

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 12-CP-23-6195
Court of Appeals Tracking No.: 2014-000150

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SEP 23 2014

SC Court of Appeals

Canal Insurance Company,.....Appellant,

v.

National House Movers, L.L.C.;

Kevin E. Jones; David Black;

Ron Hewes; and Brent Jones.....Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
#2012-CP-23-06195

Canal Insurance Company,

Plaintiff

v.

National House Movers, LLC, Kevin E.
Jones, David Black, Ron Hewes, and
Brent Jones,

Defendants.

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 DEC 30 AM 10 57

This is a non-jury, declaratory judgment action filed by Canal Insurance Company seeking a declaration that its insurance contract provides no indemnity coverage for a lawsuit filed against its insured, National House Movers, LLC. Canal's policy does not provide coverage for injuries to employees or leased workers. However, the policy does provide coverage for temporary workers as that term is defined in the insurance contract. The parties presented Joint Stipulated Facts and submitted exhibits including depositions, the insurance policy, and legal precedent from other jurisdictions. After consideration of all of the evidence presented, the Court finds that the Canal Insurance policy does provide indemnity coverage for its insured National House Movers, LLC.

STIPULATED FACTS

National House Movers, LLC, ("NHM") is a small house moving company composed of three members: Brent Jones, David Black and Ron Hewes. Mr. Hewes ("Hewes") is the sole permanent employee of NHM and conducts all of the operations to elevate or move houses. Mr. Hewes obtains casual (temporary) help only as needed for individual jobs. The temporary help provides manual labor under the direction of Mr. Hewes. Kevin E. Jones (no relation to Brent Jones), was one of the temporary employees who worked only when short term working conditions involving moving or raising a house required extra help. All other times, Ron Hewes did all of the NHM work alone.

Kevin Jones was hired by NHM for a job working on a house in Cowpens, South Carolina. Hewes initially worked on the job alone, grading the property with a tractor. When he got to a point where he needed help putting steel under the house, he contacted David Johnson who had worked with NHM before as a temporary helper. Subsequently, David Johnson asked Hewes if they needed anymore help and Hewes indicated "one more would not hurt". Johnson later contacted Kevin Jones and brought him to the jobsite.

NHM was later contracted to move a house in Gaffney, South Carolina on February 2, 2012. Jones' job was to get cable wires and telephone wires started going over the roof of the house. He was supposed to sit on the roof at the lower corner of the house and if he saw a non-electrical wire which might get hung, he was to use a piece of PVC to facilitate the wire across the roof. Mr. Hewes was walking in front of the slow moving truck. There is no eye witness to the accident, but at some point

#1
EC

Kevin Jones' arm either touched or came into close contact with an overhead power line and received serious injuries.

Inasmuch as NHM had only one full-time employee, it did not qualify for workers compensation insurance. Kevin Jones initiated a tort suit against National House Movers and its principals on June 26, 2012. NHM was insured by a commercial automobile insurance policy issued by Canal Insurance Company ("Canal") which provided indemnity for "all sums an insured legally must pay as damages because of bodily injury ... caused by an accident resulting from ownership or use of a covered vehicle." Canal's policy insured the vehicle owned by NHM which was involved in the accident. Canal provided the defense of the lawsuit under a reservation of rights and on September 26, 2012, filed this declaratory judgment action contending that the insurance policy excludes coverage for this injury.

The determinative issue in the case is whether or not Kevin Jones was a temporary worker. If so, he is not an employee as defined by the Canal policy and indemnity coverage is afforded by the Canal policy. If not, he is an employee and excluded from indemnity coverage afforded by the policy.

General Contract Law

In interpreting this policy provision, the Court adheres to the general rules of contract construction. *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). Courts must enforce, not write, contracts of insurance. *Auto-Owners Insurance Co. v. Rhodes*, ___ S.E.2d ___ (Op. No. 27316, decided September 25, 2013, S.C. Supreme Court).

"Words in insurance contracts are to be given their 'plain, ordinary and popular meaning.' *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 732 S.E.2d 626 (2012) (internal citations omitted). Whether language is ambiguous is a question of law for the Court, and any ambiguous terms are to be construed liberally in favor of the insured. Id. Further, exclusionary terms in a policy are narrowly construed to the benefit of the insured. *McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 426 S.E.2d 770 (1993)." *Hutchinson v. Liberty Life Ins. Co.*, ___ S.C. ___, 743 S.E.2d 827, 830 (2013); see also *Preservation Capital Consultants, LLC v. First American Title Ins. Co.*, ___ S.C. ___, ___ S.E.2d ___ (Op. No. 27330, filed Nov. 13, 2013, S.C. Supreme Court).

"It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001): "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). An ambiguous contract is one that can be understood in more ways than just one or is unclear because it expresses its purpose in an indefinite manner. *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct.App.1999); *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977); see *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997) ("A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.") (internal citation and quotation omitted). Construction of an ambiguous contract is a question of fact. *Skull Creek Club Ltd. P'ship v. Cook & Book, Inc.*, 313 S.C. 283, 286, 437

S.E.2d 163, 165 (Ct.App.1993). When an agreement is ambiguous, the court should seek to determine the parties' intent. *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct.App.1995). Any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the ambiguous language. *Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981).

Canal's Insurance Contract

The parties also agreed that the relevant portions of the policy which deals with our issues are contained in the "Business Auto Coverage Form" which incorporates ISO Form IA 02 CW 0809 and consists of eleven pages. The pertinent sections of this form delineates the liability coverage (Section II, A), exclusions to the liability coverage (Section II, B), and definitions (Section V).

Canal's Business Auto Coverage Form provides liability coverage for "all sums an 'insured' legally must pay because of 'bodily injury'....to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a 'covered auto'". Section II, A. - Liability Coverage [Form IA 02 CW 0810, Page 2 of 11].

The policy contains an exclusion for bodily injury to "An 'employee' of the 'insured' arising out of and in the course of (1) Employment by the 'insured'; or (2) Performing the duties related to the conduct of the 'insured's' business." Section II, B. 4. [Form IA 02 CW 0810, Page 3 of 11].

Section V,F. specifically defines "employee" as follows:

"Employee" includes a 'leased worker'. "Employee also includes any individual, other than an employer, who is employed by an employer and who in the course of his employment directly affects commercial motor vehicle safety...'**Employee' does not include a 'temporary worker'.**" [Form IA02 CW 0810, Page10 of 11] (emphasis added).

Section V,O. specifically defines a "temporary worker" as follows:

"Temporary worker" means a person who is **furnished to you** to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions. 'Temporary Worker' does not include a driver of a motor vehicle in your business." [Form IA 02 CW 0810, Page 11 of 11]. (emphasis added).

Section V,I. specifically defines a "leased worker" as follows:

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the Conduct of your business. "**Leased worker' does not include a 'temporary worker'**". [Form IA 02 CW 0810, Page 10 of 11]. (emphasis added).

Canal contends that the phrase "furnished to you" necessarily requires the third party involvement of an employment entity such as an employment agency, manpower service provider or similar service. Defendants contend that the phrase does not restrict the third party to an employment agency or even a business entity. They argue that the majority view is that the term "furnished to you" only requires a third party other than the employer, irrespective of whether the entity is an individual or a business.

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The facts establish that Kevin Jones was a person who worked for NHM on only "short-term workload conditions". Therefore if Kevin Jones was not "furnished to" NHM as defined by the policy, he would be classified as an employee and precluded from indemnity coverage to NHM as provided in Section II, B.4. of the Insurance policy. However, if Kevin Jones was "furnished to" NHM, he would be a "temporary worker" who is not defined as an "employee" under the policy and NHM would be entitled to indemnity protection. Canal's policy does not define the phrase "furnished to". While this phrase has not been construed in the context of an insurance policy in our state, it has engrossed significant judicial review in other jurisdictions.

Canal's Insurance policy is comprised of accumulated Insurance Services Office, Inc. (ISO) forms. The temporary worker definition was added to the ISO Form IA 02 CW 0810 in 1993. *American Family Mutual Ins. Co. v. Tickle*, 99 S.W.3d 25 (Mo. Ct. App. 2003). Since that time, numerous courts have grappled with the definition and potential ambiguity of the term "furnished to you" in trying to determine whether an individual qualifies as a temporary worker under a CGL policy. These decisions do not generally focus on the meaning of "furnished" which has a plain and ordinary meaning but rather deal with who should furnish the temporary worker to satisfy the definitional phrase.

The standard definition of the word "furnish" is "to provide or supply with what is needed, useful or desirable." Webster's Third New International Dictionary of the English Language, 923 (2002). The general legal definition of "furnish" is "to supply, provide or equip, for accomplishment of a particular purpose." Black's Law Dictionary, 675 (6th Ed., 1990). The term "furnished to" nor the word "furnished" is defined anywhere in the Canal policy.

Law Relating to "furnished to you"

The vast majority of jurisdictions have concluded that the phrase "furnished to you" is not ambiguous and necessarily means that a third party is involved in "furnishing" the temporary worker to the employer. See *AMCO Ins. Co. v. Dorpinghaus*, No. 05-1296, 2007 WL 313280 (D.Minn. Jan. 11, 2007); *Bornreger v. Smith*, 811 N.W.2d 447 (Wis.Ct.App. 2012); *Brown v. Indiana Ins. Co.*, 184 S.W.3d 528 (Ky. 2005); *Carl's Italian Restaurant v. Truck Ins. Exchange*, 183 P.3d 636 (Colo.App.2007); *Gavan v. Bituminous Casualty Corp.*, 242 S.W.3d 718 (Mo. 2008); *General Agents Ins. Co. of America, Inc. v. Mandrill Corp, Inc.*, 243 Fed.Appx. 961 (6th Cir.(Tenn.) 2007); *Lafayette Insurance Co. v. Roberts*, 2013 WL 3961173 (Tenn.Ct.App., filed July, 2013); *Monticello Ins. Co. v. Dion*, 836 NE2d 1112 (Mass.App.Ct. 2005); *Nautilus Ins. Co. v. Gardner*, 2005 WL 664358 (E.D.Pa. March 21, 2005); *Para v. Markel Intern. Ins. Co. Ltd.*, 300 Fed.Appx 317 (5th Cir.(Tx.) 2008); *Rhiner v.Red Shield Ins.*, 208 P.3d 1043 (Or Ct.App. 2009); *Mendenhall v. Property & Cas. Ins. Co. of Hartford*, 375 S.W.3d 90 (MO. 2012); *Nationwide Mut. Ins. Co. v. Allen*, 850 A.2d 1047 (Conn.App.2004); *Nick's Brick Oven Pizza v. Excelsior Ins.*, 853 N.Y.S.2d 870 (Sup. Ct. 2008); *Northland Cas. Co. v. Meeks*, 530 F.2d 869 (8th Cir.(Ark.) 2008).

A few jurisdictions have found ambiguity in the temporary worker definition. These courts conclude that virtually anyone can "furnish" the temporary worker to the employer including the worker and the employer themselves. See *Nick's Brick Oven Pizza v. Excelsior Ins.*, 853 N.Y.S.2d 870 (Sup. Ct. 2008); *Bituminous Cas. v. Ross*, 413 F.Supp2d 740 (N.D.W.Va. 2006); *Ayers v. C&D Contractors*, 237 F.Supp.2d 764 (W.D.Ky. 2002); *National Indemnity v. Landscape Mgt.*, 963 So.2d 361 (Fla.App 4 Dist. 2007); *American Family Mut. Ins v. As One*, 189 S.W.3rd 194 (Mo. App. 2006) [But note that this decision was overruled by the Missouri Supreme Court in *Gavan v. Bituminous Casualty Corp.*, 242 S.W.3d 718 (Mo. 2008). [An *en banc* (5-3) decision with the dissent advocating adhering to the finding of ambiguity.]

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Only a few courts have construed the definition of "furnished" to require involvement of a temporary service or entity as argued by Canal. *Brown v. Indiana Ins. Co.*, 184 S.W.3d 528 (Ky. 2005); *Burlington Ins. Co. v. De Vesta*, 511 F.Supp.2d 231 (Conn. D.Ct.2007); *AMCO Ins. Co. v. Dorpinghaus*, 2007 WL 313280 (USD Ct. Minn.). However, as indicated above, the clear majority of courts have not restricted the third party involvement to some type of employment or staffing agency. In fact, to impose this requirement would amount to rewriting the contract. The policy definition simply does not say "Temporary worker" means a person who is furnished to you by an employment-type agency..." More importantly, it is unreasonable to assume that any person would glean this restriction from the words provided in the policy. Because the policy is silent as to who must furnish a temporary employee, this Court also adopts the majority rule that any third person or entity is sufficient to furnish the temporary worker.

The evidence in this case establishes that Kevin Jones was only employed by NHM for short-term working conditions. It is also uncontroverted that David Johnson suggested, contacted and transported Kevin Jones to NHM for the job in which he was injured. It was stipulated that David Johnson was neither a permanent employee nor a member of NHM and that David Johnson "brought Kevin Jones to NHM." There is no evidence that David Johnson was an agent of NHM and such a conclusion is inconsistent with his manual labor temporary position. In fact, the Florida Court of Appeals has held that even another employee can furnish a temporary worker under this same policy provision. See *National Indemnity Company of the South v. Landscape Management Company, Inc.*, 963 So.2d 361 (Fla.App. 4 Dist. 2007) (also finding that the relevant policy provision was susceptible to more than one reasonable interpretation, one providing coverage and another limiting coverage, the insurance policy was considered ambiguous.) The Court therefore finds that Kevin Jones was a temporary worker as defined by the Canal policy on February 2, 2012, inasmuch as he was furnished to NHM by David Johnson, a third person.

Canal raises an additional argument that Kevin Jones was an employee of NHM under South Carolina common law citing evidence of NHM's right to control Jones. Canal also cites policy language in the policy defining an employee as any individual "who in the course of his employment directly affects commercial motor vehicle safety." However, even if Jones is classified as an employee by any other provision in the policy, Canal's temporary worker exception contractually excludes Jones as an employee: "'Employee' does not include a 'temporary worker'." Section V.F. [Form IA02 CW 0810, Page 10 of 11]

Conclusion

This Court is persuaded that the Canal policy definition of a temporary worker is not ambiguous and can be interpreted by referencing the terms of the entire contract. As found by the vast majority of jurisdictions that have considered this policy provision, in its plain and ordinary meaning, the definition of "temporary worker" does require the involvement of some third party who "furnishes" the temporary worker to the insured. The Court further finds that the policy does not restrict the furnisher of a temporary worker to an employment agency or entity. Any other interpretation would effectively either delete the "furnished to" language from the policy or rewrite the definitional phrase. Courts must enforce, not write, contracts of insurance. *Auto-Owners Insurance Co. v. Rhodes*, ___ S.E.2d ___ (Op. No. 27316, decided September 25, 2013, S.C. Supreme Court).

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The Court therefore finds that because Kevin Jones was furnished by a third party to NHM for short-term workload conditions, Jones was a "temporary worker" within the meaning of the policy. NHM is therefore entitled to indemnity coverage provided in the Canal policy for the claim which has been filed against NHM by Kevin Jones.

Attorney's Fees

NHM also sought attorney fees and costs associated in the defense of the declaratory judgment action instituted by Canal. Our courts have consistently held that where an insured is successful in the defense of a declaratory judgment action brought by his insurer in an effort to relieve itself of coverage under the policy, attorney's fees incurred by the insured are recoverable against the insurer. *Hegler v. Gulf Insurance Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978); *State Auto Property & Casualty Insurance Company v. Reynolds*, 350 S.C. 108, 564 S.E.2d 677 (S.C.App. 2002). The court is required to consider six factors when determining a reasonable attorney's fee. *Clardy v. Bodolosky*, 679 S.E.2d 527 (S.C.App 2009). NHM and its counsel shall submit to the Court and to Canal's counsel, all evidentiary matter necessary for the court to make a determination of a reasonable attorney's fee. Canal shall have 30 days after NHM's filing to file any evidentiary matter contesting the amount of the attorney's fee request.

IT IS SO ORDERED.



Judge Edward W. Miller
Circuit Court Judge

Dated: 12/27, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Canal Insurance Company,

Plaintiff

v.

National House Movers, LLC, Kevin E.
Jones, David Black, Ron Hewes, and
Brent Jones

Defendants

IN THE COURT OF COMMON PLEAS
#2012-CP-23-06195

JOINT STIPULATED FACTS

1. This is a non-jury, declaratory judgment action filed by Canal Insurance Company seeking a declaration that this insurance contract provides no indemnity coverage for a lawsuit filed against the insured, National House Movers, LLC. National House Movers, LLC, ("NHM") is a small house moving company composed of three members: Brent Jones, David Black and Ron Hewes. Mr. Hewes is the only permanent employee of NHM and conducts all of the operations to elevate or move houses. Mr. Hewes obtains casual help only as needed for individual jobs. The casual help provides manual labor under the direction of Mr. Hewes. Kevin E. Jones (no relation to Brent Jones), was one of the casual employees who worked only when short term working conditions involving moving or raising a house required extra help.
2. Kevin Jones was hired by NHM for a job working on a house in Cowpens, South Carolina. Ron Hewes initially worked on the job alone, grading the property with a tractor. When he got to a point where he needed help putting steel under the house, he contacted David Johnson to assist. Later, David Johnson asked Hewes if they needed anymore help and Hewes indicated "one more would not hurt". Johnson then contacted Kevin Jones. Kevin Jones was brought to NHM by David Johnson.
3. Mr. Jones was not brought to NHM by either a staffing agency, employment agency, or other short-term or seasonal employment entity.
4. Ron Hewes provided "on the job" training for Mr. Jones and directed Mr. Jones' performance of his duties on the day of the accident.
5. In particular, Mr. Jones was told to stay in his position at the lower corner of the house unless he was moving non-electrical wires and was also instructed not to touch electrical lines, which were identified to him by Mr. Hewes.



6. NHM furnished Mr. Jones with all tools and equipment he used in the scope of his employment, including a PVC pipe he used to raise the utility lines over the house NHM was transporting.
7. Mr. Jones was paid in cash on Fridays at an hourly rate for hours he had worked the preceding week.
8. According to both NHM's Rule 30(b)(6) designee and Kevin Jones, Ron Hewes had the authority to hire and fire Mr. Jones at will on behalf of NHM.
9. The house involved in this case was transported on dollies hooked to a commercial vehicle.
10. The reason Mr. Jones was employed to clear the wires was because if they got caught on the house, the wires could break or pull a pole out of the ground. This directly affected the safety of transporting the house and the operation of the vehicles transporting the house since a falling pole could damage the house or the commercial vehicle used to tow the house.
11. NHM was later contracted to move a house in Gaffney, South Carolina on February 2, 2012. Jones' job was to get cable wires and telephone wires started going over the roof of the house. He was supposed to sit on the roof at the lower corner of the house and if he saw a non-electrical wire which might get hung, he was to use a piece of PVC to facilitate the wire across the roof. Mr. Hewes was walking in front of the slow moving truck. There is no eye witness to the accident, but at some point Kevin Jones' arm either touched or came into close contact with an overhead power line and received serious injuries.
12. Inasmuch as NHM had only one full-time employee, it did not qualify for workers compensation insurance. Kevin Jones initiated his tort suit against National House Movers and its principals on June 26, 2012. National House Movers, LLC, was insured by a commercial automobile insurance policy issued by Canal Insurance Company which provided indemnity for "all sums an insured legally must pay as damages because of bodily injury ... caused by an accident resulting from ownership or use of a covered vehicle." Canal's policy insured the vehicle owned by NHM which was involved in the accident. Canal Insurance provided the defense of the lawsuit under a reservation of rights and on September 26, 2012, Canal filed this Declaratory Judgment action contending that the insurance policy excludes coverage for this injury.

Canal's Insurance Contract

13. The parties also agree that the relevant portions of the policy which deals with our issues are contained in the "Business Auto Coverage Form" which incorporates ISO Form IA 02 CW 0809 and consists of eleven pages. The pertinent sections of this form delineates the liability coverage (Section II, A), exclusions to the liability coverage (Section II, B), and definitions (Section V).
14. Canal's Business Auto Coverage Form provides liability coverage for "all sums an 'insured' legally must pay because of 'bodily injury' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a 'covered auto'". Section II, A. – Liability Coverage [Form IA 02 CW 0810, Page 2 of 11].
15. The policy contains an exclusion for bodily injury to "An 'employee' of the 'insured' arising out of and in the course of (1) Employment by the 'insured'; or (2) Performing the duties related to the conduct of the 'insured's' business." Section II, B. 4. [Form IA 02 CW 0810, Page 3 of 11].

Section V,F. specifically defines "employee" as follows:

"Employee" includes a 'leased worker'. "Employee also includes any individual, other than an employer, who is employed by an employer and who in the course of his employment directly affects commercial motor vehicle safety...**'Employee' does not include a 'temporary worker'.**" [Form IA02 CW 0810, Page10 of 11] (emphasis added).

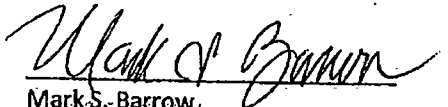
Section V,O. specifically defines a "temporary worker" as follows:

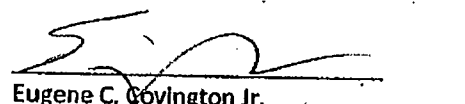
"Temporary worker" means a person who is furnished to you to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions. 'Temporary Worker' does not include a driver of a motor vehicle in your business." [Form IA 02 CW 0810, Page 11 of 11]. (emphasis added).

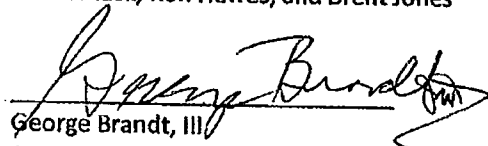
Section V,I. specifically defines a "leased worker" as follows:

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the Conduct of your business. **"Leased worker" does not include a 'temporary worker'.**" [Form IA 02 CW 0810, Page 10 of 11]. (emphasis added).

WE SO STIPULATE:


Mark S. Barrow
Attorney for Canal Insurance Company


Eugene C. Covington Jr.
Attorney for National House Movers, LLC,
David Black, Ron Hewes, and Brent Jones


George Brandt, III
Attorney for Kevin E. Jones

#3147

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Canal Ins. Co.
~~State of South Carolina~~
Plaintiff(s),

National House Movers

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

EXHIBIT LIST

Case NO: 2012 CP 236195

Plaintiff Attorney Mark Steven Boraw

Date 11-21-0013

Defendant Attorney Eugene C. Covington

Judge Edward Miller

Reporter Caroline Hiskell

Court's Exhibit

Plaintiff	Exhibit Description	Defendant	Exhibit Description
✓ 1	<u>Joint Stipulation</u>	1	
2		2	
3		3	
4.		4.	
5.		5.	
6.		6.	
7.		7.	
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13.		13.	
14.		14.	
15.		15.	
16.		16.	

Submitted and received this 22

day of November 2013

Caroline Hiskell
Court Reporter

Stephen Loff 11/22/13
Clerk of Court

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Canal Insurance Company,

Plaintiff,

v.

National House Movers, LLC, Kevin
E. Jones, David Black, Ron Hewes,
Brent Jones and Fred Najim,

Defendants.

Civil Action No.: _____

2012-CP-23-00195

**COMPLAINT
FOR DECLARATORY
JUDGMENT**

(NON-JURY)

2012 SEP 26 A 9:07

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

Plaintiff will show unto the Court:

JURISDICTION

1. Plaintiff is an insurance company based in Greenville, South Carolina, which provides commercial auto and trucking insurance.
2. Defendant National House Movers, LLC, is a limited liability company headquartered in Greer, South Carolina, which had business auto insurance coverage through Canal Insurance Company.
3. Defendant Kevin E. Jones is on knowledge and belief a resident of Spartanburg, South Carolina who was injured during the course and scope of his employment with National House Movers, LLC. He has brought a lawsuit, Civil Action No. 2012-CP-42-2687, against National House Movers, LLC and the four other, below-named, Defendants.
4. On knowledge and belief, based on statements in Kevin E. Jones' Complaint, David Black; Ron Hewes; Brent Jones; and Fred Najim "are members in and/or owners of ... National House Movers, and one or more of them [is a resident] of Spartanburg County."

5. This Court has jurisdiction of this action based on Article V of the South Carolina Constitution and Titles 14 and 15 of the South Carolina Code, Annotated. Venue is proper in Greenville County based on S.C. Code Ann. §15-7-30.

6. This Court has jurisdiction of this Complaint for Declaratory Judgment under S.C. Code Ann. §§15-53-20 and 30.

FACTS

7. Plaintiff Canal Insurance Company issued to Defendant National House Movers, LLC, a policy of truck insurance, number PIA 05589202, for the period 3/18/2011 – 3/18/2012. A certified copy of the commercial auto part and the general, multi-part provisions are attached hereto as Exhibit 1.

8. As its name implies, National House Movers (“House Movers”) is in the business of moving houses from one location to another.

9. On February 2, 2012, House Movers was utilizing its vehicle, on knowledge and belief a 2000 GMC tractor with trailer, to move a house to the vicinity of Gaffney, South Carolina.

10. Defendant Kevin Jones was working in the course and scope of his employment with House Movers, which had directed him to remain on the roof of the house as the vehicle moved it and keep watch for obstacles that might inhibit the movement of the vehicle and house.

11. Defendant David Black, Ron Hewes, Brent Jones and Fred Najim were, on knowledge and belief, in or on the vehicle as it progressed to and through Gaffney.

12. Kevin Jones alleges that he was given a piece of PVC pipe six to eight feet long by Defendant Hewes and instructed to use to reposition or hold up electrical power lines so that they would clear the roof of the house as it passed underneath the lines.

13. Recognizing Hewes' right to control him in his employment, Kevin Jones did as he was directed.

14. As Kevin Jones was in the course of redirecting or lifting the power lines, he came into contact with, or got sufficiently close to, a power line that he experienced a significant electrical shock.

15. On June 26, 2012, Kevin Jones initiated his lawsuit against House Movers and the four individual Defendants, David Black, Ron Hewes, Brent Jones, and Fred Najim.

16. Canal Insurance Company is defending House Movers and the four associated individuals in the underlying lawsuit under a reservation of rights.

FOR A FIRST DECLARATION
(No Coverage)

17. Canal Insurance Company's policy includes the following exclusions:

B. Exclusions

The insurance does not apply to any of the following:

4. Employee Indemnification and Employer's Liability

"Bodily injury" to:

a. An "employee" of the "insured" arising out of an in the course of:

(1) Employment by the "insured"; or

(2) Performing the duties related to the conduct Of the "insured's" business; or

5. Fellow Employee

"Bodily injury" to:

a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or

18. Such exclusions have been recognized in South Carolina law, S.C. Code Ann §38-77-200.

19. Canal Insurance Company's policy defines "employee" as follows"

F. "Employee" includes a "leased worker". "Employee" also includes any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment. "Employee" does not include a "temporary worker".

20 Defendant Kevin Jones is, by policy definition, an "employee" as he fits in the category of "any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety." Kevin Jones' actions in repositioning power lines directly affected the safety of House Movers' commercial tractor and trailer.

21. Kevin Jones is, moreover, not a "temporary worker," as the policy defines that term as follows:

O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a driver of a motor vehicle in your business.

Jones was not a substitute for a permanent employee and was not hired because of seasonal or short-term workload conditions.

22. Canal Insurance is, therefore, entitled to a declaration that coverage is excluded by the quoted exclusions 4 and 5, so there is no coverage for Home Movers or its employees, who were also "users" of the motor vehicle.

FOR A SECOND DECLARATION
(No Duty to Defend)

23. The allegations in paragraphs 1 through 22 above are realleged as though repeated verbatim herein.

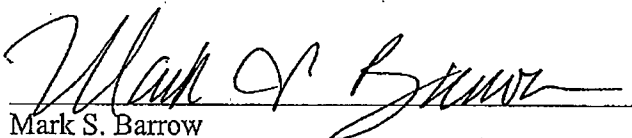
24. Under South Carolina law, a liability insurer has no duty to defend its insured if its policy provides no coverage to the insured. USAA Prop. And Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008).

25. As addressed above, there is no coverage for the injury to Kevin Jones, so Canal Insurance Company has no duty to defend any party in the underlying lawsuit.

WHEREFORE, Plaintiff prays for a declaration that its policy provides no coverage for the allegations in Kevin Jones' underlying Complaint; for a declaration, consequently, that it has no duty to defend any party in the underlying action; for the costs and fees incurred in this action; and for such other remedy as is just and reasonable.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
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Columbia, South Carolina

September 24, 2012

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	#2012-CP-23-06195
Canal Insurance Company,	)	
	)	
Plaintiff	)	
	)	
v.	)	ANSWER OF DEFENDANTS
	)	NATIONAL HOUSE MOVERS, LLC,
National House Movers, LLC, Kevin E.	)	DAVID BLACK, RON HEWES, AND
Jones, David Black, Ron Hewes, Brent	)	BRENT JONES
Jones, and Fred Najim,	)	
	)	
Defendants	)	

The Defendants National House Movers, LLC, David Black, Ron Hewes, and Brent Jones hereby answer the Complaint as follows:

1. These Defendants have insufficient information to form a belief as to the allegations of Paragraph 1 and therefore deny the same and demand strict proof thereof.
2. These Defendants admit the allegations of Paragraph 2 of the Complaint.
3. These Defendants admit the allegations of Paragraph 3 of the Complaint.
4. These Defendants admit the allegations of Paragraph 4 of the Complaint with the exception that Fred Najim is not a member or owner of National House Movers, LLC.
5. These Defendants admit the allegations of Paragraphs 5, 6, 7, 8, 9 and 10 of the Complaint.
6. These Defendants deny the allegations of Paragraphs 11 and 12 of the Complaint.
7. These Defendants deny the allegations of Paragraph 13 of the Complaint.
8. These Defendants have insufficient information to form a belief as to the allegations of Paragraph 14 and therefore deny the same and demand strict proof thereof.
9. These Defendants admit the allegations of Paragraph 15 and 16 of the Complaint.
10. These Defendants would crave reference to the entire insurance contract as to the allegations of Paragraphs 17, 18, 19, 20 and 21 of the Complaint and therefore deny the same and

demand strict proof thereof.

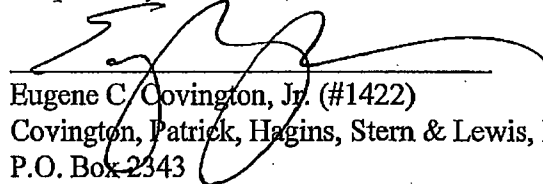
11. These Defendants deny the allegations of Paragraphs 22, 23, 24 and 25 of the Complaint.

FOR A COUNTER-DECLARATION
(Coverage and Attorney Fees)

12. These defendants, as insureds under the policy of insurance, are entitled to a declaration from the Court that coverage is provided under the terms of the policy and that these Defendants are further entitled to attorney fees and costs for defending this Declaratory Judgment action.

WHEREFORE, these Defendants pray for a declaration that its policy does provide coverage for the allegations in Kevin Jones' underlying action; for the costs and fees incurred in defending this action; and, for such other and further relief as the Court shall deem just and reasonable.

Respectfully submitted,



Eugene C. Covington, Jr. (#1422)
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000
(864) 233-9777 fax
gcovington@covpatlaw.com
Attorneys for Defendants National House
Movers, LLC, David Black, Ron Hewes,
and Brent Jones

Dated: December 18, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
)
) THIRTEENTH JUDICIAL CIRCUIT

Canal Insurance Company,
Plaintiff,

v.

National House Movers, LLC; Kevin E.
Jones; David Black; Ron Hewes;
Brent Jones and Fred Najim,
Defendants.

ANSWER

2012-CP-23-06195

Defendant, Kevin E. Jones, in responding to the allegations set forth by Plaintiff in its Complaint, responds as follows:

1. Lacking information, but assuming the allegations set forth in paragraph 1 are to be true, they are admitted.

2. It is admitted, as alleged in paragraph 2, that the Defendant National House Movers, LLC, is a limited liability company. On information and belief, the other allegations set forth in paragraph 2 are true, and therefore they are admitted.

3. It is admitted, as alleged in paragraph 3, that this Defendant, Kevin E. Jones, was injured while temporarily employed by the Defendant National House Movers, LLC, and that with regard to his injuries, he has initiated the lawsuit described. All other allegations set forth in paragraph 3 are denied. On information and belief, it is believed this Defendant, Kevin E. Jones, could best be described as a temporary worker and/or an independent contractor. He was not an employee in the traditional sense of the word.

4. The allegations set forth in paragraph 4 are admitted.

5. Lacking information, but assuming the allegations set forth in paragraph 5 are to be true, they are admitted.

6. The allegations set forth in paragraph 6 are admitted.

7. Assuming the allegations set forth in paragraph 7 are true, they are admitted.

8. The allegations set forth in paragraph 8 are admitted.

9. Believing the allegations set forth in paragraph 9 are to be true, they are admitted.

10. The allegations set forth in paragraph 10 are denied, except it is admitted that one or more of the owners of National House Movers, LLC had directed him to remain on the roof of the house, to watch for obstacles, to relocate or reposition electrical and other similar lines, and to otherwise attempt to insure that the house that was being moved by the Defendant National House Movers, LLC could proceed down one or more public roads, from the location where it was initially found, to another location. Other than doing as he was told, this Defendant, Kevin E. Jones, was doing nothing else.

11. With regard to at least some of the other individual Defendants, the allegations set forth in paragraph 11 are admitted.

12. The allegations set forth in paragraph 12 are admitted.

13. The allegations set forth in paragraph 13 are denied. However, it is admitted that Kevin Jones was injured while attempting to obey the instructions given to him by the Defendant Hewes with regard to relocating electrical power lines.

14. The allegations set forth in paragraphs 14 and 15 are admitted.

15. Lacking information, but believing the allegations set forth in paragraph 16 to be true, they are admitted.

16. The allegations set forth in paragraph 17 are admitted.

17. Lacking information, the allegations set forth in paragraph 18 are denied.

18. The allegations set forth in paragraph 19 are admitted.

19. The allegations set forth in paragraph 20 are denied. In fact, the Defendant, Kevin E. Jones, was a "temporary worker," as defined by Plaintiff in its policy. The exclusion regarding employees set forth in Plaintiff's policy specifically says that it does not include temporary workers. This Defendant was a temporary worker at the time of his injury. Therefore, he was not excluded, but was in fact covered under Plaintiff's policy with the Defendant National House Movers, LLC.

20. The allegations set forth in paragraph 21 are denied. In fact, this Defendant was a "temporary worker," as the policy defines the term, in that he was furnished/used by National House Movers, LLC, on a temporary, irregular, and sporadic basis, only as short-term workload conditions required.

21. The allegations set forth in paragraph 22 are denied.

22. The allegations incorporated by reference into paragraph 23 are admitted and denied to the same extent heretofore admitted and denied.

23. The allegations set forth in paragraph 24 are admitted to the extent that Plaintiff would have no duty to defend the other Defendants, other than this Defendant, if the policy/policies in question provided no coverage to the Defendant National House Movers, LLC. Since the policy does provide coverage with regard to this Defendant, because he was a temporary

employee, or as indicated above, an independent contractor, and not subject to the "permanent employee" exclusion, this Defendant is informed and so believes that the Plaintiff does have a duty to defend the other Defendants in this action, and a duty to pay such sum as a Court may determine in the lawsuit identified in paragraph 3 above.

24. This Defendant, Kevin E. Jones, denies all other allegations set forth by Plaintiff in its Complaint not heretofore admitted or explained:

WHEREFORE, this Defendant, Kevin E. Jones, having responded to all allegations set forth by Plaintiff in its Complaint, prays that this Court deny Plaintiff's prayer for relief and/or enter an order affirming the status of this Defendant, Kevin E. Jones, as being, at the time of his injury, a temporary worker, and therefore entitled to coverage under Plaintiff's policy, for the costs of this action, for an attorney's fee, if appropriate, and for such other and further relief as to this Court seems just and proper.

HENDERSON, BRANDT & VIETH, P.A.

By: 

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S.C. Bar #03023
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Spartanburg, SC
October 30, 2012

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE, 2013 JAN 10 THIRTEENTH JUDICIAL CIRCUIT

Canal Insurance Company,

Plaintiff,

v.

National House Movers, LLC, Kevin
E. Jones, David Black, Ron Hewes,
Brent Jones and Fred Najim,

Defendants.

FILED-CLERK OF COURT
GREENVILLE, SC
PAUL D. WICKENS

Civil Action No.: 12-CP-23-6195

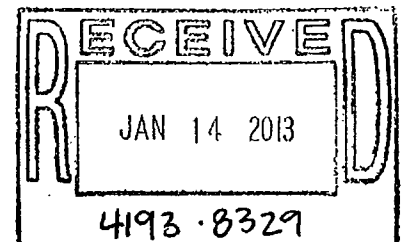
PLAINTIFF CANAL INSURANCE
COMPANY'S ANSWER TO
DEFENDANTS NATIONAL HOUSE
MOVERS, LLC, DAVID BLACK, RON
HEWES AND BRENT JONES'
COUNTER DECLARATION

To the extent that Paragraph 12 of the Answer of the above-referenced Defendants can be construed as a Counterclaim, Plaintiff Canal Insurance Company hereby answers, alleges and would show unto the honorable Court:

1. Any allegation not specifically admitted herein is denied..
2. In response to the allegations of Paragraph 12 of the Answer of the above-referenced Defendants, the allegations of that paragraph is denied.

Wherefore, Plaintiff prays for its declaration complained of in its original Complaint, and for the additional relief requested in its Complaint, and for any other relief the Court deems just and proper.

(Signature Page Immediately Following)



Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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**ATTORNEYS FOR PLAINTIFF
CANAL INSURANCE COMPANY**

Columbia, South Carolina

January 8, 2013

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3) 2012-CP-23-6195
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25)

COUNTY OF GREENVILLE

Canal Insurance Co.

-vs-

National Home Movers

TRANSCRIPT OF RECORD

November 21, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

MARK BARROW, Esquire
Attorney for the Plaintiff

GEORGE COVINGTON, Esquire
Attorney for the Defendant

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

Canal Insurance vs. National Home Movers

1 THE COURT: Alright.

2 MR. BARROW: What we are prepared to do this
3 morning, Your Honor, of course is hand up to the Court the
4 stipulation of facts and then to just argue our respective
5 sides because it is a question of law for the court. And
6 then what we were also going to suggest to make it as
7 painless as possible is both of us submit proposed orders.

8 THE COURT: Alright. Okay

9 MR. COVINGTON: There is one other thing that
10 should be in the record is the actual insurance policy.
11 In fact, there should be the entire policy as Exhibit 1
12 and then there's just the provisions of the policy that
13 we're concerned about.

14 MR. BARROW: That's correct.

15 THE COURT: I think it's in the same place
16 that your memorandum of law is. I don't have it.

17 MR. BARROW: We would agree to submit one and
18 we'd be happy to do that and we would need to do that,
19 Your Honor, and you would need to see it as well. We
20 marked it as exhibits and submitted it up at the last
21 hearing.

22 THE COURT: I've got a deposition of Ron
23 Hughes.

24 MR. COVINGTON: You should have three
25 depositions.

Canal Insurance vs. National Home Movers

1 MR. BARROW: You should have three.

2 THE COURT: That was attached to your
3 memorandum of law so whoever the court reporter was or the
4 Clerk's Office have taken the exhibits and put them
5 somewhere.

6 MR. BARROW: What we'll do is when we leave
7 here, we'll check with the Clerk's Office and if the
8 Clerk's Office doesn't have them, we will resubmit to you
9 the depositions and the policy.

10 THE COURT: Okay.

11 MR. BARROW: They do need to be part of the
12 record.

13 THE COURT: They probably are. When was the
14 last hearing and who heard it?

15 MR. BARROW: Judge Hayes heard it and it was
16 about a month ago maybe.

17 MR. COVINGTON: It was a summary judgment
18 motion.629 :45

19 THE COURT: Okay.

20 MR. BARROW: May it please the Court, Your
21 Honor, I'm going to hand up the joint stipulation of fact
22 for the court and ---

23 THE COURT: Do you want this marked as an
24 exhibit or it doesn't matter?

25 MR. BARROW: It doesn't matter as long as

Canal Insurance vs. National Home Movers

1 it's in the court record to us just for the record. What
2 will be in the record is the joint stipulation of facts,
3 the depositions of Ron Hughes, Kevin Jones, and I think
4 it's Brent Jones, 30B6 and the entire policy from the
5 Canal Insurance Company.

6 THE COURT: Okay.

7 MR. BARROW: Thank you, Your Honor. This is
8 a declaratory judgment action brought by the plaintiff
9 Canal Insurance Company. Canal issues a policy of
10 insurance to its insured National House Movers. The
11 insurance policy covered the period of 3-18-2011 to
12 3-18-2012. The policy consisted of three coverage parts,
13 a commercial automobile part, a commercial general
14 liability, and marine and for purposes of this hearing and
15 this David Johnson, we're only dealing with the commercial
16 automobile policy.

17 Now, this declaratory judgment action arises
18 out of an injury that occurred to a Kevin Jones who was on
19 the day of the accident employed by National House
20 Movers. Ron Hughes was the, I think as the defense would
21 say, he was the full time employee of National House
22 Movers and I think that at that point or some time later,
23 it's in his deposition, he was actually an owner.

24 National House Movers was in the business of,
25 of course, moving houses and in this particular case, they

Canal Insurance vs. National Home Movers

1 had employed Mr. Jones to help them periodically to do
2 that to perform that task at several different times.
3 They originally came by Mr. Jones as a result of
4 Mr. Hughes working with another man at National House
5 Movers called David Johnson. I think it's undisputed that
6 David Johnson worked for National House Movers
7 periodically. He also worked for some other people so he
8 would be categorized, I think, not as a full time employee
9 but a part time employee. When the need arose, they would
10 get David Johnson and David Johnson would assist them.

11 On this particular event, they were working
12 on jacking up a house and get it moving. They determined
13 they needed some help. David Johnson and Mr. Hughes were
14 working at that location, David Johnson suggested they get
15 Kevin Jones. He was a friend of his, he knew him.
16 Mr. Hughes said that would great.

17 David Johnson contacted Mr. Jones and asked
18 him if would like to come work and he said absolutely.
19 Johnson picked him up, brought him to the work site.

20 In addition to that the testimony is he was
21 trained by Mr. Hughes, Mr. Jones was, as to how to do the
22 job. He was given the tools by Mr. Hughes as to how to do
23 the job. He was controlled by Mr. Hughes, and Mr. Hughes
24 had the right to hire and fire and, of course, he was paid
25 via testimony by cash on Fridays.

Canal Insurance vs. National Home Movers

1 Now, the reason for that is multi-fold. One,
2 as Mr. Hughes has admitted and I just read portion of his
3 testimony the acts that Mr. Jones was performing by
4 lifting those wires up were, in deed, part of the act that
5 could directly effect commercial motor vehicles safety as
6 described in the policy because he didn't want those wires
7 to get caught, could pull a pole down, could wreck the
8 truck.

9 Second, the definition of temporary worker
10 which the defendants are relying upon to assert that he
11 was not an employee therefore the exclusion doesn't apply,
12 is defined as follows; "Temporary worker means a person
13 who is furnished to you to substitute for a permanent
14 employee or leave or to meet seasonal or short term work
15 load conditions." But it doesn't stop there. "Temporary
16 worker does not include a driver or a motor vehicle in
17 your business."

18 So the key part of the definition of
19 temporary worker which is in dispute today is the
20 language, "who is furnished to you." And attached to our
21 memorandum of law is an AVA article which actually goes
22 through fairly succinctly and summarizes the majority view
23 in the United States and a minority view in the United
24 States it cites a number of cases for both and we have
25 cited those cases in our memo of law. In fact it is the

Canal Insurance vs. National Home Movers

1 majority view in the United States that in order for a
2 temporary worker to be -- "a worker to be classified as
3 temporary, he has to be furnished to the employer by some
4 entity that is in the business of doing that or otherwise
5 as the courts have concerned it completely reads out those
6 words out of the policy or the policy doesn't make sense
7 if that's allowed to happen."

8 So there's a litany of cases cited that say
9 furnished to you means you have to be furnished to some
10 entity in the business. For example, ManPower, an
11 employment agency and specific samples like that given in
12 the cases which are attached to our brief. In this case
13 the testimony is clear that Kevin Jones, the injured party
14 was not furnished by anyone in the business of doing this.

15 As a matter fact, he was contacted by a
16 friend David who was working on the job to say do you want
17 to come here. There is a case that is directly on point
18 that we have cited in our memo and it's cited also, and
19 there's a discussion about it, again this article that we
20 have provided and it is the case of Amco Insurance Company
21 versus Dolphin(ph) House and in the Amco case, in that
22 case you had an owner of a construction company that
23 wanted to build a home and so he contacted his son. His
24 son worked for another business and he said I'm going to
25 need some help framing this house and his son said, sure,

Canal Insurance vs. National Home Movers

1 house and the PVC pipe to move the wires. He paid him by
2 cash every Friday. The significance of that is a lot of
3 temporary workers did get paid a set sum for a specific
4 task but that wasn't how he was paid. And then finally
5 Mr. Hughes admits as Mr. Jones did that he had the right
6 to fire him.

7 So there's direct evidence of NHM's right to
8 control, they exercised that, they furnished the
9 equipment, method payment and they had the right to fire.
10 And then lastly, under the policy itself as I read earlier
11 to the Court, Canal opines that he is an employee because
12 he was doing something that affected commercial motor
13 vehicle safety and I cited for the Court earlier there's
14 direct testimony from Mr. Hughes who testified that, "And
15 you're concerned with the safety of the wires that are
16 across the road, correct?

17 ANSWER: Yes, sir.

18 QUESTION: And the reason why you're doing this
19 is to prevent an accident involving one of the wires that
20 might pull a pole down, that might impact your house, your
21 truck, adjoining property, or might hit somebody else,
22 correct?

23 ANSWER: Yes, sir."

24 All of that is cited, Your Honor, in our
25 memorandum of law. So our position is three-fold. First,

Canal Insurance vs. National Home Movers

1 the contract still is enforced even though part of it is
2 ambiguous. It's just that at that point the court has to
3 determine what -- well, you know the adhesion rule in
4 particular in contracts and particularly with exclusion
5 because in South Carolina like many states if you got
6 ambiguity in an exclusion from the liability that you have
7 contracted for, that's even considered more strictly than
8 anything else because you're taking away what you've
9 contract to provide. So it's almost a double whammy in
10 exclusion that you're saying is not clear.

11 But I want to explain one of thing before we
12 get into the meat of this. This article -- this is the
13 article that was written that was put in. You've got
14 probably one part of it.

15 THE COURT: Well, no, this is Exhibit 6. We
16 got the exhibits from the last hearing.

17 MR. COVINGTON: The whole article is in there
18 too. Yours is just part of it, the part that has to do
19 with, "furnished to you." There's other questions like
20 was it seasonal work, or was he hired to replace another
21 worker in short term work conditions. There's other parts
22 of this policy contract language.

23 You will find, No. 1, that this was written
24 by a lawyer in Boston. Now, I don't know, he may be a
25 good lawyer but what I do know is he was the counsel for

Canal Insurance vs. National Home Movers

1 Scottsdale Insurance Company which was involved in several
2 cases involving this ISO form and he wrote an article for
3 the Tort Trial and Insurance Practice Law Journal in 2010,
4 and what he did was, according to him, is he got an
5 associate in the firm to assist him and what I suspect is
6 that that assistant primarily read all these cases and
7 then he puts in this article how he interprets these
8 cases.

9 And he does say in there, here's a majority
10 view, here's a minority view, but I don't want the Court
11 to think that we in any way agree with his categorization.

12 THE COURT: So you want me to consider the
13 source?

14 MR. COVINGTON: Yes, and also consider where
15 it was published. It's not a learned treatise. It's not
16 by a professor. It is a lawyer's opinion which is no
17 different than any of us. More importantly, if you go
18 back and read all these cases, which I have done, every
19 one of them that he cited. You get squibs and then you
20 get his interpretation of that squib and then you
21 categorize it because what he tried to say is well there
22 is more cases that hold that the policy is not ambiguous.
23 That is true.

24 That is true. In numbers there are more
25 cases that have held we can figure out what this says.

Canal Insurance vs. National Home Movers

1 And there's been six cases that have held this can mean
2 multiple things and that's the definition of ambiguity.

3 Now, what I vehemently disagree with is that
4 these cases that says we can figure out what it says and
5 these cases that say it's ambiguous all struggle with not
6 what "furnished to you means," we all know furnished means
7 supply or provide and "to you" means it has to come to
8 you. So the majority view is that this temporary worker
9 has to come from somebody other than the employer because
10 it wouldn't be to him by him that would not make that
11 phrase very clear.

12 The question has become as you indicated very
13 quickly, who has to furnish that? What are we talking
14 about, who does that? And that is where the majority and
15 minority split is. The majority of the cases clearly hold
16 that the furnisher of the temporary worker has to be a
17 third person or entity from the employer. The clear
18 minority says it has to be some kind of business entity
19 who is in the business of furnishing the employee.

20 THE COURT: Opposite from ---

21 MR. COVINGTON: No, that's exactly what
22 they're saying. They're saying we want the courts in this
23 state to construe furnished to you to read instead
24 furnished to you by an entity in the business of
25 furnishing labor such as ManPower ---

Canal Insurance vs. National Home Movers

1 THE COURT: Is that the majority or the
2 minority?

3 MR. COVINGTON: That is the minority view not
4 the majority view.

5 THE COURT: Let's get that cleared up because
6 Mark said ---

7 MR. COVINGTON: I know but this article says
8 -- in the article he claims that the majority view is that
9 it has to be through kind of business. He says that but
10 what I'm telling you you read these cases and that is not
11 what they all say. They all say, the majority, it has to
12 be done by somebody other than the employer, but very few
13 -- and I'll go through them. Very quickly because this
14 very important if you want to understand them and we can
15 go through the policy reasons we've requested that and why
16 are we doing this and why are we having this controversy
17 and I can show it to you in the case because when I
18 actually read them, I started figuring it out.

19 He did these all chronologically which is
20 pretty good. The first case was Monicello Insurance.
21 These are the majority of the cases, he says, cases where
22 temporary worker must be furnished. You see it right here
23 on Page 66.

24 THE COURT: Okay.

25 MR. COVINGTON: This is his majority view, he

Canal Insurance vs. National Home Movers

1 MR. BRANDT: I can't draw that conclusion for
2 the Court. I think that's going to be legal conclusion in
3 the case because of the policy language, but the
4 transcripts are in and the amount of work that he's
5 performed is before the Court.

6 MR. BARROW: There are 1099's attached to
7 Mr. Jones's deposition.

8 MR. BRANDT: I think uncontradicted that
9 \$1878 over a significantly a long period of time in 2011
10 and \$1304 in 2012.

11 THE COURT: Now, the stipulation of facts you
12 want that included in the record.

13 MR. BARROW: We have a signed on there
14 someplace.

15 THE COURT: We'll mark that as a Court's
16 Exhibit. Does everybody agree with that to make sure it's
17 in the record.

18 MR. BARROW: I want to make sure what you
19 have in the record because you were going to check on
20 that.

21 (Stipulation marked as Court's Exhibit No. 1
22 for identification.)

23 THE COURT: Let me tell you what we've got
24 from the Clerk's Office. We've got the joint stipulated
25 facts submitted today which is Court's Exhibit 1. We have

Canal Insurance vs. National Home Movers

1 what's entitled Defendant's 6 which is an Harle written by
2 Steven Pearlmutter and it's Page 762 through 809. We have
3 Plaintiff's 5 submitted at the previous hearing and I
4 would say 6 was submitted at the previous hearing and it
5 is a copy of the policy in total.

6 Also marked as Defendant's 5 is the
7 deposition of Kevin Jones and in a envelope we've got
8 Defendant's Exhibit 1 which I think are the attorney's
9 submissions of relevant policy provisions, I mean.

10 MR. COVINGTON: That's a short version of the
11 policy.

12 THE COURT: Exhibit 2 is the deposition of
13 Ron Hughes, 4 is the deposition of Brent Jones. We have
14 two Exhibit 5's. So this does not have a sticker, it's
15 just written on there as No. 5, so we will make submitted
16 previously at the summary judgment hearing handwritten on
17 the front page Plaintiff's 5, we will make this
18 Defendant's Exhibit 3.

19 Put a blue sticker on that.

20 (Kevin Jones deposition marked as Defendant's
21 Exhibit No. 3 for identification.)

22 MR. BARROW: You got all everything in the
23 record.

24 THE COURT: You guys are going to submit
25 proposed order for me to decided?

Completed Certified Policy / Dec Page Transmittal Sheet

Date Requested:	<u>03/22/2012</u>	Claim Number:	<u>473302</u>
Requesting Party:	<u>Ken Kelly</u>	DOL:	<u>02/02/2012</u>
Date Completed:	<u>03/22/2012</u>	Policy Number:	<u>PIA05589202</u>

This transmittal sheet verifies that the attached policy has been properly reviewed and Certified

CANAL
Greenville, SC

CHANGE NUMBER: _____
ISSUE DATE: 3/18/2011
RENEWAL OF: PIA05589201

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RENEWAL CERTIFICATE

POLICY NUMBER: <u>PIA05589202</u>		COMPANY <u>Canal Insurance Company</u>	
NAMED INSURED <u>National House Movers LLC</u>			
MAILING ADDRESS OF NAMED INSURED <u>P.O. Box 2567 Greer, SC 29652</u>			
AGENT OF INSURED <u>Michael P. Hair & Associates, Inc.</u>			
ADDRESS OF AGENT OF INSURED <u>P.O. Box 472224 Charlotte, NC 28247</u>			
POLICY PERIOD	EFFECTIVE DATE <u>3/18/2011</u>	EXPIRATION DATE <u>3/18/2012</u>	AUTHORIZED REPRESENTATIVE <u>Wm. R. Timmons Agency, LLC</u>

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS POLICY MAY BE SUBJECT TO AUDIT. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

COVERAGES PARTS	PREMIUM
COMMERCIAL AUTOMOBILE COVERAGE PART	\$ 3,144.00
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$ 500.00
COMMERCIAL INLAND MARINE COVERAGE PART	\$ 3,615.00
	\$
TOTAL PREMIUM:	\$ 7,259.00
DEPOSIT:	\$ 0.00
	\$
	\$
	\$
	\$
	\$
	\$

SEE ATTACHED FORM IL 03 CW FOR A LIST OF FORMS APPLICABLE TO ALL COVERAGE PARTS.

This certificate together with the Conditions, Coverage Part Declarations, Coverage Part Coverage Form(s) and any forms and endorsements complete the above numbered policy.

Countersigned Date: 3/18/2011

By: _____

Wm. R. Timmons Agency, LLC

CANAL

Greenville, SC

Issue Date: 3/18/2011

Effective Date: 3/18/2011

POLICY NUMBER: **PIA05589202**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF FORMS AND ENDORSEMENTS

This schedule applies to the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART

FORMS THAT MAY APPLY TO MORE THAN ONE COVERAGE PART

IL 85 CW 1107 -- Premium Summary, IL 09 85 01 08 - Terrorism Disclosure, IL 141 CW 1010 -- Policyholder Notice - Punitive Damages Exclusion, IL 90 CW 0906 -- Claims Reporting Info Notice, IL 91 SC 0907 -- SC Resident Ins Adjuster, IL 99 CW 0710 -- Privacy Notice, IL 27 CW 0906 -- Signature Page Endorsement, IL 10 CW 0906 -- Driver Schedule - No Ded (6-28-10), IL 35 CW 1010 -- Punitive Damages Exclusion, IL 00 03 09 08 -- Calculation of Premium, IL 00 21 09 08 -- Nuclear Energy Liability Exclusion Endorsement (Broad Form), IL 02 49 09 08 -- SC Changes - Cancellation and Nonrenewal, IL 05 CW 0906 -- Common Policy Conditions, IL 49 CW 0906 Combined Deductible, A-101 SC (8-2009) - Canal Truck Insurance Application, A-101 SC SUPP (9-2010) - SC Supplemental Application,

FORMS THAT APPLY TO THE COMMERCIAL AUTOMOBILE COVERAGE PART

IA 128 CW 0509 -- Policyholder Notice Re State-Federal Filings, IA 90 SC 0806 -- SC Notice Re UM UIM, IA 01 CW 0906 -- Business Auto Declarations Page (Map Rev 0610), IA 02 CW 0810 -- Business Auto Coverage Form, CA 02 30 04 10 - SC Changes - Cancellation and Nonrenewal, CA 21 19 03 06 SC UM, CA 21 88 03 06 SC UIM, CA 23 01 12 93 Explosives, CA 23 94 03 06 Silica Dust Exclusion, CA 99 16 12 93 -- Hired Autos Specified As Covered Autos You Own, CA 99 48 03 06 Pollution Liability, IA 06 CW 0806 -- Truckers Endorsement, IA 07 CW 0906 -- Contractual Liability Limitation, IA 08 SC 0906 -- Occupant Hazard Limitation - SC, IA 09 CW 0906 -- Dump Site Pollution Exclusion, MCS-90 (4-2000) -- End for Public Liability Under Sections 29 and 30, SC Changes CA 01 50 03 08, ID-1 SC (9-2009),

FORMS THAT APPLY TO THE COMMERCIAL GENERAL LIABILITY COVERAGE PART

IG 01 CW 0906 -- GL Declarations, CG 00 01 12 07 - CGL Coverage Form, CG 00 68 05 09 -- Recording And Distribution of Material, CG 21 36 03 05 -- Exclusion-New Entities, CG 21 39 10 93 -- Contractual Limitation, CG 21 47 12 07 - Employment Related Practices Exclusion, CG 21 49 09 99 Total Pollution Exclusion Endorsement, CG 21 60 09 98 -- Year 2000 Exclusion, GL873 -- Assault and Battery (12-2003), IG 05 CW 0106 -- GL Conditions, IG 32 CW 0106 -- Dog Exclusion, IG 33 CW 0106 -- Asbestos Exclusion, IG 36a CW 0106 Limitation of Coverage to Designated Business Activity, IG 37 CW 0106 -- Firearm Exclusion,

FORMS THAT APPLY TO THE COMMERCIAL INLAND MARINE COVERAGE PART

IA 128 CW 0509 -- Policyholder Notice Re State-Federal Filings, IM 95-P CW 0709 -- MTC Policyholder Notice - Preferred, IM 01 CW 0709 - Motor Truck Cargo Declarations Page, IM 129-P CW 0709 -- MTC Coverage Form - Preferred, IM 59 CW 0709 -- Commodity List Endorsement,

IL 03 CW 0906

CANAL

Greenville, SC

PUNITIVE DAMAGES EXCLUSION ENDORSEMENT ADVISORY NOTICE TO POLICYHOLDERS

**BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

This Notice does not form a part of your insurance contract. No coverage is provided by this Notice, nor can it be construed to replace any provisions of your policy (including its endorsements). If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

Carefully read your policy, including the endorsements attached to your policy.

This Notice provides information concerning the following new endorsement, which applies to your renewal policy being issued by us:

Punitive Damages Exclusion Endorsement

IL 35

When this endorsement is attached to your policy, coverage does not insure against or provide indemnity for fines, penalties, exemplary or punitive damages or any other type or kind of judgment or award which does not compensate the party benefiting from the award or judgment for any actual loss or damage sustained.

CANAL

Greenville, SC

PRIVACY NOTICE

One of the most important assets of Canal Insurance Company and Canal Indemnity Company (hereinafter collectively referred to as "Canal") is the trust consumers place in us to respect and properly handle personal information received by Canal in connection with providing our products and services. To continue earning your trust and enhance the products and services offered to you, Canal has adopted the following Privacy Policy to govern how we treat your nonpublic information. We recognize the importance of respecting the privacy of our policyholders and want to make sure that you know that all steps necessary will be taken to protect the privacy of the customer information we collect and, in some cases, disclose. This Privacy Policy applies to both current and former customers of Canal. So that you can best understand what happens to the information collected, we encourage you to take a few moments and read the following information about how we collect, disclose, and protect your personal information.

A. What information do we collect?

Canal, its agencies and other affiliated companies that provide services on behalf of Canal, collect information necessary to underwrite and provide accurate insurance rates and to maintain and improve customer service and claims handling. We obtain nonpublic personal information about you from you in your request for a quotation of rates, on applications for coverage, through your transactions and other interactions with us, as well as from consumer reporting agencies, state motor vehicle departments, and other third parties. We obtain and use this information in accordance with the applicable state and federal laws. The information we gather helps us identify who you are, and properly service your business.

B. How do we use collected information?

We use the information collected to provide you with accurate rates and to provide customer service. We reserve the right to share any information we collect about you with non-affiliated third parties for purposes other than those specified in this notice. However, prior to sharing any such information, we will provide you with a notice of the types of information and non-affiliated third parties with which we intend to share and give you an opportunity to opt-out of having your information shared.

C. What information do we disclose?

We may disclose some or all of the information referred to above to affiliates and also to unaffiliated third parties for the purpose of servicing customers' insurance needs, performing business services for us, or as otherwise permitted under applicable state or federal laws. For example, we retain the services of certain outside contractors to perform services on our behalf. At times we must disclose relevant information about our policyholders to our contractors so they may provide specific services for us such as policy issuance, or inspections and appraisals after a claim. For purposes of fraud prevention, we also participate in several insurance industry supported databases of reported claims and additional driver information. Any personally identifiable medical information will not be shared for purposes other than to properly service the policy you purchase and/or to administer a claim.

D. What security procedures are used?

Our customers expect us to maintain information that is accurate, protected against manipulation and errors, secure from theft, and free from unwarranted disclosure. We maintain technical and organizational safeguards to protect the confidentiality of nonpublic personal information about our policyholders against (i) unauthorized access or disclosure and (ii) accidental loss, alteration, or destruction. We permit only authorized employees, who are trained in the proper handling of policyholder information, to have access to that information. We strive to ensure that the companies we use as our contractors support our commitment to privacy protection in their handling of personal data about our policyholders. We require outside contractors to keep your information strictly confidential and to use the information solely on our behalf and as directed by us, and we require them to protect this information as we would. We maintain physical, electronic and procedural safeguards that comply with state regulations to guard your nonpublic personal information.

E. Is the information accurate?

We maintain procedures to assure that the information we collect is accurate, up-to-date, and as complete as possible. If you believe the information we have about you in our records or files is incomplete or inaccurate, you may request that we make any additions or corrections, or if it is feasible, that we delete this information from our files. You may make this request by writing to us at Canal, P. O. Box 7, Greenville, South Carolina 29602, ATTN: Legal Department.

NOTE: This Privacy Policy relates only to policyholders who have purchased insurance through Canal. We reserve the right to change this Policy at any time, but rest assured you will be promptly notified of any change as required by law. Additionally, because you purchased your insurance through an agent that agent may have a different policy for disclosing information that you provided to that agent. Please contact the agent directly to receive a copy of their privacy policy.

CANAL

Greenville, SC

POLICY NUMBER: PIA05589202

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SIGNATURE PAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART
GENERAL LIABILITY COVERAGE PART
INLAND MARINE COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

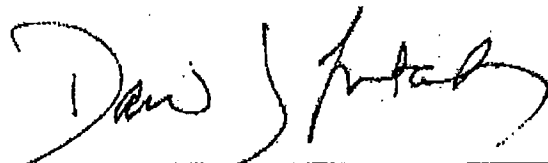
This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 3/18/2011	Countersigned By: Wm. R. Timmons Agency, LLC (Authorized Representative)
Named Insured: National House Movers LLC	

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.



Secretary



President

Greenville, SC

POLICY NUMBER: PIA05589202

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DRIVER SCHEDULE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

CARGO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 3/18/2011	Countersigned By: Wm. R. Timmons Agency, LLC (Authorized Representative)
Named Insured: National House Movers LLC	

The following individuals are drivers of "autos" under this policy. Any driver of an "auto" during the policy period should be reported to us immediately and added to the list of drivers before operating an "auto" covered under this policy.

[illegible]

CANAL

Greenville, SC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUNITIVE DAMAGES EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by the above Coverage Forms, the provisions of the Coverage Forms apply unless modified by this endorsement.

The policy to which this endorsement is attached is amended by adding the following Exclusion:

This policy does not insure against or provide indemnity for fines, penalties, exemplary or punitive damages or any other type or kind of judgment or award which does not compensate the party benefiting from the award or judgment for any actual "loss" or damage sustained.

This exclusion applies regardless of whether the damages are based upon the "Insured's" conduct or the conduct of some other party for whom the "insured" may be legally responsible.

If the exclusion of punitive or exemplary damages is not permitted by the law of the state in which a claim for punitive or exemplary damages is brought, then this exclusion shall limit those damages to the extent permitted by law. In no event shall the total of compensatory and punitive or exemplary damages be payable in excess of the Limit of Insurance provided herein.

This exclusion applies to all coverages under this policy.



Canal Truck Insurance Application

SOUTH CAROLINA

☐ Insurance ☐ Indemnity Sections 1 through 6 must be completed for a quote indication. Sections 7 through 9 must be completed in order to bind.

1. General Information

Applicant Legal Name National House Movers, LLC		Form of Business ☐ Individual ☒ LLC ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Trust	
Company Name (DBA) (if any)		Principal or Majority Owner (please include all principals) Brent Jones	
Tax Identification Number or Social Security Number (If provided, certificates of insurance may be accessed from www.canal-ins.com 24 hours a day)			

Location of Business Premises or Physical Address 1441 South Buncombe Road, Greer SC 29650064		Telephone Number 864-631-4305	Mobile Phone Number
City Greer	State SC	Zip Code 29650	County Greenville

Location is: ☐ Inside City Limits ☒ Outside City Limits

Mailing Address (if different than above)

P.O. Box 2567

City Greer	State SC	Zip Code 29652	County Greenville
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Please enter the month and year the current operations began: Month: 00 Year: 2008

Policy Type	☒ Scheduled Vehicle	☐ Gross Receipts	☐ Gross Mileage
Business Class	☒ For Hire Trucking	☐ Private Carrier	☐ Non Trucking
For-Hire and Private Operations	☐ Auto or Boat ☐ Container ☐ Drive-Away ☐ Dry Bulk or Farm Products ☐ Dry Van / Box ☐ Dry Van- Doubles ☐ Dump ☐ Dump-Coal ☐ Flatbed ☐ Livestock ☐ Log or Pulp ☐ Mobile Home ☐ Refrigerated ☒ Special Type Operations ☐ Tanker-Fuel ☐ Tanker- Liquids or Compressed Gases ☐ Towing and Recovery ☐ Waste / Garbage		

Commodities Transported (Please be specific - general freight and miscellaneous is not acceptable)

%	Commodity	%	Commodity
100	Houses		

Please enter the percentage of loads received from a broker:

Indicate Policy Term and Payment Method

☐ Short Term Policy: Desired Expiration Date _____ (no payment plan available for short term policies)

Annual Policy: ☐ Full Payment to Company ☒ Company Payment Plan

☐ Financed through outside Premium Finance Company with full payment to Canal (no double financing permitted - attach contract)

☒ Continuous Until Canceled Policy (2 month escrow deposit and monthly billing)

2. Motor Carrier Filings

MCS-90 Requested: ☒ Yes ☐ No	Authority Type: ☐ Common ☒ Contract ☐ Brokerage
MC# 600375	DOT # 1826809

3. History

Have there been any losses in the current year or the past three years? ☐ Yes ☒ No If yes, please complete below.
Please complete for all lines of business for the current year, as well as for the three years prior, or submit loss runs.

Year	Liability		Physical Damage		Cargo		General Liability	
	# Claims	*Amount Incurred	# Claims	*Amount Incurred	# Claims	*Amount Incurred	# Claims	*Amount Incurred
2010	0				0		0	
2009	0				0		0	
2008	0				0		0	

Please enter the number of claims over \$100,000:

Please enter the dollar amount for claims over \$100,000:

Loss runs are required for all applicants with five or more power units. Attach separate loss runs if space provided is not sufficient. *Amount incurred should include amounts paid, reserved totals as well as any expenses.

4. Drivers

I declare the following list includes all drivers of vehicles requested to be covered under the policy including employees, leased employees, owner operators, mechanics, family members, and any other person allowed to drive an insured vehicle.

Driver Name	Years of Experience	Convictions and MVR Record	Driver License Number	License State	Year Hired	Date of Birth
Boyce Barnett	25	0		SC	2008	

THIS IS NOT A QUOTE

THIS IS NOT A QUOTE

THIS IS NOT A QUOTE

5. Vehicles								
Description of Vehicles (trailers must be scheduled for liability coverage to apply while detached from a covered power unit)								
Unit No.	Model Year	Make and Unit Type	Vehicle Identification Number (VIN)	GVW	Radius	*Stated Value	Gap Coverage (Y/N)	**Is garaging address same as physical? (Y/N)
1	2000	White/GMC Tractor	4V5SG2UEOYN521128	Over 45,000	D-150		N	Y

*Only applicable if Physical Damage coverage is applied for. **If a unit is not garaged at the physical address, it is necessary to list the garaging addresses in the Additional Underwriting Information section of this application.

6. Coverage	
Coverages Desired:	☒ Auto Liability ☐ Auto Physical Damage ☒ Motor Truck Cargo ☒ Truckers General Liability

Auto Liability Coverage Selection	
Combined Single Limit - each accident \$ 1,000,000	
If applying for Hired Auto coverage, please enter the annual estimated cost of hire: _____	
If Non-Owned coverage is desired please enter the number of employees: _____	
Is this a social service agency or charitable organization? ☐ Yes ☐ No	

Auto Physical Damage Coverage Selection	
Deductible Desired	Coverage Desired
☐ \$500 ☐ \$1,000 ☐ \$2,500 ☐ \$5,000	☐ Collision and Specified Causes of Loss ☐ Collision and Comprehensive (where available)
Additional Auto Physical Damage Coverages Desired	
☐ Additional Towing Limit \$ _____	(in the event of a total loss to the described unit) \$2,500 included
☐ Trailer Interchange Unit \$ _____	Minus \$1,000 Deductible (UJA container haulers)
☐ Non-Owned Trailer Limit \$ _____	Minus \$1,000 Deductible (coverage applies only while attached to a scheduled power unit)

Motor Truck Cargo Coverage Selection	
Please select the desired form: ☐ Standard ☒ Preferred	
Limit Desired Per Vehicle \$100,000	Deductible Desired ☐ \$500 ☒ \$1,000 ☐ \$2,500 ☐ \$5,000
Units that require specific limits other than above, please indicate below.	
Unit No.	Desired Limit
\$	\$
Additional Cargo Coverages or Endorsements Desired	
☐ Refrigeration Breakdown - \$2,500 minimum deductible required	☐ Removal of Co-insurance Clause
☐ Removal of Commodities Theft	
☐ Earned Freight Increase to \$ _____ (\$1,000 included)	☐ Debris Removal Increase to \$ _____ (\$25,000 included)

Truckers General Liability Coverage Selection This is for businesses solely involved in "for-hire" transportation of property	
Desired Limits	General Aggregate - please select one ☐ \$1,000,000 ☒ \$2,000,000 Each Occurrence \$1,000,000 (included)
Employers Liability (Stop Gap) Coverage - Applicable only in ND, OH, WA and WY. Please select either yes or no.	
☐ Yes ☒ No	\$1,000,000 Bodily Injury by Accident - each accident \$1,000,000 Bodily Injury by Disease - each employee
	\$1,000,000 Bodily Injury by Disease - each policy

7. Additional Underwriting Information

Have any drivers been convicted of any of the following? ☐ Yes ☐ No
 Negligent homicide, unlawful use of vehicle, speed contest or racing, reckless driving, leaving the scene of an accident or a hit and run, any felony conviction which involves a motor vehicle, speed twenty miles or more over the speed limit or driving while license is suspended or revoked in a commercial vehicle, DUI or DWI.

If yes, please provide driver name, conviction date and details:

Please complete all of the following:

- | | | |
|---|--|---|
| ☐ Yes | ☒ No | Do you own any other businesses? |
| ☐ Yes | ☒ No | Have there been any changes in the ownership, management or name of the operation in the past five years? |
| ☒ Yes | ☐ No | Are all owned and operated power units listed on this application? |
| ☐ Yes | ☒ No | Do you have any mobile equipment subject to financial responsibility laws? |
| ☐ Yes | ☒ No | Do you act as a freight forwarder, freight broker or arrange loads for others? |
| ☐ Yes | ☒ No | Do you lease to others? |
| ☐ Yes | ☒ No | Do you haul double trailers? |
| ☐ Yes | ☒ No | Do you haul triple trailers? |
| ☐ Yes | ☒ No | Do you allow guest passengers? |
| ☐ Yes | ☒ No | Are any vehicles used to transport employees? |
| ☐ Yes | ☒ No | Do you hire owner operators on a trip lease basis? |
| ☐ Yes | ☒ No | Do you lend, lease or rent trucks, tractors or trailers to others without drivers? |
| ☐ Yes | ☒ No | Do you agree to report all drivers to your agent prior to them driving an insured unit? |
| ☒ Yes | ☐ No | Do you comply with all DOT regulations concerning driver employment, files and regulations? |

If applying for Non-Trucking Coverage list name and the motor carrier number of the lessee to whom you are permanently leased.

Name of Motor Carrier:

Motor Carrier Number:

Filings Requested	Motor Carrier #	Applicant's Name and Address Exactly As It Appears On Each Permit
☒ Liability BMC 91X ☐ Cargo BMC 34	MC 600375	
☒ Liability - Form E SC State	600375	
☐ Oversized/Overweight		
☐ Hazardous		
☐ Cargo - Form H State		
☐ SR 22- If yes explain		

Please note: The FMCSA and/or state agencies require a minimum 36 day notice of cancellation on all policies that have an MCS-90 or filings.

Certificates of Insurance	
Name	Mailing Address

Additional/Designated Insureds for Auto Liability or Truckers General Liability		
Name	Mailing Address	*Type of Additional Insured

*Please enter each desired additional/designated insured by entering the corresponding number: Auto Liability Additional Insureds: 1. Designated Additional Insured, 2. Intermodal, 3. Additional Insured Waiver Rights Recovery, 4. Additional Insured Hired/Non-Owned General Liability Additional Insureds A. Controlling Interest, B. Designated Person or Organization, C. Managers or Lessee of Premises, D. Mortgagee, E. Owners, Lessees or Contractors, F. Co-Owner of Insured Premises, G. Vicarious Liability for Owners, Lessees or Contractors

Please complete this section for vehicles with different ownership or different garaging addresses

Name and address of vehicle owners other than the named insured (owner types 2, 3 & 4 listed below)

Unit No.	Name of Owner	*Ownership Type	Mailing Address

*Please enter the owner type by entering the corresponding number. 1. Owned by Named Insured, 2. Owned by Leasing Company (long term lease without a driver), 3. Owned by Owner Operator (leased with driver), 4. Owned by Employee of Named Insured (officer). Please note that coverage for owners might not be afforded if this section is not completed.

For Liability Coverage, if a unit is not garaged at the physical address of the applicant, please list the garaging addresses for each unit

Unit No.	Street Address	City	State	Zip Code	County
Unit No.	Street Address	City	State	Zip Code	County

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THIS IS NOT A FINISHED

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Extra Page for Additional Driver and Vehicle Information

Drivers, continued

I declare the following list includes all drivers of vehicles requested to be covered under the policy including employees, leased employees, owner operators, mechanics, family members, and any other person allowed to drive an insured vehicle.

Driver Name	Years of Experience	Violations and MVR Record	Driver License Number	License State	Year Hired	Date of Birth

Drivers with Multiple Violations

Driver Name	Conviction Date and Violation

Vehicles, continued

Description of Vehicles (trailers must be scheduled for liability coverage to apply while detached from a covered power unit)

Unit No.	Model Year	Make and Unit Type	Vehicle Identification Number (VIN)	GVW	Radius	*Stated Value	Gap Coverage (Y/N)	**Is Garaging address same as physical? (Y/N)
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								

*Only applicable if Physical Damage coverage is applied for. **If a unit is not garaged at the physical address, it is necessary to list the garaging addresses in the Additional Underwriting Information section of this application.

THIS IS NOT A RINDED

THIS IS NOT A RINDED

THIS IS NOT A RINDED

PIA05589202

CANAL Canal Truck Insurance Application

Please complete this section for Auto Physical Damage Loss Payees		
Unit No.	Name of Loss Payee	Loss Payee Complete Address
Please List The Name and Address of Owners of Non-Owned Trailers		
Name of Owner	Address of Owner	
Please complete this section if Truckers General Liability coverage is desired		
☐ Yes	☒ No	Do you haul bulk flammable? If yes, a \$1,000 deductible applies. If desired, please indicate an optional higher deductible \$
☐ Yes	☒ No	Do you repair or service vehicles of others?
☐ Yes	☒ No	Do you have dogs at premises? (see exclusion endorsement)
☐ Yes	☒ No	Do you carry a firearm? (see exclusion endorsement)
☐ Yes	☒ No	Do you generate income from other activities besides the operation of the trucks?
Please list all mobile equipment owned by the applicant, if any (i.e. forklift, backhoe, mobile crane, etc.)		
Please list all premises owned or rented		
Street Address		
1441 South Buncombe Street		
City	State	Zip Code
Greer	SC	29615
	County	Greenville

8. MVR AND CREDIT REPORT ACKNOWLEDGEMENT

I authorize Canal to obtain a copy of any Motor Vehicle Report for rating/underwriting the insurance for which I have applied. I also understand that a routine inquiry may be made providing information concerning my character, general reputation, personal characteristics and mode of living. Upon written request, information as to the nature and scope of the report will be provided to me.

Disclosure: In connection with this application for commercial automobile insurance, we may review a credit report or obtain or use a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of the insurance score. Your credit report/credit-based insurance score will not be used for any purpose other than the underwriting of the commercial automobile insurance policy for which you have applied.

Under no circumstances can the credit-based insurance score, the lack thereof, or the refusal to authorize the obtaining of a credit report or a credit-based insurance score be a factor in determining your eligibility for commercial automobile insurance, including cancellation or nonrenewal, if a policy is ultimately issued.

I authorize Canal to obtain a credit report, including but not limited to a credit-based insurance score based on personal information provided. This authorization is valid for future reports obtained for renewal policies with Canal.

Brent Jones
Applicant's Signature

3/18/11
Date

9. ACKNOWLEDGEMENT AND SIGNATURE

I hereby certify that the information contained in this application is true and agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and will hold the Company harmless for the action taken. I also agree that if a policy is issued pursuant to this application, the application and any elections or rejections, which are included with the application and signed by me, may be relied upon by the Company as accurate and shall become a part of the policy. I further understand and agree that the Company requires all units to be scheduled if I have requested an MCS-90 or filings.

I recognize that all or parts of my operations are under the Department of Transportation oversight requiring me to adhere to their rules and regulations. I acknowledge that DOT rules and regulations are understood by me, and I will adhere to the rules and regulations including, but not limited to, driver licensing, vehicle inspection, maintenance and hours of service.

NOTICE: IF THIS IS A NEW POLICY, THE INSURER CAN SEND NOTICE OF CANCELLATION ON THIS POLICY, FOR WHICH YOU ARE APPLYING, WITHOUT CAUSE DURING THE FIRST 60 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 60 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS ALLOWED BY SOUTH CAROLINA LAW.

Signature of APPLICANT

X

Brent Jones

Type or Print Applicant Name

Brent Jones

Title or Relationship to Applicant

President

Date and Time Application Completed

03/17/11

Requested Effective Date and Time

03/18/11

Signature of AGENT
of the Applicant

X *Michael P. Hair*

Agency Name

Michael P. Hair & Associates

Address of Agency

P.O. Box 472224, Charlotte NC 28247-2224

Canal General Agent Use Only

Date and Time Bound: 1600,03/18/2010

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CANAL**SOUTH CAROLINA SUPPLEMENTAL APPLICATION**☐ **INSURANCE COMPANY****MUST be completed if Auto Liability Coverage is requested**

1. Applicant Name

National House Movers, LLC

2. DBA, if any

NOTICE: THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE**I. EXPLANATION OF COVERAGES**

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. That refusal may be based upon a number of reasons. *Automobile liability insurance coverage* pays other motor vehicle drivers and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: *bodily injury and property damage*. *Bodily injury coverage* is a coverage which pays people upon whom your motor vehicle inflicts bodily injury. *Property damage coverage* is a coverage which pays people for damages which your automobile causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$25,000 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide to you at least \$25,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25/50/25. These limits are commonly-known as *minimum limits*. If you purchase automobile liability insurance, then, in order to drive your automobile upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of the State that an insurance company which underwrites your minimum limits of \$25,000/\$50,000/\$25,000 must also agree to underwrite higher than those minimum limits of automobile liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your automobile liability insurance coverage, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them referred to within your automobile insurance policy as UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional automobile insurance premium for each of these additional coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically must provide uninsured motorist coverage of \$25,000/\$50,000/\$25,000. All uninsured motorist coverages provide for a \$200 deductible for property damage claims.

You also have the right to buy *additional* uninsured motorist coverage, in various limits, up to the limits of the liability coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill-in the amounts of increased premium.

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Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of underinsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill-in the amounts of increased premium.

It is important that you understand that, *if you reject* either one of these coverages upon this Form and if you are involved in an automobile accident, then this Form may be used by your insurance company as **evidence against you** if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your automobile insurance policy may be canceled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then you must then contact either your insurance agent or your insurance company. You will not be presented with another copy of this Form by your insurance agent or by your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of the Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this Form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, then you should contact the State of South Carolina Department of Insurance. Its address and telephone numbers are:

Office of Consumer Services, State of South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202
(803) 737-6180 (800) 768-3467
E-mail Address: info@doi.sc.gov

PIA05589202

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Limits of Coverage	Other Commercial	Small Commercial Program
25/50/25	52.00	15.00
25/100/25	69.00	27.00
25/300/25	95.00	33.00
50/100/25	75.00	28.00
100/300/50	100.00	35.00
100/300/100	180.00	35.00

Limits of Coverage	Other Commercial	Small Commercial Program
75,000 CSL	88.00	27.00
100,000 CSL	110.00	30.00
200,000 CSL	180.00	35.00
250,000 CSL	211.00	38.00
300,000 CSL	241.00	45.00
350,000 CSL	265.00	49.00
500,000 CSL	335.00	53.00
600,000 CSL	365.00	57.00
750,000 CSL	395.00	64.00
900,000 CSL	425.00	68.00
1,000,000 CSL	440.00	71.00

* Minimum limits of 25,000/50,000/25,000 for uninsured motorist coverage are required to be purchased.

Do you wish to purchase additional uninsured motorist coverage? Yes ☒ No ☐

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile liability limits.

Limits Desired Bodily Injury Property Damage -OR- Combined Single Limits
 000 / 000 000 75,000

Sign here to confirm your selection:

B. A. M.

X

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III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Limits of Coverage	Other Commercial	Small Commercial Program
25/50/25	52.00	15.00
25/100/25	69.00	48.00
25/300/25	95.00	65.00
50/100/25	75.00	52.00
100/300/50	100.00	69.00
100/300/100	180.00	70.00

Limits of Coverage	Other Commercial	Small Commercial Program
75,000 CSL	88.00	49.00
100,000 CSL	110.00	60.00
200,000 CSL	180.00	70.00
250,000 CSL	211.00	75.00
300,000 CSL	241.00	83.00
350,000 CSL	266.00	90.00
500,000 CSL	335.00	98.00
600,000 CSL	365.00	107.00
750,000 CSL	395.00	120.00
900,000 CSL	425.00	131.00
1,000,000 CSL	440.00	139.00

Do you wish to purchase underinsured motorist coverage? Yes ☒ No ☐

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your uninsured motorist limits selected above.

Limits Desired Bodily Injury Property Damage -OR- Combined Single Limits

000 / 000

000

75,000

Sign here to confirm your selection: _____ X

For an additional premium charge optional limits for UM and/or UIM are available up to the limits of your liability coverage. Our agent can quote premium prices for you.

IV. APPLICANT'S ACKNOWLEDGEMENT

By my signature, I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the spaces provided. I further understand that the above explanations of these coverages are intended only to be brief descriptions of coverages, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Your Signature: Brent Jones X

Your Address: 1441 South Blincombe Street

Type or Print Your Name: BRENT JONES

P.O. Box 2587

Today's Date: 03/07/11

Greer, SC 29650

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CANAL

Greenville, SC

ISSUE DATE: 3/18/2011

POLICY NUMBER: PIA05589202

COMMERCIAL AUTO

BUSINESS AUTO DECLARATIONS**ITEM TWO****SCHEDULE OF COVERAGES AND COVERED AUTOS**

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the Covered Autos Section of the Business Auto Coverage Form next to the name of the coverage.

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the Covered Autos Section of the Business Auto Coverage Form shows which autos are covered autos.)	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
LIABILITY	7	\$ 1,000,000	\$ 2,968.00
PERSONAL INJURY PROTECTION (or equivalent No-fault Coverage)		SEPARATELY STATED IN EACH P.I.P. ENDORSEMENT MINUS \$ DED.	\$
ADDED PERSONAL INJURY PROTECTION (or equivalent added No-fault Coverage)		SEPARATELY STATED IN EACH ADDED P.I.P. ENDORSEMENT.	\$
PROPERTY PROTECTION INSURANCE (Michigan only)		SEPARATELY STATED IN THE P.P.I. ENDORSEMENT MINUS \$ DED. FOR EACH ACCIDENT.	\$
AUTO MEDICAL PAYMENTS		\$	\$
MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia only)		SEPARATELY STATED IN EACH MEDICAL EXPENSE AND INCOME LOSS BENEFITS ENDORSEMENT.	\$
UNINSURED MOTORISTS	7	\$ 75,000	\$ 88.00
UNDERINSURED MOTORISTS (When not included in Uninsured Motorists Coverage)	7	\$ 75,000	\$ 88.00
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR STATED VALUE WHICHEVER IS LESS, MINUS THE DEDUCTIBLE FOR EACH COVERED AUTO. See ITEM FOUR For Hired Or Borrowed "Autos". See ITEM SEVEN for "trailers" you do not own while attached to a covered "auto".	\$
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR STATED VALUE WHICHEVER IS LESS, MINUS THE DEDUCTIBLE FOR EACH COVERED AUTO. See ITEM FOUR For Hired Or Borrowed "Autos". See ITEM SEVEN for "trailers" you do not own while attached to a covered "auto".	\$
PHYSICAL DAMAGE COLLISION COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR STATED VALUE WHICHEVER IS LESS, MINUS THE DEDUCTIBLE FOR EACH COVERED AUTO. See ITEM FOUR For Hired Or Borrowed "Autos". See ITEM SEVEN for "trailers" you do not own while attached to a covered "auto".	\$
TRAILER INTERCHANGE FOR ☐ COMPREHENSIVE or ☐ SPECIFIED CAUSES OF LOSS and ☐ COLLISION		ACTUAL CASH VALUE, COST OF REPAIR OR \$ WHICHEVER IS LESS, MINUS \$1,000 DED. FOR EACH COVERED "TRAILER".	\$
PREMIUM FOR ENDORSEMENTS			\$
*ESTIMATED TOTAL PREMIUM			\$ 3,144.00

*This policy may be subject to final audit.

POLICY NUMBER: PIA05589202

ITEM THREE

SCHEDULE OF COVERED AUTOS YOU OWN

Covered Auto No.	DESCRIPTION					TERRITORY	
	Year, Model, Trade Name, Body Type Serial Number (S) Vehicle Identification Number (VIN)					Town & State Where The Covered Auto Will Be Principally Garaged	
1	2000 White/GMC 4V5SG2UEOYN521126					Greer, SC	
Covered Auto No.	CLASSIFICATION				EXCEPT For Towing, All Physical Damage Loss Is Payable To You And The Loss Payee Named Below As interests May Appear At The Time Of The Loss.		
	Radius Of Operation	Business Class	Vehicle Type	Description of Cargo			
1	150	Mobile Home	TRACTOR	HOUSE MOVERS			
Covered Auto No.	COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)						
	LIABILITY		PERSONAL INJURY PROTECTION		ADDED P.I.P.	PROPERTY PROTECTION (Michigan Only)	
	Limit	Premium	Limit Stated In Each P.I.P. End. Minus Deductible Shown Below	Premium	Limit Stated In Each Added P.I.P. End. Premium	Limit Stated In P.P.I. End. Minus Deductible Shown Below	Premium
1	1,000,000	2,968.00					
Total Premium		\$ 2,968.00		\$	\$		\$

POLICY NUMBER: PIA05589202

ITEM THREE

SCHEDULE OF COVERED AUTOS YOU OWN (Cont'd)

Covered Auto No.	COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)			
	AUTO MEDICAL PAYMENTS		MEDICAL EXPENSE AND INCOME LOSS BENEFITS (Virginia Only)	
	Limit	Premium	Limit Stated In Each Medical Expense And Income Loss Endorsement For Each Person	Premium
Total Premium		\$		\$

Covered Auto No.	COVERAGES - PREMIUMS, LIMITS AND DEDUCTIBLES (Absence of a deductible or limit entry in any column below means that the limit or deductible entry in the corresponding ITEM TWO column applies instead.)				
	☐ OCN ☐ Stated Value	☐ COMPREHENSIVE ☐ SPECIFIED CAUSES OF LOSS		COLLISION	
		Deductible	Premium	Deductible	Premium
1	0.00				0.00
Total Premium			\$		\$ 0.00

Note

The amount shown in the Schedule or in the Declarations is not necessarily the amount you will receive at the time of "loss" for the described property. Please refer to the Limit Of Insurance and Deductible Provision stated in the Business Auto Coverage Form.

POLICY NUMBER: PIA05589202

ITEM FOUR

SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS

LIABILITY COVERAGE – RATING BASIS, COST OF HIRE		
ESTIMATED COST OF HIRE	RATE PER EACH \$100 COST OF HIRE	TOTAL ESTIMATED PREMIUM
\$	\$	\$

PHYSICAL DAMAGE COVERAGE

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY DEDUCTIBLE	ESTIMATED ANNUAL COST OF HIRE	RATE PER EACH \$100 ANNUAL COST OF HIRE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO.	\$	\$	\$
SPECIFIED CAUSES OF LOSS	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO.	\$	\$	\$
COLLISION	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO.	\$	\$	\$
TOTAL PREMIUM				\$

Cost of Hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or "employees" or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

ITEM FIVE

SCHEDULE FOR NON-OWNERSHIP LIABILITY

RATING BASIS	NUMBER	PREMIUM
Number Of Employees		\$ 0.00
Number Of Partners		\$ 0.00
TOTAL PREMIUM		\$

POLICY NUMBER: PIA05589202

ITEM SIX

TRAILER INTERCHANGE COVERAGE (see endorsement IA 19 CW)

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY DEDUCTIBLE	ESTIMATED EXPOSED VALUE*	RATE - % OF EXPOSED VALUE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE, COST OF REPAIR OR \$ _____ WHICHEVER IS LESS, MINUS \$1,000 DED. FOR EACH COVERED "TRAILER".	\$		\$
SPECIFIED CAUSES OF LOSS		\$		\$
COLLISION		\$		\$
TOTAL PREMIUM				\$

*Estimated exposed value is the stated limit times the number of tractors insured for liability coverage on the policy.

ITEM SEVEN

TRAILERS YOU DO NOT OWN WHILE ATTACHED TO A COVERED AUTO

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY DEDUCTIBLE	ESTIMATED EXPOSED VALUE*	RATE - % OF EXPOSED VALUE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE, COST OF REPAIR OR \$ _____ WHICHEVER IS LESS, MINUS \$1,000 DEDUCTIBLE FOR EACH COVERED "TRAILER".	\$		\$
SPECIFIED CAUSES OF LOSS		\$		\$
COLLISION		\$		\$
TOTAL PREMIUM			\$	

*Estimated exposed value is the stated limit times the number of tractors insured for liability coverage on the policy.

CANAL

Greenville, SC

COMMERCIAL AUTO

POLICY NUMBER:

BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow without a driver. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Nonowned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.
11	Any "auto" 10,000 GVW or greater	
12	"Trailers" you do not own while attached to a covered "auto".	Only those "trailers" you do not own while in your possession and only while attached to a covered "auto".

13	"Trailers" in your possession under a written "trailer" or equipment interchange agreement	Only those "trailers" you do not own while in your possession under a written "trailer" or equipment interchange agreement in which you assume liability for "loss" to the "trailers" while in your possession.
19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

B. Owned Autos You Acquire After The Policy Begins

1. If Symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
 - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Liability Coverage is provided by this coverage form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

A temporary substitute auto does not mean a vehicle that includes a driver.

SECTION II - LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

(2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

(3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.

(4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".

(5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

(1) All expenses we incur.

(2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.

(5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

(1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

b. That the "insured" would have in the absence of the contract or agreement.

3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

a. An "employee" of the "insured" arising out of and in the course of:

(1) Employment by the "insured"; or

(2) Performing the duties related to the conduct of the "insured's" business; or

b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

(1) Whether the "insured" may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and

- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b, and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

SECTION III - PHYSICAL DAMAGE COVERAGE

A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

2. Towing

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. Glass Breakage - Hitting A Bird Or Animal - Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss" is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

C. Limit Of Insurance

1. The most we will pay for "loss" in any one "accident" is the lesser of:

- a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
 - c. The limit of liability shown in the Schedule.
2. \$1,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
- a. Permanently installed in or upon the covered "auto" in a housing opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
 - b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
 - c. An integral part of such equipment.
3. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations or Schedule.

SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. Loss Conditions

1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
 - (1) How, when and where the "accident" or "loss" occurred;
 - (2) The "insured's" name and address; and
 - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
 - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
 - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
 - (4) Authorize us to obtain medical records or other pertinent information.
 - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:
 - (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
 - (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
 - (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
 - (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. Legal Action Against Us

No one may bring a legal action against us under this coverage form until:

- a. There has been full compliance with all the terms of this coverage form; and

- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. Loss Payment – Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value, but there shall be no abandonment to the company.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

2. Concealment, Misrepresentation Or Fraud

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

3. Liberalization

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Ballee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

5. Other Insurance

- a. For any covered "auto" you own, this coverage form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this coverage form provides for the "trailer" is:

(1) Excess while it is connected to a motor vehicle you do not own.

(2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this coverage form's Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage form and policies covering on the same basis.

6. Premium Audit

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured or your agent will get a refund.
- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. Policy Period, Coverage Territory

Under this coverage form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1). The United States of America;
- (2). The territories and possessions of the United States of America;
- (3). Puerto Rico;
- (4). Canada; and
- (5). Anywhere in the world if:
 - (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
 - (b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

8. Two Or More Coverage Forms Or Policies Issued By Us

If this coverage form and any other coverage form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the coverage form or policies shall not exceed the highest applicable Limit of Insurance under any one coverage form or policy. This condition does not apply to any coverage form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

SECTION V - DEFINITIONS

A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

B. "Auto" means:

1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other Substitute Auto at Section motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph 6.b. or 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
 - (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F. "Employee" includes a "leased worker". "Employee" also includes any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment. "Employee" does not include a "temporary worker".
- G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H. "Insured contract" means:
- 1. A lease of premises;
 - 2. A sidetrack agreement;
 - 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - 5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
 - 6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for
- "property damage" to any "auto" rented or leased by you or any of your "employees".
- An "insured contract" does not include that part of any contract or agreement:
- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
 - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
 - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J. "Loss" means direct and accidental loss or damage.
- K. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- 1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - 2. Vehicles maintained for use solely on or next to premises you own or rent;
 - 3. Vehicles that travel on crawler treads;
 - 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.
 - 5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers; or

Canal 0267

6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
- b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

M. "Property damage" means damage to or loss of use of tangible property.

N. "Suit" means a civil proceeding in which:

- 1. Damages because of "bodily injury" or "property damage"; or
 - 2. A "covered pollution cost or expense";
- to which this insurance applies, are alleged.

"Suit" includes:

- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.

O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a driver of a motor vehicle in your business.

P. "Trailer" includes semitrailer. But for Trailer Interchange Coverage only, "trailer" also includes a container.

POLICY NUMBER: PIA05589202

COMMERCIAL AUTO
CA 21 19 03 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA UNINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in, South Carolina, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: National House Movers LLC

Endorsement Effective Date: 3/18/2011

Countersignature Of Authorized Representative

Name: Wm. R. Timmons Agency, LLC

Title:

Signature:

Date: 3/18/2011

SCHEDULE

Limit Of
Insurance: \$75,000

Each "Accident"

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Coverage

We will pay in accordance with the South Carolina Uninsured Motorists Law all sums the "insured" is legally entitled to recover as damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by an "insured" or "property damage" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".

B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
 - a. The Named Insured and any "family members".
 - b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
 - a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
 - c. The Named Insured for "property damage" only.

C. Exclusions

This coverage does not apply to any of the following:

1. Any claim settled without our consent.
2. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
3. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
4. The first \$200 of the amount of "property damage" to the property of each "insured" as the result of any one "accident".

5. That part of "property damage" for which an "insured" has been compensated by insurance or otherwise.

6. "Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the limit of Uninsured Motorists Coverage shown in the Schedule. If the "bodily injury" or "property damage" is sustained by an individual Named Insured or any "family member" while "occupying" a covered "auto", our limit is the sum of:
 - a. The limit of insurance shown in the Schedule for this coverage as applicable to a covered "auto"; and
 - b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".
2. Subject to the maximum limit of insurance for all damages:
 - a. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" or "property damage" sustained in an "accident" by an "insured" other than an individual Named Insured or any "family member", is that "insured's" pro rata share of the limit shown in the Schedule for this coverage that applies to the vehicle that "insured" was "occupying" at the time of the "accident".
 - b. The individual Named Insured or any "family member" who sustains "bodily injury" or "property damage" in that "accident" will also be entitled to a pro rata share of the limit described in Paragraph a. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "Insureds".

3. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" or "property damage" is sustained by an individual Named Insured or any "family member" while not "occupying" any "auto", the most we will pay for all damages resulting from that "accident" is the sum of:

- a. The highest limit of insurance for this coverage applicable to any one of such Named Insured's covered "autos"; and
- b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".

4. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" or "property damage" is sustained in an "accident" by an individual Named Insured or any "family member" while "occupying" a vehicle not owned by that Named Insured or any "family member", the most we will pay for all damages resulting from the "accident" will be the highest limit of insurance for this coverage that applies to any one of such Named Insured's covered "autos".

5. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" or "property damage" is sustained by an "Insured" other than an individual Named Insured or any "family member" in an "accident" in which neither such Named Insured nor any "family member" sustained "bodily injury" or "property damage", the most we will pay for all damages resulting from that "accident" is the limit of insurance shown in the Schedule for this coverage that applies to the vehicle that "Insured" was "occupying" at the time of the "accident".

6. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage Form, Medical Payments Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

We will not make a duplicate payment under this coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

E. Changes in Conditions

1. Other Insurance in Business Auto and Garage Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms is replaced by the following:

- a. If an "Insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities of coverage apply:

FIRST PRIORITY	The policy affording Uninsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the "accident".
SECOND PRIORITY	Any policy affording Uninsured Motorists Coverage to a Named Insured or a family member, if the Named Insured is an individual.

- (1) If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.

- (2) If there is applicable insurance available under the first priority:

- (a) The limit of insurance applicable to the vehicle the "Insured" was "occupying", under the policy in the first priority, shall first be exhausted; and

- (b) The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.

- b. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of insurance bears to the total of all applicable limits in the same level of priority.

- c. For "property damage", this insurance is excess to all collectible insurance of any kind.

- d. Except for "property damage", the reference to "other collectible insurance" applies only to other collectible uninsured motorists insurance.

2. Duties In The Event Of Accident, Claim, Suit Or Loss is changed by adding the following:

- a. Promptly notify the police if a hit-and-run driver is involved; and
- b. Promptly send us copies of the legal papers if a "suit" is brought.

3. Transfer Of Rights Of Recovery Against Others To Us is replaced by the following:

- a. If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person or organization must do everything necessary to secure our rights and must do nothing after the "accident" or loss to impair them.
- b. If an "insured" has prosecuted to judgment any "suit" against anyone responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- c. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.
- d. If an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay the claim until the "insured" has assigned us the rights to the compensation to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

4. Two Or More Coverage Forms Issued By Us does not apply to Uninsured Motorists Coverage.

5. The following Condition is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.

2. "Occupying" means in, upon, getting in, on, out or off.

3. "Property damage" means injury to or destruction of the property of an "insured".

4. "Uninsured motor vehicle" means a land motor vehicle or "trailer":

- a. For which neither a liability bond or policy nor cash or securities deposited with the State Treasurer provides at least the amounts required by the South Carolina Motor Vehicle Financial Responsibility Act.

- b. For which neither the operator nor owner can be identified and that hits or that causes an "accident" resulting in "bodily injury" or "property damage" without hitting an individual Named Insured or a "family member", a vehicle that an individual Named Insured or any "family member" are "occupying", the Named Insured's covered "auto" or any of such Named Insured's property.

The facts of the "accident" must be corroborated by competent evidence of an eyewitness other than the owner or operator of the vehicle that an individual Named Insured or any "family member" were "occupying" at the time of the "accident". The eyewitness must sign an affidavit attesting to the truth of the facts of the "accident" contained in the affidavit.

- c. For which an insuring or bonding company successfully denies coverage, is or becomes insolvent, is in delinquency proceedings, suspension or receivership, or is proven unable to respond to a judgment.

- d. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

However, "uninsured motor vehicle" does not include any vehicle:

- a. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.

- b. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.

- c. Designed for use mainly off public roads while not on public roads.

POLICY NUMBER: PIA05589202

COMMERCIAL AUTO
CA 21 88 03 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA UNDERINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in, South Carolina, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: National House Movers LLC

Endorsement Effective Date: 3/18/2011

Countersignature Of Authorized Representative

Name: Wm. R. Timmons Agency, LLC

Title:

Signature:

Date: 3/18/2011

SCHEDULE

Limit Of Insurance: \$ 75,000

Each "Accident"

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Coverage

1. We will pay in accordance with the South Carolina Underinsured Motorists Law all sums the "insured" is legally entitled to recover as damages from the owner or driver of an "underinsured motor vehicle". The damages must result from "bodily injury" sustained by an "insured" or "property damage" caused by an "accident". The owner's or driver's liability for these damages must arise out of the ownership, maintenance, or use of the "underinsured motor vehicle".
2. We will pay under this coverage only after any liability bonds or policies have been exhausted by payment of judgments or settlements.

B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
 - a. The Named Insured and any "family members".
 - b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":
 - a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
 - b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
 - c. The Named Insured for "property damage" only.

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
2. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.

3. That part of "property damage" for which an "insured" has been compensated by insurance or otherwise.

4. "Bodily Injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the limit of Underinsured Motorists Coverage shown in the Schedule. If the "bodily injury" is sustained by any "insured" while "occupying" a covered "auto", or if the Named Insured's covered "auto" sustains "property damage" in an "accident", our limit is the sum of:
 - a. The limit of insurance shown in the Schedule for this coverage applicable to a covered "auto"; and
 - b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".
2. Subject to the maximum limit of insurance for all damages:
 - a. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" sustained in an "accident" by an "insured" other than an individual Named Insured or any "family member" is that "insured's" pro rata share of the limit shown in the Schedule for this coverage that applies to the vehicle that "insured" was "occupying" at the time of the "accident".
 - b. An individual Named Insured or any "family member" who sustains "bodily injury" or "property damage" in that "accident" will also be entitled to a pro rata share of the limit described in Paragraph a. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "Insureds".

3. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" is sustained by an Individual Named Insured or any "family member" while not "occupying" any "auto", the most we will pay for all damages resulting from that "accident" is the sum of:

- a. The highest limit of insurance for this coverage applicable to any one of such Named Insured's covered "autos"; and
- b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".

4. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" is sustained in an "accident" by an individual Named Insured or any "family member", while "occupying" a vehicle not owned by that Named Insured or any "family member" the most we will pay for all damages resulting from that "accident" will be the highest limit of insurance for this coverage that applies to any one of such Named Insured's covered "autos".

5. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage Form, Medical Payments Coverage Endorsement, or Uninsured Motorists Coverage Endorsement attached to this Coverage Form.

We will not make a duplicate payment under the Coverage Form for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of loss under any workers' compensation, disability benefits or similar law.

E. Changes In Conditions

1. Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms are replaced by the following:
 - a. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities of coverage apply:

First Priority	The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the "accident".
Second Priority	Any policy affording Underinsured Motorists Coverage to a Named Insured or a family member, if the Named Insured is an individual.

- (1) If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
- (2) If there is applicable insurance available under the first priority:
 - (a) The limit of insurance applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
 - (b) The most we will pay in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
- b. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of insurance bears to the total of all applicable limits on the same level of priority.
- c. For "property damage", this insurance is excess to all collectible insurance of any kind.
- d. For "bodily injury" this insurance is excess to any other collectible Underinsured Motorists Coverage.
2. Duties In The Event Of Accident, Claim, Suit Or Loss is changed by adding the following:

Promptly send us copies of the legal papers if a "suit" is brought.
3. Transfer Of Rights Of Recovery Against Others To Us does not apply to Underinsured Motorists Coverage.
4. Two Or More Coverage Forms Issued By Us does not apply to Underinsured Motorists Coverage.
5. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.
3. "Property damage" as used in this endorsement means injury to or destruction of the Named Insured's covered "auto". However, "property damage" does not include damage to property owned by the "Insured" while contained in the Named Insured's covered "auto".
4. "Underinsured motor vehicle" means a land motor vehicle or "trailer" of any type to which a liability bond or policy applies at the time of the "accident" in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy provide a limit that is less than the amount the "insured" is legally entitled to recover as damages caused by the "accident".

However, "underinsured motor vehicle" does not include any vehicle or equipment designed for use mainly off public roads while not on public roads.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTOS SPECIFIED AS COVERED AUTOS YOU OWN

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective 3/18/2011
Named Insured National House Movers LLC

SCHEDULE

Description of Auto: Any "auto" leased, hired or borrowed by you and scheduled on this policy, for which you have agreed to provide primary Liability insurance. If the policy to which this endorsement is attached is a fleet policy, then this coverage applies to any "autos" 10,000 GVW or greater whether scheduled on the policy or not.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease under the coverage for which it is a covered "auto".

While any covered "auto" described in the Schedule is rented or leased to you and is being used by or for you, its owner or anyone else from whom you rent or lease it is an "insured" but only for that covered "auto".

B. CHANGES IN LIABILITY COVERAGE

The following is added to WHO IS AN INSURED:



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

CHANGE NUMBER: _____
ISSUE DATE: 3/18/2011
MC NUMBER: 600375 SC
Form Approved:
OMB NO: 2126-0008

**ENDORSEMENT FOR
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY
UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980**

Issued to National House Movers LLC

of P.O. Box 2587 Greer, SC 29652

Dated at P.O. Box 7 Greenville, SC 29602 this 18th day of March, 20 11

Amending Policy No. PIA05589202 Effective Date 3/18/2011

Name of Insurance Company Canal Insurance Company

Countersigned by Sammy Vaughan *Authorized Company Representative*

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

- ☒ This insurance is primary and the company shall not be liable for amounts in excess of \$ 750,000 for each accident.
☐ This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is 864-242-5365.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, water-course, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability

herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE. The limits shown in the schedule are for information purposes only.
Form MCS-90 (4/2000)

SCHEDULE OF LIMITS -PUBLIC LIABILITY

Type of carriage	Commodity transported	Jan. 1, 1985
(1) For-hire (In interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (non-hazardous).....	\$750,000
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	\$5,000,000
(3) For-hire and Private (In interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403.	\$5,000,000

SOUTH CAROLINA AUTOMOBILE INSURANCE CARD
CANAL INSURANCE COMPANY - NAIC 10464
Bodily Injury and Property Damage Liability

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
PIA05589202	3/18/2011	3/18/2012

YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
2000	White/GMC	4V5SG2UEOYN521128

NAME OF INSURED
National House Movers LLC
P.O. Box 2567
Greer, SC 29652

AGENT
Wm. R. Timmons Agency, LLC
P.O. Box 7
Greenville, SC 29602

IN CASE OF ACCIDENT

1. Obtain names, addresses, and phone numbers of persons involved and witnesses, a police report number, and any insurance information on the other vehicles.
2. Make no statement about the accident to anyone except the police or a representative of Canal Insurance Company.
3. Promptly notify CANAL INSURANCE COMPANY, P.O. Box 7, Greenville, SC (29602) by:
 - calling (800) 452-6911;
 - e-mailing claims@canal-ins.com;
 - faxing (864) 679-2518; or
 - notifying your agent.

Coverage afforded by this policy meets South Carolina's minimum financial responsibility requirements.

This card must be carried in the vehicle at all times.

Form ID-1 SC

(Rev. 9-2003)

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CANAL INSURANCE COMPANY - NAIC 10464
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Form ID-1 SC

(Rev. 9-2003)

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

CANAL INSURANCE COMPANY,) C.A. NO.: 2012-CP-23-6195

Plaintiff,)

)

V.)

Deposition of

)

RON HEWES

NATIONAL HOUSE MOVERS, LLC,) July 16, 2013

KEVIN E. JONES, DAVID BLACK)

RON HEWES, BRENT JONES AND)

FRED NAJIM,)

Defendants.)

)

Deposition on oral examination of RON HEWES,
reported by Lisa F. Huffman, Verbatim Court Reporter and
Notary Public in and for the State of South Carolina;
said deposition taken pursuant to notice of deposition,
by agreement and in accordance with South Carolina Rules
of Civil Procedure, at Covington, Patrick, Hagins, Stern
& Lewis, P.A., 211 Pettigru Street, Greenville, South
Carolina, on July 16, 2013, at the hour of 12:36 p.m.

- 1 Q. Who owned the business when you were there?
- 2 A. Jimmy Cox.
- 3 Q. And does he still own it?
- 4 A. I don't believe so. I think his brother's running
- 5 it. I don't know what they got going on for a gig
- 6 over there.
- 7 Q. And were you an owner or an employee at that
- 8 business?
- 9 A. I was an employee who ran -- ran the crews and was
- 10 offered to become partner before I left.
- 11 Q. And you became a partner with Mr. Jones and Mr.
- 12 Black in NHM, LLC; is that correct?
- 13 A. Yes, sir.
- 14 Q. And that was in 2006.
- 15 A. Yes, sir.
- 16 Q. And explain the business of NHM.
- 17 A. As development goes, we buy houses, sell houses to
- 18 the general public, move them down the road. And
- 19 we lift and raise houses.
- 20 Q. What specifically is your job with the company?
- 21 A. My job is to prepare the house and get it ready for
- 22 transport or get it ready to lift up.
- 23 Q. And do you also hire and fire?
- 24 A. Yeah, if you want to call it that, yes.
- 25 Q. And what else would you call it?

- 1 A. Well, I don't really hire and fire people because I
- 2 don't need them all the time. I need help.
- 3 Q. How does someone get a job with NHM?
- 4 A. Well, I got David. We don't advertise to get any
- 5 jobs.
- 6 Q. I understand. But how does someone get a job?
- 7 A. If they're looking for work and I need somebody, I
- 8 get somebody. If not, then four or five guys that
- 9 we might use.
- 10 Q. Who else has the authority to hire, other than you?
- 11 A. Nobody.
- 12 Q. So you're the guy at NHM that if you need workers,
- 13 you're the guy that hires the workers.
- 14 A. Yeah.
- 15 Q. Correct?
- 16 A. Uh-huh.
- 17 Q. And when you don't need a worker and someone's
- 18 hanging around, you were paying them, you're the
- 19 guy that says, "Okay. I'm done with you. We're
- 20 not going to pay you after right now," correct?
- 21 A. No, I just don't work them. I don't say "I'm done
- 22 with you." I don't work them. I don't have any
- 23 work, don't have any work going on.
- 24 Q. You ever terminated anybody?
- 25 A. I have laid off and, yes, terminated one.

1 Q. And who was the individual you terminated?

2 A. Roger Mulinado.

3 Q. And when did you do that?

4 A. That was way back in the beginning when we first
5 started.

6 Q. What year?

7 A. I don't know, '08 maybe --

8 Q. What did you --

9 A. -- '09.

10 Q. -- terminate him for?

11 A. Not paying attention on the back side, -- couple
12 days being late.

13 Q. How many have you laid off?

14 A. Being lazy. I don't know, six.

15 Q. And that would be because you didn't have work for
16 them?

17 A. Didn't have anything to do.

18 Q. So you just laid them off and say "I'll call you
19 when I need you"?

20 A. Yeah, but they didn't stick around. So I didn't
21 need them because we didn't work for a long time.

22 Q. Right. The point I'm trying to get at is you're
23 the one with the company who would hire these
24 workers. You're the one with the company that
25 would lay them off or terminate them, right? I

1 mean, that wasn't Mr. Black's job and that wasn't
2 Mr. Jones' job.
3 A. No.
4 Q. That was your job.
5 A. Uh-huh.
6 Q. That's a yes or a no?
7 A. Yes.
8 Q. Thank you. So Kevin Jones, tell me how you first
9 met Kevin Jones.
10 A. Through David.
11 Q. David?
12 A. David Johnson.
13 Q. And David Johnson, as I understand, still works for
14 National House Movers.
15 A. Yeah, when I need him.
16 Q. And when did this accident happen? Well let me ask
17 you this: When was Kevin Jones --
18 A. Well, --
19 Q. I'm sorry to interrupt you. When was Kevin Jones
20 first hired by NHM?
21 A. We were working on a house in Cowpens. And I was -
22 - I worked on it by myself with my tractor, did all
23 the grading and everything. And then I got Fred to
24 get in touch with David. And Fred wasn't working
25 at the time.

1 Q. Fred?

2 A. Nagial. Got in touch with David because I needed

3 some help putting steel up underneath the house.

4 Q. You didn't have David's phone number?

5 A. No, sir.

6 Q. You have his phone number now?

7 A. Yes.

8 Q. And did you know where David lived?

9 A. No, sir.

10 Q. You know where he lives now?

11 A. No, sir.

12 Q. How long had David Johnson worked for NHM at the

13 time that Kevin Jones was hired?

14 A. Off and on, oh, I don't know -- off and on over the

15 years, maybe two years, here and there. He also

16 worked over at Cox as well.

17 Q. Does he still work at Cox?

18 A. I don't know. They might get him to drive every

19 once in a while when I don't use him; I don't know.

20 Q. How often do you use him?

21 A. It all depends on what we got going on. Like he's

22 anywhere between 15 and 30 hours a week or nothing.

23 Q. There's some weeks he doesn't work at all.

24 A. He doesn't do anything; does his own thing.

25 Q. And how is Mr. Johnson paid?

1 A. By -- he gets a check.

2 Q. He gets a check. And are taxes withheld or any

3 Social Security, anything else withheld on that

4 check?

5 A. I think they give him a 1099.

6 Q. Give him a 1099?

7 A. Whatever it is. I am not familiar with how they do

8 all that stuff. I don't do --

9 Q. You're going to rely on Mr. Jones as the 30(b)(6)

10 witness to tell us about whether or not --

11 A. Yeah.

12 Q. -- they're withholding.

13 A. I turn in -- I turn in what they work and that's

14 it.

15 Q. Right.

16 A. I don't know anything about the withholdings and

17 all that stuff that goes on. I do nothing but turn

18 it in.

19 Q. Correct. All right. So you hired Mr. Jones to

20 help you with this job -- I'm sorry, where was it

21 again?

22 A. Cowpens.

23 Q. Cowpens.

24 A. David asked me if we needed help, and I said "One

25 more probably wouldn't hurt."

1 Q. And is that the first time you met Mr. Jones?

2 A. Yes, sir.

3 Q. Did he interview with you?

4 A. David brought him to work that morning. All I
5 needed was a grunt to haul blocks and --

6 Q. Sure.

7 A. -- move them out of my way.

8 Q. And I appreciate that. But David Johnson didn't
9 have the authority to hire people for --

10 A. No. I just told him to bring somebody.

11 Q. Right. So he had to interview with you. He had to
12 meet you to get hired.

13 A. That day.

14 Q. Right?

15 A. Yeah.

16 Q. So tell me what you -- tell me about that process
17 in which you talked to Mr. Jones about working for
18 NHM that day, if you recall.

19 A. Same way it is with anybody. Again, I just tell
20 them what to do. Tell them what to do and if they
21 can't do it and they're not capable or physically
22 able to carry the blocks. Everything we got is
23 heavy and nasty. If they're not capable and they
24 can't hang with me and -- then I just tell them,
25 don't worry about -- I'll call you if I need you.

1 the tractor trailer, no. No, he did not.

2 Q. He would assist in jacking up the house?

3 A. Yeah, as far as setting blocks and everything.

4 Q. Sure.

5 A. But not running the jacking machine.

6 Q. So you would have provided all the tools.

7 A. Uh-huh.

8 Q. He didnt bring any; is that right?

9 A. Not that I -- not to my knowledge.

10 Q. Right. You would have instructed him and trained

11 him in what he was supposed to do.

12 A. Yes.

13 Q. Correct?

14 A. Yes.

15 Q. And when you didn't need him, you'd tell him you

16 didn't need him anymore; is that right?

17 A. Yeah, if we didn't have any -- yeah.

18 Q. In other words, you had the right to control Mr.

19 Jones' activity on the job site, tell him what he

20 was supposed to do, what he wasn't supposed to do,

21 and then tell him when you didn't need him anymore.

22 A. Yeah, I -- I guess.

23 Q. You remember what year this was when you first

24 hired Mr. Jones?

25 A. I do not.

1 Q. And the day that he first showed up, he work all
2 day for you?

3 A. I believe so, yeah, believe we were there all day.

4 Q. How much were you going to pay him that day?

5 A. Eight dollars an hour.

6 Q. Eight dollars an hour. You remember that?

7 A. Uh-huh.

8 Q. That's a yes?

9 A. Yes.

10 Q. And you would have told him that?

11 A. Yes.

12 Q. I mean, he would have been interested in knowing
13 how much he was going to get paid; wouldn't he?

14 A. It would be nice, yeah.

15 Q. Yeah.

16 A. But I don't think he had anything to do, so, I
17 mean, he would have probably done it for less, I
18 probably could have got him for less, but don't
19 tell Brent that.

20 Q. Sure. So the first day, did he work all day with
21 you?

22 A. Yes.

23 Q. And did he work the next day?

24 A. I don't recall. Possibly. That's a good
25 possibility.

1 Q. You don't know the answer to that question.

2 A. I do not know.

3 Q. And tell me how this accident happened.

4 A. We were coming down through Gaffney. The house is
5 set up with a pipe. Mr. Jones was close, but --
6 it's got a PVC pipe on the front, okay, we call it
7 a scoop. It comes down to the bolster. That's
8 what hooks up the truck, ties the two steel
9 together, okay?

10 Q. Okay.

11 A. We had just made the turn. The other power company
12 just left us up at the corner. We come down over
13 the hill, they're out of their jurisdiction. The
14 scoop -- and then there's a belt, a nylon belt that
15 goes across the peak of the house. So the wires,
16 the cable wires, they run about 16 feet. They'll
17 hit that scoop, they'll run up the scoop and
18 they'll run to the back of the house. The
19 gentleman's job on the roof is to make sure that
20 that does not get hung up.

21 Q. What doesn't get hung up?

22 A. Any of the wires.

23 Q. On what?

24 A. On the belt or anything up there on the roof that
25 may be in the way.

1 Q. And what would happen if those wires would get hung
2 up?

3 A. They would break. That's why I'm on the ground, to
4 stop the house, to watch it.

5 Q. What would break?

6 A. The wires would break. Or depending on how heavy
7 the wires, it could possibly pull a pole out.

8 Q. Right. I mean, you heard us discuss that in the
9 previous deposition.

10 A. Yeah.

11 Q. Right. And if that happened, would cause an
12 accident.

13 A. Right.

14 Q. And you're trying to -- because you're concerned
15 with safety; are you not?

16 A. That's right.

17 Q. You're concerned with the safety of the
18 transporting of the house, the operation of the
19 vehicles transporting the house.

20 A. Yes.

21 Q. And you're concerned with the safety of the wires
22 that are across the road, correct?

23 A. Yes, sir.

24 Q. And the reason why you're doing this is to prevent
25 an accident involving one of those wires that might

1 pull a pole down, it might impact your house, your
2 truck, adjoining property or hit somebody else,
3 correct?

4 A. Yes, sir.

5 Q. Now, you said the power company had just left you?

6 A. The city.

7 Q. The city?

8 A. The City of Gaffney Power Company just left us at
9 the top of the hill.

10 Q. Explain to me what you mean by that.

11 A. They came up and drove beside us and watch us run
12 our route.

13 Q. Why?

14 A. I don't know. They showed up.

15 Q. I mean, is that something that normally happens?

16 A. Uh-uh. (Witness shakes head.)

17 Q. You're shaking your head no?

18 A. No. No, sir. But we had two telephone fiber optic
19 cables that were like this, that I had the cable
20 company out there for, or telpehone company out
21 there for, because they were -- the span in the
22 road was not wide enough and they were too low. So
23 they were out there to raise them up for us, so we
24 could get up underneath them.

25 Q. Right. And you don't know why the power company

1 was there.

2 A. No.

3 Q. Were there power lines that extended over the road
4 in which you were traveling?

5 A. Yes.

6 Q. And were they making sure that you didn't impact
7 with those power lines?

8 A. Yeah, I guess that's why they were riding with us.

9 Q. Sure. Were they helping in making sure that the
10 wires are lifted up so you can get underneath them?

11 A. They may have been one 3-phase -- one or two 3-
12 phase wires going through the neighborhood. A 3-
13 phase wire is the coated wire that typically just
14 slides across the house.

15 Q. Right. And how would they help in raising the
16 wires, so that you didn't impact? What would they
17 do to raise those wires?

18 A. They'd just put a stick on it.

19 Q. Move it straight up.

20 A. Just move it straight up.

21 Q. And was Mr. Jones' job with the PVC pipe to make
22 sure that the wires didn't hit the house --

23 A. No.

24 Q. -- or the truck?

25 A. No, sir.

1 Q. Did he use the PVC pipe?

2 A. Yes, sir, he did.

3 Q. And what would he do with it again?

4 A. He was supposed to just get it started on the house
5 and then let it go to the back, because it would
6 slide on its own.

7 Q. But he's going to raise it up --

8 A. It all depends on what wires you're talking about.

9 Q. But he's going to raise the wires so they can get
10 up on the house and slide, correct?

11 A. What wires are you --

12 Q. Any wires that he's supposed to --

13 A. No.

14 Q. -- utilize.

15 A. No, that's not true.

16 Q. All right, tell me --

17 A. The only wires that he is to touch, to put up on
18 the house, are cable wires and telephone wires.

19 Q. All right now, how is he supposed to discern
20 between a cable wire --

21 A. Me.

22 Q. -- a telephoen wire and a power wire?

23 A. Cable wires are insulted, small wires this way.

24 All power line wires, unless it's a 3-phase running
25 to the house, it will have a 3-phase on it, and

1 it's all insulated, running out to the house.
2 Those -- those have electrical charge, but they're
3 all insulated. Bare wires running across is either
4 a -- it is either a -- a ground wire with a hot
5 wire above it or it is a -- to hold the poles
6 together; you know what I'm trying to say?

7 MR. BLACK: Guide wire.

8 THE WITNESS: Yeah, just a guide wire.

9 Q. And he's trained to discern the difference between
10 the types of wires, so he knows not to take his PVC
11 pipe and lift up a --

12 A. And that's why I'm on the ground.

13 Q. Let me finish.

14 A. Okay.

15 Q. He's trained to take the PVC pipe and not lift up
16 an electrical wire; is that correct? Or a power
17 wire.

18 A. Yes.

19 Q. Right?

20 A. That's why I'm on the ground, yes, sir.

21 Q. So you can tell him that as you go down the road,
22 correct?

23 A. That's right.

24 Q. But he's going to use that PVC pipe to lift up the
25 other wires, so that they are placed on top of --

1 would this be a house that's got a -- what kind of
2 frame would it have on it?

3 A. Yes, sir. Just a peak right in the middle.

4 Q. Peak in the middle.

5 A. Yes, sir.

6 Q. And he sits it on top of the peak and it slides
7 down as you move --

8 A. As we move.

9 Q. -- through the highway. And where is he
10 positioned?

11 A. Down at the lower corner of the house.

12 Q. And he's got the PVC pipe.

13 A. No. He doesn't have to have the PVC pipe. It's
14 either sitting on the gutter or sitting on the roof
15 because if it hits the scoop, it just goes up the
16 scoop and goes and he stays on the bottom corner.

17 Q. All right, I'm with you. And y'all supply all
18 that. He doesn't bring his own PVC pipe, does he?

19 A. No, sir.

20 Q. And so tell me how this accident happened on this
21 day.

22 A. Come around the corner, came down the hill. And we
23 got to the line and I went to the far right-hand
24 side. And the neutral wire was up underneath the
25 scoop. So I went to the scoop and I pulled it down

1 and we slid up underneath it. I told Kevin to get
2 down on the bottom. And as it slid up, he grabbed
3 his pipe and he was pushing the neutral wire along
4 this wire. And the electrical wire was -- above
5 the peak was probably two and a half, three feet.
6 The neutral wire had enormous slack in it. So when
7 we got up on the rooftop, the only thing that was
8 supposed to happen was supposed to just scoot
9 around the top.

10 Q. Right.

11 A. Well he was flipping it this way.

12 Q. I'm sorry, when you say --

13 A. Flipping it with a PVC pipe, the neutral wire, not
14 the hot wire. He was flipping it to ease it along,
15 working on the bottom part of the house.

16 Q. Trying to get it to ease along down the frame of
17 the house.

18 A. Yeah. He didn't have to do it.

19 Q. Right. And he wasn't supposed to do it.

20 A. Wasn't supposed to do it. He was instructed to
21 leave it alone to begin with. And then he was
22 flipping it, as we moved along. And I come around
23 the back side -- on the ground, coming around the
24 side, and I saw the wire come down and I lost sight
25 of Kevin. But I saw the wire come down, which was

1 the long wire. So the hot wire was up here; the
2 other one was down here because of the slack, it
3 was over here. So there was a good six feet, five
4 feet from where that was sitting on the house to
5 where your hot wire was. So when I saw the neutral
6 wire fall off the house, then we were clear up
7 underneath it.

8 Q. I see.

9 A. And then we started moving. And I didn't see how
10 it happened. I don't know how it happened because
11 that wire was already clear from the house before
12 he flipped that one off.

13 Q. So y'all were moving a house that day.

14 A. Uh-huh.

15 Q. Yes.

16 A. Yes.

17 Q. And Mr. Jones had worked with you in getting the
18 steel underneath the house and getting the house
19 jacked up or put on the -- what do you call --
20 dollies?

21 A. Dollies. Yes, sir.

22 Q. And then it was connected to your tractor trailer.

23 A. Connected to the bolster which ties the two steels
24 together, which has the dollies on the back, which
25 in turn hooks to the truck just like a tractor

1 A. Back when we first got started.

2 Q. Did you buy it?

3 A. The company bought it.

4 Q. I mean, did you pick it out, purchase it?

5 A. Mr. Jones and I did, yes.

6 Q. Now, Mr. Jones didn't come to you through a
7 temporary agency, did he?

8 A. No, sir.

9 Q. He was brought to you for you to determine if you
10 wanted to hire him from Donald -- I'm sorry --
11 David Johnson. David Johnson, right?

12 A. Uh-huh. Yes.

13 Q. That's a yes? Okay. How many jobs did he work on
14 for y'all; do you remember?

15 A. I couldn't recall. I would say it's probably a
16 couple in Gaffney. He may have let a couple down
17 with us. I know he worked on the big one for a
18 little while. Probably seven, maybe seven, eight
19 maybe at the most.

20 Q. Did you read his depo?

21 A. No, sir, I did not. I don't believe we did.

22 Q. So he worked on about seven or eight jobs prior to
23 the day of this accident?

24 A. Maybe. I can't specifically recall. It may not
25 have been that many. But when I say "work on

1 checks. And I take it your testimony is you would
2 have given him a lot more than three checks; isn't
3 that right?

4 A. Possibly. I don't know --

5 Q. You don't know.

6 A. -- what the other ones are. Yeah.

7 Q. And the 1099s, did you provide him with the 1099s?

8 A. I don't know. I don't know anything about 1099s.

9 Did I give them to him?

10 Q. Yes, sir.

11 A. No.

12 Q. Where would he have received them?

13 A. They probably went in the mail to him. I don't
14 know.

15 Q. On the day that this accident happened, it was you
16 and Mr. Johnson and Mr. Jones, correct?

17 A. No, sir.

18 Q. Who?

19 A. Nicholas Smith was an escort. He walked up behind
20 me.

21 Q. He was driving a truck?

22 A. No, Nicholas Smith.

23 Q. He was driving a truck?

24 A. Yes, with the police.

25 Q. Behind you.

1 A. Billy -- and Billy Joe was walking with me in the
2 front.

3 Q. Who's Billy Joe?

4 A. Billy Joe is another guy David picked up for that
5 day.

6 Q. You don't remember his last name.

7 A. All they do is put up mailboxes and signs that we
8 take down. That's it.

9 Q. Billy Joe and Nicholas?

10 A. Uh-huh.

11 Q. That's all they do?

12 A. Uh-huh.

13 Q. That's a yes?

14 A. Yes. That's a yes.

15 Q. Correct. Now, you're the one that would have
16 trained Mr. Jones, correct? No one else trained
17 for NHM; is that right?

18 A. No, sir.

19 Q. And he was getting paid at the time of this
20 accident how much per hour?

21 A. Eight dollars, as far as my recollection goes.

22 Q. Right. Right. And so he was actually working for
23 you on the day that this accident -- at the time
24 that this accident happened; isn't that right?

25 A. He was working that day, yes.

1 A. Yes, sir.

2 Q. Did any other employees have health insurance with
3 the business?

4 A. No, sir.

5 Q. So you were the only employee with --

6 A. Yes.

7 Q. -- health insurance? Did Mr. David Johnson have
8 health insurance?

9 A. No, sir.

10 Q. Was any unemployment compensation kept out of your
11 -- did you keep up with those records for the
12 unemployment compensation on Mr. Kevin Jones?

13 A. No, sir.

14 Q. And so far as you know, he was just what we've
15 described as a 1099 employee?

16 A. Yes.

17 MR. BARROW: Objection to form.

18 Q. Would you say that Mr. Jones was a temporary worker
19 for you?

20 MR. BARROW: Objection to form.

21 Q. He's objecting, but --

22 A. Yes, sir.

23 Q. -- you have to answer. Sir?

24 A. He was a -- just as work load come, I'd use him or
25 anybody else that I can get my hands on to do grunt

1 work.

2 Q. If you had a house to move, would you always call
3 Mr. Jones? Or would you call -- I believe you
4 said, is it Nicholas Smith?

5 A. Yeah, Nick -- Nick was there on occasions when we
6 moved them. Billy Joe was there. Just because you
7 need extra eyes and you need mailboxes and stuff
8 pick -- pick up. That's it.

9 Q. Did you have any permanent employees other than
10 you?

11 A. No, sir.

12 MR. BARROW: Objection to form.

13 Q. Mr. Brent Jones described, I believe, employees as
14 casual employees also. Would you put Mr. Kevin
15 Jones in that category?

16 MR. BARROW: Objection to form.

17 Q. And Nicholas Smith in that category?

18 A. I put them all there.

19 MR. BARROW: Objection to form.

20 A. I did most of the work myself.

21 Q. And you are the -- would you say you're the primary
22 employee for the company?

23 A. Yes, sir.

24 MR. BARROW: Objection to form.

25 Q. Why was Mr. Fred Nagial at this job?

1 A. Because I had the phone company and wire people
2 that I had to deal with, to lift the cables up.
3 And at the same time, we had a railroad track that
4 we had to cross, the railroad track that goes
5 through Gaffney, before we made that turn. We were
6 going to be, I had projected, about 45 minutes
7 before we got to the railroad track. And all
8 railroad tracks we cross, we have to inform the
9 railroad company, so they give us a time frame of
10 when we're going to cross it and when we can cross
11 the railroad track. So Fred was down there dealing
12 with -- with the train people for me, doing me a
13 favor.

14 Q. So he was not paid.

15 A. No, sir. He was just doing me a favor.

16 Q. You saying, in effect, that there was just not
17 enough of Ron Hewes to --

18 A. There wasn't enough of me to --

19 Q. -- move the --

20 A. -- handle the whole thing.

21 Q. -- house and deal with the railraod.

22 A. That -- that house would have sat in the middle of
23 the road until I handled the -- they were informed,
24 but they couldn't give me a time when they could
25 get there. So I had Fred on it down the street.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

CANAL INSURANCE COMPANY,) C.A. NO.: 2012-CP-23-6195

Plaintiff,)

)

V.) 30(b)(6) Deposition of

)

BRENT JONES

NATIONAL HOUSE MOVERS, LLC,) July 16, 2013

KEVIN E. JONES, DAVID BLACK)

RON HEWES, BRENT JONES AND)

FRED NAJIM,)

Defendants.)

)

30(b)(6) deposition on oral examination of BRENT JONES, reported by Lisa F. Huffman, Verbatim Court Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to notice of deposition, by agreement and in accordance with South Carolina Rules of Civil Procedure, at Covington, Patrick, Hagins, Stern & Lewis, P.A., 211 Pettigru Street, Greenville, South Carolina, on July 16, 2013, at the hour of 11:30 a.m.

1 A. Yes, sir.

2 Q. How many times?

3 A. Quite a few.

4 Q. What were those depositions, just generally, what
5 were they in relation to? Business for National
6 House Movers?

7 A. Never. I'm in the trucking business, so we get
8 sued a lot.

9 Q. What's the name of the company?

10 A. Service Transport Incorporated.

11 Q. And what's your relationship with National House
12 Movers?

13 A. One of the partners of the LLC.

14 Q. How many partners are there?

15 A. Three.

16 Q. And their names?

17 A. David Black, Ron Hewes and myself.

18 Q. And Mr. Black and Mr. Hewes are present for your
19 deposition; is that correct?

20 A. Yes, sir.

21 Q. Have you had an opportunity to look at the 30(b)(6)
22 notice with the various topics that are outlined in
23 Exhibit A of that deposition?

24 A. Briefly.

25 [MARKED FOR IDENTIFICATION AS EXHIBIT NO.

- 1 Let's see, '13, maybe three years.
- 2 Q. Who does the hiring for NHM?
- 3 A. Ron Hewes.
- 4 Q. Do y'all have any policies or procedures for hiring
- 5 and firing?
- 6 A. Nothing written.
- 7 Q. Tell me then what you understand your policies and
- 8 procedures are for hiring and firing at NHM.
- 9 A. How specific are we doing?
- 10 Q. Just tell me generally what you know about it.
- 11 A. Health, number one, I would say.
- 12 Q. What do you mean by that?
- 13 A. Got to -- got to be healthy. It's a manual job.
- 14 Q. Physical labor.
- 15 A. Yeah. In David's case, I'm assuming Ron made sure
- 16 he has a CDL and a file on him. Don't know.
- 17 Q. What else?
- 18 A. And just judge his work from day to day, or his
- 19 performance.
- 20 Q. If someone wants to put in an application to work
- 21 at NHM, where do they go to do that?
- 22 A. Good question. Have to find Ron.
- 23 Q. They have to find Mr. Hewes.
- 24 A. Yeah.
- 25 Q. Do you advertise in the phone book or some other

1 directory?

2 A. No.

3 Q. So if you're looking for employees, how do you
4 advertise the need for employees at your business?

5 A. It's word of mouth.

6 Q. You ever taken an ad in the newspaper or any other
7 publication?

8 A. No.

9 Q. And since 2006, you've never had a physical
10 location?

11 A. An office?

12 Q. Yes, sir.

13 A. In the early years -- no. They had -- there was a
14 place in Spartanburg where they domicile the
15 equipment.

16 Q. Where was that?

17 A. It's right there at Highway 220 -- no, Highway --
18 Highway 9.

19 Q. Highway 9?

20 A. I think.

21 Q. And was that -- were you utilizing that location at
22 the time of this accident involving Mr. Jones?

23 A. Yes.

24 Q. And who owned that property?

25 A. Do not know.

- 1 A. I don't think he was receiving a check. He hadn't
2 -- hadn't received a check in probably 2010.
- 3 Q. What happened to him?
- 4 A. We couldn't afford him.
- 5 Q. How long was he employed with your company?
- 6 A. '06 to '10, approximately.
- 7 Q. Anyone else on salary, other than Mr. Nagial?
- 8 A. No, sir.
- 9 Q. And who was responsible for hiring workers for this
10 company?
- 11 A. Ron Hewes.
- 12 Q. Anyone else, other than Mr. Hewes?
- 13 A. No, sir.
- 14 Q. Who was responsible for training the employees?
- 15 A. Ron Hewes.
- 16 Q. How would you train your employees? Tell me what
17 categories you were looking for and utilize the men
18 or women in and how they were trained?
- 19 A. Well, their health. It's manual labor, make sure
20 they were up for that. And then if they were to
21 drive a vehicle, be sure they have license.
- 22 Q. CDL, was that required if they were going to drive
23 a vehicle? Or just a driver's license?
- 24 A. If they were going to drive a CDL truck, they
25 needed a CDL license.

1 laugh, Ron -- take a PVC pipe and you raise the
2 wire up to where it sits on top of the house.

3 Q. So the frontman -- I mean, sorry, the man on the
4 house is responsible for taking the PVC pipe and
5 raising the wire as you're transporting the house
6 down the roadway, correct?

7 A. Right. And then the gable -- the gable of the
8 house --

9 Q. Sure.

10 A. -- I think typically the wire would sit on top of
11 that gable and slide down the gable, the peak, as
12 the house is moving.

13 Q. And why is that important in transporting a house?

14 A. So we don't knock those wires down, break the wires
15 and maybe cause a pole to fall over.

16 Q. Right. Pole could fall on the tractor, it could
17 fall on the highway, could fall on the house.

18 A. Just like you said.

19 Q. Could fall on adjacent property, correct?

20 A. Yeah.

21 Q. And was Mr. Jones trained in the job of making sure
22 the wires aren't hit by the moving of the houses?

23 A. I would think so.

24 Q. It's your understanding that he was trained by who?

25 A. Ron Hewes. It's my assumption.

1 Q. Right. Who provided him the PVC pipe?

2 A. Not a clue.

3 Q. Well, Mr. Jones didn't bring it with him, did he?

4 A. Not a clue; he may have.

5 Q. You don't know the answer.

6 A. I don't have a clue.

7 Q. Did any of your employees have to provide any of
8 their tools to do the job that you hired them to
9 do?

10 A. Not that I'm aware.

11 Q. And the PVC pipe would be one of the tools you
12 utilize in transporting the houses in order to
13 raise the wire from impacting the house; is it not?

14 A. I would think so.

15 Q. Who would have been the supervisor of Mr. Jones?

16 A. Ron Hewes.

17 Q. Who would have hired Mr. Jones?

18 A. Ron Hewes.

19 Q. Tell me what you know about the hiring of Mr.
20 Jones.

21 A. He was referred by David.

22 Q. David Johnson?

23 A. Don't know.

24 Q. Why don't we find out right now.

25 MR. BARROW: Mr. Hewes, what's David's

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
3
4 CANAL INSURANCE COMPANY,) C.A. NO.: 2012-CP-23-6195
5 Plaintiff,)
6)
7 V.) Deposition of
8) KEVIN EARLE JONES
9 NATIONAL HOUSE MOVERS, LLC,) April 9, 2013
10 KEVIN E. JONES, DAVID BLACK,)
11 RON HEWES, BRENT JONES AND)
12 FRED NAJIM,)
13 Defendants.)
14 _____)

15
16 Deposition on oral examination of KEVIN EARLE JONES,
17 reported by Lisa F. Huffman, Verbatim Court Reporter and
18 Notary Public in and for the State of South Carolina; said
19 deposition taken pursuant to notice of deposition, by
20 agreement and in accordance with South Carolina Rules of
21 Civil Procedure, at Henderson, Brandt & Vieth, P.A., 360
22 East Henry Street, Suite 101, Spartanburg, South Carolina,
23 on April 9, 2013, at the hour of 10:13 a.m.
24
25

- 1 A. Bobby Jones.
- 2 Q. Are you employed anywhere, Mr. Jones?
- 3 A. No, sir.
- 4 Q. When's the last time you were employed?
- 5 A. February the 7th, before accident.
- 6 Q. What year was that?
- 7 A. 2012.
- 8 Q. And where were you employed?
- 9 A. Well, I was helping National House Movers.
- 10 Q. And how long had you been employed by National
- 11 House Movers?
- 12 A. Well, I started in 2011 around September,
- 13 summertime, the best that I know of.
- 14 Q. You started in the summertime, you said?
- 15 A. Yes, sir.
- 16 Q. What month?
- 17 A. Around about June.
- 18 Q. That would have been June of 2011?
- 19 A. Yes.
- 20 Q. What did you do for them?
- 21 A. Well, when I first started, the only thing I was
- 22 doing was throwing blocks to them up under the
- 23 house.
- 24 Q. Throwing blocks?
- 25 A. Yeah. Big old blocks like that.

1 Q. Concrete blocks?

2 A. No, sir. They wood, like cross-ties.

3 Q. And what kind of business are they in?

4 A. Moving houses.

5 Q. And who originally hired you? Who did you
6 interview with?

7 A. I didn't have no interview with nobody. The guy
8 that was driving for them, David Johnson, he asked
9 me did I want to help. So I said "Yeah." So he
10 came and picked me up and took me to the job site.

11 Q. And who did Mr. Johnson report to? Who was his
12 boss or supervisor?

13 A. Ron Hughes.

14 Q. What was Ron Hughes' title with the company?

15 A. Basically, he was running it, I guess.

16 Q. He was the man in charge?

17 A. Yes, sir.

18 Q. And how long had David worked for them; do you
19 know?

20 A. No, sir. He had been with them before I even
21 started.

22 Q. How did you know David?

23 A. I know David from when he used to help Renelle
24 Atchison demolition houses. I met him there.

25 Q. Well, I mean, how many years ago was that?

1 A. I guess been about -- I can't remember.

2 Q. More than two or three?

3 A. Yes, sir.

4 Q. So David was a friend of yours, Mr. Jones?

5 A. Yes, sir.

6 Q. And what did he do for National House Movers?

7 A. He drove and worked heavy equipment.

8 Q. Was that a full time job for Mr. Johnson or part
9 time?

10 A. It was for him.

11 Q. And Mr. Hughes, was he a full time employee of
12 National House Movers?

13 A. Yes, sir.

14 Q. And you started work for them in June 2011 when Mr.
15 Johnson asked you to come help them out and you
16 threw wood blocks under a house; is that about
17 right?

18 A. Yes, sir.

19 Q. And was that every day, some days? How many days a
20 week were you working at first?

21 A. Well, some days I -- I worked a week and sometime I
22 work three or four weeks. After that, if there
23 ain't no work, I don't work.

24 Q. So the first day, who was on the job other than Mr.
25 Johnson? Was Ron Hughes on the job?

1 A. Yes, sir.

2 Q. Who else, that you recall?

3 A. That was it when I -- when I first went out there,
4 just me, David and Ron.

5 Q. Tell me exactly what y'all did that day.

6 A. What we did that day, we unloaded the blocks off of
7 -- off of a truck. And he got on the bobcat and
8 brought them over towards the house. He told me
9 what -- what I had to do, throw blocks under the
10 house to them, so they could stack them. They jack
11 the house up and put the blocks under there.

12 Q. And was Mr. Hughes telling you what he wanted you
13 to do?

14 A. Yes, sir.

15 Q. And did you ask Mr. Hughes how much you were going
16 to get paid? Surely, you knew how much you were
17 going to get paid; didn't you?

18 A. No. When I went out there, he didn't discuss none
19 of that with me.

20 Q. And you didn't ask any questions.

21 A. No, sir.

22 Q. So you were just going to go help these guys,
23 perform physical labor without any discussion about
24 how you were going to get paid.

25 A. I didn't discuss that. I was just -- I was just

1 or nothing.

2 Q. Who didn't turn it in?

3 A. Well, Ron.

4 Q. Ron. How do you know that?

5 A. Because he didn't. If they did, I didn't took
6 taxes and stuff out on me.

7 Q. Yeah.

8 A. So -- and then he just kept saying, "Well" -- that
9 was it.

10 Q. He kept saying what, Mr. Jones?

11 A. He kept -- he kept saying "Where is shorty? I
12 don't know if he is going to get to work with us no
13 more like that." And I said, "Okay." Well, he --
14 he kept telling David to come get me whenever he
15 had a job, so I kept -- I kept working whenever
16 they came and got me. Well, sometime the job would
17 last a week, sometime it last three weeks. If they
18 didn't have no houses, I didn't work.

19 Q. Sure.

20 A. I wasn't -- I wasn't no full-time employee --

21 Q. Right.

22 A. -- so I just helped them when they needed it.

23 Q. Now getting back to my question about what
24 information you gave them about yourself, you said
25 you never provided them with a Social Security

- 1 Q. Aunt M's, okay. And were you working on a job that
2 day for him?
- 3 A. Yes, sir.
- 4 Q. And y'all are taking a lunch break?
- 5 A. Yes, sir.
- 6 Q. Who else was there when he asked for your Social
7 Security card?
- 8 A. David Johnson was there, but he was sitting at
9 another table.
- 10 Q. So just sitting at the table with you and Mr.
11 Hughes, who else was there?
- 12 A. That was it.
- 13 Q. And Mr. Hughes said, "Mr. Jones, I want your Social
14 Security card because I'm going to put you on the
15 payroll."
- 16 A. That's what he told me.
- 17 Q. You were pretty excited about that; weren't you?
- 18 A. Well, I was.
- 19 Q. And did you discuss pay at that time?
- 20 A. No, sir.
- 21 Q. When did you finally get around to discussing pay
22 with these guys, Mr. Jones, so you'd know how much
23 you were going to get paid for doing this work?
- 24 A. We never did discuss it.
- 25 Q. So the first time you went to work for him, how

1 long did you work, other than that first day? Was
2 that several days?

3 A. I worked -- I -- I worked on that job for two
4 weeks.

5 Q. Two weeks. Every day?

6 A. Yes, sir.

7 Q. And was it about eight hours a day every day?

8 A. Yes, sir.

9 Q. And was it only you and Mr. Johnson and Mr. Hughes?

10 A. Yes, sir.

11 Q. And were you doing anything else, other than what
12 you've described for me this morning?

13 A. No, sir.

14 Q. So you were primarily there building piers, and
15 tightening up wheels, and getting a house jacked up
16 to put the wheels on; is that right?

17 A. Yes, sir.

18 Q. In other words, you were making the house able to
19 be transported from one location to another.

20 A. Yes, sir.

21 Q. And who else worked there during that two week
22 period of time other than you, and Mr. Hughes, and
23 Mr. Johnson?

24 A. That was it.

25 Q. Who had your job before you? Did they tell you?

1 today. We're going to move steel." That's it.

2 Q. How many days did Mr. Johnson move steel between
3 Cowpens and Fountain Inn, if you know?

4 A. About twice.

5 Q. Twice.

6 A. Moved it from the work -- I'm going to say the work
7 yard to the -- down there, Fountain Inn.

8 Q. And what did he do when he wasn't moving steel?
9 Nothing?

10 A. I don't know what he did. He did a little odd jobs
11 on the side.

12 Q. What other kind of odd jobs would he do when he
13 wasn't working for National House Movers?

14 A. I don't know. He'd probably do little landscaping,
15 he tell me -- he said he had some jobs lined up.

16 Q. Just something to keep him busy and make a little
17 money?

18 A. Yes, sir.

19 Q. Did you ever help him with any of that stuff?

20 A. No, sir.

21 Q. Now after the Fountain Inn job, I think you said,
22 or about the same time you started working on the
23 Gaffney job?

24 A. Yes, sir.

25 Q. And how were you paid at the Gaffney job?

1 helping them on it.

2 Q. Because they moved you to the Gaffney job?

3 A. Yes.

4 Q. Who worked on the Fountain Inn job when you were
5 moved to the Gaffney job?

6 A. Wasn't nobody working on it.

7 Q. Still just the three of you guys doing everything,
8 right?

9 A. Yes, sir.

10 Q. You and Mr. Johnson and Mr. Hughes.

11 A. Yes, sir.

12 Q. So y'all were both responsible for the Fountain Inn
13 job and the Gaffney job.

14 A. Yes.

15 Q. Now explain to me what the Gaffney job was all
16 about.

17 A. Well, that lot right there, they were going to
18 build a square right there for Dollar General. So
19 they contracted Mr. Hughes to move the houses, in
20 all, four houses. Two of them got tore down and
21 two got moved. So I basically did the same thing
22 every day. But if they didn't need me, I didn't
23 work. David would work because he had CDLs and I
24 didn't. So he just needed me when he needed an
25 extra hand. It wasn't like the office called me

1 and said, "We need you to work today or something."
2 He -- he'd tell David and David called me, "You
3 want to work today?"

4 Q. Did Mr. Hughes ever call you?

5 A. No, sir.

6 Q. Did he have your phone number?

7 A. He had it.

8 Q. You have a cell phone number?

9 A. I didn't have no cell phone at the time.

10 Q. Well, how did they call you?

11 A. I didn't have -- my old lady had one.

12 Q. She still has one; doesn't she?

13 A. Yes, sir.

14 Q. Still the same lady you live with now?

15 A. Yes, sir.

16 Q. What was her cell phone number?

17 A. 864-809-3052.

18 Q. 3052?

19 A. Yes, sir.

20 Q. And who does she have her service with, Verizon?

21 Or --

22 A. Boost Mobile. Boost Mobile.

23 Q. Boost Mobile?

24 A. Yes, sir.

25 Q. How do you spell that?

1 face, brush my teeth. Might go in there and see if
2 I can find something to put in the microwave to
3 eat. But other than that, I just lay around on my
4 -- on my bed with the TV.

5 Q. Lay around in the bed and watch TV?

6 A. (Witness shakes head.)

7 Q. Yes, sir? You're shaking --

8 A. Yes, sir.

9 Q. -- your head yes.

10 A. Oh, yes.

11 Q. That's okay. And your wife works at what time?

12 A. She go in from 6:30 to 2.

13 Q. What would happen if those wires had hit that roof?
14 Why did they want you to keep those wires off that
15 roof?

16 A. They didn't want them to catch any shingles, hang
17 up on the shingles and pull the shingles off the
18 house. That's why they don't want them to get
19 caught on the shingles because they want me to lift
20 them up.

21 Q. Could it have started a fire?

22 A. No, it wouldn't start a fire.

23 Q. Just because it would damage the house as it was
24 moving?

25 A. Yes, sir.

1 Q. Which would cause the move to stop in the middle of
2 the road, I take it, and get things back together
3 and take off again, right?

4 A. You have to get the wire unhung out of the
5 shingles.

6 Q. You could pull the poles down; couldn't you?

7 A. Yes, sir. Or break a wire, snap the wire.

8 Q. If the poles came down, it could be trouble;
9 couldn't it?

10 A. Very serious.

11 Q. Thank you, Mr. Jones, that's all the questions I
12 have for you.

13 A. Yes, sir.

14 MR. COVINGTON: No questions.

15 MR. BRANDT: You are just observing.

16 MR. REEVES: I'm not participating, but I
17 did want to ask if he knows his psychiatrist's
18 last name.

19 MR. BARROW: That was his first name?

20 THE WITNESS: Yes.

21 MR. BARROW: He said Dr. Phil.

22 THE WITNESS: Yeah. That's -- that's all
23 they put on there, was Phil.

24 MR. REEVES: Where is he?

25 THE WITNESS: ReGenesis on Church Street.

THE LAW OF "LEASED WORKER" AND "TEMPORARY WORKER" UNDER A CGL POLICY

Steven P. Perlmutter

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I. INTRODUCTION

In the twenty-first century, workplace employers are increasingly utilizing the services of alternative staffing arrangements under which they employ workers furnished by employee or labor leasing firms because these types of arrangements provide employers with a number of financial and administrative benefits. These leasing firms often assume all of the labor, payroll, insurance, administrative, and overhead costs associated with the workers they furnish. This can result in a substantial savings to the employer, who normally would pay these costs for its regular employees.¹ However, when one of these workers is injured while working at the client/insured company where the worker was placed by the leasing company, an issue arises regarding whether the client company's commercial general liability (CGL) policy covers the loss. Due to the existence of an employer's liability exclusion,² the resolution of this issue hinges on whether the worker was

1. In some states, the staffing or employment firm is considered the worker's general employer and the client company his special employer. In these states, the workers' compensation bar to an employee suing his employer does not apply to a suit against the special employer. See, e.g., *Lang v. Edward J. Lamothe Co., Inc.*, 479 N.E.2d 208, 209 (Mass. App. Ct. 1985).

2. Different insurers variously refer to this exclusion as the employer's liability exclusion, employer's exclusion, employee exclusion, and employee injury exclusion. Except where this article is quoting from a case, the author has used *employer's liability exclusion* for the sake of uniformity.

an "employee" of the client company at which he or she was placed at the time of the accident. If the worker is found to be an employee, coverage is excluded under the CGL policy.

A CGL policy addresses coverage for injuries to workers provided to client companies by employment-type organizations through the policy terms *leased worker* and *temporary worker*.³ A leased worker is considered an employee of the client company and excluded from coverage under the employer's liability exclusion in the CGL policy, but a temporary worker is not. Accordingly, insureds seeking coverage will argue that the injured worker was a temporary worker, and insurers seeking to disclaim coverage will maintain that the worker was a leased worker.

The terms *leased worker* and *temporary worker* are often defined as follows:

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."

"Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.⁴

In pertinent part, the employer's liability exclusion provides as follows:

2. Exclusions

This insurance does not apply to:

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business[.]⁵

3. In the case of workers hired directly by the company, state law on what constitutes an employee or independent contractor will govern.

4. E.g., INS. SERVS. OFFICE (ISO), COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01 12 07 § V.10, 19 (2007) [hereinafter 2007 FORM]; see also CG 00 01 12 04 (2004), CG 00 01 10 01 (2001), CG 00 01 01 96 (1996), CG 00 01 10 93 (1993). The cited definitions were added to the ISO form in 1993. Gen. Agents Ins. Co. of Am., Inc. v. Mandrill Corp., Inc., 243 F. App'x 961, 967 (6th Cir. 2007) (citing Am. Family Mut. Ins. Co. v. Tickle, 99 S.W.3d 25, 30 (Mo. Ct. App. 2003)). For an example of corresponding language prior to 1993, see *Yorkshire Insurance Co., Ltd. v. Diatom Drilling Co.*, 280 S.W.3d 278, 282 (Tex. App. 2007) ("Excluding Leased-In Employees/Workers" who were not defined by the policy).

5. 2007 FORM § I.2.e. Except for providing that an employee "includes a 'leased worker'" but "does not include a 'temporary worker,'" the CGL policy does not define the term

On the surface, the issue appears to be straightforward, but divining whether a worker is a leased or temporary worker can be more complicated than initially thought. There is also much at stake for employers: even though they can realize substantial savings by utilizing workers provided by staffing or employment-type agencies in place of employees whom they hire directly, employers will give back much, if not all, of this savings if it turns out that the injured worker is a leased worker employee because, under such circumstances, there will be no insurance coverage.

This article canvasses the law of "leased worker" and "temporary worker" as it has developed since the insertion of these terms into the Insurance Services Office (ISO) CGL form in 1993. It exposes and explores the multiple legal issues raised by these terms. It also offers advice for employers who want to reap the financial benefits of using workers furnished by staffing or employment-type companies but not negate that benefit by incurring a large uninsured judgment because a court finds that the injured worker was an uninsured leased worker rather than an insured temporary worker.

II. PURPOSE OF THE LEASED WORKER/TEMPORARY WORKER DICHOTOMY IN THE CGL POLICY

At the outset, it is important to understand the reason why the employer liability exclusion applies to leased workers but not temporary workers. The reason is grounded in the difference between a CGL policy and a workers' compensation policy. The former is designed to cover an employer's liability to third persons for the negligence of its agents, servants, and employees.⁶ CGL policies typically exclude injuries to employees because the expectation is that the employer will have in place workers' compensation insurance or self-insurance.⁷ In contrast to a CGL policy, a workers' compensation policy limits defense and indemnity of the employer to claims for benefits made by injured employees required by the

employee. *E.g., id.* § V.5. Close attention needs to be paid to the policy language because other policies contain employer's liability exclusions that exclude coverage for temporary workers. See *Wellington Specialty Ins. Co. v. Ling*, No. 3:08-CV-738-L, 2009 U.S. Dist. LEXIS 61569, at *16 (N.D. Tex. July 17, 2009).

6. See *Monticello Ins. Co. v. Dion*, 836 N.E.2d 1112, 1113 (Mass. App. Ct. 2005).

7. *Scottsdale Ins. Co. v. Carrabassett Trading Co. (Scottsdale I)*, 460 F. Supp. 2d 251, 255 (D. Mass. 2006), *vacated and remanded on other grounds sub nom.*, *Scottsdale Ins. Co. v. Torres (Scottsdale II)*, 561 F.3d 74, 78 (1st Cir. 2009); *AMCO Ins. Co. v. Dorpinghaus*, No. 05-1296 (PJS/JJG), 2007 U.S. Dist. LEXIS 2440, at **7, 20 (D. Minn. Jan. 11, 2007); *Monticello Ins. Co.*, 836 N.E.2d at 1113; *Gavan v. Bituminous Cas. Corp.*, 242 S.W.3d 718, 721-22 (Mo. 2008) (en banc).

workers' compensation statute.⁸ "The primary purpose of the exclusion is to draw a sharp line between employees and members of the general public."⁹ A CGL policy covers the claims of the former but not the claims of the latter.¹⁰

The reason the employer's liability exclusion applies to leased workers but not temporary workers is generally based on the language of a state's workers' compensation statute. Because the texts of these statutes vary from jurisdiction to jurisdiction, counsel need to consult their local statutes to understand the local justification for the employer's liability exclusion applying to leased workers but not temporary workers. For example, in Kentucky, the workers' compensation statute expressly states that a "temporary help service shall be deemed to be the employer of a temporary worker."¹¹ Thus, under Kentucky law, a temporary worker furnished to a client company by an employee leasing company is not an employee of the client company and not subject to the employer's liability exclusion.¹² Similarly, § 468.520(4)(a) of the Florida Statutes defines a "temporary help arrangement" as one in which an "organization hires its own employees and assigns them to a . . . client's workforce in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects."¹³ Thus, under Florida law, these temporary workers should be viewed as employees of the temporary help company, not the client company, and should not be subject to the employer's liability exclusion. In Massachusetts, the rationale for subjecting leased workers to the employer's liability exclusion is that Massachusetts law requires

8. See *HDH Corp. v. Atl. Charter Ins. Co.*, 681 N.E.2d 847, 850-53 & n.12 (Mass. 1997) (recognizing that the common practice for employers seeking coverage for claims outside of the workers' compensation system is to purchase some form of general liability insurance to protect against such risks).

9. *Am. Family Mut. Ins. Co. v. Tickle*, 99 S.W.3d 25 (Mo. Ct. App. 2003); see *Ind. Ins. Co. v. Brown*, No. 2003-CA-000113-MR, 2003 Ky. App. LEXIS 326, at *14 (Ct. App. Dec. 24, 2003); *Gavan*, 242 S.W.3d at 721-22; 9A STEVEN PLITT ET AL., *COUCH ON INSURANCE* § 129:3 (3d ed. 1997).

10. See *Scottsdale I*, 460 F. Supp. 2d at 255 (holding that because leasing companies also are required by state law to have workers' compensation insurance for their employees, leased workers are usually considered employees for the purposes of the CGL exclusions as well); *AMCO Ins. Co.*, 2007 U.S. Dist. LEXIS 2440, at *20 (An employer that hires leased workers or that hires temporary workers who were not furnished by a staffing company would have to purchase workers' compensation insurance to cover such workers, but an employer that hired temporary workers furnished by a staffing company would not have to purchase workers' compensation insurance to cover these workers because they would be covered by the staffing company's workers' compensation carrier. Thus, it makes sense to exclude the former from the employer's workers' compensation policy but to include the latter.).

11. KY. REV. STAT. ANN. § 342.615(5) (LexisNexis 2009).

12. See *Brown v. Ind. Ins. Co.*, 184 S.W.3d 528, 537 (Ky. 2005) (interpreting Kentucky's statute).

13. FLA. STAT. ANN. § 468.520(4)(a) (2007).

employee leasing companies, like regular employers, to provide workers' compensation insurance for their employees.¹⁴

III. TEMPORARY WORKER ISSUES

Most of the cases dealing with the leased worker/temporary worker distinction have addressed the issue of what constitutes a temporary worker. Moreover, because the CGL policy provides that *leased worker* does not include a temporary worker, an initial understanding of what constitutes a temporary worker will inform what constitutes a leased worker.

A. Furnished to: Does It Require the Injured Worker to be Provided to the Client Company by a Third-Party Employment-Type Business?

The majority of cases that have applied the employer's liability exclusion to deny coverage have done so by finding that the worker was not "furnished to" the insured client company, as is required by the CGL policy's definition of *temporary worker*. These cases, therefore, generally do not reach the issue of whether the worker was furnished to "substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions." However, the courts are in disagreement about the meaning of the "furnished to" requirement in the definition of *temporary worker*. The majority line of cases holds that to be a temporary worker, the worker must be furnished to the client company by an employment-type agency. The minority line of cases finds no requirement that the temporary worker be furnished to the client company by such a business. Both lines of cases are presented in chronological order below in order to track the development of the law on this issue.

1. Cases: Temporary Worker Must Be Furnished by an Employment-Type Business

In *Monticello Insurance Co. v. Dion*,¹⁵ the decedent (Mellen) was killed when her cousin (Dion), making a chainsaw cut, caused a tree to snap and fall on her while she was operating a wood chipping machine on the same job.¹⁶ An issue before the court was whether Mellen had been working the job as an employee of Dion, the insured, or as a temporary worker, who under the policy definitions would not be an employee of Dion. The insured's

14. See MASS. GEN. LAWS ch. 152, § 25A (2005); *Scottsdale I*, 460 F. Supp. 2d. at 255; 211 MASS. CODE REGS. § 111.04 (2009); see also *Gen. Agents Ins. Co. of Am., Inc. v. Mandrill Corp., Inc.*, 243 F. App'x 961, 967-68 (6th Cir. 2007) (holding that Tennessee workers' compensation statute makes no distinction between leased and temporary workers).

15. 836 N.E.2d 1112 (Mass. App. Ct. 2005).

16. *Id.* at 1113.

argument that Mellen was a temporary worker and not an employee foundered on the shoals of Dion's failure to satisfy the "furnished to" element of the definition of *temporary worker*.¹⁷ The court rejected the temporary worker argument by reasoning that the term *furnished to* connotes some involvement of a third person and requires something more than Dion asking his cousin if she would work for him for a few days and his cousin agreeing.¹⁸ The court also turned away the "interesting" argument that Mellen had been furnished to Dion because she was in effect a landscaping company sole proprietorship who "furnished her services to Dion [on] the day of the accident." The court found that this approach would read the "furnished to" requirement out of the policy because every employee furnishes his or her services to the employer, and Mellen's sole proprietorship had no existence separate from her own.¹⁹

The case of *Nautilus Insurance Co. v. Gardner*²⁰ arose out of the parents of a female minor bringing suit against the insured, the operator of a haunted house, based on allegations that the insured's employee sexually assaulted the minor during her nine days of employment as an "actor" at the haunted house display.²¹ In the coverage litigation, the court predicted that the Pennsylvania Supreme Court would hold that the term *furnished to you* was unambiguous and meant "supplied, provided or equipped to another entity or person."²² Ultimately, the court held that the minor did not qualify as a "temporary worker," irrespective of the brevity of her employment, because the insured presented no evidence suggesting that she was "supplied, provided or equipped" to the insured by "a headhunter, employment agency manpower service provider or any similar service."²³ Under these circumstances, the court found the minor to be an employee of the insured and subject to the employer's liability exclusion.²⁴

The case of *Brown v. Indiana Insurance Co.*²⁵ arose out of the deaths of Garcia and O'Banion in an automobile accident. At the time of their deaths, they were employees of Willowbank Garden Co. and were acting within the scope of their employment for Willowbank.²⁶ Both decedents were hired directly by Willowbank. The estates of Garcia and O'Banion brought suit against Willowbank, and Willowbank demanded

17. *Id.* at 1115.

18. *Id.* at 1114-15.

19. *Id.* at 1115.

20. No. 04-1858, 2005 WL 664358 (E.D. Pa. Mar. 21, 2005).

21. *Id.* at *2.

22. *Id.* at *7.

23. *Id.* at *6.

24. *Id.* at *7.

25. 184 S.W.3d 528 (Ky. 2005).

26. *Id.* at 531.

that its insurer provide a defense. Willowbank contended that Garcia and O'Banion were temporary workers and that it was therefore entitled to coverage "because Garcia was a migrant worker and O'Banion intended to quit work and attend college."²⁷ The court rejected this argument because it would read the "furnished to you" requirement out of the definition of *temporary worker*.²⁸ Because there was no dispute that Willowbank hired Garcia and O'Banion directly and that they were not provided by a temporary help service, the court held that Garcia and O'Banion were employees, not temporary workers, and that the employer's liability exclusion barred coverage.²⁹

The court in *American Family Mutual Insurance Co. v. Tickle*³⁰ also rejected the argument that the term *temporary worker* could be interpreted to include someone who works to meet seasonal or short-term workload conditions but who is not furnished to the employer.³¹ "Tickle was an individual who periodically sought and obtained employment [directly] from [] Kemper during periods when [] Tickle was laid off from his regular employment."³² After Tickle was injured while working for Kemper, Tickle brought suit against Kemper. Kemper sought a defense from his CGL insurer, and the insurer instituted this declaratory judgment action.³³ "Tickle concede[d] that he was not 'furnished' to [] Kemper" but contended that he was a temporary worker because it is ambiguous whether the verb *furnished* applies to a person who meets seasonal or short-term workload conditions.³⁴ Tickle argued that the phrase *is furnished* only applies to those people who substitute for a permanent employee and not to those who meet seasonal or short-term workload conditions. The court rejected this grammatical argument and found no ambiguity in the policy definition of *temporary worker*.³⁵ Accordingly, the court held that Tickle was an employee, not a temporary worker, and that the employer's liability exclusion barred coverage.³⁶

27. *Id.* at 538.

28. *Id.* at 539-40.

29. *Id.* at 537-39. The definition of *temporary worker* under the policy at issue in the case is somewhat different than the definition contained in the ISO CGL policy. The *Brown* policy defined a temporary worker to be "a person who is furnished to you for a finite time period to support or supplement your workforce in special work situations such as 'employee' absences, temporary skill shortages and seasonal workloads." *Id.* at 534. It is not clear from the opinion whether this policy was an ISO form.

30. 99 S.W.3d 25 (Mo. Ct. App. 2003).

31. *Id.* at 30-31.

32. *Id.* at 28.

33. *Id.* at 30-31.

34. *Id.*

35. *Id.*

36. *Id.*

*Nationwide Mutual Insurance Co. v. Allen*³⁷ also involved a situation where the injured worker was hired directly by the employer and was not furnished to the employer by an employment-type agency.³⁸ Allen Landscaping provided landscaping services to customers for a fee. Shaw performed landscaping work for Allen in exchange for pay.³⁹ Shaw was hired directly by Allen.⁴⁰ Shaw was injured in an accident while operating a commercial riding mower owned by Allen.⁴¹ Shaw brought suit against Allen, and Allen's insurer instituted this declaratory judgment action. The court concluded that the definition of *temporary worker* in the CGL policy was clear and unambiguous.⁴² It then held that Shaw was not a temporary worker because he was not furnished to Allen by an employment agency, manpower service provider, or similar service.⁴³ Under these circumstances, the court found Shaw to be Allen's employee and that the employer's liability exclusion operated to bar coverage for Allen.⁴⁴

In *Fulcrum Insurance Co. v. Barber*,⁴⁵ a case arising out of a worker falling to his death while painting and relamping a communications tower, the court summarily concluded without analysis that both the employer's liability exclusion and the temporary worker exception to that exclusion are not ambiguous.⁴⁶ The court did not comment on the "furnished to" issue. However, it did find that the party relying on the temporary worker exception had the burden of proof on that issue and that the burden had not been met in the case.⁴⁷

The case of *AMCO Insurance Co. v. Dorpinghaus*⁴⁸ arose out of Richie, Tommy, and Tony being injured while working for Tony's father, Steven, who was doing business as Dorpinghaus Construction.⁴⁹ "In the fall of 2004, Dorpinghaus Construction agreed to build a home and hangar garage for [] Delk." Steven agreed with his son, Tony, that Tony would help with the framing of the house and hangar.⁵⁰ At the time of this agreement, Tony was employed by another family-owned business, Meats, Meals and

37. 850 A.2d 1047 (Conn. App. Ct. 2004).

38. *Id.* at 1057.

39. *Id.* at 1051.

40. *Id.* at 1054.

41. *Id.* at 1051.

42. *Id.* at 1057.

43. *Id.*

44. *Id.*

45. No. EP-04-CA-0064-DB, 2006 U.S. Dist. LEXIS 96130 (W.D. Tex. Oct. 24, 2006) (applying Ohio law).

46. *Id.* at *13-14.

47. *Id.* at *14.

48. No. 05-1296 (PJS/JJG), 2007 U.S. Dist. LEXIS 2440 (D. Minn. Jan. 11, 2007).

49. *Id.* at *1.

50. *Id.* at *2-3.

More.⁵¹ "Knowing that he could not frame the Delk project alone, Tony [convinced] Richie, a close friend since childhood," to help with the job. "Richie was the sole proprietor of Richie's Dreamscapes, a 'hardscape' construction business."⁵² "Richie spoke directly with Steven [] about the amount of work that needed to be done and the terms of payment. Tommy was a childhood friend of both Tony and Richie" and "the sole proprietor of Do-It-Rite Lawn Care & Snow Removal."⁵³ "Tommy heard about the [] project, and asked [Steven] if he could work on it."⁵⁴

After making their own deals, Richie, Tommy, and Tony worked on the project until "the scaffolding on which they were working collapsed."⁵⁵ "All three suffered serious injuries." Throughout the time they worked on the project, "[b]oth Tommy and Richie . . . continued to run their own businesses."⁵⁶

At the time of the accident, "Dorpinghaus Construction was insured under a [CGL] policy issued by AMCO." The policy included an employer's liability exclusion and provided that *employee* includes a leased worker but not a temporary worker. "Dorpinghaus Construction . . . did not carry worker's compensation insurance."⁵⁷ Steven and the young men argued that even if the young men were working as employees, they were temporary workers and thus excluded from the definition of *employee* under the policy.⁵⁸

AMCO argued that the "furnished to you" language in the definition of *temporary worker* unambiguously meant that the young men had to be furnished to Dorpinghaus Construction by a third party such as a temporary employment agency.⁵⁹ Defendants argued that the term *furnished* is ambiguous because it does not necessarily require a third person to do the furnishing.⁶⁰ Rather, defendants, like the worker in *Dion*, argued that "a worker can furnish himself to an employer."⁶¹ Defendants also argued that "even if a third party must do the furnishing, Richie and Tommy were . . . furnished to Dorpinghaus Construction by a third party—either by their friend Tony or by their respective businesses (Richie's Dreamscapes and Do-It-Rite Lawn Care & Snow Removal)."⁶²

51. *Id.* at *3.

52. *Id.* at *4.

53. *Id.* (internal citation omitted).

54. *Id.*

55. *Id.* at *4-5.

56. *Id.* at *5.

57. *Id.* at *7.

58. *Id.* at *9.

59. *Id.* at *10.

60. *Id.*

61. *Id.*

62. *Id.*

The court agreed with the insurer and the majority of courts "that the phrase 'furnished to you' is not ambiguous and 'necessarily connotes some involvement by a third person.'"⁶³ In doing so, the court observed that this interpretation of the policy is the only one that "gives meaning to all the words of the policy" because, under defendants' construction, every worker would be "furnished to you" for the purposes of the policy. In the court's view, this interpretation would render the phrase meaningless and would read it out of the policy.⁶⁴ The court also rejected defendants' argument that because the definition of *leased worker* refers to a third party (a labor leasing firm) and the definition of *temporary worker* does not, a "temporary worker" can be self-furnished." The court reasoned that both provisions require third-party involvement and that the third-party involvement necessary for a leased worker (a labor leasing company) is more specific and narrow than that required for a temporary worker.⁶⁵

The court rejected defendants' argument that the insurer's reading of the policy makes no sense in the context of the case, where Dorpinghaus Construction did not carry workers' compensation insurance, because CGL policies exclude injuries to employees who are supposed to be covered by workers' compensation insurance.⁶⁶ The court, however, found rational the distinction between leased workers who are considered to be employees and temporary workers who are not considered to be employees because an employer, like Dorpinghaus Construction, which "hired leased workers or . . . hired temporary workers who were *not* furnished would have to purchase worker's compensation insurance to cover them."⁶⁷ By contrast, the court observed that an employer, unlike Dorpinghaus Construction, which "hired temporary workers furnished by an agency would not have to purchase worker's compensation insurance to cover them [] [because] those workers would remain covered by the agency's worker's compensation carrier."⁶⁸ Under these circumstances, it makes "sense to extend the employer's CGL policy to cover lawsuits brought by such workers."⁶⁹

Richie and Tommy's argument that Tony furnished them to Dorpinghaus Construction fared no better because the court found that "Tony was not in the business of supplying workers to others."⁷⁰ Moreover, it was undisputed that neither Richie nor Tommy had ever worked for Tony,

63. *Id.* at *14-15.

64. *Id.* at *16-17.

65. *Id.* at *17-18.

66. *Id.* at *18.

67. *Id.* at *20.

68. *Id.*

69. *Id.*

70. *Id.* at *22-23.

thus "making it difficult for Tony to furnish them to anyone."⁷¹ Richie and Tommy's argument was also undercut by the fact that they both negotiated their deals directly with Steven Dorpinghaus.⁷² Similarly, because there was no evidence that Richie's business, Richie's Dreamscapes, or Tommy's business, Do-It-Rite Lawn Care and Snow Removal, were in the business of providing temporary workers to do construction framing, the court brushed aside Richie and Tommy's argument that they were furnished to Dorpinghaus Construction by their respective businesses.⁷³ Like the court in *Allen*,⁷⁴ the *Dorpinghaus* court found that a business in the nature of "an employment agency, manpower service provider or any similar service" must furnish a worker to a business like Dorpinghaus Construction for that worker to qualify as a temporary worker.⁷⁵

Only the lead opinion in *General Agents Insurance Co. of America, Inc. v. Mandrill Corp., Inc.*⁷⁶ reached the "furnished to" issue. "Mandrill contracted to perform demolition work at two sites in Chattanooga, Tennessee."⁷⁷ During the work, "a wall collapsed injuring two workers . . . and killing a third . . . (. . . the 'Laborers')."⁷⁸ "Mandrill paid the Laborers and other workers on site in cash, on an hourly basis, generally weekly, and did not withhold or pay social security taxes."⁷⁹ At the time of the wall collapse, "Mandrill did not have workers' compensation insurance coverage."⁸⁰ The Laborers filed suit against Mandrill claiming that they were employees of Mandrill at the time of the collapse. Subsequently, one of the Laborers amended his complaint to allege that he was an independent contractor.⁸¹ Mandrill requested that its insurer defend and indemnify it, but the insurer declined to do so based on an employer's liability exclusion contained in the CGL policy. The district court held that the allegation that underlying plaintiffs were employees of Mandrill triggered the employer's liability exclusion.

The opinion concluded that the "mere use of the word 'employee' [in the underlying complaint] is not sufficient to invoke the employer's exclusion . . . if the policy is construed to cover some subclass of temporary employee" for which the policy provides coverage.⁸² This conclusion led

71. *Id.* at *23.

72. *Id.* at *22.

73. *Id.* at *23-24.

74. 850 A.2d 1047, 1057 (Conn. App. Ct. 2004).

75. *Dorpinghaus*, 2007 U.S. Dist. LEXIS 2440, at *23-24.

76. 243 F. App'x 961 (6th Cir. 2007).

77. *Id.* at 962.

78. *Id.*

79. *Id.* at 963.

80. *Id.*

81. *Id.* The court found Wynn to be an "employee" and "not an independent contractor." *Id.* at 966 n.1.

82. *Id.* at 965.

the court to consider whether the Laborers were temporary workers. The opinion lined up with the "majority of . . . courts" that have considered the "furnished to" issue because it held that the phrase *furnished to* unambiguously requires the involvement of a third party such as a temporary staffing agency that supplies the worker to the insured employer.⁸³ Any other interpretation of the language of the policy would read the phrase *furnished to* out of the policy.⁸⁴ Because there was not "a scintilla of evidence . . . to indicate that any of the Laborers were 'furnished to' Mandrill by [a] third party," the court concluded that they were not temporary workers. As a result of this finding, the court held that the employer's liability exclusion applied and operated to bar Mandrill's claim for coverage.⁸⁵

*Pacific Employers Insurance Co. v. Wausau Business Insurance Co.*⁸⁶ arose out of Hart being injured while working at Berman Brothers, Inc., a scrap metal company, while cutting up railcars.⁸⁷ Hart had been assigned to Berman by Action Labor, an employment or staffing agency. Action Labor was Hart's employer, and Berman was Action Labor's client company. "Action Labor specialize[d] in providing industrial clients with daily workers," both on a short-term and a long-term basis.⁸⁸

During the time Hart worked at Berman, "Action Labor provided [him] with workers' compensation insurance, paid his payroll taxes and provided him with the income reporting documents required by [the] Internal Revenue Service."⁸⁹ While working at Berman, Hart "present[ed] [his supervisors at Berman] with either a daily or weekly work ticket to sign."⁹⁰ He then returned these work tickets to Action Labor. Upon receipt of his ticket, Action Labor paid him directly. Action Labor "then invoice[d] Berman for the amounts due [and] provide[d] Berman with a copy of [] Hart's daily or weekly work tickets."⁹¹ Berman then paid Action Labor.⁹² Action Labor charged Berman an hourly rate for Hart's services. The hourly rate was comprised of Hart's actual salary and an amount to cover Action Labor's overhead cost and to provide Action Labor with a profit.⁹³ Hart worked

83. *Id.* at 966-67.

84. *Id.* at 968.

85. *Id.* Both dissenting opinions did not reach the temporary worker issue. See *id.* at 971-72 (Batchelder, J., dissenting); see *id.* at 972-74 (Clay, J., dissenting). All three judges, for different reasons, affirmed the judgment below that there was a duty to defend. *Id.* at 966; *id.* at 971-72 (Batchelder, J., dissenting); *id.* at 973 (Clay, J., dissenting).

86. No. 3:05-cv-850-J-32TEM, 2007 U.S. Dist LEXIS 73594 (M.D. Fla. Oct. 2, 2007).

87. *Id.* at *5.

88. *Id.*

89. *Id.* at *6.

90. *Id.*

91. *Id.* at *7.

92. *Id.*

93. *Id.* at *7 n.9. Hart sued Berman in Florida state court. *Id.* at *12. Initially, Wausau, Berman's CGL insurer, defended Berman under a reservation of rights. *Id.* Wausau then denied

at Berman continuously from at least May 25, 2000, until the date of his injury, August 18, 2000.⁹⁴

On the "furnished to" issue, the court lined up with the "majority of courts" to hold that the language unambiguously required the involvement of a third party that supplies the worker.⁹⁵ It also found that Action Labor was the undisputed third-party supplier of Hart.⁹⁶

The case of *Burlington Insurance Co. v. De Vesta*⁹⁷ arose out of Hernandez's injury while he was working for De Vesta Carpentry, a subcontractor on a Cavaliere Customs, Inc. construction site.⁹⁸ It appears that Hernandez was an employee of De Vesta.⁹⁹ The insurer brought a declaratory judgment action seeking a declaration that it had no duty to defend or indemnify on account of the employer's liability exclusion in the policy. Hernandez argued that the exclusion did not apply because he was a temporary worker. In an opinion that is short on background facts relating to Hernandez's employment status, the court concluded that Hernandez was not a temporary worker because he was not hired through "an employment agency, manpower service provider or any similar service."¹⁰⁰

The Colorado Court of Appeals agreed that a temporary worker must be a worker provided to the insured by a third party. In *Carl's Italian Restaurant v. Truck Insurance Exchange*,¹⁰¹ the underlying complaint alleged that Arellano was injured in an automobile collision with Perigo, an employee of Carl's Italian Kitchen.¹⁰² In the coverage action brought by Carl's business owner's liability insurer, the trial court applied an auto exclusion in the policy applicable to employees of Carl's to grant summary judgment to the insurer.¹⁰³ The policy defined an insured to include Carl's employees, and

coverage based on an employer's liability exclusion and on Hart being a leased worker. *Id.* at *12-13. Wausau tendered the defense to Pacific, the workers' compensation and employer's liability insurer for Action Labor. *Id.* at *13. After the nearly \$3 million judgment was affirmed on appeal, Berman assigned Pacific all rights to pursue all claims against Wausau. Pacific assumed and ultimately satisfied the state court judgment. *Id.*

94. *Id.* at *5.

95. *Id.* at *19-20.

96. *Id.* For a discussion of the court's treatment of the issue of whether Hart was furnished to meet short-term workload conditions, see *infra* note 256 and accompanying text. For a discussion of the issues of whether Action Labor was a labor leasing firm and whether Hart was leased by Action Labor to Berman "under an agreement" between Berman and a labor leasing firm, see *infra* note 290 and accompanying text.

97. 511 F. Supp. 2d 231 (D. Conn. 2007).

98. *Id.* at 232.

99. *Id.* at 233.

100. *Id.* (citing *Nationwide Mut. Ins. Co. v. Allen*, 850 A.2d 1047, 1057 (Conn. App. Ct. 2004)).

101. 183 P.3d 636 (Colo. Ct. App. 2007).

102. *Id.* at 638.

103. *Id.*

the trial court found Perigo to be an employee of Carl's at the time of the accident. On appeal, plaintiff argued that the trial court erred by finding Perigo to be an employee of Carl's because he was a temporary worker.¹⁰⁴

In an opinion that, like *De Vesta*, is short on facts relating to the circumstances of the injured worker's employment status, the appellate court affirmed the judgment of the trial court on the basis that Perigo was not a temporary worker because he was not furnished to Carl's by a third party.¹⁰⁵ Like the courts in *Dion*, *Brown*, *Dorpinghaus*, and *General Agents*, the court found the definition of *temporary worker* to be unambiguous and rejected the argument that a person could furnish himself to an employer because this would effectively read the words *furnished to* out of the policy.¹⁰⁶ The court also reasoned that its interpretation of the term *furnished to* was "consistent with Colorado appellate decisions defining the term in similar contexts."¹⁰⁷

Like the court in *Dorpinghaus*, the appellate court rejected the argument that the definition of *temporary worker* does not require the involvement of a third party because it, unlike the definition of *leased worker*, which expressly states that the leased worker must be provided by a labor leasing firm, does not contain any reference to a third party furnishing the worker to the insured.¹⁰⁸ The court reasoned that just because one portion of the policy referred to third-party involvement more explicitly than another does not mean that third-party involvement is excluded from the latter provision.¹⁰⁹

The court refused to follow *Bituminous Casualty Corp. v. Mike Ross, Inc.*¹¹⁰ and *American Family Mutual Insurance Co. v. As One, Inc.*¹¹¹ because neither opinion, in its view, analyzed the definition of *temporary worker* "in the context of the insurance policy in which it is contained."¹¹² Both of those opinions, as discussed below, held that the language *furnished to* did not require the involvement of a third party.

Prior to the Missouri Supreme Court's en banc opinion in *Gavan v. Bituminous Casualty Corp.*,¹¹³ the Missouri Court of Appeals had issued two opinions on the meaning of the term *temporary worker*. As explained above, although the court in *Tickle*¹¹⁴ did not have to reach the "furnished to"

104. *Id.*

105. *Id.* at 639-40.

106. *Id.* at 639.

107. *Id.* at 639-40.

108. *Id.* at 640.

109. *Id.*

110. 413 F. Supp. 2d 740 (N.D. W. Va. 2006).

111. 189 S.W.3d 194 (Mo. Ct. App. 2006).

112. *Carl's Italian Rest.*, 183 P.3d at 640.

113. 242 S.W.3d 718 (Mo. 2008) (en banc).

114. 99 S.W.3d 25 (Mo. Ct. App. 2003).

issue because the injured worker conceded that he was not furnished to the employer by a third party, the court found the definition of *temporary worker* not to be ambiguous because it applied both to people who substitute for a permanent employee on leave and to those who meet seasonal and short-term workload conditions.¹¹⁵ However, as discussed below, the court in *As One*¹¹⁶ did address the “furnished to” issue and held that the term did not require that the injured worker be provided by a third party because a worker can furnish himself to the employer.¹¹⁷ In *Gavan*, the Missouri Supreme Court, sitting en banc, squarely faced and resolved the issue of whether the language *furnished to* required that the injured worker be provided to the insured by a third party.

The case arose out of a May 2000 accident during which Gavan, a bricklayer, “was injured when a ladder on which he was standing collapsed” while he was working for Ste. Genevieve Building Stone Co.¹¹⁸ From 1996 to 2000, Ste. Genevieve periodically employed Gavan as its workload demanded. Gavan “sued two co-employees who worked at the construction site with him.”¹¹⁹ He settled this suit under an agreement that judgment would enter against them but only be satisfied by Ste. Genevieve’s insurance policies.¹²⁰ Thereafter, judgment entered in the underlying case in the amount of \$2.3 million, and Gavan then instituted the instant action.¹²¹ The insurers “denied coverage on the ground that the policies expressly excluded coverage for employees who cause bodily injury to a ‘co-employee.’”¹²² “Gavan contend[ed] . . . that he was not a co-employee but rather a temporary worker.”¹²³

Initially, Gavan argued “that he was a temporary worker because he was ‘furnished to’ Ste. Genevieve by a third party,” the bricklayer’s union. “However, the record show[ed] otherwise.” It demonstrated that “Gavan was hired in January 2000 when he came across one of Ste. Genevieve’s projects and asked a Ste. Genevieve project manager for a job.” There

115. See *supra* note 30 and accompanying text. Because *Tickle* involved a situation where the worker admitted that he was not furnished to the employer, *As One* is technically not inconsistent with *Tickle*. In this regard, the holding of *Tickle* is limited to the “furnished to” requirement of the definition of *temporary worker* applying both to people “who substitute for a permanent employee” and “to those who meet seasonal or short-term workload conditions.” The case did not deal with the issue of whether the “furnished to” requirement meant that the worker had to be furnished by a third party because *Tickle* admitted that he was not furnished to the employer.

116. 189 S.W.3d 194 (Mo. Ct. App. 2006).

117. See *infra* note 174 and accompanying text.

118. *Gavan*, 242 S.W.3d at 719.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

was no evidence that Gavan on this occasion obtained the work through a union hall referral, although in the past he had obtained work in such a manner.¹²⁴ The court also concluded that union membership alone was not sufficient "to meet the 'furnished to' requirement because membership simply makes a person eligible for employment on a union job."¹²⁵

Gavan, relying on *As One*, then argued that the term *furnished to* does not require that a worker be supplied to the insured by a third party and that the term is ambiguous. The court rejected these arguments and held that the term *furnished to* was "not ambiguous and necessarily implies that a third party has been involved in providing or supplying the worker to the insured."¹²⁶ The court, like most of the courts that have addressed the issue, reasoned that "if the 'furnished to' clause were read to include the ability . . . to furnish oneself, then the clause would have no meaning" and would be read out of the definition of *temporary worker*.¹²⁷ Accordingly, *Gavan* expressly overruled *As One*.¹²⁸ Because Gavan was an employee of Ste. Genevieve at the time of the accident, the co-employee exclusion barred his claim.

The U.S. Court of Appeals for the Eighth Circuit in *Northland Casualty Co. v. Meeks*¹²⁹ agreed with the district court that the language *furnished to* means furnished by another entity rather than hired directly by the employer.¹³⁰ The case arose out of Meeks being "fatally injured in a[] [motor vehicle] accident while transporting agricultural products" for Rocky Harrell, d/b/a Rocky Harrell Farms.¹³¹ Harrell had contracted with Meeks to transport products on an as-needed basis during the upcoming harvest season.¹³² Meeks was hauling exclusively for Harrell during the relevant time period.¹³³ The tractor used by Meeks was owned by Harrell, and the trailer was leased by Harrell.¹³⁴ According to the district court, the parties were in agreement that Meeks was a "seasonal employee."¹³⁵

124. *Id.* at 720.

125. *Id.*

126. *Id.* at 721-22.

127. *Id.* at 721.

128. *Id.* It also overruled the opinion of the Missouri Court of Appeals in *American Family Mutual Insurance Co. v. As One, Inc.*, 189 S.W.3d 194 (Mo. Ct. App. 2006), which concluded that the term *furnished to* was ambiguous. See *Gavan v. Bituminous Cas. Corp.*, No. ED88258, 2007 Mo. App. LEXIS 871, at *11 (Ct. App. June 12, 2007), *superseded by Gavan*, 242 S.W.3d 718.

129. 540 F.3d 869 (8th Cir. 2008).

130. *Id.* at 876.

131. *Id.* at 871-72.

132. *Id.* at 871.

133. *Id.*

134. *Id.*

135. *Northland Cas. Co. v. Harrell*, No. 4:06CV00731 JMM, 2007 U.S. Dist. LEXIS 58369, at *11 (E.D. Ark. Aug. 9, 2007), *aff'd*, 540 F.3d 869 (8th Cir. 2008).

The insurer took the position that the Employee Indemnification and Employer Liability exclusion in the policy barred coverage because Meeks was an employee of Harrell at the time of the accident.¹³⁶ Although the district court found under Arkansas law that Meeks was an employee of Harrell, defendants argued that the exclusion did not apply because Meeks was a temporary worker, presumably because he only worked for Harrell during the harvest season in 2002. The district court rejected this argument because Meeks was hired directly by Harrell and not provided to Harrell by a third party.¹³⁷ The district court also found the term *furnished to* to be clear and unambiguous and that any reading of the definition of *temporary worker* that does not involve a third party providing the worker to the insured would read the language *furnished to* out of the policy.¹³⁸

The Eighth Circuit, like the courts in *Dorpinghaus* and *Carl's Italian Restaurant*, also rejected the argument that the definition of *temporary worker* does not require the involvement of a third party because it, unlike the definition of *leased worker*, which expressly states that the leased worker must be provided by a labor leasing firm, does not contain any reference to a third party furnishing the worker to the insured.¹³⁹ The court reasoned that just because one portion of the policy referred to third-party involvement more explicitly than another does not mean that third-party involvement is excluded from the latter provision.¹⁴⁰

In *Parra v. Markel International Insurance Co. Ltd.*,¹⁴¹ "Parra worked intermittently for Interamerican on an as needed basis."¹⁴² While working in Interamerican's warehouse, Parra suffered a serious injury.¹⁴³ Because Interamerican was not a subscriber to the Texas workers' compensation program, it had no tort immunity. Therefore, Parra sued it under Texas tort law for damages.¹⁴⁴ "Interamerican did not [inform] Markel of the suit and Parra obtained a judgment against Interamerican for a sum in excess of \$1 million."¹⁴⁵ Parra then sought to recover this judgment from Markel as a third-party beneficiary under Interamerican's [CGL] policy with Markel.¹⁴⁶

"The record [showed] that Interamerican sometimes [contacted] Parra when it needed temporary workers."¹⁴⁷ It also showed that on other oc-

136. *Meeks*, 540 F.3d at 872, 874.

137. *Id.* at 874.

138. *Id.*

139. *Id.* at 875-76.

140. *Id.* at 876.

141. 300 F. App'x 317 (5th Cir. 2008).

142. *Id.* at 318-19.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 319.

casions "Parra would contact Interamerican through its warehouse supervisor."¹⁴⁸ On other occasions, the warehouse supervisor "would contact Parra when temporary help was needed. Parra argued that he was 'furnished' to Interamerican" by the warehouse supervisor and that he was therefore a temporary worker and not subject to the employer's liability exclusion.¹⁴⁹

"The district court concluded that the clause 'person who is furnished to you' required a showing that a third person rather than an agent or employee of the employer referred the temporary worker to the employer for employment." The court of appeals agreed.¹⁵⁰ Following the Eighth Circuit's decision in *Meeks*, the U.S. Court of Appeals for the Fifth Circuit found that the term *furnished to* was unambiguous and "require[d] the involvement of a third party in furnishing a worker either to 'substitute for a permanent 'employee' on leave' or 'to meet seasonal or short-term workload conditions.'"¹⁵¹ The court agreed with *Meeks* that "attaching any other meaning to the term [*furnished to*] would render the provision meaningless."¹⁵²

The trial court in *Rhiner v. Red Shield Insurance Co.*¹⁵³ held that a worker who furnished himself to an employer was a temporary worker because this type of relationship satisfied the "furnished to you" requirement of the policy definition of *temporary worker*.¹⁵⁴ The Court of Appeals of Oregon reversed.¹⁵⁵ In doing so, the court rejected the contention that the definition of *temporary worker* can be read to apply "to any person who has been hired to meet seasonal or short-term workload conditions, regardless of who furnished the worker."¹⁵⁶ The court concluded that the phrase *a person who is furnished to you*, as used in the definition of *temporary worker*, means a person who is referred from, or provided by, a third party such as an employment agency, labor contractor, or other entity.¹⁵⁷ The court reasoned that plaintiff's proposed reading of this phrase, that a person can furnish himself to an employer, would render the "a person furnished to you" language of the definition of *temporary worker* "superfluous."¹⁵⁸

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* (internal citations omitted).

152. *Id.*

153. 228 Or. App. 588 (Ct. App. 2009).

154. *Id.* at 590-91.

155. *Id.* at 594.

156. *Id.* at 593 (emphasis in original).

157. *Id.* at 594.

158. *Id.*

2. Cases: Temporary Worker Need Not Be Furnished by an Employment-Type Business

The following cases do not involve situations where an employment-type agency furnished the worker to the insured. Rather, they involve situations where the employer located and hired the worker through a newspaper advertisement or personal references from a friend, acquaintance, or current workers; or the worker simply presented himself to the employer. In each instance, the courts found the term *furnished to* to be ambiguous and construed the policy against the insurer.

In *Ayers v. C&D General Contractors*,¹⁵⁹ a general contractor was hired "to replace the old styrofoam dock supports [for a marina on the Ohio River] with new supports."¹⁶⁰ The general contractor hired Ayers to work on this project.¹⁶¹ Ayers was hired through a newspaper advertisement.¹⁶² During the course of the job, a crane collapsed on Ayers and killed him. The issue in this declaratory judgment action was whether there was coverage for the general contractor because Ayers was a temporary worker.¹⁶³

Although virtually all the cases discussed in the previous section of this article expressly found the terms *temporary worker* and *furnished to* to be unambiguous, the *Ayers* court found the term *furnished to you* to be "too ambiguous to be given [the] literal interpretation" meaning supplied by a temporary agency.¹⁶⁴ The court reasoned that such a reading would result in short-term employees responding to newspaper advertisements being excluded from coverage, whereas short-term employees supplied by a temporary agency would be covered. The court found that "such a literal interpretation . . . changes the basic meaning of the contract by including some temporary employees and excluding others" based on a distinction that the court found inexplicable and illogical.¹⁶⁵ The court concluded that if the employee is hired to fill in for a permanent employee on leave or to meet short-term need, the employee is a temporary worker and thus exempt from the employer's liability exclusion.¹⁶⁶ In doing so, it read the "furnished to you" element of the definition of *temporary worker* out of the policy.

159. 237 F. Supp. 2d 764 (W.D. Ky. 2002).

160. *Id.* at 766.

161. *Id.*

162. *Id.* at 768 n.7.

163. There was no dispute that Ayers was not a leased worker because he was hired as a result of a newspaper advertisement and there was no labor leasing firm involved. *Id.*

164. *Id.* at 769.

165. *Id.*

166. *Id.*

Like *Ayers*, the court in *Mike Ross*¹⁶⁷ found the term *temporary worker* to be ambiguous.¹⁶⁸ *Mike Ross* arose out of an injury sustained by McCarthy while he was burning brush for Mike Ross, Inc.¹⁶⁹ McCarthy got the job with Mike Ross as a result of a person named Bogert asking Mike Ross to find McCarthy a job.¹⁷⁰ The insurer for Mike Ross brought a declaratory judgment action seeking a declaration that it did not owe the insured a duty to defend or indemnify because McCarthy was an employee of Mike Ross and the employer's liability exclusion in the policy barred coverage. The insured countered by arguing that because McCarthy was a temporary worker, the employer's liability exclusion in the policy did not apply.

The court found the policy definition of *temporary worker* to be ambiguous because, among other things, "[t]he phrase 'furnished to' [was] not defined in the policy and [was] reasonably susceptible to multiple meanings"; it could mean being furnished by a temporary employment agency or by an individual who recommends a worker to an employer.¹⁷¹ The court reasoned that the latter interpretation was supported by the definition of *leased worker*, which includes the reference to a labor leasing firm. The court concluded that the absence of such a reference in the definition of *temporary worker* meant that a person could be a temporary worker even though he was not furnished by a temporary employment agency and was furnished by a third party, such as Bogert.¹⁷²

Although it was subsequently overruled by *Gavan*, the case of *As One*¹⁷³ is instructive because it, like the *Ayers* and *Mike Ross* cases, concluded that the term *furnished to* did not require the involvement of a third-party employment-type business.¹⁷⁴ In *As One*, Stepp was injured while using a "bucket truck" owned by As One, Inc..¹⁷⁵ The policy contained an employer's liability exclusion and the standard definitions of *leased worker* and *temporary worker*. Stepp claimed that the exclusion did not apply because he was a temporary worker. Stepp, like the worker in *Dion*, argued, among other things, that he was furnished to As One for work by himself or Stepp Electric Service, a business that he owned as a sole proprietor.¹⁷⁶ The insurer argued that the term *furnished to* contains a requirement that, as a

167. 413 F. Supp. 2d 740 (N.D. W. Va. 2006).

168. *Id.* at 744-45.

169. *Id.* at 742.

170. *Id.* at 743.

171. *Id.* at 744-45.

172. *Id.* at 745.

173. 189 S.W.3d 194 (Mo. Ct. App. 2006).

174. *Id.* at 198.

175. *Id.* at 196.

176. *Id.*

matter of law, a third party furnish the worker to the insured. Thus, the issues formulated by the court were whether the word *furnished*, as a matter of law, "mandates that a third [party] supply a worker to the insured and, if it does, [whether there is] compliance with th[is] [requirement] if a sole proprietorship supplies the worker."¹⁷⁷ The court described the case as one of first impression.¹⁷⁸

The court held that the "furnished to" requirement in the definition of *temporary worker* could be satisfied by a worker supplying himself to work.¹⁷⁹ The court reached this conclusion by finding that the literal words in the definition of *temporary worker* contained no express or implied requirement that the worker be supplied or furnished by a third party, such as an employment agency.¹⁸⁰ Like the court in *Mike Ross*, the court found support for its conclusion in the definition of *leased worker*. The court reasoned that because the definition of *leased worker* contained an explicit reference to a worker provided by a labor leasing firm, the omission of such a reference in the definition of *temporary worker* meant that one could be a temporary worker if the worker was not furnished by an employment agency as long as the person, in the words of the definition of *temporary worker* at issue in the case, "worked for a finite period of time to support or supplement the workforce in special work situations such as employee absences, temporary skill shortages and seasonal workloads."¹⁸¹

The court in *National Indemnity Co. of the South v. Landscape Management Co., Inc.*¹⁸² lined up with the cases holding that the language *furnished to* does not require the worker to be provided by a third-party employment-type agency. The case arose out of an injury to a Landscape Management Co., Inc. employee during a motor vehicle accident involving a Landscape-owned vehicle.¹⁸³ The injured employee filed a lawsuit against Landscape and the permanent employee of Landscape who was driving the motor vehicle at the time of the accident.

177. *Id.*

178. *Id.* at 197-98. Although the case may have presented an issue of first impression in Missouri, it did not present an issue of first impression nationally because *Monticello Insurance Co. v. Dion*, 836 N.E.2d 1112 (Mass. App. Ct. 2005), had previously rejected the sole proprietorship theory. *As One* did not refer to the *Dion* decision. Subsequent to *As One*, *AMCO Insurance Co. v. Dorpinghaus*, No. 05-1296 (PJS/JJG), 2007 U.S. Dist. LEXIS 2440 (D. Minn. Jan. 11, 2007), based on the facts of the case, also rejected the sole proprietorship theory. *Id.* at *23-24. See also *Essex Ins. Co. v. Pingley*, 839 N.Y.S.2d 208, 210-11 (App. Div. 2007) (concluding that a self-employed person working as a joint venturer was not an employee under a policy, which defined an employee as a "member, associate, leased worker, temporary worker or any person or persons loaned to or volunteering services").

179. *Am. Family Mut. Ins. Co.*, 189 S.W.3d at 197-98.

180. *Id.* at 198-99.

181. *Id.* at 199.

182. 963 So. 2d 361 (Fla. Dist. Ct. App. 2007).

183. *Id.* at 362.

At the time of the accident, the injured worker had been hired by Landscape to fill a seasonal need for workers during the summer growing season.¹⁸⁴ The Landscape supervisor had asked his permanent employees to help find seasonal labor, and the injured worker's brother-in-law, who was a permanent employee of Landscape, referred the worker to the supervisor as a result of that inquiry.¹⁸⁵ The worker was hired with the explicit understanding that the employment would end in the fall.¹⁸⁶

Because it was undisputed that the injured worker had been hired to meet seasonal or short-term workload conditions, the only temporary worker issue was whether the injured worker was furnished to Landscape within the meaning of the policy.¹⁸⁷ The appellate court agreed with the trial court that the phrase *furnished to you* is ambiguous because it is capable of different meanings.¹⁸⁸ The court reasoned that because the policy language does not explicitly require that the temporary worker be furnished by a third party, such as a temporary worker leasing company or other business, a reasonable interpretation is that the worker could be furnished by any person or company, including another employee of the employer.¹⁸⁹ The court further reasoned that because the policy is silent as to who must furnish the worker in order for the worker to qualify as a temporary worker and because there are several reasonable interpretations of who that might be, the policy is ambiguous and should be construed against the insurer.¹⁹⁰

The case of *Nick's Brick Oven Pizza Inc. v. Excelsior Insurance Co.*¹⁹¹ arose out of a motor vehicle accident in which the employee, Schmidt, rear-ended a vehicle operated by Mendola.¹⁹² The insurer declined to defend Nick's Brick Oven Pizza, Inc. in a lawsuit brought by Mendola based on an auto exclusion that applied to employees of Nick's. Nick's claimed that Schmidt was not an employee but rather a temporary worker to whom the exclusion did not apply. Although the court found sufficient evidence to establish that Schmidt was a worker who met seasonal or short-term workload conditions,¹⁹³ the insurer argued that because Schmidt was not furnished to Nick's by a third party, he did not qualify as a temporary worker under the policy. Schmidt came to work for Nick's as a result of a referral from

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 363.

188. *Id.* at 364.

189. *Id.*

190. *Id.*

191. 853 N.Y.S.2d 870 (Sup. Ct. 2008).

192. *Id.* at 871.

193. *Id.* at 873.

a friend of the principal of Nick's.¹⁹⁴ After the friend identified Schmidt, Nick's contacted Schmidt and hired him for the summer season.¹⁹⁵

The court found the term *furnished to* to be ambiguous because it was susceptible to multiple meanings.¹⁹⁶ It was unclear to the court whether the worker had to be furnished by an employment agency, headhunter, manpower service provider, or similar service or whether an individual could furnish the worker to the insured merely by recommending him.¹⁹⁷ The court found the latter interpretation to be reasonable because the definition of *temporary worker*, unlike the definition of *leased worker*, did not refer to any type of employment agency, such as a labor leasing firm.¹⁹⁸ However, it also found the former interpretation of *furnished to* to be reasonable.¹⁹⁹ Because ambiguities in an insurance contract are to be construed against the insurer, the court construed the policy in favor of coverage for Nick's.²⁰⁰

3. Evaluation of Divergent Lines of Cases

The cases holding that the term *furnished to* does not require that the injured worker be placed or supplied by a third-party employment-type organization appear to be poorly decided because they ignore the plain language of the definition of *temporary worker* in order to reach a result that provides the insured with coverage.²⁰¹ By doing so, these courts appear not to have appreciated that the difference between a leased worker being considered an employee and a temporary worker being considered a nonemployee is based on a distinction rooted in workers' compensation law that comes into play when an employment-type agency provides or furnishes one of its employees to a client employer.²⁰²

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* at 874.

199. *Id.* at 873.

200. *Id.* at 875. A twist on the usual temporary worker issue was presented in *Grable v. Atlantic Casualty Co.*, 280 S.W.3d 104 (Mo. Ct. App. 2009). There, the employer exclusion in the CGL policy was replaced by an endorsement that contained a broader definition of an employee. The court found that this broad definition unambiguously included a temporary worker because it included any worker "hired, loaned, leased, contracted, or volunteering." *Id.* at 108.

201. Tellingly, the Supreme Court of Kentucky has refused to follow the Western District of Kentucky's decision in *Ayers*. *Brown v. Ind. Ins. Co.*, 184 S.W.3d 528, 538-40 (Ky. 2005). Moreover, neither *Ayers* nor *Mike Ross* was cited in *As One*, and *As One* was overruled by *Gavan*. The court in *Dorpinghaus* also distinguished *Ayers* on the same grounds as the Kentucky Supreme Court did in *Brown*. No. 05-1296 (PJS/JJG), 2007 U.S. Dist. LEXIS 2440, at *19 (D. Minn. Jan. 11, 2007). The court in *Carl's Italian Restaurant* refused to follow *Mike Ross* and *As One* because neither opinion analyzed the definition of *temporary worker* "in the context of the insurance policy in which it was contained." 183 P.3d 636, 640 (Colo. Ct. App. 2007).

202. See *Brown*, 184 S.W.3d at 538-40 (observing that *Ayers* was decided under the Longshore and Harbor Workers' Compensation Act, which, unlike the Kentucky Workers

Moreover, by effectively reading the "furnished to" requirement of the definition of *temporary worker* out of the policy, the cases also appear to blur the distinction between a regular employee, to which the employer's liability exclusion would apply, and a temporary worker, to whom the exclusion would not apply.²⁰³

The reality of the workplace is that many employers obtain their workers either in response to advertisements that they place in a newspaper or on the Internet in response to recommendations from people they know or in response to people who come to them directly seeking employment. These people are classic employees to whom the exclusion is intended to apply. For such workers, the length of their employment, even if it is brief, is irrelevant because such workers under CGL policy definitions cannot be temporary workers. By making such people temporary worker nonemployees, to whom the exclusion would not apply, the cases appear improperly to read the exclusion out of the policy for many, if not most, employees.²⁰⁴

B. Furnished to: Does It Apply to All Parts of Temporary Worker?

Related to the issue of whether the worker has to be furnished to the insured by an employment-type agency to be a temporary worker is the issue of whether the "furnished to" requirement of the definition of *temporary worker* only applies to a person furnished "to substitute for a permanent employee on leave" or whether it also applies to a person hired "to meet seasonal or short-term workload conditions." Not surprisingly, the cases finding that *furnished to* means a person furnished by an employment-type agency to the insured also conclude that the "furnished to" requirement applies to all three types of workers described in the definition of *temporary worker*.²⁰⁵

Compensation Act, draws no distinction between a temporary worker and any other employee); *Gavan v. Bituminous Cas. Corp.*, 242 S.W.3d 718, 721-22 (Mo. 2008) (en banc).

203. See *Media Gen. Operations, Inc. v. Stovall*, No. 1:04-cv-659-MEF, 2007 U.S. Dist. LEXIS 83891, at *16 (M.D. Ala. Nov. 13, 2007) (the use of the word *includes* in the definition of *Employee* in the policy suggests that there are people who could be employees but not leased workers); *St. Paul Reinsurance Co., Ltd. v. Baldwin*, 503 F. Supp. 2d 1255, 1263 (D.S.D. 2007) (the inclusion of *leased worker* within the definition of *employee* merely broadens the scope of the definition of *employee* rather than making the term subject to two meanings); *Farmers Union Mut. Ins. Co. v. Horton*, 67 P.3d 285, 289 (Mont. 2003) (a leased worker is only one type of employee covered by the employer's liability exclusion); *Rhiner v. Red Shield Ins. Co.*, 228 Or. App. 588, 594 (Ct. App. 2009) (a person who furnishes himself to an employer is not a temporary worker).

204. See *Baldwin*, 503 F. Supp. 2d at 1263 (worker who was electrocuted while performing maintenance on a live electrical line owned by his employer's client was not a temporary worker because he was a permanent employee of his employer for six years and was neither substituting for a permanent employee on leave nor serving as a seasonal or short-term worker).

205. See *Gen. Agents Ins. Co. of Am., Inc. v. Mandrill Corp., Inc.*, 243 F. App'x 961, 967-68 (6th Cir. 2007); *Nationwide Mut. Ins. Co. v. Allen*, 850 A.2d 1047, 1057 (Conn. App. Ct. 2004); *Am. Family Mut. Ins. Co. v. Tickle*, 99 S.W.3d 25, 30-31 (Mo. Ct. App. 2003).

In contrast, the courts that have found that the "furnished to" requirement could be satisfied even though the worker was not furnished through an employment-type agency have also concluded that the "furnished to" requirement only applies, at most, to a worker furnished to substitute for a permanent employee on leave. The court in *Mike Ross* found that a temporary worker could be a person either (1) "furnished" to the insured to substitute for a permanent employee on leave or (2) "hired" to meet seasonal demands and short-term workload conditions.²⁰⁶ Thus, the *Mike Ross* court relegated the "furnished to" requirement of the definition of *temporary worker* to people "substitut[ing] for a permanent employee on leave."²⁰⁷ The court in *Ayers* went even further in parting ways with *Tickle* and *Allen* on this issue by finding that if an employee was hired to fill in for a permanent employee on leave or to meet a short-term need, the worker was a temporary worker.²⁰⁸ The court in *Nick's Brick Oven Pizza* followed *Ayers* on this issue and expressly rejected the approach taken by *Allen*.²⁰⁹

Once again, the courts that have limited the "furnished to" requirement to the situation where the worker is substituting for a permanent employee on leave appear to have reached an incorrect result due to their failure to appreciate the workers' compensation basis for the distinction between a leased worker and a temporary worker and their blurring of the distinction between a regular employee, to which the employer's liability exclusion would apply, and a temporary worker, to whom the exclusion would not apply.

C. Does Furnished to Mean Directly Furnished?

A twist on the "furnished to" issue was presented in *U.S. Underwriters Insurance Co. v. Congregation Kollel Tisreth, Tzvi*.²¹⁰ In this case, the congregation hired a general contractor to demolish a building it owned.²¹¹ The general contractor retained a subcontractor to do the demolition work.²¹² During the demolition work, one of the subcontractor's workers was injured when a wall collapsed.²¹³ The worker brought suit against the insured, which provided notice of the suit to its insurer. The insurer disclaimed and brought this declaratory judgment action. The insured argued that because the project was short-term and the injured worker was a temporary worker because he was not a permanent employee of the subcontractor, the employ-

206. 413 F. Supp. 2d 740, 745 (N.D. W. Va. 2006).

207. *Id.*

208. 237 F. Supp. 2d 764, 769 (W.D. Ky. 2002).

209. 853 N.Y.S.2d 870, 874 (Sup. Ct. 2008) (citing *Allen*, 850 A.2d at 1057).

210. No. 99-CV-7398, 2004 WL 2191051 (E.D.N.Y. Sept. 30, 2004).

211. *Id.* at *2.

212. *Id.* at *3.

213. *Id.*

er's liability exclusion in the policy did not apply.²¹⁴ The court rejected this argument because, *inter alia*, the record showed that the injured worker was not furnished to the insured.²¹⁵ On this point, the court reasoned that the injured worker was employed by the subcontractor, who in turn was retained by the general contractor to perform the demolition work.²¹⁶

Accordingly, it appears that to be a temporary worker, one must be furnished directly by an employment-type agency to its client company, and that the concept of a temporary worker does not apply to workers furnished by an employment-type agency to a contractor that is to perform work at the insured's place of business.

This result flows directly from the definition of *temporary worker*, which requires that the temporary worker be furnished to "you" [the insured]. If the reasoning of *U.S. Underwriters* is followed, then, irrespective of whether the worker is furnished by a third-party employment-type agency; through an advertisement or the recommendations of friends, acquaintances, or co-workers; or by the worker presenting himself to the employer, there will be no coverage if the employee is not furnished directly to the insured.

D. Short-Term Workload Conditions

There are cases that present straightforward and noncontroversial examples of short-term workload conditions. However, there are also fact patterns that are more troublesome.

1. Easy Cases

Dion provides an easy example of short-term workload conditions because it involved a worker retained to clear more than twenty trees over the course of a few days.²¹⁷ Another easy case on what constitutes short-term workload conditions is *Nick's Brick Oven Pizza*.²¹⁸ There, Nick's hired Schmidt only for its busy summer season, after which he was going back to college.²¹⁹

Although the court in *Gavan* found that an issue of fact existed regarding whether the injured plaintiff bricklayer was hired by Ste. Genevieve to meet short-term workload conditions, the case provides a good example of the type of facts that could support a finding of short-term workload

214. *Id.* at *5.

215. *Id.* at *6.

216. *Id.*; see also *All-Tex Roofing, Inc. v. Greenwood Ins. Group, Inc.*, 74 S.W.3d 412, 417 (Tex. App. 2002) (worker not a leased worker subject to the employer's liability exclusion because he was not leased to the insured by a labor leasing firm but rather was leased to the insured's subcontractor).

217. 836 N.E.2d 1112, 1115 (Mass. App. Ct. 2005).

218. See 853 N.Y.S.2d 870 (Sup. Ct. 2008).

219. See *supra* note 191 and accompanying text.

conditions.²²⁰ The facts in favor of plaintiff bricklayer included his being told when he was hired that he might work as long as two or three months; his understanding that he was being hired to fill an immediate, temporary need and that there was no promise of long-term or permanent employment; the testimony of the Ste. Genevieve representative that the company's hiring of bricklayers depended on the "volume of work"; and the testimony of the business manager of the Bricklayers Union that a bricklayer's employment with a contractor is considered temporary employment that ends when a project is complete or when there is not enough work to keep the bricklayer occupied.²²¹

2. More Complicated Cases

Notwithstanding these easy cases, there are factual scenarios that require a more detailed analysis of what is meant by the undefined term *short-term workload conditions*. Because the term is undefined in a CGL policy, it has been attacked as ambiguous due to its lack of temporal boundaries. The cases addressing this issue are sparse. At this juncture, the cases appear to employ two separate types of analysis. One type of analysis is termed the prospective approach, and the other is the retrospective approach. Under the prospective approach, *short-term* is measured at the time the lease agreement is made. Under the retrospective approach, *short-term* is measured at some point thereafter, most likely at the time of the accident. The prospective approach has resulted in the courts not finding the undefined term *short-term workload conditions* ambiguous. The retrospective approach has resulted in one court finding the term ambiguous. This case will be examined initially because it illustrates the type of mischief that this undefined term can cause.

a. Mike Ross Retrospective Approach

Although the court in *Mike Ross* did not expressly address the prospective/retrospective dichotomy, it engaged in a retrospective analysis and thereby found the term *short-term workload conditions* to be ambiguous. The court rhetorically asked whether the "phrase mean[s] a worker can work only one hour to be considered 'temporary?' Five hours? Ten hours? One day? Ten days? Four months? Six months? One year?" The court concluded that the question was impossible to answer based on the language of the policy, which did not define the term *short-term workload conditions*.²²²

220. No. ED88258, 2007 Mo. App. LEXIS 871, at *13 (Ct. App. June 12, 2007), *superseded by* Gavan v. Bituminous Cas. Corp., 242 S.W.3d 718 (Mo. 2008).

221. *Id.* It is not clear from the opinion what facts the insurer was relying on for its position that plaintiff was not hired to meet short-term workload conditions.

222. Bituminous Cas. Corp. v. Mike Ross, Inc., 413 F. Supp. 2d 740, 745 (N.D. W. Va. 2006) (the worker at issue in the case had worked for the insured for approximately six months). For a discussion of the facts of the *Mike Ross* case, see *supra* note 167 and accompanying text.

b. Scottsdale Prospective Approach

In *Scottsdale Insurance Co. v. Carrabassett Trading Co.*,²²³ the district court (*Scottsdale I*) recognized and addressed the two analytical frameworks and ultimately concluded that the prospective approach was the correct one.²²⁴ Although the court of appeals (*Scottsdale II*) vacated the district court judgment and remanded the case for further proceedings, it did so based on what it viewed as a genuine issue of material fact relevant to the prospective approach. It did not question the propriety of the prospective approach.²²⁵ Interestingly, neither court mentioned the *Mike Ross* opinion even though it predated both opinions. Although the U.S. Court of Appeals for the First Circuit vacated the judgment in favor of the insurer and remanded the case for further proceedings, the case actually represents a significant victory for insurers because it adopted an analytical framework that permits courts to avoid having to find the term *short-term workload conditions* ambiguous.

In *Scottsdale*, the worker was placed at the client company on August 20, 2003, and worked there continuously until December 8, 2003.²²⁶ After an interlude of several weeks during the holiday season, the worker was again placed at the client company "beginning on January 19, 2004, and (with the exception of one week in June) worked there continuously until August 23, 2004. . . . During the course of his two assignments at the client company, the worker worked a total of 1,613.50 hours" at the client company.²²⁷ This contrasted with other workers placed at the client company by the same labor firm during the fourteen months prior to the worker's accident, who recorded only 10, 30, 32, 117, and 280 hours during this time period.²²⁸ Notwithstanding this lengthy work record, the insured client company argued that the worker was a temporary worker because he was hired to meet short-term workload conditions. The client company identified those short-term workload conditions as a need for temporary workers to meet a short-term demand for its products.

The district court began its analysis of the short-term workload conditions issue by addressing what it viewed as the threshold issue of whether "the terms 'seasonal' and 'short-term' are to be measured at the time the [lease] agreement is made or at some point thereafter."²²⁹ It framed this issue by explaining that "a worker might be supplied to meet an anticipated one-week shortage (and therefore be 'short-term' . . .), but wind up working

223. *Scottsdale I*, 460 F. Supp. 2d 251 (D. Mass. 2006), *vacated and remanded*, 561 F.3d 74 (1st Cir. 2009).

224. *Id.* at 257.

225. *Scottsdale II*, 561 F.3d 74.

226. *Scottsdale I*, 460 F. Supp. 2d at 253.

227. *Id.*

228. *Id.*

229. *Id.* at 257.

for three years (and therefore be 'long-term,' as measured by hindsight)." The district court resolved this threshold issue by looking to the policy language *furnished . . . to meet* in the definition of *temporary worker*.²³⁰ The district court concluded that this language "suggests that the reasonable expectations of the parties concerning workload conditions, as measured at the time the employee is 'furnished,' governs whether the employee fits within either the 'seasonal' or 'short-term' category."²³¹ Accordingly, under the district court's construct, "even if the duration of a worker's assignment ends up being lengthy, [the worker] [would] still be considered a 'temporary worker' if the parties reasonably intended [at the outset] for [the worker] to fulfill a short-term workload condition."²³² Similarly, under the district court's approach, "a worker will not be considered 'temporary' if the parties reasonably intended for him . . . to help with a long-term project or permanent workload condition, even if the assignment is cut short."²³³ The district court reasoned that its prospective approach has a "practical advantage" over a retrospective approach. In the district court's view, under the latter approach, "the parties have no way of knowing when a worker has crossed the line and is no longer working to meet 'short-term' conditions (and thus no longer a 'temporary worker'), and thus no way of knowing when insurance responsibility shifts."²³⁴ Thus, by employing the prospective approach, the district court avoided having to find the language *short-term workload conditions* ambiguous.

The district court's treatment of this threshold issue raises serious questions about how employers and courts are to determine whether a particular worker is a leased worker or a temporary worker. Its reliance on the policy language *furnished . . . to meet* in the definition of *temporary worker* suggests that this language can only refer to the time that the lease is entered. This conclusion, however, is debatable because there is no reason that the language cannot refer to a subsequent point in time. For example, in the *Scottsdale* case, the worker was injured approximately a year after the original lease arrangement was entered. At the time of his injury, it could reasonably be argued that the worker was still being furnished to meet the labor requirements of the client company. Whether those labor requirements at that time constituted short-term workload conditions would seem to be a separate and distinct question.

The district court in *Scottsdale I* appears to have recognized the possibility that a retrospective approach may be appropriate because it also

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* at n.3.

concluded that even if such an approach were to be adopted, it was "highly doubtful" that a worker who worked at the client company for forty-seven weeks and 1,613.5 hours over the course of a year could be considered a temporary worker.²³⁵

The court of appeals, however, "eschew[ed] any reliance on the number of hours" that the worker ended up working at the client employer or any comparison of those hours to those of other workers placed at the client employer by the labor leasing firm in the same time frame.²³⁶ It did so based on the district court's prospective approach.²³⁷ Thus, in the First Circuit, a retrospective analysis for determining what constitutes short-term workload conditions is not appropriate.

After passing the threshold, the *Scottsdale* district court addressed the substantive issue of what constitutes short-term workload conditions. Although the term was not defined in the policy, the district court found that this did not compel a conclusion that it was ambiguous because undefined terms are to be accorded their plain and ordinary meaning.²³⁸ The court concluded that the "plain meaning" of *short-term* "suggests a period of time that is relatively brief and finite."²³⁹ For example, the district court pointed to "someone hired to complete a specific project or responding to an unexpected, temporary demand in goods or services" as a person who "could . . . be said to have been furnished to meet 'short-term' workload conditions."²⁴⁰ This example is consistent with Massachusetts regulations that provide that an employee leasing arrangement "is long term and not an arrangement to provide the lessee temporary help services during seasonal or unusual conditions such as temporary skill shortages or temporary special assignments and projects."²⁴¹ By way of contrast, the district court also concluded that "'short-term' cannot mean 'indefinite' or 'open-ended.'"²⁴²

Ultimately, the district court held that the injured worker was not working to meet short-term workload conditions because the record indicated that the parties, at the time the lease arrangement was agreed upon, intended that the worker work for the client company for an "indefinite amount of time."²⁴³ This finding was based on the testimony of the presi-

235. *Id.*

236. *Scottsdale II*, 561 F.3d 74, 79 (1st Cir. 2009).

237. *Id.*

238. *Scottsdale I*, 460 F. Supp. 2d at 258.

239. *Id.*

240. *Id.*

241. 211 MASS CODE REGS. 111.03 (2009).

242. *Scottsdale I*, 460 F. Supp. 2d at 258.

243. *Id.* at 258-59.

dent of the client company, who testified that when the worker arrived at his company, "he was expected to stay as long as the company needed him."²⁴⁴ This finding was also supported by the testimony of the labor leasing firm, whose representative testified that the worker at issue "was on assignment for [the client company] for an indefinite period of time based on the client's needs."²⁴⁵

The court of appeals did not disagree with the district court's legal conclusion that the lack of a definition in the policy of the term *short-term workload conditions* did not render the term ambiguous. It did, however, disagree with the district court's conclusion that the worker's "indefinite" placement at the client employer was "necessarily incompatible with the possibility that he was addressing a 'short-term workload condition.'"²⁴⁶ The court of appeals reasoned that the president of the client company testified that the company's "workload fluctuated and that times of heavy workload required additional help."²⁴⁷ It also relied on the president's testimony that the worker was brought in "just to meet [the company's] workload at that time."²⁴⁸

Although the court of appeals concluded that fact issues precluded the entry of summary judgment in favor of the insurer, it rejected the worker's argument that the phrase *short-term* is ambiguous because "'short-term conditions' can extend for varying lengths of time, and thus an insured can never know what is covered."²⁴⁹ It appears to have done so due to the existence of the same factual issues that precluded the entry of summary judgment in favor of the insurer. These factual issues are the client company's "intent in using" the worker, "the nature of the company's workflow[,] and how the worker's placement fit within its ordinary course of business."²⁵⁰

The court of appeals opinion raises a number of issues. There was no dispute in the case that the worker at issue was hired as a general floor worker who was to do what was necessary based on workload conditions. There was also no dispute that business was good enough that he worked for the client company for 1,613 hours over the course of a year and would have continued working for the company for an indefinite period of time if he had not been injured. Under these circumstances, it is not clear why the case was remanded for further development of the client company's intent in using the worker or the nature of the company's workflow and the placement fit of the worker within the company's ordinary business.

244. *Id.* at 258.

245. *Id.*

246. *Scottsdale II*, 561 F.3d 74, 79 (1st Cir. 2009).

247. *Id.*

248. *Id.* at 79-80.

249. *Id.* at 80.

250. *Id.*

It may be that the court of appeals wanted the record to be further developed on the client company's specific workload conditions for which the worker was hired because it believed that such facts would be relevant to whether the worker was furnished to meet short-term workload conditions. The court's reference to "the nature of [the company's] workflow" suggests that it may have been looking for evidence on how long it expected to employ the worker at the time it leased him from the labor leasing firm. Under the First Circuit's prospective approach, this is the key inquiry.

Under the First Circuit's approach, the fact that the worker wound up working 1,613 hours for the company over the course of a year would not be relevant or dispositive because such long-term or indefinite placement would not necessarily be inconsistent with short-term workload conditions.²⁵¹ In a metaphysical sense, this can be true because the term *short-term* is a relative term and can include a wide variety of temporal periods. However, in the context of the case, there was no dispute that the worker was hired as a general floor worker who was kept on by the company because business or workflow was good enough to keep him employed as a general worker for a year. The court's "eschew[ing]" "any" reliance on the number of hours that the worker wound up working seems, unnecessarily, to turn a blind eye to the reality of the workplace. The length of time a worker works at a place of employment would seem to be relevant to, but not dispositive of, the issue of the client company's intent in using the worker. The district court recognized the reasonableness of this factor, a factor that comports with the maxim that insurance contracts, like all contracts, must be given a sensible and practical construction.²⁵²

The court's reference to the worker's "placement fit within its ordinary course of business" may suggest a concern about the client company leasing the worker to perform work that was normally done by a regular employee because the leasing arrangement is a less expensive way for the client company to get its work done. If it was the client company's intent to do so for a long period of time so that it would not have to hire a regular worker, this may undercut a conclusion that this worker was furnished to meet short-term workload conditions. The courts should not let such employers have it both ways. In other words, employers using such workers in place of regular employees for an indefinite or substantial period of time,

251. *Id.* at 79.

252. See *Scottsdale I*, 460 F. Supp. 2d 251, 257 n.3 (D. Mass. 2006); see also *Gen. Agents Ins. Co. of Am., Inc. v. Mandrill Corp., Inc.*, 243 F. App'x 961, 968 n.3 (6th Cir. 2007) (finding the time on the job relevant); *Pac. Employers Ins. Co. v. Wausau Bus. Ins. Co.*, 508 F. Supp. 2d 1167, 1176 (M.D. Fla. 2007) (in denying a motion for summary judgment, the court found the length of the worker's employment relevant to the issue of whether he was a temporary worker).

in order to realize the payroll, administrative, insurance, and overhead cost savings associated with these workers, should not be able to claim that such workers are temporary workers covered by the employer's CGL policy. Under the *Scottsdale II* prospective approach, it appears that the insurer would have the burden of proving that this was the client company's intent when it leased the worker from the labor leasing firm.

c. Progeny of the Scottsdale Prospective Approach

It appears that the court of appeals in *Scottsdale II* may have been influenced by the posttrial opinion of the court in the case of *Wausau*,²⁵³ a case in which summary judgment had been previously denied due to the existence of genuine issues of material fact.²⁵⁴ In a previous opinion denying a motion for summary judgment, the court found the meaning of the term *short-term* to be unclear based on "the facts of the case presented to date."²⁵⁵ At the summary judgment stage, the material facts in dispute included the length of Hart's employment with Berman, a fact that the court, unlike the First Circuit in *Scottsdale II*, found material in determining whether the worker was a temporary worker, whether the Railcar Project was a "special project," and whether Action Labor was a temporary help firm or a leasing company.²⁵⁶ The trial court resolved all these issues in a manner that resulted in Hart not being a temporary worker.²⁵⁷

On the short-term workload conditions issue, the court adopted the *Scottsdale I* prospective approach. The court concluded that the evidence supported a finding that the injured worker had been placed at Berman by Action Labor "for an indefinite period of time."²⁵⁸ Like the court in *Scottsdale I*, it reasoned that it was of no moment whether the injury occurred three days, three months, or three years into the worker's engagement with Berman because it was the understanding of the labor leasing company (Action Labor) and the client company (Berman) at the beginning of the worker's term that determines whether a worker is furnished for short-term workload conditions.²⁵⁹ Because the court found that understanding to be that the worker was employed at Berman for an indefinite period of time, the court concluded that he was not a temporary worker.²⁶⁰ This

253. *Wausau*, 508 F. Supp. 2d 1167.

254. For a discussion of the facts of this case, see *supra* note 96 and accompanying text.

255. *Wausau*, 508 F. Supp. 2d at 1176.

256. *Id.*

257. Consequently, the trial court's interpretation of the term *short-term workload conditions* is not legally in conflict with the opinion of the judge who decided the motion for summary judgment. See *id.*; *Pac. Employers Ins. Co. v. Wausau Bus. Ins. Co.*, No. 3:05-cv-850-J-32TEM, 2007 U.S. Dist. LEXIS 73594, at *25-31 (M.D. Fla. Oct. 2, 2007).

258. *Id.* at *36.

259. *Id.*

260. *Id.* at *37.

finding made it unnecessary for the court to decide the exact parameters of *short-term*.²⁶¹

The First Circuit in *Scottsdale II* found that its holding, vacating the district court judgment and remanding the case for further proceedings, was not inconsistent with the trial court decision in *Wausau*. This was because the trial in that case had provided the type of further factual development that the First Circuit believed was required on the issues of the client company's "intent in using" the worker, "the nature of the company's workflow[,] and how the worker's placement fit within its ordinary course of business."²⁶² The First Circuit's approval of *Wausau* also demonstrates it would not find short-term workload conditions to exist where there is an adequate record that the employment arrangement was for an indefinite period of time.

d. *State Law and the Meaning of Short-Term Workload Conditions*

Wausau raised but did not resolve the issue of whether state law can inform the meaning of the term *short-term workload conditions* in the CGL policy. Defendant in the case argued that the employer's liability exclusion did not apply to the injured scrap metal worker because he was a temporary worker due to the fact that the Railcar Project was a "special project" under Florida law. Plaintiff maintained that the worker was injured when he was working on the "special project" of cutting up railcars. In support of this argument, plaintiff relied on § 468.520(4)(a) of the Florida Statutes, which defines *temporary help arrangement* as one in which an "organization hires its own employees and assigns them to a client to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects."²⁶³

Although the court concluded that it could resolve the meaning of the employer's liability exclusion without "borrowing" from the Florida statute, it found that analysis of the statute was instructive because the parties' arguments for and against the application of the statute provided insight into both the nature of the injured worker's duties and his employment with Berman.²⁶⁴ In the end, the court concluded, based on the evidence at trial, that the cutting of railcars was not a special project because railcars served simply as another source of scrap metal for Berman as part of its

261. *Id.* The court found as "not particularly pertinent" the testimony of two Wausau claim representatives who testified that there was no consensus within Wausau about the meaning of *short-term* in the Wausau policies. *Id.* at *30-31 & n.17.

262. *Scottsdale II*, 561 F.3d 74, 80 & n.6 (1st Cir. 2009).

263. *Wausau*, 2007 U.S. Dist. LEXIS 73594, at *20 (citing FLA. STAT. ANN. § 468.520(4)(a) (2008)).

264. *Id.* at *21.

regular and ordinary course of business of cutting and processing scrap for sale.²⁶⁵ Accordingly, the Florida statute would not have provided a basis for finding the worker a temporary worker exempt from the employer's liability exclusion.

Although the court of appeals did not address this issue in *Scottsdale II*, the district court did point to a Massachusetts regulation for concluding that someone hired to complete a specific project or to respond to an unexpected, temporary demand in goods or services could be said to be furnished to meet short-term workload conditions.²⁶⁶

To date, no court has expressly relied on a state statute or regulation to inform the meaning of the phrase *short-term workload conditions* in the CGL policy. An insured may argue that such reliance would be inappropriate because the CGL policy does not refer to state law or incorporate the language of any state law on the issue. An insurer, however, should argue that the CGL policy is routinely interpreted in accordance with state law (thus, the different interpretation of the same CGL policy provisions by different state courts) and that an insured is presumed to know the law.²⁶⁷ This argument is consistent with the prospective approach and can avoid a court holding the term *short-term workload conditions* ambiguous because state law can supply meaning to the term *short-term workload conditions*.

e. Construction Company Problem

The opinion in *General Agents* did not directly analyze the short-term workload conditions issue and therefore did not take sides on the prospective/retrospective approaches.²⁶⁸ However, it stated that it "would be inclined to find that the Laborers were not 'temporary workers'" because the "demolition job was the only job Mandrill had at the time and the Laborers had been on the job . . . for months."²⁶⁹ Under these circumstances, the court reasoned that "[t]o hold that the Laborers were 'temporary workers' . . . would effectively hold that *everyone* on the Mandrill payroll was

265. *Id.* at *20-24.

266. *See supra* note 14.

267. *See* *Master Mortgage Inv. Fund, Inc. v. Am. Nat'l Fire Ins. Co.*, 165 B.R. 453, 456 (Bankr. W.D. Mo. 1993) (court looks to relevant state statutes to determine the meaning of the term *claim* in an insurance contract); *Vitti v. Allstate Ins. Co.*, 713 A.2d 1269, 1274 (Conn. 1998) ("in the absence of other statutory [or regulatory] guidance, we may appropriately look to the meaning of words as commonly expressed in law and in dictionaries"); *Grant v. State Farm Fire & Cas. Co.*, 638 So. 2d 936, 938 (Fla. 1994) (where a contract of insurance is entered into on a matter surrounded by statutory limitations and requirements, the parties are presumed to have entered into such agreement with reference to the statute, and the statutory provisions become part of the contract); *Bray v. Bray*, 269 N.E.2d 452, 453-54 (Mass. 1971) (every person is presumed to know the law).

268. *See* 243 F. App'x 961 (6th Cir. 2007).

269. *Id.* at 968 n.3.

a 'temporary worker' and read the employer's exclusion out of the CGL Policy."²⁷⁰

General Agents raises an interesting issue about the application of *short-term workload conditions* to construction companies, many of which have few, if any, regular employees until they land a project, at which time they staff the project. If state workers' compensation statutes or regulations, such as those in Massachusetts and Florida, which define temporary help services or arrangements to include "special assignments and projects,"²⁷¹ are relevant to determining whether an injured worker is a temporary worker, an issue is whether these job-specific workers are temporary workers because they are working on a special assignment or project.

To date, no court has directly addressed this issue, although *General Agents* comes the closest. The statutory or regulatory language should control. In the case of the Massachusetts regulation and the Florida statute, it would seem that a construction project that is part of the construction company's regular and normal business would not be a special assignment or project. *General Agents* appears to be consistent with this approach.²⁷²

Of course, a court may never need to face this issue if it concludes that the term *furnished to* requires the involvement of a third-party employment-type company and finds that the construction workers were not furnished by such a company to the construction company for the job in question.

E. Seasonal Workload Conditions

There is little authority on this issue, perhaps because the notion of what is seasonal is not controversial. In *Meeks*, the parties appear to have agreed that the injured worker was a seasonal employee.²⁷³ As previously explained, the case arose out of *Meeks* being "fatally injured in a[] [motor vehicle] accident while transporting agricultural products for Harrell," where Harrell had contracted with *Meeks* to transport products on an as-needed basis during the upcoming harvest season.²⁷⁴ Similarly, in *Landscape Management*, a case arising out of an accident involving the insured's vehicle in which the alleged temporary worker was injured, there was no dispute that

270. *Id.* (emphasis in original).

271. See FLA. STAT. ANN. § 468.520(4)(a) (2008); 211 MASS. CODE REGS. 111.03 (2009).

272. See also *Pac. Employers Ins. Co. v. Wausau Bus. Ins. Co.*, 2007 No. 3:05-cv-850-J-32TEM, 2007 U.S. Dist. LEXIS 73594, at *20-24 (M.D. Fla. Oct. 2, 2007) (the cutting of railcars was not a "special project" because railcars served simply as another source of scrap metal for Berman as part of its regular and ordinary course of business of cutting and processing scrap for sale.)

273. No. 4:06CV00731 JMM, 2007 U.S. Dist. LEXIS 58369, at *11 (E.D. Ark. Aug. 9, 2007), *aff'd*, 540 F.3d 869 (8th Cir. 2008).

274. See *supra* note 129 and accompanying text.

the injured worker "was hired by [the insured] to fill a seasonal need for workers during the summer growing season."²⁷⁵

Employing its prospective analysis to the issue of what constitutes seasonal workload conditions, the district court in *Scottsdale I* found that there was no evidence in the record that the worker was hired to meet seasonal workload conditions. Although the client company asserted that demand for its product changed regularly, the court found that there was no evidence that recycling is a seasonal business like farming or snow removal or subject to substantial seasonal increases such as the increases in retail sales prior to the Christmas holiday.²⁷⁶

The district court also reasoned that the worker's "relatively stable" hours at the client company over the course of a year "strongly suggested that his workload was not 'seasonal.'" On this point, the court observed that the worker worked at the client company for a total of 1,613.5 hours and that, "[o]ther than the week he was injured, he worked between 20 and 45 hours . . . for 47 weeks." The district court also noted that the worker "spent 17 weeks working 40 or more hours, 22 weeks working between 30 and 39 hours, and 7 weeks working between 20 and 29 hours."²⁷⁷

IV. LEASED WORKER ISSUES

A. What Is a Labor Leasing Firm?

The quintessential qualification of a leased worker is that the worker must be hired through a labor leasing firm.²⁷⁸ Because the CGL policy does not define *labor leasing firm*, courts have to grapple with the question of what is meant by that term.

There are a myriad of staffing-type firms interacting with the workplace. These would include the following:

- Temporary and long-term staffing firms recruit, train and test their employees and assign them to clients who supervise and control their work.

275. 963 So. 2d 361, 362 (Fla. Dist. Ct. App. 2007); see also *Nick's Brick Oven Pizza, Inc. v. Excelsior Ins. Co.*, 853 N.Y.S.2d 870, 873 (Sup. Ct. 2008) (college student hired to deliver pizza for only the busy summer months, after which he would return to college).

276. *Scottsdale I*, 460 F. Supp. 2d 251, 257 & n.4 (D. Mass. 2006) (citing *Nautilus Ins. Co. v. Gardner*, No. 04-1858, 2005 WL 664358, at *6 (E.D. Pa. Mar. 21, 2005) (concluding that employment that takes place for fourteen days before Halloween at a "haunted house" can reasonably be considered seasonal)).

277. *Scottsdale I*, 460 F. Supp. 2d at 257 n.5.

278. For a case where there was no dispute that the injured worker was a leased worker, see *American Safety Indemnity Co. v. Stollings Trucking Co., Inc.*, 450 F. Supp. 2d 639 (S.D. W.Va. 2006). See also *Ayers v. C&D Gen. Contractors*, 237 F. Supp. 2d 764, 768 n.7 (W.D. Ky. 2002) (parties agreed that Ayers was not a leased worker because he was hired through a newspaper

These staffing firms pay their workers wages and benefits and provide insurance and then bill the client company for the workers' wages and benefits, unemployment and workers' compensation insurance, administrative expenses and a profit.

- Professional Employer Organization (PEO) firms do not involve supplying labor but rather offer human resources outsourcing services in which the PEO assumes all the legal and administrative responsibilities for an employer for payroll, benefits and other employer-related functions on behalf of all or substantially all of another firm's entire regular, full-time workforce. Unlike staffing firms, PEOs do not recruit workers from the labor market and assign them to their clients.
- Payrolling firms involve the client, not the staffing firm, recruiting the worker but asking the staffing firm to hire the worker and assign him to perform services for the client. An example is if the client has special needs and is in the best position to screen applicants for the required skills. Another example involves workers employed by the client whom the client places on the payroll of the staffing firm.
- Managed services are services provided by an organization that has expertise in operating a specific client function. The firm contracts with the customer not just to provide and supervise staff, but to take full operational responsibility for performing the function—generally peripheral to the client's core business, on an ongoing basis.
- Placement services are services provided by employment agencies and executive recruiters that bring together, for a fee, potential employers (their customers) and job seekers for the purpose of establishing a regular full-time employment relationship with the customer.
- Temp-to-hire services combine the elements of both temporary staffing and placement services. Under these arrangements, the client asks the staffing firm to recruit individuals who may be interested in permanent employment and assign them to the client for a trial period during which both the client and the worker can evaluate the relationship. During the trial period, the staffing firm employs the worker and pays all wages, benefits and statutory insurance coverages. If the client and the worker eventually enter a full-time relationship, the worker's relationship with the staffing firm is terminated.²⁷⁹

advertisement and there was no labor leasing firm involved); *Nautilus Ins. Co.*, 2005 WL 664358, at *6 (parties agreed that worker was not a leased worker because she was not leased to her employer from a labor leasing firm).

279. EDWARD A. LENZ, CO-EMPLOYMENT: EMPLOYER LIABILITY ISSUES IN THIRD-PARTY STAFFING ARRANGEMENTS 7-16 (5th ed. 2003); see also *Infinet Mktg. Servs., Inc. v. Am. Motorist Ins. Co.*, 58 Cal. Rptr. 3d 92, 94 n.2 (Ct. App. 2007) ("Employee leasing companies (also sometimes called professional employer services) typically 'contract [] with client companies to provide leased labor and labor-related services, i.e., payroll, safety and tax services and employment benefits, including workers' compensation insurance []' for employees the client already has.").

The question is which of these staffing-type companies constitute a labor leasing firm as contemplated by the CGL policy. Because the essence of a labor leasing firm is the existence of a labor lease, it would appear that all the above types of staffing firms, except PEOs and employment placement services, could qualify as labor leasing firms because these types of organizations could lease their workers to a client company. On the other hand, PEOs and employment placement services do not enter labor lease arrangements with the clients of customers. The former do not lease out their employees to clients, and the latter match a worker and an employer for a fee.

One example of a labor leasing firm was at issue in the case of *Occidental Fire & Casualty Co. of North Carolina v. Reber Corp.*²⁸⁰ The case arose out of a truck driver for the insured (Reber Corp.) named Mackle being killed by a metal manhole cover while he was unloading a truck.²⁸¹ When Mackle's wife contacted Reber to claim workers' compensation benefits for her husband's death, she learned that Reber was not his employer because Reber had transferred all of its employees to TTC Illinois, Inc. and subsequently leased the workers, including Mackle, back from TTC.²⁸² At the time of Mackle's death, Mackle was working on behalf of Reber, and Reber was partially insured by plaintiff under an automobile policy that provided coverage for Reber's fleet of trucks.²⁸³ However, the policy contained an exclusion applicable to claims made by Reber employees for bodily injury or death that arose out of the employees' employment with Reber or the employees performing duties related to the conduct of Reber's business.²⁸⁴

The policy defined *employee* to include any of Reber's "leased workers." It also contained essentially the same definition of *leased worker* as the CGL policy. The court found the unresolved issue of Mackle being either an employee or a leased worker immaterial to determining the insurer's liability under the policy because both classifications were excluded from coverage under the terms of the employer's liability exclusion.²⁸⁵ Nevertheless, the case provides an example of what can be considered a labor leasing firm.

An issue is whether the term *labor leasing firm* in the CGL policy also includes a staffing service that does not lease a client company's workforce back to it, as was done in *Reber*, but leases its own employees, who never worked for the client company, to the client company. In *Wausau*, a witness

280. No. 04-876, 2004 U.S. Dist. LEXIS 12774 (E.D. Pa. June 28, 2004).

281. *Id.* at *2.

282. *Id.*

283. *Id.* at *3.

284. *Id.* at *3-4.

285. *Id.* at *7-8.

for plaintiff, the party arguing that the injured worker was a temporary worker, maintained that the injured worker was a temporary employee at the client company because he was furnished to the client company by a temporary help firm, not an employee leasing company.²⁸⁶ The witness defined *employee leasing company* as a company, like the one in *Reber*, to which the client sends its workers and then leases them back such that the leasing company, not the client company, pays these workers and provides them with insurance.²⁸⁷ The witness also testified that Action Labor was a temporary help firm, not an employee leasing company because it provides temporary employees for short- or long-term assignments based on a day-to-day agreement.²⁸⁸

The court rejected the distinction drawn by the witness because it appeared to be based on nothing more than his own subjective opinion.²⁸⁹ The court reasoned that what mattered was the definition of *leased worker* in the policy, not the subjective, unsupported belief of a single witness.²⁹⁰ For the same reason, the court, on this issue, refused to be guided by the distinction between *leased* and *temporary* in the Florida workers' compensation statute, a distinction that requires a company to obtain a license prior to engaging in the employee leasing business. Presumably, Action Labor did not have such a license. The court found the relevant inquiry to be the type of business that Action Labor was in, within the meaning of the language in the Wausau policies, not the meaning of terms in the workers' compensation statute.²⁹¹

The CGL policy definition of *leased worker* does not support a cramped reading of *labor leasing firm*, which would restrict its application to a *Reber*-type arrangement. Rather, the term *labor leasing firm* in the CGL policy appears to be expansive enough to include any staffing or employment service firm that leases one of its employees to a client company to perform duties related to the conduct of the client company's business. The key is the existence of a lease arrangement between the labor leasing firm and the client company, not whether the leased worker worked for the client company before that company transferred all its employees to the labor leasing firm.

286. No. 3:05-cv-850-J-32TEM, 2007 U.S. Dist LEXIS 73594, at *24-26 (M.D. Fla. Oct. 2, 2007).

287. *Id.* at *24-25.

288. *Id.* at *25.

289. *Id.* at *26.

290. *Id.*

291. *Id.* at *29-30. The court's refusal to rely on the state workers' compensation statute on the issue of what constitutes a labor leasing firm may explain the court's reluctance to rely on that statute when deciding the issue of whether the injured worker was furnished to Berman by Action Labor to meet short-term workload conditions.

B. *Indicia of a Labor Lease*

1. Substance over Form

The easy case involves a written lease agreement between the labor leasing firm and the client company regarding a worker. However, not all cases are so easy. For example, there are situations where there is no explicit lease arrangement and the staffing service denies that it leases its employees to client companies, but the reality of the arrangement is that it is a leasing agreement. This was the precise situation in *Scottsdale*.²⁹² The district court and the court of appeals agreed that the relevant inquiry is the substance or reality of the arrangement, not its form, because there is no requirement under the policy that the agreement be memorialized in writing or labeled as a leasing agreement.²⁹³

The district court also found that additional indicia of a labor lease would include the employment or staffing company determining the worker's rate of pay; retaining the final authority to continue the worker's employment; and incurring the burden and cost of having to handle payroll, payroll tax, insurance, workers' compensation, and other administrative obligations in connection with the employment of the leased worker.²⁹⁴

In *Scottsdale II*, the court of appeals agreed with the district court that it did not matter that the employment firm never used the term *lease* because it "fit the profile of a 'labor leasing firm' in that it retained the rights and obligations of an employer—including determining rate of pay, procuring workers' compensation insurance and processing payroll."²⁹⁵

The case of *Wausau* adopted the *Scottsdale* definition of a lease, i.e., a company leases a worker to a client when it gives the client the right to use

292. 460 F. Supp. 2d 251 (D. Mass. 2006), *vacated and remanded on other grounds*, 561 F.3d 74 (1st Cir. 2009).

293. *Scottsdale II*, 561 F.3d 74, 78 (1st Cir. 2009); *Scottsdale I*, 406 F. Supp. 2d 251, 256 (D. Mass. 2006) (finding a lease arrangement even though the labor firm never used the term *lease* in the course of its business). In *Scottsdale I*, the court found an employment lease because the labor firm provided its client company with the right to use the worker's services for a period of time in exchange for a fee. *Id.* at 256. The district court found that this conclusion was buttressed by the terms of the Massachusetts Workers' Compensation Act, which provides as follows:

"Employee leasing company", a sole proprietorship, partnership, corporation or other form of business entity whose business consists largely of leasing employees to one or more client companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers, and the right to hire and fire workers provided by the employee leasing company; provided, however, that the leasing arrangement is long term and not an arrangement to provide the client company temporary help services during seasonal or unusual conditions.

Id. at 256 n.2 (quoting MASS. GEN. LAWS. ch. 152, § 14A(1)(c) (2009)).

294. *Id.* (citing *Home Ins. Co. v. Liberty Mut. Fire Ins. Co.*, 830 N.E.2d 186, 188-89 (Mass. 2005)).

295. *Scottsdale II*, 561 F.3d at 78.

the worker's services for a period of time in exchange for a fee, irrespective of whether the parties characterize their arrangement as a lease or whether the lease is in writing.²⁹⁶ Based on this definition, the court found that Hart was leased to Berman because it was undisputed that Action Labor was in the business of placing its employees at client companies for varying lengths of time in exchange for a fee.²⁹⁷ The court also found that these facts supported a finding that Action Labor was a labor leasing firm.²⁹⁸

*In re South Louisiana Sugars Cooperative, Inc.*²⁹⁹ provides an example of the difficulty a court might have in determining whether a worker is a leased worker. South Louisiana Sugars Cooperative, Inc. (SLSC) was sued by Barnes, an employee of Acadia Labor Services, for personal injuries he sustained while on a barge owned by SLSC.³⁰⁰ SLSC sought coverage from the Audubon Insurance Group, but Audubon denied coverage based on, *inter alia*, the employer's liability exclusion. The district court found that the exclusion applied and granted summary judgment for Audubon.³⁰¹

On appeal, the Fifth Circuit found the following material facts not to be in dispute:

- Acadia and SLSC had a verbal agreement under which Acadia agreed to supply labor workers to SLSC to provide stevedoring services.
- As a condition of the verbal agreement between SLSC and Acadia, Acadia was required to provide general liability coverage for at least \$1,000,000 and maintain workers' compensation insurance on its employees.
- Acadia decided which employees went to work for SLSC and also provided an on-site supervisor to oversee its employees at SLSC's facilities.
- Acadia submitted weekly invoices to SLSC.
- Barnes was employed by Acadia at the time of the accident.
- Acadia retained all rights to hire or fire Barnes, paid Barnes's salary, and maintained workers' compensation insurance for Barnes.
- Pursuant to the policy issued to Acadia, Louisiana Workers Compensation paid benefits to Barnes in connection with his injuries sustained at SLSC's facilities.³⁰²

Although the district court found this evidence to be sufficient to determine that Acadia was a labor leasing firm and Barnes a leased worker, the Fifth Circuit without explanation found the evidence to be insufficient as

296. *Pac. Employers Ins. Co. v. Wausau Bus. Ins. Co.*, Case No. 3:05-cv-850-J-32TEM, 2007 U.S. Dist LEXIS 73594, at *27-28 (M.D. Fla. Oct. 2, 2007). For a discussion of the facts of the case, see *supra* note 86 and accompanying text.

297. *Id.* at *29.

298. *Id.*

299. 485 F.3d 291 (5th Cir. 2007).

300. *Id.* at 292.

301. *Id.*

302. *Id.* at 293.

a matter of law to establish that Barnes was a leased worker as defined by the policy.³⁰³ The court did not say or hint at what evidence was lacking. It simply vacated the judgment and remanded the case for further proceedings and development of the facts on the leased worker issue.

Notwithstanding the unexplained shortcomings of the summary judgment record on the issue of whether the worker was a leased worker in *In re South Louisiana Sugars Cooperative*, the court in *Wausau* found that the summary judgment record in *Scottsdale I* on the leased worker issue was more fully developed and supported the judgment that the injured worker in that case was a leased worker.³⁰⁴ The court also noted that the record, after trial, in *Wausau* was sufficient to support its finding that the injured worker in the case was a leased worker.³⁰⁵

2. Relevance of State Law

State statutory or regulatory law can also support the conclusion that the parties' arrangement is in reality a labor lease even though there is no formal written lease. For example, in Missouri, temporary help arrangements are specifically excluded from the definition of *employee leasing arrangements*.³⁰⁶ Similarly, the Massachusetts Workers Compensation Act, and the regulations promulgated thereunder, define *employee leasing company* as a business consisting

largely of leasing employees to . . . client companies under contractual arrangements that retain for such employee leasing companies a substantial portion of personnel management functions, such as payroll, direction and control of workers and the right to hire and fire workers provided by the employee leasing company; provided however, that the leasing arrangement is long term and not an arrangement to provide the client company temporary help services during seasonal or unusual conditions, such as temporary skill shortages or temporary special assignments and projects.³⁰⁷

Moreover, a Massachusetts regulation requires the employee leasing firm to purchase and maintain a workers' compensation insurance policy for each client company.³⁰⁸ If the facts of a particular case fit the state statutory and regulatory definitions of *employee leasing arrangement* or demonstrate

303. *Id.*

304. *Wausau*, 2007 U.S. Dist. LEXIS 73594, at *35-36 n.19. Of course, the First Circuit in *Scottsdale II* found the record not adequately developed on the short-term workload conditions issue.

305. *Wausau*, 2007 U.S. Dist. LEXIS 73594, at *35-36 n.19.

306. *Am. Family Mut. Ins. Co. v. Tickle*, 99 S.W.3d 25, 29 (Mo. Ct. App. 2003) (citing Mo. REV. STAT. § 287.282.3 (2000)).

307. MASS. GEN. LAWS ch. 152, § 14A(1)(c) (2009); 211 MASS. CODE REGS. 111.03 (2009).

308. 211 MASS. CODE REGS. 111.04 (2009).

that the staffing service company is meeting the obligations of a labor or employee leasing firm under state law, the arrangement should be viewed as a lease irrespective of whether there is a written lease. The *Scottsdale* court engaged in precisely this type of analysis.³⁰⁹

Although the court in *Wausau* refused to rely on the Florida workers' compensation statute for the purpose of determining what constitutes a labor leasing firm, it does not appear that the court believed that it would be error to do so. Rather, it appears that the court thought it could resolve the issue based on the language of the policy at issue and that it therefore had no need to address the relevance of the statute.³¹⁰

3. Relevance of Federal Law

Federal law may be relevant to determining whether an arrangement is a labor lease in circumstances where there is no written lease. For example, the Internal Revenue Code includes a section that, through coverage tests, seeks to ensure that employer-provided retirement plans do not discriminate in favor of higher-paid employees by requiring that retirement plans cover a minimum percentage of lower-paid employees.³¹¹ Plans that pass the tests and meet other requirements qualify for tax benefits.³¹² When applying the coverage tests, the tax code requires employers to include leased employees in their head count. Section 414(n)(2) of the Code defines *leased employee* as any person furnishing services to a recipient if the following conditions are met:

The person must perform services under an agreement between the recipient employer and the leasing organization.

The person must perform services on a substantially full-time basis for a one-year period. Under IRS Notice 84-11, 1984-2 CB 469, at "Q-7," this test is met if during a twelve-month period one of the following conditions is met:

- The employee performs at least 1500 hours of service for the customer.
- The employee performs a number of hours of service for the customer that is equal to at least 75 percent of the average number of hours customarily worked by the customer's own employees performing similar services.
- The person must perform services under the primary direction and control of the recipient.³¹³

309. *Scottsdale I*, 460 F. Supp. 2d 251, 256 n. 2 (D. Mass. 2006), *vacated and remanded on other grounds*, 561 F.3d 74 (1st Cir. 2009). *Scottsdale II* did not disturb this holding. *Scottsdale II*, 561 F.3d 74, 78 (1st Cir. 2009).

310. *Wausau*, 2007 U.S. Dist. LEXIS 73594, at *26.

311. See 26 U.S.C. § 410(b) (2009).

312. 26 U.S.C. § 402 (2009).

313. 26 U.S.C. § 414(n)(2) (2009).

If the arrangement at issue in a particular case meets these criteria and this section of the Code applies to the client company at issue, the Code may be able to be used as additional support for the argument that the worker is a leased worker.

C. Does Leased Worker Not Include a Temporary Worker?

The definition of *leased worker* provides that it "does not include a 'temporary worker.'" However, it would appear that, notwithstanding this definition, a leased worker also could be a temporary worker.³¹⁴ For example, there appears to be no reason why a leased worker could not be "leased" to the client company by a labor leasing firm for a period of time that covers a permanent employee's leave or seasonal or short-term workload conditions of the client company.³¹⁵ Such a lease arrangement, whether in writing or not, would appear to satisfy the "furnished to you" requirement of the definition of *temporary worker*. Moreover, the fact that the leased worker would be substituting for a permanent employee on leave or to meet seasonal or short-term workload conditions would appear to meet the requirement of the definition of *leased worker* that the worker "perform duties related to the conduct of the [client company's] business."

If a particular worker meets the definition of both *leased worker* and *temporary worker*, the issue becomes whether the employer's liability exclusion bars coverage for the claim. One might argue that the CGL policy is ambiguous in this respect and should be construed against the insurer so as to provide coverage (i.e., find that the temporary worker status is dispositive and trumps the leased worker status for the purposes of coverage). However, such an argument would be ill-founded because the long-term or short-term nature of the worker's employment with the client company should dictate whether the worker is a leased worker or a temporary worker. Accordingly, in the final analysis, the theoretical possibility that a worker can fit under the definitions of both *leased worker* and *temporary worker* should yield to the reality of the worker's employment situation. There is no ambiguity because the CGL policy definitions make plain that a person furnished to meet short-term workload conditions is a temporary worker, not a leased worker.

314. See, e.g., *Scottsdale I*, 460 F. Supp. 2d at 255; see also *Gen. Agents Ins. Co. of Am., Inc. v. Mandrill Corp., Inc.*, 243 F. App'x 961, 967 n.2 (6th Cir. 2007) ("[T]emporary agencies may sometimes provide temporary employees as well as permanent or quasi-permanent employees.").

315. *Scottsdale I*, 460 F. Supp. 2d at 255.

V. MANAGING THE RISK: BUSINESS OPTIONS
FOR CLIENT COMPANIES

Because client companies without insurance may be liable if the injured worker is found not to be a temporary worker, such companies face risk. Client companies can handle this risk in a number of fashions. In the first instance, they simply can take the chance that a court will find the injured worker a temporary worker. Employers may also decide that the chances of workers furnished to them by an employment-type agency sustaining a serious injury on the job are so remote that they are willing to accept the substantial economic and administrative benefits of using such workers in place of regular employees and run the risk that if one or more of these workers are injured on the job, the employer, not its CGL insurer, will be responsible for any judgment that may be entered against the company.

If the perceived risk of leased workers becoming seriously injured on the job is not trivial, the employer may decide to investigate the availability and cost of a CGL policy endorsement that covers leased workers. If the cost of such an endorsement is not prohibitive and does not exceed the economic and administrative benefits of the employee leasing arrangement, the purchase of such an endorsement could protect the employer against a large judgment entered against it as a result of a catastrophic injury to one of its leased workers.

Another business option for client company employers is to include a waiver clause in the leased worker's contract with the employee leasing company, providing that the leased worker waives the right to bring a claim or suit against the client company for damages based upon injuries that are covered under the workers' compensation statute. Courts have upheld such waivers.³¹⁶

VI. CONCLUSIONS

The current state of the law on leased workers and temporary workers under the CGL policy yields the following conclusions:

A. *Temporary Worker Conclusions*

The better-reasoned cases hold that to be a temporary worker, the worker must be furnished to the client company by an employment-type agency.

316. See, e.g., *Edgin v. Entergy Operations, Inc.*, 961 S.W.2d 724 (Ark. 1998); *Horner v. Boston Edison Co.*, 695 N.E.2d 1093 (Mass. App. Ct. 1998). But see *Brown v. Soh*, 909 A.2d 43 (Conn. 2006) (refusing to enforce exculpatory agreement between employer and employee where the exculpatory agreement at issue did not address insurance coverage and concluding that the issue of whether workers' compensation insurance ultimately is provided (which it was) "is not a factor considered in analyzing the terms of the agreement presently before us").

There is a line of cases holding that to be a temporary worker, the worker need not be furnished to the client company by an employment-type agency. These cases find the "furnished to" requirement of the definition of *temporary worker* satisfied if the worker is hired as a result of his response to a newspaper advertisement, a recommendation from a friend, or presenting herself personally or as a sole proprietorship to the employer looking for a worker. These cases are poorly decided because they do not appreciate that the difference between a leased worker considered to be an employee and a temporary worker considered to be a nonemployee is based on a distinction rooted in workers' compensation law that comes into play when an employment-type agency provides or furnishes one of its employees to a client employer. These cases also blur the distinction between a regular employee, to whom the employer's liability exclusion applies, and a temporary employee, to whom the exclusion does not apply.

The better-reasoned cases also conclude that the "furnished to" requirement of the definition of *temporary worker* applies not just to people substituting for a permanent employee on leave but also to people furnished to meet seasonal or short-term workload conditions. The "furnished to" requirement of the definition of *temporary worker* means that the worker must be provided by the employment-type agency directly to the client company. Accordingly, a temporary worker is not a worker provided by an employment-type agency to a contractor that provides services at the insured's place of business.

To date, the courts have employed two distinct types of analysis to the issue of what constitutes short-term workload conditions. The retrospective approach looks back from the time of the worker's injury to determine whether the worker had been working for a short term for the client company. One court using this approach has found the term *short-term workload conditions* to be ambiguous because there is no way to determine when the short term ends.

Other courts have used a prospective approach for determining whether the worker was furnished to meet short-term workload conditions. Under this approach, the test is the intent of the client company at the time it leased the worker. The courts employing the prospective approach have not found the term *short-term workload conditions* to be ambiguous.

Employers that intend to use workers provided by an employee leasing company in place of regular employees for an indefinite or substantial period of time in order to realize the economic and administrative benefits that these workers have over regular employees may find that they, not their insurance companies, are responsible for any judgment such workers obtain against them: the courts may find workers used in such a manner to be leased workers subject to the employer's liability exclusion.

The term *seasonal workload conditions* in the definition of *temporary worker* normally refers to seasonal business, like farming or snow removal or increased sales during the holiday season. A worker's relatively stable hours at a client company over a long period of time will undercut the argument that he was furnished to the client company to meet seasonal workload conditions.

B. *Leased Worker Conclusions*

A labor leasing firm includes any staffing service that leases its employees to a client company to perform duties related to the conduct of the client company's business. It is not limited to a company that has a client company transfer to it all of its employees so that the labor leasing company can lease those people back to the client company.

A labor lease does not have to be in writing. What matters is the substance or reality of the relationship, not its form.

A labor lease exists when the labor leasing firm provides its client company with the right to use its workers' services for a period of time in exchange for a fee.

Additional indicia of a labor lease include the following labor services: determining the worker's rate of pay; retaining the final authority to continue the worker's employment; and incurring the burden and cost of having to perform payroll, payroll tax, insurance, workers' compensation, and other administrative obligations in connection with the employment of the leased worker.

Although it is theoretically possible that a leased worker could also be a temporary worker, notwithstanding the CGL policy language providing to the contrary, the long-term, short-term, or seasonal nature of the worker's employment at the client company will dictate whether the courts treat the worker as a leased worker or a temporary worker.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 19, 2014

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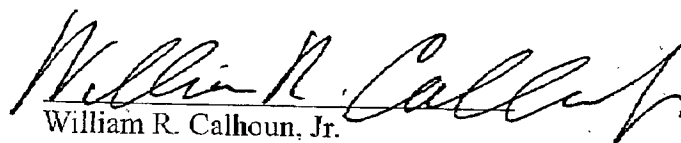
SEP 23 2014

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 19, 2014



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SEP 23 2014

APPEAL FROM GREENVILLE COUNTY

Edward W. Miller, Circuit Court Judge

SC Court of Appeals

Case No. 12-CP-23-6195

Court of Appeals Tracking No.: 2014-000150

Canal Insurance Company,.....Appellant,

v.

National House Movers, L.L.C.;

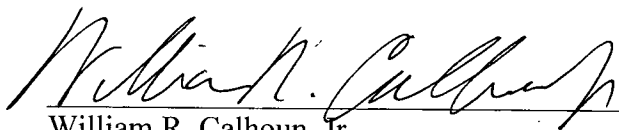
Kevin E. Jones; David Black;

Ron Hewes; and Brent Jones.....Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on National Home Movers, L.L.C.; David Black; Ron Hewes; and Brent Jones, by depositing a copy of it in the United States Mail, postage prepaid, on the date annotated below, addressed to their attorney of record, Eugene C. Covington, Jr., Post Office Box 2343, Greenville, S.C. 29602 and have served Kevin E. Jones in the same manner and on the same day by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to his attorney of record, George Brandt, III, 360 East Henry Street, Suite 101, Spartanburg, S.C. 29302.

September 23, 2014



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