THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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

Canal Insurance Company,.....Appellant,

v.

National House Movers, L.L.C.;
Kevin E. Jones; David Black;
Ron Hewes; and Brent Jones.....Respondents.

REPLY BRIEF OF APPELLANT

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ATTORNEYS FOR APPELLANT

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STANDARD OF REVIEW

This Court has stated the standard of review as follows:

> "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Auto Owners Ins. Co. v. Newman,* 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009) "Where the action presents a question of law ... this Court's review is plenary and without deference to the trial court." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.,* 395 S.C. 40, 47, 717 S.E.2d 589, 592 (2011).

Pulliam v. Travelers Indem. Co., 403 S.C. 332, 339, 743 S.E.2d 117, 121 (Ct. App. 2013).

To the extent Respondent objects to the suggestion in note 1 to Appellant's Brief regarding possible subject matter jurisdiction questions[1], the following citations are pertinent: Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct. App. 2001) ("A question of subject matter jurisdiction is a question of law for the court."); Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) ("We are free to decide **questions** of **law** with no **deference** to the trial court."); Tatnall v. Gardner, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) ("The issue of subject matter jurisdiction may be raised at any time including when raised for the first time on appeal to this [c]ourt.")

ARGUMENT

I. THE TRIAL COURT ERRED IN HOLDING THAT KEVIN JONES WAS "FURNISHED" TO NHM.

The Trial Court cited as apparently its primary authority a case from the Florida Court of Appeals, National Indemnity Company of the South v. Landscape Management Co., Inc., 963 So.2d 361 (Fla. App. 4 Dist. 2007), which held that the term "furnished to" in the definition of

[1] NHM had five employees moving the house on the day in issue. The threshold for mandatory workers compensation is four employees. S.C. CODE ANN §42-1-150. See also, S.C. CODE ANN. §42-1-130; Simmons v. SC Strong, 402 S.C. 166, 171, 739 S.E.2d 631, 633 (Ct. App. 2013); Hernandez-Zuniga v. Tickle, 374 S.C. 235, 243-44, 647 S.E.2d 691, 695 (Ct. App. 2007).

"temporary worker" was ambiguous. Order, p. 5; R.5. This position is an outlier, a distinct minority position. The Eighth Circuit, citing the Florida case, specifically rejected the position that "furnished to" was ambiguous. Northland Cas. Co. v. Meeks, 540 F.3d 869, 876-77 (8th Cir. 2008) (citing nine other cases in support of the majority position).

The Trial Court, therefore, held that Jones was a temporary worker because "he was furnished to NHM by David Jones...." Order, p. 5; R.5. This conclusion is based on an insufficient analysis of the term, "furnish." The more numerous, better-reasoned opinions rely on a deeper analysis of what it is to "furnish" someone and consider the context of the policy in issue being a *liability* policy intended to cover a business' legal obligations to third parties, not to people working for the business. Modern liability policies produced by ISO take cognizance of the fact that all states have workers compensation systems; they have a specific exclusion for claims made under workers' compensation.

In failing to consider the purpose and terms of the policy, the court failed to follow the legal principles that our appellate courts have established, including the following:

> An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts. *Auto Owners Ins. Co. v. Rollison,* 378 S.C. 600, 663 S.E.2d 484 (2008); *Coakley v. Horace Mann Ins. Co.,* 376 S.C. 2, 656 S.E.2d 17 (2007); *Estate of Revis v. Revis,* 326 S.C. 470, 484 S.E.2d 112 (Ct.App.1997)...
>
> "Where the contract's language is clear and unambiguous, **the language alone** determines the contract's force and effect." *McGill v. Moore,* 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "Courts must enforce, not write, contracts of insurance, and their language must be given its **plain, ordinary and popular meaning**." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha,* 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Williams v. Government Employees Ins. Co. (GEICO), Op. No. 27435 (S.C. Sup. Ct. filed August 20, 2014)(Shearouse Adv. Sh. No. 33, at 34, 38) (emphasis added).

A. **The Language of the Policy**

The language in issue in the policy is derived from the definition of "temporary worker," which Jones claims to be because "temporary workers" are not held to be "employees," so the exclusion for injury to employees would not affect him. The key sentence states that, "'Temporary worker" means a person "who is furnished to you" under two circumstances. It is undisputed that Mr. Jones was hired to meet a "short-term workload" condition, so the dispute arises from the phrase, "who is furnished to you."

Appellant's prior brief discussed two cases that are on point for the situation here. Appellant's Brief, pp. 8-10: AMCO Ins. Co. v. Dorpinghaus, 2007 WL 313280 (D. Minn. 2007) and Borntreger v. Smith, 811 N.W.2d 447 (Wis. Ct. App. 2012). In both cases, the courts rejected the idea that a person who had no control over a second person could "furnish" that second person to anyone. In this case, David Johnson had no control or authority over Kevin Jones, so he could not "furnish him" to NHM. Depo. of Jones, pp. 8,9; R.118-19.

Cases from six other states are instructive as to the meaning of "furnished to you." The Fifth Circuit, in a case from Texas, affirmed summary judgment for an insurer in a case in which an employee brought suit against the insurer's insured. Parra v. Markel International Ins. Co. Ltd., 200 Fed. Appx. 317 (5th Cir. 2008). Mr. Parra worked intermittently for the insured, Interamerican Textile, on an as-needed basis. While working in Interamerican's warehouse he suffered a serious injury, brought suit against the insured and obtained a One Million Dollar ($1,000,000) judgment. He sought to recover his judgment from Interamerican's CGL insurer, Markel. Markel held that Para was an employee of Interamerican and thereby excluded from coverage by the CGL policy's exclusion for injuries to employees. Parra asserted that he was a

temporary employee and consequently not subject to the exclusion. Id. at 318. The arrangement between Parra and Interamerican was as follows:

> The record reveals that Interamerican sometimes called Parra when it needed temporary workers and at other times Parra would contact Interamerican through its warehouse supervisor, Guerrero. On occasion Guerrero would contact Parra when temporary help was needed. Parra argued that he was "furnished" to Interamerican by Guerrero.

Id. at 319. This fact pattern was similar to the case at hand, as Johnson called Jones to come to NHM – with Hewes' approval. Hewes Depo., p. 13, line 24; R.90, line 24 – p. 14, line 15; R. 91, line 14.

The Texas 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." 300 Fed. Appx. at 319.

The Fifth Circuit affirmed, quoting the Eighth Circuit's opinion in Northland Cas. Co. v. Meeks, *supra.*, p. 2, for the proposition that a third party – inferrably not an agent or employee of the employer – was required for a temporary employee to be furnished. Id.

The Appeals Court of Massachusetts also addressed a case in which the meaning of "furnished to you" was determinative. Monticello Ins. Co. v. Dion, 836 N.E.2d 1112 (Mass. App. Ct. 2005). In this case, Paul Dion did business as All the Answers Tree Service. He had a CGL policy issued by Monticello Insurance Company. As Mr. Dion was making a preliminary chain-saw cut on a tree, the tree snapped and fell in an unanticipated direction, hitting and killing Doreen Mellen. Monticello's policy had exclusions for injuries to employees and to independent contractors, which she might have been. To obtain coverage, she, therefore, had to be a "temporary employee," which category was an exception to the definition of "employee." Given that the work could qualify as a short-term work condition, she would be a temporary employee if she had been "furnished" to Dion.

The Appeals Court quoted the lower court's holding to the effect that the phrase, "furnished to you," had the necessary connotation of "some involvement by a third person... [t]he usual and ordinary sense of the words 'furnished to you' require[s] something more than Dion asking his cousin [Ms. Mellen] if she would work for him for a few days and his cousin agreeing." 836 N.E.2d at 1115.

The defendants tried to circumvent the "furnished to" requirement by claiming that Mellen had a sole proprietorship and that the proprietorship "furnished" her to Dion. The Appeals Court, affirming the trial court, held:

> The argument is interesting but must be seen as a purely verbal formulation designed to read "furnished to" out of the policy. Any employee of a business, at least since the abolition of slavery, can be said to "furnish his services" to his employer, a phrase synonymous with "work for" his employer; and Doreen Mellen's "sole proprietorship" had no legal existence separate from her own.

836 N.E.2d at 1115.

Here, we have no more than Kevin Jones agreeing to come with David Johnson to an interview with Ron Hewes. Depo. of Hewes, p. 9, lines 10-14;R.86, lines 10-14; p. 14, lines 8-15; R.91, lines 8-15.

The Kentucky Supreme Court, in Brown v. Indiana Ins. Co., 184 S.W.3d 528 (Ky. 2005), addressed a case in which two workers hired by Willowbank Garden Company were killed when a pickup truck in which they were riding was hit by a train. Willowbank did not have workers compensation insurance. The plaintiffs asserted that the deceased workers had been "temporary employees," and that, therefore, the policy's exclusion for injuries to employees did not apply. The plaintiffs, citing the same case relied upon by Respondents here – Ayers v. C&D Gen.

Contractors, 237 F.Supp.2d 764 (W.D. Ky. 2002)[2] – argued that the "furnished to you" requirement was ambiguous. The Kentucky Supreme Court rejected the suggestion that "furnished to" was ambiguous. It held that:

> Neither Garcia nor O'Banion was "furnished to" Willowbank by a temporary help service, and both therefore fall within the "employee" exclusions of Indiana Insurance's automobile policy. Matthew Zehnder, one of the three owners of Willowbank, testified that he hired Garcia on the recommendation of a tobacco farmer and that he hired O'Banion at the request of O'Banion's parents. Thus, neither was a "temporary worker" as those terms are defined in both the insurance policy and the Workers' Compensation Act. Willowbank argues that Garcia and O'Banion were "temporary workers" because Garcia was a migrant worker and O'Banion intended to quit work and attend college that fall.

Brown, 184 S.W.3d at 538. The law of Kentucky would not longer support the Ayers holding.

The situation regarding Kevin Jones is similar, as he was not furnished by any employment service, as arguably most courts require,[3] and he was *hired* – the action completing the "furnishing to" – by Hewes on behalf of NHM itself. The latter is not third-party involvement.

The Appellate Court of Connecticut took an appeal of a judgment for Nationwide Mut. Ins. Co. in a declaratory action brought by the insurer Nationwide Mutual Ins. Co. v. Allen, 850 A.2d 1047 (Conn. App. 2004). The defendants were the owner of a landscaping business named Allen Landscaping and William Shaw, a man injured while working for the landscaping business. The issue of coverage turned on whether Shaw was Allen's employee. The defendants asserted that Shaw was a temporary employee and that the "temporary worker" definition was

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[2] Ayers is red-flagged on Westlaw. The Sixth Circuit, which has judicial oversight of the Western District of Kentucky, disagreed that "furnished to you" was ambiguous. General Agents Ins. Co. of America, Inc. v. Mandrill Corp. Inc., 243 Fed. Appx. 961 (6th Cir. 2007). Moreover, the Kentucky Supreme Court, in the cited Brown v. Indiana Ins. Co., kindly distinguished Ayers on the ground that it was based on Federal law – the Admiralty Extension Act, 33 USC 905(5) – rather than state law.

[3] *See*, Perlmutter, S.P., "The Law of 'Leased Worker' and 'Temporary Worker' Under a CGL Policy, p. 766 ("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.") R.134.

ambiguous because the plaintiff's interpretation differed from their own. 850 A.2d at 1057. The Appeals Court, affirming the trial court held that:

> A plain reading of the relevant provisions of the insurance policy and an examination of the facts lead to the conclusion that Shaw was not a temporary worker as defined by the policy, because he was not "furnished" to Allen. The court found that Allen did not go to an employment agency, manpower service provider or any similar service to employ or to utilize Shaw's services. **Shaw was not employed by anyone who lent or furnished him to Allen as an employee.** Thus, the court reasonably concluded that Shaw was not furnished to Allen within the definition of "temporary worker" and could not be a temporary worker under the insurance policy. Additionally, we observe that the temporary worker definition makes no grammatical sense without the "furnished by" language.

850 A.2d at 1057 (emphasis added).

In this case Jones similarly was "not employed by anyone who furnished him to" NHM as an employee. Such a relationship, which involves an element of control, is necessary for one person to furnish another person to an employer.

The Tennessee Court of Appeals directly addressed "whether an injured worker was an 'employee' or a 'temporary worker'" in Lafayette Ins. Co. v. Roberts, 2013 WL 3961173, *1 (Tenn.. Ct. App. 2013). The Roberts (Jerry, Diane and James) owned a commercial building in Dyersburg, Tennessee, that was used as a Family Dollar Store. They hired Bobby Burns to assist with recoating the roof. Burns fell from the roof and experienced serious injury. Id. He thereafter sued the Roberts, who requested defense and indemnity from their CGL carrier, Lafayette Insurance Company.

The insurer initiated a declaratory action to determine the issue of coverage, alleging that Burns' injuries were excluded by the policy's exclusion for employees' injuries. Lafayette filed a motion for summary judgment to that effect, arguing against the notion that Burns was a "temporary worker." Mr. Burns likewise filed a motion for summary judgment, arguing to the

contrary. The trial court granted Burns' motion, holding that Lafayette had a duty to defend the insured in the underlying tort case.

On appeal, the Tennessee Court of Appeals reversed the trial court. In doing so, it addressed the intentions and expectations regarding CGL policies, noting particularly that "the basic purpose of [the exclusions for works compensation and employers' liability exclusions] is to **prevent the general liability insurance policy from being converted into a workers' compensation and employer's liability policy.**" 2013 WL 3961176 at *4 *quoting* Appleman on Insurance 2d §132.5 (2002) (emphasis added).

The facts of the case revealed that the injured worker, Burns, "was hired directly by Jerry Roberts [the owner] and that he was not provided to the Roberts by any type of temporary staffing agent, employment agency, or the like." Id. at *6. Burns and Roberts argued that no third party was required and that the owner could "furnish" himself a temporary worker.

The Appeals Court did not simply look at the definition of furnish, but "construe[d] the instrument as a whole." Id., at *7 (citation omitted). It concluded that for an owner or company to hire a worker directly did not comply with the terms of the policy, as follows:

> If one could furnish oneself with a temporary worker within the meaning of the policy, there would be no need for including the phrase "who is furnished to you." The definition could just as easily read, "a person who substitutes for a permanent employee or who meets seasonal or short-term workload conditions." Any worker who substituted for a permanent employee on leave or who met seasonal demands or short-term workload conditions would satisfy the definition of a temporary worker, and there would effectively be no "furnished to you" requirement. Contracts must be construed, as far as is reasonable, so as to give effect to every term.

Id., at *7 (citation omitted). *See also* South Carolina authority in Valley Public Service Authority v. Beech Island Rural Community, 319 S.C. 488, 494, 462 S.E.2d 296, 299 (Ct. App. 1995) ("Every term contained in a contract must be considered and given effect if possible").

In the present case, NHM *de facto* provided Kevin Jones to itself, using its present employee, Steve Johnson, to bring Jones to be hired by Hewes – **if Hewes, after interviewing him, wanted to hire him.** Depo. of Hewes, p. 14, lines 3-5; R.91, lines 3-5;; p. 35, lines 6-19; R.103, lines 6-19. Jones was not "furnished" until he was hired – and that was by Mr. Hewes.

While the trial court found no evidence that Johnson acted as an agent for NHM (because he was a manual laborer, Order, p. 5; R.5), Johnson's actions certainly meet the dictionary definition of "agent." Black's Law Dictionary, 5th ed. ("A person authorized by another to act for him"; "A business representative whose function is to bring about...contractual obligations between principal and third persons"). Because Johnson was acting at the behest of Hewes, he was the agent of Hewes/NHM under South Carolina law. Dyar v. Georgia Power Co., 173 S.C. 527, ___, 176 S.E. 711, 718 (1934) ("An agent is generally defined as a person who acts on behalf of another person who is his principal") *quoting* Jenkins v. Bridge Co., 73 S.C. 528, 53 S.E. 991, 992 (1906). "The authorized acts of an agent are the acts of the principal." ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 242, 489 S.E.2d 470, 472 (1997), quoted in Stiltner v. USAA Cas. Ins. Co., Op. No. 2014-UP-084 (S.C. Ct. App., filed Mar 5, 2014). The holding of LaFayette Ins. Co. v. Roberts is, therefore, right on point for the situation here.

Empire Fire and Marine Ins. Co. v. Jones, 739 F.Supp.2d 746 (M.D. Pa. 2010) also addresses the language of the policy. The policy's language contained the same wording in the "temporary worker" definition as Canal Insurance's policy in this case and the cases previously cited in this brief: "a person who is furnished to you [for either of two reasons]." 739 F.Supp.2d at 763. "Furnished to" is again the principal focus.

Empire Fire arose out of a situation in which a man named Drumheiser was injured by a garbage truck owned by Robert A. Jones. Empire filed an action for declaratory judgment to obtain a declaration of its obligation to defend and indemnify Jones. A magistrate had recommended that the court grant summary judgment to the insurer, which it did. The District Court described the situation by which Drumheiser came to be employed by Jones' business, as follows:

> Jones had a business which provided coal and trash hauling services. About one year prior to the incident on August 19, 2008, Jones ran into Michael and Gloria Kalman ("the Kalmans") at a local restaurant. During this encounter, Jones expressed that he was looking for someone to help him with his hauling services. It was at this time that the Kalmans recommended Drumheiser to Jones, with the understanding that Drumheiser would continue to work for the Kalmans as well. A week or two following this encounter, Jones called Drumheiser to solicit his labor. Drumheiser agreed to work for Jones in addition to working for the Kalmans.

Empire Fire and Marine Ins. Co., 739 F.Supp.2d at 749-50 (footnote omitted).

Citing two Pennsylvania cases and Blacks' Law Dictionary, the court held that the policy exclusion was not ambiguous, id., p. 754, and then addressed the question of whether Drumheiser fit into the policy's definition of "temporary worker." It, agreeing with the magistrate judge, whose report was attached, held that Drumheiser had not been furnished to Jones:

> While the Kalmans were, quite clearly, Drumheiser's primary employers, the Kalmans did not supply or provide Drumheiser to Jones, inasmuch as they had no control over Drumheiser. Drumheiser could have just as easily refused Jones' offer of employment as he did accept it. Quite simply, Drumheiser was not the Kalmans' property that they could supply, provide, or *furnish* to Jones. Instead, they gave Jones a referral to Drumheiser, and Jones contacted Drumheiser himself to set up the terms of Drumheiser's employment with Jones. Likewise, the Kalmans ultimately had no power to set the conditions of Dumheiser's employment with Jones, nor could they recall Drumheiser from that employment without his consent. Mr. Kalman's understandable desire to share the fruits of a person he considered to be an excellent part-time worker does not transfer Drumheiser into a "Temporary worker," as set forth in the exclusion.

Id., at 754 (footnote omitted).

Here, Johnson was like the Kalmans in one respect: he "had no control" over Kevin Jones that would allow him to "furnish" Jones to NHM. Like the Kalmans, Johnson gave Hewes a referral to Kevin Jones, but either Jones or Hewes could have failed to enter into an employment relationship between Jones and NHM. It is also clear that Johnson had no authority to set the terms of Jones' employment, as that was reserved to Hewes. Depo. of Hewes, p. 20, line 10; R. 92, line 10 – p. 21, line 19; R.93, line 19. As with the Kalmans in Empire Fire, Johnsons' actions regarding Kevin Jones did not bring Jones within the policy's definition of "temporary worker."

The cases cited clearly are more comprehensive and better-reasoned than the trial court's order in this case. They pay far more attention to the whole policy and the intentions for such a liability policy. Our Supreme Court has held that:

> An insurance contract is read as a whole document so that "one may not, by pointing out a single sentence or clause, create and ambiguity." Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract. *Id.*

Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

The cited cases also pay far more attention to the words within the definition of "temporary worker." In sum, the cited cases present a far better legal analysis of which it means to be a "temporary worker" under such a policy, especially given the purposes – and intended limitations – of such a policy. The trial court's holding would turn a liability policy – which was not intended as a workers' compensation or employers' liability policy – into exactly what it was intended not to be.

II. THE TRIAL COURT ERRED IN HOLDING THAT THE SPECIFIC INCLUSION, AS AN EMPLOYEE, OF "ANY INDIVIDUAL...WHO IS EMPLOYED...AND WHO IN THE COURSE OF HIS EMPLOYMENT DIRECTLY AFFECTS COMMERCIAL MOTOR VEHICLE SAFETY" IS

TRUMPED BY THE STATEMENT THAT TEMPORARY EMPLOYEES ARE NOT EMPLOYEES.

The policy's definition of "employee" is 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 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. "Employee" does not include a "temporary worker" (emphasis added) R.70.

The trial court considered this definition and ruled on it as follows:

> 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 provisions in the policy, Canal's temporary worker exception contractually excludes Jones as an employee: "'Employee' does not include a 'temporary worker'." R.5.

Appellant contends that this holding of the trial court was erroneous. The words of the definition make plain that the *specific intention* of the insurer was to include *anyone* – any individual – who directly affected the safety of the operation of a commercial motor vehicle was to be an employee. It makes eminent sense for the insurer to limit its coverage for people who are directly involved in motor vehicle safety inasmuch as a person who is doing that is at greater risk than other workers. Three example positions are cited: drivers, mechanics and freight handlers. As pointed out in Appellant's Brief, pp. 14-16, the deposition testimony of Brent Jones (NHM's 30(b)(6) designee), Kevin Jones, and Ron Hewes is to the effect that Jones was directly involved in the safety of the house hauler. His actions were to prevent pulling utility poles down that could impact the house, truck, people, and other property. Because a house was the freight, and Jones' actions had a direct effect on that freight he could reasonably be considered a freight handler, one of the specifically mentioned inclusions.

In contrast to the specific intention to include as employees *every individual* who was directly affected motor vehicle safety, the provision makes a general statement that temporary employees are not included in the employee category. The prior statements have made plain that everyone affecting vehicle safety is **already specifically included in that category**. The broader, general statement about temporary employees should not trump the specific inclusion of every individual who affects vehicle safety.

This Court has applied the general rule that specific terms take precedence over general terms in the following case:

> [A]n interpretation of paragraph 8 in the manner suggested by Reyhani would conflict with the more specific provisions of paragraph 9(b) which relates specifically to the future development of Phases 2 and 3 of the regime. The purpose of all rules of contract construction is to ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof. *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 232 S.E.2d 728 (1977). Documents will be interpreted so as to give effect to all of their provisions, if practical. 17A Am.Jur.2d *Contracts* § 385 (1991).

Reyhani v. Stone Creek Cove Condominium II Horizontal Property …, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997).

The specific mention of "all individuals [whose work] affects motor vehicle safety" is obviously a statement of the intent of the drafters, which, as Reyhani holds, is the ultimate purpose for all rules of construction. *See also*, Kwok v. Delta Air Lines, Inc., ___Fed. Appx. ___, 2014 WL 4178199 (11th Cir. 2014) ("[u]nder general rules of contract construction, a limited or specific provision will prevail over one that is more broadly inclusive"); Home Instead, Inc. v. Florance 721 F.3d 494, 499 (8th Cir. 2013) ("Where general and specific terms in a contract may relate to the same thing, the more specific controls") (citation omitted).

The trial court's holding that the broad, general statement regarding temporary workers trumps the specific statement about all individuals whose work directly affects motor vehicle

safety is incorrect. It does not look at the purpose and intention of the whole policy, does not look at the specific intention and rationale for creating a special category for all individuals whose work directly affects safety, and does not follow the general – and our State's – rules for construing exact and specific terms in a contract vis-à-vis general terms. The lower court's holding should be reversed because Kevin Jones' work caused him to have a direct effect on the safety of the house-hauling truck.

III. THE TRIAL COURT'S ORDER AND RESPONDENT'S BRIEF DO NOT ACKNOWLEDGE LIKELY ADVERSE CONSEQUENCES OF THE ORDER.

This is not simply an academic "parade of horribles"; it is a realistic assessment of what, given the pressures on small businesses, will result if such a decision creates a weak spot that is likely to fail under pressure.

Second, the order creates an unfair situation for insurance companies, which have tailored general liability policies not to replace or be an alternative to workers' compensation. They have charged premiums based on the belief that the general liability policies will not provide coverage for injuries to employees. Their expectation is that their intention regarding such policies – which is understood and consented to by insureds – will be honored by courts. If that expectation is thwarted by courts, insurers will find it necessary to take action. One such action is to raise premiums. Another such possibility is to stop selling policies in jurisdictions that no longer consider that the intention for liability policies is to cover legal liabilities to *third parties*, not employees.

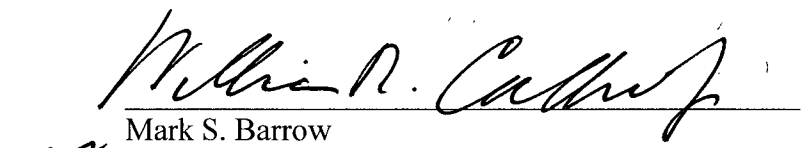
CONCLUSION

The trial court's order should be reversed. It did not take cognizance of the purpose of general liability policies. It incorrectly held that a co-worker of Jones could "furnish" him to

NHM, though he had no control or authority over Jones. It incorrectly held that Jones was furnished by Johnson, even though the "furnishing" was in no way accomplished until Hewes hired Jones. The lower court was likewise in error in holding that Jones was a "temporary employee" even though his duties caused him to have a direct effect on the safety of a commercial motor vehicle – which previously and specifically made him an employee under the policy. Finally, the trial court failed adequately to contemplate and consider the adverse effects of *de facto* turning a general liability policy into an employer's liability policy or workers compensation insurance based on a friends' bringing Jones to be interviewed for a job by Hewes. The trial court's order of December 30, 2013, should be reversed.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



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September 23, 2014

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

Canal Insurance Company,.....Appellant,

v.

National House Movers, L.L.C.;
Kevin E. Jones; David Black;
Ron Hewes; and Brent Jones.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

September 23, 2014

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PROOF OF SERVICE

I certify that I have served Appellant's Final Brief and Final Reply Brief on National Home Movers, L.L.C.; David Black; Ron Hewes; and Brent Jones, by depositing a copy of each 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 each 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 24, 2014

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