

2012-213425

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SCWCC File No. 0719222

Gregory A. Collins  
(deceased), Employee, Claimant ..... Respondent,  
v.  
Seko Charlotte and Nationwide Mutual  
Ins. Co. .... Petitioners,  
v.  
West Expedited & Delivery Service, Inc., ..... Defendant,  
v.  
Seko Worldwide and Federal Ins. Co., ..... Defendants,  
v.  
Uninsured Employers Fund, ..... Respondent.

APPENDIX  
VOL. I

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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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SCWCC File No. 0719222

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Gregory A. Collins (Deceased), .....Claimant/Respondent,

v.

West Expedited & Delivery Service, Inc., Seko Charlotte, Inc. and Nationwide Mutual Insurance Co., Seko Worldwide, LLC and Federal Ins. Co., and South Carolina Workers' Compensation Uninsured Employers' Fund..... Defendants,

Of Whom,

Seko Charlotte, Inc. and Nationwide Mutual Insurance Co. are ..... Respondents,

and

South Carolina Workers' Compensation Uninsured Employers' Fund is .....Appellant.

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RECORD ON APPEAL

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APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO: 0719222

GREGORY A. COLLINS (DECEASED),

EMPLOYEE,  
CLAIMANT/APPELLANT;

vs.

SEKO CHARLOTTE AND  
NATIONWIDE MUTUAL INS. CO.,

DEFENDANTS/APPELLANTS

vs.

WEST EXPEDITED & DELIVERY SERVICE,  
INC.,

DEFENDANT/RESPONDENT

vs.

SEKO WOLDWIDE AND FEDERAL  
INS. CO.,

DEFENDANTS/RESPONDENTS

vs.

UNINSURED EMPLOYERS FUND

DEFENDANTS/RESPONDENTS.

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Appellate Panel Review held in  
Columbia, South Carolina on October 26, 2010

Appellate Panel Decision and Order  
Filed 1/24, 2011.

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**APPEARANCES:**

Claimant/Appellant represented by Linda B. McKenzie, Esquire, of Greenville, South Carolina.

Defendants/Appellants Seko Charlotte and Nationwide Mutual Ins. Co. represented by A. Mundi George, Esquire, of Columbia, South Carolina.

Defendant/Respondent West Expedited & Delivery Service, Inc. represented by Brian A. Martin of Greer, South Carolina, did not appear for Full Commission oral arguments.

Defendants/Respondents Seko Worldwide and Federal Ins. Co. represented by Zach Smith of Greenville, South Carolina.

Defendant/Respondent Uninsured Employers' Fund represented by Timothy B. Killen of Columbia, South Carolina.

### STATEMENT OF THE CASE

A hearing was held before the Honorable David W. Huffstetler on May 12, 2010 in Greenville, South Carolina. By Order dated June 24, 2010, Commissioner Huffstetler Ordered that Seko Charlotte, Inc. was the statutory employer, and Nationwide Insurance Company as carrier was obligated to pay the Claimant's dependents 500 weeks of compensation. The amount payable was apportioned 50 percent to the Decedent's wife and 50 percent to the Decedent's son, Joshua C [REDACTED]. The Commissioner also Ordered that Seko Charlotte maintained the right to seek reimbursement from West Expedited and Delivery Service for any benefits paid under the Act.

In reaching his Order, the single Commissioner found and ruled as follows:

### FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers Compensation Act.
2. West Expedited and Delivery Service is the uninsured employer. It is found that at the time of the accident West had four or more employees and therefore was subject to the Workers' Compensation Act.
3. West Expedited and Delivery Service as the uninsured employer had in 1974 elected to obtain Workers Compensation insurance and become subject to the Act. West in 1994 elected to cease paying for their Workers Compensation insurance but failed to follow the provisions of the Workers Compensation Act as to withdrawal and therefore continued to operate under the Act.
4. That Seko Charlotte, Inc. was the statutory employer of the Claimant and Nationwide is their workers compensation carrier.
5. At the time of the decedent's fatal injuries, he was the statutory employee of Seko Charlotte, Inc. The Claimant's direct employer was engaged by Seko Charlotte, Inc to make interstate deliveries. Though Seko Charlotte, Inc employed drivers of its own, it subcontracted its interstate deliveries through West and operations like West. Because its business was national (and worldwide), such interstate deliveries are an integral and necessary part of Seko Charlotte Inc business. Accordingly, in order to remain a viable business with its unique purpose, it is necessary for Seko Charlotte to

subcontract its interstate deliveries. ("I would say so, yeah. Every part of business that we do is important to us." Deposition of Ron Burks, p. 32-33 (Fund's APA, p 79-80); "So, yeah, we needed to make that delivery, if we want to keep in business." Deposition of Ron Burks, p. 33 (Fund's APA p. 80)). Accordingly, the requirements for a statutory employment relationship were created here. See Voss v. Ramco, Inc. 325 SC 560, 482 SE2d 582 (Ct. App 1997).

6. The South Carolina Uninsured Employers Fund and Seko Worldwide insured by Federal Insurance Company are without liability in this case due to Seko Charlotte, Inc. being the statutory employer and having Workers Compensation insurance through Nationwide.
7. The Claimant herein did not deviate from the most direct route to return him to South Carolina. There is no allegation or evidence that the Claimant was, at any part of his trip, engaged by any employer other than the employer who engaged him on the first leg of his trip. As such, because the Claimant was a "traveling employee," he was within the course of his employment during the return leg of his trip, which was when he suffered his fatal injuries.
8. That by presumption of the statute and by the facts Mr. Collins left two whole dependants, his wife, Crystal Collins and his minor son, Joshua C [REDACTED]
9. That the Claimant left a partial dependant stepdaughter, Destiny L [REDACTED]. However, under Workers Compensation law the wholly dependant wife and son take to the exclusion of the partially dependant stepdaughter. Crystal Collins was not directly asked whether Destiny's father failed to make child support payments at the time of the Claimant's death in 2007. She is the only witness who could definitively answer that question. It would be speculative for this commissioner to make a finding that Destiny L [REDACTED] was wholly dependent upon the Claimant at the time of his death.
10. That the Claimant's average weekly wage was \$641.78 thereby making his weekly compensation rate of \$427.87.

#### CONCLUSIONS OF LAW

Accordingly, as provided by the South Carolina Code of Laws, 1976, as amended, it is the determination of this Commissioner that:

1. The Claimant sustained a fatal injury arising out of and in the course of his employment as defined by S.C. Code §42-1-160.
2. At the time of the accident the Claimant had an average weekly wage of \$641.78 thereby making his weekly compensation rate of \$427.87 as defined by §42-1-140.
3. At the time of his fatal accident the Claimant was an employee of West Expedited and Delivery Service as set forth in SC Code Ann. §42-1-130.

4. At the time of the accident and in the year preceding pursuant SC Code Ann §42-1-360 the employer, West Expedited and Delivery Services was subject to the Workers Compensation Act.
5. S.C. Code Ann. § 42-1-410 is applicable in governing statutory employment and this section provides that; "When any person . . . referred to as "contractor," contracts . . . with any other person . . . for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if that workman had been immediately employed by him."
6. Under the Statutory Employment Doctrine, any employee of a subcontractor may look to an upstream employer for benefits. The effect of the statutory employment provisions of the Workers' Compensation Act is to impose absolute liability upon the general contractor even though it was not the immediate, direct or actual employer of the injured claimant.
7. The analysis used to determine whether the activity of a South Carolina Claimant is sufficient to qualify him as a statutory employee of the alleged statutory employer(s) is based upon a three-part test. The three-parts are: (1) whether the activity is an important part of the contractor's or owner's trade, business, or occupation; (2) whether the activity is a necessary, essential, and integral part of the contractor's trade, business, or occupation; or (3) whether the identical activity has been previously performed by the contractor's employees. *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997). It is well settled that 'traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.' Arthur Larson, *Larson's Worker's Compensation Law*, § 14.01 (Lexis-Nexis 2004). However, this general rule is subject to challenge when an injury occurs while the employee has deviated from his business route or purpose. *Hall v. Desert Aire, Inc.*, 656 S.E.2d 753, 762 (S.C. App. 2007), 376 S.C. 338, 357 (emphasis added). There is no evidence that Mr. Collins deviated from his purpose or route.
8. The law of South Carolina is clear and well established as to the higher tier employers right to indemnity through the Claimant's general employer and this right may not be abrogated.
9. Pursuant to SC Code §42-1-440, "when the principle contractor is liable to pay compensation under any of the sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of such sections or from an intermediate contractor, and have a cause of action therefore."
10. A principle contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractors as defendants or codefendants.
11. Pursuant to *Miller v. Lawrence Robinson Trucking* 333 SC 576, 510 SE 2d 431 (Ct. App. 1998), a "contractor who is liable to pay compensation under the statutory employer doctrine is entitled to indemnity from the workers immediate employer."
12. The case of *Adams v. Texfi Industries*, 320 SC 213, 464 SE 2d 109 excludes stepchildren from the presumption of whole dependency.

13. Section 42-9-130 awards benefits to whole dependents to the exclusion of partial dependents.

Within the statutory period, counsel for the Defendants Seko Charlotte and Nationwide Mutual Ins. Co. and the Claimant each filed an Application for Review in the case setting forth their reasons, copies of which were furnished to all interested parties, prior to oral arguments presented before the Appellate Panel on October 26, 2010.

Seko Charlotte submitted an appeal, seeking an Order finding that they were not the Claimant's statutory employer at the time of the accident because they had no continuing contract, control, or any other relationship with Claimant at the time of his accident. They pointed out that West Expedited (Claimant's Employer) was paid mileage one way and had no continuing interests for a return trip. At the time of the accident, Claimant had already returned to the exclusive control of his Employer. As such, Seko Charlotte asserted that West Expedited and the Uninsured Employers Fund were responsible for payment of the Claimant's benefits under the Act. Seko Charlotte generally took exception to the Single Commissioner's discussion, Findings of Fact 1, 4 5, 6, 7, Conclusion of Law 7, and the Commissioner's Order.

We Agree.

Claimant also submitted a timely appeal seeking an Order finding that the proceeds of the Award were apportioned incorrectly. The Claimant asserts that Destiny L [REDACTED] was a totally dependent step-child and should be entitled to benefits. The Claimant asserts that the proceeds should be apportioned with 50 percent to Claimant's wife, 25 percent to the Claimant's son, Joshua C [REDACTED], and 25 percent to the Claimant's step-child, Destiny L [REDACTED].

We Agree.

Neither West Expedited & Delivery Service, Inc., the Uninsured Employers' Fund, nor Seko Worldwide, LLC have appealed any issues with the Hearing Commissioner's Decision and



Order. Seko Worldwide, LLC did, however, request that they be permanently dismissed from this matter with prejudice. The Uninsured Employers' Fund and the Claimant took the position that the single Commissioner's Order finding Seko Charlotte liable as a statutory employer should be upheld.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In the appellate review, the Appellate Panel shall, pursuant to Section 42-17-50 (1985), review the award, weigh the evidence that was presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, we hereby Reverse the Decision and Order of the Single Commissioner and institute the following Order.

#### FACTS OF THE CASE

The facts of this case are fairly straightforward. Claimant was hired by Morris West to drive a van and operate as an employee of Mr. West's company which is West Expedited and Delivery Services, Inc. Seko Charlotte contracted with West Expedited to make an interstate delivery. As a result, Claimant was sent to Ina Bearing Company in Spartanburg, SC on September 7, 2007 to pick up parts and deliver them to Wauwatosa, Wisconsin. As part of the contract, Seko Charlotte contracted to pay for mileage only one way and had no continuing interest, right, or exercise of control over the Claimant once the delivery was complete. Once the delivery was accomplished, West Expedited regained the exclusive right of control over the employee.

During the course of the trip back to West Expedited, Claimant was in an accident which resulted in his untimely death. Claimant is survived by his wife, Crystal Collins, child, Joshua C [REDACTED], and step-child, Destiny I [REDACTED].

#### DISCUSSION

- I. THE SINGLE COMMISSIONER ERRED IN FINDING SEKO CHARLOTTE WAS THE CLAIMANT'S STATUTORY EMPLOYER AT THE TIME OF HIS ACCIDENT; WHERE THE GREATER WEIGHT AND PREPONDERANCE OF THE EVIDENCE SHOWS THE CLAIMANT RETURNED TO THE EXCLUSIVE CONTROL OF HIS EMPLOYER, WEST EXPEDITED, AT THE TIME OF THE ACCIDENT.

This is a case of first impression. It is apparent that a statutory employment relationship was created with Seko Charlotte when the Claimant picked up the load in Spartanburg, SC; however, it is also clear that Seko Charlotte did not maintain the degree of control necessary to continue an employment relationship on the return trip. There does not appear to be any prior case law in South Carolina relating to whether a statutory employer remains liable despite completion of all aspects of the employment contract and return of all control over the employee to the primary employer.

**The Claimant was not in the course and scope of employment with Seko Charlotte at the time of his accident**

Seko-Charlotte admittedly did business with West Expedited encompassing a delivery to the Milwaukee, Wisconsin area; however, Seko-Charlotte denies that it is a proper party under the Act. Importantly, at the time of the accident Claimant was under the control of his primary employer, West Expedited & Delivery Service.

Prior to the completion of the delivery, Claimant was under the control of Seko-Charlotte as to the details and deadlines related to his Wisconsin delivery. Upon completion of this task, Claimant returned to the exclusive control of West Expedited & Delivery Service. When this

separate identification can clearly be made, the employer who retained control over the Claimant at the time of injury should be held exclusively liable.

“Under settled law, the determination of whether a claimant is an employee focuses on the issue of control, specifically whether the purported employer had the right to control the claimant in the performance of his work. [Citations omitted]. In evaluating the right of control, the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. [Citations omitted].” Wilkinson v. Palmetto State Transportation Co., 382 S.C. 295, 676 S.E.2d 700 (2009). These factors “should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor.” Id.

#### *1. Direct Evidence of the Right of Exercise or Control*

It is clear from the facts of this case that Seko-Charlotte exhibited no right or exercise of control over the Claimant at the time of the injury. Seko-Charlotte had no right to determine the means and methods of Claimant’s services to this regular employer. Even though Seko-Charlotte contracted with the Claimant’s Employer for the assignment, their control over the Claimant ended as soon as the delivery was made. The Claimant’s Employer exercised complete control over the means of travel and methods of performing the return trip. Seko-Charlotte had no input on when Claimant should return home, whether he should pick up another load, where he should report to, what route he should take, how to complete his task, or any other measure of control. Furthermore, Claimant was returning to South Carolina under the direction of West Expedited to perform additional work for West Expedited; Claimant was not returning with even

an expectation of performing additional work for Seko Charlotte. Claimant was returning to South Carolina for his Employers' benefit, not Seko Charlotte's.

## *2. Furnishing of Equipment*

The Claimant was driving his Employer's truck at the time of his accident (not Seko-Charlotte's); therefore, Seko-Charlotte had no involvement in the furnishing of equipment.

## *3. Method of Payment*

Seko-Charlotte had no control over the method the Claimant would be paid. The Claimant's contract with his Employer was outside the scope of this delivery or whether a return haul would be taken. Seko-Charlotte took no part in any business process following the delivery and was completely disinterested in whatever means, methods, or other jobs the Claimant might take.

## *4. Right to Fire*

Finally, Seko Charlotte had no right to fire the Claimant at the time of his accident. The job was over and there was no expectation of additional trips at the time. Seko Charlotte had absolutely zero vested interest in whether the Claimant took instructions from his Employer or even continued to perform the job, much less if he did it well, or whether he should be fired.

Viewing the Wilkinson factors neutrally between the parties, it is clear that no employment relationship existed between the Claimant and Seko-Charlotte at the time of the accident. Therefore, at the time of the accident, the Claimant could not be considered a covered employee of Seko-Charlotte under the Act.

## *Traveling Employee/The Going and Coming Rule*

"As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his

employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment." Sola v. Sunny Slope Farms, 244 S.C. 6, 14, 135 S.E.2d 321, 326 (1964); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998); McDaniel v. Bus Terminal Rest. Mgmt. Corp., 271 S.C. 299, 247 S.E.2d 321 (1978); Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942); Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000).

The South Carolina Supreme Court has carved out five exceptions to the going to and coming from rule. The first four were enumerated in Sola:

- (1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
- (2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
- (3) The way used is inherently dangerous and is either a) the exclusive way of ingress and egress to and from his work; or b) constructed and maintained by the employer; or

~~(4)~~ That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

The 5<sup>th</sup> exception is the "special errand doctrine" where "the injury is sustained by the employee while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972).

Taking the above factors in order:

- 1) At the time of the injury, Claimant's means of transportation was provided by his general employer, West Expedited & Delivery Service. Also, Seko-Charlotte only paid on a per-mile basis for the run to Wisconsin, not the return trip. Therefore, any compensation received for Claimant's labor at the time of the injury was solely derived from his general employer.
- 2) At the time of the accident, Claimant was no longer charged with any duty by Seko-Charlotte, their interest in the Claimant ended at the time he made the delivery.

- 3) The route used was apparently a common interstate route and not inherently dangerous. Even if it were, Seko-Charlotte no longer had control over Claimant's route.
- 4) The accident did not happen in close proximity to Seko-Charlotte or the prior delivery for which the Claimant was hired.
- 5) The Claimant was not engaged in a special errand for Seko-Charlotte, any directives he was following at the time of the accident would have originated from his general employer, West Expedited & Delivery Service.

It is clear from the above analysis that the Claimant was no longer an employee within the scope of the "going and coming rule."

The Single Commissioner included in his Order that:

It is well settled that 'traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.' Arthur Larson, Larson's Workers' Compensation Law, § 14.01 (Lexis-Nexis 2004). However, this general rule is subject to challenge when an injury occurs while the employee has deviated from his business route or purpose. Hall v. Desert Aire, Inc., 656 S.E.2d 753, 762 (Ct. App. 2007). There is no evidence that Mr. Collins deviated from his purpose or route.

(Finding of Fact 7). First, whether the Claimant deviated from his return trip is immaterial to the analysis. Seko Charlotte had no continuing control or interest in the Claimant once the delivery was made. Seko Charlotte paid for mileage one-way to the Milwaukee area, if the Claimant chose to return to South Carolina via Alaska it wouldn't make any difference to Seko Charlotte because its interest in the transaction was complete. West Expedited is the only entity that had control over the Claimant and has an interest in the Claimant's route of return.

Hall deals with the continuance of an "employee" relationship, not a "statutory employee" relationship. This Claimant continued his "employee" relationship with West Expedited; however, the "statutory employee" relationship with Seko Charlotte had ended. In Hall and all other South Carolina traveling employee cases the liable party, without exception, continues to have control over the employee at the time of their accident.

Control is the main factor. If the employee is outside of the control of an employer, an accident while traveling is not attributable to that employer. This is why exceptions to the rule involve deviation (i.e. loss of control by the employer). At the time of the accident, Seko Charlotte had no continuing control over the Claimant, while West Expedited maintained exclusive control over him. Therefore, West Expedited and the Uninsured Employers Fund are the proper parties liable for the accident.

The Single Commissioner's Order and the Uninsured Employers Fund read Hall to stand for a theory that Seko Charlotte's interest in the delivery is not complete until the driver returns home, no matter what the parties bargained for and no matter what type of employment relationships were in existence at the time of the accident. The single Commissioner indicated that Seko Charlotte "made an unfortunate decision by contracting with a company who failed to have Workers' Compensation Insurance." (Order at 9-10). However, Hall does not address whether a statutory employer relationship terminates upon completion of the contract or bargained for task.

In the instant case, not only did Seko Charlotte no longer have the necessary control over either the Claimant or West Expedited to qualify as a statutory employer for the return trip, Seko would have had to enter into a second contract with West Expedited in order to gain such control. Under the single Commissioner's theory, the return trip was still part of the contract with Seko Charlotte. If this were true, Seko Charlotte would have had the ability to have Claimant haul a load back to South Carolina; in reality, Seko Charlotte would have had to pay a separate fee to transport something back to South Carolina. The Claimant's representative and West Expedited both admit that Seko Charlotte only paid for a one way trip and Claimant was not carrying a return load.

While it may have been a poor decision to contract with someone who did not have insurance, Seko Charlotte would have only been liable for the Claimant's injury if the accident happened prior to the completion of the contract. It would be an unduly harsh result to find that a former statutory employer can still be held liable for accidents after completion of its contract and after it had given up all control over the employee in question.

Even if Seko Charlotte could be judged to have continuing control over the Claimant at the time of his accident, we note again that Claimant was not paid by Seko Charlotte for this trip. Any compensation received for this time and mileage would be from the primary employer. With regard to Seko Charlotte, at best, Claimant would have been a gratuitous employee at the time of his death. In Kirksey v. Assurance Tire Co. the Court specifically held that gratuitous workers are not employees under a contract of hire. Kirksey, 314 S.C. 43, 45, 443 S.E.2d 803, 804 (1994).

#### **Once a Statutory Employer's Control Over an Employee Ends, the General Employer is Solely Liable**

Any acts Claimant engaged in after the delivery was complete were not "consistent with the contract of hire" because the contract paid purely for mileage one-way, and Claimant had returned to the exclusive control of West Expedited & Delivery Service. South Carolina case law is without an example of an employee remaining a statutory employee despite completion of their task and lack of evidence of control.

The statutory employer case law in South Carolina all deals with employees actively involved in their contracted duties. For example, in Carrier v. Westvaco, an employee of a subcontractor, (who was injured while standing on a pier waiting to have his truck loaded), was acting in the course of his employment, as his waiting was consistent with his contract of hire and was incidental to his employment as a truck driver. Carrier v. Westvaco, 806 F.Supp. 1242



(1992). In Carrier, the truck driver had clearly not completed his run and part of the process of transporting freight is waiting for a truck to be loaded. Additionally, in the case law the Single Commissioner cited (Voss v. Ramco), the statutory employee remained in the course and scope of Ramco's business at the time of his injury. Voss, 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997). In the instant case, however, the Claimant did complete his run and had no further duties, obligations, or activities related to Seko-Charlotte.

**Georgia and North Carolina Case Law Supports a Finding Claimant was No Longer the Statutory Employee of Seko Charlotte at the Time of the Accident**

Because South Carolina case law does not address whether statutory employment continues for a traveling employee once the job is completed and the statutory employer has no further exercise or right of control, it is helpful to examine the law of our neighboring states.

The Courts in Georgia have addressed a similar situation and agree that without a continuing right of control the statutory employment relationship ends upon completion of the delivery. Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734, 741 (Ga. 1980). In Farmer, Hames Trucking contracted with a small delivery service to make an out of state shipment. The only control Hames exercised over the shipment was providing the destination. The Georgia Commission initially held Hames responsible, but on appeal determined that "Hames Trucking Company neither had the right to nor exercised any control over Farmer on his return trip to Georgia." The Georgia Supreme Court would agree, stating, "the terms of the equipment lease between Martin and Hames Trucking Company clearly show that Hames Trucking Company exercised no control over Martin's drivers regarding return hauls of regulated commodities and Hames Trucking Company thus was not an employer of Farmer at the time of the accident." [emphasis added]).

This case supports a finding that once a delivery is complete, if there is no control remaining on the return trip, then there is no statutory employment. The Court held that "the proper test to be applied in determining the existence of an employee-employer relationship is "whether the alleged employer had the right to control the time, manner, and method of performance of the alleged employee's work duties, or whether the alleged employer assumed such control, regardless of whether he had the right to do so." Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734, 736 (Ga. 1980).

Similarly in North Carolina, "The crucial test in determining whether a servant furnished by one person to another becomes the employee of the person to whom he is loaned is whether he passes under the latter's right of control with regard not only to the work to be done but also to the manner of performing it... 'Where one is engaged in the business of renting out trucks, automobiles, cranes or any other machine, and furnishes a driver or operator as part of the hiring, there is a factual presumption that the operator remains in the employ of his original master, and, unless that presumption is overcome by evidence that the borrowing employer in fact assumes control of the employee's manner of performing the work, the servant remains in the service of his original employer.'" Lewis v. Barnhill, 267 N.C. 457, 465 (N.C. 1966). While Seko Charlotte may have exhibited the necessary measure of control for the negotiated one-way delivery, it did not maintain such control once the delivery was complete. West Expedited, as Claimant's general employer, maintained control of its employee throughout and Claimant returned to its exclusive control upon making his delivery.

The greater weight and preponderance of the evidence shows the Claimant was under the exclusive control of West Expedited (an uninsured employer) and, therefore, the Uninsured Employers Fund was the responsible party

The Claimant is not without recovery as a result of his accident. Despite the fact that Seko Charlotte was no longer his statutory employer at the time of his accident, Claimant was still employed by West Expedited and still furthering its business interests as a necessary result of making the return trip under their control. West Expedited did not maintain workers' compensation coverage; however, the Single Commissioner Ordered that West Expedited was subject to the Act at the time of the accident. This Finding was not appealed by West Expedited or the Uninsured Employers Fund. As a result, the Uninsured Employers Fund is responsible for payment of the deceased Claimant's benefits and should remain a party to the claim pursuant to §42-7-200.

II. THE SINGLE COMMISSIONER ERRED IN FINDING CLAIMANT'S STEP-CHILD, DESTINY LEDBETTER, WAS NOT THE CLAIMANT'S DEPENDENT AT THE TIME OF HIS ACCIDENT; WHERE THE GREATER WEIGHT AND PREPONDERANCE OF THE EVIDENCE SHOWS THE CLAIMANT'S STEP-CHILD WAS A TOTAL DEPENDENT.

At the initial hearing, Crystal Collins testified that she is the mother of both Joshua C[REDACTED] and Destiny L[REDACTED]. Joshua was two and Destiny ten at the time of the hearing. She testified that she was married to Greg Collins and that Destiny is his step-daughter. She further stated that she was divorced from Destiny's father and that he did not provide any support for Destiny. She further testified that she was totally dependent upon Claimant for support as was Joshua and Destiny. The only other evidence offered in this claim with regard to dependency was the dependency investigation dated September 22, 2009. It verifies that Crystal Collins and Claimant were married on July 14, 2007. Claimant was the biological father of Joshua C[REDACTED]. Crystal Collins had previously been married but that marriage ended in divorce. The dependency investigator stated that Ms. Collins told him that Mr. Collins' step-daughter, Destiny

L [REDACTED], and the decedent's son, Joshua C [REDACTED], were financially dependent on Claimant at the time of his death.

Even though there was an Order of Support for the natural father the testimony was that he did not support Destiny. Crystal Collins testified that she was married to Claimant at the time of his death. She said they were living together along with her son, Joshua, and daughter, Destiny. She was asked if she was divorced from Destiny's father at which time she answered, "yes, ma'am." Thereafter, she was asked, "Does Destiny's father support her at all?" She answered, "No, ma'am." She was asked, "Was she totally dependent upon Greg for her support?" She answered, "Yes, ma'am." There was no cross-examination as to this testimony or any evidence that the mother was not truthful in her statement. Her statement was supported by the dependency evaluation. The evaluation indicates that Claimant's mother, who would have been the grandmother of Joshua and the step-grandmother to Destiny, told the investigator that both of the children and Crystal were dependent upon her son at the time of his death.

Throughout the hearing, no one contested the claim that the step-daughter was dependent. There were, by the time of the hearing, at least four defense attorneys questioning the parties. None of the defendants took the position that the step-daughter was not wholly dependent, nor cross-examined anyone as to the dependency of Crystal Collins as the widow, Joshua C [REDACTED] as the natural dependent child, or Destiny L [REDACTED] as the wholly dependent step-child.

Therefore, we reverse the portion of the Order finding that Destiny L [REDACTED] is not entitled to benefits and find that benefits should be awarded one half to Crystal Collins as widow and the other half divided equally between Joshua C [REDACTED] and Destiny L [REDACTED] as wholly dependent children.

We find that the greater weight and preponderance of the evidence rejects the single Commissioner's findings and conclusions as stated in the discussion above. Based on a review of the file, the evidence presented in the parties' briefs and oral argument, the Appellate Panel Reverses the Single Commissioner's Order dated June 24, 2010 and the following are made as:

#### FINDINGS OF FACT

Based upon the oral arguments, APA Submissions, and record on appeal, the Appellate Panel makes the following findings of fact:

1. The South Carolina Workers' Compensation Commission has jurisdiction of this case.
2. Claimant has an average weekly wage of \$641.78 with a corresponding compensation rate of \$427.87.
3. The Claimant was an employee of West Expedited & Delivery Service.
4. West Expedited & Delivery Service was subject to the Act and an uninsured employer at the time of the Claimant's death.
5. Seko Charlotte contracted with West Expedited to make an interstate delivery. As a result, Claimant was sent to Ina Bearing Company in Spartanburg, SC on September 7, 2007 to pick up parts and deliver them to Wauwatosa, Wisconsin. As part of the contract, Seko Charlotte contracted to pay for mileage only one way and had no continuing interest, right, or exercise of control over the Claimant once the delivery was complete. Once the delivery was accomplished, West Expedited regained the exclusive right of control over the employee.
6. It is apparent that a statutory employment relationship was created with Seko Charlotte when the Claimant picked up the load in Spartanburg, SC; however, it is also clear that Seko Charlotte did not sustain the degree of control necessary to maintain an employment relationship on the return trip.
7. The Claimant was not under the course and scope of employment with Seko Charlotte at the time of his death. Viewing the Wilkinson factors neutrally between the parties (as required by case law), it is clear that no employment relationship existed between the Claimant and Seko-Charlotte at the time of the accident.
  - a. Seko Charlotte did not retain any right of exercise or control. Even though Seko-Charlotte contracted with the Claimant's Employer for the assignment, their control over the Claimant ended as soon as the delivery was made. The Claimant's Employer exercised complete control over the means of travel and

methods of performing the return trip. Seko-Charlotte had no input on when Claimant should return home, whether he should pick up another load, where he should report to, what route he should take, how to complete his task, or any other measure of control. Furthermore, Claimant was returning to South Carolina under the direction of West Expedited to perform additional work for West Expedited; Claimant was not returning with even an expectation of performing additional work for Seko Charlotte. Claimant was returning to South Carolina for his Employers' benefit, not Seko Charlotte's

- b. Seko Charlotte did not furnish any equipment.
  - c. Seko-Charlotte had no control over the method the Claimant would be paid and specifically was not paying Claimant or West Expedited for the return trip.
  - d. Seko Charlotte had no right to fire the Claimant at the time of his accident. The job was over and there was no expectation of additional trips at the time. Seko Charlotte had absolutely zero vested interest in whether the Claimant took instructions from his Employer or even continued to perform the job, much less if he did it well, or whether he should be fired.
8. Claimant's accident does not meet the requirements of the Going and Coming Doctrine as it relates to Seko-Charlotte; however, it does meet the requirements as it relates to West Expedited.
- a. At the time of the injury, Claimant's means of transportation was provided by his general employer, West Expedited & Delivery Service. Also, Seko-Charlotte only paid on a per-mile basis for the run to Wisconsin, not the return trip. Therefore, any compensation received for Claimant's labor at the time of the injury was solely derived from his general employer.
  - b. At the time of the accident, Claimant was no longer charged with any duty by Seko-Charlotte, their interest in the Claimant ended at the time he made the delivery.
  - c. The route used was apparently a common interstate route and not inherently dangerous. Even if it were, Seko-Charlotte no longer had control over Claimant's route.
  - d. The accident did not happen in close proximity to Seko-Charlotte or the prior delivery for which the Claimant was hired.
  - e. The Claimant was not engaged in a special errand for Seko-Charlotte, any directives he was following at the time of the accident would have originated from his general employer, West Expedited & Delivery Service.
9. The Claimant was a "traveling employee" as to West Expedited only. As the single Commissioner stated, "It is well settled that 'traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.' Arthur Larson, Larson's Workers' Compensation Law, § 14.01 (Lexis-Nexis 2004). However, this general rule is subject to challenge when an injury occurs while the employee has deviated from his business route or purpose. Hall v. Desert Aire, Inc., 656 S.E.2d 753, 762 (Ct. App. 2007)."

- a. Whether the Claimant deviated from his return trip is immaterial to the analysis. Seko Charlotte had no continuing control or interest in the Claimant once the delivery was made. Seko Charlotte paid for mileage one-way to the Milwaukee area; its interest in the transaction was complete. West Expedited is the only entity that had control over the Claimant and had an interest in the Claimant's route of return.
  - b. Hall deals with the continuance of an "employee" relationship, not a "statutory employee" relationship. This Claimant continued his "employee" relationship with West Expedited; however, the "statutory employee" relationship with Seko Charlotte had ended. In Hall and all other South Carolina traveling employee cases the liable party, without exception, continues to have control over the employee at the time of their accident.
  - c. Control is the main factor. If the employee is outside of the control of an employer, an accident while traveling is not attributable to that employer. This is why exceptions to the rule involve deviation (i.e. loss of control by the employer). At the time of the accident, Seko Charlotte had no continuing control over the Claimant, while West Expedited maintained exclusive control over him. Therefore, West Expedited and the Uninsured Employers Fund are the proper parties liable for the accident.
10. Under the single Commissioner's theory the return trip was still part of the contract with Seko Charlotte, if this were true Seko Charlotte would have had the ability to have Claimant haul a load back to South Carolina; in reality Seko Charlotte would have had to pay a separate fee to transport something back to South Carolina. The Claimant's representative and West Expedited both admit that Seko Charlotte only paid for a one way trip and Claimant was not carrying a return load.
  11. The Claimant is not without recovery as a result of his accident. Despite the fact that Seko Charlotte was no longer his statutory employer at the time of his accident, Claimant was still employed by West Expedited and still furthering its business interests as a necessary result of making the return trip under their control.
  12. Crystal Collins and Claimant were married on July 14, 2007. Claimant was the biological father of Joshua C[REDACTED] and stepfather of Destiny L[REDACTED]. Crystal Collins had previously been married but that marriage ended in divorce.
  13. The dependency investigator stated that Ms. Collins told him that Mr. Collins' step-daughter, Destiny L[REDACTED], and the decedent's son, Joshua C[REDACTED], were financially dependent on Claimant at the time of his death.
  14. Even though there was an Order of Support for the natural father the testimony was that he did not support Destiny.
  15. Crystal Collins testified that she was married to Claimant at the time of his death. She said they were living together along with her son, Joshua, and daughter, Destiny. She was asked if she was divorced from Destiny's father at which time she answered,

"yes, ma'am." Thereafter, she was asked, "Does Destiny's father support her at all?" She answered, "No, ma'am." She was asked, "Was she totally dependent upon Greg for her support?" She answered, "Yes, ma'am." There was no cross-examination as to this testimony or any evidence that the mother was not truthful in her statement.

16. Ms. Collins' statement was supported by the dependency evaluation. The evaluation indicates that Claimant's mother, who would have been the grandmother of Joshua and the step-grandmother to Destiny, told the investigator that both of the children and Crystal were dependent upon her son at the time of his death.
17. No one has contested the claim that the step-daughter was dependent and none of the defendants have taken the position that the Crystal Collins as the widow, Joshua C. [REDACTED] as the natural dependent child, or Destiny L. [REDACTED] as the wholly dependent step-child were not dependent at the time of the Claimant's death.
18. We find that Claimant's widow, Crystal Collins, is entitled to one-half of the proceeds of this claim and Claimant's child, Joshua C. [REDACTED], and step-child, Destiny L. [REDACTED] are each entitled to one-fourth of the proceeds.
19. The claims against Seko Worldwide, LLC and their carrier Federal Insurance Company/Chubb Group of Insurance Companies and the claims against Seko Charlotte and their carrier Nationwide Mutual Ins. Co. are hereby dismissed.

#### CONCLUSIONS OF LAW

Under the South Carolina Workers' Compensation Act and other applicable law, it is the determination and conclusion of the Appellate Panel that:

1. Pursuant to §42-1-140, West Expedited was Claimant's only employer at the time of the accident.
2. "Under settled law, the determination of whether a claimant is an employee focuses on the issue of control, specifically whether the purported employer had the right to control the claimant in the performance of his work. [Citations omitted]. In evaluating the right of control, the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. [Citations omitted]." Wilkinson v. Palmetto State Transportation Co., 382 S.C. 295, 676 S.E.2d 700 (2009). These factors "should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor." Id.
3. Pursuant to §42-1-400, Claimant was no longer a "statutory employee" of Seko Charlotte at the time of his accidental death.



4. Pursuant to §42-1-160, the Claimant sustained an injury by accident arising out of and in the course and scope of employment only with West Expedited.
5. "As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment." Sola v. Sunny Slope Farms, 244 S.C. 6, 14, 135 S.E.2d 321, 326 (1964); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998); McDaniel v. Bus Terminal Rest. Mgmt. Corp., 271 S.C. 299, 247 S.E.2d 321 (1978); Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942); Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000).
6. The South Carolina Supreme Court has carved out five exceptions to the going to and coming from rule. The first four were enumerated in Sola:
  - (1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
  - (2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
  - (3) The way used is inherently dangerous and is either a) the exclusive way of ingress and egress to and from his work; or b) constructed and maintained by the employer; or
  - (4) That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

The 5<sup>th</sup> exception is the "special errand doctrine" where "the injury is sustained by the employee while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972).
7. The Claimant was a "traveling employee" as to West Expedited only. It is well settled that 'traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.' Arthur Larson, Larson's Workers' Compensation Law, § 14.01 (Lexis-Nexis 2004). However, this general rule is subject to challenge when an injury occurs while the employee has deviated from his business route or purpose. Hall v. Desert Aire, Inc., 656 S.E.2d 753, 762 (Ct. App. 2007).
8. South Carolina case law is without an example of an employee remaining a statutory employee despite completion of their task and lack of evidence of control.

9. Georgia case law supports a finding that once a delivery is complete, if there is no control remaining on the return trip, then there is no statutory employment. "The board held that the proper test to be applied in determining the existence of an employee-employer relationship is "whether the alleged employer had the right to control the time, manner, and method of performance of the alleged employee's work duties, or whether the alleged employer assumed such control, regardless of whether he had the right to do so." Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734, 736 (Ga. 1980). (The terms of the equipment lease between Martin and Hames Trucking Company clearly show that Hames Trucking Company exercised no control over Martin's drivers regarding return hauls of regulated commodities and Hames Trucking Company thus was not an employer of Farmer at the time of the accident).
10. It is clear that any income Claimant received for the return trip was paid solely by West Expedited. Even if Seko Charlotte could be considered an employer at the time of the accident, they specifically did not pay for any part of the return trip. In Kirksey v. Assurance Tire Co., the Court specifically held that gratuitous workers are not employees under a contract of hire. Id.
11. Pursuant to §42-7-200, West Expedited was an uninsured employer at the time of the accident and, therefore, the Uninsured Employers' Fund is liable for compensation owed to the Claimant's dependents.
12. Pursuant to Adams v. Texfi Industries, the standard for determining the degree of dependency required in order for stepchildren to be deemed dependent under §42-1-70 is as follows: a dependent is one who looks to another for support and maintenance; one who is in fact dependent – one who relies on another for the reasonable necessities of life. Adams, 320 S.C. 213, 464 S.E.2d 109 (1995).
13. Pursuant to §42-1-70, Claimant's stepchild was dependent on the Claimant and meets the definition of "child."
14. Pursuant to §42-9-110, Claimant's surviving spouse and child are conclusively presumed to be wholly dependent. Therefore, the Claimant's wife, son, and step-daughter are all presumed to be whole dependents.
15. Pursuant to §42-9-290, the Claimant's whole dependents are entitled to 500 weeks of compensation in addition to burial expenses of \$2500.00. Such benefits are awarded in a one-half share to the Claimant's widow and one-quarter shares to each of Claimant's minor dependents.
16. Regulation 67-903 is applicable and sets forth the requirements of conducting a "good faith" investigation concerning dependency issues.

17. Pursuant to R. 67-902 and other applicable law, the Parties conducted a good faith dependency investigation and made a good faith effort to discover the Claimant's beneficiaries.

ORDER

IT IS THEREFORE ORDERED that, as an uninsured employer, West Expedited & Delivery Service, Inc.'s liability is the responsibility of the South Carolina Uninsured Employers Fund pursuant to the Act.

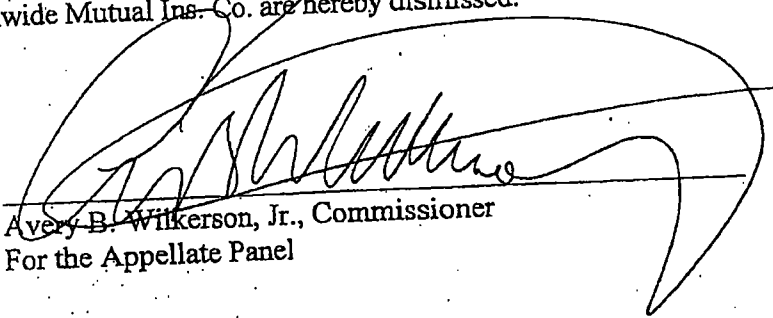
IT IS FURTHER ORDERED that the statutory employment relationship between Claimant and Seko Charlotte, Inc. and Nationwide Insurance Company did not extend beyond completion of the contracted for services and, at the time of the injury, Claimant was under the exclusive control of West Expedited & Delivery Service, Inc.

IT IS FURTHER ORDERED that the South Carolina Uninsured Employers Fund shall immediately pay to Crystal Collins, the decedent's wholly dependent widow, \$213.93 per week beginning September 8, 2007 and shall continue to pay her until such time as she has received 500 weeks compensation.

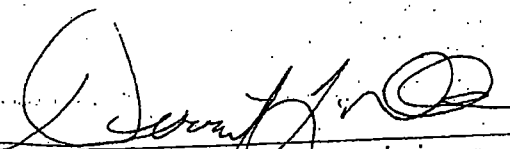
IT IS FURTHER ORDERED that the South Carolina Uninsured Employers Fund shall immediately pay to Joshua C. [REDACTED] through his Court appointed conservator \$106.97 per week beginning September 8, 2007 and shall continue to pay him until such time as he has received 500 weeks compensation.

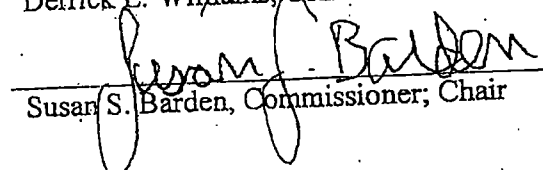
IT IS FURTHER ORDERED that the South Carolina Uninsured Employers Fund shall immediately pay to Destiny L. [REDACTED] through her Court appointed conservator \$106.97 per week beginning September 8, 2007 and shall continue to pay her until such time as she has received 500 weeks compensation.

IT IS FURTHER ORDERED that the claims against Seko Worldwide, LLC and their carrier Federal Insurance Company/Chubb Group of Insurance Companies and the claims against Seko Charlotte and their carrier Nationwide Mutual Ins. Co. are hereby dismissed.

  
Avery B. Wilkerson, Jr., Commissioner  
For the Appellate Panel

CONCUR:

  
Derrick L. Williams, Commissioner

  
Susan S. Barden, Commissioner, Chair

Dated: 1/24/11

#### CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 24 day of January, 2011  
By Valerie D. Decker

Administrative Assistant to the Commissioner

Timothy B. Kellers  
Mitchell K Byrd Jr.  
A. Mardi George  
Brian A. Martin  
Irvin H. Phelps III  
Linda Byars McKenzie

**SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER: 0719222**

Gregory Collins (deceased), )  
 )  
Employee/Claimant, )  
 )  
vs. )  
 )  
West Expedited Delivery Services, Inc., )  
Seko Worldwide, Federal Ins. Co., )  
Seko Charlotte, Nationwide Mutual Ins )  
Company, and Uninsured Employers Fund )  
 )  
Employers & Carrier/Defendants )  
\_\_\_\_\_ )

**DECISION AND ORDER**

**Hearing:**

Held in Greenville, South Carolina, on May 12, 2010

**Appearances:**

Claimant represented by Linda B. McKenzie Attorneys at Law,  
Greenville, South Carolina

West Expedited Delivery Services, Inc. represented by Brian A.  
Martin & Kenneth B. Southerlin, Attorneys at Law, Greer, South  
Carolina.

South Carolina Uninsured Employers Fund represented by  
Timothy B. Killen, Attorney at Law, Columbia, South Carolina.

Seko Worldwide and Federal Insurance Co. represented by  
Mitchell K. Byrd, Attorney at Law, Greenville, South Carolina

Seko Charlotte and Nationwide Mutual Ins. Co. represented by A.  
Mundi George, Attorney at Law, Columbia, South Carolina

**Purpose of Hearing:**

To determine issues as set forth in the pleadings and motions of all  
parties.

**Order:**

By Commissioner David Huffstetler,  
South Carolina Workers' Compensation Commission

ELECTRONICALLY FILED: June 24, 2010

## STIPULATIONS

1. The South Carolina Workers' Compensation Commission has jurisdiction of this case.
2. The parties stipulate that Greenville County is the proper venue.
3. An Order was signed by Commissioner Susan Barden appointing Crystal Collins as the Guardian Ad Litem for her children, Destiny D. L. [REDACTED] and Joshua E. C. [REDACTED]
4. The deceased employee had an average weekly wage of \$641.78 thereby giving him a weekly compensation rate of \$427.87.
5. The Claimant, Gregory Collins, died as a result of a motor vehicle accident on September 8, 2007 while returning from a delivery for West Expedited and Delivery Service (West).
6. The South Carolina Workers' Compensation Commission file with the exception of self serving declarations and unstipulated medical reports is made a part of the record.
7. That the transcript of the hearing on December 18, 2009 before Commissioner Barden is made a part of the record.

## APA SUBMISSIONS

### Claimant's Exhibits

|    |                                                                     |                  |       |
|----|---------------------------------------------------------------------|------------------|-------|
| 1. | License & Certificate of Marriage                                   | 7/14/07          | 1     |
| 2. | Birth Certificate-Joshua E. C. [REDACTED] and Destiny L. [REDACTED] | 9/25/07          | 2-3   |
| 3. | Certificate of Death                                                | 9/13/07          | 4     |
| 4. | Kentucky Police Traffic Report                                      | 9/9/07           | 5-11  |
| 5. | 2007 Employees 1096                                                 |                  | 12-15 |
| 6. | 2007 Employee W-2s                                                  |                  | 16-20 |
| 7. | 2007 Employer Quarterly Contribution & Wage Reports                 |                  | 21-28 |
| 8. | 2007 Payroll Summary                                                | 10/1/07-10/31/07 | 29-34 |
| 9. | Consent Agreement                                                   | 10/20/07         | 35-36 |

### Seko Charlotte, Inc. Defendant's Exhibits

|    |                                                                    |         |       |
|----|--------------------------------------------------------------------|---------|-------|
| 1. | Defendants' Memorandum of Law                                      | 4/30/10 | 1-7   |
| 2. | SC WCC coverage information for Seko Worldwide, Inc.               |         | 8-9   |
| 3. | Nationwide Mutual Ins. Co. policy for Ins for Seko Charlotte, Inc. |         | 10-48 |

- dba Seko Worldwide
4. Consent Agreement dated 11/20/07 with corresponding fine paid by West Expedited to WCC with check dated 11/20/07 49-50

**SC Uninsured Employers Fund**

1. Dependency Investigation & Attachments, SIU Services, Inc. 9/22/09 1-22
2. Seko documents received pursuant to Form 27 Rec'd 3/19/10 23-30
3. Deposition of Morris West 2/23/10 31-43
4. Claimant's Shipment tracking information from  
Seko Worldwide website: [www.skeoworldwide.com](http://www.skeoworldwide.com) Accessed 5-3-10 44-47
5. Deposition of Ron Burks 5/10/10 48-99

**West Expedited Delivery Services**

1. Employers' Payroll/Accounting Records 1/1/07-9/30/07 1-48

**EVIDENCE SUBMITTED AT HEARING**

1. Deposition of Morris West taken February 23, 2010
2. Hearing transcript of December 18, 2009
3. Deposition of Morris West taken May 21, 2008

**STATEMENT OF CASE**

This claim was initially filed alleging that the Claimant, Gregory Alan Collins, died as a result of a compensable accident arising out of and in the course of his employment on September 8, 2007 while an employee of West Expedited and Delivery Service, Inc (West). He alleged that he was an employee of West and that they had four or more employees during 2007 and therefore should have had Workers Compensation insurance.

Prior to the matter being heard by the Commission a Consent Agreement (Compliance File Number X070622) (APA 9) was entered into wherein Morris West acknowledged that since September 15, 1994 his company was operating without Workers Compensation Insurance in violation of §42-5-10 and §42-5-20 of the Act. He agreed to pay a fine in the amount of

\$1,825.00. (APA 9) Thereafter, through counsel Claimant requested a hearing to resolve the issue of compensability and whether West was operating with four or more employees.

The matter was scheduled for hearing December 18, 2009 in Columbia, SC before Commissioner Susan Barden. The case was called and testimony of Crystal Collins, widow of Gregory Collins, was taken, and testimony of Mr. Morris West began. During West's testimony a Motion to add a party was made. Thereafter, Commissioner Barden issued an Order granting the Motion to add Seko Worldwide, LLC and Federal Insurance Company as a party to the action. An objection had been entered as to the use of Mr. West's deposition taken May 21, 2008; the Commissioner ruled that after the party was added the deposition was admissible in further actions.

Seko Worldwide and Federal Insurance Company were thereafter made a party to the case. Through error both attorneys Mitchell Byrd and Mundi George appeared representing Seko Worldwide. It was then through depositions discovered that Gregory Collins, an employee of West Expedited and Delivery Services, Inc, was at the time of his fatal accident returning from making a delivery for Seko Charlotte Inc, and they are insured by Nationwide Mutual Insurance Company (Nationwide) (represented by Mundi George). Thereafter, a Motion was filed to add Seko Charlotte Inc. and Nationwide Mutual Insurance Company as a party. Seko Charlotte, Inc. consented to being added as a party and waived the 30 day notice of the hearing.

The facts in this case with regard to Mr. Gregory Collins and his fatal accident are fairly simple and not the primary issue of litigation. Mr. Collins was hired by Mr. Morris West to drive a van and operate as an employee of Mr. West's company which is West Expedited and Delivery Services Inc. As part of his employment he was sent to Ina Bearing Company in Spartanburg, South Carolina on September 7, 2007 to pick up parts and delivery them to



Wauwatosa, Wisconsin. After delivering the parts Mr. Collins was on his way home when he was killed in an automobile accident.

The issues in this case are several but the facts are fairly straight forward. Mr. Collins was killed while returning from a delivery. He was an employee of West Expedited and Delivery Services, Inc. West Expedited and Delivery Services, Inc was owned by Morris West. Mr. West through his company had contracted with Seko Charlotte. The evidence establishes that Mr. West was contacted by Seko Charlotte with a request to pick up parts at Ina Bearing in Spartanburg, South Carolina and delivery them to Wisconsin. Seko Charlotte is a franchise of Seko Worldwide. Mr. West contends that he had less than four employees and therefore was not subject to the Workers Compensation Act. Seko Charlotte contends that once Mr. Collins had made delivery to Wisconsin and was on the return trip to South Carolina he was no longer in the course and scope of the statutory employment, and that "the statutory employment relationship ended once the delivery was made and signed for." (TR pg 16) If this claim is found compensable because Mr. West had four or more employees then the issues are as to liability of each defendant and the dependency.

## ISSUES

1. **Is West Expedited and Delivery Services, Inc subject to the Workers Compensation Act?**

The determination of whether a Worker's Compensation Claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the Claimant in the performance of his work. In evaluating the

right of control, the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. Wilkinson v Palmetto State Transport, 382 S.C. 295, 676 S.E.2d 700

Morris West has owned his company (West) since 1974. He testified that in the year 2007 he, his wife, his daughter-in-law and Gregory Collins were the only people who received W-2's for tax purposes and the rest of his workers were paid by 1099's. He stated that he paid himself and his wife with W-2s based on the advice of his accountant. He told me "...to start doing that on me and my wife, just write us a check every week....That was for tax purposes really." (TR pg 39) He admitted that he worked running the business, taking the calls for deliveries and calling the drivers. He also testified that his wife either kept his books (at least writing checks and providing needed information to the accountant) or dispatched. (TR pg 40) After his wife developed health problems his daughter-in-law worked in the business. He stated that the employment of his wife and daughter-in-law did not overlap. The first issue is whether West had four or more employees and thus whether the drivers Mr. West considered independent contractors were, for workers compensation purposes, employees.

The evidence established that West kept a list of drivers and Mr. Collins was one of the drivers on his list. In 2007 the list consisted of Mr. Collins and at least three other drivers. (Jerry McCue, Steve Scott and Ronald Collins) According to West he considered his business a broker type business where he assisted large transportation companies with their smaller delivery jobs. He would receive between \$1.20 and \$1.30 per mile for one way delivery of goods. Each driver was also paid by the mile, with the rates varying depending on whether they owned their own vans. Calls for deliveries were received by West and he or his wife would dispatch a driver. Each

driver was contacted by cell phone and told where to pick up the load to be delivered. West was given the approved number of miles for the trip which he passed on to the driver. The drivers (including Collins) kept the vans at their homes and would drive them to the pickup location and mileage would begin from there. All of the drivers drove and made deliveries under West licenses. (TR pg 36-38) All of the drivers worked exclusively for West.

West testified that he had secured Workers Compensation Insurance in 1974 but elected to stop carrying it in 1994. "Q: So, in 1994, you decided to drop your workers' comp coverage, is that correct? A: Yes, because my insurance agent told me it wasn't necessary to carry that if you don't have over "x" amount of drivers." (TR pg 44) He testified that he made a conscious decision to stay under four drivers. "...it was later than that I started making some of them contract drivers." (TR pg 44) West also testified that it was not general practice for them to have cargo coming back. "...most of the time, if they have something coming back home it would be the same company sent them up there but would want them to bring a return back or something like that. That's about the only return trips we get." (TR pg 14)

Mr. West also testified that from 1974 to 1994 he had Workers Compensation Insurance. He stated that he made a decision in 1994 to drop his Workers Compensation coverage. Without regard to the number of employees West voluntarily became subject to the Act when he purchased his Workers Compensation coverage in 1974. Carter v. Associated Petroleum Carriers, 235 SC 80, 110 SE 2d 8, describes the insurance contract as incorporating the provisions of the Workers Compensation Act. By securing Workers Compensation Insurance West waived his exemption, even if he had less than four employees. SC Code Ann. §42-1-390 requires written notice to the Workers Compensation Commission for the employer to withdraw the waiver. There is no evidence in the record that the employer ever sent anything to the

Workers' Compensation Commission withdrawing from the Act. Therefore by law he is subject to the Workers Compensation Act.

People are not independent contractors just because the employer or his accountant indicates they are. Mr. West testified that the Claimant was his employee. He also testified that at the very least, Steve Scott and Jerry McCue worked exclusively for him. His wife, then his daughter-in-law also worked for him in billing and dispatching. Mr. West was President of the corporation and he had a second vehicle and also worked in the business. The fact that Mr. Scott and Mr. McCue bought their vehicle from Mr. West does not exclude them from being employees anymore than an employer who requires a mechanic to buy his own hand tools gets to exclude them as employees. Mr. West had at least five employees. The uncontradicted testimony by the employer is that he assigned all the drivers including Mr. Scott and Mr. McCue their jobs and paid them by the same method as he paid the Claimant. The rate per mile was different but many employers pay different wages to different employees. He contacted them all by the same means, provided them with the same instructions and they all drove under his license. He had the right to terminate all of them and testified that he would not allow them to drive for anyone else under his insurance or license. It is therefore found that he did have four or more employees and was subject to the Workers' Compensation Act at the time of the Claimant death.

**2. Was there a statutory employer?**

Mr. Ronald Harvey Burks testified that Seko Charlotte Inc. is a world wide logistics company. They handle transportation around the world whether it is by ocean country to country, air country to country, imports, exports that fly or go over seas. They handle air transportation, road transportation, basically any type of transportation. He acknowledged that in

2007 Seko Charlotte dispatched a delivery job to West Expedited and Delivery Services requesting transport from Spartanburg, South Carolina to Wisconsin. He did not recall the specifics of the job other than West's driver was to pick up a load at Ina Bearing Company, who was a customer of Seko Charlotte and deliver it to Wisconsin. He acknowledged that West was probably paid \$1.20 to \$1.30 per mile one way. He testified that once the goods were delivered to Wisconsin, Seko Charlotte, Inc had no further directions or instructions for Mr. West and would not have objected to Mr. West picking up a delivery in Wisconsin or any where else for return to South Carolina. On cross-examination Mr. Burks acknowledged that Seko Charlotte, Inc. employs approximately 16 people and part of their business is making local deliveries. He testified that any delivery over 50 miles from Charlotte is usually sub-contracted out. He further testified that the business did involve interstate commerce as they pick up in Fort Mill and Rock Hill, South Carolina. Mr. West had testified that he has ICC, MCC license and Seko Charlotte was also licensed.

Seko Charlotte has taken the position that their contract with Mr. West ended with the delivery. That might be a viable argument if the Claimant had left Wisconsin with a delivery for a different company but that is not the case here. Mr. West sent his driver to Wisconsin to make Seko Charlottes delivery. After making the delivery he was on the return trip when he was in the fatal accident. There was no evidence that he deviated from the route back to South Carolina. Seko Charlotte's contract was with West Expedited and Delivery Service, Mr. Morris West, and not the Claimant. Their payment for one way mileage does not change the relationship of statutory employer. Even if West was not subject to the Workers Compensation Act, Seko would still be responsible for the injuries Mr. Collins suffered. (See SC Code Ann. §42-1-400) It appears that Seko Charlotte made an unfortunate decision by contracting with a company who

failed to have Workers Compensation insurance. Seko Charlotte has the right to seek reimbursement from West Expedited and Delivery Services just as UEF would if they had been found responsible. Neither the UEF nor Seko Worldwide are liable since the statutory employer is Seko-Charlotte.

3. Who are the decedent's legal dependants under the Workers Compensation Act?

The issue of dependency was primarily litigated at the hearing before Commissioner Barden which was stopped prior to completion; however, the transcript of that hearing was made a part of the evidence at this hearing. Also made part of the evidence is the dependency investigation dated September 22, 2009. The dependency investigation indicates that Crystal Collins and the deceased, Gregory Collins, were married July 14, 2007 in Greenville, South Carolina. (Exhibit 3) They had one child, Joshua C [REDACTED], born February 12, 2007. (Exhibit 4) Mr. Collins is the biological father of Joshua C [REDACTED]. Ms. Collins had previously been married and from that marriage she had one child, Destiny L [REDACTED], who was born December 14, 1999. The dependency investigation stated that Ms. Collins told the investigator that the stepdaughter, Destiny L [REDACTED] and the decedent's son Joshua C [REDACTED] were financially dependant on Mr. Collins at the time of his death. There was a Court Order of support with regard to Destiny's father. Since Destiny L [REDACTED] was the Claimant stepchild, she is not entitled to the presumption of whole dependency. see Adams v. Texfi Industries, 320 SC 213, 464 SE 2d 109. The Court Order provides a means of partial support from her father, which makes her a partial dependent of the Claimant.

There was no sworn testimony as to whether Destiny L [REDACTED]'s father complied with the Court Order compelling him to make payments of child support at the time of the Claimant's death. There are two transcripts in the file relating to the hearing before Commissioner Barden

on December 18, 2009. Page 11 of the "Corrected Transcript" shows part of the testimony from Crystal Collins. Part of that testimony is shown below.

*Q. Does Destiny's father support her at all?*

*A. No, ma'am.*

*Q. Was she totally dependent upon Greg for her support?*

*A. Yes, ma'am.*

The first question is asked in the present tense. It does not ask whether Destiny's father supported her at the time of the Claimant's death, more than two years before. The second question is asked without any explanation of the legal application of total dependency. It is not disputed that the Claimant provided the daily necessities of life for Destiny. However, there is no sworn testimony to support a finding that her father failed to make child support payments at the time of the Claimant's death. It would be speculative for this commissioner to make that finding. Crystal Collins is the only witness who can state with accuracy whether the support payments were actually made, and that question was not put to her directly at the hearing before Commissioner Barden. She did not testify at the hearing before this commissioner. Statements on this issue from anyone else are of little value, as those people cannot state with personal knowledge whether the payments were made. Whole dependents take to the exclusion of partial dependents.

After reviewing all of the evidence in this case the following finding of facts and ruling of law accordingly made.

### FINDINGS OF FACT

1. That all parties to this preceding are subject to and bound by the terms and provisions of the South Carolina Workers Compensation Act.
2. West Expedited and Delivery Service is the uninsured employer. It is found that at the time of the accident West had four or more employees and therefore was subject to the Workers Compensation Act.
3. West Expedited and Delivery Service as the uninsured employer had in 1974 elected to obtain Workers Compensation insurance and become subject to the Act. West in 1994 elected to cease paying for their Workers Compensation insurance but failed to follow the provisions of the Workers Compensation Act as to withdrawal and therefore continued to operate under the Act.
4. That Seko Charlotte, Inc. was the statutory employer of the Claimant and Nationwide is their workers compensation carrier.
5. At the time of the decedent's fatal injuries, he was the statutory employee of Seko Charlotte, Inc. The Claimant's direct employer was engaged by Seko Charlotte, Inc to make interstate deliveries. Though Seko Charlotte, Inc employed drivers of its own, it subcontracted its interstate deliveries through West and operations like West. Because its business was national (and worldwide), such interstate deliveries are an integral and necessary part of Seko Charlotte Inc business. Accordingly, in order to remain a viable business with its unique purpose, it is necessary for Seko Charlotte to subcontract its interstate deliveries. ("I would say so, yeah. Every part of business that we do is important to us." Deposition of Ron Burks, p. 32-33 (Fund's APA, p 79-80); "So, yeah, we needed to make that delivery, if we want to keep in business." Deposition of Ron Burks, p. 33 (Fund's APA p. 80)) Accordingly, the requirements



for a statutory employment relationship were created here. See Voss v. Ramco, Inc. 325 SC 560,482 SE2d 582 (Ct. App 1997).

6. The South Carolina Uninsured Employers Fund and Seko Worldwide insured by Federal Insurance Company are without liability in this case due to Seko Charlotte, Inc. being the statutory employer and having Workers Compensation insurance through Nationwide.

7. The Claimant herein did not deviate from the most direct route to return him to South Carolina. There is no allegation or evidence that the Claimant was, at any part of his trip, engaged by any employer other than the employer who engaged him on the first leg of his trip. As such, because the Claimant was a "traveling employee," he was within the course of his employment during the return leg of his trip, which was when he suffered his fatal injuries.

8. That by presumption of the statute and by the facts Mr. Collins left two whole dependants, his wife, Crystal Collins and his minor son, Joshua [REDACTED]

9. That the Claimant left a partial dependant stepdaughter, Destiny L [REDACTED]. However, under Workers Compensation law the wholly dependant wife and son take to the exclusion of the partially dependant stepdaughter. Crystal Collins was not directly asked whether Destiny's father failed to make child support payments at the time of the Claimant's death in 2007. She is the only witness who could definitively answer that question. It would be speculative for this commissioner to make a finding that Destiny L [REDACTED] was wholly dependent upon the Claimant at the time of his death.

11. That the Claimant's average weekly wage was \$641.78 thereby making his weekly compensation rate of \$427.87.

## CONCLUSIONS OF LAW

Accordingly, as provided by the South Carolina Code of Laws, 1976, as amended, it is the determination of this Commissioner that:

1. The Claimant sustained a fatal injury arising out of and in the course of his employment as defined by S.C. Code §42-1-160.
2. At the time of the accident the Claimant had an average weekly wage of \$641.78 thereby making his weekly compensation rate of \$427.87 as defined by §42-1-140.
3. At the time of his fatal accident the Claimant was an employee of West Expedited and Delivery Service as set forth in SC Code Ann. §42-1-130.
4. At the time of the accident and in the year preceding pursuant SC Code Ann §42-1-360 the employer, West Expedited and Delivery Services was subject to the Workers Compensation Act.
5. S.C. Code Ann. § 42-1-410 is applicable in governing statutory employment and this section provides that, "When any person . . . referred to as "contractor," contracts . . . with any other person . . . for the execution or performance by or under the subcontractor of the whole or any of the work undertaken by such contractor, the contractor shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if that workman had been immediately employed by him."
6. Under the Statutory Employment Doctrine, any employee of a subcontractor may look to an upstream employer for benefits. The effect of the statutory employment provisions of the Workers' Compensation Act is to impose absolute liability upon the general contractor even though it was not the immediate, direct or actual employer of the injured claimant.

7. The analysis used to determine whether the activity of a South Carolina Claimant is sufficient to qualify him as a statutory employee of the alleged statutory employer(s) is based upon a three-part test. The three-parts are: (1) whether the activity is an important part of the contractor's or owner's trade, business, or occupation; (2) whether the activity is a necessary, essential, and integral part of the contractor's trade, business, or occupation; or (3) whether the identical activity has been previously performed by the contractor's employees. Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997). It is well settled that 'traveling employees are generally within the course of their employment from the time they leave home on a business trip until they return, for the self-evident reason that the traveling itself is a large part of the job.' Arthur Larson, *Larson's Worker's Compensation Law*, § 14.01 (Lexis-Nexis 2004). However, this general rule is subject to challenge when an injury occurs while the employee has deviated from his business route or purpose. Hall v. Desert Aire, Inc., 656 S.E.2d 753, 762 (S.C. App. 2007), 376 S.C. 338, 357 (emphasis added). There is no evidence that Mr. Collins deviated from his purpose or route.

8. The law of South Carolina is clear and well established as to the higher tier employers right to indemnity through the Claimant's general employer and this right may not be abrogated.

9. Pursuant to SC Code §42-1-440, "when the principle contractor is liable to pay compensation under any of the sections 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of such sections or from an intermediate contractor, and have a cause of action therefore."

10. A principle contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractors as defendants or codefendants.

11. Pursuant to Miller v. Lawrence Robinson Trucking 333 SC 576, 510 SE 2d 431 (Ct. App. 1998), a "contractor who is liable to pay compensation under the statutory employer doctrine is entitled to indemnity from the workers immediate employer."
12. The case of Adams v. Texfi Industries, 320 SC 213, 464 SE 2d 109 excludes stepchildren from the presumption of whole dependency.
13. Section 42-9-130 awards benefits to whole dependents to the exclusion of partial dependents.

### ORDER

IT IS, THEREFORE, ORDERED that Seko Charlotte, Inc as the statutory employer and Nationwide Insurance Company as the workers' compensation carrier shall immediately pay to Crystal Collins, the decedent's wholly dependant widow, \$213.94 per week beginning September 8, 2007 and shall continue to pay her until such time as she has received 500 weeks compensation.

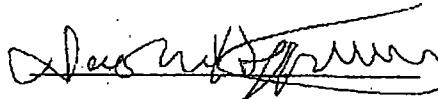
IT IS FURTHER ORDERED that Seko Charlotte, Inc as the statutory employer and Nationwide Insurance Company as the workers' compensation carrier shall pay to Joshua C [REDACTED] through his Court appointed conservator \$213.93 per week beginning September 8, 2007 and continuing thereafter until such time as they have paid him 500 weeks compensation.

IT IS HEREBY FURTHER ORDERED Seko Charlotte, Inc as the statutory employer and Nationwide Insurance Company as the carrier shall maintain the right to seek reimbursement from West Expedited and Delivery Services for benefits paid under the Workers Compensation Act due to West's failure to secure Workers Compensation insurance.

IT IS, ALSO ORDERED that the claim against Seko Worldwide and the South Carolina Uninsured Employers Fund is hereby dismissed.

No hearing costs are assessed in this matter.

**SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION**



**David W. Huffstetler, Commissioner**

**CERTIFICATE OF SERVICE**

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

June 24, 2010

By: Kellie Lindler, Administrative Assistant to Commissioner Huffstetler

South Carolina Workers' Compensation  
1612 Marion Street • Post Office Box 17  
Columbia, South Carolina 29202-1715  
(803) 737-5723

Commission



WCC File #: 0719222

File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Gregory A. Collins (deceased) SSN: [REDACTED]

Address: [REDACTED]

City: Easley State: SC Zip: 29640

Home Phone: ( ) - Work Phone: ( ) -

Employer's Name: West Expedited Delivery Services, Inc.

Address: 801 Ansel School Rd

City: Greer State: SC Zip: 29651

Insurance Carrier: WC Uninsured Employer's Fund

Preparer's Name: Linda B. McKenzie

Law Firm: Bowen McKenzie Bowen

Preparer's Phone #: (864) 271 - 2270

Complete each information blank. To request a hearing, check Box 12b., indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7 and 8 and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

The claimant is the spouse/widow (Crystal Collins) (relationship to employee) of Gregory A. Collins (employee's name)

1. The employee sustained an accidental injury to the deceased (Part of Body Hurt) on Sept. 8, 07 (Month Day Year) in Laurel County, State of Kentucky.
2. Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the employee was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on Sept. 8, 07 (Month Day Year) in the following manner:  
telephone
- ☐ 6. Due to injury, the employee received medical examination and treatment which remains unpaid by the employer.
- ☐ 7. Due to injury, the employee lost compensable time from work and wages for the periods of:
- ☐ 8. The employee died on Sept. 8, 07 (Month Day Year) as a result of the accidental injury, and death compensation is claimed.
9. At the time of the injury, the employee was paid weekly wages of \$350.00. The claimant demands an accounting of days worked and wages earned as provided by law.
10. Further grounds of claim:  
compensability
11. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 12a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 12b. I am requesting a hearing. A \$25 fee is required.

Signature of Claimant/Representative

Date

Refer to R.67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.

WCC Form # 52  
Revised 9/90

52

Employee's Notice of Claim and/or  
Request for Hearing, Death Case

South Carolina Workers' Compensation Commission  
1612 Marion Street • Post Office Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5723  
www.wcc.sc.gov



WCC File #: 0719222  
Can File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Service

Claimant's Name: Gregory A. Collins (deceased) SSN: [REDACTED] Employer's Name: West Expedited Delivery Services, Inc.  
Address: [REDACTED] Address: 801 Ansel School Rd.  
City: Easley State: SC Zip: 29640 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Home Phone: ( ) Work Phone: ( ) Insurance Carrier: \_\_\_\_\_  
Preparer's Name: Linda B. McKenzie Law Firm: Bowen McKenzie Bowen Preparer's Phone #: (864)-271-2270

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: Sept. 8, 2007

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to MVA-massive head trauma resulting in death (Part(s) of Body Injured) on September 8, 2007 (Month/Day/Year)

1b. Laurel in county, state of Kentucky.

Body part(s) affected are death

Briefly describe how the accident occurred. MVA

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on Sept. 8, 07 (Month/Day/Year) in the following manner:

telephone

☐ 6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: \_\_\_\_\_

☐ (b) additional medical examination and treatment for: \_\_\_\_\_

☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability:

☒ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

na

10a. At the time of the injury, the Claimant was paid weekly wages of \$Fm 20, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

na

11a. Further grounds or unusual aspects of claim:

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

11c. To the best of your knowledge, did you have any prior permanent disability? na  
If yes, describe: \_\_\_\_\_

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 30 minutes

I verify the contents of this form are accurate and true to the best of my knowledge.

Linda B. McKenzie  
Preparer's Signature

Attorney for the Claimant  
Title

lmckenzie@bmbfirm.com  
Email

6/8/09  
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50  
Revised 9/07

50

Employee's Notice of Claim and/or  
Request for Hearing

South Carolina Workers' Compensation Commission  
P.O. Box 1715 1612 Marion Street  
Columbia, South Carolina 29202-1715

WCC File No. 0719222  
Carrier Fee No. UEF 006182  
Carrier Code No.  
Employer FEIN 570961807

GREGORY A. COLLINS

Claimant's Name

SSN

[REDACTED], EASLEY, SC 29640

Address

City

State

Zip

WEST EXPEDITED & DELIVERY

Employer's Name

SERVICE INC. 801 ANGEL SCHOOL RD., GREER, SC 29651

Address

City

State

Zip

Home Phone

Work Phone

LISA C. GLOVER  
Preparer's Name

(803) 798-2722

Phone

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.  
The South Carolina Uninsured Employers' Fund in answer to the claim due to the death of Gregory Alan Collins respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application.
2. It is denied that both the employer and employee were subject to the Worker's Compensation Act at the time in question. The reasons for denial are:  
Pending investigation.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:  
Pending investigation.
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment.  
Pending investigation.
5. It is denied that the notice of injury was given the employer as specified in the application.
6. It is denied that the employee was entitled to medical care as a result of injury.
7. It is denied that the employee lost compensable time from work and wages for the period(s) of:
8. It is denied that the employee's death resulted proximately from accidental injury arising out of and in the course of employment on 9/8/07.
9. It is contended that an average weekly wage of \$ (unknown) applies, according to attached accounting of employee's earnings as provided by law.
10. Further contentions or grounds of defense are:  
See attachment.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to

See Attached Certificate Of Service

STAFF ATTORNEY  
DEPUTY GENERAL COUNSEL

Preparer's Signature

Title

7-9-09  
Date

100 220 Executive Center Drive, Suite 119 Columbia, South Carolina 29210  
Address

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days of filing this form.

WCC Form 53

Rev 9/90

South Carolina Uninsured Employers'  
Fund's Answer To Request for Hearing, Death Case



ATTACHMENT - WCC FORM 53

11. All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

50 or 52

Fund files this Answer in response to Claimant's Form <sup>52</sup>52, Requesting a Hearing        Filing a Claim       , dated 6-8-09. TB

Fund files this Answer in response to Claimant's Amended Form 52, Reque a Hearing        Filing a Claim       , dated       .

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not agent for the uninsured employer, nor a carrier for th uninsured employer.

# South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1333 Main Street, Suite 500  
Columbia, South Carolina 29202-1715  
(803) 737-5700

WCC File # 0719222  
Carrier File # 6132WC220180  
Carrier Code #  
Employer FEIN

Gregory A. Collins  
(deceased)

Claimant's Name SSN  
Easley, South Carolina 29640  
Address City State Zip

Home Phone #

Work Phone #  
A. Mundi George  
Preparer's Name

Seko Worldwide, LLC

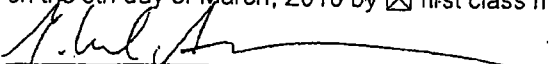
Employer's Name  
3101 Yorkmont Road  
Charlotte, North Carolina 28208  
Address City State Zip  
Federal Insurance Company c/o Nationwide Mutual  
Insurance Company  
Insurance Carrier  
(803) 227-2259  
Phone Number

Complete each information blank. Specify clearly when contentions are admitted in part or denied in part.  
The employer-insurance carrier in answer to the claim due to the death of Gregory A. Collins, respectfully shows.

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Death is admitted but not that it arose out of the course of employment.
2. It is denied that both employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Defendants Seko and their carrier assert that West Expedited Delivery (Claimant's actual employer) was not subject to the Act; Defendants deny the statutory employment relationship; Defendants deny an injury by accident arising out of and in the course of employment and assert a going and coming rule defense.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 2 above.
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: \_\_\_\_\_.
5. It is denied that notice of injury was given the employer as specified in the application. The reasons for denial are: \_\_\_\_\_.
6. It is denied that the employee was entitled to medical care as a result of the injury. The reasons for denial are: \_\_\_\_\_.
7. It is denied that the employee lost compensable time from work and wages for period(s) of: \_\_\_\_\_.
8. It is denied that the employee's death resulted proximately from accidental injury arising out of and in the course of employment on September 8, 2007. The reasons for denial are: It is admitted that Claimant died but not as a proximate result from an injury by accident.
9. It is contended that an average weekly wage of \$Unknown applies, according to attached accounting of employee's earnings as provided by law.
10. Further contentions or grounds of defense are: Notice and statute of limitations in addition to West Expedited Delivery not being subject to the Act, denial of a statutory employment relationship with Seko, no injury by accident arising out of and in the course of employment and assertion of the going and coming rule defense.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to:  
Linda B. McKenzie, Esquire  
Bowen, McKenzie & Bowen  
Post Office Box 2547  
Greenville, South Carolina 29602

on the 5th day of March, 2010 by ☒ first class mail; ☐ personal service; ☐ certified mail.

  
Preparer's Signature

Attorney for Employer/Carrier  
Title

March 5, 2010  
Date

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Post Office Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5739  
www.wcc.sc.gov



PRE-HEARING BRIEF  
WCC File No: 0719222

Gregory A. Collins  
(deceased)  
Claimant's Name SSN  
DECEASED  
[REDACTED]  
Easley, South Carolina 29640  
Address City State Zip  
Home Phone # Work Phone #  
A. Mundi George  
Preparer's Name

Seko Charlotte, Inc.  
Employer's Name  
3101 Yorkmont Road  
Charlotte, North Carolina 28208  
Address City State Zip  
Nationwide Mutual Insurance Company  
Insurance Carrier  
(803) 227-2259  
Phone Number

A claim for workers' compensation benefits is made based on the following grounds:.

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$339.68 (per Form 20) 2. AWW: \$509.50 (per Form 20) Date of Injury September 8, 2007 (Death)
3. Type of injury and body part(s): Massive head trauma resulting in death.
4. Facts in controversy: Compensability of claim and payment of benefits for death claim. Employer Seko Charlotte objects to being added as a party to this claim and claims insufficient notice of the Hearing (no 30-day notice). Seko Charlotte asserts that no statutory employment relationship exists and asserts that Claimant's death did not arise out of or in the course of his statutory employment with Seko Charlotte. Seko Charlotte is a North Carolina employer with North Carolina coverage who did not have four or more actual employees or four or more statutory employees regularly employed in the state; therefore, Seko Charlotte is not subject to the Act in South Carolina. See Number 5 below for legal issues.
5. Legal issues involved: See Number 4 above. Claimant's employment relationship with West Expedited Delivery Services. West Expedited's business relationship with Seko Charlotte. Seko Charlotte's alleged liability as a statutory employer. Whether Seko Charlotte should be added as a party. Exploration of statutory employment issues, employee versus independent contractor issues, and lent employee with dual employment. Whether Claimant was in the course and scope of his statutory employment with Seko Charlotte when he was killed. Seko Charlotte's indemnity rights against West Expedited based upon West's execution of a capitulation agreement and payment of associated fines. Dependency issues (whether a good faith dependency investigation has been performed, identification of the proper dependents, appointment of guardians ad litem for the minor children, direction of payment to the minors through a conservator appointed in the Probate Court, payment of funeral expenses). See Defendants' Memorandum of Law attached.
6. Unusual aspects: Motion to Add Seko Charlotte, Inc. and Nationwide Mutual Insurance Company must be addressed; Multiple defendants with multiple issues and additional time requested.
7. Witnesses (designate if expert) Glen Maddox, Ron Burks and other necessary employer witnesses may be called to testify on behalf of Seko Charlotte, Inc.
8. Exhibits: Defendants' Memorandum of Law dated 04/30/10 consisting of 7 pages; South Carolina Workers' Compensation Commission coverage information for Seko Worldwide, Inc. (through Federal Insurance Company for a 09/08/07 date of accident); Nationwide Mutual Insurance Company Policy of Insurance for Seko Charlotte, Inc. d/b/a Seko Worldwide with policy dates 10/20/06-10/20/07; Consent Agreement dated 11/20/07 with corresponding fine paid by West Expedited to Workers' Compensation Commission with check dated 11/20/07.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)  
The only relevant medical evidence is the Death Certificate which is to be submitted by Claimant as part of Claimant's case.
10. Name, address, and specialty, if any, of the treating physician: Not applicable (death case).
11. Impairment rating(s); body part(s); physician and date of opinion: Not applicable (death case).
12. I am amending my Form 50/51 in the following manner: Amending Form 53 to add indemnification rights of statutory employer against uninsured actual employer who has admitted violation of the Act.

I verify the contents of this form are accurate and true to the best of my knowledge.

SIGNATURE A. Mundi George

Email: mgeorge@mgclaw.com

DATE OF HEARING: May 12, 2010

Time needed for hearing: 3 hours

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.  
Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0719222

GREGORY A. COLLINS (DECEASED),

Employee,

Claimant,

vs.

SEKO CHARLOTTE, INC.,

Employer,

AND

NATIONWIDE MUTUAL INSURANCE  
COMPANY,

Carrier,

Defendants.

NOTICE OF WITNESSES AND  
WRITTEN MEDICAL REPORTS  
TO BE INTRODUCED AS  
DIRECT EVIDENCE ON BEHALF  
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND LINDA B.  
MCKENZIE, ESQUIRE, ESQUIRE:

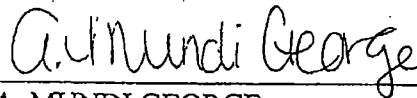
YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South  
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws  
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

| APA#  | DOCTOR                                                                                                                                              | PRACTICE | DATES    | PAGE # |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|--------|
| Ex. 1 | Defendants' Memorandum of Law                                                                                                                       |          | 04/30/10 | 1-7    |
| Ex. 2 | South Carolina Workers' Compensation Commission coverage<br>information for Seko Worldwide, Inc.                                                    |          |          | 8-9    |
| Ex. 3 | Nationwide Mutual Insurance Company Policy of Insurance for Seko<br>Charlotte, Inc. d/b/a Seko Worldwide                                            |          |          | 10-48  |
| Ex. 4 | Consent Agreement dated 11/20/07 with corresponding fine paid by<br>West Expedited to Workers' Compensation Commission with check<br>dated 11/20/07 |          |          | 49-50  |

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Glen Maddox, Ron Burks and other necessary employer witnesses may be called to testify on behalf of Seko Charlotte, Inc.



A. MUNDI GEORGE  
MCANGUS GOUDELOCK & COURIE, L.L.C.  
Post Office Box 12519, Capitol Station  
700 Gervais St. Suite 300  
Columbia, South Carolina 29211-2519  
(803) 779-2300  
Attorneys for the Employer/Carrier

Columbia, South Carolina  
April 30, 2010

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0719222

GREGORY A. COLLINS (DECEASED),

Employee,

Claimant,

vs.

SEKO CHARLOTTE, INC.,

Employer,

AND

NATIONWIDE MUTUAL INSURANCE  
COMPANY,

Carrier,

Defendants.

CERTIFICATE  
OF  
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO:

Linda B. McKenzie, Esquire  
Bowen, McKenzie & Bowen  
Post Office Box 2547  
Greenville, South Carolina 29602

Timothy B. Killen, Esquire  
S. C. Uninsured Employers' Fund  
100 Executive Center Drive, Suite 101  
Columbia, South Carolina 29210

Brian A. Martin, Esquire  
Martin & Davis, LLC  
212 Trade Street  
Greer, South Carolina 29651

Kenneth G. Southerlin, Jr., Esquire  
Stokes & Southerlin, PA  
Post Office Box 2077  
Greer, South Carolina 29650

Mitchell K. Byrd, Jr., Esquire  
Willson Jones Carter & Baxley, LLC  
872 South Pleasantburg Drive  
Greenville, South Carolina 29607

VIA HAND DELIVERY

S. C. WORKERS' COMPENSATION  
COMMISSION  
1333 Main Street, Suite 500  
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written  
Medical Reports

DATE OF MAILING: April 30, 2010



---

Sharon S. O'Quinn  
Secretary to A. Mundi George



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0719222

GREGORY A. COLLINS (DECEASED),

Employee,

Claimant,

vs.

SEKO CHARLOTTE, INC.,

Employer,

AND

NATIONWIDE MUTUAL INSURANCE  
COMPANY

Carrier,

Defendants.

DEFENDANTS' MEMORANDUM OF  
LAW

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND LINDA B.  
MCKENZIE, ESQUIRE:

I. Was a Statutory Employee relationship created in hiring Claimant to make  
the delivery?

The Claimant has not carried his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that an injury arose out of and occurred in the course of an employment relationship with Seko-Charlotte. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998) (The workers' compensation claimant has the burden of proving the facts that show the injury arose out of employment, and award of benefits must not rest on surmise, conjecture, or speculation); Mims v. Nehi Bottling Co., 218 S.C. 513, 63 S.E.2d 305 (1951) (The burden is upon the Claimant to prove the facts will render the injury compensable).

Undertaking our own analysis, the factual circumstances from which alleged statutory employment relationships arise are so varied that no single bright line test is readily available. Meyer v. Piggly Wiggly No. 24, Inc., 331 S.C. 261, 500 S.E.2d 190 (Ct. App. 1998). However, a three-part test serves as a guide to analyze whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee of the contractor for workers' compensation purposes. Whether the worker qualifies as a statutory employee is based on:

1) whether the activity is an important part of the contractor or owner's trade, business, or occupation;

2) whether the activity is a necessary, essential, and integral part of the contractor's trade, business, or occupation; or

3) whether the identical activity has been previously performed by the contractor's employees; if any one of these tests is satisfied, injured worker of subcontractor is considered statutory employee of owner.

Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997); see also Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004).

Since there is no general rule for determining whether the work in a given case satisfies the prescribed test, each case must be decided on its own facts. Revels v. Hoechst Celanese Corp., 301 S.C. 316, 391 S.E.2d 731 (Ct. App. 1990).

Taking the above into consideration in order:

- 1) This delivery was not an important part of the contractor's business. The delivery was a relatively small load that Seko-Charlotte never handles on its own. Any similar deliveries would also be farmed out to other carriers.
- 2) Small freight shipments are not an integral part of the contractor's trade. Seko-Charlotte specializes in large shipments. The contracting out of small shipments was not because they did not have the capacity, it was because their business model does not incorporate the transport of such shipments.
- 3) Again, because Seko-Charlotte does not engage in the transport of small shipments, the contractor's employees have not previously engaged in this type of delivery.

The above factors show that Seko-Charlotte was not acting as a statutory employer relating to the delivery to Wisconsin. Furthermore, where the Claimant has not proven the facts that would render his claim compensable, he is not entitled to compensation from Seko-Charlotte.

## II. Did an employment relationship exist at the time of the accident?

### Going and Coming Rule

"As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment." Sola v. Sunny Slope Farms, 244 S.C. 6, 14, 135 S.E.2d 321, 326 (1964); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998); McDaniel v. Bus Terminal Rest. Mgmt. Corp., 271 S.C. 299, 247 S.E.2d 321 (1978); Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942); Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct.App.2000).

The South Carolina Supreme Court has carved out five exceptions to the going to and coming from rule. The first four were enumerated in Sola:

- (1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
- (2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
- (3) The way used is inherently dangerous and is either a) the exclusive way of ingress and egress to and from his work; or b) constructed and maintained by the employer; or
- (4) That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

The 5<sup>th</sup> exception is the "special errand doctrine" where "the injury is sustained by the employee while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972).

Taking the above factors in order:

- 1) At the time of the injury, Claimant's means of transportation was provided by his general employer, West Expedited Delivery Service. Also, Seko-Charlotte only paid on a per-mile basis for the run to Wisconsin, not the return trip. Therefore, any compensation received for Claimant's labor at the time of the injury was solely derived from his general employer.
- 2) At the time of the accident, Claimant was no longer charged with any duty by Seko-Charlotte, their interest in the Claimant ended at the time he made the delivery.
- 3) The route used was apparently common interstate routes and not inherently dangerous. Even if it were, Seko-Charlotte no longer had control over Claimant's route.
- 4) The accident did not happen in close proximity to Seko-Charlotte or the prior delivery for which the Claimant was hired.
- 5) The Claimant was not engaged in a special errand for Seko-Charlotte, any directives he was following at the time of the accident would have originated from his general employer, West Expedited Delivery Service.

It is clear from the above analysis that the Claimant was no longer an employee within the scope of the "going and coming rule."

#### Was Claimant still in the course and scope of employment?

Under settled law, the determination of whether a claimant is an employee or independent contractor focuses on the issue of control, specifically whether the purported employer had the right to control the claimant in the performance of his work. [Citations omitted]. In evaluating the right of control, the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. [Citations omitted]."

Wilkinson v. Palmetto State Transportation Co., 382 S.C. 295, 676 S.E.2d 700 (2009). These factors "should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor." Id.

#### *Direct Evidence of the Right of Exercise or Control*

It is clear from the fact of this case that Seko-Charlotte exhibited no right or exercise of control over the Claimant at the time of the injury. Seko-Charlotte had no right to determine the means and methods of Claimant's services to this regular employer. Even though Seko-Charlotte contracted with the Claimant's Employer for the assignment, their control over the Claimant ended as soon as the delivery was made. The Claimant's Employer exercised complete control over the means of travel and methods of performing the task on return. Seko-Charlotte had no input on when Claimant should return home, whether he should pick up another load, where he should report to, what route he should take, how to complete his task, or any other measure of control.

#### *Furnishing of Equipment*

The Claimant was driving his Employer's truck at the time of his accident (not Seko-Charlotte's); therefore, Seko-Charlotte had no involvement in the furnishing of equipment.

#### *Method of Payment*

Seko-Charlotte had no control over the method the Claimant would be paid. The Claimant's contract with his Employer was outside the scope of this delivery or whether a return haul would be taken. Seko-Charlotte took no part in any business process following the delivery and was completely disinterested in whatever means, methods, or other jobs the Claimant might take.

#### *Right to Fire*

Finally, Seko Charlotte had no right to fire the Claimant at the time of his accident. The job was over and there was no expectation of additional trips at the time. Seko Charlotte had absolutely zero vested interest in whether the Claimant took instructions from his Employer or even continued to perform the job, much less if he did it well, or whether he should be fired.

Viewing the Wilkinson factors neutrally between the parties, it is clear that no employment relationship existed between the Claimant and Seko-Charlotte at the time of the accident. Therefore, at the time of the accident, the Claimant could not be considered a covered employee of Seko-Charlotte under the Act.

Additionally, any acts Claimant engaged in after the delivery was complete were not "consistent with the contract of hire" because the contract paid purely for mileage one-way and Claimant had returned to the exclusive control of West Expedited Delivery Service. South Carolina case law regarding statutory employees is consistent in the fact that the claimants are, without exception, in the midst of their duties for their statutory employers at the time of their injuries. For example, in Carrier v. Westvaco, an employee of a subcontractor, (who was injured while standing on a pier waiting to have his truck loaded), was acting in the course of his employment, as his waiting was consistent with his contract of hire and was incidental to his employment as a truck driver. Carrier v. Westvaco, 806 F.Supp. 1242 (1992). In Carrier, the

truck driver had clearly not completed his run and part of the process of transporting freight is waiting for a truck to be loaded. In the instant case, however, the Claimant did complete his run and had no further duties, obligations, or activities related to Seko-Charlotte.

#### **Lent Employee Rule**

Alternatively, if the Commission were to find that the Claimant was performing work arising out of and in the course and scope of employment at the time of the accident, it is the Defendants' position that the employee was a "lent employee" that was engaged in "dual employment."

An employee under similar circumstances was considered a lent employee under DeBerry v. Coker Freight Lines. In DeBerry, Coker Freight Lines was a common carrier of freight, operating in interstate commerce, and was under contract to deliver a shipment of plywood to three consignees in New England. It appears that while the respondent was unloading the plywood in New Jersey, that some of the plywood fell on him and broke his leg. This is the injury for which he seeks compensation.

The truck which the respondent had driven to New Jersey was owned either by Frances J. Jordan or Jordan Motor Lines, Inc., and the respondent was employed by the owner of the truck. The truck and the respondent were leased by the owner thereof to the Coker Freight Lines for the purpose of transporting the plywood in question to the consignees in the State of New Jersey and New York. The owner of the truck was to receive a portion of the freight charge as compensation, and the respondent a percentage of the owner's share as his wages for operating the truck. It further appears that the owner of the truck was not a licensed common carrier in interstate commerce. The truck, therefore, at the time of the injury to the respondent, was being operated solely under the authority granted to Coker Freight Lines as a common carrier in interstate commerce, and in fulfillment of the contract of Coker Freight Lines to transport the plywood from Sumter, South Carolina and deliver it in Lodi, New Jersey, and other points. DeBerry v. Coker Freight Lines, 234 S.C. 304, 108 S.E.2d 114 (1959).

Under these facts, the Court determined:

When a general employer lends an employee to a special employer, the special employer becomes liable for workmen's compensation only if:

- (a) the employee has made a contract of hire, express or implied, with the special employer;
- (b) the work being done is essentially that of the special employer; and
- (c) the special employer has the right to control the details of the work.

'When all three of the above conditions are satisfied in relation to both employers, both employers are liable for workmen's compensation. Employment may also be 'dual', in the sense that, while the employee is under contract of hire with two different employers, his activities on behalf of each employer are separable and can be identified with one employer or the other. When this separate identification can clearly be made, this particular employer whose work was being done at the time of injury will be held exclusively liable.'

DeBerry v. Coker Freight Lines, 234 S.C. 304, 108 S.E.2d 114 (1959). See also *Larson's Workers' Compensation Law* § 48.00 (1998).

Similarly, Seko Charlotte was a common carrier who was under contract to deliver goods from South Carolina to Wisconsin. As in DeBerry, Seko-Charlotte entered into a deal with West Expedited Delivery Service to make the delivery. The Claimant was admittedly an Employee of West Expedited Delivery Service and drove a truck owned and operated by West Expedited Delivery Service. Under the agreement, Seko-Charlotte contracted to pay West Expedited Delivery Service a set amount per mile one way and Claimant would be paid his share out of the amount paid to West.

Where the two cases diverge is at the time of the accident. In DeBerry, the accident occurred during the course and scope of the contracted deliveries while DeBerry was still under the control of Coker Freight Lines. In the instant case, Claimant was injured after the delivery was complete and he was not under any type of control of Seko-Charlotte.

Importantly, at the time of the accident he was under the control of his primary employer, West Expedited Delivery Service. "His activities on behalf of each employer are separable and can be identified with one employer or the other." DeBerry, 234 S.C. 304, 108 S.E.2d 114 (1959). Prior to the completion of the delivery, Claimant was under the control of Seko-Charlotte as to the details and deadlines related to his Wisconsin delivery. Upon completion of this task, Claimant returned to the exclusive control of West Expedited Delivery Service.

In the trucking industry it is commonplace, if not assumed, that a truck making a long haul will typically seek out and find a load for the return trip. This is one of the primary reasons that the parties would enter into a contract of hire for one-way only. Seko-Charlotte only paid for mileage to Wisconsin and would naturally assume that West Expedited Delivery Service or the Claimant would arrange for a haul on the return trip so as not to waste 850+ miles of man-hours, fuel, and wear-and-tear which could otherwise be generating revenue.

Larson states, "What gives the lent-employee cases their special character, however, is the fact that they begin, not with an unknown relation, but with an existing employment relation. ... The only presumption is the continuance of the general employment, which is taken for granted as the beginning point of any lent-employee problem." *Larson's Workers' Compensation Law* § 48.14 (1998).

Therefore, whether West Expedited Delivery Services arranged for a return load or not is immaterial. What is important is the fact that Claimant was back under their exclusive and total control. What West does or directs its employees to do as their "general employer" was no longer of any concern of Seko-Charlotte. As stated in the DeBerry rule, "When this separate identification can clearly be made, th[e] particular employer whose work was being done at the time of injury will be held exclusively liable." That particular employer is West Expedited Delivery Services.

### III. Does Seko Charlotte have a subrogation interest against West?

In the alternative, if Seko-Charlotte is found liable for Claimant's injuries, it has a right to indemnity through the general employer, West Expedited Delivery Service.

Section 42-1-440 states, "When the principal contractor is liable to pay compensation under any of §§ 42-1-400 to 42-1-450, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workmen independently of such sections or from an intermediate contractor, and have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant."

In other words, a "Contractor who is liable to pay compensation under the statutory employer doctrine is entitled to indemnity from the worker's immediate employer." Miller v. Lawrence Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998).

Once the highest responsible person is determined ... every intermediate contractor and subcontractor under him shoulders the same, indeed the primary, obligation, for the "principal contractor" is entitled to indemnity from him and to call him in to defend the compensation claim. Chavis v. E.I. DuPont de Nemours & Co., 283 F.2d 745 (4<sup>th</sup> Cir. 1960). (See also Long v. Atlantic Homes, 311 S.C. 237, 428 S.E.2d 711 (1993); An injured employee was not required to establish that his immediate employer was financially irresponsible before bringing a claim against his statutory employer, since the statutory employer is entitled to indemnity from the immediate employer, either through a separate action or by joining him as a defendant in the action brought by the injured employee, and § 42-1-450 provides that nothing in the sections preceding shall be construed as preventing the employee from recovering from a subcontractor instead of the principal contractor.)

South Carolina case law is clear and well established as to the higher-tier employer's right to indemnity through the Claimant's general employer and this right may not be abrogated.

*A. Mundi George*

A. MUNDI GEORGE  
MCANGUS GOUDELOCK & COURIE, L.L.C.  
Post Office Box 12519, Capitol Station  
700 Gervais St. Suite 300  
Columbia, South Carolina 29211-2519  
(803) 779-2300  
Attorneys for the Employer/Carrier

Columbia, South Carolina  
April 30, 2010

Policy Number: 0871722063

Coverage/Injury/Illness Date: 9/8/2007

**Workers' Compensation Insurance Coverage Provider**

FEDERAL INSURANCE COMPANY

[Click here for claim processing information.](#)**Filter to refine name and address results**

Employer Name:

City:

Zip Code:

Show All Names ☐

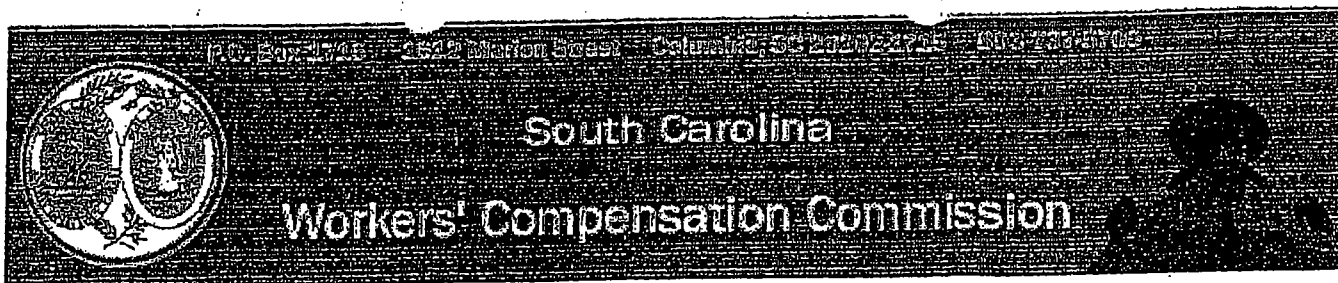
Filter

Reset

&lt;&lt; Previous Next &gt;&gt;

| Employer Name         | Street Address                                 | CityStateZip |
|-----------------------|------------------------------------------------|--------------|
| SEKO WORLDWIDE<br>INC | NO SPECIFIC ADDRESS (RECORD TYPE)<br>SUBMITTED | SC           |





Seko: Policy # 081722063

Below is the result of your South Carolina Workers' Compensation insurance coverage inquiry.  
The proper address for services is:

87 Federal Insurance Company  
Chubb Group of Ins. Companies  
3440 Toringdon Way Suite 307  
Charlotte, NC 28277-  
(800) 444-0604

*For additional information, please contact  
the SC Workers' Compensation Commission Coverage Division  
@ (803) 737-6203*



On Your Side®

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**AFFIDAVIT OF RECORDS CUSTODIAN CERTIFYING RECORDS**

Terry B Barefoot, having first been duly sworn according to law, makes oath upon his or her personal knowledge as follows:

1. I, Terry B Barefoot, am the duly authorized custodian of the records for Nationwide Mutual Insurance Company, and in such capacity, I have authority to certify the attached record.

2. The attached record is a true and accurate copy of the 61 WC-659-181-3001 insurance policy issued to SEKO Charlotte Inc./DBA SEKO Worldwide for the policy period October 20, 2006 to October 20, 2007.

3. The attached policy was kept in the ordinary course of the regularly conducted business activity of Nationwide Mutual Insurance Company and was prepared as a regular practice and custom at or near the time of policy inception or amendment.

FURTHER AFFIANT SAITH NOT

Terry B. Barefoot  
AFFIANT

4-20-2010  
DATE

# ENDORSEMENT 24-416A WORKERS COMPENSATION POLICY CHANGE

Issued By: NATIONWIDE MUTUAL INSURANCE COMPANY

The policy to which this endorsement is attached is amended as shown below:

1. Item 1 of the Information Page is amended as follows:

☐ Sole Proprietorship    ☐ Partnership    ☐ Corporation    ☐ Other \_\_\_\_\_

Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* ☐ Is deleted      \* ☐ Is added      \* ☐ Is changed to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Applicable only if X'ed

2. Policy Period: From OCTOBER 20, 2006 to OCTOBER 20, 2007 12:01 A.M.  
Standard Time at the Insured's mailing address.

3. Item 4 is amended to read: THE REMUNERATION FOR WC CLASSIFICATION - 7231 HAS BEEN CHANGED FROM 212,338.0 TO 357,983.0.

THE REMUNERATION FOR WC CLASSIFICATION - 8742 HAS BEEN

CHANGED FROM 236,134.0 TO 256,584.0.

4. The Extension Schedule is amended as follows:

| Classification, State, Territory (NY only) and Code                                      | Premium Basis                       | Rates                     | Estimated Annual Premium |
|------------------------------------------------------------------------------------------|-------------------------------------|---------------------------|--------------------------|
|                                                                                          | Estimated Total Annual Remuneration | Per \$100 of Remuneration |                          |
| TRUCKING: MAIL, PARCEL OR (NC) 000 7231<br>PACKAGE DELIVERY-ALL EMPLOYEES<br>AND DRIVERS | \$ 357,983.0                        | 10.290                    | \$ 36,836                |
| SALESPERSONS, COLLECTORS OR (NC) 000 8742<br>MESSENGERS-OUTSIDE                          | \$ 256,584.0                        | .810                      | \$ 2,078                 |
| CLERICAL OFFICE EMPLOYEES NOC (NC) 000 8810                                              | \$ 1,000,779.0                      | .330                      | \$ 3,303                 |

5. Item 4 of the Information Page is amended as follows:

|                                                    |      |           |
|----------------------------------------------------|------|-----------|
| PREMIUM SUBJECT TO EXPERIENCE MODIFICATIONS        | \$   | 42,217.00 |
| EXPERIENCE MODIFICATION .870 9898                  | -    | 5,488     |
| MISCELLANEOUS MODIFICATION                         |      |           |
| SCHEDULE MODIFICATION                              |      |           |
| PREMIUM ADJUSTED BY APPLICATION OF MODIFICATION(S) | \$   | 36,729.00 |
| PREMIUM DISCOUNT 0063                              | \$ - | 3,458     |
| LOSS CONSTANT                                      |      |           |
| EXPENSE CONSTANT 0900                              | \$   | 210       |
| TERRORISM RISK - 9740                              | \$   | 485.00    |
| DTEC - NC 9741                                     | \$   | 162.00    |

MINIMUM PREMIUM 750  
TOTAL ESTIMATED ANNUAL PREMIUM 34,128.00

6. The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown below:

Anniversary Rating Date \_\_\_\_\_ (Month) \_\_\_\_\_ (Day)

7. ☐ Name of Insured is changed as indicated below:

Former Name \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. ☐ Address of Insured is changed as indicated below:

The following item shall be completed if this endorsement is not referred to by number in the policy to which this endorsement is attached.

|                                                                      |                                                                                                                 |                                                             |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Attached to and forming part of policy number:<br>61 WC 659-181-3001 | Effective at 12:01 A.M. on policy effective date or on<br>OCTOBER 20, 2006 (whichever is later)<br>Mo. Day Year | This endorsement supersedes any prior endorsement numbered: |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

This endorsement is executed by the company designated on the Information Page.

Issued to:

☐ Countersigned at:

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3400 INTERNATIONAL AIRPORT DR  
STE 100  
CHARLOTTE NC 28208

CHARLOTTE NC 28210  
Authorized Representative:  
W H GILL & ASSOCIATES INC  
0002996-32

PLEASE ATTACH THIS ENDORSEMENT TO YOUR POLICY AS IT CONSTITUTES AN IMPORTANT PART OF THE CONTRACT.

# ENDORSEMENT 24-416A WORKERS COMPENSATION POLICY CHANGE

Issued By: NATIONWIDE MUTUAL INSURANCE COMPANY

The policy to which this endorsement is attached is amended as shown below:

1. Item 1 of the Information Page is amended as follows:

☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ Other \_\_\_\_\_

Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* ☐ Is deleted      \* ☐ Is added      \* ☐ Is changed to  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Applicable only if X'ed

2. Policy Period: From OCTOBER 20, 2006 to OCTOBER 20, 2007 12:01 A.M.  
Standard Time at the Insured's mailing address.

3. Item 4 is amended to read: THE REMUNERATION FOR WC CLASSIFICATION - 8810 HAS BEEN  
CHANGED FROM 732,835.0 TO 1,000,779.0.

THE REMUNERATION FOR WC CLASSIFICATION - 9740 HAS BEEN  
CHANGED FROM 1,181,307.0 TO 1,615,346.0.

4. The Extension Schedule is amended as follows:

| Classification, State, Territory (NY only) and Code | Premium Basis                       | Rates                     | Estimated Annual Premium |
|-----------------------------------------------------|-------------------------------------|---------------------------|--------------------------|
|                                                     | Estimated Total Annual Remuneration | Per \$100 of Remuneration |                          |
| TERRORISM TOTAL - NC (NC) 000 9740                  | \$ 1,615,346.0                      | .030                      | \$ 485                   |

5. Item 4 of the Information Page is amended as follows:

PREMIUM SUBJECT TO EXPERIENCE MODIFICATIONS

EXPERIENCE MODIFICATION

MISCELLANEOUS MODIFICATION

SCHEDULE MODIFICATION

\$ SEE  
PAGE  
ONE  
FOR  
PREMIUM

PREMIUM ADJUSTED BY APPLICATION OF MODIFICATION(S)

\$ AMOUNTS

PREMIUM DISCOUNT

\$

LOSS CONSTANT

EXPENSE CONSTANT

\$

6. The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown below:

Anniversary Rating Date \_\_\_\_\_ (Month) \_\_\_\_\_ (Day)

7. ☐ Name of Insured is changed as indicated below:

Former Name \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. ☐ Address of Insured is changed as indicated below:

The following item shall be completed if this endorsement is not referred to by number in the policy to which this endorsement is attached.

|                                                                      |                                                                                                                 |                                                                |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Attached to and forming part of policy number:<br>61 WC 659-181-3001 | Effective at 12:01 A.M. on policy effective date or on<br>OCTOBER 20, 2006 (whichever is later)<br>Mo. Day Year | This endorsement supersedes any<br>prior endorsement numbered: |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|

This endorsement is executed by the company designated on the Information Page.

Issued to:

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3400 INTERNATIONAL AIRPORT DR  
STE 100  
CHARLOTTE NC 28208

Countersigned at:

CHARLOTTE NC 28210  
Authorized Representative:  
W H GILL & ASSOCIATES INC  
0002996-32

PLEASE ATTACH THIS ENDORSEMENT TO YOUR POLICY AS IT CONSTITUTES AN IMPORTANT PART OF THE CONTRACT.

## ENDORSEMENT 24-416A WORKERS COMPENSATION POLICY CHANGE

Issued By: NATIONWIDE MUTUAL INSURANCE COMPANY

The policy to which this endorsement is attached is amended as shown below:

1. Item 1 of the Information Page is amended as follows:

☐ Sole Proprietorship   ☐ Partnership   ☐ Corporation   ☐ Other \_\_\_\_\_

Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* ☐ Is deleted   \* ☐ Is added   \* ☐ Is changed to  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*Applicable only if X'ed

2. Policy Period: From OCTOBER 20, 2006 to OCTOBER 20, 2007 12:01 A.M.  
Standard Time at the Insured's mailing address.

3. Item 4 is amended to read: THE REMUNERATION FOR WC CLASSIFICATION - 9741 HAS BEEN CHANGED FROM 1,181,307.0 TO 1,615,346.0.  
\_\_\_\_\_  
\_\_\_\_\_

4. The Extension Schedule is amended as follows:

| Classification, State, Territory (NY only) and Code | Premium Basis                       | Rates                     | Estimated Annual Premium |
|-----------------------------------------------------|-------------------------------------|---------------------------|--------------------------|
|                                                     | Estimated Total Annual Remuneration | Per \$100 of Remuneration |                          |
|                                                     |                                     |                           |                          |

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5. Item 4 of the Information Page is amended as follows:

PREMIUM SUBJECT TO EXPERIENCE MODIFICATIONS

EXPERIENCE MODIFICATION

MISCELLANEOUS MODIFICATION

SCHEDULE MODIFICATION

\$ SEE  
PAGE  
ONE  
FOR  
PREMIUM

PREMIUM ADJUSTED BY APPLICATION OF MODIFICATION(S)

\$ AMOUNTS

PREMIUM DISCOUNT

\$

LOSS CONSTANT

EXPENSE CONSTANT

\$

6. The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown below:

Anniversary Rating Date \_\_\_\_\_ (Month) \_\_\_\_\_ (Day)

7. ☐ Name of Insured is changed as indicated below:

Former Name \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. ☐ Address of Insured is changed as indicated below:

The following item shall be completed if this endorsement is not referred to by number in the policy to which this endorsement is attached.

|                                                                      |                                                                                                                 |                                                             |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Attached to and forming part of policy number:<br>61 WC 659-181-3001 | Effective at 12:01 A.M. on policy effective date or on<br>OCTOBER 20, 2006 (whichever is later)<br>Mo. Day Year | This endorsement supersedes any prior endorsement numbered: |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

This endorsement is executed by the company designated on the Information Page.

Issued to:

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3400 INTERNATIONAL AIRPORT DR  
STE 100  
CHARLOTTE NC 28208

Countersigned at:

CHARLOTTE NC 28210  
Authorized Representative:  
W H GILL & ASSOCIATES INC  
0002996-32

PLEASE ATTACH THIS ENDORSEMENT TO YOUR POLICY AS IT CONSTITUTES AN IMPORTANT PART OF THE CONTRACT.



## ENDORSEMENT 24-416-A WORKERS COMPENSATION POLICY CHANGE

Issued By: NATIONWIDE MUTUAL INSURANCE COMPANY

NCCI CO NO #16195

The Policy to which this endorsement is attached is amended as shown below:

1. Item 1 of the Information Page is amended as follows:

☐ Sole Proprietorship    ☐ Partnership    ☐ Corporation    ☐ Other \_\_\_\_\_

Location \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* ☐ is deleted

\* ☐ is added

\* ☐ is changed to

LOC 001 AT 3400 INTERNATIONAL AIRPORT DR, CHARLOTTE NC 28208-4787 HAS BEEN  
REMOVED FROM THE POLICY

LOC 002 AT 3101 YORKMONT RD #SUITE 1500, CHARLOTTE NC 28208-7373 HAS BEEN ADDED TO  
THE POLICY.

\* Applicable only if X'ed

2. Policy Period: From 10/07/2006 to 10/07/2007 12:01 A.M.  
Standard Time at the insured's mailing address.

3. Item \_\_\_\_\_ is amended to read: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The Extension Schedule is amended as follows:

| Classification, State, Territory (NY only) and Code | Premium Basis<br>Estimated Total<br>Annual Remuneration | Rates<br>Per \$100 of<br>Remuneration | Estimated<br>Annual Premium |
|-----------------------------------------------------|---------------------------------------------------------|---------------------------------------|-----------------------------|
|                                                     |                                                         |                                       |                             |

"This agreement to amend your policy does not in any way supersede or modify your policy status as set forth in a non-renewal or cancellation notice sent you."

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5. Item 4 of the Information Page is amended as follows:

|                                                    |    |
|----------------------------------------------------|----|
| PREMIUM SUBJECT TO EXPERIENCE MODIFICATIONS        | \$ |
| EXPERIENCE MODIFICATION                            |    |
| MISCELLANEOUS MODIFICATION                         |    |
| SCHEDULE MODIFICATION                              |    |
| PREMIUM ADJUSTED BY APPLICATION OF MODIFICATION(S) | \$ |
| PREMIUM DISCOUNT                                   | \$ |
| LOSS CONSTANT                                      |    |
| EXPENSE CONSTANT                                   | \$ |

6. The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown below:

Anniversary Rating Date \_\_\_\_\_ (Month) \_\_\_\_\_ (Day)

7. ☐ Name of Insured is changed as indicated below:

Former Name \_\_\_\_\_

8. ☐ Address of Insured is changed as indicated below:

The following item shall be completed if this endorsement is not referred to by number in the policy to which this endorsement is attached.

|                                                                   |                                                                                                                |                                                             |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Attached to and forming part of policy number: 61 WC 659-181-3001 | Effective at 12:01 A.M. on policy effective date or on <u>10/01/2007</u> (whichever is later),<br>Mo. Day Year | This endorsement supersedes any prior endorsement numbered: |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

This endorsement is executed by the company designated on the Information Page.

Issued to:

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3101 YORKMONT RD SUITE 1500  
CHARLOTTE NC 28208

Countersigned at  
RALEIGH NC 27622

Authorized Representative  
W H GILL & ASSOCIATES INC  
0002996-32



Issued by:  
NATIONWIDE MUTUAL INSURANCE COMPANY

Home Office: Columbus, Ohio

Prepared for:

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3400 INTERNATIONAL AIRPORT DR  
STE 100  
CHARLOTTE NC 28208  
|||||

Thank you for choosing our agency and Nationwide as your business insurance professionals.

Your policy is an important document that helps to protect your business. Keep it and other valuable papers in a safe place.

We have an outstanding reputation for fast, fair claims service. In the event of a loss, you can reach our Claims Office 24 hours a day at 1-800-421-3535.

It is important that you review any enclosed "POLICYHOLDER INFORMATION" documents for notices, additional coverage options, and any request for a response. If you see, RESPONSE REQUIRED, please handle as instructed.

If you have any questions about this policy or the services we offer, please contact our agency at 704-364-0833. We can assist you with all your business as well as personal insurance needs.

We look forward to continuing to provide your insurance protection.

W H GILL & ASSOCIATES INC  
STE C  
6831 FAIRVIEW RD  
CHARLOTTE NC 28210

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POLICYHOLDER INFORMATION

## NOTICE OF TERRORISM INSURANCE COVERAGE

Effective January 1, 2006 the National Council on Compensation Insurance, Inc. has relabeled Terrorism to "Foreign Terrorism" to differentiate this exposure from Domestic Terrorism.

The enclosed policy endorsement, WC 00 04 22 (Ed. 1-06), provides additional details.  
(NOTE: there is no premium change as a result of this relabelling).

Please contact your Nationwide Agent with questions regarding this communication.

NATIONWIDE INSURANCE COMPANIES • One Nationwide Plaza • Columbus, Ohio 43215-2220  
Serving the Personal and Business Community Since 1926

Hearing or voice impaired: 1-800-622-2421 (TTY Only)



## POLICYHOLDER INFORMATION

### ESTIMATED PREMIUM

Enclosed is a statement for the estimated renewal premium on your present insurance coverage. You can keep this coverage in force for another year by prompt payment.

Last year's premium was also estimated and our auditor will call soon after the due date to determine the actual cost of your policy for last year. We will then adjust the premium and allow any credits due.

Please mail your payment with a copy of the renewal statement before the renewal date of your policy. This will assure continuation of this valuable protection.

NATIONWIDE MUTUAL INSURANCE COMPANY • One Nationwide Plaza • Columbus, Ohio 43216  
Serving the Personal and Business Community Since 1928



# WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Issued By: **NATIONWIDE MUTUAL INSURANCE COMPANY**

NCCI COMPANY NO. 16195

## INFORMATION PAGE RENEWAL

**1** Name and  
address of  
Insured

SEKO CHARLOTTE INC  
DBA SEKO WORLDWIDE  
3400 INTERNATIONAL AIRPORT DR  
STE 100  
CHARLOTTE NC 28208

Form of ☐ Sole Proprietorship ☐ Partnership ☒ Corporation  
Business: ☐ Other

Policy Number:  
61 WC 659-181-3001

Replaced or Transferred From Policy Number:

Fed. Emp. I.D. No. 561278605

Intrastate I.D. No.

Interstate I.D. No.

Locations - All usual workplaces of the insured at or from which operations covered by this policy are conducted are located at the above address unless otherwise stated herein:

SEE EXT. SCHEDULE CAS 4232

**2** Policy Period: From **OCTOBER 20, 2006** to **OCTOBER 20, 2007** 12:01 A.M.  
Standard Time at the Insured's mailing address.

**3** A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: SEE EXTENSION SCHEDULE CAS4233

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3 A.  
The limits of our liability under Part Two are: Bodily Injury by Accident \$ 100,000 each accident  
Bodily Injury by Disease \$ 100,000 each employee  
Bodily Injury by Disease \$ 500,000 policy limit

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

SEE EXTENSION SCHEDULE CAS4233

D. This policy includes these endorsements and schedules:

|                  |                  |                  |                  |
|------------------|------------------|------------------|------------------|
| WC 000000 A 0492 | CAS 4415         | WC 00 04 14 0790 | WC 00 04 22 0106 |
| WC 00 01 13 0106 | WC 320301 B 1001 | WC 00 04 19 0101 | CAS 4233         |
| WC 00 04 06 0884 | WC 000421 A 0106 | CAS 4995 1099    |                  |

**4** Premium: The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit:

See Information Page - Extension Schedule for detailed premium information

Total estimated annual premium \$ 21,521.00

Minimum premium \$ 750 Deposit premium \$ 21,521.00

Premium Adjustment Period: ☒ Annual ☐ Semi-Annual ☐ Quarterly ☐ Monthly

Date of Issue: 10-11-06

4401 CREEDMOOR ROAD  
Issuing Office: RALEIGH, NC 27622

Countersignature Date:

Agency At: CHARLOTTE NC 28210

Agent: W H GILL & ASSOCIATES INC



## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

### INFORMATION PAGE - EXTENSION SCHEDULE

Policy Number:  
61 WC 659-181-3001

- 1** Locations - All usual workplaces of the Insured at or from which operations covered by this policy are conducted are located at the addresses stated herein:

001  
3400 INTERNATIONAL AIRPORT DR  
CHARLOTTE NC 28208

State Unempl ID06363520  
Intrastate I.D.004205253



## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

### INFORMATION PAGE - EXTENSION SCHEDULE

Policy Number:  
61 WC 659-181-3001

- 3** A. Workers Compensation Insurance: Part One of the Policy applies to the Workers Compensation Law of the states, if any, which are indicated by an "X" below:

|                                               |                                        |                                                    |                                         |
|-----------------------------------------------|----------------------------------------|----------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Alabama              | <input type="checkbox"/> Hawaii        | <input type="checkbox"/> Minnesota                 | <input type="checkbox"/> Oregon         |
| <input type="checkbox"/> Alaska               | <input type="checkbox"/> Idaho         | <input type="checkbox"/> Mississippi               | <input type="checkbox"/> Pennsylvania   |
| <input type="checkbox"/> Arizona              | <input type="checkbox"/> Illinois      | <input type="checkbox"/> Missouri                  | <input type="checkbox"/> Rhode Island   |
| <input type="checkbox"/> Arkansas             | <input type="checkbox"/> Indiana       | <input type="checkbox"/> Montana                   | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> California           | <input type="checkbox"/> Iowa          | <input type="checkbox"/> Nebraska                  | <input type="checkbox"/> South Dakota   |
| <input type="checkbox"/> Colorado             | <input type="checkbox"/> Kansas        | <input type="checkbox"/> New Hampshire             | <input type="checkbox"/> Tennessee      |
| <input type="checkbox"/> Connecticut          | <input type="checkbox"/> Kentucky      | <input type="checkbox"/> New Jersey                | <input type="checkbox"/> Texas          |
| <input type="checkbox"/> Delaware             | <input type="checkbox"/> Louisiana     | <input type="checkbox"/> New Mexico                | <input type="checkbox"/> Utah           |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Maryland      | <input type="checkbox"/> New York                  | <input type="checkbox"/> Vermont        |
| <input type="checkbox"/> Florida              | <input type="checkbox"/> Massachusetts | <input checked="" type="checkbox"/> North Carolina | <input type="checkbox"/> Virginia       |
| <input type="checkbox"/> Georgia              | <input type="checkbox"/> Michigan      | <input type="checkbox"/> Oklahoma                  | <input type="checkbox"/> Wisconsin      |

- 3** C. Other States Insurance: Part Three of the policy applies to the states, if any, which are indicated by an "X" below:

|                                                          |                                                   |                                                   |                                                    |
|----------------------------------------------------------|---------------------------------------------------|---------------------------------------------------|----------------------------------------------------|
| <input checked="" type="checkbox"/> Alabama              | <input checked="" type="checkbox"/> Hawaii        | <input checked="" type="checkbox"/> Minnesota     | <input checked="" type="checkbox"/> Oregon         |
| <input checked="" type="checkbox"/> Alaska               | <input checked="" type="checkbox"/> Idaho         | <input checked="" type="checkbox"/> Mississippi   | <input checked="" type="checkbox"/> Pennsylvania   |
| <input checked="" type="checkbox"/> Arizona              | <input checked="" type="checkbox"/> Illinois      | <input checked="" type="checkbox"/> Missouri      | <input checked="" type="checkbox"/> Rhode Island   |
| <input checked="" type="checkbox"/> Arkansas             | <input checked="" type="checkbox"/> Indiana       | <input checked="" type="checkbox"/> Montana       | <input checked="" type="checkbox"/> South Carolina |
| <input checked="" type="checkbox"/> California           | <input checked="" type="checkbox"/> Iowa          | <input checked="" type="checkbox"/> Nebraska      | <input checked="" type="checkbox"/> South Dakota   |
| <input checked="" type="checkbox"/> Colorado             | <input checked="" type="checkbox"/> Kansas        | <input checked="" type="checkbox"/> New Hampshire | <input checked="" type="checkbox"/> Tennessee      |
| <input checked="" type="checkbox"/> Connecticut          | <input checked="" type="checkbox"/> Kentucky      | <input checked="" type="checkbox"/> New Jersey    | <input checked="" type="checkbox"/> Texas          |
| <input checked="" type="checkbox"/> Delaware             | <input checked="" type="checkbox"/> Louisiana     | <input checked="" type="checkbox"/> New Mexico    | <input checked="" type="checkbox"/> Utah           |
| <input checked="" type="checkbox"/> District of Columbia | <input checked="" type="checkbox"/> Maryland      | <input checked="" type="checkbox"/> New York      | <input checked="" type="checkbox"/> Vermont        |
| <input checked="" type="checkbox"/> Florida              | <input checked="" type="checkbox"/> Massachusetts | <input type="checkbox"/> North Carolina           | <input checked="" type="checkbox"/> Virginia       |
| <input checked="" type="checkbox"/> Georgia              | <input checked="" type="checkbox"/> Michigan      | <input checked="" type="checkbox"/> Oklahoma      | <input checked="" type="checkbox"/> Wisconsin      |

- 3** D. This policy includes these endorsements and schedules:





# WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

## INFORMATION PAGE - EXTENSION SCHEDULE

Policy Number:  
61 WC 659-181-3001

**4** Premium: The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit:

| CLASSIFICATION OF OPERATIONS                                                                                                              | Terr.<br>Code<br>(Not<br>applicable<br>in FL.) | Code<br>No. | PREMIUM BASIS                          | RATE                            | Estimated<br>Annual<br>Premiums |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|-------------|----------------------------------------|---------------------------------|---------------------------------|
| Entries in this item, except as specifically provided elsewhere in this policy, do not modify any of the other provisions of this policy. |                                                |             | Total Estimated<br>Annual Remuneration | Per \$100<br>of<br>Remuneration |                                 |
| LOCATION 001 - NORTH CAROLINA<br>TRUCKING: MAIL, PARCEL OR<br>PACKAGE DELIVERY-ALL EMPLOYEES<br>AND DRIVERS                               |                                                | 7231        | \$ 212,338.0                           | 10.290 \$                       | 21,850                          |
| SALESPERSONS, COLLECTORS OR<br>MESSENGERS-OUTSIDE                                                                                         |                                                | 8742        | \$ 236,134.0                           | .810 \$                         | 1,913                           |
| CLERICAL OFFICE EMPLOYEES NOC                                                                                                             |                                                | 8810        | \$ 732,835.0                           | .330 \$                         | 2,418                           |
| FREIGHT HANDLING-EXPLOSIVES<br>OR AMMUNITION-UNDER CONTRACT:<br>STATE ACT ONLY                                                            |                                                | 7360        | IF ANY                                 | 9.730 \$                        | 0                               |
| TERRORISM TOTAL - NC                                                                                                                      |                                                | 9740        | \$ 1,181,307.0                         | .030 \$                         | 354                             |

## SUMMARY

|                                                    |      |     |        |
|----------------------------------------------------|------|-----|--------|
| PREMIUM SUBJECT TO EXPERIENCE MODIFICATIONS        |      | \$  | 26,181 |
| EXPERIENCE MODIFICATION 0.870                      | 9898 | \$- | 3,404  |
| SCHEDULE MODIFICATION                              |      |     | N/A    |
| PREMIUM ADJUSTED BY APPLICATION OF MODIFICATION(S) |      | \$  | 22,777 |
| PREMIUM DISCOUNT                                   | 0063 | \$- | 1,938  |
| LOSS CONSTANT                                      |      |     |        |
| EXPENSE CONSTANT                                   | 0900 | \$  | 210    |
| TERRORISM RISK                                     | 9740 | \$  | 354    |
| DTEC - NC                                          | 9741 | \$  | 118    |

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# WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

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In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

## GENERAL SECTION

### A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page.) The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

### B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

### C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

### D. State

State means any state of the United States of America, and the District of Columbia.

### E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

## PART ONE WORKERS COMPENSATION INSURANCE

### A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

### C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

### D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;

4. interest on a judgment as required by law until we offer the amount due under this insurance; and

5. expenses we incur.

#### E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

#### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

#### G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

#### H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law.

Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
  - a. benefits payable by this insurance; or
  - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

## PART TWO EMPLOYERS LIABILITY INSURANCE

### A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

### B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

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The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

#### C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;

8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;

10. bodily injury to a master or member of the crew of any vessel;

11. fines or penalties imposed or violation of federal or state law; and

12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

#### D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

#### E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;

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4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

#### F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

#### G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease - policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease - each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay claims for damages after we have paid the applicable limit of our liability under this insurance.

#### H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

#### I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

### PART THREE OTHER STATES INSURANCE

#### A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

#### B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

### PART FOUR YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.

2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

## PART FIVE PREMIUM

### A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

### B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

### C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons

lawfully secured their workers compensation obligations.

### D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

### E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

### F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

### G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

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## PART SIX CONDITIONS

### A. Inspection

We have the right, but are not obligated to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

### B. Long Time Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

### C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

### D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

### E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.



## MUTUAL POLICY CONDITIONS ENDORSEMENT

### POLICYHOLDER MEMBERSHIP IN THE COMPANY

(Applicable Only in the Nationwide Mutual Insurance Company or the Nationwide Mutual Fire Insurance Company in All States Except Those Specifically Provided For)

Because this policy is issued by a mutual insurance company, you are a member of the company while this or any other policy is in force. While a member you are entitled to one vote only – either in person or by proxy – at meetings of the company.

The annual meeting of members of the company issuing your policy (the company is indicated on the Declarations Page) will be held at the Nationwide Plaza in Columbus, Ohio, on the first Thursday of April. The time of the meeting for the Nationwide Mutual Fire Insurance Company is 9:30 A.M. and the time of the meeting for the Nationwide Mutual Insurance Company is 10:00 A.M. We will mail notice of any change in meeting dates, time or place to you at your address last known to us at least ten days prior to the rescheduled meeting date.

This policy is non-assessable, meaning that you are not subject to any assessment beyond the premiums we require for each policy term.

### POLICYHOLDER MEMBERSHIP IN THE COMPANY

(Applicable Only in the Nationwide Mutual Insurance Company or the Nationwide Mutual Fire Insurance Company When This Policy is Issued in The State of Texas)

IN WITNESS WHEREOF: The issuing company, as designated on the Information Page, has caused this policy to be signed by its President and Secretary at Columbus, Ohio, and countersigned by a duly authorized representative of the company.

ATTEST:

*Patricia B. Hatter*

Secretary

*Stephen S. Roman*

President

Nationwide Mutual Insurance Company  
Nationwide Mutual Fire Insurance Company

*D. J. Polinette*

President

Nationwide Property and Casualty Insurance Company



## NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by \_\_\_\_\_

## FOREIGN TERRORISM PREMIUM ENDORSEMENT

The endorsement is notification that your insurance carrier is charging premium for losses that may occur in the event of an act of foreign terrorism.

Your policy provides coverage for workers compensation losses caused by acts of foreign terrorism, including workers compensation benefit obligations directed by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

For purposes of this endorsement, an "act of foreign terrorism" is defined as:

- a. Any act that is violent or dangerous to human life, property or infrastructure; and
- b. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The premium charge for the coverage your policy provides for workers compensation losses caused by an act of foreign terrorism is shown in Item 4 of the Information Page or in the Schedule below.

### SCHEDULE

| State          | Rate per \$100 of Payroll |
|----------------|---------------------------|
| NORTH CAROLINA | .030                      |

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

|                            |                               |                      |
|----------------------------|-------------------------------|----------------------|
| Endorsement Effective      | Policy No. 61 WC 659-181-3001 | Endorsement No.      |
| Insured SEKO CHARLOTTE INC |                               | Premium \$ \$ 354.00 |

Insurance Company NATIONWIDE MUTUAL INSURANCE COMPANY

Countersigned by \_\_\_\_\_

## TERRORISM RISK INSURANCE EXTENSION ACT ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Extension Act of 2005.

### Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply. "Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments resulting from the Terrorism Risk Insurance Extension Act of 2005.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.
- e. For the period beginning on January 1, 2006 and ending on December 31, 2006, an amount equal to 17.5% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2006.
- f. For the period beginning on January 1, 2007 and ending on December 31, 2007, an amount equal to 20% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2007.

### Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer

deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

**Policyholder Disclosure Notice**

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States Government would pay 90% for Program Year 4 and 85% for Program Year 5 of our insured terrorism or war losses exceeding our insurer deductible.
2. The premium charged for the coverage this policy provides for insured terrorism or war losses is included in the amount shown in Item 4 of the Information Page or in the Schedule in the Foreign Terrorism Premium Endorsement (WC 00 04 22), attached to this policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured

Policy No. 61 WC 659-181-3001

Endorsement No.  
Premium \$

Insurance Company

Countersigned by \_\_\_\_\_

## NORTH CAROLINA AMENDED COVERAGE ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because North Carolina is shown in Item 3.A. of the Information Page.

The **Cancellation** Condition of the policy is replaced by this Condition:

### D. Cancellation and Nonrenewal

#### 1. You may cancel this policy.

If you cancel this policy, you must mail or deliver advance written notice to us stating when the cancellation is to take effect.

#### 2. We may cancel this policy.

(a) If this policy has been in effect for fewer than 60 days and is not a renewal policy, we may cancel this policy for any reason by giving you at least 30 days prior written notice of cancellation and the reasons for cancellation by registered or certified mail, return receipt requested.

(b) If this policy has been in effect for at least 60 days or is a renewal policy, we may not cancel this policy without your prior written consent, except for any one of the following reasons:

- (1) Nonpayment of premium in accordance with the policy terms.
- (2) An act or omission by you or your representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy, continuing the policy, or presenting a claim under the policy.
- (3) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by you and us at the time of assumption of the risk.
- (4) Substantial breach of contractual duties, conditions, or warranties that materially affects the insurability of the risk.
- (5) A fraudulent act against us by you or your representative that materially affects the insurability of the risk.

(6) Willful failure by you or your representative to institute reasonable loss control measures that materially affect the insurability of the risk after written notice by us.

(7) Loss of facultative reinsurance or loss of or substantial changes in applicable reinsurance as provided in G.S. 58-41-30.

(8) Your conviction of a crime arising out of acts that materially affect the insurability of the risk.

(9) A determination by the Commissioner that the continuation of this policy would place us in violation of the laws of North Carolina.

(10) You fail to meet the requirements contained in our corporate charter, articles of incorporation, or bylaws, when we are a company organized for the sole purpose of providing members of an organization with insurance coverage in North Carolina.

(c) If we cancel for any of the reasons listed in paragraph (b), we must provide you with at least 15 days prior written notice of cancellation stating the precise reason for cancellation. We must provide this notice by registered or certified mail, return receipt requested, to you and any other person designated in the policy to receive notice of cancellation at the addresses shown in the policy or, if not indicated in the policy, at the last known addresses. Whenever notice of cancellation is required to be given by registered or certified mail, cancellation will not be effective unless and until that method is employed and completed. Failure to send notice as provided in this paragraph to any other person designated in the policy to receive notice of cancellation invalidates the cancellation only as to that other person's interest.

- (d) Cancellation for nonpayment of premium is not effective if the amount due is paid before the effective date stated in the notice of cancellation.
3. We may refuse to renew this policy.
- (a) If this policy is for a term of one year or less, we must provide you with notice of nonrenewal at least 45 days prior to the expiration date of the policy.
- (b) If this policy is for a term of more than one year or for an indefinite term, we must provide you with notice of nonrenewal at least 45 days prior to the anniversary date of the policy.
- (c) The notice of nonrenewal must state the precise reason for nonrenewal. Failure to send this notice, as provided in paragraphs 3 and 5, to any other person designated in the policy to receive this notice invalidates the nonrenewal only as to that other person's interest.
- (d) Any nonrenewal attempted or made that is not in compliance with paragraphs (a), (b) and (c) is not effective. Paragraphs (a), (b) and (c) do not apply if you have obtained insurance elsewhere, have accepted replacement coverage, or have requested or agreed to nonrenewal.
4. Whenever we lower coverage limits, raise deductibles, or raise premium rates for reasons within our exclusive control and other than at your request, we will mail you written notice of the change at least 30 days in advance of the effective date of the change. As used in this paragraph, the phrase, "reasons within our exclusive control" does not mean experience modification changes, exposure changes, or loss cost rate changes.
5. We must provide the notice required by paragraphs 3 and 4 by mail to you and any other person designated in the policy to receive this notice at the addresses shown in the policy or, if not indicated in the policy, at the last known addresses. Mailing copies of the notice by regular first-class mail satisfies the notice requirements of paragraphs 3, 4 and 5.
6. We will also send copies of the notice required by this endorsement to the agent or broker of record, though failure to send copies of the notice to the agent or broker of record will not invalidate a cancellation or nonrenewal. Mailing copies of the notice by regular first-class mail to the agent or broker of record satisfies the requirements of this paragraph.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

|                       |                                                                                                            |            |                    |                 |
|-----------------------|------------------------------------------------------------------------------------------------------------|------------|--------------------|-----------------|
| Endorsement Effective | 10.20.06                                                                                                   | Policy No. | 61 WC 659-181-3001 | Endorsement No. |
| Insured               | SEKO CHARLOTTE INC<br>DBA SEKO WORLDWIDE<br>3400 INTERNATIONAL AIRPORT DR<br>STE 100<br>CHARLOTTE NC 28208 | Premium \$ | INCLUDED           |                 |
| Insurance Company     | NATIONWIDE MUTUAL INSURANCE COMPANY                                                                        |            |                    |                 |

Countersigned by \_\_\_\_\_

## PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend"

Section D. of Part Five of the policy is replaced by this provision.

### PART FIVE PREMIUM

D. Premium is amended to read:

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by \_\_\_\_\_



## WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

### INFORMATION PAGE - EXTENSION SCHEDULE

Policy Number:  
61 WC 659-181-3001

- 3** A. Workers Compensation Insurance: Part One of the Policy applies to the Workers Compensation Law of the states, if any, which are indicated by an "X" below:

|                                               |                                        |                                                    |                                         |
|-----------------------------------------------|----------------------------------------|----------------------------------------------------|-----------------------------------------|
| <input type="checkbox"/> Alabama              | <input type="checkbox"/> Hawaii        | <input type="checkbox"/> Minnesota                 | <input type="checkbox"/> Oregon         |
| <input type="checkbox"/> Alaska               | <input type="checkbox"/> Idaho         | <input type="checkbox"/> Mississippi               | <input type="checkbox"/> Pennsylvania   |
| <input type="checkbox"/> Arizona              | <input type="checkbox"/> Illinois      | <input type="checkbox"/> Missouri                  | <input type="checkbox"/> Rhode Island   |
| <input type="checkbox"/> Arkansas             | <input type="checkbox"/> Indiana       | <input type="checkbox"/> Montana                   | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> California           | <input type="checkbox"/> Iowa          | <input type="checkbox"/> Nebraska                  | <input type="checkbox"/> South Dakota   |
| <input type="checkbox"/> Colorado             | <input type="checkbox"/> Kansas        | <input type="checkbox"/> New Hampshire             | <input type="checkbox"/> Tennessee      |
| <input type="checkbox"/> Connecticut          | <input type="checkbox"/> Kentucky      | <input type="checkbox"/> New Jersey                | <input type="checkbox"/> Texas          |
| <input type="checkbox"/> Delaware             | <input type="checkbox"/> Louisiana     | <input type="checkbox"/> New Mexico                | <input type="checkbox"/> Utah           |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Maryland      | <input type="checkbox"/> New York                  | <input type="checkbox"/> Vermont        |
| <input type="checkbox"/> Florida              | <input type="checkbox"/> Massachusetts | <input checked="" type="checkbox"/> North Carolina | <input type="checkbox"/> Virginia       |
| <input type="checkbox"/> Georgia              | <input type="checkbox"/> Michigan      | <input type="checkbox"/> Oklahoma                  | <input type="checkbox"/> Wisconsin      |

- 3** C. Other States Insurance: Part Three of the policy applies to the states, if any, which are indicated by an "X" below:

|                                                          |                                                   |                                                   |                                                    |
|----------------------------------------------------------|---------------------------------------------------|---------------------------------------------------|----------------------------------------------------|
| <input checked="" type="checkbox"/> Alabama              | <input checked="" type="checkbox"/> Hawaii        | <input checked="" type="checkbox"/> Minnesota     | <input checked="" type="checkbox"/> Oregon         |
| <input checked="" type="checkbox"/> Alaska               | <input checked="" type="checkbox"/> Idaho         | <input checked="" type="checkbox"/> Mississippi   | <input checked="" type="checkbox"/> Pennsylvania   |
| <input checked="" type="checkbox"/> Arizona              | <input checked="" type="checkbox"/> Illinois      | <input checked="" type="checkbox"/> Missouri      | <input checked="" type="checkbox"/> Rhode Island   |
| <input checked="" type="checkbox"/> Arkansas             | <input checked="" type="checkbox"/> Indiana       | <input checked="" type="checkbox"/> Montana       | <input checked="" type="checkbox"/> South Carolina |
| <input checked="" type="checkbox"/> California           | <input checked="" type="checkbox"/> Iowa          | <input checked="" type="checkbox"/> Nebraska      | <input checked="" type="checkbox"/> South Dakota   |
| <input checked="" type="checkbox"/> Colorado             | <input checked="" type="checkbox"/> Kansas        | <input checked="" type="checkbox"/> New Hampshire | <input checked="" type="checkbox"/> Tennessee      |
| <input checked="" type="checkbox"/> Connecticut          | <input checked="" type="checkbox"/> Kentucky      | <input checked="" type="checkbox"/> New Jersey    | <input checked="" type="checkbox"/> Texas          |
| <input checked="" type="checkbox"/> Delaware             | <input checked="" type="checkbox"/> Louisiana     | <input checked="" type="checkbox"/> New Mexico    | <input checked="" type="checkbox"/> Utah           |
| <input checked="" type="checkbox"/> District of Columbia | <input checked="" type="checkbox"/> Maryland      | <input checked="" type="checkbox"/> New York      | <input checked="" type="checkbox"/> Vermont        |
| <input checked="" type="checkbox"/> Florida              | <input checked="" type="checkbox"/> Massachusetts | <input type="checkbox"/> North Carolina           | <input checked="" type="checkbox"/> Virginia       |
| <input checked="" type="checkbox"/> Georgia              | <input checked="" type="checkbox"/> Michigan      | <input checked="" type="checkbox"/> Oklahoma      | <input checked="" type="checkbox"/> Wisconsin      |

- 3** D. This policy includes these endorsements and schedules:



**PREMIUM DISCOUNT ENDORSEMENT**

The premium for this policy and the policies, if any, listed in Item 3 of the Schedule may be eligible for a discount. This endorsement shows your estimated discount in Item 1 or 2 of the Schedule. The final calculation of premium discount will be determined by our manuals and your premium basis as determined by audit. Premium subject to retrospective rating is not subject to premium discount.

**SCHEDULE**

| 1. <u>State</u> | <u>Estimated Eligible Premium</u> |                  |                   |         |
|-----------------|-----------------------------------|------------------|-------------------|---------|
|                 | First<br>\$5,000                  | Next<br>\$95,000 | Next<br>\$400,000 | Balance |
| NORTH CAROLINA  | NONE                              | .109             | .126              | .144    |

2. Average percentage discount: \_\_\_\_\_ %

3. Other policies:

4. If there are no entries in Items 1, 2 and 3, of the Schedule see the Premium Discount Endorsement attached to your policy number:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective:

Policy No. 61 WC 659-181-3001

Endorsement No.

Insured SEKO CHARLOTTE INC

Premium \$

Countersigned by \_\_\_\_\_

Insurance Company NATIONWIDE MUTUAL INSURANCE COMPANY

**DOMESTIC TERRORISM, EARTHQUAKES, AND CATASTROPHIC INDUSTRIAL ACCIDENTS PREMIUM ENDORSEMENT**

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of domestic terrorism, earthquakes and/or a catastrophic industrial accident.

The premium charge provides funding for the risk of earthquakes, catastrophic industrial accidents, and certain acts of domestic and foreign terrorism. It does not provide funding for acts of terrorism certified as such by the Terrorism Risk Insurance Act (TRIA) of 2002, but rather provides funding for all other acts of terrorism specifically excluded by TRIA.

For purposes of this endorsement, the following definitions apply:

**Domestic terrorism:** All acts of terrorism outside the scope of TRIA with aggregate workers compensation losses in excess of \$50 million

**Earthquake:** The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity where aggregate workers compensation losses from the single event are in excess of \$50 million

**Catastrophic Industrial Accident:** Any single event resulting in aggregate workers compensation losses in excess of \$50 million

**SCHEDULE**

|    | Payroll | Rate | Premium |
|----|---------|------|---------|
| NC | 1181307 | .010 | 118     |

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No. 61 WC 659-181-3001

Endorsement No.

Insured SEKO CHARLOTTE INC

Premium \$

Insurance Company NATIONWIDE MUTUAL INSURANCE COMPANY

Countersigned by \_\_\_\_\_

## WORKERS COMPENSATION DIVIDEND ENDORSEMENT

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The insured shall participate in the earnings of the company, to such extent and upon such conditions as shall be determined by the Board of Directors of the company in accordance with law and as made applicable to this policy, provided the insured shall have complied with all of the terms of this policy with respect to the payment of premium.

Dividends are not guaranteed and must be declared by the Board of Directors and paid from surplus.

## NATIONWIDE'S PREMIUM AUDIT FACTS

### What is a Premium Audit?

It is the actual findings from the examination of your business accounting records to determine the correct insurance charges for the covered period.

### When is a Premium Audit necessary?

At the beginning of each policy period, your premium is based on an estimate using an exposure base such as Gross Sales, Payroll or other similar factor. So at the end of each policy period, generally each year, we must ask you for the actual amount so we can adjust your insurance coverage.

### Does this mean my insurance will cost me more money?

Yes, sometimes, but it can also mean you may be entitled to a refund. For example, you estimate your Gross Sales at \$5,000,000 but unfortunately only have Gross Sales of \$4,000,000; your insurance cost could be 20% less after we conduct the Premium Audit. Isn't that a fair way for both of us?

### Does a Premium Audit require me to keep extra records?

No, your normal business accounting records are generally all that is needed.

You need to let us look at your:

- Journals
- Ledgers
- Tax Reports
- Individual Payroll Records
- Vehicle Titles
- Certificates of Insurance

### How do you conduct a Premium Audit?

We use one of three methods:

- We will call you on the telephone during normal business hours, after you return a post card giving a convenient time. We will ask you several questions. Normally this takes less than 10 minutes; or,
- We send you a questionnaire to complete and return to us; or

We will arrange for our company auditor or an independent auditor, who is employed by a nationally known auditing service, to come to your place of business at a time which is convenient to you.

### What kind of accounting information do you need?

This may vary, but usually we need to know:

- Your Gross Sales; this is your total sales, less sales taxes paid, credits given for return merchandise and any amounts you may make as finance charges.
- Your total payroll, which includes wages, commissions, bonuses, holiday pay, vacation pay, sick pay, piece work payments, profit sharing, tool allowances and value of board and lodging. Please keep any overtime pay separate as the extra pay for overtime is not included in payroll for insurance computation.\* If you do not keep separate records on overtime pay, you may be paying too much for your insurance.
- Amounts paid to subcontractors. You should require that your subcontractors furnish you Certificates of Insurance for Workers' Compensation and General Liability and Automobile Liability.

It is to your advantage to have Certificates of Insurance from your subcontractors available to the auditor showing adequate general liability insurance. If a subcontractor cannot furnish a Certificate of Insurance documenting general liability insurance limits of at least \$300,000, they may be classified as your employees and your premium may be increased.

If you have any questions about your Premium Audit, please contact your Nationwide Agent and he or she will help in answering your questions.

The contents of this publication follow general insurance principles, and it is not intended to supersede any definitions or conditions contained in your policy.

- \* EXCEPTION: The states of Pennsylvania and Delaware include extra pay for overtime in the workers compensation payroll.

NATIONWIDE INSURANCE COMPANIES • One Nationwide Plaza • Columbus, Ohio 43215-2220  
Serving the Personal and Business Community Since 1926

Hearing or voice impaired: 1-800-622-2421 (TTY Only)

## DATOS SOBRE LA AUDITORÍA DE LAS PRIMAS DE NATIONWIDE

### ¿Qué es una auditoría de las primas?

Es el resultado real de un examen de los documentos de contabilidad de su negocio para determinar los costos correctos de seguros para el periodo de cobertura.

### ¿Cuándo es necesaria una auditoría de las primas?

Al comienzo de cada periodo de póliza, su prima se basa en un cálculo que utiliza una base de exposición, tal como las ventas brutas, la nómina u otro factor similar. Por eso, al final de cada periodo de póliza, generalmente cada año, tenemos que pedirle la cantidad real para poder ajustar la cobertura de su seguro.

### ¿Quiere decir esto que mi seguro me costará más dinero?

Sí, a veces, pero también puede significar que tendrá derecho a un reembolso. Por ejemplo, usted calcula que sus ventas brutas a \$5,000,000 pero desafortunadamente sólo tiene ventas brutas por valor de \$4,000,000; el costo de su seguro podría ser de un 20% menos después de nuestra auditoría de las primas. ¿Verdad que es justo para ambos?

### ¿Es necesario que mantenga documentos adicionales para la auditoría de las primas?

No, por regla general lo único que se necesita son sus documentos normales de contabilidad para su negocio.

Debe permitirnos ver sus:

- Diarios
- Libros mayores
- Declaraciones de impuestos
- Registros individuales de nómina
- Títulos de propiedad de sus vehículos
- Certificados de seguros

### ¿Cómo llevan a cabo la auditoría de las primas?

Utilizamos uno de estos tres métodos:

- Le llamaremos por teléfono durante el horario comercial normal, una vez que usted haya enviado de regreso una postal indicando la mejor hora para llamarle. Le haremos varias preguntas. Normalmente, esto toma menos de 10 minutos; o
- Le enviaremos un cuestionario para que usted lo rellene y envíe de regreso; o
- Haremos los arreglos necesarios para que un auditor de la compañía o un auditor independiente, empleado de un servicio de auditoría reconocido

a nivel nacional, acuda a su negocio a una hora conveniente para usted.

### ¿Qué tipo de información sobre contabilidad necesitan?

Esto puede variar, pero por regla general necesitamos saber:

- Sus ventas brutas; es decir el total de sus ventas, menos los impuestos de ventas pagados, créditos por devoluciones de mercancía y cualquier cantidad que pueda ganar como cargos de financiación.
- El total de su nómina, que incluye salarios, comisiones, bonificaciones, paga de días feriados, paga de vacaciones, paga en días de enfermedad, pagos por unidades trabajadas, participación en los beneficios, compensación para herramientas y valor de alojamiento y comidas. Por favor, mantenga cualquier paga por horas extraordinarias separada, ya que la paga adicional por horas extraordinarias no se incluye en la nómina para las cuentas de seguros.\* Si no mantiene registros separados para la paga por horas extraordinarias, es posible que esté pagando demasiado por su seguro.

- Cantidades pagadas a subcontratistas. Usted deberá requerir que sus subcontratistas le entreguen certificados de seguros para el seguro para accidentes de trabajo (Worker's Compensation) y seguro de responsabilidad civil en general y responsabilidad civil para automóviles.

El hecho de tener certificados de seguros de sus subcontratistas a disposición del auditor para demostrar que tiene seguro adecuado de responsabilidad civil es ventajoso para usted. Si un subcontratista no puede darle un certificado de seguro para documentar límites de seguro de responsabilidad civil de por lo menos \$300,000, se le podría clasificar como empleado de usted y su prima podría aumentar.

Si tiene cualquier pregunta acerca de la auditoría de las primas, póngase en contacto con su agente de Nationwide para que responda a sus preguntas.

Los contenidos de esta publicación están de acuerdo con los principios generales de seguros y no tienen por objetivo reemplazar las definiciones o condiciones contenidas en su póliza.

\* **EXCEPCIÓN:** Los estados de Pennsylvania y Delaware incluyen la paga adicional por horas extraordinarias en la nómina del seguro para accidentes de trabajo.

NATIONWIDE INSURANCE COMPANIES • One Nationwide Plaza • Columbus, Ohio 43215-2220  
Servicio a personas y comercios desde 1926

Para personas con problemas auditivos o del habla: 1-800-622-2421 (TTY solamente)

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## ABOUT SUBCONTRACTORS

Workers' Compensation Law makes you responsible for Workers' Compensation Claims of any subcontractors you engage unless such subcontractors provide their own compensation insurance.

Your coverage may extend not only to the employees of an uninsured subcontractor, but also to the subcontractor as well.

Besides paying additional premium, you may be potentially liable for a claim against an uninsured subcontractor, which may unfavorably affect your credits for good loss experience.

It is to your benefit that all your subcontractors carry Workers' Compensation and provide you proof of that coverage by means of a Certificate of Insurance. Without this proof of insurance, the amount you paid the subcontractor will be added to your payroll. This of course, increases your insurance costs.

Some subcontractors operate without employees. Most states do not require a sole proprietor or partners to purchase workers' compensation coverage. In this situation, these subcontractors should provide the following documentation:

- ◆ A Certificate of Insurance for General Liability Coverage.
- ◆ A statement that he/she has no employees and he/she has elected not to purchase workers' compensation insurance.
- ◆ A copy of the occupational license, if the type of work done requires a license from a governmental agency.

These documents help verify the subcontractor relationship and avoid the need to make a premium charge.

Where state laws permit, the sole proprietor and partner should be encouraged to purchase workers' compensation insurance.

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Serving the Personal and Business Community Since 1928

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## Audit Information – North Carolina

### Workers' Compensation

- The sole proprietor or partners in a Partnership are excluded from coverage under the Workers' Compensation policy unless they elect to be covered and notify the Company of this intent.
- Executive Officers of a Corporation are automatically covered under Workers' Compensation policy unless they elect to be excluded. The Company must be notified of this intent.
- Premium for Workers' Compensation is based on an estimated payroll for the term of the policy; thus, the premium at inception is considered estimated. After the policy period expires, we will request actual payroll figures from you. The premium will be adjusted according to the actual payroll for that period. You will receive either an audit billing or refund after premiums have been computed.
- Total overtime wages are included in payroll unless you keep specific records. The extra pay for overtime in excess of the amount the employee would have earned for the overtime work at his regular rate of pay must be shown separately, by employee.
- Your records should identify the type of work performed by each employee and the home state of each employee.
- Use of subcontractors can affect your premium.

A subcontractor without employees is no longer required to carry Workers' Compensation. If he later hires employees and does not secure Workers' Compensation, you will be charged for the payroll for his employees.

If a subcontractor with employees carries his own insurance, you must secure a Certificate of Insurance from him for your records. This will prevent you from being charged for his employees.

Certificates of Insurance must be obtained before the job is performed.

- The costs your subcontractors charge for labor must be shown separate from material costs.

### General Liability

- Premium for General Liability coverage is based on various types of exposures: payroll, sales, units, etc. At the beginning of a policy term, an estimated amount of exposure is used to develop an estimated premium to charge for the coverage. After the policy term expires, we will request that you provide your actual exposures (sales, payroll, units, etc.) for the term of the policy. We will use this information to develop an actual premium, and make the necessary adjustments to the premium for the same policy term. You will be billed, or refunded accordingly.
- Several factors are considered in developing actual exposures...

If the premium basis is payroll, a flat amount of payroll is used for a sole proprietor, each partner or each executive officer. This flat payroll is added to the actual payroll for your employees.

Use of subcontractors can affect premiums. If a subcontractor cannot furnish a Certificate of Insurance documenting general liability limits of at least \$300,000, they may be classified as your employees and your premium may be increased.

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If the subcontractor has adequate coverage, obtain a Certificate of Insurance and a charge will be made under the lower-rated Contractors/Subcontractors classification for the coverage. This charge is based on the total cost of the job - material and labor.

Certificates of Insurance should be obtained from the subcontractor before a job is performed.

Audit balances represent earned premium and are due when billed. To avoid substantial premium adjustments as a result of an audit, you should contact your agent to adjust estimated exposures if you experience, or anticipate changes in your exposures and/or operations during the term of your policy. Your agent will welcome your call.

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5104

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

South Carolina Workers' )  
Compensation Commission, )

Petitioner, )

v. )

West Expedited & Delivery )  
Service, Inc. )

Respondent. )

Consent Agreement  
Compliance File #: X070622

I, the undersigned, in my position as Owner, have full binding authority to execute this agreement on behalf of the Respondent. I acknowledge that since 9/15/94, the Respondent was operating without workers' compensation insurance and in violation of Section 42-5-10 and Section 42-5-20 (1985). An employer required to carry workers' compensation insurance, who refuses or neglects to do, so shall be punished by a fine of \$1.00 for each employee, but not less than \$10.00 or more than \$100.00 for each day of refusal or neglect [SC Code Ann. Section 42-5-40 (1985)]. Also the Commission has authority to assess a minimum penalty of \$750.00 [Section 42-3-105].

The fine assessed in this case is \$1,825.00, to be paid within 14 calendar days of the date of the accompanying violation letter.

The Respondent agrees to take immediate action to comply with the requirements of the South Carolina Workers' Compensation Act.

By executing this agreement, the Respondent is responsible for any claim found to be compensable, which occurs during the period of violation. Further, the Respondent agrees to make prompt payment of any claim found to be compensable.

Executing the agreement does not nullify any defenses the employer may have for any claim, to include a defense that an injury was not the result of an accident arising out of employment. Also, the Respondent does not waive any claims or causes of action the Respondent may have against any third party, insurance company, agent or broker.

Morris J. West 11/20/07 Morris J. West  
Respondent's signature Date Respondent's Name (Print)  
James L. West 11/20/07 James L. West  
Witness's signature Date Respondent's FBIN 28-0961807  
51-

SCWCC

NOV 28 '07  
INSURANCE &  
MEDICAL SERVICES

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| THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT(S) |  |  |  | WEST EXPEDITED & DELIVERY SERVICE, INC.      |  | 2163       |
|---------------------------------------------------------------------|--|--|--|----------------------------------------------|--|------------|
|                                                                     |  |  |  | 801 ANSEL SCHOOL RD. PH. 864-877-8200        |  | 87-206/532 |
|                                                                     |  |  |  | GREER, SC 29651                              |  |            |
|                                                                     |  |  |  | Date <u>11/20/07</u>                         |  |            |
| TOTAL OF INVOICES                                                   |  |  |  | Pay to the Order of <u>Western Camp Com.</u> |  | \$ 1825.00 |
| LESS % DISCOUNT                                                     |  |  |  | Check # <u>40660</u>                         |  |            |
| LESS                                                                |  |  |  | Dollars <u>50</u>                            |  |            |
| TOTAL DEDUCTIONS                                                    |  |  |  |                                              |  |            |
| AMOUNT OF CHECK                                                     |  |  |  |                                              |  |            |

|                         |                                    |                 |            |                              |
|-------------------------|------------------------------------|-----------------|------------|------------------------------|
| <b>GREER STATE BANK</b> | 801 N. Main St.<br>Greer, SC 29650 | Invoice # 40660 | ID # 35207 | Signature <u>L. C. C. C.</u> |
| For <u>7070622</u>      | <u>SAR 11-20-07</u>                |                 |            |                              |
| "002163"                | "                                  |                 |            |                              |

South Carolina Workers' Compensation Commission  
P.O. Box 1715  
Columbia, South Carolina 29202-1715 (803)737-5700

WCC File # 0719222  
Carrier File # 006182  
Carrier Code #  
Employer FEIN 570961807

AMENDED

GREGORY A. COLLINS  
Claimant's Name

[REDACTED] EASLEY, SC 29640  
Address City State Zip

Home Phone # Work Phone #  
TIMOTHY B KILLEN  
Preparer's Name Address

WEST EXPEDITED & DELIVERY

Employer's Name  
SERVICE INC. 801 ANSEL SCHOOL RD., GREER, SC 29651  
Address City State Zip

Insurance Carrier  
100 Executive Center Dr. 803 798-2722 EXT. 134  
Suite 101, Columbia, SC 29210 Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☒ Both Injury by Accident and Disease ☐ Other

1. Date of accident: 09/08/2007 2. AWW: \$ 509.50 Comp. Rate: \$ 339.68

3. Type of injury and body part(s) Death as a result of a motor vehicle accident.

4. Facts in controversy: See Attachment to Form 58.

5. Legal issues involved: See Attachment to Form 58.

6. Unusual problems: See Attachment to Form 58.

7. Witnesses (designate if expert)\* Morris West; any and all witnesses named or called by any party.

8. Exhibits: Dependency Investigation; SEKO documents; Depo. of Morris West; &  
Tracking information from SEKO Worldwide; Depo. of Ron Burks.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)  
N/A.

10. Name, address, and specialty, if any, of the treating physician: N/A

11. Impairment rating(s); body part(s); physician and date of opinion: N/A

DATE OF HEARING: 05/12/2010 TIME OF HEARING: 10:30 a.m.

SIGNATURE [Signature] DATE 5/10/10  
On behalf of ☐ Claimant ☐ Employer ☒ SC Uninsured Employers' Fund

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.  
Commissioners reserve the right to admit expert witnesses at hearings.

**ATTACHMENT TO AMENDED FORM 58****SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND**

4. (a) Whether Claimant suffered a fatal motor vehicle collision in the course and scope of his employment as a delivery driver with West Expedited and Delivery;
- (b) Whether SEKO Worldwide, LLC and/or SEKO Charlotte, Inc. was the Claimant's statutory employer at the time of his motor vehicle collision. In particular, whether the Claimant's injuries arose out of the contract between his direct employer and SEKO Worldwide, LLC and/or SEKO Charlotte, Inc., where:
- i. There is, apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury;
  - ii. The injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment;
  - iii. The Claimant's accident was directly attributable to his duties to act as a courier between South Carolina and Wisconsin;
  - iv. The substantial evidence supports a finding that but for the contractual relationship between West Expedited and Delivery and SEKO Worldwide, LLC and/or SEKO Charlotte, Inc., the Claimant would not have suffered this motor vehicle collision; and
  - v. There is an implied requirement in the contract(s) between West Expedited and Delivery and SEKO Worldwide, LLC and/or SEKO Charlotte, Inc. that West's drivers, in order to provide efficient movement of goods across the country for SEKO, return to the Upstate of South Carolina after the delivery of SEKO shipments;
- (c) Determination of dependents; and
- (d) Should a party other than the Fund be responsible for the payment of benefits, whether that party shall reimburse the Fund for expenses incurred as a result of the Dependency Investigation.

5. See Number Four (4), above; Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

TBL

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. FILE NO: 0719222

|                            |   |                           |
|----------------------------|---|---------------------------|
| GREGORY A. COLLINS,        | ) | A M E N D E D             |
|                            | ) | NOTICE OF WITNESSES AND   |
| Employee/Claimant,         | ) | WRITTEN MEDICAL REPORTS   |
|                            | ) | TO BE INTRODUCED AS       |
| vs.                        | ) | DIRECT EVIDENCE ON        |
|                            | ) | BEHALF OF SOUTH CAROLINA  |
| WEST EXPEDITED & DELIVERY, | ) | UNINSURED EMPLOYERS' FUND |
|                            | ) |                           |
|                            | ) |                           |
| Employer/Defendant.        | ) |                           |

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
LINDA B. MCKENZIE, ESQ., ATTORNEY FOR EMPLOYEE/CLAIMANT  
BRIAN ASHLEY MARTIN, ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT  
KENNETH G. SOUTHERLIN, ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT  
MITCHELL K. BYRD., JR., ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT  
A. MUNDI GEORGE, ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT

YOU ARE HEREBY NOTIFIED that the South Carolina Uninsured Employers' Fund, pursuant to the provisions of the South Carolina Workers' Compensation Act and the South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the South Carolina Uninsured Employers' Fund, to wit:

|                         |                |                 |
|-------------------------|----------------|-----------------|
| NAME OF PHYSICIAN/OTHER | DATE OF REPORT | NUMBER OF PAGES |
| -----                   | -----          | -----           |

(SEE ATTACHMENT)

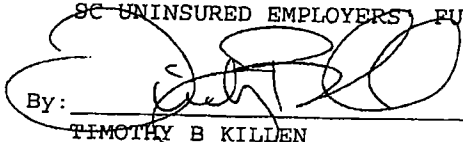
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Defendant South Carolina Uninsured Employers' Fund.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendant Uninsured Employers' Fund:

MORRIS WEST; AND ANY AND ALL WITNESSES NAMED OR CALLED BY ANY PARTY.

SC UNINSURED EMPLOYERS' FUND

By: 

TIMOTHY B KILLEN

STAFF ATTORNEY

Suite 101

100 Executive Center Drive

Columbia, South Carolina 29210

Telephone No.: (803) 798-2722 Ext. 124

May 11, 2010

**ATTACHMENT TO AMENDED NOTICE OF WITNESSES AND WRITTEN MEDICAL  
REPORTS**

SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

| NO. | NAME OF PHYSICIAN/OTHER                                                                                                                | DATES           | PAGES   |
|-----|----------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------|
| 1.  | Dependency Investigation and Attachments, SIU Services, Inc.                                                                           | 9/22/09         | 1 - 22  |
| 2.  | SEKO documents received pursuant to Form 27                                                                                            | Rec'd 3/19/10   | 23 - 30 |
| 3.  | Deposition of Morris West                                                                                                              | 2/23/10         | 31 - 43 |
| 4.  | Claimant's Shipment Tracking Information from SEKO Worldwide website: <a href="http://www.sekoworldwide.com">www.sekoworldwide.com</a> | Accessed 5/3/10 | 44 - 47 |
| 5.  | Deposition of Ron Burks                                                                                                                | May 10, 2010    | 48 - 99 |

*TRU*

SEP 22 2007

WEST DELIVERY SERVICE INC  
801 ANSEL SCHOOL ROAD  
GREER, S.C. 29651

DATE: SEPTEMBER 10, 2007

SEKO FREIGHT SYSTEMS  
3400 INT. AIRPORT DR.  
SUITE 100  
CHARLOTTE, N.C. 28208

DATE: AUGUST 28, 2007

SHIPPER: TIMKEN  
WALHALLA, SC

CONSIGNEE: DELPHI CHASSIS  
SANDUSKY, OH

REF# 388727

CHARGE: \$ 812.40

DATE: AUGUST 31, 2007

SHIPPER: INA BEARING  
SPARTANBURG, SC

CONSIGNEE: HI TECH  
SENECA, SC

REF# 373718

CHARGE: \$ 97.20

DATE: AUGUST 31, 2007

SHIPPER: HONEYWELL  
GREER, SC

CONSIGNEE: US AIRWAYS  
CHARLOTTE, NC

REF# 337871

CHARGE: \$ 110.00

DATE: SEPT. 6, 2007

SHIPPER: INA BEARING  
SPARTANBURG, SC

CONSIGNEE: INA BEARING  
FORT MILL, SC

REF# 373715

CHARGE: \$ 96.00



DATE: SEPT. 7, 2007

SHIPPER: INA BEARING  
SPARTANBURG, SC

CONSIGNEE: HARLEY DAVIDSON  
WAUWATOSA, WI

REF# 373716

CHARGE: \$ 1,068.00 ✓

---

TOTAL CHARGES: \$ 2,183.60

BY Morris L. West  
MORRIS L. WEST

[illegible]

2007 (44 21675

DELIVERING CARRIER  
USF WORLD WIDE

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful

(Signature of Consignor)

If charges are to be prepaid,  
write or stamp here, "To be Prepaid."

112508 - 1 skid 24 ctn 5184 parts

PROTECT FOR 6 AM 8/29/07 WED.

## OUR EXPENSE

FORWARD TO.

ADDRESS

CITY STATE ZIP CODE

Received \$ \_\_\_\_\_  
to apply in prepayment of the charges  
on the property described herein.

Agent or Cashier

Per \_\_\_\_\_  
(The signature here  
acknowledges only the amount

### Charges Advanced

13

† "Shipper's Imprint in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission."

NOTE - Where the rate is dependent on value, shippers are required to state specifically in writing the assessed or declared value of property. The assessed or declared value of property is hereby specifically stated by the shipper to not be exceeding:

The fibre boxes used for this shipment conform to the specifications set forth in the box marker's certificate thereon and all other requirements of Consolidated Freight Classification.

Agent; Per

Permanent post-office address of shipper. WALHALLA, SOUTH CAROLINA 29691



1100 Arlington Heights Road, Suite 600, Itasca, IL 60143  
Phone 630.919.4800 Fax 630.773.4215

| SHIP DATE | ORIGIN | DEST | HOUSE WAYBILL |
|-----------|--------|------|---------------|
| 8/3/07    |        |      | 373718        |

SEKO Worldwide limits their liability. To view SEKO Worldwide's tariffs, rules, terms and conditions, please visit [www.sekoworldwide.com](http://www.sekoworldwide.com) on the Internet.

|                                                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| SHIPPER                                                                                                                                                                                                                                       |                            | CONSIGNEE                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                         |
| INA USA - PLANT #4<br>NEW CUT ROAD<br>SPARTANBURG, SC. 29304<br><br>Attn: CHRISTINA                                                                                                                                                           |                            | Hi-Tech<br>219 Hi-Tech<br>Seneca SC 29678                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                         |
| SENT BY/NAME/DEPT<br>Christina                                                                                                                                                                                                                | TELEPHONE<br>864-583-4541  | ATTN NAME/DEPT                                                                                                                                                                                                                                                                                                                                                                                | TELEPHONE                                                                                                                               |
| SEKO ACCOUNT #<br>INAU28304                                                                                                                                                                                                                   | SHIPPER REFERENCE #        | SEKO ACCOUNT #                                                                                                                                                                                                                                                                                                                                                                                | CONSIGNEE REFERENCE #                                                                                                                   |
| BILL-TO PARTY                                                                                                                                                                                                                                 |                            | BILL CHARGES TO:<br>PREPAID COLLECT 3RD PARTY<br><br>PREPAID UNLESS OTHERWISE SPECIFIED                                                                                                                                                                                                                                                                                                       | FCCOD AMT<br><br>SHIPPER'S COD<br>SUBJECT TO PARAGRAPH B<br>ON REVERSE SIDE                                                             |
| ACCT. #                                                                                                                                                                                                                                       |                            | SHIPPER'S DECLARED VALUE / INSURANCE OPTION<br>Unless indicated below and subject to conditions on reverse side, reimbursement for loss/damage is the greater of \$50.00 or \$0.50 per pound of affected freight. See paragraphs 3, 5, 6 and 15 on reverse side. Additional charges apply.<br>Enter amount(s) below:<br>Declared Value for Carriage Full Value Insurance<br>\$ _____ \$ _____ |                                                                                                                                         |
| CARTONS                                                                                                                                                                                                                                       | WEIGHT                     | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                   | PIECES LENGTH WIDTH HEIGHT CUBIC INCHES CUBIC WEIGHT                                                                                    |
| 1                                                                                                                                                                                                                                             | Shed 4 Pcs.                | 263 #                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                         |
| SERVICE LEVELS<br>____ SEKO@Once (NFO) ____ SEKO SurfaceSaver (3-5 Business Days)<br>____ SEKO One (Next Day by 5 PM) ____ Other ____<br>____ SEKO Two (2nd Day by 5 PM) Req. Del. Date ____<br>____ SEKO Three (3rd Day by 5 PM) P.O. # ____ |                            |                                                                                                                                                                                                                                                                                                                                                                                               | SHIPPER'S SIGNATURE<br>(SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE)<br>X [Signature] P/B/K<br>DATE<br>SPECIAL INSTRUCTIONS<br>ASAP |
| HOUSE WAYBILL NO.                                                                                                                                                                                                                             | SIGN FOR SEKO WORLDWIDE BY |                                                                                                                                                                                                                                                                                                                                                                                               | DATE REC'D                                                                                                                              |
|                                                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                                                                                                                               | TIME REC'D                                                                                                                              |
|                                                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                                                                                                                               | NO. SHPTS.                                                                                                                              |
| POD #1                                                                                                                                                                                                                                        |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| x Steve Scott 8-3-07 12:15 1                                                                                                                                                                                                                  |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| NAME DATE TIME CARTONS RECEIVED                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| (RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED)                                                                                                                                                                      |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| POD #2 (FOR OSD or PARTIALS)                                                                                                                                                                                                                  |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| X _____ 26 _____ 11                                                                                                                                                                                                                           |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| NAME DATE TIME CARTONS RECEIVED                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |
| (RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED)                                                                                                                                                                      |                            |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                         |

## SEKO WORLDWIDE LLC

1100 ARLINGTON HTS RD  
SUITE 600  
ITASCA, IL 60143

Station: CLT Phone: 704-423-0111 FAX: 704-423-0333

## DELIVERY RECEIPT



**337871**

|                                                                               |                |                                 |                                                                                  |             |                      |
|-------------------------------------------------------------------------------|----------------|---------------------------------|----------------------------------------------------------------------------------|-------------|----------------------|
| <b>Ship Date</b>                                                              | <b>Service</b> | <b>Due Date/Time</b>            | <b>Origin</b>                                                                    | <b>Dest</b> | <b>House Waybill</b> |
| 08/31/2007                                                                    | X              | 09/04/2007/10:30                | CLT                                                                              | PHX         | 337871               |
| <b>Shipper</b>                                                                |                |                                 | <b>Consignee</b>                                                                 |             |                      |
| HONEYWELL<br>400 BUNCOMBE RD<br>GREER SC, 29651<br>Phone: 8649893794<br>Attn: |                |                                 | HONEYWELL<br>3131 E AIRLANE<br>PHOENIX AZ, 85034<br>Phone: 602-231-2861<br>Attn: |             |                      |
| Shipper Ref:                                                                  |                |                                 | Consignee Ref:                                                                   |             |                      |
| Total Pieces                                                                  | Total Weight   |                                 | Bill to Party                                                                    |             |                      |
| 1                                                                             | 15             |                                 | HONEYWELL                                                                        |             |                      |
| Description                                                                   | Purchase Order | Pieces/DIMs                     | Serial #                                                                         |             |                      |
| E/E<br><br><br><br><br><br><br><br><br><br>ELECTRONIC EQUIP.                  |                | 1-17x12x10                      |                                                                                  |             |                      |
| Declared Value: \$0.00                                                        |                | COD Amount: \$0.00<br>COD Type: |                                                                                  |             |                      |
| Special Instructions                                                          |                |                                 |                                                                                  |             |                      |
|                                                                               |                |                                 |                                                                                  |             |                      |

POD#1

Name: DOMINQUEZ

Date: 09/04/2007

Time: 07:20

Pieces Received:

POD#2(OSD or Partial.)

**Name:**

Date:

Time:

Pieces Received:

Shipment received complete and in good condllion except as noted.

Please Fax Signed Proof of Delivery to 1-866-481-7356 (Toll Free)



| SHIP DATE | ORIGIN | DEST | HOUSE WAYBILL |
|-----------|--------|------|---------------|
| 9/6/07    |        |      | 373715        |

1100 Arlington Heights Road, Suite 600, Itasca, IL 60143  
Phone 630.919.4800 Fax 630.773.4215

SEKO Worldwide limits their liability. To view SEKO Worldwide's tariffs, rules, terms and conditions, please visit [www.sekoworldwide.com](http://www.sekoworldwide.com) on the Internet.

|                                                                                     |                     |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                             |
|-------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| SHIPPER                                                                             |                     | CONSIGNEE                                                                                                                                                                                                                                                                                                                                                                                     |                                                                             |
| INA USA - PLANT #4<br>NEW CUT ROAD<br>SPARTANBURG, SC. 29304<br><br>Attn: CHRISTINA |                     | INA BEARING CO.<br>PLANT 3<br>308 SPRINGHILL FARM RD<br>FORT MILL SC 29715                                                                                                                                                                                                                                                                                                                    |                                                                             |
| SENT BY/NAME/DEPT                                                                   | TELEPHONE           | ATTN NAME/DEPT                                                                                                                                                                                                                                                                                                                                                                                | TELEPHONE                                                                   |
|                                                                                     | 864-583-4541        |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                             |
| SEKO ACCOUNT #                                                                      | SHIPPER REFERENCE # | SEKO ACCOUNT #                                                                                                                                                                                                                                                                                                                                                                                | CONSIGNEE REFERENCE #                                                       |
| INAJ29304                                                                           |                     |                                                                                                                                                                                                                                                                                                                                                                                               |                                                                             |
| BILL-TO PARTY                                                                       |                     | BILL CHARGES TO:<br>PREPAID COLLECT 3RD PARTY<br><br>PREPAID UNLESS OTHERWISE SPECIFIED                                                                                                                                                                                                                                                                                                       | FCCOD AMT<br><br>SHIPPER'S COD<br>SUBJECT TO PARAGRAPH 8<br>ON REVERSE SIDE |
| ACCT. #                                                                             |                     | SHIPPER'S DECLARED VALUE / INSURANCE OPTION<br>Unless indicated below and subject to conditions on reverse side, reimbursement for loss/damage is the greater of \$50.00 or \$0.50 per pound of affected freight. See paragraphs 3, 5, 6 and 15 on reverse side. Additional charges apply.<br>Enter amount(s) below:<br>Declared Value for Carriage Full Value Insurance<br>\$ _____ \$ _____ |                                                                             |
| CARTONS                                                                             | WEIGHT              | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                   | PIECES LENGTH WIDTH HEIGHT CUBIC INCHES CUBIC WEIGHT                        |

Shipper must check one of the items below.

Shipment contains no dangerous goods. ☒

Shipment contains dangerous goods as described. ☐

|                                                       |                                                                |                                                                          |        |
|-------------------------------------------------------|----------------------------------------------------------------|--------------------------------------------------------------------------|--------|
| SERVICE LEVELS                                        |                                                                | SHIPPER'S SIGNATURE<br>(SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE) | DATE   |
| <input checked="" type="checkbox"/> SEKO Once (NFO)   | <input type="checkbox"/> SEKO SurfaceSaver (3-5 Business Days) | <input checked="" type="checkbox"/> Carol Lawrence                       | 9/6/07 |
| <input type="checkbox"/> SEKO One (Next Day by 5 PM)  | <input type="checkbox"/> Other                                 | SPECIAL INSTRUCTIONS                                                     |        |
| <input type="checkbox"/> SEKO Two (2nd Day by 5 PM)   | Req. Del. Date                                                 |                                                                          |        |
| <input type="checkbox"/> SEKO Three (3rd Day by 5 PM) | P.O. #                                                         |                                                                          |        |

|                   |                            |            |                     |            |
|-------------------|----------------------------|------------|---------------------|------------|
| HOUSE WAYBILL NO. | SIGN FOR SEKO WORLDWIDE BY | DATE REC'D | TIME REC'D          | NO. SHPTS. |
| 373715            | Stale Scott                | 9/6-7/07   | 11:55 AM<br>1:30 AM | 1          |

|                                                                        |                |        |         |                  |
|------------------------------------------------------------------------|----------------|--------|---------|------------------|
| OD #1                                                                  | NAME           | DATE   | TIME    | CARTONS RECEIVED |
| X                                                                      | Billy Rollings | 9/7/07 | 2:50 AM |                  |
| RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED |                |        |         |                  |
| OD #2 (FOR OSD or PARTIALS)                                            |                |        |         |                  |

|      |      |      |                  |
|------|------|------|------------------|
| NAME | DATE | TIME | CARTONS RECEIVED |
|      |      |      |                  |

(RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED)

ORIGIN COPY



| SHIP DATE | ORIGIN | DEST | HOUSE WAYBILL |
|-----------|--------|------|---------------|
| 9/6/07    |        |      | 373716        |

1100 Arlington Heights Road, Suite 600, Itasca, IL 60143  
Phone 630.919.4800 Fax 630.773.4215

SEKO Worldwide limits their liability. To view SEKO Worldwide's tariffs, rules, terms and conditions, please visit [www.sekoworldwide.com](http://www.sekoworldwide.com) on the Internet.

|                                                                                     |                     |                                                                                                                                                                                                                                                                                                                                                                                                |                                                                               |
|-------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| SHIPPER                                                                             |                     | CONSIGNEE                                                                                                                                                                                                                                                                                                                                                                                      |                                                                               |
| INA USA - PLANT #4<br>NEW CUT ROAD<br>SPARTANBURG, SC. 29304<br><br>Attn: CHRISTINA |                     | Harley Davidson<br>W156 N9000P. Igrim Rd.<br>Menomonee Falls WI                                                                                                                                                                                                                                                                                                                                |                                                                               |
| SENT BY/NAME/DEPT.                                                                  | TELEPHONE           | ATTN NAME/DEPT.                                                                                                                                                                                                                                                                                                                                                                                | TELEPHONE                                                                     |
|                                                                                     | 864-583-4541        |                                                                                                                                                                                                                                                                                                                                                                                                |                                                                               |
| SEKO ACCOUNT #                                                                      | SHIPPER REFERENCE # | SEKO ACCOUNT #                                                                                                                                                                                                                                                                                                                                                                                 | CONSIGNEE REFERENCE #                                                         |
| INAU28304                                                                           |                     |                                                                                                                                                                                                                                                                                                                                                                                                |                                                                               |
| BILL-TO PARTY                                                                       |                     | BILL CHARGES TO:<br>PREPAID COLLECT *3RD PARTY<br><br>PREPAID UNLESS OTHERWISE SPECIFIED                                                                                                                                                                                                                                                                                                       | FCCOD AMT<br><br>SHIPPER'S COD.<br>SUBJECT TO PARAGRAPH 8.<br>ON REVERSE SIDE |
| ACCT. #                                                                             |                     | SHIPPER'S DECLARED VALUE / INSURANCE OPTION.<br>Unless indicated below and subject to conditions on reverse side, reimbursement for loss/damage is the greater of \$50.00 or \$0.50 per pound of affected freight. See paragraphs 3, 5, 6 and 15 on reverse side. Additional charges apply.<br>Enter amount(s) below:<br>Declared Value for Carriage Full Value Insurance<br>\$ _____ \$ _____ |                                                                               |
| CARTONS                                                                             | WEIGHT              | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                    | PIECES LENGTH WIDTH HEIGHT CUBIC INCHES CUBIC WEIGHT                          |

|                                                                                                                                                                                          |          |        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|--------|
| 2 Skids                                                                                                                                                                                  | 12 Boxes | 1670 # |
| SHIPPER must check one of the items below.<br>Shipment contains no dangerous goods. <input type="checkbox"/><br>Shipment contains dangerous goods as described. <input type="checkbox"/> |          |        |

|                              |                                        |                                                                          |        |
|------------------------------|----------------------------------------|--------------------------------------------------------------------------|--------|
| SERVICE LEVELS               |                                        | SHIPPER'S SIGNATURE<br>(SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE) | DATE   |
| SEKO@Once (NFO)              | SEKO Surface Saver (8-5 Business Days) | X Carol Lawrence                                                         | 9/6/07 |
| SEKO One (Next Day by 5 PM)  | Other                                  | SPECIAL INSTRUCTIONS                                                     |        |
| SEKO Two (2nd Day by 5 PM)   | Req. Del. Date                         |                                                                          |        |
| SEKO Three (3rd Day by 5 PM) | P.O. #                                 |                                                                          |        |

|                   |                            |            |            |            |
|-------------------|----------------------------|------------|------------|------------|
| HOUSE WAYBILL NO. | SIGN FOR SEKO WORLDWIDE BY | DATE REC'D | TIME REC'D | NO. SHPTS. |
|                   | [Signature]                |            |            |            |

|                                                                          |      |        |       |                  |
|--------------------------------------------------------------------------|------|--------|-------|------------------|
| JO #1                                                                    | NAME | DATE   | TIME  | CARTONS RECEIVED |
|                                                                          |      | 9/7/07 | 15:45 |                  |
| (RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED) |      |        |       |                  |

|                                                                          |      |      |      |                  |
|--------------------------------------------------------------------------|------|------|------|------------------|
| JO #2 (FOR OSD or PARTIALS)                                              | NAME | DATE | TIME | CARTONS RECEIVED |
| 118                                                                      |      | 29   |      |                  |
| (RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED) |      |      |      |                  |

PERKO CHARLOTTE, INC.

OPERATIONS PAYABLES

24469

West Delivery Service Inc.

| Date         | Type | Reference | Original Amt. | Balance Due | 10/8/2007<br>Discount | Payment  |
|--------------|------|-----------|---------------|-------------|-----------------------|----------|
| 09/10/2007   | Bill | 091007    | 2,183.60      | 2,183.60    |                       | 2,183.60 |
| 09/17/2007   | Bill | 091407    | 370.00        | 370.00      |                       | 370.00   |
| Check Amount |      |           |               |             |                       | 2,553.60 |

Bank of America

2,553.60



39097



Southern Reporting, Inc.

Condensed Transcript of the  
Deposition of

Morris West

February 23, 2010

Collins vs. West Expedited & Delivery Service Inc.,  
et al  
0719222

COPY

Southern Reporting, Inc.  
Phone: 803.749.8100  
Fax: 803.749.9991  
Email: SouthernReporting@sc.rr.com



| Page 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
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| <p>South Carolina Workers' Compensation Commission<br/>W.C.C. File No. 0719222</p> <p>Gregory A. Collins<br/>(Deceased),</p> <p>Claimant,</p> <p>vs.</p> <p>West Expedited &amp; Delivery<br/>Service Inc.,</p> <p>Employer,</p> <p>and</p> <p>SCWC Uninsured Employers<br/>Fund,</p> <p>Carrier/Defendants.</p> <p>Gregory A. Collins<br/>(Deceased),</p> <p>Claimant,</p> <p>vs.</p> <p>Seko Worldwide, LLC,</p> <p>Employer,</p> <p>and</p> <p>Federal Insurance Company<br/>c/o Nationwide Mutual<br/>Insurance Company,</p> <p>Carrier/Defendants.</p> <p>Deposition<br/>of<br/>Morris West</p> <p>DATE: 02/23/10<br/>TIME: 2:16 p.m.</p> <p>LOCATION:<br/>McAngus Goudelock &amp;<br/>Courie, L.L.C.<br/>Two Liberty Square<br/>75 Beattie Place Street,<br/>Suite 300,<br/>Greenville,<br/>South Carolina</p> <p>REPORTER:<br/>Angela M. Barrett</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | <p>EXHIBITS</p> <p>1</p> <p>2 Defendants' Exhibit No. 1, "EXPRESS TRUCK DISPATCH,"<br/>dated 09/04, 1 page. 10</p> <p>3</p> <p>4 Defendants' Exhibit No. 2, SEKO House Waybill, dated<br/>08/31/07; 1 page. 25</p> <p>5 Defendants' Exhibit No. 3, "EXPRESS TRUCK DISPATCH,"<br/>dated 08/27; 1 page. 30</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |
| <p>Page 2</p> <p>1 APPEARANCES</p> <p>2 For the Claimant: Linda B. McKenzie, Esq.<br/>Bowen, McKenzie &amp; Bowen<br/>Post Office Box 2547<br/>(25 Mills Avenue)<br/>Greenville, South Carolina 29602</p> <p>3</p> <p>4</p> <p>5 For Seko Worldwide, LLC: A. Mundi George, Esq.<br/>McAngus Goudelock &amp; Courie, L.L.C.<br/>Post Office Box 12519<br/>(700 Gervais Street, Suite 300)<br/>Columbia, South Carolina 29211</p> <p>6</p> <p>7</p> <p>8 For West Expedited &amp; Delivery<br/>Service, Inc.: Brian A. Martin, Esq.<br/>Martin &amp; Davis, L.L.C.<br/>212 Trade Street<br/>Greer, South Carolina 29651</p> <p>9</p> <p>10</p> <p>11 Kenneth G. Southerlin, Jr., Esq.<br/>Stokes &amp; Southerlin, P.A.<br/>Post Office Box 2077<br/>Greer, South Carolina 29650</p> <p>12</p> <p>13</p> <p>14 For South Carolina Second<br/>Injury Fund: Timothy B. Kilen, Esq.<br/>South Carolina Second Injury Fund<br/>100 Executive Center Drive, Suite 101<br/>Santee Building<br/>Columbia, South Carolina 29210</p> <p>15</p> <p>16</p> <p>17 INDEX</p> <p>18</p> <p>19 Stipulations: 4</p> <p>20 Examination by Ms. George: 16</p> <p>21 Examination by Mr. Kilen: 28</p> <p>22 Examination by Mr. Martin: 36</p> <p>23 Examination by Ms. McKenzie: 40</p> <p>24 Reexamination by Ms. George: 42</p> <p>25 Reexamination by Mr. Kilen:</p> |  | <p>Page 4</p> <p>1 STIPULATIONS</p> <p>2 It is stipulated by and between counsel for</p> <p>3 the respective parties that all objections are</p> <p>4 reserved until the time of trial, except as to</p> <p>5 the form of the questions.</p> <p>6 This deposition is being taken pursuant to the</p> <p>7 South Carolina Workers' Compensation Act and</p> <p>8 all applicable rules.</p> <p>9</p> <p>10</p> <p>11 The reading and signing of this deposition is</p> <p>12 waived by the deponent and counsel for the</p> <p>13 respective parties.</p> <p>14 Whereupon,</p> <p>15 Morris West, being duly sworn and cautioned to</p> <p>16 speak the truth, the whole truth, and nothing</p> <p>17 but the truth, testified as follows:</p> <p>18 EXAMINATION</p> <p>19 BY MS. GEORGE:</p> <p>20 Q Mr. West, my name is Mundi George. I'm an attorney</p> <p>21 that's representing SEKO Worldwide --</p> <p>22 A Uh-huh.</p> <p>23 Q -- and their workers' comp insurance carrier. I</p> <p>24 know --</p> <p>25 A Right.</p> <p>26 Q -- that you've had your deposition taken before in</p> |  |

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1 Q Is that what this is?  
2 A Right.  
3 Q Okay.  
4 A That's the dates.  
5 Q Okay. What -- what is the significance of this  
6 date: Tuesday 9/4? What does that mean?  
7 A That was a -- that was the day that I started this  
8 sheet.  
9 Q Okay.  
10 A This down here, I -- okay. That would've been the  
11 4th, the next day would've been the 5th, so on  
12 down.  
13 Q Okay. And then -- you -- you can keep that as your  
14 copy for right now, sir.  
15 A Okay.  
16 Q How did you come to the conclusion that -- how did  
17 you come to the conclusion that you should turn  
18 this over to your attorney or -- or to other  
19 parties as proof that SEKO did a job for you -- or  
20 gave a job to you?  
21 A Gave a job to me?  
22 Q Yes, sir. Did you have to go back and look at your  
23 records?  
24 A No, I didn't. Because I knew SEKO give this one to  
25 me.

1 document that's from SEKO.  
2 A Uh-huh.  
3 Q And it has, if you'll see in the top right-hand  
4 corner, their House Waybill No. --  
5 A Yeah.  
6 Q -- 373718. Is that the same reference number  
7 that's on your express dispatch log?  
8 A Yes. But now wait just a minute. Let's see if I  
9 can clear that up.  
10 Q Okay.  
11 A See if I've got a Seneca there. And I don't. This  
12 -- this house waybill --  
13 Q Okay.  
14 A -- is INA Bearing's bill.  
15 Q Out of?  
16 A Spartanburg.  
17 Q Okay.  
18 A That's their -- that's their -- sometimes they pay  
19 me by that number, and sometimes they don't.  
20 Q Okay. Well, what I'm asking, though, is: On your  
21 log you have what you've told me is a SEKO  
22 Reference No. 3 --  
23 A Yeah.  
24 Q -- 73718.  
25 A Uh-huh.

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1 Q Okay. And then, how did you reach the conclusion  
2 that SEKO was the company that offered the job to  
3 you that was the job where Mr. Collins died?  
4 How --  
5 A Okay.  
6 Q -- did you know that?  
7 A I've got right here: the customer, who did it, and  
8 the reference number they give me to bill them  
9 with.  
10 Q Okay. So is the reference number the way that you  
11 communicate with the trucking companies about the  
12 specific job? You call it by reference number?  
13 A When I bill them, I do, yeah.  
14 Q Okay. And what -- what is the reference number  
15 that you believe the job --  
16 A -- that he did?  
17 Q Yes, sir.  
18 A 373718.  
19 Q Okay.  
20 MS. GEORGE: (To the court reporter) We're  
21 going to make this "EXPRESS TRUCK DISPATCH"  
22 Defendant SEKO's Exhibit 1, please.  
23 Defendants' Exhibit No. 1, "EXPRESS TRUCK  
24 DISPATCH," dated 09/04, 1 page.  
25 Q Okay. Mr. West, I'm going to show you another

1 Q And that reference number is how you would bill  
2 them.  
3 A Right. That's what -- that's exactly what I bill  
4 them on.  
5 Q But their reference number does not match up to the  
6 delivery destination on your log. Do you know why?  
7 A No. Because the date here's eight -- 8/31, and we  
8 did that nine -- 9/6.  
9 Q Okay. So can you understand why we have some  
10 questions if what --  
11 A Yes.  
12 Q -- you're offering me is that Mr. Collins died  
13 doing SEKO Reference No. 373718 --  
14 A Yes.  
15 Q -- but their matching reference number doesn't  
16 match up?  
17 I'm wondering if -- if possibly there's a -- a  
18 -- was there a different job involved or a  
19 different company involved?  
20 A I can't say -- I can't really tell you that right  
21 -- it could be that the -- this was my -- maybe  
22 ordered at this time from the Seneca plant to send  
23 up there.  
24 Q But the job that you were asked to do -- that your  
25 company was asked to --

1 A Yeah.  
 2 Q -- do was from Spartanburg --  
 3 A Yeah.  
 4 Q -- to Wisconsin; is that --  
 5 A Right.  
 6 Q -- correct?  
 7 A Uh-huh.  
 8 Q Make --  
 9 A No.  
 10 Q -- sure you say --  
 11 A Wait --  
 12 Q -- "yes" or --  
 13 A -- a minute.  
 14 Q -- "no" for the record.  
 15 A All right. It would've been that way, because they  
 16 shipped that to these people. Okay. I don't know  
 17 why the number's different.  
 18 Q Okay. Well, would you agree then that there's some  
 19 question raised by this house waybill number  
 20 comparing to your dispatch log?  
 21 A Say that again.  
 22 Q Would you agree that there's some -- there's some  
 23 questions --  
 24 A Yeah.  
 25 Q -- raised --

1 A There's --  
 2 Q -- now?  
 3 A -- a question --  
 4 Q Okay.  
 5 A -- question on that.  
 6 Q Let me ask you this question: Did ever in -- in  
 7 the course of your business, did a trucking company  
 8 call and offer a delivery to a business similar to  
 9 yours, who couldn't do it for whatever reason, and  
 10 then they would call you and ask you to do it  
 11 instead of it coming -- coming from the big  
 12 trucking company directly?  
 13 A That probably happens a good bit, and I don't even  
 14 know it, you know.  
 15 Q Okay. So it's -- it's -- it's possible then --  
 16 A Yeah.  
 17 Q -- that there's sometimes a middleman?  
 18 A It -- yeah.  
 19 Q Okay. Is it possible that there was a middleman  
 20 involved --  
 21 A I don't --  
 22 Q -- in the delivery that Mr. Collins --  
 23 A Oh.  
 24 Q -- did?  
 25 A No. No.

1 Q Okay. Why do you seem so certain about that?  
 2 A Because I know he was over there and called me when  
 3 he picked up.  
 4 Q No. What I mean by that: Is it possible that the  
 5 job that Mr. Collins did may have originated with  
 6 SEKO, but that SEKO tried to give it to another  
 7 delivery company who then called and offered it to  
 8 you?  
 9 MR. KILLEN: Object to the form --  
 10 A It --  
 11 MR. KILLEN: -- of the question.  
 12 A -- could have. I -- I -- there's no way I'd know.  
 13 Q So it's possible?  
 14 A It's possible.  
 15 Q Okay. Mr. West, I think you testified at your  
 16 deposition and also at the hearing that the  
 17 trucking companies that offer jobs to your company  
 18 pay you only based upon mileage one way; is that --  
 19 A That's right.  
 20 Q -- correct?  
 21 A That's right.  
 22 Q So after the delivery is made, the trip home --  
 23 A Unless --  
 24 Q -- is not paid for by the trucking company?  
 25 A No.

1 Q Would that apply to the jobs that you did for SEKO,  
 2 specifically?  
 3 A Yes.  
 4 Q Okay. SEKO paid you then, specifically, to make --  
 5 pick up product, deliver it to --  
 6 A Right.  
 7 Q -- a destination, and then the job was done?  
 8 A That's right.  
 9 Q Then your relationship with them for that job was  
 10 over --  
 11 A Yeah.  
 12 Q -- at that point? Make sure you say "yes" or "no"  
 13 for the record.  
 14 A Yes. I'm --  
 15 Q Okay.  
 16 A -- sorry.  
 17 MS. GEORGE: I don't have any other questions.  
 18 (To Ms. McKenzie) Here. This might need to  
 19 be --  
 20 EXAMINATION  
 21 BY MR. KILLEN:  
 22 Q Mr. --  
 23 MS. GEORGE: -- here.  
 24 Q -- West --  
 25 A Yes, sir.

1 Q -- I'm Tim Killen from the Uninsured Employers'  
2 Fund.  
3 Can you tell me a little bit more about SEKO's  
4 Exhibit No. 1? It's the "EXPRESS TRUCK DISPATCH"  
5 document.  
6 A Uh-huh.  
7 Q Can you tell me -- down there where it says  
8 "Thursday, September 6th" and you have the customer  
9 name "SEKO," the --  
10 A Yeah.  
11 Q -- the driver's name is Greg.  
12 A Yes.  
13 Q And the pickup address was INA Bearing?  
14 A Right.  
15 Q Or is it I-N-A?  
16 A Yes, sir.  
17 Q Is that how you say it?  
18 A Yeah.  
19 Q I-N-A?  
20 A INA -- INA Bearing.  
21 Q INA Bearing.  
22 And that's in Spartanburg?  
23 A Yes.  
24 Q And where was Mr. -- is the "Greg" referred to  
25 there -- is that Mr. Collins --

1 Q Okay. Was it -- did you speak with the same person  
2 every time, or did you speak with different --  
3 A Different people.  
4 Q -- individuals? Okay.  
5 Then over here beside -- beside the -- the  
6 reference number, there is no check mark unlike the  
7 other ones listed here. What does that --  
8 A This --  
9 Q -- signify --  
10 A These --  
11 Q -- if anything?  
12 A -- check marks? I think that was just checked off  
13 when I got the -- got the bill number, because  
14 sometime I don't get one. They'll just tell me to  
15 do something, and I'll have to call later and get  
16 the --  
17 Q It -- it was checked off --  
18 A -- a bill number.  
19 Q The bill number? What is that?  
20 A Or the reference number. The number that I bill  
21 with.  
22 MS. GEORGE: (Coughs.) Excuse me.  
23 Q I -- I'm not sure I understand. So -- so why would  
24 there not be a check mark beside 373718? Does it  
25 have any significance?

1 A Yes.  
2 Q -- the claimant --  
3 A Yes.  
4 Q -- the deceased claimant?  
5 Where was his destination?  
6 A Wisconsin. And I -- I can't read the name there.  
7 Q Okay. But he was making a delivery up to  
8 Wisconsin?  
9 A Yeah. Yes.  
10 Q Okay. And September 6th, was that the day that the  
11 -- the claimant made the pickup from INA Bearing,  
12 or was that the day you got the job from SEKO?  
13 A I got the job from SEKO that day and picked it up  
14 that day.  
15 Q Okay. And the reference number comes from whom?  
16 A That is the reference number that SEKO gave me to  
17 bill them.  
18 Q Okay. They gave you that over the telephone?  
19 A Yes.  
20 Q Okay. Who were you speaking with at SEKO?  
21 A I --  
22 Q Do --  
23 A -- don't --  
24 Q -- you know?  
25 A I don't remember.

1 A No.  
2 Q Okay.  
3 A Hold on just a minute. That might be something  
4 that -- that might be a -- I might've put that  
5 check mark on there where I paid them already.  
6 Q Where you paid the driver?  
7 A Yeah.  
8 Q Okay.  
9 A I do that sometimes too.  
10 Q Okay. And --  
11 A At that time I don't know what I was checking.  
12 Q And so -- and obviously Mr. Collins never made it  
13 back; that's correct?  
14 A No.  
15 Q Okay. And can you tell me what it means over here  
16 in the column under the heading "Miles"? You have  
17 the number 30, and below that you have the number  
18 860?  
19 A I don't know what that 30 was for. The 860 was the  
20 miles.  
21 Q 860 is the total miles from --  
22 A Yeah. Yes.  
23 Q Is that from Spartanburg all the way to the  
24 destination in Wisconsin?  
25 A Yes.

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1 Q Okay. And you -- you don't know what the  
2 30 represents?  
3 A No, I don't.  
4 Q Okay. And then, under -- in the column under the  
5 heading "Delivery," you have 372 with a circle  
6 around it.  
7 A That's right. That's what I paid him.  
8 Q That's the dollar amount you were to pay the  
9 deceased?  
10 A Yeah. I did pay him.  
11 Q Okay. And what is this last column here?  
12 A That's what I got paid.  
13 Q You got paid \$1,068?  
14 A Yes.  
15 Q By whom?  
16 A By SEKO.  
17 Q Okay. And do you have records of -- of receipt of  
18 that money?  
19 A Yes.  
20 Q Okay. Would you be able to provide those records  
21 to your attorneys?  
22 A Pardon?  
23 Q Would you be able to provide --  
24 A Yes.  
25 Q -- copies of those records to your attorneys?

1 A Yes. I -- that would -- one like this would be our  
2 bill of lading.  
3 Q They would send this to you -- SEKO would --  
4 A Yeah.  
5 Q -- send this to you, for example?  
6 A In this case, we picked them up at the shipper.  
7 Q So you would pick this one up at INA USA --  
8 A Yeah.  
9 Q -- in Spartanburg?  
10 A Right.  
11 Q And what does a "CONSIGNEE" mean?  
12 A That's who received it at the -- at the  
13 destination.  
14 Q That's where you were taking it?  
15 A Right.  
16 Q Mr. Collins wasn't going to Seneca that day, was  
17 he?  
18 A Pardon?  
19 Q Mr. Collins wasn't making a delivery to Seneca for  
20 you --  
21 A No.  
22 Q -- was he? Okay.  
23 A I could probably go back and find out if I made one  
24 to Seneca on 8/31. I don't know whether I did or  
25 not.

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1 A Yes.  
2 Q Okay. Okay. And -- excuse me.  
3 MR. KILLEN: (To the court reporter) Can we  
4 go off the record a second?  
5 (Off the record briefly at  
6 2:32 p.m.)  
7 THE EXAMINATION BY MR. KILLEN CONTINUES.  
8 Q Mr. West, I'd like to show you the other document.  
9 A Okay.  
10 Q It's -- and it's got a SEKO logo on it, a ship date  
11 of August 31st, 2007 --  
12 A Right.  
13 Q -- and a House Waybill No. 373718.  
14 A Right.  
15 Q Did you ever receive these documents -- or this  
16 document?  
17 A I don't think so. I don't think I did that.  
18 Q Okay. Would you receive documents such as this in  
19 the course of your business?  
20 A Pardon?  
21 Q Would you receive these types of documents doing  
22 business with SEKO?  
23 A Yes.  
24 Q Okay. Okay. What -- what's represented in the  
25 "SHIPPER" box?

1 Q Okay. You would have a --  
2 A But --  
3 Q -- an --  
4 A But nobody signed for it.  
5 Q Explain that to me.  
6 A But that don't really -- sometimes -- sometimes the  
7 driver would sign, and sometimes they wouldn't.  
8 Q Where would the driver's signature go on this  
9 document?  
10 A Just anywhere he wanted to put it really.  
11 Q Okay.  
12 MR. KILLEN: (To the court reporter) Can I  
13 mark that as either Defendants' Exhibit  
14 No. 2 or UEF's No. 1, whichever's most  
15 convenient?  
16 MS. GEORGE: (To the court reporter) I don't  
17 think it matters. (To Mr. Killen) Did I --  
18 MR. KILLEN: Does she --  
19 MS. GEORGE: -- get one too?  
20 MS. MCKENZIE: (To Mr. Killen) Can we give  
21 her mine?  
22 MR. KILLEN: Does she --  
23 MS. GEORGE: (To Ms. McKenzie) No.  
24 MR. KILLEN: Oh, I'm --  
25 MS. GEORGE: She --

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1 MR. KILLEN: -- sorry.  
2 MS. GEORGE: -- can have mine.  
3 MS. MCKENZIE: (To the court reporter) How we  
4 marking it? Defendants' 2?  
5 THE COURT REPORTER: Yes.  
6 MR. KILLEN: Okay.  
7 MS. MCKENZIE: Okay.  
8 Defendants' Exhibit No. 2, SEKO House  
9 Waybill, dated 08/31/07; 1 page.  
10 Q Where would the -- the driver, the one who was  
11 either working for or with you, where would he or  
12 she sign on -- on this -- on this document?  
13 Defendants' Exhibit 2.  
14 A Isn't that what you just asked?  
15 Q Yeah, I did. Did -- did -- did you answer it? I'm  
16 sorry.  
17 A I said, "Most of the time they'll just write it  
18 anywhere."  
19 Q Okay. Okay.  
20 A I'm --  
21 Q So --  
22 A -- sorry.  
23 Q -- there's --  
24 A I didn't --  
25 Q -- not a --

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1 from their destinations?  
2 A No. It was all included in ...  
3 Q That was all one set --  
4 A Yeah.  
5 Q -- fee you would pay to your drivers?  
6 Would that be part of the consideration that  
7 you gave in determining the price you charged SEKO?  
8 A Yes. I'd -- SEKO -- ask that again.  
9 Q Would you take that into consideration when  
10 determining how much you would charge SEKO?  
11 A No. They paid me a straight amount per mile.  
12 Q Okay.  
13 A I pay my drivers a straight amount per mile.  
14 Q Okay. And Mr. Collins was returning from Wisconsin  
15 when he was in his accident? Is that correct?  
16 A Yes.  
17 Q Okay. And that was on September 8th, 2007?  
18 A No. That was nine -- 9/6/2007.  
19 Q Okay. He -- he was in his accident on  
20 September 6th, 2007?  
21 A Yes.  
22 Q Okay. How do you know that? Could --  
23 A Because we --  
24 Q -- you be mistaken?  
25 A Because it's wrote down.

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1 A -- mean to --  
2 Q -- spot --  
3 A -- be --  
4 Q -- for them --  
5 MS. GEORGE: No.  
6 Q I'm sorry. I didn't -- I didn't get your answer.  
7 A I have made a -- I have made a rule in the last  
8 year or so that all the drivers do sign it. Used  
9 to they didn't worry about it too much, and I knew  
10 who done it and ...  
11 Q Okay. What kind of contract did you have with  
12 SEKO?  
13 A I didn't have one.  
14 Q What was your business relationship with SEKO?  
15 A Just when they called and wanted something done,  
16 I'd do it.  
17 Q What kind of business is SEKO?  
18 A Pardon?  
19 Q What kind of business is SEKO?  
20 A They are a -- a trucking firm and a brokerage  
21 outfit, I think, kind of combined.  
22 Q Okay.  
23 A About the same as I am, except a lot bigger.  
24 Q Okay. Fair enough.  
25 Did you pay your drivers anything to return

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1 Q Okay.  
2 MR. KILLEN: That's all the questions I have.  
3 MR. MARTIN: (To the court reporter) Can we  
4 go off the record for a minute?  
5 (Off the record from 2:39 p.m. until  
6 2:47 p.m.)  
7 EXAMINATION  
8 BY MR. MARTIN:  
9 Q All right. Mr. West, you -- during the break -- we  
10 took a break to -- so I could have a -- a document  
11 photocopied. I'd like to -- to show that -- this  
12 document to you. And tell me if you recognize  
13 this. Is this another one of the dispatch  
14 sheets --  
15 A Yes.  
16 Q -- that you prepared in your business?  
17 A Yes.  
18 Q This dispatch, what are the dates reflected in --  
19 on this dispatch sheet?  
20 A August 27th, 28th of '07, 29th, 30th. This --  
21 Q Okay. I'd like for you to look at -- at August the  
22 31st --  
23 A Uh-huh.  
24 Q -- of '07.  
25 A Yeah.

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1 A Right. Right there.  
2 Q And the job -- and then the reference to the  
3 "EXPRESS TRUCK DISPATCH" for 9/4 with the reference  
4 number 373718 --  
5 A Just --  
6 Q -- for --  
7 A -- three --  
8 Q -- Greg's job.  
9 A -- numbers difference.  
10 Q Okay.  
11 A Over here, which was a -- a earlier date --  
12 Q Uh-huh.  
13 A -- got 337871.  
14 Q Correct.  
15 A So there was a lot of numbers between --  
16 MS. MCKENZIE: Eight seven --  
17 Q -- 871 --  
18 A Yeah. And there.  
19 Q -- and that one.  
20 A Uh-huh.  
21 Q So are you suggesting that the number you wrote  
22 down here for the -- for the reference number  
23 related to the job Greg Collins was on --  
24 A I would say this one was the correct one.  
25 Q Was a correct one?

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1 A Yeah. I would say so.  
2 Q But this is the -- this document has the  
3 373718 that goes to Seneca.  
4 A Yeah.  
5 Q And this one showing the same thing of  
6 8/31 references a delivery to Seneca --  
7 A Right.  
8 Q -- with the same number.  
9 So isn't it more likely that this is the  
10 number that was incorrect? the one that references  
11 Greg Collins's trip.  
12 A I would not say.  
13 Q Either way, there's a mistake in one of these --  
14 A Yeah.  
15 Q -- in one of these?  
16 Okay. When you -- when you mentioned being  
17 paid one way --  
18 A Uh-huh.  
19 Q -- that -- that SEKO -- you -- you would bill SEKO  
20 -- or SEKO would pay you for the mileage from  
21 picking it up --  
22 A Yeah.  
23 Q -- to the point of delivery. Is that mileage  
24 computation also take into effect the cost of  
25 returning, even though it's not billed for

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1 returning?  
2 A They could say that either way.  
3 Q Okay.  
4 A Because -- no. That's all right.  
5 Q Okay. And I believe you indicated that you -- you  
6 believe you have a record of receipt of payment  
7 from --  
8 A Yeah.  
9 Q -- SEKO.  
10 A And I'm almost 100 percent sure, because on a check  
11 stub, it'll have which trip that was for.  
12 Q On the check -- on -- on the -- the check stub from  
13 SEKO?  
14 A Yeah. If it don't, it'll have a bill that I sent.  
15 Q Okay.  
16 A And the bill will have that on there.  
17 Q Okay. And you're going to look through those  
18 records --  
19 A Yeah.  
20 Q -- to see if you can find that documentation --  
21 A Yeah.  
22 Q -- for us.  
23 A I think I can find enough to where --  
24 Q Okay.  
25 MR. MARTIN: That's all the questions I have.

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1 MS. MCKENZIE: I have just a couple.  
2 EXAMINATION  
3 BY MS. MCKENZIE:  
4 Q Hello --  
5 A All right.  
6 Q -- again, Mr. West.  
7 A Okay.  
8 Q However you bill them, whether you say it's for  
9 miles one way, you knew your people had to come  
10 back, right?  
11 A Yes.  
12 Q So I see what you say to your attorney: That's  
13 already figured into the way -- the amount you  
14 charge for billing?  
15 A Yes.  
16 Q Okay. And who wrote -- whose writing is on these?  
17 Is this your writing?  
18 A Well, most of it's mine.  
19 Q Okay.  
20 A You can probably take a --  
21 Q Would any -- who else would've written on these  
22 things?  
23 A Let's see --  
24 Q Because sometimes it looks like it might be a  
25 little different. Like if we look at Defendants'

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1 860 miles --  
 2 A Yes.  
 3 Q -- what -- what does that mileage represent? Is  
 4 that the distance from Spartanburg, South  
 5 Carolina --  
 6 A That's what --  
 7 Q -- to --  
 8 A -- they --  
 9 Q -- Wauwatosa --  
 10 A That's --  
 11 Q -- Wisconsin?  
 12 A That's what they pay me for.  
 13 Q But is that -- is that what they told you the  
 14 length of the trip was --  
 15 A Yes.  
 16 Q -- from Spartanburg to Wauwatosa --  
 17 A Yeah.  
 18 Q -- Wisconsin? Is that right?  
 19 A That's right.  
 20 Q So they paid you for the number of miles from the  
 21 pickup to the delivery?  
 22 A Yeah.  
 23 Q Okay.  
 24 MS. GEORGE: No further questions.  
 25 THE DEPONENT: (To Ms. George) Do you have a

1 Signing waived.  
 2 (Whereupon, there being no further  
 3 questions, the deposition was  
 4 concluded at 2:59 p.m.)  
 5 (\*This transcript may contain quoted material.  
 6 Such material is reproduced as read or quoted  
 7 by the speaker.)  
 8 (\*\*Certificate accompanies certified original only.)  
 9  
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1 calculator?  
 2 MS. GEORGE: (No response.)  
 3 REEXAMINATION  
 4 BY MR. KILLEN:  
 5 Q Mr. West, this may seem like a silly question.  
 6 MS. GEORGE: (To Ms. McKenzie) Does he have a  
 7 microphone?  
 8 Q But it -- it's necessary for the drivers who are  
 9 working for or with you to return from their  
 10 destinations, isn't it?  
 11 A Yes.  
 12 Q Okay. You wouldn't have much of a business --  
 13 A -- if they --  
 14 Q -- if your drivers just --  
 15 A Right.  
 16 Q -- went to Wisconsin and stayed there, would you?  
 17 A Right.  
 18 Q Yeah.  
 19 MR. KILLEN: And no further questions.  
 20 MR. MARTIN: I have no questions.  
 21 MS. MCKENZIE: Me --  
 22 MS. GEORGE: That --  
 23 MS. MCKENZIE: -- either.  
 24 MS. GEORGE: That concludes the deposition.  
 25 FURTHER DEPONENT SAITH NOT.

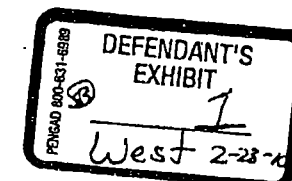


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# XPRESS TRUCK DISPATCH

| Station | Call Time | Wght Lim | Driver | Unit # | Shipper & Pick Up Address       | Destination             | Reference | Begin Address | P/U/LP            | Com Hrs | Miles | Deliver | C.O.     |
|---------|-----------|----------|--------|--------|---------------------------------|-------------------------|-----------|---------------|-------------------|---------|-------|---------|----------|
| PST     | 3 PM      |          | Steve  |        | PST Greenville SC               | Engle Global Atlanta GA | 274200    |               |                   |         |       |         |          |
| STN     | 3 PM      |          | Seenu  |        | O. H. H. Hammer Greenwood SC    | Chickadee NC            | 359155    |               |                   |         | 167   | 251     | 200      |
|         |           |          |        |        | Black 9-5                       |                         |           |               | Cap P/U attempted | 15      |       |         | 7        |
| KMY     | 11 AM     |          | Steve  |        | Champion Fruit Farm ENV SC      | Charlotte NC            | 338163    |               |                   |         | 100   | (42)    | 120      |
| KMY     |           |          | Jerry  |        | Bondax DUNCAN SC                | Simco Macomb MI         | 121852    |               |                   |         | 714   | (643)   | 900      |
|         |           |          | Arizon |        | Break SC                        | Charleston SC           | 121863    |               |                   |         | 214   | (38)    | 303.1    |
|         |           |          |        |        | Thursday 9-6                    |                         |           |               |                   |         |       |         |          |
| Sat AM  |           |          | Steve  |        | Knight's Apparel Spartanburg SC | Grinnit Falls NC        | 539172    |               |                   |         | 104   | (72)    | 172      |
| Art     |           |          | Art    |        | San Vazquez Art AC              | San Vazquez Art Mill AC | 373715    |               |                   |         | 80    | (34)    | 96       |
| Art     |           |          | Dug    |        | IND. Bearing Spartanburg SC     | Kittiwake WI            | 373718    |               |                   |         | 30    | (372)   | 106      |
| Art     |           |          | Steve  |        | Span America Greenville         | Fed Ex Greer            | 529182    |               |                   |         | 860   | (372)   | 106      |
| PST     |           |          | Steve  |        | Friday 9/9/07 PST Greenville SC | Engle Global Atlanta GA | 274200    |               |                   |         | 115   | 35      | 75       |
|         |           |          |        |        |                                 |                         |           |               |                   |         | (244) | 100     | (70) 200 |



FROM

(FRI) AUG 31 2007

33/ST. 11:28/No. 7500000062 P 1

**SEKO**1100 Arlington Heights Road, Suite 800, Itasca, IL 60143  
Phone 630.819.4800 Fax 630.773.4215

| SHIP DATE | ORIGIN | DEST | HOUSE WAYBILL |
|-----------|--------|------|---------------|
| 8/31/07   |        |      | 373718        |

SEKO Worldwide limits their liability. To view SEKO Worldwide's tariffs, rules, terms and conditions, please visit [www.sekoworldwide.com](http://www.sekoworldwide.com) on the Internet.

|                                                                                     |                           |                                             |                       |
|-------------------------------------------------------------------------------------|---------------------------|---------------------------------------------|-----------------------|
| SHIPPER                                                                             |                           | CONSIGNEE                                   |                       |
| INA USA - PLANT #4<br>NEW CUT ROAD<br>SPARTANBURG, SC. 29304<br><br>Attn: CHRISTINA |                           | Hi-tech<br>219.. Hi-Tech<br>Seneca SC 29678 |                       |
| SENT BY/NAME/DEPT<br><i>Christina</i>                                               | TELEPHONE<br>804-583-4541 | ATTN NAME/DEPT                              | TELEPHONE             |
| SEKO ACCOUNT #<br>INAU29304                                                         | SHIPPER REFERENCE #       | SEKO ACCOUNT #                              | CONSIGNEE REFERENCE # |

## BILL-TO PARTY

BILL CHARGES TO:  
PREPAID COLLECT \*3RD PARTY

FOCOD AMT

SHIPPER'S COD  
SUBJECT TO PARAGRAPH 8  
ON REVERSE SIDE

PREPAID UNLESS OTHERWISE SPECIFIED

## SHIPPER'S DECLARED VALUE / INSURANCE OPTION

Unless indicated below and subject to conditions on reverse side, reimbursement for loss/damage is the greater of \$50.00 or \$0.50 per pound of affected freight. See paragraphs 3, 5, 6 and 15 on reverse side. Additional charges apply.

Enter amount(s) below:

Declared Value for Carriage

Full Value Insurance

\$

\$

ACCT. #

CARTONS WEIGHT DESCRIPTION

PIECES LENGTH WIDTH HEIGHT CUBIC INCHES CUBIC WEIGHT

Shipper must  
check one of the  
items below.Shipment contains  
no dangerous  
goods. ☐Shipment contains  
dangerous goods as  
described. ☐

## SERVICE LEVELS

SEKO Once (NFO) \_\_\_\_\_ SEKO SurfaceSaver (3-5 Business Days) \_\_\_\_\_

SEKO One (Next Day by 5 PM) \_\_\_\_\_ Other \_\_\_\_\_

SEKO Two (2nd Day by 5 PM) \_\_\_\_\_ Req. Del. Date \_\_\_\_\_

SEKO Three (3rd Day by 5 PM) \_\_\_\_\_ P.O. # \_\_\_\_\_

SHIPPER'S SIGNATURE  
(SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE)

DATE

## SPECIAL INSTRUCTIONS

ASAP

HOUSE WAYBILL NO.

SIGN FOR SEKO WORLDWIDE BY

DATE REC'D

TIME REC'D

NO. SHPTS.

DD #1

NAME

DATE

TIME

(RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED)

DD #2 (FOR OSD or PARTIALS)

DEFENDANT'S  
EXHIBIT

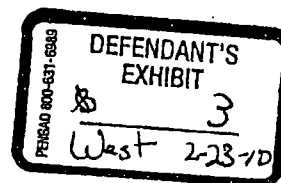
2

West 2-23-10

PENGAD 800-831-8888

# EXPRESS TRUCK DISPATCH

| Customer | Call Time | Dept | Driver | Unit # | Shipper & Pick Up Address          | Destination                         | Reference | Signatures | P/LP | Comm | Miles | Deliv | COS    |
|----------|-----------|------|--------|--------|------------------------------------|-------------------------------------|-----------|------------|------|------|-------|-------|--------|
| Saturday |           |      | Jerry  |        | Knight's Apparel<br>Spartanburg SC | Dixie Parkway<br>Greenville SC      | 539083    | ✓          |      |      | 20    | (45)  | 75     |
| Seko     |           |      | Jerry  |        | Timken<br>Walhalla, SC             | Delphi Chassis<br>Salem, OH         | 388727    | ✓          |      |      | 677   | (610) | 812.8  |
| Cris     |           |      | Steve  |        | WW Frainger<br>Greenville, SC      | W. Columbia, SC                     | 238140    | ✓          |      |      | 83    | (45)  | 100    |
| Chick    |           |      |        |        | Wednesday 8/29/07                  |                                     |           |            |      |      |       |       |        |
| Alma     | 11:51     |      | Steve  |        | Butler's<br>Greenville, SC         | Greenville SC                       |           | ✓          |      |      | 730   | (45)  | 156    |
|          |           |      |        |        | Thursday 8-30-07                   |                                     |           |            |      |      |       |       |        |
| Saturday |           |      | Jerry  |        | Cutler Hammer<br>Greenville SC     | Fair X<br>Greenville SC             | 539132    | ✓          |      |      |       | (60)  | 75     |
| W        |           |      |        |        | Sunday 8/31/07                     |                                     |           |            |      |      |       |       |        |
| Jerry    |           |      | Jerry  |        | Jack Hackman<br>Greenville SC      | Supply Tech Services<br>Marietta Ga | 121570    | ✓          |      |      | 106   | (149) | 233.6  |
| Seko     |           |      | Steve  |        | INA<br>Spartanburg SC              | Hi Tech<br>Seneca SC                | 373718    | ✓          |      |      | 81    | (92)  | 197.20 |
| Pst      |           |      | Greg   |        | W. Vill. AC                        | Alanta Ga                           | 273912    | ✓          |      |      | 166   | (70)  | 200    |
| Nations  |           |      | Morris |        | Commercial Union<br>Greenville SC  | Timken<br>Greenville SC             | 2008365   | ✓          |      |      |       |       | 75     |
| Nations  |           |      | Steve  |        | Commercial Union<br>Greenville SC  | Timken<br>Greenville SC             | 2008372   | ✓          |      |      | 48    | (40)  | 75     |
| Ceres    |           |      | Greg   |        | GRANITE<br>Fontana Inn SC          | Artic Processing<br>Datesburg SC    | 238152    | ✓          |      |      | 74    | (33)  | 93.6   |
| Seko     |           |      | Jerry  |        | Honewell<br>Greenville SC          | Charlotte NC                        | 337871    | ✓          |      |      | 92    | (83)  | 110    |





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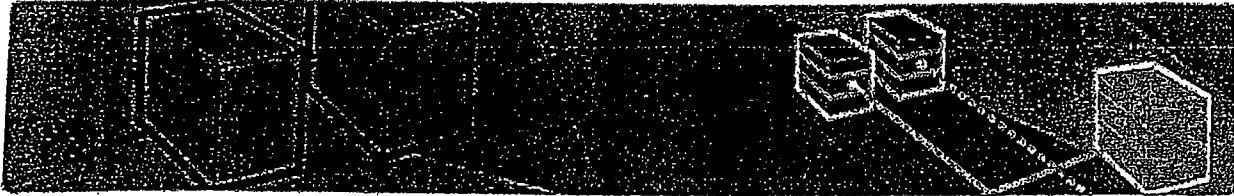
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|--------------|----------|---------------------------------|-------------------------------------|
| 373716       | 9/6/2007 | SPARTANBURG SC<br>UNITED STATES | MENOMONEE FALLS WI<br>UNITED STATES |
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AWB/Tracking Number: 373717

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|        |   |        |     |
|--------|---|--------|-----|
| Pieces | 1 | Weight | 600 |
|--------|---|--------|-----|

|              | Origin         | Destination                  |
|--------------|----------------|------------------------------|
| AWB Date     | 9/6/2007       | Estimated Del. Date 9/7/2007 |
| City,ST      | SPARTANBURG,SC | City,ST WAUWATOSA,WI         |
| Country      | UNITED STATES  | Country UNITED STATES        |
| Ref.         | Ref.           |                              |
| Airport/Area | GSP            | Airport/Area MKE             |

### Proof of Delivery Information (Local Time)

Name: LISA DONOHUE

Date/Time: 9/7/2007 15:30

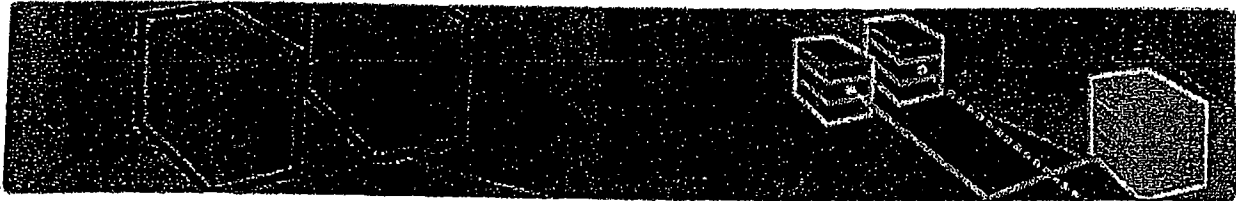
### Notes and Remarks (GMT -0600)

|            |          |                              |
|------------|----------|------------------------------|
| 09/07/2007 | 3:25 PM  | Status Changed to Delivered  |
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Pieces 2 Weight 1640

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|--------------|----------------|------------------------------|
| AWB Date     | 9/6/2007       | Estimated Del. Date 9/7/2007 |
| City,ST      | SPARTANBURG,SC | City,ST MENOMONEE FALLS,WI   |
| Country      | UNITED STATES  | Country UNITED STATES        |
| Ref.         | Ref.           |                              |
| Airport/Area | GSP            | Airport/Area MKE             |

### Proof of Delivery Information (Local Time)

Name: BILL EPPS

Date/Time: 9/7/2007 15:45

### Notes and Remarks (GMT -0600)

|            |          |                              |
|------------|----------|------------------------------|
| 09/07/2007 | 3:26 PM  | Status Changed to Delivered  |
| 09/07/2007 | 11:03 AM | Status changed to In Transit |
| 09/07/2007 | 10:49 AM | Status Changed to Dispatched |

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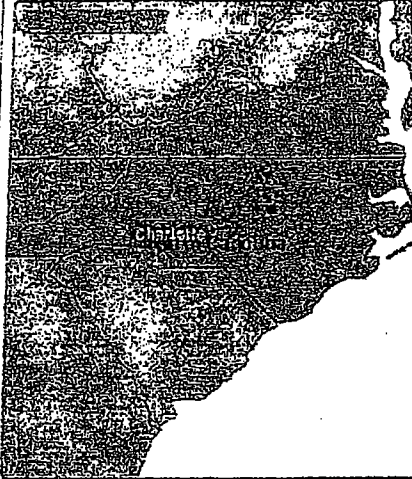




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**SEKO Charlotte**  
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Address:  
3101 Yorkmont Road  
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Charlotte, NC 28208 USA

T: +1 704 423 0111  
F: +1 704 423 0333

Contact:  
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[glenn.maddox@sekoworldwide.com](mailto:glenn.maddox@sekoworldwide.com)

International Phone (704) 423-5630  
[cltin@sekoworldwide.com](mailto:cltin@sekoworldwide.com)

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BEFORE THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

W.C.C. FILE NO.: 0719222

GREGORY A. COLLINS  
(DECEASED),

CLAIMANT,

VS

SEKO WORLDWIDE, LLC,

EMPLOYER,

AND

CHUBB GROUP OF INSURANCE  
COMPANIES,

CARRIER.

DEPOSITION OF RON BURKS

CHARLOTTE, NORTH CAROLINA

MAY 10, 2010

REPORTER: KELLY REITER

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## Appearances:

For the Claimant -  
(Via Telephone)

Linda B. McKenzie, Esquire  
Bowen, McKenzie & Bowen, LLP  
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For the Employer and Carrier -

Mitchell K. Byrd, Junior, Esquire  
Willson, Jones, Carter and  
Baxley, PA  
872 South Pleasantburg Drive  
Greenville, South Carolina 29607

On Behalf of the Uninsured  
Employers' Fund -

Timothy B. Killen, Esquire  
SC Second Injury Fund and Workers'  
Compensation Uninsured Employers'  
Fund  
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Suite 101  
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On Behalf of Seko Charlotte -

Mundi George, Esquire  
McAngus, Goudelock & Courie, LLC  
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Post Office Box 12519 (29211)  
Columbia, South Carolina 29201

On Behalf of West Expedited -  
(Via Telephone)

Brian Martin, Esquire  
Martin & Davis, LLC  
212 Trade Street  
Greer, South Carolina 29681

Kenneth Southerlin, Esquire  
Stokes & Southerlin, PA  
Post Office Box 2077  
Greer, South Carolina 29652

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1 Deposition of Ron Burks, taken before me, Kelly  
2 Reiter, a Notary Public for the State of North Carolina,  
3 at the law office of McAngus, Goudelock, and Courie,  
4 LLC, 6302 Fairview Road, Suite 200, Charlotte, North  
5 Carolina, commencing at 12:07 p.m. on May 10, 2010,  
6 taken in the aforementioned cause now pending before the  
7 South Carolina Workers Compensation Commission.

8 That the signing of the transcript of deposition by  
9 the witness is waived.

10 \* \* \* \* \*

11 Ron Burks, first being duly sworn, deposes and says as  
12 follows:

13 E X A M I N A T I O N - (By Mr. Byrd)

14 Q Good morning, Ron.

15 A Good morning.

16 Q I'm Mitchell Byrd. I'm a lawyer from Greenville.  
17 In this case, I'm representing Seko Worldwide, LLC,  
18 and also their workers' comp insurance company in  
19 this claim that has been filed. What we're going  
20 to do right now is called a deposition, and that  
21 means I'm going to ask you a lot of questions. I'm  
22 going to try to keep my portion of this deposition  
23 very short. There's really only a couple of things  
24 that I need to just ask you about, and it's  
25 certainly not going to be adversarial in any way.

Deposition of Ron Burks

1 I just need to ask you a few questions.

2 A Okay.

3 Q If you don't understand one of my questions, make  
4 sure you tell me that you don't understand the  
5 question.

6 A (Indicating yes)

7 Q Again, I'm not going to try to trick you about  
8 anything. So if for some reason you don't  
9 understand one of my questions, please just tell me  
10 that you don't understand it, and I'll ask you a  
11 better question that hopefully you will understand.

12 A Okay.

13 Q Okay. You're doing fine with this, just speak up  
14 nice and loud. Please answer any questions out  
15 loud, even if they're just a simple yes or no  
16 answer, so she can record everything.

17 A Oh, okay.

18 Q Stop me if you need a break, or if you have any  
19 questions along the way. Okay?

20 A (Indicating yes)

21 Q Tell me your full name for the record.

22 A Ronald Harvey Burks.

23 Q And just so we can have this in the transcript,  
24 will you tell me your address and your telephone  
25 number?

Deposition of Ron Burks

- 1 A It's [REDACTED], Matthews, North Carolina,  
2 28104. Cell phone or home number?  
3 Q Both, please.  
4 A Cell is 704-[REDACTED]-[REDACTED]. Home is 704-[REDACTED]-[REDACTED].  
5 Q And is that home address where you receive all of  
6 your mail?  
7 A Yes.  
8 Q Do you receive mail anywhere else?  
9 A No.  
10 Q Where are you employed, Mr. Burks?  
11 A Seko Charlotte, Incorporated.  
12 Q What's your position there?  
13 A General manager.  
14 Q How long have you been doing that job?  
15 A I've been there for twenty-nine years.  
16 Q How long has the company been around?  
17 A Thirty years.  
18 Q So you've been there almost from the very  
19 beginning?  
20 A Right.  
21 Q And I know that this may require, or could require,  
22 a lengthy answer, but tell me if you can what your  
23 duties are as the general manager at Seko  
24 Charlotte.  
25 A Well, it's quite extensive. Mainly, it's just

Deposition of Ron Burks

1 making sure the business is run, the personnel is  
2 scheduled to handle the jobs at hand, and having  
3 the right people in the right place, and just  
4 making sure we're in compliance. Mainly, the day-  
5 to-day activities, just making sure those run  
6 smoothly to run the business.

7 Q Would you say you run the day-to-day operations of  
8 the company?

9 A Yes.

10 Q And would you agree with me that you are familiar  
11 with the day-to-day operations of the business that  
12 you run?

13 A Yes.

14 Q Would you say there's anyone at the company that's  
15 more familiar than you with the day-to-day  
16 operations of Seko Charlotte, Inc.?

17 A Well, with the international operations, yes. The  
18 regular operations, or domestic, no.

19 Q Okay. What type of company is Seko Charlotte?

20 A We're a logistics company, also known as a  
21 forwarder, meaning we're - - - As a whole, we're a  
22 non-asset-based company that provides  
23 transportation logistic services to and from  
24 different points in the world.

25 Q And when you say non-asset based, are you talking

Deposition of Ron Burks



1       about Seko Worldwide, or are you talking about Seko

2       - - -

3   A    Seko Worldwide, in general, is. Yes.

4   Q    Is a non-asset-based company, in your opinion?

5   A    Right.

6   Q    Now, when we talk about Seko Worldwide and then we  
7       talk about Seko Charlotte, are those two different  
8       companies?

9   A    I would say so. I mean, we're a franchise  
10       operation. Seko Worldwide is the whole - - - We're  
11       a franchise, which is just a franchise branch, in  
12       Charlotte, North Carolina.

13   Q   All right. Excuse me for just one second. Tell me  
14       a little bit more, if you can, about how Seko Char  
15       - - - And I'm calling them Seko Charlotte. Is that  
16       correct?

17   A    Yes.

18   Q    Okay. And that's your company that you work for?

19   A    Yes.

20   Q    Does Seko Charlotte do business under any other  
21       name?

22   A    No.

23   Q    Do they sometimes do business under the name Seko  
24       Worldwide?

25   A    Well, that's our parent company, is Seko Worldwide,

Deposition of Ron Burks

1       so you know, technically yes, we do. I guess  
2       that's our parent company, so that's our main  
3       brand, is Seko Worldwide.

4   Q   And do you sometimes use Seko Worldwide letterhead  
5       and Seko Worldwide documents in your day-to-day - -

6       -

7   A   Yes.

8   Q   Transactions?

9   A   Yes.

10   Q   And you mentioned the word franchise, and I've also  
11       heard the term independent operating partner. Tell  
12       me a little bit more, if you can, about how Seko  
13       Charlotte and Seko Worldwide are related.

14   A   Seko Worldwide is just, I guess what we call, our  
15       parent company or the - - - They do have franchises  
16       in different cities that do a franchise operation  
17       for that parent company. We do business with Seko  
18       Worldwide as our parent company, who I - - - They  
19       provide a certain amount of product for us, or the  
20       technical aspects for a business, the computer  
21       systems and the accounting departments, so forth.  
22       They keep a certain percentage of any profit we  
23       would make. I guess that's basically how it works.  
24       We do business as the franchise under Seko  
25       Charlotte, Incorporated, but we do it as a whole

Deposition of Ron Burks

1 for Seko Worldwide, or name brand. That's how we  
2 brand our products, is Seko Worldwide.

3 Q Okay. Now, this Seko Charlotte company, where you  
4 have been working for twenty-nine years - - -

5 A (Indicating yes)

6 Q Is that company owned by Seko Worldwide?

7 A Is it owned by Seko Worldwide?

8 Q (Indicating yes)

9 A I would think it's - - - That - - - That's  
10 something - - - I'm not sure how to answer that, to  
11 tell you the truth.

12 Q Okay. Who do you understand is the owner of Seko  
13 Charlotte?

14 A It's Glen Maddox.

15 Q And do you know how long Glen has been involved  
16 with Seko Charlotte?

17 A Well, he's been there since its inception in 1980,  
18 so thirty years.

19 Q Does all of the work that Seko Charlotte, all of  
20 the work that y'all do on a daily basis, do you  
21 always do jobs that have a relationship with Seko  
22 Worldwide such as they benefit from your work? Or  
23 do you sometimes do work just for Seko Charlotte?

24 A That all goes through Seko Worldwide, and it all  
25 goes through our system. So everything that's done

Deposition of Ron Burks

1 goes through our system, so it's - - - We don't  
2 have any operations on the side, that we just do  
3 Seko Charlotte, Incorporated that we do by  
4 ourselves, just for ourselves. It's all through  
5 Seko Worldwide. All of the accounting, everything  
6 that's done, goes through Seko Worldwide.

7 Q Does Seko Worldwide or anyone at Seko Worldwide  
8 that maybe works directly for - - - Would you say  
9 they were your parent company, in a sense?

10 A I would say so. That's what they - - - I would say  
11 in a sense. I don't know if that's a technically  
12 right answer, but I would say. I would say it  
13 seems like they are.

14 Q And Seko Charlotte has an operating agreement with  
15 Seko Worldwide that sets out the way that business  
16 gets done?

17 A Right.

18 Q Would you say that Seko Charlotte does business  
19 with Seko Worldwide but is a separate and  
20 independent company, in a sense?

21 A It possibly could be construed that way. I'm not  
22 exactly sure, technically, if that's the case or  
23 not.

24 Q Okay. How many employees do you have at Seko  
25 Charlotte, where you work?

Deposition of Ron Burks

1 A We've got about - - - Right now, we've got about  
2 sixteen.

3 Q About sixteen?

4 A (Indicating yes)

5 Q What types of employees do you have?

6 A We have office personnel. We have an international  
7 department and a domestic department that do  
8 operations. We have three drivers that drive our  
9 leased trucks from Penske.

10 Q And then you?

11 A Right.

12 Q Now, in being involved in the day-to-day  
13 operations, can you tell me if Seko Charlotte has  
14 its own payroll system?

15 A Yes.

16 Q The answer is yes, or - - -

17 A Yes.

18 Q Okay. So these people, these sixteen employees,  
19 when they get paid their hourly rate or their  
20 salary, when they get their paycheck, does that  
21 paycheck come from - - -

22 A Seko Charlotte.

23 Q Seko Worldwide or Seko Charlotte?

24 A Seko Charlotte, Incorporated.

25 Q Okay. And does Seko Worldwide, on a day-to-day

Deposition of Ron Burks

1 basis, have any influence over who you hire, or how  
2 many employees you hire, or your payroll?

3 A Not normally, only on the customs brokerage end of  
4 it.

5 Q Okay. And explain that to me.

6 A Customs brokerage?

7 Q (Indicating yes)

8 A It's where the imports come in. We have an in-  
9 house broker that helps clear those with customs,  
10 and they have a hand in who gets that position,  
11 that particular position, because they have a lot  
12 of compliance issues with customs.

13 Q And so that person might work for both Seko  
14 Charlotte and Seko Worldwide?

15 A That person could work for both, yeah.

16 Q Okay. As Seko Charlotte, when you have - - - How  
17 does Seko Charlotte get their business?

18 A We have salespeople go out to businesses and sell  
19 our services to those businesses, as far as  
20 transportation services.

21 Q And with the goal of bringing in work, I mean in  
22 Laymen's terms, what type of work are you getting?

23 A Well, you know, we do have national sales reps.  
24 Some of it is national business, but most of it is  
25 business we go out and sell through our

Deposition of Ron Burks

1 salespeople. It's various types of work. Again,  
2 it's mainly just transportation logistics. It  
3 could be air exports, imports. Ocean, we do ocean.  
4 It could be air freight flying on a plane. Just  
5 any kind of transportation needs that a customer  
6 would have, and we can serve them. That's mainly  
7 what we do and what we sell.

8 Q And just transporting - - -

9 A That's all we sell - - -

10 Q Goods?

11 A Is transportation services.

12 Q So if someone contacts you that has goods that need  
13 to go from Point A to Point B, that would be the  
14 goal of your company, to get those goods to that  
15 location for your customer?

16 A Right.

17 Q And is Seko Charlotte free to take on just about  
18 any business as it sees fit? I mean, do you need  
19 permission from Seko Worldwide to take on a  
20 customer?

21 A We - - - They normally do credit checks on  
22 customers. We just make sure they have credit  
23 established, and at that point, yes.

24 Q And do you do all of those credit checks and  
25 everything in-house at Seko Charlotte?

Deposition of Ron Burks

- 1 A We send them to our corporate office and they - - -
- 2 Q And they'll check them?
- 3 A They approve credit.
- 4 Q Is there any kind of an arrangement with Seko
- 5 Worldwide to share insurance policies? Do they
- 6 provide your company, Seko Charlotte, with any
- 7 types of insurance?
- 8 A They have the master insurance policies, and then
- 9 we have our own policies. So I'm not sure if any
- 10 override or complement each other. But we do have
- 11 our policies, and corporate has its policies so - -
- 12 - (No further response)
- 13 Q Let's take workers' comp, for example. Does Seko
- 14 Charlotte carry a workers' comp policy?
- 15 A Yes.
- 16 Q And if any of these sixteen employees that you've
- 17 told me about should theoretically get hurt in the
- 18 line of work, would it be your understanding that
- 19 typically that type of injury would be covered
- 20 under Seko Charlotte's own - - -
- 21 A Right.
- 22 Q Workers' comp policy?
- 23 A Yes.
- 24 Q And that workers' comp policy, is that something
- 25 that Seko Worldwide pays for, or is that something

Deposition of Ron Burks



1 that - - -

2 A That's - - -

3 Q Seko Charlotte pays for?

4 A Seko Charlotte pays for that.

5 Q And this is sort of - - - Again, I basically just  
6 asked this question, but just so I'm clear. Your  
7 company is responsible for its own workers' comp  
8 policy?

9 A Yes.

10 Q Are you familiar with a company called West  
11 Expedited and Delivery?

12 A Yes.

13 Q Have you used that company before, or done business  
14 with them?

15 A Yes.

16 Q Do you know who Gregory Collins was?

17 A No.

18 Q Did he ever work directly for your company?

19 A No.

20 Q In early September 2007, maybe more specifically  
21 May 6th - - - Oh, I'm sorry. I said September. I  
22 meant to say - - - Yeah, that's right. In early  
23 September 2007, maybe September 6th or 7th, 2007,  
24 did West Expedited Delivery make a run from  
25 Spartanburg to Wisconsin at Seko Charlotte's

Deposition of Ron Burks

1 request?

2 A Yes.

3 Q Who contacted West in that transaction? Do you  
4 know the name of the person that contacted West?

5 A No, I don't. That was back in 2007, so I really  
6 don't know who did.

7 Q Is it your understanding that it was a Seko  
8 Charlotte employee?

9 A Yes.

10 Q Do you have any indication or any knowledge about  
11 how that transaction originated?

12 A The customer would have called us, and we don't  
13 have any trucks in that area at that time. So I'm  
14 sure - - - We don't have any trucks in that area,  
15 so we find out somebody down there that can perform  
16 the service. I'm sure somebody called West and  
17 asked them, and they said, yes, we can do that.  
18 They took the load, and that was it.

19 Q Do you have any knowledge of whether or not someone  
20 at Seko Worldwide, that was working for your  
21 corporate parent, had any hand in that transaction?

22 A No, they would not have.

23 Q It would have been straight from Seko Charlotte?

24 A Right.

25 Q And that's the company owned by Glen Maddox?

Deposition of Ron Burks

1 A Right.

2 Q Would you agree with me that the company that you  
3 work for is Seko Charlotte, Inc., doing business as  
4 - - - and sometimes doing business as Seko  
5 Worldwide?

6 A Yes.

7 Q You don't work directly for Seko Worldwide?

8 A Right.

9 Q To the best of your knowledge, was Gregory Collins  
10 the driver of the West Expedited van that went from  
11 Spartanburg to Wisconsin at Seko's request?

12 A Yes.

13 Q And in your opinion, if the person driving those  
14 goods that day in early September of 2007, if that  
15 person was not Gregory Collins but an actual Seko  
16 Charlotte employee who had been driving those  
17 goods, if that person had been injured in the  
18 course of their employment, making that run, would  
19 that have been a workers' comp claim that would be  
20 handled with Seko Charlotte or with Seko Worldwide?

21 A Seko Charlotte.

22 Mr. Byrd - Okay. I think that's all of the  
23 questions that I have right now, Mr. Burks. I  
24 appreciate you answering those for me.

25 A Okay.

Deposition of Ron Burks

1           Mr. Byrd - Some of the other parties here may  
2           have some questions for you. If you will,  
3           just answer those.

4   A     All right.

5           Mr. Byrd - Thank you.

6   A     Thanks.

7   EXAMINATION - (By Mr. Killen)

8   Q     Mr. Burks - - -

9   A     Yes.

10   Q     I'm Tim Killen.

11   A     Hey, Tim.

12   Q     I represent the South Carolina Workers'  
13           Compensation Uninsured Employers' Fund.

14   A     (Indicating yes)

15   Q     Can you just describe to me a little bit better  
16           what transportation logistics is?

17   A     Basically, it's transportation and the best modes  
18           and methods to get whatever form of transportation  
19           is to the parties involved. So mainly, it could be  
20           - - - You know, imports have to come from overseas.  
21           How do you do that? What's the best way to do it?  
22           It's ocean exports. Maybe, you know, what's the  
23           best way to do the ocean export? Is it a full  
24           container? Is it a partial container? Air  
25           freight, what's the best flight to get it on to

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1 meet - - - to give the provided service? Does the  
2 customer need something the same day, next day,  
3 second day? It's all just transportation, and  
4 basically what's the best logistical method to move  
5 things and the form that would serve the customer  
6 and be cost efficient for the customer.

7 Q You're just figuring that out, the best ways to  
8 ship things. Is that correct?

9 A Basically.

10 Q Okay.

11 A (Indicating yes)

12 Q So if someone had a shipment that needed to go from  
13 Spartanburg up to Wisconsin, and they came to you,  
14 you would find out the most efficient way to get  
15 that shipment to Wisconsin, correct?

16 A Right.

17 Q Now, you were talking about Morris West's company,  
18 and that's West Expedited and Delivery?

19 A (Indicating yes)

20 Q Did you have any written contracts with Mr. West's  
21 company?

22 A Not that we know of, at that point, no.

23 Q Do you have written contracts with this company  
24 now?

25 A No.

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1 Q Okay. Is that normal?

2 A In a way, it is. I think back then, more - - -

3 Now, there's more - - - You know, word-of-mouth

4 back then was basically something that was more

5 done. A gentlemen's agreement, so to speak, on

6 certain things, and that's how we did business. I

7 believe that was how our relationship with Mr. West

8 started, was just a word-of-mouth agreement.

9 Q What did you know about Mr. West's business?

10 A Well, he had a lot of good references, and a lot of

11 people had spoke highly of Mr. West and his

12 business and his ethics at the time we started

13 using him.

14 Q What was your understanding of what his business

15 was?

16 A What our understanding of Mr. West's business is,

17 that he had a trucking company that - - - And they

18 did some express hot deliveries in that area.

19 Q What's an express hot delivery?

20 A It's something that needs to get just somewhere

21 faster than an LTL truck would. Something that the

22 customer is wanting it to go faster than a normal

23 LTL type truck.

24 Q Let me stop you. What's an LTL truck?

25 A It's less than a truckload. It's mainly a partial

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1       load that truckers consolidate. Like I said,  
2       Yellow Freight or Roadway or someone like that,  
3       it's when they consolidate a lot of freight on a  
4       truck, and it takes - - - They have to go through  
5       several hubs, and it takes several days to get from  
6       that Point A to Point B.

7   Q    So Mr. West would use vans?

8   A    He would use vans to run something exclusively to  
9       Point B, rather than waiting for it to be  
10       consolidated on a truck with all kinds of freight  
11       that made several stops and took a few days to get  
12       somewhere.

13   Q    So if one of your customers came to you and they  
14       wanted something halfway across the country in a  
15       day or two, just one item, you would perform that  
16       service for them?

17   A    Well, we would certainly try.

18   Q    And that was part of your business?

19   A    (Indicating yes)

20   Q    Yes?

21   A    Yes.

22   Q    Well, what was your understanding of the substance  
23       of your gentlemen's agreement with Mr. West?

24   A    Our agreement was very, you know, clear by both  
25       parties and didn't ever seem to have a conflict

Deposition of Ron Burks

1 with it. We - - - He had his fleet of trucks, or  
2 his vans, and he would run those for a dollar and  
3 twenty cents per mile one way. When he completed  
4 the job, he would bill us for that amount. It was  
5 a one-way mileage charge. He would charge us, one  
6 way, a dollar twenty per loaded mile.

7 Q You paid him a dollar twenty for each mile it took  
8 to get from where the item was shipped to where the  
9 item was being shipped?

10 A Where the item was delivering to.

11 Q Okay.

12 A Yeah.

13 Q And is it your understanding that Mr. West had more  
14 than one van?

15 A Yes.

16 Q And when you wanted an item shipped out of the  
17 Spartanburg area or the upstate, you could call on  
18 Mr. West?

19 A (Indicating yes)

20 Q Is that a yes?

21 A (Indicating yes)

22 Q Is that a yes?

23 A Yes.

24 Ms. George - You have to actually say yes for

25 - - -

Deposition of Ron Burks



1 A I gotcha.

2 Q I'm sorry. It's just for the court reporter.

3 Ms. George - The court reporter.

4 A I figured that out after my second uh-huh.

5 Q Okay. If none of Mr. West's vans were in the  
6 Spartanburg area, what would you then do?

7 A Well, then we would see if there were any other  
8 companies in that area that could perform the  
9 service.

10 Q Well, was it your expectation that Mr. West's van  
11 would return from the delivery point back to  
12 Spartanburg?

13 A It was our - - - We didn't know. All we asked him  
14 to do was to get something from Point A to Point B.  
15 Now, sometimes after - - -

16 Q I asked - - -

17 A After that, we didn't know what his drivers did.  
18 Sometimes, he tried to get something else, but that  
19 was the normal course of business in logistics.  
20 You try to get a load coming back, once you deliver  
21 something. All we knew is, we needed something  
22 from Point A to B. That's what we contracted with  
23 him to do, and that's what we expected. We didn't  
24 - - -

25 Q Okay. But my question - - -

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1 A We didn't bind him after that.

2 Q Excuse me. My question to you was, whether or not  
3 you expected Mr. West's drivers to return to South  
4 Carolina?

5 A I would imagine that they would come back. That's  
6 where they were based at.

7 Q You would need them to come back, wouldn't you?

8 A I wouldn't need them to. They would probably need  
9 to, if they wanted to get home.

10 Q If you ever wanted to use Mr. West's services  
11 again, wouldn't you expect that his drivers would  
12 return?

13 A Well, I would expect that would be part of his  
14 logistics that he would do, but I would expect,  
15 since that's their home base, they would eventually  
16 return. Sure.

17 Q And would you pay Mr. West's company with a check?

18 A Yes.

19 Q How frequently would you use Mr. West's company?

20 A Oh, I don't think we used them too often, but I  
21 would guess - - - Back during that time, Tim, I  
22 think we used them about two or three times a  
23 month.

24 Q Okay. Let me show you some items that are in our  
25 APA submissions, which is for the upcoming hearing.

Deposition of Ron Burks

1 Specifically, I'm going to show you Page 26 of the  
2 Fund's APA submission.

3 A (Indicating yes)

4 Q Can you tell me what that document is?

5 A That's one of our Seko bills of lading.

6 Q Okay. What's that number up there in the upper  
7 right-hand corner?

8 A That's the Seko bill number. That's the Seko  
9 reference number.

10 Q Is that a Seko Charlotte or a Seko Worldwide  
11 number?

12 A That's a Seko Worldwide number.

13 Q How does that number get assigned?

14 A These are - - - This is on a preprinted bill, which  
15 means this customer down here, they wanted  
16 preprinted bills. We gave them preprinted bills  
17 with preassigned numbers on them, and we mailed  
18 them to them. So that when they had a shipment,  
19 they would already have our bill with their name on  
20 it, and they would fill in the remaining  
21 information on it.

22 Q And your customer on that particular document is  
23 INA USA?

24 A Right.

25 Q Or I-N-A USA? I'm not sure.

Deposition of Ron Burks

- 1 A Right, yes.
- 2 Q And the shipment was going from there in
- 3 Spartanburg - - -
- 4 A (Indicating yes)
- 5 Q To where?
- 6 A Seneca, South Carolina.
- 7 Q To Hi-Tech?
- 8 A Yes.
- 9 Q Okay. Does it say on there, anywhere, who was to
- 10 perform the actual shipping of this item, or these
- 11 items?
- 12 A Well, it's on a Seko document, so - - -
- 13 Q So Seko was shipping it?
- 14 A Well, INA was shipping it. Seko was performing the
- 15 transportation for INA.
- 16 Q Seko through Mr. West?
- 17 A Yes.
- 18 Ms. George - Objection. This is - - - Have we
- 19 established already that - - - Is this one of
- 20 the ones I provided to you?
- 21 Mr. Killen - Yes. This is one of the ones - -
- 22 -
- 23 Ms. George - Through the subpoena?
- 24 Mr. Killen - Correct.
- 25 Ms. George - Okay. So we know that West did

Deposition of Ron Burks

1 this one?

2 Mr. Killen - Yes, yes.

3 Ms. George - Okay. Sorry.

4 FURTHER EXAMINATION - (By Mr. Killen)

5 Q Okay. Can you hand me that back, please?

6 A Okay.

7 Q And here's another one. That's Page 27, which your  
8 attorney provided to me. Can you tell me what this  
9 document is?

10 A This is a computer generated document that - - -  
11 Basically, we had a customer, Honeywell in Greer,  
12 that shipped an item to Honeywell in Phoenix. It's  
13 one piece, fifteen pounds. Obviously, this one  
14 flew out to Phoenix on a plane.

15 Q Okay. This wouldn't have been provided - - - I  
16 mean, done through Mr. West?

17 A Well, it's possible. I'm not sure if it did or  
18 not.

19 Q I've got another one. It's Page 28 of our APAs,  
20 which your attorney provided to us. Can you tell  
21 me what that is?

22 A This was a shipment from INA going to Fort Mill,  
23 South Carolina.

24 Q And to the best of your knowledge, is that a  
25 shipment through Seko performed by West Expedited

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1 and Delivery?

2 A Yes.

3 Q Okay. And finally, this is another one. This is  
4 Page 29 of our APA submissions. Can you tell me  
5 what this document is?

6 A This is INA. They had a shipment to Menomonee  
7 Falls, Wisconsin.

8 Q What do you know about that shipment?

9 A Well, I don't know much, except that they had the  
10 shipment. From what I'm seeing on this document,  
11 it's a shipment to Menomonee Falls, Wisconsin.

12 Q Was that - - -

13 A It's two skids, sixty-two boxes, sixteen hundred  
14 and forty pounds.

15 Q Is that a lot of stuff?

16 A I mean, it would fit on a van.

17 Q Was that part of the shipment that Mr. Collins was  
18 taking to Wisconsin?

19 A I don't believe so.

20 Q Okay.

21 A Oh, it may have been, but I'm not really sure on  
22 this one.

23 Q Well, let me show you some other documents. It's  
24 Page 45 and 46 of our APA submissions. This is - -

25 -

Deposition of Ron Burks

- 1 A Oh, it very well could have been, Tim. I'm - - -  
2 In fact, that could have been one - - - Yeah, it  
3 probably was one that Mr. Collins took.
- 4 Q How many shipments was he taking up to Wisconsin?  
5 A He took two.
- 6 Q Okay. He took two. So let me show you these  
7 pages, 45 and 46.
- 8 A (Indicating yes)
- 9 Q I pulled these off of the Seko Worldwide website.  
10 A Right.
- 11 Q It still has the tracking information there. Can  
12 you tell me where those shipments are going?
- 13 A Well, one was Wauwatosa, and one was Menomonee  
14 Falls. Mr. Collins did take two shipments that  
15 day. They were about ten minutes apart.
- 16 Q Can you tell me, does the house waybill number on  
17 Page 29 match any of the house waybill numbers on  
18 those pages?
- 19 A Yeah, 373716. Yeah.
- 20 Q Is there a different house waybill number for the  
21 other shipment?
- 22 A Yes, 373717.
- 23 Q Okay. Do you have a copy of - - -  
24 A Boy, you can't lean back in these chairs, can you?  
25 Q I'm sorry. What do you refer to these things as?

Deposition of Ron Burks

- 1 A It's what we call a bill of lading.
- 2 Q Do you have a copy of the other bill of lading?
- 3 A I did. I - - -
- 4 Q The 37 - - -
- 5 A I have provided that before. I don't have one on
- 6 me, but I have provided that.
- 7 Q Okay. To the best of your knowledge, did Mr.
- 8 Collins pick up any other items for any other
- 9 company on his return from Wisconsin?
- 10 A I don't know if he did or didn't. I don't know.
- 11 Q To the best of your knowledge, was Mr. Collins not
- 12 on his way back to the upstate of South Carolina
- 13 from Wisconsin?
- 14 A I don't know. You know, I really didn't know
- 15 anything about this until we heard something a few
- 16 months ago about it. So I actually didn't even
- 17 know that the accident had happened.
- 18 Q To the best of your knowledge, did Mr. Collins
- 19 depart from his duties of driving at any time?
- 20 A What do you mean, departed from his duties?
- 21 Q Did he - - -
- 22 A He departed from his duties when he gave us the
- 23 PODs, and that's all. That's the last we would
- 24 know of what exactly he did. After he - - - After
- 25 that, I don't know. I don't know what he did.

Deposition of Ron Burks



1 Q So you're saying after he dropped off his two  
2 shipments for your company - - -

3 A (Indicating yes)

4 Q At that point in time, what is your relationship?  
5 In your understanding, what is your relationship  
6 with that driver?

7 A Well, we don't have a relationship after that,  
8 after he calls in his - - - he delivers and calls  
9 in his PODs. Then we pretty much don't have a  
10 relationship. Then we're done. What he does is up  
11 to him. He could stay up there. He could get  
12 another load. He could go see relatives. I mean,  
13 that's - - - He's done, so we don't know.

14 Q Okay. But did - - -

15 A We don't have anything after that, any requirements  
16 for him.

17 Q Did he go see relatives?

18 A I don't know.

19 Q Did he pick up another load?

20 A I don't know.

21 Q Do you know what Mr. Collins was transporting for  
22 Seko?

23 A It was machine parts. I believe they were  
24 specifically bearings.

25 Q Would such a delivery be an important part of

Deposition of Ron Burks

1       Seko's business?

2   A    I would say so, yeah. Every part of business that  
3       we do is important to us.

4   Q    Did you need to make that delivery? Did Seko  
5       Charlotte need to make that delivery?

6   A    Well, the customer wanted delivery made. So, yeah,  
7       we needed to make that delivery, if we want to keep  
8       in business.

9   Q    You testified earlier that you have three drivers -  
10       - -

11   A    Yes.

12   Q    That work for Seko Charlotte?

13   A    Right.

14   Q    Do they make these same types of deliveries?

15   A    Those are local drivers. They stay within a  
16       hundred mile radius of Charlotte. They're really  
17       route trucks we have that stay local.

18   Q    So your drivers that you directly employ, you only  
19       use them around here?

20   A    Ah - - -

21   Q    But if you want to make a shipment across the  
22       country, you're a - - -

23   A    We don't go - - - Yeah, we're worldwide. We use  
24       somebody else on that.

25   Q    So you'll need somebody else to perform that job

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1 function, wouldn't you?

2 A Right.

3 Q So to be consistent with the purpose of your  
4 business, and it's all the way up to Seko  
5 Worldwide, it's a worldwide operation, correct?

6 A Right.

7 Q You need to hire these people such as Mr. West?

8 A We have the need to, you know, farm out business to  
9 other businesses to accommodate our transportation  
10 needs, yes.

11 Q And it's your position that - - - or it's your  
12 understanding that Mr. Collins would have been  
13 covered by your workers' compensation insurance on  
14 the way up to Wisconsin?

15 A Actually, I believe in our conversations, you know,  
16 that Mr. Morris had all of his credentials, and  
17 again, that was word-of-mouth. So we thought that  
18 if anything had happened, that it would be him  
19 covering it. But basically, that was our job that  
20 we gave him, is the one-way mileage. Other than  
21 that, we thought that Mr. West was a bigger company  
22 than apparently he was and thought he had a lot  
23 more credentials, or the insurance that he should  
24 have had.

25 Q Well, the mileage issue and the way you pay him,

Deposition of Ron Burks

1       that doesn't necessarily mean that he's no longer  
2       doing service on his return, does it?

3   A    That mileage we pay him, a service on his return?  
4       He's not doing a service for us on his return,  
5       because he's already done the service for us. So  
6       he's not doing a service for us on a return, no.

7   Q    Why did you pick a dollar twenty per mile?

8   A    That's pretty much the - - - That's the rate that  
9       he said he had to have. That's probably sort of  
10       one of those things of what the market would bear  
11       or what he decided he wanted to run his trucks for  
12       us, is a dollar twenty a mile one way. We probably  
13       talked about it back then, Tim, and he probably - -  
14       - You know, we agreed on that particular amount.

15   Q    That was a negotiated price?

16   A    Yes. But he pretty much - - - He was the owner of  
17       his own business, and he sort of dictated to us. I  
18       told him I couldn't - - - You know, name his price.  
19       He had to name it, and that's the price he named.

20   Q    Does Seko Charlotte see any benefit from Mr. Morris  
21       having a fleet of vans in Spartanburg, in the  
22       Spartanburg area?

23   A    Yes.

24   Q    Does Seko Worldwide provide advertisement to Seko  
25       Charlotte?

Deposition of Ron Burks

1 A Did Seko Worldwide provide advertisement?

2 Q Yes.

3 A I don't believe they do any advertising. It's all  
4 just going and seeing the customers, is the only  
5 way we get out to the field. You know, name  
6 recognition, there's - - - I don't think there's  
7 any national type of advertising done with the  
8 company.

9 Q Who handles Seko Worldwide's website?

10 A Our IT people, so I'm not - - -

11 Q Whose IT people?

12 A Seko Worldwide's IT people.

13 Q And that's y'all's IT people?

14 A Seko Worldwide's, yes.

15 Q Okay.

16 A Yeah, they have in-house people that design that  
17 and keep it running. I think Chris Johnson is the  
18 main guy over it.

19 Q And do you have a lot of interaction with them?

20 A No.

21 Q Someone can go to that website, Seko Worldwide's  
22 website, and track their shipment that's being  
23 performed by Seko Charlotte?

24 A (Indicating yes)

25 Q Is that a yes?

Deposition of Ron Burks

1 A Yes.

2 Q Do you pay Seko Worldwide to perform that service?

3 A The website? Is that what service you're talking  
4 about?

5 Q Yes.

6 A Maintaining the website?

7 Q Yeah, with the tracking function.

8 A That's part of their percentage. We work on a  
9 sixty/forty percent. So any profit we get, they  
10 will - - - they do - - - It's on a percentage  
11 basis. So they get a certain percentage of the  
12 profit, and that's how they run the business.  
13 That's how they - - - They take that percent to run  
14 the website and pay the employees up there at the  
15 corporate office.

16 Q Seko Worldwide takes a percentage of every shipment  
17 that y'all make - - -

18 A Yes.

19 Q The profit?

20 A Yes.

21 Q So on this particular run being performed by Mr.  
22 Collins, Seko Worldwide would have seen a profit?

23 A Yeah. If we make a profit on a shipment, which we  
24 normally do, they get sixty percent of that,  
25 whatever that profit is. No, excuse me. They get

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1       forty percent, and we get sixty percent.

2   Q   Okay. What else does Seko Worldwide do for you for  
3       that forty percent?

4   A   They provide the billing, the accounting, maintain  
5       the website, maintain the relationship with the  
6       agents overseas, and building the network up, and  
7       national sales accounts.

8   Q   Well, earlier, you were talking about your national  
9       sales representatives. Are they employees of Seko  
10      Charlotte or Seko Worldwide?

11   A   Seko Worldwide.

12   Q   And earlier, we were talking about sending credit  
13      to your corporate office - - - office for approval.  
14      Excuse me, I need some water. Where's your  
15      corporate office?

16   A   You can have mine, if you want it.

17   Q   That's all right. Thank you.

18   A   What is it now?

19   Q   Where's your corporate office?

20   A   It's in Itasca, Illinois.

21   Q   Now, is that Seko Charlotte's corporate office?

22   A   No.

23   Q   That's Seko Worldwide's corporate office?

24   A   Correct.

25   Q   And Seko Worldwide has a master insurance policy.

Deposition of Ron Burks

1 Is that correct?

2 A Yes.

3 Q Why would they have a master insurance policy?

4 Mr. Byrd - Object to the form of the question.

5 Q Do you know why Seko Worldwide has a master  
6 insurance policy or policies?

7 A I would guess because they have a lot of entities  
8 to protect themselves, as any business would.

9 Q Do you know when those insurance policies would  
10 kick in?

11 A No.

12 Q What does Seko Worldwide do for Seko Charlotte in  
13 regards to accounting?

14 A Accounting?

15 Q Yes.

16 A They perform our collections. They perform our  
17 billing, certain reports.

18 Q And you don't pay them anything extra? You just  
19 pay them the forty percent of your profits?

20 A Right.

21 Q If somebody calls into Seko Worldwide and they have  
22 a shipment they want to make, and they're located  
23 in Charlotte, what's the next step in the process?

24 A Are you talking about if they called our corporate  
25 office, or called us in Charlotte?

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1 Q If they called the corporate office, Seko  
2 Worldwide's office?

3 A The corporate office? The corporate office would  
4 probably try to find out who the customer was and  
5 if it was a customer in our base. If it's one of  
6 our customers, they would direct them back to the  
7 Charlotte office.

8 Q The Charlotte office is the office of Seko  
9 Charlotte?

10 A Yes.

11 Q Bear with me for one second, please.

12 A Okay.

13 Whereupon - A brief discussion was held off  
14 the record, which was not reported.

15 FURTHER EXAMINATION - (By Mr. Killen)

16 Q When you contracted with Morris West's company to  
17 make an individual shipment, how would you get in  
18 touch with his company?

19 A I would just call his number.

20 Q His business number?

21 A He - - - Yeah, his business number.

22 Q And you would tell him what?

23 A We had his cell number, too, and that's why I'm  
24 hesitating. You know, if we couldn't get through  
25 on the business, then we called his cell.

Deposition of Ron Burks

1 Q Okay.

2 A Then we would tell him that we had a shipment at  
3 Point A that had to be at Point B. Do you have the  
4 personnel and people to do it, to perform the  
5 service?

6 Q Would you tell him when the shipment needed to be  
7 delivered by?

8 A Yes. We would tell him - - - You know, usually  
9 what we would tell him is, well, it's a hot one.  
10 It needs to be there whenever you can get it - - -  
11 as soon as you can get it there.

12 Q Okay. Did you give him deadlines?

13 A Not necessarily. No, we didn't give him deadlines.  
14 We just told him, you know, it's hot. Get it there  
15 as soon as you can. No, we didn't give him  
16 specific deadlines, but he understood the nature of  
17 the urgency of the shipment. Just do the best you  
18 can under, you know, safe conditions. We didn't  
19 give him deadline times, but we told him, you know,  
20 the best you can do.

21 Q What would happen if one of his drivers didn't make  
22 a delivery in a timely fashion?

23 A Well, then the customer would be upset because they  
24 didn't get their goods that they needed. What  
25 specifically do you mean, what would happen?

Deposition of Ron Burks

1 Q I mean, what would you do?

2 A What would I do?

3 Q Yeah. What would be your reaction?

4 A If I found out it wasn't on time?

5 Q Correct.

6 A I would try to find out why. Was there an  
7 accident? Was there a reason? I mean, if there's

8 a - - - Did you break down? If the truck had broke

9 down, then we would try to find a truck to

10 intercept the goods and finish the trip. Other

11 than that, just do the best you can. I mean, the

12 main thing we stressed with them was communication,

13 so we could tell the customer what was going on.

14 The customer just needed to know, you know. Is it

15 getting there later? Is it getting there? Is

16 there a problem? Just communication is the main

17 thing.

18 Q If the reason weren't something understandable, if

19 there was something you did not approve of, would

20 you take the business away from Mr. West?

21 A Well, if he did that on a frequent basis, I'm sure

22 there would be some kind of - - - There's no

23 incentive for us to give him business if he's going

24 to be, you know, jeopardizing our customers and

25 business. Sure.

Deposition of Ron Burks

1 Q How many companies like Mr. West does Seko  
2 Charlotte use in South Carolina?

3 A I don't know like Mr. West. Now, when you say like  
4 him, I don't know if he's sort of a - - -

5 Q Well, let me ask that question again.

6 A All right.

7 Q How many people do you contract with in South  
8 Carolina, or how many companies does Seko Charlotte  
9 - - -

10 A I'd say - - -

11 Q Contract with in South Carolina to perform these  
12 types of deliveries?

13 A Yeah, probably a handful of them.

14 Q What, that's five?

15 A Probably somewhere in that neighborhood, yeah.

16 Q Five companies?

17 A (Indicating yes)

18 Q And you were doing - - - Is that a yes?

19 A Beg your pardon?

20 Q Is that a yes?

21 A Yes.

22 Q And they're - - -

23 A I've got to wipe uh-huh out.

24 Q In 2007, you were using the same amount of  
25 companies?

Deposition of Ron Burks

1 A Probably so.

2 Q Do you know how many employees each of those  
3 companies had during that time period?

4 A Usually, they were single owner/operators,  
5 individual owner/operators/drivers.

6 Q Do you know how many employees Mr. West had in  
7 2007?

8 A No. I thought he had a bigger trucking company.  
9 To be honest with you, I thought West Delivery was  
10 like a huge trucking company. I didn't know how  
11 many employees it had. From what I understand, he  
12 had three to six or something, but I don't know.

13 Q And you never asked him if he had workers'  
14 compensation coverage?

15 A I believe we did, and I thought the answer was yes.

16 Q Was this before or after Mr. Collins' accident?

17 A That's when we start with anybody. With him, I'm  
18 sure we asked him, and I thought the answer was  
19 yes, yes, we do. We have all of that - - - I think  
20 since that time, we've been getting, you know,  
21 written files on it and updating them every year,  
22 but I don't know. Mr. West, he seemed like an  
23 actually really good man. I had heard so much  
24 about him, but I'm sure that we did ask him about  
25 that. I think the answer was yes.

Deposition of Ron Burks

1 Q You would have only asked him once, and that was at  
2 the time you originally engaged him to perform  
3 subcontract work for Seko Charlotte?

4 A It could have been once. It could have been more.

5 Q So you don't know?

6 A No.

7 Mr. Killen - That's all the questions I have.

8 Anybody else?

9 Mr. Martin - I've got a couple of questions  
10 that I'd like to ask. This is Brian Martin.

11 Ms. George - Go ahead, Brian.

12 EXAMINATION - (By Mr. Martin via telephone)

13 Q Mr. Burks, my name is Brian Martin. I'm an  
14 attorney, and I represent West Exp - - -

15 Whereupon - The teleconference was  
16 disconnected. It had to be reestablished, so  
17 a brief recess was taken.

18 EXAMINATION - (By Mr. Martin via telephone)

19 Q Mr. Burks, you had indicated, I believe, that you  
20 have three employees at Seko Charlotte. Is that  
21 correct?

22 A Three employees? No. About sixteen employees.

23 Q Sixteen employees?

24 A Right.

25 Q You mentioned that you had three drivers that did

Deposition of Ron Burks

1 local runs?

2 A Right.

3 Q Okay. How do you pay those drivers that do the  
4 local runs? Are they salaried?

5 A Those are salaried drivers.

6 Q And the other sixteen employees that you have, are  
7 any of those folks employed on a contract basis?

8 A On a contract basis? No. They're all salaried  
9 employees.

10 Mr. Martin - Okay. That's all the questions I  
11 have.

12 A Okay.

13 Ms. George - Linda, your turn.

14 E X A M I N A T I O N - (By Ms. McKenzie via telephone)

15 Q The only question I have is, the other companies  
16 that you contract with to deliver goods, do you pay  
17 them by the mile just as you paid Mr. West?

18 A Yeah. Every company we contract out to has a one-  
19 way, per-mile charge. Every one we've ever dealt  
20 with has only charged per mile one way, and it  
21 wouldn't - - -

22 Ms. McKenzie - Thank you. That's all I have.

23 A Okay.

24 Mr. Byrd - You don't have any questions?

25 Ms. George - I don't have any questions.

Deposition of Ron Burks

1 Mr. Byrd - Well, I just have a couple of  
2 follow ups, if I'm the last one.

3 FURTHER EXAMINATION - (By Mr. Byrd)

4 Q Mr. Burks, you were asked a few questions earlier  
5 by Mr. Killen about Seko Worldwide's website, and  
6 that's certainly a benefit to being partners with  
7 Seko Worldwide. Isn't that correct?

8 A Yes.

9 Q And your company, Seko Charlotte, has a  
10 profitsharing arrangement with Seko Worldwide,  
11 correct?

12 A Right.

13 Q And in exchange for you giving them a share of the  
14 profits, or your company giving them a share of the  
15 profits, you get benefits in return for that,  
16 correct?

17 A Correct.

18 Q And that would be help with accounting, use of  
19 their website, use of documents that are  
20 preprinted, things like that?

21 A Yes.

22 Q It's all kinds of things, isn't it?

23 A And plus a network of agents around the world that  
24 we use, yes.

25 Q So your business grows, even though you have to

Deposition of Ron Burks



1 give up some of your profits?

2 A Well, we're trying.

3 Q Okay. But that's the idea, correct?

4 A Right.

5 Q You were shown some documents earlier, and you  
6 described them as bills of lading, I believe. Let  
7 me just show you one of those. I'm just going to  
8 pick one here and show it to you. This is Page 29  
9 of the APA submissions submitted by the Uninsured  
10 Employers' Fund.

11 A (Indicating yes)

12 Q You were shown this earlier. Do you recognize  
13 seeing that again?

14 A Yes, yes.

15 Q And in the top left corner, it says, Seko. Is that  
16 correct?

17 A Yes.

18 Q And earlier, you described this document as a Seko  
19 Worldwide bill of lading in a sense. Is that an  
20 accurate description?

21 A Yes.

22 Q And now, this is a form that's preprinted, right?

23 A This portion and this portion, some - - - This, all  
24 of this that's preprinted, what you see that's  
25 preprinted is the preprinted part, yes.

Deposition of Ron Burks

1 Q And it's a document that Seko Worldwide produces  
2 that Seko Charlotte uses. Is that correct?

3 A Yes.

4 Q And would being able to use Seko's letterhead and  
5 these documents, that's a benefit that Seko  
6 Charlotte gets as a result of this profitsharing  
7 arrangement?

8 A Yes.

9 Q And just because profits are being shared and you  
10 get to take advantage of these benefits, that  
11 doesn't mean that Seko Worldwide and Seko Charlotte  
12 aren't two separate entities. Is that right?

13 A Repeat that.

14 Q Okay. Let me just ask that question a better way.

15 A Okay.

16 Q I'm sorry about that. That was a confusing  
17 question. The fact that Seko Charlotte uses Seko  
18 Worldwide letterhead, uses the Seko Worldwide name,  
19 and takes advantage of Seko Worldwide's website,  
20 that doesn't change the fact that Seko Worldwide  
21 and Seko Charlotte are two separate entities?

22 A Right.

23 Q Is that correct?

24 A That's correct.

25 Q Seko Worldwide and Seko Charlotte are two separate

Deposition of Ron Burks

1 entities that do business, that have a business  
2 relationship. Is that correct?

3 A I'm not exactly sure how you would construe that,  
4 but we do have a business relationship. We call  
5 that our parent company. We are a separate entity,  
6 and that we're a franchise that has its own profit  
7 and loss as a business.

8 Mr. Byrd - All right. Thank you, Mr. Burks.

9 A Okay.

10 Mr. Byrd - That's all the questions that I  
11 have.

12 Mr. Killen - I'll just follow up.

13 FURTHER EXAMINATION - (By Mr. Killen)

14 Q You don't buy the letterhead from Seko Charlotte -  
15 - - I mean, excuse me, Seko Worldwide, do you?

16 A No.

17 Q They provide it to you?

18 A Right.

19 Q You don't pay Seko Worldwide to perform your  
20 accounting services, do you?

21 A No.

22 Q And you don't pay them by the job to do your  
23 billing services, do you?

24 A No.

25 Q You just split the profit?

Deposition of Ron Burks

1 A Right.

2 Q And this was the case back in 2007 as well,  
3 correct?

4 A Right.

5 Mr. Killen - That's all I have.

6 Ms. George - Brian or Linda?

7 Ms. McKenzie - I don't have anything.

8 Mr. Martin - I don't have anything.

9 Mr. Southerlin - I don't have anything.

10 Ms. George - Or Kenneth. Sorry, I did not  
11 acknowledge you, Kenneth. I don't have any  
12 other questions, either.

13 Whereupon - Deposition was concluded at  
14 1:08 p.m.

Signing of Transcript Kelly Reiter  
Court Reporter/Notary Public  
of Deposition By

Witness Waived

(Recorded deposition tapes retained for fifteen days  
from date of certification or until transcript has been  
signed in cases when signature is not waived)

Deposition of Ron Burks

# South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1333 Main Street, Suite 500

Columbia, South Carolina 29202-1715

(803) 737-5700

WCC Form 30

0719222

Carrier File #

6132WC220180

Carrier Code #

Employer FEIN

561278605

Gregory A. Collins  
(deceased)

Claimant's Name

SSN

DECEASED

Easley, South Carolina 29640

Address City State Zip

Home Phone #

Work Phone #

A. Mundi George

Preparer's Name

Seko Charlotte, Inc.

Employer's Name

3101 Yorkmont Road

Charlotte, North Carolina 28208

Address City State Zip

Nationwide Mutual Insurance Company

Insurance Carrier

(803) 227-2259

Phone Number

Request for Commission Review by ☐ claimant ☒ employer (check one)

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

SEE ATTACHED

Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated in this form.

certify that I have served this document pursuant to R.67-211 by delivering a copy to:

\*SEE ATTACHED CERTIFICATE OF SERVICE\*\*

on the 7th day of July, 2010 by ☒ first class mail; ☐ personal service; ☐ certified mail.

A. Mundi George  
Preparer's Signature

Attorney for Employer/Carrier  
Title

July 7, 2010  
Date

check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67.205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC FORM #30 REV. DATE 3/97

30

REQUEST FOR COMMISSION REVIEW.

Gregory A. Collins (deceased) v. Seko Charlotte, Inc. and Nationwide Mutual Insurance Company  
Date of Accident: September 8, 2007  
WCC File No.: 0719222

GROUND'S FOR APPEAL

1. Did the Single Commissioner err in his discussion by asserting that Claimant's statutory employment relationship with Seko Charlotte did not end with the delivery because there was no new delivery for a different company on the return trip, such error being that the existence of a new load is immaterial to whether Claimant remained a statutory employee of Seko Charlotte? (pg. 9)
2. Did the Single Commissioner err in his discussion, finding that there is no evidence Claimant deviated from his route back to South Carolina, such error being that the existence of a deviation on the return trip is immaterial to an analysis of whether Claimant remained a statutory employee of Seko Charlotte at the time of the accident? (pg. 9)
3. Did the Single Commissioner err in his discussion by asserting that payment for one-way mileage does not change the relationship of statutory employer, such error being that payment of one way mileage is evidence of bargained for mutual understanding that all ties between Seko Charlotte and both West Expedited and the Claimant were terminated upon delivery? (pg. 9)
4. Did the Single Commissioner err in his discussion by asserting that Seko Charlotte is responsible for Claimant's injury under Section 42-1-400, such error being that Section 42-1-400 imposes no such liability? (pg. 9)
5. Did the Single Commissioner err in his discussion by asserting that neither the UEF nor Seko Worldwide are liable because the statutory employer is Seko Charlotte, such error being that Seko Charlotte was not the statutory employer at the time of the accident and therefore, because West Expedited was subject to the Act and uninsured, the greater weight and preponderance of the evidence shows the UEF is a responsible party? (pg. 10)
6. Did the Single Commissioner err in his Finding of Fact number one, finding that all parties are subject to the Workers' Compensation Act, where the greater weight and preponderance of the evidence shows Seko Charlotte no longer had any connection with West Expedited or Claimant at the time of the accident and should not be subject to the Act?
7. Did the Single Commissioner err in his Finding of Fact number four, finding that Seko Charlotte, Inc. was the statutory employer of Claimant and Nationwide was their workers' compensation carrier, where the greater weight and preponderance of the evidence shows Seko Charlotte was not Claimant's statutory employer at the time of the accident?
8. Did the Single Commissioner err in his Finding of Fact number five, finding that the statutory requirements were met to find Seko Charlotte was the statutory employer, where the greater weight and preponderance of the evidence shows that the requirements were not met to create a statutory employer relationship and the analysis ignores the absence of such factors at the time of the injury?
9. Did the Single Commissioner err in his Finding of Fact number six, finding that neither the UEF nor Seko Worldwide are liable because the statutory employer is Seko Charlotte, such error being that Seko Charlotte was not the statutory employer at the time of the accident and therefore, because West Expedited was subject to the Act and uninsured, the greater weight and preponderance of the evidence shows the UEF is a responsible party?

Gregory A. Collins (deceased) v. Seko Charlotte, Inc. and Nationwide Mutual Insurance Company  
WCC File No.: 0719222  
Grounds for Appeal  
Page 2

10. Did the Single Commissioner err in his Finding of Fact number seven, finding that Claimant was a "traveling employee" and his statutory employment relationship with Seko Charlotte did not end with the delivery because there was no new delivery for a different company on the return trip, such error being that the existence of a new load is immaterial to whether Claimant remained a statutory employee of Seko Charlotte?

11. Did the Single Commissioner err in his Conclusion of Law number seven, holding that there is no evidence Claimant deviated from his purpose or route, such error being that the existence of a deviation on the return trip is immaterial to an analysis of whether Claimant remained a statutory employee of Seko Charlotte at the time of the accident?

12. Did the Single Commissioner err in his Order, holding that Seko Charlotte, Inc. is the statutory employer and Nationwide Insurance Company is the workers' compensation carrier responsible for Claimant's injuries and payment of associated benefits, where the greater weight and preponderance of the evidence shows that Seko Charlotte was not the statutory employer at the time of the accident?

13. Did the Single Commissioner err in his Order, holding that the claim against Seko Worldwide and the South Carolina Uninsured Employers' Fund was dismissed, such error being that Seko Charlotte was not the statutory employer at the time of the accident and therefore, because West Expedited was subject to the Act and uninsured, the greater weight and preponderance of the evidence shows the Uninsured Employers' Fund is a responsible party?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0719222

EMPLOYEE/CLAIMANT: GREGORY A. COLLINS

EMPLOYER: WEST EXPEDITED & DELIVERY SERVICE, SEKO  
CHARLOTTE, SEKO WORLDWIDE

INSURER: NATIONWIDE MUTUAL INSURANCE COMPANY, FEDERAL  
INSURANCE COMPANY

---

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

---

PURSUANT TO NOTICE OF THE WORKERS' COMPENSATION  
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 12TH  
DAY OF MAY, 2010, COMMENCING AT THE HOUR OF 10:35 AM  
IN GREENVILLE, SOUTH CAROLINA, ATTENDED BY COUNSEL AS  
FOLLOWS:

KATHRYN BOSTROM,  
VERBATIM COURT REPORTER

COPY

---

**BOSTROM REPORTING**

109 KYLE AVENUE  
INMAN, S.C. 29349  
803-446-7040



APPEARANCES

FOR THE  
CLAIMANT:

LINDA B. MCKENZIE, ESQUIRE  
BOWEN MCKENZIE AND BOWEN  
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PO BOX 2547  
GREENVILLE, SC 29602

FOR SEKO  
WORLDWIDE &  
FEDERAL  
INSURANCE  
COMPANY:

MITCHELL K. BYRD, ESQUIRE  
WILLSON JONES CARTER & BAXLEY, PA  
872 S. PLEASANTBURG DRIVE  
GREENVILLE, SC 29607

FOR SEKO  
CHARLOTTE &  
NATIONWIDE  
MUTUAL  
INSURANCE  
COMPANY:

A. MUNDI GEORGE, ESQUIRE  
MCANGUS GOUDELOCK & COURIE, LLC  
POST OFFICE BOX 12519  
COLUMBIA, SC 29211

FOR UNINSURED  
EMPLOYERS'  
FUND:

TIMOTHY B. KILLEN, ESQUIRE  
THE UNINSURED EMPLOYERS' FUND  
100 EXECUTIVE CENTER DRIVE  
SUITE 101  
COLUMBIA, SC 29210

FOR WEST  
EXPEDITED  
AND DELIVERY  
SERVICE, INC:

BRAIN A. MARTIN, ESQUIRE  
MARTIN & DAVIS  
212 TRADE STREET  
GREER, SC 29651

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EXHIBITS

THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.

1        PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING WAS  
2        TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY PUBLIC  
3        FOR THE STATE OF SOUTH CAROLINA, IN GREENVILLE, SOUTH  
4        CAROLINA.

5                                \* \* \* \* \*        \* \* \* \* \*        \* \* \* \* \*

6                COMMISSIONER HUFFSTETLER:

7        ~~THIS IS WORKERS' COMPENSATION FILE NO. 0719222.~~  
8        THE CASE OF THE CLAIMANT GREGORY A. COLLINS, WHO  
9        IS DECEASED, VERSUS THE EMPLOYER WEST EXPEDITED  
10       AND DELIVERY SERVICE. I ALSO HAVE NAMED AS  
11       PARTY SEKO WORLDWIDE AND SEKO CHARLOTTE  
12       INCORPORATED. THE CASE IS BROUGHT ON BEHALF OF  
13       CRYSTAL COLLINS. SHE HAS PREVIOUSLY BEEN  
14       APPOINTED AS GUARDIAN AD LITEM FOR HER CHILDREN  
15       DESTINY D. LEDBETTER AND JOSHUA E. COLLINS.  
16       THEY ARE ALL REPRESENTED BY ATTORNEY LINDA B.  
17       MCKENZIE. WEST EXPEDITED AND DELIVERY SERVICE,  
18       INC. IS REPRESENTED BY ATTORNEY BRIAN A. MARTIN.  
19       SEKO WORLDWIDE AND FEDERAL INSURANCE COMPANY  
20       REPRESENTED BY ATTORNEY MITCHELL K. BYRD, JR.  
21       SEKO CHARLOTTE INCORPORATED AND NATIONWIDE  
22       MUTUAL INSURANCE COMPANY IS REPRESENTED BY  
23       ATTORNEY A. MUNDI GEORGE. THE CASE IS SET TO  
24       CONSIDER ISSUES OUTLINED IN FORMS 52 AND 53.

1           THERE WAS A MOTION TO ADD SEKO CHARLOTTE  
2           INCORPORATED AS PARTY. IT IS MY UNDERSTANDING  
3           THAT THEY ARE IN AGREEMENT TO BE ADDED AS A  
4           PARTY AND THEY AGREE ALSO TO GO FORWARD WITH THE  
5           HEARING WITHOUT 30 DAYS NOTICE.

6           MS. GEORGE:

7           CORRECT.

8           COMMISSIONER HUFFSTETLER:

9           THE AVERAGE WEEKLY WAGE BY AGREEMENT OF THE  
10          PARTIES IS \$641.78 WITH A COMPENSATION RATE OF  
11          \$427.87. THE DATE OF ACCIDENT IS SEPTEMBER 8,  
12          2007. ARE THERE ANY OBJECTIONS TO THOSE ITEMS,  
13          JURISDICTION, VENUE, OR ANY OF THE APA  
14          SUBMISSIONS?

15          MS. MCKENZIE:

16          NO, YOUR HONOR.

17          COMMISSIONER HUFFSTETLER:

18          WITHOUT OBJECTION THE COMMISSION FILE BECOMES  
19          PART OF THE RECORD WITH THE EXCEPTION OF SELF-  
20          SERVING DECLARATIONS AND UNSTIPULATED MEDICAL  
21          REPORTS. IT'S AN ADMITTED ACCIDENT. THE ISSUES  
22          -- A FATAL ACCIDENT -- THE ISSUES IN DISPUTE ARE  
23          WHETHER THE EMPLOYER WEST EXPEDITED DELIVERY  
24          SERVICE, INCORPORATED IS SUBJECT TO THE ACT OR  
25          WAS SUBJECT TO THE ACT AT THE TIME OF THE

1 ACCIDENT, AND ALSO THE ISSUE OF ANY STATUTORY  
2 EMPLOYERS. IS THAT CORRECT?

3 MS. MCKENZIE:

4 YES, YOUR HONOR.

5 MR. MARTIN:

6 YES, SIR.

7 MS. GEORGE:

8 YES, SIR.

9 MR. BYRD:

10 YES, SIR.

11 MR. KILLEN:

12 YES, SIR.

13 COMMISSIONER HUFFSTETTLER:

14 I HAVE, IN THE FILE, A TRANSCRIPT FROM A HEARING  
15 THAT STARTED ON DECEMBER 18, 2009, BEFORE  
16 COMMISSIONER BARDEN. IT APPEARS THAT THAT  
17 HEARING ENDED RATHER ABRUPTLY WITH AN AGREEMENT  
18 TO ADD A PARTY. THAT TRANSCRIPT HAS BEEN  
19 OFFERED AS PART OF THE RECORD. ANY OBJECTION?

20 MS. GEORGE:

21 NO, SIR.

22 MR. KILLEN:

23 NO, SIR.

24 MS. MCKENZIE:

25 NO, SIR.

1           MR. BYRD:  
2           NO, SIR.  
3           COMMISSIONER HUFFSTETLER:  
4           I ALSO HAVE A DEPOSITION OF MORRIS D. WEST THAT  
5           HAS ALSO BEEN OFFERED. ANY OBJECTION?  
6           MS. GEORGE:  
7           NO, SIR.  
8           MR. KILLEN:  
9           NO, SIR.  
10          MR. MARTIN:  
11          NO, SIR.  
12          COMMISSIONER HUFFSTETLER:  
13          MS. MCKENZIE, YOU'RE THE MOVING PARTY. DO YOU  
14          HAVE A WITNESS?  
15          MS. MCKENZIE:  
16          YOUR HONOR, I HAVE QUESTIONED MY CLAIMANT IN  
17          PREVIOUS TRANSCRIPT AND I REST WITH THAT AND MY  
18          CROSS EXAMINATION OF THESE WITNESSES.  
19          COMMISSIONER HUFFSTETLER:  
20          MR. KILLEN, YOU REPRESENT THE UNINSURED  
21          EMPLOYERS' FUND. DO YOU HAVE A WITNESS?  
22          MR. KILLEN:  
23          YES, SIR, WE WILL CALL MR. WEST.  
24          COMMISSIONER HUFFSTETLER:  
25          IS THIS MR. WEST HERE?

1 MR. KILLEN:

2 YES, SIR.

3 \* \* \* \* \*

4 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
5 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE  
6 MATTER HEREIN:

7 \* \* \* \* \*

8 MORRIS LEE WEST,

9 BEING FIRST DULY SWORN OR AFFIRMED, TESTIFIED ON HIS  
10 OATH AS FOLLOWS:

11 COMMISSIONER HUFFSTETLER:

12 MR. KILLEN?.

13 MR. KILLEN:

14 THANK YOU, MR. COMMISSIONER.

15 DIRECT EXAMINATION

16 BY MR. KILLEN:

17 Q MR. WEST, CAN YOU TELL ME WHAT YOU DO FOR A LIVING?

18 A I RUN A COURIER BUSINESS.

19 Q WHAT'S THE NAME OF THAT BUSINESS?

20 A WEST EXPEDITED AND DELIVERY SERVICE.

21 Q IS THAT A CORPORATION?

22 A IT'S INCORPORATED.

23 Q IN SOUTH CAROLINA?

24 A YES. .

25 Q AND ARE YOU THE PRESIDENT OF WEST EXPEDITED AND

1 DELIVERY?

2 A YES.

3 Q ARE THERE ANY OTHER SHAREHOLDERS IN THAT CORPORATION?

4 A NO.

5 Q BACK IN SEPTEMBER OF '07, DID YOU HAVE AN EMPLOYEE

6 NAMED GREGORY A. COLLINS?

7 A YES.

8 Q PRIOR TO SEPTEMBER OF '07, HOW LONG HAD MR. COLLINS

9 BEEN EMPLOYED BY YOU?

10 A I THINK ABOUT TEN MONTHS.

11 Q WHAT WAS MR. COLLINS' JOB?

12 A DRIVING A DELIVERY VAN.

13 Q HOW MANY OTHER EMPLOYEES DID YOU HAVE IN THE TIME

14 PERIOD IMMEDIATELY PRECEDING SEPTEMBER OF '07?

15 A HE WAS THE ONLY ONE THAT WAS REALLY AN EMPLOYEE. I

16 HAD SOME CONTRACT DRIVERS.

17 Q MR. COLLINS WAS YOUR ONLY EMPLOYEE, IS THAT CORRECT?

18 A AS WELL AS I REMEMBER, YES.

19 Q HOW DID YOU DIFFERENTIATE BETWEEN MR. COLLINS AND

20 YOUR CONTRACT DRIVERS?

21 A THE CONTRACT DRIVERS OWN THEIR OWN VEHICLES AND PAY

22 THEIR OWN EXPENSES.

23 Q SUCH AS WHAT EXPENSES?

24 A GAS, OIL, TRUCKS, INSURANCE.

25 Q AND, YOU PAID THOSE EXPENSES FOR MR. COLLINS?



1 A THEY JUST TOLD ME WHERE TO PICK IT UP AND WHERE IT  
2 WAS GOING.

3 Q DID THEY TELL YOU WHEN IT NEEDED TO BE DELIVERED BY?

4 A YEAH.

5 Q WAS THIS PARTICULAR DELIVERY WHAT THEY CALL A HOT  
6 SHIPMENT, MEANING THAT IT HAD TO GET THERE EXTREMELY  
7 FAST?

8 A WELL, NOT EXTREMELY FAST. IT HAD TO BE THERE THE  
9 NEXT DAY.

10 Q FROM SOUTH CAROLINA TO WISCONSIN IN ONE DAY, IS THAT  
11 CORRECT?

12 A YES. WELL, IT WOULD HAVE BEEN ALL NIGHT AND THEN  
13 INTO THE NEXT DAY.

14 Q AND, WHAT WAS YOUR AGREEMENT WITH SEKO CHARLOTTE?  
15 HOW DID THEY PAY YOU?

16 A THEY PAID ME PER MILE.

17 Q HOW MUCH DID THEY PAY YOU PER MILE?

18 A AT THAT TIME, I THINK IT WAS \$1.30, I'M NOT SURE.  
19 \$1.20 OR THIRTY.

20 Q A \$1.20 OR \$1.30 PER MILE. IS THAT THE DISTANCE  
21 BETWEEN THE PICK-UP POINT AND THE DELIVERY POINT?

22 A YES.

23 Q DID SEKO CHARLOTTE EVER PAY YOU FOR THIS DELIVERY?

24 A YES, THEY DID.

25 Q IS IT YOUR UNDERSTANDING THAT MR. COLLINS HAD ALREADY

1 DROPPED OFF THE SHIPMENT AT THE TIME --  
2 A YES.  
3 Q AND, HE WAS IN A MOTOR VEHICLE ACCIDENT ON THE WAY  
4 HOME, IS THAT CORRECT?  
5 A YES.  
6 Q WHERE WAS HE DRIVING BACK TO?  
7 A WHEN IT HAPPENED?  
8 Q YEAH.  
9 A WHERE WAS HE DRIVING BACK TO?  
10 Q YEAH, WHERE WAS HE COMING -- WHERE WAS HE GOING?  
11 A HIS HOME.  
12 Q AND, HE LIVED IN SOUTH CAROLINA, IS THAT CORRECT?  
13 A YEAH.  
14 Q NOW, WHEN YOU CONTRACTED WITH SEKO CHARLOTTE TO  
15 FIGURE OUT THE PRICE PER MILE, DID YOU CONSIDER ALL  
16 OF YOUR EXPENSES THAT WOULD BE INCURRED IN MAKING  
17 SUCH A DELIVERY?  
18 A YES.  
19 Q SO, THAT INCLUDES WEAR AND TEAR?  
20 A YEAH.  
21 Q THAT INCLUDES WHAT IT WOULD COST YOU IN GASOLINE TO  
22 GET A TRUCK ALL THE WAY TO WISCONSIN AND BACK?  
23 A YES.  
24 Q WAS IT NECESSARY FOR YOUR BUSINESS FOR YOUR DRIVERS  
25 TO RETURN TO SOUTH CAROLINA?

1 A YES.

2 Q WAS IT NECESSARY FOR PEOPLE WHO DID BUSINESS WITH YOU  
3 SUCH AS SEKO CHARLOTTE THAT YOU KEPT A FLEET OF READY  
4 VEHICLES HERE IN SOUTH CAROLINA?

5 A NO, THEY JUST CALLED FROM TIME TO TIME, BUT, I DID  
6 KEEP A FLEET.

7 Q PARDON ME?

8 A I DID KEEP SOME HERE.

9 Q YOU KEPT THEM HERE SO IF SOMEONE CALLED YOU --

10 A YEAH.

11 Q -- YOU WOULD BE ABLE TO CONDUCT BUSINESS, CORRECT?

12 A NOT ALL THE TIME, THEY MIGHT ALL BE OUT OR SOMETHING  
13 ON SOMETHING ELSE.

14 Q RIGHT, I UNDERSTAND THAT THEY WOULDN'T NECESSARILY  
15 ALWAYS BE HERE.

16 A RIGHT.

17 Q BUT, THEY WOULD RETURN, WOULDN'T THEY?

18 A YEAH.

19 Q SO, YOU COULD USE THOSE --

20 A I CAN.

21 Q VANS FOR FUTURE SHIPMENTS. HOW DID YOU PAY YOUR  
22 EMPLOYEE, MR. COLLINS?

23 A PER MILE.

24 Q YOU PAID HIM PER MILE AS WELL? HOW MUCH DID YOU PAY  
25 HIM?

1 A FORTY-TWO CENTS.

2 Q HOW DID YOU PAY THE PEOPLE YOU CONSIDERED TO BE

3 SUBCONTRACTORS OR INDEPENDENT CONTRACTORS?

4 A I PAID THEM BY THE MILE ALSO.

5 Q DID YOU PAY THEM A DIFFERENT AMOUNT THAN YOU PAID MR.

6 COLLINS?

7 A UH-HUH.

8 Q IS THAT A YES?

9 A YES.

10 Q HOW MUCH WOULD YOU PAY THEM PER MILE?

11 A AT THAT TIME, I THINK IT WAS A DOLLAR A MILE.

12 Q HOW MUCH WOULD YOU PAY MR. COLLINS?

13 A FORTY-TWO CENTS A MILE.

14 Q OKAY, I'M SORRY I ASKED THAT. WAS IT YOUR PRACTICE

15 SOMETIMES WHEN YOUR DRIVERS WERE RETURNING FROM A

16 DELIVERY TO SEND THEM TO PICK UP SOMETHING ELSE THAT

17 NEEDED TO BE SHIPPED SOMEWHERE ELSE?

18 A NO, IT'S NOT THE GENERAL PRACTICE. MAYBE ONCE OR

19 TWICE A YEAR. MOST OF THE TIME, IF THEY HAVE

20 SOMETHING COMING BACK, IT WOULD BE THE SAME COMPANY.

21 SENT THEM UP THERE WOULD WANT THEM TO BRING A RETURN

22 BACK OR SOMETHING LIKE THAT. THAT'S ABOUT THE ONLY

23 RETURN TRIPS WE GET.

24 Q OKAY. AND, IN THIS PARTICULAR CASE WHEN MR. COLLINS

25 SUFFERED HIS FATAL ACCIDENT, WAS HE -- DID HE MAKE

1 ANOTHER PICK-UP ON HIS RETURN TRIP HOME?

2 A NO.

3 Q HE HAD GONE UP THERE FOR YOU AND FOR SEKO CHARLOTTE  
4 AND HE WAS COMING BACK, CORRECT?

5 A THAT'S CORRECT.

6 Q WOULD HE HAVE BEEN IN THAT FATAL CAR ACCIDENT HAD HE  
7 NOT MADE THAT PARTICULAR SHIPMENT?

8 A I DON'T SEE HOW YOU CAN ANSWER THAT.

9 Q WOULD HE HAVE BEEN IN KENTUCKY ON THAT ROAD HAD HE  
10 NOT MADE THAT PARTICULAR SHIPMENT TO WISCONSIN?

11 A NO, I DON'T THINK HE WOULD. HE WOULD HAVE WENT  
12 SOMEWHERE ELSE, HE CERTAINLY WOULDN'T HAVE BEEN IN  
13 KENTUCKY.

14 MR. KILLEN:

15 THAT'S ALL THE QUESTIONS I HAVE, COMMISSIONER.

16 COMMISSIONER HUFFSTETTLER:

17 MR. BYRD, DO YOU HAVE QUESTIONS? WHO FILED THIS  
18 MEMORANDUM OF LAW?

19 MR. KILLEN:

20 I DID, COMMISSIONER.

21 COMMISSIONER HUFFSTETTLER:

22 AND, YOU TAKE POSITION THAT THE RETURN TRIP WAS  
23 NOT IN THE COURSE AND SCOPE?

24 MR. KILLEN:

25 NO, SIR, I DO NOT.

1 COMMISSIONER HUFFSTETLER:

2 THAT SEEMS TO BE WHAT YOUR MEMORANDUM SAYS, THAT  
3 THE JOB WAS FINISHED WITH THE DELIVERY?

4 MR. KILLEN:

5 NO, SIR, THAT'S THE POSITION OF SEKO CHARLOTTE  
6 AND, I BELIEVE, SEKO WORLDWIDE.

7 COMMISSIONER HUFFSTETLER:

8 "OKAY. THAT'S OKAY, IT'S NOT YOUR POSITION, YOU  
9 DON'T HAVE TO ANSWER THAT.

10 MR. KILLEN:

11 YES, SIR.

12 COMMISSIONER HUFFSTETLER:

13 SO, THE POSITION THAT SEKO WORLDWIDE AND SEKO  
14 CHARLOTTE TAKES IS THE RETURN TRIP HOME, IN THE  
15 COMPANY VAN WAS NOT IN THE COURSE AND SCOPE OF  
16 THE EMPLOYMENT?

17 MS. GEORGE:

18 CORRECT. IT WAS NO LONGER IN THE COURSE AND  
19 SCOPE OF THE STATUTORY EMPLOYMENT. THE  
20 STATUTORY EMPLOYMENT RELATIONSHIP ENDED ONCE THE  
21 DELIVERY WAS MADE AND SIGNED FOR. BECAUSE THE  
22 CONTRACTOR EMPLOYMENT WAS ONE WAY PER LOADED  
23 MILE, PICK-UP AND DELIVERY, PERIOD.

24 COMMISSIONER HUFFSTETLER:

25 OKAY, THANK YOU. MR. BYRD, DO YOU HAVE

1                   QUESTIONS?

2                               CROSS EXAMINATION

3       BY MR. BYRD:

4       Q       MR. WEST, YOU WERE JUST ASKED SOME QUESTIONS ABOUT  
5               THE ONE-WAY TRIP THAT YOU MADE AT SEKO CHARLOTTE'S  
6               REQUEST, IS THAT CORRECT?

7       A       YES.

8       Q       THE SEKO COMPANY THAT YOU DEALT WITH, THEY WERE OUT  
9               OF CHARLOTTE, CORRECT?

10      A       YES.

11      Q       AND, YOU ASKED THE QUESTION ABOUT MAKING THIS RUN  
12              FROM SPARTANBURG TO WISCONSIN, IS THAT RIGHT?

13      A       RIGHT.

14      Q       WAS THAT A ONE-WAY AGREEMENT?

15      A       YES.

16      Q       WITH SEKO CHARLOTTE?

17      A       YES.

18      Q       SO, AT THE POINT OF DELIVERY IN WISCONSIN, WOULD YOU  
19              SAY THAT YOUR AGREEMENT WITH SEKO CHARLOTTE ENDED AT  
20              THAT POINT?

21              MS. MCKENZIE:

22              OBJECTION, COMMISSIONER, THAT CALLS FOR HIM TO  
23              MAKE A LEGAL CONCLUSION.

24              MR. KILLEN:

25              I JOIN IN THE OBJECTION, COMMISSIONER.

1           MR. BYRD:

2           IT WAS HIS CONTRACT WITH THE COMPANY. I WAS  
3           JUST ASKING HIM OPINION IF HIS RELATIONSHIP IN  
4           THAT CONTRACT ENDED AT THAT POINT? I DON'T  
5           THINK IT CALLS FOR A LEGAL CONCLUSION. I'M  
6           ASKING FOR HIS UNDERSTANDING.

7           COMMISSIONER HUFFSTETLER:

8           I'M GOING TO LET HIM ANSWER IT. I'LL KEEP YOUR  
9           OBJECTION IN MIND WHEN I WEIGH THE VALUE OF THE  
10          EVIDENCE. HE CLEARLY IS NOT GIVING A LEGAL  
11          OPINION, IT'S JUST HIS OPINION AS A WITNESS.

12        Q     SAME QUESTION, MR. WEST, WOULD YOU SAY THAT YOUR  
13               AGREEMENT WITH SEKO ENDED WHEN MR. COLLINS MADE THAT  
14               DELIVERY IN WISCONSIN?

15        A     AS FAR AS I KNOW, YES.

16        Q     YOU SAID JUST NOW THAT THOUGH IT MAY BE RARE, MAYBE  
17               ONCE A YEAR, SOMETIMES YOUR DRIVER HAVING MADE SUCH A  
18               DELIVERY OUT OF STATE, COULD TAKE A RETURN SHIPMENT  
19               BACK TO SOUTH CAROLINA, OR TO ANYWHERE ELSE, IS THAT  
20               RIGHT?

21        A     YES.

22        Q     SO, YOUR BUSINESS WAS FREE TO SEND SOMEONE SUCH AS  
23               MR. COLLINS SOMEWHERE ELSE IN AND AROUND WISCONSIN TO  
24               PICK UP ANOTHER LOAD, CORRECT?

25        A     THAT WOULD BE CORRECT.



1 Q AND YOU COULD VERY WELL TAKE -- AT THE POINT YOU  
2 COULD DIRECT MR. COLLINS OR ANY OTHER EMPLOYEE WHO IS  
3 OUT OF STATE TO, HAVING DROPPED OFF THOSE GOODS, GO  
4 SOMEWHERE ELSE AND PICK UP ANOTHER LOAD AND BRING IT  
5 HOME, CORRECT?

6 A YES.

7 MR. BYRD:

8 THAT'S ALL THE QUESTIONS I HAVE, MR. WEST, THANK  
9 YOU.

10 COMMISSIONER HUFFSTETTLER:

11 MS. GEORGE?

12 MS. GEORGE:

13 THANK YOU COMMISSIONER.

14 CROSS EXAMINATION

15 BY MS. GEORGE:

16 Q MR. WEST, WHEN SEKO CHARLOTTE DISPATCHED THE JOB TO  
17 YOU, WAS IT PAID PER LOADED MILE, IS THAT WHAT THEY  
18 CALL IT?

19 A YES.

20 Q PAID FOR LOADED MILE. AND, I BELIEVE YOU TESTIFIED  
21 EARLIER THAT THEY TOLD YOU WHEN THE GOODS NEEDED TO  
22 BE PICKED UP AND WHEN THE GOODS NEEDED TO BE  
23 DELIVERED, IS THAT CORRECT?

24 A YES.

25 Q DID THEY TELL YOU AFTER THE DELIVERY WAS MADE WHEN

1 YOUR DRIVER NEEDED TO BE BACK IN SOUTH CAROLINA?

2 A NO.

3 Q DID THEY TELL YOU THE ROUTE HE NEEDED TO TAKE?

4 A NO.

5 Q DO THEY GIVE YOU ANY OTHER INSTRUCTIONS ON ANY WORK  
6 TO BE PERFORMED AFTER THE DELIVERY?

7 A NO.

8 Q DID THEY PAY YOU FOR ANY WORK WHATSOEVER AFTER THE  
9 TIME THE DELIVERY WAS MADE?

10 A NO.

11 Q DID SEKO CHARLOTTE HAVE ANY RELATIONSHIP WITH YOUR  
12 COMPANY WHATSOEVER AFTER THE DELIVERY WAS MADE IN  
13 WISCONSIN?

14 A NO.

15 MS. GEORGE:

16 I HAVE NO FURTHER QUESTIONS, THANK YOU.

17 COMMISSIONER HUFFSTETTLER:

18 JUST TO BE CLEAR ON THE RECORD SINCE YOUR CLIENT  
19 WAS ADDED VERY LATE IN THE PROCESS, IT IS MY  
20 UNDERSTANDING THAT YOUR CLIENT AGREES THAT THEY  
21 DISPATCHED THIS JOB?

22 MS. GEORGE:

23 CORRECT, COMMISSIONER. THAT WAS ESTABLISHED  
24 THROUGH A DEPOSITION TAKEN ON MONDAY AND THAT  
25 SAME WITNESS WAS HERE TO TESTIFY TO THAT TODAY.

1 COMMISSIONER HUFFSTETLER:

2 WELL IF YOU AGREE TO THAT, WE MAY NOT NEED THAT  
3 TESTIMONY. NO ONE SEEMS TO OBJECT. OKAY, THANK  
4 YOU.

5 COMMISSIONER HUFFSTETLER:

6 SIR, DO YOU HAVE QUESTIONS?

7 MR. MARTIN:

8 YES, THANK YOU, COMMISSIONER.

9 CROSS EXAMINATION

10 BY MR. MARTIN:

11 Q MR. WEST, HOW LONG HAVE YOU OPERATED WEST DELIVERY  
12 SYSTEMS?

13 A SINCE 1974.

14 Q AND, AT THE TIME YOU STARTED WEST DELIVERY, WERE YOU  
15 WORKING FOR ANOTHER COMPANY?

16 A YES.

17 Q WHAT WAS THAT COMPANY THAT YOU WORKED FOR?

18 A FLUOR DANIEL.

19 Q SO, YOU STARTED WEST DELIVERY IN '74, AND YOU  
20 BASICALLY OPERATED WEST DELIVERY WHILE YOU WERE  
21 WORKING A FULL-TIME JOB FOR FLUOR DANIEL?

22 A YEAH.

23 Q WHEN DID YOU STOP WORKING FOR FLUOR DANIEL?

24 A I THINK IT WAS PROBABLY ABOUT '89 OR '90.

25 Q DID YOU CONTINUE TO OPERATE WEST DELIVERY --

1 A YEAH.

2 Q -- CONTINUOUSLY SINCE THAT TIME?

3 A YES.

4 Q HAVE YOU HAD PERIODS OF TIME WHERE YOU HAD MORE

5 EMPLOYEES AND SOME TIMES WHERE YOU'VE HAD LESS

6 EMPLOYEES?

7 A OH, YES.

8 Q AT THE TIME THAT -- WELL, TELL US A LITTLE BIT MORE

9 ABOUT YOUR BUSINESS. HOW DOES IT OPERATE? HOW DO

10 YOU GET JOBS? HOW DO YOU GET THE BUSINESS FOR WEST

11 DELIVERY?

12 A THEY'S JUST A FEW TRUCKING COMPANIES OUT THERE THAT

13 KNOW ABOUT ME. THEY JUST CALL ME.

14 Q THESE ARE TRUCKING COMPANIES YOU HAVE RELATIONSHIPS

15 WITH?

16 A UH-HUH.

17 Q AND, SO, THEY CALL YOU--

18 A RIGHT.

19 Q -- AND, SAY WE GOT THIS PACKAGE WE NEED DELIVERED

20 FROM POINT A TO POINT B?

21 A RIGHT.

22 Q AND, DO THEY GIVE YOU ANY INSTRUCTIONS ON HOW TO GET

23 IT THERE?

24 A NO.

25 Q THOSE DETAILS ARE LEFT UP TO YOU?

1 A THAT'S RIGHT.

2 Q NOW, AT THE TIME IN 2007, HOW MANY TRUCKS, ACTUAL  
3 VEHICLES, DID WEST DELIVERIES OWN?

4 A I THINK I OWNED TWO.

5 Q OKAY.

6 A ONE I USE AS A SPARE.

7 Q AS A SPARE?

8 A YEAH.

9 Q WAS MR. COLLINS USING THE OTHER ONE?

10 A THAT'S RIGHT.

11 Q AND, SO WHEN YOU GOT A CALL FROM A COMPANY TO TAKE A  
12 DELIVERY, YOU WOULD EITHER CALL MR. COLLINS TO HAVE  
13 HIM TAKE THAT DELIVERY?

14 A YEAH.

15 Q OR --

16 A OR ONE OF THE OTHER DRIVERS.

17 Q HOW MANY DRIVERS, DURING 2007, DID YOU UTILIZE IN  
18 TRANSPORTING STUFF FOR YOUR COMPANY?

19 A I DON'T REMEMBER, BUT NEVER OVER FOUR AT ANY ONE  
20 TIME, I DON'T THINK.

21 Q DO YOU KEEP THESE DRIVERS ON ANY SORT OF LIST OR  
22 ROTATING LIST?

23 A MORE OR LESS, YES.

24 Q SO, YOU WOULD GET A CALL FROM THE COMPANY FOR THEM TO  
25 TAKE A JOB, IF THAT DRIVER IS OFF DOING A JOB AND YOU

1 GET A CALL FROM A SECOND COMPANY, YOU GO TO THE NEXT  
2 NAME ON THE LIST, YOU GET A CALL FROM THE THIRD  
3 COMPANY YOU GO TO THE NEXT NAME ON THE LIST?  
4 A IT USUALLY WORKS THAT WAY.  
5 Q WAS MR. COLLINS GIVEN ANY PREFERENCE ON JOBS THAT YOU  
6 ASSIGNED TO HIM OVER THE OTHER DRIVERS, OR WAS HE  
7 JUST ONE OF THE NAMES IN THAT LIST?  
8 A JUST ONE OF THE NAMES ON THAT LIST, I GUESS. HE DID  
9 LIKE TO DO LONGER RUNS THAN SOME OF THE OTHERS DID.  
10 Q SO, THEY HAD DIFFERENT PREFERENCES ON THE TYPES OF  
11 JOBS?  
12 A YEAH. AND, I TRIED TO, YOU KNOW, KEEP THEM HAPPY,  
13 YOU KNOW.  
14 Q SO, WOULD YOU CLASSIFY YOUR BUSINESS MORE AS THE  
15 BROKER TYPE BUSINESS, YOU ARE BASICALLY ASSISTING THE  
16 LARGE TRANSPORTATION COMPANY WITH A SMALLER JOB?  
17 A THAT'S RIGHT.  
18 Q DID YOU OPERATE AN OFFICE? DID YOU HAVE A SEPARATE  
19 OFFICE LOCATION, A PLACE WHERE YOU CONDUCTED  
20 BUSINESS?  
21 A NOT AT THAT TIME.  
22 Q OKAY, IN 2007, WERE YOU CONDUCTING THAT BUSINESS OUT  
23 OF YOUR HOME?  
24 A YES.  
25 Q IS MOST OF YOUR CONTACTS DONE THROUGH THE CELL PHONE

1 AND TELEPHONE?

2 A YES.

3 Q SO, YOU WOULD TAKE A CALL FROM A TRANSPORTATION  
4 COMPANY, THEY NEED A JOB, YOU THEN CALL ONE OF THE  
5 DRIVERS ON THE LIST AND OFFER THEM THAT JOB?

6 A THAT'S RIGHT.

7 Q IF YOU CALLED THE DRIVER, WERE THEY REQUIRED TO TAKE  
8 THAT JOB?

9 A NO.

10 Q IF THEY DIDN'T TAKE THAT JOB, WHAT HAPPENED?

11 A IT JUST ROTATED ALL THE WAY AROUND.

12 Q YOU WOULD GO TO THE NEXT NAME ON THE LIST AND YOU  
13 WOULD KEEP GOING DOWN THE LIST UNTIL YOU GOT BACK TO  
14 THAT DRIVER?

15 A RIGHT.

16 Q OKAY. WAS THERE ANY PUNISHMENT OR ANYTHING THAT YOU  
17 DID TO ANY DRIVERS IF THEY REFUSED A JOB FROM YOU?

18 A NOT THAT I CAN THINK OF.

19 Q NOW, HOW DID YOU BILL FOR YOUR PAYMENT, FOR WEST  
20 DELIVERY'S PAYMENT WITH THE COMPANY THAT CALLED AND  
21 SAID "HEY, WE NEED YOU TO DO THIS JOB." DID YOU SEND  
22 THAT COMPANY A BILL?

23 A YEAH.

24 Q AND, WAS THAT BILL BASED ON THE MILEAGE?

25 A YES.

1 Q WHO DETERMINED THE MILEAGE?  
2 A USUALLY THE COMPANY.  
3 Q THEY WOULD CALL YOU AND SAY WE NEED YOU TO TAKE THIS  
4 PACKAGE FROM POINT A TO POINT BE AND IT'S GOING TO BE  
5 175 MILES?  
6 A YES.  
7 Q AND I BELIEVE YOU TESTIFIED THAT THEY WOULD PAY YOU  
8 BETWEEN A \$1.20 AND A \$1.30 A MILE?  
9 A YES.  
10 Q AND, THEN YOU BILLED THAT TO THE COMPANY AND THEN YOU  
11 PAID THE DRIVERS, AND I BELIEVED YOU TESTIFIED YOU  
12 PAID MR. COLLINS AS AN EMPLOYEE .42 CENTS A MILE?  
13 A RIGHT.  
14 Q AND, YOU PAID THE OTHER DRIVERS \$1.00 A MILE?  
15 A YES.  
16 Q AND, YOU GOT \$1.20 FROM THE COMPANY THAT YOU ACTUALLY  
17 SHIPPED THE PRODUCT FOR?  
18 A RIGHT.  
19 Q THE TRUCKS THAT THE OTHER DRIVERS USED OTHER THAN MR.  
20 COLLINS --  
21 A YEAH.  
22 Q DID YOU PROVIDE THEM THOSE TRUCKS?  
23 A MOST OF THEM, I SOLD THEM TO THEM.  
24 Q WHEN YOU SAY YOU SOLD THEM TO THEM, YOU MEAN THEY  
25 STARTED WORKING FOR YOU DRIVING ONE OF YOUR TRUCKS --



1 A YEAH.

2 Q -- AND THEN THROUGH THE COURSE OF TIME, YOU

3 SUBTRACTED SOME OF THEIR PAYMENTS TO MAKE A PAYMENT

4 ON A TRUCK --

5 A RIGHT.

6 Q -- TO BUY THE TRUCK FROM YOU?

7 A THAT'S RIGHT.

8 Q AFTER THE TRUCK WAS PAID OFF, DID YOU TITLE THE TRUCK

9 TO THEM?

10 A YES.

11 Q SO, THEY WOULD, IN FACT, END UP -- THEY BASICALLY

12 WORKED TO OWN THE TRUCK AND THEN ONCE THEY OWNED THE

13 TRUCK YOU PAID THEM THE \$1.00 A MILE RATE?

14 A YEAH. MY ONE DRIVER, HE PAYS ME STRAIGHT OUT CASH

15 FOR THE TRUCK HE'S DRIVES, AS SOON AS HE GOT IT.

16 Q AS SOON AS HE STARTED WORKING FOR YOU, HE PAID CASH

17 TO BUY THE TRUCK FROM YOU?

18 A ONE OR TWO OF THE OTHERS, THEY HAD ONE WHEN THEY COME

19 TO WORK FOR ME.

20 Q SO, AT ANY POINT IN TIME, WEST DELIVERY, YOU SAY YOU

21 MAYBE HAD TWO TRUCKS THAT WEST DELIVERY ACTUALLY

22 OWNED AND THE REST OF THE TRUCKS THAT WERE UTILIZED

23 WERE OWNED BY THE DRIVERS?

24 A AT THAT TIME, YES.

25 Q NOW, AS FAR AS STAFF FOR YOUR COMPANY, YOU HAD

1 SOMEONE THAT HELPED YOU WITH YOUR BOOKKEEPING AND  
2 YOUR RECORDS?

3 A WELL, NOT SO MUCH AS MY BOOKKEEPING, BUT MY WIFE  
4 USUALLY HELPS IF I WASN'T THERE WITH ANSWERING THE  
5 TELEPHONE, DISPATCHING AND HANDLING MY BIDS.

6 Q AND, IN 2007, YOUR WIFE'S NAME WAS JIMMY LOU, IS THAT  
7 RIGHT?

8 A RIGHT.

9 Q IN 2007, JIMMY LOU WAS PAID BY WEST DELIVERY AS AN  
10 EMPLOYEE SOME OF THE MONTHS IN 2007, IS THAT RIGHT?

11 A YES.

12 Q AND, IN AROUND MAY/JUNE SHE SUFFERED SOME HEALTH  
13 ISSUES?

14 A RIGHT.

15 Q AND, AT THE TIME WHEN YOU SUFFERED HEALTH ISSUES, SHE  
16 STOPPED BEING ABLE TO HELP YOU AT THE COMPANY, IS  
17 THAT RIGHT?

18 A RIGHT.

19 Q AND, THEN, IS IT YOUR DAUGHTER-IN-LAW --

20 A YEAH.

21 Q -- THAT CAME IN, SHERRY CAMPBELL, CAME IN TO HELP YOU  
22 OUT THERE?

23 A THAT'S RIGHT.

24 Q SO, YOUR WIFE AND SHERRY WEREN'T WORKING IN THE  
25 OFFICE OR HELPING YOU OUT WITH THE STUFF AT THE SAME

1 MAKE A GOOD RECORD EITHER. SO, I WOULD ASK FOR  
2 ALL THE LAWYERS HERE, WHEN I HAVE SOMETHING TO  
3 SAY, YOU STOP TALKING. YOU ASKED THE QUESTION  
4 ABOUT WHETHER THEY WORKED AT THE SAME TIME.  
5 AND, THE WAY YOU PUT IT WAS -- "BUT, THEY DID  
6 NOT WORK AT THE SAME TIME, IS THAT CORRECT?"  
7 AND, HE SAID "NO". SO, IN THE RECORD, IT LOOKS  
8 LIKE HE'S NOT AGREEING WITH YOU. I THINK HE WAS  
9 TRYING TO AGREE WITH YOU. I'M TRYING TO BE  
10 CLEAR ON THE RECORD, IF YOU WOULD REPHRASE YOUR  
11 QUESTION.

12 MR. MARTIN :

13 YES, SIR.

14 Q MR. WEST, DID YOU WIFE JIMMY LOU OR YOUR DAUGHTER-IN-  
15 LAW, SHERRY CAMPBELL WORK FOR WEST DELIVERY AT THE  
16 SAME TIME AT ANY POINT DURING 2007?

17 A AT THE SAME TIME, NO.

18 Q THANK YOU. OTHER THAN MR. COLLINS, DID YOU HAVE ANY  
19 OTHER DRIVERS THAT WERE FULL-TIME EMPLOYEES DURING  
20 2007 THAT YOU RECALL?

21 A NO.

22 Q THE DRIVERS THAT YOU HAVE THAT OWNED THEIR OWN  
23 VEHICLES, DO YOU PROVIDE THEM ANY INSURANCE ON THOSE  
24 VEHICLES?

25 A NO.

1 Q DO YOU PROVIDE THEM ANY BENEFITS OF EMPLOYMENT, ANY  
2 HEALTH INSURANCE OR DISABILITY INSURANCE OR ANY  
3 BENEFITS OF EMPLOYMENT?

4 A NO.

5 Q DO YOU PAY FOR THEIR GAS?

6 A NO.

7 Q IF YOU DISPATCH THEM ON A JOB, DO YOU PROVIDE THEM  
8 SPECIFIC INSTRUCTIONS ON THE ROUTE THAT THEY NEED TO  
9 TAKE IN DELIVERING THAT JOB?

10 A NO. SOMETIMES THEY ASK WHICH IS THE BEST WAY TO GO.

11 Q DO YOU HAVE A REQUIREMENT WITH THOSE DRIVERS THAT YOU  
12 USE THAT THEY ARE NOT ALLOWED TO DRIVE FOR ANYONE  
13 ELSE?

14 A NOT ON MY INSURANCE.

15 Q CAN YOU EXPLAIN WHAT YOU MEAN BY NOT ON YOUR  
16 INSURANCE?

17 A WELL, THEY ALL HAVE INSURANCE AT THE SAME PLACE. I  
18 GO OUT AND, YOU KNOW, I FIND THE INSURANCE. THEY PAY  
19 FOR IT, BUT THEY'VE GOT TO BE ON THAT POLICY.

20 Q OKAY.

21 A IF THEY DRIVE FOR SOMEBODY ELSE, THEN THEY HAVE TO  
22 MAKE AN AGREEMENT WITH WHOEVER ELSE THEY DRIVE FOR.

23 Q OKAY, SO IF YOU DISPATCHED ONE OF YOUR CONTRACT  
24 DRIVERS TO MAKE A RUN FROM SAY SPARTANBURG TO  
25 MICHIGAN --

1 A YEAH.

2 Q -- THEY ARE ALLOWED FOR ANOTHER COMPANY SIMILAR TO  
3 YOURS TO CALL THEM AND ASK THEM TO PICK UP SOMETHING  
4 IN MICHIGAN AND BRING IT BACK, AND THAT IS OKAY AS  
5 LONG AS THAT JOB IS NOT COVERED UNDER YOUR INSURANCE  
6 --

7 A THAT IS RIGHT.

8 Q -- IT IS UNDER THE COMPANY THAT HAS ASKED THEM TO  
9 MAKE THAT RUN?

10 A RIGHT.

11 Q ALL RIGHT. WITH THE DRIVERS THAT YOU DID NOT TREAT  
12 AS EMPLOYEES, DID YOU WITHHOLD ANY TAXES ON THEM?

13 A NO.

14 Q DID YOU PROVIDE THEM WITH A 1099 AT THE END OF THE  
15 YEAR?

16 A YES.

17 Q DID YOU HAVE ANY GUARANTEED AMOUNT OF COMPENSATION  
18 THAT ANY OF THOSE DRIVERS WOULD RECEIVE?

19 A NO.

20 MR: MARTIN:

21 THAT'S ALL THE QUESTIONS I HAVE, COMMISSIONER.

22 COMMISSIONER HUFFSTETLER:

23 MA'AM?

24 CROSS EXAMINATION

25 BY MS. MCKENZIE:

1 Q MR. WEST, DURING 2007, YOU HAD GREGORY COLLINS AS AN  
2 EMPLOYEE, RIGHT?

3 A RIGHT.

4 Q AND, HE DROVE AND ONLY DID DELIVERIES, IS THAT  
5 CORRECT?

6 A THAT'S RIGHT.

7 Q AND, THEN, STEVE SCOTT DROVE FOR YOU DURING THAT  
8 TIME, TOO, IS THAT CORRECT?

9 A YES.

10 Q AND, HE WOULD ONLY DO DELIVERIES, IS THAT CORRECT?

11 A THAT'S RIGHT.

12 Q AND, JERRY MCCUE DROVE FOR YOU DURING THAT TIME,  
13 ALSO, IS THAT RIGHT?

14 A YES, THAT'S RIGHT.

15 Q AND, HE ONLY--

16 COMMISSIONER HUFFSTETLER:

17 HOW DO YOU SPELL MCCUE?

18 MS. MCKENZIE:

19 M-C-CAPITAL C-U-E.

20 Q AND, SOMEBODY NAMED RONALD COLLINS DROVE FOR YOU  
21 ALSO?

22 A YES.

23 Q AND, HE DID DELIVERIES, IS THAT CORRECT?

24 A YES.

25 Q AND, THEN DURING 2007, YOU KNOW MR. CLAUDE BURRELL

- 1 WHO DROVE FOR YOU?
- 2 A YES.
- 3 Q WAS HE A DELIVERY DRIVER TOO?
- 4 A YES. HE OWNED HIS OWN VAN.
- 5 Q AND, THEN, THERE'S A STEVE SCOTT ALSO?
- 6 A STEVE SCOTT, RONALD SCOTT IS THE SAME ONE?
- 7 Q ARE THEY THE SAME PERSON?
- 8 A YES.
- 9 Q OKAY, I GOT A LITTLE CONFUSED IN THE RECORD. NOW, TO
- 10 HAVE YOUR DELIVERY BUSINESS AND LEGALLY OPERATE IT,
- 11 YOU HAVE TO HAVE A TRANSPORT BUSINESS LICENSE, IS
- 12 THAT CORRECT?
- 13 A A MCC LICENSE, YES.
- 14 Q I MANY HAVE SAID THAT INCORRECTLY, BUT YOU HAVE TO
- 15 HAVE A SPECIAL LICENSE, CORRECT?
- 16 A YES.
- 17 Q AND, YOU'RE LICENSED TO RUN THIS BUSINESS, CORRECT?
- 18 A YES.
- 19 Q NOW, DURING 2007, YOU PAID MR. MCCUE ABOUT THIRTY-
- 20 THREE, A LITTLE MORE THAN \$33,000, IS THAT CORRECT?
- 21 A YES.
- 22 Q AND, I BELIEVE YOU TOLD ME PREVIOUSLY, HE ONLY WORKED
- 23 FOR YOU, IS THAT RIGHT?
- 24 A THAT'S RIGHT.
- 25 Q SO, HE DIDN'T WORK FOR ANY OTHER TRANSPORT BUSINESS?

1 A NO.

2 Q AND, MR. RONALD SCOTT WHO IS ALSO LISTED AS STEVE

3 SCOTT --

4 A YES.

5 Q -- HE ONLY WORKED FOR YOU DURING THAT TIME, TOO,

6 CORRECTLY?

7 A RIGHT.

8 Q BECAUSE HE MADE \$37,000.

9 A OKAY.

10 Q WOULD THAT BE CORRECT?

11 A I GUESS IT IS.

12 Q AND, I THINK RONALD SCOTT, ALSO KNOWN AS STEVE SCOTT

13 HAD STARTED OUT IN YOUR VAN AND THEN HE SLOWLY

14 PURCHASED IT FROM YOU, IS THAT CORRECT?

15 A THAT'S CORRECT. WHEN HE COME TO WORK FOR ME, HE COME

16 AS A CONTRACTOR DRIVER.

17 Q AND, WHEN YOU WERE DECIDING WHO WOULD BE A W-2 OR AN

18 EMPLOYEE, AND WHO WOULD BE CONTRACT, THEY ALL SAID

19 THAT WAS UP TO YOU, YOU MADE THAT DECISION, RIGHT?

20 A NO, I LET THEM MAKE THE DECISION, "DO YOU WANT TO GO

21 THIS WAY?"

22 Q OKAY. IF MR. --

23 A WHAT I WAS TRYING TO DO WAS GET OUT OF OWNING TRUCKS,

24 EXCUSE ME. I WANTED EVERYBODY AS CONTRACT DRIVERS.

25 Q SO, YOU WERE TRYING TO MAKE THEM ALL CONTRACT



1 DRIVERS?

2 A RIGHT.

3 Q AND, SWITCH THEM ALL OVER?

4 A RIGHT.

5 Q AND, THE ONLY DIFFERENCE BETWEEN DRIVING AS AN

6 EMPLOYEE AND A CONTRACT DRIVER WAS THEY WERE EITHER

7 BUYING OR HAD BOUGHT THE TRUCK?

8 A RIGHT.

9 Q SO, IT WAS THEIR TRUCK?

10 A THAT'S RIGHT.

11 Q BUT, OTHERWISE, YOU CONTACTED THEM ALL BY CELL PHONE?

12 A YEAH.

13 Q THEY ALL KEPT THE VEHICLES AT THEIR HOUSE, CORRECT?

14 EVEN MR. COLLINS?

15 A YES, MOST OF THE TIME.

16 Q HE HAD YOUR VEHICLE BUT KEPT IT AT HIS HOUSE?

17 A MOST OF THE TIME.

18 Q YOU WOULD GET A JOB FROM A COMPANY AND YOU WOULD CALL

19 THE DRIVER ON HIS CELL PHONE, CORRECT?

20 A CORRECT.

21 Q NO MATTER IF THEY WERE CONTRACTOR OR EMPLOYEE?

22 A RIGHT.

23 Q YOU TOLD THEM WHERE TO GO TO PICK UP THE LOAD, IS

24 THAT CORRECT?

25 A YES, MA'AM, THAT'S CORRECT.

1 Q AND, THEN WHEN THEY GOT THERE, THE PEOPLE THAT THEY  
2 PICKED THE LOAD UP FROM TOLD THEM WHERE THEY WERE  
3 GOING, BUT YOU HAD ALREADY TOLD THEM, CORRECT?

4 A CORRECT.

5 Q THEY GOT SOME DOCUMENTATION?

6 A YES.

7 Q WHERE THEY PICKED IT UP?

8 A YES.

9 Q THEY DELIVERED IT -- THEY WERE ALL PAID BY THE MILE,  
10 CORRECT?

11 A CORRECT.

12 Q AND, THEY DELIVERED THE LOAD AND CAME HOME, CORRECT?

13 A RIGHT. CORRECT.

14 Q AND, IF YOU HAD ANOTHER JOB FOR THEM, YOU WOULD CALL  
15 THEM ON THE PHONE, CORRECT?

16 A CORRECT.

17 Q WHETHER THEY WERE EMPLOYEE OR CONTRACT DRIVER?

18 A CORRECT.

19 Q NOW, AM I CORRECT THAT THE CONTRACT DRIVER, EVEN  
20 THOUGH YOU CALLED THEM A CONTRACT DRIVER, THEY DID  
21 NOT OWN THEIR OWN BUSINESS, DID THEY?

22 A THEY CONSIDERED IT THAT THEY OWNED THEIR OWN  
23 BUSINESS.

24 Q YOU CONSIDERED IT THAT THEY OWNED THEIR OWN BUSINESS?

25 A YES.

- 1 Q BECAUSE THEY OWNED THEIR OWN TRUCK.
- 2 A YES.
- 3 Q BUT NONE OF THEM HAD A LICENSE TO RUN A DELIVERY
- 4 BUSINESS, DID THEY?
- 5 A BUT THEY COULD RUN UNDER MY AUTHORITY.
- 6 Q THEY COULD RUN UNDER YOUR AUTHORITY?
- 7 A THAT'S RIGHT.
- 8 Q BUT, WITHOUT RUNNING UNDER YOUR LICENSE, THEY WERE
- 9 ILLEGAL, WEREN'T THEY?
- 10 A THAT'S RIGHT.
- 11 Q SO, TO MAKE THESE RUNS, ALL OF THESE DRIVERS THAT I
- 12 JUST NAMED HAD TO DRIVE UNDER YOUR LICENSE?
- 13 A THAT'S RIGHT. IF THEY WERE --
- 14 Q BECAUSE YOU WERE -- I'M SORRY?
- 15 A IF THEY WERE DRIVING FOR ME.
- 16 Q BECAUSE YOU WERE THE ONLY ONE LEGALLY LICENSED TO
- 17 OPERATE A DELIVERY BUSINESS OF THIS SORT?
- 18 A THAT'S CORRECT.
- 19 Q SO, ALL OF THEM WERE RUNNING UNDER YOUR LICENSE?
- 20 A YES, ALL EXCEPT THAT RON COLLINS. HE APPLIED FOR AND
- 21 GOT HIS OWN LICENSE.
- 22 Q AND, RONALD SCOTT --
- 23 COMMISSIONER HUFFSTETLER:
- 24 LET'S BE CLEAR ON THAT. WHEN WAS THAT?
- 25 Q OKAY. WHAT DID YOU SAY? WHEN DID HE GET HIS OWN

- 1 LICENSE?
- 2 A I DON'T REMEMBER.
- 3 Q IT WAS AFTER MR. COLLINS DEATH, WASN'T IT?
- 4 A I DON'T REMEMBER THAT, I REALLY DON'T.
- 5 Q MR. SCOTT EVENTUALLY GOT A LICENSE IN 2008, CORRECT?
- 6 A YES.
- 7 Q BUT, DURING 2007 WHEN HE MADE \$37,000 HE WAS UNDER
- 8 YOUR LICENSE?
- 9 A THAT'S CORRECT.
- 10 Q AND, MR. MCCUE NEVER GOT ONE, SO IN 2007, HE WAS
- 11 UNDER YOUR LICENSE, CORRECT?
- 12 A THAT'S CORRECT.
- 13 Q AND, A MR. CLAUDE BURRELL RAN UNDER YOUR LICENSE TOO,
- 14 CORRECT?
- 15 A YES, THAT'S CORRECT.
- 16 Q AND, YOU WERE PAID BY YOUR CORPORATION, CORRECT?
- 17 A WELL, I GUESS SO.
- 18 Q YOU DID A W-2 FORM FOR YOURSELF?
- 19 A YEAH, BUT THE REASON I DID THAT, I WAS ADVISED BY MY
- 20 ACCOUNTANT TO START DOING THAT ON ME AND MY WIFE,
- 21 JUST RITE US A CHECK EVERY WEEK. SOMETIMES I WOULD
- 22 WRITE MYSELF A CHECK AND PUT IT RIGHT BACK INTO THE
- 23 BUSINESS IF THINGS WERE TIGHT OR SOMETHING LIKE THAT,
- 24 YOU KNOW. THAT WAS FOR TAX PURPOSES REALLY.
- 25 Q SO, YOU DID A W-2 ON YOURSELF?

1 A YES.

2 Q BUT, YOU ARE THE ONE WHO DISPATCHED EVERYBODY TO  
3 WHERE THEY WERE SUPPOSED TO GO?

4 A YES.

5 Q AND, YOU TOLD ME IN YOUR DEPOSITION YOUR WIFE KEPT  
6 YOUR BOOKS FOR YOU, IS THAT CORRECT?

7 A I WOULD SAY -- SHE DIDN'T REALLY KEEP BOOKS FOR ME.  
8 SHE DISPATCHED FOR ME SOME AND SHE DID MY BILLING FOR  
9 ME.

10 Q SHE DID YOUR WHAT?

11 A MY BILLING.

12 Q YOUR BILLING.

13 A YEAH.

14 Q SO, SHE BILLED THE COMPANIES?

15 A THAT'S RIGHT.

16 Q SO, WHEN I ASKED YOU WHETHER OR NOT YOUR WIFE KEPT  
17 THE BOOKS FOR YOU AND YOU SAID YES, DID YOU MEAN THAT  
18 SHE WAS DOING THE BILLING FOR YOU?

19 A YES.

20 Q AND, YOU PAID HER A CHECK AND A W-2, CORRECT?

21 A RIGHT. I THINK I JUST DID THAT MAYBE ONE YEAR.

22 Q BUT, THAT WAS 2007?

23 A YEAH, IT PROBABLY WAS.

24 COMMISSIONER HUFFSTETLER:

25 COULD I ASK SOMETHING TO CLEAR THAT UP?

1 MS. MCKENZIE:

2 YES, YOUR HONOR.

3 COMMISSIONER HUFFSTETLER:

4 YOU TESTIFIED EARLIER THAT YOUR WIFE HAD HEALTH  
5 PROBLEMS IN MAY OR JUNE AND THEN YOUR DAUGHTER-  
6 IN-LAW CAME INTO THAT ROLE. DID YOU GIVE HER A  
7 W-2?

8 MR. WEST:

9 YEAH.

10 COMMISSIONER HUFFSTETLER:

11 AND, SHE WAS DOING THAT BILLING ROLE IN  
12 SEPTEMBER OF 2007?

13 MR. WEST:

14 YES.

15 COMMISSIONER HUFFSTETLER:

16 OKAY. THANK YOU.

17 Q AFTER WE FILED A WORKERS' COMPENSATION CLAIM ON  
18 BEHALF OF MR. COLLINS, YOU MET WITH SOMEONE AT THE  
19 STATE WITH REGARDS TO THE FACT THAT YOU DID NOT HAVE  
20 ANY WORKERS' COMP INSURANCE, IS THAT CORRECT?

21 A I DON'T REMEMBER, I'M SURE I DID.

22 Q I WANT TO SHOW YOU A DOCUMENT AND IT'S CLAIMANT'S APA  
23 9, PAGE 35 AND 36.

24 A YEAH.

25 Q YOU GOT GLASSES YOU NEED TO PUT ON?

1 A YES, MA'AM.

2 Q OKAY.

3 A OKAY.

4 Q THIS DOCUMENT IS CALLED A CONSENT AGREEMENT. IS THAT

5 YOUR SIGNATURE AT THE BOTTOM OF IT, MORRIS L. WEST?

6 A YES.

7 Q AND, WHAT DATE IS IT DATED?

8 A 11/20/07.

9 Q AND, BELOW YOUR NAME IS A WITNESSES SIGNATURE. WHO

10 SIGNED THAT DOCUMENT?

11 A MY WIFE.

12 Q AND, YOUR WIFE IS JIMMY LOU WEST?

13 A THAT'S RIGHT.

14 Q AND, IS THAT HER SIGNATURE?

15 A IT IS.

16 Q AND, SHE WITNESSED IT THE SAME DAY?

17 A YES.

18 Q SO, SHE WAS ABLE TO FUNCTION ENOUGH TO ACT AS YOUR

19 WITNESS AND GO WITH YOU TO THE STATE TO ENTER INTO

20 THIS AGREEMENT?

21 A I DON'T REMEMBER.

22 Q IN THIS AGREEMENT YOU ADMITTED TO THE STATE OF SOUTH

23 CAROLINA THAT YOU HAD OPERATED WITHOUT WORKERS' COMP

24 INSURANCE SINCE WHAT DATE?

25 A THAT SAYS 9/15/94.

1 Q OKAY. 9/15/94. AND, THAT YOU SHOULD HAVE BEEN  
2 REQUIRED TO HAVE WORKERS' COMP INSURANCE, IS THAT  
3 CORRECT?

4 A NO. BECAUSE I DIDN'T HAVE THAT MANY -- AT THE TIME  
5 THAT I QUIT USING WORKERS' COMP, I NEVER DID USE MORE  
6 THAN THREE, I THINK THREE OR FOUR DRIVERS.

7 Q OKAY, SO YOU CONSCIOUSLY QUIT HAVING WORKERS' COMP IN  
8 1994 AND THEN YOU WERE GOING TO KEEP YOUR DRIVERS  
9 UNDER THREE, RIGHT?

10 A RIGHT.

11 COMMISSIONER HUFFSTETLER:

12 I NEED TO BE CLEAR ON THIS POINT. ARE YOU  
13 SAYING THAT YOU HAD WORKERS' COMPENSATION  
14 INSURANCE PRIOR TO 1994 FOR THIS COMPANY?

15 MR. WEST:

16 OH, YES, SINCE 1974.

17 COMMISSIONER HUFFSTETLER:

18 IS THERE ANY DOCUMENTATION FROM ANYONE -- I  
19 HAVEN'T READ ALL OF THE APA SUBMISSIONS. DOES  
20 ANYONE HAVE ANY DOCUMENTATION OF THE COMPANY  
21 HAVING WITHDRAWN FROM THE ACT?

22 MS. GEORGE:

23 NO, SIR.

24 MR. MARTIN:

25 NO, SIR.



1           MS. MCKENZIE:

2           NO, SIR.

3           COMMISSIONER HUFFSTETLER:

4           OKAY.

5       Q     SO, IN 1994, YOU DECIDED TO DROP YOUR WORKERS' COMP  
6            COVERAGE, IS THAT CORRECT?

7       A     YES, BECAUSE MY INSURANCE AGENT TOLD ME IT WASN'T  
8            NECESSARY TO CARRY THAT IF YOU DON'T HAVE OVER "X"  
9            AMOUNT OF DRIVERS.

10      Q     AND, THEN AFTER THAT, YOU DECIDED YOU WERE GOING TO  
11            KEEP YOUR DRIVERS UNDER FOUR?

12      A     YES.

13      Q     AND, THAT'S WHEN YOU STARTED MAKING SOME OF THEM  
14            CONTRACT DRIVERS AND SOME OF THEM EMPLOYEES?

15      A     NO, IT WAS LATER THAN THAT THAT I STARTED MAKING SOME  
16            OF THEM CONTRACT DRIVERS.

17      Q     AND, YOU PAID THE STATE OF SOUTH CAROLINA A FINE OF  
18            \$1,825.00.

19      A     THEY SENT ME A BILL ON IT.

20      Q     AND, THEN DID YOU GET WORKERS' COMP COVERAGE?

21      A     NO.

22      Q     DO YOU HAVE WORKERS' COMP COVERAGE NOW?

23      A     NO. I DON'T HAVE ANYBODY WORKING FOR ME NOW, EXCEPT  
24            MYSELF.

25      Q     THIS IS PAGE 36 OF THE APA'S, IS THAT THE CHECK YOU

1           WROTE THE STATE?

2       A     IT MUST BE.

3       Q     AND, IT WAS WRITTEN BY WEST EXPEDITED DELIVERY AND  
4           SERVICES?

5       A     YEAH.

6       Q     AND, SIGNED BY WHOM?

7       A     JIMMY LOU WEST.

8       Q     SO, SHE WAS STILL WORKING ENOUGH TO SIGN CHECKS?

9       A     THAT'S RIGHT. SHE HAD RECOVERED SOME AT THAT TIME.

10      Q     AND, IN 2007, WHEN YOU PAID MY CLIENT MR. GREGORY  
11           COLLINS, YOU PAID HIM PART IN W-2 AND PART IN 1099,  
12           DIDN'T YOU?

13      A     NO. GREGORY COLLINS, NO.

14      Q     SO, IF THERE WAS A 1099 FOR MR. GREGORY COLLINS AS  
15           WELL AS A W-2, IT WOULD HAVE BEEN A MISTAKE?

16      A     I SUPPOSE SO.

17      Q     BECAUSE HE WAS YOUR EMPLOYEE, RIGHT?

18      A     YES.

19           MR. MCKENZIE:

20           I DON'T HAVE ANY FURTHER QUESTIONS,  
21           COMMISSIONER.

22      A     I DON'T THINK THERE WAS A 1099 -- WHICHEVER ONE THAT  
23           IS I DO FOR THE CONTRACT DRIVERS. I DON'T THINK  
24           THERE'S ONE --

25           MS. MCKENZIE:

1                   THANK YOU.

2                   COMMISSIONER HUFFSTETTLER:

3                   MR. KILLEN, DO YOU HAVE ANY OTHER QUESTIONS?

4                   MR. KILLEN:

5                   YES, SIR, THANK YOU.

6                   REDIRECT EXAMINATION

7                   BY MR. KILLEN:

8           Q     AROUND THE TIME YOU SIGNED THIS CONSENT AGREEMENT  
9                   WITH THE WORKERS' COMPENSATION COMMISSION DID YOU  
10                  HAVE ANY CONVERSATIONS WITH ANY REPRESENTATIVE FROM  
11                  THE COMMISSION ABOUT WITHDRAWING FROM THE ACT, FILING  
12                  ANY FORMS TO WITHDRAW FROM THE ACT?

13          A     I DON'T REALLY REMEMBER.

14          Q     YOU WERE TALKING ABOUT A LICENSE THAT YOU HAVE, CAN  
15                  YOU TELL ME WHAT LICENSE THAT IS?

16          A     THAT'S THE PUBLIC SERVICE LICENSE.

17          Q     PUBLIC SERVICE LICENSE?

18          A     YES.

19          Q     WHAT DOES THAT ALLOW YOU TO DO?

20          A     TRANSPORT GOODS BY MOTOR VEHICLE.

21          Q     IS THAT SOMETHING YOU NEED TO DO TO TRANSPORT GOODS  
22                  AND INTERSTATE COMMERCE?

23          A     YES.

24          Q     AND, WHAT AGENCY DO YOU GO THROUGH TO OBTAIN THAT  
25                  LICENSE?

1 A IT'S CHANGED NOW FROM WHAT IT USED TO. USED TO YOU  
2 WENT THROUGH THE PUBLIC SERVICE OF SOUTH CAROLINA AND  
3 ICC.

4 Q WHAT'S ICC?

5 COMMISSIONER HUFFSTETLER:

6 IS THAT INTERSTATE COMMERCE COMMISSION?

7 MR. WEST:

8 YEAH.

9 MR. KILLEN:

10 THANK YOU, COMMISSIONER.

11 Q AND, THAT'S A FEDERAL AGENCY, ICC?

12 A YES.

13 Q ARE YOU AWARE OF ANY REQUIREMENTS BY THE ICC THAT A  
14 PARTY WHO CONTRACTS TO MAKE A DELIVERY IN INTERSTATE  
15 COMMERCE IS ALSO THE PARTY THAT IS REQUIRED TO  
16 PROVIDE ALL THE INSURANCE FOR THE ENTIRETY OF THE  
17 TRIP?

18 A YOU HAVE TO SEE THAT IT'S THERE, THAT IT'S ON FILE.

19 MR. KILLEN:

20 THANK YOU, THAT'S ALL I HAVE.

21 COMMISSIONER HUFFSTETLER:

22 MR. BYRD, DO YOU HAVE ANY QUESTIONS?

23 MR. BYRD:

24 NO, SIR.

25 COMMISSIONER HUFFSTETLER:

1 ANYBODY ELSE?

2 MS. GEORGE:

3 NO, COMMISSIONER.

4 MR. MARTIN:

5 JUST ONE, COMMISSIONER.

6 RECROSS EXAMINATION

7 BY MR. MARTIN

8 Q MR. WEST, AT THE TIME THAT YOU EXECUTED THE  
9 CAPITULATION AGREEMENT HAD YOU CONSULTED OR RETAINED  
10 AN ATTORNEY TO REPRESENT YOU IN THIS WORKERS' COMP  
11 CLAIM?

12 A AT THAT TIME, I CAN'T REMEMBER.

13 MR. MARTIN:

14 THAT'S ALL I HAVE, COMMISSIONER.

15 A THEY JUST SENT THAT BILL AND I JUST MAILED IT BACK TO  
16 THEM BECAUSE I DIDN'T HAVE BUT ABOUT THREE OR FOUR  
17 DAYS TO GET IT BACK.

18 MR. MARTIN:

19 THANK YOU, MR. WEST.

20 COMMISSIONER HUFFSTETLER:

21 ANY OTHER WITNESSES?

22 MS. MCKENZIE:

23 NO, SIR.

24 COMMISSIONER HUFFSTETLER:

25 IS THERE ANYTHING ELSE FOR THIS HEARING?

1        MS. GEORGE:

2                YES, SIR, I HAVE A WITNESS TO CALL.

3                \* \* \* \*        \* \* \* \*        \* \* \* \*        \* \* \* \*

4                THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
5                WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE  
6                MATTER HEREIN:

7                \* \* \* \*        \* \* \* \*        \* \* \* \*        \* \* \* \*

8                RONALD HARVEY BURKS,

9                BEING FIRST DULY SWORN OR AFFIRMED, TESTIFIED ON HIS  
10                OATH AS FOLLOWS:

11                COMMISSIONER HUFFSTETLER:

12                GO AHEAD, MA'AM.

13                DIRECT EXAMINATION

14                BY MS. GEORGE:

15                Q        MR. BURKS, CAN YOU PLEASE TELL ME WHERE YOU WORK?

16                A        SEKO CHARLOTTE INCORPORATED

17                Q        WHAT KIND OF BUSINESS IS SEKO CHARLOTTE INCORPORATED?

18                A        WE ARE A WORLDWIDE LOGISTICS COMPANY.

19                Q        WHAT IS THAT MEAN?

20                A        THAT IS WHERE YOU HANDLE TRANSPORTATION AROUND THE  
21                WORLD WHETHER IT BE OCEAN, COUNTRY TO COUNTRY, AIR  
22                FROM COUNTRY TO COUNTRY, AIR IMPORTS, EXPORTS THAT  
23                FLY OR GO OVERSEAS, THEY COULD COME INTO THE STATES,  
24                GO OUT OF THE STATES, AIR TRANSPORTATION, ROAD  
25                TRANSPORTATION, JUST BASICALLY ANY KIND OF WORLDWIDE

1 TRANSPORTATION THERE IS.

2 Q IN 2007, DID SEKO CHARLOTTE DISPATCH A DELIVERY JOB  
3 TO WEST EXPEDITED AND DELIVERY TO TAKE A DELIVERY  
4 FROM SPARTANBURG TO WISCONSIN?

5 A YES.

6 Q WHAT WERE THE SPECIFIC REQUIREMENTS OR THE ACTUAL  
7 WORK REQUESTS FOR THAT JOB? WHAT DID IT ENTAIL?

8 A WELL, WE HAD ASKED THEM TO PICK UP A LOAD IN  
9 SPARTANBURG AND TAKE THE LOAD TO WISCONSIN.

10 Q DO YOU RECALL ANY SPECIFICS ABOUT THE COMPANIES  
11 INVOLVED IN THAT -- YOUR CUSTOMER'S OR THEIR TYPE OF  
12 PRODUCTS?

13 A WELL, INA BEARING COMPANY WAS OUR CUSTOMER.

14 Q AND, THEY ARE LOCATED WHERE?

15 A IN SPARTANBURG --

16 Q AND, DO YOU KNOW --

17 A -- SOUTH CAROLINA.

18 Q I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU.

19 SPARTANBURG, SOUTH CAROLINA?

20 A UH-HUH.

21 Q MAKE SURE YOU SAY YES OR NO.

22 A YES.

23 Q WHERE WAS THE DELIVERY GOING TO?

24 A IT WAS GOING TO WISCONSIN, MENOMONEE FALLS,  
25 WISCONSIN.

1 Q DO YOU REMEMBER WHAT THE INVENTORY OR THE PRODUCT  
2 WAS?  
3 A BEARINGS.  
4 Q WHAT WERE THE SPECIFIC TERMS OF THE JOB DISPATCHED TO  
5 WEST?  
6 A WELL, THE TERMS IS WE ASKED HIM TO TAKE SOMETHING  
7 FROM THAT POINT A TO POINT BE AND WE ALREADY HAD AN  
8 AGREEMENT ON THE RATES, SO THAT'S BASICALLY ALL THERE  
9 WAS TO IT.  
10 Q AND, WHAT WAS THE AGREED UPON RATE?  
11 A \$1.20, I THINK IT WS \$1.20 PER MILE. IT COULD HAVE  
12 BEEN \$1.30 PER MILE BACK THEN, I'M NOT SURE. IT  
13 DEPENDS ON THE GAS PRICES.  
14 Q AND, THAT WAS WHAT MR. WEST TESTIFIED TO EARLIER  
15 BETWEEN \$1.20 AND \$1.30 PER MILE?  
16 A RIGHT. CORRECT.  
17 Q AND, THEN, WHAT MILEAGE FROM WHERE TO WHERE?  
18 A WELL, THAT WAS FROM SPARTANBURG TO MENOMONEE FALLS.  
19 Q WHAT ABOUT FROM MENOMONEE FALLS BACK TO SPARTANBURG.  
20 A THAT HAS NO BEARING ON IT. IT WAS JUST ONE-WAY  
21 MILEAGE.  
22 Q HOW DID MR. WEST'S COMPANY KNOW WHERE TO PICK UP FROM  
23 AND DELIVER TO?  
24 A WE INSTRUCTED HIM WHERE TO PICK UP AND I BELIEVE THE  
25 INSTRUCTIONS WERE ON THE PAPERWORK ON WHERE TO



1 DELIVER IT TO. WE MAY OR MAY NOT HAVE TOLD HIM WHERE  
2 EXACTLY IT WAS GOING TO.

3 Q WAS THAT INFORMATION HE WOULD GET FROM YOUR CUSTOMER  
4 AT THE TIME OF PICK-UP?

5 A YES.

6 Q AND, WHEN WAS YOUR JOB COMPLETED? THE JOB YOU  
7 REQUESTED MR. WEST'S COMPANY TO PERFORM FOR YOU?

8 A ONCE THEY DELIVERED THE LOAD AND THEY CALLED IN THE  
9 POD, POD MEANING PROOF OF DELIVERY, ONCE THEY SAID  
10 WE'VE GOT IT SIGNED FOR, HERE'S A TIME, IT'S  
11 UNLOADED, IT'S DONE, THAT'S WHEN IT WAS COMPLETED.

12 Q AND WHAT WORK WAS MR. WEST'S COMPANY DOING FOR YOU  
13 AFTER THAT DELIVERY WAS MADE IN WISCONSIN?

14 A THEY DIDN'T DO ANYTHING AFTER THAT FOR US.

15 Q WHAT WERE YOU PAYING HIM FROM THAT POINT? .

16 A NOTHING.

17 Q DID YOU HAVE ANY INSTRUCTIONS FOR MR. WEST OR THE  
18 DRIVERS AS TO WHEN THEY NEEDED TO RETURN TO SOUTH  
19 CAROLINA AFTER THE DELIVERY WAS MADE?

20 A NO.

21 Q DID YOU INSTRUCT HIM ON THE ROUTE HE NEEDED TO COME  
22 BACK BY?

23 A NO.

24 Q WERE THEY PERFORMING ANY SERVICE FOR YOU WHATSOEVER  
25 AFTER THE DELIVERY WAS MADE IN WISCONSIN?

1 A NO.

2 MS. GEORGE:

3 I HAVE NO FURTHER QUESTIONS, COMMISSIONER.

4 COMMISSIONER HUFFSTETTLER:

5 MR. KILLEN.

6 MR. KILLEN:

7 THANK YOU, MR. COMMISSIONER.

8 CROSS EXAMINATION

9 BY MR. KILLEN:

10 Q WASN'T MR. COLLINS ACTUALLY MAKING TWO DELIVERIES FOR  
11 YOU?

12 A YES.

13 Q HE HAD TWO DELIVERIES TO GO FROM THE UPSTATE OF SOUTH  
14 CAROLINA TO WISCONSIN?

15 A CORRECT.

16 Q AND, THAT BOTH OF THOSE DELIVERIES WERE IN THE  
17 MILWAUKEE AREA, IS THAT CORRECT?

18 A CORRECT.

19 Q HOW MANY PEOPLE DOES SEKO CHARLOTTE, INCORPORATED  
20 EMPLOY?

21 A ABOUT 16.

22 Q ARE THEY ALL EMPLOYED IN NORTH CAROLINA?

23 A YES.

24 Q HOW MANY PEOPLE DOES YOUR COMPANY EMPLOY IN SOUTH  
25 CAROLINA?

1 A NONE..

2 Q HOW MANY DRIVERS DOES SEKO CHARLOTTE EMPLOY?

3 A THREE. THAT'S PART OF THAT 16.

4 Q OKAY. DO THOSE DRIVERS MAKE -- WHAT DO THEY DO?

5 A THEY MAKE A LOCAL ROUTE DELIVERY, LOCAL PICK-UP AND  
6 DELIVERIES IN THE AREA, USUALLY WITHIN A 50 MILE  
7 RADIUS.

8 Q OKAY. THEY MAKE PICK-UPS AND THEN THEY DELIVER TO A  
9 POINT AND THEN THEY COME BACK TO YOUR OFFICE,  
10 CORRECT?

11 A RIGHT.

12 Q ARE THOSE DRIVERS COVERED BY YOUR WORKERS'  
13 COMPENSATION INSURANCE TO THE BEST OF YOUR KNOWLEDGE?

14 A YES.

15 Q ARE THEY COVERED BY YOUR WORKERS' COMPENSATION  
16 INSURANCE THE ENTIRE TRIP?

17 A YES.

18 Q SO, ANYTHING OVER 50 MILES, DOES SEKO CHARLOTTE USE A  
19 SUB-CONTRACTOR?

20 A WE USUALLY SUB-CONTRACT ANYTHING OVER 50 MILES OUT.  
21 THOSE DRIVERS WILL GO A 100 MILE RADIUS SOMETIMES.  
22 THEY GO IT A LITTLE BIT OUTSIDE THE 50 MILE SCOPE, SO  
23 IT COULD BE A 100 MILE RADIUS.

24 Q YOUR DRIVERS OPERATE IN INTERSTATE COMMERCE?

25 A YES, THEY DO PICK UP IN FORT MILL AND ROCK HILL,

1 SOUTH CAROLINA SOMETIMES.

2 Q SO, DOES YOUR COMPANY, SEKO CHARLOTTE HAVE ONE OF  
3 THOSE LICENSES MR. WEST WAS TESTIFYING TO?

4 A ICC, YES. MCC LICENSE.

5 Q ARE YOU AWARE OF ANY REQUIREMENT BY THE ICC THAT YOUR  
6 COMPANY PROVIDE INSURANCE ROUNDTrip TO DRIVERS THAT  
7 IT CONTRACTS WITH?

8 A NO.

9 Q YOU'RE NOT AWARE OF THAT?

10 A NO.

11 Q WAS THIS TRIP THAT MR. COLLINS WAS ON, WAS IT A  
12 NECESSARY PART OF YOUR BUSINESS?

13 A IT WAS IMPORTANT TO THE CUSTOMER THAT THEY GET  
14 SOMETHING TO THEIR CUSTOMER, SO IT WAS DEFINITELY  
15 IMPORTANT THAT WE TRY TO SERVE THE CUSTOMER.

16 Q SO, IT WAS A NECESSARY PART OF YOUR BUSINESS,  
17 CORRECT?

18 A YES.

19 Q AND, YOU HAVE DRIVERS THAT DO THIS SAME TYPE OF  
20 FUNCTION IF NOT DRIVING FOR AS LONG PERIODS OF TIME?

21 A DRIVING, YES.

22 Q SO, MR. WEST IS ONE OF YOUR SUBCONTRACTORS IN SOUTH  
23 CAROLINA?

24 A YES.

25 Q HOW MANY OTHER SUBCONTRACTORS IN SOUTH CAROLINA DID

1 YOU USE IN 2007?

2 A IN 2007 WE HAD ABOUT TWO OR THREE OTHER INDIVIDUALS  
3 THAT DROVE FOR US.

4 Q TWO OR THREE OTHERS? TWO DAYS AGO IN YOUR DEPOSITION  
5 YOU SAID IT WAS A HANDFUL --

6 A A HANDFUL, RIGHT.

7 Q AND THEN I SAID ABOUT 5 AND YOU SAID THAT'S ABOUT  
8 RIGHT.

9 A RIGHT, BUT I RECOLLECTED ON THAT AND TRIED TO THINK  
10 OF THE DRIVERS WE HAD BESIDES WEST AND IT WAS TWO OR  
11 THREE OTHERS WHICH WOULD MAKE THREE OR FOUR TOTAL, SO  
12 CLOSE TO A HANDFUL.

13 Q DO YOU KNOW HOW MANY EMPLOYEES EACH OF THOSE  
14 SUBCONTRACTORS EMPLOY?

15 A THESE WERE USUALLY INDIVIDUALS.

16 Q DID SOME OF THEM ALSO EMPLOY EMPLOYEES SUCH AS MR.  
17 WEST?

18 A RESTATE THAT PLEASE.

19 Q DID SOME OF THOSE OTHER SUBCONTRACTORS EMPLOY  
20 EMPLOYEES?

21 A I DON'T THINK SO.

22 Q SO, MR. WEST WAS THE ONLY ONE WHO HAD AT LEAST ONE  
23 EMPLOYEE, IS THAT YOUR TESTIMONY?

24 A WELL, THEY HAD AT LEAST ONE, THEY WERE THEIR OWN  
25 EMPLOYEE. HE'S THE ONLY ONE I CAN THINK OF THAT HAD

- 1 MORE THAN ONE EMPLOYEE.
- 2 Q WHERE WERE YOUR OTHER SUBCONTRACTORS IN SOUTH
- 3 CAROLINA LOCATED?
- 4 A THEY WERE IN THE SPARTANBURG AREA, INMAN TO BE
- 5 SPECIFIC, AND CAMPOBELLO WHICH I THINK IS IN THAT
- 6 AREA.
- 7 Q WHEN YOU CONTRACTED WITH MR. WEST WAS THAT A \$1.20 A
- 8 MILE, WAS THAT A NEGOTIATED FIGURE?
- 9 A YEAH, I'M SURE IT WAS NEGOTIATED BETWEEN MR. WEST AND
- 10 US, YES.
- 11 Q IN COMING TO THAT NUMBER, WHAT CONSIDERATIONS DID YOU
- 12 USE?
- 13 A WELL, THAT WAS PRETTY MUCH THE GOING RATE. EVERYBODY
- 14 WE EMPLOYED BACK THEN OR WENT TO WAS, YOU KNOW, ONE-
- 15 WAY MILEAGE IT WAS SOMEWHERE IN THAT NEIGHBORHOOD, SO
- 16 I THINK FAIR MARKET VALUE BASICALLY IS WHERE WE WERE
- 17 TRYING TO GET IN THAT RANGE.
- 18 Q DOES IT SEEM LIKELY TO YOU THAT MR. WEST'S DRIVERS
- 19 WOULD RETURN FROM THEIR TRIPS WHEN THEY MADE ANY
- 20 SHIPMENTS FOR YOUR COMPANY?
- 21 A WHAT DO YOU MEAN TURN FROM THE TRIPS?
- 22 Q WELL, DOES IT SEEM LIKELY THAT THEY WOULD NEED TO
- 23 RETURN TO SOUTH CAROLINA?
- 24 A RETURN, YES.
- 25 Q IN FACT, IN ORDER FOR YOU TO RUN YOUR BUSINESS, FOR

1 SEKO CHARLOTTE TO RUN ITS BUSINESS, YOU WOULD NEED  
2 MR. WEST AND THOSE LIKE HIM TO HAVE A FLEET OF  
3 DRIVERS READY TO GO AT ANY TIME, CORRECT?

4 A I WOULDN'T SAY THAT'S CORRECT. WE DIDN'T HAVE THAT  
5 MUCH DOWN THERE. WE MAYBE GAVE MR. WEST SOMETHING  
6 ABOUT TWICE A MONTH, SO IT WASN'T A WHOLE LOT GOING  
7 ON THERE, BUT IT WAS NICE TO HAVE SOMEONE DOWN THERE,  
8 BUT IT WAS NOT ABSOLUTELY NECESSARY.

9 Q IF YOU HAD A HOT ITEM --

10 A UH-HUH.

11 Q SOMETHING THAT NEEDED TO BE HALFWAY ACROSS THE  
12 COMPANY IN A DAY'S TIME, WOULDN'T YOU DEPEND ON MR.  
13 WEST TO HAVE A DRIVER AT THE READY?

14 A WE USUALLY DIDN'T GO THAT FAR, BUT I MEAN, IT WAS  
15 GOOD TO HAVE THE THREE OR FOUR THAT WE HAD AVAILABLE  
16 THAT WERE AVAILABLE AT DIFFERENT TIMES SO WE SORT OF,  
17 WE DID LIKE MR. WEST DID, WE JUST SORT OF ROTATED  
18 WHOEVER WAS AVAILABLE, WE WOULD MAKE CALLS AND  
19 SEE WHO WAS AVAILABLE.

20 Q IF ALL YOUR SUBCONTRACTORS WENT TO WISCONSIN AND  
21 STAYED, YOU WOULDN'T BE ABLE TO RUN YOUR BUSINESS?

22 A WELL, IF THEY WENT UP THERE AND STAYED, WE WOULD HAVE  
23 TO TRY TO FIND MORE SUBCONTRACTORS.

24 Q RIGHT, YOU WOULD JUST HAVE TO KEEP LOOKING FOR MORE  
25 SUBCONTRACTORS.

1 A CORRECT.

2 Q WOULD YOU AGREE WITH ME THAT IT'S THE RETURN TRIP  
3 THAT IS NECESSARILY INCIDENTAL TO THE DELIVERY

4 A YOU'D PROBABLY HAVE TO EXPLAIN INCIDENTAL.

5 Q OKAY. WOULD MR. COLLINS HAVE BEEN MAKING THAT RETURN  
6 TRIP FROM WISCONSIN TO SOUTH CAROLINA HAD HE NOT MADE  
7 THAT DELIVERY FOR SEKO CHARLOTTE?

8 MR. BYRD:

9 OBJECTION. YOUR HONOR, IT CALLS FOR  
10 SPECULATION.

11 MR. KILLEN:

12 I'LL REPHRASE IT, YOUR HONOR.

13 COMMISSIONER HUFFSTETLER:

14 THANK YOU.

15 Q MR. COLLINS WAS RETURNING FROM MAKING A DELIVERY IN  
16 WISCONSIN FOR YOUR COMPANY, CORRECT?

17 A UH-HUH.

18 COMMISSIONER HUFFSTETLER:

19 YOU CAN --

20 A WELL, THAT'S -- I'M SORRY, YES..

21 COMMISSIONER HUFFSTETLER:

22 WHEN YOU AND I TALK AT THE SAME TIME, WE CAN'T  
23 MAKE A GOOD RECORD. WE ALL HAVE THE HABIT TO  
24 SAY UH-HUH. IT DOESN'T MAKE A GOOD RECORD. I  
25 HAVE NO QUESTION IN MY MIND THIS CASE WILL GO ON



1 APPEAL. AND WHEN THE APPELLATE PANEL OR THE  
2 COURT SEES THE TRANSCRIPT, WE NEED TO BE ABLE TO  
3 UNDERSTAND IF WE ARE SAYING YES OR NO. SO, WE  
4 TRY TO AVOID THE UH-HUHS.

5 Q MR. WEST WAS RETURNING HOME FROM MAKING A DELIVERY  
6 FOR SEKO CHARLOTTE WHEN HE WAS KILLED, CORRECT?

7 A I ASSUME THAT HE WAS.

8 Q TO THE BEST OF YOUR KNOWLEDGE, DID MR. WEST DEVIATE  
9 IN ANY WAY FROM HIS RETURN TRIP HOME?

10 A I DO NOT KNOW, TO THE BEST OF MY KNOWLEDGE, HE  
11 DIDN'T. HE CERTAINLY HAD THE RIGHT TO DO WHATEVER HE  
12 WANTED TO WHEN HE WAS DONE WITH OUR TRIP. I KNOW  
13 MOST OF THE COMPANIES WE CONTRACT WITH TRY TO FIND  
14 SOMETHING ELSE UP IN THAT AREA GOING FROM THAT AREA  
15 TO ANOTHER AREA, BUT I AM NOT SURE WHAT MR. COLLINS  
16 DID AT THAT TIME AFTER HE FINISHED THE JOB FOR US.

17 Q MR. WEST DIDN'T MAKE ANOTHER PICK-UP ON HIS WAY HOME,  
18 DIDN'T HE?

19 A I DON'T KNOW.

20 Q TO THE BEST OF YOUR KNOWLEDGE, DID HE MAKE ANOTHER  
21 PICK-UP ON THE WAY HOME?

22 A NOT THAT I KNOW OF.

23 Q CAN YOU TELL ME ABOUT SEKO CHARLOTTE'S RELATIONSHIP  
24 WITH SEKO WORLDWIDE?

25 A WE ARE MORE OR LESS A FRANCHISE OF SEKO WORLDWIDE, IS

1           OUR CORPORATE OFFICE UP IN ILLINOIS. THEY DO  
2           FRANCHISE OUT TO THE SMALLER CITIES SO WE ARE  
3           BASICALLY A FRANCHISE AND IT IS BASED ON A PROFIT  
4           SPLIT, EVERYTHING WE DO HAVE A PROFIT SPLIT WITH OUR  
5           CORPORATE OFFICE.

6       Q   SEKO WORLDWIDE PROVIDES SEKO CHARLOTTE WITH FORMS,  
7           CORRECT?

8       A   CORRECT.

9       Q   SEKO WORLDWIDE PROVIDES SEKO CHARLOTTE WITH I.T.,  
10          INFORMATION TECHNOLOGY, CORRECT?

11      A   CORRECT.

12      Q   SEKO WORLDWIDE PROVIDES SEKO CHARLOTTE WITH A WEB  
13          PRESENCE, IS THAT CORRECT?

14      A   CORRECT.

15      Q   AND, SEKO WORLDWIDE PROVIDES SEKO CHARLOTTE WITH  
16          ACCOUNTING SERVICES, CORRECT?

17      A   CORRECT.

18      Q   SEKO WORLDWIDE PROVIDES SEKO CHARLOTTE WITH BILLING  
19          SERVICES, CORRECT?

20      A   YES.

21      Q   IN RETURN FOR THOSE SERVICES AND BENEFITS, SEKO  
22          CHARLOTTE GIVES FORTY PERCENT OF ITS PROFITS TO SEKO  
23          WORLDWIDE, CORRECT?

24      A   YES.

25      Q   ARE ANY OTHER PAYMENTS MADE FROM SEKO CHARLOTTE TO

1 SEKO WORLDWIDE?

2 A I DO NOT THINK SO.

3 Q IN FACT, YOU ARE MORE LIKE AN OPERATING PARTNER

4 RATHER THAN A FRANCHISE, CORRECT?

5 A I'M NOT SURE HOW YOU WOULD DETERMINE THAT.

6 Q YOU HOLD YOURSELF OUT TO THE PUBLIC AS BEING A SEKO

7 WORLDWIDE LOCATION, CORRECT?

8 A YES.

9 Q WHAT'S YOUR EMAIL ADDRESS?

10 A MY PERSONAL EMAIL ADDRESS?

11 Q YOUR BUSINESS EMAIL ADDRESS.

12 A IN CHARLOTTE OR CORPORATELY?

13 Q BOTH.

14 A OURS IN CHARLOTTE WE HAVE, OR OUR INTERNATIONAL WE

15 HAVE ONE, FOR DOMESTIC WE HAVE ONE. IT'S -- OUR

16 DOMESTIC ONE IS CLT@SEKOWORLDWIDE.COM. INTERNATIONAL

17 IS CLTINTL@SEKOWORLDWIDE.COM.

18 Q @SEKOWORLDWIDE.COM?

19 A UH-HUH.

20 COMMISSIONER HUFFSTETLER:

21 AGAIN, IF YOU WOULD GIVE A "YES" OR "NO".

22 A YES.

23 Q AND, FOR ALL OF YOUR SHIPMENTS, ALL THE SHIPMENTS

24 PERFORMED THROUGH SEKO CHARLOTTE, ANYONE FROM ANY

25 COMPUTER ALL AROUND THE WORLD CAN GO TO SEKO

1 WORLDWIDE'S WEBSITE AND TRACK THE PROGRESS AND THE  
2 STATUS OF THAT SHIPMENT?

3 A YES.

4 Q AND, AGAIN, YOU ARE JUST SPLITTING PROFITS WITH THEM,  
5 CORRECT?

6 A YES.

7 MR. KILLEN:

8 THAT'S ALL I HAVE COMMISSIONER.

9 CROSS EXAMINATION

10 BY MR. BYRD:

11 Q MR. BURKS, IT'S NICE TO SEE YOU AGAIN. WE MET  
12 EARLIER THIS WEEK. I JUST HAVE A COUPLE OF BRIEF  
13 QUESTIONS. I BELIEVE YOUR DEPOSITION TRANSCRIPT IS  
14 IN THE RECORD, BUT YOU ARE AN EMPLOYEE OF A COMPANY  
15 CALLED SEKO CHARLOTTE INCORPORATED, IS THAT CORRECT?

16 A YES.

17 Q AND, THAT'S A SEPARATE COMPANY THAN SEKO WORLDWIDE  
18 LLC, CORRECT?

19 A YES.

20 Q YOUR CHARLOTTE OFFICE HAS BEEN DESCRIBED AS A  
21 FRANCHISE OR AN OPERATING PARTNER, CORRECT?

22 A YES.

23 Q AND, AS PART OF YOUR OPERATING AGREEMENT WITH SEKO  
24 WORLDWIDE, THEY TAKE PART OF YOUR PROFITS AND IN  
25 RETURN YOU GET LOTS OF SERVICES?

1 A YES.

2 Q YOU GET THE BENEFIT OF THE WEBSITE OR PRE-PRINTED  
3 FORMS OR ACCOUNTING SERVICES, CORRECT?

4 A YES.

5 Q SEKO CHARLOTTE IS STILL A SEPARATE COMPANY, CORRECT?

6 A YES.

7 Q IS THAT COMPANY -- IT'S OWNED BY GLEN MADDOX WHO IS  
8 YOUR DIRECT BOSS, CORRECT?

9 A YES.

10 Q DOES SEKO WORLDWIDE PROVIDE SEKO CHARLOTTE ANY KIND  
11 OF WORKERS' COMPENSATION COVERAGE?

12 A THEY HAVE THEIR OWN WORKMANS' COMP AND SEKO CHARLOTTE  
13 HAS ITS OWN WORKMANS' COMP.

14 Q SO, IF ONE OF YOUR EMPLOYEES, THE 16 THAT YOU SAID  
15 WORK IN SEKO CHARLOTTE, THEORETICALLY WERE INJURED IN  
16 THE COURSE OF THEIR EMPLOYMENT, THAT WOULD  
17 THEORETICALLY BE COVERED UNDER SEKO CHARLOTTE'S  
18 WORKERS' COMPENSATION COVERAGE, CORRECT?

19 A YES.

20 Q SEKO WORLDWIDE DIDN'T HAVE ANY PART OF DEALING WITH  
21 MR. WEST IN THIS TRANSACTION WE ARE HERE TALKING  
22 ABOUT TODAY, DID IT?

23 A CORRECT.

24 MR. BYRD:

25 THANK YOU.

1 MR. MARTIN:

2 I HAVE NO QUESTIONS, YOUR HONOR.

3 COMMISSIONER HUFFSTETLER:

4 MA'AM?

5 MS. MCKENZIE:

6 I DON'T HAVE ANY.

7 MS. GEORGE:

8 I DO HAVE A FEW ON REDIRECT, THANK YOU,  
9 COMMISSIONER.

10 REDIRECT EXAMINATION

11 BY MS. GEORGE:

12 Q MR. BURKS, I BELIEVE IT WAS MR. KILLEN THAT WAS  
13 ASKING YOU ABOUT THE SEKO, THE SEKO CHARLOTTE  
14 EMPLOYEES, 16 OF THEM AND THE SEKO DRIVERS, THREE OF  
15 THEM. HOW ARE THOSE DRIVERS PAID?

16 A THEY ARE ON SALARY.

17 Q SO, I BELIEVE MR. KILLEN WAS ASKING YOU IF ONE OF  
18 THEM WAS MAKING A DELIVERY AND WAS INJURED IN THAT  
19 DELIVERY IF THAT WOULD BE A SEKO CHARLOTTE WORKERS'  
20 COMP CLAIM?

21 A YES.

22 Q BECAUSE THEY ARE SALARIED?

23 A YES.

24 Q THEY ARE NOT PAID FOR ONE-WAY DELIVERY?

25 A NO.

1 Q AND, MR. KILLEN ALSO ASKED YOU IF THE WORK PERFORMED  
2 BY WEST OR A COMPANY SIMILAR TO WEST, WAS AN  
3 IMPORTANT PART OF SEKO CHARLOTTE'S BUSINESS. DO YOU  
4 RECALL HIM ASKING YOU THAT?

5 A YES.

6 Q WHAT IS THE IMPORTANT PART OF THE BUSINESS AS IT  
7 RELATES TO YOUR CUSTOMERS? WHAT DO YOUR CUSTOMERS  
8 NEED FROM YOU?

9 A OUR CUSTOMERS NEED SERVICE FROM US. THEY JUST NEED  
10 THEIR GOODS. THEY CONTRACT US TO GET THEIR GOODS  
11 FROM POINT A TO POINT B.

12 Q DO THEY ASK YOU TO DO ANYTHING ELSE SPECIFICALLY IN  
13 THIS TRANSACTION BESIDES GETTING THE GOODS FROM A TO  
14 B?

15 A NO.

16 MS. GEORGE:

17 THANK YOU.

18 COMMISSIONER HUFFSTETLER:

19 THANK YOU, SIR. IS THERE ANYTHING ELSE?

20 MR. MARTIN:

21 COMMISSIONER, I HAVE A WITNESS. I APOLOGIZE,  
22 SIR, I CANNOT REMEMBER IF I HANDED A COPY OF MR.  
23 WEST'S APA'S WHEN WE FIRST CAME IN. THEY WERE  
24 SUBMITTED AT THE PRIOR HEARING.

25 COMMISSIONER HUFFSTETLER:

1 IS THAT IT?

2 MR. MARTIN:

3 THAT IS --

4 MS. MCKENZIE:

5 THEY GAVE US BACK EVERYTHING AFTER THE PRIOR  
6 HEARING.

7 MR. MARTIN:

8 OKAY, I APOLOGIZE.

9 \* \* \* \* \*

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
11 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE  
12 MATTER HEREIN:

13 \* \* \* \* \*

14 BRYAN JETER,

15 BEING FIRST DULY SWORN OR AFFIRMED, TESTIFIED ON HIS  
16 OATH AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. MARTIN:

19 Q MR. JETER, CAN YOU STATE THE NAME OF YOUR BUSINESS?

20 A LISTER, JETER AND LLOYD CPAs, LLC.

21 Q AND, YOUR PROFESSION?

22 A I'M A CERTIFIED PUBLIC ACCOUNTANT.

23 Q WHAT IS YOUR RELATIONSHIP WITH WEST EXPEDITED  
24 DELIVERY SERVICES?

25 A THE COMPANY HAS ENGAGED US TO PERFORM THEIR



1 BOOKKEEPING, PAYROLL TAXES, INCOME TAX RETURNS.

2 Q AND, HOW LONG HAVE YOU BEEN PROVIDING THAT SERVICE?

3 A I'VE BEEN WITH THE COMPANY SINCE OCTOBER 2006 AND  
4 WE'VE DONE IT AT LEAST SINCE THEN.

5 Q DO YOU PREPARE THE PAYROLL CHECKS FOR WEST DELIVERY?

6 A WE DO NOT, NO.

7 Q CAN YOU EXPLAIN THE PROCESS HOW -- WHAT SERVICES YOU  
8 DO PROVIDE TO THEM?

9 A MR. WEST TYPICALLY PROVIDES US WITH HIS BANK  
10 STATEMENT, HIS CHECK STUBS AND HIS OTHER INFORMATION  
11 AND WE PREPARE A MONTHLY FINANCIAL STATEMENTS BASED  
12 OFF OF THOSE RECORDS AS WELL AS WE ACCUMULATE THE  
13 PAYROLL TAX RECORDS AND WE ADVISE HIM ON TAX DEPOSITS  
14 THAT ARE NEEDED AS WELL AS PREPARE QUARTERLY TAX  
15 RETURNS BASED ON THE INFORMATION HE HAS PROVIDED AND  
16 ANNUAL TAX RETURNS BASED ON THE INFORMATION HE HAS  
17 PROVIDED.

18 Q AND, DO YOU PREPARE HIS, YOU PREPARE HIS TAX RETURNS?

19 A YES, I DO.

20 Q BASED ON THE STATEMENT YOU JUST MADE, BE CLEAR IN  
21 UNDERSTANDING MR. WEST PROVIDES YOU THE INFORMATION?

22 A THAT'S CORRECT.

23 Q TO PREPARE THE DOCUMENTS AND YOU SIMPLY PREPARE THEM?  
24 DOES THAT INCLUDE THE QUARTERLY RETURNS?

25 A YES, IT DOES.

1 Q AND, WE'VE SUBMITTED TO THE COMMISSION THE PAYROLL  
2 RECORDS FROM JANUARY 1, 2007 TO SEPTEMBER 30, 2007.  
3 HAVE YOU HAD AN OPPORTUNITY TO REVIEW THOSE RECORDS  
4 YOURSELF?

5 A I HAVE.

6 Q ARE THOSE RECORDS BROKEN DOWN -- OR HOW ARE THOSE  
7 RECORDS BROKEN DOWN?

8 A THE RECORDS PROVIDED SHOW A MONTHLY DETAIL OF EACH  
9 PAYCHECK THAT WAS MADE WITH THE CORRESPONDING TAX  
10 DEDUCTIONS AND THAT SORT OF THING, AS WELL AS ANY  
11 CONTRACTORS THAT WERE PAID DURING THE MONTH.

12 Q THE CONTRACTORS ARE -- YOU REVERTED TO 1099 FORMS?

13 A YES, THAT'S CORRECT.

14 Q DOES THE PAYROLL RECORDS DIFFERENTIATE BETWEEN FOLKS  
15 THAT ARE PAID THROUGH A PAYCHECK AND THOSE THAT ARE  
16 PAID THROUGH A 1099 CHECK?

17 A THAT'S CORRECT.

18 Q DURING THE PERIOD OF TIME IN 2007 FOR THE RECORDS  
19 THAT YOU REVIEW, WAS THERE ANY SINGLE MONTH IN WHICH  
20 MR. WEST ISSUED PAYROLL CHECKS TO FOUR OR MORE  
21 EMPLOYEES?

22 A NOT THAT I RECALL.

23 Q ARE YOU FAMILIAR THROUGH THE RECORDS WITH MR. WEST'S  
24 WIFE, JIMMY LOU?

25 A YES.

1 Q HAVE YOU WORKED WITH JIMMY LOU IN PREPARING SOME OF  
2 THE RECORDS?

3 A WE ASKED QUESTIONS FOR CLARIFICATION AND THAT SORT OF  
4 THING, BUT MY UNDERSTANDING WAS DURING THE PERIOD OF  
5 TIME IN QUESTION, SHE WAS THE ONE HANDLING THE CHECK  
6 WRITING AT THE TIME.

7 Q AND, YOU WERE AWARE THAT MS. WEST SUFFERED SOME  
8 HEALTH ISSUES IN MAY OR JUNE?

9 A THAT'S CORRECT.

10 Q AT THE TIME, OR PRIOR TO THOSE ISSUES, WAS MS. WEST  
11 ISSUED A PAYCHECK, AN EMPLOYEE PAYCHECK?

12 A I BELIEVE THAT SHE WAS FOR PART OF THAT TIME, YES.

13 Q AFTER HER HEALTH ISSUES, WAS THERE SOMEONE ELSE THAT  
14 CAME IN TO WORK FOR THE COMPANY?

15 A I BELIEVE THAT MR. WEST HANDLED SOME OF THE DUTIES  
16 AND I THINK HIS DAUGHTER HAD STEPPED IN TO HANDLE  
17 SOME OF THOSE DUTIES AS WELL.

18 Q WAS HIS DAUGHTER NAMED SHERRY CAMPBELL?

19 A I BELIEVE THAT IS CORRECT, YES.

20 Q SO, WAS THERE ANY POINT IN TIME THAT YOU RECALL THAT  
21 THE PAYROLL RECORDS THAT MRS. WEST AND MRS. CAMPBELL  
22 RECEIVED PAYCHECKS AT THE SAME TIME?

23 A I WOULD HAVE TO GO BACK AND DOUBLE CHECK, BUT I DON'T  
24 THINK SO.

25 Q LET ME HAND YOU THIS -- IT'S A COPY OF THOSE PAYROLL

1 RECORDS IF YOU COULD LOOK THROUGH THERE AND SEE -

2 COMMISSIONER HUFFSTETLER:

3 IS ANYBODY ALLEGING THAT THOSE TWO PEOPLE WORKED  
4 AT THE SAME TIME?

5 MS. MCKENZIE:

6 NO.

7 COMMISSIONER HUFFSTETLER:

8 I TAKE SILENCE IS NOBODY'S ALLEGING THAT. THANK  
9 YOU.

10 Q THAT'S FINE, THANK YOU. CAN YOU EXPLAIN THE  
11 DIFFERENCE BETWEEN THOSE MONTHLY PAYROLL RECORDS AND  
12 THE QUARTERLY CONTRIBUTION REPORTS THAT YOU WOULD  
13 PREPARE?

14 A THERE SHOULDN'T BE ANY DIFFERENCE UNLESS WE HAD TO GO  
15 BACK AND MAKE A CORRECTION FOR A PRIOR PERIOD. WE  
16 FIND IT EASIER TO CORRECT A CURRENT PERIOD RATHER  
17 THAN GO BACK AND AMEND A QUARTERLY STATE UNEMPLOYMENT  
18 TAX RETURN, FOR EXAMPLE.

19 Q LET ME SHOW YOU, THIS IS CLAIMANT'S APA EXHIBIT 7,  
20 WHICH IS THE QUARTERLY RETURNS THAT WERE SUBMITTED AS  
21 PART OF HER APA. IF YOU WOULD LOOK AT THE SECOND  
22 PAGE DOWN AT THE BOTTOM, PAGE 28. THIS PAGE  
23 INDICATES THAT THERE WERE ONE, TWO, THREE, FOUR,  
24 FIVE, SIX INDIVIDUALS THAT ARE LISTED AS -- ARE THESE  
25 FOLKS LISTED AS EMPLOYEES ON THIS RETURN?

1 A ON THIS PARTICULAR RETURN, THEY WOULD HAVE BEEN PAID  
2 AT LEAST ONE PAYCHECK DURING THE QUARTER IN QUESTION,  
3 THAT'S CORRECT.

4 Q BUT, THERE WOULD HAVE BEEN OVERLAPPING?

5 A PROBABLY.

6 Q AND, IF YOU WILL FLIP OVER TO THE PAGE AT THE BOTTOM,  
7 IT SAYS 22. IS THE QUARTER ENDING MARCH 31, 2007,  
8 THERE'S AN INDIVIDUAL ON THIS LIST WITH CHUCK HOWELL  
9 WITH 846. DO YOU REMEMBER THE CIRCUMSTANCES WITH  
10 REGARD TO THAT EMPLOYEE?

11 A NOT RIGHT OFFHAND. I BELIEVE IT WAS LATER DETERMINED  
12 THAT HE WAS NOT AN EMPLOYEE AND WE MADE THE  
13 CORRECTION ON THE NEXT QUARTER REPORT. IF YOU FLIP  
14 TO THAT SECOND QUARTER, WE SHOWED HIS WAGES AS BEING  
15 BACK BACKED OFF AND WE GOT THE CORRECT NAME OF CHUCK  
16 E. HARWELL. THAT WAS JUST A CORRECTION THAT WAS MADE  
17 THERE ON THAT REPORT BECAUSE WE DID NOT HAVE MR.  
18 HARWELL'S SOCIAL SECURITY NUMBER AT THE TIME. NOR,  
19 DID WE HAVE THE CORRECT NAME AT THE TIME. WE HAVE  
20 PROBLEMS READING THE LEGIBILITY OF SOME OF THE CHECK  
21 STUBS FROM TIME TO TIME.

22 Q OKAY. BASED ON THE PAYROLL INFORMATION, YOU BELIEVE  
23 THAT MR. WEST MAINTAINED LESS THAN FOUR EMPLOYEES  
24 DURING 2007.

25 MS. MCKENZIE:

1           OBJECTION, COMMISSIONER. THAT'S A LEGAL  
2           DETERMINATION TO BE DETERMINED BY THE COMMISSION  
3           BASED UPON THE WORKERS' COMP DEFINITION OF  
4           EMPLOYEE, NOT ONE FOR SOMEONE FILLING OUT  
5           ACCOUNTING RECORDS.

6           MR. MARTIN:

7           I'LL REPHRASE THE QUESTION, COMMISSIONER.

8           Q   DID THE PAYROLL RECORDS INDICATE TO YOU FROM A  
9           PAYROLL STANDPOINT WERE MORE -- STRIKE THAT.

10          COMMISSIONER HUFFSTETLER:

11          I'M NOT SURE -- I ASSUME YOU'RE HEADING TOWARDS

12          --

13          MR. MARTIN :

14          THAT'S ALL THE QUESTIONS --

15          COMMISSIONER HUFFSTETLER:

16          -- THE SAME QUESTION. THIS WITNESS CANNOT GIVE  
17          A LEGAL OPINION ON WHETHER OR NOT MR. WEST HAD  
18          FOUR OR MORE EMPLOYEES. THAT'S MY JOB.

19          MR. MARTIN:

20          YES, SIR. I HAVE NO MORE QUESTIONS FOR THIS  
21          WITNESS.

22          COMMISSIONER HUFFSTETLER:

23          MR. KILLEN?

24          MR. KILLEN:

25          NO QUESTIONS, YOUR HONOR.

1 COMMISSIONER HUFFSTETLER:

2 MR. BYRD?

3 MR. BYRD:

4 NO MORE QUESTIONS, YOUR HONOR.

5 COMMISSIONER HUFFSTETLER:

6 MS. GEORGE?

7 MS. GEORGE:

8 NO, SIR.

9 MS. MCKENZIE:

10 I HAVE JUST A COUPLE.

11 CROSS EXAMINATION

12 BY MS. MCKENZIE:

13 Q IT DOESN'T OFTEN APPEAR ON THE REPORTS, BUT AT THE  
14 END OF THE YEAR, MR. MORRIS WEST WAS GIVEN A W-2 FORM  
15 ALSO, RIGHT?

16 A THAT'S CORRECT.

17 Q SO, HE'S NOT SHOWN ON THOSE QUARTERS OF WHAT YOU SENT  
18 IN TO THE EMPLOYMENT SECURITY COMMISSION?

19 A THAT'S CORRECT.

20 Q AND, MR. WEST TOLD YOU WHETHER TO GIVE SOMEBODY A W-2  
21 FORM OR A 1099, IS THAT CORRECT?

22 A WELL, HE MADE THE DETERMINATION EACH MONTH AS TO  
23 WHETHER THEY WERE AN EMPLOYEE OR A CONTRACTOR. WE  
24 ISSUED THE CORRECT FORMS BASED ON THAT INFORMATION.

25 Q AND, AS A MATTER OF FACT, THE SUMMARY YOU GAVE YOU

1 GAVE FOR 2007, SHOWS THAT YOU LISTED MR. COLLINS PART  
2 OF THE TIME AS AN EMPLOYEE AND PART OF THE TIME AS A  
3 CONTRACT 1099 EMPLOYEE, CORRECT?

4 A THAT'S CORRECT.

5 MS. MCKENZIE:

6 THAT'S ALL I HAVE.

7 COMMISSIONER HUFFSTETLER:

8 ANYTHING ELSE FOR THIS WITNESS?

9 MR. KILLEN:

10 NO, SIR

11 MR. BYRD:

12 NO, YOUR HONOR.

13 MS. GEORGE:

14 NO, SIR.

15 COMMISSIONER HUFFSTETLER:

16 IS THERE ANYTHING ELSE FOR THIS HEARING?

17 MS. MCKENZIE:

18 NO, SIR.

19 MR. BYRD:

20 NO, SIR.

21 MR. KILLEN:

22 NO, SIR.

23 MS. GEORGE:

24 NO, SIR.

25 COMMISSIONER HUFFSTETLER:



1 IF NOT, THEN THAT CONCLUDES THIS MATTER.

2 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING  
3 WAS CONCLUDED AT THE HOUR OF 11:52 AM.)

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CERTIFICATE OF NOTARY PUBLIC  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0719222

EMPLOYEE/CLAIMANT: GREGORY A. COLLINS

EMPLOYER: WEST EXPEDITED & DELIVERY SERVICE, SEKO  
CHARLOTTE, SEKO WORLDWIDE

INSURER: NATIONWIDE MUTUAL INSURANCE COMPANY, FEDERAL  
INSURANCE COMPANY

I, KATHRYN B BOSTROM, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 76 PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF GREGORY COLLINS, TAKEN ON THE 12TH DAY OF MAY, 2010

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 27TH DAY OF MAY, 2010.

*Kathryn B Bostrom*

KATHRYN B BOSTROM  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 8-5-2012

\* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

## SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0719222

GREGORY A. COLLINS )

CLAIMANT, )

VS. )

WEST EXPEDITED AND )  
DELIVERY SERVICE )  
EMPLOYER, )

AND )

FEDERAL INSURANCE CO )  
CHUBB GROUP OF INS )  
SC UEF )

CARRIER. )

FULL COMMISSION HEARING

OF

GREGORY A. COLLINS

VS

WEST EXPEDITED AND DELIVERY SERVICE

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Gregory A. Collins versus West Expedited and Delivery Service, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:00 P.M., Tuesday, October 26, 2010, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

PALMETTO COURT REPORTING  
321 Mac Circle Lexington, SC 29073  
(803) 358-0515  
www.PalmettoCourtReporting.com

Appearances

## FOR THE CLAIMANT:

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 Columbia, SC 29211-2519

Zachary McIver Smith, Esquire  
 Willson Jones Carter & Baxley  
 872 South Pleasantburg Drive  
 Greenville, SC 29607

Timothy B. Killen, Esquire  
 SC Second Injury Fund and  
 Workers' Compensation Uninsured Employers' Fund  
 100 Executive Center Drive, Suite 101  
 Columbia, SC 29210

## COMMISSIONERS PRESENT:

Susan S. Barden, Chair  
 Avery B. Wilkerson  
 Derrick Williams

\*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

## WITNESSES

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| Reply for the Second Appellant by Ms. George     | 25:15 |
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STIPULATIONS

1  
2 Court Reporter: Today is Tuesday, October 26th --  
3 are you ready?

4 Commissioner Williams: And another party's not  
5 here.

6 Commissioner Barden: You know me.

7 Commissioner Williams: Yes. The other party is  
8 not here.

9 Commissioner Barden: Yes, I know. I wrote it down  
10 in the record here.

11 Court Reporter: Are you ready?

12 Commissioner Barden: Yes. You do know that the  
13 Bryan Martin is not here --

14 Commissioner Wilkerson: No.

15 Commissioner Barden: -- not appearing today.

16 Commissioner Wilkerson: Right. Yes.

17 Court Reporter: This is South Carolina Workers'  
18 Compensation Case Number 0719222. This is the  
19 case of Gregory A. Collins, Claimant, versus West  
20 Expedited and Delivery Services, Employer, and  
21 Federal Insurance Company and Chubb Group of  
22 Insurance Company, maybe Seko worldwide and the  
23 Uninsured Employer's Fund, also. Am I correct on  
24 all that?

25 Ms. George: And also Seko Charlotte, LLC and

1 Nationwide Insurance Company.

2 Court Reporter: Thank you. This is a Cross  
3 Appeal. The First Appellant is the Defendant  
4 represented by A. Mundi George. The Second  
5 Appellant is the Claimant represented by Linda B.  
6 McKenzie. The Respondents are Mr. Killen for the  
7 UEF and Mr. Zack Smith for SeKo worldwide. And  
8 each of the Appellants get eight (8) minutes for  
9 oral arguments and three (3) minutes in reply, and  
10 the Respondents five (5) minutes each. You are  
11 requested to argue the grounds of exception and  
12 stay within the record. The Single Hearing  
13 Commissioner was Commissioner Huffstetler.

14 Commissioner Barden: Okay. A couple of things  
15 before we get started is that the dependency issue  
16 is only being appealed by the Claimant. And I  
17 understand that the other parties who are present  
18 today have no objection to the -- as far as the  
19 issue of dependency, they take no position; is  
20 that correct? And I'm seeing a universal nod --  
21 Mr. Killen: That's correct.

22 Commissioner Barden: -- nodding of the heads. I  
23 also want to state for the record that Bryan  
24 Martin and Kenneth Sutherland, who represented  
25 West Expedited at the hearing before Commissioner

1 Huffstetler, are not appearing today; so, West is  
2 choosing not to participate in this appeal; is  
3 that correct from under -- everybody's  
4 understanding?

5 Mr. Killen: Correct, Commissioner.

6 Commissioner Barden: -- is aware of the appeal, I  
7 guess is what I'm asking?

8 Mr. Killen: Commissioner, I -- I had a telephone  
9 conversation with Mr. Martin yesterday. He  
10 informed me that he would not be attending this  
11 hearing today.

12 Commissioner Barden: Thank you so much. And then  
13 I understand as far as the GAL, which was  
14 appointed previously for Destiny -- children --  
15 minor children, Destiny and Joshua, that -- and  
16 it's actually the -- the widow of Mr. Collins, she  
17 is not appearing today; is that correct?

18 Ms. McKenzie: Right. She's not appearing. I'm  
19 representing all of them.

20 Commissioner Barden: Okay. All right. We are  
21 ready to go and we will start with you, Ms.  
22 McKenzie.

23 ARGUMENT FOR THE FIRST APPELLANT

24 By Ms. McKenzie:

25 Thank you. May it please the Commission. I do



1 have the honor of representing Ms. Crystal Collins, and  
2 Joshua and Destiny in this claim for Workers'  
3 Compensation benefits. We have appealed the issue of  
4 dependency. This case was originally scheduled to be  
5 heard at a hearing December 18th, 2010, before  
6 Commissioner Barden. At that hearing on page --

7 Commissioner Barden: In 2009?

8 Ms. McKenzie: -- I'm sorry, 2009.

9 Commissioner Barden: Okay.

10 Ms. McKenzie: It says '10 on here but we haven't  
11 gotten there yet have we? I'm not that clairvoyant.  
12 2009. On page 7 of the transcript from that hearing I  
13 made it known to the court that we were contending that  
14 the widow and both of the minor children were dependent  
15 upon the decedent at the time of his death. The state  
16 did an investigation with regard to dependency, and it  
17 is APA Number 1 of the State's APA, page 5. The  
18 Investigator talked to Joe Huffland, Senior, who was  
19 the best friend of the decedent. And Joe Huffland said  
20 at the time of his death Crystal Collins; the wife, his  
21 son; Joshua C [REDACTED], and his step-daughter, Destiny  
22 L [REDACTED], were dependent upon the decedent. The  
23 decedent's mother, who is not related to Destiny  
24 L [REDACTED], gave a statement that at the time of her  
25 husband -- her son's death, his wife, his son, and his

1 step-daughter, were totally dependent upon him for  
2 support.

3 Commissioner Barden: And what I understand is  
4 there was a court order requiring Destiny --  
5 support for Destiny but there was no evidence that  
6 that support was ever paid; is that correct?

7 Ms. McKenzie: That is correct. And that is the  
8 First Hearing, page 7 and then testimony of the mother,  
9 which is page 11.

10 Commissioner Barden: And the mother is supportive  
11 of Destiny receiving this money instead of her  
12 receiving half. She's willing --

13 Ms. McKenzie: She's -- she's supportive of Destiny  
14 receiving this money; yes, she is. No one has ever  
15 contested that Destiny was not entitled to this money.  
16 And at the Hearing when I questioned the mother she  
17 said that Destiny's father had never paid support and  
18 that she was dependent upon Greg; that was how they  
19 were living at the time of his death. He -- death --  
20 he had always treated her as his daughter and he had  
21 supported her and there is absolutely no evidence that  
22 she wasn't dependent. And I'd submit merely the fact  
23 that there was a court order in the past ordering  
24 somebody to pay and they never paid; the mother said  
25 that he never supported her. Just the fact there is a

1 court order does not make her not dependent upon her  
2 stepfather. So, I submit to you all the evidence shows  
3 that she was dependent. And that that order should be  
4 amended with that portion changed making Destiny also a  
5 dependent to share benefits under the Act. Thank you.

6 Commissioner Barden: All right. Ms. George.

7 Ms. George: Thank you.

8 ARGUMENT FOR THE SECOND APPELLANT

9 By Ms. George:

10 May it please the Commission. Mundi George  
11 representing Seko Charlotte and Nationwide Insurance  
12 Company. If only my argument would be quite as simple  
13 as Ms. McKenzie's was on the dependency issues.  
14 Essentially, we're narrowing down a three (3) year  
15 ordeal into about eight (8) minutes, but let me lay it  
16 out as simply as I can. The Claimant was an employee  
17 of West Expedited and Delivery. Seko Charlotte  
18 dispatched the job to West Expedited and Delivery. The  
19 job was to deliver parts from a company in Spartanburg  
20 to a company in Wisconsin. Payment for that job was a  
21 dollar and twenty cents (\$1.20) per mile, one (1) way.  
22 It's called payment per loaded mile; the time that the  
23 load is in the truck. Mr. West, the owner of West  
24 Expedited, assigned that job to his employee, the  
25 Claimant, Gregory Collins. Gregory Collins picked up

1 the parts, he drove them to Wisconsin, he delivered the  
2 parts. On the way back he was killed in Kentucky on  
3 the road in a motor vehicle accident. Everybody will  
4 agree to those facts in this case. The issues that are  
5 here before you are the dependency appealed by Ms.  
6 McKenzie, and then to determine the party responsible  
7 for the death benefits. Procedurally, there was a  
8 partial hearing, no decision was made on that issue.  
9 Two (2) parties appealed the -- the Hearing by  
10 Commissioner Huffstetler, one (1), on dependency and  
11 then me on the responsible party. Our essential  
12 argument is that SeKo Charlotte, the company that  
13 dispatched the job to West, who gave the job to the  
14 claimant, was a statutory employer but only from the  
15 time --

16 Commissioner Barden: Wait a minute.

17 Ms. George: -- that the delivery was picked up  
18 and delivered and done.

19 Commissioner Barden: So, your theory is once the  
20 delivery was made, he was coming back, it was more  
21 going and coming than -- or maybe not going and  
22 coming but he was not working for -- he was not  
23 furthering the business of SeKo Charlotte?

24 Ms. George: Correct. And if --- if you -- we're  
25 going to assume you've had all these briefs. There are

1 a hundred (100) different ways under workers' Comp law  
2 to evaluate, analyze, an employment relationship, okay?  
3 I think the facts are clear that the Claimant was an  
4 employee of West all the time. The whole time he drove  
5 he was an actual employee of his actual employer. But  
6 that is not the same relationship as a statutory  
7 employer relationship. 42-1-400 is the statutory  
8 employer relationship, case law dictates what that is;  
9 the integral and important part of the business, all  
10 those factors. We admit it for one (1) part of that  
11 job, the pick up to the drop off.

12 Commissioner Wilkerson: Could he have brought  
13 something back for someone else?

14 Ms. George: He could have brought someone back for  
15 anyone else, anywhere in the country, anywhere in the  
16 world. He could have brought something back for us,  
17 but we would have had to contract for that separately  
18 and pay it separately.

19 Commissioner Barden: You all paid -- you all paid  
20 for one (1) way?

21 Ms. George: We paid for one (1) way. We -- our  
22 argument is that our statutory employment relationship  
23 ended when that delivery was successfully made in  
24 Wisconsin. And then after that he returned under the  
25 exclusive control of his actual employer, West. There

1 are two (2) parts in the Hearing transcripts, which  
2 I'll mention for the record, two (2) different  
3 witnesses. One (1) of them is Mr. West, the owner of  
4 the company, on pages 11, 18, and 20. And his  
5 testimony is that Seko gave the job to him. The  
6 contract was for a delivery. The payment was for one  
7 (1) way. His opinion was that he had no -- his company  
8 had no relationship with Seko Charlotte, whatsoever,  
9 once that delivery was made. They had no control.  
10 They had no instructions. They didn't give him any  
11 information or direction on when his employee should  
12 come back, how he should come back, the route he should  
13 take, and there was no payment made. Ron Burks, who  
14 testified on behalf of Seko Charlotte, also said Seko  
15 told -- Seko Charlotte told West where to pick up, when  
16 the delivery had to go, where it had to be, when it had  
17 to get there but after that they weren't paying  
18 anybody, they had no time frame on anybody, they  
19 couldn't control his route, his speed, whether it took  
20 him four (4) hours, four (4) days or four (4) months to  
21 get back. He could have gone on vacation. He could  
22 have done another job. He could have done anything.  
23 If he never came back to South Carolina that would have  
24 been okay as exemplified by the fact, and I -- I feel  
25 bad saying it, but Mr. Collins didn't come back. Seko

1 Charlotte's business went on as usual. They didn't  
2 even know for several years that he had passed away.  
3 Seko Charlotte had no connection to Mr. Collins'  
4 activities after that delivery was made --

5 Commissioner Barden: Do you believe --

6 Ms. George: -- at all.

7 Commissioner Barden: -- the UEF should pick up  
8 the tab for this?

9 Ms. George: The unappeased findings of the single  
10 Commissioner's order are that West was subject to the  
11 Act. That West was uninsured at the time of the  
12 accident. The only responsible party could be the UEF  
13 in that circumstance. Still the actual -- the Claimant  
14 was still the actual employer of Mr. West but no longer  
15 in a statutory relationship with us. You asked about  
16 the Going and Coming Rule. You know, in my scenario  
17 that our job existed from pick up to delivery, he was  
18 coming home from work after that delivery. So, I mean  
19 if you find that there was still an employment  
20 relationship, he's coming home, then --

21 Commissioner Wilkerson: What -- what would your  
22 position be -- was he an employee of anybody after  
23 he delivered the parts?

24 Ms. George: -- you -- you know, there -- there was  
25 no evidence presented, I guess simply because nobody

1 knew exactly when he left, exactly the speed he was  
2 going. But I think what was assumed by everyone was  
3 that he was -- he was coming home to South Carolina.  
4 So, our position on that would be that he would still  
5 be an employee of West Expedited and Delivery, his  
6 actual employer, at that time. But there was no  
7 evidence presented that he had, in fact, contracted for  
8 another job or that he was carrying another load. He  
9 could have been and maybe we don't know but there was  
10 no evidence presented on that issue.

11 Commissioner Williams: But you would agree, I  
12 mean, he had to come back home?

13 Ms. George: Well --

14 Commissioner Williams: Whether -- whether or not  
15 he was --

16 Ms. George: -- I -- I mean, our --

17 Commissioner Barden: Obviously he didn't have to  
18 come back home.

19 Commissioner Wilkerson: Yes. Right.

20 Ms. George: -- our point really -- you know,  
21 sometimes you get into arguing absurdities in a case  
22 like this. And I -- I believe, you know, some of the  
23 questioning from the UEF is what if every driver you  
24 ever used drove away and never came back. Well, I  
25 mean, if you have to get to an absurdity to -- to reach



1 a conclusion that maybe you just need to come back to  
2 the -- to the basic, which is Seko Charlotte didn't  
3 care if Gregory Collins came back or not or how he came  
4 back or what he did on the way back. Seko Charlotte  
5 had other companies they used for deliveries besides  
6 West and Mr. West had other drivers besides Mr.  
7 Collins. So, their business wasn't going to come to a  
8 halt regardless. The important part of Seko's business  
9 was getting the delivery to the customer. What  
10 happened to Mr. West's driver I don't think is really  
11 irrelevant.

12 Commissioner Barden: Do you think that job was  
13 over once he made the delivery -- dropped it off?

14 Ms. George: That's the only thing that Seko  
15 contracted -- Seko Charlotte contracted with West to do  
16 was to make a delivery. You know, the -- the -- I  
17 think the UEF's briefs submitted to the Single  
18 Commissioner, pages 22 through 33, contained the  
19 documents of the jobs that were requested and said that  
20 the jobs were paid and it's all one (1) way mileage.  
21 You know, the Single Commissioner found that he was  
22 still a statutory employee because he didn't deviate.  
23 Well, their employment relationship is over; you can't  
24 deviate. You have to be within the course and scope of  
25 your employment first to determine then if you

1 deviated. So, the fact that he didn't deviate is only  
2 relevant if he was still employed but he wasn't. There  
3 was -- we had no general interest in anything that he  
4 did after that point. So, he remained under the  
5 control of Mr. West. And, again, the unappealed  
6 findings are that West had four (4) or more employees,  
7 was subject to the Act, didn't have insurance. It's  
8 our position that the Single Commissioner's ruling that  
9 Seko Charlotte was a statutory employer should be  
10 reversed and that the Uninsured Employer's Fund should  
11 be ordered to pay the death benefit.

12 Commissioner Barden: well, you did it in eight (8)  
13 minutes. All right, Mr. Killen.

14 ARGUMENT FROM THE RESPONDENT

15 By Mr. Killen:

16 May it please the Commission. I am Tim Killen  
17 appearing in behalf of the Uninsured Employer's Fund.  
18 And Ms. George spoke a lot about control and the issue  
19 of control. Unfortunately, the issue of control is not  
20 relevant to the statutory employment analysis. It's  
21 relevant to a loaned employee or a direct employment  
22 relationship but not a statutory employment analysis.  
23 That's -- that -- that analysis focuses on the work,  
24 itself. And this work to be performed, this delivery  
25 out to Wisconsin, was Seko Charlotte's work; it was

1           their job. If -- if they had a direct employee that  
2           they sent out to Wisconsin and he got in a -- in an  
3           accident on the way back there'd be no doubt that they  
4           would be responsible in such a situation. And if this  
5           were a -- a lent employee case there might be some  
6           credence to that but -- but that's not the case.

7           Commissioner Barden: But in that case that you  
8           described if he was a direct employee, one (1), he  
9           would either be in the vehicle of his direct  
10          employer and two (2), doesn't the -- the Statutory  
11          Employer Statute say that while you're performing  
12          the work? And in Ms. George's argument he was no  
13          longer performing work. So -- sorry for  
14          interrupting but can you --

15          Mr. Killen: That's all right. And -- and I'll be  
16          happy to get to that, Commissioner. It -- it's -- in  
17          this case, as she discussed, there's a clear and --

18          Commissioner Barden: -- you would -- you would  
19          concede that her client's job was over as soon as  
20          the Claimant dropped off -- or the decedent  
21          rather, dropped off that load?

22          Mr. Killen: -- no, Commissioner, I --

23          Commissioner Barden: You would not?

24          Mr. Killen: -- I wouldn't concede that. I -- I  
25          would say that the return trip is a necessarily

1 incidental to the delivery. I mean, it -- it is part  
2 of the job. It's part and parcel of the job.

3 Commissioner Barden: Okay.

4 Mr. Killen: If -- if you -- and -- excuse me.  
5 What -- what our Statutory Employment Doctrine does, it  
6 imposes absolutely liable -- absolute liability upon  
7 the general contractor even though it was not the  
8 immediate, direct, or actual employer. According to  
9 the Supreme Court the manifest purpose of the Statutory  
10 Employment Doctrine is to afford the benefits of  
11 compensation to those who are exposed to the risk --  
12 the risks of an employer's business. And -- and place  
13 the burden of paying compensation on the organizer of  
14 the enterprise. And -- and the court has also said to  
15 be an employee and entitle -- entitled to -- excuse me.  
16 That an employee to be entitled to compensation need  
17 not be in the actual performance of the duties for  
18 which he was expressly employed in order for his injury  
19 or death to be in the course of employment as long as  
20 the employee is engaged in a pursuit or undertaking,  
21 which in some logical matter pertains to his  
22 employment. Clearly, I -- I think the return trip  
23 pertains to his employment. And also another Supreme  
24 Court case says it's well settled that traveling  
25 employees are generally within their course of

1 employment from the time they leave home on a business  
2 trip until the time they return for the self-evident  
3 reasoning that traveling, itself, is a large part of  
4 the job. There's no allegation that this Claimant did  
5 anything but go to Wisconsin to make -- drop off these  
6 two (2) parts and then came back. There's no  
7 allegation that anybody else employed him on the return  
8 trip or that he deviated. And -- and for that reason,  
9 he's a traveling employee and he was in the course and  
10 scope of his employment at the time he suffered his  
11 fatal injuries. Furthermore, the -- the certainty that  
12 the Claimant would need to return to his base of  
13 operations coupled with the likelihood that he would  
14 face perils along the roadway after his point of  
15 delivery is directly connected to the Statutory  
16 Employment. And --

17 Commissioner Barden: But you -- you would concede  
18 that they weren't paying for the return trip back?

19 Mr. Killen: -- I would concede that that is the  
20 method by which the two (2) employers figured out how  
21 much the trip would cost.

22 Commissioner Barden: But you're saying his return  
23 is an incidental part of --

24 Mr. Killen: Yes, ma'am.

25 Commissioner Barden: -- that job?

1 Mr. Killen: It certainly is.

2 Commissioner Barden: Even though he might not have  
3 been paid that way --

4 Mr. Killen: Technically --

5 Commissioner Barden: -- it was structured that  
6 way.

7 Mr. Killen: -- that's not what -- yes. Yes,  
8 Commissioner. Just because the two (2) employers got  
9 together and figured out how much they would charge,  
10 and they did it on -- based on one (1) way mileage, it  
11 -- it does not affect the duties that the employer has  
12 to his employees or the statutory employer has to the  
13 statutory employees.

14 Commissioner Wilkerson: Let me ask you a question.  
15 If -- if he had deviated and gone out of and come  
16 back but three (3) miles before he got back to his  
17 destination he was back on and he was killed there  
18 would you have the same position?

19 Mr. Killen: I don't know, Commissioner. I'd --  
20 I'd have to --

21 Commissioner Barden: That sounds like a law school  
22 question.

23 Mr. Killen: -- that -- it does.

24 Commissioner Wilkerson: And once they get back on  
25 it then I think -- I -- I think they're back on

1 the home trail; that's why I asked was there a  
2 different position. That's a --

3 Mr. Killen: I'd have to do some research on that  
4 one.

5 Commissioner Barden: Okay. Thank you.

6 Commissioner Wilkerson: -- that's -- that's an old  
7 Claimant question.

8 Commissioner Barden: All right.

9 Commissioner Wilkerson: My claims has to kick in  
10 every now and then.

11 Commissioner Barden: Mr. Smith.

12 ARGUMENT FOR THE RESPONDENT

13 By Mr. Smith:

14 May it please the Commission. Zack Smith on  
15 behalf of Seko worldwide and the Federal Insurance  
16 Company.

17 Commissioner Barden: And they are franchise --  
18 franchised through you --

19 Mr. Smith: Correct.

20 Commissioner Barden: -- is that right? Okay.

21 Mr. Smith: It's our position that we were  
22 erroneously added as a party to this case.

23 Commissioner Barden: You had no idea?

24 Mr. Smith: At the December 2009 Hearing it was  
25 alleged that a company by the name of Seko could be a

1 statutory employer. And --

2 Commissioner Barden: Well, I can tell you all  
3 wouldn't be sitting here on appeal on my failure  
4 to add, to me that's a perfunctory thing at the  
5 Commission; so, I'll defend myself on that. Go  
6 ahead.

7 Commissioner Williams: Does -- does anybody  
8 challenge whether or not they -- I mean --

9 Commissioner Wilkerson: I wouldn't think so.

10 Commissioner Williams: -- over -- over the course  
11 of -- of the case, obviously, we have to figure  
12 out whether an employer or a carrier should be in  
13 here. Does anyone even challenge whether or not  
14 SeKo worldwide should even be in this case?

15 Commissioner Wilkerson: He might. He would.

16 Commissioner Barden: He --

17 Mr. Killen: No, Commissioner. I -- I think that  
18 it either falls under UEF or SeKo Charlotte.

19 Commissioner Barden: -- SeKo Charlotte. But we  
20 didn't know that at the time we were having this  
21 hearing.

22 Commissioner Williams: I was just trying to catch  
23 your arguments because you have a good brief in  
24 here but -- but --

25 Mr. Smith: We'll just rely on the brief.



1 Commissioner Wilkerson: And, Tim, let me say.

2 Thank you for being up-front and honest. Most

3 Attorneys would have given me some answer --

4 Mr. Smith: Yes.

5 Commissioner Wilkerson: -- as opposed to saying I  
6 don't know. So, thank you for doing that.

7 Commissioner Barden: Okay. Now, you all each have  
8 a couple of minutes in reply if you would like.

9 Ms. McKenzie, do you feel the need to --

10 Ms. McKenzie: I want to just say something.

11 Commissioner Barden: -- sure. Go ahead.

12 REPLY FROM THE FIRST APPELLANT

13 By Ms McKenzie:

14 In response to this I would, of course, take the  
15 money from either one of them.

16 Commissioner Barden: Right.

17 Ms. McKenzie: But, with regard to your question of  
18 the money going to -- I just feel compelled to tell you  
19 what I think.

20 Commissioner Wilkerson: Good.

21 Ms. McKenzie: I think that if -- once you deviate  
22 then you may be out of the course of your employment,  
23 but once you get back -- so, if you died three (3)  
24 miles from home you're back in your employment. And --  
25 but we got all tied --

1 Commissioner Wilkerson: Eight (8) minutes was all  
2 you had.

3 Ms. McKenzie: -- I know. We got all tied up in  
4 this over the fact that you're just paid one (1) way.  
5 But that doesn't mean you just drive one (1) way in  
6 these cases. The Claimant was just paid mileage for  
7 one (1) way. He was only -- he was paid by mileage  
8 because that's how the industry does it. His employer  
9 was paid a dollar twenty (\$1.20) a mile. He was paid  
10 some cents a mile but he was only paid for the mileage  
11 one (1) way. Now, he didn't get in his truck and drive  
12 it and report his mileage, all of that's a fallacy;  
13 it's like an agreed upon amount. This part needs to be  
14 delivered to this place and we're going to say it's --  
15 I'm making up this number five hundred (500) miles  
16 and we're going to pay you one-twenty (\$1.20) a mile;  
17 so, we're going to pay you this much dollars for  
18 delivering it but they only pay on one (1) way. And  
19 they all testified that's the industry -- that's just  
20 the way they figure how they're paid. So, then my  
21 Claimant was just paid from leaving to arriving and  
22 that was a big argument at the hearing before  
23 Commissioner Huffstetler. He was paid one (1) way too  
24 but there's no question he has to come back home. So,  
25 I contend that that's kind of a red herring. It

1 doesn't matter whether you're on the trip there or on  
2 the trip back. If you're an employer or a statutory  
3 employee you should be covered. It's a part of their  
4 business. It's a part of their business and they know  
5 everybody has to come back home. Now, if he had taken  
6 --

7 Commissioner Barden: But you are covered one way  
8 or the other.

9 Ms. McKenzie: -- you're covered, right. And so,  
10 that's -- I just wanted to respond to the question.

11 Commissioner Barden: Okay.

12 Ms. McKenzie: Thank you.

13 Commissioner Barden: All right. Ms. George.

14 REPLY FROM THE SECOND APPELLANT

15 By Ms. George:

16 Commissioner Williams: Mundi, let me ask this. If  
17 Rusty or Hugh sent you down to Myrtle Beach to  
18 your Myrtle Beach office to drop --

19 Commissioner Barden: There's another lawsuit in  
20 the making.

21 Commissioner Williams: -- drop a document off --  
22 to drop documents off --

23 Ms. George: Will you use hypothetical names in  
24 this question?

25 Commissioner Williams: -- and -- and your only

1 duty was to take these documents there and drop  
2 them off at your Myrtle Beach office and you had  
3 -- you could do whatever else. You go to the  
4 outlets or take your family with you, spend --  
5 spend the weekend there. And you were coming back  
6 though from this trip and something happened to  
7 you; do you think you would be covered?

8 Ms. George: Probably. And I -- and I know -- I  
9 know we've talked about this at different conferences  
10 and things on how Commissioners feel about it but it's  
11 the Idaho question that Mr. --

12 Mr. Wilkerson: It is.

13 Ms. George: -- that Commissioner Wilkerson asked.  
14 Commissioner Williams: Okay.

15 Ms. George: I mean, at some point if there is  
16 evidence to show that you are back where you are  
17 supposed to be and there's not a four (4) month window,  
18 as I said earlier, in there. I mean, within a  
19 reasonable time frame, probably. But I'm also a  
20 partner/employee --

21 Commissioner Williams: Yes.

22 Ms. George: -- of Hugh and Rusty --

23 Commissioner Williams: That's probably not a good  
24 --

25 Ms. George: -- and that's the difference.

1 Commissioner Williams: -- a good example.

2 Ms. George: No, I like that example; let's stick  
3 with that example.

4 Commissioner Wilkerson: But for -- but for your  
5 deviation you wouldn't have been hit.

6 Ms. George: Perhaps. Yes. And that's what I'd be  
7 arguing if I had to defend the case.

8 Commissioner Wilkerson: Not fair. I know.

9 Ms. George: But, you know, Mr. Killen's position  
10 for the UEF is that I can't be up here arguing control  
11 because control doesn't apply to statutory employment.  
12 But his response to you was look at all those death  
13 cases where employees are whether they're -- where  
14 they're reasonably supposed to be when they're -- when  
15 they're killed; you assume it's related to employment.  
16 And what about the traveling employees? All those  
17 cases are about actual employment relationships, not  
18 statutory employment relationships. And as much as the  
19 statutory employment relationship is -- we almost try  
20 to bring it down to the actual employment relationship;  
21 it's still different. It's analyzed differently. The  
22 facts are different. The factors for an actual  
23 employee are those control factors about are you paid,  
24 are they providing transportation, can they hire and  
25 fire you, what control do they have over you. The

1 statutory employment relationship factors are  
2 different. They're the important and integral part of  
3 the trader business. The important part of our  
4 business was getting the parts there; when it was over  
5 it wasn't our business anymore. Our actual employees,  
6 a little bit different. They did -- we had different  
7 amounts of control, different relationships with our  
8 actual employees, but as far as Greg Collins was  
9 concerned --

10 Commissioner Barden: I don't know --

11 Ms. George: -- he did what he asked him to do and  
12 it was done. Did I actually address your Idaho  
13 question, Commissioner?

14 Commissioner Wilkerson: Yes.

15 Ms. George: Okay. Thank you.

16 Commissioner Wilkerson: I know. I mean, I agree  
17 with you.

18 Commissioner Barden: -- okay. Thank you all.

19 Ms. George: Thank you.

20 Commissioner Barden: This concludes this  
21 proceeding.

22 (THERE BEING NO FURTHER ORAL ARGUMENTS, THE FULL COMMISSION  
23 HEARING CONCLUDED AT 2:26 P. M.)  
24  
25

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Full Commission Hearing of Gregory A. Collins, vs. West Expedited and Delivery Service;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

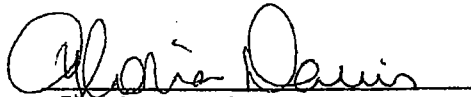
That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 28 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 18th Day of December, 2010.



Gloria Davis  
Notary Public for South Carolina  
My Commission Expires 1/22/12

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SCWCC File No. 0719222

Gregory A. Collins (Deceased), .....Claimant/Respondent,

v.

West Expedited & Delivery Service, Inc., Seko Charlotte, Inc. and Nationwide Mutual Insurance Co., Seko Worldwide, LLC and Federal Ins. Co., and South Carolina Workers' Compensation Uninsured Employers' Fund..... Defendants,

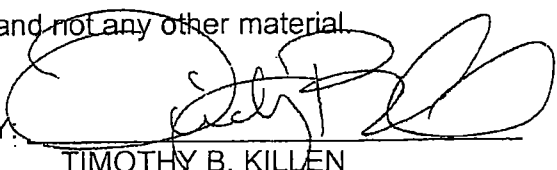
Of Whom,  
Seko Charlotte, Inc. and Nationwide Mutual Insurance Co. are ..... Respondents,

and

South Carolina Workers' Compensation Uninsured Employers' Fund is .....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains material proposed to be included by any of the parties and not any other material.

BY: 

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May 16, 2011  
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SCWCC File No. 0719222

Gregory A. Collins (Deceased), Employee, Claimant, ..... Respondent

v.

Seko Charlotte and Nationwide Mutual Insurance Co., ..... Respondents

v.

West Expedited & Delivery Service, Inc., ..... Defendant

v.

Seko Worldwide and Federal Ins. Co., ..... Defendants

v.

Uninsured Employers' Fund, ..... Appellant

SUPPLEMENTAL RECORD ON APPEAL

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1 A YES.

2 Q AND, MR. COLLINS USED YOUR TRUCK OR VAN?

3 A YES.

4 Q NOW, WAS MR. COLLINS EMPLOYED BY YOU ON SEPTEMBER 8,

5 2007?

6 A YES.

7 Q CAN YOU TELL ME WHAT HE WAS DOING?

8 A HE HAD MADE A TRIP TO WISCONSIN AND WAS ON HIS WAY

9 BACK.

10 Q WHAT WAS HE DELIVERING TO WISCONSIN?

11 A BEARINGS.

12 Q DID YOU CONTRACT WITH ANYBODY FOR THAT DELIVERY?

13 A NO, THEY JUST CALLED AND ASKED ME TO PICK UP.

14 Q WHO CALLED AND ASKED YOU TO MAKE A PICK UP?

15 A SEKO CORPORATION.

16 Q DO YOU KNOW WHETHER THAT'S SEKO WORLDWIDE OR SEKO

17 CHARLOTTE?

18 A I GUESS SEKO CHARLOTTE.

19 Q AND, WHO WAS YOUR CONTACT AT SEKO CHARLOTTE?

20 A I DON'T REMEMBER.

21 Q WAS IT A GENTLEMAN OR A LADY?

22 A I DON'T REMEMBER THAT.

23 Q AND, WHEN THEY CALLED AND ASKED YOU TO MAKE A PICK-UP

24 AND A DELIVERY FOR THEM, WHAT KIND OF SPECIFICS DID

25 THEY GIVE YOU?

) Angela M. Barrett

Page 2

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17 INDEX

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25

EXHIBITS

1

2

Defendants' Exhibit No. 1, "EXPRESS TRUCK DISPATCH,"  
dated 09/04, 1 page.

10

3

4

Defendants' Exhibit No. 2, SEKO House Waybill, dated  
08/31/07; 1 page.

25

5

Defendants' Exhibit No. 3, "EXPRESS TRUCK DISPATCH,"  
dated 08/27; 1 page.

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Page 4

1 STIPULATIONS

2 It is stipulated by and between counsel for  
3 the respective parties that all objections are  
4 reserved until the time of trial, except as to  
5 the form of the questions.

6 This deposition is being taken pursuant to the  
7 South Carolina Workers' Compensation Act and  
8 all applicable rules.

9 - - - -

10 The reading and signing of this deposition is  
11 waived by the deponent and counsel for the  
12 respective parties.

13 Whereupon,

14 Morris West, being duly sworn and cautioned to  
15 speak the truth, the whole truth, and nothing  
16 but the truth, testified as follows:

17 EXAMINATION

18 BY MS. GEORGE:

19 Q Mr. West, my name is Mundi George. I'm an attorney  
20 that's representing SEKO Worldwide --

21 A Uh-huh.

22 Q -- and their workers' comp insurance carrier. I  
23 know --

24 A Right.

25 Q -- that you've had your deposition taken before in

1 this case --

2 A Uh-huh.

3 Q -- and I know that you've testified partially at a  
4 hearing in this case. What we're going to do today  
5 is very similar to what you've been through before;  
6 only, we're going to try very hard to be respectful  
7 for you and not make you answer the exact same  
8 questions --

9 A All right.

10 Q -- over and over again. But the rules of the  
11 deposition are the same as they were the first  
12 time, which is: If you don't understand my  
13 question, please don't answer it. You let me know  
14 if it was confusing to you in any way, and I'll  
15 repeat it or rephrase it to make sure it's a clear  
16 question to you. If you don't know the answer,  
17 please tell me that you don't know. If you're  
18 guessing or estimating, please let me know that as  
19 well. Otherwise, my assumption is that you  
20 understood my question and that you're giving me  
21 what you believe, to the best of your ability, to  
22 be a truthful response.

23 A I am.

24 Q If you want to take a break at any time and get a  
25 drink of water or just have a rest, you let us know



Page 6

1 that. Otherwise, we promise to get you out of here  
2 as quickly as possible --

3 A Okay.

4 Q -- okay?

5 Mr. West, at your deposition that Ms. McKenzie  
6 took and at the hearing -- partial hearing before  
7 Commissioner Barden, you testified that in early  
8 two -- early September 2007 you had, at the very  
9 most, three employees in your company: you, your  
10 -- if all of these three, at --

11 A Okay.

12 Q -- the very most: you and your wife at the time  
13 and Mr. Collins.

14 A Yeah.

15 Q Is that still your testimony today? that at the  
16 most there were three.

17 A Yeah. Yes. Yes, ma'am.

18 Q Okay. Is your -- why --

19 A My wife --

20 Q Is your hesitation that you don't know if you were  
21 considered an employee?

22 A I didn't -- I didn't figure myself to be.

23 Q Okay.

24 A My wife was the same way. She did my dispatching  
25 and that sort of thing.

1 Q Okay.

2 A But at the time she was incapacitated.

3 Q Okay. She had some surgery?

4 A A heart attack, yeah.

5 Q And then --

6 A Uh-huh.

7 Q -- someone filled in for her --

8 A Right. Uh-huh.

9 Q -- doing the same thing she was doing; is that

10 correct?

11 A Yeah. Yeah. And --

12 Q Okay.

13 A -- just at times, you know.

14 Q Right.

15 A Not as a day-to-day thing.

16 Q So if your wife couldn't do her job, someone else

17 did it for her?

18 A Uh-huh.

19 Q Is that correct?

20 A Yeah.

21 Q Okay. The other people that worked for your

22 company -- your drivers --

23 A Yeah.

24 Q -- they were all independent owner-operators --

25 A Right.

Page 8

1 Q -- is that correct?

2 A That's right.

3 Q Okay. We're skipping on to the next issue. Your  
4 attorney, Mr. Martin, provided to me an "EXPRESS  
5 TRUCK DISPATCH," which I believe to be basically a  
6 record of deliveries. Is that what this is?

7 A Okay.

8 Q You need to put your glasses on?

9 A Yeah. If can find them.

10 MS. GEORGE: (To all counsel) I've provided  
11 everybody a --

12 A Thought I --

13 MS. GEORGE: -- copy --

14 A -- had them --

15 MS. GEORGE: -- of --

16 A -- here --

17 MS. GEORGE: -- this.

18 A -- just a minute ago.

19 Q That's okay. You take your time. We'll find you a  
20 pair if you can't find yours.

21 A Oh, I'm sorry. They was in my lap.

22 Q This document, is it a -- basically a record of  
23 when a trucking company calls you and offers a job  
24 to you?

25 A Uh-huh.

1 Q Is that what this is?

2 A Right.

3 Q Okay.

4 A That's the dates.

5 Q Okay. What -- what is the significance of this  
6 date: Tuesday 9/4? What does that mean?

7 A That was a -- that was the day that I started this  
8 sheet.

9 Q Okay.

10 A This down here, I -- okay. That would've been the  
11 4th, the next day would've been the 5th, so on  
12 down.

13 Q Okay. And then -- you -- you can keep that as your  
14 copy for right now, sir.

15 A Okay.

16 Q How did you come to the conclusion that -- how did  
17 you come to the conclusion that you should turn  
18 this over to your attorney or -- or to other  
19 parties as proof that SEKO did a job for you -- or  
20 gave a job to you?

21 A Gave a job to me?

22 Q Yes, sir. Did you have to go back and look at your  
23 records?

24 A No, I didn't. Because I knew SEKO give this one to  
25 me.

Page 10

1 Q Okay. And then, how did you reach the conclusion  
2 that SEKO was the company that offered the job to  
3 you that was the job where Mr. Collins died?

4 How --

5 A Okay.

6 Q -- did you know that?

7 A I've got right here: the customer, who did it, and  
8 the reference number they give me to bill them  
9 with.

10 Q Okay. So is the reference number the way that you  
11 communicate with the trucking companies about the  
12 specific job? You call it by reference number?

13 A When I bill them, I do, yeah.

14 Q Okay. And what -- what is the reference number  
15 that you believe the job --

16 A -- that he did?

17 Q Yes, sir.

18 A 373718.

19 Q Okay.

20 MS. GEORGE: (To the court reporter) We're  
21 going to make this "EXPRESS TRUCK DISPATCH"  
22 Defendant SEKO's Exhibit 1, please.

23 Defendants' Exhibit No. 1, "EXPRESS TRUCK  
24 DISPATCH," dated 09/04, 1 page.

25 Q Okay. Mr. West, I'm going to show you another

1 document that's from SEKO.

2 A Uh-huh.

3 Q And it has, if you'll see in the top right-hand  
4 corner, their House Waybill No. --

5 A Yeah.

6 Q -- 373718. Is that the same reference number  
7 that's on your express dispatch log?

8 A Yes. But now wait just a minute. Let's see if I  
9 can clear that up.

10 Q Okay.

11 A See if I've got a Seneca there. And I don't. This  
12 -- this house waybill --

13 Q Okay.

14 A -- is INA Bearing's bill.

15 Q Out of?

16 A Spartanburg.

17 Q Okay.

18 A That's their -- that's their -- sometimes they pay  
19 me by that number, and sometimes they don't.

20 Q Okay. Well, what I'm asking, though, is: On your  
21 log you have what you've told me is a SEKO

22 Reference No. 3 --

23 A Yeah.

24 Q -- 73718.

25 A Uh-huh.

Page 12

1 Q And that reference number is how you would bill  
2 them.

3 A Right. That's what -- that's exactly what I bill  
4 them on.

5 Q But their reference number does not match up to the  
6 delivery destination on your log. Do you know why?

7 A No. Because the date here's eight -- 8/31, and we  
8 did that nine -- 9/6.

9 Q Okay. So can you understand why we have some  
10 questions if what --

11 A Yes.

12 Q -- you're offering me is that Mr. Collins died  
13 doing SEKO Reference No. 373718 --

14 A Yes.

15 Q -- but their matching reference number doesn't  
16 match up?

17 I'm wondering if -- if possibly there's a -- a  
18 -- was there a different job involved or a --  
19 different company involved?

20 A I can't say -- I can't really tell you that right  
21 -- it could be that the -- this was my -- maybe  
22 ordered at this time from the Seneca plant to send  
23 up there.

24 Q But the job that you were asked to do -- that your  
25 company was asked to --

1 A Yeah.

2 Q -- do was from Spartanburg --

3 A Yeah.

4 Q -- to Wisconsin; is that --

5 A Right.

6 Q -- correct?

7 A Uh-huh.

8 Q Make --

9 A No.

10 Q -- sure you say --

11 A Wait --

12 Q -- "yes" or --

13 A -- a minute.

14 Q -- "no" for the record.

15 A All right. It would've been that way, because they

16 shipped that to these people. Okay. I don't know

17 why the number's different.

18 Q Okay. Well, would you agree then that there's some

19 question raised by this house waybill number

20 comparing to your dispatch log?

21 A Say that again.

22 Q Would you agree that there's some -- there's some

23 questions --

24 A Yeah.

25 Q -- raised --



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1 A There's --  
2 Q -- now?  
3 A -- a question --  
4 Q Okay.  
5 A -- question on that.  
6 Q Let me ask you this question: Did ever in -- in  
7 the course of your business, did a trucking company  
8 call and offer a delivery to a business similar to  
9 yours, who couldn't do it for whatever reason, and  
10 then they would call you and ask you to do it  
11 instead of it coming -- coming from the big  
12 trucking company directly?  
13 A That probably happens a good bit, and I don't even  
14 know it, you know.  
15 Q Okay. So it's -- it's -- it's possible then --  
16 A Yeah.  
17 Q -- that there's sometimes a middleman?  
18 A It -- yeah.  
19 Q Okay. Is it possible that there was a middleman  
20 involved --  
21 A I don't --  
22 Q -- in the delivery that Mr. Collins --  
23 A Oh.  
24 Q -- did?  
25 A No. No.

1 Q Okay. Why do you seem so certain about that?

2 A Because I know he was over there and called me when  
3 he picked up.

4 Q No. What I mean by that: Is it possible that the  
5 job that Mr. Collins did may have originated with  
6 SEKO, but that SEKO tried to give it to another  
7 delivery company who then called and offered it to  
8 you?

9 MR. KILLEN: Object to the form --

10 A It --

11 MR. KILLEN: -- of the question.

12 A -- could have. I -- I -- there's no way I'd know.

13 Q So it's possible?

14 A It's possible.

15 Q Okay. Mr. West, I think you testified at your  
16 deposition and also at the hearing that the  
17 trucking companies that offer jobs to your company  
18 pay you only based upon mileage one way; is that --

19 A That's right.

20 Q -- correct?

21 A That's right.

22 Q So after the delivery is made, the trip home --

23 A Unless --

24 Q -- is not paid for by the trucking company?

25 A No.

Page 16

1 Q Would that apply to the jobs that you did for SEKO,  
2 specifically?

3 A Yes.

4 Q Okay. SEKO paid you then, specifically, to make --  
5 pick up product, deliver it to --

6 A Right.

7 Q -- a destination, and then the job was done?

8 A That's right.

9 Q Then your relationship with them for that job was  
10 over --

11 A Yeah.

12 Q -- at that point? Make sure you say "yes" or "no"  
13 for the record.

14 A Yes. I'm --

15 Q Okay.

16 A -- sorry.

17 MS. GEORGE: I don't have any other questions.  
18 (To Ms. McKenzie) Here. This might need to  
19 be --

20 EXAMINATION

21 BY MR. KILLEN:

22 Q Mr. --

23 MS. GEORGE: -- here.

24 Q -- West --

25 A Yes, sir.

1 Q -- I'm Tim Killen from the Uninsured Employers'  
2 Fund.

3 Can you tell me a little bit more about SEKO's  
4 Exhibit No. 1? It's the "EXPRESS TRUCK DISPATCH"  
5 document.

6 A Uh-huh.

7 Q Can you tell me -- down there where it says --

8 "Thursday, September 6th" and you have the customer  
9 name "SEKO," the --

10 A Yeah.

11 Q -- the driver's name is Greg.

12 A Yes.

13 Q And the pickup address was INA Bearing?

14 A Right.

15 Q Or is it I-N-A?

16 A Yes, sir.

17 Q Is that how you say it?

18 A Yeah.

19 Q I-N-A?

20 A INA -- INA Bearing.

21 Q INA Bearing.

22 And that's in Spartanburg?

23 A Yes.

24 Q And where was Mr. -- is the "Greg" referred to  
25 there -- is that Mr. Collins --

Page 18

1 A Yes.

2 Q -- the claimant --

3 A Yes.

4 Q -- the deceased claimant?

5 Where was his destination?

6 A Wisconsin. And I -- I can't read the name there.

7 Q Okay. But he was making a delivery up to  
8 Wisconsin?

9 A Yeah. Yes.

10 Q Okay. And September 6th, was that the day that the  
11 -- the claimant made the pickup from INA Bearing,  
12 or was that the day you got the job from SEKO?

13 A I got the job from SEKO that day and picked it up  
14 that day.

15 Q Okay. And the reference number comes from whom?

16 A That is the reference number that SEKO gave me to  
17 bill them.

18 Q Okay. They gave you that over the telephone?

19 A Yes.

20 Q Okay. Who were you speaking with at SEKO?

21 A I --

22 Q Do --

23 A -- don't --

24 Q -- you know?

25 A I don't remember.

1 Q Okay. Was it -- did you speak with the same person  
2 every time, or did you speak with different --

3 A Different people.

4 Q -- individuals? Okay.

5 Then over here beside -- beside the -- the  
6 reference number, there is no check mark unlike the  
7 other ones listed here. What does that --

8 A This --

9 Q -- signify --

10 A These --

11 Q -- if anything?

12 A -- check marks? I think that was just checked off  
13 when I got the -- got the bill number, because  
14 sometime I don't get one. They'll just tell me to  
15 do something, and I'll have to call later and get  
16 the --

17 Q It -- it was checked off --

18 A -- a bill number.

19 Q The bill number? What is that?

20 A Or the reference number. The number that I bill  
21 with.

22 MS. GEORGE: (Coughs.) Excuse me.

23 Q I -- I'm not sure I understand. So -- so why would  
24 there not be a check mark beside 373718? Does it  
25 have any significance?

Page 20

- 1 A No.
- 2 Q Okay.
- 3 A Hold on just a minute. That might be something
- 4 that -- that might be a -- I might've put that
- 5 check mark on there where I paid them already.
- 6 Q Where you paid the driver?
- 7 A Yeah.
- 8 Q Okay.
- 9 A I do that sometimes too.
- 10 Q Okay. And --
- 11 A At that time I don't know what I was checking.
- 12 Q And so -- and obviously Mr. Collins never made it
- 13 back; that's correct?
- 14 A No.
- 15 Q Okay. And can you tell me what it means over here
- 16 in the column under the heading "Miles"? You have
- 17 the number 30, and below that you have the number
- 18 860?
- 19 A I don't know what that 30 was for. The 860 was the
- 20 miles.
- 21 Q 860 is the total miles from --
- 22 A Yeah. Yes.
- 23 Q Is that from Spartanburg all the way to the
- 24 destination in Wisconsin?
- 25 A Yes.

1 Q Okay. And you -- you don't know what the  
2 30 represents?

3 A No, I don't.

4 Q Okay. And then, under -- in the column under the  
5 heading "Delivery," you have 372 with a circle  
6 around it.

7 A That's right. That's what I paid him.

8 Q That's the dollar amount you were to pay the  
9 deceased?

10 A Yeah. I did pay him.

11 Q Okay. And what is this last column here?

12 A That's what I got paid.

13 Q You got paid \$1,068?

14 A Yes.

15 Q By whom?

16 A By SEKO.

17 Q Okay. And do you have records of -- of receipt of  
18 that money?

19 A Yes.

20 Q Okay. Would you be able to provide those records  
21 to your attorneys?

22 A Pardon?

23 Q Would you be able to provide --

24 A Yes.

25 Q -- copies of those records to your attorneys?



Page 22

1 A Yes.

2 Q Okay. Okay. And -- excuse me.

3 MR. KILLEN: (To the court reporter) Can we  
4 go off the record a second?

5 (Off the record briefly at  
6 2:32 p.m.)

7 THE EXAMINATION BY MR. KILLEN CONTINUES.

8 Q Mr. West, I'd like to show you the other document.

9 A Okay.

10 Q It's -- and it's got a SEKO logo on it, a ship date  
11 of August 31st, 2007 --

12 A Right.

13 Q -- and a House Waybill No. 373718.

14 A Right.

15 Q Did you ever receive these documents -- or this  
16 document?

17 A I don't think so. I don't think I did that.

18 Q Okay. Would you receive documents such as this in  
19 the course of your business?

20 A Pardon?

21 Q Would you receive these types of documents doing  
22 business with SEKO?

23 A Yes.

24 Q Okay. Okay. What -- what's represented in the  
25 "SHIPPER" box?

1 A Yes. I -- that would -- one like this would be our  
2 bill of lading.

3 Q They would send this to you -- SEKO would --

4 A Yeah.

5 Q -- send this to you, for example?

6 A In this case, we picked them up at the shipper.

7 Q ~~So you would pick this one up at INA USA~~

8 A Yeah.

9 Q -- in Spartanburg?

10 A Right.

11 Q And what does a "CONSIGNEE" mean?

12 A That's who received it at the -- at the  
13 destination.

14 Q That's where you were taking it?

15 A Right.

16 Q Mr. Collins wasn't going to Seneca that day, was  
17 he?

18 A Pardon?

19 Q Mr. Collins wasn't making a delivery to Seneca for  
20 you --

21 A No.

22 Q -- was he? Okay.

23 A I could probably go back and find out if I made one  
24 to Seneca on 8/31. I don't know whether I did or  
25 not.

Page 24

1 Q Okay. You would have a --

2 A But --

3 Q -- an --

4 A But nobody signed for it.

5 Q Explain that to me.

6 A But that don't really -- sometimes -- sometimes the  
7 driver would sign, and sometimes they wouldn't.

8 Q Where would the driver's signature go on this  
9 document?

10 A Just anywhere he wanted to put it really.

11 Q Okay.

12 MR. KILLEN: (To the court reporter) Can I  
13 mark that as either Defendants' Exhibit  
14 No. 2 or UEF's No. 1, whichever's most  
15 convenient?

16 MS. GEORGE: (To the court reporter) I don't  
17 think it matters. (To Mr. Killen) Did I --

18 MR. KILLEN: Does she --

19 MS. GEORGE: -- get one too?

20 MS. MCKENZIE: (To Mr. Killen) Can we give  
21 her mine?

22 MR. KILLEN: Does she --

23 MS. GEORGE: (To Ms. McKenzie) No.

24 MR. KILLEN: Oh, I'm --

25 MS. GEORGE: She --

1 MR. KILLEN: -- sorry.  
2 MS. GEORGE: -- can have mine.  
3 MS. MCKENZIE: (To the court reporter) How we  
4 marking it? Defendants' 2?  
5 THE COURT REPORTER: Yes.  
6 MR. KILLEN: Okay.  
7 MS. MCKENZIE: Okay.  
8 Defendants' Exhibit No. 2, SEKO House  
9 Waybill, dated 08/31/07; 1 page.  
10 Q Where would the -- the driver, the one who was  
11 either working for or with you, where would he or  
12 she sign on -- on this -- on this document?  
13 Defendants' Exhibit 2.  
14 A Isn't that what you just asked?  
15 Q Yeah, I did. Did -- did -- did you answer it? I'm  
16 sorry.  
17 A I said, "Most of the time they'll just write it  
18 anywhere."  
19 Q Okay. Okay.  
20 A I'm --  
21 Q So --  
22 A -- sorry.  
23 Q -- there's --  
24 A I didn't --  
25 Q -- not a --

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1 A -- mean to --

2 Q -- spot --

3 A -- be --

4 Q -- for them --

5 MS. GEORGE: No.

6 Q I'm sorry. I didn't -- I didn't get your answer.

7 A I have made a -- I have made a rule in the last  
8 year or so that all the drivers do sign it. Used  
9 to they didn't worry about it too much, and I knew  
10 who done it and . . .

11 Q Okay. What kind of contract did you have with  
12 SEKO?

13 A I didn't have one.

14 Q What was your business relationship with SEKO?

15 A Just when they called and wanted something done,  
16 I'd do it.

17 Q What kind of business is SEKO?

18 A Pardon?

19 Q What kind of business is SEKO?

20 A They are a -- a trucking firm and a brokerage  
21 outfit, I think, kind of combined.

22 Q Okay.

23 A About the same as I am, except a lot bigger.

24 Q Okay. Fair enough.

25 Did you pay your drivers anything to return

1 from their destinations?

2 A No. It was all included in . . .

3 Q That was all one set --

4 A Yeah.

5 Q -- fee you would pay to your drivers?

6 Would that be part of the consideration that  
7 you gave in determining the price you charged SEKO?

8 A Yes. I'd -- SEKO -- ask that again.

9 Q Would you take that into consideration when  
10 determining how much you would charge SEKO?

11 A No. They paid me a straight amount per mile.

12 Q Okay.

13 A I pay my drivers a straight amount per mile.

14 Q Okay. And Mr. Collins was returning from Wisconsin  
15 when he was in his accident; is that correct?

16 A Yes.

17 Q Okay. And that was on September 8th, 2007?

18 A No. That was nine -- 9/6/2007.

19 Q Okay. He -- he was in his accident on  
20 September 6th, 2007?

21 A Yes.

22 Q Okay. How do you know that? Could --

23 A Because we --

24 Q -- you be mistaken?

25 A Because it's wrote down.

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1 Q Okay.

2 MR. KILLEN: That's all the questions I have.

3 MR. MARTIN: (To the court reporter) Can we  
4 go off the record for a minute?

5 (Off the record from 2:39 p.m. until  
6 2:47 p.m.)

7 EXAMINATION

8 BY MR. MARTIN:

9 Q All right. Mr. West, you -- during the break -- we  
10 took a break to -- so I could have a -- a document  
11 photocopied. I'd like to -- to show that -- this  
12 document to you. And tell me if you recognize  
13 this. Is this another one of the dispatch  
14 sheets --

15 A Yes.

16 Q -- that you prepared in your business?

17 A Yes.

18 Q This dispatch, what are the dates reflected in  
19 on this dispatch sheet?

20 A August 27th, 28th of '07, 29th, 30th. This --

21 Q Okay. I'd like for you to look at -- at August the  
22 31st --

23 A Uh-huh.

24 Q -- of '07.

25 A Yeah.

1 Q And can you tell me if there was a job on  
2 August 31st for SEKO?

3 A Huh.

4 Q Is there a reference number listed for this -- for  
5 a job for SEKO for August 31st?

6 A 373718.

7 Q And that's the same reference number for the -- the  
8 document --

9 A Yeah.

10 Q -- the exhibit that was showed to you before by --

11 A That --

12 Q -- Ms. Mundi?

13 A That's correct.

14 Q Okay. So what we have is the -- the same reference  
15 number being used in your log in two -- in the --  
16 in two different places; is that right?

17 A That's right.

18 Q Now --

19 MR. MARTIN: (To the court reporter) So I  
20 guess we'll mark this as an exhibit. Can we  
21 put that in?

22 MS. GEORGE: Uh-huh. I'll give her this one.

23 MR. MARTIN: Okay.

24 MS. MCKENZIE: (To the court reporter) Are we  
25 going to make it Defendants' 3?



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1 THE COURT REPORTER: (Nods head up and down.)

2 MS. MCKENZIE: Okay.

3 MS. GEORGE: (To Mr. Martin) Can I take this  
4 one and give him another?

5 MR. MARTIN: Yeah.

6 THE DEPONENT: This right --

7 MS. GEORGE: Okay.

8 MR. MARTIN: I could do that.

9 Defendants' Exhibit No. 3, "EXPRESS TRUCK  
10 DISPATCH," dated 08/27; 1 page.

11 Q Now let's talk about how you get these -- this  
12 reference number. You indicated previously in your  
13 questions that sometimes that number is given to  
14 you over the telephone; is that right?

15 A Sometimes.

16 Q Okay. What are other circumstances you might be  
17 given that number?

18 A Sometimes they'll tell me, "Use the reference  
19 number on a house waybill."

20 Q And -- so that you would actually use the document  
21 when the driver comes back --

22 A Yes.

23 Q -- is that right?

24 A That's right.

25 Q Okay.

1 A Sometimes I don't know till he gets back, unless I  
2 ask him.

3 Q Do you remember if -- what happened with the -- the  
4 bill of lading -- or the document with regard to  
5 the trip that Mr. Collins was on when he died?

6 A I don't remember. I don't remember whether it was  
7 still in the truck or whether it wasn't.

8 Q Okay.

9 A If it was in the truck, I sent it in. But I've got  
10 a copy of it if I did.

11 Q Okay. And you -- and you're going to look for that  
12 copy and --

13 A Yeah.

14 Q -- see if we can find that --

15 A Yes.

16 Q -- is that right?

17 Okay. But would it be fair to say -- is it  
18 your estimation that there's -- some reason there's  
19 a mistake in just the reference number for what was  
20 done -- entered on your dispatch for August the 6th  
21 for the job that Greg was driving that day? The  
22 one that was shown on the first exhibit.

23 A You think -- that might be my mistake.

24 Q That the number on this might be your mistake?

25 A Possibly.

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1 Q But is there any mistake -- do you -- are you sure  
2 then that the job that he was driving for was for  
3 SEKO?

4 A Yes.

5 Q Okay. Now -- so it's -- it's possible that either  
6 that number was mistakenly written on this document  
7 by you or that it was a number mistakenly given to  
8 you by someone at SEKO?

9 A I don't know.

10 Q Okay.

11 A Can I say something else?

12 Q Okay.

13 A There's just one SEKO on that. No. There's  
14 another SEKO. All right. You see these two  
15 numbers here?

16 Q Now what --

17 A They were both done the same day.

18 Q Let me make sure everybody knows what you're  
19 referring to. You're looking at -- on the express  
20 trust -- "EXPRESS TRUCK DISPATCH" with the date at  
21 the top marked Monday, August 27th. You're  
22 referring to the very last line, which was a job  
23 for SEKO showing Jerry; Honeywell; Greer, South  
24 Carolina to Charlotte; with a reference number  
25 337871.

1 A Right. Right there.

2 Q And the job -- and then the reference to the  
3 "EXPRESS TRUCK DISPATCH" for 9/4 with the reference  
4 number 373718 --

5 A Just --

6 Q -- for --

7 A -- three --

8 Q -- Greg's job.

9 A -- numbers difference.

10 Q Okay.

11 A Over here, which was a -- a earlier date --

12 Q Uh-huh.

13 A -- got 337871.

14 Q Correct.

15 A So there was a lot of numbers between --

16 MS. MCKENZIE: Eight seven --

17 Q -- 871 --

18 A Yeah. And there.

19 Q -- and that one.

20 A Uh-huh.

21 Q So are you suggesting that the number you wrote  
22 down here for the -- for the reference number  
23 related to the job Greg Collins was on --

24 A I would say this one was the correct one.

25 Q Was a correct one?

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1 A Yeah. I would say so.

2 Q But this is the -- this document has the  
3 373718 that goes to Seneca.

4 A Yeah.

5 Q And this one showing the same thing of  
6 8/31 references a delivery to Seneca --

7 A Right.

8 Q -- with the same number.

9 So isn't it more likely that this is the  
10 number that was incorrect? the one that references  
11 Greg Collins's trip.

12 A I would not say.

13 Q Either way, there's a mistake in one of these --

14 A Yeah.

15 Q -- in one of these?

16 Okay. When you -- when you mentioned being  
17 paid one way --

18 A Uh-huh.

19 Q -- that -- that SEKO -- you -- you would bill SEKO  
20 -- or SEKO would pay you for the mileage from  
21 picking it up --

22 A Yeah.

23 Q -- to the point of delivery. Is that mileage  
24 computation also take into effect the cost of  
25 returning, even though it's not billed for

1 returning?

2 A They could say that either way..

3 Q Okay.

4 A Because -- no. That's all right.

5 Q Okay. And I believe you indicated that you -- you  
6 believe you have a record of receipt of payment

7 from --

8 A Yeah.

9 Q -- SEKO.

10 A And I'm almost 100 percent sure, because on a check  
11 stub, it'll have which trip that was for.

12 Q On the check -- on -- on the -- the check stub from  
13 SEKO?

14 A Yeah. If it don't, it'll have a bill that I sent.

15 Q Okay.

16 A And the bill will have that on there.

17 Q Okay. And you're going to look through those  
18 records --

19 A Yeah.

20 Q -- to see if you can find that documentation --

21 A Yeah.

22 Q -- for us.

23 A I think I can find enough to where --

24 Q Okay.

25 MR. MARTIN: That's all the questions I have.

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1 MS. MCKENZIE: I have just a couple.

2 EXAMINATION

3 BY MS. MCKENZIE:

4 Q Hello --

5 A All right.

6 Q -- again, Mr. West.

7 A Okay.

8 Q However you bill them, whether you say it's for  
9 miles one way, you knew your people had to come  
10 back, right?

11 A Yes.

12 Q So I see what you say to your attorney: That's  
13 already figured into the way -- the amount you  
14 charge for billing?

15 A Yes.

16 Q Okay. And who wrote -- whose writing is on these?  
17 Is this your writing?

18 A Well, most of it's mine.

19 Q Okay.

20 A You can probably take a --

21 Q Would any -- who else would've written on these  
22 things?

23 A Let's see --

24 Q Because sometimes it looks like it might be a  
25 little different. Like if we look at Defendants'

1 Exhibit 3, which is the one when it says August, a  
2 couple of these writings look like they're --  
3 A That --  
4 Q -- different --  
5 A That --  
6 Q -- handwriting.  
7 A That, probably, right there was my daughter-in-  
8 law's handwriting.  
9 Q Okay. You're pointing to under August 27th? the  
10 kind of printing?  
11 A Yeah. She might've worked that day.  
12 Q Okay. I don't want to say neater than yours but --  
13 A It is. More legible anyway.  
14 Q Okay. Look --  
15 A Mine used to be good.  
16 Q You -- okay. All right.  
17 Look on this one that is Defendants'  
18 Exhibit 1. Is that all your handwriting? Can you  
19 tell? Or -- and if you can't, just tell me.  
20 A This right here almost -- that right there is not  
21 mine. This probably is and this.  
22 Q Okay. When --  
23 A The --  
24 Q -- you say --  
25 A -- number.



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1 Q -- "that one," are you talking about the one that  
2 says "Steve"?  
3 A Yeah.  
4 Q Okay. The next to the last entry on the Exhibit 1,  
5 which --  
6 A Yeah.  
7 Q -- is labeled 9/4, the one that says --  
8 A All this might not be mine.  
9 Q Okay. The --  
10 A That --  
11 Q The --  
12 A -- kind of --  
13 Q -- one --  
14 A -- got --  
15 Q -- that's --  
16 A -- spread out --  
17 Q -- under --  
18 A -- again --  
19 Q -- Greg --  
20 A Yeah..  
21 Q -- that says "Steve," and then there's another  
22 Steve.  
23 Okay. Would --  
24 A I think --  
25 Q -- you --

1 A -- that --  
2 Q -- know --  
3 A -- might --  
4 Q -- whose it is?  
5 A No.  
6 Q Okay.  
7 A Probably the same -- well, it don't look like the  
8 same. I don't know.  
9 Q All right. Do you know during this period of time  
10 -- I know you said your daughter-in-law did that  
11 one. Do you know if -- during this period of time,  
12 if your wife was maybe in the office some and did  
13 some?  
14 A I wouldn't think so.  
15 Q You would?  
16 A I said, "I wouldn't" --  
17 Q You wouldn't --  
18 A -- "think so."  
19 Q -- think so. Okay.  
20 Defendants' Exhibit No. 2, which is this SEKO  
21 form that we have.  
22 A Uh-huh.  
23 Q Do you know if this -- no matter what the number  
24 says, do you know if this is a delivery that you or  
25 your people made?

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1 A Right now I don't, because I don't have a -- a --

2 Q -- a sheet for the --

3 A -- a sheet for --

4 Q -- 31st?

5 A -- that -- the -- no.

6 Q Okay. All right.

7 MS. MCKENZIE: That's all I have.

8 A We -- we can find out --

9 Q Okay.

10 A -- pretty --

11 MS. MCKENZIE: That's all --

12 A -- easy.

13 MS. MCKENZIE: -- I have.

14 THE DEPONENT: Okay.

15 MS. GEORGE: (To Ms. McKenzie) Thank you.

16 REEXAMINATION

17 BY MS. GEORGE:

18 Q Mr. West, I just have another question for you --

19 A Okay.

20 Q -- about the mileage.

21 A Uh-huh.

22 Q Let's go back to Defendants' Exhibit 1, which is  
23 the "EXPRESS TRUCK DISPATCH" with Tuesday,  
24 September 4th up at the top. The one that contains  
25 Greg Collins' job. Under the "Miles" column,

1 860 miles --

2 A Yes.

3 Q -- what -- what does that mileage represent? Is

4 that the distance from Spartanburg, South

5 Carolina --

6 A That's what --

7 Q -- to --

8 A -- they --

9 Q -- Wauwatosa --

10 A That's --

11 Q -- Wisconsin?

12 A That's what they pay me for.

13 Q But is that -- is that what they told you the

14 length of the trip was --

15 A Yes.

16 Q -- from Spartanburg to Wauwatosa --

17 A Yeah.

18 Q -- Wisconsin? Is that right?

19 A That's right.

20 Q So they paid you for the number of miles from the

21 pickup to the delivery?

22 A Yeah.

23 Q Okay.

24 MS. GEORGE: No further questions.

25 THE DEPONENT: (To Ms. George) Do you have a

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1 calculator?

2 MS. GEORGE: (No response.)

3 REEXAMINATION

4 BY MR. KILLEN:

5 Q Mr. West, this may seem like a silly question.

6 MS. GEORGE: (To Ms. McKenzie) Does he have a  
7 microphone?

8 Q But it -- it's necessary for the drivers who are  
9 working for or with you to return from their  
10 destinations, isn't it?

11 A Yes.

12 Q Okay. You wouldn't have much of a business --

13 A -- if they --

14 Q -- if your drivers just --

15 A Right.

16 Q -- went to Wisconsin and stayed there, would you?

17 A Right.

18 Q Yeah.

19 MR. KILLEN: And no further questions.

20 MR. MARTIN: I have no questions.

21 MS. MCKENZIE: Me --

22 MS. GEORGE: That --

23 MS. MCKENZIE: -- either.

24 MS. GEORGE: That concludes the deposition.

25 FURTHER DEPONENT SAITH NOT.

1 Signing waived.

2 (Whereupon, there being no further  
3 questions, the deposition was  
4 concluded at 2:59 p.m.)

5 (\*This transcript may contain quoted material.  
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7 by the speaker.)

8 (\*\*Certificate accompanies certified original only.)

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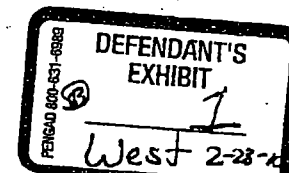
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Friday 9-4

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FROM

(FRI) AUG 31 2007

33/ST. 11:28/No. 7500000062 P 1

**SEKO**

|                             |        |      |                                |
|-----------------------------|--------|------|--------------------------------|
| SHIP DATE<br><i>8/31/07</i> | ORIGIN | DEST | HOUSE WAYBILL<br><b>373718</b> |
|-----------------------------|--------|------|--------------------------------|

1100 Arlington Heights Road, Suite 800, Itasca, IL 60143  
Phone 830.919.4800 Fax 830.773.4215

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| SHIPPER<br><br>INA USA - PLANT #4<br>NEW CUT ROAD<br>SPARTANBURG, SC. 29304<br><br>Attn: CHRISTINA | CONSIGNEE<br><br><i>Hi-Tech</i><br><i>219.. Hi-Tech</i><br><i>Seneca SC 29678</i> |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|

|                                       |                           |                |                       |
|---------------------------------------|---------------------------|----------------|-----------------------|
| SENT BY/NAME/DEPT<br><i>Christina</i> | TELEPHONE<br>864-583-4541 | ATTN NAME/DEPT | TELEPHONE             |
| SEKO ACCOUNT #<br>INAU29304           | SHIPPER REFERENCE #       | SEKO ACCOUNT # | CONSIGNEE REFERENCE # |

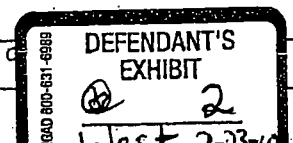
|               |                                                                                                                                                                                                                                                                                                                                                                                            |           |                                                            |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------------------------------------------------------|
| BILL-TO PARTY | BILL CHARGES TO:<br><input checked="" type="checkbox"/> PREPAID <input type="checkbox"/> COLLECT <input type="checkbox"/> 3RD PARTY                                                                                                                                                                                                                                                        | FCCOD AMT | SHIPPER'S COD<br>SUBJECT TO PARAGRAPH 8<br>ON REVERSE SIDE |
| ACCT. #       | SHIPPER'S DECLARED VALUE / INSURANCE OPTION<br>Unless indicated below and subject to conditions on reverse side, reimbursement for loss/damage is the greater of \$50.00 or \$0.50 per pound of affected freight. See paragraphs 3, 5, 8 and 15 on reverse side. Additional charges apply.<br>Enter amount(s) below:<br>Declared Value for Carriage \$ _____ Full Value Insurance \$ _____ |           |                                                            |

| CARTONS | WEIGHT | DESCRIPTION           | PIECES | LENGTH | WIDTH | HEIGHT | CUBIC INCHES | CUBIC WEIGHT | Shipper must check one of the items below.                                                                                                 |
|---------|--------|-----------------------|--------|--------|-------|--------|--------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| 1       |        | <i>Sheet 4 Pans -</i> |        |        |       |        |              |              | Shipment contains no dangerous goods. <input type="checkbox"/><br>Shipment contains dangerous goods as described. <input type="checkbox"/> |

|                                                                                                                                                                                                                                              |                                                                                                |                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------|
| SERVICE LEVELS                                                                                                                                                                                                                               | SHIPPER'S SIGNATURE<br>(SUBJECT TO TERMS AND CONDITIONS ON REVERSE SIDE)<br><i>[Signature]</i> | DATE<br><i>8/31/07</i> |
| ____ SEKO@Once (NFO)      ____ SEKO SurfaceSaver (3-5 Business Days)<br>____ SEKO One (Next Day by 5 PM)      ____ Other<br>____ SEKO Two (2nd Day by 5 PM)      Req. Del. Date _____<br>____ SEKO Three (3rd Day by 5 PM)      P.O. # _____ | SPECIAL INSTRUCTIONS<br><br><i>ASAP</i>                                                        |                        |

|                   |                            |            |            |            |
|-------------------|----------------------------|------------|------------|------------|
| HOUSE WAYBILL NO. | SIGN FOR SEKO WORLDWIDE BY | DATE REC'D | TIME REC'D | NO. SHPTS. |
|-------------------|----------------------------|------------|------------|------------|

|                                                                          |      |      |      |
|--------------------------------------------------------------------------|------|------|------|
| POD #1                                                                   | NAME | DATE | TIME |
| (RECEIVED ABOVE SHIPMENT COMPLETE AND IN GOOD CONDITION EXCEPT AS NOTED) |      |      |      |
| POD #2 (FOR OSD or PARTIALS)                                             |      |      |      |





# EXPRESS TRUCK DISPATCH

Monday Aug 27

| Customer          | Call Time | Dept | Driver           | Unit # | Shipper & Pick Up Address          | Destination                         | Reference #             | Sign Address                | P/Up | Com. Trk | Miles | Delivery | COS    |
|-------------------|-----------|------|------------------|--------|------------------------------------|-------------------------------------|-------------------------|-----------------------------|------|----------|-------|----------|--------|
| Saturn            |           |      | Jerry            |        | Knight's Apparel<br>Spartanburg SC | Dixie Parkway<br>Greenville SC      | 539083                  | ✓                           |      |          | 20    | (45)     | 75     |
| Tuesday Aug 28    |           |      |                  |        |                                    |                                     |                         |                             |      |          |       |          |        |
| Seko              |           |      | Jerry            |        | Timken<br>Walhalla, SC             | Delphi Chassis<br>Sandusky, OH      | 388727                  | ✓                           |      |          | 677   | (610)    | 812.8  |
| Chris             |           |      | Steve            |        | W.W. Haininger<br>St. Louis, MO    | Bo. Mechanical<br>W. Columbia, SC   | 238140                  | ✓                           |      |          | 83    | (45)     | 100.00 |
| Wednesday 8/29/07 |           |      |                  |        |                                    |                                     |                         |                             |      |          |       |          |        |
| <del>Wash</del>   |           |      | <del>Steve</del> |        | <del>Butler's</del>                | <del>Greenville SC</del>            | <del>Augustine Dr</del> | <del>City of Florence</del> |      |          | 730   |          | 156    |
| <del>Wash</del>   |           |      | <del>Steve</del> |        | <del>Butler's</del>                | <del>Greenville SC</del>            | <del>Augustine Dr</del> | <del>City of Florence</del> |      |          | 730   |          | 156    |
| Thursday 8-30-07  |           |      |                  |        |                                    |                                     |                         |                             |      |          |       |          |        |
| Saturn            |           |      | Jerry            |        | Autler Hammen<br>Greenville SC     | Ford X<br>Greenville SC             | 539132                  | ✓                           |      |          |       | (60)     | 75     |
| Friday 8/31/07    |           |      |                  |        |                                    |                                     |                         |                             |      |          |       |          |        |
| Jerry             |           |      | Jerry            |        | Jack Hockman<br>Greenville SC      | Supply Tech Services<br>Marietta GA | 121570                  | ✓                           |      |          | 168   | (149)    | 233.6  |
| Seko              |           |      | Steve            |        | JNA<br>Spartanburg SC              | JNA<br>Seneca SC                    | 373718                  |                             |      |          | 81    | (82)     | 197.20 |
| Pst               |           |      | Greg             |        | D. Vile<br>A.C.                    | Alanta MA                           | 273912                  | ✓                           |      |          | 165   | (70)     | 1200   |
| Nations           |           |      | Morris           |        | Commercial Wren<br>DURHAM NC       | Simkin<br>Monroe Port SC            | 2008365                 | ✓                           |      |          |       |          | 75     |
| Nations           |           |      | Steve            |        | Commercial truck<br>DURHAM NC      | Simkin<br>Monroe Port SC            | 2008372                 | ✓                           |      |          | 48    | (40)     | 75     |
| CERES             |           |      | Greg             |        | GRAMER<br>Fountain Inn SC          | Amic Processing<br>DARTSBURG SC     | 238152                  | ✓                           |      |          | 74    | (33)     | 93.6   |
| Seko              |           |      | Jerry            |        | Honolulu<br>Greenville SC          | Charlotte NC                        | 237871                  | ✓                           |      | 1948     | 92    | (83)     | 110    |

