

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC SUPREME COURT

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

Opinion No. 2015-UP-339 (S.C. Ct. App. filed July 8, 2015)
Appellate Case No. 2015-002397

LeAndra Lewis, ... Petitioner,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

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INDEX

Materials Following this Court's Remand

This Court's Letter of Remand (Apr. 24, 2015)	1
Opinion of the Court of Appeals (July 8, 2015)	2
Ms. Lewis's Petition for Rehearing (July 23, 2015)	5
Letter from the Court of Appeals Requesting a Return (Aug. 3, 2015)	11
The Fund's Return (Sept. 8, 2015)	12
Ms. Lewis's Reply (Sept. 15, 2015)	17
Order Denying Rehearing (Oct. 23, 2015)	18

Materials from this Court's Review

This Court's Decision Reversing the Court of Appeals (Mar. 18, 2015)	19
Ms. Lewis's Merits Brief - Petitioner (Aug. 1, 2014)	28
The Fund's Merits Brief - Respondent (Sept. 22, 2014)	49
Ms. Lewis's Reply Brief (Oct. 2, 2014)	59

Materials from the Original Appendix

Original Opinion of the Court of Appeals (Sept. 5, 2012)	68
Ms. Lewis's Petition for Rehearing (Sept. 20, 2012)	78
Order Denying Rehearing (Oct. 18, 2012)	87
Ms. Lewis's Merits Brief to the Court of Appeals - Appellant (Jan. 5, 2011) ...	88
The Fund's Initial Brief - Respondent (Nov. 15, 2010)	120
Ms. Lewis's Reply Brief (Jan. 5, 2011)	130

Materials from the Original Record on Appeal

Orders

Single Commissioner (Oct. 13, 2009)	141
Appellate Panel (June 24, 2010)	155

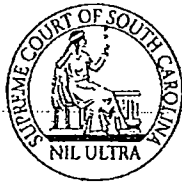
Forms and Pleadings

Form 50 - Ms. Lewis' Request for a Hearing (Dec. 1, 2008)	164
Form 51 - The Fund's Answer (Jan. 13, 2009) (with cover letter)	165
The Fund's Memorandum of Law (June 10, 2009)	168
Ms. Lewis's Memorandum of Law (June 17, 2009) (with attachments and cover letter)	174
Form 30 - Ms. Lewis's Request for Panel Review (Oct. 28, 2009)	200
Ms. Lewis's Appellate Brief to the Full Commission (Feb. 1, 2010)	203
Notice of Appeal to the Court of Appeals (July 7, 2010)	215

Transcripts

Single Commissioner's Hearing (May 21, 2009)	217
Brandy Spears-Hunger	
Direct	222
Cross	227
Daquanna Jerae Cooper	
Direct	229
Cross	243
Redirect	251
Leandra Ovon Lewis	
Direct	257
Cross	274
Redirect	295
Recross	300
Redirect	302
Recross	303

Clarnicki Lewis	
Direct	305
Cross	308
Appellate Panel Hearing (Apr. 19, 2010)	317
Appellant	319
Respondent	327
Reply	333
Other Materials and Documents	
Letter from Compliance Officer at the Commission (Jan. 12, 2009)	338
Letter from Claims Analyst, Second Injury Fund (Jan. 22, 2009)	340
Hearing Commissioner's Request for a Proposed Order (July 13, 2009)	341
Appellate Panel's Request for a Proposed Order (May 3, 2010)	343
Certificate of Counsel	345



The Supreme Court of South Carolina

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April 24, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201-3726

Re: LeAndra Lewis v. L.B. Dynasty
Appellate Case No. 2012-213376

Dear Ms. Kitchings:

Please be advised that the petition for rehearing has been denied. Therefore, the South Carolina Court of Appeals should proceed as directed in the remand from this Court.

Very truly yours,

CLERK

cc: Lisa C. Glover, Esquire
Blake Alexander Hewitt, Esquire
Charles B. Burnette, III, Esquire
John S. Nichols, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

LeAndra Lewis, Appellant,

v.

L.B. Dynasty d/b/a Boom Boom Room Studio 54 and
S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the
Respondent.

Appellate Case No. 2010-165646

Appeal From The Workers' Compensation Commission

Opinion No. 2015-UP-339
Submitted March 18, 2015 – Filed July 8, 2015

AFFIRMED

Charles B. Burnette, III, of Burnette & Payne, PA, of
Rock Hill; John S. Nichols and Blake Alexander Hewitt,
both of Bluestein, Nichols, Thompson & Delgado, LLC,
of Columbia, for Appellant.

Lisa C. Glover, of Columbia, for Respondent.

PER CURIAM: In *Lewis v. L.B. Dynasty*, 411 S.C. 637, 770 S.E.2d 393 (2015), our supreme court held that Lewis was an employee rather than an independent contractor; thus, she was entitled to benefits. Accordingly, the supreme court remanded the case to this court to determine Lewis' compensation rate, as this court did not reach the issue in *Lewis v. L.B. Dynasty, Inc.*, 400 S.C. 129, 732 S.E.2d 662 (Ct. App. 2012).

On appeal to this court, Lewis argued the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) erred in determining that if she was an employee, her compensation rate would be \$75 per week. We disagree.

"Generally, when an employee works at concurrent jobs, the employee's wages from his multiple jobs may be combined to compute his average weekly wages." *Steele v. Self Serve, Inc.*, 335 S.C. 323, 326, 516 S.E.2d 674, 676 (Ct. App. 1999). "[T]he claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." *Id.* at 327, 516 S.E.2d at 676. Regulation 67-1603(H) provides:

If the claimant alleges he or she worked for two or more employers when the injury occurred, the claimant may request the additional wages be included as part of his or her average weekly wage. The claimant shall obtain a completed Form 20 from each of the other employers and file the Forms 20 with the Claims Department. The claimant shall provide a copy of each Form 20 to the employer's representative. The Commission will calculate the new compensation rate and notify the parties. If the employer's representative does not agree to pay the new compensation rate, the claimant may request a hearing to determine the proper compensation rate by filing a Form 50 pursuant to R.67-207.

S.C. Code Ann. Regs. 67-1603(H) (2012).

Lewis argued her compensation rate should be \$661.29, based on an average weekly wage of \$1,650, which consisted largely of wages earned from other employers. The single commissioner found Lewis failed to prove her claimed average weekly wage and credited Lewis for wages earned from the L.B. Dynasty

d/b/a Boom Boom Room Studio 54 (the Club) only.¹ The single commissioner based this finding on the fact that Lewis failed to submit a Form 20, as required by Regulation 67-1603(H), outlining the wages she received from other employers and on the lack of any evidence except her and her witnesses' testimony regarding the wages she earned from other employers.

Lewis cited *Steele v. Self Serve, Inc.* in support of her argument that she was not required to file a Form 20 documenting her wages earned from other employers, and her testimony regarding her wages was sufficient to meet her burden of proof. However, *Steele* was decided under a former version of Regulation 67-1603, that stated "the claimant *may* obtain a completed Form 20 for each additional job." *Steele*, 335 S.C. at 327, 516 S.E.2d at 676 (emphasis added). The current regulation, which was amended before Lewis filed her claim, states "the claimant *shall* obtain a completed Form 20 from each of the other employers and file the Forms 20 with the Claims Department." S.C. Code Ann. Regs. § 67-1603(H) (2012) (emphasis added).² Further, in *Steele*, the claimants submitted a tax return reflecting wages earned from another employer in support of their oral testimony. *Steele*, 335 S.C. at 326, 516 S.E.2d at 676. In the instant case, Lewis presented no evidence regarding the wages she earned from other employers except for her and her sister's testimony regarding the number of nights Lewis normally worked.

We find Lewis' average weekly wage was a factual determination supported by the evidence, and the single commissioner made no legal errors in its determination that she failed to meet her burden to prove her wages earned from other employers. Therefore, we affirm the Appellate Panel's determination that Lewis' compensation rate is \$75 per week.

AFFIRMED.³

FEW, C.J., and HUFF and SHORT, JJ., concur.

¹ The Appellate Panel affirmed the entirety of the single commissioner's decision without specifically discussing the compensation rate issue.

² S.C. Code Ann. Regs. § 67-1603 was amended in 1997.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No. 0821881

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

This Court issued its decision on July 8, 2015. See 2015-UP-339. This petition is timely under Rule 221(a).

Ms. Lewis adheres to her arguments from the previous briefing and additionally (and respectfully) submits that the court may have overlooked or misapprehended the following points in its decision:

I. The opinion states that the Commission's factual findings are supported by the evidence, but the Commission found as a fact that there was no evidence of Ms. Lewis's earnings except her own testimony, and this finding is obviously untrue.

The closing section of the opinion states that the Commission's factual determination of Ms. Lewis's average weekly wage is supported by the evidence. This is not true.

The Commission found—as a fact—that there was “no evidence whatsoever” of how much money Ms. Lewis earned, how many hours Ms. Lewis worked, and that the “only evidence” was Ms. Lewis's testimony. (App.p.90) (finding no. 12). That statement is both internally inconsistent and inaccurate. Ms. Lewis offered testimonial evidence, so it is wrong to say that there is “no evidence” on the point. Furthermore, the commission heard from two witnesses who corroborated Ms. Lewis's testimony. A fellow dancer testified that an “average night” working at a dancing club would yield \$200 to \$300 dollars, (App.p.171, lines 4-12), and Ms. Lewis's sister testified that Ms. Lewis worked at least five days a week, fifty-two weeks a year. (App.p.253, lines 1-9). The commission's “finding” is not faithful to the record, yet the appellate panel repeated it verbatim. (App.p.99). This Court should reverse the finding. It is quite plainly wrong.

II. The Uninsured Employers' Fund did not put up a case or attack anyone's credibility. In these circumstances, the finding that Ms. Lewis failed to carry her burden is clearly erroneous.

The only evidence in the record came from witnesses. Four people testified at the hearing; a police officer who investigated the shooting, Ms. Lewis, a fellow dancer, and Ms. Lewis's sister. See (App.p.157) (listing the witnesses). The single commissioner summarized the Uninsured Employer's Fund's position as being that Ms. Lewis was an

independent contractor and not an employee! (App.pp.82-83). The Fund's only documented argument on average weekly wage appears in a post-trial brief in which the Fund summarizes Ms. Lewis's testimony, ignores the other witnesses' testimony, and argues that Ms. Lewis was bound by her earnings from LB Dynasty because she did not obtain completed Form 20s from other dancing clubs. (App.pp.110-111).

Here is the point: the Fund did not put up a case. It did not call any witnesses and it did not attack any of the witnesses' credibility. Thus, the only evidence in the record is evidence Ms. Lewis offered, and it is hardly surprising that Ms. Lewis's evidence tends to support her claim. If the *only* evidence in the record supports Ms. Lewis's claim, it necessarily follows that Ms. Lewis has proved her case by the greater weight of the evidence. While the evidence here might not meet a high threshold like the "clear and convincing" standard, it is more than nothing, and the Fund offered nothing.

III. The Form 20 is irrelevant. A strip club does not know what a dancer earns, the failure to file a Form 20 is not fatal, and Ms. Lewis was not claiming "dual" employment, but was instead asking the commission to use an alternative method under the average weekly wage statute.

It is difficult to follow the reasoning that a Form 20 has any relevance to this case.

First, Regulation 67-1603A explains that *the employer* is responsible for completing the Form 20. Of course, nobody from LB Dynasty did this because nobody from LB Dynasty has ever appeared or participated in this claim, and even if LB Dynasty *had* participated, everyone agrees (and every tribunal has found) that the club did not pay Ms. Lewis anything, so the Form 20 would have been blank. Ms. Lewis's experience in this regard is not unique. See *Harrell v. Diamond A Entm't*, 992 F. Supp. 1343, 1349 (M.D. Fla. 1997) ("[I]t seems

fairly obvious that [an exotic dancing club] would have no way of knowing how much money each of its dancers charged for dances or took home at the end of a shift.”). It is hard to follow the argument that the absence of these empty forms should control the outcome.

Second, nothing in the regulation itself suggests that the failure to complete or furnish a Form 20 is fatal to a claim. If the claimant disagrees with the employer’s Form 20, there is an attempt to resolve the disagreement administratively, and if that fails, the disagreement is decided at a hearing. Reg. 67-1603C(2). No authority states that the Form 20 is any sort of special (or even required) evidence at this hearing. One regulation describes the commission deciding average weekly wage by using “information in the Commission’s” file as well as other “statements or evidence.” Reg. 67-1603G. Another regulation briefly explains that wage determination is an issue to be decided at a hearing unless it is stipulated. Reg. 67-606. There is no warning that the failure to complete or furnish a Form 20 is fatal. The regulation *does* use the word “shall,” but this describes an internal calculation process that the commission is doing before the parties ever appear at a hearing. The regulation does not say that failing to furnish these forms has any preclusive effect, and again, it is hard to understand why the outcome of the case should hinge on whether Ms. Lewis gave the commission blank forms from other strip clubs before the case was heard.

Finally, the Form 20s from other clubs would be immaterial because Ms. Lewis was not claiming dual employment. The appellate briefing has focused on the Form 20 because the Fund argued the Form 20 and wrote its wrongheaded argument into the Commission’s decision, virtually word for word. Compare (App.p.110) (“The Fund argues that the Claimant is bound . . .”) with (App.p.90-91) (The Claimant is bound . . .). But Ms. Lewis’s

argument to the commission was based on the average weekly wage statute, which contains multiple mechanisms for approximating a claimant's future earnings and helpfully explains that when it is impractical to use one of the standard methods of calculating the average weekly wage because of the shortness of the time the worker has been employed by the employer in question, the commission is supposed to consider the average earnings of someone in the same class of employment in the same locality or community. See (App.pp.121-22) citing S.C. Code Ann. § 42-1-40. The statute also explains that the purpose of the average weekly wage calculation is to "most nearly approximate the amount which the injured employee would be earning were it not for the injury." *Id.* Numerous decisions from this Court and the Supreme Court have acknowledged this statutory purpose. *Brown v. Peoplease Corp.*, 402 S.C. 476, 484, 741 S.E.2d 761, 765 (Ct. App. 2013); *Pilgrim v. Eaton*, 391 S.C. 38, 50, 703 S.E.2d 241, 247 (Ct. App. 2010); *Bennett v. Gary Smith Builders*, 271 S.C. 94, 98-99, 245 S.E.2d 129, 131 (1978). As this Court observed in *Pilgrim*, the goal of the Workers' Compensation Act "is to compensate workers for reductions in their earning power caused by work-related injuries." 391 S.C. at 50, 703 S.E.2d at 247.

The Commission's decision is directly at odds with this goal. Suppose for a moment that Ms. Lewis is permanently and totally disabled. Under the commission's logic, the absolute destruction of Ms. Lewis's earning capacity amounts to a loss of \$75 per week. Even a cursory examination of the average weekly wage statute illustrates that this is incorrect. Section 42-1-40's default provision for calculating the average weekly wage requires dividing Ms. Lewis's earnings by the number of weeks she worked at the club. Ms. Lewis earned \$357 on the night she was shot (App.p.85) and presumably the number of

weeks worked for LB Dynasty would be 1. This yields a compensation rate of \$238 because the Form 20 says to multiply the average weekly wage by .6667 to determine the compensate rate.¹ There is no way to justify the commission's decision. Even under its own reasoning, it is not correct.

CONCLUSION

The Court should grant this petition and reverse the Commission's decision. The evidence in the record is that Ms. Lewis earned approximately \$250 to \$350 per night and generally worked year-round. (App.p.202, line 23 - p.203, line 14); (App.p.229, lines 13-21); and (App.p.253, lines 1-9). The only remaining evidence is that an average night dancing would yield \$200 to \$300 dollars and that the average full-time dancer works Monday through Saturday. (App.p.171, lines 4-21). By any calculation, this results in the maximum compensation rate, which the single commissioner noted was \$661.29. (App.p.82). At a minimum, the issue should be remanded.

July 23, 2015

Respectfully submitted,



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¹Available at <http://www.wcc.sc.gov/welcomeandoverview/forms/Pages/default.aspx>



The South Carolina Court of Appeals

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August 03, 2015

Mr. Blake Alexander Hewitt, Esquire
PO Box 7965
Columbia SC 29202

Re: Lewis, LeAndra v. L.B. Dynasty
Appellate Case No. 2010-165646

Dear Counsel:

This will acknowledge receipt of your Petition for Rehearing.

By copy of this letter, opposing counsel is requested to file an original return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Charles B. Burnette, III, Esquire
Lisa C. Glover, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION
Court of Appeals

WCC File No. 0821881

LeAndra Lewis.....Appellant,

v.

L.B. Dynasty Inc., d/b/a Boom Boom Room Studio 54,
And the South Carolina Uninsured Employer's
Fund.....Defendants,

Of whom

The South Carolina Uninsured Employers' Fund
Is the Respondent.

RETURN TO PETITION FOR REHEARING

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This Return to Petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

~~-----~~ This Court issued its decision on July 8, 2015. See 2015-UP-339. Appellant timely filed a Petition for Rehearing under Rule 221(a). This Return to Petition is timely filed under Rule 240(c).

The South Carolina Uninsured Employers' Fund (the Fund) maintains its positions as outlined in previously filed briefs and respectfully submits that the court has not overlooked or misapprehended any points for consideration.

QUESTIONS PRESENTED

Whether the Claimant, LeAndra Lewis, is entitled to the Maximum Compensation Rate of \$661.29 for the year of 2008.

ARGUMENTS

In regards to the Claimant's wages Ms. Lewis contends that she is entitled to the maximum Compensation Rate for the year of 2008 based upon her employment at the club where the injury occurred and the other clubs she danced at. She testified that she worked at the club where the injury occurred on three occasions during the year of 2008. Otherwise she worked

at other clubs in South Carolina and North Carolina. Ms. Lewis contends her Average Weekly Wage and Compensation Rate should be based upon this dual employment.

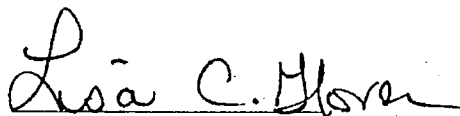
The Fund argues that the finding of the Single Commissioner regarding the Compensation Rate should be affirmed. Ms. Lewis failed to meet her burden of proof. Ms. Lewis requested that the income from her dancing at clubs other than where the injury occurred be included in the calculation of her Average Weekly Wage and Compensation Rate. Regulation 67-1603(H) states "the Claimant shall obtain a completed Form 20 from each of the other employers and file the Forms 20 with the Claims department. The Claimant shall provide a copy of each Form 20 to the employer's representative. The Commission will calculate the new compensation rate and notify the parties. If the employer's representative does not agree to pay the new compensation rate, the claimant may request a hearing to determine the proper compensation rate, the claimant may request a hearing to determine the proper compensation rate by filing a Form 50 pursuant to R. 67-207." Ms. Lewis testified that she danced five to six nights per week but did not have any Form 20 to present as evidence of additional wages to be considered. Ms. Lewis further did not have a income tax return to present as evidence of these additional wages. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999).

CONCLUSION

For the reasons stated above, the Fund contends the Claimant is not entitled to a finding that she is entitled to the maximum Compensation Rate for the year 2008. Claimant failed to meet her burden of proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

The Fund respectfully request that this Court deny this Petition for ReHearing and affirmed its prior ruling that the Appellate Panel 's determination that Lewis' compensation rate is \$75 per week.

Respectfully submitted,

A handwritten signature in black ink, reading "Lisa C. Glover". The signature is fluid and cursive, with the first name "Lisa" being the most prominent part.

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BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

September 15, 2015

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: LeAndra Lewis v. The S.C. Uninsured Employer's Fund
Case Tracking No.: 2010-165646

Dear Ms. Kitchings:

Please construe this letter as constituting the appellant's reply in support of the petition for rehearing.

The appellant fully adheres to the arguments from the petition. At no point does the return filed by the Uninsured Employers' Fund engage the substance of those arguments.

Ms. Lewis is not claiming dual employment. Her argument below stated this plainly. Also, even if the Fund is right about limiting Ms. Lewis' wages to those she earned from LB Dynasty only, the Fund still does the math wrong; the average weekly wage far exceeds \$75/week. Candidly, it is difficult for me to see how the Fund has a good faith basis for some of its positions.

I have enclosed the required number of copies of this letter so that it can be treated as a reply. Please do not hesitate to contact me if I can ever be of assistance to you.

Yours sincerely,

Blake A. Hewitt *by BNTD w/ express permission*

cc: Charles B. Burnette, III, Esquire
Lisa C. Glover, Esquire

The South Carolina Court of Appeals

LeAndra Lewis, Appellant,

v.

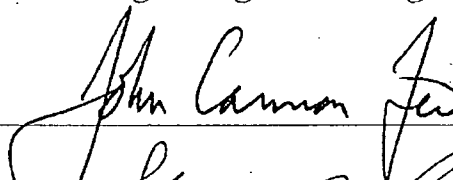
L.B. Dynasty dba Boom Boom Room Studio 54 and S.C.
Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the
Respondent.

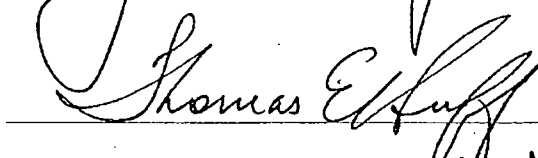
Appellate Case No. 2010-165646

ORDER

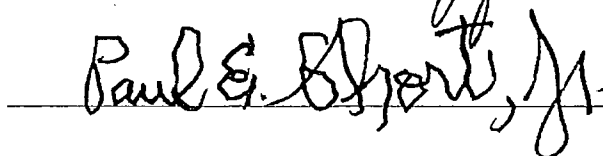
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C. J.



J.



J.

Columbia, South Carolina

cc:

FILED

October 23, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

LeAndra Lewis, Petitioner,

v.

L.B. Dynasty, d/b/a Boom Boom Room Studio 54 and
S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is,
Respondent.

Appellate Case No. 2012-213376

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from The Workers' Compensation Commission

Opinion No. 27509

Heard January 14, 2015 – Filed March 18, 2015

REVERSED AND REMANDED

Charles B. Burnette, III, of Burnette & Payne, PA, of
Rock Hill; John S. Nichols and Blake A. Hewitt, both of
Bluestein, Nichols, Thompson & Delgado, LLC, of
Columbia, for Petitioner.

Lisa C. Glover, of Columbia, for Respondent.

JUSTICE HEARN: LeAndra Lewis was injured by an errant bullet at Studio 54 Boom Boom Room (the Club) while she was working as an exotic dancer. The question before the Court is whether she is an employee of the Club and thus eligible for workers' compensation. Considering the relationship in toto, we find the Club exercised control over the manner in which she performed her work and therefore conclude she was an employee.

FACTUAL/PROCEDURAL BACKGROUND

Lewis worked as an exotic dancer, performing five to seven days a week. Lewis traveled throughout North and South Carolina to dance at different establishments, and performed at the Club on three separate occasions. Upon arrival at the Club, Lewis presented identification demonstrating she was old enough to perform, reviewed the Club's rule sheet, and paid a tip-out fee. The tip-out fee, which was determined based on when her shift started, was \$70.

The types of dances Lewis performed at the Club included V.I.P. dances, table dances, and dances on the stage. Lewis was required to perform V.I.P. dances whenever a patron requested one. The Club set the minimum price of these dances, which were to be performed in a specific area, and Lewis had to give a portion of that payment to the Club. Lewis's rotation on stage was determined by the Club and it chose the music for those performances.

The Club required the performers to follow specific guidelines or risk being fined or immediately discharged. Because this Club was topless only, the dancers were subject to fines for removing their panties. Although the Club did not set times when the dancers were required to work, it did devise a dancing schedule once the women arrived and they were not allowed to leave prior to the end of their shift without paying a fine. Furthermore, if a dancer did not perform on stage during the assigned time, she had to pay a fine. Failure to pay any fine or repeated violations of the rules could result in termination. Additionally, the dancers could be dismissed for fighting or having sex in the Club.

During Lewis's shift at the Club, a fight broke out and Lewis was struck in the abdomen by a stray bullet, which caused severe damage to her internal organs and resulted in the loss of a kidney. She also sustained substantial scarring. Lewis filed a claim for workers' compensation requesting temporary total disability benefits and medical treatment from the date of the accident. The putative employer was not represented at the hearing, but the South Carolina Uninsured Employer's Fund appeared to dispute Lewis's claim, arguing Lewis was an independent contractor and not an employee.

At the hearing, Lewis argued the Club exercised control over the manner in which her work was performed, and she was therefore an employee of the Club. She testified she earned \$357 the night she was shot, and made a total of \$1,357 at

the Club over the course of her shifts. Lewis did not state what her income was at the other establishments where she danced, but stated she made approximately \$250 to \$350 a night. She had never filed a tax return and produced no documentation indicating where she worked or what her total income was.

The single commissioner found that Lewis was an independent contractor and denied compensation. Additionally, the commissioner stated that had Lewis established she was an employee, her compensation rate would be \$75 per week based on Lewis's failure to produce evidence of the income she earned at other establishments. The appellate panel of the Workers' Compensation Commission affirmed, adopting the single commissioner's order.

On appeal, the court of appeals affirmed in a split decision. *Lewis v. L.B. Dynasty, Inc.*, 400 S.C. 129, 732 S.E.2d 662 (Ct. App. 2012). The majority found that Lewis was an independent contractor, and thus the court did not have to reach the question of whether the commissioner erred in setting her compensation rate at \$75 per week. *Id.* at 137, 732 S.E.2d at 666. Judge Short dissented, concluding that examining the relationship as a whole, the Club exercised sufficient control to evince an employment relationship. *Id.* at 139, 732 S.E.2d at 667 (Short, J., dissenting). We granted certiorari.

ISSUE PRESENTED

Did the court of appeals err in finding Lewis was an independent contractor, not an employee of the Club?

LAW/ANALYSIS

Lewis argues the details of her professional relationship preponderate in favor of finding she was an employee of the Club and the court of appeals erred in concluding otherwise. We agree.

We construe workers' compensation law liberally in favor of coverage to further the beneficent purpose of the Workers' Compensation Act; accordingly, only exceptions and restrictions to coverage are strictly construed. *James v. Anne's Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010). The burden of proving the relationship of employer and employee is upon the claimant, and this proof must be made by the greater weight of the evidence. *Marlow v. E. L. Jones & Son, Inc.*, 248 S.C. 568, 570, 151 S.E.2d 747, 748 (1966). Whether a claimant is an employee or independent contractor is a jurisdictional question and therefore the

Court may take its own view of the preponderance of the evidence. *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). The crux of this determination is the purported employer's right to control the claimant in the performance of his work. *Id.* In analyzing the nature of a work relationship the Court examines four factors: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire. *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 475–76, 753 S.E.2d 416, 419 (2013). Each factor is considered with equal force and the mere presence of one factor indicating an employment relationship is not dispositive of the inquiry. *Id.*

At the outset, we agree with Lewis that the majority of the court of appeals allowed its analysis to be influenced by the initial conclusion that Lewis was an "itinerant artistic performer." *Lewis*, 400 S.C. at 134, 732 S.E.2d at 664. While we recognize the unique details of the arrangement between the Club and Lewis, we emphasize our inquiry is a balance of factors based on the totality of the circumstances. Attempting to broadly characterize the nature of her profession prior to engagement in the analysis foretells a single result. The question before the Court is a simple, fact-based consideration—did the Club exercise sufficient control over Lewis to create an employee relationship—further commentary on the nature of her profession is unnecessary. We therefore now proceed to the right to control test.

I. RIGHT TO OR EXERCISE OF CONTROL

Turning to the first prong of the test, we find the facts preponderate in favor of an employment relationship. In considering this question, the court of appeals focused on whether the Club dictated *how* she danced and concluded that because Lewis could choreograph her own routine, the Club did not control her work. We find this a myopic view in light of the facts presented. Certainly, the Club did not specify all the details of her movements, but it is unfaithful to the record to claim it did not control her performance in her capacity as an entertainer. Prior to working her shift, Lewis was required to pay a tip-out fee, undergo a search, and review the Club's rule sheet. The Club could decline her entry if her appearance was undesirable. Once Lewis began her shift, the Club chose the music for all her performances. It also dictated when in the rotation of dancers she must appear on stage. The Club set the minimum for a V.I.P. dance—which she was required to perform if asked—and specified an area for those to take place. Although Lewis technically performed routines of her own direction, the Club specified her degree

of nudity—she was required to be topless, but would be fined for removing more. Additionally, she was not permitted to leave her shift early without paying a fine.

We recognize that Lewis had no set schedule, and came when she chose with no other repercussion than the loss of income. Nevertheless, once the Club engaged her for the evening, it exercised significant control over the performance of her work. Accordingly, we find this factor weighs in favor of a finding of an employment relationship.

II. FURNISHING OF EQUIPMENT

We further agree with Lewis that the Club furnished equipment so as to preponderate this factor in favor of her having an employee relationship.

When considering this prong, the court of appeals concluded the Club did "nothing more than allow [Lewis] on the premises" because there was no practical way she could have supplied the poles, stage, furniture, or bar items. Instead, it stated, "From the standpoint of both the [Club] and its customers, Lewis brought her own 'equipment' for her work." *Lewis*, 400 S.C. at 135, 732 S.E.2d at 665.

Initially, we disagree with the court of appeals that an individual's body can be considered equipment for the purpose of this analysis. See *Matter of Hanson*, 754 P.2d 444, 447 (Idaho 1988) ("The worker's body is not a major item of equipment within the meaning of the third element of the 'right to control' test. Major items of equipment include such things as tools, machinery, special clothing, parts, and other similar items necessary for the worker to accomplish the task to be performed. For example, a plumber, hired to perform plumbing repairs on a building, usually brings the tools, the parts, and often special equipment in the form of augers, pipe cutters and threaders, etc., in order to perform the service. Those are the sorts of items which constitute the 'major items of equipment' under the third element of the right to control test. The fact that the plumber also supplies the body doing the work is true whether he is acting as an employee or as an independent contractor.").

Furthermore, assuming her body is equipment is inconsistent with the rationale underlying the Court's consideration of this factor. As Professor Larson has written:

When it is the employer who furnishes the equipment, the inference of

the right to control is a matter of common sense and business. The owner of a \$100,000 truck who entrusts it to a driver is naturally going to dictate details such as speed, maintenance, and the like in order to protect his or her investment

This being the rationale, the rule should not be applied to items of equipment whose size and value are not so large as to provide this incentive for control and for efficient employment of capital.

3 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 61.01 (2013). The genesis of this consideration is that whomever bears the risk of the capital in any investment would logically exert the most control over how that investment is used.

We observe that other than her costume, Lewis brought no other equipment to the Club. The Club, however, supplied her necessary performance space—including an area for V.I.P. dances, a stage with a pole, tables, and a sound system. It therefore had a more significant interest in ensuring the dancers effectively utilized the equipment provided to ensure the advertised experience was available to the patrons. *See Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951, 959 (Nev. 2014) ("With regard to the relative investment of the parties, we note that Sapphire provides all the risk capital, funds advertising, and covers facility expenses. The performers' financial contributions are limited to . . . their costume and appearance-related expenses and house fees. Thus, the performers are far more closely akin to wage earners toiling for a living, than to independent entrepreneurs seeking a return on their risky capital investments." (internal quotation omitted)). Because the Club, and not Lewis, bore the risk of the capital investment in the equipment used by Lewis to perform her work, we find this factor weighs in favor of an employee relationship.

III. METHOD OF PAYMENT

Lewis argues this prong of the analysis provides little assistance in analyzing the nature of her professional relationship. We recognize at the outset the facts of this case are distinct in that the Club did not directly pay her any of her earnings; instead, it facilitated the payment she received from the customers. Nevertheless, we do not agree this factor is irrelevant to our inquiry.

When considering this prong, typically a court looks to whether the claimant

was paid by the job or by the hour and how the claimant filed her taxes. Here, Lewis never filed her taxes and does not appear to have ever been given a Form 1099 or a W-2. We therefore again find it helpful to turn to Professor Larson's discussion of the rationale underlying this consideration:

A moment's reflection will show the realistic connection between payment and control. If an employer in a regular business or industry purchases personal labor by the hour, day, or week, it is almost certain to insist on the right to see that the time is well and efficiently spent. If it pays by the hour, the employer wants to see that it gets a full hours work, and that the hour is applied where it is most needed. . . .

By contrast, if the employer makes an agreement to pay a man one hundred dollars to clean out a well, it has no reason to care whether the worker is slow or fast, clumsy or efficient.

3 *Larson's*, § 61.06. Accordingly, the payment prong reflects the putative employer's interest in a worker's productivity and efficiency and whether it would indicate the retention of control over the manner in which the job is performed.

We note the Club exerted some control over her payment; it set the price of the tip-out fee and the minimum for V.I.P. dances, providing Lewis no discretion to alter these amounts. Additionally, it required Lewis to perform these V.I.P. dances upon request from a customer. Nevertheless, on the balance we agree with the court of appeals' conclusion that this factor does not suggest the exercise of control of the Club; therefore, we find this factor preponderates in favor of an independent contractor relationship.

IV. RIGHT TO FIRE

In considering the right to fire, we are aware that in any relationship there exists some right to terminate the arrangement. However, as this Court has previously noted, "[t]he power to fire, it is often said, is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contract, under which the contractor should have the legal right to complete the project." *Shatto*, 406 S.C. at 481, 753 S.E.2d at 422 (quoting 3 *Larson's* § 61.08[1]). In essence, examining this factor requires the Court to look to whether liability exists if the work is prematurely interrupted. We find the Club ultimately had the right to terminate Lewis without risk of repercussions. Accordingly, we find this factor weighs in favor of an employment

relationship.

The testimony at the hearing indicates Lewis would be fined for a failure to comply with the rules—including not staying for her rotation in stage performances, leaving before her shift was over, and declining to perform a V.I.P. dance. Failure to pay any fine would result in her termination. She could also be fired for continuously breaking the rules, fighting, or improper hygiene. The Club could even decline to let her in for not having the desired appearance. We acknowledge she had the right not to show up at all because she had no set schedule, but once she was hired for the night, the Club could end that relationship prior to her shift ending and leave Lewis with no recourse for that firing.

On balance, we find this prong indicates an employee relationship. Lewis could be terminated for violations of the company rules and could be prevented from working at the Club's discretion. Additionally, there is no indication Lewis would possess any right to relief if she was terminated.

CONCLUSION

We emphasize our analysis is necessarily driven by the particular facts of this case. Examining the totality of the circumstances, we hold the weight of the evidence weighs in favor of finding Lewis was an employee of the Club and is entitled to workers' compensation benefits. We therefore reverse the court of appeals' opinion holding the contrary. Additionally, because it declined to address the question of Lewis's compensation rate, we remand that issue to the court of appeals for consideration.

TOAL, C.J., BEATTY and KITTREDGE JJ., concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent as I agree with the analysis and holding of the Court of Appeals and thus, would dismiss the writ of certiorari as improvidently granted.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

Opinion No. 5032 (S.C. Ct. App. filed Sept. 5, 2012)

LeAndra Lewis, ... Petitioner,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

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TABLE OF CONTENTS

Table of Authorities	ii
Questions Presented	1
I. Did the Court of Appeals err when it held that LeAndra Lewis, a traveling exotic dancer, was an independent contractor and was therefore <i>not</i> entitled to workers' compensation benefits for the injuries she suffered when she was shot while working?	
II. Did the Workers' Compensation Commission err when it held that if Ms. Lewis' claim was compensable, the amount of her benefits would only be based on her earnings from the club where she was working when she got hurt?	
Statement of the Case	1
Arguments	3
I. A faithful application of the employment test leads to the conclusion that the law deems Ms. Lewis to be an employee	4
i. The "direct evidence of control" factor weighs in favor of employment. The club exercised almost total control over Ms. Lewis when she was working	5
ii. The club had the right to fire Ms. Lewis, which suggests that Ms. Lewis was an employee	7
iii. "Method of payment" is difficult to evaluate because the club did not pay Ms. Lewis. Her money came from customers	9
iv. The "furnishing equipment" factor might not be entitled to controlling weight, but the club <i>did</i> furnish Ms. Lewis with equipment	10
II. Denying Ms. Lewis's claim violates the principle that a business is obligated to secure workers' compensation coverage for any worker who is helping produce the business's goods or services	12

III.	The Workers' Compensation Commission erred when it held that Ms. Lewis's benefits would only be based on her earnings from the club where she was working at the time of her injury	15
Conclusion		16

TABLE OF AUTHORITIES

Cases

(South Carolina)

<i>5 Star, Inc. v. Ford Motor Co.</i> , Op. No. 27398 (S.C. Sup. Ct. filed June 11, 2014) (Shearouse Adv. Sh. No. 23 at 21)	15
<i>Chavis v. Watkins</i> , 256 S.C. 30, 180 S.E.2d 648 (1971)	4, 5
<i>Cooke v. Palmetto Health Alliance</i> , 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005)	13
<i>Gentry v. Milliken & Co.</i> , 307 S.C. 235, 414 S.E.2d 180 (Ct. App. 1992)	14
<i>Lewis v. L.B. Dynasty, Inc.</i> , 400 S.C. 129, 732 S.E.2d 662 (Ct. App. 2012)	2
<i>Marchbanks v. Duke Power Co.</i> , 190 S.C. 336, 2 S.E.2d 825 (1939)	13
<i>Shatto v. McLeod Reg'l Med. Ctr.</i> , 406 S.C. 470, 753 S.E.2d 416 (2013)	8, 15
<i>Tharpe v. G. E. Moore Co.</i> , 254 S.C. 196, 174 S.E.2d 397 (1970)	8
<i>Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.</i> , 382 S.C. 295, 676 S.E.2d 700 (2009)	4, 5, 8

(Other Jurisdictions)

<i>Reich v. Priba</i> , 890 F. Supp. 586 (N.D. Tex. 1995)	10
<i>Russell v. Torch Club</i> , 97 A.2d 196 (Hudson County Ct. 1953)	7
<i>Schmidtkofer v. Indus. Comm'n</i> , 61 N.W.2d 862 (Wis. 1953)	7

Statutes & Other Authorities

S.C. Code Ann. § 42-1-130 (Supp. 2013)	14
S.C. Code Ann. §§ 42-1-400 to -450 (1985 & Supp. 2013)	13
Arthur Larson & Lex K. Larson, <i>Larson's Workers' Compensation Law</i> (2004)	9

QUESTIONS PRESENTED

- I. Did the Court of Appeals err when it held that LeAndra Lewis, a traveling exotic dancer, was an independent contractor and was therefore *not* entitled to workers' compensation benefits for the injuries she suffered when she was shot while working?
- II. Did the Workers' Compensation Commission err when it held that *if* Ms. Lewis' claim was compensable, the amount of her benefits would only be based on her earnings from the club where she was working when she got hurt?

STATEMENT OF THE CASE

In July of 2008, LeAndra Lewis was shot in the abdomen while working as a topless waitress and dancer at a Columbia business operated by L.B. Dynasty, Inc. The gunshot arose out of a fight between other people at the club. Ms. Lewis was an innocent bystander.

Ms. Lewis had danced at this particular club before, but she did not dance there regularly. She usually danced at a club in Charlotte 3 or 4 nights a week. Other nights, she would travel to a place of her choosing in either North or South Carolina. (App.p.144).

Ms. Lewis received extensive injuries from the gunshot. She injured her intestines, liver, pancreas, uterus, and a kidney. She filed this workers' compensation case in December of 2008 by requesting a hearing to determine her entitlement to temporary disability benefits and medical treatment. See (App.p.102) (Ms. Lewis' request for a hearing).

L.B. Dynasty has never appeared in this litigation. The South Carolina Uninsured Employers' Fund began defending the case after the Workers' Compensation Commission could not locate insurance coverage for the club or determine whether the club was subject to the Workers' Compensation Act. See (App.pp.278-80) (letters from the commission and the Fund). The Fund answered Ms. Lewis's claim with a general denial. (App.pp.103-05).

A single hearing commissioner denied the claim. (App.p.79). Ms. Lewis appealed, and an appellate panel of the commission affirmed the hearing commissioner. (App.p.93).

The case centers around two issues.

The first issue is whether Ms. Lewis qualifies as an “independent contractor” as opposed to an “employee.” If she is an “employee,” her work-related injuries are compensable under the Workers’ Compensation Act. If she is an independent contractor, she does not have a viable claim.

The second issue relates to the amount of money Ms. Lewis earned while she was working. This question is relevant because it impacts the amount of Ms. Lewis’s benefits if her claim is compensable.

The two orders from the commission are not materially distinguishable. Compare (App.pp.86-92) with (App.pp.95-100). Neither order contains much analysis. Instead, both orders list the evidence and then summarily conclude that Ms. Lewis was not an employee. Both orders also conclude that *if* the claim is compensable, Ms. Lewis’s benefits would be limited to the earnings she received from this particular club. (App.pp.90-91, 99-100).

After the appellate panel denied her claim, Ms. Lewis appealed to the Court of Appeals. The court conducted oral argument and affirmed the commission in a 2-1 decision. (App.pp.1-10) (also at 400 S.C. 129, 732 S.E.2d 662 Ct. App. 2012)).

The majority opinion reasoned that each prong of the four-prong employment test counseled in favor of a finding that Ms. Lewis was an independent contractor and not an employee. The majority also believed that certain other aspects of Ms. Lewis’s work “weigh[ed] heavily” in support of this result. The majority noted that this club did not recruit

Ms. Lewis and that Ms. Lewis could decide for herself when and where to work. The majority saw this as a clear independent contractor relationship. (App.pp.3-7).

The dissent viewed the case very differently. Observing that the employment test focuses on determining who has right to control the worker while he or she is working, the dissenting judge opined that the law deemed Ms. Lewis to be an employee because the evidence suggested that once Ms. Lewis went to work, it was the club—and not Ms. Lewis—who had the ultimate right to direct Ms. Lewis's activities. The dissent also observed that several courts in other jurisdictions have analyzed similar arrangements and found the relationships to be that of employment. (App.pp.8-10).

Ms. Lewis filed a petition for rehearing. See (App.pp.11-19). This petition was summarily denied, see (App.p.20), and these proceedings followed.

ARGUMENT

There are two reason that this Court should reverse the Court of Appeals.

First, the decision of the Court of Appeals does not correctly apply the employment test. Although Ms. Lewis's work situation was admittedly unusual, the odd aspects of this arrangement cannot trump the reality that once Ms. Lewis went to work, the management of the club was in complete control of her activities. Ms. Lewis was not hired to perform her own work according to her own methods. She was allowed to work only as long as she subjected herself to the club's authority. This level of control is inconsistent with independent contract. In the eyes of the law, Ms. Lewis was an "employee."

Second, denying Ms. Lewis's request for benefits does violence to the principle that a business is obligated to secure workers' compensation coverage for any worker who is

helping produce the business's core goods or services. This is commonly known as the "statutory employee" doctrine. Although Ms. Lewis did not work at this club on many prior occasions and she might never have worked there again, she was injured while providing the key ingredient of this club's operation. Patrons go to a topless dancing club to see topless dancers. Denying this claim allows this club and other clubs like it to ignore their statutory obligation to purchase insurance for the workers who are keeping the business open. The law should not condone this activity or create an environment that encourages it.

I. A faithful application of the employment test leads to the conclusion that the law deems Ms. Lewis to be an "employee."

As this Court knows, classifying someone as an "employee" or an "independent contractor" involves examining who has the right to control the worker. In employment, it is often said that the hiring party (the employer) has the right to control the worker both in what tasks the worker does and in the manner in which the worker performs them. *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). If the boss can tell the worker *how* to do the job, that usually signifies employment.

This is different from an independent contractor. An independent contractor is someone who is hired "to do a piece of work according to his own methods." *Chavis v. Watkins*, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971). He is generally not subject to anyone's control except as to the "result" of the work. Where employees generally work for wages and are subject to another person's supervision, an independent contractor is generally free to decide how the job will be done, to hire additional workers, and is compensated by the difference between the job's overhead and what he or she receives from the customer.

This is a jurisdictional question, which means that this Court is not bound by the commission's factual findings. Instead, this Court may take its own view of the facts. *Wilkinson*, 382 S.C. at 299, 676 S.E.2d at 702; *Chavis*, 256 S.C. at 32, 180 S.E.2d at 649.

The Court of Appeals observed these principles, and the court also correctly observed that the law evaluates the question of "control" by examining four factors: (1) direct evidence of control/exercise of control; (2) furnishing equipment; (3) method of payment; and (4) the right to fire. (App.p.3) (quoting *Wilkinson*, 382 S.C. at 299, 676 S.E.2d at 702).

Where the Court of Appeals erred was in how it applied these factors to the present circumstances. The only factors that present close questions are "method of payment" and "provision of equipment." Even then, these factors do not point strongly in the direction of classifying Ms. Lewis as an independent contractor. At worst, these points are a "wash."

Under the remaining two factors of the test, Ms. Lewis believes that her case for employment is strong. The record suggests that the club maintained complete control over Ms. Lewis while she was working, and the record further suggests that Ms. Lewis would have been immediately fired if she refused to follow any of the club's directions. This does not describe an independent contractor. It describes an employee.

- i. The "direct evidence of control" factor weighs in favor of employment. The club exercised almost total control over Ms. Lewis when she was working.

When Ms. Lewis showed up to work, she was searched. (App.p.126, lines 3-9). The club required Ms. Lewis to dance on stage, to dance in a specific rotation, and to dance to the music it selected. (App.p.179, lines 1-13; p.207, lines 5-20). Ms. Lewis did not get to decide when to take breaks during her shift or for whom she would dance. The club fined her if she

missed her spot in the dancing rotation, (App.p.207, lines 5-20), and the club required Ms. Lewis to perform a dance if a customer asked her to. (App.p.188, lines 13-22).

The club also required Ms. Lewis to perform certain dances called V.I.P. dances. The club set the minimum price that Ms. Lewis could charge for these dances, and the club took a portion of this fee. (App.p.238, line 22 - p.239, line 20). Ms. Lewis danced under the supervision of the club's "house mom." (App.p.201, lines 5-10). This person "stay[ed] on the girls" and collected the club's cut of a dancer's money. (App.p.201, lines 5-10).

The Court of Appeals focused on whether there was any evidence of the club telling Ms. Lewis *how* to dance. (App.p.3). The court took the view that there was nothing in the record demonstrating that Ms. Lewis would have been required to follow the club's directions if the club had ordered Ms. Lewis to perform in a certain way. *Id.*

With the utmost respect for the Court of Appeals, this view was not sound. Although the evidence suggests that Ms. Lewis could exercise some degree of discretion and creativity with her work, the evidence *also* suggests that her discretion and creativity was subject to a limitation. That limitation was the club's supervision and direction. The club told her when to dance, where to dance, the order of her dance, and how much to charge for a dance. This level of control describes a worker that possesses a job only so long as she abides by the orders her boss gives her. This is inconsistent with independent contract. It is employment, albeit for a specific (and short) term.

As Ms. Lewis wrote in her brief to the Court of Appeals, two cases from other jurisdictions may provide useful illustrations. See (App.pp.41-42). Both of these cases involved entertainers who worked at nightclubs.

In one of the cases, the written agreement between the owner and the performers designated the relationship as one of employment. Despite this designation, the court scrutinized how the parties conducted themselves in practice. The court observed that the owner had paid a flat rate for the performers' services, had no control over the makeup or identity of the performers, and had no knowledge of how the money was divided among them. The court held that the performers and the owner were engaged in a joint enterprise where each was in business for himself. Thus, the injured performer was held *not* to be an employee. See *Schmidtkofer v. Indus. Comm'n*, 61 N.W.2d 862 (Wis. 1953).

In the second case, a nightclub singer was held to be an employee even though the parties' written agreement designated her as an independent contractor. That court emphasized that someone else selected the songs for the singer to perform and that the singer was required to mingle with patrons between her performances. The court wrote:

[the singer's] freedom . . . was so drastically and extensively subordinated to the particular wish and purpose of [the employer] that her real status was manifestly that of an employee and no other.

Russell v. Torch Club, 97 A.2d 196, 197 (Hudson County Ct. 1953).

The latter case is like Ms. Lewis's case. Ms. Lewis could generally dance as she wished, but she did so under the club's supervision. The Court of Appeals erred in how it analyzed this factor. The club had total control over Ms. Lewis while she was working.

- ii. The club had the right to fire Ms. Lewis, which suggests that Ms. Lewis was an employee.

It is often said that the power to fire someone is the power to control them. As this Court has previously described, the power to end the relationship without any future liability

is inconsistent with an independent contract relationship. In an independent contract relationship, the contractor generally has the right to complete the project. See, e.g., *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013) and *Tharpe v. G. E. Moore Co.*, 254 S.C. 196, 201, 174 S.E.2d 397, 399 (1970) (describing this principle).

This Court has also described that the “right to fire” can be a difficult standard to evaluate because an owner generally retains some ability to terminate anyone, including an independent contractor. *Shatto*, 406 S.C. at 481, 753 S.E.2d at 422; *Wilkinson*, 382 S.C. at 304, 676 S.E.2d at 704. This factor sometimes warrants lower weight, but it is still relevant.

In the present case, the right to fire factor leans in the direction of employment. Nothing suggests that Ms. Lewis’s interaction with the club was an arms-length negotiation. This workplace agreement was a contract of adhesion, which Ms. Lewis was free to accept (in which case she had a job for the evening) or reject (in which case she did not). Ms. Lewis said that the club had the right to terminate the arrangement for any reason or for no reason at all. See (App.p.239, line 21 - p.240, line 1). The club had no mutual obligations to any of the dancers; a dancer in fact had to pay to leave the club if she wanted to leave before the time the club set for her. (App.p.176, lines 9-18; p.206, lines 1-15). The power to immediately and unilaterally end this relationship indicates nothing if not the fact that the club had the right to tell Ms. Lewis how to do her job. If the club did not like what Ms. Lewis was doing, it had the power to cut her loose.

The Court of Appeals focused its analysis on the fact that this working relationship was for a short duration. (App.pp.6-7). That is not part of the test. It does not matter if Ms. Lewis was working for an hour or a week. What matters is whether the club had the right

to end the job on a whim. While it is perfectly accurate to say that a business has the right to end a contractual relationship if the terms of the agreement are breached, that point is not in dispute. The analysis hinges on the character of the agreement, not its length. If Ms. Lewis's job was subject to the club's discretion, that *does* distinguish this relationship from the circumstances that are typically associated with an independent contractor.

The Court of Appeals also opined that the rules the club imposed on Ms. Lewis required nothing more than her obedience with the law. (App.p.7). Respectfully, this statement is not accurate. The law did not require Ms. Lewis to perform V.I.P. dances, to dance in a rotation, or to dance on a stage. It is true that Ms. Lewis knew she would have to perform these activities, but her prior knowledge does not affect whether the character of this relationship fits in one column or the other. Ms. Lewis knew she was subjecting herself to the club's control. Her self-awareness does not transform her from a subordinate to an equal.

- iii. "Method of payment" is difficult to evaluate because the club did not pay Ms. Lewis. Her money came from customers.

Method of payment is a factor of the employment test because payment on a time basis is a strong indicator of employment and payment on a completed job basis is indicative of an independent contractor. 3 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, § 61.06 (2004). An owner who purchases labor by the hour or by the day generally retains the right to insist that the worker's time is being used efficiently. This sort of supervisory authority is usually a call-sign of employment.

This is the most unusual aspect of Ms. Lewis's working arrangement because the club never paid her anything. All of Ms. Lewis's income came from tips she received directly

from customers. In fact, Ms. Lewis had to pay the club a fee in order to dance each evening. (App.p.201, line 17 - p.202, line 13). The amount of this fee was set by the club, and the club also required Ms. Lewis to share a portion of the money she earned with management. (App.p.172, lines 1-3; p.221, line 25 - p.222, line 3; p.239, lines 13-15).

This is not payment by the hour or payment by the job. It does not fit either part of this factor of the common law employment test. But even though this situation was unusual, there are at least two circumstances here that should be instructive.

First, the importance of gratuities to Ms. Lewis's income suggests that the club was dependent on customer goodwill. To protect that goodwill, it follows that the club would retain the right to control Ms. Lewis's work in order to police customer satisfaction.

Second, a United States District Court in the Northern District of Texas examined a similar arrangement and noted that the "key components of profit and loss" for a dancer are the club's cover charge, the price of alcohol, and the atmosphere. All of these things are controlled exclusively by the club. *Reich v. Priba*, 890 F. Supp. 586, 593 (N.D. Tex. 1995). The court observed that "[a]ny profit to the [dancer] is more analogous to earned wages than to a return for risk on capital investment." *Id.* The reality is that the club's management has tremendous influence over a dancer's ability to profit, but it disguises that influence behind the sleight-of-hand that the club never physically hands a dancer any money.

- iv. The "furnishing equipment" factor might not be entitled to controlling weight, but the club *did* furnish Ms. Lewis with equipment.

Furnishing equipment is a factor of the employment test because an owner that has purchased equipment for a worker to use is "naturally" going to retain the right to control

how the worker uses that equipment in order to protect his or her investment. Larson & Larson, *supra* p.9, at § 61.07[2].

Like “method of payment,” it would be reasonable to view this factor of the test as being difficult to evaluate in these circumstances. Ms. Lewis’s job involved next to no equipment. Her responsibilities instead involved being courteous to patrons, serving them drinks, and dancing. As the Court of Appeals observed, there is no practical possibility that a topless waitress (or, for that matter, *any* kind of waitress) would provide her own chairs, tables, or bar glasses. See (App.pp.5-6). Like “method of payment,” it may be tempting initially to declare this factor of little utility.

But here again, there are a couple of aspects of this arrangement that should be instructive.

First, the Court of Appeals appears to have reached the conclusion that because this arrangement was unusual, this counted “against” the finding of an employment. See (App.pp.5-6). It did this with each factor of the employment test. Rather than conclude that this factor or any of the others were of low value or were neutral in these circumstances, the Court of Appeals seemed to take the view that unless the evidence weighed in favor of employment, this counted against Ms. Lewis’s claim.

That view is not faithful to how the test operates. Reasonable doubts are to be resolved in favor of including workers and workplace injuries, not excluding them. While it is fair to say that no dancer is going to supply her own stage, tables, or chairs, it is difficult to see why this practical impossibility weighs *against* Ms. Lewis’s claim to employment. This view puts a thumb on the scale against the claimant. That perspective was not correct.

Second, it ought to say *something* that the only capital investment Ms. Lewis made to work was to show up. This might not be entitled to controlling weight, but in the same way that a restaurant furnishes a waiter or a waitress with almost everything that individual needs in order to do the job, the club provided those same materials to Ms. Lewis. It was impossible for Ms. Lewis to have any earning potential apart from the club. She could not make money unless there was a functioning establishment in operation around her. This makes it hard to view her as someone who is engaged in her own independent business. It looks instead like she is working in a business that is being run by someone else.

Ms. Lewis has openly conceded that this arrangement was unusual. But the novel aspects of this relationship cannot mask the reality that the club maintained complete control over Ms. Lewis while she was working. The club *had* to do this—Ms. Lewis testified that on the night she was shot, there were 20 or 30 other dancers working with her. These workers were the critical component of the club's operation. The idea that the club did not have the right to control them is too hard to swallow. This Court should hold that the Court of Appeals was not correct. On balance, the control test weighs in favor of employment.

II. Denying Ms. Lewis's claim violates the principle that a business is obligated to secure workers' compensation coverage for any worker who is helping produce the business's goods or services.

There are different ways to view the conflict in this case. One way is to characterize the case from Ms. Lewis's perspective and in terms of her own request for benefits.

From that viewpoint, the question for resolution is whether someone like Ms. Lewis—a topless waitress and dancer—qualifies for coverage if she is hurt while working. The previous section of this brief is devoted to answering that question. The Court may have

a different view, but Ms. Lewis believes that a faithful application of the “control” test leads to the conclusion that she is an employee.

An alternative way to characterize this case is from the industry’s perspective. From that angle, the question is whether it is permissible for a business—in this case, a topless dancing club—to hire 20 or 30 people each evening, to use those people to provide the necessary ingredients for the club’s operation, and to avoid including those people in the business’s workers’ compensation coverage.

The answer to this question is “no.” It is generally *not* permissible for a business to use workers to perform its core operations but fail to procure workers’ compensation coverage for those people. As this Court explained in a decision that was authored many years ago, the General Assembly apparently recognized that allowing an owner to take this sort of action would inevitably result in businesses siphoning people out of the workers’ compensation system by using people labeled as sub-contractors to perform the owner’s trade and business. See *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 343-344, 2 S.E.2d 825, 828 (1939). This is commonly known as the “statutory employee” doctrine and it is codified in sections 42-1-400 to -450 of the South Carolina Code (1985 & Supp. 2013).

South Carolina courts have applied this principle on several occasions. For example, an emergency helicopter pilot was held to *not* be a statutory employee of a hospital because the hospital was in the business of providing healthcare, not transportation. See *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005). For an example in the other direction, a worker installing machinery at a factory was held to be a statutory employee because the machinery in question was an integral part of the factory’s trade and

because the factory's regular employees had installed similar machinery previously. See *Gentry v. Milliken & Co.*, 307 S.C. 235, 414 S.E.2d 180 (Ct. App. 1992). The lesson of these cases seems plain. A business owner is supposed to provide coverage for everyone who is working to further the essential parts of the business. To the extent that any business does *not* do so, the business is ignoring its obligation under the law.

That is what the club is doing here. Ms. Lewis and her fellow dancers are providing the essential element—public nudity—of this business's operation. The Workers' Compensation Act was written to apply broadly. The statutory definition of "employee" includes "every person engaged in [] employment." S.C. Code Ann. § 42-1-130 (Supp. 2013). The definition excludes "casual employees" from coverage, but only if those employees are not engaged in the business's trade, business, or occupation. *Id.* There does not appear to be any suggestion that this exclusion would apply to Ms. Lewis's case. Ms. Lewis and her co-workers were the reason that this club opened its doors each evening.

Here is the point. This case *is* about Ms. Lewis's quest to receive medical care and benefits for her work-related injury, but it is also about an industry that is acting unlawfully. The Court should not allow this club and others like it to skirt their obligation to insure their workers against workplace injuries. The industry needs to be told to follow the law.

This result is in line with the results from several other jurisdictions. See (App.pp.44-48) (citing and analyzing multiple foreign cases). This Court is not the first court to wrestle with the employment status of a topless dancer. Federal courts have addressed this question in the context of the Fair Labor Standards Act, and courts in other states have addressed the question in the context of their workers' compensation schemes or employment regulations.

These decisions have debunked the suggestions that the itinerant nature of this work or the fact that many clubs never directly pay a dancer any money weigh in favor of finding that a dancer is an independent contractor. *Id.* These decisions also acknowledge that the run-of-the-mill dancer does not possess the “skill” of an independent and professional artisan, and they similarly recognize that the circumstances with the most impact on a dancer’s ability to earn money are circumstances that the club exclusively controls. *Id.* This is an industry that operates on short-term relationships of employment. A dancer can work only so long as a club is willing to retain her. When that time expires, the dancer is out of a job.

III. The Workers’ Compensation Commission erred when it held that Ms. Lewis’s benefits would only be based on her earnings from the club where she was working at the time of her injury.

Ms. Lewis included this issue in her petition for a writ of certiorari because she briefed the issue to the Court of Appeals and she believes that the commission’s decision is plainly wrong both as a matter of fact and as a matter of law. See (App.pp.50-53). The Court of Appeals did not reach this issue. The amount of Ms. Lewis’s benefits became irrelevant once the court held that Ms. Lewis was not an employee. See (App.p.7).

In light of the fact that the Court of Appeals did not reach this issue, Ms. Lewis feels she must concede that the prudent course would be for this Court to remand this issue to the Court of Appeals for resolution. See *Shatto*, 406 S.C. at 482, 753 S.E.2d at 421 (remanding an issue that was avoided by the court’s original disposition), see also *5 Star, Inc. v. Ford Motor Co.*, Op. No. 27398 (S.C. Sup. Ct. filed June 11, 2014) (Shearouse Adv. Sh. No. 23 at 21, 28) (same).

CONCLUSION

The unusual aspects of this working arrangement cannot trump the reality that once Ms. Lewis made the decision to go to work, the management of the club was in complete control of her activities. Also, denying Ms. Lewis's request for benefits does violence to the principle that a business is obligated to secure workers' compensation coverage for workers that provide the business's core goods and services. The decisions below give this business a free pass to ignore the law, and this sort of business does not have any endearing characteristics making it worthy of such a pass.

This Court should reverse. It should hold that the law deems Ms. Lewis to be an "employee" and that the Court of Appeals erred in holding otherwise. Because the Court of Appeals did not reach the question of how to compute Ms. Lewis's earnings, the Court should remand that question for adjudication.

Respectfully submitted,

July 30, 2014

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

RECEIVED

SEP 22 2014

Opinion No. 5032 (S.C. Ct. App. Filed September 5, 2012)

S.C. Supreme Court

LeAndra Lewis.....Petitioner,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom room Studio 54, and
The S.C. Uninsured Employers' Fund.....Defendants,

Of whom

The S.C. Uninsured Employers' Fund
Is the.....Respondent.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities.....	3
Statement of Issues on Appeal.....	4
Statement of the Case.....	4

Arguments

1. The Commission Did Not Err in Finding That Ms. Lewis Was An Independent Contractor.....6-8
 - A. Direct Evidence of the Right or Exercise of Control..6-7
 - B. Furnishing of Equipment 7
 - C. Method of Payment.....7-8
 - D. Right to Fire.....8
2. The Commission Did Not Err In Finding That If Ms. Lewis Was An Employee Her Compensation Rate Would Be \$75.00 per Week..8-9

Conclusion.....	10

TABLE OF AUTHORITIES

Cases:

<u>Chavis v. Watkins</u> , 256 S.C. 30, 180 S.E.2d 648 (1971).....	7
<u>Wilkinson v. Palmetto State Transp. Co.</u> , 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009).....	6
<u>Steele v. Self Serve</u> , 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999).....	9

Statutes

Regulation 67-1603(H).....	9

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING THAT LEANDRA LEWIS WAS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE?
2. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED THAT IF LEANDRA LEWIS WAS AN EMPLOYEE HER COMPENSATION RATE WOULD BE \$75.00 PER WEEK?

STATEMENT OF THE CASE

The case of LeAndra Lewis v. L.B. Dynasty, Inc., dba Boom Boom Room Studio 54 involves a question of whether the South Carolina Workers' Compensation Commission has jurisdiction over this claim based upon whether the Claimant was an employee or independent contractor for LB Dynasty, Inc. If found to be an employee, the Claimant contends she suffered an injury by accident by way of a gunshot wound to her abdomen, back, bladder, reproductive organs, liver, pancreas, duodenum, biliary tract, scarring to neck and skin loss on July 23, 2008. The Claimant was the victim of a random shooting at the employer location. The Claimant seeks a finding that LB Dynasty, Inc. employed her as an exotic dancer. The Claimant further seeks a finding she is permanently and totally disabled or alternatively, she is in need of further medical treatment. Claimant seeks Temporary Total benefits from July 23, 2008 through the present and continuing as well as payment of all causally related medical expenses. Claimant further contends she is entitled to the 2008 maximum Compensation Rate of Six Hundred sixty-one dollars and twenty-nine cents (\$661.29).

The Respondent, South Carolina Uninsured Employers' Fund argues the Claimant was not an employee of LB Dynasty, Inc. The Fund further contends the Claimant was an

independent contractor and is not entitled to any benefits under the South Carolina Workers' Compensation Act. Finally, the Fund contends the employer is not subject to the Act.

No one appeared on behalf of LB Dynasty, Inc. (herein after referred to as the Club).

Commissioner G. Bryan Lyndon heard this matter on May 21, 2009 in Columbia, South Carolina. On October 13, 2009, he issued an Order concluding that Ms. Lewis was an Independent Contractor and not an employee. Further, Commissioner Lyndon found that if Ms. Lewis had met her burden of proof in establishing that she was an employee of L.B. Dynasty she would be entitled to a Compensation Rate of \$75.00 per week. The single commissioner denied benefits to Ms. Lewis and dismissed her claim with prejudice, subject to her appellate rights.

Counsel for the Claimant appealed timely and the Appellate Panel of the South Carolina Workers' Compensation Commission affirmed Commissioner Lyndon's Order in its entirety.

ARGUMENT

THE CLAIMANT LEANDRA LEWIS WAS, AT THE TIME OF HER ACCIDENT, AN INDEPENDENT CONTRACTOR OF L.B. DYNASTY, INC.

The Court must determine four factors to conclude LeAndra Lewis is an employee or independent contractor. First, direct evidence of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire. The Supreme Court instructs that all four factors “should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor.” *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009).

1. Direct Evidence of the Right or Exercise of Control

LeAndra Lewis worked at L.B. Dynasty, Inc., as a dancer/stripper on three occasions during 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was July 23, 2008. (Hearing Tr. p.64). At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Claimant testified that she resides in North Carolina. Claimant testified that upon arriving at L.B. Dynasty, Inc. (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a “tip-out fee.” There is no evidence of direct control.

The “tip-out” fee is based on time of arrival. This fee is lower if the dancers arrive early in the evening and progressively higher the later the dancer arrives at the Club. (Hearing Tr. pp. 30, 65). Claimant testified that she arrived at the Club between 11:00pm

and midnight. Further, that she paid a "tip-out" fee of seventy to eighty dollars. The Claimant decided what time she arrived at the Club.

The actual work to be performed at the Club was dancing. The Claimant testified that she choreographed her own dance routines and provided her costume. This work was to be done according to her own methods. *Chavis v. Watkins*, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971). The Claimant also testified that she could come and go to clubs as she pleased.

2. Furnishing of Equipment

The Club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers on a first come basis. None of these items were provided specifically for the Claimant. However, Claimant testified that she could not dance without music and used the table and chairs as props.

3. Method of Payment

The Claimant testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came from tips given to her by the patrons. The Club never paid the Claimant any money. Claimant assumed responsibility for all cost associated with her dancing at the Club. These cost included a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee.

Upon questioning by the single commissioner, Claimant testified that she danced at other clubs throughout North and South Carolina. Claimant testified that she worked five to six nights per week because the money was addictive. (Hearing Transcript page 75 lines 17-20). Claimant further testified that if there was not a lot of money at one club she would go to another club to go after the money. (Hearing Transcript page 80 lines 3-6).

4. Right to Fire

The Claimant testified that the Club did not have to let her dance if her appearance was not attractive. Claimant further testified that she could be fined and/or asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations. Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

Based on the Claimant's testimony and the evidence presented, the Fund contends the Claimant was an independent contractor and not an employee of LB Dynasty, Inc.

ARGUMENT

THE CLAIMANT LEANDRA LEWIS IS NOT ENTITLED TO THE
MAXIMUM COMPENSATION RATE FOR THE YEAR 2008?

The Claimant contends that she earned One Thousand Six Hundred fifty dollars per week as a dancer in clubs. She testified that she worked at the club where the injury occurred on three occasions during the year of 2008. Otherwise she worked at other clubs in South Carolina and North Carolina. Claimant testified that she could not

remember the dates of the first and second time she danced at the Club but did recall that she earned Five Hundred dollars (\$500.00) each time. Claimant further testified that she earned Three Hundred fifty-seven dollars (\$357.00) on the night she was injured. The Claimant testified that she worked five to six nights per week earning an average of two hundred fifty dollars to three hundred fifty dollars per night. The Claimant contends her Average Weekly Wage and Compensation Rate should be based upon this dual employment.

The Fund argues that if the Claimant is deemed an employee and the claim is compensable the Claimant is bound by the wages earned from this Club only. The Claimant is required by Regulation 67-1603(H) to submit a Form 20 to the Claim's department of the South Carolina Workers' Compensation Commission and the employer outlining wages earned from other employers. The Claimant testified that she did not have any Form 20s to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999). The Claimant further testified that she did not file tax returns regarding her income. (Hearing Transcript page 87 lines 4-7).

CONCLUSION

For the reasons stated above, the Fund contends the Claimant was an independent contractor and not an employee. Therefore, the Claimant is not entitled to any benefits. Alternatively, if the Court finds that the Claimant was an employee of the Club and entitled to benefits, the Fund contends the Claimant is not entitled to a finding that she is entitled to the maximum Compensation Rate for the year 2008. Claimant failed to meet her burden of proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

Respectfully Submitted

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Columbia, South Carolina
September 22, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

Opinion No. 5032 (S.C. Ct. App. filed Sept. 5, 2012)

LeAndra Lewis, ... Petitioner,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

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TABLE OF CONTENTS

Table of Authorities	ii
Arguments	1
A. Like the brief that the Fund filed below, the brief the Fund has filed in this Court does not explain <i>why</i> the facts show that the club did not have the right to control Ms. Lewis	1
B. The Fund's brief never discusses the argument that denying this claim violates the letter and the spirit of the statutory employee doctrine	3
C. Ms. Lewis is not pressing the issue that concerns the amount of her earnings, but the Fund argues the issue anyway and advances arguments that seem to be obviously incorrect	4
Conclusion	6

TABLE OF AUTHORITIES

Cases

(South Carolina)

<i>Poch v. Bayshore Concrete Prods./S.C., Inc.</i> , 405 S.C. 359, 747 S.E.2d 757 (2013)	4
<i>Steele v. Self Serve</i> , 335 S.C. 323, 516 S.E.2d 674 (Ct. App. 1999)	5

(Other Jurisdictions)

<i>Harrell v. Diamond A Entertainment, Inc.</i> , 992 F. Supp. 1343 (M.D. Fla. 1997)	5
<i>Russell v. Torch Club</i> , 97 A.2d 196 (Hudson County Ct. 1953)	2

Statutes & Other Authorities

S.C. Code Ann. § 42-1-130 (Supp. 2013)	3
8 S.C. Code Ann. Regs. 67-1603 (2012)	5
Black's Law Dictionary (9th ed. 2009)	1
Donald J. Kochan, <i>While Effusive, "Conclusory" Is Still Quite Elusive</i> , 73 U. Pitt. L. Rev. 216 (2011)	1

ARGUMENT

- A. Like the brief that the Fund filed below, the brief the Fund has filed in this Court does not explain *why* the facts show that the club did not have the right to control Ms. Lewis.

One dictionary defines “conclusory” as “expressing a factual inference without stating the underlying facts on which the inference is based.” Black’s Law Dictionary 329 (9th ed. 2009). Just as a flippant statement can relate to an issue of fact, it is also possible to propose a conclusion of law without explaining why that view of the law is correct. In addition to being labeled “conclusory,” this sort of defect is sometimes called an *ipse dixit*. This is an assertion that a party *makes*, but does not *prove*. *Id.* at 905; see also Donald J. Kochan, *While Effusive, “Conclusory” Is Still Quite Elusive*, 73 U. Pitt. L. Rev. 216, 218 (2011).

The Fund is in the enviable position of having won at every stage of this case. It does not have the burden of proof in these proceedings, and nothing in this brief should be taken as a suggestion to the contrary.

But Ms. Lewis believes that the arguments she offered in her principal brief warrant some sort of substantive answer. Ms. Lewis has attempted to explain her view that the commission’s decision was wrong and that the decision of the Court of Appeals is affected by several errors of law, yet the Fund never acknowledges these arguments, and the Fund never even references the Court of Appeals. Like the brief that the Fund filed below; see (App.pp.55-64), the brief it has filed in this Court is a conclusory document that lists the employment test, recites a few facts (even some incorrect ones), and then gives a conclusion.

This failure should say something. It should be telling that the Fund never attempts to explain why it believes that the management of this club did not have the authority to

direct Ms. Lewis's conduct. The reality is that the record belies this position. Every waitress has a boss, and this is true regardless of whether the waitress is wearing clothing.

Ms. Lewis was told when to dance, where to dance, what music she would dance to, and how much she could charge for a dance. She was also told what to do with her money, when she could take breaks, and when she could leave work without incurring a penalty. The Court of Appeals seemed transfixed on the idea that the club never told Ms. Lewis *how* to dance, but the court missed the point that everything in this record tends to suggest that *if* management had given Ms. Lewis such instructions, she would have been required to follow those instructions or she would have been fired. No other conclusion is reasonably possible.

The Fund makes no effort to discuss any of the foreign cases that Ms. Lewis cited as persuasive. The majority of the Court of Appeals fell victim to the same omission. See (App.pp.1-7). Candor requires acknowledging that the test for employment under the Fair Labor Standards Act is different than the test that controls the present case, but it ought to say something that multiple federal jurisdictions have examined similar circumstances and reached the conclusion that even though this looks like an arms-length relationship, it is employment-in-disguise. See (App.p.45) (citing the FLSA's employment test).

The other set of foreign cases that go un-analyzed are the two cases that involved nightclub entertainers. See (Brief of Petitioner, pp.6-7). *Russell v. Torch Club* involved a singer who could not pick her songs and who was required to mingle with patrons between performances. 97 A.2d 196 (Hudson County Ct. 1953). The Fund never attempts to explain why Ms. Lewis's case is different from the *Russell* performer, whose freedom was extensively curtailed. The Fund is not alone. The Court of Appeals ignored this case too.

Yes, this was short-term work for Ms. Lewis, but the statutory definition of “employee” does not exclude a short-term or temporary worker unless such a worker is not engaged in the employer’s trade, business, or occupation. See S.C. Code Ann. § 42-1-130 (Supp. 2013). The putative employer in the present case is a topless dancing bar. It would seem obvious that Ms. Lewis — a topless dancer and waitress — would be working in this establishment’s trade, business, and occupation.

With the utmost respect for the commission and the Court of Appeals, the only conclusion that has any support in this record is that as soon as Ms. Lewis went to work, this club had the right to control Ms. Lewis’s conduct.

B. The Fund’s brief never discusses the argument that denying this claim violates the letter and the spirit of the statutory employee doctrine.

Ms. Lewis’s principal brief took the position that this case is about an industry that appears to be in serial violation of the law. The statutory employee doctrine provides that it is impermissible for a business to hire temporary workers to perform its core operation, call those workers “independent contractors,” and attempt to use such labeling to avoid the obligation to insure those workers against the risks of being disabled by a workplace accident. That is exactly what this club is doing here. This club is skirting the system, and the federal cases show that this club is not unique.

Suppose that Ms. Lewis was a regular worker at this establishment. Suppose that instead of having danced at this club on only 2 or 3 prior occasions, she danced there 4 nights a week. Let us also suppose that Ms. Lewis’s experience was the typical experience. Instead of having a random set of dancers each night, assume that the same group of 20 women

constituted the club's regular staff. Assume also that the other details of the workplace relationship are identical to the details described in this record.

It seems difficult to understand how someone could offer a good faith contention that those women would be anything other than statutory employees. Without this workforce, the club does not have a viable business.

The present circumstances are not meaningfully distinguishable. The fact that Ms. Lewis was not a regular worker is irrelevant to an employment analysis. Ms. Lewis knew that this workplace relationship was going to be short-lived, but the same is true of a temporary laborer on a construction site. Knowing that the job will not be long-term does not change anything. A laborer is engaged in employment, even if it is only temporary. E.g. *Poch v. Bayshore Concrete Prods./S.C., Inc.*, 405 S.C. 359, 747 S.E.2d 757 (2013).

This is another argument that the Court of Appeals did not address and that the Fund has not attempted to answer.

C. Ms. Lewis is not pressing the issue that concerns the amount of her earnings, but the Fund argues the issue anyway and advances arguments that seem to be obviously incorrect.

Ms. Lewis's principal brief conceded that the prudent way to handle the issue concerning the amount of money she earned was to remand this issue so that the Court of Appeals could consider it in the first instance. (Brief of Petitioner, p.15). Strangely, the Fund's brief argues the issue despite Ms. Lewis's concession, and in doing so, the Fund continues to advance two ideas that seem to be manifestly incorrect.

The first of these mistaken ideas is that Ms. Lewis was required to submit a document called a Form 20 if she wanted to include earnings from other employers in the calculation

of her “compensation rate.” The thing that makes this argument so odd is the fact that the relevant regulation seems to state rather clearly that the Form 20 is completed by the *employer*, not the *employee*. See 8 S.C. Code Ann. Regs. 67-1603 (2012). Yes, subsection (H) of the regulation requires Ms. Lewis to obtain a completed Form 20 from each of her other alleged employers, but any reasoning that is based on subsection (H) collapses on itself once it is applied to the circumstances of Ms. Lewis’s case. Everyone agrees that none of Ms. Lewis’s employers paid her *anything* directly, so all of these employers would have left the Form 20 blank. This appears to be common in this industry. As a United States District Court in Florida observed, “it seems fairly obvious that [the club] would have no way of knowing how much money each of its dancers . . . took home at the end of a shift.” *Harrell v. Diamond A Entertainment, Inc.*, 992 F. Supp. 1343, 1349 (M.D. Fla. 1997).

The second of the Fund’s mistaken ideas is related to the first. The Fund begins by attempting to use the absence of the Form 20 to attack Ms. Lewis’s argument, but then the Fund cites a case — *Steele v. Self Serve* — where the claimant failed to present a Form 20 but the commission included earnings from multiple employers *anyway*. 335 S.C. 323, 328, 516 S.E.2d 674, 676-77 (Ct. App. 1999). It is difficult to see how the Fund can maintain both positions at the same time. Either the failure to submit a Form 20 *is* a bar to the inclusion of these wages or it *is not*.

The fund closes its brief by noting Ms. Lewis’s admission that she did not report her earnings to the relevant authorities. Ms. Lewis covered this point in the reply brief that she filed below. (App.p.74). This is a matter for resolution between Ms. Lewis and the state and federal governments. Nothing ties her workers’ compensation benefits to her tax return.

CONCLUSION

The unusual aspects of this working arrangement cannot trump the reality that once Ms. Lewis made the decision to go to work, the management of this club was in complete control of her activities. Ms. Lewis could generally dance as she wished, but all of the evidence suggests that she did so under the club's supervision. Furthermore, denying Ms. Lewis's request for benefits does violence to the principle that a business is obligated to secure workers' compensation coverage for the people who provide the business's core goods and services. This Court should reverse. It should hold that the law deems Ms. Lewis to be an "employee," and it should remand the question that concerns the amount of Ms. Lewis's earnings to the Court of Appeals.

October 1, 2014

Respectfully submitted, v



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

LeAndra Lewis, Appellant,

v.

L.B. Dynasty, Inc., d/b/a Boom Boom Room Studio 54
and the South Carolina Uninsured Employers' Fund,
Defendants,

Of whom the South Carolina Uninsured Employers' Fund
is Respondent.

Appellate Case No. 2010-165646

Appeal from the South Carolina
Workers' Compensation Commission

Opinion No. 5032
Heard March 27, 2012 – Filed September 5, 2012

AFFIRMED

Charles B. Burnette, III, Burnette & Payne, PA, of Rock
Hill, Blake A. Hewitt and John S. Nichols, Bluestein,
Nichols, Thompson, & Delgado, LLC, of Columbia, for
Appellant.

Lisa C. Glover, the South Carolina Uninsured Employers'
Fund, of Columbia, for Respondent.

FEW, C.J.: LeAndra Lewis worked as a dancer in various "exotic dance clubs" throughout North and South Carolina. On June 23, 2008, she was shot while

dancing at the Boom Boom Room Studio 54 on Two Notch Road in Columbia, South Carolina. The workers' compensation commission held that she was not an employee of the club and therefore not entitled to benefits under the Workers' Compensation Act. We agree.

I. Facts and Procedural History

Lewis was nineteen years old and living in Charlotte, North Carolina at the time of her injury. She danced three or four nights a week at a place called Club Nikki's in Charlotte. On two or three other nights a week, Lewis travelled around the Carolinas to dance in other clubs. She typically earned between \$250.00 and \$350.00 a night in cash. When the single commissioner asked about her total income dancing "five to six nights a week, fifty weeks,"¹ Lewis responded, "the money is actually addictive honestly, so you want to strive to get more, you know, so you work even harder." Lewis worked several years in this business before she was shot, and she never filed a tax return.² The clubs where Lewis worked are commonly referred to as strip clubs. Lewis's role as a dancer in these clubs is what most people would call being a stripper.

The night Lewis was shot was the second or third night she danced at the Boom Boom Room. She had not danced there the night before, and she could not remember the previous time or times she was there. Lewis presented several fellow exotic dancers as witnesses to explain that dancers often choose a city and a club to dance in on a particular night and travel there uninvited and unannounced. In keeping with this practice, Lewis showed up at the Boom Boom Room on this particular night, showed her identification to prove she was at least eighteen years old, and paid the required "tip-out" fee in cash to the club. She did not fill out an employment application and did not sign an employment agreement. The club gave her a "rules sheet," she went to the dressing room to put on her outfit, and she danced.

¹ Using the numbers testified to by Lewis, which average five and a half nights a week for fifty weeks earning \$300.00 per night, her annual taxable income would have been \$82,500.00.

² In response to a follow-up question about filing tax returns, Lewis testified, "I don't have enough money. I want to talk to somebody, but they're just too expensive for me to afford."

At some point during the night, an altercation broke out in the club. There was gunfire, and a stray bullet hit Lewis in the abdomen. She suffered serious injuries to her intestines, liver, pancreas, kidney, and uterus. Surgeons removed one kidney, and doctors informed her she may never be able to have children due to the injuries to her uterus. According to her testimony, extensive scarring from the gunshot wound left her unemployable as an exotic dancer.

Lewis filed a claim for benefits with the workers' compensation commission. Because the club had no insurance, the South Carolina Uninsured Employers' Fund was forced to defend. Both the single commissioner and the appellate panel denied Lewis's claim based on the finding that she was not an employee. Her appeal came directly to this court pursuant to section 42-17-60 of the South Carolina Code (Supp. 2011).

II. The Independent Contractor/Employee Analysis

"[T]he 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 [her] work." *Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009). The test requires us to "examine[] 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; [and] (4) right to fire." *Id.* The question is a jurisdictional one as to which the appellate court "may take its own view of the preponderance of the facts upon which jurisdiction is dependent." *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 317, 713 S.E.2d 267, 270 (2011). Applying the *Wilkinson* "control" test to the facts of this case, we find that Lewis was not an employee of the club.

Lewis claims that the club's managers "controlled" her by searching her when she arrived that night, requiring her to pay the "tip-out" fee, and directing her to the manager's office and then the dressing room. She argues in her brief the club's control over her is demonstrated by these facts:

She danced when the club told her to dance; the club selected the music; the club set her hours; the club required her to perform on demand; the club required her to strive to get V.I.P. dances; the club set her tip-out and

the floor rate for V.I.P. dances; and the club required her to bring drinks from the bar.

She argues that the club furnished equipment, such as the stage for dancing; poles to assist the dancers; private rooms for V.I.P. dances; tables, chairs, and couches for the customers; and even glasses in which the bartenders poured their drinks. In her brief, Lewis states, "The club provided the dancers with cleaning solution, towels, and a basket for collecting money while on stage, and the club provided the dancers with lockers for their belongings."

Lewis discounts the method of payment factor on these facts since the club paid her nothing, but simply took a cut of her tips. As to the right to fire factor, Lewis argues the club's right to "fine" her or refuse her readmission to dance at the club for violating club rules weighs in favor of an employment relationship.

We compliment Lewis's counsel for this creative presentation, framing questions to the witnesses and presenting evidence to the commission in such a fashion as to create the appearance that the facts of this case fit the words of the *Wilkinson* test. However, we find that none of this supports the argument that Lewis met the test for an employment relationship under *Wilkinson*. Rather, the facts of this case demonstrate that Lewis was not an employee, and therefore that she is not entitled to workers' compensation benefits.

We decide this appeal using the test articulated by the supreme court in *Wilkinson*. See *Pikaart*, 393 S.C. at 318-19, 713 S.E.2d at 270-71 (explaining that *Wilkinson* requires a court to "evaluate[] the four factors with equal force in both directions to provide an even-handed and balanced approach"); *Paschal v. Price*, 392 S.C. 128, 133-34, 708 S.E.2d 771, 773-74 (2011) (applying *Wilkinson* test). As Lewis's counsel candidly acknowledged at oral argument, however, this case presents an "unorthodox" situation. Given these unusual facts, we initially stand back from the *Wilkinson* analysis and note that Lewis was an itinerant artistic performer. Other than to perform within the physical limitations of the Boom Boom Room and to comply with its basic rules and procedures, most of which simply required her to obey the law, she did as she pleased. One of her witnesses testified, "Sometimes you just jump up some days and say, 'let's go down here, I think.' Or a rapper might be here, you know; that's another reason that girls travel, is a rapper might be here or an actor or somebody and you just want to come down here for that." Lewis was asked at the hearing before the single commissioner, "You could go to ten different clubs in ten different days if you wanted to?" to which she responded,

"Right." Lewis was never invited to dance at the Boom Boom Room. She showed up unannounced, paid the club for the right to dance and receive tips from its customers, and kept almost all the money she received without paying any employment taxes. This arrangement left her free to walk out of the club at a moment's notice without any employment-related consequences other than to lose income. As one of Lewis's witnesses testified, "You're not free to leave, but you can leave. You have to pay to leave." These circumstances and others we will discuss weigh heavily against finding an employment relationship.

Focusing back on the *Wilkinson* test, we find Lewis was not an employee.

1. *The right or exercise of control*

Despite all the circumstances cited by Lewis under which the club required her to work, the work she travelled from Charlotte to perform, and the performance the customers of the club paid to see, was that of an exotic dancer. As Lewis states in her brief, "The record does not indicate that the club told [her] *how* to dance."³ As counsel conceded at oral argument, "There is not any evidence of the club telling [her] how specifically to dance" and, "While the dance is going on she has complete discretion." The extent to which an exotic dancer in the Boom Boom Room decides the manner in which she performs her dance to satisfy the club's customers, according to the record in this case, is not subject to any limitation or control by the club. The "right or exercise of control" factor weighs against finding an employment relationship.

2. *Furnishing of equipment*

The "equipment" Lewis argues the club furnished her is insignificant to the *Wilkinson* analysis. With respect to furnishing equipment, the club did nothing more than allow her onto its premises. There is no practical possibility that an exotic dancer might bring her own stage, poles, chairs, couches, or bar glasses. From the standpoint of both the Boom Boom Room and its customers, Lewis

³ In fairness, Lewis continued the sentence with "but the record does reflect that the club exerted so much control over [her] that *if* the club had told [her] how to dance, she would have been required to follow the club's instructions." We find no evidentiary support for the portion of the sentence quoted in this footnote. Rather, the record indicates the club had nothing to say as to *how* Lewis should dance.

brought her own "equipment" for her work. This factor weighs against finding an employment relationship.

3. *Method of payment*

As Lewis points out in her brief, "The club paid Ms. Lewis nothing—zero." She collected her payment in the form of cash tips from the club's customers. The club's only involvement in the customers paying money to the dancers was to keep a large quantity of one dollar bills on hand so that a customer could "make it rain." This procedure allowed a customer who was particularly happy with a dancer's performance or who wanted to encourage a more enthusiastic performance to pay the club \$100.00 or more and get the same amount back in one dollar bills. When the customer threw the ones in the air, he was said to "make it rain." As Lewis testified, however, even in this instance the money comes from the customer. Therefore, the club did not pay Lewis. Rather, *she paid the club* for the right to perform. As she testified, "they . . . told me to pay my [\$70.00] tip-out" as a condition of entering the club. She also paid the club a share of her V.I.P. fees and tipped the disk jockey and bartender. This factor weighs against finding an employment relationship.

4. *Right to fire*

Lewis argues the club had the right to fire her if she did not comply with its rules. We find, however, that the "rules" the club imposed on exotic dancers like Lewis do not indicate an employment relationship. Any business has a right to impose conditions on those to whom it pays money for work, regardless of whether the worker is an independent contractor or an employee. The business's right to terminate the relationship for a violation of its conditions does not make the worker an employee. *See Wilkinson*, 382 S.C. at 304, 676 S.E.2d at 704 (stating "a right of termination, in some form, exists in an independent contractor arrangement"). In this case, the employment "relationship" Lewis claims existed was never contemplated to last more than one night in the club. Therefore, terminating the relationship would involve nothing more than kicking her out of the club and not allowing her back in on a subsequent night. Lewis was asked by her attorney, "In your own words, explain to the commissioner how their rules and controls dictate what you have to do when you get there and if you don't do what they say, what happens." She responded:

Well, if you don't do what they say, then you get fined. If you don't pay the fine, then you are fired. Or if—it depends on to what extreme the—what you did, you know. . . . Like if you get caught having sex in the club, then you're automatically fired. Like fighting, you're automatically fired, can't work back at the club.

These restrictions do not distinguish Lewis's relationship with the Boom Boom Room from any independent contractor relationship. Any business that pays for work to be performed on its premises is free to terminate the relationship for the type of conduct Lewis described, even when the work is being performed by an independent contractor. The "rules" imposed on Lewis are not in the record, and Lewis has cited no significant restriction on her conduct from these rules or otherwise that is not simply a requirement that Lewis obey the law. *See* 382 S.C. at 302, 676 S.E.2d at 703 (stating "requiring a worker to comply with the law is not evidence of control by the putative employer"). The "right to fire" factor weighs against finding an employment relationship.

III. Conclusion

We agree with the workers' compensation commission's finding that Lewis is not an employee. Thus, the commission correctly concluded it had no jurisdiction to award benefits. This ruling makes it unnecessary to address the other issues raised on appeal. *See Price v. Peachtree Elec. Servs., Inc.*, 396 S.C. 403, 410, 721 S.E.2d 461, 464 (Ct. App. 2011) (declining to address other issues when "our determination as to the jurisdiction of the Commission is dispositive of the case").

AFFIRMED.

HUFF, J., concurs.

SHORT, J., dissents in a separate opinion.

SHORT, J., dissenting: The majority finds the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel) was correct in finding Lewis was an independent contractor of the Boom Boom Room Studio 54

(the Club) in Columbia. However, I would find that Lewis was an employee of the Club; therefore, I respectfully dissent.⁴

"The existence of an employment relationship is a jurisdictional issue for purposes of workers' compensation benefits and is reviewable under a preponderance of the evidence standard." *Shatto v. McLeod Reg'l Med. Ctr.*, 394 S.C. 552, 557, 716 S.E.2d 446, 449 (Ct. App. 2011). Because the issue of Lewis's employment status is jurisdictional, this court makes findings based on its view of the preponderance of the evidence. *See Brayboy v. WorkForce*, 383 S.C. 463, 464, 681 S.E.2d 567, 567 (2009) (making its findings based on its view of the preponderance of the evidence because the issue of Brayboy's employment status was jurisdictional).

"Under South Carolina law, the primary consideration in determining whether an employer/employee relationship exists is whether the alleged employer has the right to control the employee in the performance of the work and the manner in which it is done." *Paschal v. Price*, 392 S.C. 128, 132, 708 S.E.2d 771, 773 (2011). "The test is not the actual control exercised, but whether there exists the right and authority to control and direct the particular work or undertaking." *Kilgore Group, Inc. v. S.C. Emp't Sec. Comm'n*, 313 S.C. 65, 68, 437 S.E.2d 48, 49 (1993). "'An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work.'" *Bates v. Legette*, 239 S.C. 25, 34-35, 121 S.E.2d 289, 293 (1961) (quoting

⁴ The Club did not have workers' compensation insurance; therefore, the South Carolina Uninsured Employer's Fund (the Fund) became involved in the case. The Fund filed an initial brief on appeal; however, it did not file a final brief. Rule 208(a)(4), SCACR, provides that if a respondent does not file an initial brief, this court is permitted to take whatever action the court deems proper. Respondent's failure to file a brief alone can justify reversal. *See Turner v. Santee Cement Carriers, Inc.*, 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981) (noting that respondent did not file a brief with the court and her failure to do so allowed the court to take such action upon the appeal as it deemed proper, and stating this failure alone would justify reversal; however, it simply considered it as an additional ground). Despite the Fund's failure to file a final brief, this court permitted the Fund to appear and argue the case at oral argument.

56 C.J.S. *Master and Servant* § 3(1)). "The four principal factors indicating the right of control are (1) direct evidence of the right to, or exercise of, control; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire." *Paschal*, 392 S.C. at 132, 708 S.E.2d at 773. This court evaluates the four factors with equal force in both directions. *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 300, 676 S.E.2d 700, 702 (2009).

Although I could not find any South Carolina appellate court cases that have addressed whether an exotic dancer is classified as an employee or independent contractor, other courts in various jurisdictions have analyzed the same or similar arrangements between exotic dancers and clubs and found an employment relationship existed. *See Club Paradise, Inc. v. Oklahoma Emp't Sec. Comm'n*, 213 P.3d 1157, 1161 (Okla. Civ. App. 2008) (finding the exotic dancers were employees of Club Paradise based on the club's control over its dancers' performance, and noting the workers performed on the club's premises, the club could dismiss its workers at any time, and either party could terminate their relationship without liability); *Yard Bird, Inc. v. Va. Emp't Comm'n*, 503 S.E.2d 246, 224-25 (Va. Ct. App. 1998) (finding exotic dancers were employees based on the amount of control the Yard Bird had over its dancers, and noting the club attempted to enforce its rule that dancers not leave the premises between sets, dancers could choose times they worked, but only in conformity with the club's schedule, and the club required dancers to comply with liquor control laws and regulations that governed its licensing status). While these jurisdictions do not apply an identical test to that utilized by the courts in South Carolina for determining whether an employment relationship exists, they are to some degree similar and consider the degree of control the alleged employer exerts over the worker.

In the case before us, Lewis presented evidence that the Club exercised the right to control her and the other exotic dancers in the performance of their work. When hired, Lewis was required to present her identification and sign a form agreeing to comply with the Club's rules. The Club provided virtually all of the necessary tools for the dancers to perform, including towels, lockers, alcohol, music, chairs, tables, a stage, poles, a "V.I.P." area, and customers. Although dancers could choose their own costumes, they could not remove the bottom portion of their costume or choose when they performed on stage. The Club set the fees for V.I.P.

dances and required the dancers to remit a portion of the fees they collected to the Club. The Club fined or fired dancers if they missed their turn in the rotation or altered the V.I.P. dance price. Once the dancers reported to work, the Club fined or fired them if they left before a certain time. In addition, the Club fined or fired dancers for failure to comply with the Club's rules. Thus, under the totality of the circumstances, I find the Club exercised the sufficient amount of control over Lewis in the performance of her work to establish an employment relationship, and the Appellate Panel erred in finding Lewis was an independent contractor.

78
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

WCC File No. 0821881

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

PETITION FOR REHEARING

This court published its decision in *Lewis v. L.B. Dynasty Inc.* on September 5, 2012. See Op. No. 5032 (Shearouse Adv. Sh. No. 31 at 67). This petition for rehearing is therefore timely under Rule 221(a) of the South Carolina Appellate Court Rules.

The appellant respectfully submits that the court may have overlooked or misapprehended the following points in its decision:

I.

The Court's analysis begins by characterizing Ms. Lewis as "an itinerant artistic performer." Slip op. at 4. The opinion recites that on the night of her injury, Ms. Lewis

showed up to the Boom Boom Room unannounced and kept almost all of the money she received. Slip op. at 5. The opinion also observes that this arrangement left Ms. Lewis “free to walk out of the club at a moment’s notice without any employment-related consequences other than to lose income.” *Id.*

For the most part, these observations are fair. It is accurate to say that Ms. Lewis showed up to the Boom Boom Room unannounced and that both parties contemplated that their relationship would be a short one. Because several jurisdictions have rejected the characterization of exotic dancing as a “skill” or a form of “art,”¹ calling Ms. Lewis an “artistic performer” may not be the most accurate characterization of her job. In a similar fashion, the record reflects that Ms. Lewis was not totally free to leave the club at any point during the night; if she wanted to leave before the time the club had appointed, she had to pay the club a fee. (R.p. 98, lines 9-18; p. 128, lines 1-15). But the thesis behind the Court’s observations is certainly reasonable. This work situation was admittedly unorthodox, in a number of ways.

While these observations are correct descriptions of the record, the Court may have overlooked that it is at least debatable how these particular facts are relevant to the issue on appeal. The issue on appeal is whether the Boom Boom Room had the right to control the manner in which Ms. Lewis performed her work. If Ms. Lewis and Ms. Lewis alone had the

¹See, e.g., *Doe v. Cin-Lan, Inc.*, No. 08-cv-12719, 2008 WL 4960170 (E.D. Mich. Nov. 20, 2008) (not reported in the Federal Supplement) (favorably describing a dancer’s claim that her job involved only a “low level of skill”); *Harrell v. Diamond A Entertainment, Inc.*, 992 F. Supp. 1343, 1351 (M.D. Fla. 1997) (a district court describing why it was not persuaded that nude dancing required special or unusual ability); *Reich v. Priba*, 890 F. Supp. 586, 592 (N.D. Tex. 1995) (describing that the record contained no evidence of any specialized skills).

right to control the manner of her dancing, the law says she is an independent contractor. If the Boom Boom Room had the right to tell Ms. Lewis how to dance, the law says she is an employee. See *Kilgore Group, Inc. v. S.C. Employment Sec. Comm'n*, 313 S.C. 65, 68, 437 S.E.2d 48, 49 (1993) (describing the employment test in terms of who has the right to control the manner in which the work is done). The Court's observations about the itinerant nature of Ms. Lewis's work are certainly fair, but the question the Court must ask is whether Ms. Lewis's freedom to work when she wants and for whom she wants reflects (a) that Ms. Lewis has the right to control her own conduct while at work, or (b) whether the Boom Boom Room had the right to control her conduct at work. The Court's opinion does not explain why the fact that Ms. Lewis's work was transient shows one thing or another.

The better view would be to conclude that although Ms. Lewis showed up to the Boom Boom Room unannounced and both parties contemplated that their relationship would be a short one, these facts do not make much of a difference in determining whether Ms. Lewis was an independent contractor or an employee. Ultimately, those particular circumstances do not say anything with respect to the question of who had the right to control the manner in which Ms. Lewis performed her work. An at-will employee has the freedom to walk away from a job at his or her discretion, and as the Court of Appeals of Virginia observed, "[t]he fact that a person may work several part-time jobs, even in the same industry, does not necessarily make him or her an independent contractor." *Yard Bird, Inc. v. Virginia Employment Comm'n*, 503 S.E.2d 246, 251 (Va. Ct. App. 1998). As Ms. Lewis described in her briefs to this Court, other jurisdictions have discounted the importance of the fact that exotic dancers "tend to travel." See (Brief of Appellant, pp.18-19).

And while it was certainly fair to point out that Ms. Lewis had the ultimate decision-making authority when it came to deciding whether to go to work, in fairness, the Court should take stock of the fact that Ms. Lewis and the twenty to thirty other women working at the Boom Boom Room were providing *the essential ingredient* — public nudity — that drove the club's decision to open for business. The statutory employee doctrine instructs that a business may not avoid its obligation under the workers' compensation act by using people designated as "independent contractors" to perform activities that are a core part of its trade, South Carolina's workers' compensation laws are to be construed in favor of coverage, and the public policy of South Carolina ought to be to place the cost of industrial accidents like the one Ms. Lewis suffered at the feet of the business that employed her when she was injured. These arguments were addressed on pages 21 and 22 of Ms. Lewis's principal brief to this Court and on pages 2 and 4 of her reply brief.

II.

With respect to the "right or exercise of control" factor of the employment test, the Court's opinion concludes that the evidence does not suggest that the Boom Boom Room had any control over how Ms. Lewis performed her work. Slip op. at 5.

This factor of the test does not rise and fall on whether the club ever actually exercised any control over how Ms. Lewis danced. The test is "whether there exists the right and authority to control and direct the particular work or undertaking." *Kilgore*, 313 S.C. at 68, 437 S.E.2d at 49.

According to the testimony presented in this case, the club required Ms. Lewis to use the dancing pole if she knew how; the club required Ms. Lewis to perform V.I.P. dances, the

club set the minimum price Ms. Lewis could charge for a V.I.P. dance, the club set the order for Ms. Lewis's and the other dancers' stage dances, and the club made Ms. Lewis dance to its music. (R.p.101, lines 1-13; p.110, lines 13-22; p.111, lines 19-24; p.129, lines 5-20; p.160, lines 13-22). This level of control does not describe a relationship where Ms. Lewis was hired to perform her work according to her own methods, and it does not suggest that she had the final say with respect to whether her conduct at work was acceptable. The decision whether to take a break from dancing during her shift was not up to Ms. Lewis; if she missed her dance rotation, she was fined. (R.p.129, lines 5-20). Ms. Lewis could not refuse to perform a dance for a particular customer; the club required her to perform a V.I.P. dance if asked. (R.p.110, lines 13-22). The only reasonable conclusion is that the club was superior to Ms. Lewis in the chain of authority. The evidence that the club had the right to control the manner in which Ms. Lewis performed her work is overwhelming. Cf. *Reich*, 890 F. Supp. at 592 (the court recited that a club set the times for a dancer's performance, published rules dancers were required to follow, took a portion of part of dancer's earnings, and required a would-be dancer to sign an agreement that was prepared solely by the club, and the court concluded "all of these factors suggest control").

III.

With respect to the "furnishing of equipment" factor, the Court's opinion observes that the club did nothing more than allow Ms. Lewis on to its premises.

The Court's opinion does not contain any explanation of why "furnishing of equipment" is a factor of the employment test. As Ms. Lewis's principal brief described, when a business has invested resources in procuring equipment that is used by a worker, the

law implies that the business has retained the right to control the manner of the worker's performance. (Brief of Appellant, pp.9-10). The justification for this is that when the worker uses the business's equipment, the business is "naturally" going to retain the right to control how the equipment is used in order to protect its investment. *Id.*

The only capital investment Ms. Lewis had to make in order to work was to show up. In the same way that a restaurant furnishes a waiter with everything that individual needs in order to actually work, the club furnished all of the tools Ms. Lewis used to work. It is not necessary that this factor be the majority of the basis for the Court's decision. An exotic dancer cannot realistically furnish her own dancing stage and full-service bar. But as Ms. Lewis's principal brief described, it ought to say something that the club provided things like pieces of furniture that Ms. Lewis used as props when dancing. This suggests that the club retained the right to tell Ms. Lewis what to do with that equipment.

IV.

On the "method of payment" factor of the employment test, the Court's opinion observes that the club did not pay Ms. Lewis anything and that Ms. Lewis had to pay the club in order to dance. Slip op. at 6.

The Court's opinion may have overlooked that the reason method of payment is a factor of the employment test is that "[p]ayment on a time basis is a strong indication of the status of employment. . . . [and] [p]ayment on a completed project basis is indicative of independent contractor status." (Brief of Appellant, p.7) (quoting 3 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law*, §61.06 (2004)). Ms. Lewis's situation does not qualify on either court, but that should not mean that her method of payment counts

“against” either employment or independent contract — it means that this factor is more difficult to evaluate. As Ms. Lewis’s principal brief described, it is not uncommon for *employees* in the hospitality industry to be required to remit a portion of their gratuity earnings to others working in the establishment. See *Lentz v. Spanky’s Rest. II, Inc.*, 491 F. Supp. 2d 663, 671 (N.D. Tex. 2007) (describing different types of “tip pools”). Also, the importance of gratuities to Ms. Lewis’s income reasonably suggests that the club depended on customer goodwill, in which case the club would naturally retain the right to control the manner of a dancer’s performance in order to protect that goodwill. See (Brief of Appellant, p.9). The Court may also find it instructive to consider that the “key components of profit and loss” — the club’s cover charge, the price of alcohol, and the atmosphere — are all controlled by the club. A district court in the Northern District of Texas listed these facts and observed, “[a]ny profit to the entertainers is more analogous to earned wages than to a return for risk on capital investment.” *Reich*, 890 F. Supp. at 593.

V.

On the “right to fire,” the Court’s opinion observes that a business has the right to impose conditions on its workers, and the Court asserts that Ms. Lewis cited no significant restriction on her conduct that was not simply a requirement that she obey the law. Slip op. at 6-7.

The law did not require Ms. Lewis to strive to get V.I.P. dances, the Boom Boom Room did. The Boom Boom Room also required Ms. Lewis to dance in a rotation, to do a V.I.P. dance whenever asked, to work a set number of hours, and to use the dancing pole. The notion that Ms. Lewis was required to do nothing more than follow the law is not

accurate. Ms. Lewis testified that if the club's management was not happy with the way she was dancing, they could fire her. (R.p.129, lines 1-4):

The reason right to fire is a difficult factor to evaluate is because parties in arms-length negotiations will sometimes put provisions in their agreements allowing each other to terminate the relationship without liability. See (Brief of Appellant, p.16) (describing this factor). A business has the right to set conditions on the performance of work, but if the business retains a unilateral right to terminate the relationship without future liability, that relationship is employment, not independent contract. By retaining such power, the business is retaining the right to control the manner in which the work is performed. Arthur and Lex Larson's treatise quotes a Louisiana case that instructs "[a]ny employee cannot deem to be independent when his work can be stopped at the will of the employer, because, as we have observed above, the power to terminate the employment, of necessity, gives to the employer the power to control the activities of the employee." Larson & Larson, *supra* page 6, at § 61.08[2] (quoting *Deason v. Coal Operators Cas. Co.*, 43 So. 2d 630, 631 (La. Ct. App. 1950)). That rule is sound. The evidence in this case suggests that the club had the right to dismiss Ms. Lewis or any other dancer whenever it wanted. That tends to show the club had the right to control the manner of Ms. Lewis's or any other dancer's manner of performing work.

CONCLUSION

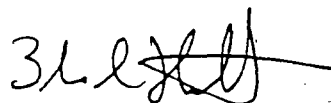
The Court should grant this petition and amend its decision to conclude that LeAndra Lewis was an employee of the Boom Boom Room at the time of her injury. Although this work situation was admittedly unusual, the fairest reading of the record shows that

everything that happened inside the walls of the Boom Boom Room happened only because the Boom Boom Room allowed it. Operations like the Boom Boom Room should not be allowed to evade the statutory obligation to provide workers' compensation insurance for workers that are engaged in the core component of the exotic dancing business, and the evidence overwhelmingly suggests that the Boom Boom Room had the power to control how Ms. Lewis went about her work.

The Court should also hold that the workers' compensation commission erred in calculating Ms. Lewis's compensation rate. This argument appears on pages 23 to 26 of Ms. Lewis's principal brief, pages 5 through 7 of her reply brief, and was not addressed by the Court.

September 20, 2012

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The South Carolina Court of Appeals

LeAndra Lewis, Appellant,

v.

L.B. Dynasty, Inc., d/b/a Boom Boom Room Studio 54
and the South Carolina Uninsured Employers' Fund,
Defendants,

Of whom the South Carolina Uninsured Employers' Fund
is Respondent.

Appellate Case No. 2010-165646

ORDER DENYING PETITION FOR REHEARING

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon, Jr. C.J.
Thomas C. Hoff J.

Paul E. Sport, Jr. J.
*I vote to deny petition for rehearing
but adhere to my dissent.*

Columbia, South Carolina

FILED

October 18, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
T. Scott Beck, Commissioner

WCC File No. 0821881

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

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TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	1
Statement of the Case	1
Arguments	3
I. Because The Club Had the Right to Control Ms. Lewis, the Commission Erred in Finding That Ms. Lewis Was an Independent Contractor	4
A. The Right to Control a Worker Determines Employment Status, and "Right to Control" Is Measured by Looking at Four Factors: Method of Payment, Furnishing Equipment, Direct Evidence of the Right to Control, and the Right to Fire	5
B. Because the Club Did Not Pay Ms. Lewis, the Method of Payment Does Not Tend to Show That the Club Had the Right to Control the Details of Ms. Lewis's Work	7
C. Because the Club Furnished Ms. Lewis with Equipment, this Tends to Show That the Club Retained the Right to Control the Details of Ms. Lewis's Work	9
D. Because the Club Exercised Almost Total Control over Ms. Lewis When She Was at Work, this Indicates That the Club Had the Right to Control the Details of Ms. Lewis's Work	11
E. The Club Had the Right to Fire Ms. Lewis, and this Tends to Show That Ms. Lewis Was an Employee	16

F.	Because Dancers Have No Bargaining Power and Are Economically Dependent on These Clubs, and Because These Clubs' Primary Purpose Is to Profit off Showcasing Dancers, Public Policy Favors Finding That Ms. Lewis Was an Employee and Not an Independent Contractor	17
II.	The Commission Erred When it Determined That If Ms. Lewis Was an Employee, Her Compensation Rate Would Be \$75.00 per Week	23
A.	The Commission's Decision Is Controlled by an Incorrect Reading of the Applicable Regulation, and Ms. Lewis Admits That Her Employers Never Paid Her "Wages"	24
B.	Ms. Lewis and Two Witnesses Provided Evidence on the Amount of Her Earnings and Hours Worked, and the Commission Should Either Have Found this Testimony to Be Incredulous Before Rejecting It, or the Testimony Should Have Carried the Day	25
	Conclusion	27

30 CASES

TABLE OF AUTHORITIES

Cases

(South Carolina)

<i>Bates v. Legette</i> , 239 S.C. 25, 121 S.E.2d 289 (1961)	6, 13
<i>Boles v. Una Water Dist.</i> , 291 S.C. 282, 353 S.E.2d 286 (1987)	25
<i>Chavis v. Watkins</i> , 256 S.C. 30, 180 S.E.2d 648 (1971)	5, 6, 13
<i>Dawkins v. Jordan</i> , 341 S.C. 434, 534 S.E.2d 700 (2000)	5, 6
<i>Foreman v. Jackson Minit Mkts., Inc.</i> , 265 S.C. 164, 217 S.E.2d 214 (1975)	25
<i>Kilgore Group, Inc. v. S.C. Employment Sec. Comm'n</i> , 313 S.C. 65, 437 S.E.2d 48 (1993)	11
<i>Marchbanks v. Duke Power Co.</i> , 190 S.C. 336, 2 S.E.2d 825 (1939)	22
<i>Nelson v. Yellow Cab Co.</i> , 349 S.C. 589, 564 S.E.2d 110 (2002)	5
<i>State v. Starnes</i> , Op. No. 26868 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearouse Adv. Sh. No. 33 at 44)	26
<i>Steele v. Self-Serve, Inc.</i> , 335 S.C. 323, 516 S.E.2d 674 (Ct. App. 1999)	25
<i>Tharpe v. G. E. Moore Co.</i> , 254 S.C. 196, 174 S.E.2d 397 (1970)	6, 10, 16
<i>Wilkinson v. Palmetto State Transp. Co.</i> , 382 S.C. 295, 676 S.E.2d 700 (2009)	5, 6, 16, 17, 22
<i>Wilson v. Georgetown County</i> , 316 S.C. 92, 447 S.E.2d 841 (1994)	4
<i>Young v. Warr</i> , 252 S.C. 179, 165 S.E.2d 797 (1969)	5, 11

(Other Jurisdictions)

<i>Brenner v. State ex rel. Oklahoma Employment Sec. Comm'n</i> , 201 P.2d 236 (Okla. 1948)	20
<i>Club Paradise, Inc. v. Oklahoma Employment Sec. Comm'n</i> , 213 P.3d 1157 (Okla. Civ. App. 2008)	19, 20
<i>Doe v. Cin-Lan, Inc.</i> , No. 08-cv-12719, 2008 WL 4960170 (E.D. Mich. Nov. 20, 2008)	20
<i>Harrell v. Diamond A Entertainment, Inc.</i> , 992 F. Supp. 1343 (M.D. Fla. 1997)	19, 20, 24
<i>Lentz v. Spanky's Rest. II, Inc.</i> , 491 F. Supp. 2d 663 (N.D. Tex. 2007)	9
<i>McLaughlin v. Seafood, Inc.</i> , 861 F.2d 450 (5th Cir. 1988)	19
<i>Reich v. Circle C. Investments, Inc.</i> , 998 F.2d 324 (5th Cir. 1993)	18, 19, 20
<i>Reich v. Priba</i> , 890 F. Supp. 586 (N.D. Tex. 1995)	18, 19, 20
<i>Russell v. Torch Club</i> , 97 S.2d 196 (Hudson County Ct. 1953)	15
<i>Schmidlkofer v. Indus. Comm'n</i> , 61 N.W.2d 862 (Wis. 1953)	14
<i>Yard Bird, Inc. v. Virginia Employment Comm'n</i> , 503 S.E.2d 246 (Va. Ct. App. 1998)	19

Statutes and Other Authorities

S.C. Code Ann. § 1-23-380 (Supp. 2009)	4, 23, 24
25A S.C. Code Ann. Regs. 67-1603 (Supp. 2009)	23, 24, 25
3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW (2000)	6
1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW (2004)	21
3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW (2004)	7, 9, 10, 14, 15, 16

STATEMENT OF ISSUES ON APPEAL

- I. Whether the South Carolina Workers' Compensation Commission Erred When it Determined That Leandra Lewis Was an Independent Contractor and Not an Employee.
- II. Whether the Commission Erred When it Determined That *If* Ms. Lewis *Was* an Employee, Her Compensation Rate Would Be \$75.00 per Week.

STATEMENT OF THE CASE

This is an appeal in a workers' compensation case. The issues on appeal are whether the South Carolina Workers' Compensation Commission erred when it determined that LeAndra Lewis was an independent contractor instead of an employee, and whether the Commission erred when it determined that *if* Ms. Lewis *was* an employee, her compensation rate would be \$75.00 per week.

On June 23, 2008, LeAndra Lewis was shot in the abdomen while performing as a topless dancer at the Boom Boom Room Studio 54, a business operated by L.B. Dynasty, Inc. (R.p. 24). By all accounts, Ms. Lewis was a bystander, shot as a result of a fight between other individuals at the club. (R.p. 89, lines 10-13; p.132, line 10 - p.133, line 10). She initiated this workers' compensation case on December 1, 2008, by filing a request for a hearing with the Workers' Compensation Commission. (R.p. 24). In her hearing request, Ms. Lewis sought payment of temporary disability benefits, alleged that she was permanently and totally disabled, and alleged that she was in need of additional medical examination and treatment. (R.p. 24).

The South Carolina Uninsured Employers' Fund became involved in the case after the Commission conducted an investigation of Ms. Lewis's claim and failed to locate any

workers' compensation insurance policy carried by L.B. Dynasty. (R.pp. 200-202). The Commission's investigation had also failed to determine whether L.B. Dynasty regularly employed four or more persons and was subject to the Workers' Compensation Act. *Id.* On February 13, 2009, the Fund filed its answer to Ms. Lewis's request for a hearing. (R.pp. 26-27). This answer contained a general denial of all Ms. Lewis's allegations, and it specifically denied that Ms. Lewis and L.B. Dynasty were covered by the Workers' Compensation Act. (R.pp. 26-27).

A single hearing commissioner conducted a hearing in this case on May 21, 2009. (R.p. 77). At the conclusion of the hearing, the hearing commissioner requested that the parties provide him with briefs discussing whether Ms. Lewis was an employee or an independent contractor and how the parties arrived at their values for Ms. Lewis's compensation rate. (R.p. 176, line 9 - p.178, line 2) (hearing testimony); see also (R.pp. 28-33) (Fund's brief); and (R.pp. 34-59) (Ms. Lewis's brief).

About a month after the last of the briefing, the hearing commissioner requested that the Fund's attorney prepare an order in accordance with the position outlined in the Fund's brief. (R.pp. 203-204). This request included a finding that Ms. Lewis failed to prove that she was an employee, and a finding that there was no evidence whatsoever as to the amount of money Ms. Lewis made or the hours she worked. *Id.* The hearing commissioner signed an order to this effect on October 13, 2009. (R.p. 1).

On October 28, 2009, Ms. Lewis filed a request that the Commission review the hearing commissioner's decision. (R.pp. 60-62). On April 19, 2010, an appellate panel of the Commission conducted oral argument. (R.p. 179) (argument transcript).

On May 3, 2010, the Commission requested that counsel for the Fund prepare an order fully affirming the hearing commissioner's decision. (R.pp. 205-206). The Commission signed this order on June 24, 2010. (R.p. 15).

On July 7, 2010, Ms. Lewis served and filed her notice of appeal. (R.p. 75).

ARGUMENTS

This appeal is about two things. It is about whether Ms. Lewis was an employee of the topless club where she was working at the time she was shot, and it is about how much money Ms. Lewis made when she was working. The Commission resolved both of these questions against Ms. Lewis. It found that Ms. Lewis was an independent contractor at the time of her injury, and it refused to consider Ms. Lewis's earnings from dancing at other clubs – limiting its calculation of her compensation rate to the “wages” she earned from the Boom Boom Room. (R.pp. 18-21).

This Court should reverse the Commission's decision.

On the question of employment, whether a worker is an employee or an independent contractor rises and falls on who has the right to control the worker, both in the type of work performed and the manner of performance. This is determined by a four-factor test which the Commission listed, but did not discuss in any substantive analysis.

The Court should reverse this part of Commission's decision because although Ms. Lewis's work situation was unusual in some respects – for example, Ms. Lewis had only worked at the Boom Boom Room on two or three previous evenings – a genuine examination of her working situation reveals that the Boom Boom Room, not Ms. Lewis, had the right to control the details of Ms. Lewis's work. This is supported by persuasive authority from

South Carolina and from other jurisdictions, as well as by South Carolina's statutory employee doctrine which provides that a business may not avoid its obligation to carry workers' compensation insurance by offering its core goods and services through workers hired as "independent contractors."

On the question of Ms. Lewis's earnings, the Commission found that there was no evidence as to the amount of money Ms. Lewis earned or the hours she worked, that Ms. Lewis's testimony was self-serving, that Ms. Lewis was required to submit a document called a Form 20 to the Commission to prove wages from other employers, and that Ms. Lewis was bound by the "wages" she earned from the club. (R.p. 21).

The Court should reverse this portion of the Commission's decision because each of the Commission's justifications are flawed. Testimony *is* evidence, Ms. Lewis offered two witnesses plus herself who testified on this issue, there was no finding that this testimony was not credible, and most importantly, neither the Boom Boom Room nor any of Ms. Lewis's other employers ever paid Ms. Lewis "wages" (in fact, the Club never paid Ms. Lewis *anything*). On both issues, the Commission's decision simply does not address Ms. Lewis's arguments and explain why these arguments are not persuasive and should not carry the day.

I. Because The Club Had the Right to Control Ms. Lewis, the Commission Erred in Finding That Ms. Lewis Was an Independent Contractor.

Under South Carolina law, the existence of the employer-employee relationship is a "jurisdictional question." *Wilson v. Georgetown County*, 316 S.C. 92, 93-94, 447 S.E.2d 841, 842 (1994). As distinguished from the deferential standard of review for most factual

determinations made by administrative agencies, see S.C. Code Ann. § 1-23-380(5)(e) & (f) (Supp. 2009) (factual findings and conclusions of agencies are affirmed unless clearly erroneous, arbitrary, capricious, or characterized by an abuse of discretion), an appellate court may take its own view of the preponderance of the evidence with respect to jurisdictional facts. *Dawkins v. Jordan*, 341 S.C. 434, 438-39, 534 S.E.2d 700, 703 (2000) (overruled on other grounds by *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 300, 676 S.E.2d 700, 702 (2009)). “It is South Carolina’s policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers’ Compensation Act.” *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 594, 564 S.E.2d 110, 112 (2002) (overruled on other grounds by *Wilkinson*, 382 S.C. at 300 n.3, 676 S.E.2d. at 702, n.3).

A. The Right to Control a Worker Determines Employment Status, and “Right to Control” Is Measured by Looking at Four Factors: Method of Payment, Furnishing Equipment, Direct Evidence of the Right to Control, and the Right to Fire.

In creating a test to distinguish between an employee and an independent contractor, “[t]he courts have found difficulty in laying down any hard and fast rule.” *Young v. Warr*, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969). Determining the proper classification of a worker “in each case depends largely upon its own factual situation, subject to certain established principles.” *Id.*

The “established principle” used to draw the distinction is that a worker qualifies as an employee when the employer has the right to control the worker, both in what work the worker performs and in how the work is performed. *Chavis v. Watkins*, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971). In contrast, “[a]n independent contractor is one who, exercising an

independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work." *Id.* (quoting *Bates v. Legette*, 239 S.C. 25, 34-35, 121 S.E.2d 289, 293 (1961)).

In determining whether the purported employer has the right to control the worker, courts examine four factors: (1) direct evidence of the right to control; (2) method of payment; (3) furnishing of equipment; and (4) the right to fire. *Chavis*, 256 S.C. at 32, 180 S.E.2d at 649 (citing *Tharpe v. G. E. Moore Co.*, 254 S.C. 196, 200, 174 S.E.2d 397, 399 (1970) and other cases). Until relatively recently, any single one of these factors tending to show employment was virtually proof that a worker was an employee, and in the contrary direction, any factor tending to show that a worker was not an employee was "at best only mildly persuasive . . . and sometimes of [] no [] force at all." *Dawkins*, 341 S.C. at 439, 534 S.E.2d at 703 (2000) (quoting 3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 61.04 (2000)).

That is no longer the law in South Carolina. Instead, courts examine the four factors used to determine the right to control "with equal force in both directions." *Wilkinson*, 382 S.C. at 300, 676 S.E.2d at 702. Where it used to be virtually conclusive if one of the four factors favored a finding that the employer had right to control the worker, the Supreme Court has instructed that all four factors "should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor." *Id.* at 307, 676 S.E.2d at 706.

Ms. Lewis's argument is that the question is close as to method of payment, but that provision of equipment, direct evidence of the right to control, and the right to fire all tilt

strongly in favor of a finding of employment.

B. Because the Club Did Not Pay Ms. Lewis, the Method of Payment Does Not Tend to Show That the Club Had the Right to Control the Details of Ms. Lewis's Work.

Courts examine "method of payment" when determining employment status because "[p]ayment on a time basis is a strong indication of the status of employment. . . . [and] [p]ayment on a completed project basis is indicative of independent contractor status." 3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, §61.06 (2004). Describing the rationale for these rules, Professors Arthur and Lex Larson write:

If an employer in a regular business or industry purchases personal labor by the hour, day, or week, it is almost certain to insist on the right to see that the time is well and efficiently spent. If it pays by the hour, the employer wants to see that it gets a full hour's work, and that the hour is applied where it is most needed. If it pays by the day, the employer will ordinarily fix the time of beginning and ending work, and the amount of time allowed for lunch and rest periods. If there is not enough of one kind of work to fill the worker's time, the employer will if possible direct the use of the time at some other point.

By contrast, if the employer makes an agreement to pay a man one hundred dollars to clean out a well, it has no reason to care whether the worker is slow or fast, clumsy or efficient. The worker may use a broom or a bath-brush; the details do not matter, so long as the well gets cleaned for a hundred dollars.

Id.

In comparison to a conventional business arrangement, the method of payment in Ms. Lewis's case was admittedly unorthodox. The club paid Ms. Lewis nothing – zero. All of Ms. Lewis's income came from tips she received directly from customers, or a percentage of the fees she earned for doing "V.I.P. dances." The record reflects that customers would tip dancers while the dancers were on the floor of the club (where the dancers could do a

"table dance," (R.p. 143, lines 10-24), or get drinks for patrons from the bar, (R.p. 127, lines 3-5)), and that the dancers would also receive tips while performing on stage by themselves. (R.p. 143, lines 16-21). Most "tips" were in \$1 bills. (R.p. 151, lines 22-25). A "V.I.P. dance" was a private dance a customer could purchase directly from a dancer. (R.p. 96, line 9 - p. 98, line 8). The club set the low-end cost of this dance – a dancer could charge no less than \$25 for a V.I.P. dance – and Ms. Lewis had to give the club "a cut" of what the customer paid Ms. Lewis for the V.I.P. dance. (R.p. 143, line 25 - p. 144, line 3) (had to give the club a cut); (R.p. 160, lines 22-25; p. 163, lines 11-23) (club set the minimum charge for V.I.P. dance). Dancers were required to collect the money for V.I.P. dances and pay the club its share immediately at the conclusion of the dance. (R.p. 97, line 14 - p. 98, line 8).

Ms. Lewis in fact had to pay the club a fee in order to dance each evening. The record describes this fee as a "tip-out" – a fee the club set and required Ms. Lewis to pay when she showed up to work. (R.p. 123, line 17 - p. 124, line 13; p. 132, line 18 - p. 133, line 3) (Ms. Lewis describing arriving at the club and paying the tip-out fee before work); (R.p. 94, lines 1-3; p. 161, lines 13-15) (club set the amount of the tip-out). And again, Ms. Lewis had to pay the club a portion of the money she charged for "V.I.P. dances." (R.p. 143, line 25 - p. 144, line 3).

This arrangement is not payment by the hour, and it is not payment by the job. In one sense, it looks like an arrangement common in the hospitality or tourism industry, where gratuities are often a large component of compensation. But as the testimony to the hearing commissioner described, waitresses, for example, typically have a small base salary that they receive in addition to tips. (R.p. 164, line 16 - p. 165, line 24). It is also unusual for an

employee to have to pay an employer a fee to work. Ms. Lewis had to pay this “tip-out” in order to dance for the evening, but at the same time, it is not uncommon for employees in the hospitality industry to be required to remit a portion of their gratuity earnings to others working in the establishment. See *Lentz v. Spanky’s Rest. II, Inc.*, 491 F. Supp. 2d 663, 671 (N.D. Tex. 2007) (describing different types of “tip pools”).

Using the rationales described by Professors Arthur and Lex Larson as a guide, this method of payment does not tend to make a strong showing of employment, nor does it look like something common to an independent contractor. The importance of gratuities to Ms. Lewis’s income could suggest that the Boom Boom Room was heavily dependent on customer goodwill for its livelihood, and this might indicate that the club would have retained the right to control the details of Ms. Lewis’s work in order to protect that goodwill. Similarly, the requirement that Ms. Lewis collect the fees for V.I.P. dances and immediately remit the club’s share of those charges does suggest that the club is controlling the details of Ms. Lewis’s work. But at the same time, the Boom Boom Room was not paying Ms. Lewis anything.

This method of payment simply does not fit in the rationale underlying the “method of payment” prong of the employment test. For this reason, the Court should find that the “method of payment” factor is not terribly useful on the question of employment.

C. Because the Club Furnished Ms. Lewis with Equipment, this Tends to Show That the Club Retained the Right to Control the Details of Ms. Lewis’s Work.

In determining employment status, courts look at whether an employer furnished a

worker with equipment because where an employer has invested resources in procuring the equipment used by a worker, the employer is “naturally going to dictate details . . . to protect his or her investment.” LARSON & LARSON, *supra* page 7, at § 61.07[2]; see also *Tharpe v. G. E. Moore Co.*, 254 S.C. 196, 200, 174 S.E.2d 397, 399 (1970) (citing to the former version of this treatise while laying out the test for employment).

In this case, the Boom Boom Room owned the stage Ms. Lewis danced on, the “dancing pole” on the stage, and the tables, chairs, and couches Ms. Lewis used for dances. (R.p. 101, lines 19 - 25) (club owned stage and pole); (R.p. 130, line 8 - p. 131, line 13) (club owned stage, pole, chairs, and tables). The club provided the dancers with cleaning solution, towels, and a basket for collecting money while on stage, and the club provided the dancers with lockers for their belongings. (R.p. 102, line 1 - p. 103, line 1; p. 130, line 8 - p. 131, line 13). The testimony before the hearing commissioner was that dancers were required to use this equipment – in particular, the dancing pole – if they knew how, and that dancers were required to give “V.I.P. dances” which involved using chairs and couches. (R.p. 95, lines 19-24) (required to use the pole); (R.p. 110, lines 16-21) (required to do V.I.P. dances); (R.p. 118, lines 4-18) (describing a V.I.P. dance).

The Boom Boom Room’s provision of this equipment tends to show that the Boom Boom Room retained the right to control the details of Ms. Lewis’s work. Ms. Lewis was provided with a pole to dance on, and with couches, chairs and tables to use, and she was required to use these items in her dancing. In order to protect its investment in this equipment, it is likely that the club would have given Ms. Lewis specific direction if it was dissatisfied with her use of this equipment, or have disciplined her if she misused it. The

same is true of the lockers, towels, money basket, and cleaning solution.

The Commission's order lists the "furnishing of equipment" prong, but the order does not provide any analysis of why this factor tends to show Ms. Lewis being an employee or independent contractor. See (R.p. 19, ¶¶16, 17). The Commission's order correctly recounts that none of this equipment was provided specifically for Ms. Lewis, see (R.p. 19, ¶17), but again, the rationale for examining furnishing of equipment is that an employer who furnishes a worker with equipment is likely to retain the right to supervise the details of the work to see that its investment is protected. The Boom Boom Room furnished Ms. Lewis with equipment, and it is therefore likely that the Boom Boom Room retained the right to dictate the details of Ms. Lewis's work if it wanted to.

For this reason, the Court should find that the "furnishing of equipment" prong tilts in favor of a finding of employment.

D. Because the Club Exercised Almost Total Control over Ms. Lewis When She Was at Work, this Indicates That the Club Had the Right to Control the Details of Ms. Lewis's Work.

When used to distinguish between an employee and an independent contractor, the word "control" means control both over the worker's performance – the end result – *and* the manner in which the work was done. See *Kilgore Group, Inc. v. S.C. Employment Sec. Comm'n*, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993); see also *Young*, 252 S.C. at 189-90, 165 S.E.2d at 802 (describing that an independent contractor contracts to do independent work according to his own methods). In this case, the evidence before the hearing commissioner showed that from the moment she entered the Boom Boom Room, Ms. Lewis was tightly

controlled and supervised by the club.

The testimony described that when Ms. Lewis showed up to work, she was searched. (R.p. 123, line 17 - p. 124, line 1; p. 126, lines 3-5). After she was searched, the Boom Boom Room controlled how long Ms. Lewis worked. Once Ms. Lewis came to work – a decision that admittedly was her own – she was not free to leave but instead had to pay a “fine” if she wished to leave the club before the time the club had appointed. (R.p. 98, lines 9-18; p. 128, lines 1-15).

The evidence suggests that the club set the amount of this “fine,” (R.p. 126, lines 1-2; p. 129, lines 16-23), and the testimony described that a dancer could be “fined” for an infraction of club rules. These club rules included some obvious prohibitions like fighting, see (R.p. 99, line 18-22), and this prohibition would not necessarily be instructive on whether the club was controlling the manner of Ms. Lewis’s work. But the club could also fine Ms. Lewis for refusing to dance on the stage – to the music picked by the club – when it was her “turn.” (R.p. 101, lines 2-13; p. 129, lines 7-12). The club could also fine Ms. Lewis for her “hygiene,” including if Ms. Lewis removed all of her clothing, which was against the club rules. (R.p. 99, lines 16-22).

According to Ms. Lewis, a dancer could be fined for refusing anything the club asked her to do. (R.p. 127, lines 13-25). Dancers were required to do a V.I.P. dance for a customer if asked, (R.p. 110, lines 13-22), and Ms. Lewis testified that the club required dancers to “strive” to get V.I.P. dances. (R.p. 142, lines 20-25). The club set the amount of the tip-out Ms. Lewis had to pay to work, and the club set the rate that dancers charged for V.I.P. dances. (R.p. 94, lines 1-3; p. 160, line 22 - p. 161, line 20).

From the moment Ms. Lewis walked into the club, the Boom Boom Room was controlling the majority of Ms. Lewis's conduct when it came to "how" she did her work. The club told Ms. Lewis how long she would work, when she would dance, what type of dances she had to do, how much to charge for dances, what music she would dance to, and that she was required to dance when asked. The club was controlling every aspect of operation inside its facility. The record does not indicate that the club told Ms. Lewis *how* to dance, but the record does reflect that the club exerted so much control over Ms. Lewis that *if* the club had told Ms. Lewis how to dance, she would have been required to follow the club's instructions or she would have lost her job.

This level of control does not describe an independent contractor hired to do a specific piece of work pursuant to her own methods. It does not describe a contractor that is free from the control of his employer except as to the result of his work. See *Chavis*, 256 S.C. at 32, 180 S.E.2d at 649 (quoting *Bates*, 239 S.C. at 34-35, 121 S.E.2d at 293) ("An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work."). Indeed, it would be the atypical contractor that would agree to this type of tight supervision. This arrangement was an agreement of adhesion where Ms. Lewis either agreed to be under constant control and supervision or did not have a job.

Applying persuasive authority to the facts of this case again helps to make the point. The evidence suggested that Ms. Lewis did not have a formal employment agreement with the Boom Boom Room. Instead, Ms. Lewis would decide that she wanted to work, go to the

club, present her identification, be given a "rule sheet," and pay the tip-out. (R.p. 146, lines 10-23). Given these circumstances, there might be the temptation to view this arrangement as an arms-length negotiation between independent contractors engaged in a joint enterprise.

But the club retained too much control, and this arrangement was too one-sided, for this to be called a joint enterprise. Larson's Workers' Compensation Law makes an instructive comparison. It describes two cases, the first of which involved an orchestra leader who entered into a contract with the owner of a dance hall for a one-night performance. LARSON & LARSON, *supra* page 7, at § 61.05[1] (citing *Schmidlkofer v. Indus. Comm'n*, 61 N.W.2d 862 (Wis. 1953)). The contract designated the relationship as that of employer and employee, and it also provided that the employer would have "complete control" of the employees' services. *Schmidlkofer*, 61 N.W.2d at 537. Despite this, when one of the musicians was injured on the way to the dance hall, the court held that there was evidence supporting the lower tribunal's determination that the musician was not an employee but an independent contractor. *Id.* at 540. The court looked at the terms of the parties' written agreement, but the court also considered the parties' conduct and observed that the owner of the dance hall had paid a flat rate for the musicians, had no right of control over which instruments made up the orchestra, had no right to determine the identity of the musicians, and had no knowledge of how the money was to be divided among the musicians. *Id.* at 539. The *Schmidlkofer* court held that this venture was carried on as a co-partnership, each member of the orchestra was a co-member of a joint enterprise, and the musician was not an employee.

The second case was that of a night-club singer who "was held to be an employee

because the piano player directed what songs she could sing and excluded songs she wished to sing, and because between appearances [the singer] was required to mingle with the patrons and sit at the bar and drink with them.” LARSON & LARSON, *supra* page 7, at § 61.05[1] (citing *Russell v. Torch Club*, 97 S.2d 196 (Hudson County Ct.1953)). A written agreement between the parties designated the night-club singer as an independent contractor, but the court noted:

[the singer's] freedom for the performance of the service for which she had engaged herself was so drastically and extensively subordinated to the particular wish and purpose of respondent that her real status was manifestly that of an employee and no other.

Russell, 97 A.2d at 197.

Ms. Lewis's case is much more like the night-club singer's case than it is like the orchestra musician's. Ms. Lewis was subject to the Boom Boom Room's complete control. She danced when the club told her to dance, (R.p. 110, lines 13-22); the club selected the music, (R.p. 101, lines 2-13); the club set her hours, (R.p. 98, lines 9-18; p.128, lines 1-15); the club required her to perform on demand, (R.p. 110, lines 13-22); the club required her to strive to get V.I.P. dances, (R.p. 142, lines 20-25); the club set her tip-out and the floor rate for V.I.P. dances, (R.p. 94, lines 1-3; p. 160, line 22 - p. 161, line 20); and the club required her to bring drinks from the bar. (R.p. 127, lines 3-5). This type of control does not indicate that Ms. Lewis was engaged in her own business enterprise. It indicates that she was an employee subject to the control of an employer.

The Commission did not give this factor any substantive discussion. See (R.p. 19, ¶¶13-15). For the reasons outlined in this subsection, the Court should hold that this direct

evidence of the right to control tends to show that Ms. Lewis was an employee.

E. The Club Had the Right to Fire Ms. Lewis, and this Tends to Show That Ms. Lewis Was an Employee.

“The power to fire, it is often said, is the power to control. The absolute right to terminate the relationship without liability is not consistent with the concept of independent contract, under which the contractor should have the legal right to complete the project contracted for and to treat any attempt to prevent completion as a breach of contract.” LARSON & LARSON, *supra* page 7, at § 61.08[1]; see also *Tharpe*, 254 S.C. at 201, 174 S.E.2d at 399 (quoting this same passage from a former version of the Larson treatise).

Because parties in arms-length negotiations will sometimes put provisions into their agreements allowing for each other to terminate the relationship, there is some nuance in looking at the right to fire. This was what the trucker and the trucking company had done in the *Wilkinson* case. There, the written agreement provided that either party could terminate the relationship on thirty days notice, and additionally, that in the event a party materially breached the agreement, the non-breaching party was entitled to terminate the agreement and sue for damages. *Wilkinson*, 382 S.C. at 304, 676 S.E.2d at 704. In *Wilkinson*, the court held that the trucking company did not have the “right to fire” the trucker. The court held that the parties’ relationship was instead governed by the parties’ agreement. *Id.* at 304, 676 S.E.2d at 704.

Where some sort of bargained-for-exchange or a right to sue to complete the project characterizes an independent contractor relationship, the evidence in this case does not suggest that Ms. Lewis had any bargaining power or remedies against the club. There is no

evidence that the club had any obligations at all when it came to its agreement with Ms. Lewis or other dancers. The evidence shows that Ms. Lewis paid to dance at the club and agreed to abide by the club's rules, and that if she violated the club's rules or did not obey the club's instructions, she was subject to a fine or firing. (R.p. 127, lines 13-25). Ms. Lewis also testified that the club had the right to dismiss her from work for any reason or for no reason at all. (R.p. 161, line 21 - p. 162, line 1). Where the *Wilkinson* case contained an arrangement that had obligations on both employer and worker and a written agreement that followed suit, Ms. Lewis's case looks like her job was subject to the whims of her employer.

The Commission's order does not set forth its opinion on whether the "right to fire" factor tended to show status as an employee or an independent contractor. See (R.p. 20, ¶¶20-22). Because the evidence demonstrates that the club had the right to unilaterally bar Ms. Lewis from working – for any reason or no reason at all – the Court should find that the "right to fire" factor tends to show that Ms. Lewis was an employee and not an independent contractor.

F. Because Dancers Have No Bargaining Power and Are Economically Dependent on These Clubs, and Because These Clubs' Primary Purpose Is to Profit off Showcasing Dancers, Public Policy Favors Finding That Ms. Lewis Was an Employee and Not an Independent Contractor.

This Court is not the first court asked the question of whether topless or "exotic" dancers qualify as employees as opposed to independent contractors. Some United States District Courts have been asked to answer this question in the context of the Fair Labor Standards Act, and courts in other states have addressed the question in the context of their

workers' compensation schemes or employment regulations.

By nature, those decisions have their own nuances. For example, the FLSA does not use the common-law test for employment, but focuses on "economic dependence" as the touchstone. See, e.g., *Reich v. Priba*, 890 F. Supp. 586, 592 (N.D. Tex. 1995). Under the FLSA, the critical inquiry is "whether the individual is, as a matter of economic reality, in business for herself." *Id.* (quoting *Reich v. Circle C. Investments, Inc.*, 998 F.2d 324, 327 (5th Cir.1993)). Though these cases have individual differences from the case presented here, the Court may nevertheless find some of the observations in these cases instructive.

For example, the evidence presented to the hearing commissioner described a transient aspect of Ms. Lewis's work. Ms. Lewis was nineteen years old at the time of her injury, and according to her, she danced at topless clubs throughout North and South Carolina since she was eighteen years old. (R.p. 120, lines 5-6) (nineteen at time of injury); (R.p. 129, lines 25 - p. 130, line 1) (dancing since eighteen); (R.p. 144, 12-25; p. 162, lines 20-23) (dancers travel). According to Ms. Lewis, she had danced at the Boom Boom Room on two or three previous occasions prior to the occasion on which she was shot. (R.p. 120, lines 23-24).

In *Reich v. Priba Corporation*, the United States District Court for the Northern District of Texas held that exotic dancers in a Texas nightclub were employees even though the court found that "[t]he nature of the employment relationship between the entertainers and [the club] is highly transient." 890 F. Supp. at 591. It did so on the grounds that the club completely controlled every meaningful aspect of the business, including setting the price for dances and the amount of the "tip-out," and because the club controlled "the opportunity for

profit and loss.” *Id.* at 592-594. Citing a decision from the Fifth Circuit, the court dealt with the dancers’ propensity to travel by explaining “[e]ven if the freedom to work for multiple employers may provide something of a safety net, unless a worker possesses specialized and widely-demanded skills, that freedom is hardly the same as true economic independence.” *Id.* at 593 (quoting *McLaughlin v. Seafood, Inc.*, 861 F.2d 450, 452-53 (5th Cir. 1988)).

The *Reich* court’s decision to place less weight on the fact that dancers are itinerant is not an outlier. The United States District Court for the Middle District of Florida expressed agreement and noted that other courts have done the same. See *Harrell v. Diamond A Entertainment, Inc.*, 992 F. Supp. 1343, 1352 (M.D. Fla. 1997) (noting “[o]ther courts have found that exotic dancers tend to be itinerant, but have placed less emphasis on this factor”).

At the state-court level, the Court of Appeals of Virginia has taken the same view. Answering the question in the context of reviewing a ruling by the Virginia Employment Commission, the court noted that although exotic dancing enterprises are “temporary and short-lived,” “[t]he evidence that dancers perform at other clubs does not conclusively prove they are engaged in independently established business[;] [t]he other clubs might treat the dancers as employees.” *Yard Bird, Inc. v. Virginia Employment Comm’n*, 503 S.E.2d 246, 251 (Va. Ct. App. 1998). The court observed “[t]he fact that a person may work several part-time jobs, even in the same industry, does not necessarily make him or her an independent contractor.” *Id.* at 251 (cited approvingly in *Club Paradise, Inc. v. Oklahoma Employment Sec. Comm’n*, 213 P.3d 1157, 1161 (Okla. Civ. App. 2008)).

These courts have also rejected the notion that an exotic dancer has any sort of

meaningful control over the amount of money she earns, and that there is “skill” involved in this job. Returning to Texas, the *Reich* court observed that the club dictated the flow of its customers into the business by controlling the advertising, atmosphere, and surroundings; that “the ability to converse with club clientele in an effort to generate a larger tip” was more like “efficiency” and customer “rapport” than “skill;” and that by controlling the hours, atmosphere, advertising, and charges for the tip-out fees and for dances, the club controlled the opportunity for profit and loss. 890 F. Supp. at 592-594. Citing this decision, the United States District Court for the Middle District of Florida agreed, noting that a dancer’s ability to obtain tips and table dances, an activity called “hustling” in the industry, “has been universally rejected by every court to consider it.” *Harrell*, 992 F. Supp. at 1350-1351. The Court was “not persuaded that [an exotic dancer] practiced the kind of initiative and skill that sets her apart as an independent contractor.” *Id.* at 1351. For similar reasons, the United States District Court for the Eastern District of Michigan rejected the argument that nude dancers were generally free to develop a fan base of regular customers, and that “successful nude dancing requires a significant modicum of business acumen.” *Doe v. Cin-Lan, Inc.*, No. 08-cv-12719, 2008 WL 4960170 (E.D. Mich. Nov. 20, 2008) (not reported in the Federal Supplement). That court observed:

It is not impossible that in some times and places, maintaining a nude dancing career could require significant artistic skill or business savvy. But such an abstract possibility cannot substitute for the record before the Court in this case. On the record, the plaintiff’s claims of the low level of skill involved in her work are thoroughly plausible. The novelty of public nudity corroborates her assertion that most of a nude dancer’s business is attracted by her “physical attributes,” rather than by her artistic skill.

Id. at *13; see also *Club Paradise*, 213 P.3d at 1161 (quoting *Brenner v. State ex rel.*

Oklahoma Employment Sec. Comm'n, 201 P.2d 236, 242 (Okla. 1948)) (noting that an exotic dancer's job is not an independent enterprise – it is an endeavor which exists “only by reason of their employment by [the club], and subject to [its] willingness to retain them[,] and constantly subject to discharge, at which time they [a]re out of employment”).

These cases echo the description Ms. Lewis provided of working at the Boom Boom Room. They describe economic inequality underlying what appears to be an arms-length transaction, and nearly plenary influence over a dancer's profits hidden behind the sleight-of-hand that the club never actually pays the dancer anything. When questioned about how the club could control the money she made, Ms. Lewis observed “if the business is not nice, then people are not [going to] spend money,” and that the alcohol provided to the customers by the club was important because “the drunker [the customers] get, the more money they spend.” (R.p. 126, lines 20-23; p. 155, lines 9-24). Though these cases from other jurisdictions perform the employee/independent contractor analysis under different regimes, the observations in these cases can and should be persuasive in this Court's analysis. These observations demonstrate that the club is in control to such a degree that this relationship cannot be characterized as being between independent contractors.

Professors Arthur and Lex Larson describe the purpose of workers' compensation as passing the cost of insuring the workforce against industrial accident on to employers, who must then build this cost into the cost of the goods or services offered to the public and thereby force the cost of industrial accident to be carried by “the consumers of the product whose manufacture was the occasion for the injury.” 1 LARSON & LARSON, *supra* page 7, at § 1.03[2]. Ms. Lewis submits that in dancing at the Boom Boom Room, she was not an

independent contractor engaged in her own business through which she can be expected to have channeled the cost of her suffering an industrial accident. She was a nineteen year-old who joined twenty to thirty other dancers a night and provided *the* essential element – public nudity – that drove the Boom Boom Room’s decision to open for business. The Boom Boom Room apparently did not purchase workers’ compensation insurance, although it used many women – presumably working as independent contractors – to perform the essential components of the club’s trade and business. South Carolina’s statutory employee doctrine exists to preclude this very action. See *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 343-344, 2 S.E.2d 825, 828 (1939) (“It was evidently realized by the General Assembly that it would not be fair to relieve the owner of compensation to employees doing work which was a part of his trade or business by permitting such owner to sub-let or sub-contract some part of said work. Doubtless in many instances such contractor would be financially irresponsible, or the number of employees under him would be so small, as in this case, that such contractor would not be required under the Act to carry compensation insurance.”).

Ms. Lewis submits that the public policy of South Carolina should place the cost of industrial accidents like hers at the feet of the business employing her when she was injured. In South Carolina, there is a “general principle sanctioned by the Legislature that workers’ compensation laws are to be construed liberally in favor of coverage.” *Wilkinson*, 382 S.C. at 300, 676 S.E.2d at 702. The Court should apply that principle here. Coupled with the evidence that the club had the right to control Ms. Lewis – shown by the club’s provision of equipment, direct evidence of the right to control, and the right to fire – this broad construction should lead to a finding the Ms. Lewis was an employee instead of an

independent contractor.¹

II. The Commission Erred When it Determined That If Ms. Lewis Was an Employee, Her Compensation Rate Would Be \$75.00 per Week.

The Workers' Compensation Commission uses a regulation to guide the calculation of an injured worker's compensation rate. That regulation directs an employer to calculate a worker's compensation rate by filling out a document known as a Form 20. See 25A S.C. Code Ann. Regs. 67-1603 A (Supp. 2009). The employer is required to provide the worker's gross wages on the form. See Reg. 67-1603 B. The worker's total wages are converted into an average weekly wage by dividing total wages paid by the number of weeks worked, and the compensation rate is calculated by taking two-thirds of the average weekly wages. See WCC Form #20, *available at* <http://www.wcc.state.sc.us/Welcome+and+Overview/Forms/>.

In this case, the Commission held that there was no evidence of the amount of money Ms. Lewis earned or the hours that she worked, that the only evidence was Ms. Lewis's self-serving testimony, and that Ms. Lewis was required by Regulation 67-1605 H to submit a Form 20 to the Commission outlining wages earned from other employers. See (R.p. 21, ¶24). The Court should reverse the Commission's decision because each of these justifications is inaccurate, and the Commission's decision is therefore arbitrary, clearly erroneous in view of the reliable, probative, and substantial evidence in the record, and also affected by an error of law. See § 1-23-380 (5)(d) & (e).

¹Though the order is not long on substantive analysis, the Court may find it relevant that the Commission has, on a previous occasion, found a dancer of this type to be an employee and not an independent contractor. See *Black v. The Dollhouse*, W.C.C. File No. 0115769 (March 19, 2009) (included on pages 48-59 of the Record).

A. The Commission's Decision Is Controlled by an Incorrect Reading of the Applicable Regulation, and Ms. Lewis Admits That Her Employers Never Paid Her "Wages."

Beginning with the regulation, the Commission's order does not tell the whole story. It is only partially correct to say that an injured worker is required to submit a Form 20 to prove wages from another employer. A Form 20 is filled-out by the employer's representative. See Reg. 67-1603 A. Regulation 67-1603 H instructs an injured worker who was working for multiple employers at the time of injury to "obtain a completed Form 20 from each of the other employers," and that after this process is complete, the Commission will calculate the new compensation rate and notify the parties. Under the regulation, a claimant never fills out a Form 20, and the regulation repeatedly instructs that the proper way for an injured worker to raise the issue of the compensation rate to the Commission is by filing a request for a hearing – a Form 50. See Reg 67-1603 C(2) & H.

But more to the point, the glaring error here is that Ms. Lewis's employers never paid her *anything*. The evidence before the Commission indicated that all of Ms. Lewis's money came directly from customers, either in the form of tips she received or in the form of fees she charged for doing V.I.P. dances. According to the evidence before the Commission, Ms. Lewis's employers would have no idea about how much money she made, and they would certainly not have the information needed to fill out a Form 20 – there were no "gross wages" paid by an employer to report. Cf. *Harrell*, 992 F. Supp. at 1349 ("Indeed, it seems fairly obvious that [the exotic dancing club] would have no way of knowing how much money each of its dancers charged for dances or took home at the end of a shift."). The

Commission's citation to Regulation 67-1603 H tells only part of the story and omits the facts that the employer is required to fill in the information for the Form 20, and that Ms. Lewis's employers would not have had any information related to her earnings.

The case cited in the Commission's order helps exhibit the flaw of the decision. This Court's decision in *Steele v. Self-Serve, Inc.*, recognizes the general rule that "when an employee works at concurrent jobs, the employee's wages from his multiple jobs may be combined to compute his average weekly wages." 335 S.C. 323, 326, 516 S.E.2d 674, 676 (Ct. App. 1999) (citing *Boles v. Una Water Dist.*, 291 S.C. 282, 353 S.E.2d 286 (1987) and *Foreman v. Jackson Minit Mkts., Inc.*, 265 S.C. 164, 217 S.E.2d 214 (1975)). In *Steele*, a Form 20 from one of the injured worker's employers was not presented to the Commission. *Id.* at 328, 516 S.E.2d at 676. The Commission had a W-2 tax form that showed the injured worker's earnings from this second employer during the year of his death, but the Commission also heard testimony from the injured worker's wife related to the worker's weekly earnings from this employer. The Commission calculated the average weekly wage based on the W-2 form, and this Court noted that the wife's testimony supported this calculation. *Id.* at 328, 516 S.E.2d at 677. At no point does the Court appear preclude consideration of these additional earnings based on the absence of a Form 20.

B. Ms. Lewis and Two Witnesses Provided Evidence on the Amount of Her Earnings and Hours Worked, and the Commission Should Either Have Found this Testimony to Be Incredible Before Rejecting It, or the Testimony Should Have Carried the Day.

Because the club knew nothing of Ms. Lewis's income, evidence of Ms. Lewis's

income would have to come from her. Ms. Lewis testified that she earned \$250 to \$350 per night, and that she danced at clubs five to six night per week, sometimes seven. (R.p. 124, line 23 - p. 125, line 14). The hearing commissioner pressed Ms. Lewis on this point, asking Ms. Lewis if she was really testifying that she danced five to six nights a week, fifty weeks a year, and Ms. Lewis answered that she did. (R.p. 151, lines 13-21). Ms. Lewis provided two witnesses who corroborated this testimony. Another dancer testified that an "average night" would yield \$200 to \$300 dollars, (R.p. 93, lines 4-12), and Ms. Lewis's sister testified that Ms. Lewis would be working at least five days a week, fifty-two weeks a year. (R.p. 175, lines 1-9).

Testimony is evidence, see, e.g., *State v. Starnes*, Op. No. 26868 (S.C. Sup. Ct. filed Aug. 16, 2010) (Shearouse Adv. Sh. No. 33 at 44, 51) (noting that the appellant's testimony "I was scared" constituted evidence that the appellant was afraid); Ms. Lewis was not the only individual providing evidence on this issue; and the Commission did not determine this evidence to be incredulous. The Commission's decision to limit Ms. Lewis to the "wages" she earned at the Boom Boom Room is flawed because Ms. Lewis earned no "wages" – either from the Boom Boom Room or any other club – and the Commission's decision to ignore the evidence presented by Ms. Lewis, her sister, and the other dancer, must be based on something of substance in order to avoid being clearly erroneous or arbitrary.

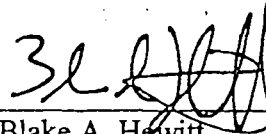
For these reasons, the Court should hold that the Commission erred when it determined that if Ms. Lewis was an employee, her compensation rate would be \$75.00 per week.

CONCLUSION

This Court should take its own view of the evidence on the jurisdictional question of employment, and the Court should reverse the Commission's decision that Ms. Lewis was an independent contractor and hold that she was an employee. The Court should also reverse the Commission's decision limiting Ms. Lewis to the wages she earned at the Boom Boom Room and remand this issue to the Commission for a determination of Ms. Lewis's compensation rate. The Commission's decision on this point was controlled by an incomplete reading of the applicable regulation and was clearly erroneous or arbitrary in light of the evidence and circumstances of this case.

January 5, 2011

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams
David W. Huffstetler
T. Scott Beck

WCC File No. 0821881

LeAndra Lewis.....Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom room Studio 54, and
The S.C. Uninsured Employers' Fund.....Defendants,

Of whom

The S.C. Uninsured Employers' Fund
Is the.....Respondent.

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TABLE OF CONTENTS

Table of Authorities.....	3
Statement of Issues on Appeal.....	4
Statement of the Case.....	4
 Arguments	
1. The Commission Did Not Err in Finding That Ms. Lewis Was An Independent Contractor.....	6-8
A. Direct Evidence of the Right or Exercise of Control..	6
B. Furnishing of Equipment	7
C. Method of Payment.....	7-8
D. Right to Fire.....	8
2. The Commission Did Not Err In Finding That If Ms. Lewis Was An Employee Her Compensation Rate Would Be \$75.00 per Week..	8-9
Conclusion.....	9

TABLE OF AUTHORITIES

Cases:

Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009).....6

Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999).....9

Statutes

Regulation 67-1603(H).....9

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING AS A FACT AND CONCLUDING AS A MATTER OF LAW THAT LEANDRA LEWIS WAS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE?

2. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FINDING AS A FACT AND CONCLUDING AS A MATTER OF LAW THAT IF LEANDRA LEWIS WAS AN EMPLOYEE HER COMPENSATION RATE WOULD BE \$75.00 PER WEEK?

STATEMENT OF THE CASE

The case of LeAndra Lewis v. L.B. Dynasty, Inc., dba Boom Boom Room Studio 54 involves a question of whether the South Carolina Workers' Compensation Commission has jurisdiction over this claim based upon whether or not the Claimant was an employee or independent contractor for LB Dynasty, Inc., dba Boom Boom Room Studio 54. If found to be an employee, the Claimant contends she suffered an injury by accident by way of a gunshot wound to her abdomen, back, bladder, reproductive organs, liver, pancreas, duodenum, biliary tract, scarring to neck and skin loss on July 23, 2008. The Claimant was the victim of a random shooting at the employer location. The Claimant seeks a finding that LB Dynasty, Inc., dba Boom Boom Room Studio 54 employed her as an exotic dancer. The Claimant further seeks a finding she is Permanently and totally disabled or alternatively she is in need of further medical treatment. Additionally, Claimant seeks Temporary Total benefits from July 23, 2008 through the present and continuing and payment of all causally related medical expenses. Claimant further contends she is entitled to the 2008 maximum Compensation Rate of Six Hundred sixty-one dollars and twenty-nine cents (\$661.29).

The Defendant, South Carolina Uninsured Employers' Fund takes the position the Claimant was not an employee of LB Dynasty, Inc., dba Boom Boom Room Studio 54. The Fund further contends the Claimant was an independent contractor and is not entitled to any benefits under the Act. Finally, the Fund contends the employer is not subject to the Act.

No one appeared on behalf of LB Dynasty, Inc., dba Boom Boom Room Studio 54 (herein after referred to as the Club).

The parties were heard by Commissioner G. Bryan Lyndon on May 21, 2009 in Columbia, South Carolina. On October 13, 2009, Comm. Lyndon issued an Order finding as a fact and concluding as a matter of law that Ms. Lewis was an Independent Contractor and not an employee. Further, the Single Commissioner found that if Ms. Lewis were an employee she would be entitled to a Compensation Rate of \$75.00 per week. The Single Commissioner denied benefits to Ms. Lewis and dismissed her claim with prejudice, subject to her appellate rights.

Within the statutory period, counsel for the Claimant filed an Application for Review before the South Carolina Workers' Compensation Commission. The Appellate Panel of the South Carolina Workers' Compensation Commission affirmed the Order of the Single Commissioner in its entirety.

ARGUMENT

WHETHER THE CLAIMANT LEANDRA LEWIS WAS, AT THE TIME OF HER ACCIDENT, AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE OF L.B. DYNASTY, INC. DBA BOOM BOOM ROOM STUDIO 54?

In order to reach a conclusion regarding whether or not LeAndra Lewis is an employee or independent contractor four factors must be determined. First, direct evidence of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire. The Supreme Court instructs that all four factors "should be evaluated in an evenhanded manner in determining whether the questioned relationship is one of employment or independent contractor." *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009).

1. Direct Evidence of the Right or Exercise of Control

LeAndra Lewis (herein referred to as the Claimant) worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was July 23, 2008. (Hearing Tr. p.64). At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Claimant testified that she is a resident of the state of North Carolina. Claimant testified that upon arriving at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." This fee is based on time of arrival. This fee is lower if the dancers arrive early in the evening and progressively higher the later the dancer arrives at the Club. (Hearing Tr. pp. 30, 65).

Claimant testified that she did not fill out an employment application nor sign any type of contract.

The Claimant testified that she provided her own costume and choreographed her own dance routines

2. Furnishing of Equipment

The Claimant testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Claimant. However, Claimant testified that she could not dance without music and used the table and chairs as props.

3. Method of Payment

The Claimant testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came from tips given to her by the patrons. Claimant further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Claimant testified that if she engaged in fights, danced bottomless or disregarded her personal hygiene she would be subject to a fine. Claimant testified that she conducted herself in such a manner that she was never assessed a fine. The Club never paid the

Claimant any money. Claimant assumed responsibility for all cost associated with her dancing at the Club.

Upon questioning by the Single Commissioner, Claimant testified that she danced at other clubs throughout North and South Carolina. Claimant testified that she worked five to six nights per week because the money was addictive. (Hearing Transcript page 75 lines 17-20). Claimant further testified that if there was not a lot of money at one club she would go to another club to go after the money. (Hearing Transcript page 80 lines 3-6).

4. Right to Fire

The Claimant testified that the Club did not have to let her dance if her appearance was not comely. Claimant further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations. Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

Based upon the testimony of the Claimant and the evidence presented the Fund contends the Claimant was an independent contractor and not an employee of LB Dynasty, Inc. dba Boom Boom Room Studio 54.

ARGUMENT

WHETHER THE CLAIMANT LEANDRA LEWIS IS ENTITLED TO THE MAXIMUM COMPENSATION RATE FOR THE YEAR 2008?

The Claimant contends that she earned One Thousand Six Hundred fifty dollars per week as a dancer in clubs. She testified that she worked at the club where the

injury occurred on three occasions during the year of 2008. Otherwise she worked at other clubs in South Carolina and North Carolina. Claimant testified that she could not remember the dates of the first and second time she danced at the Club but did recall that she earned Five Hundred dollars (\$500.00) each time. Claimant further testified that she earned Three Hundred fifty-seven dollars (\$357.00) on the night she was injured. The Claimant contends her Average Weekly Wage and Compensation Rate should be based upon this dual employment.

The Fund argues that the Claimant is bound by the wages earned from the Club only. The Claimant is required by Regulation 67-1603(H) to submit a Form 20 to the Claim's department and the employer outlining wages earned from other employers. The Claimant testified that she did not have any Form 20 to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999). The Claimant further testified that she did not file tax returns regarding her income. (Hearing Transcript page 87 lines 4-7).

CONCLUSION

For the reasons stated above, the Fund contends the Claimant was an independent contractor and not an employee. Therefore, the Claimant is not entitled to any benefits. Alternatively, if the Commissioner finds that the Claimant was an employee of the Club, the Fund contends the Claimant is not entitled to a finding that she is entitled to the maximum Compensation Rate for the year 2008. Claimant failed to meet her burden of

proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

Respectfully Submitted

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November 15, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA-
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
T. Scott Beck, Commissioner

WCC File No. 0821881

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S.C. COURT OF APPEALS

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

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TABLE OF CONTENTS

Table of Authorities	ii
Arguments	1
I. The Fund's Brief Does Not Contain Any Substantive Analysis of Why the Facts of this Case Do Not Suggest That the Club Had the Right to Control Ms. Lewis	1
II. The Fund's Argument on the Amount of Ms. Lewis's Earnings Is Based on Incomplete or Incorrect Readings of the Law	5
A. A Form 20 Is Irrelevant When the Worker Was Not Paid Any "Wages" - and the Boom Boom Room Never Paid Ms. Lewis Anything	5
B. When Calculating the Compensation Rate, South Carolina's Workers' Compensation Law Does Not Take into Account Whether Earnings Were Reported for Income Tax Purposes	7
Conclusion	8

TABLE OF AUTHORITIES

Cases

(South Carolina)

<i>Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n</i> , 290 S.C. 409, 351 S.E.2d 151 (1986)	6
<i>Bennett v. Gary Smith Builders</i> , 271 S.C. 94, 245 S.E.2d 129 (1978)	5
<i>Cooke v. Palmetto Health Alliance</i> , 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005) ..	2, 4
<i>Schuler v. Tri-County Elec. Co-op</i> , 385 S.C. 470, 684 S.E.2d 765 (2009)	2

(Other Jurisdictions)

<i>Pizza Hut Delivery v. Blackwell</i> , 418 S.E.2d 639 (Ga. Ct. App. 1992)	7

Statutes and Other Authorities

S.C. Code Ann. § 42-1-40 (Supp. 2009)	7
25A S.C. Code Ann. Regs. 67-1603 (Supp. 2009)	5, 6
3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW (2004)	4
Fla. Stat. Ann. § 440.02 (28) (West 2009)	7

ARGUMENTS

As LeAndra Lewis's principal brief described, this case is about who had the right to control her when she was working at the Boom Boom Room, and it is about how much money she made when she was working. On control, Ms. Lewis's position is that although her work situation was unorthodox, the evidence shows that the Boom Boom Room was in control when she was at work. On earnings, Ms. Lewis's position is that the Commission read the applicable regulation incorrectly and misstated the evidence in the record.

The brief filed by the South Carolina Uninsured Employer's Fund opposes both arguments, but the Fund's brief should not be persuasive for two reasons. First, the Fund's brief contains no analysis explaining its view of why the facts in this case show that Ms. Lewis, and not the Boom Boom Room, was in control when Ms. Lewis was at work. Second, the Fund's argument on the amount of Ms. Lewis's earnings is controlled by the very same errors appearing in the Workers' Compensation Commission's decision.

I. The Fund's Brief Does Not Contain Any Substantive Analysis of Why the Facts of this Case Do Not Suggest That the Club Had the Right to Control Ms. Lewis.

Like the order from the Workers' Compensation Commission, see (R.p. 15), the Fund's brief lists the four factor test for employment, recites some of the facts of the case, and gives a conclusion – that Ms. Lewis is an independent contractor and not an employee. See (Resp. Br. pp.6-8) (the Fund's argument on the question of employment). This is an *ipse dixit*; a conclusion offered with no argument about why it is the correct one. It should not be persuasive.

The argument that Ms. Lewis put forth below and reiterates in this appeal is that although some aspects of her work were admittedly unusual, the evidence in the record demonstrates that while she was at work, the Boom Boom Room was in control – both in the type of work Ms. Lewis performed and in the manner of the work’s performance. Buttressing this conclusion are South Carolina’s well-established policy of construing doubts about the employer-employee relationship in favor of coverage under the Workers’ Compensation Act, see, e.g., *Schuler v. Tri-County Elec. Co-op*, 385 S.C. 470, 473, 684 S.E.2d 765, 767 (2009), and the statutory employee doctrine which provides that a business owner may not escape the obligation to provide workers’ compensation insurance to the workers doing tasks that are a part of the owner’s trade or business. See, e.g., *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (listing that a statutory employee is engaged in an activity that is “a part of [the employer’s] trade, business or occupation,” and that an activity is “part of the employer’s trade” when it is an important, necessary, integral, and essential part of the employer’s business, or when it has previously been performed by the employer’s employees).

This analysis is not terribly complex. It must focus on the facts of Ms. Lewis’s case and whether those facts suggest that the Boom Boom Room had the right to control the details of Ms. Lewis’s work. It instructs that in a close case, Ms. Lewis gets the benefit of the doubt, and that when a business owner uses workers labeled as “independent contractors” to perform activities within the owner’s trade or business, the court will look at the label of “independent contractor” with a skeptical eye.

Not only does the Fund’s brief fail to take any of these arguments head-on, it does

not give them any substantive discussion. It instead recites facts which are, for the most part, uncontradicted.¹ There is no question that Ms. Lewis determined on her own whether she wanted to go to work at the Boom Boom Room on a given evening, but Ms. Lewis's argument was that once she was at the Boom Boom Room, the club had the right to control the details of her work.

The club gave Ms. Lewis the order in which she would dance and the music she would dance to. (R.p. 101, lines 2-13; p. 129, lines 7-12).

The club searched Ms. Lewis when she arrived for work, (R.p. 123, line 17 - p. 124, line 1; p. 126, lines 3-5), set the prices she would charge for dances, (R.p. 160, lines 22-25; p. 163, lines 11-23), and set the amounts she owed the club for "tip-out" (R.p. 94, lines 1-3; p. 161, lines 13-15) and for V.I.P. dances. (R.p. 98, line 23 - p. 99, line 4).

Once she came to work, the club controlled the hours Ms. Lewis worked, (R.p. 98, lines 9-18; p. 128, lines 1-15), required her to perform a V.I.P. dance if asked, (R.p. 110, lines 13-22), and required her to "strive" to get customers to purchase V.I.P. dances. (R.p. 142, lines 20-25).

The club furnished equipment for dancers to use. See (App. Br. pp.10-11) (citing to several different parts of the record indicating that the Boom Boom Room furnished dancers with equipment). This equipment may not have been furnished specifically for Ms. Lewis, but the reason "furnishing of equipment" is examined when determining employment status

¹There is at least one contested fact in this appeal. The Fund's brief asserts that Ms. Lewis was not required to perform table dances or V.I.P. dances. See (Resp. Br. p.7). There is no citation offered for this assertion, and Ms. Lewis's testimony provides that the opposite was true. See (R.p. 110, lines 13-22).

is that an employer who furnishes a worker with equipment is likely to retain the right to control the details of work in order to protect his investment. 3 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW, § 61.07[2] (2004).

Dealing with whether Ms. Lewis was a statutory employee, the emergency helicopter pilot in *Cooke* lost his claim because Palmetto Health Alliance (a hospital) was in the business of providing healthcare, not transportation to the hospital. See 367 S.C. at 174-75, 624 S.E.2d at 442. In contrast, the Boom Boom Room opened its doors for one reason and one reason alone – to make money off of semi-nude dancers like Ms. Lewis.

Neither the Commission's order nor the brief offered by the Fund contain any substantive response to the argument that while Ms. Lewis was at work, the Boom Boom Room had the right to control the details of her work. The club controlled so much – the hours of work, the house rules, the order of dancing, the dance music, the price of dances, and the amount of tip-out – that the only reasonable inference is that had the club wanted to direct the smallest details of Ms. Lewis's work, it could have. Such a holding would be in line with persuasive authority from other jurisdictions, see (App. Br. pp.18-23), and would reflect the economic reality that Ms. Lewis was not in business for herself. Ms. Lewis and the other dancers at the Boom Boom Room were the engine that drove that business's decision to open its doors and its ability to profit.

This Court should accordingly reverse the Commission's decision that Ms. Lewis was an independent contractor and hold that at the time of her injury, she was an employee.

II. The Fund's Argument on the Amount of Ms. Lewis's Earnings Is Based on Incomplete or Incorrect Readings of the Law.

On the amount of Ms. Lewis's earnings, the Fund's brief goes along two lines. First, the Fund casts its lot with the Commission and argues that Ms. Lewis is required to present a form to the Commission in order for wages earned from other employers to be considered in her calculating her compensation rate. Second, the Fund points out that Ms. Lewis did not report any of her earnings from dancing to the State or Federal government, though the Fund's brief does not say what consequences follow this failure and explain why.

The first argument is wrong as a matter of reading the regulation. The second argument is irrelevant under the law. Most importantly, the Fund's brief leaves unanswered Ms. Lewis's charge that the Commission was simply incorrect when it held that there was "no evidence whatsoever" as to the amount of money Ms. Lewis earned or the hours she worked other than her own testimony.

A. A Form 20 Is Irrelevant When the Worker Was Not Paid Any "Wages" - and the Boom Boom Room Never Paid Ms. Lewis Anything.

If a worker is working for two or more employers at the time of an injury, the Commission's regulations allow the worker to include earnings from both employers when calculating the compensation rate. See 25A S.C. Code Ann. Regs. 67-1603 H (Supp 2009). This process exists to ensure that the compensation rate is based on an accurate reflection of the results of the injury's impact on the worker's future earning capacity. See *Bennett v. Gary Smith Builders*, 271 S.C. 94, 98-99, 245 S.E.2d 129, 131 (1978) ("The objective of wage calculation is to arrive at a fair approximation of the claimant's probable future earning

capacity.”).

In the typical workers’ compensation case, the process of calculating the compensation rate begins with the employer or his representative completing a form called a Form 20 which has been developed by the Commission. Reg. 67-1603 A. This form provides a space for the employer to record all “wages” paid to an employee. See, WCC Form #20, *available at* <http://www.wcc.state.sc.us/Welcome+and+Overview/Forms/>.

The argument that Ms. Lewis should have submitted Form 20’s to the Commission cannot be persuasive because neither the Boom Boom Room nor any dance club ever paid her any wages. In fact, they didn’t pay her anything. The employers would not have had any information to put on the form. Both the Fund’s and the Commission’s insistence on this argument is quite odd in light of the uncontested fact that if Ms. Lewis had given the Boom Boom Room or another club a Form 20 to complete, they would have left it blank. They had no way of knowing how much she made.

One place for the Commission to go to determine Ms. Lewis’s earnings was to her testimony and the evidence offered by her co-workers (on earnings) and family (on her work schedule). See (App. Br. pp.24-27). The Commission’s order did not address the evidence offered by Ms. Lewis’s co-worker or her sister, and the Commission made no finding that Ms. Lewis’s testimony was not credible.² The Fund’s brief leaves this argument completely unaddressed, and Ms. Lewis submits that it should accordingly carry the day.

²The Commission did describe Ms. Lewis’s testimony as “self-serving,” see (R.p. 21, ¶24), but if that is a credibility finding, it is not apparent on its face. As an administrative agency, the Commission must state its findings with specificity, and implied findings are not acceptable. *Able Communications, Inc. v. South Carolina Pub. Serv. Comm’n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

B. When Calculating the Compensation Rate, South Carolina's Workers' Compensation Law Does Not Take into Account Whether Earnings Were Reported for Income Tax Purposes.

Ms. Lewis admitted that at the time of her hearing, she had not reported her earnings from dancing for income tax purposes. (R.p. 163, lines 4-7).

Regrettable though that decision may be, it does not mean that she did not earn income in the amounts that she described in her testimony. Unlike other states, South Carolina's workers' compensation law does not limit a worker's earnings to earnings that are reported to the appropriate authorities for the purpose of taxation. Compare S.C. Code Ann. § 42-1-40 (Supp. 2009) (defining a worker's "average weekly wage" in terms of the worker's "earnings") with Fla. Stat. Ann. § 440.02 (28) (West 2009) (defining "wages" under Florida's workers' compensation law as "only the wages earned or reported for federal income tax purposes"). Whether such a limitation would be wise or unwise may be debatable, but South Carolina law does not contain any such limitation at present.

A case from the Court of Appeals of Georgia involved a restaurant worker who sought to include his "tip" income in calculating the amount of his workers' compensation benefits, and this worker had not reported that tip income for tax purposes. See *Pizza Hut Delivery v. Blackwell*, 418 S.E.2d 639 (Ga. Ct. App. 1992). The Court upheld the inclusion of those tips in the computation for several reasons, and in closing, the court observed "[a]ny failure to pay income tax on unreported tips is a matter for resolution between [the worker] and the state and federal governments." *Id.* at 640. That observation should control here.

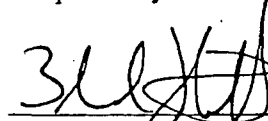
CONCLUSION

Ms. Lewis's position is that the evidence shows she was not an independent contractor engaged to perform her own work on her own terms. Instead, the Boom Boom Room was in control. The Court should reverse the Commission's decision that Ms. Lewis was an independent contractor and hold that at the time of her injury, she was an employee.

Ms. Lewis's position is also that the Commission read the applicable regulation incorrectly and misstated the evidence in the record when it limited Ms. Lewis to the earnings she realized from the Boom Boom Room. The Court should reverse the Commission's decision and remand this case for calculation of Ms. Lewis's compensate rate.

January 5, 2011

Respectfully submitted,



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Attorneys for Appellant

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
S.C.W.C.C. FILE NO: 0821881

LEANDRA LEWIS,

Employee/Claimant,

vs.

L.B. DYNASTY, INC. dba BOOM BOOM
ROOM STUDIO 54,

Employer/Defendant,

and

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND,

Defendant.

DECISION AND ORDER

HEARING:

May 21, 2009

APPEARANCES:

Employee/Claimant appeared and was
represented by Charles Burnett, Esquire
Of Rock Hill, South Carolina

Neither Employer/Defendant nor a
representative of the company appeared.

Defendant/South Carolina Uninsured
Employers' Fund, appeared and was
represented by Lisa C. Glover, Esquire, its
Deputy General Counsel of Columbia, South
Carolina.

PURPOSE OF HEARING:

To determine issues as set forth on the Form 50 and 51 and any other issues, which may timely come before the Commission.

OPINION AND AWARD:

G. Bryan Lyndon, Commissioner

FILED:

October 13, 2009

ADMINISTRATIVE PROCEDURE ACT (APA) SUBMISSIONS

CLAIMANT SUBMISSIONS

APA 1	Palmetto Health Richland Hospital	7/23/08-8/19/08	1-46
APA 2	Carolinas Medical Center Billing	8/21/08-4/27/09	47-94
APA 3	Dr. Mary Le-Bliss	3/19/09	95-96
APA 4	Exhibits		
	A) Police Report	7/24/08	
	B) Magistrate Prelim Notice	8/6/08	
	C) Printout of SC Secretary of State Mark Hammond	11/7/08	
	D) Notice from Richland County Business Service Center	11/5/08	
	E) Investigator Spears' Incident and Investigative Report	7/23/08-7/31/08	

EMPLOYER/DEFENDANT SUBMISSIONS

NONE

SOUTH CAROLINA UNINSURED EMPLOYERS' FUND SUBMISSIONS

NONE

STIPULATIONS

The parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission had jurisdiction to hear the case.

Venue was proper in Richland County, South Carolina.

3. Notice was timely and proper.
4. The Commission's file became a part of the record with the exception of self-serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

The hearing in this matter was commenced at 9:55 am in Columbia, South Carolina pursuant to Forms 50 and 51. The purpose of the hearing was to first determine if the Claimant was an employee or independent contractor for LB Dynasty, Inc., dba Boom Boom Room Studio 54. If found to be an employee, the Claimant contends she suffered an injury by accident by way of a gunshot wound to her abdomen, back, bladder, reproductive organs, liver, pancreas, duodenum, biliary tract, scarring to neck and skin loss on July 23, 2008. The Claimant was the victim of a random shooting at the employer location. The Claimant seeks a finding that LB Dynasty, Inc., dba Boom Boom Room Studio 54 employed her as an exotic dancer. The Claimant further seeks a finding she is permanently and totally disabled or alternatively she is in need of further medical treatment. Additionally, Claimant seeks Temporary Total benefits from July 23, 2008 through the present and continuing and payment of all causally related medical expenses. Claimant further contends she is entitled to the 2008 maximum Compensation Rate of Six Hundred sixty-one dollars and twenty-nine cents (\$661.29).

The Defendant, South Carolina Uninsured Employers' Fund takes the position the Claimant was not an employee of LB Dynasty, Inc., dba Boom Boom Room Studio 54. The Fund further contends the Claimant was an independent contractor and is not entitled

to any benefits under the Act. Finally, the Fund contends the employer is not subject to the Act.

No one appeared on behalf of LB Dynasty, Inc., dba Boom Boom Room Studio 54 (herein after referred to as the Club).

EVIDENCE OF THE CASE

The Claimant called three witnesses to testify on her behalf. The first witness to testify was Investigator Brandy Spears-Hunger of the Richland County Sheriff's Department. Investigator Spears-Hunger testified that she conducted the investigation surrounding the shooting at the Club. Her investigation revealed the Claimant was not the target of the shooting but a random victim. Investigator Spears-Hunter testified that during the course of her investigation she interviewed or learned of fourteen (14) persons who allegedly worked at the Club. Investigator Spears-Hunger admitted on cross-examination that she did not know the employment relationship between any of these persons, i.e. employees or independent contractors, nor did she know how they were hired, paid or supplied equipment (Transcript page 13 line 18 through page 14 line 13).

Daquanna Jarae Cooper was the next witness to testify on the Claimant's behalf. Ms. Cooper testified that she is twenty (20) years of age and has worked in the exotic dance industry for the last four years. Ms. Cooper further testified that she is a resident of the state of North Carolina.

Ms. Cooper testified that she previously worked at LB Dynasty, Inc., dba Boom Boom Room Studio 54 as an exotic dancer two or three times two years ago. She testified that in order to work in the Club a dancer has to present identification indicating she is at

least eighteen years old, read and sign a Rules sheet and pay a "tip-out" fee. The amount of the "tip-out" fee is dependent on the time of arrival. The later you arrive at the Club the more the fee. Ms. Cooper indicated that she did not fill out an employment application.

Ms. Cooper stated she observed other dancers, bartenders, disc jockeys working at the Club. She testified that she did not know about the employment relationship between those persons and the Club. Ms. Cooper testified that when she danced at the Club two years ago she danced on stage, in rotation and in the VIP room. She earned money dancing in all of these areas. Ms. Cooper testified that she had to give the Club a percentage of the money she earned doing a VIP dance otherwise she kept all of the money she earned. The Club never paid Ms. Cooper any money.

The last person to testify on behalf of the Claimant was Clarnicki Lewis. She is the sister of the Claimant. Ms. Lewis testified that she accompanied the Claimant to the Club on July 23, 2008. Upon their arrival the Claimant went to management area to check in and she went into the Club, as did the other patrons. Ms. Lewis testified that she observed several persons working there but did not know about the employment relationship between these persons and the Club.

Finally, the Claimant testified. Claimant testified that she is twenty (20) years old and earned a High School diploma. Claimant testified that she is single and does not have children. Claimant further testified that she is a resident of the state of North Carolina.

The Claimant worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to

recall that the last time she danced was July 23, 2008. At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Claimant testified that upon arriving at the Club she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." Claimant testified that she did not fill out an employment application nor sign any type of contract. The Claimant testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Claimant. Claimant testified that she could not dance without music and used the table and chairs as props.

The Claimant testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came from tips given to her by the patrons. Claimant further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Claimant testified that if she engaged in fights, danced bottomless or disregarded her personal hygiene she would be subject to a fine. Claimant testified that she conducted her self in such a manner that she was never fined. The Club never paid the Claimant any

money. Claimant assumed responsibility for all cost associated with her dancing at the Club.

Further the Claimant testified that she worked at other Clubs during the year in North and South Carolina. Claimant testified that she worked on average five to six days per week Claimant contends she earned One Thousand Six Hundred fifty dollars (\$1650.00) per week Claimant testified that she could work at any Club she chose. Claimant testified that she did not have any documentation about other jobs or her earnings.

Finally, the Claimant testified that the Club did not have to let her dance if her appearance was not comely. Claimant further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request would be based on repeated violations. Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

FINDINGS OF FACTS

1. Claimant alleges an injury by accident to the abdomen, back, bladder, reproductive organs, liver, pancreas, duodenum, biliary tract, scarring and skin loss. Claimant maintains that she was an employee of the Uninsured Defendant.
2. Claimant who lives in North Carolina worked as an exotic dancer in clubs in North and South Carolina. She was inadvertently shot.

- when an altercation broke out at the club. Claimant was a random victim.
3. Claimant maintains that she is an employee and not an independent contractor.
 4. Claimant stated she could be fired if she was not properly dressed, had poor hygiene and could be fired if she danced out of rotation. Claimant further testified she could be fired for fighting or taking off your underwear.
 5. Claimant stated the owner supplied the music, a pole, towels, pole cleaner, tables and a sofa upon which she could lean but not sit. The owner of the Club also supplied the lighting.
 6. Claimant stated lockers were provided. If they were all taken the dancers would put their belongings on the floor.
 7. Claimant never filled out an employment application and can dance anywhere she wants to. Claimant testified that in order to dance you walk in the Club, present identification that you are of the age of majority, pay a tip out fee, read and sign a rules sheet and go to work.
 8. Claimant testified that her only compensation comes from tips from patrons. Claimant testified that she had to pay a tip out fee to the bartender and disc jockey. The Club did not pay claimant any monies.

9. Claimant stated she could quit at any time and had never been fired. She also stated she had control over the costumes she wore, was not required to use the pole and could pick her own music.
10. The record was left open for 30 days for briefs from the Claimant and the Uninsured Employers' Fund. The briefs were submitted and the record is closed.
11. I find the Claimant failed to prove she was an employee of LB Dynasty, Inc., dba Boom Boom Room Studio 54. In fact, I find there can be no clearer definition of an Independent Contractor than the relationship Claimant had with the Club. My decision is based on very weak factual evidence presented by the Claimant that fails to meet the test required by the Act. In order to reach a conclusion regarding whether or not Claimant is an employee or independent contractor four factors must be determined. First, direct evidence of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire.

i. Direct Evidence of the Right or Exercise of Control

The Claimant worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was

July 23, 2008. At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Claimant testified that she is a resident of the state of North Carolina.

Claimant testified that upon arriving at L.B. Dynasty, Inc. (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." Claimant testified that she did not fill out an employment application nor sign any type of contract.

ii. Furnishing of Equipment

The Claimant testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Claimant. However, Claimant testified that she could not dance without music and used the table and chairs as props.

iii. Method of Payment

The Claimant testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came

from tips given to her by the patrons. Claimant further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Claimant testified that if she engaged in fights, danced bottomless or disregarded her personal hygiene she would be subject to a fine. Claimant testified that she conducted herself in such a manner that she was never fined. The Club never paid the Claimant any money. Claimant assumed responsibility for all cost associated with her dancing at the Club.

iv. Right to Fire

The Claimant testified that the Club did not have to let her dance if her appearance was not comely. Claimant further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations.

Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

The recent Supreme Court decision of Lea Ann Wilkinson v. Palmetto State Transportation Company, 676 S.E.2d 700 (S.C. 2009) also assist in this decision.

12. I find that if the Claimant had met her burden of proof in establishing that she was an employee of LB Dynasty, dba Boom Boom Room Studio 54 the Compensation rate would be Seventy-five dollars (\$75.00). There is no evidence whatsoever, as to the amount of money Claimant earned, hours worked, etc. The only evidence is Claimant's testimony, which is self-serving. The Claimant is bound by the wages earned from the Club only. The Claimant is required by

Regulation 67-1603(H) to submit a Form 20 to the Claim's department and the employer outlining wages earned from other employers. The Claimant testified that she did not have any Form 20 to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999).

13. Claim for benefits is denied.

CONCLUSIONS OF LAW

After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, the following Conclusions of Law are hereinafter set forth:

1. The burden of proof applicable to a claim for Workers' Compensation benefits is the preponderance of the evidence. The Claimant failed to meet her burden by failing to establishing she was an employee of LB Dynasty Inc. dba Boom Boom Room Studio 54 on July 23, 2008 as outlined in §42-1-130.

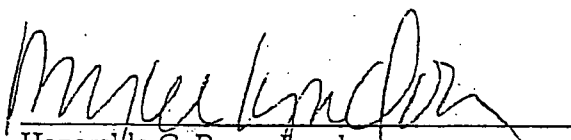
ORDER

Based upon the Findings of Facts and Conclusions of Law it is hereby **ORDERED, ADJUDGED AND DECREED** the Claimant, LeAndra Lewis, failed to prove by a preponderance of the evidence, that she was an employee of LB Dynasty, Inc., dba Boom Boom Room Studio 53.

It is therefore **ORDERED, ADJUDGED AND DECREED** the Claimant,
 LeAndra Lewis's claim for benefits under the South Carolina Workers'
 Compensation Act is **DENIED AND DISMISSED** with prejudice subject to her
 appellate rights.

IT IS SO ORDERED.

No hearing costs are assessed in this matter.


 Honorable G. Bryan Lyndon
 Commissioner

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date
 served this order in the above entitled matter upon all
 parties to this order by first class mail, return receipt
 postage paid, and by first class mail addressed to
 the attorney or other agent for the parties.

This 13th day of October, 2009
 By Shawna Morris
 Administrative Assistant to the Commissioner

CB
 LCG

L.B. Dynasty
 Cent Mart

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C FILE NO. 0821881

LeAndra Lewis

CLAIMANT/EMPLOYEE

- V -

L.B. Dynasty dba Boom Boom Room Studio 54 DEFENDANT/EMPLOYER

AND

S.C. UNINSURED EMPLOYERS' FUND, DEFENDANT/

Appellate Panel Review held in Columbia,
South Carolina on April 19, 2010 per notices
Timely and properly served on all parties of
Interest

Appellate Panel Decision and Order filed

6/24/2010

APPEARANCES:

Claimant/Employee, represented by Blake Hewitt and Marti
Bluestein, Esquire of Columbia, South Carolina

Defendant/Employer/L.B. Dynasty, Inc., dba Boom Boom Room
Studio 54, did not appear

Defendant/ South Carolina Uninsured Employers' Fund
Represented by Lisa C. Glover, of Columbia, South Carolina

STATEMENT OF CASE

The parties were heard by Commissioner G. Bryan Lyndon on May 21, 2009 in Columbia, South Carolina. On October 13, 2009, Comm. Lyndon issued the following Order:

IT IS THEREFORE ORDERED the Claimant, LeAndra Lewis's claim for benefits under the South Carolina Workers' Compensation Act is DENIED AND DISMISSEDD with prejudice subject to her appellate right.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth nine reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 19 2010. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. The Commissioner erred in finding as a fact and concluding as a matter of law the Clamant was an independent contractor contractor instead of an employee. Further, the Commissioner erred in finding as a fact and concluding as a matter of law the

Claimant failed to provide evidence of her earnings and hours worked.

FINDING OF FACT

1. All parties to this proceeding are subject to and are bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. 2. Claimant alleges an injury by accident to the abdomen, back, bladder, reproductive organs, liver, pancreas, duodenum, biliary tract, scarring and skin loss. Claimant maintains that she was an employee of the Uninsured Defendant.
3. 3. Claimant who lives in North Carolina worked as an exotic dancer in clubs in North and South Carolina. She was inadvertently shot when an altercation broke out at the club. Claimant was a random victim.
4. 4. Claimant maintains that she is an employee and not an independent contractor.
5. 5. Claimant stated she could be fired if she was not properly dressed, had poor hygiene and could be fired if she danced out of rotation. Claimant further testified she could be fired for fighting or taking off your underwear.
6. 6. Claimant stated the owner supplied the music, a pole, towels, pole cleaner, tables and a sofa upon which she could lean but not sit. The owner of the Club also supplied the lighting.

7. 7. Claimant stated lockers were provided. If they were all taken the dancers would put their belongings on the floor.
8. 8. Claimant never filled out an employment application and can dance anywhere she wants to. Claimant testified that in order to dance you walk in the Club, present identification that you are of the age of majority, pay a tip out fee, read and sign a rules sheet and go to work.
9. 9. Claimant testified that her only compensation comes from tips from patrons. Claimant testified that she had a pay a tip out fee to the bartender and disc jockey. The Club did not pay claimant any monies.
10. 10. Claimant stated she could quit at any time and had never been fired. She also stated she had control over the costumes she wore, was not required to use the pole and could pick her own music.
11. 11. The record was left open for 30 days for briefs from the Claimant and the Uninsured Employers' Fund. The briefs were submitted and the record is closed.
12. 12. I find the Claimant failed to prove she was an employee of LB Dynasty, Inc., dba Boom Boom Room Studio 54. In fact, I find there can be no clearer definition of an Independent Contractor than the relationship Claimant had with the Club. My decision is based on very weak factual evidence presented by the Claimant that fails to meet the test required by the Act. In order to reach a conclusion regarding whether or not Claimant is an employee or independent contractor four factors must be determined. First, direct evidence

of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire.

13. i. Direct Evidence of the Right or Exercise of Control

14. The Claimant worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was July 23, 2008. At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

15. Claimant testified that she is a resident of the state of North Carolina.

Claimant testified that upon arriving at L.B. Dynasty, Inc. (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." Claimant testified that she did not fill out an employment application nor sign any type of contract.

16. ii. Furnishing of Equipment

17. The Claimant testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Claimant. However, Claimant testified that she could not dance without music and used the table and chairs as props.

18. iii. Method of Payment

19. The Claimant testified that she earned Five hundred dollars (\$500.00) on her first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came from tips given to her by the patrons. Claimant further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Claimant testified that if she engaged in fights, danced bottomless or disregarded her personal hygiene she would be subject to a fine. Claimant testified that she conducted her self in such a manner that she was never fined. The Club never paid the Claimant any money. Claimant assumed responsibility for all cost associated with her dancing at the Club.

20. iv. Right to Fire

21. The Claimant testified that the Club did not have to let her dance if her
22. appearance was not comely. Claimant further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations. Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

23. The recent Supreme Court decision of *Lea Ann Wilkinson v. Palmetto State Transportation Company*, 676 S.E.2d 700 (S.C. 2009) also assist in this decision.
24. 12. I find that if the Claimant had met her burden of proof in establishing that she was an employee of LB Dynasty, dba Boom Boom Room Studio 54 the Compensation rate would be Seventy-five dollars (\$75.00). There is no evidence whatsoever, as to the amount of money Claimant earned, hours worked, etc. The only evidence is Claimant's testimony, which is self-serving. The Claimant is bound by the wages earned from the Club only. The Claimant is required by Regulation 67-1603(H) to submit a Form 20 to the Claim's department and the employer outlining wages earned from other employers. The Claimant testified that she did not have any Form 20 to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." *Steele v. Self Serve*, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999)
25. 13. Claim for benefits is denied.

CONCLUSIONS OF LAW

1. After due consideration of the claim and defenses and after reviewing all the evidence contained in the record, the following Conclusions of Law are hereinafter set forth:

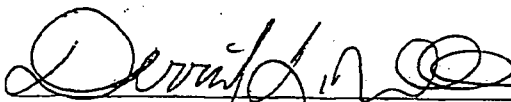
1. The burden of proof applicable to a claim for Workers' Compensation benefits is the preponderance of the evidence. The Claimant failed to meet her burden by failing to establishing she was an employee of LB Dynasty Inc. dba Boom Boom Room Studio 54 on July 23, 2008 as outlined in §42-1-130.

ORDER

IT IS THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on October 13, 2009 is hereby Affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

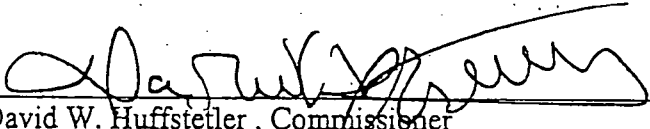
AND IT IS SO ORDERED.

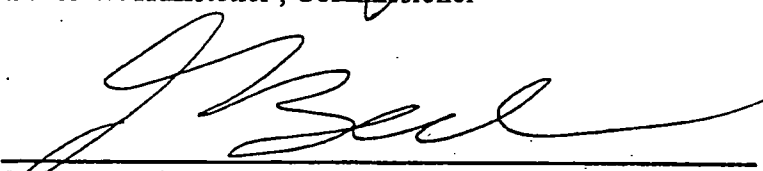
S.C. WORKERS' COMPENSATION COMMISSION.


Derrick L. Williams, Commissioner

FULL AFFIRMATION

CONCUR:


 David W. Huffstetler, Commissioner


 T. Scott Beck, Commissioner

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 States mail addressed to the attorney or attorneys for said parties.

This 24 day of June, 2012
 By Valerie D. Decker

Administrative Assistant to the Commissioner

Charles B. Burnette III

Marti Bluestein

Boom Boom Boom Studio 54 (Reg & cert)

Lisa Glover

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 #: TBD 164
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: LeAndra Lewis SSN: _____
Address: _____
City: Charlotte State: NC Zip: _____
Home Phone: (704) 965-2075 Work Phone: ()

Employer's Name: L B Dynasty, Inc., d/b/a Boom Boom Room Studio 54 and Will Thompson
Address: 6212 Two Notch Road
City: Columbia State: SC Zip: 29223
Insurance Carrier: No Coverage Found

Preparer's Name: Charles B. Burnette, III. Law Firm: Burnette & Payne, P.A. Preparer's Phone #: (803) 328-1800

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: July 23, 2008

X Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to abdomen, gastric laceration, liver laceration, pancreatic laceration, & duodenal laceration (Part(s) of Body Injured) ON

1b. July 23, 2008 (Month/Day/Year) in Richland county, state of South Carolina.

Body part(s) affected are: abdomen, liver, pancreas, intestines, and other organs, depression

Briefly describe how the accident occurred. Gunshot wound to abdomen

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 7-23-08 (Month/Day/Year) in the following manner:

Employer witnessed the shooting

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

X (a) medical examination and treatment for: all affected body parts

☐ (b) additional medical examination and treatment for: _____

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

7-23-08 and continuing

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

X (1) General Disability:

X Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

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

Multiple body wounds

10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, 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:

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:
Palmetto Health Richland, Columbia, SC and Mental Health Center, 501 Billingsley Road, Charlotte, NC

11c. To the best of your knowledge, did you have any prior permanent disability? No

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.

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

14. Estimated time needed for hearing: 1 hour

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

Preparer's Signature

Attorney for Claimant
Title

Burnettelaw@Comporium.net
Email

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.

WC902m # 50
Revised 9/07

50²⁴

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

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 799-2722
FAX: (803) 799-5290

February 13, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO.: 000398465141

Judicial Director
South Carolina Workers' Compensation Commission
1612 Marion Street
Columbia, South Carolina 29202

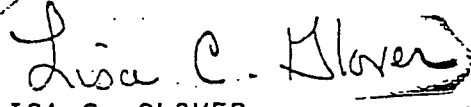
RE: LEANDRA LEWIS VS. L B DYNASTY, INC.
d/b/a BOOM BOOM ROOM STUDIO
SCWCC NO. 0821881; UEF NO. 006541

Dear Judicial Director:

Enclosed is the Fund's Answer to Request for Hearing in the above referenced case. By copy of this letter, I am serving same on the parties listed below.

With kind regards, I am

Yours very truly,


LISA C. GLOVER
DEPUTY GENERAL COUNSEL

LG:

Enclosure

cc: Charles B. Burnette, III
L B Dynasty, Inc.
d/b/a Boom Boom Room Studio

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

WCC File No. 0821881
Carrier File No. UEF 006541
Carrier Code No.
Employer FEIN

166

LEANDRA LEWIS

Claimant's Name

SSN

L B DYNASTY, INC. d/b/a BOOM BOOM ROOM STUDIO

Employer's Name

Address

City

State

Zip

6212 TWO NOTCH RD., COLUMBIA, SC 29223

Address

City

State

Zip

704 965 2075

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, 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:
General; there has been no proof.
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:
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
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 the notice of injury was given the employer. The reasons for denial are:
6. It is denied that the employee (needs)(is entitled to additional) medical care as a result of injury. The reasons for denial are:
7. It is denied that the employee is entitled to temporary total disability for the period(s) of:
8. It is denied that the employee is permanently disabled. The reasons for denial are:
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ (unknown) applies, according to attached accounting of employee's earnings as provided by law.
11. 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

Lisa C. Glover
Preparer's Signature

DEPUTY GENERAL COUNSEL

Title

Date

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.

South Carolina Uninsured Employers'

ATTACHMENT - WCC FORM 51

SCUEF NO: 006541
SCWCC NO: 0821881

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

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.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing Filing a Claim , dated 12-1-08.

Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing Filing a Claim , dated .

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

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTÉE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 768-2722
FAX: (803) 768-5290

June 10, 2009

Hon. G. Bryan Lyndon, Commissioner
SC Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

Re: Leandra Lewis vs. L.B. Dynasty, Inc.
d/b/a Boom Boom Room Studio 54, et al.
SCWCC No. 0821881; SCUEF No. 6541

Dear Commissioner Lyndon:

Enclosed is Defendant South Carolina Uninsured Employers' Fund's Memorandum of Law for the above-referenced case. I am providing a copy of this Memorandum to Charles B. Burnette, III, Esquire.

With warm regards,

Lisa C. Glover
Deputy General Counsel
lcglover@sif.sc.gov

LCG/ss
Enclosure(s)
c: Charles B. Burnette, III, Esq.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. FILE NO: 0821881

LEANDRA LEWIS,

Employee/Claimant,

MEMORANDUM OF LAW

VS.

L.B. DYNASTY, INC. dba BOOM BOOM
ROOM STUDIO 54,

Employer/Defendant,

and

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND.

Defendant.

QUESTION PRESENTED

WHETHER THE CLAIMANT LEANDRA LEWIS WAS, AT THE TIME OF HER ACCIDENT, AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE OF L.B. DYNASTY, INC. DBA BOOM BOOM ROOM STUDIO 54?

The case of LeAndra Lewis v. L.B. Dynasty, Inc., dba Boom Boom Room Studio 54 involves a question of whether the South Carolina Workers' Compensation Commission has jurisdiction over this claim based upon whether or not the Claimant was an employee or independent contractor. In order to reach a conclusion regarding whether

or not LeAndra Lewis is an employee or independent contractor four factors must be determined. First, direct evidence of the right or exercise of control; second, furnishing of equipment; third, method of payment; and fourth, right to fire.

1. Direct Evidence of the Right or Exercise of Control

LeAndra Lewis (herein referred to as the Claimant) worked at L.B. Dynasty, Inc. dba Boom Boom Room Studio 54 as a dancer/stripper on three occasions during the year 2008. During her testimony, the Claimant testified that she could not recall the first two dates she worked but was able to recall that the last time she danced was July 23, 2008. At this time, the Claimant suffered a gunshot wound when a fight broke out between two patrons of the club.

Claimant testified that she is a resident of the state of North Carolina. Claimant testified that upon arriving at L.B. Dynasty, Inc. (herein referred to as the Club) she presented identification that she was eighteen years old or older, read and signed a Rules Sheet and paid a "tip-out fee." Claimant testified that she did not fill out an employment application nor sign any type of contract.

2. Furnishing of Equipment

The Claimant testified that she provided her own costumes to perform her dance routines in. The club had a stage, a pole, tables, chairs, a bar, music, a dressing area and lockers. None of these items were provided specifically for the Claimant. However, Claimant testified that she could not dance without music and used the table and chairs as props.

3. Method of Payment

The Claimant testified that she earned Five hundred dollars (\$500.00) on her

first two visits and Three hundred fifty-seven dollars (\$357.00) on the night she was injured. Claimant testified that she could earn money by dancing on the stage individually and with other dancers in a group, by performing table dances or by performing "VIP" dances. Claimant was not required to perform table dances or VIP dances. Patrons requested table dances and VIP dances. Claimant earned more money by performing table dances and VIP dances. Claimant testified that the money she earned came from tips given to her by the patrons. Claimant further testified that she was obligated to pay the Club a tip-out fee, a tip for the DJ, and a percentage of the VIP dance fee. The Claimant testified that if she engaged in fights, danced bottomless or disregarded her personal hygiene she would be subject to a fine. Claimant testified that she conducted her self in such a manner that she was never fined. The Club never paid the Claimant any money. Claimant assumed responsibility for all cost associated with her dancing at the Club.

4. Right to Fire

The Claimant testified that the Club did not have to let her dance if her appearance was not comely. Claimant further testified that she could be asked to leave the Club for fighting, dancing bottomless and disregarding her personal hygiene. This request was based on repeated violations. Claimant testified that she was never asked to leave the Club for any of these violations because she did not engage in such activities.

Based upon the testimony of the Claimant and the evidence presented the Fund contends the Claimant was an independent contractor and not an employee of LB Dynasty, Inc. dba Boom Boom Room Studio 54. The Fund further relies upon the

guidance of the South Carolina Supreme Court as outlined in the recent decision of Wilkinson v. Palmetto State Transportation Company, 2009 S.C. 0505.252.

QUESTION PRESENTED

WHETHER THE CLAIMANT LEANDRA LEWIS IS ENTITLED TO THE
MAXIMUM COMPENSATION RATE FOR THE YEAR 2008?

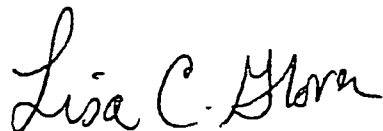
The Claimant contends that she earned One Thousand Six Hundred fifty dollars per week as a dancer in clubs. She testified that she worked at the club where the injury occurred on three occasions during the year of 2008. Otherwise she worked at other clubs in South Carolina and North Carolina. Claimant testified that she could not remember the dates of the first and second time she danced at the Club but did recall that she earned Five Hundred dollars (\$500.00) each time. Claimant further testified that she earned Three Hundred fifty-seven dollars (\$357.00) on the night she was injured. The Claimant contends her Average Weekly Wage and Compensation Rate should be based upon this dual employment.

The Fund argues that the Claimant is bound by the wages earned from the Club only. The Claimant is required by Regulation 67-1603(H) to submit a Form 20 to the Claim's department and the employer outlining wages earned from other employers. The Claimant testified that she did not have any Form 20 to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999).

For the reasons stated above, the Fund contends the Claimant was an independent contractor and not an employee. Therefore, the Claimant is not entitled to any benefits.

Alternatively, if the Commissioner finds that the Claimant was an employee of the Club, the Fund contends the Claimant is not entitled to a finding that she is entitled to the maximum Compensation Rate for the year 2008. Claimant failed to meet her burden of proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa C. Glover".

Lisa C. Glover, Esquire
Deputy General Counsel
SC Uninsured Employers' Fund

COPY

BURNETTE & PAYNE, P.A.

Attorneys at Law

Charles B. Burnette III
Connie H. Payne414 E. Main Street
P.O. Box 12186
Rock Hill, SC 29731Telephone (803) 328-1800
Fax (803) 328-9494
INTERNET E-MAIL
burnettelaw@Comporium.net

June 17, 2009

The Honorable Bryan G. Lyndon, Commissioner
The South Carolina Workers' Compensation Commission-
Post Office Box 1715
Columbia, SC 29201-1715Re: LeAndra Lewis v. LB Dynasty, Inc., d/b/a Boom Boom Room Studio 54
WCC File No.: 0821881

Dear Commissioner Lyndon:

Enclosed is the Brief you requested outlining the Claimant's right to benefits in the above-entitled action. You had requested at the hearing any decisions rendered in the dancing/entertainment industry. I have enclosed an Order from Commissioner Bass which was confirmed by the Full Commission awarding a similar type of dancer to benefits. Many of the issues are same. However, this case did precede the Wilkinson decision and my Brief carefully addresses considerations of Wilkinson.

With best wishes, I am,

Sincerely,



Charles B. Burnette III

CBBIII/klc

Enclosures

cc: Lisa Glover, Esquire (w/enc)

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION COMMISSION
COUNTY OF YORK	)	
LeAndra Lewis,	)	
Employee,	)	
	)	WCC FILE NO.: 0821881
Claimant,	)	
	)	
-vs-	)	
	)	
LB Dynasty, Inc., dba Boom Boom Room	)	
Studio 54,	)	LEGAL BRIEF/MEMORANDUM
	)	OF LAW ON BEHALF OF
An Uninsured Employer,	)	LEANDRA LEWIS, CLAIMANT
	)	
and	)	
	)	
SC Uninsured Employer's Fund,	)	
	)	
Defendants.	)	

TO: THE HONORABLE G. BRYAN LYNDON OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION AND LISA GLOVER, ESQUIRE,
ATTORNEY FOR SC UNINSURED EMPLOYER'S FUND:

INTRODUCTION

This case exemplifies the need for a balanced approach to young women brought into an entertainment industry. The Employer was an incorporated business with an established location. Its trade and business was to maximize profits through the use of young women subjected to a regime of rules designed to generate employer profits.

It would serve no purpose to "sugarcoat" this industry. Cash and questionable conduct obviously dominate the services required by these young females and the manner of payment. However, in applying the prongs set forth in Lea Ann Wilkinson (surviving spouse) for Scott R. Wilkinson (deceased), Claimant, Respondent v. Palmetto State Transportation Company, Employer, and Canal Insurance Company, Carrier, Petitioners, Opinion No. 26646, it is necessary to recognize the disparity of age, leverage in operating

the business, and ability to mandate rules.

The above-entitled claim came before the Single Commissioner on May 21, 2009, on the Claimant's Form 50, having properly served all parties. The pro se uninsured Employer (hereinafter referred to as Employer) failed to appear at the hearing to provide a defense. The South Carolina Uninsured Employer's Fund (hereinafter referred to as the Fund) was present as was the attorney for the Claimant.

The Claimant takes the position that the incident and injuries occurring on July 23, 2008, bring this matter under the jurisdiction of the South Carolina Workers' Compensation Act, thus making this a compensable claim entitling the Claimant to all benefits afforded pursuant to the South Carolina Workers' Compensation Act.

Specifically, the issues before the Single Commissioner are: 1) Whether the Employer was subject to the South Carolina Workers' Compensation Act on the date at issue making this an Employer/Employee Relationship; 2) Whether the Claimant sustained a compensable injury by accident arising out of and in the course of her employment; 3) A determination of the Claimant's average weekly wage and resulting compensation rate; and 4) The Claimant's entitlement to temporary total disability from July 24, 2008 and continuing as well as payment of all causally related medical treatment.

The uncontroverted testimony and written evidence revealed that on July 23, 2008, the Claimant reported to Crystal Taylor, one of the Managers for the LB Dynasty, Inc., dba Boom Boom Room Studio 54 (hereinafter referred to as the Club) to report for work as a dancer, the Claimant was physically searched by the bouncer upon her entrance on the premises. She then had to immediately report to the management office wherein a copy of her identification was made by the manager, Crystal Taylor. The Claimant's "tip

out" fee was collected; the Claimant was again advised of the Club rules and penalties, to include being fired, for breaking any of the rules of the Club. The Claimant then went on to the dressing room, dressed, and proceeded out onto the dance floor to begin work for the night.

During the evening, while the Claimant was on the floor dancing, a fight broke out on the stage near the DJ booth. During the fight a pistol was discharged and a stray bullet struck the Claimant in her low back. The Claimant was not the intended victim, but a victim by accident. The testimony and written evidence of Officer Spears, the investigative police officer for the Richland County Sheriff's Department, revealed the son of Ernest Jacobs Sr., another Manager of the club, was the shooter and was later arrested and charged with Assault and Battery with Intent to Kill, and is currently in jail awaiting sentencing directly related to this matter. It is from this incident that this claim arose and benefits are now being sought on the Claimant's behalf.

EVIDENCE PRESENTED

The Claimant called three separate witnesses, in addition to the testimony of the Claimant, and established the following uncontroverted and corroborated facts:

- 1) The Claimant reported for work on July 23, 2008, as a dancer for the Employer. Upon reporting for work, the dancers are physically searched by security and must immediately report to management to provide their ID and pay their "tip out" fee, are appraised of the "house rules and penalties, to include being fired" before going out on the dance floor.
- 2) That the Employer provides the majority of equipment utilized by the dancers, to include but not limited to: a) stage, b) lighting, c) music, d) the

drinks and mixers for the same, e) the pole, f) the DJ, g) the "Hype Man," h) security, i) the VIP rooms, j) the couches in the VIP room, k) dressing room for the dancers, l) lockers for the dancers, m) tip baskets for the dancers, n) towels, o) clearing fluid used by the dancers between dances, and p) the customers.

- 3) That the Employer had the following Employees in its employ:
 - approximately 20-30 dancers;
 - 2 bartenders;
 - 3 to 4 management personnel;
 - the DJ;
 - the Hype man;
 - 6-8 bouncers;
 - a door person;
 - a House Mom.
- 4) That Claimant sustained a compensable injury by accident arising out of and in the scope of her employment when she was shot in the low back while dancing when a fight broke out on the stage and a gun was discharged. The Claimant was not the intended victim but a victim by accident.
- 5) That the dancers earn approximately Three Hundred and No/100 (\$300.00) per night, six nights per week for a total of One Thousand Six Hundred Fifty and No/100 (\$1,650.00) per week.
- 6) That the Employer set the rules that the dancers had to abide by and exercised substantial control over the dancer's activities and conduct when in

the Club. Failure to abide by the "house rules" would subject the dancer to a \$25.00 fine and the right of the Employer to fire the dancer.

APPLICATION OF LAW

The Wilkinson case recently modified the law of South Carolina. This case calls for a balancing of four factors, each being given equal weight. (1. Direct Evidence of the Right or Exercise of Control, 2. Furnishing of Equipment, 3. Method of Payment, 4. Right to Fire.)

1. DIRECT EVIDENCE OF THE RIGHT OR EXERCISE OF CONTROL

In Wilkinson, the written contract provided that the Claimant "shall determine the means and methods of the performance of all transportation services." If Wilkinson agreed to an assignment and made the pickup, he exercised complete control over the delivery and chose his travel routes without direction from Palmetto.

The uncontroverted, corroborated evidence of the case at bar clearly established that the Employer set the hours of operation; the Employer set the amount the dancers were paid; the Club determined the rotation of the dancers on the stage and if the dancer failed to appear on stage when her name was called, she was fined by the Club and if the fine was not paid immediately, the dancer was *fired*. The Club scheduled the VIP dances and a "house mom" and bouncer supervised the private VIP dances by the dancer and collected the money for the dance. The cost paid from the cover charge to enter the Club to the amount paid by the customers for a dance were determined by the Club and the dancers had no control on the amount charged. The Club exercised control in searching

all dancers coming into the Club.

Further, the Club established rules wherein the dancers could not argue with the customers, other dancers, or other employees. If a dancer was caught arguing, she would either be fined or fired, or in some instances both. All of this was at the discretion of the management of the Club.

Unlike Wilkerson, the nature of the relationship of Employer/Employee existed in the fact that the Club exercised substantial control of the dancer's activities, dance schedule, stage dance, VIP dances and the amount charged for these performances. The Employer even controlled the state of "undress" a dancer was permitted with fines and possible termination for breach of any of the "house rules."

The Club established house rules which gave the Employer the ultimate right to fire a dancer for violation of any of the rules at any time.

2. FURNISHING OF EQUIPMENT

In the case at bar, the Employer provided the advertising for customers; provided the customers, provided the stage, the pole, the music, the lighting, the drinks and mixers for the same, the dressing room for the dancers, lockers for the dancers, the tip basket for the dancers, the towels for the dancers, the cleaning fluid used by the dancers between dances, the DJ, the "hype man," security, the VIP rooms, and the couches in the VIP rooms. It was established that the dancers did provide their own costumes. Clearly when reviewing the evidence as a whole, the undisputed testimony and written evidence establishes that the Employer provided a majority of furnishings and equipment for the dancers.

3. METHOD OF PAYMENT

This form of enterprise is predominately a cash business. Again, the Employer did not appear at the hearing, nor did any of the management for the Employer appear to give evidence or testimony as to the method of payments and amounts of payments for the dancers. Neither did the Fund proffer evidence or testimony on this issue.

The only evidence presented into the record is the testimony of the Claimant and Daquanna Jerae Cooper, another dancer for the employer.

Both the Claimant and Ms. Cooper testified that they earned an average of Three Hundred and No/100 (\$300.00) Dollars per night, six nights a week dancing. The Claimant and Ms. Cooper (a similarly situated employee) were able to break down and validate their earnings as follows:

\$100.00	Stage Dances
\$100.00 - \$150.00	Table Dances
\$ 50.00 - \$100.00	VIP Room Dances

While the payment may have been in the form of cash payments due to the nature of the business, the fact is undisputed that the Claimant was paid working in the Club approximately \$300.00 per night. The cover charge to enter the Club, and the dances performed by the dancers, resulted in profits for the Club. The Club received the benefit of the Claimant's work in generating income for the Club, enticing the customers to buy drinks and pay for dances. The sole purpose for the Claimant's work was to benefit her Employer and generate a profit for the Employer.

4. RIGHT TO FIRE

The uncontroverted evidence of the case at bar comes by way of testimony of not only the Claimant but also a coworker, Daquanna Jerae Cooper. Both testified that Management had the ultimate right to fire any of the dancers at any time for numerous reasons, specifically but not limited to 1) failure to timely appear on stage when called by the DJ for their stage dance; 2) failing to dance the required number of stage dances in a night; 3) arguing with customers and/or employees of the Club; and 4) failing to immediately pay a fine issued by Management for breaking one of the "house rules" relating to the dancers, and 5) dancing bottomless.

The testimony in this case clearly established that the Employer had the "right to fire" the Claimant and when viewed in this context as a whole.

WILKINSON IN CONCLUSION

The Court in Wilkinson stated, "We return to our jurisprudence that evaluates the four factors with equal force in both directions." Clearly the Wilkinson case does not require the Claimant to prove all four considerations. The law now requires a balancing of the four considerations to determine if the Claimant has shown by a preponderance of evidence, a balance of these considerations weighs in the Claimant's favor. The Claimant maintains based on the uncontroverted facts that these considerations, as a whole, bring her into the Employer/Employee relationship.

DETERMINATION OF CLAIMANT'S AVERAGE WEEKLY WAGE

The South Carolina Workers' Compensation Act §42-1-60 provides in part,

"... Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment it is impracticable to complete the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community..." In the case at bar, the Claimant's witness, Daquanna Jeræ Cooper, testified that she is a dancer for the Employer and further testified as to the nightly earnings for stage dances, table dances and VIP Room dances.

Whether or not taxes are paid on wages is irrelevant to the question of whether wages were earned and received. Further, no one disputes that the Employer received the benefit of the Employee's work, and testimony was Claimant earned approximately \$300.00, per night, six nights a week dancing. No one refuted her testimony or offered evidence to the contrary. She has met her burden of proof and whether tax returns are filed by the Employee is irrelevant. While not a requirement by statute of the South Carolina Workers' Compensation Act to verify income, the Claimant testified that it was her intent to file income taxes on the wages she earned as a dancer. However, due to the severity of her injuries and her inability due to her disability to earn wages since July 23, 2008, she could not afford to pay a tax consult to prepare a return, nor could she pay the taxes due. The Internal Revenue Service has provisions for filing a delinquent return, no matter how many years an individual has not filed under the Internal Revenue Service

Policy State P-5-133.

When the issue of wage determination is to be made, Regulation 67-606 (A) of the South Carolina Workers' Compensation Act provides that the average weekly wage and compensation rate is an issue for determination at the hearing unless stipulated by the parties. Neither the Employer or the Fund offered a Form 20, provided any evidence of the amount of wages and specifically did not object to the Claimant and the Claimant's witness's testimony as to the amount of wages. Not only did the Claimant expect payment for her dancing, she also received payment for her dancing.

CONCLUSION

Based upon the preponderance and uncontroverted and substantial evidence of the record as a whole, and weight given to the testimony of not only the Claimant, but that of a co-worker, Danquanna Cooper, as well as the testimony of Officer Spears and Carl Nikkie Lewis, the Claimant has clearly met a preponderance of the considerations in Wilkinson for this claim to be found compensable and benefits awarded pursuant to the South Carolina Workers' Compensation Act.

The established mode of this form of the entertainment business is to entice young girls, often underage, to become dancers at the Club with the Club controlling the trade, expecting profits to be generated by these young girls. The dancers expect and receive earnings from the enterprise developed by the Club.

This type of enterprise, due to the nature of the business, is a predominantly cash business. The Claimant and Ms. Cooper both testified they were paid approximately \$300.00 per night, working six nights a week, which would yield an average weekly wage.

of \$1,650.00 per week, equating to the maximum allowable compensation rate of \$661.29 per week.

The Claimant further testified that she intended on filing a tax return for her earnings, but due to the severity of her injuries, and the fact she is still written out of work and has no source of income, she has been unable to afford to pay the tax consultant fees and the income tax due on her earnings.

Ms. Cooper, also a dancer for the employer, also provided uncontroverted testimony that the dancers were paid in cash each night. The Employer certainly reaped the benefits of the dancer's performances, which is a direct aspect of their trade and the sole purpose of their business. The Employer is a "Strip Club," which by the mere aspect of the mode of business, requires the employment of young dancers to bring in their customers, thus allowing the Employer to realize a profit and operate a business.

Our South Carolina Supreme Court held in Abbott v. The Limited, Inc., (2000) 338 S.C. 161, 526 S.E. 2d 513, and cited in Olmstead v. Shakespeare (Opinion No. 3437) filed, January 22, 2002, the three established tests used to determine whether an employee is engaged in an activity that is part of the owner's trade, business, or occupation as required under South Carolina Code Ann. §42-1-400, 1) is the activity an important part of the owner's business or trade; 2) is the activity a necessary, essential, and integral part of the owner's business; or 3) has the activity previously been performed by the owner's employees? The guidepost is whether or not that which is being done is or is not a part of the general trade, business, or occupation of the owner. Again, the substantial uncontroverted evidence of the record of the case at bar is that this is a *CASH* business, with the dancers being paid in cash. Waitresses in the food industry provide a good

analogy for wages being paid primarily by the customer and in cash.

A claimant has the burden of proving facts sufficient to allow recovery under the South Carolina Workers' Compensation Act. Hall v. Desert Aire, Inc., (SC App. 2007) 376 SC 338, 656 SE2d 754. When reviewing the record as a whole, the Claimant has met the burden of proof and this case should be interpreted broadly in favor of coverage. The Employer would have an unfair advantage over these young dancers by using them to bring in the customers and provide profits for the Employer, but denying them protection under the South Carolina Workers' Compensation Act under the veil that the dancers are independent contractors when the substantial evidence of the record does not hold this to be true. The Claimant has met her burden of proof.

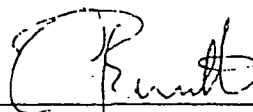
When reviewing the record as a whole, the Employer had the requisite number of employees to bring this matter under the jurisdiction of the South Carolina Workers' Compensation Act. The testimony and investigative report of Officer Spears, at least 20 to 34 employees have been identified as working for the Employer.

The Claimant was struck by a stray bullet when a fight broke out at the DJ booth at the stage. The totality of her injuries, specifically but not limited to include the total loss of a kidney and probable inability to bear children, are well documented in the Claimant's APA submissions, submitted without objection. An intentional assault on an employee by a third person is an "accident" because it is unexpected when viewed from the employee's perspective. Doe v. SC State Hospital, (S.C. App. 1985) 285 S.C. 183, 328 S.E. 2d 652.

Based on the aforementioned, a Decision and Order should be issued finding the following:

- a) The Employer is subject to the jurisdiction of the South Carolina Workers' Compensation Act;
- b) The Employer/Employee relationship existed on July 23, 2008;
- c) The Claimant sustained a compensable injury by accident arising out of and in the course of her employment;
- d) The Claimant is entitled to payment of all causally related medical care;
- e) The Claimant's average weekly wage is \$1,650.00, yielding a weekly compensation rate of \$661.29;
- f) The Claimant is awarded temporary total disability from July 24, 2008 and continuing;
- g) The Claimant is not at maximum medical improvement.

Respectfully Submitted,



Charlie B. Burnette, III.
Attorney at Law
P. O. Box 12186
Rock Hill, South Carolina 29731
(803) 328-1800
ATTORNEY FOR CLAIMANT

Rock Hill, South Carolina

June 17, 2009

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0115769

Lisa M. Black, Employee,

Claimant,

Vs.

Thee Dollhouse, and Fire and
Casualty Insurance Co. Of Conn.,

Defendants.

HEARING:

Held in Conway, South Carolina on
February 11, 2003

APPEARANCES:

Claimant represented by Robert
S. Haight, Jr., Esquire, of Harry
Pavilack & Associates, P.A. of Myrtle
Beach, South Carolina.

Defendants, Thee Doll House, and their
carrier, Fire & Casualty Insurance Co.
Of Conn., represented by M. Stephen
Stubley, Esquire, of Huff, Cauthen &
Martin, LLC, of Columbia, South
Carolina.

PURPOSE OF HEARING:

To determine issues as set forth in
Forms 50 and 51.

DECISION AND ORDER:

By J. Alan Bass, Commissioner

FILED:

March 19, 2003

I. STIPULATIONS

All parties present at the hearing stipulated to the following issues:

1. The purpose of the hearing was to determine the issues as set forth on Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Horry County, is proper and agreed upon, and the file is made a part of the record.
4. The Claimant seeks benefits under the South Carolina Workers' Compensation Act, based upon an injury which occurred on August 7, 2001. At the time of the accident, the Claimant claimed to be an employee of Thee Doll House. The Defendants denied that the Claimant was an employee, but contend rather that she was instead an independent contractor. The South Carolina Workers' Compensation Commission has jurisdiction over Thee Doll House, and has jurisdiction to decide if an employee/employer relationship existed at the time of the alleged incident.

II. A.P.A. SUBMISSIONS

Pursuant to the Administrative Procedures Act, the parties offered into evidence the following documents:

- APA #1: The medical records of Grand Strand Regional medical Center dated July 28, 2000, numbered pages 1-6;

- APA #2: The medical records of Grand Strand Regional Medical Center dated August 7, 2001, numbered Pages 7-15;
- APA #3: The medical records of Grand Strand Regional Medical Center dated August 8, 2001, numbered Pages 16-21;
- APA #4: The medical records of Grand Strand Regional Medical Center dated August 9, 2001, numbered Pages 22-26;
- APA #5: The medical offices notes of Dr. J. Clark Butler of Strand Orthopaedic Consultants, dated August 22, 2001, September 5, 2001, and August 7, 2001, and August 8, 2001, numbered Pages 27-33;
- APA #6: The medical office notes of Dr. Thomas Chambers of Strand Regional Specialty Associated dated August 9, 2001 and August 17, 2001, numbered Pages 34-47;
- APA #7: Two [2] letters of Thee Dollhouse dated August 9, 2001 and September 7, 2001, numbered Pages 48-49

III. STATEMENT OF THE CASE

As mentioned above, this matter came before the undersigned Commissioner pursuant to Forms 50 and 51. The purpose of the hearing was to first determine if the Claimant was an employee or an independent contractor for Thee Dollhouse. If found to be an employee, the Claimant contends she suffered an injury by accident to her left upper extremity on August 7, 2001. The Claimant further seeks temporary total benefits, medical benefits, and compensation for permanent partial disability.

The Defendants maintain that the Claimant is an independent contractor, and is not entitled to any benefits whatsoever under the South Carolina Workers' Compensation Act.

IV. EVIDENCE ON THE CASE

The Claimant, Lisa M. Black, was the first witness to testify at the hearing. Ms. Black is twenty-three [23] years of age, is single, and has one [1] child. She completed High School, and has largely worked as a dancer in various clubs in the Myrtle Beach area since her graduation from High School. In addition, the Claimant has worked as a telemarketer for Blue Green Marketing.

The Defendants offered testimony of Gil Moreau, Assistant General Manager, who has been with Thee Dollhouse for twenty [20] years. The Defendants also offered the testimony of Donna McCallister who is the bookkeeper at Thee Dollhouse and handles most of the administrative needs for the employer. Both of these witnesses testified as to the procedures and operations of the Dollhouse. Finally, the employer offered the testimony of Tim Hicks, who does not work for the employer, but owns another similar type establishment in the Myrtle Beach area, and who offered testimony to the effect that he hired the Claimant after she had been able to return to work from her work related injury, and that she was terminated in the Spring of 2002.

After a careful review of the testimony and the evidence in the record, this Commissioner makes the following findings of fact and conclusions of law based upon a preponderance of the evidence.

V. FINDINGS OF FACT

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. The second week of May, 2001, the Claimant began working at Thee Dollhouse in Myrtle Beach, South Carolina as a dancer/entertainer.

3. When the Claimant began working at Thee Dollhouse, she was told that she would have to follow the following rules and regulations:

- a. She would not be allowed to wear shorts, pants or sheers.
- b. She would be required to wear a long evening gown, and her gown would have to be authorized by the "house mother."
- c. She would have to wear Jamaica-cut panties.
- d. She would have to wear a garter, and the garter could not be any closer than a dollar bill's length from her groin area.
- e. All tips she received would have to be placed in her garter, not her panties.
- f. She would be required to keep two feet on the floor and could get no closer than 6" from a customer.

4. When she first started working at Thee Dollhouse, the Claimant was told she had to work on Sundays.

5. The Claimant was required to work at least 4 days a week, although she could choose the days she worked.

6. If the Claimant began working before 4 p. m., she could leave at midnight. If she arrived at Thee Dollhouse after 4 p. m., she had to work all night.

7. The DJ at Thee Dollhouse would determine the times at which each dancer/entertainer would dance on stage.

8. The Claimant had to follow the DJ's schedule unless she was in the "VIP room." Otherwise, she could work in whatever area of the club she wished.

9. The Claimant was required to wear latex of a certain thickness over her nipples (this is also an ordinance of the City of Myrtle Beach).

10. The Claimant could be fined for absences.

11. Thee Dollhouse provides dancers/entertainers with a stage, music, and customers. The main attraction at Thee Dollhouse - that which draws customers in hopes they might buy food and drink - are the dancers/entertainers.

12. When dancers/entertainers come to Thee Dollhouse, they are told by Gil Moreau, Assistant General Manager at all times pertinent herein, the parameters of what type of performance he does not want. Further, Thee Dollhouse reserves the right to alter the content of the dancer/entertainers' performance if it deems the content inappropriate. Thee Dollhouse utilizes the dancers/entertainers for promotional purposes, trumpeting them with the attitude "these are our girls and we have the best looking girls in town."

13. At all times pertinent herein, Thee Dollhouse had the authority to fire the Claimant, as well as its other dancers/entertainers. Thee Dollhouse personnel claim they wouldn't fire a dancer/entertainer, but merely "take her off the schedule" or "send her home." Use of these euphemisms doesn't change the fact the dancer wouldn't be working there any more, and that the employer had the absolute right to fire or terminate the employment of the Claimant.

14. On August 7, 2001, the Claimant was an employee of Thee Dollhouse.

15. On August 7, 2001, the Claimant slipped and fell while dancing on the stage at Thee Dollhouse and dislocated left elbow. It was a compensable injury by accident to her left upper extremity.

16. The Claimant sought medical attention from the following healthcare providers: Horry County EMS, \$250.50; Grand Strand Regional Medical Center, 8/7/01, \$749.79 and \$62.00; Carolina Radiology, \$52.00; Dr. Thomas Chambers, of Strand Regional Specialty Associates, \$78.00; Myrtle Beach Brace & Limb Center, \$710.00; Dr. J. Clark Butler of Strand Orthopaedic Consultants, \$188.00. All such medical treatment was directly related to her accident on August 7, 2001, and tended to lessen her disability.

17. The Claimant was told on more than one occasion by Thee Dollhouse management personnel that they would take care of her medical expenses.

18. The employer in writing told Myrtle Beach Brace and Limb and Dr. Thomas Chambers they were paying the charges for the Claimant.

19. The Claimant reached maximum medical improvement [MMI] on September 5, 2001. As a result of her accident on August 7, 2001, the Claimant continues to suffer intermittent pain and discomfort in her left arm. She suffers intermittent sensitivity to touch, as well as a loss of strength. She also has a total of 10 degrees loss of motion to the left arm as a result of the accident.

20. The Claimant has suffered a Ten [10%] per cent loss of use of her left upper extremity.

21. I found the Claimant's testimony to be credible. I found neither Donna McCallister nor Tim Hicks to be credible witnesses. Claimant's average weekly wage was \$1,144.44 (\$10,500 in income for 2001, less \$200.00 earned at Dangerous Curves, divided by 9 weeks the Claimant worked at Thee Dollhouse). The Claimant's comp rate is \$532.77 (max).

22. As a result of her left arm injury, the Claimant was unable to work for a period of five (5) weeks.

V. CONCLUSIONS OF LAW

Accordingly, as provided by the South Carolina Code of Laws (1976 as amended), Section 42-17-40, it is the determination of this Commissioner:

1. That it is the established law of this State that any reasonable doubt as to the construction of a workmen's compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. Cokeley v. Robert Lee, Inc. 197 SC 157, 14 SE2d 889 (1941); Ham v. Mullins Lumber Co. 193 SC 66, 7 SE2d 712 (1940); Baldwin v. Pepsi-Cola Bottling Co. 234 SC 320, 108

SE2d 409 (1959), See also, De Berry v. Coker Freight Lines 234 SC 304, 108 SE2d 114 , (1959).

2. It is established law that whether an individual is an employee or an independent contractor is a fact-specific determination reached by applying certain general principles. The test is based on the right to control, not the exercise. There are four [4] factors to determine the right of control; (1) direct evidence of the right or exercise of control; (2) method of payment; (3) furnishing of equipment; and (4) right to fire. Nelson v. Yellow Cab Co. 343 SC 102, 538 SE2d 276, (S.C. App. 2000)

3. That under Section 42-1-130, the Claimant was a covered employee at the time in question.

4. That under Section 42-1-140, the Employer, The Dollhouse, was subject to The South Carolina Workers' Compensation Act.

5. That under Section 42-1-160, the Claimant did sustain an injury by accident to her left upper extremity arising out of and in the course of her employment.

6. That under Section 42-15-60, the Claimant has incurred adequate and proper medical care, and the charges for that medical care shall be the responsibility of the employer.

7. That under Section 42-9-10 and Section 42-1-120, the Claimant is entitled to compensation for temporary general disability for five [5] weeks.

2. That under Section 42-9-30 (13), the Claimant is entitled to compensation for loss of use of her left arm of ten [10%] per cent.

VII. ORDER

IT IS, ~~THEREFORE ORDERED~~, that the Employer, Thee Dollhouse, shall make the following payments:

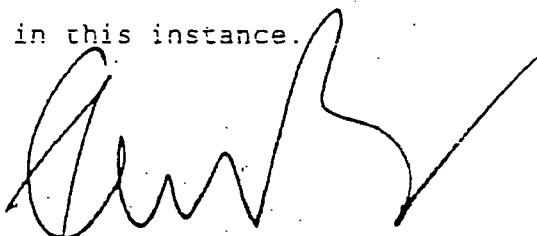
1. All charges incurred with the Claimant's medical care between August 7, 2001, and the last date she saw the doctor which are causally related to this accident suffered by Claimant. These charges include costs incurred at Horry County EMS, Carolina Radiology, Grand Strand General Hospital, Strand Orthopaedic Consultants, Strand Regional Specialty Associates, Myrtle Beach Brace and Limb.

2. Compensation to the Claimant in the amount of Five Hundred Thirty-two and 77/100 (\$532.77) Dollars for a period of five [5] weeks for temporary general disability.

3. Compensation to the Claimant in the amount of Five Hundred Thirty-two and 77/100 (\$532.77) Dollars per week for a period of twenty-two [22] weeks for loss of use of the left arm.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED...

By: 

J. ALAN BASS, COMMISSIONER
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Columbia, South Carolina

_____, 2003

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 thereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 19th day of March, 2003

By C. J. Mason
Administrative Assistant to the Commissioner

RS#
MSS

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 0821881
Carrier File #: UESF 000941
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Leandra Lewis SSN: _____ Employer's Name: LB Dynasty, Inc dba Boom Boom Room Studio 54
Address: _____ Address: 6212 Two Notch Road
City: Charlotte State: NC Zip: 28208 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Uninsured Employer
Preparer's Name: Charles B Burnette III Law Firm: Burnette & Payne Preparer's Phone #: (803) 328-1800

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 07/23/2008

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).

Please See Attachment for Exceptions

Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Lisa Glover, Deputy General Counsel;
Name

Uninsured Employers' Fund, 100 Executive Center Drive, Suite 101, Santee Building, Columbia, SC 29210 and LB Dynasty, Inc., d/b/a Boom Boom Room, Studio 54, 6212 Two Notch Road, Columbia, SC 29201

I, the 28 day of October, 2009, by [Signature] ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature: _____ Attorney for Claimant: _____ Date: October 28, 2009
Title

Check this box if you are not represented by an attorney. ☐

If 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 losing party. R.67-701B. Otherwise, file the original and four 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 able to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.



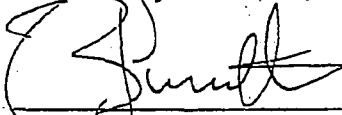
Claimant's Name: LeAndra Lewis SSN: _____ Employer's Name: LB Dynasty, Inc dba Boom Boom Room Studio 54
Address: _____ Address: 6212 Two Notch Road
City: Charlotte State: NC Zip: 28208 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: Uninsured Employer
Preparer's Name: Charles B Burnette III Law Firm: Burnette & Payne Preparer's Phone #: (803) 328-1800

ATTACHMENT TO REQUEST FOR COMMISSION REVIEW

1. Did the Single Commissioner err as a matter of law or fact in Finding of Fact Number 11 in that the Claimant failed to prove she was an employee of the Defendant, error being the substantial evidence of the record established the Employee/Employer relationship existed and neither the Employer or the Uninsured Employer's Fund put up a defense in rebuttal to evidence presented by the Claimant?
2. Did the Single Commissioner err as a matter of law or fact in Finding of Fact Number 11 that the Claimant failed to prove she was an employee, the error being the uncontroverted evidence of the claimant and the claimant's witnesses established that in order to dance for the Employer the dancers were required to sign a statement of the rules of the Club establishing that a dancer could be fired for an infraction of any one of the Club's Rules?
3. Did the Single Commissioner err as a matter of law or fact in Finding of Fact Number 11(i) in denying benefits to the Claimant because the Claimant failed to prove that the Employer had the right to exercise control, the error being the uncontroverted evidence of the record clearly established that the Employer exercised specific control over the dancers in setting the fees, the clientele of the establishment, the rotation of the dancers on the stage, as well as the rules in which the dancers were required to abide by or be fired?
4. Did the Single Commissioner err as a matter of law or fact in Finding of Fact Number 11(ii) that the equipment provided by Club was inconsequential, the error being the uncontroverted substantial evidence of the record established that the Employer provided the stage, the pole, tables, chairs, a bar, music, a dressing area, lockers and the clientele?
5. Did the Single Commissioner err as a matter of law or fact in Finding of Fact Number 11(iii) in finding that the Claimant failed to provide evidence as to her earnings and hours worked, the error being the Claimant's uncontroverted testimony was supported by co-worker as to hours of operation and earnings pursuant to South Carolina Code of Laws, § 42-1-40 and Regulation 67-1603 providing an alternative method to calculate a claimant's average weekly wage and weekly compensation rate can be based on the earnings of a similar employee?
6. Did the Single Commissioner err in failing to consider evidence supporting an employer/employee relationship, the error being the Single Commissioner's Order omits reference to numerous control factors offered by the Claimant and Claimant's witnesses which was uncontroverted?
7. Did the Single Commissioner err in finding as a matter of law Claimant failed to prove she was an employee, the error being a balancing of control factors was not conducted consistent with Wilkinson v. Palmetto State Transportation Company, 382 S.C. 295, 676 S.E.2d 700 (2009)?

8. Does an application of the law in Wilkinson v. Palmetto State Transportation Company, 382 S.C. 295, 676 S.E.2d 700 (2009) instead of pre-Wilkinson law in the State of South Carolina violate due process or equal protection rights of the Claimant as set forth in the South Carolina Constitution or the Constitution of the United States?
9. The request for Commission review and the issues raised are subject to amendment specifically under South Carolina Code of Law, § 42-17-50.

Respectfully Submitted,



Charles B. Burnette III, Attorney for Claimant
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(803) 328-1800 x 21
(803) 328-9494 Fax

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No.: 0821881**

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

LeAndra Lewis,)

Employee/Appellant,)

-vs-)

LB Dynasty, Inc., dba Boom Boom)
Room Studio 54, An Uninsured)
Employer,)

Respondent,)
and)

SC Uninsured Employer's Fund,)

Respondent,)

Defendants.)

**CLAIMANT/APPELLANT'S BRIEF
TO FULL COMMISSION**

STATEMENT OF THE CASE

Claimant LeAndra Lewis was performing as a dancer at L.B. Dynasty, Inc., d/b/a Boom Boom Room Studio 54 (hereinafter "the Club") when she was shot following a dispute between two other people in the Club on July 23, 2008. As a result of the shooting, Claimant suffered injuries to her abdomen, liver, pancreas, duodenum, intestines, bowel, skin, and psyche. Claimant filed a Form 50 requesting a hearing on December 1, 2008, and the above-entitled claim came before the Single Commissioner on May 21, 2009. The *pro se* uninsured Employer (hereinafter referred to as "Employer") failed to appear at the hearing to provide a defense.

The South Carolina Uninsured Employer's Fund (hereinafter referred to as "the Fund") was present as was the attorney for the Claimant.

The issues before the Single Commissioner were: 1) Whether the Employer was subject to the South Carolina Workers' Compensation Act on the date at issue making this an Employer/Employee relationship; 2) Whether the Claimant sustained a compensable injury by accident arising out of and in the course of her employment; 3) A determination of the Claimant's average weekly wage and resulting compensation rate; and 4) The Claimant's entitlement to temporary total disability from July 24, 2008, and continuing, as well as payment of all causally-related medical treatment.

The single Commissioner issued a Decision and Order on October 13, 2009, in which he found that Claimant failed to satisfy her burden of proof in establishing that she was an employee of the Club and denied Claimant's claims for benefits under the South Carolina Workers' Compensation Act. Claimant timely filed a Form 30, Request for Commission Review on October 28, 2009, setting forth nine exceptions to the single Commissioner's Order. This appeal follows.

STATEMENT OF THE FACTS

The uncontroverted testimony and written evidence revealed that on July 23, 2008, the Claimant reported to Crystal Taylor, one of the managers for the Club, for work as a dancer. Claimant was physically searched by the bouncer upon her entrance to the Club. Claimant immediately reported to the management office wherein Ms. Taylor made a copy of Claimant's identification. While in the office, Claimant's "tip out" fee was collected and Claimant was again advised of the Club rules and penalties, to include being fired, for breaking any of the rules of the

Club. The Claimant then proceeded to the dressing room, dressed, and began work for the night on the dance floor.

While the Claimant was on the floor dancing, a fight broke out on the stage near the DJ booth. During the fight, a pistol was discharged and a stray bullet struck the Claimant in her low back. Claimant was not the intended victim, but a victim by accident. The testimony and written evidence of Officer Spears, the investigative police officer for the Richland County Sheriff's Department, revealed the shooter was the son of Ernest Jacobs Sr., another Manager of the Club. The shooter was later arrested and charged with Assault and Battery with Intent to Kill, and is currently in jail awaiting sentencing directly related to this matter. It is from this incident that this claim arose and Claimant is seeking benefits.

As a result of the shooting, Claimant sustained injuries to the following scheduled members or organs: abdomen (pain and scarring from surgery for gunshot wound and insertion of drainage tube); back injury (pain and scarring from surgery to remove kidney, as well as pain in back due to the loss of Claimant's kidney and constant bladder infections, some nerve damage due to initial gunshot wound then multiple surgeries resulting from the same); loss of left kidney (removal of left kidney-total loss of kidney); bladder (constant bladder infections resulting from only having a single kidney and scarring to the urinary tract and adhesions on bladder); female reproductive organs (scarring to ovary and uterus, may be infertile as a result and with only 1 remaining kidney, claimant has been advised that a pregnancy could be harmful); liver (lacerated from gunshot and secondary adhesions from leaky bile duct); pancreas (infection and scarring due to initial gunshot injury and subsequent surgeries to clear up internal infections resulting from laceration causing intestinal tract leakage); duodenum (scarring from surgical incision of

initial surgery); stomach (scar tissue from initial surgery looking for bullet); biliary tract (3 inches removed due to damage from gunshot wound and adhesions that had formed on intestinal tract); scarring to neck (PICC line left significant scarring and hyper-pigmentation on neck); and severe scarring and loss of skin from nephrectomy (resulting from initial gunshot wound and then to re-open same area to remove damaged kidney).

ISSUES

- I. **WHEN CONSIDERING THE RECORD AS A WHOLE, DID THE SINGLE COMMISSIONER ERR IN FINDING OF FACT NUMBER 11 AND CONCLUSION OF LAW NUMBER 1 IN DETERMINING THAT THE CLAIMANT FAILED TO PROVE SHE WAS AN EMPLOYEE OF THE DEFENDANT, ERROR BEING THE SUBSTANTIAL EVIDENCE OF THE RECORD ESTABLISHED THE EMPLOYEE/EMPLOYER RELATIONSHIP EXISTED AND NEITHER THE EMPLOYER NOR THE UNINSURED EMPLOYER'S FUND PUT UP A DEFENSE IN REBUTTAL TO EVIDENCE PRESENTED BY THE CLAIMANT?**

Workers' compensation awards are authorized only if an employer-employee relationship exists at the time of injury. S.C. Code Ann. § 42-1-100 (1976, as amended). Whether such a relationship exists is a jurisdictional question. *South Carolina Workers' Compensation Comm'n v. Ray Convington Realtors, Inc.*, 318 S.C. 546, 459 S.E.2d 302 (1995). The determination of whether a worker is an employee or an independent contractor is a jurisdictional question. *Id.* It is South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. *Wilson v. Georgetown County*, 316 S.C. 92, 447 S.E.2d 841 (1994).

An "independent contractor" is one who, "contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work ... [W]here one who performs work for another represents the will of that other,

not only as to the result, but also as to the means by which the result is accomplished, he is not an independent contractor but an agent." *Young v. Warr*, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969) [emphasis added]. There are four elements which determine the right of control: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) right to fire; and (4) method of payment. *Wilkinson v. Palmetto State Transportation Company, Employer, and Canal Insurance Company*, 382 S.C. 295, 676 S.E.2d 700 (2009). These four employment factors should be evaluated "with equal force in both directions." *Id.*

The Supreme Court of South Carolina has explicitly recognized that contractual language characterizing a relationship as that of employer/independent contractor is not dispositive. *Kilgore Group Inc. v. South Carolina Employment Security Commission*, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993). Under South Carolina law, in determining whether an injured person was an employee or an independent contractor, the general test applied is that of control by the employer. *Tharpe v. G.E. Moore Co.*, 254 S.C. 196, 174 S.E.2d 397 (1970). It is not the actual control then exercised, but whether there exists the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment. *Id.*

I. Right to Control and Right to Fire

The relationship of Employer/Employee existed between Claimant and the Club. The Club exercised substantial control over Claimant's activities, dance schedule, stage dance, VIP dances and the amount charged for these performances. The Club established house rules which gave the Club the ultimate right to fire Claimant for violation of any of the rules at any time.

The uncontroverted, corroborated evidence of the case clearly establishes that the Club set Claimant's hours of operation and mandated how long Claimant had to dance (Hearing Tr. p. 52); the Club set the minimum Claimant could charge for private dances and how her earnings were divided (Hearing Tr. pp. 58, 59, 87, 88); the Club determined Claimant's rotation on the stage which directly influenced how much money she could earn (Hearing Tr. p. 46, 53); if Claimant failed to appear on stage when her name was called, she was fined by the Club; and if Claimant did not pay her fine, she would be fired (Hearing Tr. p. 51); the Club scheduled Claimant's VIP dances, a "house mom" and bouncer supervised Claimant's private VIP dances, and a "house mom" collected the money for the dance (Hearing Tr. p. 47, 48); the Club mandated the cover charge for admission into the Club and the minimum amount charged for a dance (Hearing Tr. p. 47); the Club also required that Claimant consent to a search of her person and belongings (Hearing Tr. p. 50); the Club also exercised control over Claimant's appearance and would refuse to let her dance if she did not have the right "body structure or something that they're looking for." (Hearing Tr. p. 52).

The Club established rules wherein Claimant could not argue with the customers, other dancers, or other employees. (Hearing Tr. p. 51). If Claimant was deemed to exercise poor hygiene, failed to follow management's instructions or give an inadequate dance performance, the managers of the club could fire her. (Hearing Tr. pp. 52, 53, 59): All of these decisions were in the sole discretion of the management of the Club. (Hearing Tr. p. 53)

The uncontroverted evidence comes by way of testimony of not only the Claimant but also a coworker, Daquanna Jerae Cooper. Ms. Cooper corroborated Claimant's testimony that 1) failure to timely appear on stage when called by the DJ for a stage dance could result in a fine

and possible firing (Hearing Tr. p. 19) ; 2) failing to dance the required number of hours could result in a fine and possible firing (Hearing Tr. p. 22); 3) failing to maintain proper hygiene could result in a fine and possible firing (Hearing Tr. p. 23); and 4) failing to pay a fine issued by Management for breaking one of the "house rules" relating to the dancers could result in termination (Hearing Tr. p. 24); and 5) management controlled the minimum charge for V.I.P. performances (Hearing Tr. p. 23).

The testimony in this case clearly established that the Employer/Club clearly retained the "right to fire" the Claimant if the Club management was dissatisfied with Claimant's hygiene, quality of performance, failure to pay fines, or failure to do as instructed by the Club management. As such, the Club clearly retained the right to control Claimant's work and the right to fire her if they became dissatisfied with Claimant.

2. Employer Provided Equipment

In this case, the Employer provided the advertising for customers; provided the customers; provided the stage; the pole; the music; the lighting; the drinks and mixers for the same; the dressing room for the dancers; lockers for the dancers; the tip basket for the dancers; the towels for the dancers; the cleaning fluid used by the dancers between dances; the DJ; the "hype man"; security; the VIP rooms; and the couches in the VIP rooms. (Hearing Tr. pp. 24-28, 54-56). The dancers did provide their own costumes. (Hearing Tr. p. 54). Clearly when reviewing the evidence as a whole, the undisputed testimony and written evidence establishes that the Employer provided a majority of furnishings and equipment for the dancers.

3. Method of Payment

This form of enterprise is predominately a cash business. Again, the Employer/Club did not appear at the hearing, nor did any of the management for the Employer/Club appear to give evidence or testimony as to the method of payments and amounts of payments for the dancers. Neither did the Fund proffer evidence or testimony on this issue.

The only evidence presented into the record is the testimony of the Claimant and Daquanna Jeræ Cooper, another dancer for the employer.

Claimant and Ms. Cooper testified that they earned an average of Three Hundred and No/100 (\$300.00) Dollars per night, six nights a week dancing. The Claimant and Ms. Cooper (a similarly situated employee) were able to break down and validate their nightly earnings as follows:

\$100.00	Stage Dances
\$100.00 - \$150.00	Table Dances
\$ 50.00 - \$100.00	VIP Room Dances

While the payment may have been in the form of cash payments due to the nature of the business, the uncontroverted facts of the case still indicate that Claimant was paid approximately \$300.00 per night working in the Club. The cover charge to enter the Club, and the dances performed by the dancers, resulted in profits for the Club. The Club received the benefit of the Claimant's work in generating income for the Club: Claimant enticed the customers to buy drinks and pay for dances, and the sole purpose of the Claimant's work, was to benefit the Employer/Club and generate a profit for the Employer.

II. DID THE SINGLE COMMISSIONER ERR IN FINDING OF FACT NUMBER 12 AND CONCLUSION OF LAW NUMBER 1 IN FINDING THAT THE CLAIMANT FAILED TO PROVIDE EVIDENCE AS TO HER EARNINGS AND HOURS WORKED, THE ERROR BEING THE CLAIMANT'S UNCONTROVERTED TESTIMONY WAS SUPPORTED BY A CO-WORKER AS TO HOURS OF OPERATION AND EARNINGS PURSUANT TO SOUTH CAROLINA CODE OF LAWS, § 42-1-40 AND REGULATION 67-1603 PROVIDING AN ALTERNATIVE METHOD TO CALCULATE A CLAIMANT'S AVERAGE WEEKLY WAGE AND WEEKLY COMPENSATION RATE CAN BE BASED ON THE EARNINGS OF A SIMILAR EMPLOYEE?

The single Commissioner found that if Claimant satisfied her burden of proof in proving that she was an employee, that her average weekly wage was \$75.00. The South Carolina Workers' Compensation Act §42-1-40 provides in part:

Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment it is impracticable to complete the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community..."

Claimant's witness, Daquanna Jeræ Cooper, testified that she is a dancer for the Employer and further testified as to the nightly earnings for stage dances, table dances and VIP Room dances. Ms. Cooper testified that she averaged \$200-300 per night which is consistent with Claimant's testimony that Claimant averaged between \$250-350 per night. Claimant testified that she worked between five to seven nights a week at various clubs. Even assuming a conservative estimate of \$275 a night (the average of Ms. Cooper's and Claimant's typical nightly earnings) for five nights a week and 50 weeks a year, Claimant's compensation rate would be well in excess of the maximum compensation rate.

Whether or not taxes are paid on wages is irrelevant to the question of whether wages were earned and received. Further, no one disputes that the Employer received the benefit of

the Employee's work, and she testified she earned approximately \$300.00 per night, six nights a week dancing. No one refuted Claimant's testimony or offered evidence to the contrary. She has met her burden of proof and whether she filed tax returns is irrelevant. While not a requirement by statute of the South Carolina Workers' Compensation Act to verify income, the Claimant testified that it was her intent to file income taxes on the wages she earned as a dancer. However, due to the severity of her injuries and her inability due to her disability to earn wages since July 23, 2008, she could not afford to pay a tax consultant to prepare a return, nor could she pay the taxes due. The Internal Revenue Service has provisions for filing a delinquent return, no matter how many years an individual has not filed under the Internal Revenue Service Policy State P-5-133.

When the issue of wage determination is to be made, Regulation 67-606 (A) of the South Carolina Workers' Compensation Act provides that the average weekly wage and compensation rate is an issue for determination at the hearing unless stipulated by the parties. Regulation 67-1603(G) provides for calculation of the compensation, and provides:

Failure to file and/or serve the Form 20 as set forth above may result in a fine and/or the Commissioner or Claims Mediator determining the average weekly wage and compensation rate from information in the Commission's file and statements or evidence presented at the hearing or conference.

Neither the Employer/Club nor the Fund offered a Form 20, provided any evidence of the amount of wages Claimant earned, and specifically did not object to Claimant or Claimant's witness's testimony as to the amount of wages. Not only did Claimant expect payment for her dancing, she actually received payment for her dancing.

CONCLUSION

Based upon the preponderance and uncontroverted and substantial evidence in the record as a whole, the weight given to the testimony of Claimant, her co-worker, Danquanna Cooper, Officer Spears and Carl Nikkie Lewis, Claimant has clearly met a preponderance of the considerations set forth in *Wilkinson*, for this claim to be found compensable and benefits awarded pursuant to the South Carolina Workers' Compensation Act.

The established mode of this form of the entertainment business is to entice young girls, often underage, to become dancers at the Club with the Club controlling the trade, expecting profits to be generated by these young girls. The dancers expect and receive earnings from the enterprise developed by the Club. This type of enterprise, due to the nature of the business, is predominantly a cash business. The Claimant and Ms. Cooper both testified they were paid approximately \$300.00 per night, working six nights a week, which would yield an average weekly wage of \$1,650.00 per week, equating to the maximum allowable compensation rate of \$661.29 per week.

The Claimant further testified that she intended to file a tax return for her earnings, but due to the severity of her injuries, and the fact she is still written out of work and has no source of income, she has been unable to afford to pay the tax consultant fees and the income tax due on her earnings.

A claimant has the burden of proving facts sufficient to allow recovery under the South Carolina Workers' Compensation Act. *Hall v. Desert Aire, Inc*, 376 S.C. 338, 656 S.E.2d 754 (Ct. APP. 2007). When reviewing the record as a whole, the Claimant has met the burden of proof and this case should be interpreted broadly in favor of coverage. The Employer would

have an unfair advantage over these young dancers by using them to bring in the customers and provide profits for the Employer, but denying them protection under the South Carolina Workers' Compensation Act under the veil that the dancers are independent contractors when the substantial evidence of the record does not hold this to be true. The Claimant has met her burden of proof.

Based on the aforementioned, the Claimant satisfied the requirements of *Wilkinson*, and has established by a preponderance of the substantial evidence in the record as a whole that the Employer/Employee relationship existed.

Accordingly, the Decision and Order of the Single Commissioner in this matter should be reversed and benefits awarded to the Claimant consistent with a finding of compensability.

Respectfully Submitted,



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Attorneys for Claimant/Appellant

February 1, 2010

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 07 2010
SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
T. Scott Beck, Commissioner

WCC File No. 0821881

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

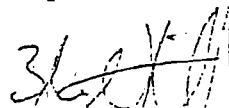
NOTICE OF APPEAL

LeAndra Lewis appeals the decision and order of the South Carolina Workers' Compensation Commission's Appellate Panel dated June 24, 2010. Appellant received written notice of this order on June 25, 2010.

Pursuant to S.C. Code Ann. § 42-17-60 (Supp. 2009), Appellant states the following grounds for the appeal as well as the alleged errors of law:

1. The Commission erred in finding and concluding that Appellant was an independent contractor instead of an employee; and
2. The Commission erred in finding and concluding that Appellant was "bound by the wages earned" from her alleged employer, that Appellant was required to submit a Form 20 to prove her earnings from other employers, that the only evidence of Appellant's earnings was her own testimony, and that Appellant's compensation rate (if she was an employee) would be seventy-five dollars.

Respectfully submitted,



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0821881

RE COPY

EMPLOYEE/CLAIMANT: LEANDRA LEWIS

EMPLOYER: LB DYNASTY DBA BOOM BOOM ROOM STUDIO 54

CARRIER:

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 21ST DAY
OF MAY, 2009, COMMENCING AT THE HOUR OF 9:55 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE G. BRYAN
LYNDON, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-576-7834

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * *

6 BY COMMISSIONER LYNDON:

7 TODAY'S DATE IS MAY THE 21ST, 2009. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
9 NUMBER 0821881. THE CLAIMANT IS LEANDRA LEWIS,
10 REPRESENTED BY ATTORNEY CHARLIE BURNETTE, VERSUS
11 EMPLOYER L.B. DYNASTY CORPORATION DOING BUSINESS AS
12 BOOM BOOM ROOM STUDIO 54. THEY WERE WITHOUT
13 COVERAGE. HERE ON BEHALF OF THE SOUTH CAROLINA
14 UNINSURED EMPLOYERS FUND IS ATTORNEY LISA GLOVER.
15 THE PURPOSE OF THE HEARING IS TO DETERMINE ISSUES
16 RAISED ON FORMS 50 AND BY OPERATION OF REGULATION
17 67-603. THE CLAIMANT'S AVERAGE WEEKLY WAGE FOR THE
18 TIME BEING -- THIS HAS NOT BEEN ESTABLISHED, AND IT
19 MAY BE -- THROUGH TESTIMONY WE MAY GET SOME MORE
20 INFORMATION ON IT, BUT THE ONLY THING I HAVE IS THAT
21 SHE MADE \$1,650 A WEEK, WITH A COMP RATE OF 661.29,
22 WHICH I BELIEVE IS THE STATUTORY MAXIMUM FOR '08,
23 AND THE DATE OF ACCIDENT IS 7/23/08. ARE THERE ANY
24 OBJECTIONS TO APAs, JURISDICTION, VENUE OR ANY OTHER
25 ITEMS?

1 BY MS. GLOVER:

2 NONE.

3 BY MR. BURNETTE:

4 NONE ON BEHALF OF THE CLAIMANT.

5 BY THE COMMISSIONER:

6 THEN WITHOUT OBJECTION THE COMMISSION FILE
7 BECOMES A PART OF THE RECORD WITH THE EXCEPTION OF
8 SELF-SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
9 REPORTS. PRIOR TO GOING ON THE RECORD, WE HAD A
10 PREHEARING CONFERENCE.

11 IT'S THE POSITION OF THE CLAIMANT THAT AS A
12 RESULT OF A GUNSHOT WOUND SHE RECEIVED WHILE SHE WAS
13 AT WORK DURING THE COURSE AND SCOPE OF HER
14 EMPLOYMENT WITH THE DEFENDANT, THE UNINSURED
15 DEFENDANT, THAT SHE RECEIVED INJURIES TO HER
16 ABDOMEN, BACK, KIDNEY, BLADDER, FEMALE REPRODUCTION
17 ORGANS, LIVER, PANCREAS, DUODENUM, STOMACH, BILIARY
18 TRACT, SCARRING TO THE NECK, SEVERE SCARRING AND
19 LOSS OF SKIN FROM NEPHROTOMY, AND COUNSEL STATES
20 THAT DUE TO THE MULTITUDE OF INJURIES SHE HAS, SHE
21 IS PERMANENTLY AND TOTALLY DISABLED. BUT THE REAL
22 PURPOSE TODAY, FIRST, IS TO FIND THAT THIS IS A
23 COMPENSABLE CLAIM UNDER THE ACT. THAT ALL HER
24 CAUSALLY RELATED MEDICALS ARE TO BE PAID, AND THAT
25 SHE WOULD START GETTING TEMPORARY TOTAL DISABILITY

1 CHECKS FROM 7/23/08 AND CONTINUING, OR IN THE
2 ALTERNATIVE TO GO AHEAD AND FIND HER PERMANENTLY AND
3 TOTALLY DISABLED. THIS LADY WAS A DANCER, AND
4 COUNSEL STATES THAT THE TESTIMONY WILL INDICATE THAT
5 THERE WERE FOUR OR MORE EMPLOYEES CONTINUALLY
6 WORKING AT THIS ESTABLISHMENT. SO THEY WERE SUBJECT
7 TO THE ACT, REGULARLY USING FOUR OR MORE PEOPLE.
8 THAT SHE WAS NOT AN INDEPENDENT CONTRACTOR, BUT WAS
9 AN EMPLOYEE AND MEETS THE FOUR CRITERIA THAT WOULD
10 MAKE HER AN EMPLOYEE AND NOT AN INDEPENDENT
11 CONTRACTOR, AND THAT SHE AND OTHER WITNESSES WILL
12 PROVE THIS.

13 THE POSITION OF THE FUND IS IT'S DENIED THAT,
14 FIRST, THE CLAIMANT IS AN EMPLOYEE. THAT SHE WAS AN
15 INDEPENDENT CONTRACTOR. IT'S QUESTIONABLE WHETHER
16 OR NOT, AND NOT FULLY KNOWN, WHETHER OR NOT FOUR OR
17 MORE PEOPLE ACTUALLY WORKED THERE. OTHERWISE, IF
18 THERE WERE FOUR OR MORE PEOPLE, THEY ALSO WERE
19 INDEPENDENT CONTRACTORS, SUCH AS SECURITY. AND
20 COUNSEL STATES THAT THE CLAIMANT HAS TO PROVE THAT
21 SHE'S AN EMPLOYEE, AND SHE BROUGHT THAT UP IN LIGHT
22 OF A BRAND NEW CASE THAT THE SUPREME COURT JUST
23 RULED ON, AND THAT CASE IS WILKINSON VERSUS PALMETTO
24 STATE TRANSPORTATION, WHICH PUTS WHAT USED TO BE, TO
25 USE THE WORD OF THE JUSTICE, A PREORDAINED RESULT

1 WHEN YOU MET ONE OF THESE FOUR CRITERIA, IT OFFERS A
 2 STRICTER TEST, ACCORDING TO COUNSEL. FIRST, THE
 3 CLAIMANT HAS TO ESTABLISH SHE WAS AN EMPLOYEE, NOT
 4 AN INDEPENDENT CONTRACTOR, STATING THAT SHE FINDS IT
 5 HARD TO BELIEVE THAT ANY EQUIPMENT WOULD BE
 6 SUPPLIED, AND THAT THE PAY WAS SOLELY IN TIPS, WHICH
 7 PUTS THE COMP RATE IN QUESTION, ACCORDING TO
 8 COUNSEL, AND HOPEFULLY TESTIMONY CAN HELP US CLEAR
 9 THAT UP. BUT AT ANY RATE, IT'S DENIED THAT THE
 10 CLAIM SHOULD BE FOUND COMPENSABLE UNDER THE ACT
 11 SIMPLY BECAUSE THIS INDIVIDUAL WORKED AS AN
 12 INDEPENDENT CONTRACTOR AND WAS NOT AN EMPLOYEE UNDER
 13 THE ACT.

14 ANYTHING TO ADD TO THOSE POSITIONS?

15 BY MS. GLOVER:

16 NOTHING.

17 BY MR. BURNETTE:

18 YOU SUMMARIZED IT WELL.

19 BY THE COMMISSIONER:

20 MA'AM, WOULD YOU STATE YOUR FULL NAME FOR THE
 21 RECORD?

22 * * * * *

23 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
 24 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
 25 MATTER HEREIN:

8

BRANDY SPEARS-HUNGER,

BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
FOLLOWS:

BY THE COMMISSIONER:

ANSWER ANY QUESTIONS THAT COUNSEL MAY HAVE,
PLEASE.

DIRECT EXAMINATION BY MR. BURNETTE:

Q. PLEASE STATE YOUR FULL NAME.

A. BRANDY SPEARS-HUNGER.

Q. WHERE DO YOU WORK?

A. RICHLAND COUNTY SHERIFF'S DEPARTMENT.

BY THE COMMISSIONER:

COULD YOU SPELL YOUR LAST NAME FOR THE COURT
REPORTER?

BY THE WITNESS:

S-P-E-A-R-S HYPHEN H-U-N-G-E-R.

BY THE COMMISSIONER:

THANK YOU VERY MUCH. OKAY.

DIRECT EXAMINATION RESUMED BY MR. BURNETTE:

Q. I'M SORRY; HOW LONG HAVE YOU WORKED AT THE RICHLAND
COUNTY SHERIFF'S DEPARTMENT?

A. SINCE 2002.

Q. WERE YOU WORKING THERE ON JULY 23RD, 2008?

A. YES, SIR.

Q. AND DID YOU HAVE AN OCCASION IN YOUR OFFICIAL

1 CAPACITY TO INVESTIGATE A SHOOTING AT A CLUB CALLED
2 STUDIO 54/THE BOOM BOOM ROOM?

3 A. YES.

4 Q. AND IS THE ADDRESS THAT YOU'VE GOT ON YOUR REPORT
5 6212 TWO NOTCH ROAD?

6 A. YES.

7 Q. ULTIMATELY, DID YOU SWEAR OUT A WARRANT ON THE
8 DEFENDANT, A CRIMINAL DEFENDANT, WHO WAS A SHOOTER
9 IN THIS INCIDENT?

10 A. YES.

11 Q. AND ARE YOU THE DESIGNATED SHERIFF'S DEPARTMENT
12 INVESTIGATOR IN CHARGE OF THIS FILE?

13 A. YES.

14 Q. DO YOU HAVE THE BUSINESS RECORDS OF THE
15 INVESTIGATION WITH YOU TODAY?

16 A. YES.

17 Q. I'LL ASK YOU IF YOU HAD AN OCCASION TO INTERVIEW A
18 MANAGER AT THIS CLUB BY THE NAME OF CRYSTAL TAYLOR?

19 A. YES, I DID.

20 Q. AND YOU'VE HAD AN OPPORTUNITY TO REVIEW YOUR
21 INVESTIGATIVE NOTES?

22 A. YES, SIR.

23 Q. AND WE HAVE INCLUDED A NUMBER OF THOSE IN AS
24 EXHIBITS WHICH HAVE BEEN GIVEN TO THE FUND'S COUNSEL
25 AND TO THE COMMISSIONER, AND I WANT TO ASK YOU ABOUT

10

1 CERTAIN PEOPLE THAT YOU WOULD DETERMINE FROM YOUR
2 INVESTIGATION AND YOUR INTERVIEWING OF THE MANAGER
3 OF THIS BUSINESS. WAS THERE A DANCER?

4 A. YES, SIR.

5 Q. AND WAS HER NAME DIANDRA JOHNSON?

6 A. YES, THERE WAS.

7 Q. IS THERE ANOTHER MANAGER BY THE NAME OF ERNEST
8 JACOBS, JR.?

9 A. YES.

10 Q. YOU'VE ALREADY TESTIFIED ABOUT CRYSTAL TAYLOR. DID
11 SHE REPRESENT HERSELF ON BEHALF OF THE BUSINESS AS A
12 MANAGER?

13 A. YES, SHE DID.

14 Q. WAS THERE A DISC JOCKEY OR A D.J. BY THE NAME OF
15 RENALDO WILSON?

16 A. YES.

17 Q. AND DID HE ALSO GO BY PUFF?

18 A. YES.

19 Q. WAS THERE AN OWNER OF THIS BUSINESS, ALTHOUGH IT'S A
20 CORPORATION, BY THE NAME OF NORMAN HARVIN?

21 A. YES.

22 Q. WAS THERE ANOTHER DANCER THAT YOU COULD IDENTIFY BY
23 NAME NAMED ROSA RAY BLACKMAN?

24 A. YES, SIR.

25 Q. AND WAS HER STAGE NAME MERCY?

1 A. YES.

2 Q. WAS THERE AN INTERVIEW OF A BOUNCER BY THE NAME OF
3 ANDREW HARRIS?

4 A. YES, SIR.

5 Q. WAS THERE AN INDICATION IN YOUR RECORDS THAT THERE
6 WAS A HOST AT THIS CLUB?

7 A. YES. I BELIEVE IT WAS INDICATED IN ONE OF THE CASE
8 NOTES.

9 Q. OKAY. WAS THERE A BOUNCER BY THE NAME OF HERB
10 DOZIER?

11 A. YES.

12 Q. A BOUNCER BY THE NAME OF BRANDON MIDDLETON?

13 A. YES.

14 Q. NOW, AT SOME POINT IN TIME DID THE MANAGER BRING YOU
15 GUN CASINGS FROM THE CLUB?

16 A. YES, CRYSTAL TAYLOR DID.

17 Q. OKAY. AND HOW DID SHE INDICATE THAT THE GUN CASINGS
18 WERE FOUND?

19 A. WHEN THE CLEANING CREW WAS CLEANING THE
20 ESTABLISHMENT, THEY HAD FOUND THE GUN CASINGS ON THE
21 FLOOR.

22 Q. OKAY. SO, WAS THAT AN INDICATION TO YOU THAT THERE
23 WAS A CLEANING CREW AT THIS BUSINESS?

24 A. YES. THE WAY THAT SHE DESCRIBED, THERE WAS A
25 CLEANING CREW. YES, SIR.

12

1 Q. ANOTHER BOUNCER BY THE NAME OF CURTIS?

2 A. YES.

3 Q. AND THEN I BELIEVE THAT THERE WERE TWO UNNAMED
4 DANCERS THAT WERE DISCOVERED WITH YOUR INVESTIGATION
5 WITH THIS MANAGEMENT?

6 A. YES.

7 Q. OKAY. SO, IF YOU ADD ALL THOSE UP YOU'RE TALKING
8 ABOUT 14 THAT YOU EITHER INTERVIEWED OR LEARNED BY
9 NAME OR LEARNED BY POSITION; IS THAT CORRECT?

10 A. YES, SIR.

11 Q. AND DOES THAT LIST ACCURATELY REFLECT WHAT YOUR FILE
12 DOCUMENTS?

13 A. YES, SIR.

14 BY MR. BURNETTE:

15 WE'D OFFER THAT.

16 BY THE COMMISSIONER:

17 THAT WILL BE MARKED AS CLAIMANT'S ONE.

18 (COURT REPORTER MARKS LIST CLAIMANT'S EXHIBIT NUMBER
19 ONE.)

20 DIRECT EXAMINATION RESUMED BY MR. BURNETTE:

21 Q. INVESTIGATOR SPEARS, WERE YOU ABLE TO DETERMINE THAT
22 MY CLIENT, LEANDRA LEWIS, WAS SHOT AT THIS CLUB ON
23 THIS OCCASION?

24 A. YES.

25 Q. DID YOU SEE HER AT THE HOSPITAL?

13

1 A. YES, I DID.

2 Q. WHAT HOSPITAL WAS SHE IN?

3 A. RICHLAND MEMORIAL.

4 Q. DID IT APPEAR TO YOU THAT SHE HAD SUFFERED INJURIES
5 AS A RESULT OF A GUNSHOT WOUND?

6 A. YES.

7 Q. AND WERE YOU ABLE TO DETERMINE THAT IT HAPPENED AT
8 THIS BUSINESS, STUDIO 54 THE BOOM BOOM ROOM?

9 A. YES.

10 Q. AND THERE'S NO INDICATION THAT THERE WAS ANY
11 CONNECTION BETWEEN THIS SHOOTER AND MY CLIENT OTHER
12 THAN THAT THEY WERE AT THE SAME PLACE?

13 A. CORRECT

14 BY MR. BURNETTE:

15 THAT'S ALL I HAVE.

16 BY THE COMMISSIONER:

17 OKAY. MS. GLOVER?

18 CROSS EXAMINATION BY MS. GLOVER:

19 Q. INVESTIGATOR SPEARS, OF ALL OF THOSE PEOPLE THAT YOU
20 LISTED THAT ARE IN YOUR REPORT AS BEING EMPLOYEES OF
21 L.B. DYNASTY A.K.A. THE BOOM BOOM ROOM, DO YOU HAVE
22 ANYTHING IN YOUR INVESTIGATIVE REPORT TO INDICATE
23 THE EMPLOYMENT RELATIONSHIP BETWEEN THOSE PEOPLE AND
24 THE OWNERS OF L.B. DYNASTY A.K.A. BOOM BOOM ROOM?

25 A. NOT IN AN OFFICIAL CAPACITY, NO. NO DOCUMENTS,

14

1 EMPLOYMENT RECORDS OR ANYTHING LIKE THAT, NO.

2 Q. SO, TO YOUR KNOWLEDGE THEY COULD HAVE BEEN
3 INDEPENDENT CONTRACTORS AS WELL INSTEAD OF
4 EMPLOYEES?

5 A. I DON'T KNOW. I CAN'T ANSWER THAT.

6 Q. DO YOU HAVE ANY INDICATION AS TO HOW THEY WERE
7 HIRED?

8 A. I DON'T.

9 Q. DO YOU HAVE ANY INDICATION AS TO HOW THEY WERE PAID?

10 A. I DON'T.

11 Q. DO YOU HAVE ANY INDICATION AS TO WHETHER OR NOT THE
12 COMPANY SUPPLIED THEM WITH ANY EQUIPMENT?

13 A. I DON'T.

14 BY MS. GLOVER:

15 I DON'T HAVE ANY OTHER QUESTIONS, COMMISSIONER.

16 BY THE COMMISSIONER:

17 OKAY. ANY OTHER QUESTIONS?

18 BY MR. BURNETTE:

19 NO QUESTIONS.

20 BY THE COMMISSIONER:

21 YOU CAN BE EXCUSED. THANK YOU FOR COMING OUT.

22 WE APPRECIATE IT.

23 BY MS. GLOVER:

24 YOUR HONOR, I HAVE NO OBJECTION TO HER BEING
25 EXCUSED.

15

1 BY THE COMMISSIONER:

2 OKAY. THANK YOU.

3 (OFF THE RECORD)

4 BY THE COMMISSIONER:

5 WE'RE BACK ON THE RECORD. WOULD YOU STATE YOUR
6 FULL NAME FOR THE RECORD, MA'AM?

7 BY THE WITNESS:

8 DAQUANNA JERAE COOPER.

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 DAQUANNA JERAE COOPER,

14 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
15 FOLLOWS:

16 BY THE COMMISSIONER:

17 ANSWER ANY QUESTIONS MR. BURNETTE MAY HAVE,
18 PLEASE.

19 DIRECT EXAMINATION BY MR. BURNETTE:

20 Q. MS. COOPER, HAVE YOU WORKED AT STUDIO 54 THE BOOM
21 BOOM ROOM NIGHTCLUB ON TWO NOTCH ROAD?

22 A. YES, YES.

23 Q. OKAY. HOW MANY TIMES HAVE YOU WORKED THERE?

24 A. PROBABLY TWO TO THREE TIMES, TWO YEARS AGO.

25 Q. BUT YOU WOULD BE FAMILIAR WITH THAT OPERATION, SAY,

16

1 IN THE SUMMER OF LAST YEAR?

2 A. YEAH.

3 Q. YOU NEED TO SPEAK UP SO SHE CAN ---

4 A. YES.

5 Q. OKAY. NOW, APPROXIMATELY HOW MANY DANCERS WERE
6 THERE WHEN YOU WORKED?

7 A. FIFTEEN TO TWENTY.

8 Q. OKAY. HOW ABOUT BARTENDERS?

9 A. TWO.

10 Q. TWO BARTENDERS?

11 A. YEAH. THERE COULD BE ONE, BUT MOST OF THE TIME
12 THERE'S TWO ON A REAL BUSY NIGHT.

13 Q. WHAT ABOUT A D.J.?

14 A. ONE D.J., BUT THERE'S USUALLY LIKE TWO MEN STANDING
15 BACK THERE.

16 Q. WHAT ABOUT A HYPE MAN?

17 A. YEAH. THERE'S A HYPE MAN, YES.

18 Q. WHAT ABOUT MANAGEMENT PEOPLE? HOW MANY MANAGEMENT
19 PEOPLE WOULD YOU SEE AROUND THERE?

20 A. THERE'S LIKE THREE, THREE MANAGEMENT PEOPLE.

21 Q. NOW, WHEN YOU WOULD GET THERE, WHERE WOULD YOU GO IN
22 THE CLUB BEFORE YOU STARTED WORKING?

23 A. IN THE BACK TO DRESS OUT.

24 Q. WOULD YOU CHECK IN WITH THE MANAGEMENT?

25 A. OF COURSE. YOU HAVE TO CHECK IN AND PAY TIP-OUT.

1 Q. OKAY. AND DID YOU REMEMBER CHECKING IN WITH A
2 CRYSTAL TAYLOR OR SOMEBODY ---

3 A. SHE TAKES YOUR TIP-OUT.

4 Q. OKAY. NOW, ON AN AVERAGE NIGHT HOW MUCH MONEY WOULD
5 YOU MAKE?

6 A. LIKE AN AVERAGE LIKE ---

7 Q. WHAT YOU WOULD TAKE HOME.

8 A. LIKE NOT A GOOD NIGHT, LIKE NOT ON A BUSY NIGHT; IS
9 THAT WHAT YOU MEAN?

10 Q. WELL, NOT A SLOW NIGHT, NOT AN EXCEPTIONAL NIGHT,
11 JUST AN AVERAGE NIGHT.

12 A. LIKE TWO TO THREE HUNDRED DOLLARS.

13 Q. OKAY. AND HOW MANY NIGHTS COULD YOU WORK A WEEK?

14 A. YOU CAN WORK FIVE TO SEVEN DAYS. YOU CAN WORK THE
15 WHOLE WEEK IF YOU WANT, BUT I WORK -- ARE YOU
16 TALKING ABOUT ME OR WHAT CAN SOMEONE DO?

17 Q. WELL, ON AVERAGE IF YOU'RE A FULL-TIME DANCER AND
18 YOU'RE THERE AS MUCH AS YOU CAN BE, EARNING AS MUCH
19 AS YOU CAN, ON AVERAGE HOW MANY NIGHTS WOULD YOU
20 WORK?

21 A. MONDAY THROUGH SATURDAY..

22 Q. OKAY. ALL RIGHT. NOW, I WANT TO ASK YOU SOME
23 SPECIFICS ABOUT THIS CLUB, OKAY? NOW, WHO SETS THE
24 HOURS?

25 A. THE OWNER, MANAGEMENT.

18

1 Q. AND WHO SETS HOW MUCH YOU HAVE TO PAY THE MANAGEMENT
2 IN TIP-OUT MONEY?

3 A. THE OWNER.

4 Q. WHO MAKES THE RULES IN THE CLUB?

5 A. THE OWNER, THE MANAGER.

6 Q. YOU NEED TO SPEAK UP SO SHE CAN HEAR YOU.

7 A. THE OWNERS, THE MANAGERS.

8 Q. OKAY. AND ARE THERE A LOT OF RULES THAT YOU HAVE TO
9 FOLLOW AS A DANCER?

10 A. YES.

11 Q. TELL US ABOUT THE RULE REQUIRING DANCE ROTATION.

12 A. YOU HAVE TO STAY IN DANCE ROTATION. YOU HAVE TO
13 PARTICIPATE IN DANCE ROTATION.

14 Q. OKAY. AND IF YOU DON'T PARTICIPATE IN DANCE
15 ROTATION, WHAT HAPPENS?

16 A. YOU'RE FINED.

17 Q. AND WHO GETS THE FINE MONEY?

18 A. THE OWNER, MANAGEMENT.

19 Q. NOW, WHO DECIDES WHEN YOU GET ON STAGE AND WHEN
20 YOU'RE NOT ON STAGE?

21 A. THE MANAGEMENT. WELL, THE D.J. CALLS YOU UP THERE,
22 SO -- BUT I GUESS THE MANAGEMENT WOULD.

23 Q. OKAY. BUT THEIR D.J. DOES THE CALLING OUT?

24 A. YEAH, OR THE HYPE MAN. I GUESS THAT'S WHAT YOU CALL
25 HIM.

- 1 Q. AND WHEN YOUR NAME IS CALLED UP, WHAT ARE YOU
2 REQUIRED TO DO?
- 3 A. GO ON STAGE.
- 4 Q. AND DANCE?
- 5 A. YEAH.
- 6 Q. AND I THINK YOU'VE ALREADY SAID -- AND IF YOU DON'T
7 GET ON STAGE WHEN THEY CALLED YOUR NAME, WHAT
8 HAPPENS?
- 9 A. YOU'RE FINED.
- 10 Q. NOW, ARE THERE RULES ABOUT WHAT ARTICLES OF CLOTHING
11 YOU TAKE OFF?
- 12 A. YEAH. IT'S A TOPLESS BAR. IT'S ONLY TOPLESS. YOU
13 DON'T -- YOU CAN'T TAKE OFF YOUR PANTIES OR YOUR
14 SCRUNCHIES OR YOUR THONG.
- 15 Q. AND WHAT HAPPENS IF YOU VIOLATE THAT RULE?
- 16 A. YOU'RE FINED.
- 17 Q. WHO FINES YOU?
- 18 A. MANAGEMENT, THE OWNER.
- 19 Q. AND WHO DO YOU PAY THE FINE?
- 20 A. YOU PAY IT TO MANAGEMENT OR WHOEVER COMES UP AND
21 TELLS YOU YOU NEED TO GIVE THEM THE MONEY.
- 22 Q. AND IF YOU DON'T PAY THE FINE, WHAT HAPPENS?
- 23 A. YOU CAN'T DANCE THERE.
- 24 Q. WHAT HAPPENS?
- 25 A. YOU'RE NO LONGER WELCOME TO DANCE THERE.

20

1 Q. WHO CONTROLS THAT PROCESS?

2 A. THE OWNER, MANAGEMENT.

3 Q. ALL RIGHT. NOW, ARE THERE SEPARATE TYPES OF DANCES
4 THAT ARE DONE IN THIS CLUB?

5 A. YES.

6 Q. YOU'VE TALKED ABOUT THAT WHEN YOUR NAME IS CALLED
7 YOU HAVE TO GO ON STAGE AND DANCE; IS THAT CORRECT?

8 A. MM-HMM. (AFFIRMATIVE RESPONSE)

9 Q. ALL RIGHT. WHERE ARE OTHER PLACES THAT YOU DANCE IN
10 THE CLUB?

11 A. THERE'S A V.I.P., WHICH IS A LITTLE BIT MORE MONEY
12 TO GET DANCES, WHICH MAKES IT --- IT'S SUPPOSED TO BE
13 A LITTLE BIT MORE PRIVATE. AND THEN THERE'S THE
14 FLOOR.

15 Q. ALL RIGHT. WHO ---

16 A. WELL, NOT AN ACTUAL FLOOR. IT'S LIKE TABLES AND
17 CHAIRS.

18 Q. WHO DECIDES WHERE YOU DO V.I.P. DANCES?

19 A. THE MANAGEMENT HAS IT ALREADY SET UP. IT'S AN AREA
20 THAT'S SPECIFIC FOR THAT.

21 Q. ARE YOU REQUIRED TO GO TO THAT AREA TO DO A V.I.P.
22 DANCE?

23 A. YES. THAT'S WHERE V.I.P.s ARE DONE.

24 Q. IS THIS A SEPARATE ROOM?

25 A. YES, YOU COULD SAY THAT.

1 Q. DO I TAKE IT TO MEAN THAT THE V.I.P. DANCES ARE OF A
2 MORE PERSONAL NATURE THAN WHAT YOU WOULD DO ON
3 STAGE?

4 A. YES.

5 Q. NOW, WHO CONTROLS HOW MUCH IS CHARGED FOR A V.I.P.
6 DANCE?

7 A. IT'S ALREADY SET HOW MUCH IT IS. I MEAN, I GUESS
8 MANAGEMENT, THE OWNER, 'CAUSE IT'S ALREADY SET.
9 EACH CLUB HAS A SET AMOUNT FOR THEIR V.I.P. DANCES.
10 SO, I GUESS IT WOULD BE LIKE THE OWNER OR THE
11 MANAGER.

12 Q. AND WHO SETS THE AMOUNT?

13 A. THE OWNER.

14 Q. ALL RIGHT. NOW, IF YOU DO A V.I.P. DANCE, IS THAT
15 PROCESS CONTROLLED BY SOME OTHER PEOPLE OTHER THAN
16 YOU AS FAR AS THE MONEY AND THE SECURITY?

17 A. YEAH, THERE'S SECURITY THERE, AND YOU PAY THE OWNER
18 PART OF YOUR DANCE THAT YOU GOT.

19 Q. THERE'S A DIVISION OF THE MONEY?

20 A. YES.

21 Q. WHEN IS THAT MONEY COLLECTED?

22 A. ONCE THE SONG IS OVER, ONCE YOU'RE DONE WITH YOUR
23 SONG.

24 Q. SO, THE MINUTE THE SONG IS OVER YOU ARE REQUIRED TO
25 ACCOUNT TO THE MANAGEMENT FOR THE MONEY?

22

1 A. YES.

2 Q. IS THERE A PERSON WITH MANAGEMENT THAT TAKES THAT
3 MONEY?

4 A. YES.

5 Q. AND WHERE WOULD THAT PERSON BE AFTER THAT DANCE TO
6 TAKE THAT MONEY?

7 A. MOST LIKELY THEY'LL BE NEAR V.I.P. TO TAKE THE
8 MONEY, BUT THEY COULD BE ANYWHERE.

9 Q. NOW, ARE YOU FREE TO LEAVE DURING THE HOURS THAT
10 MANAGEMENT HAS SPECIFIED AS THE WORKING HOURS ON A
11 GIVEN NIGHT?

12 A. YOU'RE NOT FREE TO LEAVE, BUT YOU CAN LEAVE. YOU
13 HAVE TO PAY TO LEAVE.

14 Q. YOU HAVE TO PAY TO LEAVE?

15 A. YES.

16 Q. WHO DO YOU PAY?

17 A. CRYSTAL. I MEAN, WELL, THE PERSON WHO TAKES THE
18 MONEY.

19 Q. NOW, LET ME ASK YOU ABOUT THE WAY THAT YOU GET PAID.
20 YOU'VE ALREADY INDICATED THAT YOU PAY THE MANAGEMENT
21 TIP-OUT MONEY, IS THAT RIGHT?

22 A. YES.

23 Q. YOU'VE TESTIFIED THAT THEY SET THE V.I.P. DANCE?

24 A. YES.

25 Q. AND WHO DECIDES HOW THAT MONEY IS DIVIDED?

- 1 A. IT'S ALREADY -- IT'S ALREADY SET HOW IT'S GONNA BE
2 DIVIDED. THE OWNER.
- 3 Q. SET BY WHOM?
- 4 A. THE OWNERS, THE MANAGERS.
- 5 Q. ARE YOU AT LIBERTY TO CHANGE THE AMOUNT OF THE
6 V.I.P. DANCE?
- 7 A. NO. YOU CAN DO MORE DANCES TO GET MORE MONEY, BUT
8 YOU CAN'T TELL SOMEBODY, "I'M GONNA GIVE YOU A
9 V.I.P. FOR \$10," AND IT'S ALREADY SET AT 25, NO.
- 10 Q. WHO CONTROLS THAT MANNER OF PAYMENT?
- 11 A. THE OWNER.
- 12 Q. OKAY. NOW, DOES THE OWNERSHIP -- WELL, LET ME ASK
13 YOU THIS: HAVE YOU SEEN DANCERS GET FIRED FROM THE
14 CLUB BEFORE?
- 15 A. YES.
- 16 Q. AND WHAT ARE SOME REASONS THAT A DANCER CAN BE
17 FIRED?
- 18 A. FIGHTING. A LOT OF -- MAJORITY OF -- A LOT OF TIMES
19 IT'S FOR FIGHTING, HYGIENE, LIKE IF YOU'RE JUST LIKE
20 TAKING YOUR PANTIES OFF. YOU'RE CONSISTENTLY DOING
21 THE SAME THING AFTER YOU PAY THE FINES, THEN THEY'RE
22 GONNA FIRE YOU.
- 23 Q. WELL, SO IF YOU VIOLATE THEIR RULES THEY CAN FIRE
24 YOU, IS THAT RIGHT?
- 25 A. YEAH.

1 Q. BUT SOME OF THE RULES, IF YOU VIOLATE THEM YOU'RE
2 NOT FIRED, YOU'RE FINED; IS THAT CORRECT?

3 A. YES.

4 Q. SO YOU PAY THE MANAGEMENT MONEY?

5 A. YES.

6 Q. WHAT IF YOU ---

7 A. YOU CAN BE FINED A BUNCH OF TIMES, BUT SOMETIMES
8 YOU'RE JUST RELENTLESS IN DOING THE SAME THING,
9 YOU'RE GONNA BE FIRED.

10 Q. OKAY. NOW, MY QUESTION IS, WHAT HAPPENS IF YOU
11 DON'T PAY THE FINE?

12 A. YOU'LL BE FIRED.

13 Q. OKAY. SO THEY CAN FIRE YOU FOR THE VIOLATION, BUT
14 THEY CAN ALSO FIRE YOU FOR NOT PAYING THE FINE IF
15 THEY CHOOSE TO TAKE YOUR MONEY FOR WHATEVER RULE YOU
16 BROKE?

17 A. YEAH. THEY CHOOSE TO TAKE YOUR MONEY BEFORE THEY'LL
18 FIRE YOU.

19 Q. OKAY. NOW, LET ME ASK YOU ABOUT EQUIPMENT. WHO
20 PROVIDES THE MUSIC?

21 A. THE OWNER. I MEAN, THE D.J.

22 Q. DO YOU BRING YOUR OWN BOOM BOX?

23 A. NO.

24 Q. DO YOU BRING YOUR OWN CDs?

25 A. NO.

- 1 Q. OKAY. WHO CONTROLS WHAT MUSIC YOU HAVE TO DANCE TO?
- 2 A. THE D.J. HAS THE SONG ON WHEN YOU'RE GETTING UP
- 3 THERE. HE'LL SAY, "PEACHES, COME ON UP," AND THE
- 4 SONG WILL ALREADY BE PLAYING.
- 5 Q. OKAY. SO, YOU'RE COMMANDED BY SOMEBODY WITH THE
- 6 MANAGEMENT TO GET ON STAGE TO PERFORM; IS THAT
- 7 CORRECT?
- 8 A. YES.
- 9 Q. AND THEN IF YOU DON'T DO THAT, YOU GET FINED?
- 10 A. YES.
- 11 Q. AND THEN WHEN YOU GET UP THERE, YOU HAVE TO DANCE TO
- 12 THE MUSIC THAT THEY PLAY?
- 13 A. YEAH.
- 14 Q. NOW, DO YOU HAVE YOUR OWN COSTUME?
- 15 A. YEAH.
- 16 Q. ALL RIGHT. NOW, IF -- BUT WHO CONTROLS WHAT YOU CAN
- 17 TAKE OFF OF THAT COSTUME?
- 18 A. THE OWNER IS -- THE OWNERS, THE MANAGEMENT.
- 19 Q. WHO PROVIDES THE STAGE?
- 20 A. IT'S THE OWNER. IT'S THE BUILDING. THE OWNERS, THE
- 21 MANAGER.
- 22 Q. ARE THERE EQUIPMENT LIKE POLES ON STAGE?
- 23 A. YES.
- 24 Q. WHO PROVIDES THOSE?
- 25 A. THEY ARE THERE. THE OWNER.

1 Q. NOW, ARE THERE THINGS THAT ARE -- EQUIPMENT THAT IS
2 USED FOR CLEANING THE STAGE? I THINK YOU MENTIONED
3 SANITARY THINGS?

4 A. IT'S UP THERE ON THE STAGE. LIKE THIS IS THE STAGE.
5 IT'LL BE BACK THERE. THE POLE'S HERE. IT'LL BE
6 BACK THERE SO YOU CAN GRAB IT.

7 Q. YOU'RE SAYING "IT," BUT WHAT IS IT?

8 A. THE TOWEL AND THE SOLUTION THAT THEY HAVE TO WIPE
9 THE POLE DOWN.

10 Q. ALL RIGHT. SO, WHO PROVIDES TOWELS?

11 A. THE OWNER.

12 Q. WHO PROVIDES THE ALCOHOL?

13 A. THE BARTENDERS, THE OWNER.

14 Q. WHAT ABOUT THE -- IS THERE A MONEY BASKET?

15 A. YES.

16 Q. WHAT IS THAT USED FOR?

17 A. FOR YOU TO COLLECT YOUR MONEY THAT YOU GET WHILE
18 YOU'RE ON STAGE.

19 Q. AND WHO PROVIDES THAT BASKET?

20 A. THE OWNER.

21 Q. ARE THERE LOCKERS?

22 A. YES.

23 Q. WHO OWNS THE LOCKERS?

24 A. THE OWNERS.

25 Q. AND DO THEY PROVIDE ONE TO YOU WHEN YOU WORK THERE?

1 A. YES.

2 Q. IS THERE A BAR GOING ON?

3 A. YES.

4 Q. IS THAT PART OF YOUR WORK JOB, ALCOHOL SERVING TO

5 THE CUSTOMERS ON OCCASIONS?

6 A. YEAH. THE MAJORITY OF THE TIME THEY GET IT

7 THEIRSELF.

8 Q. WELL, YOU INDICATED THAT THERE MIGHT BE ONE OR TWO

9 BARTENDERS, IS THAT RIGHT?

10 A. MM-HMM. (AFFIRMATIVE RESPONSE)

11 Q. DO YOU HAVE ANY -- WHO PROVIDES THE GLASSES?

12 A. THE OWNER OWNS THE GLASSES, BUT THE BARTENDER WILL

13 GIVE YOU A GLASS.

14 Q. BUT IT'S THE CLUB'S GLASS, NOT YOURS?

15 A. YES.

16 Q. ALL RIGHT. WHAT ABOUT LIQUOR AND ICE AND MIXERS?

17 A. IT'S THE OWNERS.

18 Q. ALL RIGHT. IS LIGHTING IMPORTANT TO THE WORK YOU

19 DO?

20 A. YES.

21 Q. AND WHO PROVIDES THE LIGHTING?

22 A. IT'S WITH THE BUILDING. THE OWNER.

23 Q. YOU'VE INDICATED THAT THERE ARE SEPARATE PLACES YOU

24 HAVE TO GO TO DO V.I.P. DANCES, IS THAT RIGHT?

25 A. MM-HMM. (AFFIRMATIVE RESPONSE)

1 Q. IS THERE CERTAIN FURNITURE THAT'S INVOLVED IN THESE
2 AREAS?

3 A. THERE'S COUCHES OR LIKE -- IT'S JUST LIKE AN
4 UPGRADED AREA. LIKE SEE THOSE TWO CHAIRS BACK
5 THERE, THEY'RE LIKE NOT THAT GOOD. BUT THOSE CHAIRS
6 ARE MUCH BETTER. LIKE IT'S JUST A CUSHIER AREA.

7 Q. WHOSE CHAIRS ARE THEY?

8 A. THE OWNER.

9 Q. DO YOU BRING ANYTHING NECESSARY -- WELL, LET ME ASK
10 YOU, IS ALL THIS EQUIPMENT NECESSARY TO DO YOUR JOB?

11 A. YES.

12 Q. AND OTHER THAN BRINGING YOUR COSTUME, IS THERE
13 ANYTHING ELSE YOU BRING OTHER THAN YOURSELF?

14 A. NO. LIKE ACCESSORIES AND STUFF, SHOES.

15 Q. LET ME ASK YOU THIS: DOES THE MANAGEMENT PROVIDE
16 AREAS FOR YOU TO MAKE UP?

17 A. WHAT DO YOU MEAN?

18 Q. LIKE A MIRROR?

19 A. YEAH. FOR ME TO GET DRESSED, DRESS OUT, YEAH.

20 Q. WHO PROVIDES ALL THAT?

21 A. THAT'S THE OWNER AND THE BUILDING.

22 Q. AND BASED ON YOUR OWN EXPERIENCE, IN THE SUMMER OF
23 LAST YEAR WAS THE SAME EQUIPMENT, THE SAME RULES,
24 THE SAME WAY TO GET PAID, THE RIGHT TO FIRE, ALL OF
25 THOSE THE SAME WAY BACK IN THE SUMMER OF LAST YEAR

1 AT THIS STUDIO 54 BOOM BOOM ROOM?

2 A. YES. SHOULD HAVE BEEN, YEAH.

3 BY MR. BURNETTE:

4 THAT'S ALL I HAVE.

5 BY THE COMMISSIONER:

6 ALL RIGHT. ANSWER ANY QUESTIONS THAT MS.

7 GLOVER MAY HAVE, PLEASE.

8 CROSS EXAMINATION BY MS. GLOVER:

9 Q. NOW, YOU INDICATED THAT YOU WORKED THERE ONLY TWO TO
10 THREE TIMES?

11 A. YEAH.

12 Q. WHEN IS THE LAST TIME YOU WORKED AT L.B. DYNASTY
13 HERE IN COLUMBIA?

14 A. IT'S NOT L.B. DYNASTY.

15 Q. OKAY. WAS IT BOOM BOOM ROOM?

16 A. YES.

17 Q. WHEN WAS THE LAST TIME YOU WORKED THERE?

18 A. I'M NOT SURE OF THE EXACT DATE. I WORK A LOT, AND
19 IT'S NOT JUST THAT ONE CLUB, AND I LIVE IN
20 CHARLOTTE.

21 Q. OKAY. BUT YOU SAID YOU WORKED THERE TWO AND A HALF
22 YEARS AGO, SO THAT WAS PROBABLY SOMETIME IN LATE '06
23 OR '07?

24 A. NO. IT WAS LIKE '07, YEAH.

25 Q. OKAY. SO, THE LAST TIME WAS IN 2007?

30

1 A. MM-HMM. (AFFIRMATIVE RESPONSE)

2 Q. OKAY. AND WHEN YOU WENT TO WORK THERE, HOW DID YOU
3 COME TO BE -- HOW DID YOU GO TO WORK THERE? DID YOU
4 JUST WALK UP TO THE CLUB AND SAY, "I WANT TO DANCE"?

5 A. YEAH. YOU GO IN, YOU GIVE YOUR I.D., THEY GIVE YOU
6 A RULE SHEET, YOU GIVE THEM YOUR MONEY.

7 Q. OKAY. DID YOU HAVE TO FILL OUT ANY SORT OF
8 APPLICATION?

9 A. NO.

10 Q. AND YOU SAY YOU HAD TO GIVE THEM MONEY TO PAY THE
11 TIP-OUT MONEY?

12 A. MM-HMM. (AFFIRMATIVE RESPONSE)

13 Q. AND HOW MUCH IS THAT?

14 A. THIRTY-FIVE DOLLARS. WELL, LET ME REPHRASE IT.
15 BECAUSE IF YOU COME LATER, IT'S ALWAYS GONNA BE
16 MORE, BUT IF YOU COME EARLY, IT'S CHEAPER. SO I'M
17 NOT REALLY SURE HOW MUCH IT IS LIKE LATER IN THE
18 NIGHT.

19 Q. OKAY. BUT I GUESS TO GET THE \$35 FEE, WHAT TIME
20 WOULD YOU HAVE TO REPORT THERE?

21 A. EARLY, LIKE NINE, EIGHT, NINE.

22 Q. EIGHT OR NINE O'CLOCK? OKAY. AND IF YOU GOT THERE
23 PAST, LET'S SAY, MIDNIGHT, DO YOU HAVE ANY IDEA HOW
24 MUCH THE FEE WOULD BE THEN?

25 A. NO, I DON'T.

1 Q. OKAY. AND WHERE DO YOU LIVE NOW?

2 A. I LIVE IN CHARLOTTE, IN CONCORD ACTUALLY. YOU WANT

3 MY FULL ADDRESS?

4 Q. YES, PLEASE.

5 A. IT'S 100 TRIBUNE AVENUE SOUTHWEST, APARTMENT "D," AS

6 IN DOG. THAT'S CONCORD.

7 Q. NOW, WERE YOU LIVING IN COLUMBIA DURING THE TIME

8 THAT YOU WORKED AT THIS CLUB?

9 A. NO.

10 Q. YOU'VE ALWAYS LIVED IN CHARLOTTE OR IN ---

11 A. YES.

12 Q. --- NORTH CAROLINA?

13 A. MM-HMM. (AFFIRMATIVE RESPONSE)

14 Q. AND YOU JUST HEARD ABOUT THE CLUB AND YOU DECIDED TO

15 COME DOWN TO COLUMBIA AND WORK THE CLUB FOR A COUPLE

16 NIGHTS?

17 A. YEAH. I PREFER THE FURTHER CLUBS.

18 Q. YOU PREFER WHAT?

19 A. THE CLUBS FURTHER OUT.

20 Q. OKAY. AND YOU INDICATED -- NOW, WHEN YOU SAID THERE

21 WERE 15 TO 20 DANCERS, WAS THAT DURING THE TIME THAT

22 YOU DANCED THERE?

23 A. YEAH.

24 Q. AND DO YOU KNOW IF THEY HAD ANY SORT OF EMPLOYMENT

25 RELATIONSHIP WITH THE COMPANY?

1 A. WHAT DO YOU MEAN?

2 Q. DO YOU KNOW IF THEY HAD TO -- IF THEY WERE ON
3 SALARY?

4 A. NO, THERE'S NO SALARY IN DANCING.

5 Q. SO EVERY DANCER THAT COMES IN -- IF I WANTED TO GO
6 THERE AND DANCE, ALL I'D HAVE TO DO IS GO IN THERE
7 AND SHOW THEM MY I.D., THEY'D GIVE ME A RULE SHEET,
8 AND I WOULD PAY A TIP-OUT FEE INITIALLY?

9 A. YEAH.

10 Q. THAT'S HOW IT WORKS?

11 A. YEAH.

12 Q. I COULD WALK IN AND DO THAT?

13 A. YEAH. WELL, YOU HAVE TO BE OLD ENOUGH.

14 Q. RIGHT. WELL, PRESENTING I.D. WHICH MEANS YOU'RE 18
15 OR OLDER?

16 A. YEAH.

17 Q. OR IS IT 21? WHAT WAS THE AGE?

18 A. EIGHTEEN.

19 Q. EIGHTEEN, OKAY. SO IF I PRESENTED I.D. THAT
20 INDICATED THAT I WAS 18 YEARS OLD, PAID MY TIP-OUT
21 FEE, AND THEY GAVE ME A RULE SHEET WHICH I COMPLY
22 WITH, I COULD GO AND DANCE THERE?

23 A. YEAH.

24 Q. OKAY. NOW, DO YOU HAVE ANY IDEA HOW THE D.J. WAS
25 PAID?

- 1 A. NO. I GUESS HE -- 'CAUSE HE'S A CONSISTENT WORKER.
2 THAT'S THE THING ABOUT DANCERS. WE'RE NOT GONNA
3 STAY IN THE SAME PLACE.
- 4 Q. BUT DO YOU KNOW IF HE WORKED THERE, THE D.J. AT THE
5 TIME THAT YOU WORKED THERE THOSE TWO TO THREE
6 NIGHTS, DO YOU KNOW IF HE WAS CONSISTENT D.J. AT
7 THAT CLUB?
- 8 A. NO, I DIDN'T THINK TO ASK.
- 9 Q. DO YOU KNOW IF THE HYPE MAN WAS A CONSISTENT
10 EMPLOYEE OR REGULAR EMPLOYEE?
- 11 A. WELL, I KNOW THEY'RE REGULAR EMPLOYEES, BUT I DON'T
12 ---
- 13 Q. BUT YOU KNOW THE PARTICULAR ONE THAT WAS THERE ON
14 THE OCCASIONS THAT YOU DANCED?
- 15 A. YEAH. THE SAME ONES ARE THERE, BUT I DON'T KNOW IF
16 THEY'RE GETTING PAID A SALARY LIKE YOU ASKED.
- 17 Q. SO YOU DON'T KNOW WHAT THE RELATIONSHIP IS AS FAR AS
18 HOW THEY'RE GETTING PAID OR WHETHER OR NOT ---
- 19 A. I DON'T KNOW HOW THEY'RE GETTING PAID, BUT I KNOW
20 THAT THEY'RE CONSISTENTLY THERE.
- 21 Q. OKAY. WELL, YOU KNOW THAT THERE IS SOMEONE IN THAT
22 POSITION THERE CONSISTENTLY, BUT NOT NECESSARILY THE
23 SAME PERSON?
- 24 A. YEAH.
- 25 Q. OKAY. AND AS FAR AS A DANCE ROTATION, WHAT IS THAT?

1 DOES THAT MEAN EACH DANCER GETS A TURN UP ON STAGE
2 BY HERSELF?

3 A. YEAH.

4 Q. AND ARE YOU REQUIRED TO DO THAT IF YOU GO IN AND SAY
5 YOU WANT TO DANCE?

6 A. YEAH.

7 Q. AND YOU SAY THAT IF YOU DON'T GET IN THE DANCE
8 ROTATION, HOW MUCH ARE YOU FINED?

9 A. IT'S \$25.

10 Q. OKAY. NOW, HOW LONG HAVE YOU BEEN WORKING IN THE
11 INDUSTRY?

12 A. ABOUT THREE AND HALF, FOUR YEARS.

13 Q. NOW, DID YOU PERFORM ANY V.I.P. DANCES WHEN YOU
14 WORKED IN THIS CLUB TWO AND A HALF YEARS AGO?

15 A. YES.

16 Q. WERE YOU REQUIRED TO DO THAT OR WERE YOU REQUESTED
17 TO DO IT? DID A PARTICULAR PATRON REQUEST THAT YOU
18 DO A V.I.P. DANCE?

19 A. WELL, YOU'RE REQUIRED TO DO IT IF THEY ASK BECAUSE
20 IT'S A SET PART OF THE CLUB.

21 Q. RIGHT.

22 A. SO IF THEY ASK, YOU'RE REQUIRED TO DO IT.

23 Q. BUT IF THEY DON'T ASK YOU TO DANCE IN THE V.I.P.
24 ROOM, YOU DON'T GET AN OPPORTUNITY TO DANCE IN THE
25 V.I.P. ROOM?

- 1 A. NO.
- 2 Q. SO THAT'S STRICTLY UP TO THE PATRONS?
- 3 A. YES.
- 4 Q. OKAY. AND COULD YOU QUIT WORKING THERE AT ANY TIME?
- 5 I GUESS YOU DID BECAUSE YOU ONLY WORKED TWO TO THREE
- 6 TIMES.
- 7 A. YES.
- 8 Q. WERE YOU FIRED FROM THERE?
- 9 A. NO.
- 10 Q. SO YOU JUST VOLUNTARILY DECIDED YOU DIDN'T WANT TO
- 11 DANCE THERE ANYMORE?
- 12 A. YEAH.
- 13 Q. OKAY. AND AS FAR AS YOU INDICATED THAT THE CLUB DID
- 14 NOT PROVIDE YOUR COSTUME OR ANYTHING?
- 15 A. NO.
- 16 Q. OKAY. COULD YOU CHANGE COSTUMES DURING THE NIGHT IF
- 17 YOU WANTED TO?
- 18 A. YEAH, IF YOU WANT TO.
- 19 Q. AND AS FAR AS DANCING ON THE STAGE, WERE YOU
- 20 REQUIRED TO USE A POLE?
- 21 A. YOU ARE -- IT'S LIKE YOU ARE REQUIRED, BUT IF YOU
- 22 CAN'T, THEN YOU DON'T HAVE TO. BUT IF YOU KNOW HOW
- 23 TO USE IT AND THEY KNOW YOU KNOW HOW TO USE IT,
- 24 YEAH.
- 25 Q. BUT DO THEY PENALIZE YOU FOR NOT USING THE POLE?

36

1 A. I DON'T KNOW IF YOU COULD -- NO.

2 Q. OKAY. AND AS FAR AS THE MUSIC THAT YOU DANCE TO, DO
3 YOU PICK YOUR OWN SONGS?

4 A. NO, UNLESS YOU'VE BEEN LIKE, LIKE YOU SAID, A PATRON
5 THERE AND THE D.J. KNOWS YOU, THEN YOU COULD
6 PROBABLY WORK SOMETHING OUT. BUT AS FAR AS I KNOW,
7 NO.

8 Q. OKAY. AND DID YOU DANCE THERE AT THE SAME TIME THAT
9 MS. LEWIS DANCED THERE?

10 A. NO.

11 Q. AND HOW DO YOU KNOW MS. LEWIS?

12 A. I KNOW HER. SHE'S A DANCER ALSO IN CHARLOTTE.

13 Q. AND ARE YOU CURRENTLY WORKING ---

14 A. NO.

15 Q. --- ANYWHERE?

16 A. WELL, I'M WORKING, BUT NOT AS A DANCER.

17 Q. WHERE DO YOU WORK NOW?

18 A. RIGHT NOW I'M TEACHING HISPANIC WOMEN ENGLISH.

19 Q. WHERE AT?

20 A. AT MY COMPLEX I LIVE IN. THE ADDRESS YOU HAVE, I DO
21 IT THERE.

22 Q. AND WHO ARE YOU EMPLOYED BY?

23 A. NO ONE. SELF-EMPLOYED.

24 Q. AND DO YOU KNOW RIGHT NOW WHETHER OR NOT MS. LEWIS
25 IS WORKING ANYWHERE?

1 A. NO, SHE'S NOT. WELL, I DON'T THINK SHE IS.

2 Q. I MEAN NOT NECESSARILY DANCING, JUST WORKING
3 ANYWHERE?..

4 A. OH, NO, SHE'S NOT WORKING. IF SHE'S NOT DANCING,
5 SHE'S NOT WORKING.

6 BY MS. GLOVER:

7 I THINK THAT'S ALL THE QUESTIONS THAT I HAVE.

8 BY THE COMMISSIONER:

9 MR. BURNETTE?

10 REDIRECT EXAMINATION BY MR. BURNETTE:

11 Q. HOW OLD ARE YOU NOW, MA'AM?

12 A. I'M 20.

13 Q. YOU'RE 20 YEARS OLD? MS. GLOVER ASKED YOU HOW LONG
14 YOU'VE WORKED ---

15 A. I KNEW THAT WAS GONNA COME UP.

16 Q. --- IN THE INDUSTRY AND YOU SAID FOR THREE AND A
17 HALF YEARS?

18 A. THREE TO FOUR YEARS.

19 Q. THREE TO FOUR YEARS?

20 A. MM-HMM. (AFFIRMATIVE RESPONSE)

21 Q. SO DOES THAT MEAN FROM AS EARLY AS AGE 15 YOU'VE
22 BEEN ---

23 A. NO, 16.

24 Q. SIXTEEN?

25 A. 'CAUSE I'LL BE 21 THIS YEAR. SO I WOULD DO LIKE

1 PRIVATE PARTIES, BUT I WASN'T LIKE TAKING ALL MY
2 CLOTHES OFF THEN. BUT NOW I -- LIKE I COULDN'T WORK
3 IN A CLUB THEN, BUT -- I KNEW YOU WAS GONNA SAY
4 THAT.

5 BY MR. BURNETTE:

6 THAT'S ALL I HAVE.

7 BY THE COMMISSIONER:

8 LET ME ASK A COUPLE OF QUESTIONS. YOU'VE
9 WORKED TWO, THREE YEARS, HOWEVER LONG IT WAS. HOW
10 MANY DIFFERENT PLACES DO YOU THINK YOU'VE WORKED IN
11 THAT PERIOD OF TIME, WHETHER IT'S IN NORTH CAROLINA,
12 SOUTH CAROLINA, GEORGIA, FLORIDA, WHEREVER?

13 BY THE WITNESS:

14 PROBABLY LIKE SIX PLACES.

15 BY THE COMMISSIONER:

16 Q. HOW MANY STATES?

17 A. NO, JUST ---

18 Q. SIX PLACES?

19 A. YEAH, NORTH CAROLINA AND SOUTH CAROLINA.

20 Q. SOUTH CAROLINA?

21 A. YEAH.

22 Q. AND WHAT'S THE LONGEST YOU THINK YOU'VE EVER STAYED
23 AT ONE PLACE?

24 A. 'CAUSE I DON'T ALWAYS DANCE, SO IT'S NOT -- YOU
25 KNOW, I DON'T ALWAYS DANCE. I DO A LOT OF DIFFERENT

1. THINGS, TOO. SO, I'D PROBABLY SAY LIKE SIX MONTHS
2 MAYBE.

3 Q. WOULD THAT BE ABOUT AVERAGE THAT YOU WOULD STAY, AND
4 THEN YOU WOULD MOVE ON?

5 A. YEAH. YEAH, 'CAUSE I WOULD STOP OR FINISH SCHOOL OR
6 TAKE A COURSE OR SOMETHING.

7 Q. AND AS FAR AS THE V.I.P. ROOM IS CONCERNED, IF YOU
8 HAD A CHOICE OF DANCING ON THE FLOOR OR THE V.I.P.
9 ROOM, WHICH WOULD YOU CHOOSE?

10 A. THE V.I.P.

11 Q. BECAUSE YOU MAKE MORE MONEY THERE, DON'T YOU?

12 A. YES, AND IT'S MORE ---

13 Q. RIGHT. SO THEY DON'T MAKE YOU GO THERE; YOU WANT TO
14 GO THERE, IS THAT RIGHT?

15 A. YEAH, IT'S MORE -- IT'S NOT SO MUCH LIKE -- YOU'RE
16 NOT LIKE BEING BUMPED BY ANOTHER PERSON. YOU'RE NOT
17 BEING HIT BY ANOTHER PERSON, YOU KNOW.

18 Q. SO THERE'S NO DOUBT IF YOU ASK EVERY DANCER, THEY
19 PROBABLY -- I'M ASKING YOU -- DO YOU THINK THEY ALL
20 WOULD SAY, I'D LIKE TO WORK IN THE V.I.P. ROOM
21 RATHER THAN BE OUT ON THE FLOOR?

22 A. NO. ACTUALLY, THE STAGE IS PRETTY DECENT, TOO, AS
23 FAR AS MONEY GOES. THE STAGE IS PRETTY DECENT IF
24 YOU KNOW HOW TO DO TRICKS.

25 Q. RIGHT. AS FAR AS EQUIPMENT, THAT CAME UP, COULD YOU

40

1 DANCE IN THAT SAME CLUB WITHOUT A STAGE IF THEY JUST
2 DIDN'T HAVE A STAGE FOR WHATEVER REASON? THERE ARE
3 PEOPLE WHO DANCE ON THE FLOOR, IS THAT RIGHT? THEY
4 DO TABLE DANCES?

5 A. YEAH, THEY DO SOME, YEAH, TABLE DANCES, YEAH.

6 Q. SO, YOU'VE ALREADY STATED IF YOU DIDN'T KNOW HOW TO
7 USE A POLE THEY DIDN'T MAKE YOU DO THAT, RIGHT?

8 A. BUT THEY MADE YOU GET ON STAGE.

9 Q. THEY MADE YOU GET ON STAGE?

10 A. AND YOU JUST HAD TO LIKE HOLD THE POLE AND, YOU
11 KNOW, WALK AROUND IT. BUT YOU HAVE TO GET THE POLE
12 IN YOUR -- YOU KNOW, YOUR LITTLE DANCY DANCE.

13 Q. AND IF YOU MISS YOUR ROTATION BECAUSE -- JUST SAY,
14 FOR INSTANCE, YOU HAD AN UPSET STOMACH AND YOU
15 MISSED YOUR ROTATION, BUT YOU GOT IN THE ROTATION
16 NEXT, THEY STILL WOULD FINE YOU?

17 A. NO.

18 Q. RIGHT.

19 A. IF YOU SAY, "OH, MY GOD. MY STOMACH IS UPSET, AND
20 I'M GOING NOW," YOU JUST, YOU KNOW ---

21 Q. SOMEBODY ELSE COULD DO IT AND THEN YOU COULD FALL IN
22 LINE SOMEWHERE ELSE?

23 A. YEAH.

24 Q. BUT THERE'S A ROTATION BECAUSE IF YOU HAVE TEN
25 PEOPLE DANCING, THEY WANT TO SEE ALL TEN THAT NIGHT,

- 1 IS THAT RIGHT?
- 2 A. YEAH, 'CAUSE THEY WANT EVERYONE -- IT'S ABOUT THE
- 3 CUSTOMER. THEY WANT EVERYBODY TO SEE WHO IS THERE.
- 4 Q. RIGHT.
- 5 A. 'CAUSE LIKE I SAID, SOMETIMES IT'S LIKE REALLY
- 6 CROWDED AND YOU DON'T GET TO SEE THE GIRL YOU MIGHT
- 7 BE LOOKING FOR.
- 8 Q. AND YOU THINK YOU'VE WORKED AT ABOUT SIX DIFFERENT
- 9 CLUBS IN TWO DIFFERENT STATES, RIGHT?
- 10 A. YEAH.
- 11 Q. AND ROUGHLY STAYED THERE ABOUT SIX MONTHS AT A CLIP?
- 12 A. YEAH.
- 13 Q. SO IF YOU JUST GOT TIRED OF THE SCENERY HERE AND YOU
- 14 COULD GO, SAY, BACK TO CHARLOTTE OR SOMEWHERE LIKE
- 15 THAT, YOU WOULD APPLY JUST LIKE ---
- 16 A. YEAH, SOMETIMES YOU JUST JUMP UP SOME DAYS AND SAY,
- 17 "LET'S GO DOWN HERE. I THINK..." -- OR A RAPPER
- 18 MIGHT BE HERE. YOU KNOW, THAT'S ANOTHER REASON THAT
- 19 GIRLS TRAVEL, IS A RAPPER MIGHT BE HERE OR AN ACTOR
- 20 OR SOMEBODY AND YOU JUST WANT TO COME DOWN HERE FOR
- 21 THAT. AND THOSE NIGHTS ARE WHEN YOU TYPICALLY DON'T
- 22 HAVE TO FILL OUT AN APPLICATION AND ---
- 23 Q. YOU WOULDN'T GIVE NOTICE OR ANYTHING; YOU'D JUST
- 24 SAY, "TONIGHT IS MY LAST NIGHT," IS THAT RIGHT?
- 25 A. AND THEN IT'S EASIER TO COME HERE AND DO IT BECAUSE

1 I HAVE A NORTH CAROLINA CHARLOTTE I.D., AND THIS IS
2 SOUTH CAROLINA, AND THEY FEEL LIKE YOU TRAVELED ALL
3 THIS FAR, SO...

4 Q. AND THE WORD COUCH AND CHAIRS ARE MENTIONED, BUT YOU
5 COULD DO -- YOU COULD DANCE WITHOUT A COUCH OR
6 CHAIR; YOU DON'T DANCE ON THE COUCH? THE PEOPLE ARE
7 SITTING IN THE COUCH OR THE CHAIR, RIGHT, AND YOU'RE
8 IN FRONT OF THEM?

9 A. YEAH. BUT THAT'S THE WHOLE POINT OF V.I.P. IT'S
10 SUPPOSED TO FEEL MORE ---

11 Q. INTIMATE?

12 A. LIKE, YEAH, MORE UPSCALE. IT'S HAS LIKE CURTAINS
13 AND PLANTS AND DIFFERENT KIND OF LIGHT AND ---

14 Q. BUT THAT EQUIPMENT IS THERE, IF I UNDERSTAND IT
15 CORRECTLY, THAT'S WHERE THE CUSTOMER SITS? YOU
16 DON'T GET ON THERE AND DANCE ON THE SOFA, DO YOU?
17 THEY SIT ---

18 A. YOU DANCE ON THE CUSTOMER.

19 Q. RIGHT. AND EVERY PENNY YOU MAKE IS IN TIPS?

20 A. YEAH.

21 Q. THERE'S NOT ANOTHER CENT HANDED TO YOU OTHERWISE?

22 A. NO, NOT A WAITRESS JOB.

23 BY THE COMMISSIONER:

24 I DON'T BELIEVE I HAD ANY OTHER QUESTIONS,
25 UNLESS YOU ALL HAD OTHERS.

1 BY MS. GLOVER:

2 I DON'T HAVE ANY FOLLOW-UP.

3 BY THE COMMISSIONER:

4 UNLESS YOU THINK SHE'S GOING TO BE RECALLED,
5 SHE CAN BE EXCUSED. YOU CAN BE EXCUSED. THANK YOU,
6 MA'AM.

7 (OFF THE RECORD)

8 BY THE COMMISSIONER:

9 IF YOU WOULD STATE YOUR FULL NAME FOR THE
10 RECORD, MA'AM.

11 BY THE WITNESS:

12 LEANDRA LEWIS.

13 * * * * *

14 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
15 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
16 MATTER HEREIN:

17 LEANDRA LEWIS,

18 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
19 FOLLOWS:

20 BY THE COMMISSIONER:

21 ANSWER ANY QUESTIONS YOUR LAWYER MAY HAVE,
22 PLEASE.

23 DIRECT EXAMINATION BY MR. BURNETTE:

24 Q. YOUR FULL NAME, PLEASE, MA'AM.

25 A. LEANDRA LEWIS.

1 Q. DO YOU HAVE A MIDDLE NAME?
2 A. OVON.
3 Q. HOW OLD ARE YOU?
4 A. TWENTY.
5 Q. HOW OLD WERE YOU WHEN YOU WERE SHOT IN THIS CLUB?
6 A. NINETEEN.
7 Q. HOW FAR DID YOU GO IN SCHOOL?
8 A. I DIDN'T COMPLETE -- I WENT TO THE 12TH GRADE, BUT I
9 DIDN'T GET MY HIGH SCHOOL DIPLOMA.
10 Q. ARE YOU SINGLE OR MARRIED?
11 A. SINGLE.
12 Q. DO YOU HAVE ANY CHILDREN?
13 A. NO, SIR.
14 Q. CAN YOU HAVE CHILDREN?
15 A. THE DOCTORS TOLD ME THAT IT WOULD BE A HIGH
16 POSSIBILITY THAT I WOULDN'T BE ABLE TO HAVE
17 CHILDREN.
18 Q. NOW, WHAT IS THE NAME OF THE CLUB WHERE YOU WERE
19 SHOT?
20 A. STUDIO 54 BOOM BOOM ROOM.
21 Q. IS THIS LOCATED ON TWO NOTCH ROAD?
22 A. YES, SIR.
23 Q. HOW MANY TIMES HAVE YOU DANCED AT THIS CLUB?
24 A. TWO OR THREE.
25 Q. NOW, THERE ARE CERTAIN EXHIBITS THAT WE PUT IN

1 THROUGH YOUR BRIEF THAT THIS IS OWNED BY L.B.
2 DYNASTY, INCORPORATED, AND THE REGISTERED AGENT IS
3 LOCATED AT 6212 TWO NOTCH ROAD. I SHOWED YOU THOSE
4 DOCUMENTS?

5 A. YES, SIR.

6 Q. IS THERE ALSO A CLUB ACROSS THE STREET THAT IS OWNED
7 BY THIS SAME OWNERSHIP?

8 A. YES, SIR.

9 Q. OKAY. NOW, IS THERE ALSO ANOTHER CLUB THAT THIS
10 OWNERSHIP HAS IN GREENVILLE?

11 A. YES, SIR, THERE IS.

12 Q. HAVE YOU DANCED FOR THIS OWNERSHIP IN GREENVILLE AT
13 THAT CLUB?

14 A. YES, SIR.

15 Q. AND THAT'S IN ADDITION TO THE TIMES THAT YOU'VE
16 DANCED ON TWO NOTCH?

17 A. YES, SIR.

18 Q. WHO SEEMED TO BE IN CHARGE WHEN YOU REPORTED TO WORK
19 ON JULY 23RD OF LAST YEAR?

20 A. CRYSTAL TAYLOR.

21 Q. AND WHAT IS HER TITLE?

22 A. THE MANAGER.

23 Q. WERE YOU ALSO TOLD THAT AN ERNEST JACOBS WAS A
24 MANAGER?

25 A. YES, SIR.

1 Q. AT THE CLUB THIS NIGHT WHEN YOU WERE SHOT, I WANT
2 YOU TO REVIEW FOR THE COMMISSIONER HOW MANY PEOPLE
3 WERE WORKING THERE. HOW MANY DANCERS WERE THERE?

4 A. TWENTY TO THIRTY.

5 Q. WAS THIS A BUSY NIGHT?

6 A. YES, SIR.

7 Q. HOW MANY BARTENDERS?

8 A. TWO BARTENDERS.

9 Q. HOW MANY MANAGEMENT PEOPLE WERE IN AND OUT OF THE
10 OFFICE?

11 A. I SAW AT LEAST FOUR.

12 Q. WHAT ABOUT A D.J.?

13 A. IT WAS ONE D.J.

14 Q. WHAT ABOUT A HYPE MAN?

15 A. ONE HYPE MAN.

16 Q. NOW, WHAT DOES A HYPE MAN DO?

17 A. HE INTRODUCES YOU AND GETS THE CROWD HYPED, YOU
18 KNOW, GET THEM PUMPING, TRYING TO SPEND MONEY.

19 Q. DOES HE HAVE AUTHORITY TO TELL YOU WHEN TO GET ON
20 STAGE AND WHEN NOT TO BE ON THE STAGE?

21 A. YES, SIR.

22 Q. AND DOES HE EXERCISE THAT AUTHORITY?

23 A. YES, SIR.

24 Q. AND DOES HE APPEAR TO BE WORKING FOR THE CLUB?

25 A. YES, SIR.

- 1 Q. WERE THERE ANY PEOPLE AT THE DOOR TAKING UP MONEY?
- 2 A. YES, SIR.
- 3 Q. HOW MANY?
- 4 A. ONE.
- 5 Q. AND WHAT IS A HOUSE MOM?
- 6 A. SHE'S LIKE SOMEONE THAT STAYS ON THE GIRLS, AND SHE
- 7 COLLECTS MONEY FROM V.I.P. AND MAKES SURE THAT WE
- 8 UPKEEP OURSELVES.
- 9 Q. WHO DOES SHE COLLECT THE MONEY FOR?
- 10 A. THE MANAGER OR THE OWNERS.
- 11 Q. OKAY. AND THEN ARE THERE BouncERS?
- 12 A. YES, SIR.
- 13 Q. AND HOW MANY WERE THERE THAT NIGHT?
- 14 A. THERE HAD TO BE SIX TO EIGHT BouncERS THERE THAT
- 15 NIGHT 'CAUSE THERE WERE SOME WORKING OUTSIDE AND
- 16 INSIDE.
- 17 Q. NOW, I WANT TO ASK YOU A COUPLE OF THINGS ABOUT
- 18 CONTROL. DID THE MANAGEMENT CONTROL YOU WHEN YOU
- 19 GOT THERE THAT NIGHT WHEN YOU FIRST GOT TO THE DOOR?
- 20 A. YES, SIR.
- 21 Q. AND HOW DID THEY CONTROL YOU?
- 22 A. THEY TOLD ME TO PUT MY BAGS ON THE TABLE SO THAT
- 23 THEY COULD BE CHECKED, AND TOLD ME TO PAY MY TIP-
- 24 OUT, AND SHE DIRECTED ME TO THE DRESSING ROOM.
- 25 Q. WERE YOU SEARCHED?

1 A. YES, SIR, I WAS SEARCHED.

2 Q. AND WHERE WERE YOU DIRECTED?

3 A. TO THE MANAGER'S OFFICE.

4 Q. AND WHEN YOU WALKED INTO THE MANAGER'S OFFICE, HOW
5 MANY PEOPLE WERE IN THE MANAGER'S OFFICE?

6 A. FOUR.

7 Q. OKAY. DID THEY ALL APPEAR TO BE WORKING THERE?

8 A. YES, SIR.

9 Q. AND THEN DID YOU ENTER INTO A FINANCIAL ARRANGEMENT
10 WITH THE MANAGEMENT?

11 A. YES, SIR.

12 Q. AND WHAT WAS THAT FINANCIAL ARRANGEMENT?

13 A. THAT I HAD TO PAY A \$70 TIP-OUT, AND THAT WAS IT.

14 Q. WHAT OTHER FEES DO YOU SHARE WITH THE MANAGEMENT?

15 A. ALSO, OFF OF MY V.I.P. WE HAVE TO GIVE THEM A CUT.

16 Q. GIVE THEM A CUT?

17 A. YES, SIR.

18 Q. AND YOU SAID THE HOUSE MOM TAKES THAT ON BEHALF OF
19 THE MANAGEMENT?

20 A. ON BEHALF OF THE MANAGEMENT, YES, SIR.

21 Q. WHAT OTHER FEES?

22 A. WE HAVE TO TIP LIKE THE D.J., AND THAT'S ABOUT IT.

23 Q. HOW MUCH MONEY WOULD YOU MAKE ON AN AVERAGE NIGHT
24 WORKING AT THIS CLUB?

25 A. ANYWHERE FROM 250 TO 350.

1 Q. ALL RIGHT. NOW, WOULD YOU BREAK DOWN -- EXCUSE ME;
2 HOW MUCH DID YOU SAY AGAIN?

3 A. TWO FIFTY TO THREE FIFTY.

4 Q. AND THAT'S PER NIGHT?

5 A. PER NIGHT.

6 Q. AND HOW WOULD YOU BREAK THOSE AMOUNTS DOWN?

7 A. WELL, IT VARIES, BUT USUALLY I WOULD SAY I WOULD GET
8 \$100 FROM V.I.P. AND \$100 OFF TABLE DANCES, AND ON
9 STAGE EITHER 50 OR MORE, 50 OR MORE ON STAGE.

10 Q. OKAY. AND YOU BELIEVE THAT TO BE SOMEWHERE IN THE
11 NEIGHBORHOOD OF 250 TO \$350 PER NIGHT?

12 A. YES, SIR.

13 Q. AND HOW MANY NIGHTS WOULD YOU WORK PER WEEK?

14 A. FIVE TO SIX, MAYBE SOMETIMES SEVEN.

15 Q. NOW, LEANDRA, I WANT TO ASK YOU PARTICULARLY SOME
16 THINGS THAT THE COMMISSIONER HAD ASKED THIS OTHER
17 WITNESS ABOUT. DO YOU WORK OTHER CLUBS?

18 A. YES, SIR.

19 Q. WHEN YOU WORKED FOR THE STUDIO 54 BOOM BOOM ROOM,
20 DID YOU EVER SIGN A CONTRACT?

21 A. NO, NOT AT 54.

22 Q. OKAY. AND DID YOU EVER SIGN ANYTHING WHERE YOU
23 AGREED TO BE AN INDEPENDENT CONTRACTOR AT THE STUDIO
24 54 BOOM BOOM ROOM?

25 A. NO, SIR, I DIDN'T.

1 Q. WHO MADE THE RULES?

2 A. THE MANAGER.

3 Q. ALL RIGHT. NOW, THEY SEARCHED YOU BEFORE YOU WENT
4 IN, IS THAT RIGHT?

5 A. YES, SIR.

6 Q. DID YOU CONSIDER THAT TO BE CONTROLLING YOU?

7 A. YEAH, 'CAUSE IF I WANTED TO I COULD HAVE BEEN NASTY
8 AND NOT WANTED THEM TO SEARCH MY BAG, YOU KNOW. BUT
9 THEY HAVE TO. IT'S MANDATORY.

10 Q. ALL RIGHT. HOW MUCH WAS THE TIP-OUT MONEY THAT THE
11 MANAGEMENT GOT?

12 A. SEVENTY DOLLARS.

13 Q. AND WHAT TIME DID YOU GET THERE THAT NIGHT?

14 A. IT WAS LIKE 11, 11:30.

15 Q. THERE WERE SOME QUESTIONS ASKED ABOUT YOUR ABILITY
16 TO DO YOUR JOB WITHOUT THE CLUB'S EQUIPMENT?

17 A. CORRECT.

18 Q. CAN YOU DANCE WITHOUT MUSIC?

19 A. NO. YOU'D LOOK CRAZY.

20 Q. IS THE ALCOHOL, BAR, AND ALL THAT IMPORTANT TO YOU
21 GETTING YOUR JOB AND GETTING TIPS?

22 A. YES, SIR, 'CAUSE THE DRUNKER THEY GET, THE MORE
23 MONEY THEY SPEND.

24 Q. AND WHO PROVIDES ALL OF THE -- EVERY -- THE BAR,
25 FROM THE GLASSES TO THE ALCOHOL TO ICE, ALL THE

1 REST?

2 A. THE OWNERS.

3 Q. ALL RIGHT. WHEN YOU ARE REQUESTED, DO YOU GO AND
4 GET DRINKS FROM THE BAR?

5 A. YES.

6 Q. NOW, YOU SHARE THE TIP-OUT MONEY WITH THE
7 MANAGEMENT; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. WHAT OTHER MONIES ARE YOU REQUIRED TO SHARE WITH THE
10 MANAGEMENT?

11 A. V.I.P. DANCES, IF YOU GET FINED, AND THAT'S ABOUT
12 IT.

13 Q. CAN YOU, IN YOUR OWN WORDS, EXPLAIN TO THE
14 COMMISSIONER HOW THEIR RULES AND CONTROLS DICTATE
15 WHAT YOU HAVE TO DO WHEN YOU GET THERE AND IF YOU
16 DON'T DO WHAT THEY SAY, WHAT HAPPENS.

17 A. WELL, IF YOU DON'T DO WHAT THEY SAY, THEN YOU GET
18 FINED. IF YOU DON'T PAY THE FINE, THEN YOU ARE
19 FIRED. OR IF -- IT DEPENDS ON TO WHAT EXTREME THE
20 -- WHAT YOU DID, YOU KNOW. IT DEPENDS ON WHAT YOU
21 DID, 'CAUSE YOU CAN BE FIRED RIGHT THERE ON THE
22 SPOT. LIKE IF YOU GET CAUGHT HAVING SEX IN THE
23 CLUB, THEN YOU'RE AUTOMATICALLY FIRED. LIKE
24 FIGHTING, YOU'RE AUTOMATICALLY FIRED, CAN'T WORK
25 BACK AT THE CLUB.

1 Q. WHEN YOU STARTED TO WORK THERE, WHO DECIDES WHEN THE
2 CLUB'S OPEN AND WHEN IT ENDS?

3 A. THE OWNERS.

4 Q. AND DO YOU HAVE TO FOLLOW THEIR TIME FRAMES?

5 A. YES, BUT THEN AGAIN NO. YOU HAVE TO BE THERE FROM A
6 CERTAIN TIME. LIKE DEPENDING ON WHAT TIME YOU GET
7 THERE, YOU CAN'T LEAVE BEFORE A CERTAIN TIME. LIKE
8 IF YOU GET THERE EARLIER, YOU CAN LEAVE AFTER LIKE
9 ONE OR TWO. IF YOU GET THERE KIND OF LATE, LIKE I
10 DID, YOU CAN'T LEAVE UNTIL LIKE FIVE OR SIX, WHEN
11 THE CLUB CLOSES.

12 Q. AND WHEN YOU SAY YOU CAN'T LEAVE, WHO TELLS YOU YOU
13 CAN'T LEAVE?

14 A. THE MANAGERS. IF YOU TRY TO LEAVE OR IF YOU DO
15 LEAVE, THEN YOU'RE FINED OR EITHER YOU'RE FIRED.

16 Q. WHAT ARE SOME OTHER REASONS THAT YOU CAN BE FIRED?

17 A. FIGHTING, ARGUING, HYGIENE, NOT PAYING ---

18 Q. SO MANAGEMENT IS AT LIBERTY TO JUDGE WHETHER THEY --
19 JUDGE WHAT THEY THINK ABOUT YOUR HYGIENE AND CAN LET
20 YOU GO FOR THAT REASON ALONE?

21 A. OH, YEAH. OR YOU MIGHT NOT EVEN GET HIRED. LIKE
22 THEY'LL LOOK AT YOUR BODY, AND IF YOU DON'T HAVE THE
23 RIGHT BODY STRUCTURE OR SOMETHING THAT THEY'RE
24 LOOKING FOR, THEN THEY'LL TELL YOU YOU CAN'T WORK
25 THERE, YOU KNOW.

1 Q. OKAY. AND WHEN YOU ARE THERE BECAUSE THEY HAVE
2 HIRED YOU, WHAT RIGHTS DO THEY HAVE IF THEY'RE NOT
3 HAPPY WITH THE WAY YOU'RE PERFORMING?

4 A. THEN THEY CAN FIRE YOU.

5 Q. AND WHAT ABOUT STAGE ROTATION; HOW DOES THAT WORK?
6 WHO SETS THE TIMING AND SUMMONS YOU TO THE STAGE?

7 A. THE D.J. AND THE HYPE MAN. AND STAGE ROTATION IS
8 WHERE IT'S A LIST OF GIRLS. EVERYBODY HAS A
9 DIFFERENT TURN TO GO ON STAGE. IF YOU MISS STAGE
10 ROTATION, THEN YOU ARE FINED. IF YOU DON'T PAY THAT
11 FINE, THEN YOU ARE FIRED. BUT YOU HAVE TO --, IT'S
12 MANDATORY THAT YOU GO ON STAGE.

13 Q. NOW, THERE WERE SOME QUESTIONS ABOUT WHERE IF YOU
14 HAD A LEGITIMATE EXCUSE, YOU GOT SICK OR SOMETHING,
15 WOULD THAT GET YOU OUT OF THE STAGE ROTATION?

16 A. ACTUALLY, IT REALLY ALL DEPENDS ON HOW GOOD YOU ARE
17 WITH MANAGEMENT, YOU KNOW, 'CAUSE SOMETIMES, STUFF
18 LIKE THAT, YOU COULD TALK TO THEM AND THEY'LL LET
19 YOU SLIDE. BUT SOMETIMES THEY MIGHT NOT, AND IF YOU
20 MISS STAGE ROTATION, YOU STILL DO GET FINED.

21 Q. WHO CONTROLS WHETHER THEY ARE LENIENT OR STRICT WITH
22 YOU?

23 A. THE MANAGERS.

24 Q. HAVE YOU BEEN DOING THIS SINCE YOU WERE 18 YEARS
25 OLD?

1 A. YES, SIR.

2 Q. HAVE YOU EVER, AT YOUR YOUNG AGE, WORKING FOR STUDIO
3 54, EVER HAD A CHANCE TO SET THE RULES OR CHANGE THE
4 RULES?

5 A. NO.

6 Q. DO YOU DO WHAT YOU'RE TOLD?

7 A. YES, SIR.

8 Q. NOW, WHAT ARE THINGS IN TERMS OF EQUIPMENT THAT THE
9 CLUB PROVIDES TO YOU TO USE IN YOUR DANCING?

10 A. THEY PROVIDE TOWELS, ALCOHOL, THE STAGE, POLE,
11 MUSIC, I MEAN, ALCOHOL IF YOU DRINK, THE CHAIRS, THE
12 TABLES. I MEAN, THEY PROVIDE EVERYTHING JUST ABOUT
13 EXCEPT OUR COSTUME. AND THEY ALSO DO HAVE PEOPLE IN
14 THERE THAT ARE SELLING OUTFITS. SO...

15 Q. NOW, AFTER YOU WERE SEARCHED, YOU WENT INTO THE
16 MANAGERS OFFICE. WERE YOU ASSIGNED A LOCKER?

17 A. NOT ACTUALLY ASSIGNED. IT GOES BY IF YOU GET THERE
18 FIRST, OR WHOEVER GETS THERE FIRST OR WHATEVER, YOU
19 GET TO CHOOSE YOUR LOCKER.

20 Q. WHO PROVIDES THE LOCKERS?

21 A. THE CLUB DOES.

22 Q. ARE THE FURNISHINGS NECESSARY FOR YOU TO DO YOUR
23 DANCE THE WAY THE INDUSTRY REQUIRES YOU TO DO THE
24 DANCE?

25 A. YES. I FEEL LIKE WITHOUT THE CHAIRS THEN -- I MEAN,

1 YOU COULD DANCE STANDING UP, BUT IT WOULDN'T BE --
2 IT WOULDN'T BE THE SAME. LIKE WITHOUT THE CHAIR,
3 THEN YOU CAN'T GIVE A PROPER DANCE.

4 Q. WHAT ABOUT THE TABLES? WHAT IS A TABLE DANCE?

5 A. A TABLE DANCE IS WHERE YOU'RE ON THE FLOOR AND
6 YOU'RE DANCING FOR THE CUSTOMER. I MEAN,
7 PERSONALLY, I USE THE TABLE AS A PROP, I GUESS YOU
8 COULD SAY.

9 Q. DO ALL THE GIRLS DO THAT?

10 A. YEAH. WE USE CHAIRS AND TABLES.

11 Q. IN ORDER TO DO A TABLE DANCE, DO YOU HAVE TO HAVE A
12 TABLE?

13 A. YES.

14 Q. LET ME ASK YOU IF YOU COULD EXPLAIN TO THE
15 COMMISSIONER ABOUT THIS RULE THAT IF YOU WERE TO
16 TAKE OFF YOUR BOTTOM, WHAT HAPPENS?

17 A. IF YOU TAKE OFF YOUR BOTTOM, THEN YOU GET FINED, AND
18 THAT FINE IS \$25. IF YOU DON'T PAY THAT FINE, THEN
19 YOU ARE FIRED.

20 Q. ALL RIGHT. SO, YOU CAN BE FINED FOR TAKING OFF YOUR
21 BOTTOM, BUT YOU STILL GET TO STAY THERE PROVIDED YOU
22 GIVE MANAGEMENT MONEY?

23 A. MONEY, CORRECT.

24 Q. BUT IF YOU DON'T GIVE THE MANAGEMENT MONEY, YOU'RE
25 NOT BEING FIRED BECAUSE YOU TOOK OFF YOUR BOTTOM;

1 YOU'RE BEING FIRED BECAUSE YOU DIDN'T GIVE THEM THE
2 MONEY?

3 A. MONEY, CORRECT.

4 Q. ARE THERE SOUND SYSTEMS?

5 A. YES, SIR.

6 Q. OKAY. SO THEN THERE'S MICROPHONES AND SPEAKERS AND
7 ALL THAT? IN ORDER FOR YOU TO GET UP ON THE STAGE,
8 DOES IT NEED TO HAVE TO BE BROADCAST FOR YOU TO GET
9 UP THERE?

10 A. YES, SIR.

11 Q. AND THEN AGAIN IF YOU DON'T GET UP WHEN YOU'RE
12 CALLED, WHAT HAPPENS?

13 A. THEN YOU GET FINED.

14 Q. AND THE FINE MONEY GOES TO WHO?

15 A. THE MANAGER.

16 Q. AND THEY PROVIDE ALL THE MUSIC?

17 A. YES, THEY DO.

18 Q. NOW, IF YOU'LL BRIEFLY TELL US WHAT HAPPENED ON THIS
19 NIGHT YOU GOT SHOT. YOU SAID YOU ARRIVED ABOUT WHAT
20 TIME?

21 A. ELEVEN, ELEVEN-THIRTY. AND SECURITY CHECKED MY
22 BAGS, YOU KNOW, THOROUGHLY CHECKED MY SISTER'S, AND
23 MY SISTER'S FRIEND GIRL WAS WITH US. AND THEY
24 DIRECTED ME TO CRYSTAL TAYLOR. I SPOKE WITH CRYSTAL
25 TAYLOR. SHE ASKED ME FOR MY I.D., ASKED ME FOR MY

1 TIP-OUT MONEY. I PAID HER MY 70 BUCKS, AND SHE
2 DIRECTED ME TO THE DRESSING ROOM, YOU KNOW, SHOWED
3 ME EVERYTHING AROUND. AND GOT DRESSED, WENT OUT TO
4 WORK. AND, SAY, LIKE 2:30, 3:00, THEY TURNED OFF
5 THE MUSIC, CUT ON THE LIGHTS 'CAUSE THERE WAS AN
6 ALTERCATION IN THE CLUB BETWEEN TWO GUYS OR
7 WHATEVER, AND THEN NEXT THING I KNOW THEY TURNED
8 BACK ON THE MUSIC AND ALL I HEARD WAS GUNSHOTS, AND,
9 I MEAN, I JUST -- I DON'T EVEN KNOW HOW TO EXPLAIN
10 IT. I JUST GOT HIT.

11 Q. DID YOU END UP AT RICHLAND MEMORIAL HOSPITAL? I
12 BELIEVE IT'S CALLED PALMETTO NOW.

13 A. YEAH, PALMETTO RICHLAND.

14 Q. ALL RIGHT. AND DID YOU -- THE MEDICAL RECORDS
15 INDICATE THAT THE GUNSHOT CAUSED DAMAGE TO YOUR
16 INTESTINES, IS THAT RIGHT?

17 A. YES, SIR.

18 Q. YOUR LIVER?

19 A. YES, SIR.

20 Q. YOUR PANCREAS?

21 A. YES, SIR.

22 Q. YOUR UTERUS?

23 A. YES, SIR.

24 Q. NOW, DID YOU HAVE A COMPLETE LOSS OF A KIDNEY?

25 A. YES, SIR.

1 Q. IT IS OUT OF YOUR BODY NOW?

2 A. REMOVED, FULLY GONE.

3 Q. AND DO YOU HAVE SUBSTANTIAL SCARRING AS A RESULT OF
4 ALL THIS?

5 A. YES, SIR.

6 Q. AND DO THESE PICTURES ACCURATELY REFLECT THE
7 SCARRING AS A RESULT OF THIS ACCIDENT?

8 A. YES, SIR.

9 BY MR. BURNETTE:

10 YOUR HONOR, WE'D OFFER A TOTAL OF EIGHT
11 PICTURES.

12 BY THE COMMISSIONER:

13 WE'LL MARK THAT AS ONE EXHIBIT, CLAIMANT'S TWO.

14 (OFF THE RECORD)

15 (COURT REPORTER MARKS PHOTOGRAPHS CLAIMANT'S EXHIBIT
16 NUMBER TWO.)

17 BY THE COMMISSIONER:

18 WE'RE BACK ON THE RECORD.

19 DIRECT EXAMINATION RESUMED BY MR. BURNETTE:

20 Q. LEANDRA, YOU BEING 19 YEARS OLD, GOING TO WORK AT
21 THIS STUDIO 54, WHO DO YOU FEEL CONTROLLED ALL THE
22 RULES?

23 A. THE MANAGERS.

24 Q. AND CONTROLLED HOW MUCH MONEY YOU COULD MAKE AND HOW
25 THE MONEY WAS DIVIDED?

- 1 A. THE MANAGERS.
- 2 Q. AND IN YOUR ABILITY TO PERFORM IN A PROFESSIONAL
- 3 MANAGER ON STAGE WITH ALL THE APPARATUS, OTHER THAN
- 4 THE COSTUME WHO PROVIDED ALL THE EQUIPMENT?
- 5 A. THE MANAGERS.
- 6 Q. AND IF YOU EVER DIDN'T DO WHAT YOU WERE TOLD TO DO,
- 7 WERE YOU EITHER FINED OR FIRED?
- 8 A. YES, SIR.
- 9 Q. AND DID THEY HAVE THE ABSOLUTE RIGHT TO DO THAT?
- 10 A. YES, SIR.
- 11 Q. AND EVEN THOUGH YOU HAD ONLY DANCED AT THIS CLUB TWO
- 12 OR THREE TIMES, DID YOU FEEL LIKE YOU WERE SUBJECT
- 13 TO ALL THOSE THINGS THAT YOU'VE TALKED ABOUT?
- 14 A. YES, SIR.
- 15 Q. YOU ARE ASKING FOR TEMPORARY TOTAL FROM THE DATE OF
- 16 THE ACCIDENT UNTIL NOW, IS THAT RIGHT?
- 17 A. YES, SIR.
- 18 Q. AND CONTINUING. NOW, I WANT TO ASK YOU THIS: DID
- 19 THE MANAGER, CRYSTAL TAYLOR, TELL YOU WHO WAS GOING
- 20 TO PAY THESE BILLS?
- 21 A. YES, SHE DID. SHE SAID THAT THE CLUB WOULD.
- 22 Q. THAT THE CLUB WOULD PAY YOUR BILLS?
- 23 A. THE CLUB WOULD TAKE CARE OF THE EXPENSES.
- 24 Q. AND HAVE THEY?
- 25 A. NO, THEY HAVE NOT.

60

1 Q. AND YOU'RE CLAIMING THAT -- WHEN IS THE LAST TIME
2 YOU WENT TO THE DOCTOR?

3 A. YESTERDAY.

4 Q. HAVE YOU BEEN RELEASED FROM THE DOCTOR?

5 A. NO, SIR.

6 Q. HAVE YOU WORKED ANYWHERE SINCE THIS ACCIDENT?

7 A. NO, SIR.

8 Q. ARE YOU ABLE TO WORK IN THIS BUSINESS WITH THIS
9 SCARRING THAT YOU'VE GOT THAT ARE SHOWN IN THESE
10 PICTURES?

11 A. NO, SIR. IT WOULD -- I WOULDN'T MAKE NOWHERE NEAR
12 THE SAME MONEY 'CAUSE THIS SCARRED ME, I MEAN, FOR
13 LIFE.

14 Q. AND EVEN THOUGH THE DOCTOR HASN'T RELEASED YOU, DO
15 YOU FEEL THAT YOU'RE TOTALLY DISABLED ---

16 A. YES, SIR.

17 Q. --- AS A RESULT OF THIS ACCIDENT?

18 A. YES, SIR.

19 BY MR. BURNETTE:

20 THAT'S ALL I HAVE, COMMISSIONER.

21 BY THE COMMISSIONER:

22 MS. GLOVER?

23 CROSS EXAMINATION BY MS. GLOVER:

24 Q. OKAY. WHAT IS YOUR CURRENT ADDRESS?

25 A. 1002 STATE STREET, CHARLOTTE, NORTH CAROLINA.

1 Q. AND DO YOU LIVE AT THAT ADDRESS WITH ANYONE?

2 A. YES?

3 Q. WHO?

4 A. MY SISTER.

5 Q. AND HAVE YOU WORKED ANYWHERE SINCE THIS ACCIDENT
6 OCCURRED, SINCE JULY 23RD OF '08?

7 A. NO, MA'AM.

8 Q. AND WHAT DOCTOR DID YOU SEE YESTERDAY?

9 A. DR. LE-BLISS, MARY LE-BLISS.

10 Q. AND WHAT KIND OF DOCTOR IS SHE?

11 A. SHE IS A -- SHE'S MY PHYSICIAN.

12 Q. IS SHE YOUR FAMILY DOCTOR?

13 A. NO, SHE'S MINE, MY DOCTOR.

14 Q. OKAY. BUT WHAT IS HER PRACTICE SPECIALITY? IS IT
15 JUST FAMILY MEDICINE?

16 A. NO. SHE PRACTICES MORE THAN ONE THING. IT'S LIKE A
17 MEDICAL CENTER.

18 Q. OKAY. SO IT'S ---

19 A. AND I GO THERE.

20 Q. IT'S JUST A GENERAL MEDICAL CENTER? SHE'S NOT LIKE
21 A HEART DOCTOR OR ANYTHING LIKE THAT, IS SHE?

22 A. NO. BUT SHE DOES HAVE LIKE CLINICS INSIDE OF HER
23 DOCTOR, AND YOU GO THERE TO HAVE DIFFERENT TESTS
24 DONE AND STUFF.

25 Q. WHAT IS SHE TREATING YOU FOR SPECIFICALLY?

1 A. SHE'S TREATING ME FOR -- SHE GIVES ME MY PAIN
2 MEDICINE FOR MY BACK AND STUFF. SHE SENT ME TO A
3 GASTRO DOCTOR, UROLOGY DOCTOR. I STILL GO THERE.
4 BASICALLY EVERYTHING.

5 Q. SO BASICALLY SHE'S YOUR FAMILY DOCTOR AND SHE REFERS
6 YOU TO OTHER SPECIALISTS; IS THAT WHAT YOU'RE
7 SAYING?

8 A. YES, BECAUSE THAT'S WHAT SHE HAS TO DO.

9 Q. OKAY. AND SO WHAT TREATMENT DID SHE PROVIDE FOR YOU
10 YESTERDAY?

11 A. I HAD AN ULTRASOUND DONE TO MAKE SURE EVERYTHING WAS
12 GOING ALL RIGHT, AND SHE TOLD ME THAT THERE'S A
13 POSSIBILITY THAT I'M GONNA HAVE TO HAVE ANOTHER
14 SURGERY TO HAVE THE SCAR TISSUE REMOVED BECAUSE IT'S
15 CLUMPED UP RIGHT HERE FROM HAVING -- THEM HAVING TO
16 GO IN HERE TWICE.

17 Q. OKAY. NOW, WHAT KIND OF MEDICATION ARE YOU ON?

18 A. OXYCONTIN. I DON'T KNOW THE NAMES OFF THE BAT. I'M
19 ON TWO ANTIBIOTICS.

20 Q. IS DR. LE-BLISS BASICALLY MANAGING ALL OF THAT
21 MEDICATION?

22 A. YES, AND MY OTHER DOCTORS THAT I GO TO, THE UROLOGY
23 CLINIC AND ---

24 Q. DO THEY GIVE YOU MEDICATION AS WELL, OR DO THEY KIND
25 OF RELY ON DR. LE-BLISS TO MAKE SURE THAT YOU AREN'T

1 GETTING, I GUESS, MORE MEDICATION THAN YOU NEED OR
2 SOMETHING THAT'S NOT GOING TO INTERACT WITH EACH
3 OTHER?

4 A. RIGHT. THEY COMMUNICATE. THEY DO THAT. THEY
5 HANDLE THAT.

6 Q. SO BASICALLY DR. LE-BLISS IS KIND OF HANDLING ALL OF
7 THAT? OKAY. AND HAS THE STATE OF SOUTH CAROLINA
8 GIVEN YOU ANY MONEY BECAUSE OF YOUR BEING A CRIME
9 VICTIM? DID YOU RECEIVE MONEY FROM THE STATE OFFICE
10 OF VICTIM ASSISTANCE?

11 A. CRIME VICTIMS? YES, I DID..

12 Q. OKAY. IS IT CORRECT YOU RECEIVED AROUND \$17,000?

13 A. I'M NOT SURE OF THE AMOUNT.

14 Q. DID YOU GET THAT MONEY PERSONALLY, OR DID IT GO
15 TOWARD PAYING ANY OF YOUR MEDICAL BILLS?

16 A. IT WENT TO PAYING SOME OF THE MEDICAL BILLS, SOME OF
17 THEM.

18 Q. LET'S GO BACK TO ACTUAL WORK. AND YOU INDICATED
19 THAT YOU WORKED AT THIS PARTICULAR CLUB HERE IN
20 COLUMBIA. WERE YOU LIVING IN COLUMBIA AT THE TIME
21 THIS HAPPENED?

22 A. NO.

23 Q. YOU WERE LIVING IN CHARLOTTE?

24 A. MM-HMM. (AFFIRMATIVE RESPONSE)

25 Q. NOW, ARE YOU ORIGINALLY FROM CHARLOTTE OR GASTONIA?

1 A. CHARLOTTE.

2 Q. HAVE YOU EVER LIVED IN GASTONIA?

3 A. YES.

4 Q. AND YOU SAID THAT YOU WORKED AT THIS PARTICULAR CLUB

5 HERE IN COLUMBIA TWO TO THREE TIMES?

6 A. YES, MA'AM.

7 Q. TELL ME THE DATES BESIDES THE DATE OF THE -- OKAY.

8 WE KNOW THE DATE OF ACCIDENT WAS JULY 23RD OF '08.

9 WHAT ARE THE OTHER TWO TIMES OR THE OTHER ONE TIME

10 YOU WORKED AT THIS CLUB?

11 A. I MEAN, REALLY YOU DON'T KEEP UP WITH STUFF LIKE

12 THAT, YOU KNOW. YOU DON'T THINK THAT YOU WILL HAVE

13 TO REMEMBER DATES THAT YOU WORKED.

14 Q. WAS IT IN 2008?

15 A. YEAH.

16 Q. WAS IT THE SAME YEAR?

17 A. DEFINITELY IN 2008, YEAH.

18 Q. SO, DID YOU EVER WORK AT THE CLUB IN 2007 THAT YOU

19 RECALL?

20 A. IT MIGHT HAVE BEEN 2007 OR 2008; I'M NOT FOR SURE.

21 Q. AND WHAT IS YOUR DATE OF BIRTH?

22 A. 11/16/88.

23 Q. AND YOU WERE 17 IN 2007, 18. OKAY. NOW, ON THE

24 OCCASION -- WHEN YOU WENT TO WORK AT THE CLUB ON

25 JULY 23RD, THAT WAS AT LEAST YOUR SECOND TIME

1 WORKING THERE, YOUR SECOND OR THIRD TIME?

2 A. YES, MA'AM.

3 Q. OKAY. THE TIME BEFORE THAT, DO YOU RECALL WHAT TIME

4 YOU ARRIVED TO WORK?

5 A. IT WAS -- IT WAS AROUND THE SAME TIME.

6 Q. AROUND THE SAME TIME, 11 OR 11:30?

7 A. MM-HMM. (AFFIRMATIVE RESPONSE)

8 Q. AND DO YOU RECALL PAYING THE SAME TIP-OUT FEE,

9 ABOUT, YOU SAID, ---

10 A. SEVENTY.

11 Q. --- \$70?

12 A. YEAH. OR I THINK WE EVEN HAD TO PAY 80, SO IT MIGHT

13 HAVE BEEN LATER.

14 Q. SO, BASICALLY, THE LATER -- AS MS. COOPER SAID, THE

15 LATER YOU GOT THERE, THE MORE YOU HAD TO PAY IN TIP-

16 OUT?

17 A. MORE, YEAH.

18 Q. AND DO YOU RECALL HOW MUCH MONEY YOU MADE THAT

19 NIGHT?

20 A. I MADE 357. I REMEMBER 'CAUSE MY SISTER TOLD ME.

21 Q. SO YOU MADE 357 ON THAT OCCASION?

22 A. AND THAT WASN'T EVEN THE END OF THE NIGHT.

23 Q. NO. OKAY. JUST SO WE'RE SURE, THIS ISN'T THE --

24 THIS 357 THAT YOU EARNED WAS NOT FOR THE DATE OF THE

25 ACCIDENT?

66

1 A. YES.

2 Q. SO YOU MADE \$357 THAT NIGHT, OKAY. DO YOU RECALL
3 HOW MUCH YOU MADE THE TIMES BEFORE ---

4 A. OH, BEFORE?

5 Q. YES.

6 A. YEAH, WE DID -- WE DID GOOD. WE MADE LIKE 500. IT
7 WAS ME AND MY FRIENDS.

8 Q. OKAY. SO IF YOU WORKED THERE ON TWO OCCASIONS
9 BEFORE, YOU SAY YOU BELIEVE THAT YOU MADE \$500?

10 A. I DON'T BELIEVE; I KNOW.

11 Q. ON THOSE TWO OCCASIONS -- ON THOSE ONE OR TWO
12 OCCASIONS, YOU BELIEVE THAT YOU EARNED \$500?

13 A. YES, MA'AM.

14 Q. BUT THE NIGHT THAT YOU WERE SHOT, THAT WAS THE LAST
15 TIME YOU WORKED THERE, CORRECT?

16 A. CORRECT.

17 Q. AND CAN YOU STATE FOR SURE WHETHER OR NOT IT WAS ONE
18 OR TWO TIMES BEFORE THAT YOU WORKED THERE?

19 A. NO, I CAN'T.

20 Q. NOW, AS FAR AS DOING V.I.P. DANCES; YOU ONLY GOT TO
21 DO A V.I.P. DANCE IF THE PATRON REQUESTED THAT YOU
22 DANCE, CORRECT?

23 A. CORRECT. BUT THEY REQUIRE YOU TO REALLY DO V.I.P.
24 DANCES. THEY REQUIRE THAT YOU STRIVE TO GET A
25 V.I.P. DANCE.

- 1 Q. OKAY. BUT IF YOU DIDN'T GET A V.I.P. DANCE, DID YOU
2 HAVE TO -- YOU DIDN'T GET PENALIZED FOR THAT, DID
3 YOU?
- 4 A. NO.
- 5 Q. NOW, HOW DIFFERENT ARE THE TABLE DANCES FROM THE
6 V.I.P. DANCES?
- 7 A. THEY'RE DIFFERENT. YOU GET MORE INTERACTION IN THE
8 V.I.P. I MEAN, WE'RE MORE, YOU KNOW, CLOSE THAN YOU
9 WOULD ON A TABLE DANCE.
- 10 Q. AND TABLE DANCES, ANYBODY CAN GET A TABLE DANCE?
11 YOU'RE JUST WORKING THE FLOOR, AND THEN YOU DO A
12 TABLE DANCE, AND THEN YOU GET PAID FOR THAT?
- 13 A. MM-HMM. (AFFIRMATIVE RESPONSE)
- 14 Q. OKAY. YOU'RE GOING TO HAVE ANSWER ---
- 15 A. OH, YES.
- 16 Q. --- BECAUSE SHE'S TAKING DOWN EVERY WORD THAT WE'RE
17 SAYING. OKAY. AND THEN WHEN YOU WORKED ON THE
18 STAGE, WHEN YOU WERE ON THE STAGE BY YOURSELF, THE
19 MONEY THAT YOU EARNED FROM WORKING ON THE STAGE, YOU
20 GOT TO KEEP THAT MONEY, CORRECT?
- 21 A. CORRECT.
- 22 Q. AND DID YOU GET TO KEEP THE MONEY THAT YOU EARNED
23 FROM THE TABLE DANCES?
- 24 A. YES.
- 25 Q. SO, THE ONLY MONEY THAT YOU HAD TO GIVE THE CLUB WAS

68

1 YOU HAD TO GIVE THE V.I.P. -- YOU HAD TO GIVE THEM A
2 CUT OF THE V.I.P. DANCE?

3 A. YES, MA'AM.

4 Q. AND YOU HAD TO DO THE TIP-OUT?

5 A. YES, MA'AM.

6 Q. OKAY. NOW, BEFORE YOU CAME HERE TO COLUMBIA TO
7 WORK, WHERE HAD YOU WORKED BEFORE?

8 A. CLUB NIKKI'S.

9 Q. WHERE IS THAT?

10 A. IN CHARLOTTE, NORTH CAROLINA.

11 Q. AND HOW OFTEN WERE YOU WORKING THERE?

12 A. WELL, SEE, WE TRAVEL. SO, LIKE MAYBE THREE TIMES,
13 FOUR TIMES OUT THE WEEK.

14 Q. YOU WERE WORKING AT CLUB NIKKI'S THREE OR FOUR TIMES
15 OUT OF THE WEEK?

16 A. YEAH.

17 Q. NOW, YOU TESTIFIED THAT YOU WORKED AN AVERAGE OF
18 FIVE TO SIX, MAYBE SEVEN DAYS?

19 A. YEAH.

20 Q. BUT THAT WASN'T AT THIS PARTICULAR CLUB HERE IN
21 COLUMBIA, CORRECT?

22 A. CORRECT.

23 Q. YOU ONLY WORKED AT THIS CLUB TWO OR THREE TIMES
24 TOTAL?

25 A. CORRECT.

- 1 Q. OKAY. AND THEN THE MONEY THAT YOU EARNED, YOU MADE
2 A TOTAL FROM WORKING OFF OF THIS CLUB HERE IN
3 COLUMBIA, YOU ONLY MADE \$1,357; IS THAT CORRECT?
- 4 A. YES, MA'AM.
- 5 Q. NOW, YOU INDICATED THAT YOU CAN'T DANCE WITHOUT
6 MUSIC. I KNOW IN A CLUB THERE IS MUSIC, BUT YOU CAN
7 DANCE WITHOUT MUSIC, CAN'T YOU?
- 8 A. I MEAN, DON'T YOU THINK YOU WOULD LOOK CRAZY?
- 9 Q. NOT NECESSARILY. I MEAN, YOU COULD THINK OF A SONG
10 IN YOUR HEAD AND DANCE?
- 11 A. I MEAN, MY PERSONAL OPINION, I DON'T THINK YOU CAN
12 DANCE WITHOUT MUSIC.
- 13 Q. OKAY. AND YOU INDICATED THAT YOU DON'T THINK --
14 THAT YOU USE THE TABLES AND THE CHAIRS AS PROPS TO
15 DANCE, I GUESS PRIMARILY WHEN YOU WERE DOING TABLE
16 DANCES?
- 17 A. YES.
- 18 Q. BUT DID YOU NEED THOSE TO DO YOUR DANCING?
- 19 A. I MEAN, YES, FOR STABILITY, YOU KNOW. I MEAN, WITH
20 OUR JOB, I MEAN, YOU HAVE TO HAVE STABILITY. I
21 MEAN, YOU LEAN BACK ON SOMETHING. YOU HAVE TO HAVE
22 YOUR HAND ON THE TABLE OR ON THE SOFA.
- 23 Q. AND YOU TALKED ABOUT DIFFERENT WAYS THAT YOU COULD
24 GET FINED. WERE YOU EVER FINED ON THOSE THREE
25 OCCASIONS THAT YOU WORKED FOR THIS CLUB IN COLUMBIA?

1 A. NO, BECAUSE I FOLLOWED THE RULES.

2 Q. SO, BASICALLY, WHETHER OR NOT YOU GOT FINED WAS
3 DEPENDENT ON YOUR BEHAVIOR?

4 A. WELL ---

5 Q. IF YOU BROKE THE RULE, THEN YOU WOULD GET FINED?

6 A. CORRECT.

7 Q. BUT YOU DIDN'T BREAK ANY RULES, SO YOU DIDN'T GET
8 FINED?

9 A. CORRECT.

10 Q. DID YOU FILL OUT ANY SORT OF EMPLOYMENT APPLICATION
11 WHEN YOU CAME TO WORK AT THIS CLUB HERE IN COLUMBIA?

12 A. NO.

13 Q. DID YOU JUST PRESENT YOUR I.D., THEY GAVE YOU A RULE
14 SHEET, AND YOU PAID YOUR TIP-OUT FEET?

15 A. RIGHT.

16 Q. YOU DID THAT ON ALL THREE OCCASIONS THAT YOU WORKED
17 AT THIS CLUB?

18 A. YES, BUT YOU HAVE TO SIGN YOUR NAME ON SOMETHING,
19 LIKE THE RULE SHEET.

20 Q. OKAY. THAT'S JUST BASICALLY STATING THAT YOU
21 UNDERSTAND THE RULES AND THAT YOU WILL COMPLY WITH
22 THE RULES?

23 A. CORRECT.

24 Q. HOW DO YOU SPEND YOUR DAYS?

25 A. HOW DO I WHAT?

- 1 Q. SPEND YOUR DAYS.
- 2 A. SPEND MY DAYS?
- 3 Q. YES. WHAT DO YOU DO ON AN AVERAGE DAY?
- 4 A. NOTHING MUCH REALLY. STAY AT HOME ON THE LAPTOP. I
- 5 MEAN, REALLY NOTHING. I MEAN, I TAKE CARE OF KIDS
- 6 SOMETIMES, BABYSITTING.
- 7 Q. AND DO YOU EARN ANY MONEY FROM BABYSITTING?
- 8 A. NO.
- 9 Q. WHOSE CHILDREN ARE YOU TAKING OF?
- 10 A. MY GOD -- IT'S MY GODDAUGHTER.
- 11 Q. AND HOW OLD IS SHE?
- 12 A. ONE.
- 13 Q. AND HOW LONG HAVE YOU BEEN TAKING CARE OF HER?
- 14 A. I DON'T TAKE CARE OF HER. ONLY LIKE WHEN MY BEST
- 15 FRIEND NEEDS TO GO TO DO SOMETHING OR, YOU KNOW...
- 16 Q. AND WHAT IS YOUR EDUCATIONAL BACKGROUND?
- 17 A. I WENT TO WEST CHARLOTTE SENIOR HIGH SCHOOL. I
- 18 DROPPED OUT IN THE 12TH GRADE, BUT I WENT THROUGH A
- 19 PROGRAM THAT HELPS YOU GET YOUR HIGH SCHOOL DIPLOMA.
- 20 SO DID GET MY HIGH SCHOOL DIPLOMA.
- 21 Q. AND HAVE YOU TAKEN ANY OTHER COURSES LIKE AT A
- 22 TECHNICAL SCHOOL OR GOTTEN ANY CERTIFICATES OR
- 23 ANYTHING LIKE THAT?
- 24 A. NO. ACTUALLY, I'M STARTING CLASS IN AUGUST AT
- 25 CENTRAL PIEDMONT ---

1 Q. AND WHAT WILL YOU STUDY?

2 A. --- FOR REGISTERED NURSE.

3 Q. AND HOW LONG IS THAT PROGRAM?

4 A. THE NURSING PROGRAM?

5 Q. YES.

6 A. IT DEPENDS ON YOU. IT COULD BE TWO TO FOUR YEARS.

7 Q. AND DO YOU FEEL THAT YOU'LL BE ABLE TO COMPLETE THAT
8 PROGRAM?

9 A. I MEAN, MENTALLY-WISE, YES, BUT I KNOW IT'S GONNA BE
10 LIKE A HIGH DEMAND OF WORK, LIKE HANDS ON, SO I'M
11 GONNA HAVE TO BE DOING A LOT OF STUFF. I MEAN, I
12 KNOW IF I WANT TO BETTER MY LIFE, I MEAN, IT'S
13 SOMETHING I HAVE TO DO.

14 Q. OKAY. DO YOU HAVE ANY PROBLEM SITTING FOR LONG
15 PERIODS OF TIME?

16 A. SITTING AND STANDING FOR A LONG PERIOD OF TIME.

17 Q. HOW LONG CAN YOU SIT BEFORE YOU START HAVING ANY
18 SORT OF DISCOMFORT?

19 A. AT LEAST LIKE TWO HOURS.

20 Q. AND WHAT ABOUT STANDING?

21 A. STANDING, NO MORE THAN PROBABLY LIKE AN HOUR.

22 Q. AND WHAT ABOUT WALKING?

23 A. WALKING, NOT TOO FAR, AND SOMETIMES I HAVE TO USE MY
24 CANE BECAUSE LIKE MY BACK WHERE I GOT HIT, THE
25 BULLET SPLATTERED AND IT MESSED UP MY SPINE A LITTLE

1 BIT. SO, SOMETIMES I HAVE PAIN, HAVE TO USE THE
2 CANE TO WALK.

3 Q. OKAY. DO YOU THINK YOU COULD WORK DOING A JOB WHERE
4 YOU WOULD BE ABLE TO SIT DOWN AND STAND UP AS YOU
5 NEEDED TO?

6 A. CAN YOU TELL ME WHAT KIND OF JOB THAT WOULD BE?

7 Q. SAY LIKE BEING A RECEPTIONIST. IF YOU HAD TO GO TO,
8 LET'S JUST SAY, AN OFFICE AND WORK AS A RECEPTIONIST
9 ANSWERING THE TELEPHONES, DO YOU THINK YOU COULD SIT
10 THERE AND ANSWER THE PHONES FOR MAYBE TWO HOURS AND
11 THEN GET UP AND STRETCH IF YOU NEEDED TO AND THEN
12 SIT BACK DOWN OR WALK AROUND? DO YOU THINK YOU
13 COULD DO THAT?

14 A. I COULD IF I WANTED TO.

15 Q. HAVE YOU LOOKED FOR ANY WORK SINCE YOU GOT HURT?

16 A. NO, ACTUALLY, NO. I'VE BEEN FOCUSING ON GETTING
17 MYSELF BACK TO NORMAL.

18 Q. HAVE ANY OF YOUR DOCTORS TOLD YOU THAT YOU CANNOT
19 WORK AT ALL?

20 A. MY -- NOT -- WELL, THE DOCTORS IN COLUMBIA TOLD ME
21 THAT I COULD NOT WORK UNTIL I WAS RELEASED FROM A
22 DOCTOR'S CARE, AND I HAVEN'T BEEN RELEASED.

23 Q. WHEN IS THE LAST TIME YOU SAW A DOCTOR HERE IN
24 COLUMBIA?

25 A. I CAME DOWN HERE 'CAUSE I HAD TO -- NOVEMBER, I

1 BELIEVE. OCTOBER OR NOVEMBER.

2 Q. AND DO YOU RECALL WHICH DOCTOR THAT WAS?

3 A. DR. BYNOE.

4 Q. DR. BYNOE?

5 A. MM-HMM (AFFIRMATIVE RESPONSE), B-Y-N-O-E.

6 Q. I'M FAMILIAR WITH DR. BYNOE. AND WHAT DID DR. BYNOE
7 DO FOR YOU?

8 A. SAVED MY LIFE.

9 Q. OKAY. I MEAN ON THIS LAST VISIT THAT YOU HAD WITH
10 HIM.

11 A. HE GAVE ME PAIN MEDICINE, CHECKED OUT MY BACK. I
12 GUESS HE DID HIS JOB, WHAT HE'S SUPPOSED TO DO.

13 Q. OKAY. AND IN REGARDS TO YOUR SAYING THAT ONCE YOU
14 GOT THERE AND IF YOU LEFT EARLY YOU GOT FINED FOR
15 LEAVING, NOW, I GUESS ONCE YOU GOT THERE AND CHECKED
16 IN, WAS IT PART OF THE RULES THAT YOU STAY A CERTAIN
17 NUMBER OF HOURS?

18 A. YEAH.

19 BY MS. GLOVER:

20 I DON'T HAVE ANY OTHER QUESTIONS.

21 BY MR. BURNETTE:

22 I DON'T HAVE ANY.

23 BY THE COMMISSIONER:

24 LET ME ASK YOU A COUPLE.

25 BY THE WITNESS:

1 YES, SIR.

2 BY THE COMMISSIONER:

3 Q. YOUR PROFESSION REALLY IS A DANCER, EXOTIC DANCER;
4 WOULD THAT BE FAIR TO SAY?

5 A. YES, SIR.

6 Q. AND YOU WERE ASKED, I BELIEVE, BY YOUR ATTORNEY THEY
7 TELL YOU HOW TO DANCE. BUT NOBODY CAN TELL YOU HOW;
8 YOU KNOW HOW TO DANCE, DON'T YOU? THAT'S HOW YOU
9 GET HIRED, IS THAT RIGHT?

10 A. YES, SIR.

11 Q. HAVE YOU EVER FILED A TAX RETURN IN YOUR LIFE?

12 A. NEVER. I COULDN'T.

13 Q. SO, WHEN YOU SAY YOU WORKED SOMEWHERE TWO OR THREE
14 TIMES, THERE ARE 52 WEEKS IN A YEAR AND MOST PEOPLE
15 TAKE A COUPLE WEEKS OFF, SO THERE ARE 50 WEEKS. SO
16 IT'S ROUGHLY 2,000 HOURS YOU CAN WORK IN A YEAR.
17 ARE YOU SAYING YOU WORKED FIVE TO SIX NIGHTS A WEEK,
18 FIFTY WEEKS?

19 A. YES. I MEAN, YES, SIR. WE -- THE MONEY IS ACTUALLY
20 ADDICTIVE HONESTLY. SO YOU WANT TO STRIVE TO GET
21 MORE, YOU KNOW, SO YOU WORK EVEN HARDER.

22 Q. ALL RIGHT. ARE TIPS MOSTLY IN ONES?

23 A. MOSTLY ONES.

24 Q. MOSTLY ONE DOLLAR BILLS?

25 A. MM-HMM. (AFFIRMATIVE RESPONSE)

1 Q. AND YOU WERE MAKING HOW MUCH A NIGHT?

2 A. THREE -- ON AN AVERAGE?

3 Q. YES.

4 A. TWO FIFTY TO THREE FIFTY A NIGHT.

5 Q. SO YOU WOULD HAVE TO HAVE 250 TO 300 ONE DOLLAR
6 BILLS HANDED TO YOU, IS THAT RIGHT?

7 A. NOT ALL ONE DOLLAR BILLS. IF YOU THINK ABOUT IT,
8 YOU DO V.I.P., TABLE DANCES ARE TEN, SO YOU -- YOU
9 MAINLY GET ONES LIKE WHEN YOU'RE ON STAGE.

10 Q. BUT YOU SAID TIPS WERE MOSTLY IN ONES. I UNDERSTAND
11 THE V.I.P. WOULDN'T TIP IN ONES. BUT IS THAT THE
12 EXCEPTION OR THE RULE, THE V.I.P.?

13 A. SIR?

14 Q. IS IT OFTEN THAT YOU GET TO DANCE V.I.P.? WOULD YOU
15 SAY MOST PEOPLE WHO DANCE, DANCE ON THE STAGE AND
16 THEY GET ONE DOLLAR TIPS?

17 A. YES.

18 Q. THAT'S MOST?

19 A. MOST.

20 Q. SO TO GET 300 BUCKS, 300 PEOPLE WOULD HAVE TO GIVE
21 YOU A ONE DOLLAR BILL, RIGHT?

22 A. NOT 300, NO. THEY CALL IT MAKE IT RAIN, WHERE THEY
23 TAKE A STACK OF 100 AND JUST THROW IT IN THE AIR
24 OVER YOU AND ---

25 Q. NOT MANY PEOPLE DO THAT, DO THEY?

- 1 A. YEAH.
- 2 Q. THEY THROW \$100 IN THE AIR?
- 3 A. A HUNDRED DOLLARS, TWO HUNDRED. I'VE DONE COUNTED A
- 4 THOUSAND ONES.
- 5 Q. SO IT'S YOUR TESTIMONY THAT YOU REALLY WORK 52 WEEKS
- 6 A YEAR, FIVE TO SIX NIGHTS A WEEK?
- 7 A. YES, SIR.
- 8 Q. AND HOW MUCH DO YOU HAVE TO TIP THE D.J.?
- 9 A. FIVE BUCKS, FIVE TO TEN BUCKS.
- 10 Q. IN A NIGHT?
- 11 A. YEAH.
- 12 Q. AND THEN EVERY NIGHT YOU HAVE TO PAY THAT FEE?
- 13 A. TIP-OUT.
- 14 Q. TIP-OUT?
- 15 A. YES, SIR.
- 16 Q. SO THAT SHAVES THAT AND THAT. WHAT ABOUT DRINKS?
- 17 YOU SAID DRINKS WERE FREE?
- 18 A. NO, NOT DRINKS. DRINKS ARE NOT FREE; YOU HAVE TO
- 19 PAY FOR IT.
- 20 Q. SO YOU HAVE TO PAY FOR YOUR DRINKS?
- 21 A. YEAH.
- 22 Q. SO WE KNOW ROUGHLY \$100 COMES OFF WHAT YOU MAKE JUST
- 23 ON THE TIP-OUT AND THE D.J., RIGHT?
- 24 A. RIGHT.
- 25 Q. TELL ME ABOUT THE MONEY BASKET. IS THAT FOR PEOPLE

1 WHO DON'T MAKE MUCH MONEY AND YOU ALL SHARE IT?

2 A. NO, NO, NO. THE ONLY WAY YOU SHARE MONEY IS IF YOU
3 GO ON STAGE TOGETHER WITH SOMEBODY. A MONEY BASKET
4 IS FOR LIKE WHEN I TOLD YOU THE DUDES THROW THE
5 MONEY IN THE AIR WITH THE HUNDREDS, AND YOU SCRAPE
6 THEM ALL UP AND YOU PUT THEM IN A MONEY BASKET
7 BECAUSE YOU GO TO THE NEXT STAGE.

8 Q. AND YOU'VE NEVER BEEN FINED, YOU SAID, RIGHT?

9 A. YES, SIR.

10 Q. DO YOU KNOW WHO OWNS, THE NAME OF THE OWNER, THE
11 ABSOLUTE OWNER OF BOOM BOOM ROOM STUDIO 54? IS IT
12 WILL THOMPSON?

13 A. WILL THOMPSON.

14 Q. IS HE STILL IN BUSINESS, OR DO YOU KNOW?

15 A. I HAVE NO IDEA. FROM LAST I HEARD THEY WERE CLOSED
16 DOWN, BUT I'M NOT FOR SURE.

17 Q. BUT HE HAD TWO HERE AND ONE IN GREENVILLE, YOU SAID?

18 A. YEAH, HE HAS THEM ALL OVER.

19 Q. WHEN YOU SAY ALL OVER, MORE THAN TWO IN COLUMBIA AND
20 ONE IN GREENVILLE?

21 A. YEAH.

22 Q. AND SINCE YOU'RE A PROFESSIONAL DANCER, COULD YOU
23 WORK ONE NIGHT THERE AND IF THERE WAS A CLUB DOWN
24 THE STREET THAT FOR SOME REASON -- THERE WAS A
25 RAPPER THERE -- THAT YOU WANTED TO GO TO, COULD YOU

1 GO TO THAT ONE?

2 A. YEAH. BUT USUALLY I TRY TO STICK TO THE SAME CLUB
3 'CAUSE YOU WANT TO GET KIND OF FAMILIAR, BUT, YOU
4 KNOW, YOU DON'T WANT TO WEAR YOURSELF OUT.

5 Q. ON THE OTHER HAND, YOU COULD GO TO TEN DIFFERENT
6 CLUBS IN TEN DIFFERENT DAYS IF YOU WANTED TO?
7 NOBODY COULD KEEP YOU FROM DOING THAT, RIGHT?

8 A. RIGHT.

9 Q. WELL, HOW CAN THEY CONTROL THE MONEY YOU MAKE?
10 BECAUSE YOU WORK STRICTLY OFF TIPS. GOOD DANCERS
11 GET A LOT OF TIPS AND MAYBE NOT SO GOOD DANCERS
12 DON'T; IS THAT FAIR TO SAY? SO THEY CAN'T CONTROL A
13 NICKEL THAT YOU MAKE, CAN THEY? IF PEOPLE ARE
14 STINGY OR DON'T HAVE MONEY, IF IT'S A DEPRESSION, DO
15 THEY TIP AS MUCH AS THEY DO IN GOOD TIMES?

16 A. NO.

17 Q. SO, WHAT YOU MAKE IS REALLY DEPENDENT ON YOU AND A
18 LOT OF OTHER CIRCUMSTANCES, BUT IT HAS NOTHING TO
19 DO, AS I UNDERSTAND IT, WHEN THE BUSINESS, RIGHT,
20 UNLESS YOU'RE FINED?

21 A. WELL, YES, IT DOES BECAUSE IF THE BUSINESS IS NOT
22 NICE, THEN PEOPLE ARE NOT GONNA SPEND MONEY. IF
23 THEY'RE NOT UPKEEPING THEIR BUSINESS, THEN THEY'RE
24 NOT MAKING US MONEY.

25 Q. BUT IF PEOPLE DON'T TIP, YOU'RE NOT GOING TO STAY

1 THERE EITHER; YOU'RE GOING TO LEAVE, RIGHT?

2 A. RIGHT.

3 Q. IF IT'S A PLACE THAT FOR WHATEVER REASON THERE'S NOT
4 A LOT OF MONEY THERE, ARE YOU GOING TO STAY, OR
5 WOULD YOU GO TO A PLACE THAT TIPS BETTER?

6 A. SEE, IT JUST ALL DEPENDS, BUT I GO AFTER THE MONEY.

7 Q. IS THAT ONE OF THE REASONS PEOPLE GO FROM CLUB TO
8 CLUB, IS BECAUSE THEY HEAR ANOTHER CLUB MAY TIP
9 BETTER, THAT THE TIPPERS MAY BE BETTER?

10 A. YEAH.

11 Q. IS THAT A PRIMARY REASON, YOU THINK?

12 A. YEAH.

13 Q. IF YOU COULDN'T GET A LOCKER, WHERE WOULD YOU HANG
14 YOUR CLOTHES?

15 A. YOU WOULD HAVE -- THEY WOULD BE ON THE FLOOR.

16 Q. SO A LOCKER IS THERE IF YOU CAN GET ONE; IF YOU
17 CAN'T GET ONE ---

18 A. BUT USUALLY YOU DO GET ONE. THEY HAVE ENOUGH FOR
19 EVERYONE.

20 Q. AND WHEN YOU DO A TABLE DANCE, YOU DON'T GET ON THE
21 TABLE? YOU SAY YOU USE IT AS A PROP; YOU MIGHT HOLD
22 YOUR HAND ON IT? YOU'VE GOT LIKE THREE OR FOUR
23 PEOPLE SITTING AT A TABLE, OR A BUNCH OF GUYS
24 HANGING AROUND A TABLE, THERE WOULDN'T BE A LOT OF
25 ROOM. YOU DON'T ACTUALLY PHYSICALLY GET ON TOP OF

1 THE TABLE, DO YOU?

2 A. NOT ON TOP, BUT I PUT MY LEG ON THERE. SO I AM
3 TOUCHING THE TABLE. MY LEG GOES ON THE TABLE.

4 BY THE COMMISSIONER:

5 I DON'T BELIEVE I HAVE ANY OTHER QUESTIONS.

6 BY MR. BURNETTE:

7 I HAVE JUST A COUPLE OF FOLLOW-UPS.

8 BY THE COMMISSIONER:

9 ALL RIGHT, SIR.

10 REDIRECT EXAMINATION BY MR. BURNETTE:

11 Q. WHEN YOU'RE TALKING ABOUT RAINING THE HUNDRED ONE
12 DOLLAR BILLS, WHERE DOES THAT HUNDRED DOLLARS COME
13 FROM?

14 A. THE BAR, THE CLUB.

15 Q. ALL RIGHT. SO, THE CLUB IS PROVIDING THAT HUNDRED
16 DOLLARS THAT IS RAINING? YOU NEED TO SAY "YES" OR
17 "NO" SO ---

18 A. YES.

19 BY THE COMMISSIONER:

20 I WANT TO MAKE SURE SHE UNDERSTANDS THAT,
21 BECAUSE I WAS ASKING ABOUT TIPS. IF A GUY CAME IN
22 THERE WHO HAD BEEN DRINKING OR SOMETHING AND HAD A
23 LOT OF ONES, DOES HE THROW THEM IN THE AIR OR DOES
24 THE CLUB JUST SAY, I'M THROWING A HUNDRED DOLLAR
25 BILLS IN THE AIR?

1 BY THE WITNESS:

2 OH, HE THROWS THEM IN THE AIR.

3 BY THE COMMISSIONER:

4 SO IT'S A PATRON; IT'S A CUSTOMER, IS THAT

5 RIGHT?

6 BY THE WITNESS:

7 YES, SIR.

8 BY THE COMMISSIONER:

9 IS THAT THE QUESTION YOU WERE ASKING?

10 REDIRECT EXAMINATION RESUMED BY MR. BURNETTE:

11 Q. WHERE DOES THE HUNDRED DOLLAR -- THE ---

12 A. MONEY THAT THEY GIVE?

13 Q. YES.

14 A. WHERE DOES IT COME FROM?

15 Q. RIGHT.

16 A. COMES FROM THE BAR.

17 Q. WHEN YOU SAY THE BAR, ARE YOU TALKING ABOUT WHERE
18 THEY GET DRINKS AT THE BAR OR ARE YOU TALKING ABOUT
19 PEOPLE WHO ARE SITTING AT A BAR?

20 A. WHERE YOU GET DRINKS AT THE BAR.

21 Q. DOES THE MANAGEMENT HAVE ANYTHING TO DO WITH THE
22 HUNDRED DOLLARS THAT'S THROWN UP IN THE AIR BY THE
23 CUSTOMERS?

24 A. DO THEY HAVE ANYTHING TO DO WITH IT?

25 Q. YES.

1 A. LIKE WHAT DO YOU MEAN?

2 BY THE COMMISSIONER:

3 ASK THE QUESTION -- I'M SORRY TO INTERRUPT, BUT
4 IT SEEMED LIKE IT WAS PATENTLY CLEAR TO ME, BUT
5 OBVIOUSLY IT WOULD BE A DIFFERENCE. IF \$100 WAS
6 THROWN IN THE AIR, WHO WOULD DO IT?

7 BY THE WITNESS:

8 THE CUSTOMER.

9 BY THE COMMISSIONER:

10 A CUSTOMER, NOT ANYBODY WITH THE CLUB, IS THAT
11 RIGHT? I MEAN, A CUSTOMER, A PERSON WHO WALKED IN
12 THE BUILDING?

13 BY THE WITNESS:

14 RIGHT.

15 BY THE COMMISSIONER:

16 HE MAY THROW 200 OR MAY THROW TEN, BUT HE COULD
17 THROW MONEY IN THE AIR, IS THAT RIGHT?

18 BY THE WITNESS:

19 RIGHT. I MEAN, SOMETIMES THE PEOPLE THAT WORK
20 THERE TIP, TOO, I MEAN.

21 BY THE COMMISSIONER:

22 BUT DOES THE MANAGEMENT THROW \$100 IN THE AIR
23 FOR YOU ALL, THE PERSON THAT OWNS THE CLUB?

24 BY THE WITNESS:

25 NOT UNLESS YOU HAVE LIKE A SET, NOT ON A

1 REGULAR.

2 REDIRECT EXAMINATION RESUMED BY MR. BURNETTE:

3 Q. THAT'S WHAT I'M TRYING TO UNDERSTAND. I'M NOT
4 TALKING ABOUT WHO THROWS THE MONEY; I'M TALKING
5 ABOUT WHERE IS THE MONEY COMING FROM. YOU'RE
6 TALKING ABOUT A DEFINED NUMBER OF BILLS, 100 OF
7 THEM? YOU NEED TO SAY "YES" OR "NO."

8 A. YES, YES.

9 Q. HOW DID THE CUSTOMERS GET THE EXACT 100 DOLLAR
10 BILLS? WHERE DID THEY COME FROM?

11 A. THEY CAME FROM THE BAR AT THE CLUB.

12 Q. FROM BEHIND THE BAR, IN FRONT OF THE BAR?

13 A. BEHIND THE BAR.

14 Q. OKAY. WHO IS BEHIND THE BAR THAT HANDS THE HUNDRED
15 ONE DOLLAR BILLS OVER?

16 A. THE BARTENDER.

17 Q. THE BARTENDER. DOES THAT BARTENDER WORK FOR THE
18 MANAGEMENT?

19 A. YES.

20 Q. OKAY. IS THAT PART OF YOUR COMPENSATION?

21 A. YES.

22 Q. ALL RIGHT. THE COMMISSIONER ALSO ASKED YOU ABOUT
23 WHETHER MANAGEMENT CONTROLS OTHER FEES THAT YOU GET.
24 WHO SETS HOW MUCH YOU CAN CHARGE FOR A V.I.P. DANCE?

25 A. THE CLUB DOES.

- 1 Q. AND ARE YOU AT LIBERTY TO CHANGE THAT RULE?
- 2 A. NO.
- 3 Q. IS THERE ANY -- DO YOU HAVE ANY FLEXIBILITY TO
- 4 CHANGE THE DEAL WITH A CUSTOMER, SAY A V.I.P. DANCE
- 5 FOR TEN DOLLARS?
- 6 A. NO.
- 7 Q. WHY NOT?
- 8 A. BECAUSE THE CLUB HAS THEIR SET RULES, AND IF YOU DO,
- 9 THEN YOU'RE NOT FOLLOWING THEM, AND YOU'RE FIRED.
- 10 Q. SO, THEY'RE CONTROLLING HOW MUCH MONEY YOU CAN EARN
- 11 ON A V.I.P. DANCE?
- 12 A. V.I.P., CORRECT.
- 13 Q. AND THEN THEY'RE CONTROLLING HOW MUCH YOU NET BY HOW
- 14 MUCH THEY REQUIRE YOU TO PAY IN TIP-OUT MONEY?
- 15 A. CORRECT.
- 16 Q. AND DOES THE CLUB MAKE MONEY OFF OF YOU IF YOU WERE
- 17 TO -- THEY NOT BE HAPPY WITH YOUR HYGIENE AND FIRE
- 18 YOU OR FINE YOU, DO THEY MAKE MONEY WHEN THEY FINE
- 19 YOU?
- 20 A. YES.
- 21 Q. AND DO THEY HAVE A RIGHT TO FIRE YOU JUST BECAUSE
- 22 THEY DON'T LIKE THE WAY THAT YOU'RE LOOKING ON A
- 23 GIVEN NIGHT?
- 24 A. YEAH, OR YOU SMELL, OR WHATEVER THE CASE MAY BE.
- 25 Q. AND WHO CONTROLS ALL THAT?

86

1 A. THE MANAGERS.

2 BY MR. BURNETTE:

3 THANK YOU.

4 BY THE COMMISSIONER:

5 MS. GLOVER?

6 RECROSS EXAMINATION BY MS. GLOVER:

7 Q. AS FAR AS THIS MAKE IT RAIN, DOES A CUSTOMER TAKE
8 LIKE A HUNDRED DOLLAR BILL OR WHATEVER BILLS HE HAS
9 TOTALING \$100 TO THE BARTENDER AND SAYS, "GIVE ME
10 100 ONES," AND THEN COMES BACK AND TOSSES THE MONEY,
11 THE SINGLES, TO YOU, AND THAT'S WHAT IS CALLED MAKE
12 IT RAIN?

13 A. YES.

14 Q. OKAY. SO IT'S NOTHING THAT THE CLUB ITSELF IS DOING
15 FOR YOU?

16 A. I MEAN, THEY'RE SUPPLYING THE ONES, RIGHT?

17 Q. YES, THEY'RE SUPPLYING THE ONES, BUT IT'S NOT COMING
18 OUT OF THE CLUB'S PROFITS?

19 A. CORRECT.

20 Q. OKAY. NOW, UP UNTIL THE DATE OF ACCIDENT, JULY 23RD
21 OF '08, WERE YOU WORKING AT OTHER CLUBS ---

22 A. YES.

23 Q. --- THROUGHOUT NORTH AND SOUTH CAROLINA?

24 A. YES.

25 Q. DO YOU HAVE ANY SORT OF DOCUMENTATION AS TO WHERE

1 YOU WERE WORKING AND WHAT YOU WERE EARNING WITH YOU
2 HERE TODAY?

3 A. NO.

4 Q. AND YOU SAID YOU HAVEN'T FILED ANY TAX RETURNS?

5 A. NO, BUT I -- I DIDN'T EVEN -- I DON'T HAVE ENOUGH
6 MONEY. I WANT TO TALK TO SOMEBODY, BUT THEY'RE JUST
7 TOO EXPENSIVE FOR ME TO AFFORD.

8 BY MS. GLOVER:

9 OKAY. I THINK THAT'S ALL THE QUESTIONS I HAVE.

10 BY THE COMMISSIONER:

11 ONE OTHER QUESTION. ON THE V.I.P., HOW MUCH IS
12 THE MINIMUM THAT YOU CAN CHARGE FOR A V.I.P. DANCE?

13 BY THE WITNESS:

14 THERE'S NO MINIMUM. IT'S 25.

15 BY THE COMMISSIONER:

16 Q. TWENTY-FIVE DOLLARS?

17 A. YES, SIR.

18 Q. IF SOMEBODY OFFERED YOU 1,000, YOU'D SAY, "I'M
19 SORRY, I CAN'T TAKE 1,000; IT CAN ONLY BE 25"?

20 A. NO, I'D DANCE FOR, I GUESS, \$1,000.

21 Q. YOU'D TAKE THAT THOUSAND. SO YOU CAN GO UP; YOU
22 JUST CAN'T GO BELOW 25, RIGHT?

23 A. RIGHT.

24 Q. BECAUSE THAT'S IN A DIFFERENT SECTION OF THE CLUB,
25 IS THAT RIGHT?

88

1 A. RIGHT.

2 Q. SO THE ONLY RULE IS THAT YOU CAN'T GO BELOW A
3 MINIMUM? YOU CAN TAKE AS MUCH MONEY AS YOU WANT
4 BECAUSE IT'S REALLY BASED ON YOUR TALENTS, AS I
5 UNDERSTAND IT? IF SOMEBODY LIKES YOU PERSONALLY AND
6 LIKES THE WAY YOU DANCE, THEY TIP YOU ACCORDINGLY;
7 IS THAT FAIR TO SAY?

8 A. YES, SIR.

9 BY THE COMMISSIONER:

10 I DON'T THINK I HAVE ANY OTHER QUESTIONS.

11 BY MS. GLOVER:

12 I DON'T HAVE ANYMORE.

13 BY MR. BURNETTE:

14 MAYBE JUST ONE MORE.

15 REDIRECT EXAMINATION BY MR. BURNETTE:

16 Q. IF YOU GO TO A RESTAURANT AND YOU LIKE THE WAITRESS,
17 THE WAITRESS PERFORMS GOOD, SHE GETS A BIGGER TIP?

18 A. CORRECT.

19 Q. DO YOU SEE ANY ANALOGY BETWEEN BEING A WAITRESS IN A
20 RESTAURANT AND DANCING AS FAR AS HOW MUCH MONEY YOU
21 CAN MAKE?

22 A. YES, SIR.

23 Q. AND WHAT IS THAT?

24 A. I MEAN, IF YOU UPKEEP YOURSELF AND, YOU KNOW, HAVE
25 NICE THINGS, THEN YOU'LL GET MORE MONEY, AND THAT'S

89

1 -- WITH A WAITRESS, IF YOU GIVE GOOD SERVICE, YOU'LL
2 GET A BIGGER TIP.

3 Q. AND JUST LIKE WAITRESSES ARE REQUIRED TO FOLLOW
4 RESTAURANT RULES, DO YOU FOLLOW THE RULES IN YOUR
5 CLUB?

6 A. YES, SIR.

7 BY MR. BURNETTE:

8 THAT'S ALL I HAVE.

9 RECROSS EXAMINATION BY MS. GLOVER:

10 Q. AS FAR AS A WAITRESS, DO YOU UNDERSTAND THAT A
11 WAITRESS FILLS OUT AN EMPLOYMENT APPLICATION?

12 A. YES.

13 Q. DO YOU ALSO UNDERSTAND THAT A WAITRESS IS PAID A
14 BASE SALARY, WHICH MAY BE LIKE \$2.50 OR \$3.00 PER
15 HOUR, AND THEY ALWAYS GET THAT BASE SALARY IN
16 ADDITION TO THE TIPS?

17 A. YES.

18 Q. DO YOU UNDERSTAND THAT TAXES ARE TAKEN OUT OF THAT
19 BASE SALARY?

20 A. YES.

21 Q. AND DO YOU ALSO UNDERSTANDING THAT THE WAITRESS IS
22 REQUIRED TO REPORT HER TIPS WHEN SHE FILES A TAX
23 RETURN, OR WHEN HE FILES A TAX RETURN?

24 A. YES.

25 Q. DO YOU DO ANY OF THAT?

1 A. ACTUALLY, I'M FILING. THAT'S WHAT I'M SAYING. I'M
2 GOING TO FILE TAXES, BUT I JUST DON'T HAVE THE
3 MONEY.

4 Q. DID YOU RECEIVE ANY SORT OF BASE SALARY?

5 A. NO.

6 Q. DID YOU FILL ANY EMPLOYMENT APPLICATION?

7 A. I DIDN'T FILL ONE OUT, BUT I WENT THROUGH LIKE A
8 HIRING PROCESS.

9 Q. THE HIRING PROCESS IS WHERE YOU WENT IN AND SHOWED
10 YOUR I.D. PROVING THAT YOU WERE 18 YEARS OR OLDER,
11 AND YOU SIGNED A SHEET OF RULES INDICATING THAT YOU
12 UNDERSTOOD THE RULES AND THAT YOU WOULD COMPLY WITH
13 THE RULES, AND PAID A TIP-OUT FEE?

14 A. RIGHT, AND THEY LOOKED AT YOUR BODY BECAUSE IF YOU
15 WASN'T UP TO PAR, THEN YOU COULDN'T WORK THERE.

16 BY MS. GLOVER:

17 OKAY. I DON'T HAVE ANY OTHER QUESTIONS,
18 COMMISSIONER.

19 BY THE COMMISSIONER:

20 I DON'T HAVE ANY OTHER QUESTIONS.

21 BY MR. BURNETTE:

22 I'VE GOT ONE MORE WITNESS. IT WILL BE VERY
23 SHORT.

24 (OFF THE RECORD)

25 BY THE COMMISSIONER:

1 IF YOU WOULD STATE YOUR FULL NAME FOR THE
2 RECORD, MA'AM.

3 BY THE WITNESS:

4 CLARNICKI LEWIS.

5 BY THE COMMISSIONER:

6 MA'AM?

7 BY THE WITNESS:

8 CLARNICKI LEWIS.

9 BY THE COMMISSIONER:

10 COULD YOU SPELL YOUR FIRST NAME?.

11 BY THE WITNESS:

12 C-L-A-R-N-I-C-K-I, LEWIS.

13 * * * * *

14 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
15 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
16 MATTER HEREIN:

17 CLARNICKI LEWIS,

18 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
19 FOLLOWS:

20 BY THE COMMISSIONER:

21 ANSWER ANY QUESTIONS MR. BURNETTE MAY HAVE,
22 PLEASE.

23 DIRECT EXAMINATION BY MR. BURNETTE:

24 Q. WHAT IS YOUR RELATIONSHIP TO LEANDRA LEWIS?

25 A. I'M HER OLDEST SISTER.

1 Q. AND DID YOU HAVE AN OCCASION TO GO WITH HER TO THE
2 STUDIO 54 BOOM BOOM ROOM ON THE NIGHT SHE GOT SHOT?

3 A. YES.

4 Q. OKAY. HOW OLD ARE YOU?

5 A. I'M 21.

6 Q. HOW WOULD YOU DESCRIBE, BASED ON YOUR OWN
7 OBSERVATIONS, ABOUT STUDIO 54 AS TO WHO'S RUNNING
8 THE SHOW, WHO'S CALLING THE SHOTS, WHO'S MAKING THE
9 RULES AND ENFORCING THE RULES?

10 A. THE MANAGEMENT.

11 Q. WOULD YOU, IN YOUR OWN WORDS, TELL US WHAT YOU MEAN
12 BY THAT?

13 A. IT WOULD HAVE TO BE CRYSTAL, WHO IS ONE OF THE
14 MANAGEMENT, AND A COUPLE OF OTHER MANAGERS THAT
15 DICTATE WHAT IS SUPPOSED TO HAPPEN IN THE CLUB, WHAT
16 GOES ON, WHAT CAN'T GO ON, ALL THOSE TYPE THINGS.

17 Q. DO THE GIRLS THAT WORK THERE SEEM TO BE WELL
18 EDUCATED GIRLS, OLDER GIRLS, OR YOUNGER AND LESS
19 EDUCATED?

20 A. YOUNGER GIRLS, LESS EDUCATED, MOST OF THEM WITHOUT
21 HIGH SCHOOL DIPLOMAS.

22 Q. ALL RIGHT.. DOES IT APPEAR TO YOU THAT MANAGEMENT IS
23 CONTROLLING THAT ENTIRE PROCESS?

24 A. YES, MOST DEFINITELY.

25 Q. NOW, HAVE YOU MET THIS MANAGER, CRYSTAL TAYLOR?

1 A. I DID.

2 Q. AND WHERE DID YOU MEET HER?

3 A. AT THE HOSPITAL THE NIGHT THAT LEANDRA GOT SHOT.

4 Q. AND WHAT DID THIS MANAGER TELL YOU ABOUT THE CLUB
5 AND THE RESPONSIBILITY THE CLUB WOULD HAVE FOR HER
6 INJURIES?

7 A. SHE SAID, DO NOT WORRY ABOUT THE PAYMENTS OF
8 ANYTHING. I WILL TAKE -- THE CLUB WILL TAKE CARE OF
9 ALL OF LEANDRA'S MEDICAL BILLS. JUST -- JUST WORRY
10 ABOUT HER GETTING BETTER AND JUST KEEP HER UPDATED.

11 Q. AND DID SHE SEEM TO BE THERE ON BEHALF OF THE CLUB?

12 A. YES, SHE WAS.

13 Q. AND WHEN YOU WERE THERE THAT NIGHT, JUST VERY
14 QUICKLY, OTHER THAN CUSTOMERS, HOW MANY PEOPLE WOULD
15 YOU SAY WERE WORKING THERE?

16 A. OTHER THAN CUSTOMERS? WOW, IT WOULD HAVE TO BE AT
17 LEAST 40 PEOPLE. IT HAD TO BE AT LEAST 40 PEOPLE.

18 Q. DID THEY ALL SEEM TO BE UNDER THE MANAGEMENT ---

19 A. YES.

20 Q. --- OF THE CLUB?

21 A. YES. IT WAS ANYWHERE BETWEEN 20 AND 30 DANCERS. IT
22 MAY HAVE BEEN MORE THAN THAT, BUT AT LEAST 20 TO 30
23 DANCERS.

24 Q. AND THEN WHAT ABOUT BARTENDERS?

25 A. YEAH, YOU HAVE TWO BARTENDERS, SIX BOUNCERS. YOU

94

1 HAD A D.J., HYPE MAN THAT ARE ALL THERE ALSO.

2 Q. AND ALL THE MANAGEMENT PEOPLE?

3 A. YEAH.

4 Q. HOW MANY MANAGERS WERE THERE?

5 A. THREE OR FOUR. THERE WAS THREE OR FOUR. I KNOW IT
6 WAS CRYSTAL AND AT LEAST TWO OTHER MEN THAT SEEMED
7 TO BE MANAGERS ALSO, THAT WERE MANAGERS.

8 BY MR. BURNETTE:

9 I THINK THAT'S ALL I HAVE.

10 BY THE COMMISSIONER:

11 MS. GLOVER.

12 CROSS EXAMINATION BY MS. GLOVER:

13 Q. MS. LEWIS, WHAT IS YOUR EDUCATIONAL BACKGROUND?

14 A. I HAVE A HIGH SCHOOL DIPLOMA.

15 Q. AND ARE YOU CURRENTLY WORKING ANYWHERE?

16 A. I AM. I WORK AT WAL-MART AT UNIVERSITY. I'M A
17 FRONT-END CASHIER.

18 Q. AND HOW LONG HAVE YOU BEEN WITH WAL-MART?

19 A. I'VE BEEN WITH WAL-MART SINCE NOVEMBER OF LAST YEAR.

20 Q. OKAY, NOVEMBER OF '08. AND WHERE WERE YOU WORKING
21 BEFORE?

22 A. I WAS AT CATO'S, AND I WAS THERE FOR THREE YEARS.

23 Q. AND DO YOU ACCOMPANY YOUR SISTER ON A REGULAR BASIS
24 TO THE CLUBS THAT SHE WORKS AT?

25 A. I ACTUALLY USED TO DO IT A LOT BEFORE, BUT HONESTLY

1 SHE JUST ASKED ME THAT ONE DAY AND I WENT WITH HER,
2 BUT I HADN'T BEEN IN A CLUB WITH HER IN MAYBE SIX
3 MONTHS BEFORE THEN. BUT I USUALLY GO EVERY NOW AND
4 THEN, MAYBE ONE A MONTH OR WHATEVER JUST TO GO, JUST
5 TO DO SOMETHING, GET OUT OF THE HOUSE.

6 Q. OKAY. AND YOU TWO LIVE TOGETHER NOW?

7 A. WE ACTUALLY LIVE NEXT DOOR TO EACH OTHER.

8 Q. AND WHO DOES YOUR SISTER LIVE WITH?

9 A. HERSELF.

10 Q. SHE LIVES BY HERSELF?

11 A. MM-HMM. (AFFIRMATIVE RESPONSE)

12 Q. AND TO YOUR KNOWLEDGE, IS SHE WORKING ANYWHERE NOW?

13 A. NO.

14 Q. AND WAS THE LAST TIME SHE WORKED WAS WHEN SHE GOT
15 SHOT AT THE CLUB?

16 A. YEAH.

17 Q. AND HOW DOES SHE PAY HER BILLS?

18 A. SHE -- ACTUALLY, I HELP HER OUT A LITTLE BIT AND,
19 PLUS, HER BOYFRIEND PAYS THE MAJORITY OF THE BILLS.
20 I TRY TO HELP HER OUT WITH FOOD AND EVERYTHING ELSE.

21 Q. DOES HER BOYFRIEND LIVE WITH HER?

22 A. NO.

23 Q. AND IS HER BOYFRIEND THE YOUNG MAN THAT'S OUT THERE
24 IN THE WAITING ROOM?

25 A. MM-HMM. (AFFIRMATIVE RESPONSE)

1 Q. OKAY. AND WHEN YOU SAID YOU MET CRYSTAL TAYLOR AT
2 THE HOSPITAL AND SHE TOLD YOU THAT THE CLUB WOULD
3 TAKE CARE OF THE BILLS, DO YOU KNOW WHETHER OR NOT
4 MS. TAYLOR HAD ANY AUTHORITY TO BIND THE CLUB?

5 A. SAY THAT AGAIN.

6 Q. DO YOU KNOW IF SHE HAD ANY AUTHORITY TO SAY THAT THE
7 CLUB WOULD TAKE CARE OF THE BILLS?

8 A. YEAH. ACTUALLY, SHE TOLD ME THAT SHE WAS ONE OF THE
9 MANAGERS AT THE CLUB AND SHE WOULD BE IN CHARGE OF
10 HELPING TAKE CARE OF LEANDRA AND HER BILLS AND
11 EVERYTHING ELSE, DO NOT WORRY ABOUT ANYTHING, 'CAUSE
12 THEY'VE HAD INCIDENTS LIKE THIS BEFORE.

13 Q. OKAY. NOW, YOU INDICATED THAT YOU SAW A NUMBER OF
14 PEOPLE THAT YOU BELIEVE THAT WERE WORKING THERE. DO
15 YOU KNOW ANYTHING ABOUT THE SPECIFICS OF THEIR
16 EMPLOYMENT RELATIONSHIP WITH THE CLUB, WHETHER OR
17 NOT THEY WERE INDEPENDENT CONTRACTORS, WHETHER OR
18 NOT THEY WORKED FOR -- LIKE THE SECURITY PEOPLE, DO
19 YOU KNOW WHETHER OR NOT THEY ACTUALLY WORKED FOR A
20 SECURITY COMPANY VERSUS WORKING FOR THE BOOM BOOM
21 ROOM?

22 A. WILL YOU -- AS FAR AS THE BOUNCERS, THEY -- YOU
23 WOULD ASSUME THAT THEY WORKED FOR THE CLUB BECAUSE
24 THAT'S WHERE THEY WERE.

25 Q. AND NOT ASSUMING, DO YOU HAVE ANY DIRECT KNOWLEDGE

1 OF HOW THEY WERE EMPLOYED?

2 A. NO. I MEAN, NO.

3 Q. NOW, WHEN YOUR SISTER CHECKED IN THAT NIGHT, WERE
4 YOU WITH HER?

5 A. YEAH. WHEN SHE CHECKED IN OUTSIDE WHERE THEY
6 CHECKED HER BAGS AND THINGS, I WAS WITH HER, BUT I
7 COULDN'T FOLLOW HER TO THE LOCKER ROOMS OR NOTHING
8 LIKE THAT.

9 Q. DID YOU GO WITH HER INTO THE MANAGEMENT ROOM?

10 A. NO, THEY WOULDN'T ALLOW ME TO.

11 Q. OKAY. SO, BASICALLY, AFTER YOU ALL GOT IN THE CLUB,
12 YOU WERE JUST A PATRON IN THE CLUB?

13 A. YEAH.

14 Q. ALONG WITH EVERYBODY ELSE?

15 A. RIGHT.

16 Q. NOW, YOUR SISTER INDICATED THAT SHE IS GETTING READY
17 TO START SCHOOL IN AUGUST. DO YOU BELIEVE THAT SHE
18 IS ABLE TO WORK?

19 A. I REALLY DON'T THINK SHE'S ABLE TO WORK. IT'S BEEN
20 A REALLY HARD YEAR FOR ALL OF US. BUT AS FAR AS
21 SCHOOL, I MEAN, THAT SHOULDN'T BE A PROBLEM BECAUSE
22 SHE WON'T HAVE TO BE ON HER FEET. BUT I KNOW SHE
23 WILL NOT PROBABLY BE ABLE TO DANCE EVER AGAIN.

24 Q. DO YOU THINK THERE'S SOME OTHER WORK SHE CAN DO
25 BESIDES DANCING?

1 A. SHE COULD PROBABLY DO A SIT-DOWN JOB OR SOMETHING,
2 BUT NOTHING WHERE SHE WOULD BE REQUIRED TO HAVE TO
3 BE ON HER FEET.

4 BY MS. GLOVER:

5 I DON'T HAVE ANY OTHER QUESTIONS.

6 BY THE COMMISSIONER:

7 MR. BURNETTE?

8 BY MR. BURNETTE:

9 NO OTHER QUESTIONS.

10 BY THE COMMISSIONER:

11 LET ME ASK YOU ONE QUESTION, MA'AM: HOW LONG
12 HAS YOUR SISTER LIVED NEXT DOOR TO YOU?

13 BY THE WITNESS:

14 I'VE LIVED NEXT DOOR TO HER FOR -- SINCE
15 DECEMBER OF '08.

16 BY THE COMMISSIONER:

17 Q. AND PRIOR TO THAT, WHERE DID YOU ALL LIVE?

18 A. I STAYED WITH HER.

19 Q. YOU ALL LIVED TOGETHER?

20 A. YEAH.

21 Q. AND YOU HAVE A YOUNG CHILD?

22 A. NO, I HAVE NO KIDS.

23 Q. WHEN YOU ALL LIVED TOGETHER, HOW MUCH WAS SHE GONE?

24 A. YOU MEAN LIKE FOR WORK OR JUST GONE PERIOD?

25 Q. RIGHT.

1 A. SHE WOULD BE GONE AT LEAST FIVE DAYS A WEEK, FIVE TO
2 SIX DAYS A WEEK.

3 Q. THAT'S 52 WEEKS OUT OF THE YEAR?

4 A. MM-HMM. (AFFIRMATIVE RESPONSE)

5 Q. EVERY WEEK?

6 A. MM-HMM. (AFFIRMATIVE RESPONSE)

7 Q. THERE'S NO TIME THAT SHE WASN'T WORKING?

8 A. NO. SHE ALWAYS -- SHE HAD TO MAKE MONEY. SHE
9 WANTED -- THAT'S WHAT SHE LIKED TO DO.

10 Q. AND SHE TESTIFIED SHE BABYSAT, BUT THAT WASN'T WITH
11 YOUR CHILD?

12 A. NO.

13 BY THE COMMISSIONER:

14 I DON'T HAVE ANY OTHER QUESTIONS.

15 BY MS. GLOVER:

16 I DON'T HAVE ANYTHING ELSE.

17 BY MR. BURNETTE:

18 THAT'S ALL I HAVE.

19 BY THE COMMISSIONER:

20 ANY OTHER WITNESSES?

21 BY MR. BURNETTE:

22 NO OTHER WITNESSES.

23 BY MS. GLOVER:

24 NO. MS. TAYLOR'S NOT HERE.

25 BY THE COMMISSIONER:

100

1 RIGHT. IF THERE'S NOTHING ELSE, THEN THAT
2 WOULD CONCLUDE ---

3 BY MS. GLOVER:

4 WELL, I GUESS, COMMISSIONER, AS FAR AS HER
5 EMPLOYMENT OUTSIDE OF THIS JOB, I WOULD ASK THAT
6 THAT NOT BE CONSIDERED BECAUSE SHE HASN'T PRESENTED
7 ANY SORT OF DOCUMENTATION, I.E. AS IN A FORM 20.

8 BY THE COMMISSIONER:

9 RIGHT. I WAS GOING TO HAVE A POST-HEARING
10 CONFERENCE WITH THE ATTORNEYS. WE'RE ON THE RECORD.
11 I'LL JUST SAY IT HERE. ONE OF THE BIG CONCERNS,
12 OBVIOUSLY, IS THE AVERAGE WEEKLY WAGE AND COMP RATE,
13 THAT I HAVE. THERE HAS BEEN ABSOLUTELY NOT ONE
14 SCINTILLA OF EVIDENCE. I HAD TESTIMONY HERE,
15 OBVIOUSLY, BUT THERE'S NO HARD EVIDENCE, I GUESS I
16 WOULD SAY, OTHER THAN TESTIMONY FROM EITHER A
17 COWORKER OR SISTER AND THE CLAIMANT HERSELF. I'M
18 GOING TO HOLD THAT IN ABEYANCE. WHAT I WAS GOING TO
19 ASK YOU ALL TO DO IS TO -- IF YOU COULD PROVIDE A
20 BRIEF, AND IF THE BRIEF COULD BE WRITTEN IN SUCH A
21 WAY TO INCLUDE THE NEW DECISION, THIS WILKINSON
22 VERSUS PALMETTO STATE TRANSPORTATION DECISION, THE
23 NEW SUPREME COURT DECISION, AND HOW THIS MAY OR MAY
24 NOT CONFORM WITH THAT CHANGE IN THE WAY EMPLOYMENT
25 IS REVIEWED. AND ALSO, IF IN THE BRIEF YOU COULD

101

1 PUT THE RATIONALE FOR THE MAX COMP RATE VERSUS
2 SOMETHING LESS THAN THAT. WE'RE STILL ON THE
3 RECORD, AND IT DOES TO ME SEEM A LITTLE BIT UNUSUAL
4 THAT EVERYBODY WOULD GET THE SAME AMOUNT OF TIPS
5 EVERY NIGHT, MAKE THE SAME AMOUNT OF MONEY, YET
6 THERE'S NOTHING TO PROVE THAT. SO, IF YOU WOULD
7 DISCUSS WHAT YOUR POSITION IS ON THE AVERAGE WEEKLY
8 WAGE AND COMP RATE, AND I DON'T KNOW WHAT ELSE TO DO
9 BUT SET IT FROM THAT AND WHAT I'VE HEARD TODAY. BUT
10 WHEN I CALLED THE CASE AND READ \$1,650 AVERAGE
11 WEEKLY WAGE WITH A \$661.29 COMP RATE, I'M SAYING I'M
12 HOLDING THAT IN ABEYANCE UNTIL I CAN MAKE AN
13 INFORMED DECISION AS BEST I CAN WITH THE TESTIMONY
14 AS TO WHAT IT SHOULD BE.

15 BY MS. GLOVER:

16 I BELIEVE THAT YOU INDICATED THAT WAS THE
17 CLAIMANT'S A POSITION AS FAR AS THE AVERAGE WEEKLY
18 WAGE AND COMP RATE.

19 BY THE COMMISSIONER:

20 IT IS.

21 BY MS. GLOVER:

22 BUT OTHERWISE IT WAS DISPUTED ON MY BEHALF.

23 BY THE COMMISSIONER:

24 I DID. I BELIEVE I DID STATE THAT. AND 30
25 DAYS, DO YOU THINK YOU ALL COULD GET ME A BRIEF?

102

1 AND IF THERE'S NOTHING ELSE, THAT WOULD CONCLUDE THE
2 HEARING.

3 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
4 CONCLUDED AT THE HOUR OF 11:56 A.M.)

STATE OF SOUTH CAROLINA
 WORKERS' COMPENSATION COMMISSION
 CASE NUMBER - 0821881

LEANDRA LEWIS,	)	
	)	
CLAIMANT,	)	FULL COMMISSION HEARING
	)	
VS.	)	BEFORE
	)	
L. B. DYNASTY,	)	PANEL B
	)	
EMPLOYER,	)	COMMISSIONER WILLIAMS
	)	
UEF,	)	COMMISSIONER BECK
	)	
CARRIER,	)	COMMISSIONER HUFFSTETLER
	)	
DEFENDANTS.	)	
	)	

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
 BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN AND FOR
 THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
 2:35 PM ON MONDAY, APRIL 19, 2010, WORKERS'
 COMPENSATION COMMISSION, 1333 MAIN STREET, COLUMBIA,
 SOUTH CAROLINA.

SARA QUATTLEBAUM, Independent Court Reporter
 148 LAKE HARBOR DRIVE
 LEXINGTON, SC 29072
 (803)447-0272

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INDEX

POSITION OF APPELLANT.....	3
POSITION OF RESPONDENT.....	11
CERTIFICATE	22

1 THE COURT: Today's date is April 19, 2010. This
2 is South Carolina Workers' Compensation Case.
3 No. 0821881. This is the case of Leandra Lewis,
4 Claimant, versus L.B. Dynasty, Inc, Employer.

5 The Appellate is the Claimant represented by
6 Blake Hewitt. The Respondent is represented by Lisa
7 Glover.

8 Each side is allowed ten minutes for oral
9 argument, the Appellate three minutes in reply.. You
10 are requested to argue the grounds of exception and
11 stay within the record.

12 COMMISSIONER BECK: Mr. Hewitt.

13 MR. HEWITT: Thank you, Commissioner, and may it
14 please the Commission.

15 My name is Blake Hewitt and along with Marti
16 Bluestein I represent Leandra Lewis who initiated this
17 case seeking compensation for injuries she received
18 when she was shot while working as a dancer at a
19 nightclub operated by L.B. Dynasty, Inc., a South
20 Carolina corporation.

21 This case is about two things. It's about who
22 had the right to control Ms. Lewis when she was at
23 work, and it's about how much money she made when she
24 was working. The hearing Commissioner in this case
25 determined that Ms. Lewis was in control when she was

1 at work and that she was there as an independent
2 contractor and not an employee.

3 We contend that determination was incorrect for
4 two reasons. First, we think an even-handed
5 application of the four-factor test set forth most
6 recently in the Wilkinson case indicates that the club
7 was in control when Ms. Lewis was at work and that she
8 was therefore an employee and not an independent
9 contractor. Second, we think a broader examination of
10 the purpose of the Workers' Compensation Act sort of
11 compels and buttresses this conclusion.

12 On the second question presented, which is how
13 much money Ms. Lewis made when she was working, the
14 hearing Commissioner determined Ms. Lewis' average
15 weekly wages and ruled her comp rate was \$75. We
16 contend that the evidence does not support this
17 determination as well. As the panel is aware, the
18 four factors typically used to determine employment
19 status are method of payment, direct evidence of the
20 right to control, furnishing of equipment, and the
21 right to fire.

22 The Wilkinson case tells us that these statutes
23 are to be evaluated on an even playing field with
24 equal force in both directions. Our position is that
25 method of payment in this case is kind of a toss up.

1 It doesn't really tend to go either way. But the
2 direct evidence of the right to control, provision of
3 equipment, and the right to fire all are strongly in
4 favor of a finding of employment.

5 Method of payment is kind of a toss up in this
6 case because Ms. Lewis didn't receive any income from
7 the club. The club paid her nothing, zero. She was
8 paid exclusively in cash. All of that cash came from
9 customers. either in the form of tips that she
10 received directly from customers for dancing or in the
11 form of fees that she charged customers to perform VIP
12 dances. Ms. Lewis, in fact, had to pay the club
13 before she worked each evening. The parties refer to
14 this in the record as a tip-out fee which the club
15 set. And Ms. Lewis also had to pay the club a
16 percentage of the fees that she charged customers
17 doing VIP dances.

18 The method of payment is a part of the right to
19 control analysis because payment based on time is
20 indicative of employment status where a worker is paid
21 by the hour. For example, the Employer is likely to
22 have the right to supervise the way the worker
23 performs her work to see that he gets a full hour
24 worth of work, payment by the job as indicated by
25 independent contractor status.

1 COMMISSIONER WILLIAMS: Mr. Chairman, we
2 typically don't see employees paying the employers for
3 their work as long as the employer is paying the
4 employees for their services in order to perform. She
5 had to paid the company, the club for her services?

6 MR. HEWITT: That's exactly correct.

7 COMMISSIONER WILLIAMS: Go ahead.

8 MR. HEWITT: It's a very atypical form of
9 financial arrangement. We don't usually think of this
10 as a traditional employment situation. Courts across
11 the nation have looked at exotic dancers and exotic
12 dancers have successfully challenged their status as
13 independent contractors in a couple of different
14 contexts. You see it in federal court under the Fair
15 Labor Standards Act and you see it in other state
16 courts under their Workers' Compensation regimes or
17 under their employment regimes. And according to the
18 Middle District of Texas, the Federal Court in the
19 Middle District of Texas took an interesting view of
20 this. Because on the one hand I think there's the
21 temptation to say that the fee that she has to pay up
22 front is sort of like rent, like she's leasing space
23 to dance for the evening. And the court in the Middle
24 District of Texas said it's really not - that's not
25 the best view of the way this financial transaction is

1 structured. The club has direct control over so much
2 that goes or impacts Ms. Lewis' earning potential.
3 The club, for example, sets the cover charge that it's
4 going to charge for an evening for patrons to get in.
5 The club controls the advertising. The club has
6 control -

7 COMMISSIONER BECK: Mr. Hewitt, how does that
8 affect her, though?

9 MR. HEWITT: Well, it has a direct relation to
10 her ability to earn wages because the amount of money
11 that she can elicit from a customer has a direct
12 correlation to how many people are packed in the club.

13 COMMISSIONER BECK: She gets nothing from the
14 cover charge.

15 MR. HEWITT: That's correct. But she absolutely
16 benefits indirectly from that. For example, if the
17 club sets an extremely high cover charge it's more
18 likely than not that there would be less people in the
19 club. So the club is in control of a great deal that
20 goes to her earning potential. The club sets the
21 floor that she could charge for a VIP dance. The club
22 just set that. The club set the cover charge for
23 persons going into the establishment. The club
24 controlled its alcohol policy. Ms. Lewis had no
25 control over that. A court took a real interesting

1 view and said that an exotic dancer's ability to sort
2 of encourage patrons to part with their money is a
3 direct - has a direct relationship really to more of
4 luck than anything else. It's a function of how
5 intoxicated patrons get in the club as to how free
6 they are to surrender their money.

7 COMMISSIONER BECK: One of the things that wasn't
8 quite clear when we were reading through the briefs,
9 and my interpretation was that she only worked there
10 three different days. This would be in the record,
11 but didn't she work at other locations as well?

12 MR. HEWITT: Ms. Lewis' testimony is that she
13 worked five to six nights a week as an exotic dancer.

14 COMMISSIONER BECK: At various locations?

15 MR. HEWITT: Yes, sir. Throughout North
16 Carolina.

17 COMMISSIONER BECK: Then wouldn't she be an
18 employee of all of those?

19 MR. HEWITT: That's absolutely correct, Your
20 Honor. I think sort of a transient aspect of this is
21 kind of the biggest hitch in the giddy-up or the most
22 troubling aspect of the case from an initial
23 perspective because it looks like it's something - it
24 looks like Ms. Lewis is in a great deal of control
25 over how she is structuring her relationship.

1 COMMISSIONER BECK: Did they tell her when she
2 had to be at that location?

3 MR. HEWITT: They did not tell her when she had
4 to be at that location. However when she went to that
5 location they told her how long she would have to
6 work. That is a component of our case under the
7 direct evidence of the right to control prong. When
8 Ms. Lewis went to work, she was searched. The club
9 told her how long she had to work that evening. The
10 club told her what it would cost her to work that
11 evening. The club told her what she would charge for
12 VIP dances. The club told her what her rotation would
13 be in dancing. If she did not dance in that rotation
14 she would be fined or she was subject to dismissal
15 from the club outright.

16 It looks less and less like a bargain for
17 exchange when the club is imposing so many conditions
18 or calling so many of the shots. if you will. It's
19 not an arm's-length negotiation. This is an agreement
20 of adhesion. And it looks a lot more like a short
21 term employment agreement than it looks like an
22 independent contractor negotiating terms in a bargain
23 for exchange. It looks a lot more like employment, it
24 is our contention, than an independent contractor
25 bargaining with his own terms. It would be very

1 atypical for an independent contractor to agree to
2 this type of supervision.

3 I think that when you take that showing in its
4 context and combine it with the remaining factors from
5 the Wilkinson test; the provision for equipment, for
6 example, where an employer provides a worker with
7 equipment that the worker will use to perform this
8 task, the law presumes that the employers retain the
9 right to supervise the way the worker uses that
10 equipment because an employer is interested in
11 protecting his investment. In this case, the club
12 gave Ms. Lewis a stage to dance on. It gave Ms. Lewis
13 a pole to dance on. It provided tables and chairs and
14 couches for the patrons that Ms. Lewis used
15 extensively in performing her dancing routines. And
16 this is evidence that the club had the right to
17 control the manner of Ms. Lewis' dancing. If she had
18 misused the equipment they provided, used it in a
19 manner that was other than their intentions, they
20 would have dismissed her and the record contains that
21 evidence.

22 COMMISSIONER WILLIAMS: Mr. Chairman, for lack of
23 a better term, she could choose whether or not she
24 wanted to slide down the pole or dance on the stage or
25 do a table dance. She could choose whether or not she

1 wants to do those things or activities. She wouldn't
2 have to be a pole dancer, she could just gyrate around
3 the stage; is that correct?

4 MR. HEWITT: Well, the record reflects,
5 Commissioner, that when she decided to go to work she
6 absolutely had to agree to dance onstage. So she
7 could make the initial determination, of course, of
8 whether she wanted to go to work, which is very
9 typical from the traditional employer/employee
10 relationship. An employee and an employer typically
11 have no continuing obligation to one another. South
12 Carolina is an employment-at-will state.

13 But once she decided to go to work she had to
14 dance on the stage. If she refused to do so they
15 would not have hired her. That's reflected in the
16 record. She had to perform VIP dances if she was
17 asked to. That's reflected in the record. Those were
18 the terms that the club put on her short term
19 employment.

20 COMMISSIONER BECK: Your time has expired.
21 You'll have three minutes in reply later.

22 MR. HEWITT: Thank you.

23 COMMISSIONER BECK: Ms. Glover.

24 MS. GLOVER: May it please the Commission. The
25 Fund would ask that you affirm the decision of the

1 Single Commissioner in finding that Leandra Lewis was
2 an independent contractor and not an employee.

3 By way of some background, Ms. Lewis was shot.
4 She was the unintended victim of a shooting at the
5 club. One of the owners, I believe the stepson,
6 pulled out a gun and got into a fight with someone and
7 a stray bullet hit her, causing substantial damage
8 physically as is indicated in the record. We contend
9 that she -

10 COMMISSIONER WILLIAMS: Mr. Chairman, obviously
11 if she is not covered under Comp, she could have a
12 court claim against the club.

13 MS. GLOVER: I believe so, Commissioner.

14 COMMISSIONER WILLIAMS: Or even the patron who
15 accidentally shot her.

16 MS. GLOVER: I believe that she did receive about
17 15 to 17,000 from the state Office of Victim
18 Assistance in regards to that. She testified to that
19 in the hearing.

20 But in regards to her employment there, we
21 contend that she was not an employee but an
22 independent contractor. You have heard co-counsel
23 mention this tip-out fee. At the hearing Ms. Lewis as
24 well as a witness that she brought who was also a
25 former dancer testified as to the tip-out fees. They

1 were required to pay a fee based upon the time that
2 they arrived at the club. The later they arrived at
3 the club, the more the tip-out fee was because the
4 club would be closing at a certain point in time. So
5 if they would arrive at 8:00 at night when there
6 weren't as many patrons there they would probably have
7 to pay about \$30 for the tip-out fee. But if they
8 arrived like at 11:00 to midnight they would have to
9 pay about \$75 or such because the club would be
10 closing probably around 3:00 or 4:00 and there was not
11 much time for them left to dance.

12 The girls, the only thing that was required of
13 them was for them to present themselves to the club,
14 show proper identification indicating that they were
15 of the age of majority, read and sign a rule sheet,
16 and they could walk in the club and start dancing.

17 Ms. Lewis provided her own costume. She provided
18 her own choreography. Yes, the club did have a stage.
19 They did have a pole and they did have a DJ that
20 provided music. If Ms. Lewis was one of the more
21 popular dancers she could select which song she danced
22 her solo dances on. All of the girls are required to
23 go up on stage at one point in time in a group and
24 dance, and they collected funds that way from the
25 patrons. They did solo dances where they were on the

1 stage by themselves. They were not required to use
2 the pole. I believe Ms. Lewis testified as well as
3 her witness testified that if you used the pole the
4 patrons found that to be more exciting and therefore
5 you would get more money.

6 Ms. Lewis controlled how much money she made.
7 The only interest the club had was if she was asked to
8 perform a VIP dance and she did, she would have to
9 give them a percentage of that money. But whatever
10 money she got when she was on stage in a group or by
11 herself, she kept for herself.

12 If there was a patron that wanted to do what is
13 called make it rain, typically that was \$100. He
14 could take a \$100 to the bartender. The bartender
15 would exchange that out for \$100 in singles. He would
16 just throw the 100 bills up in the air and Ms. Lewis
17 could collect those. She testified that she had in
18 the past collected \$300 or \$400 a night that way.

19 As you have indicated, in the record Ms. Lewis
20 only danced at this particular club on three
21 occasions, two times in 2007 and the last time on the
22 date that she was injured. She testified that she
23 earned, I think \$500 the first two times she danced
24 here in South Carolina and I believe the last time she
25 earned - I believe it was even less than that. I

1 can't quite recall what that is.

2 She did testify that she danced at other clubs
3 throughout the state, throughout South Carolina and
4 North Carolina. She and her witness testified they
5 typically wanted to dance a little bit further away
6 from home I guess to maintain anonymity. They didn't
7 want to dance too close to home.

8 Ms. Lewis testified that she enjoyed dancing
9 because she liked the money that she earned. So she
10 would dance, as she said, five to six, seven nights a
11 week if she could because she enjoyed the money that
12 she earned.

13 She was not an employee. The equipment that was
14 there, as I stated, was provided by the club. It was
15 not specifically provided to her. She testified that
16 she used tables and chairs sometimes as props. She
17 testified, though, that she couldn't really dance
18 without music. So that was there.

19 We have already gone over the method of payment.
20 The only money that she gave the club was for the
21 tip-out fee, and she controlled that as to what time
22 she arrived at the club.

23 And she gave them a percentage of VIP dances.
24 VIP dances were dances requested by patrons. If no
25 one requested a VIP dance, she did not perform a VIP

1 dance. Therefore, she did not have to give any money
2 to the club.

3 In regards to the right to fire, the Claimant
4 testified that there were certain conditions that she
5 had to meet in order to, I guess, not get fined or get
6 fired and that was - one of them that she had to
7 maintain a comely appearance and that she had to keep
8 certain garments on. And that if she had taken off
9 her panties she would be fined. If it happened again
10 she might be fined again, and I think a third or
11 subsequent time they would ask her to leave.
12 Ms. Lewis states that she never did anything that
13 would get her fined or get her kicked out of the club
14 when she was there dancing.

15 COMMISSIONER HUFFSTETLER: Mr. Chairman, I guess
16 what I'm trying to understand or distinguish, I want
17 to say this. We are talking about the entertainment
18 industry, whatever it is in the entertainment
19 industry. If Bob Dillon comes to the Township
20 Auditorium and they provide him with a dressing room
21 and whatever they provide Bob Dillon does that make
22 him an employee of the Township?

23 MS. GLOVER: The Fund contends no. He's not an
24 employee of the Township. He's entered into a
25 contractual relationship with the Township whereby

1 they provide him with a venue. He goes out and makes
2 his performance and he is getting, I believe, the bulk
3 of the money that are garnered from ticket sales.

4 COMMISSIONER HUFFSTETLER: The Township does
5 advertising on his behalf. They would collect money
6 at the box office. They are going to provide
7 everything he needs as far as venue goes. I guess I'm
8 trying to understand the difference.

9 MS. GLOVER: I would say it's a contract matter,
10 not an employment. I don't believe it's an employment
11 issue. Entertainers have their specific contracts.
12 They have riders within those contracts as to what
13 they like. You know, if they want flowers in their
14 dressing room, they have to be a certain kind of
15 flowers. I've seen - I've only had the opportunity to
16 view one such contract, and some of them require
17 particular flowers, particular drinks free. It's up
18 to them. That's the contract between the venue and
19 the entertainer. But that does not make that
20 entertainer an employee of that particular venue.

21 The Fund would ask that you affirm the Single
22 Commissioner's order.

23 COMMISSIONER BECK: Mr. Hewitt, three minutes for
24 a rebuttal.

25 COMMISSIONER HUFFSTETLER: And to explain, Bob

1 Dillon was a singer in 1950.

2 MR. HEWITT: I own several Bob Dillon albums and
3 am a big fan and I would like to begin by answering
4 your question.

5 The answer is absolutely no, Bob Dillon is not an
6 employee of the Township when he does a show because
7 the Township provides him with a dressing room. The
8 question is who is in control. That's what the
9 Wilkinson case tells us is the question for an
10 employment analysis. And Bob Dillon is absolutely on
11 an equal if not a greater bargaining position with the
12 Township.

13 Ms. Lewis had absolutely no control in this
14 relationship. This was an agreement of adhesion. It
15 was a take-it-or-leave-it agreement, like a typical
16 employment agreement. The club was absolutely in
17 control. The hearing Commissioner found to the
18 contrary. We contend that's incorrect.

19 COMMISSIONER WILLIAMS: Mr. Chairman, she did
20 control when she came to work or if she came to work
21 and what time she came to work. She could have come
22 at 8:00, 9:00, 10:00. She had a lot of control over
23 whether or not she even showed up at the Boom Boom
24 Room. Would you agree with that?

25 MR. HEWITT: That's exactly correct. I do not

1 think that that ought to be an outcome determinative
2 factor in this case.

3 COMMISSIONER WILLIAMS: The only reason I raised
4 that is most employers give you a schedule. Even when
5 we see independent contractor issues with trucking
6 companies that we need you to run this route during
7 this time, she could have not shown up at Boom Boom
8 Room, she could have gone to Platinum Plus or any
9 other local club; would you agree with that?

10 MR. HEWITT: That's exactly correct. But I think
11 what's important in this case and the guiding point
12 for this panel's determination in this case is that
13 once Ms. Lewis got to work who was in control? The
14 club was in control. The club was calling all of the
15 shots. The club was telling her when to dance, how
16 much it cost to dance, that she had to dance under
17 certain circumstances, that if she left before a
18 certain lapse of time she would be fined or she would
19 be dismissed and banned from performing there. That's
20 the way this industry works and the courts across the
21 country that have considered this, federal courts and
22 other state courts have said the type of control that
23 the dancer, the aspects of this arrangement that the
24 dancers are in control of are at a minimum when
25 compared to what the club is controlling. The dancers

1 depend upon the club for her livelihood.

2 Ms. Lewis doesn't have an independent
3 professional identity. That's sort of the rarity in
4 this type of industry. She's dependent upon a club
5 providing advertising and a stage and setting a
6 reasonable cover charge and packing people in and
7 serving enough alcohol to augment their willingness to
8 disassociate themselves of the cash in their wallet.

9 If I could touch briefly on the hearing
10 Commissioner's decision with respect to the amount of
11 money that Ms. Lewis made when she was working, the
12 hearing Commissioner focused on the absence of a Form
13 20 from the record in this case. That should not be
14 outcome determinant because a Form 20 is always
15 prepared by an employer. We know in this case that
16 none of Ms. Lewis' employers paid her anything. All
17 of the money came directly from the customers and her
18 testimony was the best source of information.

19 Thank you.

20 COMMISSIONER HUFFSTETLER: Did she submit a tax
21 return?

22 MR. HEWITT: May I respond?

23 COMMISSIONER BECK: Yes, sir.

24 MR. HEWITT: She did not submit tax returns. May
25 I explain?

1 COMMISSIONER HUFFSTETLER: I mean, that's the
2 best evidence. You tell the government how much you
3 make and she could have brought that to the hearing.
4 She obviously didn't do that.

5 MR. HEWITT: That's exactly correct. But our
6 position would be that her testimony, which is she
7 made \$250 to \$350 a night, passes the smell test.
8 It's certainly credible. And if the question for
9 employment is control then the absence of tax returns
10 should not be outcome determinative and there is
11 evidence -

12 COMMISSIONER BECK: All I asked was did she bring
13 tax returns?

14 MR. HEWITT: I'm sorry. The answer is no.

15 COMMISSIONER BECK: Okay. Thank you. That will
16 conclude this proceeding.

17 (The hearing concluded at 3:00 PM)

State of South Carolina



1612 Marion Street
P.O. Box 1715
Columbia, S.C. 29202-1715

TEL: (803) 737-5700
FAX: (803) 737-5768

Workers' Compensation Commission

January 12, 2009

Charles B. Burnett, III
Attorney at Law
P.O. Box 12186
Rock Hill, SC 29731

Re: Investigation file:
LeAndra Lewis v. L&B Dynasty, Inc.
WCC File No. X080891
Date of accident: 7/23/08

Dear Mr. Burnett:

The SC Workers' Compensation Commission's Compliance Division has conducted an investigation regarding the claim referenced above. We were unable to locate insurance coverage or show conclusively that the employer, L&B Dynasty, Inc., was subject to the SC Workers' Compensation Act by regularly employing four or more persons in this state. Also, we were unable to locate previous insurance coverage that would have brought the employer under the Act. If we receive additional information, we could change our opinion; however, at this time, it is our opinion the Commission does not have jurisdiction over the matter.

The term "regularly employed" is not defined in South Carolina and is the subject of much litigation. Each case depends on its individual facts and circumstances. We will gladly investigate further any leads you may develop, but it is our intention to close our file at this time.

If you would like to proceed with the claim, please let me know in writing, and I will forward your Form 50 to the Judicial Department to process for a 50/51 hearing. Also please serve the uninsured employer and the SC Uninsured Employers' Fund. The Fund's address for service is as follows:

SC Uninsured Employers' Fund
Koger Center; Winthrop Bldg; Ste 119
220 Executive Center Drive
Columbia, SC 29210

At a hearing, the first issue to prove is that the employer is subject to the Act. The South Carolina Uninsured Fund will not pay a claim unless there is a finding the employer was subject to the Act and uninsured. If the employer is not subject to the Workers' Compensation Act, you may proceed at common law in circuit court.

If you have questions, please call me directly at 803-737-5711.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Felton", with a long horizontal flourish extending to the right.

Michael Felton, Compliance Officer
Compliance Division

MF:f

The South Carolina Second Injury Fund

WILLIAM E. GUNN
INTERIM DIRECTOR

WINTHROP BUILDING, SUITE 119
220 EXECUTIVE CENTER DRIVE
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

01/22/2009

CHARLES B. BURNETTE, III
PO BOX 12186
ROCK HILL, SC 29731

RE: LEANDRA LEWIS VS. L B DYNASTY, INC.

UEF NUMBER: 006541 WCC NUMBER: X080891 ACCIDENT DATE: 07/23/2008

Dear MR. BURNETTE:

This is to advise you that I am in the process of investigating the above captioned claim.

It has come to our attention that L B DYNASTY, INC. may not have been covered for worker's compensation insurance at the time of your client's alleged injury.

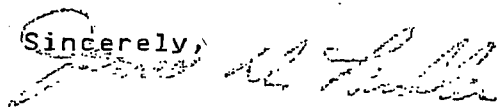
In order for me to evaluate this claim completely, I respectfully request that you complete the enclosed Claimant Information sheet and return it to me along with copies of all of the medical bills to-date. I cannot make payment on the medical bills at this time, but I need them in order to estimate our potential exposure on this claim. It is necessary that I have the narrative medical reports from all of your client's treating doctors.

If this claim is nearing a settlement posture, please submit your demand letter along with the above requested information for a complete evaluation.

If you wish to discuss our position on this claim in detail, please give me a call during normal business hours at (803) 798-2722.

I look forward to hearing from you soon.

Sincerely,



JAMES LINDLER
CLAIMS ANALYST II
Telephone Extension: 135

JDL/drg
Enclosure

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC # 0821881

DATE/PLACE of HEARING: 5/21/09, Columbia, SC

CLAIMANT: LeAndra Lewis

EMPLOYER: LB Dynasty d/b/a Boom Boom Room Studio 54 & Will Thompson

CARRIER: South Carolina Uninsured Employers Fund

CLAIMANT'S ATTY: Charles Burnette, III

DEFENDANT'S ATTY: Lisa Glover

FINDINGS OF FACT

1. Claimant alleges injury by accident to multiple body parts as a result of being shot on July 23, 2008. Claimant maintains she was an employee of the Uninsured Defendant.
2. Claimant who lives in North Carolina worked as an exotic dance in clubs in North and South Carolina. She was inadvertently shot when an altercation broke out at the club. She had not part in the disturbance and was hit by accident randomly.
3. Claimant maintains she is an employee and not an independent contractor.
4. Claimant stated she could be fired if she was not properly dressed, not cleans (hygienically) and could be fired if she danced out of rotation. Claimant further testified she could be fired for fighting or taking off your underwear.
5. Claimant stated owner supplied the music, a pole, towels and pole cleaner, tables and sofa upon which she could lean but not sit. She said lighting was supplied.
6. Claimant stated lockers were provided. If they were all taken dancers would put their clothes on the floor.
7. Claimant never filled out an application and can dance anywhere she wants in any town or state. She stated in order to dance you walk in the club, show and ID, pay a tip, and go to work.
8. Dancers only compensation comes from tips. They pat "tip out money" to the bartender and D.J.
9. Claimant stated she could quit at any time and had never been fired. She also stated she had control over the costumes she wore, was not required to use the pole and could pick her own songs.
10. The record was left open for 30 days for briefs from the Claimant and SCUEF. The record is now closed. I agree with the position outlined in the Fund's Brief and ask that an Order to be drawn consistent with that brief and my findings.
11. I find Claimant failed to prove she was an employee of the Uninsured Defendant. In fact, I find there can be no clearer definition of an Independent Contractor than the relationship Claimant had with Uninsured Defendant. My decision is based on very weak factual evidence that fails to meet the test required by the Act. The "Wilkerson vs. Palmetto State Trucking" case also assists this decision.
12. Compensation Rate: \$75.00 (Note, there is no evidence whatsoever, as to the amount of money Claimant made, hours worked etc). All there is, is Claimant's testimony which would be self-serving.
13. Claim for Benefits Under the Act is Denied.

Commissioner's Notes for Decision and Order

Page 1 of 2

INSTRUCTIONS: Lisa Glover attorney to prepare proposed Order. Proposed Order shall include Findings of Fact attached hereto. Any other Findings of Fact not inconsistent with those attached hereto may also be proposed. Proposed Order shall be submitted by August 14, 2009. If you need a transcript order it *immediately* from court reporter Jan Whitworth *in writing* at Post Office Box 551, Roebuck, S c 29376 (864) 494-2705. Provide a copy of the proposed order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the Commission.



The Commission now requires the original and three copies of the proposed order with self-addressed, stamped envelope to each party.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award

G. Bryan Lyndon, Commissioner
South Carolina Workers' Compensation Commission
July 13, 2009

cc: Charles B. Burnette, III Esquire
Boom Boom Studio

Sandy Greenaway

From: Hollmon, Eugenia [EHollmon@wcc.sc.gov]
Sent: Monday, May 03, 2010 2:19 PM
To: Glover, Lisa; Strausbaugh, Susan; Sandy Greenaway; Marti Bluestein
Subject: RE: Lewis

Please see that once again I have corrected the Commissioner assigned to the order. This instruction is the correct one. Please excuse all others.

Genia

From: Hollmon, Eugenia
Sent: Monday, May 03, 2010 2:16 PM
To: Glover, Lisa; Strausbaugh, Susan; 'Sandy Greenaway'; 'mmbluestein@bntdlaw.com'
Subject: RE: Lewis

Panel members and Commissioner assigned to do the order have been corrected.

From: Hollmon, Eugenia
Sent: Monday, May 03, 2010 2:09 PM
To: Glover, Lisa; Strausbaugh, Susan; 'Sandy Greenaway'; mmbluestein@bntdlaw.com
Subject: Lewis

Attached is a request for proposed decision and order.

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**LeAndra Lewis v L.B. Dynasty Inc.
SCWCC: 0821881**

**Commission Panel: Huffstetler, Williams, Beck; Chair
Order Assigned to Commissioner: Williams**

Blake Hewitt
Lisa C. Glover

Defendants/Appellant
Defendants/Respondent

This matter was heard before the South Carolina Worker's Compensation Full Commission Appellate Panel during the last term. The Panel has considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order.

Ms. Glover please prepare a proposed order with copies for each Party; and submit to the Judicial Department within thirty (30) days of this notice.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
David W. Huffstetler, Commissioner
T. Scott Beck, Commissioner

WCC File No. 0821881

LeAndra Lewis, ... Appellant,

v.

L.B. Dynasty Inc., d/b/a
Boom Boom Room Studio 54, and
the S.C. Uninsured Employer's Fund, ... Defendants,

Of whom

The S.C. Uninsured Employer's Fund
is the Respondent.

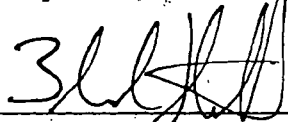
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

/signature page attached

December 21, 2010

Respectfully submitted,



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Bluestein, Nichols, Thompson &
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burnettelaw@comporium.net

Attorneys for Appellant