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In The Court of Appeals

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

South Carolina Workers' Compensation Commission Appellate Panel

Appellate Case No. 2016-002148

Jose Martinez, Respondent,

v.

Jose Efrain Henriquez Salgado; Farley Construction; Auto-Owners Insurance Company; and
Builders Mutual Insurance Company,

Of whom Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company are the
Appellants,

And

Farley Construction Co. and Builders Mutual Insurance Company are the Respondents.

RECORD ON APPEAL

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1419236

JOSE MARTINEZ

vs.

JOSE EFRAIN HENRIQUEZ SALGADO and FARLEY CONSTRUCTION, LLC

Employers

-and-

AUTO OWNERS INSURANCE COMPANY and

BUILDERS MUTUAL INSURANCE COMPANY

Carriers

Hearing:

April 22, 2015
Anderson, South Carolina

Appearances:

For the Claimant, Jose Martinez:
Joseph R. Baldwin, Esquire—Attorney at Law
of Greer, South Carolina

For the Employer, Jose Efrain Henriquez Salgado
and the Carrier, Auto Owners Insurance Company:
John Stroud, Esquire of Warder Law Firm
of Charleston, South Carolina

For the Employer, Farley Construction, LLC
and the Carrier, Builders Mutual Insurance Company:
George A. Taylor, Esquire of Callison Tighe &
Robinson, LLC, of Columbia, South Carolina

Purpose of Hearing:

To determine which employer/carrier is liable for
compensation, if any due, to consider any other issues.

Decision and Order:

By Michael Campbell, Commissioner.

Filed

March 29, 2016

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted by the parties for inclusion in the record of this case, without objections.

I. CLAIMANT'S APA SUBMISSIONS

EXHIBITS

- A. Disability Notes from treating physician record indicating that claimants considered self-pay

II. DEFENDANTS' FARLEY CONSTRUCTION, LLC AND BUILDERS MUTUAL INSURANCE COMPANY, APA SUBMISSIONS

EXHIBITS

1. Certificate of Insurance produced by Jose Efrain Henriquez Salgado.
2. Copies of pay stubs dated 12/17/14, 12/18/14, 1/9/15, 1/15/15, 2/6/15, 2/9/15.
3. Permit Fee Receipt from City of Gaffney.
4. City of Gaffney Business License.
5. Permit - Inspection Card.
6. Invoice to Jose Efrain Henriquez in the amount of \$1,620.00.
7. Invoice to Jose Efrain Henriquez in the amount of \$805.00.
8. Deposition Transcript of Claimant.
9. Deposition Transcript of Jose Efrain Henriquez Salgado (upon receipt.)
10. Deposition Transcript of Josue Efrain (upon receipt.)

III. DEFENDANTS' JOSE EFRAIN HENRIQUEZ SALGADO AND AUTO OWNERS INSURANCE COMPANY, APA SUBMISSIONS

None

STIPULATIONS

At the call of the case the parties stipulated as follows:

- a. The South Carolina Workers' Compensation Commission has jurisdiction and venue is proper in Anderson County.
- b. Notice of Hearing was sufficient.

STATEMENT OF THE CASE

This matter came before the undersigned Commissioner for a hearing to determine issues set forth on the Form 50 filed by the Claimant on January 6, 2015, the Form 51 filed by Defendant Farley Construction, LLC ("Farley Construction") and its carrier Builders Mutual Insurance Company on January 29, 2015, and the Form 51 filed by Defendant Jose Efrain Henriquez Salgado ("Salgado") and its carrier Auto-Owners Insurance Company on February 4, 2015. The Claimant, Jose Martinez, alleges that he suffered an injury by accident within the course and scope of his employment on December 12, 2014. The Claimant named both Salgado and Farley Construction as employers/ defendants, and has taken the position that the Commission should determine which defendant and carrier is responsible for compensation.

Salgado and its carrier Auto-Owners Insurance Company have denied that the Claimant suffered a compensable accident and have further denied that the Claimant was an employee of Salgado at the time of the alleged accident. Salgado and its carrier allege that Farley Construction was the Claimant's employer on the day of the alleged injury.

Farley Construction and its carrier do not dispute that the Claimant was injured on December 12, 2014, but deny that the Claimant was an employee of Farley Construction. Farley Construction alleges that the Claimant was an employee of its subcontractor, Salgado.

Since the alleged accident, the Claimant has not received any medical benefits or compensation benefits from any party.

Of note, Salgado, though properly named and served, did not appear for his deposition in this case which was noticed for April 8, 2015, and did not appear for this

Hearing. Salgado's lawyer made attempts to get his client to the deposition and this Hearing but was unable to do so despite his efforts.

The issues before the undersigned Commissioner are whether the Claimant suffered a compensable injury by accident and which employer and carrier is responsible for compensation if any is due.

EVIDENCE OF THE CASE

Hearing Testimony:

Claimant Jose Martinez – The Claimant testified that he has not worked at all since December 12, 2014, and he is currently seeing a doctor for his injuries. (Hr'g Tr. 13:10-16.) The Claimant has not received any benefits since his injury and has received medical bills that have not been paid. (Hr'g Tr. 13:21-14:7.) When asked who was paying him for his work on December 12, 2014, the Claimant testified "[t]he day that I had the accident Efrain [referring to Salgado] told me that the man from Farley Construction was going to pay." (Hr'g Tr. 15:4-9.)

On cross-examination by counsel for Farley Construction, the Claimant admitted that he had not even heard of the company Farley Construction at the time he was deposed in this case. (Hr'g Tr. 15:16-20.) The Claimant further testified that approximately one week following his accident, Salgado returned his car and paid him for his work on December 12, 2014. (Hr'g Tr. 15:21-25.) The Claimant testified that Salgado paid him \$100, and that the money came from Michael Farley. (Hr'g Tr. 19:20-21.) He testified that he has tried to contact Salgado since then, but Salgado will not answer his call. (Hr'g Tr. 16:4-7.) He testified that he and Salgado are friends. (Hr'g Tr. 16:12.)

The Claimant testified that no one from Farley Construction has ever paid him (Hr'g Tr. 16:20-22.) The Claimant testified that he did not know how much money he was going to make on December 12, 2014, but that Salgado told him to meet Michael Farley for work. (Hr'g Tr. 17:1-12.) The Claimant testified that he has never filled out an application for employment with Farley Construction. (Hr'g Tr. 17:13-15.) The Claimant testified that he usually works five or six days a week, and that "two days, three days a week, sometimes a whole week" are for Salgado. (Hr'g Tr. 18:1-5.) The Claimant testified that he believes he worked for Farley Construction on December 12, 2014, but that is the only day he ever worked for Farley Construction. (Hr'g Tr. 18:10-15.) When asked if he would feel differently about who he was working for if Salgado had been present, the Claimant testified that the last time he talked to Salgado he was told: "that if I would have been working with him he would have been responsible." (Hr'g Tr. 18:16-21.)

On cross-examination by counsel for Salgado, the Claimant testified that he transported himself to the jobsite. He used his own hammer and tool belt, but Farley Construction provided a drill for him to use. (Hr'g Tr. 20:15-25.) When the Claimant was asked who his boss was on the day of his accident, he testified "Efrain told me that Michael was going to tell me what we had to do." (Hr'g Tr. 21:16-19.) When asked if he was certain he was working for Farley Construction, the Claimant testified "I was sure that I was working for them that day, because Efrain told me that they needed me and that they were going to pay me that day." (Hr'g Tr. 21:25-22:2.)

Ron Farley – Ron Farley was called by Farley Construction. He testified that he is a 60% owner of Farley Construction and his son Michael Farley owns the remaining

40%. (Hr'g Tr. 23:21-23.) Farley Construction has three employees, Ron, Michael and a salesman named James Butler. (Hr'g Tr. 24:3-6.) Farley Construction is a general contractor. Ron Farley testified regarding how the company operates: "We sell the work, collect the work buy the materials, and pay subcontractors to do the work." (Hr'g Tr. 25:15-21.) Ron Farley testified that he and his son both perform physical labor occasionally and that Michael Farley does more than he. (Hr'g Tr. 25:22-26:4.)

Ron Farley was asked about Defendants' Exhibit 1, a Certificate of Insurance from Salgado to Farley Construction dated December 8, 2014. Ron Farley testified that he insisted his company receive a certificate of insurance from Salgado if he was going to use Salgado as a subcontractor. (Hr'g Tr. 26:18-27:2.) He received the fax on December 8, 2014 from Calidad Latina Insurance Company in Greenville. (Hr'g Tr. 31:4-10.)

Ron Farley testified that the Claimant was never employed by Farley Construction. (Hr'g Tr. 27:9-22.) Farley Construction never paid the Claimant. (Hr'g Tr. 27:23-25.) Ron Farley testified that he does know Salgado. (Hr'g Tr. 28:1-14), and Salgado has performed work for Farley Construction as an employee of its former subcontractor, Extreme Construction, and later as a direct subcontractor of Farley Construction. (Hr'g Tr. 29:3-30:6.)

Michael Farley – Michael Farley was called to testify by Farley Construction. Michael Farley testified that he and his father split up the work for Farley Construction, and that he handles the jobs occurring in Cherokee County. Michael Farley testified that he met Salgado when Salgado worked for a company called Extreme Construction. (Hr'g Tr. 39:22-40:2.) Salgado left Extreme Construction in 2014 and went on his own.

(Hr'g Tr. 40:3-6.) At that time, Farley Construction started hiring Salgado's company. (Hr'g Tr. 40:7-8.) Michael Farley testified that Salgado has his own employees and he has seen as many as six on a jobsite at one time. (Hr'g Tr. 40:23-15.) He testified that he had seen the Claimant working for Salgado prior to December 12, 2014. (Tr. 45:9-21.)

Michael Farley testified that he was working on Petty Street on December 12, 2014 (hereafter referred to as the "Petty Street job"). (Hr'g Tr. 41:21-42:9.) The week before the Petty Street job, Michael Farley took Salgado by the jobsite to show him where they would be working next. (Hr'g Tr. 42:19-43:3.) Salgado agreed that his company would work the Petty Street job. (Hr'g Tr. 43:10-12.) Michael Farley testified that days before December 12, 2014, he learned that Salgado and his crew were working another job and they would not all be at the Petty Street job that week. (Hr'g Tr. 43:15-19.) Michael Farley testified that he spoke with Salgado, and Salgado told him he would have somebody with experience with metal roofs there on December 12, 2014. (Hr'g Tr. 44:6-8.) Michael Farley testified that Salgado sent the Claimant. (Hr'g Tr. 44:22-24.)

Michael Farley testified that he did not pay the Claimant, did not discuss pay with the Claimant and believed that Salgado would work that out with the Claimant. (Hr'g Tr. 44:25-45:8.) Michael Farley testified he has never paid Salgado's employees and does not know how much Salgado pays them. (Hr'g Tr. 45:22-46:8.)

Michael Farley was asked about Defendants' Exhibits 6 and 7, invoices submitted by Salgado to Farley Construction. (Hr'g Tr. 46:16-19.) He testified Invoice 131929 was for the Petty Street job. Michael Farley testified the total invoice amount

was \$805, and that he issued one check to Salgado for that amount. (Hr'g Tr. 47:19-20; 48:24-49:7.) He paid \$100 to Salgado for the services provided by the Claimant, but he was not concerned with how much Salgado paid the Claimant. (Hr'g Tr. 47:25-48:2.)

Michael Farley testified that he was present at the jobsite when the Claimant fell off the roof, and he took the Claimant's truck keys following the accident. (Hr'g Tr. 49:15-50:4.) He testified he drove the Claimant's vehicle off the jobsite for safekeeping because he would want someone to do the same for him. (Hr'g Tr. 50:10-11.)

On cross-examination by counsel for Salgado, Michael Farley testified that he did not know who Salgado was sending to work on the Petty Street job on December 12, 2014. (Hr'g Tr. 52:4-10.) Michael Farley testified that the Claimant had his own tool belt, but that he used Farley Construction's ladder. (Hr'g Tr. 52:21-53:5.) Michael Farley testified that he was the superintendent on the job and that he "told everybody what to do." (Hr'g Tr. 53:12-15.) Michael Farley testified that there were four employees on the job. Aside from he and the Claimant, there was Jim Butler, an employee of Farley Construction, and Vernon Camp, a subcontractor of Farley Construction. (Hr'g Tr. 53:20-54:2.)

Michael Farley was asked about Exhibits 6 and 7, and specifically why one invoice does not have Salgado's employees described on it and the Petty Street job invoice does. (Hr'g Tr. 55:10-13.) Michael Farley testified that the Petty Street job invoice included two different jobsites on Petty Street. He testified it's not common for an invoice to include one person's name on it, and it's also not common for Salgado to send only one employee to a jobsite. (Hr'g Tr. 56:13-17.)

On cross-examination by counsel for the Claimant, Michael Farley testified that he and Salgado agreed on an amount Farley Construction would pay Salgado for the work performed on December 12, 2014 by the Claimant. (Hr'g Tr. 57:14-20.)

FINDINGS OF FACT

1. Jose Efrain Henriquez Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier. I base this finding on the record as a whole and the testimony of the Claimant, Michael Farley and Ron Farley.

2. Claimant sustained a compensable injury to his back arising out of and in the course and scope of his employment on December 12, 2014.

3. Farley Construction was the general contractor for the Petty Street job where the Claimant was injured on December 12, 2014. Farley Construction hired Salgado to work as a subcontractor on the Petty Street job and specifically to assist in the installation of a metal roof. The Claimant was directed to the Petty Street job by his employer, Salgado, because he had experience working with metal roofs.

4. The Claimant was an employee of Salgado prior to December 12, 2014.

5. Salgado had the right to control the Claimant, and although Salgado was not present at the Petty Street job on December 12, 2014, Salgado had the right and authority to control and direct the Claimant's work and the manner in which his work was performed and accomplished.

6. Salgado exercised control over the Claimant. Salgado directed the Claimant to the Petty Street job on December 12, 2014 instead of the other job Salgado was performing out of town.

7. Salgado paid the Claimant for his work on December 12, 2014 (and prior) and Salgado determined the Claimant's wages. Salgado paid the Claimant \$100 cash for the work the Claimant performed on December 12, 2014.

8. Salgado had the right to fire the Claimant. Although Farley Construction could likely insist that Salgado not allow the Claimant on his projects (including the Petty Street job), Farley Construction had no right to fire the Claimant.

9. On the day of the accident, the Claimant used his own hammer and tool belt; Farley Construction provided at least a ladder and drill; the Claimant had his own tools in his truck but they were not used because Michael Farley was already on the jobsite with his tools.

10. Salgado produced a Certificate of Insurance, Accord Form 25, on December 8, 2014 through his insurance agent, Calidad Latina Insurance, representing to Farley Construction that he had workers compensation insurance just prior to the Petty Street job commencing.

11. Salgado does have workers compensation insurance, and his carrier is Auto-Owners Insurance Company.

12. Salgado did not appear for the Hearing although he was provided proper notice. Salgado did not appear for his deposition in this case although he was properly served notice.

13. A determination of permanency is premature at this time.

14. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of Salgado and Auto-Owners Insurance Company's choosing.

15. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

16. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.

17. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

CONCLUSIONS OF LAW

1. This matter is governed by the South Carolina Workers' Compensation Act, § 42-1-10, et. seq. of the South Carolina Code.

2. The Claimant sustained an injury by accident pursuant to S.C. Code Ann. § 42-1-160 on December 12, 2014 within the course and scope of his employment with Salgado, and Salgado and its carrier, Auto-Owners Insurance Company, were given proper notice of Claimant's injury.

3. Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier.

4. Salgado had the right to control the Claimant. I base this conclusion on the record as a whole and the testimony of Ron Farley, Michael Farley and Jose Martinez, as well as, relevant South Carolina case law. See Farrar v. D.W. Daniel High School, 309 S.C. 523, 424 S.E.2d. 543 (Ct. App. 1992) (the factors to be considered when determining whether an injured person is an employee or independent contractor are: (1) the employer's right to exercise or the actual exercise or control over the details of the work and how it is performed; (2) the method of payment; (3) furnishing of

equipment; and (4) the right to terminate.) Though Salgado did not directly furnish the equipment (the company that hired Salgado did provide some equipment), the other factors weigh heavily in favor of finding the Claimant was an employee of Salgado.

5. Defendants Farley Construction and Builders Mutual Insurance Company are not the responsible employer and carrier in this case and are hereby dismissed.

6. Farley Construction justifiably relied on a Certificate of Insurance provided by Salgado through his insurance agent and therefore is relieved of any and all liability pursuant to S.C. Code Ann. § 42-1-415.

7. A determination of permanency is premature at this time.

8. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of José Efraín Henríquez Salgado and Auto-Owners Insurance Company's choosing.

9. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

10. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.

11. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

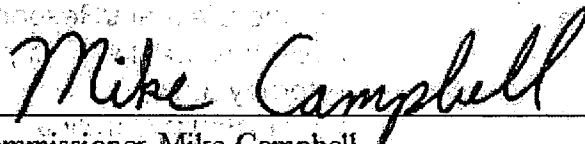
AWARD

ACCORDINGLY IT IS HEREBY ORDERED that Defendant Salgado and its carrier, Auto-Owners Insurance Company provide Claimant an evaluation and any additional causally related medical treatment recommended by a physician, with a

specialty to the back; the physician to be selected by Auto-Owners Insurance Company. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury. Additionally, Defendants Salgado and Auto-Owners Insurance Company shall reimburse Claimant for all past out-of-pocket causally related medical expenses. Additionally, Defendants Farley Construction and Builders Mutual Insurance Company are dismissed with prejudice.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION


Commissioner Mike Campbell

March 29, 2016

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

March 29, 2016

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1419236

JOSE MARTINEZ

VS.

JOSE EFRAIN HENRIQUEZ SALGADO; FARLEY CONSTRUCTION;
AUTO-OWNERS INSURANCE COMPANY; AND
BUILDERS MUTUAL INSURANCE COMPANY

Hearing: July 18, 2016

Appearances:

For the Claimant/Respondent:
Joseph R. Baldwin, Esquire
Attorney at Law
Greer, South Carolina

For the Defendants/Appellant
Jose Efrain Henriquez Salgado
and Auto-Owners Insurance Company:
F. Reid Warder, Jr., Esquire
John D. Stroud, Esquire
Warder Law Firm
Charleston, South Carolina

For the Defendants/Respondents
Farley Construction Company
and Builders Mutual Insurance Company
George A. Taylor, Esquire
Callison Tighe & Robinson, LLC
Columbia, South Carolina 29201

Purpose of Hearing: Appellate Panel Review of Issues Raised in Form 30

Decision and Order: By Gene McCaskill, Aisha Taylor, Avery B. Wilkerson

Filed: September 20th, 2016

STATEMENT OF THE CASE

This matter was originally heard by Commissioner Michael Campbell on April 22, 2015 in Anderson, South Carolina. On March 29, 2016, Commissioner Campbell

issued an Order with the following Findings of Fact, Conclusions of Law, and Award.

FINDINGS OF FACT

1. Jose Efrain Henriquez Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier. I base this finding on the record as a whole and the testimony of the Claimant, Michael Farley and Ron Farley.
2. Claimant sustained a compensable injury to his back arising out of and in the course and scope of his employment on December 12, 2014.
3. Farley Construction was the general contractor for the Petty Street job where the Claimant was injured on December 12, 2014. Farley Construction hired Salgado to work as a subcontractor on the Petty Street job and specifically to assist in the installation of a metal roof. The Claimant was directed to the Petty Street job by his employer, Salgado, because he had experience working with metal roofs.
4. The Claimant was an employee of Salgado prior to December 12, 2014.
5. Salgado had the right to control the Claimant, and although Salgado was not present at the Petty Street job on December 12, 2014, Salgado had the right and authority to control and direct the Claimant's work and the manner in which his work was performed and accomplished.
6. Salgado exercised control over the Claimant. Salgado directed the Claimant to the Petty Street job on December 12, 2014 instead of the other job Salgado was performing out of town.

7. Salgado paid the Claimant for his work on December 12, 2014 (and prior) and Salgado determined the Claimant's wages. Salgado paid the Claimant \$100 cash for the work the Claimant performed on December 12, 2014.

8. ~~Salgado had the right to fire the Claimant. Although Farley Construction could~~
~~likely insist that Salgado not allow the Claimant on his projects (including the Petty~~
~~Street job), Farley Construction had no right to fire the Claimant.~~

9. On the day of the accident, the Claimant used his own hammer and tool belt; Farley Construction provided at least a ladder and drill; the Claimant had his own tools in his truck but they were not used because Michael Farley was already on the jobsite with his tools.

10. Salgado produced a Certificate of Insurance, Accord Form 25, on December 8, 2014 through his insurance agent, Calidad Latina Insurance, representing to Farley Construction that he had workers compensation insurance just prior to the Petty Street job commencing.

11. Salgado does have workers compensation insurance, and his carrier is Auto-Owners Insurance Company.

12. Salgado did not appear for the Hearing although he was provided proper notice. Salgado did not appear for his deposition in this case although he was properly served notice.

13. A determination of permanency is premature at this time.

14. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of Salgado and Auto-Owners Insurance Company's choosing.

15. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

~~16. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.~~

17. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

CONCLUSIONS OF LAW

1. This matter is governed by the South Carolina Workers' Compensation Act, § 42-1-10, et. seq. of the South Carolina Code.

2. The Claimant sustained an injury by accident pursuant to S.C. Code Ann. § 42-1-160 on December 12, 2014 within the course and scope of his employment with Salgado, and Salgado and its carrier, Auto-Owners Insurance Company, were given proper notice of Claimant's injury.

3. Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier.

4. Salgado had the right to control the Claimant. I base this conclusion on the record as a whole and the testimony of Ron Farley, Michael Farley and Jose Martinez, as well as, relevant South Carolina case law. See Farrar v. D.W. Daniel High School, 309 S.C. 523, 424 S.E.2d. 543 (Ct. App. 1992) (the factors to be considered when determining whether an injured person is an employee or independent contractor are (1) the employer's right to exercise or the actual exercise or control over the details of the work and how it is performed; (2) the method of payment; (3) furnishing of equipment; and (4) the right to terminate.) Though Salgado did not directly furnish the

equipment (the company that hired Salgado did provide some equipment), the other factors weigh heavily in favor of finding the Claimant was an employee of Salgado.

5. Defendants Farley Construction and Builders Mutual Insurance Company are not the responsible employer and carrier in this case and are hereby dismissed.

6. Farley Construction justifiably relied on a Certificate of Insurance provided by Salgado through his insurance agent and therefore is relieved of any and all liability pursuant to S.C. Code Ann. § 42-1-415.

7. A determination of permanency is premature at this time.

8. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company's choosing.

9. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

10. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.

11. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

AWARD

ACCORDINGLY IT IS HEREBY ORDERED that Defendant Salgado and its carrier, Auto-Owners Insurance Company provide Claimant an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back; the physician to be selected by Auto-Owners Insurance Company. The specialist is to be selected from a practice that has not previously treated Claimant

and is to be provided with all of Claimant's medical records pertaining to his work related injury. Additionally, Defendants Salgado and Auto-Owners Insurance Company shall reimburse Claimant for all past out-of-pocket causally related medical expenses.

~~Additionally, Defendants Farley Construction and Builders Mutual Insurance Company~~
~~are dismissed with prejudice.~~

APPEAL TO THE FULL COMMISSION

Within the statutory period, counsel for Defendants/Appellants Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company filed a Request for Commission Review (Form 30) setting forth its grounds for review, copies of which were furnished to all parties prior to oral argument scheduled before the Appellate Panel of the Full Commission on July 18, 2016. Prior to oral argument, the Commission received Briefs from Defendants/Appellants Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company (including a Reply Brief) and Defendants/Respondents Farley Construction, LLC and Builders Mutual Insurance Company. The Claimant did not file a brief and maintained its position that the Commission should determine which of the defendants and carriers were responsible for compensation. 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 since been under study and consideration. By appeal, Defendants/Appellants submit the following questions presented in their Brief:

1. Did the Single Commissioner err in finding that Salgado was a subcontractor on the jobsite in question?
2. Did the Single Commissioner err in applying the test set out in Farrar v. D.W. Daniel High School for a determination of who Claimant's direct employer was?

3. Even if the test set out in Farrar is applicable, did the Single Commissioner err in his application of the Farrar test?
4. Did the Single Commissioner err in finding Salgado was Claimant's direct employer?

~~The Appellant Panel, pursuant to S.C. Code Ann. § 42-17-50, "shall review the award, and if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award."~~

The Appellate Panel may make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, fully affirms the Single Commissioner's March 29, 2016 Decision and Order, and the following Findings of Fact and Conclusion of Law:

APPELLATE PANEL'S FINDINGS OF FACT

1. Jose Efrain Henriquez Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier. We base this finding on the record as a whole and the testimony of the Claimant, Michael Farley and Ron Farley.
2. Claimant sustained a compensable injury to his back arising out of and in the course and scope of his employment on December 12, 2014.
3. Farley Construction was the general contractor for the Petty Street job where the Claimant was injured on December 12, 2014. Farley Construction hired Salgado to work as a subcontractor on the Petty Street job and specifically to assist in the installation of a metal roof. The Claimant was directed to the Petty Street job by his employer, Salgado, because he had experience working with metal roofs.

4. The Claimant was an employee of Salgado prior to December 12, 2014.

5. Salgado had the right to control the Claimant, and although Salgado was not present at the Petty Street job on December 12, 2014, Salgado had the right and

~~authority to control and direct the Claimant's work and the manner in which his work~~
~~was performed and accomplished.~~

6. Salgado exercised control over the Claimant. Salgado directed the Claimant to the Petty Street job on December 12, 2014 instead of the other job Salgado was performing out of town.

7. Salgado paid the Claimant for his work on December 12, 2014 (and prior) and Salgado determined the Claimant's wages. Salgado paid the Claimant \$100 cash for the work the Claimant performed on December 12, 2014.

8. Salgado had the right to fire the Claimant. Although Farley Construction could likely insist that Salgado not allow the Claimant on his projects (including the Petty Street job), Farley Construction had no right to fire the Claimant.

9. On the day of the accident, the Claimant used his own hammer and tool belt; Farley Construction provided at least a ladder and drill; the Claimant had his own tools in his truck but they were not used because Michael Farley was already on the jobsite with his tools.

10. Salgado produced a Certificate of Insurance, Accord Form 25, on December 8, 2014 through his insurance agent, Calidad Latina Insurance, representing to Farley Construction that he had workers compensation insurance just prior to the Petty Street job commencing.

11. Salgado does have workers compensation insurance, and his carrier is Auto-Owners Insurance Company.

12. Salgado did not appear for the Hearing although he was provided proper notice. Salgado did not appear for his deposition in this case, although he was properly served notice.

13. A determination of permanency is premature at this time.

14. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of Salgado and Auto-Owners Insurance Company's choosing.

15. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

16. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.

17. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

APPELLATE PANEL'S CONCLUSION OF LAW

1. This matter is governed by the South Carolina Workers' Compensation Act, § 42-1-10, et. seq. of the South Carolina Code.

2. The Claimant sustained an injury by accident pursuant to S.C. Code Ann. § 42-1-160 on December 12, 2014 within the course and scope of his employment with Salgado, and Salgado and its carrier, Auto-Owners Insurance Company, were given proper notice of Claimant's injury.

3. Salgado was the Claimant's employer at the time of the accident; therefore, Auto-Owners Insurance Company is the responsible carrier.

4. Salgado had the right to control the Claimant. I base this conclusion on the record as a whole and the testimony of Ron Farley, Michael Farley and Jose Martinez, as well as, relevant South Carolina case law. See: Farrar v. D.W. Daniel High School, 309 S.C. 523, 424 S.E.2d 543 (Ct. App. 1992) (the factors to be considered when determining whether an injured person is an employee or independent contractor are: (1) the employer's right to exercise or the actual exercise or control over the details of the work and how it is performed; (2) the method of payment; (3) furnishing of equipment; and (4) the right to terminate.) Though Salgado did not directly furnish the equipment (the company that hired Salgado did provide some equipment), the other factors weigh heavily in favor of finding the Claimant was an employee of Salgado.

5. Defendants Farley Construction and Builders Mutual Insurance Company are not the responsible employer and carrier in this case and are hereby dismissed.

6. Farley Construction justifiably relied on a Certificate of Insurance provided by Salgado through his insurance agent and therefore is relieved of any and all liability pursuant to S.C. Code Ann. § 42-1-415.

7. A determination of permanency is premature at this time.

8. Claimant is entitled to an evaluation and any additional causally related medical treatment recommended by a physician, with a specialty to the back, of Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company's choosing.

9. The specialist is to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to his work related injury.

10. Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses.

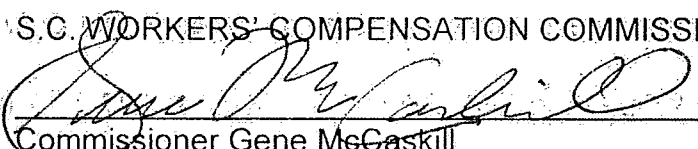
11. As stipulated to at the hearing, a determination of AWW and CR are held in abeyance at this time.

ORDER OF APPELLATE PANEL

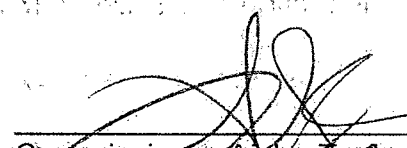
The Appellate Panel of the South Carolina Workers' Compensation Commission,
by unanimous vote, hereby affirms the Single Commissioner's March 29, 2016 Decision
and Order in FULL and same shall constitute the Decision and Order of the Appellate
Panel.

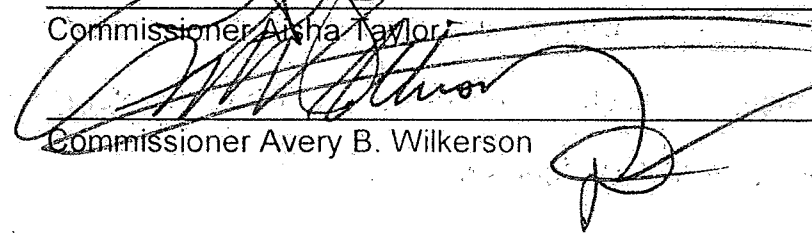
IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


Commissioner Gene McGaskill

FULL AFFIRMATION


Commissioner Aisha Taylor


Commissioner Avery B. Wilkerson

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on September 20, 2016



Claimant's Name: Jose Martinez SSN: [REDACTED]

Employer's Name: Jose Salgado

Address: 126 Ridge Dr

Address: 223 Guyton Rd

City: Williamston State: SC Zip: 29697

City: Williamston State: SC Zip: 29697

Home Phone: 864-209-6619 Work Phone: 864-989-1321

Insurance Carrier: Auto Owners Insurance Company

Date of Injury: Dec 12, 2014

Preparer's Name: F. Reid Warder, Jr. Law Firm: Warder Law Firm, LLC Preparer's Phone #: (843) 556-4400

Date of Injury or Illness: Dec 12, 2014

Estimated time for hearing: one hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Deny Claimant sustained an injury by accident arising out of and in the course of her employment as alleged; further deny Employee/er relationship.
2. It is ☒ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Admitted as to the Employer, however denied as to Claimant; see #1 above.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: See #1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See #1 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are: Claim barred under § 42-15-20.
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are: See #1 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: _____
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are: _____
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ TBD applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Reserve the right to amend

Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

RJM

Attorney for Jose Efrain Henriquez Salgado
and Travelers Property Casualty Company
of America ONLY

Preparer's Signature

Title

reid@warderlawfirm.com
Email

February 04, 2015
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days on the date of filing this form.



WCC File #: **1419236**

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Jose Martinez SSN: _____

Address: 126 Ridge Dr.

City: Williamston State: SC Zip: 29697

Home Phone: () Work Phone: ()

Date of Injury: 12/12/2014

Employer's Name: Jose Efrain Henriquez Salgado

Address: 223 Guyton Rd., Williamston, SC 29697

88 Hamilton Woods Court, Lake Wylie, SC 29710

Insurance Carrier: Auto Owners Insurance Company (for Salgado)

Builders Mutual Insurance Company

(for Farley Construction)

Preparer's Name: George A. Taylor Law Firm: Callison Tighe & Robinson, LLC

Preparer's Phone #: (803) 404-6900

Date of Injury or Illness: 12/12/2014 Estimated time for hearing: 1 hour.

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Claimant did not work for Farley Construction, LLC. Claimant worked for Defendant Jose Efrain Henriquez Salgado, a subcontractor, who had workers' compensation coverage in place with Defendant Auto Owners Insurance Company at the time of the alleged accident.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1 above.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1 above.
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
See No. 1 above.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1 above.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ Unknown applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
All defenses applicable under the South Carolina Workers' Compensation Act including, but not limited to, §42-1-120; §42-1-130; §42-1-140; §42-1-150; §42-1-160; §42-15-20; §42-15-40; §42-15-60; Cooper v. McDevitt & Street Co.; and the South Carolina Code of Laws (1985 and Cum. Supp. 1995); South Carolina Workers' Compensation Commission lacks subject matter jurisdiction.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

Preparer's Signature

Attorney
Title

GeorgeTaylor@CallisonTighe.com
Email

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 da from the date of filing this form.

SCWCC
FEB 02 2015
JUDICIAL

1/29/15



Claimant's Name: Jose Martinez Employer's Name: Jose Efrain Henriquez Salgado
Farley Construction, LLC
Address: 126 Ridge Dr. Address: 223 Guyton Rd., Williamston, SC 29697
88 Hamilton Woods Court, Lake Wylie, SC 29710
City: Williamston State: SC Zip: 29697
Home Phone: () - Work Phone: () - Carrier: Auto Owners Insurance Company (for Salgado)
Builders Mutual Insurance Company (for Farley Construction)
Preparer's Name: George A. Taylor Preparer's Phone #: (803) 404-6900

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: Unknown 2. AWW: Unknown Date of Injury: 12/12/2014
3. Type of injury and body part(s): Alleged back and spine.
4. Facts in controversy: (1) Responsible Employer and Carrier; (2) AWW/CR; (3) Compensability.
5. Legal issues involved: (1) Whether Claimant was an employee of Farley Construction, LLC; (2) AWW/CR; (3) Compensability.
6. Unusual aspects: See Addendum attached.
7. Witnesses (designate if expert):* See Notice of Witnesses attached.
8. Exhibits: See Notice of Witnesses and APA Submissions attached.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
None.
10. Name, address, and specialty, if any, of the treating physician: Spartanburg Regional Medical, 101 East Wood St.,
Spartanburg, SC 29303; Upstate Spine & Neurosurgery Center, 1075 Boiling Springs Rd., Spartanburg, SC 29303.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: _____

Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

certify I have served this document pursuant to Reg. 67-211 by delivering a copy to (See Certificate of Service attached) this

9 day of April, 2015 by; ☒ first class postage ☐ certified mail ☐ personal service.

Signature: _____ Email: GeorgeTaylor@CallisonTighe.com
Date of hearing: April 22, 2015 Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-501 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58

Revised 7/13

58

PRE-HEARING BRIEF

Jose Martinez v. Jose Efrain Henriquez Salgado et al
WCC No. 1419236

**ADDENDUM TO DEFENDANTS' FARLEY CONSTRUCTION, LLC
AND BUILDERS MUTUAL INSURANCE COMPANY,
FORM 58 - PRE-HEARING BRIEF**

No. 6. Unusual Aspects:

Defendants Farley Construction, LLC and Builders Mutual Insurance Company continue to investigate this claim. These defendants have been unable to take the deposition of Defendant Jose Efrain Henriquez Salgado due to difficulty in locating the Defendant. Defendant Salgado's deposition was finally set for 4/8/15 and Defendant Salgado did not appear for the deposition though he received notice from his attorney. Upon information and belief, Defendant Salgado and his brother Josue (Joseph) Efrain are business partners and share a certificate of insurance. Defendant Salgado and Joseph Efrain are subcontractors for Farley Construction. Joseph Efrain and Defendant Salgado, by and through their insurance agent, produced a certificate of insurance to Farley Construction on December 8, 2014 showing they had workers' compensation coverage.

The Claimant was an employee of defendant Salgado and Joseph Efrain. The Claimant was placed on the jobsite on 12/12/14 at the direction of his employer, Joseph Efrain and defendant Salgado, and he was paid for his work by Joseph Efrain and Defendant Salgado.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737.5675 www.wcc.sc.gov

WCC File #: **1419236**Carrier File #: **E2V0606**

Carrier Code #:

Employer FEIN #:

Claimant's Name: Jose Martinez

SSN: [REDACTED]

Employer's Name: Jose SalgadoAddress: 126 Ridge DrAddress: 223 Guyton RdCity: WilliamstonState: SCZip: 29697City: WilliamstonState: SCZip: 29697Home Phone: 864-209-6619Work Phone: 864-989-1321Insurance Carrier: Auto Owners Insurance CompanyPreparer's Name: F. Reid Warder, Jr.Law Firm: Warder Law Firm, LLCPreparer's Phone #: (843) 556-4400**REQUEST FOR COMMISSION REVIEW**Request for Commission Review by ☐ claimant ☒ employer (check one)Date of injury or illness: Dec 12, 2014

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary.)

SEE ATTACHED(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.☐ Mediation☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Joseph R. Baldwin, Esq and George Taylor, Esq. address 306 W. Polsett Street, Greer, SC 29650; P.O. Box 1390, Columbia SC 29202-1390 on the 8th day of April 2016, by ☒ first class mail ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney for Jose Efrain Henriquez
Salgado and Auto Owners Insurance
Company
Title

Reid@warderlawfirm.com
Email

April 04, 2016
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32 if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC Form # 30
Rev. 3/97

30**REQUEST FOR COMMISSION REVIEW**

Attachment to Form 30.

Jose Martinez v. Jose Efrain Henriquez Salgado, et. al.

WCC # 1419236

1. The Single Commissioner erred with respect to his Finding of Fact number one (1); the error being that to the extent that this finding suggests or indicates that Jose Efrain Henriquez Salgado was the Claimant's direct employer and Auto-Owners was the responsible carrier; these findings are not supported by the greater weight of evidence in the record or applicable law.
2. The Single Commissioner erred with respect to his Finding of Fact number three (3); the error being that to the extent that this finding suggests or indicates that Jose Efrain Henriquez Salgado was the Claimant's direct employer and Auto-Owners was the responsible carrier, that Farley Construction hired Salgado, and that Salgado exercised control over the Claimant on the jobsite in question; these findings are not supported by the greater weight of evidence in the record or applicable law and is not relevant to establishing a direct employer relationship.
3. The Single Commissioner erred with respect to his Finding of Fact number four (4); the error being that to the extent that this finding suggests or indicates that Salgado's prior relationship with the Claimant is relevant to who the Claimant had a direct employment relationship with on December 12, 2014 or was substantial enough to conclude a relationship existed on the day in question; these findings are not supported by the greater weight of evidence in the record or applicable law and is not relevant to establishing a direct employer relationship.
4. The Single Commissioner erred with respect to his Finding of Fact number five (5); the error being that to the extent that this finding suggests or indicates that Salgado exercised control over the Claimant on the jobsite, employed the Claimant, and directed the Claimant's work; these findings are not supported by the greater weight of evidence in the record or applicable law and is not relevant to establishing a direct employer relationship in this matter.
5. The Single Commissioner erred with respect to his Finding of Fact number six (6); the error being that to the extent that this finding suggests or indicates that Salgado exercised control over the Claimant on the jobsite; this finding is not supported by the greater weight of evidence in the record or applicable law and is not relevant to establishing a direct employer relationship.
6. The Single Commissioner erred with respect to his Finding of Fact number seven (7); the error being that to the extent that this finding suggests or indicates that Salgado employed the Claimant, determined the Claimant's wages, and paid the Claimant for work performed; this finding is not supported by the greater weight of evidence in the record or applicable law and prior payments are not relevant to establishing a direct employer relationship in this matter.
7. The Single Commissioner erred with respect to his Finding of Fact number eight (8); the error being that to the extent that this finding suggests or indicates that Salgado employed the Claimant, had the right to fire the Claimant, and that Farley Construction had no right to fire the Claimant; this finding is not supported by the greater weight of evidence in the record or applicable law.
8. The Single Commissioner erred with respect to his Finding of Fact number ten (10); the error being that to the extent that this finding suggests or indicates that the certificate of insurance is evidence of a direct employment relationship between Salgado and the Claimant and that the Certificate of Insurance was to cover the job the Claimant was injured on in this matter; this finding is not supported by the greater weight of evidence in the record or applicable law.

9. The Single Commissioner erred with respect to his Finding of Fact number thirteen (13); the error being that this finding is not supported by the greater weight of the evidence in the record or applicable law.
10. The Single Commissioner erred with respect to his Finding of Fact number fourteen (14); the error being that to the extent that this finding suggests or indicates that Auto-Owners Insurance Company and Salgado are the Employer and are responsible for medical benefits owed to the Claimant under the Act; this finding is not supported by the greater weight of evidence in the record or applicable law. No error is being alleged, nor appeal being made, as to the proper Employer/ Carrier directing the Claimant's medical treatment in this matter.
11. The Single Commissioner erred with respect to his Finding of Fact number sixteen (16); the error being that to the extent that this finding suggests or indicates that Auto-Owners Insurance Company and Salgado are responsible for past medical benefits owed to the Claimant under the Act; this finding is not supported by the greater weight of evidence in the record or applicable law.
12. The Single Commissioner erred with respect to his Ruling of Law number two (2) wherein he ruled that the Claimant sustained an injury by accident pursuant to 42-1-160 on December 12, 2014 within the course and scope of his employment with Salgado, and Salgado and its carrier, Auto-Owners Insurance Company, were given proper notice of Claimant's injury; the error being that to the extent that this application suggests or indicates that Salgado was the Claimant's direct employer at the time he sustained his injury and was given proper notice under the SCWCA; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
13. The Single Commissioner erred with respect to his Ruling of Law number three (3) wherein he ruled that Salgado was the Claimant's employer at the time of the accident and Auto-Owners Insurance Company is the responsible carrier; the error being that to the extent that this application suggests or indicates that Salgado was the Claimant's employer at the time of the accident and Auto-Owners Insurance Company is the responsible carrier; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
14. The Single Commissioner erred with respect to his Ruling of Law number four (4) wherein he applied the four-factor test set forth in Farrar v. D.W. Daniel High School to determine if there was a direct employment relationship between Salgado and Claimant; the error being that to the extent that this application suggests or indicates that this is the correct test and factors to be considered in determining whether or not there is a direct employment relationship between Claimant and Salgado; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
15. The Single Commissioner erred with respect to his Ruling of Law number four (4) wherein he ruled that under the test set forth in Farrar v. D.W. Daniel High School, Salgado had the right to control Claimant, paid Claimant, had the right to terminate Claimant; the error being that to the extent that this application suggests or indicates that Salgado had the right to control Claimant, paid Claimant, had the right to terminate Claimant; these rulings are not supported by the greater weight of the evidence in the record or applicable law.
16. The Single Commissioner erred with respect to his Ruling of Law number five (5) wherein he ruled that Defendants Farley Construction and Builders Mutual Insurance Company are not the responsible employer and carrier in this case and are hereby dismissed; the error being that to

the extent that this application suggests or indicates that Farley Construction is not the direct employer and Builders Mutual is not the responsible carrier in this matter and should be dismissed; this ruling is not supported by the greater weight of the evidence in the record or applicable law.

17. The Single Commissioner erred with respect to his Ruling of Law number six (6) wherein he ruled that under 42-1-415 Farley Construction is relieved of any and all liability because he relied on a certificate of insurance; the error being that to the extent that this application suggests or indicates that the certificate of insurance was provided specifically for this job and finding 42-1-415 applicable or relevant in the determination of a direct employment relationship; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
18. The Single Commissioner erred with respect to his Ruling of Law number seven (7); the error being this ruling of law is not supported by the greater weight of the evidence or applicable law.
19. The Single Commissioner erred with respect to his Ruling of Law number eight (8) wherein he ruled that Salgado and Auto-Owners shall choose the physician to provide further medical treatment; the error being that to the extent that this application suggests or indicates that Salgado and Auto-Owners are the responsible parties in this claim; these findings are not supported by the greater weight of the evidence in the record or applicable law.
20. The Single Commissioner erred with respect to his Ruling of Law number nine (9) wherein he ruled that the primary care physician was to be selected from a practice that has not previously treated Claimant and is to be provided with all of Claimant's medical records pertaining to the work injury; the error being that to the extent that this application suggests or indicates that Salgado and Auto-Owners are the responsible parties in this claim; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
21. The Single Commissioner erred with respect to his Ruling of Law number ten (10) wherein he ruled that the Claimant is entitled to reimbursement for all past out-of-pocket causally related expenses; the error being that to the extent that this application suggests or indicates that Salgado and Auto-Owners are the responsible parties in this claim; this ruling is not supported by the greater weight of the evidence in the record or applicable law.
22. The Single Commissioner erred with respect to his Decision and Order; the error being that to the extent that this Decision and Order suggests or indicates that the Claimant is the direct employee of Salgado; the Findings of Facts, Rulings of Law and Decision and Order are not supported by the greater weight of the evidence in the record or applicable law.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1419236

JOSE MARTINEZ,)
)
CLAIMANT,) HEARING
) BEFORE COMMISSIONER
) R. MICHAEL CAMPBELL, II
V.)
)
) **TRANSCRIPT**
JOSE EFRAIN HENRIQUEZ)
SALGADO,)
)
EMPLOYER,)
AND)
)
AUTO OWNERS INSURANCE)
COMPANY AND BUILDERS)
MUTUAL INSURANCE COMPANY,)
)
CARRIER,)
DEFENDANTS.)
_____)

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:15 P.M., WEDNESDAY, APRIL 22 2015, RONALD TOWNSEND
GOVERNMENT BUILDING, 2404 NORTH MAIN STREET, ANDERSON,
SOUTH CAROLINA 29621.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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803-397-0189

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1 THE COURT: Today's date is April 22, 2015. This
2 is South Carolina Workers' Compensation Case File
3 Number 1419236. This is the case of the Claimant Jose
4 Martinez, represented by Attorney Joseph R. Baldwin.
5 The Employer is Jose Efrain Henriquez Salgado and
6 Farley Construction. The Carrier is Auto Owners
7 Insurance Company, represented by Attorney John Stroud
8 and Builders Mutual Insurance Company represented by
9 Attorney George A. Taylor.

10 The date of accident is December 12th, 2014. The
11 average weekly wage and compensation rate are to be
12 determined.

13 APAs have been submitted. Are there any
14 objections to APAs, jurisdiction, venue or any other
15 items?

16 MR. TAYLOR: No objections.

17 MR. STROUD: Not from me, Your Honor, but just
18 -- I think our -- is average weekly wage being
19 addressed today or not? Sorry.

20 THE COURT: No, I said it was to be determined.
21 We're going to hold that in abeyance pending the
22 conversation from prehearing conference to see if that
23 matter can be stipulated to, and if not, then it will
24 be addressed at a different time. But as far as
25 today's proceeding it's being held in abeyance.

1 MR. STROUD: Thanks.

2 THE COURT: Without objection the Commission's
3 File becomes a part of the record with the exception
4 of self-serving declarations and unstipulated medical
5 reports.

6 We are here today to determine which Employer and
7 Carrier is liable for the compensation, if any is due,
8 and so what I would like to do is have everyone put
9 their positions on the record and so, Mr. Taylor, I
10 will begin with you and let you and Mr. Stroud put
11 your positions on the record, sir.

12 MR. TAYLOR: Thank you, Commissioner. George
13 Taylor for Farley Construction and its Carrier,
14 Builders Mutual Insurance Company. Our position is
15 that the Claimant was employed by a gentleman named
16 Jose Efrain Henriquez Salgado. I'll call him Mr.
17 Salgado throughout this although he does have a
18 brother that uses the same last name. But -- but Jose
19 Efrain Henriquez Salgado is a subcontractor for Farley
20 Construction and he has been for some time. Mr.
21 Salgado used to work for a company called Extreme
22 Construction and eventually went on his own; he broke
23 away from Extreme. And when he did that Farley
24 Construction started hiring Mr. Salgado and his -- his
25 company to do jobs that they may have at one time used

1 Extreme to do. Jose Salgado sent the Claimant to the
2 jobsite which he was hurt on December 12th, 2014.
3 There's -- there's no -- there's no dispute from --
4 from -- from my clients' perspective at least, that
5 there was an accident on the jobsite. A -- an
6 Employee of Farley Construction saw him fall from the
7 roof, but they -- our position is that he was there
8 for Mr. Salgado, he was not there at our request. In
9 fact, no one from Farley Construction contacted Mr.
10 Martinez and asked him to be at the job. We contacted
11 Mr. Salgado and Mr. Salgado sent him to the job. Our
12 client -- my client, Farley Construction had no intent
13 to pay Mr. Martinez for his work that day. We were
14 going to pay Mr. Salgado just like we always do in
15 accordance to -- with the work that he -- or his -- or
16 his Employees provide to the company. Farley
17 Construction, about four days before this accident
18 happened, told Mr. Salgado if you are going to work
19 for us and send your Employees to work for us we've
20 got to have a certificate from you. Included in our
21 -- in our APAs is a Certificate of Insurance and I
22 actually -- I have two copies of it because one shows
23 the full certificate and -- but it's just sort of
24 difficult to make out based on the -- the copying
25 quality. It was -- it -- it came via fax from Mr.

1 Salgado's agent, but the -- the second copy is much
2 more clear and you can read everything, but it's cut
3 off, so I figured two kind of poor quality copies made
4 one good -- good quality copy.

5 THE COURT: Okay.

6 MR. TAYLOR: And so we had a Certificate of
7 Insurance from Mr. Salgado and four days later, of
8 course, Mr. Martinez was injured. We -- we don't
9 believe that -- that him being there one day qualified
10 him as an Employee of -- of Farley Construction.
11 Admittedly, no one else from Salgado's crew was there
12 that day, but that was just happenstance. The day
13 before the injury occurred Michael Farley of Farley
14 Construction spoke with Mr. Salgado and said, hey, I
15 need you guys working at this job. And -- and Mr.
16 Salgado said, look, I'm in Columbia. I'll have one of
17 my Employees help you tomorrow and then we'll finish
18 that job up later with -- with the rest of our crew;
19 and that's how it happened. And we think that -- that
20 -- that the factor has been waived in favor of a
21 finding that Mr. -- that -- that the Claimant was
22 employed by Mr. Salgado and not Farley Construction.

23 THE COURT: All right. Thank you. Mr. Stroud.

24 MR. STROUD: Thank you, Commissioner. The
25 Claimant testified in his deposition that he worked

1 for Farley Construction and specifically denies
2 working for Jose Efrain Henriquez Salgado. He
3 testified that Michael Farley paid him and that
4 Michael Farley provided all the tools that he used and
5 that Michael Farley would have had the right to fire
6 him. The evidence will show you that -- that, as Mr.
7 Taylor told you, Farley was short on workers so he
8 contacted Jose Salgado and asked him for help and Jose
9 was in Columbia so he told a friend, Mr. Martinez
10 about this job and Mr. Martinez went and provided the
11 work. That does not mean that he was there as an
12 Employee of Mr. Salgado. In fact, the testimony says
13 -- states that they were expecting Jose Salgado to
14 show up and so my issue is if they were expecting Mr.
15 Salgado to come and someone else comes, then it's our
16 position that they said -- I don't know, this isn't in
17 evidence, but there must have been some sort of
18 conversation where they decided to keep this guy and
19 have him work there; because he was working there and
20 it's our position that, you know, using the four
21 factors they all point to Farley. Mr. Salgado was not
22 on the jobsite at all, he had nothing -- you know, he
23 was in Columbia doing another job and that Mr. Farley,
24 whether he admits to it or not, hired the Claimant for
25 that one day and therefore, he was a direct Employee

1 of Mr. Farley and -- and basically held responsible
2 fully.

3 THE COURT: Thank you, Mr. Stroud. Mr. Baldwin,
4 would you like to place your position on the record?

5 MR. BALDWIN: Well, I'm --

6 THE COURT: I know that we're really here to
7 determine their -- but I'm happy to let you put
8 anything on the record that you care to.

9 MR. BALDWIN: I'm basically here as a bystander
10 based on -- you just have to consider what Mr.
11 Martinez said in his deposition and -- and he's really
12 not capable of making a legal conclusion. He just
13 knows the -- I think what he said the facts were, were
14 accurate and based on what he said in his deposition
15 I believe you can make an appropriate decision. I
16 think based on what I know about the lawyers that
17 things can point either way. I'm basically going to
18 let them do the talking.

19 THE COURT: I understand. I understand. Cora
20 would you like to go ahead and swear in the
21 interpreter? Ma'am we have some questions that we
22 have to go through to qualify you as an interpreter so
23 the court reporter's going to ask you the questions
24 and swear you in. Okay?

25 MR. TAYLOR: Commissioner, could --I'm sorry I

1 hate to interrupt. Can I put one more -- can I make
2 one more request? I overlooked something when -- Mr.
3 Salgado is not present here today even though he is a
4 Defendant in this action. He was named as a witness
5 and he is not here. We also noticed his deposition
6 and he did not show up for his deposition, so we have
7 not been able to solicit any opinion or any testimony
8 from Mr. Salgado. Though efforts have been made, and
9 I'm -- and I'm certain that -- that Mr. Stroud has
10 made every effort to get his client to his deposition
11 and to this hearing but he hasn't been.

12 THE COURT: Okay. Mr. Stroud, do you have
13 anything to add?

14 MR. STROUD: No, Commissioner, I'm not relying
15 on any information obtained from Mr. Salgado.
16 Everything I'm relying on is in the Claimant's
17 deposition and -- and Mr. Farley's deposition. And I
18 did attempt to get him there but I couldn't do it.

19 THE COURT: All right. Thank you. Fair enough.
20 Okay.

21 THE COURT REPORTER: Ms. Carvajal, are you a
22 friend, associate or relative of a party, or counsel
23 for a party involved in this proceeding?

24 THE TRANSLATOR: No.

25 THE COURT REPORTER: Have you served in an

1 investigative capacity for any party involved in the
2 case?

3 THE TRANSLATOR: No.

4 THE COURT REPORTEER: Do you or your spouse or
5 child have a financial interest in the subject matter
6 in controversy or in a party to the proceeding or any
7 other interest that would be affected by the outcome
8 of the case?

9 THE INTERPRETER: No.

10 THE COURT: Have you been involved in the choice
11 of counsel or law firm for this case?

12 THE INTERPRETER: No.

13 THE COURT REPORTER: Are you an attorney or an
14 Employee of an attorney in the case?

15 THE INTERPRETER: Have you previously been
16 retained for private employment by one of the parties
17 to interpret this case?

18 THE INTERPRETER: No.

19 THE COURT REPORTER: Is there any reason your
20 independence of judgment would be compromised in the
21 course of providing services in the case?

22 THE INTERPRETER: No.

23 THE COURT REPORTER: To the lawyers. Do you
24 consent that the interpreter should not be
25 disqualified and should be allowed to render services

1 in this case?

2 MR. TAYLOR: She should be allowed.

3 MR. STROUD: Yes.

4 THE COURT: Okay.

5 THE COURT REPORTER: Would you raise your right
6 hand, please? Do you solemnly swear or affirm to
7 interpret these proceedings truly, fairly and
8 impartially to the best of your ability so help you
9 God?

10 THE INTERPRETER: I do.

11 THE COURT: Ma'am, just a couple of quick
12 instructions for you since you're going to be
13 interpreting. When you give the responses make sure
14 you speak up and speak clearly for us. It's
15 important, obviously, that we all hear his responses,
16 but that we get them for the record for the court
17 reporter. So any help you can give us with that would
18 be appreciated.

19 THE INTERPRETER: Yes, sir.

20 THE COURT: Okay if you could tell him to raise
21 his right hand. Do you swear or affirm that the
22 testimony you are about to give is the truth, the
23 whole truth and nothing but the truth?

24 THE WITNESS: Yes.

25 THE COURT: Mr. Baldwin your witness.

1 Jose Martinez,

2 Having first been duly sworn, testified as follows.

3 DIRECT EXAMINATION

4 BY MR. BALDWIN:

5 Q Could you tell the Commissioner your name,
6 please?

7 A José Martinez (inaudible).

8 Q And you are the Claimant in this case?

9 A Yes.

10 Q On -- since December 12th have you worked at
11 all?

12 A No.

13 Q And are you currently seeing a doctor
14 concerning your injuries?

15 A Yes, I have an appointment tomorrow with a
16 doctor.

17 Q And has the doctor told you that you should
18 not go back to work up until now?

19 A He said that I am going to be okay in
20 approximately eight months.

21 Q And have you been paid anything by any
22 Worker's Comp or have you received any wages at all
23 since the accident?

24 A No, nothing, not even a dollar.

25 Q And has the -- to your knowledge have the

1 doctors been paid anything for your treatment?

2 A Please repeat that.

3 Q To your knowledge have the doctors received
4 any money for your treatment?

5 A No, they are charging me.

6 Q And have you paid them anything?

7 A No.

8 Q Okay. And at the time of the accident how
9 many days a week were you working usually?

10 A Six or five days a week.

11 Q And how many hours would you generally work
12 in a day?

13 A In the summer or warm time ten or 12 hours.

14 Q And how much would they pay you per day?

15 A \$150.

16 Q And who did you -- who -- who generally paid
17 you?

18 A At that time I was working for Efrain, but
19 sometimes I wasn't working the whole time, just for
20 the season or something.

21 Q But did you work for somebody just about
22 every day?

23 A I worked with three people.

24 MR. BALDWIN: That's all -- all I have, your
25 honor.

1 THE COURT: okay.

2 MR. BALDWIN: I know that you're the Commissioner.

3 THE COURT: That's fine.

4 THE COURT: Ma'am, could you, just to clarify the
5 question that Mr. Baldwin just asked, could you ask
6 him who was paying him?

7 THE WITNESS: The day that I had the accident
8 Efrain told me that the man from Farley Construction
9 was going to pay.

10 THE COURT: All right. That's fine.

11 CROSS EXAMINATION

12 BY MR. TAYLOR:

13 Q Mr. Martinez we, of course, have met before,
14 but my name is George Taylor and I represent Farley
15 Construction. This morning I -- or this afternoon I
16 heard you say the words Farley Construction. When I
17 took your deposition you had never heard of the
18 company Farley Construction had you?

19 A Yes, because I didn't have idea of the name
20 of the company, I just knew Michael.

21 Q Since you were injured on December 12th,
22 2014 have you spoken with Mr. Salgado?

23 A One week after the accident he took my car
24 to my house and the money from the day that I worked
25 at first. He brought my car and the money.

1 Q Mr. Salgado brought your car and the money?

2 A Yes, he was in Michael's car. The car --
3 was in Michael's car.

4 Q And -- and since that time have you had any
5 conversations with Mr. Salgado?

6 A I tried to communicate with him but he
7 didn't answer his cell phone.

8 Q Have you had any conversations with him
9 about your workers' compensation claim?

10 A No, nothing.

11 Q You and Mr. Salgado are friends aren't you?

12 A Yes, we are friends.

13 Q When -- when your lawyer was asking you
14 questions a moment ago you -- you referred to someone
15 as Efrain. Is that the same person as -- as the
16 person we've been calling José Efrain Henrique
17 Salgado?

18 A It's the same José Efrain Salgado, it's the
19 same.

20 Q Has anyone from Farley Construction,
21 including Michael Farley, ever handed you any money?

22 A Nobody.

23 Q Before you went to work on December 12th,
24 2014 did you and Michael Farley have any conversations
25 about how much you were going to make that day?

1 A No, he didn't tell me how much he was going
2 to pay me, but he did say to wait for him at exit 93.

3 Q Who told you to wait for who at exit 93?

4 A Efrain told me to wait for Michael at that
5 exit.

6 Q When did Efrain tell you to wait on Michael
7 at exit 93?

8 A He told me that morning because the GPS in
9 my cell phone wasn't working, so they told me to wait
10 for him there.

11 Q Efrain told you to wait for him there?

12 A Yes, because they were working at Columbia.

13 Q Have you ever filled out an application for
14 employment to work at Farley construction?

15 A No.

16 Q Did you ever ask Michael Farley or anyone
17 else at Farley Construction for a job?

18 A No, but he needed help so they told me I
19 could go and help.

20 Q And when you went to the jobsite on December
21 12th, 2014 did you bring your own tools?

22 A I have my tools but I used theirs.

23 Q You testified a moment ago that you work
24 five -- five or six days a week; is that right?

25 A Yes.

1 Q How many of those days are for Efrain
2 Salgado?

3 A Two days, three days a week, sometimes a
4 whole week. Sometimes just one day because I work for
5 others too -- because I work in a group.

6 Q And do I understand your testimony correctly
7 that you only say that you worked for Farley
8 Construction on the day that you were injured?

9 A Can you say that again?

10 Q Do I understand your testimony correctly
11 that -- that you believe that you were employed by
12 Farley Construction only on the day that you were
13 injured?

14 A That's the only day that I worked for
15 Farley.

16 Q If Efrain Salgado had been there with you on
17 December 12th, 2014 would you have thought you were
18 working for Mr. Salgado?

19 A That's what he told me the last time that we
20 talked, he said that if I would have been working with
21 him he would have been responsible.

22 Q Who told you that?

23 A Efrain.

24 Q When did Efrain tell you that?

25 A The last time we talked.

1 THE COURT: When was the last time that they
2 talked?

3 A The day he got some mail from my attorney he
4 called me and I told him that I -- yes he called me
5 because I got these letters from my attorney and I
6 told him that I didn't do him any trouble because what
7 I had told him was that I was working that day for
8 Farley Construction.

9 Q You have not filed income tax returns in the
10 last five years have you?

11 A No.

12 Q If Michael Farley had sent you home on
13 December 12th, 2014 and told you that you were fired
14 would you have still had a job with Efrain Salgado?

15 A Yes, because they wouldn't have been any
16 problem.

17 Q When Efrain Salgado paid you for the work
18 that you did on December 12th, 2014 was it in cash or
19 check?

20 A He said take this money that Michael sent
21 you for the day that you worked there, cash, \$100.

22 Q And he told you that hundred dollars was
23 from 100 was it -- scratch that. Was it a \$100 bill?

24 A Five 20s.

25 Q And did he tell you that those five \$20

1 bills came from Michael Farley?

2 A Yes, he said that.

3 Q Specifically that the five \$20 bills came
4 from Michael Farley?

5 A Yes.

6 Q He did not say that he cashed a check and
7 pulled \$100 out of it and gave it to you?

8 A He didn't say that, just that.

9 MR. TAYLOR: That's all the questions I've got
10 for you.

11 THE COURT: Thank you, Mr. Taylor. Mr. Stroud.

12 MR. STROUD: Thank you, Commissioner.

13 CROSS EXAMINATION

14 BY MR. STROUD:

15 Q Mr. Martinez, am I -- you drove your truck
16 full of tools to the jobsite?

17 A Yes, I transported myself from my house to
18 the jobsite.

19 Q Okay. But did you use any of your tools on
20 this jobsite?

21 A No, just my hammer and my tool belt.

22 Q What other tools did you have to use on that
23 job?

24 A Michael gave me the drill, the tools I was
25 using to -- to work there.

1 Q And what happened to your truck after you
2 got hurt?

3 A They told me that Michael has taken it to
4 his house.

5 Q When is the next time you saw your truck?

6 A Until Efrain took it to my house.

7 Q Is that when Efrain gave you the \$100?

8 A Yes.

9 Q Is it your understanding that Efrain was
10 delivering the \$100 to you along with your truck?

11 A Would you please repeat that?

12 Q Is it your understanding that he was
13 delivering you the \$100 and your truck as opposed to
14 paying you for work you had done?

15 A Yes.

16 Q When you got to the jobsite who was -- who
17 was your boss?

18 A Efrain told me that Michael was going to
19 tell me what we had to do.

20 Q Okay. Did Michael tell you what you had to
21 do?

22 A Yes.

23 Q Is -- is there any doubt in your mind that
24 you were working for Farley Construction on that day?

25 A No. I was sure that I was working for them

1 that day, because Efrain told me that they needed me
2 and that they were going to pay me that day.

3 Q Okay. So, is it your understanding that
4 Efrain referred you to the jobsite instead of hired
5 instead of hiring -- instead of Efrain hiring you to
6 be there?

7 A Yes.

8 Q Okay.

9 MR. STROUD: Those are all the questions I have
10 for you.

11 THE COURT: Mr. Baldwin do you have anything
12 more?

13 MR. BALDWIN: No sir.

14 THE COURT: Mr. Taylor?

15 MR. TAYLOR: If I could have just one moment,
16 please, Commissioner. I'm sorry. I don't have any more
17 questions for Mr. Martinez.

18 THE COURT: Mr. Taylor.

19 MR. TAYLOR: I call Ron Farley.

20 THE COURT: Sir, if you would, I have a couple of
21 quick instructions for you. If you would, if you're
22 asked a yes or no questions please give us a verbal
23 yes or no answer. Try and stay away from things like
24 uh-huh and huh-uh, that's too easily misunderstood for
25 the record. And again, please speak up and speak

1 clearly for us. Thank you sir, I appreciate it.
2 Please raise your right hand. Do you swear or affirm
3 that the testimony you're about to give is the truth,
4 the whole truth and nothing but the truth?

5 THE WITNESS: I do.

6 THE COURT: Please state your name for the
7 record.

8 THE WITNESS: Ronald Lee Farley.

9 THE COURT: Mr. Taylor, your witness.

10 Ronald Lee Farley,
11 Having first been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Farley, where do you work?

15 A I try not to. I'm semi-retired, but I own
16 60 percent of the company and I pretty much answer the
17 phone.

18 Q What's -- what -- when you said the company,
19 what company are you referring to?

20 A Farley Construction, LLC.

21 Q And you said you own 60 percent, who owns
22 the other 40 percent?

23 A My son, Michael.

24 Q And that's Michael Farley?

25 A Yes.

1 Q And how many employees does Farley
2 Construction Company have?

3 A Michael, myself and a salesman; three
4 employees.

5 Q And what is the salesman's name?

6 A James Butler.

7 Q And how do you know that Farley Construction
8 does not employ anyone else?

9 A Well, that's who our accountant sends the
10 taxes in on.

11 Q And -- and do you regularly look after the
12 books and records for Farley Construction?

13 A Well, we have a CPA that does that.

14 Q Who does the hiring for Farley Construction
15 Company?

16 A Well, we don't actually hire.

17 Q If you decided that you needed another
18 person to -- to -- to work directly for Farley
19 Construction, would who -- who would hire that person?

20 A Well, if I needed him I'd hire him; if
21 Michael needed him he'd hire him.

22 Q If Michael hired --

23 A We operate as two separate entities under
24 one company.

25 Q Okay. If -- if Michael wanted to hire

1 somebody would he consult you?

2 A He might.

3 Q All right. If you wanted to hire somebody
4 would you consult Michael?

5 A I'd ask him if he knew him maybe.

6 Q Okay. But you -- you -- Michael would not
7 need your permission to hire somebody?

8 A No.

9 Q How many subcontractors does Farley
10 Construction use?

11 A I thought you might ask that so I looked at
12 how many 1099s we sent out last year, it was about 20.

13 Q And what -- what kind of work does Farley
14 Construction do?

15 A We're mainly insurance repair now. I'm a
16 general contractor, so we hire other people to help us
17 do work. We sell the work, collect the work, buy the
18 materials and pay subcontractors to do the work. And
19 we -- I was doing roofing, siding, windows, gutters,
20 things that go along with like hail damage claims,
21 that sort of thing.

22 Q Do you ever get out -- outside on a roof and
23 do any work yourself anymore?

24 A Actually, people say I don't act my age but
25 I don't get on a steep roof, but I have this past year

1 been on some that aren't very steep, but no work.

2 Q Okay. And how about your son, Michael
3 Farley?

4 A Well, he probably does. He probably does.

5 Q Do you require your subcontractors have
6 insurance?

7 A I would like for everyone to have it, not
8 everyone does, but some of them are good enough that
9 we pay it for them.

10 Q Okay. And the ones that do have insurance
11 how do you know that they have insurance?

12 A I require them to give me a Certificate of
13 Insurance.

14 Q I was going to show you what we have marked
15 as Defendants' Exhibit 1.

16 MR. TAYLOR: And this was in my APA submissions.

17 It's a --

18 Q Why -- why don't you tell us what that is,
19 Mr. Farley?

20 A This is a copy of the Certificate that they
21 mailed me when I insisted that if we were going to use
22 these folks, not through Extreme Construction, that
23 they had to furnish us a Certificate of Insurance.
24 And this is the one because it says Dudget Roofing
25 instead of Budget Roofing at the bottom, so that's the

1 original -- that's the one they sent me on the 8th of
2 December.

3 Q Okay. And -- and you see this is a -- the
4 document I gave you is two pages long?

5 A Yes.

6 Q Can you identify what the second page is?

7 A It's the same thing, but when it went
8 through the fax machine the top got cut off.

9 Q Okay. I -- I'm going to ask about this
10 document more in a minute, but before you knew about
11 this workers' compensation claim, had you ever heard
12 of a gentleman named José Martinez?

13 A Never.

14 Q Have you had a chance to review the books
15 and records of Farley Construction and determine
16 whether anyone named José Martinez was ever employed
17 by Farley Construction?

18 A Reviewing didn't take much; there was no
19 such thing ever happened.

20 Q Farley Construction never hired José
21 Martinez?

22 A Never. Didn't even know his name.

23 Q Has Farley Construction ever paid money to
24 José Martinez?

25 A Never.

1 Q Do you know a gentleman named José Efrain
2 Henriquez Salgado?

3 A We call him Joseph.

4 Q So that -- you've been here this entire
5 afternoon as these proceedings have gone on, haven't
6 you?

7 A Yes.

8 Q And -- and you've heard us refer to someone
9 as Salgado and Efrain?

10 A Yes.

11 Q Is it your understanding that the person
12 that we've been calling Efrain or Salgado is the same
13 person that you know as Joseph?

14 A Yes. When he hands me an invoice it says
15 Jose Efrain Hernandez, but without Salgado at the end
16 of it.

17 Q Okay.

18 A Because he hand writes it out on a
19 pre-purchase form, a white form.

20 Q All right. Just -- just for ease I'm going
21 to continue to call him Salgado.

22 A Okay.

23 Q How long have you known Salgado?

24 A Four or five years.

25 Q And has he done work for Farley Construction

1 that entire time?

2 A Yes.

3 Q Did he used -- before -- when -- when you
4 first met Salgado was he working for another
5 subcontractor of yours?

6 A Yeah. We call him Luis, but Luis is what I
7 call him, but he's Luis Rivera, he lives in Charlotte.
8 The name of his company is Extreme Construction.

9 Q And Salgado was an Employee of Extreme
10 Construction?

11 A Yes.

12 Q And when did, if you know, did Salgado stop
13 working for Extreme Construction?

14 A Back during all that big hail storm last
15 year they started doing a lot of work out of Columbia
16 and wasn't going to Charlotte to help Luis, Extreme,
17 and they fell out over it.

18 Q You say that day, you mean Salgado fell out
19 with Luis?

20 A That's right.

21 Q And what -- what timeframe was that?

22 A It was during the summer.

23 Q Of 2000?

24 A '14.

25 Q Okay. When they had that falling out did

1 you start to hire Salgado outside of hiring Extreme?

2 Q My son Michael wanted to because they were
3 so good at what they did and they were already trained
4 to do everything we wanted to our specifications, but
5 I refused to let them work for us until they furnished
6 their workman's comp certificate.

7 Q Okay. A moment ago I handed you a document,
8 Defendants' Exhibit 1. Do you still have that in
9 front of you?

10 A Yes.

11 Q Is that the document that they eventually
12 supplied you?

13 A Yes.

14 Q All right. How did you receive this
15 document?

16 A Fax.

17 Q And the -- the first page, it's a little
18 less clear, has at the top of it a fax number and date
19 and time; do you see that?

20 A Yes.

21 Q There's two lines, one says December 29,
22 2014, 9:02 PM and then under that it says December 30,
23 2014 9:01 AM; do you see that?

24 A Yes.

25 Q Do you know -- do you know whether or not

1 you received this on December 29th or December 30th?

2 A I think that's when this was getting sent
3 back and forth to you.

4 Q Okay. All right. Do you know when you
5 first received this then?

6 A On -- yeah, it's dated the 8th of December.

7 Q Okay. And so you recollect -- you believe
8 that this was faxed to you on December 8th, 2014?

9 A Yes, from this Calidad Latina Insurance
10 Company in Greenville.

11 MR. BALDWIN: Calidad Latina.

12 A I'm sorry?

13 Q And -- and do you know what Calidad Latina
14 Insurance is?

15 A No.

16 Q Did you understand that to be an insurance
17 agency?

18 A Yes.

19 Q When -- when -- now, was it you that told
20 Salgado he needed to give you a Certificate of
21 Insurance?

22 A Through Michael, yes.

23 Q Okay. So Michael was actually the one who
24 had the conversation with him?

25 A Well, actually he was doing work for me too.

1 Q Okay. Did -- did y'all require that the
2 Certificate come from an insurance agent?

3 A Well, we just -- I wanted one in the record
4 with a W-9 Form.

5 Q Okay. Are you familiar with any work that
6 was being done in Gaffney on December 12th, 2014?

7 A I became aware of it.

8 Q Is it your understanding that the only
9 Farley Employee on that job was Michael Farley?

10 A No.

11 Q Okay. What other Employee of Farley
12 Construction was there?

13 A Jim Butler was there.

14 Q And who is Jim Butler?

15 A That's the other Employee.

16 Q He's the only other Employee?

17 A That's right.

18 Q Are you -- have you since learned that
19 Farley Construction hired a subcontractor to assist
20 with that job?

21 A Say that again.

22 Q Have you since learned that Farley
23 Construction hired a subcontractor to assist with the
24 job that was going on on December 12th, 2014?

25 A Hired a subcontractor?

1 Q That's right.

2 A What do you mean by that?

3 Q Did -- did Farley Construction call one of
4 its subcontractors and say we've got work and we need
5 work on December 12th, 2014?

6 A The only way I can answer that is that there
7 were four men -- I was told there was four men on the
8 job.

9 Q Okay. And were any of those folks
10 subcontractors?

11 A I guess they would have to be.

12 Q But -- but -- but you don't -- you don't
13 have personal knowledge of who Michael Farley called
14 --

15 A No.

16 Q -- and asked for help for the December 12th
17 job?

18 A No.

19 Q Would -- would Michael Farley be the person
20 to ask about those questions?

21 A Yes.

22 Q Well, Ron, I think that's all the questions
23 I've got for you. I appreciate it.

24 THE COURT: Mr. Stroud?

25 CROSS EXAMINATION

1 BY MR. STROUD:

2 Q Ron, I couldn't -- Mr. -- excuse me, Mr.
3 Fraley.

4 A That's okay.

5 Q I couldn't help but notice your -- your Tee
6 Shirt that you're wearing right now and it says Budget
7 Roofing with Farley Construction under it, correct?

8 A That's right.

9 Q Okay. And -- and there is some confusion in
10 the Claimant's deposition where he -- he was saying he
11 worked for Budget Roofing. Is that kind of a second
12 name for your company?

13 A It's more of an advertising phrase.

14 Q Okay. But you're -- you wouldn't be
15 surprised if he -- if he mistook that as -- as part of
16 the company name?

17 A At one time before Michael and I went into
18 business together, the name of my company was Farley
19 Construction General Contractors, Incorporated.
20 That's hard to say on the radio, so I shortened it to
21 Budget Roofing and advertised the Gaffney football
22 games.

23 Q Okay.

24 A And it became where I could walk through
25 Walmart and people wanted to talk about roofing.

1 Q I appreciate you clearing that up for us.
2 And just out of curiosity, did you have a job or do
3 you recall having a job on December 8th, 2014 that --
4 that --

5 A No.

6 Q Okay. Fair enough.

7 A That's just the date that they sent it to
8 me.

9 Q Okay. Jim Butler is -- he's a salesman; is
10 that correct?

11 A Yeah, he's our salesman.

12 Q Okay. Is it common for a salesman to be on
13 the work job -- on the worksite?

14 A He was handing the sheets of metal up to the
15 workers on the roof that day.

16 Q Okay. So he was helping a little bit?

17 A Yeah.

18 Q Okay. So that's common for him to do?

19 A Right.

20 MR. STROUD: No further questions.

21 THE COURT: Okay. Mr. Baldwin, do you have
22 anything for this witness?

23 MR. BALDWIN: Yes.

24 CROSS EXAMINATION

25 BY MR. BALDWIN:

1 Q Were the other workers on the -- that were
2 on the roof with Jose on that day, who actually was
3 their Employer?

4 A Well, you'll have to ask Michael that, but I
5 saw that he was paying another guy that had done work
6 for us in the past that does not have any insurance,
7 but he was -- had used him some as a laborer.

8 Q But there were four of them, right, Jose as
9 well as --

10 A That's my understanding.

11 Q And you really don't know who the other
12 three were? Were they with the same -- were they the
13 same group or were they four different people working
14 up there or -- or four different individuals that
15 weren't connected to each other or getting --

16 A Well, I understand -- I understand it was
17 Michael and Jim, Jose and this one other guy which I
18 don't know who he was.

19 Q You said there was four?

20 A That's my understanding now, I wasn't there.

21 Q And two of them were your Employees, Jose
22 and one other guy, but you don't know who the other
23 guy worked for?

24 MR. TAYLOR: Object to the form.

25 THE COURT: Could you please rephrase the

1 question?

2 MR. BALDWIN: Yeah.

3 BY MR. BALDWIN:

4 Q The way I understand it is that two of the
5 people were part of your son and one of your other
6 Employees?

7 A That's right.

8 Q And then Jose was on the roof?

9 A Yes.

10 Q And one other guy was on the roof?

11 A No, he was on the ground.

12 Q Okay. But he --

13 A Handing up the material.

14 Q But he wasn't connected with Farley? The
15 guy that was handing --

16 A I'm sure he got a 1099 at the end of the
17 year. He had done some work for us before.

18 Q Do you have any idea whether he had a crew
19 or did he just work by himself?

20 A I can't answer that.

21 Q Okay. That -- that's fair enough. Thank
22 you.

23 THE COURT: Mr. Taylor?

24 MR. TAYLOR: No further questions.

25 THE COURT: Sir, you can step down. Thank you.

1 MR. TAYLOR: I've got Michael Farley outside.

2 THE COURT: Okay. Sir, just a couple of quick
3 instructions for you before we get started. Be sure
4 to speak up and speak clearly for us. It's important
5 that we all hear your responses and that the court
6 reporter get it for the record. If you're asked a yes
7 or no question please give us a verbal yes or no
8 answer. Try and refrain from things like uh-huh and
9 huh-uh, but if you could help us out with that we
10 would appreciate it.

11 THE WITNESS: No problem.

12 THE COURT: Please raise your right hand. Do you
13 swear or affirm that the testimony you're about to
14 give is the truth, the whole truth and nothing but the
15 truth?

16 THE WITNESS: Yes, sir.

17 THE COURT: Please state your name for the
18 record.

19 THE WITNESS: Fredrick Michael Farley.

20 THE COURT: Okay. Mr. Taylor, your witness.

21 Fredrick Michael Farley,
22 Having first been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. TAYLOR:

25 Q Mr. Farley, what do you -- what do you go

1 by?

2 A Michael.

3 Q Where do you work, Michael?

4 A Farley Construction.

5 Q What -- your -- your -- your father

6 testified a moment ago that -- that he owns 60 percent

7 of the company and you own 40 percent of Farley

8 Construction; is that also your understanding?

9 A Yes, that's correct.

10 Q How do y'all divide up who does what?

11 A I -- I pretty much handle Cherokee County

12 and he handles York County and I do everything in

13 Cherokee County.

14 Q So you handle the jobs that are occurring in

15 Gaffney?

16 A That's correct.

17 Q Do you know a gentleman named Jose Efrain

18 Henriquez Salgado?

19 A Yes.

20 Q Who is he?

21 A That's who I refer to -- I call him Joseph.

22 Q All right. And how long have you known

23 Joseph?

24 A Four, maybe five years.

25 Q And -- and did Joseph, at one time, work for

1 a company called Extreme Construction?

2 A Yes, he did, that's how I met him.

3 Q And -- and your understanding is that
4 sometime in 2014 he left Extreme Construction and went
5 on his own?

6 A Yes.

7 Q When he did that did you start hiring him?

8 A Yes.

9 Q And does Jose -- we've been calling him,
10 this morning, Salgado.

11 A Okay.

12 Q I know that you call him Joseph, but if I
13 say --

14 A Well, that -- we just call him that because
15 -- for simplicity, you know, so everybody understands
16 who we're talking, you know.

17 Q Fair enough. But if I say Salgado you know
18 --

19 A That's right. I -- that's it.

20 Q -- who I'm talking about? Does Salgado have
21 Employees of his own?

22 A Yes.

23 Q How many Employees does Salgado have?

24 A I'm not sure how many. I mean I've seen up
25 to six in one day, is probably the maximum amount I've

1 seen in one day on any of my jobs, you know. I don't
2 see him on other jobs, so I don't know.

3 Q How many Employees does Farley Construction
4 have?

5 A Three.

6 Q Who are they?

7 A Me, my dad and Jim Butler.

8 Q Okay.

9 A We use subcontractors.

10 Q All right. If you wanted to hire a new
11 Employee for Farley Construction would you consult
12 your father?

13 A Absolutely.

14 Q Is that because he owns 60 percent of the
15 company?

16 A No, no, just because we refer -- we --
17 what's the word I'm looking for?

18 MR. FARLEY: I know a lot of people around town.

19 A We confer on such things, you know. Two
20 opinions are better than one about somebody.

21 Q Okay. Did you do a job in Gaffney on
22 December 12th, 2014?

23 A Yes, we were working at -- on Petty Street.

24 Q It was on Petty Street?

25 A Yes, sir.

1 Q Is that P-E-T-T-Y?

2 A That's right.

3 Q I'm going to call that the Petty Street job.

4 A Okay.

5 Q Did -- what were you -- what kind of work
6 were you doing on the Petty Street job?

7 A We were installing a new Engineered Truss
8 Roof over an existing roof, existing flat roof and
9 installing metal roofing on top of that.

10 Q How many men do you generally use on a job
11 like that?

12 A It varies per day exactly, you know, I -- I
13 used one subcontractor that had a three man crew to
14 help me set the trusses, and then my plan was to use
15 Salga -- I don't know how to say it.

16 Q You can call him Joseph.

17 A That's why we call him Joseph. So -- and
18 his crew to help me put the metal roof on.

19 Q Did you ever call on Salgado to -- to -- to
20 help you put the metal roof on?

21 A Yes.

22 Q When did you do that?

23 A Well, actually the week before, when we did
24 a -- a shingle job just a couple of blocks away, I
25 took him by there and showed him that this is where

1 we're going to work next week.

2 Q You took Salgado by there?

3 A Yes.

4 Q Was anyone else with you when you did that?

5 A The whole group was with me, because we had
6 just left -- we had just finished up the other job
7 and, you know, everybody just went down to the other
8 one and we stopped there and I showed them, this is
9 what we're going to do next week.

10 Q And did Salgado agree that his company would
11 help do that job?

12 A Yes.

13 Q When was the next time you had a
14 conversation with Salgado about the Petty Street job?

15 A Oh, that -- the next Wednesday when he was
16 supposed to show up I had a conversation -- I guess
17 maybe it was probably Tuesday afternoon that I found
18 out that they were not planning on being there on
19 Wednesday morning like we had planned.

20 Q So did he call you on Tuesday?

21 A I probably called him.

22 Q Okay. And he told you that he would not
23 have his whole crew there?

24 A He said nobody was coming.

25 Q And how did you respond to that?

1 A I said, "I need some help. You've got to --
2 I need -- you've got to help me out like you
3 promised."

4 Q Okay. And did he change his tune and -- and
5 decide to --

6 A Well, he -- we left it at that for then and
7 he called me the next day and said, "I have somebody
8 with experience with metal, I'll send him."

9 Q And -- all right. And so did you hear
10 anything else from Salgado after that? Before the job
11 started, excuse me?

12 A No.

13 Q All right. And then did you work on
14 December 12th, 2014?

15 A Yes.

16 Q Did -- there's a gentleman in this room
17 named Jose Martinez who is the Claimant in this fall,
18 do you recognize him?

19 A Yes.

20 Q Did he work with you on December 12th, 2014?

21 A Yes.

22 Q And was it your understanding that Salgado
23 sent him to work with you on December 12th, 2014?

24 A That's -- that's true, yes.

25 Q Okay. Did you have a conversation with Mr.

1 Salgado about you paying Mr. Martinez for his work?

2 A No.

3 Q Did you tell him how much he was going to
4 get paid that day?

5 A No.

6 Q Was it your thought that Salgado would have
7 that conversation with him?

8 A Yes.

9 Q Before December 12th, 2014 had you ever seen
10 Mr. Martinez?

11 A Yes.

12 Q And when you saw him before December 12th,
13 2014 who was he working for?

14 A Joseph.

15 Q Have you ever --

16 A On my job, I mean it was my -- you know, my
17 roofing job.

18 Q Right. So he -- so -- so Joseph Salgado
19 would bring Jose Martinez to jobs that he was -- his
20 company was doing for your company?

21 A Yes.

22 Q Have you ever paid Salgado's Employees
23 directly?

24 A Never. Can I inject something there? I --
25 I don't write people checks that don't have workman's

1 comp certificate. That costs me \$22 for every hundred
2 I pay them, so I'm -- we're very careful about who we
3 write a check to.

4 Q When you pay Mr. Salgado, how do you pay
5 him?

6 A I write a check straight to him.

7 Q Do you know how he pays his Employees?

8 A No, never been involved in that.

9 Q Do you know how much he pays his Employees?

10 A No.

11 Q I'm going to hand you a two page document
12 that's been marked as Defendants' Exhibit 2.
13 (Defendants' Exhibit Number 2, marked for
14 identification and entered into the record).

15 MR. TAYLOR: This is in my APA submissions.

16 Q Do you recognize this document, these two
17 documents?

18 A Yes, these are invoices that Joseph has
19 turned in to me.

20 Q The first document, do you know what -- what
21 -- what this job was; the invoice that says 131926?

22 A Yes.

23 Q Did this -- did that -- did that one have
24 anything to do with December 12th job?

25 A No. No.

1 Q All right. Then turn to the second page.
2 Is that invoice 131924?
3 A Yes.
4 Q Did this have anything to do with the
5 December 12th, 2014 job?
6 A This is where I included the \$100 for Jose's
7 time on the Petty Street job.
8 Q Okay. The total amount there is \$805; do
9 you see that?
10 A Yeah.
11 Q The \$705 portion is hard for me read. Can
12 you tell me what that is?
13 A It's -- it's 15 squares at \$47 a square is
14 what that -- how that comes up to \$705.
15 Q And -- and then you paid Mr. Salgado an
16 additional \$100 for the services of his Employee, Jose
17 Martinez?
18 A That's right.
19 Q And did you write one check for that \$805?
20 A Yes.
21 Q To be clear, you did not hand Mr. Salgado
22 five \$20 bills and say give this to Jose Martinez?
23 A No, sir, I did not. I wrote a check for 805
24 -- \$805.
25 Q If Mr. Salgado had decided to pay Mr.

1 Martinez \$90 and not \$100 would you have cared at all?

2 A No, it's not my concern.

3 MR. TAYLOR: Can you mark this as Exhibit 3?

4 A I was about to ask you about that. I sent
5 you a copy of the check.

6 MR. STROUD: Commissioner, while he's showing it
7 I'll have to object to that document.

8 MR. TAYLOR: It's provided in the APAs.

9 A I had it with me and we talked about it when
10 you took my deposition. I told you in my deposition I
11 had a check for that amount.

12 THE COURT: I'll allow it in.

13 (Defendants' Exhibit Number 3, marked for
14 identification and entered into the record).

15 BY MR. TAYLOR:

16 Q I'm -- I'm -- I'm handing you Defendants'
17 Exhibit -- documents -- Defendants' Exhibit 3. Do you
18 recognize that?

19 A Yes, I do.

20 MR. TAYLOR: And for the record, this document
21 was not included in my APA submissions.

22 THE COURT: Okay.

23 BY MR. TAYLOR:

24 Q Did you sign that check?

25 A Yes, I did.

1 Q Who is that check to?

2 A Joseph.

3 Q And Joseph Henriquez Efrain Salgado?

4 A Right. Right.

5 Q And was that \$805, at least partially for
6 the Petty Street work; the Petty -- Petty job?

7 A Yes.

8 MR. TAYLOR: Commissioner, since that's not in my
9 APAs and isn't currently part of the record, I move to
10 include that Exhibit 3 into the record.

11 THE COURT: Okay. I'll allow it.

12 (Defendants' Exhibit Number 3, marked for
13 identification and entered into the record).

14 BY MR. TAYLOR:

15 Q I understand that after Mr. Martinez fell
16 off the roof you did not have any conversations with
17 Mr. Martinez.

18 A Not other than just absolute necessity of
19 like asking for his keys to his truck.

20 Q After (inaudible).

21 A Yeah, yeah. Well, I was on the roof and
22 before I even got down there was firemen and EMTs
23 surrounding him before I even got off the roof.
24 Because we were only half a block from the closest
25 city fire department. So they were -- they were there

1 before I even got down.

2 Q And -- and you said you got the keys to his
3 truck?

4 A Yes.

5 Q Did you end up moving his truck at some
6 point?

7 A I did. I took it to my house for
8 safekeeping.

9 Q And -- and why did you do that?

10 A Just because that's what I'd want somebody
11 to do for me.

12 Q If you had decided on December 12th, 2014
13 that -- that -- that -- that Mr. Martinez was not
14 working well you could have sent him home, couldn't
15 you?

16 A I guess so.

17 Q And do you generally feel that's true with
18 all of your subcontractors' Employees if they come to
19 your job?

20 A Sure.

21 Q But if -- if Salgado wanted to put him on
22 another job in Columbia the very next day would that
23 -- would you have been able to stop that?

24 A No. I -- I have told subcontractors before
25 that certain -- I didn't want certain Employees of

1 theirs on my job, so I mean I have that say-so I would
2 say, but I mean work for him anywhere else, sure.

3 Q There was some testimony that there was a --
4 a drill and screws of yours that were used on the roof
5 of this job. Did you understand that to be true?

6 A Yes.

7 Q All right. Was there a need for a -- how
8 many drills did y'all have on the roof?

9 A Two.

10 Q Is it uncommon for you to provide a drill to
11 a subcontractor?

12 A No, I provide whatever tools are necessary
13 to get the job done, you know, I mean whatever tools
14 and materials are necessary to get the job done,
15 that's -- that's my responsibility.

16 Q Well, Michael, I appreciate you being here.
17 Some of these other lawyers may have some questions
18 for you; the Commissioner may have some questions for
19 you. That's all I've got. Thank you.

20 A Okay.

21 THE COURT: Mr. Stroud?

22 MR. STROUD: Thank you, Commissioner.

23 CROSS EXAMINATION

24 BY MR. STROUD:

25 Q I'm -- I'm just a little confused about one

1 thing or actually a few, but at the time on December
2 12, 2014 were you expecting Mr. Martinez to show up or
3 were you expecting Mr. Salgado to show up?

4 A I didn't know who was going to show up. I
5 mean I knew -- I knew Joseph wasn't showing up, he had
6 let me know that he wasn't going to -- he and the crew
7 were not coming.

8 Q Okay.

9 A But I didn't know who he was sending --

10 Q Okay.

11 A -- to help me.

12 Q And we were talking about the truck earlier.
13 Do you remember if there were any tools in that truck?

14 A Yeah, there were -- there were tools and
15 stuff that I didn't want to get missing; that's why I
16 took it to the house, you know.

17 Q Do you know if the Claimant used -- or Mr.
18 Martinez used any of his own tools on your job?

19 A Sure.

20 Q Which tools was he using?

21 A There was a lot. I mean he -- he had his
22 own tool belt. I mean he wore his own tool belt, I
23 mean.

24 Q Okay. What about ladders, who provided
25 those?

1 A We were using mine because they were off the
2 truck. I mean he had a ladder on his truck. We
3 already -- I had all the tools there, that we were
4 locking up inside the building, that we were using, so
5 we didn't have to unload it every day.

6 Q And when he began working did he -- did he
7 need any help, did he know what to do?

8 A Well, we -- everybody needs discussion. I'm
9 everybody's supervisor so I tell everybody what to do.

10 Q Okay.

11 A And when to do it.

12 Q All right. Just so the record's clear, you
13 did tell Mr. Martinez what to do and when to do it?

14 A I was superintendent of the job, I told
15 everybody what to do.

16 Q Okay. And if he ran into a problem and Mr.
17 Martinez needed to talk to somebody about it would he
18 come to you?

19 A Well, it could be either me or Jim.

20 Q Okay. And how many people were on this job?

21 A There were four that day.

22 Q Okay. There was Jim, yourself, Mr. Martinez
23 and who was the fourth person?

24 A Vernon Camp.

25 Q Okay. And who's Vernon Camp?

1 A He's another subcontractor that helps me on
2 certain projects.

3 Q Okay. And he didn't have any Employees on
4 the jobsite; is that correct?

5 A No. No.

6 Q Okay. And did Salgado eventually come and
7 pick up the truck --- the --- the Claimant's truck?

8 A Yes.

9 Q Okay. And is that when you paid him or --

10 A That's correct.

11 Q Okay. Let me ask you, do you still have Mr.
12 Taylor's exhibit in front of you; these two invoices?

13 A No, sir.

14 Q If you would, please, just look at the one
15 for 130 Brookshire Drive.

16 A Okay.

17 Q Do you recall that job?

18 A Yes.

19 Q And Mr. Salgado was working for you on that
20 job?

21 A Yes.

22 Q Okay. Did he have any crew on that --

23 A Yes.

24 Q Okay. How many people did he have?

25 A On that job I think it was probably four.

1 Q Okay. What is -- what is -- what does
2 two-lay mean?

3 A It means part of the roof had two layers of
4 shingles and part of the roof had only one layer of
5 shingles, and it's, you know, paid separate.

6 Q Okay.

7 A For prices.

8 Q Okay. And then the plywood is just --

9 A Some bad plywood was replaced.

10 Q Okay. Well, I guess my question is why are
11 Mr. -- Mr. Salgado's Employees not on the Brookshire
12 Drive invoice but Jose is on the Gaffney Street
13 invoice?

14 A Well, we just -- I just wrote -- that was --
15 I just wrote Jose's name because that was what it was
16 for, that's what I was paying him for, so that's what
17 I wrote.

18 Q Okay. But you didn't pay him for the five
19 Employees on the 130 Brookshire Drive did you?

20 A I paid him for that job. This was -- this
21 was one job, Brookshire was one job, 705 was one job,
22 100 was another job; all different jobs.

23 Q Oh, all right. I understand.

24 A So 705 was not for -- actually it was on
25 Petty Street, but it was not that -- the next block

1 over from where you used to live going north, that
2 would be 300 block or would that be 300 block? Okay,
3 that other job was at 30 -- it was a couple -- Ms.
4 Horton across the house -- across the road diagonally
5 from where you used to live, what -- anyway.

6 Q You can't ask him.

7 A Anyway, -- what I'm trying to say is both of
8 those jobs are on Petty Street. Okay?

9 Q All right.

10 A So it's a little confusing there too. Okay?

11 Q Right.

12 A But I can't remember the exact numbers.

13 Q I got you. But is it common for you to put
14 down one of his Employees' names on these invoices and
15 then pay him for that Employee?

16 A No, it's -- it's not common for him to just
17 send one person, no.

18 Q Okay. When -- when Mr. Martinez showed up
19 to the jobsite did y'all -- did y'all talk to each
20 other?

21 A You said Mr. Martinez?

22 Q Mr. Martinez?

23 A The -- the December 12th?

24 Q Yes, sir.

25 A Sure. Yeah.

1 Q Okay. What did y'all talk about?

2 A The job, how old we were, how many kids we
3 have and then we were on the roof together waiting on
4 them to drill holes in the metal a lot of time, so we
5 were up there chit chatting.

6 Q Okay. Did y'all talk about Mr. -- Mr.
7 Salgado at all that -- that morning?

8 A No, I don't think so.

9 Q Okay.

10 MR. STROUD: Those are all the questions I have.

11 THE COURT: Mr. Baldwin?

12 CROSS EXAMINATION

13 BY MR. BALDWIN:

14 Q My only question was how -- how was it
15 determined that \$100 was to be paid for Jose and his
16 work on -- on that date?

17 A We -- we had a conversation about it and I
18 kept asking him how much I owed him for that and we --
19 we just came to the agreement that \$100. I don't -- I
20 mean --

21 Q Was it basically --

22 A There was no -- it was just something that
23 we just kind of picked out of the air. It really
24 wasn't anything we discussed or figured out before,
25 you know, we just --

1 Q Was it based on how long he was on the site,
2 how long he was there that day or --

3 A Oh, no, I did --

4 Q I mean was that part -- what -- what time
5 was -- did the accident occur; do you remember?

6 A It seemed like it was like between 3:00,
7 3:30, something like that.

8 Q And he got there maybe about 9:00 or so?

9 A I think we started at 8:00 that morning.

10 Q So he had been there six or seven hours?

11 A Yes.

12 Q But you can't remember the hours -- the time
13 on the job was -- how it was decided or was it decided
14 by how --

15 A Well, I -- I remember in the conversation
16 with -- I had with Joseph was -- I remember telling
17 him that he was there for six or seven hours and I
18 asked him how much, you know, how much that would be,
19 I asked him. And we -- we came to the agreement of
20 \$100.

21 Q So it wasn't actually based on how many
22 shingles he put on or anything like that, or how much
23 work he actually did?

24 A No.

25 Q Okay. Thank you. I appreciate it.

1 THE COURT: Mr. Taylor, anything more?

2 MR. TAYLOR: I don't think so, but if I can have
3 just one minute, please.

4 THE COURT: Take your time.

5 MR. TAYLOR: I -- I don't have any questions,
6 Commissioner.

7 THE COURT: Anything more for this witness?

8 MR. BALDWIN: No.

9 MR. STROUD: No, Commissioner.

10 THE COURT: Is that all we have? You don't have
11 anyone else to call, right?

12 MR. TAYLOR: There's no one else to call.

13 THE COURT: There being nothing further that
14 concludes this proceeding.

15 (The hearing concluded at 3:47 p.m.)

16

17

18

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND
FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 59
TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 31ST DAY OF
DECEMBER, 2015.

CORA ELLIS BRUTON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES DECEMBER 31, 2024

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1419236

JOSE MARTINEZ	)	
	)	
CLAIMANT,	)	
	)	SC WORKERS' COMPENSATION COMMISSION
VS.	)	
	)	FULL BOARD HEARING OF
JOSE EFRAIN HENRQUEZ	)	
SALGADO	)	JOSE MARTINEZ
EMPLOYER,	)	
AND	)	VS
	)	
AUTO OWNERS OR	)	JOSE EFRAIN HENRQUEZ SALGADO
BUILDERS MUTUAL	)	
CARRIER.	)	

This is the Transcript of the South Carolina Workers' Compensation Full Board Hearing of Jose Martinez versus Jose Efrain Henrquez Salgado, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 1:36 P.M., Monday, July 18, 2016, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY

REPORTED

BY

GLORIA DAVIS

PALMETTO COURT REPORTING
 321 Mac Circle Lexington, SC 29073
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COMMISSIONERS PRESENT:

Avery Wilkerson, Chair
Gene McCaskill
Aisha Taylor

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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STIPULATIONS

Commissioner Wilkerson: Madame Court
Reporter, if you would, please call the case.
Thank you.

Court Reporter: Today is July 18th,
2016. This is South Carolina Workers' Compensation case number 1419236. This is the case of Jose Martinez, the Claimant, versus Jose Efrain Henriquez Salgado -- there we go -- the Employer, and Auto Owners or Builders Mutual are the Carriers. The Appellant is the Defendant, Auto Owners, represented by John Stroud. The Respondents are Builders Mutual, represented by George A. Taylor and the Claimant represented by Joseph R. Baldwin. Each side is allowed ten (10) minutes for oral argument and the Appellant three (3) minutes in reply. You are requested to argue the grounds of exception and stay within the record. The Single Hearing Commissioner was Commissioner Campbell.

Commissioner Wilkerson: Mr. Baldwin, let me ask you a question. With you sitting over there, I'm guessing you're not going to

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1 have a lot to say, if anything --

2 Mr. Baldwin: I just --

3 Commissioner Wilkerson: -- but do you

4 all want to divide your time or tell me how

5 --

6 Mr. Baldwin: -- I -- I'll spend thirty

7 (30) seconds --

8 Commissioner Wilkerson: -- that's okay.

9 I'm just trying to figure out --

10 Mr. Baldwin: -- I don't -- I mean, I

11 have -- I'm just here to observe these two

12 (2) guys fight it out. If I could just get

13 --

14 Commissioner Wilkerson: -- you don't

15 care who pays you, right?

16 Mr. Baldwin: -- that's just -- that's

17 exactly right.

18 Commissioner Wilkerson: Okay. That's

19 fine. All right. I'm fine with that. Thank

20 you.

21 Mr. Baldwin: Okay.

22 Commissioner Wilkerson: Please, Mr.

23 Stroud?

24 Mr. Stroud: Thank you, Commissioner.

25 ARGUMENT FOR THE APPELLANT:

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1 By Mr. Stroud:

2 Commissioners, we're here today because of filing
3 of a Form 30 to appeal the Single Commissioner's order
4 assigning my client, Jose Efrain Henrquez Salgado, as
5 the direct employer of Jose Martinez. Just for time's
6 sake and because of the names mentioned, we will just
7 refer to him as Salgado --

8 Commissioner Wilkerson: And that's fine.

9

10 Mr. Stroud: -- seeing that both of
11 their names are Jose.

12 Commissioner Wilkerson: -- that's fine.

13 There is no disputing their name, right?

14 Mr. Stroud: -- there's no dispute in
15 the names.

16 Commissioner McCaskill: Well, it's kind
17 of hard to follow the bouncing ball, but --

18 Mr. Stroud: It -- it changes many times
19 during the length of the case but the last
20 time it was Salgado.

21 Commissioner McCaskill: -- but it's the
22 same guy?

23 Mr. Stroud: It's the same guy and --
24 and my client didn't show up for the hearing
25 or the depositions and Farley Construction

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1 was referred to as Budget Roofing; we take
2 the position that that was the same people as
3 Budget Roofing.

4 Commissioner McCaskill: Oh, I --

5 Mr. Stroud: And that's all I have on
6 that.

7 Commissioner McCaskill: -- I -- they --
8 they so testified in the deposition or the
9 hearing, one or the other; I read them both.

10 Mr. Stroud: It's all in the -- it's all
11 in the --

12 Commissioner Wilkerson: Yes.

13 Mr. Stroud: -- transcript. So,
14 basically, Commissioners, the -- this is a -- this is a
15 strange case with a perfect storm of things going
16 perfectly wrong. Basically, Farley Construction and
17 Salgado had, at one point, an agreement to do this job
18 on Petty Street. Salgado told him I'm not coming; my
19 crew is not coming. And then, Farley Construction
20 calls him and says -- let me back up. This deal was
21 with Farley and he said, okay, I have a guy and he
22 sends this guy. It's our position that that was a
23 referral and not a -- a subcontractor job because he
24 had already canceled the deal by just effectively
25 saying I'm not showing up with my crew. He was down in

1 Columbia doing a completely different job. The
2 Claimant was not the -- the type of employee that only
3 works for Salgado. He worked -- I think he testified
4 that he worked for three (3) different people and the
5 Thursday before the accident he was -- he wasn't even
6 working for anybody; he was doing construction for his
7 lady friend. He kind of floats around. And so, just
8 because he sent him and he's worked for him in the past
9 doesn't necessarily mean that he was his employee at
10 the time. Salgado did not profit from the jobsite in
11 question, he didn't produce an invoice for the jobsite
12 in question. He did take the money that Michael --
13 Michael Farley wrote a check for a hundred dollars
14 (\$100.00) and also had the Claimant's truck at his --
15 at his house for safe keeping because he was injured.

16 Commissioner McCaskill: Did he write
17 the check for a hundred dollars (\$100.00) or
18 did he write the check for eight hundred and
19 five dollars (\$805.00) and denote that a
20 hundred dollars (\$100.00) of it was for Jose?

21 Mr. Stroud: Very good question; I
22 appreciate that. He -- I believe the record says it
23 was eight hundred and five dollars (\$805.00) and one
24 hundred (\$100.00) was for Jose. And so, it is our
25 position that just because my client went out there to

1 get the truck and cashed the check and then delivered
2 the hundred dollars (\$100.00) doesn't mean that he was
3 -- that was part of a contract or anything, he was just
4 trying to get his money and help out his friend who
5 just got hurt. The invoice, if you guys -- I think it
6 does a pretty decent job of explaining that --

7 Commissioner Wilkerson: Yes.

8 Mr. Stroud: -- pending you guy's
9 approval. Do you guys have any questions about the
10 invoice?

11 Commissioner Wilkerson: No, I don't.

12 Mr. Stroud: Okay.

13 Commissioner Wilkerson: Any questions?

14 Mr. Stroud: And I must admit in my appellant
15 brief I got a little off on a tangent about the
16 difference between the four (4) factor test and
17 contract employment. My position is that I'm not --
18 you know, I'm not clear on it but it doesn't matter,
19 either way you look at it, Michael Farley was the
20 Employer. He told the Claimant what to do and when to
21 do it; that was a direct quote. He paid him a hundred
22 dollars (\$100.00), he wrote him -- who -- specifically
23 for Jose, not for the job or anything, he wrote Jose
24 one hundred dollars (\$100.00); that means that hundred
25 dollars (\$100.00) was for Jose. I think I lost track

1 of my thoughts: Oh, the equipment, he provided all the
2 equipment, even though the Claimant had his own. He
3 said he had the right to send him home if he wasn't
4 doing a good job, which I would argue is the same thing
5 as firing him. The Claimant testified that it was his
6 understanding that he was working for Michael Farley
7 and that he was -- that all that Salgado did was refer
8 him to the jobsite. Now, the Single Commissioner wrote
9 in the order that he believed that the control exercise
10 was that he gave him the address and told him where to
11 meet the guy. And I -- I submit to you it is a
12 referral, there's -- there's no control about how a job
13 was done, no specific instructions about what you need
14 to do for the job; that's just telling him where to
15 meet the guy to do the work and that is a referral in
16 our -- in our opinion and is our position. Oh, the --
17 the -- the payment, he testified that he paid him a
18 hundred dollars (\$100.00) based on the number of hours
19 worked, as opposed to doing the job. He did testify
20 that he and my client had a conversation to determine
21 how much the money was but it also -- I mean, he is the
22 one that paid the hundred dollars (\$100.00). We don't
23 know the details of that conversation, unfortunately,
24 to be able to determine how much he would normally pay
25 or how much do I owe you. We just don't --

1 unfortunately, my client did not show up for his
2 deposition or the hearing but I would submit -- submit
3 to you that he was not subpoenaed for the hearing. I
4 did list him as a witness because -- I knew he wouldn't
5 show up but we felt he should for that as well. I do
6 not believe that the Joint-Employer Doctrine applies to
7 that but before my time is over with I would like to
8 remind the Commission that that doctrine is an
9 inference -- a permissible inference and not a
10 presumption. So, that means that you're allowed to
11 think maybe he's trying to hide something but you can't
12 assume it. So, even if it does apply and that's --
13 keep that in mind.

14 Commissioner Wilkerson: We can't assume
15 to what he is going to testify to help you
16 either, can we?

17 Mr. Stroud: No, you can't.

18 Commissioner Wilkerson: Okay.

19 Mr. Stroud: But I'm -- my entire
20 argument is based on the Claimant's testimony
21 and Michael Farley's testimony.

22 Commissioner Wilkerson: I understand.

23 Mr. Stroud: I wish that I had him but
24 -- it would just make things easier but I don't. And
25 other than that we -- we don't -- and that is

1 unfortunate but I -- I would, you know, all of the
2 evidence that is in the record points to a direct
3 relationship between Michael Farley and the Claimant.
4 I know that -- I understand that his position is that
5 he didn't hire him but the outline -- but the cruel
6 line is -- the cruel law states that anything can turn
7 into an employment contract as long as it's perceived
8 by the reasonable person that he has an employment
9 relationship with this other person then it exists and
10 the Claimant testified that he thought he was working
11 for Michael Farley. So, in -- to make it clear to the
12 Commissioners, he -- my position is that he hired him,
13 that Michael Farley hired the Claimant, he had direct
14 control and he actually exercised that control by the
15 use of equipment and he testified that he had the right
16 to ask him to leave the job, which I would submit to
17 you is the equivalent to firing him and I therefore ask
18 that you reverse the Single Commissioner's order
19 finding that the direct employer is Farley's
20 Construction and the responsible Carrier would be
21 Builders Mutual. Thank you.

22 Commissioner Wilkerson: Any questions?

23 Commissioner Taylor: Nothing from me.

24 Commissioner Wilkerson: Thank you. Mr.

25 Taylor?

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1 Mr. Taylor: Thank you.

2 ARGUMENT FOR THE RESPONDENT

3 By Mr. Taylor:

4 George Taylor for Farley Construction, the
5 Defendant that did respond to this Claimant's case, sat
6 for a deposition and attended the hearing on the case.
7 The issue is whether or not Salgado was the direct
8 employer of Martinez. And the Single Commissioner
9 properly ruled that Martinez was an employee of Salgado
10 and there is an abundance of evidence that would show
11 that he was, in fact, the employee of Salgado. Farley
12 hired -- Farley Construction hired Salgado to do the
13 job on Petty Street. The week before the job started,
14 Michael Farley, of Farley Construction, took Salgado
15 and his crew to the jobsite and said this is where
16 you're going to be working. The following week on
17 Monday, which would have been December 8th of -- yes,
18 December 8th, 2014, Salgado even had his insurance
19 agent send a new certificate of insurance to Michael
20 Farley. Four (4) days later, Mr. Martinez is on the
21 job at the direction of Salgado; there's no dispute
22 that Salgado called him and told him where to be. So,
23 he went to the -- to that jobsite, Martinez was on that
24 jobsite because Salgado said I have a guy -- not I know
25 a guy -- I have a guy and that guy is good with metal

1 roofs, so I'm going to send you my guy who is good at
2 metal roofs; that's what he did. He -- he didn't have
3 to send his whole crew to be engaged as a
4 subcontractor; he can send one (1) -- one (1) of his
5 employees and still be engaged as a subcontractor of
6 Farley Construction. Farley Construction is the
7 company that paid, Salgado and Salgado paid Martinez.
8 And if Salgado had not been in the case -- we don't
9 have his testimony but we do know that Michael Farley
10 testified that he had a conversation with Salgado about
11 how much Farley Construction should pay Salgado for the
12 work that was performed on December 12th. From that
13 point, if Salgado had elected to pay Martinez five
14 hundred dollars (\$500.00) or five dollars (\$5.00) was
15 of no concern to Michael Farley and that was his
16 testimony, that I didn't care what percentage of this
17 money he spent but this is -- this is the amount I'm
18 paying Salgado for the work that was performed on the
19 Petty Street job and it was up to Salgado, alone, to
20 determine how much of that he paid his guy that did the
21 work. The Claimant testified that prior to December
22 12th, 2014, he had never done any work for Farley
23 Construction and that he had never even heard of the
24 company, Farley Construction, although he did know of
25 Budget Roofing, but he did work several days a week for

1 -- for Mr. Salgado. Salgado and the Claimant were
2 friends and the Claimant testified to that. And -- and
3 I understand that the Claimant is taking the position
4 that on this day, only, he was working for Farley
5 Construction and not for Salgado. But -- but the
6 Claimant is not the one in the position to determine
7 that legal definition to a relationship and particular
8 where it involves his friend and his friend who he
9 spoke with after his injury. And -- and the Claimant
10 actually testified that -- that Salgado and he talked
11 about who he was -- who Martinez was working for and
12 Salgado had told him, if I had been at the jobsite, I
13 would have been your employer but I wasn't there so you
14 worked for Farley Construction and -- and so that was
15 -- my point there is the Claimant's view of who he was
16 working for really is irrelevant. And I think what is
17 so critical in this case is that we -- we don't know
18 what Salgado would have testified to but we know that
19 he has been served a subpoena, we know that his
20 deposition was noticed and he was a party in the case,
21 we know that he had notice of the hearing and he has
22 chosen not to be here for some reason. And he could
23 have testified very favorably to his insurance
24 company's position or he may have testified in favor of
25 Farley Construction. My client is absolutely convinced

1 that if he was here and under oath that he would
2 testify that Mr. Martinez --

3 Commissioner Wilkerson: That's --
4 that's outside of the record. You can't --
5 you can't be convinced of something when
6 somebody is not here or wasn't there; I don't
7 think.

8 Mr. Stroud: He doesn't need your help,
9 Judge.

10 Commissioner Wilkerson: Okay. I'm not
11 helping him; I just -- it -- was it like --
12 but the certificate of insurance, was that a
13 point of contention at the -- at the Single
14 Commissioner hearing?

15 Mr. Taylor: -- it -- I mean, it was
16 certainly -- it's a part of the record, it
17 was introduced into evidence, he -- it was
18 produced by the agent for Salgado the Monday
19 prior to the injury, which was December 8th,
20 four (4) days prior.

21 Commissioner Wilkerson: A valid
22 certificate?

23 Mr. Taylor: I -- excuse me?

24 Commissioner Wilkerson: It was valid,
25 it wasn't --

1 Mr. Taylor: It was a valid certificate.

2 Commissioner Wilkerson: -- a point of
3 contention? Okay.

4 Mr. Taylor: Yes. And -- and of an
5 important note, there was no other job being done by
6 Salgado for Farley Construction that week. The week
7 prior they had done another job on Petty Street but for
8 the week of this injury, that's the only job that was
9 done is the one that Jose Martinez worked on on
10 December 12th. So, there's an abundance of evidence
11 for the -- for the Single Commissioner to determine
12 that -- that Mr. Martinez worked for Salgado and that
13 Salgado was the subcontractor of Farley Construction.
14 I -- I heard a number of times things to the effect of,
15 unfortunately we don't know what Salgado would testify
16 to or it might have been good or it might have been
17 bad, and that's all fair, but -- but the reality is is
18 that he hasn't shown up and he should have shown up and
19 he could have clarified all of this and -- and he has
20 elected not to and those inferences should be in favor
21 of Farley Construction, who has appeared and has
22 testified to the relationship between Farley
23 Construction and Salgado and Salgado to Martinez. I
24 don't believe that this case represents any kind of
25 perfect storm. I think the only storm is that Salgado

1 really hasn't appeared to make things, perhaps, more
2 clear for the Commission. But -- but in any respect,
3 it was Salgado who put Mr. Martinez on the jobsite;
4 it's Salgado who is his employer and -- and that's --
5 that's my case.

6 Commissioner Wilkerson: Okay. Thank
7 you. Any questions? Mr. Baldwin, anything?

8 ARGUMENT FOR THE CLAIMANT

9 By Mr. Baldwin:

10 As they indicated, this happened in December of
11 2014, and we just need a ruling as quick as we -- we
12 can get one.

13 Commissioner Wilkerson: Okay. Thank
14 you. Any questions of Mr. Baldwin? Thank
15 you. Thanks. In reply?

16 Mr. Taylor: I don't have anything
17 further, Commissioner.

18 Commissioner Wilkerson: Good, it worked
19 out well. You can take part of his time; so,
20 I'll give you your three (3) minutes.

21 REPLY BY THE APPELLANT

22 By Mr. Stroud:

23 All right. They're implying, Commissioner --
24 first off the certificate of insurance. Monday prior
25 to the injury, the -- the certificate of insurance, I

1 want to say two (2) things on that. I believe Ron
2 Farley, at some point, testified that he does not allow
3 anyone on their jobsite without a certificate of
4 insurance. So, then he maintains that the Petty Street
5 job was done -- the -- the second -- the first one that
6 was done down the street was after -- that was -- the
7 certificate was for that or at that time he felt he was
8 going to work on that job the Monday prior. The
9 testimony was that Tuesday, the next day, he called and
10 said, my crew isn't coming.

11 Commissioner Wilkerson: Was there
12 anything on the certificate verifying what
13 job it was in reference to?

14 Mr. Stroud: No, sir.

15 Commissioner Wilkerson: Well, then,
16 would it not cover all jobs?

17 Mr. Stroud: I -- I don't -- I really
18 don't know.

19 Commissioner Wilkerson: Well, what did
20 --

21 Mr. Stroud: My -- my position is that
22 it is not job specific; so, you -- I don't
23 think you can use it as a determination of --
24 of a contract, I guess, is the only way I can
25 answer that.

1 Commissioner Wilkerson: -- yes.

2 Mr. Stroud: If it was job specific, I
3 mean, I -- I mean, even so, even if it did
4 say it was for this job the -- the day
5 before, he accepted the assignment and so it
6 doesn't really matter what the certificate of
7 insurance said because, technically, the
8 evidence is that he backed out of the deal.

9 Commissioner McCaskill: Well, doesn't
10 that depend on how you look at it?

11 Mr. Stroud: Well, yes; this is my
12 position.

13 Commissioner McCaskill: I understand
14 that but -- but here's -- here's my question
15 for you, Mr. Stroud. If Farley's are paying
16 Salgado a hundred dollars (\$100.00) for Jose
17 and if Jose was working for them, why didn't
18 they just pay Jose?

19 Mr. Stroud: Because they weren't going
20 to drive his truck back to his home. So, my
21 client drove to Gaffney to get the Claimant's
22 truck, while he was there he said, here is
23 the check for your job and added on a hundred
24 dollars (\$100.00) for Jose. And apparently
25 my client said, it's -- the Claimant

1 testified, when he delivered the money he
2 said, here is the hundred dollars (\$100.00)
3 that Michael Farley sent for you. So, it's
4 our position that he was just delivering the
5 money, just like he was delivering the truck
6 and I know you needed the money. You know,
7 he was just trying to help out his friend who
8 was hurt and that they -- that he referred
9 his friend to this -- to the jobsite but that
10 does not mean that he was the employer. Does
11 that answer your question? I'm just making
12 sure I understand your question.

13 Commissioner McCaskill: Thank you, sir.

14 Commissioner Wilkerson: Thank you all.

15 I appreciate it. This concludes the hearing.

16 (THERE BEING NO FURTHER DISCUSSION, THE FULL BOARD HEARING

17 CONCLUDED AT 1:57 P.M.)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
 COUNTY OF RICHLAND)

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Full Board Hearing of Jose Martinez, vs. Jose Efraín Henríquez Salgado;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 21 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 30th Day of October, 2016.

Gloria G. Davis
 Gloria G. Davis
 Notary Public for South Carolina
 My Commission Expires 12/21/21

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In the Matter Of:

Martinez, Jose v

Salgado, Jose Efrain Henriquez, et al

Jose Martinez

March 06, 2015

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1419236

Jose Martinez, Claimant,
vs (INTERPRETED DEPOSITION)

Jose Efrain Henriquez Salgado and
Farley Construction, LLC,
Employers,
and

Auto Owners Insurance Company, and
Builders Mutual Insurance Company,
Carriers/Defendants.

INTERPRETED
DEPOSITION OF: JOSE MARTINEZ

DATE: March 6, 2015

TIME: 10:00 a.m.

LOCATION: Joseph R. Baldwin, Esquire
306 West Poinsett Street
Greer, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MICHELE E. BECKER,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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19
20 ALSO PRESENT: LUNA GAINER, INTERPRETER
21
22
23
24
25

P-R-O-C-E-E-D-I-N-G-S

LUNA GAINER

being first duly sworn, interpreted truly and
faithfully as follows:

JOSE MARTINEZ

being first duly sworn, testified as follows:

EXAMINATION

BY MR. TAYLOR:

Q. Mr. Martinez, my name is George
Taylor, and I represent Farley Construction, LLC,
and Builders Mutual Insurance Company.

A. Okay.

Q. And I'm here to take your deposition
this morning.

A. Okay.

Q. Have you ever had your deposition
taken before?

A. No. No. It's the first time.

Q. All right. You've probably spoken to
your lawyer some about what's going to transpire,
but let me go over some basic ground rules with you.

A. Okay.

Q. The general format is, I'm going to
ask you questions, and you're going to answer my
questions.

1 A. Okay.

2 Q. We of course have Luna here who's
3 going to be translating for us, and I would ask that
4 if you understand some English, please allow me to
5 finish my question and her to translate the full
6 question before you answer, even if you understand
7 the English question.

8 A. Okay.

9 Q. That just makes everything easier for
10 our court reporter and for Luna who's going to be
11 translating for us.

12 A. Okay.

13 Q. I don't anticipate that we'll take
14 terribly long this morning, but if at any point you
15 need to take a break, you let us know, okay?

16 A. Yes. Okay. We're fine like this.

17 Q. If I ask you anything this morning
18 that you don't understand, please ask me to rephrase
19 the question, okay?

20 A. Yes. Okay.

21 Q. You're doing a great job so far, and
22 my experience when we have a translator, this
23 usually isn't a problem, but be sure to always give
24 verbal responses. Sometimes it may be easy to nod
25 your head up and down, or left and right, but please

1 remember to give me verbal responses.

2 A. Okay.

3 Q. Are you under the influence of any
4 medications, drugs or alcohol that would impair your
5 ability to give testimony this morning?

6 A. No.

7 Q. Tell me your full name, please.

8 A. Jose Angel Martinez Juarez.

9 Q. And what's your current address?

10 A. 126 Ridge Drive, R-i-d-g-e Drive,
11 Williamston, South Carolina.

12 Q. It's like Ridge, R-i-d-g-e?

13 A. Okay.

14 Q. For the record, Mr. Martinez has
15 handed us an envelope that has his address and name
16 on it. The address is 126 Ridge Drive, Williamston,
17 South Carolina, 29619.

18 How long have you lived in South
19 Carolina?

20 A. Eight years.

21 Q. And has all of that time been in
22 Williamston, South Carolina?

23 A. No. Here I live two years, and six
24 years in Williamston. Here in Greer I lived two
25 years.

1 Q. So you lived in Greer for two years,
2 and then you've lived the last six years in
3 Williamston?

4 A. Yes. Yes, sir.

5 Q. And have you lived at the 126 Ridge
6 Drive location for the past two years?

7 A. No. No. I've only been hardly eight
8 or nine months there. I've lived in different
9 places.

10 Q. Who lives with you at 126 Ridge Drive?

11 A. I been living together with a girl.

12 Q. And is this a spouse?

13 A. No. It's a friend, but it's -- I'm --

14 INTERPRETER LUNA GAINER: Interpreter
15 correction.

16 A. I'm into that. I'm going to marry
17 her.

18 Q. What is her name?

19 A. Selena Maribel.

20 INTERPRETER LUNA GAINER: Interpreter
21 is asking for a spelling.

22 A. Selena Maribel Naupari Zambrano.
23 Naupari is spelled N-a-u-p-a-r-i.

24 Q. And how long have you-all lived
25 together?

1 A. For about nine months.

2 Q. Do you have any children?

3 A. She's six months pregnant.

4 Q. And you don't have any children who
5 are currently alive?

6 A. No. I don't have any children with
7 her. She does, but from another relationship.

8 Q. Do you have any children from a
9 relationship other than with Selena?

10 A. No. . No.

11 Q. And how many children does she have?

12 A. Four.

13 Q. Do those children live with you?

14 A. Yes.

15 Q. What are their ages?

16 A. 11, 6, 4 and 2.

17 Q. Do you have a driver's license?

18 A. No.

19 Q. Do you have any form of
20 identification?

21 A. Yes. My passport, but I didn't bring
22 it. I forgot it.

23 Q. Where did you live before you moved to
24 South Carolina?

25 A. No. Well, I came here from El

1 Salvador. I came here.

2 Q. Are you originally from El Salvador?

3 A. Yes.

4 Q. Are you in the U.S. legally?

5 A. No.

6 Q. What's your birth date?

7 A. 10/23/1974.

8 Q. What's the farthest that you went in
9 school?

10 A. I didn't finish my studies. I only
11 studied for eight years.

12 Q. How old were you when you quit going
13 to school? How old were you?

14 A. 14 years old.

15 Q. Have you had any kind of education
16 since you've been in the United States?

17 A. No.

18 Q. After you left school at 14 years old,
19 have you had any kind of formal education?

20 A. No. None.

21 Q. What kind of work have you done since
22 you've been in the United States?

23 A. I've worked in a little bit of
24 everything, restaurant, construction.

25 Q. In any of your jobs have you learned

1 how to operate any kind of specialized equipment?

2 A. Yes.

3 Q. What kind of things?

4 A. Bobcat, those machines to push dirt or
5 excavate, and in a restaurant, production. I was
6 working in production.

7 MR. TAYLOR: Off the record.

8 (Off-the-record.)

9 BY MR. TAYLOR:

10 Q. We just took a short break, and before
11 we did you had said that you know how to operate a
12 Bobcat?

13 A. Yes.

14 Q. Can you operate any other kind of
15 heavy machinery besides a Bobcat?

16 A. No. No. Only in the past I used to
17 work stripping floors. I don't know how can you
18 call that machine, but it's the one that makes the
19 floor shiny.

20 Q. Okay.

21 A. But in the last two years I've
22 dedicated myself to the roofing, the last three
23 years.

24 Q. And since you've been in the United
25 States have you been convicted of any crimes?

1 A. Yes. I've had a DUI.

2 Q. When was that?

3 A. A year ago.

4 Q. Did you plead guilty?

5 A. Yes.

6 Q. Is that the only conviction you've had
7 while you've been in the United States?

8 A. Yes, sir.

9 Q. Did you have a driver's license during
10 that time?

11 A. No.

12 Q. We're here of course to discuss an
13 alleged work accident on December 12th, 2014.
14 Excluding that accident have you ever had any other
15 workers' compensation cases?

16 A. I had an accident in 2008.

17 Q. Did you file a workers' compensation
18 claim after that accident?

19 A. Yes. Yes.

20 Q. How long were you out of work?

21 A. I think it was -- it was not a long
22 time. About three months.

23 Q. Tell me what happened.

24 A. I had second grade burns. I have
25 surgery in my arms.

1 Q. In both arms?

2 A. No. Only one.

3 Q. Left or the right?

4 A. Left.

5 Q. And you had one surgery?

6 A. A plastic surgery.

7 Q. How did you burn your arm?

8 A. A gas explosion.

9 Q. Who were you working for?

10 A. For a company called.

11 INTERPRETER LUNA GAINER: Interpreter
12 needs to ask him to repeat.

13 THE DEPONENT: Long Hughes. Walhalla.

14 MR. BALDWIN: It's a utility company
15 that did excavation in Walhalla. I can't remember
16 the name.

17 MR. TAYLOR: Off the record.

18 (Off-the-record.)

19 BY MR. TAYLOR:

20 Q. We're back on the record. Is the
21 company that you were working for Long Hughes
22 Utility?

23 A. Something like that. I don't remember
24 very well, but, yes.

25 Q. Were you paid while you were out of

1 work after that accident?

2 A. Yes. They paid me the first week that
3 I had been working with them.

4 Q. I mean, did they pay you for the three
5 months that you were out of work?

6 A. Yes. Yes, sir.

7 Q. Were your medical bills paid for?

8 A. Everything. Everything.

9 Q. At the end of that case did it settle?

10 A. Yes. Yes.

11 Q. How much money did you receive?

12 A. I don't remember very well.

13 Q. Was it more than \$10,000?

14 A. No. About 4,500.

15 Q. Did you go back to work for that
16 utility company after your arm got better?

17 A. Yes. Yes. I went back to work with
18 them.

19 Q. Any other workers' compensation claims
20 besides the one that you just told me about?

21 A. No. No.

22 Q. Have you ever been involved in a
23 lawsuit before?

24 A. No.

25 Q. You've never been sued by anybody?

1 A. No.

2 Q. And to the best of your knowledge no
3 one has ever sued you?

4 A. No.

5 Q. Any other injury at work that has
6 required you to miss at least more than one day of
7 work?

8 A. No.

9 MR. BALDWIN: Off the record.

10 (Off-the-record.)

11 BY MR. TAYLOR:

12 Q. I'm not sure if he answered my last
13 question. I asked besides the injury that we've
14 already talked about and the alleged accident on
15 December 12th, 2014, have you ever had any work
16 injuries that have required you to miss more than
17 one day of work?

18 A. No. No.

19 Q. Have you ever had any surgeries?

20 A. No.

21 Q. When you had your DUI about a year
22 ago, was there an accident or were you just pulled
23 over by a police officer?

24 A. It was in a parking lot that I got
25 detained by the police.

1 Q. Was there an automobile accident
2 associated with that?

3 A. Before that. Before about three years
4 ago, yes.

5 Q. So have you had more than one DUI?

6 A. Yes.

7 Q. Okay. How many DUIs have you had?

8 A. Three. Three.

9 Q. Three? All three in the United
10 States?

11 A. Yes.

12 Q. You told me about the one that was a
13 year ago. When were the other two?

14 A. I don't remember the date, but one of
15 them about three years ago and the last one about a
16 year ago.

17 Q. Okay. So there was one about a year
18 ago, there was one about three years ago. How about
19 the third one?

20 A. The third one about a year ago.

21 Q. So you got two about one year ago?

22 A. Within the three years it has been --
23 well, also four years ago or so I had another one.

24 Q. And did you plead guilty to all of
25 those DUIs?

1 A. Yes.

2 MR. BALDWIN: Um --

3 MR. TAYLOR: You can ask him all the
4 questions when I'm done.

5 MR. BALDWIN: I know he's not
6 answering correctly. He's not entered a plea or
7 been found guilty on the last one. He got stopped,
8 okay?

9 MR. TAYLOR: That's fine. He's going
10 to answer as best as he can.

11 MR. BALDWIN: Yeah.

12 BY MR. TAYLOR:

13 Q. Did any of those three DUIs involve
14 accidents?

15 A. Yes.

16 Q. How many of them?

17 A. Only one.

18 Q. And that was the 13 years ago?

19 A. Yes.

20 Q. Tell me about that accident.

21 A. Well, the thing is, I had some
22 material in my car and I rolled over with it, and I
23 was drunk as well.

24 Q. What material did you have in your
25 car?

1 A. Roofing, shinglings.

2 Q. Did you hit another car?

3 A. No. No. It was in a curve that I
4 turned over.

5 Q. So you were going around a curve and
6 your car flipped over?

7 A. Yes.

8 Q. Was anyone injured in that accident?

9 A. Yes. My friend.

10 Q. Were you injured in that accident?

11 A. Yes. Me too.

12 Q. What body parts of yours were injured?

13 A. My left arm.

14 Q. Anything else?

15 A. No.

16 Q. And what was your friend's name that
17 was in the car with you?

18 A. Jorge Avila.

19 Q. Are you still friends?

20 A. Yes.

21 Q. How badly was he injured?

22 A. His neck. He broke his neck here --
23 (indicating).

24 Q. Was anyone injured that was not in the
25 car with you?

1 A. No. No one else.

2 Q. Have you ever had any surgeries?

3 A. No.

4 Q. Besides the ones to your left arm that
5 we've already talked about?

6 A. Zero. No. No. No. Nothing.

7 Q. Are you currently being treated for
8 any medical conditions?

9 A. Well, only from the accident that I
10 just had on December 12th.

11 Q. Nothing else?

12 A. Yes.

13 Q. Do you have a family doctor?

14 A. No.

15 Q. Did you regularly see a doctor before
16 December 12th, 2014?

17 A. No. No.

18 Q. If you had a reason to see a doctor
19 prior to December 12th, 2014, where did you go?

20 A. I don't know. To the hospital maybe.

21 Q. What hospital would that be?

22 A. In Greenville or Anderson.

23 Q. Where were you treated after your left
24 arm burn?

25 A. In Atlanta, Georgia. Atlanta,

Georgia.

Q. Do you know the name of the facility?

A. No. I don't remember.

Q. Where were you treated after the DUI accident three years ago?

A. At the hospital of Greenville.

Q. Do you have any health problems?

A. No.

Q. Diabetes, for example?

A. No.

Q. High blood pressure?

A. Nothing. Nothing. None of that.

Q. Have you ever spent a night in a hospital before?

A. No.

Q. Have you ever had any broken bones?

A. No.

Q. And other than the automobile accident we've already talked about, have you had -- have you ever been involved in any other car accidents that have required you to see a doctor?

A. No.

Q. Who were you working for on December 12th, 2014?

A. Well, I was working with different

1 people. That day I was working with a Efrain, and
2 that day I was working with Mr. Budget. Roofing
3 Budget. He's using a pronunciation.

4 Q. Who was paying you for the work that
5 you were doing in December of 2014?

6 A. Roofing Budget.

7 Q. I'm sorry, could you spell that,
8 please?

9 A. No, I don't know. I don't know how to
10 write in English.

11 Q. Who was your boss on that job?

12 A. I only know him by Budget only.

13 Q. Budget?

14 A. Yes.

15 MR. BALDWIN: Budget.

16 BY MR. TAYLOR:

17 Q. Who sent you to the job you were
18 working on on December 12th, 2014?

19 A. Efrain.

20 Q. Efrain?

21 A. Efrain. Yes.

22 Q. What is Efrain's full name?

23 A. I really don't know. I only know him
24 as Efrain.

25 Q. Do you know any other name that goes

1 with Efrain?

2 A. No. I know him through work.

3 Q. How long had Efrain been putting you
4 on jobs?

5 A. Well, since I've known him about three
6 years.

7 Q. Does Efrain ever go by the name of
8 Jose?

9 A. Jose is the name of one of his
10 brothers. Josue is the name of his brother. I
11 think his name is Jose Efrain.

12 Q. So Jose Efrain is not the same person
13 as Efrain?

14 A. Yes. It's the same.

15 Q. Is Jose Efrain the guy who sent you to
16 the job on December 12th, 2014?

17 A. Yes. I have the address where he sent
18 me in my cell phone.

19 Q. I'm going to get that from you in a
20 moment. But you had been doing work with Efrain for
21 approximately three years?

22 A. Yes. I've been working with him,
23 like, but temporarily, like, not all the time.
24 Like, whenever he needed help I would help him out.

25 Q. And is he the brother of a guy named

1 Jose Efrain?

2 A. Yes. No. No. He has a brother named
3 Josue.

4 Q. Josue?

5 A. Josue.

6 Q. Josue?

7 A. Yes. It's different.

8 Q. Is Josue the person who received the
9 contracts for the jobs that you worked on?

10 A. Yes. They are -- those two are the
11 ones. I mean, they both work together. The two
12 brothers work together.

13 Q. So neither one of them was in charge
14 of the other?

15 A. At the time of the accident I was
16 working for some bosses of them. They didn't work
17 with them that day. I didn't work with them. They
18 were far away. They are in the Columbia.

19 Q. My question was between the two of
20 them was either one of them in charge of the other
21 or are they equals?

22 A. No. It's just that the job where the
23 accident happened to me -- well, both of them were
24 in charge of the same job.

25 Q. I'm not -- okay. I'm not interested

1 in the job you were working on on the day you were
2 injured. I'm interested in figuring out who of
3 Josue Efrain and the other Efrain, which one was in
4 charge of the other?

5 A. Well, Efrain? Efrain is the one in
6 charge.

7 Q. That is not the same one as Josue
8 Efrain?

9 A. No.

10 Q. Do you have the phone numbers for
11 either of those two gentlemen?

12 A. I have both of their numbers.

13 Q. Will you please give them to me.
14 Let's start with Josue?

15 A. 864-556-3006.

16 Q. And you pulled that up on your cell
17 phone. Can I see that, please?

18 A. Yes. It's right here.

19 Q. And how about Efrain's phone number?

20 A. 864-276-8353.

21 Q. Do you still do any work for either of
22 the Efrain brothers?

23 A. Ultimately I have not had
24 communication with them after the accident.

25 Q. Have you tried to contact either of

1 them?

2 A. No. Here I have the message that they
3 sent me on the 11th at 7:09. It's from Efrain to
4 the address where the accident happened to me.
5 Where I was going to work for them.

6 Q. Would you read that for me, please?

7 A. I cannot read it to you. It's right
8 here. I don't know how to say it. Here is the
9 address. I have it here.

10 Q. May I see your phone, please? There's
11 some circles on your phone. Are these a problem on
12 the screen?

13 A. Yes. It is a problem.

14 Q. And I'm not sure how to navigate
15 through your phone. I'm not going to try to. But
16 this address, North Petty Street, 305, Gaffney, is
17 that the address you were working at on
18 December 12th?

19 A. That's the address here. I have the
20 date, the 11th. PM is when they send me to go so
21 that I could go the next day to work for their boss.

22 Q. And which of the Efrains did that come
23 from?

24 A. From Jose Efrain.

25 Q. There's a message that was sent after

1 the address was sent. What did that message say?

2 A. It says that's the address.

3 Q. Do you have any other text messages
4 between you and Jose Efrain?

5 A. No. Those are the only ones.

6 Q. And for the last three years you said
7 you worked with Jose Efrain and his brother on and
8 off?

9 A. Uh-huh. Temporarily. I would not
10 work with them continuously. That week I was
11 working with them.

12 Q. Who else have you worked for over the
13 last three years?

14 A. Jorge Avila. The person with which I
15 had the accident.

16 Q. And what does he do?

17 A. Roofing also. He does the same as
18 them.

19 Q. Does Jorge pay you in cash or check?

20 A. They would pay me in cash. Efrain as
21 well.

22 Q. Have you had any jobs since you've
23 been in South Carolina where you were paid by check?

24 A. Yes. At the company where I was
25 working where I had the accident.

1 Q. Where you were burned?

2 A. Yes.

3 Q. Is that the only job where you were
4 paid by check?

5 A. Yes.

6 Q. How much did Jose Efrain pay you by
7 the hour?

8 A. He would pay me daily, 125 daily.

9 Q. And how many days in a week did you
10 work for Jose Efrain?

11 A. Sometimes -- sometimes we would work
12 five, sometimes six.

13 Q. And how many weeks out of the month
14 would you work for Jose Efrain?

15 A. Well, the season, when it was hot I
16 was working with them all the time.

17 Q. And when it's not hot where were you
18 working?

19 A. I would go with another friend, with
20 Jorge Avila or with another person.

21 Q. In 2014, of the 52 weeks in a year,
22 how many would you estimate that you worked for Jose
23 Efrain?

24 A. I couldn't say because I wasn't
25 working all the time with him.

1 Q. I'm asking you to estimate how many
2 weeks you think you worked?

3 A. In 2014?

4 Q. Yes.

5 A. Well, with him I didn't work a lot
6 with him. I worked more with Jorge Avila.

7 Q. How much did Jorge Avila pay you?

8 A. He was paying me a little more.

9 Q. How much was he paying you?

10 A. 150.

11 Q. A day?

12 A. Yes.

13 Q. Between Jose Efrain and Jorge Avila,
14 how many weeks do you think you worked in 2014?

15 A. Well, in what I remember I worked
16 almost all the time when I worked with him. Only
17 when it would rain we would not work.

18 Q. Do you have any records of being paid
19 by either Jorge or Jose Efrain?

20 A. No. They would pay me in cash.

21 Q. Have you filed taxes while you've
22 lived in the United States at all?

23 A. Yes. When I was working at the
24 company I would do my taxes.

25 Q. And what years did you work for that

1 utility company?

2 A. 2007, 2008, I think.

3 Q. So besides the years 2007 and 2008,
4 have you ever paid income taxes?

5 A. Yes.

6 Q. What years have you paid income taxes
7 other than 2007 and 2008?

8 A. 2007, 2008, 2009.

9 Q. Any other years?

10 A. No.

11 Q. Have you ever heard of someone named
12 Ron Farley?

13 A. No.

14 Q. Have you ever heard of Farley
15 Construction Company?

16 A. No.

17 Q. On December 12th, 2014, who were you
18 working with?

19 A. Well, with those. With Bally Roofing.
20 I didn't know them like that. I don't know whether
21 they have any other name.

22 Q. How many people were you working with
23 on December 12th, 2014?

24 A. Three Americans and myself.

25 Q. And Mr. Martinez, I see that you

1 probably are understanding some of my questions
2 before Luna has an opportunity to translate. Please
3 wait till she translates it. It just makes it
4 easier for all of us, okay?

5 A. Okay.

6 Q. And on December 12th, 2014, what kind
7 of work were you doing?

8 A. We were placing a roof, metal roof on
9 a building. On a building that is across the street
10 from the family court in Gaffney.

11 MR. BALDWIN: Gaffney.

12 INTERPRETER LUNA GAINER: Interpreter
13 corrects herself. Gaffney.

14 BY MR. TAYLOR:

15 Q. How many people were on the roof?

16 A. We were two on top and two on the
17 bottom.

18 Q. And the two on the bottom were not
19 helping to install the metal roofing?

20 A. They were handing the pieces to us.

21 Q. And do you know the guy's name that
22 was on the roof with you?

23 A. Michael is the name of the gentleman.

24 Q. Do you know Michael?

25 A. I've known him from a long time ago,

1 but I've never done like acquainting with him or
2 anything like that. I went because a friend asked
3 me to go there to help them.

4 Q. Had you ever done any work with
5 Michael before?

6 A. Well, no. Yes. We would work. We
7 were making houses, but I would go with him. I was
8 working with Efrain.

9 Q. So you would do work -- scratch that.
10 So in the times that you had worked with Michael,
11 you were doing that work for Efrain?

12 A. I was working for -- he would pay me.
13 Efrain would pay me.

14 Q. Was Efrain the subcontractor to
15 Michael?

16 A. Yes.

17 Q. So to the best of your knowledge
18 Michael was paying Efrain and Efrain was paying you?

19 A. Yes. But the day of the accident,
20 that day they were paying me.

21 Q. Who is they?

22 A. Michael.

23 Q. Did Michael pay you on December 12th,
24 2014?

25 A. Yes. They send me the money.

1 They send me a hundred dollars with
2 Efrain. That was all that they have given me.

3 Q. So Efrain paid you?

4 A. No. Michael paid me. He send me the
5 money with him. Because they took my truck.
6 Michael took my truck to his home.

7 Q. Michael took your truck to whose home?

8 A. His house.

9 Q. Has Michael ever paid you before
10 December 12th, 2014?

11 A. No. No. Not until that day that I
12 worked with them.

13 Q. Why is it that on December 12th, 2014,
14 Michael was going to pay you, but in every other
15 time you had done work for Michael, Efrain paid you?

16 A. Because they needed help, and I had
17 nothing to do. So I went there to help them. I had
18 never worked with them like that until that day.

19 Q. Did Michael call you to come to that
20 job?

21 A. No. Michael called Efrain. They
22 needed help.

23 Q. Do you know Michael's phone number?

24 A. No. I don't have it. I used to, but
25 I don't have it.

1 Q. Does Michael speak Spanish?

2 A. No.

3 Q. Can you speak English?

4 A. I speak a little, not much.

5 Q. And have you ever had a phone
6 conversation with Michael before?

7 A. No.

8 Q. Did you -- how much did Michael tell
9 you he was going to pay you on December 12th, 2014?

10 A. No. He didn't even tell me how much
11 he was going to pay me.

12 Q. Was he going to pay you in cash or
13 check?

14 A. He paid me in cash. Only he sent me a
15 hundred dollars with Efrain.

16 Q. When Efrain sent you to that job, did
17 Efrain tell you that Michael was going to be paying
18 you or did you -- did Michael tell you that?

19 A. He said that Michael was going to pay
20 me.

21 Q. And he told you that over the
22 telephone?

23 A. Yes.

24 Q. When was that phone conversation?

25 A. Two days before or one day before, I

1 think.

2 Q. Does Efrain have insurance?

3 A. I'm not sure. I don't know.

4 Q. What time of the day were you injured?

5 A. It was around between 2 and 3 in the
6 afternoon.

7 Q. What happened?

8 A. I fell from a roof. I stood on a
9 metal plate. It wasn't well nailed and so it got
10 off and I went with it down.

11 Q. You were holding onto a metal plate
12 that was a roofing plate or something?

13 A. We would stand on them.

14 Q. And tell me how you fell?

15 A. I remember that I stood on that piece
16 and it was not nailed. That's the only thing I
17 remember.

18 Q. And did you fall off the roof?

19 A. Yes.

20 Q. How did you land?

21 A. I fell sideways sitting rather,
22 sitting on one buttocks on the ground.

23 Q. How high up was this roof that you
24 fell off of?

25 A. Between 16 and 18 feet.

1 Q. And you landed on your butt?

2 A. Yes.

3 Q. Did anything else hit besides your
4 butt?

5 A. No. No.

6 Q. Did you hit more on one side than the
7 other?

8 A. The left side more.

9 Q. When you hit the ground what did you
10 do?

11 A. I couldn't -- I couldn't -- I couldn't
12 get up.

13 Q. Did somebody come help you?

14 A. Yes.

15 Q. Who?

16 A. The people that were there with me.

17 Q. Did someone call an ambulance?

18 A. Yes.

19 Q. And the ambulance came and took you to
20 the hospital?

21 A. Yes.

22 Q. What body parts did you injure?

23 A. My spine.

24 Q. What part of your spine?

25 A. I have two bones broken.

1 Q. And what part of your back?

2 A. I broke my --- I brought my X-ray.

3 Q. Do you know, can you tell me was it
4 your upper back, or lower back, mid back?

5 A. The lower back.

6 Q. Did you hurt anything other than your
7 back?

8 A. No. Only there.

9 Q. And today is anything bothering you
10 other than your back?

11 A. No. Only that.

12 Q. And on December 12th, did the
13 ambulance take you to Spartanburg Regional Hospital?

14 A. Yes.

15 Q. Have you been treated anywhere other
16 than Spartanburg Regional?

17 A. Yes. Where I'm going to therapy now.

18 Q. And where are you going to therapy
19 now?

20 A. I don't know the name, it right here.

21 Q. For the record, Mr. Martinez has
22 handed me an envelope that says Upstate Spine and
23 Neurosurgery Center. Address, 1075 Boiling Springs
24 Road, Spartanburg, South Carolina, 29303.

25 How long have you been going to

1 therapy at this location?

2 A. Now it's been since the accident
3 happened, almost two-and-a-half months.

4 Q. How often are you going to therapy?

5 A. Three months. This March I'm going to
6 be three months.

7 Q. Are you going to therapy on a weekly
8 basis?

9 A. No. I go like every month.

10 Q. Once a month?

11 A. Uh-huh.

12 Q. And so how many times total have you
13 been to Upstate Spine and Neurosurgery?

14 A. Two times I think. Two times.

15 Q. Have you been anywhere other than
16 Upstate Spine and Neurosurgery and the Spartanburg
17 hospital?

18 A. No. No. Well, the last time with the
19 other accident, but I don't remember the places.

20 Q. I mean, since December 12, 2014.

21 A. No. No.

22 Q. Is your back getting better?

23 A. Yes. I'm getting better.

24 Q. If I were to ask you this morning to
25 rate the pain in your back on a scale of 1 to 10, 1

1 being virtually no pain, and 10 being excruciating,
2 almost unbearable pain, where would you rate the
3 pain in your back right now?

4 A. Well, right now, more or less a six.

5 Q. On a good day where would you rate the
6 pain using the same scale I just gave you?

7 A. When you say, good day, what are you
8 referring to?

9 Q. When your back is not bothering you
10 much, when you feel your best?

11 A. Well, I cannot be sitting for a long
12 time or standing for a long time. Maybe when I'm
13 laying down I relax a little more.

14 Q. Is your back ever in more pain than a
15 6?

16 A. When I stop taking the pills, yes.

17 Q. The reason I ask that is sometimes
18 pain presents on a varying scale. People have
19 really good days and really bad days. Other folks
20 will sometimes have a more constant pain. And my
21 question for you is, do you have the fluctuating
22 pain or is your pain more constant?

23 A. I didn't understand. How do you say?

24 Q. Does your pain ever get much better or
25 worse than a 6, or is it mostly a constant 6?

1 A. A little while ago my pills ran out
2 and I noticed that the pain went up.

3 Q. We've been going about an hour and 10
4 minutes. You-all want to take a short break?

5 (A recess transpired.)

6 BY MR. TAYLOR:

7 Q. You told me that your back is getting
8 better. Where would you have rated your pain in the
9 middle of December using the same scale I gave you
10 earlier?

11 A. The middle of December it was when the
12 accident happened, and at that time I was in very
13 bad shape because they had given me a medication
14 that had very very high effects.

15 Q. What was your pain level back then?

16 A. Eight. Eight.

17 Q. Are you currently taking any
18 medications?

19 A. Yes. I'm taking some pills that they
20 left for me for the pain.

21 Q. What are the pills?

22 A. It's like a Tylenol, but I don't
23 remember the brand name right now.

24 Q. Is it a prescription pill?

25 A. Yes. Yes. By a doctor, yes.

1 Q. Is that the only medication you're
2 taking?

3 A. Yes. It's for the pain. It's for
4 pain and for -- it's like an antibiotic as well.

5 Q. And have you taken any other
6 over-the-counter medications besides what the
7 doctors have given you?

8 A. No. No.

9 Q. Did you pay for those medications out
10 of your own pocket?

11 A. No. Well, yes. The medications, yes.
12 I'm buying it.

13 Q. You pay for it?

14 A. Yes.

15 Q. Did anyone give you any money to pay
16 for those medicines?

17 A. My wife. My wife.

18 Q. And have you paid Spartanburg Hospital
19 or Upstate Spine and Neurosurgery for your visits to
20 those facilities?

21 A. No. No. In fact, one of the
22 medications was very very expensive, and that's why
23 I didn't buy it. It was more than \$300, so I didn't
24 buy it.

25 Q. Has anyone paid you since you've been

1 out of work?

2 A. No. No one.

3 Q. Efrain has not given you any money --

4 A. No one. Not a thing.

5 Q. Mr. Martinez, I know that you know the
6 question, but please be sure to let me finish the

7 question and let our translator finish translating
8 before you answer, okay?

9 A. Okay.

10 Q. Have you worked at all since
11 December 12th, 2014?

12 A. No. No.

13 Q. Have you been looking for work?

14 A. No.

15 Q. Do you want to go back to work?

16 A. When I get better, yes, I'm going to
17 work.

18 Q. Currently are you capable of working?

19 A. Yes. Right now the doctors told me
20 that I could not work. They told me I could not
21 work.

22 Q. Do you feel like you can work?

23 A. No.

24 Q. Do you help around the house?

25 A. Yes.

1 Q. What kind of things?

2 A. Sweeping and mopping. I do movements
3 because I cannot just lay in bed.

4 Q. Besides sweeping and mopping, what
5 things do you help with?

6 A. Well, read the Bible, because I go
7 sometimes to church.

8 Q. I mean chores.

9 A. Chores, no.

10 Q. Do you make the bed?

11 A. Yes.

12 Q. Do the dishes?

13 A. Yes. All that, yes.

14 Q. Cook dinner?

15 A. Once in a while, yes, I do cook.

16 Q. Are you able to do all of those things
17 now?

18 A. Yes.

19 Q. Do any of those things make your back
20 worse?

21 A. Yes. When I do a lot of movement like
22 mopping or use the mop.

23 Q. Are you doing any exercises to help
24 your back recover?

25 A. No.

1 Q. When is the last time you talked to
2 Efrain or his brother?

3 A. I don't remember. I called him but I
4 could not get in touch with him.

5 Q. When you worked for Efrain did you use
6 your own tools or did he provide your tools?

7 A. No. I had my own tools.

8 Q. Did you bring your own tools on
9 December 12th, 2014?

10 A. No. I had my tools in my car but they
11 had their tools.

12 Q. Does it take special tools to put a
13 metal roof up?

14 A. Yes. A drill.

15 Q. Do you have that equipment? Do you
16 own it?

17 A. Yes. I have that.

18 Q. And you brought that kind of equipment
19 to the job that day?

20 A. Ended up there.

21 Q. What ended up where?

22 A. My backpack, my drill, all that ended
23 up staying there. And my car, all that stayed
24 there.

25 Q. Did you get all your tools and

1 equipment back?

2 A. Yes. They're all back in the car, all
3 of it.

4 Q. How long have you and Efrain been
5 friends?

6 A. Some four years, I think.

7 Q. Does he live near you?

8 A. Yes.

9 Q. Are you-all friends outside of work?

10 A. Yes.

11 Q. How close are you?

12 A. Not a lot. We speak only about work,
13 nothing else.

14 Q. Do you-all ever go places together
15 outside of work?

16 A. No.

17 Q. Where was Efrain working on
18 December 12th, 2014?

19 A. In Columbia.

20 Q. Had you been working with Efrain in
21 Columbia before December 12th, 2014?

22 A. Yes. I went to work for a few days
23 with them over there.

24 Q. Where did you work on December 11th?

25 A. December 11th? That day I did not

1 work. I only went to make a repair somewhere.

2 Q. Was that repair for Efrain?

3 A. No. That was from a lady friend of
4 mine.

5 Q. What day of the week was
6 December 12th?

7 A. It was a Friday.

8 Q. Had you worked at all that week for
9 Efrain?

10 A. Yes. I think I worked Monday and
11 Tuesday with them, I think.

12 Q. In Columbia?

13 A. No. Here in Greenville we did a job.

14 Q. Had Efrain ever sent you to work for
15 someone else where you would be the only person that
16 he was sending to the job?

17 A. No. That was the only time that he
18 sent me there.

19 Q. Do you know if Efrain was planning to
20 send more people there after December 12th?

21 A. No. No. Only myself.

22 Q. Do you know if Efrain had employees at
23 that same address the Monday following
24 December 12th?

25 A. No.

1 No. No. No.

2 Q. No, you don't know, or, no, he did
3 not?

4 A. No. I really don't know.

5 Q. Do you recognize the name Jose Efrain
6 Henriquez Salgado?

7 A. Until a little while ago I knew that
8 because I received a letter at my house, but I used
9 to know him only as Efrain.

10 Q. Have you asked Efrain for any help
11 since your injury?

12 A. No.

13 Q. Why not?

14 A. Because he got angry because of that
15 accident with me. He thought that I did it on
16 purpose.

17 Q. Why did he think you did it on
18 purpose?

19 A. I don't know.

20 Q. Did he tell you he thought you did it
21 on purpose?

22 A. No. Another friend told me.

23 Q. Have you spoken to him at all since
24 December 12th?

25 A. Well, he came to bring me my car and

1 to pay me. That's the only time.

2 Q. Do you know where Efrain lives?

3 A. I don't know exactly the address, but
4 he lives like a street -- the street next to my
5 street.

6 Q. Do you know the name of the street?

7 A. No.

8 Q. Do you know where Guyton Road is,
9 G-u-y-t-o-n?

10 A. I think that's it.

11 Q. Do you think that's where Efrain
12 lives?

13 A. I think that's where it is.

14 Q. Mr. Martinez, I'm almost done. If you
15 give me just a moment to look over some of these
16 documents I've got.

17 When Efrain paid you was it always at
18 the end of a workday?

19 A. No. It was each week.

20 Q. He would pay you at the end of the
21 week?

22 A. Yes.

23 Q. How many people did Efrain have
24 working for him?

25 A. One, two, three. About four people.

1 Q. Including you?

2 A. Uh-huh.

3 Q. Well, Mr. Martinez, that's all the
4 questions I've got for you.

5 A. I have a question. Why we keep
6 mentioning Efrain when at the time of the accident I
7 was working with someone else?

8 Q. That's a question for your lawyer.

9 MR. TAYLOR: That's all the questions
10 I've got for you. Some of the other lawyers may
11 have some questions for you.

12 MR. STROUD: Mr. Martinez, I
13 introduced myself for the record. My name is John
14 Stroud, and I represent Jose Efrain and his
15 insurance company.

16 EXAMINATION

17 BY MR. STROUD:

18 Q. I just have a few followup questions
19 for you.

20 A. Okay.

21 Q. Now, I know that on December 12th you
22 brought your truck and tools to the job site, but my
23 question is, did you use any of your tools or did
24 you use tools provided by Michael?

25 A. No. No. I use the tools that Michael

1 gave me.

2 Q. And was there anyone on that job site
3 who was giving instructions on how to put the roof
4 on?

5 A. Yes. Michael. But I had knowledge of
6 what I was doing. I had done it many times before.

7 Q. Okay. If you ran into a problem, like
8 you ran out of screws or nails, who would you go to
9 to talk about that?

10 A. To Mr. Michael.

11 Q. And who do you believe would have the
12 right to fire you from that job site?

13 A. Please ask the question again.

14 Q. Let's just pretend for a second that
15 you were doing a very bad job on the job site. Who
16 do you think would be the one to fire you?

17 A. Michael.

18 MR. STROUD: Thank you.

19 MR. TAYLOR: I have one more question.
20 Do you mind if I interject?

21 EXAMINATION

22 BY MR. TAYLOR:

23 Q. Mr. Martinez, was this a one-day only
24 job or were you planning on coming back the next
25 Monday to work with Michael?

A. Well, that job, they had been working there for about a week or so, and I was going to help them that day only.

MR. TAYLOR: I don't have any further questions.

EXAMINATION

BY MR. BALDWIN:

Q. I just want to clear up something. How much were you going to be paid that day?

A. Well, I didn't really notice nor did I ask. But what I do know is that they send me a hundred dollars.

Q. How much were you earning per day when you worked back then in that time period?

A. I was making between 125, 150 a day, but...

INTERPRETER LUNA GAINER: Continue.

THE DEPONENT: But since I was working for different people, like for Efrain and another person, well, I would make about 750 a week.

BY MR. BALDWIN:

Q. Who would tell you how much you were going to get paid every day?

A. Well, yes. I already knew what I was

1 making, 150, \$135.

2 Q. The day that you fell, did you believe
3 you were working for Budget Roofing on that day?

4 A. Yes. They were going to pay me.

5 Q. How long does the doctor say you're
6 going to be out of work?

7 A. He said between six and eight months.

8 Q. And after six or eight months, is
9 there anything he can actually do for you, like,
10 surgery?

11 A. Well, so far they haven't told me
12 anything. I don't know.

13 Q. And to your knowledge has anyone paid
14 the doctor?

15 A. No.

16 MR. BALDWIN: That's all I have.

17 MR. TAYLOR: Very good. We're all
18 done.

19 (The Witness, after having been advised
20 of his right to read and sign this transcript, does
21 waive that right.)

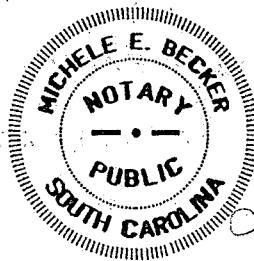
22 (Deposition concluded at 11:39 p.m.)
23
24
25

CERTIFICATE OF REPORTER

I, Michele E. Becker, Registered Merit Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to
nor counsel for any party to the cause pending or interested
in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 12th day of March, 2015 at Greer,
Greenville County, South Carolina.



Michele E. Becker,
Registered Merit Reporter
My Commission expires
November 21, 2021

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. File No. 1419236

Jose Martinez,

Claimant,

-vs-

Jose Efrain Henriquez Salgado and
Farley Construction, LLC,

Employers,

-and-

Auto Owners Insurance Company and
Builders Mutual Insurance Company,

Carriers/Defendants.

NOTICE OF DEPOSITION

TO: JOSEPH F. BALDWIN, ESQUIRE, COUNSEL FOR CLAIMANT
JOSE EFRAIN HENRIQUEZ SALGADO AND AUTO OWNERS
INSURANCE COMPANY

YOU WILL PLEASE TAKE NOTICE that on March 6, 2015 at 10:00 a.m. on said date, at the Law Office of Joseph R. Baldwin, Attorney, 306 West Poinsett St., Greer, South Carolina 29650, the attorney for the Defendants, Farley Construction, LLC and Builders Mutual Insurance Company, will take the deposition of Claimant, **Jose Efrain Henriquez Salgado**, on oral examination, pursuant to the South Carolina Rules of Civil Procedure, the Workers' Compensation Act and the Administrative Procedures Act, before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take part as is fit and proper.



CALLISON TIGHE & ROBINSON, LLC

George A. Taylor

Post Office Box 1390

Columbia, South Carolina 29202

(803) 404-6900

ATTORNEYS FOR DEFENDANTS

FARLEY CONSTRUCTION, LLC AND

BUILDERS MUTUAL INSURANCE COMPANY

Columbia, South Carolina

January 19, 2015

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



WCC File #: **1419236**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jose Martinez SSN: _____
Address: 126 Ridge Drive
City: Williamston State: SC Zip: 29697
Home Phone: _____ Work Phone: _____
Preparer's Name: George A. Taylor Law Firm: Callison Tighe & Robinson, LLC
Employer's Name: Jose Efrain Henriquez Salgado
Farley Construction, LLC
Address: 223 Guyton Rd., Williamston, SC 29697
88 Hamilton Woods Court, Lake Wylie, SC 29710
Insurance Carrier: Auto Owners Insurance Company/Travelers
Builders Mutual Insurance Company (for Farley)
Preparer's Phone #: 803-404-6900

SUBPOENA

To: **JOSE EFRAIN HENRIQUEZ SALGADO, 223 Guyton Rd., Williamston, SC 29697**

- ☐ **YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____

ROOM: _____

DATE AND TIME: _____

- ☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: **Law Office of Joseph R. Baldwin**
306 West Polinsett St.
Greer, SC 29650

DATE AND TIME: **March 6, 2015**
11:00 a.m.

- ☐ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS:

PLACE: _____

DATE AND TIME: _____

- ☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES: _____

DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

ISSUING OFFICER'S SIGNATURE AND TITLE

Attorney

(803) 404-6900
PHONE NUMBER

DATE

11/29/15

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

CERTIFICATE OF SERVICE

**Jose Martinez v. Jose Efrain Henriquez Salgado, Auto Owners
Insurance Company/Travelers, Farley Construction, LLC and
Builders Mutual Insurance Company**

WCC No. 1419236

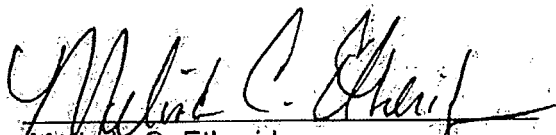
Our File No. 3399.463

I, the undersigned, Melinda C. Etheridge, of the law offices of Callison Tighe & Robinson, LLC, attorneys for Defendants, Farley Construction, LLC and Builders Mutual Insurance Company, do hereby certify that I have served the below named parties with a copy of the **Notice of Deposition of Jose Efrain Henriquez Salgado** by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on January 29, 2015:

Parties served: Joseph R. Baldwin, Esquire
Attorney at Law
306 West Poinsett St.
Greer, SC 29650

Auto Owners Insurance Company/Travelers
Post Office Box 473502
Charlotte, NC 28427

Jose Efrain Henriquez Salgado
223 Guyton Rd.
Williamston, SC 29697


Melinda C. Etheridge

Columbia, South Carolina

January 29, 2015



WCC File #: **1419236**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jose Martinez SSN: _____
Address: 126 Ridge Drive
City: Williamston State: SC Zip: 29697
Home Phone: _____ Work Phone: ()
Preparer's Name: George A. Taylor Law Firm: Callison Tighe & Robinson, LLC
Employer's Name: Jose Efrain Henriquez Salgado
Farley Construction, LLC
Address: 223 Guyton Rd., Williamston, SC 29697
88 Hamilton Woods Court, Lake Wylie, SC 29710
Insurance Carrier: Auto Owners Insurance Company/Travelers
Builders Mutual Insurance Company (for Farley)
Preparer's Phone #: 803-404-6900

SUBPOENA

To: **JOSE EFRAIN HENRIQUEZ SALGADO, 223 Guyton Rd., Williamston, SC 29697**

- ☐ **YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____

ROOM: _____

DATE AND TIME: _____

- ☐ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____

DATE AND TIME: _____

- ☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See Exhibit A attached.

PLACE: Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite 100
Columbia, SC 29201

DATE AND TIME: February 2, 2015
9:00 a.m.

- ☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES: _____

DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

[Signature]
ISSUING OFFICER'S SIGNATURE AND TITLE

Attorney
PHONE NUMBER

(803) 404-6900

1/23/15
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

EXHIBIT A

1. All documents related to contracts (or purported contracts) to which Jose Efrain Henriquez Salgado and/or his business was a party for jobs pending from December 12, 2014, to present.
2. All documents relating to workers' compensation insurance for Jose Efrain Henriquez Salgado and/or any business controlled by him which was in effect for the period including December 12, 2014, including but not limited to:
 - (a) Certificates of Insurance, (regardless of whether he "opted out");
 - (b) insurance policies;
 - (c) cancellation notices;
 - (d) reinstatement notices;
 - (e) letters to or from insurance agents or carriers;
 - (f) premium audits;
 - (g) any other document or thing related to workers' compensation coverage for the period including December 12, 2014 with regard to Jose Efrain Henriquez Salgado or his business(es).
3. All payroll reports, documents, check stubs, tax records including but not limited to Form 1099s, W-2s and any other documentation regarding payroll, tax withholdings, FICA, social security, and all other such tax records showing business deductions issued to or from Jose Efrain Henriquez Salgado.
4. Roster of all employees for the last two years. All employment records for all employees and subcontractors of Jose Efrain Henriquez Salgado to include payroll records, tax records including but not limited to Form 1099s and W-2s.
5. All statements of witnesses, whether signed or unsigned.
6. Tax returns filed by Jose Efrain Henriquez Salgado for 2012, 2013 and 2014.
7. All records of income, including cash payments, to Jose Efrain Henriquez Salgado.

CERTIFICATE OF SERVICE

**Jose Martinez v. Jose Efrain Henriquez Salgado, Auto Owners
Insurance Company/Travelers, Farley Construction, LLC and
Builders Mutual Insurance Company**

WCC No. 1419236

Our File No. 3399.463

I, the undersigned, Melinda C. Etheridge, of the law offices of Callison Tighe & Robinson, LLC, attorneys for Defendants, Farley Construction, LLC and Builders Mutual Insurance Company, do hereby certify that I have served the below named parties with a copy of the Subpoena by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on January 23, 2015:

Parties served: Joseph R. Baldwin, Esquire
Attorney at Law
306 West Poinsett St.
Greer, SC 29650

Via Certified Mail/Return Receipt Requested

70121010000256575916

Jose Efrain Henriquez Salgado
223 Guyton Rd.
Williamston, SC 29697

Auto Owners Insurance Company/Travelers
Post Office Box 473502
Charlotte, NC 28427


Melinda C. Etheridge

Columbia, South Carolina
January 23, 2015

CERTIFICATE OF SERVICE

**Jose Martinez v. Jose Efrain Henriquez Salgado, Auto Owners
Insurance Company/Travelers, Farley Construction, LLC and
Builders Mutual Insurance Company**

WCC No. 1419236

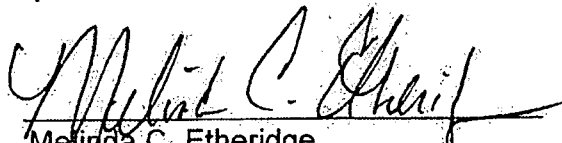
Our File No. 3399.463

I, the undersigned, Melinda C. Etheridge, of the law offices of Callison Tighe & Robinson, LLC, attorneys for Defendants, Farley Construction, LLC and Builders Mutual Insurance Company, do hereby certify that I have served the below named parties with a copy of the **Notice of Deposition of Jose Efrain Henriquez Salgado** by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on January 29, 2015:

Parties served: Joseph R. Baldwin, Esquire
Attorney at Law
306 West Poinsett St.
Greer, SC 29650

Auto Owners Insurance Company/Travelers
Post Office Box 473502
Charlotte, NC 28427

Jose Efrain Henriquez Salgado
223 Guyton Rd.
Williamston, SC 29697


Melinda C. Etheridge

Columbia, South Carolina

January 29, 2015

CERTIFICATE OF LIABILITY INSURANCE

DATE ISSUED: 12/08/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CALIDAD LATINA INSURANCE Greenville, SC 3405 White Horse Rd Suite B Greenville, SC 29611 Phone: (864) 269-0401 Fax: (864) 269-0466		CONTACT NAME: Angela Beltran PHONE (A/C No.): (864) 269-0401 FAX (A/C No.): (864) 269-0466 E-MAIL ADDRESS: calladclatna@bellsouth.net	
INSURED JOSE EFRAIN HENRIQUEZ SALGADO 223 GUYTON RD WILLIAMSTON SC 29697-		INSURER(S) AFFORDING COVERAGE INSURER A: AUTO OWNERS INSURANCE INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO. JEOT ☐ LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED EQUIPMENT (Per occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPOUND AGG \$ \$
AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ D&B ☐ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/INSURER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A	6810UB2E43401A	08/27/2014	08/27/2015	PER STATUTE OTH ER E.L. EACH ACCIDENT \$ 100,0 E.L. DISEASE - EA EMPLOYEE \$ 100,0 E.L. DISEASE - POLICY LIMIT \$ 500,0

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACCORD 101, Additional Remarks Schedule, may be attached if more space is required)

ROOFING

CERTIFICATE HOLDER

FARLEY CONSTRUCTION LLC
 DUDGET ROOFING
 88 HAMILTON WOODS CT
 LAKE WYLIE, SC 29710
 FAX: 803-831-2427

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

[Signature]

131924

A-5840 T-48708/46721

12/19/2014 #3854 \$805.00 Seq:943848610 Acct:51125803 ABA:53201186 TC:81

FARLEY CONSTRUCTION, LLC. 383 GRASSY POND ROAD GAFFNEY, SC 29341		3854
DATE <u>12-17-14</u>		41-118371 121
PAY TO THE ORDER OF <u>Jose E. Henriquez</u>	\$ <u>805.00</u>	
<u>Eight hundred five + 00/100</u>		DOLLARS
 The Palmetto Bank Uptate South Carolina 1-800-PAL BANK		
FOR <u>Horton</u>	<u>M. Michael Farley</u>	
⑈003854⑈ ⑆053201186⑆ 051125803⑈		

12/19/2014 #3854 \$805.00 Seq:943848610 Acct:51125803 ABA:53201186 TC:81

11/11	*****CHS*****	Seq: 5	3854
		Batch: 619785	
		Date: 12/18/14	
⑈003854⑈ ⑆053201186⑆ 051125803⑈			

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

South Carolina Workers' Compensation Commission Appellate Panel

Appellate Case No. 2016-002148

Jose Martinez, Respondent,

v.

Jose Efrain Henriquez Salgado; Farley Construction; Auto-Owners Insurance Company; and
Builders Mutual Insurance Company,

Of whom Jose Efrain Henriquez Salgado and Auto-Owners Insurance Company are the
Appellants,

And

Farley Construction Co. and Builders Mutual Insurance Company are the Respondents.

CERTIFICATE OF COUNSEL

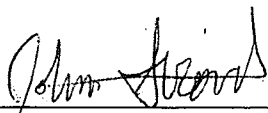
RECEIVED

MAR 10 2017

SC Court of Appeals

The Undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

February 16, 2017



John D. Stroud, Esq.
PO Box 31057
Charleston, SC 29417
(843) 556-4400
Attorney for Appellant