THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-001422

Rey Perez, Claimant, Respondent,

v.

The Lamar Group, LLC, and/or Green Valley Country Club, Employer, and Bridgefield Casualty Insurance Company, Carrier, Respondents,

and

SC Uninsured Employers Fund, Appellant.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Rey Perez (hereinafter "Claimant") filed a Form 50, Request for Hearing, on or about April 27, 2015, alleging he suffered injuries to his face, jaw, head, and ear on March 28, 2012, when a roof truss collapsed and struck him. EA Operations dba Green Valley Country Club and Bridgefield Casualty (hereinafter "Respondents") timely filed a Form 51 answer denying the claim because Claimant was not an employee or statutory employee of EA Operations. A hearing was held before Commissioner R. Michael Campbell on April 20, 2016, in Greenville, South Carolina.

Before the Single Commissioner, the accident itself was not disputed, but there was a dispute about which party was responsible for payment of benefits. Defendants present at the hearing were: 1) current Respondents, EA Operations dba Green Valley Country Club and its insurance carrier, Bridgefield Casualty Insurance Company; 2) Durham Greene and its insurance carrier, Key Risk Insurance Company; 3) Cornell Dubilier Electronics and its insurance carrier, Travelers Indemnity Company; and 4) current Appellant, the South Carolina Uninsured Employers Fund (UEF) (hereinafter "Appellant").

At the hearing, Appellant contended that Claimant was a direct employee of the Lamar Group and that EA Operations dba Green Valley Country Club (hereinafter "Respondent") had voluntarily undertaken to become a general contractor and was, therefore, responsible as a statutory employer.

At the hearing, Respondent asserted it is not in the trade, business, or occupation of construction; rather, Respondent is in the business of running a country club. Respondents contended responsibility for payment of benefits in this claim properly rested with

Appellant as Claimant's direct employer was subject to the Act, operating without insurance, and there was no statutory employer.

On October 11, 2016, the Single Commissioner issued a Decision and Order, whereby he found, in relevant part, that Claimant was an employee of the Lamar Group on the date of accident; that the Lamar Group was subject to the Act and operating without insurance; and that Respondent was the Claimant's statutory employer and should be responsible for payment of benefits.

On October 25, 2016, Respondents timely appealed the Decision and Order via filing of a Form 30, Request for Commission Review. Briefs were filed by both parties, and oral arguments were held before the Appellate Panel of the South Carolina Workers' Compensation Commission on January 23, 2017. By Decision and Order dated May 25, 2017, the Appellate Panel unanimously overturned the Order of the Single Commissioner finding that Respondent was not the Claimant's statutory employer and Appellant was responsible for payment of benefits. Appellant timely filed a Notice of Appeal to this Court, and this appeal follows.

STATEMENT OF THE FACTS

Claimant was working for the Lamar Group on March 28, 2012, at the Green Valley Country Club when a truss collapsed and struck him in the face. (R. p. 70, lines 4-7; R. p. 137, lines 7-13; R. p. 141, lines 14-20)

The project on which Claimant was injured involved converting several restrooms into a fitness center. (R. p. 157, lines 8-16) Green Valley Country Club is operated by EA Operations (collectively "Respondent"). (R. p. 156, lines 8-13) Mike Kaplan is Respondent's executive director. (R. p. 156, lines 21-22) The business of Respondent includes managing the golf course and club, maintaining the golf course and providing food and beverage service. (R. p. 156, lines 11-20) None of the employees of Respondent have ever performed construction work or set trusses. (R. p. 159, lines 13-25)

Mr. Kaplan entered into a consulting arrangement with John Coleman to manage the project of converting the restrooms into a fitness center. (R. p. 62, line 21-p. 62, line 9; R. p. 158, lines 5-8) Mr. Coleman is familiar with the building trade and trains building inspectors. (R. p. 62, lines 3-16; R. p. 64, lines 4-8; R. p. 157, line 24-p. 158, line 2) He does business as Coleman Home Inspections. (R. p. 63, lines 11-22) It was Mr. Coleman's responsibility to meet with contractors, architects, and engineers. (R. p. 66, line 22-p. 67, line 4) He also received and reviewed bids in order to make recommendations as to which contractors should perform the work. (R. p. 67, lines 4-8) Mr. Coleman oversaw the day-to-day operations of the conversion project. (R. p. 67, lines 10-11)

Mr. Coleman learned about the Lamar Group from a member of the Club and secured the Lamar Group to perform the specific task of setting trusses. (R. p. 68, lines 6-11; R. p. 80, lines 17-21) He chose the Lamar Group based on the recommendation of an acquaintance

and after meeting with the owner, Lauro Martinez, a number of times and visiting several of the Lamar Group's worksites. (R. p. 68, lines 6-11; R. p. 80, lines 1-12) Mr. Coleman did not obtain a valid certificate of insurance from the Lamar Group. (R. p. 74, line 24-p. 75, line 6; R. p. 77, line 2-p. 78, lines 1-12) The referring acquaintance sent Mr. Coleman a certificate of insurance for the Lamar Group at some point, but it had expired. (R. p. 74, line 24-p. 75, line 6; R. p. 102, lines 15-20) At no point did the Lamar Group do any other work on Respondent's grounds in any capacity. (R. p. 83, lines 14-20)

On the day of the incident, Lauro Martinez was directing the setting of the trusses on the renovation project. (R. p. 124, line 21-p. 125, line 10; R. p. 140, line 4-p. 141, line 4) Claimant was employed by Lauro Martinez on the day of his accident. (R. p. 137, lines 11-13) Claimant was not an employee of Respondent. (R. p. 146, lines 18-20) In fact, he never spoke to anyone employed by Respondent regarding the setting of the trusses. (R. p. 146, lines 21-24)

Following the incident, Lauro Martinez took the Claimant to the hospital. (R. p. 142, lines 2-3) Mr. Coleman never heard from him again and Mr. Martinez has remained conspicuously absent throughout the majority of the pendency of this claim. (R. p. 70, lines 14-23; R. p. 115, lines 4-8) The Lamar Group was never paid for the work they did on the project and did not submit a bill. (R. p. 70, line 24-p. 71, line 5) Lauro Martinez acknowledged following the accident that he did not have valid workers compensation insurance. (R. p. 128, lines 1-3)

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission, and it is not the task of courts to weigh the evidence as found by the single commissioner. Langdale v. Harris Carpets, 395 S.C. 194, 203, 717 S.E.2d 80, 84 (Ct. App. 2011). The appellate court's review of these findings of fact is limited to determining whether the findings are *clearly* unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987) (emphasis added). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. R. L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). However, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. Broughton v. South Carolina Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951).

The Appellate Panel's decision must be affirmed if it is supported by substantial evidence in the record. Wise v. Wise, 394 S.C. 591, 597, 716 S.E.2d 117, 120 (Ct. App. 2011) (citing Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005)). Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion that the Appellate Panel reached, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Appellate Panel's finding from being supported by substantial evidence. Hill v. Eagle Motor Lines, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007). Where there are conflicts in evidence over a

factual issues, the findings of the Appellate Panel are conclusive. Etheredge v. Monsanto Co., 349 S.C. 451, 455, 562 S.E.2d 679, 681 (Ct. App. 2002).

Section 1-23-380(A)(5) of the South Carolina Code also provides, in part:

> The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007).

Thus, appellate "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005) (citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)).

Specifically, "[t]he determination of whether a worker is a statutory employee is jurisdictional and, therefore, the question on appeal is one of law." Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 216, 661 S.E.2d 295, 298 (Ct. App. 2008) (citing Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999); Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)). "As a result, this court has the power and duty to review the entire record[1] and decide the jurisdictional facts in accord with its view of the preponderance of the evidence." Id. at 216, 661 S.E.2d at 399 (citing Harrell, 337 S.C. at 320, 523 S.E.2d at 769; Glass, 325 S.C. at 202, 482 S.E.2d at 51.

The preponderance of the evidence "is evidence which is of the greater weight or more convincing than the evidence which is offered in opposition to it . . . ." Black's Law Dictionary 1182 (6th ed. 1990). "The preponderance of the evidence means such evidence

[1] Respondents object to references and inferences made in Appellant's Initial Brief that rely on information not in the record as it came before the Single Commissioner.

as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true." Sanders, Neese, and Nichols, South Carolina Trial Handbook, § 9:5 Quantum of Evidence in Civil Cases (1994), (citing Frazier v. Frazier, 228 S.C. 149, 89 S.E.2d 225 (1955)).

ARGUMENTS

I. THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S FINDING THAT RESPONDENT IS NOT CLAIMANT'S STATUTORY EMPLOYER AND SUCH FINDING SHOULD BE AFFIRMED AS A MATTER OF LAW

The preponderance of the evidence supports the finding of the Appellate Panel of the South Carolina Workers' Compensation Commission that Respondent is not Claimant's statutory employer. The law regarding statutory employment in South Carolina is well-established. S.C. Code Ann. § 42-1-400 provides:

> When any person... referred to as ' owner,' undertakes to perform or execute any work which **is part of his trade, business, or occupation** *[emphasis added]* and contracts with any other person ... for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay any workman employed in the work any compensation under this title which he would have been liable to pay if the workman has been immediately employed by him. S.C. Code Ann. § 42-1-400.

The crux of determining whether an employee who bears no contractual relationship to the owner is a statutory employee is "whether or not [the work] being done is or is not a part of the **general trade, business, or occupation of the owner**." Revels v. Hoechst Celanese Corp., 301 S.C. 316, 391 S.E.2d 731, 732 (Ct. App. 1990) (citing Hopkins v. Darlington Veneer Co., 208 S.C. 307, 311, 38 S.E.2d 4, 6 (1946)) (emphasis added). Our courts have adopted three tests to determine whether the work performed by a subcontractor constitutes part of the owner's business. Only one of these tests must be met in order for a subcontractor's employees to be considered statutory employees of the owner. Glass v. Dow Chemical Co., 325 S.C. 198, 482 S.E.2d 49 (1997). The Court must consider whether:

a) the activity of the subcontractor is **an important part** of the owner's trade or business;

b) the activity performed by the subcontractor is a **necessary, essential, and integral part of the owner' s business**; or
c) **the identical activity performed by the subcontractor has been performed by employees of the owner.**

Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997) (emphasis added). Our Supreme Court has approvingly noted, "the cases...agree upon the general rule-of-thumb that the statute covers all situations in which work is accomplished which this employer, or employers in a similar business, would ordinarily do through [their own] employees." Adams v. Davison-Paxon Co., 230 S.C. 532, 96 S.E.2d 566, (1957) (internal citations omitted). In Gentry v. Milliken & Co., this Court stated that "courts focus on whether the work is an important, necessary, essential, and integral part of the business and whether it is identical to work that has been performed by employees of the owner." 414 S.E.2d 180 (Ct. App. 1992). Here, the work being performed by the Claimant at the time of his injury fails to satisfy any of these tests. Therefore, Respondent cannot be the Claimant's statutory employer and Appellant's assertion to the contrary ignores the established case law and the evidence in this case.

A. The activity engaged in by the subcontractor was not an important part of Respondent's trade or business

Pursuant to Voss and Glass, the first test considered by courts in determining whether an injured worker is a statutory employee is whether the worker was engaged in an activity that is an **important part** of the owner's trade or business. In Glass v. Dow Chemical Co., the Court utilized this test in determining that Glass was not a statutory employee. Dow manufactured a mortar additive (Sarabond) which was used in constructing façade panels for buildings. When the panels started to crack on a particular project at the Medical University of South Carolina ("MUSC"), Dow hired subcontractors to replace the

cracked panels as part of a settlement with MUSC. Glass, 325 S.C. 198, 482 S.E.2d 49, 50 (1996). Workers, including Glass, were injured by toxic fumes emitted when using cutting torches to remove the panels. Id. In explaining its conclusion that Glass was not Dow's statutory employee, our Supreme Court noted that Dow's business was manufacturing Sarabond, not replacing defective panels to avoid litigation costs. Glass at 50. The Court further held that "where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not [an important] part of the business." Glass v. Dow Chemical Co., at 50-51. (citing Arthur Larson & Lex K. Larson, The Law of Workers' Compensation § 49.16(e)(1996)).

In the case at bar, Respondent's business is running a country club. This specifically involves managing the golf course and golf center, golf course maintenance, food and beverage service, and providing tennis services. (R. p. 156, lines 17-20) Respondents are not in the construction business. (R. p. 157, lines 5-7) None of Respondent's employees performed any work on the construction project where the Claimant was injured. (R. p. 159, lines 13-16) Further, none of Respondent's employees have ever performed construction work for their employer. (R. p. 159, lines 17-20) Specifically, Respondent's employees are not trained to install trusses, the task the Claimant was performing when he was injured. (R. p. 159, lines 21-24) As none of the employees of Respondent were trained or able to complete the specialized work of setting trusses, outside laborers with specialized training, such as the Claimant, were required to complete the project.

The preponderance of the evidence in this case clearly indicates that the specialized activity of setting trusses in which Claimant was engaged when he was injured was not an important part of Respondent's trade or business.

B. The activity engaged in by the subcontractor was not necessary, essential or integral to Respondents' business

To satisfy the second prong of the Voss test, the activity of setting trusses must be a **necessary, essential, or integral part** of Respondent's business. As this Court has explained, this prong is satisfied, "[if] the nature of the work being done is such an integral part of the operations of the company for which it is done that the company cannot function without it, the company falls under the statutory employee situation." Hairston v. Re: Leasing, Inc., 286 S.C. 493, 497; 334 S.E.2d 825, 827 (Ct. App. 1985) (overruled in part by Abbott v. Ltd., Inc., 338 S.C. 161, 526 S.E.2d 513 (2000)).

In the federal district court case of Dickerson v. Eastman Kodak Co., Eastman (in an effort to obtain summary judgment in a case for negligence) argued that Dickerson, a driver, was its statutory employee because transportation was an essential part of its business in that it had to get its product to customers. Dickerson v. Eastman Kodak Co., 569 F.Supp. 1221 (D.SC. 1983). The district court rejected this argument, noting that "the test is not one of whether the subcontractor's activity is useful, necessary, or even absolutely indispensable to the [alleged] statutory employer's business, since, after all, this could be said of practically any repair, construction, or transportation service. The test . . . is whether this indispensable activity is, in that business, normally carried on through employees rather than independent contractors." Dickerson v. Eastman Kodak Co., 569 F.Supp. 1221, 1224 (D.SC. 1983) (citing Larson's Workmen's Compensation Law §49.12 at 9-53 (1982)).

Similarly, in Raines v. Gould, Inc., this Court held that installation of an electrical system at a manufacturer's plant was not essential to the owner's business of making and selling batteries. Raines v. Gould, Inc., 288 S.C. 541, 343 S.E.2d 655 (Ct. App.1986). In

Raines, the injured worker was employed by a subcontractor and sustained injury while installing an electrical system at a plant being constructed for the manufacturer/owner. This Court reasoned that overseeing one construction project was not enough to transform an owner's trade, business or occupation into one of construction. "Every manufacturer must have a plant, but this fact alone does not make the work of constructing a plant a part of the trade or business of every manufacturer who engages a contractor to construct a plant. Otherwise, the employees of every contractor so engaged would be the statutory employees of every such manufacturer." Raines, 288 S.C. 541, 343 S.E.2d 655 (Ct. App. 1986). This court distinguished the situation in Raines from one in which an owner truly makes construction an essential or integral part of its operations. If "a business by its size and nature is accustomed to carrying on a more or less ongoing project of construction, perhaps having a construction division, or has handled its own construction in the past, construction work delegated to a contractor may be considered part of its trade or business." Raines, 288 S.C. 541, 343 S.E.2d 655, 658 (Ct. App. 1986).

It is clear in the case at bar that the installation of trusses and more generally construction was not a necessary, integral or essential part of the country club's business. Respondent could have and did continue to operate the club without the new fitness center. (R. p. 160, lines 2-7) While Respondent did engage a consultant to manage a small scale conversion of some restrooms into a fitness center and contract with the Lamar Group to set trusses for the roofline, there is absolutely no evidence indicating Respondent "by its size and is accustomed to carrying on ... an ongoing project of construction." See Raines at 658. Appellant essentially concedes this by arguing that this Court should find that Respondent is in the business of construction even though this is the first such endeavor it

has engaged in.

If setting trusses was a necessary, essential, or integral part of Respondent's business, it would be logical for Respondent to employ persons with specialized training to complete such tasks. However, the setting of trusses in this instance was both isolated and unique. The club's employees were engaged in its day-to-day operations of running a golf course and providing food and beverage service. (R. p. 156, lines 14-20) They had no training or expertise in construction or the setting of trusses and had never engaged in any type of construction activity for Respondent. (R. p. 159, lines 13-24)

To extend the doctrine of statutory employment to any individual working on the grounds of a business on a project would make construction "a part of the trade or business of every [owner] who engages a contractor." Raines, 288 S.C. 541, 343 S.E.2d 655 (Ct. App. 1986).

Therefore, by a preponderance of the evidence, the setting of trusses was not necessary, essential, or integral to Respondent's business. Therefore, the second test of Voss is not satisfied.

C. The activity engaged in by the subcontractor was not identical to any activity engaged in by employees of Respondents.

To satisfy the third prong of the Voss test, the Claimant must be engaged in an activity that is regularly performed by the employees of the owner. "[E]mployees who work for the subcontractor but are not employed to do the work that the owner would normally do would not have a statutory employment relationship with the owner." Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 323, 523 S.E.2d 766 (1999).

As mentioned above, the employees of Respondent do not engage in setting trusses, nor do they engage in any type of construction activities. (R. p. 159, lines 17-24) Mike

Kaplan testified none of Respondent's employees worked on the project where the Claimant was injured. (R. p. 159, lines 13-16) Further, none of Respondent's employees have ever performed construction work for their employer. (R. p. 159, lines 17-20) Respondent's employees are not trained to install trusses, the activity Claimant was engaged in when he was injured. (R. p. 140, line 24-p. 141, line 1; R. p. 159, lines 21-24) Therefore, the facts of the instant case do not satisfy the third prong of the Voss test.

In sum, a review of the case law makes clear that the specialized work of installing trusses is not within the "trade, business or occupation" of Respondent and, therefore, it is not the Claimant's statutory employer.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S ORDER SHOULD NOT BE OVERTURNED BASED ON IRRELEVANT CITATIONS AND ILL-CONCEIVED PUBLIC POLICY ARGUMENTS

Because this state's relevant statutory and case law provide no support for its position, Appellant's brief consists in large part of finger-pointing, smoke and mirrors, and public policy arguments which cannot pass muster.

First, Appellant cites to a section from Title 40 of the South Carolina Code, the title which governs professions and occupations. He alleges that Respondent engaged in "illegal" conduct by using Durham Greene's license when Durham Greene was not actively involved in the project. The section in question, § 40-11-110, merely provides that the state board governing contractors *may* impose disciplinary action if it finds that a contractor allowed its license to be used by an unlicensed entity. S.C. Code Ann. §40-11-110 (1976). This assertion is irrelevant to whether Respondent is a statutory employer and is advanced in effort to muddy the water and distract this Court from the issues germane to its determination.

Similarly, Appellant raises Section 42-1-415 of the S.C. Code in support of its argument that the UEF should not be found responsible for this case. This reliance is misplaced and totally irrelevant to the issue at bar. Section 42-1-415 provides that where "a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title..." S.C. Code Ann. § 42-1-415 (1976). This section only comes into play where an otherwise admitted statutory employer seeks to avoid liability by asserting that because they obtained what appeared to be a valid certificate of insurance from a subcontractor, they should be relieved of payment to an injured worker. Respondents have not raised this defense and the issue here is not whether the Lamar Group's certificate of insurance was valid. All parties concede it was not. The issue is whether Respondent qualifies as a statutory employer at all because it is not in the trade, business or occupation of construction.

The crux of Appellant's argument seems to be that this court should ignore Section 42-1-400 of the South Carolina Code and the decades of case law interpreting it, which unequivocally require that for an owner to be deemed a statutory employer, the work being done by the injured worker must be in the owner's trade, business or occupation. S.C. Code Ann. §42-1-400 (1976). While all of the evidence is that Respondent is a country club and its only business is running a country club, Appellant argues that by undertaking to renovate some bathrooms into a fitness center, the country club magically morphed into a full-fledged construction company. This argument is without merit and if adopted could apply to almost any scenario in which a business makes improvements. For example, if a

law firm decided to renovate an office into a breakroom for employees, reviewed and approved plans, and hired plumbers and framers to do the work, under Appellant's theory the firm would be in the trade or business of construction. As mentioned previously, this is precisely the situation this Court considered in Raines, when it held that there was no statutory employment relationship, noting that to find otherwise would open a floodgate which would allow any employee of a subcontractor to establish a statutory employment relationship with whoever commissioned the project. Raines, 288 S.C. 541, 343 S.E.2d 655, 659 (Ct. App. 1986).

Finally, Appellant clumsily attempts to sway this court from legitimate legal analysis by arguing that it should not be responsible for this claim because it is a public entity and Respondent Bridgefield Casualty is an insurance company. Obviously, the legislature contemplated this in its creation of the Uninsured Employers Fund and its enactment of the South Carolina Workers' Compensation Act. See S.C. Code Ann. §42-7-200 (1976 & 2007). Interestingly, while the Appellant is a public entity, it is funded in large part by taxes on insurance carriers and self-insurers. Id. Further, the Uninsured Employers Fund is only responsible for the payment of a claim in the unique situation where the responsible employer, here the Lamar Group, is subject to the Act, uninsured, and there is no statutory employer under S.C. Code Ann. § 42-1-400 and the case law of this state. In fact, the case at bar is exactly the situation anticipated by the legislature in its creation of the UEF.

Appellant argues that to find the UEF responsible would somehow contravene public policy. In reality, the contrary is true. Workers' compensation insurance carriers write policies in South Carolina according to contemplated risk, which is based on the

activities of the insured's workers and the statutes and case law of our state. If insurance carriers are unable to anticipate the risk they are insuring because a court will find them responsible as a statutory employer (contrary to statute and established case law), premiums will inevitably rise, an eventuality which would negatively affect this state's businesses and the state as a whole. Worst case scenario, if workers' compensation carriers are unable to accurately predict what risks they are insuring, they may choose not to write business in South Carolina at all.

In sum, Appellant argues what it attempts to characterize as a common sense approach which completely and utterly ignores the law, statutes, and legislative intent. Appellant argues no case law because there is none which supports its position. Our courts have affirmed the three-part test laid out in Voss and Glass time and time again. When this test is applied to the facts of this case it is abundantly clear that the work being performed by the Claimant at the time of his injury was not in the trade, business and occupation of the Respondent and consequently, Respondent is not the Claimant's statutory employer.

CONCLUSION

Based on the foregoing, Respondents respectfully request the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission be affirmed in its entirety and that this Court find, as a matter of law, that Respondent was not the Claimant's statutory employer and that responsibility for the claim lies with the Uninsured Employer's Fund.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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