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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

Case No. 2016-CP-32-02419  
Case No. 2016-CP-32-02397  
Appellate Case No. 2017-002573

Hawi Kebede, Meilit A. Lemu and Schewangiz K. Moses ..... Respondents,  
v.  
Amick Farms, LLC and OSI Group..... Appellants.

AND

Tizezew Tadese.....Respondent,  
v.  
Amick Farms, LLC and OSI Group..... Appellants.

**RESPONDENTS' MOTION TO DISMISS APPEAL**

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COME NOW Respondents, Hawi Kebede, Mekilit Lemu, Schewanzie Moses, and Tizezew Tadese, by and through their undersigned counsel and respectfully move this Honorable Court to dismiss the appeal. Appellants, Amick Farms, LLC and OSI Group, are the Defendants in the underlying complaint brought before the Circuit Court by the Respondents, who respectively are the Plaintiffs. Pursuant to Rule 12(b)(1), SCRPC, Appellants moved the Circuit Court to dismiss Respondents' complaint on the grounds of lack of subject matter jurisdiction. The Circuit Court denied Appellants' motion. Appellants now appeal the court's order denying their 12(b)(1) motion, which is not immediately appealable. Deskins v. Boltin, 319 S.C. 356, 357, 461 S.E.2d 395 (1995).

Accordingly, Respondents move to dismiss the subject appeal.

#### FACTS AND PROCEDURAL HISTORY

On July 7 & 8, 2016, Respondents filed Complaints in the Court of Common Pleas Eleventh Judicial Circuit against Amick Farms, LLC and OSI Group for claims of negligence. Exhibit A, *Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss at Exhibit 1 Complaint*; Exhibit B, *Tizezew Tadese Complaint*. Amick Farms produces a line of chicken products for their foodservice, industrial, and retail customers. Respondents are refugees from Africa who were recruited by Employer Solution Staffing Group, LLC [ESSG] to work at Amick Farms. Their work at Amick Farms is governed by the Temporary Staffing Service Provider Agreement between Amick Farms and ESSG. Exhibit A, at Exhibit 2 Contract. The contract provides the agreement that ESSG will provide "supplemental labor" to Amick Farms for use at Amick Farm's plant. Id. at ¶ 1. Further, by contract, the supplemental labor employees, which include Respondents, "are and will be employed solely by [ESSG]." Id. at ¶ 3A. The contract

also provides that ESSG is solely responsible for the wages, benefits, hiring, discipline, and discharge of the employees. Id. at ¶ 3A and ¶ 3B.

Moreover, ESSG and Amick Farms's contract requires that ESSG will be "solely responsible" for procuring and paying workers compensation benefits to its employees. Id. at ¶ 3A. To that end, the contract agrees that "under no circumstances shall an employee of [ESSG] or its subcontractors be deemed or construed to be an employee of [Amick Farms]." Id. at ¶ 15.

On July 8, 2013, after working a night shift at Amick Farms, Respondents were injured while riding in a van owned by East Coast Labor Solutions and driven by Rahmel York. Exhibit A, at Exhibit 3 Traffic Collision Report Form. Mr. York was driving too fast, and is believed to have fallen asleep at the wheel, causing the van to crash on Interstate 20 in Gilbert, SC. Id.

Respondents subsequently filed a Workers Compensation claim against both ESSG and Amick Farms. Soon thereafter, the workers' compensation attorney for Amick Farms by letter advised the Workers Compensation Commission that "there was initially some confusion about which employer was connected to which claimant... we have now aligned the parties properly." Exhibit A, at Exhibit 4 May 12, 2005 Letter from Amick Farms's Counsel. Amick Farms attorney enclosed with the letter a proposed Consent Order of Dismissal with Prejudice of Amick Farms and its insurance carrier from Respondents' workers compensation case based on Amick Farms and ESSG agreeing that ESSG "was the sole employer of its employees [Respondents here], that it provided workers' compensation insurance coverage for them, and that it would indemnify Amick Farms from, among other things, workers' compensation claims brought by its employees against Amick Farms." Exhibit A, at Exhibit 5 Consent Order Dismissing Amick Farms and Liberty Mutual Insurance Group. Defendant Amick Farms by its attorney signed the Order indicating its agreement that it was not the employer of the Respondents. Id. The Commission

signed the Order, dismissing Amick Farms with prejudice from Respondents' workers compensation case as Respondents were not covered employees of Amick Farms. The Respondents' workers' compensation claim against ESSG was eventually resolved.

Respondents then filed a civil complaint against Amick Farms based on Appellants [Amick Farms and OSI Group] negligently allowing Mr. York to drive them home from work after York had worked multiple night shifts in a row, including a double shift. Exhibit A, at Exhibit 1. In response, Appellants Amick Farms and OSI Group moved pursuant to Rule 12(b)(1), SCRPC, to dismiss the complaint for lack of subject matter jurisdiction on the basis that Respondents' claims are barred by the exclusivity provision of the Workers' Compensation Act, S.C. Code § 42-1-540. Exhibit C, *Defendants' Motions to Dismiss*.

On August 2, 2017, the Circuit Court held a hearing on the Appellants' (Defendants') motion to dismiss for lack of subject matter jurisdiction, where all parties were represented by counsel. On September 28, 2017, the Circuit Court issued its Order Denying Appellants' Motion to Dismiss for lack of subject matter jurisdiction. Exhibit D, *Order Denying Defendants' Motion to Dismiss*. Thereafter, Appellants appealed the Order to this Honorable Court.

### ARGUMENT

Appellants' appeal of the Circuit Court's Order denying their motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) is not immediately appealable and, accordingly, should be dismissed. E.g., Deskins, 319 S.C. at 357, 461 S.E.2d 395; Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995), overruled on other grounds by Sabb V. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002).

In Deskins, the Supreme Court was faced with the same issue here where immediate appeal was taken to overturn a lower court's denial of a 12(b)(1) motion to dismiss on the grounds that

the action was barred by the exclusivity provision of the Workers' Compensation Act. 319 S.C. at 357, 461 S.E.2d 395. The Supreme Court reiterated its then recent holding in Woodard, 319 S.C. at 242-43, 460 S.E.2d at 394, "that the denial of a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable." Id.

Our Supreme Court consistently holds that an order denying a motion to dismiss under Rule 12(b)(1) is interlocutory, does not fall within one of the several categories of appealable orders in S.C. Code § 14-3-330, and, thus, is not immediately appealable. E.g., Deskins, 319 S.C. at 357, 461 S.E.2d 395; Woodard, 319 S.C. at 242-43, 460 S.E.2d at 393-94. As explained by the Supreme Court:

An order *denying* a motion to dismiss for lack of subject matter jurisdiction does not *finally* determine anything. *See McLendon v. South Carolina Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage in the proceedings). Consequently, while such orders may involve a substantial right, they do not fall under § 14-3-330(2)(a) because they do not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action. For the same reason, such orders do not "involve the merits" under § 14-3-330(1). *See Mid-State Distributors v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993) (for an order to "involve the merits" as that term is used in § 14-3-330, it must *finally determine* some substantial matter forming the whole or a part of some cause of action or defense).

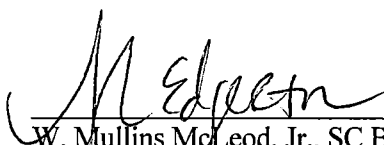
Woodard, 319 S.C. at 242-43 [FN 2], 460 S.E.2d at 393-94; see also Cooke v. Palmetto Health Alliance, 367 S.C. 167, 173-74, 624 S.E.2d 439, 442 (Ct. App. 2005) (reiterating that denial of Rule 12(b)(1) motion is not immediately appealable but where parties consented to a non-jury hearing on the merits of the exclusivity defense that resulted in a final determination by trial court, the determination was appealable).

In sum, the Circuit Court's denial of Appellants' Motion to Dismiss for lack of subject matter jurisdiction is not immediately appealable, and Appellants' appeal should be dismissed.

CONCLUSION

For the foregoing reasons, Appellants are not entitled to an appeal of the lower court's denial of their motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCF, on the ground that the exclusivity provision of the Workers' Compensation Act bars the civil claims against them. As such, Respondents Motion should be GRANTED and the appeal dismissed.

Respectfully submitted this 11 day of April 2018,



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the Plaintiffs are their statutory employees because: 1) Defendants' contract with the Plaintiffs' true employer, a staffing agency, provides that the staffing agency is the Plaintiffs' "sole employer"; and 2) Defendants represented to the Workers' Compensation Commission that the staffing company was the "sole employer" of the Plaintiffs.

The Defendant should not be rewarded for such gamesmanship. For these reasons, along with the law of the State of South Carolina and argument set forth below, the Defendants' motion to dismiss should be denied.

### FACTS

Defendant Amick Farms produces a line of chicken products for their foodservice, industrial, and retail customers. The Plaintiffs are refugees from Africa who were recruited by Employer Solution Staffing Group, LLC ("Employer Staffing") to work at Amick Farms. Their work at Amick Farms is governed by the Temporary Staffing Service Provider Agreement that Amick Farms signed with Employer Staffing in February, 2013. Exhibit 2, Contract. The contract confirmed that the purpose of the arrangement was for Employer Staffing to provide "supplemental labor" to Amick Farms for use at their plant. Id. at Paragraph 1. The contract provides that the employees of Employer Staffing – to include the Plaintiffs – "are and will be employed solely by [Employer Staffing]." Id. at Paragraph 3A. The contract further provides that Employer Staffing will be responsible for the wages and benefits of the employees, and Employer Staffing has the right to hire and fire them. Id. at Paragraph 3A and 3B.

The contract also required Employer Staffing to be "solely responsible" for procuring and paying workers compensation benefits to its employees. Id. at Paragraph 3A. To this end, the contract confirms that "under no circumstances shall an employee of [Employer Staffing] or its

subcontractors be deemed or construed to be an employee of Amick Farms.” *Id.* at Paragraph 15. Therefore, by contract and by control over Plaintiffs’ employment, the Plaintiffs’ are employees of Employer Staffing only.

On July 8, 2013, after working a night shift at Amick Farms, the Plaintiffs were injured while riding in a van being driven by Rahmel York, an employee of Amick Farms. *See* Exhibit 3, the Accident Report. Mr. York fell asleep at the wheel and crashed on Interstate 20 in Gilbert, SC. The Plaintiffs subsequently filed a Workers Compensation claim against Employer Staffing and the Defendant Amick Farms.

Soon thereafter, the workers’ compensation attorney for the Defendant Amick Farms advised the Commission that “there was initially some confusion about which employer was connected to which claimant... we have now aligned the parties properly.” *See* Exhibit 4, May 12, 2005 correspondence from Amick Farms. The parties submitted a Consent Order of Dismissal with Prejudice as to Amick Farms because the staffing agency was the “sole employer” of the Plaintiffs. Defendant Amick Farms signed the Order indicating their agreement that they were not the employer of the Plaintiffs. *See* Exhibit 5, Order of Dismissal. The Plaintiffs’ workers’ compensation claim was eventually resolved and the Plaintiffs were compensated.

The Plaintiffs then filed the instant case against Amick Farms based on their failure to monitor and supervise Mr. York. More specifically, the Plaintiffs allege Amick Farms negligently allowed Mr. York to drive them after working multiple night shifts in a row, including a double shift. In response to the Plaintiffs’ allegations, the Defendants filed the current Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. They now claim they are the employer of the Plaintiffs and are immune from the Plaintiffs’ lawsuit based on the exclusivity provision of the Workers’ Compensation Act.

## WORKERS' COMPENSATION EXCLUSIVITY

The South Carolina Workers' Compensation Act (the Act) provides the legal framework to compensate employees who are injured in accidents arising out of and in the course of their employment. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 71 (1980). The Act, and thus the Workers' Compensation forum, provides the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, 833 (2004).<sup>1</sup> More specifically, the exclusivity provision of the Act prevents an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. Edens v. Bellini, 359 S.C. 433, 441–43, 597 S.E.2d 863, 867–68 (Ct. App. 2004). In theory, this arrangement works for both parties as they both receive benefits under the Act; the employee receives the right to swift and sure compensation, and the employer receives immunity from tort actions by the employee. Parker, 275 S.C. at 71.

Coverage under the Act is generally dependent on the existence of an employer-employee relationship. McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947). However, the definition of an employer is not limited to the employee's immediate employer; rather the Act includes those who the employee works for, either directly or indirectly. Edens, 359 S.C. at 444. The Act thus provides that owners may be responsible for workers' compensation payments to employees of their subcontractors. *See* §§ 42-1-420 and 42-1-430. In those cases, the employer

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<sup>1</sup> The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

S.C.Code Ann. § 42-1-540 (1985) (emphasis added).

would be deemed a “statutory employer” to the employees of their subcontractors if certain elements are met.

However, whether an entity is a statutory employer depends on the nature of the work performed by the subcontractor or their employees. Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (Ct.App.1997). The Courts provide three tests to determine whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee within the meaning of § 42-1-400:

- (1) is the activity an important part of the owner's business or trade;
- (2) is the activity a necessary, essential, and integral part of the owner's trade, business, or occupation; or
- (3) has the identical activity previously been performed by the owner's employees.

Boone v. Huntington and Guerry Elec. Co., 311 S.C. 550, 430 S.E.2d 507 (1993)

Only one of these three criteria must be met for a worker to qualify as the statutory employee of the owner. Olmstead v. Shakespeare, 354 S.C. 421, 581 S.E.2d 483 (2003). Because there are many different factual scenarios, there is no easy way to determine whether work in a given case is a part of the general trade, business or occupation of the principal employer. Ost v. Integrated Prods., Inc., 296 S.C. 241, 244, 371 S.E.2d 796, 798 (1988). Therefore, “each case must be determined on its own facts.” Ost, 296 S.C. at 244.

In this case, the Plaintiffs were injured after they left the Defendants’ chicken plant and were on their way home. By definition, the Plaintiffs were not injured while performing activities within the course and scope of their alleged employment with the Defendants. Fred West, the Vice President of Amick Farms, testified that the Plaintiffs were not injured during their course and scope of work with Amick Farms. Mr. West testified:

Q. Make sure the record is clear. To the best of your knowledge while riding home in the van the workers were not involved in the course of their employment with Amick Farms, LLC?

Defense Attorney: Object to the form.

A. Not to my knowledge.

See Exhibit 6, Deposition of Fred West, p. 64; 3-8.

More pertinent to this inquiry is that the Plaintiffs' activity at the time of their injury does not meet any of the Boone factors. The Defendants were not the statutory employer of the Plaintiffs at the time of the accident.

In fact, situations where employees are injured while traveling to and from work is commonly referred to as the "going and coming rule." This rule holds "an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment." McDaniel v. Bus Terminal Restaurant Management Corp., 271 S.C. 299, 247 S.E.2d 321 (1978). While there are exceptions to this rule,<sup>2</sup> none of the exceptions apply to this case. Based on the going and coming rule, the Plaintiffs are not statutory employees of the Defendants, and thus their Motion to Dismiss should be denied.

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<sup>2</sup> (1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;  
(2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;  
(3) The way used is inherently dangerous and is either:  
(a) the exclusive way of ingress and egress to and from his work; or  
(b) constructed and maintained by the employer; or  
(4) That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.  
Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

However, even if the Plaintiffs could be deemed statutory employees of the Defendants, the Defendants have waived their right to assert the exclusivity provision based on the same. To reach this conclusion, one must first consider the reason why the law of statutory employer exists. The overarching purpose of creating the “statutory employer” is to provide employees access to additional workers’ compensation coverage if their direct employers are financially irresponsible. Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 328 (1999). In theory, the presence of a statutory employer provided employees with “double protection” as both the owner and the immediate employer of the employee were subjected to the requirements of the Act. Long v. Atlantic Homes, 311 S.C. 237, 241, 428 S.E.2d 711, 713 (1993). In return for providing double Workers’ Compensation protection for employees, statutory employers were provided immunity against tort actions by their statutory employees. Parker, 275 S.C. at 74.

However, the statutory employer arrangement is predicated on the statutory employer complying with the “quintessential obligation” of the Act – the duty to secure the payment of compensation. Harrell, 337 S.C. at 328. If the statutory employer does not have workers’ compensation coverage available to the employees, by definition there cannot be “double protection.” Id. at 328. Employers who refuse to secure compensation under the act, and provide “double protection,” may be responsible to their statutory employees in a civil action. Id.; *see also* S.C. Code Ann. § 42–5–40 (1985).

The Defendants’ action violate the entire purpose of the Act. The Defendants entered into a contract with Employer Staffing in search of supplemental labor. Employer Staffing provided the same. However, the Defendants made sure that while the workers would be working at their chicken plant performing manual labor, and thus subject to the obvious injuries associated with the same, the Defendants would never be responsible for their on the job injuries or injuries to

them by Defendants' other employees. The contract specifically provides "under no circumstances shall an employee of [Employer Staffing] or its subcontractors be deemed or construed to be an employee of Amick Farms." Ex. 2, Paragraph 3A. Fred West signed the agreement on behalf of Amick Farms and consented to this arrangement. He testified:

Q. Turn to page 6. Paragraph 15. The subtitle is independent contractor. Do you see that?

A. Yes, sir.

Q. The fourth line down, all the way to the right, starting with under

A. Yes, sir.

Q. Under no circumstances shall any employee of service provider or employee of its subcontractors be deemed or construed to be an employee of client." Do you see that?

A. Yes, sir.

Q. That's the agreement that you entered in with Employer Solutions Staffing Group?

A. Yes, sir.

Exhibit 6, Deposition of Fred West, p. 57; 9-23.

The Defendants effectively want supplemental labor with no risk – they want all the juice and none of the squeeze. Their actions do not provide protection to the workers. And their actions certainly do not provide double protection to the workers as envisioned by the Act. Yet, despite entering into an agreement that specifically eliminates the possibility that the workers are their employees, they now claim to be their statutory employer because it suits their current need. The Court should deny the Defendants' Motion to Dismiss because according to their own agreement with Employer Staffing, the Defendants are not the Plaintiffs' employer.

Finally, and perhaps most importantly, the Defendants are judicially estopped from arguing that they are the statutory employer of the Plaintiffs to this Court because they represented to the

South Carolina Workers' Compensation Commission that they were not. Judicial estoppel exists to prevent the attempted actions of these Defendants. See Quinn v. Sharon Corp., 343 S.C. 411, 415, 540 S.E.2d 474, 476 (2000) ("The purpose of judicial estoppel is to prevent the manipulation of the judicial system by the litigants... [a] court invokes judicial estoppel to prevent a party from changing its position over the course of judicial proceedings."). In fact, numerous courts have prohibited a party from asserting a position that is inconsistent from a prior position taken in the same cause of action or course of litigation. Id. citing Southmark Corp. v. Trotter Smith & Jacobs, 212 Ga. App. 454, 442 S.E.2d. 265 (1994). The Court should analyze the following five elements to determine the applicability of judicial estoppel:

1. two inconsistent positions must be taken by the same party or parties in privity with each other;
2. the two inconsistent positions were both made pursuant to sworn statements;
3. the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
4. the inconsistency must be part of an intentional effort to mislead the court; and
5. the two positions must be totally inconsistent; that is, the truth of one position must necessarily preclude the veracity of the other position.

The Defendants represented to the Workers' Compensation Commission that Employer Staffing was the "sole employer" of the workers. Amanda Goldsberry, the workers' compensation coordinator for Amick Farms, confirmed the same. She testified:

Q. And you agree that Amick Farms made the representation to the workers' comp commission that ESSG was the sole employee of these workers?

Defense Attorney: Object to the form.

A. Yes.

See Exhibit 7, Deposition of Amanda Goldsberry, p. 20; 5-9.

Mrs. Goldsberry also confirmed that Amick Farms consulted with the general counsel to review the Order and eventually approve the same. She testified:

Q. Did you have any internal talks with anybody at Amick Farms about this representation being made to the workers' compensation commission, not your counsel?

A. I did, but counsel was there.

Q. Counsel was there. These orders were filed with the commission with the approval of Amick Farms. True?

Defense Attorney: Object to the form.

A. To my knowledge, yes.

Exhibit 7, Deposition of Amanda Goldsberry, p. 23; 22 through p. 24; 6.

This representation meets all five of the elements of judicial estoppel as the Defendants now claim they are the employer of the workers. The representation was:

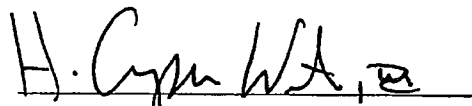
1. Inconsistent with their current position;
2. Made in the form of a Consent Order which was sworn to by the Defendants;
3. Made during related proceedings with the same parties and the same facts;
4. Submitted as part of the Defendants' plan to either mislead the Commission or this Court regarding the employment status of the workers;
5. Totally inconsistent with their current that they are the Plaintiffs' employer.

The Court should deny the Defendants' Motion to Dismiss because the Defendants are judicially estopped from arguing that they are the Plaintiffs' employer since they took the exact opposite position with the Workers' Compensation Commission.

**CONCLUSION**

The reasoning applied by multiple courts in South Carolina applies here, and, therefore, the Defendants' motion to dismiss should be denied as a matter of law. The Plaintiffs' Complaint sets forth facts to support each cause of action. Further, the Defendants are not the statutory employer of the Plaintiffs, and, therefore, they do not receive immunity under the Act. The Plaintiff respectfully requests that this Court follow the holdings of the trial courts' from South Carolina and deny the Defendant's motion to dismiss.

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And

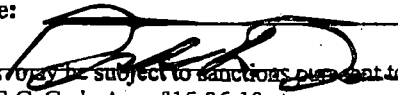
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August 2, 2017  
Lexington, South Carolina



Submitting Party Signature:



Date: 7/8/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

2016-CP-32-\_\_\_\_\_

2016 JUL

-8 PM 4:55

Hawi Kebede, Mekilit A. Lemu,  
And Shewangiz K. Moges,

Plaintiffs,

vs.

Amick Farms, LLC and OSI Group,

Defendants.

**SUMMONS  
(JURY TRIAL DEMANDED)**

**TO: THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, 109 N. Main Street, PO Box 1211, Sumter, South Carolina 29151, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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Sumter, South Carolina  
July 8, 2016

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
Hawi Kebede, Mekilit A. Lemu, )  
And Shewangiz K. Moges, )  
Plaintiffs, )  
vs. )  
Amick Farms, LLC and OSI Group, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT JUL -8 PM 4:55  
2016-CP-32-

**COMPLAINT  
(JURY TRIAL DEMANDED)**

1. The Plaintiffs are citizens and residents of Richland County, South Carolina and at the time of the occurrence referenced herein were passengers in a 1999 Ford Van owned by East Coast Labor Solutions.

2. Upon information and belief, Defendant, Amick Farms, LLC, LLC, is a business entity organized and existing under the laws of a State of the United States of America and owns property and/or does business in Batesburg, South Carolina.

3. Upon information and belief, Defendant, OSI Group, is a business entity organized and existing under the laws of a State of the United States of America and owns property and/or does business in Batesburg, South Carolina.

4. This action is brought by the Plaintiff pursuant to §15-5-90 of the South Carolina Code of Laws to recover for the conscious pain and suffering inflicted on the Plaintiffs and pursuant to §15-51-10 et seq. of the South Carolina Code of Laws for the wrongful act, neglect or fault of the Defendants which caused the injuries sustained by the Plaintiffs.

5. That on or about July 8, 2013 Rahmel York was employed by Amick Farms, LLC and was directed by his supervisor to drive the 1999 Ford Van to transport several employees home. The Plaintiffs were one of the employees that occupied the 1999 Ford Van as passengers and said van was operated by Mr. York. That at approximately 9:00 a.m., Mr. York, who was traveling Eastbound on Interstate 20 in Gilbert, South Carolina, fell asleep while driving said van and veered off the left side of the roadway and overcorrected to the right consequently causing the van to overturn and flip multiple times striking an embankment and coming to rest on said embankment.

6. At all times relevant hereto, Rhamel York, was employed and served as an agent for Defendant, Amick Farms, LLC and OSI Group and was acting within the course and scope of his employment.

7. As a result of the above referenced occurrence, the Plaintiffs sustained severe and permanent injuries to their persons.

**FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligent Entrustment)**

8. The Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 7 as set forth herein.

9. On the day before the above referenced accident, Rhamel York worked the night shift at Amick Farms, LLC from 11:15 p.m. on Sunday, July 7, 2013 through 8:30 a.m. on Monday, July 8, 2013. Additionally, prior to his Sunday shift, Mr. York had worked the preceding Friday and Saturday night shifts from 11:15 p.m. until 8:30 a.m. On the day of the above described accident, Mr. York had worked three (3) consecutive days on night shift from 11:15 p.m. to 8:30 a.m. and despite being aware of his work schedule, Mr. York was instructed

by his supervisor to transport the Plaintiffs and the other employees home in said transportation van.

10. That the injuries, harm and damages incurred by the Plaintiffs were a direct and proximate result of Mr. York's negligent and reckless operation of said transportation van and the Defendants knew or should have known that Mr. York's operation of said vehicle was likely to pose an unreasonable risk of harm to others.

11. The Defendants as the employer of Rhamel York had the right to permit and the power to prohibit the use of this van by Rhamel York.

12. The Defendants knew, or had reason to know, that Rhamel York was likely to drive the van in a negligent and reckless manner.

13. As a direct result of Defendants negligently entrusting Rhamel York, who operated said vehicle owned by the Defendants in a negligent and reckless manner, the Plaintiffs, without any contributory negligence, did suffer injuries, damages and harm.

**FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligent Supervision)**

13. The Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 13 as set forth herein.

14. That upon information and belief, the Defendants owed statutory and common law duties to the public at large and to the Plaintiffs in particular, to refrain from negligently supervising employees.

15. These Defendants knew or reasonably should have known that Rhamel York had worked multiple and consecutive overtime shifts prior to the date of the above described accident and was not in suitable condition to operate said van in such a manner to safely transport the Plaintiffs and other employees home.

16. As a direct, foreseeable and proximate result of the negligent, grossly negligent, reckless, willful and wanton acts and/or omissions of the Defendants, the Plaintiffs suffered pain and physical harm.

17. Due to the willful, wanton, reckless, grossly negligent and negligent acts of the Defendants as set out above, the Plaintiffs are entitled to recover actual and punitive damages from the Defendants as determined by a jury.

**WHEREFORE**, Plaintiffs pray for judgment against Defendants jointly and severally in a sum to be determined by a jury together with punitive damages, costs of this action and for such other and further relief as this Court deems just, equitable and appropriate.

The Deas Law Firm



**Gary L. Deas, Esquire**  
Attorney for Plaintiffs  
Post Office Box 1211  
109 N. Main Street  
Sumter, South Carolina 29151  
(803) 775-7004  
(803) 773-9037 fax

Sumter, South Carolina  
July 8, 2016

## TEMPORARY STAFFING SERVICE PROVIDER AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of this 30<sup>th</sup> day of January, 2013 ("Effective Date"), by and between Employer Solutions Staffing Group, LLC, with a Corporate Headquarters at 7301 Ohms Lane, Suite 405, Edina, Minnesota 55439 (hereinafter "Service Provider") and Amick Farms, LLC, with a Corporate Headquarters at 2076 Batesburg Highway, Batesburg, South Carolina 29008 (hereinafter "Client").

WHEREAS, Client wishes to engage Service Provider's services, and Service Provider wishes to accept such engagement.

NOW, THEREFORE, the parties agree as follows:

1. **Scope.** From the Effective Date of this Agreement until its termination, Service Provider agrees to provide, and the Client agrees to procure from Service Provider, certain of Client's supplemental labor and recruitment needs.

The areas and types of supplemental labor services (the "Services") to be performed by Service Provider's employees shall be as specifically defined in supplements to this Agreement, each of which shall be substantially in the form of the project agreement attached hereto and incorporated herein by reference (the "Project Agreement"). The fees to be paid to Service Provider by Client shall be as set forth in the Project Agreement.

### 2. Implementation of Services

- A. The location covered by this Agreement shall include all Client plants that Service Provider will provide supplemental non-professional contracted labor as determined by Client in its sole discretion.
- B. Service Provider and Client shall cooperate in implementing and providing all services under this Agreement. Such cooperation includes, but is not limited to, providing Service Provider reasonable advance notice of projected staffing needs such that Service Provider can adequately adjust, and arrange for, any increase or decrease in Client's projection. Advanced scheduling will take place with notice of changing needs to be given in writing, with no less than 24 hours notice (or orally with written confirmation within 24 hours thereafter), except in the event of an emergency.
- C. Service Provider shall provide to Client, only those Service Provider employees who successfully complete/pass E-Verify, background checks and specified drug tests meeting the minimum standards that Client requires of its own employees. Service Provider shall ensure that such pre-employment testing is performed in compliance with all applicable laws.
- D. The Service Provider shall work with the Client through the Client's designated Contact Person(s) as defined in paragraph 4 below to address all day-to-day or long term issues under this Agreement. Social Security Verification and E-Verify shall be performed on each Service Provider employee prior to presentation to Client, and there shall be no charge for this service. A criminal background check and drug screen will be included in the fee stated in Exhibit A.

In addition to the social security, credit and background checks cited above, Service Provider will, at no additional charge to Client, thoroughly evaluate all Service Provider employees through skill evaluations and behavioral interviewing.

- **Skill Assessment.** Service Provider will assess administrative and clerical skill levels. In addition, Service Provider will assess basic skills, aptitude, safety and forklift operation, if applicable. Every evaluation will be timed and indicate the Service Provider employee's proficiency level. All Service Provider employees presented to Client will have passed skill evaluations and behavioral interviewing.



- Behavioral interviewing. Service Provider shall also assess the abilities, work and personal experiences, likes and dislikes of all Service Provider employees to evaluate their suitability to fill Client's temporary needs. The evaluation factors will include overall suitability for temporary work; educational background, work experience, ability to interface with managers and co-workers; maturity; stability; motivation; interests and availability.

Client may request Service Provider to replace any Service Provider employee for any reason or no reason.

### 3. Service Provider Employees

- A. The parties agree that Service Provider employees are and will be employed solely by Service Provider. Service Provider shall be solely responsible for all wages, benefits, payroll deductions, and employee payment issues, including deposit and payment of all employment taxes and workers' compensation insurance with respect to Service Provider employees.
  - B. Service Provider reserves the right to contact, screen, hire, discipline or discharge any and all Service Provider employees.
  - C. Service Provider agrees not to solicit Client employees for employment with Service Provider. Service Provider, however, shall have the right to request Client's employees, during non-work hours, to provide employment referrals to Service Provider.
  - D. Once a Service Provider employee has worked at Client's facility for a period of one (1) year, Client may, in its sole discretion and without further obligation to Service Provider, hire Service Provider employees as Client's employees for regular positions. In the event Client elects to hire a Service Provider employee, Client will advise Service Provider of such decision.
  - E. Service Provider agrees to train and orientate its employees assigned at the Client's facility to the exact standards of the Client and will maintain documentation of such training for each Service Provider employee assigned to the Client. It is the responsibility of the Service Provider to ensure its employees are trained properly and adequately.
4. **Contact Person(s).** In order to help ensure the smooth and consistent performance of the parties' undertakings pursuant to this Agreement Client shall designate a Contact Person who shall be authorized by Client to provide information and requests to Service Provider regarding Client's needs as they may arise, to sign-off on all attendance records or to designate a person with authority to do so, and to address all other service and performance issues.
5. **Right to Audit.** Client shall have the right to audit during normal business hours Service Provider's records pertaining to the performance of this Agreement, regardless of the manner or form in which such records are maintained by Service Provider. Service Provider shall make such records available for Client's review upon reasonable prior notice from Client and in a location and organized in manner physically conducive to Client's audit requirements. Until Client makes the final payment to Service Provider for Service Provider's services under this Agreement, and for a period of two (2) years thereafter, Client may exercise such right as often as reasonably necessary and appropriate. Client may, without penalty, withhold final payment for Service Provider's services rendered under the last week's invoice under this Agreement until such time as Client's reasonable request to audit Service Provider's records is honored.
6. **Holidays.** Service Provider employees will observe Client's holidays. In the event that Client provides Service Provider with reasonable notice that Client desires Service Provider to provide Service Provider employees on these holidays, Service Provider shall make Service Provider employees available for work on the specified holiday. Service Provider employees will be compensated by Service Provider using the holiday pay policy of the Client.
7. **Confidentiality.** Service Provider shall regard as confidential and proprietary all of the information communicated by Client or otherwise obtained by Service Provider in connection with this Agreement including any work product created by Service Provider employees (which information shall at all times

be the property of Client). Service Provider shall not, without the Client's prior written consent, at any time (a) use such information for any purpose other than in connection with the performance of its obligations under this Agreement or (b) disclose any portion of such information to third parties, excluding Service Provider's agents or subcontractors that are directly performing services for Service Provider in connection with this Agreement. Service Provider shall promptly upon the expiration or earlier termination of this Agreement return to Client, without retaining copies thereof, all such information which is in written or tangible form (including, without limitation, all copies, summaries and notes of the contents thereof), regardless of the party causing the same to be in such form, and destroy all written materials prepared by Service Provider which incorporate or include any such information. Service Provider shall disseminate such information to its employees, agents and subcontractors only on a "need-to-know" basis. Service Provider shall cause each of its employees, agents and subcontractors who have access to such information to comply with the terms and provisions of this paragraph in the same manner as Service Provider is bound hereby, with Service Provider remaining responsible for the actions and disclosures of any such employees, agents or subcontractors. In addition, except as otherwise provided herein, Service Provider shall not, without Client's prior written consent, disclose to third parties any information generated under or the nature of and discussions regarding, this Agreement. Service Provider agrees that any breach of this Section by Service Provider, its employees, agents or subcontractors shall cause irreparable injury to Client, that Client shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and that Service Provider agrees to waive any requirement for securing or posting of any bond in connection with such remedy.

Notwithstanding the foregoing, Service Provider's obligations pursuant to the above Section shall not apply to (a) information that, at the time of disclosure, is, or after disclosure becomes part of, the public domain other than as a consequence of Service Provider's breach, (b) information that was known or otherwise available to Service Provider prior to the disclosure by Client, (c) information disclosed by a third party to Service Provider after the disclosure by Client, if such third party's disclosure neither violates any obligation of the third party to Client nor is a consequence of Service Provider's breach, or (d) information that Client authorizes, in writing, for release.

8. **Safety/Security Policies and Procedures.** Service Provider and its Service Provider employees shall comply with all of Client's safety and security guidelines, as well as Client's general policy and procedures (relating to e.g. smoking, drinking, dress code, parking, housekeeping and conduct). Service Provider shall perform the Services in a professional, safe and workmanlike manner, shall have sole responsibility for safety of its Service Provider employees and shall take all precautions and comply with all safety rules of Client and any applicable federal, state and local laws, rules, regulations and ordinances relating to job-site safety.

**B. Term of Agreement**

- A. Subject to the termination provisions set forth in Section 9B hereof, this Agreement shall become effective as of the date the first Service Provider Associate provides services to Client and shall continue until terminated by the parties ("Term") upon 30 days notice. The Agreement will automatically be renewed in one (1) year increments unless terminated earlier as provided herein. Notwithstanding anything contained herein to the contrary, this Agreement shall not be terminated while there is an active Project Agreement.
- B. Either party may immediately terminate this Agreement if a Default, as defined below, by the other party has occurred and is continuing by giving written notice thereof to the defaulting party. Termination of this Agreement shall not relieve the parties of any obligation accruing with respect to this Agreement prior to such termination. The term "Default" shall mean any of the following:
- (a) failure by a party to comply with or to perform any provision or condition of this Agreement for ten (10) days after written notice thereof to such party, or
  - (b) a party becomes insolvent, is unable to pay its debts as they mature or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or

is named in, or its property is subject to a suit for appointment of a receiver; or is dissolved or liquidated; or

- (c) any warranty made in this Agreement is breached, false, or misleading in any material respect.

In the event of such termination, the non-defaulting party shall be entitled to pursue any remedy provided in law or equity. In no event shall either party be liable for incidental, consequential or punitive damages.

Upon Service Provider's receipt of any such notice from Client or Service Provider's sending of any such notice to Client ("Notice date"), Service Provider shall immediately discontinue all work and shall incur no further expenses billings pursuant thereto without Client's prior written approval. In the event of a termination, Client shall owe Service Provider fees for actual work performed by Service Provider through the notice date billed at the rates under this Agreement. If applicable, Service Provider shall refund to Client within thirty (30) days of the notice date any amounts by which the sums paid by Client to Service Provider exceed such fees owed by Client.

Notwithstanding the foregoing or anything herein to the contrary, Client may terminate this Agreement at anytime without cause and without penalty upon 30 days prior written notice to Service Provider.

10. **Non-Exclusivity.** Service Provider acknowledges that Client may enter into similar agreements with parties other than Service Provider for services similar to those which may be provided by Service Provider hereunder. Accordingly, Service Provider agrees that the agreement between the parties hereto shall not be deemed exclusive and that Client may from time to time enter into similar agreements with third parties which may be Service Provider's competitors with respect to the Services or other professional service projects.

11. **Warranties and Representations by Service Provider**

- A. Service Provider represents, warrants and agrees that it has and will have full power and authority to enter into, and to fully perform, this Agreement and that no agreement or understanding with any other person, firm or corporation exists or will exist which will interfere with Service Provider's obligations hereunder. Service Provider further represents and warrants that (i) the disclosure to Amick Farms, LLC of any information by Service Provider in connection with the Services does not contravene any confidentiality obligation Service Provider may have to any third party; (ii) Service Provider will use its best efforts in providing its Services hereunder and will provide them in a professional and workmanlike manner; (iii) Service Provider shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders of the state and locality where its Services are being rendered; and (iv) Service Provider has or will duly obtain any and all licenses, permits, and authority necessary or required by federal, state, or local laws, rules, regulations or ordinances covering its provision of Services hereunder.
- B. Service Provider represents and warrants to Client that it has complied, and will comply, with all applicable federal, state, local, and local laws, rules, regulations and requirements, including but not limited to: The Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, and National Labor Relations Act, the Illinois Fair Employment Practices Act, and all other labor, employment and applicable laws.
- C. Service Provider represents and warrants that it shall be solely responsible for the payment of all wages, fringe benefits, social security, worker's compensation, unemployment and other taxes applicable to the performance of services under this Agreement by Service Provider Service Provider employees.
- D. Service Provider represents and warrants to Client that the execution and performance of this Agreement by it are fully authorized, that this Agreement has been validly executed and delivered, and that the individual executing this Agreement has full authority to bind Service Provider. It

further represents that its performance hereunder will not conflict with any contract or legal obligation to which it is bound.

- E. The parties to this Agreement mutually acknowledge and agree that this Agreement, by its nature, contemplates fluctuations in the need for Service Provider Service Provider employees from time to time and from day to day. Service Provider represents and warrants that it will use its best efforts to staff 100 percent of Client's needs, provided that Client provides adequate advance notice to Service Provider, in accordance with the terms of this Agreement.
- F. Service Provider shall provide reasonable and accurate documentation to Client regarding Service Provider employees work schedules, fees, and other charges.
- G. Service Provider represents and warrants that in performing services hereunder it shall provide Service Provider employees who have completed the Service Provider screening processes (including background checks and drug tests), and possess the qualifications to perform in the areas where their services are to be utilized.
- H. Service Provider represents that it has utilized its best efforts, at Service Providers sole cost and expense, to ensure that all of Service Provider employees provided to Client (directly by Service Provider or indirectly through one of its subcontractors) pursuant to this Agreement are authorized to work under all applicable local, state and federal laws and regulations (including, without limitation, any laws or regulations enacted, adopted or promulgated after the execution of this Agreement).

#### 12. Warranties and Representations by Client

- A. Client represents and warrants to Service Provider that it has complied with and will comply with all applicable federal, state, local, domestic and other laws, rules, regulations and requirements. Client agrees that it will not ask or require Service Provider, in its sole judgment, to engage in conduct that would require Service Provider to violate any laws, regulations, or legal requirements.
- B. Client represents and warrants to Service Provider that the execution and performance of this Agreement by it are fully authorized, that this Agreement has been validly executed and delivered, and that the individuals executing this Agreement have full authority to bind Client.
- C. Client represents and warrants that Client's Contact Person, or another representative (or representatives) designated by Client, shall be available each business day and shall be authorized to review and sign off on all daily time records for Service Provider Service Provider employees. Client agrees that, when its representative signs off on such attendance records, such records are deemed final unless and until Client obtains evidence to the contrary.
- D. Client represents that, to the best of its knowledge, the positions being filled by Service Provider Service Provider employees under this Agreement do not require the Service Provider employees to belong to or join a union or pay union dues.

13. **Notice.** All notices, reports and receipts shall be in writing and shall be deemed duly given on (a) the date of personal or courier delivery; (b) the date of transmission by telecopy or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by first-class mail, return receipt requested, postage prepaid; or (c) three (3) business days after the date of deposit in the United States mail, sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Service Provider:

Employer Solutions Staffing Group, LLC  
7301 Ohms Lane  
Suite 405  
Edina, Minnesota 55439

**If to Client:**

**Amick Farms, LLC**  
2079 Batesburg Highway  
Batesburg, South Carolina 29006  
Attn: Fred West  
Phone: (803) 532-1400  
Fax: (803) 532-1441  
Email: [FWest@AmickFarms.com](mailto:FWest@AmickFarms.com)

**With a copy to:**

**OSI Industries, LLC**  
1225 Corporate Boulevard  
Aurora, Illinois 60505  
Attn: General Counsel  
Fax: (830) 851-0927

Either party may change its mailing address by written notice to the other party in accordance with this Section.

14. **Integrated Agreement.** This Agreement constitutes the entire understanding between Client and Service Provider regarding the subject matter herein. All representations and warranties, if any, made contemporaneously with or prior hereto are superseded and merged into this Agreement. The parties acknowledge that they are entering into this Agreement solely on the basis of the agreements and representations contained herein, and for each party's respective purposes and not for the benefit of any third party. Nothing in this Agreement is intended to, or does, create any third party beneficiaries, including, but not limited to, any Service Provider Associate. A waiver by any party of any provision of this Agreement shall not be deemed a waiver as to any future or continuing performance and shall not relieve any party from its responsibilities under this Agreement. No alterations, amendments, or modifications hereof are binding unless in writing and signed by the parties hereto. All headings are for the convenience of the parties and do not define, extend or limit the provisions of this Agreement.
15. **Independent Contractor.** Nothing contained herein shall be deemed or construed to create any partnership or joint venture between Client and Service Provider. All activities by Service Provider, or its subcontractors, under the terms of this Agreement shall be carried on by Service Provider, or its subcontractors, as an independent contractor and not as an agent for or employee of Client. Under no circumstances shall any employee of Service Provider or employee of its subcontractors be deemed or construed to be an employee of Client. Client shall not be liable for any injuries or damages incurred by Service Provider, or its subcontractors, as a result of its activities in the performance of this Agreement.
16. **Survival.** The provisions of Sections 5, 7, 11, 12, and 17 hereof shall survive any termination of this Agreement.
17. **Insurance and indemnification**
- A. Service Provider agrees to obtain and maintain at its expense the amounts and types of insurance coverages as identified in Exhibit B, attached hereto and incorporated herein.
  - B. Service Provider agrees to indemnify, defend and hold harmless Client and its members, managers, officers, employees, agents, parent, affiliates, representatives, successors and assigns of, from and against any liabilities, claims, causes of action, lawsuits, judgments, damages, injuries, penalties or expenses (including reasonable attorneys' fees, court costs and out of pocket expenses) suffered or incurred by Client as a result of a breach of any representation or warranty made hereunder by Service Provider or any act or deed, whether by way of tort or contract, committed or omitted by Service Provider, its employees, representative, agents or subcontractors in the performance of this Agreement, or acts of its employees or in any way arising out of this Agreement.
18. **Force Majeure.** If either party is prevented from complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident or other acts of God, then upon written notice to the other party, the affected provisions and/or requirements of this Agreement shall be suspended during the period of such disability. During such period, the non-disabled party may seek to have its needs, which would otherwise be met hereunder, met by others without liability to the disabled party hereunder. If the

disability continues for more than ten (10) days after the cessation of the reason for such disability, the non-disabled party shall have the right to terminate this Agreement, and neither party shall thereafter have any further rights or obligations hereunder, except as specifically set forth.

19. **No Assignment.** Service Provider acknowledges that the services to be rendered by it to Client are unique and personal. Accordingly, Service Provider may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Client. This Agreement shall inure to the benefit of Client and Service Provider and to Client's successors, assigns and affiliates.

20. **Law and Venue.** This Agreement is governed by, and shall be construed in accordance with the substantive laws, but not the laws of conflicts, of the State of Illinois.

21. **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and a telefax copy of an original signature will be regarded as an original signature for purposes of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their respective authorized representatives as of the Effective Date.

AMICK FARMS, LLC  
By: [Signature]  
Printed Name: Troy West  
Title: VP Ops  
Date: 2/5/13

EMPLOYER SOLUTIONS STAFFING GROUP, LLC  
By: [Signature]  
Printed Name: Chris Lovin  
Title: CEO/President  
Date: 2/7/13



**EXHIBITS**

- Exhibit A..... Project Agreement and Service Fees
- Exhibit B..... Insurance Requirements

**EXHIBIT A**  
**PROJECT AGREEMENT AND**  
**SERVICE FEES**

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**1. Services: [To be provided by the parties]**

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**2. Service Fees**

**A. Service Provider fees for services provided under this Agreement shall be:**

- Per hour pay rate plus thirty-nine percent (39%) for General Utility, Sanitation Service Provider employees, and any other position assignments identified by the (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Shift).

**B. Service Provider fees will be billed on a weekly basis. Invoices will be presented by Service Provider each week to the Client's Contact Person or, in the absence of the Contact Person, to the head of Client's Accounts Payable Department. Client agrees to pay each such invoice within three (3) to five (5) days of receipt of invoice. If any adjustments or disputes arise regarding an invoice, all adjustments/disputes shall be handled/resolved in the next invoice. Client acknowledges that Service Provider's fees under this Agreement are predicated upon timely payment of all invoices.**

**C. Except as set forth below, the fees charged by Service Provider shall be held firm for a period of twelve (12) months from the date that the first Service Provider Associate begins work at Client's location.**

**D. Service Provider shall provide adequate documentation on all fees and charges hereunder. If a dispute shall arise at anytime regarding fees and charges hereunder, the parties shall seek to resolve such dispute in good faith and in a timely manner.**

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**  
**TEMPORARY STAFFING SERVICE PROVIDERS**

1. Service Providers shall maintain the following insurance in amounts not less than those specified below:

a. **Workers' Compensation Insurance.**

i. **Coverage A:** In amounts that are Statutory in accordance with the laws of the state with jurisdiction, including Voluntary Compensation, Broad Form All States Endorsement,

Endorse the policy with a waiver of subrogation for any and all claims made against Amick Farms, LLC & Affiliated Companies

or

Endorse the workers' compensation policy with an "Alternate Employee Endorsement."

ii. **Coverage B:** The workers' compensation policy should include Employer's Liability Coverage in amounts listed below:

"Insurance at a limit of not less than \$1,000,000 each accident, and in aggregate.

Additionally, the policy should indicate limits in the following amounts:

Each Accident: ..... \$1,000,000.

Disease-Policy Limit: ..... \$1,000,000.

Disease-Each Employee: ..... \$1,000,000.

b. **Commercial General Liability Insurance.**

i. **Bodily injury liability and property damage liability** in an amount not less than \$2,000,000 each occurrence and in aggregate.

ii. The above policy to include Blanket Contractual Liability, Products and Completed Operations, Independent Contractors, Broad Form Property Damage, Personal Injury, Incidental Medical Malpractice.

iii. Endorse the policy to delete any co-insurance provisions and replace or endorse the policy with the following:

"The insurance afforded to the Additional Insured is primary insurance, and noncontributory. If the Additional Insured has other insurance which is applicable to the loss on an excess, contingent, or primary basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance." This should be evidenced on the Certificate of Insurance. The additional insured is Amick Farms, LLC & Affiliated Companies.

c. **Umbrella Liability.**

i. Provide Umbrella Liability limits of at least \$2 million per occurrence and in the aggregate. Coverage must cover in excess of the following policies:

a. Coverage B - Employer's Liability Policy.

b. Commercial General Liability Policy.

2. A Certificate of Insurance evidencing these coverages should be sent to:

Amick Farms, LLC  
Insurance Department  
2079 Batesburg Highway  
Batesburg, South Carolina 29008  
Fax: (803) 532-1441

with a copy to: OSI Industries, LLC  
Insurance Department  
1225 Corporate Boulevard  
Aurora, Illinois 60506  
Fax: (630) 851-7006

ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010)				# Of Units 1	Amended - Attach Copy of Original Report Corrected	Notified 0904	Arrived 0919				
Date 07-09-2013	Time of Collision 0800	County 32	<input checked="" type="radio"/> Interstate <input type="radio"/> 2-US Primary <input type="radio"/> 3-SC Primary		<input type="radio"/> 4-Secondary <input type="radio"/> 5-County <input type="radio"/> 6-PP		Collision Location (Rt # / Name) 520 /			<input checked="" type="radio"/> Main <input type="radio"/> 2-Alternate <input type="radio"/> 5-Spur	<input type="radio"/> 6-Connection <input type="radio"/> 7-Business <input type="radio"/> 9-Other	Miles: 2.98	Dir. N S E W	In (Near) City or Town of: GILBERT		
Lane # / Dir.		Distance Offset Feet	Direction N E S W	<input checked="" type="radio"/> 1-Interstate <input type="radio"/> 2-US Primary <input type="radio"/> 3-SC Primary		<input type="radio"/> 4-Secondary <input type="radio"/> 5-County <input type="radio"/> 6-Other		Base Intersection (Rt # / Name) 34 / POND BRANCH RD			<input checked="" type="radio"/> Main <input type="radio"/> 2-Alternate <input type="radio"/> 5-Spur	<input type="radio"/> 6-Connection <input type="radio"/> 7-Business <input type="radio"/> 9-Other	GPS COORDINATES 00 00 00.00"			
R.R. Id.		From	Ramp Only	To	<input checked="" type="radio"/> 1-Interstate <input type="radio"/> 2-US Primary <input type="radio"/> 3-SC Primary		<input type="radio"/> 4-Secondary <input type="radio"/> 5-County <input type="radio"/> 6-Other		Second Intersection (Rt # / Name) 178 / FAIRVIEW RD			<input checked="" type="radio"/> Main <input type="radio"/> 2-Alternate <input type="radio"/> 5-Spur	<input type="radio"/> 6-Connection <input type="radio"/> 7-Business <input type="radio"/> 9-Other	Latitude 33 51 56.68	Longitude 81 23 20.26	
E-552088				Driver/Pedestrian's Full Name YORK RAHMEL MAURICE				Driver/Pedestrian's Full Name								
Unit # 01	Sex M	Race B	Street/R.F.D. 407 BAGNALD DR			Unit #	Sex	Race	Street/R.F.D.			State		Driver's License #	Class	Insurance Company
# Occ 11	Birth Date 06-26-1985		City, State, & Zip SUMTER SC 291504409			# Occ	Birth Date		City, State, & Zip			State		Driver's License #	Class	Insurance Company
State SC	Driver's License # 180767560		Class D	Insurance Company NATIONAL LIABILITY AND FIRE			State	Driver's License #		Class	Insurance Company					
Year 1999	Body VN	Vehicle Make FORD	VIN # 1FB5531L6XHC00488			Year	Body	Vehicle Make	VIN #			State	Year	License Plate #	Owner's D.L. #	
State WV	Year 2014	License Plate # 6TT877	Owner's D.L. # NONE			State	Year	License Plate #	Owner's D.L. #			Home Telephone (803) 7204872		Owner's Full Name EAST COAST LABOR SOLUTIONS		
Home Telephone ( )		Owner's Full Name			Home Telephone ( )		Owner's Full Name			Bus. Telephone ( )		Street/R.F.D.				
Bus. Telephone ( )		Street/R.F.D.			Bus. Telephone ( )		Street/R.F.D.			Contributed To Collision Yes No		City, State, & Zip FAIRLEA WV 24802				
Contributed To Collision Yes No		City, State, & Zip			Contributed To Collision Yes No		City, State, & Zip			Estimated Speed 70	Speed Limit 70	C.D.L. Req: Yes (No)	T/B S Req: Yes (No)	A/C/Org Info (see back): Yes (No)	Towed (Yes) No	
Driver/Pedestrian's Full Name				State		Year	License Plate #	Owner's D.L. #		Home Telephone ( )		Owner's Full Name				
Home Telephone ( )		Owner's Full Name			Bus. Telephone ( )		Street/R.F.D.			Contributed To Collision Yes No		City, State, & Zip				
Contributed To Collision Yes No		City, State, & Zip			Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	A/C/Org Info (see back): Yes No	Towed (Yes) No	Dir. of Travel: Unit 1: N S (E) W   Unit 2: N S E W   Unit 3: N S E W					
Unit 1 Dam.				Unit 2 Dam.				Unit 3 Dam.				Prop. Dam. 1		Prop. Dam. 2		
\$5000				\$				\$				\$		\$		
Property Owner/Witness						Property Owner/Witness										
Address						City										
State		Zip	Phone		State		Zip	Phone								
Photo: Describe What Happened (Refer to Units by Number)																
Y (N)																
UNIT 1 WAS TRAVELING EASTBOUND ON I 20. THE DRIVER OF UNIT 1, DRIVING TOO FAST FOR CONDITIONS, TRAVELED OFF THE LEFT SIDE OF THE ROADWAY AND OVERCORRECTED TO THE RIGHT. UNIT 1 THEN OVERTURNED IN THE ROADWAY AND OFF RIGHT SIDE OF THE ROADWAY STRIKING AN EMBANKMENT.																
<div style="border: 2px solid black; padding: 5px; display: inline-block;">             ALL-STATE LEGAL EXHIBIT 3           </div>																
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																
Investigating Officer's Name MOSEY - MB		Rank TRP	Badge # T 972	Jurisdiction Code H P O 1	Review Date 07-14-2013	Reviewer's Name B E Kyzer		Rank Cpl	Internal Agency Code 138W125340							

ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY				Page # 2	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 7/2010)				# Of Units 1	Amended - Attach Copy of Original Report Corrected	Notified 0804	Arrived 0919	
Date 07-08-2013	Time of Collision 0800	Count 32	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- PP	Collision Location (Rt. # / Name) 520 /				1- Main 2- Alternate 5- Spur	8- Connection 7- Business	Miles: 2.98	Dir: N E S W	In (Near) City or Town of: GILBERT
Lane # / Dir. # / Dir. N E S W	Distance Offset Miles Feet .52	Direction N E S W	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 8- Other	Base Intersection (Rt. # / Name) 34 / POND BRANCH RD				1- Main 2- Alternate 5- Spur	8- Connection 7- Business 9- Other	GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS		
R.R. Id.	From: N E S W	Ramp Only 1- Entrance 2- Exit	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 8- Other	Second Intersection (Rt. # / Name) 178 / FAIRVIEW RD				1- Main 2- Alternate 5- Spur	8- Connection 7- Business 9- Other	Latitude 33 51 56.68	Longitude 81 23 20.28	
Driver/Pedestrian's Full Name						Driver/Pedestrian's Full Name							
Unit # # Occ	Sex	Race	Street/R.F.D. City, State, & Zip			Unit # # Occ	Sex	Race	Street/R.F.D. City, State, & Zip				
State	Driver's License #	Class	Insurance Company			State	Driver's License #	Class	Insurance Company				
Year	Body	Vehicle Make	VIN #			Year	Body	Vehicle Make	VIN #				
State	Year	License Plate #	Owner's D.L. #			State	Year	License Plate #	Owner's D.L. #				
Home Telephone ( )		Owner's Full Name				Home Telephone ( )		Owner's Full Name					
Bus. Telephone ( )		Street/R.F.D.				Bus. Telephone ( )		Street/R.F.D.					
Contributed To Collision Yes No		City, State, & Zip				Contributed To Collision Yes No		City, State, & Zip					
Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No		Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No			
Summons #	Code	Summons #	Code	Towed	Yes No	Summons #	Code	Summons #	Code	Towed	Yes No		
Driver/Pedestrian's Full Name						State	Year	License Plate #	Owner's D.L. #				
Unit # # Occ	Sex	Race	Street/R.F.D. City, State, & Zip			Home Telephone ( )		Owner's Full Name					
Bus. Telephone ( )		Street/R.F.D.				Bus. Telephone ( )		Street/R.F.D.					
Contributed To Collision Yes No		City, State, & Zip				Contributed To Collision Yes No		City, State, & Zip					
Year	Body	Vehicle Make	VIN #			Estimated Speed	Speed Limit	C.D.L. Req: Yes No	T/B S Req: Yes No	Alc/Drg Info (see back): Yes No			
Dir. of Travel: Unit 1: N-S E-W		Unit 2: N S E W		Unit 3: N S E W		Summons #	Code	Summons #	Code	Towed	Yes No		
Unk 1 Dam.			Unk 2 Dam.			Unk 3 Dam.			Prop. Dam. 1		Prop. Dam. 2		
\$			\$			\$			\$		\$		
Property Owner/Witness						Property Owner/Witness							
Address City						Address City							
State Zip		Phone		State Zip		Phone		State Zip		Phone			
Photo: Describe What Happened (Refer to Units by Number) Y (N)													
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.													
Investigating Officer's Name MOSEY - MB			Rank TRP	Badge # T 9 7 2	Jurisdiction Code H P O 1	Review Date 07-14-2013	Reviewer's Name B E Kyzer			Rank Cpl	Internal Agency Code 13BW125340		

Unit	Date of Birth	Sex	Race	INJ	Seat	R/S/D	A/B/D	Eject	LAI	Tran	Name	Street Address	Zip Code
01	06-26-1985	M	B	2	01	13	1 3	1	1	1	YORK RAHMEL MAURI	407 BAGNAL DR SUMTER SC	29150409
01	04-01-1962	M	O	3	07	00	3	3	1	1	LIN'HTUO SOE	3430 KAY ST APT H-4 COLUMBIA SC	29210
01	02-24-1964	M	O	3	40	00	7 3	3	1	1	HUGGINS BERTLEY	1714 PATS DR COLUMBIA SC	29203
01	05-20-1958	F	O	3	40	00	7 3	3	1	1	MELKINIT ALEMU	1212 METZE RD APT 15-B COLUMBIA SC	29210
01	03-04-1988	F	O	3	09	00	7 3	3	1	1	KEBEDE HAWI	1212 METZE RD APT 15-B COLUMBIA SC	29210
01	05-20-1958	M	O	3	40	00	7 3	3	1	1	SIU KHUNH	3930 BROAD RIVER RD COLUMBIA SC	29210

<b>Race</b>	A - Asian/Pacific Islander	W - Caucasian	B - African American	H - Hispanic	O - Other	I - Alaskan Native or American Indian	U - Unk.		
<b>Injury Status</b>	0 - Not Injured	1 - Possible Injury	2 - Non-Incapacitating	3 - Incapacitating	4 - Fatal				
<b>Seating Loc.</b>	01 02 03 04 05 06 07 08 09	20 - Pedestrian	30 - Trailing Unit	40 - Bus or Van (4th row or Higher)	50 - Other Enclosed Area (nontrailing)	60 - Sleeper or Cab	70 - Riding on Unit Exterior	80 - Lap	90 - Unk./NA
<b>Restraint/Safety Device</b>	00 - None Used	11 - Shoulder belt	12 - Lap Belt Only	21 - Child	22 - Child	31 - Helmet	41 - Protective Pads	51 - Reflective Clothing	61 - Lighting

<b>Air Bag Deployment / Switch</b>	1 - Deployed Front	2 - Deployed Side	3 - Deployed Both	4 - Not Deployed	5 - Not Applicable	6 - Deployment Unk.	7 - Not App.	8 - Unk.
<b>Ejection</b>	1 - Not Ejected	2 - Part. Ejected	3 - Tot. Ejected	4 - Unk.				
<b>Head Injury</b>	1 - Yes	2 - No						
<b>Location After Impact</b>	1 - Not Trapped	2 - Extricated (Mechanical Means)	3 - Freed (non-mech.)	4 - Not Applicable	5 - Unknown			
<b>Sequence of Events</b>								

<b>Non-Collision</b>	01 - Cargo/Equip Loss or Shift	02 - Cross Median/Corner	03 - Downhill Runaway	04 - Equipment Failure	05 - Fire/Explosion	06 - Immolation	07 - Jackknife	08 - Overturn/Rollover	09 - Ran off Road Left	10 - Ran off Road Right	11 - Separation of Units	12 - Spill (Maximum Vols)	13 - Other Non-collision	14 - Unk. Non-collision									
<b>Collision: Not Fixed</b>	20 - Animal (Deer Only)	21 - Animal (All Other)	22 - Motor Veh. (In Transport)	23 - Motor Veh. (Stopped)	24 - Motor Veh. (Other Roadway)	25 - Motor Veh. (Paralel)	26 - Pedalcycle	27 - Pedestrian	28 - Railway Veh.	29 - Hwy Zone Maint. Equip	30 - Other Movable Object	31 - Unk. Movable Object											
<b>Collision: Fixed Object</b>	40 - Bridge Overhead Structure	41 - Bridge Pier/Post End	42 - Bridge Pier or Abutment	43 - Bridge Rail	44 - Culvert	45 - Curb	46 - Ditch	47 - Embankment	48 - Equipment	49 - Fence	50 - Guardrail End	51 - Guardrail Face	52 - Highway Traffic Sign Post	53 - Imped. Accumulator/Crash Cushion	54 - Light/Luminaire Support	55 - Mail Box	56 - Median Barrier	57 - Overhead Sign Support	58 - Other (Post, Pole, Support, Etc.)	59 - Other (Wall, Building, Tunnel, Etc.)	60 - Tree	61 - Utility Pole	62 - Work Zone Maint. Equipment

<b>Manner of Collision (Struck Veh.)</b>	00 - Not Coll. w/ Motor Veh.	10 - Rear End	20 - Head On	30 - Rear-to-Rear	41 - Angle (↘↗)	42 - Angle (→ ←)	43 - Angle (↖ ↗)	50 - Sideswipe Same Dir	60 - Sideswipe Opposite Dir	70 - Backed Into	80 - Other	89 - Unknown									
<b>Vehicle Type</b>	01 - Automobile	02 - Pickup Truck	03 - Truck Tractor	04 - Other Truck	05 - Full Size Van	06 - Mini Van	07 - Sport Utility	08 - Motorcycle	09 - Other Motorcycle	10 - Pedalcycle	11 - Train	12 - School Bus	13 - Passenger Bus	14 - Animal Drawn Veh.	15 - Animal (Hidden)	16 - Other	17 - Run Only				
<b>Vehicle Use Code</b>	01 - Personal	02 - Driver Training	03 - Construction/Maint.	04 - Ambulance	05 - Military	06 - Transport Passenger	07 - Transport Property	08 - Farm Use	09 - Wrecker or Tow	10 - Logging	11 - Government	12 - Fire Fighting	13 - Police	14 - Other	15 - Pedestrian						
<b>Vehicle Attachment</b>	01 - None	02 - Mobile Home	03 - Semi-Trailer	04 - Utility Trailer	05 - Farm Trailer	06 - Towed Motor Vehicle	07 - Petroleum Tanker	08 - Lowboy Trailer	09 - AutoCarrier Trailer	10 - Other Tanker	11 - Flat Bed	12 - E-Twin Trailers	13 - F-Other								
<b>Action Prior to Impact</b>	01 - Backing	02 - Changing lanes	03 - Entering traffic lane	04 - Leaving traffic lane	05 - Making U-turn	06 - Movements Essentially Straight Ahead	07 - Overtaking/passing	08 - Parked	09 - Stopping or Stopped in traffic	10 - Turning left	11 - Turning right	12 - Walking, Playing, Cycling	13 - Working	14 - Approaching/Leaving Vehicle	15 - Entering/Crossing Location	16 - Playing/Working on Vehicle	17 - Pushing Vehicle	18 - Standing	19 - Walking, Playing, Cycling		
<b>Weather Condition</b>	1 - Clear (no adverse conditions)	2 - Rain	3 - Cloudy	4 - Sleet, Hail	5 - Snow	6 - Fog, Smog, Smoke	7 - Blowing Sand, Oil, Dirt or Snow	8 - Severe Crosswinds	9 - Unk.												
<b>Light Condition</b>	1 - Daylight	2 - Dawn	3 - Dusk	4 - Dark (Lighting Unspecified)	5 - Dark (Street Lamp Lit)	6 - Dark (Street Lamp Not Lit)	7 - Dark (No lights)														
<b>Junction Type</b>	01 - Crossover	02 - Driveway	03 - Five/More Points	04 - Four-way Intersection	05 - Railway Grade Crossing	06 - Shared Use Paths or Trail	07 - T-Intersection	08 - T-Intersection	09 - Traffic Circle	10 - Y-Intersection	11 - Nonjunction	12 - Unk.									
<b>Primary Contributing Factors</b>	01 - Disregarded Signs, Signals, Etc.	02 - Distracted/Inattention	03 - Driving Too Fast for Conditions	04 - Exceeded Authorized Speed Limit	05 - Failed to Yield Right of Way	06 - Ran off Road	07 - Fatigued/Asleep	08 - Followed Too Closely	09 - Made an Improper Turn	10 - Medical Related	11 - Aggressive Operation of Vehicle	12 - Over-correcting/Over-steering	13 - Swerving to Avoiding Object	14 - Wrong Side or Wrong Way	15 - Under the Influence	16 - Vision Obscured (Within Unit)	17 - Improper lane Usage/Change	18 - Cell Phone	19 - Texting	20 - Other Improper Action	21 - Unk.
<b>Roadway</b>	30 - Debris	31 - Non-highway Work	32 - Obstruction in Roadway	33 - Road Surface Condition (I or Wet)	34 - Rut, Holes, Bumps	35 - Shoulders (None, Low, Soft, High)	36 - Traffic Control Device (i.e. Missing)	37 - Work Zone (Constr./Maint./Utility)	38 - Worn, Travel-Polished Surface	48 - Other	49 - Unk.										
<b>Non-Motorist</b>	50 - Inattentive	51 - Lying &/or Illegally in Roadway	52 - Failure to Yield R. of W.	53 - Not Visible (Dark Clothing)	54 - Disregarded Signs, Signals, Etc.	55 - Improper Crossing	56 - Cutting	57 - Wrong Side of Road	58 - Other	59 - Unk.	60 - Under the Influence	61 - Other Person Under Influence									
<b>Environmental</b>	60 - Animal in Road	61 - Glass	62 - Obstruction	63 - Weather Cond.	64 - Other	65 - Unk.															
<b>Vehicle Defect</b>	70 - Brakes	71 - Steering	72 - Power Plant	73 - Tires/Wheel	74 - Lights	75 - Signals	76 - Windows/Shield	77 - Restraint System	78 - Truck Coupling	79 - Cargo	80 - Fuel System	81 - Other	82 - Unk.								

Unit	Date of Birth	Sex	Race	INI	Seat	RSD	ABD	Eject	LAI	Tran	Name	Street Address	Zip Code
01	03-19-1973	F	O	3	40	00	7	3	3	1	1	MOGES SHEWANGI	1212 METZE RD APT B-15 COLUMBIA SC 29210
01	09-11-1985	F	O	2	05	12	7	3	1	1	1	TADESE TIZEZEW	1011 BEATTY ST APT B-4 COLUMBIA SC 29210
01	07-26-1984	M	O	2	04	12	7	3	1	1	1	HABTEGIOR YOSEF A	1221 M ST NW APT 1025 WASHINGTON DC 20005
01	01-25-1967	M	B	2	08	12	7	3	1	1	1	CHICK WILLIAM M	119 VANLUE LN WHITMIRE SC 29178
01	01-01-1987	M	O	2	06	12	7	3	1	1	1	ATSBEHAS GEBREYOW	3530 BROAD RIVER RD COLUMBIA SC 29210

Race: A - Asian/Pacific Islander W - Caucasian B - African American H - Hispanic O - Other I - Alaskan Native or American Indian U - Unk.		a) Injury Status: 0 - Not Injured 3 - Incapacitating 1 - Possible Injury 4 - Fatal		2 - Non-capacitating 3 - Incapacitating		Seating Loc.: 01 02 03 04 05 06 07 08 09		20 - Pedestrian 60 - Sleeper of Cab 30 - Trailing Unit 70 - Riding on Unit Exterior 40 - Bus or Van (4th row or Higher) 80 - Lap 50 - Other Enclosed Area (nontrailing) 99 - Unk./NA 51 - Other Unenclosed Area (nontrailing)		Restraint/Safety Device: 00 - None Used 21 - Child 11 - Shoulder belt Safety Seat 12 - Lap Belt Only 88 - Other 13 - Shoulder & Lap Belt 89 - Unk.											
Air Bag Deployment / Switch: 1 - Deployed Front 4 - Not Deployed 2 - Deployed Side 7 - Not Applicable 3 - Deployed Both 9 - Deployment Unk. 1 - Switch in On Position 3 - No Switch 2 - Switch in Off Position 8 - Unknown		Ejection: 1 - Not Ejected 2 - Part Ejected 3 - Tot Ejected 7 - Not Eject 8 - Unk.		b) 2 or 3 Wheel Motorized Vehicle: 1 - Head Injury 1 - Yes 2 - No Location After Impact: 1 - Not Trapped 4 - Not Applicable 2 - Extricated (Mechanical Means) 9 - Unknown		3 - Freed (non-mech)		a) Transported to Medical Facility: 1 - Yes 2 - No 3 - Unknown		Pedestrian, Motor/Pedalcycle Only: 31 - Helmet 51 - Reflective Clothing 41 - Protective Pads 61 - Lighting											
Sequence of Events																					
Non-Collision: 01 - Cargo/Equip Load or Shift 04 - Equipment Failure 02 - Cross Median/Center 05 - Fire/Explosion 03 - Overhill Runaway 07 - Jackknife		06 - Overturn/Rollover 09 - Ran off Road Left 10 - Ran off Road Right 11 - Separation of Units 12 - Spill (non-hazardous Mat) 18 - Other Non-collision 19 - Unk. Non-collision		Collision: Not Fixed 20 - Animal (Deer Only) 21 - Animal (All Other) 22 - Motor Veh. (In Transport) 23 - Motor Veh. (Stopped) 24 - Motor Veh. (Other Roadway) 25 - Motor Veh. (Parked) 26 - Pedalcycle		27 - Pedestrian 28 - Railway Veh 29 - Work Zone Maint. Equip 30 - Other Movable Object 31 - Unk. Movable Object		Common: Fixed Object 41 - Bridge Pier or Abutment 42 - Bridge Pier or Abutment 43 - Bridge Rail 44 - Culvert 45 - Curb 46 - Ditch		47 - Embankment 48 - Equipment 49 - Fence 50 - Guardrail End 51 - Guardrail Face 52 - Highway Traffic Sign Post 53 - Impact Attenuator/Crash Cushion 54 - Light/Luminare Support		55 - Mail Box 56 - Median Barrier 57 - Overhead Sign Support 58 - Other (Post, Pole, Support, Etc.) 59 - Other (Wall, Building, Tunnel, Etc.) 60 - Tree 61 - Utility Pole 62 - Work Zone Maint. Equipment									
Manner of Collision (Struck Veh): 01 - Not Coll. w/ Motor Veh. 10 - Rear End 20 - Read On		30 - Rear-to-Rear 41 - Angle (↘↗) 42 - Angle (→←) 43 - Angle (↗↘)		50 - Sideswipe Same Dir 60 - Sideswipe Opposite Dir 70 - Backed Into 89 - Unknown		1st / Most Deformed Area: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		1st Deformed: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80		Most Deformed: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80											
Vehicle Type: 01 - Automobile 12 - Pickup Truck 13 - Truck Tractor 14 - Other Truck		15 - Full Size Van 16 - Mini Van 17 - Sport Utility 25 - Motorcycle 26 - Other Motorbike		27 - Pedalcycle 38 - Animal (Ridden) 41 - Pedestrian 51 - Train		81 - School Bus 82 - Passenger Bus 88 - Other 99 - Unk. (Hit and Run Only)		A1 - Pedestrian 81 - None 92 - Rollover 93 - Total 94 - Under Carriage 99 - Other 99 - Unk.		Alcohol / Drug Test Given: 1 - Given - Known Results 2 - Given - Unreliable		3 - Given - Pending 4 - None 5 - Refused		Special Use Only: 1 - Under-Compartment Intrusion 2 - Under-No Intrusion 3 - Under-Unknown		8 - Under-MV in Transport 4 - Over-Other Vehicle 9 - Unk.					
Vehicle Use Code: 01 - Personal 02 - Driver Training 03 - Construction/Maint.		04 - Ambulance 05 - Military 06 - Transport Passenger 07 - Transport Property		08 - Farm Use 09 - Wrecker or Tow 10 - Police 11 - Government 41 - Pedestrian		12 - Fire Fighting 13 - Logging 18 - Other 41 - Pedestrian		A1 - Test Type: 1 - Breath (Alc Only) 2 - Blood		3 - Urine 4 - Serum 8 - Other		0 - None/Minor 2 - Functional Damage 3 - Disabling Damage		4 - Severe/Totalled 5 - Not Applicable		Extent of Deformity: 1 - None 2 - 1-4" 3 - 4-6" 4 - 6-12" 5 - 12-18" 6 - 18-24" 7 - 24-30" 8 - 30-36" 9 - 36-42" 10 - 42-48" 11 - 48-54" 12 - 54-60" 13 - 60-66" 14 - 66-72" 15 - 72-78" 16 - 78-84" 17 - 84-90" 18 - 90-96" 19 - 96-102" 20 - 102-108" 21 - 108-114" 22 - 114-120" 23 - 120-126" 24 - 126-132" 25 - 132-138" 26 - 138-144" 27 - 144-150" 28 - 150-156" 29 - 156-162" 30 - 162-168" 31 - 168-174" 32 - 174-180" 33 - 180-186" 34 - 186-192" 35 - 192-198" 36 - 198-204" 37 - 204-210" 38 - 210-216" 39 - 216-222" 40 - 222-228" 41 - 228-234" 42 - 234-240" 43 - 240-246" 44 - 246-252" 45 - 252-258" 46 - 258-264" 47 - 264-270" 48 - 270-276" 49 - 276-282" 50 - 282-288" 51 - 288-294" 52 - 294-300"					
Weather Condition: 1 - Clear (no adverse conditions) 2 - Rain		3 - Cloudy 4 - Sleet, Hail 5 - Snow		6 - Fog, Smog, Smoke 7 - Blowing Sand 8 - Other 9 - Unk.		8 - Severe Crosswinds		A1 - Test Results: 1 - Two-way, Not Divided 2 - Two-way, Divided, Unprotected Median 3 - Two-way, Divided, Barrier		4 - One-Way 5 - Other		Trafficway: 1 - 1st 2 - 2nd 3 - 3rd		Road Character: 1 - Straight - Level 2 - Straight - On grade 3 - Dry 4 - Wet 5 - Snow 6 - Ice 7 - Water (Standing, etc.) 8 - Other		Road Surface Condition: 1 - 1 2 - 2 3 - 3 4 - 4 5 - 5 6 - 6 7 - 7 8 - 8 9 - 9 10 - 10 11 - 11 12 - 12 13 - 13 14 - 14 15 - 15 16 - 16 17 - 17 18 - 18 19 - 19 20 - 20 21 - 21 22 - 22 23 - 23 24 - 24 25 - 25 26 - 26 27 - 27 28 - 28 29 - 29 30 - 30 31 - 31 32 - 32 33 - 33 34 - 34 35 - 35 36 - 36 37 - 37 38 - 38 39 - 39 40 - 40 41 - 41 42 - 42 43 - 43 44 - 44 45 - 45 46 - 46 47 - 47 48 - 48 49 - 49 50 - 50 51 - 51 52 - 52 53 - 53 54 - 54 55 - 55 56 - 56 57 - 57 58 - 58 59 - 59 60 - 60 61 - 61 62 - 62 63 - 63 64 - 64 65 - 65 66 - 66 67 - 67 68 - 68 69 - 69 70 - 70 71 - 71 72 - 72 73 - 73 74 - 74 75 - 75 76 - 76 77 - 77 78 - 78 79 - 79 80 - 80 81 - 81 82 - 82 83 - 83 84 - 84 85 - 85 86 - 86 87 - 87 88 - 88 89 - 89 90 - 90 91 - 91 92 - 92 93 - 93 94 - 94 95 - 95 96 - 96 97 - 97 98 - 98 99 - 99 100 - 100					
Light Condition: 1 - Daylight 2 - Dawn		3 - Dusk 4 - Dark (Lighting Unspecified) 5 - Dark (Street Lamp Lit)		6 - Dark (Street Lamp Not Lit) 7 - Dark (No Lights)		Junction Type: 01 - Crossover 02 - Driveway		03 - Five/More Points 04 - Four-way Intersection 05 - Railway Grade Crossing		07 - Shared Use Paths or Trail 08 - T-Intersection 09 - Traffic Circle		12 - Y-Intersection 13 - Nonjunction 89 - Unk.		02 - Flashing Traffic Signal 11 - RR (X-bucks, Lights & Gates) 12 - RR (X-bucks & Lights) 13 - RR (X-bucks Only)		21 - Officer or Flagman 22 - Oncoming Emergency Vehicle 31 - Pavement Markings (only) 41 - Stop Sign 42 - School zone Sign		43 - Yield Sign 44 - Work Zone 45 - Other Warning Signs		51 - Flashing Beacon 55 - None 89 - Unk.	
Contributing Factors: 01 - Disregarded Signs, Signals, Etc. 02 - Distracted/Inattention 03 - Driving Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Asleep 08 - Followed Too Closely		09 - Made an Improper Turn 10 - Medical Related 12 - Aggressive Operation of Vehicle 13 - Over-correcting/Over-steering 14 - Swerving to Avoiding Object 15 - Wrong Side or Wrong Way 16 - Under the Influence 17 - Vision Obscured (Within Unit) 18 - Improper Lane Usage/Change 19 - Cell Phone 20 - Texting 28 - Other Improper Action		29 - Unk.		Roadway: 30 - Debris 31 - Non-highway Work 32 - Obstruction in Roadway 33 - Road Surface Condition (i.e., Wet) 34 - Rut, Holes, Bumps 35 - Shoulders (None, Low Soft, High) 36 - Traffic Control Device (i.e. Missing) 37 - Work Zone (Const./Maint./Utility) 38 - Worn, Travel-Polished Surface		48 - Other 49 - Unk.		Non-Motorist: 50 - Inattentive 51 - Lying &/or Illegally in Roadway 52 - Failure to Yield R of W. 53 - Not Visible (Dark Clothing) 54 - Disregard Signs, Signals, Etc. 55 - Improper Crossing 56 - Daring 57 - Wrong Side of Road 58 - Other 59 - Unk. 60 - Under the Influence 61 - Other Person Under Influence		62 - Obstruction 63 - Weather Cond. 68 - Other 69 - Unk.		Vehicle Defect: 70 - Brakes 71 - Steering 72 - Power Plant 73 - Tires/Wheel 74 - Lights 75 - Signals		76 - Windows/Shield 77 - Restraint System 78 - Truck Coupling 79 - Cargo 80 - Fuel System 88 - Other 89 - Unk.					

May 12, 2015

The Honorable T. Scott Beck  
Commissioner  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

Re: Mekilit Alemu v. Amick Farms  
WCC File No.: 1309242  
Claim No.: WC555-C70326  
Date of Injury: 7/8/2013  
Our File No.: 001142-00980

Hawi Kebede v. Amick Farms  
WCC File No.: 1308971  
Claim No.: WC555-C70336  
Date of Injury: 7/8/2013  
Our File No.: 001142-00981

Shishay Atsbeha v. Amick Farms  
WCC File No.: 1308972  
Claim No.: WC555-C70328  
Date of Injury: 7/8/2013  
Our File No.: 001142-00982

Yosef Habtegiorgis v. Amick Farms  
WCC File No.: 1309144  
Claim No.: WC555-C70330  
Date of Injury: 7/8/2013  
Our File No.: 001142-00984

Shewangiz Moges v. Amick Farms  
WCC File No.: 1308391  
Claim No.: WC555-C70338  
Date of Injury: 7/8/2013  
Our File No.: 001142-00985

Tizezew Tadesse v. Amick Farms  
WCC File No.: 1308970  
Claim No.: WC555-C70331  
Date of Injury: 7/8/2013  
Our File No.: 001142-00986

William Chick v. Amick Farms  
WCC File No.: 1322500  
Claim No.: WC555-C70325  
Date of Injury: 7/8/2013  
Our File No.: 001142-00983

**SCWCC**  
MAY 12 2015  
**JUDICIAL**

Dear Commissioner Beck:

These seven cases all stem from a car accident on July 8, 2013. Derrick Williams represents all of the claimants; Scott Garrett represents Employer Solutions Staffing Group (ESSG); and Stan Lacy and I represent Amick Farms. Initially, there was confusion about which employer was connected to which claimant, but we have now aligned the parties properly. Accordingly, enclosed for your review and execution are the original and one copy each of a Consent Order of Dismissal with Prejudice in each of these files.

283414

COLLINS & LACY, P.C.

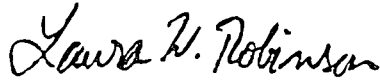


If the Orders meet with your approval, we would very much appreciate your signing the originals, returning a copy of each Order back to our office in the enclosed envelopes I have provided.

Thank you for your kind assistance with this. If you have any questions, or need additional information from us, please do not hesitate to ask.

With highest regards,

Sincerely,



Laura W. Robinson

LWR

Enclosures

cc: Scott Garrett, Esquire, McAngus Goudelock & Courie, LLC  
Amanda Goldsberry, Amick Farms, LLC  
Derrick L. Williams, Esquire, Mickle & Bass, LLC  
Geisser Amaro, Liberty Insurance Corporation  
Kathy McCarty  
(all with enclosures)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SALUDA )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Shewangiz Moges, )  
 )  
Employee/Claimant, )

WCC FILE NO. 1308391

V. )

CONSENT ORDER DISMISSING  
AMICK FARMS, LLC AND  
LIBERTY MUTUAL INSURANCE GROUP

Amick Farms, LLC, )  
 )  
Carrier/Defendants, )

And )

Liberty Mutual Insurance Group, )  
 )  
Carrier/Defendants, )

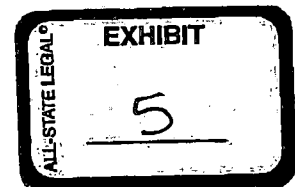
And )

Employer Solutions Staffing )  
Group, LLC, )

Employer, )

Accident Fund National Ins. Corp., )  
 )  
Carrier/Defendants. )

This matter comes before me on agreement by all parties to dismiss with prejudice Defendants Amick Farms, LLC and Liberty Mutual Insurance Group from this action. The Form 50 filed by Claimant listed both Amick Farms and Employer Solutions Staffing Group (ESSG) as employers of Claimant at the time of the alleged accident on July 8, 2013. However, Claimant was an employee of ESSG, a temporary staffing company that through a contract dated January 30, 2013, provided staffing services to Amick Farms. As part of that contract, ESSG agreed that it was the sole employer of its employees, that it provided workers' compensation insurance coverage for them, and that it would indemnify Amick Farms from, among other things, workers' compensation claims brought by its employees against Amick Farms. Therefore, and by agreement of all parties,

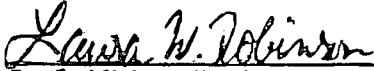


Defendants Amick Farms, LLC and Liberty Mutual Insurance Group are hereby dismissed from this action with prejudice.


AND IT IS SO ORDERED.

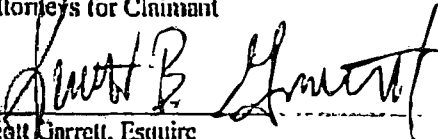
  
Commissioner Mike Campbell

We so move:

  
Stanford E. Lacy, Esquire  
Laura W. Robinson, Esquire  
Collins & Lacy, P.C.  
Post Office Box 12487  
Columbia, SC 29211  
803-256-2660  
Attorneys for Amick Farms, LLC and  
Liberty Mutual Insurance Group

We so consent:

  
Derrick L. Williams, Esquire  
Andrea C. Roche, Esquire  
Mickle & Bass  
Post Office Box 5639  
Columbia, SC 29250  
Attorneys for Claimant

  
Scott Garrett, Esquire  
McAngus, Goudelock & Courie, LLC  
Post Office Box 12519  
Columbia, SC 29211  
Attorneys for Employer Solutions Staffing  
Group and Accident Fund National Insurance Company

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 Barbara Cheesaborn on May 20, 2015

Columbia, South Carolina  
April 27, 2015

STATE OF SOUTH CAROLINA )  
COUNTY OF SALUDA )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Hawi Kebede , )  
Employee/Claimant, )

WCC FILE NO. 1308971

V. )

CONSENT ORDER DISMISSING  
AMICK FARMS, LLC AND  
LIBERTY MUTUAL INSURANCE GROUP

Amick Farms, LLC, )  
Carrier/Defendants, )

And )

Liberty Mutual Insurance Group, )  
Carrier/Defendants, )

And )

Employer Solutions Staffing  
Group, LLC, )

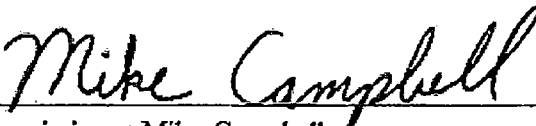
Employer, )

Accident Fund National Ins. Corp., )  
Carrier/Defendants. )

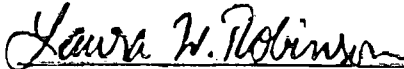
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Defendants Amick Farms, LLC and Liberty Mutual Insurance Group are hereby dismissed from this action with prejudice.

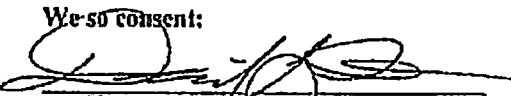
AND IT IS SO ORDERED.

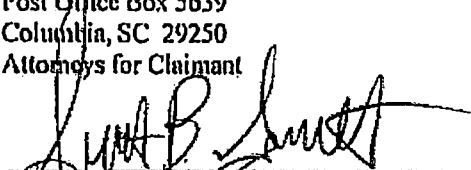
  
\_\_\_\_\_  
Commissioner Mike Campbell

We so move:

  
\_\_\_\_\_  
Stanford E. Lacy, Esquire  
Laura W. Robinson, Esquire  
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Post Office Box 12487  
Columbia, SC 29211  
803-256-2660  
Attorneys for Amick Farms, LLC and  
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Group and Accident Fund National Insurance Company

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By Barbara Cheeseboro on May 20, 2015

Columbia, South Carolina  
April 27, 2015

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SALUDA )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Melilli Alemt, )  
 )  
Employee/Claimant, )

WCC FILE NO. 1309242

V. )

CONSENT ORDER DISMISSING  
AMICK FARMS, LLC AND  
LIBERTY MUTUAL INSURANCE GROUP

Amick Farms, LLC, )  
 )  
Carrier/Defendants, )

And )

Liberty Mutual Insurance Group, )  
 )  
Carrier/Defendants, )

And )

Employer Solutions Staffing )  
Group, LLC, )

Employer, )

Accident Fund National Ins. Corp., )

Carrier/Defendants. )

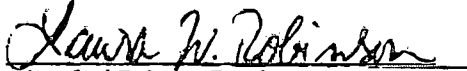
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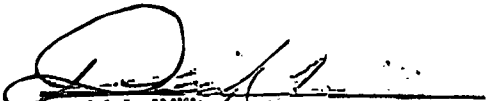
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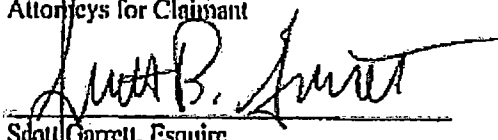
  
\_\_\_\_\_  
Commissioner Mike Campbell

We so move:

  
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Laura W. Robinson, Esquire  
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Attorneys for Amick Farms, LLC and  
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Group and Accident Fund National Insurance Company

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By Barbara Cheeseboro on May 20, 2015

Columbia, South Carolina  
April 27, 2015

FRED FOSTER WEST, SR., SWORN.

DIRECT EXAMINATION

BY MR. COOPER:

Q. Give us your full name for the record?

A. Sure. Fred Foster West, Sr.

Q. You've got your senior in there?

A. Yeah. Got a Jr., somewhere.

Q. I've got a 10 week old at home?

A. Oh, wow.

(The deposition went off the record.)

BY MR. WILSON:

Q. Mr. West, you've given a deposition before?

A. Yes.

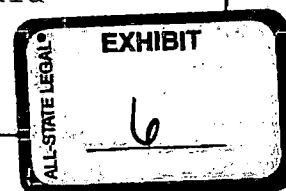
Q. The rules are state forward if I ask you a question I need you to give me a verbal truthful response. Okay?

A. Yes.

Q. The verbal is important because Eve is taking down everything I ask and everything you say uh-huh's ore you a us a are going to cause me to say yes or no or whatever?

A. Yes.

Q. You're under oath the same as you would be in a court of law. Do you know that?



1 A. No.

2 Q. And one of the reasons that ESSG in this  
3 order accepted that they were the sole employer of  
4 the workers' is because that's what you contracted  
5 with them for Liz hi object to the form?

6 Q. Do you understand that?

7 MS. BLACK: Object to the form.

8 A. I don't understand your question.

9 Q. Turn to page 6. Paragraph 15. The  
10 subtitle is independent contractor. Do you see  
11 that?

12 A. Yes, sir.

13 Q. The fourth line down, all the way to the  
14 right, starting with under --

15 A. Yes, sir.

16 Q. Under no circumstances shall any  
17 employee of service provider or employee of its  
18 subcontractors be deemed or construed to be an  
19 employee of client." Do you see that?

20 A. Yes, sir.

21 Q. That's the agreement that you entered in  
22 with Employer Solutions Staffing Group?

23 A. Yes, sir.

24 Q. And your understanding is at no time  
25 would any of the workers provided to Amick Farms

1 Q. To the best of your knowledge?

2 A. To the best of my knowledge.

3 Q. Make sure the record is clear. To the  
4 best of your knowledge while riding home in the  
5 van the workers were not involved in the course of  
6 their employment with Amick Farms, LLC?

7 MS. BLACK: Object to the form.

8 A. Not to my knowledge.

9 Q. And to your knowledge, Amick Farms, LLC,  
10 did not provide the transportation to those  
11 temporary workers to go home?

12 A. That is correct.

13 Q. For how many years has Amick Farms been  
14 using temporary workers?

15 A. Again, I'm not evasive, I don't know.  
16 I've been there since '99. It hasn't been the  
17 hole time, but I don't know when we started using  
18 outside services.

19 Q. All right. What benefits does Amick  
20 Farms receive from the temporary workers?

21 A. Define benefits for me so I understand  
22 how to answer your question.

23 Q. Why not just have all full-time labor?

24 A. You are subject to the marketplace as  
25 far as applicant flow.

AMANDA CHASE GOLDSBERRY, SWORN.

DIRECT EXAMINATION

BY MR. WILSON:

Q. Full name for the record?

A. Amanda Chase Goldsberry.

Q. Have you been deposed before?

A. No.

Q. A couple of rules, I just need you to answer my questions truthfully and verbally.

Okay?

A. Yes.

Q. Both are equally as important. The verbal part is just so the record is clear as to what your answer is to my question. Okay?

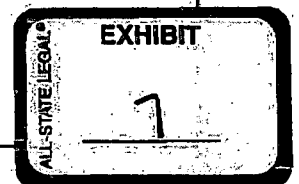
A. Yes.

Q. The truthful part is also important because your deposition is under oath the same way as it would be in a court of law. Do you know that?

A. Yes.

Q. If I ask you something that doesn't make any sense, you want me to ask it a different way, you just don't understand what I'm asking, let me know, I'll ask the question a different way.

Okay?



1 MS. BLACK: Object to the form.

2 BY MR. WILSON:

3 Q. Right?

4 A. Yes.

5 Q. And you agree that Amick Farms made the  
6 representation to the workers' comp commission  
7 that ESSG was the sole employee of these workers?

8 MS. BLACK: Object to the form.

9 A. Yes.

10 Q. (Employer)?

11 Q. How many active workers' compensation  
12 claims do you all have at a time? Give me a  
13 reasonable best estimate?

14 A. Currently?

15 Q. Yes.

16 A. I have 169.

17 Q. And as far as estimates go, I'm going to  
18 say that's pretty --

19 A. That's my job.

20 Q. Do you separate those brought by  
21 full-time employees versus temporary workers?

22 A. I do not file -- or open a claim for  
23 temporary employees unless I receive a form 50 and  
24 I'm advised by counsel to file a claim.

25 Q. And you don't open a claim for temporary

1 we're clear. I said Exhibit 1. This is the  
2 letter to the commission that you and I went over.

3 A. Uh-huh (indicating an affirmative  
4 response).

5 Q. Yes?

6 A. Yes, sir.

7 Q. And this letter 1 is for Kabede; 2 is  
8 for Lemu; 3 is for Moses, and 4 is for Tadese. Do  
9 you agree with that?

10 A. Yes.

11 Q. And they're corresponding orders,  
12 dismissing Amick Farms from the compensation for  
13 each of these exhibits (sic)?

14 A. Yes, sir.

15 Q. Okay. And in each of the orders, Amick  
16 Farms represented to the commission that ESSG was  
17 the sole employer of these employees?

18 MS. BLACK: Object to the form.

19 BY MR. WILSON:

20 Q. Right?

21 A. Yes.

22 Q. Did you have any internal talks with  
23 anybody at Amick Farms about this representation  
24 being made to the workers' compensation  
25 commission, not your counsel?

1 A. I did, but counsel was there.

2 Q. Counsel was there. These orders were  
3 filed with the commission with the approval of  
4 Amick Farms. True?

5 MS. BLACK: Object to the form.

6 A. To my knowledge, yes.

7 Q. As we sit here, do you know will any  
8 other temporary workers from ESSG filed workers'  
9 compensation claims based on their work at the  
10 Amick Farms plant?

11 A. No, sir.

12 Q. You don't know whether they did or  
13 didn't file a claim?

14 A. Yeah, I don't know.

15 Q. Will they did or they didn't, you would  
16 agree with me that Amick Farms would have never  
17 been responsible to pay the claim?

18 MS. BLACK: Object to the form.

19 A. Correct.

20 Q. Did you have any role at Amick Farms  
21 about placing these workers in the various  
22 divisions?

23 A. No, sir.

24 Q. Did you have any role in telling them  
25 what jobs to do or anything?

**COPY**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
) ELEVENTH JUDICIAL CIRCUIT  
COUNTY OF LEXINGTON ) 2016-CP-32-\_\_\_\_\_

Tizezew Tadese,  
  
Plaintiff,

vs.

Amick Farms, LLC and OSI Group,  
  
Defendants.

**2016CP3202397**

**COMPLAINT  
(JURY TRIAL DEMANDED)**

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON, SC

2016 JUL -7 AM 10:18

**FILED**

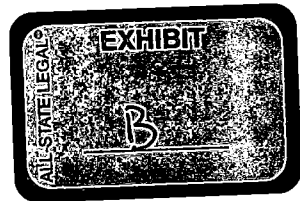
1. The Plaintiff is a citizen and resident of Richland County, South Carolina and at the time of the occurrence referenced herein was a passenger in a 1999 Ford Van owned by East Coast Labor Solutions.

2. Upon information and belief, Defendant, Amick Farms, LLC, LLC, is a business entity organized and existing under the laws of a State of the United States of America and owns property and/or does business in Batesburg, South Carolina.

3. Upon information and belief, Defendant, OSI Group, is a business entity organized and existing under the laws of a State of the United States of America and owns property and/or does business in Batesburg, South Carolina.

4. This action is brought by the Plaintiff pursuant to §15-5-90 of the South Carolina Code of Laws to recover for the conscious pain and suffering inflicted on the Plaintiff and pursuant to §15-51-10 et seq. of the South Carolina Code of Laws for the wrongful act, neglect or fault of the Defendants which caused the injuries sustained by the Plaintiff.

5. That on or about July 8, 2013 Rahmel York was employed by Amick Farms, LLC and was directed by his supervisor to drive the 1999 Ford Van to transport several employees



home. The Plaintiff was one of the employees that occupied the 1999 Ford Van as a passenger and said van was operated by Mr. York. That at approximately 9:00 a.m., Mr. York, who was traveling Eastbound on Interstate 20 in Gilbert, South Carolina, fell asleep while driving said van and veered off the left side of the roadway and overcorrected to the right consequently causing the van to overturn and flip multiple times striking an embankment and coming to rest on said embankment.

6. At all times relevant hereto, Rhamel York, was employed and served as an agent for Defendant, Amick Farms, LLC and OSI Group and was acting within the course and scope of his employment.

7. As a result of the above referenced occurrence, the Plaintiff sustained injuries and burns to her back, left arm and right hand and sustained permanent scarring as a result of said burns.

**FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligent Entrustment)**

8. The Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 7 as set forth herein.

9. On the day before the above referenced accident, Rhamel York worked the night shift at Amick Farms, LLC from 11:15 p.m. on Sunday, July 7, 2013 through 8:30 a.m. on Monday, July 8, 2013. Additionally, prior to his Sunday shift, Mr. York had worked the preceding Friday and Saturday night shifts from 11:15 p.m. until 8:30 a.m. On the day of the above described accident, Mr. York had worked three (3) consecutive days on night shift from 11:15 p.m. to 8:30 a.m. and despite being aware of his work schedule, Mr. York was instructed by his supervisor to transport the Plaintiff and the other employees home in said transportation van.

10. That the injuries, harm and damages incurred by the Plaintiff was a direct and proximate result of Mr. York's negligent and reckless operation of said transportation van and the Defendants knew or should have known that Mr. York's operation of said vehicle was likely to pose an unreasonable risk of harm to others.

11. The Defendants as the employer of Rhamel York had the right to permit and the power to prohibit the use of this van by Rhamel York.

12. The Defendants knew, or had reason to know, that Rhamel York was likely to drive the van in a negligent and reckless manner.

13. As a direct result of Defendants negligently entrusting Rhamel York, who operated said vehicle owned by the Defendants in a negligent and reckless manner, the Plaintiff, without any contributory negligence, did suffer injuries, damages and harm.

**FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligent Supervision)**

13. The Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 13 as set forth herein.

14. That upon information and belief, the Defendants owed statutory and common law duties to the public at large and to the Plaintiff in particular, to refrain from negligently supervising employees.

15. These Defendants knew or reasonably should have known that Rhamel York had worked multiple and consecutive overtime shifts prior to the date of the above described accident and was not in suitable condition to operate said van in such a manner to safely transport the Plaintiff and other employees home.

16. As a direct, foreseeable and proximate result of the negligent, grossly negligent, reckless, willful and wanton acts and/or omissions of the Defendants, the Plaintiff suffered pain and physical harm.

17. Due to the willful, wanton, reckless, grossly negligent and negligent acts of the Defendants as set out above, the Plaintiff is entitled to recover actual and punitive damages from the Defendants as determined by a jury.

**WHEREFORE**, Plaintiff prays for judgment against Defendants jointly and severely in a sum to be determined by a jury together with punitive damages, costs of this action and for such other and further relief as this Court deems just, equitable and appropriate.

The Deas Law Firm



Garryl L. Deas, Esquire  
Attorney for Plaintiffs  
Post Office Box 1211  
109 N. Main Street  
Sumter, South Carolina 29151  
(803) 775-7004  
(803) 773-9037 fax

Sumter, South Carolina

July 1, 2016

STATE OF SOUTH CAROLINA

**ORIGINAL**

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2017 MAY -8 PM 2:06

Tizezew Tadesc,

Civil Action No. 2016-CP-32-02397

Plaintiff,

v.

Amick Farms, LLC and OSI Group,

Defendants.

**DEFENDANTS' MOTION TO DISMISS**

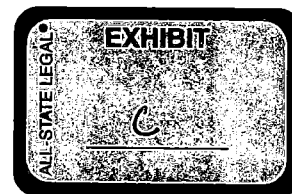
**TO: THE ABOVE-NAMED PLAINTIFF AND HIS/HER COUNSEL, GARRYL DEAS, ESQUIRE**

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as counsel may be heard, Defendants Amick Farms, LLC and OSI Group ("Defendants"), through their undersigned attorneys, will move at a time and place to be arranged by the Court and counsel involved for an Order dismissing this lawsuit on the grounds that this Court lacks subject-matter jurisdiction under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure as the claims of Plaintiff Tizezew Tadesc, ("Plaintiff") are barred by the exclusivity provision of the South Carolina Workers' Compensation Act, S.C. Code Ann. §42-1-540 and Plaintiff has already received his/her remedy in that forum; and,

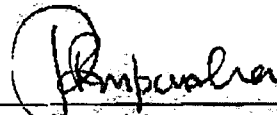
This motion is further supported by the pleadings in the case, any affidavits as well as any memoranda of law presented at or prior to the hearing.

Defendants have complied with their obligations under Rule 11 of the South Carolina Rules of Civil Procedure.

*[signature block following]*



**HAYNSWORTH SINKLER BOYD, P.A.**



---

Roopal S. Ruparelia (SC Bar No. 16003)  
1201 Main Street, 22<sup>nd</sup> Floor  
Post Office Box 11889 (29211-1889)  
Columbia, South Carolina 29201  
(803) 779.3080 - telephone  
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Charlie E. Ipock (SC Bar No. 101258)  
135 S. Dargan Street, Suite 300  
Florence, South Carolina 29506  
(843) 669.6002 – telephone  
(843) 669.3815 – fax  
cipock@hsblawfirm.com

May 4, 2017  
Columbia, South Carolina

*Attorneys for Defendants*

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

**ORIGINAL**

IN THE COURT OF COMMON PLEAS

Hawi Kebede, Mckilit A. Lemu and  
Shewangiz K. Moges,

Plaintiffs,

v.

Amick Farms, LLC and OSI Group,

Defendants.

Civil Action No. 2016-CP-32-02419

**CERTIFICATE OF SERVICE**

Tizezew Tadesc,

Plaintiff,

v.

Amick Farms, LLC and OSI Group,

Defendants.

Civil Action No. 2016-CP-32-02399

SP  
FILED  
MAY -8 PM 2:06  
LEXINGTON  
SOUTH CAROLINA  
CLERK OF COURT

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 4 day of May, 2017, caused the foregoing DEFENDANTS' MOTION TO DISMISS to be served via U.S. mail, postage prepaid, and/or by some other means as referenced below, on counsel of record at the address(es) shown below:

**VIA U.S. MAIL ONLY**

Garryl L. Deas, Esquire  
The Deas Law Firm  
109 N. Main Street  
P.O. Box 1211  
Sumter, SC 29151  
deaslawfirm@yahoo.com

*Counsel for Plaintiff*

Racheal M. Dykes  
Racheal M. Dykes  
Haynsworth Sinkler Boyd, P.A.

**ORIGINAL**

STATE OF SOUTH CAROLINA

**FILED**

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2017 MAY -8 PM 2:05

Hawi Kebede, Mekilit A. Lemu and  
Shewangiz K. Moges,

Civil Action No. 2016-CP-32-02419

Plaintiffs,

LISA D. COLE  
CLERK OF COURT

**DEFENDANTS' MOTION TO DISMISS**

v.

Amick Farms, LLC and OSI Group,

**JP**

Defendants.

**TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR COUNSEL, GARRYL DEAS, ESQUIRE**

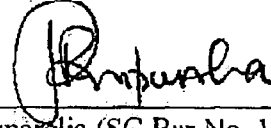
YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as counsel may be heard, Defendants Amick Farms, LLC and OSI Group ("Defendants"), through their undersigned attorneys, will move at a time and place to be arranged by the Court and counsel involved for an Order dismissing this lawsuit on the grounds that this Court lacks subject-matter jurisdiction under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure as the claims of Plaintiffs Hawi Kebede, Mekilit A. Lemu, and Shewangiz K. Moges ("Plaintiffs") are barred by the exclusivity provision of the South Carolina Workers' Compensation Act, S.C. Code. Ann. §42-1-540 and Plaintiffs have already received their remedy in that forum; and,

This motion is further supported by the pleadings in the case, any affidavits as well as any memoranda of law presented at or prior to the hearing.

Defendants have complied with their obligations under Rule 11 of the South Carolina Rules of Civil Procedure.

*[signature block following]*

HAYNSWORTH SINKLER BOYD, P.A.



---

Roopal S. Ruparelia (SC Bar No. 16003)  
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(843) 669.3815 - fax  
cipock@hsblawfirm.com

May 4, 2017  
Columbia, South Carolina

*Attorneys for Defendants*

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

**ORIGINAL**

COURT OF COMMON PLEAS

Hawi Kcbede, Mekilit A. Lemu and  
Shewangiz K. Moges,

Civil Action No. 2016-CP-32-02419

Plaintiffs,

**CERTIFICATE OF SERVICE**

v.

Amick Farms, LLC and OSI Group,

Defendants.

Tizeczw Tadese,

Civil Action No. 2016-CP-32-02397

Plaintiff,

v.

Amick Farms, LLC and OSI Group,

Defendants.

FILED  
2017 MAY -8 PM 2:05  
CLERK OF COURT  
LEXINGTON, SOUTH CAROLINA

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 4 day of May, 2017, caused the foregoing DEFENDANTS' MOTION TO DISMISS to be served via U.S. mail, postage prepaid, *and/or by some other means as referenced below*, on counsel of record at the address(es) shown below:

**VIA U.S. MAIL ONLY**  
Garryl L. Deas, Esquire  
The Deas Law Firm  
109 N. Main Street  
P.O. Box 1211  
Sumter, SC 29151  
deaslawfirm@yahoo.com

*Counsel for Plaintiff*

Racheal M. Dykes  
Racheal M. Dykes  
Haynsworth Sinkler Boyd, P.A.



The underlying case involves an automobile accident that occurred on July 8, 2013. The Plaintiffs were injured when the driver of their passenger van fell asleep behind the steering wheel and drove the van into an embankment. The Plaintiffs had worked an overnight shift at Amick Farms and were on their way home at the time of the accident. The Plaintiffs filed a Workers' Compensation claim against the Defendants and ESSG based on this incident. On May 12, 2015, the Defendants sent correspondence to the South Carolina Workers Compensation Commission ("the Commission") regarding the proper parties to the claim. In their letter, the Defendants stated "initially, there was some confusion about which employer was connected to which claimant, but we have now aligned the parties properly." The Defendants attached a Consent Order to their correspondence which provided that ESSG was the Plaintiffs' "sole employer" and that the Defendants should be dismissed from the Workers' Compensation claim. The Commission accepted the representations made by the Defendants and signed the Consent Order dismissing the Defendants. The Plaintiffs apparently resolved their Workers' Compensation claim with ESSG.

The Plaintiffs then filed the instant case against Defendants based on their failure to monitor and supervise Mr. York. In response to the Plaintiffs' allegations, the Defendants filed an Answer with corresponding affirmative defenses. The Defendants did not plead the affirmative defense of exclusivity based on the South Carolina Workers' Compensation Act ("the Act") in their original Answer. The Defendants subsequently amended their Answer and asserted this defense based on their new averment that they are the Plaintiffs' statutory employer. The Defendants then filed the current Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. They now claim they are the statutory employer of the Plaintiffs and are immune from the Plaintiffs' lawsuit based on the exclusivity provision of the Act.



## LAW

Initially, the Court acknowledges generally that the South Carolina Workers' Compensation Act (the Act) provides the legal framework to compensate employees who are injured in accidents arising out of and in the course of their employment. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 71 (1980). The Act, and thus the Workers' Compensation forum, provides the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, 833 (2004). More specifically, the exclusivity provision of the Act prevents an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. Edens v. Bellini, 359 S.C. 433, 441–43, 597 S.E.2d 863, 867–68 (Ct. App. 2004). This exclusivity provision also extends to workers not directly employed by the Defendant if the worker can be classified as a statutory employee. Edens, 359 S.C. at 445, 597 S.E.2d at 869. A worker is a statutory employee if the activity he performed for the owner satisfies one of the following three (3) tests: (1) Is the activity an important part of the owner's business or trade; (2) Is the activity necessary, essential, and integral part of the owner's trade, business, or occupation; or (3) Has the identical activity previously been performed by the owner's employees. See Riden v. Kemet Elecs. Corp., 313 S.C. 261, 263-264, 437 S.E.2d 156, 157-158 (Ct. App. 1993).

South Carolina also recognizes the doctrine of judicial estoppel. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. See Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 476 (2000). A party cannot assert one set of facts in litigation and then change those facts in subsequent litigation "when the initial version no longer suits him." Hayne, 327 S.C. at 252. Judicial estoppel may be properly applied to prevent a party from asserting



a legal position regarding their employment relationship with another when that position contradicts the legal position they previously asserted regarding their employment status. *See Allen v. Zurich Ins., Co.*, 667 F.2d 1162 (4<sup>th</sup> Cir. 1982). This is because the purpose of the doctrine is to protect the integrity of the judicial process and the courts. *Quinn*, 343 S.C. at 414, 540 S.E.2d at 475. The doctrine punishes those who take the truth-seeking function of the system lightly. *Hayne*, 327 S.C. at 252. Judicial estoppel is an equitable concept and the application of the doctrine is discretionary. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31 (2003).

To determine the applicability of judicial estoppel, South Carolina courts analyze the following five elements:

1. two inconsistent positions must be taken by the same party or parties in privity with each other;
2. the two inconsistent positions were both made pursuant to sworn statements;
3. the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
4. the inconsistency must be part of an intentional effort to mislead the court; and
5. the two positions must be totally inconsistent; that is, the truth of one position must necessarily preclude the veracity of the other position.

*See Cothran v. Brown*, 357 S.C. 210, 214, 592 S.E.2d 629, 632 (2004).

This Court finds that the Defendants' actions meet the elements of judicial estoppel set forth in *Cothran*. The Defendants represented to the Workers' Compensation Commission that ESSG was the "sole employer" of the workers. According to the Defendants, this representation was made based on the contract which stated that ESSG was the sole employer of the Plaintiffs and that "under no circumstances" would the Defendants ever be deemed the employer of the Plaintiffs. This representation meets all five of the elements of judicial estoppel as the Defendants now claim they are the employer of the workers. The representation was:



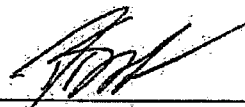
1. Inconsistent with their current position;
2. Made in the form of a Consent Order which was sworn to by the Defendants;
3. Made during related proceedings with the same parties and the same facts;
4. Submitted as part of the Defendants' plan to either mislead the Commission or this Court regarding the employment status of the workers;
5. Totally inconsistent with their current claim that they are the Plaintiffs' employer.

CONCLUSION

The Court finds these Defendants are judicially estopped from asserting that they are the employer of the Plaintiffs, statutory or otherwise, based on their prior assertions to the contrary. The Defendants represented that ESSG is the sole employer of the Plaintiffs to suit their needs in the Workers' Compensation forum. Now, they assert that they are the employer of the Plaintiffs in this forum to avoid liability. This Court will not allow the Defendants to change their position regarding the Plaintiffs' employment in an effort to avoid liability.

WHEREFORE, the Defendants' Motion to Dismiss the Plaintiffs' Complaint under the exclusive remedy provisions of the South Carolina Workers' Compensation Act is DENIED.

It is so Ordered.

  
\_\_\_\_\_  
The Honorable R. Knox McMahon  
Circuit Court Judge

This 28 day of August, 2017  
Lexington County, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF LEXINGTON )  
 )  
Hawi Kebede, Mekilit A. Lemu, and )  
Shewangiz K. Moses, )  
 )  
Plaintiffs, )  
v. )  
 )  
Amick Farms, LLC and OSI Group, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-32-02419

**ORDER**

This matter came before the Court for a hearing on August 2, 2017. The Defendants filed a Motion to Dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(1), SCRPC. Representing the Plaintiff was Cooper Wilson, Esquire. Representing the Defendants was Roopal Ruparelia, Esquire. For the following reasons, Defendants' Motion is hereby DENIED.

The Defendants Amick Farms, LLC and OSI Group (collectively "Amick Farms") own and operate a chicken plant that produces a line of chicken products for their foodservice, industrial, and retail customers. In 2013, Amick Farms entered into a contract with Employer Solutions Staffing Group ("ESSG"), a temporary staffing company. The contract stated that ESSG would provide "supplemental labor" to Amick Farms for use at their chicken plant. The Plaintiffs are refugees from Ethiopia who were hired by ESSG to perform supplemental labor at Amick Farms under the terms set forth in the contract.

The contract stated that the employees of ESSG – to include the Plaintiffs – "are and will be employed solely by [ESSG]." The contract also stated "under no circumstances shall an employee of [ESSG] or its subcontractors be deemed or construed to be an employee of Amick Farms."



The underlying case involves an automobile accident that occurred on July 8, 2013. The Plaintiffs were injured when the driver of their passenger van fell asleep behind the steering wheel and drove the van into an embankment. The Plaintiffs had worked an overnight shift at Amick Farms and were on their way home at the time of the accident. The Plaintiffs filed a Workers' Compensation claim against the Defendants and ESSG based on this incident. On May 12, 2015, the Defendants sent correspondence to the South Carolina Workers Compensation Commission ("the Commission") regarding the proper parties to the claim. In their letter, the Defendants stated "initially, there was some confusion about which employer was connected to which claimant, but we have now aligned the parties properly." The Defendants attached a Consent Order to their correspondence which provided that ESSG was the Plaintiffs' "sole employer" and that the Defendants should be dismissed from the Workers' Compensation claim. The Commission accepted the representations made by the Defendants and signed the Consent Order dismissing the Defendants. The Plaintiffs apparently resolved their Workers' Compensation claim with ESSG.

The Plaintiffs then filed the instant case against Defendants based on their failure to monitor and supervise Mr. York. In response to the Plaintiffs' allegations, the Defendants filed an Answer with corresponding affirmative defenses. The Defendants did not plead the affirmative defense of exclusivity based on the South Carolina Workers' Compensation Act ("the Act") in their original Answer. The Defendants subsequently amended their Answer and asserted this defense based on their new averment that they are the Plaintiffs' statutory employer. The Defendants then filed the current Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. They now claim they are the statutory employer of the Plaintiffs and are immune from the Plaintiffs' lawsuit based on the exclusivity provision of the Act.

A handwritten signature in black ink, appearing to be the initials 'M' and 'A' or similar, written in a cursive style.

## LAW

Initially, the Court acknowledges generally that the South Carolina Workers' Compensation Act (the Act) provides the legal framework to compensate employees who are injured in accidents arising out of and in the course of their employment. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 71 (1980). The Act, and thus the Workers' Compensation forum, provides the exclusive remedy against an employer for an employee's work-related accident or injury. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831, 833 (2004). More specifically, the exclusivity provision of the Act prevents an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. Edens v. Bellini, 359 S.C. 433, 441-43, 597 S.E.2d 863, 867-68 (Ct. App. 2004). This exclusivity provision also extends to workers not directly employed by the Defendant if the worker can be classified as a statutory employee. Edens, 359 S.C. at 445, 597 S.E.2d at 869. A worker is a statutory employee if the activity he performed for the owner satisfies one of the following three (3) tests: (1) Is the activity an important part of the owner's business or trade; (2) Is the activity necessary, essential, and integral part of the owner's trade, business, or occupation; or (3) Has the identical activity previously been performed by the owner's employees. See Riden v. Kemet Elecs. Corp., 313 S.C. 261, 263-264, 437 S.E.2d 156, 157-158 (Ct. App. 1993).

South Carolina also recognizes the doctrine of judicial estoppel. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. See Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 476 (2000). A party cannot assert one set of facts in litigation and then change those facts in subsequent litigation "when the initial version no longer suits him." Hayne, 327 S.C. at 252. Judicial estoppel may be properly applied to prevent a party from asserting



a legal position regarding their employment relationship with another when that position contradicts the legal position they previously asserted regarding their employment status. See Allen v. Zurich Ins., Co., 667 F.2d 1162 (4<sup>th</sup> Cir. 1982). This is because the purpose of the doctrine is to protect the integrity of the judicial process and the courts. Quinn, 343 S.C. at 414, 540 S.E.2d at 475. The doctrine punishes those who take the truth-seeking function of the system lightly. Hayne, 327 S.C. at 252. Judicial estoppel is an equitable concept and the application of the doctrine is discretionary. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31 (2003).

To determine the applicability of judicial estoppel, South Carolina courts analyze the following five elements:

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See Cothran v. Brown, 357 S.C. 210, 214, 592 S.E.2d 629, 632 (2004).

This Court finds that the Defendants' actions meet the elements of judicial estoppel set forth in Cothran. The Defendants represented to the Workers' Compensation Commission that ESSG was the "sole employer" of the workers. According to the Defendants, this representation was made based on the contract which stated that ESSG was the sole employer of the Plaintiffs and that "under no circumstances" would the Defendants ever be deemed the employer of the Plaintiffs. This representation meets all five of the elements of judicial estoppel as the Defendants now claim they are the employer of the workers. The representation was:



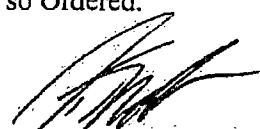
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CONCLUSION

The Court finds these Defendants are judicially estopped from asserting that they are the employer of the Plaintiffs, statutory or otherwise, based on their prior assertions to the contrary. The Defendants represent that ESSG is the sole employer of the Plaintiffs to suit their needs in the Workers' Compensation forum. Now, they assert that they are the employer of the Plaintiffs in this forum to avoid liability. This Court will not allow the Defendants to change their position regarding the Plaintiffs' employment in an effort to avoid liability.

WHEREFORE, the Defendants' Motion to Dismiss the Plaintiffs' Complaint under the exclusive remedy provisions of the South Carolina Workers' Compensation Act is DENIED.

It is so Ordered.

  
\_\_\_\_\_  
The Honorable R. Knox McMahon  
Circuit Court Judge

This 28 day of August, 2017  
Lexington County, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2016-CP-32-02419  
Case No. 2016-CP-32-02397  
Appellate Case No. 2017-002573

**RECEIVED**  
APR 12 2018  
SC Court of Appeals

Hawi Kebede, Meilit A. Lemu and Schewangiz K. Moses ..... Respondents,  
v.  
Amick Farms, LLC and OSI Group..... Appellants.

AND

Tizezew Tadese.....Respondent,  
v.  
Amick Farms, LLC and OSI Group..... Appellants.

PROOF OF SERVICE

I, the undersigned Paralegal of the law office of McLeod Law Group, LLC, attorneys for Respondents, does hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

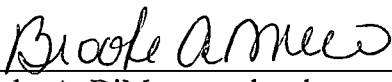
Pleading(s):           **MOTION TO DISMISS**

Counsel Served:       **VIA US MAIL**

Elizabeth H. Black, SC Bar No. 76067  
Roopal S. Ruparelia, SC Bar No. 16003  
1201 Main Street, 22<sup>nd</sup> Floor  
Columbia, SC 29201-3226  
803-779-3080  
[eblack@hsblawfirm.com](mailto:eblack@hsblawfirm.com)  
[rruparelia@hsblawfirm.com](mailto:rruparelia@hsblawfirm.com)

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Steven H. Gistenson  
Michael F. Derksen  
DYKEMA GOSSETT PLLC  
10 S. Wacker Drive, Suite 2300  
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\_\_\_\_\_  
Brooke A. DiMeo, paralegal

April 11, 2018



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April 11, 2018

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211

Re.: Hawi Kebede, Meilit A. Lemu and Schewangiz K. Moses, Respondents, v. Amick Farms, LLC and OSI Group, Appellants.  
and  
Tizezew Tadese, Respondent, v. Amick Farms, LLC and OSI Group, Appellants.  
Appeal No.: 2017-002573

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Motion to Dismiss in the above-referenced matter. Also enclosed, please find the Proof of Service and a check for the filing fee. Please file the original and return the filed to copy to me in the self-addressed, stamped envelope.

By copy of this correspondence and its enclosures, I hereby serve counsel for Appellant with same.

With kind regards, I am

Sincerely,

Brooke A. DiMeo, paralegal to  
Jacqueline LaPan Edgerton

/bad  
Enclosures

cc: Garryl L. Deas, Esquire  
Elizabeth H. Black, Esquire  
Roopal S. Ruparelia, Esquire  
Sarah P. Spruill, Esquire  
Steven H. Gistenson, Esquire  
Michael F. Derksen, Esquire

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