RECEIVED
Oct 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

South Carolina Workers' Compensation Commission Claim No. 1819776

Appellate Case No. 2021-000695

South Carolina Uninsured Employers Fund.....Appellant

v.

Jeff Quinn (Employee), Yeamans Hall Club (Employer), Accident Fund Insurance Co. of America (Carrier), Travelers Property & Casualty Company of America (Carrier), and Michael Hannaway d/b/a Hannaway Painting (Employer).....Respondents

---

INITIAL BRIEF OF RESPONDENTS YEAMANS HALL CLUB AND ACCIDENT FUND INSURANCE CO. OF AMERICA

J. Gabriel Coggiola, Esquire
Willson, Jones, Carter & Baxley, P.A.
3600 Forest Dr., Suite 204
Columbia, South Carolina 29204
(803) 227-2884
jgcoggiola@wjcblaw.com
Attorney for Respondents Yeamans Hall Club and Accident Fund Insurance Co. of America

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

STATEMENT OF ISSUES ON APPEAL

I. Whether the Workers' Compensation Commission erred as a matter of law in finding that Appellant South Carolina Uninsured Employers' Fund was bound by the Commission's July 25, 2019, coverage and compliance order and could not contest the issue of coverage as to Respondent Travelers Property and Casualty Co. as a result?

II. Whether the Workers' Compensation Commission erred as a matter of law in finding that Respondent Travelers Property and Casualty Co. properly cancelled coverage for Respondent Michael Hannaway d/b/a Hannaway Painting and that Appellant South Carolina Uninsured Employers' Fund was responsible for this claim?

III. Whether the Workers Compensation Commission properly found that Respondent Yeamans Hall Club was not the statutory employer of the injured worker in this claim, and as a result, Appellant South Carolina Uninsured Employers' Fund was responsible for this claim?

STATEMENT OF THE CASE

Respondent Employee Jeff Quinn (hereinafter "Claimant") was involved in a work accident on August 29, 2018, while working for Respondent Employer Michael Hannaway d/b/a Painting (hereinafter "Hannaway"). Specifically, Claimant fell from a ladder while pressure washing a residence that was owned by a member of Respondent Employer Yeamans Hall Club (hereinafter "Yeamans Hall"). As a result of the accident, Claimant sustained multiple injuries and required extensive treatment, including surgery to repair an ankle fracture.

Respondent Travelers Property and Casualty Co. of America (hereinafter "Travelers") issued a workers' compensation policy to Hannaway with coverage for the period of April 5, 2018–April 5, 2019, which covered the date of Claimant's work accident; however, Travelers denied coverage on the basis that it cancelled Hannaway's policy due to failure to comply with the premium audit of a prior year's policy. (09/17/19 Form 51 of Travelers). At the time of accident,

Yeamans Hall carried workers' compensation insurance for its direct employees through its carrier, Respondent Accident Fund Insurance Co. of America.

Claimant filed a request for hearing with the Workers' Compensation Commission, naming Hannaway as the employer and Appellant South Carolina Uninsured Employers Fund (hereinafter "the UEF") as Defendants based on Travelers' purported cancellation of its policy. On June 26, 2019, the UEF moved to add Travelers as a party to the claim on the grounds that Travelers' cancellation of coverage was invalid in that the asserted basis of cancellation included amounts allegedly from a prior year's coverage. In addition, the UEF moved to add Yeamans Hall and its carrier Accident Fund Insurance Co. of America to the claim based on Yeamans Hall being the "statutory employer" of Claimant. (UEF's 06/26/19 Motion to Add). On July 8, 2019, the Commission issued an order adding both Travelers and Yeamans Hall to the claim based on the UEF's motion. (Commission's 07/08/19 Order Granting Motion to Add).

On July 29, 2019, Claimant filed an amended request for hearing with the South Carolina Workers' Compensation Commission, naming Hannaway as the employer, the UEF, and Yeamans Hall as the statutory employer. (Claimant's amended Form 50 dated 07/29/19). On August 7, 2019, Yeamans Hall filed an answer to Claimant's request for hearing, denying that they were the Claimant's statutory employer on the date of his alleged accident. (Yeamans Hall's Form 51 dated 08/07/21).

All parties appeared before the Single Commissioner for a hearing on December 10, 2019. Following the hearing, the Single Commissioner issued a Decision and Order on June 29, 2020, wherein the Single Commissioner ruled that Travelers did not provide coverage for Hannaway on the date of Claimant's accident. As a result, Travelers was not liable for any benefits or

compensation owed to Claimant, and Travelers was dismissed from the case with prejudice. The Single Commissioner further ordered that Yeamans Hall was not the statutory employer of Claimant on the date of accident, and as a result, Yeamans Hall was also dismissed with prejudice. Finally, the Single Commissioner ordered that Claimant sustained a compensable injury by accident on August 28, 2018, and the UEF was responsible for all previous causally related medical treatment, ongoing medical treatment, and temporary benefits beginning August 29, 2018 and continuing. (Single Commissioner's June 29, 2020 Decision and Order).

On August 4, 2020, the UEF filed a request for commission review of the Single Commissioner's June 29, 2020 decision.[1] (UEF's Form 30 dated 08/04/20). Specifically, the UEF argued that the Single Commissioner erred in finding, concluding, and ordering (1) that the UEF was bound by and precluded from raising and litigating the issue of Travelers' coverage as a result of a "show cause" order concerning Hannaway, to which proceeding neither the UEF nor Travelers were parties to or received notice for; (2) that Yeamans Hall was not Claimant's statutory employer on the date of accident; (3) that Travelers properly cancelled coverage for Hannaway, including the ruling that the case of *Crews v. W.R. Crews, Inc.,* 390 S.C. 15 (Ct. App. 2010) was distinguishable, and (4) that Claimant had not reached maximum medical improvement ("MMI") for his injuries and was to remain on a running award of temporary benefits.

Following briefing of all relevant matters by the parties, oral arguments were held before the Full Commission Appellate Panel (hereinafter "Full Commission") on January 25, 2021. On June 1, 2021, the Full Commission issued a Decision and Order, wherein the Full Commission

[1] In South Carolina Workers' Compensation, the process to appeal the decision of a Single Commissioner's is to make an application for review to the commission by filing a Form 30 "Request for Commission Review," within fourteen (14) days from the date when notice of an award shall be given, and the commission shall review the award, and if good grounds be shown thereof, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award. S.C. Code Ann. § 42-17-50; Reg. 67-609.

affirmed the Single Commissioner's decision in full and adopted the Single Commissioner's Findings of Fact and Conclusions of Law as the Full Commission's findings. (Full Commission's 06/01/20 Decision and Order).

On June 30, 2021, the UEF filed a notice of Appeal before the South Carolina Court of Appeals. This appeal follows.

STANDARD OF REVIEW

Judicial review of a Workers' Compensation decision is governed by the substantial evidence rule of the *Administrative Procedures Act. Baxter v. Martin Bros., Inc.*, 368 S.C. 510, 513, 630 S.E.2d 42, 43 (2006); *Shealy v. Aiken Cty.*, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000). However, if the factual issue before the Commission involves a jurisdictional question, this court's review is governed by the preponderance of evidence standard. *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002).

While the appellate court may take its own view of the preponderance of evidence on the existence of an employer-employee relationship, the final determination of witness credibility is usually reserved to the Appellate Panel. *See Dawkins v. Jordan*, 341 S.C. 434, 441, 534 S.E.2d 700, 704 (2000) (*citing Ford v. Allied Chem. Corp.*, 252 S.C. 561, 167 S.E.2d 564 (1969)).

ARGUMENTS

A. The Full Commission erred in finding that UEF was precluded from raising and litigating the issue of whether Travelers wrongfully cancelled coverage for Hannaway on the date of Claimant's work accident, and whether in fact, Travelers did properly cancel coverage.[2]

[2] The issue of whether the UEF was precluded from raising and litigating the issue of Travelers' wrongfully cancelled coverage is an issue separate and apart from any arguments involving Yeamans Hall. To that end, Yeamans Hall purports that the UEF's arguments have merit, and the UEF has properly raised these arguments to

In its brief, the UEF makes extensive arguments regarding whether the Full Commission erred in finding that it was precluded from raising and litigating the issue of whether Travelers wrongfully cancelled coverage because it was bound by a July 25, 2019, "Show Cause" Order issued by the Workers' Compensation Commission finding that Hannaway was subject to the South Carolina Workers' Compensation Law (hereinafter "the Act") and uninsured. The UEF argues the Commission's decision on this issue was faulty both as applied to the specific facts of this case and also when viewed in the context of Title 42 and the use of collateral estoppel/claim preclusion against the UEF generally. In support of its argument, the UEF asserts it was not a party to the "show cause" proceeding, nor was it notified of the "show cause" proceeding at any point. As a result, the UEF argued this Court should reverse the part of the Full Commission's order precluding the UEF from raising and litigating the issue of whether Travelers wrongfully cancelled coverage on light of the procedural history and timing of the pertinent orders in this matter. The UEF goes on to argue there is no statutory or regulatory basis upon which to preclude the UEF from litigating the issue of Travelers' coverage.

Further, the UEF argues Travelers wrongfully cancelled coverage for Hannaway based on this Court's 2010 decision in *Crews v. W.R. Crews*,[3] wherein this Court held that current year coverage under an assigned risk policy cannot be validly cancelled based upon a default in an obligation owed under the prior year's policy unless the assigned risk plan specifically provided for that particular remedy with precise language. The UEF goes on to argue that in the instant case,

---

this Court for adjudication. Accordingly, Yeamans Hall contends that this Court should consider this issue prior to consideration of the statutory employment argument raised by the UEF in its brief.

[3] *390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010)*

neither the policy issued by Travelers nor the provisions of the assigned risk plan, provide for a cancellation on that basis.

To this end, if this Court finds the UEF's arguments persuasive on the issue, then there is no need to address the issue of whether Yeamans Hall was the statutory employer of Claimant on the date of his work accident as the issue is dispositive. (*see Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) ("An appellate court need not address remaining issues when disposition of a prior issue is dispositive."). At this time, Yeamans Hall defers to the arguments on these issues raised by the UEF in its brief; however, Yeamans Hall reserves the right to address any arguments raised by Travelers in its reply brief. (*see* Footnote 2, *supra.*)

B. Yeamans Hall Club Was Not Claimant's Statutory Employer on the date of Claimant's work accident.

In South Carolina, the basic test for determining whether an employee who bears no contractual relationship to an owner is considered the owner's "statutory employee" through employment by another person is:

> [W]hether or not [the work] being done is part of the general trade, business[,] or occupation of the owner…[t]he employee is to be excluded or included as a 'statutory employee' depending upon whether or not the person is performing or executing a part of the owner's general business.
>
> *Revels v. Hoescht Celanese, Corp.*, 301 S.C. 316, 318, 391 S.E.2d 731, 732 (Ct. App. 1990) (*citing Hopkins v. Darlington Veneer Co.*, 208 S.C. 207, 311, 38 S.E.2d 6, 6 (1946)).

The Act collectively refers to §§ 42-1-400 – 42-1-410 as the "statutory employee doctrine." In pertinent part, the § 42-1-400 provides:

> When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owners," undertakes to perform or execute any work which is a part of his trade, business, or occupation and contracts with any other person (in this section and

> Sections 42-1-420 to 42-1-430 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if the workman had been immediately employed by him.
>
> S.C. Code Ann. § 42-1-400 (2015)

Pursuant to S.C. Code Ann. § 42-1-400, a court must make two determinations in assessing whether owner's workers' compensation liability will attach. First, the owner must qualify as a business under the Act. Second, the employee's work must have constituted part of the owner's "trade, business, or occupation." *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 321, 523, S.E.2d 766, 770 (1999).

To this end, South Carolina courts have applied a three-part test to determine if an employee's activities are part of the owner's trade, business, or occupation under § 42-1-400. In *Glass v. Dow Chemical*, the Supreme Court stated that "this statutory requirement has been construed to include activities that: (1) are an important part of the trade or business of the employer; (2) are a necessary, essential, and integral part of the business of the employer; or (3) have been *previously* performed by employees of the employer." 325 S.C. 198, 201, 482 S.E.2d 49, 50 (1997) (*emphasis added*).

In *Keene*,[4] the recent South Carolina Supreme Court decision involving the statutory employer doctrine, the Court acknowledged that the resulting body of jurisprudence stemming from the application of the statutory employee doctrine is "confusing, conflicting, and always difficult for the workers' compensation commission and the circuit courts to apply." *Keene* at 51. The Court went on to state this difficulty has become particularly apparent in the modern economy

[4] *Keene v. CNA Holdings*, Op. No. 28052 (S.C. Sup. Ct. filed August 11, 2021) (Shearouse Adv. Sh. No. 27 at 50).

wherein subcontracting work a company could do with its own employees is such an important and legitimate business practice. *Id.* In *Keene*, the Court stated, "[t]oday, following our more recent decisions on the statutory employee doctrine, we apply the doctrine in light of the General Assembly's original purpose for enacting it: 'to prevent owners and contractors from subcontracting out their work to avoid liabilities for injuries incurred in the course of employment.'" *Id.*

In *Keene*, the Court proceeded to provide a historical analysis of the case law interpreting the statutory employee doctrine from the time of its original enactment and stated that in the early years of interpreting the predecessor statutes to Sections 42-1-400 and 42-1-410, the Court viewed the scope of an employer's "trade, business, or occupation" quite broadly, and for decades, the Court continued to interpret the phrase "trade, business, or occupation" liberally to include any work they deemed necessary to the owner's business. *Keene* at 54. The Court cited *Bell v. South Carolina Elec. Gas Co.*, 234 S.C. 577, 109 S.E.2d 441 (1959), as an application of their broad interpretation to maintenance and repair workers. *Keene* at 55. The Court went on to state that shortly after *Bell*, even as they viewed the scope of a company's "trade, business, or occupation" broadly in most of their cases, they began a series of cases in which they narrowed their original view. *Keene* at 56. The Court cited *Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 132 S.E.2d 18 (1963), *overruled on other grounds by Sabb v. South Carolina State Univ.*, 350 S.C. 416, 422–423 n.2, 567 S.E.2d 231, 234 n.2 (2002), wherein they stated, "[i]t is especially difficult to lay down any hard and fast rule with regard to such activities as repair and maintenance," because "[t]he practices of different concerns operating in the same field often vary." 243 S.C. at 11, 132 S.E.2d at 23. The Court explained this point was significant because different business managers make

legitimate choices about the scope of their company's business based on the circumstances the manager deems important to the company. *Keene* at 56.

Furthermore, in *Keene*, the Court noted that while each of the three tests referenced above remain a valid consideration, the appropriate focus of the legal doctrine is on the key question posed by the statute. *Keene* at 61. The Court stated that in answering the question posed by section 42-1-400 of whether the work contracted out is "part of the [the owner's] trade, business or occupation," the Court should focus initially on what the owner decided is part of his or her business. *Id.* The Court acknowledged that increasingly, business managers are outsourcing work that formerly was handled as part of a business, and they are doing so to meet the ever-increasing competitive challenges businesses face. *Id.* To that end, the Court concluded:

> In reality, therefore, what is or is not "part of" the owner's business is a question of business judgment, not law. If a business manager reasonably believes her workforce is not equipped to handle a certain job, or the financial or other business interests of her company are served by outsourcing the work, and the decision to do so is not driven by a desire to avoid the cost of insuring workers, then the business manager has legitimately defined the scope of her company's business to not include that particular work.
>
> *Keene* at 61.

In this case, the facts clearly establish that the work Claimant performed on the date of his accident as an employee of Hannaway was not part of Yeamans Hall's trade or business as set forth in S.C. Code Ann. § 42-1-400 or as contemplated by the Court in *Glass*, *Bridges*, or *Keene*.

Yeamans Hall takes issue with UEF's baseless claim that the Full Commission treated the issue of whether Yeamans Hall was the statutory employer in this case in a summary manner on the grounds that this contention is without merit and wholly unsupported by the evidence in the record. The UEF makes this argument based on the sole grounds that the Full Commission's

decision and order addressing the statutory employment issue was brief and only contained two findings.[5] The UEF seems to ignore that in coming to this conclusion, the Single Commissioner heard testimony from multiple witnesses, including the maintenance manager of Yeamans Hall, and reviewed the deposition testimony of both the controller and the maintenance manager at Yeamans Hall, which were submitted by the UEF. Although the other issues involved in this appeal consumed a larger portion of the Decision and Order, the question of whether Yeamans Hall was the statutory employer was addressed in specific terms, citing the appropriate statute and case law, and referencing pertinent witness testimony in support of their conclusion. To say that either the Single Commissioner or the Full Commission treated this issue in a summary manner is purely speculative and lacks merit.

i. The work performed by Claimant on the date of accident was not an important part of the trade or business of Yeamans Hall.

Yeamans Hall is a private golf club that provides recreational services by furnishing, maintaining, and coordinating its attendant golf course. Yeamans Hall is tasked with managing the day-to-day affairs of the business, ranging from scheduling tee times, rearranging tee boxes, maintaining fairways and greens, and selling various products out of its pro shop, among other tasks related to their on-site hotel and restaurants. At his deposition, Jason Lambert, the controller for Yeamans Hall,[6] described the "purpose or trade" of Yeamans Hall as, "[h]ospitality. So we have a golf course, hotels, restaurants, so it's just hospitality for private members." (Lambert Deposition, p.6, lines 11–18). In addition to the activities described above, Yeamans Hall has members with private homes within the club. At his deposition, Mr. Lambert explained that there

[5] The UEF cites no cases or statutory authority regarding any requirements for length of discussion required in Orders. Yeamans Hall contends that all that is required is a Finding of Fact or Conclusion of law supported by the evidence in the record.

[6] At his deposition, Jason Lambert described his job duties as a controller as "financial management of the company." (Lambert Depo. Tr., p.5, lines 10–11).

are three levels of membership for Yeamans Hall members, which include resident, non-resident, and proprietor. (Lambert Deposition, p.16, lines 8–22). Mr. Lambert went on to explain that proprietor membership refers to the classification of members that actually live on the property. (Lambert Deposition, p.17, lines 2–3).

As part of the proprietor level of membership at Yeamans Hall, proprietor members pay an additional fee to Yeamans Hall as an amenity that allows members in that classification to contact the club to arrange for services to be performed on their homes. (Lambert Deposition, p.20, lines 1–6). These additional services include work such as having their houses painted, pressure washed, and other general maintenance performed. Proprietor members have the option of using the club to arrange with companies, like Hannaway, to perform these services, or to contact companies directly to have the work performed for them. (Hr. Tr. P.33, lines 3–7). If a member does choose to have Yeamans Hall coordinate with a company engaged in these specific trades to perform the requested services, and upon completion of the work, Yeamans Hall would pay the company for the work performed and then bill the member for the cost of the services. (Lambert Deposition, p. 9, lines 1–24; Hr. Tr., p.32, lines 16–21).

Yeamans Hall does not provide any direction or control over how the work is performed and does not have any control over the hiring and firing of the workers the contractors choose to employ. (Hr. Tr., p.32, lines 12–15; p.33, lines 10–13). Yeamans Hall simply takes the request from its members, coordinates with a company engaged in that specific trade, and then directs the company to the location where the work is to be performed. (Hr. Tr., p.32, lines 12–15).

Although Yeamans Hall does employ some maintenance workers of its own, Mr. Lambert testified that in 2018, Yeamans Hall employed three maintenance employees to perform "normal

maintenance activities." (Lambert Deposition, p.25, lines 1–10). In order for Yeamans Hall to carry out the tasks required to operate a functioning golf course, hotel, and restaurants successfully, it is necessary to keep several maintenance employees on staff; however, as the Court stated in *Keene*, "in *Glass*, we recognized that not all work 'necessary' for an owner to 'carry on its business'—the standard we used in *Marchbanks* and *Bozeman*—was 'part of his…business' under section 42-1-400." *Keene* at 57 (*referencing Marchbanks v. Duke Power Co.,* 190 S.C. 336, 2 S.E.2d 825 (1939) and *Boseman v. Pacific Mills*, 193 S.C. 479, 8 S.E.2d 878 (1940)). The Court went on to state, "[w]e specifically recognized that 'where repairs are major, specialized, or of the sort which the employer is not equipped to handle with its own work force, they are not part of the business." *Keene* at 57 (*citing Glass*, 325 S.C. at 202, 482 S.E.2d at 51).

The situation described by the Court is *Keene* above is directly on point in this case. Although Yeamans Hall coordinated for work to be done on the private residences at the request of its proprietor members, at the time of Claimant's accident, Yeamans Hall did not perform the work as part of its business, nor was it equipped to handle such work with its own maintenance crew. Yeamans Hall simply acted as a conduit to coordinate the requested services to be performed by outside companies that engaged in this line of work on behalf of its members.

At his deposition, Yeamans Hall's maintenance manager Al Halle testified that Yeamans Hall did perform some painting on club properties, but they did not perform any painting on members' homes. (Halle Deposition, p.9, lines 22–25, p.10, lines 1–3). At the hearing before the Single Commissioner, Mr. Halle, testified, "[w]hen a homeowner will ask me to either clean their house or -- then I'll either hire a contractor or, you know, take it on ourselves, but we only started taking it on ourselves because of this lawsuit." (Hr. Tr., p.33, lines 17–20). When Mr. Halle was

asked if pressure washing houses was an important part of the busines at Yeamans Hall, Mr. Halle testified, "[n]o, it's a very minute part." (Hr. Tr., p.33, lines 21–23) (*see* Argument iii, *infra*).

If this court accepts the UEF's argument that just because Yeamans Hall employed maintenance workers of its own, and therefore this type of work was "part of their business," then no business could ever employ anyone whose job activities overlapped with any tasks performed by any contractors or subcontractors, regardless of its scale.

In order to further illustrate this point, it is helpful to look at other types of employers that may obtain the services of outside companies to engage in work that is not an important part of their trade or business. For example, hotels are clearly in the business or trade of hospitality. Although hotels often keep a general maintenance person on staff to make incidental repairs around their facilities, they engage the services of outside companies to perform work such as servicing their hearing and air systems or maintaining their landscaping. Clearly the employees of the companies that engage in these services are not statutory employees of the hotel.

ii. The work performed by Claimant on the date of accident was not a necessary, essential, and integral part of the business of Yeamans Hall.

As stated in the argument above, Yeamans Hall's amenity to coordinate work performed on the private homes of its proprietor members is not an important part of Yeamans Hall's trade or business. Nor is this amenity a necessary, essential, and integral part of Yeamans Hall's business. If Yeamans Hall were to terminate this one specific service offered to its one of its three classifications of members, Yeamans Hall's business would carry on business as usual, as it has since the golf course was founded.

When asked about these services at his deposition, Yeamans Hall's controller Jason Lambert testified, "I can only speak from a financial standpoint, and it's not a lot of revenue for us. So from a financial standpoint, it's not—it's miniscule." (Lambert Depo. Tr., p.29, lines 3–6). This point is further evidenced by the fact that Yeamans Hall's proprietor members don't even have to go through Yeamans Hall to have these services performed, and many proprietor members contact outside companies or vendors to perform work on their homes directly, without involving Yeamans Hall at all. While this optional service offered to Yeamans Hall's proprietor members is part of an extensive list of amenities offered to members of the club, including, but not limited to, use of the golf facilities, access the onsite pro shop, and use of the hotels and restaurants, this particular service is not a necessary, essential, or integral part of Yeamans Hall's overall business as a private golf club.

iii. The work performed by Claimant on the date of accident was not work *previously* performed by employees of Yeamans Hall.

With regard to the third prong of the test set forth in *Glass*, Yeamans Hall would not be a statutory employer based on work *previously* performed by employees of the employer. Al Halle's testimony at the December 10, 2019, hearing clearly established that the worked performed by Claimant at the time of his accident, pressure washing, was not work previously performed by employees of Yeamans Hall. Mr. Halle testified Yeamans Hall had a sheet they would send out to members, asking what services they would like done before they came to their homes, and one of those services included pressure washing. (Hr. Tr., p.36, lines 22–25). Mr. Halle testified that at the time of Claimant's accident, Yeamans Hall would call in a contractor and have them perform that work. (Hr. Tr., p.37, lines 1–4). Mr. Halle testified that *after* Claimant's accident, Yeamans Hall started taking care of those services themselves, because "they did not want to be responsible

for anybody getting else getting hurt [—] or the contractors [—] we [—] cause we found out that he [—] that the insurance was cancelled that we follow up on once a year." (Hr. Tr., p.37, lines 5–14) (*emphasis added*). Mr. Halle went on to testify that prior to Claimant's accident, employees of Yeamans Hall never pressure washed before that time. (Hr. Tr., p.35, lines 11–13, p.37, lines 1–25, p. 38, lines 1–4).

When viewing this case through the lens of *Keene*, the decision to contract the type of work performed by Claimant at the time of his accident out to companies whose trade or business was to engage in these types of services was clearly a business decision made by managers who reasonably believed that the financial or other business interests of its company were better served by outsourcing the work. Appellant cites no evidence in this case to support the contention that the decision to do so was driven by a desire to avoid the cost of insuring workers, especially considering Yeamans Hall provided workers' compensation coverage for its employees through Accident Fund Insurance at the time of Claimant's. In light of *Keene*, the business managers at Yeamans Hall legitimately defined the scope of its company's business to not include the particular work Claimant was performing while working for Hannaway, and therefore Yeamans Hall was not Claimant's statutory employer.

CONCLUSION

Based on the arguments set forth above, this Court should affirm the Full Commission's decision that Yeamans Hall was not the statutory employer of Claimant at the time of his work accident.

[Signature Block on Following Page]

J. Gabriel Coggiola, Esquire
Willson, Jones, Carter & Baxley, P.A.
3600 Forest Dr., Suite 204
Columbia, SC 29204
(803) 227-2884
jgcoggiola@wjcblaw.com
Attorney for Respondents Yeamans Hall Club and Accident Fund Insurance Co. of America

October 29, 2021