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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE APPELLATE PANEL OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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South Carolina Workers' Compensation 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

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**INITIAL REPLY BRIEF OF APPELLANT SOUTH CAROLINA UNINSURED  
EMPLOYERS' FUND TO BRIEF OF YEAMANS HALL CLUB**

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*Rm CJ*

## ARGUMENTS IN REPLY

The Appellant, pursuant to the provisions of Rule 208 (a) (3), SCACR, replies to the Respondent Yeamans Hall Club's (Yeamans) initial brief as follows:

1. The Commission provided no meaningful explanation for its ruling.

The Respondent contends that the Commission did not treat the issue of statutory employment in a summary manner. (Initial brief at pages 10-11). That argument is implausible because the order itself reflects the patently cursory nature of the ruling of the Commission on that issue. (No. 55 of Decision and Order). This is not to say that there was no evidence presented on that issue, but rather to point out that it is difficult to tell from the Commission's finding/conclusion No. 55 what evidence in the record it considered compelling on that issue and why. In other words, the Commission's analysis and understanding of this jurisdictional issue cannot really be determined by reference to the order. This absence of analysis makes the conclusion reached by the Commission less than compelling. This Court has no obligation at all to adopt or defer to the Commission on jurisdictional questions like statutory employment. Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (Ct. App. 2007). This Court can make its own findings of fact independent of the findings of the Commission on this issue. Id. This should be even more true for this Court when it is practically impossible to discern exactly what reasoning was applied by the Commission in ruling that the Respondent was not a statutory employer.

2. Respondent is a statutory employer under even narrow application of the doctrine.

The Respondent incorrectly argues that the facts in the case at bar do not fit within a narrow interpretation of what constitutes "trade, business or occupation." (Initial brief at pages 8-10). For example, neither the Respondent nor the Commission even discuss the on-going, varied, and extensive nature of work being done by the Claimant's direct employer at Yeamans. The nature

of this work is discussed in detail at pages 7-8 of the Appellant's initial brief to include the number of houses worked on, the type of work done, the number of multiple site visits and the fact that the house at which the Claimant was injured was worked on at least 5 times by the direct employer. Respondent attempts to avoid statutory employer liability by contending that it is strictly a golf course and that the concept of statutory employment in this case has no relevance outside of work directly and intimately related to golf. (Initial brief at pages 10-13). Respondent, however, concedes that proprietor level members who own houses pay a substantial extra fee for an "amenity" provided by way of having Yeamans arrange and directly pay for contractors to perform maintenance work on their homes. Of course, none of this has anything to do with golf even though the Respondent charges a fee for it, just like it charges a fee for golf. It is difficult to understand how that amenity or service is not part of the actual business of Yeamans when it charges a fee to provide that service. Given the extensive and ongoing nature of the work done at Yeamans by the direct employer, for which the members pay an extra fee, the Respondent is a statutory employer even if that doctrine is narrowly applied.

3. The Keene decision focused on ensuring coverage for injured workers.

The Keene decision is more nuanced and carefully calibrated than recognized by the Respondent. See Keene v CAN Holdings, LLC (Op. No. 28052, filed 8/11/21). As noted in Appellant's initial brief at pages 8-9 the Keene decision repeatedly focuses on the value of statutory employment as a doctrine to ensure that injured workers of an uninsured subcontractor have workers' compensation insurance available to them when injured. The Respondent had the opportunity to require that the Claimant's direct employer provide it with proof of insurance as part of the contractual arrangement to work at Yeamans (as was done in Keene), but did not do so. If the Respondent had required a proper certificate of insurance from the direct employer, then

pursuant to Section 42-1-415 it could not have liability for this claim and could properly transfer responsibility to the UEF.

There really was no actual evidence (as opposed to Respondent's speculation) as to why or for what purpose the Respondent decided to subcontract this ongoing and extensive work to the direct employer of the Claimant. The Keene decision recognized that business practices have changed since the origin of the statutory employment doctrine, but that decision nevertheless remained focused upon the doctrine of statutory employment as an appropriate and valuable means to ensure the availability of insurance to injured workers. In Keene (at page 62) it was held redundant and unnecessary to make the owner of the project a statutory employer when the direct employer had workers' compensation insurance (and when, in fact, the project owner required the subcontractor to have insurance). In this case, it is undisputed that the direct employer was not insured nor is it disputed that the Respondent could have required that the direct employer be insured. On the record before this Court, the Keene decision is fully consistent with holding the Respondent to be a statutory employer, particularly in light of the nature and scope of the work being done by the direct employer.

CONCLUSION

For the reasons stated above, or as previously made in the initial brief or to be made at oral argument, the Appellant requests that this Court reverse the order of the Commission and find that the Respondent was a statutory employer.

Respectfully submitted,

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