

**STEWART LAW OFFICES, L.L.C.**

BRENT P. STEWART  
*Licensed in WV & SC*  
brent@stewartlawoffices.net

SHEPARD SMITH  
*Licensed in NC*  
shepard@stewartlawoffices.net

CHRISTIAN GERENCIR  
*Licensed in NC & WV*  
christian@stewartlawoffices.net

1242 Ebenezer Road  
Rock Hill, SOUTH CAROLINA 29732

REPLY TO:  
P.O. Box 670  
Rock Hill, SOUTH CAROLINA 29731  
1-866-STEWART · FAX (803) 328-5876

March 24, 2022

TYLER A. BATHRICK\*  
tyler@stewartlawoffices.net

SAM BASS\*  
sam@stewartlawoffices.net

STEPHEN SUGGS\*  
ssuggs@stewartlawoffices.net

STEPHEN VICARI\*  
stephen@stewartlawoffices.net

\*Licensed in SC

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Thomas Garner v. USA Logistics  
Appellate Case No.: 2022-000135

Dear Ms. Kitchings:

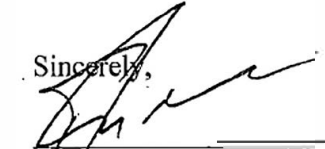
On March 23, 2022 the transcript of the proceedings in this case was received by our office.

**RECEIVED**

**MAR 28 2022**

**SC Court of Appeals**

Sincerely,

  
Tyler Bathrick  
Stewart Law Offices  
P.O. Box 670  
Rock Hill, SC 29731  
(803) 328-5600  
tyler@stewartlawoffices.net  
Attorney for Appellant

Cc: B. Gibbs Leaphart  
Robinson Gray Stepp & Laffitte, LLC  
1310 Gadsden St.  
Columbia, SC 29211

STATE OF SOUTH CAROLINA  
BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC No. 1701045

Thomas Garner, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 USA Logistics, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 Uninsured Employers Fund, )  
 )  
 Carrier/Defendants. )  
----- )

**FULL COMMISSION HEARING**

\*\*\*\*\*

**Monday, September 20, 2021**  
4:13 p.m. - 4:28 p.m.

The Full Commission Hearing was heard before Commissioners Melody L. James and Susan S. Barden and Aisha Taylor, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of September, 2021, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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VIRTUAL APPEARANCES

**Tyler A. Bathrick, Esquire**  
Stewart Law Offices  
1242 Ebenezer Road  
Rock Hill, South Carolina 29732  
Attorney for the Claimant

**Robert M. Cook II, Esquire**  
The Robert Cook Law Firm, LLC  
128 N Oak Street  
Batesburg-Leesville, South Carolina 29006  
Attorney for the UEF

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



1 CALL TO ORDER:

2 **COURT REPORTER:** Today is Monday September 20th,  
3 2021. This is South Carolina Workers'  
4 Compensation case number 1701045. This is the  
5 case of Thomas Garner, Claimant, versus USA  
6 Logistics, Employer and there is no carrier.  
7 The appellant is the Claimant represented by  
8 Tyler Bathrick. The Respondent is pro se. And  
9 the UEF is represented by Robert Cook. Each  
10 side is allowed 10 minutes for oral argument  
11 and the appellant three minutes in reply. You  
12 are requested to argue the grounds of exception  
13 and stay within the record.

14 **COMMISSIONER JAMES:** All right. And I would note  
15 for the record that it is 4:13. This matter  
16 was scheduled for 3:30. We have present as  
17 indicated by the court reporter representation  
18 for the Claimant and the South Carolina  
19 Uninsured Employers Fund. No one is present on  
20 behalf of USA Logistics even though dual --  
21 notice has been duly provided. All right, I  
22 believe we're ready to get started. Mr.  
23 Bathrick, whenever you're ready, sir.

24 APPELLANT'S ARGUMENT:

25 **MR. BATHRICK:** Good afternoon. My name is Tyler



1 Bathrick. I am out of the Steward Law Offices.  
2 We represent Thomas Garner with regard to a  
3 January 16th, 2017 work related injury. Mr.  
4 Garner is a resident of Leesville, South  
5 Carolina. The employer in this matter, USA  
6 Logistics is located in Lincolnton, North  
7 Carolina. The Employer, USA runs a trucking  
8 outfit where they're regularly picking up items  
9 at the West Marine located in Rock Hill, South  
10 Carolina. They were uninsured on the date of  
11 the accident and they did not attend the  
12 scheduled hearing before the single  
13 commissioner. Mr. Garner heard about the job  
14 with USA Logistics through another driver for  
15 USA Logistics. Upon hearing about the job, Mr.  
16 Garner drove up to Lincolnton, North Carolina  
17 from Leesville, South Carolina, which is about  
18 a three and a half hour drive. He completed an  
19 employment application, completed a drug test,  
20 wasn't hired on that date, drove back home  
21 three and a half hours and waited on the  
22 Employer to get back to him about whether or  
23 not he had a job. About three to five days  
24 went by and Mr. Garner didn't hear anything  
25 from USA Logistics, so he decided to give them



1 a call. Got somebody on the phone and they  
2 indicated that he had a job if he wanted it.  
3 All he had to do was get up there and get to  
4 work. Mr. Garner was located in Leesville,  
5 South Carolina when he made that phone call.  
6 We take that date as the date he was hired by  
7 USA Logistics. Mr. Garner went up to USA  
8 Logistics in Lincolnton, North Carolina, three  
9 and a half hour drive for him and thought he  
10 was gonna get to work. Before getting to work  
11 they had him sign some paperwork. One of the  
12 pieces of paperwork that he had to fill out and  
13 sign was a independent contractor contract.  
14 It's one of those forms those employers have  
15 him fill out saying they're not an employee,  
16 they're an independent contractor, we believe,  
17 to try to skirt workers' comp law. But on that  
18 -- you know, he signed that paperwork, hopped  
19 in his truck and he started working on that day  
20 for USA Logistics. On January 16th, 2017 Mr.  
21 Garner was delivering a load for USA Logistics  
22 in Wyoming when he sustained an injury and  
23 broke his right tibia. We brought a South  
24 Carolina workers' comp claim and the single  
25 commissioner found that we did not have



1 jurisdiction to bring that claim. We disagree.  
2 We believe that our Supreme Court has already  
3 found that when a jurisdictional question  
4 arises, that should be resolved and will be  
5 resolved in favor of inclusion. That's O'Brien  
6 v. Daniel Construction. Section 42-15-10 of  
7 the South Carolina Code states that an employee  
8 can bring a claim in the state where he was  
9 hired, the state where he was injured or the  
10 state where his employment is located. In our  
11 case he obviously wasn't hurt in South  
12 Carolina. He was hurt out in Wyoming. But we  
13 believe he was hired in South Carolina. We  
14 also believe that his main place of business  
15 was in South Carolina. I'll start with the  
16 hire issue first. As previously indicated,  
17 after taking that drug test he was hired three  
18 to five days later via telephone. Mr. Garner  
19 testified he was sitting in his house in  
20 Leesville, South Carolina when he was hired.  
21 South Carolina law's clear on this matter. We  
22 got O'BRIEN v. Daniel Construction and Hill v.  
23 Eagle Motor Lines. Both of those cases state  
24 that the employee is hired in the state where  
25 he is located when he's hired. In our case he



1 was in Leesville, South Carolina. And my facts  
2 are actually stronger than the facts in Hill.  
3 In Hill the employer or the employee filled out  
4 paperwork, submitted an application via mail in  
5 Alabama. A recruiter from Alabama called him,  
6 said they had a position for him. All he had  
7 to do was get out to Alabama and take a drug  
8 test, complete a road test and complete  
9 orientation. Once the road test and the drug  
10 test were completed, the employer in Hill said  
11 that he was certified to drive and gave him his  
12 first assignment. In Hill our Supreme Court  
13 found coverage with those facts. They  
14 indicated, we therefore find the employer hired  
15 respondent during the telephone conversation in  
16 which the employer notified the respondent that  
17 there was a job opening for him and arraigned  
18 for respondent to travel to Alabama and  
19 commence work. Accordingly the situs of the  
20 contract was in South Carolina and the  
21 Commission has jurisdiction over Respondent's  
22 claim. In Hill the Supreme Court found that  
23 the road test, the drug test and the  
24 orientation were all incidental to employment  
25 and the date of hire was the date on the phone.



1 Like I said, Mr. Garner's facts are actually --  
2 my client's facts are actually stronger than  
3 that. He didn't have to jump through the hoops  
4 of a drug test, he didn't have to jump through  
5 the hoops of orientation. He didn't have to  
6 jump through the hoops of a road test. He just  
7 got his butt up to Lincolnton and hopped in the  
8 truck and got to work. All the facts in this  
9 case indicate that Mr. Garner was hired in  
10 South Carolina. Hearing testimony on page 11  
11 lines 1 through 17, now when she said you were  
12 hired where were you located? Answer, I was  
13 sitting on my couch at 114 Rickard Road. I can  
14 probably tell you I was probably watching Law  
15 and Order too believe it or not. Question, is  
16 that in Leesville, South Carolina? Answer,  
17 yes, sir. A couple questions later. Do you  
18 take that as your hire date? Mr. Garner  
19 responded, I do. The Defendants are about to  
20 rely on an independent contractor agreement to  
21 say that he wasn't hired via phone, that the  
22 independent contractor agreement signed in  
23 North Carolina states his date of hire as April  
24 4th and that's when he was actually hired by  
25 that company. That's not when he was hired by



1 that company. That's the date he signed the  
2 independent contractor agreement. He was  
3 actually hired over the phone three to five  
4 days after taking that drug test. We believe  
5 that the independent contractor agreement, just  
6 like the drug test, just like the orientation,  
7 just like the driving test in Hill was  
8 incidental to employment. He was hired -- Mr.  
9 Garner was hired when he received that phone  
10 call in South Carolina. In the Hill case the  
11 Supreme Court went on to find additional  
12 support for jurisdiction because Hill's  
13 principal place of employment was in South  
14 Carolina. Same should be done for our case.  
15 Mr. Garner testified that he usually kept his  
16 truck at his house in Leesville, South  
17 Carolina. He kept his trailer at the West  
18 Marine located in Rock Hill, South Carolina.  
19 And that's where he usually started most of his  
20 drives from at his house. The next part is  
21 really important. The independent contractor  
22 agreement actually states in section two,  
23 contractor's principal place of business is  
24 located at 114 Rickard Road, Leesville, South  
25 Carolina 29070. So if we're gonna rely on an



1 independent contractor agreement we gotta rely  
2 on all of it. It says that the principal place  
3 of business is actually in Leesville, South  
4 Carolina. So we have an employer in North  
5 Carolina who's calling residents of South  
6 Carolina, giving the tractor trailers to drive  
7 back to South Carolina, having them make pick-  
8 ups in South Carolina and yet somehow we're  
9 finding that there's no jurisdiction in South  
10 Carolina and that just doesn't sit right with  
11 me. I think the Defendants are in a tough spot  
12 on this one. I think they can have it one way  
13 or the other, they can't have it both ways. If  
14 the independent contractor agreement controls  
15 and that's when he was hired, the independent  
16 contractor agreement also states that his  
17 principal place of location is in Leesville,  
18 South Carolina, so we have jurisdiction that  
19 way. We're requesting the finding that there  
20 is jurisdiction, that the single commissioner's  
21 ruling on that be overturned. We're requesting  
22 that this gets remanded back to the single  
23 commissioner so that the other issues that were  
24 raised before him can be addressed and we can  
25 go from there. I don't have anything else



1 unless y'all have any questions for me. Thank  
2 y'all.

3 (Multiple thank yous heard.)

4 **COMMISSIONER JAMES:** Mr. Cook?

5 **UEF'S ARGUMENT:**

6 **MR. COOK:** May it please the Commission. On behalf  
7 of the UEF we believe that the Commissioner's  
8 order should be upheld. What's different about  
9 this case from the cases mentioned by Mr.  
10 Bathrick is you actually have a written  
11 agreement that spells out the terms in this  
12 particular case. This is not a telephone case.  
13 Even if it was a telephone case, the employee  
14 testified that he called the people up in North  
15 Carolina to follow up on the status of this  
16 employment possibility and not the other way  
17 around. But the agreement that laid out what  
18 their obligations were was part of the Fund's  
19 APAs and it was 291 and 292. It's a relatively  
20 short contract. Though contract on page 291  
21 states that the agreement was entered into in  
22 the county of Lincoln in the state of North  
23 Carolina. It also states, and I'm just reading  
24 quotes here, contractor understands they're  
25 solely responsible for workers' compensation.



1 All state, federal, local security, fees and  
2 taxes governed by the state of North Carolina.  
3 It further says on that same page, this  
4 agreement contains the entire understanding  
5 between the parties and voids any prior  
6 agreements between the parties concerning the  
7 subject matter of this agreement. According to  
8 that, even if there had been a verbal hire,  
9 this written supercedes that. On the next  
10 page, page 292, it states, all contractors  
11 shall be registered, licensed and governed by  
12 the law of the state of North Carolina. And  
13 the last provision is, the laws of the state of  
14 North Carolina they're under shall govern this  
15 agreement and any dispute. In terms of the  
16 only document that was relevant to the  
17 agreement, it all states it occurred in North  
18 Carolina, it's governed by North Carolina and  
19 North Carolina law governs the dispute. This  
20 was not tried on the basis of their being an  
21 independent contractor issue. So it's -- it  
22 is an independent contractor contract, but the  
23 basis was there was simply no jurisdiction on  
24 behalf of the Commission because nothing  
25 happened related to South Carolina. Out-of-



1 state employer, that's conceded. Out-of-state  
2 injury, that's conceded. The only question is  
3 where was the situs of the contract? Well if  
4 you're gonna ask yourself the question, where  
5 is the situs of the contract, looking at the  
6 actual contract would make the most sense. And  
7 in this particular case, this two-page contract  
8 is replete with references to being in North  
9 Carolina. It was signed in North Carolina.  
10 That's undisputed. The Claimant himself  
11 testified that he had to go back up to North  
12 Carolina a second time to sign this contract.  
13 And had he not been satisfied with the  
14 compensation terms offered to him while he was  
15 at the employer's address in North Carolina, he  
16 would have gone back home and not taken the  
17 job. Those cases tend to say, well what was  
18 the last effective action that created a  
19 contractual agreement. And the last effective  
20 action that created the agreement was him  
21 signing this contract that states it's governed  
22 by North Carolina law and agreeing to the  
23 compensation that was offered him in North  
24 Carolina. For those reasons there's just no  
25 South Carolina nexus to this thing other than



1 the fact that Claimant lives here, and that's  
2 not sufficient to give the Commission  
3 jurisdiction. And that's the argument of the  
4 Fund.

5 **COMMISSIONER JAMES:** All right, thank you. Any  
6 questions?

7 (No response.)

8 **COMMISSIONER JAMES:** Okay. Mr. Bathrick, do you  
9 have anything you wish to present in reply,  
10 sir?

11 **APPELLANT'S REPLY:**

12 **MR. BATHRICK:** Yeah, I think the big question is  
13 when he was hired, and all the evidence  
14 indicates he was hired three to five days after  
15 taking that drug test when he was in Leesville.  
16 They can come up with pay and everything else  
17 later, that's incident to employment just like  
18 in Hill v. Eagle Motors. And then finally if  
19 we're gonna go by the contract, like I said, if  
20 the contract was signed in North Carolina, it  
21 also says that contractor's principal place of  
22 business is ---

23 (Train horn)

24 **MR. BATHRICK:** That's a new one.

25 **MR. COOK:** It's not new to me. It happens two or



1 three times a day.

2 **MR. BATHRICK:** That's your wake up call.

3 **MR. COOK:** If I could interject. Mr. Bathrick  
4 deserves that interruption because his client  
5 is from Leesville and I have not made any point  
6 of the fact that he's poaching my workers' comp  
7 clients ---

8 **MR. BATHRICK:** (Laughs)

9 **MR. COOK:** --- by taking this case.

10 **COMMISSIONER JAMES:** And just so the record's clear,  
11 there was a train noise that kinda interrupted  
12 the hearing, I think from Mr. Cook's ---

13 **MR. COOK:** That's the 4:30 train.

14 **COMMISSIONER JAMES:** Thank you. So I did stop your  
15 time, Mr. Bathrick.

16 **MR. BATHRICK:** Oh, no. It's no problem. I got like  
17 one more quick statement. If we're going by  
18 the independent contractor agreement and we  
19 find the independent contractor agreement  
20 controls, we should also find that the  
21 independent contractor agreement says the  
22 principal place of business is 114 Rickard  
23 Road, Leesville, South Carolina 29070. That's  
24 the second little dot on the agreement, which  
25 would give us jurisdiction for this claim in



1 South Carolina as the principal place of  
2 business being in South Carolina. So either  
3 way there's jurisdiction. He was either hired  
4 in South Carolina or the principal place of  
5 business is in South Carolina. Thank y'all.

6 **COMMISSIONER JAMES:** Thank you. That concludes this  
7 hearing.

8 (There being nothing further, the hearing concluded  
9 at 4:28 p.m.)

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## Cheri Alexander

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**From:** Coral Strickland <coral@creelreporting.com>  
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SC Court of Appeals

Jenny Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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