NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0540

CF INDUSTRIES, INC. and HARTFORD FIRE INSURANCE COMPANY

VERSUS

TURNER INDUSTRIAL SERVICES, INC., COOPERHEAT-MQS, INC. and CATALYST PROCESS SPECIALISTS, INC.

Judgment Rendered: AUG 24 2012

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On Appeal from the 23rd Judicial District Court
for the Parish of Ascension
Docket No. 69,737

Honorable Ralph Tureau, Judge Presiding

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDonald, J. dissents. I believe the 1996 ATC controls and prior decisions of this court created confusion in the trial court.

HUGHES, J.

This is an appeal from a judgment of the 23rd Judicial District Court, rendered after the conclusion of a jury trial. The judgment held that a 1995 contract between appellants, CF Industries, Inc. (CFII) and Cooperheat-MQS, Inc. (MQS), was effective between the parties for damages arising out of services provided by an employee of MQS that contributed to an explosion in 2000. The judgment further held that CFII is not an additional insured under the policy of insurance issued to MQS by defendants/appellees, Lumbermens Mutual Casualty Company (Lumbermens) and that Lumbermens was only liable to indemnify CFII up to one million dollars, under the applicable contract. CFII and its insurer, Illinois National Insurance Company (collectively, "CFII") appealed, contending a different contract between the parties was controlling. Lumbermens filed an answer to the appeal, alleging that in the event the 1995 contract was not a binding agreement, it owed no indemnity to CFII and the portion of the judgment so ordering should be reversed. For the reasons that follow, we deny the relief sought by Lumbermens in its answer and affirm the judgment of the district court.

FACTS AND PROCEDURAL HISTORY

This action arises from an explosion at CFII's facility in Donaldsonville, Louisiana. The explosion occurred on May 24, 2000, and was caused by a failed weld in a pressure vessel. An employee of MQS, Sammy Charlet, had recently inspected the vessel. CFII filed suit against MQS and Lumbermens, MQS's insurer at the time of the explosion. CFII alleges that the Agreement of Terms and Conditions signed by CFII and MQS in 1996 (the 1996 ATC) was in effect between the parties at the time of the explosion and governed MQS's responsibility to indemnify CFII for

any damages caused or contributed to by its employee. Specifically, CFII alleges that under the terms of the 1996 ATC, which they also contend terminated any prior agreements, MQS was required to name CFII as an additional insured under its policy with Lumbermens, and is responsible to indemnify CFII for any and all damages caused or contributed to by its employee, Sammy Charlet.

Lumbermens, however, alleges that the 1996 ATC did not govern its responsibilities to CFII for the fault or negligence of Sammy Charlet, but that Sammy Charlet's terms of employment were governed by a prior agreement, the 1995 ATC.[1] The 1995 ATC did not contain a provision requiring MQS to name CFII as an additional insured under its policy, and it limited its indemnity exposure to a maximum of one million dollars. Alternatively, Lumbermens alleges in its answer to this appeal that if no agreement was reached as to the terms of the 1995 ATC, as CFII now contends, then there was no agreement in effect between the parties regarding Sammy Charlet's employment at the Donaldsonville facility on the day of the explosion, and it is thus not liable to CFII for any amount of indemnification.

Previously in the course of this litigation, the trial court ruled on a motion for summary judgment that the 1996 ATC governed the obligations between the parties at the time of the explosion, and that CFII therefore qualified as an additional insured under the terms of the Lumbermens policy. Lumbermens appealed that judgment, and this court reversed it after a *de novo* review, concluding that a factual dispute existed over "whether it was

[1] While signed in 1995, the revision date stated in the 1995 ATC is 4/25/1994. As such, throughout the course of the litigation, the 1995 ATC was sometimes referred to as the Terms and Conditions dated 4/25/1994, or the 1994 ATC. In this opinion, however, for the purpose of consistency, we reference the document as the 1995 ATC.

the intent of the parties that the provisions in the 1996 ATC would terminate the earlier document [the 1995 ATC]." **CF Industries, Inc. v. Turner Indus. Services, Inc.**, 06-0856 (La. App. 1st Cir. 2/9/07), (unpublished), 949 So.2d 675.

Subsequently, CFII filed a third supplemental and amending petition to assert bad faith claims against Lumbermens under former LSA-R.S. 22:658 and LSA-R.S. 22:1220[2], for its failure to timely pay the indemnity sought by CFII. In response, Lumbermens filed a motion for partial summary judgment asserting that CFII had no legal basis for a bad faith action. The trial court granted Lumbermens' motion for partial summary judgment and dismissed CFII's bad faith claims, concluding that a reasonable coverage dispute existed. In making this conclusion, the trial court relied on this court's prior appeal decision, discussed above, which reversed its grant of a motion for summary judgment in favor of CFII finding that the 1996 ATC controlled. Based on this court's conclusion that it was disputed whether it was the intent of the parties that the 1996 ATC terminated the prior 1995 ATC as to Sammy Charlet's employment, the trial court found that the decision could only mean that a reasonable and legitimate coverage dispute existed, which would preclude a finding of bad faith on the part of Lumbermens. On appeal, this court again reversed the trial court's judgment, concluding that nothing in the prior reversal would preclude a factfinder, after hearing the evidence and making its credibility determinations, from finding that Lumbermens' actions contravened the good faith requirements of former LSA-R.S. 22:658 and LSA-R.S. 22:1220.

[2] Effective January 2009, LSA-R.S. 22:658 was re-numbered as LSA-R.S. 22:1892 and LSA-R.S. 22:1220 was re-numbered as LSA-R.S. 22:1973. For consistency, this opinion retains the numbering used by CFII in its supplemental and amending petition, which was in effect at the time this cause of action arose.

CF Industries, Inc. v. Turner Indus. Services, Inc., 09-0093 (La. App. 1st Cir. 6/12/09) (unpublished).

The case went to a trial on the merits. At the conclusion of its case-in-chief, CFII moved for a directed verdict, which motion was denied by the court. The jury ultimately returned a verdict, finding that the 1995 ATC controlled the rights and obligations between CFII and MQS with respect to the services provided by Sammy Charlet on the date of the explosion. The jury also found that the explosion was in some way connected to and arose out of Sammy Charlet's services, and attributed 52% of the fault to MQS. The jury denied CFII's bad faith claims against Lumbermens. The trial court concluded that the jury's findings, as a matter of law, resulted in the ultimate conclusion that CFII was not an additional insured under the Lumbermens policy, and that the indemnity claims asserted by CFII against MQS and Lumbermens were capped at the one million dollar limitation agreed upon by the parties in the 1995 ATC. CFII moved for a JNOV and also filed a motion for new trial, which were both denied by the trial court. CFII now appeals the judgment, and makes the following assignments of error:

1. The trial court erred in allowing parol evidence and the jury erred in considering it.

2. The jury was manifestly erroneous in finding that the 1995 Agreement of Terms and Conditions was the agreement which applied with respect to the services provided by MQS Inspection through Sammy Charlet on May 24, 2000, and the trial court's rulings and judgment thereon were incorrect.

3. The trial court abused its discretion by denying appellants CF Industries, Inc.'s and Illinois National Insurance Company's Motion for Directed Verdict that the more recent 1996 Agreement of Terms and Conditions applied, and by denying appellants' Motion for JNOV and Motion for New Trial.

Lumbermens answered the appeal, asserting that in the event that the 1995 ATC was not a binding agreement, then there was no agreement, and that the portion of the judgment finding that it was to indemnify CFII up to one million dollars should be reversed.

LAW AND ANALYSIS

I. Assignment of Error No. 1-Parol Evidence

In its first assignment of error, CFII alleges that the trial court erred in admitting parol evidence for the purpose of determining whether the parties agreed to the 1995 ATC and whether the 1996 ATC terminated the 1995 ATC.

An appellate court may not overturn a jury's findings of fact absent manifest error, or unless a finding is clearly wrong. However, if upon review, we find that the trial court committed one or more evidentiary errors that interdict the fact-finding process, we are required to instead conduct a *de novo* review. As such, because a finding of an evidentiary error may affect the standard of review we should apply, we will first address the alleged evidentiary errors. **Wright v. Bennett**, 2004-1944 (La. App. 1 Cir. 9/28/05), 924 So.2d 178, 182. We note, however, that in regards to the defendants' allegations of error as to whether the trial court improperly admitted or excluded certain evidence, the trial court is granted broad discretion in these rulings and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. **Wright**, 924 So. 2d at 183, *citing* **Turner v. Ostrowe**, 2001-1935 (La. App. 1 Cir. 9/27/02), 828 So.2d 1212, 1216, writ denied, 2002-2940 (La. 2/7/03), 836 So.2d 107.

Morever, this circuit has previously noted that LSA-C.E. art. 103(A) provides, in part, that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is

affected." **Wright**, 924 So.2d at 183. "The proper inquiry for determining whether a party was prejudiced by a trial court's alleged erroneous ruling on the admission or denial of evidence is whether the alleged error, when compared to the entire record, had a substantial effect on the outcome of the case. If the effect on the outcome of the case is not substantial, reversal is not warranted." **Wright**, 924 So.2d at 183. As such, even if we determine that the trial court abused its discretion and improperly admitted or excluded certain evidence, we must then also find that the error, when compared to the entire record, had a substantial effect on the outcome of the case in order for the error to warrant a reversal of the verdict.

The First Circuit, in **Spohrer v. Spohrer**, 610 So.2d 849, 851-53 (La. App. 1st Cir. 1992), held the following regarding interpretation of contractual provisions:

> Legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. The rules of interpretation establish that when a clause in a contract is clear and unambiguous, the letter of the clause should not be disregarded under the pretext of pursuing its spirit.
>
> As a general rule, parol evidence is inadmissible to vary, modify, explain, or contradict a writing. In **Investors Associates Ltd. V. B.F. Trappey's Sons, Inc.**, 500 So.2d 909, 912 (La. App. 3 Cir.), writ denied, 502 So.3d 116 (La. 1987), the court noted that:
>
> > [C]ontracts, subject to interpretation from the instrument's four corners without the necessity of extrinsic evidence, are to be interpreted as a matter of law. The use of extrinsic evidence is proper only where a contract is ambiguous after an examination of the four corners of the agreement.
>
> However, as pointed out by the court in **Investors Associates, Ltd.**, there are exceptions which permit reference to parol and other outside evidence. One such instance is where the mutual intention of the parties has not been fairly explicit.

In such instances, the court may consider all pertinent facts and circumstances, including the party's own conclusions rather than adhere to a forced meaning of the terms used.

Further, when the terms of a written contract are susceptible to more than one meaning, or there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language employed, or fraud is alleged, parol evidence is admissible to clarify the ambiguity, show the intention of the parties, or prove fraud. **Borden v. Gulf States Utilities Company**, 543 So.2d at 927; **Schroeter v. Holden**, 499 So.2d at 311.

Louisiana Civil Code article 2045 defines interpretation of a contract as "the determination of the common intent of the parties." **Lindsey v. Poole**, 579 So.2d 1145, 1147 (La. App. 2nd Cir.), writ denied, 588 So.2d 100 (La.1991). Such intent is to be determined in accordance with the plain, ordinary, and popular sense of the language used, and by construing the entirety of the document on a practical, reasonable, and fair basis. Moreover, LSA-C.C. art. 2047 provides that "[t]he words of a contract must be given their generally prevailing meaning. Words of art and technical terms must be given their technical meaning when the contract involves a technical matter." The rule of strict construction does not authorize courts to make a new contract where the language employed expresses the true intent of the parties. One of the best ways to determine what the parties intended in a contract is to examine the method in which the contract is performed, particularly if performance has been consistent for a period of many years. Intent is an issue of fact which is to be inferred from all of the surrounding circumstances.

The applicable standard of review for contractual interpretation was set forth by this court in **Borden, Inc. v. Gulf States Utilities Company**, 543 So.2d 924, 928 (1989): (Citations omitted).

> Whether a contract is ambiguous or not is a question of law. Where factual findings are pertinent to the interpretation of a contract, those factual findings are not to be disturbed unless manifest error is shown. However, when an appellate review is not premised upon any factual findings made at the trial level, but is, instead, based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. In such cases, appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. (Citations omitted.)

In this case, there are two "master" contracts to be interpreted. The dispute lies with whether the terms of the two were ever agreed upon, and, if so, then which of the two applies under the facts of this case. The pertinent language in the contracts makes clear, and neither party disputes that: The 1995 ATC, if agreed upon as modified by MQS, *did not* require MQS to list CFII as an additional insured under its policies of insurance, and capped MQS's potential indemnity exposure at one million dollars; the 1996 ATC *did* require that MQS list CFII as an additional insured under its policies of insurance, and did not contain a limit of indemnification liability.

However, CFII contends that the 1995 ATC could not be applicable because the parties never reached a meeting of the minds as to its terms. The 1995 ATC was sent, signed by CFII, to MQS, along with an unsigned copy. MQS did not sign the copy that was signed by CFII, but instead modified the indemnity portion of the unsigned agreement by writing by hand on the heading: (See: "MQS Proposal 1"-Ps1.031; "INDEMNITY" Section-attached). This modification by MQS was signed and returned to CFII with the referenced attachment, a letter written by Jim Gregory and Bill McDonough, dated September 6, 1995, detailing the specific changes proposed by MQS.

Thereafter, on September 20, 1995, Purchase Order #976085 was issued by CFII to MQS for the requisition of Sammy Charlet's certified inspection services at the CFII facility. The purchase order stated that "CF Industries, Inc.'s (CFII) Appendix of Terms and Conditions (T&C) dated 4-25-94 [the 1995 ATC] attached (two copies) apply to this purchase order... ." On September 29, 1995, Change Order 1 to Purchase Order #976085 was issued and was *signed by both parties*. The change order stated: "This change is issued to acknowledge the indemnity requirements as outlined in

Jim Gregory's and Bill McDonough's proposal of 9/06/1995. These requirements will become part of the indemnity requirements of CFII's Contractors Terms and Conditions as submitted with the original order."

Clearly, the change order establishes that the parties agreed upon the terms and conditions that would apply to Sammy Charlet's employment at the CFII facility. As such, CFII's argument that the 1995 ATC never became effective as to the parties must fall. The 1995 ATC was a binding contract between the parties and thus became the law between them.[3]

But CFII also contends that in the event the 1995 ATC became a binding contract, the 1996 ATC still controlled at the time of the explosion in 2000, because the 1996 ATC served to terminate any prior agreements of the parties.

A review of the language of the 1996 ATC, however, reveals no language expressly terminating the 1995 ATC. In fact, language in the 1996 ATC creates the possibility that *its* terms could be modified or superseded in the event that a more specific contract or purchase order applies:

> 29. CONFLICT
>
> Should the parties hereto enter into a Service Agreement or Purchase Order or any other written contract (excluding work order, job tickets or similar documents issued by CFII) which is specifically prepared for a particular job to be done or service to be rendered by CONTRACTOR [MQS], then, in the event of a conflict between the terms of such Service Agreement, Purchase Order or contract and the terms of this Agreement, the terms of the Service Agreement, Purchase Order or specific special contract for the particular job or service shall prevail.

[3] Even in instances where the law requires that a contract must be in writing, it is not necessary that the contract be included in only one document. The offer, acceptance, and terms can be in two or more separate documents, and the "memorandum of the contract" will be sufficient if the offer, acceptance, and all required terms are present. **Salmon Falls Manufacturing Co., v. Goddard**, 55 U.S. 446, 1852 WL 6760 (U.S. Mass.), **Dozier v. Rhodus**, 08-1813 (La. App. 1 Cir. 5/5/09), 17 So.3d 402, rehearing denied, (La. App. 1 Cir. 6/19/09), writ denied, (La. 10/30/09), **Doiron v. Louisisna Farm Bureau Mutual Ins. Co.**, 98-2818 (La. App. 1 Cir. 2/18/00), 753 So.2d 357.

The 1995 ATC also contains the "CONFLICT" section above, verbatim. Here, there is a specific purchase order – for a particular job to be done or service to be rendered—for the employment of Sammy Charlet. And that purchase order by its terms is governed by the 1995 ATC. The 1995 ATC was a binding contract between CFII and MQS and the language of the contracts makes clear that the 1995 ATC was not "terminated" by the 1996 ATC.

We note that CFII made no objection to the admission of parol evidence at the trial in this case. Louisiana Code of Evidence article 103(A)(1), which is the article governing rulings admitting evidence, clearly sets forth a two-fold procedure for objecting. It requires both a contemporaneous objection and an enunciation of the specific grounds for the objection. The purpose of this rule is to afford the trial court an opportunity to prevent or correct prejudicial error. **Jeansonne v. Bosworth**, 601 So.2d 739, 91-0461 (La. App. 1 Cir. 5/22/92), rehearing denied, (La. 12/9/92). If no objection is made, the party is precluded from raising the issue on appeal. **Jeansonne v. Bosworth**, 601 So.2d at 744. As such, because CFII made no contemporaneous objection at the trial, it is precluded from raising this issue on appeal.

Moreover, the testimony at the trial is merely cumulative of the language in the contracts. Where evidence is admitted that is merely cumulative of other evidence in the record, any error in its admission is harmless. **Brumfield v. Guilmino**, 93-0366 (La. App. 1 Cir. 3/11/94), writ denied, 94-0806 (La. 5/6/94), 637 So. 2d 1056, **Alcorn v. City of Baton Rouge ex re. the Baton Rouge Police Dept.**, 02-0952 (La. App. 1 Cir. 1/16/04), 863 So.2d 517, remanded, 02-0952 (La.App. 1 Cir. 12/30/04), 898 So.2d 385, writ denied, 05-0255 (La. 4/8/05), 899 So.2d 12. As such, the

admission of the testimony, when compared to the entire record, did not have substantial effect on the outcome of this case and does not warrant reversal. **Wright**, 924 So.2d at 183. Therefore, the applicable standard of review has not been affected and we proceed to address the remaining assignments of error under the manifest error standard of review.

II. Assignment of Error No. 2-The 1995 ATC

We now look to CFII's allegation that the jury committed manifest error in its finding that the 1995 ATC was the agreement that applied with respect to the services provided by MQS through Sammy Charlet on May 24, 2000. This issue involves factual determinations and must be decided by the jury based on the surrounding circumstances. See **Wegman v. Central Transmission, Inc.**, 499 So.2d 436 (La. App. 2 Cir. 12/3/86), rehearing denied, (La. App. 2 Cir. 1/15/87), writ denied, (La. 3/20/87).

A court of appeal may not set aside a trial court's or a jury's findings of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The supreme court has announced a two-part test for the reversal of a factfinder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993), see also **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, the issue to be resolved by a reviewing court is not whether the trier-of-fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart v. State, Department of Transportation and Development**, 617 So.2d at 882. Where factual findings are based on determinations regarding

the credibility of witnesses, the trier-of-fact's findings demand great deference. **Boudreaux v. Jeff**, 03-1932 (La. App. 1st Cir. 9/17/04), 884 So.2d 665, 671, **Secret Cove, L.L.C. v. Thomas**, 02-2498 (La. App. 1st Cir. 11/7/03), 862 So.2d 1010, 1016, writ denied, 04-0447 (La. 4/2/04), 869 So.2d 889. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell v. ESCO**, 549 So.2d at 844. Moreover, where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State, Department of Transportation and Development**, 617 So.2d at 883.

After a thorough review of the record before this court, we are unable to say that there was no reasonable basis for the jury's factual findings, nor can we say that the findings were clearly wrong. Stated differently, there is a reasonable factual basis in the record for the jury's conclusion that the terms of the 1995 ATC were applicable to the services provided by Sammy Charlet on the date of the explosion.

Both the 1995 ATC and the 1996 ATC were valid agreements between the parties. The question is which applied to the accident in 2000. The evidence established the following facts:

The 1996 ATC was signed by all parties as of 10/31/96. In connection therewith, Purchase Order #980794 was issued for the purpose of requisitioning from MQS the services of one W.F.M.T. crew to support inspection during an ammonia II turnaround. This job is referred to throughout the litigation as the "wet mag job." The record establishes, and

the parties do not contest, that this crew was separate from and did not include Sammy Charlet.

Purchase Order No. 976085, dated 9/20/95, provided for the services of a "lead inspector," Sammy Charlet. It specified that the 1995 ATC would apply using the following language:

> CF INDUSTRIES, INC'S. (CFII) APPENDIX OF TERMS & CONDITIONS (T&C) DATED 4-25-94 ATTACHED (TWO COPIES) APPLY TO THIS PURCHASE ORDER & NOT THE T&C PRINTED ON THE REVERSE SIDE OF THIS PURCHASE ORDER.

On 9/29/95 Change Order #1 to Purchase Order No. 976085, signed by both parties, was issued and provided:

> THIS CHANGE IS ISSUE[D] TO ACKNOWLEDGE THE INDEMNITY REQUIREMENTS AS OUTLINED IN JIM GREGORY'S AND BILL MCDONOUGH'S PROPOSAL OF 09-06-95. THESE REQUIREMENTS WILL BECOME PART OF THE INDEMNITY REQUIREMENTS OF CFII'S CONTRACTOR'S TERMS AND CONDITIONS AS SUBMITTED WITH THE ORIGINAL ORDER.

Through this change order, signed by both parties, the terms and conditions contained in the Gregory and McDonough letter became part of the requirements of the 1995 ATC.

Change Order #2, dated 11/2/96, extended the services of Sammy Charlet to 12/31/97, but also contained the following language:

> WE REQUEST THAT YOU SIGN AND RETURN ONE (1) SET OF CFII'S AGREEMENT OF TERMS AND CONDITIONS FOR SERVICE COMPANIES AND CONTRACTORS THAT WAS PROVIDED WITH OUR P.O. 980794. THESE TERMS ARE MODIFIED AS NOTED IN CHANGE ORDER ONE (1) OF THIS ORDER. THE TERMS AND CONDITIONS WILL APPLY TO ALL FUTURE ORDERS WE PLACE WITH YOUR COMPANY.

As noted, "P.O. 980794" was the "wet mag job" issued in conjunction with the 1996 ATC. The above language requests only that the vendor "sign and return" a copy of the 1996 ATC and does not specifically address its

adoption or incorporation, but even if such intent could be discerned, "these terms are modified as noted in Change Order one (1) of this order." (There is nothing in the record to suggest that "this order" refers to anything other than Purchase Order No. 976085.)

Change Order #2 also contains the following language on page 3:

> CF INDUSTRIES, INC'S. (CFII) APPENDIX OF TERMS & CONDITIONS (T&C) DATED 4-25-94 ATTACHED (TWO COPIES) APPLY TO THIS PURCHASE ORDER & NOT THE T&C PRINTED ON THE REVERSE SIDE OF THIS PURCHASE ORDER.

Change Order #2 thus adopts the 1995 ATC by its plain language or, perhaps, the 1996 ATC as modified by the terms of the 1995 ATC and the Gregory and McDonough letter set forth in Change Order #1.

Charlet's services were again extended by Change Order #3 to Purchase Order No. 976085 on 1/3/98. The following language was again included:

> CF INDUSTRIES, INC'S. (CFII) APPENDIX OF TERMS & CONDITIONS (T&C) DATED 4-25-94 ATTACHED (TWO COPIES) APPLY TO THIS PURCHASE ORDER & NOT THE T&C PRINTED ON THE REVERSE SIDE OF THIS PURCHASE ORDER.

In a special jury interrogatory, the jury was asked whether the 1995 ATC or the 1996 ATC applied to the services provided by Sammy Charlet. The evidence, as detailed above, provided the jury with a reasonable basis to find as a matter of fact that the 1995 ATC applied to Purchase Order No. 976085, the requisition of the certified inspection services of Sammy Charlet, and continued to be the applicable agreement between MQS and CFII as to Sammy Charlet's employment until he resigned, after the date of the explosion. While more recent, the 1996 ATC appears tied to the "wet mag job" and is not specifically referenced by the purchase order for the

services of Sammy Charlet, which in each of its change orders specifically references the 1995 ATC. The finding by the jury that the 1995 ATC applied is amply supported by the record and we will not disturb it.

III. Assignment of Error No. 3-Directed Verdict, JNOV, New Trial

In this assignment of error, CFII contends that the trial court abused its discretion in denying its Motion for Directed Verdict, Motion for Judgment Notwithstanding the Verdict (JNOV), and Motion for a New Trial.

In ruling on a motion for directed verdict or a JNOV under LSA-C.C.P. arts. 1810 and 1811, the trial court is required to employ the following legal standard:

> A directed verdict or a JNOV should be granted only if the trial court, after considering the evidence in the light most favorable to the party opposed to the motion, finds it points so strongly and overwhelmingly in favor of the moving party that reasonable persons could not arrive at a contrary verdict on that issue.

Petitto v. McMichael, 588 So.2d 1144, 1147 (La. App. 1st Cir.1991), writ denied, 590 So.2d 1201 (La. 1992); **Barnes v. Thames**, 578 So.2d at 1169; **Lilly v. Allstate Insurance Company**, 577 So.2d 80, 83 (La. App. 1st Cir.1990), writ denied, 578 So.2d 914 (La. 1991).

If there is substantial evidence opposed to the motion of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motion must be denied. **Petitto v. McMichael**, 588 So.2d at 1147; **Barnes v. Thames**, 578 So.2d at 1169.

Further, a new trial should be granted, upon contradictory motion of a party, if the verdict or judgment appears contrary to the law and evidence.[4] A court also has discretionary power to grant a new trial.[5]

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[4] Art. 1972. Peremptory grounds

> A new trial shall be granted, upon contradictory motion of any party, in the following cases:

CFII argues that there is no substantial evidence opposed to its motions of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. In its motion for new trial, CFII alleged that the judgment was contrary to law, based on the same arguments.

Based on our conclusions reached hereinabove, there is substantial evidence opposed to the motions for directed verdict and JNOV of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach the conclusion that the 1995 ATC was in effect governing Sammy Charlet's employment at the time of the accident. Likewise, we find no legal basis upon which the trial court was required to grant the motion for new trial, and no abuse of discretion in the trial court's ruling to deny the motion for new trial. As such, this assignment of error is also without merit.

CONCLUSION

For the reasons assigned herein, the judgment of the 23rd Judicial District Court for the Parish of Ascension is affirmed. The answer is denied. All costs of this appeal are assessed to the plaintiffs/appellants, CF Industries, Inc. and Illinois National Insurance Company.

ANSWER DENIED; JUDGMENT AFFIRMED.

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(1) When the verdict or judgment appears clearly contrary to the law and the evidence.
(2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.
(3) When the jury was bribed or has behaved improperly so that impartial justice has not been done.

[5] Art. 1973. Discretionary grounds

A new trial may be granted in any case if there is good ground therefor, except as otherwise provided by law.