IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 17, 2010 Session

# JOSEPH SCOTT RICHARDSON v. JAMES BROWN CONTRACTING, INC. d/b/a JAMES BROWN TRUCKING COMPANY ET AL.

**Appeal from the Chancery Court for Hamilton County**
**No. 07-0538 Howell N. Peoples, Chancellor**

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**No. E2009-01785-WC-R9-WC - Filed August 18, 2010**

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The owner and operator of a tractor-trailer filed a workers' compensation claim against a common carrier for injuries that he incurred while attempting to verify a load to transport to another location. The trial court ruled that the owner/operator, while an independent contractor, was entitled to workers' compensation benefits by virtue of a written contract between the parties extending coverage, as permitted by statute. The trial court reserved judgment on the award and permitted an interlocutory appeal. The Supreme Court granted the appeal and referred it to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Code Annotated section 50-6-225(e)(3) and Tennessee Supreme Court Rule 51. Because the evidence does not preponderate against the findings of fact made by the trial court, the judgment is affirmed. The cause is remanded to the trial court for the disposition of the remaining issues.

**Tenn. R. App. P. 9 Interlocutory Appeal by Permission; Judgment of the Chancery Court Affirmed and Remanded**

GARY R. WADE, J., delivered the opinion of the court, in which WALTER C. KURTZ, SR. J., and JON KERRY BLACKWOOD, SR. J., joined.

Melissa Kelly Helton, Chattanooga, Tennessee, for the appellant, James Brown Contracting.

Russell Theodore King, Chattanooga, Tennessee, for the appellee, Joseph Scott Richardson.

## MEMORANDUM OPINION

### Facts and Procedural Background

On June 22, 2006, Joseph Scott Richardson, a tractor-trailer owner and operator, was injured in Chattanooga while identifying a load for transport. At the time, he was working under a service contract with James Brown Contracting, Inc., doing business as James Brown Trucking Company ("JBT"), of Lithonia, Georgia. Between 1998 and 2001, Richardson and JBT had entered into three "Independent Contractor Agreement[s]". Although JBT was unable to locate a copy of the first two contracts, the third contract includes the following clause at paragraph 21, entitled "OWNER'S EMPLOYEES":

> The OWNER may elect to have CARRIER secure workman's compensation insurance on its behalf to cover OWNER and/or its employees. If OWNER elects to have CARRIER secure workman's compensation coverage for its benefit, OWNER agrees to reimburse CARRIER by authorizing the cost of that coverage to be deducted from its settlements with CARRIER. The amount of those deductions for the purchase of such coverage is set forth on Exhibit "C" hereto.

(Emphasis added.)

The term "workman's compensation" also appears in two other paragraphs in the contract. Those provisions purport to require the owner/operator to submit proof of workers' compensation coverage and permit JBT to "obtain any and all coverages referenced above and [to] deduct the costs thereof from its settlements with" the owner/operator if he "fails to furnish AUTHORIZED CARRIER with evidence of workman's compensation insurance." Exhibit "C" ("Exhibit C"), however, makes no mention of workers' compensation, but authorizes JBT to deduct from Richardson's pay the "cost of coverage and administrative cost" for "[o]ccupational [a]ccident coverage and [b]ob-tail insurance."[1] Richardson's

[1] "Bobtail insurance" is liability coverage for trucks returning to the terminal after the delivery of their cargo. While the company hiring the truck assumes liability while the truck is loaded with cargo, that liability ends upon delivery. Harvey W. Rubin, Barron's Dictionary of Insurance Terms 56 (4th ed. 2000). Barron's does not define "occupational accident insurance," but includes a definition of "occupational accident" that cross-references the definition of "workers' compensation." Id. at 349-50. An industry association describes occupational accident insurance, which covers eligible on-the-job accidents sustained by owner/operators, as a less-expensive alternative where workers' compensation coverage is either unavailable to the owner/operator or prohibitively expensive. National Truckers' Association, Occupational Accident Insurance, http://www.nationaltruckers.com/member/occAcc.aspx (last visited July 19, 2010).

signatures appear on both the contract and the attached Exhibit C.[2] The contract[3] also contains a paragraph titled "ENTIRE CONTRACT," which permits addenda but requires a signature from both parties in order to modify or change the terms:

> This contract, together with the addend[a] hereto and any trip record issued pursuant to this contract, constitutes the entire agreement and understanding between the parties and it may not be modified, altered, changed or amended in any respect except in writing signed by both parties.

There were two addenda to the final contract, both purportedly signed by Richardson, which the trial court ultimately found to be inapplicable. The first required "[t]he OWNER . . . to obtain Occupational Accident insurance for OWNER or its employees and agrees that CARRIER will secure said coverage." That addendum referred to Exhibit C for the amount of deductions to be recovered from settlements. The second addendum provided that the "OWNER and its employees are not entitled to receive worker's compensation benefits . . . [and that] OWNER acknowledges that [occupational accident insurance] is not in any way construed as workers compensation insurance."

At trial, Richardson, who acknowledged signing both the third contract and Exhibit C, testified that he had never seen either of the two addenda prior to his injury. He specifically denied having signed the documents or having authorized anyone to sign on his behalf. He further testified that his first contract, in 1998, was presented and explained to him in JBT's Lithonia office by a representative of JBT, elsewhere identified as Nell Butler.[4] Richardson stated that he asked Ms. Butler about "workman's comp" and explicitly recalled having requested coverage because his brother had been injured in a work-related accident for which there was no insurance and "about lost everything." Richardson also recalled that after being warned by Ms. Butler that he would have to bear the cost of the premiums, he

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[2] Some of the pages of the contract evince a signature date of December 27, 2000, while other pages include a handwritten date of January 1, 2001 adjacent to Richardson's signature.

[3] Additionally, the contract contained a choice of law provision requiring that the contract "be governed by the laws of the State of Georgia." Richardson asserts in his response brief that Georgia law should be applied to this case and relies upon a Georgia statute concerning parol evidence. It is well-established, however, that an issue that is not raised at trial generally will not be considered on appeal. See Dye v. WITCO Corp., 216 S.W.3d 317, 321 (Tenn. 2007); Simpson v. Frontier City Credit Union, 810 S.W.2d 147, 153 (Tenn. 1991). Because the record demonstrates that the choice of law provision of the contract was not raised at trial, Tennessee law is applied to the contract.

[4] Ms. Butler did not testify at trial. In her deposition, Lynn Parker, a JBT human resources supervisor, testified that Ms. Butler had "oriented Mr. Richardson," but she also stated that did not know how to contact or find Ms. Butler.

"explained . . . [why the coverage was] so important to me." He also remembered her instructions that he could "just sign these right here and go on . . . [and] read it later." Richardson, who admitted that he was "not a real strong reader," testified that when he was informed that the contract contained "mostly legal stuff or something like that," he did not read any of the content.

After purchasing a different truck in 1999, Richardson, at JBT's request, signed the second of his three contracts. He testified that a JBT representative explained at the time that "the only thing that changed [from the first contract] was [that] you got to have a copy that shows a different VIN number on your truck." Richardson understood "that was the whole purpose, and [he] didn't think anything would change." Because Richardson continued to have insurance deductions from his settlement statement and believed that he had elected worker's compensation coverage in the first contract, he did not question the abbreviation on his settlement statement: "OC/ACCID/INS."[5] He further testified that no one at JBT had ever informed him that he was not covered under workers' compensation or that his coverage had changed from his understanding of the initial contractual terms. Richardson admitted that he never read the second and third contracts and acknowledged that he had never made any further inquiry regarding his coverage.

Richardson's wife, Teresa, who handled the majority of the Richardson family finances, stated that she "normally only sign[ed her husband's] name to church checks, like [] tithes . . . and occasionally to the mortgage." She specifically denied signing either addendum, claiming that her husband did not bring work documents home and asserting that "[she] would have never signed work stuff." She had no recollection of ever being in JBT's main office in Lithonia and asserted that she had never been inside the JBT office in Cleveland. While she did remember accompanying her husband to the Ooltewah terminal to "get some logs or something like that," she stated that she did not enter the "office part."

The discovery deposition of Lynn Parker, Director of Human Resources for JBT, was presented as evidence on behalf of Richardson. After acknowledging that she was unable to find the first two contracts for Richardson, Ms. Parker was able to produce a copy of the third contract. She confirmed that JBT typically offered occupational accident insurance coverage as an option and testified that workers' compensation coverage was also optional, but pointed out that to her knowledge, "no owner[/]operator ever asked [] about enrolling in that program."

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[5] During his testimony at the hearing, Richardson referred to the settlement statements as his "pay stubs" or "check stubs." He stated, for example, that he confirmed with his brother that he had purchased workers' compensation coverage because "it show[ed] on my check stub."

Kevin Slaughter, Vice President of Operations at JBT, testified that owner/operators were offered only occupational accident insurance. He explained that the contractual language offering workers' compensation coverage was likely language taken from another contract in the trucking industry, but he insisted that JBT, as a business practice, did not allow owner/operators to elect workers' compensation coverage. Slaughter claimed that his duties included traveling to the various terminals to explain the changes contained in the addenda, but he conceded that he did not witness the signatures of the owner/operators and acknowledged that these documents were not signed by a representative of JBT.

Roy Cooper, Jr., a forensic document examiner, testified as an expert on behalf of JBT. Cooper stated with eighty-five percent certainty that the signatures on the addenda were not Richardson's. Cooper also compared the signature on the addenda to the writing sample of Teresa Richardson and opined that he was eighty-five to ninety-five percent certain that she was the signer. Cooper explained that he could not assess the signatures on the addenda with one-hundred percent accuracy because the original copies of the documents were not available.

In the first part of a bifurcated proceeding,[6] the trial court, reserving for later any consideration of benefits, addressed only whether Richardson was "entitled to recover workers' compensation benefits for treatment of the injury he sustained in June of 2006." After determining that Richardson was an owner/operator of a tractor-trailer truck and that JBT was a common carrier certified by the Interstate Commerce Commission, the trial court concluded that, under Tennessee Code Annotated section 50-6-106(1)(A) (2008), owner/operators were not, as a general rule, employees for purposes of workers' compensation. The trial court did, however, find that Richardson, as an owner/operator, qualified for worker's compensation under section 50-6-106(1)(B), which specifically allows coverage if there is a written agreement between the common carrier and the owner/operator.

The trial court accredited Richardson's testimony that he had specifically requested workers' compensation coverage when he signed the initial contract with JBT, and that JBT, as stated in the only contract available, had offered the coverage on the condition that Richardson pay the cost. The trial court also found that the workers' compensation and occupational accident insurance provisions in the third contract and Exhibit C were contradictory, and that any resulting ambiguity should be construed against JBT as the drafter of the agreement. Because the contract refers to Exhibit C for an explanation of workers' compensation coverage charges to electing owner/operators, the trial court ruled that

[6] JBT sought and received permission to bifurcate the issues of liability and benefits. See Tenn. R. Civ. P. 42.02 ("The court for convenience or to avoid prejudice may . . . in nonjury trials, order a separate trial of any one or more claims, cross-claims, counterclaims, third-party claims, or issues.").

Richardson's signature on Exhibit C was an election of workers' compensation coverage entitling him to coverage "by virtue of the contractual agreement between the parties."

While observing that Richardson was bound by the provisions of the contract even though he had not read the content, the trial court was persuaded that the testimony established that Richardson did not sign the addenda. The trial court considered the expert testimony offered by JBT suggesting that Teresa Richardson may have signed the addenda, but found that Richardson was not bound by the terms because the expert was unable to fully and reliably test the signature and because there was no evidence that Mrs. Richardson had any authority to sign on behalf of her husband. Based upon these findings, the trial court found that Richardson was entitled to workers' compensation coverage.

Prior to any consideration of benefits, JBT filed a motion for new trial, which was denied. Upon motion, the trial court granted an interlocutory appeal. The Supreme Court granted JBT's application under Tennessee Rule of Appellate Procedure 9 and referred the interlocutory appeal to this Panel. In its appeal, JBT argues that the trial court erred by finding Richardson was entitled to benefits either by the terms of the contract or by an election in substantial compliance with Tennessee Code Annotated section 50-6-106(1)(B).

## Standard of Review

In workers' compensation cases, we review issues of fact de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e) (2008). "[T]he reviewing court must conduct an in-depth examination of the trial court's factual findings and conclusions." Trosper v. Armstrong Wood Prods., Inc., 273 S.W.3d 598, 604 (Tenn. 2008). Considerable deference must be afforded credibility or factual determinations when the trial judge had an opportunity to hear in-court testimony and observe the witness' demeanor. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). The same deference, however, is not afforded to findings based on documentary evidence, such as depositions. Trosper, 273 S.W.3d at 604. A trial court's conclusions of law are afforded no presumption of correctness by the reviewing court. Id. "The interpretation of written agreements . . . is a matter of law [to be] review[ed] de novo on the record according no presumption of correctness to the trial court's conclusions of law." Allstate Ins. Co. v. Watson, 195 S.W.3d 609, 611 (Tenn. 2006).

## Analysis

### I. Entitlement to Workers' Compensation Based Upon the Contractual Terms

We first address whether Richardson was entitled to workers' compensation benefits under his owner/operator agreement with JBT. Tennessee Code Annotated section 50-6-106(1)(A) states that for workers' compensation purposes, "no common carrier by motor

vehicle operating pursuant to a certificate of public convenience and necessity shall be deemed the employer of a leased-operator or owner-operator of a motor vehicle or vehicles under a contract to such a common carrier[.]" The workers' compensation statute also provides, however, that

> a leased operator or a leased owner/operator of a motor vehicle under contract to a common carrier may elect to be covered under any policy of workers' compensation insurance insuring the common carrier upon written agreement of the common carrier, by filing written notice of the contract, on a form prescribed by the commissioner, with the division[.]

Tenn. Code Ann. § 50-6-106(1)(B) (emphasis added). Courts, therefore, must evaluate the specific agreement between the common carrier and the independent owner/operator in order to determine whether the owner/operator is covered under the common carrier's workers' compensation policy. The recovery of benefits by the Richardson for his June 22, 2006 injury thus depends upon the meaning of the terms contained in his third "Independent Contractor Agreement" and the accompanying Exhibit C, as well as the validity of the two addenda signed subsequent to the third contract.

When interpreting a contract, "a cardinal rule is that a court must attempt to ascertain and give effect to the intent of the parties." Christenberry v. Tipton, 160 S.W.3d 487, 494 (Tenn. 2005). "[C]ourts look to the plain meaning of the words in the document to ascertain the parties' intent." Allstate, 195 S.W.3d at 611. A reviewing court's initial task is to determine if the contractual language at issue is ambiguous. Id. "A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one." Planters Gin Co. v. Fed. Compress & Warehouse Co., 78 S.W.3d 885, 890 (Tenn. 2002). When the terms of the contract are susceptible to more than one reasonable meaning, the parties' intent cannot be determined using a literal interpretation of language in the contract. Allstate, 195 S.W.3d at 611. If, however, the contractual language is clear and unambiguous, the literal meaning of the terms controls the outcome of the dispute. Id. Generally, a vague or ambiguous provision in a contract must be construed against the party responsible for drafting it. Id. at 612 (citing Hanover Ins. Co. v. Haney, 425 S.W.2d 590, 592 (Tenn. 1968); Vargo v. Lincoln Brass Works, Inc., 115 S.W.3d 487, 492 (Tenn. Ct. App. 2003)).

Preliminarily, we agree with the trial court that the terms of the third contract between Richardson and JBT regarding the provision of workers' compensation coverage are internally contradictory. Paragraph 21 of the contract allows Richardson to elect "workman's compensation insurance," an option that clearly is permissible under our workers' compensation law. See Tenn. Code Ann. § 50-6-106(1)(B). The election of coverage is contingent upon Richardson agreeing to a deduction from his settlement statement as set

forth in Exhibit C. The terms of Exhibit C, however, make no reference to workers' compensation coverage, and instead authorize JBT to deduct the "cost of coverage and administrative cost" for "[o]ccupational [a]ccident coverage and [b]ob-tail insurance." Neither the term "workman's compensation insurance" in paragraph 21 nor the term "[o]ccupational [a]ccident coverage" in Exhibit C is defined in the agreement.[7] When the provisions are read together, then, it is unclear whether Richardson could actually have chosen the option of receiving workers' compensation coverage, or whether he was limited to obtaining occupational accident insurance. Because the terms of the third contract are susceptible to more than one reasonable interpretation, they are ambiguous.

The two signed addenda would serve to correct this ambiguity, because they effectively replace "workman's compensation" with "Occupational Accident," clarify that Richardson was "not entitled to receive worker's compensation benefits," and require an acknowledgment that occupational accident insurance "is not in any way construed as workers compensation insurance." The trial court, however, determined that Richardson was "not bound by these documents because he did not sign them and it [wa]s not established that his wife was authorized to sign the documents on his behalf." The preponderance of the evidence does not weigh against the trial court's finding. As neither of the addenda is witnessed and only one of them is dated, we are limited to considering the testimony of Richardson, his wife, and Cooper, JBT's handwriting expert, to discern whether the signatures on the documents are valid. Both Richardson and his wife denied signing the documents. Cooper opined that Richardson probably did not sign the documents and could not testify with absolute certainty that Mrs. Richardson had done so. Moreover, no evidence was presented to suggest that Mrs. Richardson had any authority to sign documents binding her husband to JBT. Her testimony suggested that she had never been inside a JBT office. Because we affirm the holding of the trial court that the addenda are invalid, those two documents cannot be used to clarify the ambiguity surrounding the type of insurance coverage that Richardson elected in his agreement with JBT.

Upon concluding that the terms of the contract were ambiguous, the trial court held in Richardson's favor, employing the long-held principle that any ambiguities in a contract shall be construed against the drafter. See Allstate, 195 S.W.3d at 612. Our Supreme Court

[7] As we have noted, the undefined term "occupational accident coverage" appears to have specific meaning within the trucking industry as an alternative method of providing coverage for accidental injuries to owner/operators in the workplace. The description of the coverage sounds a lot like the definition of workers' compensation: "[a] system of providing benefits to an employee for injuries occurring in the scope of employment." Black's Law Dictionary 1637-38 (8th ed. 2004); see also Lynch v. City of Jellico, 205 S.W.3d 384, 390 (Tenn. 2006) (explaining that the "purpose of the Tennessee Workers' Compensation Law, which was originally enacted in 1919, is to relieve society of the burden of providing compensation to injured workers and to put that burden on the industry employing the worker").

has also stated, however, that "when a contractual provision is ambiguous, a court is permitted to use parol evidence, including the contracting parties' conduct and statements regarding the disputed provision, to guide the court in construing and enforcing the contract." Id. (citing Memphis Hous. Auth. v. Thompson, 38 S.W.3d 504, 512 (Tenn. 2001); Fidelity-Phenix Fire Ins. Co. of N.Y. v. Jackson, 181 S.W.2d 625, 631 (Tenn. 1944) (describing the rule of "practical construction"); see also Vargo, 115 S.W.3d at 494 ("[W]hen a particular contractual provision is ambiguous, the 'rule of practical construction' permits the courts to use the contracting parties' conduct and statements regarding the disputed provision as guides in construing and enforcing the contract.")). Here, both parties presented evidence of conduct and statements outside of the contractual terms in an effort to persuade the trial court to make an interpretation favorable to their side. Whether the evidence should have been excluded or not, however, our ruling would be the same.

Richardson testified that he inquired about workers' compensation insurance during his orientation and contends that he emphasized to Ms. Butler, the JBT representative, his reasons for wanting coverage. He believed that deductions were taken from his settlement statement to pay for his elective workers' compensation coverage. He also testified that he was told that the second signed contract was needed only to update the vehicle identification number to reflect the new truck he had leased. At all times, then, Richardson believed that he was covered by workers' compensation insurance. Ms. Butler did not appear as a witness, but portions of the deposition testimony of Ms. Parker, JBT's Director of Human Resources, were read into the trial record. She confirmed that JBT offered workers' compensation as an option, but stated that, to her knowledge, no owner/operator had ever requested the coverage. Slaughter, JBT's Vice President of Operations, testified that, despite the language of Richardson's third contract stating that workers' compensation insurance was an option, it was not JBT's practice to offer such coverage to its independent owner/operators. In summary, this evidence is at best inconclusive, and is not so strong as to countervail the well-established tenet that ambiguities in a contract are to be construed against the drafter.

JBT argues against the consideration of any extrinsic evidence, claiming that "[t]he ambiguity described by the trial court, if any, is a patent ambiguity, which "[p]arol[] evidence cannot be used to cure."[8] We decline JBT's invitation to classify the ambiguities in the third

[8] A "patent ambiguity" is one "produced by the uncertainty, contradictoriness, or deficiency of the language of an instrument." Mitchell v. Chance, 149 S.W.3d 40, 44 (Tenn. Ct. App. 2004) (quoting Weatherhead v. Sewell, 28 Tenn. (9 Hum.) 272, 295 (1848)). This is different, of course, from "latent ambiguity," which does "not arise from the words themselves, but from the ambiguous state of extrinsic circumstances to which the words of the instrument refer." Id. (quoting Weatherhead, 28 Tenn. at 295). "In other words, a patent ambiguity is one which appears on the face of the [writing], while a latent ambiguity is one which is not discoverable from a perusal of the [writing] but which appears upon consideration of the (continued...)

contract as either "patent" or "latent." As we have stated, the evidence of the parties' conduct and beliefs regarding the contractual provisions does not clarify the ambiguity, and, therefore, does not affect our ruling. Moreover, our Supreme Court has generally remained silent concerning the distinction between patent and latent ambiguities when applying the ambiguity exception to the general rule excluding parol evidence. See, e.g., Allstate, 195 S.W.3d at 611-12 (using parol evidence to construe the meaning of the term "non intentional"); Memphis Hous. Auth., 38 S.W.3d at 512 (considering parol evidence to define an ambiguous term in a public housing lease); Jones v. Brooks, 696 S.W.2d 885, 886 (Tenn. 1985) ("[W]here there exists an ambiguity in a contract, parol evidence is admissible to explain the actual agreement."). Further, commentators have observed that "[t]he modern (and more sensible) rule is that extrinsic evidence may clarify either a patent or a latent ambiguity." Steven W. Feldman, 21 Tennessee Practice Contract Law & Practice § 8:52 (2006) (citing cases).

In summary, the provisions in the third contract are ambiguous as to whether Richardson was offered workers' compensation insurance or occupational accident coverage. The addenda that would assist in clarifying these terms were held to be invalid by the trial court, and the preponderance of the evidence does not weigh against this conclusion. Moreover, the extrinsic evidence presented by the parties is not illuminating. We affirm the trial court's holding that the ambiguous provisions in the contract should be construed against the drafter, and, therefore, Richardson is entitled to workers' compensation benefits. This is consistent with both traditional principles of contractual interpretation and with Tennessee Code Annotated section 50-6-106(1)(B), which envisions the election of workers' compensation coverage by independent owner/operators of motor vehicles who, like Richardson, are under contract to common carriers.

## II. Substantial Compliance

Tennessee Code Annotated section 50-6-106(1)(B) states that the owner/operator's election of workers' compensation coverage is made "upon written agreement of the common carrier" and "by filing written notice of the contract, on a form prescribed by the commissioner, with the division."[9] Having determined that the agreement between

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[8](...continued)
extrinsic circumstances." Id. at 44-45. Traditionally, many courts have declined "to consider parol evidence that adds to, varies, or otherwise contradicts the language of the deed," but have admitted parol evidence "to remove a latent ambiguity in the deed." Id. at 44 (citing Stickley v. Carmichael, 850 S.W.2d 127, 132 (Tenn. 1992)); see also Ward v. Berry & Assoc., Inc., 614 S.W.2d 372, 374 (Tenn. Ct. App. 1981) ("Parol evidence is not admissible to remove a patent ambiguity but is admissible to remove a latent ambiguity.").

[9] "'Commissioner' means the commissioner of labor and workforce development," Tenn. Code Ann. (continued...)

Richardson and JBT permitted Richardson to choose workers' compensation insurance, we turn now to whether Richardson substantially complied with the remainder of the provision. In Perkins v. Enterprise Truck Lines, Inc., the Supreme Court held that "the filing requirement in [section] 50-6-106(1)(B) is merely directory and that an election may be accomplished by substantial compliance with the workers' compensation statute." 896 S.W.2d 123, 126 (Tenn. 1995); see also Presley v. Bennett, 860 S.W.2d 857, 860 (Tenn. 1993) (determining that the procedural requirement in Tennessee Code Annotated section 50-6-113(e)(1) (1991), concerning election of workers' compensation coverage by a subcontractor under contract to a general contractor, was valid). The Court reasoned that "the 'Legislature's specific expression of intent [was] that the Workers' Compensation Act be given an equitable construction so that the objects and purposes of the Act may be realized and attained.'" Perkins, 896 S.W.2d at 126 (quoting Presley, 860 S.W.2d at 860). "'The question as to whether there has been a sufficient compliance depends upon the facts of the individual cases.'" Id. (quoting Commercial Ins. Co. v. Young, 354 S. W.2d 779, 787 (Tenn. 1962)).

In Perkins, written notice of the owner/operator's election of workers' compensation coverage was not filed with the division. 896 S.W.2d at 126. The evidence showed, however, that Perkins had been "told by an agent of Enterprise that he was covered by workers' compensation insurance," and had "accepted employment with this understanding." Id. at 127. Moreover, Enterprise had "stated in its answers to interrogatories that Perkins was covered by workers' compensation insurance." Here, JBT has not admitted that Richardson was covered by workers' compensation insurance, but the facts are otherwise similar. As stated, the trial court accredited Richardson's testimony that during his orientation with JBT, a company representative informed him that workers' compensation coverage was available if he paid for it. Richardson believed that he had elected workers' compensation insurance and remained covered during the entire period he worked as an independent contractor for JBT. The contract maintained on file by JBT so stated, and JBT made deductions from Richardson's pay for insurance. By signing both the contract and the accompanying Exhibit C, Richardson substantially complied with Tennessee Code Annotated section 50-6-106(1)(B) under the standard set forth by our Supreme Court in Perkins.

**Conclusion**

Under these unique circumstances, we hold that the trial court correctly determined that Richardson was covered by workers' compensation insurance. Moreover, Richardson

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[9](...continued)
§ 50-6-102(6) (2008 & Supp. 2009), while "'[d]ivision' . . . means the division of workers' compensation of the department of labor and workforce development," Tenn. Code Ann. § 50-6-102(9).

substantially complied with Tennessee Code Annotated section 50-6-106(1)(B). The judgment of the trial court is, therefore, affirmed.

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GARY R. WADE, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
May 17, 2010 SESSION

# JOSEPH SCOTT RICHARDSON VS. JAMES BROWN CONTRACTING, INC. D /B/A JAMES BROWN TRUCKING COMPANY ET AL

**Chancery Court for Hamilton County**
**No. 07-0538**

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**No. E2009-01785-WC-R9-WC - Filed August 18, 2010**

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## JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to James Brown Contracting, Inc. and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM