

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304747

ZACHARY OWEN, EMPLOYEE

CLAIMANT

**TODD CHRISTEN CONSTRUCTION
COMPANY, EMPLOYER**

RESPONDENT NO. 1

**LIBERTY MUTUAL INSURANCE
COMPANY, CARRIER**

RESPONDENT NO. 1

E Q CUSTOM BUILDERS, UNINSURED EMPLOYER

RESPONDENT NO. 2

JOHN GIBSON, UNINSURED EMPLOYER

RESPONDENT NO. 3

OPINION FILED MARCH 9, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 10, 2003, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE EMILY PAUL, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 3 failed to appear.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On October 14, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of the same date was filed. The prehearing order reflects the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The prehearing order is herein designated part of the record as Commission Exhibit No. 1.

The testimony of Zachary Owen, the claimant, Todd Christen, and Willie Howard, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Zachary Owen, the claimant, with a date of birth of January 15, 1976, is a high school graduate with some post secondary education. The claimant commenced his employment with respondent No. 1, as a framer, seven to nine months prior to March 5, 2003.

The claimant denies that he has ever been self-employed as a framer or that he has ever owned his own framing business. The claimant's testimony reflects that throughout his employment history he has worked for someone else.

The testimony of the claimant reflects that when he commenced his employment with Todd Christen Construction Company, Inc., he earned \$13.00 per hour. The claimant acknowledged that during the course of his employment with Todd Christen Construction Company he rarely worked overtime. Indeed, the testimony of the claimant reflects that it was stretching it to work a forty hour week consistently during his employment with Todd Christen Construction.

The claimant acknowledged his signature on an Affidavit for Certificate of Non-Coverage dated March 5, 2003, which is contained in the record. (CX1, p. 2-3) The testimony of the claimant reflects that he had worked for respondent No. 1, Todd Christen Construction Company, several months prior to executing the Affidavit for the Certificate of Non-Coverage on March 5, 2003. Additionally, the testimony in the record reflects that the claimant's job duties, and the manner in which they were performed, did not change any fashion after March 5, 2003 than they had been prior to that date.

The evidence in the record reflects that respondent No. 1, Todd Christen Construction

Company, Inc., paid for the cost of the Certificate of Non-Coverage on behalf of the claimant. The claimant testified:

Well, Todd told me that he was going to have some people sign them and then that way from what I understood that it wouldn't be as expensive and I asked him what would happen if I fell and hurt myself and he said, we'll shuffle it around and take care of you and that's why I went ahead and did it. (T. 13)

Todd Christen, owner of Todd Christen Construction Company, Inc., acknowledged that respondent No. 1 paid for the Certificate of Non-Coverage which was issued to the claimant on March 5, 2003. Mr. Christen responded when questioned whether the purpose of securing the Certificate of Non-Coverage was to get around buying workers' compensation insurance:

Well, not entirely but the main purpose is, is everybody in my company gets an option whether they want payroll taxes taken out or not and with me being a corporate an actually corporated company with payroll taxes you're most certainly going to have to. And I can't – you can't be liable for the workmen's comp – I need certificates for everybody that's going to be, not having payroll taxes out, I guess. I don't have to have them, no. (T. 40)

Mr. Christen acknowledged that at the time the claimant was hired by respondent No. 1, he worked for same as an employee for a period of several months, and was covered under the workers' compensation insurance policy secured by respondent-employer. Mr. Christen added that the afore was the case until the point that he, claimant, got the Certificate of Non-Coverage. Mr. Christen acknowledged that when the claimant secured the Certificate of Non-Coverage on March 5, 2003, the claimant's job duties did not change, and he continued to be an employee of respondent No. 1 until April 3, 2003. At another juncture, Mr. Christen testified regarding the Certificate of Non-

Coverage:

It's their choice. If they don't have payroll taxes taken out, I would like and need a certificate, so you don't have to pay the workmen's comp on that set amount. It's not required but I would like one. I have several subcontractors that work for me to this day that I don't tell what to do everyday or anything else and I have certificates on them, also, but they're not my employees. (T. 43)

The evidence in the record reflects that while Todd Christen Construction Company, Inc. is a solely owned entity owned by Todd Christen. At the time a contract was entered for framing of a house in the Marche Subdivision with E Q Custom Builders, respondent No. 2, the testimony of Todd Christen reflects that he and Johnny Gibson entered into a partnership arrangement with respect to residential framing. Mr. Christen acknowledged that a formal written document was not prepared outlining the terms of the agreement between Todd Christen Construction Company and Johnny Gibson wherein the same would be partners in the framing of houses. (T. 39) Mr. Christen's testimony reflects that the partnership arrangement between Todd Christen Construction, Inc. and Johnny Gibson was known by E Q Custom Builders at the time the contract for framing of the house in the Marche Subdivision was entered. (T. 55)

Mr. Willie Howard's testimony reflects that the nature of the business of E Q was to construct residential homes and that he was one of the general partners. Mr. Howard's testimony further reflects that he had prior business dealings with Todd Christen Construction Company before the contract was entered regarding the homes in the Marche Subdivision. Regarding the contract relative to the homes in the Marche Subdivision, Mr. Howard testified:

Actually we kind of started it kind of jointly probably around about the first of the year, around that time.

We had two houses in the same subdivision. They were under construction at the same time so we employed him to do both at that time. And that had to be the early part of the year, maybe around – and I may be wrong but it was around January or February, though. (T. 62)

Regarding the partnership arrangement between Johnny Gibson and Todd Christen, Mr. Howard testified that he was aware of some type of partnership:

Yes. I think it's always kind of been that assumption.
(T. 67)

As previously noted, E Q Custom Builders, the prime contractor, is in the business of constructing residential homes. The testimony of Mr. Willie Howard reflects that subcontractors on projects of E Q Custom Builders, respondent No. 2, had as a point man the job superintendent of respondent No. 2, Terry McDowell. (T. 76) Mr. Howard acknowledged that he has knowledge of the construction industry and the importance of workers' compensation coverage. While acknowledging that respondent No. 2 is an uninsured employer, Mr. Howard testified that he attempted to address any concerns regarding workers' compensation coverage in his business by the manner in which it was set up:

One of the things we do is we ensure – the majority of the subs that we use have been with us since we started. And those all carry their own workman's comp. So we ensure that everybody that goes on the job has that coverage in the event of such situations so – and that's one reason why we try to stay with those main subs that we've done business with for years, for the most part so that's the reason why we are structured that way, that we ensure that those who do come on the job have workman's comp. (T. 63)

Further, Mr. Howard's testimony reflects that at the time the contract was entered with respondent

No. 1, in addition to his past experience with same, he was assured that workers' compensation coverage was in place.

The testimony of the claimant reflects that when he commenced his employment with respondent No. 1, he earned an hourly wage rate of \$13.00 per hour. The testimony further reflects that when receiving his weekly pay, the claimant was paid by check on an account of Todd Christen Construction Company, Inc. Claimant testified there were no deductions from his wages for income tax purposes. Further, the testimony of the claimant reflects that while he used his personal hand tools, other equipment and material to do the framing was provided by Todd Christen and John Gibson. Additionally, the testimony of the claimant reflects that he was told when and where to work, primarily by Todd Christen, when performing employment duties framing on the job projects on which he worked. The claimant's testimony reflects that while employed by respondent No. 1, the same would have several jobs going at the same time:

Well, there's usually two jobs and some of us were on one and then some of us were on another one so, we usually had two going at one time. (T. 10-11)

The testimony of the claimant reflects that in April 2003, he was working on one of the jobs of Todd Christen Construction Company, the one on which he sustained an injury on April 24, 2003. The claimant was already working for respondent No. 1 at the time work began on the house at 22 Latour, in the Marche Subdivision, the site on which he suffered an injury. The testimony of the claimant reflects that at the time the new job site began the crew moved to the location:

For a period of time Todd and Johnny and the rest of the crew and then we split off and there was me and Ryan and John Gibson. (T. 20)

The claimant's testimony reflects that after a period of time Todd Christen stopped coming by the

new project and that he received his direction from Johnny Gibson.

The claimant acknowledged that he had heard, based upon conversation with Johnny Gibson, of the possibility of a split between Mr. Gibson and Todd Christen Construction Company:

He just said, that, I mean, it never was for a sure thing that I knew of, it was argument back and forth and the possible split up. (T. 11)

Nonetheless, the testimony of the claimant reflects that a split did in fact occur. Changes that occurred as a result of the split, included the fact that Todd Christen no longer appeared at the job site where work was performed by the claimant and a co-worker named Ryan, and Johnny Gibson. Further, the testimony of the claimant reflects that he was told by Mr. Gibson that he was being placed on salary and would receive \$600.00 per week, as was Ryan. The claimant thereafter received all directions with respect to where and when to discharge employment duties from John Gibson and was paid in cash.

The claimant acknowledged that following the April 24, 2003 injury he filed a claim for workers' compensation benefits and completed a Form C on May 4, 2003, which reflected as the employer E C Custom Contractors as the name on the building permit with Johnny Gibson being his immediate boss. When questioned whether he had been notified by Todd Christen that he had been fired, the claimant testified:

I wouldn't say I was fired. I mean we had a conversation about the way things were going and this and that, to the best of my memory, but I don't remember ever being told I was fired or anything like that. (T. 29)

The testimony of Mr. Todd Christen reflects that the claimant was last paid wages by respondent No. 1 on April 3, 2003. Mr. Christen testified regarding the mechanism of payment in

the construction industry:

Basically as the contractors need their money they get draws, generally, I get a draw from each builder each week that I'm working on the project. (T. 36)

Mr. Christen provided testimony regarding the disagreement between respondent No. 1 and

John Gibson, respondent No. 3:

Actually as of that day [April 3, 2003] – Actually that day, Friday, me and Mr. Gibson had a discussion after we did payroll that afternoon that I didn't think things were working out very well and it led to our breaking up but not on that date.

* * *

It was actually exactly a week later. To be honest the way our conversation ended that afternoon I told him I was not really happy with him and I didn't think he was pulling his share of the load for being a partner or so-called partner and he asked me to let it go he'd get better and I agreed and during the recourse of the next week somehow along the lines Johnny Gibson either with the builder or however just kind of cut me just straight out of the loop as far as that house. He decided – I'm just going to have to assume that he was scared that I was going to dump him, just hand free dump him, and so he took care of it by going behind my back and getting – I'm going to have to assume, I don't know, that he got the employees to go work with him –

* * *

And I found out the next Friday, which would have been the 10th, I went by the job site and nobody was there. I asked him where they were at and he said, we have – Johnny Gibson I'm saying, said, we have a problem, we need to meet. And he told me that it was no longer going to work, that we had split up and I said, what about the job today and he said, I've

already taken care of that with Willie, I'll be getting the draw, I'll be paying the guys. I said, so that means that you're going to be responsible for everybody from this point on and he said, yes. So, kind of officially as of that day we split up and then later in the course of that Friday afternoon on the 10th and that Saturday we split up all the tools that we had acquired during the time that we were together. (T. 32-34)

Following the dissolution of the partnership between respondent No. 1 and respondent No.

3, Mr. Christen testified regarding his efforts to contact respondent No. 2:

I didn't tell E Q Custom Builders directly. I could never get them on the phone during the time this had taken place, like around the 10th when it was actually official. I didn't actually get to talk to the owners at E Q but I talked to a superintendent, which I can't think of his last name but his first name was Terry, and I discussed, I said, look me and John split up. I don't like the way everybody is talking behind my back and the draws have changed place. I've never had a phone call from anybody. This is not the way it should be handled so I am officially not on the house. I will not come back. The house is not completed because I feel like you've broken our contract. And on top of that my workmen's comp policy will no longer be in effect because my company is no longer working on the job. And Terry understood that. And I also left this message on E Q's, one of their mobile numbers, on their phone but like I say, I never got to talk to them personally but I did talk to their superintendent to convey that because that was something that was really bothering me. (T. 34-35)

The testimony of Mr. Christen reflects, regarding the status of the claimant following April

3, 2003:

That's correct. Because the way I understood it as of like April 3rd or April 4th he quit. I didn't fire him. He quit and went to work for John Gibson. That's kind

of pretty much the bottom line.

* * *

Because the draw got switched from the company that was supposed to be framing the house to John Gibson. I was told through John Gibson, that if you want to get technical, that those two employees had decided to go work for him, which they got a raise, which is an incentive to get them to come with them, that's real basic in seeing that. (T. 47)

The testimony of Mr. Willie Howard, the general partner with E Q Custom Construction, respondent No. 2, reflects regarding the split between respondent No. 1 and respondent No. 3:

No one ever really approached me saying that they were having problems until later on. I didn't know anything then. No one came to say that this is what is going on. One of the things that you will find as a general contractor, one thing is for the job to continue to move. And it's imperative that that job moves. For whatever reason at that particular time when they, I guess Todd went to this other home, that our project slowed down and obviously there was some concern with that. And so not only myself, as well as my foreman, called to see what was going on. Later I found out that for whatever reasons Johnny had indicated to me that Todd wasn't coming back. Now, whether that is true or not, I do not know but that was what was indicated to me. And I explained to Johnny at that time that I needed the job completed. I don't care who did it because as far as I was concerned when I saw Johnny I saw Todd, that's my deal. That's how it has always been. So, I really didn't get anything from Johnny as to, you know, what the problems were. My main thing was to ensure that the job kept moving. And so if he was saying he was going to step up and do it, as far as we were concerned, we were fine with that, as long as the job was completed because the majority of the money had already been paid out on the job. (T. 65-65)

Mr. Howard's testimony reflects that he was upset when provided the information by Mr. Gibson, respondent No. 3, that Mr. Christen was not returning to the house. As a consequence of the afore, Mr. Howard acknowledged that he did not return telephone calls placed to him by Mr. Christen. Further, the testimony of Mr. Howard reflects:

. . .From what I can recall, I tried calling Todd maybe once when this stuff actually broke because obviously at the time there was no windows in the house and they had not been ordered. So, my concern was, what is going on here? And, if I did make contact with him probably my foreman probably tried to reach him as well. So, when Johnny availed himself and came on the job, because if I'm not mistaken, when Todd had left, that being the incorporation had left my job, he had left Johnny over here doing my job and I don't know how long that went on but I know they had split off at that point before whatever problems they had transpired. (T. 65-66)

While on the one hand Mr. Howard maintains that when he saw Johnny [Gibson], he saw Todd [Christen] because they were partners and he viewed them as interchangeable with respect to Todd Christen Construction Company and the requirements of workers' compensation coverage, a review of the testimony reflects that after the split, which Mr. Howard acknowledged occurred with respect to respondent No. 1 and respondent No. 3, when the draw was made payment was had to Johnny Gibson as opposed to Todd Christen as was the case prior to the separation. (T. 75) The testimony of Mr. Howard clearly reflects that after April 4, 2003, any draw had on the project, on which the claimant suffered his injury, was made to Johnny Gibson. Further, there is no evidence in the record to reflect that Mr. Howard or respondent No. 2 took any actions to ensure that Johnny Gibson, respondent No. 3, had in place a policy of workers' compensation insurance coverage at the time work was done on the two houses of respondent No. 2 in the Marche Subdivision.

The testimony in the record reflects that on April 24, 2003, the claimant suffered injuries within the course and scope of his employment when he fell from scaffolding at the job site while framing a house at 22 Latour in the Marche Subdivision. The claimant was transported from the job site to Baptist Medical Center by ambulance. The claimant's injuries growing out of the accident included a broken collar bone, several fractured ribs, a collapsed lung. The claimant did not return to gainful employment until September 22, 2003. The evidence in the record reflects that the claimant did not receive indemnity benefits subsequent to his compensable injury nor were medical providers paid for treatment rendered to the claimant regarding the April 24, 2003 injuries.

After a thorough consideration of all the evidence in this record, to include the testimony of the witnesses, a review of the medical reports and other documents, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 24, 2003, the claimant was not an employee of respondents #1.
3. On April 24, 2003, the relationship of employee-employer existed between the claimant and respondent #3, an uninsured subcontractor of respondent #2, the prime contractor. Accordingly, claimant is a statutory employee of respondent #2.
4. On April 24, 2003, the claimant earned an average weekly wage of \$600.00, which generates weekly compensation benefit rates of \$400.00/\$300.00 for temporary total disability/permanent partial disability benefits, respectively.
5. On April 24, 2003, the claimant sustained an injury arising out of and in the course of his employment, which rendered him temporarily totally disabled for the period April 25, 2003, through the end of his healing period, or until such time he returned gainful employment, September

22, 2003, whichever occurred first.

6. Respondent #2 shall pay all reasonable hospital and medical expenses arising out of the injury of April 24, 2003.

7. Respondent #2 is entitled to reimbursement from respondent #3 for expenses and sums paid to and on behalf of the claimant as a result of the April 24, 2003, compensable injury.

8. Respondent #2 has controverted this claim in its entirety.

CONCLUSIONS

On April 24, 2003, while discharging employment duties, the claimant suffered injuries when he fell from scaffolding. As a consequence of the injuries sustained in the April 24, 2003 accident, the claimant was totally incapacitated from engaging in gainful employment through the end of his healing period. The claimant did return to gainful employment on September 22, 2003. Further, the claimant incurred medical expenses relative to treatment for the April 24, 2003 injuries, which were reasonable, necessary, and related to the injury. The claimant seeks corresponding workers' compensation benefits growing out of the April 24, 2003 accident. Respondent No. 1, Todd Christen Construction Company, Inc., had in place workers' compensation insurance at the time of the April 24, 2003 accidental injury of the claimant. Respondent No. 1 denies that the claimant was an employee of same at the time of the accident. E Q Custom Builders, respondent No. 2, was the prime contractor on the project wherein the claimant suffered his injuries of April 24, 2003. Respondent No. 2 denies that the claimant was an employee of same. Respondent No. 3, an uninsured subcontractor, failed to appear at the hearing.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits growing out of an injury suffered subsequent

to the effective date of the afore provision.

The evidence preponderates that the claimant was an employee of respondent No. 2 as of March 5, 2003 and as of April 3, 2003. While the evidence does reflect that a Certificate of Non-Coverage was issued to the claimant on March 5, 2003, the evidence preponderates that the claimant was not a self-insured employer at the time of the issuance of the certificate. Indeed, the claimant had discharged employment duties for respondent No. 1 as a framer several months prior to March 5, 2003. The claimant continued to discharge the same job duties subsequent to March 5, 2003, with the same responsibilities and requirement to adhere to the direction of supervisory personnel of respondent No. 1. Further, the evidence discloses that respondent No. 1 paid the cost of the Certificate of Non-Coverage which was issued to the claimant on March 5, 2003.

The evidence in the record reflects that at the time the claimant commenced his employment with respondent No. 1 a partnership arrangement existed between respondent No. 1 and respondent No. 3. On April 3, 2003, respondent No. 1 last paid wages to the claimant for employment duties at the job site in the Marche Subdivision, a job owned by respondent No. 2.

The credible evidence in the record reflects that as a result of the dissolution of the partnership arrangement between respondent No. 1 and respondent No. 3 subsequent to April 3, 2003, the claimant ceased his employment as an employee with respondent No. 1. The credible evidence reflects that the claimant became an employee of respondent No. 3 subsequent to April 3, 2003 and that his rate of pay, as a consequence of the afore, increased from \$13.00 per hour to a weekly salary of \$600.00. At the time of the claimant's injury of April 24, 2003, respondent No. 1, did not have employees performing job duties in the state of Arkansas.

The claimant's assertion that respondent No. 1 should be estopped from asserting it did not

provide insurance coverage for the claimant at the time of the accident, is without merit. At the outset it is noted that estoppel is an equitable remedy. As has been long held, he who seeks equity must have clean hands. The evidence is clear that neither respondents nor the claimant in the instant claim come forth with clean hands. Respondent No. 1 attempted to avoid premium on payroll of its employees by paying a \$50.00 to have employees secure a Certificate of Non-Coverage reflecting that they were not employees of same. At the same time, respondent No. 1 acknowledged that the claimant was as much an employee on March 5 as he was prior to the issuance of the Certificate of Non-Coverage on said date. Respondent No. 2 acknowledged the importance, in the construction business of maintaining workers' compensation insurance coverage. While privy to the afore, and as a prime or general contractor with employees, respondent No. 2 structured its business in an effort to avoid securing a policy of workers' compensation insurance coverage by ensuring that subcontractors have in place a policy of workers' compensation insurance coverage for their employees. Further, respondent No. 2 acknowledged that presenting a Certificate of Non-Coverage would not satisfy its requirement with respect to a certificate of workers' compensation insurance coverage for its subcontractors. In the instant claim, respondent No. 2 was aware of the dissolution of the partnership arrangement between respondent No. 1 and respondent No. 3 at the time a contract was entered with respondent No. 3, Johnny Gibson, to complete the work at the house at 22 Latour and to complete the work at the other house of respondent No. 2 in the Marche Subdivision, which had not been completed by respondent No. 1. Respondent No. 2, at the time the contract was entered with respondent No. 3 to complete the two houses, did not inquire of the status of the workers' compensation coverage for employees of same nor did it request a certificate of workers' compensation insurance coverage from respondent No. 3. The evidence further reflects that

respondent No. 1 was unable to reach respondent No. 2 to address complaints regarding the change in the contract, particularly as to same related to the draw subsequent to April 4, 2003.

Finally, the evidence in the record reflects that the claimant was aware of the employment relationship between himself and respondent No. 1 was not in place at the time of the April 24, 2003 accident. In this regard, the evidence discloses that while claimant earned \$13.00 per hour as a full-time employee of respondent No. 1 prior to April 3, 2003, after the separation of respondent No. 1 and respondent No. 3, the claimant's earnings changed to that of salary and receipt of \$600.00 per week. The evidence discloses that the co-worker of the claimant, Ryan, also received a similar salary from respondent No. 3. Prior to the change in the method of pay, the evidence discloses that the claimant had received a paycheck drawn on the account of Todd Christen Construction, Inc., respondent No. 1 subsequent to the change in pay, the claimant was paid in cash and from respondent No. 3. Finally, when questioned about whether he had been fired by respondent No. 1, the claimant's testimony in that regard is equivocal. The more credible testimony in that regard is that presented by Mr. Todd Christen, which reflects the contents of his conversation with respondent No. 3, wherein the increase in pay was used as an inducement to the claimant leaving the employment of respondent No. 1 and becoming an employee of respondent No. 3.

The evidence reflects that as of April 24, 2003, the claimant was an employee of John Gibson, an uninsured subcontractor. The evidence preponderates that as an employee of respondent No. 3, the claimant's job duties were directed by respondent No. 3. The claimant, with the exception of using his personal tools, used the tools of respondent No. 3 and material furnished by respondent No. 3 in the discharge of his employment duties. Further, the claimant was told when and where to report for work by respondent No. 3. Payment was made to the claimant by respondent No. 3 for

work performed. Aloha Pools and Spas, Inc. v. Warsaw, 342 Ark. 398, 39 S.W.3d 440 (2000). Additionally, the evidence in the record reflects that respondent No. 3 did not have a policy of workers' compensation insurance in place for its employees at the time of the claimant's April 24, 2003 compensable injury.

Respondent No. 2, E Q Custom Builders, was the prime contractor on the project where claimant sustained his injury. E Q subcontracted with respondent No. 3 to complete the framing on the house where the claimant suffered his injury. Additionally, respondent No. 2 paid for respondent No. 3 to complete the work on another house in the Marche Subdivision which had been previously contracted with respondent No. 1. The credible evidence in the record reflects that respondent No. 3 successfully maneuvered the eviction of respondent No. 1 from the two houses in the Marche Subdivision and procured the work for himself. In doing so, respondent No. 3 did not have workers' compensation in place.

Unfortunately as a prime contractor, respondent No. 2, took the bait of respondent No. 3, severed the contract with respondent No. 1 and replaced same with respondent No. 3. Respondent No. 2 has spent a substantial amount of monies on the project at the time that respondent No. 1 was maneuvered out of the contracts by respondent No. 3. Respondent No. 2 took a gamble in going forth with the projects with respondent No. 3 and unfortunately became the loser when an injury was in fact sustained by an employee of respondent No. 3 and respondent No. 3 did not have worker' compensation coverage in place resulting in the injured employee becoming a statutory employee of respondent No. 2. Respondent No. 2 is liable for the payment of workers' compensation benefits to the claimant as a result of the April 24, 2003 compensable injury suffered by same. Respondent No. 2 is entitled to reimbursement for sums expended to and on behalf of the claimant from

respondent No. 3 as a result of the compensable injury.

AWARD

Respondent No. 2 is herein directed and ordered to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$400.00 for the period commencing April 25, 2003, and continuing through the end of the claimant's healing period or until such time as the claimant returned to gainful employment, whichever occurs first, as a result of the compensable injury of April 24, 2003. Said sums accrued shall be paid in a lump without discount.

Respondent No. 2 is further ordered and directed to pay all reasonable related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable injury of April 24, 2003.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Philip M. Wilson, on the controverted portion of this award, pursuant to Arkansas Code Ann. §11-9-715.

Respondent No. 2 is entitled to reimbursement from respondent No. 3 for expenses incurred as a result of sums paid to and on behalf of the claimant growing out of the April 24, 2003 compensable injury.

This award shall bear interest at the legal rate pursuant to Arkansas Code Ann. §11-9-109, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge