

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F411291

MARTY CARTER, EMPLOYEE

CLAIMANT

**TRANSPLACE STUTTGART, INC.,
EMPLOYER**

RESPONDENT NO. 1

**HARTFORD UNDERWRITERS INSURANCE
COMPANY,
INSURANCE CARRIER**

RESPONDENT NO. 1

**C-CLAW, INC.,
EMPLOYER**

RESPONDENT NO. 2

UNINSURED

OPINION FILED SEPTEMBER 21, 2005

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 23, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gail O. Matthews, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by Mr. Gary Rodgers, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 23, 2005, to determine the nature and extent of claimant's injury and which party is responsible under the Arkansas Workers' Compensation Law for claimant's injuries and resultant disability, if any, suffered by claimant.

The parties stipulated to the existence of the employee-employer relationship between claimant and C-Claw, Inc., on September 3, 2004. The parties have further stipulated that claimant sustained an injury. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$300.00 for temporary total disability and \$225.00 for permanent partial disability benefits.

Claimant contends that he sustained a compensable fracture injury to his leg on September 3, 2004, when he fell off the truck he was driving for C-Claw, Inc., which is uninsured and was brokered by Transplace Stuttgart. It is claimant's contention that Transplace handled the load and obtained the load for C-Claw and is, therefore, responsible under the Workers' Compensation Act for C-Claw, an uninsured subcontractor.

Respondent No. 1, Transplace Stuttgart, is a transportation broker licensed by the Department of Transportation. Respondents No. 1, Transplace Stuttgart and Hartford Underwriters Insurance Company contend that claimant was an employee of C-Claw, Inc., respondent No. 2, and that if claimant is entitled to workers' compensation benefits, those benefits should be paid by C-Claw. Respondent No. 1 further contends that it was not a statutory employer of the claimant; that Transplace Stuttgart, LP, is a broker as defined under federal law and in actual fact that its contract with its customer was simply to locate a motor carrier and not to transport the

goods itself; and that in order for a prime contractor/subcontractor relationship to exist, the person sought to be charged as prime contractor must have been contractually obligated to a third party for the work being done at the time of the injury. Respondents No. 1 contend that in the event they are held to be a statutory employer of claimant, the Commission should enter an order pursuant to Ark. Code Ann. § 11-9-402(b)(1), directing C-Claw, Inc. to pay Transplace Suttgart the full amount of any compensation paid or payable to or on behalf of the claimant.

Respondent No. 2, C-Claw, Inc., contends that at the time of claimant's injury, respondent No. 2 and respondent No. 1 were operating under an agreement and contract under which respondent No. 2 acted as a subcontractor for respondent No. 1 in transporting and carrying various agricultural products. Respondent No. 2 contends that it is a small corporation with only two regular employees at the time of this incident involving claimant and was, therefore, not engaged in "employment" within the meaning of the Arkansas Workers' Compensation Act in accordance with Ark. Code Ann. § 11-9-102(11)(A). Respondent No. 2 contends that, as a result, it did not have and was not required to have, by Arkansas law, workers' compensation coverage as of September 3, 2004, which was the date of the incident. Respondent No. 2 further contends that at the time of the injury on September 3, 2004, claimant was an employee of an uninsured subcontractor so that the responsibility for the

workers' compensation injuries which the claimant may have sustained lies with respondents No. 1

STATEMENT OF THE CASE

Claimant, Marty Carter, testified that he is forty-five-years-old and had worked for C-Claw, Inc., as a truck driver for a little over a year at the time of his injury on September 3, 2004. He testified that during that time, he always hauled the same types of loads – agricultural loads – and always exclusively for the same broker, Transplace Stuttgart. He testified that at times Transplace would call him personally and tell him where to pick up a load or where to wait on another load. Claimant testified that he was hired by Mr. Meredith Clawitter, owner of C-Claw, Inc., and was paid by Mr. Clawitter every week. He testified that he understood he was not an employee of Transplace Stuttgart.

Claimant testified that Mr. Clawitter had three trucks and that those trucks would be assigned as follows: one to Mr. Clawitter's son; one to claimant; and one to Mr. "Butch" (a/k/a Mr. Clawitter). Mr. Clawitter testified that, in his opinion, he only had two employees, his son and claimant; he testified that he did not consider himself to be an employee of C-Claw, Inc. Claimant testified, however, that there were numerous times when all three trucks were in use at the same time.

Claimant testified that on September 3, 2004, he was sweeping off the top of the trailer of his truck and got off balance as he was standing on the top edge of the

trailer, when he fell to the ground. Claimant testified that he fell approximately ten-to-twelve feet, breaking his left tibia out from under his knee. He testified, and the medical records reflect, that he then developed a compartmental syndrome. The parties have stipulated that claimant sustained an injury. After five surgeries, claimant testified that he is now starting to get some bone formation. Although he did have medical insurance through his wife, he testified that his medical bills have exceeded \$100,000.

Claimant testified that he has been unable to work since the accident and was still unable to work as of the date of the hearing. Claimant testified that his doctor, Dr. Martin, has not released him to return to work or given him any indication of when he will be released. Further, he testified that he has not drawn any type of benefits of any kind since the date of the accident, including any disability insurance. He testified that he has applied for social security disability, but was not aware of the status of that at the time of the hearing.

Meredith Clawitter testified that he has been working with Transplace approximately three years and that, during that time, he had not hauled for any other broker. He testified that he knew he could turn down a job with Transplace if he wanted to and that he had the right to haul for someone else if he wanted to, but he chose not to. He testified that, pursuant to their arrangement, when C-Claw was brokered a load from Transplace, the brokerage fee of 8 percent of the freight rate for

that load would be paid off the top to Transplace, and the rest would be paid to C-Claw. Mr. Clwitter further testified that he had signed a contract with Transplace regarding certain types of insurance coverage he would agree to keep on his trucks. He testified that Transplace required liability and cargo insurance and that workers' compensation insurance was addressed in the "packet," but that Mr. Clwitter chose not to take out workers' compensation insurance because he did not think he needed it since he only had two employees, not counting himself. Further, he testified that, although he did not exactly understand it at the time, he knows he signed an indemnity agreement with Transplace, whereby he would have to repay Transplace for any workers' compensation coverage Transplace might incur on C-Claw's behalf, if C-Claw did not have coverage.

Pamela Johnston, Director of Legal and Risk for Transplace, testified regarding the levels of insurance the carriers who do business with them need. She testified that when it comes to workers' compensation, Transplace requires their carriers to have it unless they are exempt by their own state's laws, and that is strictly left up to the carrier to determine whether or not they are required to have it, based upon their state's laws. She testified that if a state's laws exempt a carrier from having workers' compensation coverage, then Transplace requires them to sign an indemnification, which is a separate sheet of paper for indicating that they are exempt under their state

law and requiring them to indemnify Transplace if anything ever comes up wherein Transplace becomes liable for workers' compensation coverage.

Curtis Clay Siems works as a dispatcher who assigns the loads for Transplace and testified on their behalf. He testified that he calls customers such as Cereal By-Products or Producers Rice Mill and asks to broker a load for them or customers call him and ask him to broker a load for them, for a percentage. He testified that he then selects a carrier to use. He testified that he is under no obligation to use particular trucks or drivers and that he is under no contractual obligations to transport loads of goods from one place to another for certain customers. He explained it on strictly a load-by-load basis, with no obligations to any customers or any drivers, although he did admit that there are "unspoken" loyalties and that the only way his company makes money is by keeping his customers happy by providing reliable drivers. He also testified that, although there is nothing to prohibit the carriers from contacting the customers directly and soliciting their business themselves, it is, again, a sort of "unspoken" rule that carriers simply do not do that.

Mr. Siems testified that regarding the particular load carried by claimant on September 3, 2004, it appeared from the brokerage trip entry to be a load of rice bran that was handled in the usual and customary way that Transplace brokers loads, wherein Transplace did not agree to actually transport the load from Stuttgart to Dumas, but agreed to make arrangements with the carrier to transport the load for

Cereal By-Products from Stuttgart to Dumas, and then brokered it to C-Claw, Inc., charging C-Claw an 8 percent brokerage freight fee for that particular load.

The exhibits introduced into evidence include a signed contract entered into between Transplace Texas, LP, and C-Claw, Inc., on or about October 25, 2002, wherein C-Claw agreed to operate as a subcontractor for Transplace Texas in transporting and carrying various agricultural products. The exhibits further include an agreement signed on June 23, 2004, by which Transplace Texas transferred and assigned unto Transplace Stuttgart, LP, all of their interest in the aforementioned contract with respect to C-Claw, Inc. It was apparently under this contract that the parties were operating at the time of claimant's injury on September 3, 2004.

FINDINGS OF FACT

1. All stipulations agreed to by the parties herein are accepted as fact;
2. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury on September 3, 2004;
3. Claimant was an employee of C-Claw, Inc., at the time of his injury;
4. C-Claw, Inc., did not have workers' compensation coverage as of September 3, 2004, the date of the incident;
5. C-Claw, Inc. was an uninsured subcontractor of Transplace Stuttgart, Inc.;

6. Transplace Stuttgart is the statutory employer of claimant and is liable to claimant for benefits including past and future medical benefits and temporary total disability benefits for his compensable injury.
7. The issue of permanency is held in abeyance;
8. Pursuant to Ark. Code Ann. § 11-9-402(b)(1), and the indemnity agreement entered into between the parties, C-Claw, Inc., is hereby ordered to pay Transplace Stuttgart, Inc., the full amount of any compensation paid or payable to or on behalf of the claimant.

DISCUSSION

In this case, it is clear and stipulated that claimant sustained an injury while on the job and that claimant was working as a driver for C-Claw at the time of his injury. It is also clear and undisputed that C-Claw never hauled for any broker other than Transplace. Further, although there was testimony from both Mr. Clawitter and agents of Transplace that there was no contract of exclusivity between C-Claw and Transplace Stuttgart, there obviously had been a contract between Transplace Texas, LP, and C-Claw that was assigned to Transplace Stuttgart. What is also clear is that C-Claw did not have workers' compensation coverage and that Mr. Clawitter admitted that he knew he had signed an indemnity agreement with Transplace wherein

he would be liable to Transplace in the event they ever had to pay a workers' compensation claim on his behalf.

Transplace tried to make itself out to be simply a broker with no contractual ties to any customer or carrier and therefore no liability as a prime contractor or statutory employer for workers' compensation purposes in this case. While it is true that Transplace does give the appearance of simply acting as a "middleman" to "farm out" hauls of products between customers and carriers, the Arkansas Court of Appeals has made it clear that one in such a position can bear responsibility depending on what the evidence bears out. In the recent decision of *Garcia v. A&M Roofing*, CA 04-530 (Ark. App. 2-2-2005), the Court of Appeals rejected A&M's assertion that it was a mere broker, "selling" the roofing contracts to "independent" contractors and bearing no further responsibility. Therein, the court held that A&M was actually a prime contractor and that the roofers were "uninsured subcontractors," holding A&M liable to the appellant for his workers' compensation injuries.

Here, it is this examiner's opinion that Transplace was the statutory employer of claimant and is liable to claimant, as such, for his injuries sustained on September 3, 2004; further, Transplace is entitled to indemnity from C-Claw, Inc., as an uninsured subcontractor and pursuant to their indemnity agreement.

AWARD

Respondents No. 1 are directed to pay the claimant benefits in accordance with the findings of fact above.

Respondent No. 2 is directed to pay Respondents No. 1 in accordance with the findings of fact above.

Respondents are directed to pay the claimant's attorney, Mr. Gail Matthews, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge