

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**  
**IN THE MATTER OF**

**FILE NO. UE-2006-02-17**

**TIM MANN AND SHANNON MANN**

**OPINION AND ORDER FILED OCTOBER 18, 2006**

Hearing before Administrative Law Judge Barbara W. Webb in Little Rock, Pulaski County, Arkansas.

Commission's Compliance Division appeared by and through Frankie Brand, Compliance Division investigator.

Employer appeared by and through its attorney, Mr. Paul Keith, Attorney at Law, Monticello, Arkansas. Also present was Mr. Tim Mann and Mr. Shannon Mann.

**STATEMENT OF THE CASE**

Following an investigation by the Compliance Division of the Arkansas Workers' Compensation Commission, the employer was charged with violations of the Arkansas Workers Compensation Law; specifically, failing and/or refusing to secure workers' compensation coverage for its employees. Following unsuccessful efforts by the Compliance Division to insure coverage for the employer's employees, and after communication advising the employer that it was in violation of the law, the matter was ultimately referred to this Administrative Law Judge for a review and determination concerning what action, if any, should be taken.

On February 23, 2006, the initial Order and Notice of Hearing was filed, charging the employer with non-compliance of the law and assessing the maximum

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statutory penalty of Ten Thousand Dollars (\$10,000.00) pursuant to Ark. Code Ann. §11-9-406. (Commission Exhibit 1). The Order provided that it would become final twenty (20) days after the employer's receipt, unless a written request for a hearing was filed with the Commission. In addition, the employer was directed and ordered to obtain and show proof of workers' compensation insurance within the same twenty (20) days, unless a written request for a hearing was filed, at which time the employer would be permitted to appear on April 12, 2006, and show cause, if any there be, why the employer should not be required to obtain workers' compensation insurance and/or pay the penalty assessed. A copy of the February 23, 2006 Order and Notice of Hearing was sent both certified mail and first-class mail to Mr. Tim Mann and Mr. Shannon Mann, individually. Return receipts evidence delivery of the Order and Notice of Hearing on February 24, 2006. A written request for hearing and a Motion for Continuance was submitted by Mr. Paul Keith, Attorney for Tim Mann and Shannon Mann, and the case was rescheduled to April 17, 2006, and was rescheduled again to May 4, 2006.

A hearing was conducted on May 4, 2006, in this case. Testimony was offered on behalf of the Compliance Division by Ms. Frankie Brand. Mr. Tim Mann and Mr. Shannon Mann testified on behalf of the Employer. The record consists of the transcript of the May 4, 2006 hearing containing 17 exhibits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 1) The Arkansas Workers' Compensation Commission has jurisdiction in this matter.
- 2) Tim and Shannon Mann are separate business entities which have separate contracts with FedEx Ground;
- 3) Tim Mann is currently in compliance with the Arkansas Workers' Compensation law in that he is a sole proprietor with no employees as of May 4, 2006.

By agreement of the parties, the issues litigated at the hearing were:

- (1) Whether Shannon Mann is a an independent contractor or subcontractor.
- (2) Whether Shannon Mann has a sufficient number of employees to require him to carry workers' compensation coverage.
- (3) Whether Tim Mann is an independent contractor or subcontractor.
- (4) Whether the contingent endorsement of the Protective Work Accident policy complies with the requirements of Arkansas law as a workers' compensation policy
- (5) Whether Tim Mann was in compliance with the Arkansas Workers' Compensation Act during the period of time in which a claim was filed against him and at all other relevant times
- (6) Whether Shannon Mann was in compliance with the Arkansas Workers' Compensation Act during the period of time relevant to these proceedings.

The Respondents contend that they have written contracts with FedEx Ground ("FedEx"), a branch of Federal Express Corporation, to pick up and deliver packages in an assigned territory in Arkansas. Therefore, they contend they are contractors and not subcontractors. They further contend that any lack

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of compliance was in good faith due to their reliance on FedEx. They contend that they paid each month for a policy of insurance from FedEx. Tim Mann further contends that he has made arrangements to take care of the claim filed by Scott Dennis from Protective Insurance Company, the insurance provided by FedEx.

Shannon Mann ("S. Mann") testified that he is a sole proprietor. He testified that he currently had one employee. He testified that he has only had two employees at any one time. His employees drive trucks and deliver packages. The delivery vans are owned by Shannon Mann. He testified that he has been a contractor with FedEx Ground for three and a half years. He explained that FedEx Ground, one of the five divisions of the FedEx Corporation, is the only division that operates contractors, not employees. He explained that FedEx Ground is a vendor that ships packages all over the country on ground. He explained that his written contract with FedEx Ground designates him as the "contractor". As a contractor, he delivers packages to customers and picks up packages from customers. FedEx owns the terminal where packages are transferred. S. Mann testified that he is compensated weekly based on the number of packages and stops. He testified that he relied on advice from FedEx with respect to issues about insurance. As part of the contract, he purchases a policy of insurance called "Independent Contractor Work Accident Insurance".

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The cost of the insurance is deducted automatically in his weekly settlements with FedEx. It was his understanding that this policy covered his employees. He has subsequently learned that it is not a workers' compensation policy. He testified that he purchased the policy with the intent of providing coverage to his employees in the event they were injured on the job.

He testified that there were five contractors that worked out of the terminal in El Dorado and that all five purchased the group coverage in lieu of workers' compensation coverage. He counted on the Protective policy to cover his employees. He testified that he had never had an employee injured on the job. He testified that no one had ever referred to him as a subcontractor. He understood that if he had more than three employees without coverage, he would be in violation of the law. He testified that he also worked in the business but did not understand that he should count himself in calculating whether he was required to carry coverage. He testified that he would carry workers' compensation coverage if the Commission deemed him to be a subcontractor and required him to carry workers' compensation coverage on his employees.

He explained that in addition to the truck drivers, there is a package handler that unloads the trailers and sorts the packages at the terminal. She is paid in cash and works about an hour a day. Her salary is divided on a pro rata basis between the contractors who use the terminal. All of the uniforms are

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provided by FedEx. The ring scanner and side scanner are provided by FedEx. All the shorts, shirts, hats, rain jackets, jackets, and vehicles have the FedEx Ground logo on them. S. Mann explained that the contractors have to follow FedEx guidelines and specifications, including the type of vehicle used for delivery of packages. He explained that a customer would bring the package to a FedEx location and the employees of FedEx would transfer the package to S. Mann who completes the delivery.

He testified that he pays his employees weekly and issues W-2s at the end of the year. He explained that FedEx requires the contractor and all employees to go to a two-week training program before they are allowed to be hired. The training program teaches them the FedEx guidelines and safe driving.

He explained that a contractor purchases the territory. He purchased his business from the existing contractor who decided to retire. He works exclusively for FedEx and is precluded from delivering packages for anyone else. Under the agreement with FedEx, he is required to follow DOT guidelines, i.e. not to exceed a 14-hour day or a 70-hour week. He testified that his work schedule is determined by the packages that come off the trailer from FedEx Ground. He explained that he makes the decision of how to move the packages but must maintain a ninety-nine percent service rating.

He testified that he had not dealt directly with the insurance company. He explained that everything he knew about the protective policy was what FedEx told him. His contact at Fed Ex is the terminal manager. He testified that notwithstanding the disclaimer language on Page 5 of the policy, he was told by FedEx that it was a workers' compensation policy. He testified that this was the first time he was aware that someone was hurt on the job. He explained that if an injury occurs on the job, he is supposed to report the injury to FedEx and Protective Insurance Company. He testified that he can use the equipment for other purposes when it is not in FedEx's service, but not while delivering packages for Fed Ex. The uniforms are not provided, but must be purchased. The decisions of when to go to what stops are made by him and not Fed Ex. He cannot perform work for anyone else other than FedEx and has not done so during the last three years.

Tim Mann ("T. Mann") testified that he is a sole proprietor. He has been a contractor with FedEx for three and a half years. He owns the Camden route which runs Norfolk, Smackover, Louann, Camden, East Camden, Bearden, Barton, and Chester. He originally worked for Shannon Mann and purchased his route from him. He owns the equipment and does not have any employees at the time. He explained that he operates out of the same terminal and has never been referred to as a subcontractor. He testified that he had control over how he

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operated his business within certain guidelines. He previously had one employee, Scott Dennis. Dennis was employed on December 30, 2005, and reported an accident to him. He forwarded the information to Protective Insurance Company. It is his understanding that Protective has agreed to cover the injuries suffered by Dennis. He testified that he is committed to provide appropriate payment for any benefits owed to Dennis whether Protective pays or not. He has never had an injured employee other than Dennis. He normally has employees during peak seasons, i.e. during the Christmas buying season which runs from September until December. He explained that Dennis went to the required FedEx training school and was certified. He explained that if Dennis had not attended the school, FedEx would not let T. Mann hire him.

He testified that he was paid by the number of stops and packages delivered and picked up. He testified that he had no contact with the shipper of the package and does not receive packages from anyone other than FedEx. He testified that he has worked exclusively for FedEx. He understood the contract to require him to have the work accident policy and believed it would cover his employee. He did not believe he was out of compliance with the workers' compensation laws because he did not have over three employees. He did not provide Dennis with the workers' compensation forms to file his claim. He explained that Dennis was claiming permanent disability and the claim is still

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pending. He testified that Dennis' medical bills are being paid by the Protective policy. T. Mann did not know if the benefits under the policy were similar to the benefits under the workers' compensation laws. He testified that if he is not in compliance with the law, he will get in compliance since he is a law-abiding citizen. He explained that pursuant to Section 5. 3 of the contract, he has a proprietary interest in the customers that he serves and that he purchased the right to serve those customers.

Frankie Brand, an investigator with the Compliance Division, testified on behalf of the Commission. She received a claim for compensation, C-form, on Dennis Scott which named his employer as Tim and Shannon Mann. She talked to Tim Mann by telephone and was advised that his workers' compensation was with FedEx. She send a certified questionnaire to the address on the C-form, which she subsequently learned was Shannon Mann's address. The letter was received by Andrea Mann, the wife of Shannon Mann. She sent a letter dated February 3, 2006, advising them that they were required to carry workers' compensation based on the position of the compliance division that the Manns were a subcontractor. She requested that the Manns submit the required coverage information within ten days. The letter was received by Andrea Mann. On February 13<sup>th</sup>, she talked with Mr. Keith, the Manns' attorney, and was advised that Tim and Shannon were not in business together and that the

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correspondence was sent to the home address of Shannon Mann and was not reaching Tim Mann. She faxed a separate questionnaire to Keith and he had Tim's wife, Lisa, complete the questionnaire. The response stated that Tim had a part-time employee at one time but that he currently had no employees. Brand sent a letter to Tim Mann advising him that in the event he hired an employee, he would be required to carry workers' compensation insurance. Brand received a fax from Shannon Mann advising that he had insurance on himself and the two men working for him through Protective Insurance and provided the policy number. Brand called and talked with Donna at Protective and learned that the policy was a work accident policy. Brand explained that she was familiar with the Protective policy because most of the people that enter into contracts with FedEx have the policy as their accident policy. She testified that as of the date of hearing, the NCCI did not reflect a workers' compensation policy on either of the Mann operations. Brand explained that she had received a letter from Ms. Peacock with Protective Insurance stating that the policy was not a workers' compensation policy. Brand explained that the work accident policy is a policy that covers the injury of the person but does not provide any total disability or any similar coverage. The insurance policy is not registered with NCCI as a workers' compensation policy. Brand testified that Protective Insurance Company is an authorized insurance carrier in Arkansas for workers'

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compensation and issues workers' compensation policies. Brand explained that it was her understanding that the policy would cover medical expenses and temporary disability benefits. The plan provides that the policy can be converted to a workers' compensation policy for an additional premium. From her investigation, she determined that FedEx is the holder of the Master Policy.

On cross-examination, Brand agreed that the policy would be confusing to someone that has not been in the insurance business. She testified that both Mann entities had been cooperative with her investigation.

### **DISCUSSION**

Arkansas Code Ann. § 11-9-406(a) (Repl.2002) provides:

Any employer required to secure the payment of compensation under this chapter who fails to secure compensation shall be subject to a fine of up to Ten Thousand Dollar (\$10,000.00) as determined by the Workers' Compensation Commission, payable to the Death and Permanent Total disability Trust Fund, or be guilty of a Class D Felony. This sub-section shall not affect any other liability of the employer under this Act.

Arkansas Code Annotated § 11-9-102(11) (Repl. 2002) defines employment, in pertinent part, to include the following:

(1) Every employment in the state in which three (3) or more employees are regularly employed by the same employer in the course of business (with specified exceptions for employees employed to perform domestic service, maintenance, repair, remodeling, or similar work in the private home or residence of the person employing the employee) A.C.A. § 11-9-102(11)(A); and

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- (2) Every employment in which one or more employees are employed by a contractor who subcontracts any part of his or her contract, A.C.A. § 11-9-102 (11)(C); and
- (3) Every employment in which one or more employees are employed by a subcontractor. A.C.A. § 11-9-102 (11)(D).

An “employee” is defined, in pertinent part, as “any person, including a minor, whether lawfully employed or unlawfully employed in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied . . .” Ark. Code Ann. § 11-9-102 (9)(A). The term “employee” also includes:

a sole proprietor, partner, or member who devotes full time to the proprietorship, partnership, or limited liability company. However, any sole proprietor, partner of a partnership, or member of a limited liability company who desires not to be included in the definition of “employee” may file for and receive a certification of non-coverage under this chapter from the commission.” Ark. Code Ann. § 11-9-102 (9)(B).

While any individual holding a current certification of non-coverage is conclusively presumed not to be an employee, the law is clear that no election by a sole proprietor, partnership, or limited liability company shall affect the rights or coverage of any employees of those sole proprietorships, partners, or members. Ark. Code Ann. § 11-9-102(9)(D) and (E).

Arkansas Code Annotated § 11-9-102(1) (Repl. 2002) defines the payment of compensation under this chapter. It states:

Every employer shall secure the payment of compensation under this chapter:

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(1) By insuring and keeping insured the payment of the compensation with any carrier authorized to write Workers' Compensation Insurance;

(2) By furnishing satisfactory proof to the commission of his financial ability to pay compensation and receiving an authorization from the Commission to pay compensation directly.

Arkansas Code Annotated § 11-9-102(1) (Repl.2002) defines carrier as

follows:

'Carrier' means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of Workers' Compensation Insurance in this state; whether required by the context, the term 'carrier' shall be deemed to include duly qualified self-insured or self-insured groups.

For all relevant time periods herein, Shannon Mann and Tim Mann did not maintain workers' compensation coverage under the belief that they did not have the sufficient number of employees and the insurance purchased from FedEx would cover any employee injured on the job. The Manns' failure to maintain coverage was discovered by the filing of a workers' compensation claim by Dennis Scott, a person claiming to be an employee of Tim Mann and Shannon Mann, alleging a work-related injury in El Dorado, Arkansas, on December 30, 2005. Frankie Brand, an investigator with the Compliance Division, testified that she could find no record of any workers' compensation coverage for Tim Mann and Shannon Mann.

It has been previously held by this Commission that employers are subject to a One Thousand Dollar (\$1,000.00) a day penalty for failure to secure workers' compensation insurance. The Commission held that an employer can be subject to the maximum statutory penalty if it remains uninsured for more than ten (10) days. See, *In re Valu Line Company, Inc.*, 1995 AWCC 70, Full Workers' Compensation Commission Opinion filed March 16, 1995, (Employer #00089148).

In order to reach a determination of whether the Manns were in compliance with the Arkansas Workers' Compensation Act, the threshold question of whether the Manns should be classified as employees, sub-contractors, or independent contractors must be addressed.

### **I. Employee v. Independent Contractor**

The issue of whether one is an employee or independent contractor is analyzed under two separate tests: (1) the control test; and (2) the relative nature of the work test. On the issue of control, the Arkansas Supreme Court has held that the ultimate question is not whether the employer actually exercises control over the doing of the work, but whether he has the right to control. *Wright v. Tyson Foods, Inc.*, 28 Ark. App. 261, 773 S.W.2d 110 (1989). The following factors are to be considered in determining whether one is an employee or independent contractor: (a) the extent of control which, by the

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agreement, the master may exercise over the details of the work; (b) whether or not the one employee is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether in the locality the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principle is or is not in business. *Aloha Pools and Spas, Inc. v. Employers Ins. of Wausau*, 342 Ark. 398, 39 S.W.3d 440 (2000).

The factors pertaining to the nature of the worker's occupation and whether it is part of the regular business of the employer comprise the "relative nature of the work" test. *Arkansas Transit Homes, Inc. v. Aetna Life & Casualty*, 341 Ark. 317, 16 S.W.3d 545 (2000). In *Sandy v. Salter*, 260 Ark. 486, 541 S.W.2d 929 (1976), the Arkansas Supreme Court adopted Professor Larson's test for examining the relationship between the worker's occupation and the regular business of the employer. This test requires consideration of two factors: (1) whether and how much the worker's occupation is a separate calling or

profession; and (2) what relationship it bears to the regular business of the employer. *Id.* The more the worker's occupation resembles the business of the employer, the more likely the worker is an employee.

In the instant case, the Manns testified that they exclusively delivered packages for FedEx Ground. All the shorts, shirts, hats, rain jackets, jackets, and vehicles have the FedEx Ground logo on them. S. Mann explained that the contractors have to follow FedEx guidelines and specifications, including the type of vehicle used for delivery of packages. T. Mann testified that all employees had to attend the FedEx training school and would not be "approved" by FedEx Ground for hire without a certificate of completion.

At the hearing, the Manns contend that they are contractors and not subcontractors and therefore do not meet the threshold requirements to carry workers' compensation coverage. Notwithstanding the labels given by the parties, it is noteworthy that the actual conduct of the parties determines whether a party is an employee or independent contractor. Because FedEx Ground was not a party to this proceeding, I do not reach the determination of whether the relationship between the Manns and FedEx Ground was that of employer-employee or independent contractor.

## **II. Subcontractor v. Independent Contractor**

The term “subcontractor” is not defined in the workers’ compensation statute. Where the workers’ compensation statutes do not define specific language included in them, the Arkansas Supreme Court has held that it falls to the Court to define the term in a manner that neither broadens nor narrows the scope of Act 796 of 1993. *Jones Brothers, Inc. v. Whitlock*, (Ark. 05-1135, Opinion dated May 4, 2006), citing *Wallace v. West Fraser South, Inc.*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Jan. 26, 2006). The Court noted that it had historically held that “strict construction means narrow construction and requires that nothing be taken as intended that is not clearly expressed.” *Elam v. Hartford Fire Ins. Co.*, 344 Ark. 555, 568, 42 S.W.3d 443, 451 (2001). In *Jones Brothers, Inc. v. Whitlock*, the Court examined its prior rulings on the merits of the prime contractor-subcontractor issue. The Court noted that “the person sought to be charged as a prime contractor must have been contractually obligated to a third party for the work being done at the time of the injury”. *Nucor Holding Corp. v. Rinkines*, 326 Ark. 217, 223, 931 S.W.2d 426, 439 (1996). In *Nucor Holding Corp.*, the Court also referred to the definition of “subcontractor” in the Court of Appeals decision in *Bailey v. Simmons*, 6 Ark. App. 193, 639 S.W.2d 526 (1982). In *Bailey*, the Court of Appeals addressed the issue of independent contractor v. subcontractor:

The Supreme Court in *Hollingsworth & Rockwood Ins. v. Evans*, 255 Ark. 387, 500 S.W.2d 382 (1973) recognized the distinction between a subcontractor and an independent contractor:

There is, of course, a considerable difference between a subcontractor and independent contractor. In *Black's Law Dictionary* a subcontractor is defined as:

"One who takes portion of a contract from principal contractor or another subcontractor. \* \* \* One who has entered into a contract, express or implied, for the performance of an act with the person who has already contracted for its performance."

In *Gaydos v. Packanack Wood Dev., Co.*, 166 A.2d 182, at page 184, the New Jersey Court defined a subcontractor in a workmen's compensation case as follows:

"A subcontractor is one who enters into a contract with a person for the performance of work which such person has already contracted to perform. In other words, subcontracting is merely 'farming out' to others all or part of work contracted to be performed by the original contractor."

6 Ark. App. at 196. In *Garcia v. A&M Roofing*, CA 04-430 (Ark. App, 2-2-2005), the Court of Appeals cited its prior ruling in *Hale v. Mansfield Lbr. Co.*, 237 Ark. 854, 855, 376 S.W.2d 670, 670-1 (1964), for the proposition "even if it can be said that Hale was an independent contractor, he was an independent subcontractor, and Mansfield would be liable to his employees under the workmen's compensation law".

In the instant case, FedEx Ground is in a contractual relationship with the end consumer to provide package pick-up and delivery services accomplished by the use of contracts with owner-operators of trucking equipment with qualified operators who conduct his/her business "so that it can be identified as being part of the FedEx Ground system". See, S. Mann and T. Mann Exhibits 1, FedEx

Ground Package System, Inc. Pick-up and Delivery Contractor Operating Agreements, Page 1. Both Manns testified that they had no contact with the shipping consumer and received all of the packages designated for their delivery route from FedEx Ground. Based on the preponderance of the evidence, I find that, for all relevant times herein, Tim Mann and Shannon Mann were subcontractors who employed one or more employees.

### **III. The Protective Insurance Work Accident Policy**

The Manns contend that they purchased insurance from FedEx Ground with the belief and understanding that employees involved in work accidents were insured and that the Manns were in compliance with the law. At the hearing, the attorney for the Manns conceded that the work accident policy purchased from Protective Insurance did not constitute a valid workers' compensation policy. The letter from Protective Insurance Company dated April 26, 2006, correctly noted that the policy is designed to cover independent contractors but does not constitute workers' compensation coverage as needed to protect their employees and required by applicable state law. See, Manns Exhibit 2. As noted on the Declaration Page of the Master Policy, "The Group Master Policy is not a workers' compensation policy and does not satisfy any coverage for workers compensation if such coverage is required by law." In *Hickok v. Stone Express*, 2006 AWCC 79 (May 3, 2006), the Full Commission

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addressed the question of whether an Occupational Accident and Contingent Liability policy made available under a contractual agreement between Stone Express and P.A.M. Transport satisfied Stone Express 's obligation to secure the payment of compensation as required by A.C.A. § 11-9-404. Noting that the policy only covered injured "independent contractors" and not employees of the subcontractor, Stone Express, the Commission found that the policy did not satisfy the Stone Express's obligation to secure the payment of compensation.

In the instant case, the policy also contains a Contingent Workers Compensation Endorsement which contractually requires the insurance company to issue a Standard Workers Compensation Policy **for an additional premium** if the Covered Person becomes legally obligated to pay benefits for any person under a state's Workers Compensation Act. Again, a disclaimer is found at the bottom of the endorsement, in bold print: "THIS IS NOT A WORKERS COMPENSATION POLICY AND IT HAS NOT AND CANNOT BE FILED WITH THE INDUSTRIAL BOARD AS EVIDENCE OF INSURANCE." Therefore, based on the clear language of the endorsement, I find that the endorsement does not satisfy the Manns' obligation to provide workers compensation coverage to their employees.

In this case, I find that the preponderance of the evidence shows that Shannon Mann and Tim Mann were subcontractors with one or more employees

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and were required to maintain workers' compensation coverage as required by applicable law. I further find that the Group Independent Contractor Work Accident Insurance Policy with Protective Insurance with the Contingent Workers Compensation Endorsement does not satisfy the Manns' obligation to secure workers' compensation coverage for their employees.

For the reasons set forth herein, I find that the preponderance of the evidence has proven that Tim Mann and Shannon Mann have failed to secure and provide workers' compensation coverage to their employees during the relevant times to this proceeding as required by Arkansas Workers' Compensation Act.

The primary focus of this compliance proceeding, even after seeking sanctions, has remained the same -- to ensure that all employers secure compensation for its workers. The Compliance Division does not normally seek civil or criminal sanctions without first requesting voluntary compliance with the law. The evidence shows that Protective Insurance Company has agreed to pay the medical expenses of Scott Dennis. The evidence further shows that the Manns acted in reliance on their understanding that the Protective Insurance policy satisfied their obligation to provide insurance coverage to their employees.

After full consideration of the facts, issues, and the law, and acting within the sound discretion permitted for a hearing official, I have elected set aside and

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hold in abeyance the imposition of a portion of the full statutory penalty of Ten Thousand Dollars (\$10,000.00) as to both Tim Mann and Shannon Mann, contingent upon the following:

1. Tim Mann and Shannon Mann shall each pay the sum of One Thousand Dollars (\$1,000.00) penalty to the Death and Permanent Total Disability Trust Fund for their failure to secure workers' compensation coverage.
2. Tim Mann and Shannon Mann procures and continues at all times to provide workers' compensation coverage for its employees, if any. The Compliance Division will continue to monitor Tim and Shannon Mann to ensure that they provide coverage for their employees.
3. Tim Mann and Shannon Mann promptly pays any valid claims which may be filed against them during the period of non-coverage based upon any final determination and award, if any, to any of its employees.
4. Employer promptly pays all costs including the sum of \$560.10 for the costs of preparation of the transcript and other expenses incurred in connection with the May 4, 2006 hearing. incurred in connection with this proceeding.

Conditioned on the compliance of all the aforementioned provisions, Nine Thousand of the Ten Thousand (\$10,000.00) penalty for non-compliance will be set aside and held in abeyance pending further rulings in this case. Failure to

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comply with all conditions may result in enforcement of the entire maximum statutory penalty.

**ORDER**

\_\_\_\_\_ Pursuant to Arkansas Code Annotated § 11-9-406(a), Tim Mann and Shannon Mann are hereby directed and ordered to pay the sum of One Thousand Dollars (\$1,000.00) each, endorsed to the Death and Permanent Total Disability Trust Fund, c/o Arkansas Workers' Compensation Commission, P. O. Box 950, Little Rock, Arkansas 72203-0950. Said penalty shall be paid within forty-five days of the date of this Order unless a timely Petition for Review is filed with the Full Workers' Compensation Commission.

Tim Mann and Shannon Mann are further directed and ordered to pay all costs of this litigation; specifically, the sum of \$560.10, representing the cost of the preparation of the transcript in this proceeding. Said payment should be remitted to the Arkansas Workers' Compensation Commission, Post Office Box 950, Little Rock, Arkansas, 72203-0950, within twenty (20) days of the date of this Order.

Tim Mann and Shannon Mann are further directed and ordered to procure and continue at all times to provide workers' compensation coverage for its employees, if any. Further, the Compliance Division is directed to continue to

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monitor the employer to ensure that it continues to provide workers' compensation coverage for its employees. Any lapse of coverage will result in additional sanctions.

Tim Mann and Shannon Mann are further directed to promptly pay any valid claims which may be filed against them during the period of their non-coverage based upon any final determination and award, if any, to any of their employees

In the event that either of the employer fails to pay the penalties assessed herein, this Commission may petition the Circuit Court of Pulaski County, Arkansas, for an order enjoining the respective employer from engaging in further employment until such time as the employer makes full payment of all civil penalties as provided by Arkansas Code Annotated § 11-9-406(b)(6) (Repl.2002).

**IT IS SO ORDERED.**

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**HONORABLE BARBARA WEBB**  
Administrative Law Judge