

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E509478

SCIPIO JOHNSON, EMPLOYEE	CLAIMANT
BONDS FERTILIZER, INC., EMPLOYER	RESPONDENT NO. 1
AGRI GROUP-COMP SI FUND, CARRIER	RESPONDENT NO. 1
BONDS BROTHERS, INC., EMPLOYER	RESPONDENT NO. 2
CNA INSURANCE COMPANY, CARRIER	RESPONDENT NO. 2

**OPINION FILED DECEMBER 6, 2007**

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE TIMOTHY S. PARKER,  
Attorney at Law, Eureka Springs, Arkansas.

Respondent No. 1 represented by HONORABLE MICHAEL J. DENNIS,  
Attorney at Law, Pine Bluff, Arkansas.

Respondent No. 2 represented by HONORABLE D. KEITH FORTNER,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the  
Administrative Law Judge filed January 10, 2007.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The preponderance of the evidence demonstrates that claimant was simultaneously employed by Bonds Brothers Trust a/k/a The Farm and Bonds Fertilizer, Inc. on June 28, 1995.
3. The preponderance of the evidence demonstrates that claimant was performing employment related services for both employers at the time of the accident on June 28, 1995.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

This case comes before the Commission on the claimant's appeal of the Administrative Law Judge's January 10, 2007, opinion, which found the claimant was simultaneously employed by both employers at the time of his injury on June 28, 1995. I respectfully dissent from the Majority's opinion, which affirmed and adopted the Administrative Law Judge's findings. After a de novo review of the record, I find that the claimant was not a dual employee of Bonds Fertilizer and Bonds Brothers Inc., at the time of his accident. Accordingly, I must respectfully dissent.

This case arises out of a collision that occurred on June 28, 1995, when a pick-up truck in which the claimant was a passenger was struck broadside by a Union Pacific freight train loaded with coal. The driver of the pick-up truck, Frances Birmingham, was employed by Bonds Fertilizer, Inc. Alyston Luster, another occupant of the pick-up truck, worked for Bonds Brothers Partnership Trust ("The Farm"). The claimant performed work for both entities; however, only one would issue him a paycheck for any given pay period. In other words, if he worked for both Bonds Fertilizer, Inc., and The Farm in the same week, he would receive only one paycheck.

On the day of the collision, the claimant had worked solely for The Farm. On the morning of the accident, claimant was performing work for The Farm, due to the fact that David Owens, another of The Farm's employees, was out sick. That afternoon, the claimant was supposed to deliver a load of fertilizer that was coming in at 3:00 p.m. for Bonds Fertilizer. However, around 1:00 p.m., The Farm foreman, Allan Maxey, instructed the claimant to go field, pick up a

tractor, and begin laying irrigation pipe, a Farm related duty. Maxey instructed the claimant to ride with Frances Birmingham, an employee of Bonds Fertilizer, to go pick up the tractor. The truck in which they were riding was owned by Bonds Brothers and had a 1,000-gallon water tank hooked to the back.

As they reached the railroad crossing at Clemmons Road in Tamo, Arkansas, Frances Birmingham ran the stop sign at the crossing. The train struck the pick-up truck, broadside, ejecting all three passengers from the vehicle. Mr. Luster died from his injuries. Claimant sustained an open comminuted fracture to his femur, broken ribs, and other multiple injuries, including a closed-head, traumatic brain injury. He spent approximately three weeks in the hospital and underwent extensive rehabilitation.

While the claimant was in the hospital, Bonds Fertilizer, Inc., filed a claim for workers' compensation benefits on his behalf with Ag Comp SIF, comp carrier for Bonds Fertilizer. Tammy Hester, claims representative for Ag Comp SIF, stated that she never spoke to the claimant, nor

did the claimant make any individual claim on his own behalf. Ms. Hester stated that the claim was made by Kenny Bonds, President of Bonds Fertilizer, Inc., who was also a partner in The Farm. Ms. Hester indicated in her deposition that The Farm was not covered by workers' comp, but Bonds Fertilizer, Inc., was covered.

The claimant subsequently filed a tort action in Jefferson County Circuit Court against Bonds Fertilizer, Inc., and the Union Pacific Railroad. Ag Comp intervened in the lawsuit, seeking to recover the workers' compensation benefits it had paid on behalf of the claimant, who has acknowledged that, in the event of recovery against Bonds Fertilizer, Ag Comp is entitled to recoup its benefits paid. Bonds Fertilizer filed a Motion for Summary Judgment, asserting workers' compensation as an affirmative defense.

The Jefferson County Circuit Court granted summary judgment to Bonds Fertilizer, Inc., finding that the claim against Bonds Fertilizer, Inc., was barred under the exclusive remedy provision of the Arkansas Workers' Compensation Act. The claimant appealed to the Arkansas

Supreme Court which, in a decision dated April 17, 2003, reversed and remanded the order of the trial court granting summary judgment to Bonds Fertilizer, Inc., stating, in its opinion, that the only relevant issue remaining is whether the claimant was performing services for Bonds Fertilizer, Inc., or, alternatively, for The Farm, at the time of his injuries. The Court further stated that the question of whom the claimant was working at the time of his injuries was an issue of fact for the Commission to resolve.

The claimant then asked the Workers' Compensation Commission to decide the question posed by the Supreme Court Opinion. The Bonds entities objected to the Commission making this determination, arguing that the two-year statute of limitations for workers' compensation claims and the prohibition against advisory opinions prevented the Commission from deciding the question posed in the Supreme Court Opinion. The ALJ and the Full Commission agreed with Bonds concerning the statute of limitations and advisory opinion issues, and dismissed the claimant's request. On appeal, the Supreme Court reversed the rulings of the ALJ

and the Full Commission, reiterating its previous mandate in its previous Opinion, that the only issue remaining was for whom was the claimant working - the Farm, or Bonds Fertilizer, Inc.

At his oral deposition given April 30, 1998, Kenny Bonds, Jr., President of Bonds Fertilizer, Inc., stated under oath that there were three separate Bonds entities, Bonds Brother Trust; the operating partnership of the farm which was needed for ASAC purposes; Bonds Brothers, Inc., which was also a partner in the trust; and Bonds Fertilizer, Inc., a wholly owned subsidiary of Bonds Brothers, Inc. Bonds Brothers, Inc., had no employees and no payroll.

Mr. Bonds further testified that the fertilizer business would not have encompassed driving the tractor and putting out layby, or driving a tractor and putting out irrigation pipe, as those duties would involve the farm, i.e., Bonds Brothers Partnership Trust. He testified that his farm manager, Alan Maxey, asked the claimant to pick up a tractor that had poly-pipe on it and take it back to another farm location where they would lay irrigation with

that poly-pipe. He testified that the claimant was going to pick up the tractor and drop it off at another location. Mr. Bonds further testified that someone who works in the fertilizer would not pick up and move tractors from one farm to the next. He testified that there was a lull in the fertilizer and that the claimant was available to take the place of David Owens, a farm worker, who was ill that day. Mr. Owens was supposed to have been driving a tractor that day. Mr. Bonds testified that this type of work was farm work.

Mr. Bonds testified, also, that Francis Birmingham, the individual who drove the truck at the time it was struck by the Union Pacific freight train, was a 100% employee of Bonds Fertilizer during that time of the year.

At his deposition, the claimant testified that, on the day of the accident, Alan Maxey, The Farm manager, told him that he would not haul any fertilizer that morning. Mr. Maxey told the claimant that David Owens was in the hospital and the claimant was go to get the tractor and finish plowing and spraying the field that morning. The

claimant plowed and sprayed that morning until lunch. After lunch, the claimant drove back to the headquarters, where Alan Maxey came out and told him to go down to the Love place and pick up a tractor and bring it back to another section of land and start putting out poly-pipe on the bean field. The claimant was told by Mr. Maxey to catch a ride with Francis Birmingham and Alyston Luster and ride down there and bring the tractor back. While on his way to get the tractor, he was struck by the freight train while riding with Francis Birmingham, an employee of Bonds Fertilizer, Inc.

Burma Ashburn, bookkeeper for the Bonds entities, testified that she filled out the telephone workers' compensation report when the accident happened. She testified that Kenny Bonds provided her the information to fill it out. She testified that no fertilizer went out that afternoon. She testified that they do not keep time cards. She also testified that if an employee works for both The Farm and the fertilizer in one week that they would only receive one check, i.e., they would not get a check from

both Bonds Brothers Partnership Trust and Bonds Fertilizer, Inc. She testified that a comp claim was filed on the claimant mainly because he worked for Bonds Fertilizer. To her knowledge, no one has ever explained to the claimant as to how to distinguish between the three Bonds entities. She confirmed that farm worker David Owens was out sick on June 28, 1995.

The Supreme Court in the initial Johnson decision, rendered on April 17, 2003 (hereinafter Johnson I), set forth the following facts,

The record reflects that, on the date of the accident, Johnson was an employee of both the Farm and Bonds Fertilizer. Both companies, along with Bonds Brothers, were either owned or controlled by Kenny Bonds and Brian Bonds. Kenny and Brian each own fifty percent of Bonds Brothers. Bonds Brothers is a sole shareholder of Bonds Fertilizer. The Farm is a partnership comprised of Kenny Bonds Farms, Brian A. Bonds Trust, and Bonds Brothers. When Johnson performed work for either the Farm or Bonds Fertilizer, he reported to the same supervisor, Allen Maxey. Some weeks Johnson would perform tasks for both employers, but he would receive only one paycheck, from the company that he did the most work for that week. The week before the accident and the week of

the accident, Johnson was paid by Bonds Fertilizer. (Emphasis added.)

**On the morning of the accident, Johnson was performing work for the Farm, because one of the Farm's employees was out sick. That afternoon, Johnson was supposed to deliver a load of fertilizer that was coming in at 3:00 p.m. for Bonds Fertilizer. In the meantime, around 1:00 p.m., Maxey instructed Johnson to pick up a tractor for the Farm and begin laying irrigation pipe. Maxey instructed Johnson to ride with Frances Birmingham, an employee of Bonds Fertilizer. Allison Lester, an employee of the Farm, also rode with them. The truck they were riding in was owned by Bonds Brothers, and it had a one thousand gallon water tank hooked to the back. (Emphasis added.)**

When they approached the railroad crossing at Clemmons Road, Birmingham applied the brakes and slowed the truck to one or two miles per hour. She did not come to a complete stop. According to their depositions, both Birmingham and Johnson looked both ways to see if a train was coming. Neither of them saw or heard a train. Birmingham then began driving the truck across the track when Johnson hollered for her to "step on it". The train collided with the bed of the truck, throwing all three passengers from the vehicle. Johnson and Birmingham received serious injuries from the collision, but Lester's injuries were fatal. (Emphasis added.)

\_\_\_\_\_After reviewing the record, I find that the claimant was not acting as an employee of Bonds Fertilizer at the time of the accident. First and foremost, I make this finding because at the time of the collision, he was acting on behalf of and in the best interest of the Farm. Clearly, the claimant was sent to get pipe in relation for a job that was being performed for the "The Farm". Though the claimant was employed by both the "The Farm" and Bonds Fertilizer his work for each company was distinguishable and separable. Furthermore, at the time of the collision he was not acting on behalf of Bonds Fertilizer and therefore was not a dual or loaned employee. Furthermore, I do not find that the doctrine of a "loaned or special employee" to be applicable.

It is readily apparent that Mr. Johnson was performing work for The Farm at the time he was injured. The Supreme Court's statement of facts in Johnson I was based upon abstracted deposition testimony of the witnesses. Indeed, the recitation of facts by the Supreme Court in its opinion is entirely consistent with the representations made by Mimi Miller, the attorney for Bonds Fertilizer and Bonds

Brothers, Inc., at a Summary Judgment hearing held November 4, 1999, in the Circuit Court of Jefferson County, Arkansas. A transcript of that hearing has been filed with the Commission and is in the Supreme Court record in Johnson I. Ms. Miller characterized the three separate Bonds entities by stating that Bonds Brothers, Inc., owned all the equipment and buildings for all the Bonds entities. She further stated Bonds Brothers Trust was an operating entity for the Farm, so Bonds Brothers Trust was referred to as "The Farm".

Ms. Miller furthermore related to the Court that Bonds Brothers, Inc., is incorporated and owned all the equipment and buildings that the entities operated out of and that Bonds Brothers, Inc., was owned by Brian and Kenny Bonds. She furthermore pointed out that Bonds Brothers, Inc., was the sole shareholder of Bonds Fertilizer. She pointed out that the plaintiff, at different times of the year, worked for the Farm or for the Fertilizer company. Ms. Miller stated that one of the employees for the Farm (David Owens) had been absent that day and, on the afternoon

of June 28, 2995, the claimant happened to be asked to go out to the Farm and pick up a tractor.

Ms. Miller stated to the Court that Bonds Fertilizer had compensation coverage for the plaintiff at the time of the accident and the compensation payments were paid on the basis of payroll records. Ms. Miller represented to the Jefferson County Circuit Court that Bonds Fertilizer lent Mr. Johnson to Bonds Brothers Farm and that he was specifically doing work for The Farm at the time of the accident. She furthermore stated that the Farm would have been able to control the details of his work.

It is a basic tenet of Arkansas law that an attorney is an agent for the party he represents; thus, the client is bound by the actions of his attorney. 7 Am Jur 2d Attorneys at Law §147. The actions of an attorney are imputed to his client. Id § 157 citing Alger v. Beasley, 180 Ark. 46, 20 S.W.2d 317 (1929). Thus, admissions of fact during civil litigation are binding on the client, including a subsequent trial based on the same action. Id §168 (Citations omitted). It is furthermore a basic tenet of

Arkansas law that the statements of an attorney are imputed to and binding upon his client, even in the absence of evidence supporting the statements of the attorney. Mackey v. State, 329 Ark. 229, 947 S.W.2d 359 (1997); Withers v. State, 308 Ark. 507, 825 S.W.2d 819 (1992); Whiting v. Beebe, 12 Ark. 421 (1851); Seavey, Warren A. Agency § 107 citing Roberts v. Eastland Food Products Co., 323 Mass. 406, 82 N.E.2d 798. In the case of Ragland v. Gulf Oil Comp., 288 Ark. 182, 703 S.W.2d 449 (1986), the Supreme Court stated that the chancellor was entitled to rely upon the admission of an attorney who stated that the only issue for the chancellor's decision was whether fuel was for on road use or, alternatively, off road use. The Court stated that when a party through its attorney concedes in open court a material fact, no other proof is necessary on this fact and the party making the admission cannot thereafter complain of the admission.

I further find that pursuant to the doctrine of judicial estoppel, Bonds Farm is prohibited from taking the position that the claimant was not working for "The Farm" at

the time of his injuries. The Doctrine of Judicial Estoppel prohibits a party from taking inconsistent positions in the same or related litigation. Johnson v. Daggett, Van Dover, Donovan and Perry, 99 F. Supp. 1008 (E.D. Ark. 2000); Robertson Oil Co. v. Phillips Petroleum, 14 F 3d 360 (8<sup>th</sup> Cir. 1992). Put another way, a party is estopped from assuming an attitude inconsistent with his first position and detrimental to the rights of others. Mason v. Urban Renewal of Little Rock, 245 Ark. 837, 434 S.W.2d 614 (1968). In the Arkansas Supreme Court case of Dupwe v. Wallace, 355 Ark. 521, 140 S.W.3d (2004), the Arkansas Supreme Court indicated that the Doctrine of Judicial Estoppel prohibited parties from taking inconsistent positions in the same or related litigation and is used against parties attempting to do so who seek to play "fast and loose" with the Courts.

The principle of law currently characterized as "Judicial Estoppel" has previously existed as a branch of the Doctrine Against Inconsistent Positions, the latter of which has been developed under Arkansas case law. In the case of Tennessee v. Barton, 210 Ark. 816, 198 S.W.2d 152

(1946), the Arkansas Supreme Court refused to allow Barton to challenge the validity of a portion of a Utah divorce decree that he had requested be given full faith and credit in an earlier action to recover the dower fund. Similarly in Rudolph v. Kelly, 144 Ark. 296, 222 S.W.42 (1920), the Arkansas Supreme Court refused to allow a party to argue inconsistent positions, stating that by doing so, a party was playing "fast and loose" in a lawsuit.

The Doctrine Against Inconsistent Positions also applies to positions taken outside lawsuits. In Wendtworth v. City of Fort Smith, 256 Ark. 735, 510 S.W.2d 296 (1974), the Supreme Court ruled that the appellants were estopped from denying in a lawsuit that a strip of land was a dedicated public street, when the appellants had, in a prior public proceeding, objected to a proposal to close or vacate the street in question. Likewise, in Potts v. Rader, 215 Ark. 160, 219 S.W.2d 7691 (1949), the Arkansas Supreme Court stated that appellants could not claim title to a portion of land in reliance upon a deed and, at the same time, claim the rest of the land described in the deed upon a theory

that the deed was invalid. In Dicus v. Allen, 2 Ark. App. 204, 619 S.W.2d 306 (1981), the Court of Appeals stated that it would be "inherently unfair" to permit appellees to take inconsistent positions and held they were estopped from rejecting a survey that they had relied upon only one (1) year before. As was stated in International Harvester v. Burks Motors, 252 Ark. 816, 481 S.W.2d 351 (1972), a Court has a right to rely upon the statements of a party. The Supreme Court has stated one is not allowed to avail himself of inconsistent positions in litigation concerning the same subject matter. Cox v. Harris, 64 Ark. 213, 215, 41 S.W.42b (1897).

Attorney Miller's representations to the Jefferson County Circuit Court in the tort action are corroborated by the deposition testimony of Kenny Bonds, President of Bonds Fertilizer and by that of the claimant himself. Mr. Bonds stated under oath at his deposition that at the time of the grade crossing collision at issue in this case, the claimant was on his way to pick up a tractor and move it to another farm. Bonds testified that someone who works in fertilizer

would not pick up and move tractors from one farm to the other.

In arguing that the claimant's exclusive remedy is workers' compensation, Bonds Fertilizer attempts to rely upon the Dual Employment Doctrine or, alternatively, the Loaned Employee Doctrine. In support of its position, Bonds Fertilizer has previously cited the Supreme Court to the cases of Daniels v. Riley's Health and Fitness Centers, 310 Ark. 756, 840 S.W.2d 177 (1992) for its dual employment argument and to the case of Cash v. Carter, 312 Ark. 41, 847 S.W.2d 18 (1993) for its arguments that the claimant was a loaned employee. By applying the reasoning of those two cases to the facts of this case, neither doctrine applies, so as to shield Bonds Fertilizer from tort liability in this case.

In the case of Cash v. Carter, 312 Ark. 41, 847 S.W.2d (1993), Cash was injured while doing welding work on a barge owned by Carter Construction Company. At the time Cash was injured, he was performing work for Carter Construction and was under the supervision of Carter

Construction employees. Cash subsequently filed a tort action against Isaac F. Carter, the owner of Carter Companies, a parent corporation for several subsidiaries, including Appellee Carter Construction and non-party Little Rock Quarry. Mr. Carter was also the owner of Appellee Arkansas Valley Dredging Company, Inc., which was a separate parent corporation. Cash urged that he was entitled to bring the tort action because his employer, Little Rock Quarry, issues his payroll check to defeat the workers' compensation exclusive remedy defense. The Circuit Court of Pulaski County, Arkansas, ruled that the fact that Little Rock Quarry issued the check was not determination of the workers' compensation exclusive remedy issue, and entered summary judgment against Cash on his tort claims against Isaac F. Carter individually, Carter Construction Company, Inc., and Arkansas Valley Dredging Company, Inc., finding that Cash was either an actual employee or a loaned employee of Carter Construction Company when the accident occurred. Cash appealed to the Arkansas Supreme Court.

The Supreme Court affirmed the Circuit Court decision finding that Cash was a loaned employee to Carter Construction Company and, thus, a temporary employee of that firm at the time he was injured. In its opinion, the Court looked to the case of Daniel v. Riley Health and Fitness Centers, 310 Ark. 756, 840 S.W.2d 177 (1992), stating, in pertinent part, as follows:

When a general employer loans an employee to a special employer, the special employer becomes liable for Workmen's Compensation only if:

- (a) The employee has made a contract for hire, express or implied, with the special employer;
- (b) The work being done is essentially that of the special employer; and
- (c) The special employer has the right to control the details of the work.

When all three of the above conditions are satisfied in relation to both employers, both employers are liable for Workmen's Compensation.

Employment may also be "dual" in the sense that, while the employee is under contract of hire with two different employers, his activities on behalf of each employer are separate and can be identified with one employer or the other. **When this separate identification can clearly be made, the particular employer whose work was being done at the time of the injury will be held exclusively liable.** (Emphasis added). 847 S.W.2d at 20.

Applying the reasoning in Cash v. Carter, supra, it is readily apparent that, while Bonds Brothers Partnership Trust, a/k/a "The Farm" might be liable for workers' compensation benefits, Bonds Fertilizer, Inc., would most definitely not be liable for workers' compensation benefits, giving the undisputed facts and pivotal admissions made by Bonds Fertilizer, through its President, Kenny Bonds, at deposition, and by its attorney at the hearing on the Motion for Summary Judgment in the tort action in this case. Simply put, the claimant was not performing duties for Bonds Fertilizer, Inc., at the time he was injured and, therefore, both employers are not jointly liable for payment of workers' compensation.

Applying the language of Cash v. Carter, supra, to the facts in this case, the Loaned Employee Doctrine does not provide a workers' compensation shield to Bonds Fertilizer, Inc., against the claimant's tort claims. On the day of the accident, the claimant had performed absolutely no work at all for Bonds Fertilizer, Inc.; instead, he was performing work that was separately and distinctly related to The Farm. The Supreme Court, in Johnson I, so stated in its recitation of facts after reviewing the abstracted deposition testimony of the pertinent witnesses and the in-court admission of attorney Mimi Miller. As Mr. Bonds himself testified, the activities on behalf of each of the Bonds entities are separate and distinct, and the claimant was working for The Farm when he was injured. Mimi Miller, attorney for both Bonds entities, represented to the Jefferson County Circuit Court that the claimant was specifically working for The Farm, subject to the control of The Farm. Applying the holding and rationale of Cash v. Carter, supra, the activities on behalf of each of the Bonds entities were separate and can be identified with the

particular employer whose work was done at the time of injury will be held exclusively liable for workers' compensation. In this case, that entity would be The Farm, a/k/a Bonds Brothers Partnership Trust, not Bonds Fertilizer, Inc. Accordingly, Bonds Fertilizer's reliance upon the loaned employee doctrine set forth in Cash v. Carter, supra, is misplaced.

As an alternative argument to the Loaned Employee Doctrine, Bonds Fertilizer asks the Commission to find that the Dual Employment Doctrine provides a shield to tort liability, citing the court to the case of Daniels v. Riley's Health and Fitness Center, 310 Ark. 756, 840 S.W.2d 177 (1992). The same reasoning in Cash v. Carter, is contained in Daniels v. Riley's Health and Fitness Center. In that case, the Arkansas Supreme Court unequivocally stated that when a separate identification can be made with respect to activities to be performed on behalf of each employer, the particular employer whose work was being done at the time of injury will be held "exclusively liable" for workers' compensation. 840 S. W. ed at 178. Since the

claimant was working exclusively for The Farm on the day and at the time he was injured, The Farm, had it carried comp coverage, would be exclusively liable for workers' compensation coverage since the claimant was not performing employment services for Bonds Fertilizer at the time of the grade crossing collision. Bonds Fertilizer is, however, liable for the tortuous conducts of its employees, Francis Birmingham, who was employed 100% of the time by Bonds Fertilizer, Inc.

The Supreme Court has stated in two separate opinions and mandates involving these same parties and issues that the only issue for the Commission to decide is for whom was the claimant working at the time he was injured - The Farm or Bonds Fertilizer. Kenny Bonds, Jr., President of Bonds Fertilizer, has admitted that the claimant was working for The Farm when he was injured. Mimi Miller, attorney for Bonds Fertilizer and Bonds Brothers, Inc., has stated at a hearing that, at the time the claimant was injured, he was working specifically for The Farm and subject to the control of The Farm. The Supreme Court in

Johnson I relied upon testimony and attorney representation in its opinion. Bonds does not now have the liberty, under the law of this state, to retract its admissions made to the Courts of this state. Bonds has admitted facts virtually determinative of the one issue posed by the Supreme Court in both Johnson I and Johnson II. As such, at the time the claimant was injured, he was performing work for The Farm.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner