

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E614855

DOUGLAS L. STOCKS, EMPLOYEE	CLAIMANT
CONVENIENT STORE SUPPLY, INC., A SELF INSURED EMPLOYER	RESPONDENT
HELSMAN MANAGEMENT SERVICES, LLC, TPA	RESPONDENT

**OPINION FILED MAY 3, 2007**

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

Claimant represented by HONORABLE BOYD TACKETT, JR.,  
Attorney at Law, Conway, Arkansas.

Respondent represented by HONORABLE GUY A. WADE, Attorney at  
Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he was not an employee of Affiliated Foods Southwest on October 29, 1996, when he sustained an admittedly compensable injury. Based upon our de novo review of the record, we find that the Administrative Law Judge incorrectly interpreted the provisions of Ark. Code Ann. §11-9-105(a). Accordingly, we hereby reverse the decision of the Administrative Law Judge.

The claimant was working for Convenient Store Supply Incorporated (CSSI) on October 29, 1996, when he sustained an admittedly compensable injury. The claimant received workers' compensation benefits associated with that injury. Affiliated Foods Incorporated (Affiliated) and its wholly owned subsidiaries and entities including, but not limited to, CSSI, were self insured for workers' compensation purposes for the calendar year 1996. Helmsman Management Services, LLC, an affiliate of Liberty Mutual Insurance Company, acted as the third party administrator over workers' compensation claims for Affiliated and its subsidiaries. Specifically, Helmsman administered payments of temporary total, permanent partial, and medical benefits to the claimant with respect to the claimant's October 29, 1996 injury. The claimant filed suit in Pulaski County Circuit Court against Affiliated and several John Does alleging negligence which resulted in damage to him with respect to the October 29, 1996, compensable workers' compensation injury. Affiliated filed a Motion to Dismiss and a subsequent Motion for Summary Judgment. In the

motions, Affiliated alleged that the claimant was barred from seeking action in Circuit Court due to the exclusive remedy provisions pursuant to Ark. Code Ann. §11-9-105. On June 4, 2002, the Pulaski County Circuit Court Judge granted Affiliated's Motion for Summary Judgment finding that the Circuit Court action was barred due to the exclusive remedy provisions of the Arkansas Workers' Compensation Act, specifically, Ark. Code Ann. §11-9-105. The claimant appealed this issue to the Arkansas Supreme Court. On September 15, 2005, the Supreme Court reversed and remanded the case for review to the Workers' Compensation Commission to make a determination of the claimant's employment status. Specifically, the Supreme Court stated:

...[W]hether Affiliated Foods's status as the sole stockholder and owner of Shur-Valu, which is the sole stockholder and owner of CSSI, along with its corporate relationship to CSSI and its actions in supplying equipment for CSSI render it a stockholder-employer under 11-9-105 and therefore limit [claimant's] remedy to workers' compensation benefits.

The evidence demonstrates that CSSI has always been owned by Shur-Valu Stamps Inc. Shur-Valu Stamps Inc., is the sole stockholder of CSSI. Affiliated Foods is the sole stockholder and owner of Shur-Value Stamps, Inc. After reviewing this evidence, the Administrative Law Judge found that the claimant was not an employee of Affiliated on October 29, 1996. ITf is from this finding that the respondents appealed.

In our opinion, a review of the applicable case law demonstrates that the exclusive remedy provisions of the Arkansas Workers' Compensation Act precludes the claimant from seeking remedy against Affiliated Foods in Circuit Court. Ark. Code Ann. §11-9-105(a) (Repl. 2002) provides:

The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer, or any principal, officer, director, stockholder, or partner acting in his or her capacity as an employer, or prime contractor of the employer, on account of the injury or death, and the negligent acts of a co-employee shall

not be inputted to the employer. No role, capacity, or persona of any employer, principal, officer, or director, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this chapter, and the remedies and rights provided by this chapter shall in fact be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

The respondents offered the affidavits of several of the officers of Affiliated. These affidavits were included in the respondents' Motion for Summary Judgment in Circuit Court and have been attached as exhibits to the Commission's file.

Mr. Robert Southern, Director of Personnel, for Affiliated, indicated that CSSI was provided workers' compensation insurance by Affiliated. He stated that the same policy covering the employees of Affiliated also covered the employees of CSSI. The personnel department of Affiliated handled the personnel matters of CSSI. In fact, the Affiliated personnel department hires the employees of CSSI. The employees of CSSI share the same health insurance

plan, life insurance plan, retirement plan, disability plan, vacation policy, holiday policy, leave policy, credit union, service award program, and other benefits as the employees of Affiliated. The various benefit plans outlined are administered by Affiliated and paid for with Affiliated funds. The CSSI employees also share the same rules of conduct as Affiliated employees. In addition, both the employees of CSSI and Affiliated have the same employee handbook.

Employees of Affiliated and CSSI may transfer positions, without loss of seniority or benefits between entities as personnel needs in one entity increase and in the other, decrease. In fact, the claimant, in the present case, transferred from working directly for Affiliated to the subsidiary CSSI only a few weeks prior to the October 29, 1996, injury. The transfer was necessitated by a reduction in force at Affiliated and increased need at CSSI. The claimant had also just received his ten year service award from Affiliated. This represented an accumulation of service time with both Affiliated and CSSI.

The equipment used by the claimant while working for CSSI was leased by Affiliated and provided to CSSI without receiving any pecuniary benefit in return. In fact, most of the equipment used by employees of CSSI was owned or leased by Affiliated. The only benefit derived by Affiliated in supplying the equipment to CSSI employees was to the potential of increased efficiency and productivity of those employees performing the work.

Finally, the Affidavit of John Mills, executive vice president and director of finance and administration at Affiliated was attached. In it, Mr. Mills indicated that Affiliated is and always has been the sole stockholder and owner of Shur-Valu Stamps, Inc. Both Affiliated and CSSI have the same board of directors. The business of both companies is discussed and determined at the same board meetings. The executive officers of CSSI are the same individuals as the executive officers of Affiliated, although their titles may differ. Moreover, the officers of CSSI are paid by Affiliated.

In our opinion, there simply is no way to make a distinction between the three based upon the fact that each of these are the sole shareholders. Affiliated owns all of the stock of Shur-Valu, which in turn owns all of the stock of CSSI. Affiliated is the sole shareholder and not some minority shareholder that is asking for protection.

With respect to the issues set forth by the Arkansas Supreme Court, there are very few cases which have ever directly considered this matter. However, the Arkansas Supreme Court, in Donley v. Pace Industries, 336 Ark. 101, 984 S.W.2d 421 (1999) provided some guidance.

In Donley, an action was brought by the estate of Donley and a co-worker injured when a worker turned a valve on a die cast machine causing a fire. The deceased's estate and the injured worker brought an action in circuit court seeking damages for wrongful death and personal injuries as a result of the accident. The trial court granted summary judgment for the defendant because it was a self-insured corporation and the claim fell within the exclusive remedy provisions of the Arkansas Workers' Compensation Act.

Upon review, the Arkansas Supreme Court affirmed the trial court's summary judgment. The Supreme Court explained that although the injured employees made accusations of a genuine issue of fact, they offered no proof to contradict the testimony provided in support of the motion for summary judgment.

In Donley, the estate and the injured worker both received workers' compensation benefits. The suit in circuit court was in the form of a products liability claim against the die cast machine's manufacturer, Cleveland Automatic Machine Company, the company that previously owned the machine, Precision and Precision's parent company, Pace. Three years before the date of the injury Automatic Castings, the claimant's employer, Precision and Pace merged, with Pace becoming the surviving corporation. The facts presented by the company were that Automatic Castings and Precision continued to operate only as "subsidiaries or divisions" of Pace. The injured employees suggested that the three companies remained separate although they presented no

proof in this regard. Subsequent to the merger, Precision had transferred the die cast machine to Automatic Casting.

In coming to its determination to affirm the trial court finding that the exclusive remedy barred any action against the corporation which was determined to be the employer, the court reviewed three issues. With respect to the dual persona doctrine, the court held that the 1993 changes to the Workers' Compensation Act expressly overruled the dual persona doctrine. With respect to the summary judgment challenged by the employees, the court ruled that the employees presented no proof to contradict the testimony as to the existence of the corporate entities and therefore had no basis to challenge it. Finally, the court reviewed the constitutionality of Ark. Code Ann. §11-9-105(a). In that regard, they found that the issue had not been raised below and could not be addressed on appeal.

The Donley determination provides some guidance and application to the present issue. As in Donley, Affiliated provided the pallet jack to CSSI. The claimant's third party action against Affiliated involves allegations

that this pallet jack was somehow defective which caused or contributed to the injury of the claimant. As in Donley, the injured employees alleged that the equipment transferred between subsidiaries was the cause of injury to the employees. In Donley, however, the Arkansas Supreme Court was able to determine, consider and affirm the trial court's grant of summary judgment barring the employee's action against the parent company based on far fewer contacts or relationships than those in the present case as expressed through the affidavits attached to the stipulation.

As the court pointed out in its decision in Donley, there is no other conclusion. In the present matter, it should be recognized that Affiliated is, in essence, the employer of the claimant. Therefore, in our opinion, the claimant is barred from any further recovery. The provision of the pallet jack by Affiliated is what allegedly caused the injury at issue. Affiliated did so within its scope as employer/sole shareholder. No other logical conclusion can be derived.

Finally, the claimant asserts the theories of *res judicata* and *collateral estoppel* as a basis for finding in his favor. *Res Judicata*, or issue preclusion, forbids the reopening of a matter once judicially determined by a preponderance of the evidence competent authority, including but not limited to, the workers' compensation commission. See, Craven v. Fulton Sanitation Service, Inc., 2005 Ark. Lexis 224 (2005). The claimant however fails to assert that there has never been any hearing, opinion, award or determination by the Arkansas Workers' Compensation Commission with respect to Affiliated. The claimant's argument fails because there has been no determination by the Commission.

For the same reason, *collateral estoppel* also is inappropriate. In order for it to apply and bar any future litigation, the issue to be precluded must have been actually litigated; the issue must have been determined by a final judgment; and the determination must have been essential to the judgement. See Craven, supra.

The only conclusion that can be drawn from the facts of this case are that Affiliated obtained workers' compensation insurance through the self-insured program for itself and its solely owned subsidiaries' employees. The claimant was injured on October 29, 1996, while working for a wholly owned subsidiary of Affiliated, CSSI. Workers' compensation benefits were paid by Affiliated as a result of his injury. It is undisputed that Affiliated provided the same handbook, employment policies, direction and seniority to the claimant through the same board of directors and administrators. It is of note, that all of the board of directors of Affiliated, CSSI and Shur-Valu, are the same. Affiliated hired the claimant and handled all the personnel matters involving the claimant. As a matter of fact, the claimant was employed by Affiliated until he was shifted over to working for CSSI when CSSI needed help. The benefit plans provided to or on behalf of the claimant, including, but not limited to, health insurance, life insurance, retirement, disability, vacation policy, holiday policy, leave policy, credit union, service award programs and other

benefits are paid for and administered by Affiliated. Affiliated even provided the equipment utilized by the claimant as part of his job. Therefore, there can be no other conclusion but that Affiliated was acting in a capacity as the claimant's employer. To find otherwise, is simply an illogical conclusion. Accordingly, we find that the decision of the Administrative Law Judge should be and hereby is reversed and the claimant is hereby found to be an employee of Affiliated.

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

I must respectfully dissent from the Majority opinion, finding that the claimant, is in essence an employee of Affiliated Foods Southwest, Inc.

According to the written stipulations entered into by the parties, the claimant sustained an admittedly compensable injury on October 29, 1996. At that time, the claimant was employed by Convenient Store Systems, Inc. (CSSI). That company was the wholly-owned subsidiary of Shur-Valu Stamps, Inc. (Shur-Valu). In turn, Shur-Valu was the wholly-owned subsidiary of Affiliated. Affiliated, who was the sole stockholder and owner of Shur-Valu, did not own any stock in CSSI.

Following his compensable injury, the claimant received a substantial amount of workers' compensation benefits. Those benefits were paid by Helmsman Management Services, Inc., an affiliate of Liberty Mutual Insurance Company, who, according to the stipulations, was the third party administrator for the workers' compensation claims of Affiliated and its subsidiaries, who were stipulated to be self-insured.

In September 1999, the claimant filed suit in Pulaski County Circuit Court against Affiliated, contending that its negligence had resulted in his October 29, 1996

injury. On June 4, 2002, the Circuit Court granted a summary judgment motion in favor of Affiliated, finding that the exclusive remedy provision of the Workers' Compensation Act precluded a negligence suit against them by the claimant. On September 15, 2005, the Arkansas Supreme Court reversed that judgment and held that the determination of jurisdiction and applicability of the exclusive remedy doctrine was exclusively within the purview of the Arkansas Workers' Compensation Commission and remanded the case to us for determination See, *Stocks v. Affiliated Foods Southwest, Inc.* , 363 Ark. 235, \_\_\_ S. W. 3d \_\_\_ (2005).

The issue which the Commission must determine is whether Affiliated was an employer of the claimant for workers' compensation purposes. If the answer to that question is yes, then the exclusive remedy provisions would apply and the claimant could not pursue a third party action against them. On the other hand, if Affiliated is not such an employer, then the claimant is free to pursue them in a negligence claim.

The applicability of the exclusive remedy provision is set out in Ark. Code Ann. §11-9-105 (a):

The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer, or any principal, officer director, stockholder, or partners acting in his or her capacity as an employer, or prime contractor of the employer, on account of the injury or death, and the negligent acts of a co-employee shall not be inputted to the employer. No role, capacity, or persona of any employer, principal, officer, or director, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this chapter, and the remedies and rights provided by this chapter shall in fact be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

The obvious intent and purpose of that statute is to limit any claims that an injured worker might have against his employer for job-related injuries to those benefits provided by the Workers' Compensation Act. The

statute also prohibits an injured worker from pursuing a claim for damages, against a "principal, officer, director, stockholder, or partner acting in his or her capacity as an employer...".

There does not appear to be any dispute that the protection of the exclusion remedy doctrine extends to Shur-Valu. They are, in fact, the owner and sole stockholder of CSSI. The issue which must be resolved in this case is whether Affiliated, by virtue of them being the owner and sole stockholder of Shur-Valu, also falls under the exclusive doctrine penumbra and are afforded similar protection.

The Majority finds that there is no material difference between Shur-Valu and Affiliated. That is, since Affiliated owned all of Shur-Valu, they are also the owner and stockholder of CSSI. Therefore, they are covered under the exclusive remedy provision just as Shur-Valu is. The only case authority provided by the Majority to support their position is Donley v. Pace Industries, 336 Ark. 101, 984 S. W. 3d 421 (1999). In Donley, the plaintiff's spouse

had been employed by a company known as Automatic Casting. Approximately three years before Mr. Donley sustained his fatal injury, Automatic Casting had merged with Precision Industries, Inc. and Pace, Industries. After the merger, Pace Industries was the surviving corporation and Precision Industries and Automatic Casting continued to operate only as subsidiaries or divisions of Pace. Mr. Donley was killed in a fire caused by a piece of machinery owned by Precision, which was allegedly improperly maintained. The Circuit Court granted a summary judgment motion finding that Pace, as a parent company of both Precision and Automatic Casting, was the claimant's employer and could not be sued. The Supreme Court affirmed that decision.

In my opinion, the Donley decision differs substantially from the case at bar. In Donley, there was no question that Pace Industries was the owner and sole stockholder of Automatic Casting and Precision Industries. In pursuing a lawsuit against Pace Industries, the plaintiff was contending that Pace had acted in a dual persona and was therefore liable in a capacity other than as an employer.

But, the Supreme Court was not willing to extend the dual persona doctrine as proposed by the plaintiff. Rather, they noted that, while not applying to the Donley case, the Legislature had specifically abolished the dual persona doctrine and they were reluctant to extend its holdings further.

Since Donley was based upon the dual persona doctrine, a theory not involved here, I do not see how Donley can have any bearing on the present claim. It appears to me that the real issue in this case is whether Affiliated was an employer for purposes of the exclusive remedy doctrine. In analyzing that question, I note that merely being a stockholder of an employer is not sufficient to give that entity or individual immunity from a civil suit by an injured worker. The stockholder is only protected if the alleged negligent act occurred while the stockholder was "acting in his or her capacity as an employer."

As mentioned above, one of the stipulations was that the claimant had received a substantial amount of workers' compensation benefits. That fact is not only set

out in the stipulations entered into by the parties, but it is further supported by several statements in the affidavits made part of the record. These affidavits are all from individuals who identified themselves as either corporate officers or employees of Affiliated. However, it appears from my review of the stipulations and the affidavits, that it is unclear as to who paid the claimant's workers' compensation benefits.

I raise that point because of the holding in the Supreme Court case of Stapleton v. Limbaugh Construction, 333 Ark. 381, 961 S. W. 2d 648 (1998). That opinion also dealt with the applicability of the exclusive remedy provisions of Ark. Code Ann. §11-9-105 (a). While the case specifically concerned a prime contractor, I believe that it is analogous to this case. In Stapleton, the claimant was employed by NWA Steel Company. Limbaugh Construction was the prime contractor who had hired the claimant's employer. The claimant sustained an injury and received benefits from the workers' compensation insurance policy maintained by NWA Steel. The claimant then filed suit against Limbaugh

Construction contending that his injury was the result of their negligence. Limbaugh, in a summary judgment motion asserted that the suit should be dismissed because they were a prime contractor, one of the specific entities listed in the Act as having protection of the exclusive remedy statute. The Circuit Court granted the summary judgment and held that the plaintiff's action was barred. However, the Supreme Court reversed that decision and held that Limbaugh could be sued. The Court, after considerable discussion, held that Limbaugh would only be entitled to exclusive remedy protection if they were either the claimant's actual or constructive employer. They held that to apply the exclusive remedy doctrine to them if they were not in one of those two categories, would be an unconstitutional extension of the Workers' Compensation Act. That conclusion was based upon the Court finding that prior to the 1993 Amendment of the exclusive remedy statute, an injured worker could sue a prime contractor or his employer if his employer had a policy of workers' compensation insurance who paid all appropriate benefits. However, if the actual employer did

not have workers' compensation insurance, and the prime contractor was liable as a constructive employer, then the exclusive remedy provisions applied and the prime contractor could not be sued. The Court held that extending exclusive remedy provisions to a prime contractor who had no workers' compensation liability violated Article 5, Section 32 of the Arkansas Constitution.

I believe that the doctrine enunciated by the Supreme Court in Stapleton, is applicable to the present claim. That is, if Affiliated provided workers' compensation benefits to the claimant in this case, then they are clearly acting as his employer and would be immune from suit because of the exclusive remedy provision. On the other hand, if all of the claimant's benefits were paid by CSSI, a corporation independent of Affiliated, then the claimant could proceed in a negligence claim against Affiliated.

Unfortunately, the affidavits and stipulations which comprise the record are unclear on how the claimant's workers' compensation benefits were paid. For example, stipulation number 3 states, "Affiliated Foods, Southwest,

Inc. ("Affiliated") and its wholly-owned subsidiaries and entities, including, but not limited to CSSI, were self-insured for the calendar year 1996." However, in several places in the parties briefs, references are made to either Affiliated or CSSI having workers' compensation insurance.

Another confusing statement is in the Affidavit of John Mills, who identifies himself as the Executive Vice President of Affiliated. In Paragraph 3 of his affidavit, he states as follows:

"That, Plaintiff, Douglas Stocks injuries in this matter were covered and paid under CSSI's workers' compensation. Both CSSI's and Affiliated Foods' workers' compensation coverages were handled together in one package on October 26, 1996, the date of this accident."

That statement is clearly inconsistent. Either the claimant's injuries were covered under CSSI's workers' compensation or they were handled under Affiliated's workers' compensation program. Both statements cannot be true.

Another conflict is in the Affidavit of Robert Southern, who states that he is Affiliated's Director of Personnel. Paragraphs 2 and 4 of his affidavit reads as follows:

"2. That, the Workers' Compensation insurance for Convenience Store Supply, Inc. ("CSSI") employees is provided by Affiliated Foods and is in the same policy covering employees working directly for Affiliated Foods.

4. That CSSI's and Affiliated Foods' workers' compensation coverage were at the time of the subject accident and are still today handled together in one package."

Mr. Southern's statement that the workers' compensation coverage for CSSI and Affiliated were provided by the same policy, would seem to contradict the stipulation that all of the entities were self-insured. The affidavit further confuses the issue when Mr. Southern states that the compensation coverage for CSSI and Affiliated was handled "in one package." The use of the phrase "in one package" could mean many things. It could be that the separate coverages of CSSI and Affiliated were both administered by Helmsman Management Services, or, it could mean that they

were both paid out of the same self-insured fund. Another possibility is that they were both covered under the same workers' compensation insurance policy. It is simply not possible to know what the affiant meant.

In the briefs prepared by the parties, both on appeal and before the Administrative Law Judge, the respondent and claimant specifically refer to the respondent as having workers' compensation insurance. At one point, the claimant asserts that CSSI had a separate insurance policy than Affiliated. In reply, the respondent states that both companies are covered under the same insurance policy. Obviously, these assertions regarding insurance policies are contradictory to the stipulation that states that all of the entities were self-insured.

Since Affiliated is the party asserting a defense under the exclusive remedy statute, the burden should be on them to establish its applicability. Obviously, they have not done so under the requirement of the Stapleton. The only other basis Affiliated asserts for their immunity is based

upon the "corporate relation" between Affiliated, Shur-Valu, and CSSI. I find this argument to be unpersuasive.

The affidavit of the various corporate officers and employees of Affiliated detail the intertwined business relationship between Affiliated and CSSI. Both companies had shared management and essentially identical employee benefit plans. Further, these benefit plans were administered as one unit and employees were allowed to transfer between CSSI, Shur-Valu, and Affiliated, without loss of seniority or other benefit rights. However, in my opinion, even if true, the relationship between the entities is not relevant to the issue here. As outlined above, the Workers' Compensation Act specifically provides that the exclusive remedy doctrine only applies to situations where a claim is being made against a stockholder who was acting as an employer when the injury occurred. In other words, the stockholder's conduct, which allegedly caused the injury, must have occurred while the stockholder was acting as an employer.

One of the ways Affiliated could have acted as the claimant's employer was in providing him workers'

compensation insurance coverage. However, Affiliated failed to establish that. The other possibility would be for Affiliated to show that their negligent act occurred while they were providing him direct supervision, paid his salary, or in some other way behaved as an employer. While the record indicates that Affiliated and CSSI shared many corporate operations, there is no evidence that Affiliated managed the day-to-day affairs of CSSI. In fact, the affidavits and stipulations establish that CSSI and Affiliated were separate corporate entities. While Affiliated could have merged the two companies into one unit, the fact is, they did not. Affiliated created and organized CSSI so that it was able to function independently of them. It does not appear reasonable for Affiliated to contend that CSSI and they are one company for workers' compensation purposes but are separate companies for other purposes.

The record simply does not set out how Affiliated could acted as the claimant's employer. The affidavit states that the claimant had formerly been employed by Affiliated

but his employment with them had been terminated because of a reduction in force. The affidavit then goes on to state that the claimant became employed by CSSI. While his seniority and employee benefits may have transferred with him, the claimant admittedly changed employers. That is, his paychecks began coming from CSSI, and his supervision was under the corporate identity of that company and not Affiliated.

In determining the applicability of the Workers' Compensation Act, the Commission is required to consider all provisions strictly. See Ark. Code Ann. §11-9-704(c)(3). Also, see Ark. Code Ann. §11-9-1001, which specifically directed the Commission to avoid interpreting the Workers' Compensation Act so as to broaden or narrow its provision. In my opinion, to interpret Ark. Code Ann. §11-9-105(a) in the manner asserted by the respondent would result in the impermissible broadening of the exclusive remedy statute. The provision, as it is written, states that only stockholders acting as an employer are entitled to exclusive remedy protection. In this case, Affiliated was not a

stockholder of CSSI nor was it acting as the claimant's employer. In my opinion, they cannot receive such protection unless the statute specifically includes them in its language. For that reason, I believe the Administrative Law Judge's decision to find that Affiliated was not the claimant's employer and was, therefore, not entitled to any protection from civil suits by the Workers' Compensation Act should have been affirmed.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner