

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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OWEN THOMAS, INC.,

*Petitioner,*

v.

FRANCES ATIAPO,

*Respondent.*

—————◆—————  
**On Petition For Writ Of Certiorari To  
The Court Of Appeals Of North Carolina**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

The Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), provides that a state “may not . . . enforce a law . . . related to a price, route, or service of any . . . broker . . . with respect to the transportation of property.” Here, the North Carolina Court of Appeals upheld enforcement of a North Carolina workers’ compensation law against petitioner, a federally-authorized broker from Florida.

Petitioner, on behalf of a produce supplier, engaged a North Carolina motor carrier to transport a load of produce. The motor carrier’s driver was injured in an accident, but the motor carrier did not have workers’ compensation insurance. The North Carolina Industrial Commission made petitioner liable to the driver under N.C. Gen. Stat. § 97-19.1, a law that holds “contractors” responsible for benefits to the drivers of uninsured motor carriers. The court of appeals held that § 14501(c)(1) did not preempt enforcement of § 97-19.1 against petitioner because imposing liability for workers’ compensation was not a “regulation of prices, routes, or services.” App. 9.

Did the court of appeals err in holding that 49 U.S.C. § 14501(c)(1) did not preempt enforcement of N.C. Gen. Stat. § 97-19.1 against a federally-authorized broker?

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Owen Thomas, Inc. states that no parent or publicly-held company owns any of its stock.

### **PARTIES BELOW**

Goree Logistics, Inc. was a party-defendant below, but does not join this petition.

Mandieme Diouf, the owner of Goree Logistics, Inc., was a party-defendant below, but does not join this petition.

The North Carolina Industrial Commission was a party below because it assessed penalties against Goree Logistics, Inc. and Mandieme Diouf for failure to carry workers' compensation insurance.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Owen Thomas, Inc. respectfully petitions this Court for a writ of certiorari to review the judgment of the Court of Appeals of North Carolina in this case.



## **OPINIONS BELOW**

The order of the Supreme Court of North Carolina denying Owen Thomas, Inc.'s petition for discretionary review of the decision of the Court of Appeals of North Carolina is available at 775 S.E.2d 858. App. 65-66. The opinion of the Court of Appeals of North Carolina is available at 770 S.E.2d 684. App. 1-12. The Amended Opinion and Award of the Full Commission of the North Carolina Industrial Commission is available at 2014 WL 2998143 (N.C.Ind.Com.). App. 13-31. The original Opinion and Award of the Full Commission is available at 2014 WL 1778660 (N.C.Ind.Com.). App. 32-45. The Opinion and Award by Adrian Phillips, Deputy Commissioner of the North Carolina Industrial Commission, is reproduced at App. 46-64.



## **JURISDICTION**

On March 17, 2015, the Court of Appeals of North Carolina filed its decision affirming the Amended Opinion and Award of the Full Commission against petitioner Owen Thomas, Inc.

On August 20, 2015, the Supreme Court of North Carolina denied the petition for discretionary review of petitioner Owen Thomas, Inc.

On November 2, 2015, Chief Justice Roberts granted Owen Thomas, Inc.'s timely request for an extension of time to file a petition for a writ of certiorari to and including December 18, 2015.

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the Court of Appeals of North Carolina's decision on a writ of certiorari.



### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Supremacy Clause of the U.S. Constitution (art. VI, cl. 2) provides in part that “the laws of the United States . . . shall be the supreme law of the land.” Relevant provisions of the Federal Aviation Administration Authorization Act of 1994 (FAAAA), 49 U.S.C. § 14501 and 49 U.S.C. § 13102, are reproduced at App. 67-81. Relevant provisions of The North Carolina Workers’ Compensation Act, N.C. Gen. Stat. § 97-19 and § 97-19.1, are reproduced at App. 81-85.



## STATEMENT OF THE CASE

### A. Introduction

Owen Thomas, Inc. (“Owen Thomas”) is a federally-authorized freight broker located in Zephyrhills, Florida. It has customers in the produce industry for whom it finds motor carriers to haul shipments of produce in interstate commerce. App. 19. In this case, Owen Thomas selected Goree Logistics, Inc., a motor carrier based in Charlotte, North Carolina, to deliver a load of blueberries for Owen Thomas’ client, Sunny Ridge Farms. App. 2. Owen Thomas entered into a “Broker-Carrier Agreement” with Goree Logistics, Inc. (“Goree”) in which the motor carrier agreed to assume responsibility for workers’ compensation insurance for its drivers. App. 2. Despite this representation, Goree did not have workers’ compensation insurance. App. 2.

Goree assigned a truck driver named Frances Atiapo (“Atiapo”) to deliver the load of blueberries. Atiapo was instructed to deliver the goods to Wyoming, but the goods were rejected, and the motor carrier eventually directed Atiapo to drive the truck to Colorado. On his way to the destination in Colorado, Atiapo rear-ended a line of stopped cars and was injured. App. 3.

Atiapo filed a workers’ compensation claim with Goree. Goree denied the claim, and Atiapo requested a hearing before the North Carolina Industrial Commission. When it was disclosed at the hearing that Goree did not have workers’ compensation insurance,

Owen Thomas was added as a defendant to the proceeding to determine if the broker was liable to Atiapo for benefits under N.C. Gen. Stat. § 97-19.1. Although the statute is not a model of clarity, it has been interpreted here as making a “contractor” liable for workers’ compensation benefits to the injured driver of an uninsured motor carrier. App. 4.

The Industrial Commission held that Owen Thomas was liable under § 97-19.1, regardless of its status as a federally-authorized broker, which it characterized as a “distinction without a difference.” App. 24. The North Carolina Court of Appeals agreed, holding that 49 U.S.C. § 14501(c)(1) did not preempt enforcement of § 97-19.1 against Owen Thomas.

**B. This Court’s Interpretation of 49 U.S.C. § 14501(c)(1)**

With the enactment of the Motor Carrier Act of 1980, 94 Stat. 793, Congress attempted to deregulate the trucking industry. In 1994, Congress recognized that a patchwork of state regulation in the trucking industry was interfering with this objective of the Motor Carrier Act. In response, Congress enacted the preemption provision now codified in § 14501(c)(1).

This Court has taken great pains to define the preemptive scope of § 14501(c)(1). In 2008, the Court held that a Maine law requiring motor carriers to adopt certain measures to help ensure cigarettes were not sold to minors was preempted by § 14501(c)(1). *Rowe v. New Hampshire Motor Transport Ass’n*, 552

U.S. 364. In *Rowe*, the analysis of whether the Maine law was preempted turned on whether the state law was “related to a price, route, or service.” This Court determined that the phrase “related to,” should be interpreted broadly, as it had been in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) (holding that a state action against an airline carrier “related to” the price, route, or service of the airline carrier, and was thus preempted, because the state action had “a connection with, or reference to” carrier rates, routes, or services). Furthermore, this Court has held that the phrase “related to” embraces state laws having a connection with rates, routes, or services, whether the state law affects the transportation activity “directly or indirectly.” *Dan’s City Used Cars, Inc. v. Pelkey*, 133 S.Ct. 1769, 1778 (2013) (citing *Rowe*) (quoting *Morales*, 504 U.S. at 384).

The last word on § 14501(c)(1) preemption was this Court’s decision in *Dan’s City Used Cars, Inc. v. Pelkey*. In *Pelkey*, this Court explained that while cases such as *Rowe* and *Morales* focused on the broad intent of the phrase “related to,” § 14501(c)(1)’s requirement that the state law at issue must be enacted or enforced “with respect to transportation of property” was paramount, and “massively limits the scope of preemption.” *Pelkey* at 1778 (quoting *Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting)). Therefore, where the complained of conduct of the towing company in *Pelkey* took place after completion of the towing, and focused on the disposal of the towed

vehicle, the “transportation of property” requirement was not met, and preemption did not apply.

**C. N.C. Gen. Stat. § 97-19.1 and What It Means to the Trucking Industry**

N.C. Gen. Stat. § 97-19.1 provides, in relevant part:

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

App. 83-84.

This type of workers’ compensation statute is commonly referred to as a “statutory employment” provision. The purpose of statutory employment

liability is “to prevent principal contractors, intermediate contractors, and sub-contractors from relieving themselves of liability under the [Workers’ Compensation] Act by doing through sub-contractors what they would otherwise do through the agency of direct employees.” *Cook v. Norvell-Mackorell Real Estate Co.*, 99 N.C.App. 307, 310, 392 S.E.2d 758 (1990) (quoting *Withers v. Black*, 230 N.C. 428, 53 S.E.2d 668 (1949)).

Section 97-19.1 applies the statutory employment principle to the motor carrier industry. The statute is meant to ensure that if a motor carrier engages the services of an independent owner-operator (rather than employ its own drivers), and that owner-operator has not obtained adequate workers’ compensation coverage for him or herself (or any additional drivers he or she may have hired), the motor carrier will be held liable for injuries to the driver(s). By making the motor carrier a statutory employer of an independent contractor for workers’ compensation purposes, the statute removes any incentive a motor carrier might have to insulate itself from liability for driver injuries simply by “outsourcing” that part of its business to an owner-operator.

The North Carolina Attorney General described the legislative intent behind § 97-19.1 in a July 2, 2007 advisory opinion that addressed the concern of the American Trucking Association that § 97-19.1 violated 49 U.S.C. § 14501(c)(1). The Attorney General determined that § 97-19.1 was not preempted

(for reasons described below) and explained the law as follows:

The intent of this provision is to make it more likely that the independent trucker, his employees and subcontractors are afforded the protection of the Workers' Compensation Act through the purchase of workers' compensation insurance or other financial safeguards established in Section 97-93 of the Act. Section 97-19.1 allows the independent driver to purchase insurance or for the motor carriers up the chain of command to have secured coverage for the truckers below them in the chain. Thus, Section 97-19.1 establishes a requirement for workers' compensation insurance applicable to the trucking industry.

App. 88.

#### **D. This Litigation**

In its contentions to the deputy commissioner, Owen Thomas argued that it was not subject to the jurisdiction of the North Carolina Industrial Commission because (1) it did not qualify as a "contractor" under § 97-19.1, and (2) 49 U.S.C. § 14501(c)(1) preempted the enforcement of § 97-19.1 against Owen Thomas because it was a federally-authorized freight broker, and § 14501(c)(1) provides, in relevant part, that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any private motor carrier, *broker*, or



freight forwarder with respect to the transportation of property.” App. 76 (emphasis added).

The deputy commissioner found that Owen Thomas fit the definition of a “principal contractor” contained in § 97-19.1, and was liable to Atiapo as his statutory employer due to Goree’s failure to secure workers’ compensation insurance for Atiapo. App. 59. The deputy commissioner did not address Owen Thomas’ federal preemption argument. The motor carrier and its owner were assessed penalties for failing to carry workers’ compensation insurance. Owen Thomas was ordered to pay Atiapo \$4,356.50 in disability compensation and \$73,165.25 in medical expenses, as well as the costs of the action. App. 62-64.

Owen Thomas, as well as the motor carrier and the motor carrier’s owner, appealed the decision to the Full Commission of the North Carolina Industrial Commission. The Full Commission affirmed the decision of the deputy commissioner in its Opinion and Award filed April 14, 2014. App. 32. The Full Commission filed an Amended Opinion and Award after granting the State’s Motion for Reconsideration, which objected to the fact that the Full Commission had not assessed penalties against the motor carrier or its owner.

In neither of its opinions did the Full Commission address Owen Thomas’ federal preemption argument. However, the Full Commission did comment that Owen Thomas’ classification as a “broker” was “a distinction without a difference” because it was a

“principal contractor” for purposes of North Carolina workers’ compensation law, and thus subject to liability under § 97-19.1. App. 24-25.

The North Carolina Court of Appeals affirmed the decision of the Full Commission. The court held that § 14501(c)(1) did not preempt the enforcement of § 97-19.1 against Owen Thomas because the court could find “no reason why a statute requiring financial responsibility as to workers’ compensation should be considered a regulation of prices, routes, or services.” App. 9. The court of appeals concluded that “the federal preemption established in 49 U.S.C. § 14501(c)(1) does not apply to N.C. Gen. Stat. § 97-19.1, which imposes liability upon those who employ persons or entities that fail to procure required workers’ compensation insurance.” App. 9.

Owen Thomas also argued to the court of appeals that enforcement of a state law imposing financial responsibility for workers’ compensation insurance, if not preempted altogether, should be limited solely to motor carriers because state regulations having to do with insurance are referenced in § 14501(c)(2)(A), a savings clause that refers to motor carriers, but not brokers. Section 14501(c)(2)(A) states in relevant part that § 14501(c)(1) “shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . or the authority of a State to regulate *motor carriers* with regard to minimum amounts of financial responsibility relating to *insurance requirements* and self-insurance authorization. . . .” App. 76-77 (emphases added).

The court of appeals concluded that the above argument was without merit because Owen Thomas “went beyond its role as a broker and acted as a contractor.” App. 10. In the court’s eyes, the fact that Owen Thomas was hired by Sunny Ridge Farms to “insure shipment of Sunny Ridge’s goods” showed that the broker was “in effect, a motor carrier, despite the fact that the company itself owned no vehicles.” App. 10.



## **REASON FOR GRANTING THE PETITION**

### **I. The state court’s decision will have a nationwide impact on the trucking industry.**

Today, there are approximately 15,682 entities in the United States who have obtained broker authority from the Federal Motor Carrier Safety Administration (FMSCA) pursuant to 49 U.S.C. § 13904. App. 86. Brokers serve a crucial function in efficiently matching demand for transportation services with supply. They act as intermediaries between shippers and motor carriers, arranging for the transportation of a shipper’s property by a motor carrier, without themselves handling or transporting the property in question. *See* 49 C.F.R. § 371.2(a).

There are approximately 36,121 motor carriers domiciled in North Carolina. App. 86. In the wake of

the state court's decision, all 15,682 brokers across the United States are potentially liable for the injuries of an incalculable number of drivers employed or contracted by North Carolina's 36,121 motor carriers.

Indeed, the logical implication of the state court's decision extends workers' compensation liability even to freight forwarders. According to the court of appeals, preemption did not apply because Owen Thomas was "in effect, a motor carrier, despite the fact that the company itself owned no vehicles." App. 10. The court based this conclusion on its finding that Owen Thomas took it upon itself to "insure shipment of Sunny Ridge's goods." App. 10. Insuring shipment of a shipper's goods is one of the key traits of a freight forwarder as defined in 49 U.S.C. § 13102(8). A freight forwarder "assumes responsibility for the transportation from the place of receipt to the place of destination." By the court's reasoning, freight forwarders also match this notion of a *de facto* motor carrier liable for drivers' injuries.

For the above reasons, it is not an exaggeration to say that so long as a North Carolina motor carrier is involved in a particular interstate shipment of goods, a large segment of the national trucking industry is potentially liable for workers' compensation benefits to truck drivers transporting the goods to any destination in the country. And the effect of the decision promises to radiate throughout the trucking

industry as North Carolina is recognized as a hub of interstate transportation on the East coast.<sup>1</sup>

## **II. The state court’s decision brings to light the uncertain state of FAAAA preemption for brokers.**

Since the enactment of § 14501(c)(1), this Court has been presented with cases involving motor carriers (including tow trucks), but not cases involving the remaining entities mentioned in § 14501(c)(1) – brokers and freight forwarders. The trucking industry has received guidance from this Court on the applicability of § 14501(c)(1) to motor carriers, but brokers and freight forwarders remain in the dark. This case provides the Court with the opportunity to finalize its work of setting down the boundaries of the preemptive scope of § 14501(c)(1).

A survey of existing state workers’ compensation laws reveals that the patchwork of state regulation sought to be unraveled by Congress still exists as to brokers and freight forwarders. For example, had

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<sup>1</sup> Charlotte Chamber Economic Development, *Logistics & Distribution, Mecklenburg County* (2015) [http://www.charlotte.global/clientuploads/Economic\\_pdfs/Logistics-Ports.pdf](http://www.charlotte.global/clientuploads/Economic_pdfs/Logistics-Ports.pdf). (“Interstates 85 and 77 link Charlotte with the Northeast, Southwest and Midwest. I-40 is a short half-hour drive north of Charlotte, providing a crucial link to the West Coast. More than 320 trucking firms have operations in the Charlotte area and employ 28,000 workers. Approximately half of the nation’s top 100 trucking firms are in Charlotte, including nine of the top 10 firms.”)

Owen Thomas hired a Montana motor carrier in this same scenario, it would not have faced workers' compensation liability. The Montana legislature has explicitly excluded from the jurisdiction of its Workers' Compensation Act "employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. § 13102. . . ." Mont. Code Ann. § 39-71-401 (West).

The most concerning aspect of the state court's decision is the way in which the court disregarded the plain language of § 14501(c). While § 14501(c)(1) sets forth the general rule that the enactment or enforcement of state law is preempted where it is "related to a price, route, or service of any motor carrier . . . or any private motor carrier, broker, or freight forwarder with respect to the transportation of property," there is an exception to this general rule set forth in § 14501(c)(2)(A): that is, § 14501(c)(1) "shall not restrict the safety regulatory authority of a State with respect to motor vehicles . . . or the authority of a State to regulate *motor carriers* with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. . . ." (emphasis added).

The plain language of § 14501(c) expresses the Congressional intent that "financial responsibility relating to insurance requirements," which we must assume includes workers' compensation insurance, applies solely to *motor carriers*. Brokers and motor

carriers are both included in the general rule of § 14501(c)(1). However, only the term “motor carrier” is referenced in the exception allowing state regulation of insurance requirements.

It is axiomatic that “a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.” *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006). “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Id.* (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

Congress intentionally excluded the term “broker” from 14501(c)’s provision allowing state regulation of insurance requirements. The North Carolina Attorney General characterized § 97-19.1 as a statute “which provides that a *motor carrier* may be liable for workers’ compensation benefits,” and opined that the statute did not violate § 14501(c) because of the exception for regulation of “insurance requirements” for *motor carriers*. App. 87-94. How was a broker like Owen Thomas to predict that it would face liability under a state law regulating “insurance requirements” where the plain language of § 14501(c) allows such state regulation only with respect to motor carriers?

### III. The State Court's Decision is Wrong

This is a case of straightforward statutory interpretation. As this Court recognized in *Pelkey*, where Congress has enacted a law intended to supersede state legislation, this Court's "task is to identify the domain expressly pre-empted." *Pelkey* at 1778 (quoting *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541 (2001)). And "[t]o do so, [the Court] focus[es] on the statutory language, which necessarily contains the best evidence of Congress' pre-emptive intent." *Id.* (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). Here, the state court overlooked the plain meaning of § 14501(c)(1), which led to its erroneous decision.

The court should have held that § 14501(c)(1) preempted § 97-19.1 for three reasons. First, Owen Thomas was a "broker" as contemplated by § 14501(c)(1).<sup>2</sup> Second, § 97-19.1 "related to" Owen Thomas' "prices, routes, or services" as that language has been interpreted by this Court. And third, § 97-19.1 was enforced against Owen Thomas in a manner that was "with respect to the transportation of property" as that phrase was interpreted in *Pelkey*.

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<sup>2</sup> Petitioner would contend that Owen Thomas' status as a federally-authorized broker obviates the need to proceed further with the analysis under § 14501(c). The rules of statutory construction, along with common sense, lead to the conclusion that Congress would not have felt the need to create an *exception* for insurance requirements if it did not think that insurance requirements per se "related to prices, routes, or services . . . with respect to the transportation of property."



### A. Owen Thomas was a “broker.”

In *Pelkey*, the court looked to 49 U.S.C. § 13102 for the definition of “transportation” to help interpret § 14501(c)(1). *Pelkey* at 1779. To determine whether Owen Thomas was a “broker” as that term is used in § 14501(c)(1), the definition is also found in § 13102:

Broker. – The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

49 U.S.C. § 13102(2).

The North Carolina Court of Appeals described Owen Thomas’ role in this case as follows: Owen Thomas contracted with Sunny Ridge Farms to transport the load of produce. App. 7. (The court implicitly adopted the Industrial Commission’s finding that Owen Thomas was “a federally-licensed freight broker authorized by its customers to negotiate and arrange for transportation of shipments in interstate commerce.”) App. 5. Owen Thomas selected a motor carrier to transport the produce. App. 7. Owen Thomas was compensated by retaining any monies not paid to the trucking company it hired. App. 7. Simply put, Owen Thomas arranged for a motor carrier to haul a load of produce for a shipper, and was paid for that service.

Comparing the court's characterization of Owen Thomas to § 13102(2)'s definition of "broker," it is clear that Owen Thomas was a "principal or agent" that "negotiat[ed] for . . . or arrang[ed] for" transportation by a motor carrier. Owen Thomas did so "for compensation" by retaining monies not paid to the carrier. Owen Thomas was a "broker" as defined by § 13102(2), and as that term is used in § 14501(c)(1).

**B. Enforcement of § 97-19.1 "related to a price, route, or service" of Owen Thomas.**

The state court saw "no reason why a statute requiring financial responsibility as to workers' compensation should be considered a regulation of prices, routes, or services."<sup>3</sup> This holding is erroneous for several reasons, the most obvious being that the inquiry is not whether a state law "regulates" prices, routes, or services, but whether the law is "related to" the prices, routes, or services of an entity covered by 14501(c)(1).

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<sup>3</sup> The court of appeals mistakenly claimed in its opinion that Owen Thomas never argued that § 97-19.1 "related to a price, route, or service." Owen Thomas argued in its reply brief to the court that "[t]here can be nothing that interferes with the services of an out-of-state, federally-licensed freight broker more than for the Commission to reach out and pull the broker under its jurisdiction when the out-of-state broker chooses a motor carrier located in this state, and the destination for the shipment is not even located in North Carolina." This point was also brought forward at oral argument before the court.

The phrase “related to a price, route, or service” has been defined by this Court as “having a connection with or reference to rates, routes, or services, whether directly or indirectly.” However, the phrase does not include state laws affecting prices, routes, or services in only a “tenuous, remote, or peripheral . . . manner.” See *Pelkey* at 1778. The word “regulate,” on the other hand, is defined by Black’s Law Dictionary as “[t]o *control* (an activity or process) esp. through the implementation of rules. REGULATE, Black’s Law Dictionary (10th ed. 2014) (emphasis added). The state court’s use of the term “regulate” in its analysis shows that it mistakenly viewed the preemptive scope of § 14501(c)(1) in a much more restrictive way than Congress intended, which led to its erroneous holding.

As to whether § 97-19.1 is related to the “prices” of a broker like Owen Thomas, the state court’s decision will at minimum make it much more expensive for brokers to insure their operations: after all, under the rule of the decision below, an insurer will have no way whatsoever to assess the scope of the broker’s exposure *ex ante*, and thus no information from which to set actuarially-driven premiums.

As for whether § 97-19.1 affects the “services” of a broker like Owen Thomas, the answer can be found in the plain language of Title 49. The definition of a “broker” in § 13102(2) describes a broker’s role in the trucking industry, and thus its “services.” The “service” of a broker is “selling, providing, or arranging for, transportation by motor carrier. . . .” Further

guidance is provided by 49 C.F.R. § 371.2. In that section, “brokerage or brokerage service” is defined as “the arranging of transportation or the physical movement of a motor vehicle or of property.” 49 C.F.R. § 371.2(c). The very conduct of Owen Thomas in this case matches the definition of “brokerage service.”

By the state court’s reasoning, Owen Thomas’ liability attached when it “arranged for” transportation by an uninsured motor carrier, because at that juncture Owen Thomas became a “contractor” under § 97-19.1. Owen Thomas became statutorily liable to the truck driver while performing the quintessential service of a broker – selecting a motor carrier to ship goods.

**C. Enforcement of § 97-19.1 affected Owen Thomas “with respect to the transportation of property.”**

As this Court held in *Pelkey*, the phrase “with respect to the transportation of property” is crucial to the preemption analysis. “Transportation” is defined in § 13102(23) as including “services related to that movement, including *arranging for*, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.” (emphasis added). Owen Thomas “arranged for” transportation by motor carrier. Guided by this Court’s analysis in *Pelkey*, and the definition of “transportation” in Title

49, § 97-19.1 was enforced here “with respect to the *transportation* of property.”

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◆

## CONCLUSION

Brokers like Owen Thomas bring efficiency to the trucking industry by matching demand for transportation services with supply. Enabling efficiency in the trucking industry was Congress’ goal when it enacted the Motor Carrier Act of 1980. And when Congress saw that a patchwork of state regulation stood in the way of this goal, it established preemption through 49 U.S.C. § 14501(c)(1). For brokers, the decision of the North Carolina Court of Appeals means that the patchwork still exists, and the scope of § 14501(c)(1) is uncertain. For the above reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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App. 1

770 S.E.2d 684

Court of Appeals of North Carolina.

Frances ATIAPO, Employee, Plaintiff,

v.

GOREE LOGISTICS, INC., and Owen Thomas,  
Inc., Employer, Noninsured, Defendants.

and

The North Carolina Industrial Commission

v.

Goree Logistics, Inc., and Owen Thomas, Inc.,  
Noninsured Employer, and Mandieme Diouf,  
Individually, Defendants.

No. COA14-977. | March 17, 2015.

Appeal by defendants from opinion and award  
entered 20 June 2014 by Commissioner Tammy  
Nance in the North Carolina Industrial Commission.  
Heard in the Court of Appeals 4 February 2015.

**Attorneys and Law Firms**

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Lawrence P. Margolis, Charlotte, for defendants-  
appellants Goree Logistics, Inc. and Mandieme Diouf.

Ferguson, Scarbrough, Hayes, Hawkins & DeMay,  
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appellant Owen Thomas, Inc.

## **Opinion**

STEELMAN, Judge.

Where the evidence supported a finding that Owen Thomas was a general contractor, the Industrial Commission did not err in holding Owen Thomas liable as a statutory employer pursuant to N.C. Gen.Stat. § 97-19.1. Where an employer failed to carry workers' compensation insurance, the Industrial Commission did not err in imposing penalties upon the employer and its principal.

### ***I. Factual and Procedural Background***

On 22 June 2011, Owen Thomas, Inc. (Owen Thomas), a licensed transportation broker, entered into a "Broker-Carrier Agreement" with Goree Logistics, Inc. (Goree). Owen Thomas was acting on behalf of its client, Sunny Ridge Farms (Sunny Ridge), to procure transportation for Sunny Ridge's goods. The agreement provided that Goree would exercise full control over the work it performed in transporting the goods, and that Goree would assume responsibility for payment of all taxes, unemployment, and workers' compensation, and other related fees.

Frances Atiapo (plaintiff) drove a tractor trailer for Goree, and was directed to drive a tractor trailer transporting Sunny Ridge's goods. At the time of plaintiff's injury, Goree did not have workers' compensation insurance.

Plaintiff was instructed to deliver the goods to Wyoming. When the goods were rejected, plaintiff was directed by Goree to drive the truck to Georgia. Plaintiff was later directed by Goree to go to Colorado. Near Ft. Collins, Colorado, plaintiff crested the peak of a hill, and came upon a string of stopped vehicles. His brakes failed and the tractor trailer collided with another vehicle. As a result of the collision, plaintiff sustained injuries.

On 29 July 2011, plaintiff filed an IC Form 18 notice of accident. On 19 September 2011, plaintiff filed a Form 33 request for hearing on his workers' compensation claim. On 28 September 2011, Goree filed a Form 61 denial of plaintiff's claim, contending that plaintiff was not an employee of Goree, but an independent contractor, and that Goree had only two persons driving trucks for it.

Following a hearing before the deputy commissioner, Owen Thomas was added as a party defendant to this proceeding.

On 14 April 2014, the Industrial Commission filed its Opinion and Award. The Commission found, despite the presence of a written agreement between plaintiff and Goree stating that plaintiff was an independent contractor, that for purposes of Chapter 97 of the North Carolina General Statutes, plaintiff was an employee of Goree. It further found that Goree had no workers' compensation insurance. Because Goree did not regularly employ three or more employees, the Commission did not assess penalties



pursuant to N.C. Gen.Stat. § 97-94. Based upon its findings of fact, the Commission concluded that Owen Thomas was a “principal contractor within the meaning of N.C. Gen.Stat. § 97-19.1(a)” and ordered that Owen Thomas pay to plaintiff temporary total disability compensation, all of plaintiff’s medical expenses arising from his injury by accident, and the costs of the hearing.

On 23 April 2014, the Attorney General filed a motion for reconsideration, asserting that under the provisions of N.C. Gen.Stat. § 97-19.1(a), a “contractor, intermediate contractor, or subcontractor” contracting in the interstate or intrastate carrier industry and operating a tractor trailer licensed by the United States Department of Transportation is required to carry workers’ compensation insurance, “irrespective of whether such contractor regularly employs three or more employees[.]” N.C. Gen.Stat. § 97-19(a) (2013). Therefore, it was argued that Goree and its principal, Mandieme Diouf (Diouf), were subject to penalties under § 97-94 for failure to procure workers’ compensation insurance.

On 20 June 2014, the Industrial Commission filed an Amended Opinion and Award, assessing penalties of \$8,800 against Goree, and \$78,868.63 against Goree’s principal, Diouf.

On 3 July 2014, Owen Thomas served notice of appeal from the Amended Opinion and Award. On 23 July 2014, Goree and Diouf served notice of appeal from the Amended Opinion and Award.

## **II. Standard of Review**

“Appellate review of an award from the Industrial Commission is generally limited to two issues: (i) whether the findings of fact are supported by competent evidence, and (ii) whether the conclusions of law are justified by the findings of fact.” *Chambers v. Transit Mgmt.*, 360 N.C. 609, 611, 636 S.E.2d 553, 555 (2006). However, the Commission’s “findings of jurisdictional facts are not conclusive on appeal even if they are supported by competent evidence;” instead, “a reviewing court must consider all the evidence in the record and make an independent determination of the jurisdictional facts.” *Cain v. Guyton*, 79 N.C.App. 696, 698, 340 S.E.2d 501, 503, *aff’d per curiam*, 318 N.C. 410, 348 S.E.2d 595 (1986).

## **III. Appeal of Owen Thomas – Jurisdiction**

In its sole argument on appeal, Owen Thomas contends that the Industrial Commission lacked jurisdiction over it. We disagree.

### **A. N.C. Gen.Stat. § 97-19.1**

In its findings of fact, the Commission recognized that Owen Thomas “is a federally licensed ‘freight broker’ authorized by its customers to negotiate and arrange for the transportation of shipments in interstate commerce.” The Commission concluded that plaintiff was an employee of Goree. The Commission then further concluded that “the use of the word ‘broker’ is a distinction without a difference.” It noted

that Owen Thomas was able to use its own judgment in selecting a carrier for its client, and that it retained a portion of what it received for the contract. It therefore concluded that Owen Thomas was a principal contractor. Because Owen Thomas was a principal contractor, and because Goree did not carry workers' compensation insurance, the trial court held Owen Thomas liable to plaintiff pursuant to N.C. Gen.Stat. § 97-19.1.

N.C. Gen.Stat. § 97-19.1 provides, in relevant part:

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

N.C. Gen.Stat. § 97-19.1(a) (2013). In order for Owen Thomas to be liable under this statute, it must be shown that (1) Owen Thomas was a principal contractor, and (2) the subcontractor did not have the proper insurance. In the instant case, there is no factual dispute that Goree did not have the required workers' compensation insurance coverage. The only question, then, is whether the Commission correctly found and held that Owen Thomas was a principal contractor.

Owen Thomas contracted with Sunny Ridge to ship its goods. Owen Thomas was to be paid by Sunny Ridge for this service and would retain any monies not paid to the trucking company it hired. It had discretion in selecting a carrier. Owen Thomas provided 1099 tax forms to Goree. Owen Thomas controlled not only the outcome of the task, namely the delivery of goods, but the method by which the task would be performed, including how frequently Goree would report to Owen Thomas, and specifications on the temperature that would be maintained during transport. Sunny Ridge paid Owen Thomas "for insuring a delivery[.]"

Sunny Ridge paid Owen Thomas to deliver its goods. Owen Thomas then hired Goree to perform the delivery. Owen Thomas provided Goree with 1099 tax forms for the money paid by Owen Thomas.

We hold that this evidence supports the Industrial Commission's determination that Owen Thomas acted as a contractor hired by Sunny Ridge for the purpose of ensuring delivery of Sunny Ridge's goods.

This in turn supports a finding that Owen Thomas employed Goree, a subcontractor without workers' compensation insurance coverage, and is therefore liable to plaintiff under N.C. Gen.Stat. § 97-19.1.

This argument is without merit.

***B. Federal Preemption***

Owen Thomas contends that it is exempt from N.C. Gen.Stat. § 97-19.1 due to federal preemption, and that federal law precludes states from regulating interstate commerce. Owen Thomas notes that an exception to this rule exists in 49 U.S.C. § 14501(c), but contends that the statute creates an exception only for motor carriers.

49 U.S.C. § 14501(c)(1) provides that:

[A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a *price, route, or service* of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1) (2005) (emphasis added). An exception exists to this statute, which notes that this rule

shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to *minimum amounts of financial responsibility relating to insurance requirements* and self-insurance authorization[.]

49 U.S.C. § 14501(c)(2)(A) (emphasis added).

We note that Owen Thomas does not contend that North Carolina’s workers’ compensation insurance requirements constitute a “law related to a price, route, or service of any motor carrier.” We see no reason why a statute requiring financial responsibility as to workers’ compensation should be considered a regulation of prices, routes, or services. We further note that the exception enumerated in 49 U.S.C. § 14501(c)(2)(A) explicitly holds that the rule in § 14501(c)(1) does not apply to insurance requirements. We hold that the federal preemption established in 49 U.S.C. § 14501(c)(1) does not apply to N.C. Gen.Stat. § 97-19.1, which imposes liability upon those who employ persons or entities that fail to procure required workers’ compensation insurance.

Owen Thomas contends nonetheless that the exception in 49 U.S.C. § 14501(c)(2)(A) does not apply, because while § 14501(c)(1) contains language including motor carriers and brokers, § 14501(c)(2)(A)

contains language including only motor carriers. Owen Thomas contends that the exception does not apply to brokers.

In the instant case, however, Owen Thomas went beyond its role as broker and acted as a contractor. As stated in section III-A of this opinion, Owen Thomas was hired to insure shipment of Sunny Ridge's goods. Owen Thomas then employed Goree to perform its obligation. At this point, Owen Thomas was not a broker, but a general contractor who had contracted with a motor carrier. Owen Thomas was, in effect, a motor carrier, despite the fact that the company itself owned no vehicles. Even assuming *arguendo* that § 14501(c)(2)(A) did not create an exception for brokers, Owen Thomas was not acting as a broker at the time it did business with Goree, and therefore was subject to the exception, which allowed N.C. Gen.Stat. § 97-19.1 to apply.

This argument is without merit.

#### ***IV. Appeal of Goree and Diouf – Penalties***

In their sole argument on appeal, Goree and Diouf contend that the Full Commission erred in imposing penalties upon Goree and Diouf for failure to procure workers' compensation insurance. We disagree.

In its original Opinion and Award dated 20 April 2014, the Full Commission did not hold Goree or Diouf liable for statutory penalties pursuant to N.C.

Gen.Stat. § 97-94, because Goree was not shown to regularly employ three or more employees. Thereafter, the Attorney General filed a motion for reconsideration. In its Amended Opinion and Award, the Full Commission imposed penalties against Goree and Diouf pursuant to N.C. Gen.Stat. § 97-94. On appeal, Goree and Diouf do not dispute the Commission's finding that plaintiff was an employee and not an independent contractor; rather, they contend that they are exempt from N.C. Gen.Stat. § 97-19.1, because they do not regularly employ three or more people, and because they are not a "principal contractor, intermediate contractor, or subcontractor[.]"

The Purpose of the Workers' Compensation Act "is not only to provide a swift and certain remedy to an injured workman, but also to insure a limited and determinate liability for employers." *Riley v. Debaer*, 149 N.C.App. 520, 523, 562 S.E.2d 69, 70 *aff'd per curiam*, 356 N.C. 426, 571 S.E.2d 587 (2002) (quoting *Johnson v. First Union Corp.*, 131 N.C.App. 142, 144, 504 S.E.2d 808, 809-10 (1998)). The argument presented by Goree and Diouf, that they are exempt from liability because the statute mentions contractors and subcontractors, but not employers, is specious. N.C. Gen.Stat. § 97-11 specifically provides that "[n]othing in this Article shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty." N.C. Gen.Stat. § 97-11 (2013). We decline to construe the provisions of N.C. Gen.Stat. § 97-19.1 to relieve an employer and its principal from penalties for failure to perform the



statutory duty of providing workers' compensation insurance for its workers.

We further note that, in the context of interstate or intrastate trucking, § 97-19.1 applies "irrespective of whether such contractor regularly employs three or more employees[.]" N.C. Gen.Stat. § 97-19.1. Goree and Diouf's contentions that they employ fewer than three employees is thus irrelevant; the provisions of § 97-19.1 apply. We hold that the Commission did not err in imposing penalties upon Goree and Diouf for failure to carry workers' compensation coverage.

This argument is without merit.

**AFFIRMED.**

Judges DIETZ and INMAN concur.

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**NORTH CAROLINA  
INDUSTRIAL COMMISSION**

**I.C. NO. X57890, FRANCES ATIAPO, Employee, Plaintiff v. GOREE LOGISTICS, INC., and OWEN THOMAS, INC., Employer, NONINSURED, Defendants.**

**AND**

**PH-2819 THE NORTH CAROLINA INDUSTRIAL COMMISSION v. GOREE LOGISTICS, INC., and OWEN THOMAS, INC., NONINSURED Employer, and MANDIEME DIOUF, Individually, Defendants.**

**AMENDED OPINION AND AWARD for the Full Commission by TAMMY NANCE, Commissioner.**

**Filed: JUN 20, 2014**

This case was heard before the Full Commission on December 10, 2013, upon the respective appeals of Defendants Goree Logistics, Inc. and Mandieme Diouf and Defendant Owen Thomas, Inc. from the July 26, 2013 Opinion and Award of Deputy Commissioner Adrian A. Phillips. This case was initially heard before Deputy Commissioner Phillips in Concord, North Carolina on August 9, 2012, and on March 1, 2013 after the addition of Defendant Owen Thomas, Inc. as a party defendant. On April 14, 2014, the Full Commission filed an Opinion and Award in this matter. On April 23, 2014, the State filed a Motion for Reconsideration of the April 14, 2014 Opinion and Award. Therein, the State argues that the Full Commission should have imposed penalties against Defendants Goree Logistics, Inc. and Mandieme Diouf

pursuant to N.C. Gen. Stat. § 97-94 due to Defendant Mandieme Diouf's failure to bring Defendant Goree Logistics, Inc. into compliance with N.C. Gen. Stat. § 97-93 by refusing or neglecting to secure payment of compensation in accordance with the Workers' Compensation Act. On April 28, 2014, Defendant Owen Thomas, Inc. filed a notice of appeal to the North Carolina Court of Appeals from the April 14, 2014 Full Commission Opinion and Award. On May 5, 2014, Defendants Goree Logistic, Inc. and Mandieme Diouf filed a response to the State's Motion, arguing that the State's Motion should be denied and that the Court of Appeals, not the Industrial Commission, is now the appropriate venue for the State to argue its position due to Defendant Owen Thomas, Inc. having filed a notice of appeal to the Court of Appeals.

APPEARANCES

Plaintiff: Grandy & Martin, PA, Attorneys at Law, Charlotte, North Carolina; Kenneth C. Martin, appearing.

Defendants: Lawrence Margolis, Charlotte, North Carolina; Lawrence Margolis, counsel of record for Defendants Goree Logistics, Inc. and Mandieme Diouf, NOT APPEARING.

Ferguson, Scarbrough, Hayes, Hawkins and Demay, PA, Concord, North Carolina; John F. Scarbrough, appearing for Defendant Owen Thomas, Inc.

State: State of North Carolina: North Carolina Department of Justice; Raleigh, North Carolina; Asst. Attorney General, Marc X. Sneed, counsel of record.

\* \* \* \* \*

Having considered the State's Motion for Reconsideration and Defendants Goree Logistics' and Mandieme Diouf's response thereto in conjunction with record in this matter and the prior arguments and briefs of the parties, the Full Commission concludes that: (1) the Commission is the appropriate venue for the State to have raised this issue, as the State's timely Motion for Reconsideration tolled the time for the filing of any notices of appeal to the North Carolina Court of Appeals pursuant to Rule 702(1) of the *Workers' Compensation Rules of the North Carolina Industrial Commission*; and (2) the State's Motion for Reconsideration should be and **HEREBY IS GRANTED**. Accordingly, having reviewed the prior Opinion and Award based upon the record of the proceedings before the Deputy Commissioner and the briefs and arguments of the parties, and in light of the State's Motion for Reconsideration, which the Full Commission has granted herein, the Full Commission hereby enters the following Amended Opinion and Award.

\* \* \* \* \*

The Full Commission finds as facts and concludes as matters of law the following which were entered into by the parties as:

STIPULATIONS

1. On June 30, 2011, Plaintiff sustained an injury to his right leg during the course of an automobile collision in the state of Colorado.

2. On the date of the injury, the parties were subject to and bound by the provisions of the North Carolina Workers' Compensation Act.

3. Defendant Goree Logistics, Inc. did not have workers' compensation insurance in effect on June 30, 2011.

\*\*\*\*\*

The following were received into evidence by the Deputy Commissioner as:

STIPULATED EXHIBITS

1. Stipulated Exhibit #1: Medical Records
2. Stipulated Exhibit #2: Industrial Commission Forms
3. Stipulated Exhibit #3: The Broker/Carrier Agreement
4. Stipulated Exhibit #4: Transaction Confirmations

5. Stipulated Exhibit #5: Defendant Owen Thomas' responses to Plaintiff-Employee's First Set of Interrogatories and Request for Production of Documents to Defendant Owen Thomas, Inc., Defendant Goree Logistics' Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents, and Plaintiffs Responses to Defendant Goree Logistics' First Set of Interrogatories and Request for Production of Documents.

\* \* \* \* \*

Based upon the foregoing Stipulations and a preponderance of the evidence in view of the entire record, the Full Commission makes the following additional:

FINDINGS OF FACT

1. Plaintiff, who was 45 years old on the date of the hearing before the Deputy Commissioner, began working for Defendant Goree Logistics, Inc. (hereinafter, "Goree Logistics") as a long-distance truck driver on or about January 6, 2011. When Plaintiff worked for Goree Logistics, he drove a truck that was owned by Goree Logistics, and operated it under Goree Logistics' I.C.C. license and U.S. Department of Transportation permit. There is no evidence of record that Plaintiff worked as a truck driver for anyone else during the time he worked for Goree Logistics, or that he had his own U.S. Department of Transportation license or permit.

2. Goree Logistics is a North Carolina corporation engaged in the business of interstate trucking. It was incorporated by Defendant Mandieme Diouf (hereinafter, "Mr. Diouf") pursuant to Articles of Incorporation filed on November 17, 2008. Mr. Diouf was the only executive officer listed in any of the documentation filed with the North Carolina Secretary of State's Office.

3. When Plaintiff began working for Goree Logistics in January 2011, he signed a written contract in which it was stated that he was an independent contractor. However, he also signed a Contract Addendum which set forth 25 specific terms and conditions by which Plaintiff was required to abide and which evidenced significant control by Goree Logistics over the manner and details of Plaintiff's work and the circumstances under which the "contractor" would be entitled to "pay raises" and "bonuses." It also provided that abandonment of the tractor trailer or using the truck for personal reasons would result in "immediate termination."

4. Goree Logistics did not withhold taxes from Plaintiff's paychecks, the amount of which was calculated based upon the number of miles driven and the number of stops.

5. Goree Logistics issued Plaintiff a Form 1099 showing that he earned \$9,015.10 during the time that he worked for Goree Logistics in 2011.

6. Based upon the terms of the Contract Addendum and the degree of control Goree Logistics exercised over Plaintiff's work as a truck driver, the Full Commission finds that Plaintiff was an employee of Goree Logistics from January 6, 2011 until the date of the injury which is the subject of this claim.

7. Plaintiff testified before the Deputy Commissioner that Goree Logistics employed five or six truck drivers. However, he did not identify the names of these drivers, which could have been obtained through discovery prior to the hearing. Mr. Diouf testified that he employed two truck drivers, one of whom was Plaintiff. There was no evidence offered, however, regarding the terms under which the other truck driver worked for Goree Logistics. Therefore, the Full Commission finds that Goree Logistics employed two employees, to wit: Plaintiff and Mr. Diouf, the latter being an executive officer who is statutorily considered an employee of the corporation. There was insufficient evidence of record to find that Goree Logistics regularly employed three or more employees at the time of the injury giving rise to this claim.

8. Defendant Owen Thomas, Inc. (hereinafter, Owen Thomas), a Florida corporation, is a federally licensed "freight broker" authorized by its customers to negotiate and arrange for the transportation of shipments in interstate commerce. Owen Thomas' customers typically need to have produce shipped between two points, and Owen Thomas "brokers" the movement of this freight through contracts with



freight hauling companies such as Goree Logistics. According to John Grimes, a prior owner of and current consultant to Owen Thomas, the customers pay Owen Thomas directly and then Owen Thomas “contract[s] out the work to be done.” For example, for the load of blueberries that Plaintiff was transporting through his employment with Goree Logistics on June 30, 2011, Sunny Rich, a customer of Owen Thomas, contracted with Owen Thomas to arrange for the delivery of the blueberries. Sunny Rich paid Owen Thomas, and Owen Thomas in turn entered into a “Broker-Carrier Agreement” with Goree Logistics to make the delivery for a fixed price, which was less than the amount Owen Thomas was paid by Sunny Rich. The difference between what Sunny Rich paid Owen Thomas and what Owen Thomas paid Goree Logistics represented Owen Thomas’ profit on the transaction.

9. Owen Thomas did not carry workers’ compensation insurance to cover the employees of the carriers with whom it contracted when it “brokered” freight shipments. Paragraph 4 of the Broker-Carrier Agreement pertaining to the shipment of Sunny Rich’s blueberries provided that Goree Logistics shall maintain workers’ compensation insurance as required by state law and shall also agree to provide certificates of insurance to Owen Thomas upon request. However, Goree Logistics did not carry workers’ compensation insurance, and there is no evidence of record that Owen Thomas ever asked Goree Logistics for a certificate of insurance.

10. During the course of transporting these blueberries, Plaintiff sustained an injury by accident arising out of and in the course of his employment with Goree Logistics when he was involved in a motor vehicle accident near Ft. Collins, Colorado on June 30, 2011. Plaintiff was hospitalized for several days in Colorado before Goree Logistics paid to fly him back to North Carolina. As a result of the June 30, 2011 injury by accident, Plaintiff sustained a right forearm hematoma, lacerated left cheek and tongue, forehead laceration, and fractures to the tibia and fibula of the right leg. He was placed in a leg cast and then a leg boot, which restricted his ability to put weight on his foot or drive a truck. Plaintiff was released to return to work as a truck driver on November 3, 2011. Plaintiff did not retain any work restrictions as a result of the June 30, 2011 injury by accident. Plaintiff regained the capacity to earn the same wages he was earning at the time of the injury in the same or any other employment on November 3, 2011.

11. As of the date of the hearings before the Deputy Commissioner, Plaintiff had not returned to work for Goree Logistics or any other employer. Goree Logistics had terminated Plaintiff's employment, and he had/has not been able to find any other employment as a truck driver, in part because he lost his driver's license in the June 30, 2011 motor vehicle accident and had not gotten a new license. Plaintiff testified that he had been filling out applications and sending them to trucking companies, but he did not identify the names of the employers with whom he

had allegedly applied. Moreover, it is presumably unlikely that Plaintiff would be hired to work as a truck driver when he does not have a license to drive a truck. Plaintiff has not applied to work for any employer other than trucking companies. Therefore, assuming, arguendo, that Plaintiff did have any work restrictions, which he did/does not, the Full Commission finds that he has not made reasonable efforts to find other employment and that there has been no showing that it would be futile due to preexisting conditions for Plaintiff to look for other employment.

12. Plaintiff worked for Goree Logistics, Inc. for a period of 25 weeks prior to the date of injury, and during that time earned \$9,015.10. Plaintiff's average weekly wage is \$360.60.

13. The medical treatment Plaintiff received from June 30, 2011 to November 3, 2011 was reasonable and necessary to effect a cure, give relief, and lessen the period of disability.

14. Mr. Diouf had the ability and authority to bring Goree Logistics into compliance with N.C. Gen. Stat. § 97-93, but failed to do so.

\* \* \* \* \*

Based upon the foregoing Stipulations, Findings of Fact, and a preponderance of the evidence in view of the entire record, the Full Commission makes the following:

CONCLUSIONS OF LAW

1. The outcome of this case is governed by the provisions of N.C. Gen. Stat. § 97-19.1, which set forth the respective rights and liabilities of persons engaged in interstate or intrastate trucking and which differ in many important respects from the “statutory employer” or “contractor under” provisions of N.C. Gen. Stat. § 97-19.

2. N.C. Gen. Stat. § 97-19.1(a) provides at the outset that a truck driver can be an independent contractor or an employee, based upon the application of the common law test for determining employment status. Based upon application and analysis of the factors enumerated in *Hayes v. Board of Trustees*, 224 N.C. 11, 29 S.E.2d 137 (1944), which sets forth the elements indicative of an employer-independent contractor relationship, the Full Commission concludes that Plaintiff was an employee of Goree Logistics.

3. Pursuant to N.C. Gen. Stat. § 97-19.1(a),  
[a]ny principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in N.C. Gen. Stat. § 97-93

. . . shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury . . . of the independent contractor and his employees or subcontractors. . . .

N.C. Gen. Stat. § 97-19.1(a). Owen Thomas argues that it is not governed by the provisions of N.C. Gen. Stat. § 97-19.1 because Owen Thomas was merely a “broker” or agent, not a contractor within the meaning of N.C. Gen. Stat. § 97-19.1. The Full Commission concludes that under the facts of this case, the use of the word “broker” is a distinction without a difference. Owen Thomas entered into a contract with Sunny Rich to ensure the transport of Sunny Rich’s freight. Owen Thomas in turn contracted with Goree Logistics to accomplish the transport. Owen Thomas relies upon the case of *Cook v. Norvell-Mackorell Real Estate Co.*, 99 N.C. App. 307, 392 S.E.2d 758 (1990), to argue that an agent or broker cannot be held to be a contractor under these circumstances. However, in *Cook*, the defendant, a real estate management company, was not permitted to exercise its independent judgment in determining who would perform the roofing work and did not receive any additional compensation for completing the roofing project in question. In the case at bar, Owen Thomas was free to contract with any trucking company and it did retain a portion of what it received from Sunny Rich for the contract. Therefore, the Full Commission concludes that Owen Thomas was a principal contractor within the meaning of N.C. Gen. Stat. § 97-19.1(a).

4. Because Owen Thomas is a principal contractor who contracted with Goree Logistics, an interstate carrier “who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 . . . for his employees,” Owen Thomas is liable pursuant to N.C. Gen. Stat. § 97-19.1 for the payment of compensation and medical benefits to Plaintiff, who was an employee of Goree Logistics. N.C. Gen. Stat. § 97-19.1(a)

5. On June 30, 2011, Plaintiff sustained an injury by accident arising out of and in the course of his employment with Goree Logistics. N.C. Gen. Stat. § 97-2(6).

6. As a result of the June 30, 2011 injury by accident, Plaintiff was temporarily and totally disabled from June 30, 2011 to November 3, 2011. N.C. Gen. Stat. § 97-29.

7. Disability is defined as the “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.” N.C. Gen. Stat. § 97-2(9). Plaintiff’s disability ended when he received a full duty release with no restrictions on November 3, 2011. *In re Stone v. G & G Builders*, 346 N.C. 154, 484 S.E.2d 365 (1997).

8. The medical treatment Plaintiff received from June 30, 2011 to November 3, 2011 was reasonable and necessary to effect a cure, give relief, and

lessen the period of disability. The cost of this medical treatment includes balances to: (1) Poudre Valley Health Center (ambulance) (\$1,904.00), (2) Poudre Valley Health Center (\$65,298.25), (3) Poudre Valley Medical Group (\$336.00), (4) Advanced Medical Imaging (\$1980.00), (5) Beacon ER Physicians (\$827.00), (6) North Colorado Anesthesia (\$1,288.00), (7) Surgical Specialists of the Rockies (\$334.00), (8) Charlotte Radiology (\$37.00), and (9) Orthopedic Center of the Rockies (\$2,537.00). The total cost of these medical expenses is \$74,541.25.

9. Although Goree Logistics was not shown to regularly employ three or more employees based on the evidence of record, N.C. Gen. Stat. § 97-19.1 provides, in pertinent part, that:

Any principal contractor, intermediate contractor, or subcontractor, *irrespective of whether such contractor regularly employs three or more employees*, who contracts with an individual in the interstate or intrastate carrier industry, who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out

of and in the course of the performance of the work covered by such contract.

N.C. Gen. Stat. § 97-19.1(a) (Emphasis added.) N.C. Gen. Stat. § 97-9 further provides that [e]very employer subject to the compensation provisions of [the Workers' Compensation Act] shall secure the payment of compensation to his employees . . . ” N.C. Gen. Stat. § 97-9. Because Plaintiff is an employee of Goree Logistics pursuant to N.C. Gen. Stat. § 97-19.1, and he was driving a truck owned by Goree Logistics pursuant to the authority of Goree Logistics and its license from the United States Department of Transportation, Goree Logistics was obligated to obtain workers' compensation coverage in accordance with N.C. Gen. Stat. § 97-93, irrespective of the fact that the evidence of record does not establish that Goree Logistics regularly employed three or more employees. *See* N.C. Gen. Stat. §§ 97-19.1; 97-9; 97-93.

10. Any employer required to secure payment of compensation under the Workers' Compensation Act, who refuses or neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each day of such refusal or neglect and until the same ceases. N.C. Gen. Stat. § 97-94(b). In the present case, Goree Logistics neglected or refused to insure its liability or otherwise comply with N.C. Gen. Stat. § 97-93, beginning January 6, 2011 to June 30, 2011, which is a period of 176 days and which totals \$8,800.00 ( $\$50.00 \times 176 = \$8,800.00$ )



11. Any person with the ability and authority to bring an employer into compliance with N.C. Gen. Stat. § 97-93 who fails or neglects to do so may be assessed a penalty equal to one hundred percent (100%) of the amount of compensation due to the employer's employees during the time the employer failed to comply with N.C. Gen. Stat. § 97-93. N.C. Gen. Stat. § 97-94 (d). The penalty may include medical compensation in addition to indemnity compensation. *Putnam v. Alexander*, 194 N.C. App. 578, 670 S.E.2d 610 (2009). In the instant matter, Mr. Diouf had the ability and authority to bring his business, Goree Logistics, into compliance with N.C. Gen. Stat. § 97-93, but he neglected to do so. Accordingly, the Commission may assess a civil penalty against Mr. Diouf in an amount up to and including one hundred percent of any compensation due to Plaintiff. This amount totals \$78,868.63 and is calculated as follows: (\$240.41 X 18 weeks = \$4,327.38 in TTD benefits); (\$4,327.38 in TTD + \$74,541.25 in medical expenses = \$78,868.63).

\*\*\*\*\*

Based upon the foregoing Stipulations, Findings of Fact, and Conclusions of Law, the Full Commission makes the following:

AWARD

1. Owen Thomas shall pay Plaintiff temporary total disability compensation at the rate of \$240.41 per week (\$360.00 X .6667 = \$240.41) for the period

from June 30, 2011 to November 3, 2011. This compensation has accrued and shall be paid to Plaintiff in a lump sum, subject to the attorney fee hereinafter approved.

2. Owen Thomas shall pay for any and all related medical expenses incurred by Plaintiff for treatment of the involved injury during the period from June 30, 2011 to November 3, 2011, in accordance with the Fee Schedule. The total cost of these medical expenses is \$74,541.25. Plaintiff's counsel shall send a copy of this decision to all of the healthcare providers in this matter, who shall in turn submit their bills for payment to Owen Thomas at 37612 Daughtry Road, Zephyrhills, FL 33541. These medical care providers shall not seek payment of their bills from Plaintiff.

3. A reasonable attorney's fee of 25% of the compensation awarded herein is approved for Plaintiff's counsel. This fee shall be deducted from the lump sum payment due Plaintiff and forwarded directly to Plaintiff's counsel.

4. Goree Logistics is ordered to pay the State of North Carolina penalties in the sum of \$8,800.00, which represents \$50.00 per day beginning January 6, 2011 to June 30, 2011, a period of 176 days during which Goree Logistics failed to secure workers' compensation coverage in accordance with the Workers' Compensation Act. Payment should include the Industrial Commission (I.C.) file number and Penalty (PH) number. Payment shall be made to the Order of

the North Carolina Industrial Commission and shall be sent to: N.C. Industrial Commission, Attn: Sharon Hodge, 4340 Mail Service Center, Raleigh, North Carolina 27699-4340. Payment will be accepted in the form of cashier's check, money order or certified check.

5. An additional penalty of 100% of the amount of compensation due to Plaintiff in this matter is assessed against Mr. Diouf, individually, for failing to comply with N.C. Gen. Stat. § 97-93. Payment in the amount of \$78,868.63 (\$4,327.38 in TTD + \$74,541.25 in medical expenses \$78,868.63) shall be made to the North Carolina Industrial Commission and sent to: N.C. Industrial Commission, Attn: Sharon Hodge, 4340 Mail Service Center, Raleigh, North Carolina 27699-4340. Payment will be accepted in the form of a cashier's check, money order or certified check.

6. Owen Thomas shall pay the cost of the hearing before the Full Commission in the amount of \$220.00.

App. 31

This the 11th of June, 2014.

/s/ Tammy Nance  
TAMMY NANCE  
COMMISSIONER

CONCURRING:

/s/ Linda Cheatham  
LINDA CHEATHAM  
COMMISSIONER

/s/ Andrew Heath  
ANDREW T. HEATH  
CHAIRMAN

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**NORTH CAROLINA INDUSTRIAL COMMISSION  
I.C. NO. X57890 & PH-2819, FRANCES ATIAPO,  
Employee, Plaintiff v. GOREE LOGISTICS, INC.,  
and OWEN THOMAS, INC., Employer, NONIN-  
SURED, Defendants.**

**AND**

**PH-2819 THE NORTH CAROLINA INDUSTRIAL  
COMMISSION v. GOREE LOGISTICS, INC., and  
OWEN THOMAS, INC., NONINSURED Employ-  
er, and MANDIEME DIOUF, Individually, De-  
fendants.**

**OPINION AND AWARD for the Full Commission  
by TAMMY NANCE, Commissioner.**

**Filed: APR 14 2014**

This matter was reviewed by the Full Commission on December 10, 2013, upon the respective appeals of Defendants Goree Logistics, Inc. and Mandieme Diouf and Defendant Owen Thomas, Inc. from the July 26, 2013 Opinion and Award of Deputy Commissioner Adrian A. Phillips. This case was initially heard before Deputy Commissioner Phillips in Concord, North Carolina on August 9, 2012, and on March 1, 2013 after the addition of Owen Thomas, Inc. as a Defendant.

**APPEARANCES**

Plaintiff: Grandy & Martin, PA, Attorneys at  
Law, Charlotte, North Carolina;  
Kenneth C. Martin, appearing.

Defendants: Lawrence Margolis, Charlotte, North Carolina; Lawrence Margolis, counsel of record for Defendants Goree Logistics, Inc. and Mandieme Diouf, NOT APPEARING.

Ferguson, Scarbrough, Hayes, Hawkins and Demay, PA, Concord, North Carolina; John F. Scarbrough, appearing for Defendant Owen Thomas, Inc..

State: State of North Carolina: North Carolina Department of Justice; Raleigh, North Carolina; Asst. Attorney General, Marc X. Sneed, counsel of record.

\*\*\*\*\*

Having reviewed the prior Opinion and Award based upon the record of the proceedings before the Deputy Commissioner and the briefs and arguments of the parties, the Full Commission hereby modifies the decision of Deputy Commissioner Phillips.

\*\*\*\*\*

The Full Commission finds as facts and concludes as matters of law the following which were entered into by the parties and stipulated to by the parties:

STIPULATIONS

1. On June 30, 2011, Plaintiff sustained an injury to his right leg during the course of an automobile collision in the state of Colorado.

2. On the date of the injury, the parties were subject to and bound by the provisions of the North Carolina Workers' Compensation Act.

3. Defendant Goree Logistics, Inc. did not have workers' compensation insurance in effect on June 30, 2011.

\* \* \* \* \*

The following were received into evidence by the Deputy Commissioner as:

STIPULATED EXHIBITS

1. Stipulated Exhibit #1: Medical Records
2. Stipulated Exhibit #2: Industrial Commission Forms
3. Stipulated Exhibit #3: The Broker/Carrier Agreement
4. Stipulated Exhibit #4: Transaction Confirmations
5. Stipulated Exhibit #5: Defendant Owen Thomas' responses to Plaintiff-Employee's First Set of Interrogatories and Request for Production of Documents to Defendant Owen Thomas, Inc., Defendant Goree Logistics' Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents, and Plaintiff's Responses to Defendant Goree Logistics' First Set of Interrogatories and Request for Production of Documents.

\*\*\*\*\*

Based upon the foregoing Stipulations and a preponderance of the evidence in view of the entire record, the Full Commission makes the following additional:

FINDINGS OF FACT

1. Plaintiff, who was 45 years old on the date of the hearing before the Deputy Commissioner, began working for Defendant Goree Logistics, Inc. (hereinafter, "Goree Logistics") as a long-distance truck driver on or about January 6, 2011. When Plaintiff worked for Goree Logistics, he drove a truck that was owned by Goree Logistics, and operated it under Goree Logistics' I.C.C. license and U.S. Department of Transportation permit. There is no evidence of record that Plaintiff worked as a truck driver for anyone else during the time he worked for Goree Logistics, or that he had his own U.S. Department of Transportation license or permit.

2. Goree Logistics, Inc. is a North Carolina corporation engaged in the business of interstate trucking. It was incorporated by Defendant Mr. Mandieme Diouf (hereinafter, "Mr. Diouf") pursuant to Articles of Incorporation filed on November 17, 2008. Mr. Diouf was the only executive officer listed in any of the documentation filed with the North Carolina Secretary of State's Office.



3. When Plaintiff began working for Goree Logistics in January 2011, he signed a written contract in which it was stated that he was an independent contractor. However, he also signed a Contract Addendum which set forth 25 specific terms and conditions by which Plaintiff was required to abide and which evidenced significant control by Goree Logistics over the manner and details of Plaintiff's work and the circumstances under which the "contractor" would be entitled to "pay raises" and "bonuses." It also set forth the circumstances under which the "contractor" would be entitled to "pay raises" and "bonuses," and provided that abandonment of the tractor trailer or using the truck for personal reasons would result in "immediate termination."

4. Goree Logistics did not withhold taxes from Plaintiff's paychecks, the amount of which was calculated based upon the number of miles driven and the number of stops.

5. Goree Logistics issued Plaintiff a Form 1099 showing that he earned \$9015.10 during the time that he worked for Goree Logistics in 2011.

6. Based upon the terms of the Contract Addendum and the degree of control Goree Logistics exercised over Plaintiff's work as a truck driver, the Full Commission finds that Plaintiff was an employee of Goree Logistics from January 6, 2011 until the date of the injury which is the subject of this claim.

7. Plaintiff testified before the Deputy Commissioner that Goree Logistics employed five or six truck

drivers. However, he did not identify the names of these drivers, which could have been obtained through discovery prior to the hearing. Mr. Diouf testified that he employed two truck drivers, one of whom was Plaintiff. There was no evidence offered, however, regarding the terms under which the other truck driver worked for Goree Logistics. Therefore, the Full Commission finds that Goree Logistics employed two employees, to wit: Plaintiff and Mr. Diouf, the latter being an executive officer who is statutorily considered an employee of the corporation. There was insufficient evidence of record to find that Goree Logistics regularly employed three or more employees at the time of the injury giving rise to this claim.

8. Defendant Owen Thomas, Inc. (hereinafter, Owen Thomas), a Florida corporation, is a federally licensed “freight broker” authorized by its customers to negotiate and arrange for the transportation of shipments in interstate commerce. Owen Thomas’ customers typically need to have produce shipped between two points, and Owen Thomas “brokers” the movement of this freight through contracts with freight hauling companies such as Goree Logistics. According to John Grimes, a prior owner of Owen Thomas and a current consultant to that company, the customers pay Owen Thomas directly and then Owen Thomas “contract[s] out the work to be done.” For example, for the load of blueberries that Plaintiff was transporting through his employment with Goree Logistics on June 30, 2011, Sunny Rich, a customer of

Owen Thomas, contracted with Owen Thomas to arrange delivery of the blueberries. Sunny Rich paid Owen Thomas, and Owen Thomas in turn entered into a “Broker-Carrier Agreement” with Goree Logistics to make the delivery for a fixed price which was less than the amount Owen Thomas was paid by Sunny Rich. The difference between what Sunny Rich paid Owen Thomas and what Owen Thomas paid Goree Logistics represented Owen Thomas’s profit on the transaction.

9. Owen Thomas did not carry workers’ compensation insurance to cover the employees of the carriers with whom it contracted when it “brokered” freight shipments. Paragraph 4 of the Broker-Carrier Agreement pertaining to the shipment of Sunny Rich’s blueberries provided that Goree Logistics shall maintain workers’ compensation insurance as required by state law and shall also agree to provide certificates of insurance to Owen Thomas upon request. However, Goree Logistics did not carry workers’ compensation insurance and there is no evidence of record that Owen Thomas ever asked Goree Logistics for a certificate of insurance.

10. During the course of transporting these blueberries, Plaintiff sustained an injury by accident arising out of and in the course of his employment with Goree Logistics when he was involved in a motor vehicle accident near Ft. Collins, Colorado on June 30, 2011. Plaintiff was hospitalized for several days in Colorado before Goree Logistics paid to fly him back to North Carolina. As a result of the June 30, 2011

injury by accident, Plaintiff sustained a right forearm hematoma, lacerated left cheek and tongue, forehead laceration, and fractures to the tibia and fibula of the right leg. He was placed in a leg cast and then a leg boot which restricted his ability to put weight on his foot or drive a truck. Plaintiff was released to return to work as a truck driver on November 3, 2011. Plaintiff does not retain any work restrictions as a result of the June 30, 2011 injury by accident. Plaintiff regained the capacity to earn the same wages he was earning at the time of the injury in the same or any other employment on November 3, 2011.

11. As of the date of the hearing before the Deputy Commissioner, Plaintiff had not returned to work for Goree Logistics or any other employer. Goree Logistics had terminated his employment, and Plaintiff has not been able to find any other employment as a truck driver, in part because he lost his driver's license in the June 30, 2011 motor vehicle accident and has not gotten a new license. He testified that he has been filling out applications and sending them to trucking companies, but he did not identify the names of the employers with whom he has allegedly applied. Moreover, it is presumably unlikely that Plaintiff would be hired to work as a truck driver when he does not have a license to drive a truck. Plaintiff has not applied to work for any employer other than trucking companies. Therefore, assuming, *arguendo*, that Plaintiff did have any work restrictions, which he does not, the Full Commission finds that he has not made reasonable efforts to find

other employment and that there has been no showing that it would be futile due to preexisting conditions for Plaintiff to look for other employment.

12. Plaintiff worked for Goree Logistics, Inc. for a period of 25 weeks prior to the date of injury, and during that time earned \$9,015.10. Plaintiff's average weekly wage is \$360.60.

13. The medical treatment Plaintiff received from June 30, 2011 to November 3, 2011 was reasonable and necessary to effect a cure, give relief, and lessen the period of disability.

\* \* \* \* \*

Based upon the foregoing Stipulations, Findings of Fact, and a preponderance of the evidence in view of the entire record, the Full Commission makes the following:

CONCLUSIONS OF LAW

1. The outcome of this case is governed by the provisions of N.C. Gen. Stat. § 97-19.1, which set forth the respective rights and liabilities of persons engaged in interstate or intrastate trucking and which differ in many important respects from the "statutory employer" or "contractor under" provisions of N.C. Gen. Stat. § 97-19.

2. N.C. Gen. Stat. § 97-19.1(a) provides at the outset that a truck driver can be an independent contractor or an employee, based upon the application

of the common law test for determining employment status. Based upon application and analysis of the factors enumerated in *Hayes v. Board of Trustees*, 224 N.C. 11, 29 S.E.2d 137 (1944), which sets forth the elements indicative of an employer-independent contractor relationship, the Full Commission concludes that Plaintiff was an employee of Goree Logistics.

3. Pursuant to N.C. Gen. Stat. § 97-19.1(a),

[a]ny principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in N.C. Gen. Stat. § 97-93 . . . shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury . . . of the independent contractor and his employees or subcontractors. . . .

N.C. Gen. Stat. § 97-19.1(a).

4. Owen Thomas argues that it is not governed by the provisions of N.C. Gen. Stat. § 97-19.1 because Owen Thomas was merely a “broker” or agent, not a contractor within the meaning of N.C. Gen. Stat. § 97-19.1. The Full Commission concludes that under

the facts of this case, the use of the word “broker” is a distinction without a difference. Owen Thomas entered into a contract with Sunny Rich to ensure the transport of Sunny Rich freight. Owen Thomas in turn contracted with Goree Logistics to accomplish the transport. Owen Thomas relies upon the case of *Cook v. Norvell-Mackorell Real Estate Co.*, 99 N.C. App. 307, 392 S.E.2d 758 (1990), to argue that an agent or broker cannot be held to be a contractor under these circumstances. However, in *Cook*, the defendant, a real estate management company, was not permitted to exercise its independent judgment in determining who would perform the roofing work and did not receive any additional compensation for completing the roofing project in question. In the case at bar, Owen Thomas was free to contract with any trucking company and it did retain a portion of what it received from Sunny Rich for the contract. Therefore, the Full Commission concludes that Owen Thomas was a principal contractor within the meaning of N.C. Gen. Stat. § 97-19.1(a).

5. Because Owen Thomas is a principal contractor who contracted with Goree Logistics, an interstate carrier “who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 . . . for his employees,” Owen Thomas is liable pursuant to N.C. Gen. Stat. § 97-19.1 for the payment of compensation

and medical benefits to Plaintiff, who was an employee of Goree Logistics. N.C. Gen. Stat. § 97-19.1(a)

6. On June 30, 2011, Plaintiff sustained an injury by accident arising out of and in the course of his employment with Goree Logistics. N.C. Gen. Stat. § 97-2(6).

7. As a result of the June 30, 2011 injury by accident, Plaintiff was temporarily and totally disabled from June 30, 2011 to November 3, 2011. N.C. Gen. Stat. § 97-29.

8. Disability is defined as the “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. N.C. Gen. Stat. § 97-2(9). Plaintiff’s disability ended when he received a full duty release with no restrictions on November 3, 2011. *In re Stone v. G & G Builders*, 346 N.C. 154, 484 S.E.2d 365 (1997).

9. Goree Logistics was not shown to regularly employ three or more employees. Therefore, there is no basis to assess penalties pursuant to N.C. Gen. Stat. § 97-94.

\* \* \* \* \*

Based upon the foregoing Stipulations, Findings of Fact, and Conclusions of Law, the Full Commission makes the following:



AWARD

1. Owen Thomas shall pay Plaintiff temporary total disability compensation at the rate of \$240.41 per week for the period from June 30, 2011 to November 3, 2011. This compensation has accrued and shall be paid to Plaintiff in a lump sum, subject to the attorney fee hereinafter approved.

2. Owen Thomas shall pay for any and all related medical expenses incurred by Plaintiff for treatment of the involved injury during the period from June 30, 2011 to November 3, 2011, in accordance with the Fee Schedule. Plaintiff's counsel shall send a copy of this decision to all of the healthcare providers in this matter, who shall in turn submit their bills for payment to Owen Thomas at 37612 Daughtry Road, Zephyrhills, FL 33541. These medical care providers shall not seek payment of their bills from Plaintiff.

3. A reasonable attorney's fee of 25% of the compensation awarded herein is approved for Plaintiff's counsel. This fee shall be deducted from the lump sum payment due Plaintiff and forwarded directly to Plaintiff's counsel.

4. Owen Thomas shall pay the cost of the hearing before the Full Commission in the amount of \$220.00.

This the 24th day of March, 2014.

/s/ Tammy Nance  
TAMMY NANCE  
COMMISSIONER

CONCURRING:

/s/ Linda Cheatham  
LINDA CHEATHAM  
COMMISSIONER

/s/ Andrew T. Heath  
ANDREW T. HEATH  
CHAIRMAN

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**NORTH CAROLINA  
INDUSTRIAL COMMISSION**

**I.C. NO. X57890: FRANCES ATIAPO, Employee-Plaintiff v. GORES [sic] LOGISTICS, INC., and OWEN THOMAS, INC., Non-Insured-Employer, Defendants**

**And**

**PH-2819, THE NORTH CAROLINA INDUSTRIAL COMMISSION v. GOREELOGISTICS [sic], INC., and OWEN THOMAS, INC., Non-Insured-Employer, Defendants and MANDIEME DIOUF, Individually**

**OPINION & AWARD by ADRIAN PHILLIPS, DEPUTY COMMISSIONER**

**FILED: July 26, 2013**

**Invoice #: B06849 & B06850**

This matter was heard before the Undersigned in Concord, North Carolina, in part on August 9, 2012, and in part on March 1, 2013 after the addition of Owen Thomas, Inc. as a Defendant. Prior to the start of the November 16, 2012 hearing, a proposed Pre-Trial Agreement was presented to the Court. Defendant, Goree Logistics, Inc., objected to certain provisions of the proposed agreement and stipulated to the remainder. At this hearing, the State's Motion to add Owen Thomas as a party defendant was granted by the Court. The parties informed the Court that there would be no medical depositions or any further reason to keep the record open after the March 1st hearing and pursuant to the Undersigned's

Order dated March 13, 2013, the parties were given until April 29, 2013 to present Contentions and a proposed Opinion and Award. Upon receipt of the parties' respective briefs, the record duly closed on April 29, 2013. This matter now stands ready for decision by the Undersigned.

\* \* \* \* \*

**APPEARANCES**

Plaintiff: Grandy & Martin,  
P.A., Attorneys,  
Charlotte, North Carolina;  
Kenneth C. Martin,  
Counsel of Record.

Defendant, Goree  
Logistics, Inc.: Lawrence Margolis,  
Charlotte, North Carolina;  
Lawrence Margolis,  
Counsel of Record.

Defendant, Owen  
Thomas, Inc.: Ferguson, Scarbrough,  
Hayes, Hawkins  
and Demay, PA.,  
Concord, North Carolina;  
John F. Scarbrough,  
Counsel of Record.

State of North  
Carolina: North Carolina  
Department of Justice;  
Raleigh, North Carolina;  
Asst. Attorney General,  
Marc X. Sneed, Appearing.

\*\*\*\*\*

The following documentary evidence was received as:

**EXHIBITS**

1. Stipulated Exhibit #1 – Medical Records
2. Stipulated Exhibit #2 – Industrial Commission Forms
3. Stipulated Exhibit #3 – The Broker/Carrier Agreement
4. Stipulated Exhibit #4 – Transaction Confirmations
5. Stipulated Exhibit #5 – Defendant, Owen Thomas’ responses to Plaintiff-Employee’s First Set of Interrogatories and Request for Production of Document to Defendant Owen Thomas, Inc. and Defendant’s (Goree Logistics) Responses to Plaintiff’s First Set of Interrogatories and Request for Production of Documents and Plaintiff’s Responses to Defendant’s (Goree Logistics) First Set of Interrogatories and Request for Production of Documents.
6. Plaintiff’s Exhibit #1 – Plaintiff’s Wage Information
7. Plaintiffs Exhibit #2 – Plaintiffs Medical Bills
8. Defendant Goree Logistics’ Exhibit #1 – 1099 Form

9. Defendant Exhibit #2 – Contract Addendum
10. State Exhibit #1 – Secretary of State Records for Defendant, Goree Logistics,
11. State Exhibit #2 – NCIC Database Printout
12. State Exhibit #3 – Rate Conformation on Defendant Owen Thomas.

\* \* \* \* \*

**ISSUES**

1. Whether this claim falls under the jurisdiction of the Industrial Commission?
2. Whether an employment relationship existed between Plaintiff and Defendant under the North Carolina Workers' Compensation Act?
3. Whether Defendant, Owen Thomas, Inc., is Plaintiff's statutory employer pursuant to N.C. Gen. Stat. §97-19?
4. Is Plaintiff entitled to receive benefits under the Workers' Compensation Act from Defendant, Goree Logistics, Inc., and/or Defendant Owen Thomas, Inc. and if so, to what benefits is Plaintiff entitled?
5. What was Plaintiff's average weekly wage as of the date of his injury?

\* \* \* \* \*

The Undersigned finds as facts and concludes as matters of law the following which were entered into by the parties and stipulated to by the parties:

**STIPULATIONS**

1. On June 30, 2011, Plaintiff sustained an injury to his right leg during the course of an automobile collision in the state of Colorado.

2. On the date of the injury, the parties' [sic] were subject to and bound by the provisions of the North Carolina Workers' Compensation Act.

3. Defendant, Goree Logistics, Inc., did not have workers' compensation insurance in effect on June 30, 2011.

\* \* \* \* \*

Based upon the foregoing Stipulations and the competent and credible evidence of record and when viewing the foregoing by a preponderance of the evidence, the Undersigned makes the following:

**FINDINGS OF FACT**

1. At the time of hearing, Plaintiff was 45 years old with a date of birth of October 3, 1966. Plaintiff first began working for Goree Logistics on or about January 6, 2011. Pursuant to a written and verbal agreement, Plaintiff was hired by Mandieme Diouf, the owner of Goree Logistics, to drive a tractor trailer owned by Goree Logistics throughout the continental United States. Mandieme Diouf was Plaintiff's immediate supervisor.

2. Prior to working for Goree Logistics, Plaintiff worked for Martin Transportation, Express Leasing,

Omar Logistic, Gemini Traffic and Sales and Nationwide Express. Plaintiff testified that these were all truck driving jobs and truck driving has mostly been his employment history.

3. The tractor trailer operated by Plaintiff on the date of his injury was owned by, and registered to, Goree Logistics. It was licensed as a commercial motor vehicle through the North Carolina Department of Motor Vehicles. Goree was licensed by the U.S. Department of Transportation #1946972.

4. Plaintiff earned wages totaling \$9,006.05 during the 25 weeks he worked for Defendant-Employer prior to June 30, 2011. Plaintiff's average weekly wage is \$360.24.

5. At the time of his injury, Plaintiff himself was not licensed by a governmental motor vehicle regulatory agency and was not operating the tractor trailer in question pursuant to such a license and did not have his own separate business.

6. Plaintiff testified that, at the time of his injury, five or six other people worked for Goree Logistics.

7. Mandieme Diouf testified that he provided Plaintiff with a 1099 form for the year 2011. However, Plaintiff does not recall receiving any type of tax form from Goree Logistics. Plaintiff testified that Goree Logistics did not withhold any taxes from him. He just received a check with no withholding. Plaintiff testified that he drove continuously for Goree



Logistics from January 2011 through the date of his accident.

8. At the time of his injury, Plaintiff was transporting blueberries in the tractor trailer owned by Goree Logistics. Plaintiff was originally instructed to transport the blueberries to Cheyenne, Wyoming. However, the produce was rejected there and he was thereupon directed to transport the produce to Denver, Colorado, where Plaintiff reloaded and continued on to Georgia. In the course of his journey from Cheyenne to Denver, Plaintiff was involved in an automobile accident near Fort Collins, Colorado, which caused him to sustain a right forearm hematoma, lacerated left cheek and tongue, forehead laceration and fractures to the tibia and fibula of the right leg.

9. Plaintiff initially received medical treatment on the date of his injury, at the Medical Center of the Rockies. His treatment included an ORIF surgery performed by Dr. Robert Baer on July 1, 2011. Plaintiff notified his employer, Mandieme Diouf, from the hospital regarding his accident and injuries.

10. John Grimes, the original owner of Owen Thomas and current consultant for the company, testified that Defendant, Owen Thomas, is a federally licensed Brokerage Firm for the transportation of freight. Mr. Grimes testified that Owen Thomas did not have workers' compensation insurance, but had general liability and cargo insurance to use if the primary customer "didn't come through."

11. At the time of Plaintiffs injury, Owen Thomas was engaged in the business of moving freight through contracts with freight hauling companies as a regular part of its business.

12. With regard to the particular load that Plaintiff was transporting at the time of his injury, Sunny Ridge was Owen Thomas' customer. Sunny Ridge had purchased the blueberries in question and they were also the customer that sold the blueberries to Wal-Mart where the fruit would ultimately be delivered.

13. Owen Thomas entered into a Broker-Carrier agreement with Goree Logistics at the time of Plaintiffs injury. Plaintiff was driving the tractor trailer making the delivery that had been brokered by Owen Thomas pursuant to the Broker-Carrier Agreement with Goree Logistics.

14. Paragraph 3.2 of the Broker-Carrier Agreement between Owen Thomas and Goree Logistics, includes the compensation to be received by Owen Thomas, from Goree Logistics for their broker's fee. Paragraph 4 of the agreement provides that Goree Logistics shall maintain workers' compensation insurance as required by state law and shall also agree to provide certificates of insurance to Owen Thomas upon request.

15. Although the Broker-Carrier Agreement provides that Goree Logistics understands and agrees that they are an independent contractor, Owen Thomas maintained control over the performance of

Goree Logistics' work including requiring Goree Logistics to call Owen Thomas at 8 a.m. and 2 p.m. daily. The agreement also required Goree Logistics to pulp product, call with pulp temperatures and write pulp temperatures on the confirmation and bills. The agreement also required Goree Logistics to cooperate with redeliveries and deviations from the original terms of the contract for reasonable compensation.

16. John Grimes testified that Owen Thomas was paid a contracted sum of money for the delivery of the blueberries by Sunny Ridge. Owen Thomas in turn, contracted with Goree Logistics to provide transportation for a fee set forth in Stipulated Exhibit #3. The difference between these two sums of money was Owen Thomas' profit for the transaction. Owen Thomas would receive money from Sunny Ridge and then Owen Thomas would write a check to Goree Logistics for the contracted amounts.

17. During the year 2011, Goree Logistic transported freight for Owen Thomas on one or two other occasions prior to the transaction involving Plaintiff's injury.

18. Mandieme Diouf testified that Owen Thomas had one hundred percent control over the deliveries Goree Logistics performed on behalf of Owen Thomas. Diouf testified that Owen Thomas controlled where Goree's drivers would go and what time they had to arrive at various destinations. Every time there was a problem, the problem needed to be communicated with Owen Thomas. Plaintiff, however,

testified that according to his knowledge, Owen Thomas did not have any control over how his deliveries were performed.

19. Plaintiff has not worked for Defendant-Employer since the date of his accident and has not received any wages or other compensation from Defendant-Employer since this date. Plaintiff has not received any workers' compensation indemnity or medical benefits associated with this claim from either Goree Logistics or Owen Thomas.

20. Following the accident, Plaintiff was placed in a leg cast and then a leg boot which restricted his ability to put weight on his foot or drive a truck. Plaintiff was not released to return to work as a truck driver until November 3, 2011. He attempted to return to work with Defendant-Employer but was told that he was terminated.

21. Plaintiff has also not returned to work with any other employer since the date of his accident. He has been filling out applications and sending them to employers. Plaintiff's ability to search for a job has been limited by the fact that he lost his driver's license in the wreckage of the accident and has not had the money to go to the Department of Motor Vehicles to obtain a new license. Plaintiff testified that he has not been allowed to retrieve his personal belongings from the truck including his wallet and driver's license. Mandieme Diouf testified that Plaintiff's belongings were scattered in the wreckage of the

truck in Colorado and that he has never had any access to them.

22. Mandieme Diouf testified that at the time of Plaintiff's accident, he employed only one driver, that being Plaintiff. He further testified that Plaintiff was an independent contractor that set up his own work; no social security or medical was withheld from his check. Mandieme Diouf testified that Plaintiff signed a contract which established him as working as an independent contractor for Goree Logistics.

23. Mandieme Diouf testified that Goree Logistics owned two trucks at the time of Plaintiffs injury. He testified that Plaintiff did not drive a truck for Goree Logistics between April 13 and June 22 of 2011. He also testified that he would not consider allowing Plaintiff to return to work for him in a million years.

24. Mandieme Diouf testified that Goree Logistics was not working for Wal-Mart when Plaintiff was delivering blueberries; rather, Goree Logistics was working for Owen Thomas and had a contractual relationship with them for this delivery. He testified that Goree Logistics was paid a lump sum of \$4,500.00 by Owen Thomas for transporting the blueberries.

25. Mandieme Diouf testified that Owen Thomas directed Plaintiff where he needed to go to make his blueberry deliveries. He himself did not tell Plaintiff where to go. Mandieme Diouf provided Plaintiff with the truck and told him he would be dealing with Owen Thomas and to call them and they would give Plaintiff all the information he needed.

26. Mr. Diouf testified that before Owen Thomas would give him the contract, they wanted to know all the information about who would be driving the truck transporting the blueberries.

27. Owen Thomas also required information as to Goree Logistics including when they were incorporated, licensed, whether they carried cargo insurance and liability insurance. Mandieme Diouf testified that Goree Logistics did not have workers' compensation insurance and was unable to provide Owen Thomas with evidence that he had such.

\* \* \* \* \*

Based upon the foregoing Stipulations and Findings of Fact, and when viewing the foregoing by a preponderance of the evidence, the Undersigned makes the following additional:

**CONCLUSIONS OF LAW**

1. All parties are properly before the Industrial Commission. All parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act. The Industrial Commission has jurisdiction over the parties and the subject matter of this case. N.C. Gen. Stat. §97-2.

2. On June 30, 2011, Plaintiff sustained a compensable injury by accident, arising out of and in the course of his employment with Defendant-Employer, Goree Logistics, Inc., to his right arm, face and right leg. N.C. Gen. Stat. §97-2(6).

3. Goree Logistics, Inc., was the duly-qualified Employer at the time of the accident and is subject to the North Carolina Workers' Compensation Act, having employed the requisite number of employees to be bound under the provisions of said Act at the time of the incident. N.C. Gen. Stat. §97-2.

4. An employee-employer relationship existed between Plaintiff and said Defendant-Employer, Goree Logistics, Inc., at the time of his injury and said Defendant-Employer was uninsured at that time. N.C. Gen. Stat. §97-2.

5. Defendant Owen Thomas, Inc., was acting in the role of general contractor for the particular job on which Plaintiff was injured as contemplated by the Act. N.C. Gen. Stat. §97-19 states that any contractor who sublets any work without requiring from such subcontractor or obtaining from the Industrial Commission, a certificate of workers' compensation insurance stating that the subcontractor has complied with N.C. Gen. Stat. §97-93, shall be liable, irrespective of the subcontractor's number of employees, for payment of compensation for injuries suffered by an employee of the subcontractor due to an accident arising out of and in the course of the performance of the work covered by the subcontract. There is no evidence in this matter as to whether Owen Thomas, Inc., or anyone on their behalf, ever received a valid certificate of workers' compensation insurance from Goree Logistics, Inc. As a result thereof, Owen Thomas, Inc., is liable for all benefits owed to Plaintiff as a

result of his June 30, 2011 compensable injury by accident. N.C. Gen. Stat. §97-19.

6. Pursuant to N.C. Gen. Stat. §97-19.1, any principal or intermediate contractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 . . . shall be liable as an employer under this Article for the payment of compensation on account of the injury of the independent contractor and his employees. There is no evidence in this matter as to whether Owen Thomas, Inc., or anyone on their behalf, ever received a valid certificate of workers' compensation insurance from Goree Logistics, Inc. As a result thereof, Owen Thomas, Inc., is liable for all benefits owed to Plaintiff as a result of his June 30, 2011 compensable injury by accident. N.C. Gen. Stat. §97-19.1.

7. Plaintiff's average weekly wage was \$360.24, yielding a compensation rate of \$240.16. N.C. Gen. Stat. § 97-2(5).

8. As a result of Plaintiff's compensable injuries by accident, Plaintiff is entitled to have Defendant-Employer, Owen Thomas, Inc., pay to Plaintiff, temporary total disability compensation at the rate of \$240.16 beginning June 30, 2011 to November 3,



2011. This amount totals \$4,356.50. N.C. Gen. Stat. § 97-29.

9. As a result of Plaintiffs compensable injuries by accident, Plaintiff is entitled to have Defendant-Employer, Owen Thomas, Inc., pay to Plaintiff, any permanent partial disability compensation for his right leg once a treating physician has assigned said rating. N.C. Gen. Stat. §97-31.

10. As a result of Plaintiffs compensable injuries by accident, Plaintiff is entitled to have Defendant-Employer, Owen Thomas, Inc., pay for any and all related medical expenses that tended to effect a cure, provide relief or lessened Plaintiff's period of disability. This amount includes balances to: Poudre Valley Health Center \$1,904.00 (ambulance), Poudre Valley Health Center \$65,298.25, Poudre Valley Medical Group \$336.00, Advanced Medical Imaging \$1,980.00, Beacon ER Physicians \$827.00, North Colorado Anesthesia \$1,288.00, Surgical Specialists of the Rockies \$334.00, CPN Myers Park Orthopedic \$344.00, Charlotte Radiology \$221.00, Orthopedic Center of the Rockies, \$2,537.00. This amount totals \$73,165.25. N.C. Gen. Stat. § 97-25, N.C. Gen. Stat. § 97-25.1.

11. Any employer required to secure payment of compensation who refuses and neglects to secure such compensation shall be punished by a penalty of one dollar (\$1.00) for each employee, but not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each day of such refusal or

neglect, and until the same ceases pursuant to N.C. Gen. Stat. §97-94(b). In the present case, Defendant-Employer, Goree Logistics, Inc., neglected or refused to insure its liability or otherwise comply with N.C. Gen. Stat. §97-93, beginning January 6, 2011 to June 30, 2011, a period of 138 days, which totals \$7,800.00.

12. Anyone with the ability and authority to bring their business into compliance with N.C. Gen. Stat. §97-93 and who fails to do so may be assessed a penalty equal to one hundred percent of the amount of compensation due Defendant's employees injured during the time his business failed to comply with N.C. Gen. Stat. §97-93 as set out in N.C. Gen. Stat. § 97-94(d). The civil penalty under N.C. Gen. Stat. §97-94(d), may include medical compensation in addition to indemnity compensation, *Putman V. Alexander*, 194 N.C. App. 578, 670 S.E.2d 610 (2009). Here, Defendant, Mandieme Diouf, had the ability and authority to bring his business in compliance with N.C. Gen. Stat. §97-93, but neglected to do so. The Commission may therefore assess a civil penalty against Mandieme Diouf in an amount up to one hundred percent of any compensation due to Plaintiff. This amount totals, \$77,521.75 (\$4,356.50 in TTD +? in PPD + \$73,165.25 in MEDS= \$77,521.75). N.C. Gen. Stat. §97-94(d).

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Based upon the foregoing Stipulations, Findings of Fact and Conclusions of Law, and when viewing

the foregoing by a preponderance of the evidence, the Undersigned enters the following:

**AWARD**

1. Defendant-Employer, Owen Thomas, Inc., shall pay to Plaintiff, temporary total disability compensation at the rate of \$240.16 beginning June 30, 2011 to November 3, 2011. This amount totals \$4,356.50. This amount shall be paid to Plaintiff in one lump sum.

2. Defendant-Employer, Owen Thomas, Inc., shall pay to Plaintiff, any permanent partial disability compensation for his right leg once a treating physician has assigned said rating.

3. Defendant-Employer, Owen Thomas, Inc., shall pay for any and all related medical expenses that tended to effect a cure, provide relief or lessened Plaintiff's period of disability. This amount includes balances to: Poudre Valley Health Center \$1,904.00 (ambulance), Poudre Valley Health Center \$65,298.25, Poudre Valley Medical Group \$336.00, Advanced Medical Imaging \$1,980.00, Beacon ER Physicians \$827.00, North Colorado Anesthesia \$1,288.00, Surgical Specialists of the Rockies \$334.00, CPN Myers Park Orthopedic \$344.00, Charlotte Radiology \$221.00, Orthopedic Center of the Rockies, \$2,537.00. This amount totals \$73,165.25. Plaintiff's counsel shall send a copy of this decision to all of the healthcare providers in this matter who have not been paid for services provided to Plaintiff related to

his compensable injury. The healthcare providers with outstanding bills in this matter **shall not** seek to obtain collection of these bills from Francis Atiapo. The healthcare providers shall direct their collection efforts at Defendant-Employer, Owen Thomas, Inc., whose address appears to be 37612 Daughtry Road, Zephyrhills, FL 33541, based upon information in the Industrial Commission file. Failure to comply with this Order by the healthcare providers and their collection agencies will result in the initiation of contempt proceedings against persons in violation of this Order.

4. A reasonable attorney's fee of 25% of the compensation awarded herein is approved for Plaintiff's counsel. This fee shall be deducted from the initial lump sum payment of temporary total disability benefits designated in paragraph 1. With regard to any permanent partial disability that is assigned to Plaintiff, Plaintiff's counsel shall receive 25% of this lump sum in the form of a separate lump sum.

5. Defendant-Employer, Goree Logistics, Inc., is ordered to pay the State of North Carolina penalties in the sum of \$7,800.00 which represents \$50.00 per day beginning January 6, 2011 to June 30, 2011, a period of 138 days, the time period that Defendant-Employer failed to secure workers' compensation coverage in accordance with the Workers' Compensation Act. Payment should include the Industrial Commission (I.C.) number and Penalty (PH) number. Payment shall be made to the Order of the North Carolina Industrial Commission and sent to: N.C.

Industrial Commission, Attn: Sharon Hodge, 4340 MAIL SERVICE CENTER, RALEIGH, NORTH CAROLINA 27699-4340. Payment will be accepted in the form of cashier's check, money order or certified check.

6. An additional penalty of 100% of the amount of the compensation due to Plaintiff in this matter is assessed against Mandieme Diouf, individually, for failing to comply with N.C. Gen. Stat. §97-93. A check in the amount of \$77,521.75 (\$4,356.50 in TTD + ? in PPD + \$73,165.25 in MEDS= \$77,521.75), shall be made payable to the North Carolina Industrial Commission. Payment shall be made to the Order of the North Carolina Industrial Commission and sent to: N.C. Industrial Commission, Attn: Sharon Hodge, 4340 MAIL SERVICE CENTER, RALEIGH, NORTH CAROLINA 27699-4340. Payment will be accepted in the form of cashier's check, money order or certified check.

7. Defendant-Employer, Owen Thomas, Inc., shall bear the costs of this action.

IT IS FURTHER ORDERED that this matter is HEREBY REMOVED from the Concord hearing docket.

/s/ Adrian Phillips

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**ADRIAN A. PHILLIPS**  
**DEPUTY COMMISSIONER**

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775 S.E.2d 858 (Mem)  
Supreme Court of North Carolina.

Frances ATIAPO, Employee

v.

GOREE LOGISTICS, INC., and  
Owen Thomas, Inc., Employer, NonInsured  
and  
The North Carolina Industrial Commission

v.

Goree Logistics, Inc., and Owen Thomas, Inc.,  
NonInsured, Employer, and Mandieme Diouf,  
Individually.

No. 139P15. | Aug. 20, 2015.

**Attorneys and Law Firms**

John F. Scarborough, Charlotte, for Owen Thomas,  
Inc.

Lawrence P. Margolis, Charlotte, for Goree Logistics,  
Inc., et al.

Kenneth C. Martin, Charlotte, for Atiapo, Frances.

Marc X. Sneed, Assistant Attorney General.

John F. Scarbrough, Attorney at Law, for Owen  
Thomas, Inc.

Sidney S. Eagles, Jr., Raleigh, for American Trucking  
Association, Inc. and North Carolina Trucking Asso-  
ciation.

***ORDER***

Upon consideration of the petition filed on the  
21st of April 2015 by Defendant (Owen Thomas, Inc.)  
in this matter for discretionary review of the decision

of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

“Denied by order of the Court in conference,  
this the 20th of August 2015.”

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49 U.S.C.A. § 13102. Definitions

Effective: July 30, 2008

In this part, the following definitions shall apply:

- (1) **Board.** – The term “Board” means the Surface Transportation Board.
- (2) **Broker.** – The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.
- (3) **Carrier.** – The term “carrier” means a motor carrier, a water carrier, and a freight forwarder.
- (4) **Contract carriage.** – The term “contract carriage” means –
  - (A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and
  - (B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).
- (5) **Control.** – The term “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by –



(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

**(6) Foreign motor carrier.** – The term “foreign motor carrier” means a person (including a motor carrier of property but excluding a motor private carrier) –

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

**(7) Foreign motor private carrier.** – The term “foreign motor private carrier” means a person (including a motor private carrier but excluding a motor carrier of property) –

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate

transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

**(8) Freight forwarder.** – The term “freight forwarder” means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business –

**(A)** assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

**(B)** assumes responsibility for the transportation from the place of receipt to the place of destination; and

**(C)** uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

**(9) Highway.** – The term “highway” means a road, highway, street, and way in a State.

**(10) Household goods.** – The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property

if the transportation of such effects or property is –

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

**(11) Household goods freight forwarder.** – The term “household goods freight forwarder” means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

**(12) Household goods motor carrier.** –

(A) **In general.** – The term “household goods motor carrier” means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

(i) Binding and nonbinding estimates.

(ii) Inventorying.

(iii) Protective packing and unpacking of individual items at personal residences.

(iv) Loading and unloading at personal residences.

**(B) Inclusion.** – The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

**(C) Limited service exclusion.** – The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

**(13) Individual shipper.** – The term “individual shipper” means any person who –

**(A)** is the shipper, consignor, or consignee of a household goods shipment;

**(B)** is identified as the shipper, consignor, or consignee on the face of the bill of lading;

**(C)** owns the goods being transported; and

**(D)** pays his or her own tariff transportation charges.

**(14) Motor carrier.** – The term “motor carrier” means a person providing motor vehicle transportation for compensation.

**(15) Motor private carrier.** – The term “motor private carrier” means a person, other than a motor carrier, transporting property by motor vehicle when –

(A) the transportation is as provided in section 13501 of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

**(16) Motor vehicle.** – The term “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

**(17) Noncontiguous domestic trade.** – The term “noncontiguous domestic trade” means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

**(18) Person.** – The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

**(19) Pre-arranged ground transportation service.** – The term “pre-arranged ground transportation service” means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular

route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

**(20) Secretary.** – The term “Secretary” means the Secretary of Transportation.

**(21) State.** – The term “State” means the 50 States of the United States and the District of Columbia.

**(22) Taxicab service.** – The term “taxicab service” means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that –

**(A)** is licensed as a taxicab by a State or a local jurisdiction; or

**(B)** is offered by a person that –

**(i)** provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

**(ii)** does not primarily provide transportation to or from airports.

**(23) Transportation.** – The term “transportation” includes –

**(A)** a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or

property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(24) **United States.** – The term “United States” means the States of the United States and the District of Columbia.

(25) **Vessel.** – The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(26) **Water carrier.** – The term “water carrier” means a person providing water transportation for compensation.

(27) **Over-the-road bus.** – The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.

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49 U.S.C.A. § 14501.

Federal authority over intrastate transportation

Effective: August 10, 2005

(a) **Motor carriers of passengers.** –

(1) **Limitation on State law.** – No State or political subdivision thereof and no interstate

agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to –

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or

(C) the authority to provide intrastate or interstate charter bus transportation.

This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

**(2) Matters not covered.** – Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.



**(b) Freight forwarders and brokers. –**

**(1) General rule. –** Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

**(2) Continuation of Hawaii's authority. –** Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

**(c) Motor carriers of property. –**

**(1) General rule. –** Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

**(2) Matters not covered. –** Paragraph (1) –

**(A)** shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose

highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

**(B)** does not apply to the intrastate transportation of household goods; and

**(C)** does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

**(3) State standard transportation practices. –**

**(A) Continuation.** – Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to –

- (i)** uniform cargo liability rules,
- (ii)** uniform bills of lading or receipts for property being transported,
- (iii)** uniform cargo credit rules,

(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

(v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

**(B) Requirements.** – A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if –

(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

**(C) Election.** – Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

**(4) Nonapplicability to Hawaii.** – This subsection shall not apply with respect to the State of Hawaii.

**(5) Limitation on statutory construction.** – Nothing in this section shall be construed to prevent a State from requiring that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee (or an employee or agent thereof) or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both.

**(d) Pre-arranged ground transportation.** –

**(1) In general.** – No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service –

**(A)** meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

**(B)** meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and

(C) is providing such service pursuant to a contract for –

(i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or

(ii) transportation by the motor carrier from one State, including intermediate stops in another State, to a destination in the original State.

(2) **Intermediate stop defined.** – In this section, the term “intermediate stop”, with respect to transportation by a motor carrier, means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

(3) **Matters not covered.** – Nothing in this subsection shall be construed –

(A) as subjecting taxicab service to regulation under chapter 135 or section 31138;

(B) as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential access or facilities to one or more providers of pre-arranged ground transportation service; and

(C) as restricting the right of any State or political subdivision of a State to require, in a nondiscriminatory manner, that any individual operating a vehicle providing prearranged ground transportation service originating in the State or political subdivision have submitted to pre-licensing drug testing or a criminal background investigation of the records of the State in which the operator is domiciled, by the State or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.

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N.C. Gen. Stat. § 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability

Effective: August 23, 2013

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without obtaining from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 for a specified term, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three

employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at any time before subletting such contract to the subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for compensation or other benefits under this Article and within the term specified by the certificate.

Notwithstanding the provisions of this section, any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of work shall not be held liable to any employee of such subcontractor if either (i) the subcontractor has a workers' compensation insurance policy in compliance with G.S. 97-93 in effect on the date of injury regardless of whether the principal contractor, intermediate contractor, or subcontractor failed to timely obtain a certificate from the subcontractor; or (ii) the policy expired or was cancelled prior to the date of injury provided the principal contractor, intermediate contractor, or subcontractor obtained a certificate at any time before subletting such contract to the subcontractor and was unaware of the expiration or cancellation.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor.

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N.C. Gen. Stat. § 97-19.1. Truck, tractor,  
or truck tractor trailer driver's status as  
employee or independent contractor

Effective: June 26, 2006

(a) An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee



or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

(b) Notwithstanding subsection (a) of this section, a principal contractor, intermediate contractor, or subcontractor shall not be liable as an employer under this Article for the payment of compensation on account of the injury or death of the independent contractor if the principal contractor, intermediate contractor, or subcontractor (i) contracts with an independent contractor who is an individual licensed by the United States Department of Transportation and (ii) the independent contractor personally is operating the vehicle solely pursuant to that license.

(c) The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business.

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**Data Source** CSA, MCMIS and ICC snapshot as of 10/23/2015

Total population of motor carriers domiciled in NC

Total Carrier	Interstate	Intra-HM	Intra-Non HM
36,121	25,246	443	10,432

Total U. S. population of motor carriers (for-hire & private), FF and Broker

Interstate, Intra-HM and Intra-non HM carriers				
Total Carrier	For-Hire Carrier (Authorized for Hire and Exempt for hire)	Private Carrier (Private Property; Private Passenger Business; Private Passenger Non-Business)	US Brokers	US Freight Forwarders
1,598,850	791,908	797,204	15,682	1,235

Note:

Freight Forwarder: prefix is 'FF', common or contract status is active, has current active authority 'HOUSEHOLD GOODS FREIGHT FORWARDER' or 'PROPERTY FREIGHT FORWARDER'

Broker: Broker status is active, has current active authority 'BROKER', 'HOUSEHOLD GOODS BROKER', or 'PROPERTY BROKER'

[LOGO] NORTH CAROLINA  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL **ROY COOPER**

July 2, 2007

Hon. Drew P. Saunders  
House of Representatives  
North Carolina General Assembly  
Legislative Building 16 W. Jones Street  
Raleigh, NC 27601-1096

Re: Advisory Opinion: Workers' Compensation Act;  
N.C.G.S. § 97-19.1; Regulation of Motor Carriers

Dear Representative Saunders:

Thank you for presenting the American Trucking Associations' White Paper concerning Section 97-19.1 of the North Carolina Workers' Compensation Act for our review. Your letter requests that we review whether N.C.G.S. § 97-19.1 violates the restrictions on State regulation as expressed in 49 U.S.C. § 14501(c).

**Does N.C.G.S. § 97-19.1 violate 49 U.S.C. § 14501(c)?** No. N.C.G.S. § 97-19.1, which provides that a motor carrier may be liable for workers' compensation benefits, does not violate 49 U.S.C. § 14501(c).

Section 97-19.1 of the North Carolina Workers' Compensation Act states in pertinent part:

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who

contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck trailer licensed by the United States Department of Transportation and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits . . .

The intent of this provision is to make it more likely that the independent trucker, his employees and subcontractors are afforded the protection of the Workers' Compensation Act through the purchase of workers' compensation insurance or other financial safeguards established in Section 97-93 of the Act. Section 97-19.1 allows the independent driver to purchase insurance or for the motor carriers up the chain of command to have secured coverage for the truckers below them in the chain. Thus, Section 97-19.1 establishes a requirement for workers' compensation insurance applicable to the trucking industry.

The United States Congress has specifically limited state and local government regulation of motor carriers. Section 14501(c) provides, in pertinent part:

**Motor carriers of property(1)**

General rule. Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having

the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4) [49 USC § 41713(b)(4)]) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property. (2) Matters not covered. Paragraph (1)(A) ***shall not restrict*** the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or ***the authority of the State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization***;

49 U.S.C. § 14501(c) (emphasis added); see *New Hampshire Motor Transport Assoc. v. Rowe*, 448 F.3d 66, 76 (1st Cir. 2006), *cert. granted*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 342, 166 L.Ed.2d 14 (2006); *Worldwide Moving & Storage v. District of Columbia*, 445 F.3d 422, 426 (D.C. Cir. 2006). Under this Federal regulation, “***insurance requirements***” is a specific exception. *New Hampshire Motor Transport Assoc.*, 448 F.3d at 76; *Worldwide Moving & Storage*, 445 F.3d at 426.

The effect of the “***insurance requirements***” exception has only been addressed in a few cases. In *New Hampshire Motor Transport Assoc. v. Rowe*, 448 F.3d 66 (1st Cir. 2006), *cert. granted*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 342, 166 L.Ed.2d 14 (2006), one of the cases cited in the American Trucking Association “white

paper,” the First Circuit Court of Appeals ruled that a statute enacted by the State of Maine to regulate the sale and delivery of tobacco products violated 49 U.S.C. § 14501(c), stating:

These provisions combine to bar states (subject to certain exceptions discussed later) from enacting laws related to prices, routes, or services of air or motor carriers of property.

*New Hampshire Motor Transport Assoc.*, 448 F.3d at 69 (referencing 49 U.S.C. §§ 14501, 41713). The exceptions, or areas that the State is allowed to regulate, specifically include insurance regulations:

the authority of the State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self insurance authorization.

*New Hampshire Motor Transport Assoc.*, 448 F.3d at 76. The First Circuit concluded that the statutory exceptions are to be interpreted narrowly and do not include the ability to broadly regulate “health and safety,” but specifically allow States to pass laws relating to insurance requirements. *Id.*

The insurance exclusion from the Federal Motor Carrier regulation was also discussed by the United States Court of Appeals for the District of Columbia in *Worldwide Moving & Storage v. District of Columbia*, 445 F.3d 422 (D.C. Cir. 2006). In this case, Worldwide challenged a District of Columbia regulation requiring a surety bond asserting that the

federal regulation preempted the local regulation. *Worldwide Moving & Storage*, 445 F.3d at 424. More specifically, Worldwide asserted that it complied with federal bonding requirements for interstate carriers, and thereby, the additional bonding requirements of the local ordinance violate 49U.S.C. § 14501(c). *Id.* The Court of Appeals rejected the moving company's arguments stating:

Worldwide contends the Superior Court's enforcement proceedings is [sic] preempted under two federal statutes. . . . The second statute is 49 U.S.C. § 14501(c)(1), which prohibits a state from enacting or enforcing laws or regulations governing aspects of interstate transportation. Section 14501(c)(2)(A), however, expressly states that the prohibition "shall not restrict . . . the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization," which appears to exempt from the prohibition the surety bond requirement imposed on Worldwide. *Id.* At 426. Thus, the D.C. Circuit refused to enjoin the enforcement of a District of Columbia surety bond ordinance.

The "white paper" presents numerous decisions, which address the broad reach of the federal regulations prohibiting local laws that relate "to a price, route, or service of any motor carrier." These cases, however, do not address the specific exception presented by Section 97 –



19.1 of the North Carolina Workers' Compensation Act; to wit, Section 14501(c)(2)(A)'s specific permission for the State "to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization." Because Section 97-19.1 appears to fall clearly within the exception to the Federal legislation, Section 97-19.1 should not be precluded by the Federal legislation. *See New Hampshire Motor Transport Assoc.*, 448 F.3d at 76; *Worldwide Moving & Storage*, 445 F.3d at 426; 49 U.S.C. § 14501(c)(A)(2) (States permitted to regulate insurance).

North Carolina has an interest in protecting the health and financial security of employees who are subject to its jurisdiction. *See Jenkins v. American Enka Corp.*, 95 F.2d 755 (4th Cir. 1938) (N.C. Workers' Compensation Act is constitutional). The philosophy of the Workers' Compensation Act is that the wear and tear of human beings in modern industry should be charged to the industry, just as the wear and tear of machinery has always been charged. *Vause v. Vause Farm Equipment Co.*, 233 N.C. 88, 92, 63 S.E.2d 173, 176 (1951). The social policy behind the North Carolina Workers' Compensation Act is two-fold: First, the Act provides employees with a swift and certain compensation for the loss of earning capacity and Second, the Act provides limited liability for employers. *Hendrix v. Linn-Corriher Corp.*, 317 N.C. 179, 190, 345 S.E.2d 374, 381 (1986).

North Carolina, consistent with other States, has chosen to protect employees through workers' compensation insurance. On Page h of the "white paper," the American Trucking Association suggests that its preferred coverage is "occupational accident insurance." This coverage provides some of the benefits available through the Workers' Compensation Act; however, occupational accident insurance is not a replacement for workers' compensation insurance. Occupational accident insurance policies often have limitations on triggering events (such as disability within 10 days of injury) and limitations on the benefits provided (i.e., \$100,000 cap). Further, the occupational accident insurance policies are not administered by an administrative body and thereby do not assure the injured employee a swift and certain compensation for injuries received on the job. *See Hendrix*, 317 N.C. at 190, 345 S.E.2d at 381 (one of the purposes of workers' compensation is to provide swift and certain benefits). Moreover, occupational accident insurance policies do not comply with the insurance requirements of the Workers' Compensation Act, and thereby do not necessarily afford the employer the protections of the Act. *See* N.C.G.S. § 97-98.

The current requirements expressed in Section 97-19.1 do not appear to violate 49 U.S.C. § 12405(c). *See New Hampshire Motor Transport Assoc.*, 448 F.3d at 76; *Worldwide Moving & Storage*, 445 F.3d at 426;

49 U.S.C. § 14501(c)(A)(2) (States permitted to regulate insurance).

Respectfully yours,

Ann Reed

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