

2010

Workers Compensation Fund and Iverson Steel and Erection Company and Wadman Company v. Argonaut Insurance Company : Brief of Appellant

Utah Court of Appeals

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IN THE SUPREME COURT OF THE STATE OF UTAH

WORKERS COMPENSATION FUND
and IVERSON STEEL AND ERECTION
COMPANY and WADMAN COMPANY,

Plaintiffs/Appellees,

vs.

ARGONAUT INSURANCE COMPANY,

Defendant/Appellant

Supreme Court No. 20100211-SC

Trial Court No. 020903830

BRIEF OF APPELLANT ARGONAUT INSURANCE COMPANY

On Appeal from the Salt Lake Department
For the Third Judicial District Court, State of Utah
The Honorable Denise P. Lindberg, District Judge

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STATEMENT OF JURISDICTION

This is an appeal from a final judgment overruling Argonaut's objections to the entry of judgment. This Court has jurisdiction pursuant to Utah Code Ann. § 78A-3-102.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the judgment entered on January 11, 2010 was allowed when the defendant requested a hearing so that damages could be contested.

Preservation: This issue was preserved in Argonaut's Objection to Proposed Order and Motion for Hearing on Remaining Issues Before this Court,¹ Objection to Plaintiffs' and Wadman's Motion to Enter Judgment,² Argonaut Insurance Company's Objection to the Minute Entry,³ and Argonaut Insurance Company's Objection to Judgment.⁴

Standard of Review: "Constitutional issues, including that of due process, are questions of law which [the court] review[s] for correctness."⁵ The Supreme Court reviews a district court's rulings on motions under Utah Rules of Civil Procedure Rules 59 and 60 for an abuse of discretion.⁶

¹R. 1334-1335.

²R. 1448-1449.

³R. 1454-1455.

⁴R. 1519-1520.

⁵*State in Interest of K.M.*, 965 P.2d 576, 578 (Utah App. 1998).

⁶*Warren v. Dixon Ranch Co.*, 260 P.2d 741, 742 (Utah 1953).

II. Whether the court was incorrect not to enter judgment against Wadman Corporation who was the statutory employer as previously found by this court.

Preservation: This issues was preserved in Argonaut Insurance Company's Objection to Judgment.⁷

Standard of Review: "A motion or action to modify a final judgment is addressed to the discretion of the trial court, the exercise of which must be based on sound legal principles in light of all relevant circumstances."⁸

III. Whether the court abused its discretion by failing to take evidence on the status of the relationship between Argonaut and Wadman.

Preservation: This issue was preserved in Argonaut's Objection to Proposed Order and Motion for Hearing on Remaining Issues Before this Court,⁹ Objection to Plaintiffs' and Wadman's Motion to Enter Judgment,¹⁰ and Argonaut Insurance Company's Objection to the Minute Entry.¹¹

Standard of Review: Appellate Courts review a district court's decision to not allow evidence for an abuse of discretion.¹²

⁷*Id.*

⁸*Gillmor v. Wright*, 850 P.2d 431, 434 (Utah 1993).

⁹R. 1334-1335.

¹⁰R. 1448-1449.

¹¹R. 1454-1455.

¹²*Bee v. Anheuser-Busch, Inc.*, 2009 UT App 35, ¶9, 204 P.3d 204.

IV. Whether the Labor Commission has exclusive jurisdiction to determine allowable benefits when they are in dispute and whether interest should be charged and at what rate.

Preservation: This was preserved in Argonaut Insurance Company's Objection to Judgment.¹³

Standard of Review: "Whether the Commission has exclusive jurisdiction to determine entitlement to workers' compensation benefits is an issue of law subject to a correctness standard of review."¹⁴

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

United States Constitution Amendment XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Constitution Article I § 7

No person shall be deprived of life, liberty or property, without due process of law.

Utah Rules of Civil Procedure, Rule 54(d)(2)

How assessed. The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a

¹³R. 1519-1520.

¹⁴*Sheppick v. Albertson's, Inc.*, 922 P.2d 769, 773 (Utah 1996).

memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to the affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

Utah Rules of Civil Procedure, Rule 59(a)(1), (a)(5), (a)(6), and (a)(7)

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

Utah Rules of Civil Procedure, Rule 60(b)

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore

denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Utah Code Ann. § 15-1-1(2) (West 2010)

(2) Unless parties to a lawful contract specify a different rate of interest, the legal rate of interest for the loan or forbearance of any money, goods, or chose in action shall be 10% per annum.

Utah Code Ann. § 15-1-4 (West 2010)

(3)(a) Except as otherwise provided by law, other civil and criminal judgments of the district court and justice court shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

Utah Code Ann. § 34A-2-401(2) (West 2002)

(2) The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be:

- (a) on the employer and the employer's insurance carrier; and
- (b) not on the employee.

Utah Code Ann. § 34A-2-407(11)(a) (West 2002)

(11)(a) Subject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to employees by physicians, surgeons, or other health providers are:

- (i) reasonably related to industrial injuries or occupational diseases; and
- (ii) compensable pursuant to this chapter or Chapter 3, Utah Occupational Disease Act.

Utah Code Ann. § 34A-2-420(3) (West 2002)

(3) Awards made by final order of the commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable.

STATEMENT OF THE CASE

This case originated with a declaratory judgment action requesting the court to declare duties of the parties involved in the construction of the Santa Clara Intermediate School (the “Project”) for Washington County School District which elected to participate in the Owner Controlled Insurance Program (“OCIP”) sponsored by the State of Utah. The main dispute is who is responsible to pay workers’ compensation benefits to Cory Searle (“Mr. Searle”), an employee of Iverson Steel and Erection Company (“Iverson”) who was injured while working on the Project.¹⁵ Argonaut Insurance Company (“Argonaut”) filed a motion for summary judgment against Iverson Steel claiming that no contract existed between them and thus no coverage could be afforded to its employee.¹⁶ The district court granted the motion and WCF appealed. This Court found that no contract existed between Argonaut and Iverson, but that Argonaut would have to pay Mr. Searle’s benefits because it was the insurance carrier for Wadman Corporation

¹⁵R. 135.

¹⁶R. 424-553.

(“Wadman”), the statutory employer of Mr. Searle.¹⁷ It then remanded the case to the district court for “action consistent with this opinion.”¹⁸

On remand, Argonaut requested a hearing to allow the court to determine the policy between Wadman and Argonaut and the amount of benefits due to Mr. Searle.¹⁹ The coverage under the insurance policy had never been before the district court and Mr. Searle’s benefits had not been determined by the Labor Commission, which has exclusive jurisdiction over the determination of benefits. Without a resolution of these issues, proper damages could not be assessed. Despite Argonaut’s objections, the district court entered judgment based on a judgment submitted by WCF. Because the district court overruled Argonaut’s objections, it did not have an opportunity to present contrary evidence to the damages, costs, and interest submitted by WCF. Argonaut appeals the entry of judgment by the district court.

STATEMENT OF FACTS

Nature of the Case: The Washington County School District was the owner of the Project and Wadman was the successful bidder to be the general contractor for the Project.²⁰ As part of the bid specifications, the requirements of the State of Utah OCIP Manual were incorporated into the final contract between Wadman and the Washington

¹⁷R. 1332.

¹⁸*Workers’ Compensation Fund v. Wadman*, 2009 UT 18, ¶41, 210 P.3d 277.

¹⁹R. 1334-1335.

²⁰R. 137.

County School District.²¹ The OCIP Manual states that it does not provide coverage interpretations and that the policy governs.²² After the project began, Wadman hired Iverson because its original steel erection subcontractor was behind schedule.²³ Iverson began work on January 28, 2002.²⁴ On February 7, 2002, Mr. Searle was injured when he fell from a second story level to the concrete floor below.²⁵ Iverson's enrollment form was submitted on February 8, 2002.²⁶ Argonaut issued a workers' compensation policy to Iverson effective February 8, 2002.²⁷ The case was filed as a declaratory relief action to determine who was responsible to pay benefits to Mr. Searle.²⁸

Procedural History: This case originated in May of 2002 when the Workers' Compensation Fund ("WCF") filed a complaint for declaratory relief against the State of Utah Department of Administrative Services, Department of Risk Management, Willis of Utah, Inc., Washington County School District, Wadman, and Argonaut.²⁹ Iverson

²¹R. 462.

²²R. 581.

²³R. 506-507.

²⁴R. 519.

²⁵R. 525-526

²⁶R. 499.

²⁷R. 529.

²⁸R. 135.

²⁹R. 1-12.

assigned its rights to WCF³⁰ and WCF filed an amended complaint naming itself and Iverson as plaintiffs on November 1, 2002.³¹ After discovery, Argonaut filed a motion for summary judgment.³² The motion was based on the fact that Argonaut did not have a contract of insurance with Iverson or Mr. Searle.³³ All defendants but Wadman also filed motions for summary judgment.³⁴ WCF stipulated to a dismissal of Willis of Utah, Inc.³⁵ The district court granted the motions for summary judgment and Argonaut, State of Utah Department of Administrative Services, Division of Risk Management, and Washington County School District were dismissed from the case with prejudice.³⁶

WCF and Iverson appealed the orders granting summary judgment.³⁷ Wadman also appealed.³⁸ After the appeal was filed, but before oral argument, WCF settled with Washington School District and the Division of Risk Management.³⁹ Prior to a mediation,

³⁰R. 56-58.

³¹R. 149 and 134-147.

³²R. 424-426.

³³R. 435.

³⁴R. 554-705.

³⁵R. 1225-1230.

³⁶R. 1237-1251.

³⁷R. 1252-1254.

³⁸R. 1264.

³⁹R. 1289-1291.

Wadman assigned its Rights to WCF.⁴⁰ WCF advanced four reasons that Argonaut was responsible to pay the benefits to Mr. Searle. Those arguments were (1) Wadman was Argonaut's agent, (2) Iverson's employees were loaned employees, (3) Argonaut must provide coverage because the Project was an OCIP project and Argonaut was the OCIP insurer, and (4) Wadman was the statutory employer of Mr. Searle and Argonaut must provide coverage as Wadman's insurer.⁴¹

This Court rejected all but the last of WCF's arguments.⁴² This Court found Wadman to be Mr. Searle's statutory employer, that Argonaut was Wadman's insurance carrier, and remanded the case to the district court for action consistent with its opinion.⁴³ Once back in the district court, Argonaut objected to WCF's proposed order and made a motion for a hearing on the remaining issues.⁴⁴ Specifically, Argonaut sought a review of the policy that controlled the relationship between Argonaut and Wadman and an opportunity to present evidence regarding issues not addressed by this Court pursuant to its due process rights.⁴⁵ Argonaut also filed an Objection to Plaintiffs' and Wadman's Motion to Enter Judgment again stressing the need for the determination of evidentiary

⁴⁰R. 1302

⁴¹*Id.*

⁴²R. 1322.

⁴³R. 1332.

⁴⁴R. 1334-1335.

⁴⁵R. 1338-1341.

issues.⁴⁶ The district court overruled Argonaut's objections finding there were no issues remaining.⁴⁷ Argonaut objected to this judgment.⁴⁸ This objection was also overruled and the district court entered judgment against Argonaut.⁴⁹ Argonaut objected the judgment asserting that it should have been entered against Wadman, the support for damages was insufficient and inconsistent with applicable law, and that the Labor Commission should determine the benefits due to Mr. Searle.⁵⁰ The district court again overruled Argonaut's objection and entered a final judgment on February 10, 2010.⁵¹ Argonaut filed its Notice of Appeal on March 8, 2010.⁵²

SUMMARY OF ARGUMENTS

The district court erred when it overruled Argonaut's objections and motions in opposition to the entry of judgment. Specifically, the district court should have allowed a hearing on damages, entered judgment against Wadman Corporation, and taken evidence on the relationship between Argonaut and Wadman. Also, the district court lacked jurisdiction to determine the workers' compensation benefits due to Mr. Searle and

⁴⁶R. 1448-1449.

⁴⁷R. 1451-1452.

⁴⁸R. 1454-1455.

⁴⁹R. 1476-1482.

⁵⁰R. 1519-1520.

⁵¹R. 1533.

R. 1548.

applied the wrong interest rate.

No Hearing on Damages: The district court entered judgment against Argonaut for \$790,484.59 based on cursory support by WCF and not allowing Argonaut to present evidence in violation of Argonaut's due process rights. Argonaut made several objections putting the district court on notice that its rights were in jeopardy. Argonaut also objected after the judgment was entered, giving the district court the opportunity to correct the error pursuant to Utah Rules of Civil Procedure 59 and/or 60. The district court should have allowed a hearing to determine the proper amount of damages.

No Judgment Against Wadman: This Court previously found that Wadman Corporation was the statutory employer of Mr. Searle. The Workers' Compensation Act requires that employers and their insurance carriers be responsible for the payment of benefits. The district court's refusal to include Wadman on the judgment was a violation of the Workers' Compensation Act and prior Utah case law.

No Evidence on the Relationship Between Wadman and Argonaut: The district court ruled that all coverage issues were determined by the Supreme Court. However, the OCIP Manual clearly states that the policy governs any coverage interpretations. The policy at issue in this case has never been put in evidence or interpreted by the court. Before Argonaut can be required to pay Mr. Searle's benefits, the policy must be interpreted to determine the type and amount of benefits to which Mr. Searle is entitled.

Labor Commission has Exclusive Jurisdiction Over Benefits: In entering judgment against Argonaut, the trial court effectively determined the type and amount of workers'

compensation benefits due to Mr. Searle. The Workers' Compensation Act gives the Labor Commission exclusive jurisdiction over the determination of benefits. The district court recognized this in its judgment. Despite its knowledge of the Labor Commission's jurisdiction, the district court set the benefits for Mr. Searle. Argonaut should have the opportunity to defend Mr. Searle's claims in front of the Labor Commission.

In addition, the district court used interest rates applicable to contracts in its judgment. The Workers' Compensation Act sets the interest rate for workers' compensation claims and this Act governs the benefits due in this case. The district court's judgment should be corrected using the correct interest rate.

ARGUMENT

I. Whether the Judgment Entered on January 11, 2010 was allowed when the defendant requested a hearing so that damages could be contested

After receiving the case on remand, Judge Lindberg entered a preliminary judgment on January 11, 2010 based on a proposed order drafted by the WCF.⁵³ This judgment was finalized on February 10, 2010.⁵⁴ However, Argonaut objected to the WCF's proposed order prior to the entry of the January 11, 2010 order.

On September 10, 2009, Argonaut filed its Objection to Proposed Order and Motion for Hearing on Remaining Issues Before this Court, pursuant to plaintiff's

⁵³R. 1476.

⁵⁴R. 1533.

complaint for declaratory relief.⁵⁵ One of the remaining issues before the trial court was the amount of damages. Argonaut again objected to the WCF's Motion to Enter Judgment on October 14, 2009.⁵⁶ The WCF's proposed order ignored several evidentiary issues such as the amount of damages that the trial court needed to rule upon.

Despite these objections and the need for a hearing to determine the amount of damages, Judge Lindberg entered a minute entry on December 11, 2009 overruling Argonaut's objections.⁵⁷ However, in overruling the objections, the trial court also recognized that Argonaut should have the opportunity to present a defense regarding damages. The court stated

once the Court has received and reviewed WCF's memorandum in support of taxable costs and "necessary disbursements in the action," *and Argonaut has had an opportunity to respond, see Utah Rule of Civil Procedure 54(d)(2)*, the Court will consider the submissions and, as necessary, enter an appropriate supplement to the Judgment.⁵⁸

Argonaut was never given an opportunity to respond. Argonaut objected to the Minute Entry again asking that the "proper evidence be evaluated before an Order is actually entered"⁵⁹ WCF filed its memorandum in opposition to this objection

⁵⁵R. 1334-1335.

⁵⁶R. 1448-1449.

⁵⁷R. 1451-1451.

⁵⁸R. 1451 (emphasis added).

⁵⁹R. 1455.

on December 22, 2009.⁶⁰ Pursuant to Utah Rule of Civil Procedure 7(c)(1), Argonaut should have had the opportunity to file a reply memorandum. Instead, the trial court entered a judgment on January 11, 2010.⁶¹

The district court's entry of judgment was improper. Argonaut objected to the entry of this judgment because it allowed WCF to recover administrative costs, adds prejudgment interest, and because the Labor Commission has exclusive jurisdiction over determining the amount of monies paid.⁶² This judgment was also inconsistent with this Court's prior decision in this case. This Court found that Wadman was the statutory employer of Mr. Searle and remanded the case back to the district court for "action consistent with this opinion."⁶³ On remand, the proper action for the district court would be to enter a judgment stating that Wadman was the statutory employer of Mr. Searle and then transfer the case to the Labor Commission to determine the benefits due to Mr. Searle. Instead, the district court entered judgment against Argonaut and awarding WCF damages it was not entitled to receive.

Because the district court did not follow this Court's decision, Argonaut never had an opportunity to rebut the damages claimed by WCF. WCF filed for

⁶⁰R. 1457.

⁶¹R. 1476 and 1478-1482.

⁶²R. 1519-1520.

⁶³*Workers' Compensation Fund v. Wadman Corp.*, 2009 UT 18, ¶ 41, 210 P.3d 277.

declaratory relief in this action asking the court to determine who was responsible to pay workers' compensation benefits..⁶⁴ The district court's award of damages to WCF including administrative costs and interest at 10% exceeded the relief sought in the complaint for declaratory relief. WCF's action for declaratory relief does not entitle it to administrative costs or interest at 10%. Although the Utah Declaratory Judgment Act allows a court to provide supplementary relief, it also requires that the adverse party be allowed to respond.⁶⁵ Despite these objections, the trial court finalized its judgment on February 10, 2010⁶⁶ without giving Argonaut the opportunity to respond to WCF's claims to damages. The trial court erred in entering judgment against the objections of Argonaut.

The district court's failure to hold a hearing on damages violated Argonaut's due process rights. Also, the district court's overruling of Argonaut's objections to the judgment constituted an abuse of discretion in violation of Utah Rules of Civil Procedure 59 and/or 60.

A. The District Court's Failure to Hold a Hearing on Damages Violated Argonaut's Due Process Rights.

The trial court's entry of judgment on January 11, 2010, which was finalized on February 10, 2010, without allowing a hearing regarding damages deprived Argonaut of

⁶⁴R. 134, 135.

⁶⁵See Utah Code Ann. 1953 § 78-33-8 (2002).

⁶⁶R. 1533.

its right to due process of law. The trial court's actions denied Argonaut the opportunity to defend itself from WCF's claims of damages. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."⁶⁷

Argonaut has not been allowed to present its objections.

Argonaut has not been afforded the opportunity to present its objections to the amount of damages because the district court refused to allow a hearing. Instead, the district court accepted the amount of damages unilaterally set by WCF. The only support provided by WCF as to the amount of damages were cursory computer printouts.⁶⁸ These printouts had no foundation and do little to support WCF's claim to damages. Also, the WCF failed to provide any evidence of the administrative costs incurred or cite any authority showing they are authorized to receive such costs.⁶⁹ Argonaut is entitled to have WCF prove the amount of damages and present its own evidence regarding damages. "Parties to a judicial proceeding are entitled to notice 'that a particular issue is being considered by a court' and must be given 'an opportunity to present evidence and

⁶⁷*Jackson Construction Co. v. Marrs*, 2004 UT 89, ¶10, 100 P.3d 1211 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

⁶⁸R. 1514 and 1518.

⁶⁹R. 1481.

argument on that issue before decision.”⁷⁰ Also, “[i]t is elementary that a court may not make findings binding upon a defendant without a hearing, or an opportunity to be heard.”⁷¹ Argonaut was not provided an opportunity to present evidence regarding damages in violation of its due process rights guaranteed by the United States and Utah Constitutions.⁷²

B. The District Court Abused its Discretion in Not Treating Argonaut’s Objections as Motions Under Utah Rules of Civil Procedure 59 and/or 60.

Additionally, WCF has argued that there is no Utah Rule of Civil Procedure that allows Argonaut to seek relief from the judgment entered against it.⁷³ However, there are at least two rules that allow Argonaut to challenge the judgment entered in this case.

Those rules are Rule 59 and Rule 60 of the Utah Rules of Civil Procedure.

1. Argonaut’s objections to the judgment should be treated as a motion for new trial or amendment of judgment under Rule 59.

Rule 59(a) provides

on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and

⁷⁰*State in Interest of K.M.*, 965 P.2d 576, 579 (Utah App. 1998) (quoting *Plumb v. State*, 809 P.2d 734, 743 (Utah 1990).

⁷¹*Riggins v. District Court of Salt Lake County*, 51 P.2d 645, 660 (Utah 1935).

⁷²See U.S. Constitution, Amendment XIV, § 1 and Utah Constitution Article I § 7.

⁷³See R. 1463 (WCF is “unaware of any Utah Rule of Civil Procedure that provides for such redundant pleadings.”) and R. 1523 (“Once again, Argonaut cites to no Utah Rule of Civil Procedure or other authority for its right to object at this procedural point”).

conclusions, and direct the entry of a new judgment.

Such action by the trial court is allowed under a variety of circumstances. Those that are applicable to this case are irregularity in the proceedings of the court by which either party was prevented from having a fair trial, excessive or inadequate damages, insufficiency of the evidence to justify the verdict or other decision, and error in law.⁷⁴

Argonaut was not afforded a fair trial because it was not allowed a hearing on damages. The damages awarded against Argonaut are likely excessive because Argonaut has not been given the opportunity to rebut the claims of WCF. Finally, the evidence presented by WCF as to damages is insufficient to justify the award. WCF only provides two pieces of paper to justify \$790,484.59 in damages.

The fact that Argonaut's filings were captioned "objections" rather than "motions for new trial" is immaterial. "If the nature of the motion can be ascertained from the substance of the instrument, ... an improper caption is not fatal to that motion."⁷⁵ Argonaut's objections clearly stated that the entry of judgment would be and was improper. Argonaut's objections were sufficient to act as motions for new trial or amendment of judgment and the trial court abused its discretion in not allowing Argonaut to present evidence to rebut WCF's claims as to the amount and nature of damages.

⁷⁴See Utah Rule of Civil Procedure 59(a)(1), (a)(5), (a)(6) and (a)(7).

⁷⁵*Armstrong Rubber Co. v. Bastian*, 657 P.2d 1346, 1348 (Utah 1983). See also *Howard v. Howard*, 356 P.2d 275, 276 (Utah 1960).

2. Argonaut's objections should be treated as a motion for relief from judgment or order pursuant to Rule 60(b).

If Argonaut's objections cannot be considered as a motion for new trial pursuant to Rule 59, the objections should be treated as motions for relief from judgment pursuant to Rule 60(b). This rule provides that "on motion and upon such terms as are just, the court may in the furtherance of justice relieve a party ... from a final judgment."⁷⁶ Relief from a final judgment is allowed for any reason "justifying relief from the operation of the judgment."⁷⁷ As was noted above, the fact that the objections may not have been correctly captioned is immaterial.

"It is well established that 60(b) motions should be liberally granted because of the equitable nature of the rule. Therefore, a district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities."⁷⁸ Argonaut was deprived of an opportunity to address the damages issue on the merits because the trial court refused to have a hearing and instead instituted a judgment based on the unilateral assertions of WCF. The trial courts repeated overruling of Argonaut's objections were a series of "misfortunes which prevent[ed] the presentation of a claim or defense"⁷⁹ and this Court should reverse the trial court's

⁷⁶Utah Rule of Civil Procedure 60(b).

⁷⁷*Id.*

⁷⁸*Menzies v. Galetka*, 2006 UT 81, ¶54, 150 P.3d 480.

⁷⁹*Warren v. Dixon Ranch Co.*, 260 P.2d 741, 742 (Utah 1953).

rulings and require a hearing on damages.

II. Whether the District Court was Incorrect not to Enter Judgment Against Wadman Corporation who was the statutory employer as previously found by the Supreme Court.

The district court erred in entering judgment only against Argonaut. This Court found that Wadman was the statutory employer of Mr. Searle.⁸⁰ Utah Code Ann. § 34A-2-401(2) provides that responsibility to pay benefits is “on the employer and the employer’s insurance carrier.”⁸¹ As the statutory employer of Mr. Searle, Wadman is also liable for benefits due to Mr. Searle.

Utah courts have repeatedly found that statutory employers are liable for compensation benefits. In *BB & B Transportation v. Industrial Commission of Utah*, 893 P.2d 611 (Utah App. 1995), the court found that a trucker driver’s employer and statutory employer were both responsible for workers’ compensation benefits.⁸² Also, the court in *Pinnacle Homes, Inc. v. Labor Commission*, 2007 UT App 368, 173 P.3d 208, found that a contractor (statutory employer) and subcontractor were liable to pay the workers’ compensation benefits due to a roofer that fell in the course of his employment. In affirming the decision of the Appeals Board, the court stated that Utah Code Ann. § 34A-2-401 “requires employers to provide workers’ compensation benefits

⁸⁰See *Workers’ Compensation Fund v. Wadman Corp.*, 2009 UT 18, ¶33, 210 P.3d 277.

⁸¹Utah Code Ann. 1953 § 34A-2-401(2)(a) (2002).

⁸²*BB & B Transportation*, 893 P.2d at 614.

to employees injured in work-related accidents.”⁸³ Utah law requires that statutory employers be liable for benefits to injured employees. The district court’s failure to include Mr. Searle’s statutory employer Wadman on the judgment violates the Workers’ Compensation Act and the prior decisions of Utah courts.

III. Whether the District Court Abused its discretion by failing to take evidence on the status of the relationship between Argonaut and Wadman

The district court refused to allow Argonaut to present evidence of the contract and the status of the relationship between Argonaut and Wadman.⁸⁴ This decision prevented Argonaut from presenting issues to the district court that had not yet been addressed in the litigation. The insurance contract between Argonaut and Wadman has not been put into evidence in this case. That contract is the controlling document that will determine what benefits Argonaut is required to pay on behalf of Wadman to its statutory employee Mr. Searle. It is common knowledge that insurance contracts contain provisions that may limit coverage of an insured. Argonaut, Wadman, and WCF must have the opportunity to review this contract and have a court of competent jurisdiction interpret its provisions. Not allowing the parties this opportunity is error.

WCF contends, and the trial court agreed, that all terms of the contract between Wadman and Argonaut are contained in the OCIP Manuals in evidence, that all terms of the OCIP Contract are set by statute, and that there are no more issues remaining before

⁸³*Pinnacle Homes*, 2007 UT App 368 at ¶9.

⁸⁴R. 1451.

the trial court.⁸⁵ These assertions are incorrect. First, the OCIP Manual was prepared by Willis⁸⁶ and the representations of coverage in the manual were not made by Argonaut. Thus, those representations cannot be binding on Argonaut.⁸⁷ Also, the OCIP Manual clearly states that it “[d]oes not and is not intended to provide coverage interpretations. The terms and conditions of the policies alone govern how coverage is applied.”⁸⁸ The policies that are now at issue in this case have never been put in evidence. To state that all terms of the contract and policies have been before the court is false. As the OCIP Manual states, the policy is controlling and must be interpreted by the court.

IV. Whether the Labor Commission has exclusive jurisdiction to determine allowable benefits when they are in dispute and whether interest should be charged and at what rate.

The district court erred when it entered judgment including damages because it does not have jurisdiction to determine workers’ compensation benefits. Also, the interest rate charged by the court was in error because the Workers’ Compensation Act sets the rate of interest for workers’ compensation benefits.

⁸⁵See e.g. R. 1355-1358 and R. 1451.

⁸⁶R. 579.

⁸⁷See *City Elec. v. Dean Evans Chrysler-Plymouth*, 672 P.2d 89, 90 (Utah 1983) (“It is the principal who must cause third parties to believe that the agent is clothed with apparent authority.”) and Restatement (Second) of Agency § 7 (2007) (Only when principal has manifested consent does agent have the power to affect the legal relations of the principal).

⁸⁸R. 581.

A. The Labor Commission has exclusive jurisdiction to determine workers' compensation benefits.

The district court lacked jurisdiction to enter a judgment that awarded workers' compensation benefits. Only the Labor Commission has jurisdiction to determine allowable benefits in workers' compensation cases. The district court even recognized this in its judgment.⁸⁹ The Workers' Compensation Act explicitly provides that "[s]ubject to appellate review under Section 34A-1-303, the commission has exclusive jurisdiction to hear and determine whether the treatment or services rendered to employees by physicians, surgeons, or other health providers are: (i) reasonably related to industrial injuries ... and (ii) compensable pursuant to this chapter"⁹⁰ In addition, the Workers' Compensation Act prohibits those seeking the collection or payment of benefits from maintaining "a cause of action in any forum within this state other than the commission"⁹¹ subject to a few exceptions that are not applicable in this case.

The district court in this case had no jurisdiction to determine the amount of benefits payable to Mr. Searle. "District courts have no jurisdiction whatsoever over the

⁸⁹"Any dispute regarding the benefits provided pursuant to the Utah Workers Compensation Act is the [sic] exclusively within the jurisdiction of the Utah Labor Commission." R. 1481.

⁹⁰Utah Code Ann. 1953 § 34A-2-407(11)(a) (2002). Mr. Searle was injured on February 7, 2002 and the statute cited was the statute in effect at the time of his injury. The current version of 34A-2-407(11)(a) also gives the Labor Commission exclusive jurisdiction to determine "the reasonableness of the amounts charged or paid" and "collection issues related to a good or service."

⁹¹Utah Code Ann. 1953 § 34A-2-407(11)(b) (2002).

determination of the amount of a compensation award or an award of medical benefits.”⁹² The Workers’ Compensation Act allows resort to a district court only if an employee is injured by a willful or intentional tortious act or if an employer fails to comply with the insurance requirements of the act.⁹³ These exceptions are not applicable and the district court erred when it entered an award against Argonaut for the workers’ compensation benefits of Mr. Searle.

In a prior appeal, this Court stated “[b]ecause Wadman’s policy with Argonaut was still valid and Mr. Searle was the statutory employee of Wadman, Argonaut must pay Mr. Searle’s compensation benefits.”⁹⁴ The district court, in violation of the Workers’ Compensation Act and Argonaut’s due process rights, accepted WCF’s unilateral determination of Mr. Searle’s compensation benefits and entered judgment with damages against Argonaut. The Labor Commission has the exclusive jurisdiction to determine Mr. Searle’s compensation benefits and Argonaut has the right to present evidence before the Labor Commission. Mr. Searle’s proceeding before the Labor Commission has been stayed pending resolution of this case.⁹⁵ The district court should

⁹²*Stokes v. Flanders*, 970 P.2d 1260, 1262 (Utah 1998). *See also Sheppick v. Albertson’s, Inc.*, 922 P.2d 769, 773 (Utah 1996) (“District courts have no jurisdiction whatsoever over cases that fall within the purview of the Workers’ Compensation Act”) and cases cited therein.

⁹³*See Sheppick*, 922 P.2d at 774 and Utah Code Ann. 1953 §34A-2-207.

⁹⁴*Workers’ Compensation Fund v. Wadman Corp.*, 2009 UT 18, ¶40, 210 P.3d 277; R. 1313.

⁹⁵R. 709.

have transferred the damages portion of the judgment to the Labor Commission for determination instead of accepting the WCF's cursory assertions of the benefits due to Mr. Searle. Argonaut must be able to present its case before the Labor Commission and have the Labor Commission determine what medical expenses are related to the accident and if those medical expenses were reasonable.

B. The District Court erred when it awarded prejudgment interest as provided in Utah Code Ann. § 15-1-1 and postjudgment interest as provided in Utah Code Ann. § 15-1-4.

The district court erred because the Workers' Compensation Act has its own interest provisions that apply to this case so Utah Code Ann. §§ 15-1-1 and 15-1-4 are inapplicable to this case.

1. Utah Code Ann. § 15-1-1 only applies between parties to a contract.

The district court awarded WCF \$239,421.49 in prejudgment interest based on Utah Code Ann. § 15-1-1. However, this statute is inapplicable to this case. Utah Code Ann. § 15-1-1 only applies to parties to a lawful contract. There is no contract between Argonaut and WCF and so this statute does not apply. This Court in *Wilcox v. Anchor Wate, Co.*, 2007 UT 39, 164 P.3d 353 reversed a district court judge's award of interest based on Utah Code Ann. § 15-1-1. The Court found that "[o]nly when the parties to a contract fail to specify a rate of interest does the default rate specified in section 15-1-1(2) apply."⁹⁶ The Court found the district court erred because there was no contract

⁹⁶*Wilcox*, 2007 UT 39, ¶44.

between the parties in *Wilcox* and that the appropriate rate of interest was that provided by the statutes governing distribution of estates.⁹⁷

Like the parties in *Wilcox*, there is no contract between Argonaut and WCF that would trigger the applicability of Utah Code Ann. § 15-1-1. Also, as in *Wilcox*, this case involves statutory provisions that provide an interest rate. The Workers' Compensation Act provides that interest of 8% per annum is payable "from the date when each benefit payment would have otherwise become due and payable."⁹⁸ The district court's award of pre-judgment interest relying on vague calculations based on unsupported claim payment cash flows for calendar years by WCF⁹⁹ is in direct violation of this statute.

There is no contract between Argonaut and WCF to make Utah Code Ann. § 15-1-1 applicable to the judgment in this case. Pursuant to the Workers' Compensation Act, interest can only be applied from the date when each benefit was payable. This will require the Labor Commission to determine what benefits are due to Mr. Searle and when the benefits were and are payable. The district court erred in granting prejudgment interest.

⁹⁷*Id.*

⁹⁸Utah Code Ann. § 34A-2-420(3) (2002).

⁹⁹*See* R. 1517-1518.

2. The Workers' Compensation Act has its own interest provision that is applicable to this case.

The post-judgment interest awarded by the district court is based on Utah Code Ann. § 15-1-4. Like Utah Code Ann. § 15-1-1, this provision is inapplicable to this case. This statute applies to contracts and obligations in general.¹⁰⁰ There is no contract between Argonaut and WCF and Argonaut is to pay Mr. Searle's compensation benefits not an obligation to WCF.¹⁰¹ This case involves the payment of workers' compensation benefits and, as was established above, the Workers' Compensation Act and the Labor Commission should govern the amount of payments in this case. Utah Code Ann. § 15-1-4 is inapplicable and the interest rate set forth in the Workers' Compensation Act governs.

Interest on workers' compensation benefits is governed by Utah Code Ann. § 34A-2-420. This section provides that "[a]wards made by final order of the commission shall include interest at the rate of 8% per annum from the date when each benefit payment would have otherwise become due and payable."¹⁰² There has not been a final award entered by the Labor Commission regarding benefits due to Mr. Searle and therefore it was improper for the district court to enter a judgment with interest against Argonaut at the rate of 10%. Interest should be awarded at the rate provided by the

¹⁰⁰See Utah Code Ann. § 15.

¹⁰¹See *Workers' Compensation Fund v. Wadman Corp.*, 2009 UT 18, ¶40, 210 P.3d 277.

¹⁰²Utah Code Ann. § 34A-2-420(3).

Workers' Compensation Act and only on a final order by the Labor Commission.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's entry of judgment and require a hearing on damages where evidence of the policy can be presented or allow the Labor Commission to determine the benefits due to Mr. Searle.

DATED this 7 day of July, 2010.

PLANT, CHRISTENSEN & KANELL


Theodore E. Kanell

Daniel E. Young
Attorneys for Appellants
Argonaut Insurance Company

ORAL ARGUMENT

Argonaut requests oral argument be scheduled in this matter.

RESPECTFULLY SUBMITTED this 7 day of July, 2010.

PLANT, CHRISTENSEN & KANELL

A handwritten signature in black ink, appearing to read 'Theodore E. Kanell', is written over a horizontal line.

Theodore E. Kanell

Daniel E. Young

Attorneys for Appellants

Argonaut Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2010, a true and correct copy of **BRIEF OF APPELLANT ARGONAUT INSURANCE COMPANY** was mailed, postage prepaid to the following:

James R. Black
James R. Black & Associates
265 E. 100 S., Ste 255
Salt Lake City, UT 84111

Dennis V. Lloyd
Workers Compensation Fund
100 West Towne Ridge Parkway
Sandy, UT 84070

Daniel E. Young

ADDENDUM

Pursuant to Utah Rules of Appellate Procedure Rule 24(a)(11)(A)-(C), Argonaut attaches as “Exhibit A” the district court’s judgment on remand and as “Exhibit B” this Court’s prior decision in this case.

EXHIBIT A
Judgment on Remand

ORIGINAL

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WORKERS COMPENSATION FUND
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Attorneys for Workers Compensation Fund

IMAGED

FILED DISTRICT COURT
Third Judicial District

JAN 11 2010

By MB SALTLAKE COUNTY
Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS

DATE 01/12/10

IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

WORKERS COMPENSATION FUND
and IVERSON STEEL and ERECTION
COMPANY,

Plaintiffs,

vs.

STATE of UTAH DEPARTMENT of
ADMINISTRATIVE SERVICES,
DIVISION of RISK MANAGEMENT,
WASHINGTON COUNTY SCHOOL
DISTRICT, WADMAN
CORPORATION and ARGONAUT
INSURANCE CO.,

Defendants.

JUDGMENT ON REMAND
FROM THE UTAH SUPREME
COURT (Revised Per Minute Entry
Dated December 11, 2009)

Civil No. 020903830

Judge: Danise P. Lindberg

Judgment on Remand from the Utah Supreme Court (F



JD30659350 pages: 41
020903830 ARGONAUT INSURANCE

PRELIMINARY

1. This matter is subject to a Remand Order from the Utah Supreme Court dated March 24, 2009.

2. Workers Compensation Fund and Iverson Steel (jointly referred to as “WCF”) filed its First Amended Complaint for Declaratory Relief¹ dated September 30, 2002. Among other claims for relief, WCF asked the district court for the following declaratory and other relief from defendant Argonaut Insurance (“Argonaut”): (1) A declaratory judgment that Argonaut is the insurance carrier liable to pay workers compensation benefits to and on behalf of statutory employee Corey Searle, an Iverson Steel employee who was injured in an accident arising out of and in the course of his OCIP employment for statutory employer Wadman Corporation; (2) that Argonaut is to reimburse WCF all workers’ compensation benefits it advanced on behalf of Corey Searle; (3) that Argonaut is to reimburse WCF administrative costs incurred in adjusting the Corey Searle workers’ compensation claim; (4) that Argonaut be assessed interest as allowed by Utah law; and (5) that Argonaut pay WCF the costs of court incurred in pursuing the claim against Argonaut².

4. After discovery was completed, the parties filed cross motions for summary judgment. The district court granted the defendants’ motions and denied WCF’s. WCF appealed.

5. Prior to the appeal, WCF stipulated to a dismissal with prejudice of defendant

¹See Declaratory Judgments Utah Code Ann. §78B-6-401 *et seq.* and Rule 57 of the Utah Rules of Civil Procedure.

²See “First Amended Complaint for Declaratory and Other Relief” as Attachment 1 hereto.

Willis.³

6. Prior to an appellate court ordered mediation, defendant Wadman assigned its rights to WCF.⁴

7. Prior to oral argument before the Utah Supreme Court, WCF stipulated to the dismissal with prejudice of its claims against the School District and the State of Utah defendants. WCF's remaining claim on appeal was that the district court erred in granting summary judgment to Argonaut.⁵

8. The Supreme Court reversed the Third District Court's decision granting defendant Argonaut's motion for summary judgment in its opinion dated March 24, 2009. It ordered the case remanded "...for action consistent with... (the) opinion".⁶

9. Argonaut filed a Petition for Rehearing April 7, 2009. Per Supreme Court request WCF filed a responsive brief May 19, 2009. The Supreme Court denied Argonaut's rehearing petition June 24, 2009.

JUDGMENT

The Court, having reviewed the Utah Supreme Court opinion in this matter and the associated remand order, hereby adopts that opinion in its entirety and specifically enters judgment as requested by WCF that:

³*Workers Compensation Fund v. Argonaut Ins. Co.*, 2009 UT 18; 626 Utah Adv. Rep. 18; Utah Lexis 54 (Utah 2009). See the Supreme Court opinion in its entirety as Attachment 2.

⁴See, Id. at ¶6, Attachment 2.

⁵See, Id., Attachment 2.

⁶See, Id. at ¶41, Attachment 2.

1. Defendant Wadman, general contractor of the Owner Controlled Insurance Program (“OCIP”) project, was at all relevant times the *statutory employer*⁷ of Iverson Steel and its OCIP site injured employee Corey Searle⁸;

2. *Because Wadman’s policy with Argonaut was still valid and Mr. Searle was the statutory employee of Wadman, Argonaut must pay Mr. Searle’s compensation benefits*⁹;

3. Argonaut shall reimburse WCF all workers’ compensation benefits it advanced on behalf of Corey Searle and will immediately assume its role as the liable workers compensation carrier for the Corey Searle claim at issue.

To August 10, 2009, WCF is entitled to reimbursement of \$490,063.10 it has paid to or on behalf of Corey Searle¹⁰.

Any dispute regarding the benefits provided pursuant to the Utah Workers Compensation Act is the exclusively within the jurisdiction of the Utah Labor Commission¹¹;

4. Argonaut shall reimburse WCF reasonable administrative costs incurred in adjusting the Corey Searle workers’ compensation claim which totals \$7,000;

5. Argonaut shall pay prejudgment interest on all workers’ compensation benefits it advanced on behalf of Corey Searle and reasonable administrative costs incurred in adjusting the

⁷See, Utah Code Ann. §34A-2-103(7)(a)(ii).

⁸See, *Argonaut* at ¶¶ 39 and 40, Attachment 2.

⁹See, *Id.* at ¶40, Attachment 2.

¹⁰See the Claim Reserves Summary as Attachment 3.

¹¹See, *Working RX, Inc. V. Workers Compensation Fund*, 2007 UT App 376; 173 P.3d 853. *Stokes v. Flanders*, 970 P.2d 1260, 1262 (Utah 1998).

Corey Searle workers' compensation claim as provided in Utah Code Ann. §15-1-1 at 10% per annum to the date of entry of this Judgment. The prejudgment interest as of August 10, 2009, totals \$293,421.49¹².

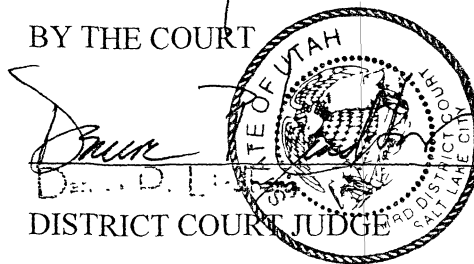
6. After entry this Judgment and until the Judgment is satisfied, Argonaut shall pay post judgment interest on all amounts herein ordered as provided by Utah Code Ann. §15-1-4.

7. The judgment totals as follows:

Workers Compensation Benefits paid to August 10, 2009	\$490,063.10 ¹³
Administrative Costs to August 10, 2009	\$ 7,000.00
Prejudgment Interest Per Utah Code Ann. §15-1-1	<u>\$293,421.49¹⁴</u>
Total Judgment	\$790484.59

Dated this 11 day of January, 2010.

BY THE COURT



DISTRICT COURT JUDGE

¹²See, Attachment 4 with explanation of calculations and spreadsheet of prejudgment interest.

¹³See the Claim Reserves summary as Attachment 3.

¹⁴To August 10, 2009. See, Attachment 4 with explanation of calculations and spreadsheet of prejudgment interest.

CERTIFICATE OF DELIVERY

I hereby certify that on the 18th day of December 2009, I caused a true and correct copy of the foregoing SUMMARY JUDGMENT (Revised Per Minute Entry Dated December 11, 2009) to be DELIVERED to the following:

Theodore E. Kanell
PLANT, CHRISTENSEN & KANELL, PC
136 East South Temple, Suite 1700
Salt Lake City, Utah 84111

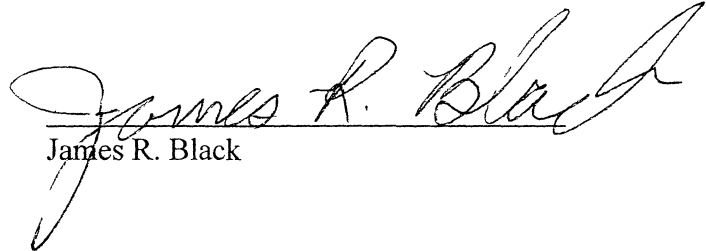

James R. Black

EXHIBIT B

WCF v. Wadman, 2009 UT 18, 210 P.3d 277

210 P 3d 277, 626 Utah Adv Rep 18, 2009 UT 18
(Cite as: 210 P.3d 277)

H

Supreme Court of Utah
WORKERS' COMPENSATION FUND and Iverson Steel and Erection Company, Plaintiffs and Appellants,
v
WADMAN CORPORATION, Defendant and Appellant,
v
State of Utah Department of Administrative Services, Division of Risk Management, **Argonaut** Insurance Co , and
Washington County School District, Defendants and Appellee
Nos. 20070160, 20070180.

March 24, 2009
Rehearing Denied June 24, 2009

Background: Workers' Compensation Fund (WCF) brought action against general contractor and its Workers' Compensation insurer after coverage was denied to employee of subcontractor injured on project overseen by general contractor. The District Court, Third District, Salt Lake County, Sandra N. Peule, J , granted summary judgment to insurer, and WCF appealed.

Holdings: The Supreme Court, Nehring, J , held that
(1) insurer was not bound by acts of general contractor which had agreed to have subcontractor's employees covered,
(2) employees of subcontractor were not covered as "loaned employees" of general contractor,
(3) manual of Owner Controlled Insurance Program (OCIP) did not mandate that OCPI must automatically supply insurance to all subcontractors,
(4) injured employee of subcontractor was not covered as employee of subcontractor,
(5) insurer did not have responsibility to verify that subcontractors were properly enrolled, and
(6) general contractor was statutory employer of subcontractor and its employees were covered by contractor's coverage.

Reversed

West Headnotes

[1] Workers' Compensation 413 ☞ 11

413 Workers' Compensation

413 Nature and Grounds of Employer's Liability

413k Purpose of Legislation Most Cited Cases

The purpose of the Workers' Compensation Act is to provide compensation to injured employees by a simple and speedy procedure which eliminates the expense, delay and uncertainty in proving fault. West's U C A § 34A 2 101 to § 34A 11 102

[2] Workers' Compensation 413 ☞ 1061

413 Workers' Compensation

413X Insurance and Public Funds

210 P.3d 277, 626 Utah Adv. Rep. 18, 2009 UT 18
(Cite as: 210 P.3d 277)

413XI(D) Private Insurance

413k1061 k. In General. Most Cited Cases

When a dispute arises regarding workers' compensation insurance, inferences constituting a worker's right to recover are liberally construed in favor of the employee. West's U.C.A. § 34A-2-101 to § 34A-11-102.

[3] Workers' Compensation 413 ↪ 1061

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1061 k. In General. Most Cited Cases

Workers' Compensation insurer was not bound by acts of general contractor, which had agreed to have subcontractor's employees covered but then neglected to send enrollment form to insurer's broker, although contractor may have acted as if it had authority to complete the enrollment process; insurer had not contributed to formation of a belief that contractor was its agent or knowingly permitted it to assume the exercise of such authority and, to contrary, contractor had agreement with broker to act as its agent to receive insurance enrollment forms.

[4] Principal and Agent 308 ↪ 99

308 Principal and Agent

308III Rights and Liabilities as to Third Persons

308III(A) Powers of Agent

308k98 Implied and Apparent Authority

308k99 k. In General. Most Cited Cases

It is only when consent to the exercise of authority by a presumptive agent has been manifested by the principal that the agent has the power to affect the legal relations of the principal. Restatement (Second) of Agency § 7.

[5] Workers' Compensation 413 ↪ 1065

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1064 Risks and Coverage

413k1065 k. In General. Most Cited Cases

Employees of a subcontractor which was inadvertently left out of applications for Workers' Compensation coverage were not covered as "loaned employees" of general contractor under alternate employer endorsement of general contractor's policy with insurer; subcontractor's employees were not on contractor's payroll or meant to continue working for contractor after the project was completed, and subcontractor had contracted with contractor as a company to perform work, not contracted as employees.

[6] Workers' Compensation 413 ↪ 1061

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1061 k. In General. Most Cited Cases

Manual of Owner Controlled Insurance Program (OCIP) did not mandate that "OCIP team" of the state, its engineer, and all applicable insurance carriers or state agency representatives working to implement the insurance program must automatically supply insurance to all subcontractors, such that a subcontractor would be covered despite general contractor's neglect to send form to insurer's broker; manual instead required that subcontractors and contractors must

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submit enrollment forms and obtain separate insurance contracts.

[7] Insurance 217 ⚙️ 2094

217 Insurance

217XV Coverage--in General

217k2094 k. Commencement of Coverage. Most Cited Cases

When determining the starting date of an insurance contract, the law looks to the contract terms.

[8] Workers' Compensation 413 ⚙️ 1065

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1064 Risks and Coverage

413k1065 k. In General. Most Cited Cases

Injured employee of subcontractor on public project, for whom general contractor neglected to send Workers' Compensation enrollment form to insurer's broker, was not covered by insurer as employee of subcontractor; Owner Controlled Insurance Program (OCIP) manual plainly stated that the form must be submitted as part of the enrollment process, and the insurance company never issued a binding receipt.

[9] Workers' Compensation 413 ⚙️ 1061

413 Workers' Compensation

413XI Insurance and Public Funds

413XI(D) Private Insurance

413k1061 k. In General. Most Cited Cases

Workers' Compensation insurer on a public construction project did not have responsibility to verify that subcontractors were properly enrolled for Workers' Compensation coverage as part of its contract with the Owner Controlled Insurance Program (OCIP); duty of OCIP team members was to oversee safety, not relieve contractors of responsibility, and OCIP manual specified that general contractor itself had responsibility to ensure that subcontractors were enrolled. West's U.C.A. § 34A-2-201.

[10] Workers' Compensation 413 ⚙️ 351

413 Workers' Compensation

413V Employees Within Acts

413V(G) Employees of Contractor or Subcontractor

413k351 k. Liability of General Contractor to Employees of Subcontractor. Most Cited Cases

General contractor on public construction project was statutory employer, under Workers' Compensation statutes, of subcontractor and its employees for whom general contractor had neglected to file form for Workers' Compensation coverage, and thus employees were covered by contractor's insurance; contractor hired subcontractor to complete steel work and therefore procured its services, contractor exercised control by supervising subcontractor's work, and contractor's trade and business was construction, so that erecting steel in the building was part of that trade and business. West's U.C.A. § 34A-2-103(2).

[11] Workers' Compensation 413 ⚙️ 344

413 Workers' Compensation

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4131 Employees Within Acts

4131(c) Employees of Contractor or Subcontractor

4131.344 k In General Most Cited Cases

Typically, an employee seeking Workers' Compensation coverage for an injury cannot reach through the layers of employers any further than the first-insured contractor. West's U.C.A. § 34A-2-103(7)(e)

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NEHRING, Justice

INTRODUCTION

¶ 1 In this appeal, we determine who was responsible for paying workers' compensation benefits to Corey Searle, an employee of Iverson Steel and Erection Company, who was injured while working on the Santa Clara Middle School in Santa Clara, Utah. Iverson had a subcontract with Wadman Corporation to perform the steel erection component of the construction of the Santa Clara Middle School. Wadman was the entity retained by the Washington County School District to be the general contractor on the project. Argonaut Insurance Company provided the workers' compensation coverage for the project through an Owner-Controlled Insurance Program, which we will refer to as the OCIP. After Mr. Searle was injured, Argonaut refused to pay his claims. The Workers' Compensation Fund¹ then sued the Washington County School District, the State of Utah Department of Administrative Services, Division of Risk Management, Willis of Utah, Inc., Wadman, and Argonaut. The WCF stipulated to a dismissal of its claim against Willis. The School District, the Division of Risk Management, and Argonaut successfully moved for summary judgment. The WCF appealed. It claims that the district court erred when it concluded that the defendants were not responsible for providing coverage to Iverson that covered Mr. Searle. After the appeal was filed but before oral argument, the WCF settled with the School District and the Division of Risk Management, leaving only the WCF's claim against Argonaut to be decided. As we conclude that Mr. Searle was Wadman's statutory employee, we reverse

1 Iverson was initially a plaintiff in this case, but it subsequently assigned its rights to the WCF.

BACKGROUND

¶ 2 While working on the Middle School project for the School District, Mr. Searle severely injured both legs when he fell two stories and landed on concrete. Insurance coverage for the Middle School project was controlled by the OCIP, which was initially created by the Division of Risk Management. After the OCIP's creation, each school district within Utah had the option of participating in the OCIP to help reduce construction costs. The School District chose to participate in the OCIP for the Middle School project. Argonaut was the designated workers' compensation insurance carrier for all contractors and subcontractors who enrolled in the OCIP. As part of its contract with the School District, Wadman agreed to purchase workers' compensation insurance through the *280 OCIP. Wadman also agreed to be responsible for ensuring that all subcontractors were enrolled with the OCIP carrier, Argonaut.

¶ 3 Although Wadman initially verified that all subcontractors were properly enrolled in the OCIP, the steel erection subcontractor originally retained by Wadman fell behind schedule and Wadman replaced it with a new subcontractor, Iverson, to complete the steel erection work. Wadman rejected Iverson's initial bid for the work, but an agreement was reached after Iverson reduced its price to pass through to Wadman the savings in workers' compensation premiums that Iverson would realize because of the OCIP. After Iverson agreed to the contract, Wadman trained Iverson in the safety practices required by the OCIP, but it failed to send the OCIP enrollment form for Iverson to Willis, the insurance broker that was assigned to be the OCIP administrator. Iverson began working on the project on January 28, 2002, and Argonaut began receiving insurance premiums for the job. The WCF, Iverson's alternate insurance provider, did not receive premiums for the Middle School project. Argonaut's Senior Safety Management Consultant, J. Le-

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manski, later inspected the construction site for safety, but he did not comment on Iverson's enrollment status. On February 7, 2002, Mr. Searle was injured. The following day, Wadman submitted the enrollment form for Iverson to Willis. Argonaut later issued Iverson an insurance policy, but the effective date of the policy was February 8, the day after the accident.

¶ 4 Iverson submitted a claim for Mr. Searle's injury to Argonaut, which Argonaut denied. Argonaut based its denial on the fact that the enrollment form was not submitted until the day after Mr. Searle's accident. The WCF then sued Argonaut, the Division of Risk Management, the School District, Willis, and Wadman. The defendants moved to dismiss. First, they contended that the WCF did not have standing to bring its claim because it was not injured. The WCF successfully overcame the challenge to its standing by noting that it had obtained an assignment of rights from Iverson and had paid Mr. Searle's claim.

¶ 5 Following discovery, the WCF stipulated to a dismissal of its claims against Willis. The School District and the Division of Risk Management moved for summary judgment. They asserted that they could not be considered the employers or insurers of Iverson because no contractual obligation existed that required them to pay workers' compensation. Argonaut also moved for summary judgment, arguing that it did not have a responsibility to provide insurance for Mr. Searle because Wadman did not have agency authority to act for Argonaut, Iverson's employees were not loaned, the enrollment form for Iverson was not submitted until after the accident, and Wadman was not the statutory employer of Mr. Searle. Wadman opposed the other defendants' motions for summary judgment and amended its answer to include cross-claims against Argonaut, the School District, and the Division of Risk Management. The district court held a hearing on all the motions before it and granted summary judgment in favor of the School District, the Division of Risk Management, and Argonaut. It also held that the grant of summary judgment to those defendants made Wadman's cross-claims moot.

¶ 6 The WCF appealed. Wadman filed a separate appeal. The cases were assigned together for mediation. On September 7, 2007, prior to the mediation, Wadman assigned its rights to the WCF. Mediation between the WCF, the School District, the Department of Risk Management, and Argonaut was not successful. A briefing schedule was set, and the WCF timely filed a brief in which it advanced the claims of Iverson and Wadman that had been assigned to it. The WCF argued that the district court's grant of summary judgment to Argonaut, the School District, and the Division of Risk Management was in error. Prior to oral argument, the WCF stipulated to the dismissal with prejudice of its claims against the School District and the Division of Risk Management. The WCF's only remaining claim on appeal is, therefore, that the district court erred in granting summary judgment to Argonaut. The WCF advances the following arguments for requiring Argonaut to provide coverage for Mr. Searle's accident: (1) Wadman was Argonaut's agent and bound Argonaut to provide coverage, (2) Iverson's employees were loaned employees and were covered by the Alternate Employer Endorsement of the Argonaut Policy, (3) Argonaut must provide coverage because the Middle School was an OCIP project and Argonaut was an OCIP insurer, and (4) Argonaut must provide coverage because Wadman was the statutory employer of Mr. Searle and because Argonaut was bound to cover workers' compensation claims against Wadman.

STANDARD OF REVIEW

¶ 7 In order for summary judgment to be granted, there must be no issue of material fact and the moving party must be entitled to judgment as a matter of law. Utah R. Civ. P. 56(c), Bowen v. Riverton City, 656 P.2d 434, 435 (Utah 1982). The essential facts of the case regarding the terms and manner of Mr. Searle's employment are undisputed. As a result, the responsibility of Argonaut to pay compensation for Mr. Searle's accident is an issue of law that we will decide. Bennett v. Indus. Comm'n, 726 P.2d 427, 429 (Utah 1986), Whitchad v. Safway Steel Prods. Inc., 304 Md. 67, 497 A.2d 803, 806 (1985). The court has jurisdiction over this matter pursuant to Utah Code section 78A-3-102(3)(j) and gives no deference to the district court's conclusions of law, Krantz v. Holt, 819 P.2d 352, 353 (Utah 1991).

ANALYSIS

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[1][2] ¶ 8 The purpose of the Workers' Compensation Act is to provide compensation to injured employees “by a simple and speedy procedure which eliminates the expense, delay and uncertainty” in proving fault. *Wilstead v. Indus. Comm’n*, 17 Utah 2d 214, 407 P.2d 692, 693 (1965); see *Shupe v. Wasatch Elec. Co.*, 546 P.2d 896, 900 (Utah 1976) (Maughan, J., dissenting). When a dispute arises regarding workers' compensation insurance, “inferences ... constituting a worker's right to recover are liberally construed” in favor of the employee. *Baker v. Indus. Comm’n*, 17 Utah 2d 141, 405 P.2d 613, 614 (Utah 1965). The WCF argues that various doctrines have been created to afford employees compensation and to prevent employers from avoiding responsibility. Specifically, it argues that Argonaut should have been required to provide coverage based on the theory of agency authority, the loaned employee doctrine, the requirement that insurance contracts be interpreted in favor of the employee, and the statutory employer doctrine. We will discuss each of these theories in turn, concluding that despite shortcomings of the first three, Mr. Searle was the statutory employee of Wadman and therefore covered by its compensation carrier, Argonaut.

I. WADMAN DID NOT HAVE AGENCY AUTHORITY TO ACT FOR ARGONAUT

[3] ¶ 9 The WCF claims that Wadman acted as Argonaut's agent, which obligated Argonaut to provide insurance. The argument presented is that a principal, Argonaut, is bound by the acts of an agent who has apparent authority to act. The WCF and Iverson contend that since Wadman acted as if it had authority to complete the workers' compensation enrollment process, Argonaut was bound by Wadman's actions. See *Restatement (Second) of Agency* § 8 (1958); *Vickers v. N. Am. Land Devs., Inc.*, 94 N.M. 65, 607 P.2d 603, 604 (1980).

[4] ¶ 10 We indicated in *Luddington v. Bodenvest, Ltd.* that in order to cloak a presumptive agent with authority, “the principal [must have] manifested his ... consent to the exercise of such authority or [have] knowingly permitted the agent to assume the exercise of such authority.” 855 P.2d 204, 209 (Utah 1993) (quoting *Am. Jur. 2d Agency* § 80 (1986)). We also stated that “[i]t is the principal who must cause third parties to believe that the agent is clothed with apparent authority.” *City Elec. v. Dean Evans Chrysler-Plymouth*, 672 P.2d 89, 90 (Utah 1983). It is only when this consent has been manifested by the principal that the agent has “the power to affect the legal relations of the principal.” *Restatement (Second) of Agency* § 7 (2007).

¶ 11 The WCF and Iverson argue that Wadman's actions imply that agency authority existed. The record, however, contains no evidence that Argonaut contributed to the *282 formation of a belief that Wadman was Argonaut's agent or that Argonaut knowingly permitted Wadman to “assume the exercise of such authority.” *Luddington*, 855 P.2d at 209. Argonaut contracted with Willis to act as its agent, with the authority to receive all enrollment forms and issue safety manuals. The limit of Wadman's workers' compensation responsibility was to verify that subcontractors were properly enrolled in the OCIP as required by Wadman's contract with the School District.

¶ 12 If Iverson believed that an agency relationship existed between Wadman and Argonaut, it was Iverson's responsibility to verify that Argonaut had conferred this authority on Wadman. *Zions First Nat'l Bank v. Clark Clinic Corp.*, 762 P.2d 1090, 1095 (Utah 1988) (holding that “one who deals exclusively with an agent has the responsibility to ascertain that agent's authority despite the agent's representations”). Since Iverson did not verify that Wadman had agency authority and since Argonaut never stated that such an authority existed, Wadman could not have acted to bind Argonaut as Iverson's workers' compensation insurer.

II. IVERSON'S EMPLOYEES WERE NOT “LOANED” EMPLOYEES

[5] ¶ 13 The WCF also contends that Iverson's employees were “loaned” to Iverson by Wadman and consequently were covered by the Alternate Employer Endorsement of Argonaut's workers' compensation policy with Wadman. The WCF failed to state what was meant by a “loaned employee” in its brief and did not explain or include the full text or background of the Alternate Employer Endorsement. Consequently, the substance of its argument is unclear. We assume, however, that the WCF was referring to the rule set forth in *Gherst v. Salazar*, 883 P.2d 1352, 1356-57 (Utah

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1994) *Gheisi* indicates that an employee is loaned if “ ‘(a) the employee has made a contract of hire, express or implied, with the special employer, (b) the work being done is essentially that of the special employer, and (c) the special employer has the right to control the details of the work ’ ” *Id.* (quoting 1B Arthur Larson, *Workmen's Compensation Law* § 48 00, at 8-343 (1992)) The loaned employee doctrine typically applies when a temporary agency or general employer hires employees, placing them on company payroll, and then loans the employees to other “special” employers to actually perform work *Id.*

¶ 14 The WCF's argument regarding how Iverson's employees were loaned is ambiguous. The WCF does claim, however, that Iverson was Wadman's special or alternate employer and should therefore receive compensation from Wadman's insurance provider, Argonaut. It appears that the WCF contends that Wadman hired Iverson's employees as the “general employer” and then loaned the employees back to Iverson as the temporary or “special employer,” which obligated Argonaut, as Wadman's insurance provider, to supply coverage under the Alternate Employer Endorsement.

¶ 15 The loaned employee doctrine presupposes that workers are “under contract to the [general labor] service to work as an employee for a client” and that the general employer, which is typically the temporary agency but in this instance would be Wadman, is merely loaning the employees and not supervising the actual work. *Gheisi*, 883 P 2d at 1356-57. *See also* *United Motorsola, Inc.*, 135 Utah 517, 662 P 2d 1024-1025 (1983). Here Iverson's employees did not have a contract with Wadman and no evidence was presented that Iverson's employees were on Wadman's payroll or would continue working for Wadman after the project was complete. The inclusion of employees on the company payroll and their continued employment with the general employer after the completion of the project are key factors in determining if an employee is loaned. *See Gheisi*, 883 P 2d at 1356-57. Iverson contracted with Wadman as a company to perform work on the project. Since no contract existed between Wadman and the employees, as evidenced by the fact that the employees were not directly paid by Wadman, Wadman could not have loaned the employees to other entities. Furthermore, Wadman was responsible for supervising Iverson's work, so a loaned-employee relationship could not have existed.

*283 ¶ 16 The alternate argument that Iverson loaned its employees to Wadman as the special employer also does not apply in this case. A central test in determining if a labor service loaned its employee is if it “was *not* responsible for performance of the construction work.” *Wood*, 662 P 2d at 1025 (emphasis added). Iverson was responsible for the steel construction work, therefore, it did more than furnish laborers. Because Iverson provided laborers, contracted to erect the steel on the project, and took responsibility for the performance of the steel work, it could not have loaned its employees to Wadman. Since no evidence was presented that Argonaut had a contract with Iverson to provide workers' compensation coverage for its loaned employees, the designation of Iverson's employees as “loaned”-and it is clear that they were not “loaned”-is of no legal consequence.

III. NO CONTRACT WAS CREATED BETWEEN IVERSON AND ARGONAUT IN THE ABSENCE OF THE COMPLETED ENROLLMENT FORM.

¶ 17 The WCF argues that a contract of insurance was formed between Argonaut and the state to provide coverage for Iverson since Argonaut was part of the “OCIP team” and was required to provide insurance to all subcontractors. The WCF further contends that the failure to submit the enrollment form was immaterial to the formation of a contract of insurance between Iverson and Argonaut and therefore the contract should be enforced.

¶ 18 The notion that an implied contract existed between Argonaut and other participants in the OCIP team that required Argonaut to provide insurance to all subcontractors is not supported by the terms found in the OCIP manual. The OCIP manual supplemented the individual insurance policies issued to contractors and subcontractors and set forth the terms of the OCIP. The manual states that it “identifies, defines, and assigns responsibilities related to the administration of the [OCIP].” It also “[d]escribes the OCIP and details the insurance-related responsibilities of the various parties involved,” however, it “is not intended to provide coverage interpretations” and the “terms and conditions of the policies alone govern how coverage is applied.”

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¶ 19 Although the policy alone determines coverage, the OCIP manual was nevertheless an essential element in defining the contractual relationships that existed between the OCIP team members. The manual specifies that its terms are binding and “[t]he requirements of the [OCIP] Manual, including State of Utah OCIP Safety and Health Manual, shall become a part of [the] Contract Agreement.” It also states that any “Contractor/Subcontractor shall cause all provisions and requirements of the OCIP to be included in any contract/subcontract agreement and shall assure compliance.”

[6] ¶ 20 As a binding agreement defining the contractual obligation among its parties, the OCIP manual mentions the existence of an “OCIP team,” but does not require that the team supply insurance to all subcontractors. The safety manual defines the OCIP team as “the Owner (STATE OF UTAH/ENGINEER), WILLIS CORROON and all applicable insurance carriers or the representative of defined State agencies and firms working together to implement the insurance program.” The manual specifies that the owner’s responsibility consists of providing general support for the worksite. The OCIP manual specifically contemplates the possibility that a contractor may choose not to enroll with the OCIP insurance provider. The manual specifies that “[non-enrolled] contractors should notify their own insurance company” instead of the OCIP insurance of injuries. The OCIP manual also repeatedly states that although all subcontractors *should* enroll in OCIP, coverage is only valid for properly enrolled subcontractors, stating that “[t]he OCIP will be only for the benefit of Contractor/Subcontractor(s) of all tiers who have been properly enrolled in the OCIP program.” In order to be properly enrolled, the manual specifies that all contractors/subcontractors are required to submit enrollment forms and complete certain requirements. Each subcontractor also received a separate contract of insurance. The necessity of each subcontractor obtaining a separate contract of insurance and enrolling separately*284 in the OCIP indicates no general contract of insurance existed between Argonaut and all subcontractors.

¶ 21 In the absence of a contract being formed by the existence of the OCIP, the question remains if a contract was otherwise created between Iverson and Argonaut. When determining the starting date of an insurance contract, the law looks to the contract terms. *Vestco Mortgage, Inc. v. First Am Title Ins. Co.*, 2006 UT 34, ¶ 8, 139 P 3d 1055 (“An insurance policy is merely a contract between the insured and the insurer and is construed pursuant to the same rules applied to ordinary contracts.” (internal quotation marks omitted)).

¶ 22 The Argonaut enrollment expressly states that before any contractors or subcontractors start work on the project, Willis must receive the form. The OCIP manual confirms this requirement and indicates that although “[t]he ‘Start Date’ indicated on the contract award form is the date that the Contractor/Subcontractor is expected to begin operations at the Project Site,” all subcontractors are to be properly enrolled before access to the project site is allowed and coverage begins.

¶ 23 The WCF argues that the form was not an essential element of the contract. It cites testimony from Argonaut’s vice president from a different case in which he opined that if the State of Utah rolling wrap-up pieces were all in place, Argonaut would provide coverage even without the form. This statement, however, does not mean that the enrollment form, despite being expressly made a part of the insurance contract, is superfluous. Rather, the testimony illustrates that in one instance, an Argonaut executive speculated that the form may not have been necessary. In contrast to that statement, the OCIP manual repeatedly states that submitting the form is required to complete OCIP enrollment and that the form must be received by Willis before any subcontractors can start work. The form is necessary because it allows the insurance agent to track applications for enrollment and obtain necessary information for setting insurance rates.

¶ 24 The WCF maintains that Wadman’s payment of a premium for Iverson’s coverage to Argonaut and not the WCF demonstrates that the form was a mere technicality and that a contract of insurance already existed between Argonaut and Iverson. The WCF and Iverson fail to cite any case law supporting this assertion. Several states, including Utah, have treated as enforceable “binder” agreements between an insurance provider and an insured that provide temporary insurance before the actual policy is issued. See *Williams v. First Colony Life Ins. Co.*, 593 P 2d 534 (Utah 1979). These binder agreements, however, typically require an application to be submitted and the insurer to provide a con-

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ditional receipt specifying the terms of the binder. *Cain v. Actna Life Ins. Co.*, 135 A.17, 189, 659 P.2d 1334 (1983); *Springer v. Allstate Life Ins. Co. of N.Y.*, 94 N.Y.2d 645, 710 N.Y.S.2d 298, 731 N.E.2d 1106 (2000). The binder agreements also require, according to the Fifth Circuit, that all conditions specified by the insurance provider be met, *Gladney v. Paul Revere Life Ins. Co.*, 895 F.2d 238 (5th Cir.1990), “in order for a contract of temporary insurance to exist,” *Fox v. Catholic Knights Ins. Soc’y*, 2003 WL 87, ¶ 23, 263 Wis.2d 207, 665 N.W.2d 181 (2003) (citations and internal quotation marks omitted). Although premiums were paid to Argonaut, none of the other requirements for a binder agreement were met.

¶ 25 We previously stated that although “it is unfair for an insurer to collect a premium which purports to cover a period when in fact no such coverage exists: i.e., between the time of the application and the delivery of the policy,” it is for

this reason, we have approved the rule that ordinarily, when the insured has done everything required of him and paid his premium, the insurance takes effect from the time of the issuance of a binding receipt, even though the policy has not been delivered. This is especially so when death or injury occurs from some cause unrelated to any possible ground for rejecting the application.

Williams, 593 P.2d at 537.

[8] ¶ 26 In this case, the application or enrollment form was never received by Argonaut*285 and the insurance company never issued a binding receipt. Argonaut clearly stated that receipt of the enrollment form was a prerequisite to coverage. Since Iverson was required to submit the form and no binding receipt was given, no contract was created. The terms of the OCIP manual were clear. The manual plainly stated that the form must be submitted as part of the enrollment process.

[9] ¶ 27 The WCF alternately argues that Argonaut was required to provide coverage since it had a responsibility to verify that all subcontractors were properly enrolled as part of its contract with the OCIP. It contends that J. Lemanski, Argonaut's Senior Safety Management Consultant, was on the job inspecting the premises for safety before the accident, had knowledge of Iverson's involvement, and had a responsibility to verify that those working on the site were insured as part of the safety inspections.

¶ 28 Evaluating the safety of a job site is not the same as verifying that a subcontractor has met all of the conditions necessary to commence insurance coverage. The OCIP Safety and Health Manual states, “Each Contractor shall bear sole and exclusive responsibility for safety in all phases of their work. Nothing contained herein shall relieve such responsibility.” It also states that the role of OCIP team members includes the “overall management responsibility for site safety and health,” but “[t]his responsibility does not supersede, override, or take precedence over that of Contractors who are ultimately responsible for the safety and health of their employees....” The duty of OCIP team members was to oversee safety, not to relieve contractors of responsibility. There is nothing in the OCIP manual that indicates Argonaut contracted with the Division of Risk Management to be responsible for ensuring that all subcontractors were properly enrolled. In contrast, the OCIP manual clearly specifies that Wadman had a responsibility to ensure that all subcontractors were properly enrolled, and pursuant to Utah Code section 34A-2-201, Iverson also had the responsibility of making sure that its employees were insured, which it failed to do. Although Argonaut may have had a responsibility to conduct safety inspections, verification that Iverson was properly enrolled was beyond the scope of Argonaut's responsibility.

IV. MR. SEARLE WAS A STATUTORY EMPLOYEE OF WADMAN

¶ 29 In response to motions for summary judgment in the district court, the plaintiffs contended that Argonaut and Wadman were Mr. Searle's statutory employers for purposes of workers' compensation coverage. The WCF reiterates those arguments here, urging us to find that under the OCIP “common law employee/employer relationships are

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altered” and the key element in determining a statutory relationship is the right to control.

¶ 30 Argonaut asserts that the statutory employer argument should be dismissed because the argument is a claim that could only be brought by Wadman and because Wadman failed to file an appellate brief. It is true that Wadman did not file an appellate brief; Wadman, however, assigned its rights to the WCF prior to the mediation and before a briefing schedule was set. Accordingly, the WCF had the right to bring a claim directly against Argonaut for coverage based on any claim that Wadman had. The WCF did so on February 7, 2008, when it filed its opening brief in which it asserted that Wadman was Mr. Searle's statutory employer and coverage should be provided by Argonaut. Argonaut also argues that the brief filed by the WCF does not raise any of Wadman's claims. Although the WCF's brief does not discuss the elements of the statutory employer doctrine in great detail, it does claim that Wadman was the statutory employer of Iverson, which was sufficient to put Argonaut on notice of the statutory employer argument. Since Wadman assigned its rights to the WCF and since the joint brief raised Wadman's claims, the WCF's statutory employer claim should not be dismissed.

[10] ¶ 31 Utah Code section 34A-2-103(2) defines the circumstances under which an employer/employee relationship is created as a matter of law. This section states that an employer is someone “who regularly employs *286 one or more workers or operatives in the same business, or in or about the same establishment.” Utah Code Ann. § 34A-2-103(2) (Supp. 2008)^{FN2}. Section 34A-2-103(7)(a)(ii), the statutory employee section, also indicates that if

FN2. The legislature amended Title 34 in 2008. Because the changes do not affect our analysis, we cite to the 2008 version.

an employer *procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control*, and this work is a *part or process in the trade or business of the employer*, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter.

Utah Code Ann. § 34A-2-103(7)(a)(ii) (emphasis added). In *Bennett v. Industrial Commission*, we clarified that the term “supervision or control” includes the general contractor's ultimate control over the project. 726 P.2d 427, 432 (Utah 1986); see also *Pinnacle Homes, Inc. v. Labor Comm'n*, 2007 UT App 368, ¶ 21, 173 P.3d 208.

¶ 32 In general, Argonaut cannot be described as a statutory employer merely because it participated in the OCIP. In order for a statutory employer relationship to exist, the employer must procure the work to be done, retain supervision and control, and the work must be part of the employer's trade or business. Utah Code Ann. § 34A-2-103(7)(a)(ii). Argonaut was not the statutory employer of Iverson in this case because Argonaut did not procure the services of Iverson, did not have ultimate control over Iverson's work, and was not in the trade or business of construction.

¶ 33 In contrast, the WCF correctly contended that Wadman was Iverson's statutory employer. Wadman hired Iverson to complete the steel work and therefore procured Iverson's services. Wadman also exercised control over the project by supervising Iverson's work. Finally, Wadman's line of trade and business was construction, and thus erecting the steel part of the building was part of its trade and business. Because Wadman satisfies all the elements in section 34A-2-103(7)(a)(ii), it is the statutory employer of Mr. Searle.

¶ 34 Even if the level of supervision exercised by Wadman was uncertain, an inference of supervision would still automatically arise because the work being performed was part of the employer's business. *Bennett*, 726 P.2d at 432. In *Bennett*, we determined that even though general contractors frequently delegate a substantial amount of work to subcontractors, the general contractor remains responsible so long as the subcontractor's work is a part or process of the general contractor's business. *Id.* In this case, the steel construction performed by Iverson was part of Wadman's general business of construction and an inference of control arose because Wadman was the general contractor.

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¶ 35 Argonaut claims that Iverson already had coverage through the WCF and therefore the statutory employer doctrine did not apply. Argonaut also contends that the WCF, having paid Mr. Searle's claim, had the right to seek reimbursement of unpaid premiums from Iverson, and therefore Iverson had coverage through the WCF. The WCF counters these arguments, stating that the insurance coverage Iverson received from the WCF did not cover the Middle School project and that Argonaut, not the WCF, received premiums for the Middle School project.

¶ 36 Typically, an employee cannot reach through the layers of employers any further than the first-insured contractor. *Jacobson v Indus. Comm'n*, 738 P.2d 658, 661 (Utah Ct App 1987). Section 34A-2-103(7)(e) states that the statutory employer doctrine is applicable to contractors and subcontractors unless "the employer who procures work to be done by the contractor or subcontractor obtains and relies on a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201." Section 34A-2-201 provides,

*287 An employer shall secure the payment of workers' compensation benefits for its employees by

- (1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund,
- (2) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state, or
- (3) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in amount, in the manner, and when due as provided for [by statute]

¶ 37 Iverson did not provide Wadman with a certificate of compliance with section 34A-2-201 for the Middle School project. It could not have because it informed the WCF that Iverson's employees working on the Middle School project would not need to be covered by the WCF while they were working on the project.

¶ 38 Iverson did, however, provide some documentation of the WCF coverage to Wadman. Under the OCIP, all subcontractors and contractors were required to provide proof of 34A-2-201 compliance for off-site activities in order to enroll in the OCIP. Iverson had to demonstrate compliance with the off-site insurance requirement by showing that it had coverage through the WCF for off-site jobs, which it did. This coverage did not preclude Iverson from being a statutory employer for the Middle School project since Wadman never received information that Iverson had other insurance for the project. Utah Code Ann. § 34A-2-103(7)(e). To the contrary, Wadman requested that Iverson reduce its bid in anticipation of the OCIP, not Iverson's usual insurance covering all work-related incidents on-site, and paid the premium for Iverson to be covered under the OCIP. Wadman informed Iverson that insurance would be provided, and Iverson acted upon this belief. In this case, Wadman did not rely on a certificate of insurance from Iverson, and therefore the statutory employer doctrine applies.

¶ 39 As for Argonaut's argument that Iverson actually had coverage through the WCF because the WCF chose to pay Mr. Searle's claim and could then seek reimbursement from Iverson for unpaid premiums, we find that it is without merit. If Argonaut's position was the law, employers that failed to enroll subcontractors in the OCIP could presumably escape statutory employer liability if the WCF chose to voluntarily pay injured workers. Wadman should not be allowed to avoid responsibility as the statutory employer of Iverson. Because Wadman procured Iverson's services and retained supervision and control over Iverson's work and because Iverson's work was part of the business of Wadman, we hold that Wadman was the statutory employer of Iverson and therefore the statutory employer of Mr. Searle.

¶ 40 In addition to finding Wadman to be the statutory employer of Iverson, we must determine if Argonaut, as Wadman's insurance provider, was required to pay workers' compensation benefits to Mr. Searle. Neither party contests that Wadman was properly enrolled in the OCIP. The renewed policy between Argonaut and Wadman became effective September 8, 2001, several months before the accident. In the absence of the policy later becoming invalid, the policy requires that Argonaut pay workers' compensation insurance benefits for all of Wadman's employees. The

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Supplemental General Conditions for OCIP does state that failure to follow procedure, such as verifying a subcontractor is enrolled, may result in the termination of coverage. The effect of this document on the policy, however, is unclear. In any case, Argonaut is required by law to give notice to Wadman of any policy cancellation. Section 34A-2-205(1)(b) states that a workers' compensation insurance policy "is in effect from inception until canceled by filing with the division or its designee a notification of cancellation in the form prescribed by the division within ten days after the cancellation of a policy." Since no notice was given to Wadman by Argonaut of the insurance policy being cancelled, the policy is still valid. Because Wadman's policy with Argonaut was still valid and Mr. Searle was the statutory employee of Wadman, Argonaut must pay Mr. Searle's compensation benefits.

***288 CONCLUSION**

¶ 41 We find that Wadman did not have agency authority for Argonaut, that Iverson's employees were not loaned, and that Argonaut did not have a responsibility to ensure that Iverson was properly enrolled in the OCIP. We also find that there was no contract between Argonaut and Iverson. Argonaut still had a responsibility to provide insurance coverage for Mr. Searle, however, because Iverson and Mr. Searle were the statutory employees of Wadman and Argonaut was Wadman's insurance provider. Consequently, we reverse the district court decision granting Argonaut summary judgment and remand for action consistent with this opinion.

¶ 42 Chief Justice DURHAM, Associate Chief Justice DURRANT, Justice WILKINS, and Justice PARRISH concur in Justice NEHRING's opinion.
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