IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

CONTINENTAL CASUALTY COMPANY and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,	)	
Petitioners,	)	
VS.	)	**NO. 10-789-III**
THERACO, INC.,	)	
Respondent.	)	

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MEMORANDUM AND ORDER

This lawsuit is a petition for judicial review of a decision by the Commissioner's Designee of the Department of Commerce and Insurance (the "Department") under Tennessee Code Annotated section 4-5-322(h) of the Uniform Administrative Procedures Act. The Petitioners are insurance companies who challenge the Department's determination that their insured, Respondent Theraco, Inc., does not owe additional insurance premiums totaling $273,833.00. The State got involved when Theraco filed a complaint with the Tennessee Administrator of TWCIP[1] concerning the Petitioners' retroactive assessment of Theraco for the additional, substantial amount of premiums.

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[1]The reason that a Department of the State of Tennessee is involved in deciding an insurance premium issue is that Theraco obtained insurance through a State program: the assigned risk pool ("TWCIP"). That program requires all insurors, who transact workers' compensation insurance business in Tennessee as Petitioners, to participate in an equitable apportionment of writing workers' compensation insurance for those who are unable to procure the insurance by ordinary methods. TENN. CODE ANN. § 56-5-314(c).

The additional assessment Theraco complained about derives from the Petitioners' contention that under the premium assessment provision of their insurance policies physical therapists used by Theraco in its business are either (1) employees who qualify for workers' compensation benefits or (2) whose relationship and work for Theraco put the Petitioners at risk for having to pay workers compensation benefits. Theraco's position is that the physical therapists are independent contractors and, therefore, pose no basis for additional workers compensation insurance premiums. The Plan Administrator upheld the additional premium assessment by the Petitioners. On appeal to the Department, pursuant to Tennessee Code Annotated section 56-5-309(b), Theraco prevailed. That decision was then appealed by the Petitioners to this Court under the Uniform Administrative Procedures Act, pursuant to Tennessee Code Annotated section 56-5-318.

After reviewing the entire record and considering argument of counsel, the Court concludes that the Petitioners have not demonstrated, under Tennessee Code Annotated section 4-5-322(h), substantial and material evidence that fairly detracts from the Department's decision that the therapists are independent contractors; nor have the Petitioners demonstrated as a matter of law or fact that the therapists fit within that provision of the insurance policy that permits assessment of a premium where the Insuror is placed at risk for having to pay workers compensation benefits. The petition for judicial review must, therefore, be dismissed with prejudice.

The findings of fact and conclusions of law on which the Court bases its decision are as follows.

Summary of Dispute

In issue are three insurance policies which the Court shall refer to for ease of reference as: 2007 CNA policy, 2008 CNA policy and the Travelers Policy. Theraco obtained these from the Petitioners for workers' compensation and employee liability insurance. All of the policies have the same relevant policy language, and, with only a few exceptions, most of the facts related to Theraco's business and its applications for insurance with the Petitioners are the same.

Theraco has four salaried employees. Two are officers who have elected exemption from workers' compensation coverage. That leaves two full-time clerical employees. It is these two employees for whom Theraco sought and received workers' compensation coverage under the three policies referred to above. As to each of these policies Theraco obtained, the Petitioners conducted audits after coverage was obtained[2] and determined that

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[2]The authorization for "retroactive" assessment of premiums is stated in the policies:

Premium Payments

You will pay all premiums when due. You will pay the premium even if part or all of the workers' compensation law is not valid.

Final Premium

The premium shown on the Information Page, schedules and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications, and rates, that

Theraco retrospectively owed significant additional premium amounts of $132,267.00 for the 2007 CNA policy; $44,089.00 for the 2008 CNA policy; and $97,527.00 on the Travelers Policy.

The Petitioners' premise for the additional premiums relates to Theraco's use in its business of physical therapists and assistants (collectively referred to as "PTs"). The record establishes that the way Theraco's business works with respect to PTs is that for 20 years Theraco has contracted with five or six home health agencies to provide in-home therapy on a fee-for-service basis to patients in middle Tennessee for whom the home health agencies receive orders for physical therapy from a physician. The home health agency faxes referrals for physical therapy to Theraco. Theraco then contracts with the individual therapists, who are licensed by the State of Tennessee, to provide the in-home therapy.

The provision of the workers compensation insurance policies the Petitioners contend are implicated by Theraco's use of PTs require payment of premiums for: (1) employees and (2) all other persons engaged in work that "could make [the Petitioners] liable" for workers'

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lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy. . . .

compensation insurance. The insurance policy provisions under which the Petitioners claim Theraco owes additional premiums are quoted as follows:

Remuneration

> Premium of each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. **This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:**
>
> 1. All your officers and employees engaged in fork covered by this policy; and
>
> 2. **All other persons engaged in work that could make us liable under Part One (Workers' Compensation Insurance) of this policy.** If you do not have payroll records for these persons, the contract price for their services and materials may be used as a premium basis. This Paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers' compensation obligations.

Theraco denies that the PTs were employees or placed the Petitioners at risk for workers' compensation liability. It is Theraco's position that the PTs are independent contractors. The Department in its decision agreed.

Petitioners' Grounds for Reversal Under Section 4-5-322(h)

The Petitioners' grounds for reversal are simple and track the two provisions under the insurance policies that allow for assessment of premiums. As quoted above, the first basis for a premium assessment under the policies for the PTs is if they are employees. The applicable law for this analysis is Tennessee Code Annotated section 50-6-102(10)(D) of the

Tennessee Workers Compensation Act which sets out 7 factors for determining whether a worker is an employee or an independent contractor. A review of the record in this case, the Petitioners assert, establishes that the Department's application of section 50-6-102(10)(D) to conclude that the PTs are independent contractors is unsupported by substantial and material evidence in light of the entire record, and thus requires reversal under section 4-5-322(h)(5). Next, the Petitioners assert that the Department's failure to analyze the second aspect of the insurance policies requirement that premiums are also due if the Petitioners "could be liable" is arbitrary and capricious, and that there is substantial and material evidence of record that the Petitioners are at risk and "could be liable" to pay workers' compensation benefits for the PTs used by Theraco so as to require payment of the additional premium.

Analysis

Governing Statute

Beginning with Petitioners' argument that the PTs are employees, the Court refers to the statute that informs this analysis. Tennessee Code Annotated section 50-6-102(10)(D) provides as follows:

> (D) In a work relationship, in order to determine whether an individual is an "employee," or whether an individual is a "subcontractor" or an "independent contractor," the following factors shall be considered:
>
> (i) The right to control the conduct of the work;

(ii) The right of termination;

(iii) The method of payment;

(iv) The freedom to select and hire helpers;

(v) The furnishing of tools and equipment;

(vi) Self-scheduling of working hours; and

(vii) The freedom to offer services to other entities . . . .

Application of Statute in Final Order

Comparing the provisions of the above statute to the Final Order entered by the Department, the Court sees the following correlation:

- Paragraph 3 of the findings of fact, and paragraphs 3 and 4 of the conclusions of law of the Department's final order relate to factor (i) that Theraco does not exercise sufficient control of the PTs for them to be considered employees.

- Paragraph 5 of the findings of fact and paragraph 7 of the conclusions of law relate to factor (iii) on payment and show the independence of the PTs as to payment.

- Paragraph 5 of the conclusions of law pertains to factor (v) regarding tools, and establishes that the PTs obtain a majority of their tools independently and not from Theraco.

- Conclusion of law 6 relates to factor (ii) and establishes that the right to terminate is held mutually by Theraco and the PTs such that this factor does not indicate that the PTs are employees.

For ease of reference for the discussion that follows, the Court quotes the foregoing findings of fact and conclusions of law from the Final Order:

FINDINGS OF FACT

* * * *

3. Contracted therapists received referrals for services from Theraco, schedule initial evaluations with patients, establish a plan of care approved by the patient's physician, and invoice Theraco after services have been provided.

* * * *

5. Theraco invoices home health agencies for services provided by Contracted Therapists, pays them bi-weekly on a per-visit basis, and provides various other administrative services. Theraco does not withhold individual income taxes, provide employee benefits, or reimburse Contracted Therapists for mileage.

* * * *

CONCLUSIONS OF LAW

* * * *

3. In accordance with the factors specified in Tenn. Code Ann. § 50-6-102(10)(D), Theraco has shown, by a preponderance of the evidence, that it has a limited degree of control of Contracted Therapists with regard to services provided to patients. Theraco does not schedule appointments, develop plans of care, prescribe the number of patient visits, or determine when a patient should be discharged. Mr. McEver is a licensed physical therapist and, on some occasions, consults with Contracted Therapists, the evidence does not show that he directed Contracted Therapists in providing services.

4. Contracted therapists determine whether to accept or reject referrals, schedule patient visits, develop an individual plan of care for each patient subject to physician approval, and provide services in accordance with

Tenn. Code Ann. Title 63, Chapter 13 and Tenn. R. and Regs., Chapter 1150. They make determinations, for example, as to whether a physical therapist assistant will be required or appropriate during a particular course of treatment. They prepare and submit all documentation regarding services to the home health agency.

5. Except for an ultrasound machine provided by Theraco when requested by a physical therapist, Contracted Therapists provide or obtain all equipment used in patient care, such as blood pressure cuff, thermometer, gait belts, oximeter, weights and balance belts.

6. The contract between Theraco and Contracted Therapists can be terminated by either party with advance notice to the other, and does not require a Contracted Therapists to work exclusively for Theraco.

7. Theraco provides no employee benefits to Contracted therapists. Contracted therapists are responsible for their own professional liability and car insurance as required by home health agencies.

Petitioners' Section 4-5-322(h) Arguments

In the face of the Department's findings of fact and conclusions of law, it is the burden of the Petitioners on this petition for judicial review to identify substantial and material evidence in the record that fairly detracts from the weight of the Department's decision. TENN. CODE ANN. § 4-5-322(h)(5). In this regard, the Petitioners have argued in their papers the following evidence of record as fairly detracting:

1. On factor (v), tools, the Petitioners argue that Theraco provides an ultrasound machine to the PTs which is admittedly an important piece of equipment.

2. On factor (ii), termination, the Petitioners argue that Theraco has the right to terminate the PTs under their contracts.

3. On factor (iii), freedom to offer services to others, the Petitioners argue that Theraco did not produce any documentation that the PTs provide services to any other individuals or entities.

4. On factor (iii), method of payment, the Petitioners argue that the PTs regularly receive a paycheck every two weeks based upon an hourly rate.

5. On factor (vi), self-scheduling of working hours, the Petitioners argue that the ability of the PTs to schedule their own working hours is undercut by the level of control imposed upon them by Theraco to work within certain geographical areas, not provide their services to a home health care provider that has a relationship with Theraco and to attend various meetings.

6. On factor (i), right to Control Conduct of Work, the Petitioners argue that the requirement in Theraco's contracts with the home health agencies that Theraco teach, supervise, document all services provided by the therapists, develop, review and revise patient plans of care, and schedule patient care visits is indicative of control. Another indicia of control is that Theraco limits the geographical areas where the therapists can provide therapy services, limits the amounts the therapists can charge, and requires the therapists to maintain professional liability insurance, licensure and take annual physicals.

For ease of reference the Petitioners' arguments listed above shall be referred to as "Detractors."

After reviewing the record, the Court finds, for several reasons, that the Petitioners' Detractors do not "fairly" detract from the entire record and do not require reversal of the decision of the Department.

Tools

The most obvious lack of "fairly" detracting relates to factor (v) on tools. The availability of one piece of equipment, an ultrasound machine, does not fairly detract from the Department's conclusion of law, paragraph 5, as to the six other tools the PTs must provide themselves, and which tools are regularly and frequently used by the PTs.

Right to Terminate

Similarly, that Theraco has the right to terminate (factor (ii)) its contracts with the PTs is only half the story. Conclusion of law paragraph 6 by the Department is that the PTs also, mutually, have the right to terminate the contracts with Theraco. Thus, on termination, as well, the Petitioners have failed to fairly detract from the record as a whole.

Services to Others

The same is true as to exclusivity/freedom to offer services to others, factor (vii). The Petitioners claim that no document was provided by Theraco that the PTs have provided their services to others. Yet, conclusion of law 6 by the Department addresses factor (vii), albeit a different way, by finding that the contracts between the PTs and Theraco contain no exclusivity provision.

Payment

As well, Petitioners' argument that the PTs receive a biweekly paycheck and must attend Theraco meetings do not fairly detract from finding of fact 5 concerning factor (iii) on payment in the Department's Final Order that Theraco does not withhold individual income taxes, provide employee benefits or reimburse PTs for mileage, and conclusion of law 7 that the PTs are responsible for their own professional liability and car insurance.

Control

Lastly, there is the issue of control, factor (i). The Court begins its analysis with the principle of law that the touchstone of the employee/independent contractor analysis has to do with who controls the means; that is whether the worker devises his own methods to perform a service or work without control or direction from the employer, except as to the result to be achieved. *Crowell General Continental Inc. v. Lytle*, 439 S.W.2d at 601. "The relationship of employer and employee exists only when the employer retains the right to direct the manner in which the business is to be done, as well as the result to be accomplished, or, in other words, not only what must be done, but how it must be done." 30 C.J.S. *Direction and Control* § 8 (West 2010).

The distinction between independent contractor and employee is best understood by focusing on what type of control the employer exercises over the worker. This analysis centers on whether the employer exercised control over the "means" the worker employed

to reach a certain "result," or simply the ultimate "result." In worker's compensation cases, an independent contractor is "'one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains that result.'" *Galloway v. Memphis Drum Service*, 822 S.W.2d 584, 587 (Tenn. 1991) (quoting *Barker v. Curtis*, 287 S.W.2d 43, 45 (Tenn. 1956)). In *Ellis v. Bradley County, Tennessee*, the Court emphasized that in an employee-employer relationship, "[t]he employer's right is to control both the ends and the manner and means by which the business is done." 2007 WL 1830756, at *4 (E.D. Tenn. 2007) (citations omitted).

Means

Review of the record establishes the following substantial and material evidence that the PTs control the means (all the details that relate to fulfilling the physician's orders that the patient receive physical therapy, and reports and plans on the same). In this regard the record establishes that Theraco's relationship with the PTs derives from referrals from home health agencies. These referrals are then forwarded to the PTs in that geographical area. The PTs, in turn, contact the patient to schedule their initial evaluation. This initial evaluation plan of care is completed by the PTs and sent directly to the home health agencies, not to Theraco. Once the plan of care is set, the therapist self-schedule their visits with the patient according to the plan of care. The plan of care must be approved by a physician. Daily visit notes are completed by the PTs for every visit made. During their visits with patients, the

PTs are appearing on behalf of the home health agencies, not Theraco. All documentation completed by the therapists regarding their patient visits is turned in to the appropriate home health agency, who maintains the patient records. Theraco does not have anyone present at any time while the PTs are treating the patients pursuant to the plan of care, which has been approved by a physician.

Detracting from the foregoing facts, the Petitioners assert, are provisions in the contracts Theraco enters into with the home health agencies; termination of PTs for noncompliance with requirements; PT supervision of assistants; and bars to PT self-scheduling. Each of these will be considered in turn.

Home Health Agency Contracts

The contracts Theraco enters into with the home health agencies provide that Theraco shall "teach, supervise, document all services provided by the therapists, develop, review and revise patient plans of care, and schedule patient care visits." Hearing exhibit 6 at 3. These requirements, the Petitioners assert, are indicative that Theraco controls the means of the PTs work not just the ultimate result that patients receive therapy. The Court disagrees.

These requirements in the Theraco contract with the home health agencies must be read in the context of the entire agreement. In paragraph 14 of the agreement, the home health agencies acknowledge that Theraco is using therapists to provide the services Theraco has agreed to provide under the contract. In other words, the home health agencies know and

contemplate that Theraco will use PTs to perform the referrals from the home health agency. The harmonious construction of paragraph 14 with Theraco's obligations under the agreement with the home health agencies is that while Theraco is ultimately the party responsible to the home health agency to make sure that these requirements are met (the result), Theraco is not prohibited from having the physical therapist perform the services and details necessary to achieve the result (the means). And that is exactly what the record shows.

Additionally, the representation in Theraco's contract with the home health agency does not provide a basis for Theraco to be estopped to disavow independent contractor status. The Petitioners are not parties to the contract so they cannot invoke estoppel. The provision in Theraco's contract with the home health agencies is being used by the Petitioners in this case as an admission under Tennessee Rule of Evidence 803(1.2). That representation, therefore, must be weighed with the other evidence. The Court finds that the provision in Theraco's contract with the home health agencies does not fairly detract from the other evidence above that it is the PTs which perform the therapy services referred from the home health agencies.

Termination For Noncompliance with Rules

The Court as well rejects the Petitioners' argument that the requirement in Theraco's contract with the PTs that if they do not maintain professional insurance or take yearly

physicals they will be terminated is indicia of control. Another inference that can be drawn is that Theraco includes these requirements for quality control reasons—to assure that the PTs are legally permitted to perform the services which, again, pertains to achieving an ultimate result (quality service) and not dictating the means to achieve that result.

PT Supervision of Assistants

The Petitioners also argue that the requirement by Theraco that the PTs perform certain supervisory and other services as to PT assistants is, again, indicative of control by Theraco. The Court finds that this argument is misplaced. The evidence reveals that the law of Tennessee requires that PTs supervise assistants. Paragraph 9 of Theraco's contract with the home health agencies requires Theraco to abide by Tennessee law in rendering services to the agencies. Thus, Theraco's requirements of the PTs with respect to PT assistants is not indicative of control but compliance with Tennessee law.

Bars to Self-Scheduling

With respect to self-scheduling of hours, the evidence in the record that Theraco's PTs are confined to a certain geographical area and cannot offer services to a home health provider that does business with Theraco and that the PTs have to attend certain meetings are facts from which the inference can be drawn that Theraco uses these as a competitive device to protect its business from competition. This inference competes with the one the

Petitioners draw that these requirements effectively prevent the PTs from self-scheduling. In the face of competing inferences, this Court cannot say that the Petitioners' inference fairly detracts in a substantial and material way from the entire record related to the Department's decision that the PTs are not employees.

Based on all of the foregoing analysis of the evidence of record on the factors contained in section 50-6-102(10)(D), the Court concludes that paragraph 1 of the Department's order determining that the PTs are independent contractors is supported by substantial and material evidence, and that the Petitioners have failed to identify substantial and material evidence that fairly detracts from the Department's decision.

A corollary to the Court's conclusion, that the Department's decision that the PTs are not employees of Theraco and are, instead, independent contractors, is that Theraco does not employ five employees to qualify as an employer under the Workers' Compensation Act section 50-6-102(11). Accordingly, paragraph 2 of the Department's order is sustained by this Court as supported by substantial and material evidence.

The practical effect of the Court's determination that the Department's decision is correct that the PTs are independent contractors is that the first provision of the premium reimbursement provision of the insurance policies in question (that the Petitioners may charge retroactive premiums for additional employees) has not been demonstrated with

respect to the PTs. On this basis, then, additional premiums charged by the Petitioners is not justified, and paragraph 2 of the Department's order is sustained on this basis.

"Master Policy"

Before moving to the second policy provision for assessment of premiums, the Court must briefly digress to address a part of the record that does not easily fit within the section 50-6-102(D)(10) factors analysis above. It is the Petitioners' argument regarding a "Master Policy" allegedly maintained by Theraco to provide liability insurance for the PTs. At the evidentiary hearing, the Petitioners made reference to certain professional liability and car insurance policies of the PTs provided during discovery which contained a reference to a "Master Policy." The Petitioners allege that these references to a "Master Policy" in some of the PTs' insurance policies show an "interconnectedness" between Theraco and the PTs. The Petitioners argued that this evidence was proof in the record which fairly detracts from the Commissioner's conclusion of law in paragraph 7 that "[c]ontracted therapists are responsible for their own professional liability and car insurance as required by home health agencies."

The Court rejects this argument on the basis of insufficient proof of a Master Policy and its provisions. A review of the record reveals that all of the PTs testified that they were responsible for obtaining their own professional liability insurance and their own car insurance without the aid of Theraco. Additionally, Mr. McEver, Theraco's owner, testified

that there exists no "Master Policy" maintained by Theraco. Other than the inference drawn by Petitioners from a reference in a discovery document to a "Master Policy," there were no facts presented in the record which support this allegation.

Risk of Liability

The Court next addresses the second basis in the insurance policy for retroactive premium assessment. This is the provision that allows for premiums to be assessed if the Petitioners "could be liable."

The Petitioners' argument in this regard begins with the principle of workers' compensation law that where there is doubt in the mind of the Court, "the Workers' Compensation Law is to be rationally construed in favor of finding employee status." *Thweatt v. Travelers Property & Cas. Ins. Co.*, 2000 WL 1030621 *4 (Workers Comp. Panel 2000) (citations omitted). Next, citing to *Hartford Underwriters Insurance Company v. Penney*, 2010 WL 2432058 (Tenn. Ct. App. June 17, 2010); *CNA v. King*, 2006 WL 2792159 (Tenn. Ct. App. September 28, 2006); and *Royal Insurance Co. v. R&R Drywall, Inc.*, 2003 WL 21302983 (Tenn. Ct. App. June 6, 2003), the Petitioners argue that, even if the PTs are not Theraco employees, the Petitioners are at risk of having to pay workers compensation insurance for the PTs. From their papers, the Petitioners' argument is, "If a therapist incurred a workplace injury and pursued a claim for workers' compensation benefits against the Respondent, the Petitioners would be forced to answer and defend such a claim as the

Respondent's insurors." Petitioners' Reply, Filed September 7, 2010, at 10. For two reasons, the Court concludes that the Petitioners do not prevail on this argument.

First, in determining whether Theraco's relationship with the PTs places the Petitioners at risk, the Court concludes that the standard is one of a reasonable risk that the Petitioners will have to pay benefits, not the mere possibility of risk of payment of benefits. The Court obtains this standard by drawing upon out-of-state case law. "An insurance provision is considered illusory if 'a premium was paid for coverage which would not pay benefits under any reasonably expected set of circumstances.' [citations omitted]. If a provision covers some risk reasonably anticipated by the parties, it is not illusory. [citations omitted]. If it does not, the illusory provision should be enforced in a way that protects the insured's reasonable expectations." *Schwartz v. State Farm Mutual Auto Insurance Co.*, 174 F.3d 875, 879 (C.A. 7(ind.) 1999). In other words, the standard that this Court must apply is to determine in this case whether the provision concerning charging a premium for liability that the insuror could be liable for comports with reasonable expectations. In this case the reasonable expectation is an application of the statutory factors of section 50-6-102(D)(10) indicative of employee/independent contractor status. The above analysis on that statute, as applied to the record in this case, demonstrates that the reasonable expectation in this case, as opposed to a possibility, is that the PTs constitute independent contractors, and that there is not a reasonable risk of the Petitioners paying workers compensation benefits for them. That the above analysis demonstrates that the section 50-6-102(10)(D) factors readily

predominant in favor of the independent contractor status of the PTs defeats the Petitioners' claim of entitlement to premiums on the grounds they are at risk to pay benefits for the PTs.

Relying mainly on the foregoing analysis of the reasonable expectation, the Court has also taken into account, to a lesser extent, that the cases listed above as Petitioners' authority have a distinguishing feature. The cases all have to do with the construction industry. That industry has a special requirement under Tennessee Code Annotated section 50-6-113 which provides as follows:

> (a) A principal contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

This statute expands the circumstances under which a construction company can be held liable under the Workers' Compensation Act. Such expanded coverage necessarily results in expanded circumstances under which the insuror "could" be held liable, and increases the risk of the insuror paying workers compensation benefits. But such is not the case on the record before the Court. The only applicable analysis under which the Petitioners could be liable are the statutory factors under section 50-6-102(10)(D). There are not expanded circumstances of "up the chain" liability as with contractors and general contractors in the construction industry.

The Court's conclusion that the Petitioners have not demonstrated that they reasonably could be liable to pay workers' compensation benefits for the PTs requires the Court to dismiss that portion of the petition for judicial review.

Thus, having determined that the Petitioners have failed to demonstrate grounds under Tennessee Code Annotated section 4-5-322(h) for reversal of the Department's decision, the Court ORDERS that this petition for judicial review is dismissed with prejudice. Court costs are taxed to the Petitioners.

ELLEN HOBBS LYLE
CHANCELLOR

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