

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS**

MICHAEL KUKOR

APPELLANT

V.

NO. 2010-TS-01280-COA

**NORTHEAST TREE SERVICE, INC.
AND
LIBERTY MUTUAL INSURANCE COMPANY**

APPELLEES

AND

**JAY'S SERVICE COMPANY
AND
FIRSTCOMP INSURANCE COMPANY**

APPELLEES

REPLY BRIEF OF APPELLANT

**APPEALED FROM THE CIRCUIT
COURT OF MADISON COUNTY,
MISSISSIPPI**

ORAL ARGUMENT REQUESTED

**HON. JOHN HUNTER STEVENS
MSB [REDACTED]
GRENFELL, SLEDGE AND STEVENS
1535 LELIA DRIVE
JACKSON MS 39216
TEL NO. (601) 366-1900
FAX NO. (601) 366-1799
ATTORNEY FOR APPELLANT**

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS**

MICHAEL KUKOR

APPELLANT

VS.

NO. 2010-TS-01280-COA

**NORTHEAST TREE SERVICE, INC.
AND
LIBERTY MUTUAL INSURANCE COMPANY**

APPELLEES

AND

**JAY'S SERVICE COMPANY
AND
FIRSTCOMP INSURANCE COMPANY**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel for the Appellant, Michael Kukor, certifies the following parties have an interest in the outcome of this case. These representatives are made in order that the Court may evaluate possible disqualifications or recusal.

1. Michael Kukor, Appellant
2. John Hunter Stevens, Grenfell, Sledge & Stevens, PLLC - Counsel for Appellant
3. Northeast Tree Service, Inc. - Appellee
4. Liberty Mutual Insurance Company - Appellee
5. W. Bienville Skipper, Esq., - Counsel for Appellees No. 3 & 4 above
6. Jay's Service Company - Appellee
7. FirstComp Insurance Company - Appellee
8. Ashley Pradel, Esq. - Counsel for Appellees No. 6 & 7 above

9. Hon. Tammy G. Harthcock - Administrative Judge, Mississippi Workers' Compensation Commission
10. Hon. William E. Chapman, III, Madison County Circuit Court Judge

This the 2 day of Nov, 2010.



JOHN HUNTER STEVENS

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	-i-
TABLE OF CONTENTS	-ii-
INTRODUCTION	1
DISCUSSION	1
CONCLUSION	2
CERTIFICATE OF SERVICE	3

INTRODUCTION

The Appellees, Northeast Tree Service, Inc. and Liberty Mutual Insurance Company, attempt to spread a smoke screen in an attempt to whitewash Appellees' clear violation of the law as it relates to providing workers' compensation benefits to its employees, in this case Michael Kukor.

DISCUSSION

All employers in the State of Mississippi who employ more than five (5) employees are required to fulfill the regulations contained in the Mississippi Workers' Compensation Act. It could hardly be said that an employer who admittedly creates a sham or illegal company for the sole purpose of cutting benefits to its own employees involves questions, not of facts, but questions of law. The facts are not disputed. In this case, Jim Albritton, the owner of Northeast, attempted to create an illegal entity, Jay's Service Company solely for the purpose of trying to circumvent the requirements of the Workers' Compensation Act. He admitted this fact. Noticeably absent from the Appellees' brief is any reference whatsoever to the fact that this Jay's Service Company was not a legal entity; and, in fact, pursuant to Mississippi law as cited in the Appellant's brief, the claim is indefensible that this Jay's Service Company was none other than Northeast Tree Service and/or Jim Albritton, and should be treated as same as rightfully found by the Administrative Law Judge. Further, absent from the Employer and Carrier's brief is any reasonable attempt to distinguish this case from Holliman or any of the other cases discussing joint employment. To say that Northeast, and the illegal Jay's Service Company did not offer joint services, defies logic that these companies are, at a minimum, joint employers of Mike Kukor. To find otherwise is simply absurd. Common sense should prevail.

To affirm the Commission Order would be a travesty of justice to the workers of this state,

and would allow employers, such as Jim Albritton, to manufacture companies solely for the purposes of saving insurance premiums in an attempt to pay lower benefits to legitimately injured employees such as Mike Kukor. This is simply wrong. This will perpetuate those workers who most need protection, and who work in dangerous jobs for employers to be without a remedy, which would defeat the purpose of the Mississippi Workers' Compensation Act. The intent of the Act is to be fair and just. This has an opposite result. To affirm the ruling of the Commission would allow employers to manipulate the system and effectively cheat a legitimately injured worker out of those benefits which are legally required by the Act. Jim Albritton knew the injustice and travesty, and, in fact, paid benefits over and above the sham \$49.00 per week paid by Liberty Mutual. Did the company really expect Mr. Kukor and his family to survive on \$49.00 per week? In fact, Mr. Albritton admitted that, at a minimum, this illegal company known as Jay's Service Company was a 'sub-contractor' and an 'integral part' of Northeast. There is simply no question that Mr. Kukor was employed by this entity as one in the same as a joint employment. These facts are indistinguishable from Holliman, and from Pineywoods School vs. Judy Young (Citations set forth in Appellee's brief at p.11,12).

CONCLUSION


When evaluating the legal requirements of the Mississippi Workers' Compensation Act, it cannot be said that this case was a blatant attempt to circumvent the requirements of the Act. Mr. Albritton admitted as much, not only by his actions, but also his admissions. The law and common sense require reversal of the Commission's findings. To do otherwise, would ignore the plain and clear meaning of the Act, the result of which would completely do away with just and fairness as it relates to the injured worker especially ones working in a high risk occupation like a tree climber.

Respectfully submitted the 2 day of NOV, 2010.

MICHAEL KUKOR, CLAMANT

BY: 

JOHN HUNTER STEVENS

JOHN HUNTER STEVENS (MSB 
Grenfell, Sledge, and Stevens, PLLC
1535 Lelia Drive (39216)
P. O. Box 16570
Jackson, MS 39236-6570
Telephone: (601) 366-1900
Facsimile: (601) 366-1799

CERTIFICATE OF SERVICE

I, John Hunter Stevens, do hereby certify that I have this day mailed by United States Mail, postage prepaid, the above foregoing document to:

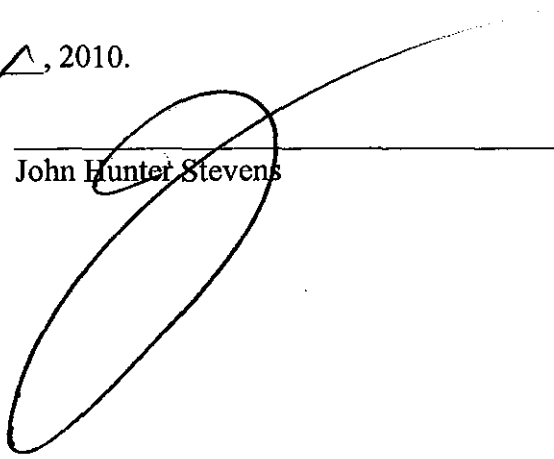
Ashley Pradel, Esq.
Anderson, Crawley & Burke, PLLC
P. O. Box 2540
Ridgeland, MS 39158 -2540

W. Bienville Skipper, Esq.
P. O. Box 1084
Jackson, MS 39215-1084

Hon. William E. Chapman, III
Madison County Circuit Court Judge
P. O. Box 1626
Canton, MS 39046

Mississippi Workers' Compensation Commission
ATTN: DOCKET ROOM
P. O. Box 5300
Jackson, MS 39296-5300

DATED, this the 2 of Nov, 2010.



John Hunter Stevens