

THE SUPREME COURT  
 STATE OF NORTH DAKOTA

HUFFMAN INC.	)	SUPREME COURT NO.: 2014 0348
d/b/a HUFFCO SERVICES	)	CIVIL NO.: 08-2013-CV-01855
	)	
	)	
Appellant,	)	
	)	<b>APPELLANT'S REPLY BRIEF</b>
vs.	)	
	)	
Workforce Safety and	)	
Insurance,	)	
	)	
Appellee.	)	
_____	)	

APPEAL FROM DISTRICT COURT JUDGMENT ENTERED JULY 22, 2014, WITH  
 NOTICE OF ENTRY OF JUDGMENT SERVED AUGUST 11, 2014, AND ORDER  
 AFFIRMING ADMINISTRATIVE DECISION DATED AUGUST 8, 2014.

COUNTY OF BURLEIGH  
 SOUTH CENTRAL JUDICIAL DISTRICT  
 THE HONORABLE DAVID REICH

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## **TABLE OF CONTENTS**

	<b>Paragraph</b>
TABLE OF CONTENTS .....	pg. i
TABLE OF AUTHORITIES CITED.....	pg. ii
REPLY BRIEF	1
CERTIFICATE OF SERVICE .....	pg. 4

## TABLE OF AUTHORITIES

Cases	Paragraph
<u>Myers-Weigel Funeral Home v. Job Ins. Div. Of Job Serv. N.D.</u> , 1998 ND 87, Para. 9, 578 N.W.2d 125; <u>Matter of BKU Enterprises, Inc.</u> , 513 N.W.2d 382, 385 (ND 1994) .....	5
<u>WSI v. Larry's On Site Welding</u> , 2014 ND 81, 845 N.W.2d 310 .....	5

[1] **REPLY BRIEF**

[2] Appellant Huffco Services submits this short reply to the argument of Appellee Workforce Safety and Insurance.

[3] WSI points to the Worker Relationship Questionnaire filled out by Huffco's office manager ((Appellant's Supp. App. 001; (CR 63-68)) as evidence that Appellant Huffco never informed WSI that the State of Colorado's insurance carrier, Pinnacol Assurance, determined that Huffco's drivers were independent contractors (WSI Brief, para. 8). Actually, WSI's questionnaire expressly referenced individuals performing services in North Dakota, not workers performing those same services in Colorado. While each sovereign state is free to make its own determination of employee/independent contractor status, the North Dakota Department of Labor considers the determinations of other states, including Colorado. WSI, in turn, must defer to the determination of the Department of Labor. In the instant case, the North Dakota Department of Labor was never asked to make, and did not make, any determination of Huffco's drivers' status as either employees or independent contractors and, consequently, did not consider the determination that Huffco's drivers in Colorado had been determined to be independent contractors. The Administrative Law Judge, however, was fully aware of the Colorado determination as well as the fact that Huffco's Colorado attorney had advised that its North Dakota drivers would also be considered independent contractors and its other workers were covered under its Colorado workers compensation policy, yet that evidence played no role in the ALJ's decision making. Furthermore, the fact that all of the Declaration of Independent Contractor Status Forms completed by Huffco's North Dakota drivers were, on their face, intended for use in the State of

Colorado ((Appellant's Supp. App. 008; (CR 74-82)) and thus evidenced Huffco's use of those forms in Colorado, also played no role in the ALJ's decision making. Surely, while the decision of Huffco's Colorado insurance carrier regarding drivers similarly situated to its North Dakota drivers was not binding on the ALJ in the instant matter, it was entitled to some consideration.

[4] Although WSI considered anyone providing services to Huffco in North Dakota to be "similarly situated," clearly they were not (App. Pp. 23.1-23.13). Huffco had two types of workers in North Dakota: those whom it considered to be employees (generally, office workers) and whom it believed were covered under its Colorado workers compensation policy, based on the opinion of its Colorado insurance carrier (App. P. 47; H.T. p. 29, ll. 1-9) and those whom it considered to be independent contractors (generally, drivers) based on the determination of its Colorado workers compensation insurance carrier, the opinion of its corporate attorney (App. 48; H.T. p. 30, ll. 3-19), industry practice and the drivers' agreement that they were working as independent contractors. When Huffco discovered that its North Dakota employees were not covered by its Colorado workers compensation carrier, it immediately took steps to obtain coverage in North Dakota (App. P. 47; H.T. p.29, ll. 10-15). Huffco did not consider its drivers in North Dakota to be employees based on the reasons previously mentioned.


[5] This Court recently decided the case of WSI v. Larry's On Site Welding, 2014 ND 81, 845 N.W.2d 310. A comparison may prove useful. Unlike the workers providing services to Larry's On Site Welding, Huffco's drivers signed written agreements that they were independent contractors. Like Larry's workers, Huffco's workers were only paid for the time they spent working; they were not paid for "down" time as employees typically

are paid. Like Larry's workers, Huffco's workers received training and instruction as directed by the well site operators. Huffco's involvement was limited to simply passing on the instructions of the site operators. Like Larry's workers, Huffco's workers were free to come and go as they pleased; there was no ongoing relationship. As Amy Huffman testified, "They kind of hopped from one company to another and, for lack of better terms, cherry-picked the best jobs. So that was really not necessarily a decision of ours, but it was just industry standard that the drivers were independent contractors and worked where they chose" (App. P. 47; H.T. p. 26, ll. 19-24). Like Larry's On Site Welding, Huffco was simply following industry practice in utilizing independent contractors. Unquestionably, Huffco was not in control of how the drivers performed their work; the drivers were subject to the direction of the well site operators. See Myers-Weigel Funeral Home v. Job Ins. Div. Of Job Serv. N.D., 1998 ND 87, Para. 9, 578 N.W.2d 125; Matter of BKU Enterprises, Inc., 513 N.W.2d 382, 385 (ND 1994).

[6] Just as Larry's On Site Welding's welders were determined to be independent contractors, so too should Huffco's drivers.

Respectfully submitted this 24th day of December, 2014.

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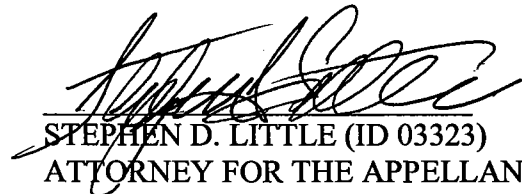
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