NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 1140

MICHAEL SULLIVAN, CHARLES BALDWIN, JOHNNY KNIGHTEN, JIMMY PHILLIPS AND RON DICKERSON

VERSUS

THE WORLEY COMPANIES WORLEY CATASTROPHE SERVICES, L.L.C., WORLEY CATASTROPHE RESPONSE, L.L.C., AND CLAIMS LIQUIDATING, L.L.C., FORMERLY KNOWN AS WORLEY CLAIMS SERVICES OF LOUISIANA, INC.

Judgment Rendered: December 21, 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 599,055

Honorable R. Michael Caldwell, Judge Presiding
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L. J. Hymel **Baton Rouge, LA** **and** **James H. Colvin, Jr.** **Pamela Breedlove** **Shreveport, LA** **and** **Timothy W. Cerniglia** **New Orleans, LA**	**Counsel for Plaintiffs/Appellants,** **Michael Sullivan, Charles Baldwin,** **Johnny Knighten, Jimmy Phillips,** **and Ron Dickerson**
Jennifer L. Anderson **David P. Borghardt** **Baton Rouge, LA**	**Counsel for Defendants/Appellees,** **Worley Catastrophe Services, LLC** **and Worley Catastrophe Response, LLC**
J.P. Hughes, Jr. **Oxford, MS**	**Counsel for Intervenor,** **John J. Altier**

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BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

McClendon, J. concurs and assigns reasons.

WHIPPLE, J.

In this suit alleging failure to pay wages due under written employment agreements, plaintiffs appeal the trial court judgment in favor of defendants, granting defendants' motion for summary judgment and dismissing plaintiffs' claims with prejudice. For the following reasons, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

On April 20, 2010, the Deepwater Horizon offshore drilling rig exploded, resulting in a massive oil spill in the Gulf of Mexico. Thereafter, Worley Catastrophe Services, L.L.C., and Worley Catastrophe Response, L.L.C., (hereinafter referred to collectively as "Worley") provided claims adjusting services on behalf of ESIS, Inc., BP Exploration & Production, Inc. ("BP"), and the Gulf Coast Claims Facility ("the GCCF") for claims arising from the event. Worley, in turn, contracted with approximately 1,200 adjusters to perform adjusting services on its behalf for those claims. In connection with their performance of these adjusting services for claims from the oil spill, these 1,200 adjusters signed employment agreements, entitled "Agreement," with Worley, all in substantially the same form and substance.

On February 8, 2011, plaintiffs, Michael Sullivan, Charles Baldwin, Johnny Knighten, Jimmy Phillips, and Ron Dickerson, claims adjusters hired by Worley to perform adjusting services, filed a petition styled "Class Action Petition," asserting claims on their own behalf and as representatives of other similarly situated individuals and naming as defendants The Worley Companies, Worley Catastrophe Services, L.L.C., Worley Catastrophe Response, L.L.C., (hereinafter referred to collectively as "Worley"), and Claims Liquidating, L.L.C., formerly known as Worley Claims Services of

Louisiana, Inc.[1] In the original and amending petitions, plaintiffs averred that pursuant to the Agreement, which each entered into with Worley, they were entitled to wages in excess of those paid to them by Worley. Specifically, plaintiffs averred that the Agreement they each signed provided for a wage "equivalent to 65% of the total fee Worley invoiced," but that they had received at most $550.00 per day, plus expenses, a wage less than the agreed-upon 65% of the fee invoiced to, and paid by, Worley's clients, ESIS, the GCCF, and BP. Thus, individually and on behalf of all class members, plaintiffs sought unpaid wages allegedly due under the Agreement together with statutory penalties and attorney's fees pursuant to LSA-R.S. 23:631 and 23:632.[2]

On June 6, 2011, plaintiffs filed a "Motion to Certify Action as Class Action" pursuant to LSA-C.C.P. art. 592. Following a hearing on the motion, the trial court granted the motion to certify the action as a class action by judgment dated September 21, 2011.[3]

Thereafter, on December 2, 2011, Worley filed a motion for summary judgment, contending that the Agreement upon which the plaintiffs' and the class members' claims were based, by its unambiguous language, did not apply to the adjusting of "third party claims on the environmental project at issue," which Worley referred to as "the BP project," but rather applied "only to the adjusting of first party insurance claims on projects for insurance carriers." Worley further contended that the adjusters working on

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[1]Plaintiffs later sought and were granted dismissal without prejudice of their claims against Claims Liquidating, L.L.C.

[2]Louisiana Revised Statute 23:631 provides for the payment of wages due upon the discharge or resignation of an employee, and LSA-R.S. 23:632 imposes liability upon the employer for the payment of penalties and attorney's fees where the employer fails or refuses to comply with the provisions of LSA-R.S. 23:631.

[3]Worley devolutively appealed the trial court's judgment certifying this action as a class action, which appeal is also before this panel. By opinion also handed down this date, this court affirmed the trial court's class certification. Sullivan v. Worley, 2012-0095 (La. App. 1st Cir. 12/21/12) (unpublished).

the BP project were paid pursuant to separate oral agreements with Worley. With regard to the fact that these adjusters were working on the BP project, an environmental project involving third-party claims, and each in fact had signed the Agreement at issue, Worley contended that the purpose of having the Agreement signed by each adjuster and including it with the "new hire paperwork" was to ensure it was "on file" in the event an adjuster was later deployed on a project for an "insurance carrier client." Moreover, Worley asserted that even if the Agreement were characterized as ambiguous, it should nonetheless be interpreted to apply only to "insurance claims adjusting."

Plaintiffs opposed the motion for summary judgment, contending that the question of whether the Agreement, which Worley undisputedly required 1,200 adjusters to sign before they commenced work on the BP Oil Spill, or an alleged oral agreement governed their employment relationship presented a disputed issue of fact which precluded summary judgment.

Following a hearing on the motion, the trial court, by judgment dated March 8, 2012, granted Worley's motion for summary judgment and dismissed plaintiffs' claims with prejudice in their entirety.[4] From this judgment, plaintiffs appeal, contending that the trial court erred in:

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[4]We note that the trial court's March 8, 2012 judgment dismissing plaintiffs' claims "with prejudice in their entirety" appears to be a dismissal of the claims of the named plaintiffs as well as the claims of the class members. When a matter is certified as a class action, LSA-C.C.P. art. 592(B) requires the trial court to direct notice to the class members, including an opt out provision, "as soon as practicable after certification, but in any event early enough that a delay provided for the class members to exercise an option to be excluded form the class will have expired before commencement of the trial on the merits of the common issues." However, in the instant case, the court determined that it would hear the motion for summary judgment prior to class notification being sent to the class members and then purported to dismiss with prejudice the claims of all class members without them ever having received notice of the pendency of the class action or having the opportunity to opt out of the class. While we note that such a procedure raises process concerns, see Duckworth v. Louisiana Farm Bureau Mutual Insurance Company, 2011-2835, (La. 11/2/12), ___ So. 3d ___, ___, 2012 WL 5374248, p. 9, we need not address the effect, if any, this judgment would have on the rights of the class members because we have otherwise determined that summary judgment was improvidently granted herein.

(1) Granting summary judgment on a contested issue of fact, that being, which agreement the parties intended to govern their contractual relationship, an alleged oral agreement asserted by Worley or the written Agreement that Worley required 1,200 adjusters sign as part of "their employment with Worley";

(2) Relying on LSA-C.C. art. 2046 regarding interpretation of contracts, to determine a question of fact reserved to the trier of fact; and

(3) Finding, as a matter of law, that the Agreement was clear and unambiguous and could only apply to adjusting "insurance claims" for insurance companies.

SUMMARY JUDGMENT

A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. LSA-C.C.P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. LSA-C.C.P. art. 966(C)(2). However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. LSA-C.C.P. art. 966(C)(2). If the moving party points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. LSA-C.C.P. art.

966(C)(2). If the mover has put forth supporting proof through affidavits or otherwise, the adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial. LSA-C.C.P. art. 967(B).

If, on the other hand, the mover will bear the burden of proof at trial, that party must support his motion with credible evidence that would entitle him to a directed verdict if not controverted at trial. Hines v. Garrett, 2004-0806 (La. 6/25/04), 876 So. 2d 764, 766. Such an affirmative showing will then shift the burden of production to the party opposing the motion, requiring the opposing party either to produce evidentiary materials that demonstrate the existence of a genuine issue for trial or to submit an affidavit requesting additional time for discovery. Hines, 876 So. 2d at 766-767.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. Hines, 876 So. 2d at 765. Despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. Willis v. Medders, 2000-2507 (La. 12/8/00), 775 So. 2d 1049, 1050.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 2008-

1262 (La. App. 1st Cir. 12/23/08), 5 So. 3d 238, 243-244, writ denied, 2009-0166 (La. 3/27/09), 5 So. 3d 146.

DISCUSSION

Contracts have the effect of law between the parties. LSA-C.C. art. 1983. Courts are obligated to give legal effect to contracts according to the common intent of the parties. LSA-C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA-C.C. art. 2046. Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. LSA-C.C. art. 2050; Cajun Constructors, Inc. v. Fleming Construction, Inc., 2005-2003 (La. App. 1st Cir. 11/15/06), 951 So. 2d 208, 214, writ denied, 2007-0420 (La. 4/5/07), 954 So. 2d 146.

Thus, when the words of the contract are clear and explicit and lead to no absurd consequences, it will be enforced as written, and its interpretation is a question of law for the court to decide. Johnson v. Illinois National Insurance Company, 2000-1775 (La. App. 1st Cir. 11/9/01), 818 So. 2d 100, 103, writ denied, 2001-3190 (La. 2/8/02), 809 So. 2d 139. Accordingly, where a contract can be construed from the four corners of the instrument without looking to extrinsic evidence and the question of contractual interpretation is thus answered as a matter of law, summary judgment is appropriate. Dean v. Griffin Crane & Steel, Inc., 2005-1226 (La. App. 1st Cir. 5/5/06), 935 So. 2d 186, 189, writ denied, 2006-1334 (La. 9/22/06), 937 So. 2d 387.

In support of its motion for summary judgment, Worley contended that the unambiguous language of the Agreement demonstrates that it applies only to first-party insurance adjusting services and, thus, that it did

not apply to the work plaintiffs performed in adjusting third-party claims filed against BP as a result of the BP oil spill.

The relevant language of the Agreement is as follows:

> Whereas, Employee is or will be acting on behalf of Worley and further acknowledges that Worley's **principal business** is supplying temporary help to assist in **adjusting claims for various insurance companies and/or carriers** ...
>
> Whereas, Employee assures Worley that he/she is knowledgeable about the various aspects of **insurance claims adjusting** and is capable of rendering advice concerning all aspects of said business; ... .
>
> * * *
>
> Now, therefore, in exchange for the employment of the Employee by Worley and the promises contained herein, Worley and Employee do hereby covenant, contract and agree as follows:
>
> 1. Worley shall employ Employee for the purpose of providing assistance to Worley and such other entities as Worley may designate, from time to time, which said consulting services shall be **in the general area of all aspects of insurance claims adjusting**. ... As compensation for his/her employment, Employee shall receive such monetary compensation as agreed between the parties for services in writing from time to time.
>
> 2. Employee and Worley acknowledge and agree that the nature of the Employee's association with Worley is and shall remain that of an employee-at-will. Nothing contained herein, or otherwise, creates nor shall it be construed to create any employment relationship other than an employment-at-will.
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> □ Employee agrees to receive 40% for regular pay consideration plus 25% for overtime consideration making a total commission of **65% of the total fee amount of the invoice billed to the insurance carrier**, upon receipt by Worley, of payment from carrier for work performed. This will be **calculated based on each individual file billed and payment received for that file**.
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> * * *
>
> 6. Worley agrees to pay any retainer fee offered by a client based upon the adjuster's satisfactory performance as deemed by the client. This retainer is to be paid to the employee after payment has been received by Worley.

> Worley in no way has any control over conditions of payment, time of payment nor determination of the number of days employee is entitled to receive compensation. As with all pay employee will receive 65% of the amount determined by the client. [Emphasis added.]

In its memorandum in support of its motion for summary judgment, Worley averred that the above-quoted language clearly and unambiguously demonstrated that the Agreement applies only to adjusting services for first-party **insurance claims** for **insurance carriers** or companies and does not apply to third-party environmental claims such as those handled by plaintiffs in connection with the BP oil spill.

In support of its motion, Worley filed excerpts of the testimony of Allen Carpenter, the director of corporate compliance for Worley Catastrophe Response, from both the class certification hearing and a deposition. Carpenter testified that Worley provides two primary types of claims adjustment services, insurance and non-insurance. With insurance claims adjusting, Worley contracts with an insurance company to supplement its adjusting staff in the event of a natural disaster or a large-claim event. For non-insurance customers, on the other hand, Worley provides claims adjusting services to a company, but those services are not tied directly to an insurance policy. According to Carpenter, within Worley's line of work, it is customary to offer employment to adjusters on non-insurance events at day-rate compensation rather than on a per-file percentage rate of compensation.

Carpenter further testified that the approximately 1,200 adjusters it hired to perform third-party or non-insurance adjusting services in response to the BP oil spill entered into **oral** agreements with Worley for those services at a day rate of $450.00 or, in some cases, $550.00. With regard to the Agreement at issue, which Worley has stipulated the adjusters signed in

connection with their deployment to perform adjusting services for claims arising from the BP oil spill, Carpenter claimed that the Agreement was not signed by the adjusters for purposes of services provided for *this event.* Rather, the Agreement applies to Worley's **insurance services** work, and Worley had the adjusters sign the Agreement as part of the "employment package" in the event that *at some point in the future* an insurance event arose. Thus, Carpenter explained, Worley had the Agreement "on file" for insurance services work that these adjusters *may perform* on behalf of Worley in the future. According to Carpenter, the oral agreement that Worley entered into with the adjusters for services relating to the BP oil spill was separate and apart from the written Agreement, which governed insurance adjusting services that the adjusters *may provide in the future.*

Worley also filed excerpts of the depositions of the named plaintiffs. In their depositions, Sullivan, Phillips, Baldwin, and Dickerson each testified that when contacted about performing adjusting services on behalf of Worley for BP oil spill claims, they were orally told that the pay would be a certain sum per day, i.e., a day rate, and that, except for minor errors, they were paid that agreed-upon amount during their employment with Worley. Although in the excerpt of Knighten's deposition filed by Worley there is no discussion of the initial oral contract made with Knighten and any oral agreement that may have been reached at that time, Knighten did testify that he was paid a day rate in connection with his employment by Worley for the BP oil spill claims, and he agreed that, other than an error in the daily rate that was eventually resolved, he was paid the amount he was supposed to receive.

Thus, Worley asserted that by the clear and unambiguous language of the Agreement, which applied only to **insurance** claims adjusting, the Agreement did not apply to the work performed by plaintiffs.

As further evidence that the Agreement did not apply to plaintiffs' services herein, Worley noted that the terms of the Agreement provided for compensation as "a total commission of 65% of the total fee amount of the invoiced billed to the **insurance carrier**," which was to "be calculated based on each individual file billed and payment received for that file." (Emphasis added). Worley noted that it was undisputed that BP is not an insurance carrier. Worley further argued that interpreting the Agreement to apply to environmental claims would lead to absurd consequences, asserting that compensating each employee 65% per file of each file he or she worked, when multiple adjusters worked on the same files, would lead to "an absurd, unworkable compensation system."

Alternatively, noting that the Agreement uses the term "insurance" six times, Worley asserted that even if the Agreement could be characterized as ambiguous, interpreting it to apply to environmental claims adjusting would render ineffective all references to insurance carriers, insurance claims, and the adjusting thereof throughout the Agreement. Further, Worley contended that, if the Agreement were ambiguous, making parol evidence admissible, the conduct of the parties, i.e., Worley's payment of, and plaintiffs' acceptance of payment of, a day rate, and Worley's "regular practices" in paying a day rate for environmental projects "weigh in favor" of the interpretation asserted by Worley.[5] Based on these arguments, Worley

[5]Worley also argued that plaintiffs had waived any rights to compensation in accordance with the terms of the Agreement by accepting the compensation they were paid by Worley.

sought summary judgment dismissing all claims at the plaintiffs' and class members' expense.

In granting the motion for summary judgment and dismissing all claims with prejudice, the trial found that the Agreement is "completely unambiguous" and "applies only to insurance claims billed on a per-file basis" "for adjusting of insurance claims for insurance companies." Noting that this case did not involve "insurance claims," the court concluded that the Agreement by its clear wording did not apply to plaintiffs' claims for unpaid wages. We disagree.

Initially, we observe that there are two allegedly applicable contracts at issue herein, i.e., the **oral contract** Worley contends it entered into with each adjuster who performed services for it related to the BP oil spill and the **written Agreement** signed by each adjuster in connection with the deployment to perform the adjusting services at issue. While plaintiffs contend that the written Agreement governs the parties' relationship, Worley contends that the oral contracts govern. Which of two contracts applies is a determination that may, under the particular facts presented, raise genuine issues of material fact as to which of the two contracts applies herein. See Bolton v. Tulane University of Louisiana, 96-1246 (La. App. 4th Cir. 1/29/97), 692 So. 2d 1113, 1125-1126, writ denied, 97-1229 (La. 9/27/97) 701 So.2d 982. Moreover, whether an oral agreement modifies a written contract is also question of fact.[6] Cajun Constructors, Inc., 951 So. 2d at 214.

[6]As the courts have recognized, in certain circumstances, an oral agreement and associated conduct may modify a written contract, even when the written contract contains a provision stating otherwise. See generally Cajun Constructors, Inc, 951 So. 2d at 214; see also J. Michael Howell & Associates, Inc. v. Sierra W/O Wires, Inc., 2010-1019, p. 8 (La. App. 1st Cir. 12/22/10) (unpublished).

Moreover, we do not find, as suggested by Worley, that the language of the Agreement clearly and unambiguously demonstrates that it did not apply to the employment relationships at issue. Although the Agreement does use the terms "insurance" and "insurance carriers," the Agreement also references the "client" in referring to the entity for whom Worley performs adjusting services. Thus, construing the language of the agreement as a whole, and as noted by plaintiffs, a reasonable interpretation of the phrase "insurance carriers" certainly could include self-insured entities, such as BP. Moreover, the Agreement specifically recites that Worley shall employ the employee in "the **general area** of **all aspects** of insurance claims adjusting." (Emphasis added). This phrase likewise could be reasonably interpreted to include adjusting services for such self-insured entities.

In instances where the mutual intention of the parties has not been fairly explicit, the court may consider all pertinent facts and circumstances surrounding the parties at the time of contracting and may consider the party's own conclusions rather than adhere to a forced meaning of the terms used in the contract. LSA-C.C. art. 2053; Naquin v. Louisiana Power & Light Company, 2005-2103 (La. App. 1st Cir. 9/15/06), 943 So. 2d 1156, 1161, writ denied, 2006-2476 (La. 12/15/06), 945 So. 2d 691; Investors Associates Ltd. v. B.F. Trappey's Sons Inc., 500 So. 2d 909, 912 (La. App. 3rd Cir.), writ denied, 502 So. 2d 116 (La. 1987). However, given the weighing of factual evidence generally necessary to determine a party's intent, such issues are rarely appropriate for resolution by summary judgment. See Eskind v. Marcel, 06-0369 (La. App. 1st Cir. 12/28/06), 951 So. 2d 289, 292.

In support of their assertion that summary judgment was not appropriate, plaintiffs offered Stipulations of the parties, wherein Worley

stipulated that approximately 1,200 adjusters signed "employment agreements in substantially the same form and substance as the Agreement attached [to the Stipulations] **in connection with** their deployment to perform adjusting services for claims arising from the oil spill." (Emphasis added). Plaintiffs also submitted deposition testimony establishing that Worley **required** all 1,200 adjusters to sign the written Agreement and that even adjusters who had already executed employment contracts with Worley for prior work were required to execute the written Agreement prior to working on claims from the BP oil spill. The Agreement was presented to the adjusters for execution along with other employment documents. Moreover, although plaintiffs did acknowledge in their depositions that they were to be paid a day rate, they further testified, as evidenced by excerpts of testimony submitted in opposition to the motion for summary judgment, that they believed the day rate they were being paid actually represented 65% of the amount Worley was billing its clients for plaintiffs' adjusting services in connection with the BP oil spill, as set forth in the Agreement.[7] Concerning Worley's argument that plaintiffs waived their right to claim unpaid wages by accepting the day rate they were paid, plaintiffs asserted that because they believed that the day rate they were being paid represented 65% of the amount Worley was billing its clients, they could not have waived any such right to seek full compensation.

Also, with regard to Worley's argument that the Agreement does not apply because of the reference to "per file" billing, plaintiffs noted that the Agreement further provided "**as with all pay**, employee will receive 65% of

[7]Phillips specifically testified that he questioned a Worley employee at the time he signed the Agreement about the provision in the Agreement referencing compensation in the amount of 65% of the amount invoiced and that the employee indicated to him that the 65% compensation provision was "the same thing" as the day rate he was quoted.

the amount determined by the client." (Emphasis added). Based on this provision, plaintiffs asserted that they were entitled to 65% of the day rate Worley billed its clients for plaintiffs' services. Indeed, Baldwin had testified in his deposition that when he performed services on behalf of Worley in the 2005 to 2006 timeframe for an insurance client, Worley had paid him 65% *of the day rate* it was billing the insurance carrier.

Plaintiffs also submitted the affidavit of an adjuster who was employed by Worley only in connection with the BP oil spill claims and attested that after her employment with Worley ceased, Worley sent her a letter threatening legal action against her for alleged violations of the non-competition clause in the Agreement. Plaintiffs asserted that these actions by Worley demonstrated Worley's intent that the employment relationship with plaintiffs in connection with the BP oil spill be governed by the terms of the Agreement.

On review, we agree that summary judgment is not appropriate herein, given these compelling claims regarding the applicable contract and terms, which can be resolved by the careful weighing of testimony and evidence to determine the underlying facts and the intention of the parties in confecting an employment relationship.

Considering the foregoing and based on our *de novo* review of the record as a whole, we conclude that genuine issues of material fact exist as to whether the written Agreement applied and which terms, if any, governed the employment relationship of the parties with regard to plaintiffs' adjusting services related to the BP oil spill. As such, summary judgment was improvidently granted.

CONCLUSION

For the above and foregoing reasons, the March 8, 2012 judgment, granting Worley's motion for summary judgment and dismissing plaintiffs' claims with prejudice, is hereby reversed. This matter is remanded for further proceedings consistent with the views expressed herein. Costs of this appeal are assessed against Worley Catastrophe Response, L.L.C. and Worley Catastrophe Services, L.L.C.

REVERSED AND REMANDED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 1140

MICHAEL SULLIVAN, CHARLES BALDWIN, JOHNNY KNIGHTEN, JIMMY PHILLIPS AND RON DICKERSON, INDIVIDUALLY AND AS CLASS REPRESENTATIVES

VERSUS

THE WORLEY COMPANIES, WORLEY CATASTROPHE SERVICES, L.L.C., WORLEY CATASTROPHE RESPONSE, L.L.C., AND CLAIMS LIQUIDATING, L.L.C., FORMERLY KNOWN AS WORLEY CLAIMS SERVICE OF LOUISIANA, INC.

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McCLENDON, J., concurs and assigns reasons.

I agree with the majority that the Agreement's opening paragraphs, which reference that Worley's "principal business is supplying temporary help to assist in adjusting claims for various insurance companies and/or carriers" and the employee's assurance of knowledge about "various aspects of insurance claims adjusting," do not clearly and unambiguously demonstrate that the Agreement was limited solely to adjusting claims for insurance carriers.[1]

Further, the Agreement entered into between the parties references three provisions regarding compensation. First, paragraph one provides that the "Employee shall receive such monetary compensation as agreed between the parties for services in writing from time to time." Next, paragraph two provides that the "Employee agrees to receive 40% for regular pay consideration plus 25% for overtime consideration making a total commission of 65% of the total fee amount of the invoice billed to the insurance carrier, upon receipt by Worley, of payment from carrier for work performed." Third, paragraph six provides that "As with all pay employee will receive 65% of the amount determined by the client."

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[1] "Principal" is defined as "Chief; primary; most important." Black's Law Dictionary (9th ed. 2009).

Clearly, the payment provision in paragraph two does not apply herein insofar as BP is not an insurance carrier. Also, paragraph one allows the parties to enter into other arrangements that are not specifically provided for in the Agreement. However, it is unclear whether the provision in paragraph six, which provides that the employee is to receive 65% of the amount determined by the client, modifies any arrangement agreed upon by the parties in accord with paragraph one or paragraph two. Although an argument can be made that paragraph six merely modifies the provisions found in paragraph two, given the ambiguity in the Agreement, extrinsic evidence is required to determine the intent of the parties. Therefore, summary judgment is inappropriate. Accordingly, I concur with the result reached by the majority.