OPINION ENTERED: March 26, 2012

CLAIM NO. 200900834

INTERCHEZ LOGISTICS SYSTEMS, INC. PETITIONER

VS. **APPEAL FROM HON. LAWRENCE F. SMITH, ADMINISTRATIVE LAW JUDGE**

HOWARD RITCHIE,
UNITED, INC.,
IMAGE POINT, INC.,
KIRK & BLUM MANUFACTURING,
GTI ROLL TRANSPORTATION SERVICES, INC.,
UNINSURED EMPLOYERS' FUND,
and HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

AND

IMAGE POINT, INC. PETITIONER

V.

HOWARD RITCHIE,
INTERCHEZ LOGISTICS
UNITED, INC.,
KIRK & BLUM MANUFACTURING,
GTI ROLL TRANSPORTATION SERVICES, INC.,
UNINSURED EMPLOYERS' FUND,
and HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

* * * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Interchez Logistics Systems, Inc. ("Interchez"), Image Point, Inc. ("Image Point"), and Kirk & Blum Manufacturing ("Kirk & Blum") filed notices of appeal seeking review of a decision rendered May 31, 2011, by Hon. Lawrence F. Smith, Administrative Law Judge ("ALJ"), awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits to Howard Ritchie ("Ritchie") due to an accident occurring on October 26, 2008. Interchez, Image Point, and Kirk & Blum also appealed from the August 8, 2011 order denying all petitions for reconsideration. Kirk & Blum subsequently withdrew its appeal.

At the time of the accident, Ritchie was driving a truck with a load consisting of items picked up in Tennessee, Kentucky, and Ohio for delivery to Washington and Oregon. The accident occurred in Nebraska. His load consisted of products from Image Point, Kirk & Blum, and Castle Gap Fabrication ("Castle Gap"). Castle Gap was dismissed at the hearing with no objection from any of the

remaining parties. The load being delivered for Image Point was brokered through Interchez. The load being delivered for Kirk & Blum was brokered through GTI Roll Transportation Services, Inc. ("GTI"). The Uninsured Employers' Fund ("UEF") is also a party to this appeal.

Ritchie received his assignment to pick up and deliver the loads from United, Inc. ("United"), a trucking company located in Hazard, Kentucky. United had no workers' compensation insurance coverage in effect on October 26, 2008. United asserted Ritchie was an independent contractor, and had executed a written rejection of the Kentucky Workers' Compensation Act, although it was never filed with the Department of Workers' Claims. The ALJ determined Ritchie was an employee of United. He found Interchez and Image Point liable for TTD, PPD and medical benefits pursuant to KRS 342.610(2). We affirm in part, reverse in part and remand.

Ritchie testified by deposition on March 1, 2010, and again at the hearing held March 28, 2011. Ritchie is a resident of Perry County, Kentucky. He has a GED, obtained a welding certificate, and holds a commercial driver's license. His work experience includes serving a stint in the U.S. Army as an anti-aircraft crewman, a welder in a welding shop, a welder for a coal mine, and a truck driver.

Ritchie began working for United's predecessor in 2004, and continued to work at the same location for successive companies until the date of the accident. He later attempted to work for a similar trucking company, but was prevented from doing so because of continuing neck problems, and thoughts of the other driver killed in the October 26, 2008 accident. He currently drives a dump truck part-time which does not require him to climb, or secure loads with straps or chains. He currently earns $500.00 to $600.00 dollars per week.

Ritchie testified he was United's employee, not an independent contractor. He did not own the truck, nor did he own any equipment. He did not pay insurance on the truck which he believed to be owned by United. United directed him where to pick up and deliver a load. He signed numerous documents while working for United, none of which were explained to him. He testified United often called directing him to change the name on the truck, even during deliveries. He testified at the time of the accident, he was hauling a load for Image Point, and was unfamiliar with Interchez. Ritchie testified approximately 15 drivers worked for United, as well as secretaries, mechanics and dispatchers. Ritchie was dispatched through United's office, and was paid on a basis of 25% of the

load, which he testified amounted to $1,500.00 to $2,000.00 per week.

At the time of the accident, he was in Nebraska taking a delivery to Portland, Oregon. An automobile crossed the median and struck his truck head-on. He momentarily lost consciousness at the scene. He was then taken to the closest hospital, which was located across the state line in Colorado, where an MRI was performed. United sent him money to stay in a hotel. Elliot Campbell, one of the owners and a dispatcher for United, brought him home. Ritchie treated with Dr. Gilbert, a family physician. Dr. Gilbert referred him to Dr. Bean, a neurosurgeon, who ordered an additional MRI. He continues to complain of neck stiffness, and difficulty with standing and lifting. He also experiences frequent headaches. He has been unable to continue with treatment because he cannot afford it.

Melinda Campbell, one of the owners of United, testified by deposition on May 7, 2010. She testified Ritchie was a contract laborer. She also stated he had signed a written rejection of the Kentucky Workers' Compensation Act, which United required of all drivers. She also testified Ritchie leased the truck and could accept or reject any loads offered. The United dispatcher would call Ritchie to offer the load, which he had the

opportunity to accept or reject. She testified Ritchie was required to carry his own workers' compensation insurance, and liability insurance, but was not required to provide proof of insurance. United had no written contract with Interchez. She testified United carried no workers' compensation coverage, because it had no employees. All trucks operated by United were owned by AOD, another company, and licensed in Tennessee. United is not currently in operation. She currently operates Interstate[1], a separate company. Ms. Campbell was unable to produce a copy of the lease agreement allegedly signed by Ritchie. Likewise, she produced no proof the written rejection had been filed with the Kentucky Department of Workers' Claims.

Elliot Campbell testified by deposition on May 7, 2010. He is a dispatcher for Interstate Line Haul. Some loads are arranged through Interchez. At one time, a set-up package was signed with Interchez. Mr. Campbell has dispatched for United, AOD, AODD, WFO, Trans West Carriers, Interstate Line Haul and Elliot Campbell Contracting. As a dispatcher, he arranges loads for drivers who he said are all independent contractors. He maintains paperwork pertinent to deliveries until they are completed. At the

[1] Presumed to be the same entity as Interstate Line Haul referenced by Elliot Campbell in his deposition.

time of the accident, Ritchie was hauling three loads, most likely through different brokers. Mr. Campbell was paid based upon 2% of the load, but only if two or more loads were on the truck.

Bryan Napier, a consultant for AOD, testified by deposition on May 7, 2010. His duties as a consultant consist of working as dispatcher. He testified he receives a 2% commission from loads. He was also a consultant for United, but was paid through AOD. The load Ritchie was hauling for Image Point was brokered through Interchez.

Mark Chesnes, president of Interchez, testified by deposition on April 29, 2011. He described Interchez as an outsource service for logistics departments, essentially arranging deliveries between companies. All of its employees are in Ohio or Michigan. Mr. Chesnes testified Image Point would electronically transmit shipment information to Interchez, who would then place it out for bid. Interchez has no trucks and no employees involved in the actual delivery of the product.

Ritchie supported his claim with records from the Sedgwick County Health Center in Colorado for treatment due to the motor vehicle accident. He also filed records from Dr. Gilbert and Dr. Bean establishing he suffered from cervicalgia, cervical disk disease, lumbar radiculopathy,

anxiety, depression and panic attacks. On February 2, 2009, Dr. Gilbert noted Ritchie had probable post-traumatic stress syndrome.

Ritchie filed the Form 107-I report prepared by Dr. Robert Johnson who evaluated him on September 11, 2009. Dr. Johnson stated Ritchie injured his neck and head in the motor vehicle accident occurring October 26, 2008 when he was flipped upside down. Dr. Johnson diagnosed Ritchie with persistent neck pain, stiffness and guarding, along with post-traumatic stress disorder, all caused by the motor vehicle accident. He found Ritchie had reached maximum medical improvement ("MMI"). He assessed a 15% impairment rating pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Johnson opined Ritchie had no prior active condition. He also stated Ritchie does not retain the capacity to perform the job he was doing at the time of the accident, and should avoid jarring and vibration, awkward positions with his neck, and twisting of the neck.

Ritchie also introduced the October 27, 2009 report of Dr. Christopher Allen, a licensed clinical psychologist. He noted Ritchie had been unable to work due to pain and symptoms of traumatic stress. Dr. Allen

diagnosed Ritchie with post-traumatic stress disorder and depressive disorder not otherwise specified. He assessed a 10% impairment rating pursuant to the AMA Guides, 2nd Edition, of which he found 3% to be pre-existing and active.

Image Point introduced Dr. Bean's records from March 30, 2009 and April 27, 2009. Dr. Been noted the MRI performed April 14, 2009 demonstrated degenerative cervical disk bulges at C4-5, C5-6 and C6-7 to the left. He assessed a 5% impairment rating pursuant to the AMA Guides. He did not believe Ritchie was a surgical candidate. He advised Ritchie should avoid working in a constant tilted, twisted position.

Image Point also filed the Electro Diagnostic Functional Assessment of an examination performed by Dr. John Coyle and Dr. Mary Rose Cusimano-Reason, Ph.D. performed June 29, 2010. This report outlined Ritchie had chronic unrelated pathology; was non-compliant with cervical range of motion; had minimal myofascial lumbar pathology inconsistent with date, complaints and mechanism of injury. This report also detailed Ritchie had reached MMI to his pre-injury status with no ratable impairment relative to the October 26, 2008 injury.

Ritchie was evaluated by Dr. Tim Allen, a psychiatrist, on May 21, 2010. Dr. Allen diagnosed pain disorder associated with both a neck injury and psychological factors, and a personality disorder not otherwise specified. Dr. Allen noted Ritchie exhibited some symptoms of post-traumatic stress disorder, but did not exhibit significant functional impairment. He found Ritchie had reached MMI, and the pain disorder was directly related to the October 26, 2008 work-related injury. Dr. Allen assessed a 5% impairment rating pursuant to the AMA Guides, 2nd Edition, half of which he attributed to a pre-existing personality disorder.

In the opinion and award rendered May 31, 2011, the ALJ determined:

> In view of the above stated findings of fact and conclusions of law, and this ALJ being otherwise sufficiently advised;
>
> **IT IS HEREBY ORDERED AND ADJUDGED** as follows:
>
> 1. Kirk & Blum Manufacturing Company, GTI Roll Transportation Services and AIM Sign Company are dismissed with prejudice from this litigation as having no liability under Kentucky law.
>
> 2. Plaintiff shall recover temporary total disability benefits from October 26, 2008 to April 27, 2009, at the rate of 670.02 per week.

> 3. Plaintiff shall recover permanent partial disability benefits based upon a 12% functional impairment in accordance with KRS 342.730 in effect on the date of the injury.
>
> $ 502.51 (2/3 of AWW or max)
> X .12 (12% wbi)
> $ 60.30
> X 1.0 (per KRS 342.730(1)(b)
> $ 60.30
> $ X 3 (per KRS 342.730(1)(c)(1 and 3)) (inability to return to the type of work performed at the time of injury)
> **$180.90**
>
> 4. Pursuant to the provisions of KRS 342.730(1)(c)(2), plaintiff is entitled to recover the amount of **$180.90** per week beginning April 28, 2009, and continuing thereafter for a total of 425 weeks from said date.

Other than Image Point's argument the ALJ erred in finding Ritchie to be United's employee, rather than an independent contractor, none of the parties dispute the ALJ's determination of entitlement to TTD benefits, the award of PPD benefits, or the award of medical benefits. Likewise, none of the parties argue Ritchie effectively rejected the Kentucky Workers' Compensation Act, therefore the ALJ's determination on these issues is affirmed.

I. Did the ALJ err in finding Ritchie to be an employee of United?

On appeal, Image Point argues the ALJ erred by finding Ritchie was employed by United. In the opinion, order and award rendered May 31, 2011, regarding this issue, the ALJ found the following:

> **Did the plaintiff have an employment relationship with United, Inc.?** The plaintiff's evidence is that he worked for defendant, United, Inc., as a truck driver, a job he had held since 2004. The defendant, United, Inc., counters that the plaintiff was an independent trucker who had rejected protection by the workers[sic] compensation act and who indicated his independent status through his tax returns. Other defendants agree with United, Inc., but also state that even if the plaintiff is deemed to have been an employee they are not responsible under the up the ladder requirements of KRS 342.610.
>
> As the plaintiff points out KRS 342.640(1) states that "[e]very person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer. Furthermore, the Supreme Court in Ratliff v. Redmon, 396 S.W.2d 320 (Ky. 1965) has set out a nine factor test to be considered when determining whether or not a claimant is an independent contractor or an employee. They are:
>
> 1. The extent of control which, by the agreement, the master may

> exercise over the details of the work;
>
> 2. Whether or not the one employed is engaged in a distinct occupation or business;
>
> 3. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
>
> 4. The skill required in the particular occupation;
>
> 5. Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
>
> 6. The length of time for which the person is employed;
>
> 7. The method of payment, whether by the time or the job;
>
> 8. Whether or not the work is a part of the regular business of the employer;
>
> 9. Whether or not the parties believe they are creating the relationship of master and servant.

Id. at 324-325. Later, the Supreme Court further condensed the criteria indicating that a proper Ratliff analysis requires consideration of four factors: (1) the nature of the work as related to the business generally carried on by the alleged employer; (2) the extent of control exercised by the alleged employer; (3) the professional

skill of the alleged employee; and (4) the true intent of the parties. Purchase Transportation Services v. Estate of Wilson, 39 S.W.3d 816, 818 (Ky. 2001), (citing Uninsured Employers' Fund v. Garland, 805 S.W.2d 116, 117 (Ky. 1991)), see also Husman Snack Food Co. v. Dillon, 591 S.W.2d 701 (Ky. App. 1979) and Chambers v. Wooten's IGA Foodliner, 436 S.W.2d 265 (Ky. 1969). The application of the test for distinguishing an independent contractor from an employee favors the employee-employer relationship. Husman Snack Foods Company, supra, 591 S.W.2d at 703.

When applying the Ratliff factors to this litigation, this ALJ is persuaded that on almost all of the nine factors the evidence favors the plaintiff's assertion that he was an employee. The defendant controlled the details of the plaintiff's driving responsibilities. The defendant owned the vehicle and selected the assignments. This Administrative Law Judge is persuaded that the plaintiff's use of the itemized tax return procedure represents an attempt by the parties to circumvent federal and state tax requirements. However, it does not remove the plaintiff from the protection of the Kentucky Workers Compensation Act. Also, this ALJ recognizes the defendant's reliance upon a purported contract and rejection of the workers compensation act documents that the plaintiff signed. However, I am equally persuaded that these actions also represent the employer's attempt to fraudulently circumvent statutory requirements. Accordingly, I find that the plaintiff was an employee of the defendant United, Inc..[sic] and not an independent contractor.

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky.1999). In order to reverse the decision of the ALJ, it must be shown there was no evidence of substantial probative value to support the

decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

It is clear in the case *sub judice*, the ALJ considered the factors set forth in Ratliff v. Redmon, 396 S.W.2d 320 (Ky. 1965), and the four predominant factors identified in Uninsured Employers Fund v. Garland, 805 S.W.2d 116 (Ky. 1991). We believe the ALJ sufficiently weighed each of the factors against the evidence as set forth in Ratliff v. Redmon, *supra*, and Garland, *supra*, and determined Ritchie was an employee of United on October 26, 2008. We find the ALJ's analysis to be sufficiently adequate to apprise the parties of the basis for his decision and to permit meaningful review on appeal. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). We believe the ALJ's determination was supported by substantial evidence and on this issue, we affirm.

II. Did the ALJ err by dismissing GTI, and Kirk & Blum, and assessing all liability on Interchez and Image Point?

In the opinion, order and award rendered May 31, 2011, the ALJ found regarding this issue as follows:

> **Responsible Parties:** KRS 342.610 states in part as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:

(a) To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or

(b) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to

> the owner or lessee of land principally used for agriculture.
>
> The evidence of record shows that Image Point Inc. was in the business of making signs that had to be delivered to buyers. To do that it contracted with Interchez Logistics to provide transportation for the products that Image Point Inc. made. In turn, Interchez Logistics subcontracted with the defendant United Inc., to haul the signs made by Image Point. As the UEF pointed out in its brief, both United Inc. and Interchez are in business to ship products. Interchez made money by subcontracting work to United Inc. However, neither had workers compensation insurance. Since Image Point Inc., did have insurance it comes within the definition of an up the ladder employer pursuant to KRS 342.610 (2). Furthermore, from this ALJ's review of the evidence, there is insufficient proof to find any of the other parties liable.

While it is without question getting products to customers is important to the business of Image Point, Kirk & Blum and Castle Gap, no evidence establishes any of these entities are directly involved in shipping and delivery other than as customers of a transportation service. Each of these entities contacted a broker service to obtain shipping services to transport their products to customers. There is no evidence establishing any of these companies

relied on a single trucking company or group of trucking companies to deliver its product.

Mr. Chesnes testified Image Point provided Interchez an electronic notification of the need for pick-up and delivery of a product. Interchez then placed the delivery out for bid. Any approved trucking company was free to make a bid which was accepted based upon cost and ability to make the delivery. It is clear from his testimony Image Point freely accepted the services of any trucker sent to its warehouse through Interchez.

In Tom Ballard Co. v. Blevins, 614 S.W.2d 247 (Ky. App. 1980), a company involved in the excavation and removal of coal, was under contract to sell and deliver coal to its customers. The hauling of the coal was arranged through the services of Roy Yates, a truck broker, who, for a fee paid by a coal company, procured truckers to haul the coal. Shoppel Blevins ("Blevins") owned several trucks and Lonnie Blanton ("Blanton") operated one of them. Blanton was killed in a truck accident while operating one of Blevins' trucks in which he had hauled coal from the coal company's mine. At the time of the accident, he was returning from a delivery. The coal company paid all of the hauling costs, including the fee charged by Yates, directly to Yates and Yates paid the truckers. The

Kentucky Court of Appeals held the coal company was the statutory employer of truck drivers, employed by the contractor and hired by the coal company to haul the coal to the coal company's customers. The Court of Appeals reasoned delivering the coal to its customers was a regular or recurrent part of the business of the mining company under its contracts to both mine and deliver. *Id.* at 249.

Similarly, in Wright v. Dolgencorp, Inc., 161 S.W.3d 341, 344 (Ky. App. 2004), Tom Wright ("Wright") a truck driver employed by Werner Enterprises ("Werner"), was under contract with Dollar General Corporation ("Dollar General") to provide drivers and trucks for the purpose of transporting merchandise from Dollar General's various distribution centers to its stores. Wright, in the course of his employment with Werner, picked up a trailer at Dollar General's distribution center in Scottsville, Kentucky, for the purpose of delivering merchandise to its store in Clintwood, Virginia. After Wright arrived at the store in Virginia, while assisting with the unloading of the merchandise, he was injured. He sought medical attention for his injuries and submitted a workers' compensation claim against his employer, Werner. Werner's workers' compensation insurance carrier paid the claim. Wright in turn filed a negligence claim in circuit court

against Dollar General and Dolgencorp, Inc. ("Dolgencorp"), a wholly-owned subsidiary of Dollar General responsible for the operation of the distribution center in Scottsville. The Court of Appeals held that pursuant to KRS 342.610(2), an employee of a trucking company hired to haul merchandise from a business retailer's main distribution center to its retail stores was the statutory employee of the retailer. The Court concluded, therefore, both Dollar General and Dolgencorp were shielded from third party civil liability under the exclusive remedy provisions of KRS Chapter 342.

Upon scrutinizing the record, we believe the facts in Tom Ballard Co. v. Blevins, *supra*, and Wright v. Dolgencorp, Inc., *supra*, are distinguishable from those in the case *sub judice*. There is no question Image Point, Kirk & Blum, and Castle Gap regularly engaged in shipping and transportation of products to customers using third party truck brokers. However, unlike the coal company in Blevins, *supra*, or the trucking company in Wright, *supra*, there was little, if any, exclusivity involving the transportation contracts. No evidence establishes any of these entities relied on a single trucking company or group of trucking companies to make its deliveries. Rather, they freely accepted the services of any trucker sent to their warehouses or shipping points by the brokers involved.

Contracts were sporadic and wholly dependent on availability. Varied trucking companies bid on the contracts at their convenience. The duration of contracts was generally day-to-day and trip-to-trip, and subject to cancellation.

We believe the ALJ erred in determining either Interchez or Image Point was subject to statutory liability pursuant to 342.610(2). Interchez merely received electronic information from Image Point when it had a product needing pick-up and delivery. Interchez provided no actual transportation service. Likewise, no evidence was introduced establishing Image Point was actively involved in transportation service as a "regular and recurrent" part of its business. In General Electric Co. V. Cain, 236 S.W.3d 579, 586-587 (Ky. 2007), the Kentucky Supreme Court defined what is meant by the phrase "regular or recurrent" as used in KRS 342.610(2)(b). The Court explained, for purposes of KRS 342.610(2) governing workers' compensation liability of contractors, "regular" means the type of work performed is a "customary, usual or normal" part of the trade, business, occupation, or profession of the contractor, including work assumed by contract or required by law, and "recurrent" means the work is repeated, though not with the preciseness of a clock.

Image Point is a manufacturer of goods. There is no evidence it was directly involved in shipping, other than to contact Interchez of the need for pick-up and delivery of a product it had manufactured. There is no evidence Image Point leased, owned or operated any trucks for use in transportation or was physically responsible for the actual shipping and delivery of goods and merchandise other than through contacting a broker.

Interchez acted as an agent on behalf of Image Point, but was not engaged in the business of transporting products. Further, as is the case with Image Point, there is no evidence Interchez leased, owned or operated any trucks for use in transportation or was physically responsible for the shipping and delivery of products. Similarly, there is no evidence establishing Interchez was subject to any guarantee, warranty, financial or legal liability, to or on behalf of, any of its patrons at any time concerning appointments arranged through its services. Rather, Interchez acted as an electronic and telephonic switchboard for the posting, coordination, scheduling and exchange of information regarding the timetables for and availability of potential hauls by independent truckers and trucking companies, and, as in the case of Image Point, companies needing goods and merchandise transported by

truck to other businesses and localities. Interchez also acted as a conduit for price negotiation, payment processing, and money transfers between the seller of goods and the truck drivers and trucking companies who transport those goods.

Pursuant to the Supreme Court's holding in Cain, *supra*, because Interchez is not equipped with the skilled manpower and tools to perform the actual transportation of goods and merchandise, and does not engage in shipping and delivering of products, as a matter of law it cannot be held liable based on a contractor/subcontractor relationship with either Image Point or United, and is therefore not a statutory employer or subcontractor for purposes of imposing up-the-ladder liability pursuant to KRS 342.610(2). *Id.* at 585 and 587.

Accordingly, the ALJ's decision rendered May 31, 2011, and the order ruling on the petition for reconsideration rendered August 8, 2011 are hereby **AFFIRMED IN PART, REVERSED IN PART AND REMANDED** for dismissal of Interchez and Image Point for the reasons stated in the opinion, and for entry of an order finding the Uninsured Employers' Fund liable for payment of all benefits.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

COUNSEL FOR INTERCHEZ:

HON ROBERTA K KISER
167 WEST MAIN ST, STE 100
LEXINGTON, KY 40507

COUNSEL FOR HOWARD RITCHIE:

HON MCKINNLEY MORGAN
921 SOUTH MAIN STREET
LONDON, KY 40741

COUNSEL FOR UNITED, INC.:

HON ERIC ASHLEY
2300 NORTH MAIN ST, STE 3
HAZARD, KY 41701

COUNSEL FOR KIRK & BLUM MFG.:

HON JAMES B COOPER
444 W SECOND STREET
LEXINGTON, KY 40507

COUNSEL FOR IMAGE POINT, INC.:

HON DOUGLAS A U'SELLIS
600 E MAIN ST, STE 100
LOUISVILLE, KY 40202

COUNSEL FOR GTI ROLL TRANSPORTATION:

HON LAURIE GOETZ KEMP
BONTERRA BLDG, STE 200
NEW ALBANY, IN 47150

COUNSEL FOR UEF:

HON ELIZABETH A MYERSCOUGH
UNINSURED EMPLOYERS' FUND
1024 CAPITAL CENTER DRIVE
FRANKFORT, KY 40601

ADMINISTRATIVE LAW JUDGE:

HON ALLISON E JONES
410 WEST CHESTNUT ST, STE 700
LOUISVILLE, KY 40202