

IN THE COURT OF APPEALS

STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JAN 27 2011

Jan M. Martin

JACKSON CONSTRUCTION, INC.,
a New Mexico corporation, and
PAUL JACKSON, Qualifying Party
For Jackson Construction, Inc.,

Petitioners-Appellees,

v.

COA No. A-0001-CA-2010-30454
District Court No. CV 2009-361, Div. I

GLENN R. SMITH, in his capacity of
Director, STATE OF NEW MEXICO
WORKERS' COMPENSATION
ADMINISTRATION,

Respondent-Appellant.

REPLY TO APPELLEES' ANSWER BRIEF

Workers' Compensation Administration
Roberta Y. Baca
WCA Assistant General Counsel
Special Assistant Attorney General
Attorney for Appellant
Post Office Box 27198
Albuquerque, NM 87125-7198
(505) 841-6085
(505) 841-6813 (facsimile)

I. TABLE OF CONTENTS

	Page
I. Table of Contents.....	ii
II. Table of Authorities.....	iii
III. Argument.....	1
IV. Conclusion.....	4

II. TABLE OF AUTHORITIES

	Page
<u>New Mexico Case Law:</u>	
<i>City of Rio Rancho v. Logan</i> , 143 N.M. 281, 175 P.3d 949 (N.M. App. 2007).....	1
<i>Harger v. Structural Services, Inc.</i> , 121 N.M. 657, 916 P.2d 1324 (1996)	1
<u>Statutes:</u>	
NMSA 1978, §52-1-6.....	1, 2
NMSA 1978, §52-1-7.....	1, 2
NMSA 1978, §52-1-22.....	1

III. ARGUMENT

The Workers' Compensation Act exists to protect employers and workers. It seeks to strike a balance in the system so that each side is equally protected in the event of an accident. In the present case, Jackson Construction, Inc., is a New Mexico corporation licensed by the Construction Industries Division. NMSA 1978, §52-1-6 contemplates that regardless of the number of workers this type of construction business should have insurance.

In its brief, Appellee argues that all subcontractors are independent contractors. There is no evidence that the workers of Mr. Jackson's subcontractors are independent contractors nor was an independent contract introduced into evidence by Jackson Construction, Inc. It is the WCA's contention that Jackson Construction, Inc., is a statutory employer pursuant to NMSA 1978, §52-1-22, and *Harger v. Structural Services, Inc.*, 121 N.M. 657, 916 P.2d 1324 (1996) and is therefore required to have coverage.

The Court of Appeals in *Rio Rancho v. Logan*, 143 N.M. 281, 175 P.3d 949 (N.M. App. 2007), ruled: "[t]he application of 52-1-6 regardless of the number of employees is in accordance with the law."

The WCA does not incorrectly apply NMSA 1978, §52-1-7, which was intended to allow an executive employee to opt out of coverage and to nevertheless be counted in the headcount. A corporation is separate and distinct from its

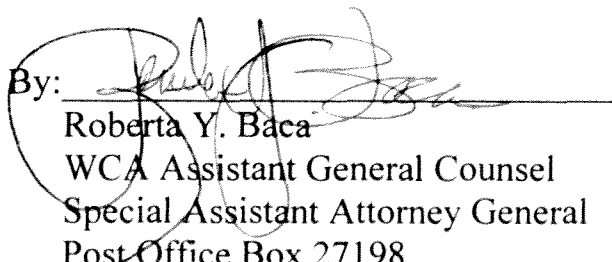
officers and shareholders. A corporation is therefore separate and distinct from someone who is a sole proprietor.

IV. CONCLUSION

The WCA respectfully requests that the Court reverse the District Court's decision and read NMSA 1978, §52-1-6 literally and require all Construction Industries Division licensed corporations, regardless of the number of employees, to obtain workers' compensation insurance coverage. Additionally, NMSA 1978, §52-1-7, *supra.*, expressly provides that corporate officers who opt out of insurance coverage as executive employees are nevertheless included in the headcount for purposes of the mandatory insurance provisions of the Workers' Compensation Act.

Respectfully submitted,

WORKERS' COMPENSATION ADMIN.

By: 
Roberta Y. Baca
WCA Assistant General Counsel
Special Assistant Attorney General
Post Office Box 27198
Albuquerque, NM 87125-7198
(505) 841-6085
(505) 841-6813 (facsimile)
Roberta.Baca@state.nm.us

CERTIFICATE OF MAILING

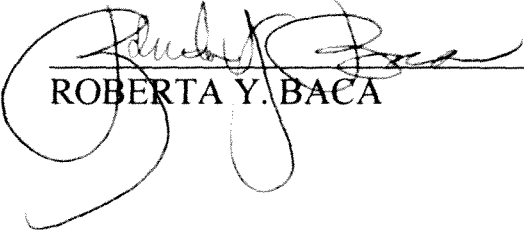
I HEREBY CERTIFY that a copy of the foregoing pleading was served on the 27th day of January 2011 to:

Robert M. Doughty II
Robert M. Doughty II, P.C.
Post Office Box 1569
Alamogordo, NM 88311-1569


ROBERTA Y. BACA

STATEMENT OF COMPLIANCE WITH RULE 12-502(E)

This Petition complies with the type-volume limitation imposed by NMRA 2010, Rule 12-505(E). The word count feature of the word processing system (Microsoft Word, Version 2003) used to prepare the Petition indicates a word count of 313 for the body of the Petition, excluding the cover page, signature block, certificate of service and this certificate of compliance.


ROBERTA Y. BACA