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I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN E-MAILED ON THIS DAY **10/02/2026** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

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2026-CA-0078

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MELVIN SMITH	*	**NO. 2026-CA-0078**
VERSUS	*	
		COURT OF APPEAL
RNK CONSTRUCTION, L.L.C. AND CNA INSURANCE COMPANIES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

* * * * * * *

APPEAL FROM
THE OFFICE OF WORKERS' COMPENSATION
NO. 23-01539, DISTRICT “”
HONORABLE Abril L. Baloney,
* * * * * *
Chief Judge Roland L. Belsome
* * * * * *

(Court composed of Chief Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Dale N. Atkins, Judge Karen K. Herman, Judge Nakisha Ervin-Knott)

LOBRANO, J., CONCURS AND ASSIGNS REASONS
HERMAN, J. DISSENTS WITH REASONS
ERVIN-KNOTT, J., DISSENTS AND ASSIGNS REASONS

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REVERSED AND REMANDED.
October 2, 2026

RLB

DNA

This is a workers' compensation case in which the worker was denied treatment and payment because he was deemed an independent contractor. Melvin Smith ("Smith") suffered injuries to his head and several other areas of his body in a single vehicle traffic accident. He applied for and was denied all workers' compensation benefits by the workers' compensation court. For reasons that follow, we reverse that decision and remand for further proceedings.

Case summary and prior procedings

Smith was driving a dump truck on La. Hwy. 1 on December 3, 2022. He had just delivered a load of sand from RNK Construction, L.L.C. ("RNK") to one of its customers on Grand Isle. As he was returning to RNK's truck yard, he failed to negotiate a 90-degree turn on La. Hwy. 1, crashed into a protective barrier and suffered injuries that required medical treatment.

RNK refused to pay any medical or wage benefits on the basis that Smith was an independent contractor and not an employee within the contemplation of the workers' compensation law. Smith filed a Disputed Claim for Compensation ("1008") with the Office of Workers' Compensation on March 29, 2023 seeking payment for medical treatment and temporary total disability benefits.

After a trial and post-trial briefing, the workers' compensation judgment was rendered on May 16, 2024 denying Smith's claim for the reasons advanced by RNK. From that judgment, Smith has taken this appeal.

Discussion and application of law

Dating back to the inception of the Workers' Compensation Act, a bargain was struck between workers and employers. This bargain is summarized in La. R.S. 23: 1020.1, which provides in pertinent part:

> The provisions of this Chapter are based on the mutual renunciation of legal rights and defenses by employers and employees alike; therefore, it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits.

A more expansive expression of that bargain must include the specific waivers of rights to which the statute refers. Those who toiled and were injured in the fields, streets, factories, etc. waived their rights to be made whole as they would be under the law of tort when they were injured due to hazards or negligence in the workplace. Employers waived their right to defend on the basis that they were not negligent. Workers received a guarantee of medical treatment, and the employers' exposure was limited to a fixed fraction of the workers' regular earnings as a benefit during rehabilitation. To establish the employer's liability, a worker is only required to prove his status as an employee. The purpose of the act is "[t]o provide for the timely payment of temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is provided in this Chapter." *Id.*

A person rendering service for another in any trades, businesses, or occupations covered by the workers' compensation law is *presumed* to be an employee. La.

R.S. 23:1044. This means that RNK has the burden of overcoming that presumption to prove Smith's independent contractor status.

RNK relies heavily on La. R.S. 23:1021(7) for assistance in proving that Smith is not an employee. That statute provides that:

> (7) "Independent contractor" means any person who renders service, *other than manual labor*, for a specified recompense for a specified result either as a unit or as a whole, under the control of his principal as to results of his work only, and not as to the means by which such result is accomplished, and are expressly excluded from the provisions of this Chapter unless a substantial part of the work time of an independent contractor is spent in manual labor by him in carrying out the terms of the contract, in which case the independent contractor is expressly covered by the provisions of this Chapter. *The operation of a truck tractor or truck tractor trailer, including fueling, driving, connecting and disconnecting electrical lines and air hoses, hooking and unhooking trailers, and vehicle inspections are not manual labor within the meaning of this Chapter.*[1]

La. R.S. 23:1021(7) (emphasis added).

This statute does not declare that a dump truck driver must be an independent contractor. The statute directs itself to "truck tractors" and "tractor trailers." The statute itself does not define these vehicles, so we must look elsewhere. 49 U.S.C. 31111(a)(3) defines a truck tractor as follows:

> (3)Truck tractor.—The term "truck tractor" means—
> (A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or
> (B) a power unit that carries as property motor vehicles when operating in combination with a semitrailer in transporting motor vehicles or any other commodity, including cargo or general freight on a backhaul.

La. R.S. 1:3 instructs us that when a statute lacks a definition, we must refer to common usage of the words in the statute. In common usage, a truck tractor is defined essentially the same as it is in 49 U.S.C. 31111(a)(3).[2] The common usage

[1] This writer would suggest that driving a truck-tractor or tractor-trailer is manual labor because it is a physically taxing and tedious job.

supports the definition found in similar bodies of law. A dump truck is not a truck tractor or tractor trailer.

RNK's reliance on La. R.S. 23:1021(7) is misplaced. It is not relevant to deciding the central issue before us. Here, we must determine whether Smith was an independent contractor or an employee of RNK. In *Hickman v. S. Pacific Transp. Co.*, 262 La. 102, 262 So.2d 385 (1972), the Supreme Court laid down a set of considerations for courts to review in determining employment status. Those factors, set forth more than half a century ago, are adopted and recited more recently in *Duronslet v. Wal-Mart Stores, Inc.,* 2022-0019, p. 21 (La. App. 4 Cir. 7/27/22), 345 So. 3d 1136, 1150–51, in which this court wrote:

> There exists "no hard and fast rule" to distinguish between an employee and an independent contractor; rather the distinction entails a factual determination that courts decide on a case-by-case basis.
> . . .
> The label "independent contractor" indicates "a freedom of action and choice with respect to the undertaking in question and a legal responsibility on the part of the contractor in case the agreement is not fulfilled in accordance with its covenants."
> . . .
> The Louisiana Supreme Court has developed the following factors to help determine whether an individual is an employee or an independent contractor:
>
> (1) there is a valid contract between the parties; (2) the work being done is of an independent nature such that the contractor may employ non-exclusive means in accomplishing it; (3) the contract calls for specific piecework as a unit to be done according to the independent contractor's own methods, without being subject to the control and direction of the principal, except as to the result of the services to be rendered; (4) there is a specific price for the overall undertaking agreed upon; and (5) the duration of the work is for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach.

(internal citations omitted).

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[2] https://www.merriam-webster.com/dictionary/truck#h1; https://www.britannica.com/technology/truck-vehicle#ref527779

All these factors must be considered and no single factor is determinative. *Campora v. Falstaff, L.L.C.,* 2001-2014 (La. App. 4 Cir. 6/12/02), 823 So. 2d 389, 392. They are addressed below in the context of other applicable law.

Review of determining factors

1. Is there a valid contract between the parties?

The record is devoid of any writing between RNK and Smith that identifies Smith's role as an independent contractor. All the writings memorializing the relationship between Smith and RNK point to employment, not independent contracting.

Smith filled out a form document entitled "Commercial Motor Vehicle Driver Application for *Employment*" (italics added), which includes the name, RNK Construction, L.L.C. in its title block. On that form, he signed his name as the "applicant" below text reading, "The following question is made necessary for *employment* with RNK CONSTRUCTION LLC, by the Federal Motor Carrier Regulations, Section 40.25." (capitals in original, italics added).

Smith was also required to sign an acknowledgment that reads, "ACKNOWLEDGMENT NOTICE OR RECEIPT OF CONTROLLED SUBSTANCES AND ALCOHOL TESTING PROGRAM POLICY FOR SAFETY-SENSITIVE/COVERED *EMPLOYEES*." (Capital letters in original, italics added.) Smith's signature is on a line of the form marked "Employee Signature." The words "employee," "employer," and "employment" appear dozens of times throughout that document.

Yet another form that Smith signed on the line marked "Employee Signature" is the Basic Regulated Driver Policies. The signature line appears below the following paragraphs:

> If you have any uncertainty or questions regarding the content of these Basic Regulated Driver Policies, you are required to consult your *supervisor*. This should be done prior to signing and agreeing to the Policies and Procedures for RNK Construction L.L.C.
>
> By signing my name below, I certify that I have read, and I understand the requirements and expectations of me as an *employee*. I agree to adhere to all provisions and procedures outlined in these policies, and I have had the opportunity to ask questions and to clarify any uncertainty regarding these policies.
>
> I understand that failure to do so will result in discipline up to and including *termination*.

(emphasis added).

The Basic Regulated Driver Policies included rules that governed RNK truck drivers and warned Smith that breaking any of the rules would subject him to disciplinary action "up to and including termination of employment."

Nothing in the many pages that Smith signed warned him that he would be an independent contractor. Smith also testified that he did not understand that he was applying to work as an independent contractor and that he had never worked as an independent contractor before.

The documents that Smith signed do not constitute a contract that make him an employee. The purpose of recounting their content is to emphasize the fact that Smith reasonably believed that he was working as an employee, not an independent contractor. This fact distinguishes Smith's case from *Chaisson v. La. Rock Monsters, LLC,* 2013-1423 (La. App. 4 Cir. 4/2/14), 140 So. 3d 55 and *Davis v. Tube-Tech Servs., Inc.,* 2024-573 (La. App. 3 Cir. 4/2/25), 408 So. 3d 1171, *writ denied*, 2025-00569 (La. 9/16/25), 416 So. 3d 480. In *Chaisson* and in *Davis*, the

worker applying for benefits testified that they made an informed decision to work as independent contractors. RNK cites both of these cases as support for the proposition that truck drivers are independent contractors. That argument is incorrect and neither of these cases support that proposition.

RNK cites *Wilfred v. A. Serv. Cab Co.,* 2014-1121 (La. App. 4 Cir. 5/27/15), 171 So. 3d 1007, 1012, *writ denied*, 2015-1271 (La. 9/25/15), 178 So. 3d 570, for the proposition that an employment application is unpersuasive to establish an employment relationship. In *Wilfred*, the court mentioned the fact that the decedent taxi driver filled out an employment application. However, the court found that other *Hickman* factors outweighed that fact. Primarily, the court focused on the fact that the defendant, A Service, provided a service to the taxi driver for which *the driver paid the defendant*. The court noted that, "A Service offered minimal supervision to the drivers," and "A Service did not own any of the cabs." *Wilfred v. A. Serv. Cab Co.*, 2014-1121 (La. App. 4 Cir. 5/27/15), 171 So. 3d 1007, 1012, writ denied, 2015-1271 (La. 9/25/15), 178 So. 3d 570. For these reasons, *Wilfred* stands in near complete opposition to the case now before the court.

Against this documentary evidence and testimony, RNK provided no contract or other writing that contradicted the statements in the forms that indicated that Smith would be an employee.

RNK argues in its brief, and elicited testimony by its representatives, that Smith "received a 1099 at the end of the tax-year, … was responsible for his own tax withholdings, and … did not receive any benefits." While these statements are true, they are not evidence of Smith's employment status. They are more useful as evidence of RNK's desire to squeeze every penny of value out of Smith's labor. Not withholding taxes means that RNK is not contributing an employer's share of

Smith's social security and Medicare taxes. Smith would pay those taxes out of his income. He is receiving no benefits such as medical insurance or paid leave. That saves RNK even more money. Moreover, this information does not add insight into Smith's understanding of his employment status. Even at the time of the accident, he had not yet received a "1099" tax form indicating his independent contractor status. Smith was hired in April of 2022 and was injured that December. He would not have received his first form 1099 until January in 2023. Smith had not yet had to deal with the tax implications of his classification as an independent contractor. Therefore, Smith's tax treatment would not have given him any indication that he was anything other than an employee. This is especially true considering Smith's testimony that he had never worked before as an independent contractor. Further, unless he had consulted with a tax advisor during the six months of his employment, he may not even have understood his need to set aside sufficient funds to make up for RNK's decision not to withhold for taxes. While these business practices are not unlawful by any means, they do not overcome the presumption of La. R.S. 23:1044 nor do they outweigh the impression of employment presented by the documents Smith signed at the inception of his relationship with RNK.

2. Could Smith employ independent, non-exclusive means in accomplishing his work?

Smith's job consisted of driving a dump truck carrying soil. The dump truck he drove was owned, maintained, and insured by RNK. The dump truck had RNK signage prominently displayed on it. Smith was required to wear a company uniform with RNK insignia on it. Smith was advised by a RNK dispatcher when a load was ready for transport. That information was conveyed to him by text. The

text included a GPS map with a pin showing the location for delivery and the directions to the location. Smith's location was monitored by RNK's office at all times using the same GPS system and a tracker in the dump truck. The dump truck that Smith drove also had a camera installed that allowed RNK to monitor his driving and his behavior in the cab.

Against this tightly controlled work environment, RNK testified that Smith, as an independent contractor, could refuse to haul any load if he so chose. Again, this testimony falls short of proving that Smith was aware that he could refuse an assignment or that he ever exercised that privilege.

3. ***Does the contract call for specific piecework to be done according to the independent contractor's own methods, without being subject to the control and direction of the principal, except as to the result of the services to be rendered?***

There is no doubt that Smith's income was based in part on piecework as that term is used in *Hickman* and its progeny. RNK's testimony that Smith was paid 25 percent of "what the truck earned" was not contested. In other words, Smith was paid one-quarter of what the customer paid RNK, whether that payment was calculated by the hour or by the load. To the extent that this *Hickman* test questions the control RNK's control over the means and methods of completing his assigned tasks, the facts showed that RNK monitored all of Smith's actions during his work day and held the power to terminate him at will if his actions did not meet RNK's rules or expectations.

4. ***Is there a specific price for the overall undertaking agreed upon?***

As indicated above, Smith's pay fluctuated from assignment to assignment. However, the system of calculating his pay is specific.

5. ***Is the duration of the work for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach?***

There is no definite term to the relationship between Smith and RNK. It is terminable at will by either party.

The following list summarizes the facts proven at trial:

- There was no written independent contractor agreement, and which countered the explicit representations made to Mr. Smith through RNK's employment application and written policies.
- Mr. Smith did not own the dump truck he operated or the equipment and tools inside the dump truck, or pay for repairs/maintenance, fuel, or liability insurance.
- Mr. Smith was required to wear the RNK uniform for all its hauling assignments.
- Mr. Smith performed work through RNK's dispatch and received daily instructions from it.
- The written policies RNK gave to Smith bound him to a regimen of required and prohibited conduct and subjected him to disciplinary action, including termination, if he violated those policies;
- Smith did not perform the hauling services for his own customers, but for RNK customers.
- RNK dictated where loads were picked up and delivered, and the flow of paperwork memorializing the deliveries.
- RNK retained the ability terminate Smith's job at any time with or without cause.

Using *Hickman* and *Duronselet* as guides, the evidence clearly shows that RNK controlled every important aspect of Smith's work. To the extent that the trial judge's decision was influenced by the language of La. R.S. 23:1021(7), that judgment is the result of legal error. The statute is meant to ensure the inclusion of all manual laborers in the pool of workers who are entitled to workers' compensation benefits regardless of their contractual employment status. The mention of truck tractors and tractor trailer drivers is only meant to create an exception to the general rule that all manual laborers are entitled to benefits. In the absence of a contract in which an employee consciously and intentionally opts out of workers' compensation insurance coverage, we must rely on the jurisprudential tests above for determining the nature of the relationship. Those tests lead me to conclude that Smith was an employee, not an independent contractor. Any other conclusion is clearly wrong and manifestly erroneous.

Conclusion

After reviewing the close control that RNK exercised over Smith's work, the nature of the work, and the contracts by which he was bound, this court holds that as a matter of fact and a matter of law, he was not an independent contractor. For this reason, we vacate the judgment of the Workers' Compensation Court and remand this case to that court to determine the amounts due to Smith under the Workers' Compensation Act.

REVERSED AND REMANDED.

MELVIN SMITH	*	**NO. 2026-CA-0078**
VERSUS	*	**COURT OF APPEAL**
RNK CONSTRUCTION, L.L.C. AND CNA INSURANCE COMPANIES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

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JCL **LOBRANO, J., CONCURS AND ASSIGNS REASONS**

I concur in the majority's decision to reverse the judgment of the Office of Workers' Compensation and remand this matter for further proceedings. I write separately to emphasize RNK Construction, L.L.C.'s reserved right of control over Melvin Smith's work and the statutory policy implicated by classifying a worker as an independent contractor.

Under La. R.S. 23:1044, Smith is presumed to be an employee because he rendered services within RNK's business. RNK was therefore required to rebut that presumption by establishing an independent contractor relationship. *See Hillman v. Comm-Care, Inc.*, 01-1140, p. 6 (La. 1/15/02), 805 So.2d 1157, 1161.

The principal consideration in determining whether a worker is an employee or an independent contractor is the right of control reserved by the alleged employer. *Hickman v. S. Pac. Transp. Co.*, 262 La. 102, 117-18, 262 So.2d 385, 390-91 (1972). The inquiry concerns not only the control actually exercised, but also whether the relationship gives the alleged employer the right to exercise control.

RNK required Smith to comply with written policies identifying him as an employee and subjecting him to discipline up to and including

termination. RNK owned, maintained, fueled, and insured the dump truck. It assigned through dispatch Smith's loads, designated the pickup and delivery locations, and required him to wear an RNK uniform. The truck was equipped with GPS tracking and a live-feed in-cab camera that gave RNK the ability to monitor his work. Smith hauled materials for RNK's customers rather than his own. Because the relationship had no fixed term and RNK reserved the power to terminate, RNK could end it at will without incurring liability for breach. Smith's compensation based on a percentage, RNK's issuance of a Form 1099, and his ability to decline a particular assignment are relevant considerations, but they are not controlling.

The Workers' Compensation Act establishes reciprocal obligations between employers and employees. As this Court has recognized, workers' compensation is "social legislation through which 'employees and employers surrender certain advantages in exchange for others which are more valuable to both parties and society.'" *Noonan v. City of New Orleans*, 06-1121, p. 5 (La. App. 4 Cir. 11/14/07), 972 So.2d 344, 347 (quoting *Melancon v. Lafayette Ins. Co.*, 05-762, p. 9 (La. App. 3 Cir. 3/29/06), 926 So.2d 693, 702) (internal citation and quotation marks omitted). Employees generally relinquish their right to recover full tort damages from their employers for work-related injuries, while employers accept responsibility for providing the benefits prescribed by the Act without regard to fault. *See* La. R.S. 23:1020.1(D)(1).

That statutory compromise does not permit an employer to exercise the control and retain the economic benefits characteristic of an employment relationship while disclaiming the corresponding statutory obligations when

the worker is injured. Permitting an employer to direct the work, furnish the equipment, impose workplace rules, and retain the power of termination, yet avoid workers' compensation liability through a Form 1099 or a particular method of payment, would elevate form over substance. It would allow the employer to retain the benefits of an employment relationship while shifting the costs of workplace injury to the worker, the worker's family, and ultimately society.

Such a result is incompatible with La. R.S. 23:1044, which presumes employee status and requires the alleged employer to rebut that presumption by establishing an independent contractor relationship. *See Hillman*, 01-1140, p. 6, 805 So.2d at 1161. The presumption cannot be overcome merely through the terminology used in a contract or payment record.

Considering the totality of the circumstances and the factors articulated in *Hickman*, I concur in reversing the judgment and remanding the matter to the Office of Workers' Compensation for further proceedings.

MELVIN SMITH	*	**NO. 2026-CA-0078**
VERSUS	*	**COURT OF APPEAL**
RNK CONSTRUCTION, L.L.C. AND CNA INSURANCE COMPANIES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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KKH

HERMAN, J. DISSENTS WITH REASONS

I respectfully dissent from the majority and find that the record supports the WCJ's conclusion that Appellant, Melvin Smith ("Appellant"), was an independent contractor.

In workers' compensation cases, Louisiana appellate courts apply the "manifest error-clearly wrong" standard. *Irving v. Transit Mgmt. of Se. Louisiana, Inc*., 2010-0360, p. 2 (La. App. 4 Cir. 7/20/10), 44 So.3d 796, 798 (citing *Banks v. Industrial Roofing & Sheet Metal Works, Inc*., 1996-2840, p. 6 (La. 7/1/97), 696 So.2d 551, 556). As such, "the findings of the WCJ will not be set aside by a reviewing court unless they are found to be clearly wrong in light of the record viewed in its entirety." *Id*. "Where there are two permissible views of the evidence, a factfinder's choice between them can never be manifestly erroneous or clearly wrong." *Lassalle v. Napoleon,* 2025-0295, p. 6 (La. App. 4 Cir. 11/4/25), 430 So.3d 1155, 1158 (citing *Stobart v. State*, 617 So.2d 880, 882 (La. 1993)). "Thus, 'if the [factfinder's] findings are reasonable in light of the record on its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.'" *Id*. (quoting *Sistler v. Liberty Mut. Ins. Co*., 558 So.2d 1106, 1112 (La. 1990)).

The "distinction between employee and independent contractor status is a factual determination to be decided on a case-by-case basis." *Chaisson v.*

Louisiana Rock Monsters, LLC, 2013-1423, p. 3 (La. App. 4 Cir. 4/2/14), 140 So.3d 55, 57 (quoting *Tate v. Progressive Sec. Ins. Co.,* 2008-0950, p. 2 (La. App. 4 Cir. 1/28/09), 4 So.3d 915, 916).

To help determine whether an individual is an employee or an independent contractor, the Louisiana Supreme Court outlined the following factors to consider:

> (1) there is a valid contract between the parties; (2) the work being done is of an independent nature such that the contractor may employ non-exclusive means in accomplishing it; (3) the contract calls for specific piecework as a unit to be done according to the independent contractor's own methods, without being subject to the control and direction of the principal, except as to the result of the services to be rendered; (4) there is a specific price for the overall undertaking agreed upon; and (5) the duration of the work is for a specific time and not subject to termination or discontinuance at the will of either side without a corresponding liability for its breach.

Chaisson, 2013-1423, pp. 3-4, 140 So.3d at 57-59 (quoting *Hickman v. Southern Pacific Transport Co.,* 262 La. 102, 262 So.2d 385 (1972)).

"The 'essence of the employer-employee relationship is the right to control.'" *Chaisson*, 2013-1423, p. 4, 140 So.3d at 58 (quoting *Hillman v. Comm-Care, Inc.,* 2001-1140, p. 8 (La. 1/15/02), 805 So.2d 1157, 1162). "The primary factors evidencing the right to control are '1) selection and engagement, 2) payment of wages, 3) power of dismissal and 4) power of control.'" *Id*. Not one factor alone is determinative. *Id*., p. 4, 140 So.3d at 58. "Rather, the court must consider the totality of the circumstances." *Id*. (citing *Harrington v. Hebert*, 2000–-1548 (La. App 3 Cir. 5/23/01), 789 So.2d 649, 653; *Theodore v. Krazy Korner*, 2012–0173 (La. App. 4 Cir. 5/23/12), 95 So.3d 572, 574-575).

Here, the trial testimony provides that Appellant could pick and choose his job assignments. RNK drivers had no set hours as it was dependent on whether the driver accepted a job from dispatch via text. In fact, a spreadsheet of Appellant's pay shows that at certain points Appellant elected to work one to three days a week. Appellant was also free to work for other companies while driving for RNK.

Moreover, upon receipt of dispatch information, RNK drivers were responsible for coordinating with the pit bosses to load the truck. Appellant would drive the haul from the RNK yard to the job site. Appellant did not load or unload cargo and thus did not engage in manual labor. While Appellant conducted pre-trip and post-trip inspections, RNK was responsible for the truck maintenance. Although RNK provided GPS link of the delivery location to the drivers; RNK drivers were not required to take that route. Thus, RNK did not control the manner in which the drivers accomplished their job. Also, while Appellant did wear an RNK uniform, the testimony shows that it was because RNK customers/jobs required reflective gear. Further, Appellant was not paid hourly nor by salary; he earned 25% of what the truck made.

Appellant emphasizes that the language provided in RNK's job application and policies refer to an RNK driver as an "employee." However, these forms were prepared and required by Transportation Compliance Services USA ("TSC"), which ensured that its drivers were compliant with Department of Transportation regulations. Moreover, the testimony of April Wilkie, the manager of RNK, and the owner of RNK, Robert Gilbert, indicated that the TCS forms did not have any bearing on the classifications of its hires. Furthermore, while there was no written independent contract agreement Appellant received a 1099 form and no taxes were withheld from his paycheck. *See also Tate*, 2008-0950, p. 9, 4 So.3d at 921 (finding no requirement that a contract of "an independent contractor relationship" be in writing). Wilkie also advised all RNK drivers during the interview process that they are a "1099 contractor." Appellant also did not receive employee benefits nor allotted vacation time.

Accordingly, based on the totality of circumstances, I cannot say that the trial court was manifestly erroneous in concluding that Appellant was an

independent contractor and thus not entitled to benefits under the LWCL. As such, I would affirm the trial court's judgment.

MELVIN SMITH	*	**NO. 2026-CA-0078**
VERSUS	*	**COURT OF APPEAL**
RNK CONSTRUCTION, L.L.C. AND CNA INSURANCE COMPANIES	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

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NEK **ERVIN-KNOTT, J., DISSENTS AND ASSIGNS REASONS**

I respectfully dissent for the reasons assigned by Judge Herman.