

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
ORLANDO DISTRICT

**EMPLOYEE:**

Mario Monroy  
1201 Parplow Drive  
Winter Gardens, FL 34787

**ATTORNEY FOR EMPLOYEE:**

Paul J. Morgan, Esquire  
1099 West Morse Boulevard  
Winter Park, FL 32789

**EMPLOYER #1:**

ASP Framing  
2840 Old Winter Gardens Drive  
Orlando, FL 32805

**ATTORNEY FOR E/C #1:**

Morgan Indek, Esquire  
1900 Summitt Tower Blvd  
Orlando, FL 32810

**EMPLOYER #2:**

GM Group Const. Corp  
3837 N. Dale Mabry Blvd.  
Tampa, FL 32624

**ATTORNEY FOR E/C #2:**

Rex A. Hurley, Esquire  
1560 Orange Avenue  
Winter Park, FL 32789

**CARRIER #1:**

United Self Insured Services  
Post Office Box 616648  
Orlando, FL 32861

**CARRIER #2:**

First Commercial Ins. Co.  
2300 W. 84<sup>th</sup> Street  
Hialeah, FL 33016

**OJCC CASE NO.:** 07-005420TWS

**D/A:** 02/20/2006

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COMPENSATION ORDER

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Pursuant to due Notice of Hearing, this matter came on for Hearing in Orlando, Orange County, Florida on June 11, 2008. Present and representing the employee was Paul Morgan, Esquire. Present and representing the employer/carrier #1 was Morgan Indek, Esquire. Present and representing the employer/carrier #2 was Rex Hurley

Prior to hearing, the parties entered into a pretrial stipulation which is accepted and adopted by the undersigned. The Petitions for

Benefits listed on the pretrial stipulation were 02/19/2007 and 09/07/2007.

At hearing the evidence consisted of the claimant's testimony as well as; Alfredo Sandoval, owner of ASP Framing.

The following were admitted into evidence:

**Judge's Exhibits:**

1. Pretrial Stipulation dated: February 19, 2008

**Claimant's Exhibits:**

1. Employee's Pre-Hearing Memorandum
2. Alfredo Sandoval's Business Card
3. Deposition: Alfredo Sandoval (page 15 line 25 and page 45 line 1-10)

**Employer/Carrier's #1 Exhibits:**

1. **PROFFER EXHIBIT** Medical Records/Orlando Regional Medical Center
2. Deposition: Bhupinder Rai Gupta, M.D. taken March 28, 2008
3. Hearing Information Sheet of ASP Framing/USIS
4. **PROFFER EXHIBIT** Deposition: Albeiro Sandoval taken March 17, 2008
5. Notice of Controversy Between Carriers dated October 11, 2007
6. Deposition: Alma Cunningham taken June 2, 2008
7. Affidavit of Non-Appearance dated March 28, 2008
8. Order dated May 8, 2008
9. Composite of photocopies of ASP Framing Corp checks
10. ASP Framing Corp Contract Agreement

**Employer/Carrier's #2 Exhibits:**

1. Hearing Information Sheet
2. Construction Subcontract Agreement

**Joint Exhibits:**

1. Deposition: Mario Monroy taken October 29,, 2007
2. Deposition: Mario Monroy taken March 19, 2008

After hearing all of the testimony and evidence presented, and after having resolved any and all conflicts therein, and after having very carefully observed the candor and demeanor of the witnesses who testified

before me, the undersigned Judge of Compensation Claims makes the following findings of fact and conclusions of law:

The issues for determination are who was the claimant's employer on the date of injury of February 20, 2006, and E/C #1's claim for contribution from E/C #2. The parties agreed that all other issues are reserved for a later hearing, if necessary.

Claimant was hired to perform carpentry and framing work on an apartment complex being constructed. During the "clean-up" stages of construction, claimant fell through a third-floor elevator shaft and landed on the ground below. Claimant suffered severe injuries to the right side of his face and body including lacerations, bruising, and loss of vision in his right eye. The claimant alleges he was hired and employed by ASP Framing Corp. ("ASP") when the accident on February 20, 2006 occurred. ASP, however, alleges that the claimant was actually employed by a subcontractor, G.M. Group Construction Corp. ("GM"), at the time of the accident. A claim was initially filed on February 19, 2007 against ASP, which is owned by Alfredo Sandoval. A subsequent claim was filed against GM on September 7, 2007, which is owned by Jose Martinez.

Based on the evidence and testimony, I find that that ASP was the employer of the claimant when the accident occurred. I accept the claimant's testimony as credible and truthful, and to the extent his testimony conflicts with that of the other witnesses in the case, I accept the claimant's testimony over those other witnesses, including Alfredo and Albeiro Sandoval.

ASP hired the claimant and paid the claimant on a weekly basis. Claimant was under the impression that he was an employee of ASP. The

claimant also returned to work for ASP after he recovered from his injuries.

Further, ASP was in control of claimant's behavior at the job site. They had the ability to direct the manner in which claimant's work should be done. The work being performed by the claimant was also under the direct supervision of an ASP employee, Mr. Reyes. Reyes was ASP's supervisor on site at the apartment complex when the injury occurred. An ASP employee, Manuel, also provided tools and transportation to the claimant for the job site.

I reject ASP's argument that because Jose Fernandez went to the hospital following the accident and told both the claimant and the hospital that he was taking responsibility for payment of claimant's benefits and medical care, that this court is required to determine that GM Group is claimant's employer, contrary to the credible evidence in the case. Mr. Fernandez' actions occurred after the accident, while the issue for determination is who was claimant's employer on 2/20/06. As the evidence establishes that ASP Framing was the claimant's employer at the time of the accident, ASP and its carrier, USIS, are responsible for claimant's workers' compensation benefits.

**WHEREFORE**, it is ordered and adjudged:

1. ASP Framing Corp. was claimant's employer on 2/20/06, the date of claimant's injury.
2. ASP Framing Corp. and USIS are the responsible employer/carrier for any workers' compensation benefits due to claimant as a result of the 2/20/06 injury.

3. All petitions for benefits against GM Group Construction Co. and First Commercial Insurance Company are DENIED and DISMISSED WITH PREJUDICE.
  
3. The claim for contribution filed by ASP Framing Corp. and USIS against GM Group Construction Corp. and First Commercial Insurance Company is DENIED and DISMISSED WITH PREJUDICE.

Done and Emailed this 15th day of June, 2008.

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Thomas W Sculco  
Judge of Compensation Claims  
Orlando District

Mailed to:  
Mario Monroy  
1201 Parplow Drive  
Winter Garden, FL 34787

Emailed to:

Paul Morgan, Esquire  
Morgan Indek, Esquire  
Rex Hurley, Esquire

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Secretary to Judge