

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ALFA INSURANCE CORPORATION PLAINTIFF

VS. CIVIL NO. 3:08CV-114DPJ-JCS

SRI RAM, INC. D/B/A KIBS
SUPERMARKET AND CHARLES WILLIAMS DEFENDANTS

SRI RAM, INC. CROSS-CLAIMANT

VS.

ALFA INSURANCE CORPORATION CROSS-DEFENDANT

SRI RAM, INC. COUNTER-CLAIMANT

VS.

ALFA INSURANCE CORPORATION COUNTER-DEFENDANT

CHARLES WILLIAMS CROSS-CLAIMANT

VS.

SRI RAM, INC. CROSS-DEFENDANT

RULING

BEFORE THE HONORABLE DANIEL P. JORDAN III
UNITED STATES DISTRICT JUDGE
JANUARY 22ND, 2009
JACKSON, MISSISSIPPI

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR
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APPEARANCES: (via phone)

FOR ALFA INSURANCE CORPORATION: MR. DAVID E. STOVALL

FOR SRI RAM, INC.: MR. DENNIS L. HORN

FOR CHARLES WILLIAMS: MR. DELANO FUNCHES
MR. EDWARD WIGGINS
MR. HENRY CLAY

1 THE COURT: All right. I have Gina Morris in here
2 with me who is our court reporter, and she will transcribe what
3 we have to say. Because we're on a conference call, if
4 somebody says something, I'd appreciate it if you'd introduce
5 yourself for her. And before we begin, let me ask all of you
6 to do just that. Start with Alfa.

7 MR. STOVALL: Your Honor, this is David Stovall
8 representing Alfa with Wilkins, Stephens & Tipton.

9 THE COURT: Okay. Sri Ram.

10 MR. HORN: Dennis Horn representing Sri Ram, your
11 Honor.

12 THE COURT: And Charles Williams.

13 MR. WIGGINS: Edward Wiggins, your Honor.

14 MR. FUNCHES: And Delano Funches.

15 THE COURT: Okay. Thank you.

16 MR. CLAY: And Henry Clay, Judge.

17 THE COURT: Okay. Before I start my ruling, let me
18 make a few prefatory comments. First, there are times -- and
19 I'll just put this on the record -- where I will dictate a
20 ruling like this where I know the parties want an answer and my
21 schedule is tight and we, frankly, don't have the time to put
22 together the order.

23 We start a significant trial that the preliminary
24 hearings start next week. So I thought this was the more
25 efficient way to get a ruling to you and at the same time give

1 you a sufficient record from which to appeal.

2 If a party desires a copy of the transcript, you can
3 order it from Gina. I will reserve the right to review the
4 transcript and amend it if I see something in there that I feel
5 like should be amended.

6 All right. Any questions before we get going?

7 MR. STOVALL: No, your Honor.

8 MR. HORN: No, sir.

9 THE COURT: All right. And this will read somewhat
10 like a memorandum of opinion. Again, for purposes of appeal so
11 somebody could follow along, I'll state the background and
12 history here.

13 This is an insurance coverage dispute in which Alfa
14 Insurance Corporation seeks declaratory judgment that the
15 business owner's policy it issued to defendant Sri Ram, Inc.,
16 d/b/a Kibs Marketplace, does not provide coverage for an injury
17 to defendant Charles Williams.

18 The material facts in this case are not disputed.
19 Mr. Williams performed odd jobs for Kibs three to four days a
20 week. He was paid at times in cash; but, generally, it appears
21 that he bartered his services in exchange for merchandise or
22 store credit. When he worked, his pay was based on the hours
23 worked at a rate of 5 to 6 dollars an hour, according to his
24 employer.

25 On March 6th, 2006, Mr. Williams was working in a back

1 room cleaning or fronting merchandise at the direction of the
2 store's owner, Mr. Ivayu Pillai, who's better known as Mr. P by
3 all the parties. They refer to him as Mr. P and I'll use that
4 as well.

5 Mr. P was in the same room assisting an electrician
6 named Steve McDonald who was running a wire through a conduit
7 to install a new power outlet for a Coke machine. Mr. P was to
8 watch the conduit and inform Mr. McDonald when the line
9 appeared.

10 Mr. P was interrupted, though, when asked to come to
11 the front of the store. He, therefore, instructed Mr. Williams
12 to take his place and assist McDonald. Significantly, Mr. P
13 instructed Williams to watch to see when the line Mr. McDonald
14 was pushing came out of the metal conduit above the breaker
15 box. It appears from the record that Williams performed no
16 other task other than watching for the fishing line, as Mr. P
17 instructed.

18 While performing this task at Mr. P's direction, a
19 spark ignited injuring Mr. Williams. According to Mr. P's
20 un rebutted testimony, Williams assisted McDonald for only a few
21 minutes before the accident occurred.

22 Alfa claims that Mr. Williams was the insured's
23 employee and, therefore, excluded from coverage. No one
24 contends that this is an ambiguous policy and I agree. So I'll
25 start with the contract language. I won't recite all of the

1 language because it is clearly reflected in the record, but I
2 will note that Alfa's business owner's policy held by plaintiff
3 Sri Ram states that it covers bodily injury.

4 Williams suffered a bodily injury. Section B provides
5 the exclusions and states in Section B(1)(e) that coverage is
6 excluded for bodily injuries to, one, an employee of the
7 insured arising out of and in the course of (a) employment by
8 the insured; or (b) performing duties related to the conduct of
9 the insured's business.

10 Alfa's position is easily summarized. Coverage is
11 excluded because Williams was an employee and was performing
12 duties related to the conduct of the insured's business. For
13 reasons I will explain more fully, I find that as a matter of
14 law this is the correct interpretation and that Alfa's motion
15 should be granted.

16 First, there appears to be no dispute that if
17 Mr. Williams was the insured's employee, then coverages would
18 be excluded pursuant to Section B(1)(e)(1) for injury arising
19 out of and in the course of (a) employment by the insured, or
20 (b) performing duties related to the conduct of the insured's
21 business. Accordingly, the defendants claim that Williams was
22 either not Sri Ram's employee or was not at the time of the
23 accident because he was a borrowed servant of McDonald.

24 Looking first at Williams' response, I note that it
25 provides facts which do not appear to be disputed and then

1 states on page 3 that Williams "could be an employee, temporary
2 worker or an invitee." Williams offers no authority for this
3 argument which appears conclusory, and I find that these
4 statements are neither persuasive nor adequate under Rule
5 56(c).

6 Still, I will look at Williams' arguments and first
7 note that his claimed invitee status turns on whether he was an
8 employee. If he was not an employee, then he is probably
9 correct that he was an invitee. So we need to determine
10 whether he was an employee. Williams suggests that he was not.
11 I may have missed it, but it didn't appear that Sri Ram joined
12 in that portion of the argument.

13 In any event, the Mississippi Supreme Court held in
14 *Sennett v. USF&G*, 757 So.2d 206 at paragraph 21 (Miss. 2000),
15 that the primary purpose of an employee exclusion clause
16 essentially identical to the one in this case was to draw a
17 sharp line between employees and members of the general public.
18 Mississippi has offered no other relevant explanations of the
19 clause.

20 However, in *Traveler's Insurance Company v. Brown*, 338
21 F.2d 229, 237 (C.A.La. 1964), the Fifth Circuit examined an
22 employee exclusion under Louisiana law and, finding no guidance
23 from the case law in Louisiana, found it reasonable to examine
24 the standards governing the master-servant, independent
25 contractor, or borrowed servant relationships.

1 Those issues have been addressed in cases such as
2 *Richardson v. APAC-Mississippi, Inc.*, 631 So.2d 143, 148 (Miss.
3 1994), where the Mississippi Supreme Court cited various
4 sources for the definition of an employee or a master-servant.
5 For example, 53 Am.Jur.2d Master and Servant, Section 3,
6 observes that "servants are workers for another under an
7 express or implied agreement." The Restatement of Agency
8 observes in Section 2(b) that "a servant is a person employed
9 by a master to perform service in his affairs whose physical
10 conduct in the performance of the service is controlled or is
11 subject to the right to control by the master."

12 Looking at Williams' position in this case, it appears
13 that his primary argument rests on the undisputed fact that he
14 was often paid with goods rather than cash. Williams cites no
15 authority for his claim that payment in goods and cash
16 precludes employment status under an employee exclusion and I
17 see no distinction between someone who receives cash and
18 someone who receives in-kind consideration.

19 As stated in *Sennett*, the purpose of the clause is to
20 distinguish employees from the general public. And the facts
21 demonstrate that Williams was more than a member of the general
22 public. He was an employee.

23 For starters, there is no dispute that Williams worked
24 at the store three to four days a week mopping, sweeping and
25 cleaning up at the direction of Mr. P. That's from

1 Mr. Williams' deposition, page 43. He and Mr. P testified that
2 he was compensated by the insured for his work with merchandise
3 and sometimes cash. Williams testified that he worked when he
4 needed money. Mr. P agreed with that. Mr. P also stated that
5 Williams' pay was based on the hours worked at a rate of 5 to 6
6 dollars per hour.

7 Williams also testified that he was supposed to get to
8 the store at 7:30. Mr. P testified that that's when the store
9 opened. At the time he was asked to help McDonald, Williams
10 was working in a back room. Finally, Mr. P testified on page
11 39 of his deposition that when Williams was there to shop, he
12 was a customer. When he was there to work, "He was an employee
13 at that time." Clearly, that's a correct interpretation of the
14 arrangement.

15 There was an express or implied agreement between the
16 store and Williams. Williams performed services. Williams
17 worked under Mr. P's direction and Williams was compensated.
18 Moreover, Williams was actually working at the time of the
19 incident. Williams was not part of the general public in this
20 regard. I find, therefore, that he was an employee under the
21 plain language of the policy.

22 Williams next posits that he might have been a
23 temporary worker and, therefore, not an employee under the
24 terms of the policy. Again, this argument appears in one
25 rhetorical sentence. Still, it is true that Section F(5) of

1 the policy defines employee as excluding temporary workers.
2 However, Section F(17) defines temporary worker in unambiguous
3 terms to mean "A person who is furnished to you to substitute
4 for a permanent employee on leave or to meet seasonal or
5 short-term workload conditions."

6 Williams offers no record evidence or legal
7 authorities to support the conclusion that he was a temporary
8 worker as defined by the policy. And I find as a matter of law
9 that he was not. Williams worked on a regular basis three to
10 four days a week.

11 Sri Ram's memorandum presents a more significant
12 issue, whether Williams was a borrowed servant of McDonald, the
13 electrician, at the time of the accident. I will just note
14 that this argument never really links the borrowed servant
15 status issue to the contract language.

16 On page 2 of its memorandum, Sri Ram states that if
17 Williams was a borrowed servant the exclusion for employees
18 does not apply. Sri Ram cites no authority for this position
19 and I have seen none that hold that a borrowed servant is no
20 longer considered the general employer's employee under an
21 employee exclusion even when the work indisputably relates to
22 the insured general employer's business as outlined in subpart
23 B(1) (e) (1) (b) of the policy.

24 Sri Ram does cite the basic concept that when one is a
25 borrowed servant he or she ceases to be an employee of the

1 general employer, but those cases do not examine this policy
2 language. Nevertheless, I need not resolve this issue because
3 I have concluded that Williams was not, as a matter of law, a
4 borrowed servant of McDonald.

5 To begin with, it is not entirely clear whether the
6 borrowed servant question is one of fact or law. Under Fifth
7 Circuit law it is a question of law provided that the
8 underlying facts are not disputed. *Gaudet v. Exxon*
9 *Corporation*, 562 F.2d 351 (5th Cir. 1977).

10 Judge Lee ruled in footnote 4 of *Honey v. United*
11 *Parcel Service*, 879 F.Supp. 615, 619 n.4 (S.D. Miss. 1995),
12 that the issue of whether an employee is a borrowed servant for
13 purposes of workers' compensation exclusivity was a question of
14 law. However, in *Patton-Tully Transportation Company v.*
15 *Douglas*, 761 So.2d 835, 838 (Miss. 2000), the Mississippi
16 Supreme Court observed that "a dispute over whether one is a
17 borrowed servant could still exist although all the facts were
18 stipulated, for it concerns not only the facts themselves but
19 the implications to be drawn from the facts."

20 There may be a question here as to whether this is a
21 procedural or substantive issue, but none of the parties
22 addressed it. Plus, *Patton-Tully* is a little unclear in that
23 it says a jury question "could still exist." If I apply the
24 federal standard, then I would note that the underlying facts
25 are not disputed and demonstrate that Williams was not

1 McDonald's borrowed servant.

2 Nevertheless, even if Mississippi would view that as a
3 question of fact, and I applied that analysis as substantive
4 law, there would still be no material question of fact. A
5 question is not material if, when viewing the facts in the
6 light most favorable to the nonmoving party, no reasonable
7 juror could decide the issue in the nonmovant's favor. *Jenkins*
8 *v. Methodist Hospitals Dallas, Inc.*, 478 F.3d 255, 260
9 (5th Cir. 2007). In this case I find that no reasonable juror
10 could conclude that Mr. McDonald became Williams' employer.

11 Turning to the substance of the issue, Alfa's original
12 memorandum cited the nine-part test in *Kisner v. Jackson*, 159
13 Miss. 424, 428-29, 132 So. 90, 91 (1931). However, that test
14 addresses independent contractors. While Sri Ram discusses
15 *Kisner* to a limited extent, Sri Ram stops short of actually
16 saying that Williams was an independent contractor. To the
17 extent Sri Ram somehow meant to apply that argument, which is
18 not apparent, I would reject it because Williams clearly was
19 not an independent contractor.

20 The more apparent question Sri Ram raises is whether
21 Williams was a borrowed servant of McDonald. There's another
22 nine-part test that the Fifth Circuit developed in *Ruiz v.*
23 *Shell Oil*, 413 F.2d 310, 312-13 (5th Cir. 1969), to address
24 this issue. While the Mississippi Supreme Court has
25 acknowledged the Fifth Circuit's test, it developed a more

1 streamline inquiry in *Clark v. Luther McGill*, 127 So.2d 858,
2 862 (Miss. 1961).

3 There the Mississippi Supreme Court began by noting
4 that there is a presumption of continued employment with the
5 general employer. The court observed that "The only
6 presumption is the continuance of the general employment which
7 is taken for granted as the beginning of any lent-employee
8 problem. To overcome this presumption, it is not unreasonable
9 to insist upon a clear demonstration that a new temporary
10 employer has been substituted for the old."

11 The court went on to observe that under the loaned
12 servant doctrine, the court is guided by three important
13 factors in analyzing whether an employment relationship exists:
14 One, whose work is being performed; two, who has the right to
15 control the worker in his duties on the job; and, three, the
16 existence of an employment contract between the employee and
17 the special employer, whether implied or actual. *Patton-Tully*
18 *Transportation Company v. Douglas*, 761 So.2d 835, 839-840
19 (Miss. 2000) (citing *Jones v. James Reeves Contractors, Inc.*,
20 701 So.2d at 780 (citing *Quick Change Oil Lube, Inc. v. Rogers*,
21 663 So.2d 585, 592 (Miss. 1995); *Index Drilling Company v.*
22 *Williams*, 242 Miss. 775, 786-87, 137 So.2d 525, 529 (1962);
23 *Clark v. Luther McGill, Inc.*, 240 Miss. at 517, 127 So.2d at
24 861)).

25 There are a number of other cites. If we produce a

1 transcript here, I'll provide those notes to Gina and she can
2 plug them in.

3 *Clark* is the appropriate test, and I'll make two quick
4 points about that before I apply it. First, *Clark* overlaps
5 *Ruiz* to some extent; and I'll, therefore, expressly discuss
6 some of the *Ruiz* factors. I have, though, reviewed all of the
7 *Ruiz* factors; and to the extent they are applicable, they would
8 in no way change my conclusion. Second, *Clark* was adopted
9 after some of the authority that Sri Ram cites in its
10 memorandum of law.

11 For example, Sri Ram cites *Sawmill Construction*
12 *Company v. Bright*, 77 So. 316 (Miss. 1918), stating that it is
13 directly on point. *Bright* is factually similar, but only to
14 the extent that the employee was performing an isolated task
15 for the purported employer. The case is easily distinguishable
16 because the general and special employer had an arrangement
17 whereby they shared employees, and the court focused on this
18 arrangement.

19 The Mississippi Supreme Court has frequently observed
20 in cases such as *Patton-Tully* and *Jones v. James Reeves*
21 *Contractors, Inc.*, that its decisions prior to *Clark* were
22 somewhat inconsistent. Pre-*Clark* cases such as *Bright* often
23 looked to the relationship between the lending and borrowing
24 employers; whereas, *Clark* focuses the inquiry on the
25 relationship between the special employer and employee.

1 *Patton-Tully* and *Jones* both explain that since *Clark* the court
2 has been consistent in its application, and that application is
3 consistent with my holding today.

4 Turning to the three *Clark* factors, I'll start by
5 addressing whose work is being performed. This inquiry
6 received slight attention in the cases, in part because the
7 courts tend to look at it in terms of the second inquiry, who
8 controlled the work.

9 Sri Ram cites deposition testimony that Williams and
10 McDonald thought Williams was doing McDonald's work. However,
11 Sri Ram cites the depositions generally for this point, failing
12 to identify any specific deposition responses. While I agree
13 that the testimony unequivocally demonstrates that Williams was
14 assisting McDonald at the time, it does not answer the more
15 specific question at hand. And there is no dispute in the
16 record that the work McDonald was performing was at the store
17 and, according to Mr. P, for the store's benefit.

18 Plus, Williams was actually filling in for Mr. P doing
19 his part of the work for the store. Thus, it would appear that
20 the work was for the benefit of the store. But from the
21 defendant's perspective this inquiry would be at best neutral.

22 The second factor is who has the right to control the
23 worker in his duties on the job, and this factor is far from
24 neutral. In *Patton-Tully* the Mississippi Supreme Court
25 observed that "right of control is the determinative factor in

1 ascertaining whether an employment relationship is that of
2 master-servant." The court further noted, "The factor of
3 control is perhaps the most universally accepted standard for
4 establishing an employer-employee relationship."

5 In *Clark*, the court noted that "The ultimate right to
6 control should not be confused with immediate control." Let me
7 emphasize that language. The question is not whether Williams
8 was under McDonald's immediate control; the question is who had
9 the ultimate right to control.

10 The quote from *Clark* continues: "For it is the
11 reserved right of control rather than its actual exercise that
12 furnishes the true test of relationship. And he is master who
13 has the supreme choice, control and direction of the servant
14 and whose will the servant represents in the ultimate results
15 and in all its details; and the fact that the borrower gives
16 information and directions to the servant as to the details of
17 the work or the manner of doing it does not make the general
18 servant of the employer the servant of the borrower."

19 In *Quick Change Oil Lube, Inc., v. Rogers*, 663 So.2d
20 585 (Miss. 1995), the court added that if the lender is to
21 escape liability by showing that the employee was borrowed by
22 the special employer "it must appear that the servant is under
23 the borrower's exclusive control and directions as to the work
24 in progress."

25 Significantly, the term "control has been further

1 defined as involving careful distinction between authoritative
2 direction and control and mere suggestion as to details or the
3 necessary cooperation where the work furnished is part of a
4 larger undertaking." In *Patton-Tully* the Mississippi Supreme
5 Court explained this further, and I'll paraphrase it a little
6 further for clarity by removing the proper names. But the
7 court held, "The fact that the purported borrower may have
8 exercised immediate control over the servant's activities
9 should not be confused with the ultimate right of control that
10 the general employer had over its employee."

11 I also found helpful the following quote from *Jones v.*
12 *James Reeves Contractors, Inc.* "But the mere fact that a
13 servant is sent to do work pointed out to him by a person who
14 has made a bargain with his master does not make him that
15 person's servant. More than that is necessary to take him out
16 of the relation established by the only contract which he has
17 made and to make him a voluntary subject of a new sovereign."

18 *Jones* pulled this language from *Standard Oil Company*
19 *v. Anderson*, a United States Supreme Court decision that was
20 quoting then Chief Justice Oliver Wendell Holmes of the
21 Massachusetts Supreme Court. Significantly, the Mississippi
22 Supreme Court noted in *Jones* that its post-*Clark* decisions have
23 been more akin to this language from *Standard Oil*.

24 In this case there is no disputed material fact as to
25 what Williams was doing and no material fact remains as to the

1 insured's reserved right of control. Williams was cleaning or
2 working in the same room as Mr. P and McDonald when Mr. P was
3 called to the front. When Mr. P was called to the front, he
4 directed Williams to stop what he was doing and to take Mr. P's
5 place watching for the fishing line to appear through the
6 conduit. Williams had not completed his other work when he was
7 interrupted.

8 Mr. P repeatedly testified that he gave Williams
9 detailed instructions on what he was supposed to do. Pages 40
10 through 41 of Mr. P's deposition testimony provide a good
11 example, but there is simply no room for dispute that Mr. P
12 expressly instructed Williams on the exact task he was to
13 perform while Mr. P was in the front and how he was to
14 accomplish it.

15 Generally speaking, Williams was to watch and let
16 Mr. McDonald know when the line appeared in the conduit. It
17 appears from Williams' testimony that the only task he
18 performed was the one spelled out by Mr. P. Plus, Mr. P never
19 left the store. Although McDonald had his own tools, a point
20 that Sri Ram makes in its response, there's no evidence that
21 Mr. Williams used any tools or did anything other than watch
22 and wait for the fishing line to appear through the conduit,
23 just as Mr. P instructed.

24 Although not determinative, I have to note that
25 according to Mr. P, Williams assisted McDonald for only a few

1 minutes before the accident, all the while doing exactly what
2 Mr. P instructed him to do. Mr. P states in his affidavit that
3 he submitted after the deposition that he also told Williams to
4 do what Mr. McDonald said and that he left Williams under
5 McDonald's exclusive control.

6 I have to note that this testimony is inconsistent
7 with Mr. P's testimony during his deposition in which he was
8 repeatedly asked what he told Williams, and he repeatedly
9 stated that he told him to watch for the fishing line. Not
10 once does Mr. P say that he told Williams to do what McDonald
11 said or that he was under McDonald's exclusive control.

12 Moreover, Williams was asked four times in his
13 deposition to explain what Mr. P told him to do; and each time
14 he said he was told to help McDonald by watching for the line.
15 That's found in Williams' deposition at 26, 49 and 50. He
16 never mentioned any more general comments about doing what
17 McDonald said or being under his control.

18 Finally, Mr. McDonald, the only other witness to the
19 conversation, testified on page 15 of his deposition, "He just
20 told him to stand there and watch that for me and tell me when
21 it came out."

22 Cases such as *Copeland v. Wasserstein, Perella &*
23 *Company*, 278 F.3d 472, 482-83 (5th Cir. 2002), hold that a
24 party may not create a fact issue by submitting an affidavit
25 that contradicts without explanation prior deposition

1 testimony. And that's what this affidavit purports to do.

2 But even considering the alleged statement that
3 Williams should do what McDonald said, his statement would not
4 demonstrate a master-servant relationship. As stated in
5 *Patton-Tully, Jones* and other cases from the Mississippi courts
6 of appeal, an instruction of cooperation rather than
7 subordination would not satisfy this element. And even if
8 theoretically Williams was under McDonald's immediate control,
9 *Clark* holds that that alone is not sufficient.

10 As stated in that case, "The ultimate right to control
11 should not be confused with immediate control." There is
12 simply nothing in this record to suggest that Williams was
13 under McDonald's control and nothing to overcome the
14 presumption that Williams continued in the employment of the
15 store.

16 The final *Clark* factor requires a clear showing that
17 the employee has entered a contract with the special employer
18 sufficient to establish a master-servant relationship between
19 the special employer and the employee. But if there's no such
20 consent, then the contract of hire, express or implied, does
21 not exist; and the general employment is not exclusively
22 suspended insofar as the rights of the workman are concerned.
23 In this sense voluntary consent contemplates an understanding
24 by the workman of the shift in employment and of the
25 consequences thereof and a freedom from real or apparent

1 compulsion.

2 In this case there's just no logical way to conclude
3 that Williams entered into an express or implied contract to
4 perform this single, simple task. In fact, McDonald testified
5 on page 47 of his deposition that he did not hire Williams to
6 help him. Williams was never asked whether he considered
7 himself employed by McDonald, and there's nothing in the record
8 to suggest that McDonald was going to compensate Williams or
9 that there was any prior understanding that Williams would be
10 McDonald's employee.

11 Likewise, there's no evidence that McDonald could hire
12 Williams for, or fire Williams from, this one task. See
13 *Goolsby Trucking Company v. Alexander* at paragraph 32. Nor are
14 there any other indicia of a master-servant relationship.
15 Instead, there's just what it appears: Williams was working
16 nearby and was asked by his employer to fill in briefly for the
17 work that his employer was doing and at his employer's
18 instruction. There's no indication of a contract of employment
19 with McDonald.

20 Having reviewed the appropriate factors, there is no
21 clear demonstration that a new employment relationship was
22 formed. I find, therefore, as a matter of law, that Williams
23 remained employed by Sri Ram at the time of the injury and,
24 therefore, the exclusion applies.

25 First of all, any questions?