Rel: November 8, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180180

Ex parte Ultratec Special Effects, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: David J. Cothran, as administrator of the Estate of Aimee Cothran, deceased

v.

Ultratec Special Effects, Inc., et al.)

1180183

Ex parte Ultratec Special Effects, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Donald Ray Sanderson, as administrator of the Estate of Virginia Marie Sanderson, deceased

v.

Ultratec Special Effects, Inc., et al.)

(Madison Circuit Court, CV-15-902114 and CV-15-902098)

On Application for Rehearing

BOLIN, Justice.

Ultratec Special Effects, Inc. ("Ultratec"), filed two petitions for a writ of mandamus in this Court asking us to direct the Madison Circuit Court to vacate its order of October 25, 2018, denying Ultratec's motion for a summary judgment on claims asserted against it by David J. Cothran, as the administrator of the estate of his sister, Aimee Cothran, and by Donald Ray Sanderson, as the administrator of the estate of his wife, Virginia Marie Sanderson (hereinafter referred to collectively as "the Estates"), based on, among others, Ultratec's claim that it was immune from suit based on the exclusivity provisions of the Workers' Compensation Act, § 25-5-1 et seq., Ala. Code 1975 ("the Act"). This Court denied those petitions without an opinion on January 24, 2019. On February 7, 2019, Ultratec filed applications for rehearing. On March 15, 2019, this Court entered an order in each case granting Ultratec's application for a rehearing as

to the sole issue whether Ultratec is entitled to immunity under the Act. We consolidated the petitions for the purpose of issuing one opinion.

Factual and Procedural History

On September 21, 1988, Adrian Segeren formed 793862 Ontario, Inc. ("Ontario"), a Canadian corporation created for the purpose of manufacturing lighting equipment. In 1993, Le Maitre, Ltd. ("Le Maitre U.K."), a company based in the United Kingdom that manufactured pyrotechnics and fog machines, reached an agreement with Ontario whereby Le Maitre U.K. purchased 50% of the shares of stock in Ontario. Le Maitre U.K. supplied its products to Ontario on favorable terms, and Ontario sold Le Maitre U.K.'s products in North America using the Le Maitre trademark. Ontario formed Le Maitre Special Effects, Inc. ("Le Maitre Canada"), a Canadian corporation and wholly owned subsidiary of Ontario, for the purpose of operating the business entered into with Le Maitre U.K. In addition to selling the Le Maitre U.K. products, Le Maitre Canada continued Ontario's business of manufacturing and selling lighting equipment. Le Maitre Canada also began manufacturing and selling its own line of fog machines.

In 2001, Le Maitre Canada formed Wow Works, a Buckley/Wymek Company, Inc. ("Wow Works"), a Florida corporation, engaged in the business of show design. In 2002, Le Maitre Canada became the sole shareholder of Wow Works. Wow Works sold all of its assets, and the name of the company was changed to Le Maitre Orlando, Inc. ("Le Maitre Orlando").

In 2005, Segeren began negotiations with Luna Tech, Inc. ("Luna Tech"), an Alabama corporation, to purchase Luna Tech's assets. Luna Tech was engaged in the business of manufacturing pyrotechnic items at a plant in Owens Cross Roads, Alabama. In December 2006, Segeren reached an oral agreement with Luna Tech whereby Le Maitre Canada would purchase Luna Tech's assets and begin operations at the Owens Cross Roads plant on March 1, 2007. The parties' oral agreement was to be reduced to a writing and the sale was to close on March 1, 2007. However, the closing date was delayed because of prior litigation Luna Tech was involved in and because the Le Maitre U.K. partners had sued Le Maitre Canada in Canada to enjoin the purchase of Luna Tech. Nevertheless, Le Maitre Canada and Luna Tech reached an agreement that permitted Le Maitre Canada to begin operations at the Owens

Cross Roads plant on March 1, 2007. On March 6, 2007, Le Maitre Orlando was incorporated in Alabama ("Le Maitre Alabama") as a wholly owned subsidiary of Le Maitre Canada.

The Le Maitre U.K. partners retained the exclusive use of the name "Le Maitre" following the Canadian litigation. Therefore, on April 6, 2009, Segeren formed Ultratec in Ontario, Canada, to continue the business operations of Le Maitre Canada. Ontario and Le Maitre Canada were merged into Ultratec. Additionally, on June 9, 2009, the name Le Maitre Alabama was changed to Ultratec Special Effects (HSV), Inc. ("Ultratec HSV").

With the Canadian litigation being resolved, Ultratec HSV entered into an asset-purchase agreement with Luna Tech on August 3, 2009, whereby Ultratec HSV purchased all of Luna Tech's assets. Ultratec HSV initially entered into a lease agreement with MST Properties, LLC ("MST"), who was leasing the property on which the Owens Cross Roads plant was located from Thomas Dewille, the property owner. On August 16, 2017, Ultratec HSV purchased the Owens Cross Roads property from Dewille.

In sum, Ultratec is a Canadian corporation that manufactures special-effects equipment such as fog machines and lighting equipment. Ultratec HSV is an Alabama corporation, and a wholly owned subsidiary of Ultratec, that manufactures pyrotechnics articles -- specifically indoor and close-proximity pyrotechnics for use at concerts and other similar events -- at its Owens Cross Roads plant in Alabama. Segeren is the sole member of the Ultratec board of directors and the company's president, secretary, and treasurer. Segeren's wife, Marnie Styles, serves as a vice-president of Ultratec. Stephen Habermehl serves as Ultratec's chief financial officer. Ultratec owns 100% of the stock of Ultratec HSV. Segeren is the sole officer and director of Ultratec HSV.

On February 6, 2015, Aimee Cothran and Virginia Sanderson were working at the Ultratec HSV plant when they were killed by an explosion. In November 2015, the Estates separately sued Ultratec, among others,[1] alleging against Ultratec negligence, negligent supervision, wantonness,

[1]The Estates also sued co-employees Robert Holland, Randy Moore, Mike Thouin, and John Anthony. Those co-employees are not parties to the petitions.

conspiracy, and strict liability. Ultratec answered the complaints, raising as an affirmative defense the exclusivity provisions of the Act.

On April 20, 2018, Ultratec moved the trial court for a summary judgment, arguing that the claims asserted against it were barred by the exclusivity provisions of the Act. Specifically, Ultratec argued that it was immune because it and Ultratec HSV were a single employer group for purposes of the Act; because Aimee and Virginia were jointly employed by both Ultratec and Ultratec HSV; and because Ultratec HSV operated as a division of Ultratec. On August 6, 2018, the Estates filed a response in opposition to the motion for a summary judgment, arguing that a parent corporation is not entitled to the immunity provided by the exclusivity provisions of the Act in a tort action for the injury or death of an employee of the corporation's subsidiary; that questions of fact exists as to whether Ultratec and Ultratec HSV are separate entities; and that the joint-employer doctrine is inapplicable as a matter of law. Following a hearing, the trial court, on October 25, 2018, entered an order denying Ultratec's motion for a summary judgment, holding that

Ultratec was not protected by the exclusivity provisions of the Act as a "group employer or otherwise."

Standard of Review

> "'While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus.' Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000). A writ of mandamus is an extraordinary remedy available only when there is: '(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.' Ex parte BOC Group, Inc., 823 So. 2d 1270, 1272 (Ala. 2001)."

Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003). Also,

> "whether review of the denial of a summary-judgment motion is by a petition for a writ of mandamus or by permissive appeal, the appellate court's standard of review remains the same. If there is a genuine issue as to any material fact on the question whether the movant is entitled to immunity, then the moving party is not entitled to a summary judgment. Rule 56, Ala. R. Civ. P. In determining whether there is a [genuine issue of] material fact on the question whether the movant is entitled to immunity, courts, both trial and appellate, must view the record in the light most favorable to the nonmoving party, accord the nonmoving party all reasonable favorable inferences from the evidence, and resolve all reasonable doubts against the moving party, considering only the evidence before the trial court at the time it denied the motion for a summary judgment. Ex parte Rizk, 791 So. 2d 911, 912 (Ala. 2000)."

Ex parte Wood, 852 So. 2d 705, 708 (Ala. 2002).

> "'When the movant makes a prima facie showing that there is no genuine issue of material fact, the burden shifts to the nonmovant to present substantial evidence creating such an issue. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797–98 (Ala. 1989). Evidence is "substantial" if it is of "such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Wright [v. Wright], 654 So. 2d [542,] 543 [(Ala. 1995)] (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)).'"

Wilson v. Manning, 880 So. 2d 1101, 1102 (Ala. 2003) (quoting Hobson v. American Cast Iron Pipe Co., 690 So.2d 341, 344 (Ala. 1997)).

Discussion

Ultratec argues that it is entitled to immunity under the exclusivity provisions of the Act from the claims asserted against it by the Estates because, it says, Ultratec and Ultratec HSV operate as a single employer group within the meaning of the definition of "employer" in § 25-5-1(4), Ala. Code 1975.

Initially, we note that the exclusive-remedy provisions of the Act provide, in relevant part:

> "Except as provided in this chapter, no employee of any employer subject to this chapter ... shall

> have a right to any other method, form, or amount of compensation or damages for an injury or death occasioned by an accident or occupational disease proximately resulting from and while engaged in the actual performance of the duties of his or her employment and from a cause originating in such employment or determination thereof."

§ 25-5-52, Ala. Code 1975.

> "The rights and remedies granted in this chapter to an employee shall exclude all other rights and remedies of the employee ... at common law, by statute, or otherwise on account of injury, loss of services, or death. Except as provided in this chapter, no employer shall be held civilly liable for personal injury to or death of the employer's employee, for purposes of this chapter, whose injury or death is due to an accident or to an occupational disease while engaged in the service or business of the employer, the cause of which accident or occupational disease originates in the employment. In addition, immunity from civil liability for all causes of action except those based upon willful conduct shall also extend to the workers' compensation insurance carrier of the employer; to a person, firm, association, trust, fund, or corporation responsible for servicing and payment of workers' compensation claims for the employer; to an officer, director, agent, or employee of the carrier, person, firm, association, trust, fund, or corporation; to a labor union, an official, or representative thereof; to a governmental agency providing occupational safety and health services, or an employee of the agency; and to an officer, director, agent, or employee of the same employer, or his or her personal representative. Nothing in this section shall be construed to relieve a person from criminal prosecution for failure or neglect to perform a duty imposed by law."

§ 25-5-53, Ala. Code 1975. Additionally,

> "The intent of the Legislature is to provide complete immunity to employers and limited immunity to officers, directors, agents, servants, or employees of the same employer and to the workers' compensation insurance carrier and compensation service companies of the employer or any officer, director, agent, servant, or employee of such carrier or company and to labor unions and to any official or representative thereof, from civil liability for all causes of action except those based on willful conduct and such immunity is an essential aspect of the workers' compensation scheme. The Legislature hereby expressly reaffirms its intent, as set forth in Section 25-5-53, as amended herein ...."

§ 25-5-14, Ala. Code 1975.

Section 25-5-1(4), Ala. Code 1975, defines "employer" for purposes of the Act as follows:

> "Every person who employs another to perform a service for hire and pays wages directly to the person. The term shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his or her insurer, the insurer being entitled to the employer's rights, immunities, and remedies under this chapter, as far as applicable."

(Emphasis added.) Specifically, Ultratec argues that it is immune from suit by the Estates because, it says, Ultratec and Ultratec HSV operate as a single employer group as defined in § 25-5-1(4). The Estates argue that the phrase "group thereof" refers to any group of persons or entities that acts

as a "service company for a self insurer," not a group of entities within the same conglomerate as the "employer."

Richardson v. PSB Armor, Inc., 682 So. 2d 438 (Ala. 1996), is the only case to have specifically addressed the "group thereof" language of § 25-5-1(4). In that case, James Richardson was employed by Southern Nuclear Operating Company ("Southern Nuclear"). Southern Nuclear operated the Farley Nuclear Plant for the plant's owner, Alabama Power Company ("Alabama Power"). Southern Nuclear handled the plant's day-to-day operations pursuant to a contract between Southern Nuclear and Alabama Power. In turn, Southern Nuclear received support services from Southern Company Services, Inc. ("SCSI"), pursuant to a contract between Southern Nuclear and SCSI. Southern Nuclear, Alabama Power, and SCSI were all wholly owned subsidiaries of The Southern Company.

In May 1993, Richardson was injured in the course of his employment with Southern Nuclear and was awarded worker's compensation benefits for that injury. In January 1994, Richardson sued Alabama Power and SCSI in federal district court seeking damages for his work-related injuries. Alabama Power and SCSI denied liability and moved for a summary

judgment. Alabama Power Company contended that it was immune from liability because the definition of "employer" in § 25-5-1(4) included the phrase "group thereof," and it argued that it came within that phrase. SCSI argued that it also was entitled to the status of an "employer," because, it said, as a "service company" for a self-insured employer, Southern Nuclear, it also fell within the statutory definition of "employer." The district court certified questions to this Court, asking particularly when is it proper for an employer's "service company," or a "group thereof," to be deemed an "employer" under the Act?

With regard to SCSI's claim that it was an "employer" based on its status as a "service company," this Court stated:

> "We are called upon initially to address the question whether a 'service company' that does not assist the employer in regard to its workers' compensation benefits plan fits within this definition of 'employer.' Richardson argues that the term 'service company for a self insurer' applies only to those service companies that assist with the administration of the employer's workers' compensation program. We agree.
>
> "In determining the legislative intent, the 'polestar' of statutory construction, see Sunflower Lumber Co. v. Turner Supply Co., 158 Ala. 191, 48 So. 510 (1909); Ex parte Jordan, 592 So. 2d 579, 581 (Ala. 1992), we are guided by Ala. Code 1975, § 25-5-53, through which the legislature has expressly

> stated which nonemployer entities enjoy statutory immunity. That section provides, in pertinent part, that 'immunity from civil liability for all causes of action except those based on willful conduct shall ... extend to the workers' compensation insurance carrier of the employer [or] to a ... corporation responsible for the servicing and payment of workers' compensation claims for the employer.'
>
> "Note that under § 25-5-53 the grant of immunity to a corporate 'service company' is expressly tied to the servicing and administering of a workers' compensation program. Reading this section in pari materia with § 25-5-1(4), which defines 'employer,' we think it clear that the reference in § 25-5-1(4) to 'a service company for a self-insurer' was intended to apply to companies that administer the workers' compensation plan of a self-insured employer.
>
> "Accordingly, as to the first certified question -- '[w]hether a service company that does not provide assistance related to workers' compensation benefits qualifies as a "service company for a self-insurer" and thus, is an "employer"' -- we answer in the negative.
>
> "As to the second certified question -- whether the services provided by SCSI to Southern Nuclear under a January 1995 agreement between them renders SCSI a service company 'employer' under § 25-5-1(4) -- we observe that, given our answer to the first question, we must answer this second question in the negative. That agreement provides for SCSI to act as a service company of Southern Nuclear, but SCSI does not assert that it contracted by that agreement to service or administer Southern Nuclear's workers' compensation program, and it is undisputed that SCSI did not service or administer that program for Southern Nuclear."

Richardson, 682 So. 2d at 440-41.

With regard to Alabama Power's claim that it was a "group" of "an employer," this Court explained:

> "The third certified question is '[w]hether a corporation-owner of a plant, which relinquishes operating control to a sister company ... wholly owned by the same parent corporation ... is a "group" of [an] "employer" ..., where the corporation-owner indirectly pays the employee's wages and workers' compensation benefits.' We answer this third question in the negative.
>
> "[Alabama Power] and Southern Nuclear are both subsidiaries under the corporate umbrella of The Southern Company. In December 1991, [Alabama Power] and Southern Nuclear entered into an agreement providing that Southern Nuclear would operate [Alabama Power's] Farley Nuclear Plant and that [Alabama Power] would be entitled to all power generated at the plant. Southern Nuclear charges [Alabama Power] for its costs in operating the facility. Those costs would include the wages and benefits Southern Nuclear pays its employees.
>
> "It bears emphasis, however, that these two companies are wholly separate in their operations and as legal entities. For example, [Alabama Power] is an Alabama corporation in the business of selling electrical power, while Southern Nuclear is a separate Delaware corporation in the business of operating nuclear power plants.
>
> "Simply stated, the conclusion is inescapable that, irrespective of the fact that Southern Nuclear charges [Alabama Power] for its costs of operation, the relationship of these separate companies cannot reasonably be construed so as to make [Alabama Power] a 'group' of Southern Nuclear. Also, to answer the last certified question, we conclude that

> our answer to the third question is not altered by the existence of a contract between [Alabama Power] and Southern Nuclear wherein they essentially agree that [Alabama Power] will be deemed to be an 'employer' for purposes of workers' compensation immunity. In this regard, we are not persuaded by [Alabama Power's] arguments that we should impose the terms of this agreement on a person not a party to the agreement (and not employed by [Alabama Power]), so as to render [Alabama Power] immune from that person's work-related claims. Accordingly, we answer the last question in the negative."

Richardson, 682 So. 2d at 441.

This Court in Richardson held that the phrase "a service company for a self-insurer" applied to companies that administer the workers' compensation plan of a self-insured employer and that a service company that does not provide assistance related to workers' compensation benefits does not qualify as an "employer" under § 25-5-1(4). This Court, in Richardson, was not specifically asked to determine whether the phrase "group thereof" -- in the statutory provision "the term [employer] shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof," § 25-5-1(4) -- refers back to the phrase "a service company for a self-insurer." Here, however, the Estates have argued that the phrase "group thereof" refers to "a service company for a self-insurer."

"When a court construes a statute, '[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.'" Ex parte Berryhill, 801 So. 2d 7, 10 (Ala. 2001) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)). Giving the words used in § 25-5-1(4) their commonly understood meaning and interpreting the language as its written, we conclude that the phrase "group thereof" modifies the phrase "a service company for a self-insurer" in that provision. Having determined in Richardson that only those service companies that provide assistance related to workers' compensation benefits qualify as an "employer" under § 25-5-1(4), it follows that only those groups that provide assistance related to workers' compensation benefits will qualify as an "employer" as that term is defined in § 25-5-1(4).

Ultratec argues that it and Ultratec HSV operate as a single employer group and that, therefore, Ultratec is an "employer" as that term is defined in § 25-5-1(4), Ala. Code 1975. However, Ultratec has not asserted in any way or

presented any evidence indicating that it provides assistance in administering Ultratec HSV's workers' compensation plan or any other employment plan for that matter. Accordingly, Ultratec does not qualify as an employer under § 25-5-1(4), and, therefore, is unable to rely upon the exclusivity provisions of the Workers' Compensation Act. Because Ultratec has failed to demonstrate a clear legal right to the relief sought, we deny the petition insofar as it seeks immunity on this ground.[2]

---

[2]The trial court denied Ultratec's motion for a summary judgment based on a claim of immunity under the exclusivity provisions of the workers' compensation Act. Generally, the denial of a motion for summary judgment is not reviewable. However, the exception to that rule is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus. Ex parte Nall, 879 So. 2d at 543. To determine whether Ultratec is entitled to immunity under the exclusivity provision of the Act in this case, this Court was required to address an unsettled question of law that presented grounds for a substantial difference in opinion, which is generally considered in a permissive appeal filed pursuant to Rule 5, Ala. R. App. P. Ex parte Hodge, 153 So. 3d 734 (Ala. 2014) However, "there is no guarantee of Rule 5 certification because certifying an interlocutory order for a 'permissive' appeal is within the wide discretion of the trial judge. Moreover, should the trial court grant its consent to appeal, there is no guarantee that this Court would accept the question certified." Ex parte Hodge, 153 So. 3d at 748. Thus, we conclude that this important question is one that is properly reviewed by a petition for a writ of mandamus. On mandamus review, a party cannot prevail unless that party establishes "a clear legal right to the order sought." Ex parte Nall, 879 So. 2d at 543. Ultratec has failed

Ultratec next argues that it was immune from suit based on the exclusivity provisions of the Act because, it says, Aimee and Virginia were jointly employed by both Ultratec and Ultratec HSV.

This Court has stated:

> "'In Marlow v. Mid-South Tool Co., 535 So. 2d 120, 123 (Ala. 1988), this Court stated:
>
> > "'"In what has come to be taken as a statement of the test for establishing a special employer's right to rely on the exclusivity of the workmen's compensation remedies, this Court [in Terry v. Read Steel Products, 430 So. 2d 862, 865 (Ala. 1983),] quoted the following test from 1C A. Larson, The Law of Workmen's Compensation, § 48 (1980):
> >
> > > "'"'When a general employer lends an employee to a special employer, the special employer becomes liable for workmen's compensation only if
> > >
> > > "'"'(a) the employee has made a contract of hire, express or implied, with the special employer;
> > >
> > > "'"'(b) the work being done is essentially that of the special employer; and

---

to satisfy its burden in that regard.

> "'"'(c) the special employer has the right to control the details of the work.
>
> "'"'When all three of the above conditions are satisfied in relation to both employers, both employers are liable for workmen's compensation."'
>
> "'See, also, Means v. International Systems, Inc., 555 So. 2d 142 (Ala. 1989); Bechtel v. Crown Cent. Petroleum Corp., [495 So. 2d 1052 (Ala. 1986)], and Pettaway v. Mobile Paint Manufacturing Co., 467 So. 2d 228 (Ala. 1985).'
>
> "Pinson v. Alabama Power Co., 557 So. 2d 1236, 1237-38 (Ala. 1990)."

G.UB.MK Constructors v. Garner, 44 So. 3d 479, 485 (Ala. 2010).

Ultratec has presented evidence in the form of Segeren's affidavit indicating that Segeren, as the president of Ultratec, reserved the right to control Aimee's and Virginia's work at Ultratec HSV. Segeren testified in his affidavit that he reserved the right to control all aspects of Aimee's and Virginia's work at Ultratec HSV, including the right to change their job duties and responsibilities, alter their work schedule, take disciplinary action against them, and promote or demote them. Segeren also testified that he reserved the

right to control Aimee's and Virginia's work at Ultratec HSV by establishing and changing work rules, personnel policies, operating procedures, and production schedules. However, Ultratec has offered no evidence indicating, much less argued, that Aimee and Virginia contracted, expressly or impliedly, for employment with Ultratec or that the work Aimee and Virginia performed at Ultratec HSV was essentially the work of Ultratec. See Garner, supra. Because Ultratec has failed to demonstrate a clear legal right to the relief sought, we deny the petition insofar as it seeks immunity on this ground.

Ultratec next argues that it was immune from suit based on the exclusivity provisions of the Act because, it says, Ultratec HSV operates as a division of Ultratec. Specifically, Ultratec, relying upon this Court's decision in Meeks v. Budco Group, Inc., 631 So. 2d 915 (Ala. 1993), argues that a parent corporation is immune from tort liability under the Act for injuries sustained by an employee of the parent corporation's wholly owned and controlled divisions.

In Meeks, the employee suffered an injury in May 1990 during the course of his employment with Lift Equipment Rebuilders, Inc., when a hook broke loose from a crane that

was owned by O/B Leasing Company. The employee sued O/B Leasing and Budco Group, Inc., a Cincinnati-based Ohio corporation. The employee contended that his claims against O/B Leasing and Budco were not barred by the exclusivity provision of the Act because, he claimed, O/B Leasing and Budco were not his employers. The employee asserted that only Lift Equipment should be considered his employer because he had for some time been receiving his paychecks from Lift Equipment.

Before January 1, 1990, Budco owned all the stock of both O/B Leasing and Lift Equipment, both of which were also Cincinnati-based Ohio corporations. On January 1, 1990, O/B Leasing and Lift Equipment merged into Budco and ceased to exist as separate entities. O/B Leasing and Lift Equipment became divisions of Budco. Before the merger, O/B Leasing and Lift Equipment each had its own outstanding capital stock, its own articles of incorporation, and its own bylaws, and each kept its own minutes. However, after the merger, only Budco had a board of directors and officers and kept minutes or corporate books. Additionally, before the merger, O/B Leasing and Lift Equipment filed consolidated federal income-

tax returns reflecting their status as subsidiaries and the incomes of the individual companies were reported in those consolidated returns. After the merger, Budco filed federal income-tax returns as a single corporation. Further, before the merger, Budco would not cover a loss incurred by one of its subsidiaries and each subsidiary operated as an independent entity. After the merger, Budco became the responsible borrowing party, and, as such, would have had to cover any losses incurred by the divisions.

Before the merger, all three corporations maintained separate bank accounts, but, after the merger, only Budco retained any funds in its accounts. The accounts for O/B Leasing and Lift Equipment were maintained merely as subaccounts on a zero-balance plan. Under this plan, when a check was drawn on one of the subaccounts, an equal amount was transferred to that account from Budco's account to cover the check drawn. No funds were maintained in the Lift Equipment subaccount, and the employee's paychecks came from Budco, if indirectly, and not from Lift Equipment.

The trial court entered a summary judgment in favor of defendants concluding that Budco, as well as all of its

divisions, was the employer for purposes of the Act and, therefore, could assert the exclusivity provisions of the Act as a defense to the employee's claims seeking damages based on his work-related injury. This Court concluded on appeal that the evidence did not support the employee's contention that Lift Equipment and Budco continued as separate entities following the January 1990 merger, such that the exclusivity provisions of the Act did not bar the employee's personal-injury claim against Budco. Meeks, supra.

Ultratec argues that Ultratec HSV operates as a division of Ultratec just as Lift Equipment was a division of Budco and that, therefore, like Budco in Meeks, Ultratec is entitled to immunity pursuant to the exclusivity provisions of the Act. Ultratec points to evidence indicating that Ultratec and Ultratec HSV's bank accounts are maintained on the same zero-balance plan as were the bank accounts in Meeks. Segeren testified that Habermehl, Ultratec's chief financial officer, sweeps all the funds in Ultratec HSV's accounts into Ultratec's accounts and then transfers funds back into Ultratec HSV's accounts only as needed to cover Ultratec HSV's expenses, such as payroll and workers' compensation premiums.

Ultratec states that, in this way, Aimee's and Virginia's wages were being paid by Ultratec in the same manner the employee in Meeks was being paid. Segeren testified that Ultratec and Ultratec HSV have consolidated financial statements and that all of Ultratec HSV's assets are pledged as collateral for a loan from the Royal Bank of Canada to Ultratec. Ultratec acknowledges that it and Ultratec HSV file separate tax returns but that the returns note that the two companies are related entities. Ultratec also notes that Segeren is the sole director of both Ultratec and Ultratec HSV and that Ultratec HSV does not maintain its own corporate minutes book separate and apart from Ultratec.

This case is distinguishable from Meeks in one very important aspect. In Meeks, the two corporations merged; here, there has been no merger between Ultratec and Ultratec HSV, a fact Ultratec readily acknowledges. Ultratec is a Canadian corporation incorporated under Canadian law; Ultratec HSV is an Alabama corporation incorporated under the laws of Alabama. Further, before the merger in Meeks, Lift Equipment filed its own federal income-tax return reflecting its status as a subsidiary of Budco. After the merger, Budco filed

federal income-tax returns as a single corporation. Here, both Ultratec and Ultratec HSV file separate tax returns -- Ultratec files a tax return in Canada and Ultratec HSV files a tax return in the United States. We also note that during the Occupational Safety and Health Administration ("OSHA") investigations that followed the explosion, Ultratec successfully petitioned OSHA to have its named removed as a respondent-employer in the proceedings so that only Ultratec HSV would be cited as the employer. Segeren explained the reasoning for doing so as follows in a deposition in the underlying action:

> "I think that's a pretty important distinction to make sure [Ultratec HSV] and [Ultratec] are ... segregated in that way, specifically because our workers' compensation works completely different in Canada than it does in the United States. And I think that's not a small thing that you want to clarify."

Given the abundance of disputed facts as to this issue, we cannot say that Ultratec has demonstrated a clear legal right to the relief sought, and we deny the petition insofar as Ultratec seeks immunity on this ground.

Ultratec next argues that strong public policy favors that immunity under the exclusivity provisions of the Act be

extended to parent corporations for workplace injuries or deaths of employees of a parent corporation's subsidiaries. As discussed above, the Act provides immunity through the exclusivity provisions of the Act to employers of employees injured or killed during the course of their employment with the employer. An extension of that immunity to parent corporations is better left to the Alabama Legislature. "Matters of policy are for the Legislature and, whether wise or unwise, legislative policies are of no concern to the courts." Marsh v. Green, 782 So. 2d 223, 231 (Ala. 2000). Accordingly, the petition is denied as to this ground.

1180180 -- APPLICATION GRANTED IN PART; DENIED IN PART; PETITION DENIED.

1180183 -- APPLICATION GRANTED IN PART; DENIED IN PART; PETITION DENIED.

Parker, C.J., concur.

Mendheim and Stewart, JJ., concur in the result.

Shaw, Bryan, and Sellers, JJ., dissent.

Wise and Mitchell, JJ., recuse themselves.

SELLERS, Justice (dissenting).

Ultratec Special Effects, Inc. ("Ultratec"), is a Canadian corporation; its wholly owned subsidiary, Ultratec Special Effects (HSV), Inc. ("Ultratec HSV"), is an Alabama corporation. Ultratec HSV manufactures pyrotechnic equipment at its plant in Owens Cross Roads, Alabama. Aimee Cothran and Virginia Marie Sanderson were working in the plant when they were killed in an explosion.[3]

The administrators of Cothran's and Sanderson's estates sued Ultratec. Broadly speaking, they alleged that Ultratec failed to properly inspect the Owens Cross Roads plant, failed to make proper recommendations regarding safety at the plant, provided unsafe formulas and processes for the manufacturing of pyrotechnic products at the plant, failed to ensure that the pyrotechnics were made in safe facilities with proper equipment and procedures, recklessly or carelessly used explosive materials and manufactured explosive products, failed to properly supervise Ultratec HSV employees, engaged in abnormally dangerous activities at the plant, and

[3]At the time of the explosion, Ultratec HSV was leasing the plant from MST Properties, LLC. Ultratec HSV purchased the plant in August 2017.

encouraged workers at the plant to work in unsafe conditions and at unsafe speeds in pursuit of greater profits.

There is no dispute that Ultratec HSV, which is not a defendant below, is an "employer" for purposes of immunity under the Alabama Workers' Compensation Act, § 25-5-1 et seq., Ala. Code 1975. Ultratec argues that it, too, should be considered an employer for purposes of the Act. Based on that argument, Ultratec moved for a summary judgment in its favor. The trial court denied that motion, and Ultratec filed a petition for a writ of mandamus.

Section 25-5-1(4), Ala. Code 1975, defines "employer" as follows:

> "Every person who employs another to perform a service for hire and pays wages directly to the person. The term shall include a service company for a self-insurer or any person, corporation, copartnership, or association, or group thereof, and shall, if the employer is insured, include his or her insurer, the insurer being entitled to the employer's rights, immunities, and remedies under this chapter, as far as applicable. The inclusion of an employer's insurer within the term shall not provide the insurer with immunity from liability to an injured employee, or his or her dependent in the case of death to whom the insurer would otherwise be subject to liability under Section 25-5-11. Notwithstanding the provisions of this chapter, in no event shall a common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity be deemed the 'employer'

> of a leased-operator or owner-operator of a motor vehicle or vehicles under contract to the common carrier."

(Emphasis added.)[4] Ultratec argues that the phrase "group thereof" in § 25-5-1(4) means that a group of related entities, such as Ultratec and Ultratec HSV, should be considered a single employer under the Workers' Compensation Act. The main opinion, however, concludes that "the phrase 'group thereof' modifies the phrase 'a service company for a self-insurer,'" ___ So. 3d at ___, and that, because Ultratec has not demonstrated that it is a service company, it cannot qualify as an employer under the "group thereof" language.

As Ultratec points out, the phrase "group thereof" was included in the definition of "employer" in the original version of Alabama's workers' compensation law. See Act No. 245 § 36(d), Ala. Acts 1919 (defining "employer" in part as "every person ... who employs another to perform a service for hire and to whom the 'employer' directly pays wages, and shall

---

[4]Although the definition of "employer" in § 25-5-1(4) makes reference to the payment of wages "directly" to an employee, this Court has held that a person or entity can be an employer for purposes of workers' compensation even if the person or entity does not pay compensation directly to the employee. See Pettaway v. Mobile Paint Mfg. Co., 467 So. 2d 228, 230 (Ala. 1985).

include any person or corporation, co-partnership, or association or group thereof"). There was no reference to a "service company" or a "self-insurer" in the definition of "employer" in the original workers' compensation law. Other than changes not relevant here, the definition of "employer" remained substantially the same for many years. A 1984 act amending § 25-5-1 defined "employer," in part, as follows:

> "Every person not excluded by Section 25-5-50 who employs another to perform a service for hire and pays wages directly to such person. Such term shall include any person, corporation, copartnership or association, or group thereof, and shall, if the employer is insured, include his insurer, such insurer being entitled to the employer's rights, immunities and remedies under this chapter, as far as applicable ...."

Act No. 84-787, Ala. Acts 1984 (First Special Session). In 1992, the definition was amended to insert "a service company for a self-insurer or" before "any person, corporation, copartnership, or association, or group thereof." See Act No. 92-537, Ala. Acts 1992.

The current definition of "employer" is not a model of clarity. If a statute is ambiguous, this Court should give it a meaning that is reasonable. Ex parte Alabama Pub. Serv. Comm'n, 268 Ala. 322, 328, 106 So. 2d 158, 163 (1958). In my

view, the only reasonable way to interpret the statute is to conclude that "group thereof" is intended to make clear that an "employer" can include a group of persons, corporations, copartnerships, or associations. Thus, I would conclude that a group of persons or entities, such as Ultratec and Ultratec HSV, can be considered a single employer under the Workers' Compensation Act. I believe my reading of the statute is consistent with Richardson v. PSB Armor, Inc., 682 So. 2d 438 (Ala. 1996), which suggests that "group thereof" refers to a group of persons or entities that employs workers. 682 So. 2d at 441.[5]

In Richardson, supra, this Court ultimately concluded that the two companies involved in that case, which were owned by the same corporate parent, were not part of a "group" of employers because the "two companies [were] wholly separate in their operations and as legal entities." 682 So. 2d at 441.

[5]I also believe my reading of the definition of "employer" is consistent with precedent indicating that a person can be hired to perform a service for multiple employers at the same time. See, e.g., Ex parte Stewart, 518 So. 2d 118, 120 (Ala. 1987) (noting that the "assumption that a worker can have only one master for the purposes of the workers' compensation law" "ignores both the realities of the workplace and the teachings of precedent"). See also § 25-5-76, Ala. Code 1975 (recognizing that an employee can be "be employed and paid jointly by two or more employers").

One of the companies was an Alabama corporation in the business of selling electrical power, and the other company was a Delaware corporation in the business of operating nuclear-power plants. Id. Ultratec and Ultratec HSV, however, are not sister companies; Ultratec wholly owns Ultratec HSV. Courts in other jurisdictions have held that a parent company of a wholly owned and controlled subsidiary can be considered an employer of the subsidiary's employees for purposes of workers' compensation, where the parent company is substantially involved in the day-to-day business operations of the subsidiary. See, e.g., Wells v. Firestone Tire & Rubber Co., 421 Mich. 641, 364 N.W. 2d 670 (1984); and Stigall v. Wickes Mach., a Div. of Wickes Corp., 801 S.W.2d 507 (Tenn. 1990). It does not appear that this Court has addressed that specific issue, and it is not discussed in the main opinion.

Although Ultratec and Ultratec HSV are, like the corporations in Richardson, separate legal entities, they are not "wholly separate in their operations." Ultratec owns 100 percent of the stock of Ultratec HSV. According to the affidavit testimony of Adrian Segeren, Segeren is the sole director of Ultratec and Ultratec HSV. He is also the sole

officer of Ultratec HSV. He testified that the practical challenges a Canadian company doing business in the United States faces makes structuring the two companies as parent and subsidiary the best business model. For example, Segeren testified that there are different tax laws and tax rates in Canada and in the United States and that it is easier to keep track of income earned in those countries if the companies are two separate legal entities. He also testified that it is easier for a United States corporation to procure insurance in the United States and that some customers prefer to make payments to a United States entity.

According to Segeren's affidavit, he maintains operational control over Ultratec and Ultratec HSV, and the two companies are highly integrated. Segeren testified that Ultratec provides centralized management oversight and has control of Ultratec HSV. Segeren has the authority to make hiring and firing decisions with respect to Ultratec HSV employees, as well as the right to control their work. In addition to Segeren, two other Ultratec employees have worked consistently at the Owens Cross Roads plant. New Ultratec HSV

employees are given a copy of the Ultratec employee handbook when they are hired.

Ultratec HSV's finances are managed by the chief financial officer of Ultratec. The only people with signing authority on Ultratec HSV bank accounts are officers of Ultratec. Customers purchasing products at the Owens Cross Roads plant sometimes wire payment to a bank account that is in the name of Ultratec. Funds are constantly transferred from Ultratec HSV bank accounts to Ultratec bank accounts in an effort to keep the balances in Ultratec HSV's accounts near zero. Funds for Ultratec HSV's operating expenses are often transferred from Ultratec bank accounts to Ultratec HSV bank accounts. Enough funds are usually kept in one of Ultratec's bank accounts to cover a week's payroll for Ultratec HSV employees and are routinely transferred to Ultratec HSV's accounts so that its employees can be paid. Ultratec HSV's assets have been pledged as collateral to secure a loan to Ultratec.

A license issued by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives, which is necessary for Ultratec HSV to manufacture pyrotechnic products, was issued

to Ultratec. The same is true with respect to a permit issued by the Alabama Fire Marshal.

I believe Ultratec has demonstrated that it and Ultratec HSV are sufficiently "integrated" with respect to the business conducted at the Owens Cross Roads plant so that Ultratec HSV employees should also be considered employees of Ultratec for workers' compensation purposes. Thus, I would grant Ultratec's petition for the writ of mandamus. Cf. Domino's Pizza, Inc. v. Casey, 611 So. 2d 377 (Ala. Civ. App. 1992) (affirming a trial court's ruling that an employee of the owner of a franchise restaurant was also an employee of the franchisor for purposes of workers' compensation based on testimony indicating that the franchisor actively participated in the operation of the restaurant and exercised significant control over employees who worked there).