NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

PORTEADORES DEL NOROESTE, S.A. DE,C.V.
Petitioner

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *et al.*,
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona

PETITION FOR A WRIT OF CERTIORARI

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December 22, 2014

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QUESTIONS PRESENTED

Mexico requires all employers to pay a worker's compensation tax (called "IMSS"). Any injured Mexican employee receives: 100% of their lost wages, disability benefits, and other related compensation (i.e. disfigurement) regardless of which country they are injured in. Arizona deems a Mexican employer engaged in international trade an "uninsured employer" even if they have purchased IMSS and the employee can receive full benefits. The Foreign Commerce Clause prohibits multiple taxation. The Foreign Commerce Clause requires the nation to speak with one voice on international trade.

1. Does the Foreign Commerce Clause require the individual states to recognize and honor the worker's compensations systems enacted by our foreign trading partners or must their foreign employers engaged in international trade purchase extra, and unnecessary, worker's compensation in each and every state they enter before conducting business in the United States?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Porteadores Del Noroeste S.A. De, C.V. ("Porteadores") was the Petitioner/Uninsured Employer below. Porteadores is a Mexican company headquartered in Tijuana, Baja California, Mexico. Porteadores is not a publicly traded corporation, issues no stock, and has no parent corporation. There is no publicly held corporation with more than a 10% ownership stake in Porteadores.

Respondents are The Industrial Commission of Arizona (Respondent below); Adan Valenzuela (Respondent Employee below) and the Special Fund Division/No Insurance Section [of the Industrial Commission of Arizona] (Respondent Party in Interest below).

In the matter below, only the Respondent Employee actively participated in the Appellate Process. The State Agencies took no position before the Arizona Court of Appeals or the Arizona Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Porteadores Del Noroeste S.A. De, C.V. ("Porteadores") respectfully requests that this Court grant its petition for a writ of certiorari to review the Arizona Supreme Court's order declining discretionary review of the Arizona Court of Appeals' Opinion in this case.

OPINIONS BELOW

The Arizona Supreme Court's unpublished decision declining jurisdiction was decided September 23, 2014 and appears in the petition's appendix ("Pet. App.") at 1a-2a. The Arizona Court of Appeals' Opinion is reported at 234 Ariz. 53 (Ariz. App. 2013) and appears at Pet. App. 3a-16a. The Administrative Law Judge's ("ALJ") final decision on these issues is also unreported, but appears at Pet. App. 24a. With the ALJ's final decision, Petitioner was authorized under Arizona law to seek non-discretionary review with the Arizona Court of Appeals. Pet. App. 27a-28a.

JURISDICTION

The Arizona Court of Appeals entered its decree on the questions presented when it rendered its opinion. The Arizona Court of Appeals decree became final when the Arizona Supreme Court declined its discretionary review on September 23, 2014. The Court has jurisdiction under 28 U.S.C. §1257(a) as the issues raised deal with whether Arizona's workers compensation statutes are "repugnant to the Constitution, treaties or statutes of . . . the United States" when applied to double taxation of foreign commerce. As an agency of the state is a Respondent,

service is not required upon the Arizona Attorney General pursuant to Rule 29.4(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution's Foreign Commerce Clause (Article 1, Section 8, Clause 3) is the primary matter at issue. This clause provides in relevant part, that Congress shall have the power "to regulate Commerce with foreign Nations . . .".

Also important are the relevant Arizona's worker's compensation statutes, as they existed when this dispute arose. Since the dispute arose, the statutes were modified, and though not directly relevant to this dispute shows that Arizona is increasing its burden on foreign commerce.

The Appendix reproduces the relevant constitutional provisions as well the relevant Arizona Worker's Compensation statutes.

STATEMENT OF THE CASE

Material, Case Specific Facts. Adan Valenzuela ("Mr. Valenzuela") is a Tijuana, Mexico resident. In early 2010, Cazali Adminsitradora de Personal, S. de R.L. ("Cazali"), a Mexican company, employed Mr. Valenzuela as a long-haul truck driver. Porteadores, a Mexican company, contracted with Cazali for truck drivers to pick up diesel fuel in Phoenix, Arizona and return the fuel to Nogales, Sonora, Mexico.

In April 2010, Cazali supplied Mr. Valenzuela to Porteadores and Porteadores paid Cazali for the contract labor. Cazali paid Mr. Valenzuela's wages, including Mr. Valenzuela's Mexican worker's compensation tax "IMSS".

On April 30, 2010, Mr. Valenzuela fell asleep while driving. At the time, he was about eleven miles away from the Mexican border. He sustained injuries in the crash. Though initially treated in Arizona,[1] he travelled back to Mexico for treatment the following day.

In Mexico, Mr. Valenzuela applied for and received disability, medical care, and 100% of his lost wages through IMSS. Mr. Valenzuela could have received compensation for scarring on top of his head, but he chose not to seek any disfigurement compensation.[2]

At some point after the accident and before being cleared to return to work in October 2010, Mr. Valenzuela alleges he stopped seeing IMSS doctors, opting to see a private doctor instead.

After being cleared to return to work, Mr. Valenzuela resigned from Cazali and filed an Arizona worker's compensation claim against Porteadores.

Under Arizona worker's compensation laws, contracted out employees are deemed "lent employees". In other words, the entity contracting for the labor (i.e. Porteadores) is equally responsible for providing worker's compensation coverage as the true employer (i.e. Cazali).

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[1] This case does not include any claims for Arizona medical bills. Porteadores paid the bills incurred for Mr. Valenzuela's Arizona treatment.

[2] At least he had not sought such compensation through the February 14, 2012 hearing. It is possible he sought such compensation up through October 2012 when IMSS would have closed his file.

There is no dispute that IMSS is constitutionally mandated under Article 123 of Mexico's constitution. Likewise, it is undisputed that IMSS is a comprehensive worker's compensation system. However, Mr. Valenzuela wants more than what he sought from, and was paid by, IMSS. His argument is that IMSS is vastly inferior to Arizona worker's compensation, and therefore, he is seeking:

1. A "recommended average monthly wage" above and beyond the 100% salary paid by IMSS,
2. $17,000 for alleged private medical bills (originating out of a residence, not a doctor's office, in Mexico), and
3. Compensation for scarring using Arizona's compensation scheme.

The Administrative Law Judge refused jurisdiction over Cazali because it was a Mexican company without any direct ties to the United States. The Administrative Law Judge accepted jurisdiction over Porteadores because Porteadores' trucks entered into Arizona for commerce, and Department of Transportation requirements mandated that Porteadores have a U.S. mailing address to receive Department of Transportation correspondence (a P.O. Box in the San Diego area).

Stage of the State Proceedings. **P**orteadores seeks review of the State courts' decisions. Accordingly, pursuant to Rule 14.1(g)(i), Porteadores discloses that Porteadores presented the issues as follows:

Administrative Law Judge:

1. 04/25/12 Porteadores' Request for Review (Pet. App. 17a)

2. 05/24/12 ALJ's Decision Upon Review (Pet. App. 24a)

Arizona Court of Appeals:

3. 08/23/12 Porteadores' Opening Brief (Pet. App. 29a)

Arizona Supreme Court:

4. 03/07/13 Porteadores' Petition for Review (Pet. App. 38a)

REASONS FOR GRANTING THE PETITION

RULE 10(c). When a state court decides an important federal question in a way that conflicts with relevant U.S. Supreme Court precedent, this Court must take a special interest in resolving the matter. This is especially important when it involves an influential, published opinion, that establishes an erroneous standard other states may well follow (to the detriment of relations with our foreign trade partners).

IMSS is a Tax Based Workers' Compensation System. IMMS is a worker's compensation system based on Article 123 of Mexico's constitution. Mexican Employers are required to provide coverage for all employees.

Arizona's Workers' Compensation System is a Taxation Based Statutory Framework. Under ARS §23-961(J), all self-insured employers **and** all workers' insurance companies must pay a minimum tax based on a formula for presumed insurance policy premiums. Pet.App. 46a.

The *Japan Line, Ltd.* Taxation Standard. The Foreign Commerce Clause is an important Congressional

tool used to further our nation's goals as a whole. The leading case involving taxation statutes solely impacting instrumentalities of foreign commerce is *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 99 S. Ct. 1813, 60 L. Ed. 336 (1979).

In *Japan Line, Ltd.* the Court set forth a six-prong test that judges whether taxing statutes unconstitutional impact foreign commerce. Four prongs come from the dormant interstate commerce clause analysis set out in *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279 (1977). *Japan Line, Ltd.* added the final two prongs to complete the test for the dormant foreign commerce clause taxation analysis. To be permissible, the State tax on foreign commerce must:

1. Be applied to an activity with a substantial nexus with the taxing State,
2. Be fairly apportioned,
3. Not discriminate against interstate commerce,
4. Be fairly related to the services provided by the State,
5. Not enhance a risk of multiple taxation, and
6. Should not impair federal uniformity in an area where federal uniformity is essential.

Japan Line, Ltd. supra at 446-448.

The Multiple Taxation Risk. If the Arizona Court of Appeal's Opinion remains the law, every foreign company who has an employee enter the United States, must provide worker's compensation coverage in every state the employee enters. We have 50 states with 50 different systems. Some states honor the insurance policies

from sister states. Some do not. Some states do not require worker's compensation coverage at all.

There is no apportionment or credit given for the coverage purchased in Mexico. A Mexican employer who only purchases IMSS coverage is an "uninsured employer" in Arizona. What is worse, Arizona reserves the right to decide that the "uninsured employer" – an entity that purchased 100% coverage – did not pay adequate lost wages, disability coverage, or disfigurement coverage through the insurance they paid for.

Compounding the problem, the employer has no right of appeal in Mexico. The choice to use IMSS or not is the employee's option, regardless of how that might impact the employer's rights in the United States.

This is the exact type of concern that the *Japan Line, Ltd.* Court wanted to avoid:

> "Yet neither this Court nor this Nation can ensure full apportionment when one of the taxing entities is a foreign sovereign. If an instrumentality of commerce is domiciled abroad, the country of domicile may have the right, consistently with the custom of nations, to impose a tax on its full value. If a State should seek to tax the same instrumentality on an apportioned basis, multiple taxation inevitably results"

Id. at 447.

In this case, Mr. Valenzuela received 100% IMSS coverage until Mr. Valenzuela chose to stop it.

Federal Uniformity. This bears repeating: We have 50 states with 50 different workers' compensation systems. Some states honor the insurance policies from sister states. Some do not. Some states do not require worker's compensation coverage at all. This is the embodiment of non-uniformity.

> "A state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise. If a novel state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer. If other States followed the taxing State's example, various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from "speaking with one voice" in regulating foreign commerce."

Id. at 450-451.

Is it fair to our trading partners, whoever they are - Mexican, Canadian, English, German, Chinese (or any other trading partner) - to force the employer to research the legal requirements necessary to comply with purchasing worker's compensation insurance/tax for every state an employee enters? Does this facilitate the nations' interest of speaking with one voice on trade issues.

And what about the retaliatory risk to American business interests? If a foreign company must pay for worker's compensation in 50 different states (plus territories), is there a risk of retaliation? If so, to what extent?

There is no reasonable basis for Arizona to declare on behalf of this country that Mexico's worker's compensation system is inferior. There is no reasonable basis for Arizona to demand that all foreign companies sending employees into the United States must purchase worker's compensation for each and every state visited.

To the extent the United States desires foreign workers to have worker's compensation within our borders, it must come from congressional action, not the unilateral desire of one state.

CONCLUSION

We want to support international trade. We want companies coming to America to purchase our goods. We want to go to other countries and purchase their goods. Right now, we have a patchwork of 50 different workers compensation systems, most of which are incompatible with the other.

Any foreign business desire to enter the United States for trade, based solely on the Arizona Court of Appeals decision **must** purchase insurance and/or pay direct worker's compensation tax in each and every state it enters.

It does not matter if the company already has 100% workers' compensation for their employees (such as here). So, a Mexican long-haul trucker, traveling to Maine, could be forced to incur a significant duplicative taxed expense.

What is more, if the Arizona Court of Appeals decision stands, and becomes adopted throughout the country, Mexico, or other trading partners, may choose to retaliate. If an American enters Mexico, to do business, Mexico may require the American to purchase IMSS coverage – a percentage of the person's annual salary.

These are the exact issues that the framers of our Constitution wanted to avoid.

Respectfully, we request this Court grant this Petition for Certiorari as this is an important national question that has far reaching ramifications if not resolved at the earliest possible opportunity.

Respectfully submitted this 22nd Day of December, 2014.

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December 22, 2014

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APPENDIX

SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

STATE OF ARIZONA
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SEPTEMBER 23, 2014

RE: PORTEADORES DEL NOROESTE v ICA/VALENZUELA et al
Arizona Supreme Court No. CV-14-0041-PR
Court of Appeals, Division One No. 1 CA-IC 12-0038
Industrial Commission of Arizona No. 20102-530136
Insurance Carrier No. NONE

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 23, 2014, in regard to the above-referenced cause:

ORDERED: Petitioner's Petition for Review = DENIED.

Janet Johnson, Clerk

TO:
Stephen M Weeks
Andrew F Wade
Weston S Montrose
Kathryn E Harris
Ruth Willingham

ba

IN THE ARIZONA COURT OF APPEALS
DIVISION ONE

PORTEADORES DEL NOROESTE S.A. DE, C.V.,
uninsured employer, *Petitioner*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

ADAN VALENZUELA, *Respondent Employee*,

SPECIAL FUND DIVISION/NO INSURANCE SECTION,
Respondent Party in Interest

No. 1 CA-IC 12-0038
FILED 1-14-2014

Special Action – Industrial Commission
No. 20102-503136
The Honorable Michael A. Mosesso, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Weeks Law Firm PLLC, Tucson
By Stephen M. Weeks
Counsel for Petitioner

Industrial Commission of Arizona, Phoenix
By Andrew F. Wade
Counsel for Respondent

Taylor & Associates, PLLC, Phoenix
By Weston S. Montrose
Counsel for Respondent Employee

Special Fund Division/No Insurance Section
By Kathryn E. Harris
Counsel for Respondent Party in Interest

OPINION

Judge Michael J. Brown delivered the opinion of the Court, in which Presiding Judge Samuel A. Thumma and Chief Judge Diane M. Johnsen joined.

BROWN, Judge:

¶1 Adan Valenzuela, a citizen and resident of Mexico, was injured in a work-related accident in Arizona. The question we address is whether his employer, a corporation located in Mexico, was subject to Arizona's workers' compensation statutes at the time of Valenzuela's injury. For the following reasons, we reject the employer's argument that requiring a foreign employer to comply with such statutes would violate federal law. We therefore affirm the decision of the administrative law judge ("ALJ").

BACKGROUND

¶2 Porteadores Del Noroeste S.A. DE, C.V. ("Porteadores") transports diesel fuel from Phoenix, Arizona to Nogales, Mexico. Valenzuela, a Porteadores truck driver, was involved in a rollover accident north of Nogales and sustained numerous injuries. Valenzuela first received treatment at a Nogales hospital and was then transferred to University Medical Center ("UMC") in Tucson. He was discharged from UMC shortly thereafter and returned to Mexico, where he promptly requested a determination of disability and benefits from the Instituto Mexicano del Seguro Social ("IMSS").[3] Porteadores did not have Arizona workers' compensation coverage for its employees at the time of Valenzuela's accident.

¶3 IMSS determined that Valenzuela qualified for disability benefits and began paying him benefits. IMSS also provided him medical examinations and treatment until he was cleared to work several months after the accident. IMSS declined, however, to pay more than $17,000 in billings from Dr. Ramirez, a physician in Mexico who practices outside the IMSS network.

¶4 Valenzuela filed an injury report with the Industrial Commission of Arizona ("ICA") in September 2010, naming

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[3] It is undisputed that as an employee of a Mexico-based company, Valenzuela was covered by IMSS. According to the record, Mexico's labor laws require all employers to participate in IMSS, which compensates an injured employee for one-hundred percent of daily wages lost as a result of a work-related injury. IMSS also covers medical expenses arising from work-related injuries. If an employee elects to obtain medical treatment outside the IMSS system, however, the employee is responsible for payment of the medical expenses. From the record, neither UMC nor the Nogales hospital where Valenzuela was initially treated is within the IMSS network.

Porteadores as his employer.[4] Because the ICA claims division was unable to locate a valid Arizona workers' compensation policy in effect for Porteadores, the matter was referred to the Special Fund/No Insurance Section ("Special Fund"). The Special Fund issued a notice of determination, accepting the claim and classifying Porteadores as a "non-insured employer."

¶5 At the time Valenzuela filed his injury report, the only medical bills presented to the Special Fund for payment were those related to the emergency visit to UMC, which the Special Fund paid. Valenzuela later asked the Special Fund to pay Dr. Ramirez's bills. The Special Fund determined it would not pay the Ramirez bills on the ground that "full compensation benefits have been paid to [Valenzuela] by the [IMSS]." The Special Fund also determined that it "ha[d] a lien against any third party recovery to the extent of benefits paid or payable." Valenzuela protested both determinations and requested a hearing, alleging he had not received full compensation.

¶6 Prior to the hearing, Porteadores filed a motion to dismiss based on lack of subject matter jurisdiction, arguing the ICA did not have jurisdiction over a "company located solely within Mexico[.]" The Special Fund responded that if the ICA determined it lacked subject matter jurisdiction over Porteadores, that determination necessarily would mean the Special Fund had no obligation to pay benefits to Valenzuela. The ALJ denied the motion,

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[4] Valenzuela was actually hired by Cazali Administradora de Personal, S. de R.L. De. C.V., which contracts with Porteadores to provide drivers for Porteadores' long-Hall trucking operations. Porteadores does not challenge the ALJ's finding that "Porteadores is the employer under the Lent employee doctrine." See *Word v. Motorola,* 135 Ariz. 517, 519-20, 662 P.2d 1024, 1026-27 (1983) (explaining that if the Lent employee doctrine applies, both employers are liable for workers' compensation).

concluding that the ICA "has both subject matter jurisdiction and personal jurisdiction." Porteadores moved for reconsideration, asserting the North American Free Trade Agreement ("NAFTA") controlled its corporate activities in the United States and therefore the ICA lacked subject matter jurisdiction.

¶7 Following the hearing, the ALJ denied Porteadores' motion to reconsider, and determined that Valenzuela was "entitled to medical, surgical, and hospital benefits as a result of the injury," including the medical care provided by Dr. Ramirez. Recognizing that a claimant is not entitled to "exceed the benefits" that could be received in any one jurisdiction, the ALJ concluded the "State of Arizona" is entitled to a credit for workers' compensation benefits paid in Mexico, to be calculated after determinations of an average monthly wage, temporary disability benefits, and impairment.

¶8 Porteadores and the Special Fund requested review of the decision upon hearing. Porteadores argued that the ALJ failed to adequately address whether there was subject matter jurisdiction, asserting conflicts with federal statutes and constitutional provisions. The Special Fund asserted the decision would "alter the legal obligations of the applicant and the [Special Fund] in contravention of Arizona law." In the decision upon review, the ALJ affirmed, finding that federal law does not "preempt Arizona law in this matter." Porteadores then filed this statutory special action.[5]

DISCUSSION

[5] The Special Fund supported Porteadores' position that the ICA lacked jurisdiction over Valenzuela's claim, and counsel for the Special Fund filed a notice of appearance in this special action, but did not file a brief.

¶9 Porteadores argues that requiring a foreign employer to comply with Arizona's workers' compensation laws would violate federal law.[6]

¶10 In reviewing an ICA award, we "make an independent determination of legal issues," *Anton v. Indus. Comm'n*, 141 Ariz. 566, 569, 688 P.2d 192, 195 (App. 1984), but review factual determinations "in a light most favorable to sustaining the Commission's award," *id.* Because the workers' compensation statutes and constitutional provisions "are remedial and designed to provide compensation for those persons injured in business or industry," we liberally construe the statutes and constitutional provisions to carry out that purpose. *Id.*

¶11 States have a strong interest in protecting employees working within their borders. *De Canas v. Bica*, 424 U.S. 351, 356-58, 96 S. Ct. 933, 47 L. Ed. 2d 43 (1976) (noting that states have broad authority to regulate the employment relationship to protect workers by passing workers' compensation laws) *superseded by statute on other grounds as stated in Chamber of Comm. v. Whiting*, 131 S.Ct. 1968, 179 L. Ed. 2d 1031 (2011). Consistent with that principle, the Arizona Constitution requires the legislature to enact workers' compensation laws "in order to assure and make certain a just and humane compensation law" and

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[6] Although presented to the ALJ as an issue of subject matter jurisdiction, on appeal Porteadores reframed the argument, contending that it falls outside the scope of Arizona workers' compensation laws and therefore has no obligation to reimburse the Special Fund for monies disbursed to Valenzuela. For purposes of resolving this case, we discern no material difference between the two arguments. See *White Mountain Apache Tribe v. Indus. Comm'n,* 144 Ariz. 129, 336, 696 P.2d 223, 230 (App. 1985) ("It has long been the law in Arizona that the [ICA] is without jurisdiction to adjudicate a 'claim' arising out of an injury where the employer was not under the act.").

relieve workers and their dependents from "burdensome, expensive and litigious remedies." Ariz. Const. art. 18, § 8.

¶12 To implement the constitutional mandate, our legislature enacted the Arizona Workers' Compensation Act, Arizona Revised Statutes ("A.R.S.") sections 23-901 to -1104, which requires employers to either (1) obtain a workers' compensation policy for their employees, or (2) provide proof of financial ability to pay the compensation directly. A.R.S. § 23-961(A)(1)-(2). The Act applies to "employers and their employees engaged in intrastate and also in interstate and foreign commerce[.]" A.R.S. § 23-903. As defined in A.R.S. § 23-902(A), "employers" subject to the Act include "every person who employs any workers or operatives regularly employed[.]" An employer that does not carry the requisite workers' compensation insurance is liable for all benefits paid to injured employees and subject to civil penalties, including administrative costs, necessary expenses, and attorneys' fees. A.R.S. § 23-966(C).

¶13 Additionally, the Act provides that an employee injured in Arizona is eligible for workers' compensation benefits even if the employee was not hired in the state. *See* A.R.S. § 23-904(B).[7] The ICA has "exclusive jurisdiction to

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[7] As such, our court has concluded that "[a]n employer who has employees working in Arizona is required to have Arizona work[ers'] compensation insurance[.] There are no geographical limits imposed by the statute[.]" *Agee v. Indus. Comm'n,* 10 Ariz. App. 1, 4, 455 P.2d 288, 291 (1969). Furthermore, we have held that an injured employee may receive benefits from more than one system. *See, e.g., Jordan v. Indus. Comm'n,* 117 Ariz. 215, 217, 571 P.2d 712, 714 (App. 1977). After the ALJ's award, the legislature amended A.R.S. §23-904. The amended statute, effective September 13, 2013, provides in part that a worker who "has a claim under the workers' compensation laws of . . . [a] foreign nation for the same injury . . . as the claim filed in this state . . . is entitled to the full amount of compensation due under the laws of this state." A.R.S. §23-904(G). In the event the worker receives compensation "under the laws of the other state, . . . the insurer shall

determine all issues of law and fact relating to a claimant's entitlement to compensation benefits under the [Act]." *Rios v. Indus. Comm'n*, 120 Ariz. 374, 376, 586 P.2d 219, 221 (App. 1978); *see also* A.R.S. § 23-921.

¶14 It is well-settled that states have the power and authority "to regulate the status of employer and employee, and to enforce the public policy of the state, as it relates to work[ers]' compensation for employees engaged in interstate or foreign commerce" unless abrogated by federal law. *See, e.g.*, *Indus. Comm'n of Ariz. v. J. & J. Constr. Co.*, 72 Ariz. 139, 145, 231 P.2d 762, 766 (1951) (citing state and federal cases for the proposition that the majority of states and the United States Supreme Court recognize the authority of individual states to regulate workers' compensation for employees engaged in interstate or foreign commerce "except where the United States has a different rule"). Porteadores argues nonetheless that Arizona's authority to regulate workers' compensation relating to interstate commerce is preempted by federal law. Specifically, Porteadores asserts that (1) NAFTA and the North American Agreement on Labor Cooperation ("NAALC") preempt workers' compensation claims that are covered by IMSS; and (2) the Foreign Commerce Clause prevents application of workers' compensation statutes to Porteadores' employees engaged in business in Arizona.

A. Lack of Authority to Assert Federal Preemption

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pay any unpaid compensation to the worker up to the amount required by the claim under the laws of this state." *Id.* Because the amended statute was not in effect when Valenzuela made his claim, it does not apply here. *See* A.R.S. §23-904(H) (explaining the statue applies to "[c]laims made after the effective date . . . regardless of the date of injury").

¶15 Following extensive negotiations among the governments of the United States, Canada, and Mexico, NAFTA was signed on December 17, 1992. *Made in the USA Found. v. United States*, 242 F.3d 1300, 1302-03 (11th Cir. 2001). Congress passed, and the President signed, the NAFTA Implementation Act, effective January 1, 1994, which approved NAFTA and created comprehensive legislation to implement and enforce NAFTA's provisions. *Id.; see also* 19 U.S.C.A. §§ 3301 to -3473. The Implementation Act provides:

> No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with [NAFTA], *except in an action brought by the United States* for purposes of declaring such law or application invalid.

19 U.S.C.A. § 3312(b)(2) (emphasis added). Additionally, subsection (c) states as follows:

> *No person other than the United States-*
>
> (1) Shall have any cause of action or defense under—
>
> (A) [NAFTA] or by virtue of Congressional approval thereof, or
>
> (B) [NAALC]; or
>
> (2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State or any political subdivision

> of a State on the ground that such action or inaction is inconsistent with [NAFTA] . . . or [NAALC].

19 U.S.C.A. § 3312(c)(2) (emphasis added).

¶16 This unambiguous language provides that only the United States may challenge a state law or state action on the ground that it conflicts with NAFTA or NAALC. Given this express limitation, Porteadores is precluded from asserting that Arizona's workers' compensation statutes, or any application thereof, are preempted by NAFTA or NAALC. *See Dandamudi v. Tisch*, 686 F.3d 66, 81 (2d Cir. 2012) (rejecting preemption argument by individuals based on NAFTA Implementation Act); *Berriochoa Lopez v. U.S.*, 309 F. Supp. 2d 22, 28-29 (D.C. 2004) (stating that NAFTA Implementation Act bars private causes of action); *Leclerc v. Webb*, 270 F. Supp. 2d 779, 804 (E.D. La. 2003) (concluding individuals lacked standing to challenge state law under NAFTA because of NAFTA Implementation Act); *In re Collins*, 252 Neb. 222, 561 N.W.2d 209, 211 (Neb. 1997) (precluding private action based on NAFTA Implementation Act).

¶17 Relying on *Hartford Enters. v. Coty*, 529 F. Supp. 2d 95, 103-104 (D. Maine 2008), Porteadores nonetheless contends the limitation on standing to challenge state law under NAFTA applies only to *express* preemption challenges. *See Chaurasia v. Gen. Motors Corp.*, 212 Ariz. 18, 28, ¶ 38, 126 P.3d 165, 175 (App. 2006) ("Express preemeption exists when Congress has expressly stated its intention that state law be preempted."). To the extent *Hartford* may suggest the prohibition in the NAFTA Implementation Act applies only to claims of express

preemption, we disagree. The plain language of the Implementation Act does not support such a narrow reading. Rather, the prohibition against using NAFTA to invalidate state laws extends to any argument that a state law is "inconsistent" with NAFTA. *See* 19 U.S.C.A. § 3312(b)(2) ("No state law . . . may be declared invalid . . . on the ground that the provision or its application is *inconsistent* with [NAFTA.]" (emphasis added)); *Dandamudi*, 686 F.3d at 81 (rejecting all preemption arguments made by a party other than the United States "because the NAFTA Implementation Act allows only the United States to bring actions against state laws inconsistent with NAFTA"). Therefore, Porteadores lacks the authority to challenge Arizona's workers' compensation laws under NAFTA.

B. Foreign Commerce Clause

¶18 Arizona's legislative and regulatory authority is subject to the Commerce Clause, which grants Congress the power to regulate interstate and foreign commerce. U.S. Const. art. I, § 8, cl. 3 (granting Congress the power "[t]o regulate commerce with foreign Nations, and among the several States, and with Indian Tribes"). Particularly in the "unique context of foreign commerce," a state's authority may be restrained because of "the special need for federal uniformity." *Wardair Canada, Inc. v. Florida Dep't of Rev.*, 477 U.S. 1, 7-8, 106 S. Ct. 2369, 91 L. Ed. 2d 1 (1986). The federal government "must speak with one voice when regulating commercial relations with foreign governments." *Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 449, 99 S. Ct. 1813, 60 L. Ed. 2d 336 (1979) (internal citations and

quotations omitted). Determining whether state law violates federal uniformity and Congress' ability to speak with "one voice," however, inevitably turns on "specific indications of congressional intent" to set uniform federal policy. *See Barclays Bank PLC v. Franchise Tax Bd. Of California*, 512 U.S. 298, 324, 114 S. Ct. 2268, 129 L. Ed. 2d 244 (1994) (looking to "specific indications of congressional intent" to determine whether Congress had spoken with "one voice"); *see also Wardair Canada, Inc.*, 477 U.S. at 9-12 (discerning "federal policy" through congressional intent).

¶19 According to Porteadores, application of Arizona's workers' compensation laws here would impair federal uniformity in an area where it is essential because NAFTA and NAALC would be undermined. Even assuming, however, that NAFTA and NAALC represent "one voice" on general labor and trade matters among the United States, Mexico, and Canada, we discern no "specific indications of congressional intent" barring application of Arizona's workers' compensation laws to Porteadores. The only argument Porteadores proffers for its proposition of federal uniformity is that NAFTA and NAALC represent "one voice" of Congress on trade and labor relations with Mexico and Canada. We fail to see how these enactments represent a uniform federal policy concerning the applicability of state workers' compensation laws. In fact, as the ALJ observed, noticeably absent from NAFTA and NAALC is any discussion of workers' compensation. *See* Tequila J. Brooks, *Cross-Borders Workers' Compensation and Social Security Policy in North America: An Analysis of the NAFTA Trucking Dispute through the Eyes of a Workers' Compensation Practitioner*, 42, No. 1 International

Association of Industrial Accident Boards and Commissions Journal 121, 126, 133, 135 (Spring 2005) (criticizing NAFTA and NAALC for not addressing workers' compensation).

¶20 Porteadores fails to cite, and our research has not revealed, any authority supporting a contention that the federal government has adopted a uniform federal policy regarding workers' compensation principles applicable to foreign companies doing business in the United States. Accordingly, we will not presume that the Foreign Commerce Clause bars application of Arizona's workers' compensation statutes to foreign employers. *See Lapare v. Indus. Comm'n of Ariz.*, 154 Ariz. 318, 321, 742 P.2d 819, 822 (App. 1987) (recognizing there is a "strong presumption supporting the constitutionality of a legislative enactment and the party asserting its unconstitutionality bears the burden of overcoming the presumption"). Nor are we persuaded that Arizona's workers' compensation laws upset the delicate balance of federal uniformity or inhibit the federal government's ability to speak with "one voice" on the issue.[8]

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[8] Porteadores also argues that subjecting it to Arizona's workers' compensation laws would result in double taxation and thus violate the Foreign Commerce Clause. Because this argument was not presented to the ALJ, we decline to address it. *See T.W.M. Custom Framing v. Indus. Comm'n of Ariz.,* 198 Ariz. 41, 44, ¶4, 6 P.3d 745, 748 (App. 2000) ("[T]his Court generally will not consider on appeal issues not raised before the IC."); *Teller v. Indus. Comm'n of Ariz.,* 179 Ariz. 367, 371-72, 879 P.2d 375, 379-80 (App. 1984) ("The rationale for the general rule [refusing to address issues not presented before the ALJ] is that a petitioner must exhaust administrative remedies because the court assumes that an ALJ would have decided an issue correctly if the petitioner had presented it to the ALJ.").

CONCLUSION

¶21 Arizona's authority to regulate and enforce workers' compensation for employees engaged in foreign commerce does not contravene federal law. Accordingly, the ALJ properly determined that Porteadores is subject to Arizona's workers' compensation statutes in effect at the time of Valenzuela's injury. We therefore affirm the ALJ's award.

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BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

ADAN VALENZUELA, Applicant, vs. PORTEADORES DEL NOROESTE, S.A. DE, C.V., Defendant Employer, SPECIAL FUND DIVISION/NO INSURANCE SECTION, Defendant Party In Interest.	**ICA CLAIM NO: 20102-530136** **CARRIER CLAIM NO: None** **Date of Injury: 04/30/2010** **REQUEST FOR REVIEW** **Hon. Michael A. Mosesso** **Administrative Law Judge**

In order for a Court to have the power to rule on a matter, the Constitution requires the Court have 1) Personal Jurisdiction, and 2) Subject Matter Jurisdiction. In looking at Personal Jurisdiction, the Court must determine whether there are sufficient "Minimum Contacts".

This Court specifically found that there were minimum contacts, "such that the defendant employer is subject to the jurisdiction of the Industrial Commission."

Decision at ¶14 (Page 8). The Employer has not contested this issue. Clearly, the employer's vehicles traveled through Arizona creating minimum contacts. Therefore the Court has power to exercise personal jurisdiction over the Defendant Employer.

However, the Court must continue the analysis and determine whether the Court has a right to hear this particular matter. The Court did not make any findings supporting Subject Matter Jurisdiction

1. over a foreign corporation and its foreign employee,
2. who were engaged solely in foreign commerce, and
3. that Congress has specifically chosen to regulate under the Foreign Commerce Clause.

The Decision does not analyze or interpret whether affirmative Congressional regulation of international commerce under NAFTA and NAALC stripped this Court of Subject Matter Jurisdiction. Ihe only statement in the decision regarding Subject Matter Jurisdiction is found in the Court's closing paragraph where the Court wrote, "The Industrial Commission has subject matter jurisdiction and personal jurisdiction." It is the defendant employer's position that the only venue recognized by the United States of America for workers compensation issues involving Mexican employers and Mexican employees is under the IMSS system. If a Mexican employee is dissatisfied then the Mexican employee can follow the procedures set forth within NAALC to contest the determinations made by IMSS. There is a separate governing body that oversees the overall implementation of workers compensation by the various countries.

In other words, Congress has specifically chosen to regulate workers compensation amongst the NAFTA/NAALC Parties. Accordingly this court lacks jurisdiction to rule on workers compensation in this case. For the reasons more fully set forth in the attached Memorandum of Points and Authorities, this Court must

honor the United States policy as Congress has regulated under the foreign commerce clause.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Guiding Legal Principles.

1. "[Congress shall have the Power] to regulate Commerce with foreign nations . . .;" *United States Constitution* Article 1, Section 8, Clause 3
   a. The commerce clause can be dormant or express
   b. "As with interstate commerce, the Supreme Court interprets this [Foreign Commerce Clause] affirmative grant of power to have a "dormant" aspect that restrains state regulations even in the absence of Congressional action. See *Wardair Canada, Inc. v. Florida Dep't of Revenue*, 477 U.S. 1, 7, 106 S. Ct. 2369, 91 L. Ed. 2d 1 (1986).
   c. "Under the dormant Commerce Clause, "a statute that facially discriminates against interstate or foreign commerce, will, in most cases, be found unconstitutional." *Natsios*, 181 F.3d at 67 (citing **[*104]** *Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99, 114 S. Ct. 1345, 128 L. Ed. 2d 13 (1994)); see also *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Fin.*, 505 U.S. 71, 81, 112 S. Ct. 2365, 120 L. Ed. 2d 59 (1992); *Piazza's Seafood World, LLC v. Odom*, 448 F.3d 744, 750 (5th Cir. 2006). The same analytical framework applies to the dormant Foreign Commerce Clause as is used for the dormant Interstate Commerce Clause, see *Antilles Cement Corp. v. Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005), except that **state restrictions that burden foreign commerce "are subjected to a more rigorous and searching scrutiny,"** *South Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 100, 104 S. Ct. 2237, 81 L. Ed. 2d 71 (1984); see also *Japan Line*, 441 U.S. at 446, 448 ("a more-extensive

constitutional inquiry is required" in Foreign Commerce Clause cases); *Natsios*, 181 F.3d at 66-77, and **consideration is given to any impediment of the federal government's ability to speak with one voice in regard to regulation of foreign commerce.** See id., 181 F.3d at 57 (quoting *Japan Line*, 441 U.S. at 449)." *Hartford Enterprises v. Coty,* 529 F.Supp. 95,103-104 (U.S. Dist. Maine 2008).

2. Congressional foreign commerce regulation is stronger than the interstate commerce clause to ensure that the country speaks with one voice on matters of foreign relations. See e.g. *Japan Line, Ltd. v. County of Lost Angeles,* 441 US 434, 449-450 (1979); *The Federalist No. 42* at p. 279 (J. Madison).
    a. Under the Articles of Confederation, the country did not speak with one voice when dealing with foreign nations and that led to problems.
3. The laws of the United States are supreme, and courts must follow such laws to maintain interstate harmony and prevent harm to the unified nature of the country as a whole. *U.S. Constitution* Article VI, Clause 2 (Supremacy Clause).
    a. When there is a conflict between the laws of the United States, including those promulgated under the foreign commerce clause, the state interest must give way to the national policy.
4. To ensure uniformity in dealings with foreign countries, state laws and regulations that might impair the national government foreign-policy must yield to the national foreign-policy. See E.g. *American Insurance Association v. Garamendi.* 539 U.S. 396 (2003).
    a. When there is a conflict between the laws of the United States, including those promulgated

under the foreign commerce clause, the state interest must give way to the national policy.

5. NAALC specifically requires that each and every one of the United States honor and respect Mexico's Constitution. *NAALC Preamble; NAALC Part Two: Obligations* at Article 2.
6. NAALC allows each country, including Mexico, to protect the rights and **interests of their respective workforces.** *NAALC Annex 1: Labor Principles* at Section 10.
7. It is not in the United States interest to have Mexico retaliate by requiring every person who enters Mexico on business to pay into the IMSS system; yet that is a legitimate fear if the state of Arizona decides to tax Mexican companies who enter the United States relying on the NAALC protections. *Japan Line, Ltd. v. County of Lost Angeles,* 441 US 434, 449-450 (1979) (if a country is faced with double taxation based on it being a foreign corporation, the regulation violates the foreign commerce clause)
    a. "A state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise. If a novel state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer. **16** If other States followed the taxing State's example, various

instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from "speaking with one voice" in regulating foreign commerce." *Id. At 450-451.*

b. Arizona's refusal to acknowledge and accept IMSS as workers compensation could upset the delicate trade balance worked out between Canada, the United States, and Mexico.

c. Even states without mandatory workers compensation, such as Texas, or states with more liberal workers compensation schemes than Arizona, could be subject to Mexican IMMS taxation as retaliation.

II. Legal argument

Before this court can make a blanket statement that it has subject matter jurisdiction over this workers compensation claim, and decide that the State of Arizona must compensate a foreign worker paid 100% of his wages by IMMS worker's compensation, this court must address whether the United States Congress has stripped this Court of jurisdiction by entering into the NAALC agreement.[9] This court has not analyzed this issue at all. If this court is going to ignore United States constitutional requirements for having state law be superseded by foreign-policy, then it should explain in detail the reasoning behind such a decision.

There is no such discussion within the current Decision upon Hearing and Findings and Award. As this court has previously stated in its decision to deny the true employer, Cazali, from being named as a codefendant employer, constitutional issues can be raised at any time.

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[9] The Defendant Employer incorporates by reference its *Brief in Support of Motion for Reconsideration* and its *Response to Valenzuela's Brief*

Preemption and Subject Matter Jurisdiction are being raised now. This court must then address and support its decision so that a future reviewing court will have an idea as to how the decision was reached, whether the decision complied with current existing law, and whether it is well grounded in fact.

Accordingly, the Defendant employer respectfully requests this Court determine whether it has any authority under the U.S. Constitution and Congressional acts to permit this case to move forward.

DATED this 25th day of April, 2012.

WEEKS LAW FIRM PLLC

s/Stephen Weeks
Stephen Weeks, Esq.
Attorneys for Defendant Employer

Copy of the foregoing mailed this
25 day of April, 2012 to:

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BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

ADAN VALENZUELA, Applicant, vs. PORTEADORES DEL NOROESTE, S.A. DE, C.V., Defendant Employer, SPECIAL FUND DIVISION/NO INSURANCE SECTION, Defendant Party In Interest.	**ICA CLAIM NO: 20102-530136** **CARRIER CLAIM NO: None** **Date of Injury: 04/30/2010** **DECISION UPON REVIEW SUPPLEMENTING AND AFFIRMING DECISION UPON HEARING AND FINDINGS AND AWARD**

Heretofore, on March 27, 2012, a DECISION UPON HEARING AND FINDINGS AND AWARD was issued by the undersigned. Thereafter, on April 17, 2012, Special Fund Division/No Insurance Section, Defendant Party in Interest, filed REQUEST FOR REVIEW. On April 25, 2012, the uninsured defendant employer filed a REQUEST FOR REVIEW. On May 7, 2012, applicant filed a RESPONSE TO REQUEST FOR REVIEW.

The undersigned, having fully reconsidered the file, records and all matters hereunto appertaining, now enters DECISION UPON REVIEW SUPPLEMENTING AND AFFIRMING DECISION UPON HEARING AND FINDINGS AND AWARD as follows:

FINDINGS

1. The Defendant Party in Interest in their REQUEST FOR REVIEW has requested a modification in Finding No. 19 to add, "under ARS §23-1062.01." Such an addition is unnecessary in the administration of this claim and that finding is affirmed as written.

2. The uninsured defendant employer's REQUEST FOR REVIEW raises subject matter jurisdiction and preemption. The defendant employer appears not dispute that the Commission has personal jurisdiction, but dispute subject matter jurisdiction and whether Federal law preempts state law.

3. According to Wall et al v. Superior Court of Yavapai County 53 Ariz. 344, 89 P.2d 624 (1939) the Supreme Court of the State of Arizona stated the following:

> "Jurisdiction' is of three kinds, (a) of the subject matter, (b) of the person, and (c) to render the particular judgment which was given. Id. at 352.

The court also went on to state:

> A judgment, in order to be valid, must of course be one which a court could legally render… It only means that the judgment was one which could have been legally rendered on the issues shown by the pleadings and the evidence. Id. at 352, 353.

4. As to whether or not the Industrial Commission of Arizona has the power and authority to hear and decide this particular action involving workers' compensation benefits of the employee injured while in the course and scope of employment in Arizona, A.R.S. Sec. 23-903 covers employers and employees engaged in foreign commerce. In addition, A.R.S. §23-904(B) applies to workers not hired in the State of Arizona, but injured in the State of Arizona. In this case, applicant was hired in Mexico and injured in Arizona. In addition, applicant's employer, herein Porteadores Del Noroeste, Sa De Ev, was engaged in

foreign commerce with the United States and within Arizona, thus, with Arizona. Pursuant to A.R.S. §23-921, the Industrial Commission of Arizona is charged with the administration and adjudication of claims for compensation arising out of industrial injuries. The Decision Upon Hearing and Findings and Award issued by the undersigned on March 17, 2012, adjudicates worker's compensation benefits. The undersigned concludes that the Industrial Commission has subject matter jurisdiction, and the Industrial Commission has jurisdiction to render a judgment herein.

5. This leaves the question of whether or not NAFTA and NAALC preempt state law thus, removing jurisdiction of the Industrial Commission to decide these matters. Under the North American Agreement on Labor Cooperation, (NAALC), the preamble states as part of its resolution that the parties to the agreement are to "protect, enhance, and enforce basic workers' rights." In addition, under Part 1 of the objectives (b) they are to "promote, to the maximum extent possible, the labor principles set out in Annex I." Under Annex I Labor Principles, now, agreement outlines guiding principles that the parties are to promote. Number 10, specifically, outlines providing benefits for work injuries. Nothing in the agreement precludes the application of state law to workers' compensation in providing benefits for injured workers.

6. Applicant has provided a copy, in the pleadings, of two articles in reference to workers' compensation in Mexico and workers' compensation or cross-border issues. In reviewing these, it is noted that the article entitled Cross Border Workers' Compensation and Social Policy in North America authored by Tequila J. Brooks, in an analysis of NAFTA and US Department of Transportation regulations, the following is stated:

> The regulations do not specify that the carriers must demonstrate that they have obtained workers' compensation insurance

> for the drivers. The regulations and handbook indicate that Mexican and Canadian carriers must comply with Allstate, federal and local laws and regulations, but refers specifically to licensing and other transportation requirements. The regulations and handbook do not specifically mention the use of workers' compensation coverage. Id. at 126.

The article commented, in reference to NAFTA, that its failure to address workers' compensation was an oversight that was both political and the manner in which Federal agencies make policy. Id. at (133). The author goes on to state, "the point is simply this: As a state law issue, workers' compensation was never addressed by Federal agencies involved in making NAFTA trucking policy." Id. at 135.

7. Based upon an analysis of this article's assessment of NAFTA and a review of the NAALC agreement, the undersigned concludes that Federal law does not preempt Arizona law in this matter. Thus, the industrial commission has jurisdiction of the subject matter and has jurisdiction to render a judgment.

8. In all other aspects, the Decision upon Hearing and Findings and Award should be affirmed.

AWARD

IT IS ORDERED that the Decision upon Hearing and Findings and Award entered on March 17, 2012, as supplemented by the preceding Findings, B, and the same hereby is affirmed.

NOTICE: Any party dissatisfied with the Decision Upon Review may apply to the Arizona Court of Appeals,

Division One, 1501 W. Washington, Phoenix, AZ 85007, for a review of the lawfulness of the decision pursuant to the provisions of Arizona Revised Statutes, section 12-120.21B and section 23-951A. See also, Arizona Revised Statutes, Vol. 17B, Rule 10, Rules of Procedure for Special Actions. This Decision Upon Review shall be final unless an application is made within **THIRTY (30) DAYS** of the mailing of this Decision to the parties. Arizona Revised Statutes section 23-943H.

By: s/ Michael A. Mosesso
MICHAEL A. MOSESSO
Administrative Law Judge

DATED AND MAILED IN PHOENIX, ARIZONA ON MAY 24, 2012.

EXCERPT OF APPELLATE BRIEF

Beginning at Page 14

¶23 **Facilitating Cross-Border Movement.** The second objective is to facilitate cross-border movement of goods.

¶24 Here, we have a Mexican company, driving into Arizona to purchase diesel fuel, and bring it back into Mexico. 2/14/12 Hearing Transcript 31:14-16, 74:10-20, and 97:15-17. The federal government wants to sell American goods in Mexico, not just import goods from Mexico. The federal government wants to encourage trade both ways. If Arizona creates an impediment – mandating double insurance coverage – it can deter companies from entering the United States to buy American goods.

¶25 If Arizona creates an impediment – such as mandating double insurance coverage – it will deter companies from entering the United States to buy American goods. If fewer companies are willing to enter the United States to buy American goods, America will export fewer goods. The federal objective of encouraging cross-border movement of goods will be frustrated.

¶26 **Promoting Fair Competition.** The federal government's objective is to have fair trade with Mexico. If Arizona's system remains in place against Mexican companies, to balance the scales, Mexico would be justified in imposing a requirement that **every** American company, entering Mexico, buy IMSS coverage for their employees.

¶27 **Express Delegation.** And this Court should not overlook NAALC's delegation of worker's compensation authority, over Mexico's workforces, to Mexico. *NAALC Annex 1: Labor Principles* at Opening Paragraph and Section 10. And this makes sense from a practical stand point – the United States should oversee its workforce, Mexico should oversee its workforce, and Canada should oversee its workforce. Each country retains its sovereignty

over their respective workforces. There should be no doubt that a Mexican national, working for a Mexican company, entering the United States in accordance with NAFTA is part of Mexico's workforce.

¶28 **Federal Uniformity.** The Foreign Commerce Clause was placed into the Constitution to promote uniformity and to allow the federal government to set an appropriate, uniform level of regulation of trade with other nations. *See* Letter from James Madison to J.C. Cabell (Feb. 13, 1829), in 3 The Records of the Federal Convention of 1787, at 478 (Max Farrand ed., rev. ed. 1966). In *Japan Line,* supra, the Supreme Court expressed its concern that the nation must speak with "one voice" in the context of the Foreign Commerce Clause, and the Supreme Court reiterated the importance of federal uniformity in a subsequent case also addressing the Foreign Commerce Clause. *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 186 (1983).

¶29 Speaking with one voice in the regulation of commercial relations with foreign governments allows for the efficient execution of United States foreign policy. *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976). Thus, any impediment to the federal government's ability to speak with one voice in regard to regulation of foreign commerce must be considered. *See National Foreign Trade Counsel v. Natsios,* 181 F.3d 38 at 57 (1st Cir. 1999) (referencing *Japan Line*, 441 U.S. at 449). A state tax at variance with federal policy will violate the "one voice" standard if it implicates foreign policy issues. *Container Corp.*, 463 U.S. at 193. The concern that the nation speak with one voice arises equally in non-tax dormant Foreign Commerce Clause cases. *Antilles Cement Corp. v. Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005).

¶30 The United States spoke with one voice when Congress passed and the President signed into law the NAFTA and supplemental NAALC. The purpose of the

NAFTA was to substantially reduce tariff and nontariff barriers to trade among Canada, the United States, and Mexico. *See* North American Free Trade Agreement Implementation Act, Pub.L. No. 103-182, January 5, 1993.[10]

¶31 For its part, the NAALC represented the first instance in which the United States negotiated an agreement dealing with labor standards to supplement an international trade agreement. See *North American Agreement on Labor Cooperation: A Guide*, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Dept. of Labor, Washington D.C., April 1998. The NAFTA and NAALC were formed by three nations agreeing to respect the laws of the others in order to promote unprecedented trade and closer economic ties while also improving working conditions in these countries. Clearly, the NAFTA and NAALC implicate foreign policy issues, namely, trade and labor standards in Canada, the United States, and Mexico.

¶32 The ALJ's jurisdictional decision also violates *Japan Line*'s prohibition against impairing federal uniformity in an area where federal uniformity is essential. By claiming jurisdiction, the State of Arizona threatens relations with Mexico without input from the federal government and sister states (whose Workers' Compensation plans are not all uniform).

¶33 **Retaliation.** Underlying the dormant Foreign Commerce Clause is an important rationale: fear of states interfering with the nation's foreign affairs, resulting in harm to the nation from the retaliatory actions of foreign governments. *Japan Line*, 441 U.S. at 450.

¶34 In *Container Corp.*, Justice Brennan recognized the inherent problem with state laws which create **the**

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[10] Available at: (http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/ public_law_leg_history/).

possibility of retaliation by a foreign government against the nation as a whole. *Container Corp.*, 463 U.S. at 194. "The most obvious foreign policy implication of a state tax is the threat it might pose of offending our foreign trading partners and leading them to retaliate against the nation as a whole." *Id.*

¶35 Our foreign trading partners, Canada and Mexico, have entered into trade and labor agreements with the United States under the NAFTA and NAALC. The negotiations for these agreements took more than three years. See *North American Free Trade Agreement Implementation Act*, Pub.L. No. 103-182, January 5, 1993. The NAALC specifically allows each country to "protect the rights and interests of their respective workforces". *NAALC Annex 1: Labor Principles at opening paragraph and Section 10.* If Arizona is allowed to apply its workers' compensation laws to Mexican businesses, NAALC and NAFTA will be undermined as will the efforts of the trading partners in coming to these agreements. There is a serious risk that Mexico will retaliate by requiring United States businesses to pay into the IMSS fund. Certainly, it will be in Mexico's best interest to follow suit and require United States businesses to pay into the IMSS fund.

¶36 **This Case is Preempted.** For the reasons set forth above, this case is preempted by the federal policy.

I. Worker's Compensation is a direct tax in Mexico (as in many U.S. States). If there is a risk of multiple taxation on foreign commerce, the tax is constitutionally impermissible. Under Arizona's workers compensation system is there a risk of multiple taxation on companies involved in foreign commerce?

¶37 One of the issues raised in the 4/25/12 Request for Review was that of double taxation of foreign businesses vis-à-vis the Foreign Commerce Clause. The 5/24/12 Ruling

on Porteadores' Request for Review addressed some of the Commerce Clause issues. However the 5/24/12 Ruling on Porteadores' Request for Review did not address the multiple taxation issue.

¶38 ***Japan Line.*** The seminal case dealing with multiple taxation is *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979). In *Japan Line*, the appellants were six Japanese companies that owned shipping containers. The companies were incorporated under the laws of Japan, having their principal places of business and commercial domiciles in that country. *Id.* at 436. They owned containers that were used to transport items to the United States. The *Japan Line* appellant's were required to pay property tax in Japan on the containers. See *Id.*

¶39 The appellees in *Japan Line* were Subdivisions of the State of California ("California"). California charged the companies ad valorem taxes based upon their containers' presence in various California jurisdictions. See *Id.* at 437. The containers engaged in no intrastate or interstate transportation of cargo except as continuations of international voyages. See *Id.*

¶40 California argued that such taxes had routinely and validly been levied against business engaged in interstate commerce. In fact, the Supreme Court had previously held that "if the state tax 'is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State,' no impermissible burden on interstate commerce will be found." *Id.* at 444-445 quoting *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

¶41 The *Complete Auto* four-part test is used to determine the validity of interstate taxation. California argued that the Japanese companies were required to pay their ad valorem taxes because California followed all parts of the *Complete Auto* four-part test. *Japan Line*, 444-445.

¶42 However, the Supreme Court noted that the *Complete Auto* four-part test is incomplete when dealing with Foreign Commerce. The Supreme Court noted,

> "[w]hen a State seeks to tax the instrumentalities of foreign commerce, two additional considerations, beyond those articulated in *Complete Auto*, come into play. The first is the enhanced risk of multiple taxation." *Id*. 346.

In *Japan Line*, the Court's concern was that, unlike in interstate commerce, the tax cannot be properly apportioned. Foreign countries are sovereign, as such, foreign countries do not have to honor an apportionment tax system for businesses engaged in foreign commerce. However, in interstate commerce, states, federal courts or the Federal government can ensure proper apportionment; that cannot happen when the taxing entity is a foreign sovereign. See *Id*. at 447.

¶43 Second, "a state tax on the instrumentalities of foreign commerce may impair federal uniformity in an area where federal uniformity is essential." Id. 448. The Supreme Court has repeatedly recognized the necessity for the federal government to speak with "one voice when regulating commercial relations with foreign governments." *Id*. 449.

¶44 In *Japan Line*, the Supreme Court recognized that a

> "state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise. If a novel

> state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer. If other States followed the taxing State's example, various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from "speaking with one voice" in regulating foreign commerce." *Id*. 450-451.

¶45 In *Japan Line,* the Supreme Court struck down California's property tax on foreign cargo containers because the tax conflicted with the federal power to regulate foreign commerce. And that is because, the Constitution, as a whole, embodies the principle that national action on the international stage is favored over state action on the international stage. See *Natsios*, 181 F.3d 38 at 49–51(1st Cir. 1999) (citing the varied Constitutional clauses which vest foreign affairs power in the federal government).

¶45 Applying Arizona's workers' compensation laws to Mexican businesses engaged soley in foreign commerce, in the face of the North American Free Trade Agreement (NAFTA) and the supplemental North American Agreement on Labor Cooperation (NAALC), would be just

such an unconstitutional attempt to regulate foreign commerce.

¶46 **Porteadores.** In this case, Porteadores has its principle place of business and commercial domicile in Mexico. Mr. Valenzuela, a "lent employee" from Cazali was a Mexican citizen fully insured under the IMSS system. Porteadores' trucks are owned and operated out of Sonora, Mexico and used solely for engaging in foreign commerce.

> "Any movements or periods of nonmovement of [trucks] in [Arizona's] jurisdictions are essential to, and inseparable from, the [truck's] efficient use as instrumentalities of foreign commerce." *Id*. 437 (internal citation omitted).[11]

¶47 Even though Porteadores is engaged solely in the course of foreign commerce, it now faces multiple taxation. Mr. Valenzuela **received**, and was entitled to, medical treatment and worker's compensation for his injuries throughout his period of incapacity from the Mexican Social Security System, IMSS. Yet, this case has been assigned to the Special Fund Division and Porteadores is wrongfully classified as having no insurance for purposes of Arizona Workers' Compensation system.

¶48 Assuming, *arguendo*, that NAFTA and NAALC provisions did not prevent the ICA from claiming jurisdiction in this case (which Porteadores does not concede), the ALJ's decision violates *Japan Line*'s prohibition of double taxation in the arena of foreign commerce.

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[11] And while the Administrative Law Judge focused on the fact that Mr. Valenzuela often stopped to rest at an Arizona hotel during his transports, these stops are mandated by U.S. Department of Transportation laws. Accordingly, any stays Mr. Valenzuela had in Arizona were also purely in furtherance of transporting the diesel fuel in foreign commerce.

¶49 This case should be dismissed because it violates the multiple taxation rule set forth in *Japan Line*.

EXCERPT FROM PETITION
FOR REVIEW TO THE
ARIZONA SUPREME COURT

¶15 This is a Constitutional question of not just statewide importance, but of national importance. In rendering the Opinion, the Court of Appeals has essentially opened the State, if not the country, to widespread uncertainty and potential retaliation from Mexico. If an Arizona employee temporarily enters Mexico, the Mexican government can rely on the Court of Appeals Decision to retaliate and demand payment of a portion of the employee's salary into IMSS or face repercussions.

¶16 As it stands now, under the Court of Appeals decision, any foreign employee entering Arizona for business, who is injured, even if all treatment is covered and paid for in their home country, could make a separate claim in Arizona. With Mexico, the employee has two years to finalize its claims. The employee can fully assert claims in Arizona first, effectively taking additional money from their employer in a situation like the one in this case, and then turn around and demand additional compensation in Mexico. The employee would receive double compensation, a windfall above and beyond the full compensation they are already entitled to.

¶17 Finally, Congress has spoken to the issue. Congress, through NAFTA and NAALC have stated the intent that the states are to recognize our trading partners labor laws. Mexico has a Constitutionally guaranteed right to worker's compensation. These trade agreements require the states to honor these agreements. It is true that only the federal government's executive branch has a right to step in and invalidate a state law based on these trade agreements. However, it does not change the U.S. Constitutions dormant (as opposed to express) foreign commerce clause requirement that the states, including Arizona, honor

specific congressional intent. Remember, to ensure uniformity in dealings with foreign countries, State laws and regulations that might impair the National Government's foreign policy must yield to the policy. See e.g. *American Insurance Association v. Garamendi* 539 U.S. 396 (2003).

V. THE STATE CANNOT IMPOSE A DISCRIMINATORY SYSTEM THAT TARGETS FOREIGN COMMERCE, EVEN IF THE SYSTEM IS VALID BY AND BETWEEN THE STATES.

¶18 The States have more leeway when dealing with each other than they have when dealing with foreign nations. In interstate issues, the States must follow the *Complete Auto Transit, Inc. v. Brady* 430 U.S. 274, 279 (1977) test. In interstate issues, fair apportionment and protections can occur through the U.S. legal system. However, the Supreme Court noted,

> "[w]hen a State seeks to tax the instrumentalities of foreign commerce, two additional considerations, beyond those articulated in *Complete Auto*, come into play. The first is the enhanced risk of multiple taxation." *Japan Line, Ltd.* at 346.

In *Japan Line*, the Court's concern was that, unlike in interstate commerce, the tax cannot be properly apportioned. Foreign countries are sovereign, as such, foreign countries do not have to honor an apportionment tax system for businesses engaged in foreign commerce. In foreign situations, the foreign country is its own sovereign. The foreign country does not have to follow any sort of

apportionment that Arizona, or any other state would impose.

¶19 The natural question to this is, "Isn't Worker's Compensation, insurance?" The answer is yes and no. Yes, in Arizona an employer can buy insurance, with a portion of the premiums taxed. However, the alternative is to be self insured and just pay the tax. If an employer doesn't, and is deemed an "uninsured employer" like Porteadores who has provided Mr. Valenzuela 100% insurance in his home country, then the uninsured employer is fined. In either event, it is tax being paid to the state.

¶20 What about other states? In the State of Washington, worker's compensation is called a tax, and is collected as a tax. In Texas, there isn't even a need to have worker's compensation. With a constitutional question like this, this Court cannot look just to Arizona. The Court of Appeals decision is too broad reaching. This court must consider the impact on our sister states.

¶21 Additionally, in Mexico, worker's compensation is a tax – and it is one that provides 100% protective for an injured worker – if they pursue it.

¶22 With these considerations in mind, the Court has to decide if there is **a possibility** that Mexico might retaliate. If only Mexican companies, such as Porteadores, must pay for insurance that they already have, would they be at a disadvantage to their American counterparts? Could this lead to a strain that leads to a possibility of reprisal? If yes, then, under *Japan Line, Ltd.* this Court must find it unconstitutional.

U.S. CONSTITUTION
COMMERCE CLAUSE
Article I, Section 8, Clause 3

Section 8.

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

23-961. Methods of securing compensation by employers; deficit premium; civil penalty

(L11, Ch. 157, sec. 5. Eff. until 7/1/15)

A. Employers shall secure workers' compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with an insurance carrier authorized by the director of insurance to write workers' compensation insurance in this state.

2. By furnishing to the commission satisfactory proof of financial ability to pay the compensation directly or through a workers' compensation pool approved by the commission in the amount and manner and when due as provided in this chapter. The requirements of this paragraph may be satisfied by furnishing to the commission satisfactory proof that the employer is a member of a workers' compensation pool approved by the commission pursuant to section 23-961.01. The commission may require a deposit or any other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than one hundred thousand dollars for workers' compensation liabilities. If the employer does not fully comply with the provisions of this chapter relating to the payment of compensation, the commission may revoke the authority of the employer to pay compensation directly.

B. An employer may not secure compensation to comply with this chapter by any mechanism other than as provided in this section. No insurance, combination or other program may be marketed, offered or sold as workers' compensation that does not comply with this section. An employer violates this chapter if the employer purchases or secures its obligations under this chapter through a substitute for

workers' compensation that does not comply with this section.

C. Insurance carriers that transact the business of workers' compensation insurance in this state shall be subject to the rules of the director of insurance.

D. The director of insurance shall not issue to an insurance carrier a certificate of authority that authorizes the insurance carrier to transact workers' compensation insurance until the insurer deposits with the state treasurer, through the director of insurance, cash or securities. The amount of cash or securities required under this subsection shall be at least equal to the greater of the following amounts:

1. One hundred thousand dollars.

2. The sum of subdivisions (a) and (b) of this paragraph less credits for approved reinsurance computed as of the preceding December 31 or other time as requested by the department of insurance for workers' compensation insurance written subject to the laws of this state:

(a) The aggregate of the present values at six per cent interest of all determined and estimated future direct reported loss and loss expense payments on compensation claims incurred more than three years immediately before the preceding December 31 or other time as requested by the department of insurance.

(b) The aggregate of the amounts determined for each of the three years immediately before the preceding December 31 or other time as requested by the department of insurance that equals the greater of the following:

(i) Sixty-five per cent of the earned premiums for the year less all direct reported loss and loss expense payments made on compensation claims incurred in the corresponding year.

(ii) The present value at six per cent interest of all determined and estimated future direct reported loss and

loss expense payments on compensation claims incurred in that year.

E. On or before April 15 and on any date that the department of insurance specifically requests, an insurance carrier shall file with the department of insurance the information necessary to compute the required amount to be deposited pursuant to subsection D of this section and shall deposit any required additional amount.

F. An insurance carrier shall maintain at all times a deposit of cash or securities with the state treasurer, through the director of insurance, in an amount that is not less than the amount required under this section.

G. Cash or securities deposited pursuant to this section are subject to approval by the director of insurance at all times. The director of insurance shall hold the cash or securities for fulfillment of the obligations of the insurance carrier, including an insurance carrier acting as a reinsurer, under this chapter. The commission shall have a lien against the cash or securities deposited to the extent the special fund is liable to pay the obligations secured by the cash or securities.

H. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed upon by the insurance carrier and the employer.

I. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the

election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall notify the commission on a form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

J. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation insurance, a tax of not more than three per cent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three per cent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than two hundred fifty dollars per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three per cent to be fixed annually by the industrial commission. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection L of this section shall be deducted from the tax payable pursuant to this subsection.

K. An insurance carrier may reduce the amount of premiums paid by an employer by up to five per cent if all of the following apply:

1. The insured employer complies with the drug testing policy requirements prescribed in section 23-493.04.

2. The insured employer conducts drug testing of prospective employees.

3. The insured employer conducts drug testing of an employee after the employee has been injured.

4. The insured employer allows the employer's insurance carrier to have access to the drug testing results under paragraphs 2 and 3 of this subsection.

L. Any insurer that, pursuant to this section, paid or is required to pay a tax of two thousand dollars or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection J of this section for premiums determined pursuant to subsection J of this section or an amount equal to twenty-five per cent of the tax paid or required to be paid pursuant to subsection J of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

M. If an overpayment of taxes results from the method prescribed in subsection L of this section the industrial commission may refund the overpayment without interest.

N. An insurer who fails to pay the tax prescribed by subsection J or L of this section or the amount prescribed by section 23-1065, subsection A is subject to a civil penalty equal to the greater of twenty-five dollars or five per cent of the tax or amount due plus interest at the rate of one per cent per month from the date the tax or amount was due.

O. An insurance carrier authorized to write workers' compensation insurance may not assess an employer

premiums for services provided by a contractor alleged to be an employee under section 23-902, subsection B or C, unless the carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under section 23-902 have been met.

2. Provided a copy of such findings to the employer in advance of assessing a premium.

P. Notwithstanding section 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver that is substantially in the following form:

I am a sole proprietor, and I am doing business as (name of sole proprietor) . I am performing work as an independent contractor for (name of employer) . I am not the employee of (name of employer) for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from (name of employer) . I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

_____ _____

Sole proprietor Date

_____ _____

Insurance carrier Date