The Issues with the Expansion of Idaho's Exclusive Remedy Rule

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Background

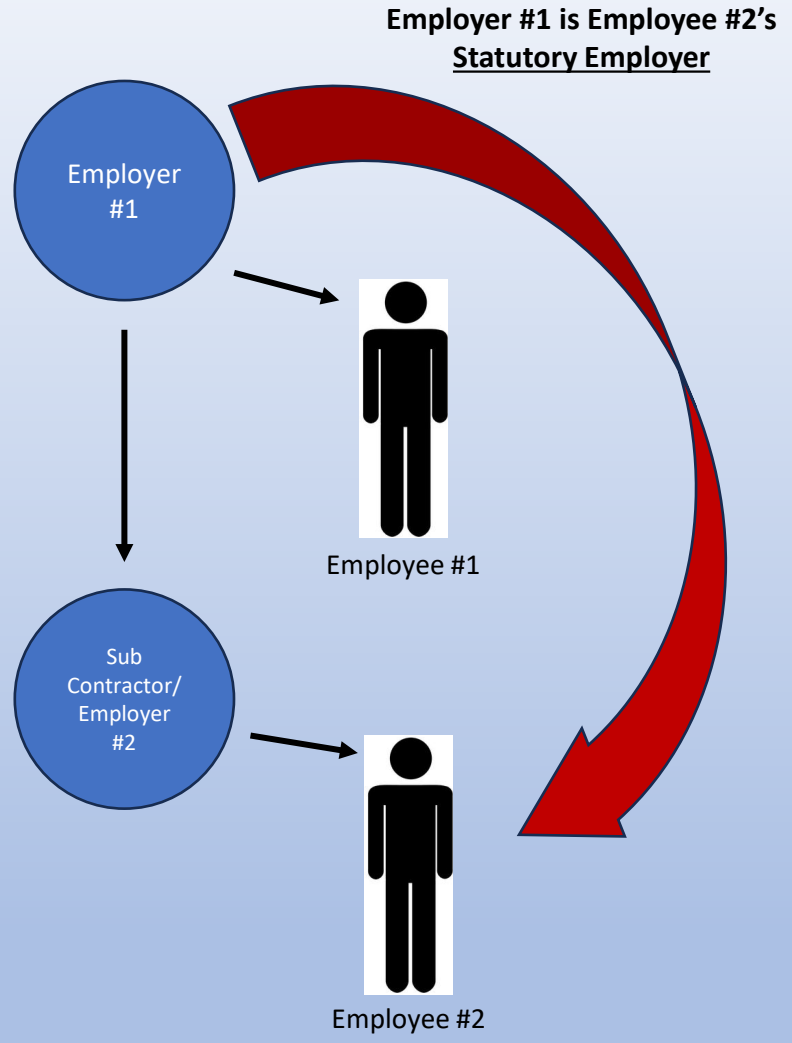
- In the past 4 years the IDSC has expanded the doctrine of the exclusive remedy rule in a way that was not intended by the drafters.
- This began with *Richards v. Z&H Construction* decided in 2020 and has continued in decisions issued since.
- The IDSC interpretation in these cases has several negative impacts on employers, sureties, and claimants.

Plan

- Review the rule and controlling statutes and how they were applied and interpreted prior to *Richardson*.
- Review IDSC cases and summarize where we are at today.
- Explain the problems and issues with the Court's holdings and how it affects employers, sureties, and claimants in our system.

Controlling Statutes For Exclusive Remedy Rule

- IC §72-209(1) – grants immunity to (actual/direct) employers
- IC § 72-216 Employers who contract for services to others "under him" are responsible to pay benefits if sub-contractor has not.
- IC §72-223(1) – grants immunity to statutory employers
  - "Such third party shall not include those employers described in section 72-216, … having under them contractors or subcontractors who have in fact complied with the provisions of section 72-301."
- IC §72-209(3) – grants immunity to (actual/direct) employees of employers (both statutory and direct)



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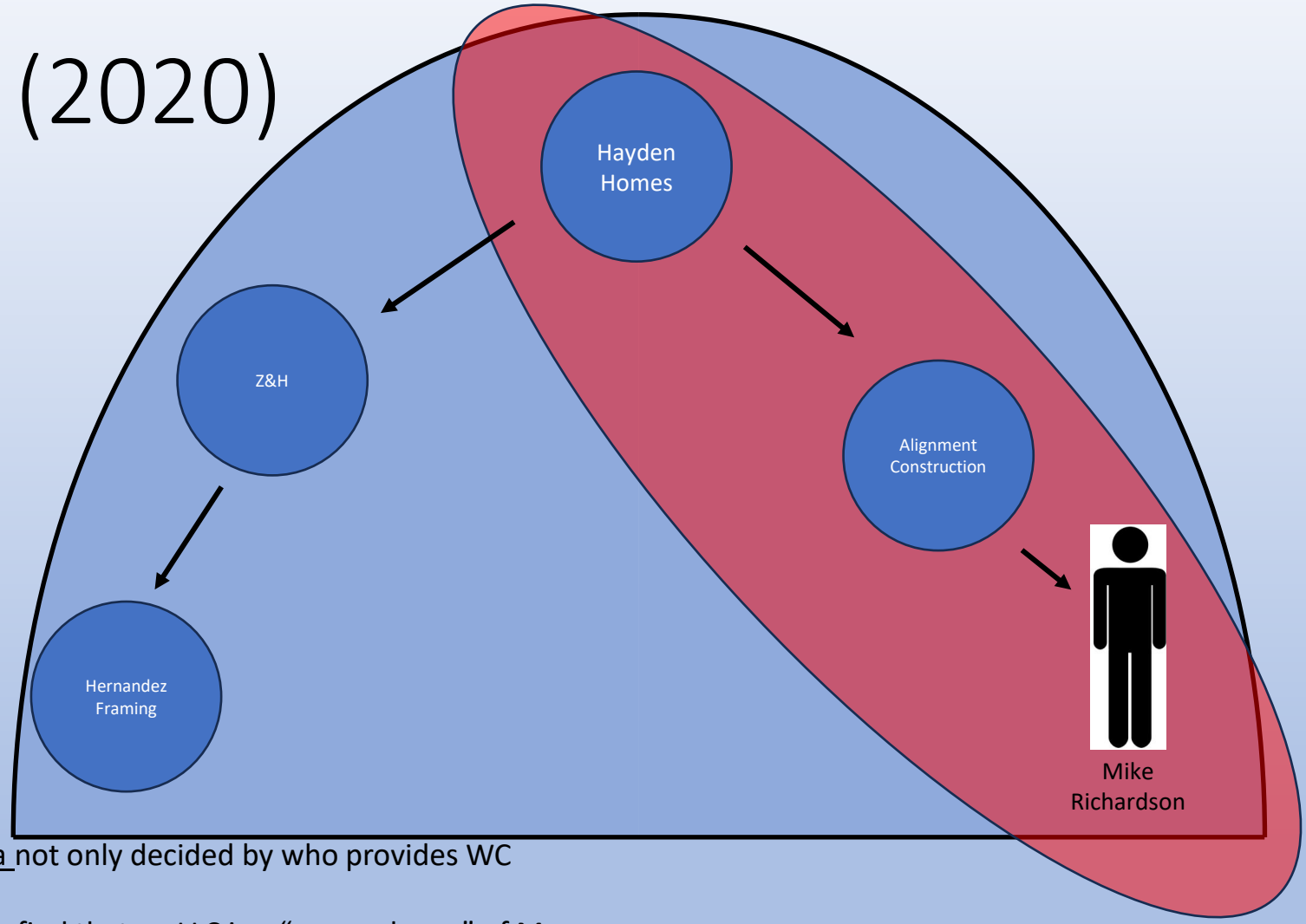
Richardson v. Z&H (2020)

- Z&H and Hernandez were sub contractors to Hayden that built a defective crawlspace cover.
- Mr. Richardson Falls through and gets a 5-level neck fusion.
- Suit filed against Z&H and Hernandez for negligence.
- Claimant argues that you only get immunity if you are on the hook to pay Richardson's WC benefits.
    - That is Alignment and Hayden.
- Defendants claim exclusive remedy rule bars 3rd party claim by Richardson.
    - They argue that Z&H and Hernandez (the LLCs) are "co-employees" of Richardson by virtue of being under Hayden.



- IDSC finds that immunity is coverage <u>like an umbrella</u> not only decided by who provides WC benefits to injured worker.
    - They take a very strict reading of the statute to find that an LLC is a "co-employee" of Mr. Richardson.
- This means that Z&H and Hernandez cannot be held responsible in the WC system or in a civil action and do not have to pay anything for their screwup!
- General Contractor, direct employer and their WC carriers pay for Z&H's negligence.

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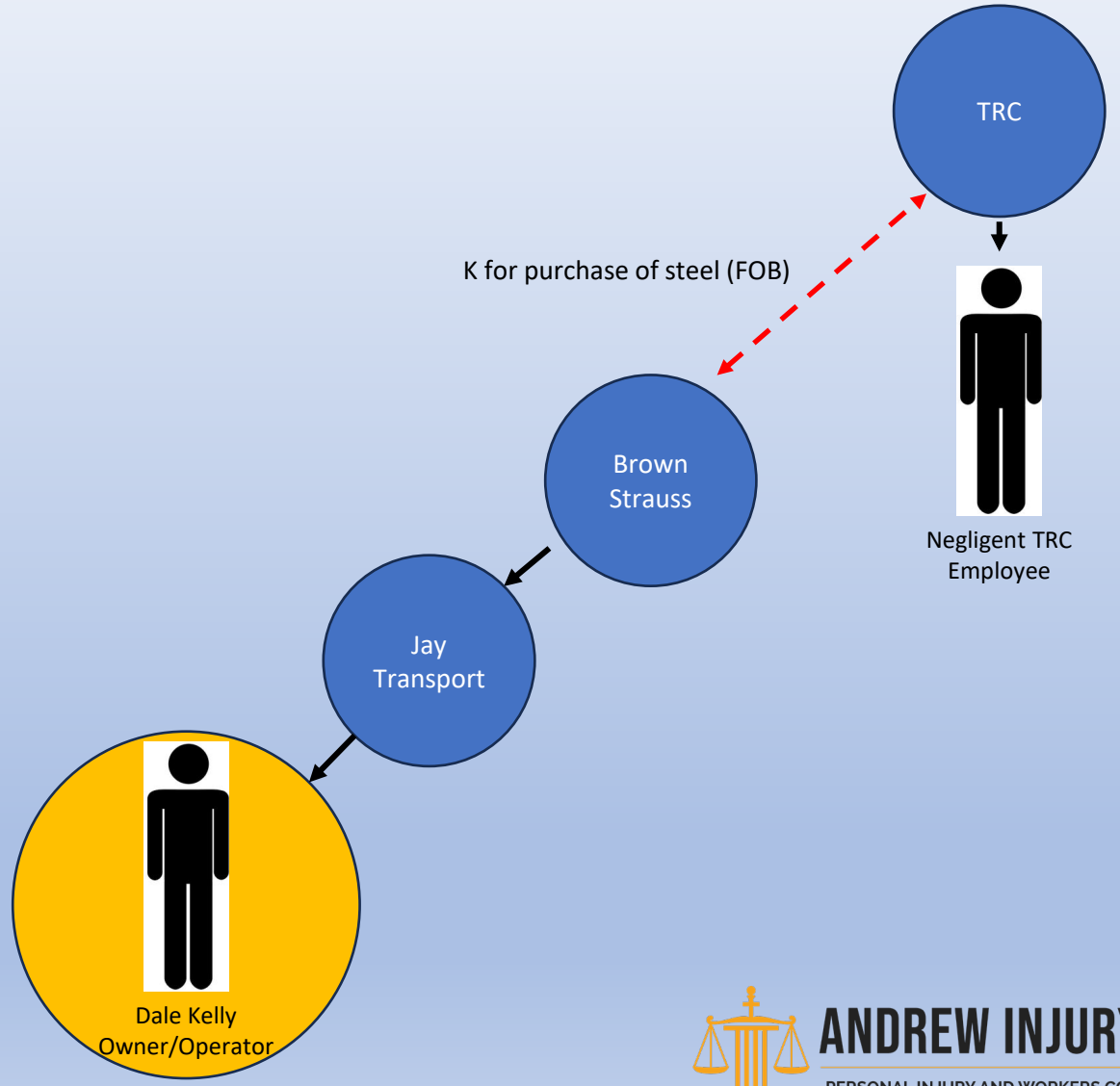
Kelly v. TRC (2021)

- TRC purchased steel from Brown Strauss that included delivery of steel (FOB).
  - Brown owned steel until delivery to TRC.
- Brown contracted with Jay Transport to deliver.
- Jay contracted with owner/operator Kelly to deliver steel.
- TRC employee dropped steel injuring Kelly.
- TRC claims immunity as a statutory employer of Kelly.
- Can Kelly and WC surety recover against TRC?

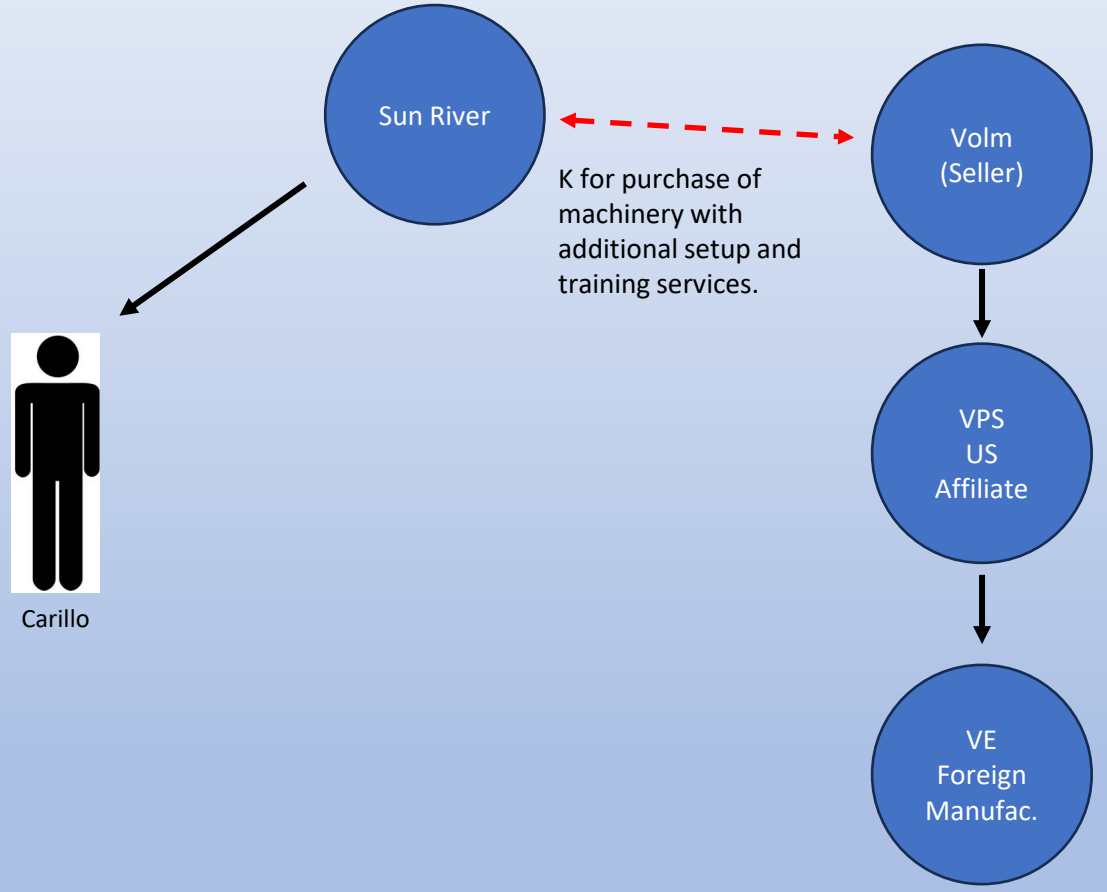


- Does the contract for goods with ancillary delivery services create a "category one" statutory employer relationship?

- Holding: No.
  - "Delivery services ancillary to a contract for the sale of goods do not in and of themselves create a category one statutory employer contractual relationship, except when the contract is settled is accompanied by an undertaking to render substantial services in connection with the goods sold, or where the transaction is a mere device or subterfuge to avoid liability under the Idaho workers compensation laws."
- "The services necessary for the completion of the contract were incidental in relation to the gravamen of the contract, which was the sale of goods."

Carillo v. Verbruggen (June 14, 2023)

- Volm, VPS, and VE claimed they were immune from suit by Carillo (and the WC surety who wanted their subro back!)
  - Statutory "co-employees" of Carillo. (Richardson)
  - Hybrid transaction that involved **substantial services with Sun River**. (Kelly)



- Court creates a new rule again!
- "Predominate factor" test.
  - "Whether a hybrid transaction confers statutory employer status turns on whether the predominant factor is the sale of goods or provision of services."
  - Focus on the "gravamen" of the transaction.
  - "Whether the predominate factor of a hybrid transaction is for goods or services may involve questions of material fact that must be resolved at trial."
  - Referenced tests:
    - Predominant factor. (UCC test)
    - Totality of the circumstances.

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Why this is a problem?

- The IDSC's expansion of the Exclusive remedy rule frustrates Idaho's statutory workers' compensation system.
  - Makes it more difficult to recover from negligent parties because the Court expanded the immunity from what the legislature intended.
    - Sureties cannot recover for benefits paid out to claimants.
    - Claimants cannot recover for general damages
    - Employers (including General Contractors, or those who contract for services) will end up receiving the cost shift because a claim cannot be made against a negligent party.
- The *Carillo* case will require the Claimant and Employer/Surety to go to court and potentially put in front of a jury the question of what is the predominant factor in a contract.
  - This costs more, takes more time, and will make it much more difficult to recover from negligent parties.
  - The IDSC has blurred the lines rather than provide a bright line rule.

To sum up

- The policy intent of the statute prior to *Richardson* was that a person gets immunity if they are on the hook for, or potentially on the hook for WC benefits.
- *Richardson*, *Kelly*, and *Carillo* have muddled that up and made our system less predictable and more expensive because it has eliminated the ability to bring 3rd party claims against negligent parties if they are considered a "co-employee" of the claimant.
- The Court has had several occasions to correct this, but they've only dug themselves in deeper and are unlikely to correct this.
- The fix will have to be legislative.

Questions?

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