



TAYLOR AND WALKER P.C.

PRESS RELEASE

Taylor & Walker receives decision that represents a significant victory for the Uninsured Employers' Fund.

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In the case of *Melvin G. Perry v. Tom Delisle and Uninsured Employers' Fund*, before the Virginia Workers' Compensation Commission, the claimant alleged an injury by accident to his back on April 4, 2001. The claimant filed a claim for benefits against his employer, who did not maintain workers' compensation liability insurance. Taylor & Walker partner, William C. Walker, representing the Uninsured Employers' Fund, defended the claim on the ground that claimant's employer was not subject to the jurisdiction of the Workers' Compensation Act, because the employer did not regularly employ three or more employees and had just two employees at the time of the accident.

The deputy commissioner ruled in favor of the employer and the Uninsured Employers' Fund, finding that at the time of the incident, the employer's customary mode of performing business required only two employees, despite the fact that the employer had employed three or more employees for some months prior to the accident, and again four months following the accident. The Full Commission affirmed this decision, based in part on the employer's credible testimony that at the time of the accident, the employer did not intend to hire a third employee.

The claimant appealed to the Court of Appeals of Virginia. In a decision issued November 30, 2004, a divided panel of the Court of Appeals reversed the Full Commission's decision.

The Uninsured Employers' Fund and the employer filed a Petition for Rehearing En Banc and brief in support thereof, which were prepared by Taylor & Walker associate Audrey Marcello, to request that all members of the Court hear the issues in this case. The Court granted the petition for rehearing, and oral argument was presented by William C. Walker before the full Court of Appeals of Virginia in Richmond on May 24, 2005. In an Opinion issued July 12, 2005, the Court, sitting en banc, affirmed the Full Commission's original Opinion, finding that credible evidence in the record supported a finding that the employer had regularly in service less than three employees, and, as a result, was not subject to the provisions of the Virginia Workers' Compensation Act.

Rehearings En Banc by the Court of Appeals of Virginia are rarely granted, and this decision represents a significant victory for the Uninsured Employers' Fund.

Taylor & Walker attorneys regularly represent employers and their insurers in both federal and state workers compensation cases as well as in a variety of employment law matters.

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