

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Macey Juarez vs. Rogers Helicopters, Inc.		
LAW AND MOTION MINUTE ORDER		Case Number: 16CECG00116

Hearing Date: **08/14/2017** Hearing Type: **From Chambers re: Summary Judgment (x2)**
 Department: **402** Judge/Temp. Judge: **Hamilton, Jeffrey Y.**
 Court Clerk: **Santana, Maria** Reporter/Tape: **Not Reported**

Appearing Parties:	
Plaintiff: Not Reported	Defendant: Not Reported
Counsel:	Counsel:

- Matter previously taken under advisement, the Court now rules;
- Continued to Set for ___ at ___ Dept. ___ for ___
- Submitted on points and authorities with/without argument. Matter is argued and submitted.
- Upon filing of points and authorities.
- Motion is granted in part and denied in part. Motion is denied with/without prejudice.
- Taken under advisement.
- Demurrer overruled sustained with ___ days to answer amend
- Tentative ruling of 07/27/2017 becomes the order of the court. No further order is necessary.
- Pursuant to CRC 391(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.
- Service by the clerk will constitute notice of the order.
- See attached copy of the Tentative Ruling.
- Judgment debtor ___ sworn and examined.
- Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:
 Money damages: Default Other ___ entered in the amount of:
 Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
 Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:
 Monies held by levying officer to be released to judgment creditor. returned to judgment debtor.
 \$___ to be released to judgment creditor and balance returned to judgment debtor.
 Levying Officer, County of ___, notified. Writ to issue
 Notice to be filed within 15 days. Restitution of Premises
 Other: ___

Tentative Rulings for Department 402

(20)

Tentative Ruling

Re: **Juarez et al. v. Rogers Helicopters, Inc. et al.**, Superior Court
Case No. 16CECG00116

Hearing Date: **July 27, 2017 (Dept. 402)**

Motion: (1) Motion for Summary Judgment by Rogers Helicopters,
Inc. and ROAM;
(2) Motion for Summary Judgment by American Airborne,
EMS

Tentative Ruling:

To grant both motions for summary judgment. (Code Civ. Proc. § 437c(c).)
Prevailing parties are directed to submit to this court, within five days of service of the
minute order, proposed judgments consistent with the court's summary judgment order.

Explanation:

The evidentiary issues have been resolved with the filing of the revised
declarations, to which plaintiffs submit no evidentiary objections. Accordingly, the
court will rule on the merits of the motions.

Defendants Rogers Helicopters, Inc. ("Rogers"), Roam, and American Airborne,
EMS ("American Airborne") move for summary judgment on the ground that workers'
compensation exclusivity precludes plaintiffs' actions against them, as decedent Kyle
Juarez's ("Juarez") employers, for injuries or death occurring during the course and
scope of his employment.

Where the conditions of compensation set forth in Section 3600 concur,
the right to recover such compensation is, except as specifically provided
in this section and Sections 3706 and 4558, the sole and exclusive remedy
of the employee or his or her dependents against the employer, and the
fact that either the employee or the employer also occupied another or
dual capacity prior to, or at the time of, the employee's industrial injury
shall not permit the employee or his or her dependents to bring an action
at law for damages against the employer.

(Lab. Code § 3602(a).)

A covered employee is "every person in the service of an employer under any
appointment or contract of hire or apprenticeship, express or implied, oral or written ..."
(Lab. Code § 3351.) "Any person rendering service for another, other than as an

independent contractor, or unless expressly excluded herein, is presumed to be an employee." (Lab. Code § 3357.)

An employee may have more than one employer for purposes of workers' compensation, and, in situations of dual employers, the second or "special" employer may enjoy the same immunity from a common law negligence action on account of an industrial injury as does the first or "general" employer. Identifying and analyzing such situations "is one of the most ancient and complex questions of law in not only compensation but tort law." (1C Larson, Workmen's Compensation Law (1986 supp.) § 48.23, p. 19.)

(*Santa Cruz Poultry, Inc. v. Superior Court* (1987) 194 Cal.App.3d 575, 578.)

"Joint employment occurs when two or more persons engage the services of an employee in an enterprise in which the employee is subject to the control of both." (*In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 732.)

Once a special employment relationship is identified, the special employer is liable for workers' compensation coverage, and that employer is immune from a common law tort action. (*Id.* at p. 578.) Control is the primary factor in determining whether an employment relationship arises. (*Id.* at p. 579-580.)

In 1991 American Airborne entered into a general partnership with defendant Rogers to form ROAM dba SkyLife ("ROAM/SkyLife"). (American Airborne Undisputed Material Fact ["AA UMF"] 2.) A revised partnership agreement was entered into in 2012. (Plaintiff's Ex. I; Revised Rogers Dec. ¶ 6.) The agreement provides that the purpose of the ROAM/SkyLife partnership is to "provide air ambulance services throughout the State of California ..." (Partnership Agreement § 1.03.) The helicopters used in this partnership were jointly owned by and registered to Rogers and American Airborne. (AA UMF 3; Rogers Dec. ¶ 7; Gordon Dec. Ex. L.) Rogers provided aircraft operations, and American Airborne / Ambulance provided medical support services. (AA UMF 4; Revised Valeri Dec. ¶ 9.)

Juarez obtained employment with American Ambulance in 2006 performing paramedic duties in ground ambulance transportation. In August 2012 Juarez applied for a flight paramedic position with ROAM/SkyLife. (Revised Epps Dec. ¶ 20.) Juarez was interviewed by Lisa Epps (ROAM/SkyLife Program Director), Vince Ellis (ROAM/SkyLife Medical Crew Supervisor), and Robert Adams (American Ambulance Human Resources). Juarez worked full time for ROAM/SkyLife (Revised Epps Dec. ¶ 21), and continued taking ground ambulance shifts with American Ambulance.

Significantly, American Ambulance is and always was the sole owner of American Airborne, owning 100% of its outstanding shares. (Revised Valeri Dec. ¶ 2.) American Airborne has no accounting records, payroll, insurance, personnel, facilities, physical locations, equipment management, employees, or other business activities that are separate from American Airborne. (AA UMF 3; Revised Valeri Dec. ¶ 6.) Todd Valeri, President, CEO and sole shareholder of American Ambulance and the President

of American Airborne (Revised Valeri Dec. ¶ 1) testified in his deposition that he did not know the difference or distinction between American Ambulance and American Airborne. He could not articulate a distinction between the two entities. (Valeri Depo. 20:18-21:2.) Valeri also testified that he is not familiar with American Airborne's corporate bylaws; he does not know whether American Airborne holds shareholder meetings; he cannot identify the board of directors; and he knows of no American Airborne meeting minutes other than a single instance in 2014. (AMF 2.)

It is apparent that there is no meaningful distinction between American Airborne and American Ambulance. The two are for all intents and purposes one and the same.

American Airborne contends that it entered into the partnership acting on behalf of American Ambulance. (See Revised Valeri Dec. ¶ 4.) Plaintiffs question this assertion, as American Ambulance is never mentioned in the partnership agreement. However, Robin Rogers of Rogers said the same. (See Revised Rogers Dec. ¶ 2.) According to Valeri, American Ambulance acted as a general partner of in the ROAM/SkyLife partnership. (Revised Valeri Dec. ¶ 5.) The evidence and course of conduct of the parties bears out this assertion. The ROAM/SkyLife website described ROAM/SkyLife as a partnership between Rogers and American Ambulance (Revised Epps Dec. ¶ 4), further evidencing the interchangeable nature of American Ambulance and American Airborne. The partners, including American Ambulance, acted in concert to run the air ambulance partnership business. (See Revised Epps Dec. ¶¶ 5-9.)

Through Rogers, ROAM/SkyLife provides flight training, as well as patient care and patient transportation training, to its medical personnel. Such training encompasses instruction on flight-related skills such as flight safety, air transport, survival, the SkyLife operations manual ("SOP"), flight dispatch, flight physiology, helicopter safety, airport security, mapping, radio communications, and the use of night-vision goggles. This training was provided pursuant to Rogers' obligations as an FAA Part 135 operator as set forth in Federal Aviation Regulation 135.621. Juarez received this training in May 2015. (Rogers UMF 20-21.)

The ROAM/SkyLife Standard Operating Procedures ("SOP") manual includes many provisions indicating a level of control by the partnership over workers such as Juarez. This includes requirements relating to clothing/uniforms on the job, grooming, weight limits, where and when employees will work, scheduling, and required certification. ROAM/SkyLife provides crew quarters at its bases and the SOP Manual specifies when and where SkyLife employees will sleep during their 24-hour shifts, and even specifies the limits of their activities and visitation during "down-time" on such shifts. The same rules apply to the pilots, except that the pilots are limited to twelve-hour shifts. The "Daily Operations" section of the manual lays out procedures for log-in, unit and equipment checkout, documentation of events, prescribed time limits, acceptance of patients, etc. (Rogers UMF 15-16, 29.) The pilot-in-command has authority over all flight safety and medical flight operations. The pilot-in-command is an employee of Rogers assigned full-time to SkyLife. (SOP 08-20-00.) The SOP Manual states that "[d]etails of patient care are outlined in the SkyLife Clinical Protocols and must be followed," and "[m]edical direction can be obtained through SkyLife

protocols, from the sending or receiving hospital and from the base hospital physician." (UMF 15, Ex. E-1 at 08-30-00.)

Juarez attended monthly safety meetings and mandatory quarterly staff meetings, along with pre-flight briefings and post-flight debriefings. (Rogers UMF 28.) Juarez wore a ROAM/SkyLife uniform and participated in decisions whether to undertake each flight, and in the cleaning of the aircraft. (AA UMF 16.)

American Ambulance paid the wages and provided workers' compensation insurance for medical personnel on ROAM/SkyLife flights, and Rogers provided the same for aviation personnel. (Plaintiffs' Response to UMF 8; Revised Epps Dec. ¶ 5.) The two companies then invoiced ROAM/SkyLife for the share of payroll, benefits and insurance attributable to their employees assigned to work for ROAM/SkyLife (including Juarez, Lisa Epps and Lisa Lopez, the flight nurse killed in the accident). (Revised Epps Dec. ¶ 19.)

At the time of the accident in which Juarez was killed, Juarez was performing flight paramedic services on a ROAM/SkyLife flight. (AA UMF 8.)

The court finds that the undisputed facts demonstrate that American Ambulance was the general employer of Juarez, and that ROAM/SkyLife was his special employer. The benefit of this doctrine extends to both Rogers and American Airborne as partners in ROAM/SkyLife. "[A]n employee of a partnership who is injured in the course and scope of her employment by the negligence of a partner, [cannot] maintain an action to recover damages from the negligent partner" due to workers' compensation exclusivity. (*Sonberg v. Bergere* (1963) 220 Cal.App.2d 681, 682-683.)

A partnership exists if there is an association of two or more persons to carry on as co-owners a business for profit, whether or not the persons intend to form a partnership. (Corp. Code § 16202(a)). For purposes of the ROAM/SkyLife partnership, American Airborne is interchangeable with American Ambulance. There is no distinction between the two. Even if American Ambulance was not named as a general partner in ROAM/SkyLife, it did in fact act as a general partner throughout the existence of the partnership. (Revised Valeri Dec. ¶ 5.) It is apparent that American Airborne is an empty shell which acts as a mere conduit for American Ambulance to act as general partner in the ROAM/SkyLife partnership. Even plaintiffs rely on evidence that American Airborne has no accounting records, payroll, insurance, personnel, facilities, physical locations, equipment management, employees, or other business activities that are separate from American Airborne. (UMF 3; Revised Valeri Dec. ¶ 6.)

In *Waste Management, Inc. v. Superior Court* (2004) 119 Cal.App.4th 105, the plaintiffs simply attributed or imputed to the parent company the negligent acts of and omissions of the subsidiary. The court held "[a]llowing a third-party tortfeasor action against [the parent company] based on the imputed acts or omissions of [the subsidiary] 'would directly oppose the purpose of the Workers' Compensation Act and the exclusive remedy provision of Labor Code section 3601.'" (*Id.* at p. 113, quoting *Shields v. County of San Diego* (1984) 155 Cal.App.3d 103, 112.) In *Shields*, the court disallowed a claim against a passive parent corporation based on acts of the

subsidiary because workers' compensation insurance is designed to eliminate such litigation.

The situation here is essentially the same, only reversed. Plaintiffs have already received the benefit of the workers' compensation insurance obtained specifically, in part, to cover American Ambulance employees providing air ambulance services pursuant to the ROAM/SkyLife partnership. In California, parent corporations cannot be held liable under an alter ego theory for a subsidiary's conduct, where the subsidiary is shielded from the same action by workers' compensation exclusivity. (See *Doney v. TRW, Inc.* (1995) 33 Cal.App.4th 245, 252.)

"In determining whether a special employment relationship exists, the primary consideration is whether the special employer has "[t]he right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not..." " (Kowalski, supra, 23 Cal.3d at p. 175, 151 Cal.Rptr. 671, 588 P.2d 811; see Borello, supra, 48 Cal.3d at p. 350, 256 Cal.Rptr. 543, 769 P.2d 399.) The decision turns on "(1) whether the borrowing employer's control over the employee and the work he is performing extends beyond mere suggestion of details or cooperation; (2) whether the employee is performing the special employer's work; (3) whether there was an agreement, understanding, or meeting of the minds between the original and special employer; (4) whether the employee acquiesced in the new work situation; (5) whether the original employer terminated [its] relationship with the employee; (6) whether the special employer furnished the tools and place for performance; (7) whether the new employment was over a considerable length of time; (8) whether the borrowing employer had the right to fire the employee and (9) whether the borrowing employer had the obligation to pay the employee." (Riley v. Southwest Marine, Inc. (1988) 203 Cal.App.3d 1242, 1250, 250 Cal.Rptr. 718.)

(Caso v. Nimrod Productions, Inc. (2008) 163 Cal.App.4th 881, 888-89.)

Here, (2) Juarez was performing the special employer's (ROAM/SkyLife) work – air ambulance services. American Ambulance did not directly provide air ambulance services. They were provided only through ROAM/SkyLife. (3) The meeting of the minds is evidenced by the partnership agreement and American Ambulance's conduct over the course of the partnership in acting as a general partner, and invoicing ROAM/SkyLife for the benefits paid to its employees on ROAM/SkyLife flights. (4) Juarez acquiesced in this work situation by applying for work on ROAM/SkyLife flights. (5) This factor does not favor special employment, as American Ambulance did not terminate its relationship with Juarez. (6) The partnership provided the aircraft and flight crew, which were essential to the provision of air ambulance services. Medical supplies appear to have been supplied by American Ambulance. (7) Juarez's work with ROAM/SkyLife was over a considerable length of time. (8) This factor is not very clear cut. Rogers Helicopters certainly did not have the authority to terminate medical personnel. Rather, it was a decision that was undertaken jointly and done through the

HR department of the partner supplying the employee. Given the structure of the partnership, it neither favors nor cuts against special employee status.

Circumstances tending to negate the existence of a special employment relationship include situations in which "[t]he employee is (1) not paid by and cannot be discharged by the borrower, (2) a skilled worker with substantial control over operational details, (3) not engaged in the borrower's usual business, (4) employed for only a brief period of time, and (5) using tools and equipment furnished by the lending employer." (*Marsh, supra*, 26 Cal.3d at p. 492, 162 Cal.Rptr. 320, 606 P.2d 355.)

(*Caso, supra*, 163 Cal.App.4th at p. 889.)

Here, Juarez was not paid directly by ROAM/SkyLife, but ROAM/SkyLife indirectly paid his wages and benefits when invoiced by American Ambulance. He was a skilled worker with substantial control over the details of his work, though he was supervised by American Ambulance personnel, effectively a ROAM/SkyLife partner, with regards to the provision of medical care. Juarez was engaged in the borrower's usual business. ROAM/SkyLife was formed for the specific purpose of providing air ambulance services, a service *not* provided by American Ambulance. He was employed for an extended period of time by ROAM/SkyLife. The final factor is a mixed bag, as indicated above.

The power to terminate is also a factor. The evidence shows that Rogers could not unilaterally terminate Juarez or medical personnel. Rather, it was a decision that was made in a collaborative manner between the partners. (Epps Depo. 15:24-16:10; 17:3-10.)

Taken as a whole, there is no triable issue as to whether Juarez was a special employee of American Airborne as a partner of ROAM/SkyLife.

The relationship with Juarez of both ROAM and Rogers arose from ROAM's general partnership business of providing air ambulance services, and Rogers was an essential part of that partnership. As it is undisputed that Juarez was performing ROAM/SkyLife business at the time of his death, ROAM and Rogers were his special employer. As such, workers' compensation immunity benefits the partners, including Rogers.

Plaintiffs have requested a continuance of the hearing because they have been denied the opportunity to discovery evidence regarding liability of American Airborne. 49 C.F.R. § 831.13(b) prohibits the release of information concerning the accident before the release of the NTSB report. That report still has not been released. According to plaintiffs, the helicopter has not been made available and cannot be inspected until after the report is published. Defendants have relied on this regulation to decline to produce evidence regarding liability. Plaintiffs contend that this motion is premature, since the delay in the NTSB report precludes plaintiffs' investigation into defendants' liability.

However, plaintiffs do not explain how any liability evidence would preclude summary judgment on grounds of workers' compensation exclusivity, which is the sole ground raised for the motions.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH **on** 07/25/17
(Judge's initials) (Date)

<p align="center">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Macey Juarez vs. Rogers Helicopters, Inc.</p>	
<p align="center">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 16CECG00116</p>

I certify that I am not a party to this cause and that a true copy of the:
08/14/2017 Minute Order and copy of 07/27/2017 Tentative Ruling
was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**
On Date: **08/15/2017**

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