

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: October 30, 2008

501969

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In the Matter of the Claim of  
DARIO ENCALADA,  
Claimant,

v

SMJ ENVIRONMENTAL, INC.,  
et al.  
Appellants,  
and

MEMORANDUM AND ORDER

SAFECO INSURANCE COMPANY  
et al.,  
Respondents.

WORKERS' COMPENSATION BOARD,  
Respondent.

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Calendar Date: September 8, 2008

Before: Mercure, J.P., Spain, Carpinello, Malone Jr. and  
Stein, JJ.

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Gabarini & Scher, P.C., New York City (William D. Buckley  
of counsel), for SMJ Environmental, Inc., appellant.

McCusker, Anselmi, Rosen & Carvelli, P.C., New York City  
(John B. McCusker of counsel), for Clarendon National Insurance,  
appellant.

Miranda, Sokoloff, Sambursky, Slone & Verveniotis, L.L.P.,  
Mineola (Ondine Slone of counsel), for Safeco Insurance Company,  
respondent.

Jones, Jones & O'Connell, L.L.P., New York City (Marc A. Grodsky of counsel), for Princeton Insurance Company, respondent.

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Malone Jr., J.

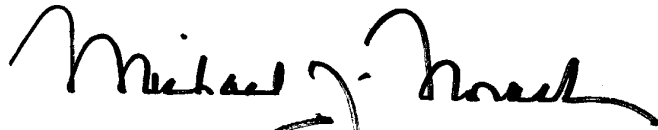
Appeal from a decision of the Workers' Compensation Board, filed October 19, 2006, which, among other things, ruled that an employer-employee relationship existed between claimant and SMJ Environmental, Inc.

The current case involves the identical alleged employers and workers' compensation carriers as in Matter of Jara v SMJ Environmental, Inc. (\_\_\_ AD3d \_\_\_ [decided herewith]). Although this case concerns a different claimant, the issues of the existence of an employment relationship and the scope of workers' compensation coverage raised herein are the same as those presented in Matter of Jara. For the reasons set forth in that case, we affirm the decision of the Workers' Compensation Board, which determined that claimant was employed by SMJ Environmental, Inc. and that Clarendon National Insurance, as the reinsurer of Frontier Insurance Company, is the liable workers' compensation carrier.

Mercure, J.P., Spain, Carpinello and Stein, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack  
Clerk of the Court