

**BOARD OF EMPLOYEE LEASING COMPANIES
GENERAL BUSINESS MEETING MINUTES
THE EMBASSY SUITES HOTEL
1100 SE 1700 STREET
FT LAUDERDALE, FLORIDA 33316**

**OCTOBER 18, 2006
10:00 A.M.**

I. CALL TO ORDER

The meeting was called to order at approximately 10:10 a.m. EST by Ms. Celeste Dockery, Board Chair.

II. ROLL CALL

MEMBERS PRESENT

Celeste D. Dockery, Chair
Carlos Rodriguez, Vice Chair
Frank W. Crum, Jr.
Kelly Lanza
Ryan S. Moore

MEMBER ABSENT

None

STAFF PRESENT

Rick Morrison, Executive Director, DBPR
Krista B. Woodard, Government Analyst II, DBPR
Lois Tepper, Board Counsel, Office of Attorney General
Eric Hurst, Assistant General Counsel, DBPR

OTHERS PRESENT

Michael Miller, Kunkel, Miller & Hament, P.A. and FAPEO
Timothy Tack, Kunkel, Miller & Hamet, P.A.
Jerry Lancaster, Providence P&C
John Wortman, Fortune Financial
Thomas Bean, O2 HR
Cathy Sena
Dion Sena, Confederated Staffing
Chris Rhoden, Risk Transfer
Carla Busick, Risk Transfer
Linda Alcathe, NELCO Companies
Joe Ott, PES
Kathy Lively, Oasis Outsourcing
Debbie Hetzer, Gevity
Bob Beck, Alpha Staff
Todd Cohen, NAPEO
David Fernandez, Co-Advantage
Greg D'Ambrosio, SE PEO
Glen Distefano, SUNZ Insurance
Doug Lilak, Sunz Insurance
Karl Mohr, Accord HR

Judy Malone, Human Resources, Inc.
Terry Mayotte, Oasis Outsourcing
Abram Finkelstein, FAPEO/ Stafflink Outsourcing
M. Seltzer, Modern Business Associates

The meeting was opened with a roll call and a quorum was established.

III. THE PLEDGE OF ALLEGIANCE

Mr. Morrison led all in the Pledge of Allegiance.

IV. REVIEW AND APPROVAL OF THE SEPTEMBER 20, 2006, TELEPHONE CONFERENCE CALL MEETING MINUTES

MOTION: Mr. Rodriguez moved to approve the minutes with noted corrections to page 8 to remove "or named clients".

SECOND: Mr. Crum seconded the motion and it passed unanimously.

V. DISCIPLINARY PROCEEDINGS – Office of the General Counsel

Mr. Hurst stated for the record that Ms. Lanza and Mr. Moore were recused on all cases presented today due to their participation on the probable cause panel.

A. HEARING(S) NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

- | | |
|---------------------------------------|-------------|
| 1. Infiniti Resource Management, Inc. | 2006-016128 |
| 2. Lawrence E. Jones | 2005-032739 |
| 3. Clarissa A. Thompson | 2005-032744 |

(PCP: Lanza and Moore, June 21, 2006)

Mr. Hurst presented the cases explaining they stem from violations involving failure to maintain positive net worth and net working capital for quarters ended December 2004, June 2005, and September 2005.

MOTION: Ms. Dockery moved to adopt the allegations of fact in the administrative complaint as the findings of fact of the board.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

Mr. Timothy Tack was present representing the Respondents stating the deficiency for the September 2005 quarterly report was cured prior to the statement actually becoming due; therefore, he is requesting dismissal of that particular count in the administrative complaint.

MOTION: Ms. Dockery moved to adopt the conclusions of law in the administrative complaint as those of the board.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

MOTION: Mr. Rodriguez moved to impose an administrative fine of \$2000, costs of \$1398.48, with joint and several liability for payment of the fine and costs and dismissal of Count Three of the administrative complaint.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

B. MOTION FOR WAIVER OF RIGHTS AND FINAL ORDER

1. Certified HR Services Company II **2005-026390**
(PCP: Lanza and Moore, June 21, 2006)

Mr. Hurst presented the case explaining it stems from violations involving having an injunction placed against it by the Florida Department of Financial Services for failure to pay insurance premiums, and practicing as an employee leasing company with an unlicensed controlling person. He stated the Respondent's license expired on April 30, 2006.

MOTION: Ms. Dockery moved that the Respondent has waived its right to a hearing.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

MOTION: Ms. Dockery moved to adopt the allegations of fact and conclusions of law contained in the administrative complaint as those of the board.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

MOTION: Mr. Rodriguez moved to impose an administrative fine of \$5000, costs of \$135.89 and revocation of the license without the ability to reapply.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

2. Certified HR Solutions, Co. **2006-016128**
3. Danny Leo Pixler **2006-016139**
(PCP: Lanza and Moore, June 21, 2006)

Mr. Hurst presented the case explaining it stems from violations involving practicing as an employee leasing company with an unlicensed controlling person, practicing as a controlling person without being properly licensed, failure to submit quarterly reports for March 2005, June 2005, September 2005, December 2005, and March 2006, failure to submit the annual financial report for 2005.

MOTION: Ms. Dockery moved that the Respondents have waived their right to a hearing.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

MOTION: Ms. Dockery moved to adopt the allegations of fact and conclusions of law contained in the administrative complaint as those of the board.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

Mr. Hurst advised that the recommended penalty provides for an administrative fine of \$9500, costs of 296.45, with joint and several liability for the payment of fine and costs, and revocation of both licenses without the ability to reapply.

Mr. Rodriguez stated he felt the penalty should be more stringent on the person due to the fact that he is still around versus the penalty on the company which is no longer in business.

After further discussion by the board, the following motion was made:

MOTION: Mr. Crum moved to impose an administrative fine of \$25,000, all inclusive of fines and costs and revocation of both licenses without the ability to reapply.
SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

C. SETTLEMENT STIPULATIONS

1. **National AG Services, Inc.** **2006-016999**
2. **Charles P. Wellborn** **2006-017005**
(PCP: Lanza and Moore, August 16, 2006)

Mr. Hurst presented the cases explaining they stem from violations involving failure to timely submit quarterly reports for March 2005, June 2005, September 2005, and December 2005.

Mr. Hurst stated the settlement stipulation provides for imposition of an administrative fine of \$4500, costs of \$424.55, with joint and several liability for payment of the fine and costs.

MOTION: Ms. Dockery moved to adopt the terms of the settlement stipulation as the final order of the board.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

3. **Prestige Employee Administrators** **2006-019260**
4. **Alan Cooperberg** **2006-019279**
(PCP: Lanza and Moore, August 16, 2006)

Mr. Hurst presented the cases explaining they stem from violations involving failure to timely file quarterly reports for quarters ended June 2005, September 2005, December 2005, and March 2006, and failure to timely file the 2005 annual financial report.

Mr. Hurst stated the settlement stipulation provides for imposition of an administrative fine of \$5750, costs of \$117.85, with joint and several liability for payment of the fine and costs.

MOTION: Ms. Dockery moved to adopt the terms of the settlement stipulation as the final order of the board.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

VI. REVIEW AND CONSIDERATION OF EMPLOYEE LEASING COMPANY AND CONTROLLING PERSON APPLICATIONS

A. PEOPle Essentials, Inc. Patrick Montgomery, Controlling Person Applicant

Ms. Woodard presented the company's application stating that all exhibits were submitted and complete. She further stated that along with the certificate of insurance, the applicant submitted a letter from the insurance agent advising of workers' compensation coverage.

Ms. Woodard presented the controlling person application of Patrick Montgomery stating all exhibits were submitted and the criminal history reports from the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigations (FBI) were returned clear.

MOTION: Ms. Lanza moved to approve both applications.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

- B. Linda B. Alcathe, Controlling Person Applicant**
National Employee Leasing Co. – GL 36
NELCO Benefit Group, Inc. – GM 73
NELCO International, Inc. – GM 74
NELCO Master Corporation, Inc. – GM 75
NELCO Three, Inc. – GM 286
NELCO Six, Inc. – GL 69
NELCO Seven, Inc. – GM 142
NELCO Eight, Inc. – GM 141
NELCO One, Inc. – GM 287
NELCO Two, Inc. – GM 285

Ms. Woodard presented the application stating all exhibits were submitted and complete and the only outstanding items are the criminal history reports from the FDLE and FBI.

Ms. Alcathe was present, sworn in and stated should anything derogatory be revealed on the criminal history reports that she would subject herself to the jurisdiction of the board.

MOTION: Ms. Dockery moved to approve the controlling person application of Ms. Alcathe with the condition that should any derogatory information be revealed on the criminal history reports that Ms. Alcathe would appear before the board.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

- C. Judy Darlene Chavers, Controlling Person Applicant**
Total Leasing Co., Inc. – GL 112
Total LC, Inc. – GM 289

Ms. Woodard presented the application stating that all exhibits were submitted and complete and the criminal history reports from the FDLE and the FBI were returned clear.

MOTION: Mr. Crum moved to approve the application.

SECOND: Ms. Lanza seconded the motion and it passed unanimously.

- D. Philip William Carollo, Controlling Person Applicant**
Co-Advantage Resources, Inc. – GL 82
Co-Advantage Resources IV, Inc. – GM 280
Co-Advantage Payroll Tax Services, inc. – GM 262
Co-Advantage Resources-Florida, Inc. – GM 260
Co-Advantage Resources V, Inc. – GM 246

Ms. Woodard presented the application stating that all exhibits were submitted and complete and the only outstanding items are the criminal history reports from the FDLE and the FBI.

Ms. Woodard reported that the applicant answered yes to question one on the background information and provided an explanation to his answer.

Mr. Timothy Tack represented the applicant stating should anything derogatory be revealed on the criminal history reports that Mr. Carollo would subject himself to the jurisdiction of the board.

Mr. Moore asked if Mr. Carollo was present to answer a few questions about the arrests listed on his application.

Mr. David Hernandez, Director of Regulatory Affairs for Co-Advantage, stated Mr. Carollo was not in attendance.

Ms. Dockery advised that she would prefer for Mr. Carollo to appear before the board to answer the questions.

After further discussion, the following motion was made:

MOTION: Mr. Crum moved to table discussion of Mr. Carollo's application until the November 2006 meeting at which time Mr. Carollo could appear before the board to answer questions posed by the board.

SECOND: Ms. Lanza seconded the motion and it passed unanimously.

**E. Cathy S. Sena, Controlling Person Applicant
Confederated Staffing, Inc. – EL 81**

Ms. Woodard presented the application stating that all exhibits were submitted and complete and the only outstanding items are the criminal history reports from the FDLE and FBI.

Mr. Mike Miller represented the applicant stating should anything derogatory be revealed on the criminal history reports that Ms. Sena would subject herself to the jurisdiction of the board.

MOTION: Mr. Crum moved to approve the controlling person application of Ms. Sena with the condition that should any derogatory information be revealed on the criminal history reports that Ms. Sena would appear before the board.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

VII. REVIEW AND CONSIDERATION OF DE MINIMIS EXEMPTION AND REGISTRATION APPLICATIONS

**A. Employee Resource Administration, L.P.
(Diane Axline, Frank Timmons, Bill Deviney, Sharon McReynolds,
Michael Ribelin, and Thomas Sellars, Partners)**

Ms. Woodard presented the application stating all exhibits were submitted and complete. She further stated that workers' compensation coverage is being provided by the Florida Workers' Compensation Joint Underwriting Association (FWCJUA).

MOTION: Ms. Lanza moved to approve the application.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

**B. Kimstaff HR, Inc.
(Kim Megonigal, President)**

Ms. Woodard presented the application stating all exhibits were submitted and complete. She further stated that workers' compensation coverage is being provided by the Florida Workers' Compensation Joint Underwriting Association (FWCJUA).

MOTION: Ms. Lanza moved to approve the application.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

VIII. REVIEW AND CONSIDERATION OF CHANGE OF OWNERSHIP APPLICATIONS.

- A. Employer's Alliance III, LLC – GL 115**
- B. Employer's Alliance, LLC – GM 224**
- C. Employer's Alliance IV, LLC – GM 302**
- D. Employer's Alliance V, LLC – GM 251**
- E. Employer's Alliance VI, LLC – GM 301**

Ms. Woodard presented the applications stating that Fortune Financials, Inc. would be the new owners for the companies. She further stated that Mr. Thomas Newman, CO 718, would remain as controlling person for the companies.

MOTION: Mr. Moore moved to approve the application.

SECOND: Ms. Lanza seconded the motion and it passed unanimously.

F. Confederated Staffing, Inc. – EL 81

Ms. Woodard presented the application stating that Jimmie Ghourley, CO 177 and Cathy Sena (newly approved for controlling person license), would be the new owners and controlling persons for the company.

MOTION: Mr. Rodriguez moved to approve the application.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

IX. REVIEW AND CONSIDERATION OF CONTROLLING PERSON RELINQUISHMENTS

- A. Yaniv Amar – CO 758**
 - AEM, Inc. – EL 270**
 - ABS 2, Inc. – GM 217**

Ms. Woodard presented the relinquishment stating there were no complaints pending against the licensee. She further stated that controlling persons remain with the company.

MOTION: Mr. Moore moved to approve the relinquishment.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

- B. Lawrence Haber – CO 769**
 - Human Resource Enterprise Corp. – EL 336**

Ms. Woodard presented the relinquishment stating there were no complaints pending against the licensee. She further stated that controlling persons remain with the company.

MOTION: Mr. Moore moved to approve the relinquishment.
SECOND: Mr. Crum seconded the motion and it passed unanimously.

X. REPORTS

A. Office of the Attorney General – Lois Tepper

Ms. Tepper advised the board that there were three (3) rules in play at this time. She stated that Rules 61G7-5.0033 and 61G7-10.002, FAC were progressing towards adoption.

Ms. Tepper stated she provided information, pertaining to Rule 61G7-10.0014(3)(a)(b), FAC, for board discussion.

Ms. Tepper informed that Mr. John Rimes, former board counsel, submitted this particular rule in 2003, and at that time, the letter from JAPC did not object to the underlying statute nor did it object to the language in the rule. They only objected to stylistic changes, such as renumbering, etc.

Ms. Tepper stated when she submitted the new proposed language, JAPC asked her to explain why she thought the underlying statute gave authority for it and based upon information from experts, she responded to the request and that is where the board is today on that rule.

Ms. Tepper stated in 2003 there was no objection and it is exactly the same language, and she felt confident that there should be no objection now, and further conversations with JAPC should resolve that and allow us to have the form that will allow the board to monitor and/or oversee compliance of how workers' compensation coverage is being provided.

At this juncture in the meeting, Ms. Dockery allowed members of the audience to speak briefly on this matter. Listed below are the comments from the audience.

Bob Beck of Alpha Staff, Inc. stated *"that some PEO policies do not provide broad enough coverage as an individual client policy. He stated that some clients can get better deals in the workers' compensation market than a PEO. He stated requiring firms to relinquish stand alone policies would place a PEO in a conflict of interest position of not being able to recommend the best solution to the client. He further stated a few of the effects of banning stand alone policies are gaps in coverage and new SUTA rates."*

Mike Miller of FAPEO, stated *"in 1989 the Legislature passed Section 440.11(2), which states the employer, meaning the client, shall be liable for and shall secure the payment of compensation for all such borrowed employees, as required in Section 440.10, except when such payment has been secured by the health supply services company. He stated originally they were going to only include PEOs, but included the temporary companies also. He further stated the employee leasing statute passed in 1991 states a licensed employee leasing company is the employer of the leased employee and an employee leasing company shall be responsible for providing workers' compensation coverage pursuant to Chapter 440. Mr. Miller concluded by stating the Legislature passed Section 627.192, entitled Workers' Compensation Insurance Employee Leasing Arrangement, which states, the lessor, meaning the PEO, that obtains coverage in the voluntary workers' compensation market, may elect with a voluntary market insurer's knowledge of consent to secure the coverage on the leased employees through a workers' compensation policy issued to a PEO. It is not mandatory, only may"*.

Abram Finkelstein of FAPEO, stated *“the statute is clear, that client based policies are anticipated, and the worst can be said is that the statute is unclear of whether it is permissible or not. However, the industry has relied on the rule and that is the reason the rule was created to recognize that client-based policies do exist. To change it mid-stream would have a tremendous impact on the industry. He stated NAPEO conducted a survey in 2005 identifying that 70% of all the PEOs allowed clients to maintain their own policy. He further stated the industry’s position is that workers’ compensation coverage is a contractual matter and should be determined by the parties not by regulatory fiat.*

Todd Cohen of NAPEO, stated *“NAPEO strongly believes that there should be maximum flexibility for PEO workers’ compensation coverage in the marketplace to include a variety of options, including both master policies and client based policies. Not only do we support this belief, but we believe Florida Statutes and Rules recognizes the important concept for the industry. He further stated NAPEO encourages the board to work with the industry, department and lawmakers on a statutory change to ensure utmost clarity on this issue. He stated in 2007, NAPEO, FAPEO, and the entire industry will pursue a legislative change. He stated NAPEO encourages the board to challenge the JAPC opinion, but however in the interim, NAPEO encourages the board to move forward with the process to certify client based policies in order to avoid severe disruption to the industry in Florida.”*

Debbie Hetzer of Gevity, stated *“the PEO industry has evolved over the years and should no longer be viewed as the provider with workers’ compensation as their primary portfolio focus. She stated some of the reasons to utilize workers’ compensation carve-outs are: long-term relationships with workers’ compensation carriers and not wanting to leave the arrangement, the client falls into an acceptable industry within the PEO business model, but their developed claim history pushes them outside of the acceptable range for the PEO, and the co-employment relationship only extends workers’ compensation coverage to the known exposures of the client.”*

Michael Corley of Progressive Employer Services, stated *“they received several comments from their clients indicating that carve-outs allow them to offer their employees the same coverage through payroll, benefits, risk management, and HR Services outside of the workers’ compensation arrangement.”*

Midge Seltzer of Modern Business Associates stated *“the issues are whether the underlying statute actually allows client based policies and how to monitor these policies. She stated if the board is not agreeing there is ambiguity. She stated if the board does not allow Ms. Tepper to go forward to address this issue with JAPC; what will the industry be left with... more ambiguity. She further stated she is urging the board to allow Ms. Tepper to draft the letter to JAPC and to pursue it that way, and in the interim, FAPEO and NAPEO will try to open up the statute and get clarity.”*

John Wortman of Fortune Financial stated *“the goal today is to make sure that every PEO and employee is covered for workers’ compensation. He stated there are four methods, a master policy, a master policy with carve-outs, a master policy wherein some clients have their own coverage that they handle, and individual policies. He further stated from the insurance standpoint these methods are fine because different PEOs have different needs. He stated the option should be available, and the insurance industry should manage those options to make sure that everyone is properly covered.”*

Doug Lilak of SUNZ Insurance stated *“there are different strokes for different folks. There is no one idea. He stated being a carrier; he is willing to underwrite individual account. He stated there are a number of ways to provide proof of coverage if that is the concern of the board.”*

Terry Mayotte of Oasis Outsourcing stated *“he supports client based policies and they are manageable. He further stated there are some risk factored clients that are not wanted on a master policy and there are some clients that are quite large that may want their own policy.”*

Jerry Lancaster of Providence Property and Casualty Insurance stated *“his company favors client based policies and the situation needs clarity.”*

Carl Moore of Accord Human Resources stated *“his company supports client based policies as an option and feels that it is the responsibility of the PEO to assure that employees are covered by workers’ compensation. He further stated this is a viable option that should remain in the law.”*

Mr. Ryan Moore thanked the industry for their comments and stated there are strong views that client based policies are viable vehicles for the PEO industry. He stated the question remains, how can we continue to do something that might have a difference of opinion from a higher regulatory office? He asked where the jurisdiction lies, with this board or with a higher authority.

Ms. Tepper stated the only way to answer his question is to proceed with the rule as it is now and get a resolution to it. She stated the board should respond to JAPC and get a decision.

Mr. Rodriguez asked what the response to JAPC would include. He stated the board needs to resolve whether client based policies are allowed. He stated he disagrees with the thought that this was originally anticipated. He stated he is concerned with what was the original intent of the law.

Ms. Dockery asked if the board could direct JAPC to get an interpretation of the workers’ compensation law.

Ms. Tepper stated she cannot direct JAPC to do anything, but she would engage in a dialogue with Mr. Harold of JAPC.

B. Executive Director – Richard Morrison

Mr. Morrison mentioned the inclusion of the Monthly Enforcement Report in the agenda materials.

Mr. Morrison stated he has been in discussion with the Budget Office about the possible surplus in the cash balance and was provided with a 5-year projection that allows for a fee waiver of renewals for controlling persons, employee leasing companies, and employee leasing company groups in 2008. He stated this waiver would bring about a reduction of \$1.2 million dollars.

MOTION: Ms. Dockery moved to allow a fee waiver of renewals fees for 2008 for controlling person, employee leasing companies, and employee leasing company groups.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

C. Office of the General Counsel – Eric Hurst

Mr. Hurst reported that the prosecuting attorney's report was included in the agenda materials.

D. Chairperson – Celeste Dockery

No Report.

XI. BOARD MEMBER TRAINING

Mr. Morrison, along with Lois Tepper, and Eric Hurst provided an extensive and very informative PowerPoint Presentation on being a board member in the state of Florida.

XII. NEW BUSINESS

None

XIII. OLD BUSINESS

None

XIV. ADJOURNMENT

MOTION: Ms. Dockery moved to adjourn.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

The meeting adjourned at 1:10 p.m.