

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2021-001174

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SC Court of Appeals

Jeffrey McCoy, ... Appellant,

v.

CroMed, LLC, and Guarantee Ins. Co. Guaranty Association Carrier, ... Respondents.

RECORD ON APPEAL

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VOLUME I

INDEX

I.	ORDERS	1
	Decision and Order dated April 13, 2021	1
	Full Commission Decision and Order dated September 20, 2021	23
II.	PLEADINGS	43
	Form 50 dated April 13, 2018	43
	Form 50 dated February 4, 2020	46
	Form 51 dated March 5, 2020	49
	Form 51 (Amended) dated June 11, 2020	52
	Form 30 dated April 27, 2021	55
	Defendant/Appellant's brief to the Full Commission dated June 21, 2021	81
	Claimant/Respondent's brief to the Full Commission dated July 6, 2021	95
	Notice of Appeal dated October 19, 2021	114
III.	TRANSCRIPTS	138
	Deposition Transcript of Jeffrey McCoy dated May 31, 2018	138
	Direct Examination by Mr. Cauthen	140
	Direct Examination by Mr. Samuels	241
	Deposition Transcript of Robert Cronan dated May 31, 2018	244
	Direct Examination by Mr. Samuels	247
	Direct Examination by Mr. Cauthen	303
	Direct Re-Examination by Mr. Samuels	306

Deposition Transcript of Malcolm Young dated August 2, 2018.	311
Direct Examination by Mr. Samuels.	314
Direct Examination by Mr. Cauthen.	358
Direct Re-Examination by Mr. Samuels.	360
Deposition Transcript of Ivan E. LaMotta, MD dated September 11, 2018.	366
Direct Examination by Mr. Cauthen.	369
Direct Examination by Mr. Samuels.	399
Direct Re-Examination by Mr. Cauthen	407
Direct Re-Examination by Mr. Samuels.	410
Direct Re-Examination by Mr. Cauthen	410
Direct Re-Examination by Mr. Samuels.	412
Direct Re-Examination by Mr. Cauthen	413
Deposition Transcript of Slif Ulrich, MD dated December 4, 2018.	417
Direct Examination by Mr. Cauthen.	419
Direct Examination by Mr. Reynolds	439
Direct Re-Examination by Mr. Cauthen	445
Direct Re-Examination by Mr. Reynolds	449
Deposition Transcript of Steven C. Poletti, MD dated August 14, 2019	453
Direct Examination by Mr. Cauthen.	456
Direct Examination by Mr. Samuels.	476
Direct Re-Examination by Mr. Cauthen	490
Direct Re-Examination by Mr. Samuels.	497

Transcript of Workers' Compensation Commission Hearing dated July 16, 2020	501
Mr. McCoy for Claimant	547
Direct Examination by Mr. Samuels, 47:1	547
Cross- Examination by Mr. Cauthen, 68:21	568
Mr. Young for Defense	624
Direct Examination by Mr. Cauthen, 124:7	624
Cross-Examination by Mr. Samuels, 134:18	634
Redirect Examination by Mr. Cauthen, 143:17	643
Mr. Cronan for Defense	645
Direct Examination by Mr. Cauthen, 145:17	645
Cross-Examination by Mr. Samuels, 187:2	687
IV. EXHIBITS	704
Claimant's Form 58 dated April 14, 2020	704
Claimant's APA Submissions dated April 14, 2020	705
1. Providence Hospital Northeast	709
2. Midlands Orthopaedics & Neurosurgery	738
3. Southeastern Spine Institute	761
Defendant's Form 58 dated June 15, 2020	765
Defendant's APA Submissions dated June 15, 2020	768
1. Southeastern Spine Institute (1/29/18)	771
2. Report and CV of Douglas M. Bull, MD (3/7/19)	778

Defendants' Exhibits dated June 15, 2020	782
3. Summary Prepared by Robert Cronan	782
4. Text Messages between Claimant and Robert Cronan	784
5. GPS and other Business records of CroMed, LLC	788
6. Payroll Records	799
Defendant's Form 58 (Amended) dated July 15, 2020	806
12. Surveillance Report.	811
V. CERTIFICATE OF COUNSEL	818

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

Cromed, LLC,

Employer,

and

**Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assn.,**

Carrier,

Defendants,

DECISION AND ORDER

HEARING:

Held in Columbia, South Carolina on July 16, 2020.

APPEARANCES:

Claimant represented by Stephen B. Samuels, Esquire, of Samuels Law Firm, LLC. Employer represented by Mark D. Cauthen, Esquire, of McKay, Cauthen, Settana & Stublely.

PURPOSE OF THE HEARING:

To determine issues raised on the Forms 50 and 51.

DECISION AND ORDER:

by Avery B. Wilkerson, Jr., Commissioner.

APA SUBMISSIONS

Claimant's Submissions:

APA	MEDICAL PROVIDER	DATES	PAGES
1.	Providence Hospital Northeast	09/18/17 - 10/20/17	01 - 28
2.	Midlands Orthopedics & Neurosurgery	10/12/17 - 02/20/18	29 - 51
3.	Southeastern Spine Institute	01/29/18	52 - 53
TAB	EXHIBIT	DATES	PAGES
A.	Drug Test Results	10/03/17	54 - 55
B.	Deposition of Jeffrey McCoy		
C.	Deposition of Robert Cronan		
D.	Deposition of Malcolm Young		
E.	Deposition of Ivan E. Lamotta, MD		
F.	Deposition of Slif Ulrich, MD		
G.	Deposition of Steven C. Poletti, MD		

Defendants Submissions:

TAB	MEDICAL PROVIDER	DATES	PAGES
1.	Southeastern Spine Institute	1/29/18	56-61
2.	Report of CV of Douglas M. Bull, MD	3/7/19	62-65

TAB	EXHIBIT	DATES	PAGES
3.	[Excluded]		66-68
4.	Text Messages between Claimant and Robert Cronan		69-72
5.	GPS and other business records of Cromed, LLC		73-83
6.	Payroll Records		84-90
7.	Deposition Transcript of Claimant		
8.	Deposition Transcript of Robert Cronan		
9.	Deposition Transcript of Malcolm Young		
10.	Deposition of Dr. Slif Ulrich		
11.	Surveillance DVD of January 14, 2019		

STIPULATIONS

The parties stipulate to the following matters:

1. Venue is proper in Richland County.
2. The parties had notice of the hearing scheduled for July 16, 2020. All parties were represented by counsel;
3. The Commission's file, with the exception of self-serving declarations and unstipulated medical reports, and the Administrative Procedures Act submissions are a part of

the record.

STATEMENT OF THE CASE

This matter comes before the Commission on a Form 50 filed by Claimant, Jeffrey McCoy. This is a denied claim. McCoy contends he injured his back and left leg on October 9, 2017. The issues to be decided are:

1. Whether McCoy suffered a compensable injury to his back (with left leg radiculopathy) on October 9, 2017.
2. Medical treatment through Dr. LaMotta.
3. Average Weekly Wage and Compensation Rate (Claimant contends AWW of \$382.50 and CR of \$255.01; Defendant contends AWW of \$351.33 and CR of \$234.33).
4. Temporary Total Disability Compensation from October 10, 2017 and continuing on a running award.

Claimant alleges he injured his back with radiculopathy into his left leg as a result of lifting a wheelchair into the trunk of a car on October 9, 2017. Claimant acknowledges he had been having back pain for several weeks prior, although his current pain and radiculopathy is much worse. In particular, Claimant relies on the medical opinions of Drs. Ulrich, LaMotta and Poletti for the proposition that the work accident caused his back injury and aggravated a preexisting condition. Claimant further contends the injury is objectively demonstrated by comparison between the pre-accident CT scan and post-accident MRI scan. Claimant seeks TTD from October 10, 2017 on a running award. He seeks payment of past medical expenses and future treatment at the direction of Dr. LaMotta.

Defendants deny the claim. Defendants contend Claimant already suffered from back pain and had already been referred to Dr. LaMotta prior to his alleged accident. Defendants contend their expert radiologist opined that there is no difference in the pre and post-accident imaging studies. Defendants further contend Claimant quit his job on the date of the alleged

accident.

EVIDENCE OF THE CASE

A. Medical Evidence.

1. Providence Hospital:

On Monday, September 18, 2017, McCoy went to Providence Hospital NE Emergency Department, reporting symptoms of back and abdominal pain with radiation into his left groin. The patient believed he had a kidney stone. The ER Physician diagnosed Mr. McCoy with acute left lumbar spasm and prescribed Valium and Motrin. He was written out of work through September 21st. McCoy provided the work note to his employer, who gave him a week off to rest and to come back the next Monday, September 25th. [APA pages 4-11].

McCoy returned to the Providence Emergency Department the next day on September 26th, for "continued lower back pain with radiation into abdomen." There was no "weakness or numbness to extremities." The ER Physician ordered a CT scan of the Abdomen/Pelvis and Lumbar Spine. The Lumbar CT revealed diffuse bulging of the disc at L4-5 with mild central canal biforaminal stenosis, and mild bulging of the L5-S1. McCoy was released to return to work on September 28th and referred to Midlands Orthopaedics. [APA pages 15-23].

2. Midlands Orthopaedics and Neurosurgery:

McCoy was seen at Midlands Orthopaedics on October 12, 2017. On the intake form, he wrote that his pain started on September 14th and worsened on October 9th. [APA page 34]. Dr. Ulrich prescribed an MRI of the lumbar spine, physical therapy and Mobic. Dr. Ulrich opined "This was a work related injury." [APA page 37].

The MRI was performed on October 20th. The MRI showed a broad-based disc protrusion at L4-5, favoring the left side, with moderate facet arthropathy; moderate foraminal

stenosis at the left L4-5 and mild on the right; annular tear along with disc protrusion at L5-S1 with abutment of the right S1 transversing nerve root.

Dr. Ivan LaMotta at Midlands referred McCoy to a pain management specialist for a selective nerve root block at left L4. He ordered additional physical therapy and prescribed ibuprofen 800 mg.

On February 20, 2018, Dr. LaMotta opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50 and 51].

Defendants deposed Dr. LaMotta on September 11, 2018 and Dr. Ulrich on December 4, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

Dr. Ulrich also stood by his opinion that this was a work-related injury. However, Dr. Ulrich also noted as he is not a spine specialist, he defers to Dr. LaMotta's opinion.

3. Southeastern Spine Institute:

McCoy then saw Dr. Steven Poletti for an evaluation on January 29, 2018. Dr. Poletti agreed with Dr. LaMotta. He wrote: "This lifting injury was potentially a straw that broke the camel's back, but nonetheless in my opinion it is most likely the lifting incident which caused the disc to herniate and ultimately has led to the recommendations by both myself and Dr. LaMotta." Dr. Poletti confirmed in his deposition that to a reasonable degree of medical certainty, Mr. McCoy's injury occurred while lifting the wheelchair.

4. Douglas M. Bull, MD:

Dr. Bull, a radiologist, reviewed the CT scan and MRI scans. He did not examine the patient. Dr. Bull opined there is no measurable difference between the two scans.

B. Testimony.

Jeffrey McCoy:

Claimant Jeffrey McCoy testified on his own behalf. McCoy is 52, went through the 11th grade and has a GED. His work history primarily involves medical transport prior to joining Cromed.

McCoy had been with Cromed about 4 months before his accident. The job involved transporting patients to medical visits in cars or vans. The job does not require lifting but he does help the elder people get in and out. Only one patient has a wheelchair; others have walkers. He would lift the walkers and wheelchairs into the vehicle.

McCoy testified that he developed groin pain on September 14, 2017. He went to the hospital on September 17, 2017 thinking he had a kidney stone. That was when they said it was in his back. The pain came on gradually. He did not recall an accident or lifting anything which is "the reason I thought it was a kidney stone."

He notified his employer, Robert Cronan, by text message. He was diagnosed with muscle spasm, given some medication, given a couple of days off and released. He told Cronan about this. Cronan gave him a week off.

During this time McCoy was in a lot of pain and vomiting.

On September 26, 2017, McCoy went back to the emergency room. He was given a CT scan and referred to Midlands' Orthopaedics.

He returned to Cromed and worked from October 2, 2017 through October 9, 2017.

Malcolm put him a vehicle with heated seats which kept some of the pain away; he "was doing pretty good."

McCoy testified he was given a tablet with his daily route. The schedule included a 10-minute window for the pickup.

His first patient was a man named Jonathon. The second was Ms. Porter. She used a wheelchair. He helped her into the car and then put the wheelchair in the trunk. As he was picking up the wheelchair, "I felt that sharp pain shot down, like, the inner -- of my inner thigh down towards my knee and it just kind of made me buckle." [Tr. P. 55, lines 4-8]. This pain was a lot different; a lot sharper pain the dull pain he was normally feeling. Previously, the pain was in his groin and abdomen. This pain shot all the way down his leg.

McCoy dropped the man off and took Ms. Porter to her drop off. He testified: "I had to go up and have someone come down and assist me because I couldn't push her up the ramp." [Tr. P. 56, lines 13-16].

At some point that morning between picking up the first and second patients, Robert Cronan called McCoy. Cronan was calling because McCoy had picked up the two clients in a different order from how Cronan had wanted. McCoy testified conversations with Cronan are not polite; Cronan can be aggressive which is why McCoy preferred talking to Malcolm.

A few minutes after that conversation, McCoy called Malcolm. He told Malcolm "that when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't -- I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. McCoy explained he was in a lot of pain and did not know if he could continue to do it.

At the end of the day when he returned the car, McCoy called Malcolm and asked for "information for the workman's comp doctor and his response to me was 'Jeff is this really the way you want to go' and I said, I just want to talk to your doctor and that was that." [Tr. Pages 58-59]. McCoy thought he still had a job and did not realize he did not have a job until Robert Cronan called or texted him wanting his shirts and workbook back.

That evening at 6:24 p.m., Cronan sent a text stating "your claim has been filed; an adjuster will contact you within 24 to 48 hours." [APA page 70; Tr. Page 59].

McCoy already had an appointment scheduled with Dr. Ulrich at Midlands' Orthopaedics on October 12, 2017. McCoy told Dr. Ulrich that his pain started on September 14th and worsened on October 9, 2017. [APA page 34]. Dr. Ulrich ordered an MRI. After the MRI, McCoy saw Dr. LaMotta, a spine specialist.

McCoy was also seen by Dr. Poletti for an independent medical evaluation.

Since the accident, McCoy has not been able to get any additional medical treatment. He has done some handyman jobs to keep food on the table. He has difficulty doing this work, but he knows his limits: "when I get tired or I start to hurt I know when to sit down." [Tr. Page 63]. He estimated he had earned maybe \$1-2,000 in the two and a half years since his injury.

He felt his condition had gotten a little better although not a 100%. He felt he would be able to drive a vehicle he was not able to constantly lift more than 15 pounds, although he could sometimes. He liked Dr. LaMotta and wanted him to be his doctor.

On cross examination, McCoy testified he worked for Cromed for 3-4 months before his injury. He testified the patient with the wheelchair weighed about 300 pounds so could not walk too well. She was able to stand. He did not have to lift her; only help her up.

He confirmed he felt the burning sensation in his inner thigh down his left side when he

lifted the wheelchair. After loading the wheelchair, he had the client sign in on the tablet. He testified the whole process took maybe three to four minutes.

He testified Cronan was upset because he picked up Jonathan before Dolores. McCoy testified that was not the order he was assigned, but as he had picked up these two people before, he knows their location and knows he would have been late picking up Jonathan. He testified only "Robert got heated; I – I don't argue – you don't argue with your boss." [Tr. Page 79]. McCoy testified he did not get irritated with Cronan over the phone call, but that he was in pain and irritated after picking up the wheelchair. He acknowledged he was sore before the trip but had been taking Motrin and was doing good.

When he called Malcolm, he explained to Malcolm that he was in pain and did not understand why Robert would send him to pick up a wheelchair. He also acknowledged that complaining about the little reprimand from Robert was part of the conversation.

McCoy denied that he told Malcom this was probably going to be his last day. He said this "may or may not" be my last day. He said this because he was upset with the conversation with Robert and did not know if the pain was going to get better.

McCoy confirmed he had no written work restrictions when he picked up the wheelchair.

McCoy testified he did not ask about workers' comp insurance; he asked about seeing the workers' comp doctor.

Malcolm Young.

Malcolm Young is the co-owner of CroMed. He has been there for 11 years. CroMed provides non-emergency transportation for Medicaid patients.

Jeff McCoy worked for Cromed for about 3 months. He recalled McCoy taking some time off in mid-September for kidney stones.

Young received a phone call from McCoy on the morning of October 9, 2017. He testified McCoy had just had a discussion with Robert.

He wasn't very happy with the way the discussion went; I believe he mentioned he didn't like the way that -- that Robert was talking to him. I remember him mentioning that, you know, that his is probably going to be my last day here because of this. I didn't want to lose an employee; so, I said, you know, are you sure you want to do this? If that's -- that's the way you want to go then, you know, go ahead and bring it on in and he said that he wanted to work the rest of the day, that he needed the money. So, I said that was fine.

[R. Page 127, line 21-page 128, line 7].

Young denied that McCoy said anything about an injury lifting a wheelchair or about workers' compensation.

Young received another call later that afternoon. He testified McCoy said he need workers' compensation information. Young assumed from the first conversation that McCoy was quitting.

On cross examination, Young denied that Mr. Cronan is difficult to talk to for a lot of employees. Although he first denied it, he admitted that in his deposition he had testified the consensus was that he was easier to talk to than Mr. Cronan.

Young admitted that Mr. Cronan was upset with McCoy and reprimanded him for not doing it exactly in the order that Mr. Cronan had set up in the tablet.

Young admitted that contrary to his testimony on direct, McCoy was also upset because he was in pain. Young also admitted he was aware that this particular patient required wheelchair. He confirmed that even though he thought McCoy was quitting, he wanted to continue working the rest of the day because he needed the money.

Robert Cronan.

Cronan testified he is the co-owner and founder of Cromed. McCoy was hired on June

26, 2017.

He recalled calling McCoy on September 17, 2017 about the schedule. McCoy told him he was glad he called because he was on the way to the emergency room. Cronan testified he hoped it was just some wicked gas and asked McCoy to keep him posted. He gave McCoy a week off.

McCoy returned to work on September 25th. Another employee called asking him to check on Jeff. Jeff explained he was in some pretty good pain, so he sent him home for that week.

McCoy returned to work on Monday, October 2nd. McCoy did not provide him with any lifting restrictions.

Cromed allows its employees to physically assist patients, does not allow its employees to lift patients.

Cronan testified he had a conversation with McCoy just before 8:00 a.m. McCoy had picked up Jonathan – which was supposed to be his second stop. The conversation covered Cronan stating McCoy had picked up his patients in the wrong order and McCoy's explanation for why he had done so. Cronan testified "maybe I was angrier than normal . . .".

Cronan went through the GPS records showing each of McCoy's stops and how long he was at each. He was at Jonathan's location for 1-2 minutes; Dolores's location for 4-5 minutes.

Cronan doubted that McCoy could have placed the wheelchair in the trunk and injured his back in 4-5 minutes.

Cronan testified the first time McCoy was asserting an injury on the job on October 9, 2017 was in December sometime when he received a Form 50 filing the claim.

On cross-examination, Cronan acknowledged any information he had as to whether there

was an accident on October 9, 2017 would have come directly from Malcolm. He agreed lifting a wheelchair is "not required but it is performed." He admitted the conversation he had with McCoy was before he picked up Dolores and her wheelchair.

Cronan testified that Cromed had no light duty available at the time of McCoy's injury.

FINDINGS OF FACT

Based on the greater weight of the evidence presented at the hearing, I make the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.
2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.
3. Claimant alleges he injured his low back with sciatica and radiculopathy into his left leg on October 9, 2017.
4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.
5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.
6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.
7. McCoy developed back and abdominal pain with radiation into his left groin on or

about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. I note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, I find that 4-5 minutes is

ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't - I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job - which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's

statements in the first phone call.

16. McCoy placed a second phone call to Young on October 9, 2017. In that call, McCoy requested an appointment with the workers' compensation doctor. Young interpreted the call as a request to file a workers' compensation claim. Young conveyed this information to Cronan. Cronan reported a claim to the Carrier based on a September 17, 2017 date of accident because Young did not inform Cronan of the October 9, 2017 injury by accident. Cronan tested McCoy advising that his claim had been filed.

17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me to be the same between the two exams,"

22. I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is

confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although – Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is – there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is \$367.82, yielding a compensation rate of \$245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc.,

518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician. Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta

and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

AWARD

IT IS ORDERED that Defendants shall pay for past causally-related medical treatment and shall continue to provide to Claimant causally related medical treatment for so long as such treatment will tend to lessen Claimant's disability;

IT IS FURTHER ORDERED that Dr. Ivan LaMotta and his practice are designated the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the authorized treating physician related to Claimant's work-related injuries, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until the authorized treating physicians opine Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability. Treatment shall include such modalities considered necessary by the

authorized treating physician;

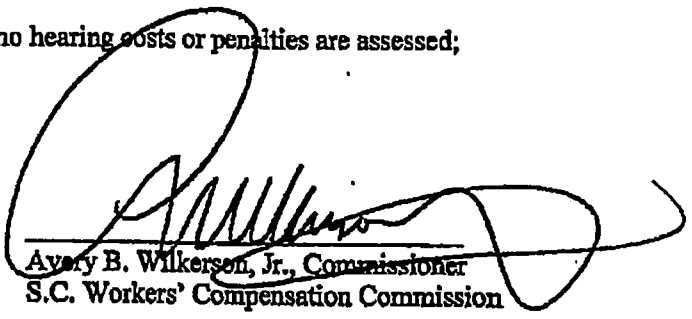
IT IS FURTHER ORDERED that Defendants shall pay temporary total disability compensation for 12 weeks pursuant to this Order;

IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

Dated: 4-12-2021


Avery B. Wilkerson, Jr., Commissioner
S.C. Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on April 13, 2021

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

Cromed, LLC,

Employer,

and

**Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assoc.,**

Carrier,

Defendants,

**FULL COMMISSION
DECISION AND ORDER**

HEARING:

Held by video conference in Columbia, South Carolina on
July 16, 2020.

APPEARANCES:

Claimant represented by Stephen B. Samuels, Esquire, of
Samuels Law Firm, LLC. Employer represented by Mark D.
Cauthen, Esquire, of Cauthen Law Group, LLC.

PURPOSE OF THE HEARING:

To determine issues raised on the Form 30.

DECISION AND ORDER:

by Susan S. Barden, Gene McCaskill, and Aisha Taylor,
Commissioners.

ISSUES ON APPEAL

Claimant's Appeal:

1. Whether the Single Commissioner erred as a matter of fact and law in ruling that McCoy was limited to 12 weeks of TTD covering the "period from October 10, 2017 through January 1, 2018," when Dr. Poletti put him on "out of work status" and Dr. LaMotta "put him on an indefinite 15-pound lifting restriction thus entitling him to a running award of TTD until he reaches MMI and/or returns to work at the same or similar employment?"

Defendants' Appeal:

1. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.
2. Whether the hearing Commissioner erred in finding a documented worsening of disc deformities after Claimants alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, Board Certified radiologist, relating to interpretation of various imaging studies, the error being such finding is against the most competent, probative medical evidence and/or clearly erroneous as a matter of law?
3. Whether the hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of an in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?
4. Whether the hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding that Claimant's testimony was "more complete and credible" than Defendant's supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives?
5. Whether the hearing Commissioner erred in finding the employer Cromed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date

of injury, Claimant never sought or attempted to return to work with Cromed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous?

6. Whether the hearing Commissioner erred in designating Dr. LaMotta as treating physician, (in the event Claimant's injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to S.C. Code Ann. § 42-15-60?

STATEMENT OF THE CASE

This is an appeal from a Form 50 hearing in a denied case involving a back injury caused by lifting a wheelchair into the trunk of a work vehicle on October 9, 2017. The Single Commissioner found the claim compensable. He ordered additional medical treatment through an orthopaedic surgeon, Dr. Ivan LaMotta, along with 12 weeks of TTD from the date of the accident.

Based on a review of the record and arguments of the Parties, the Decision and Order of the Single Commissioner is **AFFIRMED**.

SINGLE COMMISSIONER FINDINGS OF FACT

The Single Commissioner made the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.

2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.

3. Claimant alleges he injured his low back with sciatica and radiculopathy into his left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

7. McCoy developed back and abdominal pain with radiation into his left groin on or about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. I note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, I find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't -- I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but

did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job – which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's statements in the first phone call.

16. McCoy placed a second phone call to Young on October 9, 2017. In that call, McCoy requested an appointment with the workers' compensation doctor. Young interpreted the call as a request to file a workers' compensation claim. Young conveyed this information to Cronan. Cronan reported a claim to the Carrier based on a September 17, 2017 date of accident because Young did not inform Cronan of the October 9, 2017 injury by accident. Cronan tested McCoy advising that his claim had been filed.

17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands

Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me to be the same between the two exams."

22. I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although - Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is - there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a

dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is \$367.82, yielding a compensation rate of \$245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable

degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Brucoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician. Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

APPELLATE PANEL FINDINGS OF FACT

Based on a preponderance of the evidence, the Appellate Panel makes the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.

2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.

3. Claimant alleges he injured his low back with sciatica and radiculopathy into his

left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

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he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. We note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, We find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

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15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't - I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the

end of the day.” [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy’s statement as notice that he was quitting his job – which Young conveyed to Cronan.

We specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. We further find McCoy’s statement that “this may or may not be my last day” to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy’s testimony is more complete and credible than Young’s. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy’s statements in the first phone call.

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17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy’s restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined “This was a work related injury.” [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

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21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me

to be the same between the two exams.”

22. We find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified “in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although – Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is – there is a clear difference there.” [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is \$367.82, yielding a compensation rate of \$245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He

aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Brucoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician.

Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

AWARD

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner is **AFFIRMED**;

IT IS FURTHER ORDERED that Defendants shall pay for past causally-related medical treatment and shall continue to provide to Claimant causally related medical treatment for so long as such treatment will tend to lessen Claimant's disability;

IT IS FURTHER ORDERED that Dr. Ivan LaMotta and his practice are designated the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the

authorized treating physician related to Claimant's work-related injuries, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until the authorized treating physicians opine Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability. Treatment shall include such modalities considered necessary by the authorized treating physician;

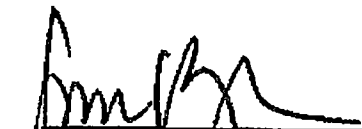
IT IS FURTHER ORDERED that Defendants shall pay temporary total disability compensation for 12 weeks pursuant to this Order;

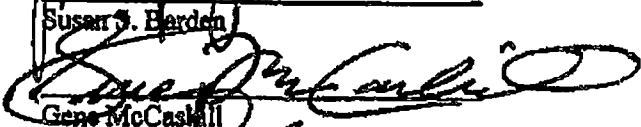
IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

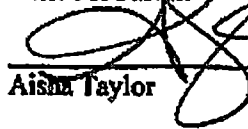
IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

AND IT IS SO ORDERED.



Susan S. Barden


Gene McCaskill


Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on September 20, 2021



STEPHEN B. SAMUELS
ATTORNEYS AT LAW

April 13, 2018

Libby C. Satterfield, Claims Analyst
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: **Jeffrey W. McCoy v. Cromed, LLC and Guarantee Insurance Company (in liquidation)/S.C. Property & Casualty Ins. Guaranty Assoc.**
D/A: 10/09/2017
WCC No.: 1717573

Dear Libby:

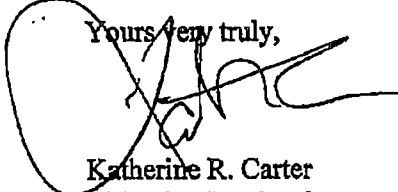
We are in receipt of and thank you for your letter dated April 9, 2018 in the above matter. Please note that a separate claim already exists with an injury date of September 17, 2017, for a different incident with the same employer. However, our representation of Mr. McCoy concerns his injury of October 9, 2017.

We enclose for filing an **Employee's Request for Hearing, WCC Form #50** which we hereby submit on behalf of Mr. Jeffrey McCoy regarding his work injury of October 9, 2017. We have also enclosed a check payable to SCWCC in the amount of \$25.00 as payment of the filing fee.

By copy of this letter to the Employer and the Carrier, we are serving them with a copy of the **Employee's Request for Hearing, WCC Form #50** as indicated by the attached Certificate of Service.

Please let us know if any additional information is needed from our office to schedule this claim for hearing. Thank you for your time and assistance. With kindest regards, I am

Yours very truly,


Katherine R. Carter
Litigation Paralegal

/krc
Enclosure(s) as stated

cc: Cromed, LLC
Guarantee Insurance Co. (in liquidation)/S.C. Property & Casualty Ins. Guaranty Assoc.

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South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: 1717573
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jeffrey W. McCoy SSN: _____ Employer's Name: Cromed, LLC
Address: _____ Address: 3 Waterside Ct.
City: Columbia State: SC Zip: 29229 City: Irmo State: SC Zip: 29
Home Phone: () - Work Phone: () - Insurance Carrier: Guarantee Ins. Co./S.C. Property & Casualty Ins. Guaranty Assoc.
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm, LLC Preparer's Phone #: (803) 779-4000

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 10/09/2017

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to (L) leg, back (Part(s) of Body Injured) on 10/09/2017 (Month/Day/Year) in Richland county, state of SC.

2. Body part(s) affected are: (L) leg, back.

3. Briefly describe how the accident occurred. Claimant was loading patient's wheelchair into truck of vehicle.

4. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

5. The relationship of employer and employee existed at the time of injury.

6. At the time of the injury the claimant was performing services arising out of and in the course of employment.

7. Notice of the accidental injury was given to the Employer on or about 10/09/2017 (Month/Day/Year) in the following manner:

By Telephone to Supervisor/Company Owner (Robert Cronan).

8. Due to injury, the claimant is in need of (check one):

☒ (a) Medical examination and treatment for: (L) leg, back

☐ (b) Additional medical examination and treatment for: _____

9. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: Oct 9, 2017 (DOI) and continuing

10. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

11a. ☒ A determination of permanent disability is premature at this time.

12. Due to the injury, the claimant has a serious bodily disfigurement consisting of:

13a. At the time of the injury, the claimant was paid weekly wages of Form 20 needed, and demands accounting of days worked and wages earned as provided by law.

13b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:

14. Further grounds or unusual aspects of claim:

Claimant reserves the right to amend Employee's Request for Hearing (WCC Form #50) as additional information becomes available.

15a. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Providence Hospital NE, 120 Gateway Corp. Blvd, Columbia, SC; Midlands Orthopaedics & Neurosurgery, 1910 Blanding St., Columbia, SC; The Southeastern Spine Institute, 1106 Chuck Dawley Blvd., Ste E, Mt. Pleasant, SC;

15b. To the best of your knowledge, did you have any prior permanent disability? No. If yes, describe: _____

16. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

17a. I am filing a claim. I am not requesting a hearing at this time.

17b. Estimated time needed for hearing: 45 minutes

17c. I am requesting a hearing. A \$25 fee is required.

☐ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See Attached Certificate of Service on the 13th day of April 2018 by ☒ first class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for Claimant: Stephen@samuelslawfirm.net Date: April 13, 2018
Title: _____ Email: _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

450

Employee's Notice of Claim and/or
Request for Hearing

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

CERTIFICATE OF SERVICE

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assoc.,

Carrier,

Defendants,

This is to certify that I, Katherine Carter, paralegal for the Samuels Law Firm, LLC, have caused the following described document, to be served on the parties listed below, by placing a copy of same in the United States mail, with sufficient postage affixed thereto, and return address clearly marked, on the date indicated below:

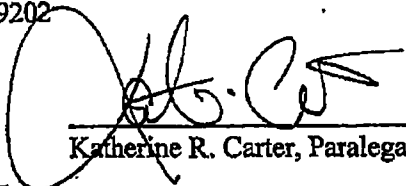
Document served: **Employee's Request for Hearing, WCC Form #50**

Person(s) served: S. C. Workers' Comp. Commission
Post Office Box 1715
Columbia, SC 29202-1715

Cromed, LLC
3 Waterside Ct.
Irmo, SC 29063

Guarantee Insurance Co.
SC Property & Casualty Insurance Guaranty Association
P.O. Box 407
Columbia, SC 29202

April 13, 2018


Katherine R. Carter, Paralegal



STEPHEN B. SAMUELS
ATTORNEYS AT LAW

February 4, 2020

Amy Bracy, Judicial Director
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Jeffrey W. McCoy v. Cromed, LLC
WCC File Number: 1717573
Claim Number: G10073/151416WC2017

Dear Ms. Bracy:

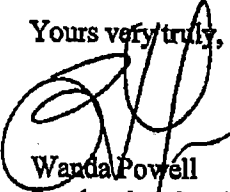
Enclosed please find an original **Employee's Request for Hearing, WCC Form #50** which we hereby submit for filing on behalf of the Claimant, Mr. Jeffrey W. McCoy. We have also enclosed our law firm's check made payable to SCWCC in the amount of \$50.00 as payment of the filing fee.

By copy of this letter and enclosures to Mark D. Cauthen, Esquire, we are hereby serving the Attorney of record with a copy of the **Employee's Request for Hearing, WCC Form #50** pursuant to Reg. 67-211.

Please let us know if any additional information is needed from our office to schedule this claim for hearing. Thank you for your assistance in this matter.

With kindest regards, I am

Yours very truly,


Wanda Powell
Paralegal to Stephen B. Samuels

/wp
Enclosure(s) as stated

cc: Mark D. Cauthen, Esquire

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South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.WCC.SC.gov



WCC File #: 1717573
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jeffrey W. McCoy SSN: _____ Employer's Name: Cromed, LLC
Address: _____ Address: PO Box 7217
City: Columbia State: SC Zip: 29229 City: Columbia State: SC Zip: 292
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: Guarantee Ins. Co./S.C. Property & Casualty
Ins. Guaranty Assoc.
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm, LLC Preparer's Phone #: (803) 779 - 4000

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to (L) leg, back on 10/09/2017 (Commission file has 9-17-17 based on incorrect 12A) in Richland county, state of SC.
2. Body part(s) affected are: (L) leg, back.
Briefly describe how the accident occurred. Claimant was loading patient's wheelchair into truck of vehicle.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 10/09/2017 (Month/Day/Year) in the following manner:
By Telephone to Supervisor/Company Owner (Robert Cronan).

☐ 7. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: (L) leg, back

☐ (b) additional medical examination and treatment for: _____

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Oct 9, 2017 (DOI) and continuing

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

9a. Claimant at MMI: ☐ Yes ☒ No

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$382.50 and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.

11. Further grounds or unusual aspects of claim:

Claimant reserves the right to amend Employee's Request for Hearing (WCC Form #50) as additional information becomes available.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Providence Hospital NE; Midlands Orthopaedics & Neurosurgery; The Southeastern Spine Institute;

11b. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13. I am filing a claim. I am not requesting a hearing at this time.

Estimated time needed for hearing: 2 hours

☒ 14. I am requesting a hearing. A \$50 fee is required.

☐ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See Attached Certificate of Service on the 4th day of February 2020, by ☒ first class postage ☐ certified mail ☐ personal service ☐ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: _____ Attorney for Claimant: stephen@samuelslawfirm.net February 4, 2020
Title: _____ Email: _____ Date: _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 1/19

47
50

Employee's Notice of Claim and/or
Request for Hearing

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

CERTIFICATE OF SERVICE

Cromed, LLC,

Employer,

and

SC Guaranty Association/Guarantee
Insurance
Co.

Carrier,

Defendants,

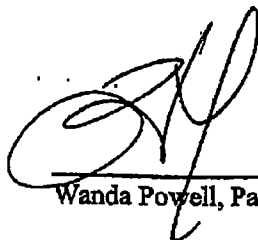
This is to certify that I, Wanda Powell, paralegal for the Samuels Law Firm, LLC, have caused the following described document, to be served by placing a copy of same in the United States mail, with sufficient postage affixed thereto, and return address clearly marked, on the date indicated below:

Document served: **Employee's Request for Hearing, WCC Form #50**

Person(s) served: Amy Bracy, Judicial Director
S. C. Workers' Comp. Commission
Post Office Box 1715
Columbia, SC 29202-1715

Mark D. Cauthen, Esquire
McKay Cauthen Settana & Stublely, P.A.
PO Box 7217
Columbia, SC 29202

February 4, 2020



Wanda Powell, Paralegal

Julius W. McKay, II
Mark D. Cauthen
Daniel R. Settana, Jr.
Janet Brooks Holmes
Brandon P. Jones
Makenzie Polston
JC Nicholson
Alexander Zuraff
Jennie Clark

Of Counsel:
C. E. Hardin, Jr.

Law Offices
The McKay Firm, P.A.

Post Office Box 7217
Columbia, South Carolina 29202-7217

1303 Blanding Street
Columbia, South Carolina 29201

Douglas McKay, Jr.
(1917-2008)

Telephone
(803) 256-4645

Fax
(803) 753-5705

E-Mail
mcauthen@mcKayfirm.com
Web
www.mckayfirm.com

March 5, 2020

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

RECEIVED
MAR 06 2020

EY:

RE: McCoy, Jeffrey v. CroMed, LLC
WCC File No.: 1717573
Claim No.: G10073
DOA: 10/09/2017
Our File No.: 3800-0287

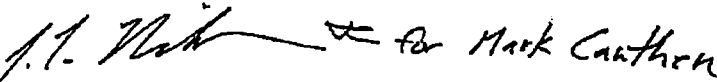
Dear Ms. Bracy:

Enclosed please find for filing the original and one copy of the Form 51 in regard to the above-referenced workers' compensation matter. Please return a filed copy to me in the envelope provided.

By copy of this letter to Stephen B. Samuels, attorney for the claimant, I am hereby serving him with a copy of the Form 51.

Thank you for your assistance with this matter.

Sincerely,


Mark D. Cauthen

MDC/dch

cc: Stephen B. Samuels, Esquire
Amy Vickers



WCC File #: 1717573
Case File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jeffrey W. McCoy SSN: _____
Address: _____
City: Columbia State: SC Zip: 29229
Home Phone: _____ Work Phone: () - _____
Date of Injury: 10/09/2017
Preparer's Name: Mark D. Cauthen, Esquire Law Firm: McKay Law Firm Preparer's Phone #: (803) 256-4645

Employer's Name: CroMed, LLC
Address: 3 Waterslide Ct.
City: Irmo State: SC Zip: 29063
Insurance Carrier: Guarantee Insurance Company in liquidation/ SC Property and Casualty Insurance Guaranty Association

Date of Injury or Illness: 10/09/2017

Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
It is denied Claimant sustained a compensable injury on or about 10-9-17 as alleged in the Form 50. See also No. 11 below.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: _____
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of: _____
See No. 1
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of TBD applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defenses available under §§ 42-1-160, 42-15-20, 42-15-60, 38-31-10 et. Seq., Code of Laws of South Carolina, 1976; Defendants reserve the right to amend this answer.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Mark D. Cauthen Attorney for Defendants mcauthen@mckayfirm.com
Preparer's Signature Title Email

March 5, 2020
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Form 51, Employer's Answer to Request for Hearing, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 5 day of March, 2020.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Stephen B Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201



Dixon Hill, Legal Assistant
The McKay Firm, P.A.
Post Office Box 7817
Columbia, South Carolina 29202-7217
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Of Counsel:
C. E. Hardin, Jr.

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1303 Blanding Street
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E-Mail

mcauthen@mckayfirm.com

Web

www.mckayfirm.com

June 11, 2020

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

JUN 19 2020

RE: McCoy, Jeffrey v. CroMed, LLC
WCC File No.: 1717573
Claim No.: G10073
DOA: 10/09/2017
Our File No.: 3800-0287

Dear Ms. Bracy:

Enclosed please find for filing the original and one copy of the Amended Form 51 in regard to the above-referenced workers' compensation matter. Please return a filed copy to me in the envelope provided.

By copy of this letter to Stephen B. Samuels, attorney for the claimant, I am hereby serving him with a copy of the Amended Form 51.

Thank you for your assistance with this matter.

Sincerely,



Mark D. Cauthen

MDC/dch

cc: Stephen B. Samuels, Esquire
Amy Vickers



WCC File #: 1717573
Ca. File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Employer's Name: CroMed, LLC
Claimant's Name: Jeffrey W. McCoy SSN: _____ Address: 3 Waterslide Ct.
Address: _____
City: Columbia State: SC Zip: 29229 City: Irmo State: SC Zip: 29063
Home Phone: _____ Work Phone: () _____ Insurance Carrier: Guarantee Insurance Company in liquidation/ SC Property and Casualty Insurance Guaranty Association
Date of Injury: 10/09/2017 Preparer's Name: Mark D. Cauthen, Esquire Law Firm: McKay Law Firm Preparer's Phone #: (803) 256-4645

Date of Injury or Illness: 10/09/2017

Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
It is denied Claimant sustained a compensable injury on or about 10-9-17 as alleged in the Form 50. See also No. 11 below.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reason for denial are: _____
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of :
See No. 1
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of TBD applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defenses available under §§ 42-1-160, 42-15-20, 42-15-60, 38-31-10 et. Seq., Code of Laws of South Carolina, 1976; Defendants further raise defense of waiver, estoppel and doctrine of laches as a bar to this claim. Defendants reserve the right to amend this answer.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Mark D. Cauthen Attorney for Defendants mcauthen@mckayfirm.com
Preparer's Signature Title Email Date

June 11, 2020
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 07/13

AMENDED

**Amended Employer's Answer to Reque
for Hearing**

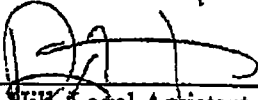
51
53

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Amended Form 51, Employer's Answer to Request for Hearing, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 11 day of June, 2020.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Stephen B Samuels, Esquire
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Web
www.mckayfirm.com

April 27, 2021

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

APR 30 2021

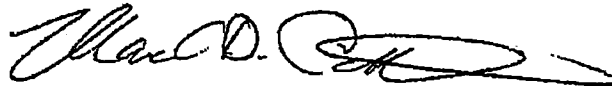
RE: McCoy, Jeffrey v. CroMed, LLC
WCC File No.: 1717573
Claim No.: G10073
DOA: 09/17/2017
Our File No.: 3800-0287

Dear Amy:

Enclosed for filing are the original and 4 copies of a Form 30 with Addendum on behalf of the Employer/Carrier in the above referenced matter, along with our check in the amount of \$150.00 for the filing fee. Please return a stamped copy of the Form 30 to me in the enclosed stamped envelope.

By copy of this letter to Stephen B. Samuels, counsel for the Claimant, I am serving him with the Form 30.

Yours very truly,



Mark D. Cauthen

MDC/acs
Enclosures

cc: Stephen B. Samuels, Esquire
Amy Vickers

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1/1/5/3
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Employer's Name: CroMed, LLC
Claimant's Name: Jeffrey W. McCoy Address: 3 Waterslide Ct
Address: _____ City: Irmo State: SC Zip: 29063
City: Columbia State: SC Zip: 29229 Guarantee Insurance Company in liquidation/ SC
Home Phone: () - Work Phone: () - Insurance Carrier: Property and Casualty Insurance Guaranty Association
Preparer's Name: Mark D. Cauthen Law Firm: The McKay Firm, P.A. Preparer's Phone #: (803)256-4645

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 10/09/2017

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See Attached.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephen B. Samuels, Samuels Law Firm, LLC
1320 Richland Street Columbia, S.C. 29201 on the 27th day of April 2021

by ☒ first class postage ☐ certified mail ☐ personal service ☐ electronic service

Mark D. Cauthen Attorney for Defendants mcauthen@mckayfirm.com April 27, 2021
Mark D. Cauthen, Esquire Title Email Date
Preparer's Signature

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Attachment to Defendants Form 30

Jeffrey McCoy v. CroMed, LLC
WCC File No.: 1717573

Grounds for Appeal

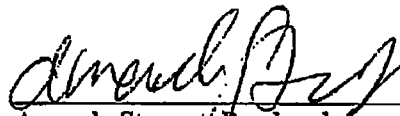
1. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as an matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?
2. Whether the hearing Commissioner erred in finding a documented worsening of disk deformities after Claimants alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, board certified radiologist, relating to interpretation of various imagining studies, the error being such finding is against the most competent, probative medical evidence and/ or clearly erroneous as a matter of law?
3. Whether the hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of and in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?
4. Whether the hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017 and in finding that Claimant's testimony was "more complete and credible" than Defendants supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the hearing Commissioners Order directives?
5. Whether the hearing Commissioner erred in finding the employer CroMed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date of injury, Claimant never sought or attempted to return to work with CroMed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous.
6. Whether the hearing Commissioner erred in designating Dr. LaMotta as treating physician, (in the event Claimants' injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to SC Code Ann. § 42-15-60.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Form 30, Request for Commission Review, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 27 day of April, 2021.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Stephen B. Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, SC 29201



Amanda Stewart, Paralegal
The McKay Firm, P.A.
1303 Blanding Street
Columbia, S.C. 29201
(803) 705-2156

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

DECISION AND ORDER

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assc.,

Carrier,

Defendants,

HEARING:

Held in Columbia, South Carolina on July 16, 2020.

APPEARANCES:

Claimant represented by Stephen B. Samuels, Esquire, of Samuels Law Firm, LLC. Employer represented by Mark D. Cauthen, Esquire, of McKay, Cauthen, Settana & Stublely.

PURPOSE OF THE HEARING:

To determine issues raised on the Forms 50 and 51.

DECISION AND ORDER:

by Avery B. Wilkerson, Jr., Commissioner.

APA SUBMISSIONS

Claimant's Submissions:

APA	MEDICAL PROVIDER	DATES	PAGES
1.	Providence Hospital Northeast	09/18/17 - 10/20/17	01 - 28
2.	Midlands Orthopedics & Neurosurgery	10/12/17 - 02/20/18	29 - 51
3.	Southeastern Spine Institute	01/29/18	52 - 53
TAB	EXHIBIT	DATES	PAGES
A.	Drug Test Results	10/03/17	54 - 55
B.	Deposition of Jeffrey McCoy		
C.	Deposition of Robert Cronan		
D.	Deposition of Malcolm Young		
E.	Deposition of Ivan E. Lamotta, MD		
F.	Deposition of Slif Ulrich, MD		
G.	Deposition of Steven C. Poletti, MD		

Defendants Submissions:

TAB	MEDICAL PROVIDER	DATES	PAGES
1.	Southeastern Spine Institute	1/29/18	56-61
2.	Report of CV of Douglas M. Bull, MD	3/7/19	62-65

TAB	EXHIBIT	DATES	PAGES
3.	[Excluded]		66-68
4.	Text Messages between Claimant and Robert Cronan		69-72
5.	GPS and other business records of Cromed, LLC		73-83
6.	Payroll Records		84-90
7.	Deposition Transcript of Claimant		
8.	Deposition Transcript of Robert Cronan		
9.	Deposition Transcript of Malcolm Young		
10.	Deposition of Dr. Slif Ulrich		
11.	Surveillance DVD of January 14, 2019		

STIPULATIONS

The parties stipulate to the following matters:

1. Venue is proper in Richland County.
2. The parties had notice of the hearing scheduled for July 16, 2020. All parties were represented by counsel;
3. The Commission's file, with the exception of self-serving declarations and unstipulated medical reports, and the Administrative Procedures Act submissions are a part of

the record.

STATEMENT OF THE CASE

This matter comes before the Commission on a Form 50 filed by Claimant, Jeffrey McCoy. This is a denied claim. McCoy contends he injured his back and left leg on October 9, 2017. The issues to be decided are:

1. Whether McCoy suffered a compensable injury to his back (with left leg radiculopathy) on October 9, 2017.
2. Medical treatment through Dr. LaMotta.
3. Average Weekly Wage and Compensation Rate (Claimant contends AWW of \$382.50 and CR of \$255.01; Defendant contends AWW of \$351.33 and CR of \$234.33).
4. Temporary Total Disability Compensation from October 10, 2017 and continuing on a running award.

Claimant alleges he injured his back with radiculopathy into his left leg as a result of lifting a wheelchair into the trunk of a car on October 9, 2017. Claimant acknowledges he had been having back pain for several weeks prior, although his current pain and radiculopathy is much worse. In particular, Claimant relies on the medical opinions of Drs. Ulrich, LaMotta and Poletti for the proposition that the work accident caused his back injury and aggravated a preexisting condition. Claimant further contends the injury is objectively demonstrated by comparison between the pre-accident CT scan and post-accident MRI scan. Claimant seeks TTD from October 10, 2017 on a running award. He seeks payment of past medical expenses and future treatment at the direction of Dr. LaMotta.

Defendants deny the claim. Defendants contend Claimant already suffered from back pain and had already been referred to Dr. LaMotta prior to his alleged accident. Defendants contend their expert radiologist opined that there is no difference in the pre and post-accident imaging studies. Defendants further contend Claimant quit his job on the date of the alleged

accident.

EVIDENCE OF THE CASE

A. Medical Evidence.

1. Providence Hospital:

On Monday, September 18, 2017, McCoy went to Providence Hospital NE Emergency Department, reporting symptoms of back and abdominal pain with radiation into his left groin. The patient believed he had a kidney stone. The ER Physician diagnosed Mr. McCoy with acute left lumbar spasm and prescribed Valium and Motrin. He was written out of work through September 21st. McCoy provided the work note to his employer, who gave him a week off to rest and to come back the next Monday, September 25th. [APA pages 4-11].

McCoy returned to the Providence Emergency Department the next day on September 26th, for "continued lower back pain with radiation into abdomen." There was no "weakness or numbness to extremities." The ER Physician ordered a CT scan of the Abdomen/Pelvis and Lumbar Spine. The Lumbar CT revealed diffuse bulging of the disc at L4-5 with mild central canal biforaminal stenosis, and mild bulging of the L5-S1. McCoy was released to return to work on September 28th and referred to Midlands Orthopaedics. [APA pages 15-23].

2. Midlands Orthopaedics and Neurosurgery:

McCoy was seen at Midlands Orthopaedics on October 12, 2017. On the intake form, he wrote that his pain started on September 14th and worsened on October 9th. [APA page 34]. Dr. Ulrich prescribed an MRI of the lumbar spine, physical therapy and Mobic. Dr. Ulrich opined "This was a work related injury." [APA page 37].

The MRI was performed on October 20th. The MRI showed a broad-based disc protrusion at L4-5, favoring the left side, with moderate facet arthropathy; moderate foraminal

stenosis at the left L4-5 and mild on the right; annular tear along with disc protrusion at L5-S1 with abutment of the right S1 transversing nerve root.

Dr. Ivan LaMotta at Midlands referred McCoy to a pain management specialist for a selective nerve root block at left L4. He ordered additional physical therapy and prescribed ibuprofen 800 mg.

On February 20, 2018, Dr. LaMotta opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50 and 51].

Defendants deposed Dr. LaMotta on September 11, 2018 and Dr. Ulrich on December 4, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

Dr. Ulrich also stood by his opinion that this was a work-related injury. However, Dr. Ulrich also noted as he is not a spine specialist, he defers to Dr. LaMotta's opinion.

3. Southeastern Spine Institute:

McCoy then saw Dr. Steven Poletti for an evaluation on January 29, 2018. Dr. Poletti agreed with Dr. LaMotta. He wrote: "This lifting injury was potentially a straw that broke the camel's back, but nonetheless in my opinion it is most likely the lifting incident which caused the disc to herniate and ultimately has led to the recommendations by both myself and Dr. LaMotta." Dr. Poletti confirmed in his deposition that to a reasonable degree of medical certainty, Mr. McCoy's injury occurred while lifting the wheelchair.

4. Douglas M. Bull, MD:

Dr. Bull, a radiologist, reviewed the CT scan and MRI scans. He did not examine the patient. Dr. Bull opined there is no measurable difference between the two scans.

B. Testimony.

Jeffrey McCoy:

Claimant Jeffrey McCoy testified on his own behalf. McCoy is 52, went through the 11th grade and has a GED. His work history primarily involves medical transport prior to joining Cromed.

McCoy had been with Cromed about 4 months before his accident. The job involved transporting patients to medical visits in cars or vans. The job does not require lifting but he does help the elder people get in and out. Only one patient has a wheelchair; others have walkers. He would lift the walkers and wheelchairs into the vehicle.

McCoy testified that he developed groin pain on September 14, 2017. He went to the hospital on September 17, 2017 thinking he had a kidney stone. That was when they said it was in his back. The pain came on gradually. He did not recall an accident or lifting anything which is "the reason I thought it was a kidney stone."

He notified his employer, Robert Cronan, by text message. He was diagnosed with muscle spasm, given some medication, given a couple of days off and released. He told Cronan about this. Cronan gave him a week off.

During this time McCoy was in a lot of pain and vomiting.

On September 26, 2017, McCoy went back to the emergency room. He was given a CT scan and referred to Midlands' Orthopaedics.

He returned to Cromed and worked from October 2, 2017 through October 9, 2017.

Malcolm put him a vehicle with heated seats which kept some of the pain away; he "was doing pretty good."

McCoy testified he was given a tablet with his daily route. The schedule included a 10-minute window for the pickup.

His first patient was a man named Jonathon. The second was Ms. Porter. She used a wheelchair. He helped her into the car and then put the wheelchair in the trunk. As he was picking up the wheelchair, "I felt that sharp pain shot down, like, the inner -- of my inner thigh down towards my knee and it just kind of made me buckle." [Tr. P. 55, lines 4-8]. This pain was a lot different; a lot sharper pain the dull pain he was normally feeling. Previously, the pain was in his groin and abdomen. This pain shot all the way down his leg.

McCoy dropped the man off and took Ms. Porter to her drop off. He testified: "I had to go up and have someone come down and assist me because I couldn't push her up the ramp." [Tr. P. 56, lines 13-16].

At some point that morning between picking up the first and second patients, Robert Cronan called McCoy. Cronan was calling because McCoy had picked up the two clients in a different order from how Cronan had wanted. McCoy testified conversations with Cronan are not polite; Cronan can be aggressive which is why McCoy preferred talking to Malcolm.

A few minutes after that conversation, McCoy called Malcolm. He told Malcolm "that when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't -- I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. McCoy explained he was in a lot of pain and did not know if he could continue to do it.

At the end of the day when he returned the car, McCoy called Malcolm and asked for "information for the workman's comp doctor and his response to me was 'Jeff is this really the way you want to go' and I said, I just want to talk to your doctor and that was that." [Tr. Pages 58-59]. McCoy thought he still had a job and did not realize he did not have a job until Robert Cronan called or texted him wanting his shirts and workbook back.

That evening at 6:24 p.m., Cronan sent a text stating "your claim has been filed; an adjuster will contact you within 24 to 48 hours." [APA page 70; Tr. Page 59].

McCoy already had an appointment scheduled with Dr. Ulrich at Midlands' Orthopaedics on October 12, 2017. McCoy told Dr. Ulrich that his pain started on September 14th and worsened on October 9, 2017. [APA page 34]. Dr. Ulrich ordered an MRI. After the MRI, McCoy saw Dr. LaMotta, a spine specialist.

McCoy was also seen by Dr. Poletti for an independent medical evaluation.

Since the accident, McCoy has not been able to get any additional medical treatment. He has done some handyman jobs to keep food on the table. He has difficulty doing this work, but he knows his limits: "when I get tired or I start to hurt I know when to sit down." [Tr. Page 63]. He estimated he had earned maybe \$1-2,000 in the two and a half years since his injury.

He felt his condition had gotten a little better although not a 100%. He felt he would be able to drive a vehicle he was not able to constantly lift more than 15 pounds, although he could sometimes. He liked Dr. LaMotta and wanted him to be his doctor.

On cross examination, McCoy testified he worked for Cromed for 3-4 months before his injury. He testified the patient with the wheelchair weighed about 300 pounds so could not walk too well. She was able to stand. He did not have to lift her; only help her up.

He confirmed he felt the burning sensation in his inner thigh down his left side when he

lifted the wheelchair. After loading the wheelchair, he had the client sign in on the tablet. He testified the whole process took maybe three to four minutes.

He testified Cronan was upset because he picked up Jonathan before Dolores. McCoy testified that was not the order he was assigned, but as he had picked up these two people before, he knows their location and knows he would have been late picking up Jonathan. He testified only "Robert got heated; I – I don't argue – you don't argue with your boss." [Tr. Page 79]. McCoy testified he did not get irritated with Cronan over the phone call, but that he was in pain and irritated after picking up the wheelchair. He acknowledged he was sore before the trip but had been taking Motrin and was doing good.

When he called Malcolm, he explained to Malcolm that he was in pain and did not understand why Robert would send him to pick up a wheelchair. He also acknowledged that complaining about the little reprimand from Robert was part of the conversation.

McCoy denied that he told Malcom this was probably going to be his last day. He said this "may or may not" be my last day. He said this because he was upset with the conversation with Robert and did not know if the pain was going to get better.

McCoy confirmed he had no written work restrictions when he picked up the wheelchair.

McCoy testified he did not ask about workers' comp insurance; he asked about seeing the workers' comp doctor.

Malcolm Young.

Malcolm Young is the co-owner of CroMed. He has been there for 11 years. CroMed provides non-emergency transportation for Medicaid patients.

Jeff McCoy worked for Cromed for about 3 months. He recalled McCoy taking some time off in mid-September for kidney stones.

Young received a phone call from McCoy on the morning of October 9, 2017. He testified McCoy had just had a discussion with Robert.

He wasn't very happy with the way the discussion went; I believe he mentioned he didn't like the way that -- that Robert was talking to him. I remember him mentioning that, you know, that his is probably going to be my last day here because of this. I didn't want to lose an employee; so, I said, you know, are you sure you want to do this? If that's -- that's the way you want to go then, you know, go ahead and bring it on in and he said that he wanted to work the rest of the day, that he needed the money. So, I said that was fine.

[R. Page 127, line 21-page 128, line 7].

Young denied that McCoy said anything about an injury lifting a wheelchair or about workers' compensation.

Young received another call later that afternoon. He testified McCoy said he need workers' compensation information. Young assumed from the first conversation that McCoy was quitting.

On cross examination, Young denied that Mr. Cronan is difficult to talk to for a lot of employees. Although he first denied it, he admitted that in his deposition he had testified the consensus was that he was easier to talk to than Mr. Cronan.

Young admitted that Mr. Cronan was upset with McCoy and reprimanded him for not doing it exactly in the order that Mr. Cronan had set up in the tablet.

Young admitted that contrary to his testimony on direct, McCoy was also upset because he was in pain. Young also admitted he was aware that this particular patient required wheelchair. He confirmed that even though he thought McCoy was quitting, he wanted to continue working the rest of the day because he needed the money.

Robert Cronan.

Cronan testified he is the co-owner and founder of Cromed. McCoy was hired on June

26, 2017.

He recalled calling McCoy on September 17, 2017 about the schedule. McCoy told him he was glad he called because he was on the way to the emergency room. Cronan testified he hoped it was just some wicked gas and asked McCoy to keep him posted. He gave McCoy a week off.

McCoy returned to work on September 25th. Another employee called asking him to check on Jeff. Jeff explained he was in some pretty good pain, so he sent him home for that week.

McCoy returned to work on Monday, October 2nd. McCoy did not provide him with any lifting restrictions.

Cromed allows its employees to physically assist patients, does not allow its employees to lift patients.

Cronan testified he had a conversation with McCoy just before 8:00 a.m. McCoy had picked up Jonathan – which was supposed to be his second stop. The conversation covered Cronan stating McCoy had picked up his patients in the wrong order and McCoy's explanation for why he had done so. Cronan testified "maybe I was angrier than normal . . .".

Cronan went through the GPS records showing each of McCoy's stops and how long he was at each. He was at Jonathan's location for 1-2 minutes; Dolores's location for 4-5 minutes.

Cronan doubted that McCoy could have placed the wheelchair in the trunk and injured his back in 4-5 minutes.

Cronan testified the first time McCoy was asserting an injury on the job on October 9, 2017 was in December sometime when he received a Form 50 filing the claim.

On cross-examination, Cronan acknowledged any information he had as to whether there

was an accident on October 9, 2017 would have come directly from Malcolm. He agreed lifting a wheelchair is "not required but it is performed." He admitted the conversation he had with McCoy was before he picked up Dolores and her wheelchair.

Cronan testified that Cromed had no light duty available at the time of McCoy's injury.

FINDINGS OF FACT

Based on the greater weight of the evidence presented at the hearing, I make the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.
2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.
3. Claimant alleges he injured his low back with sciatica and radiculopathy into his left leg on October 9, 2017.
4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.
5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.
6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.
7. McCoy developed back and abdominal pain with radiation into his left groin on or

about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. I note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, I find that 4-5 minutes is

ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't - I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job - which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's

statements in the first phone call.

16. McCoy placed a second phone call to Young on October 9, 2017. In that call, McCoy requested an appointment with the workers' compensation doctor. Young interpreted the call as a request to file a workers' compensation claim. Young conveyed this information to Cronan. Cronan reported a claim to the Carrier based on a September 17, 2017 date of accident because Young did not inform Cronan of the October 9, 2017 injury by accident. Cronan tested McCoy advising that his claim had been filed.

17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me to be the same between the two exams."

22. I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is

confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although — Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is — there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is \$367.82, yielding a compensation rate of \$245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc.,

518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician. Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta

and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

AWARD

IT IS ORDERED that Defendants shall pay for past causally-related medical treatment and shall continue to provide to Claimant causally related medical treatment for so long as such treatment will tend to lessen Claimant's disability;

IT IS FURTHER ORDERED that Dr. Ivan LaMotta and his practice are designated the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the authorized treating physician related to Claimant's work-related injuries, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until the authorized treating physicians opine Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability. Treatment shall include such modalities considered necessary by the

authorized treating physician;

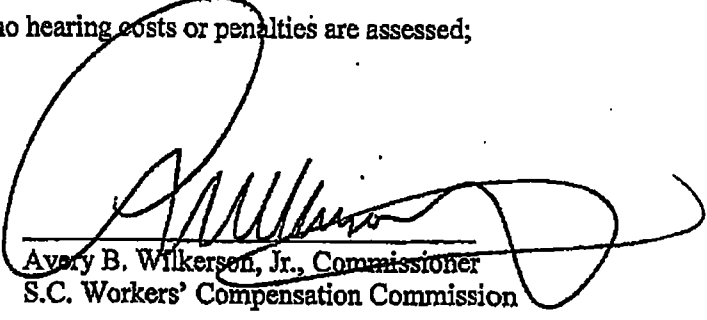
IT IS FURTHER ORDERED that Defendants shall pay temporary total disability compensation for 12 weeks pursuant to this Order;

IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

Dated: 4-12-2021


Avery B. Wilkerson, Jr., Commissioner
S.C. Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Deborah Hutto on April 13, 2021

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Appellant/Respondent,

v.

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (in liquidation)/S.C.
Property & Casualty Ins. Guaranty
Assoc.,

Carrier,

Defendants/Appellants.

**Defendant/Appellant's Brief
To The Full Commission**

STATEMENT OF THE CASE

The Claimant, Jeffrey McCoy, was employed as a medical transport driver for Defendant Cromed, LLC. Cromed provides non-emergency medical transportation services. The Claimant alleges he injured his lower back and left leg while loading a patient's wheelchair into the trunk of a vehicle on October 9, 2017.

This claim was denied. The Claimant had been experiencing non-work-related back pain for several weeks prior to the alleged injury of October 9, 2017, and had been seeking treatment for those symptoms. On 9/18/17, the Claimant reported to the Providence Hospital Northeast emergency room with complaints of lower back pain and radiation to his groin and down his bilateral lower extremities. (APA p. 2-3) These symptoms were not alleged to be work-related and are not part of this claim. The Claimant was diagnosed with a left lumbar spasm and was prescribed Valium and Motrin. The Claimant was given a work excuse until 9/21/17. Cromed provided Claimant with a full week off to rest and recover.

The following Monday, 9/25/17, the Claimant attempted to return to work with Cromed but was still having significant back pain and was unable to stay at work. He returned to the Providence Hospital Northeast emergency room the next day, 9/26/17, reporting worsening symptoms to the extent that he was now vomiting secondary to the pain. A CT Scan of Claimant's lumbar spine was obtained which revealed diffusely bulging disc at L4-5 with mild central canal and biforaminal stenosis. There is mild bulging of the L5-S1 disc without central canal stenosis. At this visit, the impression of the evaluating physician was bulging lumbar disc,

abdominal pain, elevated blood pressure, and lumbar radiculopathy. The Claimant was given another work excuse to 9/28/17. Cromed again accommodated the Claimant with another week off to rest.

At the 9/25/17 Providence ER visit, the Claimant was also referred to Midlands Orthopedics for evaluation. This referral was made approximately two weeks prior to the alleged injury of 10/9/17. (APA Submissions, p. 15-26)

The Claimant finally returned to work as a medical transport driver with Cromed on 10/2/17. On 10/9/17, the alleged date of injury and also the Claimant's final day of work with Cromed, the Claimant received a verbal reprimand from his supervisor and co-owner, Robert Cronin, for performing patient pick-ups in the wrong order. The Claimant immediately contacted the other co-owner, Malcolm Young, apparently unhappy with the discussion with Mr. Cronin, and he advised that this would probably be his last day at Cromed. Mr. Young testified he advised the Claimant at that point to bring his vehicle in, but claimant requested that he work the rest of the day, and Mr. Young agreed. In his conversation with Claimant that morning, Mr. Young indicated Claimant said nothing about injuring or re-injuring his back and nothing about lifting a wheelchair. Mr. Cronin also testified the Claimant reported nothing to him about injuring his back lifting a wheelchair on 10/9/17.

On 10/12/17, the Claimant was seen by Midlands Orthopedics per the referral made at Providence Hospital back in September. The Claimant's initial visit at Midlands on 10/12/17 was three days after his alleged injury on his final day at work at Cromed. On 10/12/17, the Claimant was seen by Dr. Slif Ulrich. At that visit, Claimant reported that he was a driver and that he "developed lower back pain with radiating pain down his left leg while driving" and that "lifting passengers" caused him significant discomfort. (It is important to note, however, that neither the Claimant nor any other driver with Cromed was required to "lift" patients but could only assist them in transferring in and out of a vehicle, wheelchair, etc.)

The Claimant was diagnosed with lower back pain and left lumbar radiculopathy. Dr. Ulrich commented, "This is a work-related injury. He has difficulties driving." However, the Claimant reported nothing to Dr. Ulrich about injuring his back while lifting a wheelchair, and that narrative is nowhere in history taken by Dr. Ulrich. At that time a MRI of the lumbar spine was ordered and the Claimant was referred to Dr. LaMotta at Midlands.

The MRI was obtained on 10/20/17 and revealed disc deformities at L4-L5 and L5-S1, worse at L4-L5 where there is a prominent broad-based disc deformity (protrusion extending centrally to the left). On 10/26/17, the Claimant followed-up at Midlands and saw Troy Blanks, Dr. LaMotta's physician assistant. At this appointment, Claimant reported to a medical provider for the first time lifting a wheelchair at work on 10/9/17 when he allegedly experienced a flareup of pain in lower back and left lower extremity. The Claimant was diagnosed with left lower extremity radiculitis, L4 nerve root pattern and lumbar stenosis at L4-L5. Dr. LaMotta's PA indicated Claimant could be treated nonoperatively and he recommended a selective nerve root block at L4 and then a course of physical therapy along with anti-inflammatories.

This was the Claimant's most recent medical visit related to this claim, except for an IME with Dr. Steven Poletti, arranged by Claimant's counsel. Although Claimant was seen twice in the emergency room in the span of two weeks in September 2017, he has not been back to the emergency room even once since then.

Claimant was not given a work excuse or work restrictions at either appointment at Midlands in 2017. The Claimant only obtained limited duty restrictions from Dr. Lamotta by way of a questionnaire submitted by his attorney and signed almost four months later on 2/20/18.

Since leaving his employment at Cromed, Claimant has made no effort to seek to return to work as a driver despite the fact that lifting is not a requirement of his position of a transport driver and would not violate a fifteen-pound lifting restriction.

ISSUES ON APPEAL

1. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.
2. Whether the hearing Commissioner erred in finding a documented worsening of disc deformities after Claimant's alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, Board Certified radiologist, relating to interpretation of various imaging studies, the error being such finding is against the most competent, probative medical evidence and/or clearly erroneous as a matter of law?
3. Whether the hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of and in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?
4. Whether the hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding that Claimant's testimony was "more complete and credible" than Defendant's supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives?
5. Whether the hearing Commissioner erred in finding the employer Cromed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date of injury, Claimant never sought or attempted to return to work with Cromed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous?

6. Whether the hearing Commissioner erred in designating Dr. LaMotta as treating physician, (in the event Claimant's injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to S.C. Code Ann. §42-15-607

ARGUMENT

1. The hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.
2. The hearing Commissioner erred in finding a documented worsening of disk deformities after Claimants alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, Board Certified radiologist, relating to interpretation of various imaging studies, the error being such finding is against the most competent, probative medical evidence and/or clearly erroneous as a matter of law.
3. The hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of an in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.

To find a worsening of disc deformities, the Commissioner had to ignore information documented in the medical records and focus on the confusing and contradictory testimony of Claimant's experts. In fact, the medical records clearly show a patient experiencing back pain radiating to his legs since mid-September 2017, which worsened to an excruciating pain of a 10/10 level by September 26, 2017. Claimant's pain was so bad it was making him vomit. (APA, p.) This is his point of greatest pain, well before the alleged wheelchair incident of October 9, 2017. Rather than rely on Dr. Lomatta, a "treating physician" who has never met his patient, and Dr. Poletti who, while paid for his opinion, couldn't seem to get his facts straight, the Commission should instead rely on the medical records and exceedingly qualified radiologist who provided the only empirical data to answer the question whether there was a change noted in the 10/27/17 MRI compared to the 9/26/17 CT.

September 18, 2017 - Providence Northeast Emergency Department:

On Monday, 9/18/17, Claimant presented to Providence Northeast complaining of abdominal and lower back pain, that started the preceding Wednesday (9/13/17), with greater pain on the left than right and with radiation to his groin and down both legs. He denied any injury occurred as noted by Grant A. Simpson, RN. His pain is noted to be dull and aching but with associated burning-type pain in his low back that is worse when he moves or when he sits straight on his buttocks. Pain is noted to be intense with movement. No vertebral tenderness was noted. Straight leg raise is negative. Claimant is noted to be in no acute distress. His treating physician on this visit indicated his belief Claimant was experiencing pain from a

musculoskeletal process. An abdominal and pelvic CT was ordered. No stone or obstruction was noted in the urinary tract and no active process was noted in the abdomen or pelvis. This was a self-pay visit.

Claimant received a work excuse to stay out of work for three days until 9/21/17, but Claimant was given the entire week to stay home by his employer. He returned to work on 9/25/17 but was back at the Providence Northeast Emergency Department the following morning.

September 26, 2017 - Providence Northeast Emergency Department:

Claimant's pain continued to intensify causing him to return to the Providence Northeast emergency room on 9/26/17 for a self-pay visit. Claimant advised Anna B. Morris, RN that he was having left flank pain radiating to the left lower quadrant. Claimant indicated he was at the ER on 9/18, and his pain had worsened since then. Claimant indicated he had abdominal pain with nausea/vomiting for two days. Now his pain is noted to be so bad that it causes "vomiting secondary to pain." Claimant advised his pain intensifies with movement. Claimant rated his pain as a 10/10. Lumbar vertebral tenderness is noted at this visit with decreased flexion, extension, and lateral movement. Based on Claimant's presentation and clinical finding changes, a lumbar CT was ordered, and Claimant was referred to Midlands Orthopedics for further evaluation. This referral to Midlands Orthopedics was made at the time Claimant was experiencing his greatest pain, well before the alleged lifting incident of October 9, 2017.

Claimant received a release from work until 9/28/17. His employer provided him an additional week out of work rather than making him return on the 28th.

The indication for the Lumbar CT of 9/26/17 was low back pain with radiculopathy for one week. The specific findings include the following: Lumbar vertebral bodies show anatomic alignment; No compression fracture or spondylolisthesis; Diffuse broad-based bulging of the L4-L5 disc which extends laterally bilaterally; Facet hypertrophy contributing to some biforaminal stenosis; Mild central Canal stenosis at that level; Mild disc bulging of L5-S1 without central canal stenosis. Primary impression was a bulging lumbar disc with secondary impressions including abdominal pain and lumbar radiculopathy. Dr. LaMotta testified there was no mention of "radiculopathy" in these records (LaMotta Depo., p. 8, l. 16 – p. 12, l. 14) (LaMotta Depo., p. 38, ll. 11-24), notwithstanding the clear and multiple indications of radiculopathy. The CT scan was noted to be self-pay.

October 12, 2017 - Midlands Orthopedics:

In the general medical information form completed at the time of Claimant's first Midlands Orthopedics appointment on October 12, 2017, Claimant noted he was experiencing numbness and continued abdominal pain which began September 14, 2017. Dr. Ulrich testified in his deposition that Claimant complained of lower back pain radiating down his left leg and was adamant the pain was work-related. (Dr. Ulrich Depo., p. 6, ll. 2-18) While Claimant noted his pain worsened on October 9, he failed to note, however, the prior times the pain worsened to the point it caused him to vomit and present to the emergency department providing a 10/10 pain

scale report to the emergency department staff. During this assessment on 10/12/17, Claimant rated his pain only at a 3/10. This visit was also self-pay.

Claimant completed the Midlands Orthopedics General Medical Information form on October 12, 2017, in response to the reason for visit, Claimant indicated "Bulging Disc." The next question asked if this was the result of an accident. Followed by "If yes, DATE of accident and please describe." Next, the form asks, "Where did the injury occur? Work__ Auto __ Home __ Other __" Of note, Claimant left these questions blank. There is no mention anywhere in the record of Claimant indicating anything about a wheelchair. Dr Ulrich testified if Claimant had indicated the kind of details about lifting a wheelchair on October 9 and having a flare-up of back pain, he would most likely have included that information in his note. (Ulrich Depo., p.16, ll.3-9)

On 10/12/17 an MRI was ordered to evaluate for left-sided herniation at L4-5 S1. An MRI was ordered due to left leg pain for one month which is consistent with his first report to the Providence Northeast emergency department note of bilateral radiation of pain down his legs.

October 20, 2017 – Providence Hospital Northeast:

Claimant returned for the scheduled MRI of the lumbar spine which is noted to be a self-pay scan. Impressions include a broad-based protrusion noted centrally into the left. Disc material is noted to extend to the left lateral recess and towards the left foramen.

October 26, 2017 - Midlands Orthopedics:

Claimant was seen and evaluated by a physician assistant, Troy Blanks, PA-C, of Midlands Orthopedics on 10/26/17 during this self-pay visit. While Dr. LaMotta claimed to have communicated with Claimant and examined him, these were blatantly false statements. Dr. LaMotta has never even met or examined the Claimant.

Q: And, in fact, he reported to you that lifting a wheelchair, not passengers - - He reported to you lifting a wheelchair had made his symptoms worse; is that right?

A: That is correct.

Q: And you were able to confirm that through the objective physical exam and MRI scan, correct?

A: Yes

(LaMotta Depo., p. 48, ll.13-20)

Q: So, did you actually see the patient on 10/26 at all?

A: I did not.

Q: Have you ever met Mr. McCoy?

A: Not in person.

(LaMotta Depo., p. 7, ll. 5-9)

The medical note of 10/26/17 indicates the problems to be reviewed include lumbar radiculopathy, lumbar disc disorder, abdominal pain, and elevated blood pressure. Under HPI, this record notes the following:

Severity: moderate; pain level 2/10; worst pain 4/10

Timing: abrupt

Context: fall...

Work Related: no

Working: no

This note also indicates Claimant has a history of lower back problems. Claimant indicated he had pain in his left lower back radiating down through his left posterior hip and wraps around into his groin.

Dr. LaMotta claims there were several differences in Claimant's condition between 9/18/17 to 10/26/17. Dr. LaMotta references a difference in Claimant's characterization of his pain. While Claimant indicated his pain was a 10/10 during both visits to the Providence Northeast emergency room, the only visit when the Claimant appeared to others to be in moderate distress was the emergency room visit on 9/26/17. During both visits to Midlands Orthopedic, Claimant's self-reported his pain during his visits of 10/12/17 and 10/26/17 were 3 and 2-4 respectively.

Dr. LaMotta testified there were qualitative differences between complaints Claimant reported to the physicians of Midlands Orthopedics compared to the complaints made during his visits to the emergency department. He uses radicular pain pattern as an example. Dr. LaMotta claims that the radicular pattern was not present during his visits to the emergency department. Radiating pain to the stomach is not radicular but pain traveling down the legs without leg problems is a radicular pain pattern. (LaMotta Depo., p.35, l.20 – p.36, l.17) The problem with this analysis is that Claimant's initial complaints to emergency department personnel on his first visit on 9/18/17 was abdominal and lower back pain, that started the preceding Wednesday (9/13/17), with greater pain on the left than right and with radiation to his groin and down both legs. Additionally, the indication for the CT of lumbar spine dated 9/26/17 is "Pain with radiculopathy, low back pain for one week."

Dr. LaMotta notes Claimant had a positive straight leg raise which is classic for radiculopathy. (LaMotta Depo., p. 39, ll. 6-12) Claimant had negative straight leg test on 9/18/17. No straight leg test was noted in the records from the 9/26/17. The 10/12/17 Midlands Orthopedic records note a positive straight leg raise for the left leg both supine and seated. Interestingly, the 10/26/17 examination by Troy Blanks at Midlands Orthopedics notes the left leg straight leg raise returned to negative both supine and seated.

LaMotta claims there is no mention of abdominal pain on Claimant's September 26 visit. Yet there are many mentions of abdominal pain in the 9/26/17 note. Claimant's first interaction with medical staff resulted in his complaints of abdominal pain with nausea and vomiting for two days. The Initial Comments section on the History of Present Illness dated 9/26/17 indicates as follows: "pt presents with c/o continued lower back pain with radiation into abdomen started 1 week ago... states pain is worse and is now vomiting secondary to the pain. abd pain to llq started 1 week ago but has worsened in the past 24 hours." Dr. LaMotta also indicated the disc bulge at L4/5 turned into a disc protrusion going to the left. (LaMotta Depo., p.16, l.21 – p.17, l. 18)

Contradictions of Claimant's Expert Witnesses:

Dr. Poletti's initial report dated 2/12/18 was littered of wrong facts including the wrong injury date, among others. He indicates in this report that Claimant's date of injury was 9/17/17 and then in the next paragraph, the date of injury becomes 9/14/17. This report also notes Claimant attempted to return to work on 10/9/17. Dr. Poletti also indicates Claimant describes his pain during some undated appointment as 7 out of 10. This never occurred at any point during Claimant's medical treatment, so Dr. Poletti simply made-up facts in this report.

Thereafter, he issued another report on 3/16/18, and while it contained fewer factual errors, the report still contained inaccuracies as well as noticeable gaps in relevant information. His History of Present Illness leaves out two of the four visits which make up the totality of Claimant's medical care. Dr. Poletti's claimed return to work date is wrong. Dr. Poletti indicated Claimant returned to work on 10/9/17, the same day as his alleged "lifting injury." Dr. Poletti's claim that Claimant's pain rating on 10/12/17 as a 7/10 is not correct as Claimant noted his pain rating on this visit as 3/10. This factually inaccurate report simply cannot be relied upon and lacks any probative value.

Dr. LaMotta testified the 10/20/17 MRI does not show a herniation. (LaMotta Depo., p. 33, ll. 10-12). Whereas Dr. Poletti's report and deposition testimony indicates the same MRI shows left-sided herniation. Dr. Poletti goes so far as to say the alleged "lifting injury" caused the disc to herniate. Dr. Poletti specifically claims "this man did not have L4 radicular symptoms prior to his injury of 10/9/17..." Dr. Poletti apparently missed the indication for the Lumbar CT of 9/26/17 which was "low back pain with radiculopathy for one week" or that Claimant initially sought medical care at the emergency department on 9/18/17 complaining of back and abdominal pain radiating to the groin and down both legs since 9/13/17.

On Which Expert to Rely:

Which expert provided the most salient information concerning whether a worsening of Claimant's condition occurred on October 9, 2017? Dr. Ulrich indicated whether pathology can be seen comparing an MRI and CT should be answered by a radiologist. He indicated a good radiologist can use a CT scan and compare it to an MRI and assess an interval change. (Ulrich Depo., p.21, l.5 – p.23, l.3) Interestingly, Dr. LaMotta relies upon the radiographical readings rather than reviewing the films to support his opinion that the disc deformities worsened between the CT and MRI. He states, "I'm looking at the MR -- the MRI reading, 10/20/17, Providence

Northeast, and the actual word used in the actual reading. In the third paragraph, it states clearly that there's a broad-based disc protrusion. So, this - - The deformity that we're talking about is a protrusion, so that is a lot worse than a disc bulge." (LaMotta Depo., p.31,112-9) Dr. LaMotta claims the terms "bulge, protrusion, extrusion, and herniation" are all terms that describe different things to radiologists and spine practitioners and are not used interchangeably. (LaMotta Depo., p.32, l. 15 - p.33, l.9)

While Dr. Poletti claims he can read and evaluate all scans (without the educational qualifications) and is more qualified than any other doctor in the state to perform this task, it appears what he is unable to do is draft a medical report that correlates factually with patient's treatment. Of note, his practice also does not release scans, whether CT or MRI, unless and until a radiologist reviews and reads each regardless of Dr. Poletti's alleged expertise. (Poletti Depo., p. 23, ll. 1-14) Dr. Poletti indicated radiologists and orthopedists sometime use the terms protrusion and herniation interchangeably. (Poletti Depo, p.12, ll.2-13)

Dr. Bull is not trying to push a narrative. He limited his evaluation in this case to the simple question whether there is a structural difference shown on Claimant's CT compared to the MRI. This is the critical question in this matter. Dr. Bull is a more qualified expert with a greater degree of expertise in reading and evaluating CT scans as compared to MRI films. He performed a more precise evaluation and gave the most specific opinion with supporting valuations. Dr. Ulrich's recommendation should be followed by the Commission who testified whether pathology can be seen by comparing a MRI and CT should be answered by a radiologist.

The Hearing Commissioner therefore erred in failing to give greater weight to the opinions of Dr. Bull, the only radiologist to give an opinion and the only expert qualified by education, training, and experience to compare the two scans and the only expert to make actual measurements to determine there was no anatomical difference between the CT and MRI relative to the degree of disc protrusion. There is insufficient reliable evidence to establish a worsening of disc deformities causally related to the alleged 10/9/17 accident. Claimant has therefore failed to meet his burden of proof to establish a causally related injury or aggravation of preexisting condition.

4. **The hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding that Claimant's testimony was "more complete and credible" than Defendant's supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives.**

The hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding Claimant's testimony was "more complete and credible" than Defendant's supervisor, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives.

The hearing Commissioner found as a fact that the Claimant reported the alleged injury on 10/9/17 while lifting the wheelchair and that he "had sharp pain down his leg and was in a lot of pain." This was against the greater weight of the evidence and therefore error. The Claimant admitted stating to Malcolm Young that "this may be my last day" (with Cromed). Claimant testified that he received a call from Robert Cronin early in the morning on 10/9/17 and that the reason for the call was that "I didn't do the route the way he wanted me to do the route...". He further testified that "[Robert] can be very aggressive, which is why I prefer talking to Malcolm." (Transcript p. 57) Claimant testified that he then called Malcolm a few minutes later to discuss his conversation with Robert. In that phone call Claimant admitted he told Malcolm that "This may or may not be my last day; I will let you know by the end of the day." (Transcript p. 58)

Malcolm Young testified at the hearing that Claimant had been reprimanded for performing patient pick-ups out of order that morning and that he was not happy about that when he contacted Malcolm. Mr. Young testified that "he was annoyed, obviously. He was, I guess, a little angry." (Transcript p. 128) Malcolm Young further testified that Claimant advised that this was probably going to be his last day, and he understood the reason to be his disagreement with Mr. Cronin. (Transcript p. 128) Mr. Young testified that he interpreted Claimant's statement that this was probably going to be his last day as quitting his employment or giving notice of his intent to quit. Robert Cronin also agreed with this assessment.

Mr. Young was adamant in his testimony that the Claimant reported nothing to him on 10/9/17 regarding injuring or reinjuring his back. Furthermore, he testified Claimant said nothing about sustaining an injury while lifting a wheelchair either. (Transcript, p. 30) Robert Cronin additionally testified that the Claimant never reported an injury that allegedly occurred lifting a wheelchair on 10/9/17 to him. (Transcript p. 181)

Claimant testified that he did not know that he did not have a job any longer with Cromed until he got a text from Robert Cronan. (Transcript p. 59) If that had been the case, however, the text exchanges between the Claimant and Mr. Cronan do not appear to reveal any element of surprise, confusion, anger, or other emotion on the Claimant's part upon learning that he had allegedly been terminated. These texts are as follows:

Cronan: Your claim has been filed. An adjuster will contact you within 24-48 hours. (Mon. Oct. 9 18:24)

Cronan: Please text me your corrected address so I can send your check. Also can you bring your shirt to Malcolm. There is a 25.00 fee if you choose to keep shirt instead. (Mon, Oct. 16 09:42)

McCoy: 127 sparkleberry ln apt 101, 29229. u never gave me a shirt

Cronan: Thought I did. Okay

Cronan: Do you still have your handbook?

McCoy: I have to look 4 it

Cronan: Okay. If I need anything I'll get in touch, Do the same if you need anything.

McCoy: Yep

There is no factual basis to support the finding that McCoy's testimony is "more complete and credible" than Young's, or more consistent with the events as they happened. Moreover, the Commissioner's Order Directives specifically instruct that "do not address credibility in the Order, unless it has been addressed in the preceding Order notes." Nowhere in the Order instructions did the hearing Commissioner determine or find that Claimant's testimony was "more complete and credible" than Malcom Young, and therefore this finding is improper and without basis.

5. **The hearing Commissioner erred in finding the employer Cromed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date of injury, Claimant never sought or attempted to return to work with Cromed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous.**

The discussion concerning Claimant's resignation or giving notice of his resignation of his employment is covered in number 4 above.

It was error for the Commissioner to find that Cromed had no suitable employment available to McCoy and could not provide work to McCoy within Dr. LaMotta's restrictions. (Finding of Fact #17) Claimant contends Robert Cronan testified that Cromed had no light duty work available and therefore could not accommodate Dr. LaMotta's restrictions. First, it must be noted that neither Dr. LaMotta nor any other physician at Midlands Orthopedics assigned work restrictions at either of Claimant's appointments in October 2017. The fifteen-pound lifting restriction from Dr. LaMotta did not come about until almost four months later via a medical questionnaire prepared by Claimant's counsel. There were no work limitations issued contemporaneously in October 2017.

Claimant asserts Robert Cronan testified that no "light duty" was available. However, Claimant's counsel failed to define what he meant by "light duty." Mr. Cronan testified there are no lifting requirements for medical transport drivers for Cromed, and thus, Claimant's job as a medical transport driver would not violate Dr. LaMotta's fifteen-pound restriction. In fact, Claimant testified at the hearing that his job with Cromed did not require lifting. Claimant testified further:

Q: Okay. Would you be able to do that job, given the nature of your -- your people you're transporting, without giving them some assistance?

A: Yes.

Q: You could?

A: Yes.

(Transcript, p. 48)

As discussed above, the overwhelming evidence indicates Claimant gave notice that he was resigning his job on 10/9/17, and this occurred approximately four months before any work restrictions were issued. Under these circumstances, Cromed had no obligation to offer work to Claimant, restricted or otherwise although suitable employment was available.

6. The hearing Commissioner erred in designing Dr. LaMotta as treating physician, (in the event Claimant's injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to S.C. Code Ann. §42-15-60.

S.C. Code Ann. §42-15-60 provides in pertinent part:

During any period of disability resulting from the injury, the employer at its own option may continue to furnish or cause to be furnished free of charge to the employee and the employee shall accept an attending physician and any medical care or treatment that is considered necessary by the attending physician unless otherwise ordered by the Commission for good cause shown.

The Defendant's good faith denial of a claim should not warrant the Commission's appointment of a treating physician on that basis alone and where there is no evidence of a "dispute" between the parties relating to treatment, but only as to compensability. Any other outcome would be prejudicial to Defendant's statutory right to a treating physician per §42-15-60. See *Turner v. South Carolina DHEC*, 377 S.C. 540, 661 S.E.2d 118 (Ct.App.2008) (Workers Compensation statute which establishes the rights of the parties in regards to payment for treatment does not give a unilateral right to Claimant to select their treatment physician and such unencumbered right undermines the authority of the Commission as prescribed by the legislature) Moreover, Finding of Fact #25 indicates "Dr. LaMotta is the most familiar with the Claimant, he is well-known to the Commission, and he has already provided a treatment plan." However, as discussed above, Dr. LaMotta never examined or even met the Claimant but instead, his physician assistant saw the Claimant on 10/26/17. Additionally, the Claimant was last seen at Midland Orthopedics in October 2017, and Dr. LaMotta is therefore, most definitely, not familiar with the Claimant or his medical condition.

CONCLUSION

For the foregoing reasons Defendants request that the Appellate Panel reverse the decision of the hearing Commissioner and deny this claim. Alternatively, Defendants request the

Decision and Order be modified to deny all temporary total disability requested and Order that Defendants be entitled to appoint an authorized treating physician.

Respectfully submitted,

s/Mark D. Cauthen
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Columbia, South Carolina
June 21, 2021

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1717573

Jeffrey W. McCoy,)
)
Appellant/Respondent,)
)
v.)
Cromed, LLC,)
)
Employer,)
)
and)
)
Guarantee Ins. Co. (in liquidation)/S.C.)
Property & Casualty Ins. Guaranty)
Assoc.,)
)
Carrier,)
)
Defendants/Appellants.)

CERTIFICATE OF SERVICE

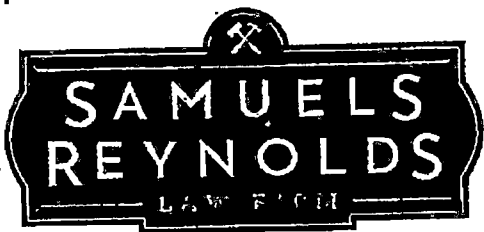
This is to certify that I, Mark D. Cauthen, have caused the following described document to be served electronically on the following parties of record, by sending a copy of same as addressed below on June 21, 2021:

Document Served: Defendant/Appellant's Brief to Full Commission

Persons Served: Eugenia Hollomon, Judicial Docketing
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715
Via Email: appeals@wcc.sc.gov
Via eCase Upload (once attorney can efile)

Stephen Samuels, Esquire
1320 Richland Street
Columbia, SC 29201
Via Email: stephen@samuelsreynolds.com

s/Mark D. Cauthen
Mark D. Cauthen, Esquire



STEPHEN B. SAMUELS
P. JASON REYNOLDS
ATTORNEYS AT LAW

July 6, 2021

Eugenia Hollmon, Judicial Docketing
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Jeffrey McCoy v. Cromed, LLC.
WCC File Number: 1717573

Dear Ms. Hollmon:

Enclosed for filing please find our Brief of Claimant/Respondent, which we hereby submit on behalf of the Claimant, Mr. McCoy. We have also electronically filed our Brief of Claimant/Respondent through eCase.

By copy of this letter and enclosures to Mark Cauthen, counsel of record for the Defendants, we are hereby serving a copy of the same upon him as indicated by the attached Certificate of Service.

Thank you for your assistance in this matter. Please call us with any questions or if additional information is needed.

With kindest regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to be "S. B. Samuels", written over a horizontal line.

Stephen B. Samuels

SBS/wp
Enclosure(s) as stated

cc: Mark Cauthen, Esquire

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy, Claimant,
Appellant/Respondent,

v.

Cromed, LLC, Employer,
and

Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assoc.,
Carrier,

Respondents/Appellants.

**BRIEF OF CLAIMANT/RESPONDENT
TO THE FULL COMMISSION**

Claimant, by and through his undersigned attorney, hereby submits his Brief of Claimant/Respondent in support of his claim for workers' compensation benefits.

STATEMENT OF THE CASE

This is an appeal from a Form 50 hearing in a denied case involving a back injury caused by lifting a wheelchair in to the trunk of a work vehicle on October 9, 2017. The Single Commissioner found the claim compensable. He ordered additional medical treatment through an orthopaedic surgeon, Dr. Ivan LaMotta, along with 12 weeks of TTD from the date of the accident.

DEFENDANTS' ISSUES ON APPEAL

1. Whether the Single Commissioner correctly found McCoy proved he had injured his back in a work-related accident based on credible lay testimony and medical evidence stated to a reasonable degree of medical certainty?
2. Whether the Single Commissioner correctly found McCoy's testimony to be more complete and credible than the testimony of Malcolm Young?
3. Whether the Single Commissioner correctly found CroMed had no light duty available and could not have offered light duty to McCoy?
4. Whether the Single Commissioner's finding that good cause supported designating Dr. LaMotta as the attending physician was within his authority and supported by the evidence?

STATEMENT OF THE FACTS

Jeffrey McCoy worked as a care driver for Cromed, LLC, a non-emergency medical transportation company, for approximately four months. On Thursday, September 14, 2017, McCoy started feeling a dull pain in his back. *This was not associated with an accident and is not claimed to be part of this accident.* By the following Sunday the pain had gotten worse, so he reported the pain to his supervisor, Malcolm Young.

The following Monday, September 18, 2017, McCoy went to Providence Hospital NE Emergency Department, reporting symptoms of back and abdominal pain with radiation into his left groin. The patient believed he had a kidney stone. The ER Physician diagnosed Mr. McCoy with acute left lumbar spasm and prescribed Valium and Motrin. He was written out of work through September 21st. McCoy provided the work note to his employer, who gave him a week off to rest and to come back the next Monday, September 25th. [APA pages 4-11].

On Monday, September 25th, McCoy attempted to return to work but was unable to stay and went home after two hours.

McCoy returned to the Providence Emergency Department the next day on September 26th, for "continued lower back pain with radiation into abdomen." There was no "weakness or numbness to extremities." The ER Physician ordered a CT scan of the Abdomen/Pelvis and Lumbar Spine. The Lumbar CT revealed diffuse bulging of the disc at L4-5 with mild central canal biforaminal stenosis, and mild bulging of the L5-S1. McCoy was released to return to work on September 28th and referred to Midlands Orthopaedic. [APA pages 15-23].

After another week of rest, McCoy went back to work on Monday, October 2, 2017. He was able to work without much difficulty through October 8, 2017. On Monday, October 9, 2017, McCoy was sent to transport two clients – one of whom was in a wheelchair. He picked up the first client and drove to pick up the wheelchair bound client.

While McCoy was enroute to his second stop – before the accident happened – Robert Cronan called McCoy. Cronan had been monitoring McCoy's route and was angry that he had picked up the first client before picking up the wheelchair bound client.

McCoy got the client into the car and as he was putting the wheelchair into the trunk, he felt acute shooting pain down into his left groin and leg. *This is the acute accident giving rise to this workers' compensation claim.*

After getting back into the car, McCoy called Malcolm Young. He testified:

I called Malcolm just a few minutes after that and told Malcolm that I didn't understand why Robert would send me to pick up that wheelchair knowing that my back was already hurt.

I told Malcolm that – that when I picked [the wheelchair] up I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of the day off. I told him at that point, no, I couldn't – I couldn't afford to take the rest of the day off and then I told him then that this may or may not be my last day; I will let you know by the end of the day. [Tr. Page 58, lines 1-17].

McCoy finished his shift for the day and dropped off the company car. He also called Malcolm "to ask for a Workman's Comp doctor." Young responded "is that the route you want go?" McCoy replied "Yes." [Tr. Page 82, lines 3-8].

Young and Cronan reported the claim to their insurance carrier that evening. Robert Cronan testified that CroMed has no light duty work and could not provide work to McCoy within Dr. LaMotta's restrictions.

McCoy was seen at Midlands Orthopaedics on October 12, 2017. On the intake form, he wrote that his pain started on September 14th and worsened on October 9th. [APA page 34]. Dr. Ulrich prescribed an MRI of the lumbar spine, physical therapy and Mobic. Dr. Ulrich opined "This was a work related injury." [APA page 37].

The MRI was performed on October 20th. The MRI showed a broad-based disc protrusion at L4-5, favoring the left side, with moderate facet arthropathy; moderate foraminal stenosis at the left L4-5 and mild on the right; annular tear along with disc protrusion at L5-S1 with abutment of the right S1 transversing nerve root.

Dr. Ivan LaMotta at Midlands referred McCoy to a pain management specialist for a selective nerve root block at left L4. [APA page 47]. He ordered additional physical therapy and prescribed ibuprofen 800 mg. He also put him on an indefinite 15-pound lifting restriction. [APA pages 51].

On February 20, 2018, Dr. LaMotta opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

McCoy then saw Dr. Steven Poletti for an evaluation on January 29, 2018. Dr. Poletti agreed

with Dr. LaMotta. He wrote: "This lifting injury was potentially a straw that broke the camel's back, but nonetheless in my opinion it is most likely the lifting incident which caused the disc to herniate and ultimately has led to the recommendations by both myself and Dr. LaMotta." Dr. Poletti stated "I would place him in off-duty status." [APA pages 52-53].

Defendants deposed Dr. LaMotta on September 11, 2018 and Dr. Ulrich on December 4, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

Dr. Ulrich also stood by his opinion that this was a work-related injury. However, Dr. Ulrich also noted as he is not a spine specialist, he defers to Dr. LaMotta's opinion.

On August 14, 2019, Defendants deposed Dr. Poletti. Dr. Poletti was shown an opinion letter from a radiologist, Dr. Bull.¹ Dr. Poletti testified "I will say again, just personally, every scan on every patient that I see, I look at the scan myself and interpret it myself." [Poletti Dep. Tr. Page 23, lines 12-14]. Dr. Poletti disagreed with Dr. Bull. In his opinion, there was an observable objective worsening on the MRI versus the pre-injury CT scan. He also testified there were difference in physical examination, signs and symptoms before and after the October 9, 2017 work accident.

The case was tried before Commissioner Avery Wilkerson on July 16, 2020. Commissioner Wilkerson issued an Order stating: "I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine." [Order, page 17,

¹Claimant objected to Dr. Bull's report on the grounds that it was obtained in violation of § 42-15-95.

Finding of Fact 22]. Commissioner Wilkerson ordered:

1. Defendants shall provide treatment with Dr. LaMotta designated as the authorized treating physician;
2. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence. [Order, page 19, Finding of Fact 29].

ARGUMENT

1. **The Single Commissioner correctly held McCoy suffered a compensable injury by accident based on a preponderance of both credible lay testimony and medical evidence [in response to Defendants' argument at pages 4-9].**

Defendants appealed Commissioner Wilkerson's findings that McCoy suffered a compensable injury to his back lifting a wheelchair on October 9, 2017. To be clear, *it is undisputed that McCoy lifted the wheelchair and loaded it into the trunk of his company vehicle on October 9, 2017.* While Defendants proposed a spurious theory that McCoy did not have sufficient time to injure himself loading the wheelchair, that theory was exploded when it was shown by the Employer's GPS log that McCoy spent 4-5 minutes at that specific location. In short, *Defendants can not and do not dispute that there was an accident. Their appeal is entirely based on disputing the opinions of the orthopaedic surgeons.*

Commissioner Wilkerson relied on both the lay testimony and expert medical evidence. In a thorough and well documented order, he explained how he reached his conclusions:

I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and

Poletti. Dr. LaMotta testified “in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although - Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is - there is a clear difference there.” [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive. [Order, Finding of Fact 22, Page 18].

At the end of the day, this is not a complicated case. The only unusual aspect is the fact that McCoy had been having axial back pain going into his abdomen in the weeks before the accident with no apparent cause or explanation.

The pain began on September 14, 2017. McCoy went to the emergency room thinking he had a kidney stone. Notably, he was given a CT scan rather than an MRI because of his presentation. Had the emergency room doctors suspected a serious back injury, they would have ordered an MRI instead.

The CT scan (taken on September 26, 2017) did show diffuse bulging of the disc at L4-5 with mild central canal biforaminal stenosis, and mild bulging of the L5-S1. For this reason, McCoy was referred to Midlands Orthopaedics. [APA pages 15-23].

McCoy's appointment was scheduled for October 12, 2017. As we know, he had the work accident on October 9, 2017. When he completed his new patient paperwork at Midlands, McCoy forthrightly stated that his pain first started on September 14th, worsening on October 9th. [APA page 34].

When did your pain first start? Sept, 14th

When did it worsen? (date and event, if applicable) Oct, 9th

Rate the severity of your pain on a scale from 1 to 10, with 1 being the least painful and 10 being the most severe:

1 2 3 4 5 6 7 8 9 10

Type of pain (circle all that apply):

Dr. Ulrich diagnosed McCoy with left lumbar radiculopathy and low back pain. He ordered an MRI. He specifically stated "This was a work related injury." [APA page 37].

After the MRI, McCoy's care was transferred to Dr. LaMotta's practice group -- where he was seen by Dr. LaMotta's PA acting under Dr. LaMotta's direction. McCoy forthrightly described his entire history -- including the history of back pain beginning on September 14, 2017. Indeed, McCoy has never tried to hide his preexisting symptoms -- a point which speaks well for his credibility. He forthrightly stated (as reported by Midlands Orthopaedics):

Mr. Jeffrey McCoy is a 49-year-old male who presents to the clinic for an initial evaluation of his lumbar spine. The patient reports that he has a history of lower back problems. He is unsure what triggered onset of his lower back pain, and notes that he woke up with stiffness on 09/14/2017. He states that he presented to the emergency room on 09/18/2017, and subsequently took 1 week off from work. He recalls that he initially felt that his condition was improving, and he returned to work on Monday 09/25/2017. However, he states that he then ended up taking another week off from work. He recalls attempting to pick up a wheelchair at work on 10/09/2017 when he experienced a flare-up of pain in his lower back and left lower extremity. He notes that sitting in a car triggers significant pain. He states that he is able to tolerate his condition while sitting at an angle on his foam cushion.

He localizes pain to the left side of his lower back, which radiates down through his left posterior hip and wraps around into his groin region. He notes that pain radiates down diagonally into his left leg as well, from laterally to medially. He claims that pain is fairly constant, which is triggered by placing weight on his left side while sitting. He denies having any significant numbness. He denies experiencing any bladder or bowel dysfunction, but notes that he constantly feels as though he must empty his bowels. The paperwork is in progress for the patient to be approved for workers' compensation.

ROS

Given that there unquestionably was an accident lifting a wheelchair, the only real issue on appeal is whether McCoy proved the aggravation of a preexisting condition. In this case, we have

the extraordinary advantage of being able to compare imaging studies taken days before and days after the accident. We already know there is a significant difference in the pre and post accident symptoms shown both by testimony and physical exam. The key are the imaging studies.

Defendants seek to make this case a dispute between experts. They posit that their expert -- a general practice radiologist who never sees, examines or treats patients -- is somehow more qualified to opine on causation (and interpret imaging studies) than three orthopaedic surgeons.

One can begin by simply reading the reports from the imaging studies (as read by the radiologists).

CT Scan - dated 9/26/17	MRI Scan - dated 10/20/17
IMPRESSION: Diffusely bulging disc L4-5 with mild central canal and biforaminal stenosis. There is mild bulging of the L5-S1 disc without central canal stenosis	IMPRESSION: Disk deformities at L4-5 and L5-S1. It is worse at L4-5 where there is a prominent broad-based disk deformity present extending centrally to the left. Disk material extending to the left lateral recess and towards the left neural foramen. There is a slightly smaller disk deformity at L5-S1, but there is associated annular fissure at L5-S1 level.

Given that the scans show pathology at the same levels, expert testimony is required to interpret the scans and, critically, *correlate the change shown on the MRI with the patient's clinical presentation*. Drs. LaMotta and Poletti were able to do just that.

Dr. LaMotta's chart states:

MRI Scan -- dated 10/20/17

MRI of the lumbar spine performed at Providence Northeast Hospital dated 10/20/17 was reviewed in detail with Dr. LaMotta as well as myself. It was discussed in detail with the patient. It reveals a broad-based **disc protrusion** at L4-5, favoring the left side. There is moderate facet arthropathy noted. Moderate foraminal stenosis is seen on the left at L4-5, and mild on the right. There is moderate lateral recess stenosis seen on the left side. At L5-S1, there is an **annular tear** along with a disc protrusion. There is abutment of the right S1 transversing nerve root. There is at least mild foraminal stenosis seen bilaterally.

Dr. LaMotta gave context to this description in his deposition. He first explained that even though an MRI is superior to a CT "you can see disc bulges, and you can differentiate disc bulges from protrusions, from extrusions even on a CT." [LaMotta dep. Tr. Page 30, lines 1-12].

He then went on to testify:

The deformity that we're talking about is a protrusion, so that is **definitely a lot worse -- a lot worse than a disc bulge**. . . . So, in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, **there is clear change**, although -- Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is -- there is a clear difference there.

[LaMotta dep. Tr. Page 31, lines 1-page 32, line 5 (emphasis added)].

Dr. Poletti's opinion was similar, although on his reading the L4-5 disc was actually herniated. Dr. Poletti opined "This lifting injury was potentially a straw that broke the camel's back, but nonetheless in my opinion it is most likely the inciting incident which caused the disc to herniate and ultimately has led to the recommendations by both myself and Dr. LaMotta." [APA page 53].

In his deposition, Dr. Poletti opined the MRI showed a herniated disc where the CT showed

a bulging disc. Dr. Poletti was then shown the report from Defendants' radiologist (Dr. Bull).² He testified:

Well, I've just looked at the MRI and the CT scan, and I've looked at the radiologist's interpretation of the CT scan that read it in the hospital, and the MRI interpretation, as well, and it's clear to me, at least from looking at it, that the MRI scan is a herniated disc which lateralizes to the left and that I don't see that on the CT scan of 9/26/17, and neither does the radiologist that -- that read his scan. And, so, again, to my interpretation, -- And I know I'm not a board-certified radiologist, but I would go out on a limb and say that there is no doctor in South Carolina that's looked at more MRIs and CT scans of the spine than me, for sure, and I don't see that the CT scans and MRIs are identical. I -- I detect the difference just as the radiologist that read the scans did, and I assume Dr. LaMotta most likely did, too, because it seems pretty obvious to me.

[Poletti Dep. Tr. Page 17, line 8-25].

Both surgeons opined their reading of the *actual scans* showed a clear difference. The CT scan showed a bulge; the MRI showed protrusion (LaMotta) or herniation (Poletti). Similarly, both spine surgeons recommended work restrictions and treatment (specifically LEST's, potentially surgery).

While interesting that Defendants would prefer to pay for a radiologist rather than a spine surgeon to opine on causation, the opinion they obtained has little if any probative value. Dr. Bull could not correlate the change in symptoms with the imaging because he never spoke to the patient nor conducted a physical exam. He is not that kind of doctor. Furthermore, the issue is more complex than merely measuring the size of the bulge versus the size of the protrusion/herniation. There is a qualitative difference Dr. Bull could not or did not address.

One might also note the Dr. Bull's opinion is not only contrary to that of the surgeons; it is also at odds with the radiologist who initially read the MRI scan. That radiologist, Dr. Lovern,

²Claimant objected to Dr. Bull's report on various grounds: (1) it was not produced prior to the deposition; and (2) it was obtained in violation of Section 42-15-95.

described "a prominent broad-based disk deformity present extending centrally to the left." As Dr. Poletti pointed out that: "The disc material can't extend into the foramen unless it's herniated." [Poletti Dep. Tr. Page 12, line 10-23].

Commissioner Wilkerson reviewed all of this evidence. He found the medical records, testimony of McCoy, and the opinions of the surgeons under oath to be more persuasive than a letter from a general radiologist not involved with treatment or examination of the patient. The Order is logical and supported by overwhelming evidence. Therefore, the Appellate Panel should affirm.

2. The Single Commissioner correctly gave greater weight to McCoy's testimony than to Young because McCoy's testimony was "more complete and credible" on the issue of reporting the injury lifting the wheelchair [in response to Defendants' argument at pages 10-11].

Defendants argue "The Hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding Claimant's testimony was "more complete and credible" than [sic] Defendant's supervisor..." [Defendants's Appellant's Brief, page 9]. The finding itself (Finding of Fact 15) states:

Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't - I couldn't afford to take the rest of the day off and then I told him that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job - which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's statements in the first phone call.

Nothing in this statement disparages the Employer's witness. The Hearing Commissioner attributed the slight inconsistency in testimony to Young "simply misinterpret[ing]" what McCoy told him. The Hearing Commissioner felt he had to resolve the inconsistent interpretations of what was said.³

Immediately after the accident, McCoy called Malcolm Young.. He testified:

I called Malcolm just a few minutes after that and told Malcolm that I didn't understand why Robert would send me to pick up that wheelchair knowing that my back was already hurt.

I told Malcolm that -- that when I picked [the wheelchair] up I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of the day off. I told him at that point, no, I couldn't -- I couldn't afford to take the rest of the day off and then I told him then that this may or may not be my last day; I will let you know by the end of the day. [Tr. Page 58, lines 1-17].

Defense Counsel aggressively cross-examined McCoy on this testimony -- under the theory that reporting sharp pain from picking up a wheelchair was not notice because "you never mentioned anything about workers' comp?" McCoy repeated his testimony that "I didn't mention anything about workman's comp that morning, no. But I did let him know that when I picked up that wheelchair, I felt that sharp pain." Counsel repeatedly challenged McCoy on his testimony, yet McCoy testified virtually identically each time. [Tr. Page 90, line 2-page 94, line 9].

The cross-examination became so heated that the Commissioner rebuked Defense Counsel for "a mischaracterization of what [McCoy said]." [Tr. Page 91, lines 4-10]. When counsel persisted

³Defendants assert that the finding was improper because no specific credibility finding was in the Order instructions. The Full Commission may note that the order instructions are sparse and general. Even so, they strongly imply that the commissioner weighed slightly differing testimony between the witnesses. Most importantly, the Commissioner held a conference call with the attorneys to work out details of the proposed Order because Defense Counsel raised certain objections -- including on this specific finding. After speaking with the attorneys, Commissioner Wilkerson kept the finding in the final Order.

in this repetitive line of questioning, the Commissioner again interjected asking counsel to move on: "Well, let's get to it because I'm tired of hearing the same question five (5) different ways because he gives the same answer every time. Maybe we'll get some more information from your side." [Tr. Page 97, line 21-page 98, line 1].

The other party to the conversation was Malcolm Young. On direct questioning, Young denied that McCoy said "anything to you about injuring or reinjuring his back?" He also denied that McCoy said "anything to you about sustaining an injury lifting a wheelchair or when he was helping Delores on her pick up?" [Tr. Page 130, lines 3-10].

The story changed on cross-examination. After confirming that part of the conversation was McCoy "venting", Young was asked "So, as part of his venting he told that he was upset about being sent . . . to a patient with a wheelchair at a time when he was already having some back pain; isn't that true?" Young responded "I can't recall all the details but that may have been part of it." On further questions about McCoy having "specifically mentioned back pain as part of the reason he was upset," Young admitted "It's very - very well possible; yes sir." [Tr. Page 140, lines 1-22].

Young was then confronted with his deposition where he was asked "did he tell you in the first conversation he had hurt or tweaked his back lifting Mr. [sic] Porter's wheelchair into the truck [sic]" and what was your answer, sir?" Young responded "So, my answer would be, 'I remember him - I remember him telling me - and probably there was an explanation about why he was saying that, he was still in pain.'" [Tr. Page 141, lines 4-14]. Young volunteered that he did not recall the conversation word-for-word because "it was three years ago." [Tr. Page 141, lines 18-20].

The point here is not that Young was lying. On cross, he admitted he had been told about pain from lifting the wheelchair. He simply did not recall the details and assumed McCoy was

talking about the previous back pain.

The Hearing Commissioner heard all of this testimony. There was a slight inconsistency between Young and McCoy – which can be attributed to differing perspectives and memories. The incident was far more significant to McCoy so it makes sense that he had a better recollection. Young's memory was refreshed when shown his deposition testimony.

All of this confirms that the Hearing Commissioner's findings are both supported by the evidence and well within his purview as the trier of fact. As such, the Decision and Order should be affirmed on this issue.

3. The Single Commissioner correctly held CroMed had no light duty available based on the owner's testimony [in response to Defendants' argument at pages 11-12].

Defendants argue it was error for the Single Commissioner to find that CroMed had no suitable employment available to McCoy and could not provide work to McCoy within Dr. LaMotta's restrictions. [Defendants' Appellant's Brief, page 11]. Defendants are mistaken.

Cronan was asked "Your company does not have any light duty work available, do they?" Cronan gave a rambling answer stating "there is no light duty as as filing and sitting in an office." He was then asked "Would you agree when I asked you in your deposition that same question your testimony was that there is no light duty at your company?" Cronan responded "Correct. At that time, then, yes, you -- you are correct." [Tr. Page 192, line 16-page 193, line 7].

McCoy was limited to lifting 15 pounds by Dr. LaMotta. He was put on "out of work status" by Dr. Poletti. Cronan's testimony is crystal clear that CroMed had no light duty work available. The Single Commissioner's order should be affirmed with the modification that McCoy should be placed on a running award of TTD.

4. The Single Commissioner correctly designated Dr. LaMotta as the attending physician pursuant to his authority under section 42-15-60 [in response to Defendants' argument at pages 12-13].

Defendants contend the Commission lacks authority to designate the attending physician.

This is simply contrary to well-established law.

The Commissioner found:

Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

[Order, page 18, Finding of Fact 25].

The Hearing Commissioner designated Dr. LaMotta as the attending physician pursuant to his authority in an appropriate exercise of his discretion. See Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006)(the Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician). As there is no abuse of discretion, the Appellate Panel has no grounds to reverse that ruling.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be affirmed in part and reversed in part. McCoy should be awarded medical treatment with Dr. LaMotta. The temporary total disability award should be modified to provide that temporary total disability compensation must be paid from October 10, 2017 and continuing on a running award..

Respectfully Submitted,



Stephen B. Samuels
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LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000

Attorney for Claimant

July 6, 2021
Columbia, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Appellant/Respondent,

v.

CERTIFICATE OF SERVICE

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assoc.,

Carrier,

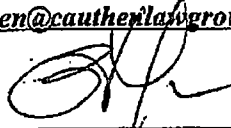
Respondents/Appellants.

This is to certify that I, Wanda Powell, paralegal for the Samuels Reynolds Law Firm, LLC, have caused the following described document, to be served electronically on the following parties of record, by sending a copy of same as addressed below, on July 6, 2021:

Document served: **Brief of Claimant/Respondent**

Person(s) served: Eugenia Hollmon, Judicial Docketing
S. C. Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202 - 1715
Via US Mail
Via eCase upload

Mark D. Cauthen, Esquire
Cauthen Law Group, LLC
2231 Devine Street, Suite 101
Columbia, SC 29205
Via email: mcauthen@cauthenlawgroup.com



July 6, 2021

113

Wanda Powell, Paralegal

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(803) 620-6282 Telephone
(803) 973-6262 Fax

RECEIVED
OCT 22 2021
BY:

Mark D. Cauthen
mcauthen@CauthenLawGroup.com

October 19, 2021

VIA HAND DELIVERY

VIA EMAIL: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Jeffrey W. McCoy v. CroMed, LLC and Guarantee Insurance Company (in liquidation)/S.C. Property and Casualty Insurance Guaranty Association
WCC File No.: 1717573

Dear Ms. Kitchings:

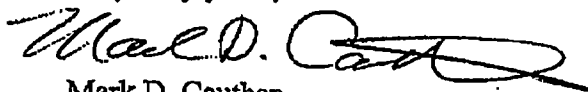
Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

1. Grounds for Appeal;
2. Proof of service of the Notice of Appeal on the Appellant/Respondent and the S.C. Workers' Compensation Commission;
3. A copy of the Order dated 9/20/21 which is to be challenged on appeal; and
4. A check in the amount of \$250 for the filing fee.

Please return a clocked copy of the Notice of Appeal to our courier.

By Copy of this letter, I am serving counsel for the Appellant/Respondent and the S.C. Workers' Compensation Commission with the Notice of Appeal.

Very truly yours,



Mark D. Cauthen

Enclosures

cc: Stephen B. Samuels, Esquire
Amy Bracy, Judicial director for SCWCC

COPY

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1717573

Jeffrey W. McCoy, Claimant, ...Appellant/Respondent,

v.

CroMed, LLC, Employer,
and Guarantee Ins. Co. (*in liquidation*)/S.C. Property & Casualty Ins. Guaranty Association,
Carrier,.....Respondent/Appellant.

NOTICE OF APPEAL

CroMed, LLC and Guarantee Ins. Co. (*in liquidation*)/S.C. Property & Casualty Ins. Guaranty Association appeal the Appellant Panel Decision and Order of the South Carolina Workers' Compensation Commission dated September 20, 2021.

October 19, 2021



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Counsel for Appellant/Respondent

**Jeffrey W. McCoy v. CroMed, LLC and Guarantee Ins. Co. (*in liquidation*)/S.C. Property
& Casualty Ins. Guaranty Association
SCWCC File No.: 1717573**

GROUND FOR APPEAL

1. Whether the Appellant Panel of the Full Commission erred as a matter of law in finding that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding was unsupported by the evidence and/or clearly erroneous as a matter of law?
2. Whether the Appellant Panel of the Full Commission erred as a matter of law and/or abused their discretion in finding a documented worsening of disc deformities after Claimant's alleged accident and in disregarding or assigning less weight to the opinions of a board certified radiologist, relating to interpretation of various imaging studies, and instead, relying on the opinion of an orthopedist who never saw Claimant and whose opinions lacked sufficient factual foundation and probative value, the error being such findings were unsupported by the evidence and contrary to the most competent, relevant, and probative medical evidence and/or clearly erroneous as a matter of law?
3. Whether the Appellant Panel of the Full Commission erred as a matter of law in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of and in the course of his employment on October 9, 2017, the error being such finding and/or conclusions were unsupported by the evidence and/or clearly erroneous as a matter of law?
4. Whether the Appellant Panel of the Full Commission erred as a matter of law in awarding temporary total disability benefits and in finding the employer had no suitable employment available to Claimant, the error being such findings and/or conclusions were unsupported by the evidence and clearly erroneous in light of the relevant and probative evidence in the record?
5. Whether the Appellant Panel of the Full Commission erred as matter of law in designating Dr. Ivan LaMotta as treating physician, the error being that the Employer/Carrier is entitled to appoint a treating physician pursuant to the Workers' Compensation Act and Regulations?

COPY

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1717573

Jeffrey W. McCoy, Claimant, ...Appellant/Respondent,

v.

CroMed, LLC, Employer,
and Guarantee Ins. Co. (*in liquidation*)/S.C. Property & Casualty Ins. Guaranty Association,
Carrier,.....Respondent/Appellant.

PROOF OF SERVICE

I certify that I, Mark D. Cauthen, counsel for Respondent/Appellant, have served the Notice of Appeal upon counsel for Appellant/Respondent and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on October 19, 2021, addressed as follows:

Stephen B. Samuels, Esquire
Samuels Reynolds Law Firm, LLC
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Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
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abracy@wcc.sc.gov
judicial@wcc.sc.gov

October 19, 2021


Mark D. Cauthen, Esquire

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (*in liquidation*)/S.C.
Property & Casualty Ins. Guaranty Assoc.,

Carrier,

Defendants,

**FULL COMMISSION
DECISION AND ORDER**

HEARING:

Held by video conference in Columbia, South Carolina on July 16, 2020.

APPEARANCES:

Claimant represented by Stephen B. Samuels, Esquire, of Samuels Law Firm, LLC. Employer represented by Mark D. Cauthen, Esquire, of Cauthen Law Group, LLC.

PURPOSE OF THE HEARING:

To determine issues raised on the Form 30.

DECISION AND ORDER:

by Susan S. Barden, Gene McCaskill, and Aisha Taylor, Commissioners.

ISSUES ON APPEAL

Claimant's Appeal:

1. Whether the Single Commissioner erred as a matter of fact and law in ruling that McCoy was limited to 12 weeks of TTD covering the "period from October 10, 2017 through January 1, 2018," when Dr. Poletti put him on "out of work status" and Dr. LaMotta "put him on an indefinite 15-pound lifting restriction thus entitling him to a running award of TTD until he reaches MMI and/or returns to work at the same or similar employment?"

Defendants' Appeal:

1. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.
2. Whether the hearing Commissioner erred in finding a documented worsening of disc deformities after Claimants alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, Board Certified radiologist, relating to interpretation of various imaging studies, the error being such finding is against the most competent, probative medical evidence and/or clearly erroneous as a matter of law?
3. Whether the hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of an in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?
4. Whether the hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding that Claimant's testimony was "more complete and credible" than Defendant's supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives?
5. Whether the hearing Commissioner erred in finding the employer Cromed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date

of injury, Claimant never sought or attempted to return to work with Cromed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous?

6. Whether the hearing Commissioner erred in designating Dr. LaMotta as treating physician, (in the event Claimant's injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to S.C. Code Ann. § 42-15-60?

STATEMENT OF THE CASE

This is an appeal from a Form 50 hearing in a denied case involving a back injury caused by lifting a wheelchair into the trunk of a work vehicle on October 9, 2017. The Single Commissioner found the claim compensable. He ordered additional medical treatment through an orthopaedic surgeon, Dr. Ivan LaMotta, along with 12 weeks of TTD from the date of the accident.

Based on a review of the record and arguments of the Parties, the Decision and Order of the Single Commissioner is **AFFIRMED**.

SINGLE COMMISSIONER FINDINGS OF FACT

The Single Commissioner made the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.
2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.
3. Claimant alleges he injured his low back with sciatica and radiculopathy into his left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

7. McCoy developed back and abdominal pain with radiation into his left groin on or about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. I note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, I find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't - I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but

did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job – which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's statements in the first phone call.

16. McCoy placed a second phone call to Young on October 9, 2017. In that call, McCoy requested an appointment with the workers' compensation doctor. Young interpreted the call as a request to file a workers' compensation claim. Young conveyed this information to Cronan. Cronan reported a claim to the Carrier based on a September 17, 2017 date of accident because Young did not inform Cronan of the October 9, 2017 injury by accident. Cronan testified McCoy advising that his claim had been filed.

17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands

Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me to be the same between the two exams."

22. I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although -- Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is -- there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a

dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is \$367.82, yielding a compensation rate of \$245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable

degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician. Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

APPELLATE PANEL FINDINGS OF FACT

Based on a preponderance of the evidence, the Appellate Panel makes the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.

2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.

3. Claimant alleges he injured his low back with sciatica and radiculopathy into his

left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

7. McCoy developed back and abdominal pain with radiation into his left groin on or about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when

he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. We note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, We find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't—I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the

end of the day.” [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy’s statement as notice that he was quitting his job – which Young conveyed to Cronan.

We specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. We further find McCoy’s statement that “this may or may not be my last day” to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy’s testimony is more complete and credible than Young’s. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy’s statements in the first phone call.

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17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy’s restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined “This was a work related injury.” [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

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30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He

aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician.

Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

AWARD

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner is **AFFIRMED**;

IT IS FURTHER ORDERED that Defendants shall pay for past causally-related medical treatment and shall continue to provide to Claimant causally related medical treatment for so long as such treatment will tend to lessen Claimant's disability;

IT IS FURTHER ORDERED that Dr. Ivan LaMotta and his practice are designated the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the

authorized treating physician related to Claimant's work-related injuries, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until the authorized treating physicians opine Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability. Treatment shall include such modalities considered necessary by the authorized treating physician;

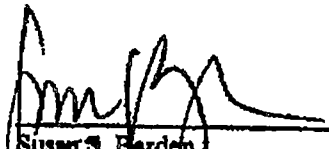
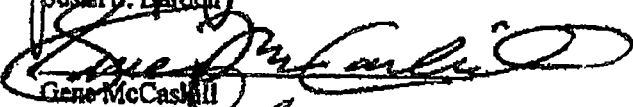
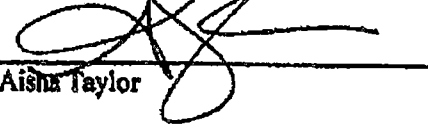
IT IS FURTHER ORDERED that Defendants shall pay temporary total disability compensation for 12 weeks pursuant to this Order;

IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

AND IT IS SO ORDERED.


Susan S. Barden

Gene McCaskill

Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on September 20, 2013 ¹³⁷

South Carolina Workers' Compensation Commission
WCC File # 1717573

Jeffrey McCoy,	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Jeffrey McCoy
	)	
CroMed, LLC,	)	
	)	
Employer,	)	
	)	
Guarantee Ins. Co. in	)	
Liquidation/S.C. Property &	)	
Casualty Insurance Guaranty	)	
Association,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Jeffrey McCoy, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 11:21 p.m., Thursday, May 31, 2018, at Samuels Law Firm, 1320 Richland Street, Columbia, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR-M

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Appearances

For the Employee/
Claimant: Stephen Samuels, Esquire
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201

For Employer/Carrier: Mark D. Cauthen, Esquire
The McKay Firm, PA
1303 Blanding Street
P.O. Box 7217 (29202)
Columbia, SC 29201

Reported By: Barbara P. Scott, CVR-M

Index

Stipulations.	3
Examination by Mr. Cauthen.	3
Examination by Mr. Samuels.	104
Certificate.	106

Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, has been partially or fully redacted or blacked out.

Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

Whereupon,

Jeffrey McCoy, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Jeffrey William McCoy.

Examination

By Mr. Cauthen:

Q Okay. Mr. McCoy, my name is Mark Cauthen. I introduced myself to you. And, as you know, I represent your -- former employer; I guess, and their insurance company in the workers' compensation case that you have filed. And, of course, we are here for your deposition today. Let me ask you first off, have you ever given a deposition like this before?

A No. No, sir.

Q Okay. You understand what this is all about --

A Yes.

1 Q -- today?

2 A Yes.

3 Q I'm sure your attorney has explained everything to
4 you. And, of course, the -- the purpose here is to
5 allow me to ask you questions about your -- your
6 injury, your accident, the claim in general, and
7 I'm going to just ask you, of course, a series of
8 questions. We'll start out with some background,
9 --

10 A Okay.

11 Q -- and then we'll get into -- and that background
12 will include things like your employment history
13 and any past claims history and things like that,
14 but then we'll get into your accident and your
15 medical treatment.

16 A Okay..

17 Q And if at any time during my questioning you don't
18 understand a question that I'm asking, if it's not
19 totally clear to you, just let me know, make sure
20 and let me know, and I'll do my best to clear it up
21 and make sure you do understand it.

22 A Okay.

23 Q And if you give me an answer, of course I'll assume
24 that you understood that question. If you would,
25 to make it easier for everyone and for our court

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1 reporter who's taking everything down, make sure
2 and just give me a verbal answer to everything.

3 A Okay.

4 Q It's very easy during the deposition for -- to
5 forget and just answer questions sometimes with a
6 uh-huh or uh-uh or a shake or nod of the head or
7 something like that. Just try to avoid that, and
8 just give us a verbal answer, like yes, no or an
9 explanation as you need to, --

10 A Okay.

11 Q -- and that'll make everything clear. Also, it's
12 very easy for the attorney asking the questions and
13 the witness to talk over each other. Sometimes
14 you'll anticipate what I'm asking and you'll go
15 ahead and probably answer before I get my question
16 out all the way, so -- and that causes the
17 transcript, the questions and answers in the
18 transcript, to overlap and it's all choppy and can
19 be confusing. So, if you would just let me finish
20 my question all the way before you give your
21 answer, and then I will always try to let you
22 finish your answer before I ask the next question.
23 That'll keep it cleaner.

24 A Okay.

25 Q Okay. And, so, with that, we will -- Let me ask

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1 you first off, too, are you this morning taking any
2 kind of medication, any drug you think that would
3 potentially impair your ability to answer questions
4 in the deposition today?

5 A No.

6 Q Okay. Very good. We will get going with it.
7 Could you give me your full name.

8 A Jeffrey William McCoy.

9 Q Okay. And your age and date of birth?

10 A 11/1/1967. I'm fifty years old.

11 Q Okay. And your Social Security number?

12 A XXX-XX-XXXX.

13 Q What is your current address?

14 A 4809 Katy Street.

15 Q K-a-t- --

16 A It's K-a-t-y.

17 Q Okay. Is that Columbia?

18 A Yes.

19 Q All right. Is that a house?

20 A It's a house, yes..

21 Q Do you own that house?

22 A No. I'm renting.

23 Q Okay. How long have you been at that address?

24 A About three months now.

25 Q Are you --

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1 A Three, maybe four months..

2 Q Okay. Are you from Columbia originally?

3 A No.

4 Q Where are you from? Where were you born?

5 A I was born in Stuttgart, Germany.

6 Q Germany?

7 A Yes.

8 Q Your parents in the military?

9 A Yes.

10 Q Okay.. How long. --. How long -- When did you move

11 to the US?

12 A I want to say I was about maybe six years old.

13 Q Okay.

14 A So, -- '67. About seventy- -- About -- About

15 '74, something like that, '75. I don't -- I don't

16 remember.. I was a baby.

17 Q Okay. How many different states have you lived in

18 prior to coming to South Carolina?

19 A Colorado; Kansas; Oklahoma.

20 Q Okay. Have you ever worked outside of the state of

21 South Carolina?

22 A Yes.

23 Q In what -- what states?

24 A I mean, I've worked in all those states. I've

25 worked in Oklahoma. I've worked in Colorado. I've

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1 worked in Kansas.

2 Q Okay. How long have you lived in South Carolina?

3 A I've been back here now for maybe about four years.

4 Q Okay. Are you married?

5 A No.

6 Q Been married in the past?

7 A No.

8 Q No. Okay. Any children?

9 A Yes.

10 Q What are their names -- names and ages, if you
11 could just give me brief rundown.

12 A Maurice is thirty-one. Monica is thirty. Antoine
13 is thirty. Maya is twenty-nine. CJ is twenty-
14 eight. Jasmine is twenty-one. Madsha and Jadsha
15 are both seventeen -- no, eighteen. Yeah, they
16 just turned eighteen.

17 Q So, eight? Is that right?

18 A Eighteen. Yes, I have eight --

19 Q Eight children?

20 A Yes.

21 Q Okay. All right. And do you have -- do you have
22 child support obligations --

23 A Yes.

24 Q -- for any? How many?

25 A The youngest two I owe back child support on, I'm

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1 paying back child support on now.

2 Q Just the youngest two?

3 A Yes.

4 Q I did notice a -- a child support deduction in your

5 pay stubs --

6 A Yes.

7 Q -- from CroMed.

8 A Yes.

9 Q And, so, are those obligations current?

10 A No, I'm not. I haven't been able to pay anything.

11 Q Okay. But while you were working with CroMed,

12 there was a deduction?

13 A Yes. While I was working there, it was being taken

14 out and being paid, yes.

15 Q So, there was an arrearage there?

16 A Yes.

17 Q Do you have any idea about how much that arrearage

18 is?

19 A No, I don't.

20 Q Is there a court order that's directing you to make

21 a certain amount of back payment?

22 A Not necessarily a court order I guess. I mean, I

23 never went to court about it, so -- I'm sure that

24 they -- I guess Social Services is doing it, I

25 guess. I'm not sure.

1 Q Okay. DSS?

2 A Yes, DSS.

3 Q And that's just for the two youngest?

4 A Yes.

5 Q Okay. And do -- How many -- How many of your

6 children are in South Carolina?

7 A Three.

8 Q Okay. Youngest -- Youngest three?

9 A The oldest three.

10 Q Oldest three?

11 A Yes.

12 Q Okay. So, the two that are seventeen --

13 A They're in Oklahoma.

14 Q Oklahoma?

15 A Yes.

16 Q So, the child support obligation, is that being --

17 is that under the laws of the state of Oklahoma or

18 South Carolina, or do you know?

19 A I would suppose Oklahoma, but I'm not -- I'm not

20 sure, I mean, who's pushing or -- Yeah.

21 Q Okay. Can you tell me the name of the mother of

22 the two that you're paying on?

23 A Margaret Owens.

24 Q Margaret Owens. Does she live in Oklahoma?

25 A Yes.

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1 Q Okay. Could you tell me about your educational
2 background, how far you went in school?
3 A Eleventh grade.
4 Q Where did you complete eleventh, or did you
5 complete eleventh?
6 A No, I didn't complete eleventh.
7 Q Went to some -- some of the eleventh?
8 A Yes.
9 Q And where was that?
10 A Denver, Colorado.
11 Q Okay. Did you obtain a GED subsequently?
12 A Yes.
13 Q Okay. Any formal education beyond obtaining the
14 GED?
15 A No.
16 Q Any kind of vocational training or tech school
17 training, anything like that?
18 A No.
19 Q Specialized job training?
20 A No.
21 Q Do you have a South Carolina driver's license?
22 A Yes.
23 Q Do you have any -- any -- Do you have a commercial
24 --
25 A No.

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1 Q -- driver's license? Have you ever had your
2 driver's license suspended by any state?
3 A Yes.
4 Q You have? What state?
5 A I've had it suspended in Colorado due to insurance.
6 -- lack of insurance.
7 Q How about South Carolina?
8 A No.
9 Q So, your driver's license is current here --
10 A Yes.
11 Q -- in South Carolina? Okay. Ever been in the
12 military?
13 A No. Do you mind if I stand for a minute?
14 Q Sure. Yeah.
15 A It's kind of easier on my back.
16 Q You're free to do that anytime you --
17 A Okay. Wonderful. Thank you.
18 Q -- need to. Also, I forgot to say, if you need to
19 take a break for any reason, just let me know --
20 A Oh, I'm fine.
21 Q -- and we can go off the record and take a break.
22 I want to go over a little bit about your work
23 history.
24 A Okay.
25 Q I just want to go back -- You're fifty. Why don't

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1 we go back about ten years. If you could, just
2 kind of give me a rundown of the types of work that
3 you've done in the past, say, ten years, and places
4 that you've worked.

5 A Mostly driving. Well, --

6 Q Ever had a CDL?

7 A No.

8 Q Okay. But it's mostly driving? What type of
9 driving?

10 A For the last few years, I've been doing the, I
11 guess, -- what do you call it -- ambulatory to --
12 basically what I'm doing for CroMed.

13 Q Medical transport?

14 A Medical transport, yes.

15 Q Okay. Just for various different companies?

16 A Yes.

17 Q Have you ever had your own business doing that?

18 A No.

19 Q Okay. Just tell me, if you would; -- Just go --
20 Why don't we just go back before CroMed because I
21 know you went to work at CroMed about -- Let's
22 see. They have your date of hire as July 3, 2017.

23 A Yes.

24 Q So, --

25 A I'm not -- I'm not real good with dates, but that

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1 sounds about right, yes.

2 Q Okay. And I won't hold you to exact dates. You
3 can -- You can estimate approximately when you
4 think you worked somewhere or how long you worked
5 somewhere, and that's good --

6 A Okay.

7 Q -- that's good enough. But what about immediately
8 prior to CroMed? Where did you work?

9 A USA Care Trans.

10 Q USA Care Trans?

11 A Yes.

12 Q Where is that located?

13 A That is also located here in Columbia.

14 Q Okay.

15 A I guess they were based out of Myrtle Beach,
16 though.

17 Q Was that medical transport?

18 A Yes.

19 Q And do you know how long you worked there?

20 A I was there approximately maybe a year, year and a
21 half.

22 Q But their -- their headquarters is in Myrtle Beach?

23 A Yes.

24 Q And do you remember your supervisor there?

25 A Oh, God, what is it? Bobby -- I don't remember

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- 1 Bobby's last name. I want to say Smith.
- 2 Q Okay. How about immediately before that?
- 3 A Well, I was with PetSmart for about a month.
- 4 Sandhills -- Oh, God, what was the name of that
- 5 place? Sandhills Lawn & Garden, and there I just
- 6 basically picked up lawnmowers and stuff.
- 7 Q Sandhills Lawn & Garden?
- 8 A Yeah. Small engine repair.
- 9 Q Okay. How about before that?
- 10 A I think that's around --
- 11 Q PetSmart, did you say that was at the Sandhills
- 12 area?
- 13 A That was also in Sandhills area, yes.
- 14 Q Okay.
- 15 A On Two Notch Road.
- 16 Q Okay. Before PetSmart?
- 17 A I was at L&M Meats, and I was only there for maybe
- 18 a week or so. It was working in their freezer, and
- 19 I couldn't handle the ice cold.
- 20 Q And where are they located?
- 21 A They are located also here in -- I want to say
- 22 Cayce.
- 23 Q That's L&M Meats?
- 24 A Yes, L&M Meats.
- 25 Q Okay. How about before that?

1 A Wow. I'm not -- My memory is shot. Before that,
2 I think I was in Oklahoma, and I was working for --
3 and I can't remember the name of the -- I was
4 working for a tobacco shop, and I can't remember
5 the name of that.

6 Q So, you had moved from Oklahoma to South Carolina?

7 A Yes.

8 Q Your first employment would have been L&M Meats?

9 A My first employment would have been Sandhills.

10 Q The Sandhills --

11 A Yes.

12 Q L&M at Sandhills?

13 A I was at Sandhills first, and then once I --
14 Sandhills was basically seasonal. Then, after
15 Sandhills, that's when I went to L&M.

16 Q Okay. What -- Now, what was the -- what was the
17 name of the company in Sandhills? Was it just
18 called Sandhills?

19 A It's Sandhills Small Engine Repair. Sandhills Lawn
20 & Garden, I believe is what it's called.

21 Q Okay.

22 A We basically -- We fix lawnmowers and stuff like
23 that, so lawn- -- It's small engine repair.

24 Q All right. You said L&M Meats for just a week or a
25 couple of weeks?

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- 1 A No. I was only there for about a week.
- 2 Q A week?
- 3 A Yeah. I couldn't handle the cold.
- 4 Q How about Sandhills Lawn -- Lawn & Garden?
- 5 A I was there for the summer, so about maybe four
- 6 months.
- 7 Q Okay.
- 8 A Other than that, I've done temporary jobs, working
- 9 temporary services.
- 10 Q In South Carolina?
- 11 A Yes.
- 12 Q Okay. Who are some of the temps that you worked
- 13 for?
- 14 A I want to say Express Temporary Service.
- 15 Q Express Temporary Service?
- 16 A Yes.
- 17 Q Are they in Columbia, also?
- 18 A Yes, off of Two Notch Road.
- 19 Q What kind of work did they assign to you?
- 20 A They had me at Wal-Mart for a couple of months.
- 21 Q Was that a driving job?
- 22 A No.
- 23 Q It wasn't?
- 24 A No.
- 25 Q And do you know -- How long were you with Express

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1 Temp?

2 A You know, I'm actually kind of still with Express

3 Temp. I just kind of call them as I need them.

4 But at that particular assignment, I want to say it

5 lasted for maybe four to six months, I think.

6 Q So, you're still employed, or signed up I guess,

7 with --

8 A Yes.

9 Q -- Express Temp Services?

10 A Yes. Well, I believe I am. I mean, it's been

11 quite a while since I've used them, but, I mean, --

12 Q Do you just call them when you want --

13 A I call them when I -- when I need work, yes.

14 Q Or do they contact you and offer you --

15 A Well, they send me -- they send text messages to

16 offer jobs or to say what they have available, and

17 I guess whoever calls first, --

18 Q Okay.

19 A -- you know, can get to it first.

20 Q When was the last time that you did anything with

21 Express Temp Service?

22 A It's been some years.

23 Q It's been some years?

24 A So, this is 2017. '16, '15, '14. I want to say

25 more or less when we first moved here, so I want to

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1 say about '14, 2014, 2013.

2 Q Okay. But you say you're still with them, but you
3 haven't done any --

4 A I haven't done no work with them for years, yeah,
5 for a while -- quite a while, but, I mean, you
6 know, I guess I'm still signed up. They still send
7 me text messages.

8 Q So, if you -- if you wanted to do something, if you
9 wanted to, you know, call them up and ask them,
10 Hey, do you have anything available, you could
11 still do that?

12 A I believe so, yes, but I'm not a hundred percent
13 sure.

14 Q Okay. Any other temp services besides Express Temp
15 Service?

16 A No.

17 Q Okay. And, so, that's what you just covered, is
18 all the employment in -- since you've been in South
19 Carolina for the past --

20 A That I can remember, yes.

21 Q -- four years? Have you ever been on -- just out
22 of work and receiving unemployment benefits or
23 receiving --

24 A No.

25 Q -- in South Carolina?

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- 1 A No.
- 2 Q No. Okay. Well, that doesn't seem to cover four
3 years worth of -- worth of work. What else have
4 you been doing since you've been in South Carolina?
- 5 A I mean, that's pretty much it. When I'm out of
6 work, I mean, I can either work for the temp
7 service or rely on my wife to cover the bills --
8 well, my girlfriend to cover the bills. I'm not
9 legally married.
- 10 Q Okay. Your girlfriend. And, so, does your
11 girlfriend live with you at that address?
- 12 A Yes.
- 13 Q And what's her name?
- 14 A Anna Kruse.
- 15 Q Is she employed?
- 16 A Yes.
- 17 Q Like C-r-u-z?
- 18 A K-r-u-s-e.
- 19 Q Oh. K-r-u-s-e. Where is she employed?
- 20 A Wal-Mart.
- 21 Q What does she do for Wal-Mart?
- 22 A Sales associate.
- 23 Q Okay. Does she work at more than one or just one
24 location?
- 25 A Just one location, Two Notch.

1 Q Two Notch. Okay. Do you have any other -- Do you
2 have any current sources of income?
3 A No.
4 Q Okay. Are you employed in any fashion currently?
5 A No.
6 Q When was the last work that you --
7 A CroMed.
8 Q CroMed was the last job?
9 A Yes.
10 Q So, this past October?
11 A Yes.
12 Q You haven't worked anywhere since October the 9th?
13 A No.
14 Q Have you earned any type of income at all since
15 October the 9th --
16 A No.
17 Q -- of 2017?
18 A No.
19 Q Are you currently looking for work?
20 A No.
21 Q Why aren't you currently looking for work?
22 A I was ordered by my doctor not to.
23 Q Which doctor?
24 A Gosh, I can't remember his name. Northeastern
25 Spine Institute. Southeastern Spine Institute.

- 1 Q Let's see. Dr. Poletti?
- 2 A I believe that's his name, --
- 3 Q Dr. Poletti?
- 4 A -- yes. That sounds -- Yeah, it sounds fair.
- 5 Q Now, I have one evaluation -- and we'll get to
- 6 this. I don't want to skip -- skip ahead really,
- 7 but just while we're on that subject, I have one
- 8 evaluation that you had with Dr. Poletti back in
- 9 January of this year. Have you seen him since
- 10 January?
- 11 A No, I have not.
- 12 Q Okay. And he gave you -- or recommended that you
- 13 be out of work at that time?
- 14 A Yes.
- 15 Q Okay. So, you -- you understood that to mean no
- 16 type of work at all, not in any fashion?
- 17 A Yes.
- 18 Q All right. Okay. Well, let me talk to you next
- 19 about your employment with CroMed. And I do have
- 20 the date of hire for you of July 3, 2017. Does
- 21 that sound right to you?
- 22 A Yes.
- 23 Q And were you hired as -- You were hired as a
- 24 driver; is that --
- 25 A Yes.

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1 Q -- right?

2 A Yes.

3 Q Tell me a little bit about your -- about your job
4 duties.

5 A Basically go to the clients' houses, pick them up,
6 take them to doctor's appointments or wherever it
7 is that they have to be.

8 Q And you were working -- you were working full-time?

9 A Yes.

10 Q Forty hours and -- and some overtime?

11 A Yes.

12 Q So, it was -- it was strictly medical transport?

13 Were you -- Do you have any other job
14 responsibilities other than driving and
15 transporting patients to --

16 A No.

17 Q -- medical appointments and so forth?

18 A No.

19 Q Okay. What were your typical working hours?

20 A It varied from day to day depending on what clients
21 were scheduled to be picked up, but normally I
22 would get up around -- I'd get started maybe around
23 six o'clock in the morning, and we wouldn't end the
24 day until maybe about five, six o'clock.

25 Q Okay. Was it Monday through Friday or --

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1 A Yeah, Monday through Friday.
2 Q No weekend work?
3 A If we got overtime, we'd get Saturdays sometimes.
4 Q Some Saturdays?
5 A Yes.
6 Q Okay. So, you would work -- Would you -- Would
7 you get 40 hours a week pretty much every week?
8 A Yeah. Yes.
9 Q And some weeks more?
10 A Some weeks more. Some weeks less.
11 Q Okay.
12 A So, an average of about 40 hours a week.
13 Q Okay. And what were you -- Were you paid hourly?
14 A Yes.
15 Q And what was that rate?
16 A I want to say 8.50.
17 Q 8.50. 8.50 plus time and a half for anything over
18 40?
19 A Yes.
20 Q Okay. Were you paid every two weeks or every week?
21 A Two weeks.
22 Q Okay. Now, besides transporting the patient to
23 whatever the destination was, how much assistance
24 did you give to the patient in terms of getting the
25 patient into and out of the car, into the facility

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- 1 and that type of --
- 2 A It really depended on the patient. If it was
- 3 someone in a wheelchair or someone elderly that
- 4 needed help, I would assist.
- 5 Q Okay. Was there a limit as to how much assistance
- 6 you could give?
- 7 A Um, --
- 8 Q For example, if you had a patient in a wheelchair,
- 9 would you -- would that patient have to be able to
- 10 stand and -- and walk into or step into the
- 11 wheelchair themselves or would you physically have
- 12 to carry or lift patients?
- 13 A I've only had one patient that was in a wheelchair,
- 14 and I would -- I would physically help her into the
- 15 -- in and out of the wheelchair.
- 16 Q Okay. You didn't have to lift patients; though,
- 17 did you?
- 18 A As far as lifting her out of it, like pick her up,
- 19 no, but to help her stand, yes.
- 20 Q Yeah. Okay. Did you have any type of medical
- 21 training in case there was any emergency dealing
- 22 with --
- 23 A CPR class.
- 24 Q Okay. Did you have to complete that for CroMed?
- 25 A I didn't complete one for CroMed, no.

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1 Q But you -- you already had CPR --
2 A But I already had one, yes.
3 Q Okay. Okay. Now, what kind of a -- Did you have
4 a standard route or would you be pretty much just
5 all over the Midlands area --
6 A Our route changed -- Our rate changed from day to
7 day. I would be sometimes in Aiken. I would be --
8 Well, half these little towns -- I can't remember
9 the names of half these little towns I've been in.
10 I've been in Cowpens, South Carolina. I never knew
11 there was such a place. But it -- it kind of
12 varied from day to day.
13 Q Okay. Now, would you -- would you always drive a
14 CroMed vehicle, or did you have your own vehicle?
15 A The CroMed vehicle.
16 Q Would it be the same one or something --
17 A It would vary from day to day, --
18 Q Okay.
19 A -- depending on the route.
20 Q Okay. All right. Okay. In a -- In a few
21 minutes, we're going to get to the accident that
22 you -- that you had in October, October 9th of
23 2017, but before we get to that, let me ask you,
24 have you ever had a back injury before you were
25 employed by CroMed?

1 A I've had back pain before, --
2 Q Okay.
3 A -- yes.
4 Q But was that the result of an injury, or do you
5 know?
6 A I mean, I'm not going to say it was the result of
7 an injury. I think I was just kind of born with
8 back issues. I'm not sure. It's -- I've had back
9 pains pretty much as long as I can remember.
10 Q Going back to a very young age?
11 A Yes.
12 Q Do you have any kind of -- Have you ever been
13 diagnosed with any kind of a back disorder, --
14 A No.
15 Q -- any --
16 A Besides what's going on now, no.
17 Q Okay. Any -- Any actual injury that you are aware
18 of that you sustained to your back, though, before
19 you went to work for CroMed?
20 A I mean, like I said, I don't -- I mean, I've never
21 been in like an accident or anything like that that
22 would cause me to -- for my back to be messed up
23 like this. You know, to be honest with you, I
24 don't know. I mean, I've never had -- you know,
25 like I said, have been in an accident to where my

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1 back would be messed up, no.

2 Q Okay.

3 A I don't really understand the question completely,
4 you know.

5 Q Well, just -- just a specific -- a specific injury,
6 such as a car accident --

7 A No.

8 Q -- or a lifting injury or something like that --

9 A No.

10 Q -- where you felt your back go out, felt immediate
11 pain, and you said, Hey, I've done something, I
12 need to go to the doctor?

13 A I mean, yes, I've been to the doctor before for my
14 back.

15 Q Okay. Let me ask you about that. What kind of
16 medical treatment -- Let me ask first off, have
17 you ever surgery on your back before?

18 A No.

19 Q No surgery. What kind of -- What kind of
20 treatment have you received for your back before
21 you were employed by CroMed?

22 A Go the emergency room. They give me some muscle
23 relaxers and send me on my way.

24 Q Just ER visits?

25 A Yes.

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- 1 Q Have you ever been treated by any specialist, such
2 as --
- 3 A No.
- 4 Q -- an orthopedist or someone like that?
- 5 A No, sir.
- 6 Q Have you ever had chiropractic treatment before for
7 your back?
- 8 A You know, I think I do -- I think I do kind of
9 remember going to a chiropractor once.
- 10 Q Do you remember --
- 11 A Like I said, my memory --
- 12 Q -- the name --
- 13 A No.
- 14 Q -- or the location of the chiropractor?
- 15 A No.
- 16 Q Was it outside of South Carolina?
- 17 A Yes.
- 18 Q Okay. Was that for back pain specifically?
- 19 A Yes, it was for back pain. I'm trying to remember.
- 20 Q That's -- If you think of it later, just let me
21 know.
- 22 A Okay.
- 23 Q But your prior treatment has just been like
24 emergent-type treatment --
- 25 A Yes.

- 1 Q -- which is some, like, acute injury, pain in the
2 back, and you just went to the doctor, to the ER
3 usually?
- 4 A Yes.
- 5 Q Do you have a family doctor here in Columbia -- in
6 South Carolina?
- 7 A No, I do not.
- 8 Q Who would you -- If you just have a sickness, a
9 cold or need a flu shot or something like that,
10 where would you go?
- 11 A I go to Sandhills Medical Clinic in Lugoff-Camden.
- 12 Q They're in Lugoff?
- 13 A Yes. I guess Lugoff-Camden, I guess right there on
14 the border.
- 15 Q Do you have a specific doctor that you've seen
16 there?
- 17 A I was seeing Montrice. I'm not quite sure what the
18 -- what my new doctor's name is.
- 19 Q Any specific health issue that you've -- that
20 you've been there for?
- 21 A Diabetes.
- 22 Q For diabetes?
- 23 A Yes.
- 24 Q Okay. Are you insulin-dependent?
- 25 A Yes.

- 1 Q Okay. And, so, they monitor your diabetic
2 condition?
- 3 A Yes.
- 4 Q Any other health issue that you regularly treat at
5 Sandhills for?
- 6 A High blood pressure. Anything, I got it. So,
7 hypertension/high blood pressure. Neuropathy.
- 8 Q Neuropathy?
- 9 A Yes.
- 10 Q What type of neuropathy? Do you know?
- 11 A What they call diabetic neuropathy. It's in my
12 feet. I get the tingling in my feet.
- 13 Q Okay. And what kind of medication do they have you
14 on for that?
- 15 A I am on insulin, Januvia, Metformin. Oh, what else
16 do they have me on? I have a list. I write it
17 down. I'm on Lantus, Novolog.
- 18 The Court Reporter: Can you put your
19 hand down?
- 20 The Deponent: Oh. I'm sorry.
- 21 Q Okay. And that's -- Would that all be prescribed
22 by Dr. Montrice?
- 23 A Yes.
- 24 Q Okay. All right. As far as -- As far as any
25 previous back pain before you went to work with

1 CroMed in 2017, what emergency rooms in South
2 Carolina do you recall going to for any back pain?
3 A Providence. Providence Northeast, I think, on
4 Farrow Road.
5 Q So, if you went to the ER, would it always be that
6 one at Providence?
7 A Not necessarily. I mean, whichever one is closest.
8 But right now -- at that time, that was the closest
9 one, Providence.
10 Q Okay. Do you always go to a Providence ER, or have
11 you gone to others?
12 A I've been to -- what is that -- Palmetto Richland.
13 Q Palmetto Richland?
14 A Yes.
15 Q Okay. How about Palmetto Baptist?
16 A No.
17 Q Lexington Medical Center?
18 A No. Never been there.
19 Q Do you know -- Can you give me an estimate of
20 about how -- Back to what age, approximately, have
21 you been having any kind of back pain, that whole
22 -- when you first recall having any kind of back
23 pain or discomfort?
24 A You know, honestly, I can't remember when exactly
25 it started.

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- 1 Q Just as long as you can remember?
- 2 A Just -- Yeah, as far as I can remember, yeah.
- 3 Q Okay. And is this -- is this all in the same area
- 4 generally of the back? Is it the low back, mid
- 5 back, upper back?
- 6 A It's pretty much been in general areas, all in mid
- 7 back, lower back.
- 8 Q Okay. Is this back pain that you've had -- is it
- 9 accompanied by any other -- any type of leg pain,
- 10 where you have, like, shooting pain going into the
- 11 hips or legs?
- 12 A Up until the incident when I picked up the
- 13 wheelchair, no. That was the first time I have
- 14 ever felt the leg -- the shooting down my -- by my
- 15 leg.
- 16 Q Okay. All right. Prior to -- to the claim that
- 17 we're here about today, have you ever previously
- 18 filed any kind of workers' compensation claim?
- 19 A Yes, I have.
- 20 Q Okay. Tell me about that.
- 21 A I smashed my finger under a rubber roll, and --
- 22 They settled. I ended up going to the hospital and
- 23 getting it done -- getting it --
- 24 Q Surgery?
- 25 A Yeah. Well, no. No, I didn't have to have

1 surgery. They just put a splint on it because it
2 was broke.

3 Q Okay. All right. And who were you working for?
4 A That was in Oklahoma. We were making horse --
5 Excess. We were making horse trailers.

6 Q Okay. And, so, that claim was just settled, --
7 A Yes.

8 Q -- resolved?
9 A Yes.

10 Q Did you miss any time from work for that, that you
11 --

12 A I think I was off work maybe -- Well, I can't
13 remember. I want to say maybe a week or so, two
14 weeks.

15 Q Okay. Anything besides that?
16 A No.

17 Q Just that one -- Just a finger injury, and that's
18 the only prior workers' comp?

19 A Yes.

20 Q Have you had any on-the-job injuries before that
21 may have -- may have not even resulted in filing a
22 workers' comp claim?

23 A No.

24 Q Have you ever previously injured your back as
25 opposed to just general back pain that you don't

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1 know where -- where it's coming from, where you --
2 A What do you mean by previously injured?
3 Q For example, lifting something when your back went
4 out, a slip-and-fall, --
5 A No.
6 Q -- a twisting injury, anything like that.
7 A No.
8 Q Okay. Have you ever been in a motor vehicle
9 accident where you had any kind of injury?
10 A Excuse me?
11 Q Have you ever been in a motor vehicle accident when
12 you sustained any type of injury?
13 A No.
14 Q All right. So, just one other workers' comp claim.
15 Have you ever --
16 A You know, I was -- but I -- I don't think I went to
17 the hospital for that, but maybe about 20 years ago
18 or so my mother was driving and we were in a car
19 accident, but -- Yeah, I don't even think -- I
20 didn't even go to the hospital for that. I ended
21 up going back to Colorado not too far -- not too
22 long after that.
23 Q You were in Colorado at the time --
24 A No. We were here in South Carolina at the time of
25 the accident.

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- 1 Q Okay.
- 2 A And I'm not -- Like I say, I want to say that was
3 maybe 20, 25 years ago.
- 4 Q Your mother driving, --
- 5 A Yes.
- 6 Q -- but you weren't even injured? You didn't --
7 You didn't seek medical care?
- 8 A No.
- 9 Q Okay. Have you ever filed any lawsuit in the past?
- 10 A No.
- 11 Q Have you ever been sued, been a party to any kind
12 of lawsuit, litigation?
- 13 A Besides an eviction, no.
- 14 Q Okay. Other than the finger that you -- that you
15 told me about, have you ever missed time from work
16 due to any kind of health issue where you, you
17 know, just had to be out, for either injury or
18 sickness?
- 19 A Yeah. I've had the flu, I mean, a cold or two, you
20 know, --
- 21 Q Okay.
- 22 A -- throughout life.
- 23 Q Have you ever applied for Social Security benefits,
24 any kind of Social Security benefits?
- 25 A I have once before, some years back. I'm not sure

1 as to when it was, but I applied to try to help to
2 get -- you know, to help me get meds, basically.
3 Q Did you receive any Social Security disability?
4 A I was -- No, I wasn't seeking Social Security
5 disability. I was seeking more sociability -- I
6 mean Social Security to try to help me keep up with
7 my meds. I wasn't able to keep up with all the
8 medicines that the doctors had me prescribed --
9 were prescribing me on.
10 Q So, you were seeking Medicare benefits --
11 A Medicare, yeah.
12 Q -- to pay for the --
13 A Yes.
14 Q -- for medication?
15 A Yes.
16 Q Where were you -- Do you know about when that was?
17 A No. It's been some years, and I was in Colorado at
18 the time.
19 Q Did you receive any benefits?
20 A No.
21 Q Did you have any type of medical insurance at --
22 while you worked for CroMed?
23 A No.
24 Q Who has paid for any of your treatment so far
25 related to -- to this claim?

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- 1 A Nobody.
- 2 Q Nobody?
- 3 A No. I got collection agencies calling me every
4 day.
- 5 Q Okay. How about -- Let's see. I know -- I know
6 you were seen at Providence a couple of times, in
7 the ER. Was any of that paid for?
- 8 A No.
- 9 Q Okay. How about Midlands Orthopaedics?
- 10 A No.
- 11 Q None of that was paid for?
- 12 A No.
- 13 Q How did they end up seeing you without some kind of
14 insurance or --
- 15 A Reference, I guess. I'm not --
- 16 Q Okay. Are they both sending you, like, collection
17 notices and things?
- 18 A Yes.
- 19 Q They are. Have you paid anything out of pocket
20 yourself?
- 21 A I haven't had -- No. I haven't had income to pay
22 anything, no.
- 23 Q Okay. Ever had an Obamacare policy?
- 24 A No.
- 25 Q Okay. All right. Before we get to the actual

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1 accident itself in October of 2017, let me ask you
2 about the month before that, in September of 2017,
3 some additional confusion as to what your date of
4 injury actually was. When CroMed did their First
5 Report of Injury, what we call a 12A, --

6 A Yes.

7 Q -- when you indicated you wanted to file a workers'
8 compensation claim, they put a date of injury down
9 as -- of 9/17, September 17, 2017. Did you have an
10 on-the-job injury on or about that time?

11 A I'm -- You know, like I said, I'm not real good
12 with dates. The day that I picked up the young
13 lady in the wheelchair. I'm not exactly sure what
14 day that was, but that was the day that I first
15 felt the shooting pain down my leg. That was the
16 same day that I talked to Malcolm about workman's
17 comp. Anything -- Anything that happened before
18 that date, no, I was not speaking to him about
19 workman's comp or any type of work injury, no. On
20 that day the incident happened when I picked the
21 young lady up in the wheelchair, when I picked the
22 wheelchair up, that's when I felt it shoot down my
23 leg. That's the day I talked to Malcolm about
24 workman's comp.

25 Q Malcolm Young?

- 1 A Yes.
- 2 Q Okay. Who was your direct supervisor at CroMed?
- 3 Was it either Malcolm or --
- 4 A It was either Malcolm or Robert. It was either --
- 5 whichever one called me, whichever phone number I
- 6 picked up and dialed. I can speak to both of them.
- 7 Q Okay. But a -- several weeks before that October 9
- 8 incident, you made two trips to the emergency room
- 9 at Providence --
- 10 A Yes.
- 11 Q -- for back pain; is that correct?
- 12 A No. The first time I went in, I thought I was
- 13 having kidney stones. I thought I had kidney
- 14 stones. I didn't think nothing about my back
- 15 whatsoever at that time. I thought it was kidney
- 16 stones. When I went in and they did the x-ray,
- 17 that's when they said it was my back and not kidney
- 18 stones.
- 19 Q Okay. You made two trips to the emergency room at
- 20 Providence --
- 21 A Yes.
- 22 Q -- before -- before you lifted the wheelchair?
- 23 A It was before -- before, yes.
- 24 Q Okay. The first one that I have, from the medical
- 25 records from Providence, was September 18, 2017.

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1 A If that was the Monday, yes.

2 Q You think that was -- that was -- Yeah, that was

3 Monday.

4 A Right. Yes.

5 Q Okay. Did you -- Do you recall communicating with

6 Robert the day before that, on Sunday, the 17th, --

7 A Yes.

8 Q -- that you were going to be going to the emergency

9 room?

10 A I told him I was going to the emergency room, I

11 thought I had kidney stones.

12 Q Okay. Thought you had kidney stones. What was the

13 pain that you were having at that time?

14 A It was in my -- It was in my groin area.

15 Q Okay. All right. Now, when you -- So, you went

16 on the 18th, the next day?

17 A Yes.

18 Q All right. And at that time, you -- according to

19 the report, or the note, you complained of left

20 lower back pain since Wednesday night.

21 A I went in complaining about kidney stones. They

22 asked me where I was feeling it. I told them where

23 I felt it, and that's when they -- like I said,

24 they did the -- the x-rays and everything and said

25 it was my back. I never went in complaining about

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- 1 my back. I went in complaining about my groin
2 area. I mean, I felt a little bit in my lower
3 back, but it was more in my groin, so I didn't
4 think it had anything to do with my back.
- 5 Q What they're indicating here is that you complained
6 of back pain since the Wednesday before, without
7 any injury, but the pain is noted to radiate into
8 your left groin. Does that -- Does that sound
9 accurate?
- 10 A That sounds about right, yes.
- 11 Q Okay. So, it was back pain that went in -- that
12 was radiating into your left groin --
- 13 A To me, it was -- it was in my groin, radiating to
14 my back, the way I felt it, yes.
- 15 Q Okay. What part of your back was --
- 16 A My lower back.
- 17 Q Lower back?
- 18 A The lower back.
- 19 Q All right. Did the -- At that time, did the pain
20 radiate -- did the pain shoot or radiate -- we call
21 -- sometimes we call it radiation, but radiating
22 into one of the legs or both?
- 23 A No. At that time, no.
- 24 Q Was it shooting to either one of your legs, --
- 25 A No. At that --

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- 1 Q -- going down to either one of your legs?
- 2 A No.
- 3 Q Make sure to let me finish the question --
- 4 A Okay.
- 5 Q -- so we don't talk over each other. At that time,
- 6 just your -- it was just into your groin?
- 7 A Yes.
- 8 Q The left side of your groin?
- 9 A Yes.
- 10 Q Okay. Did they do x-rays at that time?
- 11 A If I remember correctly, yes.
- 12 Q Okay. Do you remember what they told you about
- 13 your -- the findings that they made on your exam?
- 14 A I'm not sure if it was that time or the second time
- 15 I went in, but they said that it was my back, lower
- 16 lumbar. I don't remember exactly what it was they
- 17 told me.
- 18 Q Okay. What did they recommend to you at that time?
- 19 A Ice and heat.
- 20 Q All right. Did they prescribe any medications for
- 21 you?
- 22 A Some pain pill. No. Did they give me anything
- 23 that time? Gave me some pain pills -- or some
- 24 muscle relaxers.
- 25 Q Okay. Did they tell you there was no kidney stone?

- 1 A Yes. They said it was not my kidneys after they
2 ran the test.
- 3 Q All right. Did they indicate to you you were
4 having like a muscle spasm or something like that
5 in your low back, or what did they tell you about
6 your back?
- 7 A I believe that's what they said. Yeah, I believe
8 so, that's what they were saying, that it was
9 muscles -- muscle -- muscle spasms.
- 10 Q Okay. Now, were you -- did they give you a work
11 excuse at that time?
- 12 A Yes, they did.
- 13 Q And do you remember how long that was for?
- 14 A No, I don't. I have them. I still have them in
15 the car. I tried to give them to Robert. Robert
16 never took them.
- 17 Q Tried to give them to Robert and he didn't take
18 them?
- 19 A Yeah.
- 20 Q Okay. When did you try to give them to Robert?
- 21 A The very next day when I came back to work.
- 22 Q When was the next time that you came back to work?
- 23 A Uh, --
- 24 Q Or do you know how many days you were out?
- 25 A I think I was out a week that time and then came

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1 back that -- that following Monday and was sent
2 home again for a week.
3 Q Was sent home by who?
4 A By Robert.
5 Q All right. So, you tried to give a work excuse to
6 Robert and, you said, he wouldn't take it?
7 A He didn't take them. I mean, I'm not going to say
8 he wouldn't take it, but when -- I kept telling
9 him that I had them, and he never wanted them.
10 Q Did you show them to him?
11 A Nope. Never had a chance to. I never see Robert.
12 Q Okay.
13 A I never see -- I see Malcolm maybe once a week,
14 and I never see Robert.
15 Q Did you give the work excuses to -- or work excuse
16 to Malcolm?
17 A No.
18 Q Okay. Why not?
19 A He -- Malcolm never asked me for them, for one,
20 and, like I said, -- and when I told Robert that I
21 had them, Robert didn't worry nothing about them.
22 I mean, I still have them.
23 Q Okay. All right. So, you were out that -- that
24 whole week?
25 A Yes.

- 1 Q That whole week. All right. And then, as I
2 understand it, you went back to the emergency room
3 on September the 26th, at Providence?
4 A I think that's the date, yes.
5 Q The next week?
6 A Yes.
7 Q Okay. And what -- what problems did you have at
8 that time?
9 A The pain had just got a little bit worse.
10 Q What pain?
11 A In my back.
12 Q Okay.
13 A I was still feeling it in my back.
14 Q Was it located on either side of your back or --
15 A Just my left.
16 Q Left side of your --
17 A Yes.
18 Q -- low back?
19 A Yes.
20 Q Any other symptoms at that time?
21 A No.
22 Q Was there any radiating pain into either leg --
23 A No.
24 Q -- at that time?
25 A Not at that time, no.

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- 1 Q How about in your groin?
- 2 A No. That had -- For some reason, that had went
3 away.
- 4 Q Now, from that note, it says that you presented
5 complaining of lower back pain with radiation into
6 abdomen starting one week ago.
- 7 A Into my stomach, yes, and that's -- that's when I
8 was throwing up. When I went back in the second
9 time, I was throwing up.
- 10 Q Okay. Indicates that the pain was worse, to the
11 point where you were -- you were vomiting.
- 12 A Yes.
- 13 Q Okay. Do you think you were -- Do you think you
14 were throwing up due to the extent of the pain?
- 15 A It was because of the pain, yes.
- 16 Q Okay. So, this pain just -- over the course of a
17 week just got worse?
- 18 A It seemed to have gotten worse, yes.
- 19 Q Do you know of anything that you could have done --
- 20 A I haven't done --
- 21 Q -- to make it worse?
- 22 A No. I mean, the only thing I did at that time was
23 lay across the bed with heat and ice, alternating
24 heat and ice.
- 25 Q Okay. So, the -- Was the pain just -- just

1 limited to your back? Was it back and groin, or
2 was it anywhere else?

3 A It was just pretty much limited to my back.

4 Q But it was really, apparently, very severe?

5 A Yes.

6 Q And you think that was causing you to -- to be
7 nauseated?

8 A Yes.

9 Q How long did that last?

10 A That was just for that day. After -- After I left
11 the emergency room, they gave me -- that's when
12 they gave me the narcotics, and that kind of just,
13 yeah, took all the -- or steroids. They gave me
14 steroids one of the times -- one of those two
15 times. I'm not exactly sure when. Like I say, I'm
16 not real good with dates, and my memory is not the
17 best.

18 Q Okay. Did you return to work that week, the week
19 of the 25th, 26th?

20 A I'm not exactly sure what day -- what the date was,
21 but I was off for another week, and then that
22 Monday I went back and worked for a week and then
23 Saturday, and then that following Monday is when he
24 sent me to pick up the wheelchair.

25 Q Now, were you off another week? Were you written

1 out of work by the doctor again for another week?
2 A Yes.
3 Q So, you had two --
4 A Well, no. The doctor note covered me, I think, --
5 I want to say for only three days, but Robert told
6 me to take a week.
7 Q He told you take the rest of the week?
8 A Yes, he told me to take the week.
9 Q So, you had two weeks off there, due to the back
10 pain, --
11 A Yes.
12 Q -- before October?
13 A Yes.
14 Q Okay. Did it -- Did it improve where you could go
15 back the next week?
16 A It improved -- No, I'm not going to say it
17 improved. I can't say that because, like I said, I
18 was taking the pain pills at the time and the
19 muscle relaxers at the time, so maybe I just wasn't
20 feeling the pain.
21 Q Mm-hmm.
22 A So, you know, in my opinion, yeah, I was able to go
23 back to work.
24 Q So, you were -- you were -- That was -- Let's
25 see. You went back to work, as I understand,

1 October the 2nd. That was a Monday, the 2nd?
2 A I believe so. Like I say, I'm not exactly sure of
3 the dates, but I believe so, yes.
4 Q But you were still having back pain during that
5 time, but you were taking medication for it?
6 A Yes.
7 Q Do you remember what you -- what you were taking to
8 control it?
9 A You know, I don't remember. It was some type of
10 narcotic, but I can't remember the name of it.
11 Q Were you able to drive okay with that medication?
12 A I mean, yes, as long as I got plenty of sleep that
13 -- that night.
14 Q That back pain really didn't -- didn't resolve
15 itself?
16 A No. It still hasn't.
17 Q Okay. So, then you went -- you then -- you then
18 did go back to work, as I understand, October the
19 2nd. And did you work that full next week, --
20 A I believe so, yes.
21 Q -- the 2nd through the 7th?
22 A Yes.
23 Q Okay. Let me back up for just a second. As far as
24 September 17, 2017, that actually was a -- excuse
25 me -- a Sunday, but that was the date that --

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- 1 A I called Robert and told him I was -- Yeah.
- 2 Q Told him you were going to the ER? You did not
- 3 actually sustain an injury, though, on-the-job
- 4 injury, on 9/17/17, did you?
- 5 A No. No.
- 6 Q You're not claiming that, are you?
- 7 A No. I'm not claiming that, no.
- 8 Q Never reported any such injury to your employer?
- 9 A At that particular time, no.
- 10 Q Before you went back to work on the -- October 2nd,
- 11 did the doctors that you had seen in the emergency
- 12 room give you any kind of restrictions with regard
- 13 to your back pain?
- 14 A No lifting.
- 15 Q Just no -- no lifting?
- 16 A No heavy lifting. That's pretty much all they
- 17 said.
- 18 Q And this was in September?
- 19 A I believe so, yes.
- 20 Q Did they give you a poundage limit on what you
- 21 could and couldn't lift?
- 22 A I don't believe so, no.
- 23 Q Just no heavy lifting?
- 24 A No heavy lifting.
- 25 Q And that was at the Providence ER?

- 1 A Yes.
- 2 Q Okay. Now, at Providence, I believe on that second
3 visit that you made on the twenty- -- is it 26th --
4 26th, they made a referral to you at that time to
5 Midlands Orthopaedics. Do you remember that?
- 6 A I believe so, yes.
- 7 Q Okay. Did they contact you, or were you to contact
8 Midlands to set that up?
- 9 A I believe Midlands -- They gave me the referral,
10 and I think I had to -- No. They -- I think they
11 made the appointment from Providence, I believe.
- 12 Q Do you know when that appointment was set for?
- 13 A It was -- Okay. The Thursday -- The Monday, the
14 incident happened. That following Thursday, I was
15 supposed to go to Midlands -- was the date I was
16 going to Midlands. So, three days, four days.
- 17 Q So, it may have been around the 12th of October?
- 18 A I believe so, yes.
- 19 Q Okay. So, that was -- that was your first
20 scheduled appointment with Midlands? There wasn't
21 an earlier appointment --
- 22 A No.
- 23 Q -- to see someone at Midlands?
- 24 A No.
- 25 Q Okay.

1 A You know, they did have me see another specialist
2 at Providence, but I can't remember his name. And
3 I believe he was just -- He's the one that sent me
4 to Midlands, to a specialist.

5 Q Okay. You saw -- You think you saw two different
6 doctors at -- in the Providence ER?

7 A Right..

8 Q Okay. Okay. Now I want to get over to -- That
9 brings us up to the week of October the 2nd, and I
10 know your injury was on October the 9th, I guess
11 would have been the following Monday. Is that --
12 Is that right?

13 A I believe so, yes.

14 Q Okay. Can you tell -- Just tell us your
15 recollection -- and you can -- please go into as
16 much detail as you can remember -- exactly how your
17 accident happened on the 9th of October.

18 A I went to go pick the young lady up from her home.
19 Her son brought her down with the walker -- I mean
20 with the wheelchair. I'm sorry. I lifted her --
21 well, not lifted her, but I tried -- you know, gave
22 her aid out of her wheelchair and into the car,
23 brought the wheelchair back, collapsed it down, and
24 once I picked the wheelchair up, that's when I felt
25 the shooting. I felt the shooting shoot down my

1 leg -- felt the -- the nerve shoot down my leg.
2 Pain instantly came right back.
3 Q Which leg?
4 A My right leg. My left leg. I'm sorry.
5 Q Left leg. Okay. What kind of a -- What kind of a
6 vehicle, CroMed vehicle, --
7 A It was a Toyota Camry.
8 Q Toyota Camry?
9 A Yes.
10 Q It wasn't the Volkswagen?
11 A Oh. Yeah, it might've been the Volkswagen. I
12 drive -- Like I say, I drove different vehicles.
13 I believe it was the Volkswagen.
14 Q Volkswagen Passat?
15 A Passat, yes.
16 Q Passat. Okay. Four-door sedan?
17 A Yes.
18 Q All right. And do you know about what time you
19 started your -- your shift that day?
20 A I started around, I want to say, 6:30 -- about
21 seven o'clock.
22 Q Okay. Where do you -- Do you pick up --
23 A 7:19. 7:49. Yeah, six, seven o'clock is when I
24 started.
25 Q Do you pick up the vehicle from CroMed's location

1 in Irmo and then go to wherever --

2 A No. I pick up from CroMed's location in Columbia

3 off of Killian Road.

4 Q Okay.

5 A I believe -- Yeah, Killian Road, Clemson Road.

6 Q Okay. Clemson Road. And then go to wherever your

7 assignment is?

8 A Yes.

9 Q And, so, your first stop that day would have been

10 -- would have been where?

11 A My first stop that day was off of Bluff Road. What

12 was this guy's name? Jonathan was my first stop of

13 the day. And that was at 7:59, 7:58, somewhere up

14 in there.

15 Q Okay. That was the first patient that you picked

16 up?

17 A Yes.

18 Q All right. And do you know who the next patient

19 was?

20 A That was the young lady with the wheelchair, and I

21 can't remember her name.

22 Q Was it Dolores Porter?

23 A Dolores Porter.

24 Q Okay. All right. And what was her -- Do you know

25 where her address was? Where did you pick her up

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- 1 from?
- 2 A From her home. And I don't know her address, no,
- 3 but it's right off of Bluff Road.
- 4 Q Where were you taking Ms. Porter that day?
- 5 A Ms. Porter was going to -- off of Decker Road to --
- 6 I don't know the name of the facility.
- 7 Q Decker Boulevard here in Columbia?
- 8 A Yes, --
- 9 Q Okay.
- 10 A -- Decker Boulevard.
- 11 Q Like a -- It was like an old folks' daycare, --
- 12 A Yes.
- 13 Q -- something like that, --
- 14 A Yes.
- 15 Q -- for lack of a better term?
- 16 A Yes.
- 17 Q Okay. Anyone else that you picked up that morning?
- 18 A Like I said, Jonathan, but I can't remember
- 19 Jonathan's name.
- 20 Q Jonathan, then Dolores. Anybody else after --
- 21 A No.
- 22 Q -- Dolores?
- 23 A No. It was just those two.
- 24 Q Those two. Okay.
- 25 A And then I had to go -- From there, I had to go --

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1 I want to say to Union. I ended up going all the
2 way out to Union.

3 Q To Union?

4 A Yeah, I think.

5 Q Are you talking about after you dropped them off?

6 A After I dropped them off, yeah.

7 Q Okay. All right. Now, let's go back to picking up
8 Dolores. You said her -- Did you say her son or
9 son-in-law came out?

10 A I don't know if it's her son or son-in-law. I'm
11 not exactly sure who he is, but a young -- a
12 gentleman brought her out.

13 Q Okay. Did he bring her out in a wheelchair?

14 A Yeah, he brought her out in the wheelchair.

15 Q Okay. Now, did he help her into the Volkswagen?

16 A Never does.

17 Q He just brings -- brings her --

18 A He just brings her out and gives her over to me.

19 Q And gives her to you. Okay. Had you transported
20 her before?

21 A Yes, I have.

22 Q Okay. Did you always do it the same way?

23 A Always did it the same way, yes.

24 Q Okay. And tell me again what you -- what you did
25 at that point once he brings her out in the

- 1 wheelchair and hands her to you. What --
- 2 A I kind of, you know, give her aid and, you know,
- 3 get her out of the wheelchair, spin her around, put
- 4 her into the front seat of the car. Jonathan got
- 5 in the backseat. I put her into the front seat of
- 6 the car and then brought the wheelchair around and
- 7 put the wheelchair in the trunk.
- 8 Q Do you help her stand from the wheelchair?
- 9 A Yes.
- 10 Q Is she able to walk into -- to the --
- 11 A She can take one or two --
- 12 Q -- car?
- 13 A She can take one or two steps. That's about it.
- 14 Q Is she just a very elderly lady?
- 15 A Yes.
- 16 Q Okay. Is the son-in-law there at that time?
- 17 A I don't remember. I think he went back in the
- 18 house.
- 19 Q Okay. So, you help her get into the Volkswagen?
- 20 A Yes.
- 21 Q All right. And any problems there with helping her
- 22 get in, any --
- 23 A I mean, I'm -- I'm still stiff, you know, but no,
- 24 not -- I mean, no, not -- not no major problems,
- 25 no.

1 Q So, there's no injury associated with helping her
2 into the vehicle?

3 A No.

4 Q It was lifting the wheelchair?

5 A It was picking up the wheelchair. The trunk was
6 full of stuff, and that's what I didn't understand.
7 He has -- We have a big, black first aid box that
8 goes into the trunk, and I do have pictures of
9 that. So, basically, with me picking up the
10 wheelchair, I had to pick it up and maneuver it,
11 you know, to get it to fit in the back -- in the
12 trunk of this car, and I believe that that's -- you
13 know, in the process of me picking that up,
14 bending, maneuvering over, that's when I -- that's
15 when I felt the -- the shoot, the shot down my leg.

16 Q You said -- Now, you said you had photos of what,
17 now?

18 A I have photos of the trunk of the car and the stuff
19 that was in the trunk of the car.

20 Q Okay. Why did you take photos? I guess you --
21 Did you take them or --

22 A I took them.

23 Q Okay. Why did you take photos?

24 A Because I wanted to cover myself, because I told
25 Robert -- I wanted to cover myself as far as what

1 was in the trunk and how I had to put the
2 wheelchair in the trunk --
3 Q Okay.
4 A -- after speaking with Malcolm.
5 Q You have to maneuver -- maneuver the wheelchair to
6 get in there to fit?
7 A Yes.
8 Q All right. Now, you said you -- Is this just a
9 regular type of wheelchair or is it motorized or --
10 A It's just a regular wheelchair, yeah.
11 Q And did you say you folded it up?
12 A You have to fold it up in order to get it to go in,
13 yeah.
14 Q Folded it up and then lifted it and put it into --
15 A Yes.
16 Q -- the trunk? At what point in that process do you
17 -- did you sustain the -- have the --
18 A You know, I want to say as soon as I picked it up
19 and leaned forward, pow, that's when I felt it.
20 Q Okay. Leaned forward and put it -- it into the
21 trunk?
22 A Yes.
23 Q And tell me where -- where you felt the pain, and
24 just describe that pain you felt.
25 A I felt -- It felt like -- like just -- I don't

1 know -- like a burning, lightning sensation just
2 shot right down my leg, right into, you know, the
3 upper thigh, inner thigh, left leg.

4 Q Did you feel pain in the back, as well?

5 A Felt pain in my back, as well, yes.

6 Q Pain clearly ran down your left leg?

7 A Clearly ran down my left leg.

8 Q How far down your leg did it go?

9 A I mean, I'm going to say just above the knee, maybe
10 a little bit into the knee, but just above the
11 knee.

12 Q Was it just your left leg?

13 A Yes.

14 Q So, you felt like you -- you knew you had an injury
15 right there?

16 A I knew I was worse. I knew my back was worse, yes,
17 right then.

18 Q You knew you did something -- something else to
19 that back?

20 A Yes.

21 Q Okay. And do you know about -- about what time?
22 Would that have been eight o'clock or before eight
23 o'clock?

24 A I picked Ms. Porter up at 8:19, 8:15, 8:19,
25 something like that. I know I was on time.

1 Q Okay. All right. And from -- from -- from there,
2 where did you go?
3 A From --
4 Q From picking this up, when this happened, what did
5 you do after that?
6 A I took Jonathan to his daycare, dropped him off,
7 and then took Ms. Porter to hers.
8 Q So, you had to drive from her location to Decker?
9 A I drove from her location to --
10 Q Well, to Jonathan's --
11 A -- to Jonathan's place, and I don't know what the
12 name of that street is. It's off of Airport, I
13 want to say.
14 Q Mm-hmm.
15 A And then from -- from there, then we took a highway
16 up to Decker, yes.
17 Q Okay. Do you know about how long it took to get to
18 Decker?
19 A No, I don't. Maybe a half hour, I guess, maybe,
20 something like that.
21 Q Now, when you -- during the course of picking up
22 patients and transporting the patients, do you have
23 any -- do you have a radio in the car, two-way
24 radio or anything like that, or --
25 A No.

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1 Q -- a walkie-talkie?
2 A No.
3 Q Do you communicate at all when you pick somebody
4 up, like to confirm, Hey, I just picked up so-and-
5 so, I'm heading here, any text or phone call that
6 would --
7 A We have a tablet. I'm sorry.
8 Q -- where you would be in touch with the employer to
9 say, I got so-and-so and I'm heading here now?
10 A Yes. We have a tablet that we -- We get our
11 assignments off the tablet.
12 Q Mm-hmm.
13 A And when we pick someone up, we put in the time
14 that we picked them up, and we mark them off.
15 Q Okay. Tablet, like a -- like an iPad?
16 A Yes.
17 Q Okay. All right. So, you would keep up with the
18 -- with the assignments and check them off on the
19 -- on the iPad?
20 A Yes.
21 Q Is that a company iPad?
22 A Yes.
23 Q Okay. Is that something that you -- that you would
24 just keep and use all the time, or did you, like,
25 turn it in at the end of the day?

1 A Yes. We -- They -- They -- Each -- Each car has
2 its own tablet -- has it's own tablet, yes.
3 Q Okay.
4 A Tablet goes with the car, company.
5 Q Okay. And, so, tell me, if you -- tell me, if you
6 would, about the remainder of the day after you
7 dropped both those patients off. Did you work the
8 rest of the day?
9 A Yes, I did. I took some more -- Malcolm told me
10 to take some more pain pills. I took some more
11 ibuprofen, and I figured since I was, you know,
12 basically sitting and I had my cushions and
13 everything and I wasn't moving around, -- I
14 thought, I can't lose my job. It was the main
15 thing in my -- in my brain. So, yes, I went -- I
16 finished out the day.
17 Q Okay. Did you work all the way till, what, five
18 that day?
19 A I'm not sure of the exact time.
20 Q It would have been regular working hours?
21 A It would have been regular working hours, yes.
22 Q Okay. What else did you do the rest of the day in
23 terms of your other routes, other driving?
24 A That was it. After I went to Ms. -- After I
25 dropped Ms. Porter off, I believe I went -- I

1 believe it was in Union. I went and picked someone
2 up in Union and took her to her doctor's
3 appointment or wherever it was that she had to be,
4 and then took her home, and then after that I went
5 home.

6 Q How long a drive would that have been to Union?

7 A You know, I don't remember. I want to say about an
8 hour.

9 Q About an hour drive --

10 A Yes.

11 Q -- each way?

12 A Yes. I don't remember exactly how long it was.

13 Q Now, did you later go back to pick up the patients
14 you dropped off in the morning?

15 A No.

16 Q Did somebody else do that?

17 A Somebody else picked them up, yes.

18 Q Okay. So, after dropping off the -- Ms. Porter and
19 the other patient, you would have done the trip to
20 Union --

21 A Yes.

22 Q -- and back, and then that was the end of the day?

23 A And then that was it. That was the end of the day,
24 yes.

25 Q That was the end of the day. Okay. Now, at some

1 point, -- You've got the cell phone, I guess, --
2 A Yes.
3 Q -- with you at all times? At some point that
4 morning did you have a telephone discussion with
5 Malcolm or with -- with Robert?
6 A I've had -- I had telephone discussions with both
7 of them, yes.
8 Q That morning?
9 A That morning.
10 Q Okay. Tell me about your telephone discussion with
11 Robert first.
12 A Robert initially called me to ask me why I picked
13 Jonathan up first and not Ms. Porter first. I
14 explained to Robert that, number one, it was --
15 Jonathan was closer and his pickup time was ten
16 minutes before Ms. Porter's pickup time. Other
17 than that, I had a discussion with Malcolm asking
18 Malcolm why Robert sent me to pick up Ms. -- Ms. --
19 Miss Dolores with the wheelchair knowing that my
20 back was injured and to let him know that I was in
21 pain.
22 Q Okay. So, you had both those conversations in the
23 morning, I guess on your way to drop --
24 A I believe I talked to Malcolm after Ms. Porter --
25 after I dropped Ms. Porter, I believe. I'm not

1 exactly sure when it was that I talked to her -- to
2 him.

3 Q First conversation with Robert; the second with
4 Malcolm?

5 A First conversation was with Robert, and that was,
6 like I said, right after I had picked up Jonathan.
7 He called me to ask me why I picked Jonathan up
8 first.

9 Q Okay. So, did he -- did he basically kind of give
10 you a dressing down regarding the order of picking
11 up patients? Did he tell you, You're going out of
12 order and I need you to do the job correctly, and
13 so forth?

14 A No. He just asked me why. He asked me why did I
15 pick him up first, and I explained to him why I
16 picked him up first, because as I'm coming up Bluff
17 Road, his house is first. According to the tablet,
18 he was supposed to be picked up first. So, I did
19 what the tablet told me to do. And when he called
20 and asked me why I did it that way, I was kind of
21 confused, and I told him I did it that way because
22 Jonathan stayed -- was -- lived closer and his
23 pickup time was before Ms. Porter's pickup time.

24 Q Okay. Did he -- Did he tell you anything to the
25 effect that you're going out of order and I need

1 you to do it the way you're supposed to do it, or
2 anything like that?

3 A Yes, he did. He did tell me that, but he has also
4 told me that he deals with 40 people a day and he
5 does schedules for all people and sometimes he
6 messes up and if he -- if I feel like -- if we feel
7 like he's -- if it's not right, to just do what
8 we're supposed to do and let him know.

9 Q Okay. Was there -- Was there anything heated or
10 unpleasant about the conversation with Robert --

11 A No.

12 Q -- that morning?

13 A No.

14 Q Okay. Were you angry with Robert at all regarding
15 that conversation?

16 A I wasn't -- I wasn't angry with him, no. I just
17 didn't understand why he called me. But I wasn't
18 angry, no.

19 Q Okay. But you then had a conversation with Malcolm
20 on the phone after that?

21 A I had a conversation with Malcolm because I wanted
22 to know why Robert would send me to pick up someone
23 knowing -- pick up somebody in a wheelchair knowing
24 that my back was injured, and I told Malcolm then
25 that I was -- that I was in pain again and by the

1 -- at the end of the day I was -- I was going to
2 probably end up taking another week off. Me and
3 Malcolm had discussed -- I don't know if he told
4 me had back surgery or if he -- He said he had
5 back problems, also, so he understood, you know,
6 the pain that I was in. I can't remember whether
7 he said he had surgery or not. But we talked about
8 that for a while.

9 Q Okay. Now, in your conversation with Malcolm, --
10 And this is Malcolm Young, right?

11 A Yes.

12 Q In your conversation with Malcolm, did you complain
13 to Malcolm about the way you were treated with --
14 by Robert or anything like that?

15 A I didn't complain. We kind of laughed about it
16 because we know Robert is OCD. But no, it wasn't
17 like a complaint, no.

18 Q Okay. All right. You didn't go to him with any
19 kind of a problem you were having with -- with --
20 with Robert at that time?

21 A We talked about Robert, yes, but I didn't -- You
22 know, I asked him, I said, "Why does Robert call me
23 --" Like I said, I wasn't mad about it. I wasn't
24 -- I was more irritated, you know, but I wasn't
25 complaining, no.

1 Q Okay. You weren't angry with Robert at all?
2 A I was irritated with Robert, but I wasn't angry,
3 no.
4 Q Did you have a good working relationship with
5 Robert?
6 A Yeah. We talk. Me and Robert would talk every
7 day.
8 Q You have a good working relationship with -- with
9 Malcolm?
10 A Yes. Me and Malcolm would talk every day.
11 Q Okay. Had you ever been disciplined by either one
12 of them for any kind of infraction --
13 A Robert would call me -- If I was going down the
14 wrong street, Robert would call me to tell me not
15 to go down this street. I'm not familiar with
16 South Carolina, so I go where MapQuest tells me to
17 go. And if I don't go the way that Robert wants me
18 to go, Robert will call me and tell me that I'm
19 doing it wrong, and I would have to explain to
20 Robert that I don't know these streets, I go where
21 MapQuest tells me to go.
22 Q Okay. Now, both of these conversations we're
23 talking about, Malcolm and Robert, they were --
24 they were in the morning after dropping off Dolores
25 and the other patient?

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- 1 A Malcolm called me before I picked up Dolores.
- 2 Q Okay.
- 3 A I mean -- Not Malcolm. Robert called me before I
- 4 picked up Dolores.
- 5 Q Okay. And about what time did you talk with
- 6 Malcolm?
- 7 A I don't remember the exact time, but I know -- It
- 8 was after I dropped Ms. Porter off, I believe.
- 9 Q Okay. So, that was -- that was after the accident,
- 10 then, not --
- 11 A That was after, yes.
- 12 Q But you hadn't had the accident yet with Robert --
- 13 when you talked to Robert?
- 14 A No, I hadn't. No, I haven't -- I hadn't.
- 15 Q Okay. Did you tell Malcolm about the accident at
- 16 that time?
- 17 A Yes, I did.
- 18 Q Tell me exactly what you told him.
- 19 A I don't remember exactly what I told him, but I
- 20 told him that I was in pain again, I went, picked
- 21 up the wheelchair, I felt it shoot down my leg, and
- 22 I told Robert -- Malcolm that, and we had the
- 23 conversation about it, and I believe that's when he
- 24 was talking about his back, also.
- 25 Q And that would have been in the morning shortly

- 1 after dropping off Ms. Porter?
- 2 A I believe so, yes.
- 3 Q Did you tell Malcolm in that conversation or that
- 4 morning or anytime that day that this was probably
- 5 going to be your last day, that you would let him
- 6 know by the end of the day, --
- 7 A Yes.
- 8 Q -- that you were quitting?
- 9 A Yes, we had talked about that.
- 10 Q Okay. What -- What exactly did you tell him?
- 11 A I don't remember exactly word-for-word what I told
- 12 him, but I did let him know that I was in a lot of
- 13 pain, and I said that it was either it was going to
- 14 be my last day or I was -- I was going to be gone
- 15 for about -- at least another week or so. He asked
- 16 me do I need another week or so. I said,
- 17 "Probably, yes."
- 18 Q Why did you say this was going to be your last --
- 19 your last day? Why would it be your last day?
- 20 A Because I was in a lot of pain and I didn't think I
- 21 could do it anymore.
- 22 Q Okay. Were you -- Were you angry or upset about
- 23 anything leading to quitting?
- 24 A No.
- 25 Q Okay. So, you -- that was, in fact, your last day?

- 1 A That was, in fact, my last day.
- 2 Q And you then --
- 3 A I didn't intend for it to be my last day. I -- I
4 intended to, you know, do the workman's comp thing,
5 try to get some help with my back, get my back
6 better and go back, but I guess I was terminated.
- 7 Q Okay. You didn't -- You didn't communicate to
8 either Malcolm or Robert that day that you were
9 quitting?
- 10 A No. I didn't tell neither one of them that I was
11 quitting.
- 12 Q Or that you wouldn't be back?
- 13 A I told -- Me and Malcolm talked, and I told
14 Malcolm that I was probably going to be gone for
15 another week or so. He asked me did I need another
16 week. I said, "Probably, yes." I said, "I will
17 let you know." And at the end of the day, I asked
18 Malcolm about workman's comp.
- 19 Q Okay. When you had the conversation with Malcolm
20 and you mentioned that this might be your last day
21 and that you'd let him know by the end of the day,
22 did they tell you to bring the -- go ahead and
23 bring the vehicle in at that point, just terminate
24 the rest of your day and bring the vehicle in?
- 25 A I was done with my assignment, so I was on my way

1 back anyway. But no, nobody told me to bring the
2 vehicle back, no. I was done -- I was done with
3 my assignment, and I was -- I had parked the
4 vehicle --
5 Q Well, this is -- I'm talking about the morning --
6 A Let me see if I can remember exactly how this
7 happened.
8 Q -- the morning conversation with Malcolm --
9 A No.
10 Q -- before you went to Union.
11 A No, he did not. He told me -- He asked me could I
12 -- could I finish out the day. I said, "Yes. I'll
13 take some more pain pills and finish out the day."
14 Q Okay. He didn't -- He never told you to bring the
15 car back?
16 A No.
17 Q Do you remember having a conversation where you
18 said, No, I'd like to -- I need the money, I'd like
19 to work the rest of the day, so I'll let you know
20 by the end of the day?
21 A "I'll finish out the day, yes," and I told him I
22 would let him know whether I was going to take the
23 -- whether I was going to take a week off by the
24 end of the day.
25 Q So, you said you'd let him know whether you were

1 going to take a week off as opposed to quitting?

2 A Right. I didn't say -- I never told him I was

3 going -- I can't afford to quit. I never told

4 Malcolm I was quitting.

5 Q Okay. You didn't say anything to Malcolm to the

6 effect that, I don't get paid enough to put up with

7 this kind of s-blank-blank-blank?

8 A No. I don't remember saying that to Malcolm, no.

9 Q Okay. Did you have another conversation with

10 either Robert or Malcolm that afternoon?

11 A After asking Malcolm about -- about workman's comp,

12 I don't believe -- I don't believe I talked to

13 anyone, no. I think I may have talked to Robert

14 and Robert said that he was going to get in contact

15 with someone and have them get in contact with me

16 within the next two days or the next 24 hours or

17 something like that, he said.

18 Q Okay. Regarding -- Regarding making a claim, --

19 A Regarding making a claim, --

20 Q -- a workers' comp claim?

21 A -- right.

22 Q Okay. So, you don't recall that you had another

23 phone conversation with Malcolm or Robert that

24 afternoon?

25 A After speaking with Malcolm about the workman's

- 1 comp, I don't -- I don't think we did. I don't
2 remember having another conversation with them.
- 3 Q Did you talk to Malcolm in the afternoon about
4 workers' comp?
- 5 A Yes. That was as I was getting off work.
- 6 Q Okay. So, you didn't have a conversation with him
7 in the morning about workers' comp?
- 8 A No. We didn't talk about workman's comp that
9 morning, no.
- 10 Q So, about the time you were getting off work, four
11 or five o'clock?
- 12 A I'm not -- I don't think it was that long of a
13 day, no. I want to say it was around two o'clock,
14 but I don't remember exact time. But I don't think
15 it was -- It wasn't a long day that day because I
16 just -- I just had that one client.
- 17 Q And the trip to Union?
- 18 A Yeah. And they were keeping my -- my assignments
19 kind of short because of the fact that he knew that
20 I was in a lot of pain and he knew that I was
21 taking the medication.
- 22 Q Right. So, around two o'clock, you had -- you do
23 remember having another conversation with Malcolm
24 sometime --
- 25 A And that's when we talked about the workman's comp.

1 Q That's when you talked about workers' comp. What
2 exactly -- Tell me as best you can remember what
3 the conversation about workers' comp was.

4 A I asked him about workman's comp. What did he say
5 to me? He said they didn't -- something about --
6 I asked him about a workman's comp -- workman's
7 comp doctor, and he said they didn't have one and
8 he would have someone get in contact with me or he
9 would get in contact with Robert and have someone
10 get in contact with me.

11 Q And, so, did Robert, I think, text you later that
12 afternoon to say --

13 A I don't remember if he texted or called, but yes, I
14 -- I got the information from Robert saying that
15 someone would be --

16 Q In touch with you?

17 A -- in touch with me, yes.

18 Q Okay. Now, was that -- roughly two o'clock,
19 sometime that afternoon, that conversation with
20 Malcolm, was that the first time you mentioned
21 anything about workers' comp --

22 A To -- Yes.

23 Q -- or wanting to file a claim?

24 A Yes.

25 Mr. Samuels: I'm sorry. Where does the

1 two o'clock come from?

2 Mr. Cauthen: He said he estimates about
3 two o'clock was the end of the day that day.

4 Mr. Samuels: Okay.

5 A Well, I said I wasn't sure. I mean, yeah. Yeah.

6 Q That's just your best estimate?

7 A That's just a guesstimate, yeah.

8 Q Is that not right?

9 A Yeah, it's just a guesstimate, yeah. I'm not sure
10 exactly what time it was. What I'm thinking, it
11 was around two-something.

12 Q The end of your day?

13 A It was end of the day, yeah.

14 Q Okay. All right. And that was -- Was that also
15 the first time that you told Malcolm about the
16 injury to your back with the wheelchair?

17 A No, it wasn't. I told Malcolm about the injury to
18 my back that morning -- that -- That morning when
19 I dropped Ms. Porter off, I told Malcolm that my
20 back was hurting again and I didn't think that it
21 was right for him to send me to pick up somebody in
22 a wheelchair.

23 Q When did you first know about your assignment to
24 pick up the patient with the wheelchair?

25 A Seven o'clock that morning when I go -- when I pick

1 up my tablet.

2 Q Did you contact or communicate with -- with Malcolm
3 or -- or Robert to say, Hey, I -- I probably
4 shouldn't do this, I probably shouldn't be lifting
5 a wheelchair?

6 A No, I did not. I don't believe I did, no.

7 Q Could you have texted either one of them and said,
8 Hey, that's -- that may be pushing it, I may hurt
9 myself?

10 A You know, at the -- at the time, the way I'm
11 thinking is you don't call your boss and tell your
12 boss that you can't do a job because then you don't
13 have a job. So, you know, you grin and you bear it
14 and you try to do whatever you did that you have to
15 do in order to keep your boss happy.

16 Q Okay. But with the back pain that you were having,
17 lifting that wheelchair, you knew that was risky,
18 didn't you?

19 A Yes, I did. I -- You know, honestly, I -- I
20 really didn't think it would be, you know, that bad
21 of a thing. I mean, I didn't -- I really wasn't
22 thinking about it.

23 Q I mean, you'd just had two weeks out of work with
24 back pain, and you were just -- you know, had just
25 been back to work. Didn't you think that, Hey, you

1 know, I could hurt myself lifting a wheelchair,
2 maybe I shouldn't do this?

3 A Well, I mean, if that's the case, every time I get
4 into a vehicle I could hurt myself, somebody can
5 run into me. I mean, life is a risk. Every day is
6 a risk. So, as far as the wheelchair was
7 concerned, I mean, I thought I could do it.

8 Q Well, we're talking about an unknown risk. Here
9 you know you're -- you've got to lift a wheelchair
10 up.

11 A Right. I thought I could do it.

12 Q Okay. But you knew that could be risky for that
13 back?

14 A I wasn't thinking about that at the time, no, but,
15 you know, -- and hindsight's 20/20, yeah.

16 Q Do you know about how much that wheelchair weighed?

17 A No, I do not. Don't have a clue.

18 Q You think it was more than -- more than 20 pounds,
19 though, wasn't it?

20 A Yes.

21 Q When you told Malcolm about the -- the injury with
22 the wheelchair that morning, now, did you actually
23 tell him about that injury or did you just say --
24 did you say something to the effect that -- about
25 you hurting again, or did you specifically mention

1 --

2 A I don't -- I don't exactly remember. Like I said,

3 I don't remember word for word, but I do remember

4 -- I think I told him about the -- the shooting

5 down my leg, but, I don't -- like I say, I don't

6 remember word for word what I said to him or what

7 the conversation was.

8 Q Okay. Let me ask you this because it's -- Well,

9 do you know for a fact that you actually reported

10 that injury involving lifting the wheelchair to

11 either Malcolm or to Robert --

12 A I reported it to Robert --

13 Q -- that day?

14 A -- that day.

15 Q How did you report it to Robert?

16 A I told Robert that my back was -- that I picked

17 that -- I told Robert exactly what I said, that I

18 felt the shooting down my leg as I -- as I was

19 putting the wheelchair into the thing -- into the

20 trunk of the car, and I remember telling Malcolm

21 that, but I can't remember when I told him or what

22 time it was that I told him.

23 Q We're talking about Robert. You said you told --

24 A Robert, no. I didn't -- I didn't speak with

25 Robert after that. I spoke with Malcolm.

- 1 Q Okay. So, it was only Malcolm that you told about
2 the -- about the --
- 3 A I believe so, yes.
- 4 Q -- wheelchair accident?
- 5 A I believe so, yes.
- 6 Q Okay. And then you had a conversation later that
7 day, at the end of the day, about filing a workers'
8 comp claim?
- 9 A Yes.
- 10 Q Okay. Did you also tell Malcolm at that time that
11 you were quitting?
- 12 A I don't remember telling Malcolm that I was
13 quitting, no. Me and Malcolm talked about -- I
14 remember him asking me did I need another week, and
15 I told him I would let him know by the end of the
16 day, and then, by the end of the day, I asked for a
17 workman's comp -- I asked for his workman's comp
18 doctor.
- 19 Q And what did he tell you?
- 20 A He said he didn't have one -- or he would get in
21 touch with -- with Robert and let me know
22 something, they didn't have a doctor or they didn't
23 have -- They didn't have something. I don't
24 remember exactly what he said.
- 25 Q After that, then, I believe your next medical

1 appointment would have been the 12th of October
2 when you went to Midlands. Right?
3 A Like I say, I'm not sure of the exact date, but I
4 believe so. It was the following Thursday.
5 Q Did you go back to the ER or anything right after
6 the incident --
7 A I couldn't -- I wanted to, but I knew I couldn't
8 afford it, so I -- I just -- you know, like I said,
9 ice and heat and heat and ice and ibuprofen and
10 Tramadol and --
11 Q Okay. All right. Did you have any further
12 conversations after the 9th of October with either
13 Malcolm or with -- with Robert?
14 A I don't believe so. Ronald called me to check on
15 me.
16 Q Ronald?
17 A Yeah.
18 Q Who is Ronald?
19 A One of the coworkers. One of my coworkers called
20 to check up on me.
21 Q He's another driver?
22 A Yes.
23 Q Okay. Do you remember the conversation you had
24 with him?
25 A No. He just called I guess to ask -- Honestly, he

1 had Robert on three-way, and I knew he had Robert
2 on three-way trying to listen to our conversation,
3 so I didn't really say nothing to him.

4 Q How do you know that?

5 A Because I have -- Because he's never called --
6 One, he doesn't have my phone number. I never gave
7 him my phone number, so where he got my phone
8 number from is a mystery to us all.

9 Q Robert doesn't have your phone number?

10 A Ronald doesn't have my phone number.

11 Q Oh. Ronald doesn't.

12 A So, why Ronald called me to ask me questions, I do
13 not know.

14 Q Was he just asking -- What was he asking you?

15 A He was asking me how I was feeling, how my back was
16 feeling and what steps I was about to take.

17 Q Okay. All right. Did you have any further
18 communications at all about returning to work or --

19 A No.

20 Q -- continuing to be employed or quitting --

21 A No.

22 Q -- or anything like that? So, you were never
23 formally terminated, in your mind?

24 A In my mind, when he called me and -- and told me --
25 and asked me about the -- the -- the employee

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1 handbook and told me that if I didn't turn it in,
2 he was going to charge me \$25 for it, that's when I
3 figured that I was fired.
4 Q Was that a handbook or a t-shirt?
5 A Handbook. He never gave me a shirt.
6 Q Okay.
7 A He was supposed to give me shirts but never gave me
8 shirts.
9 Q Was that a text, a text about the -- about the \$25?
10 A I can't remember whether he texted me or whether we
11 spoke, but I can go back through my texts and see.
12 I can't remember whether he texted me or if we
13 spoke. We spoke about a shirt, and I know I told
14 him that I didn't have -- he never gave me a shirt,
15 and the employee handbook, and he never -- I don't
16 remember whether he texted me or whether we spoke.
17 Q Okay. And you said he told you if you didn't -- if
18 you didn't bring it back, you'd be fired?
19 A No, he didn't tell me that I would be fired, no.
20 Q Okay. I'm sorry. What did you say?
21 A I said when he asked me for it, you know, I figured
22 that I was fired.
23 Q When he asked you for the handbook?
24 A When he asked me for my handbook back.
25 Q Handbook or \$25?

- 1 A Or 25 -- Or he said he would charge me \$25. I
2 figured I was fired.
- 3 Q You figured you were fired? Why did you thought --
4 you think you were fired?
- 5 A I mean, when you say, Bring me back my handbook or,
6 you know, I'm gonna charge you for it, you know, I
7 guess you figure I no longer work there if I have
8 to turn in my handbook and turn in my shirt. But,
9 like I say, he never gave me a shirt. But when
10 someone asks you for your handbook and your
11 equipment, then obviously you don't have a job.
- 12 Q Like your playbook?
- 13 A Right. Exactly. Yeah, turn in your playbook,
14 you're no longer coach.
- 15 Q Come see the coach and --
- 16 A Right.
- 17 Q -- and bring your playbook. Okay. All right.
18 Since that time, have you had any -- any further
19 communications/conversations with any -- any
20 employee of CroMed?
- 21 A No.
- 22 Q All right. Did you ever make the statement to any
23 employee of CroMed that you -- that you were going
24 to sue CroMed and take them for all they're worth?
- 25 A No.

1 Q Was there a request by Robert for you to take a
2 drug test around October 2nd?
3 A Yes.
4 Q Okay. Did you take that drug test?
5 A Yes.
6 Q Was it when he told you to or was it later?
7 A I took it when he told me to.
8 Q Okay.
9 A The day he told me to take it, I was -- I believe I
10 was working that day, so he said, "Go first thing
11 tomorrow morning because I can't send you -- can't
12 put you back out on the road until you take it." I
13 went first thing that morning. I was the first
14 person there.
15 Q You didn't miss the appointment and have to -- have
16 to have it rescheduled?
17 A No.
18 Q Okay. I just want to look over a few notes here.
19 Hang on one second. Did you -- Did you later
20 receive a call from an insurance adjuster regarding
21 your workers' comp claim?
22 A Yes, I did.
23 Q Do you remember who that was?
24 A No, I do not. I -- Well, I spoke with maybe
25 three, four different people.

1 Q Did they say they were with Patriot?
2 A Yes. Patriot -- Patriot Risk, yeah.
3 Q Patriot Risk Management?
4 A Yes.
5 Q Okay. All right. What were those -- Can you tell
6 just basically how those conversations went, what
7 all you talked about?
8 A They recorded something, recorded my statement,
9 basically asked me what happened.
10 Q Okay. Did they tell you anything about medical
11 treatment or -- or your claim or anything like
12 that?
13 A No.
14 Q Okay. All right. Let me know if you need to take
15 a break at any time.
16 A Oh, no, I'm fine. I'm just ready to get this over
17 with. I want to go home and lay down.
18 Q I understand. I understand. All right. We talked
19 about your ER visits, and I think you then had --
20 you had two appointments there at Midlands with --
21 Did you see Dr. LaMotta? Do you remember a Dr. --
22 A That name sounds familiar.
23 Q -- Lamotta?
24 A I believe that's -- I've seen one here in
25 Columbia, and the other one was in North Charleston

1 -- Charleston.

2 Q Okay. That was Dr. Poletti in Charleston?

3 A Poletti in Charleston.

4 Q All right. And here in Columbia with Midlands, I

5 have a record of two different visits in October.

6 I think both of them were October.

7 A And I think one was at Providence, the -- the --

8 And he's the one that sent me to the one on -- I --

9 Saint Andrews.

10 Q Okay. Did the doctor -- doctor or doctors you saw

11 at Midlands -- did they recommend physical therapy,

12 injections?

13 A He recommended injections. He recommended

14 injections. He said, "Do not opt out surgery."

15 Q He said do not what?

16 A "Do not opt out surgery." So, I guess he was

17 thinking surgery.

18 Q Didn't he indicate to you he thought you could be

19 treated without surgery?

20 A He said that he was going to try -- I believe he

21 said he was going to try the injections first to

22 see if the injections would work.

23 Q Mm-hmm.

24 A He said, "But if the injections don't work, don't

25 --

- 1 Q Rule out?
- 2 A -- don't rule out surgery."
- 3 Q And, so, that was -- Dr. LaMotta said that?
- 4 A I believe that was what he said, yes.
- 5 Q Okay. Now, --
- 6 A He said something that scared me. So, yeah.
- 7 Q Was that the doctor at Midlands, you think, or was
- 8 that --
- 9 A I think that was the one at Midlands.
- 10 Q -- possibly Dr. Poletti that said that?
- 11 A Dr. Poletti also said it, but the one at Midlands
- 12 also -- he said it, too.
- 13 Q What did they tell you -- I know you had an MRI of
- 14 your back. What did they tell you about the MRI
- 15 and about what they found?
- 16 A Protruding disc; ruptured disc. I mean, -- I
- 17 mean, that's pretty much what they said, ruptured
- 18 disc, I guess.
- 19 Q Okay. And did you have that injection?
- 20 A No.
- 21 Q Did you have any physical therapy?
- 22 A No.
- 23 Q Did you have any futher treatment at Midlands
- 24 Orthopaedics?
- 25 A No. I've had no other further treatment besides

1 what I do at home.

2 Q Okay. What do you do at home?

3 A Ice and heat.

4 Q Ice and heat. Okay. Then I know you went to go

5 see Dr. Poletti in January of this year, I believe.

6 Is that right, --

7 A I believe, yes.

8 Q -- January 29th? And that's the only visit you've

9 had with Dr. Poletti? How did that visit come

10 about?

11 A It was ordered -- It was -- oh, God -- ordered

12 through Samuels, through my attorney.

13 Q Okay. And you haven't been back to see him since?

14 A No. I want to.

15 Q Have you had any further medical treatment at all

16 since you saw Dr. Poletti?

17 A No.

18 Q Been back to the emergency room for any reason?

19 A (Shakes head.)

20 Q You have to answer.

21 A No. I'm sorry. No, I haven't. I'm just in kind

22 of -- I'm kind of getting stiff.

23 Q You want to just -- You want us to go off the

24 record, take a break for a second?

25 A No. I just want to get it done --

- 1 Q Okay.
- 2 A -- so I -- I need to go home and lay down.
- 3 Q We're getting there now. We getting there. We
- 4 don't have too far to go. So, no further treatment
- 5 and no further trips back to the ER or any other --
- 6 any other care?
- 7 A No.
- 8 Q Have you seen your family doctor at all about any
- 9 problem with your back?
- 10 A I go see my family doctor every two to three
- 11 months.
- 12 Q Have you talked to him about your --
- 13 A But it's -- I mean, it's not really like a family
- 14 doctor. Like I say, she's my diabetic doctor.
- 15 Q Diabetic doctor.
- 16 A Yeah. But I told her about my back pain, but
- 17 there's nothing she -- You know, there's really
- 18 nothing she can do she said.
- 19 Q What is her name?
- 20 A Montrice, I believe.
- 21 Q With Sandhills?
- 22 A Yes.
- 23 Q Sandhills. Okay. You talked to her about it but
- 24 no treatment that you received?
- 25 A No treatment from her, no.

- 1 Q Okay. Do you have any appointments currently set
2 up with anyone?
- 3 A No, sir.
- 4 Q Have you seen any kind of vocational specialist or
5 anything like that?
- 6 A No. I can't -- I can't afford it. I mean, I want
7 to -- I want to go see a doctor. I want to go get
8 physical therapy. I'd like to get all that done,
9 but I -- I can't afford it, and I can't afford to
10 rack up any more bills.
- 11 Q Since this accident back in October, what are you
12 -- what are you doing on a day-to-day basis?
- 13 A As far as?
- 14 Q Just your day -- your daily activities.
- 15 A I take my wife to work. I come home. And that's
16 pretty much it. I try -- Like I say, I'm a
17 diabetic, so I try to get up and take my walks in
18 the morning when I can. Sometimes I'm in pain and
19 I can't. Other than that, that's pretty much it.
20 That's all I do.
- 21 Q Pretty much at home the rest of the time?
- 22 A Pretty much at home the rest of the time.
- 23 Q Okay. Can you drive a car okay?
- 24 A Yes, I can.
- 25 Q What kind of -- What kind of car do you drive?

- 1 A A 2016 Kia Rio.
- 2 Q Is that an automatic or a --
- 3 A Automatic, yeah.
- 4 Q Okay. Have your symptoms, your back pain, leg
- 5 pain, any injury from your October of -- from your
- 6 injury of October the 9th, any symptoms from that
- 7 injury, has it gotten better, have they improved at
- 8 all, stayed the same, gotten worse?
- 9 A I don't have the tingling in my leg, but as far as
- 10 my back, I have my good days and I have my bad
- 11 days. I have my better days and my worse.
- 12 Q You don't have the tingling in your --
- 13 A I don't feel --
- 14 Q -- leg?
- 15 A I don't have the tingling in my leg. You know, I
- 16 mean, every now and again I may feel it but not
- 17 like -- You know, I'm not doing a whole lot, so --
- 18 Q So, you don't -- Are you saying you don't having
- 19 any more pain down that left leg?
- 20 A I still have a little pain, but it's not nowhere
- 21 near like it was.
- 22 Q Is that something that just kind of goes?
- 23 A It just kind of comes and goes, yeah. Depends on
- 24 how I twist, how I sit.
- 25 Q So, some days you have it; some days you don't?

- 1 A Right.
- 2 Q How about your back itself?
- 3 A My back is always in pain.
- 4 Q Okay. And tell me what -- as specifically as you
- 5 can where in your back you are experiencing --
- 6 A It's --
- 7 Q -- experiencing the pain.
- 8 A It's lower back. Lower back, to my left side.
- 9 Q Left side, lower back?
- 10 A Right here (indicating).
- 11 Q And when it does radiate down the leg, it's just
- 12 down the left leg?
- 13 A It's just down my left leg.
- 14 Q And it just goes down to the knee?
- 15 A It comes down to about right here (indicating). It
- 16 kind of goes into the groin area --
- 17 Q Mm-hmm.
- 18 A -- and goes down to about -- about my knee, about
- 19 the front of my knee.
- 20 Q So, it's -- it's improved somewhat, it sounds like?
- 21 A Yeah.
- 22 Q Is that right?
- 23 A It's improved a little bit, yes.
- 24 Q Still have a lot of pain --
- 25 A I still have a lot of pain.

- 1 Q -- in the back?
- 2 A In my back.
- 3 Q What are you taking currently, any prescription
- 4 medications?
- 5 A Ibuprofen.
- 6 Q Is that a prescription ibuprofen or just over-the-
- 7 counter?
- 8 A It's over-the-counter.
- 9 Q All right. And that's it? That's the only --
- 10 A That's it.
- 11 Q -- prescription for pain or for inflammation or
- 12 anything like that?
- 13 A That's it. That's all I'm taking. That's all I --
- 14 I mean, I'm not --
- 15 Q Okay.
- 16 A I don't -- I don't want to get -- I don't want to
- 17 take all the pain pills. I don't want to get --
- 18 You know, I hear about the opioids and all that
- 19 stuff, and I'm not into drugs like that, so no.
- 20 Q As far as your treatment at Sandhills, your
- 21 diabetes and all that, how do you pay for that --
- 22 those prescriptions and for --
- 23 A My wife.
- 24 Q -- your medical care?
- 25 A My girlfriend.

1 Q Now, do you have any coverage through any of her
2 insurance?

3 A No.

4 Q She just pays out of her pocket for it?

5 A Pays out of her pocket. I'm on a -- what they call
6 a sliding fee scale, I guess they call it, so I pay
7 \$20 for -- to see my doctor, and then each
8 prescription, depending on what it is. I mean, my
9 -- my medicine usually ranges about maybe \$100 a
10 month.

11 Q But you don't have any kind of coverage --

12 A Like health insurance?

13 Q -- through her?

14 A No.

15 Q Okay. For your diabetes or anything like that?

16 A No.

17 Q Okay. Tell me, versus before this injury, how have
18 -- how have your day-to-day activities and your
19 day-to-day life -- how have they changed for the
20 good -- for the better or for the worse? I'm
21 looking for what kind of changes you have suffered
22 as a result of this injury. How has it changed
23 your day-to-day life, things you can and can't do
24 or do as well.

25 A I can't -- I don't sit. I can't sit for long

1 periods of time. I don't know -- Yeah. I can't
2 -- I can't sit for long periods of time. I have
3 to sit at an angle. I feel better when I stand.
4 And being aware of my back, I watch how I bend; I
5 watch how I squat; I don't pick anything up.

6 Q Okay. Are there activities, hobbies, sports,
7 things like that, that you -- that you can't do
8 anymore or that you've eliminated?

9 A No. I mean, I -- I still walk, and I go fishing.
10 I sit in a chair and stand and -- Pretty much it.
11 I don't -- I don't ride bikes or anything like
12 that. I don't have, you know, hobbies, strenuous
13 hobbies, like that.

14 Q Okay. Can you think of anything since October,
15 since your injury, that you could have done that
16 could have exacerbated or aggravated your back or
17 leg pain to make it any worse, or any new injury,
18 anything like that?

19 A No.

20 Q Are you pretty careful on day-to-day basis?

21 A I am. Ever since then, yes, I've been very careful
22 about what I do and how I do it.

23 Q Jeffrey, we do not have far to go. Just about --
24 about to wind this up. Just got a few more things
25 to ask you.

1 A Okay.

2 Q Have you ever -- Do you have any kind of criminal
3 record?

4 A Yes, I do.

5 Q Tell me about that.

6 A In my younger days, I was quite stupid. I have
7 drug charges.

8 Q Okay. What type of drug charges?

9 A Controlled substance.

10 Q Possession?

11 A Possession, yes.

12 Q In what state?

13 A Colorado.

14 Q Okay. What was the disposition of that?

15 A What do mean disposition?

16 Q Did you enter a guilty plea? Did you --

17 A Yes.

18 Q -- go to trial and get convicted or --

19 A Entered a guilty plea and got probation.

20 Q Probation. Okay. Do you know about how old you
21 were?

22 A How old I was?

23 Q Mm-hmm. Or what year that was?

24 A I want to say 1988. So, I think I was maybe --

25 Q Long time.

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- 1 A -- nineteen. Yeah. Like nineteen. Eighteen,
2 nineteen.
- 3 Q Is that the only thing you've had in the past?
- 4 A I have two of those. One was '88, and I want to
5 say the other one was like maybe '93, '92,
6 something like that. I do have --
- 7 Q The second one, was that also Colorado?
- 8 A That was also Colorado, yes. Domestic violence. I
9 did probation for it. That's also in Colorado.
- 10 Q On the second possession one that you mentioned,
11 '92, '93, --
- 12 A Mm-hmm.
- 13 Q -- was that -- was that also --
- 14 A Probation.
- 15 Q -- probation?
- 16 A Yes.
- 17 Q Okay. And then the domestic violence was when?
- 18 A I don't remember.
- 19 Q Do you know about how old you were when that
20 happened?
- 21 A I want to say maybe about 12 years ago, 12, 13
22 years ago -- 12, 13, 14 years ago.
- 23 Q Was that also Colorado?
- 24 A Yes.
- 25 Q And what happened with that charge?

1 A Probation and classes.
2 Q Okay. Anything else?
3 A I mean, traffic.
4 Q Not traffic-related. Not, you know, -- Unless a
5 DUI. Not -- Not speeding tickets.
6 A Oh, no, never had a DUI.
7 Q No DUI -- DUI, DUS, anything like that?
8 A No, no DUIs. No nothing like that, no.
9 Q Those three right there is the only thing you can
10 recall?
11 A Yeah. Unless, like you said, minor stuff.
12 Q Minor stuff?
13 A Like maybe getting caught with a joint or something
14 or -- being fined.
15 Q Any other possession crimes? Any other possession
16 crimes?
17 A No.
18 Q Anything in South Carolina that you know of?
19 A About 20 years ago, I was hanging with a guy that
20 had a fake credit card -- not fake credit card -- a
21 stolen credit card, I guess, and I ended up having
22 to pay fines for that.
23 Q For having a fake credit card?
24 A He had the credit card. I was with him, and when
25 he got caught, he was in my vehicle, and, so, --

1 He told me it was his aunt's credit -- It's a long
2 story. But he told me it was his aunt's credit
3 card, and it wasn't his aunt's credit card, and he
4 ended up getting -- he ended up getting caught
5 using it, and he was in my vehicle. So, we -- I'm
6 not sure what happened to him, but I had to pay a
7 fine.

8 Q Well, did they charge you with something?

9 A They didn't -- No. I'm not sure. They -- No. I
10 mean, they just made me pay a fine. So, I'm not
11 sure what I got -- exactly what I got charged with.

12 Q Okay.

13 A I ended up paying like a 35-dollar fine or
14 something like that.

15 Q About 20 years ago?

16 A Yeah.

17 Q All right. Anything else you can recall?

18 A Not here in South Carolina, no.

19 Q Besides the domestic and the possession of
20 controlled substances in Colorado, anything in
21 other states?

22 A No.

23 Q Okay. Have you ever undergone any kind of
24 treatment for alcoholism --

25 A No.

1 Q -- or drugs -- drugs, anything like that?

2 A No. With the domestic violence, yeah, they make

3 you do, you know, all those classes, drug classes

4 and --

5 Q Right. Right.

6 A -- and, yeah, stuff like that, yeah. I mean, I had

7 to do drug classes when I was on probation, but

8 other than that --

9 Q Okay. Any kind of psychiatric or psychological

10 treatment in the past?

11 A No, but I need it.

12 Q Okay. Let me just look over a few notes. That may

13 be all that I've got. Did you -- Did you give the

14 name of the other individual who was in the car

15 that you picked up before Dolores that morning?

16 A I can't -- Jonathan.

17 Q Jonathan.

18 A I can't remember Jonathan's last name.

19 Q And the -- the person who brought Dolores out in

20 the wheelchair, do you recall his name at all?

21 A No. I've never met him.

22 Q It was a man?

23 A I believe it was -- It's either her son or son-in-

24 law or grandson. I'm not exactly sure who he is,

25 but he's -- he's always there when I either pick

1 her up or drop her off.

2 Q Besides your back and your leg injuries that you
3 have told us about, did you sustain any other type
4 of injury in this accident that happened on the 9th
5 of October?

6 A No.

7 Q And what would you -- what would -- what would you
8 like to do? Would you just like to go to Midlands
9 Orthopaedics and treat?

10 A Yeah. That would be great. I just want to get
11 back to a normal life. That's all.

12 Mr. Cauthen: Okay. I think that's all
13 the questions that I've got, Jeffrey. I
14 appreciate that.

15 The Deponent: Okay.

16 Mr. Cauthen: Thank you very much --

17 The Deponent: Yes, sir.

18 Mr. Cauthen: -- for your patience.

19 Mr. Samuels: Let me just -- Single
20 question.

21 The Deponent: Yes, sir.

22 Examination

23 By Mr. Samuels:

24 Q You testified the emergency room gave you narcotics
25 or prednisone?

1 A I'm not exactly sure what the name of it was, but
2 yes.

3 Q They actually gave you Valium. Does that sound
4 right?

5 A They gave me -- The first time, I want to say it
6 was some type of steroid treatment, and then the
7 second one, -- I'm not -- I'm not sure. They
8 said it was a narcotic, so I'm not exactly sure
9 what it -- exactly what it was or what the name of
10 it was. I have it in my paperwork at home, but I'm
11 not exactly sure the name of it. But they said it
12 was some type of narcotic.

13 Mr. Samuels: Okay. No further
14 questions.

15 (Whereupon the deposition was concluded at
16 1:22 p.m.)

17 (Deponent has waived reading and signing.)

State of South Carolina)
) Certificate
 County of Richland)

Be it known that the foregoing deposition of
 Jeffrey McCoy was taken before me;

That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
 to administer an oath;

That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 105
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.

Signed this 14th day of June 2018.

 Barbara P. Scott

Notary Public for South Carolina
 My commission expires March 2, 2027.

Note: Recordings are retained for twelve (12) months
 from date of certification.

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South Carolina Workers' Compensation Commission
WCC File # 1717573

Jeffrey McCoy,	)	
	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Robert Cronan
	)	
CroMed, LLC,	)	
	)	
Employer,	)	
	)	
Guarantee Ins. Co. in	)	
Liquidation/S.C. Property &	)	
Casualty Insurance Guaranty	)	
Association,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Robert Cronan, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 1:36 p.m., Thursday, May 31, 2018, at Samuels Law Firm, 1320 Richland Street, Columbia, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR-M

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Appearances

For the Employee/
Claimant: Stephen Samuels, Esquire
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201

For Employer/Carrier: Mark D. Cauthen, Esquire
The McKay Firm, PA
1303 Blanding Street
P.O. Box 7217 (29202)
Columbia, SC 29201

Reported By: Barbara P. Scott, CVR-M

Index

Stipulations.	4
Examination by Mr. Samuels.	4
Examination by Mr. Cauthen.	60
Re-examination by Mr. Samuels.. . . .	63
Certificate.. . . .	67

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Exhibits

Marked as Claimant's Exhibit 1; copy of text messages
printout (green); three pages.. . . . 66

Marked as Claimant's Exhibit 2; copy of text messages
printout (yellow); one page.. . . . 66

Court Reporter's Note: This transcript may contain
quoted material. Such material is reproduced as read or
quoted by the speaker. Double hyphens (--) denote
interruption of speech, incomplete sentence/phrase, or
trailing off. [ph] denotes phonetically written. [sic]
denotes written as spoken. Social Security number, if
present, has been partially or fully redacted or blacked
out.

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Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

Whereupon,

Robert Cronan, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Robert Michael Cronan.

Examination

By Mr. Samuels:

Q Mr. Cronan, my name is Stephen Samuels. I represent Jeffrey McCoy --

A Mm-hmm.

Q -- who has filed this workers' compensation claim involving your company. I'm here to take your deposition. Have you ever given a deposition before?

A No.

Q The process is pretty simple. It's really just a conversation between the two of us.

A Mm-hmm.

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- 1 Q The only unique thing about it is that you're under
2 oath.
- 3 A Right.
- 4 Q There are some basic rules you need to be aware of.
5 One is you can't consult with your attorney during
6 the deposition.
- 7 A Okay.
- 8 Q If you take a break and talk to him outside the
9 room, I get to ask you what you talked about.
- 10 A Okay.
- 11 Q So, if you do take a break, I would suggest you
12 only talk about the weather.
- 13 A Okay.
- 14 Q To help out the court reporter, -- She's speaking
15 in that mask and taking down every word we say.
- 16 A Okay.
- 17 Q To help her, I would ask that you give verbal
18 answers to your questions, like a yes or a no, an
19 explanation.
- 20 A Okay.
- 21 Q If you do fall back and say uh-huh, nod your head,
22 I may say, Is that a yes.
- 23 A Okay.
- 24 Q I'm not trying to be rude; just to --
- 25 A I got you.

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1 Q -- get a clear record. Also, make sure that even
2 if you know where I'm going, let me finish my
3 question before you answer so we don't talk over
4 each other. If you do not understand a question,
5 just let me know, and I'll try to rephrase it in a
6 way that makes more sense --

7 A Okay.

8 Q -- so, hopefully, you can understand it.

9 A Okay.

10 Q Are you under the influence of any alcohol, drugs
11 or medication that would prevent you from
12 understanding the questions you're being asked
13 today?

14 A No.

15 Q I'm going to start off with some basic background
16 information about you personally. Then I want to
17 ask a few questions about your company, and then
18 we'll get more specific about things about Mr.
19 McCoy.

20 A Okay.

21 Q What is your home address?

22 A It's 3 Waterside -- and that's all one word -- and
23 that's Court, and that's Irmo, and that's 29063.

24 Q Are you married?

25 A No.

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1 Q Anybody live with you in that house besides
2 yourself?
3 A My son.
4 Q What's your date of birth?
5 A 5/30/73.
6 Q And I'll ask the court reporter to redact it.
7 What's your Social Security number?
8 A XXX-XX-XXXX.
9 Q Where you from originally?
10 A I was born in Johnstown, Pennsylvania.
11 Q Where they had the flood?
12 A Home of the flood, definitely.
13 Q Yeah. Studied that in law school.
14 A Yeah. I think it -- What was it, -- I forget who
15 -- McCarne -- I forget that -- Can't remember how
16 to say his name -- how to say his name, but they
17 had their little club up there, you know, at the
18 lake, so -- Carnegie. That's what it was.
19 Q What do you do for a living?
20 A CroMed Transportation. It's a nonemergency medical
21 transportation company.
22 Q How many employees do you have?
23 A I would say around 20, 25. It -- It -- We've
24 ramped up in the past. I haven't really tallied it
25 up.

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1 Q And what is the nature of your business?

2 A We provide transportation for people that don't
3 have transportation. So, the bulk of what we do --
4 You're familiar with Medicaid. So, the state pays
5 for Medicaid patients to go to the doctor and have
6 that covered. They also pay for the
7 transportation. So, they use a broker,
8 LogistiCare, and Logisticare hire -- hires
9 companies like ours to actually perform the
10 transportation.

11 Q We sometimes run into that situation with workers'
12 comp, where an injured worker will not have
13 transportation to a doctor's appointment. Do you
14 provide those --

15 A I haven't. I haven't. I've looked into -- There
16 are a few companies. We've looked into like when
17 work may get a little slower with one of the
18 brokers we -- we have, but we've never signed up
19 with any of the workers' comp. But it is similar,
20 very similar.

21 Q And in terms of the vehicles you use, these are --
22 are they your own company vehicles?

23 A Yes. CroMed owns them.

24 Q How many vehicles do you have?

25 A At the present time, 18.

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- 1 Q And what kind of vehicles are they?
- 2 A Sedans; minivans. And then we have two 15-
- 3 passenger vans.
- 4 Q How does it work with your drivers in terms of
- 5 getting their assignments?
- 6 A We use tablets. So, when they come to work, they
- 7 log into the tablet, and they can see the trips
- 8 that they have.
- 9 Q How many locations do you have?
- 10 A We park vehicles at two separate locations, and
- 11 then occasionally we let drivers take the vehicles
- 12 home.
- 13 Q What are the two separate locations?
- 14 A One is at CVS off of Killian Road, and then the
- 15 other is at -- it's a place called Jam Pac. It's
- 16 like a self-storage place off Broad River Road in
- 17 Irmo.
- 18 Q Do you have an actual physical office location?
- 19 A We do. It's in Irmo, but it's like an office that
- 20 you don't really use all that much because most of
- 21 what we can do dispatching and stuff we can do from
- 22 our home offices.
- 23 Q Got it. So, the tablets, do they stay with the
- 24 vehicles or with the employee?
- 25 A No, with the vehicle. Now, not always because at

1 -- at certain times we have to collect them back to
2 -- to charge them up and then put them back in the
3 vehicles, so probably twice a week.

4 Q But the tablet is assigned to a vehicle, not an
5 employee? Does that make sense?

6 A Sort of. Like -- Okay. Let's say vehicle A and
7 vehicle B. The tablet -- There would not be a
8 tablet A and a tablet B. There would be --
9 Whatever tablet gets in the vehicle, you can use.
10 They can log into this particular program and --
11 and see their -- their assignments by their user
12 name and login, and then it'll show them their
13 assignments for the day.

14 Q Got it. Does the tablet include a GPS function?

15 A The tablet itself does have a GPS function, and
16 then -- Yeah. So, yeah, it does. It has a GPS,
17 and the tablet does, so -- of course.

18 Q What I'm getting at is, how do you monitor where
19 your drivers are at any given time?

20 A We have GPS units inside the vehicle that track
21 and, so, could show me, you know, where they're at,
22 how fast they're going, that kind of thing.

23 Q Got it. Do you keep a log of what the GPS is
24 tracking in any particular vehicle?

25 A I don't keep -- I don't keep a log, but I have

1 access to that information. If I need to run a
2 report, I can run a report. If I need to see what
3 somebody's done for the past hour, I can, on the
4 screen, hey, show me bread crumbs of where they've
5 been.

6 Q Is there a job description for your employees?

7 A Driver. I mean, -- Not really, not -- not to the
8 point where we say, okay, here is everything that
9 -- You know, there are things in there about their
10 job description, in the handbook, though.

11 Q What are the requirements of the job?

12 A It's probably one of the most relaxed ones. I
13 mean, there -- there isn't. I mean, you don't have
14 to have a high school -- even a high school
15 education. You just have to be able to pass a
16 background check, a drug test. You have to get
17 CPR- and first aid-qualified. You have to take a
18 defensive driving course. You have to take a
19 passenger sensitivity training course. And then,
20 you know, of course, you have to have a valid
21 driver's license and not too many tickets on your
22 record.

23 Q Do you teach those courses or are they done by some
24 other third party?

25 A Third party.

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- 1 Q Do you pay for the classes?
- 2 A Correct.
- 3 Q When someone is hired, you're going to send them to
- 4 these classes before you put them to work?
- 5 A Correct, unless they already have -- You know, if
- 6 they come from another company and they already
- 7 have valid credentialing, I can use that.
- 8 Q Got it. And the drug testing, that's pre-
- 9 employment drug testing?
- 10 A Yes.
- 11 Q Is there any drug testing policy as far as
- 12 submitting to test after being hired?
- 13 A Annually, and we are part of a coalition of random
- 14 drug screen, and then any post-accident if that
- 15 involves a tow truck or an ambulance.
- 16 Q Did Mr. McCoy pass a drug test to be hired?
- 17 A He presented me with the drug test that he had from
- 18 previous employment, and it was still valid.
- 19 Q Is that something that would have been in his
- 20 personnel file?
- 21 A Yes.
- 22 Q Mr. Cronan, you responded to a subpoena to my
- 23 office several months ago. Glancing through those
- 24 materials, I did not see a pre-employment drug
- 25 test.

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1 A Would you like for me to point it out to you? I've
2 seen it.

3 Q I see -- I see a drug test in October 2017. I
4 didn't see --

5 A I've seen it in your stack of papers. I can point
6 it out for you if you'd like me to.

7 Q Yes, sir. Very good.

8 The Deponent: (to the court reporter)

9 Sorry.

10 A This is what he submitted to me for his drug
11 screen. Since it was within the one year, it was
12 still valid.

13 Q Ah. I got it. Tested October 3rd, 2016. I'm
14 sorry. I read that as 2017. All right. Thank you
15 for correcting that.

16 A That's okay.

17 The Deponent: (to the court reporter)

18 Sorry.

19 Q So, he brought you a drug test October 3rd, 2016,
20 and you did the test annually; you wanted him to
21 another test in one year; is that correct?

22 A Yes. He brought that at the time that he brought
23 me his documents, presumably from a different
24 employer, and they were still valid, so I -- I was
25 able to use them.

- 1 Q And when you did the one-year renewal test, --
- 2 A Mm-hmm.
- 3 Q -- did he pass that test?
- 4 A According to that document, yes.
- 5 Q So, he did pass the test?
- 6 A Yes.
- 7 Q It appears he was hired June 26, 2017?
- 8 A I think we -- the process began in and around that
- 9 time. I don't have the exact time. There are
- 10 different stages, you know, documents that you have
- 11 to get, credentialing you have to pass. So, I
- 12 usually say that their -- their hire date is
- 13 usually the first day that -- like when I sent the
- 14 packet up to the broker.
- 15 Q Okay. You have to send a packet to the broker?
- 16 A Mm-hmm.
- 17 Q That's -- I think you mentioned the name of the
- 18 company.
- 19 A LogistiCare.
- 20 Q LogistiCare.
- 21 A They have requirements that they set forth and the
- 22 state of South Carolina sets forth through the
- 23 Office of Regulatory Staff of -- of items that they
- 24 have to have to do this particular job.
- 25 Q Got it. So, you have to have a complete file with

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1 all those items in it --

2 A Yes.

3 Q -- before you can send it off, and that's when

4 they're hired?

5 A Correct.

6 Q So, there may be paperwork, like a handbook

7 received and other things that they'll fill out,

8 before they're formally hired, but they're part of

9 the hiring process? Is that fair to say?

10 A Yes.

11 Q I mean before they can start working with you.

12 They can't start work until they've been approved

13 by the broker?

14 A Correct.

15 Q So, are you the person that would have hired Mr.

16 McCoy?

17 A Yes.

18 Q Do you do all the hiring and firing?

19 A No. No. I -- I have -- had a partner, -- still do

20 -- Malcolm Young. Sometimes it'll begin with him

21 but usually always ends with me verifying that they

22 have all the necessary paperwork. He usually meets

23 with them at first and says, Hey, you know, how you

24 doing, this is what I need from you kind of a deal,

25 and then they usually come meet with me at some

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1 point so I can say, Okay, you have this, you have
2 that, okay, I see you have this one, hey, you still
3 need this document, and then we make arrangements
4 to get the remaining documents before they can
5 begin.

6 Q Malcolm Young is still your partner?

7 A Correct.

8 Q Is he actively involved in the operation of CroMed?

9 A Correct.

10 Q And how do you decide what each one of you does?

11 A I -- I generally do it, you know, and he -- he
12 helps. I mean, he does it quite a bit, too, but we
13 never really sat down and said, You're gonna do
14 this or you're gonna do that. We just both make
15 sure that it gets done.

16 Q Does he have any other employment other than

17 CroMed?

18 A Malcolm?

19 Q Yes.

20 A No.

21 Q So, Mr. McCoy is hired. What was he hired to do?

22 A Drive.

23 Q How much was he paid?

24 A I want to say 8.50 an hour. I'm not a hundred
25 percent sure.

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1 Q How many hours a week would he have typically
2 worked?

3 A Twenty to 30, maybe more at times. It just
4 depended on the workload. It depended on how many,
5 you know, personal days he needed. We don't -- We
6 don't -- We let anyone have whatever days they
7 want off as long as they ask for two days -- within
8 two days' notice. So, it just would vary depending
9 on their days.

10 Q Okay. What days of the week do your people work?

11 A Monday through Friday and sometimes Saturdays.

12 Q Saturday as needed, but it's generally slower than
13 during --

14 A Correct.

15 Q -- the week?

16 A Correct.

17 Q Did you have any cause to write up or discipline or
18 reprimand Mr. McCoy?

19 A Not -- Not to the point where it required a
20 written, hey, you know, the verbal isn't having the
21 desired effect type of a deal, but no, I haven't --
22 I have never had to.

23 Q Okay.

24 A Verbally, yes.

25 Q And verbally what have you had to discipline him

1 for?

2 A Not doing trips in the order that they're assigned,
3 you know, when to -- when to be at work, different
4 procedures, just -- I mean, just little things as
5 far as, Hey, when you leave to come from out of
6 town, make sure you give us a call and let us know
7 that you're coming back into town to see if we may
8 -- maybe have something else in that area. That
9 didn't happen. Smoking in the vehicle. I've had
10 to counsel him a couple of times on that. Just
11 little things that we chalk up when they're --
12 When they're first hired with us and they come from
13 other companies, we know that there's a little bit
14 of a -- a learning curve that they're going to have
15 to get here because, you know, we hold them to a
16 higher standard than some of these other companies
17 do.

18 Q Got you. So, -- So, nothing that was requiring
19 any sort of discipline but certainly things that
20 you wanted to train him up to to meet your
21 standards. Is that fair to say?

22 A Correct. Other than the smoking in the vehicle. I
23 mean, there are things that -- that I'll tolerate
24 and there's things that I won't. We tolerate a lot
25 because we need drivers. So, I try to work with

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1 them on the -- on the things like not doing trips
2 in the right order or not calling us when they come
3 from out of town, or, for example, if I tell -- if
4 I tell you seven o'clock is your start time, that's
5 what time I want you rolling out of the parking
6 lot, not barreling into the parking lot, then get
7 into the car and ten minutes later -- So, those
8 are just things that you just have to keep working
9 with and hope that they get better.

10 Q It looks like Mr. McCoy started working perhaps
11 sometime in early July 2017. Just through July,
12 August, and the first half of September, did he
13 have any problems, any physical problems, any
14 problem with his back, at that time that he was
15 reporting to you?

16 A No. The first time that I realized that he had
17 anything -- and it wasn't even his back. He said
18 it was his kidneys stones. It was on that -- in
19 September.

20 Q So, -- So, let's talk about that.

21 A All right.

22 Q So, -- So, what -- tell me when you first heard
23 anything about kidney stones.

24 A I believe -- That day was -- it was a Sunday, and
25 it would have been roughly in the afternoon

1 sometime. I was making a call to him to -- I
2 don't exactly know what the nature of the call was.
3 Sometimes I might have to call them and say, Hey, I
4 want to talk to you about the trip that you're
5 going to take. Maybe there's something -- Maybe,
6 you know, I want them to make sure, Hey, it's --
7 make sure you turn down by the -- the red fence,
8 you know, or the GPS, is it really going to take
9 you there. So, I called him on that Sunday, and he
10 said, "I'm glad you called me. I was just getting
11 ready to text you. I'm on my way down to the
12 emergency room," and I said, "Oh, man, what's going
13 on?" and he said, "I think it's kidney stones."
14 So, of course my mindset now is, Okay, obviously I
15 hope that you're okay, but who am I gonna get to --
16 to -- you know, to take these trips. So, that's
17 when I kind of go into that mode, and I have to
18 kind of juggle the schedule around a little bit.
19 But that's the first that I knew that -- that --
20 that he had what we thought was kidney stones,
21 because that's what he'd told me, so --
22 Q And I guess along with that he then was also
23 telling you he was not going to be in Monday?
24 A You know, he didn't even say that he wasn't going
25 to be in Monday. He just said that he was on the

1 way down to the -- to the doctor, and I said, "Keep
2 me posted." I think --

3 The Deponent: (to Mr. Cauthen) Do you
4 have the -- what he's looking at --

5 A There's a text that corresponds to what -- I just
6 texted him back because I kind of -- to me, -- I
7 said, Well, man, you know, -- because my -- my
8 focus shifted to, What am I gonna do, and then it
9 quickly -- That's why I texted him back, to let
10 him know that, Hey, I do understand that you're in
11 pain, you know, --

12 Mr. Cauthen: Let me just -- Let me just
13 ask, Stephen, are you going to ask him
14 questions from the document that he prepared
15 and produced to you?

16 Mr. Samuels: I may use it as a resource,
17 but I'm not -- don't intend to show it to him
18 unless necessary.

19 Mr. Cauthen: Okay. But if you're going
20 to ask questions from that, I would -- I would
21 want him to be able to have a copy and refer
22 to it.

23 Mr. Samuels: I'm going to trust that
24 he'll be able to rely on his memory. He's
25 doing fine so far.

1 Mr. Cauthen: All right. Well, --

2 Mr. Samuels: But you have the right to
3 -- to cross-examine.

4 Q So, Mr. Cronan, he never actually sent you a text
5 message; you sent him a text message?

6 A I can't recall. I'm not going to be able to recall
7 the events from that. That's why I make notes.

8 Q All right. Well, I'm going to show you, then, two
9 sets of text messages that you provided me.

10 Mr. Samuels: We will make it Exhibit 1,
11 but I need to make additional copies.

12 Q So, -- So, looking at Exhibit 1, --

13 A Mm-hmm.

14 Q -- is this something that you provided --

15 A This is --

16 Q -- from the subpoena?

17 A Yes.

18 Q And what is this we're looking at?

19 A This is a screenshot of the text messages between
20 Jeff and I on that -- September 17th.

21 Q All right. So, if he had sent you a text message
22 saying, I have kidney stones, I'm not coming in
23 tomorrow, --

24 A Mm-hmm. If -- If he had sent me a text, it should
25 have been on there, correct.

1 Q So, it not being on there, that means he did not
2 send you a text; you sent him a text after the
3 phone call?
4 A Which part?
5 Q Did he send you a text at all on Sunday, September
6 17th?
7 A If it's not on here, he did not send me a text.
8 Q Okay. I guess the text --
9 A That --
10 Q -- is your response here?
11 A Correct. Correct.
12 Q Okay. Did you get some follow-up from him after
13 he'd been to the doctor?
14 A Define follow-up.
15 Q Did you and Jeff have any communication --
16 A Verbal.
17 Q -- after he'd been to the doctor?
18 A Verbal. And I think there -- there are -- Do you
19 mind if I separate these, or no?
20 Q No, that's fine.
21 A Okay. I can't recall exactly everything. Any text
22 messages that were ever between us are gonna be
23 right there in front of you.
24 Q Okay. We've -- We've got this first one that is
25 green, --

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- 1 A Mm-hmm.
- 2 Q -- got green colors, and the other one's yellow.
- 3 Are those two different phones?
- 4 A Correct.
- 5 Q But they're both company phones, both CroMed
- 6 phones?
- 7 A Yes. Yes. One is more -- more of like a personal,
- 8 and then one is like the main CroMed phone that
- 9 they're supposed to --
- 10 Q Okay. Which one is the main CroMed phone?
- 11 A At this time -- At that time, I believe it was the
- 12 -- the green.
- 13 Q Got it.
- 14 Mr. Samuels: And for clarity, we'll make
- 15 the yellow text messages Exhibit 2.
- 16 Q So, -- So, September 17th was a -- was a --
- 17 A Sunday.
- 18 Q -- Sunday. Did Mr. McCoy work on Monday or Tuesday
- 19 of that week?
- 20 A Are you referring to the 18th and the 19th?
- 21 Q Yes, sir.
- 22 A No, he did not.
- 23 Q Did he have a doctor's note?
- 24 A Never produced a doctor's note to me.
- 25 Q Did you ask him to produce it?

- 1 A Yes. We ask anyone that misses any time to just --
2 next time you come, just make sure we get a copy of
3 the doctor's note.
- 4 Q When did you ask him to produce it?
- 5 A I don't recall the exact date or time.
- 6 Q When did Mr. McCoy come back to work?
- 7 A The following Monday.
- 8 Q The following Monday?
- 9 A Correct.
- 10 Q All right. So, he told you -- he told -- you had
11 it worked out for Monday and Tuesday off; is that
12 right?
- 13 A That's -- Yes.
- 14 Q Okay. Did you -- How did it happen that he didn't
15 come back to work on Wednesday? Was that his
16 decision, your decision?
- 17 A We told him to -- to let us know when he was ready
18 to come back to work. He never notified us, until
19 -- It was like, I think, Sunday. He says, "I'm
20 ready to go back."
- 21 Q Sunday, the 24th of September?
- 22 A That's the date of Sunday, yes.
- 23 Q Did you speak with Mr. McCoy during the week of
24 September 18th to 22nd?
- 25 A I may have. I would have to check my -- the phone

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1 records to see exactly -- to see exactly what calls
2 came in or out.

3 Q So, when -- when did you learn that he was going to
4 be coming back to work on September 25th?

5 A Sometime prior to that. I don't exactly know when
6 a discussion would have -- would have been. I
7 don't -- I don't remember without the phone
8 records exactly when he and I may have talked, or
9 if he and I talked at all, if maybe he talked with
10 Malcolm Young. I would, again, have to, you know,
11 check the records.

12 Q You mentioned something about phone records. Do
13 you have a system that keeps track of phone calls?

14 A Just a detailed billing that you get with your
15 bill.

16 Q Okay. And do you have that bill?

17 A I have access to it. I don't have it here now.

18 Q All right. Can you provide that to your attorney
19 so he can --

20 A Yes.

21 Q -- provide it to me?

22 A Yes. Absolutely.

23 Q So, I reckon that would be the months of September
24 and October 2017.

25 A Okay.

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- 1 Q I have a document that sort of lists a bunch of
2 phone calls and texts.
- 3 A Mm-hmm.
- 4 Q Is that something you created?
- 5 A Yes.
- 6 Q And was it created specifically for this case?
- 7 A When I created that, on the 14th of October, it was
8 -- was not for any lawyers because there were no
9 lawyers at that time. It was for the -- me to have
10 my ducks in a row when I talked to workers' comp.
- 11 Q Got it. And that's, I guess, the same as this --
- 12 A The narrative. Correct.
- 13 Q -- two-page narrative?
- 14 A Correct.
- 15 Q When you created that October 14th, did you have
16 any documents to refer to or was that just your
17 recollection?
- 18 A GPS records; phone records; and I think -- and, you
19 know, my phone, text messages.
- 20 Q Did Mr. McCoy tell you what the doctors had told
21 him about the kidney stones?
- 22 A Yes. I believe that he told me that it was just
23 his sciatic nerve acting up.
- 24 Q Mr. McCoy comes in on Monday, September 25th. Did
25 he work that day?

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1 A Briefly.

2 Q Tell me about briefly. What happened?

3 A I can't recall how many people he picked up, but I
4 believe it was three. I don't know what time he
5 came into work, but I know that -- I'm pretty sure
6 he picked up three, took them to a facility. There
7 was another gentleman that -- that would have been
8 by 8:30 at the latest because that's what time
9 their drop-off time was. There was another driver
10 who had taken some patients and then came back over
11 to another location and then called me and said,
12 "Hey, I think you better check on Jeff. He's not
13 doing too well. He can't get back in the car.
14 He's crying."

15 Q Did you talk to Jeff about that?

16 A I did. I called Jeff, and I told him to go ahead,
17 bring the vehicle back to me, I'm going to clear
18 the rest of his day.

19 Q What did Jeff tell you about how he was feeling?

20 A He said -- I can't recall the exact words that he
21 used. He just agreed and brought the vehicle back.

22 Q Did he tell you that he was -- Did he, himself,
23 say he was crying and couldn't get back in the car?

24 A I don't think he -- When I talked to him, -- I
25 don't think he said that, no. I don't think he

1 would have said he was crying to me, no.

2 Q Did he get back in the car?

3 A He had to have to return it, yes.

4 Q So, whoever said he couldn't get back into his car
5 was not accurate; is that correct?

6 A I don't think that he was inaccurate. I think that
7 he was saying that he was having trouble getting
8 back into his car.

9 Q Who was that person that would have told you that?

10 A Ronald Anderson, another driver.

11 Q How long has Ronald Anderson worked for you?

12 A I don't have the exact time, but it's been a good
13 while. A couple of years.

14 Q Did you and Mr. McCoy have any further
15 conversations on September 25th after he brought
16 the car back?

17 A Without the phone records and the texts, I can't
18 say definitely.

19 Q Okay. You don't remember one way or the other,
20 then?

21 A On that particular day, no. I mean, if I have
22 phone records, you know, I could go through and say
23 yes, okay, we did have a conversation, but I can't
24 definitely remember after telling him to go ahead
25 and go home and we'll clear the rest of his day.

- 1 Q Okay. What about the rest of the week? Did he
2 continue working?
- 3 A No. He didn't work again until the following
4 Monday.
- 5 Q Did you have any conversation with him about not
6 working the rest of the week?
- 7 A About not working the rest of the week, no, but
8 about other things, like, you know, you can see on
9 here some of the -- you know, there's -- there's
10 time frames where we were checking -- like, I'm
11 checking in with you, or I'll make a phone call to
12 find out, Hey, how are you doing, because there was
13 -- there was a lack of communication coming back to
14 keep me informed on what was going on on a day-to-
15 day basis.
- 16 Q Well, I'm looking at your text messages, Exhibit 1,
17 and I see a text message from Sunday, September
18 24th.
- 19 A Mm-hmm.
- 20 Q The next message is October 5th.
- 21 A On that phone, that's correct.
- 22 Q So, there are no text messages during that entire
23 week after the 24th; is that correct?
- 24 A Unless it was on a different phone, but, again, it
25 could have been on -- This was on the 23rd, so

1 that would've been -- That's October, those two
2 pages. Other than a phone call -- Again, -- And
3 I would have to -- Once we get the bills, we can
4 point you to any phone calls that we might have
5 had.

6 Q Well, I guess what I'm trying to figure out is, if
7 you've only given him Monday, September 25th off,
8 --

9 A Mm-hmm.

10 Q -- was he scheduled the rest of the week?

11 A It would have been a similar situation. They work
12 every day unless they can't work. In this
13 instance, with him going back -- He did not notify
14 me -- To my knowledge, he didn't notify me that he
15 couldn't work the next day. I think I talked to
16 him the next day. I believe his wife answered the
17 phone and -- and said, "We're -- We're going back
18 down to the hospital."

19 Q Okay. You said "his wife." Do you know her name?

20 A I do not.

21 Q I don't see anything in your notes where you had
22 any communication with Mr. McCoy the rest of the
23 week after that Monday September 25th when he was
24 sent home.

25 A Okay.

- 1 Q You didn't document any phone calls or any -- any
2 e-mails or any text messages with him during that
3 time?
- 4 A I don't know. I don't have access to that -- my
5 note sheet right now. I can't tell you definitely
6 whether I did or whether I didn't. And -- Go
7 ahead.
- 8 Q Go ahead.
- 9 A I was going to say, if there's -- if there's -- if
10 there's not a phone call, it's me letting him go
11 through the process of when you're ready to come
12 back to work, just let me know, and you'll come
13 back to work, just as the previous week, When
14 you're ready, you know, come back to work.
- 15 Q Do you know whether he had spoken to Malcolm Young
16 during that week?
- 17 A I do not know.
- 18 Q If his -- whether kidney stones or sciatic nerve,
19 he was having pain that week, --
- 20 A Mm-hmm.
- 21 Q -- you were fine with him not working?
- 22 A Either week or that -- the first week?
- 23 Q The second week, the week of September 25th.
- 24 A If somebody's hurting, I -- I have no choice. You
25 know, I mean, I'm not gonna make somebody come to

1 work when they're in pain.

2 Q You didn't fire him; you didn't terminate him; you

3 didn't --

4 A No.

5 Q -- discipline him?

6 A No.

7 Q And, so, when he comes back, he let you know that

8 he was coming back the next week?

9 A Correct. At some point, yes, he let me know that,

10 Hey, I'm available, I'm good to go now.

11 Q And that would be the week -- Monday is October

12 2nd, 2017?

13 A I believe so, yes.

14 Q So, did anything happen during the week of October

15 2nd, 2017?

16 A I don't believe so.

17 Q Okay. Did he work the entire week?

18 A Correct.

19 Q Uneventfully, with no problems?

20 A To the best of my knowledge, yes.

21 Q Didn't report any problems with working to you or

22 to Malcolm?

23 A I don't know about Malcolm, but I don't remember

24 him ever saying, hey, I'm hurting or anything like

25 that.

1 Q And he was doing his normal duties?

2 A With -- Not exactly. I mean, he was performing
3 the duties as far as picking patients up, but a
4 requirement of ours is to get out of the vehicle
5 and assist patients. Like basically it's called
6 curb-to-curb. So, when they make it to the curb,
7 we're responsible for them, not to lift or push or
8 pull or anything, but just, you know, maybe make
9 sure that you're standing guard in case an elderly
10 lady is gonna slip and fall. So, you know, we're
11 there to seatbelt them in the car. But I -- I
12 believe during that time period Jeff was not
13 exiting the vehicle. He would show up, and they
14 would get in the car, but I don't believe he was
15 exiting the vehicle.

16 Q And what are you basing that on?

17 A Time -- Times at locations. If you're there for a
18 minute and you worked the pad, -- You know, if
19 you're only at a location for a minute and you've
20 worked the pad to, you know, punch in their name
21 and have them sign it and you're already leaving,
22 that, to me, tells me that they're running and
23 jumping in the car. It takes a little bit longer
24 to -- for -- to load a patient.

25 Q Okay. Is this something that you've documented?

- 1 A It's something that I -- that I remember. I don't
2 think I -- I don't think it's on a piece of paper.
3 I can, you know, give you some comparisons if
4 that's something you would like to see.
- 5 Q Is this something that you spoke to Mr. McCoy
6 about?
- 7 A Actually, on that particular occasion, I said,
8 "Look, if you're -- if you're still not feeling
9 good, well, you can -- you know, just do what you
10 can do." I even told him that I would let him
11 drive a certain car that had heated seats if that
12 would help him because I know on long drives, it
13 helps me.
- 14 Q Did he actually end up driving a car with heated
15 seats?
- 16 A Sometimes. He didn't seem to -- He said it didn't
17 really matter to him, so -- We just try to make --
18 You know, we want you to work here, you know, we
19 want you to be comfortable, so -- but it wasn't
20 anything that we -- you know, we made him do.
- 21 Q Another documentation that was provided to me in
22 the subpoena indicates that he was not doing the
23 entire job that week.
- 24 A Okay.
- 25 Q So, you would agree you did not document that he

1 was having any difficulty or not doing the entire
2 part of the job. Is that fair to say?

3 A Yeah, I don't have a written formal document that
4 says, hey, he wasn't getting out of the vehicle,
5 no. It's something that -- that if it's an ongoing
6 thing, you know, -- because, again, when they --
7 when they work for other companies, they don't have
8 to do that, but for us, it's right in the training
9 that we provide them, that they're to be outside of
10 the vehicle for that very reason.

11 Q So, they would have to assist someone who has
12 difficulty walking; is that correct?

13 A No. They have to be able to walk and -- My main
14 -- Let's say somebody is getting in the vehicle
15 and they -- maybe they slip or it's an elderly
16 lady, you know. Plus, it's a prestige thing. It's
17 more -- We're -- We're -- Even though that's
18 what you're supposed to do, it's -- it's more like
19 a limo service. You're going to be there because
20 that's -- people enjoy that. They like that better
21 than just somebody pulling up and, "Get in," you
22 know.

23 Q Got it.

24 A Plus, I tell them all, How horrible would you feel
25 if that little old lady trying to get in the

- 1 vehicle fell down while you're sitting in your car
2 on the phone, or whatever you're -- you know,
3 you're doing, not helping her.
- 4 Q Do some of your clients rely on wheelchairs?
5 A My clients, a small percentage, yes.
6 Q Some do, though?
7 A Some do.
- 8 Q And in that case, is the driver required to load
9 the wheelchair into the car?
10 A It's not a requirement. I mean, if -- if they need
11 assistance with that, they can ask for assistance
12 from the -- the home and they can ask for
13 assistance at the facility.
- 14 Q And if no assistance is offered, would they then
15 have to load it into the car?
16 A They would not have to. They could call me and
17 say, Hey, I -- I can't do this, and I would either
18 arrange other means or, you know, send a different
19 driver or just refuse the -- the transport.
- 20 Q Do you have occasions when people load wheelchairs
21 in the car?
22 A Yes.
- 23 Q And that's part of the job?
24 A It can be part of the job, yes.
25 Q I mean, if -- if the client needs a wheelchair

1 transported from their home to wherever they're
2 going, the doctor's office or the daycare or
3 nursing home, wherever it may be, part of your
4 service is also transporting the wheelchair along
5 with the person, correct?

6 A That is correct.

7 Q And it's far more efficient for you and your
8 business if the driver loads the wheelchair into
9 the car rather than having you come out just to --

10 A Obviously.

11 Q -- do that one task? So, your preference is that
12 the driver load it into the car?

13 A If they're able to, yes.

14 Q During this week, was Mr. McCoy under any work
15 restrictions that you are aware of?

16 A No.

17 Q So, the -- on Monday, October 2nd, Mr. McCoy comes
18 back to work, works the entire week, and then does
19 he come back to work on October 9th?

20 A Yes.

21 Q Okay. So, what happened on October 9th?

22 A With regard to?

23 Q Any communication you had with Mr. McCoy about
24 working that day or any communication you had --
25 Malcolm Young had with him about working that day.

1 A Generally we send them a text message, so -- but it
2 could've been -- it could've been Malcolm. Monday,
3 October 2nd. See what that -- where that says
4 "0600" on October -- That's me telling him the
5 next day to be at work at that day, so -- from that
6 phone. Let's see. That would have been the 8th.
7 So, Sunday, the 8th, I told him be at -- seven
8 o'clock. He responded to me, "Car?" I said, "I
9 don't know at this point. Check with Malcolm,"
10 because that's on Malcolm's side. He said, "Yep."
11 That's the last -- I had one more call with --
12 with him that day, and it was in the morning. I
13 don't know exactly the time. I can get you the
14 time -- to counsel him about doing some things in
15 -- in the wrong way, and that was the -- that's the
16 last that I spoke to him until, I think, I was
17 sending him his last check.

18 Q Okay. Tell me about the conversation you had with
19 him.

20 A That day?

21 Q That day. First, when did it take place?

22 A It was AM. It would've been before he picked up
23 anyone. He was going to the wrong person. So,
24 it's -- again, it's something that I have to harp
25 on, not just him but others, Hey, make sure you're

1 doing your trips in the right order, you know,
2 we've talked about this before, you're gonna have
3 to tighten up a little bit better, you've been here
4 long enough to know. I mean, yeah, I -- I -- I
5 verbally counseled him, maybe strenuously, and let
6 him know that needs to -- he needs to make sure --
7 that he's doing his trips in the wrong order. He
8 just -- He was -- The best way to describe it is
9 -- is if you have three people that you have to
10 pick up, if you don't do them in the right order,
11 you're gonna be, you know, one side of town to the
12 other side of town. You know, it's not going to
13 flow in the intended pattern, and -- and you're
14 going to be late. So, that's why I take the time
15 to -- the night before, when I make the schedule,
16 to actually Google the locations and say, okay,
17 this one works best if you go from point A to point
18 B to point C. He was going to point C first. So,
19 I had to have him turn around on the interstate and
20 go back and pick up, you know, point A. So, that
21 -- that was basically the conversation. I
22 counseled him.

23 Q Did he pick up point A?

24 A Eventually, yes.

25 Q Well, in what order did he -- did he pick up his

1 clients that day?

2 A He did it A, B, C.

3 Q So, he followed your instruction?

4 A After I told him to, yes. Correct. After that

5 point, yes, he did.

6 Q All right. So, do you recall who the clients were

7 that he picked up that day?

8 A I do, but at this point, I don't even know if

9 that's a HIPAA violation, for me to provide that

10 information for you. I mean, I could say A, B, and

11 C, but -- I don't know. I mean, is that something

12 that I'm able to provide, names? I mean, I don't

13 know.

14 Q I don't know that it is a HIPAA violation.

15 A I mean, --

16 Q I can't -- I can't --

17 A Right.

18 Q -- advise you on that.

19 A Right. So, I mean, at this point, we'll just say

20 A, B, and C, or -- or we can make up names or --

21 Q Well, he -- Mr. McCoy provided names in his

22 deposition.

23 A All right. If you --

24 Q One of the names was Jonathan. He didn't have the

25 person's last name.

1 A Nor should he. But that's -- that's fine.
2 Q And the other person --
3 A That would have been his first pickup.
4 Q The other person's first name was Dolores.
5 A That is correct..
6 Q And you're familiar with those two people?
7 A I am -- I'm familiar with them. And he had a
8 third patient after that.
9 Q Okay. So, tell me the order he would have picked
10 the people up in.
11 A Jonathan; Dolores; and then the third one.
12 Q Okay. And would he have dropped off Jonathan and
13 Dolores before he picked up the third one?
14 A No.
15 Q Okay. So, he picks up Jonathan, he picks up
16 Dolores?
17 A And then the next one.
18 Q Then the next one.
19 A The next one and the first one, Jonathan went to
20 one facility.
21 Q Okay.
22 A He unloaded them there and then got onto the
23 interstate and drove up to the final location,
24 which was Dolores.
25 Q Okay. And the first two people, what location were

1 they dropped off at -- one and three, rather?

2 A One and three. It's -- In Cayce, there's a

3 facility called Bridges Clubhouse. It's an adult

4 daycare. So, that's where they got dropped off at.

5 Q And where was Dolores dropped off at?

6 A Off Decker Boulevard. I don't know the exact

7 address, but it's Mountaintop Adult Daycare.

8 Q Okay. And you personally did not have any

9 conversations with Mr. McCoy that day after you had

10 the initial conversation about getting to point A

11 and B in order, correct?

12 A That is correct.

13 Q Okay. Do you know whether he had any conversation

14 with anybody else in your company during that time?

15 A I believe -- If -- If memory serves me correct, I

16 believe Malcolm Young.

17 Q How did you learn he had a conversation with

18 Malcolm Young?

19 A I received a call after one of the calls from

20 Malcolm Young explaining the contents of the -- or

21 the context of the --

22 Q About what time did you receive that call?

23 A I believe, according to my notes, maybe that call

24 was at -- and you can check it, because -- I think

25 it's in the 9:25. Well, maybe that's the call to

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1 Malcolm. It would have been shortly after that --
2 that phone call that I would have received a call
3 from Malcolm, but I believe that's -- the 9:25 is
4 the call he made to Malcolm. It should be on that
5 second page of your narrative maybe, or maybe in
6 that last paragraph. If not, then I can provide it
7 with the phone record.

8 Q All right. So, 9:25 to Malcolm Young, what you
9 learned about that call, you learned from Mr.
10 Young?

11 A Correct.

12 Q And what did Mr. Young tell you?

13 A Jeff was not happy about my conversation with him
14 earlier in the day.

15 Q In what respect?

16 A That I, I guess, yelled at him.

17 Q Did you yell at him?

18 A I didn't shout or scream or anything like that. I
19 counseled him, like I said. It was maybe -- It
20 was a little bit vigorous, but it wasn't -- I mean,
21 I wasn't screaming or shouting or cursing or
22 anything along those lines.

23 Q But it was a little bit vigorous, meaning he'd be
24 able to tell that you were angry?

25 A He could tell that I was unhappy with the actions

1 that he had done so far that day, yes.

2 Q And not just by your words but by your tone, as

3 well? That's what you mean by vigorous, isn't it?

4 A Yeah. I counseled him, yes.

5 Q Did Malcolm convey any other contents of the

6 conversation he'd had with Mr. McCoy?

7 A Nothing more than he -- that he was -- that he was

8 angry and that -- that he was going -- that today

9 was going -- probably going to be his last day, he

10 doesn't have to take this crap, he's a professional

11 driver, you know, he -- I'm out here -- you know,

12 just I'm out here busting my hump for these guys

13 and, you know, this is the way they're -- he's

14 talking to me. And then I believe Malcolm asked

15 him, well, was he -- you know, trying to get to the

16 bottom of it, and he said, "Because I didn't do my

17 trips in the right order," and Malcolm told him,

18 "Well, do your trips in the right order, then, you

19 know, and then you won't have those conversations."

20 Q Tell me about, "This is probably going to be my

21 last day." What was the point to that as it was

22 conveyed to you?

23 A Just -- Just like it sounds. He was mad, and he

24 said, "I'm done. I'm not gonna work here anymore.

25 If that's the way that I'm getting treated, I'm not

- 1 gonna work here anymore."
- 2 Q Was there any conversation conveyed to you about
- 3 Mr. McCoy's back and whether he needed to go to the
- 4 hospital or anything along that line?
- 5 A No.
- 6 Q Did Malcolm convey to you that Mr. McCoy made any
- 7 threats?
- 8 A Like against me, to, like, beat me up?
- 9 Q Anything. Anything that could be construed as some
- 10 sort of threat.
- 11 A I can't recall Malcolm telling me about any
- 12 threats, no.
- 13 Q So, that would be a no?
- 14 A I can't recall Malcolm telling me anything about
- 15 any threats.
- 16 Q That's something you would have remembered, though,
- 17 if it happened?
- 18 A If Malcolm told me that, Hey, Jeff made a threat
- 19 against you, he's gonna whoop you or whatever,
- 20 yeah, I think I would remember that.
- 21 Q All right. So, the rest of the day, Mr. McCoy --
- 22 So, what -- what else does he have to do that day?
- 23 He's dropped off the two people at the adult
- 24 daycare center, --
- 25 A Mm-hmm.

1 Q -- and he's taken Dolores and dropped her off on
2 Decker.
3 A Mm-hmm.
4 Q Does he have any assignments after that?
5 A He did.
6 Q What was the assignment after that?
7 A He had a Union to, I believe, Rock Hill. It
8 could've been Charlotte, but I -- I think it was
9 Rock Hill. I have GPS records that could show.
10 Q Do you know what time he would have picked up the
11 person in Union?
12 A I can provide that, but I don't have exact. It
13 would've been maybe two hours later, something
14 along those lines.
15 Q And I'm not trying to hold you to any particular
16 time.
17 A Got you.
18 Q I'm just really trying to get the sequence of
19 events.
20 A Yeah. I just -- If I'd have known, I would've
21 wrote down -- But I just know that he went to pick
22 her up, take her on her appointment. I do -- I
23 think I remember it was like maybe 75 minutes away
24 or something along those lines. I don't know what
25 the exact pickup time was, but 10:30 let's say.

1 You know, I don't know exactly, and I don't know
2 what the drop-off time was, but he would've had
3 to had to drive up there, pick her up in the normal
4 way, take her to her appointment, wait on her,
5 bring her back home to her appointment, and then
6 drive back home.

7 Q Okay. So, he would have gone Union to either Rock
8 Hill or Charlotte, --

9 A Mm-hmm.

10 Q -- waited, --

11 A Mm-hmm.

12 Q -- and then he would, when she was done, take her
13 back to Union?

14 A Mm-hmm.

15 Q And what would he do after that?

16 A He would drive home, fill up the -- He would stop
17 at the gas station, fill it up with fuel, and then
18 drop the car off at the -- at the -- the location
19 where we keep our cars.

20 Q Okay. Just out of curiosity, where do they leave
21 the car when somebody drops it off?

22 A They lock it up. We have a spare set, and we'll go
23 at night and pick them up.

24 Q Got it.

25 A But the policy is to lock -- lock the vehicle, lock

1 everything, the contents, secure everything, lock
2 -- lock the spare key inside the vehicle and then
3 go, and then we have a hideous big ring of keys,
4 you know, so -- Malcolm has his set. I have my
5 set. And we come at -- you know, usually early in
6 the morning. Like if somebody has a -- If our
7 first pickup -- If somebody's coming at three AM,
8 we're -- 2:50 we're there, okay, unlocking the
9 doors.

10 Q So, when somebody goes to pick up one of your
11 vehicles, you or Malcolm have to be there to give
12 them the key and unlock the car?

13 A The key is inside the vehicle, and then we will
14 unlock the vehicle, but we won't always be present
15 to unlock the vehicle. Sometimes -- If the first
16 pickup is six AM, then at six AM they all get
17 unlocked, unless it's something real, real late,
18 you know. Then we might come back up there.

19 Q So, they may sit for a while unlocked with the key
20 inside?

21 A It could. Well, no. I mean, in the morning, yes,
22 but not in the evening. So, in the morning, you
23 know, if -- if -- like I said, if they come in and
24 if Malcolm comes and unlocks his side, then it
25 could be -- you know, maybe they don't come in till

1 eight but it was opened up at six, so -- Yes.

2 Q When you had the conversation with Malcolm where he

3 said Mr. McCoy expressed his unhappiness with your

4 coaching, --

5 A Mm-hmm.

6 Q -- when did that conversation take place, between

7 you and Malcolm?

8 A It would have been immediately after he hung up

9 with -- with Jeff. He would have called me. Or in

10 that vicinity. It wouldn't have been long.

11 Q Sometime in the morning?

12 A Correct.

13 Q Okay. And then did you get further communication

14 from either Mr. McCoy or Malcolm later that day?

15 A When the car was dropped off at the end of the day,

16 I got a call from Malcolm saying that Jeff was

17 requesting our workers' comp information.

18 Q Okay. Tell me what you recall about that entire

19 conversation.

20 A "Jeff's re- -- is requesting our workers' comp

21 information." I said, "Okay. Let me go." I hung

22 up, and I found the number for the workers' comp

23 and called it in.

24 Q Okay. Did Jeff request to be sent to a doctor?

25 A No.

- 1 Q Did you offer to send him to a doctor?
- 2 A No.
- 3 Q Did Malcolm offer to send him to a doctor?
- 4 A No.
- 5 Q Did you get any kind of details about the basis of
- 6 why he wanted to make a workers' comp claim?
- 7 A Based on the -- the previous three weeks, we took
- 8 it as the event that happened on the 17th was what
- 9 he was now trying to file a workers' comp claim on.
- 10 Q Okay. Not on the -- Not on what happened October
- 11 9th?
- 12 A No. I've never gotten any confirmation from Jeff
- 13 that he was injured on the job. Never spoke to him
- 14 about it.
- 15 Q And you didn't actually have any conversation with
- 16 him until --
- 17 A I did not.
- 18 Q -- after the incident he claims he was injured on
- 19 October 9th?
- 20 A I think the only -- the only -- I think I sent --
- 21 I tried to call him -- he didn't answer -- after
- 22 I'd set up the claim, and then I sent him a text
- 23 message letting him know that, Hey, they'll contact
- 24 you. And then after that it would have been
- 25 clerical, Hey, you know, normally we send out your

1 last check -- I don't know if we did it in this
2 case, but I wanted to make sure that I had the
3 right address because he had moved from one address
4 to another. So, I think we had some communication
5 regarding his last check. And then I think --
6 Come tax time, I know how it is when you're waiting
7 on that last W-2. I said, "Hey, didn't you change
8 addresses? Where do you want me to send your W-2?"
9 And he said, "Oh, just send it over to --" I think
10 it's Sparkleberry, the address. So, -- And then
11 that's what I did. I put it in the mail for him.
12 Q Any communication with him about returning t-shirts
13 and handbooks?
14 A I did -- I did, I think, text message him and just
15 said, Hey, make sure that you give back your --
16 your -- your t-shirts. I mean, they cost us --
17 These are the ones, sort of, you know, a couple of
18 different styles, but -- They cost us money, so
19 that's -- that's part of the -- the deal, is that
20 you return those and -- and your handbook and your
21 badge, any CroMed materials.
22 Q Did you get all that stuff back?
23 A I do not think -- I think I got the shirts back.
24 I think that's it. I don't think he -- he returned
25 his ID badge, and I don't believe I got his

1 handbook.

2 Q Okay. Did he not text you saying that you'd never
3 given him a shirt?

4 A He may have expressed -- He may have, but I don't
5 recall at this time. And what I -- Well, --

6 Q Well, I'm looking at this text on Exhibit 1 on
7 October 16th, and --

8 A Okay. Yeah. "U never gave me a shirt." So, yeah.
9 Okay. Yeah, I thought -- I thought maybe he
10 returned his shirts.

11 Q Do you know whether anybody else at CroMed had any
12 communication with Mr. McCoy after that last day
13 that he worked?

14 A I don't think I do. I can't recall, you know, I
15 mean, who it may be. I know -- I don't know -- I
16 can't attest to if Malcolm talked to him anymore or
17 if he talked to any of the drivers -- I can't be a
18 hundred percent sure -- after that day.

19 Q Do you remember there being a phone call from
20 Ronald to Mr. McCoy?

21 A At this time, no, I don't -- I don't recall. I
22 can't say whether there was or there wasn't.

23 Q Did you give Ronald Mr. McCoy's phone number?

24 A Again, at this point, I -- I can't remember if I
25 did or I didn't.

- 1 Q So, it might have happened; you don't remember it?
- 2 A Yeah, I don't remember.
- 3 Q Okay. Do you remember being on a three-way
- 4 conversation basically where Ronald's calling Mr.
- 5 McCoy and you were keeping quiet and listening in?
- 6 A I have no recollection of that, no.
- 7 Q Did you terminate Mr. McCoy's employment?
- 8 A Mr. McCoy quit.
- 9 Q How were you notified that he quit?
- 10 A The call that he made to Malcolm.
- 11 Q The call at nine o'clock in the morning?
- 12 A I believe 9:25, I think.
- 13 Q But he still worked the rest of the -- rest of the
- 14 day?
- 15 A He was told to bring the vehicle in, but he said,
- 16 "I need the hours, so I'll work the rest of the
- 17 day."
- 18 Q Who told him to bring the vehicle in?
- 19 A Malcolm. Based on the conversation I had with
- 20 Malcolm, Malcolm told him to bring the vehicle.
- 21 Q Your company does not have light-duty employment,
- 22 does it?
- 23 A No. There's no real light duty for driving.
- 24 Q In fact, your insurance company asked if you could
- 25 accommodate light duty, and you told them no?

1 A I can't recall if there was a conversation whether
2 we could or we couldn't. I don't -- I don't know.

3 Q If documents from your insurance company indicated
4 that you did not offer light-duty employment, or
5 could not offer light-duty employment, that would
6 have been information they would have gotten from
7 you, isn't it?

8 A I'm not understanding. You would have gotten
9 information from me if my insurance company gave
10 that to me? I'm not following the question.

11 Q If your insurance company at the time, --
12 A Guarantee.

13 Q -- Guarantee has -- or Patriot, --

14 A Okay.

15 Q -- a division of Guarantee, --

16 A Okay. Got you.

17 Q -- documented that you could not offer light duty,
18 --

19 A Okay.

20 Q -- that would have been information they would have
21 gotten from you? You would have provided that to
22 Donna Manfre at Patriot, correct?

23 A If they -- If Patriot has information that -- that
24 says that -- that CroMed said there was no light
25 duty, then yes, that would have come from CroMed.

1 Q Yeah, that was my question.

2 A Okay. Yeah. I just -- I wasn't sure. I just
3 don't recall having that conversation. It's been,
4 you know, several months.

5 Q I'm very close to finishing.

6 A Okay.

7 Q Just a couple more last things.

8 The Deponent: Are they pretty relaxed
9 about the two-hour parking?

10 Mr. Samuels: Yes, --

11 The Deponent: Okay.

12 Mr. Samuels: -- they are.

13 The Deponent: I was just making sure.

14 Mr. Samuels: Yeah.

15 The Deponent: I'm just glad they have
16 that and not the meter.

17 Q Did Malcolm communicate to you that Robert --
18 excuse me -- Jeff -- Did Malcolm communicate to
19 you that Jeff McCoy was annoyed that you'd sent him
20 to pick up a lady with a wheelchair?

21 A As in Malcolm calling me and telling me, Hey,
22 Jeff's mad at you?

23 Q Yes.

24 A I don't recall any conversation like that.

25 Q Do your employees consider you to be OCD?

- 1 A I mean, I -- I don't know. I mean, probably not
2 OCD, but, you know, the reason why we're the
3 company that we are and -- and the vehicles that we
4 have is because I do pay attention to -- to
5 details. That's the Air Force in me. You can't
6 have a -- You can't have an on-time performance
7 like we do if you don't at least -- but, you know,
8 I make -- I lay it up for them basically, Hey, this
9 is how you do it, it's easy, I'm the one who
10 prepares the night before so you guys don't have
11 to, I want you guys just to be friendly and, you
12 know, yourself.
- 13 Q Is there a window for when somebody must be picked
14 up? Like an example, if somebody has a pickup time
15 at seven, is there a range before and after seven?
- 16 A There is what's considered to be, quote, unquote,
17 on time. There's -- There's a couple of different
18 ones. So, are you referring to the -- to it like
19 when I pick them up at their home or when I drop
20 them off or just in general?
- 21 Q When you pick them up at their home.
- 22 A When I pick them up at their home, if they -- for
23 an example, if they have an eight AM pickup, we can
24 be 30 minutes before or we can be 30 minutes after.
25 So, you get an hour window, but it's 30 minutes

1 before, 30 minutes after. Now, that's to be
2 considered on time. Are we always on time? No,
3 but that's what we strive for.
4 Q Anybody tell you that Mr. McCoy said he was going
5 to sue CroMed for all it was worth?
6 A I believe I heard that.
7 Q Who did you hear that from?
8 A I believe Wendy Woods, or it could have been
9 Catherine Blackburn.
10 Q Who is Wendy Woods?
11 A Both are employees.
12 Q Both drivers?
13 A Mm-hmm. Well, Wendy's still employed. Catherine
14 is not employed anymore.
15 Q And --
16 A But they were -- At that time, they were employed
17 with CroMed.
18 Q Do you have any idea when either of these
19 conversations would have taken place?
20 A I would not have the exact -- It would have been
21 around that time frame.
22 Q What time frame?
23 A After Jeff left.
24 Q Have you had any conversations with any other
25 employees or people, other than your attorney,

1 about Mr. McCoy and his claim?

2 A That I can recall, no. I can't say definitely. I
3 may have had a conversation -- We have another
4 office worker, but I don't -- I don't -- I can't
5 recall if I had any other conversations about
6 anything related to Mr. McCoy.

7 Q Who is the other office worker?

8 A James Middlebrook.

9 Q What does James Middlebrook do?

10 A He's clerical. He's, I guess you could say, like a
11 prospect to become maybe a partner almost. You
12 know what I mean? He's gonna learn every single
13 thing that -- that we do.

14 Q What would be the substance of the conversation you
15 had with James Middlebrook?

16 A I can't recall. I don't even know that any such
17 conversation took place, but if they did, I
18 certainly wouldn't recall every word that was
19 mentioned. It may not have even been related to --
20 to this. It could have been, you know, something
21 else, but I don't -- I can't recall.

22 Mr. Samuels: I believe that is all the
23 questions I have for now.

24 The Deponent: Okay.

25 Mr. Samuels: Your attorney may or may

1 not have questions for you.

2 Mr. Cauthen: I've just got a couple of
3 clarification questions, Robert.

4 Examination

5 By Mr. Cauthen:

6 Q You were asked some questions, Robert, about the
7 phone calls, the conversations, between Malcolm and
8 Jeffrey on October the 9th, and I think you
9 indicated that Malcolm relayed the substance of
10 those conversations to you --

11 A Correct.

12 Q -- after they occurred?

13 A Correct.

14 Q And that was on October the 9th?

15 A Correct.

16 Q Okay. Just so -- to make sure I understand, did
17 Malcolm ever advise you that -- based on those
18 conversations with Jeffrey on the 9th, that he
19 understood Jeffrey was reporting an injury that
20 occurred on the 9th involving lifting a wheelchair?.

21 A No.

22 Q And, so, when he asked for the workers'
23 compensation information in his conversation with
24 Malcolm later that day, you understood that to mean
25 what? Why would he want the workers' comp

1 information?

2 A At that particular time, I believed that he wanted
3 that workers' comp information to -- to say that
4 all the -- that -- the previous three weeks when he
5 was at the hospital and his sciatic nerve was
6 hurting, that he had -- that's -- he was claiming
7 that that was an on-the-job injury.

8 Q Okay. And is that why you did the First Report of
9 Injury, the Form 12A, and indicated a date of
10 injury September 17, 2017?

11 A Yes. That was that Sunday that I talked to him and
12 he was on the way to the hospital.

13 Q When did you first learn that -- that Jeffrey was
14 claiming an injury that occurred October 9, 2017?

15 A I don't know the exact -- the exact time frame, but
16 it was -- I think it was through -- and I can't
17 fully remember. I think it was through -- when we
18 were doing the workers' comp information.

19 Q Do you mean conversations with --

20 A Like -- Yeah, --

21 Q -- Donna with Patriot?

22 A Yeah. Subsequent -- You know, This is what he's
23 saying, you know, conversations that we'd had on
24 the phone, you know, Tell me your version of
25 events, and they ended up telling me, Well, wait a

1 minute, they're -- they're saying it happened on
2 this date. You know what I'm saying? I said,
3 "That's the last day he worked, but that's --
4 that's not the -- you know, the date that I -- I'm
5 talking about. I'm talking on the 17th."

6 Q I mean, do you recall when you first -- how or when
7 you first learned that he was claiming October 9 --
8 October 9, 2017 injury? Do you recall that?

9 A I don't know when I became aware of that, but it
10 wasn't -- it wasn't on the 9th. It would've been
11 much later than that, that I realized that, oh,
12 this is what -- that he's saying that he injured
13 himself on the 9th. I had no knowledge of that. I
14 don't know when -- I don't know if it was a week
15 later, two weeks later. I don't know, you know, if
16 it was workers' comp that first discussed that with
17 me.

18 Q Okay. So, you're just not sure about that?

19 A Correct.

20 Q Miss Dolores, -- One of the patients has been
21 identified as Dolores or Miss Dolores. Was she on
22 Mr. -- Was she on Jeff's normal daily route?

23 A No. It wasn't a normal thing. I can't say that he
24 hasn't picked her up in the past, but it wasn't a
25 normal thing. It wasn't like an everyday thing,

1 and I believe she went every day. I think it was
2 various employees. It really just depends on -- on
3 what other trips are available, what makes the most
4 sense, if there -- are there other trips in that
5 area that can go together to go to the clubhouse,
6 are there -- you know, maybe something after that
7 in that area. So, it -- it really did vary from
8 day to day.

9 Q Well, the week before, the last week that he --
10 full week that he worked, the week of October the
11 2nd, do you know if Dolores would have been picked
12 up or brought back by Jeff on any one of those
13 days?

14 A So, you're talking the 2nd through the --

15 Q The 2nd through the 7th.

16 A I can't -- I can't tell you -- I can get the
17 information, but I don't -- I don't know, like,
18 right offhand whether he did take that.

19 Q Okay. You would -- You would have a record of
20 that somewhere?

21 A I would definitely have a record of that.

22 Mr. Cauthen: Okay. All right. That's
23 all I've got. Thank you.

24 Mr. Samuels: Just a little -- a couple.

25 Re-examination

1 By Mr. Samuels:

2 Q So, when you learned from Malcolm that Mr. McCoy -
3 was asking about your workers' comp information, --

4 A Mm-hmm.

5 Q -- did either you or Malcolm try to investigate or
6 ask Mr. McCoy any questions about it?

7 A I did not because I was gonna file the claim
8 because, in my mind, I already knew, you know, that
9 -- that -- that he was talking about the 17th.
10 Now, my conversation with Malcolm, it didn't go
11 that far. I think what Malcolm conveyed to me was,
12 "Jeff asked for the workers' comp information."
13 This would be Jeff. Jeff -- Jeff says, "I want
14 the workers' comp -- I want y'all's workers' comp
15 information." Malcolm says, "Okay, Jeff, we'll get
16 you that information." Because of the past three
17 weeks, we're both knowing that, you know, on the
18 17th was a Sunday. He didn't injure himself while
19 he was in a vehicle at that -- on that Sunday. So,
20 that's what we were under the preface of, you know,
21 that, hey, this was -- he's now trying to claim
22 that he was hurt on -- on the job for a day that he
23 didn't even work, which was a Sunday. So, that's
24 -- in our minds, that's what we were thinking. I
25 didn't learn until later, and it wasn't through

1 Jeff, that -- that it was -- it was on the 9th.

2 Q Well, so, you and Malcolm knew, or assumed, that he
3 was making a claim for an accident that occurred on
4 a day he didn't work. Why didn't you ask him about
5 it?

6 A Well, I did call him back, and he didn't answer the
7 phone, so -- and that's why I texted him to say,
8 you know, -- and what good is that gonna do when
9 he's asking for the workers' comp information. My
10 job, as I understood it, from that point, when an
11 employee asks you for your workers' comp
12 information, that you -- you go ahead and set up
13 the claim, and then they can go ahead and talk to
14 whoever.

15 Q But don't you have to provide information on the
16 claim form?

17 A I think when you call in, they ask you some
18 questions, and I answered, you know, to the best of
19 my ability at that time.

20 Q And that's -- And you assumed that it was
21 something from September 17th, Sunday he didn't
22 work, rather than ask Mr. McCoy?

23 A Well, I -- I had no reason to ask Mr. -- The
24 actions of the day by Mr. McCoy, I wouldn't have
25 thought that he had injured himself that day.

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1 Mr. Samuels: All right. I have no
2 further questions.
3 Mr. Caughen: All right. That's it.
4 We're done.
5 (Whereupon the deposition was concluded at
6 2:56 p.m.)
7 (At the conclusion of the deposition, the
8 following exhibits were marked.)
9 Marked as Claimant's Exhibit 1: copy of text
10 messages printout (green); three pages.
11 Marked as Claimant's Exhibit 2: copy of text
12 messages printout (yellow); one page.
13 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Richland)

Certificate

Be it known that the foregoing deposition of Robert Cronan was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 66 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 14th day of June 2018.

 Barbara P. Scott

Notary Public for South Carolina
 My commission expires March 2, 2027.

Note: Recordings are retained for twelve (12) months from date of certification.

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1 State of South Carolina
2 Before the
3 South Carolina Workers' Compensation Commission
4 WCC File No.: 1717573

5 Jeffrey W. McCoy,
6 Employee, Claimant,
7 vs.
8 Cromed, LLC,
9 Employer,
10 and
11 Guarantee Insurance Company (in
12 liquidation)/South Carolina
13 Property & Casualty Insurance
14 Guaranty Association,
15 Carrier,
16 Defendants.

Deposition of
MALCOLM YOUNG
August 2, 2018

ORIGINAL

17 Deposition on oral examination of
18 MALCOLM YOUNG, reported by Donna Cheryl Kyzer, Court
19 Reporter and Notary Public in and for the State of
20 South Carolina; said deposition taken pursuant to
21 notice of deposition and in accordance with the
22 South Carolina Rules of Civil Procedure, at
23 McKay, Cauthen Settana & Stubley, PA, 1303 Blanding
24 Street, Columbia, South Carolina, commencing on
25 Thursday, August 2, 2018, at the hour of 12:19 p.m.

MALCOLM YOUNG 8/2/2018

APPEARANCES:

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MALCOLM YOUNG 8/2/2018

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CONTENTS

(Deposition of Malcolm Young)

Page

Stipulations	4
Examination by Mr. Samuels	4
Examination by Mr. Cauthen	48
Reexamination by Mr. Samuels	50
Certificate of Reporter	55

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EXHIBIT INDEX

REPORTER'S NOTE: No exhibits were marked for
identification.

MALCOLM YOUNG 8/2/2018

1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and signing
5 of the deposition transcript by the deponent is
6 expressly waived.

7 WHEREUPON:

8 MALCOLM YOUNG, being duly sworn and
9 cautioned to speak the truth, the whole truth and
10 nothing but the truth, testified as follows:

11 EXAMINATION

12 BY MR. SAMUELS:

13 Q. Good morning, Mr. Young.

14 A. Good morning.

15 Q. My name is Stephen Samuels. I'm an
16 attorney. I represent Jeffrey McCoy in a workers'
17 compensation case that's been filed involving Cromed.
18 We're here to take your deposition today. You've
19 been listed as a witness, and I believe you may have
20 some information that may be relevant to the case.

21 A. All right.

22 Q. My goal here is simply to find out what you
23 know so I can understand what it is that you're going
24 to testify to. It helps actually me and Mr. Cauthen
25 prepare our cases and make decisions about what to do

MALCOLM YOUNG 8/2/2018

1 moving forward with the case.

2 A. Sure.

3 Q. So I'm not here to trick you or mislead
4 you. Again, I just want to find out what you know.

5 A. Sure.

6 Q. There are some rules in a deposition you
7 should be aware of. One is, this nice lady here is
8 recording every word that we say. To help her out,
9 you want to make sure you give verbal answers like a
10 yes or a no or an explanation to my questions. If
11 you kind of fall back and nod your head or shake your
12 head or say uh-huh or huh-un, I may say, Is that a
13 yes? I'm not trying to be rude. I'm just trying to
14 make sure we get exactly what you're trying to say on
15 the record correctly.

16 A. Fair enough.

17 Q. If you do not understand a question because
18 I've asked it in some way that is awkward or
19 confusing, let me know, and I will try to rephrase it
20 in a way that makes more sense to you. Otherwise,
21 I'll assume you understand the question. Is that
22 fair?

23 A. Fair enough.

24 Q. Are you under the influence of any alcohol,
25 drugs or medication that would prevent you from

MALCOLM YOUNG 8/2/2018

1 understanding the questions you're being asked today?

2 A. No.

3 Q. Okay. I'm going to ask you some basic
4 background questions and a little bit about your
5 company and your job, and then I'm going to ask you
6 more specifically about some of the events
7 surrounding Mr. McCoy. I'm going to show you some
8 documents and have you explain them to me, and we
9 shouldn't be here too long. I hope we'll get you out
10 of here and get you back to work.

11 A. Okay.

12 Q. What is your full name?

13 A. Malcolm DePorter Young.

14 Q. And how do you spell DePorter?

15 A. That's capital D-, e- and then capital P-,
16 o-r-t-e-r.

17 Q. What is your address?

18 A. It's 98 Royal Oak way. Now, that's a new
19 address. I just moved a week and a half ago.

20 Q. Okay. What city is that?

21 A. It's out in Elgin.

22 Q. Your ZIP code?

23 A. 29045.

24 Q. What is your date of birth?

25 A. April 19, 1974.

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MALCOLM YOUNG 8/2/2018

1 Q. And we will redact this, so the court
2 reporter -- so it won't appear in the record, but I'm
3 going to ask you what your Social Security number is.

4 A. XXX-XX-9104.

5 Q. Everybody in South Carolina, theirs start
6 with like 249 or 250, so --

7 A. Right.

8 Q. -- where did you get yours?

9 A. I was born in New Jersey, in East Orange,
10 New Jersey. Yeah.

11 Q. How long have you been in South Carolina?

12 A. 1992 I moved here. I went from -- I was
13 born in New Jersey, and when I was 3, we moved to Los
14 Angeles, and from 3 until 18 I was there, and then in
15 1992 I moved to South Carolina.

16 Q. Just curious, how did you get here? Why
17 did you come here?

18 A. My mother is from Bamberg, South Carolina,
19 so we've -- well, my whole life we've been back and
20 forth to see family, and one day she just -- I think
21 she got tired of the hustle and bustle of California,
22 we came here for a family reunion, to Columbia, and
23 looked around a little bit, and they saw how
24 inexpensive the housing was and the laid-back
25 lifestyle, and they wanted a change, so I was still

MALCOLM YOUNG 8/2/2018

1 young at that point, so my dad sold his business.

2 They sold the house and said, We're moving --

3 Q. Got you.

4 A. -- so here I am.

5 Q. Forgive me for asking you this question,
6 but it is asked of everybody in every deposition.

7 Have you ever been arrested?

8 A. I was arrested when I was 17.

9 Q. All right. Let me ask a different
10 question. Have you been convicted of or pled guilty
11 of a crime in the last ten years?

12 A. No.

13 Q. Where are you employed?

14 A. Cromed, LLC.

15 Q. Okay. And how long have you been with
16 Cromed?

17 A. It will be eight years in November.

18 Q. Are you an employee of Cromed or do you
19 have any ownership?

20 A. 50 percent ownership.

21 Q. Okay. With Robert Cronan?

22 A. Correct.

23 Q. What does Cromed do?

24 A. We provide nonemergency medical
25 transportation for -- my company sticks basically

MALCOLM YOUNG 8/2/2018

1 with Medicaid. We are contracted with a broker that
2 the state was hired -- that the state has hired to
3 facilitate all of the Medicaid transportation in the
4 state. We're subcontracted to that broker.

5 Q. How many drivers do you have in -- well,
6 how many drivers do you have?

7 A. Drivers? I think we're up to -- I think we
8 have 20 vehicles and 21 drivers now. Yeah.

9 Q. All right. How are your drivers paid?

10 A. They are paid hourly. Is that what you're
11 looking for?

12 Q. Yes. That's fine.

13 A. Okay. Yeah, they're paid hourly.

14 Q. What are the requirements to be a driver?

15 A. They have to pass a -- a couple of checks.
16 We do two background checks. They have to have a
17 clean driving record. We look at their ten-year
18 driving record, and they have to have a certain -- if
19 they have less than a certain amount of incidents in
20 a given number of years. They have to pass a drug
21 test, a DOT physical, and then we -- a first aid CPR
22 certification, and then there are some online
23 training manuals that we require them to complete.

24 Q. Do you know Jeffrey McCoy?

25 A. I do.

MALCOLM YOUNG 8/2/2018

1 Q. And how do you know him?

2 A. He was an employee.

3 Q. When he was hired, would he have had to
4 pass all of these requirements you just mentioned?

5 A. Correct.

6 Q. Did he pass the drug test?

7 A. Yeah. We have to send everything up in a
8 packet, and those -- everything that we have has to
9 be within a certain amount of time, so at that point
10 in time, I believe he had actually had one from a
11 previous employer that still failed -- failed within
12 the date parameter, so we sent that up.

13 Q. Was he also drug tested at some time while
14 he was with Cromed?

15 A. I don't recall.

16 Q. Had there been, ever, any concern on any
17 part of -- well, on your part, that Mr. Cronan had
18 any problem with substance abuse?

19 A. You said Mr. Cronan?

20 Q. No. I'm sorry.

21 A. Mr. McCoy?

22 Q. I misspoke. I meant Mr. McCoy.

23 A. Okay. Not while he was employed, no.

24 Q. Okay. While Mr. McCoy was employed, was he
25 ever issued any written warnings?

MALCOLM YOUNG 8/2/2018

1 A. I don't believe -- there was no written
2 warning issued. That's pretty serious. I mean, if
3 we go as far as to write you up for something, you're
4 on the borderline of being fired.

5 Q. Got it. When you give verbal warnings to
6 somebody for any kind of conduct issue, do you
7 document those?

8 A. Yes.

9 Q. So if Mr. McCoy had received any verbal
10 warnings, there would have been written documentation
11 at the --

12 A. We just --

13 Q. -- time it happened?

14 A. We just have a -- we have a sheet that --
15 like a spreadsheet, and it says verbal warning
16 saying, hey, just -- we gave so-and-so a verbal
17 warning about something that they did so if we ever
18 need to go back and look at something and write them
19 up, then we can say, okay, Hey, you had three verbal
20 warnings about this. You know, let's...

21 Q. During his employment with Cromed, did
22 Mr. McCoy have any verbal warnings that were
23 documented like that?

24 A. You know, this is something we just started
25 doing, documenting verbal warnings versus writing

MALCOLM YOUNG 8/2/2018

1 something up and putting it in their file. I can't
2 recall if it goes back that far.

3 Q. Okay. Do you recall whether or not you or
4 Mr. Cronan gave Mr. McCoy any verbal warnings?

5 A. Typically, Robert would do something like
6 that because he is, during they day, in charge of --
7 or at that time he was in charge of dispatching,
8 which means he would be in -- any phone calls that
9 would come in about a patient being ready to be
10 picked up or where is this person at, why are you
11 guys -- something like that would come into a
12 dispatch line.

13 Or if a patient needs to be picked up, then
14 the dispatcher will call and say, Hey, so-and-so is
15 ready to be picked up. He'll look at the schedule,
16 see which driver is available and then will dispatch
17 that driver out.

18 So -- and we also look and make sure people
19 are being picked up on time because we -- you know,
20 we have trackers in the -- in the vehicles so we can
21 see where they are at a given time, so if a person is
22 not where they need to be, then a call will be made
23 to them to find out what's going on.

24 If the answer is not acceptable, then, you
25 know, we try to find out why, and that would be an

MALCOLM YOUNG 8/2/2018

1 example of when we would give verbal, so at that
2 point in time, Robert would do something like that,
3 and I was doing whatever else needed to be done that
4 day.

5 Q. Okay. So sort of at this point in time,
6 and I'm talking September/October of 2017, was there
7 a certain part of the business that Robert
8 concentrated on and part of it you concentrated on or
9 how did it work?

10 A. Yeah. I mean, he -- again, he was in
11 charge of -- of -- of doing dispatching. While he's
12 dispatching, then, you know, I would be making
13 schedules, looking into hiring people, making sure
14 that, you know, our vehicle information is up to
15 date. That's information we have to provide to the
16 state.

17 Making sure that the employees packets are
18 up-to-date, so if an annual drug test was coming --
19 getting ready to expire, then you know it's time to
20 send them to another one. Somebody's got to keep an
21 eye on that kind of stuff all the time because, you
22 know, with 20 employees, something's got to be done
23 every month with one of them, so we have to figure
24 out what's going on, so.

25 You know, I mean, we have to get vehicles

MALCOLM YOUNG 8/2/2018

1 serviced. You know, we do that pretty regular. We
2 have a pretty standard service schedule, so that has
3 to be worked into the -- into the -- worked around
4 our -- our trip schedule, so there is a lot that
5 needs to be done, but the person who is dispatching
6 needs to -- needs to focus because that's obviously
7 important, so.

8 Q. Which one of you would have hired
9 Mr. McCoy?

10 A. You know, that's something we kind of -- I
11 never know when a call is going to come in. Some --
12 most of our employees are referred to us, so
13 depending on who is manning the line at the point in
14 time that call comes in.

15 So if I receive the phone call from a -- a
16 prospect, then I would say, okay -- I would talk to
17 them a little bit about what we do, about their
18 experience and say, Okay. This is the information
19 I'm going to need from you for me to get started.

20 And then once we gather that, all -- all of
21 that information, a packet needs to be built and sent
22 up to our broker. Then that person needs to be
23 approved. Once they're approved on their system and
24 entered into the system, then we can put them to
25 work.

MALCOLM YOUNG 8/2/2018

1 Typically, I would do all the information
2 gathering, and then we will sit down with them, and
3 Robert will build the files and -- and send it up.
4 So I can't say I hired him or he hired him. We --
5 we -- we do it together.

6 Q. Understood. Do you remember when Mr. McCoy
7 started working for Cromed?

8 A. My recollection, it was early August 2017,
9 maybe a little bit before then. Maybe July, August,
10 around that time.

11 Q. And I'm not holding you to a specific date.
12 I'm just getting a ballpark on that.

13 A. Yeah. That was from my recollection.

14 Q. All right. And any issues with his
15 employment at all?

16 A. Nothing out of the ordinary, nothing that
17 we don't deal with from all of the employees. I
18 mean, he, for the most part, showed up when we -- all
19 we want them to do is just show up on time, you know.
20 We're going to give you all of the instruction, so if
21 you show up on time, follow the instructions we give,
22 things are going to be fine. I don't recall anything
23 out of the ordinary, again, that we don't deal with
24 on a daily basis.

25 Q. So he showed up and followed instructions

MALCOLM YOUNG 8/2/2018

1 as you needed?

2 A. For the most part.

3 Q. As much as anybody else that --

4 A. Right.

5 Q. Yeah.

6 A. Right.

7 Q. Did, at some point, he start having any
8 health problems or start missing work for any reason?

9 A. There was a call -- when -- when we're
10 building our schedules, there are a -- a ton of
11 things that can go wrong, so sometimes we will
12 contact the employees. I remember one time Robert
13 had contacted Jeff about the next -- that Monday
14 morning, about some stuff he had to do on that Monday
15 morning, and I was told that he said he was going
16 down to the emergency room because he had some kidney
17 stones, and that's the extent of my knowledge of
18 that.

19 Q. All right. Do you remember anything that
20 happened -- what I'm trying to get is to his
21 attendance, his working, what happened over the next
22 several weeks after you learned that he was going to
23 the emergency room for kidney stones.

24 A. Okay. So I was told he had -- he was
25 having some kidney stone issues, so I think he was

MALCOLM YOUNG 8/2/2018

1 off for three or four days. He came back to work,
2 and then he worked for a couple of days, and then he
3 was still complaining of some pain. I think we gave
4 him some more time off, and then he came -- I think
5 that was about another week or so that we gave him
6 off to -- to try to heal up as best we can, then he
7 came back to work again around the first part of
8 October, I think, and then the incident -- the
9 incident occurred.

10 Q. Okay. And the incident, what is the
11 incident?

12 A. The incident would be the day that -- his
13 last day of work, the day that he called and said,
14 Hey -- there was a confrontation that him and Robert
15 had early that morning. Mr. McCoy called me and said
16 he wasn't happy with the way that that conversation
17 went, and that this was probably going to be his last
18 day.

19 You know, he just had complained about, you
20 know, he was out here working hard. He said he was
21 still in pain from what had happened, and he didn't
22 like the way Robert was talking to him.

23 So I -- you know, I told him, you know, I'm
24 sorry that you feel this way. If you don't want to
25 work for us anymore, go ahead and bring the car in.

MALCOLM YOUNG 8/2/2018

1 We will rearrange the trips, and we will go on about
2 our business, and he said that, you know, he had --
3 needed the money, so he was going to continue to work
4 out the day, so we had agreed to touch base with each
5 other later in the day, and that was the end of that
6 conversation.

7 Q. Did you have any more communication with
8 Mr. McCoy that day?

9 A. Later on that day, after his shift, he
10 called me somewhere around 5:00, 5:30 after he had
11 finished -- after he had finished his trips and came
12 back to Columbia, and I had -- you know, I had -- it
13 was out of my mind. Those kind of things happen all
14 the time, so he called me and said, Hey, Malcolm, I
15 need your workers' comp information.

16 So I said, Okay. I'll get it to you as
17 soon as I can. It was a pretty short conversation.
18 That was pretty much the gist of it.

19 Q. Did you ask him why he needed the workers'
20 comp information?

21 A. No.

22 Q. Anything else said in that conversation?

23 A. No. I remember that conversation being
24 short and sweet.

25 Q. Okay. So let's go -- let's just sort of go

MALCOLM YOUNG 8/2/2018

1 back. So he apparently had, you said -- I think you
2 may have said an altercation -- or maybe that wasn't
3 the -- I don't want to misquote you or --

4 A. Right.

5 Q. I assume -- I assume what you mean is he
6 had a conversation with Robert?

7 A. Correct.

8 Q. And what do you know about the conversation
9 between him and Robert, and what brought it on?

10 A. Okay. So we talked earlier about the
11 dispatchers and -- and tracking the drivers, making
12 sure things were being done in order. To my
13 recollection, Mr. McCoy had done some trips out of
14 order that morning, and in a situation like that,
15 Robert will call and try to correct that situation.
16 I guess that conversation -- he -- I guess Mr. McCoy
17 didn't like the way Robert addressed it -- or
18 addressed him. That was my understanding from what
19 he told me, and, you know, he was upset so he called
20 me and said, Hey, that's not...

21 Q. Does Mr. Cronan get angry?

22 A. Angry, no. He's a frank person.

23 Q. What do you mean by that?

24 A. He doesn't beat around the bush. When he
25 has something to say, he says it, and we move on.

MALCOLM YOUNG 8/2/2018

1 Some people can handle that; some people have -- take
2 issue with that. I've seen it before.

3 Q. So there have been other people who have
4 been upset by the way Mr. Cronan has spoken to them?

5 A. Maybe they didn't understand exactly what
6 was going on.

7 Q. And is it -- is it the words he uses? Is
8 it the tone of voice? What is it that affects people
9 this way?

10 A. I -- it's different people for different --
11 you know.

12 Q. Yeah.

13 A. It depends on the person.

14 Q. So how does the -- how does the driver know
15 what route he's supposed to take?

16 A. Okay. So each vehicle has a -- like a
17 little iPad in it, electronic device, and there is an
18 app on there where we can assign trips to that app,
19 and the employee will come in and log in, and
20 their -- their list of trips will be on that pad, and
21 it will have the name, the address, phone number, a
22 little thing you can do to pull up the Google maps,
23 so that's the first way that they find it.

24 Unfortunately, the way that the program is
25 set up, it lists -- when we assign trips, it lists

MALCOLM YOUNG 8/2/2018

1 them in order of time, in order of the pickup time
2 that has been assigned to that trip, so you may have
3 person A is assigned to be picked up at 9 a.m. The
4 other one is -- the next one is assigned to be picked
5 up at 9:10, and they give us a little bit of leeway
6 with these times. You know, they -- they calculate
7 how much time the trip will take, and then they give
8 us a little bit of buffer, so -- to allow us time to
9 maybe pick up some other patients so we can
10 multi-load.

11 Unfortunately, the program doesn't allow us
12 to rearrange, so in order -- sometimes when we want
13 to build an efficient route, the person that's picked
14 up at -- at 9:10, it may be more efficient to pick
15 that person up first and then go to the other person
16 that needs to be picked up at nine o'clock, so we
17 build a spreadsheet for them, and we put it in a --
18 in a Google Drive and say, Okay. Here is your trips.
19 Here's the order we want you to pick them up and drop
20 them off in so that it is most efficient for us.

21 Q. Okay. So what was the problem with
22 Mr. McCoy that particular morning?

23 A. Unfortunately, and this happens way more
24 often than it should be, you have to open up two
25 programs to get this information. Everyone opens up

MALCOLM YOUNG 8/2/2018

1 the first program. Not everyone opens up the second
2 program every day, so they may open up the program,
3 see their trips and just go. Maybe they're late or
4 something, and they don't have time or they forget,
5 but we come up with situations where they don't open
6 the drive and see which order to pick these patients
7 up in, which, you know, can cause problems.

8 So I believe that was -- when he says he
9 was doing the trips out of order, that typically
10 means he didn't pull up the Google Drive and see
11 which order to -- to do it in the.

12 Q. So he followed the order on the first
13 program --

14 A. Right.

15 Q. -- when really the second one --

16 A. Other one.

17 Q. -- was the one you wanted him to use?

18 A. Right. And that's the main program. This
19 other one is one that we designed on our own, so.

20 Q. Okay. And that, I gather, is a pretty
21 frequent occurrence with the drivers.

22 A. More common than that it should be,
23 unfortunately, yeah.

24 Q. And so you will -- your drivers will
25 transport more than one client at a time? There may

MALCOLM YOUNG 8/2/2018

1 be several in the car at --

2 A. Oh, yeah.

3 Q. -- the same time?

4 A. Uh-huh. We have two 15-passenger vans. We
5 have nine minivans, and then the rest are regular
6 sedans, but, yeah, we do a lot of multi-loading.

7 Q. Do you know what vehicle Mr. McCoy was
8 driving that particular day, which I believe was
9 October 9, 2017?

10 A. I don't recall. I know it was a sedan.
11 Which -- which sedan it --

12 Q. Yeah.

13 A. -- was, I don't -- I don't recall.

14 Q. That's close enough. Are you familiar with
15 the particular clients that he will be picking up and
16 their particular needs?

17 A. Most of them. We go -- probably 80 percent
18 of our patients are repeat patients.

19 Q. So what do you know about his route and who
20 he picked up on that particular day?

21 A. I know that there were -- on that -- in the
22 morning part of his route he had to do some local
23 trips. When I say "local trips," I mean Richland,
24 Lexington County, and I believe he had three or four
25 people that he had to pick up in the morning, and

MALCOLM YOUNG 8/2/2018

1 then there was another trip that was out of town
2 later in the morning, which is pretty common.

3 Q. The people that are being picked up, is
4 there a particular demographic? I mean are they --
5 are they poor? Are they disabled? What are they --
6 why do they need this transportation?

7 A. So anybody who is on Medicaid qualifies for
8 transportation. It's not widely known, but anybody
9 who is on Medicaid qualifies for this service. So we
10 don't have a particular -- the -- the broker is
11 assigned to giving -- to divvying out the trips, so
12 we kind of take what they give us.

13 There are people who are poor who can't
14 afford other insurance. There are people who have
15 certain health issues that automatically qualify them
16 for Medicaid. Like, if you -- if your kidneys go and
17 you have to take dialysis, you know, that -- you
18 can't work if you're taking dialysis, so they
19 automatically put you on Medicaid.

20 People with certain -- with cancers,
21 Medicaid covers that, or children under the age of
22 18, Medicaid automatically covers them. They also
23 cover patients who have mental health issues. We do
24 a lot of work for the Department of Mental Health.

25 Q. Are there ever -- when you have children,

MALCOLM YOUNG 8/2/2018

1 do you transport just the children or would you also
2 transport a parent or guardian?

3 A. I believe if they're under the age of 17,
4 they have to have an escort, and it can be -- it can
5 be more than one.

6 Q. Do you transport people who have difficulty
7 walking, for example, are wheelchair-bound?

8 A. Only in certain instances. If they are
9 wheelchair-bound, they have to have a van with a
10 wheelchair lift, which we do not have, so the only
11 time -- so the only time we will have somebody with a
12 wheelchair is if they're able to get out of the
13 wheelchair and get into the car.

14 Q. Okay. So if you have somebody with a
15 wheelchair, are there any extra responsibilities the
16 driver has for that patient?

17 A. We don't require them to do that, any extra
18 responsibilities, meaning when we take our training.
19 You know, it's called a curb-to-curb service, so the
20 patient is technically supposed to come and get in
21 the car. We're not supposed to go on the -- the
22 property or anything like that. We help them secure
23 their safety belt, that sort of thing, but...

24 Q. What do you do with their wheelchair?

25 A. Typically, the -- well, it's usually a

MALCOLM YOUNG 8/2/2018

1 family member there, and the family members will put
2 the wheelchair in the vehicle or the facility
3 sometimes will come and give us -- and the -- the
4 orderlies of the facilities will handle the
5 wheelchairs.

6 Q. Do the drivers ever handle the wheelchairs?

7 A. We tell them they're not supposed to do
8 that.

9 Q. Is there any written policy on that?

10 A. It's in LogistiCare's policy.

11 Q. LogistiCare, that's the broker?

12 A. The broker, yeah.

13 Q. Do you know one way or the other whether
14 Mr. McCoy had any patients who used wheelchairs on
15 October 9, 2017, the last day he worked?

16 A. Yeah. I believe he -- Ms. Dolores Porter.
17 Can I say that?

18 Q. The name has already been used previously,
19 so --

20 A. Okay.

21 Q. -- probably nothing we can do about it now.
22 All right. But there is a --

23 A. Yes.

24 Q. -- lady named Ms. Porter that was
25 transported on that day who used a wheelchair?

MALCOLM YOUNG 8/2/2018

1 A. Correct.

2 Q. Do you happen to know where she would be
3 transported from and to?

4 A. She lives -- and it's -- it's a rural area
5 out towards the Eastover area of town, and she goes
6 to a facility on Decker Boulevard. It's kind of a --
7 an adult daycare facility. I don't recall the name.

8 Q. Is she someone who is transported on a
9 regular basis?

10 A. Yes.

11 Q. Every day or a couple times a week?

12 A. I believe she goes Monday through Friday.

13 Q. And she's not wheelchair-bound in the sense
14 that she's got one of these electric wheelchairs and
15 can't -- she is somebody who uses a wheelchair for
16 ambulation, but she's able to -- is she able to
17 transfer from the wheelchair into the seat of the
18 car?

19 A. Yes.

20 Q. Does she need assistance for that?

21 A. With the patient that we're talking about,
22 her son-in-law would come out and help Ms. Porter in
23 and take the wheelchair and put it into the vehicle
24 for us.

25 Q. Okay.

MALCOLM YOUNG 8/2/2018

1 A. We have a lot of female employees, so, you
2 know, they --

3 Q. If her son-in-law were not available at
4 that time, would Mr. McCoy have put the wheelchair in
5 the trunk?

6 A. I don't recall him ever not being
7 available. I don't know how we would react to that
8 situation.

9 Q. I don't recall Mr. Cronan's exact testimony
10 at his deposition, but I believe he said that the
11 idea is to provide service, so, that it's, okay with
12 the company for the employee, for the driver, to load
13 somebody's wheelchair in the trunk of the car. Is
14 that something that you're familiar with or ever
15 heard before?

16 A. When you say "familiar with," how do you
17 mean?

18 Q. Well, bear with me a moment. Let me see if
19 I can find his testimony in his deposition about
20 that. While I'm looking for that, did you have any
21 communication with Mr. McCoy via text?

22 A. Typically -- I mean, yeah, typically, like
23 I'll text them to let them know what time they need
24 to be at work and what vehicle they need to be --
25 they need to be driving, so I have some -- some sort

MALCOLM YOUNG 8/2/2018

1 of contact by text with the employees pretty much on
2 a daily basis.

3 Q. I asked Mr. Cronan in his deposition,
4 referring to the drivers, Do you have occasions when
5 people load wheelchairs in the car?

6 His answer was, Yes.

7 I asked him, And that's part of the job?

8 He said, It can be part of the job, yes.

9 A. Yeah.

10 Q. Is that accurate that it can be part of the
11 job to load the wheelchair in?

12 A. Loading the wheelchair, it's kind of
13 like -- I see -- to me -- we see it as like a -- a
14 car seat. A lot of times we'll have patients who
15 have an infant and need a car seat. You know, we
16 don't train our people on how to load a car seat and
17 lift it -- how to do it. You know, it's the
18 patient's responsibility to make sure that car seat
19 is -- is secured in that vehicle, so I see it as the
20 same thing. So do we -- do we handle it? Sometimes
21 we do, but, you know, not everybody can do that, so I
22 can't require one person to do a job and another
23 person not to, so if we have somebody who is
24 physically unable to do that, I can't say, Oh, well,
25 you have to do this because so-and-so did it.

MALCOLM YOUNG 8/2/2018

1 Q. But if -- you want your drivers to be
2 helpful to the patients.

3 A. As much as possible, sure.

4 Q. And even with something like a car seat, I
5 mean, wouldn't you be concerned that, you know, if
6 you had a child in a car seat, the car seat wasn't
7 properly secured and the driver got into an accident,
8 and the child in the car seat was injured because the
9 car seat wasn't secured properly -- that's something
10 you would want to prevent, isn't it?

11 A. We would want to prevent any injury, so we
12 would hope that it -- that it -- that it is secured,
13 and we -- we can check to make sure that it's
14 secured, but as far as, Hey, I want you to be able to
15 put this car seat in the car and make sure that --
16 and -- and secure it properly, that's not something
17 that we train our drivers to do.

18 Q. All right. So you -- do you not train your
19 drivers, then, to make sure the seat is properly
20 secured before they depart the destination?

21 A. That, we do, yes.

22 Q. Okay. And with a wheelchair, you're not
23 going to have him leave the wheelchair behind.

24 A. No.

25 Q. You're going to have him -- you want your

MALCOLM YOUNG 8/2/2018

1 driver to make sure the wheelchair goes with the
2 patient.

3 A. Correct.

4 Q. So there are going to be times when it's
5 just part of the job where the driver is going to
6 need to load the wheelchair into the car somewhere,
7 like in the trunk?

8 A. Not necessarily load it, but make sure it's
9 secure and that the -- the trunk is secure, there is
10 enough room in there. Because we've had a situation
11 where the trunk popped up one time, but...

12 Q. You're not going to prohibit a driver from
13 putting somebody's wheelchair in the trunk of the
14 car, are you?

15 A. When you say "prohibit"?

16 Q. I mean -- say a driver pulls up to pick up
17 the patient, the patient has a wheelchair, the
18 patient can't, obviously, put the -- put the
19 wheelchair away. The patient can only get from the
20 wheelchair into the car. So the driver gets the
21 patient in the car. The driver does make sure the
22 seat belt is done, right?

23 A. Right.

24 Q. And the driver will assist the patient in
25 buckling up the seat belt?

MALCOLM YOUNG 8/2/2018

1 A. If need be.

2 Q. If need be. And the driver will assist
3 with making sure the wheelchair goes with the
4 patient.

5 A. Right.

6 Q. And even if that means the driver has to
7 load it up into the trunk, the driver will do that?

8 A. Well, I can't say that I would prohibit
9 something like that from happening because otherwise
10 we couldn't do the trip.

11 Q. Yeah. I mean, that's the point.

12 A. Right.

13 Q. It doesn't help your business to be stuck
14 somewhere looking for a third party to put a
15 wheelchair in the trunk.

16 A. Right.

17 Q. Nor does it help you to have to call
18 somebody else to come --

19 A. Right.

20 Q. -- while that driver waits.

21 A. Yeah. And that does happen sometimes,
22 unfortunately, but...

23 Q. All right. So, now, October 9, 2017, was a
24 Monday.

25 A. I believe that is correct.

MALCOLM YOUNG 8/2/2018

1 Q. I'm looking at the calendar. I just want
2 to confirm that. I believe Mr. McCoy had worked the
3 entire week before. He had had some time off, but he
4 had worked the entire week before?

5 A. I can't recall exactly.

6 Q. Okay. When he was given that time off,
7 what was the reason he was given time off?

8 A. That previous week?

9 Q. Yes, sir.

10 A. To my knowledge, it was he had some sciatic
11 nerve issues.

12 Q. Okay. And did you hear that from him or
13 Mr. Cronan or --

14 A. I heard --

15 Q. -- someone else?

16 A. -- that from Mr. Cronan.

17 Q. When he came -- when he was working,
18 though, he was not under any work restrictions. He
19 was working full duty; is that correct?

20 A. That's correct.

21 Q. And you had two conversations with him
22 October 9, 2017?

23 A. Correct.

24 Q. Okay. Did he tell you, in the first
25 conversation, that he had hurt or tweaked his back

MALCOLM YOUNG 8/2/2018

1 lifting Ms. Porter's wheelchair into the trunk?

2 A. I remember him telling -- I remember him,
3 in part of his explanation about why he was upset,
4 saying he was still in pain, so I took that to mean
5 that his back was still hurting from his previous
6 issues.

7 Q. Okay. So tell me about it. He told you he
8 was still in pain. This is in the first conversation
9 when he has had this exchange was Mr. Cronan that
10 upset him?

11 A. Right. Right.

12 Q. So part of that conversation was he told
13 you he was having back pain?

14 A. Correct.

15 Q. And one of the patients that he -- was he
16 with Ms. Porter at the time or is he -- had he
17 already picked her up? Had he dropped her off?
18 What --

19 A. He had already dropped her off.

20 Q. All right. So he had already dropped
21 Ms. Porter off. She had a wheelchair, and he was
22 telling you that he had -- he mentioned to you that
23 he was having back pain?

24 A. Among other things.

25 Q. Among other things.

MALCOLM YOUNG 8/2/2018

1 A. Yeah.

2 Q. What other things did he mention?

3 A. Just -- when I say "among other things," it
4 was part of his I guess rant to me.

5 Q. Okay.

6 A. You know, I think he had dropped off all of
7 his patients. I think he had finished his initial
8 run, and it was in between that time and picking up
9 the next patient that we had that conversation.

10 Q. When in the process had he spoken to
11 Mr. Cronan? I mean, what I'm getting at is, was it
12 before he picked up the patients? Was it while he
13 had them with him? Was it after he dropped them off?
14 Was it immediately before he talked to you, or was it
15 some time before he talked to you?

16 A. I don't know, as far as when he spoke to
17 Mr. Cronan, as far as the patients were concerned. I
18 would imagine, because he was angry, it was soon
19 after he had spoke with Mr. Cronan that he called me.
20 How -- how much time had passed, I don't know.

21 Q. Did he call you because you're the easier
22 guy to talk to in the company?

23 A. That seems to be the consensus. Sometimes
24 I get bad too, so it -- it just -- it all depends.

25 Q. Got you. Well, we all --

MALCOLM YOUNG 8/2/2018

1 A. Yeah.

2 Q. We all do.

3 A. Yeah.

4 Q. We all get mad.

5 A. I have my days.

6 Q. All right. So, now, with this further
7 talk, you do recall that he mentioned back pain --

8 A. (Witness nodding head.)

9 Q. -- in the conversation?

10 A. Right..

11 Q. Anything else he mentioned?

12 A. As far as?

13 Q. Anything.

14 A. Not that we haven't spoken about, just that
15 he was, you know, upset that he was out there working
16 and Robert spoke to him the way that he did and that
17 he was still in pain, and then he said, you know --
18 the first part of -- the first thing he said to me
19 was, This is probably going to be my last day.

20 And I just said, Well, what happened? And
21 then he proceeded to tell those -- the rest of the --
22 the story, and then I said what I had to say, You can
23 bring it in if you feel that way, and then he said,
24 no, he wanted to work for the rest of the day, he
25 needed the money.

MALCOLM YOUNG 8/2/2018

1 Q. And you just told me a moment ago, you said
2 he said, "Still in pain," but earlier you
3 basically -- you said just that he was in pain and
4 you interpreted that as referring to the pain that he
5 had before.

6 A. That's fair, yeah.

7 Q. Okay. So he didn't actually say, I was
8 still in pain. He just said, I'm having pain in
9 my -- did he just say I'm having pain, or my back
10 hurts? What did he say, as best as you can recall?

11 A. I can't -- I can't say. I can't say
12 whether it was specific or not to that, but that's
13 definitely what I got out of it.

14 Q. Okay. I wanted to show you some documents
15 that have been produced to me, and I'm really trying
16 to figure out why they're -- what their relevance is
17 to a hearing, so I'm going to give a copy to
18 Mr. Cauthen, and I'm going to show you this document,
19 which is pages 98, 99 and 100 of the APA submissions.
20 This is titled Fuelman Fleet Management Report.

21 A. Right.

22 Q. Can you tell me what this thing is?

23 A. So we have a -- Fuelman is a fleet -- a
24 fuel company that deals with fleets. What it allows
25 us to do is give our drivers access to money to buy

MALCOLM YOUNG 8/2/2018

1 fuel, and it prevent -- basically each vehicle is
2 assigned a fuel card that we can control what they
3 buy and how much of it they buy with it, so any gas
4 station around, whether it be around town or -- that
5 accepts Fuelman, our -- our drivers will take the --
6 the cards, use the cards to buy fuel basically, and
7 then they send us a report of who bought what. Each
8 driver has a pin number in order to activate the
9 card, so we can tell who bought what when where.

10 Q. Got you. And what is the significance --
11 is there anything important about this particular
12 fleet management report?

13 A. (No verbal response.)

14 Q. Let me ask a different question because --

15 A. Yeah.

16 Q. -- I see you're -- so on the second page of
17 it --

18 A. Right.

19 Q. -- the fourth one down, there is a listing
20 that says 10-9, 1715, which I guess is 5:15 p.m., and
21 the name Jeff McCoy.

22 A. Right.

23 Q. What does that mean?

24 A. That tells us that on that day at
25 approximately 5:15 this -- 841827 is the -- the gas

MALCOLM YOUNG 8/2/2018

1 station that he used --

2 Q. Okay.

3 A. -- to -- that basically tells me he filled
4 up the car or he put gas in the car at 5:15 at this
5 specific gas station, and the rest of the stuff --
6 they're required to put the mileage of the vehicle in
7 before they pump, and then the rest of this is
8 just -- you know, obviously, the dollar amount, the
9 taxes and the price and then how much fuel he pumped.

10 Q. Okay. So at 5:15 p.m. on October 9th, he
11 put gas in the 2016 Toyota Camry?

12 A. Correct.

13 Q. And it looks -- looking at the miles, and
14 especially since it's got -- it looks like you gassed
15 it up the next day.

16 A. Yes.

17 Q. So it looks like he did what he was
18 supposed to do gaswise?

19 A. That's -- seems pretty normal to me.

20 Q. And he's still working at 5:15 p.m.?

21 A. Yes.

22 Q. So he did finish his entire shift that day?

23 A. Yes.

24 Q. Okay. You can put that aside. I'm going
25 to show you another document that is page 102 of the

MALCOLM YOUNG 8/2/2018

1 APA submissions. Can you tell me what this document
2 is?

3 A. All right. So this looks like a printout
4 from our LogistiCare site.

5 Q. Is this an actual printout or -- because it
6 says this sheet was prepared by Robert Cronan. Is
7 this something that Mr. Cronan would have just
8 created himself on a spreadsheet or is this something
9 that is a normal business record kept by your
10 company?

11 A. This looks like a -- the software that we
12 use, obviously we can use parameters to run reports
13 so that we can find out certain bits of information.
14 This looks like a report that was -- we can put in --
15 okay. I want to search on this date the trips that
16 so-and-so driver did, and then we can pick and choose
17 which information goes at the top. All of these --
18 you know, it will calculate maybe 30 boxes, and we
19 pick ten and say, hey, these are the ones we want to
20 see.

21 Q. Okay. So this particular one, specifically
22 at the last entry, Jeffrey McCoy, 9 October '17 --

23 A. Uh-huh.

24 Q. -- what's the meaning of all of these
25 columns?

MALCOLM YOUNG 8/2/2018

1 A. All right. So this says Jeffrey McCoy,
2 October 9th at -- the scheduled pickup time,
3 meaning the time that we -- that the system told us
4 that we needed to be there.

5 Q. Okay.

6 A. The actual pickup time is the time that
7 Mr. McCoy put on his pad that he picked her up. The
8 scheduled drop-off time is -- we have to have her
9 there before 9:27. Anything after that, she would be
10 considered late. The actual drop-off time is the
11 time Mr. McCoy hit the button that he dropped her off
12 at that facility. The pickup destination, obviously
13 that says residence. The city, obviously Eastover.
14 Drop-off destination, that's Mountain Top Daycare
15 Center. That information is in there, and the city
16 is, in Columbia.

17 Q. And this is the particular lady that has
18 the -- that's in a wheelchair -- or uses a
19 wheelchair?

20 A. This looks like the same person.

21 Q. Okay. All right. So it looks like, then,
22 he picked her up at 8:06 a.m., dropped her off at
23 9:13 a.m.?

24 A. Correct.

25 Q. Is that within parameters?

MALCOLM YOUNG 8/2/2018

1 A. Yes.

2 Q. Okay.

3 A. And the rest of these look like the other
4 times that he has picked her up and dropped her off.

5 Q. Some of these have a very early pickup.

6 A. Okay. So the -- the way our system works
7 is you will pick somebody up -- we'll call that the
8 "A" leg. You pick them up, take them to their
9 facility, and then the "B" leg would be to get that
10 person home. In a situation like this, where a
11 patient has a structured trip, we pick them up at a
12 certain time, and then we're to take them to the
13 facility, and the other times, we're picking them up
14 from the facility and bringing them back home.

15 So she has -- if we look at the first one,
16 and I'm just using this as an example to explain
17 how -- how the report reads, her pickup time is 8:19,
18 the scheduled pickup time, which is the third column.
19 If you skip to the fifth column, her scheduled
20 drop-off time is 9:27. Skip down two more lines.
21 That 1:30 p.m. pickup time, that's what time she is
22 scheduled to come home.

23 Q. Okay.

24 A. So we pick her up -- we're scheduled to
25 pick her up from that facility at 1:30. The -- on a

MALCOLM YOUNG 8/2/2018

1 "B" leg, the scheduled pickup -- or the scheduled
2 drop-off time doesn't mean as much. It's not as
3 important. What is important is that we're there at
4 1:30 to pick her up.

5 Q. Okay. All of these times and everything
6 here is within your parameters, though?

7 A. I would have to look at them to see. I
8 mean, that first one looks like he was -- picked her
9 up late because she had a scheduled pickup of 8:19.
10 His actual pickup time was 8:34, so the pickup time
11 was late, but he did drop her off --

12 Q. Okay.

13 A. -- within parameters, so -- but we're
14 graded on -- we are graded on both of them.

15 Q. All right. And there are going to be times
16 it's impossible to meet the parameters because --

17 A. Yeah.

18 Q. -- of multiple pickups, routes, delays,
19 traffic and --

20 A. There are so many things that can happen.

21 Q. Okay.

22 A. It's...

23 Q. All right. I'm going to show you another
24 set of documents. So these are pages 103 through 107
25 of the APA submissions.

MALCOLM YOUNG 8/2/2018

1 A. Okay.

2 Q. So what am I looking at here?

3 A. Okay. So in each one of our vehicles we
4 use -- if you look at the bottom, it says Foxtrax
5 GPS. That's a company who has -- who supplies us our
6 GPS tracking systems. It's a little box that we plug
7 into the -- the, you know, the readout thing on
8 the -- on the vehicles, and this GPS system can tell
9 us all kinds of information about the vehicles, but
10 we basically use it to track where our -- where the
11 vehicles are at a given time, and, of course, we can
12 run -- we can pick and choose, just like before, what
13 information we want to see on a report.

14 Q. So Cromed's attorney has submitted this as
15 evidence for this hearing. Do you know what is
16 important about this document?

17 A. I would have to read -- look through it and
18 see, but... so this is -- looks like a report of the
19 Toyota Camry, which that's the last six numbers of
20 the VIN number. That's what we use to identify the
21 trips, so this is -- looks like a printout of what
22 happened on December -- or October 9th from 7 a.m.
23 to 6 p.m., so this first one -- and what we can do is
24 we can tell the system, okay, I want you to track,
25 and every time the car stops for more than, say, two

MALCOLM YOUNG 8/2/2018

1 minutes, I want you to stamp it, and so that's what
2 it looks like it's -- that's what this looks like it
3 is, and as you can see on the -- on the -- the last
4 column, it says, Stop duration, so he could have --
5 we can set the parameters. It doesn't say what the
6 parameter is, but it looks it's set for one minute,
7 which, you know, is typical.

8 Q. Okay. So I'm comparing this to the
9 previous exhibit. It looks like entry No. 8 in
10 Eastover where there is a stop of four minutes.

11 A. Four minutes.

12 Q. Would that be where he picked up the lady?

13 A. Correct.

14 Q. And then if we go on to the next page,
15 entry No. 16, there is a 12-minute stop at Decker
16 Boulevard, 1941 Decker Boulevard. Is that where he
17 dropped her off?

18 A. That looks correct, yeah.

19 Q. Okay. There is a 199 South Herlong Avenue
20 in Rock Hill. What's at 199 South Herlong Avenue in
21 Rock Hill?

22 A. Which page are you -- are you looking at?

23 Q. That's on the fourth page, entry No. 38.

24 A. Based on the time that he was stopped
25 there, that is either at or near whatever that -- the

MALCOLM YOUNG 8/2/2018

1 facility that that patient was dropped off on, so I
2 don't know if it was the 199 or if it was the 550. A
3 lot of times -- like maybe he drove, dropped the
4 patient off, and you know, there was a McDonald's
5 down the street, and he went to McDonald's and
6 hung -- you know, that was just wherever he stopped
7 and rested for that period of time.

8 Q. Okay. And it appears to say two hours and
9 58 minutes.

10 A. Two hours and 58 minutes, yeah, so I don't
11 know if that's -- because the entry above that says
12 550 South Herlong Drive that he went before that, so
13 I'm assuming that the 550 was the drop-off point, and
14 the 199, I don't know exactly what that is, but I'm
15 assuming --

16 Q. So would he have to wait in Rock Hill for a
17 patient --

18 A. Yeah.

19 Q. -- to take --

20 A. On a --

21 Q. -- them back?

22 A. When we send him out, he will drop them off
23 and wait for them --

24 Q. Okay.

25 A. -- to go back.

MALCOLM YOUNG 8/2/2018

1 Q. Is that -- is that time on the clock or is
2 that off the clock?

3 A. That's -- that's time on the clock.

4 Q. Okay. And that's just the way the business
5 works? You --

6 A. When we --

7 Q. -- just have to wait --

8 A. When we send --

9 Q. -- for people?

10 A. -- someone out of town -- when we send
11 someone out of town, we have them wait for them, and
12 we pay them for that period.

13 Q. Okay. All right. Then moving to the last
14 page, page 107, entries 51 and 52, it looks like,
15 the 210 Ricky Lane, that's maybe where he stopped to
16 gas up the car?

17 A. No. The 102 Sams Crossing, let's see,
18 that's the CVS. So that Ricky Lane was -- was
19 20 miles, so that was probably where he dropped that
20 patient off, I'm assuming, the patient that he took
21 to Rock Hill. I'm looking to see if there is
22 another -- the reason why I say that is I recognize
23 that Ricky Lane as a street that we drop -- that has
24 patients on it, so that looks like a drop-off. It
25 was 20 miles from the CVS. The place we gas up is

MALCOLM YOUNG 8/2/2018

1 right next to the CVS, so we probably -- it's in the
2 same shopping, I guess, complex --

3 Q. Got you.

4 A. -- so it probably has the same address.

5 MR. SAMUELS: Okay. I may have some more
6 questions, but for the moment, I'm pretty close to
7 done, so if Mr. Cauthen has any questions for you, if
8 you will, answer his questions, and I may ask you
9 some more afterwards.

10 EXAMINATION

11 BY MR. CAUTHEN:

12 Q. Malcolm, just a couple quick follow-ups.
13 You were asked about a telephone conversation with
14 Mr. McCoy on the morning of October 9, 2017, and I
15 think -- I think you testified that you weren't a
16 hundred percent sure whether Mr. McCoy said he was in
17 pain or still in pain. Is that -- is that right?

18 A. Again, that's what I got out of the --
19 that's what I got out of the conversation.

20 Q. Right. You don't -- you're not sure
21 whether he said "still" or "in pain"? I mean, can --

22 A. I -- I can't recall exactly.

23 Q. You don't know exactly. Okay. What did
24 you -- I just want to be certain of your testimony.
25 What did you take that to mean? What did you

MALCOLM YOUNG 8/2/2018

1 understand him to be saying?

2 A. I understood that to be that that was one
3 of the reasons why he was upset, or as upset, because
4 he was in -- because of the previous issues he was
5 having.

6 Q. Are you talking about the time that he was
7 out the prior two weeks?

8 A. Right. Yeah. I -- I know that he had
9 originally said he was out for the kidney stones, and
10 then -- and then the sciatic nerve pain in his back,
11 so I assumed that that's what he was talking about.

12 Q. Okay. Okay. Do you recall him ever -- in
13 that conversation that morning, ever saying anything
14 about injuring or reinjuring or aggravating or
15 tweaking his back lifting Ms. Dolores' wheelchair?

16 A. No, I don't remember that.

17 Q. Would you -- would you have -- would you
18 remember that if he had said that?

19 A. Oh, yeah. Definitely.

20 Q. And did you say earlier that the first
21 thing you recall he said to you in that conversation,
22 or one of the first things, was that, This is
23 probably going to be my last day?

24 A. Yes.

25 Q. All right. Did he possibly say, I'm going

MALCOLM YOUNG 8/2/2018

1 to need to take another week off, instead of this is
2 going to be my last day because of my back pain, or
3 alternatively, It's either going to be my last day or
4 I'm going to need to take another week off? Do you
5 remember him saying anything like that?

6 A. No.

7 Q. Okay.

8 A. No.

9 MR. CAUTHEN: Okay. That's all I've got.

10 REEXAMINATION

11 BY MR. SAMUELS:

12 Q. Did you talk to Mr. Cronan at all on
13 October 9, 2017?

14 A. Oh, we talk all the time, all day, yeah.

15 Q. Had you spoken to Mr. Cronan about the
16 conversation -- let me correct that. I'll start
17 over.

18 Did you talk to Mr. Cronan about Mr. McCoy
19 before you got the phone call from Mr. McCoy where he
20 said he was upset and his back was hurting?

21 A. No.

22 Q. So your first conversation -- did you --
23 did you talk to Mr. Cronan after you got the phone
24 call from Mr. McCoy?

25 A. Yes. I immediately called him.

MALCOLM YOUNG 8/2/2018

1 Q. Okay. And what did you tell him?

2 A. I just told him what happened. Hey, I just
3 talked with Jeff. It sounds like this is going to be
4 his last day, but he said he wanted to work the rest
5 of the day. I told him he was, you know, not happy
6 with the way the conversation you guys had went, and
7 I asked him what happened. He told me, and I
8 think -- I'm pretty sure that's all we said about
9 Mr. McCoy, and then we probably went on to talk about
10 some other things.

11 Q. Did Mr. McCoy tell you to make sure that --
12 excuse me. Did Mr. Cronan tell you to make sure that
13 Mr. McCoy brought the car back?

14 A. Did he tell me that?

15 Q. Yes, sir.

16 A. When you say -- like right now or at the
17 end of the day or --

18 Q. Anything. Anything like that. Whatever --

19 A. No.

20 Q. -- he told you.

21 A. No. No. I think we probably discussed
22 that if -- you know, if he wasn't going to finish out
23 the day, but he said that wasn't the case, so.

24 Q. How did you get the keys back for the car?

25 A. We have two sets, and the employees will --

MALCOLM YOUNG 8/2/2018

1 when they pull the cars back into the CVS, they lock
2 the car and leave the keys in there, and then I have
3 the -- the extra set.

4 Q. Does your company have light-duty
5 employment when somebody has an injury and the doctor
6 puts them on work restrictions?

7 A. In a situation like that, we would --
8 depending on what the doctor said that they -- we
9 would follow the orders of what the doctor said.

10 Q. And has your company offered light-duty
11 employment to Mr. McCoy after October 9, 2017?

12 A. Can you define "light duty" for me?

13 Q. Sure. No lifting over 15 pounds.

14 A. I remember there was a -- a time where --
15 you know, we have different types of vehicles. Those
16 vehicles have different features on them. I remember
17 Mr. McCoy had come back to work, and we have one
18 vehicle that has heated seats, and I know since he
19 was having the sciatic nerve problems, we said, Hey,
20 you know, if it makes you feel better, you can, you
21 know, drive this vehicle for a while, see how it --
22 see if it helps ease the pain that you're going
23 through, because we knew he was -- you know.

24 Q. Okay. In that conversation with you, did
25 he mention one of the reasons he was mad with

MALCOLM YOUNG 8/2/2018

1 Mr. Cronan was that he had been sent to up pick the
2 lady with the wheelchair when he was already having
3 back problems?

4 A. I don't --

5 Q. You know, specifically in reference to that
6 back pain?

7 A. I don't recall that.

8 Q. It may have happened, but you don't recall
9 it specifically?

10 A. I don't remember that being part of the
11 conversation.

12 Q. All right. Have you heard anything from
13 Mr. McCoy or about Mr. McCoy after October 9, 2017?

14 A. After the 9th?

15 Q. Yes. After the last day he worked.

16 A. I believe the following payday he had sent
17 me a text message inquiring where -- you know, when
18 can he come pick up his check. I believe I told him
19 that -- you know, We will mail it out to you, which
20 is normal in a case of, you know, separation, and the
21 only other thing I heard were some rumors about how
22 he was upset and he wanted to sue us.

23 Q. Sue you for what?

24 A. I don't know. It wasn't a conversation
25 that I had with somebody. It was just something that

MALCOLM YOUNG 8/2/2018

1 I -- that I had heard.

2 Q. Okay. That was -- was that before or after
3 you received the filing of the workers' compensation
4 claim?

5 A. I believe it was after.

6 Q. Okay. So you already knew -- not that he
7 was suing you, but that he was filing workers'
8 compensation about that time?

9 A. I knew that he had asked for the
10 information --

11 Q. Okay.

12 A. -- so I guess that was an assumption.

13 MR. SAMUELS: Okay. Mr. Young, that's all
14 the questions I have.

15 MR. CAUTHEN: That's it.

16 THE WITNESS: We're good?

17 MR. SAMUELS: You're all done.

18 (The deposition concluded at approximately
19 1:38 p.m.)

20

21

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23

24

25

MALCOLM YOUNG 8/2/2018

CERTIFICATE OF REPORTER

1

2

3

I, Donna Cheryl Kyzer, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

4

5

That the foregoing deposition was taken
before me on the date and at the time and location
stated on Page 1 of this transcript; that the
deponent was duly sworn to testify to the truth, the
whole truth and nothing but the truth; that the
testimony of the deponent and all objections made at
the time of the examination were recorded by me and
were thereafter transcribed; that the foregoing
deposition as typed is a true, accurate and complete
record of the testimony of the deponent and of all
objections made at the time of the examination to the
best of my ability.

11

12

I further certify that I am neither related
to nor counsel for any party to the cause pending or
interested in the events thereof.

13

14

Witness my hand, I have hereunto affixed my
official seal this 21st day of August, 2018,
Lexington, South Carolina.

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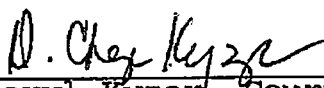
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Donna Cheryl Kyzer, Court Reporter
Notary Public
State of South Carolina at Large.
My Commission expires:
October 5, 2022

South Carolina Workers' Compensation Commission
WCC File # 1717573

Jeffrey McCoy,	)	
	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Ivan E. LaMotta, MD
	)	
CroMed, LLC,	)	
	)	
Employer,	)	
	)	
Guarantee Ins. Co. in	)	
Liquidation/S.C. Property	)	
& Casualty Insurance	)	
Guaranty Association,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Ivan E. LaMotta, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 12:29 p.m., Tuesday, September 11, 2018, at Midlands Orthopaedics and Neurosurgery, 109 Park Place Court, Lexington, South Carolina.

COPY

Reported by
Sandra M. Austin

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Appearances

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Index

Stipulations.	4
Examination by Mr. Cauthen.	4
Examination by Mr. Samuels.	34
Re-examination by Mr. Cauthen	42
Re-examination by Mr. Samuels	45
Re-examination by Mr. Cauthen	45
Re-examination by Mr. Samuels	47
Re-examination by Mr. Cauthen	48
Certificate	51

Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

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Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

Whereupon,

Ivan E. LaMotta, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Ivan LaMotta.

Examination

By Mr. Cauthen:

Q Dr. LaMotta, my name is Mark Cauthen, and I represent the workers' compensation insurance carrier in Mr. Jeffrey McCoy's workers' compensation case. Mr. McCoy is a patient of yours as I understand?

A Correct.

Q Okay. And, of course, we're here to take your deposition. I know you've only seen him maybe once or twice, so I don't expect this to be very lengthy, fortunately, but there are a few issues that I want to try to understand a little bit

1 better by taking your deposition, so, of course,
2 that's why we're here. And no need to go over the
3 particulars because I know you've given plenty of
4 these, but if you would just give us your
5 background as far as your training -- your
6 education and training as a physician.

7 A Certainly. I completed four years of undergraduate
8 premed at the University of New Orleans followed by
9 four years of medical school, LSU Medical School,
10 in New Orleans; finished in 2003. After that, I
11 started orthopedic residency over at Tulane
12 University Hospital, and then that was interrupted
13 with storm Katrina, and then I transferred over to
14 Johns Hopkins to finish my orthopedic training.
15 So, I did my last three years of training at Johns
16 Hopkins in Maryland, Baltimore, Maryland --
17 Maryland, followed by one year of fellowship for
18 adult orthopedic spine surgery under Dr. Paul
19 McAfee in Maryland. I've been in private practice
20 going on my tenth year, a board-certified
21 orthopedic surgeon.

22 Q Okay. Any particular subspecialty as far as --

23 A Well, I'm board-certified in --

24 Q -- orthopedic surgery?

25 A -- orthopedic surgery. However, I do subspecialize

1 in adult spine, so probably 95 percent of my
2 practice is adult spine.

3 Q Okay. All right. Very good. I just want to ask
4 you a little bit about your patient, Mr. Jeffrey
5 McCoy, and, first off, when did you first see the
6 patient?

7 A Well, this patient was actually seen by my
8 physician assistant, Troy Blanks. He was seen on
9 10/26/17.

10 Q On 10/26/17?

11 A Yes.

12 Q Okay. Now, the first visit that I have on a
13 referral from -- I believe a referral from
14 Providence to Midlands Orthopaedics is October 12,
15 2017. Do you have --

16 A That is correct.

17 Q -- that visit?

18 A He was seen by -- at that particular date -- On
19 that particular date, he was seen by one of my
20 partners. His name is Slif Ulrich.

21 Q Dr. Ulrich.

22 A So, he's the first one at Midlands that saw Mr.
23 McCoy.

24 Q Okay. And, so, then you saw Mr. McCoy on follow-up
25 on 10/26/17?

- 1 A Correct. My physician assistant actually saw him.
2 We discuss cases with my physician assistant, and I
3 review the records and imaging studies, but he
4 actually examined and laid hands on the patient.
- 5 Q So, did you actually see the patient on 10/26 at
6 all?
- 7 A I did not.
- 8 Q Have you ever met Mr. McCoy?
- 9 A Not in person.
- 10 Q Okay. So, Mr. McCoy has not been back to see you
11 or to Midlands since 10/26/17; is that correct?
- 12 A It appears that way, yes.
- 13 Q Okay. Okay. Let me back up and ask you a few
14 questions about the patient's treatment for back
15 pain symptoms just a few weeks before that. Have
16 you had a chance to review the records at
17 Providence, it looks like the Providence emergency
18 room treatment records?
- 19 A I have in the past. I do not have those right in
20 front of me, and I certainly did not review them --
- 21 Q So, you don't --
- 22 A -- in preparation for this deposition.
- 23 Q Okay. Let me -- I've got an extra copy, so let me
24 just ask you to take a look at -- There's just two
25 visits, the first on 9/18/17 and then a second

1 visit -- It may have been 9/26. Let me let you
2 start reading that, and I'll find the second. The
3 second date should be in there, as well. Yeah, the
4 second date is 9/26. So, the first one, 9/18, and
5 the second is 9/26. If you could just take a look
6 at those, those treatment notes from those two
7 visits.

8 A Okay.

9 Q Okay. Now, the date of injury that has been
10 identified that Mr. McCoy saw you for is 10/ --
11 let's see -- is October 9, 2017. Is that correct?

12 A That is correct.

13 Q When he reported lifting a wheelchair and injuring
14 his low back?

15 A Correct.

16 Q Okay. All right. So, a few weeks before that, it
17 appears he was seen at the Providence ER on
18 9/18/17. Looking at that first note, "Complaining
19 of left lower back pain since Wednesday of last
20 week. Denies any injury. Pain is noted to radiate
21 into the left groin," is that similar to the
22 symptoms that the patient presented when he -- or
23 reported when he first was seen at Midlands and
24 when he saw you at Midlands?

25 A It is -- It is similar, yes. He did complain of

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1 back pain of a significant difference. It appears
2 that when he came and was seen on 10/26, the
3 patient was complaining of more pain radiating down
4 the leg, not strictly just the -- not strictly the
5 back -- the back.

6 Q Okay. And if you would then flip over to the
7 second visit at Providence, 9/26/17, and looking at
8 that note, the history, "The patient presented with
9 continued low back pain with radiation into the
10 abdomen; started a week ago. Was seen recently in
11 the ER, and the pain now reported to have worsened
12 in the last 24 hours," is that -- Would that be
13 accurate from the history taken at that second
14 visit?

15 A In the ER, yes.

16 Q Okay. And what was the diagnosis made at that
17 time?

18 Mr. Samuels: Would that be page 22,
19 Mark, where you're directing him? Dr.
20 LaMotta, there are page numbers at the very
21 bottom of each of those records.

22 The Deponent: Page 22?

23 Mr. Cauthen: Your -- It's your APAs,
24 yeah. Okay. This is a different copy that
25 I've got here.

1 The Deponent: Well, if --

2 Q I'm looking at the 9/26/17, --

3 A Mm-hmm.

4 Q -- and it may be -- it may be that the history is
5 on the next page or a page before that.

6 A Now, you're looking at the initial page right here,
7 so --

8 Q Okay. With the patient history.

9 A You're asking for the diagnosis at the time that he
10 was seen in the ER?

11 Q Well, the diagnosis at that point, did you happen
12 to see that?

13 A Well, let's take a look. I have "Medical Decision-
14 making" on page 17. Typically, that's where they
15 would enter the diagnosis. That's the impression
16 and diagnosis. It states that "CT lumbar reveals a
17 diffused bulging disc, L4-5, with mild central
18 canal and -- canal and bilateral foraminal
19 stenosis; lipase, white count; will discharge
20 home," and then under -- Again, I'm not seeing the
21 word "diagnosis" under Impression. It just states
22 the reading of the MRI examination. Under Patient
23 Instructions, it states, "Acute abdominal pain as
24 well as low back strain," which those are a
25 diagnosis, so maybe they miss-entered them, but

- 1 those would be diagnosis that were assigned by Dr.
2 Washington over at Providence Health.
- 3 Q Okay. Now, there's -- If you'll note, a few pages
4 further there is -- it looks like on the discharge
5 instructions there is a referral made to Midlands
6 Orthopaedics.
- 7 A That is correct.
- 8 Q You see that? And that was made on 9/26/17?
- 9 A Yes.
- 10 Q Okay. So, that referral to -- or that orthopedic
11 referral to Midlands was actually made by
12 Providence before the injury reported by the
13 patient of 10/9 -- of 10/9/17?
- 14 A That is correct.
- 15 Q And that was to -- That referral was to evaluate
16 further back pain, radicular symptoms and so forth?
- 17 A For the back pain. There was not any mention of
18 radicular symptoms in the emergency room.
- 19 Q Okay. Go back at 9/ -- Go back to the history
20 from the 9/26/17 note.
- 21 A Mm-hmm.
- 22 Q It indicated "Continued low back pain with
23 radiation." Is that not --
- 24 A It says radiation into the abdomen.
- 25 Q Right, radiation into the abdomen, but the prior

1 report said radiation into his left groin, the left
2 extremity area?

3 A Correct.

4 Q And that's the -- That was what he was complaining
5 of when he saw -- or when he was seen by your PA,
6 was left -- radiculopathy to the left, or radiation
7 to the left upper --

8 A Mm-hmm.

9 Q -- extremity?

10 A It just mentioned -- There's no such word as
11 radiculopathy mentioned in the ED entries.

12 Q Radiation, then?

13 A There is the word radiation, yes, sir.

14 Q Radiating pain. Okay. Okay. And let's move over
15 to the visit that he had 10/26. It was 10/26 when
16 he was seen by your PA. Okay. And if you could
17 just take us through that examination and the
18 findings from that visit.

19 Mr. Samuels: Mark, do you have an APA
20 page number?

21 Mr. Cauthen: Your page 40.

22 Mr. Samuels: Page 40?

23 Mr. Cauthen: Mm-hmm.

24 Q Now, this would be the --

25 A Yes. I'm just reviewing this for a second.

1 Q Okay.

2 A All right. So, Mr. McCoy was seen by my physician
3 assistant, Troy Blanks, on 10/26/17. His -- On
4 his physical examination -- I'll just take you
5 through the -- what we would consider positive
6 findings as opposed to doing every possible
7 negative exam --

8 Q Mm-hmm.

9 A -- finding. But he had an antalgic gait, which
10 means that he was limping. He had a significant
11 tenderness to palpation in the lumbar spine region
12 and the prevertebral muscles, lumbar spine; -- so
13 that's on the sides of the spinous process --
14 severely restricted range of motion of the lumbar
15 spine. And then he also was found to have a
16 neurological deficit in the left lower extremity
17 with a deficit in extension of muscle strength,
18 four out of five on the left side. So, his
19 quadriceps muscle was affected. Yes, that is his
20 exam.

21 Q And what did the patient -- What history did you
22 take -- or did your -- Mr. Blanks take from the
23 patient at that time as to the origin of his
24 symptoms, the history of his -- of his injury?

25 A Certainly. It states that "Mr. McCoy presented for

1 an initial -- initial evaluation to the lumbar
2 spine. He had a history of lower back problems."
3 It states that "He was unsure what triggered the
4 onset of his low back pain and notes that he woke
5 up with stiffness on 9/14/17." And he presented to
6 the emergency room on 9/18/17. He took a week off
7 from work. He states that he was improving and
8 then returned to work on 9/25/17. And then it
9 states that he took another week from work.
10 There's documentation that he presented to the ER
11 again on 9/26/17. "He states that he was
12 attempting to pick up a wheelchair at work on
13 10/9/17 when he experienced a flare-up of pain in
14 his low back and the left lower extremity. He
15 notes that sitting in the car triggers significant
16 pain. He says that he is able to tolerate his
17 condition while sitting at an angle on his foam
18 cushion. And then he states that the pain
19 localizes to the left side of the low back,
20 radiates through his left posterior hip, wraps
21 around into his groin region. The pain radiates
22 diagonally into his left leg as well as laterally
23 to medial length. He claims that the pain is
24 fairly constant, which is triggered by placing
25 weight on his left lower extremity while sitting.

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1 He denies having any significant numbness. He
2 denies any bladder or bowel dysfunction but notes
3 that he constantly feels as though he must empty
4 his bowels. His paperwork is in progress for the
5 patient to be approved for workers' compensation."
6 Q Okay. All right. Now, in that -- one of the
7 paragraphs that you went over in the history taken,
8 you indicated he recalls that he initially felt his
9 -- his condition was improving, and then he
10 returned to work on Monday, 9/25/17. However, from
11 the report, one of the reports we already went over
12 from Providence -- from Providence in 9/26/17, he
13 actually reported that his condition was worsening,
14 didn't he?
15 A That's correct.
16 Q So, that would be inconsistent with what's being
17 reported here on 10/20 -- on the 10/26 visit,
18 wouldn't it?
19 A It is. And, again, this is -- this is just taken
20 from the patient, so --
21 Q Right.
22 A -- we're not making any assumptions. So, this is
23 directly what the patient is conveying to us.
24 Q Okay. All right. And, so, he -- he attributed his
25 pain to lifting a wheelchair at work on 10/9/17?

1 A He stated that his condition had flared up and
2 worsened since picking up the wheelchair on
3 10/9/17.

4 Q Okay. But, now, the patient already had low back
5 pain, as we've already looked at, from at least
6 back to 9/18/17, a few weeks just before that when
7 he was seen a few times at Providence. Is that
8 correct?

9 A Yes.

10 Q So, how do we really know what the origin of that
11 back pain is, those -- this -- these events being
12 so close together, by a few weeks? He's seen, at
13 least two visits, over at Providence with back
14 pain. Then on 10/ -- 10/26/17, he reports to your
15 PA that he's lifting a wheelchair and he's -- has
16 an exacerbation of symptoms. How do we really know
17 that there's any difference between what was going
18 on with his low back in September versus October --

19 A Mm-hmm.

20 Q -- 26 when he saw your PA?

21 A Well, I would say that there is certainly what
22 appears to be a change in condition. So, his --
23 his description of the pain is different from his
24 last entry on 9/26. I notice that there is no
25 radiation into the abdomen. This is exclusively

1 low back and radiating down the leg itself whereas
2 before it was mostly low back and radiation into
3 the abdomen, and the other -- the other thing is
4 that they -- So, on his physical exam, it's
5 different from what it was noted at -- on the
6 Providence Health ED. There wasn't any antalgic
7 gait. There was anything in the -- palpation, and
8 there was no neurological deficits. So, those are
9 assumed to be new and a change since he was last
10 seen on 9/26. And then the last thing that we can
11 say is that he had a CT examination on 9/26/17, and
12 they noted a disc bulge at the level L4-L5 whereas
13 the MRI examination that he had on 10/20/17 noted a
14 disc protrusion at the -- at the L4-L5 level going
15 to the left side and causing nerve compression.
16 So, there's certainly worsening -- worsening --
17 objective worsening of his condition in his lumbar
18 spine.

19 Q Okay. I want to come back to the imaging studies,
20 but let me ask you before we get to that -- So,
21 your opinion as to the causal relationship being
22 related to what the patient reported, lifting the
23 wheelchair on 10/9/17, would it be accurate to say
24 that your opinion that his symptoms, when you --
25 when your PA saw him on the 26th would be dependent

- 1 upon the accuracy of what the patient reported to
2 you as far as the mechanism of the injury, i.e.
3 lifting the wheelchair?
- 4 A Correct.
- 5 Q And if somehow the patient's history was
6 inaccurate, then that could affect your opinion as
7 to the causal origin of his problems, couldn't it?
- 8 A Correct.
- 9 Q Okay. Well, let me back up, then, and let's look
10 at the report from his first visit to Midlands on
11 10/12/17 when he saw Dr. Ulrich.
- 12 A Yes.
- 13 Q And that was the -- That was the initial referral,
14 wasn't it, from the -- I guess from Providence, the
15 Providence ER?
- 16 A He was the first practitioner that saw him at
17 Midlands, yes.
- 18 Q Okay. So, when Dr. Ulrich -- Dr. -- Is it -- Am
19 I saying that right, Ulrich?
- 20 A Ulrich.
- 21 Q Dr. Ulrich saw him on 10/12/17. That would have
22 been three days after the injury reported by the
23 patient of lifting the wheelchair, wouldn't it,
24 three days after?
- 25 A Correct.

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1 Q Okay. Would you flip over to the HPI section, back
2 pain reported by patient, --

3 A Mm-hmm.

4 Q -- the history taken by Dr. Ulrich at that time.

5 A Yes.

6 Q Could you tell us what that says?

7 A It states, "Mr. Jeff McCoy is a forty-nine-year-old
8 male who presents for evaluation of lower back
9 pain. He's a driver and states that he developed
10 lower back pain while -- lower back pain with
11 radiating pain down his left leg while driving.
12 Lifting passengers causes -- Lifting passengers
13 causing him significant discomfort. This has made
14 his symptoms worse. He has been seen on 9/18/17
15 and on 9/26/17 at the emergency room. He presents
16 today for assessment."

17 Q And then down -- If you would cover the -- lower
18 on that page, the Assessment and Plan and the
19 discussion right below that.

20 A Correct. He states, number one, left lumbar
21 radiculopathy, number two, low back pain. Then he
22 states that this was a work-related injury. "He
23 has difficulties driving. He is failing
24 conservative management. He has a steroid dose
25 pack with no relief of his symptoms. I think his

1 next best step is an MRI examination." And then he
2 goes into describing why the MRI.

3 Q Okay. So, at that time, then, three days after the
4 10/9/17 accident, he is reporting to Dr. Ulrich
5 that his back pain is a result of driving, is he
6 not?

7 Mr. Samuels: Objection. That's not an
8 accurate report. You're misstating what's in
9 the record.

10 Mr. Cauthen: Not an accurate report?

11 A It states that he developed lower back pain with
12 radiating pain down his left leg while driving.

13 Q While driving. Did --

14 Mr. Samuels: And it goes on to say --

15 A It says, "Lifting passengers causes him significant
16 discomfort."

17 Q Does anything in that report say anything about the
18 patient reporting that he lifted a wheelchair and
19 injured his low back?

20 A It does not.

21 Q So, the history from -- taken from the patient
22 three days after the alleged injury on 10/9/17 is
23 different than what was reported to your PA when he
24 was seen on 10/26, isn't it?

25 A What's being recorded is -- It is different. I

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1 mean, you have to understand that the patient tells
2 you something, and then you, as a practitioner,
3 enter into the medical record your interpretation
4 or your summary or your -- what you take from the
5 injury, but yes, what was entered was different.

6 Q Okay. And being three days after the injury, would
7 it be fair to assume that the history being given
8 three days after the alleged injury of 10/9/17
9 would be fresher in the mind of the patient
10 reporting his history to the provider than it would
11 be on 10/26, several weeks later, --

12 Mr. Samuels: Objection. Calls for
13 speculation.

14 Q -- when he saw your PA? I mean, is that a fair
15 assumption to make?

16 A Being that they are so close chronologically, I
17 don't think that there would be any significant
18 difference. Now, if the two entries are six months
19 apart, then I would typically say yes.

20 Q Well, but if the patient sees your -- your partner,
21 Dr. Ulrich, three days after the alleged injury --

22 A Mm-hmm.

23 Q -- and he says nothing about injuring his back
24 while lifting a wheelchair, but then he tells you
25 that several weeks later -- or your PA several

1 weeks later when he sees you on the 26th, that
2 raises a red flag, doesn't it, when the story has
3 changed?

4 A I don't think that the story has changed. Again, I
5 think that what Dr. Ulrich has chosen to enter into
6 the medical record is somewhat different than what
7 was entered by my physician assistant, and not --
8 not to take sides here, but we actually use a
9 scribe, so we actually record the -- what is being
10 said to us and -- verbally, and then the scribe
11 puts it in almost verbatim. So, I will have to
12 tell you that in terms of accuracy, what was
13 entered by Troy Blanks' scribe is probably a lot
14 more accurate than what was recorded by Dr. Ulrich.

15 Q Well, you're just speculating, though, aren't you,
16 Doctor? I mean, you can't -- you can't say that?
17 There's no basis for really saying that as a
18 factual statement; you're just --

19 A There is a lot of basis when you are actually
20 recording the conversations and somebody else is
21 typing it for you, much like our scribe here,
22 versus the four lines that Dr. Ulrich has chosen to
23 enter.

24 Q Well, how do we know Dr. Ulrich didn't record, as
25 well?

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1 A Because he doesn't use a -- a scribe.
2 Q Okay. So, you're saying the information relayed by
3 the patient on 10/26 was recorded by your PA?
4 A There is no entry on 10/26.
5 Q I'm sorry?
6 A There is no entry on 10/26.
7 Q 10/26 when he --
8 A Oh. 10/26.
9 Q 10/26 when --
10 A Yes. I'm sorry.
11 Q -- he was seen by Mr. Blanks. Blanks would have
12 recorded it?
13 A Blanks doesn't record it. We use a scribe service
14 that records the -- The patient visits, and they
15 construct the HPI for us.
16 Q I'm not sure I understand why that would be more
17 accurate than what Dr. Ulrich would have taken down
18 on the 12th.
19 A Because they -- he has gone into much greater
20 detail in recording how it happened, when it
21 happened and the description of where the pain is
22 and a lot of other details.
23 Q Okay. You're not suggesting that what Dr. Ulrich
24 -- the history that Dr. Ulrich took down is
25 inaccurate, are you?

1 A I am not suggesting that, no.

2 Q So, if we just go by what's in the medical reports,
3 because that's -- that's what we have to go by
4 here, --

5 A Mm-hmm.

6 Q -- your testimony, -- of course, we don't have Dr.
7 Ulrich's testimony -- and what's in the medical
8 reports that were prepared contemporaneously at the
9 time of the exams -- if we just go by that, then
10 the -- the -- the history of the injury or the
11 history of the origin of the symptoms at that very
12 first visit three days after the alleged injury --

13 A Mm-hmm.

14 Q -- when he was seen on the 12th of October, that
15 attributes the symptoms to a different mechanism of
16 injury, -- would that be fair to say -- i.e.
17 driving?

18 A That would be fair to say based on what's on the
19 entry by Dr. Ulrich.

20 Q And you would agree that there is nothing in Dr.
21 Ulrich's report suggesting that Mr. -- that Mr.
22 McCoy reported lifting a wheelchair --

23 A That is correct. There is nothing --

24 Q -- and injuring himself?

25 A -- in the entry by Dr. Ulrich that mentions any

1 type of wheelchair.

2 Q Now, if the patient lifted a wheelchair three days
3 before that visit, on 10/9/17, and injured his
4 back, wouldn't you expect that to be relayed to Dr.
5 Ulrich in that 10/12/17 visit?

6 A Correct.

7 Q So, I guess my real question, then, is, if we
8 assume that the -- that initial history taken by
9 Dr. Ulrich three days after the accident, on
10 10/12/17, is accurate, then that would change your
11 opinion in this case, wouldn't it, with regard to
12 the cause of the injury?

13 A Well, I am making my opinion assuming that what was
14 said to my physician assistant is true.

15 Q Okay. And, so, if it wasn't true, then that would
16 change your opinion as to the cause of the injury,
17 wouldn't it?

18 A Correct. If there's no lifting event anywhere,
19 then I would change my opinion.

20 Q Okay. I don't have too much else here. I did want
21 to ask you a couple of questions about the medical
22 questionnaire that you had completed. I called it
23 a questionnaire, and you may call it a medical
24 statement, but the two-page -- It's a two-page set
25 of questions with 12 questions that -- Do you

1 happen to have a copy of that, Dr. LaMotta?
2 A I do not have that on me, no.
3 Q I don't have a extra copy, and, unfortunately, what
4 I've got has got all kinds of highlights.
5 Mr. Samuels: I'll give --
6 Mr. Cauthen: You got a clean one?
7 Mr. Samuels: -- Dr. LaMotta a clean
8 copy.
9 Mr. Cauthen: Okay.
10 Mr. Samuels: And that, for the record,
11 is APA pages 50 and 51.
12 Mr. Cauthen: Okay.
13 Q And just tell me after you -- Okay?
14 A Yeah, I'm ready.
15 Q Let me ask you about -- Number 3 of the
16 questionnaire, you had indicated -- Well, let me
17 just get you to read that into the record for us
18 and your --
19 A Number 3?
20 Q -- mm-hmm -- your response.
21 A It says, "At the emergency room, the patient
22 underwent a CT scan on September 26, 2017, which
23 showed diffusely bulging disc L4-5 with mild
24 central canal stenosis -- central canal and
25 biforaminal stenosis. There is mild bulging of the

1 L5-S1 disc without central canal stenosis." And I
2 checked "Yes."

3 Q Okay. And then number 4 right below that.

4 A Number 4, "An MRI taken on October 20, 2017 showed
5 disc deformities at L4-5 and L5-S. It is worse at
6 the L4-5 where there is a prominent broad-based
7 disc deformity present extending centrally to the
8 left. Disc material extending to the left lateral
9 recess and towards the left neural foramen. There
10 is a slightly smaller disc deformity at the L5-S1.
11 There is associated annular fissure at L5-S1."

12 Q Okay. And then, finally, number --

13 A And I have checked "Yes."

14 Q Okay. And then, finally, number 5 there.

15 A Number 5, "The MRI shows worsening of the disc
16 deformity compared to the previous CT scan
17 consistent with an acute injury from lifting the
18 wheelchair as reported by the patient." And I have
19 checked "Yes."

20 Q Okay. Now, could you tell us, just in general, the
21 difference between a CT scan to evaluate a low back
22 -- low back pain versus an MRI to evaluate lower
23 back pain?

24 A Certainly. They are two different types of
25 modalities. Generally speaking, the CT scan is

1 much better to evaluate bones, so -- Well, it can
2 do internal organs, as well, with PO contrast, but
3 for the spine it's very good at evaluating the
4 bones and the joints and the spinous processes and
5 ruling out any type of fracture or dislocation or
6 subluxations. However, you can see some nerves.
7 You can see some discs in there. The MRI
8 examination, obviously, that's non -- non-radiating
9 technology, so that is done, and then you get an
10 image that depicts very accurately the soft
11 tissues, the discs, the nerves, the cerebral spinal
12 fluid as well as the bone. Now, again, in general,
13 a CT is better for evaluating bone than an MRI
14 examination, but you can see the bone on an MRI
15 examination. So, there are different types of
16 modalities.

17 Q When you're evaluating a patient who has low back
18 pain that is persistent for a while, he's not
19 improving, are you going to order a CT scan for
20 further evaluation at that point or are you going
21 to order an MRI for further evaluation --

22 A Well, --

23 Q -- evaluation at that point?

24 A -- more often than not, we prefer an MRI.

25 Q Now, the MRI is going to give you a more detailed

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1 -- it's a more sophisticated examination, right --
2 imaging study that is?

3 A Yes, you can say that.

4 Q And it's going to give you a more detailed look at
5 the -- you know, at the patient's insides to try to
6 find out what's going on, isn't it?

7 A Correct.

8 Q Okay. So, we -- The only thing we have prior to
9 10/9/17, the injury alleged by Mr. McCoy here, is
10 just a CT scan; --

11 A Correct.

12 Q -- is that right? And then only after that do we
13 have an MRI?

14 A That is correct.

15 Q So, in order to accurately evaluate the extent of
16 -- or the condition of his spine in terms of
17 bulging, herniating, protruding discs and so forth
18 both before and after October 9 of 2017, we really
19 need an MRI before and after to be able to compare
20 apples to apples, don't we, to see if there was
21 any, really, progression or new injury or
22 worsening?

23 A That is correct. I mean, ideally, you have an MRI
24 examination and an M -- an MRI examination before
25 and an MRI examination afterwards. However, that's

1 almost never the case. In this case, we do have a
2 CT examination that -- Again, it -- it does reveal
3 a disc bulge. So, you can see a disc bulge in an
4 MRI examination, not to the detail -- not in such
5 great detail as you can on the MRI, but you can see
6 disc bulges, and you can differentiate disc bulges
7 from protrusions, from extrusions even on a CT.
8 Again, that would be seen much clearer, into a much
9 greater detail on an MRI examination, but you --
10 you can compare one to the other much like you can
11 compare the bone in the MRI examination versus the
12 CT.

13 Q Okay. But the MRI is going to be the superior,
14 give you the superior imaging when you're looking
15 at a bulging disc, a protruding disc, a herniated
16 disc; --

17 A Correct.

18 Q -- is that right? So, what -- Now, you had
19 indicated on here the disc deformities -- the MRI
20 shows worsening of the disc deformities compared to
21 the previous CT scan consistent with an acute
22 injury from lifting a wheelchair as reported by the
23 patient. What exactly is the -- How are the disc
24 deformities worse -- worse or worsened, you know,
25 between the CT and the -- and the MRI? Can you

1 tell me specifically how they were worse?

2 A And, again, I'm -- I'm looking at the MR -- the MRI

3 reading, 10/20/17, Providence Northeast, and the

4 actual word that was used in the actual reading.

5 In the third paragraph, it states clearly that

6 there's a broad-based disc protrusion. So, this --

7 The deformity that we're talking about is a

8 protrusion, so that is definitely a lot worse -- a

9 lot worse than a disc bulge. Again, a disc bulge

10 is considered pretty much not pathological. That's

11 something that most people have. The disc bulge

12 just means that it's literally just bulging

13 somewhat. It's the disc configuration much like

14 your tires in your cars bulge out because of the

15 pressure of the car. A disc protrusion is

16 something that is definitely considered

17 pathological, and that's when you have -- it

18 progresses from a disc bulge to a disc protrusion

19 -- and that's, say, when you have a flat tire, it

20 like protrudes a lot more outward -- versus an

21 extrusion, and then you have the piece of disc

22 literally breaking off. So, in my opinion, looking

23 at the CT examination, there was a disc bulge

24 without any evidence of stenosis, and now on the

25 MRI examination, you have a disc protrusion with

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1 evidence of nerve compression. So, to me, there is
2 clear change, although -- Yes, I can tell you that
3 we don't have the same level of detail as we did on
4 the MRI examination on the CT, but there is --
5 there is a clear difference there.

6 Q Versus the CT?

7 A Correct. Now, you -- you would -- If the patient
8 had an extrusion or a protrusion, you would be able
9 to pick that up on a CT, as well, again, not to the
10 level of detail, but you would be able to
11 differentiate between a disc bulge and a protrusion
12 on a -- even on a CT scan.

13 Q So, is -- You talked about the difference between
14 a protrusion and a bulge. Is that -- Is that --
15 Those terms -- Are those terms always
16 differentiated as to being different pathology or
17 sometimes do you see radiologists kind of using the
18 terms interchangeably, bulge as a protrusion, a
19 protrusion as a bulge? Do you see that?

20 A Certainly not. Certainly not.

21 Q You don't? Okay.

22 A There's a clear difference between bulge,
23 protrusion, extrusion, herniation. Those are
24 definitely terms that are not interchangeable for
25 anybody in the spine field. Now, to -- to a

1 patient, you know, somebody non-medical, they may
2 say herniation or bulge, the same thing, but that
3 -- that's not at all the case when you talk about
4 -- when you talk to a radiologist or spine
5 practitioners.

6 Q Okay. But neither one of those is a herniation, is
7 it?

8 A A protrusion is one degree short of a herniation,
9 but no, neither one of those is a true herniation.

10 Q The MRI did not show a herniation at all; is that
11 correct?

12 A That is correct.

13 The Deponent: And I hate to cut you
14 short, guys, but this is an hour mark, so if
15 we can wrap this up shortly.

16 Mr. Cauthen: Okay. Yeah, I'm just --
17 I'm just about at the very end here.

18 Q Now, the -- your recommendation is based on the
19 last time that you saw the patient. Was that for
20 nonoperative care?

21 A Correct.

22 Q It's your opinion that the patient was not a
23 surgical candidate?

24 A So, the patient would be a surgical candidate if he
25 would be in severe persistent pain and if he had

1 tried and exhausted conservative care, but, again,
2 generally speaking, we -- we like to exhaust
3 conservative management before even offering
4 surgical intervention unless somebody has a -- you
5 know, a marked neurological deficit. But, yeah, so
6 we -- generally speaking, we'd like to see patients
7 complete physical therapy, complete anti-
8 inflammatory medications, complete injections prior
9 to offering surgery.

10 Q Okay.

11 Mr. Cauthen: All right. I believe
12 that's all that I have, Dr. LaMotta. Thank
13 you very much.

14 The Deponent: You're welcome.

15 Examination

16 By Mr. Samuels:

17 Q Dr. LaMotta, I'm Stephen Samuels. I represent your
18 patient, Jeffrey McCoy. I know you've got patients
19 to get to, so I'll be as brief as I can be. Let me
20 ask you to take a look, if you will, at the pack in
21 front of you, specifically tab 2. When patients
22 come in to Midlands Orthopaedic, do they fill out
23 paperwork on a clipboard that's given to them by
24 the intake staff?

25 A Yes.

- 1 Q And if you would look at this first page, page 29.
2 Is this the form that the patient is given to fill
3 out?
4 A Yes.
5 Q And I'm going to move you quickly to page 34, the
6 page number at the bottom of the page.
7 A Yes.
8 Q And what did Mr. McCoy report as to when his pain
9 first started?
10 A I'm sorry. Where are you looking on the page?
11 Q Page 34, --
12 A Oh. Okay. Sorry about that. It states the pain
13 started September 14th.
14 Q And when did he report that it worsened?
15 A October 9th.
16 Q Is that consistent with what he reported to you
17 when he gave -- or to your PA when he had given the
18 long history?
19 A Yes.
20 Q Also, in terms of symptoms, was there a
21 quantitative difference or qualitative difference
22 between what he reported to you and Dr. Ulrich as
23 opposed to what he reported at the emergency
24 department?
25 A Yes.

1 Q What was the difference?

2 A The pain was more in the back, and it was radiating
3 down the leg in a more radicular pattern as opposed
4 to radiating into the abdomen.

5 Q Would radiation into the abdomen be considered a
6 radicular pattern?

7 A No.

8 Q And what is a radicular pattern? What does that
9 mean?

10 A Radicular pattern means that one of his nerve roots
11 is being irritated or affected, and it gives you
12 the sensation that the pain is traveling down the
13 leg, although you don't have any leg problems.

14 Q So, would that be consistent in terms of a
15 radicular problem, what was identified on the MRI
16 and what was missing from the CT scan?

17 A Correct.

18 Q So, his reported symptoms, then, were consistent
19 with the imaging both in the CT scan and the MRI?

20 A Yes.

21 Q Now, when he saw Dr. Ulrich -- and I'll take you
22 back to his report, specifically page 37.

23 A Yes.

24 Q You had mentioned in your testimony that if there
25 was no lifting event anywhere, that would change

- 1 your opinion. Did Dr. Ulrich report any lifting --
2 or record any lifting told to him by Mr. McCoy?
3 A Well, he documented "Lifting passengers causes him
4 significant discomfort."
5 Q I think he went on to say, "This has made the
6 symptoms worse"?
7 A Correct.
8 Q And this is Dr. Ulrich, and I think you already
9 indicated that he may not be recording in the same
10 detail that you and your PA record?
11 A That is correct.
12 Q But, generally, if there had been no lifting event,
13 that would change your opinion. I presume if there
14 was no lifting event, then Dr. Ulrich would not
15 have had the opinion that this was a work-related
16 accident?
17 A That is correct.
18 Q And what was Dr. Ulrich's opinion as to whether or
19 not this was a work-related injury?
20 A Under Assessment and Plan after his diagnosis, he
21 clearly states in his first sentence that this was
22 a work-related injury.
23 Q So, in that respect, there appears to be no
24 difference in opinion regarding causation between
25 the injury and the work accident between you and

1 Dr. Ulrich. Is that fair to say?

2 Mr. Cauthen: Object to the form of the
3 question. That is --

4 A That is correct.

5 Mr. Cauthen: -- inaccurate based on
6 prior testimony.

7 Q Your opinion is that this is a work-related injury,
8 albeit a -- aggravated from a preexisting
9 condition; is that correct?

10 A It is. Yes.

11 Q In terms of the physical exam at Providence
12 Hospital, is there any indication on that physical
13 exam that Mr. McCoy would have had any sort of
14 nerve compression resulting in any radiculopathy?

15 A Not during his examinations in the ER, no.

16 Q Why -- I was --

17 A As a matter of fact, he was diagnosed with a lumbar
18 strain, which is very different from a lumbar
19 radiculopathy.

20 Q How so?

21 A A lumbar strain denotes a muscular problem
22 exclusively affecting the low back versus
23 radiculopathy which implies nerve compression
24 affecting low back and leg.

25 Q And that nerve compression was confirmed by the

- 1 objective MRI scan?
- 2 A That's correct.
- 3 Q And I assume the -- the physical examination is
- 4 also objective. Is that correct?
- 5 A Yes.
- 6 Q And he had some specific signs -- objective signs
- 7 on the physical examination confirming the
- 8 diagnosis of lumbar radiculopathy?
- 9 A Yes.
- 10 Q And what were those specific findings?
- 11 A He had a straight leg raise, which is classic for
- 12 radiculopathy. That is something that even most ER
- 13 physicians would not forget to do. And he also had
- 14 some neurological deficits. He had weakness in his
- 15 quadriceps muscle in addition to some tenderness to
- 16 palpation in the lumbar spine as well as limited
- 17 range of motion --
- 18 Q What
- 19 A -- and an antalgic gait, so antalgic gait, again,
- 20 being something that even a nonspecialist can
- 21 clearly document.
- 22 Q Does the physician at the emergency department have
- 23 the ability to order an MRI or a CT scan?
- 24 A Yes.
- 25 Q And Providence Hospital has an MRI machine as well

1 as a CT scan, correct?

2 A They do, yes.

3 Q But an MRI is ordered specifically when there is
4 suspicion of some sort of pathology that you're
5 trying to rule out based on clinical exam; is that
6 correct?

7 A That is correct.

8 Q So, if the emergency department physician orders a
9 CT scan rather than an MRI scan, what does that
10 tell us?

11 A Well, a lot of it has to do with convenience sake,
12 as well, depending on what time the patient
13 presents. It's a little easier to -- easier and
14 quicker to get a CT examination as opposed to an
15 MRI. An MRI typically requires scheduling, and
16 it's a test that requires anywhere -- anywhere from
17 20 to 40 minutes to complete whereas a CT scan can
18 be done in under, you know, five or ten minutes.
19 But they -- they -- In the ER, they're trying to
20 rule out major things that can be very easily
21 picked up on a CT, such as fractures, infections,
22 bone destructions, a major herniation as well as
23 tumors and things like that.

24 Q And in this case, there was also suspicion of a
25 kidney stone?

- 1 A Kidney stones, yes, --
- 2 Q Which would show up on a CT scan?
- 3 A Correct.
- 4 Q But ultimately when they did the CT scan, it
- 5 clinically ruled out any objective sign of
- 6 radiculopathy; is that correct?
- 7 A That is correct.
- 8 Q So, from an objective standpoint, the difference in
- 9 the physical examination and the difference in the
- 10 CT scan versus the MRI confirms that there was a --
- 11 an objective worsening in condition; is that
- 12 correct?
- 13 A Correct.
- 14 Q And that correlates with the reported lifting
- 15 accident of October 9th, 2017; is that correct?
- 16 A That is correct.
- 17 Q Now, you've given various opinions in this
- 18 questionnaire. Do you stand by those opinions at
- 19 this stage?
- 20 A Yes.
- 21 Q So, it's still your opinion that lifting the
- 22 wheelchair on October 9th, 2017 most probably
- 23 aggravated a preexisting condition leaving the need
- 24 for treatment?
- 25 A That is correct.

1 Q Is it your opinion that additional treatment would
2 tend to lessen Mr. McCoy's period of disability?

3 A Yes.

4 Q Is it your opinion that he should be limited to no
5 lifting greater than 15 pounds?

6 A Yes.

7 Q That would be a temporary restriction depending on
8 the outcome and the need for future treatment?

9 A Correct.

10 Q And he is not at maximum medical improvement?

11 A Correct.

12 Q Are these opinions to a reasonable degree of
13 medical certainty?

14 A They are.

15 Mr. Samuels: Thank you, Doctor. That's
16 all the questions I have.

17 Mr. Cauthen: Just a couple quick follow-
18 ups, Doctor.

19 Re-examination

20 By Mr. Cauthen:

21 Q Radiation -- You indicated radiation into the
22 abdomen is not radicular in nature?

23 A Not for lumbar radiculopathy. If you have a
24 thoracic radiculopathy, you can have chest wall and
25 abdominal -- abdominal pain, but not for lumbar

1 radiculopathy.

2 Q How about radiation into the left groin?

3 A So, radiation into the left groin typically is not
4 considered a sciatica type pain. If you have a
5 very high disc herniation in the lumbar spine, you
6 may see that, but that would be rare.

7 Q So, radiation into -- radiation into the groin,
8 into the -- into the left groin, to the upper
9 extremity, the top -- yeah, the upper extremity and
10 the groin area, that would not be -- that could not
11 be considered radiculopathy --

12 A Radiation into the --

13 Q -- or --

14 A --- upper extremity?

15 Q The left upper extremity -- The left groin and
16 left upper extremity.

17 A Left -- The left upper extremity is your arm.

18 Q I'm sorry. Lower extremity. Lower extremity.

19 A All right. So, radiation into the left lower
20 extremity, in the back, it's typically considered
21 sciatica, and then that is typically considered a
22 radicular pattern, or radiculopathy. Radiation
23 into the groin, that is very seldom seen. That's
24 not typically something that we would consider a
25 typical radicular pattern. I think if you have a

1 very rare high lumbar -- high lumbar disc
2 herniation, you may see that. Likewise, if you --
3 I misspoke earlier. If you have a -- If you have
4 a thoracic disc herniation, I think you can see
5 some chest wall radiation and abdominal pain, but,
6 again, that would be extraordinarily rare. We
7 would not consider those to be typical lumbar
8 radiculopathy.

9 Q Okay. And as far as your opinions regarding the
10 questionnaire -- and let me just clarify. Was this
11 medical questionnaire submitted to you by Mr.
12 Samuels?

13 A Yes.

14 Q Did you all have any discussion about the answers
15 he would like to have to this questionnaire?

16 A Absolutely not. Even if he voiced an interest in
17 my checking one box versus the other one, that
18 would have absolutely no bearing on my answers.

19 Q Okay. But that questionnaire, would, again, --
20 And I think you testified earlier -- When you
21 indicated the -- the cause, in your opinion, of the
22 symptoms was the lifting of the wheelchair incident
23 on 10/9/17, again, that would be based upon the
24 truthfulness of that history reported by the
25 patient, wouldn't it?

1 A That is correct.

2 Mr. Cauthen: Okay. All right. That's
3 all I've got, Doctor. Thank you.

4 Re-examination

5 By Mr. Samuels:

6 Q Doctor, you're not aware of any other event that
7 would have caused this aggravation of a preexisting
8 condition other than lifting the wheelchair on
9 October 9th, 2017, are you?

10 A To my knowledge, there is not.

11 Q And this change in condition, is it consistent with
12 some sort of inciting event, such as lifting at
13 work?

14 A Yes.

15 Q And would it be speculation, given this history and
16 the information you have, to suggest that there's
17 some other event or some other cause for it other
18 than lifting the wheelchair?

19 A That would be correct.

20 Mr. Samuels: Thank you, Doctor.

21 Re-examination

22 By Mr. Cauthen:

23 Q Well, Doctor, -- I'm -- I'm sorry. I'm a little
24 confused, then, on that -- that last set of
25 questions. We've already been over the very first

1 visit to Midlands three days after the alleged
2 injury, 10/12 --

3 A Mm-hmm.

4 Q -- of 2017, and the history relayed to Dr. Ulrich
5 --

6 A Mm-hmm.

7 Q -- said nothing about lifting a wheelchair
8 whatsoever, did it?

9 A It did not specifically mention wheelchair. It
10 said lifting passengers, I believe, but it -- it
11 did not mention the word "wheelchair." We've
12 already established that.

13 Q Okay. It says -- Just looking at it right here --
14 and this is, again, Claimant's APA page 37, the
15 10/12/17 visit. "Patient indicated he was --"
16 This is what Dr. Ulrich put down. "He is driving
17 -- He is a driver and states that he developed
18 lower back pain with radiating pain down his left
19 leg while driving. Lifting passengers causes him
20 significant discomfort." By referring to lifting
21 passengers causing -- causes him significant
22 discomfort, he is -- he is not specifically
23 reporting a lifting -- a lifting incident, is he?
24 I mean, by -- based on that particular history
25 recorded by Dr. Ulrich, there is no reference to a

1 specific acute lifting injury there, is there?
2 He's talking about lifting patients, I guess, in
3 general?

4 A Correct.

5 Q Okay. And, so, the -- based on Dr. Ulrich's
6 report, it appears, would you agree, that the
7 origin of the injury as related by the patient
8 three days after the alleged accident is that he
9 developed lower back pain radiating down his leg
10 while driving? Is that -- Is that correct?

11 A If I know nothing else and just had this document,
12 that would be correct, but, I mean, obviously, he
13 has reported to us that there was a specific
14 lifting injury on 10/9/17, so we can't ignore that
15 fact.

16 Q And -- But that's different than his initial
17 report to Dr. Ulrich?

18 A That is correct.

19 Q And you would also acknowledge that there are often
20 issues of secondary gain in workers' compensation
21 claims?

22 A That is correct.

23 Mr. Cauthen: Okay. Thank you very much.

24 Re-examination

25 By Mr. Samuels:

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1 Q Doctor, do you see any evidence from Mr. McCoy that
2 he's seeking secondary gain?

3 A I do not.

4 Q Did -- Going back to page 37, I want to focus on
5 the part left out by Mr. Cauthen. If you read it,
6 quote, "He is a driver and states that he developed
7 lower back pain with radiating pain down his left
8 leg while driving. Lifting passengers causes him
9 significant discomfort. This has made his symptoms
10 worse," end quote. What does that indicate to you
11 about what's making his symptoms worse?

12 A Lifting the passengers.

13 Q And, in fact, he reported to you that lifting a
14 wheelchair, not passengers, -- He reported to you
15 lifting a wheelchair had made his symptoms worse;
16 is that right?

17 A That is correct.

18 Q And you were able to confirm that through the
19 objective physical exam and MRI scan, correct?

20 A Yes.

21 Q And your opinion agrees with Dr. Ulrich that this
22 is a work-related injury; is that correct?

23 A Yes.

24 Mr. Samuels: Thank you, Doctor.

25 Re-examination

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1 By Mr. Cauthen:

2 Q But, Doctor, what Dr. Ulrich has identified as the
3 mechanism of that injury is, in fact, driving, is
4 it not, driving a vehicle? Looking at this --
5 Looking at this sentence, "He is a driver and
6 states that he developed low back pain with
7 radiating pain down his left leg while driving.
8 Lifting passengers causes him significant
9 discomfort," there's -- there's nothing in that
10 sentence that would indicate that he's talking
11 about one or the other, driving --

12 A I mean, you would have to --

13 Q -- versus the --

14 A I believe you --

15 Q -- passengers, is there?

16 A -- would have to ask Dr. Ulrich that question --

17 Q Right. Right.

18 A -- because he is already saying that he believes
19 that this is a work-related injury at the end.

20 That's --

21 Q But we can't --

22 A -- that's his conclusion.

23 Q But we can't -- we can't just assume that? You and
24 I can't just assume that from that -- that sentence
25 here, can we, that he's talking about lifting

1 causing the injury versus driving causing the
2 injury? We can't assume that, can we?

3 A That's right. You would have to ask for Dr.
4 Ulrich's testimony.

5 Q Okay. That's fair enough.

6 Mr. Cauthen: Thank you.

7 Mr. Samuels: We're all done, Doctor.

8 Thank you. I appreciate it.

9 (Whereupon the deposition was concluded at
10 1:40 p.m.)

11 (Deponent has waived reading and signing.)

State of South Carolina)
) Certificate
 County of Lexington)

Be it known that the foregoing deposition of
 Ivan E. LaMotta, MD was taken before me;

That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
 to administer an oath;

That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 50
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.

Signed this 12th day of September 2018.

 Sandra M. Austin

Notary Public for South Carolina
 My commission expires August 29, 2023.

Note: Recordings are retained for twelve (12) months
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South Carolina Workers' Compensation Commission
WCC File # 1717573

Jeffrey McCoy,	)	
Employee,	)	Deposition
	)	
Claimant,	)	of
	)	
vs.	)	Slif Ulrich, MD
	)	
CroMed, LLC,	)	
	)	
Employer,	)	
	)	
Guarantee Ins. Co. in	)	
Liquidation/S.C. Property &	)	
Casualty Insurance Guaranty	)	
Association,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

Deposition of Slif Ulrich, MD, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 12:38 p.m., Tuesday, December 4, 2018, at Midlands Orthopaedics and Neurosurgery, 1910 Blanding Street, Columbia, South Carolina.

COPY

Reported by
Sandra M. Austin

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Appearances

For the Employee/
Claimant: P. Jason Reynolds, Esquire
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For the Employer/
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Reported By: Sandra M. Austin

Also Present: Keith Taylor

Index

Stipulations.	3
Examination by Mr. Cauthen.	3
Examination by Mr. Reynolds	23
Re-examination by Mr. Cauthen	29
Re-examination by Mr. Reynolds.	33
Certificate	36

Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

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Stipulations

The reading and signing of this deposition transcript is waived by the deponent and counsel for the respective parties.

Whereupon,

Slif Ulrich, MD, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Slif D. Ulrich.

Examination

By Mr. Cauthen:

Q Dr. Ulrich, my name is Mark Cauthen, and I represent the employer and insurance carrier in Mr. Jeffrey McCoy's workers' compensation claim, and, of course, we're here for your deposition today. I don't anticipate this is going to take very long because, as I understand it, you only saw the patient one time.

A That's my understanding, yeah.

Q Okay. All right. Let me -- Let's just start out here. If you would, just give us kind of your background, your educational -- your education and

1 training as a physician.

2 A Sure. So, I'm a orthopedic board-certified
3 surgeon. Specialty, hip and knee replacement.
4 Trenton, Baltimore for residency. Fellowship in
5 Louisville. Now I'm here in Midlands, Columbia.
6 Do you need more school and all that, too, or --

7 Q No, sir.

8 A -- just --

9 Q Board-certified?

10 A Yes, sir.

11 Q In what area?

12 A Orthopedics.

13 Q Okay. All right. And how long have you been with
14 Midlands?

15 A Two and a half years.

16 Q All right. Have you had an opportunity to review
17 -- Or let me ask you, what medical records have
18 you --

19 A I have --

20 Q -- received --

21 A I have --

22 Q -- as far as Jeffrey McCoy?

23 A I have my private note and -- my personal note and
24 the spine service, Blank's note. That's the only
25 two I -- I have available.

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- 1 Q Okay. How about the Providence Hospital? He had
2 two visits to the ER at Providence Hospital. Did
3 you happen to have those -- those reports?
- 4 A Not right now, but I probably reviewed it --
- 5 Q Yeah.
- 6 A -- for when he -- when I'd seen him.
- 7 Q Okay. Okay. All right. Let me ask you, when did
8 you first have an opportunity to see Mr. Jeffrey
9 McCoy as a patient?
- 10 A So, I have to use the notes because I can't recall
11 it, but it says 12 -- 10/12/2017.
- 12 Q Okay. All right. Can you tell us what history you
13 took from the patient at that time and the -- the
14 purpose of his visit and what history you took?
- 15 A My understanding is he was seen in the emergency
16 room on the 26th. I was on-call physician that
17 day. The person -- person -- The patient was
18 assessed in the emergency room and presents to my
19 office for emergency room visit follow-up with our
20 practice because we covered the call at Providence
21 Northeast emergency room.
- 22 Q Okay. Now, you didn't see him in the ER; you just
23 saw him on the 12th of October?
- 24 A Yeah, he -- Just in the office, yeah.
- 25 Q Just in the office --

1 A Mm-hmm.

2 Q -- okay -- as a follow-up. And what history did
3 you take from the patient as to what his problem
4 was on 10/12/17?

5 A My understanding is he had low back pain and
6 radiating leg pain. I cannot recall which side was
7 involved. Let me -- It looks like left -- left
8 lumbar or radiating pain to -- to the leg. Patient
9 stated to me that he visited the emergency room, I
10 think, multiple times, or at least twice, and that
11 he presents for further treatment recommendation in
12 regard to his left leg pain and low back pain.
13 Patient stated that he strongly feels it's a work-
14 related problem. He's -- He was a driver for -- I
15 don't know what company, but that he has to lift
16 patients and the driving and lifting patients
17 caused a severe worsening of his -- of his back
18 issues or -- or radiating symptoms.

19 Q Okay.

20 A And, so, -- Yeah. Go ahead.

21 Q I'm sorry. I didn't mean to stop you.

22 A Yeah. So, I assessed the patient, and then my
23 understanding is I referred him to our spine team
24 because I -- I don't take care of -- or I'm not
25 specialized to take care of back -- back issues or

1 the low back pain or --

2 Q Right.

3 A It's not -- not my specialty.

4 Q Okay. All right. Just looking at your note --

5 A Mm-hmm.

6 Q -- at your note from 10/ -- 10/12/17, you've

7 indicated on here that "Mr. McCoy, a 49-year-old

8 male presents for evaluation of low back pain.

9 He's a driver and states that he developed lower

10 back pain with radiating pain down his left leg

11 while driving. Lifting passengers causes him

12 significant discomfort, and this makes him worse."

13 Do you recall the patient relaying to you any

14 specific mechanism of injury that -- that caused --

15 or that he attributed to --

16 A I -- I cannot recollect or -- I can't remember,

17 no.

18 Q Okay. Your report indicates back pain while

19 driving and lifting -- lifting passengers causes

20 him significant discomfort and makes the symptoms

21 worse. Is that -- Is that as much as you can

22 recall about the specifics of what he told you as

23 to the origin of his -- of his symptoms?

24 A Yeah. It's too -- too long, so I cannot recollect.

25 Q Did the patient say anything to you or report

1 anything to you about lifting a wheelchair three
2 days before this on October 9, 2017?

3 A I cannot recollect, no.

4 Q Okay. And is there anything in your report
5 regarding the patient -- a report of the patient
6 lifting a wheelchair, anything in your report?

7 A I don't -- I don't think so. I mean, I'd have to
8 review it, but I -- I don't see it.

9 Q I mean, if the patient -- Well, certainly do
10 review it --

11 A Yeah.

12 Q -- if you -- and let me know --

13 A Yeah.

14 Q -- if you see anything in there as to whether the
15 patient mentioned anything about lifting a
16 wheelchair and -- and hurting his back or injuring
17 or re-injuring himself.

18 A No, I -- I didn't see it, so --

19 Q Now, if the patient had reported that to you, you
20 would have put that in your report, wouldn't you?

21 A I -- I cannot recall. I mean, if it's important to
22 me, I probably would have put it in, but I --
23 Probably I would, but I -- I can't recall.

24 Q I mean, it's not so --

25 A Mm-hmm.

1 Q -- you know, not so much as -- a question of
2 whether you recall. It's -- The question is, is
3 it a habit and practice of yours if a patient gives
4 you a history as to the origin of an injury or pain
5 to -- to recite that as -- as specifically as
6 possible in the history?

7 A I probably would have put it down if he would have
8 made that clear or specific, but my -- my
9 recollection is I -- I can't remember, and my
10 notes don't -- don't state it, so I cannot -- It's
11 too long. I can't remember. So, I can't
12 recollect.

13 Q So, just -- just based on what's in your report, it
14 wouldn't have -- it doesn't appear, then, he told
15 you -- said anything to you about lifting a
16 wheelchair?

17 Mr. Reynolds: Objection.

18 Mischaracterizing his statement.

19 A I -- I cannot recollect, sir. So, --

20 Q You do think you would have -- If he'd have told
21 you, if he had have said that, do you think you
22 would have listed it?

23 A I -- If I felt that it's important and related to
24 the injury, I probably would -- would have put it
25 in, yeah.

1 Q Yeah. If it's -- If it's explained to you how the
2 injury happened, that would be important, wouldn't
3 it?

4 A I mean, it's -- it's a long time. I can't really
5 recall the patient, so, depending on the
6 conversation, I -- I probably would have. The only
7 -- Probably the only thing I remember, it was a
8 work-related problem is what the patient
9 highlighted or -- or stated, but what the details
10 were, I cannot recollect.

11 Q You do have -- I'm just looking at the details --

12 A Yeah.

13 Q -- of your report. That's --

14 A Yeah.

15 Q -- all we have to go --

16 A Yeah. Yeah.

17 Q That's all we have to go on.

18 A Yeah.

19 Q Is there anything about this report -- Is there
20 any reason that this report would not be accurate
21 in terms of the history that you -- that you took
22 from the patient and put in the report?

23 A No. It should be accurate for the information I
24 had at that present given time.

25 Q Well, based on what the patient told you, right?

1 A Yeah. Yeah, --

2 Q Okay.

3 A -- I agree on that.

4 Q All right. Let me also -- Do you happen to have a
5 copy of the questionnaire that the patient
6 completed before he saw you on that same visit,
7 October 12?

8 A I do not have it on me.

9 Q You don't have it. Okay.

10 A No.

11 Q Let me just show you what I have.

12 Mr. Cauthen: And these are actually from

13 --

14 A Mm-hmm.

15 Mr. Cauthen: -- Mr. Samuel's' APAs, page
16 29 and --

17 Mr. Reynolds: I've got it. Thank you.

18 Mr. Cauthen: -- 20 to 34.

19 Q And I apologize for any highlights on here. I'm
20 just going to let you take a look at this with me
21 because I just want to ask you one or two quick
22 questions. Does this appear to be the medical
23 questionnaire that Midlands would have required or
24 asked Mr. McCoy to complete --

25 A That looks --

1 Q -- before he saw you?

2 A That looks like our forms, yes, sir. Mm-hmm.

3 Q And date -- the same date of visit, 10/12/17?

4 A Yes, sir.

5 Q Okay. We'll just flip over here --

6 A Mm-hmm.

7 Q -- to the top of the second page, --

8 Mr. Cauthen: Which is page 30 in Mr.

9 Samuels' APAs.

10 Q -- and it asks the question, "Reason for your visit

11 today," --

12 A Mm-hmm.

13 Q -- and, of course, he listed bulging disc. And the

14 next question asks is whether this -- whether this

15 is the result of an accident.

16 A Mm-hmm.

17 Q What did the patient put?

18 A It looks like he left it blank.

19 Q Left it blank?

20 A Yeah.

21 Q It also asks the question, well, "If yes, date of

22 accident, please describe," and then below that,

23 "Where did injury occur, work, auto, home, other?"

24 and would you agree the patient just left all that

25 blank?

1 A I agree on that, yes, sir.

2 Q Okay. And, so, if -- if you saw a patient three

3 days after an accident that he later attributed to

4 the source of his low back pain and radiating pain

5 --

6 A Mm-hmm.

7 Q You saw him three days after that. He's reporting

8 the accident occurring on 10/9/17, and you saw him

9 10/12/17. Wouldn't you expect the patient to tell

10 you about that accident that had just happened

11 three days earlier that he thought was causing his

12 pain?

13 A I assume so. I mean, he -- I think I put down in

14 -- that this was a work-related injury. That's

15 what I have from my recollection.

16 Q Mm-hmm.

17 A I cannot answer why the patient left those pages

18 blank. It's -- You'll probably have to ask him,

19 or maybe he didn't understood how to fill this out,

20 because those are not -- It's just a -- I mean, I

21 really -- I can't -- I don't know why he didn't

22 fill it out, so --

23 Q Well, he -- he mentioned to you, again, driving --

24 What -- Again, he was saying lower back pain,

25 developed lower back pain while driving --

1 A Mm-hmm.
2 Q -- and lifting passengers makes his symptoms worse.
3 Do you have anything other than that to -- to
4 explain the -- the origin of the patient's --
5 A I do not, no.
6 Q -- complaints, what he told you about the injury?
7 A Yeah.
8 Q That would be it, right?
9 A Well, we have to go with the note, so it's all I --
10 that we have.
11 Q Well, do you have a copy of the second visit when
12 he came back to see Dr. LaMotta on 10/26, --
13 A I do, sir.
14 Q -- '17?
15 A Yes, sir.
16 Q If you'll just take a quick look at -- Go to the
17 third page. Dr. LaMotta gives the -- gives the
18 history that he took from Mr. McCoy on that visit a
19 -- I guess --
20 A Mm-hmm.
21 Q -- ten days, almost two weeks, later.
22 A Okay. Yeah.
23 Q And here he gives a specific --
24 A Mm-hmm.
25 Q -- history of attempting to pick up a wheelchair at

1 work on 10/9/17 --

2 A Mm-hmm.

3 Q -- and experienced a flare-up of his low back pain.
4 Did the patient tell you anything like that when
5 you saw him on the 12th?

6 A I -- Sir, I cannot recall.

7 Q I mean, based on your report, you would agree it
8 would not appear so?

9 Mr. Reynolds: Object to the form.

10 A He -- I mean, he might have told me, but I -- I
11 really can't -- I can't -- My recollection, I -- I
12 don't know, and I'm normally very accurate with my
13 notes. So, I cannot recollect it.

14 Q You're normally very accurate with your notes?

15 A If -- Yeah. If -- If somebody has like a
16 specific trauma, I should be pointing it out, and,
17 so -- but I -- I can't recollect, so --

18 Q Well, I mean, I'm not asking you to --

19 A Mm-hmm.

20 Q -- to recollect --

21 A Yeah.

22 Q -- precisely what he told you when -- You know,
23 obviously, we have contemporaneous notes --

24 A Mm-hmm.

25 Q -- that we can refer back to, so -- so, hopefully,

1 that could refresh your --

2 A Mm-hmm.

3 Q -- memory. But, at any rate, if he had told you,
4 when you saw him on the 12th, these kind of details
5 about lifting a wheelchair on this specific date,
6 10/9/17, and having a flare-up of back pain, you
7 would have likely put that in your report, wouldn't
8 you?

9 A Most likely, yes, sir.

10 Q So, the report -- the detail and the history taken
11 by Dr. LaMotta when he saw the patient roughly two
12 weeks later, that's different than what you have in
13 your report, isn't it?

14 Mr. Reynolds: Objection.

15 Mischaracterizing the testimony.

16 A I mean, it's interpretation, I think, so --

17 Q Well, I don't want to guess. I --

18 A Yeah.

19 Q I don't want to --

20 A Yeah.

21 Q -- don't want to guess, but, you know, --

22 A It's --

23 Q You --

24 A -- a variation of my history, yes, sir.

25 Q Well, this is -- this is -- Where in your note

1 does it say the patient told you he was lifting a
2 wheelchair on 10/9/17?
3 A Yes, it's not in my note, so it's --
4 Q It's not in your notes at all?
5 A Yeah. So, it's different, yes, sir.
6 Q Okay. I'm just looking over these notes, because I
7 don't have too much more here, Doctor. Okay. The
8 -- The patient saw you on the 12th, and he relayed
9 to you that he had two emergency room visits,
10 September 18, 2017 and September 26th of '17, to
11 the Providence ER. Were the -- The symptoms that
12 the patient presented to you with, were they
13 consistent with his emergency room visits, the
14 complaints that he had in the emergency room?
15 A I don't have the emergency room -- Do you have the
16 reports on hand?
17 Q Okay.
18 A I cannot recall it.
19 Q Yeah, let me -- let me separate those out, and you
20 can take a quick look at them.
21 A Mm-hmm.
22 Q Okay. This is 9/26/17.
23 A This is 9/26. I don't have their assessment, but
24 it looks like the HPI is for the same problem, the
25 emergency room to my visit, low back pain

1 radiating, --

2 Q Okay.

3 A -- radiating lower back pain. There's no

4 assessment and plan, so I would --

5 Q Okay.

6 A But that's the --

7 Q And then there --

8 A -- last page, yeah.

9 Q And then there's a -- Does it indicate there's a

10 referral to Midlands Orthopaedics?

11 A Yes, sir.

12 Q And that referral would have been prior to the

13 alleged --

14 A Yeah.

15 Q -- injury on 10/9/17; is that correct?

16 A I think so, yes, sir.

17 Q That report -- That referral would have been in

18 September?

19 A From 9/26 and then --

20 Q Mm-hmm.

21 A -- referred to -- to my office on the 12th.

22 Q When you saw the patient on the 12th of October, is

23 it your understanding that you -- you were seeing

24 him for the symptoms that he had already been seen

25 twice at the Providence ER for?

1 A This was my understanding.
2 Q Okay.
3 A "On-call follow-up for low back pain with radiating
4 symptoms --
5 Q Okay.
6 A -- to the left --
7 Q Okay.
8 A -- leg."
9 Q Right. Okay.
10 A So, --
11 Q One -- One other question I've got, and I will be
12 finished, Doctor. Can you explain -- just explain
13 the difference between a lumbar CT scan and an MRI
14 of the lumbar spine?
15 A Sure. So, the one is using x-ray beams --
16 Q Mm-hmm.
17 A -- to create an image. It's more specific for bony
18 structures, less delible on soft tissue structures,
19 like nerve compressions or -- or disc problems.
20 MRI uses like a magnetic field to create an image
21 and has more specificity, sensitivity for low back
22 pathologies, like nerve compressions, edema,
23 fluids. So, CT is better for bone, MRI is better
24 for -- for soft tissue, --
25 Q Okay.

1 A -- in a brief -- brief word.

2 Q An MRI is -- is always going to be ordered in the
3 context of evaluating a patient for potential disc
4 surgery, isn't it, pretty much always?

5 A Yeah, it's -- it helps to -- to narrow down your
6 differentials --

7 Q Mm-hmm.

8 A -- and to correlate your clinical exam to the image
9 findings. So, those two findings need to -- to fit
10 --

11 Q Mm-hmm.

12 A -- in order to justify an intervention or -- or
13 treatment modalities. If the clinical picture does
14 not fit the image findings, then that's -- then
15 it's a problem --

16 Q Right.

17 A -- that we need to investigate more, but we want to
18 -- and for injection or for a surgery, I mean, we
19 need a roadmap, what level, what we're dealing
20 with.

21 Q The MRI is going to be much more detailed; is that
22 --

23 A It's --

24 Q -- correct?

25 A -- yeah -- a higher sensitivity, higher specificity

1 for --

2 Q Right.

3 A -- for a compressed nerve or for -- for a stenosis,
4 yes, sir.

5 Q So, if you're looking at an MRI versus a CT scan,
6 both of the lumbar spine, the CT scan done earlier,
7 you know, weeks earlier or a month earlier --

8 A Mm-hmm.

9 Q -- than the MRI, you can't really compare those two
10 to determine whether or not they're -- there was --
11 the pathology shown, I guess, in the -- or the
12 findings in the MRI were there or not when the CT
13 was done, can you, if you understand my question?

14 A Yeah, I think the MRI will -- in that -- in a back
15 problem or a spine pathology, it probably will give
16 you a better understanding of the pathology, and
17 this question probably should be answered by a
18 radiologist, but my understanding is -- My
19 personal preference is an MRI --

20 Q Mm-hmm.

21 A -- because it gives me more information than --

22 Q Right.

23 A -- than a CT scan.

24 Q So, you're -- you're comparing apples to oranges if
25 you're talking MRI and a CT scan; they're not the

1 same thing, right?

2 A They're not the same entity, -- I -- I agree with
3 you, --

4 Q Yeah.

5 A -- but they can both lead to the same finding, or
6 pathology. It depends on the -- what you're
7 looking for.

8 Q Okay. But, I mean, if you look at -- if you have a
9 patient -- Say, for example, you get a patient
10 that you're -- that's in treatment for chronic pain
11 and over the course of a couple years he's got a
12 series of MRIs. You need those prior MRIs to look
13 back and see if the -- if he has structural
14 worsening in that spine?

15 A Yeah, you can probably see -- Yeah, you can see a
16 flare-up on --

17 Q Right.

18 A -- on that or worsening of -- of a disease. You
19 probably can see it.

20 Q You wouldn't want to take an MRI and look back a
21 year and say -- compare it to a CT scan of the
22 lumbar spine; you'd want to compare it to an MRI,
23 wouldn't you?

24 A That would be optimal, but I still think a good
25 radiologist can use a CT scan and compare it to an

1 MRI and assess an interval change. But a perfect
2 scenario would be MRI to MRI. I -- I'll probably
3 have to agree with that, yeah.

4 Mr. Cauthen: All right. That's all the
5 questions I have, Doctor. Thank you.

6 The Deponent: Thank you.

7 Examination

8 By Mr. Reynolds:

9 Q Dr. Ulrich, just real quick, and I'm going -- I
10 believe he's taken his records back, so I'm going
11 to hand those to you.

12 A Sure.

13 Q I've handed you the first visit --

14 A Mm-hmm.

15 Q -- to Providence Health ER, which I believe was
16 dated 9/18, --

17 A Okay.

18 Q -- '17.

19 A Yeah.

20 Q You were asked several questions about whether you
21 were treating the patient for the same symptoms
22 when you saw him as with his two ER visits. Do you
23 remember those questions?

24 A If you can help me out and --

25 Q Sure.

1 A -- repeat them.
2 Q Well, I'll tell you exactly what I'm getting at
3 here.
4 A Mm-hmm.
5 Q In his visit to the ER on 9/18, --
6 A Mm-hmm.
7 Q -- it appears that he is presenting for lower left
8 back pain radiating into his left groin.
9 A Mm-hmm.
10 Q Do you see that?
11 A Yeah.
12 Q Okay. If I remember correctly, you saw him for
13 back pain that was radiating into his left leg and
14 not into his groin or abdomen; is that right?
15 A Yeah. I mean, it's a definition. Here the note
16 says buttocks. So, left lower extremity might be a
17 better term.
18 Q Okay. Now, is there any mention here that he has
19 pain on 9/18 radiating into his left lower
20 extremity?
21 A Not in the -- Not the first page I have here. It
22 just says buttocks, so --
23 Q Right. And your --
24 A -- and -- and groin, yeah.
25 Q Okay. So, he was asked about his present illness,

1 and he complained of pain radiating into the left
2 groin; is that right?
3 A Per --
4 Q Okay.
5 A -- the emergency note, yes, sir.
6 Q And then if you flip over to page 15, which you
7 were asked about, --
8 A Fifteen --
9 Q Yes, sir, at the very bottom, --
10 A Okay.
11 Q -- if you look at the very --
12 A Yeah.
13 Q -- bottom.
14 A Yeah.
15 Q I believe this is the September 26th, 2017 visit --
16 A Mm-hmm.
17 Q -- to the ER. Is that correct?
18 A Yes, sir.
19 Q And again is he complaining of low back pain
20 radiating into the abdomen?
21 A That's -- That's correct. Yes, sir.
22 Q Okay. Did he mention to you any pain in his
23 abdomen when you saw him on --
24 A I cannot recollect, no.
25 Q Okay. So, you mention in your -- When you saw him

- 1 here in this office several weeks later, you
2 mention there was radiculopathy, pain radiating
3 into the left leg, correct?
- 4 A That's what my note says, yes, sir.
- 5 Q Okay. All right. You were also -- Just one other
6 question -- and just to be clear, in the present --
7 History of Present Illness on both of the emergency
8 room visits there, we didn't see any mention of any
9 pain radiating into the left leg, right?
- 10 A It appears there's not -- No, it's not -- Nothing
11 in the note, no, sir.
- 12 Q And you -- When you saw him -- In your initial
13 note, you were asked a bunch of questions about
14 lifting passengers, --
- 15 A Mm-hmm.
- 16 Q -- lifting wheelchairs. You do note in your record
17 that lifting passengers causes him significant
18 discomfort; is that correct?
- 19 A That's correct.
- 20 Q And is discomfort also another word for pain?
- 21 A Yes, I think so.
- 22 Q When someone suffers a back injury, is it normal to
23 expect that they're going to have significant pain
24 when that injury occurs?
- 25 A I agree, yes, sir.

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1 Q Okay. So, if I'm reading this correctly, he did
2 mention to you that he had significant pain when
3 lifting at work, correct?
4 A That's correct.
5 Q Okay. And you defined this as a work-related
6 injury, correct?
7 A Yeah, as a correlation. Yes, sir.
8 Mr. Caughen: Object to the form of the
9 question.
10 A Yeah.
11 Q And, in fact, under Assessment/Plan, the first
12 sentence that you dictated is "This is a work-
13 related injury," correct?
14 A That is what my note says, yes.
15 Q Okay. So, when you saw him, there was no doubt in
16 your mind that this was a work-related injury that
17 you were treating him for, correct?
18 A Yeah. My understanding is he came not as a
19 workers' compensation claim, but like the brief
20 note I have, it appears that the pain got worse, or
21 was exaggerated, at work.
22 Q Yes, sir. Now, you mentioned, in speaking that --
23 about your -- your education and experience, that
24 your specialty is hip and knee pain?
25 A Yeah, degenerative hip and knee pain and

1 replacement surgery.

2 Q Okay. Is Dr. LaMotta the -- a specialist here that
3 specializes in spinal --

4 A That's --

5 Q -- injuries?

6 A That's -- He fellowship-trained in -- in spine,
7 yes, sir.

8 Q Dr. LaMotta has completed a questionnaire in this
9 case where he has given his opinions to a
10 reasonable degree of medical certainty. Would you
11 defer to Dr. LaMotta in his specialty as to
12 designating the mechanism of injury, --

13 Mr. Cauthen: Object to the form of the
14 question.

15 Q -- any treatment needed and the future prognosis
16 for the spinal injury?

17 A Can you keep it shorter?

18 Q Yes, sir. Dr. LaMotta has completed a
19 questionnaire --

20 A Okay.

21 Q -- in this case. Given his specialty in spine
22 injuries, would you defer to him as to his opinions
23 on the mechanism of injury?

24 Mr. Cauthen: Object to the form of the
25 question.

1 A Yes, I think so.

2 Q Okay. And would you defer to him on the proper
3 treatment going forward to that injury?

4 A Yes, sir.

5 Q And of the future prognosis of that injury?

6 A Yes, sir.

7 Mr. Reynolds: Thank you. I don't think
8 I have any more questions.

9 The Deponent: Mm-hmm.

10 Mr. Cauthen: A couple follow-ups real
11 quick, Doctor.

12 The Deponent: Yes, sir.

13 Re-examination

14 By Mr. Cauthen:

15 Q You were asked a question regarding the -- whether
16 or not the patient reported any abdominal pain to
17 you when you saw him on 10/12/18, and I believe the
18 reports from Providence were referenced where he
19 did complain of abdominal pain, and you indicated
20 you didn't -- you didn't see any indication that he
21 complained of abdominal pain to you?

22 A Not if my -- I don't think so. My note doesn't
23 state any abdominal --

24 Q Okay. Well, Doctor, --

25 A -- pain.

1 Q -- if you will take a look at the patient
2 questionnaire --
3 A Yeah.
4 Q -- that we've already discussed.
5 Mr. Cauthen: And this is page 33 in Mr.
6 Samuels' APAs.
7 Q If you will look at what's highlighted there.
8 A Yeah, abdominal pain.
9 Q In fact, the patient did complain of abdominal pain
10 when he was there on the 12th, didn't he?
11 A Yeah. On the questionnaire, yeah.
12 Q I'm sorry?
13 A Yeah, on the -- on the paper, yes, sir.
14 Q On that questionnaire, --
15 A Yeah.
16 Q -- that was one of his complaints when --
17 A Yeah.
18 Q -- when he came to see you on the 12th of October,
19 --
20 A Yeah.
21 Q -- wasn't it? Is that right?
22 A Well, I had seen him for low back pain, so --
23 Q But when -- When he listed his symptoms, --
24 A Yeah.
25 Q -- he -- you --

1 A On the Review of Symptoms, one of the real symptoms
2 is abdominal pain, yes, sir.

3 Q Okay. And then real quick, over -- back over to
4 your report of 10/12 of '17, you were asked a
5 couple questions about no -- no question in your
6 mind that the -- that you thought that this was a
7 work-related injury. I think you agreed with that?

8 A Yes. Yeah.

9 Q And in your report, would you agree with me that
10 the -- the mechanism and the cause of that work-
11 related injury, based on the patient's report to
12 you, was driving?

13 Mr. Reynolds: Object to the form.

14 Q Isn't that -- Isn't that correct?

15 Mr. Reynolds: Mischaracterizes the
16 statement.

17 Q Just looking at the report right here, "He is a
18 driver and states that he's developed lower back
19 pain with radiating pain down his leg while
20 driving," that's what the patient told you, wasn't
21 it?

22 A Yeah, driving, and I think lifting passengers is
23 what the next sentence says, --

24 Q Okay.

25 A -- so I think --

1 Q And then down at the -- If you'll look down here
2 at the -- at the bottom, right below your
3 Assessment/Plan, --

4 A Mm-hmm.

5 Q -- it says, "This is a work-related injury. He has
6 difficulty driving."

7 A Yeah, that's what my note --

8 Q Okay.

9 A -- says. Yeah.

10 Q So, as far as what caused the -- the patient's
11 apparent work-related injury, based on your report,
12 he relayed to you that the cause was driving,
13 didn't he?

14 Mr. Reynolds: Objection.

15 Mischaracterizes the report.

16 A (No response.)

17 Q I mean, based on your --

18 A Yeah.

19 Q -- report.

20 A Yeah, I mean, --

21 Q That's your report?

22 A Yeah, based on my report, I can say --

23 Q And he may have also said -- Well, you did include
24 lifting patients in the top part.

25 A Mm-hmm.

1 Q In the lower part, you said driving, so -- but
2 nothing about lifting a wheelchair, correct?

3 A I cannot recall the wheelchair.

4 Q Okay. .

5 Mr. Cauthen: All right. That's all I've
6 got. Thank you, Doctor.

7 The Deponent: All right.

8 Re-examination

9 By Mr. Reynolds:

10 Q Doctor, I really don't want to have to come back
11 and ask you any other questions, but if an
12 attorney's going to mince words and --

13 A Mm-hmm.

14 Q -- parse phrases, I've got to do --

15 A Sure.

16 Q -- the same thing. We've already been over this --

17 Mr. Cauthen: Object to the form of the
18 question.

19 Q We've -- We've already been over this at least
20 once, but did the patient present to you after
21 experiencing discomfort in his low back while
22 lifting passengers?

23 A I -- That's probably -- Yeah, I would say.

24 Q I mean, that's --

25 A Yeah.

1 Q Your report says, "Lifting --

2 A Yeah.

3 Q -- passengers causes him --

4 A Mm-hmm.

5 Q -- significant discomfort," correct?

6 A Yes.

7 Mr. Cauthen: Object to the form of the
8 question. It's --

9 Q The fact that it says --

10 Mr. Cauthen: -- an inaccurate
11 characterization.

12 Q The fact that it says he has difficulties driving,
13 -- I may have difficulties driving, --

14 A Mm-hmm.

15 Q -- but that doesn't mean that it's the driving that
16 --

17 Mr. Cauthen: Object to the form of the
18 question. Speculation.

19 Q -- injured me. Is that a fair statement?

20 A I think so, yes, sir.

21 Q You were just relating that that was one of the
22 things he had difficulties with --

23 A Mm-hmm.

24 Q -- due to his low back pain; is that fair?

25 Mr. Cauthen: Object to the form of the

1 question. Speculation.

2 A My recollection, he's a professional driver -- is
3 that correct -- or a transport driver. So, he --
4 Yeah, so, he has difficulties doing his job
5 driving, --

6 Q Right, --

7 A -- yeah.

8 Q -- because of his back injury; is that --

9 A Yes, sir.

10 Q -- fair?

11 Mr. Reynolds: Thank you very much. I
12 don't have anything else.

13 Mr. Cauthen: That's all. Thank you.

14 The Deponent: All right. Thank you,
15 guys.

16 (Whereupon the deposition was concluded at
17 1:11 p.m.)

18 (Deponent has waived reading and signing.)

State of South Carolina)
)
 County of Lexington) Certificate

Be it known that the foregoing deposition of
 Slif Ulrich, MD, was taken before me;

That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
 to administer an oath;

That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 35
 typewritten pages represents a true, accurate and
 complete transcription of the testimony so given at the
 time and place aforesaid to the best of my skill and
 ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.

Signed this 10th day of December 2018.



Sandra M. Austin

Notary Public for South Carolina
 My commission expires August 29, 2023.

Note: Recordings are retained for twelve (12) months
 from date of certification.

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