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SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case Number 2022-000154

Steven M. Brant, Employee, Claimant,

v.

Core Services, LLC and South Carolina Department of Transportation, Employer, Berkshire Hathaway Direct Insurance Company, Carrier, Markel Ins. Co. and South Carolina State Accident Fund, Carriers, and South Carolina Workers' Compensation Uninsured Employers' Fund, Defendants,

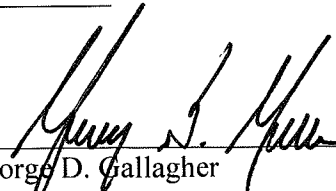
Of which Berkshire Hathaway Direct Insurance Company is the Appellant,

and

South Carolina Department of Transportation, South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employers Fund are the Respondents.

**RECORD ON APPEAL
VOLUME II**

December ~~28~~, 2022



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1907252

EMPLOYEE/CLAIMANT: STEVEN M. BRANT

EMPLOYER: S.C. DEPARTMENT OF TRANSPORTATION, ET AL.

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE
WITHIN HEARING WAS TAKEN ON THE 12TH DAY OF AUGUST, 2020,
COMMENCING AT THE HOUR OF 4:10 P.M., IN COLUMBIA, SOUTH
CAROLINA, TAKEN REMOTELY THROUGH COURTCALL BEFORE THE HONORABLE
SUSAN S. BARDEN, ATTENDED BY COUNSEL AS FOLLOWS:

**SHEILA SMALL
VERBATIM REPORTER**

**WHITWORTH COURT REPORTING
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
864-494-2705**

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ALSO PRESENT: MATT MANDEVILLE

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1 Pursuant to notice of hearing, the within hearing
2 was taken by the above-named court reporter, a notary
3 public for the state of South Carolina, taken remotely
4 through Courtcall in Columbia, South Carolina.

5 *

6 **BY COMMISSIONER BARDEN:**

7 Today's date is August 12th, 2020. This is
8 South Carolina Workers' Compensation Commission file
9 number 1907252. This is the case of the Claimant
10 Mr. Steven Brant who is appearing via CourtCall and
11 is represented by attorney Alan Tanenbaum, and, Mr.
12 Tanenbaum, I just want to make sure for the record,
13 you are good with you and your client participating
14 by CourtCall; is that correct, sir?

15 **BY MR. TANENBAUM:**

16 Yes, that's correct.

17 **BY COMMISSIONER BARDEN:**

18 All right. There are several named Defendants.
19 We have the South Carolina Department of
20 Transportation and its Carrier the State Accident
21 Fund, both of which are represented by Attorney Tim
22 Killen. We have Core Services, LLC who has not
23 chosen to present anyone in terms of representation,
24 nor has any representative of that company appeared
25 today whether electronically or live in person. We

1 have representing the Uninsured Employers Fund
2 Attorney Courtney Gruber, and we have representing
3 Berkshire Hathaway George Gallagher, and finally,
4 and again last but not least, we have representing
5 Markel Insurance Company Attorney Victoria
6 Abercrombie.

7 The purpose of today's hearing is to determine
8 issues raised in the Claimant's Form 50 and
9 responsive form 51s. There is no stipulation or
10 agreement as to average weekly wage and compensation
11 rate. The date of this accident was May 6th, 2019.
12 There a number of APAs that have been submitted.
13 Certainly, not anything from Core Services, but we
14 have APAs from the named Defendants.

15 Are there any objections to those APAs,
16 objections to jurisdiction, venue, or any other
17 items? And I'm going to go around the room, but
18 I'll start with you, Mr. Tanenbaum; do you have any
19 objections to these items?

20 **BY MR. TANENBAUM:**

21 No.

22 **BY COMMISSIONER BARDEN:**

23 All right. Mr. Gallagher, do you, sir?

24 **BY MR. GALLAGHER**

25 No, ma'am.

1 **BY COMMISSIONER BARDEN:**

2 Mr. Killen?

3 **BY MR. KILLEN:**

4 No, ma'am.

5 **BY COMMISSIONER BARDEN:**

6 Ms. Gruber?

7 **BY MS. GRUBER:**

8 No, ma'am.

9 **BY COMMISSIONER BARDEN:**

10 Ms. Abercrombie?

11 **BY MS. ABERCROMBIE:**

12 No, ma'am.

13 **BY COMMISSIONER BARDEN:**

14 Thank you so much. Without objection, the
15 Commission file becomes a part of the record with
16 the exception of self-serving declarations and
17 unstipulated medical reports.

18 Prior to going on the record, we held a
19 prehearing conference. It's the position of the
20 Claimant that he suffered a compensable injury by
21 accident arising out of and in the course and scope
22 of his employment on May 6th, 2019, on which day he
23 primarily injured both legs. He does have some
24 soreness in his back, but his primary injury is to
25 both legs. He seeks temporary total disability

1 benefits from May 6th, 2019, to the present and
2 continuing. He seeks medical treatment, and he's
3 asks that whoever is held responsible to provide him
4 treatment with specialists for his work related
5 injury. He has not reached maximum medical
6 improvement, so any determination of permanency is
7 premature. He also seeks reimbursement for any
8 expenses he's incurred this far with regard to the
9 evaluation and treatment of his legs and,
10 secondarily, his back. It's his position that the
11 doctor has written him out of work, is unable to
12 work since the date of the accident. He doesn't
13 really take a position as to who should be held
14 liable. He would just like his benefits to be
15 provided to him as soon as possible as he has been
16 waiting for benefits and waiting for a hearing to
17 boot.

18 All right. I'm going to ask the attorneys --
19 and I'm just going to go around the room, and that
20 way I can keep it straight as far as their
21 particular position on the record. And Mr.
22 Gallagher, in no particular order, I'm going to
23 start with you, sir.

24 **BY MR. GALLAGHER:**

25 Thank you, Commissioner. May I stay seated?

1 **BY COMMISSIONER BARDEN:**

2 I'm sorry?

3 **BY MR. GALLAGHER:**

4 May I stay seated?

5 **BY COMMISSIONER BARDEN:**

6 Yes, sir.

7 **BY MR. GALLAGHER:**

8 Okay, thank you.

9 **BY COMMISSIONER BARDEN:**

10 Absolutely.

11 **BY MR. GALLAGHER:**

12 Okay. Commissioner, regarding the merits of
13 the claim, I really don't have much to add.

14 **BY COMMISSIONER BARDEN:**

15 Can you hear him, Mr. Tanenbaum?

16 **BY MR. TANENBAUM:**

17 Yes.

18 **BY COMMISSIONER BARDEN:**

19 Okay. Go ahead, George.

20 **BY MR. GALLAGHER:**

21 I don't have much to add other than two things
22 I would note: number one, the out-of-work note from
23 Dr. McConnell was retroactive from the day he gave
24 the IME in February.

25 **BY COMMISSIONER BARDEN:**

1 Okay.

2 **BY MR. GALLAGHER:**

3 So, I would think that that opinion would have
4 to be discounted somewhat. The second thing I would
5 just note, Dr. McConnell did kind of hedge a little
6 bit and went ahead and rated him. So I would
7 submit, I think it's on the table for you to find
8 him at maximum medical improvement if you so choose,
9 even though that's not necessarily the Claimant's
10 position.

11 **BY COMMISSIONER BARDEN:**

12 Okay. Let me turn to Mr. Tanenbaum just so I
13 make sure I don't forget this. Mr. Tanenbaum,
14 alternatively, is your position he is at MMI, and
15 you're asking for a permanency award, because you
16 get to choose. You filed a 50. Or you are not
17 seeking a finding of permanency, and you would like
18 that deferred?

19 **BY MR. TANENBAUM:**

20 At this point, Your Honor, we're seeking
21 acceptance of the claim, ---

22 **BY COMMISSIONER BARDEN:**

23 Yes, sir.

24 **BY MR. TANENBAUM:**

25 --- and to defer permanency award.

1 **BY COMMISSIONER BARDEN:**

2 Okay. Thank you, sir. All right, anything
3 else, Mr. Gallagher?

4 **BY MR. GALLAGHER:**

5 With regard to merits, no, ma'am, but with
6 regard to coverage, I would just add, it's our
7 position of Berkshire Hathaway, biBERK -- Berkshire
8 Hathaway, direct insurance company to be precise,
9 otherwise known as biBERK. So I'm just going to
10 refer to my client as biBERK.

11 **BY COMMISSIONER BARDEN:**

12 Okay.

13 **BY MR. GALLAGHER:**

14 BiBERK previously insured Core Services, which
15 is a company that was contracted with the South
16 Carolina Department of Transportation to do some
17 road clearing. Core Services is a Kentucky
18 Corporation. The policy of insurance was entered
19 into in the state of Kentucky. Kentucky is listed
20 as the 3A endorsed state in the policy, and I think
21 that's important for a couple of reasons that I'll
22 get to.

23 **BY MR. TANENBAUM:**

24 Steven -- I think we've lost Steven.

25 **(INTERRUPTION-OFF THE RECORD COMMENTS)**

1 **BY MR. TANENBAUM:**

2 Your Honor, if you make a finding that he's at
3 MMI, yes, we would like for you to make a permanency
4 award at that point.

5 **BY COMMISSIONER BARDEN:**

6 All right. So, your primary position is, not
7 at MMI. Your alternative position is, if at MMI,
8 you would like a permanency award?

9 **BY MR. TANENBAUM:**

10 Yes.

11 **BY COMMISSIONER BARDEN:**

12 Thank you. I know you would prefer your client
13 to be on this call. Do you object, Mr. Tanenbaum --
14 because, listen, if you say "no," there's no right
15 or wrong answer. There's only your answer. Can
16 these parties go ahead and put their respective
17 positions -- well, he's coming back now.

18 **BY MR. TANENBAUM:**

19 Steven? My position is we move forward.

20 **BY COMMISSIONER BARDEN:**

21 Okay.

22 **BY MR. TANENBAUM:**

23 If he's in and out, I want to move forward with
24 the case.

25 **BY COMMISSIONER BARDEN:**

1 All right. I'm going to let Mr. Gallagher
2 finish now. Go ahead, Mr. Gallagher.

3 **BY MR. GALLAGHER:**

4 Thank you, Commissioner.

5 **BY COMMISSIONER BARDEN:**

6 You were mentioning the 3A endorsed state.

7 **BY MR. GALLAGHER:**

8 Yes, Kentucky's a 3A endorsed state. So, we
9 would submit that the contract, the policy, is
10 subject to the law of Kentucky, the interpretation
11 of the contract. It was entered into and governed
12 by the laws of Kentucky. But that's not to be
13 confused with the fact that South Carolina has
14 jurisdiction via the 3C endorsement and under the
15 other state's endorsement. But anyway, it's our
16 position that Core Services cancelled this policy
17 prior to this date of loss, and I would note that
18 the governing law on this is regulation 67-405,
19 which basically says that once a carrier, 405(c) to
20 be exact, or 405(c)(1) to even be more precise, and
21 it provides that a workers' compensation insurance
22 carrier wishing to cancel a policy of insurance
23 shall file a notice of termination in accordance
24 with 67-416. Such termination shall not be
25 effective until 30 days after receipt of ---

1 **BY THE WITNESS:**

2 It kicked me out. I was listening to everybody
3 talking. Then I went to -- went to speak, and it
4 kicked me back out, and I was trying to re-log in.

5 **BY COMMISSIONER BARDEN:**

6 Okay. Are you with us now?

7 **BY THE WITNESS:**

8 I am.

9 **BY COMMISSIONER BARDEN:**

10 All right, thank you. Mr. Gallagher, go ahead.

11 **BY MR. GALLAGHER:**

12 Commissioner, I was just saying such
13 termination shall not be effective until 30 days
14 after receipt by the Commission's authorized agent.
15 Of course, NCCI has been designated as the clearing
16 house and agent ---

17 **BY THE WITNESS:**

18 Your Honor, hello.

19 **BY COMMISSIONER BARDEN:**

20 Yes, sir, we can hear you. Go ahead, Mr.
21 Gallagher.

22 **(INTERRUPTION-OFF THE RECORD COMMENTS)**

23 **BY MR. GALLAGHER:**

24 So, the policy cancellation is not effective
25 until 30 days after NCCI get notice. In this

1 particular incident, our APA page eight sixty-three,
2 that's our APA tab 21, page eight sixty-three,
3 confirms that NCCI received notice of this
4 cancellation on April 2nd, 2019. Ergo, by operation
5 of this regulation, the policy was effectively
6 cancelled as of May 2nd, 2019, four days prior to
7 the date of this accident. Now, in anticipation of
8 ---

9 (INTERRUPTION)

10 **BY COMMISSIONER BARDEN:**

11 Go ahead.

12 **BY MR. GALLAGHER:**

13 In anticipation of arguments from the Uninsured
14 Employers Fund and the State Accident Fund, I think
15 they're going to challenge the cancellation on
16 grounds of notice to Core Services, and in response
17 to that anticipated argument, I would just point out
18 that the cancellation of the insurance policy is
19 governed -- it's a contract. It's a matter of
20 contract between Core Services and biBERK. They
21 have no standing. They were not a party to that
22 contract. They have no privity of contract. They
23 are not a third-party beneficiary to that contract.
24 They have no standing to challenge the effectiveness
25 of the cancellation based on notice to the insured.

1 That is just not something that they can bring up
2 because they weren't a party to that contract. All
3 we have to do, insofar as South Carolina is
4 concerned is satisfy the requirements of the
5 regulation, which have been satisfied.

6 Commissioner, I cited law in my brief regarding
7 privity of contract, and South Carolina contract
8 law, pretty much black letter, South Carolina
9 contract law carries the presumption that an
10 individual who is not a party to the contract lacks
11 privity to enforce it. So these entities are not
12 parties to the contract. They have no standing to
13 challenge this on notice. Plus, I would just go
14 beyond that, and note that there's no legal basis
15 for them to even assume that there's notice ---

16 (INTERRUPTION)

17 **BY COMMISSIONER BARDEN:**

18 Go ahead, Mr. Gallagher.

19 **BY MR. GALLAGHER:**

20 --- to assume that this notice was incorrect.
21 We took the 30(b)(6) deposition of the underwriting
22 representative from biBERK. She testified regarding
23 that. So, basically, they can't challenge this
24 notice to cancellation, and I would note that Core
25 Services insofar as they're -- they would be the

1 aggrieved party by the cancellation of their
2 insurance. They signed that compliance agreement
3 admitting that they were operating without workers'
4 compensation coverage in the state of South
5 Carolina. So they've already stipulated -- they
6 knew that their policy was cancelled. They
7 stipulated that they were operating in violation of
8 the act, and they would be the aggrieved party who
9 have standing to raise notice, and they haven't
10 raised that. The compliance agreement ---

11 **BY COMMISSIONER BARDEN:**

12 "They" meaning Core Services you're speaking
13 of?

14 **BY MR. GALLAGHER:**

15 Correct. The compliance agreement incidentally
16 is in Courtney's, the Uninsured Employers Fund, APA
17 page 94, where they basically stipulated that they
18 knew they didn't have insurance.

19 So that would be our position. We think the
20 policy was cancelled appropriately, and it was
21 effective cancellation by operation of this
22 regulation before the date of loss.

23 **BY COMMISSIONER BARDEN:**

24 Okay, thank you. And you'll have another
25 chance to ---

1 **BY MR. GALLAGHER:**

2 Yes, ma'am.

3 **BY COMMISSIONER BARDEN:**

4 --- respond to anyone else.

5 **(INTERRUPTION-OFF THE RECORD COMMENTS)**

6 **BY COMMISSIONER BARDEN:**

7 Okay, Mr. Killen.

8 **BY MR. KILLEN:**

9 Thank you, Commissioner. Tim Killen for the
10 State Accident Fund and the South Carolina
11 Department of Transportation. As far as the merits
12 of the case, we enter a general denial. If the
13 Department of Transportation is a statutory
14 employer, it's the Claimant's burden to prove that.
15 That has not been proven at this point. Going to
16 coverage, I'll first address the compliance
17 agreement. It appears at the UEF's APA page 94.
18 This has been litigated before the South Carolina
19 Supreme Court in *Bowman versus State Roofing*, 2005.
20 The validity of the cancellation is not investigated
21 for purposes of that agreement. That agreement
22 merely indicates that the employer is unable to
23 demonstrate compliance at the time the agreement is
24 signed, and we all know they sign it just to
25 decrease the fine or penalty that the Commission's

1 going to assess against them.

2 **BY THE WITNESS:**

3 Hello.

4 (INTERRUPTION)

5 **BY MR. KILLEN:**

6 The agreement on its face does not waive any
7 defenses ---

8 **BY THE WITNESS:**

9 Can you hear me?

10 **BY MR. KILLEN:**

11 --- the employer has ---

12 **BY COMMISSIONER BARDEN:**

13 Hold on one second, Mr. Killen.

14 Mr. Brant, we know you're there. Right now,
15 we're not -- we're going to be talking to you
16 momentarily. They're just putting their positions
17 on the record, and then you'll be testifying
18 shortly. Your attorney will be very soon asking you
19 questions about your injuries, okay?

20 (OFF THE RECORD DISCUSSION)

21 **BY COMMISSIONER BARDEN:**

22 All right. Go ahead, Mr. Killen. You were...

23 **BY MR. KILLEN:**

24 Thank you, Commissioner. I know where I was.

25 **BY COMMISSIONER BARDEN:**

1 I hope you remember where you were.

2 **BY MR. KILLEN:**

3 I do.

4 **BY COMMISSIONER BARDEN:**

5 Okay. You were talking about *Bowmen versus*
6 *State Roofing*.

7 **BY MR. KILLEN:**

8 Yes, ma'am, Al Danley's case. And I'll finally
9 say that the agreement is not binding on any other
10 parties including my client or Courtney's client.
11 Going to the actual workers' compensation policy,
12 it's at the UEF's APA, pages one forty-four through
13 one eighty-six. The address on the application for
14 insurance at UEF one forty-four, the address of the
15 insured Core Services is 828 East High Street, P & B
16 272, Lexington, Fayette, Kentucky, and the Zip code.
17 P & B being private mailbox. The address on the
18 policy is the same. That's at UEF APA, page one
19 fifty-three. The policy period is from 3/6/19 to
20 3/6/2020. South Carolina is included under part 3C
21 of the information page. At UEF page one fifty-
22 three, and the policy itself requires the mailing of
23 the cancellation to the address, quote, "shown in
24 item one of the information page." That's at UEF's
25 one sixty-seven.

1 Now we go to the notice of cancellation.
2 That's at UEF's page one seventy-four. The date of
3 mailing on that is April 2nd, and the notice
4 purports to be effective 19 days later. It's not
5 effective under regulation -- the regulation George
6 referenced 67-405(C)(1), which requires 30 days. So
7 it's not effective on its face. Then we go to the
8 proof of mailing for that notice of cancellation.
9 The proof of mailing is at UEF's page one seventy-
10 five. It fails to show that biBERK sent the notice
11 of cancellation to the address shown in item one of
12 the policy, and that's not only required by the
13 policy, the contract, it's also required by South
14 Carolina code section 38-75-730, and that governs
15 insurance policies in the state. And section 38-75-
16 730(b) states that quote, "Proof of mailing is
17 sufficient proof of notice; however, it also further
18 requires that, quote, "The notice must be given or
19 mailed to the insured and the agent at their address
20 shown in the policy." This proof of mailing doesn't
21 show that. They didn't send it to the private
22 mailbox. So the proof of mailing is insufficient,
23 and the policy was not cancelled properly, and the
24 cases -- there are plenty of cases out there where
25 carriers of the UEF, it challenges whether or not

1 another carrier properly cancels its policy in
2 accordance with South Carolina laws, which is
3 governing here. Not Kentucky. *Avant versus*
4 *Willowglen Academy, Rodriguez versus Romaro, Cruz*
5 *versus Cruz, Jeffrey versus Sunshine Recycling* are
6 just some of those examples that have made the Court
7 of Appeals and the Supreme Court. Privity of
8 contract is not required to challenge the
9 cancellation of a workers' compensation policy in
10 South Carolina. Especially where the failure to
11 properly cancel the policy imposes the liability on
12 the party challenging the cancellation. The
13 Department of Transportation, the State Accident
14 Fund, have standing to challenge whether or not
15 Berkshire Hathaway properly complied with South
16 Carolina statutory provisions, because the DOT
17 entered into their subcontracting agreement with
18 Core Services only after Berkshire Hathaway, biBERK,
19 sent an accord form 25 to the Department of
20 Transportation on March 5th, 2019. That's at UEF's
21 APA page 95. That shows workers' compensation
22 coverage. The Department of Transportation wouldn't
23 have entered into the contract if biBERK hadn't have
24 done that, if they haven't represented that there
25 was coverage, and Berkshire Hathaway failed to

1 notify them before the cancellation. So the
2 Department of Transportation, the State Accident
3 Fund, and even the UEF may be harmed if the
4 cancellation is upheld should this case be deemed to
5 be compensable because we'd be liable for payment of
6 benefits.

7 I think that sums my position up. Thank you.

8 **BY COMMISSIONER BARDEN:**

9 Thank you. Ms. Gruber.

10 **BY MS. GRUBER:**

11 Commissioner, on behalf of the UEF, I concur
12 with everything Mr. Killen said. I think our
13 positions are very similar, and, you know, we would
14 just concur that the policy in question is not
15 properly cancelled in accordance with South Carolina
16 law. The Kentucky law doesn't matter here, because
17 they were doing business here in South Carolina, and
18 therefore, they are subject to South Carolina law,
19 that the UEF and the State Accident Fund both have
20 standing in this case. Because my client and Mr.
21 Killen's client are going to be -- one of us is
22 going to be financially responsible for this claim
23 depending on what the decision is with regard to
24 whether or not the policy was properly cancelled or
25 not, and other than that, I concur with what Mr.

1 Killen said, and we're ready to move forward.

2 **BY COMMISSIONER BARDEN:**

3 Thank you. All right, Ms. Abercrombie, and
4 you're fine sitting.

5 **BY MS. ABERCROMBIE:**

6 Okay.

7 **BY COMMISSIONER BARDEN:**

8 Thank you so much for your courtesy though. Go
9 ahead.

10 **BY MS. ABERCROMBIE:**

11 So, my client is Markel, and our position is
12 that we were improperly added to this claim. If you
13 take a look at our exhibits, let's see, Exhibit 1 is
14 our coverage letter, which states that our coverage
15 does not start until after the date of accident on
16 May 15th of 2019, and as well as the application for
17 coverage by my client. That was filled out, let's
18 see, I believe the same date of 5/15 of 2019, and
19 therefore, we believe that we shouldn't be a party
20 to this claim.

21 **BY COMMISSIONER BARDEN:**

22 All right. Let me ask the attorneys as far as
23 Ms. Abercrombie's client, Markel. Do y'all agree
24 that she...?

25 **BY MR. GALLAGHER:**

1 I agree.

2 **BY COMMISSIONER BARDEN:**

3 Mr. Killen?

4 **BY MR. KILLEN:**

5 I have no argument that they can be liable.

6 **BY COMMISSIONER BARDEN:**

7 All right. Ms. Gruber?

8 **BY MS. GRUBER:**

9 I have no argument either, Commissioner.

10 **BY COMMISSIONER BARDEN:**

11 All right. Mr. Tanenbaum, the other three
12 defense lawyers believe that Ms. Abercrombie and
13 Markel -- well, not Ms. Abercrombie be released, but
14 Markel be released. We're not going to find Ms.
15 Abercrombie personally liable. Do you have any
16 objection to her being dismissed per the agreement
17 of all parties, Mr. Tanenbaum?

18 **BY MR. TANENBAUM:**

19 I don't have any objection.

20 **BY COMMISSIONER BARDEN:**

21 All right. Thank you, sir. All right. Well,
22 you heard that. By agreement, your clients are
23 dismissed.

24 **BY MS. ABERCROMBIE:**

25 Thank you.

1 **BY COMMISSIONER BARDEN:**

2 Thank you so much. It was nice seeing you.
3 You're free to leave, unless you want to join us,
4 because we'd love to have you.

5 **BY MS. ABERCROMBIE:**

6 Yes. Well, I'll sit and observe.

7 **BY COMMISSIONER BARDEN:**

8 Okay. That was my poor attempt at levity. You
9 don't have to stay.

10 **BY MS. ABERCROMBIE:**

11 No -- no, I'm fine to stay, because I know we
12 have a new associate that needs to...

13 **BY COMMISSIONER BARDEN:**

14 All right. Well, we're happy to have y'all
15 here. You're welcome to stay. You can go sit on
16 that not very comfortable bench. Right where you
17 are is fine. Just don't let me turn to you and ask
18 you to start answering questions, because I'll
19 forget that. Anywhere you want to be.

20 All right. Do I need to go back through? Do
21 you want to respond, Mr. Gallagher, to anything
22 you've heard, or are you satisfied with this?

23 **BY MR. GALLAGHER:**

24 No, ma'am, I would like the opportunity to
25 respond briefly to Mr. Killen's.

1 **BY COMMISSIONER BARDEN:**

2 Okay.

3 **BY MR. GALLAGHER:**

4 With regard to the privity issue, I would like
5 the opportunity to brief that and in response to Ms.
6 Gruber's memo of law.

7 **BY COMMISSIONER BARDEN:**

8 Okay.

9 **BY MR. GALLAGHER:**

10 Second of all, to the extent that a party who
11 may ultimately be responsible for -- a third party
12 who may ultimately be responsible for a claim via a
13 policy of insurance in which is has no privity of
14 contract, I would just note that Core Services would
15 ultimately be the liable party for this claim via
16 indemnification and the Uninsured Employers Fund's
17 right to indemnification. So the notion that the
18 Uninsured Employers Fund or the State Accident Fund
19 is the ultimately liable party is not correct. Core
20 Services is still going to be the ultimately liable
21 party as the uninsured employer for the claim. They
22 signed a compliance agreement. There was no
23 testament that -- they took the deposition of Core
24 Services prior to me being added as a party to the
25 claim, and at no time did Core Services ever dispute

1 the cancellation of their coverage. So that's not
2 the issue. With regard to the notice that the State
3 Accident Fund didn't get notice of the cancellation,
4 well, the law doesn't require that. The law doesn't
5 require that biBERK notify all of their insured
6 certificate holders that the policy's been
7 cancelled. They cancelled this policy after they
8 produced the certificate of insurance. They
9 cancelled Core Services policy for basically
10 fraudulent misrepresentation of its business
11 operations. It represented in its application to
12 biBERK that it did not engage in any land clearing
13 or tree cutting services, which is why when they
14 subsequently audited after they -- they wrote the
15 policy. They subsequently performed an audit,
16 determined that they had misrepresented. They
17 cancelled the insurance policy, and they did so in
18 accordance with the regulation. If you think about
19 a policy of insurance that's either endorsed in
20 multiple states or maybe effective via a 3C
21 endorsement in multiple states, there is no way that
22 an insurance company can comply with every single
23 state's laws regarding cancellation. So there has
24 to be a distinction between 3A and 3C endorsements.
25 If every single state's laws that's possibly

1 implicated by coverage of the policy, that's why we
2 have a regulation that says "If the regulation is
3 complied with, then the policy is effective --
4 effectively cancelled." That's why there's a 30-day
5 window that extends coverage by operation of law to
6 work out any mistakes or problems. That's why NCCI
7 is designated as the Commission's authorized agent.
8 I mean, if you go to the Commission's website and
9 use the E-Verify coverage verification tool, you
10 plug in Core Services. You plug in this date of
11 loss, guess who doesn't appear as the carrier?
12 BiBERK. Because this regulation was complied with,
13 it very clearly was -- notice was given in
14 accordance with this regulation 30 days from the
15 date of notice received on April 2nd, which would
16 have extended coverage only to May 2nd.

17 So that's just my position reply to Mr.
18 Killen's arguments, but I would also -- again, I
19 would like the opportunity to brief this issue
20 further.

21 **BY COMMISSIONER BARDEN:**

22 You will have a couple of weeks to do that.

23 **BY MR. GALLAGHER:**

24 Thank you.

25 **BY COMMISSIONER BARDEN:**

1 All right. Mr. Killen, are you satisfied with
2 your previous summary?

3 **BY MR. KILLEN:**

4 In response to Mr. Gallagher briefly.

5 **BY COMMISSIONER BARDEN:**

6 Okay.

7 **BY MR. KILLEN:**

8 The deposition of someone from Core Services
9 was taken, and it's been submitted with Ms. Gruber's
10 APA submissions. As you'll read in that deposition,
11 it wasn't quite that he didn't challenge the
12 cancellation, he didn't know anything about the
13 insurance policy. It was some other lady in the
14 business who knew everything about insurance. Will
15 Renfrow, the guy who showed up on the phone, he
16 didn't know anything about cancellation or
17 insurance. He thought he had it. And secondly, if
18 I understood him correctly, he wanted different
19 methods of cancellation for 3A and 3C states. Any
20 -- BiBERK writes insurance for South Carolina.
21 They're subject to South Carolina law. They're
22 subject to 38-75-730 like every other carrier is,
23 and compliance is determined by -- you know, there's
24 a uniformed standard out there that's determined by
25 NCCI. That's why we have NCCI, and that's why South

1 Carolina has bought into it. And whether or not
2 coverage shows on the NCCI's website doesn't mean
3 that it wasn't cancelled properly or improperly. It
4 just means that it's like the compliance agreement.
5 It's just it's not investigative. In fact, they
6 said it was cancelled on April 21st, which is,
7 again, in contravention of the South Carolina Code
8 of Regulations, which requires 30 days rather than
9 19. So that's all.

10 **BY COMMISSIONER BARDEN:**

11 Ms. Gruber, anything else?

12 **BY MS. GRUBER:**

13 Nothing, no, ma'am.

14 **BY COMMISSIONER BARDEN:**

15 All right. Okay, Mr. Tanenbaum, we are ready
16 for you to call your first and only witness, which
17 is Mr. Brant. So can Mr. Brant hear us? Is he
18 here?

19 **(INTERRUPTION-OFF THE RECORD COMMENTS)**

20 **BY COMMISSIONER BARDEN:**

21 Mr. Brant, can you hear me, sir?

22 **BY THE WITNESS:**

23 Yes -- yes, ma'am. I'm sorry.

24 **BY COMMISSIONER BARDEN:**

25 No, no problem at all. We're sorry about the

1 technical difficulties. We're doing the best we
2 can.

3 I'm going to swear you in now, okay? I would
4 like you to raise your right hand, but I'm not there
5 to watch you do it. So do you swear or affirm to
6 tell the truth, the whole truth, and nothing but the
7 truth?

8 **BY THE WITNESS:**

9 Yes, ma'am.

10 *

11 The witness was duly sworn to tell the truth, the
12 whole truth, and nothing but the truth concerning the
13 matter herein:

14 **STEVEN M. BRANT,**

15 Being first duly sworn, testified on his oath as follows:

16 **BY COMMISSIONER BARDEN:**

17 All right. Please state your full name for the
18 record.

19 **BY THE WITNESS:**

20 Steven Maynard Brant.

21 **BY COMMISSIONER BARDEN:**

22 Is "Maynard" M-a-y-n-a-r-d?

23 **BY THE WITNESS:**

24 Yes, ma'am.

25 **BY COMMISSIONER BARDEN:**

1 Okay. I'm going to ask you to answer any
2 questions that Mr. Tanenbaum has for you first.

3 But sir, before we begin, I know you're not
4 feeling well today. Are you capable of
5 understanding questions that are being asked of you
6 today?

7 **BY THE WITNESS:**

8 Yes, ma'am.

9 **BY COMMISSIONER BARDEN:**

10 Are you capable of answering those questions?

11 **BY THE WITNESS:**

12 Yes, ma'am.

13 **BY COMMISSIONER BARDEN:**

14 Are you under the influence of any drugs to
15 treat your symptoms that would affect your ability
16 to answer questions?

17 **BY THE WITNESS:**

18 No, ma'am.

19 **BY COMMISSIONER BARDEN:**

20 All right. Thank you so much. Mr. Tanenbaum,
21 go ahead, sir, whenever you're ready.

22 **BY MR. TANENBAUM:**

23 Thank you.

24 **DIRECT EXAMINATION BY MR. TANENBAUM:**

25 Q. Steven, what is your address?

1 A. 90 Live Oak Lane, Barnwell, South Carolina 29812.

2 Q. Thank you. And Steven, can you tell us what
3 happened when you were injured on May 6th, 2019?

4 A. My supervisor told me a tractor had broke down, and
5 he told me to get on the seat of it. He hooked a
6 rope to it -- a rope to it, and we was going to pull
7 it, tow it off the side of the road to a safer
8 location, and in the process of that, when he was
9 towing it, for some reason, it started standing end
10 on end, and when it got up to the point to where I
11 felt that it was going to roll over, I jumped off of
12 it, because I did not want to roll over with the
13 tractor.

14 Q. And what made you jump off the tractor?

15 A. Fear, I guess. Fear, and not wanting the tractor to
16 roll over on me.

17 Q. And so, what happened when you got off of the
18 tractor?

19 A. I jumped off, and when I did, I landed on my feet
20 and instantly hit the ground, and I could not walk.
21 I could not move my legs.

22 Q. Do you know what happened to your legs when you hit
23 the ground? In other words, ---

24 A. I broke my tibia and fibula in both my legs and had
25 to have metal and screws in the left leg to put 'em

1 -- put my bone -- my bone back together.

2 Q. And at the time that this accident happened, who
3 were you employed by?

4 A. Core Services.

5 Q. And what was your job with Core Services?

6 A. Tractor operator.

7 Q. Okay. And how much were you earning as an employee
8 of Core Services?

9 A. Fifteen dollars an hour, basically a hundred-and-
10 fifty dollars a week.

11 Q. How many hours a week were you working at the time
12 that you were injured?

13 A. At that forty to fifty hours a week.

14 Q. And what sort of work were you doing as a tractor
15 operator?

16 A. We had DOT contracts. We cut the grass on the side
17 of the road for DOT.

18 **BY COMMISSIONER BARDEN:**

19 Sir, ---

20 **BY THE WITNESS:**

21 Yes, ma'am.

22 **BY COMMISSIONER BARDEN:**

23 --- do you need to get some water or anything;
24 are you okay?

25 **BY THE WITNESS:**

1 I -- I think I got the COVID-19. I'm waiting
2 on tests results.

3 **BY COMMISSIONER BARDEN:**

4 Okay. Go ahead, sir. If you need to take a --
5 go ahead.

6 **BY MR. TANENBAUM:**

7 Steve, are you okay?

8 **BY THE WITNESS:**

9 Yes, sir -- yes, sir, I'm fine.

10 **DIRECT EXAMINATION RESUMED BY MR. TANENBAUM:**

11 Q. What county were you injured in?

12 A. Beaufort County.

13 Q. And where were you taken for care after the
14 accident?

15 A. I was taken to Beaufort Memorial and dropped off and
16 left.

17 Q. Who transported you there?

18 A. My supervisor, J.D.

19 Q. Is he the person who was there when you were
20 injured?

21 A. Yes, he's the one that was doing -- he was on the
22 tractor that was doing the towing. Yes, sir, he was
23 there.

24 Q. So, he was on the tractor that was towing the
25 disabled tractor that you were on?

1 A. Yes, sir.

2 Q. Where did you go after that for treatment?

3 A. Medshore transported me to MUSC.

4 Q. And have you had treatment other than at MUSC?

5 A. No, sir.

6 Q. Okay. So, the bills that you have incurred as a
7 result of this accident, they've been put into
8 evidence as an exhibit. How about the wheelchair
9 from LifePoint, Inc., how long were you in the
10 wheelchair for?

11 A. For roughly about two, two-and-a-half months. They
12 were called to come and get it and never come and
13 got it.

14 Q. Now, you had some preexisting issues with your
15 knees; is that right?

16 A. Yes, sir.

17 Q. Okay. And you received some money for your knees in
18 the past; is that right?

19 A. Yes, sir.

20 Q. What years were those?

21 A. Sir?

22 Q. What years did you receive money for your knees?

23 A. I can't remember exactly. Roughly, eight years ago.
24 Eight, eight-and-a-half years ago, and the other one
25 was about six years ago roughly, around about there.

1 I don't know exactly.

2 Q. Now, have you been able to work since the accident;
3 have you been able to earn any money?

4 A. I tried to earn some money to help support my kids,
5 but my legs stopped me from doing that, but I have
6 tried, yes, sir.

7 Q. Okay. How many places have you tried to work, or
8 have you worked?

9 A. I haven't went to work like that. I have just tried
10 to, you know, crawl up on a lawnmower and tried to
11 cut some -- a riding lawnmower to try to cut some
12 grass to try to make money.

13 Q. The attorney for the other side is going to ask you
14 about your earnings. I just want you to answer
15 those questions they ask.

16 A. Yes, sir.

17 Q. Now, what's going on with your back?

18 A. It's just -- it -- it's swollen, and it's painful
19 all the time, and I have a knot on -- I have a knot
20 on the -- hold on, let me feel. I have a knot, if
21 you're looking at my back, on the right side of my
22 lower back right before it connects to my butt bone.

23 Q. Are you asking the Commissioner to order that you be
24 given more medical care for your injuries?

25 A. Yes -- yes -- yes, sir.

1 **BY COMMISSIONER BARDEN:**

2 Sir, when did the back -- when did you first
3 start having the back problems?

4 **BY THE WITNESS:**

5 It -- it stayed sore for a little bit, but I
6 thought I'd get over it due to the injury, but it
7 really got bad when I got up on my walker and
8 started walking, ---

9 **BY COMMISSIONER BARDEN:**

10 Okay.

11 **BY THE WITNESS:**

12 --- tried to walk again.

13 **BY COMMISSIONER BARDEN:**

14 All right, thank you. Mr. Tanenbaum.

15 **BY MR. TANENBAUM:**

16 No further questions.

17 **BY COMMISSIONER BARDEN:**

18 All right. Please answer any questions that
19 Mr. Gallagher has for you. I know you can't see Mr.
20 Gallagher, but he is here, and he represents
21 Berkshire Hathaway.

22 Mr. Gallagher.

23 **BY MR. GALLAGHER:**

24 Commissioner, may I have one moment? I may not
25 have any questions.

1 **BY COMMISSIONER BARDEN:**

2 Okay, that's fine. Take your time.

3 **CROSS-EXAMINATION BY MR. GALLAGHER:**

4 Q. Mr. Brant, I just have one question right now. Is
5 your overall condition better or worse or about the
6 same than it was at the time Mr. Tanenbaum sent you
7 to see Dr. Bright McConnell in February of 2020?

8 A. It's staying about the same with the swelling in the
9 legs and the constant aching and all that stuff, and
10 the back stays sore. The knot's been there, but I
11 have gotten a tad bit better since then. I don't
12 have to use the cane anymore, but I have gotten a
13 little bit better.

14 Q. And at the time you saw Dr. McConnell in February of
15 2020, how long had your condition been at that
16 level?

17 A. When I first -- when I seen him?

18 Q. When you saw him, how long had you been at the level
19 you were at when you saw him in February of 2020?

20 A. About -- I've got the (inaudible). It's been
21 probably gradually over the last two or three months
22 roughly.

23 Q. Let me try to rephrase my question, because I'm
24 asking you -- if you think back to how you were when
25 you saw Dr. McConnell in February, ---

1 A. Yes.

2 Q. --- I'm asking you how long had you been at that
3 level?

4 **BY COMMISSIONER BARDEN:**

5 In February?

6 **BY MR. GALLAGHER:**

7 Yes.

8 **BY THE WITNESS:**

9 When -- when I seen him in February?

10 **CROSS-EXAMINATION RESUMED BY MR. GALLAGHER:**

11 Q. Yes.

12 A. You're not talking about the surgery. You're
13 talking about up to the day I seen him?

14 Q. Yes, how long had you been the way you were in
15 February at the time you saw him in February?

16 A. Let's see, let me think back. I was bedridden for a
17 little bit, then I got in my wheelchair. When I
18 seen him, I did -- the point I was at when I seen
19 him -- seen him, I'd been where I was at for about a
20 month.

21 **BY MR. GALLAGHER:**

22 Okay, that's all the questions I have, sir.

23 **BY COMMISSIONER BARDEN:**

24 Mr. Brant, I have a question before I turn the
25 floor over to someone else. Tell me what problems,

1 if any, you're having with regard to your legs, and
2 you can start with either leg. Just tell me which
3 one you want to start with.

4 **BY THE WITNESS:**

5 The left one, it has got screws and stuff in
6 it. It -- it swells up to where like I'm retaining
7 a lot of fluid on it, and when I try to walk ---

8 **BY COMMISSIONER BARDEN:**

9 Where does it swell; is it your ankle, your
10 knee, your thigh; where does it swell?

11 **BY THE WITNESS:**

12 From my -- about middle way from my calf up
13 into my knee.

14 **BY COMMISSIONER BARDEN:**

15 Calf into the knee, okay. And how often does
16 it swell; does it stay swollen, or does it come and
17 go?

18 **BY THE WITNESS:**

19 It stays a little swollen, but it gets worse at
20 times.

21 **BY COMMISSIONER BARDEN:**

22 And what makes it worse?

23 **BY THE WITNESS:**

24 Excessive walking.

25 **BY COMMISSIONER BARDEN:**

1 Okay. Any other problems with the left before
2 we move to the right?

3 **BY THE WITNESS:**

4 The left one, sometimes when I'm walking, it
5 likes to get wobbly and give out.

6 **BY COMMISSIONER BARDEN:**

7 Okay. All right, anything else before you talk
8 about the right one?

9 **BY THE WITNESS:**

10 Nothing besides the aching all the time with
11 that. I knew that was going to happen.

12 **BY COMMISSIONER BARDEN:**

13 Okay.

14 **BY THE WITNESS:**

15 The aching and the pain that stays in it.

16 **BY COMMISSIONER BARDEN:**

17 All right. What about the right?

18 **BY THE WITNESS:**

19 Well, pretty much the same thing. It stays a
20 little swollen, but it gets worse at -- at times
21 with excessive walking, and it likes to -- it likes
22 to get wobbly on me but not as much as the left one
23 does, but it wants to get wobbly and give out on me
24 too, and I'll fall -- I'll fall on the floor.
25 That's both legs. When it gives out, I fall.

1 **BY COMMISSIONER BARDEN:**

2 Okay. All right, please answer any questions
3 Mr. Killen has. And of course, we're going to go
4 back around the room so everybody will have a chance
5 to follow up with anything I asked.

6 Mr. Killen.

7 **BY MR. KILLEN:**

8 Thank you, Your Honor.

9 **CROSS-EXAMINATION BY MR. KILLEN:**

10 Q. Mr. Brant, Tim Killen. I represent the DOT. How
11 much money have you made since your accident?

12 A. How much money have I made since my injury? Maybe a
13 thousand dollars, maybe.

14 Q. And what were you doing to make that money?

15 A. I was just doing some like trying to get on a
16 lawnmower and cut grass for people to try to help
17 take care of my children.

18 Q. Okay. And the money you earned in 2019, did you
19 report that on your tax returns this year?

20 A. I did not file -- I did not file tax returns since
21 2015.

22 Q. Why not?

23 A. Because I was doing a lot of work to where it was no
24 taxes taken out, and I made -- I fell to where I
25 didn't have to make -- I didn't have to file because

- 1 I made \$12,000 or less on paper.
- 2 Q. Including when you worked for Core Services?
- 3 A. I never received a W2 from them, ---
- 4 Q. You made \$12,000 or less when you worked ---
- 5 A. --- so I did not file.
- 6 Q. Did you make \$12,000 or less when you worked for
- 7 Core Services?
- 8 A. Did I make \$5,000 when I worked for Core Services?
- 9 Q. Did you make 12 ---
- 10 A. Was that your question?
- 11 Q. My questions was, did you make \$12,000 or less when
- 12 you worked for Core Services?
- 13 A. Yes, I did.
- 14 Q. How long did you work for Core Services?
- 15 A. How long was I at Core? About three months. Three-
- 16 and-a-half months, give or take a few days or, you
- 17 know...
- 18 Q. So, when you've made money since your accident, who
- 19 have you worked for?
- 20 A. Just random family members. And my dad -- my dad
- 21 knew some people that were trying to help me out
- 22 because I needed the help.
- 23 Q. Just individuals or any companies?
- 24 A. No, just individuals.
- 25 Q. Have you seen a doctor for your back?

1 A. No, I have not.

2 Q. Have you told any doctors that you were having
3 trouble with your back?

4 A. I told a doctor in February that my back -- my back
5 was staying sore.

6 Q. That's the doctor your lawyer sent you to?

7 A. Sir?

8 Q. The doctor your lawyer sent you to?

9 A. Yes.

10 Q. All right. How much did you receive for your first
11 workers' compensation claim?

12 A. After attorney fees, 36,000, 38,000. Before
13 attorney fees, roughly, I think it was about 65 or
14 68, something like that.

15 Q. All right. And what body part or ---

16 A. It -- it was in that range.

17 Q. What body part or parts did you injure in that
18 claim?

19 A. I tore my meniscus. I tore my meniscus and had
20 surgery. I went back to work and reinjured it, and
21 they had to go back in. So my -- it was my meniscus
22 tear.

23 Q. Which knee?

24 A. The left knee.

25 Q. All right. And how much did you make ---

1 A. It would be right knee. They put the right knee
2 into it too, because I was starting to have issues
3 with -?? both knees, so my attorney had combined
4 both knees. Somehow my attorney at that point in
5 time combined both knees into it, because I had to
6 have surgery on it, on -- on the left knee again. I
7 -- I don't know how he combined both of them.

8 Q. And who was your employer?

9 A. Orkin Pest Control.

10 Q. Did you have to go to a hearing for that?

11 A. No, my first workers' comp -- Excuse me, I'm sorry.
12 Let me take that back. The first one I had, they
13 called me and told me that I needed to come to a
14 hearing room. At that point in time, I didn't have
15 an attorney. And they offered me money, and I took
16 it, because then I went back to work, and my knee
17 blew out again, and then that's when I hired an
18 attorney, and they were trying to make me back pay
19 what they had already gave me before I hired the
20 attorney. But I had -- the first time they called
21 me out of the blue and told me I had a meeting with
22 the Commissioner due to my injury, and that's before
23 I had an attorney representing me at that point in
24 time.

25 Q. All right. Did you ever go to a hearing on your

1 first case?

2 A. The first one I got the actual settlement, no, I
3 didn't never -- never actually went to a hearing.
4 They just settled over the phone with emails or back
5 and forth offices between the attorneys.

6 Q. All right. How much did you get for your second
7 workers' compensation case?

8 A. The second one, I was working for a temp service,
9 and I think it was \$8,000 I received after he took
10 his 7,000, after he took his fees.

11 Q. After your attorney took his fees you mean?

12 A. Yeah, after my attorney took my fees -- his fees
13 out.

14 Q. What body part or parts did you injure in that
15 claim?

16 A. My right knee.

17 Q. Have you had any other workers' compensation claims
18 other than those two and this one we're here about
19 today?

20 A. I was working part time at a restaurant, but I never
21 -- I got hurt. A keg fell on me, and a knife stuck
22 me, but it was never no attorney hired or nothing
23 like that. They just paid my doctor's bills, and
24 that was done.

25 Q. Are you still behind on child support?

1 A. Sir?

2 Q. Are you still behind on your child support?

3 A. Yes, I am.

4 Q. How far behind are you?

5 A. Eleven -- eleven thousand dollars roughly. I don't
6 know exact -- I can't -- I don't know the exact
7 amount because I don't have the piece of paper in
8 front of me.

9 Q. You've gotten a letter ---

10 **BY MR. TANENBAUM:**

11 I object, relevance. What's the relevance of
12 his child support?

13 **BY COMMISSIONER BARDEN:**

14 Mr. Killen [sic], go ahead and answer the
15 question.

16 **BY MR. KILLEN:**

17 I'll move on.

18 **BY COMMISSIONER BARDEN:**

19 What?

20 **BY MR. KILLEN:**

21 I'll move on.

22 **BY COMMISSIONER BARDEN:**

23 All right. He's moving on, he's withdrawing.
24 Go ahead.

25 **BY THE WITNESS:**

1 Hello.

2 **BY COMMISSIONER BARDEN:**

3 Mr. Killen will be right with you. He's
4 looking at his questions.

5 **BY THE WITNESS:**

6 Okay.

7 **BY MR. KILLEN:**

8 That's all the questions I have. Thank you.

9 **BY COMMISSIONER BARDEN:**

10 All right. Ms. Gruber.

11 **CROSS-EXAMINATION BY MS. GRUBER:**

12 Q. Mr. Brant, didn't you testify in your deposition
13 that you sometimes worked 40 hours a week making
14 \$600 a week?

15 A. I can't -- I can't hear you.

16 Q. Okay. Didn't you testify in your deposition that
17 you made -- sometimes you worked 40 hours a week,
18 and sometimes you worked 50?

19 A. At the point in time of my injury, we were working -
20 - we -- there were a couple of weeks that we worked
21 40 hours at the beginning, but after that,
22 everything went to 50 hours. That's why I said, "40
23 to 50 hours." Because we worked Monday through
24 Saturday.

25 Q. Yes, but we don't have any -- you don't have any

1 payroll records, do you?

2 A. Well, after the -- the first couple of weeks,
3 everybody -- everybody went to 50 hours a week. So
4 50 a week at that point in time, at the time of my
5 injury.

6 Q. Okay. Well, we're talking about your entire
7 employment with Core Services. You don't have any
8 pay stubs or any documentation that would prove how
9 many hours a week you were actually working during
10 that entire time, do you?

11 A. Because he told us he was going -- he would give us
12 a -- a printed check and told us that he would bring
13 our pay stubs to us, and they never got -- they
14 never got brought or never showed. I asked about
15 them numerous times, and he said he would give them
16 but never provided 'em.

17 Q. Yes. Mr. Brant, my question to you, sir, was very
18 simple.

19 A. Core Services never provided the pay stubs.

20 Q. My question to you is very simple. You can answer
21 "yes" or "no." Do you have any pay stubs or
22 documents proving what your earnings were when you
23 worked at Core Services?

24 A. No, I do not.

25 Q. Okay. Now, your job ---

1 A. It's hard -- hard to hear you. I apologize.

2 Q. Okay. Well, your job at Core Services was cutting
3 grass on the side of the road for the Department of
4 Transportation?

5 A. Yes, ma'am.

6 Q. Okay. Did you ever have to cut any trees down?

7 A. No, ma'am, not -- no, ma'am, 'cause we had not
8 reached brush management yet.

9 Q. Okay. And you didn't have to do any kind of earth
10 excavation, did you?

11 A. No, ma'am.

12 Q. Now, isn't it true that you've had back problems
13 before 2019?

14 A. Yes, ma'am, they went away.

15 Q. Okay. Did you have back -- you had some back
16 trouble related to an injury in 2015, didn't you?

17 A. Ma'am?

18 Q. You had some back pain related to an injury in 2015,
19 didn't you?

20 A. Yes, ma'am, I think -- I don't recall the injury,
21 but I remember roughly about that time that -- but
22 it was just a -- I can't remember what they called
23 it, but it went away. It was nothing serious.

24 Q. All right. And also in 2018, you had back trouble
25 too, didn't you?

1 A. Ma'am?

2 Q. 2018, you had back trouble too, didn't you?

3 A. It was a sciatica nerve issue or something like
4 that. I can't -- yes, ma'am, but I -- I'm not going
5 to lie to you. Yes, ma'am. But all of it went
6 away. It wasn't permanent like the situation now.

7 Q. And when did you last pay child support, Mr. Brant?

8 **BY MR. TANENBAUM:**

9 Objection.

10 **BY MS. GRUBER:**

11 Commissioner, I can ---

12 **BY MR. TANENBAUM:**

13 Inaudible.

14 **BY COMMISSIONER BARDEN:**

15 What did you say, sir?

16 **BY MR. TANENBAUM:**

17 I object. I don't think the child support is
18 relevant.

19 **BY COMMISSIONER BARDEN:**

20 And Ms. Gruber?

21 **BY MS. GRUBER:**

22 Commissioner, this man's credibility is at
23 issue. Because he is here today, he's asking for
24 money, and we have got a lien for child support that
25 was issued in December 2019 indicating at that time

1 he owed \$12,138.28 as of December 12th, 2019. Mr.
2 Brant is here asking the Commission to believe his
3 testimony in terms of how much money he needs, the
4 extent of his injuries, and whether or not he's able
5 to work in addition to whatever else he's testifying
6 to today. The fact that he owed over \$12,000 as of
7 December of 2019 is relevant to whether or not he's
8 got some financial motivation to lie today, because
9 he obviously needs money. Additionally, we know he
10 hasn't paid -- he hasn't filed any taxes since at
11 least 2015. So we don't have any proof of how much
12 money he was making. What we do know, that he
13 wasn't using whatever money he was earning since
14 2015 to pay his child support. So I certainly think
15 it's relevant, and it's a fair question.

16 **BY COMMISSIONER BARDEN:**

17 Well, I don't know when that accrued. I know
18 he left work -- he hasn't worked since what, except
19 for the lawn mowing services he performed since May
20 of 2019. So I don't know when the lien that you
21 speak of accrued. I don't know whether it goes back
22 to 2018, '17, or whatever. See what I'm trying to
23 say? I'm trying to figure out when it accrued.

24 **BY MS. GRUBER:**

25 Well, Commissioner, he's testified that he

1 didn't believe that he earned more than \$12,000
2 since 2015, so he didn't feel like he needed to pay
3 any taxes or file any taxes.

4 **BY COMMISSIONER BARDEN:**

5 Well, did he owe child support in 2015?

6 **BY MS. GRUBER:**

7 Well, I don't know, Commissioner. We haven't
8 been able to ask him any questions about that.

9 **BY COMMISSIONER BARDEN:**

10 Since it's cross -- I mean, I understand your
11 point, Mr. Tanenbaum. Because it's cross-
12 examination -- I mean, this isn't going to be the
13 linchpin of anybody's case, but I'm going to allow
14 her to ask the questions over your objection. But
15 know, sir, that you have a running objection to the
16 questions, and to any testimony elicited or
17 solicited by Ms. Gruber.

18 **CROSS-EXAMINATION RESUMED BY MS. GRUBER:**

19 Q. Mr. Brant, are you under any order to pay child
20 support on a weekly or monthly basis?

21 A. A monthly basis.

22 Q. And how much are you supposed to be per month?

23 A. Three twenty-four I think, or three hundred.

24 Q. Three forty-four?

25 A. I think three -- it's like three hundred dollars;

1 around that much. Two ninety-eight, something like
2 that.

3 **BY COMMISSIONER BARDEN:**

4 Is that a month or a week? I didn't hear.

5 **BY THE WITNESS:**

6 It's a month thing.

7 **BY COMMISSIONER BARDEN:**

8 All right.

9 **CROSS-EXAMINATION RESUMED BY MS. GRUBER:**

10 Q. And when were you ordered to pay this child support?

11 A. 2016.

12 Q. 2016?

13 A. Yes, ma'am, I'm pretty sure it was 2016.

14 Q. All right. And have you paid any child support ---

15 A. Or maybe towards -- towards the end of the year of
16 2015. I can't -- it's somewhere around that point
17 in time.

18 Q. All right. And when is the last time you paid child
19 support?

20 A. I was paying it off and on until I got hurt. I have
21 not paid since -- definitely have not paid a dime
22 since I got hurt.

23 Q. Okay. Well, if you paid \$300 a month, then you were
24 supposed to pay \$3600 a year, correct?

25 A. Yes, ma'am.

1 Q. All right. And if you owe over \$12,000 now, would
2 it be fair to say that you haven't paid child
3 support in about three years?

4 A. I -- when I first got ordered to pay child support,
5 I started out in the arrears, because they had to do
6 DNA. So I was already -- I was already -- I was way
7 behind -- I was four or five months behind, six
8 months behind, before I even got ordered to pay, and
9 they made me back pay while I was doing DNA testing,
10 and then we had to go back to court in that time
11 period.

12 Q. So, you were already six -- you were six months
13 behind in child support at \$300 a month?

14 A. I couldn't hear you.

15 Q. Okay. Mr. Brant, did you just testify that you were
16 six months behind in child support when you were
17 ordered to pay child support at \$300 a month?

18 A. In -- in that area. Four to six months, I started
19 out in arrears.

20 Q. Okay. So, when you started paying child support,
21 you were already in arrears by 1200 to \$1800
22 dollars?

23 A. That -- if you do the math, yes, ma'am, that's
24 right.

25 Q. Okay. And as of December of 2012, you owed over

1 \$12,000, correct?

2 A. Ma'am?

3 Q. As of December 12, 2019, you owed \$12,138.29; is
4 that correct?

5 A. It sounds about right. Yes, ma'am, it does.

6 **BY MS. GRUBER:**

7 I don't have any other questions, Commissioner.

8 **BY COMMISSIONER BARDEN:**

9 All right. Mr. Tanenbaum, anything on re-
10 direct, sir?

11 **BY MR. TANENBAUM:**

12 Yes.

13 **RE-DIRECT EXAMINATION BY MR. TANENBAUM:**

14 Q. Mr. Brant, the report of Dr. McConnell is an exhibit
15 to this case. On page three, paragraph three, it
16 says in part "Additionally, he has noted some onset
17 of low back pain, which he feels is secondary to his
18 abnormal gait mechanics." Is this information he
19 obtained from you?

20 A. Yes, I told him that.

21 Q. Thank you. As far as your knees, your knee injury,
22 the numbers that you threw out there as far as the
23 amounts of (inaudible) knees, are you positive that
24 those numbers are accurate?

25 A. I'm not a hundred percent positive. That's why I

1 said it was in a roundabout area, because it's been
2 a while, and I know they took the attorney's fees
3 out and stuff, and I don't know exactly the amount.
4 It's a ballpark figure of what I received.

5 **BY MR. TANENBAUM:**

6 Okay. No further questions.

7 **BY COMMISSIONER BARDEN:**

8 Mr. Gallagher?

9 **BY MR. GALLAGHER:**

10 No questions.

11 **BY COMMISSIONER BARDEN:**

12 Mr. Killen?

13 **BY MR. KILLEN:**

14 No questions, Your Honor.

15 **BY COMMISSIONER BARDEN:**

16 Ms. Gruber?

17 **BY MS. GRUBER:**

18 No, ma'am, nothing.

19 **BY COMMISSIONER BARDEN:**

20 All right. Mr. Tanenbaum, anything else from
21 you, sir?

22 **BY MR. TANENBAUM:**

23 Nothing.

24 **BY COMMISSIONER BARDEN:**

25 Okay. Are there any other witnesses besides

1 Mr. Brant that we're hearing from today?

2 **BY MR. GALLAGHER:**

3 None from biBERK.

4 **BY COMMISSIONER BARDEN:**

5 Mr. Killen?

6 **BY MR. KILLEN:**

7 None from the DOT.

8 **BY COMMISSIONER BARDEN:**

9 Ms. Courtney?

10 **BY MS. GRUBER:**

11 No, ma'am, none from the UEF.

12 **BY COMMISSIONER BARDEN:**

13 I mean, Ms. Gruber. I'm sorry. Okay. And I'm
14 not going to ask you, Ms. Abercrombie. I've got
15 that straight. Well, then that concludes this
16 proceeding.

17 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
18 **CONCLUDED AT THE HOUR OF 5:20 P.M.)**

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CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1907252

EMPLOYEE/CLAIMANT: STEVEN M. BRANT

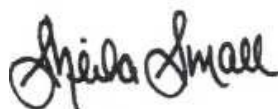
EMPLOYER: S.C. DEPARTMENT OF TRANSPORTATION, ET AL.

I, SHEILA SMALL, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **59** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **STEVEN M. BRANT** TAKEN ON THE 12TH DAY OF AUGUST, 2020.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 24TH DAY OF SEPTEMBER, 2020.



SHEILA SMALL
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-11-2029

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1907252**

Steven M. Brant,
Employee/Claimant,

v.

Core Services, LLC and South Carolina
Department of Transportation,
Employer(s),

and

Berkshire Hathaway Direct Insurance
Company, Markel Insurance Company,
and South Carolina State Accident Fund,
Carriers,

and

South Carolina Workers' Compensation
Uninsured Employers' Fund,
Defendants.

DECISION AND ORDER

Hearing:

Held in Columbia, South Carolina on August 12, 2020.

Appearances:

Alan M. Tanenbaum, Esquire, on behalf of the Employee/Claimant.

George D. Gallagher, Esquire, on behalf of the Berkshire Hathaway Direct Ins. Co.

No appearance was made on behalf of Core Services, LLC.

Timothy B. Killen, Esquire, on behalf of South Carolina Department of Transportation and South Carolina State Accident Fund.

E. Courtney Gruber, Esquire, on behalf of the South Carolina Workers' Compensation Uninsured Employers' Fund.

D. Victoria Abercrombie, Esquire, on behalf of
Markel Ins. Co.

Purpose of Hearing:

To determine Claimant's entitlement to benefits
under the S.C. Workers' Compensation Act and to
determine the issues as set forth in the Forms 50/51
submitted by the parties.

Commissioner:

The Honorable Susan S. Barden

Filed:

June 9, 2021

STIPULATIONS

It was stipulated and agreed at the time of this hearing that:

1. The purpose of the hearing was to determine Claimant’s entitlement to benefits under the S.C. Workers’ Compensation Act and to determine the issues as set forth in the Forms 50/51 submitted by the parties, as well as any other issues which may come before the Commissioner;
2. Notice of the hearing was timely and properly served upon all parties of interest;
3. Venue, set in Richland County, is proper as agreed by all parties;
4. Defendant Markel Ins. Co. is not liable for benefits; therefore, Markel shall be dismissed from this claim;
5. The record would be left open through October 15, 2020, in order for the parties to have the opportunity to submit legal memoranda relating to the issue of privity of contract and other legal issues. The record was closed at 5:00 p.m. on October 15, 2020; and
6. Claimant and his attorney participated in the hearing *via* CourtCall due to the ongoing COVID-19 pandemic.

APA SUBMISSIONS

Prior to the taking of testimony and pursuant to notices timely filed and served, the following records were submitted into evidence pursuant to the South Carolina Administrative Procedures Act and S.C. Code. Reg. 67-612.

Claimant’s Submissions

NO.	PROVIDER	DATES	PAGES
1.	Beaufort Memorial Hospital	5/6/2019	1 – 63
2.	Beaufort Imaging	5/6/2019	64 – 65
3.	ACS Physicians	5/6/2019	66 – 67
4.	Shoreline Transport	5/6/2019	68 – 73
5.	MUSC	5/6/2019 – 5/17/2019	74 – 699

6.	MUSC	5/22/2019	700 – 711
7.	Life HME Inc.	2/13/2020	712 – 713
8.	Bright McConnell, M.D.	2/14/2020 – 2/16/2020	714 – 717
9.	Unpaid Medical Bills		718 – 751
10.	Mileage due to Claimant		752 – 753
11.	Compliance Agreement	9/5/2019	754 – 757
12.	South Carolina State Procurement Documentation SC DOT and Core Services		758 – 779
13.	Contract between SCDOT and Core Services, LLC	12/11/2018	780 – 856

Uninsured Employers' Fund's Submissions

NO.	PROVIDER	DATES	PAGES
1.	MUSC	2/8/2014 – 5/22/2019	65 pages
2.	Shoreline Medical Transport	5/6/2019	3 pages
3.	Beaufort Memorial Hospital	5/6/2019	15 pages
4.	Comprehensive Urology	7/10/2017	7 pages
5.	Shiland Family Medicine	6/1/2017	3 pages

Berkshire Hathaway Direct Insurance Co.'s Submissions

NO.	PROVIDER	DATES	PAGES
17.	Accord App Proof of Address	3/5/2019	857 – 858
18.	Dec Page Proof of Address on Policy	3/5/2019	859
19.	DNOC Mailed 4/2/19 and Effective 4/21/19	4/2/2019	860 – 861
20.	Mailing Ledger Proof of Mailing	4/2/2019	862
21.	Proof of Notice to the State	4/9/2019	863 – 864
22.	Endorsement Notice to Employer that Policy was Endorsed with Cancellation	4/22/2019	865 – 867
23.	Cancellation Endorsement	4/22/2019	868 – 870
24.	DEC Core Services	3/6/2019	871 – 893
25.	Final Audit Endorsement	6/13/2019	894 – 898
26.	Deposition Transcript of Margaret Yoh	5/19/2020	

Markel Insurance Co.'s Submissions

NO.	PROVIDER	DATES	PAGES
1.	Coverage Letter	6/27/2019	1 – 2
2.	Coverage Application	5/15/2019	3 – 5

EXHIBITS

The following exhibit was submitted into evidence on behalf of the Claimant:

EXHIBIT NO. 1: DESCRIPTION

The following exhibit was submitted into evidence on behalf of the South Carolina Workers' Compensation Uninsured Employers' Fund (UEF):

- EXHIBIT A:** Compliance Agreement (9/5/2019, 1 page)
- EXHIBIT B:** SCDOT records (3/5/2019 – 10/24/2019, 49 pages)
- EXHIBIT C:** Berkshire Hathaway records (43 pages)
- EXHIBIT D:** DSS Notice of Lien (1 page)
- EXHIBIT E:** SLED report (1/16/2020, 1 page)
- EXHIBIT F:** Deposition of Jeffery Schwalk (2/27/2020, 54 pages)
- EXHIBIT G:** Deposition of Wilk Renfro (2/26/2020, 6 pages)
- EXHIBIT H:** Deposition of Steven Brant (2/26/2020, 21 pages)
- EXHIBIT I:** Deposition of Margaret Yoh (5/19/2020, 22 pages)

No other exhibits were submitted into evidence on behalf of any of the parties.

STATEMENT OF THE CASE

This claim was set for a hearing on the Forms 50 and 51, as well as by Regulation 67-603. Claimant alleged he suffered a work-related fall on May 6, 2019, with resulting injury to his right leg, left leg, and back. Claimant named his employers as Core Services, LLC ("Core", direct employer) and South Carolina Department of Transportation ("DOT", statutory employer). Claimant seeks a determination of compensability and a determination as to the responsible party for his worker's compensation benefits. He seeks payment of all past medical treatment, additional medical treatment for his injuries, temporary total disability benefits from May 6, 2019, through the present and continuing until further order of the Commission or by agreement

of the parties. He also contends he is not at maximum medical improvement (MMI). The Claimant was not seeking a finding of MMI or permanent disability. Tr. p. 9, ll. 20 – 25. However, should the Claimant be determined to be at MMI, Claimant requests an award of permanent disability. Tr. p. 11, ll. 2 – 4.

Relative to the merits of the Claimant, Berkshire Hathaway Direct Ins. Co. (“biBERK”) asserted only that the documentation holding Claimant out of work was retroactive, so the doctor’s opinion should be discounted and that the Claimant may be determined to be found to be at MMI. Tr. p. 8, l. 12 – p. 9, l. 10. Relative to the coverage issues, biBERK asserted that Core is a Kentucky company who contracted with biBERK in Kentucky. Tr. p. 10, ll. 17 – 19. biBERK asserted that Kentucky is the “3A endorsed state” on its policy. Tr. p. 10, l. 20. biBERK asserted that, even though this accident occurred in South Carolina and Core was doing business in South Carolina at the time of Claimant’s accident, its policy must be interpreted according to Kentucky law. Tr. p. 12, ll. 8 – 12. Despite this, biBERK admitted that South Carolina has jurisdiction because the policy admittedly provides coverage in South Carolina. Tr. p. 12, ll. 12 – 15.

biBERK took the position that Core’s policy was cancelled prior to the date of loss. Tr. p. 12, ll. 15 – 17. Additionally, biBERK took the position that S.C. Code of Reg. 67-405 “is the governing law” in this situation. Tr. p. 12, ll. 17 – 18. biBERK argued that it sent a notice of termination, and that the notice of termination was received by NCCI more than thirty (30) days prior to the date of accident, and that the policy was appropriately cancelled under South Carolina law. Tr. p. 12, l. 15 – p. 14, l. 7. biBERK argued that “[a]ll we have to do, insofar as South Carolina is concerned, is satisfy the requirements of the regulation [S.C. Code Reg. 67-405], which have been satisfied.” Tr. p. 15, ll. 2 – 5.

biBERK asserted that the policy it issued to Core was a contract, and that neither the

UEF, the DOT, or the State Accident Fund (SAF) has standing to challenge whether the policy was legally cancelled. Tr. p. 14, l. 13 – p. 15, l. 5. biBERK asserted that there is “no legal basis” upon which the UEF, DOT, or the SAF could challenge that the cancellation was improper. Tr. p. 15, ll. 13 – 22. biBERK asserted that Core is the “aggrieved party” if the cancellation were improper. Tr. p. 15, l. 24 – p. 16, l. 2. biBERK asserted that Core has not challenged the cancellation and did, in fact, sign a capitulation agreement with the Commission. Tr. p. 16, ll. 2 – 5. biBERK asserted that Core’s signing of the capitulation agreement was tantamount to a stipulation that the coverage was properly and legally cancelled. Tr. p. 16, l. 5 – 18.

DOT and SAF entered a general denial as to the merits of Claimant’s claim. Tr. p. 17, l. 12. As to coverage, DOT and SAF first asserted that the compliance agreement signed by a representative of Core is not dispositive of whether coverage was properly and legally terminated. DOT and SAF asserted that, as determined in *Bowman v. State Roofing*, 365 S.C. 112 (2005), the “agreement merely indicates that the employer is unable to demonstrate compliance at the time the agreement is signed” Tr. p. 17, ll. 21 – 24. DOT and SAF further argued that the compliance agreement cannot bind any other parties, including themselves and the UEF. Tr. p. 19, ll. 8 – 10.

DOT and SAF asserted that biBERK’s purported cancellation of the Core policy was ineffective. Tr. p. 19, l. 8 – p. 22, l. 6. DOT and SAF asserted that the notice of cancellation was ineffective under the policy and under S.C. Code § 38-75-730. DOT and SAF asserted that both the policy and S.C. Code § 38-75-730 require the notice of cancellation be sent to address shown in the policy, and this was not done in this case. Tr. p. 19, l. 11 – 20, l. 24.

DOT and SAF asserted that they do have standing to challenge the legality of the purported cancellation of a workers’ compensation policy where they may face liability for benefits. Tr. p. 20, l. 24 – p. 22, l. 6.

The UEF concurred with the coverage positions of DOT and SAF, asserting that Core’s policy wasn’t properly cancelled under South Carolina law. Tr. p. 22, ll. 11 – 16. UEF further asserted that Kentucky law is irrelevant, as Core and biBERK were doing business in South Carolina. Tr. p. 22, ll. 16 – 18.

After the parties’ positions were placed on the record, biBERK requested the opportunity to brief “the privity issue” and the UEF’s Memo of Law. Tr. p. 26, ll. 4 – 6. biBERK argued that, because the UEF and SAF could seek reimbursement from Core, a Kentucky company, through § 42-7-200 and § 42-1-450, respectively, that they would not be aggrieved by Core’s lack of coverage in South Carolina. Tr. p. 26, ll. 10 – 21. biBERK asserted that “there is no way that an insurance company can comply with every single state’s laws regarding cancellation” despite writing and selling policies effective in those states. Tr. p. 27, ll. 18 – 24.

EVIDENCE OF THE CASE

A. MEDICAL EVIDENCE

Comprehensive Urology

On July 10, 2017, Claimant saw Comprehensive Urology. Noted as part of his surgical history were four (4) surgeries to his knees. UEF’s APA 4, p. 84.

Shiland Family Medicine Clinic

On June 1, 2017, Claimant sought treatment for testicular pain after being kicked in the testicles by a horse. Takes Gabapentin for Fibromyalgia; requested dosage increase due to continued pain. UEF’s APA 5, pp. 91 – 92.

MUSC Health

On February 8, 2014, Claimant sought treatment for left knee pain. UEF’s APA 1, p. 1.

On March 16, 2014, Claimant sought treatment for his shoulder. UEF’s APA 1, p. 1.

On December 5, 2014, Claimant sought treatment after he injured his back and right knee when he was thrown or dragged by a horse or donkey. UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 –30, as contained in UEF's APA, Ex. H.

On August 8, 2015, Claimant sought treatment for right knee pain due to a recent accident. UEF's APA 1, p. 13.

On September 26, 2015, Claimant sought pain for left knee pain and left shoulder pain after falling out of a deer stand. UEF's APA 1, p. 14 – 15.

On July 21, 2016, Claimant sought treatment for sacrum/coccyx after a fall. UEF's APA 1, p. 19.

On July 20, 2018, Claimant sought treatment for right knee pain after tripping over a horse. UEF's APA 1, p. 30.

On October 10, 2018, (seven (7) months before the accident), Claimant had back pain after he “pulled muscle in back a few weeks ago” and/or had sciatica, and for which Claimant sought treatment. UEF's APA 1, p. 31; Tr. pp. 51 – 52.

On February 10, 2019, Claimant sought treatment for right knee pain after falling through a floor. UEF's APA 1, p. 32.

On May 6, 2019, Claimant sought treatment for bilateral knee pain after jumping off a tractor; reported having had bilateral meniscal surgeries arthroscopically in knees; reported having had partial meniscectomy on right and two (2) meniscectomy surgeries on the left several years ago. Claimant's APA 5, pp. 113, 164, and 179. UEF's APA 1, p. 48.

Claimant's prior medical history describes him having peripheral neuropathy. Claimant reported he did not strike his back or head and had no loss of consciousness after jumping; he also denied any pain elsewhere. Claimant's APA 5, pp. 89 and 515.

Bright McConnell, III, MD

On February 12, 2020, Claimant was seen for an Independent Medical Examination. Claimant is able to ambulate with use of cane; has persistence of pain along posterior aspect of left knee with swelling towards the end of the day and occasional popping; left knee greater right knee. He also reported some low back pain, which Claimant feels may be secondary to abnormal gait. Claimant's APA 8, p. 716.

B. TESTIMONY OF CLAIMANT

Steven Maynard Brant (Claimant) testified at the hearing. Claimant testified that, on May 6, 2019, he was employed by Core as a tractor operator. Tr. p. 34, ll. 2 – 6. He testified that he was making Fifteen and no/100 Dollars (\$15.00) per hour and that he worked forty (40) to fifty (50) hours per week. Tr. p. 34, ll. 9 – 13. Claimant testified that Core “cut the grass on the side of the road for DOT.” Tr. p. 34, ll. 16 – 17.

Claimant testified that, on the date of his accident, his supervisor told him to get in the seat of a tractor that was broken down on the side of a road, and they were going to tow it to a safer location. Tr. p. 33, ll. 4 – 8. He testified that the tractor “started standing end on end” as it was being towed, and he jumped off “because I did not want to roll over with the tractor.” Tr. p. 33, ll. 9 – 13. Claimant testified that when he landed on the ground, he could not move his legs. Tr. p. 33, ll. 19 – 21.

Claimant testified that, after he was injured, he was taken by his supervisor to Beaufort Memorial Hospital. Tr. p. 35, ll. 15 – 18. He was subsequently transported to the Medical University of South Carolina by Medshore. Tr. p. 36, l. 3. Claimant testified he was in a wheelchair for “roughly about two, two-and-a-half months.” Tr. p. 35, l. 11.

Claimant admitted having pre-existing conditions in his knees, and that he received compensation for injuries to his knees in the past. Tr. p. 36, ll. 14 – 19. Claimant testified that

his left leg swells after “excessive walking.” Tr. p. 40, l. 24 – p. 41, l. 24. “. . . [S]ometimes when I’m walking,” Claimant testified, “[my left leg] likes to get wobbly and give out.” Tr. p. 42, ll. 4 – 5. He also testified he has “aching all the time” in his left leg. Tr. p. 42, l. 10. He testified that the condition of his right leg is “pretty much the same thing.” Tr. p. 42, ll. 19 – 25.

Claimant testified his back is “swollen . . . and painful all the time, and I have a knot on . . . the right side of my lower back” Tr. p. 37, ll. 18 – 22. Claimant admitted he has not seen a doctor for his alleged back condition. Tr. p. 44, l. 25 – p. 45, l. 1. Claimant testified that he told Dr. McConnell (his IME doctor) that his “back was staying sore.” Tr. p. 45, ll. 4 – 5. On cross-examination, Claimant testified that he had prior back pain in 2015, but “[i]t was nothing serious.” Tr. p. 51, ll. 18 – 23. He also admitted to having back pain in 2018, but “[i]t wasn’t permanent like the situation now.” Tr. p. 52, ll. 2 – 6.

Claimant admitted to trying “to cut some grass to try to make money” after his accident. Tr. p. 37, ll. 11 – 12. As result, he testified he has earned “[m]aybe a thousand dollars, maybe.” Tr. p. 43, ll. 12 – 13. Claimant testified that he owed over Twelve Thousand and no/100 Dollars (\$12,000.00) in back child support as of December 12, 2019. Tr. p. 57, ll. 3 – 5.

On cross-examination, Claimant admitted to not having filed a tax return since 2015. Tr. p. 43, ll. 20 – 21. Claimant also admitted to receiving over Seventy-Five Thousand and no/100 Dollars (\$75,000.00) in prior workers’ compensation cases for his knees. Tr. p. 45, l. 10 – p. 47, l. 16. Claimant admitted he did not have any pay records from Core. Tr. p. 50, ll. 20 – 23.

Claimant testified that he never had to cut any trees or do any earth excavation while employed by Core. Tr. p. 51, ll. 6 – 11.

C. DEPOSITION TESTIMONY OF JEFFERY SCHWALK

Counsel for the UEF took the deposition of Jeffery Schwalk on February 27, 2020. His deposition was submitted into evidence. Mr. Schwalk testified he is employed as the

procurement manager responsible for contracts with the DOT. He testified he has been in that position since December 17, 2018. He testified he is responsible for contracts related to commodities, goods, and services. Most often, he testified, the contracts are related to maintenance of South Carolina's roads and highways. He testified the DOT is responsible for maintenance of roads, including cutting the grass on rights-of-ways. Maintenance includes tree trimming, brush removal, and mowing.

Mr. Schwalk testified that "Core Services, LLC, was awarded contracts by SC DOT for multiple counties to provide mowing services from the year 2019 to 2023." Schwalk Depo. p. 10, ll. 23 – 25. He testified that Core was required to have a valid workers' compensation insurance policy in place as part of the contract. Schwalk Depo. p. 11, ll. 20 – 23. Mr. Schwalk testified that DOT was informed and believed that Core had valid workers' compensation insurance based on "the cover pages that were provided to us in Early March." Schwalk Depo. p. 12, ll. 15 – 17.

Mr. Schwalk testified that Core was performing work that was essential to the responsibilities of the DOT. He testified that DOT "had received nothing from either Core Services of from the insurance company [biBERK] that indicated the policy was in force." Schwalk Depo. p. 20, ll. 12 – 14.

D. DEPOSITION TESTIMONY OF WILK RENFRO

Counsel for the UEF took the deposition of Wilkerson Renfro on February 26, 2020. Mr. Renfro testified he is the vice president of operations at Core. He testified Core is headquartered in Lexington, Kentucky; however, he testified that Core was licensed to do business in South Carolina. Renfro Depo. p. 4, ll. 23 – 25. Mr. Renfro testified Core performs right-of-way mowing and tree services. Renfro Depo. p. 5, l. 8. Mr. Renfro testified that Core entered into a

contractual relationship with DOT in the end of February of 2019. Renfro Depo. p. 6, ll. 3 – 7. He testified that Core was to provide right-of-way mowing and services for DOT. Renfro Depo. p. 6, ll. 10 – 15.

Renfro denied having any employees, testifying Core used only subcontractors for its labor. Renfro Depo. p. 6, l. 18 – p. 7, l. 3. Renfro testified that Core had approximately twenty (20) subcontractors in South Carolina of the DOT job(s). Renfro Depo. p. 7, ll. 21 – 24.

Renfro testified that Claimant was doing work for his company in Beaufort County on May 6, 2019. Renfro Depo. p. 14, ll. 3 – 8. Renfro testified that the supervisor, J.D., texted him to tell him that Claimant was injured on the job. Renfro Depo. p. 14, ll. 11 – 15.

Renfro testified that Core’s owner, Emily Marquess, signed the contracts with DOT. Renfro Depo. p. 19, ll. 7 – 21. Renfro testified that, “[a]s far as I know,” Core had effective workers compensation insurance coverage in South Carolina at all times relevant hereto. Renfro Depo. p. 20, ll. 5 – 11.

E. DEPOSITION TESTIMONY OF CLAIMANT

Counsel for the UEF took Claimant’s deposition on February 26, 2020. Claimant testified he had prior workers’ compensation claims for both knees. Claimant testified he was thirty-five (35) years old. He testified he dropped out of high school in the twelfth grade. Claimant testified he is still married to his wife, but he lives with his fiancée, Brittany. He testified he owes child support on behalf of the children of Lexie Williams (not his wife), “because I ain’t had no income to pay [child support].” Cl. Depo. Tr. p. 10, l. 14.

Claimant testified he has not worked since his accident. Claimant testified he got the job with Core through an ad on Craigslist.com. Claimant testified he was paid by check, every two weeks. Claimant’s testified his supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do. Claimant testified Core furnished the equipment and told workers when to

start work. Claimant did not supply any tools. Claimant was paid by the hour. Claimant was told at what time he could take a lunch break.

Claimant testified he received settlements on prior workers' compensation claims. Claimant testified that, in December 2014, he sought treatment after he injured his back when he was thrown or dragged by a horse or donkey.

Claimant testified his employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician.

F. DEPOSITION TESTIMONY OF MARGARET YOH

Counsel for the DOT and SAF took the deposition of Margaret Yoh on May 19, 2020. Ms. Yoh testified she is an employee of biBERK Insurance, which is a subsidiary of Berkshire Hathaway Direct Ins. Co. Yoh Depo. p. 4, l. 23 – p. 5, l. 5. Ms. Yoh testified she is an underwriting coordinator. Yoh Depo. p. 6, l. 14. Ms. Yoh testified that part of her job duties is relative to the cancellation of policies. Yoh Depo. p. 6, ll. 20 – 22.

Ms. Yoh testified biBERK had written a policy for Core, and that it was effective as of March 6, 2019. Yoh Depo. p. 6, l. 23 – p. 7, l. 11. Ms. Yoh confirmed that Core's mailing address was 828 East High Street, PMB 272, Lexington, Kentucky 40502. Yoh Depo. p. 7, ll. 19 – 20. Ms. Yoh confirmed that biBERK is obligated to provide written notice to an insured in advance of a cancellation, and that that notice would be mailed "[t]o the address of the named insured." Yoh Depo. p. 8, ll. 2 – 8.

During the deposition, counsel for biBERK stipulated that "the 3C endorsement [of Core's policy] would apply if there is jurisdiction in South Carolina." Yoh Depo. p. 11, ll. 12 – 14. Of course, because S.C. Code 1 42-15-80(C) South Carolina is effective under 3C, biBERK

is statutorily precluded for arguing there is no jurisdiction due to Employer having fewer than four (4) regularly employed employees in South Carolina. ¹

Ms. Yoh confirmed that paragraph D(2) of Core's policy requires that a notice of cancellation must be mailed to the insured's "mailing address shown in item 1 of the information page." Yoh Depo. p. 12, ll. 1 – 4. Ms. Yoh confirmed that the proof of mailing of the cancellation notice was not sent to the mailing address as shown in item 1 of the information page. Yoh Depo. p. 12, l. 23 – p. 13, l. 5; p. 14, ll. 16 – 20.

FINDINGS OF FACT

The undersigned Commissioner has thoroughly reviewed all of the testimony and evidence contained in the record and, after due consideration of the claim and defenses, the following Findings of Fact, as required under § 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;
2. Claimant alleges that injured both legs and his low back in work-related accident on May 6, 2019;
3. Claimant is thirty-six (36) years of age (medical evidence establishing Claimant's date of birth as June 7, 1984; Claimant's Deposition, p. 5, as contained in UEF's APA Submissions, Ex. H);
4. As to pre-existing conditions, Claimant sustained various prior knee injuries and underwent four (4) surgeries to his knees, at least two (2) of which were injuries attributable to workers' compensation claims and for which Claimant received settlements (UEF's APA 4, p.

¹ S.C. Code Ann. § 42-5-80(C) reads: "Any insurer who issues a policy of compensation insurance to an employer not subject to this title may not plead as a defense that the employer is not subject to this title and is estopped to deny coverage."

84; Claimant's APA 5, pp. 113, 164, and 179; Claimant's APA 8, p. 716; Tr. pp. 36 – 37, 45 – 47; UEF's APA 1, pp. 1, 4, 13 – 15, 30, 32, and 48; Claimant's Depo. p. 3, as contained in UEF's APA Ex. H; Claimant's Deposition, pp. 21 – 23, as contained in UEF's APA, Ex. II, ll. 24 – 25 of p. 22, and lines 1 – 4 of p. 23.);

5. As to pre-existing conditions, Claimant was diagnosed with fibromyalgia in June 2017 (the year prior to the accident in issue), during which visit Claimant asked for an increase in his Gabapentin “because he continues to be in pain.” Other records describe Claimant's prior medical history as involving peripheral neuropathy (UEF's APA 5, pp. 91 – 92; Claimant's APA 5, pp. 89 and 515);

6. In December 2014, Claimant sought treatment after he injured his back when he was thrown or dragged by a horse or donkey (UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 – 30, as contained in UEF's APA, Ex. H);

7. In 2015, Claimant sustained another back injury (Tr. p. 51);

8. In 2016, Claimant fell and injured his sacrum/coccyx (UEF's APA 1, p. 19);

9. In October 2018 (seven (7) months before the accident), Claimant had back pain after he “pulled muscle in back a few weeks ago” and/or had sciatica, and for which Claimant sought treatment (UEF's APA 1, p. 31; Tr. pp. 51 – 52);

10. Claimant attended high school and dropped out in the 12th grade (Claimant's Deposition, pp. 5 and 11, as contained in UEF's APA, Ex. H);

11. Claimant's employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician (Claimant's Deposition, pp. 11 – 21, as contained in UEF's APA, Ex. H);

12. Claimant was hired by Core Services, LLC (hereinafter “Core”) to work as a tractor operator. This job required Claimant to mow grass on the sides or shoulders of roadways (Tr. pp. 34 and 51);

13. Core is a Kentucky company headquartered in Lexington, Kentucky (*e.g.*, Claimant’s APA 12, pp. 758 and 762; Deposition of Renfro, pp. 4 – 5 and 13 – 14, as contained in UEF’s APA, Ex. G);

14. Core is engaged in right-of-way mowing and tree services (Deposition of Renfro, pp. 4 – 5, as contained in UEF’s APA, Ex. G);

15. Claimant was working full time on the date of the accident in issue. There is no evidence in the record that the Claimant was not working full duty on the date of accident (Claimant’s APA 5, pp. 96 and 425; record in its entirety);

16. Claimant’s supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do (Deposition of Renfro, pp. 13 – 17, as contained in UEF’s APA, Ex. G; Claimant’s Deposition, pp. 45 – 48, 71, as contained in UEF’s APA, Ex. H);

17. Core furnished the equipment and told workers when to start work. Claimant did not supply any tools (Deposition of Renfro, pp. 13 –17, as contained in UEF’s APA, Ex. G; Claimant’s Deposition, pp. 44 – 45, as contained in UEF’s APA, Ex. H);

18. Claimant was paid by the hour (*e.g.*, Tr. p. 34; Claimant’s Deposition, p. 44, as contained in UEF’s APA, Ex. H);

19. Claimant was told at what time he could take a lunch break (Claimant’s Deposition, p. 47, as contained in UEF’s APA, Ex. H);

20. Although Renfro testified that he only hired independent contractors, the evidence set forth in the preceding Findings of Facts leads the Undersigned to conclude that Claimant was

an employee on the date of accident (Deposition of Renfro, pp. 6 – 7, 10, as contained in UEF’s APA, Ex. G);

21. Based upon Claimant’s testimony (Claimant’s Deposition, p. 80, as contained in UEF’s APA, Ex. H), Core employed at least five (5) individuals within South Carolina on the date of accident in issue. I also find that even though Renfro testified that his workers (“20 something”) were all independent contractors, Core signed a compliance/capitulation agreement stating that Core was subject to the Act on the date of the accident (Deposition of Renfro, pp. 7 – 8, 12, as contained in UEF’s APA, Ex. G; UEF’s APA, Ex. A., p. 95; Claimant’s APA 11, p. 754);

22. No one on behalf of Core appeared at the Hearing;

23. biBERK is a subsidiary of Berkshire Hathaway (hereinafter “biBERK”). *See* Deposition of Yoh, pp. 4 – 5; biBERK AP A22, p. 865 – letterhead; biBERK APA 24, p. 871; Tr. p. 10);

24. The South Carolina Department of Transportation (hereinafter “DOT) awarded a procurement contract to Core as subcontractor to perform mowing services in Beaufort County (e.g., Claimant’s APA 11, p. 757; Claimant’s APA 12, pp. 758 – 762, 778; Claimant’s APA 13; Deposition of Schwalk, pp. 8 – 10, as contained in UEF’s APA, Ex. F; Deposition of Renfro, pp. 5 – 7, as contained in UEF’s APA, Ex. G);

25. As a condition of the contract, DOT required Core to have workers’ compensation insurance (e.g., Claimant’s APA 13, p. 830);

26. Core obtained insurance with biBERK (Tr. p. 10; APA Submissions);

27. In its application for workers’ compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal of

excavation (biBERK APA 17, p. 858; biBERK APA 18, p. 859; biBERK APA 24, pp. 872, 874; UEF's APA, Ex. C, pp. 145 and 155).

28. The policy of workers' compensation insurance with biBERK was effective March 6, 2019, through March 6, 2020 (*e.g.*, biBERK APA 18, p. 859; Ex. A to Deposition of Yoh; biBERK APA 24, pp. 871 – 872; UEF's APA, Ex. C, pp. 144 and 153; Deposition of Yoh, pp. 6 – 7);

29. The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBERK APA 24, p. 872; UEF's APA, Ex. C, pp. 144, 152 – 153; Deposition of Yoh, pp. 7, 12 – 13; biBERK APA 17, p. 857);

30. Kentucky is listed as the 3A endorsed state in the policy (biBERK APA 18, p. 859);

31. Under 3C (other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington, and Wyoming. Thus, the policy was also effective in South Carolina (biBERK APA 18, p. 859);

32. Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY, and (d) the insurer as biBERK (Claimant's APA 12, p. 768, UEF's APA Ex. B, p. 95; Deposition of Renfro, pp. 19 – 20, as contained in UEF's APA Ex. G);

33. On April 2, 2019, biBERK attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date as April 21, 2019) because of Core's material misrepresentation in obtaining coverage: Core had identified its business as landscape maintenance (performing no tree removal or excavation work). Tree work is a "more hazardous class code than a traditional landscaper" (Deposition of Yoh, pp. 7, 16; Ex. A to Deposition of

Yoh; UEF's APA Ex. C, pp. 153, 174; Claimant's APA 12, pp. 769 – 770; biBERK APA 22, p. 866; biBERK APA 19, p. 860; biBERK APA 21, p. 863; biBERK APA 23, pp. 868 – 869);

34. Core's PMB (private mail box number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBERK APA 19, p. 860; biBERK APA 20, p. 862; biBERK AP A22, p. 866; biBERK APA 23, pp. 868 – 869; Deposition of Yoh, pp. 13 – 156; Ex. C to Deposition of Yoh; UEF's APA Ex. C);

35. Pursuant to Reg. 67-405(C)(1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and, by virtue of that fact alone and absent the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 – four (4) days prior to the date of accident in issue (biBERK APA 21, p. 863);

36. Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. § 38-75-730 and Core's policy require that the insured receive notice of the cancellation to the "addresses shown in the policy." In this case, biBERK's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. I do not find this deficiency to be a mere "scrivener's error" or "inconsequential", as stated in biBERK's legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is not "inconsequential." Further, I do not find persuasive biBERK's privity argument – that the SAF and UEF are not parties to the contract and therefore have no standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF, and DOT. I agree with

the positions of the Defendants DOT, SAF, and UEF on this issue. The DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the BIBERK policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core's assets (Core being a Kentucky company) does not negate the harm that the UEF may experience. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann. § 42-1-440, and may even "call in that subcontractor . . . as a defendant or codefendant." Thus, the Act expressly gives the DOT and SAF to argue that Core and biBERK are liable. It would strain credulity to think that (1) the DOT and SAF could argue that another party is liable but, yet, (2) cannot argue that the liable party's insurance policy, which was not cancelled in accordance with the governing law to which all parties are subject, was effective at the time of accident. *See* UEF's APA Ex. C, pp. 153, 167, and 174 – 175; S.C. Code Ann. §§ 38-75-730, 42-1-440.

37. biBERK cites both Kentucky statutory law and case law in its Memorandum. However, South Carolina law governs insurance policies effective in South Carolina, and this matter arises in South Carolina. I find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBERK is subject to South Carolina law. *See, inter alia*, §§ 38-1-20, 38-5-10, and 38-75-730.

38. In the mechanics of the accident in issue, Claimant landed on both feet after jumping from a tractor that was tipping over (Tr. p. 33; Claimant's APA 1, pp. 3, 13; Claimant's APA 5, pp. 86, 113, and 515; UEF's APA 1, pp. 39, 44; UEF's APA 3, p. 70);

39. At Beaufort Memorial Hospital ER (hereinafter "BMH"), Claimant complained of leg and foot pain and weakness. X-rays showed bilateral tibial plateau fractures and a right

fibular fracture. Claimant's left foot x-ray was "unremarkable" (Claimant's APA 1, *e.g.*, pp. 3, 6 – 8, 10, 13 – 14, 17, 19 – 20, 32 – 39, and 47; Claimant's APA 2, p. 65; Tr. p. 35);

40. Although not dispositive, BMH records are devoid of any complaint or problem regarding the back or spine. In fact, Claimant *denied*, to providers, any injuries to his neck, trunk, lower back, or hips (Claimant's APA 1, p. 13). Claimant's neck and back were specifically *examined* and documented as having "full range of motion" and "absent: tenderness" (Claimant's APA 1, p. 15). These records would explain why BMH providers did not order any spinal x-rays. I base this Finding of the BMH records in their entirety. *See also* UEF's APA 3, pp. 70 and 72.

41. Claimant's testimony that he (a) injured his back in the accident, and (b) told BMH about his back pain is inconsistent with the medical records as set forth in the previous Finding of Fact (Claimant's Deposition pp. 66 – 67, 78, as contained in UEF's APA Ex. H; Tr. p. 38);

42. Because Claimant's left leg injury required a higher level of medical care that BMH was able to provide, Claimant was transferred by ambulance to MUSC where he was hospitalized/treated for eleven (11) days (*e.g.*, Claimant's APA 1, pp. 11 – 12, 16; Claimant's APA 4, pp. 69 – 72);

43. Consistent with the findings at BMH, MUSC providers also determined that Claimant had bilateral tibial fractures and a right leg fibular fracture (*e.g.*, Claimant's APA 5, pp. 92 – 93, 515, and 528 – 529; UEF's APA 1, pp. 34 – 37);

44. After Claimant's eleven (11) days of hospitalization at MUSC, the "final diagnosis" for Claimant's work injuries upon discharge was bilateral tibial fractures. During Claimant's stay, he denied any back pain and, instead, is documented as being "[n]egative for back pain." During a physical examination, Claimant's cervical, thoracic, and lumbar levels of

the spine are documented as “*normal*”. Additionally, the nurses’ notes as to location of pain are devoid of any back complaint or problem. On the date of discharge, there is no reference to or mention of the back. Unlike Claimant’s legs, Claimant’s spine was never x-rayed during his hospital stay (Claimant’s APA 5, *e.g.*, pp. 75, 82 – 83, 86, 88, 113, 320, 327, 338, 345, 350, 359, 365, 377 – 383, and 515: “*denies any pain elsewhere*” [emphasis added]; Claimant’s APA 5, 2nd page 279, 2nd page 286, 2nd page 302, 2nd page 308, and 2nd page 315; UEF’s APA 1, pp. 40 – 41, 56; MUSC records in their entirety);

45. After being released from MUSC on May 17, 2019, Claimant followed up with MUSC on May 22, 2019. There is no complaint of – or reference to – the back in these records (Claimant’s APA 6, pp. 703 – 705; UEF’s APA 1, pp. 62 – 63);

46. The first time Claimant’s back is mentioned in medical records (other than his back being “normal” or regarding his denial of back pain) is the report from Claimant’s IME (Dr. McConnell, February 12, 2020) to whom the Claimant was sent by his attorney. Although Claimant’s testimony at his deposition (two weeks later, on February 26, 2020) was that (a) his back was injured in the accident, and (b) he told BMH providers about his back pain on the date of accident (“they told me it was probably from the jarring where I landed”), BMH records refute this testimony. By contrast, Dr. McConnell inconsistently states that the Claimant’s back pain began because of abnormal gait mechanics – not because of the accident itself as Claimant alleges (Claimant’s APA 8, pp. 716 – 717; Claimant’s Deposition pp. 66 – 67, as contained in UEF’s APA Ex. H; Tr. pp. 37 – 38, 45, and 57);

47. Although Claimant testified at the Hearing that his back is swollen all the time with a knot on the right side of his lower back, Claimant’s expert’s records are devoid of any reference to (a) spinal swelling, or (b) a spinal knot. Additionally, under Dr. McConnell’s “Impression” regarding Claimant’s injuries, *Dr. McConnell does not list/mention either*

Claimant's "back" or "spine" – Dr. McConnell only lists Claimant's legs [emphasis added] (Tr. p. 37; Claimant's APA 8 in its entirety);

48. Because of his left leg injury, Claimant underwent ORIF surgery at MUSC on May 9, 2019. Claimant's right leg was treated conservatively with a hinged knee brace (medical evidence in its entirety, e.g., UEF's AP A1, pp. 54 – 55; Claimant's APA 5, pp. 118 – 119, 495, 500, 502, and 583);

49. I find that Claimant is entitled to temporary total disability (TTD) benefits from the date of accident through February 17, 2020: (a) after his surgery and upon his discharge from MUSC, Claimant was instructed (i) not to drive or operate machinery while using the narcotic pain medication he was prescribed, and (ii) to be non-weight bearing until months later (Claimant's APA 5, e.g., pp. 166, 168, 170 – 172, 174 – 175, 181 – 183, 549, 658, 660, 664 – 665, and 670; UEF's APA 1, pp. 58 – 60); (b) Claimant was further instructed that *in six (6) weeks, he might be allowed to "being to put some of [his] weight down using crutches or a walker if things are healing well"* [emphasis added] (Claimant's APA 5, p. 175); (c) Claimant was further instructed that, in three (3) months, he could *begin* to bear weight [emphasis added] (Claimant's APA 5, pp. 175 and 668); and (d) Dr. McConnell – the only physician to weigh in on restrictions as Claimant has not been provided any authorized medical treatment – states that Claimant was unable to work as a landscape maintenance worker from the date of accident until "the present" – February 17, 2020 (Claimant's APA 8, p. 714);

50. Claimant reached maximum medical improvement (MMI) on February 17, 2020 (Claimant's APA 8, p. 714, Tr. p. 11);

51. Dr. McConnell assigned a five percent (5%) impairment rating to the left lower leg and a five percent (5%) impairment rating to the right lower extremity (Claimant's APA 8, p. 717);

52. Although Claimant testified at the *Hearing* that both legs give out such that he falls onto the floor, Dr. McConnell states (twice) that, upon clinical examination, there is no instability. Claimant inconsistently testified at his *deposition* that his right knee does not give out – only his left [emphasis added] (Tr. pp. 41 – 42; Claimant’s Deposition, pp. 66, 70, as contained in UEF’s AP Ex. H);

53. As of the date of the Hearing, Claimant no longer uses a cane (Tr. p. 39);

54. Permanency award to the left leg pursuant to § 42-9-30(16): Ten Percent (10%). I base this finding on the nature of the injury, the fact that Claimant has implanted hardware, the fact that Dr. McConnell documented quadriceps atrophy, the impairment rating, and, to some extent, Claimant’s testimony regarding his subjective complaints.

55. Permanency award to the right leg pursuant to § 42-9-30(16): Six Percent (6%).

56. Claimant received causally related medicals, including but not limited to BMH, MUSC, mileage, medications, the ambulance ride from BMH to MUSC, and the wheelchair that was ordered upon Claimant’s discharge from MUSC (Claimant’s APA Submissions);

57. Claimant has an outstanding child support lien to be satisfied (UEF’s APA Ex. D);

58. Claimant’s APA Submissions are renumbered/repaginated after page 317 – instead of going to sequential page 318, they start over at 245, apparently using the hospital page numbers at the lower right-hand side. Therefore, there are two page 245’s (containing different records), two page 246’s, etc., through two page 317’s (hence my reference to “2nd page” in these instructions). I did not discover this issue until my post-Hearing review of the evidence; otherwise, I would have had Claimant’s counsel repaginate his APAs for the benefit of the other parties and the Commission;

59. Defendants Core Services, LLC and biBERK are responsible/liable for benefits;

60. biBERK shall receive credit for the One Thousand and no/100 Dollars (\$1,000.00) Claimant earned mowing grass after the date of accident (Tr. pp. 43 – 44); and

61. Claimant's Average Weekly Wage is Six Hundred, Seventy-Five and no/100 (\$675.00), yielding a Compensation Rate of Four Hundred Fifty and 02/100 Dollars (\$450.02). I base this finding on Claimant's testimony that he worked forty (40) to fifty (50) hours per week at \$15.00 per hour (Tr. pp. 34, 49 – 50: Claimant's Deposition, pp. 44, 82, as contained in UEF's APA Ex. H).

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;
2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.
3. That S.C. Code Ann. § 42-1-160(D) is applicable in defining stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury.
4. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.
5. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.
6. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.
7. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.
8. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.
9. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.
10. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.
11. That S.C. Code Ann. § 42-1-172 is applicable in defining a repetitive trauma injury.

12. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

13. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

14. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards.

15. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, Core was subject to the Act at the time in question;

16. Section 42-1-40 establishes the appropriate means of determining an injured employee's average weekly wage and compensation rate;

17. Under § 42-15-20, proper notice was provided to Employers;

18. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past casually-related medical expenses.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, sustained compensable injuries to his left leg and right leg in the course and scope of his employment with Employer, Core Services, LLC, on May 6, 2019; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's claims for benefits under the Workers' Compensation Act based on the alleged injury or injuries to his back or spine is denied; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, shall be reimbursed for all past causally-related medical treatment since the date of accident, including reimbursement to the Claimant for treatment-related mileage and prescription medications, surgeries, physical therapy, injections, hospitalizations, medications, consultations, diagnostic procedures, rehabilitation and other attendant care. These benefits shall be provided by and payment shall be made by Berkshire Hathaway Direct Insurance Company; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is at maximum medical improvement for his causally related injuries; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to temporary, total disability benefit payments from May 6, 2019, through February 17, 2020, pursuant to § 42-9-20; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his right leg in the amount of six percent (6%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his left leg in the amount of ten percent (10%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that Defendants shall receive a credit in the amount of One Thousand and no/100 Dollars (\$1,000.00) for the money Claimant earned mowing grass after the date of accident; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's outstanding child support lien shall be satisfied from this Award; and it is further

ORDERED, ADJUDGED AND DECREED that, at all times relevant hereto, Core Services, LLC had valid workers' compensation insurance coverage in South Carolina by and through biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that all benefits payable to Claimant by and through this Order shall be made by biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Transportation, the South Carolina State Accident Fund, and the South Carolina Workers' Compensation Uninsured Employers' Fund are hereby dismissed, with prejudice;

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!


Susan S. Barden

Columbia, South Carolina

June 9, 2021

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 Barbara Skarbek on June 9, 2021

Order served via USPS:

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1907252

Steven M. Brant,)
)
 Claimant,)
)
 v.)
)
 South Carolina Department)
 of Transportation,)
)
 Employer,)
)
 and)
)
 State Accident Fund,)
)
 Carrier/Defendants.)
 -----)

FULL COMMISSION HEARING

Monday, September 20, 2021
3:05 p.m. - 3:29 p.m.

The Full Commission Hearing was heard virtually before Commissioners T. Scott Beck, R. Michael Campbell, II and Avery B. Wilkerson, Jr., via Zoom, on the 20th day of September, 2021, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(No Exhibits were marked at this hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 **CALL TO ORDER:**

2 **MADAME COURT REPORTER:** Today is September 20th,
3 2021. This is South Carolina Workers'
4 Compensation Case Number 1907252. This is the
5 case of Steven M. Brant versus the South
6 Carolina Department of Transportation and the
7 State Accident Fund. The Appellant is the
8 Defendant, represented by George D. Gallagher.
9 The Respondents are Tim Killen for the State
10 Accident Fund, Courtney Gruber for SCUEF,
11 Victoria Abercrombie for Markel, Core Service,
12 LLC, who is pro se, and Alan Tanenbaum for the
13 Claimant. Each side is allowed ten minutes --
14 well, each side is allowed ten minutes for oral
15 argument and the Appellate three minutes in
16 reply. And I guess we're going to allow five
17 and five for the Respondents?

18 **COMMISSIONER BECK:** The Respondents, that's correct.

19 **MADAME COURT REPORTER:** So you are requested to
20 argue the grounds of exception and stay within
21 the record.

22 **COMMISSIONER BECK:** All right. And I will note for
23 the record Ms. Abercrombie is not present for
24 this proceeding. She represented Markel.
25 Based on a stipulation, specifically



1 stipulation number four in the order, they were
2 dismissed from this claim. I'll also note that
3 Core Services, LLC was properly noticed of this
4 proceeding and is not in attendance in this
5 matter. Mr. Gallagher?

6 **APPELLANT'S POSITION:**

7 **MR. GALLAGHER:** Thank you, Commissioner. I would
8 just also follow on that last point you made
9 and also note that Core Service never made an
10 appearance in this matter at all, not just
11 today. I think that's important to note as I
12 will explain hopefully.

13 First of all, just from the outset I'll
14 just note, Commissioners, that this is a pretty
15 complicated matter actually involving a lot of
16 issues that we don't normally come across in
17 Workers' Compensation including; cancellation
18 of coverage, privity of contract, choice of
19 law, all sorts of things that we don't normally
20 run into. So the underlying case is pretty
21 undisputed. I mean, Mr. Brant had an admitted
22 Workers' Comp accident. At the time in
23 question he was a direct employee of Core.
24 I'll just kind of give you the chronological
25 background. First of all, Core Services is a



1 Kentucky LLC. They are in the business of
2 doing road clearing and highway maintenance.
3 They're located in Lexington, Kentucky. They
4 are a registered LLC in the state of Kentucky.
5 They bought a policy of insurance directly from
6 Berkshire Hathaway direct, otherwise known as
7 biBERK, with a policy period covering them from
8 March 6th, 2019 to March 6th, 2020. Kentucky
9 is the 3A endorsed state in the policy. There
10 are no other 3A endorsed states in the policy.
11 At some point Core, I think in March, Core
12 entered into a contract with South Carolina
13 Department of Transportation to do some mowing
14 and highway maintenance work for the Department
15 of Corrections. This is what Mr. Brant was
16 doing at the time of his accident on May 6th,
17 2019. This is where it gets a little tricky.
18 Core actually initiated cancellation of -- or
19 excuse me, biBERK initiated cancellation of
20 Core's policy on April 2nd, 2019 based on
21 Core's misrepresentation of his business
22 operations, and they complied with Kentucky
23 statutes regarding cancellation of the policy.
24 I would just note from the outset that, you
25 know, even though there's a dispute about



1 whether Kentucky law applies or whether South
2 Carolina law applies, State Accident Fund and
3 Uninsured Employers Fund have not briefed or
4 otherwise contended that the cancellation, if
5 Kentucky law is applicable, was valid under
6 Kentucky law. So I think that's important to
7 note. At some point, and I believe it was in
8 September, Core actually entered into a
9 compliance agreement with the Commission,
10 admitting that it was operating without
11 Workers' Compensation coverage between April
12 21st, 2019 and May 15th, 2019. Of course
13 Claimant's accident occurred during the gap in
14 that coverage. The hearing Commissioner found
15 that biBERK did not properly or effectively
16 cancel the policy under South Carolina law and
17 imposed liability on biBERK. We, of course,
18 contend that was an error for several reasons,
19 but the biggest reason, I'll just note from the
20 outset, is that the Uninsured Fund nor the
21 State Accident Fund, Department of
22 Transportation even has standing to raise this
23 issue. They're not in privity of contract. An
24 insurance policy is essentially a contract
25 between an insurance carrier and its insured.



1 And whether or not a policy is properly
2 cancelled under that -- under the terms of the
3 policy is a matter of contract law. It's a bit
4 elementarily that a party, who is not a party
5 to a contract, cannot sue to enforce any
6 contractual rights. If they weren't a party to
7 the contract the only way they that can be --
8 have standing to contest or enforce the terms
9 of the contract or allege a breach of contract
10 would be if they were a intended third party
11 beneficiary. In this case the Uninsured Fund
12 or a -- no other third parties other than the
13 Claimant himself under South Carolina law all
14 insurances of -- it is to be construed as a
15 direct promise to the recipient of benefits
16 conferred by the Act. The only third party
17 beneficiary to the contract would be the
18 Claimant. Neither one of these entities were
19 intended third party beneficiary. They have no
20 privity of contract thus they cannot even raise
21 the issue of whether or not this policy is
22 properly cancelled. I would submit they can't
23 -- that's just a general matter of law, but
24 they especially can't do it in this case and
25 try to assert contractual rights of a party who



1 has stipulated that they didn't have coverage.
2 That was the compliance agreement that Core
3 entered into. Now, Core did not waive any
4 rights in that compliance agreement with the
5 Commission but their reservation rights doesn't
6 create any rights to anybody else. It doesn't
7 give that -- that agreement doesn't give the
8 Uninsured Fund or the State Accident Fund any
9 standing to step in their shoes and try to say
10 that the policy was not properly cancelled when
11 Core hasn't made an appearance in this case or
12 otherwise tried to contest that issue
13 themselves. So the issue is at that -- if you
14 get past that issue, if they clear that hurdle
15 then the next issue is did biBERK properly
16 cancel the policy under Kentucky law. There's
17 several reasons why we think Kentucky law
18 applies to this; number one, again, as noted
19 earlier Core is a Kentucky LLC registered under
20 the law of Kentucky. They're headquartered in
21 Lexington, Kentucky. There is a Kentucky
22 cancellation endorsement in the policy which we
23 would submit operates as a choice of law
24 provision, which I can kind of elaborate on
25 that later. I won't get too bogged down into



1 it now, which is exactly why insurance that
2 could be implicated in multi-state situations
3 may typically include an endorsement that
4 specifically outlines or designates which state
5 law is going to govern the cancellation
6 otherwise you're going to have potentially
7 other multiple states' laws particularly --
8 potentially governing cancellation depending on
9 where the underlying claim occurs. It's
10 undisputed that in this case the coverage of
11 this claim is specifically triggered by the 3C
12 endorsement, otherwise known as another states
13 endorsement, in the policy since South
14 Carolina, again, was not the 3A endorsed state.
15 So the coverage under this policy would only be
16 applicable via part 3C of the policy. That
17 coverage is only triggered when a claim arises
18 under the law of a state that's not endorsed in
19 3A. In this case South Carolina law, the
20 coverage in South Carolina law under South
21 Carolina law was not triggered until this
22 Claimant's date of accident on May 16th, 2019
23 or excuse May 6th, 2019. Coverage cancellation
24 was initiated over a month before that. So
25 clearly South Carolina had no involvement in



1 this claim as of the time that the cancellation
2 was initiated by biBERK in April. We've set
3 forth in our brief, and I'm not going to re-
4 hash it, why we think that we've complied with
5 the Kentucky statutes regarding valid
6 cancellation. I'm going to kind of focus on my
7 next point and I think this is where I think
8 the Commissioner really kind of bit on the red
9 herring so to speak. One of the things that
10 came up in this case is regarding whether or
11 not -- and of course under Kentucky law or
12 South Carolina law there has to be a proof of
13 mailing or there has to be proof of mailing.
14 There doesn't have to be an actual return
15 receipt or no personal service. The carrier
16 just has to prove that they mailed the notice
17 of cancellation to the insurer. That's under
18 South Carolina law or Kentucky law. There's a
19 lot of other differences that I kind of outline
20 in my brief that I'm not going to get bogged
21 down in. But, basically we have to establish
22 that the notice of cancellation was mailed.
23 One of -- the red herring I think that the
24 hearing Commissioner bit on is a mailing
25 ledger, a proof of mailing ledger that shows a



1 discrepancy in the address. The Core's address
2 noted in its policy included a private mail box
3 number. The proof of mailing ledger omitted
4 that private mail box number, okay. Under
5 Kentucky law I would submit there's cases that
6 I've cited in my brief that have said that's
7 immaterial. But regardless the preponderance
8 of the evidence -- and that's really the
9 standard. That -- I mean, I think the -- what
10 the State Accident Fund, the Uninsured Fund,
11 certainly the hearing Commissioner found was
12 that that proof of mailing ledger was the only
13 relevant piece of evidence regarding the
14 mailing of this notice of cancellation and ergo
15 because it did not contain the private mail
16 box number, you know, too bad biBERK, you're
17 out of luck. I would submit that the
18 preponderance of the evidence in the record
19 confirms that this was properly mailed. In
20 other words, did not -- it's not just one
21 single form of proof. One of the things I will
22 show you is APA -- and I don't know if y'all
23 can see this but I'm going to hold it up. This
24 is APA 176. I'm sorry 176. This is in the
25 UEF's APA. UEF's APA page 176 through 182.



1 This is basically the entire cancellation
2 packet that was mailed, okay.

3 **COMMISSIONER BECK:** Mr. Gallagher, finish your
4 thought. Your time's expired, sir.

5 **MR. GALLAGHER:** I'm sorry. Commissioner, I would
6 just show you that it includes an address page.
7 As you notice this on this page the only thing
8 visible on here is Core's address. This APA
9 176. It includes the private mail box number,
10 okay. You stick this into a envelope, there's
11 the address window and you can clearly see the
12 private mail box number is visible in this
13 address window. So, contrary to what I think
14 the Uninsured Fund and the State Accident Fund
15 will argue, that proof of mailing is not the
16 only evidence in the record confirming that
17 this was mailed. The representative from
18 biBERK ---

19 **COMMISSIONER BECK:** Mr. Gallagher, your times
20 expired, sir.

21 **MR. GALLAGHER:** All right.

22 **COMMISSIONER BECK:** Mr. Killen, you have five
23 minutes, sir.

24 **RESPONDENT'S POSITION (SAF):**

25 **MR. KILLEN:** Thank you, Your Honor, Tim Killen



1 representing the South Carolina Department of
2 Transportation and the South Carolina State
3 Accident Fund, and I'll be kind of hit or miss
4 but let me just say that I am going to rely on
5 the arguments as set forth in my brief. It's
6 a little more thorough than my five minutes
7 here. That page 176 that Mr. Gallagher just
8 showed you is a page in the APA submissions.
9 There's no envelope, there's no testimony about
10 an envelope, there's no testimony that 176 ever
11 got an envelope. It's just a document with a
12 name and an address on it. It's just a blank
13 page except for a name and a address. And
14 first off, I'd like to say that South Carolina
15 Code 42-3-180 gives -- says that all questions
16 arising under this title under the Workers'
17 Compensation Act shall be determined by this
18 Commission. And further, *Laboureur v.*
19 *Harleyville Mutual Insurance Company* says that
20 the Commissioner -- Commission has jurisdiction
21 on all coverage and cancellation issues. And
22 then the big one is Section 38-61-10 that says
23 all contracts on property, lives, and interest
24 in this state are considered to be made in the
25 state and all contracts of insurance which are



1 taken in the state are considered to be made
2 within the state and subject to the laws of
3 this state. Now, biBERK admits there's
4 jurisdiction here, biBERK admits that their
5 insurance policy covered South Carolina under
6 the 3C section of the policy. So they wrote
7 this policy in South Carolina. They wrote this
8 policy to cover South Carolina interests and
9 let's see, excuse me, and to say that South
10 Carolina had no interest in this is really a
11 fallacy. You have Wilk Renfro from Core
12 Services, whose deposition testimony was
13 included in the APA submissions, he testified
14 that Core Services got the job in South
15 Carolina in January or February which was
16 before this biBERK policy was ever issued.
17 They contract for Core Services to come to work
18 and South Carolina was signed on March the 4th,
19 2019. UEF's APA page 88. This is before the
20 policy was effective. And the big one in my
21 view is that Core policy -- excuse me biBERK
22 Berkshire Hathaway is the producer here. They
23 sent a certificate of insurance to the South
24 Carolina Department of Transportation. That's
25 at UEF's APA page 199. That's dated March the



1 5th, 2019, a day before the policy went into
2 effect. So to say that biBERK had no clue that
3 it was going to be a South Carolina insurance
4 policy when they wrote it to cover South
5 Carolina, when they sent a certificate to
6 Columbia, South Carolina for the South Carolina
7 Department of Transportation is, I don't think
8 that argument can be maintained. Next I would
9 just say that the capitulation agreement that
10 Core signed or someone from Core signed is not
11 -- it's not an agreement that they didn't have
12 insurance coverage. It's what the South
13 Carolina Supreme Court found in *Bowman v. State*
14 *Roofing*, is that the agreement merely indicates
15 that the employer's unable to demonstrate
16 compliance at the time the agreement is signed.
17 It's not an admission of really anything and it
18 doesn't bind the UEF, the SAF or the DOT. It
19 doesn't prevent us from making any arguments
20 that the statutory requirements weren't
21 followed. This is not a breach of contract
22 action. We are not suing biBERK under a breach
23 of contract theory; therefore, this privity
24 thing is inapplicable because of, well, Title
25 38 and Title 42, which Title 38 says that an



1 insurance policy is written to cover South
2 Carolina interests and so South Carolina law
3 applies. Further, that biBERK has the burden
4 to show that its policy was cancelled and the
5 South Carolina Supreme Court in *Edens v. South*
6 *Carolina Farm Bureau of Mutual Insurance*
7 *Company* said that giving written notice cannot
8 be accomplished by depositing in a document in
9 the mail, which may go to the insurer or he may
10 or may not receive it. Can't be done that way.
11 It's a -- it must be proved by a preponderance
12 of the evidence and what we have here is a
13 mailing ledger, a proof of mailing. What is a
14 proof of mailing other than a document showing
15 where the document was mailed. If there -- the
16 proof of mailing is wrong, which I think is
17 what Mr. Gallagher may have been saying, then
18 what good is it? Well, why do we have one?
19 What's the point of it if you can just rely on
20 everything else except for the proof of
21 mailing. I just ---

22 **COMMISSIONER BECK:** All right, Mr. Killen, your
23 times expired, sir.

24 **MR. KILLEN:** Thank you, Commissioner.

25 **COMMISSIONER BECK:** Ms. Gruber?



RESPONDENT'S POSITION (SCUEF):

1
2 **MS. GRUBER:** May it please the Appellate Panel. I'm
3 Courtney Gruber. I represent the South
4 Carolina Uninsured Employers Fund and in this
5 case our position is very similar to the State
6 Accident Fund and I would concur with what Tim
7 Killen has said. The argument that the South
8 Carolina Workers' Compensation Commission does
9 not have jurisdiction in this case because it
10 was out-of-state insurance policy involved, who
11 purported or attempted to cancel a policy
12 involving a South Carolina resident in a case
13 that is admittedly within the jurisdiction of
14 the South Carolina Workers' Compensation
15 Commission because the accident happened on the
16 job here in South Carolina. That is -- that
17 argument seems suspicious to me on its face.
18 We have numerous cases where we have out-of-
19 state insurance companies in situations like
20 these that arise where the Worker's
21 Compensation Commission clearly has
22 jurisdiction and determine whether or not there
23 is jurisdiction here in South Carolina, whether
24 it's a compensable case, I mean, it -- anything
25 involving issues related to compensability.



1 The policy -- the question is as to whether the
2 policy was correctly cancelled or not it -- I
3 brought up a case in my brief, *Earl v. HTH*
4 *Associates, Inc./Ace USA-Insurance Company of*
5 *North America*. In that case that involved a
6 situation where an insurance company attempted
7 to cancel a policy but the cancellation did not
8 comply with the technical regulation --
9 technical requirements of the regulations. But
10 the court specifically found that Workers'
11 Compensation statutes and regulations -- that
12 Workers' Compensation is a creature of statute
13 and therefore they are bound to strictly
14 construe the terms of the statutes. In this
15 case the cancellation was not sent to the
16 proper address and therefore I think it fails
17 on its, you know, on its face. The Appellants
18 have the burden of proof in this case and it's
19 our position that the decision of the Single
20 Commissioner finding that the policy was
21 invalid and the South Carolina applies in this
22 case should be affirmed in its entirety.

23 **COMMISSIONER BECK:** Okay, Mr. Gallagher?

24 **APPELLANT'S REPLY:**

25 **MR. GALLAGHER:** Commissioner, I think there must be



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1 some sort of fundamental disagreement about
2 what the issue is here because the issue isn't
3 whether or not the Commission has jurisdiction
4 to determine the coverage issue. It's a simple
5 matter of which law applies to the cancellation
6 of coverage. If the law of Kentucky comply,
7 which is what the policy says, I mean the
8 endorsement of Kentucky law in the policy is
9 very clear. If you read the coverage
10 cancellation, it specifically mirrors Kentucky
11 law. South Carolina had nothing to do with
12 this claim until under 3C endorsement. Now
13 this thing was between 3A and 3C. 3A covers
14 whichever state you have operations in -- your
15 primary operations. 3C covers states that
16 arise under another state's law that were not
17 endorsed in 3A. It's another state's
18 endorsement. It's a catch-all. 3C is the
19 applicable endorsement here that covers. 3C
20 doesn't even trigger until an accident occurs,
21 until a claim arises or until an obligation to
22 pay claims under another state's law applies,
23 and that didn't happen until the accident
24 occurred. One of the things that -- one of the
25 statutes that Mr. Killen cited kind of this 38-



1 61-10 kind of a broad South Carolina statute
2 that basically says if it affects South
3 Carolina South Carolina has jurisdiction.
4 First of all, I don't know how that --
5 everybody took civil procedure in law school.
6 I don't know how that passes any kind of
7 constitutional muster, but be that as it may,
8 our courts have interrupted that statute and it
9 specifically said that that statute does not
10 supplant traditional contract location rules,
11 lex loci contractus, meaning where the contract
12 was entered into. And there are several cases
13 that I've cited in my brief where the courts
14 have held that an accident occurring in South
15 Carolina does not make South Carolina law apply
16 to a given issue. In this case the question is
17 what law was applicable at the time the
18 cancellation was undertaken in April. That's
19 Kentucky law. It's spelled out in the policy
20 itself. South Carolina had no contact
21 whatsoever with this matter at that time. You
22 can see what kind of problem you'd have if you
23 say hypothetically if there were three or four
24 different claims and everybody tried to say
25 that the law of the foreign state governing



1 cancellation applied to the cancellation you'd
2 have four different standards applying. You
3 can't have that. That's exactly why you
4 endorse -- you have a 3A endorsement in the
5 first place and that's why you specifically
6 have a choice of law designation in the policy.

7 **COMMISSIONER BECK:** All right, Mr. Gallagher, your
8 time's expired, sir.

9 **MR. GALLAGHER:** Thank you.

10 **COMMISSIONER BECK:** All right. Thank you
11 everybody. Good to see everyone.

12 **(There being nothing further, the hearing concluded**
13 **at 3:29 p.m.)**

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Feb 10 2022

SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1907252

Steven M. Brant,
Claimant/Respondent,

-vs-

Core Services, LLC and South Carolina Department of Transportation,
Employer(s)/Respondents,

Berkshire Hathaway Direct Insurance Co.,
Carrier/Appellant,

Markel Ins. Co. and South Carolina State Accident Fund
Carriers/Respondents,

-and-

South Carolina Workers' Compensation
Uninsured Employers' Fund,
Defendant/Respondent.

Appellate Panel Review held in Columbia, South Carolina
on September 20, 2021, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed on

January 11, 2022

APPEARANCES: Claimant/ Respondent represented by Alan M. Tanenbaum,
Esquire, of Charleston, South Carolina.

Core Services, LLC is unrepresented and failed to appear.

South Carolina Department of Transportation and South
Carolina State Accident Fund represented by Timothy B. Killen,
Esquire, of Mt. Pleasant, South Carolina.

Markel Ins. Co. represented by D. Victoria Abercrombie,
Esquire, of Mt. Pleasant, South Carolina

South Carolina Workers' Compensation Uninsured Employers'
Fund represented by E. Courtney Gruber, Esquire of Charleston,
South Carolina

STATEMENT OF THE CASE

A hearing was held in this case before Commissioner Susan S. Barden on August 12, 2020. As a result of that hearing, the Single Commissioner issued her Order on June 9, 2021. The Single Commissioner found, *inter alia*, that the Claimant is entitled to certain benefits and that Core and biBERK are responsible for the payment of those benefits, as the biBERK policy was not effectively cancelled prior to the date of accident. biBERK takes this appeal.

The Single Commissioner's Findings of Fact and Conclusions of Law are as follows:

FINDINGS OF FACT (SINGLE COMMISSIONER)

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;
2. Claimant alleges that injured both legs and his low back in work-related accident on May 6, 2019;
3. Claimant is thirty-six (36) years of age (medical evidence establishing Claimant's date of birth as June 7, 1984; Claimant's Deposition, p. 5, as contained in UEF's APA Submissions, Ex. H);
4. As to pre-existing conditions, Claimant sustained various prior knee injuries and underwent four (4) surgeries to his knees, at least two (2) of which were injuries attributable to workers' compensation claims and for which Claimant received settlements (UEF's APA 4, p. 84; Claimant's APA 5, pp. 113, 164, and 179; Claimant's APA 8, p. 716; Tr. pp. 36 – 37, 45 – 47; UEF's APA 1, pp. 1, 4, 13 – 15, 30, 32, and 48; Claimant's Depo. p. 3, as contained in UEF's APA Ex. H; Claimant's Deposition, pp. 21 – 23, as contained in UEF's APA, Ex. II, ll. 24 – 25 of p. 22, and lines 1 – 4 of p. 23.);
5. As to pre-existing conditions, Claimant was diagnosed with fibromyalgia in June 2017 (the year prior to the accident in issue), during which visit Claimant asked for an increase in his Gabapentin "because he continues to be in pain." Other records describe Claimant's prior medical history as involving peripheral neuropathy (UEF's APA 5, pp. 91 – 92; Claimant's APA 5, pp. 89 and 515);
6. In December 2014, Claimant sought treatment after he injured his back when he was thrown or dragged by a horse or donkey (UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 – 30, as contained in UEF's APA, Ex. H);

7. In 2015, Claimant sustained another back injury (Tr. p. 51);
8. In 2016, Claimant fell and injured his sacrum/coccyx (UEF's APA 1, p. 19);
9. In October 2018 (seven (7) months before the accident), Claimant had back pain after he "pulled muscle in back a few weeks ago" and/or had sciatica, and for which Claimant sought treatment (UEF's APA 1, p. 31; Tr. pp. 51 – 52);
10. Claimant attended high school and dropped out in the 12th grade (Claimant's Deposition, pp. 5 and 11, as contained in UEF's APA, Ex. H);
11. Claimant's employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician (Claimant's Deposition, pp. 11 – 21, as contained in UEF's APA, Ex. H);
12. Claimant was hired by Core Services, LLC (hereinafter "Core") to work as a tractor operator. This job required Claimant to mow grass on the sides or shoulders of roadways (Tr. pp. 34 and 51);
13. Core is a Kentucky company headquartered in Lexington, Kentucky (e.g., Claimant's APA 12, pp. 758 and 762; Deposition of Renfro, pp. 4 – 5 and 13 – 14, as contained in UEF's APA, Ex. G);
14. Core is engaged in right-of-way mowing and tree services (Deposition of Renfro, pp. 4 – 5, as contained in UEF's APA, Ex. G);
15. Claimant was working full time on the date of the accident in issue. There is no evidence in the record that the Claimant was not working full duty on the date of accident (Claimant's APA 5, pp. 96 and 425; record in its entirety);
16. Claimant's supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do (Deposition of Renfro, pp. 13 – 17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 45 – 48, 71, as contained in UEF's APA, Ex. H);
17. Core furnished the equipment and told workers when to start work. Claimant did not supply any tools (Deposition of Renfro, pp. 13 – 17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 44 – 45, as contained in UEF's APA, Ex. H);
18. Claimant was paid by the hour (e.g., Tr. p. 34; Claimant's Deposition, p. 44, as contained in UEF's APA, Ex. H);

19. Claimant was told at what time he could take a lunch break (Claimant's Deposition, p. 47, as contained in UEF's APA, Ex. H);

20. Although Renfro testified that he only hired independent contractors, the evidence set forth in the preceding Findings of Facts leads the Undersigned to conclude that Claimant was an employee on the date of accident (Deposition of Renfro, pp. 6 – 7, 10, as contained in UEF's APA, Ex. G);

21. Based upon Claimant's testimony (Claimant's Deposition, p. 80, as contained in UEF's APA, Ex. H), Core employed at least five (5) individuals within South Carolina on the date of accident in issue. I also find that even though Renfro testified that his workers ("20 something") were all independent contractors, Core signed a compliance/capitulation agreement stating that Core was subject to the Act on the date of the accident (Deposition of Renfro, pp. 7 – 8, 12, as contained in UEF's APA, Ex. G; UEF's APA, Ex. A., p. 95; Claimant's APA 11, p. 754);

22. No one on behalf of Core appeared at the Hearing;

23. biBERK is a subsidiary of Berkshire Hathaway (hereinafter "biBERK"). See Deposition of Yoh, pp. 4 – 5; biBERK AP A22, p. 865 – letterhead; biBERK APA 24, p. 871; Tr. p. 10);

24. The South Carolina Department of Transportation (hereinafter "DOT") awarded a procurement contract to Core as subcontractor to perform mowing services in Beaufort County (e.g., Claimant's APA 11, p. 757; Claimant's APA 12, pp. 758 – 762, 778; Claimant's APA 13; Deposition of Schwalk, pp. 8 – 10, as contained in UEF's APA, Ex. F; Deposition of Renfro, pp. 5 – 7, as contained in UEF's APA, Ex. G);

25. As a condition of the contract, DOT required Core to have workers' compensation insurance (e.g., Claimant's APA 13, p. 830);

26. Core obtained insurance with biBERK (Tr. p. 10; APA Submissions);

27. In its application for workers' compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal or excavation (biBERK APA 17, p. 858; biBERK APA 18, p. 859; biBERK APA 24, pp. 872, 874; UEF's APA, Ex. C, pp. 145 and 155);

28. The policy of workers' compensation insurance with biBERK was effective March 6, 2019, through March 6, 2020 (e.g., biBERK APA 18, p. 859; Ex. A to Deposition of Yoh; biBERK APA 24, pp. 871 – 872; UEF's APA, Ex. C, pp. 144 and 153; Deposition of Yoh, pp. 6 – 7);

29. The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBERK APA 24, p. 872; UEF's APA, Ex. C, pp. 144, 152 – 153; Deposition of Yoh, pp. 7, 12 – 13; biBERK APA 17, p. 857);

30. Kentucky is listed as the 3A endorsed state in the policy (biBERK APA 18, p. 859);

31. Under 3C (other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington, and Wyoming. Thus, the policy was also effective in South Carolina (biBERK APA 18, p. 859);

32. Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY, and (d) the insurer as biBERK (Claimant's APA 12, p. 768, UEF's APA Ex. B, p. 95; Deposition of Renfro, pp. 19 – 20, as contained in UEF's APA Ex. G);

33. On April 2, 2019, biBERK attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date as April 21, 2019) because of Core's material misrepresentation in obtaining coverage: Core had identified its business as landscape maintenance (performing no tree removal or excavation work). Tree work is a "more hazardous class code than a traditional landscaper" (Deposition of Yoh, pp. 7, 16; Ex. A to Deposition of Yoh; UEF's APA Ex. C, pp. 153, 174; Claimant's APA 12, pp. 769 – 770; biBERK APA 22, p. 866; biBERK APA 19, p. 860; biBERK APA 21, p. 863; biBERK APA 23, pp. 868 – 869);

34. Core's PMB (private mail box number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBERK APA 19, p. 860; biBERK APA 20, p. 862; biBERK AP A22, p. 866; biBERK APA 23, pp. 868 – 869; Deposition of Yoh, pp. 13 – 156; Ex. C to Deposition of Yoh; UEF's APA Ex. C);

35. Pursuant to Reg. 67-405(C)(1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and, by virtue of that fact alone and absent the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 – four (4) days prior to the date of accident in issue (biBERK APA 21, p. 863);

36. Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. § 38-75-730 and Core's policy require that the insured receive notice of the cancellation to the "addresses shown in the policy." In this case,

biBERK's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. I do not find this deficiency to be a mere "scrivener's error" or "inconsequential", as stated in biBERK's legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is most certainly not "inconsequential." Further, I do not find persuasive biBERK's privity argument – that the SAF and UEF are not parties to the contract and therefore have no standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF, and DOT. I agree with the positions of the Defendants DOT, SAF, and UEF on this issue. The DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the BIBERK policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core's assets (Core being a Kentucky company) does not negate the harm that the UEF may see. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann. § 42-1-440, and may even "call in that subcontractor . . . as a defendant or codefendant." Thus, the Act expressly gives the DOT and SAF to argue that Core and biBERK are liable. It would strain credulity to think that (1) the DOT and SAF could argue that another party is liable but, yet, (2) cannot argue that the liable party's insurance policy, which was not cancelled in accordance with the governing law to which all parties are subject, was effective at the time of accident. See UEF's APA Ex. C, pp. 153, 167, and 174 – 175; S.C. Code Ann. §§ 38-75-730, 42-1-440.

37. biBERK cites both Kentucky statutory law and case law in its Memorandum. However, South Carolina law governs insurance policies effective in South Carolina, and this matter arises in South Carolina. I find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBERK is subject to South Carolina law. See, *inter alia*, §§ 38-1-20, 38-5-10, and 38-75-730.

38. In the mechanics of the accident in issue, Claimant landed on both feet after jumping from a tractor that was tipping over (Tr. p. 33; Claimant's APA 1, pp. 3, 13; Claimant's APA 5, pp. 86, 113, and 515; UEF's APA 1, pp. 39, 44; UEF's APA 3, p. 70);

39. At Beaufort Memorial Hospital ER (hereinafter "BMH"), Claimant complained of leg and foot pain and weakness. X-rays showed bilateral tibial plateau fractures and a right fibular fracture. Claimant's left foot x-ray was "unremarkable" (Claimant's APA 1, *e.g.*, pp. 3, 6 – 8, 10, 13 – 14, 17, 19 – 20, 32 – 39, and 47; Claimant's APA 2, p. 65; Tr. p. 35);

40. Although not dispositive, BMH records are devoid of any complaint or problem regarding the back or spine. In fact, Claimant *denied*, to providers, any injuries to his neck, trunk, lower back, or hips (Claimant's APA 1, p. 13).

Claimant's neck and back were specifically *examined* and documented as having "full range of motion" and "absent: tenderness" (Claimant's APA 1, p. 15). These records would explain why BMH providers did not order any spinal x-rays. I base this Finding of the BMH records in their entirety. *See also* UEF's APA 3, pp. 70 and 72.

41. Claimant's testimony that he (a) injured his back in the accident, and (b) told BMH about his back pain is inconsistent with the medical records as set forth in the previous Finding of Fact (Claimant's Deposition pp. 66 – 67, 78, as contained in UEF's APA Ex. H; Tr. p. 38);

42. Because Claimant's left leg injury required a higher level of medical care that BMH was able to provide, Claimant was transferred by ambulance to MUSC where he was hospitalized/treated for eleven (11) days (*e.g.*, Claimant's APA 1, pp. 11 – 12, 16; Claimant's APA 4, pp. 69 – 72);

43. Consistent with the findings at BMH, MUSC providers also determined that Claimant had bilateral tibial fractures and a right leg fibular fracture (*e.g.*, Claimant's APA 5, pp. 92 – 93, 515, and 528 – 529; UEF's APA 1, pp. 34 – 37);

44. After Claimant's eleven (11) days of hospitalization at MUSC, the "final diagnosis" for Claimant's work injuries upon discharge was bilateral tibial fractures. During Claimant's stay, he denied any back pain and, instead, is documented as being "[n]egative for back pain." During a physical examination, Claimant's cervical, thoracic, and lumbar levels of the spine are documented as "normal". Additionally, the nurses' notes as to location of pain are devoid of any back complaint or problem. On the date of discharge, there is no reference to or mention of the back. Unlike Claimant's legs, Claimant's spine was never x-rayed during his hospital stay (Claimant's APA 5, *e.g.*, pp. 75, 82 – 83, 86, 88, 113, 320, 327, 338, 345, 350, 359, 365, 377 – 383, and 515: "*denies any pain elsewhere*" [emphasis added]; Claimant's APA 5, 2nd page 279, 2nd page 286, 2nd page 302, 2nd page 308, and 2nd page 315; UEF's APA 1, pp. 40 – 41, 56; MUSC records in their entirety);

45. After being released from MUSC on May 17, 2019, Claimant followed up with MUSC on May 22, 2019. There is no complaint of – or reference to – the back in these records (Claimant's APA 6, pp. 703 – 705; UEF's APA 1, pp. 62 – 63);

46. The first time Claimant's back is mentioned in medical records (other than his back being "normal" or regarding his denial of back pain) is the report from Claimant's IME (Dr. McConnell, February 12, 2020) to whom the Claimant was sent by his attorney. Although Claimant's testimony at his deposition (two weeks later, on February 26, 2020) was that (a) his back was injured in the accident, and (b) he told BMH providers about his back pain on the date of accident

(“they told me it was probably from the jarring where I landed”), BMH records refute this testimony. By contrast, Dr. McConnell states that the Claimant’s back pain began because of abnormal gait mechanics – not the accident itself (Claimant’s APA 8, pp. 716 – 717; Claimant’s Deposition pp. 66 – 67, as contained in UEF’s APA Ex. H; Tr. pp. 37 – 38, 45, and 57);

47. Although Claimant testified at the Hearing that his back is swollen all the time with a knot on the right side of his lower back, Claimant’s expert’s records are devoid of any reference to (a) spinal swelling, or (b) a spinal knot. Additionally, under Dr. McConnell’s “Impression” regarding Claimant’s injuries, *Dr. McConnell does not list/mention either Claimant’s “back” or “spine” – Dr. McConnell only lists Claimant’s legs* (Tr. p. 37; Claimant’s APA 8 in its entirety);

48. Because of his left leg injury, Claimant underwent ORIF surgery at MUSC on May 9, 2019. Claimant’s right leg was treated conservatively with a hinged knee brace (medical evidence in its entirety, e.g., UEF’s AP A1, pp. 54 – 55; Claimant’s APA 5, pp. 118 – 119, 495, 500, 502, and 583);

49. I find that Claimant is entitled to temporary total disability (TTD) benefits from the date of accident through February 17, 2020: (a) after his surgery and upon his discharge from MUSC, Claimant was instructed (i) not to drive or operate machinery while using the narcotic pain medication he was prescribed, and (ii) to be non-weight bearing until months later (Claimant’s APA 5, e.g., pp. 166, 168, 170 – 172, 174 – 175, 181 – 183, 549, 658, 660, 664 – 665, and 670; UEF’s APA 1, pp. 58 – 60); (b) Claimant was further instructed that *in six (6) weeks, he might be allowed to “being to put some of [his] weight down using crutches or a walker if things are healing well”* [emphasis added] (Claimant’s APA 5, p. 175); (c) Claimant was further instructed that, in three (3) months, he could *begin* to bear weight [emphasis added] (Claimant’s APA 5, pp. 175 and 668); and (d) Dr. McConnell – the only physician to weigh in on restrictions as Claimant has not been provided any authorized medical treatment – states that Claimant was unable to work as a landscape maintenance worker from the date of accident until “the present” – February 17, 2020 (Claimant’s APA 8, p. 714);

50. Claimant reached maximum medical improvement (MMI) on February 17, 2020 (Claimant’s APA 8, p. 714, Tr. p. 11);

51. Dr. McConnell assigned a five percent (5%) impairment rating to the left lower leg and a five percent (5%) impairment rating to the right lower extremity (Claimant’s APA 8, p. 717);

52. Although Claimant testified at the *Hearing* that both legs give out such that he falls onto the floor, Dr. McConnell states (twice) that, upon clinical examination, there is no instability. Claimant inconsistently testified at his *deposition* that his right knee does not give out – only his left (Tr. pp. 41 – 42; Claimant’s Deposition, pp. 66, 70, as contained in UEF’s AP Ex. H);

53. As of the date of the Hearing, Claimant no longer uses a cane (Tr. p. 39);

54. Permanency award to the left leg pursuant to § 42-9-30(16): Ten Percent (10%). I base this finding on the nature of the injury, the fact that Claimant has implanted hardware, the fact that Dr. McConnell documented quadriceps atrophy, the impairment rating, and, to some extent, Claimant's testimony regarding his subjective complaints.

55. Permanency award to the right leg pursuant to § 42-9-30(16): Six Percent (6%).

56. Claimant to received causally related medicals, including but not limited to BMH, MUSC, mileage, medications, the ambulance ride from BMH to MUSC, and the wheelchair that was ordered upon Claimant's discharge from MUSC (Claimant's APA Submissions);

57. Claimant has an outstanding child support lien to be satisfied (UEF's APA Ex. D);

58. Claimant's APA Submissions are renumbered/repaginated after page 317 – instead of going to sequential page 318, they start over at 245 00 apparently using the hospital page numbers at the lower right-hand side. Therefore, there are two page 245's (containing different records, two page 246's, etc., through two page 317's (hence my reference to "2nd page" in these instructions). I did not discover this issue until my post-Hearing review of the evidence; otherwise, I would have had Claimant's counsel repaginate his APAs for the benefit of the other parties and the Commission;

59. Defendants Core Services, LLC and biBERK are responsible/liable for benefits;

60. biBERK shall receive credit for the One Thousand and no/100 Dollars (\$1,000.00) Claimant earned mowing grass after the date of accident (Tr. pp. 43 – 44); and

61. Claimant's Average Weekly Wage is Six Hundred, Seventy-Five and no/100 (\$675.00), yielding a Compensation Rate of Four Hundred Fifty and 02/100 Dollars (\$450.02). I base this finding on Claimant's testimony that he worked forty (40) to fifty (50) hours per week at \$15.00 per hour (Tr. pp. 34, 49 – 50: Claimant's Deposition, pp. 44, 82, as contained in UEF's APA Ex. H).

CONCLUSIONS OF LAW
(SINGLE COMMISSIONER)

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;
2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.
3. That S.C. Code Ann. § 42-1-160(D) is applicable in defining stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury.
4. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.
5. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.
6. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.
7. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.
8. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.
9. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.
10. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.
11. That S.C. Code Ann. § 42-1-172 is applicable in defining a repetitive trauma injury.
12. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
13. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
14. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards.
15. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, Core was subject to the Act at the time in question;

16. Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate;

17. Under § 42-15-20, proper notice was provided to Employers;

18. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past casually-related medical expenses.

DISCUSSION

Within the statutory period, biBERK filed an Application for Review in the case setting forth their assignments of error, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on June 23, 2021. In its Form 30, Appellant respectfully submitted to the Full Commission that the Single Commissioner erred as follows:

1. Did the Hearing Commissioner err in her Finding of Fact #36 that biBERK's cancellation of Core Service's ("Core") worker's [sic] compensation insurance policy was "ineffective," when such finding is against the preponderance of the evidence and is based on an erroneous application of law?

2. Did the Hearing Commissioner err in failing to find that biBERK cancelled Core's policy in accordance with applicable law, thereby rendering Core Services uninsured on Claimant's date of accident?

3. Did the Hearing Commissioner err in failing to impose liability for this claim on the S.C. Department of Transportation ("SCDOT") as Claimant's statutory employer pursuant to S.C. Code Section 42-1-400, *et seq.*?

4. Did the Hearing Commissioner err in her Finding of Fact #36 to the extent she

concludes that SCDOT and the S.C. [Workers' Compensation] Uninsured Employers['] Fund ("UEF") have standing to contest cancellation of Core's insurance policy when a) those entities lacked privity and standing; b) Core did not make an appearance in this matter to dispute the cancellation of its own policy; and c) Core in fact entered a stipulation that it was illegally operating in South Carolina without workers['] coverage?

5. Did the Hearing Commissioner err as a matter of law in her Finding of Fact #36 to the extent that she concludes the Act confers standing to an upstream employer to contest cancellation of a direct employer's insurance policy, when the statute in question merely allows imposition of liability and/or indemnification from such employer, regardless of whether that employer has insurance coverage or not?

6. Did the Hearing Commissioner err in failing to recognize the elementary proposition that only parties in privity of contract and/or third party beneficiaries to an insurance policy have standing to dispute scope of coverage and cancellation issues?

7. Did the Hearing Commissioner err as a matter of law in Finding of Fact #37 to the extent she finds that South Carolina law governs the cancellation of Core's policy and Kentucky law is "irrelevant," when a) Core is a Kentucky corporation; b) its policy with biBERK was entered into under the laws of Kentucky via the 3A endorsement on the policy; c) efforts to cancel the policy were initiated over a month *prior to* South Carolina *subject matter jurisdiction* arising over this claim via the accident's occurrence in South Carolina; and d) the parties to the insurance contract otherwise had no minimum contacts with South Carolina that could possibly confer *personal jurisdiction* over them rendering them subject to South Carolina law at the time the policy was cancelled?

8. Did the Hearing Commissioner err in her Finding of Fact #59 and by Ordering

biBERK to be responsible for medical and compensation benefits awarded in this claim, when such finding/order is based on the aforementioned erroneous predicate findings of fact and conclusions of law?

In its Appellant's Brief to the Full Commission, biBERK respectfully submitted to the Full Commission that the Single Commissioner erred as follows:

1. UEF and SAF lack standing to contest cancellation of the policy when a) neither entity was a party or third-party beneficiary to the insurance contract between Core and BiBERK; and b) Core has not made an appearance in this case to protest the cancellation itself.

2. Even if the UEF and/or the SAF have standing to raise the issue, BiBERK effectively cancelled Core's policy under Kentucky law prior to the date of accident.

3. Core's policy was also effectively cancelled under South Carolina law prior to the Claimant's date of accident.

Pursuant to S.C. Code Ann. § 42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the briefs of the Appellant and Respondents, as well as those issues raised at the Full Commission Review hearing. After careful review, The Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, have determined that the Hearing Commissioner's Findings of Fact and Conclusion of Law are corrected as stated and should be affirmed.

Accordingly, after full consideration of the evidence in the record and the parties' respective arguments, we, the Appellate Panel, enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT
(APPELLATE PANEL)

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;

2. Claimant alleges that injured both legs and his low back in work-related accident on May 6, 2019;

3. Claimant is thirty-six (36) years of age (medical evidence establishing Claimant's date of birth as June 7, 1984; Claimant's Deposition, p. 5, as contained in UEF's APA Submissions, Ex. H);

4. As to pre-existing conditions, Claimant sustained various prior knee injuries and underwent four (4) surgeries to his knees, at least two (2) of which were injuries attributable to workers' compensation claims and for which Claimant received settlements (UEF's APA 4, p. 84; Claimant's APA 5, pp. 113, 164, and 179; Claimant's APA 8, p. 716; Tr. pp. 36 – 37, 45 – 47; UEF's APA 1, pp. 1, 4, 13 – 15, 30, 32, and 48; Claimant's Depo. p. 3, as contained in UEF's APA Ex. H; Claimant's Deposition, pp. 21 – 23, as contained in UEF's APA, Ex. II, ll. 24 – 25 of p. 22, and lines 1 – 4 of p. 23.);

5. As to pre-existing conditions, Claimant was diagnosed with fibromyalgia in June 2017 (the year prior to the accident in issue), during which visit Claimant asked for an increase in his Gabapentin "because he continues to be in pain." Other records describe Claimant's prior medical history as involving peripheral neuropathy (UEF's APA 5, pp. 91 – 92; Claimant's APA 5, pp. 89 and 515);

6. In December 2014, Claimant sought treatment after he injured his back when he was thrown or dragged by a horse or donkey (UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 – 30, as contained in UEF's APA, Ex. H);

7. In 2015, Claimant sustained another back injury (Tr. p. 51);
8. In 2016, Claimant fell and injured his sacrum/coccyx (UEF's APA 1, p. 19);
9. In October 2018 (seven (7) months before the accident), Claimant had back pain after he "pulled muscle in back a few weeks ago" and/or had sciatica, and for which Claimant sought treatment (UEF's APA 1, p. 31; Tr. pp. 51 – 52);
10. Claimant attended high school and dropped out in the 12th grade (Claimant's Deposition, pp. 5 and 11, as contained in UEF's APA, Ex. H);
11. Claimant's employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician (Claimant's Deposition, pp. 11 – 21, as contained in UEF's APA, Ex. H);
12. Claimant was hired by Core Services, LLC (hereinafter "Core") to work as a tractor operator. This job required Claimant to mow grass on the sides or shoulders of roadways (Tr. pp. 34 and 51);
13. Core is a Kentucky company headquartered in Lexington, Kentucky (*e.g.*, Claimant's APA 12, pp. 758 and 762; Deposition of Renfro, pp. 4 – 5 and 13 – 14, as contained in UEF's APA, Ex. G);
14. Core is engaged in right-of-way mowing and tree services (Deposition of Renfro, pp. 4 – 5, as contained in UEF's APA, Ex. G);
15. Claimant was working full time on the date of the accident in issue. There is no evidence in the record that the Claimant was not working full duty on the date of accident (Claimant's APA 5, pp. 96 and 425; record in its entirety);

16. Claimant's supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do (Deposition of Renfro, pp. 13 – 17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 45 – 48, 71, as contained in UEF's APA, Ex. H);

17. Core furnished the equipment and told workers when to start work. Claimant did not supply any tools (Deposition of Renfro, pp. 13 –17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 44 – 45, as contained in UEF's APA, Ex. H);

18. Claimant was paid by the hour (*e.g.*, Tr. p. 34; Claimant's Deposition, p. 44, as contained in UEF's APA, Ex. H);

19. Claimant was told at what time he could take a lunch break (Claimant's Deposition, p. 47, as contained in UEF's APA, Ex. H);

20. Although Renfro testified that he only hired independent contractors, the evidence set forth in the preceding Findings of Facts leads the Undersigned to conclude that Claimant was an employee on the date of accident (Deposition of Renfro, pp. 6 – 7, 10, as contained in UEF's APA, Ex. G);

21. Based upon Claimant's testimony (Claimant's Deposition, p. 80, as contained in UEF's APA, Ex. H), Core employed at least five (5) individuals within South Carolina on the date of accident in issue. WE also find that even though Renfro testified that his workers ("20 something") were all independent contractors, Core signed a compliance/capitulation agreement stating that Core was subject to the Act on the date of the accident (Deposition of Renfro, pp. 7 – 8, 12, as contained in UEF's APA, Ex. G; UEF's APA, Ex. A., p. 95; Claimant's APA 11, p. 754);

22. No one on behalf of Core appeared at the Hearing;

23. biBERK is a subsidiary of Berkshire Hathaway (hereinafter “biBERK”). *See* Deposition of Yoh, pp. 4 – 5; biBERK AP A22, p. 865 – letterhead; biBERK APA 24, p. 871; Tr. p. 10);

24. The South Carolina Department of Transportation (hereinafter “DOT”) awarded a procurement contract to Core as subcontractor to perform mowing services in Beaufort County (*e.g.*, Claimant’s APA 11, p. 757; Claimant’s APA 12, pp. 758 – 762, 778; Claimant’s APA 13; Deposition of Schwalk, pp. 8 – 10, as contained in UEF’s APA, Ex. F; Deposition of Renfro, pp. 5 – 7, as contained in UEF’s APA, Ex. G);

25. As a condition of the contract, DOT required Core to have workers’ compensation insurance (*e.g.*, Claimant’s APA 13, p. 830);

26. Core obtained insurance with biBERK (Tr. p. 10; APA Submissions);

27. In its application for workers’ compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal or excavation (biBERK APA 17, p. 858; biBERK APA 18, p. 859; biBERK APA 24, pp. 872, 874; UEF’s APA, Ex. C, pp. 145 and 155);

28. The policy of workers’ compensation insurance with biBERK was effective March 6, 2019, through March 6, 2020 (*e.g.*, biBERK APA 18, p. 859; Ex. A to Deposition of Yoh; biBERK APA 24, pp. 871 – 872; UEF’s APA, Ex. C, pp. 144 and 153; Deposition of Yoh, pp. 6 – 7);

29. The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBERK APA 24, p. 872; UEF’s APA, Ex. C, pp. 144, 152 – 153; Deposition of Yoh, pp. 7, 12 – 13; biBERK APA 17, p. 857);

30. Kentucky is listed as the 3A endorsed state in the policy (biBERK APA 18, p. 859);

31. Under 3C (other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington, and Wyoming. Thus, the policy was also effective in South Carolina (biBERK APA 18, p. 859);

32. Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY, and (d) the insurer as biBERK (Claimant's APA 12, p. 768, UEF's APA Ex. B, p. 95; Deposition of Renfro, pp. 19 – 20, as contained in UEF's APA Ex. G);

33. On April 2, 2019, biBERK attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date as April 21, 2019) because of Core's material misrepresentation in obtaining coverage: Core had identified its business as landscape maintenance (performing no tree removal or excavation work). Tree work is a "more hazardous class code than a traditional landscaper" (Deposition of Yoh, pp. 7, 16; Ex. A to Deposition of Yoh; UEF's APA Ex. C, pp. 153, 174; Claimant's APA 12, pp. 769 – 770; biBERK APA 22, p. 866; biBERK APA 19, p. 860; biBERK APA 21, p. 863; biBERK APA 23, pp. 868 – 869);

34. Core's PMB (private mail box number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBERK APA 19, p. 860; biBERK APA 20, p. 862; biBERK AP A22, p. 866; biBERK APA 23, pp. 868 – 869; Deposition of Yoh, pp. 13 – 156; Ex. C to Deposition of Yoh; UEF's APA Ex. C);

35. Pursuant to Reg. 67-405(C)(1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and, by virtue of that fact alone and absent

the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 – four (4) days prior to the date of accident in issue (biBERK APA 21, p. 863);

36. Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. § 38-75-730 and Core’s policy require that the insured receive notice of the cancellation to the “addresses shown in the policy.” In this case, biBERK’s proof of mailing does not show the entire, complete, or proper address as set forth in the policy. WE do not find this deficiency to be a mere “scrivener’s error” or “inconsequential”, as stated in biBERK’s legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is most certainly not “inconsequential.” Further, WE do not find persuasive biBERK’s privity argument – that the SAF and UEF are not parties to the contract and therefore have no standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF, and DOT. WE agree with the positions of the Defendants DOT, SAF, and UEF on this issue. The DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the BIBERK policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core’s assets (Core being a Kentucky company) does not negate the harm that the UEF may see. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann. § 42-1-440, and may even “call in that subcontractor . . . as a defendant or codefendant.” Thus, the Act expressly gives the DOT and SAF to argue that Core and biBERK are liable. It would strain credulity to think that (1) the DOT and SAF could argue that another party is liable but, yet, (2) cannot argue that the liable party’s insurance policy, which was not cancelled in accordance with the governing law to

which all parties are subject, was effective at the time of accident. *See* UEF's APA Ex. C, pp. 153, 167, and 174 – 175; S.C. Code Ann. §§ 38-75-730, 42-1-440.

37. biBERK cites both Kentucky statutory law and case law in its Memorandum. However, South Carolina law governs insurance policies effective in South Carolina, and this matter arises in South Carolina. WE find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBERK is subject to South Carolina law. *See, inter alia*, §§ 38-1-20, 38-5-10, and 38-75-730.

38. In the mechanics of the accident in issue, Claimant landed on both feet after jumping from a tractor that was tipping over (Tr. p. 33; Claimant's APA 1, pp. 3, 13; Claimant's APA 5, pp. 86, 113, and 515; UEF's APA 1, pp. 39, 44; UEF's APA 3, p. 70);

39. At Beaufort Memorial Hospital ER (hereinafter "BMH"), Claimant complained of leg and foot pain and weakness. X-rays showed bilateral tibial plateau fractures and a right fibular fracture. Claimant's left foot x-ray was "unremarkable" (Claimant's APA 1, *e.g.*, pp. 3, 6 – 8, 10, 13 – 14, 17, 19 – 20, 32 – 39, and 47; Claimant's APA 2, p. 65; Tr. p. 35);

40. Although not dispositive, BMH records are devoid of any complaint or problem regarding the back or spine. In fact, Claimant *denied*, to providers, any injuries to his neck, trunk, lower back, or hips (Claimant's APA 1, p. 13). Claimant's neck and back were specifically *examined* and documented as having "full range of motion" and "absent: tenderness" (Claimant's APA 1, p. 15). These records would explain why BMH providers did not order any spinal x-rays. WE base this Finding of the BMH records in their entirety. *See also* UEF's APA 3, pp. 70 and 72.

41. Claimant's testimony that he (a) injured his back in the accident, and (b) told BMH about his back pain is inconsistent with the medical records as set forth in the previous Finding of Fact (Claimant's Deposition pp. 66 – 67, 78, as contained in UEF's APA Ex. H; Tr. p. 38);

42. Because Claimant's left leg injury required a higher level of medical care that BMH was able to provide, Claimant was transferred by ambulance to MUSC where he was hospitalized/treated for eleven (11) days (e.g., Claimant's APA 1, pp. 11 – 12, 16; Claimant's APA 4, pp. 69 – 72);

43. Consistent with the findings at BMH, MUSC providers also determined that Claimant had bilateral tibial fractures and a right leg fibular fracture (e.g., Claimant's APA 5, pp. 92 – 93, 515, and 528 – 529; UEF's APA 1, pp. 34 – 37);

44. After Claimant's eleven (11) days of hospitalization at MUSC, the "final diagnosis" for Claimant's work injuries upon discharge was bilateral tibial fractures. During Claimant's stay, he denied any back pain and, instead, is documented as being "[n]egative for back pain." During a physical examination, Claimant's cervical, thoracic, and lumbar levels of the spine are documented as "normal". Additionally, the nurses' notes as to location of pain are devoid of any back complaint or problem. On the date of discharge, there is no reference to or mention of the back. Unlike Claimant's legs, Claimant's spine was never x-rayed during his hospital stay (Claimant's APA 5, e.g., pp. 75, 82 – 83, 86, 88, 113, 320, 327, 338, 345, 350, 359, 365, 377 – 383, and 515: "denies any pain elsewhere" [emphasis added]; Claimant's APA 5, 2nd page 279, 2nd page 286, 2nd page 302, 2nd page 308, and 2nd page 315; UEF's APA 1, pp. 40 – 41, 56; MUSC records in their entirety);

45. After being released from MUSC on May 17, 2019, Claimant followed up with MUSC on May 22, 2019. There is no complaint of – or reference to – the back in these records (Claimant’s APA 6, pp. 703 – 705; UEF’s APA 1, pp. 62 – 63);

46. The first time Claimant’s back is mentioned in medical records (other than his back being “normal” or regarding his denial of back pain) is the report from Claimant’s IME (Dr. McConnell, February 12, 2020) to whom the Claimant was sent by his attorney. Although Claimant’s testimony at his deposition (two weeks later, on February 26, 2020) was that (a) his back was injured in the accident, and (b) he told BMH providers about his back pain on the date of accident (“they told me it was probably from the jarring where I landed”), BMH records refute this testimony. By contrast, Dr. McConnell states that the Claimant’s back pain began because of abnormal gait mechanics – not the accident itself (Claimant’s APA 8, pp. 716 – 717; Claimant’s Deposition pp. 66 – 67, as contained in UEF’s APA Ex. H; Tr. pp. 37 – 38, 45, and 57);

47. Although Claimant testified at the Hearing that his back is swollen all the time with a knot on the right side of his lower back, Claimant’s expert’s records are devoid of any reference to (a) spinal swelling, or (b) a spinal knot. Additionally, under Dr. McConnell’s “Impression” regarding Claimant’s injuries, *Dr. McConnell does not list/mention either Claimant’s “back” or “spine” – Dr. McConnell only lists Claimant’s legs* (Tr. p. 37; Claimant’s APA 8 in its entirety);

48. Because of his left leg injury, Claimant underwent ORIF surgery at MUSC on May 9, 2019. Claimant’s right leg was treated conservatively with a hinged knee brace (medical evidence in its entirety, e.g., UEF’s APA 1, pp. 54 – 55; Claimant’s APA 5, pp. 118 – 119, 495, 500, 502, and 583);

49. WE find that Claimant is entitled to temporary total disability (TTD) benefits from the date of accident through February 17, 2020: (a) after his surgery and upon his discharge from

MUSC, Claimant was instructed (i) not to drive or operate machinery while using the narcotic pain medication he was prescribed, and (ii) to be non-weight bearing until months later (Claimant's APA 5, e.g., pp. 166, 168, 170 – 172, 174 – 175, 181 – 183, 549, 658, 660, 664 – 665, and 670; UEF's APA 1, pp. 58 – 60); (b) Claimant was further instructed that *in six (6) weeks, he might be allowed to "being to put some of [his] weight down using crutches or a walker if things are healing well"* [emphasis added] (Claimant's APA 5, p. 175); (c) Claimant was further instructed that, in three (3) months, he could *begin* to bear weight [emphasis added] (Claimant's APA 5, pp. 175 and 668); and (d) Dr. McConnell – the only physician to weigh in on restrictions as Claimant has not been provided any authorized medical treatment – states that Claimant was unable to work as a landscape maintenance worker from the date of accident until "the present" – February 17, 2020 (Claimant's APA 8, p. 714);

50. Claimant reached maximum medical improvement (MMI) on February 17, 2020 (Claimant's APA 8, p. 714, Tr. p. 11);

51. Dr. McConnell assigned a five percent (5%) impairment rating to the left lower leg and a five percent (5%) impairment rating to the right lower extremity (Claimant's APA 8, p. 717);

52. Although Claimant testified at the *Hearing* that both legs give out such that he falls onto the floor, Dr. McConnell states (twice) that, upon clinical examination, there is no instability. Claimant inconsistently testified at his *deposition* that his right knee does not give out – only his left (Tr. pp. 41 – 42; Claimant's Deposition, pp. 66, 70, as contained in UEF's AP Ex. H);

53. As of the date of the Hearing, Claimant no longer uses a cane (Tr. p. 39);

54. Permanency award to the left leg pursuant to § 42-9-30(16): Ten Percent (10%).

WE base this finding on the nature of the injury, the fact that Claimant has implanted hardware,

the fact that Dr. McConnell documented quadriceps atrophy, the impairment rating, and, to some extent, Claimant's testimony regarding his subjective complaints.

55. Permanency award to the right leg pursuant to § 42-9-30(16): Six Percent (6%).

56. Claimant to received causally related medicals, including but not limited to BMH, MUSC, mileage, medications, the ambulance ride from BMH to MUSC, and the wheelchair that was ordered upon Claimant's discharge from MUSC (Claimant's APA Submissions);

57. Claimant has an outstanding child support lien to be satisfied (UEF's APA Ex. D);

58. Claimant's APA Submissions are renumbered/repaginated after page 317 – instead of going to sequential page 318, they start over at 245 00 apparently using the hospital page numbers at the lower right-hand side. Therefore, there are two page 245's (containing different records, two page 246's, etc., through two page 317's (hence my reference to "2nd page" in these instructions). WE did not discover this issue until my post-Hearing review of the evidence; otherwise, WE would have had Claimant's counsel repaginate his APAs for the benefit of the other parties and the Commission;

59. Defendants Core Services, LLC and biBERK are responsible/liable for benefits;

60. biBERK shall receive credit for the One Thousand and no/100 Dollars (\$1,000.00)

Claimant earned mowing grass after the date of accident (Tr. pp. 43 – 44); and

61. Claimant's Average Weekly Wage is Six Hundred, Seventy-Five and no/100 (\$675.00), yielding a Compensation Rate of Four Hundred Fifty and 02/100 Dollars (\$450.02). WE base this finding on Claimant's testimony that he worked forty (40) to fifty (50) hours per week at \$15.00 per hour (Tr. pp. 34, 49 – 50: Claimant's Deposition, pp. 44, 82, as contained in UEF's APA Ex. H).

CONCLUSIONS OF LAW
(APPELLATE PANEL)

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;
2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.
3. That S.C. Code Ann. § 42-1-160(D) is applicable in defining stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury.
4. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.
5. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.
6. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.
7. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.
8. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.
9. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.
10. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.
11. That S.C. Code Ann. § 42-1-172 is applicable in defining a repetitive trauma injury.
12. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
13. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
14. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards.
15. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, Core was subject to the Act at the time in question;

16. Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate;

17. Under § 42-15-20, proper notice was provided to Employers;

18. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past causally-related medical expenses.

ORDER

By unanimous vote, the Order of the Single Commissioner from which this appeal has been taken is hereby Affirmed by the Appellate Panel. This order shall constitute the final Decision and Order of the South Carolina Workers' Compensation Commission.

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner dated June 9, 2021, is hereby **AFFIRMED**.

IT IS, THEREFORE, ORDERED that the Claimant, Steven M. Brant, sustained compensable injuries to his left leg and right leg in the course and scope of his employment with Employer, Core Services, LLC, on May 6, 2019; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's claims for benefits under the Workers' Compensation Act based on the alleged injury or injuries to his back or spine is denied; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, shall be reimbursed for all past causally-related medical treatment since the date of accident, including

reimbursement to the Claimant for treatment-related mileage and prescription medications, surgeries, physical therapy, injections, hospitalizations, medications, consultations, diagnostic procedures, rehabilitation and other attendant care. These benefits shall be provided by and payment shall be made by Berkshire Hathaway Direct Insurance Company; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is at maximum medical improvement for his causally related injuries; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to temporary, total disability benefit payments from May 6, 2019, through February 17, 2020, pursuant to § 42-9-20; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his right leg in the amount of six percent (6%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his left leg in the amount of ten percent (10%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that Defendants shall receive a credit in the amount of One Thousand and no/100 Dollars (\$1,000.00) for the money Claimant earned mowing grass after the date of accident; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's outstanding child support lien shall be satisfied from this Award; and it is further

ORDERED, ADJUDGED AND DECREED that, at all times relevant hereto, Core Services, LLC had valid workers' compensation insurance coverage in South Carolina by and through biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that all benefits payable to Claimant by and through this Order shall be made by biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Transportation, the South Carolina State Accident Fund, and the South Carolina Workers' Compensation Uninsured Employers' Fund are hereby dismissed, with prejudice;

No hearing costs are assessed in this matter.

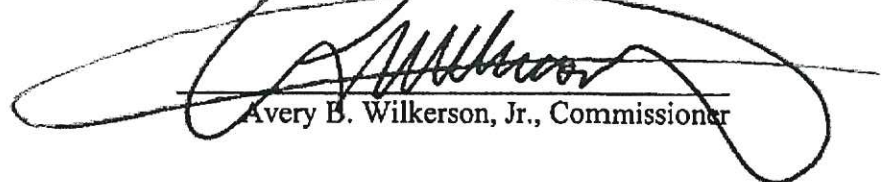
AND IT IS SO ORDERED!



R. Michael Campbell, II, Commissioner



T. Scott Beck, Commissioner



Avery B. Wilkerson, Jr., Commissioner

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 Valerie Deller on January 11, 2022

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WCC File #: 1907252
Carrier File #: 2019001743
March 16, 2020

NOTICE OF HEARING CORRECTED

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.
Date: April 30, 2020 at 10:45 AM
Location: Walterboro Voc Rehab
Conference Room
919 Thunderbolt Dr.
WALTERBORO, SC 29488

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, March 16, 2020

Party

Employee: Steven M Brant

Attorney

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WCC File #: 1907252
Carrier File #: 2019001743
April 11, 2020

NOTICE OF HEARING **POSTPONEMENT**

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.

Date: April 30, 2020 at 10:45 AM

Location: Walterboro Voc Rehab
Conference Room
919 Thunderbolt Dr.
WALTERBORO, SC 29488

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, April 11, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers Fund

E. Courtney Gruber
cgruber@yclaw.com
843-720-5410

E. Courtney Gruber
cgruber@yclaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers Fund

Party

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

Attorney

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
April 20, 2020

NOTICE OF HEARING

RESET

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.

Date: June 17, 2020 at 12:30 PM

Location: Walterboro Voc Rehab
Conference Room
919 Thunderbolt Dr.
WALTERBORO, SC 29488

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, April 20, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers Fund

E. Courtney Gruber
cgruber@yclr.com
843-720-5410

E. Courtney Gruber
cgruber@yclr.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers Fund

Party

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Jason W. Lockhart (5)
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803-227-2283

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M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

Attorney

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803-227-2283

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

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EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
June 1, 2020

NOTICE OF HEARING

RESET

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.

Date: June 17, 2020 at 11:30 AM

Location: Yemassee Town Clerk, 101 Town Circle, Courtroom
YEMASSEE, SC 29945

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, June 1, 2020

Party

Employee: Steven M Brant

Carrier: SC Workers Compensation Uninsured Employers
Fund

E. Courtney Gruber
cgruber@ycrlaw.com
843-720-5410

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

E. Courtney Gruber
cgruber@ycrlaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Party

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

Attorney

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
June 4, 2020

NOTICE OF HEARING

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.

Date: June 17, 2020 at 11:30 AM

**Location: Yemassee Town Clerk, 101 Town Circle, Courtroom
YEMASSEE, SC 29945**

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, June 4, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers
Fund

E. Courtney Gruber
cgruber@yclaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Party

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

Attorney

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
June 17, 2020

NOTICE OF HEARING

RESET

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.
Date: August 12, 2020 at 11:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, June 17, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers Fund

E. Courtney Gruber
cgruber@ycrlaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Party

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

Attorney

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
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George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
June 17, 2020

NOTICE OF HEARING **POSTPONEMENT**

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.

Date: June 17, 2020 at 11:30 AM

Location: Yemassee Town Clerk, 101 Town Circle, Courtroom
YEMASSEE, SC 29945

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, June 17, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers
Fund

E. Courtney Gruber
cgruber@ycrlaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Party

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

Attorney

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

George D. Gallagher
ggallagher@speed-seta.com
803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1907252
Carrier File #: 2019001743
August 7, 2020

NOTICE OF HEARING

RESET

Steven M Brant v. S.C DEPT OF TRANSPORTATION, et al

Subject: To determine issues as set forth on Forms 50 and 51.
Date: August 12, 2020 at 03:30 PM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, August 7, 2020

Party

Employee: Steven M Brant

Attorney

Alan M. Tanenbaum
alan@tanlaw.com
843-722-2588

Carrier: SC Workers Compensation Uninsured Employers Fund

E. Courtney Gruber
cgruber@ycrlaw.com
843-720-5410

Carrier: SC Workers Compensation Uninsured Employers Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Party

Employer: CORE SERVICES LLC
Carrier: Markel Insurance Company

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: S.C DEPT OF TRANSPORTATION
Carrier: State Accident Fund

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
Carrier: Berkshire Hathaway Direct Insurance Company

Employer: CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

Attorney

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Timothy B. Killen
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George D. Gallagher
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803-748-2919

M. Stephen Stublely
sstublely@speed-seta.com
803-748-2919

ADDENDUM - FORM 50
Steven Brant - WCC File #: 1907252

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, SC 29902

Medical University of South Carolina
171 Ashley Avenue
Charleston, SC 20425

13. Mediation

Mediation may be mandatory in this case pursuant to Reg. 67-1802 if the claimant claims permanent and total disability under Section 42-9-10 and/or Section 42-9-30(21), but he has not yet reached MMI.

Certification of Service

The counsel aforsigned certifies that (s)he has served this document pursuant to Reg. 67-211 by First Class Postage Certified Mail Personal Service Electronic Service to the entity(ies) below at the said address on the 26 day of Nov 20 19 :

Core Services, LLC
828 E. High Street, PMB 272
Lexington, KY 40502

Linda C. McDonald, Chief Counsel
South Carolina Department of Transportation
955 Park Street, P.O. Box 191, Columbia, SC 29202

Berkshire Hathaway Direct Insurance Company
BIBERK
P.O. Box 113247
Stamford, CT 06911

Hiscox Inc.
520 Madison Avenue
32nd Floor
New York, NY 10022

ADDENDUM - FORM 50
Steven Brant - WCC File #: 1907252

Markel Insurance Company.
Markel Claims
P.O. Box 2009
Glen Allen, VA 23058-2009

Jason W. Lockhart
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia SC 29211

South Carolina State Accident Fund
P.O. Box 102100
Columbia, S.C. 29221

South Carolina Uninsured Employers Fund
c/o South Carolina State Accident Fund
P.O. Box 210039
Columbia, S.C. 29221-0039

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1907252

Steven Brant,)	
)	
Employee,)	
Claimant,)	
)	
vs.)	
)	
SC Department of Transportation, <i>et al.</i> ,)	CERTIFICATE OF SERVICE
)	
Employers,)	
and)	
)	
State Accident Fund, <i>et al.</i> ,)	
)	
Carriers,)	
Defendants.)	

I, Michelle A. Adams, do hereby certify that I am the paralegal for Timothy B. Killen, attorney for the SC Department of Transportation and State Accident Fund, with **HOLDER PADGETT LITTLEJOHN + PRICKETT** in Mount Pleasant, South Carolina, and that on the 3rd day of March 2020, I mailed the foregoing NOTICE OF MOTION & MOTION TO ADD CARRIER to the following via electronic mail and United States mail, first class, proper postage affixed thereto respectively:

VIA EMAIL

Alan Tanenbaum, Esquire
Attorney At Law, PA
alan@tanlaw.com

Jason Lockhart, Esquire
McAngus Goudelock & Courie
jlockhart@mgclaw.com

E. Courtney Gruber, Esquire
Young Clement Rivers, LLP
cgruber@ycrlaw.com

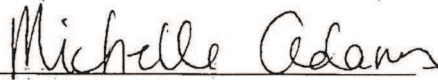
VIA US MAIL

Core Services, LLC
828 E High St, PMB 272
Lexington, KY 40502

Berkshire Hathaway Direct Insurance Company
PO Box 113247
Stamford, CT 06911

Berkshire Hathaway Direct Insurance Company
1314 Douglas St, Ste 1400
Omaha, NE 68102-1944

Lisa Glover, Esquire
SC Uninsured Employers' Fund
lglover@saf.sc.gov



Michelle A. Adams
Paralegal to Timothy B. Killen, Esquire
HOLDER PADGETT LITTLEJOHN + PRICKETT
349 W Coleman Blvd, Ste 300
Mount Pleasant, SC 29464

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
SCWCC NO. 1907252**

Steven Brant,)
)
 Claimant,)
)
 -v-)
)
 SC Dept of Transportation, et al,)
)
 Employer(s),)
)
 and)
)
 State Accident Fund, et al)
)
 Carrier(s),)
)
 and)
)
 SC Uninsured Employers' Fund)
)
 Defendants.)

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee of HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC, and that they have served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons pursuant to Rule 67-211 of the South Carolina Workers' Compensation Commission, via electronic mail and/or by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Piedmont Medical Center
Attn: Records Custodian
222 S Herlong Ave ✓
Rock Hill, SC 29732

Alan M. Tanenbaum, Esquire
Attorney At Law ✓
alan@tanlaw.com

Jason W. Lockhart, Esquire ✓
McAngus Goudelock & Courie, LLC
jlockhart@mgclaw.com

E. Courtney Gruber, Esquire
Young Clement Rivers, LLP ✓
cgruber@ycrlaw.com

Lisa C. Glover, Esquire
Uninsured Employers' Fund ✓
lglover@saf.sc.gov

M. Stephen Stubley, Esquire
Speed, Seta, Martin, Trivett & Stubley, LLC ✓
sstubley@speed-seta.com

George D. Gallagher, Esquire ✓
Speed, Seta, Martin, Trivett & Stubley, LLC
ggallagher@speed-seta.com

CORE Services, LLC
828 E High St, PMB 272 ✓
Lexington, KY 40502

DOCUMENT: Notice of Motion & Motion to Compel

DATE OF MAILING: April 7, 2020



Michelle A. Adams
Paralegal to Timothy B. Killen

ORDERED, ADJUDGED AND DECREED that Claimant's outstanding child support lien shall be satisfied from this Award; and it is further

ORDERED, ADJUDGED AND DECREED that, at all times relevant hereto, Core Services, LLC had valid workers' compensation insurance coverage in South Carolina by and through biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that all benefits payable to Claimant by and through this Order shall be made by biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Transportation, the South Carolina State Accident Fund, and the South Carolina Workers' Compensation Uninsured Employers' Fund are hereby dismissed, with prejudice;

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!


Susan S. Barden

Columbia, South Carolina

June 9, 2021

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 Barbara Skarbek on June 9, 2021

Order served via USPS:

CORE SERVICES LLC
828 E HIGH ST
LEXINGTON, KY 40502-2107

Alan M. Tanenbaum
Attorney at Law
P O Box 12
Charleston, SC 29402

Erin Farthing
State Accident Fund
PO Box 1166
Lexington, SC 29071

E. Courtney Gruber
Clement Rivers, LLP
PO Box 993
CHARLESTON, SC 29402

George D. Gallagher
Speed, Seta, Martin, Trivett & Stubley, LLC
PO Box 11669
Columbia, SC 29211

M. Stephen Stubley
Speed, Seta, Martin, Trivett & Stubley, LLC
PO Box 11669
Columbia, SC 29211

Timothy B. Killen
Holder Padgett Littlejohn & Prickett, LLC
945 Houston Northcutt Boulevard
Mount Pleasant, SC 29464

Lisa C. Glover
SC Uninsured Employers' Fund
P:O Box 1815
Lexington, SC 29071

Jason Lockhart
McAngus Goudelock & Courie, LLC
PO Box 12519
Columbia, SC 29211

CERTIFICATE OF SERVICE

Kim Long, states that she is a paralegal for Speed, Seta, Martin, Trivett & Stubley, LLC, with offices in Columbia, South Carolina. This is to certify that a copy of the foregoing Motion to Admit Additional and Newly Discovered Evidence, has been served upon the claimant, by placing a copy of the same in the United States mail, first class postage prepaid, addressed to him at his office as shown below this the 18 day of August 2021 as follows:

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

cgruber@ycrlaw.com

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tkillen@hplplaw.com

CERTIFIED AND REGULAR MAIL
RETURN RECEIPT REQUESTED

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Lisa C. Glover, Esquire
SC Uninsured Employers' Fund
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Lexington SC 29071
lglover@saf.sc.gov

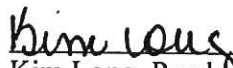
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RECEIVED

Dec 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case Number 2022-000154

Steven M. Brant, Employee, Employee, Claimant,

-vs-

Core Services, LLC and South Carolina Department of Transportation, Employer, Berkshire Hathaway Direct Insurance Co., Carrier, Markel Ins. Co. and South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employers' Fund; Defendants.

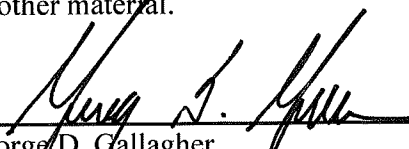
Of which Berkshire Hathaway Direct Insurance Company is the Appellant,

and

South Carolina Department of Transportation, South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employer's Fund are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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December 28, 2022
Columbia, South Carolina