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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Clifton Newman, Circuit Court Judge

Case No. 2022-000907

Shaileshkumar Patel.....Appellant,

v.

Florence Investment, LLC d/b/a Microtel Inn & Suites and
John Doe.....Respondents.

RECORD ON APPEAL

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Attorneys for the Respondent Florence Investment,
LLC d/b/a Microtel Inn & Suites

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2020-CP-21-_____
	)	
Shaileshkumar Patel	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
Florence Investment, LLC d/b/a	)	
Microtel Inn & Suites and	)	
John Doe	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office located at THE LAW OFFICE OF DARRELL THOMAS JOHNSON, JR., LLC., P.O. Box 1125, Hardeeville, South Carolina, 29927, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully Submitted.

Law Offices of Darrell Thomas Johnson, Jr., LLC

s/Warren P. Johnson.

Warren P. Johnson.

SC Bar No. 71759

Post Office Box 1125

Hardeeville, South Carolina 29927

(843) 784-2142

Attorney for Plaintiff

Dated: October 22, 2020

Hardeeville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2020-CP-21-_____
	)	
Shaileshkumar Patel	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
Florence Investment, LLC d/b/a	)	
Microtel Inn & Suites and	)	
John Doe	)	
	)	
Defendants.	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

1. The Plaintiff, Shaileshkumar Patel, is a resident of the State of South Carolina and, at the time of the assault complained of herein, was a invitee of the premises, staying at the hotel located at 1912 Enterprise Dr., Florence SC 29501.

2. The Defendant, Florence Investment, LLC d/b/a Microtel Inn & Suites (“Microtel”) is a limited liability company organized under the laws of the state of South Carolina.

3. The Defendant, John Doe, is believed to be a citizen and resident of Florence County, South Carolina.

4. The events described in this Complaint occurred at and concern the premises located at 1912 Enterprise Dr., in the City of Florence, South Carolina.

5. Defendant Microtel is a hotel operating in the City of Florence near Interstate 95.

6. Defendant Microtel is a hotel with guest doors which open directly to the outside rather than interior hallways or courtyards. In addition, the premises contain a parking lot with

multiple means of ingress and egress together with little to no lighting and little to no security measures, either active or passive.

7. On October 23, 2017, Defendant John Doe, while driving an automobile entered the Defendant Microtel's parking lot and for reasons unknown to Plaintiff, presented a gun and fired multiple rounds into the vehicle being driven by the Plaintiff and in which the Plaintiff's daughter was a passenger.

8. That the Defendant John Doe utilized his vehicle as an accessory to accomplish his assault upon the Plaintiff.

9. There is a causal connection between John Doe's use of the automobile and the assault, and Mr. Patel's injuries were foreseeably identifiable with the normal use, and John Doe's normal use of the automobile;

10. As a result of the assault, the Plaintiff was struck in his spine, severing his spinal cord and rendering him a quadriplegic.

11. The violent acts of the Defendant John Doe was a foreseeable result of the Defendant Microtel's failure to provide adequate security at the hotel despite notice and prior actual and/or constructive knowledge of the need for better security measures.

12. The exercise of reasonable care by Defendant Microtel would have revealed and/or prevented the dangerous conditions to those individuals occupying the premises.

13. Mr. Patel's injuries were due to and proximately caused by the negligent, careless, reckless, and intentional conduct of the Defendants in the following ways:

a. in failing to maintain its premises in a proper condition for those staying at the Microtel;

b. in failing to take reasonable precautions and safety measures for those staying at the Microtel;

c. in failing to provide adequate security despite knowledge of increased risks of criminal activity;

d. in John Doe's act of intruding upon and shooting the Plaintiff, while both were in vehicles such that the vehicles were integral parts of the event;

e. in failing to take other reasonable steps to deter criminal activity and enhance the safety of those at the Microtel;

f. in such other particulars as the evidence may establish.

14. As a direct and proximate result of the above mentioned foreseeable criminal activity, Mr. Patel was wrongfully injured in a violent and horrific encounter in the Microtel.

15. By reason of and in consequence of the aforesaid negligent, careless, reckless, and intentional conduct of the Defendants, Mr. Patel suffered emotionally and physically, incurred past and future medical expense and loss of income as a direct and proximate result of an attack for which the Defendants are liable.

WHEREFORE, Plaintiff prays for judgement against the Defendants for actual damages together with punitive damages in an appropriate amount, for the costs of this action, and for such other further relief and the Court may deem just and proper.

Respectfully Submitted.

[Signature Block Follows]

Dated: October 22, 2020
Hardeeville, South Carolina

Law Offices of Darrell Thomas Johnson, Jr., LLC

s/ Warren P. Johnson.
Warren P. Johnson.
SC Bar No. 71759
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff[(s),

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

DEFENDANT FLORENCE
INVESTMENT, LLC d/b/a MICROTTEL
INN & SUITES' ANSWER
(Jury Trial Demanded)

TO: ATTORNEY FOR PLAINTIFF

That the Defendant, above named, answering the Complaint of the Plaintiff,
above named, alleges and says as follows:

1. The Defendant admits so much of the allegations of paragraph 1 of the
Complaint as alleges that Plaintiff Patel was an invitee of the premises and staying at
the subject hotel at the relevant time, but lacks information sufficient to form a belief as
to the remaining allegations contained in paragraph 1

2. The Defendant admits so much of the allegations of paragraph 2 of the
Complaint as alleges that Florence Investment, LLC d/b/a Microtel Inn & Suites
("Microtel") was a limited liability company organized under the laws of the state of
South Carolina, but has since dissolved.

3. The Defendant lacks sufficient information to form a belief as to the
allegations of paragraph 3 of the Complaint.

4. The Defendant admits the allegations contained in paragraph 4 of the
Complaint.

5. The Defendant admits the allegations contained in paragraph 5 of the

Complaint.

6. The Defendant admits somuch of the allegations contained in paragraph 6 of the Complaint as allege Microtel is a hotel with guest doors opening directly to the outside, and that the premises contains a parking lot with multiple means of ingress and egress, but denies each and every other allegations contained in paragraph 6 of the Complaint.

7. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 7 of the Complaint.

8. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 8 of the Complaint.

9. That the allegations of paragraph 9 are conclusions of law, and the Defendant is not required to answer the same.

10. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 10 of the Complaint.

11. The Defendant lacks sufficient information to form a belief as to the allegations of paragraph 11 of the Complaint.

12. The Defendant denies the allegations contained in paragraph 12 of the Complaint.

13. The Defendant denies the allegations contained in paragraph 13 of the Complaint.

14. The Defendant denies the allegations contained in paragraph 1 of the Complaint.

15. The Defendant denies the allegations contained in paragraph 15 of the

Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)

16. That the Plaintiff has failed to commence this action within the time required by the applicable Statute of Limitations, and the failure of the Plaintiff to timely commence the action constitutes a bar and complete defense to the claims of the Plaintiff.

FOR A SECOND AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)

17. That the Plaintiff has not effected service upon the Defendant in a manner required by law and, therefore, this Court lacks personal jurisdiction over the Defendant.

AS A THIRD AFFIRMATIVE DEFENSE
(Exclusive Remedy)

18. That the plaintiff's exclusive remedy is worker's compensation and the plaintiff is, thus, barred from recovery in this action.

AS A FOURTH AFFIRMATIVE DEFENSE
(Statutory Employer)

19. That the defendant qualifies as a statutory employer under the Workers Compensation Act and the plaintiff is, thus, barred from recovery in this action.

WHEREFORE, having fully answered the Complaint of the Plaintiff, this Defendant prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON and STAUBES, LLC

s/John L. McDonald, Jr.

John L. McDonald, Jr.

Bar No.: 12019

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

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Fax: (843) 722-2867

Email: jmcdonald@clawsonandstaubes.com

Attorney for Florence Investment, LLC

Charleston, South Carolina

February 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**DEFENDANT FLORENCE
INVESTMENT, LLC d/b/a MICROTEL
INN & SUITES' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

PLEASE TAKE NOTICE that the Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites, by and through its undersigned attorney, shall, and hereby does, move this Honorable Court for an Order granting summary judgment in favor of the Defendant in the above-captioned matter upon the grounds that there exists no genuine issue as to any material fact and that the Defendant is entitled to judgment as a matter of law in its favor.

This Motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

[Signature on Next Page]

CLAWSON and STAUBES, LLC

/s/ John L. McDonald, Jr.

John L. McDonald, Jr.
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Email: jmcdonald@clawsonandstaubes.com
Attorney for Defendant Florence Investment,
LLC d/b/a Microtel Inn & Suites

Charleston, South Carolina

January 20, 2022

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**DEFENDANT FLORENCE
INVESTMENT, LLC d/b/a MICROTTEL
INN & SUITES' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION AND MOTION

COMES NOW Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"), by and through its undersigned attorney, and respectfully submits this Memorandum in Support of its Motion for Summary Judgment as to Plaintiff's claims against it. As set forth more fully below, Plaintiff's tort claims against Defendant are barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

BACKGROUND

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by the Defendant on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Plaintiff was employed by the Defendant hotel and lived with his family in the hotel. Plaintiff's job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24, attached hereto as **Exhibit A**. He was on call 24 hours a day, seven days a week. See id. On the night of the assault, Plaintiff and his daughter went to Walmart to get groceries for themselves

and for the hotel breakfast. See Civil Action Dep. of Plaintiff Shaileshkumar Patel at pp. 22:23-23:8, attached here to as **Exhibit B**. Upon returning to the hotel, Plaintiff pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Plaintiff stopped his vehicle and put his emergency light on, signaling the other driver to pass him. See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 44:21-46:13. The other driver did not pass him. Instead, the other driver followed Plaintiff around the parking lot two more times before exiting his vehicle, approaching Plaintiff's vehicle and shooting into the vehicle, striking Plaintiff and injuring him. See id. Plaintiff has no idea who the man was that shot him or why he followed him into the parking lot. See id.

Prior to commencing the instant civil action, Plaintiff brought a Workers' Compensation claim against Defendant. The parties ultimately settled the Workers' Compensation claim for the sum of Three Hundred Thousand Dollars (\$300,000.00) in March of 2019. See Workers' Compensation Agreement and Final Release, attached hereto as **Exhibit C**.

Plaintiff filed the instant civil complaint on October 23, 2020, alleging that Plaintiff's injuries were caused by the negligence of the Defendant in failing to maintain the premises in a proper condition and failing to provide adequate security. Defendant filed its Answer on February 19, 2021, denying the allegations of negligence and asserting as an affirmative defense that Plaintiff's action was barred under the Workers' Compensation exclusivity provision.

STANDARD OF REVIEW

While the “proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss,” “[i]f a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss.” Edens v. Bellini, 359 S.C. 433, 440-41, 597 S.E.2d 863, 867 (Ct. App. 2004) (internal citations omitted); Posey v. Proper Mold & Eng’g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (same); Dickert v. Metro. Life Ins. Co., 311 S.C. 218, 219-20, 428 S.E.2d 700, 701 (1993), as modified on reh’g (Apr. 7, 1993) (affirming grant of summary judgment to employer based upon defense that “employee’s causes of action against employer are precluded by the exclusivity provision of the South Carolina Workers’ Compensation Act”); Loges v. Mack Trucks, Inc., 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (affirming “summary judgment dismissing” some of plaintiff’s causes of action based on exclusivity provision of the Act).

Whether the exclusivity provision of the South Carolina Workers’ Compensation Act is triggered “is a jurisdictional question.” See Edens, 359 S.C. at 439-40, 597 S.E.2d at 866; Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997) (“South Carolina courts have repeatedly held that determination of the employer-employee relationship for workers’ compensation purposes is jurisdictional.”); Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (same). While a circuit court has “subject matter jurisdiction over tort claims, certain cases may be taken from the trial court’s original jurisdiction by the General Assembly.” Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). The General

Assembly has vested the Workers' Compensation Commission with exclusive original jurisdiction over the type of claims made by Plaintiff against Defendant in this action, "such that the circuit court was divested of its original jurisdiction" over Plaintiff's claim. See id.; Posey, 378 S.C. at 223, 661 S.E.2d at 402 (stating that "[t]he General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over employees work-related injuries" and holding that "circuit court's original subject matter jurisdiction was divested after it determined [worker] was [defendant's] statutory employee").

ARGUMENT

The exclusivity provision of the South Carolina Workers' Compensation Act, Section 42-1-540, provides as follows:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. . . .

S.C. Code Ann. § 42-1-540 (2015).

Section 42-1-540 "is an exclusivity provision, disallowing tort suits against the employer and limiting the injured employee's rights and remedies to those provided by the Workers' Compensation Act." Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). "The South Carolina Workers' Compensation Act . . . is the exclusive remedy against an employer for an employee's work-related accident or injury." Edens v. Bellini, 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004). "The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the

Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee.” Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002). The Act provides that when an injured employee accepts the benefits of the provisions of the Act, his common law remedies against his employer are extinguished. McCaskey v. Daniel Int’l Corp., 442 F.Supp. 1360, 1362 (D.S.C. 1977); S.C. Code Ann. 42-1-540.

“The only exceptions to the exclusivity provisions are: (1) where the injury results from the acts of a subcontractor who is not the injured person’s direct employer; (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego; (3) where the tort is slander and the injury is to reputation; or (4) where the Act specifically excludes certain occupations.” (Internal citations omitted.) Cason v. Duke Energy Corp., 348 S.C. 544, 547 n.2, 560 S.E.2d 891, 893 n.2 (2002) (refusing to carve out additional exception to exclusivity provision, holding that the Act does not permit employees injured in a catastrophic explosion to pursue litigation against their employer outside the exclusive remedy provisions of the Act).

In the present case, both the Plaintiff and his employer Defendant accepted the provisions of the Workers’ Compensation Act when Defendant agreed to pay, and Plaintiff agreed to accept, compensation on behalf of Plaintiff’s injury. Thus, Plaintiff’s act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer. See McCaskey; S.C. Code Ann. § 42-1-540 (2015). Further, none of the enumerated exceptions to the exclusivity provision apply in this case.

Plaintiff is expected to argue that the compensation he received under the Act does not bar the instant civil action, since Defendant had disputed Plaintiff’s Workers’

Compensation claim and denied liability under the Act (specifically, Defendant had asserted that Plaintiff's injuries did not occur while in the course and scope of his employment). This argument has been squarely rejected by South Carolina courts.

In Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E.2d 439 (1991), the contractor and estate of the injured subcontractor disputed whether the injured subcontractor was a statutory employee. The subcontractor's beneficiaries elected and received benefits under the Workers' Compensation Act. They then filed a negligence suit against the contractor. The circuit court granted defendant contractor's motion for summary judgment, finding that plaintiff's civil action was barred by the Act's exclusivity provision. The court noted that plaintiff's action was barred because of the prior payment of benefits under the Act. The court concluded that "a determination of entitlement, payment and acceptance of compensation under the Act precludes an action in circuit court seeking compensation for the identical injury, death or loss." Smith, 306 S.C. at 292, 411 S.E.2d at 441; see also Cook v. Mack's Transfer & Storage, 291 S.C. 84, 87, 352 S.E.2d 296, 298 (Ct. App. 1986) ("The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.")

Similarly, in Martin v. Lockheed Martin Logistic Servs., Greenville County Court of Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020), the employer and injured employee disputed whether the injured employee was a statutory employee such that he was subject to the Act's exclusivity provision. 2020 S.C. C.P. LEXIS 2133, at *1. The court, citing Smith, found that the employee's claim was barred regardless of their determination of his statutory employee status because

the employee received prior payment of benefits under the Act. 2020 S.C. C.P. LEXIS 2133, at *32. The court further explained that because the employee availed himself of the benefits under the Act by receiving a workers' compensation settlement and executing a Release, any other remedies against the employer were excluded. Id. at *33. In other words, "a determination of entitlement, payment, and acceptance of compensation under the Workers' Compensation Act precludes an action in circuit court seeking compensation for the identical injury or loss." Id.

The only difference between Smith and Martin and the instant case is the specific underlying dispute; in Smith and Martin, the parties disputed the existence of an employer/employee relationship, and in this case, the parties dispute whether the injury arose out of and in the scope of Plaintiff's employment. However, the nature of the underlying dispute is irrelevant. The case law is clear: where a plaintiff elects and receives benefits under the Workers' Compensation Act, his common law rights are extinguished. To hold, as Plaintiff here would ask the Court to hold, that any employer who settles a disputed claim under the Act is then subject to tort liability for the same injury, would be absurd, unfair, and contrary to the plain language of § 42-1-540 and the Supreme Court precedent in Smith.

Additionally, the language of the Release at issue unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers' Compensation Agreement and Final Release at p. 2. When South Carolina courts interpret written instruments, the court seeks to ascertain and give effect to the intention of the parties. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 451, 392 S.E.2d 477, 479 (Ct. App. 1990) (finding a Release containing similar language as the instant case extinguished the

plaintiff's claims at common law and under the Workers' Compensation Act). Accordingly, if a Court seeks to give effect to the parties' intent, the Court will certainly find the Release was a full and final clincher that extinguished any civil claims on Plaintiff Patel's behalf, despite the fact that Defendant maintained its denial of liability in the Release.

Moreover, although this Court will likely find Defendant's original attempt to deny liability irrelevant because the parties subsequently settled under the Act, the language of the Release between the parties further verifies that Plaintiff's injuries did in fact arise out of and in the scope of his employment. The language of the Commission's Agreement and Final Release states:

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. . . .

See Workers' Compensation Agreement and Final Release at p. 1.

Plaintiff brought his claim under the Act and accepted the benefits of the Act when he accepted compensation from the Defendant. Plaintiff's acceptance of those benefits extinguished his common law remedies against Defendant. See McCaskey; Smith, Martin; S.C. Code Ann. § 42-1-540 (2015).

CONCLUSION

For the foregoing reasons, Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites respectfully requests that its Motion for Summary Judgment be granted, and Plaintiff's tort claims against Defendant be dismissed.

CLAWSON and STAUBES, LLC

s/John L. McDonald, Jr.

John L. McDonald, Jr.

Bar No.: 12019

126 Seven Farms Drive, Suite 200

Charleston, South Carolina 29492-8144

Phone: (843) 577-2026

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Email: jmcdonald@clawsonandstaubes.com

Attorney for Defendant Florence Investment,
LLC d/b/a Microtel Inn & Suites

Charleston, South Carolina
May 5, 2022

In the Matter Of:

PATEL V. FLORENCE INV, et al.

1717093

SHALLESHKUMAR PATEL

December 03, 2018



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SHALLESHKUMAR PATEL,
EMPLOYEE/CLAIMANT,
vs. WCC FILE NO. 1717093
FLORENCE INVESTMENT, LLC dba MICROTTEL INN &
SUITES,
EMPLOYER,
and
ACCIDENT FUND INSURANCE CO. OF AMERICA,
CARRIER/DEFENDANTS.

DEPOSITION OF: SHALLESHKUMAR PATEL
DATE: December 3, 2018
TIME: 3:40 p.m
LOCATION: The Home of Shalleshkumar Patel
2520 Atlantic Palms Lane
Apt. 208
North Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: KAREN NELLIUS, RPR

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 SHALLESHKUMAR PATEL:

4 HOFFMAN LAW FIRM

5 BY: MATTHEW R. COOK

6 7087 Rivers Avenue

7 North Charleston, SC 29406

8 843-769-7077

9 Matt@hoffmanlawfirm.com

10 ATTORNEYS FOR DEFENDANTS

11 FLORENCE INVESTMENT, LLC, ET AL.:

12 WILLSON, JONES, CARTER & BAXLEY, P.A.

13 BY: LEE LOUIS GREMILLION

14 1601 N. Oak Street

15 Suite 307

16 Myrtle Beach, SC 29577

17 843-282-9017

18 Llgremillion@wjlaw.net

19 ALSO PRESENT:

20 Jagruti Thaker, Interpreter

21 (INDEX AT REAR OF TRANSCRIPT)

1 JAGRUTI THACKER,
2 being first duly sworn, interpreted as follows:
3

4 SHALLESHKUMAR PATEL,
5 being first duly sworn, testified as follows:
6

7 EXAMINATION

8 BY MR. GREMILLION:

9 Q. Mr. Patel, my name is Lee Gremillion.
10 I am a workers' comp defense lawyer out of Myrtle
11 Beach, South Carolina, and I represent Microtel and
12 their insurance carrier in the workers'
13 compensation claim you've brought.

14 I'm here today to take your deposition.
15 All right? I'm sure your lawyer has told you what
16 to expect. This is my opportunity to talk to you
17 and get your side of the story.

18 The court reporter here takes down
19 everything we say. All right? And she is going to
20 go back and write it up in a little booklet at some
21 point in the future. And we may have to go back
22 and read that little booklet at some point, and if
23 we do, it's important that everything is clear.

24 A. Yeah.

25 Q. All right. First and foremost, I am
not trying to trick you or confuse you. I'm just

1 trying to get some information out of you. Okay?

2 A. Yeah.

3 Q. If I ask you something that you don't
4 understand, either when I'm asking you directly and
5 we're talking in English without the interpreter
6 for these first few questions or if you don't
7 understand what she is asking you, the
8 interpretation, you stop and say I don't
9 understand, and I will repeat the question or
10 rephrase the question in such a way that makes
11 sense.

12 A. Yeah.

13 Q. But when you answer my question, I
14 assume you understood it. All right? So if you
15 don't understand or you think you might not
16 understand it, you let me know, okay?

17 A. Okay.

18 Q. All right. Like I said, our court
19 reporter takes down everything we say. And it's
20 important to get a clean record that we can go back
21 and read and everybody agrees on what it says.
22 Okay? To do that, there are a couple things to
23 keep in mind.

24 First, I need you to give verbal
25 answers. Shaking your head, that doesn't work.

1 Say yes or no, or whatever yes or no is in Indian.
2 Tell the interpreter. Give verbal answers. Okay?
3 Second, wait for me to get done with my
4 question.

5 A. Okay.

6 Q. That shouldn't be a problem. If we're
7 talking over each other, that makes it hard.

8 Lastly, be patient. We have an
9 interpreter. It's going to take a little bit
10 longer. I'm not going to be here all night, but
11 it's probably going to take a couple of hours.

12 A. Yeah.

13 Q. Now, if you need to take a break,
14 that's fine. We can do that. Just let me know.
15 We can take as many breaks as you want, okay?

16 A. Okay.

17 Q. Do you have any questions about the
18 process before we get down to it?

19 A. No. No, sir.

20 Q. What is your full name?

21 A. Shalleshkumar Patel.

22 Q. How old are you?

23 A. 44 years.

24 Q. When is your birthday?

25 A. July 9, 1974.

1 Q. Do you have a social security number?

2 A. Yes, sir.

3 Q. What is your social security number?

4 A. 659-76-7116.

5 Q. Okay. I heard the 659 and I heard the
6 7116. What are the two numbers in the middle?

7 A. 76.

8 Q. Do you have a valid driver's license?
9 Or did you have one?

10 A. Yes.

11 Q. Do you still have it?

12 A. Yes.

13 Q. Okay. What's your driver's license
14 number? Do you know it?

15 A. I don't remember.

16 Q. That's okay. That is a North Carolina
17 or a South Carolina driver's license?

18 A. South Carolina.

19 Q. What is your street address here?

20 A. 2520 Atlantic Palms Lane, North
21 Charleston, South Carolina 29406, apartment number
22 208.

23 Q. When did you move here?

24 A. In August this year, when he was
25 released from the hospital.

1 MR. GREMILLION: One thing. Let's go
2 off the record for a second.

3 (Off-the-record conference.)

4 BY MR. GREMILLION:

5 Q. So I was asking when did you move here
6 to North Charleston?

7 A. I moved here from Florence when I was
8 injured in 2017. October 2017.

9 Q. Okay. To make things simple, let's use
10 the interpreter from now on. Even if you
11 understand me, wait for her to ask you the question
12 and then answer her in your native language. You
13 two understand each other okay?

14 THE INTERPRETER: Yes.

15 THE WITNESS: Yes.

16 BY MR. GREMILLION:

17 Q. Where are you from?

18 A. Originally, you mean?

19 Q. Yes, originally.

20 A. India.

21 Q. What part of India?

22 A. Bardoli, B-A-R-D-O-L-I.

23 I'm from Bardoli, Gujarat, India.

24 Q. When did you move to the United States?

25 A. I moved here in December 2015.

1 Q. What is your resident status?

2 A. Permanent resident.

3 Q. What brought you to the United States
4 in 2015?

5 A. My sister-in-law.

6 Q. Do you mean your sister-in-law was
7 already living here?

8 A. Yes. My wife's sister is living here,
9 and she put a file for me, and I came here.

10 Q. Where did you first move to when you
11 came here to the United States?

12 A. Salisbury, North Carolina.

13 Q. Where did you first find work when you
14 moved here?

15 A. First job in Chicago. Started my job
16 in Chicago.

17 Q. What were you doing in Chicago?

18 A. So my wife's auntie called us there.

19 Q. Did you live in Chicago for any period
20 of time?

21 A. Seven months in Chicago.

22 Q. So when you first came to the United
23 States, were you living in Chicago?

24 A. Okay. So he came here in Salisbury,
25 North Carolina. He stayed there six months. Then

1 he -- then I moved to Chicago.

2 MR. GREMILLION: Okay. I understand
3 and I appreciate what you are trying to do, but we
4 have to make a record. We have to go back and read
5 this. So when I ask a question, just ask exactly
6 like I asked it. Whatever he says, even if it
7 doesn't make sense, just spit it back out. Tell me
8 what he said and then I'll follow up and get some
9 clarification on it. Otherwise, it's going to be
10 hard to go back and decipher when we go back and
11 read it.

12 BY MR. GREMILLION:

13 Q. How long did you live in Chicago?

14 A. Seven months.

15 Q. Where did you move after Chicago?

16 A. Florence, South Carolina.

17 Q. I take it you are married?

18 A. Yes.

19 Q. How long have you been married?

20 A. 22 years.

21 Q. Do you have any kids?

22 A. Yes.

23 Q. How many?

24 A. One child.

25 Q. How old is the child?

1 A. 21.

2 Q. Is she in school?

3 A. Yes.

4 Q. Where does she live?

5 A. She is living with us.

6 Q. Does she live here with you?

7 A. Yes.

8 Q. Where does she go to school?

9 A. Trident Technical College.

10 Q. What is she studying?

11 A. Associate degree.

12 Q. I'm sorry. Say that one more time.

13 What is she studying?

14 A. Associate degree.

15 Q. Is anybody dependent on you for
16 support? Or was anybody depending on you for
17 support when you were working?

18 A. My daughter and my wife.

19 Q. Does your wife work?

20 A. She is not working right now.

21 THE INTERPRETER: The question was now,
22 when you asked?

23 MR. GREMILLION: Yes.

24 BY MR. GREMILLION:

25 Q. Is she working now?

1 A. No.

2 Q. She cares for you?

3 A. Yes.

4 Q. When did your wife last work?

5 A. October 2017.

6 Q. And was she working at Microtel?

7 A. Yes.

8 Q. What was her job at Microtel?

9 A. Front desk.

10 Q. I understand that when you were shot,
11 you were taken to the hospital in Florence and then
12 moved to the hospital in Charleston; is that right?

13 A. Yes.

14 Q. Okay. Who are the doctors that you are
15 seeing currently?

16 A. Orthopedic, plastic surgeon, urologist,
17 and primary care doctor. And urologist, also.

18 Q. All right. Who is your primary care
19 doctor?

20 A. Dr. Johnny Weeks.

21 Q. Where is that? A man?

22 A. Yes.

23 Q. Where does he practice?

24 A. I forgot the name of the institute
25 where he works.

1 Q. Okay.

2 A. Eagle Landing, I think.

3 Q. Is that local?

4 A. Yes.

5 Q. Are all of your doctors local?

6 A. Yeah. MUSC hospital.

7 Q. Are all these doctors affiliated with
8 MUSC?

9 A. Yeah. MUSC.

10 Q. How often do you have to go see the
11 doctors? All doctors.

12 A. So urologist, I go once a month, and
13 the other doctors whenever necessary.

14 Q. Who is your orthopedist?

15 A. I don't remember his name.

16 Q. Did he practice at MUSC?

17 A. Yes. MUSC.

18 Q. Do you know who the plastic surgeon is
19 you have been seeing?

20 A. Dr. Tavanna.

21 Q. Can you spell that, please.

22 A. T-A-V-A-N-N-A.

23 Q. Do you know who the urologist is that
24 you are seeing once a month?

25 A. Dr. Rovner.

1 Q. Can you spell that, please.

2 A. R-O-V-N-E-R.

3 Q. Rovner, okay. What about the
4 neurologist you are seeing? Do you know --

5 A. Dr. Sunil Patel.

6 Q. Where does he practice?

7 A. Neurologist.

8 Q. At MUSC?

9 A. Yes.

10 Q. Have you gotten hurt at work or filed
11 any workers' compensation claims prior to this
12 incident back in October?

13 A. No, sir.

14 Q. I ask everybody these questions, okay,
15 so don't get offended. Have you ever been
16 convicted of any crimes?

17 THE INTERPRETER: I'm not sure what you
18 mean.

19 BY MR. GREMILLION:

20 Q. Have you ever been in trouble with the
21 police or convicted of a crime?

22 A. No, sir.

23 Q. Have you ever been arrested?

24 A. No, sir.

25 Q. You don't have any history or problems

1 with drug abuse or alcoholism, do you?

2 A. No, sir.

3 Q. Okay. Have you been in any car wrecks
4 that caused injuries?

5 A. No, sir.

6 Q. How far did you go in school?

7 A. Bachelor's degree.

8 Q. Where did you get your bachelor's
9 degree?

10 A. In India.

11 Q. What was the name of the university?

12 A. South Gujarat University.

13 G-U-J-A-R-A-T.

14 Q. Is it a bachelor of arts or a bachelor
15 of science?

16 A. Bachelor of arts.

17 Q. What is your degree in?

18 A. Major in Gujarati language and
19 Sanskrit.

20 Q. Say that one more time.

21 A. Major in Gujarati.

22 English and Sanskrit.

23 Q. So you studied languages in college; is
24 that right?

25 A. Yeah. Language.

1 Q. What year did you graduate from
2 college?

3 A. 1995.

4 Q. After you graduated from college --
5 well, strike that question. Let me go back.

6 Do you have any formal education beyond
7 your bachelor's of art degree?

8 A. No.

9 Q. After you graduated from college in
10 1995, where did you go to work?

11 A. As a textile designer.

12 Q. What exactly does a textile designer
13 do?

14 A. Indian women's clothes design. All the
15 sizes of ladies wear, they do the designing for
16 that. Indian ladies.

17 Q. Do you design -- look, I understand
18 English. You can talk to her -- please talk to her
19 in --

20 MR. GREMILLION: Are you speaking Hindu
21 or Gujarati?

22 THE INTERPRETER: Gujarati.

23 MR. GREMILLION: Do you speak Gujarati?

24 THE INTERPRETER: Yes.

25 BY MR. GREMILLION:

1 Q. Y'all talk in Gujarati and then she can
2 tell me what you said.

3 Do you actually design the clothes or
4 are you making the clothes that somebody else
5 designs as a textile designer?

6 A. Okay. I was making the design on the
7 clothes, printing the design on the clothes.

8 Q. How did you fall into doing that, when
9 your degree is in ancient languages? Well,
10 Gujarati and then Sanskrit.

11 A. My uncle was -- it was his office, so
12 he took me to work there.

13 Q. How long did you work for your uncle as
14 a textile designer?

15 A. I worked 20 years as a textile
16 designer.

17 Q. Okay. How much were you making?

18 A. 30,000 Indian rupees.

19 Q. What does that translate into dollars,
20 roughly?

21 THE INTERPRETER: He doesn't.

22 MR. GREMILLION: Just tell me what he
23 says.

24 THE WITNESS: He say no. He doesn't
25 know.

1 BY MR. GREMILLION:

2 Q. How many rupees are in one dollar? Or
3 how many dollars are in one rupee, roughly?

4 A. So do you want to know it for now or
5 earlier when he was --

6 Q. Earlier, sure. Earlier.

7 A. 60 rupees per dollar.

8 Q. Okay. Why did you leave your job as a
9 textile designer?

10 A. I moved to America.

11 Q. Okay. And when you moved to America,
12 did you have a job lined up over there?

13 THE INTERPRETER: Sorry. When you say
14 there --

15 MR. GREMILLION: I mean here.

16 THE WITNESS: No.

17 BY MR. GREMILLION:

18 Q. And explain to me exactly how you came
19 to be able to move to America.

20 A. Blood relation.

21 Q. So because you had a blood relation
22 living here you were able to get some sort of visa?

23 A. Yes.

24 Q. All right. You mentioned that your
25 first job here was in Chicago; is that right?

1 A. Yes.

2 Q. Okay. Let me go back. When you moved
3 to Salisbury, North Carolina, were you living in a
4 house or an apartment?

5 A. We lived with my sister-in-law.

6 Q. Your sister-in-law, that was the one
7 that got you over here in the first place?

8 A. No. That was another sister-in-law.

9 Q. Okay. All right. When you moved to
10 Chicago for this job, where were you living up
11 there?

12 A. With my aunt.

13 Q. So you have an aunt that lives in
14 Chicago?

15 A. Yes.

16 Q. What was your job in Chicago?

17 A. Packing company.

18 Q. What was your job duties?

19 A. So it was a soap factory, and I used to
20 pack soap.

21 Q. How much were they paying you?

22 A. \$11.60.

23 Q. How many hours a week were you working?

24 A. 36 hours.

25 Q. Why did you leave that job?

1 A. I went -- moved to a gas station, which
2 was nearer to my house.

3 Q. Okay. You said you worked at a gas
4 station?

5 A. I worked at the gas station, which was
6 nearer to my house.

7 Q. Okay. What was your job at the gas
8 station?

9 A. As a cashier.

10 Q. How much were you earning working at
11 the gas station?

12 A. \$10 per hour.

13 Q. How long did you work at that gas
14 station?

15 A. Four months.

16 Q. Why did you stop working there?

17 A. Because we moved to Florence, South
18 Carolina.

19 Q. Okay. And what brought you down to
20 Florence, South Carolina?

21 A. Because I got a job at Microtel.

22 Q. Okay. How did you come to get a job at
23 the Microtel in Florence, South Carolina?

24 A. My brother-in-law Kalpesh told me that
25 there is a job here.

1 THE INTERPRETER: K-A-L-P-E-S-H.

2 BY MR. GREMILLION:

3 Q. So you have a brother-in-law named
4 Kalpesh, and he told you there was a job here in
5 Florence; is that right?

6 A. Yes, sir.

7 Q. And how did Kalpesh, your
8 brother-in-law, know about a job in Florence?

9 A. The owner of Microtel name Raj told
10 him.

11 Q. How does Kalpesh know Raj?

12 A. So Kalpesh's father had the hotel, and
13 Raj was working there before.

14 Q. Is Raj one of the owners of Microtel?

15 A. Yes.

16 Q. Did you personally know any of the
17 owners of Microtel?

18 A. Yes, I did.

19 Q. Okay. Who was that?

20 A. Ashwin and Nayan.

21 Q. How did you know Ashwin?

22 A. Ashwin, when they were younger, as
23 children, they lived -- I lived on the same street
24 as Ashwin.

25 Q. How do you know Nayan?

1 A. He also used to live around our house.

2 Q. When you arrived here in the United
3 States, did you know that they had a hotel in
4 Florence?

5 A. So are you talking about Raj or the
6 others?

7 Q. I'm talking about the others.

8 A. Yes, I did know.

9 Q. Did you at any time ask Ashwin about
10 getting a job at Microtel?

11 A. No.

12 Q. So before you worked there, you never
13 contacted Ashwin and asked him about whether there
14 was a job?

15 A. No.

16 Q. Did you ask him about a job at another
17 hotel?

18 A. No.

19 Q. Okay. What was your job at Microtel?

20 A. I was told to do the front desk and
21 whatever -- 24/7, whatever was needed to be done.

22 Q. So is it your testimony that you were
23 on call 24 hours a day, seven days a week?

24 A. On call, yes.

25 Q. Okay. Who was your supervisor?

1 A. Raj.

2 Q. Did anybody else supervise you?

3 A. No.

4 Q. Did you have a schedule?

5 A. I had a schedule for front desk.

6 Q. You had a schedule for front desk, what
7 does that mean?

8 A. So the front -- at the front desk I had
9 a schedule. The other job I didn't have a
10 schedule, the 24-hour job.

11 Q. Let me ask you this. On the night you
12 got shot, were you returning from running an errand
13 for the hotel for your job?

14 A. Not for the hotel, but he was coming
15 back to the hotel.

16 MR. GREMILLION: I was coming back to
17 the hotel.

18 THE INTERPRETER: I was coming back to
19 the hotel.

20 THE WITNESS: Because I was staying
21 there.

22 BY MR. GREMILLION:

23 Q. Okay. What were you out doing that
24 evening shortly before you got shot?

25 A. I went to Walmart.

1 Q. Okay. Why did you go to Walmart?

2 A. To get groceries.

3 Q. Personal groceries?

4 A. Yes.

5 Q. Which Walmart did you go to?

6 A. Florence Super Center Walmart.

7 Q. Tell me what you did on this 24-hour
8 job. I understand your testimony is that you
9 worked -- you had a schedule to work the front
10 desk, and you were behind the front desk during
11 those hours; is that correct?

12 A. Yes.

13 Q. Let me back up. Let me just ask it
14 again.

15 The hours that you were not at the
16 front desk where you say you were on 24-hour call
17 or working 24 hours, what were you doing?

18 A. So I was not working the front desk.
19 If somebody needed blankets, something a customer
20 needed, anything, I would do that. I was cleaning
21 the garbage. They were doing renovations. I was
22 helping with the renovations. I was cleaning the
23 elevator. So I was getting the guests blankets,
24 pillows, whatever they needed, sheets. If the TV
25 wasn't working, I would go and fix the TV, air

1 conditioning.

2 Q. Okay. Were you paid any extra for
3 doing this work?

4 A. No.

5 Q. Who got in touch with you if there was
6 a job like that, like fixing someone's TV or
7 bringing someone blankets, when you weren't behind
8 the desk?

9 A. Raj.

10 Q. Okay. Would Raj call you or would he
11 send you a text?

12 A. He called.

13 Q. He called.

14 A. And if he was there, he would tell him
15 face to face.

16 Q. Okay. Did he ever send you any texts,
17 asking you to do some of this work?

18 A. No. If he is in the hotel, he would
19 knock on my door.

20 Q. Okay. How often did you interact with
21 Ashwin?

22 A. Four, five -- I come in contact four,
23 five times.

24 Q. You came into contact with him only
25 four or five times in the months you worked there?

1 A. So while I was working there, I only
2 met him four or five times.

3 Q. Did Ashwin know that you were on call
4 24 hours a day?

5 A. Yes, sir.

6 Q. Is Ashwin an honest person?

7 A. I wasn't in touch with him as much so I
8 don't know.

9 Q. What about Raj, do you think he was an
10 honest person?

11 A. I only came in contact when I was doing
12 this job. So I don't know much about it.

13 Q. You don't know him well enough to form
14 an opinion on whether or not he is an honest
15 person?

16 A. While I was working there, as far as I
17 can tell, as long as I know him while I was working
18 there, I didn't think he was that honest.

19 THE INTERPRETER: Let me make clear.

20 THE WITNESS: Yes, I did not think he
21 was an honest man.

22 BY MR. GREMILLION:

23 Q. What made you think Raj was not an
24 honest man?

25 A. So many times I thought he was lying.

1 Q. Okay. Give me one example of something
2 you thought he was lying about.

3 A. So when I first met him, they arranged
4 -- we had arranged working, there was no talk about
5 nightshift. So when the nightshift guy left, he
6 told me to do the nightshift. And then I say no.
7 And he said I talked to your brother-in-law about
8 the nightshift. So I call my brother-in-law,
9 saying that did he ask you about the nightshift.
10 He said no. I was not supposed to work nightshift.
11 This is my first time when I felt.

12 Q. How often did you have to work the
13 nightshift?

14 A. Once a week.

15 Q. Who is your brother-in-law that you are
16 talking about?

17 A. Kalpesh.

18 Q. Kalpesh. After this accident, did you
19 give Kalpesh something for him to try to get Raj to
20 sign saying you were on call?

21 A. No.

22 Q. You never gave Kalpesh something, a
23 document, and asked him to get Raj to sign it?

24 A. No.

25 Q. Does that ring a bell or sound familiar

1 at all to you?

2 A. No.

3 Q. Did you ever give anyone a document to
4 get Raj to sign?

5 A. No.

6 Q. After your accident, did Ashwin drive
7 down from North Carolina to see you in the
8 hospital? Or after you were shot, I guess.

9 A. Yes. He came to Florence hospital.

10 Q. All right. How often did Raj call upon
11 you to do jobs outside of your shift at the front
12 desk?

13 A. Most of the day. Daily.

14 Q. Most daily?

15 A. Most daily.

16 Q. Okay. Now, people that needed blankets
17 or needed TVs fixed, the guests, they wouldn't know
18 who Raj is, correct?

19 A. So they would tell the front desk.

20 Q. Okay. So did the people that were
21 working the front desk ever call you up about these
22 TVs and blankets and odd jobs?

23 A. They will tell Raj and Raj would tell
24 me.

25 Q. Okay. Did the people working the front

1 desk, other than Raj, know that you were on 24-hour
2 call?

3 A. I don't know about that.

4 Q. Well, wouldn't they see you up getting
5 blankets from downstairs or getting tools to fix
6 the TV or taking out the trash or fixing the air
7 conditioner?

8 A. Sometimes.

9 Q. Okay. So there are some people working
10 the front desk that would have seen you doing these
11 tasks on a daily basis; is that right?

12 A. Yes.

13 Q. And how often did you encounter people
14 at the front desk when you were doing your 24-hour
15 call job?

16 A. I didn't talk to them that much.

17 Q. Okay. But how often did you pass by
18 them when you were doing one of these jobs for Raj
19 that they had called to Raj to say needed to be
20 done?

21 THE INTERPRETER: Can you rephrase the
22 question?

23 BY MR. GREMILLION:

24 Q. Okay. Sure. You testified that when
25 something needed to be done outside of your regular

1 shift, which happened on a near daily basis, that
2 the guest would come down to the front desk and
3 then the person working the front desk would call
4 Raj and then Raj would call you. Is all that
5 accurate?

6 A. Yes, that's correct.

7 Q. Okay. And when you do these type of
8 things, you would often have to go by the front
9 desk to get whatever it was you needed to get to do
10 whatever it was you needed to do, correct?

11 A. Yes.

12 Q. Okay. So if we depose Dave and Carl
13 and Mattie and Jodi, they should be able to say --
14 or you would expect them to say, yes, he was doing
15 odd jobs outside of his normal desk shift hours on
16 a pretty regular basis; do you agree with that?

17 A. Yes.

18 Q. And these people that I've named, Dave
19 and Jody and Mattie and Carl, did you have any
20 reason to think they would be dishonest?

21 A. I think so no.

22 Q. When you say you think no, do you mean
23 you have some reason to think they are dishonest or
24 you don't know of any reason why they would be
25 dishonest?

1 A. No.

2 Q. Okay. Again, when you say no, do you
3 mean no, you think they are honest or no, you have
4 a reason to think they are dishonest?

5 A. No.

6 Q. I'm going to ask you one more time.
7 You are going to have to answer my question. Do
8 you think you have any reason to think that these
9 other front desk workers are dishonest?

10 A. No.

11 Q. Was there ever a time when Raj asked
12 you to do some work on behalf of the hotel outside
13 or off the hotel premises?

14 A. Yes.

15 Q. Okay. What exactly did he make you do
16 that involved you going off the property of the
17 hotel?

18 A. So sometimes they would need on the
19 breakfast area cereal, muffin, banana, and stuff
20 like that; buy food for the contractors sometimes,
21 buy beer; parts needed for renovation, he would
22 send me off the property to buy this.

23 Q. Okay. When Raj sent you off the
24 property to buy food stuff, you said, milk, cereal,
25 muffins, bananas, things of that nature, how did he

1 expect you to pay for them?

2 A. So I would pay with my own money and
3 then he would give me cash.

4 Q. Okay. So you would pay with your own
5 money and he just gave you cash?

6 A. Yes, sir.

7 Q. How often did this happen? This being
8 you going off and buying something for the property
9 and him reimbursing you in cash.

10 A. So many times.

11 Q. So many times. When you say so many
12 times, you worked there for about 10 months, right?

13 A. Uh-huh.

14 Q. Over the course of that 10 months you
15 worked there, about how many times would he send
16 you off to buy something and then reimburse you
17 with cash when you came back?

18 A. 10 or more times.

19 MR. COOK: Can you give me two minutes?

20 MR. GREMILLION: Sure.

21 (A recess transpired.)

22 BY MR. GREMILLION:

23 Q. Okay. So I believe you said there was
24 probably 10 separate occasions where Raj asked you
25 to go out and buy stuff for the hotel; is that

1 right?

2 A. More than 10.

3 Q. More than 10.

4 All right. Did Raj require you to be
5 available all of the time?

6 A. Yes.

7 Q. In other words, could you leave and go
8 do something, I mean if you weren't on shift?

9 A. After telling him. I would have to
10 tell him.

11 Q. So before -- I'm sorry. You are saying
12 before you left the hotel, you would have to tell
13 him where you were going?

14 A. So if I was going to the same city, I
15 would not have to say, but if I was going out of
16 the city, I would have to say.

17 Q. Okay. Now, I believe your wife also
18 worked as a front desk clerk; is that right?

19 A. Yes, sir.

20 Q. Was she also on 24-hour continuous
21 call?

22 A. Yes. But she would not have to do work
23 like I had to do.

24 Q. What was the type of work she had to
25 do?

1 A. She wasn't needed for anything else in
2 this time.

3 Q. I'm sorry. Say that one more time.

4 A. In this 10 months, they didn't need her
5 for anything else.

6 Q. Okay. So she did not do any sort of
7 work other than her front desk shift; is that
8 right?

9 A. They didn't need her for anything else.

10 Q. Okay. So you were the only one that
11 did work of the two of you outside of the regular
12 shifts?

13 A. Yes.

14 Q. So if she left to go out of the city
15 somewhere, she didn't have to tell Raj; is that
16 right?

17 A. No.

18 Q. Okay. Now, was Ashwin aware of this
19 arrangement, as far as you having to be accessible
20 and not leaving the city without telling Raj?

21 A. I don't know about this.

22 Q. Okay. I understand Ashwin was more in
23 charge of the contractors and the decorations and
24 renovations; is that correct?

25 A. Yes.

1 Q. Did Ashwin ever send you out to get
2 beer or food for the contractors?

3 A. One time. He sent me once.

4 Q. What was that occasion that Ashwin sent
5 you out?

6 A. So during the renovation, they needed a
7 trolly so he sent me out to get the trolly.

8 Q. Where was the trolly?

9 THE INTERPRETER: Where was the trolly?
10 Is that what you said?

11 MR. GREMILLION: Yes. Where was the
12 trolly?

13 THE WITNESS: At Super 8. He sent me
14 to Super 8 to get the trolly.

15 BY MR. GREMILLION:

16 Q. What is a trolly?

17 A. It's a cart to hold the foods.

18 Q. Okay. Super 8, what is Super 8?
19 That's a hotel, isn't it?

20 A. Another hotel.

21 MR. GREMILLION: Just answer exactly
22 what he says. Let me get clarification if I need
23 to.

24 BY MR. GREMILLION:

25 Q. And when this one occasion where Ashwin

1 had you go to Super 8 and get the trolly was during
2 a period when you were not working your desk shift?

3 A. Yes. I was working the front desk.

4 THE WITNESS: No.

5 I wasn't on the front desk that day.

6 BY MR. GREMILLION:

7 Q. At the time you were shot, back in
8 October, how many employees did Microtel employ?

9 A. Are you asking if they were present
10 there?

11 Q. Say again?

12 A. Are you asking if they were present?
13 How many staff were present?

14 Q. No. That's not what I'm asking. I
15 should have been more specific.

16 How many people worked at Microtel in
17 October of last year?

18 A. Five front desk people and three
19 housekeepers.

20 Q. Okay. Who were the five front desk
21 people?

22 A. Dave, Jodi.

23 Q. Okay.

24 A. Mattie, Jagnasha (phonetic).

25 Q. Jagnasha is your wife, correct?

1 A. Four. Four front desk.

2 Q. Okay. Well, you were working the front
3 desk one shift a day, right?

4 A. Yes. So we had five with me. Four and
5 me.

6 Q. Did Raj take a shift at the front desk
7 once a week?

8 A. No.

9 Q. Raj never worked the front desk?

10 A. No. I don't know before I came, but
11 while I was there he didn't.

12 Q. Did Raj ever go on vacation?

13 A. Yes. He would go for two or three days
14 when he needed to go.

15 Q. Where would he go?

16 A. Once he went to New York. Once he went
17 to Raleigh. Other times I don't know.

18 Q. Once he went to New York. Once he went
19 where?

20 A. Raleigh. Other times I don't know.

21 Q. And you said he was gone for three days
22 at a time?

23 A. No fixed timing.

24 Q. Okay. Who was in charge of the hotel
25 when he left?

1 A. So he would tell me things needed to be
2 done.

3 Q. Okay. We have got the five front desk
4 people. You said there were three housekeepers,
5 correct?

6 A. I think three housekeepers. I think
7 three housekeepers.

8 Q. Okay. What were the housekeepers'
9 names?

10 A. I remember two, Laura and Beverly. I
11 don't know the other one. No, I don't remember.

12 Q. Did you interact with the housekeepers
13 when you were not working the front desk?

14 A. No.

15 Q. I mean, did you ever run into them when
16 you were fixing a TV or an air conditioner or
17 bringing blankets for somebody, or doing any of the
18 other odd jobs you say you did?

19 A. So this would happen during -- after 3
20 p.m. so they would have been gone by then.
21 Housekeepers would have been gone by then.

22 Q. What happened if somebody needs a TV
23 fixed before 3 p.m.?

24 A. I would go. So most of the time the
25 guests would come in the evening.

1 Q. Most of the time the guests would what?

2 A. Most of the time the motel would be
3 filled in the evening. Rooms would be filled in
4 the evening.

5 Q. Gotcha. Before you got your job at
6 Microtel, did you ask about the possibility of
7 being able to live there with your family?

8 A. No. They told us to stay there.

9 Q. They told you to stay there?

10 A. Yes.

11 Q. Did you want to live somewhere else?

12 A. I didn't have anywhere to live.

13 Q. Did they make you live at Microtel?

14 A. So they told me to live there because
15 of 24 hours.

16 THE INTERPRETER: I don't know the word
17 force or forced to.

18 MR. GREMILLION: Just repeat. What is
19 he saying?

20 THE INTERPRETER: He is saying they
21 told me to live there.

22 BY MR. GREMILLION:

23 Q. Who is they, these people that told you
24 to live there?

25 A. Raj.

1 Q. Did you ever have any conversations
2 with Ashwin about this?

3 A. No.

4 Q. So Raj told you that you had to live
5 there in order to work there; is that right?

6 A. Yes.

7 Q. I'm going to talk some more -- I want
8 to ask you some more about the jobs you did when
9 you weren't doing your front desk job. I believe
10 you said that -- I want to say it was almost daily
11 that you had to do stuff at the hotel outside of
12 your desk shift; is that right?

13 A. Yes, sir.

14 Q. Okay. I want to know all of the jobs
15 that you had to do, other than -- when you weren't
16 working at the front desk that we have not yet
17 talked about. And I believe what we have talked
18 about thus far is you had to fix some TVs, fix some
19 air conditioners, take out some trash, get blankets
20 for people, go get food for contractors, go get
21 food for breakfast, one time you had to get beer
22 for contractors, one time you had to pick up a
23 trolley at Super 8. Tell me the other stuff you did
24 on a daily basis.

25 A. So all the things -- the furniture that

1 was being taken out for the renovation, I had to
2 take it to the dumpster. Carpets, I had to take it
3 to the dumpster. All the old furniture I had to
4 take to the dumpster.

5 Q. Okay. And to take this stuff to the
6 dumpster, you had to go out the front door or the
7 back door, correct?

8 A. So I came down the elevator, front
9 desk, and went to the back side.

10 Q. You said you went past the front desk?

11 A. Yes. I had to pass the front desk.

12 Q. Okay. And how long did it take to get
13 all these carpets and old furniture out to the
14 dumpsters?

15 A. So while the renovation was being done
16 I had to do this daily.

17 Q. Okay. How many hours do you think you
18 spent taking old carpets and old furniture out to
19 the dumpster?

20 A. Daily. Daily. Like, three, four hours
21 daily.

22 Q. Okay. So are you telling me that in
23 addition to working your shift, because I see you
24 on the calendar pretty regularly, in addition to
25 working your shift, you would also take this carpet

1 and furniture out to the dumpster?

2 A. So when I didn't have a shift or after
3 the shift, I would do this work.

4 Q. Okay. So if you weren't -- if you were
5 doing this work, either when you didn't have a
6 shift or after your shift, then someone else was at
7 the front desk, correct?

8 A. Yeah.

9 Q. Okay. And I imagine taking all this
10 stuff down, you must have passed by the desk
11 carrying stuff out to the dumpster dozens of times?

12 A. Yes.

13 Q. Okay. So somebody was at the front
14 desk, correct?

15 A. Yes. 24 hours.

16 Q. Okay. That somebody, if it wasn't your
17 wife, would have been Dave or Jodi or Mattie or
18 maybe Carl back when he was working, right? Dave
19 or Mattie or Jodi or Carl?

20 A. Carl is in the nighttime.

21 Q. It wouldn't have been Carl because he
22 was the nightshift? It wouldn't have been Carl
23 because he does the nightshift, you said?

24 A. Yes. So yes. This work wouldn't be
25 done at night, so Carl wouldn't be there.

1 Q. Okay. So these people would have seen
2 you carrying out this stuff back and forth?

3 A. Yes, sir.

4 Q. Okay. What other jobs did you do or
5 tasks did you do for Raj when you weren't working
6 your front desk shift?

7 A. I did all this work.

8 Q. You did all the work that we talked
9 about?

10 A. This was only the work.

11 Q. Let me ask you about one thing that I
12 want some clarification on. You said taking out
13 trash. I think that's one of the first things you
14 did. What exactly did that entail?

15 A. This is what I understand. All this
16 furniture, old furniture, and everything that he
17 mentioned to the dumpster.

18 Q. All right. When you say taking out
19 trash, you are talking about the furniture and the
20 carpet, not the trash on a daily basis?

21 A. Yes. I would take the garbage from the
22 front -- what was at the front door, the garbage at
23 the front door, I would take it out.

24 Q. Did the other workers that worked the
25 front desk have to take the garbage from the front

1 door out, too, on their shift?

2 A. No.

3 Q. So the taking the garbage out at the
4 front, this is something you did outside of your
5 front desk shift?

6 A. Yes. That was besides the front desk.
7 That's garbage. I would take the garbage out.

8 Q. So I imagine you had to do this, what,
9 every day? Every other day?

10 A. When is full.

11 Q. How often did it fill up?

12 A. Every other day.

13 Q. What time of day would you do it?

14 A. No fixed time.

15 Q. What did you get paid or how did you
16 get paid for these hours that you worked not at the
17 front desk?

18 A. I wasn't paid for that.

19 Q. Okay. So those hours that you spent
20 lugging down that carpet and the furniture and
21 putting it in the dumpster, they didn't pay you
22 anything for that?

23 A. No.

24 Q. Okay. November 23rd, 2017 --

25 MR. COOK: October.

1 MR. GREMILLION: October. Sorry. It's
2 been a long day.

3 BY MR. GREMILLION:

4 Q. October 23rd, 2017, I see from the
5 schedule your wife was scheduled to work from seven
6 to three.

7 A. I don't remember at this time.

8 Q. That's fine. You testified earlier
9 that you went to Walmart. And I believe you went
10 with your daughter; is that right?

11 A. Yes, sir.

12 Q. Okay. And did you encounter anything
13 odd on the way to Walmart or in the store?

14 A. No, sir.

15 Q. Okay. Did you go anywhere other than
16 Walmart that day?

17 A. No, sir.

18 Q. And on the way back from the store, did
19 you notice any car following you or --

20 A. No, sir.

21 Q. Tell me what happened. I'm sorry to
22 have to bring you through this, but I need to know
23 what happened when you pulled into that parking lot
24 up until the time you got shot.

25 A. It was raining. So I stopped my car at

1 the second door. Another car is behind me and
2 stopped behind me. And I gave an emergency light,
3 there is so many room, so he can go from the other
4 side. But he cannot go and stopped behind me.
5 Then I go around, and I came back again. At this
6 point -- but he did not go anywhere, and he came
7 again and stopped behind me. And then I go again,
8 and he pulled me in the car and shot me.

9 MR. GREMILLION: If he says something
10 in English, I don't need you to repeat it.

11 THE INTERPRETER: Okay. Thank you.

12 BY MR. GREMILLION:

13 Q. So I understand, did he follow you into
14 the parking lot?

15 A. Parking lot, yes. He followed me into
16 the parking lot.

17 Q. Okay. And so when he follows you into
18 the parking lot I believe -- did you say you
19 stopped, and he stopped right behind you, and you
20 thought maybe he wanted to get under the awning and
21 so you pulled around?

22 A. So I showed him the emergency light to
23 let him pass on the side.

24 Q. To let him pass. You mean, the
25 emergency light to let him pass. He was behind

1 you, correct?

2 A. Correct.

3 Q. Okay. And did he go around you?

4 A. He didn't go.

5 Q. Okay. And he followed you around the
6 parking lot two more times?

7 A. Yes, sir.

8 Q. Okay. Do you have any idea who that
9 man was that shot you?

10 A. No, sir.

11 Q. Do you have any idea why he followed
12 you into that parking lot?

13 A. No, sir.

14 Q. What made you decide to transfer out of
15 the hospital they took you to in the first place up
16 to MUSC?

17 A. My brother-in-law shifted me.

18 Q. I'm sorry. Your brother-in-law what?

19 A. Moved me from Florence to MUSC.

20 Q. Which brother-in-law is this?

21 A. Prashant.

22 Q. You have got a lot of brothers-in-law.
23 It seems like they all start with the letter P.
24 Can we just go down and give me a list of your
25 brothers-in-law?

1 A. Kalpesh, K-A-L-P-E-S-H.

2 Q. Where does Kalpesh live?

3 A. Salisbury, North Carolina.

4 Q. Okay. Then there is Prashant. I know
5 about him. Who else?

6 A. Prashant, Goose Creek, North
7 Charleston, Goose Creek.

8 Q. Prashant lives in Goose Creek?

9 A. Goose Creek.

10 Q. Any other brother-in-laws?

11 A. Another one is also Prashant.

12 Q. You have two brother-in-laws both named
13 Prashant? Is that a common name in India?

14 THE INTERPRETER: It is.

15 THE WITNESS: He lives in Anderson,
16 South Carolina. And another one is Satish,
17 S-A-T-I-S-H. He lives in Clemson, South Carolina.

18 BY MR. GREMILLION:

19 Q. And Ladson?

20 A. Clemson.

21 Q. All right. Any other brother-in-laws?

22 A. No.

23 Q. Had you received any threats or
24 anything in the days, weeks, prior to being shot?

25 A. No.

1 Q. In the time you worked at Microtel, had
2 anybody ever been shot in the parking lot like
3 this?

4 A. No.

5 Q. Were there ever occasions where the
6 police were called to Microtel for disturbances, or
7 anything?

8 A. So many times.

9 Q. Do you know what the issues were that
10 they were called for?

11 A. Prostitution.

12 Q. Who would call the police?

13 A. Guests would call.

14 Q. Okay. When the police would come, I'm
15 sure -- if they came a lot, you must have been
16 working the front desk some of the times they came,
17 correct?

18 A. No. Once when they came I was working
19 there. Once.

20 Q. So you were working the front desk one
21 time when the police came in all the time you
22 worked there?

23 A. I would be around, but I wouldn't be on
24 the front desk except once.

25 Q. When the police would come, do you know

1 if they would go to the front desk or if they would
2 go up to the room of whoever called them?

3 A. I don't know.

4 Q. You don't know? So you've never had to
5 -- you've never been on the front desk when the
6 police came for one of these calls; is that right?

7 A. Only once.

8 Q. One time. Okay. So on that one
9 occasion when you were on the front desk when the
10 police came, did they come and talk to you?

11 A. Yes.

12 Q. Okay. And what did they want?

13 A. They came to find out if this person
14 was staying there or had he stayed there before.
15 Inquire about a man.

16 Q. Did you look up the information for
17 them?

18 A. Yes, I did.

19 Q. Had the person been there?

20 A. He was there earlier, but not that day.

21 Q. Okay. After you told the police this
22 information, what did they do?

23 A. Nothing. They just left.

24 Q. Okay. So the police being there, did
25 they talk to anybody else at the hotel?

1 A. No.

2 Q. Okay. Did you call Raj?

3 A. I let him know.

4 Q. What did you tell him? Just the police
5 came asking about somebody?

6 A. Yes. Came to find out about someone.

7 Q. I understand as a result of being shot
8 you have suffered some pretty serious injuries.
9 How much feeling do you have below -- where does
10 the feeling stop?

11 A. From chest down.

12 Q. What are your plans for the future?
13 Are you thinking of staying here in North
14 Charleston or moving somewhere else, or what?

15 A. Staying here.

16 Q. You probably already told me this. I
17 apologize. But what family do you have here in
18 North Charleston, other than your wife and kid?

19 A. In North Charleston?

20 Q. In the tri-county area.

21 A. My brother lives in Goose Creek, about
22 15 minutes away.

23 Q. Your brother-in-law. If you've got a
24 brother-in-law, he's married to your sister, I
25 assume? Or it is your wife's brother?

1 A. My wife's sister's husband.

2 Q. Gotcha. Any other family in the area?

3 A. No.

4 Q. Okay. What do you do with your time?

5 Do you read? Watch TV? Play on the computer?

6 A. Yeah. Read, watch TV, computer,
7 mobile.

8 Q. Okay. Do you think there is any -- I
9 know -- I mean, I know you have got a spinal cord
10 injury. Do you think there is any work you might
11 consider doing in the future, maybe from home from
12 your computer? Have you given it any thought?

13 A. So I wish I could do something, but
14 seeing my physical condition, it's not possible --
15 it doesn't seem possible.

16 Q. When is the last time you saw a doctor?
17 Any doctor.

18 A. I think 10 or 15 days before.

19 Q. I'm sorry. Say that one more time.

20 A. 10 or 15 days ago.

21 Q. Who was the doctor?

22 A. The urologist's PA.

23 Q. It almost seems like a stupid question.
24 I mean, I almost hate to ask it. What specific
25 problems are you having?

1 Say a few and then stop and let her
2 translate and then say a few more, if you don't
3 mind.

4 MR. GREMILLION: Go ahead. Tell me
5 what he said now.

6 THE INTERPRETER: Waist down he can't
7 move. He has problems going to the bathroom. No
8 sense of going to the bathroom, toilet or peeing.
9 And the left hand, he is not able to move properly.

10 MR. COOK: You might want to look at
11 that left upper extremity. His shirt is covering
12 some of it.

13 BY MR. GREMILLION:

14 Q. Pull your shirt up. Let me see the
15 scar. It looks like you really don't have a
16 biceps.

17 As far as your spinal cord injury is
18 concerned, the one that's left you paralyzed, do
19 the doctors think there is any chance you'll regain
20 any movement in your legs?

21 A. No.

22 Q. Do you have any feeling in your legs or
23 your feet?

24 A. No.

25 Q. Are you paralyzed from the waist down

1 or from the chest down?

2 A. Chest down.

3 Q. Okay. Where does the feeling stop? In
4 other words, if I took a pin and poked you, how far
5 down would I have to go before you couldn't feel it
6 anymore?

7 A. From chest down.

8 Q. Okay. All right. I understand you are
9 not working and your wife is not working just
10 having to care for you. What kind of income, if
11 any, are you bringing in and where is it coming
12 from?

13 A. My brother-in-law is helping me.

14 Q. Okay. Who is paying for the apartment?

15 A. Brother-in-law.

16 Q. And this brother-in-law, which one is
17 this?

18 A. All four.

19 Q. Which one is helping you the most?

20 A. Prashant, Goose Creek.

21 Q. So the brother-in-law is paying money
22 for this apartment, for your food and medicine, and
23 that sort of thing?

24 A. Yes.

25 Q. Your medical bills, do you know what is

1 happening with those? Have they been paid by
2 anybody or are they still outstanding?

3 A. Not been paid.

4 Q. Are you receiving any money from any
5 other sources, such as some sort of victim
6 assistance fund or disability insurance, or
7 anything of that nature?

8 A. No, sir.

9 Q. Before this accident, what kind of
10 hobbies did you have?

11 A. Read, travel, watch TV.

12 Q. When you signed up to work this, you
13 say, 24-hour continuous call seven-day-a-week shift
14 thing that you described, did you sign any sort of
15 contract?

16 A. No, sir.

17 MR. GREMILLION: Matt, do you have a
18 complete list of the doctors he is seeing now?

19 MR. COOK: Not on me. But I can get
20 you -- I don't know. Tavanna. Hartsock, the
21 orthopedist at MUSC that he saw for the upper
22 extremity. I don't know the neurosurgeon or the
23 neurologist's names off the top of my head.

24 MR. GREMILLION: But you have that
25 information and can get it to me?

1 MR. COOK: Yeah, I think so.

2 MR. GREMILLION: I think that would be
3 more fruitful than --

4 MR. COOK: Please. I would be happy to
5 get you a punch list of who all is out there and
6 that kind of deal.

7 MR. GREMILLION: Okay. Let me go over
8 my notes. I think I'm done.

9 BY MR. GREMILLION:

10 Q. Do you still have any family back in
11 India?

12 A. Yes.

13 Q. Who is back in India?

14 A. Father and mother.

15 Q. Do you have any brothers and sisters?

16 A. One sister.

17 Q. Where does she live?

18 A. India. But another city.

19 Q. Okay. So the brothers-in-law you have
20 here are all either your wife's brother or someone
21 married to your wife's sister?

22 A. So three of them are my wife's sister's
23 husbands, and one of them is my wife's brother. So
24 three brothers-in-law married through wife's
25 sister, and one is my sister's brother -- my wife's

1 brother. Brother and three sisters.

2 Q. And are any of these individuals
3 related in any way to Ashwin?

4 A. Yes. One is.

5 Q. Which one?

6 A. Kalpesh.

7 Q. Kalpesh is related to Ashwin. Do you
8 think he is Ashwin's cousin?

9 A. Kalpesh's father's. Kalpesh's father's
10 sister's son.

11 Q. Say that one more time. How is Kalpesh
12 related to Ashwin?

13 A. Kalpesh's father's sister's son is
14 Ashwin.

15 Q. Kalpesh's father's sister's --

16 A. Kalpesh's father's sister's son.

17 Q. That will probably make sense tomorrow.
18 So when did you first get in touch with

19 Ashwin when you came here? When did you first
20 communicate with them upon arriving in the United
21 States?

22 A. So when they came to North Carolina,
23 Salisbury -- when they came to Salisbury, North
24 Carolina, they went to Kalpesh's -- Kalpesh's
25 brother lives in Raleigh. That's where they met

1 Ashwin. Did you get it?

2 Kalpesh's brother is living in Raleigh.
3 We visit one time Kalpesh's brother at Raleigh, and
4 we met at that time.

5 Q. You visit Ashwin in Raleigh. I assume
6 this was right when you first moved here?

7 A. After the move to states. After a long
8 time.

9 Q. Was it after -- was it before you
10 started working at Microtel?

11 A. Yes, sir.

12 Q. Okay. Did you talk to him at that time
13 about possibly working at a hotel?

14 A. No, sir.

15 Q. How many medications do you take each
16 day?

17 A. Lots.

18 THE INTERPRETER: He has a list.

19 BY MR. GREMILLION:

20 Q. Do you know what, give that to Matt.

21 MR. COOK: Okay. That's probably on
22 that table in front of you. I can get it.

23 MR. GREMILLION: Why don't you do that.

24 MR. COOK: Anything to speed this
25 along. You have got your plate full, too. I'm

1 happy to do that.

2 MR. GREMILLION: I'm trying. I just
3 want to make sure.

4 (Off-the-record conference.)

5 BY MR. GREMILLION:

6 Q. As far as our social security
7 disability, I know your status is a permanent
8 resident here in the United States. Do you know if
9 you have worked long enough or if you are otherwise
10 eligible for social security benefits?

11 A. So he applied once, and they talked to
12 him on the phone, and they say no.

13 Q. What specifically did you apply for?

14 A. Social security disability.

15 Q. All you did was talk to them on the
16 phone; is that right?

17 A. Yes. So he filled a form, and then he
18 talked to them on the phone.

19 Q. Why did they say you weren't eligible
20 or couldn't get it? Why did they deny it?

21 A. Because he is not U.S. citizen.

22 MR. GREMILLION: Okay. I am done.

23 MR. COOK: I have no questions.

24 (The witness, after having been advised
25 of his right to read and sign this transcript, does

1 not waive that right.)

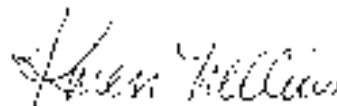
2 (The deposition was concluded at 6:00
3 p.m.)

CERTIFICATE OF REPORTER

I, Karen Nellius, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 8th day of December,
2018 at Charleston, Berkeley County, South
Carolina.



Karen Nellius, RPR
My Commission Expires
November 14, 2024

I N D E X

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REQUESTED INFORMATION INDEX
(No requested information.)

E X H I B I T S
(No exhibits proffered.)

Reference No.: 1717093

Case: PATEL V. FLORENCE INV, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Shalleshkumar Patel

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign)_____

(Print Name) _____ Notary Public,

in and for the State of _____

Reference No.: 1717093

Case: PATEL V. FLORENCE INV, et al.

Page No.____Line No.____Change to:_____

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Shalleshkumar Patel

Reference No.: 1717093

Case: PATEL V. FLORENCE INV, et al.

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Deposition of:
Shaileshkumar Patel

November 29, 2021

In the Matter of:
**Patel, Shaileshkumar Vs. Florence
Investment, LLC**

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Page 1

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF FLORENCE

3
4 SHAILESHKUMAR PATEL,

5 Plaintiff,

6 vs.

CASE NO. 2020-CP-21-02414

7 FLORENCE INVESTMENT, LLC, D/B/A

8 MICROTEL INN & SUITES AND JOHN DOE,

9 Defendants.

10
11
12 DEPOSITION OF: SHAILESHKUMAR PATEL
(Via Videoconference)

13
14 DATE: Monday, November 29, 2021

15
16 TIME: 1:15 p.m.

17
18 LOCATION: 101 Cross Creek Court
Apartment 8
Central, South Carolina

19
20
21 TAKEN BY: Counsel for the Florence Investment,
LLC

22
23 REPORTED BY: Elaine L. Grove-DeFreitas,
Independent Professional Reporter

24
25 INTERPRETED BY: Vina Patel, Gujarati Interpreter

1 APPEARANCES OF COUNSEL:

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I N D E X

Page Line

EXAMINATION

BY MR. MCDONALD..... 4/3

CERTIFICATE OF REPORTER..... 26

E X H I B I T S

(No Exhibits Introduced)

1 (Gujarati Interpreter, Vina Patel, was duly sworn)

2 SHAILESHKUMAR PATEL,

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCDONALD:

6 Q. All right. Mr. Patel, good afternoon.
7 My name is Jay McDonald, and I represent Microtel
8 Inn & Suites. Can you please state your full name
9 for the record?

10 A. My first name is Shaileshkumar. Last
11 name is Patel.

12 MR. MCDONALD: Madam Court Reporter, I
13 could not hear his response. I could hear Vina's
14 response.

15 MR. PATEL: My name is Shaileshkumar.
16 Last name Patel. Can you hear me?

17 MR. MCDONALD: Yes, sir.

18 MR. PATEL: First name is Shaileshkumar.
19 Last name is Patel.

20 BY MR. MCDONALD:

21 Q. Do you also go by Sam?

22 A. In the motel they call me that name. In
23 the motel they call me with that name, but it's not
24 a legal name. Because it's too long for them to
25 call Shaileshkumar, so they was calling me just for

1 the motel purposes.

2 Q. Does he go by any other name or
3 nickname?

4 A. No.

5 Q. Mr. Patel, I want to try to go through
6 this as quickly as I can and as efficiently as I
7 can.

8 A. Okay.

9 Q. Mr. Patel, I have you participated in a
10 workers' compensation deposition back on December
11 3rd, 2018. Do you recall giving a deposition
12 regarding this unfortunate incident on December 3rd,
13 2018?

14 A. December 3, 2018.

15 MR. PATEL: I don't remember the date.
16 I did deposition, but I do not remember the date.

17 THE COURT REPORTER: Ms. Patel, since he
18 is speaking in English I'm not going to take down
19 what he says. I'm only going to take down 100
20 percent what you say because the transcript will be
21 way too confusing. And so even if he speaks in
22 English, if you can repeat what he says, that way I
23 will just have what you say, instead of the back and
24 forth and all.

25 THE INTERPRETER: Sure.

1 MR. PATEL ANSWERS THROUGH INTERPRETER:

2 A. Yes, I did previously the deposition,
3 but I don't remember the date.

4 Q. The testimony that you gave in the prior
5 deposition, did you tell the truth?

6 A. Yes.

7 Q. Mr. Patel, what is your age?

8 A. My age -- I was born in '74. I was born
9 in year 1974. My age might be forty-seven,
10 forty-eight. My date of birth is July 9, 1974.

11 Q. Where do you currently live?

12 A. I live in Central. That's the name of
13 the town. I am in Central, South Carolina.

14 Q. Who lives there with him in Central,
15 South Carolina?

16 A. My wife and my daughter.

17 Q. How long have they lived in Central?

18 A. February 2020.

19 Q. Prior to living in Central did you live
20 at 2520 Atlantic Palms Lane in North Charleston,
21 South Carolina?

22 A. Yes, 2520 Atlantic Palms, North
23 Carolina -- South Carolina.

24 Q. Mr. Patel, you moved from North
25 Charleston, the North Charleston address to your

1 current address in Central, South Carolina in
2 February 2020?

3 A. Yes, in February 2020.

4 Q. Mr. Patel, since your last deposition --
5 I know you did not recall when that was, but since
6 then how is your health from the injuries that you
7 received from the shooting?

8 A. There is no changes in my condition. I
9 am paralyzed from -- paralyzed due to my injuries.
10 And from the chest down I am paralyzed. My left
11 hand is also not moving. And I have a spinal cord
12 injury that paralyzed me from chest down. I only
13 can move my left hand only little by little, but
14 it's still not moving well (indicating).

15 Q. Currently, what doctors does he go see
16 for treatment for any injuries from the shooting?

17 A. I go to the family physician -- my
18 family physician, and I also see the urologist.

19 Q. Mr. Patel, is your current family
20 physician still Dr. Weeks?

21 A. Yes. Since I moved from there to other
22 location, my physician changed. Right now my
23 physician is Manju Lakra.

24 MR. MCDONALD: Can you please spell
25 that, Madam Interpreter?

1 THE INTERPRETER: You want me to spell
2 that?

3 MR. MCDONALD: Or he can spell that. I
4 don't know who that is.

5 MR. PATEL: Yes. It's M, as in mango;
6 A, as in apple; N as in Nancy; J as in Jack; U, as
7 in umbrella. Manju. And last name is Lakra. L, as
8 in lion; A as in apple; K, as in kite; R, as in
9 rose; A, as in apple.

10 BY MR. MCDONALD:

11 Q. Where is Dr. Lakra's office?

12 A. I don't remember it. Do you want me to
13 Google it and find the address? I don't remember by
14 heart. I don't remember.

15 Q. Mr. Patel, just provide that to your
16 attorney. Okay?

17 A. Okay.

18 Q. Who is his current urologist?

19 A. Dr. Jeff Larson.

20 Q. Is Dr. Larson's office up there closer
21 to him in Central, South Carolina?

22 A. It's a half hour away, in Anderson.

23 Q. Mr. Patel, how many surgeries have you
24 had since the unfortunate incident where you were
25 shot on October 23rd, 2017?

1 A. Three.

2 Q. Did you say three?

3 A. Yes, three surgeries happened.

4 Q. Approximately when was the last surgery
5 that he has had due to the shooting?

6 A. 5th April, 2018. I don't remember
7 exact, but it's March or April. But it was in 2018.

8 Q. At the Medical University of South
9 Carolina?

10 A. Yes.

11 Q. Mr. Patel, how old is your daughter?

12 A. Twenty-four years old. Twenty-four.

13 Q. What is her date of birth?

14 A. September 14, 1997.

15 Q. Does he have any other children?

16 A. No.

17 Q. What does he call his daughter? What is
18 her name?

19 A. Jahnaviben.

20 Q. What does she currently do?

21 A. She is in college.

22 Q. What college?

23 A. Clemson University.

24 Q. What year is she at Clemson?

25 A. She is in her third year. She completed

1 two years in Charleston in a technical college, and
2 now she is here in the third year.

3 Q. Congratulations.

4 A. Thank you.

5 Q. What is your daughter studying at
6 Clemson? What is her major?

7 A. Computer Science.

8 Q. Mr. Patel, I have a daughter that's
9 twenty-four and I'm very proud of her. And I know
10 you're very proud of your daughter.

11 A. Thank you, sir.

12 Q. Mr. Patel, since the incident of October
13 23rd, 2017 has your daughter had to undergo any kind
14 of psychiatric or psychological evaluation or
15 treatment?

16 A. Yes. She got scared. All of us with
17 this incident are so scared. And our entire family
18 is scared of this incident we went through.

19 Q. I understand that she is scared from the
20 incident, but did she undergo any professional
21 counseling, psychological counseling, treatment
22 since the shooting?

23 A. No.

24 Q. Mr. Patel, have you talked to your
25 daughter about this incident where you were shot?

1 A. When I recover and got conscious, then
2 at that time in the hospital I talked to her what
3 happened and what I went through.

4 Q. Mr. Patel, what did you tell her in the
5 hospital?

6 A. I just told her that somebody came up
7 and shot me, I didn't even realize it, and now I was
8 getting a little better.

9 Q. Mr. Patel, was your daughter with you in
10 the car when you got shot?

11 A. Yes.

12 Q. Has your daughter spoken to you about
13 her being scared, of the trauma from you getting
14 shot?

15 A. Can you repeat that, please? Can you
16 state again?

17 Q. I'm happy to. Mr. Patel, I'm just
18 trying to find out how your getting shot has
19 affected your daughter, to your knowledge.

20 A. Everybody is scared. They are panicky.
21 Because I got shot, everybody was like scared and
22 panicky.

23 Q. Do you know if your daughter has
24 consulted with her mother about you getting shot?

25 A. Yes. After that she called her mother

1 and said that Papa is getting shot. Yes. She was
2 in the motel upstairs so she just run out and went
3 there, and she told her about it.

4 Q. And he is referring to on the night that
5 the shooting happened?

6 A. Yes.

7 Q. To your knowledge, has your daughter
8 consulted with anyone other than you and her mother
9 about you being shot?

10 A. Yes. She also talked to the owner of
11 the motel who was already there as well, saying that
12 "My dad got shot." And she talked to the owner of
13 the motel who was present at that time as well.

14 Q. The owner that was present at the time,
15 his name is what?

16 A. Rajubhai. He was not outside. He was
17 inside in the motel.

18 And this incident happened outside, so
19 he wasn't outside. He was inside. He was inside
20 the motel. My daughter go inside and tell him.

21 Q. And she went and told -- what was the
22 name of the owner that she went to tell about the
23 unfortunate shooting?

24 A. Rajubhai.

25 Q. To your knowledge, has she spoken with

1 anyone else about the shooting other than the owner
2 that night, her mother and yourself?

3 A. There was somebody at the front desk.
4 And she also talked to the front desk, the person
5 who was standing at the front desk.

6 Q. After the day of -- the evening of the
7 shooting has she spoken to anyone other than you,
8 Mr. Patel, her mother, the owner of the hotel, Raj,
9 and the front desk person that was there?

10 A. Yeah. After this incident happened the
11 other relatives and my brother-in-law and everybody
12 come to visit me from Charleston. And they was
13 talking and asking about this, and she talked to
14 them as well.

15 Q. Mr. Patel, can you give the full names
16 of those individuals in your family that came to
17 Charleston and that she spoke to?

18 A. Prasant Patel.

19 Q. I'm not hearing anything. Is he still
20 speaking?

21 A. No, I'm not talking anything.

22 Q. I did not hear the response to the
23 question about the family members that his daughter
24 talked to in Charleston about the unfortunate
25 shooting.

1 A. Prasant Patel.

2 Q. To your knowledge, Mr. Patel, has your
3 daughter spoken to anyone outside of your family
4 about the shooting?

5 A. No.

6 Q. Mr. Patel, does your daughter speak
7 English well enough where she can be deposed where
8 she speaks English only?

9 A. She talks English and Gujarati.

10 Q. Mr. Patel, do you know if she would be
11 comfortable talking with us under oath in English?

12 A. She speaks, but not speaks enough that
13 I -- that to my knowledge.

14 Q. Does she have to have an interpreter at
15 Clemson University to study Computer Science?

16 A. No. No, she will not need interpreter.

17 Q. Mr. Patel, how often are you going to
18 your family doctor for any issues dealing with the
19 injuries you had from this unfortunate incident?

20 A. Every month -- or month or two go to
21 visit.

22 Q. All right. And how about with his
23 urologist?

24 A. I'm going to visit him as well monthly
25 or bimonthly.

1 Q. Mr. Patel, are there any other doctors
2 that you have to go to on a regular basis because of
3 injuries from this shooting?

4 A. Not recently. Not regularly.

5 Q. Mr. Patel, what do you do normally
6 during the week? Just kind of give me what you do
7 Monday through Friday as far as daily living
8 activities and that kind of thing.

9 A. When I get up I go in a wheelchair. I
10 cannot do my bathroom by myself, so I do get the
11 pipe ready and do through the pipe. I catheterize
12 and then I can do it.

13 And then I have to get my medication
14 ready -- out of the box and create it and get ready
15 for that.

16 Q. I'm not sure I understand that. Can you
17 please explain that?

18 A. I use the catheter for my urine things,
19 and that's what I get ready.

20 Q. Mr. Patel, does your wife have to help
21 you with any of your normal daily activities?

22 A. Yes, she does.

23 Q. What does she assist with?

24 A. Once I stay -- or go in a bed if I
25 forget something, I ask her for the things so she

1 bring at that out. She makes the food for me, she
2 give me. Whatever I ask her to do, she does that
3 for me.

4 Q. Does anyone else help take care of him?

5 A. My wife, she help me to put my pants on.

6 Q. Does anyone other than his wife assist
7 him with those types of things?

8 A. No.

9 Q. Mr. Patel, do you have any physical
10 therapist or any type of therapist that comes to
11 your home to help and treat you in any way
12 currently?

13 A. No.

14 Q. Mr. Patel, did you move to Central,
15 South Carolina to be closer to Clemson where your
16 daughter is going to college? Is that the reason?

17 A. Yes.

18 Q. Does your daughter live in a dorm at
19 Clemson or does she come and stay with you?

20 A. Now she lives at home.

21 Q. Mr. Patel, when did you start working at
22 Microtel Inn & Suites in Florence?

23 A. 22nd December, 2016. 22 December, 2016.

24 Q. When you started at Microtel on December
25 22nd, 2016 was that your first visit to Florence,

1 South Carolina on that date?

2 A. Yes.

3 Q. Did you live anywhere in Florence other
4 than at the Microtel Inn & Suites?

5 A. No.

6 Q. Mr. Patel, did your wife and daughter
7 live with you there at Microtel as well in Florence?

8 A. Yes.

9 Q. Are you familiar with the area where
10 Microtel was located in Florence when you started
11 working at Microtel in December of 2016?

12 A. No.

13 Q. Prior to the unfortunate shooting
14 incident did he have any reason to believe that he
15 and his family were not safe at the Microtel in
16 Florence?

17 A. No, I did not realize that way.

18 Q. Prior to the shooting in October of 2017
19 did you have any knowledge of any criminal activity
20 in the area of the Microtel Inn where he was working
21 and staying with his family?

22 A. No.

23 Q. Prior to the unfortunate shooting did
24 you have any knowledge of any criminal activity in
25 or about the area of the Microtel Inn in Florence,

1 South Carolina?

2 A. No, I did not know about it.

3 Q. Mr. Patel, your wife also was employed
4 by Microtel as well as yourself?

5 A. Yes.

6 Q. Do you know if your wife was aware of
7 any danger of criminal activity prior to the
8 unfortunate shooting where you were shot in October
9 of 2017?

10 A. No.

11 Q. Did anyone at Microtel in Florence,
12 South Carolina tell you or your wife of any concerns
13 of danger due to criminal activity around the
14 Microtel Inn in Florence?

15 A. No.

16 Q. Mr. Patel, had you, your wife or your
17 daughter ever contacted the police to come to the
18 Microtel Inn because of suspicion or concern of
19 possible criminal activity prior to the unfortunate
20 incident where you were shot?

21 A. No.

22 Q. Since the shooting, Mr. Patel -- after
23 the unfortunate incident have you spoken to anyone
24 other than your attorney that told you that there
25 was criminal activity known to occur within the area

1 of the Microtel in Florence?

2 A. No.

3 Q. Mr. Patel, in the complaint that you
4 filed against Microtel Inn & Suites you allege that
5 Microtel failed to maintain its premises in a proper
6 condition for those staying at the Microtel. Can
7 you tell me what improper conditions that you're
8 referring to in that allegation? Do you have any
9 knowledge of any improper condition?

10 A. First of all, I can see that there was
11 not enough lighting. If they had enough lighting so
12 you will -- especially in the parking area so you
13 would know what's going on in there.

14 There should be cameras, and there was
15 no cameras in the -- at the location. At the same
16 time, the security guard will be helping for the
17 security of the people in the premises. There is no
18 security guard.

19 Q. Mr. Patel, did you come to those
20 conclusions after you unfortunately got shot on
21 October the 23rd, 2017?

22 A. Yes.

23 Q. Mr. Patel, how did you arrive at those
24 opinions?

25 A. What are you asking? What are you

1 talking about? I don't understand. Can you tell me
2 again?

3 Q. Yes. Let's just go at it one at a time.
4 You said, after the shooting, you believe that there
5 was not enough lighting, particularly in the parking
6 area. How did you come to that conclusion?

7 A. The person who shot me will get caught.
8 Because after when this incident happened I realized
9 that there was not enough lighting, there was no
10 cameras, so it was hard to detect or find the person
11 at this incident.

12 Q. Mr. Patel, I certainly appreciate that.
13 Did anybody tell you that or was that your own
14 conclusions after you unfortunately got shot?

15 A. I'm telling by myself.

16 Q. Thank you, sir.

17 Mr. Patel, I wanted to check on you. I
18 don't have a whole lot more questions, probably
19 about fifteen or twenty minutes, but I want to give
20 you an opportunity if you need to take a break. Do
21 you need to take a break at this point?

22 A. No, I don't want it. Can I drink a
23 water?

24 Q. Sure.

25 A. Okay.

1 Q. All right. Mr. Patel, I just need for
2 you to concisely tell me what you remember happening
3 the night of the shooting, if you can just go
4 through that. And I'm sorry to have to go through
5 that again, but if you could just tell me what
6 happened.

7 A. Me and my daughter went to the Walmart
8 to get the groceries. We just needed the groceries
9 we pick up.

10 We just came in the parking lot. It was
11 raining that day. The store is on the first -- the
12 thing is on the first floor. We live on a certain
13 floor, so there is a side -- on a side there is
14 stairs to go upstairs. I asked my daughter to get
15 down there so we can go easily without getting wet
16 from the car to pick up the groceries.

17 There was another car came right behind
18 us. So we went around it and then come -- make a
19 round and come back. The car also came around
20 behind us and stand behind us, and so I started
21 going forward again and they started shooting.

22 Q. Mr. Patel, where was your daughter when
23 they started shooting?

24 A. She was seated in the car right next to
25 me.

1 Q. Mr. Patel, your daughter was not
2 physically shot or injured from this incident?

3 A. No, she did not get hurt. Yeah. She
4 was bent down and a little downward.

5 Q. Mr. Patel, were you and your family
6 frustrated by the investigation done by the
7 government authorities to try to locate the shooter?

8 A. Yes.

9 Q. Did you speak with anybody with the
10 Florence County Sheriff's Department or Police
11 Department about their investigation?

12 A. No.

13 Q. Mr. Patel, did your daughter or your
14 wife speak to anyone with the Florence County
15 Sheriff's Department or police about their
16 investigation of this unfortunate shooting?

17 A. My daughter and my brother-in-law did
18 talk to them.

19 Q. Mr. Patel, do you know what entity they
20 talked to, whether it was the Sheriff's Department
21 or Police Department or who they talked to?

22 A. No.

23 Q. Mr. Patel, what was you and your
24 daughter's purpose to go to Walmart that evening?

25 A. We went to get the groceries.

1 Q. Did you tell the police you were going
2 to get the groceries for the hotel breakfast?

3 A. Yes.

4 Q. So Mr. Patel, when you and your daughter
5 were going to Walmart to get the groceries, you were
6 getting groceries for yourself and for the hotel
7 breakfast?

8 A. Yes.

9 Q. Mr. Patel, did you meet with or speak
10 with a person by the name of Janice Holloway?

11 A. No.

12 Q. She is a certified life care planner.
13 Does that help refresh your memory about possibly
14 speaking with Janice Holloway about a certified life
15 care plan for yourself?

16 A. Are you talking about the person that
17 came from 911?

18 Q. No, sir. I'm talking about the person
19 that prepared a life care plan. And she may or may
20 not have -- and I'm not being critical -- met with
21 you regarding future medical care that you may need
22 as a result of the unfortunate injuries from this
23 shooting.

24 A. No, I don't remember.

25 Q. Mr. Patel, you had said earlier that you

1 have undergone three surgeries, with the last
2 surgery taking place in, I believe, March or April
3 2018 at the Medical University. Can you tell me
4 your understanding of the three surgeries that you
5 have had as a result of this unfortunate incident?

6 A. Do you want besides surgery? About
7 surgery or besides the surgery?

8 Q. Mr. Patel, I just want to know what was
9 your understanding of the three surgeries that you
10 have had.

11 A. There is a plastic surgery on my hand.
12 The thing I'm showing you right now (indicating),
13 that is the surgeon. That is the one they did the
14 plastic surgery. They took the bone out of my leg
15 and put that in there.

16 Q. All right, sir. And Mr. Patel, those
17 surgeries were all done at the Medical University of
18 South Carolina?

19 A. Yes.

20 Q. Mr. Patel, have you been advised that
21 you may need more surgery of any kind because of any
22 injury you had from this incident?

23 A. No.

24 MR. MCDONALD: Mr. Patel, I want to
25 thank you for your time.

1 And I want you to know that I'm
2 certainly so sorry that you have been through this
3 experience, and hopefully that we can get this
4 matter worked out for you.

5 MR. PATEL THROUGH INTERPRETER: Thank you, sir. I
6 appreciate your help.

7 MR. MCDONALD: Warren, do you have
8 questions?

9 MR. JOHNSON: No questions.

10 (The deposition was concluded at 2:32 p.m.)

11 (The deponent waives reading and signing of this
12 deposition)

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CERTIFICATE OF REPORTER

I, Elaine L. Grove-DeFreitas, Certified
Shorthand Reporter and Notary Public for the State of
South Carolina at large, do hereby certify that the
foregoing transcript is a true, accurate and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto
affixed my official seal this 3rd day of December 2021
at Greenville County, South Carolina.



ELAINE L. GROVE-DEFREITAS
Certified Shorthand Reporter
My Commission Expires 6/22/2030

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Shaileshkumar Patel,
Employee,
Claimant,

-vs-

Florence Investment, LLC dba Microtel Inn & Suites,

Employer,
and Accident Fund Insurance Co. of America,

Carrier,
Defendants.

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

AGREEMENT AND FINAL RELEASE

W.C.C. FILE NO. 1717093

CARRIER FILE NO. AFC230007738

2019 MAR 25 AM 8:34
ELECTRONICALLY FILED
CLERK OF COURT
FLORENCE COUNTY

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of Shaileshkumar Patel ("Claimant"). Claimant is represented by Matthew R. Cook, Esquire, and Defendants, Florence Investment, LLC dba Microtel Inn & Suites and Accident Fund Insurance Co. of America, are represented by Lee Louis Gremillion, IV, Esquire of Willson Jones Carter & Baxley, P.A. The South Carolina Workers' Compensation Commission has jurisdiction. The parties agree that venue is proper in Florence County, South Carolina.

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. As a result of this alleged accident, Claimant sought and received medical treatment on his own from a number of providers, including McLeod Regional Medical Center, MUSC, Riverside Health and Rehabilitation, Roper St. Francis Rehabilitation Hospital and Roper St. Francis Physician Partners.

Claimant's compensation rate is in dispute. According to Defendants, it is One Hundred Seventeen and 13/100 Dollars (\$117.13). Claimant contends his correct compensation rate is Eight Hundred Six and 92/100 Dollars (\$806.92).

The parties hereto now advise that in their opinion the matter is in bona fide dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission. It is expressly understood and agreed that this case is being settled on a doubtful and disputed basis and Defendants continue to deny liability in this matter. Defendants maintain that substantial evidence supports their denial and that had the claim not settled, it is unlikely Claimant would have prevailed on the issue of compensability at a hearing. Specifically, Defendants assert that there is no evidence that the assailant was a guest or in any way connected to the hotel. The motive behind the shooting is unknown and appears to be a random and unforeseeable act of violence. While Claimant alleges he was a 24 hour on call employee, required to live at the hotel in order to fulfill his job duties and therefore was working at the time of the accident, Defendants maintain the greater weight of the evidence indicates Claimant's job duties were limited to front desk shift work, which he was not engaged in at the time of the shooting, and that he was not required to live at the hotel in order to fulfill the duties of his job. Defendants maintain that multiple witnesses would have testified that Claimant's only job was working the front desk during scheduled shifts and that his job did not require him to live at the hotel. As such, Defendants maintain Claimant was not working and therefore the injuries did not occur while in the course or scope of employment. The mere fact that Claimant was on hotel property when he was shot, due to, apparently, some unknown assailant following him from his shopping excursion to the hotel parking lot for unknown reasons, does not result in a compensable workers' compensation claim, unless Claimant was engaged in something work related or that benefited the employer at the time of the incident. Defendants maintain that Claimant would have difficulty proving to the Commission at a hearing that he was engaged in something work related or that benefited the employer at the time of the incident. As such, the resolution of the claim is on a doubtful and disputed, full and final clincher basis without any payment of past, present, or future medical expenses by Defendants and without any admission of liability by Defendants. The purpose of this settlement is to resolve any and all issues arising under the

South Carolina Workers' Compensation Act as it relates to the alleged accident of October 23, 2017.

Under the proposed settlement Defendants have agreed to pay and Claimant has agreed to accept the total final settlement sum of Three-Hundred Thousand Dollars and no/100 (\$300,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said alleged work accident occurring on or about October 23, 2017, while Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites. As an integral part of this settlement agreement, it is expressly understood and agreed that any and all medical expenses of whatsoever nature or kind shall be the express liability of Claimant and Defendants shall have no liability therefore.

The parties further stipulate that the aggregate settlement proceeds, which amount to \$300,000.00, shall be allocated in the following fashion:

1. The sum of \$100,000.00 as attorney fees pursuant to Commission Regulation 67-1205(C), and the agreement between the Claimant and this attorney;
2. The sum of \$7,745.41 to this attorney as reimbursement for litigation costs pursuant to Commission Regulation 67-1206;
3. The sum of \$192,254.59 as compromise settlement for disputed permanent disability at the rate of \$109.74 per week commencing on the date of the SCWCC's approval of this agreement for a period of 1751.88 weeks thereafter, representing the Claimant's life expectancy of 33.69 years, pursuant to the provisions of S.C. Code Ann. Section 19-1-150 (1976) and the decisions of the South Carolina Supreme Court in Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

It is expressly understood that Defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of Defendants.

Claimant hereby asserts that he has been fully advised by his attorney of record of all his rights under the South Carolina Workers' Compensation Act, and that Claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion Claimant's attorney concurs

and asserts that he has fully advised Claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. Claimant hereby asserts that he recognizes that his consent to, and the approval of, this Settlement Agreement and Release is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring on or about October 23, 2017, while Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites.

Claimant hereby affirms that he has not applied for and is not receiving Social Security disability, is not on Medicare, is not enrolled in Medicare Advantage, and is not aware of any Medicare liens. The parties expressly agree that Claimant does not have a reasonable expectation of Medicare eligibility within 30 months from the date of this settlement. The parties have taken into consideration Medicare's potential interest in the resolution of this claim. The parties agree that a Medicare Set-Aside will not be submitted to CMS for review and/or approval. Claimant has been advised of the potential risks associated with not establishing a Medicare Set-Aside account and not submitting a Medicare Set-Aside to CMS for review and/or approval, including but not limited to, CMS/Medicare's potential withholding of Medicare benefits to Claimant.

Claimant also expressly represents and agrees that he sustained no work accidents or work injuries while employed by Florence Investment, LLC dba Microtel Inn & Suites other than the alleged work accident and resulting injury occurring on or about October 23, 2017.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for Claimant that Claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

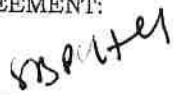
The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the Claimant's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, Claimant and Defendant (Employer, Carrier and/or servicing agent) agree that this settlement agreement cannot be voided in the future for any reason,

including on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

Claimant does hereby acknowledge that Defendants have fully, finally, and completely paid and discharged each and every one of their obligations, liabilities, and responsibilities under the South Carolina Workers' Compensation Act and that said sum is being paid in full and final satisfaction of all claims whatsoever arising from the alleged work accident occurring on or about October 23, 2017. Claimant enters into this Agreement and Final Release freely and voluntarily, without undue influence, coercion, or duress.

NOW, THEREFORE, IT IS AGREED, SETTLED, APPROVED, and ORDERED that upon the payment of Three-Hundred Thousand and no/100 Dollars (\$300,000.00) by Defendants, and the acceptance of said sum by Claimant, Defendants be, and they hereby are, fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring on or about October 23, 2017, while Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions. Claimant enters into this Agreement and Final Release freely and voluntarily, without undue influence, coercion, or duress of any kind.

WE CONSENT TO THE FOREGOING
AGREEMENT:



Shaileshkumar Patel, Claimant

Dated: 03/21/19



Matthew R. Cook
Attorney for Claimant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO: 2020-CP-21-02414
	)	
Shaileshkumar Patel,	)	
	)	
Plaintiff,	)	
	)	REPLY TO DEFENDANT FLORENCE
v.	)	INVESTMENT, LLC d/b/a MICROTEL
	)	INN & SUITES' MEMORANDUM IN
Florence Investment, LLC d/b/a	)	SUPPORT OF MOTION FOR
Microtel Inn & Suites and	)	SUMMARY JUDGEMENT
John Doe,	)	
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff by and through its undersigned attorney, and respectfully submits this Memorandum in Opposition of Defendant's Motion for Summary Judgment.

BACKGROUND

This case arises out of a tragic incident wherein the Plaintiff was rendered a quadriplegic as a result of a shooting by an unknown assailant while returning to his room at the Defendant's hotel. The Plaintiff asserts that the Defendant was on notice that there was a significant increase in criminal activity on and around the premises and failed to take any action to prevent or deter the activity to reduce the dangerous condition. According to the Defendant, the Plaintiff was not on the clock and was returning from a personal shopping trip to Wal-Mart with his daughter at the time of the shooting.

While it is true that the claim was originally filed as a workers compensation claim as the Plaintiff was also an employee of the Defendant as a night clerk, the Defendant denied that claim alleging that the injury did not arise out and in the course of scope of his employment and, as a

result, was not compensable. To support their position, the Defendant's owner and managing agent, Raj Patel, testified that the Plaintiff was a front desk clerk only and had no other duties when he was not on shift. (Page 53, Lines 4-17). In regards to being "on call" 24/7, Raj Patel disputed that and also secured numerous statements from other employees supporting this contention. (See Plaintiff's Exhibit A) In addition, Mr. Raj Patel stated that the Plaintiff was not required to live on the hotel and was never authorized or requested to do any shopping for the hotel. Further, the Plaintiff was allowed to live on the premises, only as a courtesy, and was always free to make other living arrangements, without having any impact on his employment. (P. 48, lines 13-22). In fact, according to Raj Patel, he was the only person that was allowed to do the shopping, as the company credit card was in the name of Raj Patel, and had never been given to anyone else. (P. 55 lines 10-25; P. 56 lines 1-10).

Prior to a hearing on the merits of the workers compensation claim, and faced with the numerous statements of employees and Raj Patel, which clearly defined the scope of employment as limited to front desk clerk duties, the parties agreed to mediate and, ultimately settled on a "doubtful and disputed" clincher. As clearly set forth in the clincher, the Defendant steadfastly maintained its denial that this injury fell within the scope of employment. (See Defendant's Exhibit 3).

ARGUMENT

In the case at bar, the Defendant now contends that the injuries arising from the shooting are barred by the exclusive remedy provision of the Act as they arose from a work-related accident. The flaw in this argument lies in the Defendant's position, and testimony, that at the time of the shooting, the Plaintiff was simply a guest and the injury was in no way connected to work. In order to prevail on their motion, the Defendant would have to demonstrate that the injury was in fact a work-related accident. In light of the Defendant's testimony, the Defendant cannot credibly contend that the employment was the proximate cause of the injury. Although our court has found in numerous cases that there are circumstances, when injuries arising out of acts outside the scope of an employee's regular duties, may be compensable, the Appellate Courts

have consistently held that there must some causal connection between the injury and the employment. Osteen v. Greenville County Sch. District, 333. S.C. 43; 508 S.E. 2d 21 (1998). In fact, the Court of Appeals recently addressed this requirement in the case of Patel v. BVM Motel, LLC, 433 S.C. 337, 857 S.E. 2d 564 (2021). In Patel, the Claimant was murdered at the hotel where she worked and lived. In affirming a finding of compensability, the Court identified all of the factors that supported the causal connection requirement, the most significant of which being that the employer admitted that the employee was required to live on the premises and was required to be “on call” 24/7.

Unlike the claimant in Patel, the Defendant in the case at bar, has adamantly denied that the claimant was required to live on the premises but, instead, had requested to be allowed to do so. In addition, the Employer asserts that the Plaintiff was never allowed to shop for the business and had no duties outside of the duties as a front desk clerk.

THE CLINCHER DOES NOT BAR THIS ACTION

The Defendant further asserts that this claim is barred in light of the clincher agreement which settled the Workers Compensation claim pursuant to Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E. 2d 439 (1991) and Martin v. Lockheed Martin Logistic Servs., Greenville County Court of Common Pleas, Civil Action No. 2019-CP-23-00584. However, both of these cases are clearly distinguishable from the present case, as they both involved workers compensation claims in which the Commission had **made a ruling** on the merits of the claim and awarded benefits.¹ In addition, the primary analysis in those cases was whether the tort defendant was a statutory employer of the injured worker of a subcontractor. As a result of the Commission’s finding of compensability, the Upstream Employers were then automatically entitled to the exclusive remedy defense, upon showing that they were statutory employers.

In this case, the Plaintiff applied for benefits under the Act, seeking swift, sure, compensation, which would have included priceless medical treatment for his spinal injury, and two-thirds of his average weekly wage, for the **rest of his life**. The Employer/Defendant denied that this injury was related to his employment and, ultimately, decided to cap its exposure under

¹ In Martin, after a hearing on the merits and an award of benefits, the Claimant agreed to settle permanency.

the Act for a small fraction of its exposure, by way of a doubtful and disputed settlement. The Defendants have never paid a dime of benefits, such as medical and temporary total payments, under the Act. They have instead, paid a lump sum amount to settle the claim before the Commission, **prior to a decision on the merits**. As such, they opted to defend the tort claim, which foregoes the Grand Bargain, and necessitates the Plaintiff proving fault.

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC

s/Warren P. Johnson
Warren P. Johnson
SC Bar No. 71759
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142
Attorney for the Plaintiff
File No: 17-826-01-200-20

Tuesday, May 10, 2022

In the Matter Of:
PATEL vs FLORENCE INVESTMENT

1717093

RAJENDRA PATEL

December 03, 2018



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Patel 143

Before the South Carolina
Worker's Compensation Commission

Shaileshkumar Patel,
Employee,
Claimant,

V.

WCC# 1717093

Florence Investment, LLC,
Employer,
and
Accident Fund National Insurance Company,
Carrier,
Defendants.

Deposition of: Raj Patel

Location: 273 W. Evans Street
Florence, South Carolina

Date: Monday, December 3, 2018

Time: 10:18 a.m. - 12:20 p.m.

Court Reporter: Ashley Rogers

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina Rules of Civil Procedure.

A P P E A R A N C E S

For the Claimant:
Hoffman Law Firm, LLC
7087 Rivers Avenue
North Charleston, South Carolina 29406
By: Matthew R. Cook, Esq.
contact@hoffmanlaw.net

For the Defendants:
Willson Jones Carter & Baxley, P.A.
1601 N. Oak Street
Suite 307
Myrtle Beach, South Carolina 29577
By: Lee Louis Gremillion, IV, Esq.
llgremillion@wjlaw.net

Also Present via videoconference:
Jamal Abedin (Interpreter)

I N D E X

Examination by Mr. Cook	3
Examination by Mr. Gremillion	44

E X H I B I T S

Pg/ltn	Ex.	Description
49/16	1	Copy of work schedule, 2 pages

** uh-huh = affirmative
huh-uh = negative

S T I P U L A T I O N S

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

Thereupon,

Jamel Abedin,
was sworn and put under oath to accurately and truthfully interpret all questions and answers of the proceedings.

Raj Patel,
being first duly sworn by the Court Reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

By MR. COOK:

Q Good morning.

A Good morning.

Q My name is Matt Cook. I represent Shailesh Patel in this worker's compensation case.

A Uh-huh.

1 Q I'm here today to take your deposition.
2 We have a translator who's appearing via
3 teleconference with us. I understand that you
4 speak some English.

5 A Yeah.

6 Q And otherwise, we will rely on our
7 translator. Okay?

8 A Okay.

9 Q I'm gonna start today by going through
10 some background information.

11 A Okay.

12 Q That part, I'm guessing you probably
13 can do pretty well in English.

14 A Yeah.

15 Q But if not, for anything you don't
16 understand --

17 A Yeah.

18 Q -- please, let's pump the brakes.
19 Let's get the translator to -- to translate. But
20 for efficiency sake, speed sake, we will try to
21 move through this.

22 A Okay.

23 Q If you don't understand any of my
24 questions --

25 A Uh-huh.

1 Q -- just let me know and I'll rephrase
2 them. If you don't hear any of my questions, let
3 me know and I'll repeat them and speak up.

4 A Okay.

5 Q If -- if you don't understand a
6 question because of the English, let's get our
7 translator -- just say I don't understand it and
8 we'll get the translator to do it. If you need to
9 take a break, let us know. We'll stop the
10 deposition. I'll make sure your needs are
11 accommodated. Otherwise, we'll get you in and out
12 of here. Your testimony is under oath. You've
13 been sworn in so obviously you have to answer all
14 questions honestly. If we ever went to a hearing
15 in this matter and just to give a silly example,
16 you said your favorite color today is blue and at
17 the hearing you said your favorite color is red,
18 you've got to explain why there's a difference
19 between --

20 A Okay.

21 Q -- those two answers.

22 A Okay.

23 Q Have you understood everything so far?

24 A Yeah.

25 Q All right, very good. Let's go ahead

1 and get started. What is your full name for the
2 record?

3 A Okay. Rajendra Patel.

4 Q What is your physical address?

5 A It be 1912 Enterprise Drive.

6 Q How old are you?

7 A Forty-four.

8 Q How far did you go in school?

9 A About 12 signs in -- in India.

10 Q Have you ever served in the military?

11 A No.

12 Q Are you married?

13 A Yes.

14 Q How many -- do you have any children?

15 A Yes.

16 Q How many children do you have?

17 A One children.

18 Q In terms of your work history, what all
19 have you done for work in the past prior to coming
20 to work at the ho--- the motel?

21 A I work for the night desk clerk in the
22 day time, too.

23 Q At Microtel or where?

24 A Any of the hotel. Microtel I start
25 2016.

1 Q Okay. And just for the record, what
2 type of business is -- is Microtel?

3 A It's a hotel.

4 Q And what's the physical address of the
5 hotel?

6 A 1912 Enterprise Drive.

7 Q And you reside at the hotel? You live
8 at the hotel?

9 A Yes.

10 Q Do you receive mail at that same
11 address?

12 A Yes, sir.

13 Q Is there a different mailing address
14 for anything or do you get everything --

15 A No. No, everything in one place.

16 Q All right. What is your position
17 within the company?

18 A Manager.

19 Q Do you have any ownership interest in
20 the company?

21 A Yes, sir.

22 Q What is the percentage of your
23 ownership interest --

24 A I'll be 40 percent.

25 Q Of gross profit? The -- the ownership

1 interest, is it 40 percent of the overall profit?

2 A Not profit, but in like partnership,
3 I'm 40 percent.

4 Q Who are the other named partners?

5 A Ashwin Patel, Kal Patel and Nayan
6 Patel.

7 Q Is it just for that one hotel or is
8 it --

9 A If you don't mind, I -- Kal Patel is
10 his short name. You need a full name or Kal --
11 Kal is okay?

12 Q That's fine.

13 A Okay. I just let you know.

14 Q That's fine. Thank you. Is it -- is
15 it just in that hotel or is this partnership for
16 multiple --

17 A No. No.

18 Q -- hotels --

19 A It just only that hotel.

20 Q That hotel.

21 A That's first hotel I got partners.

22 Q Okay. And how many people work at that
23 hotel?

24 A Right now or that time?

25 Q I'm gonna ask you both ways --

1 A Oh, okay. Nine people.

2 Q And -- and -- and the time of the
3 shooting of October 23rd, 2017, how many people
4 worked there?

5 A If you don't mind, I can just count,
6 but just give the one second.

7 Q Yes, sir.

8 A Eleven people.

9 Q And of the 11 people, how many of them
10 lived at the hotel?

11 A Me and Shailesh live on property.

12 Q Any others?

13 A No.

14 Q And is there a clock-in and clock-out
15 system at the hotel?

16 A Yes, sir.

17 Q Do you --

18 A But not for the -- Shailesh, because we
19 just like, you know, we know that he's just coming
20 in the morning and like, you know, work eight
21 hours, so he -- he no clock in. Because we put
22 the schedule, so I know about -- like old Indian
23 style of oh, I know what he work every day, so.

24 MR. ABEDIN: Counsel?

25 MR. COOK: Yes, sir.

1 MR. ABEDIN: I apologize. I -- I can't
2 hear Mr. Raj properly. Will you, please, help him
3 fix up his mic. Although I hear you very nice,
4 Counsel, I can't hear Mr. Raj's voice at all.

5 MR. COOK: Yes, sir. We'll -- we'll
6 work on that. Give us one second.

7 (Off the record.)

8 By MR. COOK:

9 Q So we're back on the record. So back
10 on October 23rd, 2017, did you have worker's
11 compensation insurance?

12 MR. ABEDIN: Can you repeat the date
13 please?

14 By MR. COOK:

15 Q October 23rd, 2017.

16 A I'm not aware of that.

17 Q All right. Do -- do you have anything
18 to do with who and how insurance is obtained?

19 A No, I don't have any -- any experience
20 with that.

21 Q All right. I'm gonna talk a little bit
22 more about Shailesh. Now, you and Shailesh share
23 the last -- same last name. Are you guys blood
24 related at all?

25 A No. No, relations.

1 Q How long have you known Shailesh?

2 A First time --

3 Q All right. Sorry, hang on. So what
4 we're having to do because now we're doing
5 translation, I know you may know the answer to
6 this, but we switched over so let me get it out,
7 let the translator translate, you answer --

8 A Okay.

9 Q -- and let's go that way. All right.
10 How long have you known Shailesh?

11 A When he came to work at the location,
12 that's when I got to know him.

13 Q How long did Shailesh work at the
14 location before October 23rd, 2017?

15 A He began work from January 2017.

16 Q Was Shailesh also an owner in the hotel
17 or was he just an employee?

18 A Yes, he was a hotel employee.

19 Q And he was hired here in South
20 Carolina?

21 A I -- I -- I hired him here in North --
22 South Carolina.

23 Q And all of the work that he did, was it
24 also here in South Carolina?

25 A All I know is that he used to work at

1 the desk at my place.

2 Q Which is located here in South
3 Carolina?

4 A Yes, at my hotel. Yes.

5 Q And the shooting of October 23rd, 2017,
6 that also happened here in South Carolina?

7 A Yes. Yes, in -- in the same hotel in
8 South Carolina.

9 Q Okay. And in terms of Shailesh's job,
10 what was his job title?

11 A Okay. He was -- he was supposed to
12 work at the front desk only.

13 Q Who gave him his work schedule?

14 A I used to give him.

15 Q In other words, you would be the one
16 that told him when to start work, when he could
17 finish work?

18 A I used to make the schedule for him
19 like from 7:00 to 3:00.

20 Q Did he have a uniform?

21 A No. No, uniforms.

22 Q Now, if Shailesh made a mistake -- let
23 me back up. Were you his manager?

24 A Are you talking -- are you talking
25 whether I -- I was the -- I am the manager?

1 Q Were you Shailesh's boss at the hotel?

2 A Yes, I was his manager.

3 Q And as far as hiring other individuals
4 were you responsible for hiring other individuals
5 at that hotel?

6 A I -- I -- I would do the hiring, but
7 recently, I didn't need to hire anybody because
8 the old guys were still working over there.

9 Q Right. But in the context of October
10 of '17, were you doing the hiring?

11 A Yes, it was my responsibility for the
12 hiring.

13 Q And what about the firing, was it also
14 your responsibility for firing?

15 A Yes, I was also -- I had the authority,
16 but I hadn't fired anybody from the hotel.

17 Q But the authority was yours, correct?

18 A Yes, the responsibility was mine.

19 Q And as far as any tools that Shailesh
20 needed to do his job, a computer, a telephone,
21 et-cetera, was that provided through the hotel?

22 A He used to work at the front desk and
23 there was a computer at the front desk.

24 Q What I'm -- this sounds silly, but bear
25 with me. I'm just trying to ask if everything

1 Shailesh used to do his job was provided through
2 the hotel?

3 A Yes. The computers existed in the
4 hotel and it was placed in the front desk.

5 Q All right, thank you. And I believe we
6 said earlier that back in October of 2017, there
7 was -- there was -- what was the count? It was
8 either nine or 11, I apologize, as far as number
9 of employees.

10 A Eleven.

11 Q What were Shailesh's job duties?

12 A Okay. He was responsible for the front
13 desk only.

14 Q Okay. So he was a front desk employee.
15 Is that right?

16 A Yes. Yes, that's correct.

17 Q So if -- if I was a guest at the -- at
18 the motel, when I checked in, I would be checking
19 in with Shailesh. Is that correct?

20 A Yes. Yes, if he would be working at
21 his shift, then he would be doing the check-ins.

22 Q And I think we established this through
23 your testimony earlier, but you were his
24 supervisor?

25 A Yes, I was.

1 Q And you made out his work schedule?

2 A Yes, I would prepare the schedules for
3 the next four weeks together.

4 Q All right. And did -- did Shailesh
5 live at the hotel?

6 A Yes, he was living at the hotel.

7 Q And I understand you also live at the
8 hotel. Did you live there back in '17?

9 A Yes, I was also presiding at the hotel.

10 Q Did any other employees live at the
11 hotel in October of 2017?

12 A Only Shailesh stay at the hotel and no
13 one else.

14 Q What was Shailesh's room number?

15 A Two, nineteen.

16 Q And 219, does that mean he was on the
17 2nd floor?

18 A Yes, 2nd floor.

19 Q All right. Was Shailesh required to
20 live at the hotel as a condition of his
21 employment?

22 A Yes. Yes.

23 Q And was there a benefit to the hotel by
24 having Shailesh live there?

25 A Yes. Yes, sometimes there were

1 employees who may not turn up at the job. So
2 having Shailesh was very helpful, so if someone
3 was absent, Shailesh would take over.

4 Q Give me a reference of where the hotel
5 is located. For example, is it close to a major
6 highway like Highway 52 or 95?

7 A It's close to Highway 52.

8 Q Now, did you and your partners build
9 this hotel?

10 A No, we did not. It's old hotel, 22
11 years old hotel.

12 Q And -- and so to be fair, you and your
13 partners had nothing to do with the design or
14 layout of the hotel?

15 A No. No, we did not do anything other
16 than buying some furnitures. It's a 23 year old
17 hotel.

18 Q How many rooms are in the hotel?

19 MR. ABEDIN: Can you repeat the
20 question again, Counsel?

21 By MR. COOK:

22 Q Yes. Yes, sir. How many rooms are at
23 the hotel?

24 A Previously, we had 83 rooms. Now we
25 have 78 rooms.

1 Q And Shailesh's room, room 219, is one
2 of those rooms. Is that correct?

3 A Yes.

4 Q Was Shailesh charged anything to stay
5 in the room?

6 A No, he would live free.

7 Q All right. So the -- the -- the
8 employer provided the room without charge then.
9 Is that correct?

10 A Yes, it was given free to him.

11 Q What does the room otherwise cost -- if
12 -- if -- if it wasn't Shailesh staying there, what
13 would that room cost per night?

14 A The hotel had different rates.

15 Q Different rates back in October 2017?

16 A The -- the prices were different for a
17 single room, it would be different. For a double
18 room, it would be different.

19 Q So for a room identical to room 219,
20 identical to Shailesh's room, what would the room
21 price be in October 2017?

22 A We had converted the -- Shailesh's room
23 for him as an apartment.

24 Q Okay. Let's go about this a different
25 way. I'm just trying to get a barometer on what

1 -- what the rooms would be. What were the room
2 rates for the various rooms? Just walk me through
3 what they were in October of '17.

4 A Okay. The single rooms would be 62.99
5 and the double rooms would be 72.99. At times,
6 depending on the business, we -- we would also
7 charge 78 bucks for the double rooms, too.

8 Q Just depending on availability and how
9 business --

10 A Yes. Yes.

11 Q And again, regardless of those, rate
12 prices were not applied to Shailesh, correct?

13 A Yes, Shailesh didn't have to pay a
14 thing. He lived for free.

15 Q In terms of the rate structure, were
16 rooms rented for an extended period? In other
17 words, was it an -- an extended-stay rate?

18 A No, we had -- we had no arrangement of
19 -- of renting it out on a weekly basis. If
20 someone wanted to rent it out on -- for seven
21 days, weekly, seven days a week, we had no such
22 arrangement at the hotel.

23 Q What about if it was a monthly rate,
24 could it be rented by the month?

25 A No. No monthly living arrangements.

1 Q I want to go back to the testimony
2 earlier about employees possibly not being able to
3 cover when they were supposed to work. And what I
4 mean by that is if an employee did not come in for
5 their shift unexpectedly...

6 MR. ABEDIN: Okay. Go ahead, Counsel.
7 By MR. COOK:

8 Q Would Shailesh be tasked with filling
9 in on that shift?

10 A That -- that -- that kind of situation
11 did not occur many times. I believe it happened
12 once where an employee didn't show up and Sha---
13 Shailesh took over.

14 Q And was that one of the benefits of
15 having him live on the premises is he could do
16 things like that?

17 A We did not hire so that if someone did
18 not turn up, he would be covering his duty. We
19 actually hired him to run the front desk only.

20 Q Certainly, but my -- my question was
21 when Shailesh filled in for somebody else, was
22 that a benefit to the employer?

23 A That -- that -- again, that kind of a
24 situation did not occur too much where an employee
25 didn't turn up. But again, what Shailesh would do

1 is they would switch the schedule at times. If a
2 certain employee wanted to come on a different
3 day, that Shailesh would switch shifts with him.

4 Q Yes, sir. And I -- and I appreciate
5 that. And that speaks to the occurrence. My
6 question was was that beneficial to the employer?

7 A Again, yes, but I -- I could have done
8 that -- taken over that situation, too.

9 Q Sure because you live there as well.

10 A Yes, I could do that, too.

11 Q Were there times where you were away
12 from the business?

13 A I have never gone on vacations from my
14 job. I've never taken a day off.

15 Q But were there any business trips or
16 conferences or times where you were pulled away
17 from the business?

18 A The whole year in October, I had gone
19 to rally where Shailesh had also accompanied us.
20 That was -- that was only time.

21 Q What was Shailesh's rate of pay?

22 A We used to pay him 7.50 per hour.

23 Q And approximately how many hours a week
24 would he work?

25 A Thirty-two hours, sometimes twenty-four

1 'cause he would at times work four days, sometimes
2 he would work three days a week.

3 Q Okay. I want to talk to you now a
4 little bit about Shailesh's shooting.

5 A Okay. No problem.

6 Q Just to lay a -- a silly foundation,
7 but you're aware that Shailesh was shot. Is that
8 correct?

9 MR. ABEDIN: Can you repeat the
10 question again?

11 By MR. COOK:

12 Q Yes, sir. Just -- I need to lay a
13 little bit of a foundation. I need to -- I'm
14 asking are you aware that Shailesh was shot?

15 A Okay. His daughter called me on my
16 cell phone and told me that her dad was shot.

17 Q When did you receive this call?

18 A The call was between 7:35 and 7:40.

19 Q On the day of the shooting?

20 A Yes, in the evening when the -- the
21 shooting occurred. I received the call in the
22 evening.

23 Q What's Shailesh's daughter's name?

24 A Jahnvi, J-A-H-N-V-I.

25 Q And when she made that phone call to

1 you, what exactly did she tell you?

2 A She informed me that someone shot her
3 dad.

4 Q Was anything else discussed?

5 A No, I hung up the phone and I rushed to
6 the -- rushed downstairs.

7 Q And was Shailesh still on the premises
8 at this point?

9 A Yes, he was in the -- the same place.

10 Q And where was -- as far as Shailesh's
11 location, where was Shailesh...

12 A Okay. He was sitting in the car at the
13 T.A. gas station. He was sitting in his car.

14 Q You said gas station. Was he on gas
15 station property or was he on the hotel's pro---
16 motel's property?

17 A Okay. He was -- he was in the hotel
18 property, but I'm saying that he was on the side
19 of the -- of -- of -- of the gas station, but he
20 wasn't -- he happened to be in the hotel property.

21 Q I gotcha, okay. Were you the first
22 person on the scene?

23 A No. No, there was a customer who was
24 there first before me.

25 Q Did you call 911?

1 A Yes, I called 911 from my phone.

2 Q Was it already dark this time of night?

3 A Yes, it was dark, but it was raining
4 heavily.

5 Q Dark and raining? Okay. So --

6 A Yes, it was raining very, very, very
7 hard.

8 Q And to the best of your knowledge did
9 the shooting occur just minutes prior to your
10 receiving that phone call?

11 MR. ABEDIN: I'm sorry. Can -- can you
12 repeat the question again?

13 By MR. COOK:

14 Q Yes, sir. To the best of your
15 knowledge, did the shooting occur just prior to
16 you receiving the phone call from Shailesh's
17 daughter?

18 A Yes.

19 Q So in other words, the shooting had
20 happened some time around 7:30, somewhere in that
21 -- that time frame, 7:30 p.m.

22 A Yes, approximately 7:30.

23 Q Was Shailesh shot on the employer's
24 premises?

25 A It was in the parking lot.

1 Q Yes, sir. And I -- I don't necessarily
2 mean in the hotel. Let me ask it this way, who
3 owns the parking lot?

4 A We -- we were in charge of the parking
5 lot's operation, so naturally the hotel was -- it
6 belonged to the hotel.

7 Q Was Shailesh trying to return to his
8 room?

9 MR. GREMILLION: Object to the form of
10 the question.

11 MR. ABEDIN: Was Shailesh trying to
12 return -- can you, please, repeat? Counsel --
13 Counsel, can you repeat the question please?
14 By MR. COOK:

15 Q Yes, sir. Defense Counsel has an
16 objection to the form, which is noted. The
17 question, again though, was -- is -- was Shailesh
18 trying to return to his room?

19 A Are -- are -- are you -- are you saying
20 before the shooting or after the shooting?

21 Q I'm saying at the time of the shooting,
22 was Shailesh trying to get back home for the
23 night?

24 A Before the -- before the shooting, he
25 was heading home. He was coming to his room.

1 Q What happened once you arrived? At the
2 scene of the location where Shailesh was, what
3 happened next?

4 A I received information from his
5 daughter that he was -- he had been to Walmart and
6 he was coming back to the hotel. And once at the
7 hotel, he saw a car close to the door, so he
8 circled the property again to see what actually
9 was going on. And then the car was following him.
10 And then he thought -- there was a canopy over
11 there. He wanted to park his car at -- at the
12 canopy and while doing that, the -- those guys
13 shot him and fled the scene.

14 Q And -- and when you say canopy, you
15 mean --

16 A No -- okay. Yeah, that's -- okay, go
17 ahead.

18 Q When you say canopy, do you mean
19 something to protect him from the rain?

20 A It's -- it's not a big canopy. You
21 couldn't park your car over there. It's attached
22 to the door. It -- you can't park your car over
23 there.

24 Q I gotcha. But -- but would it help
25 shield you from the rain if you were carrying

1 items in for example?

2 A I -- I think that Shailesh wanted to go
3 to -- close to the canopy because he thought there
4 may be people over there. He expected some people
5 over there. So that's why I think he -- he was
6 trying to go close to the canopy.

7 Q Do you have any knowledge of the extent
8 of Shailesh's injuries from this shooting?

9 A I did not know the extent of his
10 injury. I was trying to handle his daughter. It
11 was -- she had come in. It was raining. She had
12 an umbrella and one of the customers was over
13 there and I could see his -- he was a -- shot in
14 the arm, but I do not know the extend of the -- of
15 his injury.

16 Q Yes, sir. Let me clarify. I didn't
17 mean on the day of, but since then, have you
18 learned the extent of his injuries?

19 A Yes, when I went to the hospital, his
20 relatives informed me that he was also shot in the
21 back.

22 Q Do you know if he's paralyzed?

23 A Yes, I -- at the hospital, I was
24 informed that he was paralyzed and the relatives
25 were thinking whether they wanted to switch him to

1 another hospital, a better hospital where probably
2 they could take better care of him.

3 Q Go back to what you were telling me
4 earlier about the canopy and you thought Shailesh
5 was going over there because people were over
6 there. What -- what did you mean by that?

7 A His daughter informed me that there was
8 no chance to park in front of the canopy and
9 instead of going through the side door, the -- the
10 door of the canopy would be better to go inside
11 the hotel. That's what his daughter was telling
12 me.

13 Q How -- how many entrances are there in
14 to the property for -- for a vehicle?

15 A For customers to enter the hotel?

16 Q To clarify, as far as a vehicle
17 accessing the hotel, how many roads are there in
18 to the hotel?

19 A Two roads going in to the hotel.

20 Q How long did you say you've been at the
21 hotel? When was your date of hire?

22 A You mean before the shooting or after
23 the shooting.

24 Q Before the shooting. I -- I -- before
25 the shooting to present, how long have you been

1 there? When -- when was your date of hire? When
2 did you start?

3 A I began work at 7:30 on that day and I
4 was still working during the night because I had
5 to do a lot of jobs, a lot of work including
6 maintenance, et-cetera.

7 Q No, sir. To clarify, when is your date
8 of hire with Microtel?

9 A Ever since they bought the hotel,
10 September 2016, that's when I began work with
11 them.

12 Q And since you began working there in
13 September of 2016, have you personally ever had to
14 call 911?

15 A I don't remember. It's been such --
16 many -- such a long time. And even if I did call
17 911, possibly I may have called once, not more
18 than that.

19 Q In terms of hotel guests, if a hotel
20 guest calls 911, and the police respond...

21 MR. ABEDIN: Okay. Go ahead.

22 By MR. COOK:

23 Q Will you have to have any interaction
24 with the police as the manager?

25 A If -- if such a situation occurred,

1 then I would definitely talk with the cops, but I
2 believe such a situation never occurred before.

3 Q Do you have any recollection of ever
4 interacting with the police for any 911 calls that
5 were made from September of 2016 through the
6 shooting day?

7 A No, I have never had any interactions
8 with the cops. Cops generally don't come at
9 hotels.

10 Q Assuming that the police did respond to
11 a 911 call, would there be anyone else in a
12 managerial position that they would speak with
13 other than yourself?

14 A No, there -- there is nobody else other
15 than me.

16 Q So I'm gonna give you a few examples.
17 So if -- if 911 was called on October 12th, 2016
18 for a reported armed robbery at the premises, you
19 wouldn't have recollection of dealing with the
20 police for that?

21 MR. ABEDIN: Could you -- could you
22 repeat the question again, Counsel.

23 By MR. COOK:

24 Q Yes, sir. I'm going to ask you about
25 some various dates in light of your testimony

1 regarding 911 phone calls just to see if you have
2 any recollection of giving an interview with the
3 police or interacting with the police. So my
4 first example was October 12th, 2016, a 911 call
5 for armed robbery. Do you have any recollection
6 of dealing with the police associated with that
7 matter?

8 A No. No robbery took place at my hotel
9 on October 12th.

10 Q And, sir, I'm not representing that a
11 crime was or wasn't committed. I am going only by
12 whether or not you had to interact with the police
13 with these questions.

14 A No, I don't think I have had any
15 conversations or any intersect with the cops.

16 Q What about December 6th, 2016, a -- a
17 call dealing with a man with a gun, do you recall
18 anything like that?

19 A I -- I don't think so. I don't think
20 any such incident occurred, otherwise, the hotel
21 management would have involved me. And I think
22 nothing like that has happened at the hotel.

23 Q What about January 5th, 2017, the theft
24 of a motor vehicle?

25 A No, no one reported such an incident to

1 me at all.

2 Q What about any domestic complaints
3 where there's a -- an argument between a man and a
4 woman and the police responding to that, do you
5 remember anything like that?

6 A I don't think any -- any one came to
7 the hotel. There have been times like I may have
8 gone shopping or may -- I may have gone out of the
9 hotel for a short bit of time and if any such
10 incident occurred, it may be that it not informed
11 me of the situation at all.

12 Q All right. I'm about to move on. I
13 just want to ask you about a handful of others.

14 A Okay.

15 Q I'll -- I'll just name the legal title
16 and you can say yes or no as far as not -- whether
17 you remember. Ever dealing with the police on
18 assault and battery?

19 A Are -- are you saying that an assault
20 had taken place or would have taken place?

21 Q I -- I'm saying do you recall
22 interacting with the police over an alleged
23 assault and battery, being interviewed or
24 cooperating with an investigation? Same line of
25 questioning that we've been on.

1 A I -- I need to think -- I need to think
2 if an assault had taken place or not. I need to
3 think.

4 Q And to clarify again, I'm not -- I
5 don't care one way or the other. My question is
6 do remember dealing with the police? Police
7 investigate crimes all the time. We don't know
8 whether it did or did not occur. My question is
9 strictly limited to the police showing up and you
10 interacting with them in response to a 911 call?

11 A I -- as far as I can remember, I didn't
12 have any conversation or interactions with the
13 cops regarding this matter.

14 Q All right. What about armed robbery?

15 A No, we never had any armed robbery at
16 our hotel.

17 Q And -- and again, I'm just asking about
18 whether or not you cooperated with the police on
19 such matters whether or not -- I'm not asking
20 whether or not such matter actually occurred.

21 A No. No, nothing like that happened.
22 It -- it never happened.

23 Q All right. Distribution of heroine?

24 A No, nothing like that happened.

25 Q Prostitution?

1 A No. No, no one phoned complaining
2 about this matter.

3 Q And in terms of prostitution, did you
4 ever have any reason to suspect that any of your
5 hotel guests were engaged in acts of prostitution?

6 A I -- I -- I am not aware, but if anyone
7 -- any guests has got a prostitute in the room,
8 then possibly he only knows about that. I -- I do
9 not know of any such situation.

10 Q Do you ever recall any occasion where
11 Shailesh reported his suspicions about
12 prostitution occurring on the premises?

13 A No, Shailesh never complained to me
14 about anything related to prostitution.

15 Q In terms of the exterior doors on the
16 hotel, are -- are the locks functional on those
17 hotels -- doors? And to clarify, what I'm getting
18 at is does a guest or an employee have to use a
19 key card or a code or do the doors just open upon
20 being pulled?

21 A Are you questioning me on the guest
22 rooms or the side doors?

23 Q Side door.

24 A No, we don't have keys or codes for the
25 side doors.

1 Q Does -- did the hotel have a security
2 guard in two thousand--- in October of 2017?

3 A No. No, we never had any security
4 guard at the hotel.

5 Q And since Shailesh's shooting, has the
6 hotel hired any security?

7 A No, we have not. We have not.

8 Q Are there any emergency call boxes
9 located throughout the motel grounds?

10 A No, we don't have anything of that.

11 Q Have any emergency call boxes been
12 installed since the shooting?

13 A No, we have not. We did not.

14 Q Is there any perimeter fencing at the
15 motel?

16 A No, we did not. We did not put any
17 fences.

18 Q Has any been installed since the
19 shooting?

20 A No, we have not. It's still as it is.

21 Q Do guests and employees have to have
22 any kind of key card to access the parking lot or
23 is the parking lot completely open?

24 A No, it's totally open. We don't have
25 any doors to the parking lot.

1 Q And that's the same as it was back at
2 the time of the shooting. Is that correct?

3 A Yes, the same arrangement existed.

4 Q In terms of the reception area at the
5 check-in desk, do you utilize bullet resistant
6 glass?

7 A No, we don't have any bullet proof
8 glass over there. It's still open -- it is open.

9 Q Does the hotel have any prohibitions on
10 weapons being on the premises?

11 A No, we don't have such laws and there
12 are no signs posted on the hotel.

13 Q In terms of the locks on the -- on the
14 side doors -- the side doors being open, has that
15 changed since the shooting?

16 A No, we have not. No, it's still as it
17 is before. We have not changed the locks.

18 Q Is there any additional -- excuse me,
19 has there been any change in the lighting
20 structure of the motel since the shooting?

21 A No, the -- we put some L.E.D. light
22 where the -- the previous lights existed. We did
23 not put any new lights.

24 Q After the shooting, did -- were there
25 any policies or procedures changed by the motel

1 after Shailesh's shooting or was it business as
2 usual?

3 A No, still -- still as it was before.
4 We have not changed any rules or regulations. We
5 have not.

6 Q Were -- after Shailesh's shooting was
7 there any internal safety meetings held with any
8 of the staff?

9 A No, we did not have any discussion with
10 employees about any safe -- security or safety of
11 the hotel. Most of the employees were aware of
12 Shailesh's shooting.

13 Q So you relied upon their -- their --
14 their awareness. Did y'all -- did y'all implement
15 any active shooter discussions or safety
16 protocols?

17 A I instruct the employee that if someone
18 comes in and asks for money at the front desk to
19 give away the money. That was -- that would be a
20 security for them. They didn't have to do
21 anything. Those were some of the things that I
22 discussed.

23 Q In terms of any warning being provided
24 to the guest that were checking in immediately
25 after Shailesh's shooting, was there any warning

1 or knowledge conveyed to the guest over what had
2 happened?

3 A No, we did not have any discussions
4 with guests. But we -- the matter -- everyone
5 came to know about the matter and since my name is
6 also -- my last name is also Patel, so they
7 thought it was me. A lot of guests were worried
8 about me.

9 Q Was any new security cameras installed
10 after the shooting?

11 A No, we did not. We did not.

12 Q In terms of knowing Shailesh over the
13 time period that you did, you had a chance to
14 observe him, work with him, interact with him. Is
15 that a fair statement?

16 A He happened to be a good employee. Any
17 time I would advise him to do any kind of work in
18 the hotel, he would do accordingly. He -- he
19 never would deny or decline. He was a good
20 employee. I would like to inform you that I'm
21 talking about the front desk only. Only when he
22 worked at the front desk.

23 Q Well, just to clarify that, is there a
24 time where he hasn't been a hard worker or
25 something else? I'm -- I'm confused by that.

1 MR. ABEDIN: Could -- could you repeat
2 the question again?

3 By MR. COOK:

4 Q Yes, sir. Yes, sir. That the response
5 was limited to only the front desk. Is there any
6 other occasion where he was not working or not
7 being a hard worker?

8 A I -- I wouldn't designate any other
9 jobs to him since he was working at the front desk
10 only like regarding the furniture things. I
11 wouldn't designate those responsibility to him.
12 He would work and then after he finish his work,
13 he would go to his room. There were times that he
14 would go shopping. I would -- I met him outside,
15 but he was a good worker. I did not designate any
16 other job to him other than the -- the front desk.

17 Q So he was an honest employee, a hard
18 working employee?

19 MR. GREMILLION: Object to the form of
20 the question.

21 THE DEPONENT: Yes. Yes, he was a very
22 honest employ--- employee. He was.

23 By MR. COOK:

24 Q All right. And let me clarify, 'cause
25 he's objecting to the form of the question. In

1 your opinion, in your observation of him, was he
2 an honest employee?

3 A Yes, he -- he -- yes, he was always
4 honest. He -- I -- I -- work at the front desk,
5 he has always been very honest.

6 Q Was he hard working?

7 A He worked well at the desk and that was
8 the management required. Any kind of a job you
9 give him at the front desk, he would do the jobs.
10 That's the kind of worker we required, we needed.

11 Q Did you ever discipline him in which
12 you issued him a written reprimand for anything?

13 A There was -- there was a small
14 discussion that we would have with him all the
15 time or with other employees, too, like do this,
16 do that, those kinds of things. That's about it.

17 Q Sure, but were there any major
18 disciplinary issues with him?

19 A No, I never had any major complaints
20 against him.

21 Q Did you ever suspend him for any
22 reason?

23 A Oh, no. Nothing like that happened,
24 no.

25 Q Did you ever terminate him for any

1 reason prior to the shooting?

2 A No.

3 Q Did he ever give you --

4 A No, nothing like that ever happened.
5 No.

6 Q Did he ever give you any reason to
7 doubt his trustworthiness?

8 A No. No, nothing like that happened.

9 Q Did you have a chance to observe him
10 interact with his wife and his daughter?

11 A Could you repeat the question please?

12 Q Yes, sir. Did you ever see him
13 interact with his wife and his daughter to form an
14 opinion of his relationship as a husband and a
15 father?

16 A No, I -- I -- all -- all that I've seen
17 is is that he -- seeing him work at the front desk
18 is that his daughter is to stay in the room all
19 the time and when it would be time for her to go
20 to college, I had seen her. That's about it.

21 Q Okay. You mentioned something about
22 furniture earlier. Elaborate on that for me.
23 What were you talking about?

24 A Sometime -- sometimes when I would have
25 to place furnitures or move furnitures or work

1 with the furnitures, I never involve Shailesh. I
2 would work myself and I would work with somebody
3 else, but I -- I did not involve him. That's what
4 I meant.

5 Q I'm -- I'm confused. Why would you
6 bring up something that he was not involved in?

7 A The reason I -- I told you that is, for
8 example, I was working with the furniture in that
9 room and he was passing by and he wanted to talk
10 to me. I never asked him to assist me in what I
11 was doing. He would just come and talk to me if
12 he had -- needed to and the rest I would do it
13 myself. That's what exactly I meant.

14 Q Did the hotel undergo a renovation with
15 new furniture being placed in the ho--- hotel as
16 part of the renovation?

17 MR. GREMILLION: I'm gonna object to
18 the form of that question.

19 THE DEPONENT: Could you repeat the
20 question again? Are you saying that whether we
21 put in new furniture or not --

22 By MR. COOK:

23 Q Yeah, so let's take it a piece -- piece
24 at a time. Did the motel undergo a renovation?

25 A Yes, in the year 2017, we did a

1 complete renovation such as furnitures and
2 carpets.

3 Q And did this renovation occur while
4 Shailesh was living and working at the motel?

5 A In -- in that year, we did a complete
6 renovation and he was in the hotel. He was.

7 Q And did Shailesh assist with the
8 renovation when he was not doing his front desk
9 work?

10 A When the renovation was taking place,
11 he himself came voluntarily to see if we -- if he
12 could help any ways. But he was always working at
13 the front desk, so he wasn't needed at that time.
14 But he didn't come himself and ask if he -- if
15 help was required, if he could help us in any way.

16 Q So your testimony is that Shailesh
17 volunteered to work in his free time on the hotel
18 renovation. Is that correct?

19 A He had come to the scene while the
20 renovation was going on for two or three times and
21 wanted us to know if he could be of an assistance.
22 He voluntarily wanted to come and help us, but he
23 didn't -- he didn't need to.

24 Q At any point in time, did Shailesh help
25 with any aspect of the renovation?

1 A No. No, he did not. He did not.

2 Q If something was needed at the motel
3 outside of Shailesh's shift, was there ever an
4 occasion that he was asked to do something outside
5 of his normal shift time?

6 A No, never. It never happened.

7 Q Not even once?

8 A No.

9 Q Well, what about the time earlier when
10 you think he may have covered an employer's --
11 another employee's shift, I thought that was your
12 testimony for earlier. Would that count as one
13 time?

14 A When we hired Shailesh, we informed him
15 that in some situations if an employee didn't turn
16 up or show up, then we may need his assistance.
17 We may need him to cover a shift. Those are the
18 kinds of conversation that we had with him. But
19 such a situation never occurred. It didn't happen
20 where we had to bring him to cover somebody's job.
21 That -- that didn't happen.

22 Q So what about for instance if a -- if a
23 hotel or motel guest needed something, is it your
24 testimony that Shailesh would never have been
25 called upon outside of his normal shift to

1 accommodate the needs of the guest?

2 A If Shailesh would end his shift and
3 somebody would need something, the -- the front
4 desk would get in touch with me or whoever was at
5 the desk and the guest needed something. For
6 example, they were unable to open the door, so
7 whoever was at the desk, they would go and assist
8 him. But Shailesh never worked when he finished
9 his shift. If, again, something would be
10 required, they would direct it straight to me and
11 I would try to help them.

12 Q Bear with me one second. I may be at a
13 stopping place.

14 MR. ABEDIN: Okay.

15 MR. COOK: I believe that's all the
16 questions I have at this time. Please answer any
17 questions your counsel has.

18 THE DEPONENT: Okay. All right. Thank
19 you.

20 E X A M I N A T I O N

21 By MR. GREMILLION:

22 Q I have some questions. I'm concerned
23 about whether you're understanding all the
24 questions fully.

25 MR. GREMILLION: Now, our -- I

1 understood that at the beginning of this
2 deposition, the interpreter, we talked to you, and
3 you were from a -- you speak a different dialect
4 than Mr. Patel. Is that right?

5 MR. ABEDIN: He -- he -- everyone
6 speaks Hindi in India. But the place where he
7 comes from is called Gujar. He has his -- he has
8 his own language, but he speak fluent Hindi, the
9 language that we were talking in right now.

10 By MR. GREMILLION:

11 Q Okay. Repeatedly, I heard you say that
12 in the early part of this deposition that only two
13 employees lived at the hotel: You, Raj, and
14 Shailesh Patel, but that is not right, is it?

15 A His family -- both of us including our
16 families, his family and my family.

17 Q Okay. All right. Bear with me, I've
18 got something in the other room. I thought I had
19 another copy of this sheet. These are just --
20 I've sent you this, Matt. So -- just so we're
21 clear, you are -- you -- at the time of this
22 accident, you were living in the hotel and the
23 claimant, Shailesh Patel, was living in the hotel
24 and working there. And his wife was living at the
25 hotel and working there, too.

1 A Yeah.

2 Q Yes?

3 A Yeah.

4 Q Okay. All right. Now, I want to just
5 real quick clarify something that jumped out at
6 me. Attorney Cook asked you and I believe his
7 exact words were, was Shailesh Patel required to
8 live at the hotel as a condition of his
9 employment? All right.

10 MR. GREMILLION: Translate that.

11 MR. ABEDIN: Okay.

12 THE DEPONENT: He wanted to stay over
13 there, but there wasn't any such condition. He
14 wanted to stay.

15 By MR. GREMILLION:

16 Q And that's my question. What's --
17 what's your understanding of what Attorney Cook
18 was asking you when he posed that question?

19 A The answer that I give you right now,
20 that's the answer I gave -- give to him.

21 Q Okay.

22 MR. GREMILLION: Look, put that
23 question in plain active tense English.

24 By MR. GREMILLION:

25 Q What he's asking you is did you make

1 him live at the hotel? Did you make Shailesh
2 Patel live at the hotel?

3 A I had spoken to his cousin, okay. I
4 spoke to Shailesh cousin and I asked his cousin
5 that we were looking for an employee and that if
6 he had anybody. And then he said, yes, I have a
7 cousin who is impressed to work and provided if
8 you give him a living arrangement that would be
9 convenient. So at that time, we didn't have any
10 empty rooms. Then later on, his wife -- his
11 daughter came to see the kind of room that we'd be
12 giving to them when it was available. Then we
13 arranged a room for him.

14 Q Okay. So his family was the one
15 wanting the room. Is that right?

16 A For example, Indian people when they
17 come to -- and look for a job, they also would
18 like a living arrangement because I myself have
19 worked for 15 years and I also wanted a room for
20 myself because that helps with expenses.

21 Q Okay.

22 A So in this -- in this instance, they --
23 I -- they -- you wouldn't be able to have an
24 employee and keep them at the place without
25 providing them a living arrangement.

1 Q All right. Here's my question. All
2 right. I -- I understand they wanted a room. My
3 question, Raj, is did you make them live there in
4 order to have this job?

5 MR. COOK: Object to the form.

6 THE DEPONENT: I spoke to my partner
7 and then we came to the conclusion that we arrange
8 an apartment for him in the hotel facility. And
9 then we -- both of us we came to the conclusion
10 that we had to arrange a living -- living
11 arrangement for him, an apartment.

12 By MR. GREMILLION:

13 Q Okay. If Shailesh and his family came
14 to you and said, we're going to live somewhere
15 else, but we still want to work for the hotel,
16 would you have been okay with that?

17 MR. COOK: Object to the form.

18 THE DEPONENT: All -- all I need is an
19 employee. If they can have their own living
20 arrangement, that's fine whether they -- if -- if
21 it's a living arrangement inside the hotel, that's
22 fine, too. All we require is an employee.

23 By MR. GREMILLION:

24 Q I have -- although I don't have my
25 photocopies, so I'm not gonna make this an

1 exhibit, but it will certainly be in any A.P.A.
2 submissions, and we can figure out from there.
3 What I am referencing and you may have -- I'm sure
4 you have a copy, Matt, I sent it to you. I'm
5 looking at a calendar, about several -- about 30
6 pages that has -- it looks like a schedule. Look
7 at that, Raj. What is this?

8 A This is the schedule. That's the
9 schedule, the schedule that I would prepare for
10 all the employees of the hotel.

11 Q Okay. Let's go off the record for just
12 two seconds.

13 (Off the record.)

14 MR. GREMILLION: All right. Mark that
15 as Defendants' exhibit 1 please.

16 (Defendants' exhibit number 1
17 marked for identification.)

18 By MR. GREMILLION:

19 Q All right. I'm showing you what I've
20 caused to be marked as Defendants' exhibit 1,
21 which is the schedule for the front desk clerks.
22 Is that right?

23 A Yeah.

24 Q And I have just taken out a sampling of
25 the sum 30, 40 pages that I have. All right. Can

1 you tell me which weeks these two pages start on?
2 In other words, what do they represent, the to and
3 from dates? You've got to speak up. What are
4 these dates? What are the to and from dates on
5 this --

6 A The 10/16/17 to the 10/22/17.

7 Q Okay. What about the next page?

8 A It be 10/23/17 to 29.

9 Q Okay. So we're talking about October
10 of last year. Let's start with the one that says
11 10/16/17. All right. These people on the
12 right-hand side, who are they?

13 A They are employee.

14 Q Are these all front desk clerks?

15 A No. No. No. Yeah, this is all front.

16 Q Okay. And how many shifts are there
17 for front desk?

18 A Front desk got about three shift.

19 Q Three shift, okay. And that would be
20 3:00 in the morning -- I'm sorry 3:00 in the
21 afternoon to 11:00 at night. Is that the first
22 shift?

23 A No, first shift like 7:00 to 3:00.

24 Q So 7:00 a.m. to 3:00 p.m.?

25 A Yeah.

1 Q What's the second shift?

2 A Second shift, 3:00 to 11:00.

3 Q Third shift?

4 A It would be 11:00 to 7:00.

5 Q Okay. Sam, the person named Sam on
6 here, is that the claimant, Shailesh Patel?

7 A Shailesh. We put the short name Sam
8 because I'm Rajendra Patel. I put Raj. It's a
9 short name we put.

10 Q Okay. So is Sam Shailesh Patel?

11 A Yeah.

12 Q Yes?

13 A Yeah.

14 Q Okay.

15 A Because we put the short name because
16 nobody pronounce -- so I just put the Sam.

17 Q Okay. Is -- does his wife work there?

18 A Yeah, Jignasa.

19 Q Okay. So Jignasa is Shailesh's wife.
20 Is that right?

21 A Yeah.

22 Q All right. I see on Monday, October
23 16th, that Jignasa is scheduled to work 7:00 to
24 3:00. Is that right?

25 A Yeah.

1 Q Okay.

2 A Monday on the 16th.

3 Q All right. Do you care whether Jignasa
4 or Sam covers that 7:00 to 3:00 shift?

5 A Sometimes what happened -- they like
6 husband and wife, so sometimes she work in the
7 morning and -- can -- can I tell you about that --
8 everything and then you can translate him or
9 what --

10 Q Yeah. My question was and he's got the
11 gist of the question. It's do you care -- Jignasa
12 is scheduled on Monday, October 16th for the 7:00
13 to 3:00 shift. And my question is do you care if
14 Sam or Jignasa works that shift? That's the
15 husband and wife, Shailesh and whatever Jignasa's
16 real name is.

17 A Yeah. Yeah. Jignasa. What would
18 happen is his wife would go on a lunch break and
19 then Shailesh would come to take over that shift.
20 So it didn't bother to me because as long as
21 somebody was at the front desk, that's what
22 matters to me.

23 Q Okay. In my same -- thank you. In my
24 same example, the only shift that only Sam or
25 Jignasa are scheduled to work that Monday, the

1 16th, is 7:00 to 3:00. Do you agree with that?

2 A Yes. Yes, they had only one shift for
3 that Monday.

4 Q Okay. Do either of them, and in
5 particular Shailesh, have any obligation to the
6 hotel whatsoever for any other time that day
7 outside of 7:00 to 3:00?

8 A No, after that shift, they didn't have
9 any other work.

10 Q Okay. Would you ever call Shailesh and
11 ask him to do something to benefit the hotel
12 during a time that's not his shift?

13 A I never asked him to work after he
14 finished his shift and once he went in his room,
15 he wouldn't come out. But again, we -- we never
16 asked him to come to work after he finished his
17 shift.

18 Q All right. Did he have any obligation
19 to be available for you to call him when he was
20 not on shift? In other words, did -- did you make
21 -- did -- did you make him tell you where he was
22 at all times?

23 A Sometimes I would call him on the phone
24 and see what his status was 'cause one -- one time
25 I had to go outside shopping and then I would tell

1 him that if an emergency occurs where he may be
2 needed at the front desk, I would request him to
3 go there since I wasn't available at the hotel at
4 that time. It so happened that he did that job
5 once when something came up and he took over the
6 shift or shopping for a time because I was not at
7 the hotel at that time, but it only happened only
8 on one occasion. Most of time, after working, he
9 would go shopping. He would go to Walmart. He
10 would go other places. He would go to
11 restaurants, but that only happened only one time
12 when he came and work after a shift at the front
13 desk.

14 Q Okay. Raj, on these sheets right here.
15 I see that you work the front desk sometimes
16 yourself, correct?

17 A Yeah, sometimes I work myself.

18 Q And what you're saying is that one time
19 you happened to be on the front desk and you had
20 to be somewhere and you called him to come cover
21 for you while you went shopping or something?

22 A When it would be my shift, I would
23 always be at the front desk. I would never ask
24 him. But in my shift, I would be there all the
25 time.

1 Q Okay. If someone claimed that Shailesh
2 was on 24-hour call, would that be accurate?

3 A No, actually, it's me who would be in
4 the hotel 24 hours if and when required. It was
5 me. I was there available 24 hours at the hotel.
6 But if you would like to ask the other employees
7 about this question that you've asked me about
8 being 24 hours standby, they will tell you that
9 it's incorrect.

10 Q Okay. I will do that. Would you ever
11 ask Shailesh to go do something outside of the
12 hotel such as go to Walmart and buy something for
13 the hotel?

14 A No, never -- I hold the company's
15 credit card. I have never given that credit card
16 to anybody. Anytime if there's a shopping that's
17 required, I would go and do it myself.

18 Q So in other words, everything that gets
19 bought for the hotel like knickknacks, coffee,
20 cups, plates, gets put on the company credit card?

21 A Yes, it's -- it's a partnership
22 business, so we have the credit card that -- and
23 we have made this arrangement to use the credit
24 card when we needed to buy something for the
25 hotel.

1 Q And you never gave that credit card to
2 an employee to use?

3 A No. Even my wife doesn't possess any
4 company's credit card.

5 Q And just so we're crystal clear, there
6 was no occasion that you would ever have asked
7 Shailesh Patel to go do something outside of the
8 hotel, i.e. go get something for the hotel?

9 A No, I have never sent anybody. I do it
10 myself. I do it.

11 Q Okay. And just so we're crystal clear,
12 you did not make him live in your hotel, did you?

13 MR. COOK: Object to the form.

14 THE DEPONENT: I have previously
15 mentioned that I worked at the hotel -- at hotels
16 for 15 years and living arrangement is very much
17 required, so it was -- it was -- both of us
18 thought from that perspective that if we arrange a
19 living arrangement for an employee, that that
20 would be convenient for them and they would be
21 willing to work as opposed to not giving them a --
22 a room or a living arrangement.

23 MR. GREMILLION: I'm confused about one
24 thing you said, Mr. Interpreter. What do you mean
25 by -- well, live -- was a requirement. Did you

1 say requirement?

2 THE DEPONENT: No, it's not
3 requirement. We not ask a requirement. Again,
4 it's somebody giving a place to stay over there,
5 it helps with his costs. Nobody would come from
6 outside and work at the front desk, so if you
7 provide somebody a living arrangement, then they
8 would be willing to work.

9 By MR. GREMILLION:

10 Q I understand you don't own the hotel
11 anymore. Is that right?

12 A I'm not. I am not.

13 Q All right. I want to look at this next
14 page of my exhibit. This is the week beginning
15 10/23/17. You understand that the accident
16 happened at 7:00 -- around or about 7:00, 7:30 --

17 A 7:30, yeah.

18 Q 7:30 at night on the evening of
19 10/23/2017, right?

20 A Yeah.

21 Q Okay. And I'm not sure because I
22 haven't talked to Shailesh yet, but presumably, I
23 think he told the police he was going to Walmart
24 or he was coming back from Walmart. All right.
25 Did he have to -- would he have had to tell you

1 before he went out to go do something?

2 A I'm not that time on property when he
3 left, but -- because I go to the -- my grandfather
4 apartment when he go to Walmart. So I not talk
5 with him before. I have not spoken to him about
6 him going to the Walmart before.

7 Q Okay. He can come and go as he pleases
8 when it's not his shift, right?

9 A Yes, that's -- that's his thing. After
10 he finishes work, he can go anywhere. If he wants
11 to go and shop, that -- that's up to him.

12 Q And how long in advance does this
13 schedule come out?

14 A I would do the schedule two weeks prior
15 -- prior because sometimes there would be
16 employees who would take days off. So I would
17 ensure that two weeks prior that would give me
18 enough time to make replacements. That would help
19 with the schedule.

20 Q Okay. So when he was working for you,
21 he would know two weeks in advance when he -- when
22 him and his wife had to work and when him and his
23 wife were off. Is that right?

24 A Yes. Yes, we would post the schedule
25 and they would be informed of when they were

1 working and when they -- they had the day off.

2 Q And just so I'm clear, when he had a
3 shift off, he had no obligation to you.

4 A No, after he finishes work, there's no
5 obligation. I did not give him any jobs to do
6 when he worked -- after he finish his work.

7 Q Do you think it's possible that the
8 cops could have been called to your hotel for
9 whatever reason and whoever was at the front desk
10 dealt with it without having to call you and bring
11 it to your attention?

12 MR. COOK: Object to the form of the
13 question.

14 THE DEPONENT: If they would have
15 domestic issue in the room, husband and wife, in
16 -- in such cases, I -- I possibly would not be
17 involved. They did not involve me. But if the
18 cops arrive and they say that they needed to speak
19 to management, then they would have to call me.

20 By MR. GREMILLION:

21 Q Okay. And you have no way of knowing
22 whether the cops would have asked to speak to
23 management or not.

24 A No. No one told me anything like that.
25 I was uninformed about that.

1 Q All right. Last question, you
2 mentioned that you didn't do weekly or monthly
3 rentals. Did anybody ever come and ask for a
4 monthly rental or weekly rental?

5 A There have been occasions where people
6 came to the front desk and asked for monthly or
7 weekly rent, but we declined and, again, after the
8 renovation, we -- we made it a -- made it an
9 arrangement that no monthly or weekly rentals
10 would be given anymore.

11 Q So they had been given in the past?

12 A The previous owner may have had such
13 arrangements, but we -- we never had that
14 arrangement.

15 MR. GREMILLION: Okay. Thanks. That's
16 all the questions I have.

17 MR. COOK: I have nothing further.

18 (Deponent excused.)

19 (Whereupon, at 12:20 p.m., the
20 taking of the foregoing
21 deposition was concluded.)
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina

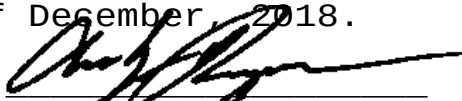
County of Florence

I, Ashley Rogers, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the deponent in the foregoing deposition was, by me, first duly sworn to testify to the truth, the whole truth and nothing but the truth; that said deposition transcript was taken via stenomask with backup; that the foregoing transcript contains a true record of the deposition of said deponent.

Before completion of the deposition, review of the transcript was not requested by the deponent, and no changes shall be appended hereto.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 11th day of December, 2018.


Ashley Rogers

Notary Public for South Carolina

My Commission Expires: March 15, 2022

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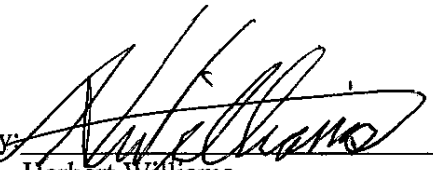
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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1717093

Shaileshkumar Patel,	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Florence Investment, LLC dba Microtel Inn & Suites,	)	Witness Statement -- Herbert Williams
	)	
Employer,	)	
and	)	
	)	
Accident Fund Insurance Co. of America,	)	
	)	
Carrier,	)	
Defendants.	)	

My name is Herbert Williams. I resided in room 202 at the Microtel Inn in Florence, South Carolina, during the time that Shaileshkumar "Sam" Patel was employed there. Sam Patel was employed at the hotel as a front desk clerk. He had had no other duties or responsibilities to the hotel that I know of. Sam was a professional and good-natured person.

By: 
Herbert Williams

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1717093

Shaileshkumar Patel,	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Florence Investment, LLC dba Microtel Inn & Suites,	)	Witness Statement -- Beverly Black
	)	
Employer,	)	
and	)	
	)	
Accident Fund Insurance Co. of America,	)	
	)	
Carrier,	)	
Defendants.	)	

My name is Beverly Black. I was employed at Microtel Inn as a housekeeper during the time Shaileshkumar "Sam" Patel was employed there. As far as I know, the only thing Sam Patel did for the hotel was work as a front desk clerk. Sam Patel had no other duties or responsibilities to the hotel that were known to, or observed by me. He certainly did not pick up groceries for the hotel as Raj was the only person who shopped for the hotel.

By: Beverly Black
Beverly Black

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1717093

Shaileshkumar Patel,	)	
	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Florence Investment, LLC dba Microtel Inn & Suites,	)	Witness Statement – Kimberly Taylor
	)	
Employer,	)	
and	)	
	)	
Accident Fund Insurance Co. of America,	)	
	)	
Carrier,	)	
Defendants.	)	

My name is Kimberly Taylor. I was employed at the Microtel Inn as a housekeeper during the same time Shaileshkumar "Sam" Patel was employed there. Sam Patel was employed as a front desk clerk. He had no other duties or responsibilities to the hotel that were known to, or observed by me other than working scheduled shifts as a front desk clerk.

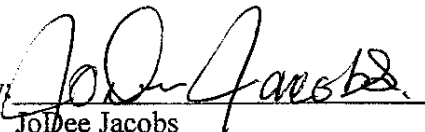
By: Kimberly A Taylor
Kimberly Black

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1717093

Shaileshkumar Patel,	)	
	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Florence Investment, LLC dba Microtel Inn & Suites,	)	Witness Statement -- JoDee Jacobs
	)	
Employer,	)	
and	)	
	)	
Accident Fund Insurance Co. of America,	)	
	)	
Carrier,	)	
Defendants.	)	

My name is JoDee Jacobs. I was employed at the Microtel Inn as a front desk clerk during the same time Shaileshkumar "Sam" Patel was employed there. Sam was also employed as a front desk clerk. I was never aware of Sam being "on call" to fix problems in the hotel when he was not scheduled to work the front desk. I worked nights and never called Sam to fix issues with rooms.

By: 
JoDee Jacobs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO: 2020-CP-21-02414
	)	
Shaileshkumar Patel,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S SUPPLEMENTAL
	)	MEMORANDUM IN OPPOSITION
	)	TO MOTION FOR SUMMARY JUDGMENT
Florence Investment, LLC d/b/a	)	
Microtel Inn & Suites and	)	
John Doe,	)	
	)	
Defendants.	)	
	)	

Plaintiff first addresses Defendant's position regarding the exclusive remedy. In this case, the employer denied that the employee was in the course and scope of employment, or that the inquiry arose out of the employment. Plaintiff, a quadriplegic, lived impoverished, and on charity of the public and family for eighteen months. His medical care was limited to emergency care, and minimal follow-up. It is unknowable if his recovery could have been better under Worker's Compensation benefits.

Pursuant to S.C. Code section 42-9-10(c), Plaintiff's benefits under the Act would have been all medical expenses from the accident until the end of his life. Plus, two thirds (2/3) of his average weekly wages for life. At the time of the accident Mr. Patel had a life expectancy of 33.69 years.

After an overwhelming presentation of evidence by Defendant, disproving the element of a Worker's Compensation claim, Plaintiff settled for a gross total of three hundred thousand and no/100 dollars (\$300,000.00) at mediation.

The documentation emphasized that there was no agreement that the case was compensable under the Act. The documents specifically settled disputed claims under the Act. Defendant's attorney artfully cites statements by Plaintiff, which were the "slender reed" to which Plaintiff's Workers Compensation claim clung. (paraphrasing Alex Sanders)

The statement that Plaintiff was returning from Walmart after shopping for personal items and something for the breakfast bar, falls far short of the standard expressed in Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 526 S.E. 2d 725 (2000), and was emphatically denied by the Defendant.

Plaintiff and Defendant approach the analysis from two different points in time. Plaintiff submits that the jurisdiction inquiry is the ***time of the injury***. Defendant, instead, focuses on the time of the doubtful and disputed settlement, 18 months later.

Plaintiff respectfully suggests that the Court should look to the facts of the accident to make a jurisdictional determination, in light of the fact that the Workers Compensation commission never made that determination, and the Defendant never admitted the elements of a Workers Compensation claim. The cases cited by Defendant are readily distinguishable by the test of “..a determination of entitlement, payment, ***and*** acceptance of compensation under the Workers Compensation Act precludes an action in Circuit Court seeking compensation for the identical injury or loss.” Smith v T.H. Snipes & Sons, 306 SC 289, 411 SE2d 439 (1991). Here there has been no such determination.

It should be noted that S.C. Code section 42-1-650, allowing tort claims one year after dismissal of workers compensation claim, clearly disavows the mere filing of a Worker’s Compensation claim as precluding a Tort claim. Reciting the basis of Plaintiff’s Worker’s Compensation claim is not dispositive, nor is it judicial estoppel.

Plaintiff respectfully submits that the appropriate analysis is for this Court to look first to whether there has been an adjudication on the merits by the Workers Compensation Commission that the injury falls within the Act. If so, plaintiff concedes that this Court lacks jurisdiction. In the absence of such a finding, this Court must then determine whether there is a genuine issue of material fact as to whether the injury would be compensable under the Act. As previously discussed, in the workers compensation claim at issue here, the Employer relied upon a general denial of the claim and provided evidence that it was not a compensable injury under the Act. For this reason, the exclusive remedy defense must fail at this stage of the litigation.

As to the question of election of remedies, while Plaintiff has not found a South Carolina case directly on point, the Fourth Circuit Court of Appeals addressed this issue in Martin v. United States, 566 F. 2d 895 (4th Cir. 1977). In Martin, the plaintiff was an employee of Fort Jackson PX and was injured in a car accident during her lunch break. After accepting benefits under the Federal Employee Compensation Act, she then filed an action under the Federal Tort Claims Act. The district court granted the defendant’s motion for summary judgment finding that she was barred by the exclusive remedy defense. On appeal, the defendant also argued, as an additional sustaining ground, that Martin’s acceptance of benefits under the Act constituted a binding election of remedies. In reversing the district court’s dismissal of the action, the Court, relying on Professor Larson’s commentary on the issue, held that the mere acceptance of some compensation benefits is not enough to constitute an election. There must also be evidence of conscious intent to elect the compensation remedy and to waive his other rights. The Court

further noted that doing so would not work to prejudice the defendant as they would be entitled to an offset for any compensation previously paid.¹

The plaintiff recognizes that Martin is distinguishable from the case at bar in that Martin had never filed a workers compensation claim and the employer had voluntarily begun payments. However, such a distinction is only relevant as a factor to be considered in determining whether there was a conscious intent to elect the workers compensation remedy.² Here, the fact that Plaintiff initially sought relief by filing a claim with the Commission, his acceptance of a settlement on a doubtful and disputed clincher which clearly limits its applicability to the Workers' Compensation Act and repeatedly notes that the claim was unlikely to be successful should be construed as evidence that the parties did not intend for this to constitute an election.³

The holding in Martin is also consistent with the case law from numerous other states that have addressed whether acceptance of benefits is an automatic bar. For example, in Collins v. Grafton, Inc., 263 Ga. 441, 435 S.E.2d 37 (1993), the Georgia Supreme Court held that the plaintiff was not estopped from bringing a personal injury action against the potential upstream employer of the Plaintiff, even though the direct employer's carrier had voluntarily made payments to some of the plaintiff's medical care providers and had been sending the plaintiff a weekly check for temporary compensation. In so doing, the Court stated "an employer in a situation where coverage is questionable should not be able to voluntarily assume liability for the limited benefits of the Workers' Compensation Act and thereby avoid the potentially greater liability of a common-law action. Similarly, in Associated Hosts of Ga. v. Marley, 184 Ga. App. 352, 361 S.E.2d 496 (1987), an off-duty employee was robbed and sexually assaulted on her employer's premises. After accepting workers compensation benefits from her employer, she then brought a tort action against the employer for her damages. The employer defended on the grounds that her acceptance of benefits was an automatic bar to the tort suit. The Georgia Court of Appeals rejected this defense, citing 2A Larson, Workmen's Compensation Law, 67.31, at 12-133, and held that "strict election doctrine transforms it into a grandiose sort of double-or-nothing gamble." Id. At 356. Pennsylvania has simplified the issue holding that only a final adjudication of work-relatedness can estop an employee from asserting that his injuries are not work-related for purposes of maintaining an action against his employer. Acceptance of benefits by itself is not adjudication of work-relatedness. Kohler v. McCrory Stores, 532 Pa. 130, 615 A.2d 27 (1992). Also see Stemm v. Rupel, 30 Ill. App. 3d 864, 332 N.E.2d 686 (1975); Hendricks v. Bettner, 40 Ill. App. 3d 1038, 353 N.E.2d 83 (1976); Erickson v. Goodell Oil Co.,

¹ Plaintiff would point out that Plaintiff had two possible remedies, and defendant had two dramatically different exposures. He settled one of them, and the other is now before the Court.

² In Martin, the Court noted that her continuing acceptance of benefits even after filing the tort suit did not constitute evidence of clear intent.

³ Particularly after 18 months of economic and medical duress suffering without income or medical care. See Willms Trucking Co., Inc. v. JW Construction Co., Inc., 442 S.E. 2d 197, 314 S.C. 171 (Ct. App. 1994).

384 Mich. 207, 180 N.W.2d 798 (1970); McGinnis v. Consolidated Casinos Corp., 98 Nev. 396, 650 P.2d 806 (Nev. 1982); Pappano v. Shop Rite of Pennington, Inc., 213 N.J. Super. 305, 517 A.2d 178 (App. Div. 1986);; Mike v. Aliquippa, 279 Pa. Super. 382, 421 A.2d 251 (1980).

Under South Carolina law, an injured employee has two possible remedies if the incident is even remotely related to their employment. The first is to file a workers compensation claim. The second choice is to file a common law tort action. If they file a claim, litigate it to a conclusion on the merits and the claim is found not to be compensable, they can then file the tort action for one year from the final adjudication. If they choose to forego the workers compensation claim, and its very limited remedy, file the tort action and risk being dismissed by the exclusive remedy defense. This is the “grandiose sort of double-or-nothing gamble” which Prof. Larson warns against. The position of the defense shifts the Grand Bargain by placing all of the power in the hands of the employer allowing them to assess their degree of fault and decide whether it is more beneficial to them to force this under workers compensation or not. As the Act provides no remedy for denying and delaying the workers compensation claim, they also get the benefit of forcing the employee into further economic and medical duress in order to get a significant discount to resolve it. If the claim itself, or a doubtful and disputed clincher for significantly less than full value, is an automatic bar to a tort suit, this is clearly the route that the majority of employers will choose. The only approach that respects the bargain is to force the employer to pick their poison. They should not be able to decide whether they would prefer to accept, or deny and settle a claim, when claimant is under duress, and cap the tort damages when they have a case in which they are concerned about their own negligence without that denial, if proven true, having the effect of waiving the exclusive remedy.

For the reasons set forth above, the Defendant’s motion for summary judgment should be denied.

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File No.: 17-826-01-200-20
Attorneys for Plaintiff

May 22, 2022

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**DEFENDANT'S REPLY TO
PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"), replying to Plaintiff's Supplemental Memorandum in Opposition to Motion for Summary Judgment, states as follows:

Defendant would preface its reply by reiterating that it is sympathetic to the tragedy of the underlying incident and the injuries which Plaintiff unfortunately sustained. For purposes of the instant motion, however, the law is clear. Plaintiff elected to and did receive benefits under the South Carolina Workers' Compensation Act when he voluntarily settled with his employer Defendant for \$300,000. When Plaintiff accepted benefits under the Act, his common law remedies against his employer were extinguished.

Plaintiff suggests that the position of the defense would "shift the Grand Bargain by placing all of the power in the hands of the employer," allowing the employer to decide "whether it is more beneficial to them to force [the claim] under workers compensation or not." Plaintiff further suggests that since "the Act provides no remedy for denying and delaying the workers compensation claim," the employer "also get[s] the benefit of forcing the employee into further economic and medical duress in order to get

a significant discount to resolve it.” Plaintiff’s position seems to be that an employee should be allowed to settle a disputed workers compensation claim with his employer and then proceed to sue his employer in tort.

In support of his position, Plaintiff cites a Fourth Circuit Court of Appeals decision, Martin v. United States. Martin is distinguishable from the case at bar for two reasons: First, Martin did not involve questions of South Carolina law or the South Carolina Workers’ Compensation Act. Second, as Plaintiff admits, Martin had never filed a workers’ compensation claim but rather accepted voluntary payments from his employer. Even if the “conscious intent” standard applied in South Carolina, certainly the Plaintiff’s acceptance of \$300,000 and execution of a release resolving all claims under the Act would be evidence of conscious intent to elect benefits under the Act. In further support of his position, Plaintiff cites cases from other states outside the Fourth Circuit, none of which apply South Carolina law or the South Carolina Workers’ Compensation Act.

The South Carolina Workers’ Compensation Act’s exclusivity provision, Section 42-1-540, does not limit its application to only those cases where the Defendant admits liability under the Act or where the parties litigate it to a conclusion on the merits and the claim is found to be compensable. Rather, the Act states that the exclusivity provision applies “when [the employee] and his employer have accepted the provisions of this title, respectively, **to pay and accept compensation**[.] . . .”. S.C. Code Ann. § 42-1-540 (emphasis added). Further, no South Carolina court interpreting Section 42-1-540 has held that such a limitation exists. “The Workers’ Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not

cumulative or supplemental thereto, but wholly substitutional.” Cook v. Mack’s Transfer & Storage, 291 S.C. 84, 87, 352 S.E.2d 296, 298 (Ct. App. 1986) (citing Caughman v. Columbia YMCA, 212 S.C. 337, 47 S.E. (2d) 788 (1948)). “The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute.” Id. (citing Owens v. Herndon, 252 S.C. 166, 165 S.E. (2d) 696 (1969); Young v. Hyman Motors, Inc., 199 S.C. 233, 19 S.E. (2d) 109 (1942)).

The Plaintiff’s position is consistent with a position that was rejected by the Court of Appeals in Cook. In Cook, the plaintiff employee was injured on the job and notified his employer. The employer initially failed to advise the workers’ compensation carrier of the information necessary to process the claim. When the information was eventually supplied to the carrier, the carrier refused to honor the claim. Plaintiff brought a tort action against his employer and the carrier for wrongful refusal to pay his workers’ compensation claim. The court found that the action was barred by the Act’s exclusivity provision, on the grounds that plaintiff’s situation was expressly covered by the Act:

This case involves an alleged refusal to pay statutory compensation benefits, a situation expressly covered by the Act. The Act provides that if an employer and injured employee fail to reach an agreement in regard to compensation within fourteen days after the employer has knowledge of the injury, then the worker may make application to the Commission for a hearing in regard to the matters at issue and for ruling thereon. Section 42-17-20. The statute further provides that all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission. Section 42-3-180. **Thus, where a remedy exists under the statute, the injured worker no longer has the right to bring a common law action to enforce his claim.** As noted above, the Act excludes all other rights and remedies of the employee at common law or otherwise. Section 42-1-540.

Cook, 291 S.C. at 87-88, 352 S.E.2d at 298-99 (emphasis added).

For purposes of the instant case, the Act includes procedures for adjudicating a compensation claim as well as those for entering into a voluntary settlement. These provisions expressly cover the Plaintiff's situation. Section 42-17-20 provides that "[i]f the employer and injured employee . . . fail to reach an agreement in regard to compensation under this title within fourteen days after the employer has knowledge of the injury . . . either party may make application to the commission for a hearing in regard to the matters at issue and a ruling thereon." Section 42-3-180 provides that "all questions arising under the Act, if not settled by agreement of the parties, shall be determined by the Commission." Contrary to Plaintiff's assertion, then, the Act *does* provide a "remedy for denying and delaying the workers compensation claim". Here, if plaintiff thought that the Defendant wrongfully denied liability under the Act, plaintiff had the option of requesting a hearing before the Commission for a determination as to liability and compensability. Instead, he chose to enter a voluntary settlement with the Defendant per Section 42-9-390. That Section provides:

Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

S.C. Code Ann. § 42-9-390.

Where, as here, a remedy exists under the Act, the Act excludes all other rights and remedies at common law. See Cook, 291 S.C. at 88, 352 S.E.2d at 299; S.C. Code Ann. § 42-1-540.

Finally, Plaintiff suggests that employees are disadvantaged by having to choose between the “very limited remedy” of workers compensation or the risk of filing a tort action and being dismissed by the exclusive remedy defense. Plaintiff seems to suggest that the only fair result would be to allow employees to both elect benefits under the Act *and* sue their employers in tort. This view loses sight of the purpose of the Act, which, as explained by the court in Cook, is to provide a balance of advantages to both employees and employers in order to afford the widest coverage for work-related injuries:

Workers' compensation was enacted to correct a perceived inadequacy of the common law to provide a remedy for employees who sustain work related injuries. The common law required the worker to prove he was injured as a result of fault on the part of his employer in order to receive compensation. It also gave the employer the defenses of assumption of risk, contributory negligence, and the fellow servant rule. Injured employees often received little or no compensation because of the difficulty of proving the employer's negligence or because of the availability of a defense to bar recovery. The Workers' Compensation Act was founded upon a recognition that it is desirable to discard the common law doctrines of tort liability in the employer-employee relationship and substitute a duty of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of his employment.

In effect, the Workers' Compensation Act shifts from the employee to the employer the risk of work-related injuries incident to modern industrial activity. In return, it

requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. This balancing of advantages is embodied in the exclusive rights and remedies provision of the Act[.] . . . [citing Section 42-1-540].

This provision bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims. **In some cases, the amount of compensation available under the Act may be substantially less than could be recovered in a successful common law action; but in other cases the employee will receive benefits he would not otherwise have enjoyed because of his inability to establish the employer's common law liability. This is a balance struck by the Legislature in order to afford the widest practical coverage for work related injuries.**

Cook, 291 S.C. at 86-88, 352 S.E.2d at 298 (emphasis added; internal citations omitted.)

By voluntarily settling his workers' compensation claim with the Defendant, Plaintiff acknowledged the risk that the Commission could make an adverse determination as to liability and compensability, and that a tort action could likewise fail. Plaintiff received swift, sure compensation and in return, surrendered his right to sue his employer in tort.

CLAWSON and STAUBES, LLC

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Charleston, South Carolina
May 23, 2022

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

The instant matter came before me on May 11, 2022, for a hearing on the Motion for Summary Judgment of Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"). Having considered the arguments of counsel, their pleadings, memoranda, exhibits and other submissions filed with the Court, and for the following reasons and based upon the following law, Defendant's Motion for Summary Judgment is GRANTED. The Court finds that Plaintiff's tort claims against Florence Investment, LLC d/b/a Microtel Inn & Suites are barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

FACTUAL AND PROCEDURAL BACKGROUND

Viewing the evidence and inferences therefrom in a light most favorable to the nonmovant, the Court makes the following findings of fact.

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by the Defendant on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Plaintiff was employed by the Defendant hotel and lived with his family in the hotel. On the night of the assault, Plaintiff and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Plaintiff

pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Plaintiff stopped his vehicle and put his emergency light on, signaling the other driver to pass him. The other driver did not pass him. Instead, the other driver followed Plaintiff around the parking lot two more times before exiting his vehicle, approaching Plaintiff's vehicle and shooting into the vehicle, striking Plaintiff and severely injuring him. The identity of the assailant was never discovered.

Prior to commencing the instant civil action, Plaintiff brought a workers' compensation claim against Defendant. In support of his claim, Plaintiff asserted that his injury occurred while in the course and scope of his employment. Specifically, Plaintiff testified that his job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24. Plaintiff testified that he was on call 24 hours a day, seven days a week. See id. Defendant denied liability under the Workers' Compensation Act, asserting that Plaintiff's injuries did not occur while in the course and scope of his employment. In support of its denial, Defendant's owner and managing agent, Raj Patel, testified that the Plaintiff was not required to live in the hotel, was not "on call" 24/7, and that his job duties were limited to working the front desk as a clerk and did not include shopping for supplies for the hotel. See Workers' Compensation Dep. of Raj Patel at p. 48:13-22; 53:4-17; 55:10-25; 56:1-10.

Prior to a hearing on the merits of the workers' compensation claim, the parties chose to settle the disputed claim for the sum of Three Hundred Thousand Dollars (\$300,000.00), and Plaintiff executed a Workers' Compensation Agreement and Final Release.

Plaintiff subsequently filed the instant civil action on October 23, 2020, alleging that Plaintiff's injuries were caused by the negligence of the Defendant in failing to maintain the premises in a proper condition and failing to provide adequate security. Defendant filed its Answer on February 19, 2021, denying the allegations of negligence and asserting as an affirmative defense that Plaintiff's action was barred under the Workers' Compensation Act's exclusivity provision.

LEGAL STANDARD

While the "proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss," "[i]f a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss." Edens v. Bellini, 359 S.C. 433, 440-41, 597 S.E.2d 863, 867 (Ct. App. 2004) (internal citations omitted); Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (same); Dickert v. Metro. Life Ins. Co., 311 S.C. 218, 219-20, 428 S.E.2d 700, 701 (1993), as modified on reh'g (Apr. 7, 1993) (affirming grant of summary judgment to employer based upon defense that "employee's causes of action against employer are precluded by the exclusivity provision of the South Carolina Workers' Compensation Act"); Loges v. Mack Trucks, Inc., 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (affirming "summary judgment dismissing" some of plaintiff's causes of action based on exclusivity provision of the Act).

Whether the exclusivity provision of the South Carolina Workers' Compensation Act is triggered "is a jurisdictional question." See Edens, 359 S.C. at 439-40, 597 S.E.2d at 866; Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)

(“South Carolina courts have repeatedly held that determination of the employer-employee relationship for workers’ compensation purposes is jurisdictional.”); Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (same).

While a circuit court has “subject matter jurisdiction over tort claims, certain cases may be taken from the trial court’s original jurisdiction by the General Assembly.” Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). The General Assembly has vested the Workers’ Compensation Commission with exclusive original jurisdiction over the type of claims made by Plaintiff against Defendant in this action, “such that the circuit court was divested of its original jurisdiction” over Plaintiff’s claim. See id.; Posey, 378 S.C. at 223, 661 S.E.2d at 402 (stating that “[t]he General Assembly has vested the South Carolina Workers’ Compensation Commission with exclusive original jurisdiction over employees work-related injuries” and holding that “circuit court’s original subject matter jurisdiction was divested after it determined [worker] was [defendant’s] statutory employee”).

LEGAL ANALYSIS

The exclusivity provision of the South Carolina Workers’ Compensation Act, Section 42-1-540, provides as follows:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. . . .

S.C. Code Ann. § 42-1-540 (2015).

Section 42-1-540 “is an exclusivity provision, disallowing tort suits against the employer and limiting the injured employee’s rights and remedies to those provided by the Workers’ Compensation Act.” Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). “The South Carolina Workers’ Compensation Act . . . is the exclusive remedy against an employer for an employee’s work-related accident or injury.” Edens v. Bellini, 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004). “The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee.” Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002). The Act provides that when an injured employee accepts the benefits of the provisions of the Act, his common law remedies against his employer are extinguished. McCaskey v. Daniel Int’l Corp., 442 F.Supp. 1360, 1362 (D.S.C. 1977); S.C. Code Ann. 42-1-540.

“The only exceptions to the exclusivity provisions are: (1) where the injury results from the acts of a subcontractor who is not the injured person’s direct employer; (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego; (3) where the tort is slander and the injury is to reputation; or (4) where the Act specifically excludes certain occupations.” (Internal citations omitted.) Cason v. Duke Energy Corp., 348 S.C. 544, 547 n.2, 560 S.E.2d 891, 893 n.2 (2002) (refusing to carve out additional exception to exclusivity provision, holding that the Act does not permit employees injured in a catastrophic explosion to pursue litigation against their employer outside the exclusive remedy provisions of the Act).

In the present case, both the Plaintiff and his employer Defendant accepted the

provisions of the Workers' Compensation Act when Defendant agreed to pay, and Plaintiff agreed to accept, compensation on behalf of Plaintiff's injury. Plaintiff's act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer. See McCaskey; S.C. Code Ann. § 42-1-540 (2015). Further, none of the enumerated exceptions to the exclusivity provision apply in this case.

Plaintiff argues that the compensation he received under the Act does not bar the instant civil action since Defendant had disputed Plaintiff's workers' compensation claim and denied liability under the Act. The Court rejects this argument.

In Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E.2d 439 (1991), the contractor and estate of the injured subcontractor disputed whether the injured subcontractor was a statutory employee. The subcontractor's beneficiaries elected and received benefits under the Workers' Compensation Act. They then filed a negligence suit against the contractor. The circuit court granted defendant contractor's motion for summary judgment, finding that plaintiff's civil action was barred by the Act's exclusivity provision. The court noted that plaintiff's action was barred because of the prior payment of benefits under the Act. The court concluded that "a determination of entitlement, payment and acceptance of compensation under the Act precludes an action in circuit court seeking compensation for the identical injury, death or loss." Smith, 306 S.C. at 292, 411 S.E.2d at 441; see also Cook v. Mack's Transfer & Storage, 291 S.C. 84, 87, 352 S.E.2d 296, 298 (Ct. App. 1986) ("The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.")

Similarly, in Martin v. Lockheed Martin Logistic Servs., Greenville County Court of

Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020), the employer and injured employee disputed whether the injured employee was a statutory employee such that he was subject to the Act's exclusivity provision. 2020 S.C. C.P. LEXIS 2133, at *1. The court, citing Smith, found that the employee's claim was barred regardless of their determination of his statutory employee status because the employee received prior payment of benefits under the Act. 2020 S.C. C.P. LEXIS 2133, at *32. The court further explained that because the employee availed himself of the benefits under the Act by receiving a workers' compensation settlement and executing a Release, any other remedies against the employer were excluded. Id. at *33. In other words, "a determination of entitlement, payment, and acceptance of compensation under the Workers' Compensation Act precludes an action in circuit court seeking compensation for the identical injury or loss." Id.

The only difference between Smith and Martin and the instant case is the specific underlying dispute; in Smith and Martin, the parties disputed the existence of an employer/employee relationship, and in this case, the parties dispute whether the injury arose out of and in the scope of Plaintiff's employment. However, the nature of the underlying dispute is irrelevant. The law is clear: where a plaintiff elects and receives benefits under the Workers' Compensation Act, his common law rights are extinguished. To hold, as Plaintiff here would ask the Court to hold, that any employer who settles a disputed claim under the Act is then subject to tort liability for the same injury, would be contrary to the plain language of § 42-1-540 and the Supreme Court precedent in Smith.

Additionally, the language of the Release at issue unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers'

Compensation Agreement and Final Release at p. 2. When South Carolina courts interpret written instruments, the court seeks to ascertain and give effect to the intention of the parties. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 451, 392 S.E.2d 477, 479 (Ct. App. 1990) (finding a Release containing similar language as the instant case extinguished the plaintiff's claims at common law and under the Workers' Compensation Act). The Court finds that the Release was a full and final clincher that extinguished any civil claims on Plaintiff Patel's behalf, despite Defendant's denial of liability in the Release.

Furthermore, to the extent Plaintiff now argues that he was not in the course and scope of his employment at the time of his injury, the Court finds this argument contrary to the evidence in the record. The record shows that Plaintiff has consistently asserted in both the workers' compensation action and instant tort action that he was injured in the course and scope of his employment. Plaintiff testified in the workers' compensation action that he was a "24/7", "on call" employee. The workers' compensation Release, signed by the Plaintiff, states:

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. . . .

See Workers' Compensation Agreement and Final Release at p. 1.

At his deposition in the instant tort action, Plaintiff testified that on the night of the assault, Plaintiff and his daughter went to Walmart to get groceries for themselves and for the hotel breakfast. See Civil Action Dep. of Plaintiff Shaileshkumar Patel at pp. 22:23-23:8.

Plaintiff brought his claim under the Act and accepted the benefits of the Act when he accepted compensation from the Defendant. Plaintiff's acceptance of those benefits extinguished his common law remedies against Defendant. See McCaskey; Smith, Martin; S.C. Code Ann. § 42-1-540 (2015).

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment filed by Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites is GRANTED.

Honorable Clifton Newman
Florence County, South Carolina

_____, 2022



Florence Common Pleas

Case Caption: Shaileshkumar Patel VS Florence Investment Llc , defendant, et al

Case Number: 2020CP2102414

Type: Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2022-05-26 19:13:45 page 10 of 10

**LAW OFFICES OF
DARRELL THOMAS JOHNSON, JR., LLC
300 MAIN STREET
POST OFFICE BOX 1125
HARDEEVILLE, SOUTH CAROLINA 29927**

DARRELL THOMAS JOHNSON, JR. *
MILLS L. MORRISON, JR. **
WARREN P. JOHNSON
JOSHUA R. FESTER

843-784-2142
FAX 843-784-5770
tdjohnson1@hargray.com

* Certified Mediator
** Also Licensed in Georgia

Friday, May 24, 2022

Via US Mail

Florence County Clerk of Court
180 N. Irby St. #Msc-E
Florence, South Carolina 29501

RE: Shaileshkumar Patel v. Florence Investment, LLC d/b/a Microtel Inn and Suites
and John Doe
Case No: 2020-CP-21-02414
Our File No: 17-826-01-200-20

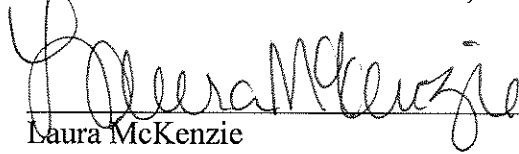
Dear Sir/Madam:

Enclosed for filing please find two copies of a Notice of Appeal of the Order
Granting Defendant's Motion for Summary Judgement in the above-referenced matter.

Please file the original documents and return the clocked copies to us in the enclosed,
postage paid return envelope.

Thanking you in advance for your assistance,

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC


Laura McKenzie
Paralegal to Joshua Fester

JRF/lmc
encs
cc: John L. McDonald, Jr. via email only



DORIS POULOS O'HARA

Clerk of Court
Judicial Center
181 N Irby Street, Suite 1100
Florence, SC 29501
(843)665-3031
Civil Division
Fax (843)676-1212

THE ATTACHED DOCUMENT(S) ARE BEING RETURNED AND **NOT RECORDED**
FOR THE FOLLOWING REASON(S):

- ☐ NOT A FLORENCE COUNTY CASE
- ☐ SIGNATURE NEEDED
- ☐ CHECK NOT ENCLOSED
- ☐ AFFIDAVIT NEEDED
- ☐ NOTARY SIGNATURE NEEDED
- ☐ \$25 FILING FEE REQUIRED
- ☐ \$150 SUMMONS AND COMPLAINT FEE REQUIRED
- ☐ CIVIL ACTION COVER SHEET NEEDED
- ☐ CORRECT CASE NUMBER/CAPTION NEEDED
- ☒ OTHER – This Notice Of Appeal can be E-Filed. Thank you.

DATED June 28, 2022

**LAW OFFICES OF
DARRELL THOMAS JOHNSON, JR., LLC
300 MAIN STREET
POST OFFICE BOX 1125
HARDEEVILLE, SOUTH CAROLINA 29927**

DARRELL THOMAS JOHNSON, JR. *
MILLS L. MORRISON, JR. **
WARREN P. JOHNSON
JOSHUA R. FESTER

843-784-2142
FAX 843-784-5770
tdjohnson1@hargray.com

* Certified Mediator
** Also Licensed in Georgia

Friday, May 24, 2022

Via US Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Shaileshkumar Patel v. Florence Investment, LLC d/b/a Microtel Inn and Suites
and John Doe
Case No: 2020-CP-21-02414
Our File No: 17-826-01-200-20

Dear Ms. Kitchings:

Enclosed for filing are an original and one (1) copy of a Notice of Appeal of the Order
Granting Defendant's Motion for Summary Judgement in the above-referenced matter.

Also enclosed, please find the following:

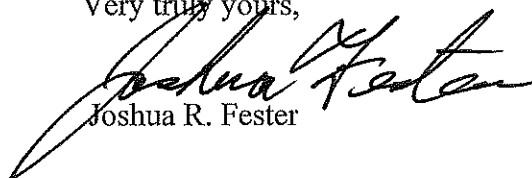
1. an original and one copy of Proof of Service of the Notice of Appeal on Respondent;
2. an original and one copy of the Order being appealed;
3. two copies of our correspondence to the Florence County Clerk of Court notifying of the appeal;
4. a check in the amount of \$250.00.

Please file the original documents and return the clocked copies to us in the enclosed,
postage paid return envelope.

Signature Page to Follow

Thanking you in advance for your assistance,

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua R. Fester". The signature is fluid and cursive, with a large initial "J" and "F".

Joshua R. Fester

Enclosures

cc: Florence County Clerk of Court

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM FLORENCE COUNTY
Clifton Newman, Circuit Court Judge

Shaileshkumar Patel.....Appellant,

v.

Florence Investment, LLC d/b/a Microtel Inn & Suites and
John Doe,.....Respondents.

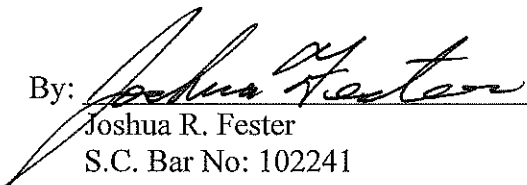
NOTICE OF APPEAL

Shaileshkumar Patel does hereby appeal the Order Granting Defendant's Motion for Summary Judgement filed May 27, 2022. Appellants received written notice of entry of this Order on May 27, 2022.

June 24, 2022

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC

By:


Joshua R. Fester

S.C. Bar No: 102241

Warren P. Johnson

S.C. Bar No: 71759

300 Main Street

P.O. Box 1125

Hardeeville, South Carolina 29927

(843) 784-2142

Attorneys for the Plaintiff

Other Counsel of Record:

John L. McDonald, Jr.
SC Bar No. 12019
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
843-577-2026
843-722-2867 fax
jmcdonald@clawsonandstaubes.com
Attorney for the Defendants

THE STATE OF SOUTH CAROLINA

Court of Appeals

APPEAL FROM FLORENCE COUNTY

Clifton Newman, Circuit Court Judge

Shaileshkumar Patel.....Appellant,

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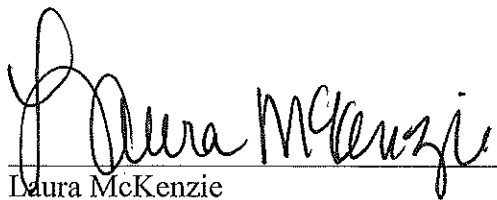
John Doe,.....Respondents.

I hereby certify that on the 24th day of June, 2022 I served a true and accurate copy of the foregoing NOTICE OF APPEAL, on the parties listed below via email and/or by placing the same in the United States mail, first class and/or Certified postage attached, and addressed to the following:

jmcdonald@clawsonandataubes.com

John L. McDonald, Jr., Esquire
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Florence County Clerk of Court
180 N. Irby St. #Msc-E
Florence, South Carolina 29501


Laura McKenzie

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

The instant matter came before me on May 11, 2022, for a hearing on the Motion for Summary Judgment of Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"). Having considered the arguments of counsel, their pleadings, memoranda, exhibits and other submissions filed with the Court, and for the following reasons and based upon the following law, Defendant's Motion for Summary Judgment is GRANTED. The Court finds that Plaintiff's tort claims against Florence Investment, LLC d/b/a Microtel Inn & Suites are barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

FACTUAL AND PROCEDURAL BACKGROUND

Viewing the evidence and inferences therefrom in a light most favorable to the nonmovant, the Court makes the following findings of fact.

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by the Defendant on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Plaintiff was employed by the Defendant hotel and lived with his family in the hotel. On the night of the assault, Plaintiff and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Plaintiff

pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Plaintiff stopped his vehicle and put his emergency light on, signaling the other driver to pass him. The other driver did not pass him. Instead, the other driver followed Plaintiff around the parking lot two more times before exiting his vehicle, approaching Plaintiff's vehicle and shooting into the vehicle, striking Plaintiff and severely injuring him. The identity of the assailant was never discovered.

Prior to commencing the instant civil action, Plaintiff brought a workers' compensation claim against Defendant. In support of his claim, Plaintiff asserted that his injury occurred while in the course and scope of his employment. Specifically, Plaintiff testified that his job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24. Plaintiff testified that he was on call 24 hours a day, seven days a week. See id. Defendant denied liability under the Workers' Compensation Act, asserting that Plaintiff's injuries did not occur while in the course and scope of his employment. In support of its denial, Defendant's owner and managing agent, Raj Patel, testified that the Plaintiff was not required to live in the hotel, was not "on call" 24/7, and that his job duties were limited to working the front desk as a clerk and did not include shopping for supplies for the hotel. See Workers' Compensation Dep. of Raj Patel at p. 48:13-22; 53:4-17; 55:10-25; 56:1-10.

Prior to a hearing on the merits of the workers' compensation claim, the parties chose to settle the disputed claim for the sum of Three Hundred Thousand Dollars (\$300,000.00), and Plaintiff executed a Workers' Compensation Agreement and Final Release.

Plaintiff subsequently filed the instant civil action on October 23, 2020, alleging that Plaintiff's injuries were caused by the negligence of the Defendant in failing to maintain the premises in a proper condition and failing to provide adequate security. Defendant filed its Answer on February 19, 2021, denying the allegations of negligence and asserting as an affirmative defense that Plaintiff's action was barred under the Workers' Compensation Act's exclusivity provision.

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In the present case, both the Plaintiff and his employer Defendant accepted the

provisions of the Workers' Compensation Act when Defendant agreed to pay, and Plaintiff agreed to accept, compensation on behalf of Plaintiff's injury. Plaintiff's act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer. See McCaskey; S.C. Code Ann. § 42-1-540 (2015). Further, none of the enumerated exceptions to the exclusivity provision apply in this case.

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Similarly, in Martin v. Lockheed Martin Logistic Servs., Greenville County Court of

Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020), the employer and injured employee disputed whether the injured employee was a statutory employee such that he was subject to the Act's exclusivity provision. 2020 S.C. C.P. LEXIS 2133, at *1. The court, citing Smith, found that the employee's claim was barred regardless of their determination of his statutory employee status because the employee received prior payment of benefits under the Act. 2020 S.C. C.P. LEXIS 2133, at *32. The court further explained that because the employee availed himself of the benefits under the Act by receiving a workers' compensation settlement and executing a Release, any other remedies against the employer were excluded. Id. at *33. In other words, "a determination of entitlement, payment, and acceptance of compensation under the Workers' Compensation Act precludes an action in circuit court seeking compensation for the identical injury or loss." Id.

The only difference between Smith and Martin and the instant case is the specific underlying dispute; in Smith and Martin, the parties disputed the existence of an employer/employee relationship, and in this case, the parties dispute whether the injury arose out of and in the scope of Plaintiff's employment. However, the nature of the underlying dispute is irrelevant. The law is clear: where a plaintiff elects and receives benefits under the Workers' Compensation Act, his common law rights are extinguished. To hold, as Plaintiff here would ask the Court to hold, that any employer who settles a disputed claim under the Act is then subject to tort liability for the same injury, would be contrary to the plain language of § 42-1-540 and the Supreme Court precedent in Smith.

Additionally, the language of the Release at issue unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers'

Compensation Agreement and Final Release at p. 2. When South Carolina courts interpret written instruments, the court seeks to ascertain and give effect to the intention of the parties. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 451, 392 S.E.2d 477, 479 (Ct. App. 1990) (finding a Release containing similar language as the instant case extinguished the plaintiff's claims at common law and under the Workers' Compensation Act). The Court finds that the Release was a full and final clincher that extinguished any civil claims on Plaintiff Patel's behalf, despite Defendant's denial of liability in the Release.

Furthermore, to the extent Plaintiff now argues that he was not in the course and scope of his employment at the time of his injury, the Court finds this argument contrary to the evidence in the record. The record shows that Plaintiff has consistently asserted in both the workers' compensation action and instant tort action that he was injured in the course and scope of his employment. Plaintiff testified in the workers' compensation action that he was a "24/7", "on call" employee. The workers' compensation Release, signed by the Plaintiff, states:

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. . . .

See Workers' Compensation Agreement and Final Release at p. 1.

At his deposition in the instant tort action, Plaintiff testified that on the night of the assault, Plaintiff and his daughter went to Walmart to get groceries for themselves and for the hotel breakfast. See Civil Action Dep. of Plaintiff Shaileshkumar Patel at pp. 22:23-23:8.

Plaintiff brought his claim under the Act and accepted the benefits of the Act when he accepted compensation from the Defendant. Plaintiff's acceptance of those benefits extinguished his common law remedies against Defendant. See McCaskey; Smith, Martin; S.C. Code Ann. § 42-1-540 (2015).

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment filed by Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites is GRANTED.

Honorable Clifton Newman
Florence County, South Carolina

_____, 2022



Florence Common Pleas

Case Caption: Shaileshkumar Patel VS Florence Investment Llc , defendant, et al
Case Number: 2020CP2102414
Type: Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2022-05-26 19:13:45 page 10 of 10

**LAW OFFICES OF
DARRELL THOMAS JOHNSON, JR., LLC
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DARRELL THOMAS JOHNSON, JR. *
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tdjohnson1@hargray.com

* Certified Mediator
** Also Licensed in Georgia

Friday, May 24, 2022

Via US Mail

Florence County Clerk of Court
180 N. Irby St. #Msc-E
Florence, South Carolina 29501

RECEIVED
JUN 27 2022
SC Court of Appeals

RE: Shaileshkumar Patel v. Florence Investment, LLC d/b/a Microtel Inn and Suites
and John Doe

Case No: 2020-CP-21-02414

Our File No: 17-826-01-200-20

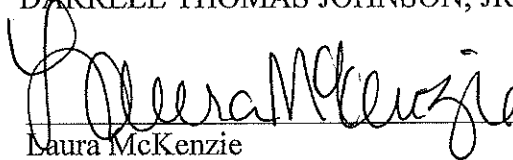
Dear Sir/Madam:

Enclosed for filing please find two copies of a Notice of Appeal of the Order
Granting Defendant's Motion for Summary Judgement in the above-referenced matter.

Please file the original documents and return the clocked copies to us in the enclosed,
postage paid return envelope.

Thanking you in advance for your assistance,

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC



Laura McKenzie
Paralegal to Joshua Fester

JRF/lmc

encs

cc: John L. McDonald, Jr. via email only

RECEIVED

JUN 27 2022

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Shaileshkumar Patel,

Plaintiff,

vs.

Florence Investment, LLC d/b/a Microtel
Inn & Suites and John Doe,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-21-02414

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

The instant matter came before me on May 11, 2022, for a hearing on the Motion for Summary Judgment of Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites (hereinafter "Defendant"). Having considered the arguments of counsel, their pleadings, memoranda, exhibits and other submissions filed with the Court, and for the following reasons and based upon the following law, Defendant's Motion for Summary Judgment is GRANTED. The Court finds that Plaintiff's tort claims against Florence Investment, LLC d/b/a Microtel Inn & Suites are barred by the exclusivity provision of the South Carolina Workers' Compensation Act.

FACTUAL AND PROCEDURAL BACKGROUND

Viewing the evidence and inferences therefrom in a light most favorable to the nonmovant, the Court makes the following findings of fact.

This case arises out of an assault that occurred on October 23, 2017, in the parking lot of a hotel operated by the Defendant on premises located at 1912 Enterprise Drive in Florence, South Carolina. At the time, Plaintiff was employed by the Defendant hotel and lived with his family in the hotel. On the night of the assault, Plaintiff and his daughter had gone to Walmart to shop. Upon returning to the hotel parking lot, Plaintiff

pulled his vehicle into the parking lot. He was followed into the parking lot by another vehicle. Plaintiff stopped his vehicle and put his emergency light on, signaling the other driver to pass him. The other driver did not pass him. Instead, the other driver followed Plaintiff around the parking lot two more times before exiting his vehicle, approaching Plaintiff's vehicle and shooting into the vehicle, striking Plaintiff and severely injuring him. The identity of the assailant was never discovered.

Prior to commencing the instant civil action, Plaintiff brought a workers' compensation claim against Defendant. In support of his claim, Plaintiff asserted that his injury occurred while in the course and scope of his employment. Specifically, Plaintiff testified that his job at the hotel was "to do the front desk and whatever -- 24/7, whatever was needed to be done." See Workers' Compensation Dep. of Plaintiff Shaileshkumar Patel at p. 21:19-24. Plaintiff testified that he was on call 24 hours a day, seven days a week. See id. Defendant denied liability under the Workers' Compensation Act, asserting that Plaintiff's injuries did not occur while in the course and scope of his employment. In support of its denial, Defendant's owner and managing agent, Raj Patel, testified that the Plaintiff was not required to live in the hotel, was not "on call" 24/7, and that his job duties were limited to working the front desk as a clerk and did not include shopping for supplies for the hotel. See Workers' Compensation Dep. of Raj Patel at p. 48:13-22; 53:4-17; 55:10-25; 56:1-10.

Prior to a hearing on the merits of the workers' compensation claim, the parties chose to settle the disputed claim for the sum of Three Hundred Thousand Dollars (\$300,000.00), and Plaintiff executed a Workers' Compensation Agreement and Final Release.

Plaintiff subsequently filed the instant civil action on October 23, 2020, alleging that Plaintiff's injuries were caused by the negligence of the Defendant in failing to maintain the premises in a proper condition and failing to provide adequate security. Defendant filed its Answer on February 19, 2021, denying the allegations of negligence and asserting as an affirmative defense that Plaintiff's action was barred under the Workers' Compensation Act's exclusivity provision.

LEGAL STANDARD

While the "proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss," "[i]f a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss." Edens v. Bellini, 359 S.C. 433, 440-41, 597 S.E.2d 863, 867 (Ct. App. 2004) (internal citations omitted); Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (same); Dickert v. Metro. Life Ins. Co., 311 S.C. 218, 219-20, 428 S.E.2d 700, 701 (1993), as modified on reh'g (Apr. 7, 1993) (affirming grant of summary judgment to employer based upon defense that "employee's causes of action against employer are precluded by the exclusivity provision of the South Carolina Workers' Compensation Act"); Loges v. Mack Trucks, Inc., 308 S.C. 134, 139, 417 S.E.2d 538, 541 (1992) (affirming "summary judgment dismissing" some of plaintiff's causes of action based on exclusivity provision of the Act).

Whether the exclusivity provision of the South Carolina Workers' Compensation Act is triggered "is a jurisdictional question." See Edens, 359 S.C. at 439-40, 597 S.E.2d at 866; Glass v. Dow Chem. Co., 325 S.C. 198, 201-02, 482 S.E.2d 49, 51 (1997)

("South Carolina courts have repeatedly held that determination of the employer-employee relationship for workers' compensation purposes is jurisdictional."); Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (same).

While a circuit court has "subject matter jurisdiction over tort claims, certain cases may be taken from the trial court's original jurisdiction by the General Assembly." Sabb v. S.C. State Univ., 350 S.C. 416, 423, 567 S.E.2d 231, 234 (2002). The General Assembly has vested the Workers' Compensation Commission with exclusive original jurisdiction over the type of claims made by Plaintiff against Defendant in this action, "such that the circuit court was divested of its original jurisdiction" over Plaintiff's claim. See id.; Posey, 378 S.C. at 223, 661 S.E.2d at 402 (stating that "[t]he General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over employees work-related injuries" and holding that "circuit court's original subject matter jurisdiction was divested after it determined [worker] was [defendant's] statutory employee").

LEGAL ANALYSIS

The exclusivity provision of the South Carolina Workers' Compensation Act, Section 42-1-540, provides as follows:

The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death. . . .

S.C. Code Ann. § 42-1-540 (2015).

Section 42-1-540 "is an exclusivity provision, disallowing tort suits against the employer and limiting the injured employee's rights and remedies to those provided by the Workers' Compensation Act." Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). "The South Carolina Workers' Compensation Act . . . is the exclusive remedy against an employer for an employee's work-related accident or injury." Edens v. Bellini, 359 S.C. 433, 441, 597 S.E.2d 863, 867 (Ct. App. 2004). "The exclusive remedy doctrine was enacted to balance the relative ease with which the employee can recover under the Act: the employee gets swift, sure compensation, and the employer receives immunity from tort actions by the employee." Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct. App. 2002). The Act provides that when an injured employee accepts the benefits of the provisions of the Act, his common law remedies against his employer are extinguished. McCaskey v. Daniel Int'l Corp., 442 F.Supp. 1360, 1362 (D.S.C. 1977); S.C. Code Ann. 42-1-540.

"The only exceptions to the exclusivity provisions are: (1) where the injury results from the acts of a subcontractor who is not the injured person's direct employer; (2) where the injury is not accidental but rather results from the intentional act of the employer or its alter ego; (3) where the tort is slander and the injury is to reputation; or (4) where the Act specifically excludes certain occupations." (Internal citations omitted.) Cason v. Duke Energy Corp., 348 S.C. 544, 547 n.2, 560 S.E.2d 891, 893 n.2 (2002) (refusing to carve out additional exception to exclusivity provision, holding that the Act does not permit employees injured in a catastrophic explosion to pursue litigation against their employer outside the exclusive remedy provisions of the Act).

In the present case, both the Plaintiff and his employer Defendant accepted the

provisions of the Workers' Compensation Act when Defendant agreed to pay, and Plaintiff agreed to accept, compensation on behalf of Plaintiff's injury. Plaintiff's act of accepting the benefits afforded by the Act effectively extinguished his common law remedies against his employer. See McCaskey; S.C. Code Ann. § 42-1-540 (2015). Further, none of the enumerated exceptions to the exclusivity provision apply in this case.

Plaintiff argues that the compensation he received under the Act does not bar the instant civil action since Defendant had disputed Plaintiff's workers' compensation claim and denied liability under the Act. The Court rejects this argument.

In Smith v. T.H. Snipes & Sons, 306 S.C. 289, 411 S.E.2d 439 (1991), the contractor and estate of the injured subcontractor disputed whether the injured subcontractor was a statutory employee. The subcontractor's beneficiaries elected and received benefits under the Workers' Compensation Act. They then filed a negligence suit against the contractor. The circuit court granted defendant contractor's motion for summary judgment, finding that plaintiff's civil action was barred by the Act's exclusivity provision. The court noted that plaintiff's action was barred because of the prior payment of benefits under the Act. The court concluded that "a determination of entitlement, payment and acceptance of compensation under the Act precludes an action in circuit court seeking compensation for the identical injury, death or loss." Smith, 306 S.C. at 292, 411 S.E.2d at 441; see also Cook v. Mack's Transfer & Storage, 291 S.C. 84, 87, 352 S.E.2d 296, 298 (Ct. App. 1986) ("The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.")

Similarly, in Martin v. Lockheed Martin Logistic Servs., Greenville County Court of

Common Pleas, Civil Action No. 2019-CP-23-00584, 2020 S.C. C.P. LEXIS 2133 (July 31, 2020), the employer and injured employee disputed whether the injured employee was a statutory employee such that he was subject to the Act's exclusivity provision. 2020 S.C. C.P. LEXIS 2133, at *1. The court, citing Smith, found that the employee's claim was barred regardless of their determination of his statutory employee status because the employee received prior payment of benefits under the Act. 2020 S.C. C.P. LEXIS 2133, at *32. The court further explained that because the employee availed himself of the benefits under the Act by receiving a workers' compensation settlement and executing a Release, any other remedies against the employer were excluded. Id. at *33. In other words, "a determination of entitlement, payment, and acceptance of compensation under the Workers' Compensation Act precludes an action in circuit court seeking compensation for the identical injury or loss." Id.

The only difference between Smith and Martin and the instant case is the specific underlying dispute; in Smith and Martin, the parties disputed the existence of an employer/employee relationship, and in this case, the parties dispute whether the injury arose out of and in the scope of Plaintiff's employment. However, the nature of the underlying dispute is irrelevant. The law is clear: where a plaintiff elects and receives benefits under the Workers' Compensation Act, his common law rights are extinguished. To hold, as Plaintiff here would ask the Court to hold, that any employer who settles a disputed claim under the Act is then subject to tort liability for the same injury, would be contrary to the plain language of § 42-1-540 and the Supreme Court precedent in Smith.

Additionally, the language of the Release at issue unambiguously states it is a "full and final clincher" that is intended to settle the matter "in its entirety." See Workers'

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Furthermore, to the extent Plaintiff now argues that he was not in the course and scope of his employment at the time of his injury, the Court finds this argument contrary to the evidence in the record. The record shows that Plaintiff has consistently asserted in both the workers' compensation action and instant tort action that he was injured in the course and scope of his employment. Plaintiff testified in the workers' compensation action that he was a "24/7", "on call" employee. The workers' compensation Release, signed by the Plaintiff, states:

It appears that Claimant was an employee of Florence Investment, LLC dba Microtel Inn & Suites and alleges that on October 23, 2017, he sustained an injury by accident arising out of and in the course of said employment when he was shot in the hotel parking lot by an unknown assailant, sustaining multiple, severe injuries. . . .

See Workers' Compensation Agreement and Final Release at p. 1.

At his deposition in the instant tort action, Plaintiff testified that on the night of the assault, Plaintiff and his daughter went to Walmart to get groceries for themselves and for the hotel breakfast. See Civil Action Dep. of Plaintiff Shaileshkumar Patel at pp. 22:23-23:8.

Plaintiff brought his claim under the Act and accepted the benefits of the Act when he accepted compensation from the Defendant. Plaintiff's acceptance of those benefits extinguished his common law remedies against Defendant. See McCaskey; Smith, Martin; S.C. Code Ann. § 42-1-540 (2015).

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment filed by Defendant Florence Investment, LLC d/b/a Microtel Inn & Suites is GRANTED.

Honorable Clifton Newman
Florence County, South Carolina

_____, 2022



Florence Common Pleas

Case Caption: Shaileshkumar Patel VS Florence Investment Llc , defendant, et al
Case Number: 2020CP2102414
Type: Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2022-05-26 19:13:45 page 10 of 10

THE STATE OF SOUTH CAROLINA
Court of Appeals

RECEIVED

JUN 27 2022

SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

Clifton Newman, Circuit Court Judge

Shaileshkumar Patel.....Appellant,

v.

Florence Investment, LLC d/b/a Microtel Inn & Suites and

John Doe.....Respondents.

I hereby certify that on the 24th day of June, 2022 I served a true and accurate copy of the foregoing NOTICE OF APPEAL, on the parties listed below via email and/or by placing the same in the United States mail, first class and/or Certified postage attached, and addressed to the following:

jmcdonald@clawsonandataubes.com

John L. McDonald, Jr., Esquire
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Florence County Clerk of Court
180 N. Irby St. #Msc-E
Florence, South Carolina 29501


Laura McKenzie

RECEIVED

Feb 09 2023

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

LAW OFFICE OF
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Warren Paul Johnson
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Attorneys for the Appellant

February 9, 2023