

Form **W-2 Wage and Tax Statement 2001**

C Employer's name, address, and ZIP code

WESTPOINT STEVENS INC.

WEST POINT GA 31833

Employee's name, address, and ZIP code

MARTHA T. KIMMER

NEW BERRY SC 29108

15 State Employer's state ID number	16 State wages, tips, etc. 52491.12	17 State income tax 3574.32	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
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Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)

OMB No. 1545-0046

Dept. of the Treasury - IRS
Visit the IRS Web Site at www.irs.gov.

Form **W-2 Wage and Tax Statement 2001**

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2 To Be Filed With Employee's State, City, or Local Income Tax Return

OMB No. 1545-0046

Dept. of the Treasury - IRS

INSTRUCTIONS FOR RECIPIENT

Box 1-Shows the total unemployment compensation paid to you this year by the payer. This amount is taxable income to you. For more information, see the instructions for your Federal income tax return.

Box 2-Shows refunds, credits, or offsets of state or local income tax you received. If there is any entry in this box, it may be taxable to you if you deducted the tax paid as an itemized deduction on your Federal income tax return. See the instructions for Form 1040 or 1040A/1040EZ for more information.

Box 3-Identifies the tax year for which the refund shown in Box 2 was made. If there is no entry in this box, the refund is for last year's taxes.

Box 4-Shows the amount of Federal income tax withheld from your unemployment benefits for the calendar year. **INCLUDE THIS AMOUNT ON YOUR INCOME TAX RETURN AS TAX WITHHELD.**

Box 5-Shows the amount of State income tax withheld from your unemployment benefits for the calendar year. **INCLUDE THIS AMOUNT ON YOUR INCOME TAX RETURN AS TAX WITHHELD.**

Box 6-Shows the amount of taxable grants you received from the Federal, State, or Local government.

Box 7-Shows the amount of Department of Agriculture payments that are taxable to you. If the payer shown is anyone other than the Department of Agriculture, it means the payer has received a payment, as a nominee, that is taxable to you. This may represent the entire agricultural subsidy payment received on your behalf by the nominee, or it may be your prorata share of the original payment. See PUBLICATION 225, Farmer's Tax Guide, and the instruction for SCHEDULE F (FORM 1040), Farm Income and Expenses, for more information about where to report this income.

Box 8-If this box is checked, the refund, credit, or offset in Box 2 is attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application. The amount, if taxable, should not be reported on page one of Form 1040, but should be reported on Schedule C or F (Form 1040), as appropriate.

1099G
Rev. 1/02

☐ CORRECTED

PAYER'S Name, Street Address, City, State, and Zip Code SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION 1550 GAOSDEN STREET COLUMBIA, S.C. 29202 TELEPHONE: (803) 737-3071		COPY C STATE Statement of Certain Government Payments
PAYER'S State Identification Number: 253492233		
PAYER'S Federal Identification Number		RECIPIENT'S Identification Number
RECIPIENT'S Name, Street Address (incl. apt. no.), City, State, and Zip Code MARTHA T KIMMER		
Account Number (optional)		CALENDAR YEAR 2001
1. Unemployment Compensation \$3,579.00	2. State or Local Income Tax Refunds	
3. Refund is for Tax Year	4. FEDERAL Income Tax Withheld \$0.00	
5. STATE Income Tax Withheld \$0.00	6. Taxable Grants	
7. Agriculture Payments	8. The amount in Box 2 applies to income from a trade or business. ☐	
This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this income is taxable and the IRS determines that it has not been reported.		

Form 1099G

Department Of The Treasury-Internal Revenue Service

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MARTHA T KIMMER

Keep for your records

or insurance premiums		In employer's securities		
\$ 0.00		\$ 0.00		
7 Distribution code 1	IRA/SEP/ SIMPLE ☐	8 Other 0.00	%	This information is being furnished to the Internal Revenue Service.
9a Your percentage of total distribution %		9b Total employee contribution \$		
10 State tax withheld \$ 0.00		11 State/Payer's state number SC/		
13 Local tax withheld \$		14 Name of locality		12 State distribution \$ 2,548.60
				15 Local distribution \$

Form 1099-R

Department of the Treasury-Internal Revenue Service

1099G
Rev 1/02

☐ CORRECTED

PAYER'S Name, Street Address, City, State, and Zip Code SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION		COPY B: RECIPIENT Statement of Certain Government Payments
PAYER'S State Identification Number: PAYER'S Federal Identification Number		
RECIPIENT'S Name, Street Address (incl. apt. no.), City, State, and Zip Code MARTHA T KIMMER		
Account Number (optional)		CALENDAR YEAR 2001
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3. Refund is for Tax Year	4. FEDERAL Income Tax Withheld \$0.00	
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Form 1099G

Department Of The Treasury-Internal Revenue Service

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EMP# 996		OMB No. 1545-0008			
b Employer identification number		1 Wages, tips, other compensation 2544.01		2 Federal income tax withheld	
c Employer's name, address, and ZIP code WHITE OAK MANOR NEWBERRY		3 Social security wages 2501.63		4 Social security tax withheld 155.10	
		5 Medicare wages and tips 2501.63		6 Medicare tax withheld 36.27	
		7 Social security tips		8 Allocated tips	
		9 Advance EIC payment		10 Dependent care benefits	
d Employee's social security number		11 Nonqualified plans		12a	
e Employee's first name and initial Last name MARTHA T KIMMER		13 Salaried employee Retirement plan Third-party sick pay ☐ ☐ ☐		12b	
		14 Other		12c	
				12d	
f Employee's address and ZIP code					
15 State Employer's state ID number SC	16 State wages, tips, etc. 2544.01	17 State income tax 39.62	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement
Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return.

2001

Department of the Treasury—Internal Revenue Service

a Control number EMP# 996		OMB No. 1545-0008		Safe, accurate, FAST! Use  Visit the IRS Web Site at www.irs.gov	
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		9 Advance EIC payment		10 Dependent care benefits	
d Employee's social security number		11 Nonqualified plans		12a See instructions for box 12	
e Employee's first name and initial Last name MARTHA T KIMMER		13 Salaried employee Retirement plan Third-party sick pay ☐ ☐ ☐		12b	
		14 Other		12c	
				12d	
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Form **W-2** Wage and Tax Statement
Copy C For EMPLOYEE'S RECORDS. (See Notice to Employee on back of Copy B).

2001

Department of the Treasury—Internal Revenue Service
This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TWO WAGE EARNER CREDIT WHEN BOTH SPOUSES WORK

Schedule W

(Rev. 09/7/00)
0000

Step 1 Compute your earned income	(a) You		(b) Your spouse	
1 Wages, salaries, tips, etc., taxed to South Carolina from South Carolina Schedule NR, Column B; line 1, federal form 1040, line 7; 1040A, line 7 or 1040EZ, line 1. (Do not include pensions or annuities. See instructions, Step 1, below.)	1	1,767 00	1	36,885 00
2 Net profit or (loss) from self-employment (from Schedules C and on Schedule K-1 of Form 1065) and any other earned income taxed to South Carolina	2	00	2	00
3 Add lines 1 and 2. This is your total earned income taxed to SC	3	1,767 00	3	36,885 00
Step 2 Compute your qualified earned income				
4 Add amounts entered on federal Form 1040, lines 23, 27 thru 29. If filing South Carolina Schedule NR, enter amounts from lines 17, 21 thru 23 and any repayment of supplemental unemployment benefits (sub-pay) allocable to South Carolina income	4	00	4	00
5 Subtract line 4 from line 3. This is your qualified earned income taxed to South Carolina. If the amount in column (a) or (b) is zero (-0-) or less, stop here. You may not take this credit	5	1,767 00	5	36,885 00
Step 3 Compute your credit				
6 Compare the amounts in columns (a) and (b) of line 5 above. Enter the smaller amount here. Enter either amount if 5(a) and 5(b) are the same. Do not enter more than \$30,000			6	1,767 00
Factor used to compute the credit (.007).			7	X .007
8 Multiply the amount on line 6 by the factor on line 7. This is the amount of your credit, which cannot exceed \$210. Enter the amount here and on form SC1040, line 7 or SC1040A, line 6.			8	12 00

Instructions

Complete Schedule W if you are taking the credit, for a married couple when both work in South Carolina. You may take the credit if both you and your spouse:

- work and have South Carolina qualified earned income and
- file a joint return.

There are three steps to follow in computing the credit on Schedule W.

Step 1 (lines 1, 2 and 3). Compute South Carolina earned income separately for yourself and your spouse. South Carolina earned income is generally income you receive for services you provide. It includes wages, salaries, tips, commissions, sub-pay, etc. that are taxed to South Carolina. It also includes income earned from self-employment, business income or loss taxed to South Carolina, partnership income or loss taxed to South Carolina, farm income or loss and any other earned income taxed to South Carolina. Earned income does not include interest, dividends, Social Security benefits, IRA distribution, unemployment compensation, deferred compensation nor non-taxable income. It also does not include any amount your spouse paid you.

Step 2 (lines 4 and 5). South Carolina qualified earned income. This is the amount on which the credit is based. Compute it by subtracting certain adjustment from South Carolina earned income. The adjustments are:

- IRA deduction (from line 23, 1040, or line 16, 1040A)
- One half of self-employment tax (from line 27 of 1040)
- KEOGH retirement plan and self-employed SEP deduction
- Repayment of sub-pay

or the total of any adjustments that apply to you or your spouse's earned income in the appropriate column of line 4.

Step 3 (lines 6, 7, and 8). Compute the credit based on the smaller of:

- the SC qualified earned income entered in column (a) or (b) of line 5, whichever is less. Do not enter more than \$30,000.

Example - You earned a salary taxed to South Carolina of \$20,000. Your spouse earned \$17,000 taxed to South Carolina and had an IRA deduction taxed to South Carolina of \$1,000. Your South Carolina qualified earned income is \$20,000 and your spouse's is \$16,000 (\$17,000 minus \$1,000). Because your spouse's qualified earned income is less than yours, the credit is based on your spouse's income. Therefore, the credit is \$112.00 (\$16,000 x .007).

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Do not write in this space - OFFICE USE

SC 1040

(Rev. 9/11/00)

SOUTH CAROLINA INDIVIDUAL INCOME TAX RETURN 2000

For the year January 1 - December 31, 2000, or other tax year beginning 2000 and ending 20

Print Your first name and Initial (Sr, Jr, 2nd, 3rd, 4th) Last name Your Social Security number

RICHARD KIMMER

Spouse's first name and Initial, if married filing jointly

MARTHA T. KIMMER

Spouse's last name, if different

Spouse's Social Security number

8

Present home address (P.O. Box)

Apt. No.

Write in this space - OFFICE USE

County code

29

If you do not wish to receive a booklet next year, but need a name and address label for your 2001 return, check here. ☐Check here, if you are filing SC Schedule NR (Part year/Nonresident) ☐CHECK YOUR (1) ☐ Single (3) ☐ Married filing separately. Enter spouse's SSN here:FEDERAL FILING STATUS (2) ☒ Married filing jointly (4) ☐ Head of household (5) ☐ Widow(er) with dependent child

Federal Exemptions: Enter the number of exemptions from line 6 (d) of your 2000 federal return.

How many of the exemptions listed above were under the age of 6 years on December 31, 2000?

Enter the number of taxpayers age 65 or older.

1 Enter Federal taxable income from your federal form 1040, line 39; 1040A, line 25; or 1040EZ, line 6 and enter it on line 53 of this return.

If zero or less, enter zero here and enter the negative amount on line 49 of this form.

2 22,307 00

STOP! Resident filers complete lines 34 through 57 and enter total from line 57.

Nonresident filers complete Schedule NR and enter total from line 41.

2 South Carolina INCOME SUBJECT TO TAX. 2 24,547 00

3 TAX: Enter tax from SOUTH CAROLINA tax tables. 3 1,377 00

4 TAX on Lump Sum Distribution (If using SC4972, please attach.) 4 00

5 TOTAL South Carolina tax. Add lines 3 and 4. Enter the total. 5 1,377 00

6 Child and Dependent Care. (See instructions.) 6 00

7 Two Wage Earner Credit from Schedule W (See instructions.) 7 12 00

8 Other Non-refundable Credits. Attach Schedule TC. 8 00

9 TOTAL Non-refundable Credits. Add lines 6 through 8 and enter the total. 9 12 00

10 SUBTRACT line 9 from line 5. Enter the difference BUT NOT LESS THAN ZERO. 10 1,365 00

11 SC INCOME TAX WITHHELD 2,282 00 (Attach W-2 or SC41.)

12 2000 Estimated Tax Payments 00

13 Amount Paid with extension 00

14 NR sale of real estate 00

15 Other SC Withholding (Attach form 1099) 00

16 Tuition Tax Credit (Attach form I-319) 00

17 ADD lines 11 through 16 and enter the total. These are your Total Payments/Credits. 17 2,282 00

18 If line 17 is LARGER than line 10, subtract line 10 from line 17 and enter the OVERPAYMENT. 18 917 00

19 If line 10 is LARGER than line 17, subtract line 17 from line 10 and enter the AMOUNT DUE. 19 00

20 USE TAX (Tax on Out-of-state Purchases. See page 9.) 20 00

21 Amount of line 18 to be credited to your 2001 ESTIMATED TAX. 21 00

22 Endangered Wildlife Fund 00

23 Children's Trust Fund 00

24 Eldercare Trust Fund 00

25 Veterans' Trust Fund 00

26 Gift of Life Trust Fund 00

27 DARE Fund 00

28 First Steps Fund 00

29 Heritage Trust Fund 00

30 ADD lines 20 through 29 and enter the total. 30 00

31 NET REFUND: If line 30 is larger than line 18, go to line 32. Otherwise, subtract line 30 from line 18 and enter the AMOUNT TO BE REFUNDED TO YOU. 31 917 00

32 NET DUE: ADD lines 19 and 30 and, if applicable, penalty amount. If line 30 is larger than line 18, subtract line 18 from line 30. Enter the AMOUNT YOU OWE. If subject to penalty for Underpayment of Estimated Tax, attach Form SC2210. (See instructions). Penalty: \$

Attach a check or money order for the full amount payable to "SC Department of Revenue." Write your Social Security number and "2000 Form SC1040" on the check.

32 472 00

SCHEDULES A&B
(Form 1040)

Schedule A - Itemized Deductions

OMB No. 1545-0074

2000

Attachment
Sequence No. **07**

Department of the Treasury
Internal Revenue Service (99)

▶ **Attach to Form 1040.** ▶ **See Instructions for Schedules A and B (Form 1040).**

Name(s) shown on Form 1040

Your social security number

RICHARD & MARTHA T KIMMER

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.			
1	Medical and dental expenses (see page A-2)	1		
2	Enter amount from Form 1040, line 34	2		
3	Multiply line 2 above by 7.5% (.075)	3		
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4		
Taxes You Paid	5 State and local income taxes	5	2,284	
6	Real estate taxes (see page A-2)	6	585	
7	Personal property taxes	7	300	
8	Other taxes. List type and amount ▶	8		
9	Add lines 5 through 8	9		3,169
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	11,204	
11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-3 and show that person's name, identifying no., and address ▶	11		
Note. Personal interest is not deductible.	12 Points not reported to you on Form 1098. See page A-3 for special rules	12		
13	Investment interest. Attach Form 4952 if required. (See page A-3.)	13		
14	Add lines 10 through 13	14		11,204
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	1,141	
If you made a gift and got a benefit for it, see page A-4.	16 Other than by cash or check. If any gift of \$250 or more, see page A-4. You must attach Form 8283 if over \$500	16		
17	Carryover from prior year	17		
18	Add lines 15 through 17	18		1,141
Casualty and Theft Losses	19 Casualty or theft loss(es). Attach Form 4684. (See page A-5.)	19		
Job Expenses and Most Other Miscellaneous Deductions	20 Unreimbursed employee expenses - job travel, union dues, job education, etc. You must attach Form 2106 or 2106-EZ if required. (See page A-5.) ▶	20		
21	Tax preparation fees	21		
22	Other expenses - investment, safe deposit box, etc. List type and amount ▶	22		
23	Add lines 20 through 22	23		
24	Enter amount from Form 1040, line 34	24		
25	Multiply line 24 above by 2% (.02)	25		
26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26		
Other Miscellaneous Deductions	27 Other - from list on page A-6. List type and amount ▶	27		
Total Itemized Deductions	28 Is Form 1040, line 34, over \$128,950 (over \$64,475 if married filing separately)? ☒ No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 36. ☐ Yes. Your deduction may be limited. See page A-6 for the amount to enter.	28		15,514

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

EEA

Schedule A (Form 1040) 2000

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South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

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

Richard Kimmer
Claimant's Name
Murata of America
Employer's Name
Charlotte, NC 28266
City State Zip
Liberty Mutual Group
Insurance Carrier
Home Phone # _____
Work Phone # _____
Philip E. Wright
Preparer's Name
Phone # _____

Complete each information blank. To request a hearing, check box 13 b., indicate the kinds of benefits claimed checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

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

- 1 a. The claimant sustained an accidental injury to knee, back, neck on 1/29/99 in Chester County, State of South Carolina month day year
- 1 b. Describe briefly how the accident occurred car wreck
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on 1/29/99 in the following manner: reported to supervisor month day year
- ☐ 6. Due to injury, the claimant is in need of (check one):
EX(a) medical examination and treatment for knee, back and neck
EX(b) additional medical examination and treatment for knee, back and neck
- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work or wages for the period of: 1/29/99 to present
- ☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial
Body part(s) affected are: knee, back and neck
- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of limp
- 10 a. At the time of injury, the claimant was paid weekly wages of \$ 582.40; and demands accounting days worked and wages earned as provided by law.
- 10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. not
- 11 a. Further grounds of claim: all benefits provided under the Act
- 11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Dr. Consuelo Kinahan, Advanced Orthopaedic and Medical Assoc., Union, SC 29379
- 11 c. To the best of your knowledge, did you have any prior permanent disability? unknown
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13 a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13 b. I am requesting a hearing.

P2E
Signature of Claimant/Representative



474
Date

Refer to R.67-205, R.67-208, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.
WCC Form # 60. Rev. Date 9/90

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

South Carolina Workers' Compensation Commission

P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715

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

Richard Kimmer
Claimant's Name

Murata of America
Employer's Name

Charlotte, NC 28266

Address City State Zip

Liberty Mutual

Home Phone # _____ Work Phone # _____ Insurance Carrier

G. D. Morgan, Jr.

Preparer's Name Phone # _____

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: See No. 11.
2. It is denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 11.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 11.
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See No. 11.
5. It is denied that notice of injury was given the employer. The reasons for denial are: See No. 11.
6. It is denied that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: See No. 11.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: See No. 11.
8. It is denied that the employee is permanently disabled. The reasons for denial are: See No. 11.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$Form 20 to be filed applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: All statutory and affirmative defenses; third party action settled without consent.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to

Philip E. Wigh

Lancaster, SC 29720

Name

Address

on the 13th day of January, 2000 by [x] first class mail; [] personal service, [] certified mail.

G. D. Morgan, Jr.
Preparer's Signature

Attorney for Employer
Title

January 13, 2000
Date

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to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

Form 451 Rev Date 9/90

Employer's Answer to Request for Hearing.

PHILIP E. WRIGHT, P.A.
Attorney at Law

803-286-4343
Real Estate: 803-286-4378
Fax No. 803-286-9996

May 21, 1999

408 N. Main Street
Lancaster, S.C. 29720

Mr. Dean Holler
Auto Owners Insurance
Post Office Box 2678
Rock Hill, SC 29732



RE: My Client: Richard Kimmer
Your Insured: Barbara Hughes
Date of Accident: 01/29/99

Dear Mr. Holler:

I enclose the medical specials on Richard Kimmer. The emergency room visit at Chester County Hospital was \$407.00, and his physical therapy through March 1 is \$3,596.00. I believe you have received other bills directly.

He is employed with Murata of America and has been out of work since February 1, 1999, until the present time. He makes \$14.56 an hour and works a minimum of 8 hours a day. He has missed 80 days and to this point through May 21, 1999, his wage loss is \$9,318.40.

Sincerely yours,

Philip E. Wright

PEW:jb
Enclosures
cc: Mr. Richard Kimmer

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Auto-Owners Insurance



STATE OF SOUTH CAROLINA
COUNTY OF Chester

RELEASE AND SETTLEMENT AGREEMENT

For the sole consideration of Fifteen Thousand Dollars, the

receipt of sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Barbara J. Hughes, Anthony Pendegrass, & Auto Owners Insurance Co. heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, or damages, known and unknown, both to person and property which have resulted or may in the future develop from an accident which occurred on or about the 29th day of Jan. 19 99 at or near Lancaster Highway, Chester SC.

This release is not intended to and does not release any claim that the undersigned may have for underinsured motorist coverage through the underinsured motorist provision of any policy which by statute or policy definition the undersigned qualifies as an insured. The undersigned expressly reserves the right to prosecute a legal action in tort against the releasee solely for the purpose of establishing a claim for underinsured motorist benefits under a personal automobile policy applicable to the undersigned. For the consideration recited above, the undersigned specifically agrees and covenants never seek to execute any judgment obtained against the releasee and will not seek to collect any such judgment out of the personal assets of the releasee. If any judgment is obtained against the releasee, undersigned agrees to seek to collect such judgment from the underinsured motorist carrier. The undersigned further agrees and covenants that if a verdict is returned against the releasee, the undersigned will move the court to order that the judgment be entered against the underinsured motorist carrier and not the releasee, in the appropriate amount. If a judgment is entered against the releasee, it is specifically agreed and covenanted that the undersigned and our attorney will mark the judgment paid and satisfied as soon as is legally practicable without making any effort to collect any amount from the releasee.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

In Witness Whereof, Richard Kimmer and Martha Kimmer have hereunto set their hand(s) and seal(s) this 16th day of June, year 1999.

In the presence of:
Witness: Janne A. Burt
Mrs. M. N. S. S.

Signed: Richard Kimmer
Signed: Martha Kimmer 477



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THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Auto-Owners Insurance

Life Home Car Business
The Auto-Owners Group
Lansing, Michigan 48909

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING, MICH.

P.B.O. DRAFT NO.
720

DATE 06/14/99

RICHARD KIMMER & MARTHA KIMMER
INDIVIDUALLY & AS HUSBAND & WIFE &
THEIR ATTORNEY PHILLIP WRIGHT
ADVANCED ORTHO & MEDICAL ASSOC & CIGNA HEALTHCARE

AT SIGHT
PAY TO THE
ORDER OF
FIFTEEN THOUSAND AND 00/100 DOLLARS

VOID IF NOT CASHED
WITHIN ONE YEAR

\$*****15,000.00

AUTO-OWNERS INS. CO.

BARBARA J HUGHES

IN PAYEE'S CO.

POLICY LIMIT EXCHANGE FOR A SIGNED COVENANT NOT TO EXECUTE

18720

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

June 18, 1999

408 N. MAIN STREET
LANCASTER, S.C. 29720

State Farm Insurance Company
Post Office Box 13500
Rock Hill, SC 29732-6440



RE: My Client: Richard Kimmer
 Your Insured: Martha T. Kimmer
 Date of Accident: 01/29/99

Gentlemen:

Please note my representation of Richard Kimmer as a result of his injuries. He has underinsured coverage with you. We have settled with the liable driver on a covenant for their coverage of \$15,000. I am in the process of obtaining his medical specials and will forward same to you as soon as possible. He is still treating and his medicals will probably exceed \$25,000, exclusive of his wage loss. He is still out of work from the January injury.

Please assign an adjuster and have him contact me.

Sincerely yours,

Philip E. Wright

PEW:jb
cc: Mr. Richard Kimmer

479

PHYSICAL THERAPY DAILY PROGRESS NOTES

SPINE

NAME:

Richard Kimmel

DATE:

6/21/99

SUBJECTIVE:

☐ No complaints
☐ No improvement

☐ Some improvement
☐ Much improvement

CHIEF COMPLAINTS:

☐ Internal pain
☐ Point tenderness
☐ Constant Pain

☐ Swelling
☐ Muscle spasm
☐ Stiffness

☐ Radicular pain
☐ Painful ROM
☐ Weakness

OTHER:

pt stated "my @ knee is giving me a lot of problems, I'm cutting it short"

TREATMENT:

☒ Moist heat
☒ Ultrasound
☒ Elec. Stim.
☐ Iontophor.
☐ TENS
☐ Traction
☐ Cold pack
☒ Massage
☐ Whirlpool

EXERCISES:

☐ Pelvic tilt
☐ Single knee
☐ Double knees
☐ Hamstrings
☐ Hip abd. Stretch
☐ Hip rot. Stretch
☐ Cybex abdom.
☐ Cybex back
☒ 30/70 Cybex leg press
☒ 1/4 mile Semi

Cervical ROM

☐ Stretches
☐ Isometric exs.
☐ Shrugs
☐ Rows
☐ Shld. Flexion
☐ Abd.
☐ UBE
☐ Stepper
☐ Treadmill

Chest press

☐ Triceps
☐ Biceps
☐ Rows
☐ Lat pulls
☐ Leg ext.
☐ Leg curl

OTHER:

LE exs @ 30 reps each

OBJECTIVE:

ASSESSMENT:

☐ Pain-increased-no change-decreased
☐ Swelling-increased-no change-decreased
☐ Spasm-increased-no change-decreased
☐ ROM
☐ Strength
☐ Gait-improved-no change
☐ Body mechanics-improved-no change
☐ Posture-improved-no change
☐ ADL-improved-no change
☒ Function-improved-no change

PLAN:

Continue plan of care

Progress

THERAPIST

[Signature]

480



PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX No. 803-286-9996

June 23, 1999

408 N. MAIN STREET
LANCASTER, S.C. 29720

Mr. Gene N. Silverman
Subro Audit Inc.
Post Office Box 510999
New Berlin, WI 53151-0999

RE:	My Client:	Richard Kimmer
	Your Client:	Cigna Healthcare
	Date of Accident:	January 29, 1999

Dear Mr. Silverman:

I enclose my check for \$8,500 representing partial payment of your subrogation interest in this matter.

Sincerely yours,

Philip E. Wright

PEW:jb

481

211



PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW - TRUST ACCOUNT

67-160/532

DATE 6/23/99

PAY
TO THE
ORDER OF

Subro Audit, Inc.

\$ 8,500.00

DOLLARS ☒ ☐ ☐

Eight Thousand Five Hundred and No/100

45701

BB&T

Branch Banking and Trust Company of South Carolina
113 WEST ARCH STREET
LANCASTER, SC 29720

FOR Richard Kimmer

[Signature]

482

217

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

June 23, 1999

408 N. MAIN STREET
LANCASTER, S.C. 29720

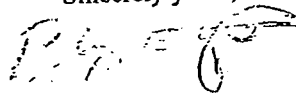
Mr. Dean Holler
Auto Owners Insurance
Post Office Box 2678
Rock Hill, SC 29732

RE: My Client: Richard Kimmer
Your Insured: Barbara Hughes
Date of Accident: 01/29/99

Dear Mr. Holler:

I enclose the executed Release and Settlement Agreement in this matter.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosure
cc: Mr. Richard Kimmer

483

712

Auto-Owners Insurance

STATE OF SOUTH CAROLINA
COUNTY OF Chester

RELEASE AND SETTLEMENT AGREEMENT

For the sole consideration of Fifteen Thousand Dollars, the receipt of sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Barbara J. Hughes, Anthony Penickgrass, & Auto Owners Insurance Co. heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, or damages, known and unknown, both to person and property which have resulted or may in the future develop from an accident which occurred on or about the 29th day of Jan., 19 99 at or near LANCASTER Highway, Chester SC.

This release is not intended to and does not release any claim that the undersigned may have for underinsured motorist coverage through the underinsured motorist provision of any policy which by statute or policy definition the undersigned qualifies as an insured. The undersigned expressly reserves the right to prosecute a legal action in tort against the releasee solely for the purpose of establishing a claim for underinsured motorist benefits under a personal automobile policy applicable to the undersigned. For the consideration recited above, the undersigned specifically agrees and covenants never seek to execute any judgment obtained against the releasee and will not seek to collect any such judgment out of the personal assets of the releasee. If any judgment is obtained against the releasee, undersigned agrees to seek to collect such judgment from the underinsured motorist carrier. The undersigned further agrees and covenants that if a verdict is returned against the releasee, the undersigned will move the court to order that the judgment be entered against the underinsured motorist carrier and not the releasee, in the appropriate amount. If a judgment is entered against the releasee, it is specifically agreed and covenanted that the undersigned and our attorney will mark the judgment paid and satisfied as soon as is legally practicable without making any effort to collect any amount from the releasee.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

In Witness Whereof, Richard Kimmer and Martha Kimmer have hereunto set their hand(s) and seal(s) this 16th day of June, year 1999.

In the presence of:
Witness: Gwen A. Barts
Witness: Amy Morgan

Signed: Richard Kimmer
Signed: Martha Kimmer

586
715

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Auto-Owners Insurance
Life Home Car Business
The Auto-Owners Group
Lansing, Michigan 48909

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING

7-80 DRAFT NO. 720
DATE 06/14/99

RICHARD KIMMER & MARTHA KIMMER
INDIVIDUALLY & AS HUSBAND & WIFE &
THEIR ATTORNEY PHILLIP WRIGHT
ADVANCED ORTHO & MEDICAL ASSOC & CIGNA HEALTHCARE
FIFTEEN THOUSAND AND 00/100 DOLLARS

AT SIGHT
PAY TO THE
ORDER OF

VOID IF NOT CASHED
WITHIN ONE YEAR

\$*****15,000.00

AUTO-OWNERS INS. CO.
John P. Seann
AUTHORIZED SIGNATURE

BARBARA J HUGHES
POLICY HOLDER

POLICY LIMIT EXCHANGE FOR A SIGNED COVENANT NOT TO EXECUTE

1e2201

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX No. 803-286-9996

June 23, 1999

408 N. MAIN STREET
LANCASTER, S.C. 29720

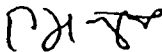
Advanced Orthopaedic Medical Associates
Attention: Julie
720 South Duncan Bypass
Union, SC 29379

RE: My Client: Richard Kimmer
Account Number: 8731
Date of Birth: 10/11/46
Date of Accident: January 29, 1999

Dear Julie:

I enclose a check for \$1,500 to apply to Mr. Kimmer's outstanding balance. This is not full payment nor a request that you accept this as full payment. There is additional coverage we can pursue and hopefully obtain full recovery of the uncovered balance.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosure
cc: Mr. Richard Kimmer

486

216



PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW - TRUST ACCOUNT
408 N MAIN ST. 286-4343
LANCASTER, SC 29720

67-160/532

DATE 6/23/99

PAY
TO THE
ORDER OF

Advanced Orthopaedic Medical Associates

\$ 1,500.00

One Thousand Five Hundred and No/100

DOLLARS

45701

BB&T

Branch Banking and Trust Company of South Carolina
115 WEST ARCH STREET
LANCASTER, SC 29720

FOR Richard Kimmer - 8731

P. E. Wright

487

2

SETTLEMENT STATEMENT

Richard Kimmer
Accident Date: January 29, 1999

Auto-Owners Insurance Company
(liability settlement proceeds)

\$ 15,000.00

DISBURSEMENTS:

Philip E. Wright - fee

\$ 5,000.00

Medical Costs - Held to negotiate
with medical creditors

\$ 10,000.00

Total Disbursements/Withholding:

\$ 15,000.00

I AGREE WITH THE ABOVE DISBURSEMENTS:

Richard Kimmer
Richard Kimmer

June 16, 1999

488

712

PHYSICAL THERAPY DAILY PROGRESS NOTES

SPINE

E: Richard Kimmer

DATE: 6-23-99



SUBJECTIVE:

- ☐ No complaints
- ☐ No improvement

- ☐ Some improvement
- ☐ Much improvement

CHIEF COMPLAINTS:

- ☐ Internal pain
- ☐ Point tenderness
- ☐ Constant Pain

- ☐ Swelling
- ☐ Muscle spasm
- ☐ Stiffness

- ☐ Radicular pain
- ☐ Painful ROM
- ☐ Weakness

OTHER:

My knees have been given me trouble. self & don't do anything my neck doesn't bother me.

TREATMENT:

- ☒ Moist heat
- ☒ Ultrasound
- ☒ Elec. Stim.
- ☐ Iontophor.
- ☐ TENS
- ☐ Traction
- ☐ Cold pack
- ☐ Massage
- ☐ Whirlpool

EXERCISES:

- ☐ Pelvic tilt
- ☐ Single knee
- ☐ Double knees
- ☐ Hamstrings
- ☐ Hip abd. Stretch
- ☐ Hip rot. Stretch
- ☐ Cybex abdom.
- ☐ Cybex back
- ☐ Cybex leg press
- ☒ 15 mins Semi

- ☐ Cervical ROM
- ☐ Stretches
- ☐ Isometric exs.
- ☐ Shrugs
- ☐ Rows
- ☐ Shld. Flexion
- ☐ Abd.
- ☐ UBE
- ☐ Stepper
- ☐ Treadmill

- ☐ Chest press
- ☐ Triceps
- ☐ Biceps
- ☐ Rows
- ☐ Lat pulls
- ☐ Leg ext.
- ☐ Leg curl

HER:

myofascial release to cervical 13 upper traps
LE thoracic 5-12 and add squeezes, toe raises, mini squats
ham curls & 30 reps & 3#.
OBJECTIVE: MHP & 5 stim to cervical 13 upper traps set to
at 1st x 2E mins. 15 US @ 1.50 cm = 8 mins to
cervical and 13 upper traps 15 4 X 2E

ASSESSMENT:

- ☐ Pain-increased-no change-decreased
- ☐ Swelling-increased-no change-decreased
- ☐ Spasm-increased-no change-decreased
- ☐ ROM
- ☐ Strength
- ☐ Gait-improved-no change
- ☐ Body mechanics-improved-no change
- ☐ Posture-improved-no change
- ☐ ADL-improved-no change
- ☐ Function-improved-no change

PLAN:

☐ Continue plan of care

☐ Progress

[Signature]
 THERAPIST

489

29/1999 14:48

CAROLINA ORTH SURG

PAGE 02

Carolina Orthopaedic Surgery Associates, P.A.
Avenue
Rock Hill, South Carolina 29732

Kimmer, Richard
Chester

DOB:

Chart:

H: He is referred back to see me by one of his friends for ongoing symptoms in his right knee. He is status post right knee arthroscopy. That was done by Dr. Kinahan and he had a posterior horn bucket handle lateral meniscus tear which was apparently resected. I don't have the op note here but he is having ongoing pain.

PE: He still has a mild effusion. He has some weakness in his quadriceps. I didn't get a thorough exam today.

P: We discussed the problem and he is not better after four months postop. He has only a few months left before he loses his job. We need to evaluate this further. I am going to obtain his op note from the surgical procedure and I am also going to get an MR of the right knee. He will follow-up with me after the MR. TGF/pp



490

PHYSICAL THERAPY DAILY PROGRESS NOTES **LOWER EXTREMITY**

NAME: Richard Kimmer DATE: 09/17/99



SUBJECTIVE:

- ☐ No complaints ☐ Some improvement
☐ No improvement ☐ Much improvement

CHIEF COMPLAINTS:

- ☐ Internal pain ☐ Swelling ☐ Radicular pain
☐ Point tenderness ☐ Muscle spasm ☐ Painful ROM
☐ Constant Pain ☐ Stiffness ☐ Weakness

OTHER: elt hurts, elt feels like bone against bone.

TREATMENT:

- ☒ Moist heat
☐ Ultrasound
☐ Elec. Stim.
☐ Iontophor.
☐ Patellar mobilization
☐ Massage
☒ Cold pack
☐ Ice massage
☐ Whirlpool

EXERCISES:

- ☐ PROM
☐ AAROM
☐ AROM
30 Quad sets
30/2# SLRs
30/2# SAQs
30/2# LAQs
30 Adductor squzs.
30/2# Ham curls
30 Heel lifts
30 Mini-squats

- 30 (med) Step-ups
30 green T-band (H/A/K)
 Incline
 Cybex leg press
 Cybex quad ext.
30/4# Cybex ham curls
 Cybex multi hip
15 mins Cybex semi
 Stepper
 Treadmill
 UBE

- ☐ Chest press
☐ Triceps
☐ Biceps
☐ Rows
☐ Lat pulls
☐ Cybex abdm
☐ Cybex back

OTHER: 10 HP to @ knee x 15 mins flb there, Heel slides and hip abd/add
glutns x 30 reps ea. @ 2# y 15 box stretching and single leg stepup x 30
w/ cold pack to @ knee x 15 mins

OBJECTIVE:

ASSESSMENT:

- ☐ Pain-increased-no change-decreased
☐ Swelling-increased-no change-decreased
☐ Spasm-increased-no change-decreased
☒ ROM AROM @ knee 105°
☐ Strength
☐ Gait-improved-no change
☐ Body mechanics-improved-no change
☐ Posture-improved-no change
☐ ADL-improved-no change
☐ Function-improved-no change

12 wte ham curls, no difficulty, added box stretches, step ups,
and

PLAN:

- ☒ Continue plan of care

Progress

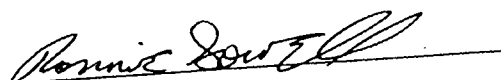
[Signature]
 THERAPIST

491

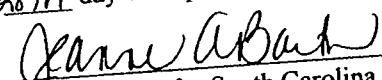
STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

AFFIDAVIT

I was retained by Philip E. Wright to locate Anthony Pendergrass in Chester, South Carolina. Attached is the report of my investigation.


Ronnie Sowell

Sworn to before me this
28th day of September, 1999.


Notary Public for South Carolina
My Commission Expires: 11/4/2008



492

Anthony D. Pendergrass-
Barbara Hughes

On August the 5th, 1999 I met with Phillip Wright at his office. He represents Richard Kimmer in a wreck case that occurred on January 29, 1999. Mr. Wright asked me to locate the driver of the other vehicle involved, Anthony D. Pendergrass, and to find out his address as of the date of the accident. I was also to determine if there were any other cars in the household that were insured on that date.

On August 10th, 1999 I drove to 113 Frazer Drive, Chester, S. C. which is the address listed on the accident report for Mr. Pendergrass. I arrived about 2:15 pm and spoke with a couple of young black males who were not very forthcoming with information. They said he didn't live at 113 Frazer Drive and one of them mumbled something about "Townhouse". I explained why I was trying to find Mr. Pendergrass, left my card and asked them to have Mr. Pendergrass call.

I went to the Treasurer's Office at the Chester County Courthouse. Mr. Pendergrass has not owned any real property since 1997. I asked about "Townhouse" and was told that that was the apartment complex at 628 Lancaster Highway. (This is the address of Barbara Hughes- the owner of the other car in the accident.) In 1997 Mr. Pendergrass lived at apartment # 208.

A little before 3pm I arrived at apartment 208 and got no answer at the door. I tried both the business and home numbers on the accident report for Barbara Hughes with no luck. I waited at the complex office for about 15 minutes and then drove back to Lancaster.

At about 7pm I drove back to the Townhouse apartments. A lady at 208, who would not open the door claimed not to know Barbara Hughes or Anthony Pendergrass. I asked around the complex but no one would admit knowing either person. The office was closed.

I drove over to 113 Frazer Drive and there I spoke with Venus Pendergrass who is the ex-wife of Anthony Pendergrass. She told me that 208 was the wrong apartment and that she could probably find him. She said that Anthony he had been living with Barbara Hughes at 628 Lancaster Highway at the time of the accident but did not give me an apartment number. I gave her a card and she said he would call. I drove home.

On August 11, 1999 I developed information that Barbara Hughes lived at the Townhouse Apartments at #204. I drove there about 7:30 PM and there were several individuals outside the apartment when I pulled up. The young man I spoke with told me that Barbara Hughes had passed away--about two years ago. I left a card with him also.

I tried to get information at the Chester County Law Enforcement Center and also at the District 4 Office of the SCHP. Trooper McDougal had been on third and was off. I checked the residences again at 113 Frazer Drive and at Townhouse Apartment 204. No new information was gathered. I came back to Lancaster.

On 8-12-99 I developed information that the SC drivers license of Pendergrass, Anthony Drake (#7779830). It is listed with the Highway Department with a home address of "628 Lancaster Highway Apt 204". This is the "Townhouse" address I visited the night before. I also understand that he drives a burgundy Maxima with chrome wheels.

About 11:00 a gentleman called me at home and said that he was Anthony Pendergrass. He said his ex-wife had just given him my card and he had been out of town. I explained the purpose of my investigation and he was willing to answer some questions.

Mr. Pendergrass said that Barbara Hughes was his mother and that on January 29, 1999 he was living with her at 628 Lancaster Highway Apt #204, Chester, SC. He told me that there was only one car in the household and it belonged to his mother (who has passed away). The only other person living at the apartment at the time was his sister who is a 14 year old minor with no car. He told me that there was no other insurance on him to drive any vehicle. Mr. Pendergrass expressed concern about the well being of Mr. Kimmer and agreed to make himself available to sign any documents as needed. He gave me a cell phone number so that I can reach him. (803-379-0077)



PATIENT: Richard Kinner

SS#: _____

☒ INITIAL ASSESSMENT _____ DAY SUMMARY _____ DISCHARGE SUMMARY

DATE: 11-2-99 PHYSICIAN: Kinner

DIAGNOSIS: Lumbar Sprain

HISTORY: DOI 1-29-99

SUMMARY: Pt. is a 53 y/o male who reports having a hx of back pain, but states he reinjured the low back ~ 2 wks. ago while cutting a tree down. On initial PT exam the following were noted: (1) Back ROM wnl x it (2) SB by 50%; (3) LE ROM tests indicated (4) Hamstring tightness (5) Back/Abdominal strength = (4-5) (6) LE sensation intact to LT testing (7) Moderate LB paraspinal muscle guarding noted on palpation of central LB area.

ASSESSMENT: ☒ 1.) Increased pain _____ 2.) Increased edema _____ 3.) Decreased ROM

_____ 4.) Decreased muscle strength _____ 5.) Decreased mobility

_____ 6.) Decreased function ☒ 7.) Other muscle tenderness/guarding (moderate)

GOALS: SHORT TERM: ☒ 1.) Decrease pain to 3/10 _____ 2.) Decrease edema to _____

☒ 3.) Increase ROM to 75% wnl ☒ 4.) Increase strength to 4+/5

_____ 5.) Improve gait to _____

☒ 6.) Other mod. lumbar paraspinal muscle guarding

LONG TERM: ☒ 1.) Decrease pain to 0/10 _____ 2.) Decrease edema to _____

☒ 3.) Increase ROM to 100% _____ 4.) Increase strength to 5/5

_____ 5.) Improve gait to _____

☒ 6.) Other muscle guarding

PLAN: _____

moist heat, Electrical Stimulation, myofascial release, Therapeutic Ex

FREQUENCY: 3 x PER WEEK

DURATION 4 wks.

ARE SOCIAL SERVICES REQUIRED: No

COMMENTS: _____

I CERTIFY THAT THE ABOVE REHABILITATIVE SERVICES ARE REQUIRED AND AUTHORIZED BY ME AND THAT THIS PLAN WILL BE REVIEWED EVERY 30 DAYS.

M

11/3/99

PT
THERAPIST

DATE

11-2-99

495

1/1

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT K
 2-924.10 TIBIA & FIBULA CONTUSION
 3-847.0 SPRAIN OF NECK



NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D.				
3 ROBERT KINCHELOE, M.D.				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
02/02/99	1	RK	12	99244		CONSULT COMPREHENS	170.00		170.00
02/02/99	1	RK	12	29505		SPLINT LONG LEG	70.00		240.00
02/02/99	1	RK	12	L1832		KO ADJ POS RIGID S	550.00		790.00
02/03/99	6	RK	23	97001		PHYSICAL THERAPY E	65.00		855.00
02/03/99	6	RK	23	97010		HOT OR COLD PACKS	25.00		880.00
02/03/99	6	RK	23	97110		THERAPEUTIC EXER.	60.00		940.00
(DAYS/UNITS = 2)									
** INS. FILED:02/05/99 REFILED:09/27/99									
02/05/99	1	RK	3	99213		OFFICE EXP PROB FO	52.00		992.00
02/05/99	1	RK	3	72052		X-RAY EXAM OF NECK	154.00		1146.00
02/08/99	3	RK	31	99213		OFFICE EXP PROB FO	52.00		1198.00
02/05/99	6	RK	23	97010		HOT OR COLD PACKS	25.00		1223.00
02/05/99	6	RK	23	97110		THERAPEUTIC EXER.	60.00		1283.00
(DAYS/UNITS = 2)									
02/09/99	6	RK	23	97010		HOT OR COLD PACKS	25.00		1308.00
02/09/99	6	RK	23	97014		ELECTRIC STIMULATI	30.00		1338.00
02/09/99	6	RK	23	97035		ULTRASOUND, EACH 1	25.00		1363.00
02/09/99	6	RK	23	97110		THERAPEUTIC EXER.	60.00		1423.00
(DAYS/UNITS = 2)									
02/09/99	6	RK	23	97250		MYOFASCIAL RELEASE	45.00		1468.00
02/10/99	6	RK	23	97010		HOT OR COLD PACKS	25.00		1493.00
02/10/99	6	RK	23	97014		ELECTRIC STIMULATI	30.00		1523.00
12/10/99	6	RK	23	97110		THERAPEUTIC EXER.	60.00		1583.00

CONTINUED ON NEXT FORM

496

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

P.

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
					(DAYS/UNITS = 2)			
02/10/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		1628.0
02/08/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		1653.0
02/08/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		1683.0
02/08/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		1708.0
02/08/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		1768.0
					(DAYS/UNITS = 2)			
02/08/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		1813.0
02/11/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		1838.0
02/11/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		1868.0
02/11/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		1893.0
02/11/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		1953.0
					(DAYS/UNITS = 2)			
02/11/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		1998.0
02/12/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		2023.0
02/12/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		2048.0
02/12/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		2108.0
					(DAYS/UNITS = 2)			
02/12/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		2153.0
02/15/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		2178.0
02/15/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		2208.0
02/15/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		2233.0
02/15/99	6 RK	12	97110		THERAPEUTIC EXER.	30.00		2263.0

CONTINUED ON NEXT FORM

497

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH.

HOME PH

BUSINESS PH:

SSN:

P.

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK
3-844.2 SPRAIN CRUCIATE LIGAMENT K

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
3 ROBERT KINCHELOE, M.D				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
02/15/99	6	RK	12	97124		MASSAGE THERAPY	35.00		2298.0
02/16/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2323.0
02/16/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2353.0
02/16/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		2413.0
						(DAYS/UNITS = 2)			
02/16/99	6	RK	12	97124		MASSAGE THERAPY	35.00		2448.0
02/17/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2473.0
02/17/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2503.0
02/17/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		2563.0
						(DAYS/UNITS = 2)			
02/17/99	6	RK	12	97124		MASSAGE THERAPY	35.00		2598.0
02/18/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2623.0
02/18/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2653.0
02/18/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		2713.0
						(DAYS/UNITS = 2)			
02/18/99	6	RK	12	97124		MASSAGE THERAPY	35.00		2748.0
02/19/99	3	RK	231	99211		OFFICE VISIT BRIEF	26.00		2774.0
** INS. FILED:02/22/99 REFILED:09/27/99									
02/19/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2799.0
02/19/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2829.0
02/19/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		2889.0
						(DAYS/UNITS = 2)			
02/19/99	6	RK	12	97124		MASSAGE THERAPY	35.00		2924.0

CONTINUED ON NEXT FORM

498

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
 2-847.0 SPRAIN OF NECK
 3-844.2 SPRAIN CRUCIATE LIGAMENT K

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
3 ROBERT KINCHELOE, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
02/22/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		2949.00
02/22/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		2979.00
02/22/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		3004.00
02/22/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		3064.00
					(DAYS/UNITS = 2)			
02/22/99	6 RK	12	97124		MASSAGE THERAPY	35.00		3099.00
02/24/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		3129.00
02/24/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		3154.00
02/24/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		3214.00
					(DAYS/UNITS = 2)			
02/24/99	6 RK	12	97124		MASSAGE THERAPY	35.00		3249.00
02/25/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		3274.00
02/25/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		3304.00
02/25/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		3329.00
02/25/99	6 RK	12	97110		THERAPEUTIC EXER.	60.00		3389.00
					(DAYS/UNITS = 2)			
** INS. FILED:02/26/99 REFILED:09/27/99								
02/26/99	3 RK	23	99213		OFFICE EXP PROB FO	52.00		3441.00
03/01/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		3466.00
03/01/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		3496.00
03/01/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		3521.00
03/01/99	6 RK	12	97110		THERAPEUTIC EXER.	30.00		3551.00
03/01/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		3596.00

CONTINUED ON NEXT FORM

499

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

- 1-924.10 TIBIA & FIBULA CONTUSION
 2-847.0 SPRAIN OF NECK
 3-844.2 SPRAIN CRUCIATE LIGAMENT K

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
3 ROBERT KINCHELOE, M.D				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/02/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3621.0
03/02/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3651.0
03/02/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3676.0
03/02/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		3736.0
						(DAYS/UNITS = 2)			
03/02/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		3781.0
03/04/99	1	RK	23	99213		OFFICE EXP PROB FO	52.00		3833.0
03/04/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		3843.0
03/04/99	1	RK		1		CASH PAYMENT		10.00	3833.0
03/08/99	3	RK		98D		DEBIT ADJUST TO PA	18.86		3851.8
03/08/99	3	RK		LAW		PMT FROM LAW OFFIC		18.86	3833.0
						CHK#:16877			
03/09/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3858.0
03/09/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3888.0
03/09/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3913.0
03/09/99	6	RK	12	97110		THERAPEUTIC EXER.	30.00		3943.0
03/09/99	6	RK	12	97124		MASSAGE THERAPY	35.00		3978.0
03/10/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4003.0
03/10/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4033.0
03/10/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4058.0
03/10/99	6	RK	12	97110		THERAPEUTIC EXER.	30.00		4088.0
03/10/99	6	RK	12	97124		MASSAGE THERAPY	35.00		4123.0
03/11/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4148.0

CONTINUED ON NEXT FORM

500

***** INSTANT BILL *****

ACCT: DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

- 1-924.10 TIBIA & FIBULA CONTUSION
- 2-847.0 SPRAIN OF NECK
- 3-844.2 SPRAIN CRUCIATE LIGAMENT K

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
03/11/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		4178.0
03/11/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		4203.0
03/11/99	6 RK	12	97110		THERAPEUTIC EXER.	30.00		4233.0
03/11/99	6 RK	12	97124		MASSAGE THERAPY	35.00		4268.0
03/12/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		4293.0
03/12/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		4323.0
03/12/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		4348.0
03/12/99	6 RK	12	97110		THERAPEUTIC EXER.	30.00		4378.0
03/12/99	6 RK	12	97124		MASSAGE THERAPY	35.00		4413.0
** INS. FILED:03/15/99 REFILED:09/27/99								
03/15/99	1 RK	32	99214		DETAILED OFFICE	80.00		4493.0
03/15/99	1 RK	32	76140		X-RAY CONSULTATION	25.00		4518.0
03/15/99	6 RK	231	97010		HOT OR COLD PACKS	25.00		4543.0
03/15/99	6 RK	231	97014		ELECTRIC STIMULATI	30.00		4573.0
03/15/99	6 RK	231	97035		ULTRASOUND, EACH 1	25.00		4598.0
03/15/99	6 RK	231	97110		THERAPEUTIC EXER.	30.00		4628.0
03/15/99	6 RK	231	97250		MYOFASCIAL RELEASE	45.00		4673.0
03/17/99	6 RK	231	97012		MECHANICAL TRACTIO	35.00		4708.0
03/17/99	6 RK	231	97014		ELECTRIC STIMULATI	30.00		4738.0
03/17/99	6 RK	231	97035		ULTRASOUND, EACH 1	50.00		4788.0
					(DAYS/UNITS = 2)			
03/17/99	6 RK	231	97110		THERAPEUTIC EXER.	70.00		4858.0
					(DAYS/UNITS = 2)			

CONTINUED ON NEXT FORM

501

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH

HOME PH

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-847.0 SPRAIN OF NECK
 2-844.2 SPRAIN CRUCIATE LIGAMENT K
 3-924.10 TIBIA & FIBULA CONTUSION

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/17/99	6 RK	123	97124		MASSAGE THERAPY	35.00		4893.00
03/19/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		4918.00
03/19/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		4953.00
03/19/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		4983.00
03/19/99	6 RK	123	97035		ULTRASOUND, EACH 1	25.00		5008.00
03/19/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5078.00
					(DAYS/UNITS = 2)			
03/19/99	6 RK	123	97124		MASSAGE THERAPY	35.00		5113.00
03/22/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5138.00
03/22/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		5173.00
03/22/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		5203.00
03/22/99	6 RK	123	97035		ULTRASOUND, EACH 1	25.00		5228.00
03/22/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		5263.00
03/22/99	6 RK	123	97250		MYOFASCIAL RELEASE	45.00		5308.00
** INS. FILED:03/23/99 REFILED:09/27/99								
03/23/99	1 RK		112		CIGNA PAYMENT		695.00	4613.00
** APPLIES TO CHARGES ON:02/02/99 CHK#:20388204								
03/23/99-	1 RK		112C		CIGNA CREDIT ADJUS		80.00	4533.00
02/02/99								
03/23/99	1 RK		112		CIGNA PAYMENT		127.00	4406.00
** APPLIES TO CHARGES ON:02/05/99 CHK#:20388204								
03/23/99-	1 RK		112C		CIGNA CREDIT ADJUS		64.00	4342.00
02/05/99								

CONTINUED ON NEXT FORM

502

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

- 1-847.0 SPRAIN OF NECK
- 2-844.2 SPRAIN CRUCIATE LIGAMENT K
- 3-924.10 TIBIA & FIBULA CONTUSION
- 4-836.0 TEAR MENISCUS/MEDIAL

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
3 ROBERT KINCHELOE, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/23/99	3 RK		112		CIGNA PAYMENT		40.00	4302.0
** APPLIES TO CHARGES ON:02/19/99 CHK#:20388204								
03/23/99	3 RK		112C		CIGNA CREDIT ADJUS		8.00	4294.0
02/19/99								
03/23/99	3 RK		RPTFE		CHARGE FOR FORMS,	10.00		4304.0
03/23/99	3 RK		1		CASH PAYMENT		10.00	4294.0
03/24/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		4319.0
03/24/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		4354.0
03/24/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		4384.0
03/24/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		4419.0
03/24/99	6 RK	123	97250		MYOFASCIAL RELEASE	45.00		4464.0
03/25/99	1 RK	41	99213		OFFICE EXP PROB FO	52.00		4516.0
03/25/99	1 RK	41	20610		MAJOR JOINT DR BUR	83.00		4599.0
03/25/99	1 RK	41	J2000		LIDOCAINE INJECTIO	15.00		4614.0
03/25/99	1 RK	41	J3301		KENALOG	42.00		4656.0
(DAYS/UNITS = 6)								
03/25/99	1 RK	41	A4209		S+ CC STERILE SYRI	2.00		4658.0
** INS. FILED:03/28/99 REFILED:03/27/99								
03/29/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		4683.0
03/29/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		4718.0
03/29/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		4748.0
03/29/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		4783.0
03/31/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		4808.0

CONTINUED ON NEXT FORM

503

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-847.0 SPRAIN OF NECK
 2-844.2 SPRAIN CRUCIATE LIGAMENT K
 3-924.10 TIBIA & FIBULA CONTUSION
 4-836.0 TEAR MENISCUS/MEDIAL

5-V67 FOLLOW-UP EXAMINATION

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D.				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/31/99	5 RK	123	97012		MECHANICAL TRACTIO	35.00		4843.00
03/31/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		4873.00
03/31/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		4908.00
03/31/99	6 RK	123	97124		MASSAGE THERAPY	35.00		4943.00
04/01/99	1 RK	4	99213		OFFICE EXP PROB FO	52.00		4995.00
04/01/99	1 RK	4	36415		DRAWING BLOOD, ROU	11.00		5006.00
04/01/99	1 RK	4	85024		AUTOMATED HEMOGRAM	30.00		5036.00
04/01/99	1 RK	4	93000		ELECTROCARDIOGRAM	56.00		5092.00
04/01/99	1 RK	4	81002		URINALYSIS W/O SCO	13.00		5105.00
04/01/99	1 RK	4	99000		SPECIMEN HANDLING/	11.00		5116.00
04/01/99	1 RK	4	80049		METABOLIC PANEL, B	50.00		5166.00
04/01/99	1 RK	4	71020		CHEST X-RAY, TWO V	82.00		5248.00
04/06/99	6 RK	123	97002		PHYSICAL THERAPY,	45.00		5293.00
04/06/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5318.00
04/06/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5388.00
					(DAYS/UNITS = 2)			
04/07/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5413.00
04/07/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5483.00
					(DAYS/UNITS = 2)			
04/07/99	1 RK	5	99024		POST OP FOLLOW UP	0.00		5483.00
04/07/99	1 RK	4	A4460		ELASTIC COMPRESSIO	20.00		5503.00
04/07/99	1 RK		RPTFE		CHARGE FOR FORMS,	10.00		5513.00
04/07/99	1 RK		11		PAYMENT BY CHECK#		10.00	5503.00

CONTINUED ON NEXT FORM

504

***** INSTANT BILL *****

ACCT: DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-847.0 SPRAIN OF NECK
2-844.2 SPRAIN CRUCIATE LIGAMENT K
3-924.10 TIBIA & FIBULA CONTUSION
4-V67 FOLLOW-UP EXAMINATION

5-836.1 TEAR LATERAL CARTILAGE/MEN

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
					CHK#:2886			
04/09/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5528.0
04/09/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		5563.0
04/12/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5588.0
04/12/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5658.0
					(DAYS/UNITS = 2)			
04/14/99	1 RK	1	99212		PROBLEM FOCUSED;ST	40.00		5698.0
04/16/99	1 RK	4	99024		POST OP FOLLOW UP	0.00		5698.0
04/21/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5723.0
04/21/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5793.0
					(DAYS/UNITS = 2)			
** INS. FILED:05/12/99 REFILED:09/27/99								
04/05/99	1 RK	5	29881		KNEE ARTHROSCOPY/M	2300.00		8093.0
** INS. FILED:04/23/99 REFILED:09/27/99								
04/21/99	6 RK	23	97010		HOT OR COLD PACKS	25.00		8118.0
04/21/99	6 RK	23	97110		THERAPEUTIC EXER.	70.00		8188.0
					(DAYS/UNITS = 2)			
04/23/99	6 RK	23	97010		HOT OR COLD PACKS	25.00		8213.0
04/23/99	6 RK	23	97110		THERAPEUTIC EXER.	70.00		8283.0
					(DAYS/UNITS = 2)			
04/28/99	1 RK		RPTFE		CHARGE FOR FORMS,	10.00		8293.0
04/28/99	1 RK		1		CASH PAYMENT		10.00	8283.0
04/28/99	6 RK	23	97010		HOT OR COLD PACKS	25.00		8308.0

CONTINUED ON NEXT FORM

505

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:864-429-8764

HOME PH:694-2093

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT K
 2-924.10 TIBIA & FIBULA CONTUSION
 3-836.1 TEAR LATERAL CARTILAGE/MEN
 4-V67 FOLLOW-UP EXAMINATION

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D.				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
04/28/99	6 RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		8378.0
** INS. FILED:05/12/99 REFILED:09/27/99								
04/15/99	1 RK	3	29881		KNEE ARTHROSCOPY/M	2300.00		10578.0
** INS. FILED:04/30/99 REFILED:09/27/99								
04/30/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		10703.0
04/30/99	6 RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 3)	105.00		10808.0
05/03/99	1 RK	4	99024		POST OP FOLLOW UP	0.00		10808.0
05/03/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		10833.0
05/03/99	6 RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		10903.0
05/04/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		10928.0
05/04/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		10958.0
05/04/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		10983.0
05/04/99	6 RK	12	97124		MASSAGE THERAPY	35.00		11018.0
** INS. FILED:05/12/99 REFILED:09/27/99								
05/05/99	6 RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 3)	105.00		11123.0
** INS. FILED:05/07/99 REFILED:05/27/99								
05/06/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		11148.0
05/06/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		11178.0
05/06/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		11203.0

CONTINUED ON NEXT FORM

506

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT K
2-924.10 TIBIA & FIBULA CONTUSION
3-847.0 SPRAIN OF NECK

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
05/06/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		11248.0
05/07/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		11273.0
05/07/99	6 RK	12	97110		THERAPEUTIC EXER.	70.00		11343.0
					(DAYS/UNITS = 2)			
05/10/99	6 RK	12	97110		THERAPEUTIC EXER.	105.00		11448.0
					(DAYS/UNITS = 3)			
05/11/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		11473.0
05/11/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		11503.0
05/11/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		11528.0
05/11/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		11573.0
** INS. FILED:05/12/99 REFILED:09/27/99								
05/12/99	6 RK	12	97110		THERAPEUTIC EXER.	105.00		11678.0
					(DAYS/UNITS = 3)			
** INS. FILED:05/13/99 REFILED:09/27/99								
05/13/99	1 RK	3	99213		OFFICE EXP. PRO3 FO	52.00		11730.0
** INS. FILED:05/14/99 REFILED:09/27/99								
05/13/99	1 RK		RPTFE		CHARGE FOR FORMS,	20.00		11750.0
05/13/99	1 RK		1		CASH PAYMENT		20.00	11730.0
05/13/99	6 RK	23	97010		HOT OR COLD PACKS	25.00		11755.0
05/13/99	6 RK	23	97014		ELECTRIC STIMULATI	30.00		11785.0
05/13/99	6 RK	23	97035		ULTRASOUND, EACH 1	25.00		11810.0
05/13/99	6 RK	23	97035		ULTRASOUND, EACH 1	25.00		11835.0
05/13/99	6 RK	23	97250		MYOFASCIAL RELEASE	45.00		11880.0

CONTINUED ON NEXT FORM

507

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:864-429-8764

HOME PH:694-2093

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D.				
6 KENNETH D. AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
05/18/99	6 RK		112		CIGNA PAYMENT		525.00	11255.0
** APPLIES TO CHARGES ON:03/15/99 CHK#:21433105								
05/18/99	6 RK		112		CIGNA PAYMENT		128.00	11127.0
** APPLIES TO CHARGES ON:03/24/99 CHK#:21433105								
05/18/99	1 RK		112		CIGNA PAYMENT		74.00	11053.0
** APPLIES TO CHARGES ON:03/15/99 CHK#:21433103								
05/18/99-	1 RK		112C		CIGNA CREDIT ADJUS		16.00	11037.0
03/15/99								
05/18/99	1 RK		112		CIGNA PAYMENT		139.30	10897.7
** APPLIES TO CHARGES ON:03/25/99 CHK#:21433103								
05/18/99-	1 RK		112C		CIGNA CREDIT ADJUS		39.70	10858.0
03/25/99								
05/18/99	1 RK		112		CIGNA PAYMENT		1782.81	9075.1
** APPLIES TO CHARGES ON:04/05/99 CHK#:21433102								
05/18/99-	1 RK		112C		CIGNA CREDIT ADJUS		491.00	8584.1
04/05/99								
05/18/99	1 RK		112		CIGNA PAYMENT		1809.00	6775.1
** APPLIES TO CHARGES ON:04/15/99 CHK#:21433102								
05/18/99-	1 RK		112C		CIGNA CREDIT ADJUS		491.00	6284.1
04/15/99								
05/18/99	6 RK		112		CIGNA PAYMENT		103.50	6180.6
** APPLIES TO CHARGES ON:03/15/99 CHK#:21433104								
05/18/99-	6 RK		112C		CIGNA CREDIT ADJUS		31.50	6149.1

CONTINUED ON NEXT FORM

508

***** INSTANT BILL *****

ACCT: DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT YTD PAY

UNION, SC 29537

11/02/99 \$190.00 \$17735.30

OFFICE PH: (

HOME PH: (

BUSINESS PH: (

SSN:

P:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/15/99									
05/18/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		6174.1
05/18/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		6204.1
05/18/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		6229.1
05/18/99	6	RK	12	97124		MASSAGE THERAPY	35.00		6264.1
05/19/99	6	RK	21	97110		THERAPEUTIC EXER.	105.00		6369.1
(DAYS/UNITS = 3)									
** INS. FILED:05/21/99 REFILED:09/27/99									
05/20/99	6	RK	21	97010		HOT OR COLD PACKS	25.00		6394.1
05/20/99	6	RK	21	97014		ELECTRIC STIMULATI	30.00		6424.1
05/20/99	6	RK	21	97035		ULTRASOUND, EACH 1	25.00		6449.1
05/20/99	6	RK	21	97124		MASSAGE THERAPY	35.00		6484.1
** INS. FILED:05/25/99 REFILED:09/27/99									
06/01/99	6	RK		112		CIGNA PAYMENT		105.00	6379.1
** APPLIES TO CHARGES ON:05/05/99 CHK#:21663515									
06/02/99	6	RK		112		CIGNA PAYMENT		1825.00	4554.1
** APPLIES TO CHARGES ON:03/29/99 CHK#:21708605									
06/02/99	6	RK		112		CIGNA PAYMENT		105.00	4449.1
** APPLIES TO CHARGES ON:05/12/99 CHK#:21708605									
06/02/99	1	RK		112		CIGNA PAYMENT		96.00	4353.1
** APPLIES TO CHARGES ON:04/01/99 CHK#:21708604									
06/02/99-	1	RK		112C		CIGNA CREDIT ADJUS		62.00	4291.1
04/01/99									

CONTINUED ON NEXT FORM

509

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-847.0 SPRAIN OF NECK
2-924.12 TIBIA & FIBULA CONTUSION

NUM	DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1	PETER J. KINAHAN, M.D				
6	KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
06/02/99	1	RK		112		CIGNA PAYMENT		108.00	4183.1
** APPLIES TO CHARGES ON: 04/14/99 CHK#: 21708604									
06/02/99-	1	RK		112C		CIGNA CREDIT ADJUS		54.00	4129.1
04/14/99									
06/02/99	1	RK		112		CIGNA PAYMENT		30.00	4099.1
** APPLIES TO CHARGES ON: 05/13/99 CHK#: 21708604									
06/02/99-	1	RK		112C		CIGNA CREDIT ADJUS		7.00	4092.1
05/13/99									
06/03/99	1	RK	1	99212		PROBLEM FOCUSED;ST	40.00		4132.1
06/04/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		4142.1
06/04/99	1	RK		1		CASH PAYMENT		10.00	4132.1
06/07/99	6	RK	21	97010		HOT OR COLD PACKS	25.00		4157.1
06/07/99	6	RK	21	97014		ELECTRIC STIMULATI	30.00		4187.1
06/07/99	6	RK	21	97035		ULTRASOUND, EACH 1	25.00		4212.1
06/07/99	6	RK	21	97110		THERAPEUTIC EXER.	105.00		4317.1
(DAYS/UNITS = 3)									
06/07/99	6	RK	21	97250		MYOFASCIAL RELEASE	45.00		4362.1
** INS. FILED: 06/08/99 REFILED: 09/27/99									
06/10/99	6	RK		112		CIGNA PAYMENT		175.00	4187.1
** APPLIES TO CHARGES ON: 05/13/99 CHK#: 21857765									
06/10/99	6	RK		112		CIGNA PAYMENT		195.00	3992.1
** APPLIES TO CHARGES ON: 05/13/99 CHK#: 21857765									
06/09/99	6	RK	21	97010		HOT OR COLD PACKS	25.00		4017.1

CONTINUED ON NEXT FORM

510

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH.

HOME PH: 694-2093 BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
2 DR. CONSUELO A. KINAH				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
06/09/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		4047.1
06/09/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		4072.1
06/09/99	6 RK	12	97110		THERAPEUTIC EXER.	105.00		4177.1
					(DAYS/UNITS = 3)			
06/09/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		4222.1
** INS. FILED:06/11/99 REFILED:09/27/99								
06/11/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		4247.1
06/11/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		4277.1
06/11/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		4302.1
06/11/99	6 RK	12	97250		MYOFASCIAL RELEASE	45.00		4347.1
** INS. FILED:06/15/99 REFILED:09/27/99								
06/14/99	2 RK		980		*DEBIT ADJUST TO P	50.53		4397.7
06/14/99	2 RK		LAW		*PMT FROM LAW OFFI		50.53	4347.1
					CHK#:17245			
06/14/99	6 RK	12	97010		HOT OR COLD PACKS	25.00		4372.1
06/14/99	6 RK	12	97014		ELECTRIC STIMULATI	30.00		4402.1
06/14/99	6 RK	12	97035		ULTRASOUND, EACH 1	25.00		4427.1
06/14/99	6 RK	12	97124		MASSAGE THERAPY	35.00		4462.1
** INS. FILED:06/18/99 REFILED:09/27/99								
06/15/99	6 RK		112		CIGNA PAYMENT		115.00	4347.1
** APPLIES TO CHARGES ON:05/20/99 CHK#:21931543								
06/18/99	1 RK		RPTFE		CHARGE FOR FORMS,	10.00		4357.1
06/18/99	1 RK		1		CASH PAYMENT		10.00	4347.1

CONTINUED ON NEXT FORM

511

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH: 254-1417

BUSINESS PH:

SSI -1417
E

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK

NUM	DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1	PETER J. KINAHAN, M.D				
2	DR. CONSUELO A. KINAH				
6	KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
06/18/99	6	RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		4417.1
06/18/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		4462.1
06/21/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4487.1
06/21/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4517.1
06/21/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4542.1
06/21/99	6	RK	12	97110		THERAPEUTIC EXER.	35.00		4577.1
06/21/99	6	RK	12	97124		MASSAGE THERAPY	35.00		4612.1
** INS. FILED:06/22/99 REFILED:09/27/99									
06/23/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4637.1
06/23/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4667.1
06/23/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4692.1
06/23/99	6	RK	12	97110		THERAPEUTIC EXER.	35.00		4727.1
06/23/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		4772.1
** INS. FILED:06/25/99 REFILED:09/27/99									
06/24/99	1	RK		112		CIGNA PAYMENT		19.00	4753.1
** APPLIES TO CHARGES ON:06/03/99 CHK#:22161843									
06/24/99-	1	RK		112C		CIGNA CREDIT ADJUS		6.00	4747.1
06/24/99									
06/25/99	2	RK		LAW		*PMT FROM LAW OFFI		200.00	4547.1
** APPLIES TO CHARGES ON:08/24/98 CHK#:5895									
06/25/99	12	RK		LAW		*PMT FROM LAW OFFI		32.00	4515.1
** APPLIES TO CHARGES ON:10/19/98 CHK#:5895									

CONTINUED ON NEXT FORM

512

***** INSTANT BILL *****

ACCT:

DATE: 11/03/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D.				
3 ROBERT KINCHELOE, M.D.				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
06/25/99	3	RK		LAW		*PMT FROM LAW OFFI		92.00	4423.1
** APPLIES TO CHARGES ON:08/27/98 CHK#:5895									
06/25/99	1	RK		LAW		PMT FROM LAW OFFIC		15.00	4408.1
** APPLIES TO CHARGES ON:02/02/99 CHK#:5895									
06/25/99	1	RK		LAW		PMT FROM LAW OFFIC		15.00	4393.1
** APPLIES TO CHARGES ON:02/05/99 CHK#:5895									
06/25/99	6	RK		LAW		PMT FROM LAW OFFIC		150.00	4243.1
** APPLIES TO CHARGES ON:02/03/99 CHK#:5895									
06/25/99	6	RK		LAW		PMT FROM LAW OFFIC		881.00	3362.1
** APPLIES TO CHARGES ON:02/11/99 CHK#:5895									
06/25/99	6	RK		LAW		PMT FROM LAW OFFIC		85.00	3277.1
** APPLIES TO CHARGES ON:02/25/99 CHK#:5895									
06/25/99	3	RK		LAW		PMT FROM LAW OFFIC		30.00	3247.1
** APPLIES TO CHARGES ON:02/08/99 CHK#:5895									
06/25/99	6	RK		112		CIGNA PAYMENT		230.00	3017.1
** APPLIES TO CHARGES ON:06/07/99 CHK#:22161844									
06/28/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3042.1
06/28/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3072.1
06/29/99	6	RK		112		CIGNA PAYMENT		230.00	2842.1
** APPLIES TO CHARGES ON:06/09/99 CHK#:22218058									
06/30/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2867.1
06/30/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2897.1
06/30/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		2922.1

CONTINUED ON NEXT FORM

513

***** INSTANT BILL *****

ACCT: DATE: 11/05/99

ADVANCED POSTAL & MEDICAL ASSOC

LAST PAYMENT YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH.

HOME PH:
SSN

BUSINESS PH:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/06/99 1:40P

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-847.0 SPRAIN OF NECK
3-715.96 KNEE OSTEOARTHRITIS
4-V67 FOLLOW-UP EXAMINATION

5-715.46 PAIN IN JOINT, LOWER LEG

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
3 ROBERT KINCHELGE, M.I				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
06/30/99	6 RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		2992.1
06/30/99	6 RK	12	97124		MASSAGE THERAPY	35.00		3027.1
** INS. FILED:07/02/99 REFILED:09/27/99								
07/06/99	6 RK		112		CIGNA PAYMENT		125.00	2902.1
** APPLIES TO CHARGES ON:06/11/99 CHK#:22338589								
07/06/99	1 RK	3	99212	24	PROBLEM FOCUSED;ST	40.00		2942.1
** INS. FILED:07/09/99 REFILED:09/27/99								
07/07/99	6 RK		112		CIGNA PAYMENT		115.00	2827.1
** APPLIES TO CHARGES ON:06/14/99 CHK#:22384638								
07/07/99	6 RK		112		CIGNA PAYMENT		35.00	2792.1
** APPLIES TO CHARGES ON:06/21/99 CHK#:22413801								
07/06/99	1 RK		RPTFE		CHARGE FOR FORMS,	10.00		2802.1
07/08/99	1 RK		1		CASH PAYMENT		10.00	2792.1
07/13/99	6 RK		112		CIGNA PAYMENT		160.00	2632.1
** APPLIES TO CHARGES ON:06/23/99 CHK#:22512778								
07/15/99	6 RK		112		CIGNA PAYMENT		230.00	2402.1
** APPLIES TO CHARGES ON:06/18/99 CHK#:22561980								
07/19/99	3 RK	3	99213		OFFICE EXP PROB FO	52.00		2454.1
07/12/99	3 RK	45	99024		POST OP FOLLOW UP	0.00		2454.1
07/12/99	3 RK	45	L1815		ELASTIC WITH CONDY	77.00		2531.1
** INS. FILED:07/23/99 REFILED:09/27/99								
07/27/99	2 RK		8		*WORKMENS COMP PAY		175.00	2356.1

CONTINUED ON NEXT FORM

514

***** INSTANT BILL *****

ADCT:

DATE: 11/08/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PT

HOME PH: 1 800

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:42P

DIAGNOSIS

1-836.0 TEAR MENISCUS/MEDIAL
2-715.96 KNEE OSTEOARTHRITIS

NUM	DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1	PETER J. KINAHAN, M.D				
3	ROBERT KINCHELOE, M.D				
6	KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
** APPLIES TO CHARGES ON:08/24/98									
07/27/99	3	RK		8		CHK#:10065133 *WORKMENS COMP PAY		92.00	2264.1
** APPLIES TO CHARGES ON:08/27/98									
07/27/99	1	RK		112		CHK#:10065133 CIGNA PAYMENT		19.00	2245.1
** APPLIES TO CHARGES ON:07/06/99									
07/27/99-	1	RK		112C		CHK#:022779100 CIGNA CREDIT ADJUS		6.00	2239.1
07/06/99									
07/28/99	6	RK		112		CIGNA PAYMENT		240.00	1999.1
** APPLIES TO CHARGES ON:06/28/99									
08/09/99	3	RK		112		CHK#:022786106 CIGNA PAYMENT		84.30	1914.8
** APPLIES TO CHARGES ON:07/19/99									
08/09/99-	3	RK		112C		CHK#:023032465 CIGNA CREDIT ADJUS		14.70	1900.1
07/19/99									
08/30/99	3	RK		RPTFE		CHARGE FOR FORMS,	10.00		1910.1
08/30/99	3	RK		1		CASH PAYMENT		10.00	1900.1
08/24/99	1	RK	12	99213		OFFICE EXP PROB FD	52.00		1852.1
08/24/99	1	RK	12	36415		DRAWING BLOOD, ROU	11.00		1863.1
08/24/99	1	RK	12	85024		AUTOMATED HEMOGRAM	33.00		1993.1
08/24/99	1	RK	12	93000		ELECTROCARDIOGRAM,	55.00		2049.1
08/24/99	1	RK	12	81302		URINALYSIS W/O SED	13.00		2062.1
08/24/99	1	RK	12	99000		SPECIMEN HANDLING/	11.00		2073.1
** INS. FILED:09/03/99 REFILED:09/27/99									
08/24/99	1	RK	12	80049		METABOLIC PANEL, B	50.00		2123.1

CONTINUED ON NEXT FORM

515

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

P:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-V67 FOLLOW-UP EXAMINATION
 2-715.96 KNEE OSTEOARTHRITIS
 3-719.46 PAIN IN JOINT, LOWER LEG
 4-836.0 TEAR MENISCUS/MEDIAL

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
------------	------	--------	----------	----------

1 PETER J. KINAHAN, M.D.

6 KENNETH D AUSTIN

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
08/31/99	1	RK	1	99024		POST OP FOLLOW UP	0.00		2123.1
08/31/99	1	RK	23	A6203		COMPOSITE DRESSING	20.00		2143.1
** INS. FILED:09/03/99 SECONDARY:10/13/99									
09/07/99	6	RK	23	97001		*PHYSICAL THERAPY	65.00		2208.1
09/07/99	6	RK	23	97010		*HOT OR COLD PACKS	25.00		2233.1
09/07/99	6	RK	23	97110		*THERAPEUTIC EXER.	70.00		2303.1
(DAYS/UNITS = 2)									
09/08/99	1	RK	1	99024		POST OP FOLLOW UP	0.00		2303.1
09/09/99	6	RK	23	97010		*HOT OR COLD PACKS	25.00		2328.1
09/09/99	6	RK	23	97110		*THERAPEUTIC EXER.	70.00		2398.1
(DAYS/UNITS = 2)									
** INS. FILED:09/10/99 REFILED:09/27/99									
08/30/99	1	RK	42	29081		KNEE ARTHROSCOPY/M	2300.00		4698.1
09/13/99	6	RK	23	97010		*HOT OR COLD PACKS	25.00		4723.1
09/13/99	6	RK	23	97110		*THERAPEUTIC EXER.	70.00		4793.1
(DAYS/UNITS = 2)									
** INS. FILED:09/14/99 REFILED:09/27/99									
09/17/99	6	RK	23	97010		*HOT OR COLD PACKS	25.00		4818.1
09/17/99	6	RK	23	97110		*THERAPEUTIC EXER.	70.00		4888.1
(DAYS/UNITS = 2)									
09/17/99	1	RK		RPTFE		CHARGE FOR FORMS,	20.00		4908.1
09/17/99	1	RK		11		PAYMENT BY CHECK#		20.00	4888.1
CHK#:3097									

CONTINUED ON NEXT FORM

516

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH

HOME PH:

BUSINESS PH:

SSN:

PH

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/06/99 11:40P

DIAGNOSIS

1-715.96 KNEE OSTEOARTHRITIS
2-719.45 PAIN IN JOINT, LOWER LEG
3-V67 FOLLOW-UP EXAMINATION

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
09/20/99	6	RK	12	97110		*THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		4358.1
09/20/99	6	RK	12	97010		*HOT OR COLD PACKS	25.00		4383.1
** INS. FILED:09/21/99 SECONDARY:10/13/99									
09/22/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		5008.1
09/22/99	6	RK	12	97110		THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		5078.1
** INS. FILED:09/27/99									
09/23/99	1	RK		112		CIGNA PAYMENT		96.00	4982.1
** APPLIES TO CHARGES ON:08/24/99 CHK#:23905989									
09/23/99-	1	RK		112C		CIGNA CREDIT ADJUS		62.00	4920.1
08/24/99									
09/23/99	1	RK	3	99024		POST OP FOLLOW UP	0.00		4920.1
09/29/99	6	RK	12	97010		*HOT OR COLD PACKS	25.00		4945.1
09/29/99	6	RK	12	97110		*THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		5015.1
** INS. FILED:10/01/99									
09/29/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		5025.1
09/28/99	1	RK		1		CASH PAYMENT		10.00	5015.1
10/05/99	1	RK		112		CIGNA PAYMENT		1609.00	3206.1
** APPLIES TO CHARGES ON:08/30/99 CHK#:24121357									
10/05/99-	1	RK		112C		CIGNA CREDIT ADJUS		491.00	2715.1
08/30/99									

CONTINUED ON NEXT FORM

517

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH.

HOME PH:

BUSINESS PH:

SSN:

P.

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/05/99 1:40PM

DIAGNOSIS

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
10/05/99	6 RK		112		CIGNA PAYMENT		160.00	2535.1
** APPLIES TO CHARGES ON:03/01/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		215.00	2320.1
** APPLIES TO CHARGES ON:03/01/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		170.00	2150.1
** APPLIES TO CHARGES ON:03/01/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		175.00	1975.1
** APPLIES TO CHARGES ON:03/01/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		180.00	1795.1
** APPLIES TO CHARGES ON:03/01/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		205.00	1590.1
** APPLIES TO CHARGES ON:02/19/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		235.00	1355.1
** APPLIES TO CHARGES ON:02/19/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		175.00	1180.1
** APPLIES TO CHARGES ON:02/19/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		225.00	955.1
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		230.00	725.1
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		215.00	510.1
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		240.00	270.1

CONTINUED ON NEXT FORM

518

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 25379

11/02/99 \$190.00 \$17735.30

OFFICE PH

HOME PH

BUSINESS PH:

SSN:

P:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/23/99 1:40P

DIAGNOSIS

1-715.95 KNEE OSTEOARTHRITIS
2-719.45 PAIN IN JOINT, LOWER LEG

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				
6 KENNETH D AUSTIN				

DATE	DR PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		190.00	80.1
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		205.00	-124.8
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		245.00	-369.8
** APPLIES TO CHARGES ON:02/05/99					CHK#:24121358			
10/05/99	6 RK		112		CIGNA PAYMENT		150.00	-519.8
** APPLIES TO CHARGES ON:02/03/99					CHK#:24121358			
10/05/99	6 RK		112		*CIGNA PAYMENT		255.00	-774.8
** APPLIES TO CHARGES ON:09/07/99					CHK#:24121358			
10/05/99	6 RK		112		*CIGNA PAYMENT		95.00	-869.8
** APPLIES TO CHARGES ON:09/13/99					CHK#:24121358			
10/01/99	6 RK	12	97310		HOT OR COLD PACKS	25.00		-844.8
10/01/99	6 RK	12	97110		THERAPEUTIC EXER.	70.00		-774.8
					(DAYS/UNITS = 2)			
10/04/99	6 RK	12	97310		HOT OR COLD PACKS	25.00		-749.8
10/04/99	6 RK	12	97110		THERAPEUTIC EXER.	70.00		-679.8
					(DAYS/UNITS = 2)			
** INS. FILED:10/05/99								
10/04/99	1 RK		RP1FE		CHARGE FOR FORMS,	10.00		-669.8
10/04/99	1 RK		1		CASH PAYMENT		10.00	-679.8
10/13/99	6 RK		112		*CIGNA PAYMENT		190.00	-869.8

CONTINUED ON NEXT FORM

519

***** INSTANT BILL *****

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$1735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-047.2 SPRAIN LUMBAR REGION
 2-715.96 KNEE OSTEOARTHRITIS
 3-724.5 BACK PAIN

NUM	DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1	PETER J. KINAHAN, M.D				
6	KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
** APPLIES TO CHARGES ON:09/17/99 CHK#:024232045									
10/13/99	1	RK		112		CIGNA PAYMENT		19.00	-983.8
** APPLIES TO CHARGES ON:08/24/99 CHK#:24284723									
10/13/99	1	RK		1120		CIGNA CREDIT ADJUS		36.00	-924.8
08/24/99									
10/15/99	6	RK		112		CIGNA PAYMENT		95.00	-1019.8
** APPLIES TO CHARGES ON:09/22/99 CHK#:24316518									
10/22/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		-1009.8
10/22/99	1	RK		1		CASH PAYMENT		10.00	-1019.8
11/02/99	6	RK		112		CIGNA PAYMENT		190.00	-1209.8
** APPLIES TO CHARGES ON:10/01/99 CHK#:24683284									
11/02/99	6	RK	1	97001		*PHYSICAL THERAPY	65.00		-1144.8
11/02/99	6	RK	1	97010		*HOT OR COLD PACKS	25.00		-1119.8
11/02/99	6	RK	1	97014		*ELECTRIC STIMULAT	30.00		-1089.8
11/02/99	6	RK	1	97110		*THERAPEUTIC EXER.	35.00		-1054.8
11/02/99	6	RK	1	97124		*MASSAGE THERAPY	35.00		-1019.8
11/04/99	6	RK	1	97010		*HOT OR COLD PACKS	25.00		-994.8
11/04/99	6	RK	1	97014		*ELECTRIC STIMULAT	30.00		-964.8
11/04/99	6	RK	1	97110		*THERAPEUTIC EXER.	35.00		-929.8
11/04/99	6	RK	1	97124		*MASSAGE THERAPY	35.00		-894.8
10/07/99	1	RK	2	99212		PROBLEM FOCUSED;ST	40.00		-854.8
11/01/99	1	RK	3	99213		OFFICE EXP PROB FO	52.00		-802.8
11/01/99	1	RK	2	20610		MAJOR JOINT OR BUR	83.00		-719.8

CONTINUED ON NEXT FORM

520

***** INSTANT BILL *****

ACCT: DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

17

P

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/02/99 1140P

DIAGNOSIS

1-715.56 KNEE OSTEOARTHRITIS

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KINAHAN, M.D				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
11/01/99	1	RK	1	J7320		HYLAN B-F 20 INJEC	365.00		-354.8

** INS. FILED:11/05/99

REF PHYS : KINAHAN, PETER J. TAX ID: 571036034
MESSAGES REF STATE: SC LIC #:

TOTAL: -\$354.8

* The Balance shown may not be the entire Account Balance.
It only reflects the transactions listed on this statement.

521

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX No. 803-286-9996

December 10, 1999

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Scott Wessinger
South Carolina Farm Bureau

Newberry, SC 29108



RE: My Client: Richard Kimmer
 Your Insured: Richard Kimmer
 Claim Number: 668356
 Policy Numbers: AU 0284539 4, AU 0284543 7, AU0625676
 Accident Date: January 29, 1999

Dear Scott:

I enclose the updated medicals on Richard Kimmer. Richard had another surgery on his knee on August 30, 1999, and has undergone a series of steroid injections. He is still having problems with his knee and may need a total knee replacement.

Richard is still out of work and has not worked since February 1, 1999. His hourly wage is \$14.56. His wage loss through today is \$26,208.00.

I enclose a copy of the Summons and Complaint which has been filed in Chester County.

Sincerely yours,

Philip E. Wright

PEW:jb
Enclosures
cc: Mr. Richard Kimmer

522

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

January 4, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Brent McKinney
State Farm Insurance Company
Columbia, SC 29290



RE: My Client: Richard Kimmer
Your Insured: Martha T. Kimmer
Claim Number:
Date of Accident: January 29, 1999

Dear Brent:

I enclose the medicals on Richard Kimmer. Richard had another surgery on his knee on August 30, 1999, and has undergone a series of steroid injections. He is still having problems with his knee and may need a total knee replacement. The medicals I have to date total \$33,031.68.

Richard is still out of work and has not worked since February 1, 1999. His hourly wage is \$14.56. His wage loss through January 3, 2000, is \$28,071.68. He loses his job on February 1 if he can't go back to work. The doctor won't release him. They anticipate knee replacement soon.

I enclose copies of the covenant with Auto Owners and the Proof of Service on Anthony Pendergrass.

I will let you know when I hear from Farm Bureau confirming their three \$25,000 policies.

Sincerely yours,

Philip E. Wright

PEW:jb
Enclosures
cc: Mr. Richard Kimmer

523

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

January 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (803) 772-6876

Mr. Ron McNeill
Senior Case Manager
Liberty Mutual Group

Columbia, SC 29202-3154



Re: My Client: Richard Kimmer
Your Client: Murata of America
Claim Number:
Date of Injury: January 29, 1999
WCC Number:

Dear Mr. McNeill:

I need a response to my Form 50. Is this an admitted case?

Sincerely yours,

Philip E. Wright

PEW:jb

cc: Mr. Richard Kimmer

P.S. How about sending me copies of the videotapes you're making of my client while he's working in his yard?

524

0011

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Richard Kimmer



Dear Richard:

I understand you have talked with attorney Thomas Pope in Newberry and that you wish for him to undertake representation in your workers' compensation case. I understand he is also talking with you about an employment law case against Murata concerning your termination.

I need you to authorize me to release your workers' compensation file to him in writing. Since you are coming by the office Tuesday, February 1, you can sign the authorization then.

I have received a notice from the attorney in the workers' compensation case that they want to take your deposition in the workers' compensation case on February 10. Please have Mr. Pope contact Mr. Morgan, attorney for Murata, to confirm that deposition date or move it if necessary.

As I explained to you when you were in the office last, I have received an answer from Mr. Morgan in the workers' compensation case in which they deny that you are entitled to workers' compensation benefits because I settled with the liability carrier in the wreck case without notifying them or getting their approval. We settled the liability portion of your wreck claim in mid-June and I filed the workers' compensation Form 50 on June 18. I did not communicate with the workers' compensation carrier concerning settling the liability case. There are still four policies of insurance to collect from which will pay very shortly.

Our workers' compensation statute requires that the Workers' Compensation Commission and the employer and the insurance carrier for the employer be notified in the event of a settlement with a liable party. I did not give those parties notification, so that may prejudice your right to recover workers' compensation benefits if, in fact, you were entitled based on the facts of the case to receive those benefits. I understand you have talked with Mr. Pope about that issue and that he will be advising you in that regard.

For the present time, I understand that you wish for me to proceed to represent you in the pending underinsurance matters related to your car wreck. Mr. Foster, attorney for your underinsurance carrier Farm Bureau, has requested that we schedule your deposition so that he can confirm your injuries and the facts of the collision. I have not scheduled that deposition yet and will wait to hear from Mr. Pope concerning on how he wishes to proceed in the workers' compensation case.

525

Mr. Richard Kimmer

February 1, 2000

Page 2

Since you may be entitled to eventually file a claim against me for some alleged error in the workers' compensation case, I need for you to confirm in writing that you agree for me to continue working on the underinsurance portion of your wreck case and that you waive any claim of conflict of interest that might arise in that representation. Since you would be saying on the one hand that I have not done what I should have in the workers' compensation case, I need to be sure that you still want me to continue with the wreck case as your attorney.

I appreciate your willingness to let me continue to represent you in this matter and want you to protect your interest as fully as you possibly can. I will be glad to cooperate with Mr. Pope in resolving the issues on your workers' compensation case as quickly as possible.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosures

526



STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

WAIVER OF CONFLICT

I, Richard Kimmer, hereby waive any conflict of interest or claim of conflict of interest by having Philip E. Wright continue to work on my personal injury case as my legal counsel. I understand that I may have a right to make a claim against Mr. Wright concerning his representation related to my workers' compensation action. I have directed him to release the workers' compensation portion of the file to attorney Thomas Pope of Newberry. I agree for Mr. Wright to continue to represent me in my personal injury case as it relates to the benefits payable by the automobile insurance carriers.


Richard Kimmer

February 1, 2000

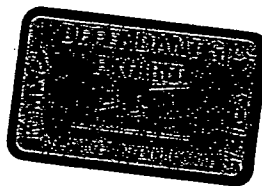
STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

AUTHORIZATION TO RELEASE FILE

I, Richard Kimmer, authorize Philip E. Wright to release the portion of my file related to my workers' compensation claim to attorney Thomas Pope of Newberry, South Carolina.

Richard Kimmer
Richard Kimmer

February 1, 2000



528

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

G. D. Morgan, Jr., Esq.
McCutchen, Blanton, Rhodes & Johnson, LLP

Columbia, SC 29211-1209



Re: **Richard Kimmer vs. Murata of America**
WCC No.
Claim No.

Dear Mr. Morgan:

Mr. Kimmer has picked up his workers' compensation file and is now represented by Thomas Pope in Newberry. I have notified Mr. Pope of the pending deposition. I am sure he will contact you if there is a problem.

Sincerely yours,

Philip E. Wright

PEW:jb

cc: Thomas H. Pope, III, Esq.
Mr. Richard Kimmer

529

FEB-08-2000 T1"

LAW OFFICES
POPE AND HUDGENS, P.A.

1508 COLLEGE STREET - P. O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

FAX (803) 276-8684

E-MAIL: pope&hudgens@scmail.com

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFFCOAT

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

February 10, 2000

Via Mail and Fax: 803/286-9996

Philip E. Wright, Esquire

Lancaster, South Carolina 29720

Re: Richard Kimmer v. Anthony Pendergrass
C/A No. 99 CP 12-413



Dear Mr. Wright:

I received your correspondence concerning the fact that Mr. Kimmer's deposition is scheduled next week in his personal injury case. I tried to call you today, but you were out of the office. I am in court next week, as I have cases pending in Common Pleas Court in Newberry and Richland Counties. I do not want this deposition to proceed in my absence. I have always found Reggie Foster to be a reasonable person, so there should be no problem in getting it continued.

My main concern is that Mr. Kimmer just recently came to my office and left his file materials. I am still in the process of reviewing them and am concerned that Mr. Kimmer will be prejudiced by going forward at this time. The questions asked him in the deposition could well prejudice his workers comp claim. Further, until I review this matter in its entirety, it appears to me that there may be a potential problem with your continued representation of Mr. Kimmer in this matter in view of the correspondence that I read which indicates you acknowledged there may have been some deficient action on your part in connection with proceeding with the third party action.

It is my understanding that you settled with the liability carrier for the policy limits of \$15,000 but that these settlement funds remain in your trust account and have not been disbursed and will not be disbursed, pending approval of Mr. Kimmer upon consultation with me.

For the short term, I ask that you have this deposition continued. I will be glad to have a conference call with you and Reggie Foster if this is necessary. Please call me back either today or tomorrow to confirm that this deposition has been continued.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope, III
Thomas H. Pope, III

cc: Mr. Richard Kimmer

530

RF 92

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

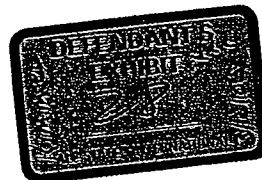
February 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (864) 587-1744

Reginald L. Foster, Esq.
Colvin & Foster, P.A.

Spartanburg, SC 29304



RE: Richard Kimmer vs. Anthony D. Pendergrass
Case No. 99-CP-12-413

Dear Reggie:

I need to postpone the deposition in this case. Richard has hired Tommy Pope in Newberry to represent him in the workers' compensation portion of his case. Mr. Pope is not available on the deposition date and wants to wait to take that until he resolves some issues with the workers' compensation claim. Please give me a call to confirm that you will postpone the deposition. I will get with Mr. Pope to see if we can reschedule.

Sincerely yours,

Philip E. Wright

PEW:jb

cc: Thomas H. Pope, III, Esq.
Mr. Richard Kimmer

B.P.S. I tried to reach Reggie yesterday and today, but he has been busy. The \$15,000 liability settlement is not in my Trust account. I took my one-third fee and paid medical subrogation of \$8,500 and medical costs of \$1,500. I enclose a copy of my escrow sheet showing the disbursements.

531

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX No. 803-286-9996

February 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (864) 587-1744

Reginald L. Foster, Esq.
Colvin & Foster P A

Spartanburg, SC 29304



RE: **Richard Kimmer vs. Anthony D. Pendergrass**
Case No. 99-CP-12-413

Dear Reggie:

I need to postpone the deposition in this case. Richard has hired Tommy Pope in Newberry to represent him in the workers' compensation portion of his case. Mr. Pope is not available on the deposition date and wants to wait to take that until he resolves some issues with the workers' compensation claim. Please give me a call to confirm that you will postpone the deposition. I will get with Mr. Pope to see if we can reschedule.

Sincerely yours,

Philip E. Wright

PEW:jb

cc: Thomas H. Pope, III, Esq.
Mr. Richard Kimmer

532



Richard Kimmer
25606 Hwy 121
Whitmire, SC 29178
February 24, 2000

Mr. Philip E. Wright
Attorney at Law

Lancaster, South Carolina 29720

Dear Mr. Wright:

I have thought about this matter for some time. In your letter dated February 1, you said that I may be entitled to eventually file a claim against you in connection with the workers compensation case. I know that, as of this time, you are still handling the suit against Anthony Pendergrass. I have problems with this since it looks like the workers compensation case and the suit against Mr. Pendergrass are all related from the same incident.

I am writing this letter to advise that I think it is in my best interest not to continue to have your services as my attorney against Anthony Pendergrass.

This letter is to authorize and request that you release your entire file in my case against Anthony Pendergrass to Attorney Thomas H. Pope, III. Please send my file to Mr. Pope at his address in Newberry, which is: P.O. Box 190, Newberry, SC 29108.

After you have released my file to Mr. Pope, you and he can discuss whether or not there is any other documentation that needs to be signed for the court to substitute Mr. Pope as my attorney.

Sincerely,

Richard Kimmer

Richard Kimmer

rk

533
RK89

LAW OFFICES
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1508 COLLEGE STREET - P. O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

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E-MAIL: pope&hudgens@scmail.com

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFCOAT

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

March 21, 2000



Philip E. Wright, Esquire

Lancaster, South Carolina 29720

Re: Richard Kimmer v. Anthony D. Pendergrass (C/A No. 99 CP 12-413)
and Richard Kimmer v. Murata of America and Liberty Mutual (WCC 9908422)

Dear Mr. Wright:

I enclose herein proposed Orders Substituting Counsel in the above matters. I would appreciate it if you would sign and return them to me in the enclosed self-addressed, stamped envelope. I will have Mr. Kimmer sign the Orders the next time that he is in the office, and I will forward them to the court officials.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/lg
Enclosures

534
RK85

Carolina Neurology

138 Dillon Drive
Spartanburg, South Carolina 29307
Telephone: (864) 585-6179 • Fax: (864) 583-5403

Carol S. Nichols, M.D.
Carol A. Kooistra, M.D.

Practice Limited to Neurology
Nerve Conduction Studies
Evoked Potentials
Sleep Disorder Studies
Appointments by Referral



NEW PATIENT EVALUATION

Richard Kimmer
DOB:

10/17/00

Mr. Kimmer is a fifty-four year old male referred for multiple problems including nystagmus and abnormal CT scan. Mr. Kimmer is somewhat vague in the description of his symptoms. He dates the onset of his illness to January of 1999 when he was involved in a serious motor vehicle accident. In that accident, another vehicle ran head on into the patient. The patient was not restrained and hit the windshield. He was not rendered unconscious but was dazed momentarily. He suffered severe damage to both knees and has required three surgical procedures for correction of those injuries. Since that time, he has had multiple chronic symptoms including dizziness, headache, loss of balance, anxiety, insomnia, and depression. The headaches occur intermittently three or four times per week and are generally occipital and nuchal in location. He can usually get relief with standard analgesics. He has been severely depressed, with loss of energy or desire to do anything he previously enjoyed. On days when his wife is at home with him, he can control the depressive symptoms reasonably well. When he is left alone, he sits and worries constantly about his situation. He cries frequently. He is unable to sleep at night, laying awake at night and sometimes having symptoms as if his face were becoming very flushed causing him to jump up and leave the bedroom.

Prior to the accident, Mr. Kimmer worked installing textile machinery. He has been unable to return to work since the accident but has been denied disability benefits. He is hypertensive on Monopril and Norvasc. He was started on Prozac approximately three months ago. He has noted some improvement with the Prozac but has not had dramatic relief of his depression on 40mgs. daily. He was just recently started on Depakote for his emotional symptoms. His other medications include Clonazepam which he takes at bedtime but does not afford him a restful nights sleep and Celebrex which he takes for arthritic pain.

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159

Richard Kimmer

10/17/00

Page Two

PAST MEDICAL HISTORY is significant in that Richard has been told by doctors since childhood that he had abnormal eye movements. His wife has been aware of those movements as long as she has known him. He has never had any imaging studies. Reportedly other family members have also had abnormal eye movements.

PHYSICAL EXAMINATION:

HEAD AND NECK: The patient is normocephalic. The eyes appear normal and the optic fundi are benign. No oral or pharyngeal lesions are noted. The neck is supple and there is no thyromegaly or adenopathy. No cranial or carotid bruits are heard.

CHEST is clear to auscultation.

HEART reveals a regular sinus rhythm without murmur or gallop. Blood pressure is 140/80.

ABDOMEN is soft and non tender and no masses are palpable.

EXTREMITIES are negative.

NEUROLOGICAL EXAMINATION:

MENTAL STATUS: The patient is alert and oriented. Memory and fund of knowledge. Higher cortical function is intact. He was noted to break down and cry frequently during the interview. He appears very anxious and depressed.

CRANIAL NERVES two through twelve are intact.

MOTOR EXAMINATION reveals the strength to be symmetrical and adequate in all muscle groups. Tone is normal.

SENSORY EXAMINATION is intact with pin prick, vibration, light touch, and proprioception. Visual fields are full to confrontation.

CEREBELLAR EXAMINATION reveals prominent nystagmus on lateral gaze in either direction and at rest. Finger to nose and heel to shin testing are normal. There is no ataxia to gait. He is able to walk tandem on a narrow base. Romberg sign is negative.

TENDON REFLEXES are symmetrical and physiologic throughout and plantar responses are flexor.

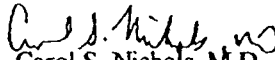
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Richard Kimmer
10/17/00
Page Three

IMPRESSION: 1. Severe post traumatic stress syndrome.
2. Congenital nystagmus.

DISPOSITION: 1. I have reviewed the CT scan. There appears to be some atrophy or porencephaly of the cerebellum. I suspect that this is a congenital anomaly but will order MRI to rule out progressive lesion.
2. Discontinue Prozac and Depakote.
3. Begin Remeron 30mgs. daily, increasing as tolerated to 45mgs. daily. I have chosen this anti-depressant for its noradernergic affect, which I think will be beneficial for his chronic pain and post traumatic symptoms.
4. Return for follow-up in one month. If he is not significantly improved on Remeron, Effexor or Wellbutrin will be tried. Ultimately, Neurontin might also be added.


Carol S. Nichols, M.D.

CSN/phb

cc: Consuelo Kimmahan, M.D., 720 S. Duncan Bypass, Union, S. C. 29379

10/24/00
PB

537
161

LAW OFFICES
POPE AND HUDGENS, P.A.

1506 COLLEGE STREET - P. O. BOX 190
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TELEPHONE (803) 276-2532

FAX (803) 276-6684

E-MAIL: popeandhudgens@newberry.net

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFcoat
W. CHAD JENKINS

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

June 17, 2002



Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP

Columbia, South Carolina 29211-1209

Re: Richard Kimmer v. Murata of America, Employer, and Liberty Mutual Group, carrier
WCC File No. 9908422

Dear Pope:

I enclose herein a sheet showing what the lump sum value on Richard Kimmer's claim would be. At the time of his injury, Mr. Kimmer actually was earning higher than the maximum comp rate.

I will plan to call you late this week to discuss possible settlement.

With best regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope, III

THP,III/lg

Enclosure

538
RCS8

RICHARD KIMMER

AWW = 775.38

COMP. RATE = 516.95

A.	<u>PAST DUE:</u>	<u>WEEKS</u>		<u>COMP. RATE</u>		<u>TOTAL</u>
	1999	48	*	\$483.47	=	\$23,206.56
	2000	52	*	\$507.34	=	\$26,381.68
	2001	52	*	\$516.95	=	\$26,881.40
	2002	26	*	~~\$516.95~~	=	~~\$13,440.70~~
				~~\$542.~~		\$89,910.34

B. FUTURE:

500 wks

- 178 wks

Bal. 322 wks → Commuted = 280.4999 wks.

280.4999

* \$516.95

\$145,004.42

C. GRAND TOTAL:

\$234,914.76

539

RK59

LAW OFFICES
POPE AND HUDGENS, P.A.

1508 COLLEGE STREET - P. O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

FAX (803) 276-8684

E-MAIL: popeandhudgens@newberry.net

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFcoat
W. CHAD JENKINS

December 6, 2002

VIA FAX ONLY:

Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP

Columbia, South Carolina 29211-1209

Re: Richard Kimmer v. Murata of America, Employer, and Liberty Mutual Group, carrier
WCC File No.

Dear Pope:

On behalf of Richard Kimmer, I am writing to demand \$220,000 in settlement of this claim.

As you know, Mr. Kimmer is totally disabled from his on-the-job injuries (see report of Dr. Mandell and Dr. William Stewart). He is also receiving social security disability.

The full value of Mr. Kimmer's compensation case is approximately \$280,000, plus medicals of \$70,000 or more. The defendants' exposure is, thus, over \$350,000.

Your clients' position in this case appears to be, not that Mr. Kimmer is not disabled from his on-the-job injuries, but that because his attorney accepted third party benefits before notifying the carrier that Claimant is barred from recovery. Our position is that the Claimant is not barred from the workers comp recovery in this case. Mr. Kimmer's former attorney accepted policy limits of \$15,000 from the carrier for Anthony Pendergrass, a judgment-proof resident of Chester County who was driving the at-fault vehicle. Our statute, SC Code §42-1-560(b), requires that notice of the commencement of an action be given within 30 days to the carrier, but this statute does not spell out any penalties for not complying with the notice requirement. In this case, your client could have recovered a portion of the \$15,000 policy limits settlement had notice been given. For simplicity sake, the claimant is willing to off-set the entire amount of the third party award against any workers comp recovery.

The above-referenced settlement offer of \$220,000 represents an off-set of all of the third party recovery of \$15,000, plus a substantial compromise of the carrier's potential full liability. If we are able to settle this case under these terms, the claimant would, of course, also want language in the settlement agreement under Utica Mohawk. This offer is made to avoid litigation and the



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RH 29

Pope D. Johnson, III, Esquire

-2-

December 6, 2002

certain appeals which would follow.

Quite honestly, I cannot imagine our court holding that a claimant who accepts a minimum limits third party settlement is barred from a compensation claim which is worth over 20 times the third party limits, simply because he did not give notice to the carrier. Put another way: how has the carrier been prejudiced in this case because it did not receive notice of the third party settlement?

This offer is a very reasonable way to avoid extensive litigation and appeals.

We look forward to hearing your response.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP,III/lg

541

RK30

DEC-03-2002 TUE 08:47 AM

FAX NO.

P. 02/02

DEC-02-2002 10:28AM FROM: Robinson, McFadden and Moore

8032520724

T-826 P.002/002 F-138

ROBINSON, MCFADDEN & MOORE, P.C.

RECEIVED DEC 02 2002



ATTORNEYS AND COUNSELLORS
AT LAW

DAVID W. ROBINSON, II
JOHN S. TAYLOR, JR.
DANIEL T. BRAILS福德
FRANK R. ELLIS, III
THOMAS W. BLANK, II
J. KENNETH SPURGE
D. CLAY ROBINSON
R. WILLIAM METZGER, JR.
KEVIN K. BELL
ANGELA B. MATTHEWS
RONNIE D. SHEALY
CHARLES H. McDONALD
MARGARET R. SCHNEIDER
ERIN A. COOK
M. KEVIN GARTISON

December 2, 2002

VIA FACSIMILE & U.S. MAIL

Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP
P.O. Drawer 11209
Columbia, SC 29211-1209

Re: Time Warner / Pee Dee
Our File No.



Dear Pope:

Frank asked me to send you this letter confirming that Judge Baxley will hear our motion for a temporary restraining order and preliminary injunction during the week of December 9th. Since Judge Baxley has two jury trials in Darlington that week, he cannot tell us a day certain when he will be able to hold our hearing. He wants the attorneys for both parties to attend the roster meeting in Darlington on Monday morning, December 9th to schedule the hearing. Frank will be returning to the office this afternoon. Should you have any questions, please contact us.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie

Bonnie D. Shealy

/bds

cc: Gardner F. Gillespie, Esquire
Caryn A. Boisen, Esquire
Gary Matz, Esquire
Jeff Zimmerman
Mr. Wayne Knighton



Founding Member

POST OFFICE BOX 944, COLUMBIA, SC 29202 ■ 1901 MAIN STREET, SUITE 1200, COLUMBIA, SC 29201
PHONE: 803.779.8900 ■ FAX: 803.252.0724 OR 803.771.9411 ■ INTERNET: WWW.ROBINSONLAW.COM

542

LAW OFFICES
POPE AND HUDGENS, P.A.

1508 COLLEGE STREET - P. O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

FAX (803) 276-8684

E-MAIL: popeandhudgens@newberry.net

December 9, 2002

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFFCOAT

W. CHAD JENKINS

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

VIA FAX ONLY:

Pope D. Johnson, III, Esquire.
McCutchen, Blanton, Rhodes & Johnson, LLP



Columbia, South Carolina 29211-1209

Re: Richard Kimmer v. Murata of America, Employer, and Liberty Mutual, carrier
WCC File No.

Dear Pope:

Can we stipulate the following:

1. that the Claimant's injury of 1/29/99 was incurred in the course and scope of employment (i.e., that the going and coming rule is not a defense);
2. that the only defense raised by defendants is that Claimant is barred because he settled with the third party liability carrier before giving notice to the workers compensation carrier; and,
3. that, subject to defendants' defense above, the Claimant is totally disabled under §42-9-20 from the January 29, 1999 injury.

Please let me know if this is agreeable. Also, please get the carrier to respond to our demand. My client is coming in this afternoon around 3:30 PM.

Best regards.

Sincerely,

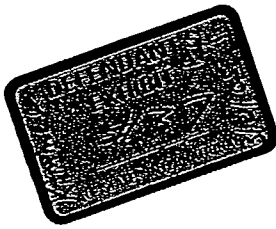
POPE AND HUDGENS, P.A.

Thomas H. Pope, III

THP,III/lg

543

RK 25



P.O. Box 490
East Syracuse NY 13057
315-433-1144
Fax 315-433-9818

Affidavit

Date: March 6, 2003 RE:
SIF# WCC#

I, Richard Kimmer, was aware/was not aware (circle) of my preexisting condition of degenerative changes left knee prior to my injury of 1/29/99.

I, Richard Kimmer, was aware/was not aware (circle) of my preexisting condition of lumbar degenerative arthritis prior to my injury of 1/29/99.

I, Richard Kimmer, was aware (circle) was not aware (circle) of my preexisting condition of degenerative arthritis/osteoarthritis right knee prior to my injury of 1/29/99. - was aware of hurt knee before 1-29-99.

Signature Richard Kimmer

Date MARCH 17, 2003

544

RK22



SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

TOLLING AGREEMENT

This Agreement ("Agreement") is made and entered into as of the 30 day of October 2003 by and between the law office of Philip E. Wright, P.A. and Philip E. Wright, Esquire ("The Firm") and Richard Kimmer ("Claimant").

The Firm provided professional services to Claimant, and Claimant now believes that he has or may have certain claims with respect to that engagement against The Firm; however, none of the parties to this Agreement desire Claimant to assert those actual potential claims at this time.

THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. The period between the date of this Agreement and the termination date, as defined below in Paragraph 4, shall not be included in determining the applicability of any statute of limitations, laches, or any other defense based upon the lapse of time in any action or proceeding brought by either party against the other arising from the firm's representation of Claimant.
2. Nothing in this Agreement shall effect any defense available to any party as of the date of this Agreement, and this Agreement shall not be deemed to revive any claim that is or was already barred on that date. Nothing in this Agreement, or in the circumstances which gave rise to this Agreement, shall be construed as an acknowledgment by any party that any claim has or has not been barred, or is about to be barred, by the statute of limitations, laches or other defense based upon the lapse of time.
3. This Agreement is not an admission of liability by any party. Neither this Agreement, nor any action taken pursuant to this Agreement, shall be offered or received into evidence in any action or proceeding as an admission of liability or wrongdoing by any party.
4. Any party may terminate this Agreement upon sixty (60) days written notice to the other sent by certified mail, return receipt requested to the party and its counsel at the following addresses:

To: Claimant: Richard Kimmer
c/o Pope & Hudgens, P.A.
PO Box 190
Newberry, SC 29108

545

To The Firm: Philip E. Wright
Attorney at Law
408 N. Main Street
Lancaster, SC 29720

Any party may change the address by which it should be given notice by giving written notice of the change of address to the other and its counsel at the above addresses by certified mail, return receipt requested. If not earlier terminated by notice, this Agreement shall terminate on ~~June 30, 2005~~.^{*} Accordingly, the termination date shall be the earlier of ~~June 30, 2005~~^{*} or the first business day following sixty days after the date of mailing of notice and termination pursuant to this Agreement.

*
11/10
R. Kim

5. This Agreement comprises the entire agreement of the parties with respect to the tolling of statute of limitations and the doctrine of laches, and this Agreement may be modified, amended, or supplemented only by a written instrument signed by all of the parties.
6. Each undersigned party represents, warrants, and states that all legal action necessary for the effectuation and execution of the Agreement has been validly taken and that the individuals whose signatures appear below are duly authorized to execute this Agreement.

This Agreement shall be interpreted in accordance with the substantive law of the State of South Carolina.

WITNESSES:

Thomas H. Byrd
Bruce B. Byrd

Richard Kimmer
Richard Kimmer, Claimant

WITNESSES:

Jeanne Abbott
Griffin C. Collins

LAW OFFICE OF PHILIP E. WRIGHT, P.A.

By:

Philip E. Wright
Philip E. Wright, Esquire

546

November 27, 1995

Mr. Richard Kimmer



Dear Richard,

This letter is to confirm our proposal to you for employment with Murata of America, Inc. and to welcome you to the Murata family. We are pleased you have accepted Murata's offer for the position of Technician Service Representative.

Your effective date of employment is December 1, 1995. You have been hired on a six months probationary period at an initial salary of \$27,000.00 per year (\$12.99 per hour), and a car allowance of \$6, 951.84. Expenses will be paid in accordance with the information outlined in the employee manual.

Murata of America, Inc. will pay for you and your family's hospitalization, medical and dental insurance and a prescription drug card, in accordance with the plan presently in effect. This will become effective 30 days from December 1, 1995 (January 1, 1996). Murata of America also provides both short and long term disability coverage after 30 days of employment. You will be eligible to participate in Murata's 401K Plan and Profit Sharing Plan in June 1996.

Normal working hours are 8:00 AM - 5:00 PM Monday through Friday.

Murata of America, Inc. observes ten (10) paid holidays during the calendar year. These are posted at the beginning of each year and are outlined in the employee handbook.

After six (6) months of employment you will be eligible for seven (7) days paid absence, after twelve (12) months from date of employment you will receive eight (8) additional days. Five (5) additional days after five (5) years worked from date of hire. These paid

000295

547

days can be used for any purpose, i.e. sick, personal, vacation, time off. No more than five (5) paid days off can be carried forward to the next calendar year.

Paychecks are given on the 15th of the month and the last working day of the month. Murata of America has available the automated payroll deposit system. This enables you to have your paycheck deposited into your personal checking account on the day the payroll is paid.

Richard, I believe this covers our employment agreement. If you have any questions or problems, please see me at any time.

Again, welcome to the Murata family! We sincerely wish you every success in you new position as Technical Service Representative.

Yours truly,

MURATEC/MURATA OF AMERICA, INC.

Randy Chaney
Technical Manager

RC/sf

000296

548

SETTLEMENT STATEMENT

Richard Kimmer

Accident Date: January 29, 1999

Auto-Owners Insurance Company
(liability settlement proceeds)

\$ 15,000.00

DISBURSEMENTS:

Philip E. Wright - fee

\$ 5,000.00

Medical Costs - Held to negotiate
with medical creditors

\$ 10,000.00

Total Disbursements/Withholding:

\$ 15,000.00

I AGREE WITH THE ABOVE DISBURSEMENTS:

Richard Kimmer
Richard Kimmer

June 16, 1999

EXHIBIT A

549

550 716

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Auto-Owners Insurance
The Home Car Business
7600 Freedom Road
Lansing, Michigan 48906

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING, MICH.

9-80 DRAFT N
720

RICHARD KIMMER & MARTHA KIMMER
INDIVIDUALLY & AS HUSBAND & WIFE &
THEIR ATTORNEY PHILLIP WRIGHT
DATE: 06/14/99
ADVANCED ORTHO & MEDICAL ASSOC & CIGNA HEALTHCARE
AT SIGHT
PAY TO THE
ORDER OF
FIFTEEN THOUSAND AND 00/100 DOLLARS

VOID IF NOT CASHED
WITHIN ONE YEAR

01/29/99

BARBARA J HUGHES

\$*****15,000.00

AUTO OWNERS INS. CO.
John P. Seeman
AUTHORIZED SIGNATURE

POLICY LIMIT EXCHANGE FOR A SIGNED COVENANT NOT TO EXECUTE

1-2720-11

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

June 23, 1999

408 N. MAIN STREET
LANCASTER, S.C. 29720

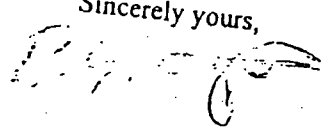
Mr. Dean Holler
Auto Owners Insurance
Post Office Box 2678
Rock Hill, SC 29732

RE: My Client: Richard Kimmer
Your Insured: Barbara Hughes
Date of Accident: 01/29/99

Dear Mr. Holler:

I enclose the executed Release and Settlement Agreement in this matter.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosure
cc: Mr. Richard Kimmer

551

Auto-Owners Insurance

STATE OF SOUTH CAROLINA
COUNTY OF Chester

RELEASE AND SETTLEMENT AGREEMENT

For the sole consideration of Fifteen Thousand Dollars, the

receipt of sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Barbara J. Hughes, Anthony Podgrass, i Auto Owners Insurance Co. heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, or damages, known and unknown, both to person and property which have resulted or may in the future develop from an accident which occurred on or about the 29th day of Jan. 19 99 at or near Lancaster Highway, Chester SC.

This release is not intended to and does not release any claim that the undersigned may have for underinsured motorist coverage through the underinsured motorist provision of any policy which by statute or policy definition the undersigned qualifies as an insured. The undersigned expressly reserves the right to prosecute a legal action in tort against the releasee solely for the purpose of establishing a claim for underinsured motorist benefits under a personal automobile policy applicable to the undersigned. For the consideration recited above, the undersigned specifically agrees and covenants never seek to execute any judgment obtained against the releasee and will not seek to collect any such judgment out of the personal assets of the releasee. If any judgment is obtained against the releasee, undersigned agrees to seek to collect such judgment from the underinsured motorist carrier. The undersigned further agrees, and covenants that if a verdict is returned against the releasee, the undersigned will move the court to order that the judgment be entered against the underinsured motorist carrier and not the releasee, in the appropriate amount. If a judgment is entered against the releasee, it is specifically agreed and covenanted that the undersigned and our attorney will mark the judgment paid and satisfied as soon as is legally practicable without making any effort to collect any amount from the releasee.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

In Witness Whereof, Richard Kimmer and Martha Kimmer have hereunto set their hand(s) and seal(s) this 16th day of June, year 1999.

In the presence of:

Witness: James A. Barth

Signed: R. Kimmer

552

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #
Carrier File #
Carrier Code #
Employer FEIN

9908422

Richard Kimmer
Whitmire SC 29178
City State Zip
Home Phone #
Work Phone #
Philip E. Wright
Preparer's Name
Murata of America
Charlotte NC 28266
Address City State Zip
Insurance Carrier
Phone #

Complete each information blank. To request a hearing, check box 13 b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

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

- 1 a. The claimant sustained an accidental injury to knee, back, neck on 1/29/99 in Chester County, State of South Carolina month day year
- 1 b. Describe briefly how the accident occurred car wreck
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on 1/29/99 in the following manner: reported to supervisor month day year
- ☐ 6. Due to injury the claimant is in need of (check one):
☒ (a) medical examination and treatment for knee, back and neck
☐ (b) additional medical examination and treatment for knee, back and neck
- ☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 1/29/99 to present
- ☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial
Body part(s) affected are: knee, back and neck
- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of limp
- 10 a. At the time of injury, the claimant was paid weekly wages of \$ 582.40 ; and demands accounting of days worked and wages earned as provided by law.
- 10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident none
- 11 a. Further grounds of claim: all benefits provided by the Act
- 11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Dr. Consuelo Kinahan, Advanced Orthopaedic and Medical Assoc., Union, SC 29379
- 11 c. To the best of your knowledge, did you have any prior permanent disability? unknown
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☒ 13 a. I am filing a claim. I am not requesting a hearing at this time.
- ☐ 13 b. I am requesting a hearing.

Signature of Claimant/Representative

Refer to R.67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to

ATTY. ADDED

JUN 25 1999

JUN 21 1999

JUN 21 1999

Division of Claims

Claims Administrator

SCWCC

553

6/18/99

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Richard Kimmer

Dear Richard:

I understand you have talked with attorney Thomas Pope in Newberry and that you wish for him to undertake representation in your workers' compensation case. I understand he is also talking with you about an employment law case against Murata concerning your termination.

I need you to authorize me to release your workers' compensation file to him in writing. Since you are coming by the office Tuesday, February 1, you can sign the authorization then.

I have received a notice from the attorney in the workers' compensation case that they want to take your deposition in the workers' compensation case on February 10. Please have Mr. Pope contact Mr. Morgan, attorney for Murata, to confirm that deposition date or move it if necessary.

As I explained to you when you were in the office last, I have received an answer from Mr. Morgan in the workers' compensation case in which they deny that you are entitled to workers' compensation benefits because I settled with the liability carrier in the wreck case without notifying them or getting their approval. We settled the liability portion of your wreck claim in mid-June and I filed the workers' compensation Form 50 on June 18. I did not communicate with the workers' compensation carrier concerning settling the liability case. There are still four policies of insurance to collect from which will pay very shortly.

Our workers' compensation statute requires that the Workers' Compensation Commission and the employer and the insurance carrier for the employer be notified in the event of a settlement with a liable party. I did not give those parties notification, so that may prejudice your right to recover workers' compensation benefits if, in fact, you were entitled based on the facts of the case to receive those benefits. I understand you have talked with Mr. Pope about that issue and that he will be advising you in that regard.

For the present time, I understand that you wish for me to proceed to represent you in the pending underinsurance matters related to your car wreck. Mr. Foster, attorney for your ~~underinsurance carrier Farm Bureau~~ has requested that we schedule your deposition so that he can confirm your injuries and the facts of the collision. I have not scheduled that deposition yet and will wait to hear from Mr. Pope concerning on how he wishes to proceed in the workers' compensation case.

E. E. Wright

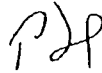
554

Richard Kimmer
January 1, 2000
Page 2

Since you may be entitled to eventually file a claim against me for some alleged error in the workers' compensation case, I need for you to confirm in writing that you agree for me to continue working on the underinsurance portion of your wreck case and that you waive any claim of conflict of interest that might arise in that representation. Since you would be saying on the one hand that I have not done what I should have in the workers' compensation case, I need to be sure that you still want me to continue with the wreck case as your attorney.

I appreciate your willingness to let me continue to represent you in this matter and want you to protect your interest as fully as you possibly can. I will be glad to cooperate with Mr. Pope in resolving the issues on your workers' compensation case as quickly as possible.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosures

555

SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

TOLLING AGREEMENT

This Agreement ("Agreement") is made and entered into as of the 30 day of October 2003 by and between the law office of Philip E. Wright, P.A. and Philip E. Wright, Esquire ("The Firm") and Richard Kimmer ("Claimant").

The Firm provided professional services to Claimant, and Claimant now believes that he has or may have certain claims with respect to that engagement against The Firm; however, none of the parties to this Agreement desire Claimant to assert those actual potential claims at this time.

THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. The period between the date of this Agreement and the termination date, as defined below in Paragraph 4, shall not be included in determining the applicability of any statute of limitations, laches, or any other defense based upon the lapse of time in any action or proceeding brought by either party against the other arising from the firm's representation of Claimant.
2. Nothing in this Agreement shall effect any defense available to any party as of the date of this Agreement, and this Agreement shall not be deemed to revive any claim that is or was already barred on that date. Nothing in this Agreement, or in the circumstances which gave rise to this Agreement, shall be construed as an acknowledgment by any party that any claim has or has not been barred, or is about to be barred, by the statute of limitations, laches or other defense based upon the lapse of time.
3. This Agreement is not an admission of liability by any party. Neither this Agreement, nor any action taken pursuant to this Agreement, shall be offered or received into evidence in any action or proceeding as an admission of liability or wrongdoing by any party.
4. Any party may terminate this Agreement upon sixty (60) days written notice to the other sent by certified mail, return receipt requested to the party and its counsel at the following addresses:

To: Claimant: Richard Kimmer
c/o Pope & Hudgens, P.A.
PO Box 190
Newberry, SC 29108

To The Firm: Philip E. Wright
Attorney at Law
408 N. Main Street
Lancaster, SC 29720

Any party may change the address by which it should be given notice by giving written notice of the change of address to the other and its counsel at the above addresses by certified mail, return receipt requested. If not earlier terminated by notice, this Agreement shall terminate on ~~June 30, 2005~~.^{*} Accordingly, the termination date shall be the earlier of ~~June 30, 2005~~,^{*} or the first business day following sixty days after the date of mailing of notice and termination pursuant to this Agreement.

*
11/1/04
R. Kimmer

5. This Agreement comprises the entire agreement of the parties with respect to the tolling of statute of limitations and the doctrine of laches, and this Agreement may be modified, amended, or supplemented only by a written instrument signed by all of the parties.
6. Each undersigned party represents, warrants, and states that all legal action necessary for the effectuation and execution of the Agreement has been validly taken and that the individuals whose signatures appear below are duly authorized to execute this Agreement.

This Agreement shall be interpreted in accordance with the substantive law of the State of South Carolina.

WITNESSES:

Walter H. Byrd
Barry B. Byrd

Richard Kimmer
Richard Kimmer, Claimant

WITNESSES:

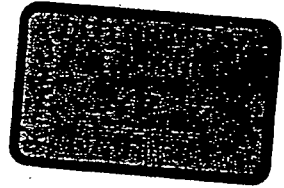
Jeanne A. Smith
Jennifer C. Collins

LAW OFFICE OF PHILIP E. WRIGHT, P.A.

By: Philip E. Wright
Philip E. Wright, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

WAIVER OF CONFLICT



I, Richard Kimmer, hereby waive any conflict of interest or claim of conflict of interest by having Philip E. Wright continue to work on my personal injury case as my legal counsel. I understand that I may have a right to make a claim against Mr. Wright concerning his representation related to my workers' compensation action. I have directed him to release the workers' compensation portion of the file to attorney Thomas Pope of Newberry. I agree for Mr. Wright to continue to represent me in my personal injury case as it relates to the benefits payable by the automobile insurance carriers.

Richard Kimmer
Richard Kimmer

February 1, 2000

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Richard Kimmer



Dear Richard:

I understand you have talked with attorney Thomas Pope in Newberry and that you wish for him to undertake representation in your workers' compensation case. I understand he is also talking with you about an employment law case against Murata concerning your termination.

I need you to authorize me to release your workers' compensation file to him in writing. Since you are coming by the office Tuesday, February 1, you can sign the authorization then.

I have received a notice from the attorney in the workers' compensation case that they want to take your deposition in the workers' compensation case on February 10. Please have Mr. Pope contact Mr. Morgan, attorney for Murata, to confirm that deposition date or move it if necessary.

As I explained to you when you were in the office last, I have received an answer from Mr. Morgan in the workers' compensation case in which they deny that you are entitled to workers' compensation benefits because I settled with the liability carrier in the wreck case without notifying them or getting their approval. We settled the liability portion of your wreck claim in mid-June and I filed the workers' compensation Form 50 on June 18. I did not communicate with the workers' compensation carrier concerning settling the liability case. There are still four policies of insurance to collect from which will pay very shortly.

Our workers' compensation statute requires that the Workers' Compensation Commission and the employer and the insurance carrier for the employer be notified in the event of a settlement with a liable party. I did not give those parties notification, so that may prejudice your right to recover workers' compensation benefits if, in fact, you were entitled based on the facts of the case to receive those benefits. I understand you have talked with Mr. Pope about that issue and that he will be advising you in that regard.

For the present time, I understand that you wish for me to proceed to represent you in the pending underinsurance matters related to your car wreck. Mr. Foster, attorney for your underinsurance carrier Farm Bureau has requested that we schedule your deposition so that he can confirm your injuries and the facts of the collision. I have not scheduled that deposition yet and will wait to hear from Mr. Pope concerning on how he wishes to proceed in the workers' compensation case.

559

RF 93

Mr. Richard Kimmer

February 1, 2000

Page 2

Since you may be entitled to eventually file a claim against me for some alleged error in the workers' compensation case, I need for you to confirm in writing that you agree for me to continue working on the underinsurance portion of your wreck case and that you waive any claim of conflict of interest that might arise in that representation. Since you would be saying on the one hand that I have not done what I should have in the workers' compensation case, I need to be sure that you still want me to continue with the wreck case as your attorney.

I appreciate your willingness to let me continue to represent you in this matter and want you to protect your interest as fully as you possibly can. I will be glad to cooperate with Mr. Pope in resolving the issues on your workers' compensation case as quickly as possible.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosures

560



Richard Kimmer
25606 Hwy 121
Whitmire, SC 29178
February 24, 2000

Mr. Philip E. Wright
Attorney at Law
408 N. Main Street
Lancaster, South Carolina 29720

Dear Mr. Wright:

I have thought about this matter for some time. In your letter dated February 1, you said that I may be entitled to eventually file a claim against you in connection with the workers compensation case. I know that, as of this time, you are still handling the suit against Anthony Pendergrass. I have problems with this since it looks like the workers compensation case and the suit against Mr. Pendergrass are all related from the same incident.

I am writing this letter to advise that I think it is in my best interest not to continue to have your services as my attorney against Anthony Pendergrass.

This letter is to authorize and request that you release your entire file in my case against Anthony Pendergrass to Attorney Thomas H. Pope, III. Please send my file to Mr. Pope at his address in Newberry, which is: P.O. Box 190, Newberry, SC 29108.

After you have released my file to Mr. Pope, you and he can discuss whether or not there is any other documentation that needs to be signed for the court to substitute Mr. Pope as my attorney.

Sincerely,

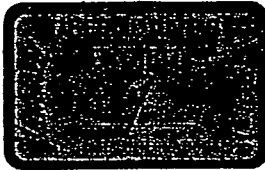
Richard Kimmer

Richard Kimmer

rk

561

RK 89



STATE OF SOUTH CAROLINA
COUNTY OF Chester

RELEASE AND SETTLEMENT AGREEMENT

For the sole consideration of Fifteen Thousand Dollars, the receipt of sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges Barbara J. Hughes, Anthony Pendegrass, e Auto Owners Insurance Co. heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, or damages, known and unknown, both to person and property which have resulted or may in the future develop from an accident which occurred on or about the 29th day of Jan, 19 99 at or near Laconaster Highway, Chester SC.

This release is not intended to and does not release any claim that the undersigned may have for underinsured motorist coverage through the underinsured motorist provision of any policy which by statute or policy definition the undersigned qualifies as an insured. The undersigned expressly reserves the right to prosecute a legal action in tort against the releasee solely for the purpose of establishing a claim for underinsured motorist benefits under a personal automobile policy applicable to the undersigned. For the consideration recited above, the undersigned specifically agrees and covenants never seek to execute any judgment obtained against the releasee and will not seek to collect any such judgment out of the personal assets of the releasee. If any judgment is obtained against the releasee, undersigned agrees to seek to collect such judgment from the underinsured motorist carrier. The undersigned further agrees and covenants that if a verdict is returned against the releasee, the undersigned will move the court to order that the judgment be entered against the underinsured motorist carrier and not the releasee, in the appropriate amount. If a judgment is entered against the releasee, it is specifically agreed and covenanted that the undersigned and our attorney will mark the judgment paid and satisfied as soon as is legally practicable without making any effort to collect any amount from the releasee.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

In Witness Whereof, Richard Kimmer and Martha Kimmer have hereunto set their hand(s) and seal(s) this 16th day of June, year 1999.

In the presence of:

Witness: Janne A. Bait

Signed: Richard Kimmer

Witness: Amey Morgan

Signed: Martha Kimmer

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #
Carrier File #
Carrier Code #
Employer FE

9908422

Richard Kimmer

Murata of America

SSN SC 29178
State Zip

Charlotte NC 28266
City State Zip

Home Phone #

Work Phone #

Insurance Carrier

Philip E. Wright

(803) 286-4343

Preparer's Name

Phone #

Complete each information blank. To request a hearing, check box 13 b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

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

- 1 a. The claimant sustained an accidental injury to knee, back, neck on 1/29/99 in Chester County, State of South Carolina
part of body hurt month day year
1 b. Describe briefly how the accident occurred car wreck

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on 1/29/99 in the following manner: reported to supervisor
month day year

- ☐ 6. Due to injury the claimant is in need of (check one):
☒ (a) medical examination and treatment for knee, back and neck
☒ (b) additional medical examination and treatment for knee, back and neck
☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 1/29/99 to present

- ☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial
☐ Partial
Body part(s) affected are: knee, back and neck

- ☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of limp

- 10 a. At the time of injury, the claimant was paid weekly wages of \$ 582.40; and demands accounting of days worked and wages earned as provided by law.

- 10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident none

- 11 a. Further grounds of claim: all benefits provided by the Act

- 11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Dr. Consuelo Kinahan, Advanced Orthopaedic and Medical Assoc., Union, SC 29379

- 11 c. To the best of your knowledge, did you have any prior permanent disability? unknown
If yes, describe:

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

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

Signature of Claimant/Representative

ATTY. ADDED

JUN 25 1999

RECEIVED

JUN 21 1999

Division of Claims

SCWFA

563

6/18/99

South Carolina Workers' Compensation Commission

P. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715

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

Richard Kimmer

Murata of America

Employer's Name

19718

Charlotte, NC 28266

Address

City State Zip

Address

City State Zip

Liberty Mutual

Home Phone #

Work Phone #

Insurance Carrier

G. D. Morgan, Jr.

Preparer's Name

Phone # _____

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: See No. 11.
2. It is denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 11.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 11.
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See No. 11.
5. It is denied that notice of injury was given the employer. The reasons for denial are: See No. 11.
6. It is denied that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: See No. 11.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: See No. 11.
8. It is denied that the employee is permanently disabled. The reasons for denial are: See No. 11.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$Form 20 to be filed applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: All statutory and affirmative defenses; third party action settled without consent.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to
Philip E. Wright, 408 North Main Street, Lancaster, SC 29720
Name _____ Address _____
on the 13th day of January, 2000 by ☒ first class mail; ☐ personal service; ☐ certified mail.

G. D. Morgan, Jr.
Preparer's Signature

Attorney for Employer
Title



January 13, 2000
Date

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to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

G. D. Morgan, Jr., Esq.
McCutchen, Blanton, Rhodes & Johnson, LLP

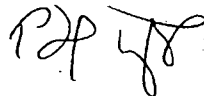
Columbia, SC 29211-1209

Re: **Richard Kimmer vs. Murata of America**
WCC No.
Claim No.

Dear Mr. Morgan:

Mr. Kimmer has picked up his workers' compensation file and is now represented by Thomas Pope in Newberry. I have notified Mr. Pope of the pending deposition. I am sure he will contact you if there is a problem.

Sincerely yours,



Philip E. Wright

PEW:jb

cc: Thomas H. Pope, III, Esq.
Mr. Richard Kimmer

FEB-08-2000 11"

LAW OFFICES
POPE AND HUDGENS, P.A.

1508 COLLEGE STREET - P. O. BOX 180
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

FAX (803) 276-8684

E-MAIL: pope&hudgens@scmail.com

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFFCOAT

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

February 10, 2000

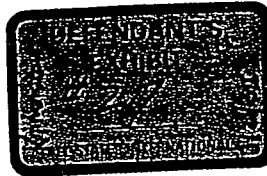
Via Mail and Fax: 803/286-9996

Philio F. Wright, Esquire

at

Lancaster, South Carolina 29720

Re: Richard Kimmer v. Anthony Pendergrass
C/A No. 99 CP 12-413



Dear Mr. Wright:

I received your correspondence concerning the fact that Mr. Kimmer's deposition is scheduled next week in his personal injury case. I tried to call you today, but you were out of the office. I am in court next week, as I have cases pending in Common Pleas Court in Newberry and Richland Counties. I do not want this deposition to proceed in my absence. I have always found Reggie Foster to be a reasonable person, so there should be no problem in getting it continued.

My main concern is that Mr. Kimmer just recently came to my office and left his file materials. I am still in the process of reviewing them and am concerned that Mr. Kimmer will be prejudiced by going forward at this time. The questions asked him in the deposition could well prejudice his workers comp claim. Further, until I review this matter in its entirety, it appears to me that there may be a potential problem with your continued representation of Mr. Kimmer in this matter in view of the correspondence that I read which indicates you acknowledged there may have been some deficient action on your part in connection with proceeding with the third party action.

It is my understanding that you settled with the liability carrier for the policy limits of \$15,000 but that these settlement funds remain in your trust account and have not been disbursed and will not be disbursed, pending approval of Mr. Kimmer upon consultation with me.

For the short term, I ask that you have this deposition continued. I will be glad to have a conference call with you and Reggie Foster if this is necessary. Please call me back either today or tomorrow to confirm that this deposition has been continued.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope, III
Thomas H. Pope, III

cc: Mr. Richard Kimmer

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21-27

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	Civil Action No. 2004-CP-46-2659
Richard Kimmer,	)	
	)	
Plaintiff,	)	
	)	
	)	AFFIDAVIT OF THOMAS H. POPE, III
	)	IN SUPPORT OF PLAINTIFF'S MOTION
Philip E. Wright,	)	FOR STAY AND IN OPPOSITION TO
	)	SUMMARY JUDGMENT
	)	
Defendant.	)	

PERSONALLY appeared before me Thomas H. Pope, III who being duly sworn, deposes and states as follows:

MOTION FOR STAY SHOULD BE GRANTED

1. He is counsel for plaintiff, Richard Kimmer, in the above case which is one for professional negligence against Defendant Wright, his former attorney.
2. He is also counsel for Richard Kimmer in the companion case of Kimmer v. Murata of America and Liberty Mutual Insurance Company, Civil Action No. 2004 CP 12-0251, which is pending in the Chester County Court of Common Pleas. The case against Murata is a workers compensation appeal which arose out of the Decision and Order of single commissioner, Michelle Childs, dated July 31, 2003. The factual basis of both cases is the same. See Exhibit A attached herewith (Petition for Judicial Review dated June 14, 2004).
3. A hearing was held on the workers comp appeal before Judge Kenneth Goode on May 18, 2005. By his letter dated May 25, 2005, Judge Goode advised counsel for the parties that he was ruling in favor of Claimant Kimmer and that he was reversing the decision of the Workers Compensation Commission and awarding full disability benefits, plus lifetime medical benefits to Plaintiff Kimmer. See Exhibit B attached herewith which is the letter of Judge Goode dated May 25, 2005.
4. The outcome in the Chester case against Murata (2004 CP 12-0251) is directly related to the case at bar. The plaintiff cannot prevail in the suit against Murata and in the case against Wright. In fact, the cases are mutually exclusive. If the decision of Judge Goode is ultimately sustained on appeal, the instant case against Wright becomes moot.

5. The instant case for professional negligence should be stayed until the final outcome of Kimmer v. Murata, et al. If the final outcome is favorable to Kimmer, this case would be dismissed. If the final outcome is unfavorable to Kimmer, the stay could be lifted and this matter could proceed.
6. It would be a waste of judicial resources, and an unnecessary expense to plaintiff, for this case to continue with discovery (there are depositions that need to be taken yet) when it may be all for naught based upon Judge Goode's ruling.
7. Counsel for Defendant Wright refuses to consent to the stay. It has been the undersigned's experience that courts routinely stay cases where the result of other litigation may be determinative of the one at bar in the instant case.
8. In fact, our Supreme Court has held that it is an abuse of discretion and reversible error for a trial judge to refuse to issue an order staying a third party action pending a determination by the Workers Compensation Commission involving the same claimants. See Talley v. John-Mansville Sales Corp., 285 S.C. 117, 328 S.E.2d 621 (1985).

FACTUAL BACKGROUND

9. Plaintiff Kimmer was injured on 1/29/99 when he was in an automobile accident driving to work. The accident was due to the negligence of a third party named Pendergrass who was judgment proof and had minimum liability coverage on the car that he was operating.
10. Plaintiff went to Attorney Wright for legal assistance, and the third party case was settled with the at-fault third party's carrier for the policy limits of \$15,000 on June 26, 1999.
11. On June 18, 1999, Attorney Wright prepared a Form 50 and filed it with the Workers Compensation Commission on June 21, 1999.
12. The accident was serious, the claimant had injuries to his knees, back and neck, and his medical bills exceeded \$25,000 at the time of the third party settlement.
13. After Defendant Wright filed a Form 50, the workers compensation defendants defended the claim on 3 fronts: (1) that the claim was not covered because it was not compensable (i.e., claimant was not hurt on the job); (2) that claimant was not seriously injured; and (3) that because Attorney Wright had settled a third party claim without notice to the comp carrier, the workers compensation claim was barred.

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14. On or about February 1, 2000, Attorney Wright wrote Kimmer a letter claiming that he may have made a mistake and that the mistake may have harmed Kimmer's possible workers comp claim "if he was entitled based on the facts of the case to receive those benefits" (letter attached to Complaint as Exhibit A thereto).
15. Thereafter, the undersigned began representing plaintiff in the workers compensation claim.
16. The claim was heard by Commissioner Childs on December 10, 2002 in Greenwood, SC. She issued her Decision and Order on July 31, 2003 (Exhibit C) in which she ruled as follows:
 - (a) that the accident was compensable (even though he was going to work at the time of the accident) because he got a car allowance and mileage;
 - (b) that claimant is permanently and totally disabled as a result of this on the job injury; and,
 - (c) that, however, because claimant did not provide notice to the carrier before settling the claim, the claimant had "made an election of remedies to proceed against the third party and was barred from pursuing his workers compensation claim."
17. Receipt of the Decision and Order of the single commissioner dated July 31, 2003 was the first notice that claimant had that the claim was barred because of the settlement with the third party without notice to the carrier. It was also the first determination that the case was a compensable one and that claimant was 100% disabled.
18. It was not until the commissioner wrote the parties of her intention to rule on June 2, 2003 that the parties learned what the rulings would be on the three contested issues at the hearing. As soon as the commissioner ruled in her Decision and Order on July 31, 2003, the affiant then had a ruling on all the contested issues and he got in touch with Defendant Wright requesting that his carrier contact him about entering into a tolling agreement.
19. Wright contacted affiant, and there was subsequently discussion about how long the tolling agreement would be in effect because the tolling agreement was for the purpose of staying the statute of limitations against Wright while the workers comp appeal could be determined.

20. It was initially agreed that there would be a one-year period on the tolling agreement - i.e., until November 1, 2004. See the tolling agreement signed by the parties dated October 30, 2003 (Exhibit D).
21. The reason for the tolling agreement was because until July 31, 2003 none of the parties knew whether or not Kimmer's injuries were compensable under the law or the extent of his damages. The parties were also unaware of whether or not Wright's actions in settling the third party claim without notice to the employer barred Kimmer's claim. The workers comp statute in this regard (§42-1-560) is silent as to any penalty for failing to give notice before settling a third party claim, and it is because that statute is ambiguous that no one knew what decision the commissioner might make on this issue.
22. Thereafter, affiant kept in touch with Wright as to the workers compensation appeal - see letter dated March 31, 2004 from affiant to Wright concerning the appellate argument included in Affidavit of Thomas H. Pope, III dated April 21, 2005.
23. Beginning around May 2004 for the next several months, affiant was in touch with Wright's professional liability carrier, Westport Assurance Company. Ms. Anne Repo was the claims representative on the claim. By letter dated May 28, 2004, affiant informed Anne Repo that the workers comp carrier wanted to discuss a possible 3-way settlement with plaintiff, Westport, and the workers compensation carrier.
24. The parties agreed that Barron Grier, Esquire, would be the mediator for this 3-way mediation and that it would be scheduled for October 12 in Mr. Grier's office in Columbia.
25. The mediator scheduled the mediation for 9:30 AM on Tuesday, October 12, 2004, in his office. On October 11, 2004, Warren C. Powell, Jr., counsel for Wright's carrier, Westport, said he did not have enough documents to evaluate the claim and wanted some discovery. He specifically recommended to me that suit be commenced and that the mediation be postponed. We further agreed to engage in expedited discovery with a view towards "having mediation in February or March 2005" (see letter dated 10/11/04 from affiant to Powell - Exhibit E).
26. Thereafter, suit was commenced promptly, acceptance of service was acknowledged by Powell. Mr. Powell filed an Answer for Wright in which no statute of limitations defense was alleged.
27. A mediation was scheduled for March 10, 2005 by the mediator which was postponed until Monday, March 28. By letter dated March 8, 2005, Mr. Powell wrote and advised that he would not participate in a mediation (Exhibit F).

28. Powell then moved to amend his Answer to allege the statute of limitations as a defense, although he learned nothing in discovery that he did not know before the case was filed.
29. On March 8, 2005, the defendant moved to amend his Answer to assert the statute of limitations defense.
30. By Order of Judge Hayes dated May 4, 2005, the motion was granted.
31. The affiant pointed out to the Court at the hearing on April 27, 2005, that since motions to amend are liberally granted for virtually any reason if this motion were granted he would need to redepose the defendant, as well as Ms. Anne Repo. There are also other witnesses who need to be deposed.
32. The defendant's motion for summary judgment was filed one day after the defendant filed his Amended Answer.
33. The affiant is informed and believes that it is entirely premature for this Court to rule on a motion for summary judgment at this time due to the fact that (a) more discovery needs to be undertaken; and, (b) it is possible that the Amended Complaint may need to be amended further in view of the Amended Answer.

**THE MOTION FOR SUMMARY JUDGMENT
IS PREMATURE AND DISCOVERY IS NOT COMPLETE**

34. The issues were initially joined in this case by late October 2004. From that time until early March 2005, there were two mediations scheduled but canceled by defendant's carrier's attorney, Mr. Powell.
35. The Amended Answer adding the statute of limitations as a defense was filed on May 10, 2005, and the defendant moved for summary judgment one day later, on May 11, 2005.
36. The motion for summary judgment is premature.
37. The case should be stayed for the reasons set forth herein, based upon the record in this case and in the case of Kimmer v. Murata (2004 CP 12-0251).
38. In the alternative, the affiant believes that the defense of statute of limitations is a factual issue for the jury, and the record needs to be developed through discovery. Since the Amended Answer was only filed in mid-May 2005, it is premature to consider a motion for summary judgment now.

39. The affiant needs to take at least two depositions (one in Chicago) and utilize an expert witness before the issue of when the statute of limitations accrues and whether it applies can be reviewed.
40. The affiant believes that, because of this, it would be a waste of time, money and judicial resources to have any further judicial proceedings in this case until there has been a final determination in Kimmer v. Murata of America referenced herein.
41. Counsel and the parties should not have to incur costs when this case will be moot if Judge Goode's Order is not appealed or is sustained on appeal.

SWORN to before me this 7th
day of June 2005

Lynne Q. Hart
Notary Public for South Carolina
My commission expires: 8-8-10

Thomas H. Pope, III
Thomas H. Pope, III

**INDEX OF EXHIBITS TO AFFIDAVIT OF THOMAS H. POPE, III IN
SUPPORT OF MOTION FOR STAY AND IN OPPOSITION
TO SUMMARY JUDGMENT DATED 6/7/05**

**Richard Kimmer v. Philip E. Wright
Civil Action No. 2004 CP 46-2659**

- | | |
|-----------|---|
| Exhibit A | Petition for Judicial Review |
| Exhibit B | Letter of Judge Kenneth G. Goode dated 5/25/05 |
| Exhibit C | Decision & Order of the Commissioner dated 7/31/03 |
| Exhibit D | Tolling Agreement dated 10/30/03 |
| Exhibit E | Letter from Thomas H. Pope, III to Warren Powell dated 10/11/04 |
| Exhibit F | Letter from Warren Powell to Thomas H. Pope, III dated 3/8/05 |

C 4-CV-12-0051

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS

Richard Kimmer,)
Petitioner,)

v.)

Murata of America and Liberty)
Mutual Insurance Company,)
Respondents.)

PETITION FOR JUDICIAL REVIEW

(WCC File No. 9908422)

(NON-JURY / NOTICE OF APPEAL)

2004 JUN 15 P 1:30

CLERK OF COURT
CHESTER COUNTY, S.C.

Petitioner hereby petitions the Court for judicial review of the Order of the SC Workers Compensation Commission filed on May 27, 2004. In support of this Petition, petitioner asserts as follows:

1. The petitioner/claimant was injured on the job on January 29, 1999, when he was seriously injured in a head-on automobile collision in Chester County with a vehicle driven by an at-fault third party.
2. At the time of the accident on-the-job, petitioner was employed by Murata of America ("Murata"), and the workers compensation carrier was Liberty Mutual Insurance Company (hereinafter referred to together as "Respondents").
3. Claimant, through his then-attorney, Phillip E. Wright, accepted a settlement with the carrier for the at-fault third party in the amount of \$15,000, which was the maximum liability policy limits available. The form 50 was filed by claimant's counsel on June 21, 1999, less than one week after the 3rd party settlement.

4. The claimant filed a Form 50 with the South Carolina Workers Compensation Commission on June 21, 1999 asserting injuries to his knees, back, and neck arising out of and in the course of his employment with Murata.

5. The respondents disputed compensability of claimant's accident and injuries, as well as the extent of said injuries; in addition, respondents raised all other defenses available in their Form 51.

6. The claim was heard by the Honorable J. Michelle Childs on December 10, 2002, in Greenwood, SC. Commissioner Childs issued her Decision and Order dated July 31, 2003 (Exhibit A), in which she ruled, inter alia, that: claimant was a covered party under the provisions of the South Carolina Workers' Compensation Act; claimant sustained compensable injuries to his legs and back arising out of and in the course of his employment with Murata; claimant timely notified employer of his injuries; and claimant is permanently and totally disabled as a result of said injuries. The Order is attached as Exhibit A.

7. However, the Commissioner also found and concluded that, in not providing notice to the carrier or the Worker's Compensation Commission before settling the 3rd party claim, claimant "made an election of remedies to proceed against the third party" and was barred from pursuing his workers compensation claim.

8. The petitioner timely filed a WCC Form 30 (Request for Commission Review) on August 12, 2003 (Exhibit B).

9. The Order of the Appellate Panel dated May 27, 2004, ruled that all of the Single Commissioner's Findings of Fact and Rulings of Law were correct, and it incorporated and affirmed the Hearing Commissioner's decision verbatim (Exhibit C).

P#2
THP

10. The Petitioner hereby appeals and timely files this Petition for Judicial Review within thirty (30) days of receipt of the Appellate Panel's Order dated May 27, 2004, as required by S.C. Code §1-23-380 and S.C. Code §42-17-60.

11. The Petitioner requests review of the Worker's Compensation Commission's Order dated May 27, 2004, upon the grounds, the findings, inferences, conclusions of law and orders issued therein were in violation of statutory provisions, are affected by error of law and are clearly erroneous in view of the substantial, reliable, and probative evidence in the whole record as provided in S.C. Code §1-23-380(g), upon the following grounds and exceptions:

- (a) The Commission erred in making the finding of fact that the claimant's settling of this claim was prejudicial to the respondent since it was not able to participate in the litigation or final release executed by the claimant, the error being that this finding is not supported by the evidence or the record in the case and is contradicted by the commissioner's previous finding of no prejudice to the carrier.
- (b) The Commission erred in making the finding of fact that the claimant's settling of this claim was prejudicial since it was not able to participate in the litigation or affect before the final release, the error being that the carrier failed to sustain its burden of proof that it had suffered any prejudice because of the claimant's settling his third party claim.
- (c) The Commission erred in making the finding of fact that the carrier had no opportunity to investigate whether there was other assets or other coverage available to the claimant under the third party, the error being that this finding is not supported by the evidence or the record in this case and is contradicted by the commissioner's finding of no prejudice to the carrier.
- (d) The Commission erred in making the finding of fact that the carrier had no opportunity to investigate whether there was other assets or other coverage available to the claimant under the third party, the error being that the evidence and record in the case is that diligent efforts were made to ascertain other assets or other coverage available to claimant from the third party and that there were none available despite the efforts of claimant's then-attorney and a private investigator.
- (e) The Commission erred in making the finding of fact that the claimant, by settling the claim, made an election of his remedies to proceed against the third party, the error being that the record reflects that the claimant made no election of remedies.

- (f) The Commission erred in making the finding of fact that the claimant had made an election of remedies, had waived his rights under the workers compensation law, and that his claim for benefits was barred, the error being that the record reflects claimant made no election of remedies, that he did not intend to make any such election, nor did he waive or intend to waive his workers compensation rights.
- (g) The Commission erred in making the finding of fact that §42-1-560 impliedly intended that settlement of the third party claim without carrier's consent constituted an election of remedies, the error being that the record in this case does not support such an intention, where the record shows that carrier suffered no prejudice.
- (h) The Commission erred in making the finding of fact that §42-1-560 barred claimant's right to relief, the error being that such conclusions of law are contrary to public policy under the facts of this case.
- (i) The Commission erred in denying workers compensation benefits to claimant based on an erroneous interpretation of §42-1-560 (Rulings of Law Nos. 3 through 7), the error being that the evidence in this case was that the seriously disabled claimant settled a \$15,000 minimum limits claim against a judgment-proof third party when his workers compensation claim was worth many times the third party settlement, with no intent to waive his workers compensation rights and with no prejudice to the workers compensation carrier which has subrogation rights against any third party recovery.
- (j) The Commission erred in ruling that this claimant, by settling a third party claim without notice to the carrier is barred by §42-1-560 when there is no prejudice to the carrier and when the provisions of the statute do not create a bar.
- (k) The Commission erred in ruling that this claimant, by settling a third party claim without notice to the carrier, is barred by §42-1-560 when there is no prejudice to the carrier and where the carrier still has full subrogation rights in the third party settlement and the claimant agrees to such subrogation rights.

12. The Petitioner is informed and believes that the Commission erred in denying his claim for any of the grounds listed herein, such that this Court should reverse the ruling and award full benefits to Petitioner. In the alternative, based on said error(s) this Court should remand this matter to the Commission for further proceedings.

WHEREFORE, Petitioner prays that this Court review the Order of the Commission dated May 27, 2004, reverse said Order, and award the claimant total disability, plus full medical benefits

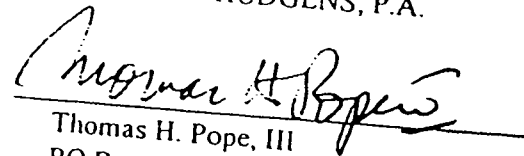
#4
THP

and/or remand this claim to the Worker's Compensation Commission for further proceedings
consistent with the Order of this Court.

Respectfully submitted,

POPE AND HUDGENS, P.A.

By:



Thomas H. Pope, III
PO Box 190
Newberry, SC 29108
(803) 276-2532

Attorneys for Claimant/Petitioner

June 6, 2004

PHS



State of South Carolina
The Circuit Court of the Sixth Judicial Circuit

KENNETH G. GOODE
JUDGE

POST OFFICE BOX 1175
WINNSBORO, SOUTH CAROLINA 29180-1175
TELEPHONE: (803) 635-3946
FAX: (803) 635-3762
E-MAIL: kgoodej@sccourts.org

May 25, 2005

W. Chad Jenkins

Newberry, SC 29108

Pope D. Johnson, III

Columbia, SC 29211

RE: Richard Kimmer vs. Murata of America and Liberty Mutual Insurance Company
Appeal No. 7

Dear Gentlemen:

Judge Goode recently heard the above worker's compensation appeal on May 18, 2005. Please let this letter serve as notice that Judge Goode has REVERSED the decision of the Worker's Compensation Commission.

Mr. Jenkins, please prepare an Order reflecting Judge Goode's decision and awarding Mr. Kimmer total and permanent disability, plus lifetime medical benefits, with an off-set for the net third-party settlement.

With kindest regards, I am

Yours very truly,

S. Jahue Moore, Jr.

Law Clerk to the Honorable Kenneth G. Goode

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DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C. FILE NO

Richard Kimmer,

Claimant,

vs.

Murata of America, Employer, and
Liberty Mutual Insurance Company,
Carrier,

Defendants

HEARING:

Held on December 10, 2002 in Greenwood, SC

APPEARANCES:

Claimant was represented by the Firm of Pope & Hedges, P.A. of Newberry, South Carolina, with Thomas H. Pope, III appearing.

Defendants were represented by the Firm of McCutchen Blanton Johnson & Barnette, LLP of Columbia, South Carolina, with Pope D. Johnson, III appearing.

PURPOSE OF HEARING:

To determine the issues set forth in the Form 50 and Form 51

OPINION AND AWARD:

J. Michelle Childs, Commissioner

FILED:

July 31, 2003

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STATEMENT OF THE CASE

This matter came before the undersigned Commissioner for a hearing on December 10, 2002, pursuant to notices timely served, at which time the parties and/or their representatives appeared.

This is a denied case arising out of an accident that occurred on January 29, 1999 when the Claimant was involved in an on-the-job motor vehicle accident and sustained injuries to his knees, neck and back.

The purpose of the hearing was to determine the issues set forth in the Form 50 and Form 51. The issues to be determined include whether the Claimant's claim is compensable, whether his claim is barred by settlement of a third party action, whether the Claimant should be limited to the scheduled members for his disability rating, whether the Claimant is totally and permanently disabled, and the applicable average weekly wage and compensation rate. The defendants asserted that if the claim was compensable and not otherwise barred, then the Claimant was entitled to the maximum compensation rate at the time of his injury, which was \$483.47. The Claimant asserted that he was entitled to the maximum compensation rate in 1999 and the maximum rate for each successive year.

MEDICAL EVIDENCE/RATINGS - APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

SUBMISSIONS BY CLAIMANT:

<u>PHYSICIAN</u>	<u>MEDICAL FACILITY</u>	<u>DATE OF REPORT</u>	<u>PAGES</u>
Dr. William Stewart	USC School of Medicine - University Speciality Clinics	4/29/02	1-7
	Social Security Disability Determination	5/1/01 & 4/13/01	8-10
Dr. Howard Mandell	Metrolina Neurological Associates, PA	2/1/02 - 2/16/01	11-19
Dr. Scott James and Dr. David Mitchell	Carolina Orthopaedic Surgery Associates	1/18/00 - 7/30/99	20-37
	BLANK PAGE		38
Dr. Stephen M. Kana	Orthopaedic Surgery & Sports Medicine	8/3/00 & 8/17/00	39-42
	Wallace Thompson Hospital	8/30/99; 4/15/99 & 4/5/99	43-45
	Wallace Thompson Hospital - Radiology Department	2/18/00 - 3/10/99	46-57
Dr. Peter J. Kinahan	Advanced Orthopaedics & Medical Assoc.	11/15/99 - 2/2/99	58-158
Dr. Carol S. Nichols	Carolina Neurology	10/17/00 & 11/22/00	159-162
Dr Donald R Johnson	Carolina Spine Institute	5/17/00	163
	Deposition of David Stalvey		164-169
	Murata of America, Inc. Employee Manual		170-198
	Documents Relative to Third Party Claim		199-218
	Documents from Attorney Phillip Wright	6/18/99 - 2/1/00	219-233

SUBMISSIONS BY DEFENDANTS:

<u>PHYSICIAN</u>	<u>MEDICAL FACILITY</u>	<u>DATE OF REPORT</u>	<u>PAGES</u>
Dr. Consuelo Kinah	Advanced Orthopaedic & Medical Assoc.	08/24/98 -07/13/00	234-257
	Wallace Thompson Hospital	03/10/99 - 10/16/00	258-274
	Springs Memorial Hospital	02/02/93 - 11/29/00	275-343
	Chester County Hospital & Nursing Center	10/08/97 - 01/29/99	344-377
	Carolina Orthopedic Surgery Center	06/21/88 - 02/15/01	378-408
	Carolina Spine Institute	5/17/00	409-417
	Carolina Center for Advanced Pain Management	07/12/00 - 09/26/00	418-426

Orthopedic Surgery & Sports Medicine

08/03/00 - 8/17/00 427-431

Orthopaedic Associates

04/21/00 - 5/12/00 432-437

EVIDENCE IN THE CASE

1. Claimant Richard Kimmer. The Claimant testified on his own behalf. He was born on October 11, 1946, is married, and has five children. He completed the sixth grade in school. His work history included work as a carpenter for over 30 years and then work as a technician installing and servicing textile machinery.

The Claimant was hired by Murata of America in December, 1995 as a technician installing and servicing machinery. The Claimant testified that he received a salary based upon a per hour rate and \$300.00+ dollars every other week for car allowance plus \$.06 per mile for each mile he drove to and from work. The Claimant worked out of his home. If he had to drive more than an hour to a particular plant, he was paid for the travel time in excess of an hour.

The Claimant's work as a service technician involved heavy, physically demanding activity. His work involved bending, stooping, climbing, pushing, lifting, and reaching.

The Claimant testified that the accident occurred on January 29, 1999 when he was enroute from his home in Whitmire to work at the Springs Catherine Plant in Chester. He was involved in a head-on collision with another vehicle. Both cars were total losses. The Claimant testified that his head broke the windshield, he injured his neck and his back, and he injured his knees against the dashboard. Thereafter, the Claimant had three arthroscopic surgeries on his right knee and one arthroscopic surgery on his left knee. In

addition, he was treated for back problems and depression. The Claimant testified that he had not worked since the date of the accident and that he did not feel that there was any other job he could do. He testified that his right knee, lower back, neck and depression gave him the most problems. He testified that he was taking eleven (11) different kinds of medicines for his injuries and problems. Further, he testified that he was now unable to do things such as fish, bowl, or play golf, which he did before the accident.

The Claimant employed Attorney Phillip E. Wright to help him with his injury claims. He testified that a settlement was reach with the at-fault party for \$15,000.00 and he signed a release of all claims against the at-fault party on June 16, 1999, two days before his attorney filed a Form 50 with the South Carolina Workers' Compensation Commission.

On cross-examination, the Claimant admitted that he was treated at the emergency room on the day of the accident and released. He admitted that his arthroscopic surgeries were outpatient type surgeries and that he had not had to have any surgical procedure for the problem related to his back. Further, he admitted that his medical bills were being paid by the group medical carrier and that he applied for and received short term disability benefits and then long term disability benefits. His long term disability benefits were \$1,700+ dollars per month, before taxes, which he acknowledged was about 70% of what he was getting by way of a salary. He drew short term disability benefits for 30 days and then long term disability benefits for eleven (11) months. He admitted that the long term disability benefits were cut off because the doctor released him to return to work and he failed to do so. The Claimant also admitted that he had not gone to vocational

rehabilitation, job service, or any other type service to try to get back into the work force. The Claimant also admitted that he had had problems with both knees and his back prior to the accident and that he had had an epidural injection for his back pain. He denied that he had knowledge of his problem with degenerative disc disease prior to the automobile accident. He also admitted that he had cut his grass and fished occasionally since the accident. He admitted that he planned to go back to work if he was able to do so.

2. Phillip E. Wright. Mr. Wright is a practicing attorney. He testified that he had represented the Claimant for several matters and that he was retained to represent him in connection with the automobile accident of January 29, 1999. He testified that he handled the Claimant's case for about a year and that he was familiar with the medical costs and treatment the Claimant had received and that his case involved a substantial claim.

Mr. Wright testified that Mr. Pendegrass was the at-fault party in the automobile accident. Mr. Pendegrass lived in Chester. He testified that he sent a private investigator over to find him and serve him because he had evaded law enforcement when law enforcement attempted to serve him. He testified that he personally looked at the records in the Chester County Courthouse to determine if Mr. Pendegrass had any assets and that he did not have any that he could find at the courthouse. He testified that he hired a private investigator to look for assets and the private investigator could not find any assets.

Mr. Pendegrass had automobile liability insurance minimal limits coverage. Mr. Wright talked with the adjuster and negotiated a settlement directly with the adjuster. No suit was ever filed. The minimum limits were tendered by the insurance company. Mr.

Wright testified that after he concluded the \$15,000.00 liability settlement, he conducted a further investigation and could find no assets. He testified that the \$15,000.00 settlement with the carrier for the at fault driver went to pay attorney's fees and medical expenses.

Mr. Wright testified that the release with the at-fault party was signed on June 16, 1999. Mr. Wright filed the Claimant's Form 50 by mail with the Workers' Compensation Commission on June 18, 1999. The Form 50 was received by the Commission on June 21, 1999. Mr. Wright testified that he had notified the Claimant, prior to settling the \$15,000.00 liability claim, that there might be a potential workers' compensation claim. This was discussed at the same time they signed the paperwork to settle the \$15,000.00 liability claim. Mr. Wright admitted that he was aware of a potential workers' compensation claim prior to settling the liability claim. He admitted that he settled the liability claim before he filed the Form 50 with the Commission and before he put the defendants on notice of the claim. He admitted that he had no recollection or documentation of talking to the workers' compensation carrier before he settled the third party liability claim.

On cross-examination, Mr. Wright admitted that the Claimant settled the third party liability claim before he gave notice to the carrier and the Commission of the workers' compensation claim. Mr. Wright admitted that he never spoke with the at-fault party himself. Mr. Wright admitted that checking records at the Chester County Courthouse would did not provide information about stocks, bonds, savings accounts or other such assets of the at fault driver and that checking at the courthouse in one county would not reflect what was owned in another county. He also acknowledged that speaking with the

carrier for the one policy on the vehicle did not reveal whether other insurance was available to the at-fault party. He admitted that there may have been other policies on other vehicles in the at-fault party's name or in the name of his other family members that might have provided coverage. He admitted that he never interviewed or deposed the at-fault party or any other party regarding the nature or extent of the at-fault party's assets or insurance coverage. He likewise admitted that the workers' compensation carrier had no opportunity to do so prior to the settlement of the claim against the at-fault party. He admitted that the workers' compensation carrier lost the opportunity to participate in or conduct its own investigation or to guide him or employ counsel to do the investigation prior to the third party case being settled.

3. William A. Manning, Jr. Mr. Manning testified he worked with Murata of America at the time the Claimant did. Initially, he had responsibility for all of the technical staff, including the Claimant. Thereafter, he worked in a trouble shooting slot and worked with the Claimant from time to time. He testified that the Claimant was one of the hardest workers he had ever worked with, on occasion working at 14 to 15 hour day. He testified that he knew the Claimant had a bad back but that it never slowed him up and he simply kept working. He testified that technicians such as the Claimant received an hourly pay rate plus a car allowance and mileage expense. He also testified that technicians, traveling, did not get paid for the first hour of travel but did get a mileage allowance for each mile driving. He also testified that he had spoken with the Claimant from time to time since the accident and that the Claimant seemed to be down in the dumps.

On cross-examination, Mr. Manning admitted that he had not worked with the Claimant on a day to day basis, that he was a friend of the Claimant, and that he came to testify on his behalf without being subpoenaed. He testified that the Claimant had back problems. On re-cross examination, he testified that he knew the Claimant was out for a period of time in the first part of 1998 for back problems.

4. John Pate. The Claimant's attorney called John Pate, a Liberty Mutual Senior Field Investigator, as a witness. Mr. Pate testified that he had not been involved in the handling of the file and that he had no knowledge of what was done or not done by Liberty Mutual regarding an investigation of a third party claim or the assets of the at-fault third party.

FINDINGS OF FACT

Based upon the stipulations of the parties, testimony and evidence received and produced at this hearing, as well as my personal observation of the witnesses, the undersigned Commissioner finds the following facts based on a preponderance of the evidence:

1. The parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The applicable compensation rate is \$438.47, the maximum allowable rate at the time of the accident.
3. The Claimant had pre-existing conditions, including without limitation, osteoarthritis, bursitis, and degenerative arthritis, and multi-level cervical spondylosis with

degenerative disc disease of the cervical spine.

4. The Claimant sustained compensable injuries to his back, neck, both knees and depression as a result of an on-the-job motor vehicle accident. Claimant was paid mileage to and from his home to various plants, as well as a monthly car allowance and an hourly rate for travel time.

5. The Claimant timely notified the employer of his injuries.

6. As a result of the accident, the Claimant was diagnosed with several injuries, including, without limitation, right knee meniscal tear, left knee lateral meniscal tear, bulging discs, and post-traumatic stress syndrome. As a result of these injuries, the Claimant had three surgeries on his right knee and one surgery on his left knee, and chronic pain in all areas of his body related to his injuries.

7. The Claimant has reached maximum medical improvement.

8. The Claimant is permanently and totally disabled as a result of the combination of injuries to his back, neck, both knees and depression.

9. The Claimant settled his claim for \$15,000 (the policy limits) against the driver of the other vehicle without filing a lawsuit.

10. The Claimant executed a release of the at fault party on June 16, 1999.

11. The Claimant filed his Form 50 on June 18, 1999, which was received by the Commission on June 21, 1999.

10. In settling his claim, the Claimant proceeded solely against the third party tortfeasor. The Claimant did not provide notice to the carrier or the Commission before

settling his claim, and thus, provided the carrier no opportunity to protect its interest against the claim. Under the circumstances of this case, it would appear that there was no prejudice to the carrier since the claim was settled for the policy limits, since there seemed to be no other assets available to the Claimant from the third party, and since the carrier also has a right of subrogation or off-set against the proceeds of the settlement. However, the Claimant's settling of this claim was prejudicial to the carrier since it was not able to participate in the litigation or affect the full and final release executed by the Claimant. The carrier had no opportunity to investigate whether there was other assets or other coverage available to the Claimant from the third party. The Claimant, by settling the claim, made an election of his remedies to proceed against the third party.

RULINGS OF LAW

Accordingly, as provided by §42-17-40 of the 1976 South Carolina Code of Laws, as amended, it is the determination and finding of this Commissioner:

1. That at the time of the accident, the Claimant and the defendant/employer were covered parties under the provisions of the South Carolina Workers' Compensation Act pursuant to §42-1-130 and §42-1-140.

2. That the Claimant suffered a compensable injury by accident arising out of and in the course of his employment pursuant to §42-1-160.

3. Under the case law, a claimant has three remedies for job-related injuries, which are as follows:

(a) To proceed solely against the employer thereby allowing the employer-carrier the opportunity to pursue reimbursement against the third

party for its obligated payments.

(b) To proceed solely against the third party tortfeasor under §42-1-550 by instituting and prosecuting an action at law; and

(c) To proceed against both the employer-carrier and the third party tortfeasor by complying with §42-1-560. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

4. Section 42-1-560 sets forth the terms and conditions which must be met if the injured employee is to pursue both remedies simultaneously. It further provides for a carrier's lien on the proceeds of the third party recovery to the extent of the total amount of compensation including medical and other expenses paid or to be paid. Moreover, the carrier's lien cannot be reduced without its consent and no compromise settlement between the employee and third party can be made binding on the carrier without its consent or either approval of the commission. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

5. While Section 42-1-560 does not specifically state that settlement with a third party without the carrier's consent constitutes an election of remedies, it is clear from a reading of the statute that the legislature did not intend for a claimant to settle his third party case without regard to the employer's rights for subrogation under §42-1-550 and still maintain a workmen's compensation claim. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

6. The object of §42-1-560 is to effect an equitable adjustment of the rights of all parties. It would "defeat this objective to allow the employee to demand compensation from the employer after having destroyed the employer's normal right to obtain

reimbursement from the third party." *Stroy v. Millwood Drug Store, Inc.*, 235 S.C. 52 at 59, 109 S.E.2d 706 (1959). *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

7. The Claimant's noncompliance with the statutory procedure and disregard for the rights and remedies of the workers' compensation carrier violates the spirit of the Act. This settlement with the at-fault party was consummated by the Claimant before the workers' compensation carrier had notice of the claim and any opportunity to conduct its own investigation into the insurance coverage and assets of the at fault party. The Claimant made an election and has waived any rights he may have had under the S.C. Workers' Compensation Law. As a result thereof, his claim for workers' compensation benefits is barred.

ORDER

IT IS ORDERED that the claim of Richard Kimmer against Murata of America and Liberty Mutual Insurance Company for benefits under the S.C. Workers' Compantion Law for an accident of January 29, 1999 be and it hereby is denied, for the reasons set forth above.

No hearing costs are assessed in this instance.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 31 day of July, 2003.

By Elaine M. Boyd

Administrative Assistant to the Commissioner

By:

J. Michelle Childs
Commissioner

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

TOLLING AGREEMENT

This Agreement ("Agreement") is made and entered into as of the 30 day of October 2003 by and between the law office of Philip E. Wright, P.A. and Philip E. Wright, Esquire ("The Firm") and Richard Kimmer ("Claimant").

The Firm provided professional services to Claimant, and Claimant now believes that he has or may have certain claims with respect to that engagement against The Firm; however, none of the parties to this Agreement desire Claimant to assert those actual potential claims at this time.

THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. The period between the date of this Agreement and the termination date, as defined below in Paragraph 4, shall not be included in determining the applicability of any statute of limitations, laches, or any other defense based upon the lapse of time in any action or proceeding brought by either party against the other arising from the firm's representation of Claimant.
2. Nothing in this Agreement shall effect any defense available to any party as of the date of this Agreement, and this Agreement shall not be deemed to revive any claim that is or was already barred on that date. Nothing in this Agreement, or in the circumstances which gave rise to this Agreement, shall be construed as an acknowledgment by any party that any claim has or has not been barred, or is about to be barred, by the statute of limitations, laches or other defense based upon the lapse of time.
3. This Agreement is not an admission of liability by any party. Neither this Agreement, nor any action taken pursuant to this Agreement, shall be offered or received into evidence in any action or proceeding as an admission of liability or wrongdoing by any party.
4. Any party may terminate this Agreement upon sixty (60) days written notice to the other sent by certified mail, return receipt requested to the party and its counsel at the following addresses:

To: Claimant:

Richard Kimmer
c/o Pope & Hudgens, P.A.
PO Box 190
Newberry, SC 29108

To The Firm: Philip E. Wright
Attorney at Law
Lancaster, SC 29720

Any party may change the address by which it should be given notice by giving written notice of the change of address to the other and its counsel at the above addresses by certified mail, return receipt requested. If not earlier terminated by notice, this Agreement shall terminate on ~~June 30, 2005~~.^{*} Accordingly, the termination date shall be the earlier of ~~June 30, 2005~~,^{*} or the first business day following sixty days after the date of mailing of notice and termination pursuant to this Agreement.

*
11/1/04
R. Kimmer

5. This Agreement comprises the entire agreement of the parties with respect to the tolling of statute of limitations and the doctrine of laches, and this Agreement may be modified, amended, or supplemented only by a written instrument signed by all of the parties.
6. Each undersigned party represents, warrants, and states that all legal action necessary for the effectuation and execution of the Agreement has been validly taken and that the individuals whose signatures appear below are duly authorized to execute this Agreement.

This Agreement shall be interpreted in accordance with the substantive law of the State of South Carolina.

WITNESSES:

Thomas H. Byrd
Barry B. Byrd

Richard Kimmer
Richard Kimmer, Claimant

WITNESSES:

Jeanne A. Butts
Jennifer C. Collins

LAW OFFICE OF PHILIP E. WRIGHT, P.A.

By: _____

Philip E. Wright
Philip E. Wright, Esquire

00-224

JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFFCOAT
W. CHAD JENKINS

DOPE & HUDGENS ATTORNEYS, P.A.

1508 COLLEGE STREET - P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

October 11, 2004

VIA FAX ONLY (803) 254-5719

Warren C. Powell, Jr., Esquire
Bruner Powell Robbins, Wall & Mullins, LLC

Columbia, SC 29260-1110

Re: Richard Kimmer v. Murata of America and Richard Kimmer v. Philip Wright

Dear Warren:

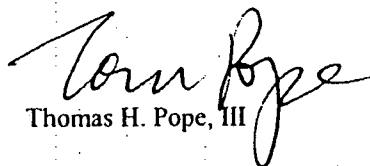
This confirms that you indicated that you have spoken today with your adjuster and she had questions that you indicated that you could not answer without discovery. Accordingly, you recommended that I go ahead and enter suit instead of having a mediation tomorrow.

This confirms that you will be contacting Barron and Pope to advise them that the mediation is postponed for tomorrow. I will then go ahead and prepare a Summons & Complaint and have it filed. You will accept service on behalf of Mr. Wright and provide an answer promptly. We will then engage in expedited discovery with a view towards having mediation in February or March 2005. For Barron's sake, I am sorry that you could not give him more notice of this. I trust that, if there is a charge or inconvenience to him, that your client would be willing to pay same.

Thank you for calling me and I will be sending you a copy of the summons and complaint in the next few days.

With kind regards.

Sincerely,
POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/bb

cc: Barron Grier, Esquire, with enclosures (via fax only)
Pope D. Johnson, III, Esquire, with enclosures (via fax only)
bcc: Mr. Richard Kimmer

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00224

BRUNER, POWELL, ROBBINS, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE (803) 252-7693
FAX (803) 254-5719

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
RONALD E. ROBBINS, P.A.
HENRY P. WALL

* Also Admitted in District of Columbia

WEBSITE: WWW.BPRWM.COM

E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.

JOEY R. FLOYD
CHRISTOPHER B. KIRK
AUTHOR'S E-MAIL: -----@bprwm.com

March 8, 2005

By Facsimile Transmission and by Regular Mail

Thomas H. Pope III, Esq.

P.O. Box 190

Newberry, SC 29108

Pope D. Johnson III, Esq.

McCutcheon Blanton Johnson & Barnette, LLP

P.O. Drawer 11209

Columbia, SC 29211

F. Barron Grier III, Esq.

Grier Law Firm, LLC

107 Westpark Blvd.

W. Center II, Suite 120

Columbia, SC 29210

RE: **Kimmer v. Wright**

Case No.: 2004-CP-46-2659

Our file number:

Gentlemen:

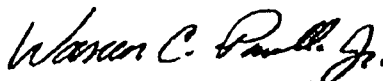
I am suggesting that this mediation, currently scheduled for March 28th, be postponed. Based on information obtained during recent discovery, I have moved to amend Defendant Wright's Answer to the Amended Complaint. Until this motion is heard it would be fruitless to continue with the mediation.

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All Counsel
March 8, 2005
Page 2 of 2

With my kindest regards, I am

Sincerely,



Warren C. Powell, Jr.

WCPjr/*pp*

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
) Civil Action No. 2004 CP 46-2659

Carol M. Kimmer, Personal)
Representative of the Estate of)
Richard Kimmer, deceased,)
)
Plaintiff,)

v.) **AFFIDAVIT OF THOMAS H. POPE, III**

Philip E. Wright,)
)
Defendant.)

PERSONALLY appeared before me Thomas H. Pope, III who being duly sworn, deposes
and states as follows:

1. He is plaintiff's counsel in the above matter. This affidavit is submitted for the purpose of placing in the record documents and exhibits in support of plaintiff's pending motion for summary judgment.
2. Attached herewith are the following exhibits:
 - (1) Kimmer's Statement 9/17/99
 - (2) Initial Form 50 - Filed by Wright
 - (3) Letter from Wright to Kimmer 2/1/00
 - (4) Deposition of David Stalvey 3/30/00
 - (5) Form 51 - Filed by Murata
 - (6) Deposition of Wright 12/10/02
 - (7) WCC Commissioner Childs' letter 6/2/03, w/attached notes to Murata counsel
 - (8) Decision and Order of Commissioner Childs 7/31/03
 - (9) Letter from Tom Pope to Phillip Wright 8/5/03, w/enclosed copy of Decision and Order 7/31/03
 - (10) Appellant's Brief to WCC Panel Review
 - (11) Respondent's Brief to WCC Panel Review
 - (12) Letter from Tom Pope to Phillip Wright 10/31/03, w/enclosed Tolling Agreement of Respondents
 - (13) Letter from Tom Pope to Phillip Wright 11/7/03 enclosing Tolling Agreement
 - (14) Decision of Workers Compensation Panel dated May 27, 2004

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- (15) Letter dated 5/28/04 from Tom Pope to Ann Repo, claims adjuster with carrier for Wright
- (16) Letter dated 7/13/04 from Tom Pope to Pope Johnson (Murata attorney)
- (17) Letter dated 8/24/04 from Tom Pope to Pope Johnson – relating to a 3-way mediation
- (18) Letter dated 8/26/04 from Tom Pope to Ann Repo relating to dates for mediation
- (19) Letter from Tom Pope to Barron Grier (mediator) 9/8/04 – setting August 12 for mediation
- (20) Letter from Tom Pope to Powell 10/11/04 – indicating he wanted discovery and recommending the entry of suit instead of having mediation
- (21) Letter from Tom Pope to Powell 10/15/04 enclosing a copy of S&C
- (22) Privilege Log (Tab 19) – correspondence between Defendant Wright and carrier from 1/27/00 to 9/17/04
- (23) Transcript of Testimony of Phillip Wright 12/10/02 – Workers Comp Hearing
- (24) Letter from Tom Pope to mediator and counsel 2/22/05 – setting mediation for 3/28/05
- (25) Deposition of Kimmer 3/2/05
- (26) Transcript of Testimony of Claimant Kimmer – Workers Comp Hearing
- (27) Plaintiff Kimmer's Deposition – Exhibits 2-38
- (28) Defendant's Answers to Second Interrogatories (Tab 29) – listing what Defendant learned after the suit was brought
- (29) Affidavit of Tom Pope dated April 21, 2005
- (30) Amended Order Reversing Workers' Compensation Decision dated September 1, 2005
- (31) Settlement documents of Wright (third party settlement of June 16, 1999)
- (32) Record on Appeal to SC Court of Appeals

SWORN to before me this 27th)
 day of August 2008)

Lynne Q. Hart)
 Notary Public for South Carolina)
 My commission expires: 8-8-10

Thomas H. Pope, III
 Thomas H. Pope, III

CERTIFICATE OF SERVICE

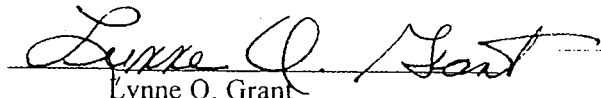
The undersigned employee of Pope and Hudgens, P.A., Attorneys at Law, Post Office Box 190, 1508 College Street, Newberry, South Carolina 29108, does hereby certify that she has served the following named individual with a copy of the pleading indicated below via United States first-class mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

SERVED:

Warren C. Powell, Jr., Esquire
Bruner, Powell, Robbins, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110

PLEADING SERVED:

Affidavit of Thomas H. Pope, III dated August 27, 2008, with attached Exhibits I through 32 in the case of Carol M. Kimmer, as Personal Representative of the Estate of Richard Kimmer, deceased v. Philip E. Wright, C/A 2004 CP 46-2659


Lynne O. Grant
Secretary to Thomas H. Pope, III

Newberry, S.C.

August 27, 2008

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INDEX OF AFFIDAVIT EXHIBITS

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- (8) Decision and Order of Commissioner Childs 7/31/03
- (9) Letter from Tom Pope to Phillip Wright 8/5/03, (copy of Decision and Order 7/31/03 is Exhibit 9)
- (10) Appellant's Brief to WCC Panel Review
- (11) Respondent's Brief to WCC Panel Review
- (12) Letter from Tom Pope to Phillip Wright 10/31/03, (Tolling Agreement is attached to Exhibit 13)
- (13) Letter from Tom Pope to Phillip Wright 11/7/03 enclosing Tolling Agreement
- (14) Decision of Workers Compensation Panel dated May 27, 2004
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- (30) Amended Order Reversing Workers' Compensation Decision dated September 1, 2005
- (31) Settlement documents of Wright (third party settlement of June 16, 1999)
- (32) Record on Appeal to SC Court of Appeals

RECORDED INTERVIEW

This is Ron McNeill. I'm speaking with Mr. Richard Kimmer at 1:13 p.m., my time from Columbia, South Carolina on Friday, September 17, 1999. We're doing this interview in regard to a workers' comp accident that you were involved in. ... inaudible ...

Q: Mr. Wright, I do have your permission to record your client?

A: Yes, that's fine.

Q: All right, Mr. Kimmer, I have your permission to be recording?

A: Yes, sir.

Q: Mr. Kimmer, if you would, state your full name for me.

A: Richard Kimmer.

Q: And spell the last name, please.

A: K-I-M-M-E-R.

Q: And, Mr. Kimmer, what is your home address?

A: Whitmire, South Carolina 29178.

Q: For the record, would you state your home phone number?

A: Area code 803-694-2093.

Q: And what about a work phone?

A: I wish you hadn't asked me that, sir. I can't never remember that number. I always use the 800 number.

Q: All right. What is the 800 number?

A: The 800 number is 1-800-368-7282.

Q: Where does that number ring, do you know?

A: It goes directly through our voice mail and then we have codes that we go through.

Q: Got you. What company do you work for?

A: Murata (ph) of America out of Charlotte, North Carolina.

Q: And what do you do for them?

A: I'm a technician, install textile machinery.

Q: How long have you worked for Murata?

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R/I - Richard Kimmer
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A: I've been an employee with them be five years the first day of December of 1999.

Q: And you're like a technician?

A: Yes, sir.

Q: Have you done the same job the whole time you've been with Murata?

A: Yes, sir.

Q: Where did you work before Murata?

A: Sir?

A: Where did you work before you came to Murata?

A: With Spring Industries.

Q: Spring Industries?

A: Yes, sir.

Q: In what city?

A: In Lancaster, South Carolina.

Q: How long did you work for them?

A: Thirty-one years, one month and one week.

Q: That sounds like one of those dates you remember when you're in the military. You said 31 years ...

A: One month and one week.

Q: How do you remember that?

MR. WRIGHT: He was there a while.

Q: Yes, 31 years, that's a long time. All right, what is your date of birth, Mr. Kimmer?

A: 10th month, 11th day of 1946.

Q: How old are you, sir?

A: Fifty-two.

Q: Are you married, Mr. Kimmer?

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A: Yes, sir, I am.

Q: And may I have your wife's name?

A: Martha Toby Kimmer.

Q: Why did you leave Springs?

A: Well, I had worked with Murata during the time I was working with Springs, for about five years during the week while I worked at Springs on weekends and it was more money, better benefits, and they offered me a full-time job so I went with them full-time.

Q: Got you. Does your wife work?

A: Yes, sir, she does.

Q: What does she do?

A: She's a supervisor at West Point Stevens here in Whitmire.

Q: At West Point Stevens?

A: Yes, sir. That's a textile industry.

Q: Do you have dependent children, sir?

A: No, sir, we don't.

Q: And may I have your social security number for verification?

A: 249-80-1417.

Q: How old are you, Mr. Kimmer?

A: Five eleven.

Q: And how much do you weigh?

A: Two thirty-five.

Q: And what is your educational background?

A: I quit school in the seventh grade.

Q: Do you have a GED?

A: No, sir, I don't.

Q: Any military?

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A: No, sir.

Q: And who's your supervisor there at Murata?

A: Dennis Skelton.

Q: Dennis, last name again?

A: Skelton, S-K-E-L-T-O-N.

Q: Now, do you remember when this accident happened?

A: Yes, sir.

Q: When did it happen?

A: About 6:50 on the morning of January the 29th of 1999.

Q: 6:50 a.m.?

A: Yes, sir.

Q: Where did the accident happen?

A: Just as I was going out of Chester, South Carolina on Highway #9 East.

Q: So this is an automobile accident?

A: Right.

Q: Okay.

A: Yes, sir.

Q: It happened on Highway...

A: Highway #9 going east from Chester toward Lancaster.

Q: Were you driving a company vehicle, were you driving your own car or what were you driving?

A: I was driving my own car.

Q: Which is what?

A: A 1989 Buick Park Avenue.

Q: A 1990 ...

A: '89.

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Q: '89.

A: Buick Park Avenue.

Q: Why were you driving your personal vehicle?

A: Well, our company used to furnish us vehicles but over the years, they done away with it and they went to paying us a car allowance and we furnish our own vehicle.

Q: ... inaudible ...

A: Yes, sir. They pay us mileage plus they give us each month for, you know, like car allowance or whatever kind of car we want to buy.

Q: Do you recall what the weather was like?

A: The weather, it was ... it was fair, just cracking daylight good. You know, January 29th, it's still winter time. It's just cracking daylight good at that time but it was fair.

Q: And Highway #9, is it one lane in each direction, two in each direction or how is it set up?

A: It's one lane each direction in the area where the accident happened.

Q: Tell me how it happened?

A: Well, I'm going east on Highway #9 with the speed limit, there's no sign, but it's a 35 mile zone through there, and I'm doing approximately 35 to 40 miles an hour. And this guy, Mr. Pendergrass ...

Q: That's his name, the other party?

A: Yes, sir.

Q: Do you know his first name?

A: Yeah, but I don't have it right now.

Q: That's okay, that's okay. Pender ... spell it for me, P-E-N-D

A: I ...

Q: Pendergrass ...

MR. WRIGHT: P-E-N-D-E-R-G-R-A-S-S.

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Q: Okay, that's what I've got.

MR. WRIGHT: His first name's Anthony.

Q: Anthony. All right, please continue, Mr. Kimmer.

A: Okay. And just as I was approaching at the convenience store, which Mr. Pendergrass was pulling out of, I was just right there and he come out of the store yard and never made any effort to go and he was going back toward Chester, which he was coming out of the store yard going west and I was going east. And he never made any effort to go across the median, you know, to the other side to go east because he only lived about 50 yards. And I think what actually happened, sir, is I was so close right there to when he was coming out in such a hurry, that he didn't ... he looked but I was so close that he looked behind me.

Q: Now, you said he lives about 50 yards?

A: It's about 50 yards from the store driveway to the driveway of where he was going.

Q: But you didn't know that he lived there, right?

A: No, sir, absolutely not.

MR. WRIGHT: He found out later.

Q: He found out later, okay. But what are you saying? He didn't get back onto the right side, he stayed on the left side?

A: Right. He came out of the store yard and headed up the left side.

Q: He was going to drive up the wrong side of the road to ...

Q: Because he just had a short distance to go?

A: Yeah.

Q: ... inaudible ...

A: And he undoubtedly, you know, I was so close that he undoubtedly looked but looked behind me and I remember reaching for my brakes but there was no skid marks where I never had time to hit him because I was just that close. And he came out in such a hurry, it was ... both cars were totaled.

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Q: He's in the left lane and you're coming along. Did you have headlights on?

Q: Yes, sir, I did. Now, were you just driving along or were you going to go into the convenience store, too?

A: No, sir. I was going on east toward Lancaster to Springs ...

Q: You were not going to the convenience store?

A: No, sir.

MR. WRIGHT: For your information, there's a driveway that goes down into the entrance of an apartment project that sits adjacent to this convenience store and it's just about 50 yards, 50 or 100 yards up the road from the convenience store and that's the only entrance into those apartments, so that was ... he lived down in those with his mother and that's where he was going back to.

Q: He didn't want to go down the road, turn around and come back?

MR. WRIGHT: Well, no, he could have ... he would have just had to cross over into the right lane. He mentioned to me, and it's not actually median, it was painted, it's got like a painted divider.

Q: Oh, got you.

MR. WRIGHT: But all he would have to do is just be across that painted divider and get on the right side of the road, go 100 yards and make a left to go into the apartments.

Q: Got you, I follow you. Now, you said that both vehicles were totaled. How did the vehicles collide?

A: Head on, passenger side to passenger side.

Q: It wasn't head on then. Passenger side ...

A: Well, yeah, it was head on but it was, you know ...

MR. WRIGHT: Not dead center.

A: It wasn't directly head on. I pulled over to try to miss him but ...

Q: Did you swerve left, you swerve right, what did you do?

A: I swerved left, yes, sir. He was still way ... you know, all the way in my lane and I swerved over toward the median a

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little bit but never got out of my lane because I didn't have time.

Q: Got you. So you swerved and the median was here ... inaudible

A: About half way of the grille on each one, you know, passenger side to passenger side about half way of the grille.

MR. WRIGHT: It was kind of right front corner to right front corner.

A: Right.

Q: What happened ... what happened after the collision?

A: Well, when we hit, my car spun around and I was thrown into the floorboard.

Q: Were you wearing a seatbelt?

A: No, sir. I can't tell you a story. I was not wearing my seatbelt. And I was thrown into the floorboard. When I got out ... finally got up and got out from under the steering wheel and all, Mr. Pendergrass had already gotten out of his car. And I'm, you know, concerned about if anybody in the other car is hurt, so I get out of my car and I walk up to him and I asked him is he okay and he said ... he just looked at me and said, "Man, what happened? Did you go to sleep?" You know, and him coming up my side of the road and asking me did I go to sleep. But that's the way it happened and it wasn't, you know ... there wasn't any other words said. We was going to call the, you know, 911, the police or whatever, and he all of a sudden said, "Well, I've got to run to my apartment." Now, why he had to go to his apartment, I don't know, but he knew someone there at the store was going to, you know, call.

Q: Were you injured in the accident?

A: Absolutely.

Q: What did you injure? Well, let's back up a little bit. Were you taken away by ambulance?

A: No, sir. Right at the minute, I was so shook up and so scared or whatever, you know, I didn't ... I didn't know how ... I knew I was hurt but I didn't think I was hurt that bad. But I had went there at the store yard to a pay phone and called my wife from work and she came on over to Chester and got me. But I was not taken away ...

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Q: Came over to Chester where, to the accident site or where?

A: Well, to the body shop, the body shop that pulled my car, she came to the body shop and got me.

Q: So, no ambulances were on the scene?

A: No, sir. They asked me did I want to call the ambulance and I told them I thought I could, you know, I would be all right but I would go by the hospital and get checked when my wife came.

Q: How did your car get to the body shop, was it driveable?

A: No, sir. They put it on a little flatbed truck that they pull them up on.

Q: When did you go for medical treatment?

A: That same morning. It was about 8:30 or 9:00 time my wife got off from work and got over there to get me.

Q: And where did you go?

A: To Chester County Hospital.

Q: When did you report it to Murata about the accident?

A: Well, there was several people at the plant where I was headed to that came by. They knew it before I ever called them, you know, and I reported it the same morning, but they already knew it before they got my call.

Q: Who did you talk to when you called?

A: If I'm not mistaken, sir, and I'm not absolutely sure, it's Dennis Skelton or either Randy Chaney.

Q: I realize this does go back to January, okay.

A: Sir?

Q: I said I understand that you may not be able to remember that since this goes back to January, okay.

A: Right.

Q: But did they say anything about medical treatment for you or

...

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A: No, sir; no, sir. They just asked me, you know, what had happened and what kind of condition I was in, and I told them I was hurt but I didn't know how bad. That was before I had went to the hospital for x-rays and all.

Q: What did they do at the emergency room or Chester County Hospital?

A: They x-rayed my knees and my head. Of course, my head hit the windshield and all. And they x-rayed all that. It didn't show up any broke bones or anything, but the two days ... let's see, that was on a Friday and I think Monday or Tuesday when I had to see another doctor because my knees had swollen up real bad and that's when they started giving me treatment.

Q: What doctor did you see?

A: Dr. _____.

(End of Side One)

Q: This is Ron McNeill and I'm continuing the interview with Mr Richard Kimmer. Mr. Kimmer, do you understand that we're going to continue to record?

A: Yes, sir, I do.

Q: And, Mr. Wright, I have your permission to continue?

MR. WRIGHT: Yes.

Q: All right. Mr. Kimmer, you started to tell me that you saw another doctor, Dr. Kenneth?

A: Dr. Kennehan, out of Union, South Carolina.

Q: What type of doctor is he?

A: Sir?

Q: Do you know what type of doctor he is?

A: He's an orthopedic surgeon.

Q: Okay. Do you remember when you first saw him?

A: It was on February the 2nd, if I'm not mistaken.

Q: Okay. I'll put a question mark by that. What did he do for your knees?

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A: He immediately gave me medication, pain pills and inflammatory, a pill for it, inflammatory ... I don't know the names of these right off.

Q: Did he do any x-rays of your knees?

A: Not right at the minute. He did a few days later.

Q: I think you said your knees were swollen, right?

A: Right.

Q: Were both of them swollen?

A: Yes, sir.

Q: Are you still under treatment with Dr. Kennehan?

A: Yes, sir, I am.

Q: When did you last see him?

A: Wednesday past was a week ago, what date was that?

Q: Last Wednesday, not this Wednesday?

A: Not this past Wednesday but Wednesday of last week.

Q: You mean the 8th, September 8th?

A: Yes, sir, that sounds right.

Q: Have you been out of work since January?

A: Yes, sir, I have. I've had a total of three arthroscopic surgeries on my knees now ...

Q: Wait, wait, three surgeries on which knees?

A: One on the left and two on the right.

Q: Okay.

A: Yes, sir. And there's still my left one is better but not to the point to where I could do my job. But my right one, he just operated on it again Monday coming will be three weeks ago. And I think it was the ...

Q: August 30th?

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A: ... 30th of last month, yes, sir. And I've been in therapy three to five times per week except for about a month over the past seven months.

Q: Well, now this happened in January. We got the claim reported to us in June. I mean, are you getting a weekly paycheck or are you still on salary or what are you doing for money?

A: Murata has long-term disability, short and long-term disability and I had ... I was on short term until it ran out and then they switched me over on long term.

Q: So, you're still on long-term disability?

A: Yes, sir.

Q: How much did you get on short-term disability per week?

A: That's been six months ago.

Q: How much are you getting on long term?

A: On long term, I get, and this is before taxes, \$1700 ... I can't give you that exact figure but it's \$1700 something dollars a month.

Q: How much longer do you have on long-term disability?

A: It goes for one year which will be five more months.

Q: Have they ever talked to you about filing a workers' comp claim? I guess I'm trying to figure out why they put it on short term, why they put it on long term when you were injured while working.

A: Well, Murata tells me that I'm not covered under workmen's comp.

Q: Why?

A: Because I was on my way to work, even though I get paid, you know, mileage to travel and I'm required to travel.

Q: ... inaudible ... your job is out of Charlotte. Are you required to report to Charlotte before you go to a job?

A: No, sir, not ... occasionally, I do have to go to Charlotte but not every day before I go to the job.

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Q: All right. Let me ask it a different way. If you lived in Whitmire and you have a job in Columbia, would you have to go to Charlotte before you came to Columbia or ...

A: No, sir.

Q: ... you just get in your car and come to Columbia?

A: I get in my car and go to Columbia.

Q: So, you're not required to report to the office ... to the office on a daily basis?

A: Right.

MR. WRIGHT: And that day you were reporting to which mill?

A: Springs Katherine Plant in Chester.

Q: Spring Katherine Plant?

MR. WRIGHT: Katherine with a K.

A: That's the plant I was working at at the time of the accident.

Q: Was this your first day being dispatched there or what?

A: No, sir. I had been there approximately two months.

Q: Okay. How much longer did you think that job was going to last over there?

A: That job was ... well matter of fact, they still have some technicians there now.

Q: Let me ask you this question. When you got hired there full-time, did they ever say you start work once you get there or was it ever explained to you beforehand that you were not considered working until you get on the job site? Was it ever discussed beforehand?

A: It was never discussed neither way, sir.

Q: Okay, okay. Now, is Dr. ...

A: Kennehan.

Q: ... Kennehan, is he the only doctor that you've seen?

A: Well, I have seen one more doctor for a, I'll say, second opinion evaluation and that was Dr. ...

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MR. WRIGHT: I think that was Lehman.

A: Lehman, yeah.

MR. WRIGHT: L-E-H-M-A-N.

Q: Carolina Ortho?

MR. WRIGHT: Right.

Q: Now, was that for your knees?

A: Yes, sir.

Q: Do you have any other injuries other than your knees?

A: I still have some problem with my neck. The doctor ... they did an MRI on my neck and they showed that I have a bulged disc and I've had a lot of problems with it.

Q: Do you recall when that was done?

A: The MRI?

Q: Yes, sir.

A: Sir, I ...

Q: That's okay; that's okay. I understand this is January.

A: If I'm not mistaken, that was some time in March maybe.

Q: Okay. I'll just put a question mark by that. Do you know which doctor ordered the MRI?

A: Dr. Kennehan, yes, sir.

Q: Now, the short-term and long-term disability, is an adjuster or somebody calling you on that claim to see how you're doing or have you spoken with anybody?

A: No, sir, I have not.

Q: Never?

A: Never.

MR. WRIGHT: They just send him a check.

Q: You don't think they ... did you have to fill out any paperwork?

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A: I have to have a ...

Q: Let me ask it a different way. I mean, initially when you filled out the paperwork, did you indicate, "I was on my way to work"? And I guess I'm just trying to figure out why short-term would accept it as a short-term claim and not say, "Whoa, you were in the course and scope of your employment, this is workers' comp." And I know that's not your decision to make. I'm just trying to come to some rhyme or reason as to why they're doing what they're doing.

A: Well, the only papers I have filled out for them, sir, is the papers that I have to send in once a month for my disability and ...

Q: Right.

MR. WRIGHT: That's just confirming that you're still going to the doctor and you're still being treated, just a continuation.

Q: Mr. Kimmer, the checks that come to you, what company is sending them to you for short-term or long-term disability?

A: Provident ... hold on just a second, let me grab an envelope. I've got it right here. It's Provident.

Q: ... inaudible ... through Murata?

A: Yes, sir. That's all it has on this envelope and on my letterhead, it's just Provident.

Q: Is there a phone number on there for them?

A: Yes, sir, there it is. It's 1-800-633-7479.

Q: Does it indicate a claim number or anything on there?

A: Okay. Here's a claim number.

Q: Okay.

A: It's 99022072.

Q: Is there an adjuster's name on there or who wrote the letter to you?

A: Sir?

Q: Who wrote the letter to you?

A: There's no one's name on here, sir.

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Q: That's okay. Now, how much were you being paid on your regular job? I mean, before your accident, how much were you being paid per year, per hour or however you were paid?

A: Okay. I was making \$14.59 per hour.

Q: How many hours per week did you work, Mr. Kimmer?

A: At the time of the accident ...

Q: Before the accident?

A: We were working 45 hours per week and sometimes more.

Q: But at the time of the accident, you were not doing your second job at Springs Industries, right? You had already quit there?

A: Oh, yeah, I quit them five years ago.

Q: Well, let me ask it this way. You didn't have another part-time job, did you?

A: No, sir.

Q: Okay, not part-time job?

A: No, sir.

Q: And at this point, you still need additional medical treatment?

A: Yes, sir.

Q: Is there anything else, Mr. Kimmer, that you think that I need to know?

A: Well, no, sir, I don't guess so.

Q: Have you ever been injured on the job before?

A: Well, yeah. My right knee, I had injured my right knee on the job in August of last year.

Q: August of ninety ...

A: '98. And ...

Q: Wait, wait, on the job, you mean with Murata?

A: Right, with Murata.

Q: How did you injure that?

A: Sir?

Q: How did you injure your knee in August?

A: Well, I was on top of a frame on my knees reaching down into the gear box, picking up about a 40 pound pulley and when I picked it up and went to move my knees, you know, to reposition myself to bring it out and lay it up on the end of the frame, just something in there done something. The doctor treated me for ...

Q: Which doctor?

A: I'm sorry, Dr. Kinslow.

Q: Kinslow?

A: Dr. Kinslow and that's at the same orthopedic ...

Q: With Kennehan?

A: With Kennehan, yes, sir. He treated me for inflamed tendons and after a couple of visits with him, it had gotten some better but not well and then in December of '98 ...

Q: Hold on a second. Did you require surgery?

A: No, sir.

Q: In December of '98, what happened?

A: I had reinjured it, the same knee, while working with Murata. I was on a cement floor trying to find something that had fell under the frame and that same knee, it just, for no reason, you know, because it wasn't never well because I was working off of knee pads and a big ball of rags, you know, like a big pillow because when I'd have to get on my knees, that's how tender it still was. But I reinjured it and I told my supervisor at the time which was in that plant was David Stalvy, that I had hurt my knee, re-aggravated it and he wrote up a report. And when I went to see the doctor, which I had asked to see Dr. Kennehan this time, the secretary at the desk told me is it workmen's comp. Well, she asked me and I said, yes, ma'am, it's workmen's comp. She said is this the same knee that you've injured before. I said, yes, it is. And she said, well, we'll have to call your company before we can see you. So, they called Murata while I was standing there waiting and they came back to the window and they told me, said Murata says we can't see you until you come to the

office. And I didn't have to go to the office the other time. Nobody never has to go to the office when they get hurt, you know, before they go to the doctor. I had already, you know, told my supervisor ...

Q: Let me ask you this question. How do you know that, when you say nobody has to go?

A: Well, I'd never heard, you know, anybody saying they had ... if you get your arm cut off, you'd have to go to the office before you go to the doctor, sir?

Q: Oh, I agree, I agree.

A: You know?

Q: If you get your arm cut off, the first thing to do is to try to get it put back on.

A: Right, and the supervisor told me that afternoon that I hurt it, he told me just get an appointment, go on to the doctor in the morning.

Q: Okay.

A: He didn't say anything about going to the office.

Q: I know, and I was just trying to find out if it was a practice of Murata that nobody goes to report it, just go on to the doctor, okay?

A: When I hurt it the first time, when I told the supervisor at the office, he just told me, said just go on, which I was traveling back and forth home because I was close enough to come home. He said just go on home and go to see the doctor in the morning. So, that's what I did. But anyway, when I ... they told me that, I just came on home.

(End of Side Two)

Q: This is Ron McNeill continuing the interview with Mr. Richard Kimmer. Mr. Kimmer, do you understand that I'm going to continue to record our conversation?

A: Yes, sir, I do.

Q: And Mr. Wright, do I have your permission to continue?

MR. WRIGHT: Yes.

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Q: You were saying that they said come to the office and you were not at the office, so you went on home, okay?

A: Right.

Q: Did you go see a doctor in December of '98?

A: Sir?

Q: You saw Dr. ... did you ever get back to Dr. Kennehan in December?

A: No, sir, I didn't. When I went back by the plant which was on my way to Murata from where I live, I stopped at the plant to let my supervisor know, you know, that I needed to go up to the office before I could go to the doctor. And sometimes they're so funny, whenever, you know, things are pushing, they don't want ... they don't want you to miss a minute's work. So, he said, well, you can go to the office but you know we've got work that needs to be done here.

Q: I know, Mr. Kimmer, what you're saying but let me just kind of interject this in here, okay. You left a job of 31 years, one month, one week to go work for somebody that's going to push you to work every minute out of the day. ... inaudible ...

MR. WRIGHT: What Richard was doing before he left was working two jobs and he was working really every minute. So, what he did was he shifted back. Is that correct, Richard? Yes, no? Richard?

A: Yeah.

MR. WRIGHT: You still there?

A: Yeah, I'm still here.

MR. WRIGHT: Is that right?

A: Yeah. See, I was working two jobs. Yeah, I was working Springs ...

MR. WRIGHT: Well, when you went to work with Murata, you actually were slowing up because you stopped working for Springs and you were just working one job instead of working two?

A: Right.

MR. WRIGHT: Instead of working 70-80 hours a week, you cut back to 45 or 50?

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A: Well, 40 to 50, sometimes we'd work, you know, 60 hours at Murata but it depended on what we were doing and where.

Q: Now, what about your medical history? Any history of high blood pressure, low blood pressure, diabetes or any medical condition that you're aware of?

A: No, sir. I've never had no medical problems to, you know ... anything like this that I've had to see a doctor on a regular basis for anything about.

MR. WRIGHT: You had that wreck, that I had for you before, Richard, over on ... he had a wreck on the same highway, a tractor-trailer pulled out in front of him. What year was that, Richard, about eighty ...

A: '94, I think.

MR. WRIGHT: Okay, I was thinking it was earlier than that.

A: It might have been. It's been a long time.

MR. WRIGHT: I was thinking late '80s, early '90s. It's been a while.

A: No, I think it was '93 or '94. Because it was during the time that I was ... before I had got married to Kathy.

Q: So, what happened in that accident?

A: Well, I had topped a hill on Highway #9 going east from Chester toward Lancaster and topped the hill and there was a cattle sale barn, you know, where they sell cattle. And it was after dark and this tractor-trailer truck was coming out of the sale barnyard with a load of cows and he was making a wide turn and just as I topped the hill with all the lights from the sale barn, it was, you know, a lot of light there and reflectors in the road. That's right where the four lanes starts and with this truck straight across the road kind of, he ...

Q: Did you hit the truck?

A: Sir?

Q: Did you hit the truck?

A: Yeah, I hit the truck.

Q: Okay. Were you injured?

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A: Yeah, I had some injuries. I was out of work, I think, five weeks.

Q: What were your injuries in that, if you recall?

MR. WRIGHT: Neck, wasn't it, Richard? I was trying to remember.

A: I had some minor problems with the neck, nothing that ever bothered me anymore since then. My face hit the windshield, I mean the steering wheel. And seems like I may have had ... sir, I'm going to be honest with you, I don't exactly remember.

Q: All you have to say is I don't recall; I don't recall.

A: Well, I don't recall all of it, no, sir.

Q: Okay, that's fine. Is there anything else that you think I need to know?

A: Let's see. In January of '98, I had ... I was being treated for pulled muscles and I was out of work six weeks with that.

Q: Who was treating you?

A: Sir?

Q: Who was treating you in January '98?

A: Yes, sir.

Q: What doctor was treating you?

A: Dr. McCarthy out of Carolina Orthopaedics.

Q: Pulled muscles in what part of your body?

A: In my lower back.

Q: How did you do that?

A: Lifting a heavy gear box at work from the floor, you know, up into the frame.

Q: Heavy gear box, is that with Murata?

A: Yes, sir.

Q: January '98. Because I was wondering when you talked about these other claims, I was like I wonder why I don't have those. We didn't get coverage until June 1 of '98, so we

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would not have had those claims. Okay. How long were you out of work for this?

A: It was six weeks.

Q: Okay. Has that healed? Pulled muscles in your low back have healed up, Richard?

A: Yes, sir.

Q: Any others that you think I need to know about or any other things you don't think I need to know about, ... inaudible ... tell me.

A: No, sir. That pretty well covers it.

Q: Okay. Mr. Wright, is there anything that you wish to add or take away from this statement?

MR. WRIGHT: No, I think you've covered most of it.

Q: Okay, Mr. Kimmer?

A: Yes, sir.

Q: Did you understand that I was recording our conversation?

A: Yes, sir, I did.

Q: All the statements you made to me were true and correct to the best of your knowledge and recollection?

A: Absolutely.

Q: And I had your permission to be recording?

A: Yes, sir.

Q: And, Mr. Wright, I had your permission to record?

MR. WRIGHT: Yes.

Q: The time now is 1:50 p.m. and I'll stop the recording.

/bs

Transcribed 2/3/00

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DAVID STALVEY - 3-30-00

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY: LINDA Y. LOVE

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Columbia, SC 29201
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FAX: (803) 799-5668

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25 Q: Oh, okay.

24 Q: And the technicians all had equal status, so to
25 speak, Richard and the rest ... other five or

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six that worked for you?

It depends really. Because I'm on the new technology so some guys had more experience than others. In fact, some guys were like at levels of just doing certain jobs, certain tasks. Other guys did other tasks.

Q: But, are you aware of the policy with regard to pay and automobiles around 1991 and '92 with Murata?

A: Correct, yeah.

Q: Did technicians have cars furnished to them for their use by Murata?

A: At one time then. I'm not sure if it was '90, '91, but at one time ...

Q: Some time in the past. Eight, ten, twelve years ago?

A: Yeah, they had cars.

Q: And in place of that Murata put in a system where they paid people a car allowance plus mileage. Is that right?

A: That's correct.

Q: Is it true that all the technicians would have a similar work schedule as Mr. Kimmer, namely they may live in Whitmire, they may live in Lancaster, they may live in Greenville, but

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Q: Was he one that would not ... was on the job when he said he would be on the job and did his work without malingering or complaining and that sort of thing?

A: In my experience with him, you know, most of the time he would work for another department, like I said.

Q: Yes, sir.

A: So the time he was with me, that was true.

Q: And that was true from your observation when he was working under others supervision? Is that right?

A: When I was able to observe him, yeah.

Q: Would you say he was a trusting sort of person and accepting type person?

A: Trusting and accepting ...

Q: In terms that he wouldn't ... if someone in management told him to do something, he wouldn't argue with them. He would do it or try to do it.

A: He would.

Q: Okay. And if someone in management told him what workers' comp law was, he would probably accept that suggestion unless he ... it would surprise you if he did that. Right?

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they would travel to whatever plant was having machinery installed?

A: Or serviced or whatever.

Q: Or serviced.

A: Yes, sir.

Q: Maintenance or whatever.

A: Or whatever they had to do.

Q: So, they may drive ten miles one day to work or one week or one month and may drive a hundred the next.

A: Correct.

Q: But travel to the job site was typical. Very few of the employees actually lived in the same town where the machine was being installed or serviced. Is that right?

A: There are some that do, you know. There are some that live in the town that the machines are installed.

Q: But then next month they may be going to another machine?

A: Exactly. They might be needed somewhere else.

Q: Did you regard Mr. Kimmer as a hard working employee during the time that you were around him at Murata?

A: Yes.

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A: That he would accept it?

Q: Right.

A: I would think he would, yeah.

Q: Did you see him the actual day that he was hurt, January 29, 1999?

A: What I remember about that day, I believe, Richard came in that afternoon, I think, to the plant where we were located after he left the hospital and he spoke to me.

Q: Did you ever have any ... did you see him at any point after that since up until today?

A: I don't recall. I don't recall seeing him.

Q: When Murata was furnishing cars to its technicians to drive to the job, did Murata also pay for gas at that time? Do you know?

A: I don't recall the policy at that time.

Q: Okay. But at the time when Murata was furnishing the technicians with cars, it was not paying a car allowance, of course. Is that right?

A: Of course. They just furnished the car.

Q: And they didn't pay mileage.

A: I don't believe they did.

Q: So, the mileage and the car allowance took the place of the car?

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1 A: I'd have to check.
2): As far as you know?
3 A: As far as I know, I think it did.
4): That's all the questions I have. Thank you.
5 MR. MORGAN: I don't have any questions.
6 (There being no further questions, the deposition
7 concluded at 4:07 p.m.)
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Concordance Report Unique Words: 186 Occurrences: 337 Words In File: 1,252 File Concordance Case Insensitive Cover Pages = 2 Includes ALL Text Occurrences Dates ON Includes Pure Numbers Possessive Forms ON -- I -- 1991 [1] 5:8 1999 [1] 8:5 -- 2 -- 2470 [1] 3:5 29 [1] 8:5 -- 4 -- 4:07 [1] 9:7 -- 9 -- 90 [1] 5:13 91 [1] 5:14 [1] 5:8 -- A -- [1] 7:13 accept [2] 7:24; 8:1 accepting [2] 7:15, 16 actual [1] 8:4 address [1] 3:4 affirmative [1] 4:14 afternoon [1] 8:7 allowance [3] 5:19; 8:19, 24 argue [1] 7:19 assembled [1] 4:16 automobiles [1] 5:8 aware [1] 5:7 -- B -- basically [1] 4:21 believe [2] 8:6, 23 borrowed [1] 4:22 -- C -- car [5] 5:19; 8:19, 21, 24, 25 carolina [1] 3:6 cars [4] 5:11, 17; 8:13, 18 check [1] 9:1 club [1] 3:6 comp [1] 7:23 company [2] 3:15, 22 explaining [1] 7:3 cluded [1] 9:7 try [1] 3:6 ie [2] 8:19, 21 omer [3] 3:10; 4:4, 5	-- D -- david [2] 3:1, 5 day [3] 6:8; 8:4, 6 department [2] 4:22; 7:6 depends [1] 5:2 deposes [1] 3:1 deposition [1] 9:6 doesn't [1] 3:22 drive [4] 3:6; 6:8, 9; 8:14 duly [1] 3:1 -- E -- eight [1] 5:15 employee [1] 6:23 employees [1] 6:13 equal [1] 4:24 eugene [1] 3:5 exactly [1] 6:21 examination [1] 3:3 experience [2] 5:3; 7:5 -- F -- fact [1] 5:4 five [1] 4:25 follows [1] 3:2 full [2] 3:4, 5 furnished [2] 5:11; 8:21 furnishing [2] 8:13, 18 -- G -- gas [1] 8:15 give [1] 3:4 greenville [1] 5:25 guys [3] 5:3, 4, 6 -- H -- half [2] 4:6, 13 hard [1] 6:22 hospital [1] 8:9 hundred [1] 6:9 hurt [1] 8:5 -- I -- i'd [1] 9:1 installed [4] 4:16; 6:2, 14, 18 instructor [1] 4:8 -- J -- january [1] 8:5 japan [1] 3:21 job [6] 3:7, 9; 6:12; 7:1, 2; 8:14 jobs [1] 5:5 -- K -- kimmer [3] 4:18; 5:23; 6:22 -- L -- lancaster [2] 3:6; 5:25 last [1] 4:19 law [1] 7:23 levels [1] 5:5 live [4] 5:24, 25; 6:17	lived [1] 6:13 located [1] 8:8 -- M -- machine [2] 6:14, 20 machinery [2] 3:16; 6:2 machines [4] 3:18, 21; 4:16; 6:17 maintenance [1] 6:6 malinger [1] 7:3 management [2] 7:18, 22 manager [4] 3:10; 4:3, 4, 5 manufacture [1] 3:19 manufactured [1] 3:21 manufacturer [1] 3:15 manufacturing [1] 3:23 mean [1] 3:22 mileage [3] 5:20; 8:22, 24 miles [1] 6:8 month [2] 6:9, 19 morgan [1] 9:5 moving [1] 3:17 mr [5] 3:3; 5:23; 6:22; 9:5 murata [12] 3:10, 15; 4:5, 8, 9; 5:9, 12, 18; 6:24; 8:13, 14, 17 -- N -- name [2] 3:4, 5 namely [1] 5:23 -- O -- observation [1] 7:10 observe [1] 7:13 oh [2] 3:19, 25 okay [4] 3:25; 4:11; 7:22; 8:17 -- P -- p.m. [1] 9:7 paid [1] 5:19 pay [3] 5:8; 8:15, 22 paying [1] 8:19 people [1] 5:19 person [2] 7:14, 15 place [2] 5:18; 8:25 plant [2] 6:1; 8:8 please [1] 3:4 plus [1] 5:19 point [1] 8:11 policy [2] 5:7; 8:16 pope [1] 3:3 position [5] 3:7, 9, 13; 4:11, 12 present [3] 3:7, 9; 4:11 project [1] 4:23 -- Q -- questions [3] 9:4, 5, 6 -- R -- recall [3] 8:12, 16 record [1] 3:12 regard [2] 5:7; 6:22 remember [1] 8:6 response [1] 4:14 rest [1] 4:25 richard [4] 4:18, 21, 25; 8:7 right [7] 3:7; 5:20; 6:15; 7:12, 25;	8:2, 20 -- S -- sales [2] 3:17, 20 schedule [1] 5:23 service [6] 3:10, 17, 20; 4:3, 4, 5 serviced [3] 6:3, 4, 15 sir [5] 3:7, 20, 24; 6:5; 7:8 site [1] 6:12 six [1] 5:1 someone [2] 7:17, 22 somewhere [1] 6:21 sophisticated [1] 3:16 sort [2] 7:4, 14 south [1] 3:6 speak [1] 4:25 spinning [1] 3:11 spoke [1] 8:9 stalvey [3] 3:1, 3, 5 states [1] 4:1 status [1] 4:24 suggestion [1] 7:24 supervise [1] 3:13 supervised [2] 4:15, 19 supervision [1] 7:11 surprise [1] 7:25 sworn [1] 3:1 system [1] 5:18 -- T -- tasks [2] 5:6 technical [2] 3:9; 4:2 technicians [8] 3:13; 4:15, 18, 24; 5:11, 22; 8:14, 18 technology [1] 5:3 ten [3] 4:10; 5:15; 6:8 terms [1] 7:17 testifies [1] 3:2 textile [1] 3:16 thank [1] 9:4 town [2] 6:14, 17 travel [2] 6:1, 12 true [3] 5:22; 7:9, 10 trusting [2] 7:14, 16 twelve [1] 5:15 type [1] 7:15 typical [1] 6:12 -- U -- uh-huh [1] 4:14 -- V -- vortex [1] 3:10 -- W -- week [1] 6:9 whit [1] 5:24 work [6] 4:15, 22; 5:23; 6:8; 7:3, 6 worked [2] 4:20; 5:1 workers [1] 7:23 working [2] 6:22; 7:11 wouldn't [2] 7:17, 19 -- Y -- yeah [5] 4:21; 5:10, 17; 7:13; 8:3
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South Carolina Workers' Compensation Commission

P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #
Carrier File #
Carrier Code #
Employer FEIN

Richard Kimmer
Preparer's Name
SSN
Whitemire, SC 29718
City State Zip Address
City State Zip
Employer's Name
Murata of America
Charlotte, NC 28266
Liberty Mutual
Home Phone #
Work Phone #
Insurance Carrier
G. D. Morgan, Jr.
Preparer's Name
Phone #
803-799-9791

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: See No. 11.
2. It is denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See No. 11.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 11.
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See No. 11.
5. It is denied that notice of injury was given the employer. The reasons for denial are: See No. 11.
6. It is denied that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: See No. 11.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: See No. 11.
8. It is denied that the employee is permanently disabled. The reasons for denial are: See No. 11.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$Form 20 to be filed applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: All statutory and affirmative defenses; third party action settled without consent.

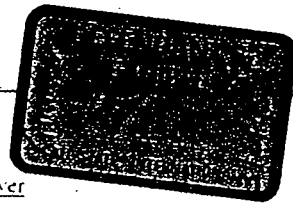
I certify that I have served this document pursuant to R.67-212 by delivering a copy to
Philip E. Wright, 408 North Main Street, Lancaster, SC 29220

Name Address
on the 13th day of January, 2000 by [x] first class mail; [] personal service; [] certified mail.

G. D. Morgan
Preparer's Signature

Attorney for Employer
Title

January 13, 2000
Date



to R.67-205, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
No. 2004-CP-46-2659

Richard Kimmer,
Plaintiff,

v.

Philip E. Wright,
Defendants.

COPY

DEPOSITION OF
PHILIP E. WRIGHT, ESQUIRE

Wednesday, January 26, 2005
10:39 a.m. - 11:53 a.m.

The deposition of PHILIP E. WRIGHT, ESQUIRE,
taken on behalf of the Plaintiff at the offices of
Bruner, Powell, Robbins,

Columbia, South Carolina, on
the 26th day of January, 2005 before Karen L.
Yearwood-Cole, Court Reporter and Notary Public in
and for the State of South Carolina, pursuant to
notice and/or agreement of counsel.

CREEL COURT REPORTING, INC.
1116 Blanding Street, Suite 1B / Columbia, SC 29201
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IN ATTENDANCE:

Richard Kimmer
Carol Thomas

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STIPULATIONS

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

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.

PHILIP E. WRIGHT, ESQUIRE, being duly sworn, deposes
and testifies as follows:

MR. WRIGHT - EXAMINATION BY MR. POPE:

Q: Give us your name and address, please sir.

A: My name is Philip Edward Wright. I live at
1551 Farrow, that's F-A-R-R-O-W, Drive, in Rock
Hill, South Carolina. The zip code is 29732.

Q: And your legal office is in Lancaster only?

A: That's correct.

Q: Okay. And your actual style of your practice
is Philip Wright P.A., something like that?

A: Philip E. Wright, P.A.

Q: Okay. You don't have any partners or
associates in your law office, do you?

A: I do not.

Q: Okay. And they are ... you're, of course,
married?

A: Correct.

Q: And have how many _____

A: I have three daughters.

Q: Three daughters. How old are they?

A: My oldest one's twenty-eight. Then the middle
one's twenty-five. And the other one's twenty-
four. She'll be twenty-five next month.

Q: Are they in York county?

1 A: No, none of them live in York County.

2 Q: Does your wife work in York?

3 A: My wife doesn't work. I don't have any
4 relatives in York County at all.

5 Q: Okay. Now you, highschool, you were educated
6 at where?

7 A: Went to Greenville High School, graduated in
8 1969.

9 Q: And what University did you attend?

10 A: Went to Furman University, graduated in 1973.

11 Q: With any military training after that?

12 A: No. I was sixty-five on the lottery number and
13 the war ended the year I graduated, so I didn't
14 have to go.

15 Q: Luck of the draw.

16 A: Didn't get drafted.

17 Q: And you went to the USC Law School?

18 A: Actually, I went to Tulane Law the first year.

19 Q: Oh.

20 A: In New Orleans, and transferred back, and
21 finished the last two years in South Carolina.

22 Q: So that was '77? '76?

23 A: Finished in '76.

24 Q: '76. And your first legal job, Mr. Wright,
25 would have been with what firm?

1 A: I actually clerked during law school with
2 Luther Lee ...

3 Q: Right.

4 A: ... and Ken Suggs in Columbia. And they hired
5 me, offered me a job as an associate my senior
6 year, which I took. And I stayed with them
7 just less than a year, decided to move to a
8 smaller town, and came to Lancaster in July of
9 1977 to be an associate with Richard E.
10 Richards ...

11 Q: Yes.

12 A: ... who is an attorney there. I became a
13 partner in that firm in about 1980, and went
14 out in sole practice in 1986.

15 Q: Is Mr. Richard's alive?

16 A: He's alive. He's not well.

17 Q: No, not practicing?

18 A: No. He's, he retired about a year, year and a
19 half ago. His health has been in decline for
20 a while.

21 Q: Did you ever practice with anybody after ...
22 well, when you were with Mr. Richard's, was
23 anybody else in the office, lawyer-wise?

24 A: No.

25 Q: So when you left in '86, he was the only person

1 that you had practiced with, except with the
2 Suggs and Mr. Lee and them?

3 A: Correct.

4 Q: So you've been solo ever since '86?

5 A: I had an associate for about six months during
6 2001 and 2002, somewhere in there.

7 Q: Right.

8 A: But he didn't work out, so that's the only
9 other attorney I've actually practiced with.

10 Q: Okay. How would you describe your practice
11 now?

12 A: General practice in a small town.

13 Q: Do you exclude anything? Do you do family
14 court?

15 A: I don't do bankruptcy. I don't do social
16 security. I don't do, you know, specialities,
17 admiralties, stuff like that.

18 Q: Right.

19 A: And I don't do medical malpractice or legal
20 malpractice. I just, I refer that, those cases
21 out.

22 Q: Okay. So, but you do criminal work.

23 A: I do criminal ...

24 Q: You try criminal cases?

25 A: Yes.

1 Q: You do civil cases, mostly for the plaintiffs
 2 I take it?
 3 A: Primarily, yes.
 4 Q: And you handle workers' comp?
 5 A: I have in the past. I don't handle any now.
 6 I haven't had a comp in a while.
 7 Q: When you were with Luther Lee and Ken Suggs,
 8 they did workers' comp, correct?
 9 A: They did.
 10 Q: A pretty good amount of it?
 11 A: We did a lot of it.
 12 Q: Yeah.
 13 A: That was kind of Mr. Lee's ...
 14 Q: Forte I guess.
 15 A: Specialty.
 16 Q: Yeah.
 17 A: Because he knew all the commissioners.
 18 Q: Yeah, that's right. Did you, you assisted him
 19 with ... I guess that was your first exposure
 20 to comp cases?
 21 A: Yes.
 22 Q: So you clerked with, what was the name of it?
 23 A: It was Luther Lee when I ...
 24 Q: And associates?
 25 A: when I started. Ken was the senior clerk,

1 and I was the second clerk. I was a year
2 behind Ken Suggs in school.

3 Q: Right.

4 A: So when Ken came out, he and Mr. Lee, during
5 the next year, formed a partnership and it was,
6 Lee and Suggs. But I ...

7 Q: And Sherod Eadon ...

8 A: ... I left about the time they formed a
9 partnership.

10 Q: Now Sherod Eadon, and those guys came later?

11 A: Yeah. Mike Kelly was a year behind me. Sherod
12 Eadon was a couple years down the road, behind
13 him. So ...

14 Q: But anyway, during the, you clerked for him for
15 a while, and then you were an associate for a
16 year?

17 A: Just under a year, about, well, from November
18 when I was sworn in until June when I left.

19 Q: And during that time you helped them with some
20 comp, I understand?

21 A: They had me primarily doing small civil cases
22 in, in outlying counties, where you had to
23 travel and try the little, less profitable
24 cases.

25 Q: Uh-huh (affirmative response).

1 A: So, I was running around to various ... I
2 don't, I don't think I did, I did very little
3 comp that last year that I was there with them.

4 Q: Well, you did comp in Lancaster for some period
5 of time, and then you haven't done it now for
6 the last, what?

7 A: I had a few comp cases in Lancaster. There's
8 not much comp in Lancaster because the, the
9 employer there was Springs, the primary
10 employer, and nobody wanted to file comp cases.
11 They discouraged it. So there was really very
12 little comp work in Lancaster.

13 Q: But anyway, you did some in other counties or
14 around there?

15 A: I had a Chester County case that I went to a
16 comp hearing again and I don't even remember
17 the claimant. It's been twelve, fifteen years
18 ago.

19 Q: Uh-huh (affirmative response).

20 A: But that's the only ... and I think we had a,
21 I think I had a death case in York County.
22 Those are the only two I can recall out of
23 Lancaster.

24 Q: And then a few in Lancaster, I guess?

25 A: A handful.

1 Q: So in the last, say fifteen years, you would
2 say you've handled a handful of workers' comp
3 cases?

4 A: Ten or twelve, probably. I was associated on
5 a North Carolina case because there was a South
6 Carolina claimant, with a firm out of Monroe.

7 Q: So what, what percent of your practice would
8 be, say, personal injuries?

9 A: Probably about twenty percent at the most.
10 That may be high. I do a lot of domestic,
11 real-estate closings.

12 Q: Uh-huh (affirmative response).

13 A: Some collection work.

14 Q: So domestic would be like a third of your work
15 or something?

16 A: Probably, probably more like forty, forty-five
17 percent, somewhere in that range.

18 Q: And real-estate ...

19 A: Time-wise, it's probably sixty percent. Real-
20 estate, probably around twenty.

21 Q: Well, let's say in the last ten years, personal
22 injury has been maybe twenty percent
23 consistently throughout that period?

24 A: Pretty much.

25 Q: Do you practice, and obviously in Lancaster, do

1 you also practice in other counties around?

2 A: I practice, my only office is in Lancaster. I
3 take cases, generally, in Chester County,
4 occasionally in York County. I do some
5 collections in Chesterfield, Kershaw,
6 Fairfield. That's about as far in the field as
7 I get.

8 Q: Do you do any form of Yellow Page or website
9 advertising or any other firm brochures or
10 anything like that?

11 A: All I have is just my name in the phonebook.
12 The bar association had an ad that lists every
13 lawyer in the county, I'm on that.

14 Q: Uh-huh (affirmative response).

15 A: And, you know, I'm in the Yellow Pages under
16 attorney, but I don't, I don't buy a special ad
17 for that, I'm just listed.

18 Q: Regular listing?

19 A: Yeah.

20 Q: There's no website or anything?

21 A: No.

22 Q: Now, you knew Richard Kimmer practically ...
23 when do you remember knowing him first, Mr.
24 Kimmer?

25 A: You know, I purge my files every ten years and

1 I, I went back trying to figure that out, and
2 I should have looked at the family court
3 documents. But I've known Richard since, I
4 would say, the mid to late 80's, when I did
5 some domestic work for him.

6 Q: Okay. So the first, I take it you couldn't
7 actually remember the first meeting or
8 anything?

9 A: Gosh, no.

10 Q: Would it, would it have been probably a
11 domestic case or some other kind of case?

12 A: I think it was a domestic case. I've handled,
13 I've handled a number of domestic matters for
14 him. I've handled a lawsuit to collect some
15 money from his daughter for him. And then I
16 handled a wreck in 1993 for him.

17 Q: Uh-huh (affirmative response).

18 A: And then this wreck in '99. There may have
19 been some other things and they might come to
20 mind as we go through if you refresh my memory,
21 but that's, that's the bulk of the work that I
22 remember doing.

23 Q: All Right. So the domestic case would have
24 been like one or two or three or what? How
25 many?

1 A: I want to say two. But in one of them, it
2 seemed like we had multiple ...

3 Q: Hearings?

4 A: ... hearings and procedures, as domestic cases
5 tend to ...

6 Q: Sure.

7 A: ... last forever.

8 Q: Explode. Multiply. Did you ever handle a
9 workers' comp matter before 1999 for him?

10 A: For Richard?

11 Q: Uh-huh (affirmative response).

12 A: Not that I recall.

13 Q: The wreck in 1993 would have been for what type
14 of injury or accident?

15 A: Rick, well the injuries, as I recall, was
16 basically a soft tissue whiplash, neck, back
17 type of thing. He was coming toward Lancaster,
18 I believe, and ran, and a truck pulled out in
19 front of the stock barn over at the, Chester,
20 well Richburg, and he, and he ran into the
21 truck that pulled out in the road and we
22 settled that case. I think that was February
23 of '93.

24 Q: Do you have any idea, was it like five thousand
25 dollar settlement or twenty thousand

1 A: It was actually four thousand.

2 Q: Four?

3 A: Actually four. It was a small case. There
4 wasn't a, there wasn't a lot of injuries. I
5 think he saw a Dr.

6 Q: A few times.

7 A: ... Hill, who was somebody I don't ... it was
8 a doctor he knew. I wasn't familiar with Dr.
9 Hill. That's who my records indicated we paid
10 at the, at the end of the case.

11 Q: Okay. So you knew him fairly well by the time
12 1999 had come, since you ...

13 A: I've had a ... he was one of my more familiar
14 clients because I had done so many things for
15 him, and known him for many, many years.

16 Q: Yeah. You, you thought a lot of each other and
17 that sort of thing?

18 A: He, he's a nice fellow. A good client.

19 Q: Well, tell me about the January 1999 accident
20 he was in. What do you remember the first
21 contact you had with Rick? I mean, did he call
22 you, did he come by, do you remember?

23 A: It seems like he called initially.

24 Q: Uh-huh (affirmative response).

25 A: But then he came in.

1 Q: Right.

2 A: And I remember when he called I said, oh no,
3 you didn't have another wreck. And it was on
4 Highway 9, the same highway he had the '93
5 wreck on.

6 Q: Uh-huh (affirmative response).

7 A: He said, yeah he did. And that's, I believe he
8 called first and later came in.

9 Q: Uh-huh. All right. Tell me, sort of
10 chronologically, about the first meeting, what
11 was said, what happened, what you did.

12 A: He came in and told me, well, he told me some
13 about it on the phone, I believe, and then when
14 he came in, we did, went through in more
15 detail, but he said he was coming from his
16 home. And I think he lived, at that time, in
17 Whitmire, and he was going to the Katherine
18 Plant to work. He was driving his own car. He
19 came through Chester and turned on to the,
20 what, turned off of what we called the bypass
21 of Chester to get on Number 9 to go out to the
22 Katherine Plant which is out Number 9. And as
23 he was coming out Number 9, a fellow came out
24 of a, from what appeared to be a convenient
25 store, about a quarter of a mile down the

1 intersection on the right. And instead of
2 coming out and going across Richard's lane to
3 travel and getting in his right lane to travel,
4 the guy, for some reason, turned into Richard's
5 lane to travel and started up the wrong lane,
6 directly toward Richard. And they, the cars
7 collide at some point, right in there. And it
8 turns out the guy was apparently going back,
9 there's an apartment project right along where
10 they collided, and the guy was trying to, I
11 guess, just come up the wrong side of the road
12 to go into the apartment project.

13 Q: Uh-huh (affirmative response).

14 A: They, they met, hit head on. Richard was, was
15 injured in the collision. He hit his knee's,
16 I think bumped his head, and had to go to the
17 hospital there. I think he was treated at the
18 emergency room. And then he just ... Richard,
19 Richard had a history of injuries and
20 difficulty, aches, and pains, and stuff. We,
21 we've talked about that frequently. We'd be in
22 the office on this other stuff. He worked two
23 jobs a lot of the time. He worked at two full
24 time jobs, and drove a lot, and this, that, and
25 the other. So he was, he was constantly having

1 some difficulties and he had a number of
2 injuries as I recall. But he, he just seemed
3 to get, he seemed to keep having continuing
4 problems after this wreck, and you know, up
5 until the time I stopped representing him, he
6 was seeing two or three different doctors, and
7 I think they've done some surgeries, and were
8 working on his knees and various things. And
9 then at that point, I kind of lost touch with
10 him.

11 Q: Do you, do you remember about when he came to
12 see you after the wreck? Was it like a week
13 later, possibly?

14 A: It wasn't long after the wreck. It was, it was
15 within a few, I would, I would think it was
16 within a few days.

17 Q: Okay. And you began gathering information, of
18 course, to access the case, I take it?

19 A: Right, it was, I mean, it was a fairly clear
20 liability case. I mean, the guy was on the
21 wrong side of the road. It was no, no question
22 about liability. And, so there wasn't a whole
23 lot of investigation to do. We, we got the
24 traffic accident report to show the other guy
25 was on the wrong side of the road. And I think

1 he admitted that to the officer. No contest
2 about it.

3 Q: What, what do you know about Richard's job at
4 that point?

5 A: I knew, we talked about his job when he came
6 in. He worked at Murata. He had been working
7 for Springs for a long time, and if I remember
8 correctly, at that point, he had already left
9 Springs. He worked at Springs right at thirty
10 years, but he had left them at that point in
11 time. And I think just now had one job which,
12 I knew he had two in the past but now he only
13 had, I think he only had the one. He told me
14 he was a, he installed textile machinery. He
15 would go from his home to various places,
16 wherever they would send him to do the work.
17 And he might go somewhere for a week or he
18 might go somewhere for a month or he might go
19 somewhere for six months. I asked him, you
20 know, how they paid him for the travel and he
21 said they paid him mileage. And I asked him if
22 they paid him from the time he left his house,
23 did he, did he get on the clock when he left
24 the house or did he get on the clock when he
25 got to the job. He said he got on the house,

1 on the clock when he got to the job. So from
2 that information, it did not appear to me to be
3 comp related. It appeared to just be simply
4 somebody on their way to work that wasn't
5 covered with comp and it's just simply a wreck
6 case.

7 Q: When did you conclude that there was a possible
8 comp claim?

9 A: Around the first of June, I got a call from a
10 fellow and I wrote a letter and I'm trying to
11 think ...

12 Q: Excuse me ...

13 A: ... of his name.

14 Q: ... is this early June of '99?

15 A: Early June of '99. In fact, I think my letter
16 was dated June the 1st. I think the guy's first
17 name was Bill, and his last name starts with an
18 H. And I can't, I can't recall it right now.
19 But somebody called and said, gave me
20 information that lead me to believe that some
21 of the information Richard had given me was not
22 correct. They basically said that he was paid
23 from the time he left home until the time he
24 got to the job. So, he was getting paid for
25 that time. So I wrote Richard a letter after

1 I talked to that gentleman, and I said, so and
2 so came in, I forget the name, and said you
3 were getting paid by the hour, when you, from
4 the time you left the house. Give me a call
5 and let's talk about that. And as I recall,
6 after Richard got the letter, he did call. We
7 talked, he told me that no, in fact, you do get
8 paid from the time he left, he only got paid
9 when you got to the job. So the information
10 that the gentleman had given wasn't correct.
11 And I said, well I want to be sure, you know,
12 before we did anything else that that was the
13 case. He said no, he did not get paid until he
14 got to the plant, and that's when his time
15 started. So, that's pretty much that.
16 Richard, at some point, and I don't know
17 whether it was this fellow that called me or
18 somebody else, was telling Richard that, that
19 they thought it was a comp claim. And Richard
20 told me what they had said, and so I filed a
21 comp claim for him, just to cover that base to
22 see if there was any possibility of it being a
23 comp claim. I didn't, frankly, think it would
24 be a successful comp claim but, you know, he,
25 I went ahead and filed it just out of, to kind

1 of protective it.

2 Q: Have you had workers' comp cases in the past
3 that also involve, later, third party actions?

4 A: I don't recall that I have. I don't recall
5 that, that to that point I had. Most, most of
6 the, most of the injuries, most of the comp
7 stuff I had were people who either got cut on
8 machinery or got their hand stuck in something
9 or, and it wasn't a, you know, we always looked
10 at the prospect of a possible, you know,
11 products liability case or something like that
12 against a manufacturer of the machinery, safety
13 and guards, and stuff like that. But I've
14 never, I don't recall one ever getting to that
15 stage, where there was actual third party
16 liability. I don't recall another car accident
17 related case.

18 Q: Did the man that talked to your, tell you that
19 Richard got some car allowance in addition to
20 mileage?

21 A: No, he just told me that he got paid from the
22 time he left home to the time he got to work.
23 His, his actual workday started the time he
24 left home.

25 Q: Uh-huh (affirmative response).

A: Which was, which was contrary to what Richard had told me.

Q: But he thought it was, whoever this ... this person that called, of course, would have been either a boss of his or a co-employee or something like that?

A: You know, I don't, I don't recall the relation to the case. I don't recall whether he was a coworker or a boss or whatever but he, he knew Richard from the employment and he knew about his method of work or whatever.

Q: Uh-huh (affirmative response).

A: And that was what he told me.

Q: Was it Bill Manning? Does that sound right?

A: I, for some reason I was thinking it was an H. The first, the letter H in the first name, last name, seems to stick but it might have been Manning. I don't, I don't know. There's actually a letter somewhere, dated June the 1st, that I've sent to Richard in some of the stuff. I don't ...

Q: Have you reviewed lately ... you testified at the workers' comp hearing?

A: Correct.

Q: Have you reviewed that transcript at all?

- 1 A: Actually, I don't think I have. I remember
2 reading the opinion, but I haven't looked at
3 the transcript of that. I may have seen it one
4 time but I, I haven't seen the last two or
5 three months at least.
- 6 Q: Okay.
- 7 A: I remember part of the proceeding. I remember
8 a lot of objections.
- 9 Q: You remember reading it, you just don't
10 remember when?
- 11 A: Right, the transcript. I think I read it, I
12 don't know, six months ago or so, something
13 like that.
- 14 Q: Did the, is it your recollection that it was
15 substantially accurate? There wasn't any,
16 there weren't any egregious typos in it or
17 anything? The answers were accurate?
- 18 A: When I went through it I, I don't remember
19 anything that jumped out at me as being
20 inaccurate.
- 21 Q: On one place in the transcript, on page sixty-
22 four, it say's that, and I'll let you read it
23 for yourself, but I'll just summerize it and
24 ask you to read it. You said, as, as the case
25 developed and I learned more about his

1 employment arrangements, it became apparent
2 that there may be a claim, depending upon those
3 facts. And that's at the top of sixty-four.
4 See if that's, seems to be accurate?

5 A: Yes, that's, uh-huh (affirmative response). I
6 remember that testimony.

7 Q: I think you've characterized Mr. Kimmer as
8 someone with a very strong work ethic?

9 A: He, he worked a lot. He works a lot of hours,
10 as I recall.

11 Q: You would agree with that characterization?

12 A: I, I can't disagree with that.

13 Q: Now you, you also said, as I recall, that you
14 had made some calls to the workers' comp
15 commission to find out if there was a first
16 report of injury, before you filed the Form 50?

17 A: Yeah. I think, I think we did do that to see
18 if they had ... the thing that puzzle, was
19 puzzling to me was that he was receiving short-
20 term disability and then long-term disability.
21 And in order to get that, he wouldn't have
22 been, it wouldn't have been an on the job
23 related injury, it would have been a non-work
24 related injury. And even the employer, as I
25 understood the way they were doing that ...

1 because Richard had a hard time with the, with
2 the disability people. They kept, that was the
3 main thing we did for several months, was try
4 to keep money flowing to him through the
5 disability because they kept wanting to cut him
6 off the, and he had to re-certify every month.
7 It was kind of a tedious process and every
8 month we went through the same thing. Richard
9 would call me and say, I got to get this form
10 filled out again, and I got to do this, and I
11 got to do that. And you had to get stuff from
12 the doctor and we'd always, we had trouble
13 getting the doctors to cooperate. But as I
14 understood it, when Richard was filling every
15 month, and the employer was filling every
16 month, and basically, you know, they were
17 saying that it was not work related, and that
18 he was entitled to the short term.

19 Q: Uh-huh (affirmative response).

20 A: So, you know, at some point, I recall saying,
21 we, I gonna, I'm gonna see if, how they
22 reported this, if they reported this as a work
23 related injury, and my recollection is they did
24 not. They hadn't filed a first report of
25 injury like they would ordinarily do in a comp

- 1 case.
- 2 Q: That's a specific comp form. I don't know what
- 3 the number is.
- 4 A: Yeah, I don't know the number.
- 5 Q: So, so you determined ... when did you
- 6 determine that you were going to file a Form
- 7 50?
- 8 A: It was, it was right at the time when we
- 9 settled with the, with the liability carrier.
- 10 We, we filed it, filed it within a couple of
- 11 days of consummating settlement on the fifteen
- 12 thousand on the liability case. Because the
- 13 guy called me, end of May, first of June, when
- 14 I wrote the letter to Richard and it was a few
- 15 days before I talked to Richard about that, and
- 16 just decided to go ahead and file it to see if
- 17 there was a potential for claim there.
- 18 Q: And of course, workers' comp would provide on,
- 19 as much or more benefit to a claimant under
- 20 these circumstances, if it was available than
- 21 any disability policy?
- 22 A: The schedule of benefits would be different,
- 23 yes.
- 24 Q: And better, of course?
- 25 A: Probably, yeah.

1 Q: Do you have a pretty clear, chronological
2 recollection as to what was going on in June of
3 '99, as far as dealing with the liability
4 carrier, dealing with the medical providers,
5 considering Richard's injuries? I think you
6 said his, you knew in June, in early June, that
7 his injuries were significant, that it wasn't
8 going to be, it wasn't obviously a four
9 thousand dollar case, it was a significant
10 case.

11 A: By June, he had been through enough medical
12 treatment and has incurred enough medical
13 expense to where it was obvious that the case
14 was going to exceed the base liability policy
15 of the Pendergraf man that hit him, it was
16 fifteen thousand minimum limits policy. And
17 the, and the ... well, the liability carrier
18 just tendered their limits. I mean, they, they
19 knew they were going to have to pay that
20 anyway, so they went ahead and tendered their,
21 their fifteen.

22 Q: Yeah, but from the standpoint of Richard Kimmer
23 and his injuries, you knew that he had
24 significant medical bills.

25 A: Sure.

1 Q: Early June ...

2 A: Yeah.

3 Q: ... it was it was over twenty-five thousand,
4 wasn't it?

5 A: Yeah. I'm sure they were probably that or more
6 by June. And he had, he had under insurance
7 through some vehicles at his home, I think
8 owned by his wife and some owned by him, with
9 State Farm and Farm Bureau. And those policies
10 were out there to go after, so there was
11 another fund to pursue after that. I mean
12 there was, that was probably going to be, well,
13 I don't remember the exact size of the policy,
14 there were several others though.

15 Q: Would, would it be ... would you agree there
16 was approximately a hundred thousand dollars in
17 UIM?

18 A: I'm, I'm thinking it was in that I'm
19 thinking a hundred, hundred and a quarter
20 maybe, somewhere in that range.

21 Q: Do you remember when you received, according to
22 ... well, we'll mark this as an exhibit,
23 Exhibit One.

24 (Plaintiff's Exhibit Number One was marked for
25 identification purposes.)

1 Q: This, this is a check, it's dated, June the
2 14th, '99 from ... was it State Auto?

3 A: Auto Owners.

4 Q: Auto Owners. And that's the limits of
5 Pendergraf's liability coverage?

6 A: Correct.

7 Q: And there was fifteen thousand of course?

8 A: Right.

9 Q: And it, plus it was paid out ... it was payable
10 to Mr. Kimmer and you, and of course two
11 providers?

12 A: That's correct.

13 Q: Who had, who had subrogation liens; is that
14 right?

15 A: Right.

16 Q: And so when that check was distributed, how,
17 what day was it that you got it? Do you
18 remember?

19 A: I probably got it the 15th or the 16th. I mean,
20 we've gotten it within a day or two after being
21 mailed. I don't, I don't remember where this
22 adjustor was physically located.

23 (Plaintiff's Exhibit Number Two was marked for
24 identification purposes.)

25 Q: Exhibit two is just a settlement sheet. That's

1 how the funds were distributed?

2 A: That's correct.

3 Q: So that settlement, of course, accomplished at
4 least getting some of Mr. Kimmer's bills
5 temporary, or a portion of them paid, and sort
6 of pleased those creditors temporarily?

7 A: We were having trouble with, with the medical
8 creditors at that point. They were clambering
9 that get something paid. So yeah, that, that
10 made them happy for the meantime.

11 Q: But it was obviously no cash to Mr. Kimmer on
12 Exhibit Two?

13 A: No.

14 Q: Now, exhibit ...

15 A: No, no, no. His medical, his medial exceeded
16 the ten that was left after my fee.

17 (Plaintiff's Exhibit Number Three was marked for
18 identification purposes.)

19 Q: Exhibit three is a, just a release that was
20 executed? Settlement agreement?

21 A: Correct.

22 Q: And that was signed on the 16th of June?

23 A: It was dated the 16th and witnessed by two of my
24 secretaries.

25 Q: All right. Do you, do you specifically

1 remember Mr. Kimmer coming in on the 16th? Do
2 you remember the occasion, but not maybe the
3 date? Do you remember the occasion when y'all
4 were sitting there, and of course, you had the
5 settlement check you had to sign there ...

6 A: Right.

7 Q: You signed the settlement statement, which was
8 the 16th of June also. And then you got the
9 settlement agreement release.

10 A: Right.

11 Q: Do you sort of remember, have a recollection of
12 sitting in your office or conference room or
13 something?

14 A: Six years ago. I don't have, I don't have any
15 clear recollection of it.

16 Q: Okay. Well, do you remember when it was
17 discussed about the, the Form 50? You had a
18 Form 50 in your office?

19 A: Right.

20 Q: And I guess you signed it, but do you remember
21 saying, now Richard we're going to file this or
22 any discussion about it? Because it, it
23 appears to be dated the 18th, I think. I've got
24 a copy somewhere.

25 (Plaintiff's Exhibit Number Four was marked for

1 identification purposes.)

2 Q: Exhibit Four is the Form 50 that you had in
3 your office. Of course, it was blank. I would
4 assume that at some point, you filled it in ...

5 A: Correct.

6 Q: ... or had your office do that?

7 A: They would type it in and I would sign it.

8 Q: And I guess the normal procedure is the lawyer
9 completes it the best he can and then he talks
10 to the client about it and if it needs to be
11 changed he does, if not, he shows it to him,
12 and then goes ahead and signs it as a lawyer,
13 and sends it in? Is that the procedure that
14 was followed, do you think?

15 A: I don't know that Richard ever saw this before
16 we filed it. We, Richard and I talked about me
17 filing it, and I told him we were going to file
18 it. I also told him, as I recall when we filed
19 it, that I did not believe he had a compensable
20 injury, but that I was going to file the case
21 on the possibility he did. So, and it looks
22 like we did that on the 18th, because I signed
23 my name and I handwrote the 18th date on it,
24 when it was signed. But I don't think Richard
25 ever saw that form before it went to the

1 Commission.

2 Q: Is that partly ... as you noted that, that the
3 area of the injury, that part of the body that
4 was hurt, were the knee, back, and neck. And
5 at that point, when it was signed, you knew
6 that his medical bills were over twenty-five
7 thousand?

8 A: Correct.

9 Q: And he was continuing to, of course, need
10 surgery and other treatment?

11 A: He was, he was still seeing the doctor. One of
12 the, one of the reasons for the liability
13 settlement was to get the medical creditors
14 paid so he could keep the seeing him, and he
15 didn't have the money or the ability to keep
16 paying him, and they want to get paid.

17 Q: But you determined that there was a possible
18 workers' comp claim. I mean, correct me if I'm
19 wrong. I thought I understood you say in early
20 June.

21 A: Well, in, around the end of May, first of June,
22 this Bill person called and told me some
23 information contrary to what Richard told me
24 about him getting paid from home, and that's
25 when I wrote Richard and asked him about it.

1 It turned out that Richard still said that
2 information wasn't right. So I, frankly, I
3 really didn't think that he had a comp claim
4 but, because the possibility was out there, I
5 went ahead and filed it. I, I was never
6 convinced that he comp claim quite frankly.

7 Q: Uh-huh (affirmative response).

8 A: Not based on what I had.

9 Q: The letter you wrote, I don't, I don't recall
10 seeing it. Do, do you, do you have it in your
11 ...

12 A: It's in the documents that we, that, that my
13 counsel ...

14 MR. POWELL: Tom, I believe this is in the material
15 we've given y'all.

16 A: It's just a one, it's just a short letter.
17 It's like three or four lines.

18 Q: Okay. Well I'll ...

19 A: It had the June the 1st.

20 Q: We'll take a break in a second, and I'll look
21 right quick. I don't want to hold you up right
22 now.

23 A: Okay.

24 Q: But you knew that if there was a comp claim, it
25 needed to be investigated, and you were going

1 to file a Form 50 to protect his rights?

2 A: Correct.

3 Q: And you wouldn't have filed it if you thought
4 it was frivolous, you just didn't know for sure
5 what the factual basis was?

6 A: I, I didn't. I didn't know. At that point in
7 time, I didn't believe that he had factual
8 basis for a claim, but because people were
9 telling him, somebody was telling him he did,
10 I went ahead and filed it to try to protect his
11 rights in that regard.

12 Q: All right. You gave no notice, in doing that,
13 you didn't give any notice to the workers' comp
14 carrier?

15 A: No.

16 Q: What did you learn about the workers' comp
17 claim later, if anything?

18 A: After we filed a claim, they took a statement
19 from Richard, I think it was in September, I
20 guy named McNeill I think took it, and asked
21 Richard about his employment. At that point,
22 Richard told the fellow that was asking him
23 questions, that he got paid a car allowance
24 for, for transportation cost. And that was the
25 first I'd heard of that. I was, I was on the

1 ... I was part of the interview and Richard was
2 answering the questions. But he told the, he
3 told the fellow that was taking the statement,
4 that he had, that they paid him mileage and
5 that they paid him a car allowance, at I think
6 three hundred dollars a month.

7 Q: Uh-huh (affirmative response).

8 A: To, to basically, I don't recall how he put it.
9 They paid him a car allowance of three hundred
10 bucks.

11 Q: And that statement would have been several
12 months after the June filing of the Form 50?

13 A: I think, I think they took that statement in
14 September. And I don't remember whether they
15 took it, I think they took it before they filed
16 their Fifty-one, their answer.

17 Q: Now the man that called you, you knew he was
18 some type of business, either co-employee or
19 somebody in the, up above the chain, at Murata;
20 is that right?

21 A: He was, he was somebody that knew Richard
22 through Murata.

23 Q: Yeah. It wasn't some neighbor, it was somebody
24 that worked with him? Presumably?

25 A: I'm not sure of that. It was somebody that

- 1 knew about his employment at Murata. I don't
2 know how they knew about it. I don't, I don't
3 think the person that called me, identified
4 themselves as to what they were or where they
5 worked. Just by name, they knew Richard ...
- 6 Q: They were cooperative with Richard's position?
- 7 A: They relate ...
- 8 Q: They tried to help out Richard?
- 9 A: Yeah, yes. They thought they had information
10 that would help him, and they gave me, he gave
11 me that information that I related in the
12 letter to Richard.
- 13 Q: You knew that Richard's education was somewhere
14 in the 7th grade level or something like that?
- 15 A: I knew that Richard didn't finish school and
16 that he had done mechanic labor, manual labor,
17 most of his life. So I didn't, no I, I know he
18 didn't have a real high level of education.
- 19 Q: Well Bill Manning, if that's the person, is a
20 graduate of Georgia Tech. Did you, did you get
21 the idea the fellow you were talking to was
22 somebody that had a degree of intelligence?
- 23 A: I don't, I didn't make a judgement about that.
24 I just talked to him on the phone.
- 25 Q: Well, I know you couldn't ...

1 A: I couldn't ...

2 Q: He'd didn't announce that he was a Georgia Tech
3 graduate, but I mean, did he seem to be
4 carrying on a conversation that was, you know,
5 had a relatively high level of sophistication
6 about terms and things like that?

7 A: Not particularly. I mean, he just called and
8 said, Richard's getting paid from the time he
9 leaves the house, which was contrary to what
10 Richard had told me.

11 Q: Yes. But you would assume that whoever was
12 calling would have, would have known that? It
13 wouldn't have been, it wouldn't been just some
14 casual acquaintance, it had been somebody that
15 worked at Murata and knew significant about it,
16 amount about Murata's pay?

17 A: I didn't make any assumptions about that. I
18 don't know.

19 Q: So in that conversation with McNeill is when
20 you, you say you realize first that, that you
21 had enough knowledge to say that there was a
22 workers' comp claim?

23 A: Well, I had enough knowledge to know that he
24 was receiving more of a benefit related to
25 travel than he told me, and that that might

1 bring him within the definition of the Act, as
2 far as working, from the time he left home.
3 If, if that was, if that was deemed to be
4 substantial support from the employer to get
5 him to and from the job, he might be one of the
6 exceptions to the rule about work travel, and
7 generally not being covered ...

8 Q: People coming and going ...

9 A: Coming and going home. Going and coming,
10 right.

11 Q: Again, just being clear here, by early June of
12 '99, you thought that Richard might possibly
13 have a workers' comp that you were going to
14 protect, even though you were doubtful that he
15 would win on it; is that fair to say?

16 A: I never ...

17 Q: Try to answer yes or no, and then explain it
18 all you want, but just ...

19 A: No. No. Pardon me ...

20 Q: Tell me what ...

21 A: As stated, that's not correct.

22 Q: All right. Well tell me ...

23 A: I never thought that Richard had a comp claim.
24 I knew that somebody who he was talking to
25 thought he had a comp claim, but based on the

1 facts that Richard had given me, and I
2 confirmed with Richard, it did not appear to me
3 that he had a comp claim. In an effort to try
4 to protect his rights if he did have a comp
5 claim, I filed the Form 50. But I filed it two
6 days after I settled with the liability
7 carrier, that they raised the election issue.

8 Q: Correct. But the question is, when did you
9 decide to, to protect his rights by filing the
10 Form 50?

11 A: You know, I don't, I don't know that I could
12 say with specificity the date, but I ...

13 Q: Uh-huh (affirmative response).

14 A: ... think I had decided, by around the date he
15 came in to do the settlement on the, with the
16 liability carrier, to file the 50 just to try
17 to protect his rights.

18 Q: So around the 16th of June ...

19 A: Uh-huh (affirmative response).

20 Q: ... in '99, you thought that that would need to
21 be done?

22 A: Right.

23 Q: Do you remember what you said to Richard in
24 regards to that Form 50 or on the 16th or before
25 that?

- 1 A: My best recollection is, I said, Richard, I'm
- 2 going to file this but I don't think you're
- 3 going to get the benefit, but I'll file it.
- 4 Q: What, at that time, did you understand the
- 5 procedure was with regard to pursuing a third
- 6 party claim and the workers' comp benefit out
- 7 of the same transaction?
- 8 A: Could you restate that, I'm ...
- 9 Q: Sure.
- 10 A: I lost you somewhere.
- 11 Q: What was your understanding then about pursuing
- 12 both a workers' comp remedy for a client and
- 13 also pursuing a third party liability remedy
- 14 out of the same transaction?
- 15 A: I knew you had to notify the carrier that you
- 16 were going to do that. I did not, at that
- 17 point in time, recall that you needed to notify
- 18 them before you settled any portion of the
- 19 case. I did not recall that there was an
- 20 election problem by potentially settling that
- 21 portion of the case before notifying them.
- 22 Q: And this is attached to the Complaint. Your
- 23 note to Mr. Kimmer, February 1, 2000 ...
- 24 A: Right.
- 25 Q: ... that sets forth pretty much the history of

1 what transpired?

2 A: You're asking me if this letter is accurate?

3 Q: Well, all right, if you think there is anything
4 that has changed after thinking about it. I
5 mean, I'm sure it's accurate, at least when you
6 wrote it, it was accurate, I assume, wasn't it?

7 A: Yes, it was.

8 Q: Okay.

9 A: So what is the question about the letter?

10 Q: Is there anything that you've learned since
11 writing it that would cause you to change any
12 portion of it now?

13 A: No. I don't see any portion of it that I would
14 change. No.

15 Q: Did you sit through the comp hearing? I can't
16 remember if you were in the room.

17 A: No.

18 Q: You just came in only when you ...

19 A: Only when I testified.

20 Q: All right.

21 A: Now we, now we waited several hours that day
22 out in the lobby.

23 Q: Yeah. Is there anything that Mr. Kimmer did
24 that was negligent or reckless on his part?

25 A: Well, Richard didn't tell me that he was

1 getting a car allowance. That's the biggest
2 problem. I mean, I never knew that until
3 September when he told the fellow that was
4 questioning about his work. That, there are,
5 that information never got to me before
6 September. I knew that, I knew he drove his
7 own car. I knew he was paid mileage. I knew
8 he didn't get paid until he got to the job.
9 And under those facts, he was just going and
10 coming to work. There was no, I didn't know of
11 any exception or rule that would entitle him to
12 comp under those, on that basis.

13 Q: But you knew that someone on his behalf had
14 called saying he should, it was a comp related
15 accident?

16 A: Late May, early June, somebody called and said,
17 I think he might be entitled to it because he
18 does get paid from the time he leaves home.
19 And that's why I wrote Richard to confirm what
20 we had talked about before. And he confirmed
21 that no, in fact, he did not get paid. From
22 the time he left home he didn't get paid until
23 he got to the job. And there was no mention of
24 a car allowance in any of that discussion. The
25 issue never came up.

1 Q: Did anything transpire between June the 16th of
2 '99 and June the 18th of '99, with regard to
3 this case? Did you learn anything, talk to
4 anybody, do anything that you could recollect
5 or that your files reflect? In other words,
6 June 16th is, according to the records of
7 course, the date that the check was executed,
8 the settlement was distributed, and the release
9 was signed. June the 18th is when the Form 50
10 was signed by you.

11 A: Nothing that I can recollect, no.

12 Q: Would it be fair to say that you just hadn't
13 prepared the Form 50 by 16th, otherwise, you may
14 have filed it on the 16th?

15 A: I'm sorry, can you say that again? Did I ...

16 Q: Well, is it fair to say that the only reason
17 the Form 50 was filed on the 18th, rather than
18 the 16th, was you just hadn't gotten your
19 secretary or whoever had not completed it yet,
20 otherwise, you probably would have filed it
21 earlier?

22 A: I cant' say one way or the other. I don't know
23 that that's the case.

24 Q: But it's your recollection that nothing
25 transpired of any significance between the 16th

1 and the 18th of June that you can remember?

2 A: Not that I can remember.

3 Q: Other than you, your testimony that Mr. Kimmer
4 didn't mention that he got a car allowance, is
5 there anything that you contend that Mr. Kimmer
6 has done that is negligent, reckless in anyway?

7 A: I can't think of anything.

8 Q: Did you ever write anyone and say that you
9 didn't tell me about the car allowance or I
10 would have done something different?

11 A: No.

12 Q: If he had told you he had the car allowance,
13 what would have, what would have been different
14 in the way that these documents were filed?

15 A: If he had told me he had the car allowance, I
16 would have gotten in touch with the employer,
17 and gotten some more details about ... I mean,
18 I assume he would know the details of what it
19 was. I could have gotten in touch with the
20 employer, found out about the car allowance,
21 and then looked at the cases to see whether
22 that might bring him within some exception to
23 the going and coming rule. But, that benefit
24 wasn't there, as far as knew. I mean, we send
25 the employer a wage lost form. You know, we

1 sent it to them for the wreck case. They
2 didn't indicate on the form that he had any
3 other form of benefits, just the wages an hour,
4 his rate and his hours per week.

5 Q: But your, your letter to him on February 1,
6 2000 didn't mention not knowing about the car
7 allowance, did it?

8 A: No.

9 Q: There's no other correspondence you have that
10 you can recollect about that?

11 A: No. I didn't write the letter February 1 to
12 try to defend myself. I wrote the letter on
13 February 1 to tell my client that there was a
14 potential problem, and that he potentially had
15 a claim. And, and I tried to tell him about
16 that and, you know, let him do what he was
17 going to do.

18 Q: I would assume there's nobody in your office
19 that would know anything about it? There's no
20 faculty, I mean, no secretary or paralegal,
21 that would have any information?

22 A: My, my staff doesn't deal with ...

23 Q: Uh-huh (affirmative response).

24 A ... clients at that level.

25 Q: I wouldn't think so either. I was just asking.

- 1 A: No. I don't have any paralegal's or anything.
- 2 Q: Well, I didn't know if somebody sat in there
- 3 with you. But I didn't suspect that was the
- 4 case. Is there any expert that has reviewed
- 5 this, at this point?
- 6 A: Pardon?
- 7 Q: Expert that's reviewed this matter for you at
- 8 this point, do you know?
- 9 A: Not to my knowledge. I haven't, I haven't
- 10 talked to any expert. Nobody has contacted me.
- 11 Q: If, for instance, if Mr. Kimmer on June the
- 12 16th, let's just say hypothetically, said, I can
- 13 get a car allowance before he signed the
- 14 release. What would you have done if anything?
- 15 A: I wouldn't settled with the carrier. I
- 16 would've said, let's hold the check a few days,
- 17 and let me do some looking, and see what, with
- 18 that fact, that changes things. Let's look
- 19 around a little bit. Then we can go ahead and
- 20 file the comp ahead of time.
- 21 Q: Did you ever meet with this fellow, Bill or was
- 22 that strictly a phone conversation?
- 23 A: I don't remember meeting with him. My
- 24 recollection is it was a telephone.
- 25 Q: Did you ever ask Mr. Kimmer to bring in all of

1 his pay stubs and information about pay?

2 A: I don't know that I did. We write to the
3 employer in a wreck case and we get the
4 information from them, and send us back the
5 form and that's what we rely on to use to base
6 our wage calculations. I'm trying to remember.
7 I don't remember seeing any check stubs or any

8

9 Q: Uh-huh (affirmative response).

10 A: ... and other physical evidence that he had.

11 Q: Okay. You recall asking him to bring it, and
12 his not bringing it, or you just don't remember
13 asking?

14 A: I don't recall asking him to bring it.

15 Q: Okay. I'm going to take a short break. We
16 probably are very close to this being over, but
17 I want to just see if can find that letter.

18 A: Okay.

19 (Off the record from 11:36 a.m. until 11:43 a.m.)

20 (Plaintiff's Exhibit Number Five was marked for
21 identification purposes.)

22 Q: Exhibit Five is a letter you found June 1 ...

23 A: Right.

24 Q: And it was Bill Manning.

25 A: Bill Manning.

1 Q: You have a recollection of who he is now after
2 seeing his whole name?

3 A: I don't.

4 (Plaintiff's Exhibit Number Six was marked for
5 identification purposes.)

6 Q: This is also, we've marked number six. You
7 actually returned the release to Auto Owners on
8 the 23rd of June; is that right?

9 A: Right.

10 (Plaintiff's Exhibit Number Seven was marked for
11 identification purposes.)

12 Q: And Exhibit Seven is the letter also June 23rd,
13 where you sent Advanced Orthopaedics, a portion
14 of the bill they were owed?

15 A: Correct.

16 (Plaintiff's Exhibit Number Eight was marked for
17 identification purposes.)

18 Q: And then eight is the letter to Subro Audit for
19 the eighty-five hundred dollars they got out of
20 that ...

21 A: Correct.

22 Q: ... fifteen thousand, as well. So all those
23 took place on the 23rd?

24 A: That's right.

25 Q: Now, you handled, you said, at least one and

1 maybe two divorces for Richard; is that right?

2 A: Domestic cases. I'm not sure they were ...

3 Q: Divorce?

4 A: One, one I believe was a divorce. I'm not sure
5 the other was actually, got to that point.

6 Q: Do you remember the time, possibly the time
7 frame, when the divorce was? I mean, was it
8 like right before '99 or was it like

9 A: I'm thinking around the time of the first wreck
10 and then up through, maybe three or four years
11 later, but not right around the time of this
12 wreck. I think ...

13 Q: Right. But, at first one in '93,
14 approximately?

15 A: Well, it lasted a while.

16 Q: Was that about when it was?

17 A: In that range.

18 Q: So the divorce would have been '96 or somewhere
19 around that?

20 A: It was some years, some time later after I
21 started the case.

22 Q: You still have that file?

23 A: I keep files ten years. If it was within that
24 ten year range, then I'll have it. If not, it
25 would be a family court file that ...

1 Q: Yeah.

2 A: ... has that information in it.

3 Q: And you, you would have had a financial
4 declaration and whatnot with that? Probably?

5 A: Yeah. I don't, I don't know if he was working
6 at Murata by then or not. I think he was, I
7 know he was working at Springs. I'm trying to
8 think when he retired or left them. Yeah.
9 There's a, I would assume we did a financial
10 statement in the, in the domestic case. It
11 wasn't a, as I recall, there wasn't a lot of
12 property. It wasn't a big ... the financially
13 were not the paramount issues in the case.

14 Q: Okay. It's my understanding ... I want, I want
15 to ask you this to see if this jogs any
16 recollection. You don't recall Mr. Kimmer ever
17 telling you before June 16th of '99 that he got
18 six cents a mile for travel, when he worked at
19 Murata? That he got time above one hour for
20 the whole day? And that he got a car allowance
21 of six hundred dollars a month?

22 A: Time above one hour, no. I ...

23 Q: Other than, you said an hour and a half travel,
24 and he got paid for half an hour?

25 A: I recall him mentioning that if he lived within

an hour of where he worked, he didn't get paid. And the Katherine plant was less than an hour from where he lived. I do remember that, at some point. Now, I don't know whether that was before, after, and I remember the six cents. I remember the mileage rate that he quoted being reimbursed was pretty low as I, my recollection. But, nothing about a car allowance. The six hundred dollars doesn't ring any bells at all.

Q: Or do you recall him saying, six cents a mile for miles traveling to the job, plus three hundred dollars a pay period for car allowance?

A: No.

Q: Twice a month, you don't remember what that either?

A: No.

Q: Is it your best recollection, you don't remember him saying it or you just flatly deny that he ever said anything about a car allowance?

A: I firmly believe that if he had told me that, I would remember it and I do not recall it, so I don't think he told me that. I'm pretty sure he didn't tell me that. I would, I would know

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1 if he had.

2 Q: Do you recall doing any research on the going
3 and coming rule or exceptions to it, when he
4 would, in connection with this accident between
5 January of '99 and June 16th, '99, do you
6 remember that?

7 A: No. Based on the fact that I hadn't, it didn't
8 appear to me to be necessary.

9 Q: Well, as I understand, you remember the six
10 cents a mile which you, you obviously thought
11 was low. And you remember something about he
12 lived within a mile, an hour of the Katherine
13 Plant, but he would have gotten paid if he
14 lived farther?

15 A: He said if you lived within an hour of where he
16 worked, he didn't, he didn't get starting pay.
17 You know, it started when we got to the job.
18 So, from Whitmire to Chester is not an hour.
19 It's thirty, forty minutes. And, so that was,
20 he didn't get paid. He didn't get paid from
21 ... if he would have been going to the coast
22 for something he, you know, he would've gotten
23 paid maybe an hour after he left. But, not on,
24 not on that date, not on that job.

25 Q: All right. The, the answer on the, in case

1 files, asserts as a third defense. It say's
2 the plaintiff was negligent, reckless, willful,
3 and wantonness in a manner in which he
4 conducted his affairs throughout the
5 transaction described the complaint. And
6 therefore, the negligence, reckless,
7 willfulness, and wantonness of the plaintiff
8 with the direct and approximate cause, the
9 plaintiffs damages. What facts, other than
10 the, does that defense rely on, the fact other
11 than ... I assume you're going to say that he
12 did not tell you about the car allowance.

13 A: I think it relies primarily on that fact.

14 Q: All right. Is there any other facts that you
15 would say that that defense has any basis on?

16 A: If there are, I'm not aware of them at this
17 point.

18 Q: Okay. You talked about the, your recollection
19 of, no mention of the Carlisle's as being
20 negligent. Is it your position that this was
21 wanton or reckless?

22 A: I don't know how you would interpret it. I
23 certainly don't, I wouldn't think that Richard
24 concealed it from me on purpose. I think he
25 probably just didn't think it was significant

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1 or meaningful, so he didn't tell me. But I ...

2 Q: Do you have any notes of that, of your
3 conference with him?

4 A: No. I looked back on my stuff and ...

5 Q: I didn't see any. I don't recall seeing any.

6 A: I didn't, I didn't have anything extensive
7 about that at all.

8 Q: Do you recall any handwritten notes about this
9 accident that you took, in your files? I don't
10 remember seeing any, you might have.

11 A: I don't, I don't think there were. I mean it
12 was, clear liability, wrong side of road, other
13 guy at fault.

14 Q: Basically, there's no research or there's no
15 research materials in the file?

16 A: No.

17 Q: And there's no notes in the files about the
18 workers' comp claim or by the third party
19 claim, other than the, obviously the accident
20 report and stuff like that? No handwritten
21 notes by you?

22 A: No. Most of my documentation, my file is done
23 by letters ...

24 Q: Uh-huh (affirmative response).

25 A: ... that I, that's how I deal with documents

1 and stuff, is just the letters that I write.

2 Q: And you testified, I think, at the comp hearing
3 that you think that Mr. Kimmer is a fine
4 person?

5 A: He's a good fellow. I like Richard. He was a
6 good client.

7 MR. POPE: That's all I have.

8 MR. POWELL: I don't have any questions.

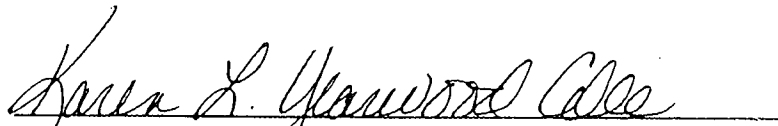
9 (There being no further questions, the deposition
10 concluded at 11:53 a.m.)
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CERTIFICATE

This is to certify that the deposition of PHILIP E. WRIGHT, ESQUIRE, consisting of Fifty-Seven (57) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 16, 2005.



Karen L. Yearwood-Cole
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 16, 2008

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

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

Richard Kimmer
C. _____
Address _____
Home Phone # _____
Work Phone # _____
Philip E. Wright
Preparer's Name

Whitemire, SC 29718
State Zip

Murata of America
Employer's Name _____
Address _____
Liberty Mutual Group
Insurance Carrier
Charlotte, NC 28266
City State Zip
Phone # _____

Complete each information blank. To request a hearing, check box 13 b., indicate the kinds of benefits claimed checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

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

1 a. The claimant sustained an accidental injury to knee, back, neck on 1/29/99 in Chester County, State of South Carolina month day year

1 b. Describe briefly how the accident occurred car wreck

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

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

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

5. Notice of the accidental injury was given to the employer on 1/29/99 in the following manner: reported to supervisor month day year

☐ 6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for knee, back and neck

☐ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 1/29/99 to present

☐ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☒ (2) Specific Disability: ☐ Total ☒ Partial

Body part(s) affected are: knee, back and neck
☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of limp

10 a. At the time of injury, the claimant was paid weekly wages of \$ 582.40 : and demands accounting of days worked and wages earned as provided by law.

10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. none

11 a. Further grounds of claim: all benefits provided under the Act

11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Dr. Consuelo Kinahan, Advanced Orthopaedic and Medical Assoc., Union, SC 29379

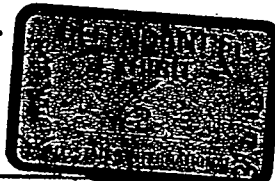
11 c. To the best of your knowledge, did you have any prior permanent disability? unknown
If yes, describe: _____

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

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

☒ 13 b. I am requesting a hearing.

P. L. E. J.
Signature of Claimant/Representative



701
12/9/99

Date

Refer to R.67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.
WCC Form # 50. Rev. Date 9/90

50

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

PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

803-286-4343
REAL ESTATE: 803-286-4378
FAX No. 803-286-9996

February 1, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

Mr. Richard Kimmer



Dear Richard:

I understand you have talked with attorney Thomas Pope in Newberry and that you wish for him to undertake representation in your workers' compensation case. I understand he is also talking with you about an employment law case against Murata concerning your termination.

I need you to authorize me to release your workers' compensation file to him in writing. Since you are coming by the office Tuesday, February 1, you can sign the authorization then.

I have received a notice from the attorney in the workers' compensation case that they want to take your deposition in the workers' compensation case on February 10. Please have Mr. Pope contact Mr. Morgan, attorney for Murata, to confirm that deposition date or move it if necessary.

As I explained to you when you were in the office last, I have received an answer from Mr. Morgan in the workers' compensation case in which they deny that you are entitled to workers' compensation benefits because I settled with the liability carrier in the wreck case without notifying them or getting their approval. We settled the liability portion of your wreck claim in mid-June and I filed the workers' compensation Form 50 on June 18. I did not communicate with the workers' compensation carrier concerning settling the liability case. There are still four policies of insurance to collect from which will pay very shortly.

Our workers' compensation statute requires that the Workers' Compensation Commission and the employer and the insurance carrier for the employer be notified in the event of a settlement with a liable party. I did not give those parties notification, so that may prejudice your right to recover workers' compensation benefits if, in fact, you were entitled based on the facts of the case to receive those benefits. I understand you have talked with Mr. Pope about that issue and that he will be advising you in that regard.

For the present time, I understand that you wish for me to proceed to represent you in the pending underinsurance matters related to your car wreck. Mr. Foster, attorney for your ~~underinsurance carrier Farm Bureau~~ has requested that we schedule your deposition so that he can confirm your injuries and the facts of the collision. I have not scheduled that deposition yet and will wait to hear from Mr. Pope concerning on how he wishes to proceed in the workers' compensation case.

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RA 93

Mr. Richard Kimmer

February 1, 2000

Page 2

Since you may be entitled to eventually file a claim against me for some alleged error in the workers' compensation case, I need for you to confirm in writing that you agree for me to continue working on the underinsurance portion of your wreck case and that you waive any claim of conflict of interest that might arise in that representation. Since you would be saying on the one hand that I have not done what I should have in the workers' compensation case, I need to be sure that you still want me to continue with the wreck case as your attorney.

I appreciate your willingness to let me continue to represent you in this matter and want you to protect your interest as fully as you possibly can. I will be glad to cooperate with Mr. Pope in resolving the issues on your workers' compensation case as quickly as possible.

Sincerely yours,



Philip E. Wright

PEW:jb
Enclosures

703

1612 Marion Street
P.O. Box 1715
Columbia, S.C. 29202-1715

TEL: (803) 737-5700
FAX: (803) 737-5764

Workers' Compensation Commission

June 2, 2003

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737-5697

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Pope D. Johnson, III
Attorney at Law
P.O. Box 11209
Columbia, SC 29211

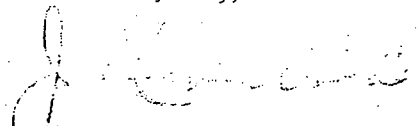
In Re: Richard Kimmer v. Murata of America
W. C. File:

Dear Mr. Johnson:

Please prepare the Order in the above referenced case and submit it to my attention by June 16, 2003. Please submit an original and three (3) copies of the order for my signature. The Order should reflect the stipulations, findings of fact or other pertinent information included in my "notes" which are attached to this correspondence. When submitting your proposed Order, please be sure to copy opposing counsel with the same.

If you have any questions in these regards, do not hesitate to contact me at 737-5692.

Yours very truly,


J. Michelle Childs, Commissioner
South Carolina Workers'
Compensation Commission

JMC/emb

CC: Thomas H. Pope, III, Esquire

WCC #

CASE CAPTION: Richard Kimmer v. Murata of America

Appearances: For Claimant: Thomas H. Pope, III
For Defendants: Pope D. Johnson, III

Comm J Michelle Childs Date and location of Hearing: December 10, 2002, Greenwood, SC

Jurisdiction & Venue Proper: Yes

DOA: 1-29-99 Accident: on-the-job auto wreck

AWW: \$775.38 CR: \$483.47

Claim: (body part-both knees, back, neck, psychological overlay) Defs: admit deny

Impairment assignment(s): total disability, Dr. Howard Mandell (2-1-02)/Dr. William Stewart (4-29-02)

The file and commissioner's notes are made a part of the record.

ISSUES: 1) compensability; 2) extent of disability; 3) AWW and CR

THE HEARING: Set on Claimant's Form 50

FINDINGS OF FACT:

Claimant AWW is \$775.38 and his CR is \$483.47.

Claimant had pre-existing conditions, including without limitation, osteoarthritis, bursitis and degenerative arthritis, and multi-level cervical spondylosis with degenerative disc disease of the cervical spine.

Claimant sustained compensable injuries to his back, neck, both knees and depression as a result of an on-the-job motor vehicle accident. Claimant was paid mileage to and from his home to various plants, as well as a monthly car allowance and an hourly rate for travel time.

Claimant timely notified his employer of his injuries.

As a result of his injuries, the Claimant was diagnosed with several injuries, including, without limitation, right knee meniscal tear, left knee lateral meniscal tear, bulging discs, and post-traumatic stress syndrome. As a result of these injuries, the Claimant had three surgeries on his right knee and one surgery on his left knee, and chronic pain in all areas of his body related to his injury.

Claimant has reached maximum medical improvement.

Claimant is permanently and totally disabled as a result of the combination of injuries to his back, neck, both knees and depression.

Claimant settled his claim for \$15,000 (the policy limits) against the driver of the other vehicle without filing a lawsuit. Claimant executed a release on June 16, 1999. Claimant filed his Form 50 on June 18, 1999, which was received by the Commission on June 21, 1999.

In settling his claim, the Claimant proceeded solely against the third-party tortfeasor. The Claimant did not provide notice to the carrier or the Commission before settling his claim, and thus, provided no opportunity for the carrier to protect its interest against the claim. Under the circumstances of this case, it would appear that there was no prejudice to the carrier since the claim was

Commissioner's Notes for Decision and Order

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settled for the policy limits, that there seem to be no other assets available to the claimant from the third-party, and that the carrier also has a right of subrogation or off-set against the proceeds of the settlement; however, the Claimant's settling of this claim is prejudicial to the Carrier since it was not able to participate in the litigation or effect the full and final release executed by the Claimant. Claimant, by settling the claim, made an election of his remedies to proceed against the third-party.

INSTRUCTIONS: Order to be written by Pope D. Johnson, III & is requested before June 16, 2003. Draft the Order consistent with the above Findings of Fact incorporating such testimony, submissions and/or exhibits consistent with the above ruling. Do not alter the substance of the above Findings of Fact; however, you may add additional facts consistent with the above ruling. The Order should also include biographical information, information regarding the claimant's work history and previous medical history, if relevant to the case.

If you need a transcript order it immediately from the court reporter, or contact my assistant, Elaine Boyd, at (803) 737-5692 or in writing at PO Box 1715, Columbia, SC 29202-1715. Provide a copy of the proposed order to opposing counsel or *pro se* claimant before or at the same time one is submitted to the commission.



The Commission now requires the original and three copies of the proposed order with addressed, postage paid envelopes.

INCLUDE IN ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact - numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award

***Do not address credibility in the Order, unless it has been addressed in the Order Notes.

Scholarships are available to children of seriously or fatally injured workers. Contact: Kids' Chance of SC, 1135 Dixired Rd., Leesville, SC 29070.

Commissioner's Notes for Decision and Order

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C. FILE NO

Richard Kimmer,

Claimant,

vs.

Murata of America, Employer, and
Liberty Mutual Insurance Company,
Carrier,

Defendants

HEARING:

Held on December 10, 2002 in Greenwood, SC

APPEARANCES:

Claimant was represented by the Firm of Pope & Hedges, P.A. of Newberry, South Carolina, with Thomas H. Pope, III appearing.

Defendants were represented by the Firm of McCutchen Blanton Johnson & Barnette, LLP of Columbia, South Carolina, with Pope D. Johnson, III appearing.

PURPOSE OF HEARING:

To determine the issues set forth in the Form 50 and Form 51

OPINION AND AWARD:

J. Michelle Childs, Commissioner

FILED:

July 31 2003

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STATEMENT OF THE CASE

This matter came before the undersigned Commissioner for a hearing on December 10, 2002, pursuant to notices timely served, at which time the parties and/or their representatives appeared.

This is a denied case arising out of an accident that occurred on January 29, 1999 when the Claimant was involved in an on-the-job motor vehicle accident and sustained injuries to his knees, neck and back.

The purpose of the hearing was to determine the issues set forth in the Form 50 and Form 51. The issues to be determined include whether the Claimant's claim is compensable, whether his claim is barred by settlement of a third party action, whether the Claimant should be limited to the scheduled members for his disability rating, whether the Claimant is totally and permanently disabled, and the applicable average weekly wage and compensation rate. The defendants asserted that if the claim was compensable and not otherwise barred, then the Claimant was entitled to the maximum compensation rate at the time of his injury, which was \$483.47. The Claimant asserted that he was entitled to the maximum compensation rate in 1999 and the maximum rate for each successive year.

MEDICAL EVIDENCE/RATINGS - APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

SUBMISSIONS BY CLAIMANT:

<u>PHYSICIAN</u>	<u>MEDICAL FACILITY</u>	<u>DATE OF REPORT</u>	<u>PAGES</u>
Dr. William Stewart	USC School of Medicine - University Speciality Clinics	4/29/02	1-7
	Social Security Disability Determination	5/1/01 & 4/13/01	8-10
Dr. Howard Mandell	Metrolina Neurological Associates, PA	2/1/02 - 2/16/01	11-19
Dr. Scott James and Dr. David Mitchell	Carolina Orthopaedic Surgery Associates	1/18/00 - 7/30/99	20-37
	BLANK PAGE		38
Dr. Stephen M. Kana	Orthopaedic Surgery & Sports Medicine	8/3/00 & 8/17/00	39-42
	Wallace Thompson Hospital	8/30/99; 4/15/99 & 4/5/99	43-45
	Wallace Thompson Hospital - Radiology Department	2/18/00 - 3/10/99	46-57
Dr. Peter J. Kinahan	Advanced Orthopaedics & Medical Assoc.	11/15/99 - 2/2/99	58-158
Dr. Carol S. Nichols	Carolina Neurology	10/17/00 & 11/22/00	159-162
Dr Donald R Johnson	Carolina Spine Institute	5/17/00	163
	Deposition of David Stalvey		164-169
	Murata of America, Inc. Employee Manual		170-198
	Documents Relative to Third Party Claim		199-218
	Documents from Attorney Phillip Wright	6/18/99 - 2/1/00	219-233

SUBMISSIONS BY DEFENDANTS:

<u>PHYSICIAN</u>	<u>MEDICAL FACILITY</u>	<u>DATE OF REPORT</u>	<u>PAGES</u>
Dr. Consuelo Kinah	Advanced Orthopaedic & Medical Assoc.	08/24/98 -07/13/00	234-257
	Wallace Thompson Hospital	03/10/99 - 10/16/00	258-274
	Springs Memorial Hospital	02/02/93 - 11/29/00	275-343
	Chester County Hospital & Nursing Center	10/08/97 - 01/29/99	344-377
	Carolina Orthopedic Surgery Center	06/21/88 - 02/15/01	378-408
	Carolina Spine Institute	5/17/00	409-417
	Carolina Center for Advanced Pain Management	07/12/00 - 09/26/00	418-426

Orthopedic Surgery & Sports Medicine	08/03/00 - 8/17/00	427-431
Orthopaedic Associates	04/21/00 - 5/12/00	432-437

EVIDENCE IN THE CASE

1. Claimant Richard Kimmer. The Claimant testified on his own behalf. He was born on October 11, 1946, is married, and has five children. He completed the sixth grade in school. His work history included work as a carpenter for over 30 years and then work as a technician installing and servicing textile machinery.

The Claimant was hired by Murata of America in December, 1995 as a technician installing and servicing machinery. The Claimant testified that he received a salary based upon a per hour rate and \$300.00+ dollars every other week for car allowance plus \$.06 per mile for each mile he drove to and from work. The Claimant worked out of his home. If he had to drive more than an hour to a particular plant, he was paid for the travel time in excess of an hour.

The Claimant's work as a service technician involved heavy, physically demanding activity. His work involved bending, stooping, climbing, pushing, lifting, and reaching.

The Claimant testified that the accident occurred on January 29, 1999 when he was enroute from his home in Whitmire to work at the Springs Catherine Plant in Chester. He was involved in a head-on collision with another vehicle. Both cars were total losses. The Claimant testified that his head broke the windshield, he injured his neck and his back, and he injured his knees against the dashboard. Thereafter, the Claimant had three arthroscopic surgeries on his right knee and one arthroscopic surgery on his left knee. In

addition, he was treated for back problems and depression. The Claimant testified that he had not worked since the date of the accident and that he did not feel that there was any other job he could do. He testified that his right knee, lower back, neck and depression gave him the most problems. He testified that he was taking eleven (11) different kinds of medicines for his injuries and problems. Further, he testified that he was now unable to do things such as fish, bowl, or play golf, which he did before the accident.

The Claimant employed Attorney Phillip E. Wright to help him with his injury claims. He testified that a settlement was reach with the at-fault party for \$15,000.00 and he signed a release of all claims against the at-fault party on June 16, 1999, two days before his attorney filed a Form 50 with the South Carolina Workers' Compensation Commission.

On cross-examination, the Claimant admitted that he was treated at the emergency room on the day of the accident and released. He admitted that his arthroscopic surgeries were outpatient type surgeries and that he had not had to have any surgical procedure for the problem related to his back. Further, he admitted that his medical bills were being paid by the group medical carrier and that he applied for and received short term disability benefits and then long term disability benefits. His long term disability benefits were \$1,700+ dollars per month, before taxes, which he acknowledged was about 70% of what he was getting by way of a salary. He drew short term disability benefits for 30 days and then long term disability benefits for eleven (11) months. He admitted that the long term disability benefits were cut off because the doctor released him to return to work and he failed to do so. The Claimant also admitted that he had not gone to vocational

rehabilitation, job service, or any other type service to try to get back into the work force. The Claimant also admitted that he had had problems with both knees and his back prior to the accident and that he had had an epidural injection for his back pain. He denied that he had knowledge of his problem with degenerative disc disease prior to the automobile accident. He also admitted that he had cut his grass and fished occasionally since the accident. He admitted that he planned to go back to work if he was able to do so.

2. Phillip E. Wright. Mr. Wright is a practicing attorney. He testified that he had represented the Claimant for several matters and that he was retained to represent him in connection with the automobile accident of January 29, 1999. He testified that he handled the Claimant's case for about a year and that he was familiar with the medical costs and treatment the Claimant had received and that his case involved a substantial claim.

Mr. Wright testified that Mr. Pendegrass was the at-fault party in the automobile accident. Mr. Pendegrass lived in Chester. He testified that he sent a private investigator over to find him and serve him because he had evaded law enforcement when law enforcement attempted to serve him. He testified that he personally looked at the records in the Chester County Courthouse to determine if Mr. Pendegrass had any assets and that he did not have any that he could find at the courthouse. He testified that he hired a private investigator to look for assets and the private investigator could not find any assets.

Mr. Pendegrass had automobile liability insurance minimal limits coverage. Mr. Wright talked with the adjuster and negotiated a settlement directly with the adjuster. No suit was ever filed. The minimum limits were tendered by the insurance company. Mr.

Wright testified that after he concluded the \$15,000.00 liability settlement, he conducted a further investigation and could find no assets. He testified that the \$15,000.00 settlement with the carrier for the at fault driver went to pay attorney's fees and medical expenses.

Mr. Wright testified that the release with the at-fault party was signed on June 16, 1999. Mr. Wright filed the Claimant's Form 50 by mail with the Workers' Compensation Commission on June 18, 1999. The Form 50 was received by the Commission on June 21, 1999. Mr. Wright testified that he had notified the Claimant, prior to settling the \$15,000.00 liability claim, that there might be a potential workers' compensation claim. This was discussed at the same time they signed the paperwork to settle the \$15,000.00 liability claim. Mr. Wright admitted that he was aware of a potential workers' compensation claim prior to settling the liability claim. He admitted that he settled the liability claim before he filed the Form 50 with the Commission and before he put the defendants on notice of the claim. He admitted that he had no recollection or documentation of talking to the workers' compensation carrier before he settled the third party liability claim.

On cross-examination, Mr. Wright admitted that the Claimant settled the third party liability claim before he gave notice to the carrier and the Commission of the workers' compensation claim. Mr. Wright admitted that he never spoke with the at-fault party himself. Mr. Wright admitted that checking records at the Chester County Courthouse would did not provide information about stocks, bonds, savings accounts or other such assets of the at fault driver and that checking at the courthouse in one county would not reflect what was owned in another county. He also acknowledged that speaking with the

carrier for the one policy on the vehicle did not reveal whether other insurance was available to the at-fault party. He admitted that there may have been other policies on other vehicles in the at-fault party's name or in the name of his other family members that might have provided coverage. He admitted that he never interviewed or deposed the at-fault party or any other party regarding the nature or extent of the at-fault party's assets or insurance coverage. He likewise admitted that the workers' compensation carrier had no opportunity to do so prior to the settlement of the claim against the at-fault party. He admitted that the workers' compensation carrier lost the opportunity to participate in or conduct its own investigation or to guide him or employ counsel to do the investigation prior to the third party case being settled.

3. William A. Manning, Jr. Mr. Manning testified he worked with Murata of America at the time the Claimant did. Initially, he had responsibility for all of the technical staff, including the Claimant. Thereafter, he worked in a trouble shooting slot and worked with the Claimant from time to time. He testified that the Claimant was one of the hardest workers he had ever worked with, on occasion working at 14 to 15 hour day. He testified that he knew the Claimant had a bad back but that it never slowed him up and he simply kept working. He testified that technicians such as the Claimant received an hourly pay rate plus a car allowance and mileage expense. He also testified that technicians, traveling, did not get paid for the first hour of travel but did get a mileage allowance for each mile driving. He also testified that he had spoken with the Claimant from time to time since the accident and that the Claimant seemed to be down in the dumps.

On cross-examination, Mr. Manning admitted that he had not worked with the Claimant on a day to day basis, that he was a friend of the Claimant, and that he came to testify on his behalf without being subpoenaed. He testified that the Claimant had back problems. On re-cross examination, he testified that he knew the Claimant was out for a period of time in the first part of 1998 for back problems.

4. John Pate. The Claimant's attorney called John Pate, a Liberty Mutual Senior Field Investigator, as a witness. Mr. Pate testified that he had not been involved in the handling of the file and that he had no knowledge of what was done or not done by Liberty Mutual regarding an investigation of a third party claim or the assets of the at-fault third party.

FINDINGS OF FACT

Based upon the stipulations of the parties, testimony and evidence received and produced at this hearing, as well as my personal observation of the witnesses, the undersigned Commissioner finds the following facts based on a preponderance of the evidence:

1. The parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

2. The applicable compensation rate is \$438.47, the maximum allowable rate at the time of the accident.

3. The Claimant had pre-existing conditions, including without limitation, osteoarthritis, bursitis, and degenerative arthritis, and multi-level cervical spondylosis with

degenerative disc disease of the cervical spine.

4. The Claimant sustained compensable injuries to his back, neck, both knees and depression as a result of an on-the-job motor vehicle accident. Claimant was paid mileage to and from his home to various plants, as well as a monthly car allowance and an hourly rate for travel time.

5. The Claimant timely notified the employer of his injuries.

6. As a result of the accident, the Claimant was diagnosed with several injuries, including, without limitation, right knee meniscal tear, left knee lateral meniscal tear, bulging discs, and post-traumatic stress syndrome. As a result of these injuries, the Claimant had three surgeries on his right knee and one surgery on his left knee, and chronic pain in all areas of his body related to his injuries.

7. The Claimant has reached maximum medical improvement.

8. The Claimant is permanently and totally disabled as a result of the combination of injuries to his back, neck, both knees and depression.

9. The Claimant settled his claim for \$15,000 (the policy limits) against the driver of the other vehicle without filing a lawsuit.

10. The Claimant executed a release of the at fault party on June 16, 1999.

11. The Claimant filed his Form 50 on June 18, 1999, which was received by the Commission on June 21, 1999.

10. In settling his claim, the Claimant proceeded solely against the third party tortfeasor. The Claimant did not provide notice to the carrier or the Commission before

settling his claim, and thus, provided the carrier no opportunity to protect its interest against the claim. Under the circumstances of this case, it would appear that there was no prejudice to the carrier since the claim was settled for the policy limits, since there seemed to be no other assets available to the Claimant from the third party, and since the carrier also has a right of subrogation or off-set against the proceeds of the settlement. However, the Claimant's settling of this claim was prejudicial to the carrier since it was not able to participate in the litigation or affect the full and final release executed by the Claimant. The carrier had no opportunity to investigate whether there was other assets or other coverage available to the Claimant from the third party. The Claimant, by settling the claim, made an election of his remedies to proceed against the third party.

RULINGS OF LAW

Accordingly, as provided by §42-17-40 of the 1976 South Carolina Code of Laws, as amended, it is the determination and finding of this Commissioner:

1. That at the time of the accident, the Claimant and the defendant/employer were covered parties under the provisions of the South Carolina Workers' Compensation Act pursuant to §42-1-130 and §42-1-140.

2. That the Claimant suffered a compensable injury by accident arising out of and in the course of his employment pursuant to §42-1-160.

3. Under the case law, a claimant has three remedies for job-related injuries, which are as follows:

(a) To proceed solely against the employer thereby allowing the employer-carrier the opportunity to pursue reimbursement against the third

party for its obligated payments.

(b) To proceed solely against the third party tortfeasor under §42-1-550 by instituting and prosecuting an action at law; and

(c) To proceed against both the employer-carrier and the third party tortfeasor by complying with §42-1-560. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

4. Section 42-1-560 sets forth the terms and conditions which must be met if the injured employee is to pursue both remedies simultaneously. It further provides for a carrier's lien on the proceeds of the third party recovery to the extent of the total amount of compensation including medical and other expenses paid or to be paid. Moreover, the carrier's lien cannot be reduced without its consent and no compromise settlement between the employee and third party can be made binding on the carrier without its consent or either approval of the commission. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

5. While Section 42-1-560 does not specifically state that settlement with a third party without the carrier's consent constitutes an election of remedies, it is clear from a reading of the statute that the legislature did not intend for a claimant to settle his third party case without regard to the employer's rights for subrogation under §42-1-550 and still maintain a workmen's compensation claim. *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

6. The object of §42-1-560 is to effect an equitable adjustment of the rights of all parties. It would "defeat this objective to allow the employee to demand compensation from the employer after having destroyed the employer's normal right to obtain

reimbursement from the third party." *Stroy v. Millwood Drug Store, Inc.*, 235 S.C. 52 at 59, 109 S.E.2d 706 (1959). *Fisher v. SC Department of Mental Retardation*, 227 S.C. 573, 291 S.E.2d 200 (1982).

7. The Claimant's noncompliance with the statutory procedure and disregard for the rights and remedies of the workers' compensation carrier violates the spirit of the Act. This settlement with the at-fault party was consummated by the Claimant before the workers' compensation carrier had notice of the claim and any opportunity to conduct its own investigation into the insurance coverage and assets of the at fault party. The Claimant made an election and has waived any rights he may have had under the S.C. Workers' Compensation Law. As a result thereof, his claim for workers' compensation benefits is barred.

ORDER

IT IS ORDERED that the claim of Richard Kimmer against Murata of America and Liberty Mutual Insurance Company for benefits under the S.C. Workers' Compantion Law for an accident of January 29, 1999 be and it hereby is denied, for the reasons set forth above.

No hearing costs are assessed in this instance.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 31 day of July, 2003.

By Elaine M. Boyd
Administrative Assistant to the Commissioner

By:

J. Michelle Childs
J. Michelle Childs
Commissioner