

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2004-CP-46-2659

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

v.

Philip E. Wright.....Appellant

**AMENDED
RECORD ON APPEAL**

Volume III of III

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August 5, 2003

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THOMAS H. POPE III
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THOMAS H. POPE
(1913-1999)

ROBERT O. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

Philip E. Wright, Esquire
Attorney at Law

Lancaster, South Carolina 29720

Re: Richard Kimmer v. Murata of America, et al.
WCC File No.

Dear Mr. Wright:

I enclose herein a copy of the Decision and Order dated July 31, 2003, which this office received last Friday, August 1, 2003. In her Order, Commissioner Childs finds that Mr. Kimmer was injured on the job and that he was totally disabled as a result of the accident but that his workers comp claim is barred because the third party claim was settled without notice to the carrier or the Commission. We are appealing the Decision and Order, but I wanted you to be aware of this ruling.

I would like to speak with you or your counsel about entering into a tolling agreement in view of our appeal of the Workers Comp decision. We would like to agree to toll the statute of limitations until a reasonable period of time after the final conclusion of all appeals on the workers comp case. If you are represented by counsel in this matter, I would appreciate it if you would have that counsel get in touch with me as soon as reasonably possible.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/lg
Enclosure

720

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH
	)	CAROLINA WORKERS'
COUNTY OF GREENVILLE	)	COMPENSATION
	)	COMMISSION
Richard Kimmer, Employee, Claimant,	)	
	)	APPELLANT'S BRIEF TO
Appellant,	)	APPELLATE PANEL
	)	
v.	)	W.C.C. File Number 9908422
	)	
Murata of America, Employer, and	)	
Liberty Mutual Insurance Company,	)	
Carrier,	)	
	)	
Respondents.	)	
	)	

APPEARANCES

Claimant:	Richard Kimmer,	
	Represented by:	Thomas H. Pope, III
		POPE & HUDGENS, P.A.
		PO Box 190
		Newberry, South Carolina 29108

AND

Defendants:	Murata of America and Liberty	
	Mutual Insurance Company,	
	Represented by:	Pope D. Johnson, III
		McCutchen Blanton Johnson & Barnette, LLP
		PO Drawer 11209
		Columbia, South Carolina 29211-1209

Single Commission Hearing Held:	December 10, 2002
	Greenwood, South Carolina

Before:	The Honorable Michelle Childs
	Commissioner

STATEMENT OF THE CASE

This case was heard by Commissioner J. Michelle Childs on December 10, 2002 in Greenwood, South Carolina, pursuant to notices timely served, at which time the parties and their representatives appeared.

The Claimant was initially hired by Employer in December 1995 and has worked as a technician installing and servicing machinery since that date. He previously worked 31 years for Springs Mills in essentially the same job. (Tr., p. 7). As a technician, the Claimant worked out of his home and alternated working among several area plants. Claimant received a salary based upon an hourly rate, \$300 dollars every other week for car allowance, and \$0.06 per mile for each mile driven to and from work. The Claimant's work as a service technician involved heavy, physically demanding activity including, but not limited to, bending, stooping, climbing, pushing, regular lifting up to 25 to 50 pounds, reaching, twisting, and turning.

On January 29, 1999, the Claimant was injured in an on the job, head-on automobile accident enroute from his home in Whitmire to work at the Springs Catherine Plant in Chester County. In the accident, the Claimant's head cracked the windshield, his neck and back snapped back, and his knees slammed up into the dashboard. (Tr., p. 15). As a result of the accident, the Claimant was diagnosed with several injuries, meniscal tears of both knees, a ruptured disc at L4-5, post-traumatic stress syndrome, and depression. (Tr., p. 18). Since the accident, the Claimant has had three surgeries on his right knee and one surgery on his left knee. In addition, the Claimant has been treated for back problems and depression and has taken eleven different kinds of medicines for his injuries caused by the car accident. (Tr., p. 21). As a result of his injuries, Claimant can not squat,

pull his weight up steps, or bend his knee with weight on it and has been unable to return to any type of employment. (Tr., p. 20). Based upon the opinions of Dr. Howard Mandell, neurologist (that Claimant is totally disabled) and William Stewart, Ph.D. (that Claimant's injuries and depression make him unemployable), Commission Childs concluded that Claimant is permanently and totally disabled as a result of the combination of injuries to his back, neck, both knees, and depression from his on-the-job injury in January 1999.

Anthony Pendergrass, a resident of Chester County, was the at-fault third-party. Mr. Pendergrass had automobile liability insurance with a minimal limits coverage of \$15,000. Phillip E. Wright, Esquire, Claimant's attorney during 1999, personally conducted an investigation and looked at the records in the Chester County Courthouse. (Tr., p. 55). He found no assets or any additional insurance policies owned by Mr. Pendergrass. (Tr., pp. 55, 57). In addition, Mr. Wright hired a private investigator, who could not find any assets. (Tr., p. 55). It was undisputed that Pendergrass resided in a poor neighborhood and had a reputation in the community for having no assets. (Tr., p. 76).

As a result, on June 16, 1999, Claimant reached a settlement with Mr. Pendergrass for \$15,000.00, the policy limits, and signed a release of all claims against the at-fault party. In reaching the settlement, neither the Claimant nor Mr. Wright intended to bar their future right to file a workers' compensation claim. (Tr., p. 66). Mr. Wright testified as follows: "No, I did not intend to waive any remedy that Mr. Kimmer had." (Tr., p. 67). None of the settlement proceeds were ever actually received by the Claimant. The proceeds were disbursed to his attorney and to pay a portion of the Claimant's mounting medical bills. (Tr., pp. 57 - 58). On June 18, 2001, two days after the

settlement was reached. Mr. Wright filed the Claimant's Form 50 by mail with the South Carolina Workers' Compensation Commission, which was received on June 21, 1999. (Tr. p. 58).

Respondents have not produced any evidence showing how they were prejudiced or how the settlement would have been different had they been given notice and "participated" in the third party matter.

At the hearing, Commissioner Childs found that Claimant's average weekly wage was \$775.38 and the applicable compensation rate was \$438.47. The Commissioner determined that Claimant was in a compensable accident, that he sustained compensable injuries to his back, neck, both knees, and depression as a result of the on-the-job motor vehicle accident, and that Claimant was permanently and totally disabled as a result of the combination of injuries. The Commissioner determined Claimant's workers' compensation claim against the Employer was barred due to the settlement of the third party claim without notice to the Employer. The Commissioner stated that it appeared there was no prejudice to the carrier since the claim was settled for the policy limits, since there were no other assets available to the Claimant, and since the carrier also had a right of subrogation or off-set against the proceeds of the settlement. However, the Commissioner held that the settling of the claim was prejudicial to the Employer since it was not able to participate in the litigation or effect the full and final release executed by the Claimant.

QUESTIONS PRESENTED

- I. Did the Commissioner err in ruling that the Employer/Carrier was prejudiced by the Claimant's settlement of a third-party claim without notice where the settlement reached was equal to the third-party's insurance policy limits, where the employer/carrier still has a right to reimbursement to the settlement proceeds, where no other assets for the third-party could be found, and where the Employer/Carrier has not shown any evidence of how they have been prejudiced?
- II. Did the Commissioner err in ruling that the settlement of a Claimant's third-party claim without giving notice to the Employer/Carrier in South Carolina bars the Claimant's right to pursue his workers' compensation claim where the employer has not been prejudiced?

ARGUMENTS

- I. The Commissioner erred in ruling as a matter of fact that the Employer/Carrier was prejudiced by the Claimant's settlement of a third-party claim without notice where the settlement reached was equal to the third-party's insurance policy limits, where the employer/carrier still has a right to reimbursement to the settlement proceeds, where no other assets for the third-party could be found, and where the Employer/Carrier has not shown any evidence of how the outcome would have been different had they had the opportunity to intervene.

At the hearing, the Commissioner found 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, and since the carrier had a right of subrogation or off-set against the proceeds of the settlement. (Order, pg. 11). Further, neither the employer nor the carrier has produced any evidence of prejudice or how the settlement would have been different had they been involved. Despite these circumstances, the Commissioner held that the settling of the claim "was prejudicial to the Employer since it was not able to participate in the litigation or effect the full and final release executed by the Claimant." (Order, pg. 11). This was error.

Testimony at trial showed that Mr. Pendergrass, the at-fault third-party, had no assets other than his \$15,000 insurance policy. At the hearing, Mr. Wright, the Claimant's initial attorney, testified that he could not find any assets owned by Mr. Pendergrass. (Transcript, pg. 56). "I personally looked at the County Court in Chester County to see if he had any assets. He did not have any that I could find. The private investigator that I hired looked and could find none either." (Tr., p. 55). In addition, Mr. Wright could not find any other insurance coverage owned by Mr. Pendergrass of a liability nature. (Tr., p. 57). Mr. Wright's determination that Mr. Pendergrass had no assets was also based on other factors. Mr. Wright discussed his efforts by stating, "I looked at where the guy lived. I looked at what he had that I could see. I looked at what I knew about him from the generalities of the report. And having some people look for him. And I didn't think he had anything." (Tr., p. 76). Even after the settlement, "We [Mr. Wright and the Claimant] did conduct a much more detailed investigation and could find nothing. I could find nothing." (Tr., p. 57). In contrast to the testimony produced by the Claimant, the employer and his carrier did not produce any evidence whatsoever showing any assets or additional insurance policies owned by Mr. Pendergrass.

Based upon Mr. Wright's determination that Mr. Pendergrass had no assets, on June 16, 1999, the Claimant reached a settlement with Mr. Pendergrass for \$15,000, the policy limits, and signed a release of all claims against the at-fault party. (Tr., pp. 57 - 58). This settlement in no way prejudiced the employer/carrier's right to subrogation and reimbursement. Since the settlement was obtained for the coverage limits, and the employer/carrier is still entitled to reimbursement through the settlement proceeds, the employer/carrier has not been prejudiced in any way by the Claimant's failure to provide notice of its third-party action and settlement. Both Claimant and Wright testified that they did not intend to elect as a remedy the third party settlement. (Tr., pp. 33, 67). In fact at

the time of the settlement in June 1999, Kimmer's medical bills exceeded \$25,000. (Tr., p. 54). The effect of the single Commissioner's ruling is that the Claimant with a 6th grade education by settling a paltry \$15,000 minimum limits liability claim to alleviate a portion of his mounting medical bills, has waived all rights to recover a total disability claim worth over \$250,000, where none of the respondents' rights have been prejudiced. There is no statutory presumption of prejudice, and the defendants have failed to meet their burden of proving that there was any prejudice.

Since the settlement was for the third-party's liability policy limits, since the employer/carrier still has a right to reimbursement to the settlement proceeds, since other assets for the third-party could not be found, and since the employer/carrier has not produced any evidence showing that the outcome would have been different had they intervened, the Full Commission should find as a matter of fact that the employer/carrier were not prejudiced by the Claimant's failure to provide notice of his third-party settlement.

II. The Commissioner committed reversible error in ruling that the settlement of a Claimant's third-party claim without giving notice to the Employer/Carrier bars the Claimant's right to pursue his workers' compensation claim where the Employer/Carrier has not been prejudiced.

Under the law of South Carolina, when the compensable injury is due to the tortious conduct of a third-party, the employee is entitled to bring an action against the third-party tortfeasor. S.C. Ann. §42-1-560(b). A claimant has three remedies for job related injuries:

- (1) to proceed solely against the employer thereby allowing the employer-carrier the opportunity to pursue reimbursement against the third party,
- (2) to proceed solely against the third party tortfeasor under section 42-1-550 by instituting and prosecuting an action at law; and

- (3) to proceed against both the employer-carrier and the third-party by complying with §42-1-560. Fisher v. South Carolina Department of Mental Retardation, 277 S.C. 573, 291 S.E.2d 200, 201 (1982).

If Claimant chooses the third option and elects to pursue claims against both the employer-carrier and the third party, the employer-carrier is entitled to a lien on proceeds of the third party action to the extent of the total amount of compensation including medical and other expenses paid or to be paid. Id.

South Carolina Code §42-1-560(b) states, "Notice of the commencement of the action [third-party action] shall be given within thirty days thereafter to the Industrial Commission, the employer and carrier upon a form prescribed by the Industrial Commission." The statute does not spell out any penalties or consequences for not complying with the notice requirement.

In addition, no compromise settlement between the employee and third party can be made binding on the carrier without its consent or the approval of the commission. Id. However, as with the notice provisions, the statute does not state any consequences for failing to obtain consent or approval.

The main concepts underlying a third-party action are that it must make the injured person whole, and it should avoid double recovery. Larson's Workers Compensation Law, §110.01-110.02. If the Claimant is not allowed to continue his workers' compensation claim, he will come far short of being made whole. At the time of the settlement, the Claimant's ever increasing medical bills were greater than the proceeds from the third party settlement. Allowing the Claimant to pursue his workers compensation claim would allow him the opportunity to be made whole, but would not amount to a double recovery.

According to Larson, the central objective of a good subrogation statute is to provide a mechanism that will achieve three results:

- (1) the third-party should pay what it would normally pay if no compensation question were involved;
- (2) the employer and carrier should "come out even" by being reimbursed for their compensation expenditure, and
- (3) the employee should get any excess of the damage recovery over compensation. Id.

If claimant is allowed to continue his compensation claim, all of these objectives would still be achieved. Since the Claimant settled with the third party for his policy limits, no other assets were discovered by the Claimant or his counsel, and neither the employer or his carrier have shown the existence of any other assets, the first objective was not affected by lack of notice. The second objective would be satisfied since the employer and his carrier will still be reimbursed for the compensation expenditures. As previously stated, Claimant settled for the available liability policy limits, and the employer and his carrier is entitled to subrogation from those proceeds. Since the employer and his carrier have not been prejudiced in any way, the Claimant's compensation claim should not be barred for failing to give notice.

Cases from other jurisdictions which have statutes similar to ours have determined that the absence of prejudice to the employer is a relevant factor in determining whether a claimant's failure to give notice should act as a bar.

In Darbonne v. M&M Right of Way Contractors, 693 So.2d 299 (La. App. 3rd Cir. 1997), a Louisiana court faced a similar situation, when an employee chose to pursue both a third party claim and a workers' compensation claim against his employer. In that case, the employee failed to give his employer notice of the his third party action before the trial court rendered final judgment.

The court agreed with the trial court that the employee had violated the state's notice requirement. However, like South Carolina, Louisiana's statute did not provide any penalty for a Claimant's violation of the notice requirement. In allowing the claimant's workers' compensation claim to proceed, the court acknowledged that the purpose behind the notice provision was to protect the employer's rights of intervention and reimbursement. However, the court reasoned that these interests could still be protected if the employee was allowed to continue his workers' compensation claim. Similarly, defendants' interest can still be protected if Kimmer is allowed to continue his workers compensation claim by deducting up to \$15,000 of the third party settlement from Claimant's workers compensation total disability award.

In holding that an employee's workers' compensation claim was not terminated by an unauthorized settlement of their third-party claim, the Montana Supreme Court stressed that there was no express statutory authority for the termination of the claim, "If the legislature wanted the insurer to exercise such control over the insured, they would have so stated." Wildin v. CNA Insur. Co., 846 P.2d 1022 (Mont. 1993). Similarly, the lack of any express statutory consequences for failing to provide notice of a third-party claim in South Carolina's Workers' Compensation statute illustrates that South Carolina's Legislature did not intend for an employee's claim to be barred for such failure under the unique facts of this case.

Maryland's statute is also silent as to the result if a third-party claim is settled without the consent or knowledge of the employer. In Ankney v. Franch, 103 Md. App. 83, 652 A.2d 1138 (Ct. Special App. 1995), *reversed on other grounds*, 341 Md. 350, 670 A.2d 951 (1996), the Maryland Court of Special Appeals decided that absent an express statutory intent clearly ending the claimant's rights under the Workers' Compensation statute, any unauthorized settlement will be handled as if

it was authorized, with the employer retaining subrogation rights in the settlement proceeds. In finding that "...it would be both unjust and unreasonable to allow the termination of an employee's claim without a showing that the employer suffered material prejudice," the Maryland Court noted that the law must be interpreted to effectuate its general purpose and that any ambiguities should be liberally construed in favor of injured employees. Id.

Other states have held that the effect of the absence of the employer's consent to a third-party settlement generally turns on whether the employee prejudiced the carrier. Larson on Workers Compensation §116.07[7]; See Millican v. Home Stores, 270 S.W.2d 372 (Tenn. 1954); Home v. Superior Life Ins., 123 S.E.2d 401 (Va. 1962); White Electric Co. v. Bak, 467 S.E.2d 827 (Va. App. 1996). (Virginia Court of Appeals ruled that claimant's settlement with third party tortfeasor did not bar his workers comp rights where employer was not prejudiced).

The single Commissioner's ruling that Claimant is barred by his attorney's actions is contrary to a long-established view that our Workers' Compensation statute is to be liberally construed in favor of employees. See Etheredge v. Monsanto, 562 S.E.2d 679 (S.C. App. 2002) (where SC Court of Appeals liberally construed notice provision in favor of claimant); Nelson v. Yellow Cab, 349 S.C. 589, 564 S.E.2d 110 (2002) (where SC Supreme Court liberally construed term "employee" to find in favor of claimant); Aughtry v. Abbeville County School District # 60, 340 S.C. 604, 533 S.E.2d 885 (2002) (where "course of employment" liberally construed in favor of claimant); Gibson v. Spartanburg County School District # 3, 338 S.C. 510, 526 S.E.2d 725 (S.C. App. 2000) (where circuit court's reversal of the full commission's ruling on dual purpose trip upheld, even when claimant was attempting a personal errand at time of injury); Bailey v. Santee River Hardwood Co., 32 S.E.2d 365 (S.C. 1944) (where the Supreme Court reinstated award after liberally construing

statute to include injured workman). Considering South Carolina's history of liberal construction in favor of the employee, the statute's failure to provide any consequence or penalty, and the fact that the settlement in no way prejudiced the employer's subrogation rights and interest, Mr. Kimmier should be allowed to recover his full disability claim despite his third-party settlement.

The cases of Fisher, 291 S.E.2d at 200, Stroy v. Millwood Drugstore, 109 S.E.2d 706 (1959), and Hudson v. Townsend Sawchain Co., 370 S.E.2d 104 (Cl. App. 1988), cited by the single Commissioner and relied upon by defendants, are all distinguishable from the present case. In Fisher, the claimant entered into a compromise settlement (i.e., for an amount less than the available coverage) without notice to the carrier. The employer did not have the opportunity to protect its rights to obtain a better settlement or verdict, and the Supreme Court concluded that it was clearly, therefore, prejudiced. Because the Claimant's actions prejudiced the defendant, the Court ruled that he had waived his workers compensation rights. In Hudson and Stroy, the claimants pursued lawsuits to an unsuccessful ending which also prejudiced the employers which, if they had had notice, could have intervened in the lawsuits to ensure that their subrogation rights were protected. In the present case, the Claimant made the maximum possible settlement with the third-party resulting in no prejudice to the employer. In addition, the defendants have not provided any evidence of prejudice and have failed to meet their burden of proof. Had the employer been notified timely by Claimant's then-attorney before the third party settlement, the defendants could not have changed the outcome.

This is a case of first impression in this state. Counsel is aware of no reported case in South Carolina where a claimant's total disability claim has been barred when his then-attorney settled a

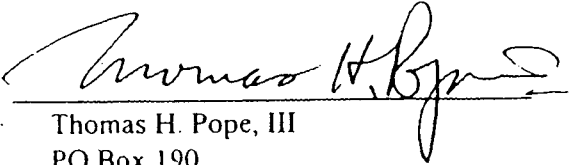
minimum limits third party action against a judgment-proof defendant and the employer was not prejudiced.

CONCLUSION

Since South Carolina Code §42-1-560 does not provide any specific consequences for failing to provide notice of a third-party action and the employer/carrier's subrogation interest can still be protected, the appellant's workers' compensation claim should not be barred in this case, where there has been no prejudice to the defendants. The decision of the single Commissioner in this regard should be reversed, and Claimant should be awarded full disability, plus medical benefits.

Respectfully submitted,

POPE AND HUDGENS, P.A.

By: 

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

Attorneys for Claimant/Appellant

October 2, 2003

CERTIFICATE OF SERVICE

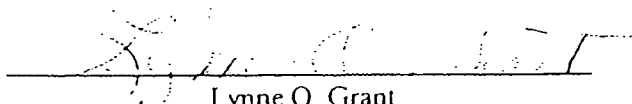
The undersigned employee of Pope and Hudgens, P.A., Attorneys at Law, Post Office Box 190, 1508 College Street, Newberry, South Carolina 29108, does hereby certify that she has served the following named individual with a copy of the pleading indicated below by United States first-class mail, with sufficient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

COUNSEL SERVED:

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

PLEADING(S) SERVED:

Appellant's Brief to Appellate Panel dated October 2, 2003, in the case of Richard Kimmer v. Murata of America and Liberty Mutual Insurance Company, WCC File No.



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

October 2, 2003

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF GREENVILLE	)	COMMISSION
Richard Kimmer, Employee, Claimant	)	WCC File No.: 9908422
	)	Carrier File No.: 510-193878
Appellant,	)	Carrier Code No.: 00417
	)	Employer FEIN: 561706754
v.	)	
	)	
Murata of America, Employer, and	)	RESPONDENTS' BRIEF
Liberty Mutual Insurance Company,	)	
Carrier,	)	
	)	
Respondents.	)	
_____	)	

STATEMENT OF THE CASE

This case was heard by Commissioner Michelle J. Childs on December 10, 2002, in Greenwood, South Carolina, pursuant to notices timely served, at which time the parties and their representatives appeared.

Claimant has worked for Employer as technician installing and servicing machinery since December 1995. He received a salary based upon an hourly rate, a \$300 car allowance paid every other week, and \$0.06 per mile for travel to and from work. (Tr., p. 9).

On January 29, 1999, while driving from his home in Whitmire to work at the Springs Catherine Plant in Chester County, Claimant was involved in a two-automobile accident in which the driver of the other automobile, Anthony Pendergrass, was at fault. (Tr., p. 13). Claimant suffered multiple injuries to his head, neck, knees and back as a result of the accident. (Tr., p. 15).

In the months following the accident, Claimant's attorney during 1999, Phillip E.

Wright, Esquire, undertook an investigation of the assets of Mr. Pendergrass. Mr. Wright discovered that Mr. Pendergrass was insured under a policy providing minimal limits coverage of \$15,000 for automobile liability. (Tr., p. 70). Mr. Wright also determined that Mr. Pendergrass, a resident of Chester County, did not own any real estate or other automobiles registered in Chester County. (Tr., p. 71). However, Mr. Wright did not make any attempt to research whether Mr. Pendergrass owned any checking or savings accounts, stocks, or bonds or property in any other country. Neither did Mr. Wright investigate whether Mr. Pendergrass was covered as an insured under any insurance policies or vehicles not owned by Mr. Pendergrass. (Tr., p. 72). At no point did Mr. Wright contact Liberty Mutual, which as a result did not participate in the investigation in any way. (Tr., p. 73).

On June 16, 1999, Claimant signed a settlement agreement with Mr. Pendergrass, releasing all claims against Mr. Pendergrass in exchange for the insurance policy limits of \$15,000. (Tr., p. 58). Neither Claimant nor his attorney, Mr. Wright, communicated with or notified Liberty Mutual before entering into the settlement. (Tr., p. 69). On June 19, 1999, Claimant filed a Form 50 by mail with the South Carolina Workers' Compensation Commission. The Commission received the form on June 21, 1999. (Tr., p. 58).

At the hearing, the Commissioner ruled that Claimant's settlement of his claim against Mr. Pendergrass without giving notice to the Employer or the Carrier was prejudicial to the Employer and the Carrier because they were unable to participate in the litigation, or to affect the full and final release executed by Claimant. Therefore, Claimant's

act in signing the settlement agreement operated as a bar against his workers' compensation claim.

ARGUMENTS

- I. The Commissioner properly ruled that the settlement of a Claimant's third-party claim without giving notice to the Employer/Carrier bars the Claimant's right to pursue his worker's compensation claim.

In Fisher v. South Carolina Department of Mental Retardation-Coastal Center, 277 S.C. 573, 291 S.E.2d 200 (1982), the Supreme Court set forth the three remedies available to an employee with a compensable injury where liability lies with some person other than the employer (the "third party"). The injured employee may: (1) proceed solely against the employer-carrier, allowing the employer-carrier to proceed against the third party, (2) proceed solely against the third party, or (3) proceed against both the employer-carrier and the third party. Fisher, 277 S.C. at 575, 291 S.E.2d at 201.

Should the employee elect to pursue the third remedy listed above, he or she must proceed according to § 42-1-560 of the Code of Laws of South Carolina. Under the provisions of the statute, the insurance carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation including medical and other expenses paid or to be paid. Notice of the commencement of an action against the third party shall be given within thirty days thereafter to the Industrial Commission, the employer and carrier. S.C.Code Ann. § 42-1-560(b).

It is well settled under South Carolina law that where a Claimant enters into a

compromise settlement with a third party without complying with the statutory provisions cited above, he or she has elected to proceed solely against the third party tortfeasor and cannot maintain a worker's compensation claim. See Taylor v. Mount Vernon-Woodberry Mills, Inc., 211 S.C. 414, 45 S.E.2d 809, 812 (1947); Gardner v. City of Columbia Police Dept., 216 S.C. 219, 57 S.E.2d 308, 310 (1950); Stroy v. Millwood Drug Store, Inc., 235 S.C. 52, 109 S.E.2d 706, 708 (1959); Fisher, 277 S.C. at 573, 291 S.E.2d at 201; Hudson v. Townsend Saw Chain Co., 296 S.C. 17, 20-21, 370 S.E.2d 104, 106 (Ct. App. 1988). As the Supreme Court reasoned in Fisher:

While § 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 . . . and still maintain a workmen's compensation claim. Fisher, 277 S.C. at 575, 291 S.E.2d at 201.

The cases relied upon by Claimant arose out of other jurisdictions, and have no binding effect in South Carolina. Regardless, the Commission can distinguish the facts of these cases from the facts underlying the present action.

In Darbonne v. M&M Right Of Way Contractors, 693 So.2d 299 (La. App. 3rd Cir. 1997), the Third Circuit Court of Appeals of Louisiana held that, under the Louisiana workers' compensation statutes, a claimant who recovered damages from a third-party tortfeasor without providing notice to the employer-carrier is barred from bringing a workers' compensation claim only where he or she compromised with the tortfeasor, not where the claimant filed suit. Because the claimant in Darbonne had filed a suit, the Court

ruled that his worker's compensation claim could proceed. Id., 693 So.2d at 302. In the present case, Claimant never filed an action against Mr. Pendergrass. Under both the law of South Carolina and the law of Louisiana, Claimant has forfeited his right to workers' compensation.

The workers' compensation statute interpreted in Wildin v. CNA Insurance Co., 256 Mont. 354, 846 P.2d 1022 (Mont. 1993), varies from South Carolina's statute in that the Montana statute requires notice to be given to the employer-carrier of the filing of a suit against the tortfeasor, but makes no provision for unauthorized settlement of a claim. See Mont. Code Ann. § 39-71-414. On the contrary, the South Carolina Act expressly demands that written notice be given prior to a settlement between the injured employee and the at-fault party. See S.C. Code Ann. § 42-1-560(f), discussed *supra*.

In Ankney v. French, 103 Md.App. 83, 652 A.2d 1138 (Md. Ct. Spec. App. 1995), reversed on other grounds, 341 Md. 350, 670 A.2d 951 (1996), the Court of Special Appeals of Maryland set forth a rule that employers must show material prejudice caused by an unauthorized settlement in order to terminate an injured employee's workers' compensation claim. Claimant cites several other cases which follow the reasoning of Ankney. See Millican v. Home Stores, Inc., 197 Tenn. 93, 270 S.W.2d 372 (Tenn. 1954); Horne v. Superior Life Insurance Co., 203 Va. 282, 123 S.E.2d 401 (Va. 1962); White Electric Co., Inc. v. Bak, 22 Va.App. 17, 467 S.E.2d 827 (Va.App. 1996). As will be discussed in detail below, Murata and Liberty Mutual were prejudiced in this case in that they were unable to participate in the investigation of the tortfeasor and the negotiation of the settlement, the

result of which is that their right of subrogation no longer exists.

In the present case, it is beyond dispute that Claimant entered into a settlement agreement with the third-party tortfeasor without providing notice to Murata or Liberty Mutual. According to South Carolina law, his actions had the effect of an election of remedies; because Claimant elected to pursue recovery solely from the third party, he cannot now assert a claim for worker's compensation.

II The Commissioner properly ruled as a matter of fact that the Employer/Carrier was prejudiced by the Claimant's settlement of a third-party claim without notice where the Employer/Carrier's right of subrogation was destroyed.

A provision that requires notice of a third-party action has as its purpose the prevention of any prejudice to the employer and carrier "as a result of the employee's decision to attempt a third-party recovery." Hudson, 296 S.C. at 22, 370 S.E.2d at 107.

Section 42-1-560(b) grants to insurance carriers the right of subrogation to the rights of the injured employee against an at-fault third party to the extent of the compensation paid by the carrier. Where the right of subrogation is given, the employee must not do anything that impairs or extinguishes such right. Stroy, 109 S.E.2d at 710.

Although the Workers' Compensation Act should be liberally construed in order to carry into effect its beneficent purposes, this does not mean that violence should be done to the statute in order to aid either party. Taylor, 45 S.E.2d at 812. The Supreme Court has held that it would defeat the objective of § 42-1-560 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. Fisher, 277 S.C. at 575-76, 291 S.E.2d at 201.

The Taylor case demonstrates that where an employee enters into a settlement agreement with a third-party tortfeasor without the knowledge or consent of the employer-carrier, the right of subrogation now codified in § 42-1-560(b) no longer exists. There, as in the present case, an injured employee, without notifying his employer, released the third party from liability in exchange for valuable consideration. As the Supreme Court explained:

... if the employer's or the insurance carrier's statutory right of subrogation is destroyed by the act of the employee, the latter's right to compensation is thereby barred. In the case before us, that is precisely what has happened. Should the [employer] pay compensation to the injured employee, under the Act it would be entitled to subrogation to the rights of the [employee] against the third parties whom he released from liability. But should the [employer] then proceed against such third parties, it would be met with a valid and binding release which would be a complete bar to such a suit. In other words, the employer would find the statutory right to subrogation to have been destroyed by the voluntary act of the employee. Taylor, 45 S.E.2d at 813.

In the case presently before the Commission, the agreement entered into by Claimant operates as a bar to the right of subrogation belonging to Respondents. Because their right of subrogation has been effectively extinguished, Respondents were prejudiced by the settlement between Claimant and the third-party tortfeasor.

In Hudson, the Court of Appeals described another effect of notice, other than to preserve the employer-carrier's right to subrogation:

By giving notice of the commencement of the third-party action, the employee also affords the employer and the carrier an opportunity to lend support to an effort that could possibly lead to the recovery by the carrier of some or all the amount that might later be paid as compensation to the injured employee under the Workers'

Compensation Act. Hudson, 296 S.C. at 22-23, 370 S.E.2d at 107.

Here, Respondents were offered no opportunity to assist Claimant in pursuing recovery from the tortfeasor. Respondents were unable to independently investigate the existence of any assets belonging to Mr. Pendergrass, or whether he was covered by any additional insurance. Further, Respondents could not take part in the negotiation of the settlement agreement. Respondents were allowed no means by which to maximize the recovery from the third-party tortfeasor and ensure that compensation for Claimant's injuries was paid to the fullest extent possible by the at-fault party. As a result, Respondents were prejudiced by Claimant's failure to provide notice of the settlement.

Because Claimant settled his claim against the third-party tortfeasor without first notifying Respondents, Respondents' right of subrogation has been destroyed, and Respondents could not take part in the investigation of the tortfeasor or the settlement negotiation. Therefore, the Commissioner ruled properly that Respondents were prejudiced by the settlement between the Claimant and the third-party tortfeasor, and that accordingly, Claimant's workers' compensation claim should be barred.

CONCLUSION

Allowing an injured employee to bring a claim for workers' compensation after he or she has settled his or her claim against the at-fault party without giving notice to the employer and the carrier is inherently prejudicial. The employer and

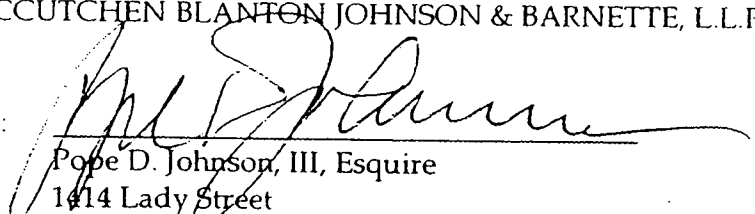
carrier, who have a statutory right to subrogation under § 42-1-560 of the Code of Laws of South Carolina, are unable to participate in the very settlement process which ultimately destroys that right. Accordingly, the courts of South Carolina have consistently barred an employee from recovering under the Workers' Compensation Act where that employee has entered into an unauthorized settlement agreement.

In the present case, the evidence is clear in showing that Claimant settled his claim with the at-fault party without providing notice to Murata or Liberty Mutual. In doing so, Claimant violated the South Carolina Workers' Compensation Act as a practical matter, and further, destroyed the right of Murata and Liberty Mutual to subrogation. The decision of the single Commissioner should be affirmed.

Respectfully submitted,

MCCUTCHEN BLANTON JOHNSON & BARNETTE, L.L.P.

BY:


Pope D. Johnson, III, Esquire
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211
(803) 799-9791
(803) 253-6084 (facsimile)
EMAIL: pdjohnson@mbjb.com

Attorneys for Respondent

Columbia, South Carolina
October 20, 2003

CERTIFICATE OF SERVICE

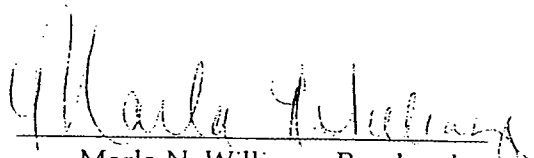
I, Marla N. Williams, of McCutchen Blanton Johnson & Barnette, L.L.P., hereby certify that I have served Thomas H. Pope, III, Esquire, attorney for the Claimant, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 25 day of October 2003.

COUNSEL SERVED:

Thomas H. Pope, III
Pope and Hudgens, P.A.
Post Office Box 190
Newberry, South Carolina 29108

PLEADINGS:

RESPONDENTS' BRIEF


Marla N. Williams, Paralegal

Columbia, South Carolina

00-224

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

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

October 31, 2003

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

Via Fax Only: 803-286-9996

Philip E. Wright, Esquire
Attorney at Law

Lancaster, SC 29720

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

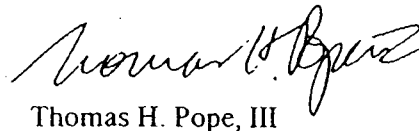
Dear Mr. Wright:

In response to your fax of yesterday, October 30, in which you request changing the termination date of the Tolling Agreement from June 30, 2005 to November 1, 2004, I have some concerns about whether the workers compensation appeal can be concluded, and the legal issues resolved, by that time. Nevertheless, I will agree to have the Tolling Agreement modified to November 1, 2004. If the legal issues on appeal are not resolved by early fall 2004, I may ask for another extension.

Accordingly, please change the date, initial the change, sign the Tolling Agreement and return it to me.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg

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

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

November 7, 2003

Philip E. Wright, Esquire
Attorney at Law

Lancaster, SC 29720

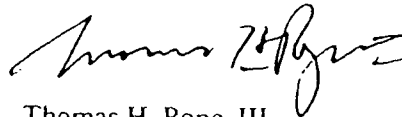
Re: Richard Kimmer

Dear Mr. Wright:

I enclose herein a copy of the executed Tolling Agreement with the one change that you made being initialed by Mr. Kimmer.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg
Enclosure

cc: Mr. Richard Kimmer

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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
Bryan B. Byrd

Richard Kimmer

Richard Kimmer, Claimant

WITNESSES:

Jane A. Butts
Jennifer C. Collins

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

By:

Philip E. Wright

Philip E. Wright, Esquire

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Appellate Panel
of the
South Carolina Workers' Compensation Commission

Order

WCC #

Richard Kimmer, Employee, *Claimant*

v.

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

AFFIRM

Appellate Panel Review held in Columbia, South Carolina, on March 30, 2004, per notices timely and properly served.

Claimant/appellant represented by Thomas H. Pope, III, Esquire
Defendant/respondent represented by Pope D. Johnson, III, Esquire

Order filed: May 27, 2004

Statement of Case

The parties were heard by Commissioner J. Michelle Childs on December 10, 2002 in Greenwood, South Carolina. On July 31, 2003, the commissioner issued an order:

The claim of Richard Kimmer against Murata of America and Liberty Mutual Insurance Company for benefits under the S.C. Workers' Compensation Law for an accident of January 29, 1999 be and it hereby is denied.

No hearing costs are assessed in this instance.

Within the statutory period, counsel for dependants filed an application for review, setting forth grounds for appeal, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on March 30, 2004.

The appellant asserts that the commissioner erred by:

Finding that the Employer/Carrier was prejudiced by the Claimant's settlement of a third-party claim without notice where the settlement reached was equal to the third-party's insurance policy limits, where the Employer/Carrier still has a right to reimbursement to the settlement proceeds, where no other assets for the third-party could be found, and where the Employer/Carrier has not shown any evidence of how they have been prejudiced; Finding that the Claimant was entitled to temporary total benefits from June 17, 2002 and continuing;

Finding that the settlement of the Claimant's third-party claim without giving notice to the Employer/Carrier in South Carolina bars the Claimant's right to pursue his workers' compensation claim where the employer has not been prejudiced.

1 of 1/appellate panel/gnr9908422/richardkimmer

EXHIBIT C

749

In an Appellate Review, the Appellant Panel shall, pursuant to S.C. Code Ann. 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

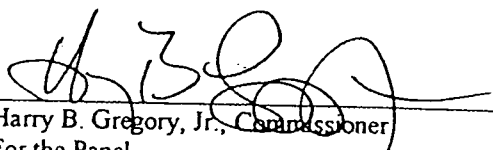
After careful review in the instant case, the appellate panel of the South Carolina Workers' Compensation Commission has determined that all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case; and, therefore, the Order is sustained in its entirety. The Hearing Commissioner's decision is incorporated by reference as if set forth verbatim herein.

ORDER

The Order of the Single Commissioner filed in the above entitled matter on July 31, 2003 is hereby affirmed by the Panel and the same shall constitute the Decision and Order of the Appellate Panel.¹

IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION


Harry B. Gregory, Jr., Commissioner
For the Panel

FULL AFFIRMATION

Concur: Lisa D. Chavis, Commissioner
Sherry Shealy Martschink, Commissioner

FILED

2004 JUN 16 PM 1:36

CLERK OF COURT
CHESTER COUNTY, S.C.

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 27th day of May, 2004

By Jessie D. Sturges
Administrative Assistant to the Commissioner

T.H.P.
P.D.J.

¹ All unchanged Findings of Fact and Conclusions of Law as contained in the single commissioner's order are specifically referenced and included in toto in the "order" portion of this decision so as to comply with the requirements of *Baldwin v. James River Corporation*, 304 SC 485, 405 SE 2d4, as well as the Administrative Procedures Act of the State of South Carolina and Sections 42-17-40 and 1-23-350 of the South Carolina Code of Laws, as per *D. Shipley, South Carolina Administrative Law* at 5-109 (1983).

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Appellate Panel
of the
South Carolina Workers' Compensation Commission

Order

WCC

Richard Kimmer, Employee, *Claimant*,
v.
Murata of America, Employer, and Liberty Mutual Insurance Company, Carrier, *Defendants*

AFFIRM

Appellate Panel Review held in Columbia, South Carolina, on March 30, 2004, per notices timely and properly served.

Claimant/appellant represented by Thomas H. Pope, III, Esquire
Defendant/respondent represented by Pope D. Johnson, III, Esquire

Order filed: May 27, 2004

Statement of Case

The parties were heard by Commissioner J. Michelle Childs on December 10, 2002 in Greenwood, South Carolina. On July 31, 2003, the commissioner issued an order:

The claim of Richard Kimmer against Murata of America and Liberty Mutual Insurance Company for benefits under the S.C. Workers' Compensation Law for an accident of January 29, 1999 be and it hereby is denied.

No hearing costs are assessed in this instance.

Within the statutory period, counsel for dependants filed an application for review, setting forth grounds for appeal, copies of which were furnished to all interested parties prior to oral argument presented before the Appellant Panel on March 30, 2004.

The appellant asserts that the commissioner erred by:

Finding that the Employer/Carrier was prejudiced by the Claimant's settlement of a third-party claim without notice where the settlement reached was equal to the third-party's insurance policy limits, where the Employer/Carrier still has a right to reimbursement to the settlement proceeds, where no other assets for the third-party could be found, and where the Employer/Carrier has not shown any evidence of how they have been prejudiced; Finding that the Claimant was entitled to temporary total benefits from June 17, 2002 and continuing;

Finding that the settlement of the Claimant's third-party claim without giving notice to the Employer/Carrier in South Carolina bars the Claimant's right to pursue his workers' compensation claim where the employer has not been prejudiced.

In an Appellate Review, the Appellant Panel shall, pursuant to S.C. Code Ann. 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

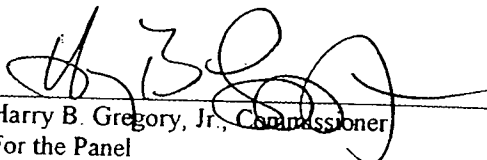
After careful review in the instant case, the appellate panel of the South Carolina Workers' Compensation Commission has determined that all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case; and, therefore, the Order is sustained in its entirety. The Hearing Commissioner's decision is incorporated by reference as if set forth verbatim herein.

ORDER

The Order of the Single Commissioner filed in the above entitled matter on July 31, 2003 is hereby affirmed by the Panel and the same shall constitute the Decision and Order of the Appellate Panel.¹

IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION


Harry B. Gregory, Jr., Commissioner
For the Panel

FULL AFFIRMATION

Concur: Lisa D. Chavis, Commissioner
Sherry Shealy Martschink, Commissioner

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 27th day of May, 2004

By 
Administrative Assistant to the Commissioner

T.H.P.
P.D.J.

¹ All unchanged Findings of Fact and Conclusions of Law as contained in the single commissioner's order are specifically referenced and included in toto in the "order" portion of this decision so as to comply with the requirements of *Baldwin v. James River Corporation*, 304 SC 485, 405 SE 2d4, as well as the Administrative Procedures Act of the State of South Carolina and Sections 42-17-40 and 1-23-350 of the South Carolina Code of Laws, as per *D. Shipley, South Carolina Administrative Law* at 5-109 (1983).

00-224

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

DOPE & HUDGENS ATTORNEYS, P.A.

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PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

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

May 28, 2004

VIA FAX ONLY:

Anne Repo, Esquire
Claims Specialist
Westport Insurance Corporation
Overland Park, Kansas

Re: Richard Kimmer v. Philip E. Wright
Your Claim No. _____
Your Policy No. _____

Dear Ms. Repo:

Thank you for sending me the fax letter yesterday on this matter. I wrote Mr. Wright and asked for your name because I think that it would be beneficial for us to talk about this matter.

I assume that you are familiar with the underlying basis of a possible claim against Mr. Wright - i.e., that he commenced a third party action against the at-fault third party without notice to the workers comp carrier, and the workers comp commissioner determined that this act was an election of remedies which precluded the claimant from workers compensation benefits. Of course, there was no conscious, intentional election of third party remedies by Mr. Kimmer (particularly where the liability coverage was only \$15,000).

Procedurally, the workers comp commissioner ruled that (a) the claimant was injured in an on-the-job injury and, thus, the claim was covered; (b) the claimant was totally disabled from this on-the-job injury; and (c) notwithstanding the above, the plaintiff was barred from seeking workers comp benefits. We appealed that decision and argued the appeal before an appellate panel of the Workers Comp Commission (3 commissioners).

At the panel hearing, there was substantial discussion about how unfair the commissioner's ruling was to preclude claimant from recovery and how that amounted to a windfall to the workers comp carrier. The panel definitely struggled with the issue. In fact, we just received the appellate panel affirmance by mail today. I enclose a copy of the order dated May 27, 2004 of the appellate panel which affirms Commissioner Child's decision.

After the appellate panel argument in March, I was approached by the workers comp carrier's attorney, Pope Johnson, who inquired about possible settlement. Mr. Johnson did not offer any money, but he and I discussed a possible scenario for settlement.

753

May 28, 2004

Mr. Kimmer had previous knee and back problems (although they were not disabling) and, for this reason, the workers comp carrier may be able to pass some responsibility to the Second Injury Fund under SC law. This fund exists so that it can pick up workers comp benefits after the first 78 weeks of payments. Mr. Johnson asked if we were interested in pursuing some kind of settlement which would include contributions from the workers comp carrier, the Second Injury Fund, and the insurance carrier (Mr. Wright's malpractice carrier).

This claim is worth somewhere in the neighborhood of \$270,000. To have this matter ended without 2 more years of appeals, Mr. Kimmer would certainly be willing to compromise some. I would like to discuss with you a possible resolution whereby the carrier would pay a fair portion of the settlement.

Please call me next week so that we can discuss this further.

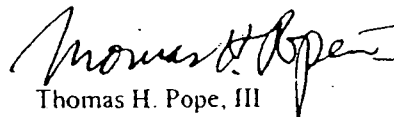
Also, for your information, I am going to appeal the panel decision to the circuit court. I do not expect that this case will be heard for several more months by the circuit court.

I will look forward to hearing from you next week.

With best regards,

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/lg

Enclosure

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

DOPE
HUDGENS
ATTORNEYS, P.A.

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NEWBERRY, SOUTH CAROLINA 29108
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WWW.POPEANDHUDGENS.COM

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

July 13, 2004

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:

After you and I spoke at the conclusion of the Appellate Panel hearing, I got in touch with the liability carrier for Philip Wright, Esquire. The name of the claims adjuster is:

Ms. Anne Repo
Claims Specialist
Westport Insurance Corporation
Overland Park, Kansas
Telephone: 312-821-4133
Fax: 877-880-1590 (written correspondence to be sent via fax, as Westport operates on a paperless file system)

I spoke with Ms. Repo several weeks ago as to whether or not her carrier would be interested in discussions of a possible settlement between your carrier, the Second Injury Fund, and the liability carrier for Mr. Wright. Ms. Repo indicated that she was willing to engage in such discussions. I have no objection to your contacting the claims adjuster directly, but we will need to consider how to proceed to discuss settlement. Do we want a mediator or do we want to have a telephone conference call or a meeting?

Please call me after you receive this letter so that we can discuss how to proceed to try to resolve this matter.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg
cc: Ms. Anne Repo (via fax only)

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

**DOPE
&
HUDGENS**
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THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

August 24, 2004

VIA FAX ONLY: 803-253-6084

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

Columbia, South Carolina 29211-1209

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

Dear Pope:

I received your voicemail message just as I was leaving the office this morning. I will be out of pocket for about three days with depositions. I understand that your client has authorized you to participate in a 3-way mediation involving the claimant, the malpractice carrier, and your carrier Liberty Mutual. You also indicated in your message that it was satisfactory if we used Barron Grier as the mediator.

I am sending a copy of this letter by fax to Anne Repo, the claims specialist for Philip Wright's malpractice carrier. When Ms. Repo receives this letter, I would ask that she call me so that we can discuss her availability for this mediation. It would be my hope that we can hold this mediation some time in late September.

After I get several suitable dates from Ms. Repo, I will be back in touch with you.

With best regards,

Sincerely,

POPE AND HUDGENS, P.A.

Tom Pope
Thomas H. Pope, III

THP, III/lg

cc: Anne Repo, Claims Specialist (via fax only: 877-880-1590)

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

DOPE & HUDGENS ATTORNEYS, P.A.

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WWW.POPEANDHUDGENS.COM

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

August 26, 2004

VIA FAX ONLY (877) 880-1590
Ann Repo, Esquire, Claims Specialist
Westport Insurance
Overland Park, Kansas

Re: Richard Kimmer v. Phillip Wright - In Re: Kimmer v. Murata of America
Your Claim No.

Dear Ms. Repo:

We spoke by phone several months ago, and I advised you that Pope Johnson, the attorney for the workers comp carrier, was amenable to mediating this case provided you were. After you indicated that you were interested in mediation of the case, Mr. Johnson sought approval of his carrier. Earlier this week, he advised me that his carrier did authorize him to proceed and participate in mediation. Mr. Johnson and I spoke and agreed between us that Barron Grier, a certified mediator and a practicing attorney in Columbia, would be satisfactory with us. Also, I checked with Mr. Grier's office and asked for dates that he is available for mediation.

I heard back from Mr. Grier's office via the enclosed fax. As you will see, he is available for mediation on the following dates in September: 21, 23, 27, 29 and 30.

Also, Mr. Grier is available on the following dates in October: 4, 5, 11, 12, 13, 14, 18, 19 and 20.

I have not heard from Mr. Johnson as to his availability on these dates; however, I am not available on September 30, October 14 or October 20. I am available on the other dates.

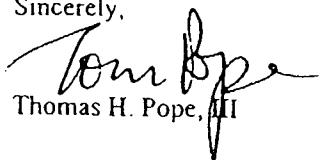
I would like to talk with you about this matter and would appreciate your calling me today, or at least by tomorrow.

In our view, there can be no mediation unless all persons with authority to settle are present. These would include the plaintiff and his counsel, the workers comp counsel and its claims adjuster (with full authority to settle), and Attorney Wright and you as his adjuster (along with any counsel he wishes to bring).

I am sending a copy of this letter to Pope Johnson so that everyone will be in the loop.

I will look forward to talking with you about this matter when you call.

Sincerely,


Thomas H. Pope, III

THP, III/lg
Enclosure
cc: Pope D. Johnson, III, Esquire, w/encl
F. Barron Grier, III, Esquire, w/encl.

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

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

September 8, 2004

VIA FAX ONLY (803) 731-4059

F. Barron Grier, III, Esquire
Grier Law Firm
107 Westpark Blvd.
Westpark Center II
Columbia, South Carolina 29210

Re: Richard Kimmer v. Murata of America, Employer, and Liberty Mutual, Carrier
and Richard Kimmer v. Phillip Wright (Westport Insurance Company)

Dear Barron:

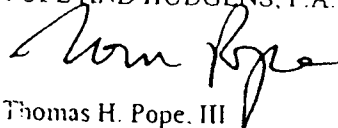
I just talked with Anne Repo, Esquire, the claims representative from Westport Insurance Company. Ms. Repo advised me that she had checked with her insured, Philip Wright, and with the person they have just hired as local counsel, Warren C. Powell, Jr., Esquire, and that it suits everybody to have the mediation on Tuesday, October 12, at your office. I assume that we would commence at 9:30 AM. I am writing this letter with copies to all involved so that everyone can note their calendars for this mediation. It would be my preference that you talk to each counsel privately at your convenience to get the "lay of the land." If you want any private submissions from the parties, I would suggest that they be limited in length.

We will await further instructions from you as to how you wish to proceed.

With best regards,

Sincerely,

DOPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg

cc: Pope D. Johnson, III, Esquire (via fax only)
Warren C. Powell, Jr., Esquire (via fax only)
Anne Repo, Esquire (via fax only)
Mr. Richard Kimmer (via mail only)

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00-224

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

W. CHAD JENKINS

DOPE & HUDGENS ATTORNEYS, P.A.

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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:

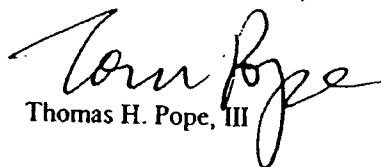
This confirms that you indicated that you have spoken today with your adjuster and she had questions that you indicated that you could not answer without discovery. Accordingly, you recommended that I go ahead and enter suit instead of having a mediation tomorrow.

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

POPE
HUDGENS
ATTORNEYS, P.A.

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

October 15, 2004

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

Columbia, SC 29260-1110

Re: Richard Kimmér v. Philip E. Wright
Civil Action No. 2004 CP 46-2659

Dear Warren:

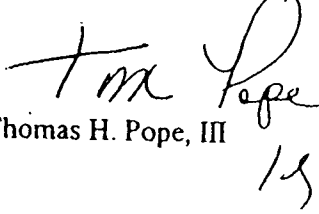
I enclose herein a copy of the Summons and Complaint in the above case which we discussed earlier this week. Pursuant to your request for discovery and your suggestion, I went ahead and filed this with the York County Clerk of Court. Also enclosed is an Acknowledgment of Service form for you to sign and return to me in the enclosed self-addressed, stamped envelope.

You indicated that you would be answering this promptly and that you would be gathering information so that we can have the mediation in this matter in February or March. If you would please advise me what information, documents, etc that you need, I will provide them to you promptly.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/lg
Enclosures

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Richard Kimmer,)

Plaintiff,)

vs.)

Phillip E. Wright)

Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2004-CP-46-2659

PRIVILEGE LOG

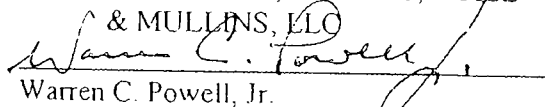
Defendant Phillip E. Wright, by and through his undersigned counsel, designates the following documents from the file of Defendant Phillip E. Wright as privileged:

1. January 27, 2000 – from Defendant to Defendant's insurance carrier.
2. January 27, 2000 – from Defendant's insurance carrier to Defendant naming the claims adjuster.
3. January 31, 2000 – from Defendant to Plaintiff re authorization to release worker's compensation file to Attorney Pope.
4. February 1, 2000 – fax to Defendant's insurance carrier from Defendant.
5. February 1, 2000 – letter to Defendant from Defendant's insurance carrier.
6. February 28, 2000 – fax from Defendant to Defendant's insurance carrier.
7. April 27, 2001 – letter to Defendant from Defendant's insurance carrier
8. February 1, 2000 – phone message slip to Defendant re message from Defendant's insurance carrier.
9. October 26, 2001 – Two pages of correspondence to and from Defendant and his insurance carrier.

10. October 29, 2001 - Correspondence to Defendant's insurance carrier from Defendant.
11. June 17, 2002 - Correspondence to Defendant's insurance carrier from Defendant.
12. October 14, 2002 - Correspondence to Defendant's insurance carrier from Defendant.
13. November 25, 2002 - Correspondence to Defendant's insurance carrier from Defendant.
14. December 10, 2002 - Correspondence to Defendant's insurance carrier from Defendant.
15. January 8, 2003 - Correspondence to Defendant's insurance carrier from Defendant.
16. August 11, 2003 - Correspondence to Defendant's insurance carrier from Defendant.
17. August 12, 2003 - Correspondence to Defendant's current insurance carrier from Defendant.
18. August 8, 2003 - Correspondence to Defendant's insurance carrier from Defendant.
19. August 4, 2003 - Correspondence to Defendant's insurance carrier from Defendant.

20. September 17, 2004 – Fax from Defendant's counsel to Defendant

BRUNER, POWELL, ROBBINS, WALL
& MULLINS, LLC



Warren C. Powell, Jr.

1735 St. Julian Place, Suite 200 (29204)

P.O. Box 61110

Columbia, SC 29260

(803) 252-7693

Attorneys for Defendant Phillip E. Wright

Columbia, South Carolina

January 7, 2005

TRANSCRIPT TESTIMONY OF

PHILIP E. WRIGHT

AT THE WORKERS' COMPENSATION HEARING HELD ON
DECEMBER 10, 2002

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Page 49

(11) WE WOULD OFFER THIS INTO EVIDENCE
(12) BY MR. JOHNSON:
(13) I DONT HAVE ANY OBJECTION TO IT ...
(14) BY THE WITNESS:
(15) A. AND I WAS AT THE SAME PLANT.
(16) BY MR. POPE:
(17) I'LL JUST OFFER THIS AS AN EXHIBIT
(18) BY MR. JOHNSON:
(19) CAN I JUST GET CLARIFICATION. DID HE SAY THIS
(20) DOES NOT INCLUDE THE DAY OF THE ACCIDENT OR IT DOES?
(21) BY MR. POPE:
(22) HE SAID IT DID NOT. THE MILEAGE IS NOT ON THERE.
(23) (PLAINTIFF'S EXHIBIT 1 MARKED, RETAINED)
(24) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(25) Q. IT WASNT ON THERE, BUT WAS THERE ANY REASON WHY YOU
(26) SHOULDN'T HAVE BEEN PAID FOR THAT DAY?
(27) A. YEAH, BECAUSE I DIDNT GET TO WORK. I WENT TO THE
(28) PLANT AFTER I WAS RELEASED FROM THE HOSPITAL. BUT NOT
(29) -I COULDN'T WORK THAT DAY.
(30) Q. THE WRECK TOOK PLACE HOW FAR FROM THE PLANT YOU WERE
(31) HEADED TO FROM YOUR HOME?
(32) A. (NO RESPONSE)
(33) Q. APPROXIMATELY.
(34) A. FROM THE PLANT, ABOUT FOUR OR FIVE MILES.
(35) Q. HE MENTIONED -- YOU MENTIONED THE DATE OF JANUARY THE

Page 50

(11) 10TH OF 2000. WERE YOU TERMINATED FROM YOUR EMPLOYMENT
(12) BY MURATA BY MR. GATTIS?
(13) A. YES, SIR. ON JANUARY THE 6TH.
(14) Q. OF 2000?
(15) A. YES, SIR.
(16) Q. ALL RIGHT, DID YOU HAVE A JOB TO RETURN TO ON JANUARY
(17) THE 10TH OF 2000?
(18) A. NO, SIR, I DIDNT HAVE.
(19) Q. THROUGHOUT YOUR 32 YEARS WITH SPRINGS MILLS, HAVE YOU
(20) EVER BEEN ACCUSED OF BEING LAZY OR MALINGERING?
(21) BY MR. JOHNSON:
(22) I WOULD OBJECT.
(23) BY THE WITNESS:
(24) A. ABSOLUTELY NOT.
(25) BY MR. JOHNSON:
(26) THAT WOULD BE HEARSAY. THAT WOULD BE HEARSAY.
(27) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(28) Q. DID YOU GET FITNESS REPORTS OR PERFORMANCE APPRAISALS
(29) FROM YOUR EMPLOYMENT AT SPRINGS?
(30) BY MR. JOHNSON:
(31) THAT WOULD BE HEARSAY. I MEAN, WHETHER HE GOT
(32) THEM WOULDNT BE, BUT WHAT THEY SAY WOULD BE, WHICH I
(33) ASSUME IS THE NEXT QUESTION.
(34) BY COMMISSIONER CHILDS:
(35) SUSTAINED AS TO HEARSAY.

Page 51

(11) BY MR. POPE:
(12) THAT'S ALL THE QUESTIONS I HAVE
(13) BY COMMISSIONER CHILDS:
(14) ANYTHING FURTHER FROM THE CLAIMANT?
(15) BY MR. POPE:
(16) NO, MA'AM.
(17) BY COMMISSIONER CHILDS:
(18) ANYTHING FROM THE DEFENSE?
(19) BY MR. JOHNSON:
(20) NO, MA'AM.
(21) BY MR. POPE:
(22) I'LL CALL MR. WRIGHT.
(23) PHILIP E. WRIGHT, BEING DULY SWORN, TESTIFIED AS FOLLOWS
(24) DIRECT EXAMINATION BY MR. POPE
(25) Q. GIVE US YOUR NAME AND ADDRESS, PLEASE.
(26) A. MY NAME IS PHILIP E. WRIGHT, AND I'M AN ATTORNEY AND I
(27) LIVE AT 1551 PHARAOH DRIVE IN ROCK HILL, SOUTH
(28) CAROLINA.
(29) Q. AND MR. WRIGHT, YOU REPRESENTED RICHARD KIMMER OVER THE
(30) YEARS PRIOR TO 1991?
(31) A. I REPRESENTED HIM IN SEVERAL MATTERS, YES, SIR.
(32) Q. ALL RIGHT. DO YOU REMEMBER SEEING HIM IN CONNECTION
(33) WITH INJURIES HE GOT IN AN AUTOMOBILE WRECK ON THE 29TH
(34) OF JANUARY OF '99?
(35) A. YES.

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(11) Q. DO YOU REMEMBER ABOUT WHEN IT WAS AFTER THAT, THAT YOU
(12) SAW HIM? A MONTH OR SO?
(13) A. IT WAS PRETTY SOON AFTER IT HAPPENED. NOT VERY LONG AT
(14) ALL. IT WASNT A FEW WEEKS.
(15) Q. OKAY. COULD YOU TELL FROM THEN, AND FROM SUBSEQUENT
(16) VISITS, WHETHER HIS INJURIES WERE MILD, MODERATE OR
(17) SEVERE?
(18) BY MR. JOHNSON:
(19) OBJECTION. THAT WOULD BE A LAY OPINION THAT
(20) WOULD NOT BE IN ACCORDANCE WITH RULE 70, WHATEVER IT
(21) IS, 1 OF THE RULES OF EVIDENCE. AND I OBJECT TO HIS
(22) OFFERING THAT KIND OF OPINION. THE MEDICAL RECORDS
(23) WILL SPEAK FOR WHATEVER HIS CONDITION WAS.
(24) DIRECT EXAMINATION RESUMED BY MR. POPE:
(25) Q. DID YOU RECEIVE THOSE MEDICAL RECORDS? AT LEAST SOME
(26) OF THEM AS THEY WERE COMING IN?
(27) A. I DID.
(28) Q. DO YOU ROUTINELY ADVISE CLIENTS BASED ON HOW SEVERE YOU
(29) THINK THEIR INJURIES ARE? BASED ON THOSE RECORDS?
(30) A. WELL, BASED ON THE RECORDS I KNEW WHAT HIS TREATMENT
(31) WAS, AND I KNEW WHO HE WAS SEEING AND WHAT THEY WERE
(32) DOING. AND HE SAW ME VERY REGULARLY. SO I KNEW HE WAS
(33) HURT, YEAH.
(34) Q. DID YOU HAVE AN IDEA OF THE DEGREE TO WHICH HE WOULD BE
(35) HURT IN TERMS OF POSSIBLE LEGAL RECOURSE? DAMAGES?

Page 53

(11) A I HANDLED THE CASE ACTIVELY FOR ABOUT A YEAR. AND I
 (12) KNEW HE WAS HURT SERIOUSLY.
 (13) BY MR. JOHNSON:
 (14) OBJECT AND MOVE TO STRIKE THAT'S A LAY OPINION
 (15) IT'S INAPPROPRIATE
 (16) BY COMMISSIONER CHILDS:
 (17) SUSTAINED AS TO THAT, BUT IF YOU'RE GOING TO
 (18) OFFER ...
 (19) BY MR. POPE:
 (20) COMMISSIONER, LAWYERS DO THAT EVERY DAY MAKE
 (21) DECISIONS LIKE THAT
 (22) BY COMMISSIONER CHILDS:
 (23) BUT I THINK HE COULD ANSWER IT MORE FROM A DAMAGE
 (24) STANDPOINT AS ...
 (25) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (26) Q. FROM THE STANDPOINT OF NOT MEDICAL, BUT DAMAGE
 (27) STANDPOINT THE STANDPOINT OF A WRECK. YOU KNOW, THE
 (28) ELEMENTS OF NEGLIGENCE WHERE YOU'VE GOT AN ACT AND
 (29) DAMAGES THAT FLOW FROM THAT ACT. DO YOU MAKE THAT SORT
 (30) OF ANALYSIS ON A REGULAR BASIS WITH CLIENTS? WHETHER
 (31) OR NOT THERE'S ANY MONEY RECOVERY THAT'S LIKELY FROM
 (32) THAT INCIDENT?
 (33) A. SURE.
 (34) Q. AND FROM YOUR REVIEW OF HIS MEDICAL RECORDS AND YOUR
 (35) ANALYSIS OF POSSIBLE SOURCES OF RECOVERY, DID YOU THINK

Page 55

(1) IN CHESTER. WE HAD DIFFICULTY LOCATING HIM. THE
 (2) ADDRESS THAT HE USED ON THE INCIDENT REPORT WAS NOT THE
 (3) ADDRESS WHERE HE ACTUALLY WAS. I ENDED UP EVENTUALLY
 (4) SENDING A PRIVATE INVESTIGATOR OVER TO FIND HIM AND
 (5) SERVE HIM BECAUSE HE EVADED LAW ENFORCEMENT WHEN WE
 (6) SENT LAW ENFORCEMENT TO SERVE HIM IN THE COMMUNITY.
 (7) Q. AND DID YOU DETERMINE WHETHER OR NOT HE WAS A PERSON
 (8) WHO HAD ANY ASSETS OR NOT?
 (9) A. HE DIDN'T HAVE ---
 (10) BY MR. JOHNSON:
 (11) EXCUSE ME, I WANT TO OBJECT UNTIL THERE'S SOME
 (12) FOUNDATION DESCRIBING WHAT HE DID SO THAT WE'LL KNOW
 (13) THE SOURCE OF IT, I OBJECT TO IT.
 (14) BY THE WITNESS:
 (15) A. I PERSONALLY LOOKED AT THE COUNTY COURTHOUSE IN CHESTER
 (16) COUNTY TO SEE IF HE HAD ANY ASSETS. HE DID NOT HAVE
 (17) ANY THAT I COULD FIND. THE PRIVATE INVESTIGATOR THAT I
 (18) HIRED LOOKED AND COULD FIND NONE.
 (19) BY MR. JOHNSON:
 (20) OBJECTION, HEARSAY.
 (21) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (22) Q. DO YOU ROUTINELY HIRE PRIVATE INVESTIGATORS FOR SUCH
 (23) PURPOSE IN THE NORMAL COURSE AND SCOPE OF YOUR JOB AS A
 (24) LAWYER?
 (25) A. NOT USUALLY. THAT'S ONE OF THE -- I'VE PROBABLY ONLY

Page 54

(1) HIS INJURIES, MEANING NOT MEDICAL, BUT IN TERMS OF
 (2) LEGAL, WERE SIGNIFICANT AND SERIOUS OR NOT?
 (3) BY MR. JOHNSON:
 (4) OBJECT, UNLESS WE CAN GET A POINT IN TIME WE'RE
 (5) TALKING ABOUT. BEFORE OR AFTER ...
 (6) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (7) Q. WITHIN FOUR MONTHS AFTER THE ACCIDENT.
 (8) A. I'M TRYING TO RECALL THE COURSE OF HIS TREATMENT. I
 (9) DON'T THINK THAT WITHIN FOUR MONTHS AFTER THE ACCIDENT
 (10) I KNEW THE FULL EXTENT OF HIS INJURIES. BECAUSE HE WAS
 (11) TREATING WITH VARIOUS DOCTORS. AND AS I RECALL THE
 (12) TREATMENT, IT WAS VERY SLOW AND NOT -- HE DID NOT
 (13) APPEAR TO ME TO BE PROGRESSING VERY WELL IN THE
 (14) TREATMENT.
 (15) Q. LET'S SAY AS OF EARLY JUNE. BECAUSE WE KNOW FROM THE
 (16) RECORDS THE SETTLEMENT ---
 (17) A. WELL, AS OF EARLY JUNE, HE HAD SUBSTANTIAL MEDICAL
 (18) COSTS, AND I KNEW THAT THE CASE WAS GOING TO BE A
 (19) SUBSTANTIAL CASE. BASED ON JUST THE AMOUNT OF THE
 (20) MEDICAL BILLING THAT I HAD GOTTEN TO THAT POINT. WHICH
 (21) I THINK WAS AROUND 20 OR \$25,000 AT THAT POINT.
 (22) Q. DID YOU DO -- IN THE COURSE OF YOUR WORK AS HIS LAWYER,
 (23) DID YOU ALSO LOOK INTO THE AT FAULT PARTY'S SITUATION
 (24) WITH INSURANCE COVERAGE AND PERSONAL ASSETS?
 (25) A. YES. THE PERSON THAT HIT HIM, MR. PENDERGRASS, LIVED

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(1) DONE IT TWO OR THREE TIMES IN MY PRACTICE.
 (2) Q. OKAY. DID YOU HAVE REASON TO BELIEVE THIS PERSON OR
 (3) THIS PRIVATE INVESTIGATOR WOULD DO A REASONABLE JOB,
 (4) BASED ON YOUR KNOWLEDGE OF HIM AND USAGE OF HIM?
 (5) BY MR. JOHNSON:
 (6) COMMISSIONER, I OBJECT FOR THE REASON THAT WE
 (7) DON'T HAVE THE PRIVATE INVESTIGATOR HERE TO CROSS
 (8) EXAMINE. WE DON'T HAVE A RIGHT TO CONFRONT HIM, AND
 (9) THAT IS RANK HEARSAY. AND WE DON'T KNOW WHETHER HE DID
 (10) A GOOD JOB, POOR JOB, AND THERE'S NO WAY FOR YOU TO
 (11) JUDGE. AND I OBJECT. THAT IS HEARSAY.
 (12) BY COMMISSIONER CHILDS:
 (13) SUSTAINED.
 (14) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (15) Q. BUT BASED ON YOUR PERSONAL WORK, YOU HAD DETERMINED
 (16) YOURSELF THAT HE HAD NO ASSETS IN THE COURTHOUSE, IS
 (17) THAT RIGHT?
 (18) A. I COULD FIND NO ASSETS.
 (19) Q. ALL RIGHT. YOU TALKED TO THE ADJUSTOR -- NO SUIT WAS
 (20) FILED AGAINST PENDERGRASS OR THE CARRIER, IS THAT
 (21) RIGHT?
 (22) A. CORRECT.
 (23) Q. WHO DID YOU NEGOTIATE THE SETTLEMENT WITH?
 (24) A. I FRANKLY DON'T REMEMBER THE NAME OF THE ADJUSTOR. I
 (25) DEALT WITH AN ADJUSTOR. I DIDN'T DEAL WITH AN

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(11) ATTORNEY. THEY ONLY HAD MINIMUM LIMITS COVERAGE. AND
(12) WHEN I SENT THE MEDICALS THAT I HAD TO THEM, THEY WERE
(13) MORE THAN THEIR MINIMUM LIMITS AND THEY IMMEDIATELY
(14) TENDERED THEM. SO I MEAN THERE WASN'T MUCH NEGOTIATION
(15) THERE.
(16) Q. WELL, WERE YOU SATISFIED THAT THERE WAS NO OTHER
(17) INSURANCE COVERAGE WHEN YOU MADE THAT SETTLEMENT?
(18) A. I KNEW THERE WAS UNDER INSURED MOTORIST COVERAGE THAT
(19) WAS AVAILABLE ON I THINK FOUR DIFFERENT POLICIES. BUT
(20) THERE WAS NO OTHER COVERAGE THAT I COULD FIND OF A
(21) LIABILITY NATURE. AND AFTER I CONCLUDED THE SETTLEMENT
(22) OF THE \$15,000 LIABILITY SETTLEMENT, BEFORE NEGOTIATING
(23) ANY FURTHER WITH THE UIM CARRIERS, WE DID CONDUCT A
(24) MUCH MORE DETAILED INVESTIGATION AND COULD FIND
(25) NOTHING. I COULD FIND NOTHING.
(1) Q. SO LIABILITY-WISE, THE \$15,000 WAS THE ONLY INSURANCE
(2) YOU COULD FIND, IS THAT RIGHT?
(3) A. THAT'S ALL THERE WAS.
(4) Q. ALL RIGHT. AND WHEN THE CASE -- WHEN THE MONEY CAME
(5) IN, WHAT WAS DONE WITH THE PROCEEDS?
(6) A. THE \$15,000 CHECK, I RECEIVED A THIRD OF THAT AS MY
(7) FEE. I PAID \$8,500 OF THAT TO THE MEDICAL SUBROGATION
(8) COMPANY THAT HAD CONTACTED US FOR MR. KIMMER'S MEDICAL
(9) INSURER, SUBRO AUDIT, INCORPORATED. PAID THEM \$8,500.
(10) AND I PAID \$1,500 TO A MEDICAL PROVIDER. WHEN THE

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(1) CHECK WAS MADE OUT, IT WAS MADE PAYABLE -- THE MEDICAL
(2) PROVIDER'S NAME WAS ON THE CHECK. AND THEY WANTED
(3) SUBSTANTIALLY MORE THAN \$1,500. THEY WERE TREATING
(4) RICHARD AT THE TIME, AND I WAS TRYING TO TALK THEM INTO
(5) CONTINUING TREATING HIM, BUT THEY WANTED MORE MONEY.
(6) BUT WE MANAGED TO TALK THEM INTO -- I MANAGED TO TALK
(7) THEM INTO GIVING -- TAKING JUST \$1,500 AND CONTINUING
(8) THE TREATMENT WITH THE HOPE THAT WHEN WE RECOVERED SOME
(9) OTHER MONIES LATER, THEY WOULD GET PAID.
(10) Q. THE RECORDS SHOW THAT THE SETTLEMENT -- THE RELEASE WAS
(11) SIGNED ON JUNE THE 16TH, 1999.
(12) A. THAT'S CORRECT.
(13) Q. AND THAT ON JUNE THE 19TH, 1999, YOU SENT THE FORM 50
(14) TO THE WORKERS' COMPENSATION COMMISSION. I THINK THEY
(15) RECEIVED IT LIKE ON THE 21ST.
(16) A. (WITNESS INDICATES AFFIRMATIVE RESPONSE)
(17) Q. WHEN YOU MADE THE SETTLEMENT FOR THE LIABILITY MINIMUM
(18) LIMITS COVERAGE OF \$15,000, YOU KNEW -- DID YOU OR DID
(19) YOU NOT KNOW AND ADVISE MR. KIMMER THAT THERE WAS A
(20) WORKERS' COMPENSATION CLAIM?
(21) BY MR. JOHNSON:
(22) OBJECT TO THE -- TO THE QUESTION. ON THE GROUNDS
(23) OF RELEVANCE.
(24) BY MR. POPE:
(25) I THINK IT'S RELEVANT.

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(1) BY COMMISSIONER CHILDS:
(2) I CAN JUST HEAR THAT BASIC QUESTION. GO AHEAD
(3) BY THE WITNESS:
(4) A. OKAY. WHEN I TOOK MR. KIMMER'S -- WELL, THE ANSWER TO
(5) THE QUESTION IS WE DISCUSSED THE POSSIBILITY OF A
(6) WORKERS' COMPENSATION CASE. WHEN I THEN TOOK THE CASE,
(7) I DID NOT SEE THE CASE AS A WORKERS' COMPENSATION CASE.
(8) I GOT -- I WAS CONTACTED BY SOMEONE WHO TOLD ME THAT IT
(9) MIGHT BE A WORKERS' COMPENSATION CASE.
(10) BY MR. JOHNSON:
(11) OBJECT, THAT WOULD BE HEARSAY.
(12) BY COMMISSIONER CHILDS:
(13) SUSTAINED
(14) BY THE WITNESS:
(15) A. AT THE TIME -- AND I THINK THE VERY DAY THAT WE -- I
(16) HAD WRITTEN TO MR. KIMMER PRIOR TO THE TIME WE SETTLED
(17) THE 15,000 LIABILITY AND TOLD HIM IN A SHORT LETTER
(18) THAT I THOUGHT THERE MIGHT BE A POTENTIAL WORKERS'
(19) COMPENSATION CLAIM. AND THAT WE NEEDED TO DISCUSS
(20) THAT. MY RECOLLECTION IS WE DISCUSSED THAT AT THE SAME
(21) TIME WE SETTLED THE \$15,000 LIABILITY CLAIM. AND
(22) ALTHOUGH I WAS UNSURE AT THE TIME WHETHER THERE WAS OR
(23) WAS NOT A CLAIM, I WENT AHEAD AND FILED A CLAIM TO TRY
(24) TO PROTECT HIS INTERESTS IF THERE WAS A CLAIM.
(25) DIRECT EXAMINATION RESUMED BY MR. POPE:

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(1) Q. AT THAT TIME WAS IT OBVIOUS TO YOU WHETHER OR NOT THE
(2) WORKERS' COMPENSATION CLAIM WOULD BE SIGNIFICANTLY MORE
(3) THAN THE MINIMUM LIMITS OR NOT?
(4) BY MR. JOHNSON:
(5) OBJECT TO THE FORM. OBJECT TO THE RELEVANCE. I
(6) DON'T THINK IT MAKES ANY DIFFERENCE WHAT HE THOUGHT OF
(7) THE CLAIM. IT'S WHAT OCCURRED.
(8) BY COMMISSIONER CHILDS:
(9) THIS IS GOING ALONG THE SAME LINE OF THE
(10) QUESTIONS THAT YOU ASKED THE CLAIMANT. IF YOU'RE GOING
(11) TO JUST GO AHEAD AND DO THIS LINE OF TESTIMONY, I CAN
(12) JUST STEP OUT IF YOU WANT TO JUST PROFFER IT.
(13) BY MR. POPE:
(14) COMMISSIONER, I THINK THE INTENTION OF THE
(15) PARTIES MAY HAVE GREAT RELEVANCE HERE. AND I THINK
(16) JUST BECAUSE HE DOESN'T WANT IT IN THE RECORD DOESN'T
(17) MEAN IT'S NOT RELEVANT ULTIMATELY. YOU MAY OR MAY NOT
(18) THINK THAT WHAT THE PARTIES INTENDED IS IMPORTANT, BUT
(19) WE THINK YOU WILL. IF YOU KNOW WHAT THE INTENTIONS
(20) WERE. SO WE BELIEVE IT SHOULD BE ADMISSIBLE. I
(21) UNDERSTAND YOU INTIMATED THAT WE -- MAYBE WE OUGHT TO
(22) JUST PROFFER IT OUT OF YOUR PRESENCE AND WE'LL DO THAT
(23) IF YOU INSIST, BUT WE THINK THIS IS RELEVANT.
(24) BY COMMISSIONER CHILDS:
(25) WELL, HE'S TESTIFIED ABOUT THE FACT THAT HE

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(11) WASN'T SURE ABOUT WHETHER OR NOT THE CLAIMANT HAD A
 (12) WORKERS' COMPENSATION CLAIM. AND SO I THINK -- AND
 (13) THEN HE FILED IT TO PROTECT THE INTEREST. SO I THINK
 (14) THAT THAT GETS ENOUGH AS TO WHAT WAS THE PURPOSE OF THE
 (15) CLAIM BEING FILED AND THINGS OF THAT NATURE. I'M NOT
 (16) SURE THAT -- I THINK THE LAW IS GOING TO STAND ON THE
 (17) LAW AS TO HOW HE --
 (18) BY MR. POPE:
 (19) WELL, IT MIGHT, BUT YOU'VE HAD SOME EVIDENCE ON
 (20) THAT POINT. I THINK YOU SHOULD GET ALL THE EVIDENCE ON
 (21) THE POINT OF WHAT WAS GOING ON IN LANCASTER, SOUTH
 (22) CAROLINA DURING THIS VERY SHORT PERIOD OF TIME WHEN A
 (23) THIRD PARTY CLAIM WAS BEING SETTLED, AND A WORKERS'
 (24) COMPENSATION FORM 50 WAS BEING FILED. I THINK YOU NEED
 (25) TO KNOW EVERYTHING ABOUT THAT. IF YOU'RE GOING TO HEAR
 (26) SOME OF IT, YOU'VE INDICATED YOU'VE HEARD ENOUGH. BUT
 (27) I DON'T THINK WE CAN QUANTIFY IT. YOU'VE HEARD --
 (28) BY COMMISSIONER CHILOS:
 (29) LET'S GO AHEAD. THAT WILL GIVE ME ENOUGH TO --
 (30) THAT'S FINE. WE'LL GO ALONG THAT LINE. GO AHEAD.
 (31) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (32) Q. AT THE TIME YOU'RE TELLING ME PRIOR TO THE LIABILITY
 (33) CLAIM BEING SETTLED, YOU SAID YOU TOLD HIM YOU THOUGHT
 (34) THERE WAS A WORKERS' COMPENSATION CLAIM. AT THE TIME
 (35) YOU WERE TALKING ABOUT THOSE TWO CLAIMS, AT THE SAME

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(11) YOU UNDERSTAND THAT THE WORKERS' COMPENSATION CARRIER
 (12) MIGHT HAVE AS TO A THIRD PARTY SETTLEMENT?
 (13) A. I KNEW THAT THEY HAD A RIGHT TO BE REPAID A PORTION --
 (14) BY MR. JOHNSON:
 (15) I WANT TO NOTE AN OBJECTION. WHAT HE UNDERSTOOD
 (16) THE RIGHTS OF THE CARRIER ARE, ARE TOTALLY IRRELEVANT
 (17) TO WHAT THE RIGHTS OF THE CARRIER ARE, AND WHETHER
 (18) HE'S RIGHT, WRONG, OR CLOSE, I MEAN IT'S JUST NOT
 (19) RELEVANT TO WHAT WE'RE DEALING WITH, AND I OBJECT TO IT
 (20) ON THE GROUNDS OF RELEVANCE.
 (21) BY COMMISSIONER CHILOS:
 (22) I'M INCLINED TO SUSTAIN, BECAUSE HE WASN'T SURE
 (23) ABOUT WHETHER HE EVEN HAD A CLAIM, AND I'M JUST NOT
 (24) SURE WE CAN KEEP GOING DOWN THE LINE --
 (25) BY MR. POPE:
 (26) WELL, THE -- I TAKE IT BECAUSE YOU WEREN'T SURE
 (27) WHETHER IT WAS COMPENSABLE, NOT WHETHER OR NOT HE WAS
 (28) INJURED, RIGHT?
 (29) BY COMMISSIONER CHILOS:
 (30) WELL, HIS ORIGINAL TESTIMONY WAS WHETHER OR NOT
 (31) HE EVEN HAD A CLAIM.
 (32) BY MR. POPE:
 (33) TRUE. THAT WAS BASED ON THE FACT THAT THE CLAIM
 (34) WAS COMPENSABLE, OR WHETHER OR NOT HE WAS INJURED, OR
 (35) WHETHER IT WAS ON THE JOB. WHAT WAS YOUR --

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(11) TIME, DURING THE PERIOD OF WHATEVER IT WAS, HOURS OR
 (12) DAYS, WAS IT YOUR BELIEF AS A LAWYER WHO EVALUATES -- I
 (13) ASSUME YOU EVALUATE CASES FOR PLAINTIFFS ON A REGULAR
 (14) BASIS. WAS IT OBVIOUS TO YOU THAT THE WORKERS'
 (15) COMPENSATION CLAIM WAS GOING TO BE GREATER OR LESSER
 (16) THAN THE MINIMUM LIMITS THIRD PARTY SETTLEMENT?
 (17) A. WELL --
 (18) BY MR. JOHNSON:
 (19) COMMISSIONER, THE WITNESS HAS ALREADY TESTIFIED
 (20) HE DIDN'T EVEN KNOW WHETHER HE HAD A VALID CLAIM OR
 (21) NOT. I JUST THINK THIS IS TOTALLY IRRELEVANT TO THE
 (22) ISSUE WE'VE GOT TO DEAL WITH, WHETHER HE THOUGHT ONE
 (23) WAS WORTH MORE OR LESS. GOOD, BAD OR WHATEVER. IT'S
 (24) REALLY WHAT HE DID.
 (25) BY COMMISSIONER CHILOS:
 (26) I THINK ON THIS PARTICULAR ISSUE HE'S SAID THAT
 (27) HE WASN'T SURE IF HE HAD A CLAIM. SO I'M NOT SURE THAT
 (28) HE CAN EVALUATE THE WORTH OF IT.
 (29) BY MR. POPE:
 (30) I'LL GO ON TO SOMETHING ELSE.
 (31) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (32) Q. ALL RIGHT, YOU FILED A WORKERS' COMPENSATION CLAIM ON
 (33) JUNE THE 19TH OF '99, CORRECT?
 (34) A. YES.
 (35) Q. AND WHEN YOU FILED THAT CLAIM, WHAT RIGHTS, IF ANY, DID

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(11) BY THE WITNESS:
 (12) A. WHEN I TOOK THE CASE, MY UNDERSTANDING WAS THAT RICHARD
 (13) WAS ON HIS WAY TO WORK AT A PLANT SOMEWHERE IN CHESTER.
 (14) AND THAT HE WAS COMING FROM HIS HOME IN WHITMIRE. AND
 (15) I DID NOT AT THAT POINT IN TIME SAY WORKERS'
 (16) COMPENSATION CLAIM. I SAID CAR WRECK. AS THE CASE
 (17) DEVELOPED AND I LEARNED MORE ABOUT HIS EMPLOYMENT
 (18) ARRANGEMENTS, IT BECAME APPARENT THAT THERE MAY BE A
 (19) CLAIM, DEPENDING UPON THOSE FACTS. AND SO -- AND I DID
 (20) NOT REALIZE THAT UNTIL THE POINT WHERE WE WERE READY TO
 (21) SETTLE THE \$15,000 CLAIM, AND I -- AND I ACTED AS SOON
 (22) AS I COULD WHEN I REALIZED THAT TO FILE A CLAIM. I
 (23) JUST SIMPLY SETTLED THE FIRST CLAIM BEFORE I FILED THE
 (24) CLAIM AND PUT THEM ON NOTICE. I DON'T KNOW HOW ELSE TO
 (25) SAY IT.
 (26) DIRECT EXAMINATION RESUMED BY MR. POPE:
 (27) Q. THE PAYMENTS YOU MADE OUT OF THE 15,000, IN YOUR
 (28) OPINION AS A LAWYER, DID THOSE CLAIMS PREJUDICE --
 (29) THOSE PAYMENTS, DID THEY PREJUDICE THE COMP CARRIER IN
 (30) ANY WAY?
 (31) BY MR. JOHNSON:
 (32) OBJECTION. HIS OPINION OF PREJUDICE -- I MEAN,
 (33) FIRST OF ALL, THE CASE LAW SAYS PREJUDICE IS NOT
 (34) RELEVANT TO THE INQUIRY. BUT SECONDLY HIS OPINION
 (35) CARRIES NO WEIGHT. IT'S FOR THE COMMISSION TO -- YOU

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(1) KNOW, IF PREJUDICE IS AN ISSUE, THAT'S A QUESTION FOR
(2) YOU.
(3) BY MR. POPE:
(4) HE CAN IDENTIFY IT AS AN AID TO THE FACT FINDER.
(5) COMMISSIONER, I BELIEVE HE'S A LAWYER. I'M JUST
(6) ASKING HIM TO TELL US FACTUALLY WHAT PREJUDICE AROSE
(7) FROM HIS -- IF ANY, AROSE FROM HIS SETTLEMENT OF THE
(8) \$15,000 CLAIM.
(9) BY COMMISSIONER CHILDS:
(10) WELL, ALONG THOSE LINES, LET ME JUST ASK THIS
(11) QUESTION YOU FILED THE CLAIM LATER A COUPLE DAYS
(12) LATER?
(13) BY THE WITNESS:
(14) A. CORRECT.
(15) BY COMMISSIONER CHILDS:
(16) HAD YOU HAD ANY DISCUSSIONS AT ALL WITH THE
(17) CARRIER?
(18) BY THE WITNESS:
(19) A. I HAD ATTEMPTED TO FIND OUT IF A FIRST REPORT OF INJURY
(20) WAS FILED THROUGH THE COMMISSION, TO SEE IF THEY HAD
(21) REPORTED IT AS AN ON-THE-JOB INJURY. BECAUSE THAT
(22) WOULD HAVE GIVEN ME AN INDICATION THAT THEY CONSIDERED
(23) IT TO BE A CLAIM. SO I MADE A COUPLE OF CALLS TO THE
(24) COMMISSION TO FIND OUT IF A FIRST REPORT HAD BEEN
(25) FILED. AND IT APPEARED TO ME THAT ONE HAD NOT BEEN

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(1) FILED. SO THAT CONCERNED ME THAT THEY HAD NOT DONE
(2) THAT. IF IT WAS A COMPENSABLE CLAIM. I'M AWARE THAT
(3) AFTER I FILED THE CLAIM, THEY FILED A NOTICE OF INJURY.
(4) SO THAT'S ALL I HAD DONE AT THAT POINT. I HAD NOT
(5) TALKED TO THE -- I HAVE NO RECOLLECTION AND NO
(6) DOCUMENTATION OF TALKING TO THE CARRIER BEFORE THEN.
(7) BY COMMISSIONER CHILDS:
(8) AND I THINK THAT JUST GOES TO -- I WANTED TO KNOW
(9) ABOUT HIS CONVERSATIONS WITH THEM TO BE ABLE TO SAY
(10) THAT HE THEN RELIED ON SOME CONVERSATIONS WITH THE
(11) CARRIER AND THEN FILED THE CLAIM. BUT HE DIDN'T HAVE
(12) THOSE.
(13) DIRECT EXAMINATION RESUMED BY MR. POPE:
(14) Q. DID YOU AND YOUR CLIENT CONSCIOUSLY AND INTENTIONALLY
(15) INTEND -- I KNOW HE'S GOING TO OBJECT. CONSCIOUSLY AND
(16) INTENTIONALLY INTEND TO ELECT THIRD PARTY REMEDIES OVER
(17) THE WORKERS' COMPENSATION REMEDY?
(18) BY MR. JOHNSON:
(19) OBJECTION AS TO RELEVANCE.
(20) DIRECT EXAMINATION RESUMED BY MR. POPE:
(21) Q. EXCLUSIVELY --
(22) BY MR. POPE:
(23) DID YOU OBJECT?
(24) BY MR. JOHNSON:
(25) I DID OBJECT.

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(1) BY COMMISSIONER CHILDS:
(2) I'LL LET YOU ANSWER GO AHEAD
(3) BY THE WITNESS:
(4) A. NO, I DID NOT INTEND TO WAIVE ANY REMEDY THAT MR.
(5) KIMMER HAD. HE WAS A GOOD CLIENT FROM A LONG TIME AGO.
(6) HE WAS -- I WOULD NOT DO THAT TO THAT CLIENT. AND IF I
(7) DID DO THAT TO THAT CLIENT, I AM IMMORTALLY SORRY.
(8) BECAUSE HE'S A FINE PERSON.
(9) DIRECT EXAMINATION RESUMED BY MR. POPE:
(10) Q. DO YOU KNOW FROM YOUR WORKING RELATIONSHIP WITH MR.
(11) KIMMER ANYTHING ABOUT HIS WORK ETHIC?
(12) A. WHEN I REPRESENTED MR. KIMMER --
(13) BY MR. JOHNSON:
(14) I OBJECT. UNLESS IT'S FIRSTHAND INFORMATION
(15) WHERE HE SAW AND OBSERVED HIM. IT WOULD EITHER BE
(16) HEARSAY OR REPUTATION. EITHER OF WHICH WOULD BE
(17) INADMISSIBLE.
(18) BY THE WITNESS:
(19) A. I HAD TO VERIFY HIS INCOME FOR A DOMESTIC CASE.
(20) THROUGH EMPLOYERS.
(21) BY MR. JOHNSON:
(22) THAT WOULD ONLY SHOW HIS INCOME IT WOULDN'T
(23) SHOW WHAT HIS WORK ETHIC --
(24) BY MR. POPE:
(25) DO YOU KNOW ABOUT HIS HOURS FROM LOOKING AT THE

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(1) INCOME. HOW MANY HOURS HE WORKED?
(2) BY THE WITNESS:
(3) A. YEAH. I KNOW HE WORKED TWO FULL TIME JOBS. AND I
(4) DON'T KNOW HOW HE DID IT.
(5) BY COMMISSIONER CHILDS:
(6) OBJECTION SUSTAINED AS TO THAT. ALL HE CAN DO IS
(7) ANSWER THOSE BASIC QUESTIONS. THE QUESTION WORK ETHIC
(8) IMPLIES OBSERVATION OF IT.
(9) DIRECT EXAMINATION RESUMED BY MR. POPE:
(10) Q. DO YOU HAVE ANY PERSONAL OBSERVATION -- ANY WAY YOU
(11) COULD PERSONALLY VERIFY THAT, OTHER THAN BEING HIS
(12) LAWYER?
(13) A. WELL, I DIDN'T GO OUT ON JOBS WITH RICHARD AND WATCH
(14) HIM WORK. BUT I SAW HIM WHEN HE CAME BY MY OFFICE
(15) EXHAUSTED AND TIRED AND ON HIS WAY TO HIS NEXT JOB.
(16) AND I DEALT WITH HIM IN HIS DIVORCE FROM HIS WIFE AND
(17) KNEW THROUGH THOSE CONTACTS HOW DILIGENT HE WAS ABOUT
(18) EVERYTHING HE DID FOR ME. SO I CONSIDERED HIM TO BE A
(19) VERY HARD WORKING PERSON. FROM MY GENERAL CONTACT WITH
(20) HIM.
(21) BY MR. JOHNSON:
(22) AGAIN --
(23) BY MR. POPE:
(24) THAT'S ALL I HAVE.
(25) CROSS EXAMINATION BY MR. JOHNSON:

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(1) Q. LET ME BE SURE IM CORRECT ABOUT THIS THERE'S NO
(2) QUESTION BUT THAT THE THIRD PARTY CASE WAS SETTLED FOR
(3) \$15,000 BEFORE YOU GAVE NOTICE TO THE CARRIER AND THE
(4) COMMISSION, AS REQUIRED BY LAW, OF THE CLAIM, AND THAT
(5) YOU WERE PROCEEDING AGAINST A THIRD PARTY?
(6) A. CORRECT. THERE'S NO DOUBT ABOUT THAT.
(7) Q. AND YOU HAD NO COMMUNICATIONS WITH THE CARRIER
(8) WHATSOEVER UNTIL AFTER YOU HAD FINALIZED THE THIRD
(9) PARTY SETTLEMENT?
(10) A. MAY I LOOK AT MY FILE. I BROUGHT THE ENTIRE THING WITH
(11) ME, AND I WANT TO BE ABSOLUTELY CORRECT.
(12) Q. THAT'S FINE
(13) A. (WITNESS REVIEWS DOCUMENTS)
(14) Q. COULD I SEE IT AFTER YOU LOOK AT IT
(15) A. YES, IF YOU'D LIKE TO SEE IT.
(16) Q. ALL RIGHT, YOUR ANSWER?
(17) A. NO, I DIDN'T HAVE ANY CORRESPONDENCE WITH THEM.
(18) Q. ALL RIGHT
(19) A. ALL MY CORRESPONDENCE WAS WITH THE AUTOMOBILE INSURANCE
(20) CARRIER.
(21) Q. NOW, MR. WRIGHT, I WANT TO TALK TO YOU ABOUT THE
(22) INVESTIGATION THAT YOU DID OR FAILED TO DO IN TERMS OF
(23) DETERMINING WHETHER THERE WERE ASSETS OF -- OR OTHER
(24) INSURANCE AVAILABLE TO THE THIRD PARTY DEFENDANT. DID
(25) YOU EVER SPEAK WITH THE THIRD PARTY DEFENDANT YOURSELF?

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(1) A. I DID.
(2) Q. BEFORE YOU SETTLED THE THIRD PARTY CLAIM?
(3) A. NO.
(4) Q. ALL RIGHT, NOW, PRIOR TO SETTLING THE THIRD PARTY
(5) CLAIM, IT'S MY UNDERSTANDING THAT YOU WENT TO THE
(6) COURTHOUSE AND LOOKED AT THE RECORDS THERE TO TRY TO
(7) SATISFY YOURSELF AS TO WHETHER HE HAD OTHER ASSETS
(8) BESIDES A \$15,000 INSURANCE POLICY; IS THAT CORRECT?
(9) A. CORRECT.
(10) Q. AND WHEN DID YOU GO TO THE CHESTER COURTHOUSE?
(11) A. I WENT SOMETIME IN THE SPRING OF '99. I DO REAL ESTATE
(12) WORK IN LANCASTER AND CHESTER COUNTIES. I DO
(13) FORECLOSURE, TITLE EXAMINATION, THOSE TYPE THINGS. AND
(14) IT WAS DURING ONE OF THOSE TRIPS. I'M OVER THERE ABOUT
(15) ONCE A MONTH.
(16) Q. DO YOU HAVE ANY RECORD OF HAVING CHECKED AS TO THIS
(17) THIRD PARTY DEFENDANT?
(18) A. NO, I DIDN'T FIND ANYTHING, SO I DIDN'T WRITE ANYTHING
(19) DOWN.
(20) Q. NOW, MR. WRIGHT, YOU, FROM DOING TITLE WORK AND WORKING
(21) IN THE COURTHOUSE, KNOW THAT THERE'S A LIMITED AMOUNT
(22) OF INFORMATION ABOUT A PERSON'S ASSETS THAT ARE KEPT AT
(23) A COURTHOUSE. CORRECT?
(24) A. I KNOW THAT I CAN FIND RECORDS OF REAL ESTATE THAT THEY
(25) OWN.

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(1) Q. OKAY, REAL ESTATE
(2) A. I CAN FIND RECORDS OF AUTOMOBILES THAT THEY OWN.
(3) Q. PERHAPS?
(4) A. NO, I CAN FIND RECORDS OF AUTOMOBILES THAT THEY OWN.
(5) Q. PROVIDED THEY'RE REGISTERED IN THAT COUNTY?
(6) A. IF THEY'RE REGISTERED IN THAT COUNTY, THEN THEY WOULD
(7) BE ON THE TAX BOOK. THAT'S THE ONLY COUNTY THAT I KNEW
(8) MR. PENDERGRASS HAD ANY CONTACT WITH. SO THE AUDITOR'S
(9) OFFICE HAS A LIST OF AUTOMOBILES. THEIR MOBILE HOMES
(10) ARE LISTED ON THE REAL ESTATE RECORDS IN THAT COUNTY.
(11) Q. IT DOESN'T SHOW STOCKS IT DOESN'T SHOW INFORMATION
(12) ABOUT BONDS, SAVINGS ACCOUNTS, CHECKING ACCOUNTS, LOANS
(13) FROM PEOPLE, UNLESS THERE'S SOME SORT OF SECURED
(14) MORTGAGE OR SOMETHING OF THAT NATURE
(15) A. NO.
(16) Q. ALL IT PROVIDES IS INFORMATION ABOUT REAL ESTATE AND
(17) AUTOMOBILES, PROVIDED THEY OWN THEM IN THAT PARTICULAR
(18) COUNTY?
(19) A. CORRECT.
(20) Q. NOW, IT ALSO -- CHECKING AT THE COURTHOUSE ALSO DOESN'T
(21) PROVIDE YOU WITH INFORMATION AS TO WHAT INSURANCE
(22) COVERAGE IS AVAILABLE TO A PARTY, DOES IT?
(23) A. IT DOES NOT.
(24) Q. AND SPEAKING WITH THE CARRIER FOR THE ONE POLICY HE DID
(25) HAVE DOESN'T TELL YOU ALL THE INSURANCE THAT'S

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(1) AVAILABLE TO HIM, DOES IT? OR COULD BE AVAILABLE TO
(2) HIM.
(3) A. NO.
(4) Q. IN OTHER WORDS, THERE MAY BE A POLICY THAT HIS WIFE MAY
(5) HAVE ON A CAR AND THEY LIVE IN THE SAME HOUSEHOLD, AND
(6) THEY MAY HAVE HAD 15 CARS IN HER NAME, AND HE MIGHT
(7) HAVE BEEN COVERED AS AN INSURED UNDER EACH OF THOSE
(8) POLICIES?
(9) A. ANY THINGS ARE POSSIBLE.
(10) Q. AND THE ONLY WAY TO DETERMINE THAT IS TO TAKE A
(11) DEPOSITION OF HIM OR OTHER PEOPLE, AND THAT WAS NOT
(12) DONE BEFORE -- I GUESS YOU COULD INTERVIEW THEM OR YOU
(13) COULD TAKE A DEPOSITION OF THEM TO FIND OUT, CORRECT?
(14) A. YOU COULD.
(15) Q. AND OF COURSE REALLY THE ONLY WAY TO TIE THEM DOWN IS
(16) TO PUT THEM UNDER OATH AND ASK THEM THE QUESTIONS,
(17) CORRECT?
(18) A. THAT'S ONE WAY.
(19) Q. AND NONE OF THOSE THINGS WERE DONE BY YOU PRIOR TO
(20) SETTLING THE THIRD PARTY CLAIM FOR \$15,000?
(21) A. CORRECT.
(22) Q. AND THE CARRIER HAD IN THIS CASE NO OPPORTUNITY TO
(23) PARTICIPATE IN -- TO DO THAT, DID THEY?
(24) A. ARE YOU TALKING ABOUT THE WORKERS' COMPENSATION?
(25) Q. YES.

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(11) A. THEY DID NOT.
(12) Q. AND THE CARRIER HAD NO OPPORTUNITY TO COMMUNICATE WITH
(13) YOU AND GUIDE YOU AS TO WHAT THEY THOUGHT WOULD HAVE
(14) BEEN IN THEIR INTEREST TO BE DONE BEFORE SETTLING THAT
(15) CLAIM, DID THEY?
(16) A. THEY DID NOT.
(17) Q. AND SO THE CARRIER LOST THE OPPORTUNITY IN THIS CASE TO
(18) PARTICIPATE IN OR CONDUCT ITS OWN INVESTIGATION OR TO
(19) GUIDE YOU, OR TO EMPLOY COUNSEL TO DO IT FOR THEM.
(20) PRIOR TO THAT THIRD PARTY CASE BEING SETTLED?
(21) A. CORRECT.
(22) BY MR. JOHNSON:
(23) THANK YOU, MR. WRIGHT.
(24) RE-DIRECT EXAMINATION BY MR. POPE:
(25) Q. MR. WRIGHT, AS A LAWYER WHO YOU'VE SAID PRACTICES IN
(26) CHESTER AND LANCASTER COUNTIES ON A REGULAR BASIS, MR.
(27) JOHNSON WENT THROUGH A LITANY OF THINGS THAT COULD HAVE
(28) BEEN DONE -- COULD HAVE HAPPENED ABOUT CHECKING
(29) ACCOUNTS, STOCKS, DID YOU KNOW WHAT NEIGHBORHOOD
(30) PENDERGRASS WAS SUPPOSEDLY AFFILIATED WITH?
(31) A. I DID.
(32) Q. WAS THAT A HIGH CLASS NEIGHBORHOOD OR HIGH RENT
(33) DISTRICT, SO TO SPEAK, OR WAS IT NOT?
(34) BY MR. JOHNSON:
(35) OBJECT TO THE RELEVANCY. IT IS REPUTATION AND

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(1) REPUTATION IS NOT ADMISSIBLE
(2) BY MR. POPE:
(3) I'M NOT ASKING FOR REPUTATION.
(4) BY MR. JOHNSON:
(5) I THINK YOU ARE.
(6) BY MR. POPE:
(7) NO, I'M NOT. COMMISSIONER, IT'S CERTAINLY
(8) RELEVANT. I THINK YOU HAVE TO PUT IT IN THE MIX TO
(9) DETERMINE WHETHER IT'S VALID.
(10) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(11) Q. LET ME ASK THIS QUESTION. WHEN LAWYERS DETERMINE
(12) WHETHER SOMEONE IS "JUDGMENT PROOF," DO THEY OFTEN LOOK
(13) AT THE NEIGHBORHOOD, THE KIND OF HOUSE, WHETHER THEY
(14) HAVE A HOUSE, AND SUCH THINGS AS THAT?
(15) BY MR. JOHNSON:
(16) OBJECTION. RELEVANCE. WHAT LAWYERS DO TO
(17) DETERMINE --
(18) BY MR. POPE:
(19) COMMISSIONER, HE HAS ASKED QUESTION AFTER
(20) QUESTION ABOUT WHAT THINGS COULD LIBERTY MUTUAL HAVE
(21) DONE IF THEY'D BEEN NOTIFIED. AND I'M ASKING WHETHER
(22) HIS INSTINCTS TOLD HIM THERE WAS ANY POINT -- ANY
(23) QUESTION THAT THIS MAN WAS JUDGMENT PROOF. I THINK
(24) THEY HAVE NOW OPENED THE DOOR TO THIS LINE OF
(25) QUESTIONING.

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(1) BY COMMISSIONER CHILDS:
(2) WELL, WHAT I THINK WE HAVE IS HIM TELLING YOU
(3) WHAT HIS EFFORTS WERE. AND THEN THEM CROSS EXAMINING
(4) ON WERE THERE OTHER EFFORTS. I THINK YOU'RE JUST
(5) TRYING TO GO TO THAT HE STOPPED -- BUT I MEAN WE'VE GOT
(6) TESTIMONY ABOUT HIS EFFORTS. THAT'S WHAT I'M SAYING
(7) REDIRECT EXAMINATION RESUMED BY MR. POPE
(8) Q. DO YOU FEEL LIKE YOUR EFFORTS WERE ADEQUATE BASED ON
(9) YOUR EXPERIENCE AS A LAWYER IN ANALYZING PERSONAL
(10) INJURY CASES?
(11) BY MR. JOHNSON:
(12) OBJECTION. IT WOULD BE TOTALLY SELF SERVING, AND
(13) IT WOULD BE MERELY HIS OPINION ON HIS OWN WORK. AND
(14) WHAT RELEVANCE DOES THAT HAVE. THE COMMISSIONER HAS TO
(15) JUDGE --
(16) BY MR. POPE:
(17) SHE'S GOT TO JUDGE IT AND IT GOES TO THE WEIGHT
(18) OF HIS TESTIMONY. NOT TO THE ADMISSIBILITY OF THE
(19) EVIDENCE. I THINK THAT GOES INTO THE MIX FOR THE
(20) COMMISSIONER TO DETERMINE. BUT YOUR HONOR, HE KEEPS
(21) CHANGING THE OBJECTIONS. HE JUST DOESN'T WANT IT IN
(22) THE RECORD. IT'S EITHER HEARSAY, OR IT'S NOT RELEVANT.
(23) AND NOW IT'S SELF SERVING.
(24) BY COMMISSIONER CHILDS:
(25) GO AHEAD. HE'S JUST TALKING ABOUT HIS EFFORTS.

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(1) GO AHEAD.
(2) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(3) Q. TELL US ABOUT YOUR EFFORTS.
(4) A. I LOOKED AT WHERE THE GUY LIVED. I LOOKED AT WHAT HE
(5) HAD THAT I COULD SEE. I LOOKED AT WHAT I KNEW ABOUT
(6) HIM FROM THE GENERALITIES OF THE REPORT. AND HAVING
(7) SOME PEOPLE LOOK FOR HIM. AND I DIDN'T THINK HE HAD
(8) ANYTHING. I MEAN --
(9) Q. HAS ANYTHING HAPPENED IN THE LAST THREE YEARS OF LIVING
(10) -- WORKING IN THIS COMMUNITY TO MAKE YOU CHANGE YOUR
(11) MIND ABOUT THAT?
(12) A. NO.
(13) Q. CAN YOU THINK OF ANYTHING -- IF YOU HAD CALLED LIBERTY
(14) MUTUAL OR -- I THINK IT'S LIBERTY MUTUAL. WHOEVER THE
(15) CARRIER IS. IF YOU HAD CALLED THEM BEFORE YOU
(16) DISBURSED THOSE FUNDS AND SAID, WILL YOU DO A CHECK ON
(17) THIS, DO YOU THINK THEY COULD HAVE DONE ANY BETTER THAN
(18) YOU DID LIVING IN THAT COMMUNITY?
(19) A. I DON'T KNOW --
(20) BY MR. JOHNSON:
(21) OBJECT.
(22) BY THE WITNESS:
(23) A. I DON'T KNOW.
(24) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(25) Q. CAN YOU TELL US ANYTHING THAT THE CARRIER COULD HAVE

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(1) DONE THAT YOU DIDN'T DO REASONABLY? REASONABLY --
(2) BY MR. JOHNSON:
(3) OBJECT HE'S ALREADY TOLD US THINGS THE CARRIER
(4) COULD HAVE DONE. I OBJECT ON THE GROUNDS OF RELEVANCE
(5) BY COMMISSIONER CHILDS:
(6) HE'S TOLD US --
(7) BY MR. POPE:
(8) THAT'S ALL I HAVE. I'LL WITHDRAW IT.
(9) BY COMMISSIONER CHILDS:
(10) THANK YOU. IS THERE ANYTHING FURTHER IN THIS
(11) CASE?
(12) BY MR. POPE:
(13) THERE IS
(14) (OFF THE RECORD DISCUSSION)
(15) BY MR. POPE:
(16) WAIT A MINUTE, I HAVE ONE MORE QUESTION FOR YOU IN
(17) FOLLOW UP TO WHAT HE SAID.
(18) REDIRECT EXAMINATION RESUMED BY MR. POPE:
(19) Q. WHEN YOU SETTLED THE THIRD PARTY CLAIM, CAN YOU TELL US
(20) WHETHER OR NOT YOU WERE AWARE FROM YOUR CLIENT THAT HE
(21) HAD OR HAD NOT BEEN RECEIVING MEDICAL BILLS FROM
(22) PROVIDERS?
(23) A. OH, YEAH. HE WAS GETTING -- THAT WAS A MAJOR REASON I
(24) WANTED TO SETTLE THE CLAIM IS HE WAS GETTING MEDICAL
(25) BILLS AND COULDN'T PAY THEM. AND RICHARD WAS VERY

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(1) CONCERNED ABOUT GETTING TREATMENT AND CONTINUING
(2) TREATMENT AND WANTED TO GET SOME -- SOME PAYMENT TO THE
(3) MEDICAL PEOPLE SO THEY WOULD KEEP SEEING HIM. SO I --
(4) BUT THEY ONLY HAD 15,000. HE HAD 25 IN MEDS. THEY
(5) COUGHED IT UP IMMEDIATELY.
(6) BY MR. POPE:
(7) THAT'S ALL.
(8) BY MR. JOHNSON:
(9) I'M SORRY, BUT I'M GOING TO HAVE TO FOLLOW UP ON
(10) THAT.
(11) RE-CROSS EXAMINATION BY MR. JOHNSON:
(12) Q. MR. WRIGHT, YOU KNEW THAT -- AND MR. KIMMER KNEW THAT
(13) HE WAS COVERED BY ONE OF THE BEST GROUP MEDICAL
(14) INSURANCE COVERAGES THAT IS AVAILABLE, RIGHT?
(15) A. YES. I KNEW --
(16) Q. THAT HE WAS GOING TO GET MEDICAL CARE -- AND HAD BEEN
(17) GETTING IT AND WOULD GET IT UNDER HIS GROUP COVERAGE?
(18) A. I KNEW THAT, BUT I COULDN'T CONVINCE HIM OF THAT.
(19) Q. RIGHT. AND --
(20) BY MR. JOHNSON:
(21) THAT'S ALL I HAVE. THANK YOU.
(22) BY COMMISSIONER CHILDS:
(23) THANK YOU. YOU CAN BE EXCUSED.
(24) BY MR. POPE:
(25) WE CALL BILL MANNING.

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(1) WILLIAM A. MANNING, JR. BEING DULY SWORN, TESTIFIED AS
(2) FOLLOWS:
(3) DIRECT EXAMINATION BY MR. POPE
(4) Q. GIVE US YOUR FULL NAME AND ADDRESS
(5) A. WILLIAM A. MANNING, JR. 5555 CHARTER OAKS LANE, YORK,
(6) SOUTH CAROLINA.
(7) Q. AND WHERE DO YOU WORK?
(8) A. I WORK FOR DYKE AMERICAS.
(9) Q. AND YOU GRADUATED FROM GEORGIA TECH, IS THAT RIGHT?
(10) A. YEAH.
(11) Q. WHAT DO YOU DO FOR DYKE AMERICA?
(12) A. I'M A TECHNICAL MARKETING REPRESENTATIVE.
(13) Q. DID YOU PREVIOUSLY WORK AT MURATA?
(14) A. YES.
(15) Q. WERE YOU ABOVE RICHARD KIMMER IN THE CHAIN OF COMMAND,
(16) SO TO SPEAK?
(17) A. YEAH.
(18) Q. WHAT WAS YOUR JOB WITH MURATA?
(19) A. WELL, WHEN I FIRST -- WHEN WE FIRST HIRED RICHARD, I
(20) WAS THE TECHNICAL MANAGER. I WAS OVER ALL THE
(21) TECHNICAL STAFF. RICHARD DIDN'T WORK DIRECTLY FOR ME.
(22) HE WORKED FOR AN OUTSIDE CONTRACTOR THAT WORKED FOR ME.
(23) SO THAT'S HOW I KNEW -- WHEN RICHARD FIRST CAME TO
(24) MURATA, THAT'S HOW HE WORKED. AFTER THEN I WAS MOVED
(25) OUT OF THE MANAGEMENT SLOT. I WAS IN A TROUBLESHOOTING

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(1) SLOT, AND I WORKED WITH RICHARD.
(2) Q. HOW MANY YEARS DID YOU HAVE AN OPPORTUNITY TO OBSERVE
(3) RICHARD KIMMER'S WORK ETHIC AND HIS PHYSICAL CONDITION
(4) ON THE JOB?
(5) A. LET'S SEE, I THINK RICHARD CAME TO MURATA SOMEWHERE IN
(6) '94. ABOUT SIX YEARS. I LEFT MURATA IN 2000.
(7) Q. BUT DURING THE SIX YEARS THAT YOU SAW HIM, HOW WOULD
(8) YOU DESCRIBE HIM AS A WORKER?
(9) A. HE WAS ONE OF THE HARDEST WORKERS I HAVE EVER WORKED
(10) WITH. IF YOU TOLD RICHARD TO GO PUT IN 42 MACHINES AND
(11) DON'T CALL UNTIL YOU GET THE 42ND ONE PUT IN, THAT'S
(12) WHAT HE DID.
(13) Q. ALL RIGHT.
(14) A. IF YOU TOLD HIM TO FINISH A JOB -- RICHARD HAS WORKED
(15) AS MANY -- I HAVE SEEN HIM PERSONALLY WORK AS MANY AS
(16) 14, 15 HOURS A DAY. WITHOUT BEING ASKED TO. I MEAN,
(17) HE WOULD DO IT TILL HE FINISHED THE JOB.
(18) Q. DURING THE TIME HE WAS WITH MURATA, HAVE YOU EVER SEEN
(19) HIM SHOW ANY SYMPTOMS OF LIMPING OR A BAD BACK OR BAD
(20) KNEES OR ANY PROBLEMS THAT KEPT HIM FROM DOING HIS JOB?
(21) A. NOT THAT KEPT HIM FROM DOING HIS JOB. I KNOW HE HAD A
(22) BAD BACK, BUT IT NEVER SLOWED HIM UP. HE KEPT WORKING.
(23) Q. YOU'RE AWARE THAT -- IS HIS JOB CALLED A SERVICE
(24) TECHNICIAN, IS THAT THE RIGHT WORD?
(25) A. SERVICE TECHNICIAN FOR THE MURATA JET SPINNER, WHICH

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

**DOPE
&
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THOMAS H. POPE
(1913-1999)
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(1927-1994)

February 22, 2005

VIA FAX ONLY

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Columbia, SC

Re: MEDIATION-Richard Kimmer v. Murata of America, Employer, and Liberty Mutual Insurance Company, carrier and/or Richard Kimmer v. Phillip E. Wright and Westport Insurance Company

Gentlemen:

This confirms that we will have the mediation in the above case on Monday, March 28, 2005 at Barron Grier's office in West Columbia beginning at 10:00AM. We have set aside all day for this mediation, if necessary.

Best regards to each of you.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/bb
cc: Richard Kimmer

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF YORK

4 RICHARD KIMMER,

5 Plaintiff,

6 vs. CASE NO. 2004-CP-46-2659

7 PHILIP E. WRIGHT,

8 Defendant.

9

10 DEPOSITION OF: RICHARD KIMMER

11 DATE: March 2, 2005

12 TIME: 10:05 a.m. to 1:10 p.m.

13

14 LOCATION: Pope & Hudgens Attorneys, P.A.
15 1508 College Street
Newberry, SC

16 TAKEN BY: Counsel for the Defendant

17 REPORTED BY: Janet L. LeVeque,
18 Registered Professional Reporter

19

20

21

22

23

24

25

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1 STIPULATION

2 It is stipulated by and between Counsel that

3 this deposition is being taken in accordance with the

4 South Carolina Rules of Civil Procedure, Rule 30; that

5 all objections as to Notice of this deposition are

6 hereby waived; that all objections except as to form

7 are reserved until the time of trial; and that the

8 deponent waives reading and signing of this

9 deposition.

10 * * * * *

11 RICHARD KIMMER,

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. POWELL:

15 Q. Mr. Kimmer, state your full name, please.

16 A. **Richard Kimmer.**

17 Q. No middle name?

18 A. **No, sir.**

19 Q. And tell me where you're from originally.

20 A. **Born and raised in Lancaster, South Carolina,**

21 **Lancaster County. I now live here in Newberry, down**

22 _____

23 A. **No, it's down. Batesburg.**

24 Q. All right. How long have you lived in Newberry

7

1 County?

2 A. **About seven years.**

3 Q. Are you under the influence of anything, drugs,

4 or anything else that would interfere with your

5 ability to understand my questions today?

6 A. **I take medication for several different things,**

7 **but I don't think that any of it will interfere with**

8 **my ability to answer your questions.**

9 Q. All right. Don't be offended by this question

10 because this is something that's asked in almost every

11 deposition: You don't have any criminal record, do

12 you?

13 A. **Criminal, no.**

14 Q. Criminal record, that's something we ask all

15 the time.

16 A. **No, I do not.**

17 Q. I just assumed you did not.

18 Do you have any relatives by blood or marriage

19 in York County?

20 A. **No, sir.**

21 Q. You're not related to anyone up there?

22 A. **No, sir.**

23 Q. Do you have any close friends in York County?

24 A. **I think my ex-supervisor from Murata is in York**

25 **County.**

8

1 Q. What's his name?

2 A. **William A. Manning. He goes by Bill.**

3 Q. He lives where in Rock Hill?

4 A. **He lives in York.**

5 Q. In York. In the town of York?

6 A. **Yes, sir. I'm assuming that's in York County.**

7 Q. Anyone else that you can think of?

8 A. **No, sir, not that I can think of.**

9 Q. Okay. Do people call you Richard?

10 A. **Yes.**

11 Q. Do you mind if I call you Richard?

12 A. **That's fine.**

13 Q. Tell me about your education.

14 A. **Dropped out of school. I went through the**

15 **seventh grade and failed it and I never did go back,**

16 **so I really just got a sixth grade education.**

17 Q. That was in Lancaster?

18 A. **Yes, sir.**

19 Q. And what did you do after you left school? Did

20 you go to work or --

21 A. **I went to work for a guy building Jim Walter**

22 **Homes, worked with him for two years. When I turned**

23 **18, I went to work in textiles at Springs Industries.**

24 Q. Which Springs Mills did you work at?

25 A. **The Lancaster plant.**

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1 Q. And how long did you do that?

2 A. I worked there for 31 years, one month and one week.

Q. Good for you. You know, you're pretty sure how long you worked there then.

6 A. Absolutely.

7 Q. Tell me this, while you were working for

8 Springs Mills, did they give you any training,

9 on-the-job training while you were there?

10 A. On the job I was doing for Springs, sure.

11 Q. Tell me what kind of training you had.

12 A. When I went to work there in 1964, I started

13 off as a sweeper. They train you for, put you with

14 someone for so long. I did the sweeping job for some

15 time, and then they -- I learned to doff, which is in

16 the spinning department where I was sweeping. I

17 learned to doff on my own, in my spare time when I was

18 sweeping.

19 Q. Explain what that is.

20 A. Doffing is taking full balls of yarn off of a

21 spinning frame, putting an empty one on, start the

22 frame up, make sure all your ends are up, thread, you

23 know, then you have to go and dump your box and fill it back up with empty bobbins, and that sort of...

Q. I see. Part of the textile process?

1 A. Yes, sir.

2 Q. When did you start working on machinery?

3 A. I started working on the old ring spinning

4 machinery there in the plant. After I had been

5 doffing for approximately ten years or so, they wanted

6 me to learn to fix, and they put me in training to

7 learn to fix on the old type ring spinning. I did

8 that for several years. And then the new air jet

9 spinning, the Murata air jet spinning came into the

10 plant, taking the place of the old ring spinning, and

11 I got on those immediately, helping install them. And

12 as we got them installed and they put them in

13 production, then I started, you know, fixing, being a

14 technician on those.

15 We had learned a great deal of the machine, you

16 know, while we were installing it. But after we got

17 so many installed, then they took different people,

18 you know. I think we went by seniority at that time.

19 We got like enough of machinery to make a fixing job, you know, so many machines per fixer.

They had a guy that they had sent to another

20 plant to learn the machines, to be the instructor to

21 train the fixers as the Murata machinery came in

22 there.

23 Q. Did you do that? You went off to be trained?

1 A. No, sir, another guy did.

2 Q. You trained under him?

3 A. Under him in the Lancaster plant.

4 Q. I see. And what was the name of the machine

5 that you first started working on, if you can

6 remember?

7 A. There was Fells and Jinks (phonetic) ring

8 spinning.

9 Q. How long did you do that?

10 A. Approximately 15 years or so.

11 Q. Okay. What happened after that, Richard? Was

12 the machinery updated or modernized?

13 A. Well, yeah, it wasn't updated. It's just the

14 air jet spinning for Murata came in, you know. They

15 did away with the old type ring spinning and replaced

16 it with the Murata air jet spinning.

17 Q. So Murata, the company you were working for

18 when this event happened, when this automobile

19 accident happened, installed its own machinery in its

20 plants?

21 A. Yes, sir.

22 Q. Do they still sell them to the plant?

23 A. Yeah, they sell them.

24 Q. Or are they just leased, do you know?

25 A. They are sold to the plants, yes, sir.

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1 Q. And so tell me how it works, if you know? Does
2 the employer sell -- I mean, does the employer provide
a contract or enter a contract with Springs Mills to
your employer? Does Murata enter the contract with
Springs Mills to provide its employees, to service
6 machinery? Is that how it works?

7 A. I'm not sure I really understood. Repeat that
8 for me, please.

9 Q. Certainly. After you went to work for Murata,
10 I get the impression from what I've read that your job
11 would be to go maintain machinery, to work on the
12 machinery that was put in the plant, or either to
13 install it?

14 A. To install it, sometimes do modifications on
15 some -- after, you know, down the years, from 1985
16 when we started putting them in the Lancaster plant,
17 to '95, when I went to work for Murata, some of the
18 first machines that was put in the plant had, you
19 know, gotten ten years old and they needed
20 modification; so I wasn't only installing the
21 machinery at times, I was doing modifications, even
22 putting in used machinery in some plants, you know,
23 where they had bought them from other plants.

Q. Okay. Was your involvement limited -- after
you went to work for Murata now, was it limited to

1 either installing new machinery, used machinery, or
2 making modifications to machinery? Would you maintain
3 them, do maintenance on them after they were
4 installed?

5 A. Not exactly maintenance, no. Modifications at
6 times, yes.

7 Q. Okay. And you would receive your instructions
8 from somebody in Charlotte, somebody in North Carolina
9 to go to a certain place?

10 A. Yes, sir.

11 Q. The machinery that you installed, Murata
12 machinery installed and worked on at the Springs
13 plants, if I said that that machinery was essential to
14 Springs Mills' business, would that be true that they
15 have to have that machinery to operate?

16 A. What does the word "essential" mean?

17 Q. In other words, do they have to have that
18 machinery in order to conduct their business?

A. Well, it would cut out so many employees for
them to add the air jet spinning and do away with the
old type ring spinning. It cut out, you know, a lot
22 of processes throughout the textile plant.

23 Q. You're right, it was an inartful question.

24 What I was really getting to is not the
25 comparison of the new machinery with the old

1 machinery.

2 A. Okay.

3 Q. Would it be accurate or would it be correct to
4 say that Springs Mills has to have textile machinery
5 of some type in order for them to produce the cloth or
6 the material that they are selling?

7 A. Yes.

8 Q. Okay. So with that in mind, it would be true
9 then that the machinery you were installing or
10 modifying, that kind of machinery -- whether it's that
11 particular model or not is not important -- but that
12 kind of machinery would be essential, or necessary,
13 for Springs Mills to conduct their business?

14 A. Yes.

15 Q. Okay. That's all I wanted to know.

16 Without any machinery, they couldn't produce
17 any cloth basically?

18 A. Any yarn.

19 Q. Any yarn to make cloth?

20 A. To make cloth, yes.

21 Q. Okay. You mentioned working under, studying
22 under this fellow to learn how to work on this
23 machinery. And what was the man's name, if you
24 remember, that went off to be trained on the
25 equipment?

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1 A. They sent two guys, but the one that I worked
2 under was David Marie.

Q. Other than learning under David Marie how to
work on this machinery, have you had any other
training at Springs Mills other than that?

6 A. On the air jet spinning machinery?

7 Q. Yes, sir.

8 A. Only what I learned on my own, you know.

9 Q. Anything else other than on the air jet
10 spinning machine?

11 A. Not to my recollection.

12 Q. Did they ever teach you typing?

13 A. No, sir.

14 Q. Did you ever learn on your own to type?

15 A. No, sir.

16 Q. Have you taken any courses on your own at any
17 of the technical colleges or trade schools outside of
18 Springs to pick up other skills?

19 A. No, sir.

20 Q. You may have told me this, but when did you
21 start working on the air jet machine?

22 A. It was 1985. To the best of my recollection,
23 it was 1985 when we started putting them in the plant
there at Springs in the Lancaster plant.

Q. And then you went with Murata in '95?

1 A. Right.

2 Q. So from 1985 to 1995, you were working for
3 Springs Mills installing and modifying machinery?

4 A. Well --

5 Q. Air jet machinery?

6 A. Yeah, there in the Lancaster plant.

7 Q. Right.

8 A. But from 1990 to 1995, I also worked for Murata
9 through an outside contractor.

10 Q. I see.

11 A. I worked for them during the week and worked
12 what they called the mini shift for Springs on the
13 weekend. I worked, sometimes it was hardly ever under
14 80 hours a week between the two jobs.

15 Q. Richard, beginning in '85 on through the period
16 of time that you worked with Springs for this outside
17 contractor or with Murata, were you doing essentially
18 the same thing on this machinery?

A. Yes, sir.

Q. You just worked for different entities?

A. Yes, sir.

22 Q. Different companies, right?

23 A. Right.

24 Q. So your day-to-day functions, that is, what you
25 were doing for Springs Mills and what you were doing

1 for this outside contractor and what you were doing

2 for Murata, you were doing the same thing?

3 A. Right. Yes, sir.

4 Q. All right. This is a part of the deposition

5 where we're going to look at some documents as we go

6 along, and a number, most of them, I think, we

7 obtained from Mr. Pope. Some of them, maybe not, that

8 you've signed, and we'll identify them as we go along.

9 Hopefully we won't spend too long doing that.

10 But I don't want to try and trick you now;

11 that's not my objective. The next series of

12 questions, I'm going to ask you about illnesses you've

13 had, injuries you've had before and after this wreck

14 of January 29th, 1999, and treatment for those things,

15 you know, what was done for you and whether you got

16 any benefit from that treatment.

17 And in addition to that, the damages that

18 you're claiming in this lawsuit that you want to be

19 paid for and the problems that were created for you as

20 a result of the wreck of January 29th, 1999, and

21 subsequent events, whether that be from the workmen's

22 comp people or from Philip Wright or whoever.

23 This is the time for you to explain, at least

24 in this deposition, the problems you've had and the

25 damages you seek about that, do you understand, as we

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1 go forward?

2 A. Yes, sir.

Q. And I give you that preface to these series of questions so we both have an idea where we're going and what we're going to do.

6 A. Yes, sir.

7 Q. I want to know if there was a problem created for you, or if it's cost you money, or if you're looking for something, I need to know it. This is the time to tell me.

11 A. Right.

12 Q. Okay. And the reason I am, perhaps, offering that to you, I'll suggest, is that you don't appear to me to be a complainer, and I'm not trying to make you a complainer. And I don't want to speak for your lawyer, but there are times when -- I think he might agree, there are times when you need to set out what problems you have. If you've got a problem, you need to tell me about it. If you had difficulty with this or that, this is the time to talk about that.

21 A. Yes, sir.

22 Q. Okay. Tell me, have you had any serious illnesses in your life, other than mumps or measles or something like that.

A. I had a, you might say it was a poor muscle in

19

1 my back, back in the early '70s. When I used to cut firewood and burn firewood, I pulled a muscle in my back and had some minor treatment for that. I might have been out of work maybe a week or so with a strained muscle.

6 Q. And you were with Springs Mills at that time?

7 A. Right.

8 Q. Were you hospitalized at all?

9 A. No, sir.

10 Q. And you say you pulled your muscle in your back as a result of doing what?

12 A. Best of my recollection, it was just a strained muscle. It's been a long time ago.

14 Q. I mean, what were you doing when you did that? Were you at work?

16 A. Cutting firewood. I was at home.

17 Q. Cutting firewood?

18 A. Yes.

19 Q. Okay. Who was your doctor for that, if you remember?

A. I do not remember that.

22 Q. I assume you went to the doctor.

23 A. Yeah, yeah. I was under a doctor's care, taking muscle relaxers or pain pills. I don't remember, you know, which.

1 Q. And did the doctor tell you to stay in bed during that week?

3 A. Well, he put me on a heating pad, you know, using the heating pad and stuff, and not lifting anything.

6 Q. He told you to take it easy, basically?

7 A. Yeah.

8 Q. This was in the early '70s, a long time before any of this?

10 A. Yes, sir.

11 Q. And before that, after that week, did you have any trouble with your back as a result of cutting the firewood?

14 A. No, sir.

15 Q. Anything else?

16 A. Sometime in the late '70s -- to the best of my recollection it was in the late '70s -- I got a little bit of the end of my thumb on my right hand cut off on some gears in Spring's plant there working on machinery.

21 Q. And you made a workmen's compensation claim as a result of that?

23 A. I guess there was a workmen's comp claim on that, because I remember them -- I don't know if I filed a claim or the company filed a claim, you know.

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- 1 I don't remember.
- 2 Q. Were you out of work?
- 3 A. No, sir.
- 4 Q. You didn't miss any work as a result?
- 5 A. Didn't miss any work. I was on light-duty
- 6 stuff.
- 7 Q. They bandaged up your thumb?
- 8 A. Bandaged it up. It just took the end of the
- 9 thumb and a little bit of the nail off.
- 10 Q. I see.
- 11 A. It was just, I called it pretty minor, but, you
- 12 know, I do remember that workmen's comp paid the
- 13 doctor bills and -- but as far as me filing a claim, I
- 14 don't think I filed a claim.
- 15 Q. Did you receive any money as a result of that
- 16 injury?
- 17 A. I did. They compensated me \$1,000 for the
- 18 damage.
- 19 Q. That was sometime in the late '70s?
- 20 A. Yes, sir, best as I can remember it was in this
- 21 '70s. I'm thinking it was the late '70s.
- 22 Q. And I assume this, I don't know this, but I
- 23 assume from the way you talk that you were not
- represented by an attorney for that?
- A. No. Well, the same attorney that Springs had

- 1 was the attorney that I had to go see.
- 2 Q. But he didn't represent you in the case. He
- 3 was Springs' lawyer?
- 4 A. He was Springs' lawyer.
- 5 Q. He wasn't Richard Kimmer's lawyer.
- 6 A. I don't remember exactly, but I don't remember
- 7 ever going to see an attorney before they wanted to
- 8 settle the thing. And I just remember that he told
- 9 me, he said, you know, I'm Spring's attorney and we
- 10 need to, you know, settle this and get it off the
- 11 record.
- 12 Q. I understand. I understand.
- 13 I forgot to ask you this earlier, sorry. I
- 14 need to ask your family association. Are you married
- 15 currently?
- 16 A. Currently going through a divorce.
- 17 Q. You're not divorced yet?
- 18 A. No, sir.
- 19 Q. Do you have any children?
- 20 A. I do.
- 21 Q. How many?
- 22 A. Three.
- 23 Q. What are their ages?
- 24 A. My oldest daughter is 36.
- 25 Q. Is she married?

- 1 A. Yes, sir. Well, she's not legally married,
- 2 but her and her boyfriend have been together 18 years
- 3 or so.
- 4 Q. Might as well be.
- 5 A. So I think they call it common-law marriage.
- 6 Q. Does she use his last name?
- 7 A. No, she don't, but her child does. She has a
- 8 daughter.
- 9 Q. And her name is?
- 10 A. Bonnie.
- 11 Q. Bonnie Kimmer?
- 12 A. Bonnie Sue Kimmer.
- 13 Q. Where does she live?
- 14 A. She lives in Lancaster.
- 15 Q. Your next child?
- 16 A. My next child is 35, and she is married.
- 17 Q. What's her married name?
- 18 A. Gilmore.
- 19 Q. And her first name is what?
- 20 A. Melissa Fay Gilmore.
- 21 Q. Where does she live?
- 22 A. She lives down in Chesterfield.
- 23 Q. Your oldest daughter's boyfriend, what's his
- 24 name? I forgot to ask you.
- 25 A. He's a Whitaker. The only thing I ever know

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1 him to be called is Pimper, but I know that's not his
 2 first name. That's the only name I know him by.
 Q. What does he do for a living?
 A. He works construction.
 Q. Do you know for who?
 A. He's got a brother that lives down in Myrtle
 Beach, and they do something with old lumber, like
 tear down old buildings and re-salvage the lumber for
 different things. That's the only thing I know, that
 he works for his brother.
 Q. And your second child, what does her husband
 do?
 A. Right now I really don't know. At one time
 he -- the last place I remember him working was the
 Wal-Mart warehouse over in Pageland.
 Q. Okay. And your third child?
 A. My third child is my son, Richard Buddy Kimmer,
 and he lives also in Lancaster.
 Q. What does he do?
 A. He works at -- I don't know the name of the
 place. He works up in Indian Land, some place that
 makes septic tanks, the concrete tank, you know.
 Q. Somewhere near Rock Hill?
 A. Indian Lane.
 Q. Just outside of there?

1 A. That's between Monroe and Charlotte.
 2 Q. I know where you're talking about.
 3 A. Did I say Indian Land? No, it's not Indian
 4 Land. It's between Monroe and Charlotte.
 5 Q. That's not important. Don't worry about it,
 6 that's okay.
 7 We were talking about your other injuries and
 8 illnesses. You told me about the early '70s, long
 9 time ago with cutting the firewood and you told me
 10 about cutting off the end of your thumb. Any other
 11 events that you can think of?
 12 A. Somewhere in the mid, well, not the mid-'90s,
 13 in '92 or '93, I had an auto accident.
 14 Q. Tell me about that.
 15 A. Well, I was traveling east on Highway 9 from
 16 Chester to Lancaster, and there was a livestock sales
 17 barn there, and this was at night. And when I topped
 18 the hill at that livestock barn, it was all lit up.
 19 So I glanced to the left to see what all the lights --
 20 surprised me being lit up at night because I didn't
 21 know that, you know, they were there that late at
 22 night. But, anyway, when I looked, glanced left at,
 23 you know, the lit-up place, then I looked back in
 24 front of me and there was a tractor-trailer truck
 25 making a wide turn coming out of the sale barn, and I

1 hit that truck.
 2 Q. How fast were you going, do you think?
 3 A. I had my cruise set. I was doing 55.
 4 Q. Tell me about your injuries from that event.
 5 A. Okay. When I hit the truck, I wasn't wearing
 6 my seatbelt and my face hit the steering wheel and the
 7 windshield broke my nose and bruised my face up pretty
 8 bad. I was out of work, I don't remember exactly,
 9 three or four weeks or so. May have been a little
 10 longer than that, I'm not sure. That's some time
 11 back.
 12 Q. Tell me about your injuries. I mean, what part
 13 of your body was injured and so forth.
 14 A. Well, I thought I just did. My face hit the
 15 steering wheel. My nose, my head busted the
 16 windshield.
 17 Q. That was all. You didn't hurt your back or
 18 knees or legs or anything, or hips?
 19 A. No, sir. I had no problem with nothing but my
 20 face and head hitting the windshield.
 21 Q. You don't need to start into the January 1999
 22 wreck. We're going to talk about that at length, you
 23 know.
 24 A. Right.
 25 Q. But anything other than what you've already

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1 told me?

2 A. In '98, I think it was, I was on my knees on
3 top of one of the machines, and I had an inflamed
4 tendon, what the doctor said it was, an inflamed
5 tendon. They treated me for that at Dr. Kinahan's. I
6 don't remember the name of the doctor's office.

7 Q. Which tendon? Was it in your back?

8 A. No, it was in my left knee.

9 Q. In the left knee?

10 A. Yes, sir.

11 Q. Who treated you?

12 A. Peter J. Kinahan.

13 Q. I see.

14 A. From Union.

15 Q. All right. And were you out of work as a
16 result of that?

17 A. I think I was out a few days, three or four
18 days or so.

19 Q. And then was this an accident, or was it you
20 were on top of the machinery and moved the wrong way
21 and pulled your tendon?

22 A. Yes, sir. It had a motor way down in the
23 machine, you know, and I was on top of the machine,
and that motor was maybe 50 pounds or so. When I went
to pick the motor up, it just put extra weight on my

1 knees or something, and maybe it did move the wrong
2 way, one way or the other or something, you know. And
3 it just hurt real bad at the time and the next day it
4 was all swollen up. I had to go to the doctor.

5 Q. In our world we call that an accident.

6 A. Yes, sir.

7 Q. It's nothing you intended to happen.

8 A. No, not at all.

9 Q. You were out of work a few days?

10 A. Yes, sir.

11 Q. And Dr. Kinahan treated you?

12 A. Right.

13 Q. What did he do for you, if you remember?

14 A. Put me on some medication. I don't know if it
15 was -- I don't remember if it was muscle relaxers or
16 pain pills, and also put a shot of cortisone.

17 Q. Was the 1998 injury as a result of this to your
18 left knee, as a result of this accident at work, was
19 that the first time you'd ever had any trouble with
20 your knees?

21 A. Yes, sir.

22 Q. You say you went back to work after a few days,
23 but did you have trouble with your knee for a while
24 after that?

25 A. Yeah. I was still under the doctor's care.

1 When I'd get on my knee, you know, at work, I would
2 have to put, either use a knee pad, or, if I didn't
3 have one handy, I'd ball up a ball of rags or
4 something, you know, and put it under my knee. That
5 went on for maybe a week to ten days or something and
6 it got okay.

7 Q. So after this 1998 event, you hurt yourself at
8 work; after a couple of weeks that resolved itself or
9 your knee was okay?

10 A. Yes, sir.

11 Q. Okay. Anything else?

12 A. No. That's it until the '99 accident.

13 Q. Did you go to any physical therapy for your
14 knee as a result of the 1998 work-related accident?

15 A. To my recollection, I did not, no.

16 Q. Tell me about the accident of, I think it was
17 January 29th, 1999; is that right?

18 A. Yes, sir.

19 Q. Tell me about that, how the accident happened.

20 A. Okay. I was on my way to work from the time I
21 lived in Whitmire, and I was on my way to work to
22 Springs Cathrine (phonetic) plant in Chester, and as I
23 was going east on Highway 9 from Chester towards
24 Lancaster, which the Cathrine plant was 3 miles out of
25 Chester, there was a guy came flying out of a store

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1 yard, and lived just right up the road in apartments.
 2 Instead of him going over on his side of the road, he
 just came out of there and shot right up, you know, on
 my side of the road, because he wasn't going but
 50 yards or so. And, undoubtedly, he maybe looked
 6 behind me or whatever the case was, but we hit head on
 7 right there. That was on my way to work in the
 8 morning on January 29th of '99.

9 Q. Were you wearing your seat belt that day?

10 A. No, sir, I wasn't.

11 Q. Do you normally wear it or not wear it?

12 A. At times I do. At times I don't.

13 Q. I hope you're wearing it now when you drive.

14 A. Well, at times I do and at times I don't. I'm
 15 not going to tell you a story about it.

16 Q. You know, I'm not throwing any rocks. I would
 17 just encourage you to wear it.

18 A. I appreciate that. Everybody does, but at
 19 times, if I'm not going but just a little ways,
 20 sometimes I do not put it on, I'm sorry.

21 Q. I understand. I understand.

22 Were you taken by ambulance from the scene?

23 A. No. The ambulance came to the scene and wanted
 to take me to the hospital, and I wouldn't go. I knew
 ' was hurting but...

1 Q. You were in pain?

2 A. I was in pain, but I didn't want to go to the
 3 hospital right then. I don't know why.

4 Q. I have to ask you why not if you were hurting.

5 A. I don't like hospitals, period. I mean, you
 6 know, there have been a lot of times in my life when I
 7 felt like I needed to go to a hospital or doctor

8 maybe. But I'm just that type person, if I don't have
 9 to go, I don't go, but I knew I probably needed to go

10 because of how I was hurting. But I called my wife
 11 immediately after the wreck and she came and picked me
 12 up at the body shop where they took my car, and she
 13 took me to the hospital then.

14 Q. Okay. I don't want to get too -- in fact, I
 15 hope I don't have to get too personal with you,
 16 Mr. Kimmer, but have you separated from your wife
 17 since that accident?

18 A. Yeah, we separated January 12th a year ago.

19 Q. A year ago?

A. Yes, sir.

Q. Do you blame that accident with you and your
 12 wife's separation at all?

13 A. It played a big part in it.

14 Q. Is that right?

15 A. I've lost two homes since this accident and a

1 wife. I spoiled my wife when I was working, and then
 2 when I couldn't work, you know, just a lot of
 3 difference in social security disability and what I
 4 used to make.

5 Q. We're going to talk about that. You're going
 6 to have plenty of time to talk about that as we go
 7 along.

8 So you do assign part of the divorce you're
 9 going through to the accident of January 29th?

10 A. Right.

11 Q. The ambulance driver said let me take you to
 12 the hospital and you declined that, correct?

13 A. Right.

14 Q. Where did you go after that? Did you go to
 15 work?

16 A. No.

17 Q. Right after the accident -- the accident
 18 occurred, you were on the accident scene there.

19 A. I rode to the body shop with the guy that took
 20 my car, B&B Body Shop in Chester, I think it was, and
 21 I called my wife from there and she came and picked me
 22 up.

23 Q. Did she take you home?

24 A. No, sir. She took me to the hospital there in
 25 Chester.

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1 Q. She took you to the hospital?

2 A. Yes, sir.

Q. Were you hurting bad enough at that point where you needed to go?

A. Absolutely. Yeah.

6 Q. You changed your mind about going?

7 A. I was hurting bad enough there at the wreck
8 scene, but I just wouldn't go. But by the time she
9 got there, you know -- sometimes you can shake things
10 off after a little while, but by the time she got
11 there, I'd actually gotten worse. She took me on to
12 the hospital.

13 Q. What was hurting you at that time?

14 A. Well, my head, my neck, my knees, one of my
15 elbows. I don't remember if it was my right one or my
16 left, but it didn't give me any problem after a day or
17 two, so I reckon I just bumped it and no permanent
18 damage or anything to it.

19 Q. Right. And so you went to the hospital the day
20 of the accident?

21 A. Yes, sir.

22 Q. There in Chester?

23 A. Yes, sir.

Q. And were you admitted to the hospital there?

A. No, sir.

1 Q. What did they do for you?

2 A. They x-rayed me. They x-rayed my knee. To the
3 best of my recollection now, they x-rayed my knees and
4 my, if I'm not mistaken, my head to make sure I didn't
5 have a skull fracture. They gave me a prescription
6 for either pain pills, or I'm assuming it was pain
7 pills, I don't remember, and told me to see a doctor.

8 I think this was on Friday. The day of the
9 accident was on Friday. They told me to see my family
10 doctor or, you know, someone about the damages
11 immediately, you know, which it was on a Monday before
12 I seen anyone.

13 Q. What did you do that weekend?

14 A. Nothing.

15 Q. Just stayed in bed?

16 A. Pretty much stayed in bed and took the pain
17 medicine or muscle relaxers, whichever one they gave
18 me at the hospital.

Q. Tell me, you say you did go see your doctor on
Monday?

A. Monday.

22 Q. What was his name?

23 A. Dr. Peter J. Kinahan.

24 Q. Same doctor?

25 A. Same doctor I'd seen in '98.

1 Q. He's in Union?

2 A. Yes, sir.

3 Q. What did he do for you?

4 A. Best of my recollection, he also x-rayed my
5 knees, and I'm not sure about my head. But then he
6 started me on, for my knees, pain pills or muscle
7 relaxers, whichever. In a few days he had me in
8 physical therapy with my knees and my neck. They put
9 me in some kind of therapy where they put your head in
10 something and pull your neck or whatever it does to
11 it.

12 Q. Right. And did he give you any other advice?

13 Did he tell you not to go back to work?

14 A. Yeah. He told me, said, you know, you can't
15 work in this condition.

16 Q. Did he tell you on that Monday how long you
17 would be out of work?

18 A. Oh, no. To the best of my recollection he
19 didn't give me any time frame or anything about, you
20 know, my getting better or anything like that

21 Q. And then you went to physical therapy?

22 A. Right.

23 Q. Where did you go to physical therapy?

24 A. It was in the same building. I cannot remember
25 the name of the things over there, but it was in the

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1 same building that Dr. Kinahan was in.

2 Q. How long did you go to physical therapy there
3 the same building?

4 A. For a long time, months. Sometimes as many as
5 three times a week. It was for a long time. I'm not
6 sure how long, but it was for a long time.

7 Q. Okay. And at some point along the way did you
8 see another doctor other than Dr. Kinahan?

9 A. Yeah. After some time he, you know, kept me in
10 that physical therapy and putting shots of cortisone,
11 you know, in my knees and even in my neck. I don't
12 know, it was several months, I guess, later. I didn't
13 feel like I was getting any better with what he was
14 doing so I did go to see a different doctor.

15 Q. Who did you go see after that?

16 A. I am not real sure what his name was. It seems
17 like it was Dr. Thomas or it seems like it was
18 something that started with a T, but down in
19 Spartanburg.

20 Q. Was he a specialist?

21 A. Orthopedic.

22 Q. Orthopedic surgeon?

23 A. Orthopedic surgeon, yes.

24 Q. What did he do for you?

25 A. Nothing.

1 Q. Did Dr. Kinahan send you to him?

2 A. No. I just wasn't getting any better with what
3 Dr. Kinahan was doing. I just felt like I needed to
4 see somebody different because all doctors, you know,
5 don't treat things the same.

6 Q. Right. Tell me, I guess my question to you
7 really is, how did you get to him? Did a friend of
8 yours refer you, or how did you get to the doctor in
9 Spartanburg, the orthopedic surgeon?

10 A. I cannot remember to save my soul. I do not
11 remember.

12 Q. How long did you see the orthopedic surgeon?

13 A. Which one?

14 Q. The one in Spartanburg.

15 A. I only seen him twice.

16 Q. Do you remember what he told you?

17 A. Only thing I remember him telling me is that,
18 yes, you have some problems, but I don't know -- you
19 have a good doctor there in Union. Nothing that he
20 could do, you know, that Dr. Kinahan wasn't doing. I
21 just felt like I needed a second opinion, you know.

22 Q. I understand.

23 Dr. Kinahan, is he an orthopedic surgeon?

24 A. Yes, sir.

25 Q. So you just wanted to hear from another one?

1 A. Right.

2 Q. Fair enough.

3 And then after the orthopedic in Spartanburg,
4 did you consult another doctor? Did you go to someone
5 else?

6 A. I did see a doctor that specialized in sports
7 medicine. I guess he's an orthopedic surgeon too.

8 Q. Where is he?

9 A. He was also in Spartanburg, and I cannot
10 remember his name either, cannot.

11 Q. How long did you see him? How long after the
12 first orthopedic in Spartanburg, after you went to see
13 him, did you wait to see the third doctor?

14 A. It was several months. It may have been a
15 year, over a year, I'm not sure. I know it was quite
16 a while.

17 Q. Did you have surgery on your knee, or knees, at
18 some point?

19 A. I had the arthroscopic surgery. Dr. Kinahan
20 did two, on the right knee and one on the left knee.

21 Q. Okay. When was that, Richard, if you remember?

22 A. It was in '99 to 2000.

23 Q. I think you're right about that.

24 Richard, at some point you started receiving
25 what I'll call term disability through Murata.

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1 A. That's correct.
 2 Q. Isn't that right?
 A. That's correct, yes, sir.
 Q. But that ran out before --
 A. Excuse me.
 6 Q. That ran out. You understood that was going to
 7 run out before long?
 8 A. Yes, sir.
 9 Q. That was a short-term thing?
 10 A. Well, it started -- I did receive short-term
 11 disability for three months, and then I was out of
 12 work longer than that so I had to apply for the
 13 long-term disability, which it lasted, I guess, a
 14 year.
 15 Q. Okay. But you understood that was going to run
 16 out?
 17 A. Oh, yeah, yeah.
 18 Q. And you understood that what you wanted, if
 19 possible, what you wanted was your workmen's comp
 20 benefits?
 21 A. Yeah. After about three months I realized, you
 22 know, they should have been paying everything from day
 23 one.
 Q. From workmen's comp?
 A. Right, from workmen's comp.

1 Q. And you say after about three months -- the
 2 wreck was in January, so January, February, March,
 3 sometime in the spring of '99 is when you realized
 4 that the workmen's compensation people should have
 5 been paying you from the beginning?
 6 A. Right.
 7 Q. We're going to go through some documents. I'm
 8 going to ask you, I'm going to label this as Number 1,
 9 Exhibit 1.
 10 (DEF. EXH. 1, Amended Summons and
 11 attachments (15 pages), was marked
 12 for identification.)
 13 Q. This is the Amended Summons and Complaint in
 14 this lawsuit, Mr. Kimmer, with the exhibits attached
 15 to it, documents behind it. I'll ask you to look at
 16 that.
 17 A. (Reviewing documents.) I can look at it, but
 18 I'm not going to be able to read all of it.
 19 Q. I'm not asking you to read every word of it.
 20 I'm just asking you, have you seen it before?
 21 A. I'm not sure.
 22 Q. I don't want to mislead you or trick you in any
 23 way, Mr. Kimmer. This is an amended version of the
 24 complaint which Mr. Pope filed on your behalf, and it
 25 makes certain allegations in there. We'll talk about

1 some of those in a little while, but I wanted to know,
 2 Mr. Pope was certainly authorized to do this for you?
 3 A. Yes, sir.
 4 Q. The exhibits that are attached to it, if you
 5 would, if you turn through the documents, Exhibit A.
 6 A. (Complies.)
 7 Q. It says Exhibit A at the bottom there?
 8 A. Yes.
 9 Q. See that?
 10 A. Yes.
 11 Q. That's a settlement statement dated June 16th,
 12 1999?
 13 A. Yes, sir.
 14 Q. And was that a settlement statement you
 15 received from Mr. Wright?
 16 A. Yes, sir, I did receive that.
 17 Q. And you signed that?
 18 A. Yes, sir.
 19 Q. And then the next, at least in my version, the
 20 next page is the check from Auto-Owners Insurance for
 21 \$15,000?
 22 A. Yes, sir.
 23 Q. That was the check. Did you endorse that
 24 check?
 25 A. I'm sure I had to, yes.

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1 Q. And next is a letter from Mr. Wright to you,
2 actually to Mr. Holler of Auto-Owners Insurance with a
copy to you dated June 23rd, 1999?

A. If I got this, I don't remember it. I've
gotten so many papers.

6 Q. I understand.

7 A. But this particular one, I do not remember.

8 Q. Okay. And then the next document attached to
9 the complaint is the Release and Settlement Agreement,
10 and that's your signature at the bottom?

11 A. Yes, sir.

12 Q. You signed that?

13 A. Yes.

14 Q. And then the next document is a Form 50, which
15 Mr. Wright filed on your behalf, dated June 18th,
16 1999, and you received a copy of that?

17 A. I don't remember if I received a copy of it or
18 not. I just remember Mr. Wright saying he was going
19 to file it.

20 Q. He was authorized to do it for you?

21 A. Yes, sir.

22 Q. Okay. And look on page 3 of the complaint back
23 in here on page 3 -- maybe we can work at it from the
that way. Paragraph 16.

A. Okay.

1 Q. If you would, read this paragraph.

2 A. (Reading.) On February the 1st of 2000, the
3 defendant wrote the plaintiff and explained the
4 position of Murata/Liberty Mutual in the workers comp
5 matter and the potential problem with his continued
6 representation. A copy of that letter is attached
7 herewith and incorporated by reference and Exhibit C.
8 Thereafter, plaintiff obtained other counsel in
9 connection with the workers compensation claim.

10 Q. All right. Let's turn to Exhibit C. That's
11 the February 1st letter that -- you understand this
12 pleading is the allegations that you make in this
13 lawsuit? You understand that? This is your complaint
14 in this lawsuit.

15 A. I'm not exactly sure I understand the question.

16 Q. Okay. My question to you is, this is the
17 complaint, Exhibit 1 that we're looking at, this is
18 the document that started this lawsuit, that Mr. Pope
19 filed on your behalf. You understand that?

A. Yes, sir.

Q. Okay. And the items, the language that's in
22 the complaint, that's what you, Richard Kimmer,
23 contend in this lawsuit, do you understand that? That
24 when I say, this is what you are saying is true, do
25 you understand that's what the complaint is?

1 A. Yes. If I am saying it, it is true.

2 Q. I'm not trying to trick you. I'm just trying
3 to work through this with you.

4 A. Okay.

5 Q. And the letter of February 1st, 2000, you
6 received that from Mr. Wright?

7 A. I'm assuming I did. I can't remember.

8 MS. POPE: Let's find the
9 letter.

10 MR. POWELL: Yeah, find
11 letter back here.

12 Q. That's it. This is it right here. This one
13 right here.

14 MR. POPE: That's the letter
15 right there.

16 MR. POWELL: Richard, you can
17 take your time and read
18 it if you'd like.

19 THE WITNESS: I'm a slow
20 reader, it will take
21 me a little while.

22 MR. POWELL: Richard, you
23 take your time.

24 MR. POPE: Let's take a
25 little break.

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(A recess transpired.)

Q. Okay. Mr. Kimmer, back on the record now. Did you receive Mr. Wright's February 1st, 2000 letter, as the complaint alleges?

A. I'm assuming I did. Since I've read it now, I do remember reading this letter, yes.

Q. Had you already obtained other counsel, another attorney by the time Mr. Wright wrote you this letter?

A. No, I had not. No.

Q. Did Mr. Wright, now that you've read the letter, was he up front with you and explain to you what he did and what happened in the matter? I mean, he didn't try to hide it from you?

A. Can we back up to the question before this one?

Q. I guess.

A. About having another attorney before he had wrote this letter?

Q. You can change your answer if you want to. It doesn't matter to me.

A. Well, according to this letter, you know, he already knew that I was talking to Mr. Pope, but...

Q. You were in the process of changing attorneys when you got the letter; is that fair? It's not a big deal.

A. Well, I'm assuming that Phil had already told

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me or something that he, in his words, screwed this up, and that I would -- he couldn't proceed with it. I would have to find another attorney to handle the workmen's comp part of this. And I'm assuming that I had talked to Mr. Pope before I got this letter, because it states in this letter, you know, it has Mr. Pope's name in here. And Phil Wright would not have known, you know, that I was talking to Mr. Pope if I had not, you know, told him.

Q. Right. And you turned this letter over to your new attorneys?

A. I don't know about this particular letter. I guess I had turned something over to him.

Q. Okay. But you made your entire file with Mr. Wright available to Mr. Pope. I think there are some documents to indicate that you understood Mr. Pope was going to get your file?

A. Right, yeah.

Q. Okay. And Mr. Wright understood, you understood Mr. Wright was telling you in this -- let me see if I can find the right. You see in the paragraph that begins there "as I explained to you when you were in the office last"?

A. Yes.

Q. See that?

A. Yes.

Q. He may be referencing the conversation you were talking about just a minute ago. (Reading.) 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.

Now, when you found this out, that they were denying your workers' compensation claim because the underlying automobile case for \$15,000 was settled without their notice, you hadn't been receiving your workers' compensation payments; is that right?

A. Right.

Q. And you understand Mr. Wright is telling you in this letter, and apparently had explained to you in his office, that the reason they were denying it is because he made a mistake?

A. Right. Yes, sir.

Q. And he also says in here that you might have a claim against him as a result of that?

A. That's true.

Q. Okay. And so my question to you really is, he didn't try to hide that from you?

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1 A. Oh, no. When I went in to talk to him, you
2 know, he told me plainly, you know, I screwed this up,
3 you have to get another attorney to take the case.

Q. Yes, sir.

A. And we've been friends a long time and we
6 had -- I'd known Phil several years prior to this. I
7 had two divorces and another little domestic or what,
8 not domestic, but a thing with my daughter where I
9 signed for a loan for her and she wouldn't pay it
10 back. He had handled three things for me and I
11 trusted him.

Q. You're not contending in this case that he
13 misled you in any way? When I say misled you, tried
14 to hide his mistake?

A. No, because he told me plainly, and it's also
16 stated in this letter here that he had made a mistake.

Q. Right. I understand. Okay. Well, let's move
18 on. We may come back to that later on, but right now
19 I want to move on down the road here a little bit.

Mr. Kimmer, I want to show you what has been
21 marked as Exhibits 2, 3, 4 and 5.

(DEF. EXHS. 2,3,4,5, Tax Returns,
23 were marked for identification.)

Q. I'll represent to you that they are tax returns
that we received; your tax returns that we received,

1 I believe, through your attorneys. Identify those for
2 us, if you would. They are 1998, I think, through
3 2001.

A. Yeah, these are my tax returns.

Q. All right, sir. And your combined income on
6 Exhibit 2 there -- unless there's an objection from
7 your attorney, to move us along, there are a lot of
8 numbers on this page; can we both agree on that?

A. Yes, there are a lot of numbers on this page.
10 Yes.

Q. I'm going to point out to you, on the 1040X,
12 apparently your return was amended for some reason.
13 Whoever prepared it for you listed the gross income
14 for you and your wife as \$101,000. Do you see that?

A. Yes, sir.

Q. And then the next year, Exhibit 3, under line 7
17 lists gross income \$60,000. See that, wages, tips,
18 and salaries? Actually, I guess the gross income
19 would be down at the bottom, but, roughly, the money
from earnings would be \$60,000, is that right, in
1999?

A. Yes, sir.

Q. You're looking at number 3 right here?

A. Yeah.

Q. Is that right?

1 A. Yes, sir.

2 Q. Was that primarily your wife's income?

3 A. No. I'm assuming that this -- her income was
4 in the mid-30s.

5 Q. Okay. But there's obviously a huge difference
6 between your income in 1998 and your income in 1999,
7 60,000 to versus 101,000?

8 A. Yeah.

9 Q. And is that difference primarily because you
10 were injured and not able to work during 1999?

11 A. Yes, because I didn't work in 1999 except, you
12 know, the first month.

13 Q. And the reason you didn't work was as a result
14 of this automobile accident on January 29th?

15 A. Yes.

16 Q. And the reason that your income was down was
17 because you weren't receiving your workers'
18 compensation payments?

19 A. Well, that's correct, but -- go ahead.

20 Q. I mean, that's one of the -- what I'm trying to
21 do is to get an idea of what you were normally making
22 and what your household was bringing in after the
23 accident with no workers' compensation payments.

24 A. Okay.

25 Q. Right?

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1 A. Right.

2 Q. And there was a difference there?

A. Yes, sir.

Q. And beginning in 1999, the failure to receive those workers' compensation payments caused you problems?

7 A. Yes, sir.

8 Q. And you knew that at the time?

9 A. Yes, sir.

10 Q. Because you had wages that weren't being paid and medical bills that were outstanding, correct?

12 A. Yes, sir.

13 Q. And then look at Exhibit 4. This will be the tax return for 2000?

15 A. Right.

16 Q. See that, Richard?

17 A. Yes, sir.

18 Q. And the amount goes down further. During 2000, was almost all of the \$38,000, \$38,652 there from your wife's income?

21 A. I'm assuming that is correct, yes, sir.

22 Q. Because you didn't work at all during 2000?

23 A. No, sir.

Q. And during 2001, this is Exhibit 5?

A. Right.

1 Q. Your wife's name is Martha?

2 A. Yes, sir.

3 Q. I see W2s, 1099s for her in 2001, and none for you. You earned no wages at all during 2001?

5 A. No, I didn't work any in 2001. The long-term disability came in, you know, somewhere in 2000 or 2001. I don't know which tax form it would be on.

8 Q. Okay.

9 A. Or if it was, I don't remember if it had to be filed. I'm not sure.

11 Q. Right.

12 A. But as far as me earning, working and earning, no.

14 Q. I understand. As you mentioned earlier, what you were getting from your disability payments was far short of what you were looking for in terms of your wages?

18 A. Well --

Q. Or your workers' compensation?

A. I think it was like 75 percent of what I normally would have been earning on the job.

22 Q. Right.

23 A. It was not far short but some short.

24 Q. But it wasn't paying your medical bills?

25 A. I was paying what I could, yeah.

1 Q. I understand, but, I mean, there were still some medical bills that were mounting up as a result of your not getting your workers' compensation?

4 A. Absolutely, yes, sir.

5 Q. And those medical bills started, well, I guess they started in 1999, January 29th, 1999?

7 A. Yes.

8 (DEF. EXH. 6, Form 50, was marked for identification.)

10 Q. This is Number 6. This is a Form 50 that Mr. Wright filed for you. We looked at that earlier. That was actually the workers' compensation claim he filed for you, isn't it?

14 A. Yes, sir.

15 (DEF. EXH. 7, Form 51, was marked for identification.)

17 MR. POPE: Can we go off the record?

19 MR. POWELL: Sure.

20 (Off-the-record conference.)

21 Q. Back on the record, Mr. Kimmer.

22 Number 7 is the Form 51 filed by the lawyer for the workers' compensation carrier, dated January 13th, 2000; is that correct?

25 A. That's what's on the form here. I don't

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1 remember ever seeing this form. I guess I did get a
2 copy of it.

Q. And number 11 there says: Grounds or defenses
that they are asserting, see it says all statutory and
affirmative defenses?

6 A. Yes.

7 Q. Third party action settled without consent?

8 A. Yes.

9 Q. That was the third party action that Mr. Wright
10 was referring to in his letter of February 1st, 2000.

11 A. Right, of the auto insurance. Yes.

12 Q. And that was the third party action being
13 settled without the consent of the workers'
14 compensation carrier, is something that Mr. Wright
15 told you about in his office and in his letter of
16 February 1st, 2000?

17 A. Yes.

18 MR. POWELL: Number 8, Tom,

19 is a May 21st, 1999

20 letter.

21 (DEF. EXH. 8, Letter, 5/21/99, was
22 marked for identification.)

23 Q. Let me show this to you, Mr. Kimmer.

A. (Reviewing documents.)

Q. We'll see a number of letters like this. I'm

1 not even going to mark all of them, but this was a
2 letter that Mr. Wright wrote to Dean Holler at
3 Auto-Owners sending him your medical bills.

4 A. Yes.

5 Q. See that?

6 A. Yes.

7 Q. He sent you a copy of that letter?

8 A. I don't remember, you know, but I'm sure he
9 did.

10 Q. Right. You would routinely receive letters
11 from Mr. Wright?

12 A. Yes, sir.

13 Q. And see what he says here: The emergency room
14 visit at Chester County Hospital was \$407, and the
15 physical therapy bill through March 1st is \$3,596?

16 A. Yes.

17 Q. To the best of your knowledge, are those
18 accurate numbers?

A. I'm assuming, yes.

Q. Okay. And it says you're employed with Murata;
been out of the work since February 1; gives your
22 hourly rate; missed 80 days through work, and wage
23 loss, \$9,318.40. To the best of your knowledge, did
24 you realize, as of May 21st, 1999, that your wages
25 lost were \$9,318.40.

1 A. I knew I had lost wages, but the figure, I had
2 no idea, but I'm assuming that is correct, yes.

3 Q. You don't dispute that that's correct?

4 A. It sounds pretty accurate, yes.

5 Q. In May of 1999, while you may not have known
6 the exact figure, you were aware that you were out
7 thousands of dollars as a result of this accident?

8 A. Right.

9 Q. And as a result of not receiving your workers'
10 compensation benefits?

11 A. Yes, sir.

(DEF. EXH. 9, Release and Settlement
Agreement, was marked for
identification.)

15 Q. We've looked at this before. I'm marking it
16 separately here. This, I think is Exhibit 9; it's the
17 Release and Settlement Agreement. Mr. Kimmer, this
18 was also attached to the complaint in this case?

19 A. Yes.

20 Q. Is this the June 16th, 1999 Release and
21 Settlement Agreement that you and your wife signed?

22 A. Yes, sir.

23 Q. In return for the payment of \$15,000?

24 A. Yeah, that was the amount that Phil used to pay
25 the doctor bills and took his third out of it, which I

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1 guess was \$5,000, but that was it, yeah.

2 Q. And that \$15,000, your medical bills far
3 exceeded -- that didn't pay all your medical bills?

4 A. Absolutely not, no.

5 Q. Okay. You understood that when this release
6 was signed, that it wouldn't pay everything?

7 A. Right, yeah.

8 (DEF. EXH. 10, Copy of Check No.
9 1-8639057, 6/14/99, for \$15,000, was
10 marked for identification.)

11 Q. Just identify the check. Number 10, we saw
12 that earlier?

13 A. Yes.

14 Q. I think it was also attached to the complaint.
15 That's the \$15,000 check that you received from the
16 insurance company for the other driver?

17 A. Yes, sir.

18 (DEF. EXH. 11, Letter, 6/18/99, was
19 marked for identification.)

20 Q. And Number 11 is Mr. Wright's letter to State
21 Farm with a copy to you; is that correct? His letter
22 of June 18th, 1999?

23 A. Yes, sir.

Q. And as of June 18th, 1999, you see Mr. Wright
says, He is still treating -- in the next to the last

1 sentence, He is still treating and his medicals will
2 probably exceed \$25,000 exclusive of his wage loss?

3 A. Yes, sir.

4 Q. While you may not have had an exact amount, did
5 you understand as of June 1999 that your medical bills
6 would probably be over \$25,000?

7 A. Yes, sir.

8 (DEF. EXH. 12, Physical Therapy Daily
9 Progress Notes, was marked for
10 identification.)

11 Q. I'm going to show you Number 12. That, I'll
12 represent to you, Mr. Kimmer, is something you may not
13 have seen. That's the physical therapy daily progress
14 notes. Have you seen any of those physical therapy
15 notes?

16 A. I don't remember seeing any of these, no.

17 Q. Okay. This one, Exhibit 12 is dated June 21st,
18 1999; is that right?

19 A. Yes.

20 Q. And it says "other" up at the top, and it says,
21 "Patient stated, 'My knee is giving me a lot of
22 problems, I'm cutting it short.'" Is that what it
23 says?

24 A. That's what it looks like.

25 Q. Do you remember what that was about? Do you

1 remember what you were talking about when you made
2 that statement?

3 A. No, I do not. I remember at times they'd tell
4 me to do so many different things, you know, so many,
5 lift a certain amount of weight, you know, with the
6 knee, with the foot, you know, working the knee.

7 Q. Yes, sir.

8 A. And sometimes I couldn't do as many as they
9 would want me to do, and I'm assuming that that is
10 what that -- that's the only thing.

11 Q. You wanted to stop because it was hurting you?

12 A. Right. I couldn't do what they required me to
13 do.

14 Q. Okay.

15 A. I had to cut it short.

16 Q. Because it was painful to you?

17 A. Too painful to continue. I stood a lot of
18 pain, you know, because they say no pain no gain, you
19 know, the more you work it, but sometimes you just
20 can't go any further.

21 Q. I understand.

22 A. I'm assuming that's what that "cutting it
23 short" is referring to.

24 Q. All right. So you were still having pain with
25 your knee in June of '99?

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1 A. Yes.

2 (DEF. EXH. 13, Letter 6/23/99,
3 attachments (8 pages) Bates Numbers
4 211 - 218, was marked for
5 identification.)

6 Q. Number 13 is a multiple-page exhibit. I'll
7 show you that.

8 MR. POWELL: Tom, for your
9 reference, it's a June 23rd, 1999
10 cover letter, with a copy of checks,
11 and another letter and a release
12 agreement and a check and stuff
13 that's already been marked, actually.
14 And another letter, another check and
15 a settlement statement.

16 Q. I'm going to give you plenty of time to look
17 through all that.

18 A. (Reviewing documents.)

19 Q. Do you see that?

20 A. Yes.

21 Q. Now, the \$8,500 check in there to Subro Audit,
22 Inc., and the other check for \$1,500 to Advanced
23 Orthopedic & Medical Associates?

A. Yes, sir.

Q. You understood those checks went out from

1 Mr. Wright's office -- and I think he sent you a copy
2 of the one to Advanced Orthopedic & Medical
3 Associates. You understood those checks were going
4 out to pay your medical bills?

5 A. Yes, sir.

6 Q. But there wasn't enough money from that \$15,000
7 settlement to pay all your medical bills?

8 A. No, sir.

9 Q. You knew that to be true?

10 A. Yes, sir.

11 Q. And this, the settlement statement, the last
12 page in that exhibit signed by you is dated June 16th,
13 1999?

14 A. Yes, sir.

15 Q. You signed that settlement statement?

16 A. Yes, sir.

17 Q. And, Richard, you signed that settlement
18 statement knowing that not all of your medical bills
19 and lost wages were going to be compensated by that
20 \$15,000 settlement?

A. Yes, sir.

22 (DEF. EXH. 14, Physical Therapy Daily
23 Progress Notes, 6/23/99, was marked
24 for identification.)

25 Q. Let me show you Number 14 now. Number 14 is

1 more physical therapy notes. Do you see that? What's
2 the date on that, Richard?

3 A. 6/23 of '99.

4 Q. Okay. Your knee is still giving you trouble,
5 according to the note there. See where it says, "My
6 knees have been giving me trouble"?

7 A. Yes, sir. I see that, yeah.

8 Q. And was that true in June of '99?

9 A. Yes, sir.

10 (DEF. EXH. 15, Narrative Report,
11 8/19/99, was marked for
12 identification.)

13 Q. You may not have seen this before. I'm marking
14 it just for identification. Some people call this a
15 narrative report. Carolina Orthopedic Surgery
16 Associates in Rock Hill, do you remember going to see
17 them?

18 A. Yes, sir, I do now. Yes, sir.

19 Q. And this is a report from them. Down at the
20 bottom it says, "We discussed the problem and he is
21 not better after four months post-op."

22 This is after your surgery. This note is dated
23 August the 19th, 1999. I'll point that out to you.

24 Is that right?

25 A. Yes, sir.

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1 Q. And this was four months after your surgery?

2 A. I don't remember the dates of the surgeries,
but I know Kinahan had done a couple of them before
then, probably, at least before then.

Q. And according to this note, you were not any
6 better four months after?

7 A. Right. Yes, sir.

8 Q. He says, "Further, he has only a few months
9 left before he loses his job."

10 Was that true at that time?

11 A. Yes, because my understanding was that, you
12 know, after I draw my disability from the company, if
13 I wasn't able to return to work, that I would be
14 terminated.

15 Q. I understand. And you apparently told your
16 doctor this?

17 A. Yeah. Yes, sir.

18 Q. You let him know that?

19 A. Yes, sir.

20 Q. And that was in August of 1999?

21 A. Yes, sir.

(DEF. EXH. 16, Physical Therapy Daily
Progress Notes, 9/17/99, was marked
for identification.)

THE WITNESS: Can I stand up for a

1 second?

2 MR. POWELL: Let's go off the
3 record for a second.

4 (Off-the-record conference.)

5 (A recess transpired.)

6 MR. POWELL: Back on the record.

7 Q. Mr. Kimmer, are you okay?

8 A. Yes, sir.

9 Q. Number 16 is the physical therapy daily
10 progress notes. This is in September of '99; is that
11 right?

12 A. Yes, sir.

13 Q. I assume you're talking about your knee, the
14 comment there, it says, "other, it hurts, it feels
15 like bone against bone"?

16 A. Yes, sir.

17 Q. Were you talking about your knees?

18 A. Yes, sir, because he took a lot of cartilage
out when he did the arthroscopic surgery.

Q. Was it both knees involved or just one?

A. Yes, both.

22 Q. You had both operated on at the same time?

23 A. Not at the same time. He did one that was a
24 couple months' difference in them. He give me time to
25 recuperate from the one before he did the other one.

1 Q. Okay.

2 A. Overall, I've had three arthroscopic surgeries
3 on the right and two on the left. And Dr. James, the
4 doctor I'm seeing at Carolina Orthopedics right now,
5 and he's informed me clearly there's nothing else he
6 can do unless it's a total knee replacement, because
7 the cartilage is, no cartilage left hardly.

8 Q. Richard, who would you regard as your primary
9 physician in the treatment of your problems from the
10 January 29th, 1999 wreck?

11 A. My primary?

12 Q. The one that you see most often, that you
13 regard as your doctor for those troubles.

14 A. Well, for a long time it was Dr. Kinahan. But
15 right now I've been seeing Dr. James at Lake Carolina
16 Orthopedics in Lancaster for, I guess, over two years
17 now, and he's my primary for now and forever with
18 these problems.

19 Q. Has he helped you?

20 A. Well, not exactly. He's giving me relief.
21 He's put shots in both knees different times that's
22 supposed to form like a cushion. It's a gel,
23 something that's supposed to form like a cartilage
24 cushion. He's keeping those shots in there to keep it
25 from feeling like bone on bone.

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1 Q. You feel like he's a good doctor?

2 A. Yeah, absolutely.

Q. Okay.

A. I wish I'd been seeing him from day one.

(DEF. EXH. 17, Affidavit, 9/28/99, attachments (3 pages), was marked for identification.)

MR. POWELL: Skipping over to the affidavit, Tom, for Number 17.

MR. POPE: Is there a number on the bottom of it? What date is that?

MR. POWELL: It's the affidavit of Ronnie Sowell.

MR. POPE: Oh, I've seen it before. Is it near bottom of the stack?

MR. POWELL: No. It should be right after the -- right after this, should be right after this. Let me see.

MR. POPE: Seventeen?

MR. POWELL: Right.

Q. I'll show you Number 17, Mr. Kimmer, which is an affidavit from Ronnie Sowell. This is someone that Mr. Wright retained to look into the Pendergrass

1 matter?

2 A. Yes, sir.

3 Q. Have you seen this before?

4 A. Yes, sir, I have.

5 Q. So do you feel like Mr. Wright tried to

6 investigate to see whether Mr. Pendergrass had any

7 assets above and beyond the insurance?

8 A. Well, according to his letter and according to,

9 you know, what he told me in the office, you know,

10 about it, or either on the phone, yeah, I do feel like

11 that he tried to find out if he had anything else that

12 we could collect off of, yes.

13 Q. And have you learned, have you been provided

14 any information since this affidavit? This affidavit

15 is dated September 28th, 1999; is that right? See

16 where it says "sworn" right there?

17 A. Oh, yeah. Yeah, I see that now.

18 Q. Have you gained any information before or since

the date of this affidavit, with the attached report,

on the investigator's work as to whether

Mr. Pendergrass or his mother, Barbara Hughes, had any

22 significant assets out of which you could collect,

23 other than the insurance policy?

24 A. As far as I remember, no. I can't say that I

25 have, because I do remember this letter here, but any

1 other letter, I do not remember.

2 Q. My question really is simple. Since this

3 happened, since this was investigated by this

4 investigator for Mr. Wright, have you gotten any

5 information that this fellow Pendergrass, or his

6 mother, has a piece of land somewhere that's very

7 valuable, or had a bunch of money somewhere, or has

8 inherited anything that you could collect from?

9 A. Have I?

10 Q. Have you heard that from any source?

11 A. Oh, no, sir. No, sir.

12 Q. I mean, as far as you know, this investigation,

13 which is Number 17, was accurate when it was done and

14 it's accurate today?

15 A. As far as I know, yes, sir.

(DEF. EXH. 18, Medical Report,

11/2/99, was marked for

18 identification.)

19 Q. I don't want to blindside you. By that I mean,

20 I don't want to ask you something and then there is

21 something in the fine print. I'm not trying to catch

22 you on anything here. I'll represent to you before I

23 ask you the question that this is a medical report on

24 your treatment. It's dated November 2nd, 1999, and

25 it's concerning a diagnosis, lumbar sprain, your lower

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1 back sprain. And it makes reference in here that you
2 were cutting a tree in, it says here: Two weeks ago
3 while cutting a tree down, you reinjured your low
4 back. Do you remember cutting a tree?

5 A. In '99?

6 Q. Yes, sir. This is dated November 2nd, 1999.
7 (Reading.) Patient is a 53-year old male who reports
8 having a history of back pain, but states he reinjured
9 the low back two weeks ago while cutting a tree down.
10 I'll let you look at that.

11 A. (Reviewing documents.) I don't remember that,
12 no, sir.

13 Q. You don't remember injuring your back when you
14 were cutting a tree down?

15 A. I don't remember cutting a tree down. I don't
16 remember using a chain saw, period, since this wreck
17 had happened.

18 Q. Okay. Do you think that this injury here could
19 just be a mistake? I'm not saying it isn't. It's
20 possible. I mean, you don't remember that event at
21 all?

22 A. No, sir, I do not. Like I say, I have not used
23 a chain saw, as far as I remember. And I'm pretty
24 positive I have not used a chain saw in years.

Q. Well, you understand, I'm not really asking you

1 about whether you used a chain saw or not. It could
2 have been an axe, for all I know. But, I mean, do you
3 remember hurting yourself trying to get a tree down in
4 October? It would have been in October of 1999. This
5 report says two weeks ago. I don't want to badger you
6 about it. I'm just asking you about whether it's so
7 or not, whether that happened.

8 A. I can't answer that with a yes or no. I can
9 answer it with I do not remember ever using a chain
10 saw since this wreck in '99.

11 Q. How about cutting a tree down?

12 A. No. No, not cutting no tree down either.

13 Q. You don't remember doing that?

14 A. No, sir, I do not.

15 Q. You understand I have to ask you.

16 A. Oh, I understand.

17 (DEF. EXH. 19, Bill Printout.

18 (26 pages), was marked for
identification.)

Q. Mr. Kimmer, I want to show you Exhibit 19,
which I'll represent to you is a bill printout.

22 Apparently this was mailed to you, it's got your
23 address on it. It's 25606 Highway 121, Whitmire,
24 29178. Was that your address at that time?

25 A. At that time, yes, sir.

1 Q. You received this from the Advanced Orthopedics
2 & Medical Associates. I'm showing you Exhibit 19.

3 A. I'm sure I did. I got all kind of these doctor
4 bills over the years.

5 Q. All right, sir. Richard, later in the
6 documents we'll see a reference to, in some of these
7 reports, to your having post-traumatic stress disorder
8 and maybe some depression problems as a result of
9 these events.

10 A. Yes, sir.

11 Q. Is that accurate?

12 A. Yes, sir.

13 Q. Did the failure of the workers' compensation
14 people to pay your lost wages and your medical bills
15 contribute to that?

16 A. Absolutely, because I've never had no problem
17 prior to this.

18 Q. And you were experiencing that post-traumatic
19 stress disorder when you would receive, for example,
20 documents like Exhibit 19?

21 A. Yes, sir.

22 Q. Did you call Mr. Wright and complain to him
23 about that, about why can't I get my bills paid?

24 A. I did talk to Mr. Wright several times, you
25 know, from early after, direct, whenever I turned the

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1 auto accident stuff over to him. And then in late
2 April or early May when we started discussing the
workmen's comp, I talked to him lots of times, you
now, about I can't pay these bills, you know, and
different things of that sort.

6 Q. That would have been in April or May of 1999?

7 A. 1999, yes, sir.

8 Q. And I think, I can't remember now, I may be
9 wrong about suggesting this, you were there for
10 Mr. Wright's deposition, when he was deposed in
11 Columbia, I think?

12 A. Yeah. Yes, sir, at your office in Columbia,
13 yes.

14 Q. As I remember, he mentioned that a friend of
15 yours, maybe a coworker of yours is the one that told
16 you he thought you'd be covered for this workers'
17 compensation under this automobile accident.

18 A. Workmen's -- yeah. Yes, sir.

19 Q. Who was that, do you remember?

20 A. William A. Manning.

21 Q. That was the Bill Manning?

22 A. Bill Manning, yes. He was my ex-supervisor.

23 He was at Murata. He was still at Murata at the time
of this accident, but not my supervisor.

Q. I understand. But was he in a management

1 position at Murata?

2 A. Some sort of --

3 Q. He was somebody's boss?

4 A. I think he moved -- not somebody's boss, but
5 something to do with the fiber control stuff. That
6 was his specialty to start with.

7 Q. But he had been your boss at one time?

8 A. Yes, sir.

9 Q. And he told you he thought you were covered,
10 workmen's comp for Murata would cover you for this
11 accident of January 29th, 1999?

12 A. Yes, sir.

13 Q. And then you approached Mr. Wright about that?

14 A. I did, yes, sir.

15 Q. And you knew, of course, that your medical
16 bills and your lost wages weren't being paid for all
17 of 1999 and on into 2000?

18 A. Yes, sir.

(DEF. EXH. 20, Letter, 12/10/99, was
marked for identification.)

19 Q. Number 20 is another one of these bills that we
20 saw, letters we saw earlier. Exhibit 20 is a letter
21 from Philip Wright dated December 10th, 1999, to Scott
22 Wessinger at Farm Bureau?

23 A. Yes, sir.

1 Q. He sent a copy of that letter to you?

2 A. I'm sure he did, yes, sir.

3 Q. See at the bottom where it says, "cc Richard
4 Kimmer"?

5 A. Yes, sir.

6 Q. That indicates that a copy was sent to you?

7 A. Yes, sir.

8 Q. And he said you're still having problems with
9 your knee; and the wage loss, he's calculated your
10 wage loss through December 10th, \$26,208. Does that
11 sound about right to you?

12 A. In and about, yeah. That's pretty close, yes,
13 sir.

14 Q. And you were aware of that in December of 1999?

15 A. Yes, sir.

16 (DEF. EXH. 21, Letter, 1/4/00, was
17 marked for identification.)

18 Q. Exhibit 21, this is just another one of these
19 letters that Mr. Wright sent. This is to State Farm.
20 This letter, Exhibit 21, is it not, is a January 4th,
21 2000 letter?

22 A. Yes, sir.

23 Q. To State Farm with a copy to you?

24 A. Yes, sir.

25 Q. And in it, Mr. Wright states that your wage

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1 loss through January 3rd was \$28,071.68; is that
2 correct? It would be in this letter here?

A. Yeah. I'm comparing that number to this
number.

Q. Right.

A. Yes, sir.

Q. And was that about right?

A. Yes, sir.

(DEF. EXH. 22, Letter, 1/11/00, was
marked for identification.)

Q. And then Exhibit 22 is Mr. Wright's January
11th letter to Liberty Mutual; is that right?

A. Yes, sir.

Q. And you received a copy of this letter also?

A. I'm sure I did, yes, sir.

Q. And Mr. Wright is saying to Mr. McNeill: I
need a response to my Form 50. He wants to know if
this is an admitted case. Do you see that?

A. Yes, sir.

Q. And you understood Liberty Mutual was the
workers' compensation carrier for Murata?

A. Yes, sir.

(DEF. EXH. 23, Letter, 2/1/00.
(2 pages), was marked for
identification.)

Q. Then Number 23, I'll mark it just because we've
seen it before, it might be excess. This happens to
be the copy that I got through your attorney. That's
the February 1st letter that we looked at earlier.

A. Yes.

Q. That's the letter you received from Mr. Wright?

A. Yes, sir.

Q. Okay. And Number 24?

(DEF. EXH. 24, Waiver of Conflict,
was marked for identification.)

Q. And Number 24.

Now, at the time of the letter of, the February
1st letter, had you and Mr. Wright discussed the
possibility of his continuing to be your lawyer for
the underinsured motorist coverage claim?

A. I think we had discussed that, but after a
while, you know, I turned that over to Mr. Pope,
because of the distance I'd have to travel, would have
to travel back and forth to Lancaster.

Q. We're going to get to that in just a minute.

A. Okay.

Q. The last paragraph of that February 2000
letter, Number 23, he says, "I appreciate your
willingness to let me to continue to represent you in
this matter, and want you to protect your interest,

1 that was with respect to the underinsured motorist
2 claim." Correct?

A. Yes, sir.

Q. It had nothing to do with the workers'
compensation claim?

A. Right.

Q. Because Mr. Pope was your lawyer for the
workers' compensation claim?

A. Right.

Q. And also on February 1st, I'll show you
Exhibit -- it's also dated February 1st, Exhibit 24.
That's a waiver of conflict. Is that your signature,
Mr. Kimmer?

A. Yes, sir.

(DEF. EXH. 25, Authorization to
Release File, was marked for
identification.)

Q. And Exhibit 25 is an authorization to release
the file.

A. Yes, sir.

Q. Now, did you authorize Mr. Wright to release
the portion of the file that he had related to your
workers' compensation claim to Attorney Tom Pope of
Newberry, South Carolina?

A. A portion of the workmen's comp file.

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1 Q. The portion of your file. See it says, I,
2 Richard Kimmer, authorize Philip E. Wright to release
3 a portion of my file related to my workers'
4 compensation claim to Attorney Thomas Pope of
5 Newberry, South Carolina?

6 A. Yes, sir.

7 Q. Is it accurate, is it correct that for all
8 purposes relating to the workers' compensation claim
9 and related matters, that Mr. Pope was your attorney
10 after February 1st of 2000?

11 A. According to this letter, yes.

12 Q. That's correct, isn't it?

13 A. To the best of my recollection, that is
14 correct, yes.

15 (DEF. EXH. 26, Letter, 2/1/00 to G.D.
16 Morgan from Philip E. Wright, was
17 marked for identification.)

18 Q. And Exhibit Number 26 is a letter also from
19 Mr. Wright. That's to Mr. Morgan, a lawyer in
20 Columbia?

21 A. Yes, sir.

22 Q. You received, you and Mr. Pope received a copy
23 of that?

A. Yes, sir.

Q. And in there, Mr. Wright is telling Mr. Morgan

1 that he's now represented by Mr. Pope of Newberry?

2 A. Yes, sir.

3 (DEF. EXH. 27, Letter, 2/10/00, was
4 marked for identification.)

5 Q. Number 27, I'll show you that is a February
6 10th letter from Mr. Pope to Mr. Wright. Did you
7 receive a copy of Mr. Pope's letter, February 10th?

8 A. I'm sure I did, yeah.

9 (DEF. EXH. 28, Letter, 2/11/00 to
10 Reggie Foster from Philip Wright, was
11 marked for identification.)

12 Q. And Number 28, I'll show you, is a letter,
13 again another letter from Mr. Wright. Now, looking
14 back at Mr. Pope's letter, the next to the last
15 paragraph on Exhibit 27, this one right here, the next
16 to the last paragraph at the bottom where he says, "It
17 is my understanding that" -- and this letter from
18 Mr. Pope is to Mr. Wright, correct?

A. Yes, sir.

Q. And with a copy to you?

A. Yes, sir.

22 Q. And the paragraph says, "It is my understanding
23 that you settled with the liability carrier for policy
24 limits of \$15,000, but that the settlement funds
25 remain in your trust account and have not been

1 disbursed and will not be disbursed pending approval
2 of Mr. Kimmer upon consultation with me."

3 Do you see that?

4 A. Yes, sir.

5 Q. Then Mr. Wright writes him back in Exhibit 28,
6 the next exhibit there, and at the bottom he puts a
7 p.s.: "I tried to reach Reggie yesterday and today,
8 but he has been busy. The \$15,000 liability
9 settlement is not in my trust account."

10 Do you see that?

11 A. Yes, sir.

12 Q. (Reading.) "I took my one-third fee and paid
13 medical subrogation of \$8,500 and medical costs of
14 \$1,500. I enclose a copy of my escrow sheet showing
15 the disbursements."

16 I don't have the escrow sheet handy, but you
17 understood that Mr. Wright had paid your medical bills
18 and the \$15,000 was not in his account. You knew
19 that?

20 A. According to these letters.

21 Q. And did you approve that? You approved for him
22 to pay your medical bills?

23 A. Yeah. Yeah, I did.

24 Q. And, at the time, you approved for him to take
25 \$5,000 as his fee?

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1 A. Well, that's what he told me he would charge to
do it, was one-third of the fee, I mean the amount.

Q. Right. My question to you, the reason I'm
going through that, do you in this case seek the
return of that \$5,000 from Mr. Wright? Do you think
he should be allowed to keep it and, if not, do you
seek the return of that in this lawsuit?

A. Well, I really don't know how to answer that.
Mr. Wright earned his third, I guess, for what he did.
But to settle that, you know, knowing that we may have
a workmen's comp, I don't feel good about him getting
any part of it and...

Q. Well, if you want it back, if you seek that in
this case, you need to tell me that.

A. I'm not a hard person to get along with. I'm
not going to say I seek that back, no. I'll, you
know, I feel like he earned it. Like I just said, I
feel like he earned what he got out of it, even though
things have not been the way they should be up to this
date, I don't guess. But, no, I do not seek the --

Q. The \$5,000?

A. The \$5,000 back.

Q. What you seek from Mr. Wright is the money that
the workers' compensation people should have paid you?

A. Yes, sir.

(DEF. EXH. 29, Letter, 2/11/00 to
Reggie Foster from Philip Wright, was
marked for identification.)

Q. The next letter is Exhibit 29. This has to do
with the postponement of the deposition.

A. Yes, sir.

Q. Another letter by Mr. Wright; is that correct?

A. I assume it is correct.

(DEF. EXH. 30, Letter, 2/24/00, was
marked for identification.)

Q. The next will be Exhibit 30. Is this your
February 24th letter to Mr. Wright, February 24th,
2000 letter to Mr. Philip Wright, the defendant in
this case?

A. (Reviewing documents.) I'm sorry. Would you
repeat the question? I was trying to read and listen
to you.

Q. That's all right, Richard.

Is Exhibit 30 a copy of your February 24th,
2000 letter to Philip Wright, the defendant in this
case?

A. Yes, sir.

Q. And in this letter of February 24th, 2000, you
say to Mr. Wright that, quote -- I'm looking at the
last sentence in the first paragraph. Quote: "I have

problems" -- you're discussing his representation of
you in the underinsured motorist claim, right?

A. Yes.

Q. And in that regard you say, quote, "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." See that?

A. Yes, sir.

Q. So you are, in effect, in this letter telling
Mr. Wright, I don't want you to represent me anymore
for this matter, for any part of it?

A. For the workmen's comp case.

Q. Or the underinsured motorist case. See, you're
asking him to send the entire file --

A. Yes, sir.

Q. -- to Mr. Pope.

A. Yes, sir.

Q. Do you see that?

A. Yes, sir.

Q. So is it fair then, is it accurate to say that
as of February 24th, after that time Mr. Philip E.

Wright did not represent you in any capacity for any
reason?

A. No, sir.

Q. What did he do after that time for you as your

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1 attorney?

2 **A. I must have misunderstood the question for you**
3 **ask me that again.**

4 Q. You were answering yes. I think you meant to
5 agree with me, I think. Let me rephrase it. We'll go
6 at it again. My understanding of Exhibit 30, your
7 letter to Mr. Wright of February 24th, was that you
8 were saying I want Mr. Pope to represent me for all
9 matters related to this January 29th, 2000 accident,
10 and the workers' compensation and the underinsured
11 motorist and all matters related to it, and send my
12 file to Mr. Pope.

13 **A. Yes, sir.**

14 Q. That's correct?

15 **A. Yes, sir.**

16 Q. Okay. So now, after February 24th, 2000, did
17 Philip Wright represent you in any matter?

18 **A. No, he did not.**

19 Q. Okay. We agree now. We agree.

20 (DEF. EXH. 31, Letter, 3/21/00, was
21 marked for identification.)

22 Q. And Exhibit 31 is just a letter from Mr. Pope
23 to Mr. Wright sending orders substituting counsel,
that is, there were orders formally substituting
Mr. Pope for Mr. Wright as your lawyer. Were you

1 aware of that?

2 **A. I'm not understanding the question, I'm sorry.**

3 Q. Were you aware that shortly after your letter
4 of February 24th, 2000, machinery was put into place
5 to enter an order in Columbia with the workers'
6 compensation commission to show Mr. Pope as your
7 attorney and not Mr. Wright any longer? Were you
8 aware that that happened?

9 **A. Yes, sir.**

10 Q. And you authorized that?

11 **A. I'm sure I did, yeah.**

12 (DEF. EXH. 32, New Patient Evaluation
13 (3 pages) Bates Numbers 159-161, was
14 marked for identification.)

15 Q. Number 32, I don't see any -- well, 32 is an
16 October 17th, 2000 report from Carolina Neurology.
17 And on the third page of it, it makes reference to
18 severe post-traumatic stress syndrome, Mr. Kimmer. I
think I mentioned that to you earlier, we would get to
something eventually through this stack of stuff that
makes reference to it. Well, this is it.

22 Can you tell me how that affects you? The
23 post-traumatic stress disorder, you talked to your
24 doctor about that?

25 **A. Yes, sir. I have seen two different**

1 psychiatrists.

2 Q. Can you tell me about what those symptoms are,
3 what your trouble is in this regard?

4 **A. Well, it makes me angry, makes me, makes my**
5 **mind wander, makes me sometimes feel like I want to do**
6 **bad things to people that's caused different things in**
7 **my life, you know, not only this but other things in**
8 **my life. I have had a serious problem with this**
9 **depression, because, you know. Forgetfulness, I guess**
10 **so much things on my mind I forget about other things.**
11 **I can't remember whether I've taken my medicine when**
12 **I'm supposed to take it, you know.**

13 Q. Right.

14 **A. My family life is just, sex life is -- that's**
15 **played a big part in my divorce that I'm going through**
16 **right now. Two years prior to her leaving, back in**
17 **January of last year, which was '04, we had sex three**
18 **or four times in two years. I can't. I've taken**
19 **medicine from doctors for that, it doesn't help.**

20 Q. I understand. And would this be attributed, do
21 you assign or does the doctor assign the cause of this
22 to any of the conduct or things that Mr. Wright did or
23 didn't do?

24 **A. Well, it's like I just said, it's not only**
25 **because of the matter that we're discussing here**

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1 today.

2 Q. But that's part of it.

3 A. I never had any problem with it until, you
4 know, I have been a workaholic all my life, and then
5 when you go from working, you know, making a decent
6 living to not working, that's, I guess -- I guess my
7 mind and my body just can't still -- even though it's
8 been six years, it still can't adjust to the
9 difference in the life I had before and what I have
10 now. And not being able to see where things are going
11 to get any better down road anywhere, you know.

12 Q. Do you blame in part, at least in part
13 Mr. Wright for that condition?

14 A. I've got to because, you know, I don't feel
15 like I would be in this financial and going through a
16 divorce and lost two homes since '99, if he had taken
17 care of the workmen's comp matter before he settled on
18 the car insurance settlement.

19 Q. So that is in part a cause for your
20 post-traumatic stress disorder?

21 A. It's the major part, I guess, you know. Maybe
22 not all him, but just what I'm having to go through
23 because of this.

Q. And you started having trouble with this back
in 1999?

1 A. Yes, sir.

2 Q. And you were aware in 1999 that you were going
3 through some changes because you weren't able to work
4 and get paid?

5 A. Absolutely, yes, sir.

6 Q. And the part about your not getting paid, you
7 were aware at least by February of 2000 that
8 Mr. Wright had at least represented to you that was in
9 part his fault?

10 A. Yes, sir.

11 (DEF. EXH. 33, Letter, 6/17/02,
12 attachment (2 pages), was marked for
13 identification.)

14 Q. Let's go to Exhibit 33. Exhibit 33 is a June
15 17th, 2002 letter by your attorney, Tom Pope, with an
16 attachment to it, on the back it says "Richard
17 Kimmer." Do you see that.

18 A. Yes, sir.

Q. Did you receive a copy of this letter with the
attachment to it? This is a letter from Mr. Pope to
Pope Johnson, correct?

22 A. I'm sure I did, yeah.

23 Q. Was Mr. Tom Pope authorized to send this letter
24 on your behalf, along with the attachment?

25 A. Well, I'm sure I did authorize it because, you

1 know, he's the lawyer. I'm sure he's not going to
2 send something -- I mean, I'm not educated. That's
3 why I have him now. That's why I had Philip Wright
4 from the beginning, because I know nothing about this
5 type situation.

6 Q. I understand. My question to you, though, is,
7 he was authorized to send information like this
8 generally on your behalf?

9 A. Well, explain to me what this information
10 really consists of, or, I mean, I'm seeing comp rate
11 one thing, the total another thing. Is this...

12 Q. That is a document that apparently was prepared
13 by Mr. Pope to send to Mr. Pope Johnson, and I'm just
14 asking you, was its transmittal, was he authorized to
15 send it for you in your workers' compensation
16 claiming?

17 A. I'm sure he was.

18 (DEF. EXH. 34, Letter, 12/6/02.
19 (2 pages), was marked for
20 identification.)

21 Q. The next letter is Exhibit 34. Mr. Pope again
22 writes a letter dated December 6th, 2002 to Pope
23 Johnson; is that right?

24 A. Yes, sir.

25 Q. And did you receive a copy of this letter?

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1 A. I'm sure I did.

2 Q. You see in the first sentence of the letter:
On behalf of Richard Kimmer, I am writing to demand
\$220,000 in settlement of this claim. Do you see
that?

6 A. Yes, sir.

7 Q. Was Mr. Tom Pope authorized to make that
8 settlement demand on your behalf?

9 A. I'm sure he and I talked about it. I'm sure I
10 okayed it, yes.

11 (DEF. EXH. 35, Letter, 12/2/02, was
12 marked for identification.)

13 MR. POWELL: Let's go off the
14 record for just a minute.

15 (Off-the-record conference.)

16 Q. Mr. Kimmer, did you have anything to do with
17 the Time Warner/Pee Dee matter that's the subject of
18 this Exhibit 35? Was Mr. Pope representing you in
19 some other case?

20 A. No, sir, he is not.

21 (DEF. EXH. 36, Letter, 12/9/02, was
22 marked for identification.)

23 Q. Is Number 36 a December 9th, 2002 letter from
Mr. Pope to Pope Johnson?

A. Would you repeat the question? I'm sorry.

1 Q. Is Exhibit 36 Mr. Tom Pope's letter of December
2 9th, 2002 to Pope Johnson?

3 A. According to this, it is, yes.

4 Q. And your attorney was authorized to send
5 Exhibit Number 36 on your behalf?

6 A. Yes, sir.

7 (DEF. EXH. 37, Affidavit, 3/6/03, was
8 marked for identification.)

9 Q. Number 37, is that your affidavit of March
10 17th, 2003?

11 A. Yes, sir.

12 Q. The last sentence there says: I, Richard
13 Kimmer, and the words "was aware" is circled.

14 A. Yes, sir.

15 Q. (Reading.) Of my preexisting condition of
16 degenerative arthritis/osteoarthritis right knee prior
17 to my injury of 1/29/99.

18 Did you in fact have degenerative arthritis or
19 osteoarthritis?

MR. POPE: You didn't read all
this.

22 Q. (Reading.) Was aware of hurt knee before
23 1/29/99.

24 Were you aware of the hurt knee and/or were you
25 aware of your degenerative arthritis, if you had

1 degenerative arthritis, before the wreck?

2 A. Well, I can't say that I was aware of the
3 arthritis, but, yeah, I was aware of the hurt knee
4 before '99. That was the one we spoke about earlier
5 in '98.

6 Q. Okay. Had you been told of any arthritis
7 problems in your knees before January 29th of 1999?
8 Had a doctor told you that or had you been advised of
9 that?

10 A. No, sir.

11 Q. Okay. Mr. Kimmer, have any of the surgeries or
12 the physical therapy that you've gotten improved your
13 situation with your knees?

14 A. Temporarily. The shots that they put in there,
15 that is supposed to help form like a cartilage
16 cushion, they are good for three to five months.
17 After that it's like bone on bone again.

18 Q. Tell me this, the reason that you're unable to
19 work today, would that have anything to do with your
20 back or is it just confined to your knees?

21 A. No, it's combined between my neck, knees and
22 back.

23 Q. Okay.

24 A. I have chronic pain in my back all the time
25 from nerve damage from the wrecks.

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1 Q. You say from the wrecks. Would it have been
2 from early January -- I mean, excuse me, the early
3 1990s wreck and the 1999 wreck?

4 A. Well, I can't say I had any problems before
5 '99, because if you look at my work record prior to
6 '99, it would be very plain to see, you know, that
7 there's been nothing, and I wasn't on any medications
8 for any type of back, you know. Looks like my prior
9 work record and not being on any medication for that
10 ought to speak for that.

11 Q. All right.

12 A. Before we go to anything else, could we back up
13 to this Exhibit 18, the one you asked me about using a
14 chain saw or an axe?

15 Q. Sure. Sure.

16 A. I've been sitting here trying to, you know,
17 remember, and there is a little something coming to me
18 about a limb breaking out of a pecan tree and hanging
19 down. And I sawed it off with the old hand type, what
20 you call it, bow saw, and drug it out of the yard.
21 That's the only thing I can remember anything about
22 that.

23 Chain saw, axe, no, but -- and I think, you
know, dragging it out of the yard, I may have flared
my back up worse than what it was. I'm not a hundred

1 percent sure. That's the only thing I can remember
2 about that, is a limb, you know, breaking out of the
3 pecan tree and me sawing it off with that hand bow
4 saw.

5 Q. Anything else you want to say about that,
6 Richard?

7 A. No, sir, that's all I can remember. I'm not a
8 hundred percent clear about that, but I do remember at
9 one time -- it was sometime, you know, after the wreck
10 had happened. I remember it was after the wreck had
11 happened.

12 MR. POWELL: We're winding down.
13 Give me just a minute or two.

14 MR. POPE: That's fine. We can
15 take a break.

16 MR. POWELL: That's okay.

17 (A recess transpired.)

18 (DEF. EXH. 38, Tolling Agreement.
(2 pages), was marked for
identification.)

Q. Back on the record, Mr. Kimmer?

12 A. Yes, sir.

13 Q. The tolling agreement that you signed and
14 Mr. Wright signed dated October 30th, 2003, do you see
15 that?

1 A. Yes.

2 Q. Are you aware of any other tolling agreement
3 between you and Mr. Wright other than this one?

4 A. I don't understand what tolling agreement
5 really means. I guess I've seen it before.

6 Q. My question to you is, the one document that I
7 have labeled tolling agreement, is this one that's
8 signed by the both of you?

9 A. Yes.

10 Q. If there is another one in this case, I need to
11 be made aware of it.

12 A. Well, I can't answer that because I don't know
13 if there's another one in this case.

14 Q. You haven't seen one if there is one?

15 A. Not in my recollection, no.

16 MR. POWELL: That's all I've got.

17 EXAMINATION

18 BY MR. POPE:

19 Q. Richard, I'm going to ask you a couple
20 questions, not about that.

21 When the complaint and the amended complaint
22 were filed, of course, you give me information as your
23 lawyer and I write it up; is that right?

24 A. Yes, sir.

25 Q. You're not a lawyer, so whatever your damages

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1 are would be determined by a court, would they not?

2 A. That's correct.

3 Q. Now, could I see Number 6, please? I don't
4 know that you're going to know the answer because I
5 didn't and Mr. Powell didn't either; but if you look
6 at Number 6, it's got a date at the bottom of 12/9/99,
7 and the exhibit that -- we're talking now about
8 Exhibit 6, which is a Form 50. The Form 50 that is
9 attached to the complaint, the amended complaint is
10 the one that was, of course, filed 6/18/99; isn't that
11 right? That's the one we've been looking at?

12 A. Yes, sir.

13 Q. 6/18/99, which is attached as part of
14 Exhibit 1.

15 A. Yes, sir.

16 Q. Do you really ever remember seeing Number 6
17 where it has a date of 12/9/99? I'm just curious,
18 because I don't.

19 A. No, sir, I don't. To the best of my
20 recollection, I do not remember seeing one dated that.

21 Q. That's fine. All right. Now, Mr. Powell
22 didn't ask you about this, but Mr. Wright represented
23 you -- I mean, he's asked you a little about it, but
he represented you in your divorce against your former
wife, Cathy Kimmer; is that right?

1 A. Yes, sir.

2 Q. And in that case you presented him with -- I
3 mean you had to sign a financial declaration for
4 family court?

5 A. Yes.

6 Q. And you had to disclose truthfully what your
7 income is; is that right?

8 A. Yes.

9 Q. And when you got paid at that time, from the
10 whole time you've been working for Murata, since 1994
11 forward, you have been paid, in addition to your
12 hourly rate, what? What have you been paid in
13 addition to that?

14 A. Car allowance, which was \$310 every two weeks.
15 I think I got paid biweekly. Gas mileage to and from
16 wherever I traveled to; and hourly wage, as long as it
17 was more than one hour from my house or, you know,
18 back to my house.

19 Q. Was Mr. Wright aware of those terms of your
employment in 1996, when you got your divorce then?

20 A. I'm sure he was because I had to present him
21 with a check stub for him to get my, you know, my
22 financial statement.

23 Q. When you went to him in connection with your
24 car wreck, you didn't know it was workers' comp until
25

1 Mr. Manning told you; it was right?

2 A. That's true.

3 Q. And Mr. Manning was aware of the terms of your
4 employment that you just described: You got a salary
5 of a certain amount per hour, you got a car allowance,
6 you got mileage, and you got hours under some
7 conditions if you drove more than an hour to work?

8 A. That's true.

9 Q. And he was aware of all that; and as far as you
10 know, did he tell that to Mr. Wright?

11 A. He did.

12 Q. And did you talk to Mr. Wright about it on more
13 than one occasion, those terms of your employment?

14 A. I did.

15 Q. Did you also have a pay stub before he
16 proceeded to represent you in your workers' comp
17 claim?

18 A. I'm sure I did, yes, sir.

19 Q. Okay. If you look at Exhibit 1, the attachment
20 with the Form 50 being behind it, when he signed,
21 Mr. Wright signed on 6/18/99, he put 10A on the Form
22 50, on your weekly wages he's got 582.40. Did he get
23 that off your pay stub?

24 A. I'm assuming he did, because, you know, I had
25 to present him with actual figures, not what I thought

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1 it was, but the actual figures. The only way I could
do that was with a pay stub.

Q. When Mr. Johnson -- he introduced a letter I
wrote to Mr. Johnson authorizing or suggesting or
demanding a settlement. That was a compromise offer,
was it not, before the hearing in the matter over two
years ago? It was a compromise, wasn't it?

MR. POWELL: Object to the form.

You may answer.

Q. Isn't that right?

A. A compromise before the settlement. Let me
make sure I understand.

Q. Never mind. It was an offer of settlement
below the amount of claim, was it not?

MR. POWELL: Object to the form.

Q. Subject to his objection.

MR. POWELL: You may answer.

THE WITNESS: Yes, sir.

Q. Richard, I'm going to show you this letter
dated November 27th, 1995. Is that approximately when
you started work for Murata that outlined the terms of
your employment?

A. Yes, sir.

(PLF. EXH. 1, Letter, 11/27/95 to

Richard Kimmer from Randy Chaney.

(2 pages), was marked for
identification.)

Q. Pursuant to that letter to you from Murata,
November 27th, 1995, you worked continuously under
that employment arrangement with Murata from that time
until you were injured in the car accident we've been
talking about; is that right?

A. That's correct, yes, sir.

Q. Full-time and continuously; is that right?

A. Yes.

Q. And did you get the car allowance and the
mileage the entire time you worked for them?

A. Yes, sir, I did.

Q. And it was on your pay stub, those items?

A. Yes, sir.

MR. POPE: That's all I have.

Thank you.

EXAMINATION

BY MR. POWELL:

Q. Mr. Kimmer, the information that Mr. Pope just
asked you about concerning your pay, that is, your
wages and your car allowance and your mileage and all
the parts of your compensation that Mr. Pope just got
through asking you about, you were aware of those
payments and that's how you were paid, you were aware

of that in 1999, correct?

A. Yes, sir.

MR. POWELL: That's all I have.

(The deposition was concluded at 1:10
p.m.)

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1 CERTIFICATE OF REPORTER

2 I, Janet L. LeVeque, Court Reporter and Notary
Public for the State of South Carolina at Large, do hereby
certify that the deponent, RICHARD KIMMER, was duly sworn by
me to testify to the truth, and that the above deposition,
pages 6 through 101, inclusive, was recorded
stenographically by me and transcribed through
computer-aided transcription by me to the best of my
ability.

10 I FURTHER CERTIFY that the foregoing transcript is a
11 true, accurate, and correct transcript of the testimony
12 given by the said deponent at the time and place specified.

13 I FURTHER CERTIFY that I am neither attorney or
14 counsel for, nor related to or employed by any of the
15 parties to the action in which this deposition is taken, or
16 financially interested in this action.

17 IN WITNESS WHEREOF, I have set my hand and seal this
18 5th day of March, 2005 at Columbia, Richland County, South
19 Carolina.

21
22 Janet L. LeVeque
Notary Public State of South
Carolina at Large.
23 My Commission expires
July 3, 2006.

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NUMBER 9908422

RICHARD KIMMER,)
)
EMPLOYEE/CLAIMANT)
)
MURATA OF AMERICA,)
)
EMPLOYER,)
)
LIBERTY INSURANCE CORPORATION,)
INSURER.)

COPY

WORKERS' COMPENSATION HEARING
TRANSCRIPT

PURSUANT TO NOTICE IN THE ABOVE-ENTITLED CASE, THE
WORKERS' COMPENSATION HEARING WAS HELD ON THE 10TH DAY OF
DECEMBER, 2002, COMMENCING AT THE HOUR OF 6:45 P.M., IN
GREENWOOD, SOUTH CAROLINA, BEFORE COMMISSIONER J. MICHELLE
CHILDS:

REPORTED BY: MARCIE L. SMITH, VERBATIM REPORTER.

FREELANCE REPORTING SERVICES
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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

FREELANCE REPORTING SERVICES (864) 587-7050

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1 BY COMMISSIONER CHILDS:

2 THIS IS WORKERS' COMPENSATION CASE FILE NUMBER
3 9908422, THE MATTER OF RICHARD KIMMER, BEING
4 REPRESENTED BY THOMAS POPE, III, VERSUS MURATA OF
5 AMERICA AND LIBERTY INSURANCE CORPORATION, BEING
6 REPRESENTED BY POPE JOHNSON. THE ISSUES BEFORE ME ARE
7 COMPENSABILITY OF THE CLAIMANT'S CLAIM. THE DEFENSE
8 TAKES THE POSITION THAT THE CLAIMANT'S CLAIMS ARE NOT
9 COMPENSABLE BASED ON AN ELECTION OF REMEDIES DEFENSE,
10 AS WELL AS -- AND THEN IF THE CLAIM IS NOT BARRED, THEN
11 THE DEFENSE TAKES THE POSITION THAT THE CLAIMANT SHOULD
12 BE LIMITED TO SCHEDULED MEMBER FOR HIS DISABILITY
13 RATING. CLAIMANT TAKES THE POSITION THAT CLAIMANT IS
14 PERMANENTLY AND TOTALLY DISABLED. WHAT IS THE AVERAGE
15 WEEKLY WAGE AND COMP RATE? IS IT 775.38?

16 BY MR. JOHNSON:

17 IT IS THE MAXIMUM RATE. 483.47 IS THE COMP RATE I
18 BELIEVE.

19 BY MR. POPE:

20 OUR POSITION ON THE COMP RATE IS THAT HIS -- HE'S
21 AT THE MAXIMUM RATE IN '99, AND IT CONTINUES EACH YEAR
22 UP THROUGH THE PRESENT.

23 BY COMMISSIONER CHILDS:

24 DEFENSE RESPONSE TO THAT?

25 BY MR. JOHNSON:

1 OUR POSITION IS THE COMP RATE IS DETERMINED AT
2 THE TIME OF THE INJURY AND THAT HE WAS AT THE MAXIMUM
3 RATE AT THAT TIME, WHICH IS 484.47. AND THAT THAT
4 WOULD BE THE APPLICABLE COMP RATE.

5 BY COMMISSIONER CHILDS:

6 I WILL LIST THAT AS ONE OF THE ISSUES FOR ME TO
7 DETERMINE. AND THEN JUST TO -- IS THE CLAIMANT WORKING
8 NOW OR HAS HE WORKED SINCE THE INJURY?

9 BY MR. POPE:

10 NO, MA'AM, HE HAS NOT.

11 BY COMMISSIONER CHILDS:

12 I JUST WANTED TO KNOW IF THERE WAS ANY OTHER
13 EVIDENCE IN THE RECORD TO ---

14 BY MR. POPE:

15 OTHER THAN THE TESTIMONY OF HIMSELF AND ONE OF
16 THE OTHER WITNESSES, THERE WON'T BE.

17 BY COMMISSIONER CHILDS:

18 OKAY. YOU CAN SWEAR THE WITNESS.

19 RICHARD KIMMER, BEING DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MR. POPE:

21 Q. YOU'RE RICHARD KIMMER?

22 A. YES, SIR.

23 Q. ALL RIGHT. WHAT'S YOUR ADDRESS?

24 A. 874 TWIN FAWN ROAD, NEWBERRY, SOUTH CAROLINA, 29108.

25 Q. YOUR DATE OF BIRTH IS 10-11-46, IS THAT RIGHT?

- 1 A. YES, SIR.
- 2 Q. YOU'RE 56 RIGHT NOW?
- 3 A. YES, SIR.
- 4 Q. YOUR WIFE IS MARTHA?
- 5 A. YES, SIR.
- 6 Q. YOU HAVE FIVE CHILDREN, CORRECT?
- 7 A. YES, SIR.
- 8 Q. THE GENERAL STATE OF YOUR HEALTH BEFORE YOUR ON-THE-JOB
- 9 ACCIDENT -- AND WHICH THE ACCIDENT WAS 1-29-99,
- 10 CORRECT?
- 11 A. YES, SIR.
- 12 Q. YOUR HEALTH BEFORE THAT DATE IN GENERAL WAS WHAT?
- 13 A. I'D HAVE TO SAY IT WAS EXCELLENT, BECAUSE I WORKED ALL
- 14 MY LIFE.
- 15 Q. HOW MANY GRADES DID YOU COMPLETE IN SCHOOL?
- 16 A. SIX.
- 17 Q. DID YOU EVER GO TO ANY TECH SCHOOL OR ANY VOCATIONAL
- 18 SCHOOL BEYOND THAT?
- 19 A. NO, SIR.
- 20 Q. OR THE GED OR ANYTHING?
- 21 A. NO, SIR.
- 22 Q. WHEN YOU FINISHED HIGH SCHOOL, YOUR FIRST JOB WAS A
- 23 CARPENTER, IS THAT RIGHT?
- 24 A. I'M SORRY?
- 25 Q. YOUR FIRST JOB AFTER HIGH SCHOOL WAS AS A CARPENTER,

1 RIGHT?

2 A. I DIDN'T FINISH HIGH SCHOOL. I'M SORRY.

3 Q. EXCUSE ME. AFTER SCHOOL I MEAN. NOT FINISHING.

4 A. YES, SIR. I WAS A CARPENTER.

5 Q. AND AFTER THAT YOU WORKED TWO YEARS AS A CARPENTER?

6 A. RIGHT, SIR. YES, SIR.

7 Q. HOW LONG DID YOU WORK FOR SPRINGS MILLS?

8 A. FOR 31 YEARS, ONE MONTH, AND ONE WEEK.

9 Q. ALL RIGHT, AND AT SPRINGS YOU WERE A TECHNICIAN, IS
10 THAT RIGHT?

11 A. YES, SIR.

12 Q. WAS THAT FAIRLY HEAVY WORK?

13 A. OCCASIONALLY, YES, SIR.

14 Q. AND YOU INSTALLED MACHINERY AND SERVICED MACHINERY; IS
15 THAT CORRECT?

16 A. RIGHT.

17 Q. ALL RIGHT. AND DID YOU GET WHERE YOU UNDERSTOOD THE
18 HIGHEST IN TECHNOLOGY MACHINES, LIKE AIR JET LOOMS AND
19 THINGS LIKE THAT?

20 A. YES, SIR.

21 Q. ALL RIGHT. WHILE YOU WERE WORKING AT SPRINGS THE LAST
22 FEW YEARS, DID YOU HAVE A SECOND JOB?

23 A. YES, SIR.

24 Q. WHO WAS THAT WITH?

25 A. PSI CONTRACTORS, MR. JIM PARNELL OUT OF ATLANTA,

1 GEORGIA.

2 Q. AND WHAT WERE THE YEARS THAT YOU WORKED YOUR SECOND JOB

3 IN ADDITION TO SPRINGS WITH THIS COMPANY?

4 A. FROM SOMETIME IN '90, TILL DECEMBER OF '95.

5 Q. SO FROM '90 TO '95, YOU WERE WORKING A FULL TIME JOB AT

6 SPRINGS, IN ADDITION TO THIS OTHER JOB WITH PSI, IS

7 THAT RIGHT?

8 A. YES, SIR.

9 Q. WHAT WERE YOU DOING WITH PSI?

10 A. INSTALLING AIR JET SPINNING FOR MURATA OF AMERICA.

11 Q. AND THEN LATER DID MURATA OF AMERICA HIRE YOU TO WORK

12 FOR THEM?

13 A. YES, SIR.

14 Q. AND THAT WAS IN DECEMBER OF '95, IS THAT RIGHT?

15 A. DECEMBER THE 1ST, '95, YES, SIR.

16 Q. NOW, AIR JET SPINNING FRAMES ARE -- THESE FRAMES ARE

17 MADE IN JAPAN, IS THAT RIGHT?

18 A. YES, SIR.

19 Q. THEY'RE 20 TIMES FASTER THAN CONVENTIONAL LOOMS, IS

20 THAT RIGHT?

21 A. YES, SIR. THE CONVENTIONAL SPINNING FRAMES.

22 Q. SPINNING FRAMES I MEAN, NOT ---

23 A. YES, SIR.

24 Q. ALL RIGHT. AND YOU WORKED WITH THIS MACHINERY, AS IT

25 DEVELOPED TECHNOLOGICALLY, THE WHOLE TIME YOU WERE

1 EITHER WITH SPRINGS OR WITH PSI OR WITH MURATA, IS THAT
2 RIGHT?

3 A. YES, SIR.

4 Q. ALL RIGHT. AND IN YOUR JOB WITH MURATA, WAS IT SIMILAR
5 TO THE JOB YOU'D HAD WITH PSI AND SPRINGS?

6 A. WITH PSI IT WAS THE SAME AS IT WAS WITH MURATA. AND AT
7 SPRINGS I WAS A TECHNICIAN ON THE MACHINERY AFTER IT
8 WAS PUT IN. BUT I ALSO HELPED PUT IN OVER 100 MACHINES
9 AT SPRINGS.

10 Q. OKAY. NOW, WHEN YOU WERE HIRED WITH MURATA, AND I'LL
11 TALK ABOUT THE NATURE OF THE JOB IN A MINUTE, BUT WHEN
12 YOU WERE HIRED IN DECEMBER OF '95, YOU WERE PAID OF
13 COURSE A SALARY PER HOUR OF FOURTEEN DOLLARS AND
14 SOMETHING AN HOUR, IS THAT RIGHT?

15 A. THAT WASN'T MY STARTING PAY, BUT THAT WAS WHAT I WAS
16 GETTING PAID AT THE TIME OF THE ACCIDENT, YES, SIR.

17 Q. AND IN ADDITION TO YOUR HOURLY RATE, WHAT WERE YOU PAID
18 TO -- IN ADDITION?

19 A. WE GOT THREE HUNDRED AND SOME ODD DOLLARS A MONTH -- I
20 MEAN, BI-WEEKLY, EVERY OTHER WEEK, FOR CAR ALLOWANCE,
21 PLUS SIX CENTS A MILE FOR EACH MILE WE DROVE TO AND
22 FROM WORK.

23 Q. WELL, TALKING ABOUT THE MURATA JOB. YOU WORKED OUT OF
24 WHERE?

25 A. FROM MY HOME.

- 1 Q. YOUR HOME WAS IN WHITMIRE THEN, IS THAT RIGHT?
- 2 A. YES, SIR.
- 3 Q. ALL RIGHT, NOW, FROM YOUR HOME YOU WOULD GO TO WHERE?
- 4 DIFFERENT PLACES OR THE SAME PLACE?
- 5 A. DIFFERENT PLANTS AT DIFFERENT TIMES.
- 6 Q. ALL RIGHT. SO EVERY WEEK, SO TO SPEAK, WAS DIFFERENT,
- 7 IS THAT RIGHT?
- 8 A. NOT EVERY WEEK. SOMETIMES I WAS IN THE SAME PLANT FOR
- 9 THREE OR FOUR MONTHS OR MAYBE EVEN LONGER.
- 10 Q. AND SOMETIMES A MATTER OF DAYS, IS THAT RIGHT?
- 11 A. YES, SIR.
- 12 Q. OKAY. WERE YOU PAID FOR EACH MILE THAT YOU DROVE FROM
- 13 YOUR HOME TO THOSE PLANTS, WHEREVER THEY WERE?
- 14 A. YES, SIR.
- 15 Q. AND YOU WERE ALSO PAID AT SIX CENTS A MILE?
- 16 A. YES, SIR.
- 17 Q. YOU WERE ALSO PAID \$620 A MONTH CAR ALLOWANCE, IS THAT
- 18 RIGHT?
- 19 A. YES, SIR. TO THE EXACT PENNY I'M NOT SURE OF, BUT IT
- 20 WAS OVER \$600 PER MONTH, YES, SIR.
- 21 Q. ALL RIGHT. AND IF YOU HAD TO DRIVE MORE THAN AN HOUR
- 22 TO A CERTAIN PLANT, WERE YOU PAID FOR THAT SALARY-WISE?
- 23 A. YES, SIR.
- 24 Q. SO IF YOU HAD TO DRIVE AN HOUR AND A HALF TO A PLANT
- 25 FOR YOUR REGULAR JOB TO FIX A LOOM OR INSTALL AN AIR

1 JET FRAME, YOU WOULD BE PAID HOW MUCH IF YOU HAD TO
2 DRIVE AN HOUR AND A HALF?

3 A. I'D BE PAID 30 MINUTES TRAVEL TIME.

4 Q. PLUS THE REGULAR CAR ALLOWANCE, IS THAT RIGHT?

5 A. AND THE SIX CENTS A MILE, YES, SIR.

6 Q. ALL RIGHT. NOW, AT MURATA DID -- THE PHYSICAL
7 REQUIREMENTS OF THAT JOB, DID IT INVOLVE LIFTING?

8 A. YES, SIR.

9 Q. TELL US THE DIMENSIONS OF THESE AIR JET FRAMES.

10 A. THE MACHINE ITSELF, AFTER IT WAS COMPLETELY INSTALLED,
11 WAS SOMEWHERE AROUND 80 FEET LONG AND IT CAME IN EIGHT
12 TO TEN DIFFERENT SECTIONS. AND SOME SECTIONS WERE AS
13 HEAVY AS 1,900 PLUS POUNDS. AND THE LIGHTEST ONE WAS
14 RIGHT AROUND 1,000 POUNDS.

15 Q. AND THE HEIGHT OF THESE FRAMES WOULD BE, WHAT, SIX OR
16 EIGHT FEET HIGH?

17 A. DEPENDING ON THE LEVEL OF THE FLOOR, YES, SIR. IT
18 VARIED.

19 Q. AND YOU WOULD LIFT AS MUCH AS HOW MUCH IN THAT JOB ON A
20 REGULAR BASIS?

21 A. ON A REGULAR BASIS PROBABLY 25 TO 50 POUNDS ON A
22 REGULAR BASIS. AT TIMES WE WOULD HAVE TO LIFT A LOT
23 MORE WHEN WE DIDN'T HAVE HELP TO DO THE LIFTING.

24 Q. WAS BENDING AND STOOPING AND CLIMBING AND PUSHING AND
25 REACHING, WAS THAT PART OF YOUR JOB AS WELL?

1 A. YES, SIR. A BIG PART.

2 Q. AND TWISTING AND TURNING, WAS THAT A BIG PART?

3 A. YES, SIR.

4 Q. WHAT KIND OF TOOLS DID YOU USE, FOR INSTANCE, WHEN YOU
5 WERE DEALING WITH PUTTING TOGETHER ONE OF THESE BIG AIR
6 JET FRAMES?

7 A. WE USED PALLET JACKS. PRY BARS.

8 Q. A PRY BAR IS LIKE A BIG CROWBAR, RIGHT?

9 A. YES, SIR. AND THEN WHEN WE GOT IT TOGETHER, YOU KNOW,
10 WE HAD TO LEVEL IT UP AND USE HAND TOOLS TO PUT THE
11 BOLTS AND STUFF IN IT.

12 Q. AND YOU ALSO HAD TO CLIMB ON TOP OF THAT EQUIPMENT,
13 TOO?

14 A. OCCASIONALLY, YES, SIR.

15 Q. AND IS THAT THE SAME JOB YOU HAD THE ENTIRE TIME YOU
16 WERE WITH MURATA?

17 A. YES, SIR.

18 Q. AND YOU WERE CALLED THE SERVICE TECHNICIAN, IS THAT THE
19 RIGHT WORD?

20 A. YES, SIR.

21 Q. YOU WERE CONSIDERED NON-EXEMPT, IS THAT THE RIGHT WORD?
22 IN THE EMPLOYEE MANUAL?

23 A. I'M SORRY?

24 Q. THEY CALL IT A NON-EXEMPT SERVICE TECHNICIAN IN THE
25 MANUAL?

1 A. I'M NOT REAL SURE, MR. POPE.

2 Q. OKAY, I'LL ASK YOUR BOSS. I'M GOING TO ASK YOU NOW
3 ABOUT THE ACCIDENT. ON JANUARY THE 29TH OF '99, AT
4 ABOUT 6:50 OR SO IN THE MORNING, YOU HAD AN ACCIDENT,
5 IS THAT RIGHT?

6 A. YES, SIR.

7 Q. WHAT TIME DID YOU GET UP THAT MORNING?

8 A. FIVE THIRTY OR QUARTER TO SIX.

9 Q. ALL RIGHT. WAS THIS A ROUTINE DAY?

10 A. IT WAS A ROUTINE DAY FOR THAT PLANT.

11 Q. AND YOU WERE HEADED TO WHICH PLANT?

12 A. SPRINGS KATHERINE PLANT IN CHESTER.

13 Q. YOU'D BEEN WORKING THERE FOR SEVERAL DAYS OR WEEKS OR
14 WHAT?

15 A. SEVERAL WEEKS.

16 Q. AND THIS WAS A FRIDAY?

17 A. YES, SIR.

18 Q. AND YOU WERE PAID -- WERE YOU PAID THAT DAY FOR MILEAGE
19 FROM YOUR HOME TO THE KATHERINE PLANT IN CHESTER AND
20 ALSO THE CAR ALLOWANCE?

21 A. THE DATE OF THE ACCIDENT?

22 Q. YES. WERE YOU TO BE PAID FOR IT ON ---

23 A. I WERE TO BE PAID, YES, SIR.

24 Q. ALL RIGHT. AND THE COLLISION -- AND I DON'T THINK IT'S
25 IN DISPUTE, SO I'LL LEAD YOU A LITTLE BIT. THIS WAS A

1 HEAD ON COLLISION, WAS IT NOT?

2 A. YES, SIR.

3 Q. THE OTHER CAR WAS IN YOUR LANE, RIGHT?

4 A. YES, SIR.

5 Q. THE OTHER CAR GOT TICKETED FOR IT, CORRECT?

6 A. YES, SIR.

7 Q. AND THE OTHER DRIVER, AS FAR AS YOU KNOW, WAS WHAT WE
8 CALL A DEADBEAT. SOMEBODY WITHOUT ANY ASSETS OR JOB?

9 BY MR. JOHNSON:

10 I'M GOING TO OBJECT. THAT WOULD REQUIRE HEARSAY
11 EVIDENCE, AND I OBJECT. I OBJECT TO THE FORM OF THE
12 QUESTION ALSO.

13 BY COMMISSIONER CHILDS:

14 SUSTAINED.

15 DIRECT EXAMINATION RESUMED BY MR. POPE:

16 Q. DID YOU AUTHORIZE YOUR THEN ATTORNEY TO INVESTIGATE
17 WHETHER OR NOT THE MAN THAT HIT YOU HAD ASSETS OR NOT?
18 YOU AUTHORIZED HIM TO CHECK INTO IT, RIGHT?

19 A. YES, SIR.

20 Q. ALL RIGHT. WELL, I'LL LET HIM EXPLAIN. YOUR CAR WAS
21 GOING ABOUT WHAT SPEED WHEN ---

22 A. 35 MILES PER HOUR.

23 Q. WAS HIS CAR GOING FASTER OR SLOWER?

24 A. SLOWER.

25 Q. YOUR CAR WAS A BUICK PARK AVENUE, CORRECT?

1 A. RIGHT.

2 Q. AND HIS WAS A WHAT?

3 A. IT WAS A LATE -- OLDER MODEL CADILLAC. A FULL SIZE

4 CADILLAC. I DON'T KNOW WHAT YEAR MODEL IT WAS.

5 Q. WERE BOTH CARS -- THERE WAS DAMAGE TO BOTH CARS?

6 A. RIGHT.

7 Q. WAS IT SUBSTANTIAL OR A LITTLE BIT OR WHAT?

8 A. TOTALLED. BOTH OF THE CARS.

9 Q. WHAT PARTS OF YOUR BODY WERE INJURED IN THAT ACCIDENT?

10 A. WELL, MY HEAD BUSTED THE WINDSHIELD. MY NECK SNAPPED

11 BACK, AND MY KNEES WENT UP INTO THE DASHBOARD. AND I

12 WAS THROWN IN THE FLOORBOARD. AND MY HEAD, MY NECK,

13 BACK, AND KNEES ALL GAVE ME THE PROBLEMS.

14 Q. AND THE POLICE CAME OF COURSE; IS THAT RIGHT?

15 A. YES, SIR.

16 Q. ALL RIGHT. DID YOU INFORM YOUR SUPERVISOR ON THE PHONE

17 ABOUT IT?

18 A. A CO-WORKER DID. AND AFTER I HAD WENT TO THE EMERGENCY

19 ROOM AND WAS RELEASED FROM THE EMERGENCY ROOM, I WENT

20 TO THE PLANT. MY WIFE TAKED ME TO THE PLANT, AND I

21 TALKED TO MY SUPERVISOR.

22 Q. THAT'S MR. STOLVIN?

23 A. YES, SIR, MR. STOLVIN.

24 Q. THEN YOU WENT TO WHAT HOSPITAL TO BE EXAMINED?

25 A. CHESTER COUNTY HOSPITAL IN CHESTER, SOUTH CAROLINA.

1 Q. AND YOU STAYED THERE FOR HOW LONG?

2 A. A COUPLE OF HOURS. I DON'T REMEMBER EXACTLY. THEY
3 TOOK X-RAYS OF MY HEAD AND KNEES.

4 Q. THE PARAMEDICS SENT YOU THERE?

5 A. THE PARAMEDICS CAME TO THE SCENE OF THE ACCIDENT. THEY
6 WANTED TO TAKE ME THEN, BUT I WOULD NOT GO BECAUSE I
7 WAS -- I GUESS I MAY HAVE BEEN SO SHOOK UP I DIDN'T
8 REALIZE HOW -- THAT I NEEDED TO GO. I KNEW I WAS HURT,
9 BUT I DIDN'T THINK OR KNOW JUST HOW BAD. SO I WOULDN'T
10 LET THEM TAKE ME. BUT WHEN I CALLED MY WIFE, SHE CAME
11 TO THE BODY SHOP AND PICKED ME UP WHERE THEY HAD TOOK
12 MY CAR. SHE TOOK ME TO THE HOSPITAL FOR THEM TO
13 EXAMINE ME.

14 Q. ALL RIGHT, NOW, OVER THE WEEKEND DID YOU GET BETTER OR
15 WORSE?

16 A. WORSE.

17 Q. AND MONDAY MORNING WHO DID YOU SEE?

18 A. THE ORTHOPEDIC SURGEON IN UNION. DR. PETER J. KINAHAN.

19 Q. NOW, I WANT TO GO BACK FOR A MINUTE. YOU MENTIONED DR.
20 KINAHAN. HAD YOU HAD ANY KNEE PROBLEM BEFORE THIS?

21 A. YES, SIR. I HAD A SLIGHT PROBLEM WITH MY RIGHT KNEE IN
22 AUGUST OR SEPTEMBER OF '98 BEFORE THIS ACCIDENT
23 HAPPENED. AND I DID SEE AN ORTHOPEDIC SURGEON A COUPLE
24 TIMES FOR AN INFLAMED TENDON.

25 Q. ALL RIGHT. HAD THAT PROBLEM COMPLETELY CORRECTED

1 ITSELF BY THE TIME YOU HAD THIS ACCIDENT?

2 A. YES AND -- YES AND NO. IF I WAS ON MY KNEES A LOT, IT
3 AGGRAVATED ME. YES.

4 Q. DID YOU HAVE ANY DISABILITY IN YOUR KNEE BEFORE THIS
5 ACCIDENT HAPPENED FROM THAT?

6 A. NO DISABILITY. I WAS DOING MY JOB CONTINUOUSLY RIGHT
7 ON ---

8 Q. ALL RIGHT, NOW, WHAT HAS DR. KINAHAN DONE AS FAR AS
9 KNEE SURGERY FOR YOU SINCE THE DATE OF THIS ACCIDENT IN
10 RESPONSE TO THOSE INJURIES?

11 A. HE HAD DONE THREE ARTHROSCOPIC SURGERIES. TWO ON MY
12 RIGHT AND ONE ON MY LEFT.

13 Q. ALL RIGHT, NOW, DR. KINAHAN, IS HE IN SOUTH CAROLINA
14 NOW?

15 A. NOT THAT I'M AWARE OF. I THINK HE'S IN WASHINGTON
16 STATE SOMEWHERE.

17 Q. NOW, DID YOU HAVE ANY ADDITIONAL KNEE SURGERY BY ANYONE
18 ELSE?

19 A. YES, SIR. I DID. I HAD ONE MORE ON MY RIGHT KNEE.
20 DR. JAMES FROM CAROLINA ORTHOPEDIC IN LANCASTER, SOUTH
21 CAROLINA. HE DID ONE THERE AT THE HOSPITAL IN
22 LANCASTER. SPRINGS MEMORIAL HOSPITAL.

23 Q. HAS DR. JAMES ALSO TREATED YOUR BACK CONDITION?

24 A. NO, NOT DR. JAMES. IT'S DR. MANDELL IS THE ONE THAT'S
25 TAKING CARE OF MY BACK.

- 1 Q. AND DR. MANDELL OF COURSE IS THE NEUROLOGIST, CORRECT?
- 2 A. THE NEUROLOGIST, YES, SIR.
- 3 Q. AND IS HE ALSO TREATING, IN ADDITION TO YOUR BACK, YOUR
- 4 NECK AND YOUR DEPRESSION?
- 5 A. DR. MANDELL?
- 6 Q. RIGHT.
- 7 A. YEAH. MY NECK. HE STARTED WITH MY DEPRESSION, BUT HE
- 8 TURNED ME OVER TO THE PSYCHIATRIST IN COLUMBIA, DR.
- 9 MAJORS.
- 10 Q. HAD YOU EVER SEEN A PSYCHIATRIST OR HAD ANY DEPRESSION
- 11 BEFORE THIS ACCIDENT?
- 12 A. NO, SIR.
- 13 Q. HAVE YOU WORKED SINCE THE DATE OF THIS ACCIDENT?
- 14 A. NO, SIR.
- 15 Q. COULD YOU HAVE WORKED, GIVEN YOUR WORK HISTORY AND YOUR
- 16 BACKGROUND, YOUR EXPERIENCE AND YOUR EDUCATION, COULD
- 17 YOU HAVE WORKED AT ANY OTHER JOB?
- 18 A. I DON'T THINK SO, NO, SIR.
- 19 Q. YOU'RE NOT WORKING WITH MURATA OF COURSE. YOU'RE NOT
- 20 ON THEIR PAYROLL NOW, IS THAT RIGHT?
- 21 A. RIGHT.
- 22 Q. NOW, WHAT PROBLEMS ARE YOU HAVING NOW, MR. KIMMER?
- 23 TELL US WHAT THEY ARE. WHAT PHYSICAL PROBLEMS YOU'RE
- 24 HAVING OR MEDICAL PROBLEMS YOU'RE HAVING BECAUSE OF
- 25 THIS ACCIDENT.

1 A. WELL, I'M HAVING PROBLEMS WITH MY RIGHT KNEE. MY LEFT
2 KNEE DOESN'T BOTHER ME HARDLY AT ALL ANYMORE, BUT MY
3 RIGHT KNEE IS A TERRIBLE PROBLEM. MY LOWER BACK AND MY
4 NECK. MY DEPRESSION. IT'S BEEN A BAD THING.

5 Q. THE WORST AREA OR PROBLEM RIGHT NOW IS WHAT?

6 A. MY LOWER BACK.

7 Q. AND DO YOU HAVE PAIN IN THAT LOW BACK AND IN THE RIGHT
8 KNEE?

9 A. YES, SIR.

10 Q. HOW WOULD YOU DESCRIBE IT? AS OPPOSED TO STABBING,
11 BURNING, DULL, SHARP, WHATEVER.

12 A. IT'S STABBING AND SHARP MOST OF THE TIME. WHEN I GET
13 ALL MY MEDICATIONS IN ME UP IN THE DAY, YEAH, THE PAIN,
14 YOU KNOW, DOES EASE OFF. BUT NOT MUCH.

15 Q. WHEN THE PAIN IS THE WORST, HOW BAD -- WHAT TIME OF DAY
16 IS IT USUALLY THE WORST?

17 A. I'M WORSE WHEN I GET UP IN THE MORNINGS. BECAUSE I'VE
18 DONE WITHOUT MY MEDICATIONS OVER THE SEVEN TO EIGHT
19 HOURS AT NIGHT.

20 Q. HOW BAD IS THE PAIN, WITH TEN BEING THE WORST AND ONE
21 BEING BEST, IN THE MORNING?

22 A. AN EIGHT OR NINE.

23 Q. ONCE YOU TAKE YOUR MEDICINE ON A GOOD DAY, UNDER THE
24 BEST CONDITIONS, FOR INSTANCE, WHAT IS THE PAIN LEVEL
25 AT ITS BEST?

- 1 A. THREE TO FOUR.
- 2 Q. WHAT AGGRAVATES YOUR BACK AND YOUR KNEE THE MOST? WHAT
- 3 ACTIVITY WOULD AGGRAVATE IT THE MOST OR MAKE IT WORSE?
- 4 A. ABOUT ANYTHING I DO AGGRAVATES BOTH OF THEM. MY BACK
- 5 IS THE WORST -- IF I JUST STAND, IT'S BAD. IF I JUST
- 6 SIT, IT'S BAD. STOOPING, BENDING IS TERRIBLE. AND MY
- 7 KNEE IS -- I CAN'T SQUAT AT ALL BECAUSE OF THE KNEE
- 8 PROBLEM. I CAN'T PULL MY WEIGHT UP STEPS, OR I CAN'T
- 9 PUT MY RIGHT FOOT DOWN FIRST TO GO DOWN STEPS AND BEND
- 10 MY KNEE WITH THE WEIGHT ON IT.
- 11 Q. WHAT DO YOU DO NOW AND WHAT HAVE YOU BEEN DOING TO EASE
- 12 YOUR PAIN?
- 13 A. I'M TAKING THE MEDICATIONS.
- 14 Q. ALL RIGHT, I'LL ASK YOU WHAT THOSE MEDICINES ARE IN A
- 15 MINUTE, BUT WHAT ELSE DO YOU DO TO EASE YOUR ---
- 16 A. ONE OF THE FIRST THINGS IN THE MORNING IS GET IN THE
- 17 WHIRL -- IT'S NOT A WHIRLPOOL TUB. WE JUST HAVE A BIG
- 18 GARDEN TUB WITH THE JACUZZI MAT IN IT THAT WORKS BY
- 19 AIR. LIKE -- NOT WATER JETS, BUT AIR. AND THEN BEFORE
- 20 I GET IN THE SHOWER EARLY AT NIGHT, I'M BACK IN IT
- 21 AGAIN. MOST OF THE TIME 20 -- 20 MINUTES IS MY
- 22 PROBABLY LEAST TIME. A LOT OF TIMES I'M IN IT 30
- 23 MINUTES.
- 24 Q. IS THAT HOT WATER IN THERE?
- 25 A. YES, SIR. I GET IN IT AS HOT AS I CAN STAND AND THEN

1 I'M LETTING THE COLD OUT AS MY BODY GETS USED TO IT AND
2 GETS IT HOTTER. RUNNING MORE HOT WATER IN IT.

3 Q. WAS THAT RECOMMENDED BY A DOCTOR OR ---

4 A. YES, SIR.

5 Q. WHAT MEDICATIONS HAVE YOU BEEN TAKING OR ARE YOU
6 TAKING?

7 A. I'VE GOT THEM ALL RIGHT HERE. I'M TAKING 11 DIFFERENT
8 KINDS.

9 Q. JUST TELL US THE ONES -- DO YOU HAVE A LIST SOMEWHERE?

10 A. I THINK MY WIFE -- NO, I GOT ONE RIGHT HERE. LET ME
11 PUT MY GLASSES ON. OKAY, I'M TAKING NEURONTIN, WHICH
12 IS FOR NERVE DAMAGE. I TAKE A 600 MILLIGRAM TABLET,
13 ONE TABLET FOUR TIMES A DAY. THAT WAS PRESCRIBED BY MY
14 NEUROLOGIST, DR. HOWARD MANDELL.

15 Q. IS THAT WELLBUTRIN?

16 A. WELLBUTRIN.

17 Q. 150 MILLIGRAMS, THREE TIMES A DAY?

18 A. YES, SIR.

19 Q. IS THAT FOR -- AN ANTI-DEPRESSANT?

20 A. YES, SIR.

21 Q. YOU TAKE HYDROCODONE, 750 MILLIGRAMS EVERY FOUR TO SIX
22 HOURS?

23 A. YES, SIR.

24 Q. THAT'S FOR PAIN?

25 A. PAIN, YES, SIR.

1 Q. ALL RIGHT, YOU TAKE REMERON ---

2 BY MR. JOHNSON:

3 YOUR HONOR, I NEED TO ---

4 BY MR. POPE:

5 OKAY, IT WILL TAKE LONGER. BUT GO AHEAD AND TELL

6 US ABOUT ---

7 BY MR. JOHNSON:

8 I DON'T HAVE ANY OBJECTION TO HIM PUTTING IN
9 WHATEVER LIST HE'S GOT OF THE MEDICATIONS TO SHORTEN
10 IT. I'M NOT TRYING TO DRAW IT OUT. BUT I OBJECT TO
11 THE LEADING.

12 DIRECT EXAMINATION RESUMED BY MR. POPE:

13 Q. ALL RIGHT, WE HAVE THE REMERON. TELL US IF YOU TAKE
14 THAT, AND WHAT YOU TAKE, AND WHY YOU TAKE IT.

15 A. OKAY, THE REMERON IS 30 MILLIGRAMS, TWO TABLETS AT
16 NIGHT AT BEDTIME. AND THAT'S AN ANTI-DEPRESSANT
17 MEDICINE, TOO.

18 Q. DO YOU TAKE BEXTRA?

19 A. BEXTRA, YES, SIR.

20 Q. FOR WHAT?

21 A. TEN MILLIGRAMS, THREE -- THREE TIMES A DAY. AND THAT'S
22 FOR ARTHRITIS.

23 Q. NOW, SPEAKING OF ARTHRITIS, HAD YOU EVER BEEN TOLD
24 BEFORE THIS ACCIDENT THAT YOU HAD ARTHRITIS?

25 A. NO, SIR.

1 Q. HAD YOU EVER THOUGHT YOU EVEN HAD ARTHRITIS?

2 A. I'VE NEVER HAD NO PROBLEM TO MAKE ME AWARE THAT I DID.
3 WITH A 55 YEAR OLD BODY, I'M SURE I PROBABLY DID.

4 Q. ASSUMING YOU HAD ARTHRITIS, HAD IT EVER GIVEN YOU ANY
5 PROBLEMS PRIOR TO THIS ACCIDENT?

6 A. NO, SIR.

7 Q. ALL RIGHT, YOU MENTIONED BEXTRA FOR PAIN. ARE YOU ALSO
8 TAKING ISADARBID, ONE TABLET A DAY?

9 A. NO, SIR, THAT ONE IS NOT -- THAT'S HEART MEDICINE.

10 Q. DOES THAT COVER THE MEDICINES YOU'RE TAKING FOR EITHER
11 ARTHRITIS, DEPRESSION, OR PAIN? THE ONES WE'VE GONE
12 OVER?

13 A. YES, SIR.

14 Q. ALL RIGHT. NOW, THE ENTIRE TIME THAT YOU WORKED FOR
15 MURATA, DID YOU RECEIVE THIS SIX HUNDRED AND SOME ODD
16 DOLLARS A MONTH TRAVEL ALLOWANCE AND SIX CENTS A MILE
17 EVERY TIME YOU TRAVELED FROM YOUR HOME TO A DIFFERENT
18 MILL?

19 A. YES, SIR.

20 Q. DID YOU EVER HAVE AN OFFICE TO GO TO OTHER THAN YOUR
21 HOME THAT YOU WORKED OUT OF?

22 A. YEAH, I HAVE HAD TO GO FROM OFFICE -- FROM MY HOME TO
23 THE OFFICE.

24 Q. WHAT I MEAN IS YOUR OFFICE WAS YOUR HOME, WASN'T IT?

25 A. RIGHT.

1 Q. ALL RIGHT, THE WHIRLPOOL YOU SAID WAS RECOMMENDED BY A
2 DOCTOR. WAS THAT DR. JAMES?

3 A. DR. JAMES AND DR. MANDELL BOTH.

4 Q. WHAT ELSE DID DR. JAMES RECOMMEND THAT YOU TRY TO DO TO
5 EASE SOME OF YOUR PROBLEMS?

6 A. HE HAD ME TRYING TO WALK. AND I COULDN'T WALK LIKE
7 AROUND THE BLOCK OR ANYTHING, SO HE TOLD ME IF I'D GET
8 ME A TREADMILL WITH THE HANDRAILS ON IT, THAT I COULD
9 WALK HOLDING THOSE HANDRAILS, AND THAT WOULD TAKE SOME
10 OF THE PRESSURE OFF MY KNEE. AND DR. MANDELL TOLD ME
11 THE SAME THING ABOUT MY BACK.

12 Q. IS THAT WHAT YOU DID? YOU GOT A TREADMILL?

13 A. YES, SIR, I GOT A TREADMILL.

14 Q. DO YOU USE THAT JUST LIKE YOU DO YOUR WHIRLPOOL EVERY
15 DAY?

16 A. YES, SIR.

17 Q. WHAT OTHER RECOMMENDATIONS DID DR. JAMES HAVE FOR YOU?

18 A. HE TOLD ME TO USE ---

19 BY MR. JOHNSON:

20 I'M GOING TO OBJECT ---

21 BY MR. POPE:

22 DON'T GIVE US HEARSAY ---

23 BY MR. JOHNSON:

24 COMMISSIONER, OBVIOUSLY THE MEDICAL RECORDS WILL
25 SPEAK FOR THEMSELVES ABOUT WHAT THE RECOMMENDATIONS

1 WERE, SO I OBJECT TO IT.

2 BY MR. POPE:

3 I'M NOT ASKING HIM TO SAY THE WORDS THE DOCTOR
4 USED. I'M JUST ASKING HIM TO ---

5 BY MR. JOHNSON:

6 I THINK THE RECOMMENDATIONS, WHATEVER THEY ARE,
7 WOULD BE HEARSAY. I MEAN, HE CAN -- I OBJECT.

8 BY COMMISSIONER CHILDS:

9 TO THAT EXTENT JUST LET HIM TALK ABOUT HIS
10 TREATMENT.

11 BY MR. POPE:

12 OKAY.

13 DIRECT EXAMINATION RESUMED BY MR. POPE:

14 Q. YOU HAD MENTIONED THE WHIRLPOOL. YOU DO THAT TWICE A
15 DAY, IS THAT RIGHT?

16 A. YES, SIR.

17 Q. WHAT OTHER ACTIVITIES ARE YOU DOING NOW ON AN AVERAGE
18 DAY?

19 A. THE WHIRLPOOL AND TRYING TO WALK ON THE TREADMILL.
20 SOME DAYS I CAN SIT DOWN THERE AT THE POND A LITTLE BIT
21 AND FISH. NOT EVERY -- YOU KNOW, NOT EVERY DAY. AND I
22 CAN'T SIT THERE LONG WHEN I DO SIT.

23 Q. DO YOU EVER USE A RECLINER? DOES THAT PROVIDE ANY
24 BENEFIT FOR YOU?

25 A. AS LONG AS I DON'T SIT TOO LONG. THE RECLINER IS --

1 IT'S COMFORTABLE FOR A WHILE, YES.

2 Q. OF ALL THE THINGS YOU DO -- ROUTINE THINGS YOU DO,
3 WHAT'S THE MOST UNCOMFORTABLE THING THAT'S ROUTINE?
4 THAT USED TO BE ROUTINE FOR YOU.

5 A. MOWING GRASS.

6 Q. I'M TALKING ABOUT STANDING, SITTING, WALKING. WHICH OF
7 THOSE THINGS OF THE ROUTINE THINGS IS MOST
8 UNCOMFORTABLE?

9 A. STANDING AND WALKING BOTH IS BAD.

10 Q. WHEN YOU WERE WORKING DURING THAT FIVE YEAR PERIOD
11 BEFORE YOU WENT FULL TIME WITH MURATA, HOW MANY HOURS A
12 WEEK WERE YOU WORKING FROM 1990 TO 1995?

13 A. VERY FEW WEEKS I CAME UNDER 80 HOURS PER WEEK.

14 Q. BEFORE THIS ACCIDENT DID YOU DO SOME GARDENING AND SOME
15 YARD WORK, AND A LITTLE BIT OF PHYSICAL EXERTION?
16 MAYBE GOLF OR BOWLING OR SOMETHING LIKE THAT. DID YOU
17 DO THOSE THINGS?

18 A. YES, SIR.

19 Q. WHAT ABOUT SINCE 1-29-99?

20 A. FISHING IS, YOU KNOW, LIKE I TOLD YOU EARLIER, THE ONLY
21 THING THAT I CAN REALLY ENJOY ANYMORE.

22 Q. AFTER THIS ACCIDENT YOU WENT TO SEE MR. PHILIP WRIGHT,
23 OF COURSE, AS AN ATTORNEY, IS THAT RIGHT?

24 A. YES, SIR.

25 Q. HE WAS IN LANCASTER, CORRECT?

1 A. YES, SIR.

2 Q. AND HE HELPED YOU WITH YOUR -- TRIED TO HELP YOU WITH
3 YOUR INJURY CLAIMS, IS THAT RIGHT?

4 A. YES, SIR.

5 Q. ALL RIGHT, DID YOU -- WERE YOU GETTING A LOT OF BILLS
6 FROM MEDICAL PROVIDERS DURING THE FIRST TWO, THREE,
7 FOUR MONTHS AFTER THE ACCIDENT?

8 A. YES, SIR.

9 Q. AND ARE YOU AWARE THAT MR. WRIGHT SETTLED THE THIRD
10 PARTY CLAIM AGAINST THE AT FAULT DRIVER FOR \$15,000?
11 THAT'S ALL THE POLICY THAT WAS AVAILABLE, IS THAT
12 RIGHT?

13 A. YES, SIR.

14 BY MR. JOHNSON:

15 OBJECT TO THE FORM OF THE QUESTION. AS BEING
16 LEADING. AND I ASSUME THE ONLY WAY HE WOULD KNOW WHAT
17 THE COVERAGE WAS WOULD BE HEARSAY, AND I OBJECT TO IT
18 ON THAT BASIS AS WELL.

19 BY COMMISSIONER CHILDS:

20 IS YOUR QUESTION MORE IN LINE WITH THAT HE
21 SETTLED THE CLAIM OR HAVING SOMETHING TO DO WITH THE
22 POLICY?

23 BY MR. POPE:

24 WELL, IT WOULD HAVE TO DO WITH BOTH THOSE ISSUES.
25 I MEAN, HIS LAWYER IS OUT HERE, AND I CAN ASK HIM ABOUT

1 IT.

2 BY COMMISSIONER CHILDS:

3 OKAY.

4 BY MR. POPE:

5 I'LL JUST MOVE ON.

6 DIRECT EXAMINATION RESUMED BY MR. POPE:

7 Q. THE SETTLEMENT, YOU DO KNOW THERE WAS A \$15,000
8 SETTLEMENT?

9 A. YES, SIR.

10 Q. AND IT WAS AGAINST THE AT FAULT PARTY'S INSURANCE
11 COMPANY?

12 A. YES, SIR.

13 Q. AND THAT MR. WRIGHT HANDLED THAT FOR YOU?

14 A. YES, SIR.

15 Q. AND OF COURSE THE RECORD SHOWS THAT AFTER YOU SIGNED
16 THE RELEASE ON JUNE 16TH OF '99, TWO DAYS LATER YOU
17 FILED A FORM 50 WITH THE COMMISSION?

18 A. YES, SIR.

19 Q. SO YOU KNEW THAT -- DID YOU OR DID YOU NOT KNOW THAT
20 THERE WAS BOTH A CLAIM AGAINST PENDERGRASS, THE
21 CARRIER, AND ALSO A CLAIM AGAINST YOUR EMPLOYER. YOU
22 KNEW THAT, IS THAT RIGHT?

23 BY MR. JOHNSON:

24 OBJECT TO THE FORM. I WANT TO OBJECT TO THE FORM
25 AS BEING LEADING AND ASK THAT HE -- THE QUESTION BE

1 REPHRASED.

2 BY MR. POPE:

3 I THINK I PHRASED IT PROPERLY. I SAID DID YOU OR
4 DID YOU NOT KNOW THAT YOU HAD BOTH CLAIMS.

5 BY COMMISSIONER CHILDS:

6 OVERRULED. GO AHEAD.

7 BY THE WITNESS:

8 A. I DID KNOW ABOUT BOTH CLAIMS, YES.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. ALL RIGHT, DID YOU INTEND -- WHEN YOUR ATTORNEY
11 ACCEPTED THE \$15,000, DID YOU INTEND TO ONLY GO AFTER
12 THE THIRD PARTY CARRIER? DID YOU INTEND THAT?

13 BY MR. JOHNSON:

14 OBJECT. HIS INTENT IS IRRELEVANT TO THE QUESTION
15 OF WHAT HE DID AND WHAT THE LAW IS. AND I MEAN
16 OBVIOUSLY WE'RE GOING TO GET A SELF SERVING ANSWER THAT
17 SAYS I NEVER INTENDED THAT. AND I OBJECT TO IT ON THE
18 GROUNDS OF RELEVANCE.

19 BY MR. POPE:

20 I THINK IT'S ULTIMATELY QUITE RELEVANT, BECAUSE
21 IF SOMEBODY TAKES A CERTAIN COURSE OF ACTION, THEIR
22 INTENTION IN THIS CASE IS VERY IMPORTANT. IF HE SAYS I
23 INTENDED TO ELECT MY REMEDY EXCLUSIVELY WITH A THIRD
24 PARTY, THEN WE WOULD BE OUT OF A CLAIM. SO THAT
25 QUESTION NEEDS TO BE ANSWERED.

1 BY COMMISSIONER CHILDS:

2 BASED ON WHETHER OR NOT HE PROPERLY ELECTED
3 REMEDIES AND ---

4 BY MR. POPE:

5 WHETHER HE INTENDED TO ELECT A REMEDY OR WHETHER
6 HE WAS JUST FOLLOWING HIS LAWYER'S ADVICE.

7 BY MR. JOHNSON:

8 THE QUESTION I GUESS ON THE TABLE IS WHAT HIS
9 INTENTION WAS. THAT IS ABSOLUTELY IRRELEVANT TO WHAT
10 HE DID AND WHAT THE EFFECT OF WHAT HE DID WAS.

11 BY MR. POPE:

12 WELL, YOU'RE SAYING IT'S LEGALLY IRRELEVANT. IT
13 MAY OR MAY NOT BE LEGALLY IRRELEVANT, BUT IT'S NOT
14 INADMISSIBLE FOR QUESTIONING PURPOSES I DON'T THINK.

15 BY MR. JOHNSON:

16 I THINK THE TEST IS RELEVANCY TO THE ISSUES --
17 THE QUESTIONS OF LAW IN THE CASE, AND I DON'T THINK
18 IT'S RELEVANT, SO I OBJECT.

19 BY COMMISSIONER CHILDS:

20 SUSTAINED.

21 DIRECT EXAMINATION RESUMED BY MR. POPE:

22 Q. DID YOU GET ANY MONEY OUT OF THE \$15,000 SETTLEMENT?

23 A. NO, SIR, I DID NOT.

24 BY MR. JOHNSON:

25 OBJECT. AGAIN, I DON'T BELIEVE THAT'S RELEVANT.

1 BUT HE'S ANSWERED IT SO ---

2 BY COMMISSIONER CHILDS:

3 OKAY.

4 DIRECT EXAMINATION RESUMED BY MR. POPE:

5 Q. DID YOU OR DID YOU NOT KNOW WHICH OF THESE TWO CLAIMS
6 WOULD BE LARGER, THE \$15,000 THIRD PARTY CLAIM OR THE
7 WORKERS' COMP CLAIM FOR YOUR INJURIES IN THAT WRECK?

8 BY MR. JOHNSON:

9 OBJECTION, RELEVANCE.

10 BY MR. POPE:

11 WELL, I SAY IT'S RELEVANT, AND I'D LIKE AN
12 ANSWER.

13 BY MR. JOHNSON:

14 IT WOULDN'T MATTER WHETHER HE THOUGHT HE WAS
15 GOING TO GET MORE OUT OF ONE OR MORE OUT OF THE OTHER.
16 IT'S A QUESTION OF WHAT DID HE DO, AND THE EFFECT OF IT
17 UNDER THE LAW. AND THE RECORD IS CLEAR ON WHAT HE DID.
18 HE SETTLED IT WITH -- BEFORE HE GAVE NOTICE AND PURSUED
19 IT WITH ---

20 BY MR. POPE:

21 WELL, THESE ARE THE FACTS UNDERLYING THAT --
22 THERE'S NO QUESTION OF WHAT HAPPENED CHRONOLOGICALLY,
23 BUT THERE'S SOME QUESTION ABOUT WHAT IT ALL MEANS. THE
24 OBVIOUS POINT IS WHY WOULD ANYBODY TAKE \$15,000, IF IT
25 MEANT FOREGOING A COMP CLAIM THAT WAS WORTH 30 TIMES

1 THAT MUCH. I MEAN, THAT'S THE OBVIOUS.

2 BY COMMISSIONER CHILDS:

3 BUT I DON'T KNOW THAT WHAT HE THINKS IT MEANS OR
4 NOT IS GOING TO ANSWER ---

5 BY MR. POPE:

6 IT MAY NOT.

7 BY COMMISSIONER CHILDS:

8 --- PROCEDURAL ISSUES. SO OBJECTION SUSTAINED.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. ALL RIGHT, MR. KIMMER, BEFORE JUNE OF 1999, DID YOU
11 KNOW THAT A SETTLEMENT OF THE \$15,000, UNDER THE
12 CIRCUMSTANCES THAT IT WAS ACCEPTED BY YOUR LAWYER,
13 WOULD PRECLUDE YOU OR COULD PRECLUDE YOU PERHAPS FROM
14 WORKERS' COMP COMPENSABILITY?

15 BY MR. JOHNSON:

16 OBJECT, RELEVANCE.

17 BY MR. POPE:

18 I'D LIKE TO TENDER HIS ANSWER, NO MATTER WHAT THE
19 RULING IS.

20 BY COMMISSIONER CHILDS:

21 LET'S DO THIS. I'M GOING TO STEP OUT OF THE ROOM
22 AND JUST LET YOU PROFFER THAT WHOLE LINE OF TESTIMONY.

23 BY MR. POPE:

24 OKAY.

25 BY MR. JOHNSON:

1 ALL RIGHT.

2 (PROFFERED TESTIMONY)

3 DIRECT EXAMINATION RESUMED BY MR. POPE:

4 Q. MR. KIMMER, DID YOU KNOW BEFORE JUNE OF '99, THAT IF
5 YOU ACCEPTED THE \$15,000 FROM THE LIABILITY CARRIER
6 THAT YOU MIGHT BE PRECLUDED FROM HAVING ANY WORKERS'
7 COMPENSATION BENEFITS?

8 A. (NO RESPONSE)

9 Q. THAT YOU WOULDN'T GET ANY WORKERS' COMP IF YOU ACCEPTED
10 THAT SUM? IN OTHER WORDS, AT THE TIME OF THE
11 SETTLEMENT, WHEN MR. WRIGHT ACCEPTED THE 15,000 AND
12 DISBURSED IT, HOWEVER HE DISBURSED IT ON THE RECORDS,
13 AT THAT TIME DID YOU HAVE ANY KNOWLEDGE THAT THAT WOULD
14 IN ANY WAY AFFECT YOUR WORKERS' COMPENSATION CLAIM
15 ADVERSELY?

16 A. NO, SIR, I DID NOT.

17 Q. OKAY.

18 BY MR. POPE:

19 I THINK THAT'S ALL I HAVE ON THAT SUBJECT. I
20 GUESS WE BETTER GET HER BACK.

21 (OFF THE RECORD DISCUSSION)

22 (MR. KIMMER'S DIRECT TESTIMONY CONTINUES)

23 DIRECT EXAMINATION RESUMED BY MR. POPE:

24 Q. DURING THE COURSE OF YOUR EMPLOYMENT WITH MURATA,
25 RICHARD, YOU WENT TO HOW MANY -- YOU DON'T HAVE TO NAME

1 THEM ALL, BUT APPROXIMATELY HOW MANY DIFFERENT PLANTS
2 TO EITHER INSTALL OR SERVICE MURATA EQUIPMENT?

3 A. TWENTY OR MORE.

4 Q. GOING BACK TO ANOTHER POINT THAT WAS COVERED IN YOUR
5 DEPOSITION. IN JANUARY OF '98, APPROXIMATELY A YEAR
6 BEFORE THIS ACCIDENT, DID YOU HAVE AN INJURY ON THE JOB
7 IN JANUARY OF '98, IN THE CANNON MILLS IN SALISBURY?

8 A. CANNON MILLS IN SALISBURY? YES, SIR, I DID.

9 Q. AND YOU DID NOT HIRE A LAWYER IN THAT CASE OR MAKE A
10 CLAIM, IS THAT RIGHT?

11 A. MR. POPE, I'M NOT SURE IF MURATA DID THAT ON A WORKERS'
12 COMP. I DO KNOW THAT I DIDN'T EVER GET ANY DOCTOR
13 BILLS. BUT IT WAS ---

14 Q. ALL RIGHT, FROM THAT INJURY IN JANUARY OF '98 TO YOUR
15 BACK, DID YOU MAKE A FULL RECOVERY OR NOT?

16 A. YES, SIR.

17 Q. DID YOU EVER RECEIVE ANY LUMP SUM PAYMENT FROM WORKERS'
18 COMP OR ANYBODY IN CONNECTION WITH THAT FOR ANY
19 DISABILITY?

20 A. THE ONLY THING I REMEMBER FROM WORKERS' COMP WAS
21 MILEAGE. AND THAT'S WHY I SAY THAT MURATA MUST HAVE
22 TURNED THAT IN TO WORKERS' COMP. BUT I THINK THAT ---

23 Q. YOU NEVER WENT BEFORE A HEARING OR GOT ANY ---

24 A. NO, SIR.

25 Q. --- FORM 16 OR ANYTHING LIKE THAT?

1 A. NO, SIR.

2 Q. ALL RIGHT. WOULD YOU WORK, RICHARD, IF YOU COULD?

3 A. YES, SIR, I WOULD.

4 Q. AND YOU'RE ASKING THIS COMMISSIONER TO MAKE A FINDING
5 THAT YOU'RE ENTITLED TO TOTAL WORKERS' COMPENSATION
6 DISABILITY; IS THAT CORRECT?

7 A. YES, SIR.

8 Q. YOU'RE ASKING FOR AN ORDER DIRECTING THAT THE COURSE OF
9 MEDICAL BILLS BE PAID?

10 A. YES, SIR.

11 Q. HAVE ANY BEEN PAID?

12 A. ONLY ---

13 Q. BY WORKERS' COMP?

14 A. NO, SIR.

15 BY MR. POPE:

16 ANSWER ANY QUESTIONS MR. JOHNSON HAS.

17 CROSS EXAMINATION BY MR. JOHNSON:

18 Q. MR. KIMMER, DO YOU HAVE ANY CHECK OR RECORD THAT YOU
19 COULD SHOW THAT YOU WERE BEING PAID -- THAT YOU WERE
20 ACTUALLY PAID MILEAGE FOR THE TRIP ON WHICH YOU WERE
21 HURT WITH YOU HERE TODAY?

22 A. MY ---

23 Q. IT'S JUST YES OR NO. DO YOU HAVE IT OR NOT?

24 A. NO, SIR.

25 Q. OKAY. NOW, MR. KIMMER, AS I UNDERSTAND IT YOU WERE

1 INVOLVED IN THIS ACCIDENT, AND YOU TOLD US YOU HURT
2 YOUR HEAD, KNEES, NECK, AND BACK, IS THAT RIGHT?

3 A. YES, SIR.

4 Q. YOU WERE TAKEN TO THE EMERGENCY ROOM, AND YOU WERE
5 TREATED AND RELEASED?

6 A. RIGHT.

7 Q. YOU WEREN'T KEPT OVERNIGHT OR ADMITTED FOR ANY SORT OF
8 TREATMENT, WERE YOU?

9 A. NO, SIR.

10 Q. AND DESPITE WHAT YOU MAY TELL US ABOUT THE SEVERITY OF
11 THE ACCIDENT AND WHATEVER INJURIES YOU HAD, YOUR
12 INJURIES WERE SUCH THAT YOU WERE EXAMINED, TREATED IN
13 THE EMERGENCY ROOM, AND RELEASED, CORRECT?

14 A. YES, SIR.

15 Q. NOW, DID I UNDERSTAND YOU TO SAY THAT SINCE YOUR
16 EMERGENCY ROOM TREATMENT, YOU'VE HAD SURGERY TO YOUR
17 RIGHT KNEE ON TWO OCCASIONS AND SURGERY TO YOUR LEFT
18 KNEE ON ONE OCCASION?

19 A. NO, SIR. I'VE HAD SURGERY ON -- NO, SIR.

20 Q. ALL RIGHT, SO YOU'VE HAD WHAT THEN? YOU'VE HAD THREE
21 TO YOUR RIGHT?

22 A. THREE TO MY RIGHT AND ---

23 Q. AND ONE TO YOUR LEFT?

24 A. MY LEFT. YES, SIR.

25 Q. NOW, HAVE ALL THOSE SURGERIES BEEN ARTHROSCOPIC

1 SURGERIES?

2 A. YES, SIR.

3 Q. HAVE ALL OF THEM BEEN SURGERIES WHERE YOU JUST WENT IN
4 AS AN OUT PATIENT, AND THEY DID THE SURGERY AND SENT
5 YOU HOME?

6 A. YES, SIR.

7 Q. HAVE YOU HAD TO SPEND THE NIGHT IN A HOSPITAL GETTING
8 MEDICAL CARE AT ANY TIME FOR ANY REASON THAT YOU CLAIM
9 IS RELATED TO THIS AUTOMOBILE ACCIDENT?

10 A. NO, SIR.

11 Q. NOW, YOU SAY YOU INJURED YOUR BACK IN THE ACCIDENT,
12 CORRECT?

13 A. YES, SIR.

14 Q. HAVE YOU HAD ANY KIND OF SURGICAL PROCEDURE BY ANY
15 PHYSICIAN FOR ANY PROBLEM RELATED TO YOUR BACK?

16 A. NO, SIR.

17 Q. MR. KIMMER, ISN'T IT CORRECT THAT AFTER THIS ACCIDENT
18 OCCURRED, YOU STARTED GETTING YOUR MEDICAL BILLS PAID
19 BY YOUR GROUP MEDICAL CARRIER?

20 A. YES, SIR.

21 Q. AND YOU APPLIED FOR AND STARTED RECEIVING SHORT TERM
22 DISABILITY BENEFITS INITIALLY AND THEN LONG TERM
23 DISABILITY BENEFITS?

24 A. YES, SIR.

25 Q. AND TELL THE COMMISSIONER, IF YOU WOULD, HOW MUCH YOU

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1 WERE GETTING FROM SHORT TERM DISABILITY IN TERMS OF
2 YOUR REGULAR SALARY.

3 A. SIR, IT'S BEEN FOUR YEARS AGO. I HAVE -- HAVEN'T THE
4 SLIGHTEST IDEA ABOUT THE SHORT TERM DISABILITY PAYMENT.

5 Q. THEN LONG TERM.

6 A. THE LONG TERM DISABILITY I THINK BEFORE TAXES WAS 1,700
7 AND SOME ODD DOLLARS PER MONTH.

8 Q. WASN'T IT ABOUT 70% OF WHAT YOU WERE GETTING BY WAY OF
9 SALARY?

10 A. I THINK IT WAS BASED ON 70%, YES.

11 Q. AND ACTUALLY WASN'T YOUR SHORT TERM DISABILITY A LITTLE
12 HIGHER?

13 A. AGAIN, I CANNOT REMEMBER WHAT THE SHORT TERM WAS. BUT
14 IT COULD HAVE BEEN, YES.

15 Q. AND OF COURSE IF YOUR WORK -- IF YOUR INJURY WAS WORK
16 RELATED, YOU WEREN'T ENTITLED TO DISABILITY BENEFITS,
17 YOU WERE ONLY ENTITLED TO COMP, RIGHT?

18 A. I DON'T KNOW.

19 Q. NOW, HOW LONG HAVE YOU DRAWN -- DID YOU DRAW SHORT TERM
20 BENEFITS? WAS THAT 30 DAYS OR 90? WHICH?

21 A. THIRTY DAYS I THINK.

22 Q. AND HOW LONG DID YOU DRAW LONG TERM DISABILITY
23 BENEFITS?

24 A. FOR 11 MONTHS I THINK.

25 Q. THE FULL TIME?

1 A. YES, SIR.

2 Q. DID THEY CUT YOU OFF FOR A REASON?

3 A. YES, THEY DID.

4 Q. AND DID THEY CUT YOU OFF FOR THE REASON THAT THE DOCTOR
5 RELEASED YOU TO RETURN TO WORK, AND YOU FAILED TO DO
6 SO?

7 A. PART OF THAT IS TRUE AND PART OF IT IS NOT TRUE.

8 Q. ACTUALLY DR. PETER J. KINAHAN RELEASED YOU TO RETURN TO
9 WORK ON JANUARY THE 5TH, 2000, DIDN'T HE?

10 A. HE -- I WAS SUPPOSED TO RETURN TO WORK ON JANUARY THE
11 10TH OF 2000...

12 Q. THAT WOULD HAVE BEEN LESS THAN A YEAR AFTER THE
13 ACCIDENT? A LITTLE LESS THAN A YEAR AFTER THE
14 ACCIDENT?

15 A. RIGHT.

16 Q. NOW, MR. KIMMER, IN TERMS -- AND AT THAT POINT YOUR
17 SHORT TERM -- YOUR LONG TERM, THEY CUT YOU OFF THAT,
18 DIDN'T THEY?

19 A. WELL, THE LONG TERM WOULD HAVE WENT ON THROUGH JANUARY,
20 YES.

21 Q. SO THEY CUT YOU OFF, CORRECT?

22 A. YES, IT WAS -- IT WAS STOPPED, YES.

23 Q. AND YOU DID NOT EVER RETURN TO WORK AT THAT POINT, DID
24 YOU?

25 A. THAT'S RIGHT. BECAUSE I ---

1 Q. NOW, YOU HAVE SINCE -- OR DURING THAT TIME APPLIED FOR
2 SOCIAL SECURITY DISABILITY, HAVEN'T YOU?

3 A. YES, SIR.

4 Q. AND YOU HAVE NOT -- WELL, LET ME ASK YOU THIS. IN
5 TERMS OF RETURNING TO WORK, GAINFUL EMPLOYMENT, YOU
6 HAVEN'T BOTHERED TO GO TO VOCATIONAL REHABILITATION,
7 HAVE YOU?

8 A. NO, SIR.

9 Q. HAVE YOU BEEN TO JOB SERVICE?

10 A. NO, SIR.

11 Q. HAVE YOU APPLIED -- BOTHERED TO APPLY FOR ANY KIND OF
12 WORK TO GET YOU BACK INTO THE WORK FORCE?

13 A. NO, SIR.

14 Q. SO EVEN THOUGH YOU'VE ONLY HAD ARTHROSCOPIC SURGERIES
15 TO YOUR KNEE, NEVER SPENT A NIGHT IN A HOSPITAL, NEVER
16 HAD ANY SURGERY TO YOUR BACK, YOU'VE DONE NOTHING TO
17 TRY TO GET BACK INTO A WORK POSITION, HAVE YOU?

18 A. NO, SIR.

19 Q. NOW, MR. KIMMER, LET ME ASK YOU THIS. EVEN THOUGH
20 YOU'VE SAID YOU ONLY HAVE A SIXTH GRADE EDUCATION, YOU
21 CAN READ, CAN'T YOU?

22 A. I CAN PRETTY WELL READ. I HAVE TROUBLE UNDERSTANDING
23 WHAT I READ.

24 Q. WELL, SOME OF US -- ALL OF US HAVE THAT PROBLEM
25 SOMETIMES, DON'T WE?

- 1 A. WELL...
- 2 Q. YOU CAN WRITE, CAN'T YOU?
- 3 A. SOME, YES, SIR.
- 4 Q. IN FACT YOU WERE WORKING ON HIGHLY TECHNICAL EQUIPMENT,
5 WEREN'T YOU?
- 6 A. RIGHT.
- 7 Q. YOU HAD A VERY SKILLED JOB?
- 8 A. PRETTY MUCH SO, YES, SIR.
- 9 Q. NOW, DESPITE THE FACT THAT YOU WERE ABLE, EVEN WITHOUT
10 AN EDUCATION, TO WORK YOURSELF INTO A SKILLED JOB, YOU
11 HAVEN'T SINCE JANUARY THE 5TH -- JANUARY 10TH, 2000,
12 DONE ANYTHING TO GET BACK INTO THE WORK FORCE, HAVE
13 YOU, SIR?
- 14 A. NO, SIR.
- 15 Q. NOW, MR. KIMMER, I WAS LOOKING AT YOUR MEDICAL RECORDS
16 THAT YOUR LAWYER HAS SUBMITTED INTO EVIDENCE, AND I
17 WANT TO JUST GET ONE OR TWO THINGS CLEAR. YOUR VISIT
18 WITH DR. WILLIAM STEWART. DO YOU REMEMBER HIM?
- 19 A. IN COLUMBIA, YES, SIR.
- 20 Q. IN COLUMBIA.
- 21 A. YES, SIR.
- 22 Q. THAT WAS SOMETHING YOUR LAWYER SET YOU UP TO SEE,
23 WASN'T IT?
- 24 A. YES, SIR, IT WAS.
- 25 Q. YOU'VE SEEN HIM ONE TIME?

- 1 A. YES, SIR.
- 2 Q. ALL RIGHT. AND YOU TRAVELED TO COLUMBIA TO SEE HIM,
3 DIDN'T YOU?
- 4 A. YES, SIR.
- 5 Q. AND DR. STEWART, DID HE DO ANYTHING ABOUT LINING UP
6 INTERVIEWS OR JOB OPPORTUNITIES FOR YOU?
- 7 A. NO, SIR.
- 8 Q. NOW, DID I ALSO UNDERSTAND YOU TO SAY THAT YOU ARE
9 SEEING A PSYCHIATRIST?
- 10 A. YES, SIR.
- 11 Q. WHAT'S THAT DOCTOR'S NAME?
- 12 A. HE'S GOT A REAL FUNNY NAME, AND I CANNOT PRONOUNCE IT.
13 MR. POPE, DID YOU HAPPEN TO GET THAT FROM THE HOSPITAL?
- 14 Q. IF YOU DON'T KNOW -- WHERE IS HE?
- 15 A. SIR?
- 16 Q. WHERE IS HE LOCATED?
- 17 A. HE COMES OUT OF LEXINGTON TO THE NEWBERRY COUNTY
18 HOSPITAL. NEWBERRY COUNTY.
- 19 Q. AND YOU CAN'T TELL ME HIS NAME?
- 20 A. NO, SIR.
- 21 Q. IF YOU CAN'T, THAT'S ALL RIGHT. NOW, I'M LOOKING AT
22 THE MEDICAL RECORDS YOUR LAWYER HAS SUBMITTED. WHEN
23 WAS THE LAST TIME YOU SAW DR. MANDELL?
- 24 A. DR. MANDELL? I SEEN HIM TWO MONTHS AGO I THINK IT WAS.
25 Q. HOW ABOUT DR. JAMES AND DR. MITCHELL?

1 A. I DON'T SEE DR. MITCHELL ANYMORE. DR. JAMES IS MY
2 ORTHOPEDIC SURGEON THAT I SEE IN LANCASTER. I SEEN HIM
3 ABOUT A MONTH AGO.

4 Q. NOW, LET ME ASK YOU THIS, SIR. YOU HAD A LAWYER AT THE
5 TIME YOU SETTLED YOUR CLAIM WITH THE DRIVER OF THE
6 ADVERSE VEHICLE, CORRECT?

7 A. YES, SIR.

8 Q. AND YOU UNDERSTAND THAT THERE IS A QUESTION IN THIS
9 CASE THAT THIS COMMISSIONER HAS GOT TO DECIDE AS TO
10 WHETHER THAT ACT BARS YOUR RIGHT TO RECOVER WORKERS'
11 COMPENSATION BENEFITS, DON'T YOU?

12 A. YES, SIR, I GUESS I DO.

13 Q. AND YOU'VE ACTUALLY HAD DISCUSSIONS NOT ONLY WITH THAT
14 LAWYER, BUT YOUR OWN LAWYER, THAT IF THAT OCCURS, YOU
15 HAVE A LEGAL MALPRACTICE CASE AGAINST THAT LAWYER,
16 DON'T YOU?

17 A. (NO RESPONSE)

18 Q. THAT'S SOMETHING YOU'VE CONSIDERED AND DISCUSSED, ISN'T
19 IT?

20 A. IT SEEMS LIKE ME AND MR. WRIGHT DID -- HE DID TELL ME
21 THAT THAT COULD BE POSSIBLE IF HE HAD MESSED THIS THING
22 UP, YES.

23 Q. OKAY. SO IN TERMS OF REMEDIES, YOU HAVE OTHER REMEDIES
24 AVAILABLE, DON'T YOU?

25 A. I CAN'T ANSWER THAT QUESTION BECAUSE I DON'T KNOW WHAT

1 YOU MEAN BY OTHER REMEDIES AVAILABLE.

2 Q. ALL RIGHT. I WANT TO ASK YOU; YOU MADE THE STATEMENT
3 THAT YOU WERE IN EXCELLENT HEALTH BEFORE THIS ACCIDENT.
4 I THINK YOU SAID YOU HADN'T HAD ANY PROBLEMS WITH
5 ARTHRITIS. DID I UNDERSTAND YOU CORRECTLY?

6 A. YES, SIR.

7 Q. ACTUALLY YOU HAD HAD PROBLEMS -- SOME SIGNIFICANT --
8 SOME REAL PROBLEMS WITH BOTH YOUR KNEES AND YOUR BACK
9 BEFORE YOU WERE EVER IN THIS ACCIDENT, HADN'T YOU, SIR?

10 A. INFLAMED TENDONS WITH MY KNEE, AND A PINCHED NERVE IN
11 MY BACK, YES.

12 Q. WELL, YOU HAD INJURED YOUR -- HAD A KNEE INJURY IN
13 AUGUST OR SEPTEMBER OF 1998, HADN'T YOU, WHEN YOU
14 INJURED YOUR RIGHT KNEE WORKING ON A MACHINE?

15 A. RIGHT.

16 Q. YOU HAD HAD AN INJURY TO YOUR BACK IN JANUARY OF 1998,
17 HADN'T YOU?

18 A. I THINK THAT'S THE MONTH, YES, SIR.

19 Q. IN FACT THAT INJURY -- YOU HAD ALSO HAD AN INJURY TO
20 YOUR BACK, WHERE YOU HAD TO HAVE AN EPIDURAL INJECTION,
21 HADN'T YOU?

22 A. BEFORE THIS WRECK?

23 Q. YES, SIR.

24 A. I DON'T RECALL IF I DID.

25 Q. YOU DON'T RECALL BEING TREATED AT THE SPRINGS HOSPITAL

1 IN 1994 FOR SCIATICA AND LOW BACK PAIN, AND THAT YOU
2 HAD AN EPIDURAL INJECTION AT THAT TIME AND IT WAS
3 TURNED IN AS WORKERS' COMP? YOU WERE BEING TREATED BY
4 DR. LEHMAN?

5 A. (NO RESPONSE)

6 Q. LET ME JUST SHOW YOU THIS AND ASK YOU. THIS IS PART OF
7 THE APA SUBMISSION, PAGES 282 AND 283. IS THAT YOU,
8 MR. KIMMER, GETTING AN EPIDURAL INJECTION?

9 A. (WITNESS REVIEWS DOCUMENT) YEAH, THAT'S ME I GUESS.

10 Q. ISN'T IT A FACT THAT YOU HAD BACK PAIN AT THAT TIME
11 THAT WAS SO SIGNIFICANT THAT YOU SUBJECTED YOURSELF TO
12 AN EPIDURAL INJECTION?

13 A. I'M STILL HAVING TROUBLE UNDERSTANDING WHAT THE
14 EPIDURAL INJECTION IS.

15 Q. RIGHT HERE.

16 A. IF I SEE IT, I STILL WON'T KNOW WHAT IT IS. WHAT IT
17 MEANS.

18 Q. A SHOT. A SHOT. A STEROID INJECTION FOR BACK PAIN.

19 A. YES, I DID.

20 Q. AND YOU WERE SUFFERING WITH SCIATICA AND LOW BACK PAIN
21 AT THAT TIME, WEREN'T YOU?

22 A. FOR A SHORT PERIOD OF TIME, YES.

23 Q. AND THAT WAS SO -- SO YOU HAD BACK PAIN IN '94 AND '98,
24 CORRECT?

25 A. '98? YES, SIR.

1 Q. YOU ALSO HAD A PROBLEM WHERE A DR. MCCARTHY DIAGNOSED
2 YOU AS HAVING A PINCHED NERVE, DIDN'T YOU?

3 A. THAT WAS IN '98, YES.

4 Q. YOU ALSO WERE IN A PRIOR AUTOMOBILE ACCIDENT IN 1991 OR
5 '92 IN WHICH YOU BROKE -- YOU HIT THE WINDSHIELD, BROKE
6 YOUR NOSE, AND HAD NECK, SHOULDER, AND BACK PAIN AT
7 THAT TIME, DIDN'T YOU?

8 A. I DON'T -- I DON'T RECALL ABOUT THE NECK AND SHOULDER
9 AND BACK PAIN. BUT I DO THE BROKE NOSE, YES.

10 Q. NOW, YOU SAID THAT YOU HAD NEVER BEEN AWARE THAT YOU
11 HAD ANY KIND OF ARTHRITIC PROBLEMS BEFORE THIS
12 ACCIDENT?

13 A. NO, I WAS NOT AWARE THAT I HAD ANY. NO.

14 Q. WHEN YOU WERE BEING TREATED AT CAROLINA ORTHOPEDIC
15 SURGERY IN FEBRUARY OF 1998 FOR LOW BACK PAIN AND
16 DEGENERATIVE DISC DISEASE, IS IT YOUR TESTIMONY THAT
17 THAT DIDN'T INVOLVE -- NOBODY TOLD YOU THEN YOU HAD
18 PROBLEMS WITH DEGENERATIVE DISC DISEASE AND ARTHRITIS?

19 A. NO, SIR. MY UNDERSTANDING AT THAT TIME WAS I HAD A
20 PINCHED NERVE.

21 Q. SO IF THE DOCTOR'S RECORDS REFLECT TO THE CONTRARY, HE
22 JUST DIDN'T EXPLAIN IT TO YOU?

23 A. WELL, THAT'S WHAT HE PUT ME IN PHYSICAL THERAPY FOR. A
24 FEW DAYS FOR. TO MY RECOLLECTION OF THEN, YES.

25 Q. MR. KIMMER, IN TERMS OF ACTIVITIES, YOU CUT YOUR GRASS,

1 DON'T YOU?

2 A. OCCASIONALLY.

3 Q. YOU FISH, DON'T YOU?

4 A. OCCASIONALLY, YES, SIR.

5 Q. YOU DRIVE AN AUTOMOBILE, DON'T YOU?

6 A. YES, SIR.

7 Q. YOU GO TO THE STORE, DON'T YOU?

8 A. YES, SIR.

9 Q. YOU GO OUT FROM TIME TO TIME TO HAVE MEALS, DON'T YOU?

10 A. ONCE IN A WHILE, YES, SIR.

11 Q. HOW OLD ARE YOU TODAY, SIR?

12 A. I'M 56.

13 Q. MR. KIMMER, DO YOU HAVE ANY PLANS TO TRY TO GET BACK TO
14 WORK?

15 A. WELL, I HAVE ---

16 Q. AFTER THIS IS OVER.

17 A. I HAVE -- I HAVE TALKED TO BOTH MY DOCTORS.

18 Q. NO, I'M ASKING YOU YOUR PLANS.

19 BY MR. POPE:

20 HE'S ALLOWED TO ANSWER THE QUESTION.

21 BY MR. JOHNSON:

22 NOT WHAT SOMEBODY HAS TOLD YOU.

23 CROSS EXAMINATION RESUMED BY MR. JOHNSON:

24 Q. I'M JUST ASKING YOU DO YOU HAVE ANY PLANS.

25 A. IF I'M ABLE TO, YES.

1 BY MR. JOHNSON:

2 THANK YOU, THAT'S ALL I HAVE.

3 RE-DIRECT EXAMINATION BY MR. POPE:

4 Q. MR. KIMMER, LET ME ASK YOU ONE QUESTION. IS THIS THE
5 KIND OF REPORT YOU FILLED IN AND IN FACT DID FILL IN
6 THE SAME WEEK OF THE ACCIDENT? JUST LOOK AT IT
7 QUICKLY. IT'S GETTING TO BE LATE.

8 A. (WITNESS REVIEWS DOCUMENT)

9 Q. THAT'S YOUR REPORT?

10 A. YES, SIR.

11 Q. AND THAT'S THE ONE YOU SUBMITTED WHEN YOU GOT PAID?

12 A. YES, SIR. AND THERE WAS THE MILEAGE ON THE DATE OF THE
13 ACCIDENT. I DID GO TO THE PLANT. I DIDN'T PUT IT ON
14 HERE. AND ONE SIMPLE REASON WHY. THE SECRETARY THAT
15 TAKES CARE OF THIS, ONE TIME I HAD TO DETOUR COMING
16 FROM A PLANT SIX MILES FURTHER BACK HOME THAN IT WAS TO
17 THE PLANT, AND SHE REJECTED TO PAY ME FOR THAT SIX
18 MILES. AND THAT'S WHY THAT WAS NOT PUT ON THERE.

19 Q. BUT WHEN YOU DROVE TO WORK ON FRIDAY MORNING, WAS IT
20 ANY DIFFERENT FROM WHEN YOU DROVE TO WORK THURSDAY AND
21 WEDNESDAY AND TUESDAY AND MONDAY OF THAT SAME WEEK?

22 A. NO, SIR.

23 Q. YOU WERE PAID FOR THOSE DAYS?

24 A. RIGHT.

25 BY MR. POPE:

1 WE WOULD OFFER THIS INTO EVIDENCE.

2 BY MR. JOHNSON:

3 I DON'T HAVE ANY OBJECTION TO IT ---

4 BY THE WITNESS:

5 A. AND I WAS AT THE SAME PLANT.

6 BY MR. POPE:

7 I'LL JUST OFFER THIS AS AN EXHIBIT.

8 BY MR. JOHNSON:

9 CAN I JUST GET CLARIFICATION. DID HE SAY THIS
10 DOES NOT INCLUDE THE DAY OF THE ACCIDENT OR IT DOES?

11 BY MR. POPE:

12 HE SAID IT DID NOT. THE MILEAGE IS NOT ON THERE.

13 (PLAINTIFF'S EXHIBIT 1 MARKED, RETAINED)

14 REDIRECT EXAMINATION RESUMED BY MR. POPE:

15 Q. IT WASN'T ON THERE, BUT WAS THERE ANY REASON WHY YOU
16 SHOULDN'T HAVE BEEN PAID FOR THAT DAY?

17 A. YEAH, BECAUSE I DIDN'T GET TO WORK. I WENT TO THE
18 PLANT AFTER I WAS RELEASED FROM THE HOSPITAL. BUT NOT
19 -- I COULDN'T WORK THAT DAY.

20 Q. THE WRECK TOOK PLACE HOW FAR FROM THE PLANT YOU WERE
21 HEADED TO FROM YOUR HOME?

22 A. (NO RESPONSE)

23 Q. APPROXIMATELY.

24 A. FROM THE PLANT, ABOUT FOUR OR FIVE MILES.

25 Q. HE MENTIONED -- YOU MENTIONED THE DATE OF JANUARY THE

1 10TH OF 2000. WERE YOU TERMINATED FROM YOUR EMPLOYMENT
2 BY MURATA BY MR. GATTIS?

3 A. YES, SIR. ON JANUARY THE 6TH.

4 Q. OF 2000?

5 A. YES, SIR.

6 Q. ALL RIGHT, DID YOU HAVE A JOB TO RETURN TO ON JANUARY
7 THE 10TH OF 2000?

8 A. NO, SIR, I DIDN'T HAVE.

9 Q. THROUGHOUT YOUR 32 YEARS WITH SPRINGS MILLS, HAVE YOU
10 EVER BEEN ACCUSED OF BEING LAZY OR MALINGERING?

11 BY MR. JOHNSON:

12 I WOULD OBJECT.

13 BY THE WITNESS:

14 A. ABSOLUTELY NOT.

15 BY MR. JOHNSON:

16 THAT WOULD BE HEARSAY. THAT WOULD BE HEARSAY.

17 REDIRECT EXAMINATION RESUMED BY MR. POPE:

18 Q. DID YOU GET FITNESS REPORTS OR PERFORMANCE APPRAISALS
19 FROM YOUR EMPLOYMENT AT SPRINGS?

20 BY MR. JOHNSON:

21 THAT WOULD BE HEARSAY. I MEAN, WHETHER HE GOT
22 THEM WOULDN'T BE, BUT WHAT THEY SAY WOULD BE, WHICH I
23 ASSUME IS THE NEXT QUESTION.

24 BY COMMISSIONER CHILDS:

25 SUSTAINED AS TO HEARSAY.

1 BY MR. POPE:

2 THAT'S ALL THE QUESTIONS I HAVE.

3 BY COMMISSIONER CHILDS:

4 ANYTHING FURTHER FROM THE CLAIMANT?

5 BY MR. POPE:

6 NO, MA'AM.

7 BY COMMISSIONER CHILDS:

8 ANYTHING FROM THE DEFENSE?

9 BY MR. JOHNSON:

10 NO, MA'AM.

11 BY MR. POPE:

12 I'LL CALL MR. WRIGHT.

13 PHILIP E. WRIGHT, BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. POPE:

15 Q. GIVE US YOUR NAME AND ADDRESS, PLEASE.

16 A. MY NAME IS PHILIP E. WRIGHT, AND I'M AN ATTORNEY AND I
17 LIVE AT 1551 PHARAOH DRIVE IN ROCK HILL, SOUTH
18 CAROLINA.

19 Q. AND MR. WRIGHT, YOU REPRESENTED RICHARD KIMMER OVER THE
20 YEARS PRIOR TO 1991?

21 A. I REPRESENTED HIM IN SEVERAL MATTERS, YES, SIR.

22 Q. ALL RIGHT. DO YOU REMEMBER SEEING HIM IN CONNECTION
23 WITH INJURIES HE GOT IN AN AUTOMOBILE WRECK ON THE 29TH
24 OF JANUARY OF '99?

25 A. YES.

1 Q. DO YOU REMEMBER ABOUT WHEN IT WAS AFTER THAT, THAT YOU
2 SAW HIM? A MONTH OR SO?

3 A. IT WAS PRETTY SOON AFTER IT HAPPENED. NOT VERY LONG AT
4 ALL. IT WASN'T A FEW WEEKS.

5 Q. OKAY. COULD YOU TELL FROM THEN, AND FROM SUBSEQUENT
6 VISITS, WHETHER HIS INJURIES WERE MILD, MODERATE OR
7 SEVERE?

8 BY MR. JOHNSON:

9 OBJECTION. THAT WOULD BE A LAY OPINION THAT
10 WOULD NOT BE IN ACCORDANCE WITH RULE 70, WHATEVER IT
11 IS, 1 OF THE RULES OF EVIDENCE. AND I OBJECT TO HIS
12 OFFERING THAT KIND OF OPINION. THE MEDICAL RECORDS
13 WILL SPEAK FOR WHATEVER HIS CONDITION WAS.

14 DIRECT EXAMINATION RESUMED BY MR. POPE:

15 Q. DID YOU RECEIVE THOSE MEDICAL RECORDS? AT LEAST SOME
16 OF THEM AS THEY WERE COMING IN?

17 A. I DID.

18 Q. DO YOU ROUTINELY ADVISE CLIENTS BASED ON HOW SEVERE YOU
19 THINK THEIR INJURIES ARE? BASED ON THOSE RECORDS?

20 A. WELL, BASED ON THE RECORDS I KNEW WHAT HIS TREATMENT
21 WAS, AND I KNEW WHO HE WAS SEEING AND WHAT THEY WERE
22 DOING. AND HE SAW ME VERY REGULARLY. SO I KNEW HE WAS
23 HURT, YEAH.

24 Q. DID YOU HAVE AN IDEA OF THE DEGREE TO WHICH HE WOULD BE
25 HURT IN TERMS OF POSSIBLE LEGAL RECOURSE? DAMAGES?

1 A. I HANDLED THE CASE ACTIVELY FOR ABOUT A YEAR. AND I
2 KNEW HE WAS HURT SERIOUSLY.

3 BY MR. JOHNSON:

4 OBJECT AND MOVE TO STRIKE. THAT'S A LAY OPINION.
5 IT'S INAPPROPRIATE.

6 BY COMMISSIONER CHILDS:

7 SUSTAINED AS TO THAT, BUT IF YOU'RE GOING TO
8 OFFER ---

9 BY MR. POPE:

10 COMMISSIONER, LAWYERS DO THAT EVERY DAY. MAKE
11 DECISIONS LIKE THAT.

12 BY COMMISSIONER CHILDS:

13 BUT I THINK HE COULD ANSWER IT MORE FROM A DAMAGE
14 STANDPOINT AS ---

15 DIRECT EXAMINATION RESUMED BY MR. POPE:

16 Q. FROM THE STANDPOINT OF NOT MEDICAL, BUT DAMAGE
17 STANDPOINT. THE STANDPOINT OF A WRECK. YOU KNOW, THE
18 ELEMENTS OF NEGLIGENCE WHERE YOU'VE GOT AN ACT AND
19 DAMAGES THAT FLOW FROM THAT ACT. DO YOU MAKE THAT SORT
20 OF ANALYSIS ON A REGULAR BASIS WITH CLIENTS? WHETHER
21 OR NOT THERE'S ANY MONEY RECOVERY THAT'S LIKELY FROM
22 THAT INCIDENT?

23 A. SURE.

24 Q. AND FROM YOUR REVIEW OF HIS MEDICAL RECORDS AND YOUR
25 ANALYSIS OF POSSIBLE SOURCES OF RECOVERY, DID YOU THINK

1 HIS INJURIES, MEANING NOT MEDICAL, BUT IN TERMS OF
2 LEGAL, WERE SIGNIFICANT AND SERIOUS OR NOT?

3 BY MR. JOHNSON:

4 OBJECT, UNLESS WE CAN GET A POINT IN TIME WE'RE
5 TALKING ABOUT. BEFORE OR AFTER ---

6 DIRECT EXAMINATION RESUMED BY MR. POPE:

7 Q. WITHIN FOUR MONTHS AFTER THE ACCIDENT.

8 A. I'M TRYING TO RECALL THE COURSE OF HIS TREATMENT. I
9 DON'T THINK THAT WITHIN FOUR MONTHS AFTER THE ACCIDENT
10 I KNEW THE FULL EXTENT OF HIS INJURIES. BECAUSE HE WAS
11 TREATING WITH VARIOUS DOCTORS. AND AS I RECALL THE
12 TREATMENT, IT WAS VERY SLOW AND NOT -- HE DID NOT
13 APPEAR TO ME TO BE PROGRESSING VERY WELL IN THE
14 TREATMENT.

15 Q. LET'S SAY AS OF EARLY JUNE. BECAUSE WE KNOW FROM THE
16 RECORDS THE SETTLEMENT ---

17 A. WELL, AS OF EARLY JUNE, HE HAD SUBSTANTIAL MEDICAL
18 COSTS, AND I KNEW THAT THE CASE WAS GOING TO BE A
19 SUBSTANTIAL CASE. BASED ON JUST THE AMOUNT OF THE
20 MEDICAL BILLING THAT I HAD GOTTEN TO THAT POINT. WHICH
21 I THINK WAS AROUND 20 OR \$25,000 AT THAT POINT.

22 Q. DID YOU DO -- IN THE COURSE OF YOUR WORK AS HIS LAWYER,
23 DID YOU ALSO LOOK INTO THE AT FAULT PARTY'S SITUATION
24 WITH INSURANCE COVERAGE AND PERSONAL ASSETS?

25 A. YES. THE PERSON THAT HIT HIM, MR. PENDERGRASS, LIVED

1 IN CHESTER. WE HAD DIFFICULTY LOCATING HIM. THE
2 ADDRESS THAT HE USED ON THE INCIDENT REPORT WAS NOT THE
3 ADDRESS WHERE HE ACTUALLY WAS. I ENDED UP EVENTUALLY
4 SENDING A PRIVATE INVESTIGATOR OVER TO FIND HIM AND
5 SERVE HIM BECAUSE HE EVADED LAW ENFORCEMENT WHEN WE
6 SENT LAW ENFORCEMENT TO SERVE HIM IN THE COMMUNITY.

7 Q. AND DID YOU DETERMINE WHETHER OR NOT HE WAS A PERSON
8 WHO HAD ANY ASSETS OR NOT?

9 A. HE DIDN'T HAVE ---

10 BY MR. JOHNSON:

11 EXCUSE ME, I WANT TO OBJECT. UNTIL THERE'S SOME
12 FOUNDATION DESCRIBING WHAT HE DID SO THAT WE'LL KNOW
13 THE SOURCE OF IT, I OBJECT TO IT.

14 BY THE WITNESS:

15 A. I PERSONALLY LOOKED AT THE COUNTY COURTHOUSE IN CHESTER
16 COUNTY TO SEE IF HE HAD ANY ASSETS. HE DID NOT HAVE
17 ANY THAT I COULD FIND. THE PRIVATE INVESTIGATOR THAT I
18 HIRED LOOKED AND COULD FIND NONE.

19 BY MR. JOHNSON:

20 OBJECTION, HEARSAY.

21 DIRECT EXAMINATION RESUMED BY MR. POPE:

22 Q. DO YOU ROUTINELY HIRE PRIVATE INVESTIGATORS FOR SUCH
23 PURPOSE IN THE NORMAL COURSE AND SCOPE OF YOUR JOB AS A
24 LAWYER?

25 A. NOT USUALLY. THAT'S ONE OF THE -- I'VE PROBABLY ONLY

1 DONE IT TWO OR THREE TIMES IN MY PRACTICE.

2 Q. OKAY. DID YOU HAVE REASON TO BELIEVE THIS PERSON OR
3 THIS PRIVATE INVESTIGATOR WOULD DO A REASONABLE JOB,
4 BASED ON YOUR KNOWLEDGE OF HIM AND USAGE OF HIM?

5 BY MR. JOHNSON:

6 COMMISSIONER, I OBJECT FOR THE REASON THAT WE
7 DON'T HAVE THE PRIVATE INVESTIGATOR HERE TO CROSS
8 EXAMINE. WE DON'T HAVE A RIGHT TO CONFRONT HIM, AND
9 THAT IS RANK HEARSAY. AND WE DON'T KNOW WHETHER HE DID
10 A GOOD JOB, POOR JOB, AND THERE'S NO WAY FOR YOU TO
11 JUDGE. AND I OBJECT. THAT IS HEARSAY.

12 BY COMMISSIONER CHILDS:

13 SUSTAINED.

14 DIRECT EXAMINATION RESUMED BY MR. POPE:

15 Q. BUT BASED ON YOUR PERSONAL WORK, YOU HAD DETERMINED
16 YOURSELF THAT HE HAD NO ASSETS IN THE COURTHOUSE, IS
17 THAT RIGHT?

18 A. I COULD FIND NO ASSETS.

19 Q. ALL RIGHT. YOU TALKED TO THE ADJUSTOR -- NO SUIT WAS
20 FILED AGAINST PENDERGRASS OR THE CARRIER, IS THAT
21 RIGHT?

22 A. CORRECT.

23 Q. WHO DID YOU NEGOTIATE THE SETTLEMENT WITH?

24 A. I FRANKLY DON'T REMEMBER THE NAME OF THE ADJUSTOR. I
25 DEALT WITH AN ADJUSTOR. I DIDN'T DEAL WITH AN

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1 ATTORNEY. THEY ONLY HAD MINIMUM LIMITS COVERAGE. AND
2 WHEN I SENT THE MEDICALS THAT I HAD TO THEM, THEY WERE
3 MORE THAN THEIR MINIMUM LIMITS AND THEY IMMEDIATELY
4 TENDERED THEM. SO I MEAN THERE WASN'T MUCH NEGOTIATION
5 THERE.

6 Q. WELL, WERE YOU SATISFIED THAT THERE WAS NO OTHER
7 INSURANCE COVERAGE WHEN YOU MADE THAT SETTLEMENT?

8 A. I KNEW THERE WAS UNDER INSURED MOTORIST COVERAGE THAT
9 WAS AVAILABLE ON I THINK FOUR DIFFERENT POLICIES. BUT
10 THERE WAS NO OTHER COVERAGE THAT I COULD FIND OF A
11 LIABILITY NATURE. AND AFTER I CONCLUDED THE SETTLEMENT
12 OF THE \$15,000 LIABILITY SETTLEMENT, BEFORE NEGOTIATING
13 ANY FURTHER WITH THE UIM CARRIERS, WE DID CONDUCT A
14 MUCH MORE DETAILED INVESTIGATION AND COULD FIND
15 NOTHING. I COULD FIND NOTHING.

16 Q. SO LIABILITY-WISE, THE \$15,000 WAS THE ONLY INSURANCE
17 YOU COULD FIND, IS THAT RIGHT?

18 A. THAT'S ALL THERE WAS.

19 Q. ALL RIGHT. AND WHEN THE CASE -- WHEN THE MONEY CAME
20 IN, WHAT WAS DONE WITH THE PROCEEDS?

21 A. THE \$15,000 CHECK, I RECEIVED A THIRD OF THAT AS MY
22 FEE. I PAID \$8,500 OF THAT TO THE MEDICAL SUBROGATION
23 COMPANY THAT HAD CONTACTED US FOR MR. KIMMER'S MEDICAL
24 INSURER, SUBRO AUDIT, INCORPORATED. PAID THEM 8,500.
25 AND I PAID \$1,500 TO A MEDICAL PROVIDER. WHEN THE

1 CHECK WAS MADE OUT, IT WAS MADE PAYABLE -- THE MEDICAL
2 PROVIDER'S NAME WAS ON THE CHECK. AND THEY WANTED
3 SUBSTANTIALLY MORE THAN \$1,500. THEY WERE TREATING
4 RICHARD AT THE TIME, AND I WAS TRYING TO TALK THEM INTO
5 CONTINUING TREATING HIM, BUT THEY WANTED MORE MONEY.
6 BUT WE MANAGED TO TALK THEM INTO -- I MANAGED TO TALK
7 THEM INTO GIVING -- TAKING JUST \$1,500 AND CONTINUING
8 THE TREATMENT WITH THE HOPE THAT WHEN WE RECOVERED SOME
9 OTHER MONIES LATER, THEY WOULD GET PAID.

10 Q. THE RECORDS SHOW THAT THE SETTLEMENT -- THE RELEASE WAS
11 SIGNED ON JUNE THE 16TH, 1999.

12 A. THAT'S CORRECT.

13 Q. AND THAT ON JUNE THE 19TH, 1999, YOU SENT THE FORM 50
14 TO THE WORKERS' COMPENSATION COMMISSION. I THINK THEY
15 RECEIVED IT LIKE ON THE 21ST.

16 A. (WITNESS INDICATES AFFIRMATIVE RESPONSE)

17 Q. WHEN YOU MADE THE SETTLEMENT FOR THE LIABILITY MINIMUM
18 LIMITS COVERAGE OF \$15,000, YOU KNEW -- DID YOU OR DID
19 YOU NOT KNOW AND ADVISE MR. KIMMER THAT THERE WAS A
20 WORKERS' COMPENSATION CLAIM?

21 BY MR. JOHNSON:

22 OBJECT TO THE -- TO THE QUESTION. ON THE GROUNDS
23 OF RELEVANCE.

24 BY MR. POPE:

25 I THINK IT'S RELEVANT.

1 BY COMMISSIONER CHILDS:

2 I CAN JUST HEAR THAT BASIC QUESTION. GO AHEAD.

3 BY THE WITNESS:

4 A. OKAY. WHEN I TOOK MR. KIMMER'S -- WELL, THE ANSWER TO
5 THE QUESTION IS WE DISCUSSED THE POSSIBILITY OF A
6 WORKERS' COMPENSATION CASE. WHEN I THEN TOOK THE CASE,
7 I DID NOT SEE THE CASE AS A WORKERS' COMPENSATION CASE.
8 I GOT -- I WAS CONTACTED BY SOMEONE WHO TOLD ME THAT IT
9 MIGHT BE A WORKERS' COMPENSATION CASE.

10 BY MR. JOHNSON:

11 OBJECT, THAT WOULD BE HEARSAY.

12 BY COMMISSIONER CHILDS:

13 SUSTAINED.

14 BY THE WITNESS:

15 A. AT THE TIME -- AND I THINK THE VERY DAY THAT WE -- I
16 HAD WRITTEN TO MR. KIMMER PRIOR TO THE TIME WE SETTLED
17 THE 15,000 LIABILITY AND TOLD HIM IN A SHORT LETTER
18 THAT I THOUGHT THERE MIGHT BE A POTENTIAL WORKERS'
19 COMPENSATION CLAIM. AND THAT WE NEEDED TO DISCUSS
20 THAT. MY RECOLLECTION IS WE DISCUSSED THAT AT THE SAME
21 TIME WE SETTLED THE \$15,000 LIABILITY CLAIM. AND
22 ALTHOUGH I WAS UNSURE AT THE TIME WHETHER THERE WAS OR
23 WAS NOT A CLAIM, I WENT AHEAD AND FILED A CLAIM TO TRY
24 TO PROTECT HIS INTERESTS IF THERE WAS A CLAIM.

25 DIRECT EXAMINATION RESUMED BY MR. POPE:

1 Q. AT THAT TIME WAS IT OBVIOUS TO YOU WHETHER OR NOT THE
2 WORKERS' COMPENSATION CLAIM WOULD BE SIGNIFICANTLY MORE
3 THAN THE MINIMUM LIMITS OR NOT?

4 BY MR. JOHNSON:

5 OBJECT TO THE FORM. OBJECT TO THE RELEVANCE. I
6 DON'T THINK IT MAKES ANY DIFFERENCE WHAT HE THOUGHT OF
7 THE CLAIM. IT'S WHAT OCCURRED.

8 BY COMMISSIONER CHILDS:

9 THIS IS GOING ALONG THE SAME LINE OF THE
10 QUESTIONS THAT YOU ASKED THE CLAIMANT. IF YOU'RE GOING
11 TO JUST GO AHEAD AND DO THIS LINE OF TESTIMONY, I CAN
12 JUST STEP OUT IF YOU WANT TO JUST PROFFER IT.

13 BY MR. POPE:

14 COMMISSIONER, I THINK THE INTENTION OF THE
15 PARTIES MAY HAVE GREAT RELEVANCE HERE. AND I THINK
16 JUST BECAUSE HE DOESN'T WANT IT IN THE RECORD DOESN'T
17 MEAN IT'S NOT RELEVANT ULTIMATELY. YOU MAY OR MAY NOT
18 THINK THAT WHAT THE PARTIES INTENDED IS IMPORTANT, BUT
19 WE THINK YOU WILL. IF YOU KNOW WHAT THE INTENTIONS
20 WERE. SO WE BELIEVE IT SHOULD BE ADMISSIBLE. I
21 UNDERSTAND YOU INTIMATED THAT WE -- MAYBE WE OUGHT TO
22 JUST PROFFER IT OUT OF YOUR PRESENCE AND WE'LL DO THAT
23 IF YOU INSIST, BUT WE THINK THIS IS RELEVANT.

24 BY COMMISSIONER CHILDS:

25 WELL, HE'S TESTIFIED ABOUT THE FACT THAT HE

1 WASN'T SURE ABOUT WHETHER OR NOT THE CLAIMANT HAD A
2 WORKERS' COMPENSATION CLAIM. AND SO I THINK -- AND
3 THEN HE FILED IT TO PROTECT THE INTEREST. SO I THINK
4 THAT THAT GETS ENOUGH AS TO WHAT WAS THE PURPOSE OF THE
5 CLAIM BEING FILED AND THINGS OF THAT NATURE. I'M NOT
6 SURE THAT -- I THINK THE LAW IS GOING TO STAND ON THE
7 LAW AS TO HOW HE ---

8 BY MR. POPE:

9 WELL, IT MIGHT, BUT YOU'VE HAD SOME EVIDENCE ON
10 THAT POINT. I THINK YOU SHOULD GET ALL THE EVIDENCE ON
11 THE POINT. OF WHAT WAS GOING ON IN LANCASTER, SOUTH
12 CAROLINA DURING THIS VERY SHORT PERIOD OF TIME WHEN A
13 THIRD PARTY CLAIM WAS BEING SETTLED, AND A WORKERS'
14 COMPENSATION FORM 50 WAS BEING FILED. I THINK YOU NEED
15 TO KNOW EVERYTHING ABOUT THAT. IF YOU'RE GOING TO HEAR
16 SOME OF IT, YOU'VE INDICATED YOU'VE HEARD ENOUGH. BUT
17 I DON'T THINK WE CAN QUANTIFY IT. YOU'VE HEARD ---

18 BY COMMISSIONER CHILDS:

19 LET'S GO AHEAD. THAT WILL GIVE ME ENOUGH TO --
20 THAT'S FINE. WE'LL GO ALONG THAT LINE. GO AHEAD.

21 DIRECT EXAMINATION RESUMED BY MR. POPE:

22 Q. AT THE TIME YOU'RE TELLING ME PRIOR TO THE LIABILITY
23 CLAIM BEING SETTLED, YOU SAID YOU TOLD HIM YOU THOUGHT
24 THERE WAS A WORKERS' COMPENSATION CLAIM. AT THE TIME
25 YOU WERE TALKING ABOUT THOSE TWO CLAIMS, AT THE SAME

1 TIME, DURING THE PERIOD OF WHATEVER IT WAS, HOURS OR
2 DAYS, WAS IT YOUR BELIEF AS A LAWYER WHO EVALUATES -- I
3 ASSUME YOU EVALUATE CASES FOR PLAINTIFFS ON A REGULAR
4 BASIS. WAS IT OBVIOUS TO YOU THAT THE WORKERS'
5 COMPENSATION CLAIM WAS GOING TO BE GREATER OR LESSER
6 THAN THE MINIMUM LIMITS THIRD PARTY SETTLEMENT?

7 A. WELL, ---

8 BY MR. JOHNSON:

9 COMMISSIONER, THE WITNESS HAS ALREADY TESTIFIED
10 HE DIDN'T EVEN KNOW WHETHER HE HAD A VALID CLAIM OR
11 NOT. I JUST THINK THIS IS TOTALLY IRRELEVANT TO THE
12 ISSUE WE'VE GOT TO DEAL WITH, WHETHER HE THOUGHT ONE
13 WAS WORTH MORE OR LESS. GOOD, BAD OR WHATEVER. IT'S
14 REALLY WHAT HE DID.

15 BY COMMISSIONER CHILDS:

16 I THINK ON THIS PARTICULAR ISSUE HE'S SAID THAT
17 HE WASN'T SURE IF HE HAD A CLAIM. SO I'M NOT SURE THAT
18 HE CAN EVALUATE THE WORTH OF IT.

19 BY MR. POPE:

20 I'LL GO ON TO SOMETHING ELSE.

21 DIRECT EXAMINATION RESUMED BY MR. POPE:

22 Q. ALL RIGHT, YOU FILED A WORKERS' COMPENSATION CLAIM ON
23 JUNE THE 19TH OF '99, CORRECT?

24 A. YES.

25 Q. AND WHEN YOU FILED THAT CLAIM, WHAT RIGHTS, IF ANY, DID

1 YOU UNDERSTAND THAT THE WORKERS' COMPENSATION CARRIER
2 MIGHT HAVE AS TO A THIRD PARTY SETTLEMENT?

3 A. I KNEW THAT THEY HAD A RIGHT TO BE REPAID A PORTION ---

4 BY MR. JOHNSON:

5 I WANT TO NOTE AN OBJECTION. WHAT HE UNDERSTOOD
6 THE RIGHTS OF THE CARRIER ARE, ARE TOTALLY IRRELEVANT
7 TO WHAT THE RIGHTS OF THE CARRIER ARE. AND WHETHER
8 HE'S RIGHT, WRONG, OR CLOSE, I MEAN IT'S JUST NOT
9 RELEVANT TO WHAT WE'RE DEALING WITH, AND I OBJECT TO IT
10 ON THE GROUNDS OF RELEVANCE.

11 BY COMMISSIONER CHILDS:

12 I'M INCLINED TO SUSTAIN, BECAUSE HE WASN'T SURE
13 ABOUT WHETHER HE EVEN HAD A CLAIM, AND I'M JUST NOT
14 SURE WE CAN KEEP GOING DOWN THE LINE ---

15 BY MR. POPE:

16 WELL, THE -- I TAKE IT BECAUSE YOU WEREN'T SURE
17 WHETHER IT WAS COMPENSABLE, NOT WHETHER OR NOT HE WAS
18 INJURED, RIGHT?

19 BY COMMISSIONER CHILDS:

20 WELL, HIS ORIGINAL TESTIMONY WAS WHETHER OR NOT
21 HE EVEN HAD A CLAIM.

22 BY MR. POPE:

23 TRUE. THAT WAS BASED ON THE FACT THAT THE CLAIM
24 WAS COMPENSABLE, OR WHETHER OR NOT HE WAS INJURED, OR
25 WHETHER IT WAS ON THE JOB. WHAT WAS YOUR ---

BY THE WITNESS:

1
2 A. WHEN I TOOK THE CASE, MY UNDERSTANDING WAS THAT RICHARD
3 WAS ON HIS WAY TO WORK AT A PLANT SOMEWHERE IN CHESTER.
4 AND THAT HE WAS COMING FROM HIS HOME IN WHITMIRE. AND
5 I DID NOT AT THAT POINT IN TIME SAY WORKERS'
6 COMPENSATION CLAIM. I SAID CAR WRECK. AS THE CASE
7 DEVELOPED AND I LEARNED MORE ABOUT HIS EMPLOYMENT
8 ARRANGEMENTS, IT BECAME APPARENT THAT THERE MAY BE A
9 CLAIM, DEPENDING UPON THOSE FACTS. AND SO -- AND I DID
10 NOT REALIZE THAT UNTIL THE POINT WHERE WE WERE READY TO
11 SETTLE THE \$15,000 CLAIM, AND I -- AND I ACTED AS SOON
12 AS I COULD WHEN I REALIZED THAT TO FILE A CLAIM. I
13 JUST SIMPLY SETTLED THE FIRST CLAIM BEFORE I FILED THE
14 CLAIM AND PUT THEM ON NOTICE. I DON'T KNOW HOW ELSE TO
15 SAY IT.

DIRECT EXAMINATION RESUMED BY MR. POPE:

16
17 Q. THE PAYMENTS YOU MADE OUT OF THE 15,000, IN YOUR
18 OPINION AS A LAWYER, DID THOSE CLAIMS PREJUDICE --
19 THOSE PAYMENTS, DID THEY PREJUDICE THE COMP CARRIER IN
20 ANY WAY?

BY MR. JOHNSON:

21
22 OBJECTION. HIS OPINION OF PREJUDICE -- I MEAN,
23 FIRST OF ALL, THE CASE LAW SAYS PREJUDICE IS NOT
24 RELEVANT TO THE INQUIRY. BUT SECONDLY HIS OPINION
25 CARRIES NO WEIGHT. IT'S FOR THE COMMISSION TO -- YOU

1 KNOW, IF PREJUDICE IS AN ISSUE, THAT'S A QUESTION FOR
2 YOU.

3 BY MR. POPE:

4 HE CAN IDENTIFY IT AS AN AID TO THE FACT FINDER,
5 COMMISSIONER, I BELIEVE. HE'S A LAWYER. I'M JUST
6 ASKING HIM TO TELL US FACTUALLY WHAT PREJUDICE AROSE
7 FROM HIS -- IF ANY, AROSE FROM HIS SETTLEMENT OF THE
8 \$15,000 CLAIM.

9 BY COMMISSIONER CHILDS:

10 WELL, ALONG THOSE LINES, LET ME JUST ASK THIS
11 QUESTION. YOU FILED THE CLAIM LATER. A COUPLE DAYS
12 LATER?

13 BY THE WITNESS:

14 A. CORRECT.

15 BY COMMISSIONER CHILDS:

16 HAD YOU HAD ANY DISCUSSIONS AT ALL WITH THE
17 CARRIER?

18 BY THE WITNESS:

19 A. I HAD ATTEMPTED TO FIND OUT IF A FIRST REPORT OF INJURY
20 WAS FILED THROUGH THE COMMISSION, TO SEE IF THEY HAD
21 REPORTED IT AS AN ON-THE-JOB INJURY. BECAUSE THAT
22 WOULD HAVE GIVEN ME AN INDICATION THAT THEY CONSIDERED
23 IT TO BE A CLAIM. SO I MADE A COUPLE OF CALLS TO THE
24 COMMISSION TO FIND OUT IF A FIRST REPORT HAD BEEN
25 FILED. AND IT APPEARED TO ME THAT ONE HAD NOT BEEN

1 FILED. SO THAT CONCERNED ME THAT THEY HAD NOT DONE
2 THAT. IF IT WAS A COMPENSABLE CLAIM. I'M AWARE THAT
3 AFTER I FILED THE CLAIM, THEY FILED A NOTICE OF INJURY.
4 SO THAT'S ALL I HAD DONE AT THAT POINT. I HAD NOT
5 TALKED TO THE -- I HAVE NO RECOLLECTION AND NO
6 DOCUMENTATION OF TALKING TO THE CARRIER BEFORE THEN.

7 BY COMMISSIONER CHILDS:

8 AND I THINK THAT JUST GOES TO -- I WANTED TO KNOW
9 ABOUT HIS CONVERSATIONS WITH THEM TO BE ABLE TO SAY
10 THAT HE THEN RELIED ON SOME CONVERSATIONS WITH THE
11 CARRIER AND THEN FILED THE CLAIM. BUT HE DIDN'T HAVE
12 THOSE.

13 DIRECT EXAMINATION RESUMED BY MR. POPE:

14 Q. DID YOU AND YOUR CLIENT CONSCIOUSLY AND INTENTIONALLY
15 INTEND -- I KNOW HE'S GOING TO OBJECT. CONSCIOUSLY AND
16 INTENTIONALLY INTEND TO ELECT THIRD PARTY REMEDIES OVER
17 THE WORKERS' COMPENSATION REMEDY?

18 BY MR. JOHNSON:

19 OBJECTION AS TO RELEVANCE.

20 DIRECT EXAMINATION RESUMED BY MR. POPE:

21 Q. EXCLUSIVELY ---

22 BY MR. POPE:

23 DID YOU OBJECT?

24 BY MR. JOHNSON:

25 I DID OBJECT.

1 BY COMMISSIONER CHILDS:

2 I'LL LET YOU ANSWER. GO AHEAD.

3 BY THE WITNESS:

4 A. NO, I DID NOT INTEND TO WAIVE ANY REMEDY THAT MR.
5 KIMMER HAD. HE WAS A GOOD CLIENT FROM A LONG TIME AGO.
6 HE WAS -- I WOULD NOT DO THAT TO THAT CLIENT. AND IF I
7 DID DO THAT TO THAT CLIENT, I AM IMMORTALLY SORRY.
8 BECAUSE HE'S A FINE PERSON.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. DO YOU KNOW FROM YOUR WORKING RELATIONSHIP WITH MR.
11 KIMMER ANYTHING ABOUT HIS WORK ETHIC?

12 A. WHEN I REPRESENTED MR. KIMMER ---

13 BY MR. JOHNSON:

14 I OBJECT. UNLESS IT'S FIRSTHAND INFORMATION
15 WHERE HE SAW AND OBSERVED HIM, IT WOULD EITHER BE
16 HEARSAY OR REPUTATION, EITHER OF WHICH WOULD BE
17 INADMISSIBLE.

18 BY THE WITNESS:

19 A. I HAD TO VERIFY HIS INCOME FOR A DOMESTIC CASE.
20 THROUGH EMPLOYERS.

21 BY MR. JOHNSON:

22 THAT WOULD ONLY SHOW HIS INCOME. IT WOULDN'T
23 SHOW WHAT HIS WORK ETHIC ---

24 BY MR. POPE:

25 DO YOU KNOW ABOUT HIS HOURS FROM LOOKING AT THE

1 INCOME. HOW MANY HOURS HE WORKED?

2 BY THE WITNESS:

3 A. YEAH. I KNOW HE WORKED TWO FULL TIME JOBS. AND I
4 DON'T KNOW HOW HE DID IT.

5 BY COMMISSIONER CHILDS:

6 OBJECTION SUSTAINED AS TO THAT. ALL HE CAN DO IS
7 ANSWER THOSE BASIC QUESTIONS. THE QUESTION WORK ETHIC
8 IMPLIES OBSERVATION OF IT.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. DO YOU HAVE ANY PERSONAL OBSERVATION -- ANY WAY YOU
11 COULD PERSONALLY VERIFY THAT, OTHER THAN BEING HIS
12 LAWYER?

13 A. WELL, I DIDN'T GO OUT ON JOBS WITH RICHARD AND WATCH
14 HIM WORK. BUT I SAW HIM WHEN HE CAME BY MY OFFICE
15 EXHAUSTED AND TIRED AND ON HIS WAY TO HIS NEXT JOB.
16 AND I DEALT WITH HIM IN HIS DIVORCE FROM HIS WIFE AND
17 KNEW THROUGH THOSE CONTACTS HOW DILIGENT HE WAS ABOUT
18 EVERYTHING HE DID FOR ME. SO I CONSIDERED HIM TO BE A
19 VERY HARD WORKING PERSON. FROM MY GENERAL CONTACT WITH
20 HIM.

21 BY MR. JOHNSON:

22 AGAIN ---

23 BY MR. POPE:

24 THAT'S ALL I HAVE.

25 CROSS EXAMINATION BY MR. JOHNSON:

1 Q. LET ME BE SURE I'M CORRECT ABOUT THIS. THERE'S NO
2 QUESTION BUT THAT THE THIRD PARTY CASE WAS SETTLED FOR
3 \$15,000 BEFORE YOU GAVE NOTICE TO THE CARRIER AND THE
4 COMMISSION, AS REQUIRED BY LAW, OF THE CLAIM, AND THAT
5 YOU WERE PROCEEDING AGAINST A THIRD PARTY?

6 A. CORRECT. THERE'S NO DOUBT ABOUT THAT.

7 Q. AND YOU HAD NO COMMUNICATIONS WITH THE CARRIER
8 WHATSOEVER UNTIL AFTER YOU HAD FINALIZED THE THIRD
9 PARTY SETTLEMENT?

10 A. MAY I LOOK AT MY FILE. I BROUGHT THE ENTIRE THING WITH
11 ME, AND I WANT TO BE ABSOLUTELY CORRECT.

12 Q. THAT'S FINE.

13 A. (WITNESS REVIEWS DOCUMENTS)

14 Q. COULD I SEE IT AFTER YOU LOOK AT IT.

15 A. YES, IF YOU'D LIKE TO SEE IT.

16 Q. ALL RIGHT, YOUR ANSWER?

17 A. NO, I DIDN'T HAVE ANY CORRESPONDENCE WITH THEM.

18 Q. ALL RIGHT.

19 A. ALL MY CORRESPONDENCE WAS WITH THE AUTOMOBILE INSURANCE
20 CARRIER.

21 Q. NOW, MR. WRIGHT, I WANT TO TALK TO YOU ABOUT THE
22 INVESTIGATION THAT YOU DID OR FAILED TO DO IN TERMS OF
23 DETERMINING WHETHER THERE WERE ASSETS OF -- OR OTHER
24 INSURANCE AVAILABLE TO THE THIRD PARTY DEFENDANT. DID
25 YOU EVER SPEAK WITH THE THIRD PARTY DEFENDANT YOURSELF?

1 A. I DID.

2 Q. BEFORE YOU SETTLED THE THIRD PARTY CLAIM?

3 A. NO.

4 Q. ALL RIGHT, NOW, PRIOR TO SETTLING THE THIRD PARTY
5 CLAIM, IT'S MY UNDERSTANDING THAT YOU WENT TO THE
6 COURTHOUSE AND LOOKED AT THE RECORDS THERE TO TRY TO
7 SATISFY YOURSELF AS TO WHETHER HE HAD OTHER ASSETS
8 BESIDES A \$15,000 INSURANCE POLICY; IS THAT CORRECT?

9 A. CORRECT.

10 Q. AND WHEN DID YOU GO TO THE CHESTER COURTHOUSE?

11 A. I WENT SOMETIME IN THE SPRING OF '99. I DO REAL ESTATE
12 WORK IN LANCASTER AND CHESTER COUNTIES. I DO
13 FORECLOSURE, TITLE EXAMINATION, THOSE TYPE THINGS. AND
14 IT WAS DURING ONE OF THOSE TRIPS. I'M OVER THERE ABOUT
15 ONCE A MONTH.

16 Q. DO YOU HAVE ANY RECORD OF HAVING CHECKED AS TO THIS
17 THIRD PARTY DEFENDANT?

18 A. NO, I DIDN'T FIND ANYTHING, SO I DIDN'T WRITE ANYTHING
19 DOWN.

20 Q. NOW, MR. WRIGHT, YOU, FROM DOING TITLE WORK AND WORKING
21 IN THE COURTHOUSE, KNOW THAT THERE'S A LIMITED AMOUNT
22 OF INFORMATION ABOUT A PERSON'S ASSETS THAT ARE KEPT AT
23 A COURTHOUSE, CORRECT?

24 A. I KNOW THAT I CAN FIND RECORDS OF REAL ESTATE THAT THEY
25 OWN.

- 1 Q. OKAY, REAL ESTATE.
- 2 A. I CAN FIND RECORDS OF AUTOMOBILES THAT THEY OWN.
- 3 Q. PERHAPS?
- 4 A. NO, I CAN FIND RECORDS OF AUTOMOBILES THAT THEY OWN.
- 5 Q. PROVIDED THEY'RE REGISTERED IN THAT COUNTY?
- 6 A. IF THEY'RE REGISTERED IN THAT COUNTY, THEN THEY WOULD
- 7 BE ON THE TAX BOOK. THAT'S THE ONLY COUNTY THAT I KNEW
- 8 MR. PENDERGRASS HAD ANY CONTACT WITH. SO THE AUDITOR'S
- 9 OFFICE HAS A LIST OF AUTOMOBILES. THEIR MOBILE HOMES
- 10 ARE LISTED ON THE REAL ESTATE RECORDS IN THAT COUNTY.
- 11 Q. IT DOESN'T SHOW STOCKS. IT DOESN'T SHOW INFORMATION
- 12 ABOUT BONDS, SAVINGS ACCOUNTS, CHECKING ACCOUNTS, LOANS
- 13 FROM PEOPLE, UNLESS THERE'S SOME SORT OF SECURED
- 14 MORTGAGE OR SOMETHING OF THAT NATURE.
- 15 A. NO.
- 16 Q. ALL IT PROVIDES IS INFORMATION ABOUT REAL ESTATE AND
- 17 AUTOMOBILES, PROVIDED THEY OWN THEM IN THAT PARTICULAR
- 18 COUNTY?
- 19 A. CORRECT.
- 20 Q. NOW, IT ALSO -- CHECKING AT THE COURTHOUSE ALSO DOESN'T
- 21 PROVIDE YOU WITH INFORMATION AS TO WHAT INSURANCE
- 22 COVERAGE IS AVAILABLE TO A PARTY, DOES IT?
- 23 A. IT DOES NOT.
- 24 Q. AND SPEAKING WITH THE CARRIER FOR THE ONE POLICY HE DID
- 25 HAVE DOESN'T TELL YOU ALL THE INSURANCE THAT'S

- 1 AVAILABLE TO HIM, DOES IT? OR COULD BE AVAILABLE TO
2 HIM.
- 3 A. NO.
- 4 Q. IN OTHER WORDS, THERE MAY BE A POLICY THAT HIS WIFE MAY
5 HAVE ON A CAR AND THEY LIVE IN THE SAME HOUSEHOLD, AND
6 THEY MAY HAVE HAD 15 CARS IN HER NAME, AND HE MIGHT
7 HAVE BEEN COVERED AS AN INSURED UNDER EACH OF THOSE
8 POLICIES?
- 9 A. ANY THINGS ARE POSSIBLE.
- 10 Q. AND THE ONLY WAY TO DETERMINE THAT IS TO TAKE A
11 DEPOSITION OF HIM OR OTHER PEOPLE, AND THAT WAS NOT
12 DONE BEFORE -- I GUESS YOU COULD INTERVIEW THEM OR YOU
13 COULD TAKE A DEPOSITION OF THEM TO FIND OUT, CORRECT?
- 14 A. YOU COULD.
- 15 Q. AND OF COURSE REALLY THE ONLY WAY TO TIE THEM DOWN IS
16 TO PUT THEM UNDER OATH AND ASK THEM THE QUESTIONS,
17 CORRECT?
- 18 A. THAT'S ONE WAY.
- 19 Q. AND NONE OF THOSE THINGS WERE DONE BY YOU PRIOR TO
20 SETTLING THE THIRD PARTY CLAIM FOR \$15,000?
- 21 A. CORRECT.
- 22 Q. AND THE CARRIER HAD IN THIS CASE NO OPPORTUNITY TO
23 PARTICIPATE IN -- TO DO THAT, DID THEY?
- 24 A. ARE YOU TALKING ABOUT THE WORKERS' COMPENSATION?
- 25 Q. YES.

1 A. THEY DID NOT.

2 Q. AND THE CARRIER HAD NO OPPORTUNITY TO COMMUNICATE WITH
3 YOU AND GUIDE YOU AS TO WHAT THEY THOUGHT WOULD HAVE
4 BEEN IN THEIR INTEREST TO BE DONE BEFORE SETTLING THAT
5 CLAIM, DID THEY?

6 A. THEY DID NOT.

7 Q. AND SO THE CARRIER LOST THE OPPORTUNITY IN THIS CASE TO
8 PARTICIPATE IN OR CONDUCT ITS OWN INVESTIGATION OR TO
9 GUIDE YOU, OR TO EMPLOY COUNSEL TO DO IT FOR THEM,
10 PRIOR TO THAT THIRD PARTY CASE BEING SETTLED?

11 A. CORRECT.

12 BY MR. JOHNSON:

13 THANK YOU, MR. WRIGHT.

14 RE-DIRECT EXAMINATION BY MR. POPE:

15 Q. MR. WRIGHT, AS A LAWYER WHO YOU'VE SAID PRACTICES IN
16 CHESTER AND LANCASTER COUNTIES ON A REGULAR BASIS, MR.
17 JOHNSON WENT THROUGH A LITANY OF THINGS THAT COULD HAVE
18 BEEN DONE -- COULD HAVE HAPPENED ABOUT CHECKING
19 ACCOUNTS, STOCKS. DID YOU KNOW WHAT NEIGHBORHOOD
20 PENDERGRASS WAS SUPPOSEDLY AFFILIATED WITH?

21 A. I DID.

22 Q. WAS THAT A HIGH CLASS NEIGHBORHOOD OR HIGH RENT
23 DISTRICT, SO TO SPEAK, OR WAS IT NOT?

24 BY MR. JOHNSON:

25 OBJECT TO THE RELEVANCY. IT IS REPUTATION AND

1 REPUTATION IS NOT ADMISSIBLE.

2 BY MR. POPE:

3 I'M NOT ASKING FOR REPUTATION.

4 BY MR. JOHNSON:

5 I THINK YOU ARE.

6 BY MR. POPE:

7 NO, I'M NOT. COMMISSIONER, IT'S CERTAINLY
8 RELEVANT. I THINK YOU HAVE TO PUT IT IN THE MIX TO
9 DETERMINE WHETHER IT'S VALID.

10 REDIRECT EXAMINATION RESUMED BY MR. POPE:

11 Q. LET ME ASK THIS QUESTION. WHEN LAWYERS DETERMINE
12 WHETHER SOMEONE IS "JUDGMENT PROOF," DO THEY OFTEN LOOK
13 AT THE NEIGHBORHOOD, THE KIND OF HOUSE, WHETHER THEY
14 HAVE A HOUSE, AND SUCH THINGS AS THAT?

15 BY MR. JOHNSON:

16 OBJECTION. RELEVANCE. WHAT LAWYERS DO TO
17 DETERMINE ---

18 BY MR. POPE:

19 COMMISSIONER, HE HAS ASKED QUESTION AFTER
20 QUESTION ABOUT WHAT THINGS COULD LIBERTY MUTUAL HAVE
21 DONE IF THEY'D BEEN NOTIFIED. AND I'M ASKING WHETHER
22 HIS INSTINCTS TOLD HIM THERE WAS ANY POINT -- ANY
23 QUESTION THAT THIS MAN WAS JUDGMENT PROOF. I THINK
24 THEY HAVE NOW OPENED THE DOOR TO THIS LINE OF
25 QUESTIONING.

1 BY COMMISSIONER CHILDS:

2 WELL, WHAT I THINK WE HAVE IS HIM TELLING YOU
3 WHAT HIS EFFORTS WERE. AND THEN THEM CROSS EXAMINING
4 ON WERE THERE OTHER EFFORTS. I THINK YOU'RE JUST
5 TRYING TO GO TO THAT HE STOPPED -- BUT I MEAN WE'VE GOT
6 TESTIMONY ABOUT HIS EFFORTS. THAT'S WHAT I'M SAYING.

7 REDIRECT EXAMINATION RESUMED BY MR. POPE:

8 Q. DO YOU FEEL LIKE YOUR EFFORTS WERE ADEQUATE BASED ON
9 YOUR EXPERIENCE AS A LAWYER IN ANALYZING PERSONAL
10 INJURY CASES?

11 BY MR. JOHNSON:

12 OBJECTION. IT WOULD BE TOTALLY SELF SERVING, AND
13 IT WOULD BE MERELY HIS OPINION ON HIS OWN WORK. AND
14 WHAT RELEVANCE DOES THAT HAVE. THE COMMISSIONER HAS TO
15 JUDGE. ---

16 BY MR. POPE:

17 SHE'S GOT TO JUDGE IT AND IT GOES TO THE WEIGHT
18 OF HIS TESTIMONY. NOT TO THE ADMISSIBILITY OF THE
19 EVIDENCE. I THINK THAT GOES INTO THE MIX FOR THE
20 COMMISSIONER TO DETERMINE. BUT YOUR HONOR, HE KEEPS
21 CHANGING THE OBJECTIONS. HE JUST DOESN'T WANT IT IN
22 THE RECORD. IT'S EITHER HEARSAY, OR IT'S NOT RELEVANT,
23 AND NOW IT'S SELF SERVING.

24 BY COMMISSIONER CHILDS:

25 GO AHEAD. HE'S JUST TALKING ABOUT HIS EFFORTS.

1 GO AHEAD.

2 REDIRECT EXAMINATION RESUMED BY MR. POPE:

3 Q. TELL US ABOUT YOUR EFFORTS.

4 A. I LOOKED AT WHERE THE GUY LIVED. I LOOKED AT WHAT HE
5 HAD THAT I COULD SEE. I LOOKED AT WHAT I KNEW ABOUT
6 HIM FROM THE GENERALITIES OF THE REPORT. AND HAVING
7 SOME PEOPLE LOOK FOR HIM. AND I DIDN'T THINK HE HAD
8 ANYTHING. I MEAN ---

9 Q. HAS ANYTHING HAPPENED IN THE LAST THREE YEARS OF LIVING
10 -- WORKING IN THIS COMMUNITY TO MAKE YOU CHANGE YOUR
11 MIND ABOUT THAT?

12 A. NO.

13 Q. CAN YOU THINK OF ANYTHING -- IF YOU HAD CALLED LIBERTY
14 MUTUAL OR -- I THINK IT'S LIBERTY MUTUAL. WHOEVER THE
15 CARRIER IS. IF YOU HAD CALLED THEM BEFORE YOU
16 DISBURSED THOSE FUNDS AND SAID, WILL YOU DO A CHECK ON
17 THIS, DO YOU THINK THEY COULD HAVE DONE ANY BETTER THAN
18 YOU DID LIVING IN THAT COMMUNITY?

19 A. I DON'T KNOW ---

20 BY MR. JOHNSON:

21 OBJECT.

22 BY THE WITNESS:

23 A. I DON'T KNOW.

24 REDIRECT EXAMINATION RESUMED BY MR. POPE:

25 Q. CAN YOU TELL US ANYTHING THAT THE CARRIER COULD HAVE

1 DONE THAT YOU DIDN'T DO REASONABLY? REASONABLY ---

2 BY MR. JOHNSON:

3 OBJECT. HE'S ALREADY TOLD US THINGS THE CARRIER
4 COULD HAVE DONE. I OBJECT ON THE GROUNDS OF RELEVANCE.

5 BY COMMISSIONER CHILDS:

6 HE'S TOLD US ---

7 BY MR. POPE:

8 THAT'S ALL I HAVE. I'LL WITHDRAW IT.

9 BY COMMISSIONER CHILDS:

10 THANK YOU. IS THERE ANYTHING FURTHER IN THIS
11 CASE?

12 BY MR. POPE:

13 THERE IS.

14 (OFF THE RECORD DISCUSSION)

15 BY MR. POPE:

16 WAIT A MINUTE, I HAVE ONE MORE QUESTION FOR YOU IN
17 FOLLOW UP TO WHAT HE SAID.

18 REDIRECT EXAMINATION RESUMED BY MR. POPE:

19 Q. WHEN YOU SETTLED THE THIRD PARTY CLAIM, CAN YOU TELL US
20 WHETHER OR NOT YOU WERE AWARE FROM YOUR CLIENT THAT HE
21 HAD OR HAD NOT BEEN RECEIVING MEDICAL BILLS FROM
22 PROVIDERS?

23 A. OH, YEAH. HE WAS GETTING -- THAT WAS A MAJOR REASON I
24 WANTED TO SETTLE THE CLAIM IS HE WAS GETTING MEDICAL
25 BILLS AND COULDN'T PAY THEM. AND RICHARD WAS VERY

886

1 CONCERNED ABOUT GETTING TREATMENT AND CONTINUING
2 TREATMENT AND WANTED TO GET SOME -- SOME PAYMENT TO THE
3 MEDICAL PEOPLE SO THEY WOULD KEEP SEEING HIM. SO I --
4 BUT THEY ONLY HAD 15,000. HE HAD 25 IN MEDS. THEY
5 COUGHED IT UP IMMEDIATELY.

6 BY MR. POPE:

7 THAT'S ALL.

8 BY MR. JOHNSON:

9 I'M SORRY, BUT I'M GOING TO HAVE TO FOLLOW UP ON
10 THAT.

11 RECROSS EXAMINATION BY MR. JOHNSON:

12 Q. MR. WRIGHT, YOU KNEW THAT -- AND MR. KIMMER KNEW THAT
13 HE WAS COVERED BY ONE OF THE BEST GROUP MEDICAL
14 INSURANCE COVERAGES THAT IS AVAILABLE, RIGHT?

15 A. YES. I KNEW ---

16 Q. THAT HE WAS GOING TO GET MEDICAL CARE -- AND HAD BEEN
17 GETTING IT AND WOULD GET IT UNDER HIS GROUP COVERAGE?

18 A. I KNEW THAT, BUT I COULDN'T CONVINCE HIM OF THAT.

19 Q. RIGHT. AND ---

20 BY MR. JOHNSON:

21 THAT'S ALL I HAVE. THANK YOU.

22 BY COMMISSIONER CHILDS:

23 THANK YOU. YOU CAN BE EXCUSED.

24 BY MR. POPE:

25 WE CALL BILL MANNING.

1 WILLIAM A MANNING, JR., BEING DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION BY MR. POPE:

4 Q. GIVE US YOUR FULL NAME AND ADDRESS.

5 A. WILLIAM A. MANNING, JR. 5555 CHARTER OAKS LANE, YORK,
6 SOUTH CAROLINA.

7 Q. AND WHERE DO YOU WORK?

8 A. I WORK FOR DYKE AMERICAS.

9 Q. AND YOU GRADUATED FROM GEORGIA TECH, IS THAT RIGHT?

10 A. YEAH.

11 Q. WHAT DO YOU DO FOR DYKE AMERICA?

12 A. I'M A TECHNICAL MARKETING REPRESENTATIVE.

13 Q. DID YOU PREVIOUSLY WORK AT MURATA?

14 A. YES.

15 Q. WERE YOU ABOVE RICHARD KIMMER IN THE CHAIN OF COMMAND,
16 SO TO SPEAK?

17 A. YEAH.

18 Q. WHAT WAS YOUR JOB WITH MURATA?

19 A. WELL, WHEN I FIRST -- WHEN WE FIRST HIRED RICHARD, I
20 WAS THE TECHNICAL MANAGER. I WAS OVER ALL THE
21 TECHNICAL STAFF. RICHARD DIDN'T WORK DIRECTLY FOR ME.
22 HE WORKED FOR AN OUTSIDE CONTRACTOR THAT WORKED FOR ME.
23 SO THAT'S HOW I KNEW -- WHEN RICHARD FIRST CAME TO
24 MURATA, THAT'S HOW HE WORKED. AFTER THEN I WAS MOVED
25 OUT OF THE MANAGEMENT SLOT. I WAS IN A TROUBLESHOOTING

1 | SLOT, AND I WORKED WITH RICHARD.

2 | Q. HOW MANY YEARS DID YOU HAVE AN OPPORTUNITY TO OBSERVE
3 | RICHARD KIMMER'S WORK ETHIC AND HIS PHYSICAL CONDITION
4 | ON THE JOB?

5 | A. LET'S SEE, I THINK RICHARD CAME TO MURATA SOMEWHERE IN
6 | '94. ABOUT SIX YEARS. I LEFT MURATA IN 2000.

7 | Q. BUT DURING THE SIX YEARS THAT YOU SAW HIM, HOW WOULD
8 | YOU DESCRIBE HIM AS A WORKER?

9 | A. HE WAS ONE OF THE HARDEST WORKERS I HAVE EVER WORKED
10 | WITH. IF YOU TOLD RICHARD TO GO PUT IN 42 MACHINES AND
11 | DON'T CALL UNTIL YOU GET THE 42ND ONE PUT IN, THAT'S
12 | WHAT HE DID.

13 | Q. ALL RIGHT.

14 | A. IF YOU TOLD HIM TO FINISH A JOB -- RICHARD HAS WORKED
15 | AS MANY -- I HAVE SEEN HIM PERSONALLY WORK AS MANY AS
16 | 14, 15 HOURS A DAY. WITHOUT BEING ASKED TO. I MEAN,
17 | HE WOULD DO IT TILL HE FINISHED THE JOB.

18 | Q. DURING THE TIME HE WAS WITH MURATA, HAVE YOU EVER SEEN
19 | HIM SHOW ANY SYMPTOMS OF LIMPING OR A BAD BACK OR BAD
20 | KNEES OR ANY PROBLEMS THAT KEPT HIM FROM DOING HIS JOB?

21 | A. NOT THAT KEPT HIM FROM DOING HIS JOB. I KNOW HE HAD A
22 | BAD BACK, BUT IT NEVER SLOWED HIM UP. HE KEPT WORKING.

23 | Q. YOU'RE AWARE THAT -- IS HIS JOB CALLED A SERVICE
24 | TECHNICIAN, IS THAT THE RIGHT WORD?

25 | A. SERVICE TECHNICIAN FOR THE MURATA JET SPINNER, WHICH

1 MEANT HE WAS IN CHARGE -- OR NOT -- COULD BE IN CHARGE
2 OF INSTALLING AND PUTTING IN THE MACHINE FROM THE
3 GROUND UP. TROUBLESHOOTING THE MACHINE. WORKING ON
4 THE MACHINE. WHATEVER IT TOOK TO GET THE MACHINE
5 RUNNING SATISFACTORILY FOR THE CUSTOMERS.

6 Q. AND HOW MANY SERVICE TECHNICIANS WORKED UNDER YOU?

7 A. AT ONE TIME I HAD AS MANY AS 24.

8 Q. WERE THEY ALL PAID THE SAME WAY THAT RICHARD WAS? LIKE
9 A CERTAIN PER HOUR PLUS ---

10 A. YEAH.

11 Q. PLUS WHAT?

12 A. LET'S SEE, THE WAY THEY WORK IT IS IT -- YOU WERE GIVEN
13 A YEARLY SALARY, BUT THEN THEY CUT IT DOWN TO HOURLY
14 PAY. AND THEN YOU GOT TIME AND A HALF FOR OVERTIME.
15 YOU ALSO GOT A CAR ALLOWANCE. SOMEWHERE AROUND -- I
16 DON'T REMEMBER EXACTLY. IT'S BEEN SEVERAL YEARS SINCE
17 I WAS THERE. BUT AROUND \$6,000 A YEAR THAT WAS
18 SUPPOSED TO BUY YOU EQUIVALENT TO A COMPANY CAR. A
19 CHEVY CELEBRITY. THEN THEY PAID YOU SIX CENTS A MILE
20 FOR GAS. NOW, WHEN YOU TRAVELED FOR THE COMPANY, LIKE
21 YOU WERE DOING AN INSTALLATION AT A MILL, THE FIRST
22 HOUR YOU TRAVELED YOU DID NOT GET PAID FOR. BUT IT WAS
23 KEPT UP WITH. BECAUSE THE FIRST HOUR YOU DIDN'T DRAW A
24 SALARY, BUT YOU DID GET MILEAGE AND YOU DID GET SIX
25 CENTS -- OR HOWEVER MUCH PER MILE THAT YOU WERE

1 DRIVING.

2 Q. AND THAT MILEAGE WOULD BE BASED ON DRIVING FROM HOME TO
3 A PLANT?

4 A. HOME TO A PLANT. YEAH.

5 Q. AND RICHARD WORKED AT NUMEROUS PLANTS WHILE HE WAS
6 WORKING FOR MURATA? DIFFERENT PLANTS WHERE THE
7 MACHINES WERE?

8 A. YEAH. HE WORKED ALL THE WAY FROM NORTHERN NORTH
9 CAROLINA -- I'M NOT SURE HE EVER WENT AS FAR AS LOWER
10 ALABAMA, BUT AROUND THIS AREA HE WORKED A LOT.

11 Q. AND HAVE YOU SEEN ANY CHANGES -- YOU DON'T SEE RICHARD
12 MUCH ANYMORE, DO YOU?

13 A. I DON'T SEE HIM MUCH. I TALK TO HIM QUITE A BIT. WE
14 CHAT.

15 Q. WELL, BASED ON YOUR CONVERSATIONS ON THE PHONE WITH
16 HIM, HAVE YOU DETECTED ANY CHANGES IN HIS PSYCHOLOGICAL
17 WELL BEING SINCE THIS ACCIDENT? WHAT OBSERVATIONS
18 COULD YOU MAKE ABOUT THAT?

19 BY MR. JOHNSON:

20 I WANT TO NOTE AN OBJECTION TO THE FORM OF THE
21 QUESTION. IF HE WANTS TO DESCRIBE SOME CHANGE IN
22 COMMUNICATION, THAT'S -- I DON'T HAVE AN OBJECTION TO
23 THAT. BUT TO THE FORM OF THE WAY IT WAS ASKED ---

24 DIRECT EXAMINATION RESUMED BY MR. POPE:

25 Q. WELL, DESCRIBE YOUR OBSERVATIONS OF ANY CHANGES YOU'VE

1 SEEN IN THE PSYCHOLOGICAL MAKE-UP OF MR. KIMMER SINCE
2 THIS ACCIDENT IN JANUARY OF '99.

3 BY COMMISSIONER CHILDS:

4 SUSTAINED AS TO THE TERM PSYCHOLOGICAL. HE CAN
5 DESCRIBE HIS Demeanor.

6 DIRECT EXAMINATION RESUMED BY MR. POPE:

7 Q. DESCRIBE ---

8 A. Demeanor. WELL, JUST FROM TALKING TO RICHARD ON THE
9 PHONE, I -- I'VE VISITED HIS HOUSE ONCE. MAYBE TWICE
10 SINCE THE ACCIDENT -- NOW, SINCE THE ACCIDENT I DID GO
11 VISIT TO SEE HOW HE WAS DOING. BUT SINCE ALL THIS I'VE
12 NOTICED -- THIS IS JUST ME, BECAUSE I'M NOT A
13 PSYCHIATRIST OR A PSYCHOLOGIST OR GOT ANYTHING TO DO
14 WITH IT. I HAVE NOTICED RICHARD SEEMS MORE DEPRESSED.
15 DOWN IN THE DUMPS, SO TO SPEAK. WHICH I THINK IS
16 NORMAL. AND I'LL SAY THIS BECAUSE I WOULD FEEL THE
17 SAME WAY IF I FELT LIKE THE COMPANY DIDN'T TREAT ME
18 RIGHT. AND I THINK THAT'S PART OF IT. THAT A COMPANY
19 THAT HE HAD WORKED VERY HARD FOR ---

20 BY MR. JOHNSON:

21 I OBJECT TO -- I MEAN, THAT HAS NOTHING TO DO
22 WITH THIS. AND THAT'S AGAIN JUST AN OPINION BY HIM
23 ABOUT WHO HAS BEEN RIGHT OR WRONG.

24 BY THE WITNESS:

25 A. NOT EXACTLY. I ---

1 BY MR. JOHNSON:

2 EXCUSE ME. COULD WE GET A RULING.

3 BY COMMISSIONER CHILDS:

4 YOU HAVE TO BE RESPONSIVE JUST TO HIS QUESTIONS,
5 AND NOT AD LIB AND ADD OTHER THINGS. ANSWER JUST THE
6 QUESTION ASKED OF YOU.

7 BY THE WITNESS:

8 A. OKAY.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. DID MR. KIMMER EVER OFFER TO COME BACK TO WORK LIGHT
11 DUTY?

12 A. YES.

13 Q. WHAT WAS THE OUTCOME OF THAT?

14 A. HE WAS TOLD HE COULDN'T COME. THAT WE DIDN'T HAVE
15 LIGHT DUTY.

16 Q. DID YOU BELIEVE THAT WAS CORRECT?

17 A. NO.

18 Q. YOU THOUGHT YOU HAD A POSITION, BUT THEY WOULDN'T HIRE
19 HIM?

20 A. IT'S NOT HIRING. WE HAD POSITIONS IN THE LAB THAT DID
21 NOT REQUIRE AS MUCH PHYSICAL DEMANDS AS PUTTING
22 MACHINERY IN OR DOING MODIFICATIONS ON THE MACHINES
23 THAT HE COULD HAVE VERY EASILY DONE. IN FACT HE COULD
24 DO SOME OF THEM -- RUNNING TESTS ON YARN SITTING DOWN.

25 Q. THE JOB HE HAD; WOULD YOU DESCRIBE THAT AS A LIGHT JOB

1 OR HEAVY JOB IN TERMS OF ITS REQUIREMENTS PHYSICALLY?

2 A. THE JOB AS TECHNICIAN IS PRETTY HEAVY. YOU HAVE TO
3 INSTALL MACHINES FROM THE GROUND UP. YOU HAVE TO BEND
4 OVER. YOU HAVE TO DO A LOT OF WORK WITH YOUR HANDS.
5 YOU HAVE TO MOVE PARTS AND MACHINES THAT ARE FAIRLY
6 HEAVY. I MEAN, YOU'RE INSTALLING A MACHINE THAT'S 60
7 FOOT LONG. YOU'RE UNDER PRESSURE TO GET IT IN UNDER
8 CERTAIN TIME LIMITS.

9 Q. THE POLICY THAT YOU DESCRIBED ABOUT THE PAY FOR A
10 SERVICE TECHNICIAN SUCH AS RICHARD KIMMER BEING A
11 CERTAIN AMOUNT PER HOUR, PLUS A CAR ALLOWANCE OF 600 OR
12 SO A MONTH AND SIX CENTS A MILE FOR MILEAGE FROM HOME
13 TO THE PLANTS. WAS THAT IN PLACE THE WHOLE TIME HE WAS
14 THERE?

15 A. YES.

16 Q. BEFORE THAT WHAT WAS THE POLICY ABOUT CARS OR CAR
17 ALLOWANCES FOR THOSE TYPES OF EMPLOYEES?

18 A. BEFORE I WENT WITH MURATA, THEY ACTUALLY HAD COMPANY
19 CARS. BUT THEY FOUND IT WAS MORE BENEFICIAL ---

20 BY MR. JOHNSON:

21 OBJECTION. I DON'T THINK WHAT BEFORE ALL THIS
22 HAPPENED IS RELEVANT -- THEY DID BEFORE IS RELEVANT TO
23 THE QUESTION. BUT IT WOULD ALSO BE HEARSAY IF HE
24 WASN'T THERE. IT WOULD BE SOMETHING SOMEBODY TOLD HIM.

25 DIRECT EXAMINATION RESUMED BY MR. POPE:

1 Q. YOU ALSO HAD EMPLOYEE MANUALS, DIDN'T YOU?

2 A. IT WAS IN THE COMPANY POLICY MANUALS. THAT'S NOT
3 HEARSAY.

4 BY COMMISSIONER CHILDS:

5 I HAVE TO DETERMINE WHAT HEARSAY IS.

6 BY THE WITNESS:

7 A. I MEAN, IF IT'S WRITTEN IN A MANUAL, I WOULD THINK ---

8 BY MR. JOHNSON:

9 THANK YOU. THE COMMISSIONER HAS RULED.

10 BY COMMISSIONER CHILDS:

11 WRITTEN THINGS CAN ALSO BE HEARSAY. IT'S NOT
12 JUST WHAT SOMEBODY TELLS YOU.

13 BY THE WITNESS:

14 A. OKAY, I'M SORRY.

15 BY COMMISSIONER CHILDS:

16 EVERYBODY IS USED TO HEARSAY FROM TV, BUT IT'S
17 DIFFERENT IN COURT.

18 BY MR. POPE:

19 I HAVE NO MORE QUESTIONS FOR MR. MANNING.

20 CROSS EXAMINATION BY MR. JOHNSON:

21 Q. I'M SORRY, YOUR LAST NAME IS WHAT?

22 A. MANNING. M-A-N-N-I-N-G.

23 Q. MR. MANNING, DID YOU WORK WITH MR. KIMMER EVERY DAY,
24 SHOULDERS TO SHOULDERS? WERE YOU ALL TOGETHER EVERY DAY?

25 A. AT SOME TIMES. NOT EVERY DAY. I WAS THE MANAGER. AT

1 TIMES I DID GET OUT AND WORK WITH HIM. AFTER I HAD
2 MOVED OUT OF THE MANAGEMENT SLOT AND BECAME A
3 TROUBLESHOOTER I WORKED I GUESS MORE FREQUENTLY WITH
4 HIM. BUT NO, I DID NOT WORK EVERY DAY WITH HIM.

5 Q. AND YOU OBVIOUSLY WEREN'T WITH HIM DURING THE PERIOD
6 THAT HE -- AT THE JOB HE WAS WORKING -- OR PLANNING TO
7 WORK IN CHESTER THAT DAY?

8 A. NOT THAT DAY. I HAD WORKED WITH HIM PREVIOUSLY THERE
9 FOR SEVERAL WEEKS. DOING MODIFICATIONS.

10 Q. AND IS IT CORRECT THAT THERE WERE A NUMBER OF DAYS THAT
11 YOU DIDN'T WORK WITH HIM AT ALL?

12 A. YEAH.

13 Q. NOW, YOU OF COURSE ARE A FRIEND OF MR. KIMMER'S, AREN'T
14 YOU?

15 A. YEAH.

16 Q. YOU'VE NOT ONLY WORKED WITH HIM, BUT SINCE HE'S HAD
17 THIS ACCIDENT, YOU'VE VISITED WITH HIM AND YOU SPEAK
18 WITH HIM BY PHONE?

19 A. YEAH, I VISITED WITH HIM AFTER HE HAD THE ACCIDENT. AS
20 A MANAGER, WHICH I FELT LIKE I SHOULD DO, YOU KNOW.
21 EVEN THOUGH HE WASN'T DIRECTLY UNDER ME, I FELT
22 SOMEBODY FROM MURATA SHOULD VISIT HIM.

23 Q. HOW OFTEN DO YOU AND HE TALK ON THE PHONE?

24 A. PROBABLY ONCE A MONTH.

25 Q. I SEE. AND WERE YOU SUBPOENAED TO BE HERE OR DID YOU

1 COME VOLUNTARILY?

2 A. I CAME VOLUNTARILY. I WAS ASKED. I DIDN'T SEE A
3 SUBPOENA.

4 Q. AND YOU CAME FROM WHERE?

5 A. YORK, SOUTH CAROLINA.

6 Q. DOWN TO GREENWOOD?

7 A. YEAH.

8 Q. AND YOU'VE BEEN HERE ALL AFTERNOON?

9 A. YEAH, I ACTUALLY CAME FROM A MILL. I WAS IN FORT LAWN,
10 SOUTH CAROLINA THIS AFTERNOON.

11 Q. NOW, LET ME ASK YOU THIS. DID I UNDERSTAND YOU TO SAY
12 THAT YOU KNEW HE HAD A BACK PROBLEM? OR A BAD BACK I
13 THINK IS WHAT YOU SAID.

14 A. NO, I ---

15 Q. IS THAT WHAT YOUR TESTIMONY WAS?

16 A. I SAID I KNEW HE HAD HAD -- HIS BACK HAD HURT SOME.
17 LET ME PUT IT LIKE THAT. WHICH ALL OF US DID DOING
18 WORK LIKE THAT.

19 Q. DID YOU SAY BAD BACK? WAS THAT YOUR EARLIER TESTIMONY?

20 A. I'M NOT SURE EXACTLY HOW I PHRASED IT.

21 Q. WELL, TELL ME WHAT YOU KNEW ABOUT HIS BACK PROBLEM.

22 A. THE ONLY THING THAT I KNEW IS THAT AT TIMES HIS BACK
23 HURT AND THAT -- YOU KNOW, HE WOULD COMPLAIN WORKING
24 SIDE BY SIDE THAT IT WAS HURTING BENDING OVER DOING OUR
25 JOB. BUT I DID NOT KNOW THAT THERE WAS ANYTHING

1 SERIOUSLY WRONG, YOU KNOW. ALL OF US -- IN DOING WORK
2 LIKE THIS, ALL OF US HAVE BACK PROBLEMS AT TIMES.

3 Q. WERE YOU AWARE THAT HE HAD HAD INJURIES TO HIS RIGHT
4 KNEE THAT PREDATED HIS AUTOMOBILE ACCIDENT?

5 A. NO.

6 Q. SO TO THE EXTENT HE WAS GETTING MEDICAL CARE OR GETTING
7 SOME SORT OF COMPENSATION BENEFIT FOR INJURIES TO HIS
8 RIGHT KNEE, YOU ARE UNAWARE OF THAT?

9 A. I DID NOT KNOW.

10 Q. WERE YOU AWARE THAT HE HAD GOTTEN AT LEAST ONE EPIDURAL
11 STEROID INJECTION FOR HIS BACK PROBLEM?

12 A. NO, SIR.

13 Q. WHAT WERE THE CIRCUMSTANCES OF YOUR LEAVING MURATA?

14 A. CAN I ASK WHAT THAT HAS TO DO WITH THIS.

15 Q. IT HAS TO DO WITH YOUR CREDIBILITY IS THE REASON I'M
16 ASKING THE QUESTION. WERE YOU TERMINATED?

17 A. NO.

18 Q. WHAT WERE THE CIRCUMSTANCES OF YOUR LEAVING MURATA?

19 A. I LEFT MURATA BECAUSE I GOT A BETTER JOB.

20 Q. AND DID YOU LEAVE VOLUNTARILY?

21 A. YES.

22 Q. HAVE YOU FILED ANY CLAIMS AGAINST MURATA?

23 A. NO.

24 BY MR. JOHNSON:

25 THANK YOU, THAT'S ALL I HAVE.

1 REDIRECT EXAMINATION BY MR. POPE:

2 Q. LET ME ASK ONE THING. DID YOU EVER KNOW MR. KIMMER TO
3 MISS ANY WORK WHATSOEVER FOR ANY PHYSICAL AILMENTS HE
4 HAD? BEYOND A DAY OR TWO HERE OR THERE I MEAN.

5 A. NOT THAT -- NO, SIR.

6 BY MR. POPE:

7 THAT'S ALL.

8 RE CROSS EXAMINATION BY MR. JOHNSON:

9 Q. WELL, THEN LET ME ASK YOU THIS. YOU WEREN'T AWARE THAT
10 HE WAS OUT OF WORK FOR SIX WEEKS AS A RESULT OF LOW
11 BACK PAIN, HAVING BEEN TREATED BY DR. MCCARTHY AT
12 CAROLINA ORTHOPEDICS IN ROCK HILL?

13 A. NO, SIR.

14 Q. YOU DIDN'T HAVE -- EVEN THOUGH YOU WERE HIS SUPERVISOR
15 AND WORKED WITH HIM, ---

16 A. NOW, WAIT A MINUTE ---

17 Q. --- YOU HAD NO KNOWLEDGE ABOUT THAT?

18 A. I WAS NOT HIS SUPERVISOR AT THAT TIME.

19 Q. IF YOU DON'T KNOW ABOUT IT, HOW DO YOU KNOW WHEN IT
20 WAS?

21 A. WELL, I KNOW WHEN HE WORKED DIRECTLY UNDER ME, HE DID
22 NOT MISS ANY TIME. BUT HE WAS WORKING FOR AN OUTSIDE
23 CONTRACTOR AT THAT TIME, AND HE HAD NO LOST TIME DURING
24 THAT TIME. THEN I MOVED OUT OF THE SUPERVISOR'S --
25 MANAGER'S SLOT IN 1995, AND THAT'S WHEN I BECAME THE

1 TROUBLESHOOTER. AND I DID WORK WITH HIM SOME. YOU
2 KNOW, I TRAVELED QUITE A BIT, SO I DID NOT WORK WITH
3 HIM EVERY DAY.

4 Q. THE QUESTION I HAVE FOR YOU, SIR, IN JANUARY -- IF THE
5 RECORDS REFLECT THAT IN JANUARY OF '98 HE INJURED HIS
6 BACK WORKING AT CANNON MILLS IN SALISBURY, NORTH
7 CAROLINA, SUFFERING LOW BACK PAIN, TREATED BY DR.
8 MCCARTHY AND WAS KEPT OUT OF WORK SIX WEEKS DURING THAT
9 TIME PERIOD, YOU'RE UNAWARE OF THAT?

10 A. IN '98? I REMEMBER THERE WAS A PERIOD DURING THAT TIME
11 -- I DON'T KNOW EXACTLY WHEN THAT HE WAS OUT SOME. I
12 DID NOT KNOW SIX WEEKS.

13 Q. HE WAS ACTUALLY OUT FOR BACK PROBLEMS, WASN'T HE, NOW
14 THAT I HAVE REFRESHED YOUR RECOLLECTION?

15 A. THAT I DON'T KNOW. BUT I BELIEVE YOU'RE RIGHT. I
16 BELIEVE IT WAS BACK PROBLEMS.

17 BY MR. JOHNSON:

18 THANK YOU.

19 BY COMMISSIONER CHILDS:

20 ANYTHING FURTHER?

21 BY MR. POPE:

22 I WANT TO ASK THE CLAIMS REP TO BE SWORN. I WANT
23 TO ASK HIM SOMETHING.

24 JOHN PATE, BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MR. POPE:

1 Q. MR. PATE, YOU HEARD MR. JOHNSON, EVER THE GOOD
2 ADVOCATE, ASK A SERIES OF QUESTIONS ABOUT THINGS THAT
3 THEORETICALLY SOME CARRIER COULD HAVE DONE TO DETERMINE
4 WHETHER THERE WERE ASSETS -- OR THAT THIS PENDERGRASS
5 MAN MIGHT HAVE HAD OR OTHER COVERAGES. HAVE YOU DONE
6 ANY SUCH ---

7 BY COMMISSIONER CHILDS:

8 ONE MOMENT, PLEASE. YOU CAN BE EXCUSED.

9 DIRECT EXAMINATION RESUMED BY MR. POPE:

10 Q. HAS YOUR COMPANY UNDERTAKEN -- EXCUSE ME, WHAT IS YOUR
11 POSITION, I GUESS?

12 A. I'M A SENIOR FIELD INVESTIGATOR.

13 Q. FOR LIBERTY MUTUAL?

14 A. CORRECT.

15 Q. ALL RIGHT, SIR. EXCUSE ME. ARE YOU AWARE OF ANYTHING
16 THAT LIBERTY MUTUAL HAS DONE TO ASCERTAIN NOW WHETHER
17 OR NOT IN FACT PENDERGRASS HAD ANY ASSETS, OR THERE WAS
18 ANY OTHER INSURANCE COVERAGES AVAILABLE?

19 A. I HAVE NO KNOWLEDGE OF WHAT WAS DONE.

20 Q. BUT YOU'VE READ THE FILE, AND THERE'S NOTHING IN THERE
21 TO INDICATE THAT, IS THAT RIGHT?

22 A. NO. I HAVE NOT READ THE FILE.

23 Q. YOU HAVEN'T?

24 A. NO, SIR.

25 Q. THIS ISN'T YOUR FILE?

1 A. NO, SIR.

2 Q. OH, EXCUSE ME. WELL, YOU'VE HEARD THE TESTIMONY AND
3 YOU CERTAINLY KNOW ABOUT SUBROGATION. WORKERS'
4 COMPENSATION ---

5 A. I KNOW WHAT SUBROGATION IS.

6 Q. ARE YOU AWARE OF ANY RIGHT THAT LIBERTY MUTUAL HAS LOST
7 BECAUSE MR. WRIGHT SETTLED THE THIRD PARTY CLAIM FOR
8 MINIMUM LIMITS TWO DAYS BEFORE HE FILED THE FORM 50?

9 A. I'M NOT QUALIFIED TO ANSWER THAT QUESTION.

10 Q. ARE YOU AWARE OF ANY JUST OFF THE TOP?

11 BY MR. JOHNSON:

12 I THINK HE'S ANSWERED IT, COMMISSIONER.

13 BY MR. POPE:

14 WELL, COMMISSIONER, IF HE COMES TO THE HEARING
15 AND THEN HE TELLS US HE'S NOT QUALIFIED TO ANSWER A
16 QUESTION, THAT'S SORT OF INCREDIBLE. HE MAY NOT KNOW
17 THE FACTS UPON WHICH HE CAN BASE IT, BUT HE CERTAINLY
18 WOULD KNOW WHETHER OR NOT, AS A COMP SENIOR REP, IF
19 ANYTHING COULD HAVE BEEN DONE.

20 BY COMMISSIONER CHILDS:

21 WELL, IF HE SAYS HE'S NOT QUALIFIED, THEN DOESN'T
22 THAT GO TO WHAT HIS WORK DUTIES ARE.

23 BY MR. POPE:

24 I SUPPOSE IT DOES. I HAVE NO OTHER QUESTIONS.

25 BY MR. JOHNSON:

1 I HAVE NONE.

2 BY COMMISSIONER CHILDS:

3 DOES THAT CONCLUDE THE HEARING?

4 BY MR. JOHNSON:

5 YES, MA'AM.

6 BY MR. POPE:

7 THAT'S ALL.

8 BY COMMISSIONER CHILDS:

9 THANK YOU.

10 (THERE BEING NO FURTHER QUESTIONS, THIS WORKERS'
11 COMPENSATION HEARING WAS CONCLUDED AT 8:41 P.M.)

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CERTIFICATE OF REPORTER

I, MARCIE L. SMITH, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING 94 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT
OF THE AFOREMENTIONED **WORKERS' COMPENSATION HEARING**, WHICH
WAS HELD ON THE 10TH DAY OF DECEMBER, 2002.

THAT THE WITNESSES WERE FIRST DULY SWORN TO TELL THE
TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH OF **THEIR**
OWN KNOWLEDGE CONCERNING THIS MATTER.

THAT I AM NOT RELATED TO NOR THE EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR RELATED TO OR EMPLOYED BY ANY ATTORNEY
OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN
THE OUTCOME OF THIS ACTION.



MARCIE L. SMITH, REPORTER

NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: 1-23-07

Form 1040X

(Rev. November 1998)

Department of the Treasury -- Internal Revenue Service

Amended U.S. Individual Income Tax Return

See separate instructions.

OMB No. 1545-0091

This return is for calendar year 1998, OR fiscal year ended 19

Please print or type	Your first name and initial RICHARD	Last name KIMMER	Your social security number
	If a joint return, spouse's first name and initial MARTHA T	Last name KIMMER	
	P.O. box, if mail is not delivered to your home		Apt. no.
	City, town or post office, state, and ZIP code. If you have a foreign address, see page 2 of the instructions. WHITMIRE SC 29178		Telephone number (optional)
	For Paperwork Reduction Act Notice, see page 6.		

- A If the name or address shown above is different from that shown on the original return, check here ☐
- B Has original return been changed or audited by the IRS or have you been notified that it will be? ☐ Yes ☒ No
- C Filing status. Be sure to complete this line. Note: You cannot change from joint to separate returns after the due date.
- | | | | | | |
|--------------------|---------------------------------|---|---|--|---|
| On original return | ☐ Single | ☒ Married filing joint return | ☐ Married filing separate return | ☐ Head of household | ☐ Qualifying widow(er) |
| On this return | ☐ Single | ☒ Married filing joint return | ☐ Married filing separate return | ☐ Head of household | ☐ Qualifying widow(er) |
- * If the qualifying person is a child but not your dependent, see page 2

USE PART II ON THE BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see pages 2-5)		A. Original amount or as previously adjusted (see page 2)	B. Net change - amount of increase or (decrease) - explain in Part II	C. Correct amount
1	Adjusted gross income (see page 3)	91,218	10,000	101,218
2	Itemized deductions or standard deduction (see page 3)	21,410	5,906	27,316
3	Subtract line 2 from line 1	69,808	4,094	73,902
4	Exemptions. If changing, fill in Parts I and II on page 2	5,400		5,400
5	Taxable income. Subtract line 4 from line 3	64,408	4,094	68,502
6	Tax (see page 4). Method used in col. C TRS	12,534	1,148	13,682
7	Credits (see page 4)			
8	Subtract line 7 from line 6. Enter the result but not less than zero	12,534	1,148	13,682
9	Other taxes (see page 4)	2,521		2,521
10	Total tax. Add lines 8 and 9	15,055	1,148	16,203
11	Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see page 4	17,901		17,901
12	Estimated tax payments, including amount applied from prior year's return			
13	Earned income credit			
14	Additional child tax credit from Form 8812			
15	Credits from Form 4136 or Form 2439			
16	Amount paid with Form 4868, 2688, or 2350 (application for extension of time to file)			
17	Amount of tax paid with original return plus additional tax paid after it was filed			
18	Total payments. Add lines 11 through 17 in column C			17,901
19	Overpayment, if any, as shown on original return or as previously adjusted by the IRS			2,846
20	Subtract line 19 from line 18 (see page 4)			15,055
21	AMOUNT YOU OWE. If line 10, column C, is more than line 20, enter the difference and see page 4			1,148
22	If line 10, column C, is less than line 20, enter the difference			
23	Amount of line 22 you want REFUNDED TO YOU			
24	Amount of line 22 you want APPLIED TO YOUR 1998 ESTIMATED TAX			

Sign Here

oint return?
ne page 2.
Keep a copy for
records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Your signature

Date

Spouse's signature. If a joint return, BOTH must

Preparer's signature

Date

Check if self-employed ☒d
eparer's
Use Only

Firm's name (or yours if self-employed) and address

JW WATTS TAX SERVICE

EIN

LANCASTER

SC

ZIP code 29720

905

Part I Exemptions. See Form 1040, Form 1040A, or Form 1040-T instructions.

If you are **not** changing your exemptions, do not complete this part.
 If claiming **more** exemptions, complete lines 25-31 and, if applicable, line 32.
 If claiming **fewer** exemptions, complete lines 25-30.

	A. Original number of exemptions reported or as previously adjusted	B. Net change	C. Correct number of exemptions
25 Yourself and spouse	25		
26 Your dependent children who lived with you	26		
27 Your dependent children who did not live with you due to divorce or separation	27		
28 Other dependents	28		
29 Total number of exemptions. Add lines 25 through 28	29		
30 Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here and on line 4	30		

Caution: If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself.

But see page 3 if the amount on line 1 is over:

Tax year	Exemption Amount	
1998	\$2,750	\$93,400
1997	2,650	90,900
1996	2,550	88,475
1995	2,500	86,025

31 Dependents (children and other) not claimed on original (or adjusted) return:
 Note: For tax year 1998, do not complete column (e) below. For tax years before 1998, do not complete column (d) below.

(a) First Name	Last Name	(b) Dependent's soc. sec. no. If born in the tax year you are amending, see page 5.	(c) Dependent's relationship to you	(d) Check if qualifying child for child tax credit	(e) No. of months lived in your home	No. of your children on line 31 who:
				☐		a lived with you ☐
				☐		b did not live with you due to divorce or separation (see page 5) ☐
				☐		Dependents on line 31 not entered above ☐
				☐		
				☐		

32 For tax years before 1995, if your child listed on line 31 did not live with you but is claimed as your dependent under a pre-1985 agreement, check here ☐

Part II Explanation of Changes to Income, Deductions, and Credits

Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 1 of the instructions. Also, check here ☐

WHEN WE ORIGINALLY FILED THE PREPARER UNDERSTATED MY WAGES. ALSO MY ITEMIZED DEDUCTIONS WERE NOT FIGURED CORRECTLY. ENCLOSED IS A NEW SCHEDULE A AND 2106.

Part III Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here ☐

If a joint return and your spouse did not previously want to have \$3 go to the fund but now wants to, check here ☐

SCHEDULES A&B
(Form 1040)

Schedule A - Itemized Deductions

OMB No. 1545-0074

1998

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-1)	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	5,819
(See page A-2.)	6 Real estate taxes (see page A-2)	6	1,108
	7 Personal property taxes	7	537
	8 Other taxes. List type and amount ▶	8	
	9 Add lines 5 through 8	9	7,464
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	10,746
(See page A-3.)	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	
	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	10,746
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	3,200
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	3,200
Casualty and Theft Losses	19 Casualty or theft loss(es). Attach Form 4684. (See page A-5.)	19	
Job Expenses and 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	7,865
(See page A-6 for expenses to deduct here.)	21 Tax preparation fees	21	65
	22 Other expenses - investment, safe deposit box, etc. List type and amount ▶	22	
	23 Add lines 20 through 22	23	7,930
	24 Enter amount from Form 1040, line 34	24	101,218
	25 Multiply line 24 above by 2% (.02)	25	2,024
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26	5,906
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 \$124,500 (over \$62,250 if married filing separately)?	28	27,316
	NO. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter on Form 1040, line 36, the larger of this amount or your standard deduction.		
	YES. Your deduction may be limited. See page A-6 for the amount to enter.		

For Paperwork Reduction Act Notice, see Form 1040 instructions.

EEA

Schedule A (Form 1040) 1998

967

Form 2106

Employee Business Expenses

See separate instructions.

OMB No. 1545-0139

Department of the Treasury
Internal Revenue Service (99)

Attach to Form 1040.

1998

Attachment
Sequence No. 54

Your name

RICHARD KIMMER

Occupation in which you incurred expenses

MACHINERY INSTALLER

Part I Employee Business Expenses and Reimbursements

STEP 1 Enter Your Expenses

	Column A Other Than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from line 22 or line 29 (Rural mail carriers See instructions.)	1 7,865	
2 Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work	2	
3 Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment	3	
4 Business expenses not included on lines 1 through 3. Do not include meals and entertainment	4	
5 Meals and entertainment expenses (see instructions)	5	
6 Total expenses. In Column A, add lines 1 through 4 and enter the result. In Column B, enter the amount from line 5	6 7,865	

Note: If you were not reimbursed for any expenses in Step 1, skip line 7 and enter the amount from line 6 on line 8.

STEP 2 Enter Reimbursements Received From Your Employer for Expenses Listed in STEP 1

7 Enter reimbursements received from your employer that were not reported to you in box 1 of Form W-2. Include any reimbursements reported under code "L" in box 13 of your Form W-2 (see instructions)	7	

STEP 3 Figure Expenses To Deduct on Schedule A (Form 1040)

8 Subtract line 7 from line 6.	8 7,865	
Note: If both columns of line 8 are zero, stop here. If Column A is less than zero, report the amount as income on Form 1040, line 7.		
9 In Column A, enter the amount from line 8. In Column B, multiply the amount on line 8 by 50% (.50). If either column is zero or less, enter -0- in that column. (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses by 55% (.55) instead of 50%. For more details, see instructions.)	9 7,865	
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 20. (Fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter the total.)	10	7,865

For Paperwork Reduction Act Notice, see instructions.

EEA

Form 2106 (1998)

908

Part II Vehicle Expenses (See instructions to find out which sections to complete.)**Section A -- General Information**

		(a) Vehicle 1	(b) Vehicle 2
11	Enter the date vehicle was placed in service	01-20-1997	
12	Total miles vehicle was driven during 1998	miles	miles
13	Business miles included on line 12	24,200 miles	miles
14	Percent of business use. Divide line 13 by line 12	100.00 %	%
15	Average daily round trip commuting distance	miles	miles
16	Commuting miles included on line 12	miles	miles
17	Other miles. Add lines 13 and 16 and subtract the total from line 12	(24,200) miles	miles
18	Do you (or your spouse) have another vehicle available for personal purposes?	☐ Yes ☐ No	

19 If your employer provided you with a vehicle, is personal use during off-duty hours permitted? ☐ Yes ☐ No ☐ Not applicable

20 Do you have evidence to support your deduction? ☐ Yes ☐ No

21 If "Yes," is the evidence written? ☐ Yes ☐ No

Section B -- Standard Mileage Rate

22 Multiply line 13 by 32 1/2 cents (.325). Enter the result here and on line 1 **22** 7,865

Section C -- Actual Expenses

		(a) Vehicle 1	(b) Vehicle 2
23	Gasoline, oil, repairs, vehicle insurance, etc.		
24a	Vehicle rentals		
b	Inclusion amount (see instructions)		
c	Subtract line 24b from line 24a		
25	Value of employer-provided vehicle (applies only if 100% of annual lease value was included on Form W-2 - see instructions).		
26	Add lines 23, 24c, and 25		
27	Multiply line 26 by the percentage on line 14		
28	Depreciation. Enter amount from line 38 below		
29	Add lines 27 and 28. Enter total here and on line 1		

Section D -- Depreciation of Vehicles (Use this section only if you own the vehicle.)

		(a) Vehicle 1	(b) Vehicle 2
30	Enter cost or other basis (see instructions)		
31	Enter amount of section 179 deduction (see instructions)		
32	Multiply line 30 by line 14 (see instructions if you elected the section 179 deduction)		
33	Enter depreciation method and percentage (see instructions)		
34	Multiply line 32 by the percentage on line 33 (see instructions)		
35	Add lines 31 and 34		
36	Enter the limit from the table in the line 36 instructions		
37	Multiply line 36 by the percentage on line 14		
38	Enter the smaller of line 35 or line 37. Also enter this amount on line 28 above		

Amended North Carolina

Individual Income Tax Return

FORM

7-400X

(REV. 11-98)

N. C. DEPARTMENT OF REVENUE
P. O. BOX 25000
RALEIGH, N. C. 27640-0640

This return is for calendar year 19 98 OR fiscal year ended .19

Please print or type	Your first name and middle initial RICHARD	Last name KIMMER	Spouse's Social Security no.
	If a joint return, spouse's first name and middle initial	Last name	
City, town or post office, state and zip code WHITMIRE SC 29178			Daytime Telephone Number
County FOREIGN			Office Use Only
Enter below name and address shown on original return if different from name and address shown above. SAME		Has your original return for this taxable year been changed or audited? ☐ Yes ☒ No If "No," have you been notified that it will be? ☐ Yes ☒ No	
Filing Status claimed. Note: You cannot change from joint to separate returns after the due date of the original return has passed. On original return ☐ Single ☐ Married filing joint return ☒ Married filing separate return ☐ Head of household ☐ Qualifying widow(er) On this return ☐ Single ☐ Married filing joint return ☒ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)			

CORRECTION OF TAXABLE INCOME AND TAX PAYMENTS

(See instructions on page 2)

	A. As originally reported or previously adjusted (see instructions)	B. Net change-Increase or (Decrease) - explain on page 2	C. Correct Amount
1. Taxable income from your federal income tax return	1. 33,883	3,544	37,427
2. Additions to federal taxable income	2. 4,353		4,353
3. Add lines 1 and 2	3. 38,236	3,544	41,780
4. Deductions from federal taxable income	4. 252		252
5. Subtract line 4 from line 3	5. 37,984	3,544	41,528
6. North Carolina taxable income	6. 27,728	(2,396)	25,332
7. North Carolina income tax	7. 1,835	(168)	1,667
8. North Carolina income tax withheld	8a. 2,488		2,488
	8b. Spouse's tax withheld		
9. Other tax payments	9.		
10. Tax Credits	10.		
11. Amount paid with original return plus additional tax paid after it was filed			11.
12. Total payments. Add lines 8a through 11 in column C			12. 2,488
13. Total of all previous refunds received for this taxable year			13. 653
14. Subtract line 13 from line 12			14. 1,835
15. If line 7, Column C is more than line 14, enter the difference here			15.
16. Interest due (See instructions)			16.
17. Add lines 15 and 16 and enter the total - PAY THIS AMOUNT			17.
18. If line 7, Column C is less than line 14, enter the difference as AMOUNT TO BE REFUNDED			18. 168

I certify that, to the best of my knowledge, this return is accurate and complete.

If prepared by a person other than taxpayer, this affirmation is based on all information of which preparer has any knowledge.

SIGN
HERE

Your Signature _____ Date _____

Paid Preparer's Signature _____ Date _____

Spouse's Signature (if filing joint return, both must sign) _____ Date _____

Preparer's Social Security or Federal Identification Number _____

Preparer's Telephone Number _____

910

Explanation of changes - Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach all supporting forms and schedules for items changed. Be sure to include your name and social security number on any attachments. If the changes to this return are also applicable to your federal return, include a copy of Federal Form 1040X. **Refunds will not be processed without a complete explanation of the changes.**

WHEN MY ORIGINAL RETURNED WAS FILED MY ITEMIZED DEDUCTIONS
WERE NOT FIGURED CORRECTLY.

911

Label

See instructions on page 18.)
Use the IRS label.
Otherwise, please print or type

For the year ending 1998, beginning 1998, ending 1998
PREPARED FOR STATE PURPOSES ONLY DO NOT FILE WITH OURS! 1545-0074

Your first name and initial
RICHARD KIMMER
Last name
KIMMER
Your social security number

If a joint return, spouse's first name and initial

Last name

Home address

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 18
WHITMIRE SC 29178

IMPORTANT!
You must enter your SSN(s) above

Yes	No
	☒

Note: Checking "Yes" will not change your tax or reduce your refund.

Presidential Election Campaign (See page 18)

Do you want \$3 to go to this fund? _____
If a joint return, does your spouse want \$3 to go to this fund? _____

Filing Status

- 1 ☐ Single
- 2 ☐ Married filing joint return (even if only one had income)
- 3 ☒ Married filing separate return. Enter spouse's SSN above, full name here. **MARTHA T KIMMER**
- 4 ☐ Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here. _____
- 5 ☐ Qualifying widow(er) with dependent child (year spouse died **> 19**) (See page 18.)

Exemptions

6a ☒ Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

b ☐ Spouse

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) Check if qualifying child for child tax credit
				☐
				☐
				☐
				☐
				☐

d Total number of exemptions claimed. _____

No. of boxes checked on 6a and 6b: **1**

No. of your children on 6c who:
• lived with you _____
• did not live with you due to divorce or separation (see page 19) _____
Dependents on 6c not entered above _____
Add numbers entered on lines above: **1**

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2 **40,320**

8a Taxable interest. Attach Schedule B if required **47**

8b Tax-exempt interest. DO NOT include on line 8a **8b**

9 Ordinary dividends. Attach Schedule B if required **252**

10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21) **252**

11 Alimony received

12 Business income or (loss). Attach Schedule C or C-EZ

13 Capital gain or (loss). Attach Schedule D

14 Other gains or (losses). Attach Form 4797

15a Total IRA distributions **15a**

15b Taxable amount (see page 22)

16a Total pensions & annuities **16a**

16b Taxable amount (see page 22) **25,208**

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

18 Farm income or (loss). Attach Schedule F

19 Unemployment compensation

20a Social security benefits **20a**

20b Taxable amount (see page 24)

21 Other income

22 Add the amounts in the far right column for lines 7 through 21. This is your total income **65,827**

23 IRA deduction (see page 25) **23**

24 Student loan interest deduction (see page 27) **24**

25 Medical savings account deduction. Attach Form 8853 **25**

26 Moving expenses. Attach Form 3903 **26**

27 One-half of self-employment tax. Attach Schedule SE **27**

28 Self-employed health insurance deduction (see page 28) **28**

29 Keogh and self-employed SEP and SIMPLE plans **29**

30 Penalty on early withdrawal of savings **30**

31a Alimony paid. b Recipient's SSN **31a**

32 Add lines 23 through 31a **32**

33 Subtract line 32 from line 22. This is your adjusted gross income **65,827**

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see page 20.

Enclose, but do not staple, any payment. Also, please use Form 1040-V.

Adjusted Gross Income

line 33 is under 30,095 (under \$10,030 if a child did not live with you). see EIC inst. on page 30.

912

RICHARD KIMMER

Tax and Credits

Standard Deduction for Most People

Single \$4,250

Head of household \$6,250

Married filing jointly or Qualifying widow(er) \$7,100

Married filing separately \$3,550

34	Amount from line 33 (adjusted gross income)	34	65,827
35a	Check if ☐ You were 65 or older. ☐ Blind. ☐ Spouse was 65 or older. ☐ Blind. Add the number of boxes checked above and enter the total here.	35a	
b	If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 29 and check here.	35b	☒
36	Enter the larger of your itemized deductions from Schedule A, line 28. OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent.	36	25,700
37	Subtract line 36 from line 34.	37	40,127
38	If line 34 is \$93,400 or less, multiply \$2,700 by the total number of exemptions claimed on line 6d. If line 34 is over \$93,400, see the worksheet on page 30 for the amount to enter.	38	2,700
39	Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	37,427
40	Tax. See page 30. Check if any tax from a ☐ Form(s) 8814 b ☐ Form 4972	40	7,726
41	Credit for child & dependent care expenses. Attach Form 2441	41	
42	Credit for the elderly or the disabled. Attach Schedule R	42	
43	Child tax credit (see page 31)	43	
44	Education credits. Attach Form 8863	44	
45	Adoption credit. Attach Form 8839	45	
46	Foreign tax credit. Attach Form 1116 if required	46	
47	Other. Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	47	
48	Add lines 41 through 47. These are your total credits.	48	
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0-	49	7,726
50	Self-employment tax. Attach Schedule SE	50	
51	Alternative minimum tax. Attach Form 6251	51	
52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required	53	2,521
54	Advance earned income credit payments from Form(s) W-2	54	
55	Household employment taxes. Attach Schedule H	55	
56	Add lines 49 through 55. This is your total tax	56	10,247
57	Federal income tax withheld from Forms W-2 and 1099	57	13,249
58	1998 est. tax payments and amount applied from 1997 return	58	
59a	Earned income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount and type	59a	
60	Additional child tax credit. Attach Form 8812	60	
61	Amount paid with Form 4868 (request for extension)	61	
62	Excess social security and RRTA tax withheld (see page 43)	62	
63	Other payments. Check if from a ☐ Form 2439 b ☐ Form 4136	63	
64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments	64	13,249
65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID	65	3,002
66a	Amount of line 65 you want REFUNDED TO YOU	66a	3,002
b	Routing number	c Type: ☐ Checking ☐ Savings	
d	Account number		
67	Amount of line 65 you want APPLIED TO YOUR 1999 ESTIMATED TAX	67	
68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE. For details on how to pay, see page 44	68	
69	Estimated tax penalty. Also include on line 68	69	

Amount You Owe

Sign Here

Joint return? See page 18. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature _____ Date _____ Your occupation SKILLED
 Spouse's signature. If joint return, BOTH must sign. _____ Date _____ Spouse's occupation _____

Paid Preparer's Use Only

Preparer's signature _____ Date 04-14-2000 Check if self-employed ☒
 Firm's name (or yours if self-employed) and address JW WATTS TAX SERVICE
 LANCASTER SC EIN 57-0895989
 ZIP code 29720

913

SCHEDULES A&B
(Form 1040)

PREPARED FOR STATE PURPOSES ONLY - DO NOT FILE WITH IRS!
Schedule A - Itemized Deductions

OMB No 1545-0074

1998

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 KIMMER

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others		
1	Medical and dental expenses (see page A-1)	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	3,653
(See page A-2.)	6 Real estate taxes (see page A-2)	6	1,108
	7 Personal property taxes	7	537
	8 Other taxes List type and amount ▶	8	
	9 Add lines 5 through 8	9	5,298
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	10,746
(See page A-3)	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	
	12 Points not reported to you on Form 1098 See page A-3 for special rules	12	
Note:	13 Investment interest. Attach Form 4952, if required. (See page A-3.)	13	
Personal interest is not deductible.	14 Add lines 10 through 13	14	10,746
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	3,200
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	3,200
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	7,865
(See page A-6 for expenses to deduct here.)	21 Tax preparation fees	21	65
	22 Other expenses - investment, safe deposit box, etc. List type and amount ▶	22	
	23 Add lines 20 through 22	23	7,930
	24 Enter amount from Form 1040, line 34	24	65,827
	25 Multiply line 24 above by 2% (.02)	25	1,317
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26	6,613
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 \$124,500 (over \$62,250 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 on Form 1040, line 36, the larger of this amount or your standard deduction. YES. Your deduction may be limited. See page A-6 for the amount to enter.	28	25,700

For Paperwork Reduction Act Notice, see Form 1040 instructions.

EEA

Schedule A (Form 1040) 1998

914

Do not write in this space - OFFICE USE

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
AMENDED INDIVIDUAL INCOME TAX

SC1040X

(Rev. 9/98)

3083

Fiscal Year Ended 19 OR CALENDAR YEAR 19

If your address has not changed since you last filed, check this box.

Print Your first name and Initial

(St., Jr., 2nd, 3rd, 4th)

Last name

RICHARD KIMMER

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

Spouse's last name, if different

MARTHA T

2. Box)

Apt. No.

Daytime telephone
Area code

Do not write in this space - OFFICE USE

City, state, and ZIP code

WHITMIRE, SC 29178

County code

36

A. Filing status claimed. (Note: You cannot change from joint to separate returns after the due date has passed.)

☐ Single☒ Married filing joint☐ Married filing separate☐ Head of Household☐ Qualifying Widow(er)

Tax Year 98

B. TYPE OF RETURN: Resident ☒ Resident ☐ Nonresident ☐
Check One SC1040A SC1040 SC1040NR

C. FEDERAL EXEMPTIONS

Number of exemptions on your federal return 2

Give the item or line reference and explain why each change was made on the reverse side - attach any schedules or forms that apply.		A As Reported Or Adjusted	B Net Change Explain on back	C Correct Amount
Income and Adjustments	1. Federal taxable income SC1040 or SC1040A	64,408	4,094	68,502
	2. Net South Carolina adjustment (plus or minus)	5,567		5,567
	3. Modified South Carolina taxable income (line 1 plus or minus line 2): Nonresident - enter amount from Part I, line 31 of this form.	69,975	4,094	74,069
Tax	4. Tax: SC1040, SC1040A or SC1040NR	4,562	287	4,849
	5. Tax on lump sum distribution (SC4972)			
	6. Total South Carolina Tax (line 4 plus line 5)	4,562	287	4,849
Credits	7. Child and Dependent Care Credit			
	8. Two Wage Earner Credit	210		210
	9. Other Non-Refundable Credits	1,835	(168)	1,667
	10. Total Credits (add lines 7 through 9)	2,045	(168)	1,877
Payments and	11. Balance: Subtract line 10 from line 6	2,517	455	2,972
	12. South Carolina tax withheld	2,166		2,166
	13. South Carolina estimated tax payments			
Transfers	14. Tuition Tax Credit			
	15. Amount paid with extension; original return; and any additional tax paid after original was filed			351
	16. Total of lines 12, column C through 15, column C			2,517
	17. Less: Net refund on original return			
	18. Balance: Subtract line 17 from line 16			2,517
	19. Transfer from original return for Estimated Tax, Endangered Wildlife Fund, Childrens Trust Fund, Eldercare Trust Fund, Veterans' Trust Fund, Gift of Life Trust Fund or DARE Fund			
	20. Net tax: Subtract line 19 from line 18			2,517
Refund or Balance Due	21. If line 20 is larger than line 11, column C. Enter the REFUND			
	22. If line 11, column C is larger than line 20, enter the difference			455
	23. Interest and penalty on tax due (from due date of original return)			
	24. TOTAL: Add lines 22 and 23 and enter the TOTAL BALANCE DUE			455

Please
Sign

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Here

Your Signature

Date

Spouse's Signature (If filing jointly, BOTH must sign.)

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.

Yes ☐No ☐

Preparer's Printed Name

JOHN M WATTS

If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Paid

Preparer's LANCASTER, SC 29720

Date

EI Number

Use Only

Address

915

INSTRUCTIONS FOR FILING AMENDED RETURNS

Form SC1040X should be used when filing an amended individual income tax return. Enter the tax year in the upper right hand corner of Form SC1040X. Furnish all information requested. SC1040X can be filed only after you have filed an original return.

Mail to: SC Department of Revenue
Income Tax
Columbia, SC 29214-0012

2. Any changes made to the original return should be explained in Part II. A change in tax withheld must be verified by a wage and tax statement. Tax credits for tax paid to other states must be verified by a copy of the other state's income tax return and federal return. Other credits must be supported by a properly completed South Carolina form.
3. The Statute of Limitations for filing claims for refund is three years from the time the timely filed return, including extensions, was filed, or two years from the date of payment, whichever is later.
4. When items are in question, refer to instructions for preparing form SC1040A, SC1040, SC1040NR, or Schedule TC, whichever is applicable.

PART I - NONRESIDENT

	(1) As Originally Reported	(2) Net Change	(3) Correct Amount	
25. Adjusted S.C. Gross Income from back of Form SC1040NR, line 55, col. B				25
26. Corrected Proration (line 25, col. 3 / corrected federal adjusted gross income)			%	26
27. TOTAL Itemized (standard) Deductions and Exemptions				27
28. Allowable Itemized (standard) Deductions and Exemptions (multiply line 27, col. 3 by corrected percent.)				28
29. Total SC deductions from back of Form SC1040NR, line 62, col. B				29
30. Add line 28 and 29, col. 3 above				30
31. Modified South Carolina taxable income as corrected (line 25, col. 3 less line 30, col. 3) Enter results from column 3 to line 3 column C on front of SC1040X Compute tax and enter on line 4 column C on front of SC1040X.				31

PART II - Explanation of changes to income, payments and credits. Enter the line reference from page 1 or PART I for which you are reporting a change and give the reason for each change. Attach applicable schedules.

Failure to provide an explanation or supporting documentation will result in a delay in processing your return.

- Have you been advised that your original state return is being or will be audited by the SC Department of Revenue. ☐ Yes ☒ No
- Are you filing this amended return due to a Federal adjustment? If yes, attach a copy of the Federal Audit or adjustment. ☐ Yes ☒ No

ON ORIGINAL RETURN MY WAGES WERE UNDERSTATED
AND MY ITEMIZED DEDUCTIONS WERE NOT FIGURED
CORRECTLY.

916

Label		For the year Jan. 1-Dec. 31, 1998, or other tax year beginning 1998, ending		OMB No. 1545-0074																																				
See instructions (page 18) of the IRS and, otherwise, please print or type.	L A B E L	Your first name and initial RICHARD		Last name KIMMER																																				
	B	If a joint return, spouse's first name and initial MARTHA T		Last name KIMMER																																				
	E	City, town or post office, state, and ZIP+4 [®] WHITMIRE SC 29178		Apt. no.																																				
	L	Do you have a foreign address, see page 18																																						
		IMPORTANT! You must enter your SSN(s) above.		Yes ☐ No ☒ Note: Checking "Yes" will not change your tax or reduce your refund.																																				
Election Campaign (See page 18.)																																								
Filing Status		1 ☐ Single 2 ☒ Married filing joint return (even if only one had income) 3 ☐ Married filing separate return. Enter spouse's SSN above, full name here: _____ 4 ☐ Head of household (with qualifying person) (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here: _____ 5 ☐ Qualifying widow(er) with dependent child (year spouse died $\neq$ 19) (See page 18.) 6a ☒ Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a.																																						
Exemptions		b ☒ Spouse c Dependents: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>(1) First name</th> <th>Last name</th> <th>(2) Dependent's social security number</th> <th>(3) Dependent's relationship to you</th> <th>(4) Check if qualifying child for child tax credit</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td>☐</td></tr> </tbody> </table> No. of boxes checked on 6a and 6b: 2 No. of your children on 6c who: • lived with you: _____ • did not live with you due to divorce or separation (see page 19): _____ Dependents on 6c not entered above: _____ Add numbers entered on lines above: 2				(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) Check if qualifying child for child tax credit					☐					☐					☐					☐					☐					☐
(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) Check if qualifying child for child tax credit																																				
				☐																																				
				☐																																				
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				☐																																				
				☐																																				
				☐																																				
Income		d Total number of exemptions claimed: _____																																						
Wages, salaries, tips, etc. Attach Form(s) W-2		7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 75,687																																						
8a Taxable interest. Attach Schedule B if required		8a 71																																						
b Tax-exempt interest. DO NOT include on line 8a		8b 																																						
9 Ordinary dividends. Attach Schedule B if required		9 																																						
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21)		10 252																																						
11 Alimony received		11 																																						
12 Business income or (loss). Attach Schedule C or C-EZ		12 																																						
13 Capital gain or (loss). Attach Schedule D		13 																																						
14 Other gains or (losses). Attach Form 4797		14 																																						
15a Total IRA distributions		15a 																																						
15b Total pensions & annuities		15b 																																						
16a Total taxable amount (see page 22)		16a 25,208																																						
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17 																																						
18 Farm income or (loss). Attach Schedule F		18 																																						
19 Unemployment compensation		19 																																						
20a Social security benefits		20a 																																						
20b Taxable amount (see page 24)		20b 																																						
21 Other income		21 																																						
22 Add the amounts in the far right column for lines 7 through 21. This is your total income		22 101,218																																						
23 IRA deduction (see page 25)		23 																																						
24 Student loan interest deduction (see page 27)		24 																																						
25 Medical savings account deduction. Attach Form 8853		25 																																						
26 Moving expenses. Attach Form 3903		26 																																						
27 One-half of self-employment tax. Attach Schedule SE		27 																																						
28 Self-employed health insurance deduction (see page 28)		28 																																						
29 Keogh and self-employed SEP and SIMPLE plans		29 																																						
30 Penalty on early withdrawal of savings		30 																																						
31a Alimony paid. b Recipient's SSN		31a																																						

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RICHARD & MARTHA T KIMMER

2

Tax and Credits

Standard Deduction for Most People

Single: \$4,250
 Head of household: \$6,250
 Married filing jointly or Qualifying widow(er): \$7,100
 Married filing separately: \$3,550

34	Amount from line 33 (adjusted gross income)	34	101,218
35a	Check if: ☐ You were 65 or older, ☐ Blind, ☐ Spouse was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here ▶ 35a		
b	If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 29 and check here ▶ 35b ☐		
36	Enter the larger of your itemized deductions from Schedule A, line 28, OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent	36	27,316
37	Subtract line 36 from line 34	37	73,902
38	If line 34 is \$93,400 or less, multiply \$2,700 by the total number of exemptions claimed on line 6d. If line 34 is over \$93,400, see the worksheet on page 30 for the amount to enter	38	5,400
39	Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	68,502
40	Tax. See page 30. Check if any tax from: a ☐ Form(s) 8814 b ☐ Form 4972 . . . ▶	40	13,682
41	Credit for child & dependent care expenses. Attach Form 2441	41	
42	Credit for the elderly or the disabled. Attach Schedule R	42	
43	Child tax credit (see page 31).	43	
44	Education credits. Attach Form 8863	44	
45	Adoption credit. Attach Form 8839	45	
46	Foreign tax credit. Attach Form 1116 if required	46	
47	Other. Check if from: a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	47	
48	Add lines 41 through 47. These are your total credits	48	
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0- ▶	49	13,682
50	Self-employment tax. Attach Schedule SE	50	
51	Alternative minimum tax. Attach Form 6251	51	
52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required NO.	53	2,521
54	Advance earned income credit payments from Form(s) W-2	54	
55	Household employment taxes. Attach Schedule H	55	
56	Add lines 49 through 55. This is your total tax ▶	56	16,203
57	Federal income tax withheld from Forms W-2 and 1099	57	17,901
58	1998 est. tax payments and amount applied from 1997 return	58	
59a	Earned income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount ▶ and type ▶ 	59a	
60	Additional child tax credit. Attach Form 8812	60	
61	Amount paid with Form 4868 (request for extension)	61	
62	Excess social security and RRTA tax withheld (see page 43).	62	
63	Other payments. Check if from: a ☐ Form 2439 b ☐ Form 4136	63	
64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments ▶	64	17,901
65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID	65	1,698
66a	Amount of line 65 you want REFUNDED TO YOU ▶	66a	1,698
b	Routing number	c Type: ☐ Checking ☐ Savings	
d	Account number		
67	Amount of line 65 you want APPLIED TO YOUR 1999 ESTIMATED TAX . . . ▶	67	
68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE. For details on how to pay, see page 44 ▶	68	
69	Estimated tax penalty. Also include on line 68	69	

Sign Here

Joint return?
See page 18.
Keep a copy
for your
records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Your signature	Date	Your occupation	Daytime telephone number (optional)
		SKILLED	
▶ Spouse's signature. If joint return, BOTH must sign.	Date	Spouse's occupation	
		SKILLED	

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ☒
Firm's name (or yours if self-employed) and address ▶	EIN	
JW WATTS TAX SERVICE		
LANCASTER SC	ZIP code	
	29720	

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SCHEDULES A&B
(Form 1040)

Schedule A - Itemized Deductions

OMB No 1545-0074

1998

Department of the Treasury
Internal Revenue Service (99)

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

Attachment
Sequence No **07**

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-1)	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	5,819	
6	Real estate taxes (see page A-2)	6	1,108	
7	Personal property taxes	7	537	
8	Other taxes. List type and amount ▶	8		
9	Add lines 5 through 8	9		7,464
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	10,746	
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		
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		10,746
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	3,200	
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		3,200
Casualty and Theft Losses	19 Casualty or theft loss(es). Attach Form 4684. (See page A-5.)	19		
Job Expenses and 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	7,865	
21	Tax preparation fees	21	65	
22	Other expenses - investment, safe deposit box, etc. List type and amount ▶	22		
23	Add lines 20 through 22	23	7,930	
24	Enter amount from Form 1040, line 34	24	101,218	
25	Multiply line 24 above by 2% (.02)	25	2,024	
26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26		5,906
27	Other - from list on page A-6. List type and amount ▶	27		
Total Itemized Deductions	28 Is Form 1040, line 34, over \$124,500 (over \$62,250 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 on Form 1040, line 36, the larger of this amount or your standard deduction. YES. Your deduction may be limited. See page A-6 for the amount to enter.	28		27,316

For Paperwork Reduction Act Notice, see Form 1040 instructions.

EEA

Schedule A (Form 1040) 1998

919

Form 2106

Employee Business Expenses

See separate instructions.

Attach to Form 1040.

OMB No 1545-0139

1998

Attachment
Sequence No. 54Department of the Treasury
Internal Revenue Service (99)

Your name

RICHARD KIMMER

Location in which you incurred expenses

MACHINERY INSTALLER

Part I Employee Business Expenses and Reimbursements**STEP 1** Enter Your Expenses

	Column A Other Than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from line 22 or line 29 (Rural mail carriers. See instructions)	1 7,865	
2 Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work	2	
3 Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment	3	
4 Business expenses not included on lines 1 through 3. Do not include meals and entertainment	4	
5 Meals and entertainment expenses (see instructions)	5	
6 Total expenses. In Column A, add lines 1 through 4 and enter the result. In Column B, enter the amount from line 5	6 7,865	

Note: If you were not reimbursed for any expenses in Step 1, skip line 7 and enter the amount from line 6 on line 8.

STEP 2 Enter Reimbursements Received From Your Employer for Expenses Listed in STEP 1

7 Enter reimbursements received from your employer that were not reported to you in box 1 of Form W-2. Include any reimbursements reported under code "L" in box 13 of your Form W-2 (see instructions)	7	

STEP 3 Figure Expenses To Deduct on Schedule A (Form 1040)

8 Subtract line 7 from line 6	8 7,865	
Note: If both columns of line 8 are zero, stop here. If Column A is less than zero, report the amount as income on Form 1040, line 7.		
9 In Column A, enter the amount from line 8. In Column B, multiply the amount on line 8 by 50% (.50). If either column is zero or less, enter -0- in that column. (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses by 55% (.55) instead of 50%. For more details, see instructions.)	9 7,865	
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 20. (Fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter the total.)	10	7,865

For Paperwork Reduction Act Notice, see instructions.

EEA

Form 2106 (1998)

920

Part II Vehicle Expenses (See instructions to find out which sections to complete.)**Section A -- General Information**

		(a) Vehicle 1	(b) Vehicle 2
11	Enter the date vehicle was placed in service	11	
12	Total miles vehicle was driven during 1998	12	miles
13	Business miles included on line 12	13	24,200 miles
14	Percent of business use. Divide line 13 by line 12	14	100.00 %
15	Average daily round trip commuting distance	15	miles
16	Commuting miles included on line 12	16	miles
17	Other miles. Add lines 13 and 16 and subtract the total from line 12	17	(24,200) miles
18	Do you (or your spouse) have another vehicle available for personal purposes?		☐ Yes ☐ No

- 19 If your employer provided you with a vehicle, is personal use during off-duty hours permitted? ☐ Yes ☐ No ☐ Not applicable
- 20 Do you have evidence to support your deduction? ☐ Yes ☐ No
- 21 If "Yes," is the evidence written? ☐ Yes ☐ No

Section B -- Standard Mileage Rate

22 Multiply line 13 by 32 1/2 cents (.325). Enter the result here and on line 1. 22 7,865

Section C -- Actual Expenses

		(a) Vehicle 1	(b) Vehicle 2
23	Gasoline, oil, repairs, vehicle insurance, etc.	23	
24a	Vehicle rentals	24a	
b	Inclusion amount (see instructions)	24b	
c	Subtract line 24b from line 24a	24c	
25	Value of employer-provided vehicle (applies only if 100% of annual lease value was included on Form W-2 - see instructions).	25	
26	Add lines 23, 24c, and 25	26	
27	Multiply line 26 by the percentage on line 14	27	
28	Depreciation. Enter amount from line 38 below	28	
29	Add lines 27 and 28. Enter total here and on line 1	29	

Section D -- Depreciation of Vehicles (Use this section only if you own the vehicle.)

		(a) Vehicle 1	(b) Vehicle 2
30	Enter cost or other basis (see instructions)	30	
31	Enter amount of section 179 deduction (see instructions)	31	
32	Multiply line 30 by line 14 (see instructions if you elected the section 179 deduction)	32	
33	Enter depreciation method and percentage (see instructions)	33	
34	Multiply line 32 by the percentage on line 33 (see instructions)	34	
35	Add lines 31 and 34.	35	
36	Enter the limit from the table in the line 36 instructions	36	
37	Multiply line 36 by the percentage on line 14	37	
38	Enter the smaller of line 35 or line 37. Also enter this amount on line 28 above	38	

a Control number 1108		OMB No. 1545-0008		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.							
b Employer's name, address, and ZIP code MURATA OF AMERICA INC. CHARLOTTE, NC 28266		1 Wages, tips, other compensation 40319.84		2 Federal income tax withheld 9089.77							
		3 Social security wages 40319.84		4 Social security tax withheld 2499.84							
		5 Medicare wages and tips 40319.84		6 Medicare tax withheld 584.64							
		7 Social security tips		8 Allocated tips							
c Employee's name, address, and ZIP code RICHARD KIMMER		9 Advance EIC payment		10 Dependent care benefits							
		11 Nonqualified plans		12 Benefits included in box 1							
		13 See instrs. for box 13		14 Other							
		15 Statutory employee		Deceased		Pension plan		Legal rep.		Deferred compensation	
16 State Employer's state I.D. no. NC)		17 State wages, tips, etc. 40319.84		18 State income tax 2487.53		19 Locality name		20 Local wages, tips, etc.		21 Local income tax	

Form **W-2** Wage and Tax Statement **1998**

Department of the Treasury—Internal Revenue Service

Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)

922

Label

For the year Jan. 1-Dec. 31, 1999, or other tax year beginning

1999, ending

OMB No. 1545-0074

See instructions on page 18 of the IRS e-file otherwise, please print or type.

Your first name and initial

Last name

Your Social Security number

RICHARD

KIMMER

If a joint return, spouse's first name and initial

Last name

MARTHA T

KIMMER

Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, see page 18

WHITMIRE

SC 29178

IMPORTANT!
You must enter your SSN(s) above

Yes	No
	☒
	☒

Note: Checking "Yes" will not change your tax or reduce your refund.

Presidential Election Campaign
(See page 18.)

Do you want \$3 to go to this fund?

If a joint return, does your spouse want \$3 to go to this fund?

Filing Status

1

Single

2

☒

Married filing joint return (even if only one had income)

3

Married filing separate return. Enter spouse's SSN above, full name here. ▶

4

Head of household (with qualifying person) (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5

Qualifying widow(er) with dependent child (year spouse died ▶19). (See page 18.)

Check only one box

Exemptions

6a

☒

Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

b

☒

Spouse

No. of boxes checked on 6a and 6b

2

c

Dependents:

(1) First name

Last name

(2) Dependent's social security number

(3) Dependent's relationship to you

(4) Check if qualifying child for child tax credit

No. of your children on 6c who:

• lived with you
• did not live with you due to divorce or separation (see page 19)

Dependents on 6c not entered above

Add numbers entered on lines above

2

d Total number of exemptions claimed.

Income

7 Wages, salaries, tips, etc. Attach Form(s) W-2

7

60,000

8a Taxable interest. Attach Schedule B if required

8a

68

b Tax-exempt interest. DO NOT include on line 8a

8b

9 Ordinary dividends. Attach Schedule B if required

9

10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21)

10

254

11 Alimony received

11

12 Business income or (loss). Attach Schedule C or C-EZ

12

13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶

13

14 Other gains or (losses). Attach Form 4797

14

15a Total IRA distributions

15a

b Taxable amount (see page 22)

15b

16a Total pensions & annuities

16a

b Taxable amount (see page 22)

16b

17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E

17

18 Farm income or (loss). Attach Schedule F

18

19 Unemployment compensation

19

20a Social security benefits

20a

b Taxable amount (see page 24)

20b

21 Other income

21

22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶

22

60,322

Adjusted Gross Income

23 IRA deduction (see page 26)

23

24 Student loan interest deduction (see page 26)

24

25 Medical savings account deduction. Attach Form 8853

25

26 Moving expenses. Attach Form 3903

26

27 One-half of self-employment tax. Attach Schedule SE

27

28 Self-employed health insurance deduction (see page 28)

28

29 Keogh and self-employed SEP and SIMPLE plans

29

30 Penalty on early withdrawal of savings

30

31a Alimony paid b Recipient's SSN

31a

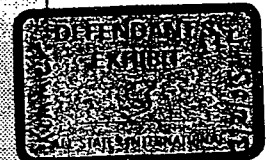
32 Add lines 23 through 31a

32

33 Subtract line 32 from line 22. This is your adjusted gross income ▶

33

60,322



923

RICHARD & MARTHA T KIMMER

Tax and Credits**Standard Deduction for Most People**

Single: \$4,300
 Head of household: \$6,350
 Married filing jointly or Qualifying widow(er): \$7,200
 Married filing separately: \$3,600

34	Amount from line 33 (adjusted gross income)	34	60,322
35a	Check if: ☐ You were 65 or older ☐ Blind ☐ Spouse was 65 or older ☐ Blind Add the number of boxes checked above and enter the total here. 35a		
b	If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 30 and check here 35b ☐		
36	Enter your Itemized deductions from Schedule A, line 28, OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent	36	15,364
37	Subtract line 36 from line 34	37	44,958
38	If line 34 is \$94,975 or less, multiply \$2,750 by the total number of exemptions claimed on line 6d. If line 34 is over \$94,975, see the worksheet on page 31 for the amount to enter	38	5,500
39	Taxable Income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	39,458
40	Tax (see page 31). Check if any tax from: a ☐ Form(s) 8814 b ☐ Form 4972 40	40	5,921
41	Credit for child & dependent care expenses. Attach Form 2441 41		
42	Credit for the elderly or the disabled. Attach Schedule R 42		
43	Child tax credit (see page 33). 43		
44	Education credits. Attach Form 8863 44		
45	Adoption credit. Attach Form 8839 45		
46	Foreign tax credit. Attach Form 1116 if required 46		
47	Other. Check if from: a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify) 47		
48	Add lines 41 through 47. These are your total credits	48	
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0- 49	49	5,921

Other Taxes

50	Self-employment tax. Attach Schedule SE	50	
51	Alternative minimum tax. Attach Form 6251	51	
52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required	53	
54	Advance earned income credit payments from Form(s) W-2	54	
55	Household employment taxes. Attach Schedule H	55	
56	Add lines 49 through 55. This is your total tax	56	5,921

Payments

57	Federal income tax withheld from Forms W-2 and 1099	57	5,549
58	1999 est. tax payments and amount applied from 1998 return	58	
59a	Earned Income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount 59a		
60	Additional child tax credit. Attach Form 8812 60		
61	Amount paid with request for extension to file (see page 48). 61		
62	Excess social security and RRTA tax withheld (see page 48). 62		
63	Other payments. Check if from: a ☐ Form 2439 b ☐ Form 4136 63		
64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments	64	5,549

Refund

Have it directly deposited! See page 48 and fill in 66b, 66c, and 66d.

65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID	65	
66a	Amount of line 65 you want REFUNDED TO YOU	66a	
b	Routing number 66b		
c	Type: ☐ Checking ☐ Savings		
d	Account number		
67	Amount of line 65 you want APPLIED TO YOUR 2000 ESTIMATED TAX 67		

Amount You Owe

68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE . For details on how to pay, see page 49	68	372
69	Estimated tax penalty. Also include on line 68	69	

Sign Here

Joint return? See page 18. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's signature	Date	Your occupation	Daytime telephone number (optional)
		SKILLED	
Spouse's signature. If joint return, BOTH must sign.	Date	Spouse's occupation	
		SKILLED	

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☒
	02-07-2000	
Firm's name (or yours if self-employed) and address	EIN	
JW WATTS TAX SERVICE	57-0895989	
LANCASTER SC	ZIP code	29720

924

SCHEDULES A&B
(Form 1040)

Schedule A - Itemized Deductions

OMB No 1545-0074

1999

Department of the Treasury
Internal Revenue Service (99)

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

Attachment
Sequence No. **07**

Name(s) shown on Form 1040

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-1)		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	2,632
	6 Real estate taxes (see page A-2)	6	1,191
	7 Personal property taxes	7	344
(See page A-2.)	8 Other taxes. List type and amount ▶	8	
	9 Add lines 5 through 8	9	4,167
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	9,497
(See page A-3.)	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	9,497
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	1,700
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	1,700
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	1,040
	FORM 2106 1,040		
(See page A-5 for expenses to deduct here.)	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	1,040
	24 Enter amount from Form 1040, line 34	24	60,322
	25 Multiply line 24 above by 2% (.02)	25	1,206
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26	0
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 \$126,600 (over \$63,300 if married filing separately)?	28	15,364
	☒ 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.		

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

EEA

Schedule A (Form 1040) 1999

925

Form 2106

Employee Business Expenses

▷ See separate instructions.

OMB No. 1545-0039

Department of the Treasury
Internal Revenue Service (99)

▷ Attach to Form 1040.

1999

Attachment
Sequence No. 54

Your name

RICHARD KIMMER

Occupation in which you incurred expenses

SKILLED

Part I Employee Business Expenses and Reimbursements**STEP 1 Enter Your Expenses**

	Column A Other Than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from line 22c or line 29 (Rural mail carriers: See instructions.)	1,040	
2 Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work		
3 Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment		
4 Business expenses not included on lines 1 through 3. Do not include meals and entertainment		
5 Meals and entertainment expenses (see instructions)		
6 Total expenses. In Column A, add lines 1 through 4 and enter the result. In Column B, enter the amount from line 5	1,040	

Note: If you were not reimbursed for any expenses in Step 1, skip line 7 and enter the amount from line 6 on line 8.

STEP 2 Enter Reimbursements Received From Your Employer for Expenses Listed in STEP 1

7 Enter reimbursements received from your employer that were not reported to you in box 1 of Form W-2. Include any reimbursements reported under code "L" in box 13 of your Form W-2 (see instructions)	7	

STEP 3 Figure Expenses To Deduct on Schedule A (Form 1040)

8 Subtract line 7 from line 6. If zero or less, enter -0-. However, if line 7 is greater than line 6 in Column A, report the excess as income on Form 1040, line 7.	8	1,040
Note: If both columns of line 8 are zero, you cannot deduct employee business expenses. Stop here and attach Form 2106 to your return.		
9 In Column A, enter the amount from line 8. In Column B, multiply line 8 by 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses by 55% (.55) instead of 50%. For more details, see instructions.)	9	1,040
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 20. (Fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter the total.)	10	1,040

For Paperwork Reduction Act Notice, see Instructions.

EEA

Form 2106 (1999)

926

Part II Vehicle Expenses**Section A - General Information** (You must complete this section if you are claiming vehicle expenses.)

		(a) Vehicle 1	(b) Vehicle 2
11	Enter the date the vehicle was placed in service	03-20-1994	
12	Total miles the vehicle was driven during 1999	miles	miles
13	Business miles included on line 12	3,200 miles	miles
14	Percent of business use. Divide line 13 by line 12	100.00 %	%
15	Average daily roundtrip commuting distance	miles	miles
16	Commuting miles included on line 12	miles	miles
17	Other miles. Add lines 13 and 16 and subtract the total from line 12	(3,200) miles	miles
18	Do you (or your spouse) have another vehicle available for personal use?	Yes	No
19	If your employer provided you with a vehicle, is personal use during off-duty hours permitted?	Yes	No ☐ Not applicable
20	Do you have evidence to support your deduction?	Yes	No
21	If "Yes," is the evidence written?	Yes	No

Section B - Standard Mileage Rate (See the instructions for Part II to find out whether to complete this section or Section C.)

22 a	Multiply business miles driven before April 1, 1999, by 32 1/2 cents (.325)	22a	1,040
b	Multiply business miles driven after March 31, 1999, by 31 cents (.31)	22b	
c	Add lines 22a and 22b. Enter the result here and on line 1	22c	1,040

Section C - Actual Expenses

		(a) Vehicle 1	(b) Vehicle 2
23	Gasoline, oil, repairs, vehicle insurance, etc.	23	
24 a	Vehicle rentals	24a	
b	Inclusion amount (see instructions)	24b	
c	Subtract line 24b from line 24a	24c	
25	Value of employer-provided vehicle (applies only if 100% of annual lease value was included on Form W-2 - see instructions).	25	
26	Add lines 23, 24c, and 25	26	
27	Multiply line 26 by the percentage on line 14	27	
28	Depreciation. Enter amount from line 38 below	28	
29	Add lines 27 and 28. Enter total here and on line 1	29	

Section D - Depreciation of Vehicles (Use this section only if you owned the vehicle and are completing Section C for the vehicle.)

		(a) Vehicle 1	(b) Vehicle 2
30	Enter cost or other basis (see instructions)	30	
31	Enter amount of section 179 deduction (see instructions)	31	
32	Multiply line 30 by line 14 (see instructions if you elected the section 179 deduction)	32	
33	Enter depreciation method and percentage (see instructions)	33	
34	Multiply line 32 by the percentage on line 33 (see instructions)	34	
35	Add lines 31 and 34	35	
36	Enter the limit from the table in the line 36 instructions	36	
37	Multiply line 36 by the percentage on line 14	37	
38	Enter the smaller of line 35 or line 37. Also enter this amount on line 28 above	38	

RICHARD KIMMER

Tax and Credits	34	Amount from line 33 (adjusted gross income)	34	23,822
	35a	Check if ☐ You were 65 or older ☐ Blind; ☐ Spouse was 65 or older, ☐ Blind. Add the number of boxes checked above and enter the total here. ▶ 35a		
	b	If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 30 and check here ▶ 35b ☒		
	36	Enter your Itemized deductions from Schedule A, line 28, OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent	36	7,232
	37	Subtract line 36 from line 34	37	16,590
	38	If line 34 is \$94,975 or less, multiply \$2,750 by the total number of exemptions claimed on line 6d. If line 34 is over \$94,975, see the worksheet on page 31 for the amount to enter	38	2,750
	39	Taxable Income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	13,840
	40	Tax (see page 31). Check if any tax from a ☐ Form(s) 9814 b ☐ Form 972 ▶	40	2,074
	41	Credit for child & dependent care expenses. Attach Form 2441	41	
	42	Credit for the elderly or the disabled. Attach Schedule R	42	
43	Child tax credit (see page 33)	43		
44	Education credits. Attach Form 8863	44		
45	Adoption credit. Attach Form 8839	45		
46	Foreign tax credit. Attach Form 1116 if required	46		
47	Other. Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	47		
48	Add lines 41 through 47. These are your total credits	48		
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0- ▶	49	2,074	
Other Taxes	50	Self-employment tax. Attach Schedule SE	50	
	51	Alternative minimum tax. Attach Form 6251	51	
	52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
	53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required	53	
	54	Advance earned income credit payments from Form(s) W-2	54	
	55	Household employment taxes. Attach Schedule H	55	
	56	Add lines 49 through 55. This is your total tax ▶	56	2,074
Payments	57	Federal income tax withheld from Forms W-2 and 1099	57	711
	58	1999 est. tax payments and amount applied from 1998 return	58	
	59a	Earned Income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount ▶	59a	
	60	Additional child tax credit. Attach Form 8812	60	
	61	Amount paid with request for extension to file (see page 48)	61	
	62	Excess social security and RRTA tax withheld (see page 48)	62	
	63	Other payments. Check if from a ☐ Form 2439 b ☐ Form 4136	63	
	64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments ▶	64	711
Refund	65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID	65	
	66a	Amount of line 65 you want REFUNDED TO YOU ▶	66a	
	b	Routing number ▶ c Type: ☐ Checking ☐ Savings		
Amount You Owe	d	Account number		
	67	Amount of line 65 you want APPLIED TO YOUR 2000 ESTIMATED TAX ▶	67	
	68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE . For details on how to pay, see page 49 ▶	68	1,363
69	Estimated tax penalty. Also include on line 68	69		

Sign Here

Joint return? See page 18.
Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's signature	Date	Your occupation	Daytime telephone number (optional)
Spouse's signature. If joint return, BOTH must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☒	961
Firm's name (or yours if self-employed) and address	EIN	ZIP code	
JW WATTS TAX SERVICE LANCASTER SC		29720	

929

SCHEDULES A&B
(Form 1040)

PREPARED FOR STATE PURPOSES ONLY - DO NOT FILE WITH IRS!
Schedule A - Itemized Deductions

OMB No. 1545-0074

1999

Attachment
Sequence No. **07**

Department of the Treasury
Internal Revenue Service (99)
Name(s) shown on Form 1040

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

RICHARD KIMMER

Security number
1417

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.		
1	Medical and dental expenses (see page A-1)	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	301
	6 Real estate taxes (see page A-2)	6	596
	7 Personal property taxes	7	172
(See page A-2.)	8 Other taxes. List type and amount ▶	8	
	9 Add lines 5 through 8	9	1,069
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098.	10	4,749
(See page A-3.)	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	4,749
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	850
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	850
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	1,040
(See page A-5 for expenses to deduct here.)	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	1,040
	24 Enter amount from Form 1040, line 34	24	23,822
	25 Multiply line 24 above by 2% (.02)	25	476
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26	564
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 \$126,600 (over \$63,300 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	7,232

930

INDIVIDUAL INCOME Tax Return 1999

North Carolina Department of Revenue

For calendar year 1999, or other tax year beginning

99 and ending

Your Social Security Number

You must enter your
social security number(s)

Spouse's Social Security Number

Your First Name (USE CAP. LETTERS FOR YOUR NAME AND ADDRESS) M.I.

RICHARD

Last Name

KIMMER

If a Joint Return, Spouse's First Name

M.I.

Spouse's Last Name

Address

WHITMIRE

County (Enter first five letters)

FOREI

State

SC

Zip Code

29178

Mark all applicable circles:

Incorrect responses may delay any refund due.

- ☐ Your name, spouse's name, address, or filing status has changed since last year's return
- ☐ First N.C. return for you or your spouse
- ☐ Return for deceased taxpayer Date of death
- ☐ Return for deceased spouse Date of death

N.C. Political Parties Financing Fund

Mark appropriate boxes if you want to designate \$1 to this fund, making a donation neither increases your tax nor reduces your refund

You	Your Spouse
☐ Democratic	☐ Democratic
☐ Republican	☐ Republican
☐ Unspecified	☐ Unspecified

Residency Were you a resident of NC for the entire year of 1999?

Yes ☐ No ☒

If no, complete line 49 through 53 on Page 4

Status Was your spouse a resident the entire year?

Yes ☐ No ☒

Filing Status

- 1 ☐ Single
- 2 ☐ Married Filing Jointly
- 3 ☒ Married Filing Separately
- 4 ☐ Head of Household
- 5 ☐ Qualifying Widow(er) with Dependent Child

(Enter your spouse's full name and Social Security Number) Name MARTHA T KIMMER

SSN

(Year spouse died:)

Enter the Number of Exemptions claimed on your federal income tax return

1

6. Taxable Income from Your Federal Income Tax Return

Form 1040, line 39; Form 1040A, Line 24; Form 1040EZ, Line 6; or TeleFile Tax Record, Line K (If zero, see the Line Instructions)

▶ 6. 13840.00

7. Additions to Federal Taxable Income

All taxpayers must complete Lines 31 through 40 on Page 3 and enter amount from Line 40

▶ 7. 551.00

8. ADD lines 6 and 7

8. 14391.00

9. Deductions from Federal Taxable Income

If applicable, complete Lines 41 through 48 on Page 3 and enter amount from Line 48

▶ 9. 254.00

10a. Line 8 minus Line 9

10a. 14137.00

b. Part-year residents and nonresidents

Complete Lines 49 through 53 on Page 4 and enter decimal amount from Line 53

▶ 10b. 0.26

11. North Carolina Taxable Income

Full-year residents enter the amount from Line 10a

Part-year residents and nonresidents multiply amount on Line 10a by 10b and enter result

11. 3676.00

931

D-400 (45)

Last Name (First 10 Characters)

Your Social Security Number

KIMMER

Enter amount from Line 11 (North Carolina Taxable Income)	12.	3676 .00
13. North Carolina Income Tax If the amount on Line 12 is less than \$68,000, use the Tax Table beginning on Page 15 of the instructions to determine your tax. If the amount on Line 12 is \$68,000 or more, use the Tax Rate Schedule on Page 23 to calculate your tax.	13.	221 .00
14. Tax Credits (From Form D-400TC, Part 4, Line 31)	▶ 14.	0 .00
15. Subtract Line 14 from Line 13	15.	221 .00
16. Consumer Use Tax (See instructions on Page 6)	▶ 16.	0 .00
17. Add Lines 15 and 16	17.	221 .00
18. North Carolina Income Tax Withheld (Staple original or copy of the original State wage and tax statement(s) in top left-hand corner of the return)	▶ 18a.	219 .00
	▶ 18b.	0 .00
19. Other Tax Payments		
a. 1999 Estimated Tax ▶ 19a.		0 .00
b. Paid with Extension ▶ 19b.		0 .00
c. Partnership ▶ 19c.		0 .00
d. S Corporation ▶ 19d.		0 .00
20. Add Lines 19a through 19d	20.	0 .00
21. Tax Credit for Child Health Insurance Premiums (From Form D-400TC Part 5, Line 39)	▶ 21.	0 .00
22. Add Lines 18a, 18b, 20, and 21	22.	219 .00
23. a. If Line 17 is more than Line 22 subtract and enter the result	▶ 23a.	2 .00
b. Penalty for underpayment of estimated income tax (See instructions and enter letter in box, if applicable)	▶ 23b.	0 .00
c. Other penalties and interest (See instructions)	23c.	0 .00
24. Add Lines 23a, 23b and 23c and enter the total - Pay This Amount	24. \$	2 .00
25. If Line 17 is less than Line 22, subtract and enter the result	25.	0 .00
26. Amount of Line 25 to be applied to 2000 Estimated Income Tax	▶ 26.	0 .00
27. Contribution to the N.C. Nongame and Endangered Wildlife Fund	▶ 27.	0 .00
28. Contribution to the N.C. Candidates Financing Fund	▶ 28.	0 .00
29. Add Lines 26, 27, and 28	29.	0 .00
30. Subtract Line 29 from Line 25 and enter the Amount To Be Refunded	▶ 30.	0 .00

Be sure to sign and date
your return on Page 4

932

Last Name (First 10 Characters)

KIMMER

Your Social Security Number

Additions to Federal Taxable Income (See Line instructions beginning on Page 8)

31. Enter the itemized deductions or the standard deduction from your federal return

- ☐ Form 1040, Line 36
- ☐ Form 1040A, Line 21
- ☐ Form 1040EZ SINGLE filers - enter \$4,300 OR the amount from Line 5 of Form 1040EZ, whichever is less
- ☐ Form 1040EZ MARRIED FILING JOINTLY filers - enter \$7,200 or the amount from Line 5 of Form 1040EZ, whichever is less
- ☐ TeleFile Tax Record filers - enter standard deduction from Line J of TeleFile Tax Record

▶ 31. 7232.00

32. Enter your standard deduction from the applicable chart or worksheet on Page 8

▶ 32. 2500.00

33. Subtract Line 32 from Line 31 and enter the result here, but not less than zero

33. 4732.00

IMPORTANT: If you claimed the standard deduction on your federal return, skip Line 34 and enter on Line 35 the amount entered on Line 33

34. If you itemized your deductions on your federal return, Form 1040, enter the state and local income taxes from Line 5 and any foreign income taxes included on Line 8 of Federal Schedule A. **IMPORTANT:** If you were required to complete the Itemized Deductions Worksheet on Page A-6 of the instructions for Federal Form 1040, see Page 9

▶ 34. 301.00

35. Compare Line 33 with Line 34 and enter whichever is less

▶ 35. 301.00

Personal exemption adjustment (Complete the Personal Exemption Adjustment Worksheet on Page 9 and enter the result.)

▶ 36. 250.00

Interest income from obligations of states other than North Carolina

▶ 37. 0.00

38. Lump-sum distributions from a pension or profit sharing plan

▶ 38. 0.00

39. Other additions to federal taxable income (Attach explanation or schedule)

▶ 39. 0.00

40. Total additions - Add Lines 35 through 39 (Enter the total here and on Line 7)

40. 551.00

Deductions from Federal Taxable Income (See Line Instructions beginning on Page 10.)

41. State or local income tax refund if included on Line 10 of Federal Form 1040

▶ 41. 254.00

42. Interest income from obligations of the United States, United States' possessions, or the State of North Carolina

▶ 42. 0.00

43. Taxable portion of Social Security and Railroad Retirement Benefits included on your federal return

▶ 43. 0.00

44. Other retirement benefits (Enter amount from Line 4 of the Retirement Benefits Deduction Worksheet on Page 10)

▶ 44. 0.00

45. Federal tax credits for which deductions were reduced

▶ 45. 0.00

46. Retirement benefits received by vested N.C. State government, N.C. local government, or federal government retirees (Bailey settlement)

▶ 46. 0.00

47. Other deductions from federal taxable income (Attach explanation or schedule)

▶ 47. 0.00

Total deductions - Add Lines 41 through 47 (Enter the total here and on Line 9)

48. 254.00



933

D-400 (45)

Last Name (First 10 Characters)

KIMMER

Your Social Security Number

Computation of North Carolina Taxable Income for Part-Year Residents and Nonresidents
(See Line Instructions beginning on Page 11)

49. Total income while you were a Resident of North Carolina	▶ 49	0.00
50. Total income from North Carolina sources while you were a Nonresident of North Carolina	▶ 50	6073.00
51. Add Lines 49 and 50	51	6073.00
52. Total Income from all sources Form 1040, Line 22; 1040A, Line 14; 1040EZ, Line 4; or TeleFile Tax Record, Line 1 (If you entered additions or deductions on Lines 7 or 9, see the instructions on Page 11)	▶ 52	23568.00
53. Divide Line 51 by Line 52 (Enter the result as a decimal amount here and on Line 10b; round to two decimal places)	53	0.26

I certify that, to the best of my knowledge, this return is accurate and complete.

Mark box if return was completed by paid preparer. ☒

If prepared by a person other than taxpayer, this certification is based on all information of which preparer has any knowledge.

Sign
Here

02-07-00
Your Signature Date

Spouse's Signature (If filing joint return, both must sign) Date

Daytime Telephone Number (Optional)

02-07-00
Paid Preparer's Signature Date

Paid Preparer's FEIN, SSN, or PTIN

Preparer's Telephone Number

Mark box if prepared by:

☐

VITA Volunteer

☐

TCE Volunteer

If REFUND mail to: N.C. DEPT. OF REVENUE
P.O. BOX 8
RALEIGH, NC 27634-0008

If you ARE NOT due a refund
mail with payment to: N.C. DEPT. OF REVENUE
P.O. BOX 25000
RALEIGH, NC 27640-0640

New Payment Voucher - If you are sending in a payment, use the new

payment voucher (D-400V) included in this tax software package.

Please do not staple or otherwise attach your payment or voucher to your return or to each other.



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Do not write in this space - OFFICE USE

Staple attachments here

Staple attachments here

SC1040

SOUTH CAROLINA
INDIVIDUAL INCOME TAX RETURN

LONG FORM 1999

(Rev. 9/20/99)

For the year January 1 - December 31, 1999 or other tax year beginning

1999 and ending

20

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

Last name

RICHARD KIMMER

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

Spouse's last name, if different

MARTHA T

Home address - street, or P. O. Box)

Apt. No.

Daytime telephone
Area Code

Do not write in this space - OFFICE USE

City, state and ZIP code

WHITMIRE, SC 29178

County code

36

If you do not wish to receive a booklet next year, but need a name and address label for your 2000 return, check here.

CHECK YOUR

(1)

Single

(3)

Married filing separately. Enter spouse's SSN here:

FEDERAL FILING STATUS

(2)

X 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 1999 federal return.

2

How many of the exemptions listed above were under the age of 6 years on December 31, 1999?

0

Enter the number of taxpayers age 65 or over.

0

1 Federal taxable income from your federal Form 1040, line 39; 1040A, line 24; or 1040EZ, line 6.

If zero or less, enter zero here and enter the negative amount on line 47 of this form.

Dollars

Cents

39,458

00

2a If itemizing your state and local income tax deduction, enter the amount from line 5 of Worksheet A on page 8 instructions.

2a

2,632

00

2b State tax refund, if included on line 10, 1999 federal Form 1040

2b

254

00

3 Subtract 2b from 2a. (If difference is a negative figure, enter the amount in brackets < >.)

2,378

00

4 If line 3 is a positive number, add lines 1 and 3; If line 3 is a negative number, subtract line 3 from line 1.

41,836

00

5 Other adjustments, if applicable: enter amount from line 55 on the back of this form (If line 55 is a negative figure, enter the amount in brackets < >.)

0

00

6 South Carolina INCOME SUBJECT TO TAX (line 4 PLUS OR MINUS the amount on line 5).

41,836

00

7 TAX: Enter tax from SOUTH CAROLINA tax tables.

7

2,591

00

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

8

00

00

9 TOTAL South Carolina tax. Add lines 7 and 8. Enter the total.

2,591

00

10 Child and Dependent Care. Federal EXPENSE from Form 2441

\$ x .07 (7%).

10

00

00

11 Two Wage Earner Credit from Schedule W on the back of this form.

11

165

00

12 Other Non-refundable Credits. Attach Schedule TC.

12

221

00

13 TOTAL Non-refundable Credits. Add lines 10 through 12 and enter the total.

386

00

14 SUBTRACT line 13 from line 9. Enter the difference BUT NOT LESS THAN ZERO.

2,205

00

15 SC INCOME TAX WITHHELD

2,249

00

(Attach W-2 or SC41.)

18 NR sale of real estate

00

19 Other SC Withholding

00

(Attach Form 1099)

16 1999 Estimated Tax Payments

00

17 Amount Paid with extension

00

20 Tuition Tax Credit

00

(Attach Form I-319)

21 ADD lines 15 through 20 and enter the total. These are your Total Payments/Credits.

2,249

00

22 If line 21 is LARGER than line 14, subtract line 14 from line 21 and enter the OVERPAYMENT.

44

00

23 If line 14 is LARGER than line 21, subtract line 21 from line 14 and enter the AMOUNT DUE.

0

00

24 Amount of line 22 to be credited to your 2000 ESTIMATED TAX.

24

00

25 Endangered Wildlife Fund

00

28 Veterans' Trust Fund

00

26 Children's Trust Fund

00

29 Gift of Life Trust Fund

00

27 Eldercare Trust Fund

00

30 DARE Fund

00

31 First Steps Fund

00

32 ADD lines 24 through 31 and enter the total.

00

If subject to penalty for Underpayment of Estimated Tax, attach a Form SC2210.

(See instructions). Penalty: \$

33 NET REFUND: Subtract line 32 from line 22 and enter the AMOUNT TO BE REFUNDED TO YOU.

44

00

34 NET DUE: ADD lines 23 and 32 and, if applicable, penalty amount. Enter the AMOUNT YOU OWE.

Attach a check or money order for the full amount payable to "SC Department of Revenue." Write your Social Security number and "1999 Form SC1040" on the check.

0

00

935

RICHARD & MARTHA T KIMMER

PART 1 ADDITIONS TO FEDERAL TAXABLE INCOME

Dollars Cents

35	Out-of-state losses - see instructions.	35		00
	Expenses related to National Guard and military reserve income	36		00
	Interest income on obligations of states and political subdivisions other than South Carolina.	37		00
	Other additions to income. (See instructions.) Attach an explanation.	38		00
39	TOTAL ADDITIONS --- add lines 35 through 38 and enter your total additions to income here.			00

PART 2 SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

40	Interest income from obligations of the U S government.	40		00
41	National Guard or Reserve annual training and drill pay. (See instructions.)	41		00
42	Permanent disability retirement income, if taxed on your federal return	42		00
43	Social Security and/or railroad retirement, if taxed on your federal return	43		00
44	Caution: Retirement Deduction - See instructions.			
	a) Taxpayer: Birth Date _____ ☐ Surviving Spouse	44a		00
	b) Spouse: Birth Date _____ ☐ Surviving Spouse	44b		00
45	Age 65 and older deduction - See instructions.			
	a) Taxpayer: Birth date _____	45a		00
	b) Spouse: Birth date _____	45b		00
46	Out-of-state income/gain - Do not include personal service income. See instructions.	46		00
47	Negative amount of federal taxable income.	47		00
48	44% of net capital gains with two years holding period (See instructions)	48		00
49	Subsistence Allowance _____ days @ \$5.00.	49		00
50	Volunteer Firefighters/Rescue Squad Deduction. See instructions.	50		00
51	Dependents under 6 years of age. See instructions.			
	Birth Date _____ SSN _____	51		00
	Birth Date _____ SSN _____			
52	Additional self-employed health insurance deduction	52		
53	Other subtractions. (See instructions.)	53		00
54	TOTAL SUBTRACTION --- add lines 40 through 53 and enter the total.	54		00
55	NET ADJUSTMENT: If line 39 is greater than line 54, the difference is a plus + figure. However, if line 54 is greater than line 39, the difference is a minus - figure. Enter the difference here and on line 5 of this return.	55		00

Schedule W TWO WAGE EARNER CREDIT WHEN BOTH SPOUSES WORK

Step 1 Compute your earned income		(a) You		(b) Your spouse	
1	Wages, salaries, tips, etc., from federal Form 1040, line 7 or 1040A, line 7, or 1040EZ, line 1. (Do not include pensions or annuities. See instructions, Step 1, page 9.)	1	23,524 00	1	36,476 00
2	Net profit or (loss) from self-employment (from Schedules C and F of Form 1040 and/or Schedule K-1 of Form 1065) and any other earned income	2	00	2	00
3	Add lines 1 and 2. This is your total earned income	3	23,524 00	3	36,476 00
Step 2 Compute your qualified earned income					
4	Add amounts entered on federal Form 1040, lines 23, 27, 28, and 29 and any repayment of supplemental unemployment benefits (sub-pay) included on line 32, or on 1040A, line 15. Enter the total. (See instructions)	4	00	4	00
5	Subtract line 4 from line 3. This is your qualified earned income. If the amount in column (a) or (b) is zero (-0-) or less, stop here. You may not take this credit.	5	23,524 00	5	36,476 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	23,524 00		
7	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 line 11 of this return	8	165 00		

See instructions inside back cover of tax booklet to determine if you are liable for use tax and page 15 of this booklet concerning accommodations tax.

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Your Signature	Date	Spouse's signature (if jointly, BOTH must sign)
	02-07-2000	
I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.		Preparer's Printed Name
Yes ☐ No ☒		JOHN M. WATTS

If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Paid	Preparer's	Use Only	El Number	City	State	Zip
				MANCASTER, SC	29720	

936

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TAX CREDITS

SCHEDULE TC

(Rev. 9/2/99)
3113

1999

NAME RICHARD & MARTHA T KIMMER	YOUR SOCIAL SECURITY NUMBER

CREDIT FOR TAXES PAID TO ANOTHER STATE

SOUTH CAROLINA RESIDENTS/PART YEAR RESIDENT ONLY.

SEE INSTRUCTIONS ON BACK OF THIS FORM (Use whole numbers)

Enter name of state NORTH CAROLINA

		Dollars	Cents
1	Enter amount of Income from Line E of worksheet on back of this form.	60,068	00
2	The portion of line 1 above which was taxed by another state (See line 2 instructions)	6,073	00
3	Percentage. (Divide the amount on line 2 by the amount on line 1, not to exceed 100%. Carry to fourth decimal place.)	10.11	%
4	Amount of South Carolina Tax from SC1040, line 7, or SC1040NR, line 2.	2,591	00
5	Tentative Credit. (Percent on line 3 times the amount on line 4 above.)	262	00
6	Net amount of tax paid the other state on the income shown on line 2 above. (See line 6 instructions) (Do not use withholding amounts from your W-2. Attach a copy of other state's tax return.)	221	00
7	Allowable Credit. Enter the lesser of the tax on line 5 or line 6 above.	221	00

Remember:

You must attach a copy of the other state's return and a copy of the federal return. Failure to attach these copies will delay the processing of your return.

Other Nonrefundable Credits:

Instructions for other nonrefundable credits can be found on the previous page. These credits are computed on separate forms. Be sure to attach the appropriate form(s) to Schedule TC for the credit you are claiming.

		Dollars	Cents			Dollars	Cents
Carryover of unused qualified credits.	▶ 8		00	Employer Child Care Credit (Attach TC-9.)	▶ 16		00
Nursing Home Credit. (See worksheet on prior page)	▶ 9		00	Base Closure Credit (Attach TC-10.)	▶ 17		00
Water Resources Credit. (Attach TC-3.)	▶ 10		00	Economic Impact Zone Credit (Attach TC-11.)	▶ 18		00
Drip/Trickle Irrigation Credit (Attach TC-1.)	▶ 11		00	Family Independence Payments Credit (Attach TC-12.)	▶ 19		00
Scenic River Tax Credit	▶ 12		00	Additional Family Independence Payments Credit (Attach TC-12A.)	▶ 20		00
Minority Contractor Business Credit. (Attach TC-2.)	▶ 13		00	Motion Picture Project/Production Facility Credit (Attach TC-13.)	▶ 21		00
New Jobs Credit (Attach TC-4.)	▶ 14		00	Qualified Retirement Plan Contribution Credit	▶ 22		00
Palmetto Seed Capital Credit (Attach TC-7.)	▶ 15		00				
23	Total Credits. Add lines 7 through 22. Enter the total.			23		221	00
24	Enter the tax from SC1040, line 9, or SC1040NR, line 4.			24		2,591	00
25	Enter the lesser of line 23 or 24. Also enter on SC1040, line 12, or SC1040NR, line 7.			25		221	00

937

a. Control number		OMB No. 1545-0008		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.					
b. Employer identification number				1 Wages, tips, other compensation	2 Federal income tax withheld				
c. Employer's name, address, and ZIP code MURATA OF AMERICA INC. P. O. BOX 567609 CHARLOTTE, NC 28266				6073.33	710.62				
				3 Social security wages	4 Social security tax withheld				
				6073.33	376.56				
				5 Medicare wages and tips	6 Medicare tax withheld				
				6073.33	86.07				
				7 Social security tips	8 Allocated tips				
				9 Advance EIC payment	10 Dependent care benefits				
e. Employee's name, address, and ZIP code RICHARD KIMMER 178				11 Nonqualified plans	12 Benefits included in box 1				
				13 See instrs. for box 13	14 Other				
				15 Statutory employee	Deceased	Pension plan	Legal rep.	Deferred compensation	
16 State	Employer's state ID	State wages, tips, etc.	18 State income tax	19 Locality name	20 Local wages, tips, etc.	21 Local income tax			
NC		6073.33	219.25						

W-2 Wage and Tax Statement 1999

Department of the Treasury—Internal Revenue Service

Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)

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Staple attachments here

Staple attachments here

SC1040

(Rev. 9/20/99)

SOUTH CAROLINA
INDIVIDUAL INCOME TAX RETURN

LONG FORM 1999

For the year January 1 - December 31, 1999 or other tax year beginning

1999 and ending 20

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

Last name

RICHARD KIMMER

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

Spouse's last name, if different

MARTHA T

or P. O. Box)

Apt. No

Daytime telephone
Area Code

Do not write in this space - OFFICE USE

City, State and ZIP code

WHITMIRE, SC 29178

County code

36

If you do not wish to receive a booklet next year, but need a name and address label for your 2000 return, check here.

CHECK YOUR

(1)

Single

(3)

Married filing separately

Enter spouse's SSN here

FEDERAL FILING STATUS

(2)

X 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 1999 federal return.

2

How many of the exemptions listed above were under the age of 6 years on December 31, 1999?

0

Enter the number of taxpayers age 65 or over.

0

		Dollars	Cents
1	Federal Taxable Income from your federal Form 1040, line 39; 1040A, line 24; or 1040EZ, line 6. If zero or less, enter zero here and enter the negative amount on line 47 of this form.	39,458	00
2a	If itemizing your state and local income tax deduction, enter the amount from line 5 of Worksheet A on page 8 instructions.	2,632	00
2b	State tax refund, if included on line 10, 1999 federal Form 1040	254	00
3	Subtract 2b from 2a. (If difference is a negative figure, enter the amount in brackets < >.)	2,378	00
4	If line 3 is a positive number, add lines 1 and 3; If line 3 is a negative number, subtract line 3 from line 1.	41,836	00
5	Other adjustments, if applicable: enter amount from line 55 on the back of this form (If line 55 is a negative figure, enter the amount in brackets < >.)		00
6	South Carolina INCOME SUBJECT TO TAX (line 4 PLUS OR MINUS the amount on line 5).	41,836	00
7	TAX: Enter tax from SOUTH CAROLINA tax tables.	2,591	00
8	TAX on Lump Sum Distribution (If using SC4972, please attach.)		00
9	TOTAL South Carolina tax. Add lines 7 and 8. Enter the total.	2,591	00
10	Child and Dependent Care. Federal EXPENSE from Form 2441 \$ _____ x .07 (7%).		00
11	Two Wage Earner Credit from Schedule W on the back of this form.	165	00
12	Other Non-refundable Credits. Attach Schedule TC.	221	00
13	TOTAL Non-refundable Credits. Add lines 10 through 12 and enter the total.	386	00
14	SUBTRACT line 13 from line 9. Enter the difference BUT NOT LESS THAN ZERO.	2,205	00
15	SC INCOME TAX WITHHELD (Attach W-2 or SC41.)	2,249	00
16	1999 Estimated Tax Payments		00
17	Amount Paid with extension		00
18	NR sale of real estate		00
19	Other SC Withholding (Attach Form 1099)		00
20	Tuition Tax Credit (Attach Form I-319)		00
21	ADD lines 15 through 20 and enter the total. These are your Total Payments/Credits.	2,249	00
22	If line 21 is LARGER than line 14, subtract line 14 from line 21 and enter the OVERPAYMENT.	44	00
23	If line 14 is LARGER than line 21, subtract line 21 from line 14 and enter the AMOUNT DUE.	0	00
24	Amount of line 22 to be credited to your 2000 ESTIMATED TAX.		00
25	Endangered Wildlife Fund		00
26	Children's Trust Fund		00
27	Eldercare Trust Fund		00
28	Veterans' Trust Fund		00
29	Gift of Life Trust Fund		00
30	DARE Fund		00
31	First Steps Fund		00
32	ADD lines 24 through 31 and enter the total. If subject to penalty for Underpayment of Estimated Tax, attach a Form SC2210. (See instructions). Penalty: \$ _____		00
33	NET REFUND: Subtract line 32 from line 22 and enter the AMOUNT TO BE REFUNDED TO YOU.	44	00
34	NET DUE: ADD lines 23 and 32 and, if applicable, penalty amount. Enter the AMOUNT YOU OWE. Attach a check or money order for the full amount payable to "SC Department of Revenue." Write your Social Security number and "1999 Form SC1040" on the check.	0	00

439

RICHARD & MARTHA T KIMMER

PART 1 ADDITIONS TO FEDERAL TAXABLE INCOME		Dollars	Cents
35	Out-of-state losses - see instructions	35	00
36	Expenses related to National Guard and military reserve income	36	00
37	Interest income on obligations of states and political subdivisions other than South Carolina.	37	00
38	Other additions to income. (See instructions.) Attach an explanation.	38	00
39	TOTAL ADDITIONS --- add lines 35 through 38 and enter your total additions to income here.	39	00
PART 2 SUBTRACTIONS FROM FEDERAL TAXABLE INCOME		Dollars	Cents
40	Interest income from obligations of the U S government.	40	00
41	National Guard or Reserve annual training and drill pay. (See instructions.)	41	00
42	Permanent disability retirement income, if taxed on your federal return	42	00
43	Social Security and/or railroad retirement, if taxed on your federal return	43	00
44	Caution: Retirement Deduction - See instructions.		
a) Taxpayer: Birth Date	☐ Surviving Spouse	44a	00
b) Spouse: Birth Date	☐ Surviving Spouse	44b	00
45	Age 65 and older deduction - See instructions.		
a) Taxpayer: Birth date		45a	00
b) Spouse: Birth date		45b	00
46	Out-of-state income/gain - Do not include personal service income. See instructions	46	00
47	Negative amount of federal taxable income.	47	00
48	44% of net capital gains with two years holding period (See instructions)	48	00
49	Subsistence Allowance _____ days @ \$5.00.	49	00
50	Volunteer Firefighters/Rescue Squad Deduction. See instructions.	50	00
51	Dependents under 6 years of age. See instructions.		
Birth Date _____ SSN _____		51	00
Birth Date _____ SSN _____		52	
52	Additional self-employed health insurance deduction	52	
53	Other subtractions. (See instructions.)	53	00
54	TOTAL SUBTRACTION --- add lines 40 through 53 and enter the total.	54	00
55	NET ADJUSTMENT: If line 39 is greater than line 54, the difference is a plus + figure. However, if line 54 is greater than line 39, the difference is a minus - figure. Enter the difference here and on line 5 of this return.	55	00

Schedule W TWO WAGE EARNER CREDIT WHEN BOTH SPOUSES WORK

Step 1	Compute your earned income	(a) You	(b) Your spouse
1	Wages, salaries, tips, etc., from federal Form 1040, line 7 or 1040A, line 7, or 1040EZ, line 1. (Do not include pensions or annuities. See instructions, Step 1, page 9.)	1 23,524 00	1 36,476 00
2	Net profit or (loss) from self-employment (from Schedules C and F of Form 1040 and/or Schedule K-1 of Form 1065) and any other earned income	2 00	2 00
3	Add lines 1 and 2. This is your total earned income	3 23,524 00	3 36,476 00
Step 2	Compute your qualified earned income		
4	Add amounts entered on federal Form 1040, lines 23, 27, 28, and 29 and any repayment of supplemental unemployment benefits (sub-pay) included on line 32, or on 1040A, line 15. Enter the total. (See instructions)	4 00	4 00
5	Subtract line 4 from line 3. This is your qualified earned income. If the amount in column (a) or (b) is zero (-0-) or less, stop here. You may not take this credit.	5 23,524 00	5 36,476 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 23,524 00	
7	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 line 11 of this return	8 165 00	

See instructions inside back cover of tax booklet to determine if you are liable for use tax and page 15 of this booklet concerning accommodations tax.

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Your Signature	Date	Spouse's signature (if jointly, BOTH must sign)
	02-07-2000	
I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.		Preparer's Printed Name
Yes ☐ No ☒		JOHN M. WATTS

If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Paid	02-07-2000	Preparer's
Use Only	EL Number	Phone Number
		City
		State

LANCASTER, SC 29720

940

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TAX CREDITS

SCHEDULE TC

(Rev. 9/2/99)
3113

1999

NAME RICHARD & MARTHA T KIMMER	YOUR SOCIAL SECURITY NUMBER

CREDIT FOR TAXES PAID TO ANOTHER STATE
SOUTH CAROLINA RESIDENTS/PART YEAR RESIDENT ONLY.
SEE INSTRUCTIONS ON BACK OF THIS FORM (Use whole numbers)

Enter name of state NORTH CAROLINA

		Dollars	Cents
1	Enter amount of Income from Line E of worksheet on back of this form.	60,068	00
2	The portion of line 1 above which was taxed by another state. (See line 2 instructions)	6,073	00
3	Percentage. (Divide the amount on line 2 by the amount on line 1, not to exceed 100%. Carry to fourth decimal place.)	10.11	%
4	Amount of South Carolina Tax from SC1040, line 7, or SC1040NR, line 2.	2,591	00
5	Tentative Credit. (Percent on line 3 times the amount on line 4 above.)	262	00
6	Net amount of tax paid the other state on the income shown on line 2 above. (See line 6 instructions) (Do not use withholding amounts from your W-2. Attach a copy of other state's tax return.)	221	00
7	Allowable Credit. Enter the lesser of the tax on line 5 or line 6 above.	221	00

Remember:

You must attach a copy of the other state's return and a copy of the federal return. Failure to attach these copies will delay the processing of your return.

Other Nonrefundable Credits:

Instructions for other nonrefundable credits can be found on the previous page. These credits are computed on separate forms. Be sure to attach the appropriate form(s) to Schedule TC for the credit you are claiming.

		Dollars	Cents			Dollars	Cents
Carryover of unused qualified credits.	▶ 8		00	Employer Child Care Credit (Attach TC-9.)	▶ 16		00
Nursing Home Credit. (See worksheet on prior page)	▶ 9		00	Base Closure Credit (Attach TC-10.)	▶ 17		00
Water Resources Credit. (Attach TC-3.)	▶ 10		00	Economic Impact Zone Credit (Attach TC-11.)	▶ 18		00
Drip/Trickle Irrigation Credit (Attach TC-1.)	▶ 11		00	Family Independence Payments Credit (Attach TC-12.)	▶ 19		00
Scenic River Tax Credit	▶ 12		00	Additional Family Independence Payments Credit (Attach TC-12A.)	▶ 20		00
Minority Contractor Business Credit. (Attach TC-2.)	▶ 13		00	Motion Picture Project/Production Facility Credit (Attach TC-13.)	▶ 21		00
New Jobs Credit (Attach TC-4.)	▶ 14		00	Qualified Retirement Plan Contribution Credit	▶ 22		00
Palmetto Seed Capital Credit (Attach TC-7.)	▶ 15		00				
23	Total Credits. Add lines 7 through 22. Enter the total.					221	00
24	Enter the tax from SC1040, line 9, or SC1040NR, line 4.					2,591	00
25	Enter the lesser of line 23 or 24. Also enter on SC1040, line 12, or SC1040NR, line 7.					221	00

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Form 1040

Department of the Treasury - Internal Revenue Service

U.S. Individual Income Tax Return

1999

(99) IRS Use Only - Do not write or staple in this space.

Label

For the year ending 1999, or for the year beginning 2000, ending

DO NOT FILE WITH OTHER FORMS! 1545-0074

See instructions on page 18.)	1	Your first name and initial	2	Last name
Set the IRS label.	A	RICHARD KIMMER		
Otherwise, please print or type.	B	If a joint return, spouse's first name and initial		Last name
	C	Home address		Apt. no.
	D	City, town or post office, state, and ZIP code. If you have a foreign address, see page 18.		
	E	WHITMIRE	SC	29178

Presidential

Election Campaign
(See page 18.)

Do you want \$3 to go to this fund?

If a joint return, does your spouse want \$3 to go to this fund?

Yes	No
	X

Note: Checking "Yes" will not change your tax or reduce your refund.

Filing Status

Check only one box.

1	Single
2	Married filing joint return (even if only one had income)
3	Married filing separate return. Enter spouse's SSN above, full name here. ▶ MARTHA T KIMMER
4	Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶
5	Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 18.)

Exemptions

6a	X	Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a	No. of boxes checked on 6a and 6b	1
b		Spouse	No. of your children on 6c who:	
c Dependents:			• lived with you	
			• did not live with you due to divorce or separation (see page 19)	
			Dependents on 6c not entered above	
			Add numbers entered on lines above	1
			d Total number of exemptions claimed.	

Income

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	23,524
8a	Taxable interest. Attach Schedule B if required	8a	44
b	Tax-exempt interest. DO NOT include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 21)	10	254
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C, or C-EZ	12	
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	Total IRA distributions	15a	
b	Taxable amount (see page 22)	15b	
16a	Total pensions & annuities	16a	
b	Taxable amount (see page 22)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits	20a	
b	Taxable amount (see page 24)	20b	
21	Other income	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income ▶	22	23,822

Adjusted Gross Income

23	IRA deduction (see page 26)	23	
24	Student loan interest deduction (see page 26)	24	
25	Medical savings account deduction. Attach Form 8853	25	
26	Moving expenses. Attach Form 3903	26	
27	One-half of self-employment tax. Attach Schedule SE	27	
28	Self-employed health insurance deduction (see page 28)	28	
29	Keogh and self-employed SEP and SIMPLE plans	29	
30	Penalty on early withdrawal of savings	30	
31a	Alimony paid b Recipient's SSN	31a	
32	Add lines 23 through 31a	32	
33	Subtract line 32 from line 22. This is your adjusted gross income	33	23,822

942

SCHEDULES A&B
(Form 1040)

PREPARED FOR STATE PURPOSES ONLY - DO NOT FILE WITH IRS!
Schedule A - Itemized Deductions

OMB No. 1545-0074

1999

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

RICHARD KIMMER

Your social security number

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others.		
1	Medical and dental expenses (see page A-1)	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	301
	6 Real estate taxes (see page A-2)	6	596
	7 Personal property taxes	7	172
(See page A-2.)	8 Other taxes. List type and amount ▶	8	
	9 Add lines 5 through 8	9	1,069
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	4,749
(See page A-3.)	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	
	12 Points not reported to you on Form 1098. See page A-3 for special rules	12	
Note. Personal interest is not deductible.	13 Investment interest. Attach Form 4952 if required. (See page A-3.)	13	
	14 Add lines 10 through 13	14	4,749
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	850
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	850
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	1,040
	21 Tax preparation fees	21	
(See page A-5 for expenses to deduct here.)	22 Other expenses - investment, safe deposit box, etc. List type and amount ▶	22	
	23 Add lines 20 through 22	23	1,040
	24 Enter amount from Form 1040, line 34	24	23,822
	25 Multiply line 24 above by 2% (.02)	25	476
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26	564
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 \$126,600 (over \$63,300 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	7,232

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

EEA

Schedule A (Form 1040) 1999

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Label
Your first name and initial
Last name
If a joint return, spouse's first name and initial
Last name
City, town or post office, state, and ZIP code. If you have a foreign address, see page 18

Presidential Election Campaign
Do you want \$3 to go to this fund?
If a joint return, does your spouse want \$3 to go to this fund?

Filing Status
1 Single
2 Married filing joint return (even if only one had income)
3 Married filing separate return. Enter spouse's SSN above, full name here.
4 Head of household (with qualifying person). (See page 18.) If the qualifying person is a child but not your dependent, enter this child's name here.
5 Qualifying widow(er) with dependent child (year spouse died 19). (See page 18.)

Exemptions
6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a.
b Spouse
c Dependents:
(1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) Check if qualifying child for child tax credit
d Total number of exemptions claimed.

Income
7 Wages, salaries, tips, etc. Attach Form(s) W-2
8a Taxable interest. Attach Schedule B if required
b Tax-exempt interest. DO NOT include on line 8a
9 Ordinary dividends. Attach Schedule B if required
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 21)
11 Alimony received
12 Business income or (loss). Attach Schedule C or C-EZ
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here
14 Other gains or (losses). Attach Form 4797
15a Total IRA distributions 15a b Taxable amount (see page 22)
16a Total pensions & annuities 16a b Taxable amount (see page 22)
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E
18 Farm income or (loss). Attach Schedule F
19 Unemployment compensation
20a Social security benefits 20a b Taxable amount (see page 24)
21 Other income
22 Add the amounts in the far right column for lines 7 through 21. This is your total income

Adjusted Gross Income
23 IRA deduction (see page 26)
24 Student loan interest deduction (see page 26)
25 Medical savings account deduction. Attach Form 8853
26 Moving expenses. Attach Form 3903
27 One-half of self-employment tax. Attach Schedule SE
28 Self-employed health insurance deduction (see page 28)
29 Keogh and self-employed SEP and SIMPLE plans
30 Penalty on early withdrawal of savings
31a Alimony paid b Recipient's SSN
32 Add lines 23 through 31a
33 Subtract line 32 from line 22. This is your adjusted gross income

945

RICHARD & MARTHA T KIMMER

Tax and Credits

Standard Deduction for Most People

Single: \$4,300
 Head of household: \$4,350
 Married filing jointly or Qualifying widow(er): \$7,200
 Married filing separately: \$3,600

34	Amount from line 33 (adjusted gross income)	34	60,322
35a	Check if ☐ You were 65 or older ☐ Blind ☐ Spouse was 65 or older ☐ Blind Add the number of boxes checked above and enter the total here ▶ 35a		
b	If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see page 30 and check here ▶ 35b ☐		
36	Enter your Itemized deductions from Schedule A, line 28, OR standard deduction shown on the left. But see page 30 to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent	36	15,364
37	Subtract line 36 from line 34	37	44,958
38	If line 34 is \$94,975 or less, multiply \$2,750 by the total number of exemptions claimed on line 6d. If line 34 is over \$94,975, see the worksheet on page 31 for the amount to enter	38	5,500
39	Taxable Income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	39,458
40	Tax (see page 31). Check if any tax from a ☐ Form(s) 8814 b ☐ Form 4972 ▶	40	5,921
41	Credit for child & dependent care expenses. Attach Form 2441	41	
42	Credit for the elderly or the disabled. Attach Schedule R	42	
43	Child tax credit (see page 33)	43	
44	Education credits. Attach Form 8863	44	
45	Adoption credit. Attach Form 8839	45	
46	Foreign tax credit. Attach Form 1116 if required	46	
47	Other. Check if from a ☐ Form 3800 b ☐ Form 8396 c ☐ Form 8801 d ☐ Form (specify)	47	
48	Add lines 41 through 47. These are your total credits	48	
49	Subtract line 48 from line 40. If line 48 is more than line 40, enter -0- ▶	49	5,921

Other Taxes

50	Self-employment tax. Attach Schedule SE	50	
51	Alternative minimum tax. Attach Form 6251	51	
52	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
53	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required	53	
54	Advance earned income credit payments from Form(s) W-2	54	
55	Household employment taxes. Attach Schedule H	55	
56	Add lines 49 through 55. This is your total tax ▶	56	5,921

Payments

57	Federal income tax withheld from Forms W-2 and 1099	57	5,549
58	1999 est. tax payments and amount applied from 1998 return	58	
59a	Earned income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount ▶ and type ▶	59a	
60	Additional child tax credit. Attach Form 8812	60	
61	Amount paid with request for extension to file (see page 48)	61	
62	Excess social security and RRTA tax withheld (see page 48)	62	
63	Other payments. Check if from a ☐ Form 2439 b ☐ Form 4136	63	
64	Add lines 57, 58, 59a, and 60 through 63. These are your total payments ▶	64	5,549

Refund

Have it directly deposited! See page 48 and fill in 66b, 66c, and 66d.

65	If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you OVERPAID	65	
66a	Amount of line 65 you want REFUNDED TO YOU ▶	66a	
b	Routing number	c Type: ☐ Checking ☐ Savings	
d	Account number		
67	Amount of line 65 you want APPLIED TO YOUR 2000 ESTIMATED TAX ▶	67	

Amount You Owe

68	If line 56 is more than line 64, subtract line 64 from line 56. This is the AMOUNT YOU OWE . For details on how to pay, see page 49 ▶	68	372
69	Estimated tax penalty. Also include on line 68	69	

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 18.
 Keep a copy for your records.

Preparer's signature	Date	Your occupation	Daytime telephone number (optional)
Spouse's signature. If joint return, BOTH must sign.	Date	Spouse's occupation	

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☒
Firm's name (or yours if self-employed) and address	EIN	ZIP code

TANCASTER

SC

946

29720

SCHEDULES A&B
(Form 1040)

Schedule A - Itemized Deductions

OMB No. 1545-0074

1999

Department of the Treasury
Internal Revenue Service (99)

▶ **Attach to Form 1040.**

▶ **See instructions for Schedules A and B (Form 1040).**

Attachment
Sequence No **07**

Name(s) shown on Form 1040

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-1)	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	2,632	
	6 Real estate taxes (see page A-2)	6	1,191	
	7 Personal property taxes	7	344	
(See page A-2.)	8 Other taxes. List type and amount ▶	8		
9	Add lines 5 through 8	9		4,167
Interest You Paid	10 Home mortgage interest and points reported to you on Form 1098	10	9,497	
(See page A-3.)	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		
	12 Points not reported to you on Form 1098. See page A-3 for special rules	12		
Note. Personal interest is not deductible.	13 Investment interest. Attach Form 4952 if required. (See page A-3.)	13		
	14 Add lines 10 through 13	14		9,497
Gifts to Charity	15 Gifts by cash or check. If you made any gift of \$250 or more, see page A-4	15	1,700	
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		1,700
Casualty and Theft Losses	19 Casualty or theft loss(es). Attach Form 4684. (See page A-5.)	19		
Job Expenses and Other 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	1,040	
Miscellaneous	FORM 2106 1,040	21		
(See page A-5 for expenses to deduct here.)	22 Other expenses - investment, safe deposit box, etc. List type and amount ▶	22		
	23 Add lines 20 through 22	23	1,040	
	24 Enter amount from Form 1040, line 34	24	60,322	
	25 Multiply line 24 above by 2% (.02)	25	1,206	
	26 Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26		0
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 \$126,600 (over \$63,300 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		15,364

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

EEA

Schedule A (Form 1040) 1999

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Form 2106

Employee Business Expenses

See separate instructions.

OMB No. 1545-0139

1999

Attachment
Sequence No. 54Department of the Treasury
Internal Revenue Service (99)

Attach to Form 1040.

Your name

RICHARD KIMMER

Occupation in which you incurred expenses

SKILLED

Part I Employee Business Expenses and Reimbursements**STEP 1 Enter Your Expenses**

	Column A Other Than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from line 22c or line 29. (Rural mail carriers. See instructions.)	1,040	
2 Parking fees, tolls, and transportation, including train, bus, etc., that did not involve overnight travel or commuting to and from work		
3 Travel expense while away from home overnight, including lodging, airplane, car rental, etc. Do not include meals and entertainment		
4 Business expenses not included on lines 1 through 3. Do not include meals and entertainment		
5 Meals and entertainment expenses (see instructions)		
6 Total expenses. In Column A, add lines 1 through 4 and enter the result. In Column B, enter the amount from line 5	1,040	

Note: If you were not reimbursed for any expenses in Step 1, skip line 7 and enter the amount from line 6 on line 8.

STEP 2 Enter Reimbursements Received From Your Employer for Expenses Listed in STEP 1

7 Enter reimbursements received from your employer that were not reported to you in box 1 of Form W-2. Include any reimbursements reported under code "L" in box 13 of your Form W-2 (see instructions)	7	

STEP 3 Figure Expenses To Deduct on Schedule A (Form 1040)

8 Subtract line 7 from line 6. If zero or less, enter -0-. However, if line 7 is greater than line 6 in Column A, report the excess as income on Form 1040, line 7.	1,040	
Note: If both columns of line 8 are zero, you cannot deduct employee business expenses. Stop here and attach Form 2106 to your return.		
9 In Column A, enter the amount from line 8. In Column B, multiply line 8 by 50% (.50). (Employees subject to Department of Transportation (DOT) hours of service limits: Multiply meal expenses by 55% (.55) instead of 50%. For more details, see instructions.)	1,040	
10 Add the amounts on line 9 of both columns and enter the total here. Also, enter the total on Schedule A (Form 1040), line 20. (Fee-basis state or local government officials, qualified performing artists, and individuals with disabilities: See the instructions for special rules on where to enter the total.)		1,040

For Paperwork Reduction Act Notice, see Instructions.

EEA

Form 2106 (1999)

948

Part II Vehicle Expenses**Section A - General Information** (You must complete this section if you are claiming vehicle expenses.)

		(a) Vehicle 1	(b) Vehicle 2
11	Enter the date the vehicle was placed in service	03-20-1994	
12	Total miles the vehicle was driven during 1999	miles	miles
13	Business miles included on line 12	3,200 miles	miles
14	Percent of business use. Divide line 13 by line 12	100.00 %	%
15	Average daily roundtrip commuting distance	miles	miles
16	Commuting miles included on line 12	miles	miles
17	Other miles. Add lines 13 and 16 and subtract the total from line 12	(3,200) miles	miles
18	Do you (or your spouse) have another vehicle available for personal use?	☐ Yes ☐ No	☐ Yes ☐ No ☐ Not applicable
19	If your employer provided you with a vehicle, is personal use during off-duty hours permitted?	☐ Yes ☐ No	☐ Yes ☐ No ☐ Not applicable
20	Do you have evidence to support your deduction?	☐ Yes ☐ No	☐ Yes ☐ No ☐ Not applicable
21	If "Yes," is the evidence written?	☐ Yes ☐ No	☐ Yes ☐ No ☐ Not applicable

Section B - Standard Mileage Rate (See the instructions for Part II to find out whether to complete this section or Section C.)

22a	Multiply business miles driven before April 1, 1999, by 32 1/2 cents (.325)	22a	1,040
b	Multiply business miles driven after March 31, 1999, by 31 cents (.31)	22b	
c	Add lines 22a and 22b. Enter the result here and on line 1	22c	1,040

Section C - Actual Expenses

		(a) Vehicle 1	(b) Vehicle 2
23	Gasoline, oil, repairs, vehicle insurance, etc.	23	
24a	Vehicle rentals	24a	
b	Inclusion amount (see instructions)	24b	
c	Subtract line 24b from line 24a	24c	
25	Value of employer-provided vehicle (applies only if 100% of annual lease value was included on Form W-2 - see instructions).	25	
26	Add lines 23, 24c, and 25	26	
27	Multiply line 26 by the percentage on line 14	27	
28	Depreciation. Enter amount from line 38 below	28	
29	Add lines 27 and 28. Enter total here and on line 1	29	

Section D - Depreciation of Vehicles (Use this section only if you owned the vehicle and are completing Section C for the vehicle.)

		(a) Vehicle 1	(b) Vehicle 2
30	Enter cost or other basis (see instructions)	30	
31	Enter amount of section 179 deduction (see instructions)	31	
32	Multiply line 30 by line 14 (see instructions if you elected the section 179 deduction)	32	
33	Enter depreciation method and percentage (see instructions)	33	
34	Multiply line 32 by the percentage on line 33 (see instructions)	34	
35	Add lines 31 and 34.	35	
36	Enter the limit from the table in the line 36 instructions	36	
37	Multiply line 36 by the percentage on line 14	37	
38	Enter the smaller of line 35 or line 37. Also enter this amount on line 28 above	38	

949

Your first name and initial Last name
RICHARD KIMMER
If a joint return, spouse's first name and initial Last name
MARTHA T KIMMER
City, town or post office, state, and ZIP+4[®] If you have a foreign address, see page 19.
LANCASTER SC 29720
Your social security number
Apt. no.
Important: You must enter your SSN(s) above.

Presidential Election Campaign (See page 19.) Note. Checking "Yes" will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? You Yes No Spouse Yes No

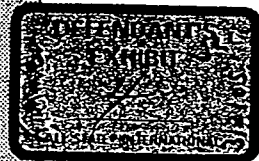
Filing Status 1 Single 2 Married filing joint return (even if only one had income) 3 Married filing separate return. Enter spouse's SSN above, full name here. 4 Head of household (with qualifying person). (See page 19.) If the qualifying person is a child but not your dependent, enter this child's name here. 5 Qualifying widow(er) with dependent child (year spouse died). (See page 19.)

Exemptions 6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. No. of boxes checked on 6a and 6b 2

b Spouse c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) Check if qualifying child for child tax credit. Add numbers entered on lines above 2

7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 38,652 8a Taxable interest. Attach Schedule B if required 8a 232 9 Ordinary dividends. Attach Schedule B if required 9 44 10 Taxable refunds, credits, or offsets of state and local income taxes (see page 22) 10 11 Alimony received 11 12 Business income or (loss). Attach Schedule C or C-EZ 12 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here 13 14 Other gains or (losses). Attach Form 4797 14 15a Total IRA distributions 15a 15b Taxable amount (see page 23) 15b 4,493 16a Total pensions & annuities 16a 16b Taxable amount (see page 23) 16b 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17 18 Farm income or (loss). Attach Schedule F 18 19 Unemployment compensation 19 20a Social security benefits 20a 20b Taxable amount (see page 25) 20b 21 Other income 21 22 Add the amounts in the far right column for lines 7 through 21. This is your total income 22 43,421

Adjusted Gross Income 23 IRA deduction (see page 27) 23 24 Student loan interest deduction (see page 27) 24 25 Medical savings account deduction. Attach Form 8853 25 26 Moving expenses. Attach Form 3903 26 27 One-half of self-employment tax. Attach Schedule SE 27 28 Self-employed health insurance deduction (see page 29) 28 29 Self-employed SEP, SIMPLE, and qualified plans 29 30 Penalty on early withdrawal of savings 30 31a Alimony paid b Recipient's SSN 31a 32 Add lines 23 through 31a 32 43,421 33 Subtract line 32 from line 22. This is your adjusted gross income 33



950

Form W-2 Wage and Tax Statement

2000

OMB No. 1545-0008

Department of the Treasury-Internal Revenue Service

a Control number 6143		Copy 2 To Be Filed with Employee's City or Local Income Tax Return		1 Wages, tips, other compensation 36885.44	2 Federal income tax withheld 4914.70
c Employer's name, address, and ZIP code WESTPOINT STEVENS INC. WHITMIRE WEST POINT GA 31833		b Employer identification number		3 Social security wages 37103.76	4 Social security tax withheld 2300.43
e Employee's name, address, and ZIP code -MARTHA T KIMMER 3 WP YS 772 3 6464 9		7 Social security tips		5 Medicare wages and tips 37103.76	6 Medicare tax withheld 538.00
		8 Allocated tips		9 Advance EIC payment	
		10 Dependent care benefits		13 D 218.32	14 Other
		11 Nonqualified plans			
		12 Benefits included in box 1			
		15 ☐ Statutory employee ☐ Discontinued ☒ Pension plan ☐ Legal rep ☒ Deferred compensation			
16		17 State wages, tips, etc. 36885.44	18 State income tax 2281.79	19 Locality name	20 Local wages, tips, etc. 21 Local income tax

a Control number 6143		Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.) 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.		1 Wages, tips, other compensation 36885.44	2 Federal income tax withheld 4914.70
c Employer's name, address, and ZIP code WESTPOINT STEVENS INC. WHITMIRE P O BOX 71 WEST POINT GA 31833		b Employer identification number		3 Social security wages 37103.76	4 Social security tax withheld 2300.43
e Employee's name, address, and ZIP code MARTHA T KIMMER 97146 3 WP YS 772 3 6464 9		7 Social security tips		5 Medicare wages and tips 37103.76	6 Medicare tax withheld 538.00
		8 Allocated tips		9 Advance EIC payment	
		10 Dependent care benefits		13 See instructions for box 13 D 218.32	14 Other
		11 Nonqualified plans			
		12 Benefits included in box 1			
		15 ☐ Statutory employee ☐ Discontinued ☒ Pension plan ☐ Legal rep ☒ Deferred compensation			
16		17 State wages, tips, etc. 36885.44	18 State income tax 2281.79	19 Locality name	20 Local wages, tips, etc. 21 Local income tax

Form W-2 Wage and Tax Statement

2000

OMB No. 1545-0008

Department of the Treasury-Internal Revenue Service

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Do not write in this space - OFFICE USE

SC 1040

(Rev. 2/1/00)

SOUTH CAROLINA INDIVIDUAL INCOME TAX RETURN 2000

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

2000 and ending 20

If 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

Spouse's last name, if different

MARTHA T KIMMER

(S)

Apt. No.

Area Code Daytime telephone

Do not write in this space - OFFICE USE

LANCASTER, SC 29720

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 hereFEDERAL 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 33 of this return.

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

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.

1 TAX: Enter tax from SOUTH CAROLINA tax tables.

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

TOTAL South Carolina tax. Add lines 3 and 4. Enter the total.

Child and Dependent Care. (See instructions)

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

8 Other Non-refundable Credits. Attach Schedule TC.

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

10 SUBTRACT line 9 from line 5. Enter the difference BUT NOT LESS THAN ZERO.

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

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

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

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

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

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

22 Endangered Wildlife Fund

23 Children's Trust Fund

24 Eldercare Trust Fund

25 Veterans' Trust Fund

26 Gift of Life Trust Fund

27 GARE Fund

28 First Steps Fund

29 Heritage Trust Fund

30 ADD lines 20 through 29 and enter the total.

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.

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.

952

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)
Use (s) shown on Form 1040

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

Your social security number

LECHARD & 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
(See page A-2.)	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
(See page A-3.)	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 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	
(See page A-5 for expenses to deduct here.)	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

953

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

WCC File
Carrier F.
Carrier Code #
Employer FEIN

Richard Kimmer

Whitemire, SC 29718

Murata of America

Preparer's Name

Charlotte, NC 28266

Address City State Zip

Liberty Mutual Group

Insurance Carrier

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 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 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 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 this 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



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.

954

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

ard Kimmer

Murata of America

Employer's Name

29718

Charlotte, NC 28266

Address 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

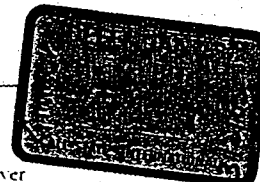
Name Address

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

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.

WCC Form #51 Rev. Date 9/90

Employer's Answer to Request for Hearing.

51

955

PHILIP E. WRIGHT, P.A.

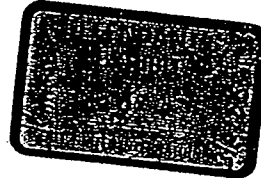
Attorney at Law

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.

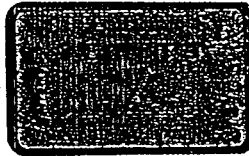
He is employed with Murata of America and has been out of work since February 1, 1999, until the present time. He makes \$14.56 an hour and works a minimum of 8 hours a day. He has missed 80 days and to this point through May 21, 1999, his wage loss is \$9,318.40.

Sincerely yours,

Philip E. Wright

PEW:jb
Enclosures
cc: Mr. Richard Kimmer

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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 Perdegrass, & 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 Concaster 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: Ganne A. Burt

Signed: Richard Kimmer

Witness: Amy Morgan

Signed: Martha Kimmer



956

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

Auto-Owners Insurance
Life Home Car Business
The No Problem Plans®
Lansing, Michigan 48909

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING, MICH.

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

9-80 DRAFT NO. 779
DATE 06/14/99

AT SIGHT
PAY TO THE
ORDER OF

VOID IF NOT CASHED
WITHIN ONE YEAR

01/29/99

BARBARA J HUGHES

AUTO-OWNERS INS. CO.

Robert P. Quinn
AUTHORIZED SIGNATURE

POLICY LIMIT EXCHANGE FOR A SIGNED COVENANT NOT TO EXECUTE

011 779

PHYSICAL THERAPY DAILY PROGRESS NOTES

SPINE

NAME:

Richard Kimmer

DATE:

6/21/99

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:

pt stated "my @ T12 is giving me a lot of problems, im 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
☐ 16 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:

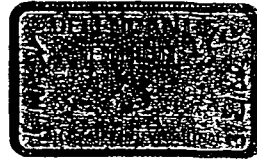
Continue plan of care

Progress

THERAPIST

[Signature]

959



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

960

211



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

PAY
TO THE
ORDER OF

Subro Audit, Inc.

DATE 6/23/99

67-160/532

\$ 8,500.00

Eight Thousand Five Hundred and No/100

DOLLARS

43701

BB&T

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

FOR Richard Kimmer

[Signature]

961
212

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

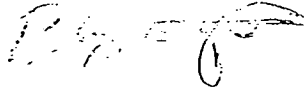
Mr. Dean Holler
Auto Owners Insurance
Post Office Box 2678
Rock Hill, SC 29732

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

962
213

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. Barts

Witness: Amy Morgan

Signed: Richard Kimmer

Signed: Martha Kimmer

963

214

964
215

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

Auto-Owners Insurance

Life Home Car Business
The "A" Accident Award
Lansing, Michigan 48909

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING, MICH.

9-80 DRAFT NO.
720

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

DATE 06/14/99

VOID IF NOT CASHED
WITHIN ONE YEAR

\$*****15,000.00

AUTO OWNERS INS. CO.

John P. Quinn
AUTHORIZED SIGNATURE

BARBARA J HUGHES

POLICY LIMIT EXCHANGE FOR A SIGNED COVENANT NOT TO EXECUTE

10220

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

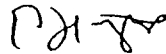
Advanced Orthopaedic Medical Associates
Attention: Julie
720 South Duncan Bypass
Union, SC 29379

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

965
216



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

DATE 6/23/99

67-160/532

PAY TO THE ORDER OF Advanced Orthopaedic Medical Associates

\$ 1,500.00

One Thousand Five Hundred and No/100

DOLLARS

43701

BB&T

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

FOR Richard Kimmer

P. E. Wright

966
215

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

967

218

PHYSICAL THERAPY DAILY PROGRESS NOTES

SPINE

Pt: Richard Kummer

DATE: 6-23-99

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: My knees have been given me trouble. self & I 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	☐ Cervical ROM	☐ Chest press
☐ Single knee	☐ Stretches	☐ Triceps
☐ Double knees	☐ Isometric exs.	☐ Biceps
☐ Hamstrings	☐ Shrugs	☐ Rows
☐ Hip abd. Stretch	☐ Rows	☐ Lat pulls
☐ Hip rot. Stretch	☐ Shld. Flexion	☐ Leg ext.
☐ Cybex abdom.	☐ Abd.	☐ Leg curl
☐ Cybex back	☐ UBE	
☐ Cybex leg press	☐ Stepper	
<u>15 mins</u> Semi	☐ Treadmill	

OTHER: myofascial release to cervical 13 upper traps
E. Hoyer, SLP, and add squeezes, toe raises, mini squats
arm circles & 30 reps & 3#.

OBJECTIVE: 100% E stim to cervical 13 upper traps set to
at 100% x 25 mins. 10 US @ 1.5 volt/cm² & 8 mins to
cervical and 13 upper traps 10 H x 10

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

TERAPIST

968

Carolina Orthopaedic Surgery Associates, P.A.
370 South Herlong Avenue
Rock Hill, South Carolina 29732
(803) 329-3130

Immer, Richard
Jhester

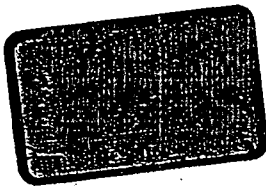
DOB:

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



969

PHYSICAL THERAPY DAILY PROGRESS NOTES LOWER EXTREMITY

ME: Richard Kummer

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: rtt turns rtt 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.
☐ 20/2# 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.
30/40# 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
supine x 30 reps ea. @ 2# y 15 box stretching and single leg stepup x 30
y 15 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

↑ d wt e ham curls, no difficulty, added box stretches, step ups,
and

PLAN:

☒ Continue plan of care ☐ Progress

Dr. H. Roberts, PM
THERAPIST

970

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

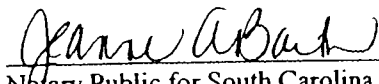
)
) AFFIDAVIT
)

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



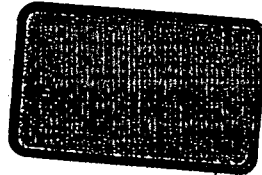
Ronnie Sowell

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



Notary Public for South Carolina

My Commission Expires: 11/4/2008



971

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.

972

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.

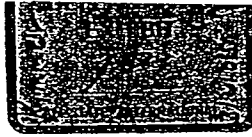
I tried to get information at the Chester County Law Enforcement Center and also at the District 4 Office of the SCHP. Trooper McDougal had been on third and was off. I checked the residences again at 113 Frazer Drive and at Townhouse Apartment 204. No new information was gathered. I came back to Lancaster.

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)

973



PATIENT: Richard Kinner

SSH: _____

☒ INITIAL ASSESSMENT _____ DAY SUMMARY _____ DISCHARGE SUMMARY

DATE: 11-2-99 PHYSICIAN: Kinner

DIAGNOSIS: Lumbar Sprain

HISTORY: DOT

SUMMARY: PT. is a 53 y/o male who reports having a hx of back pain, but states he re-injured the low back ~ 2 wks. ago while cutting a tree down. On initial PT exam the following were noted: (1) Back ROM wNL & (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 min. 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 Exer

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
PHYSICIAN

11/1/99
DATE

Patti Rohi PT
THERAPIST

11-2-99
DATE

924

64

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

ACCT:

DATE: 11/25/96

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 25379

11/02/99 \$190.00 \$17735.30

OFFICE PH

HOME PH
SSI

BUSINESS PH:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT R
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	BALANCE
2/02/99	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
02/10/99	6	RK	23	97110		THERAPEUTIC EXER.	60.00		1583.00

CONTINUED ON NEXT FORM

975

***** 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:

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
6 KENNETH D AUSTIN				

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
						(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

976

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

ACCT: 1

DATE: 11/05/99

ADVANCED ARTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 4190.00 \$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

3 ROBERT KINCHELOE, M.D

5 KENNETH D AUSTIN

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
12/15/99	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	25.00		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

977

***** 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

- 1-924.10 TIBIA & FIBULA CONTUSION
 2-947.0 SPRAIN OF NECK
 3-844.2 SPRAIN CRUCIATE LIGAMENT K

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

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANC
02/22/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		2949.0
02/22/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		2979.0
02/22/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3004.0
02/22/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		3064.0
						(DAYS/UNITS = 2)			
02/22/99	6	RK	12	97124		MASSAGE THERAPY	35.00		3099.0
02/24/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3129.0
02/24/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3154.0
02/24/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		3214.0
						(DAYS/UNITS = 2)			
02/24/99	6	RK	12	97124		MASSAGE THERAPY	35.00		3249.0
02/25/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3274.0
02/25/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3304.0
02/25/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3329.0
02/25/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		3389.0
						(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		3441.0
03/01/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3466.0
03/01/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3496.0
03/01/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3521.0
03/01/99	6	RK	12	97110		THERAPEUTIC EXER.	30.00		3551.0
03/01/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		3596.0

CONTINUED ON NEXT FORM

978

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

ACCT: 1

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 4130.00 117735.30

OFFICE PH

HOME PH: 1

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
 3-844.2 SPRAIN CRUCIATE LIGAMENT K

NUM	DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1	PETER J. KINAHAN, M.D				
3	ROBERT KINCHELOE, M.I				
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		3621.1
03/02/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3651.1
03/02/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3676.1
03/02/99	6	RK	12	97110		THERAPEUTIC EXER.	60.00		3736.1
						(DAYS/UNITS = 2)			
03/02/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		3781.1
03/04/99	1	RK	23	99213		OFFICE EXP PROB FO	52.00		3833.1
03/04/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		3843.1
03/04/99	1	RK		1		CASH PAYMENT		10.00	3833.1
03/08/99	3	RK		980		DEBIT ADJUST TO PA	18.86		3851.1
03/08/99	3	RK		LAW		PMT FROM LAW OFFIC		18.86	3833.1
						CHK#:16877			
03/09/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		3858.1
03/09/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		3888.1
03/09/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		3913.1
03/09/99	6	RK	12	97110		THERAPEUTIC EXER.	30.00		3943.1
03/09/99	6	RK	12	97124		MASSAGE THERAPY	35.00		3978.1
03/10/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4003.1
03/10/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4033.1
03/10/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4058.1
03/10/99	6	RK	12	97110		THERAPEUTIC EXER.	30.00		4088.1
03/10/99	6	RK	12	97124		MASSAGE THERAPY	35.00		4123.1
03/11/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4148.1

CONTINUED ON NEXT FORM

979

***** 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

- 1-824.10 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	BALANCE
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		4789.0
						(DAYS/UNITS = 2)			
03/17/99	6	RK	231	97110		THERAPEUTIC EXER.	70.00		4859.0
						(DAYS/UNITS = 2)			

CONTINUED ON NEXT FORM

980

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

ACCT:

DATE: 11/05/99

ADVANCED OPTICAL MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH: /

DME PH:

BUSINESS PH:

SSN

-7

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/02/99 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		4893.0
03/19/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		4918.0
03/19/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		4953.0
03/19/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		4983.0
03/19/99	6 RK	123	97035		ULTRASOUND, EACH 1	25.00		5008.0
03/19/99	6 RK	123	97110		THERAPEUTIC EXER.	70.00		5078.0
					(DAYS/UNITS = 2)			
03/19/99	6 RK	123	97124		MASSAGE THERAPY	35.00		5113.0
03/22/99	6 RK	123	97010		HOT OR COLD PACKS	25.00		5138.0
03/22/99	6 RK	123	97012		MECHANICAL TRACTIO	35.00		5173.0
03/22/99	6 RK	123	97014		ELECTRIC STIMULATI	30.00		5203.0
03/22/99	6 RK	123	97035		ULTRASOUND, EACH 1	25.00		5228.0
03/22/99	6 RK	123	97110		THERAPEUTIC EXER.	35.00		5263.0
03/22/99	6 RK	123	97250		MYOFASCIAL RELEASE	45.00		5308.0
** INS. FILED:03/23/99 REFILED:09/27/99								
03/23/99	1 RK		112		CIGNA PAYMENT		695.00	4613.0
** APPLIES TO CHARGES ON:02/02/99 CHK#:20388204								
03/23/99-	1 RK		112C		CIGNA CREDIT ADJUS		80.00	4533.0
02/02/99								
03/23/99	1 RK		112		CIGNA PAYMENT		127.00	4406.0
** APPLIES TO CHARGES ON:02/05/99 CHK#:20388204								
03/23/99-	1 RK		112C		CIGNA CREDIT ADJUS		64.00	4342.0
02/05/99								

CONTINUED ON NEXT FORM

981

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

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL 42200

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

11/02/99 1:40P

DIAGNOSIS

1-847.0 SPRAIN OF NECK
 2-844.2 SPRAIN CRUCIATE LIGAMENT X
 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 KINCHELDE, M.I				
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		1120		CIGNA CREDIT ADJUS		8.00	4294.0
02/19/99									
03/23/99	3	RK		RPTE		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 OR 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:03/29/99 REFILED:09/27/99									
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

982

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

ACCT:

DATE: 11/08/99

ADVANCED ORTHO & MEDICAL ASSOC
UNION, SC 29379LAST PAYMENT
11/02/99 1190.00 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 5-067 FOLLOW-UP EXAMINATION
 2-944.2 SPRAIN CRUCIATE LIGAMENT K
 3-924.10 TIBIA & FIBULA CONTUSION
 4-838.0 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
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	5 RK	123	97110		THERAPEUTIC EXER.	35.00		4908.00
03/31/99	5 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,	58.00		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	5 RK	123	97002		PHYSICAL THERAPY,	45.00		5293.00
04/06/99	5 RK	123	97010		HOT OR COLD PACKS	25.00		5318.00
04/06/99	5 RK	123	97110		THERAPEUTIC EXER.	70.00		5388.00
					(DAYS/UNITS = 2)			
04/07/99	5 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 COMPRESSION	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

983

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

ACCT: 1

DATE: 11/25/99

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

11/25/99 1:40PM

E

W

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

S-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	BALANC
						CHK#:2586			
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:05/27/99			
04/21/99	6	RK	23	97010		HOT OR COLD PACKS	25.00		8119.0
04/21/99	6	RK	23	97110		THERAPEUTIC EXER.	70.00		8189.0
						(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

984

***** 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: 864-429-0764

HOME PH: 694-2222

BUSINESS PH:

SE

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/03/99 1140F

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT R
 2-924.10 TIBIA & FIBULA CONTUSION
 3-836.1 TEAR LATERAL CARTILAGE/MEN
 4-067 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
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		10678.0
** 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: 09/27/99								
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

985

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

ACCT:

DATE: 11/08/99

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:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1146P

DIAGNOSIS

1-844.2 SPRAIN CRUCIATE LIGAMENT R
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 PROB 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

986

***** 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: 864-2093

BUSINESS PH:

SSN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:43P

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	11255.2
** APPLIES TO CHARGES ON: 03/15/99 CHK#: 21433105								
05/18/99	6 RK		112		CIGNA PAYMENT		128.00	11127.2
** APPLIES TO CHARGES ON: 03/24/99 CHK#: 21433105								
05/18/99	1 RK		112		CIGNA PAYMENT		74.00	11053.2
** APPLIES TO CHARGES ON: 03/15/99 CHK#: 21433103								
05/18/99-	1 RK		112C		CIGNA CREDIT ADJUS		16.00	11037.2
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		1803.00	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

987

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

ACCT: 1

DATE: 11/08/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29375

11/02/99 9190.00 117735.00

OFFICE PH

HOME PH: 444

BUSINESS PH:

SS

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40PM

DIAGNOSIS

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

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

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
03/15/99									
05/19/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		5174.1
05/19/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		6204.1
05/19/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		6229.1
05/19/99	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#: 21863515									
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

988

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

ACCT: 7

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 7190.00 517735.30

OFFICE PH:

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KINMER

RK RICHARD KINMER

11/05/99 1:40PM

5

DIAGNOSIS

1-847.0 SPRAIN OF NECK
2-S24.10 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	BALANC
06/02/99	1	RK		112		CIGNA PAYMENT		100.00	4193.1
** APPLIES TO CHARGES ON:04/14/99 CHK#:21708604									
06/02/99-	1	RK		1120		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		1120		CIGNA CREDIT ADJUS		7.00	4092.1
05/13/99									
06/03/99	1	RK	1	95212		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:06/27/99									
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

989

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

ACCT:

DATE: 11/02/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 1198.00 117735.30

OFFICE PH

HOME PH: 1-800-222-2222

BUSINESS PH:

SSI

APPOINTMENT

MR. RICHARD KIMMER

RR RICHARD KIMMER

11/02/99 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

990

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

ACCT:

DATE: 11/08/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/08/99 \$192.00 \$17735.30

OFFICE PH: 81 333

HOME PH

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KINMER

MR. RICHARD KINMER

11/08/99 1:40P

DIAGNOSIS

1-924.13 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.
06/18/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		4462.
06/21/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4487.
06/21/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4517.
06/21/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4542.
06/21/99	6	RK	12	97110		THERAPEUTIC EXER.	35.00		4577.
06/21/99	6	RK	12	97124		MASSAGE THERAPY	35.00		4612.
** INS. FILED:06/22/99 REFILED:09/27/99									
06/23/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		4637.
06/23/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		4667.
06/23/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		4692.
06/23/99	6	RK	12	97110		THERAPEUTIC EXER.	35.00		4727.
06/23/99	6	RK	12	97250		MYOFASCIAL RELEASE	45.00		4772.
** INS. FILED:06/25/99 REFILED:09/27/99									
06/24/99	1	RK		112		CIGNA PAYMENT		19.00	4753.
** APPLIES TO CHARGES ON:06/03/99 CHK#:22161843									
06/24/99	1	RK		112C		CIGNA CREDIT ADJUS		6.00	4747.
06/03/99									
06/25/99	2	RK		LAW		*PMT FROM LAW OFFI		200.00	4547.
** APPLIES TO CHARGES ON:08/24/98 CHK#:5895									
06/25/99	2	RK		LAW		*PMT FROM LAW OFFI		32.00	4515.
** APPLIES TO CHARGES ON:10/19/98 CHK#:5895									

CONTINUED ON NEXT FORM

991

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

ACCT:

DATE: 11/03/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/91 \$194.00 \$17735.30

OFFICE PH:

HOME PHONE:

BUSINESS PH:

SSN:

APPOINTMENT

DR. RICHARD KIMMER

RK RICHARD KIMMER

11/03/99 1:40P

DIAGNOSIS

1-924.10 TIBIA & FIBULA CONTUSION
2-947.0 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
06/25/99	3	RK			LAW	*PMT FROM LAW OFFI		92.00	4483.1
** APPLIES TO CHARGES ON:02/27/98 CHK#:5895									
06/25/99	1	RK			LAW	PMT FROM LAW OFFIC		15.00	4498.1
** APPLIES TO CHARGES ON:02/02/99 CHK#:5895									
06/25/99	1	RK			LAW	PMT FROM LAW OFFIC		15.00	4513.1
** APPLIES TO CHARGES ON:02/05/99 CHK#:5895									
06/25/99	6	RK			LAW	PMT FROM LAW OFFIC		150.00	4663.1
** APPLIES TO CHARGES ON:02/03/99 CHK#:5895									
06/25/99	6	RK			LAW	PMT FROM LAW OFFIC		921.00	5584.1
** APPLIES TO CHARGES ON:02/11/99 CHK#:5895									
06/25/99	6	RK			LAW	PMT FROM LAW OFFIC		95.00	5679.1
** APPLIES TO CHARGES ON:02/25/99 CHK#:5895									
06/25/99	3	RK			LAW	PMT FROM LAW OFFIC		30.00	5709.1
** APPLIES TO CHARGES ON:02/08/99 CHK#:5895									
06/25/99	6	RK			112	CIGNA PAYMENT		230.00	5939.1
** APPLIES TO CHARGES ON:06/07/99 CHK#:22181944									
06/28/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		6042.1
06/28/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		6072.1
06/29/99	6	RK			112	CIGNA PAYMENT		230.00	6302.1
** APPLIES TO CHARGES ON:06/09/99 CHK#:22218058									
06/30/99	6	RK	12	97010		HOT OR COLD PACKS	25.00		6327.1
06/30/99	6	RK	12	97014		ELECTRIC STIMULATI	30.00		6357.1
06/30/99	6	RK	12	97035		ULTRASOUND, EACH 1	25.00		6382.1

CONTINUED ON NEXT FORM

992

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

ACCT:

DATE: 11/08/99

ADVANCED LPTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$190.00 \$17735.30

OFFICE PH: 884-429-9764

HOME PH:

BUSINESS PH:

SSN

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 1:40P

DIAGNOSIS

1-324.10 TIBIA & FIBULA CONTUSION
 2-847.0 SPRAIN OF NECK
 3-715.96 KNEE OSTEOARTHRITIS
 4-067 FOLLOW-UP EXAMINATION

5-719.46 PAIN IN JOINT, LOWER LEG

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

ATE	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#:22339589									
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		RTFE		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		9		*WORKMENS COMP PAY		175.00	2356.1

CONTINUED ON NEXT FORM

993

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

ACCT:

DATE: 11.03.99

ADVANCED PHYSIO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY:

UNION, SE 29379

11/02/99 4190.00 41735.30

OFFICE PH:

4

HOME PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/03/99 1:40

DIAGNOSIS

1-936.0 TEAR MENISCUS/MEDIAL
2-715.96 KNEE OSTEOARTHRITIS

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

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALAN
** APPLIES TO CHARGES ON: 08/24/98 CHK#: 10065133									
07/27/99	3	RK		3		*WORKMENS COMP PAY		92.00	2264.
** APPLIES TO CHARGES ON: 08/27/98 CHK#: 10065133									
07/27/99	1	RK		112		CIGNA PAYMENT		19.00	2245.
** APPLIES TO CHARGES ON: 07/06/99 CHK#: 022773100									
07/27/99-	1	RK		112C		CIGNA CREDIT ADJUS		6.00	2239.
07/06/99									
07/28/99	6	RK		112		CIGNA PAYMENT		240.00	1999.
** APPLIES TO CHARGES ON: 06/28/99 CHK#: 022766106									
08/09/99	3	RK		112		CIGNA PAYMENT		84.30	1914.
** APPLIES TO CHARGES ON: 07/19/99 CHK#: 023032465									
08/09/99-	3	RK		112C		CIGNA CREDIT ADJUS		14.70	1900.
07/19/99									
08/30/99	3	RK		RPTFE		CHARGE FOR FORMS,	10.00		1910.
08/30/99	3	RK		1		CASH PAYMENT		10.00	1900.
08/24/99	1	RK	12	99213		OFFICE EXP PROB FO	52.00		1952.
08/24/99	1	RK	12	36415		DRAWING BLOOD, ROU	11.00		1963.
08/24/99	1	RK	12	55024		AUTOMATED HEMOGRAM	33.00		1993.
08/24/99	1	RK	12	93000		ELECTROCARDIOGRAM,	56.00		2049.
08/24/99	1	RK	12	81002		URINALYSIS W/O SCC	13.00		2062.
08/24/99	1	RK	12	99200		SPECIMEN HANDLING/	11.00		2073.
** INS. FILED: 09/03/99 REFILED: 09/27/99									
08/24/99	1	RK	12	80049		METABOLIC PANEL, B	50.00		2123.

CONTINUED ON NEXT FORM

994

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

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC
188

LAST PAYMENT

YTD PAY

UNION, SC 29379

11/02/99 \$150.00 \$17735.30

OFFICE PHONE:

HOME

BUSINESS PHONE:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/02/99 1:40P

079

DIAGNOSIS

1-067 FOLLOW-UP EXAMINATION
2-715.96 KNEE OSTEDARTHRTIS
2-719.46 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	YCODE	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:09/02/99 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	29881		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

995

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

ACCT:

DATE: 11/02/95

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29376

11/02/95 \$190.00 \$17735.30

OFFICE PH

HOME PH: 1

BUSINESS PH:

ESN:

F

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/95 1:40P

DIAGNOSIS

1-715.96 KNEE OSTEOARTHRITIS
 8-719.45 PAIN IN JOINT, LOWER LEG
 3-557 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
09/20/99	6	RK	12	97110		*THERAPEUTIC EXER. (DAYS/UNITS = 2)	70.00		4958.1
09/20/99	6	RK	12	97010		*HOT OR COLD PACKS	25.00		4923.1
** 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									
09/28/99	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		1909.00	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

996

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

ACCT.

DATE: 11.05.99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

170.00

UNION, SC 29379

11/02/99 4170.00 417735.00

OFFICE PH: 864-423-9764

HOME PH: 694-2093

BUSINESS PH:

SSN:

P

APPOINTMENT

MR. RICHARD KIMMER

MR. RICHARD KIMMER

11/05/99 11:43PM

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		190.00	2535.1
** APPLIES TO CHARGES ON: 03/01/99 CHK#: 24121358							215.00		2320.1
10/05/99	6	RK		112		CIGNA PAYMENT		170.00	2150.1
** APPLIES TO CHARGES ON: 03/01/99 CHK#: 24121358							175.00		1975.1
10/05/99	6	RK		112		CIGNA PAYMENT		180.00	1795.1
** APPLIES TO CHARGES ON: 03/01/99 CHK#: 24121358							205.00		1590.1
10/05/99	6	RK		112		CIGNA PAYMENT		235.00	1355.1
** APPLIES TO CHARGES ON: 02/19/99 CHK#: 24121358							175.00		1180.1
10/05/99	6	RK		112		CIGNA PAYMENT		225.00	955.1
** APPLIES TO CHARGES ON: 02/05/99 CHK#: 24121358							230.00		725.1
10/05/99	6	RK		112		CIGNA PAYMENT		215.00	510.1
** APPLIES TO CHARGES ON: 02/05/99 CHK#: 24121358							240.00		270.1

CONTINUED ON NEXT FORM

997

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

ACCT:

DATE: 11/05/99

ADVANCED ORTHO & MEDICAL ASSOC

LAST PAYMENT

YTD PAY

UNION, SC 29579

11/02/99

1190.00

117735.30

OFFICE PH:

HOME PH: 621-1234

BUSINESS PH:

APPOINTMENT

MR. RICHARD KIMMER

RK RICHARD KIMMER

11/02/99 11:40P

DIAGNOSIS

1-715.90 KNEE OSTEOARTHRITIS

2-719.45 PAIN IN JOINT, LOWER LEG

NUM DOCTOR	SSN#	TAX ID	MEDICAID	PROVIDER
1 PETER J. KIMMEL, M.D				
2 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	-389.8
** APPLIES TO CHARGES ON: 02/05/99 CHK#: 24121358									
10/05/99	6	RK		112		CIGNA PAYMENT		150.00	-539.8
** 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	97010		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	97010		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		RPTFE		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

998

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

ACCT:

DATE: 11/08/99

ADVANCED BIRTH & MEDICAL ASSOC
ASS

LAST PAYMENT

YTD PAI

UNION, SC 29375

11/02/99 \$130.00 \$1735.30

OFFICE PH

HOME PH: 594-2211

BUSINESS PH:

SSN

117

APPOINTMENT

DR. RICHARD KIMMER

RK RICHARD KIMMER

11/08/99 11:40P

DIAGNOSIS

1-847.2 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	-888.6
** APPLIES TO CHARGES ON: 08/24/99 CHK#: 24284723									
10/13/99	1	RK		1120		CIGNA CREDIT ADJUS		36.00	-924.6
08/24/99									
10/15/99	6	RK		112		CIGNA PAYMENT		95.00	-1019.6
** APPLIES TO CHARGES ON: 09/22/99 CHK#: 24316510									
10/22/99	1	RK		RPTFE		CHARGE FOR FORMS,	10.00		-1009.6
10/22/99	1	RK		1		CASH PAYMENT		10.00	-1019.6
11/02/99	6	RK		112		CIGNA PAYMENT		190.00	-1209.6
** APPLIES TO CHARGES ON: 10/01/99 CHK#: 24583284									
11/02/99	6	RK	1	97001		*PHYSICAL THERAPY	65.00		-1144.6
11/02/99	6	RK	1	97010		*HOT OR COLD PACKS	25.00		-1119.6
11/02/99	6	RK	1	97014		*ELECTRIC STIMULAT	30.00		-1089.6
11/02/99	6	RK	1	97110		*THERAPEUTIC EXER.	35.00		-1054.6
11/02/99	6	RK	1	97124		*MASSAGE THERAPY	35.00		-1019.6
11/04/99	6	RK	1	97010		*HOT OR COLD PACKS	25.00		-994.6
11/04/99	6	RK	1	97014		*ELECTRIC STIMULAT	30.00		-964.6
11/04/99	6	RK	1	97110		*THERAPEUTIC EXER.	35.00		-929.6
11/04/99	6	RK	1	97124		*MASSAGE THERAPY	35.00		-894.6
12/07/99	1	RK	2	99212		PROBLEM FOCUSED; ST	40.00		-854.6
11/01/99	1	RK	3	99213		OFFICE EXP PROB FO	52.00		-802.6
11/01/99	1	RK	2	20610		MAJOR JOINT OR BUR	63.00		-719.6

CONTINUED ON NEXT FORM

999

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

ADDT:

DATE: 11/05/99

ADVANCED OPTICAL CENTRAL ASSOC

LAST PAYMENT

YTD BAL

UNION, SC 29379

11/02/99 4190.00 417735.30

OFFIC

IE PH:

BUSINESS PH:

SSN:

APPOINTMENT

MR. RICHARD KIMMER

MR RICHARD KIMMER

11/08/99 11400

DIAGNOSIS

1-715.96 KNEE OSTEOARTHRITIS

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

DATE	DR	PAT	DIAG	TCODE	MOD	DESCRIPTION	CHARGE	CREDIT	BALANCE
11/31/99	1	AK	1	J7320		HYLAN G-F 20 INJEC	365.00		-365.00

** INS. FILED: 11/05/99

REF PHYS : KINAHAN, PETER J. TAX ID: 571036634
MESSAGES REF STATE: SC LIC # :

TOTAL: -4354

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

1000

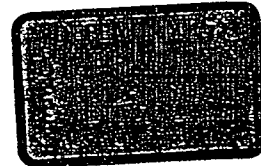
PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

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
Post Office Box 491
Newberry, SC 29108



RE: **My Client:** **Richard Kimmer**
 Your Insured: **Richard Kimmer**
 Claim Number:
 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

1001

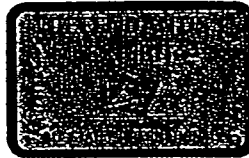
PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

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
Post Office Box 100900
Columbia, SC 29290



RE: **My Client:** **Richard Kimmer**
 Your Insured: **Martha T. Kimmer**
 Claim Number: **40/21840753**
 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

1002

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

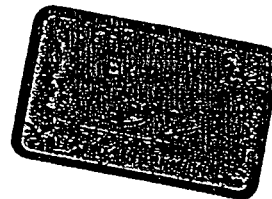
803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

January 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (803) 772-6876

Mr. Ron McNeill
Senior Case Manager
Liberty Mutual Group
Post Office Box 100154
Columbia, SC 29202-3154



Re: My Client: Richard Kimmer
Your Client: Murata of America
Claim Number: 510-193878
Date of Injury: January 29, 1999
WCC Number: 9908422

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?

1003

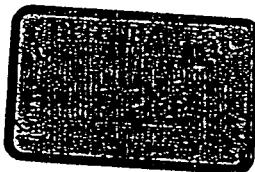
PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

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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RF93

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

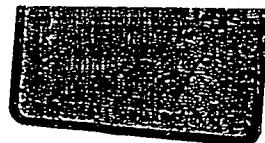
PEW:jb

Enclosures

1005

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

1006

STATE OF SOUTH CAROLINA)

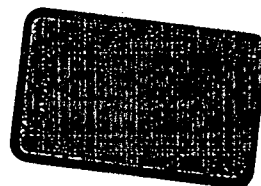
COUNTY OF LANCASTER)

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



1007

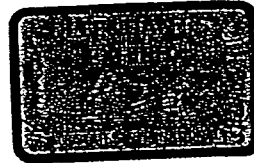
PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

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
Post Office Drawer 11209
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

1008

LAW OFFICES
POPE AND HUDGENS, P.A.
1908 COLLEGE STREET, P. O. BOX 180
NEWBERRY, SOUTH CAROLINA 29108

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

TELEPHONE (803) 276-2532
FAX (803) 276-8684
E-MAIL: pope&hudgens@scmail.com

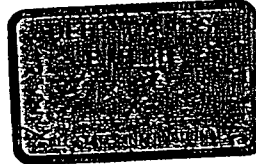
THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)
GARY T. POPE
OF COUNSEL

February 10, 2000

Via Mail and Fax: 803/286-9996

Philip E. Wright, Esquire
408 N. Main Street
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.

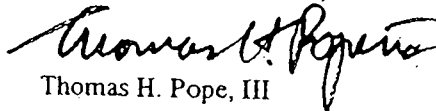
My main concern is that Mr. Kimmer just recently came to my office and left his file materials. I am still in the process of reviewing them and am concerned that Mr. Kimmer will be prejudiced by going forward at this time. The questions asked him in the deposition could well prejudice his workers comp 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

cc: Mr. Richard Kimmer

1009

PH 92

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

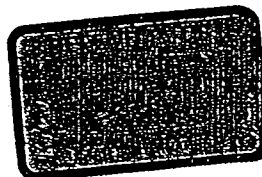
803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (864) 587-1744

Reginald L. Foster, Esq.
Colvin & Foster, P.A.
Post Office Drawer 6364
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.

1010

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

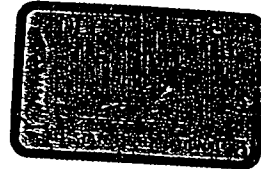
803-286-4343
REAL ESTATE: 803-286-4378
FAX NO. 803-286-9996

February 11, 2000

408 N. MAIN STREET
LANCASTER, SC 29720

BY FAX - (864) 587-1744

Reginald L. Foster, Esq.
Colvin & Foster, P.A.
Post Office Drawer 6364
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.

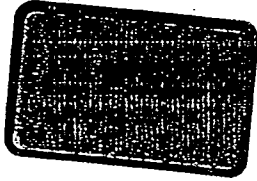
Sincerely yours,

Philip E. Wright

PEW:jb

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

1011



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

1012

RK89

LAW OFFICES
POPE AND HUDGENS, P.A.
1308 COLLEGE STREET - P. O. BOX 180
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532
FAX (803) 276-8684
E-MAIL: pope&hudgens@scmail.com

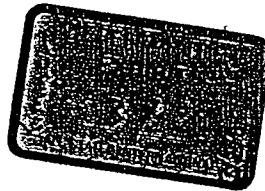
JOSEPH W. HUDGENS
THOMAS H. POPE III
SAMUEL H. JEFFCOAT

THOMAS H. POPE
(1913-1999)

ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

March 21, 2000



Philip E. Wright, Esquire
408 N. Main Street
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

1013

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: 10/11/46

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

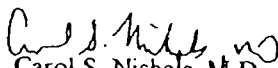
Page Three

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 noradrenergic 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

1016

161

LAW OFFICES
POPE AND HUDGENS, P.A.

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

TELEPHONE (803) 276-2532

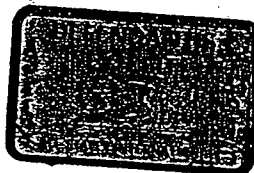
FAX (803) 276-8684

E-MAIL popeandhudgens@newberry.net

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

June 17, 2002

THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)
GARY T. POPE
OF COUNSEL



Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP
PO Drawer 11209
Columbia, South Carolina 29211-1209

Re: Richard Kimmer v. Murata of America, Employer, and Liberty Mutual Group, carrier
WCC File No. 02

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

1017

RK 58

RICHARD KIMMER

$$A_{WW} = 775.38$$

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 $\rightarrow$ Commuted = 280.4999 wks.

280.4999

* \$516.95

\$145,004.42

C. GRAND TOTAL:

\$234,914.76

1018

RK 59

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: popeandhudsons@newberry.net

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

THOMAS H. POPE
(1913-1999)

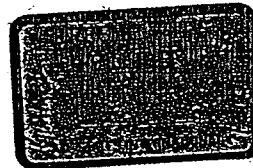
ROBERT D. SCHUMPERT
(1927-1994)

GARY T. POPE
OF COUNSEL

December 6, 2002

VIA FAX ONLY:

Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP
PO Drawer 11209
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

1019

RT 29

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.

A handwritten signature in black ink, appearing to read 'Tom', written over the printed name of Thomas H. Pope, III.

Thomas H. Pope, III

THP,III/lg

1020
RK30

ROBINSON, McFADDEN & MOORE, P.C.

RECEIVED DEC 02 2002



ATTORNEYS AND COUNSELLORS
AT LAW

DAVID W. ROBINSON, II
JOHN S. TAYLOR, JR.
DANIEL T. BRADFORD
FRANK R. ELLERRE, III
THOMAS W. HUNTER, II
J. KENLAW SPENCE
D. CLAY ROBINSON
R. WILLIAM METZGER, JR.
KEVIN K. BELL
ANDREW D. MATHIAS
HOWARD D. SMITH
CHARLES H. McDONALD
MARGARET R. SCHIRMER
BRYN A. COOK
M. KEVIN GARRISON

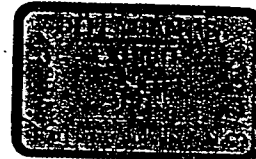
December 2, 2002

VIA FACSIMILE & U.S. MAIL

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

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

1021

RH-29

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: popeandhudsons@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
PO Drawer 11209
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.

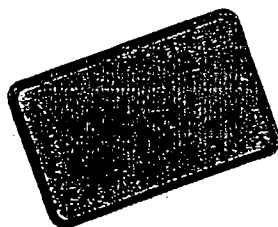
Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope, III

THP,III/lg

1022
RK 25



PO Box 490
East Syracuse NY 13057
315-433-1144
Fax 315-433-9818

Affidavit

Date: March 6, 2003
SIF# 91820 WCC#

RE: WC 550-442542

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 / 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.

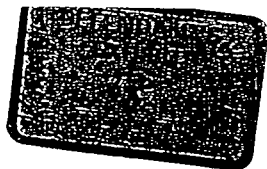
Signature Richard Kimmer

Date MARCH 17, 2003

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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

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. 11/1/05 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. Byrnes
Bryan B. Byrnes

Richard Kimmer
Richard Kimmer, Claimant

WITNESSES:

Jeanne A. Bantz
Jennifer C. Collins

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	Civil Action No. 2004-CP-46-2659
	)	
Richard Kimmer,	)	
	)	
Plaintiff,	)	DEFENDANT WRIGHT'S
	)	RESPONSES TO THE
vs.	)	PLAINTIFF'S SECOND
	)	INTERROGATORIES
Phillip E. Wright,	)	
	)	
Defendant.	)	
	)	
	)	

TO: THOMAS H. POPE III, ATTORNEY FOR THE PLAINTIFF:

Defendant Phillip E. Wright, by and through his undersigned counsel, responds to the Plaintiff's Second Interrogatories as follows:

1. State what the defendant or the defendant's counsel contends he learned at the deposition of plaintiff in this case which he did not know before that deposition that relates to the statute of limitations as a defense.

Response:

The Defendant objects to this interrogatory to the extent that it seeks to discover mental impressions of counsel and, to that extent is outside the scope of discovery under Rule 26, SCRPC. Without waiving said objection, the Defendant responds as follows:

- That the Plaintiff received the Defendant's February 2000, letter;
- That the Plaintiff had sustained damages in 1999 and early 2000;

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- That the Plaintiff, as of February 2000, attributed his damages, in part, to the Defendant's advice to settle his third party claim without notifying his employer or the worker's compensation carrier;
- That during the spring of 1999 the Plaintiff realized that he should have been receiving worker's compensation benefits since the accident in January
- The Plaintiff understood from the Defendant's letter of February 1, 2000, that the reason he was not receiving his worker's compensation benefits is because the Defendant had made a mistake and the Plaintiff may have a claim against him;
- The Plaintiff's account was that sometime prior to February 1, 2000, the Defendant during an office conference told the Plaintiff that, "I screwed this up, you have to get another attorney to take the case."
- The Plaintiff signed the Release knowing that there would not be enough money from the settlement to pay all of his medical bills;
- The Plaintiff was not better four months post-op and admits telling his doctor during August of 1999 that he had only a few months before he would lose his job;
- September 1999 – the Plaintiff continued to have knee problems
- The Plaintiff stated that not having his medical bills paid contributed to his post-traumatic stress disorder;
- The Plaintiff was aware during 1999 of his wage loss of \$26,208 through December 10, 1999;

- After February 24, 2000, the Defendant did not represent the Plaintiff on any matter;
 - The Plaintiff blames the Defendant for his post-traumatic stress disorder problems which started in 1999;
 - The Plaintiff believed by February 2000 that his not getting paid was in part the Defendant's fault
 - Ex. 38 of the Plaintiff's deposition is the only tolling agreement between the parties.
2. State the date on which defendant contends the statute of limitations expired as alluded to in the Motion to Amend and the proposed Amended Answer.

Response:

January – March 2003.

3. State what information defendant contends has been revealed during discovery (other than the deposition of the plaintiff) which supports a defense of the statute of limitations.

Response:

Information other than the deposition of the Plaintiff which supports a defense of the Statute of Limitations: certain documents produced during discovery, standing alone, do not necessarily support a Statute of Limitation defense. However, when these documents were identified and explained by the Plaintiff in his deposition the defense of the Statute of Limitations was established. All of these documents were marked as exhibits during the Plaintiff's deposition and are identified in response to Interrogatory #4 below.

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4. List each and every document which defendant contends supports a defense of the statute of limitations.

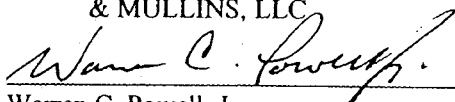
Response:

The following Plaintiff's deposition exhibits when identified and explained by the Plaintiff in his deposition support a defense of the Statute of Limitations:

Exhibits 2-38, inclusive.

BRUNER, POWELL, ROBBINS, WALL

& MULLINS, LLC



Warren C. Powell, Jr.

1725 St. Julian Place, Suite 200 (29204)

P.O. Box 61110

Columbia, SC 29260

(803) 252-7693

Attorneys for the Defendant

Columbia, South Carolina

April 18, 2005

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2004-CP-46-2659
	)	
Richard Kimmer,	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
Phillip E. Wright	)	
	)	
Defendant.	)	
_____	)	

I, Elizabeth Wright, a paralegal with the law firm of Bruner, Powell, Robbins, Wall & Mullins, LLC, do hereby certify that on the 18th day of April, 2005, I deposited into the United States Mail, first class postage prepaid, **Defendant Wright's Responses to Plaintiff's Second Interrogatories** to the parties listed below.

Thomas H. Pope, III
Post Office Box 190
Newberry, SC 29108


Elizabeth Wright

Columbia, South Carolina

April 18, 2005

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
Richard Kummer) Civil Action No. 2004 CP 46-2659
Plaintiff,)
v.)
Philip E. Wright,)
Defendant.)

AFFIDAVIT

FILED-RECEIVED
2005 APR 22 PM 2:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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

1. He is counsel for Plaintiff Richard Kummer in the above case which is one for legal malpractice against Defendant Wright.
2. This affidavit is furnished in opposition to the motion of defense counsel to amend the Complaint to add the statute of limitations as a defense. The basis for this motion is stated to be: "the grounds for this motion are that information which has been revealed during discovery...has disclosed evidence to support a defense of the statute of limitations."
3. This affidavit is to directly refute that there is any information which was not already known to defendant, his carrier, and his carrier's counsel at the time the issues were joined in this case.
4. After defendant filed his motion to amend the Answer to allege the statute of limitations as a defense on March 8, 2005, plaintiff thereafter on March 17, 2005 served second interrogatories to defendant. See Exhibit A attached herewith. These interrogatories specifically inquired of defendant and counsel what they claimed they "learned" through discovery and at the deposition of plaintiff which they did not know before the deposition.
5. On April 18, 2005, Defendant Wright served responses to these interrogatories. See Defendant Wright's responses to the plaintiff's second interrogatories dated April 18, 2005 which are attached herewith as Exhibit B.
6. There is nothing set forth in Defendant Wright's responses which Defendant Wright and/or his carrier and counsel did not fully know about before the litigation commenced, and this affidavit is to refute such contentions to the contrary.

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A. FACTUAL BACKGROUND

7. All of the facts set forth under this heading and the next (Paragraphs 8 through 32) were known to plaintiff, his carrier and/or his attorney. Attorney Powell only became involved in this matter in September 2004.
8. The Plaintiff Richard Kimmer ("Plaintiff") was injured on January 29, 1999 when he was in an accident driving to work. The accident was due to the negligence of a third party who was judgment-proof and had minimum limits coverage. At the time of the accident, Plaintiff was employed by Murata of America.
9. Claimant went to attorney Philip Wright for legal assistance and attorney Wright accepted a settlement with the at-fault third party for the policy limits of \$15,000. This settlement was on June 16, 1999. On June 18, 1999, attorney Wright prepared a Form 50 and it was filed with the Workers Compensation Commission on June 21, 1999.
10. The accident was serious and at the time of the settlement and filing a workers comp claim, he had injuries to his knees, back and neck and medical bills in excess of \$25,000 (and ongoing).
11. After Defendant Wright filed the Form 50, the workers comp defendants defended the claim on three fronts: that the claim was not covered because it was not compensable (i.e. on the job); that plaintiff was not injured seriously; and that because attorney Wright had settled a third party claim without notice to the workers comp carrier, the workers comp claim was barred.
12. Thereafter on February 1, 2000, attorney Wright wrote Kimmer a letter (attached herewith as Exhibit C) 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."
13. Thereafter, the undersigned began representing Plaintiff in his workers comp claim.
14. The claim was heard by The Honorable J. Michelle Childs on December 10, 2002 in Greenwood, South Carolina. The Commissioner issued her Decision and Order on July 31, 2003 (Exhibit D) 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;
 - (b) that Claimant is permanently and totally disabled as a result of this on-the-job injury; and

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- (c) that, however, because Claimant did not provide notice to the carrier or the Workers Comp Commission before settling the third party claim, Claimant had "made an election of remedies to proceed against the third party and was barred" from pursuing his workers comp claim.
15. The Plaintiff, by and through undersigned counsel, timely filed a WCC Form 30 (Request for Commission Review) and the appellate panel heard argument on said appeal. Thereafter, by order of the appellate panel dated May 27, 2004, the single commissioner's findings of fact and rulings of law were affirmed.
16. Thereafter, the Petitioner filed a Petition for Judicial Review (appeal from decision of Workers Compensation Commission) on May 27, 2004. This action is captioned Richard Kimmer v. Murata of America and Liberty Mutual Insurance Company, WCC File No. 9908422 (Civil Action 04-CP-12-0251, Chester Court of Common Pleas).
17. The Petition for Judicial Review has been opposed by Defendant, and the appeal is scheduled to be heard by The Honorable Kenneth Goode, Chief Administrative Judge of the Sixth Judicial Circuit, on Wednesday, May 18, 2005, at 10:30 AM.
18. If the Plaintiff prevails on his Petition for Judicial Review at the Circuit Court level and such decision is affirmed on appeal, the instant action against Wright would be moot.

B. FACTS PRELIMINARY TO BRINGING SUIT - THREE-WAY MEDIATION

19. When affiant attended the workers comp hearing before Commissioner Childs in December 2002, the Defendants were vigorously asserting (1) that the action was not compensable because Plaintiff was on the way to work when he had the wreck; (2) that he was not permanently injured; and (3) that settling the third party claim without notice constituted a bar. 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 each of these three issues. As soon as the Commissioner ruled in her Decision and Order of July 31, 2003 that Claimant was injured on the job, that he was totally disabled, but that he was barred because of the third issue. At that point, it became apparent that there was a valid claim and that plaintiff was totally disabled. Both issues had been disputed. Now that affiant had a ruling, he then got in touch with Mr. Wright requesting that his carrier contact him about entering into a Tolling Agreement. This letter from affiant to Wright is dated August 5, 2003, and a copy is included in Exhibit E (correspondence between counsel between June 2, 2003 and March 8, 2005).
20. On October 14, 2003, Wright wrote the affiant and enclosed "The Form Agreement My Liability Uses for Tolling the Statute." See Exhibit E, Tab 3.

21. After that letter, there was some discussion about how long the Tolling Agreement would be in effect, and it was ultimately agreed that it would extend for a year - until November 1, 2004. See letter dated October 31, 2003 of affiant to Wright (Exhibit E, Tab 5). The Tolling Agreement was signed by all parties as of October 30, 2003. See Exhibit E, Tab 6.
22. The reason for the Tolling Agreement was because until July 31, 2003 none of the parties knew whether or not Kimmer's injury was compensable under the law or the extent of his damages. They were also unaware of whether or not Wright's actions in settling the third party claim without notice to employer barred him. The workers comp statute in this regard is silent as to any penalty for failing to give notice before settling a third party claim.
23. Thereafter, affiant kept in touch with Wright as to the workers comp appeal. See Exhibit E, Tab 7, letter dated March 31, 2004 from affiant to Wright concerning the appellate argument.
24. Beginning around May 2004 for the next several months, affiant was in touch with Wright's professional liability carrier, Westport Assurance Company. Ms. Ann Repo was the claims representative on the claim.
25. By letter dated May 28, 2004, the affiant informed Ann Repo that the workers comp carrier wanted to discuss a possible three-way settlement with plaintiff, Westport and workers comp. See Exhibit E, Tab 9.
26. By letter dated July 13, 2004, from affiant to the workers comp defense attorney, Pope D. Johnson, III (copy to Ann Repo, Esquire), it was brought out that we would be discussing a three-way mediation. Later, it was agreed with Ms. Repo that there would be a mediation, and Pope Johnson's client also agreed to participate. See Exhibit E, Tab 12. Following that letter by late August 2004, we were discussing dates for mediation with Westport Insurance plaintiff and Murata of America's carrier. See letter dated August 26, 2004 from affiant to Ann Repo, Esquire (Exhibit E, Tab 13).
27. The parties agreed that Barron Grier, Esquire, would be the mediator for the three-way mediation, and the mediation was scheduled for October 12 in Mr. Grier's office in Columbia.
28. Warren C. Powell, Jr., Esquire did not become involved in this matter until September 2004 for the purpose of representing Wright's carrier at the mediation on October 12.
29. The mediator scheduled the mediation for 9:30 AM on Tuesday, October 12, 2004 in his office. On October 11, 2004, Warren Powell said that he did not have enough documents to evaluate the claim and wanted some discovery. He specifically

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recommended that suit be commenced and that the mediation be postponed. We agreed further to engage in expedited discovery with a view towards "having mediation in February or March 2005." See Exhibit E, Tab 20 (letter dated 10/11/04 from affiant to Powell).

30. Thereafter, suit was commenced promptly, acceptance of service was acknowledged by Mr. Powell. Mr. Powell filed an Answer for Wright in which no statute of limitations was alleged. An Amended Complaint was filed and served on October 29, 2004, and Mr. Powell advised that he would let his original Answer stand to the Amended Complaint which was agreeable with affiant. See letter dated November 10, 2004 from Powell to affiant (Exhibit E, Tab 27). Again, no statute of limitations defense was attempted to be asserted.
31. A mediation was scheduled for March 10, 2005 by the mediator which was postponed, and another mediation was scheduled for Monday, March 28, 2005 at Barron Grier's office commencing at 10 AM. On March 2, 2005, Mr. Powell took the deposition of plaintiff, Richard Kimmer, and nothing new was learned in that deposition that Mr. Wright, his carrier, and/or Mr. Powell did not already know.
32. During the time that these mediations were scheduled, Defendant Wright, his carrier and/or his carrier's attorney, Warren Powell, were aware of every fact set forth in Defendant Wright's Responses to Plaintiff's Second Interrogatories dated April 18, 2005.

**C. "NEW INFORMATION" ALLEGED BY DEFENDANT
TO HAVE BEEN LEARNED IN DISCOVERY**

33. All of the quoted items under this heading relate to factual information that defendant alleges he did not learn until he deposed plaintiff.
34. **"That the plaintiff received defendant's February 2000 letter:"** This letter is attached to the Complaint, and it is obvious that defendant is attempting to mislead the Court if he contends that he "learned" of his own letter only after deposing plaintiff.
35. **"That the plaintiff had sustained damages in 1999 and early 2000:"** Defendant Wright and counsel well knew that the plaintiff was undergoing medical treatment throughout 1999 and 2000 and had surgeries during this time period. See attached Exhibit E, a copy of the transcript of Wright's testimony at the workers comp hearing on December 10, 2002.
36. **"That the plaintiff as of February 2000 attributes these damages in part to defendant's advice to settle his third party claim without notifying his employer or the workers compensation carrier:"** The defendant's letter to plaintiff of

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February 2000 acknowledges this, and defendant did not "learn" of this during discovery. See exhibits.

37. "That during the spring of 1999, the plaintiff realized that he should have been receiving workers compensation benefits since the accident in January." This is not new material that defendant learned in discovery because in June 1999, plaintiff filed for workers comp benefits. Since Defendant Wright prepared the Form 50, he certainly knew that during this time period he was contending that Kimmer should receive workers comp benefits.
38. "The plaintiff understood from defendant's letter of February 2000 that the reason he was not receiving his workers comp benefits is because the defendant had made a mistake and that the plaintiff may have a claim against him." This letter is attached to the Complaint, and its meaning is clear. Defendant did not "learn" about this letter or its interpretation through discovery, as defendant is the author of same.
39. "The plaintiff's account was that some time prior to February 1, 2000, the defendant during an office conference told the plaintiff that "I screwed this up, you have to get another attorney to take the case." See Exhibit E which is correspondence between defendant and plaintiff's counsel identifying that this same information was being discussed by correspondence. Again, this information was not "learned" during the discovery in this case.
40. "The plaintiff signed a release knowing that there would not be enough money from the settlement to pay all of the settlement bills." See the Settlement Statement dated June 16, 1999 that was prepared by defendant and signed by plaintiff and which contains this identical information. Neither the defendant, counsel nor carrier for the defendant "learned" this information during the discovery in this case.
41. "The plaintiff was not better four months post-op and admits telling his doctor during August 1999 that he had only a few months before he would lose his job." This information has nothing to do with knowledge gained of any legal malpractice claim.
42. "September 1999 - The plaintiff continued to have knee problems." The file of Defendant Wright reflects that he was well aware that the plaintiff was continuing to have knee problems from January 1999 through February 2000 when he wrote the letter. He had doctors' reports to this effect and certainly did not "learn" of knee problems in September 1999 and during discovery in this case. See Exhibit F.
43. "The plaintiff stated that not having his medical bills paid contributed to his post-traumatic stress disorder." The deposition of Wright reflected that he knew that the plaintiff's mounting medical bills, which were in excess of the third party

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settlement of \$15,000, were making him anxious and was the primary reason he settled with said third party carrier. (Deposition of Wright and Exhibit F).

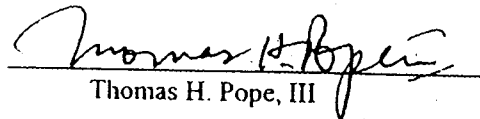
44. **"The plaintiff is aware during 1999 of his wage loss of \$26,208 through December 10, 1999:"** Defendant Wright was representing the plaintiff throughout this time period, and he was well aware of this information. (See exhibits).
45. **"After February 24, 2000, the defendant did not represent the plaintiff on any matter:"** The defendant certainly knew this in February 2000 and cannot claim that he "learned" this information during the deposition in March 2005 or in any other discovery in this case. (See exhibits).
46. **"Plaintiff blames the defendant for his post-traumatic stress disorder problems which started in 1999:"** Untrue. This question seeks a legal opinion which plaintiff is not qualified to answer. See also exhibits. Plaintiff's stress is caused by not receiving benefits. This information is contingent upon the outcome of the workers comp appeal and if the appeal is unsuccessful, it would be true. In any event, this information has been known by plaintiff and his carrier.
47. **"The plaintiff believed by February 2000 that his not getting paid was in part the defendant's fault:"** Untrue. This question sought a legal opinion which plaintiff is not qualified to answer. See also exhibits. This information is contingent upon the outcome of the workers comp appeal and if the appeal is unsuccessful, it would be true. In any event, this information has been known by plaintiff and his carrier.
48. **"Exhibit 38 of the plaintiff's deposition is the only tolling agreement between the parties:"** This is true, but the agreement, which is dated October 30, 2003, was signed by defendant and was prepared by defendant's carrier. The defendant did not "learn" of this document during discovery.

SWORN to before in this 21st
day of April 2005)

Thomas H. Pope, III)
(U.S.)

Notary Public for South Carolina

My commission expires:


Thomas H. Pope, III

1037

COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2004-CP-12-0251

Richard Kinner.

Plaintiff,)

$$v_{\cdot}$$

Murata of America, Inc. and Liberty)

Mutual Insurance Company.)

Respondents.)

AMENDED ORDER REVERSING
WORKERS' COMPENSATION DECISION

PRECISION

Upon receipt of this Court's original Order Reversing Workers' Compensation Decision, Respondents timely filed a Motion for Reconsideration. Respondents' Motion for Reconsideration is hereby Denied. However, the Respondents' Motion for Reconsideration raised several technical issues which require this Amended Order to be filed. This Amended Order shall replace the original Order dated June 20, 2005.

BACKGROUND

This matter came before this Court for a hearing on May 18, 2005. This hearing involved a Petition for Judicial Review challenging the decision of the Workers' Compensation Commission affirming the Decision and Order of Commissioner Michelle Childs. Present at the hearing were petitioner and his attorney, W. Chad Jenkins, Esquire of Pope and Hudgens and Pope D. Johnson III, Esquire of McCutchen, Blanton, Johnson and Barnett for the respondents. For the reasons set forth herein, the Order of the Workers' Compensation Commission denying benefits is reversed.

In the Decision and Order of July 31, 2003, Commissioner Childs made rulings on three contested issues:

- 1) that the claim was a compensable, on the job injury;
- 2) that the petitioner sustained total disability from the compensable accident; and,

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- 3) that the petitioner was barred from recovery because he settled the third party claim without notice to the employer/carrier.

The Workers' Compensation Appeal Panel issued its Order dated 5/27/2004 sustaining the single commissioner's Order in its entirety. Petitioner appeals the last ruling. The compensability and total disability rulings, which were contested at the hearing, were not appealed and are the law of the case.

1A#2
The record in this matter consists of the following: the Form 50 and Amended Form 50 of petitioner; the Form 51 of employer; the transcript of the hearing before Commissioner Michelle Childs held on December 10, 2002, including the APA submissions and exhibits submitted by all parties; the Decision and Order of Commissioner Childs dated July 31, 2003; the Petition for Review (Form 30) of Petitioner dated October 2, 2003; the Decision of the Review Panel dated May 27, 2004; and the Petition for Administrative Review of Petitioner dated June 15, 2004 in the instant case. The Court has carefully considered these materials in reviewing this matter, as well as the arguments and briefs of both counsels. For the reasons set forth herein, the decision of the Workers' Compensation Commission holding that petitioner is barred from recovery by §42-1-560 is reversed.

FACTS

On January 29, 1999, the petitioner was injured in a head-on collision on Highway 9 near Chester, South Carolina, when he was operating his personal vehicle on the way to the Katherine Plant of Springs Mills. At the time, the petitioner was going to his job as an installer of air jet looms for Murata¹. Even though the respondents contested that the accident occurred on the job and took

¹Kimmer had been working as an installer of looms for approximately 31 years; he was well-respected in the company and was described by his supervisor, Bill Manning, as one of the hardest working employees he had ever known, oftentimes working 14 and 15 hour days.

the position that it was not compensable, the Commissioner found that it was compensable based upon the fact that the claimant received a car allowance and mileage to work.

The petitioner sought the services of attorney Philip Wright in connection with his injuries in the accident. Attorney Wright did an investigation of the courthouse records to ascertain whether the negligent third party, Ronald Pendergrass, had any assets. Also, he hired a private investigator. Attorney Wright concluded that there were no assets other than the minimum limits coverage on the vehicle which was applicable to this matter. The investigation by Wright which included a review of courthouse records led Wright to conclude that Pendergrass owned nothing. This Court finds and concludes that this investigation was thorough and that the only insurance coverage or assets available to respond to any judgment against the third party were the liability limits of \$15,000 on the vehicle that Pendergrass was driving.

On June 16, 1999, the minimum limits of \$15,000 were tendered and were received by claimant and his attorney. On that same date, petitioner executed a covenant/release against Pendergrass' carrier. The \$15,000 was applied as follows: \$10,000 for medical providers and subrogation interests and \$5,000 to Mr. Wright for attorneys' fees. The petitioner received none of these proceeds. On June 18, 1999, Mr. Wright prepared a Form 50 to initiate the Workers' Compensation claim on behalf of Kimmer. This Form 50 was actually filed at the Workers' Compensation Commission on June 21, 1999. At some time in January or February 2000, the employer advised Mr. Wright that they were taking the position, in addition to their other defenses, that the claim was barred because the third party claim was settled without notice to the carrier or the employer.

The claim was pursued by counsel on behalf of petitioner, and a hearing was held before single commissioner, Michelle Childs, on December 10, 2002. Included in the APA submissions

for claimant were the deposition of supervisor David Stalvey, the Murata employee manual, and payroll records relating to the fact that petitioner received mileage to go to work, as well as a car allowance each month. Also introduced were numerous medical reports as to the extent of Kimmer's disability. At the hearing, evidence was introduced on the issue of petitioner's total disability, the compensability of petitioner's injury (due to the car allowance and mileage), and the circumstances under which the third party claim was settled. Petitioner acknowledged that the net proceeds of the settlement should and would be set off against any Workers' Compensation award. The employer produced no evidence that it or the carrier had been prejudiced because the third party settlement was settled without notice to them. This Court finds and concludes that, as set forth herein, there was no prejudice to the employer or to the carrier because of the fact that the claimant and his attorney settled the third party claim without providing them notice. It is clear that there was no prejudice because there were no assets to pay the third party judgment other than the liability insurance policy. The third party was judgment-proof, and there was no reasonable possibility or likelihood of any other insurance coverage or assets.

CONCLUSIONS OF LAW

In reviewing cases from the Workers' Compensation Commission, this Court sits in an appellate capacity and reviews the record for substantial errors of law or findings of fact that are clearly erroneous. Peoples v. Henry Co., 364 S.C. 123, 611 S.E.2d 527 (Ct. App. 2005), S.C. Code Ann. §1-23-380 and S.C. Code §42-17-60. For the reasons set forth herein, this Court has determined that the decision of the Commission was based upon a substantial error of law and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The only reasonable inference from the evidence is that the employer was not prejudiced by the third party

settlement and that the petitioner did not elect his third party remedy to the exclusion of his substantial workers compensation claim.

The sole issue on appeal is whether, under the facts of this case, the petitioner is barred from receiving workers' compensation benefits because he settled a third party claim without notice or prejudice to the employer. It is a case of first impression involving the application of §42-1-560, which does not provide a penalty, nor does it specify a consequence, when a claimant settles a third party claim without notice or prejudice to the employer. This statute is, therefore, ambiguous. Our courts have always construed the workers' compensation laws liberally in favor of coverage. Peay v. U.S. Silica Co., 313 S.C. 91, 437 S.E.2d 64 (1993); Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Talley v. John-Mansville Sales Corp., 285 S.C. 117, 328 S.E.2d 621 (1985); Bailey v. Santee River Hardwood Co., 205 S.C. 433, 32 S.E.2d 365 (1944).

Because the statute is silent on this subject, the petitioner's non-compliance with the notice provision of the statute should not bar him from recovery unless there has been prejudice to the employer or carrier from this non-compliance.

Our statutory scheme contemplates that an injured employee may pursue three possible options with regard to injury claims:

- 1) he can pursue a claim solely against the employer under the workers' comp laws;
- 2) he can pursue a claim solely against the third party tort feisor; or,
- 3) he can sue both the employer and the third party.

See S.C. Code §42-1-550, et seq. Under the third option, if the employee recovers from both the third party and the employer, he is not allowed to have a double recovery, as the benefits received from the third party are subject to a subrogation lien by the workers' comp carrier or the employer.

If an employee were allowed to keep third party benefits and pursue workers' comp remedies without any set off, that would result in prejudice to the employer. This Court finds and concludes in the instant case that the petitioner's pursuit of his workers' comp remedy should be allowed, subject only to a set off for the net proceeds of the third party benefits he has received.

There is no reported South Carolina case in which an employee has been barred from pursuing workers' compensation benefits when the employer's subrogation rights as to third party benefits were not impaired or prejudiced. There are three South Carolina cases which address S.C. Code §42-1-560, but all are factually distinguishable from the instant case. Nevertheless, this Court believes that these cases are consistent with the ruling of the undersigned in this case.

1146 In the case of Hudson v. Townsend Saw Chain Co., 296 S.C. 17, 370 S.E.2d 104 (Ct. App. 1988), the employee was in a wreck on the job. He brought a third party action, did not give notice, and the jury verdict was for the third party defendant. Thereafter he filed a workers' compensation claim. The employer did not have an opportunity to participate in the third party trial and clearly suffered prejudice, as it was not able to assist in presenting the case, in offering evidence or in cross examining witnesses, all of which could have quite likely changed the verdict. Even though it was not an issue before the court in Hudson, that decision left open the question of how SC Code § 42-1-560 would be applied in a future case where there was no prejudice to an employer. See also Stroy v. Millwood Drug Store, Inc., 235 S.C. 52, 109 S.E. 2d 706 (1959) (employee's workers' comp claim, filed after the third party suit which resulted in a defense verdict, was barred where the prejudice to the employer was obvious, as employee had rejected a settlement offer before the verdict and had given no notice to employer).

In Fisher v. South Carolina Department of Retardation-Coastal Center, 277 S.C. 573, 291 S.E.2d 200 (1982), our Supreme Court was faced with an appeal by an employee who had reached

a compromise settlement with a third party without notifying the employer. The lower court granted summary judgment in favor of the employer because in that case the employee had settled with Sears, which was the negligent third party in her claim. In reaching the compromise with Sears, the employee prejudiced her employer because the settlement was reached by compromise. The employer's position was sustained by the Supreme Court for the obvious reason that the employer was not able to participate in settlement negotiations with the solvent corporate defendant (Sears). Had the employer been allowed to participate, it would have been able to get a better settlement against Sears. There was clear prejudice to the employer in Fisher.

WAB 7
Gardner v. City of Columbia Police Dept., 216 S.C. 219, 575 S.E.2d 308 (1950) and Taylor v. Mt. Vernon-Woodberry Mills, Inc., 211 S.C. 414, 45 S.E.2d 809 (1947), were both decided under a previous version of the Workers' Compensation law. At the time these cases arose, the statute read that accepting a third party award or a workers' compensation award was "a bar to proceeding further with the alternate remedy." There is no such limitation today as our statute specifically provides for recovery from both a third-party and the employer. See S.C. Code §42-1-550, et seq. Furthermore, in both Gardner and Taylor, the employee reached a compromise settlement with the third-party, unlike the petitioner in this matter.

In the case at bar, the petitioner did not reach a compromise settlement but rather settled for the maximum amount of insurance coverage. Under S.C. Code §42-1-560, the employer has an absolute right to a set off of \$10,000 of that minimum limits third party recovery (the net amount after attorneys' fees). That set-off is specifically the protection the statute allows. To rule otherwise would put words into the statute that the legislature clearly did not intend.

S.C. Code §42-1-560 is ambiguous and should be construed liberally in favor of coverage. The cases of Fisher, 291 S.E.2d at 200, Stroy, 109 S.E.2d at 706, Hudson, 370 S.E.2d at 104,

Gardner, 57 S.E.2d at 308, and Taylor, 45 S.E.2d 809 relied upon by respondents, are all distinguishable from the present case. This is a case of first impression in the state. Counsel is aware of no reported case in South Carolina where a claimant's total disability claim has been barred when his then-attorney settled a minimum limits third party action against a judgment-proof defendant and the employer was not prejudiced. Since Murata suffered no prejudice from the settlement, it is only fair to allow Kimmer to recover fully for his injuries. The purpose and goal of South Carolina's third party statute will have been met: Kimmer will not receive a double recovery, and the employer's subrogation rights will be protected.

Other jurisdictions with statutes that are silent on the subject of the consequences of failure to give notice of a third party settlement have awarded workers' compensation benefits so long as the third party recovery did not prejudice the employer. In Darbonne v. M & M Right of Way Contractors, 693 So.2d 299 (La. App. 3rd Cir. 1997), the injured employee was in a car accident arising out of the course of employment. He settled with the third party before bringing his workers' compensation claim, not giving notice to his employer of the third party settlement. Like South Carolina, Louisiana's statute does not have penalties for noncompliance. In allowing the claimant's workers' compensation claim to proceed, the court acknowledged that the purpose behind the notice provision was to protect the employer's rights of intervention and reimbursement. However, the court reasoned that these interests could still be protected even if the employee continued his workers' compensation claim. Similarly, respondents' interest can still be protected if Kimmer is allowed to continue his workers' compensation claim by deducting up to \$10,000 of the third party settlement from his workers' compensation total disability award.

In holding that an employee's workers' compensation claim was not terminated by an unauthorized settlement of their third-party claim, the Montana Supreme Court emphasized that there

was no express statutory authority for the termination of the claim: "If the legislature wanted the insurer to exercise such control over the insured, they would have so stated." Wildin v. CNA Insur. Co., 846 P.2d 1022, 1024 (Mont. 1993). Similarly, the lack of any express statutory consequences for failing to provide notice of a third-party claim in South Carolina's Workers' Compensation statute illustrates that South Carolina's Legislature did not intend for an employee's claim to be barred for such failure under the unique facts of this case.

Maryland's statute is also silent as to the consequences of settling a third party claim without the consent or knowledge of the employer. In Ankney v. Franch, 652 A.2d 1138 (Ct. Sp. App. 1995), *reversed on other grounds*, 670 A.2d 951 (1996), the Maryland Court of Special Appeals decided that absent an express statutory intent clearly ending the claimant's rights under the workers' compensation statute, any unauthorized settlement will be handled as if it was authorized, with the employer retaining subrogation rights in the settlement proceeds. In finding that "it would be both unjust and unreasonable to allow the termination of an employee's claim without a showing that the employer suffered material prejudice," the Maryland Court noted that the law must be interpreted to effectuate its general purpose and that any ambiguities should be liberally construed in favor of the injured employees. Id. at 1150.

In discussing forfeiture of a workers' compensation claim, Larson's Workers' Compensation Law explains that, where a statute is silent as to the consequences of failing to give consent/notice,

the effect of the absence of consent generally turns on the question of whether the employee prejudiced the carrier by impairing its subrogation rights.... [if the carrier retains its subrogation rights in these circumstances, it has been held that the employer is not prejudiced], and accordingly that the compensation claim is not affected by the settlement.

Id. at §116.07[7] (emphasis added). Some state statutes place an absolute bar on recovery for failing to notify the employer of the third party settlement, while others have no explicit consequences.

Larson's Workers' Compensation Law, §116.07[2]. Several states, including South Carolina, have notice provisions that do not spell out the penalties for failure to comply. Larson's discusses cases from these states which have allowed workers' compensation benefits so long as there is no double recovery to the employee or prejudice to the employer.²

According to Larson's, the central objective of a good subrogation statute is to provide a mechanism that will achieve three results:

- 1) the third-party should pay what it would normally pay if no compensation question were involved;
- 2) the employer and carrier should "come out even" by being reimbursed for their compensation expenditure, and
- 3) the employee should get any excess of the damage recovery over compensation.

Id. at §116.02. By allowing petitioner to receive his compensation benefits, all of these objectives would be achieved. Since the petitioner settled with the third party for his policy limits, and he had no other assets, the first objective has been met. The second objective is satisfied since the employer and his carrier have been allowed an offset for the third party recovery. The respondents' subrogation rights have been fully protected to the extent of the available third party coverage. §42-

²See Larson's Workers' Compensation Law, §116.07[7] and §116.07D[2]; See Millican v. Home Stores, 270 S.W.2d 372 (Tenn. 1954) (Even after employee settled without notifying employer, employer remained liable for compensation benefits subrogated against settlement amount.); White Electric Co. Inc. v. Bak, 467 S.E.2d 827 (Va. App. 1996) (Virginia Court of Appeals ruled that claimant's settlement with third party tortfeasor did not bar his workers' comp rights where employer was not prejudiced.); Hendrickson v. Industrial Commission of Arizona, 46 P.3d 1063 (Ariz. 2002) (Recovery of workers' comp benefits for employee was allowed if employee carried the burden of proof.); Cook v. A.H. Davis & Son, Inc., 567 A.2d 29 (Del. Super. Ct. Ct. 1989) (Claimant who settled third party claim can still pursue workers' comp benefits.); Overend v. Elan I Corp., 441 A.2d 311 (Me. 1982) (Legislature's silence means that the third party suit does not preclude plaintiff from recovering workers' compensation benefits.); Forest v. Safeway Stores, Inc., 830 P.2d 778 (Alaska 1992) (Claimant could pursue compensation claims after third party claim was dismissed to prevent a windfall to the employer.); Weiss v. Salvation Army, 556 P.2d 598 (Okla. 1976) (Employee could receive compensation because the employer was not prejudiced by the settlement.)

1-560 allows these objectives to be met as it does not prohibit continuation of the workers' compensation claim absent prejudice to the employer.

The South Carolina statute does not address which party has the burden of proving the presence or absence of prejudice to the employer from a third party settlement without notice. This Court finds and concludes that, because the issue of non-compliance with §42-1-560 is raised as a defense to this claim, the employer/carrier has the burden of proving that it was prejudiced. This Court also finds and concludes that the respondents have not sustained the burden of proving prejudice. At the hearing before the single commissioner, the employer took the position that the third party Pendergrass "may" have had some assets, such as cash or stocks which would not have been discoverable by the private investigator hired by the claimant's attorney who went through Pendergrass' neighborhood to ascertain that he was judgment-proof. The testimony was that Mr. Wright himself went to the courthouse, as well as hired a private investigator, and that he was convinced that Pendergrass had no assets nor any other insurance policies. At the hearing, the employer raised only a theoretical possibility of more assets. This Court finds and concludes that the employer did not sustain its burden of proving that there had been prejudice by Kimmer's settlement of the third party action for \$15,000.

In the alternative, even if the employee had the burden of proving that the employer was not prejudiced by settlement of the third party action without notice, the employee has met his burden of proof.³ Petitioner's attorney took the extra step of not only checking the courthouse records

³The petition for review seeks reversal of the Commission Order, or, in the alternative, a remand. A remand would allow the party with the burden of proof to depose the third party defendant Pendergrass (or pursue other discovery) as to assets, etc. This Court believes that the record is sufficiently complete to clearly demonstrate there are no other assets or insurance and, thus, no prejudice to the employer from the third party settlement. A remand is not necessary.

himself but hiring a private investigator. Also, petitioner's attorney was familiar with the neighborhood where the third party Pendergrass lived and knew that it was a low income neighborhood. In summary, the record in this case demonstrates that the employee established that there was no prejudice to the employer/carrier by his settlement of the third party claim for the available minimum limits coverage.

This Court finds and concludes that the finding of the Workers' Compensation Commission that there was prejudice to the employer⁴ was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).

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The Order of the Commission also found that, by not giving notice of the third party claim, the employee had made an election of remedies. This Court finds and concludes that the employee Kimmer did not elect a third party remedy to the exclusion of his workers' comp claim, either explicitly or implicitly. At the time the settlement was reached for the minimum limits of \$15,000, the claimant's medical bills already exceeded \$20,000. It is both illogical and unfair to think that the petitioner intended to forego a serious workers' compensation claim for a minimum limits third party settlement. In fact, the attorney for Kimmer testified that the main reason he settled the third party claim was because there were mounting medical bills that needed payment so that plaintiff could continue getting treatment for his injuries. This Court finds and concludes that the petitioner did not make an election of remedies and that the findings and conclusions of the Commission to the

⁴The Order of the single commissioner is contradictory, as it refers to the fact that there appeared to be "no prejudice to the carrier" in one place (p. 11, lines 2 and 3) and that settling the claim "was prejudicial to the carrier" since it was not able to participate in the litigation in another place (p. 11, lines 6 and 7).

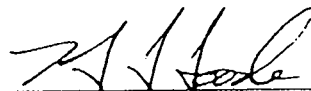
contrary were clearly erroneous, in view of the reliable, probative, and substantial evidence on the whole record.

It is undisputed that the applicable compensation rate for petitioner is \$438.47. Because he is permanently and totally disabled, he is entitled to 500 weeks at that compensation rate which computes to be \$219,235, plus respondents are obligated to pay all of claimant's medicals related to these injuries, plus lifetime medical benefits. The Respondent is entitled to an off-set for the third party settlement.

THEREFORE IT IS ORDERED that the decision of the Workers' Compensation Commission dated May 27, 2004 affirming the Decision and Order of the single commissioner filed on July 31, 2003 is hereby REVERSED and this matter is remanded to the Commission for an award consistent with this Order.

IT IS FURTHER ORDERED that this Amended Order modifies and replaces this Court's Order of June 20, 2005, and that the Respondents' Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.



Kenneth G. Goode
Presiding Judge, Sixth Judicial Circuit

Winnston, S.C.

August 1, 2005

sgt

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

1051

1052
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THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

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

CLAIMS DRAFT
PAYABLE THROUGH
MICHIGAN NATIONAL BANK
LANSING, MICH.

9-80 DRAFT NO.
720

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

DATE: 06/14/99

AT SIGHT
PAY TO THE
ORDER OF

VOID IF NOT CASHED
WITHIN ONE YEAR

\$*****13,000.00

AUTO OWNERS INS. CO.

BARBARA J HUGHES

John P. Seann
AUTHORIZED SIGNATURE

WARRANTY FOR A SIGNED COVENANT NOT TO EXECUTE

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

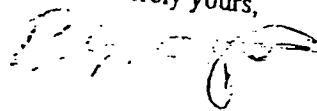
Mr. Dean Holler
Auto Owners Insurance
Post Office Box 2678
Rock Hill, SC 29732

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

1053

Auto-Owners Insurance

STATE OF SOUTH CAROLINA
COUNTY OF Chester

RELEASE AND SETTLEMENT AGREEMENT

For the sole consideration of Fifteen Thousand

Dollars, the undersigned hereby releases and forever discharges Barbara J. Hughes, Anthony Berdegrass, 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: Glenn A. Barts

Signed: Rick NK

1054

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
(803) (803)
Home Phone # Work Phone #
Philip E. Wright
Preparer's Name
Murata of America
19 Charlotte NC 28266
Address City State Zip
Insurance Carrier
(803) 286-4343
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
- ☐ 5. 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

Division of Claims
Claims Administrator

JUN 21 1999

JUN 21 '99

6/18/99

1055

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. H. A.

1056

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

1057

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

Commissioners

J. Alan Bass
Chairman
737-5697

Lisa Denese Chavis
Vice Chair
737-5678

Sherry Shealy Martschink
737-5660

W. Lee Caloe
737-5668

Holly Saleeby Atkins
737-5663

J. Michelle Childs
737-5692

George N. Funderburk
737-5701

Executive Director
Alicia K. Clawson
737-5744

Pope D. Johnson, III
Attorney at Law
P.O. Box 11209
Columbia, SC 29211

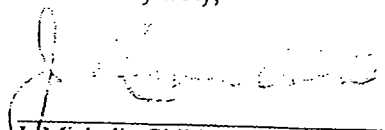
In Re: Richard Kimmer v. Murata of America
W. C. File:

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,


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 Dixie Rd., Leesville, SC 29070.

Commissioner's Notes for Decision and Order

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LAW OFFICES
POPE AND HUDGENS, P.A.

1308 COLLEGE STREET - P. O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108

TELEPHONE (803) 276-2532

FAX (803) 276-8884

E-MAIL: popeandhudsons@newberry.net

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

THOMAS H. POPE
(1913-1989)

ROBERT D. SCHUMPERT
(1927-1984)

GARY T. POPE
OF COUNSEL

August 5, 2003

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

Re: Richard Kimmer v. Murata of America, et al.
WCC File No.

Dear Mr. Wright:

I enclose herein a copy of the Decision and Order dated July 31, 2003, which this office received last Friday, August 1, 2003. In her Order, Commissioner Childs finds that Mr. Kimmer was injured on the job and that he was totally disabled as a result of the accident but that his workers comp claim is barred because the third party claim was settled without notice to the carrier or the Commission. We are appealing the Decision and Order, but I wanted you to be aware of this ruling.

I would like to speak with you or your counsel about entering into a tolling agreement in view of our appeal of the Workers Comp decision. We would like to agree to toll the statute of limitations until a reasonable period of time after the final conclusion of all appeals on the workers comp case. If you are represented by counsel in this matter, I would appreciate it if you would have that counsel get in touch with me as soon as reasonably possible.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope III

THP, III/lg
Enclosure

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LAW OFFICES
POPE AND HUDGENS, P.A.
1308 COLLEGE STREET - P. O. BOX 190
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W. CHAD JENKINS

THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)
GARY T. POPE
OF COUNSEL

November 7, 2003

Philip E. Wright, Esquire
Attorney at Law
408 N. Main Street
Lancaster, SC 29720

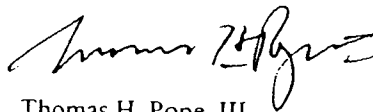
Re: Richard Kimmer

Dear Mr. Wright:

I enclose herein a copy of the executed Tolling Agreement with the one change that you made being initialed by Mr. Kimmer.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg
Enclosure

cc: Mr. Richard Kimmer

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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:

Thomas H. Brea
Ray Brea

Richard Kimmer
Richard Kimmer, Claimant

WITNESSES:

Jeanne A. Smith
Jennifer C. Collins

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

By:

P. E. Wright

Philip E. Wright, Esquire

00-224

EPH 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)

May 28, 2004

VIA FAX ONLY:

Anne Repo, Esquire
Claims Specialist
Westport Insurance Corporation
Overland Park, Kansas

Re: Richard Kimmer v. Philip E. Wright
Your Claim No. 440646
Your Policy No.

Dear Ms. Repo:

Thank you for sending me the fax letter yesterday on this matter. I wrote Mr. Wright and asked for your name because I think that it would be beneficial for us to talk about this matter.

I assume that you are familiar with the underlying basis of a possible claim against Mr. Wright - i.e., that he commenced a third party action against the at-fault third party without notice to the workers comp carrier, and the workers comp commissioner determined that this act was an election of remedies which precluded the claimant from workers compensation benefits. Of course, there was no conscious, intentional election of third party remedies by Mr. Kimmer (particularly where the liability coverage was only \$15,000).

Procedurally, the workers comp commissioner ruled that (a) the claimant was injured in an on-the-job injury and, thus, the claim was covered; (b) the claimant was totally disabled from this on-the-job injury; and (c) notwithstanding the above, the plaintiff was barred from seeking workers comp benefits. We appealed that decision and argued the appeal before an appellate panel of the Workers Comp Commission (3 commissioners).

At the panel hearing, there was substantial discussion about how unfair the commissioner's ruling was to preclude claimant from recovery and how that amounted to a windfall to the workers comp carrier. The panel definitely struggled with the issue. In fact, we just received the appellate panel affirmance by mail today. I enclose a copy of the order dated May 27, 2004 of the appellate panel which affirms Commissioner Child's decision.

After the appellate panel argument in March, I was approached by the workers comp carrier's attorney, Pope Johnson, who inquired about possible settlement. Mr. Johnson did not offer any money, but he and I discussed a possible scenario for settlement.

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May 28, 2004

Mr. Kimmer had previous knee and back problems (although they were not disabling) and, for this reason, the workers comp carrier may be able to pass some responsibility to the Second Injury Fund under SC law. This fund exists so that it can pick up workers comp benefits after the first 78 weeks of payments. Mr. Johnson asked if we were interested in pursuing some kind of settlement which would include contributions from the workers comp carrier, the Second Injury Fund, and the insurance carrier (Mr. Wright's malpractice carrier).

This claim is worth somewhere in the neighborhood of \$270,000. To have this matter ended without 2 more years of appeals, Mr. Kimmer would certainly be willing to compromise some. I would like to discuss with you a possible resolution whereby the carrier would pay a fair portion of the settlement.

Please call me next week so that we can discuss this further.

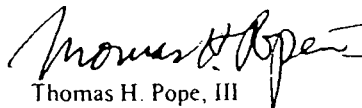
Also, for your information, I am going to appeal the panel decision to the circuit court. I do not expect that this case will be heard for several more months by the circuit court.

I will look forward to hearing from you next week.

With best regards,

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope, III

THP, III/lg

Enclosure

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

DOPE
HUDGENS
ATTORNEYS, P.A.

1508 COLLEGE STREET - P.O. BOX 190
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THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

July 13, 2004

Pope D. Johnson, III, Esquire
McCutchen, Blanton, Rhodes & Johnson, LLP
PO Drawer 11209
Columbia, South Carolina 29211-1209

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

Dear Pope:

After you and I spoke at the conclusion of the Appellate Panel hearing, I got in touch with the liability carrier for Philip Wright, Esquire. The name of the claims adjuster is:

~~Ms. Anne Repo~~
Claims Specialist
Westport Insurance Corporation
Overland Park, Kansas
Telephone: 312-821-4133
Fax: 877-880-1590 (written correspondence to be sent via fax, as Westport operates on a paperless file system)

I spoke with Ms. Repo several weeks ago as to whether or not her carrier would be interested in discussions of a possible settlement between your carrier, the Second Injury Fund, and the liability carrier for Mr. Wright. Ms. Repo indicated that she was willing to engage in such discussions. I have no objection to your contacting the claims adjuster directly, but we will need to consider how to proceed to discuss settlement. Do we want a mediator or do we want to have a telephone conference call or a meeting?

Please call me after you receive this letter so that we can discuss how to proceed to try to resolve this matter.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.



Thomas H. Pope, III

THP, III/lg
cc: Ms. Anne Repo (via fax only)

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

**DOPE
&
HUDGENS**
ATTORNEYS, P.A.

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

August 24, 2004

VIA FAX ONLY: 803-253-6084

Pope D. Johnson, III, Esquire
McCutchen, Blanton, Johnson & Barnette, LLP
PO Drawer 11209
Columbia, South Carolina 29211-1209

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

Dear Pope:

I received your voicemail message just as I was leaving the office this morning. I will be out of pocket for about three days with depositions. I understand that your client has authorized you to participate in a 3-way mediation involving the claimant, the malpractice carrier, and your carrier Liberty Mutual. You also indicated in your message that it was satisfactory if we used Barron Grier as the mediator.

I am sending a copy of this letter by fax to Anne Repo, the claims specialist for Philip Wright's malpractice carrier. When Ms. Repo receives this letter, I would ask that she call me so that we can discuss her availability for this mediation. It would be my hope that we can hold this mediation some time in late September.

After I get several suitable dates from Ms. Repo, I will be back in touch with you.

With best regards,

Sincerely,

POPE AND HUDGENS, P.A.

Tom Pope
Thomas H. Pope, III

THP, III/lg

cc: Anne Repo, Claims Specialist (via fax only: 877-880-1590)

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

**DOPE
&
HUDGENS**
ATTORNEYS, P.A.

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PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

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

August 26, 2004

VIA FAX ONLY (877) 880-1590
Ann Repo, Esquire, Claims Specialist
Westport Insurance
Overland Park, Kansas

Re: Richard Kummer v. Phillip Wright - In Re: Kummer v. Murata of America
Your Claim No.

Dear Ms. Repo:

We spoke by phone several months ago, and I advised you that Pope Johnson, the attorney for the workers comp carrier, was amenable to mediating this case provided you were. After you indicated that you were interested in mediation of the case, Mr. Johnson sought approval of his carrier. Earlier this week, he advised me that his carrier did authorize him to proceed and participate in mediation. Mr. Johnson and I spoke and agreed between us that Barron Grier, a certified mediator and a practicing attorney in Columbia, would be satisfactory with us. Also, I checked with Mr. Grier's office and asked for dates that he is available for mediation.

I heard back from Mr. Grier's office via the enclosed fax. As you will see, he is available for mediation on the following dates in September: 21, 23, 27, 29 and 30.

Also, Mr. Grier is available on the following dates in October: 4, 5, 11, 12, 13, 14, 18, 19 and 20.

I have not heard from Mr. Johnson as to his availability on these dates; however, I am not available on September 30, October 14 or October 20. I am available on the other dates.

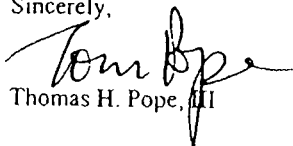
I would like to talk with you about this matter and would appreciate your calling me today, or at least by tomorrow.

In our view, there can be no mediation unless all persons with authority to settle are present. These would include the plaintiff and his counsel, the workers comp counsel and its claims adjuster (with full authority to settle), and Attorney Wright and you as his adjuster (along with any counsel he wishes to bring).

I am sending a copy of this letter to Pope Johnson so that everyone will be in the loop.

I will look forward to talking with you about this matter when you call.

Sincerely,


Thomas H. Pope, III

THP, III/lg
Enclosure
cc: Pope D. Johnson, III, Esquire, w/encl.
F. Barron Grier, III, Esquire, w/encl.

1069

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

W. CHAD JENKINS

DOPE
&
HUDGENS
ATTORNEYS, P.A.

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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
PO Box 61110
Columbia, SC 29260-1110

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

Dear Warren:

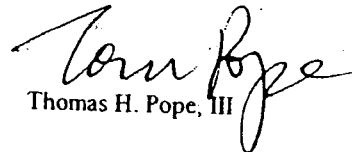
This confirms that you indicated that you have spoken today with your adjuster and she had questions that you indicated that you could not answer without discovery. Accordingly, you recommended that I go ahead and enter suit instead of having a mediation tomorrow.

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

1071

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Richard Kimmer)

Plaintiff,)

v.)

Philip E. Wright,)

Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2004 CP 46-2659

AFFIDAVIT

FILED-RECEIVED
2005 APR 22 PM 2:37
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

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

1. He is counsel for Plaintiff Richard Kimmer in the above case which is one for legal malpractice against Defendant Wright.
2. This affidavit is furnished in opposition to the motion of defense counsel to amend the Complaint to add the statute of limitations as a defense. The basis for this motion is stated to be: "the grounds for this motion are that information which has been revealed during discovery...has disclosed evidence to support a defense of the statute of limitations."
3. This affidavit is to directly refute that there is any information which was not already known to defendant, his carrier, and his carrier's counsel at the time the issues were joined in this case.
4. After defendant filed his motion to amend the Answer to allege the statute of limitations as a defense on March 8, 2005, plaintiff thereafter on March 17, 2005 served second interrogatories to defendant. See Exhibit A attached herewith. These interrogatories specifically inquired of defendant and counsel what they claimed they "learned" through discovery and at the deposition of plaintiff which they did not know before the deposition.
5. On April 18, 2005, Defendant Wright served responses to these interrogatories. See Defendant Wright's responses to the plaintiff's second interrogatories dated April 18, 2005 which are attached herewith as Exhibit B.
6. There is nothing set forth in Defendant Wright's responses which Defendant Wright and/or his carrier and counsel did not fully know about before the litigation commenced, and this affidavit is to refute such contentions to the contrary.

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A. FACTUAL BACKGROUND

- 7 All of the facts set forth under this heading and the next (Paragraphs 8 through 32) were known to plaintiff, his carrier and/or his attorney. Attorney Powell only became involved in this matter in September 2004.
- 8 The Plaintiff Richard Kimmer ("Plaintiff") was injured on January 29, 1999 when he was in an accident driving to work. The accident was due to the negligence of a third party who was judgment-proof and had minimum limits coverage. At the time of the accident, Plaintiff was employed by Murata of America.
- 9 Claimant went to attorney Philip Wright for legal assistance and attorney Wright accepted a settlement with the at-fault third party for the policy limits of \$15,000. This settlement was on June 16, 1999. On June 18, 1999, attorney Wright prepared a Form 50 and it was filed with the Workers Compensation Commission on June 21, 1999.
- 10 The accident was serious and at the time of the settlement and filing a workers comp claim, he had injuries to his knees, back and neck and medical bills in excess of \$25,000 (and ongoing).
- 11 After Defendant Wright filed the Form 50, the workers comp defendants defended the claim on three fronts: that the claim was not covered because it was not compensable (i.e. on the job); that plaintiff was not injured seriously; and that because attorney Wright had settled a third party claim without notice to the workers comp carrier, the workers comp claim was barred.
- 12 Thereafter on February 1, 2000, attorney Wright wrote Kimmer a letter (attached herewith as Exhibit C) 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."
- 13 Thereafter, the undersigned began representing Plaintiff in his workers comp claim.
- 14 The claim was heard by The Honorable J. Michelle Childs on December 10, 2002 in Greenwood, South Carolina. The Commissioner issued her Decision and Order on July 31, 2003 (Exhibit D) 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;
 - (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 or the Workers Comp Commission before settling the third party claim, Claimant had "made an election of remedies to proceed against the third party and was barred" from pursuing his workers comp claim.
15. The Plaintiff, by and through undersigned counsel, timely filed a WCC Form 30 (Request for Commission Review) and the appellate panel heard argument on said appeal. Thereafter, by order of the appellate panel dated May 27, 2004, the single commissioner's findings of fact and rulings of law were affirmed.
16. Thereafter, the Petitioner filed a Petition for Judicial Review (appeal from decision of Workers Compensation Commission) on May 27, 2004. This action is captioned Richard Kimmer v. Murata of America and Liberty Mutual Insurance Company, WCC File No. 9908422 (Civil Action 04-CP-12-0251, Chester Court of Common Pleas).
17. The Petition for Judicial Review has been opposed by Defendant, and the appeal is scheduled to be heard by The Honorable Kenneth Goode, Chief Administrative Judge of the Sixth Judicial Circuit, on Wednesday, May 18, 2005, at 10:30 AM.
18. If the Plaintiff prevails on his Petition for Judicial Review at the Circuit Court level and such decision is affirmed on appeal, the instant action against Wright would be moot.

B. FACTS PRELIMINARY TO BRINGING SUIT - THREE-WAY MEDIATION

19. When affiant attended the workers comp hearing before Commissioner Childs in December 2002, the Defendants were vigorously asserting (1) that the action was not compensable because Plaintiff was on the way to work when he had the wreck; (2) that he was not permanently injured; and (3) that settling the third party claim without notice constituted a bar. 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 each of these three issues. As soon as the Commissioner ruled in her Decision and Order of July 31, 2003 that Claimant was injured on the job, that he was totally disabled, but that he was barred because of the third issue. At that point, it became apparent that there was a valid claim and that plaintiff was totally disabled. Both issues had been disputed. Now that affiant had a ruling, he then got in touch with Mr. Wright requesting that his carrier contact him about entering into a Tolling Agreement. This letter from affiant to Wright is dated August 5, 2003, and a copy is included in Exhibit E (correspondence between counsel between June 2, 2003 and March 8, 2005).
20. On October 14, 2003, Wright wrote the affiant and enclosed "The Form Agreement My Liability Uses for Tolling the Statute." See Exhibit E, Tab 3.

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21. After that letter, there was some discussion about how long the Tolling Agreement would be in effect, and it was ultimately agreed that it would extend for a year - until November 1, 2004. See letter dated October 31, 2003 of affiant to Wright (Exhibit E, Tab 5). The Tolling Agreement was signed by all parties as of October 30, 2003. See Exhibit E, Tab 6.
22. The reason for the Tolling Agreement was because until July 31, 2003 none of the parties knew whether or not Kimmer's injury was compensable under the law or the extent of his damages. They were also unaware of whether or not Wright's actions in settling the third party claim without notice to employer barred him. The workers comp statute in this regard is silent as to any penalty for failing to give notice before settling a third party claim.
23. Thereafter, affiant kept in touch with Wright as to the workers comp appeal. See Exhibit E, Tab 7, letter dated March 31, 2004 from affiant to Wright concerning the appellate argument.
24. Beginning around May 2004 for the next several months, affiant was in touch with Wright's professional liability carrier, Westport Assurance Company. Ms. Ann Repo was the claims representative on the claim.
25. By letter dated May 28, 2004, the affiant informed Ann Repo that the workers comp carrier wanted to discuss a possible three-way settlement with plaintiff, Westport and workers comp. See Exhibit E, Tab 9.
26. By letter dated July 13, 2004, from affiant to the workers comp defense attorney, Pope D. Johnson, III (copy to Ann Repo, Esquire), it was brought out that we would be discussing a three-way mediation. Later, it was agreed with Ms. Repo that there would be a mediation, and Pope Johnson's client also agreed to participate. See Exhibit E, Tab 12. Following that letter by late August 2004, we were discussing dates for mediation with Westport Insurance plaintiff and Murata of America's carrier. See letter dated August 26, 2004 from affiant to Ann Repo, Esquire (Exhibit E, Tab 13).
27. The parties agreed that Barron Grier, Esquire, would be the mediator for the three-way mediation, and the mediation was scheduled for October 12 in Mr. Grier's office in Columbia.
28. Warren C. Powell, Jr., Esquire did not become involved in this matter until September 2004 for the purpose of representing Wright's carrier at the mediation on October 12.
29. The mediator scheduled the mediation for 9:30 AM on Tuesday, October 12, 2004 in his office. On October 11, 2004, Warren Powell said that he did not have enough documents to evaluate the claim and wanted some discovery. He specifically

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recommended that suit be commenced and that the mediation be postponed. We agreed further to engage in expedited discovery with a view towards "having mediation in February or March 2005." See Exhibit E, Tab 20 (letter dated 10/11/04 from affiant to Powell).

30. Thereafter, suit was commenced promptly, acceptance of service was acknowledged by Mr. Powell. Mr. Powell filed an Answer for Wright in which no statute of limitations was alleged. An Amended Complaint was filed and served on October 29, 2004, and Mr. Powell advised that he would let his original Answer stand to the Amended Complaint which was agreeable with affiant. See letter dated November 10, 2004 from Powell to affiant (Exhibit E, Tab 27). Again, no statute of limitations defense was attempted to be asserted.
31. A mediation was scheduled for March 10, 2005 by the mediator which was postponed, and another mediation was scheduled for Monday, March 28, 2005 at Barron Grier's office commencing at 10 AM. On March 2, 2005, Mr. Powell took the deposition of plaintiff, Richard Kimmer, and nothing new was learned in that deposition that Mr. Wright, his carrier, and/or Mr. Powell did not already know.
32. During the time that these mediations were scheduled, Defendant Wright, his carrier and/or his carrier's attorney, Warren Powell, were aware of every fact set forth in Defendant Wright's Responses to Plaintiff's Second Interrogatories dated April 18, 2005.

**C. "NEW INFORMATION" ALLEGED BY DEFENDANT
TO HAVE BEEN LEARNED IN DISCOVERY**

33. All of the quoted items under this heading relate to factual information that defendant alleges he did not learn until he deposed plaintiff.
34. **"That the plaintiff received defendant's February 2000 letter:"** This letter is attached to the Complaint, and it is obvious that defendant is attempting to mislead the Court if he contends that he "learned" of his own letter only after deposing plaintiff.
35. **"That the plaintiff had sustained damages in 1999 and early 2000:"** Defendant Wright and counsel well knew that the plaintiff was undergoing medical treatment throughout 1999 and 2000 and had surgeries during this time period. See attached Exhibit F, a copy of the transcript of Wright's testimony at the workers comp hearing on December 10, 2002.
36. **"That the plaintiff as of February 2000 attributes these damages in part to defendant's advice to settle his third party claim without notifying his employer or the workers compensation carrier:"** The defendant's letter to plaintiff of

February 2000 acknowledges this, and defendant did not "learn" of this during discovery. See exhibits.

37. **"That during the spring of 1999, the plaintiff realized that he should have been receiving workers compensation benefits since the accident in January:"** This is not new material that defendant learned in discovery because in June 1999, plaintiff filed for workers comp benefits. Since Defendant Wright prepared the Form 50, he certainly knew that during this time period he was contending that Kimmer should receive workers comp benefits.
38. **"The plaintiff understood from defendant's letter of February 2000 that the reason he was not receiving his workers comp benefits is because the defendant had made a mistake and that the plaintiff may have a claim against him:"** This letter is attached to the Complaint, and its meaning is clear. Defendant did not "learn" about this letter or its interpretation through discovery, as defendant is the author of same.
39. **"The plaintiff's account was that some time prior to February 1, 2000, the defendant during an office conference told the plaintiff that "I screwed this up, you have to get another attorney to take the case:"** See Exhibit E which is correspondence between defendant and plaintiff's counsel identifying that this same information was being discussed by correspondence. Again, this information was not "learned" during the discovery in this case.
40. **"The plaintiff signed a release knowing that there would not be enough money from the settlement to pay all of the settlement bills:"** See the Settlement Statement dated June 16, 1999 that was prepared by defendant and signed by plaintiff and which contains this identical information. Neither the defendant, counsel nor carrier for the defendant "learned" this information during the discovery in this case.
41. **"The plaintiff was not better four months post-op and admits telling his doctor during August 1999 that he had only a few months before he would lose his job:"** This information has nothing to do with knowledge gained of any legal malpractice claim.
42. **"September 1999 - The plaintiff continued to have knee problems:"** The file of Defendant Wright reflects that he was well aware that the plaintiff was continuing to have knee problems from January 1999 through February 2000 when he wrote the letter. He had doctors' reports to this effect and certainly did not "learn" of knee problems in September 1999 and during discovery in this case. See Exhibit F.
43. **"The plaintiff stated that not having his medical bills paid contributed to his post-traumatic stress disorder:"** The deposition of Wright reflected that he knew that the plaintiff's mounting medical bills, which were in excess of the third party

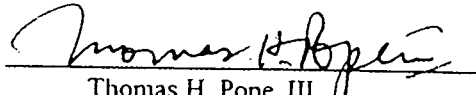
settlement of \$15,000, were making him anxious and was the primary reason he settled with said third party carrier. (Deposition of Wright and Exhibit F).

44. "The plaintiff is aware during 1999 of his wage loss of \$26,208 through December 10, 1999:" Defendant Wright was representing the plaintiff throughout this time period, and he was well aware of this information. (See exhibits).
45. "After February 24, 2000, the defendant did not represent the plaintiff on any matter:" The defendant certainly knew this in February 2000 and cannot claim that he "learned" this information during the deposition in March 2005 or in any other discovery in this case. (See exhibits).
46. "Plaintiff blames the defendant for his post-traumatic stress disorder problems which started in 1999:" Untrue. This question seeks a legal opinion which plaintiff is not qualified to answer. See also exhibits. Plaintiff's stress is caused by not receiving benefits. This information is contingent upon the outcome of the workers comp appeal and if the appeal is unsuccessful, it would be true. In any event, this information has been known by plaintiff and his carrier.
47. "The plaintiff believed by February 2000 that his not getting paid was in part the defendant's fault:" Untrue. This question sought a legal opinion which plaintiff is not qualified to answer. See also exhibits. This information is contingent upon the outcome of the workers comp appeal and if the appeal is unsuccessful, it would be true. In any event, this information has been known by plaintiff and his carrier.
48. "Exhibit 38 of the plaintiff's deposition is the only tolling agreement between the parties:" This is true, but the agreement, which is dated October 30, 2003, was signed by defendant and was prepared by defendant's carrier. The defendant did not "learn" of this document during discovery.

SWORN to before in this 21st
day of April 2005)

Thomas H. Pope, III)
Notary Public for South Carolina

My commission expires:


Thomas H. Pope, III

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