

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Gene McCaskill, Derrick L. Williams, Commissioners

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WCC File No. 1014489

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Diane Fleher, Claimant, Appellant,

v.

Dolphin Cove Marina, Employer, and Carolina Casualty Ins. Co., Respondents.

---

RECORD ON APPEAL

---

Paul D. G. Ribeiro  
Wigger Law Firm, Inc.  
8086 Rivers Avenue, Ste. A  
N. Charleston, SC 29406  
(843) 553-9800  
pribeiro@wiggerlawfirm.com

Attorney for Appellant

Lynnley Ross  
421 Wando Park Blvd. Ste. 100  
Mount Pleasant SC 29464

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# Wigger Law Firm, Inc.

ATTORNEYS AT LAW

8086 Rivers Avenue, Suite A  
North Charleston, SC 29406

JARREL L. WIGGER\*

PAUL D.G. RIBEIRO  
CASEY C. CRUMBLEY

\*Board Certified Civil Trial Specialist  
By National Board of Trial Advocacy

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Summerville, SC 29483  
(843) 851-9900  
(843) 851-9044 Fax

February 17, 2012

The Honorable T. Scott Beck  
SC Workers' Compensation Comm.  
Post Office Box 1715  
Columbia, SC 29202-1715

**RE: CLAIMANT:** Diane Fleher  
**EMPLOYER:** Dolphin Cove Marina  
**CARRIER:** Carolina Casualty Insurance Co.  
**D/LOSS:** 10/12/2010  
**WCC FILE #:** 1014489

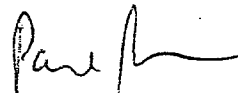
Dear Commissioner Beck:

Enclosed please find Claimant's Form 58 and Notice of Witnesses, Written Medical Records and Other Documents to be introduced as evidence in reference to the above-captioned matter. This hearing is scheduled before you on March 1, 2012 at 10:00 a.m.

By copy of this letter, I am serving the same upon Lynnley D. Ross, Esq., attorney for the Defendant. I have also served her with a copy of the evidence I intend to use at the hearing.

If you have any questions regarding this matter, please do not hesitate to call.

Respectfully,



Paul D.G. Ribeiro

PDGR/stc  
Enclosures  
cc: Lynnley D. Ross, Esquire



Claimant's Name: Diane Fleher Employer's Name: Dolphin Cove Marina  
Address: P.O. Box 142 Address: 2079 Austin Avenue  
City: Las Piedras State: PR Zip: 00771 City: Charleston State: SC Zip: 29405  
Home Phone: (775) 771-2340 Work Phone: ( ) - Carrier: Carolina Casualty Insurance Company  
Preparer's Name: Paul D.G. Ribeiro, Esq. Preparer's Phone #: (843) 553-9800

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

Injury  Illness  Repetitive Trauma

1. Compensation Rate: \$ TBD 2. AWW: \$ TBD Date of Injury: 10/12/2010
3. Type of injury and body part(s): Physical/Mental, Psychiatric, P.T.S.D.
4. Facts in controversy: Is the Claimant's injury compensable? Is the Claimant entitled to Permanent and Total Disability? Is the Claimant entitled to Temporary Total Disability? Is Claimant entitled to Dodge Medical treatment?
5. Legal issues involved: § 42-9-10; § 42-9-35; § 42-15-60; Ellison v. Frigidaire; Dodge v. Brouccoli; and any other applicable statutes, regulations and case law. Does the Commission have jurisdiction to hear the case without the proper filing of a Form 50 or a Form 21?
6. Unusual aspects: Claimant was working for her brother. When she refused to file a fraudulent insurance claim, he assaulted her.
7. Witnesses (designate if expert):\* See attached notice.
8. Exhibits: See attached notice.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):  
See attached notice.
10. Name, address, and specialty, if any, of the treating physician: Dr. Constance Guille and Dr. Daniel W. Smith, MUSC – Institute of Psychiatry, 67 President Street, Charleston, SC 29425; Dr. Robert Oliverio, Cain, Lackey Maguire & Oliverio, 615 Wesley Drive, Charleston, SC 29407; Dr. Georgia Roane, 14 E Farmfield Rd., Charleston, SC 29407; Dr. Tal Klatchko, Carolina Lung & Critical Care, 2097 Henry Tecklenburg, Charleston, SC 29414; Dr. James L. Bumgartner, Carolina Neurological Clinic, L.L.P., 125 Doughty Street, Suite 460, Charleston, SC 29403
11. Impairment rating(s); body part(s); physician and date of opinion: Disability letters from Dr. Daniel W. Smith and Dr. Constance Guille (See Pages 1, 17)
12. I am amending my Form 50/51 in the following manner:

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

Signature:  Email: pribeiro@wiggerlawfirm.com

Date of hearing: March 1, 2012 @ 10:00 a.m. Time needed for hearing: 2 hours

On behalf of  Claimant  Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

\* Commissioners reserve the right to admit expert witnesses at hearings.



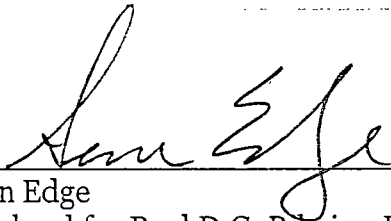
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

CERTIFICATE OF SERVICE

The Undersigned paralegal to the Attorney for the Claimant, 8086 Rivers Avenue, Suite A, North Charleston, South Carolina 29406, does hereby certify that he has served the following named individuals and/or companies with a copy of the pleading indicated below by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked, on the date indicated below:

**PARTIES SERVED:** Willson Jones Carter & Baxley, P.A.  
Attn: Lynnley D. Ross, Esq.  
421 Wando Park Blvd., Suite 100  
Mount Pleasant, SC 29464

**PLEADINGS:** Diane Fleher v. Dolphin Cove Marina  
FORM 58 – PRE-HEARING BRIEF  
NOTICE OF WITNESSES, WRITTEN  
MEDICAL RECORDS AND OTHER  
DOCUMENTS TO BE INTRODUCED  
AS DIRECT EVIDENCE ON BEHALF  
OF CLAIMANT

  
Sean Edge  
Paralegal for Paul D.G. Ribeiro, Esquire  
WIGGER LAW FIRM, INC.  
8086 Rivers Avenue, Suite A  
North Charleston, SC 29406  
(843) 553-9800

THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2012  
NORTH CHARLESTON, SOUTH CAROLINA

STATE OF SOUTH CAROLINA  
BEFORE THE WORKERS' COMPENSATION COMMISSION

DIANE FLEHER, )  
 )  
 CLAIMANT, )  
 )  
 vs. )  
 )  
 DOLPHIN COVE MARINA, )  
 )  
 EMPLOYER/DEFENDANT, )  
 )  
 CAROLINA CASUALTY INS. CO., )  
 )  
 CARRIER. )  
 \_\_\_\_\_ )

WCC FILE # 1014489

**NOTICE OF WITNESSES, WRITTEN  
MEDICAL RECORDS AND OTHER  
DOCUMENTS TO BE INTRODUCED  
AS DIRECT EVIDENCE ON BEHALF  
OF CLAIMANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND  
LYNNLEY D. ROSS, ESQ., ATTORNEY FOR DEFENDANT:

YOU ARE HEREBY NOTIFIED, that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following medical records, employment records and other related documents, as direct evidence on behalf of the Claimant, to wit:

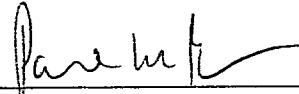
<u>Name of Medical Records</u>	<u>Date of Record</u>	<u>Page Numbers</u>
1. MUSC – I.O.P.	10/22/10 – 2/16/12	1-73
2. Dr. Robert Oliverio	10/12/10 – 7/21/11	74-80
3. Dr. James L. Bumgartner	9/27/11	81-82
4. Dr. Tal Klatchko	5/26/11	83-85
5. Dr. Georgia C. Roane	9/10/10 – 11/1/10	86-88

<u>Name of Exhibit</u>	<u>Date of Record</u>	<u>Page Numbers</u>
6. Jean R. Hutchinson, CVE - Employability Evaluation	1/31/12	89-96
7. Incident Report -- Charleston Police Department	10/12/10	97-99
8. Statement of Diane G. Fleher	10/29/10	100-101
9. Days Off Request	9/18/10	102
10. WCC Form 12-A	10/13/10	103-106
11. S.O.V.A. Letter	5/25/11	107
12. S.S.A.-Disability Determination	10/6/11	108-125
13. S.S.A. - Function Report	8/24/11	126-133

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians or other persons, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation-Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Diane Fleher, David Race, Tom Blocker, and Mike Sage



**Paul D.G. Ribeiro, Esq.**  
**Wigger Law Firm, Inc.**  
Attorney for the Claimant  
8086 Rivers Avenue, Suite A  
Charleston, SC 29406  
(843) 553-9800

Charleston, South Carolina  
17<sup>TH</sup> day of FEB., 2012





NATIONAL CRIME VICTIMS  
RESEARCH & TREATMENT CENTER  
67 President St., MSC361  
IOP, 2 South  
CHARLESTON, SC 29425  
Ph (843) 792-2945  
FAX (843) 792-3388  
<http://www.musc.edu/nrcvc>

February 16, 2012

Paul D.G. Ribeiro  
Wigger Law Firm  
8086 Rivers Avenue, Suite A  
North Charleston, SC 29406

RE: Diane G. Fleher

Dear Mr. Ribeiro:

This purpose of this letter is to describe the circumstances surrounding my treatment of Diane Fleher and give my professional opinion about her current functioning. I began treating Ms. Fleher on October 22, 2010. She presented to our office following an assault she experienced at her workplace. She reported that her half-brother David, who was also her boss, yelled at her while she was in the doorway of his office and proceeded to push her down the hallway. She reported that he pushed her 3-4 times, all while verbally abusing her. She reported that these incidents were witnessed by several employees. She found this incident to be very troubling, and reported repeated intrusive thoughts about it. Although she reported numerous instances of verbal abuse (yelling, making demeaning remarks in front of others) by her half-brother in the past, she stated that this was the first and only time he had been physically aggressive with her.

Ms. Fleher also reported a history of other abusive and violent experiences perpetrated by other people in her life. It is my opinion that these earlier events made her uniquely and especially vulnerable to psychological harm related to the incident at work with her half-brother.

Ms. Fleher reported significant problems with mood (both depression and anxiety), concentration, and her physical health that she believes have followed from this incident at work. It should be noted that Ms. Fleher suffers from several medical conditions (notably lupus and fibromyalgia) that are known to be exacerbated by psychological stress.

It is my opinion, within a reasonable degree of professional certainty, that Ms. Fleher's current psychological impairments are indeed casually related to the assault she experienced at her place of work (i.e., being berated and shoved by her half-brother). That is, had this incident not happened, it is extremely unlikely that Ms. Fleher would currently be experiencing the degree and severity of psychological and physical symptoms that she is currently suffering. I therefore conclude that she should be entitled to receive ongoing medical benefits in order to help her recover from these symptoms.

*"An equal opportunity employer,  
promoting workplace diversity."*

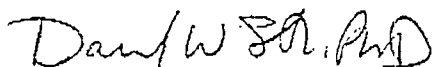
[www.musc.edu](http://www.musc.edu)

- 1 -

It is more difficult to state a confident opinion about the duration of Ms. Fleher's symptoms. She is at present unable to resume her work difficulties, and she will not be able to resume them without significant improvement. Her prognosis is complicated by her pre-existing, stress-reactive physical problems. There are no known cures for her physical problems; they are managed by treating symptoms and trying to improve overall health (which includes stress reduction). The medical conditions, in turn, exacerbate the emotional distress that Ms. Fleher is experiencing. For example, her lupus flare-ups are quite painful and limit her ability to sleep and to concentrate, which also worsens her mood. Without ongoing medical and psychological intervention, these problems are very unlikely to resolve.

I have provided this summary with Ms. Fleher's full consent to release her confidential information. Please let me know if I can provide any additional insight into Ms. Fleher's condition.

Best regards,



Daniel W. Smith, Ph.D.

Professor

Licensed Clinical Psychologist (SC #600)

*FLEHER, DIANE*

1783356 Sex: F Age: 52 DOB: 05/01/1959  
Date Printed: 12/30/11

Confidential

10/05/11 : 01:35pm

CLINICAL NOTE

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

Last Plan of Care Completed:	NO PLAN OF CARE ON RECORD
Last 90 Day Summary Completed:	NO 90DSUM ON RECORD

DIANE FLEHER  
52 year old female

DATE OF SERVICE: 10/5/11

START TIME: 1pm

END TIME: 1:30pm

TOTAL TIME: 30min

KNOWN ALLERGIES: NKA

CURRENT MEDICATIONS:

Benazepril/hydrochlorothiazide (20/12.5) daily

Cymbalta 120 daily

Wellbutrin XL 300 daily

Hydrochloroquine 200 daily

Synthroid .100 daily

Klonopin 1/1.5 qam and qhs

PRN:

Tramadol 50

Prednisone 10

cyclobenzaprine 10 Q8 hrs

Printed using Practice Partner®

### Patient Chart

*FLEHER, DIANE*

1783356 Sex: F Age: 52 DOB: 05/01/1959 Date Printed: 12/30/11

hydrocodone/APAP 7.5/500  
Rizatriptan 10

MEDICATION SIDE EFFECTS: None

MAJOR PROBLEM LIST -

LUPUS  
HYPOTHYROID  
NEUROGENIC SYNCOPE  
OBSTRUCTIVE SLEEP APNEA  
FIBROMYALGIA  
MIGRAINES  
RESTLESS LEG SYNDROME

MENTAL STATUS EXAMINATION:

Level of Consciousness: Patient is alert and fully oriented and in no apparent discomfort.  
Activity Level: Calm  
Attitude: Cooperative  
Speech: Rate: Normal  
Mood: Euthymic  
Affect: Appropriate  
Thought Process: Goal directed / Coherent  
Thought Content: Appropriate  
Potential for Suicide/Self-Harm: None  
Potential for Assault/Violence: None

Tics: None

Axis I: 1) 309.28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

**OBJECTIVE:** Pt states that her mood has been relatively stable and more positive over the past few weeks. She attributes this to a good support system (husband, friends and family) and anticipated move to PR. Overall feels she is coping with stressors better than before, although psychological, social and medical stressors are still present. Denies SI.

Printed using Practice Partner®

**MUSC**  
**MEDICAL UNIVERSITY**  
**OF SOUTH CAROLINA**

Patient Chart

*FLEHER, DIANE*

1783356 Sex: F Age: 52 DOB: 05/01/1959  
Date Printed: 12/30/11

**RESPONSE:** Discussed decrease in symptoms related to depression, anxiety and fibromyalgia and how to maintain decrease despite ongoing stressors i.e., continued work with therapist and plan to use skype while living in PR, relaxation and 'not over doing' and 'asking for help' when needed.

**ASSESSMENT:** 52 year old female with multiple medical problems presenting with improved (more stable) mood despite ongoing stressors.

**PLAN:**

- 1) Mood, Anxiety, fibromyalgia: c/w cymbalta 120mg daily. Continue work with primary therapist.
- 2) Sleep; c/w klonopin to 1mg am /1.5mg qhs short term. c/w sleep hygiene. Pt to decrease bedtime dose if sleeping too much.
- 3) psychological stressor: pt to continue to meet with primary therapist.
- 4) provided letter for 'psychiatric/emotional support' service animal
- 5) RTC in 4 weeks

**ADDENDUM:**

Refills on psychiatric medications were provided via walgreens for at least 6 months.  
Cymbalta 120 daily  
Wellbutrin XL 300 daily  
Klonopin 1/1.5 qam and qhs

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 10/05/2011 01:43PM  
# REVISED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 10/05/2011 01:48PM

Printed using Practice Partner

# MUSC

MEDICAL UNIVERSITY  
OF SOUTH CAROLINA

Patient Chart

Date Printed: 12/30/11

1783356

Sex: F

Age: 52

DOB: 05/01/1959

*FLEHER, DIANE*

## Confidential

10/05/11 : 02:44pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C

### PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER

52 year old female

START TIME: 1:30 pm

END TIME: 2:30 pm

TOTAL TIME(LENGTH OF SERVICE):

SERVICE TYPE: Ind Tx

### CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress 2) 293.83 Mood D/O due to Lupus/Fibromyalgia	AXIS I(1): 293.83 Mood D/O due to Lupus/Fibromyalgia
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

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*FLEHER, DIANE*

**PSYCHIATRIC PROBLEM ADDRESSED: 1**

PT presented on time, following regular appointment with psychiatrist. PT missed appointment last week due to physical illness (very stiff neck, other stiff joints, numbness in extremities), but is now feeling better. PT was seen by neurologist and reported significant crying jag when providing history of interaction with her brother to the doctor. Discussed this at length, and PT had difficulty identifying cognitions that preceded tearfulness and sobbing. PT was encouraged to continue to think about this issue between sessions. Also discussed PT's tendency to become sad about this altercation with her brother, rather than angry. Differences between PT's professional, composed, and assertive "business" persona versus her more submissive and child-like interpersonal persona were discussed, and PT had very positive reaction to this topic.

**PLAN:** Continue cognitive therapy for 3 more sessions prior to PT's relocation.

**RETURN TO CLINIC:** Oct 12, 2011, 1:30 pm.

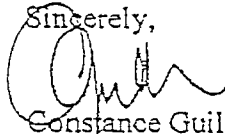
- # SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/05/2011 03:14PM
- # REVISED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/05/2011 03:15PM

October 5, 2011

To Whom It May Concern:

I'm writing on behalf of Ms. Diane Fleher. She is currently under my psychiatric care for mental health-related disability. Ms. Fleher's animal's accompanying her is necessary to her mental health treatment. Please feel free to contact me if you have any questions or concerns.

Sincerely,



Constance Guille, MD

South Carolina Medical License Number: 31671

License issued: 7/2009

License: Active

*FLEHER, DIANE*

1783356

Sex: F

Age: 52

DOB: 05/01/1959

Confidential

10/19/11 : 02:28pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C



PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME:

END TIME:

TOTAL TIME(LENGTH OF SERVICE):

SERVICE TYPE:

CURRENT MEDICATIONS:

Axis I: 1) 293.83 Mood D/O due to Lupus/Fibromyalg 2) 309.28 Adjustment D/O with mixed anxiety and depression	309.28 Adjustment D/O with mixed anxiety and depression
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	

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**FLEHER, DLANE**

1783356

Sex: F

Age: 52

DOB: 05/01/1959

Confidential

10/13/11

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C

PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 1:30 pm

END TIME: 2:25 pm

TOTAL TIME(LENGTH OF SERVICE): 55 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 293.83 Mood D/O due to Lupus/Fibromyalg	293.93 Mood D/O due to Lupus/Fibromyalgia 309.28 Adjustment D/O with Mixed Anxiety/Mood
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

Printed using Practice Partner

**FLEHER, DIANE**

**PSYCHIATRIC PROBLEM ADDRESSED: 1**

PT reported on time and generally in good spirits. PT reported that she had received pain management treatments (shots) that significantly improved some of her upper extremity pain/numbness, and that she was functioning better physically. This carried over into her mood, to a degree, by her report. She shared some autobiographical writings that she had found while packing up old papers. Discussed how her current view of herself differed from what she had written 10-15 years ago, and how some things were still the same. PT had thought considerably regarding her relative "meekness" in interactions with loved ones, in contrast to her more assertive and independent persona when conducting business. PT was open and thoughtful, and discussion was productive.

PLAN: Continue cognitive therapy, with plan to have 2 more session prior to PT's departure.

RETURN TO CLINIC: Oct 19, 1:30 pm.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/14/2011 04:27PM

# REVISED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/14/2011 04:51PM

*FLEHER, DIANE*

Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT was on time and reported being "tired." Had just taken sister-in-law, who had been significant instrumental and emotional support for past month to airport, but reported being fine with that. PT reported having come across an email she sent to her brother several years ago when she quit her job for the first time, and her reaction to re-reading it was quite negative and full of self-recrimination ("why did I ever agree to come back?"). We discussed at length how her situation in 2005 was similar and different to her situation in 2010, and what factors influenced her behavior at each time point. PT exhibited great understanding and insight into the differences and reported significant improvement in mood related to this situation. PT continues to feel very tired and run down related to her physical problems, but her general mood and thinking appear to be continuing to improve relative to her situation with her brother and other family members.

PLAN: Continue cognitive therapy; prepare for termination next session when PT relocates.

RETURN TO CLINIC: Thurs 10/27/11, 1:30 pm

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/19/2011 02:35PM

Patient Chart

Date Printed: 12/30/11

FLEHER, DIANE

1783356

Sex: F

Age: 52

DOB: 05/01/1959

Confidential

09/21/11 : 02:48pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24c



PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: SOVA

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 1:05 pm

END TIME: 2:05 pm

TOTAL TIME(LENGTH OF SERVICE): 60 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress 2) 293.9 Mood D/O due to Lupus/Fibromyalgia	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

Printed using Practice Partner®

Patient Chart

Date Printed: 12/30/11

*FLEHER, DIANE*

1783356

Sex: F

Age: 52

DOB: 05/01/1959

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented on time after rescheduling yesterday's appointment due to feeling ill. PT reported stable mood over the past week, but also increased ("much more than normal") fibromyalgia related pain. Followed up with PT about her husband's reaction to the deposition. He has apparently calmed down and is supportive of PT's decision only to seek worker's compensation support for her treatment needs, not any punitive damages. PT reports continuing to respond assertively to comments and concerns from her family (siblings) about the situation between her and her brother. She says she often cries during these interactions, but feels more angry and less helpless than she did previously. Discussed the thoughts and feelings that allowed her to respond more assertively, and how she could maintain these more helpful thinking patterns. PT responded well. Concluded with a discussion about her concerns about her son, a new topic and not one that has caused her significant ongoing distress. PT appears knowledgeable and well-prepared to cope with any continuing concerns about this issue.

PLAN: Continue cognitive therapy.

RETURN TO CLINIC: 9/27/11, 12 noon.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 09/21/2011 04:57PM

Name: FLEHER, DIANE

ID: 1783356 SEX: F AGE: 52

09/15/11 03 01 pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
 INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
 24C



**PATIENT INFORMATION:**

NAME: DIANE FLEHER  
 DOB: 05/01/59  
 MRN: 1783356

INSURANCE SOVA

Confidential patient information  
 Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
 52 year old female

START TIME: 1 30 pm  
 END TIME: 2 30 pm  
 TOTAL TIME(LENGTH OF SERVICE): 60 min

SERVICE TYPE: Individual Therapy

**CURRENT MEDICATIONS**

<p><b>Axis I:</b>                  1) 309 28 Adj D/O with Anxious and Depress                  2) 293 9 Mood D/O due to Lupus/Fibromyalgia</p>	
<p><b>Axis II:</b></p>	
<p><b>Axis III:</b>                  1) Fibromyalgia (by report)                  2) Lupus (by report)</p>	
<p><b>Axis IV:</b></p>	
<p><b>Axis V:</b></p>	

**PSYCHIATRIC PROBLEM ADDRESSED: 1**

PT reported that she had had a "difficult" morning but was very proud of herself for communicating assertively over the phone this morning with one of her half-sisters about her relationship with her half-brother. She stated that she cried extensively during the phone call, but managed to tell her half-sister several things that she felt were very important and that corrected her sibling's misinformed viewpoint about the situation between her and her half-brother. PT continues to feel very fatigued, which she attributes to her medical conditions (she is not sure whether the lupus or fibromyalgia is more responsible), and reports an overall depressed mood. She also states that having her sister-in-law around the house on a visit has been extremely helpful, in terms of preparing for the upcoming move. Discussed the relationship between PT's cognitions about family conflict tended to produce sad emotions, whereas in the past she reports that similar situations often led to more anger and motivation. She attributed some of these changes to what she perceives to be the physical deterioration of her body due to chronic illness, reciprocal effects were pointed out to her.

**PLAN:** Continue cognitive therapy

Name: FLEHER, DIANE

ID: 1783356 SEX: F AGE: 52

RETURN TO CLINIC: 9/20/11, 12 noon

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 09/15/2011 03 19PM

September 8, 2011

Social Security Administration  
DDS Charleston -S86  
PO Box 190029  
North Charleston, SC 29419

Attn: Stephanie S. Barnett  
Disability Examiner

Fax: 843-953-0355

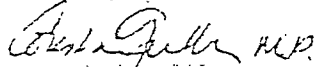
Ref No: L29296/ Diane G Fleher/ SSN: 251-23-3523

Dear Ms. Barnett:

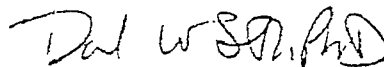
Diane G. Fleher has been undergoing psychiatric and psychological treatment at our center since October 2010. In addition, Ms. Fleher has stress-related physical problems (lupus, fibromyalgia) that exacerbate, and are exacerbated by, her mental health morbidities. It is our professional opinion that Ms. Fleher has been unable to function in a capacity that would enable her to perform any substantial work during her time in treatment, and it is expected that her conditions will continue to prevent her from doing so until her symptoms improve considerably.

Should you have any questions regarding her case, please feel free to contact our office.

Sincerely,



Constance Guille, M.D.  
Assistant Professor



Daniel W. Smith, Ph.D.  
Professor, Licensed Clinical Psychologist  
SC #600

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE:52

09/09/11 01 12pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA



PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE SOVA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

For session 9/7/11  
START TIME: 1 35 pm  
END TIME: 2 20 pm  
TOTAL TIME(LENGTH OF SERVICE): 45 mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adj D/O with Anxious and Depress 2) 293 83 Mood D/O due to Fibromyalgia and Lupus, with Depressive Features	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT described having been deposed for Worker's Compensation appeal last week. PT's report indicated that the deposition experience was stressful and moderately confrontational, but she reported handling it reasonably well. She reports increased levels of fatigue this week, and additional stress associated with monitoring her sister-in-law who is visiting from out of town in an attempt to "get well." PT was somewhat tired after having been seen by Dr. Guille immediately prior to this session. Problem solved with PT how to respond to ongoing concerns related to the Worker's Compensation situation, and what her priorities should be in terms of maintaining a focus on her own well-being. PT was engaged and generated several ideas that reflected her understanding of what would be in her own psychological best interests, but she has concerns about her husband's willingness to agree. We discussed including him in future sessions to discuss, if needed.

PLAN: Continue cognitive therapy

RETURN TO CLINIC: 9/14/11, 1 30 pm

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 09/09/2011 01 27PM

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE:52

09/07/11 01 29pm

CLINICAL NOTE

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE SOVA

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

Last Plan of Care Completed:	NO PLAN OF CARE ON RECORD
Last 90 Day Summary Completed:	NO 90DSUM ON RECORD

DIANE FLEHER  
52 year old female

DATE OF SERVICE 9/7/11  
START TIME 1pm  
END TIME 1 30  
TOTAL TIME 30 min

KNOWN ALLERGIES NKA

CURRENT MEDICATIONS no changes

MEDICATION SIDE EFFECTS: None

MAJOR PROBLEM LIST -

- LUPUS
- HYPOTHYROID
- NEUROGENIC SYNCOPE
- OBSTRUCTIVE SLEEP APNEA
- FIBROMYALGIA
- MIGRAINES
- RESTLESS LEG SYNDROME

MENTAL STATUS EXAMINATION

Level of Consciousness Patient is alert and fully oriented and in no apparent discomfort  
 Activity Level Calm  
 Attitude Cooperative  
 Speech Rate Normal  
 Mood Sad  
 Affect Congruent with mood Labile  
 Thought Process Goal directed / Coherent  
 Thought Content Appropriate  
 Potential for Suicide/Self-Harm None

Potential for Assault/Violence None

Tics None

<b>Axis I:</b> 1) 309 28 Adj D/O with Anxious and Depress	
<b>Axis II:</b>	
<b>Axis III:</b> 1) Fibromyalgia (by report) 2) Lupus (by report)	
<b>Axis IV:</b>	
<b>Axis V:</b>	

**OBJECTIVE:** Pt experienced worsening of mood, increased tearfulness, low energy and has poor concentration in the context of stressors including deposition regarding case against her brother Occasional SI but no intent, desire or plan to end her life

**RESPONSE:** Discussed continued symptoms related to depression, anxiety and fibromyalgia and worsening of these symptoms in relation to court stressors Pt considering dropping court case but needing assistance to discuss this decision with husband Also discussed option of other potential treatments to augment current therapy including using TCA, cyclobenzaprine already prescribed

**ASSESSMENT:** 52 year old female with multiple medical problems presenting with continued poor mood and concentration, mood lability, anxiety and excessive fatigue Symptoms appear to have worsened with recent deposition Offered medication change now, but decided to defer until decision was made regarding court with the hope that decision to disengage with court proceedings will likely reduce stress and improve symptoms If symptoms do not resolve, would recommend adjustment to medications and continued therapy.

**PLAN:**

- 1) Mood, Anxiety, fibromyalgia c/w cymbalta 120mg daily Continue work with primary therapist
- 2) Sleep, c/w klonopin to 1mg am /1 5mg qhs short term c/w sleep hygiene Pt to decrease bedtime dose if sleeping too much
- 3) psychological stressor pt to continue to meet with primary therapist
- 4) RTC in 4 weeks

**ADDENDUM**

Current medications

Benzepiril/hydrochlorothiazide (20/12.5) daily  
Cymbalta 120 daily  
Wellbutrin XL 300 daily Hydrochloroquine 200 daily  
Synthroid 100 daily  
Klonopin 1/1.5 qam and qhs

PRN

Tramadol 50  
Prednisone 10  
cyclobenzaprine 10 Q8 hrs  
hydrocodone/APAP 7.5/500  
Rizatriptan 10

Name: FLEHER, DIANE

ID: 1783356

SEX: F

AGE: 52

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 09/07/2011 01 43PM  
# REVISED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 09/07/2011 01 44PM

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE:52

08/23/11 01 41pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C



PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12 30 pm  
END TIME: 1 30 pm  
TOTAL TIME(LENGTH OF SERVICE): 60 mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adi D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT reported being tired (and was actually sleeping in the waiting room when I went out to greet her) due to "unrestful sleep," which she attributed to having a rough time with fibromyalgia PT reported a return of the facial cramping that she experienced during an anxiety attack previously, but this time the cramping preceded an anxiety attack She reported improved ability to manage the symptoms, however, and that they went away within a few minutes Reinforced her use of breathing and cognitive coping methods PT also stated that she had a session with attorneys this week pertaining to upcoming deposition in worker's compensation case She stated that remembering the incident where her brother pushed her was extremely distressing We explored the reasons for this, and discussed the importance of not avoiding unpleasant memories of stressful events She exhibited in-session reductions in distress when discussing the event several times, and this was highlighted as a result of non-avoidance PT demonstrated good understanding PT will be out of town next week and will resume treatment the following week

PLAN: Continue cognitive therapy

RETURN TO CLINIC: September 7, 2011, 12 noon

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# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 08/23/2011 02:25PM

Name: FLEHER, DIANE

ID: 1783356 SEX: F AGE: 52

08/16/11 04 45pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 3 05 pm  
END TIME: 4 05 pm  
TOTAL TIME(LENGTH OF SERVICE): 60 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adr D/O with Arxious and Deopress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT reported having an emotional week. She and her husband were served with subpoenas related to her workmen's compensation claim, and she had an unexpectedly emotional reaction to a comment made in the waiting room of her veterinarian's office. Examined the A-B-C progression in each of these situations. In each case, PT reported having negative, automatic cognitions pertaining to perceived failure, which precipitated feelings of sadness and helplessness. Discussed the accuracy of these automatic beliefs, and the emotions and behaviors that would be associated with alternative thoughts. PT also reported that while upset in veterinarian's office, she had a "flashback" (more likely a memory) of her brother's pushing her at her former workplace. PT continues to struggle with perception that she is responsible for family outcomes and togetherness, and that her continued conflict with family somehow reflects poorly on her (in particular, that it would be a disappointment to her mother). Discussed this at length. PT demonstrates improving understanding of the impact of negative thought processes.

PLAN: Continue cognitive therapy

RETURN TO CLINIC: 8/23/11, 12 30 pm

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# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 08/16/2011 05 04PM

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE 52

08/09/11 02 52pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12 00 noon  
END TIME: 12 55 pm  
TOTAL TIME(LENGTH OF SERVICE): 55 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adj D/O with Anxious and Deopress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented in a much happier mood than last week and was eager to relate what happened at pulmonologist's office PT reported having an episode of neurogenic syncope that resulted in temporary suspension of her driving privileges PT had them reinstated by cardiologist she visited in the following days PT reported having ongoing pain symptoms associated with fibromyalgia, but has a rheumatology appointment in the near future that she hopes might provide some benefit She described having an "a-ha moment" related to her sporadic suicidal ideation She related it to feeling of love and peace she experienced during a near death experience PT reported that this strengthened her resolve never to consider suicide as an option because it was "such a selfish choice " PT reported an improvement in her mood, as she looks forward to relocating to new home Spent some of session providing education to PT about regular, diaphragmatic breathing (as opposed to PT's habit of holding her breath when she gets upset) Demonstrated technique, which was familiar to PT from her previous vocal training Instructed PT to practice breathing during calm, relaxed moments over the next week

PLAN: Continue cognitive therapy

Name: FLEHER, DIANE

ID: 1783356

SEX F AGE:52

RETURN TO CLINIC: Tuesday 8/16/11, 3 pm

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 08/09/2011 03 00PM

Name: FLEHER, DIANE

ID: 1783356

SEX:F AGE:52

08/04/11 11 36am

CLINICAL NOTE

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA



PATIENT INFORMATION:

NAME: DIANE FLEHER  
 DOB: 05/01/59  
 MRN: 1783356

INSURANCE SOVA

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

Last Plan of Care Completed:	NO PLAN OF CARE ON RECORD
Last 90 Day Summary Completed:	NO 90DSUM ON RECORD

DIANE FLEHER  
 52 year old female

DATE OF SERVICE 8/4/11  
 START TIME 3pm  
 END TIME 3 30pm  
 TOTAL TIME 30 min

KNOWN ALLERGIES

CURRENT MEDICATIONS

Benazepril/hydrochlorothiazide (20/12 5) daily  
 Cymbalta 120 daily  
 Wellbutrin XL 300 daily Hydrochloroquine 200 daily  
 Synthroid 100 daily  
 Klonopin 1/1 5 qam and qhs

PRN

Tramadol 50  
 Prednisone 10  
 cyclobenzaprine 10 Q8 hrs  
 hydrocodone/APAP 7 5/500  
 Rizatriptan 10

MEDICATION SIDE EFFECTS: None

MAJOR PROBLEM LIST -

LUPUS  
 HYPOTHYROID  
 NEUROGENIC SYNCOPE  
 OBSTRUCTIVE SLEEP APNEA  
 FIBROMYALGIA  
 MIGRAINES

RESTLESS LEG SYNDROME

MENTAL STATUS EXAMINATION

Level of Consciousness Patient is alert and fully oriented and in no apparent discomfort

Activity Level Calm

Attitude Cooperative

Speech Rate Normal

Mood Sad

Affect Full range

Thought Process Goal directed / Coherent

Thought Content Appropriate

Potential for Suicide/Self-Harm None

Potential for Assault/Violence None

Tics None

Axis I: 1) 309 28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

**OBJECTIVE:** Significant events over past couple weeks include the purchase of a home in Puerto Rico with plans to move there in October. Continued difficulty with handling relationship with brother and was noticed of initial disability rejection. Pt experienced significant improvement in mood and sleep with in PR but upon return to US and stressors continues to feel tearful, low energy and has poor concentration. Occasional SI but no intent, desire or plan to end her life.

**RESPONSE:** Discussed continued 'residual' symptoms related to depression, anxiety and possibly fibromyalgia and need for adequate trial of medication at recently increased dose prior to discussing other potential treatment options to augment current therapy including using TCA, cyclobenzaprine already prescribed. Pt has used sleep agents and klonopin minimally over past few weeks. Continued f/u for pul/sleep tests.

**ASSESSMENT:** 52 year old female with multiple medical problems presenting with continued low mood, anxiety and excessive fatigue. Will give full trial of recent medication change to assess for effectiveness. Re-eval in 3 weeks. Continue work with primary therapist.

**PLAN:**

- 1) Mood, Anxiety, fibromyalgia c/w cymbalta 120mg daily
- 2) Sleep, c/w klonopin to 1mg am /1 5mg qhs short term c/w sleep hygiene
- 3) psychological stressor pt to continue to meet with primary therapist
- 4) RTC in 3 weeks

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 08/04/2011 11:46AM

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE:52

08/04/11 04 49pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE SOVA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12 noon, 8/2/2011  
END TIME: 1 pm, 8/2/2011  
TOTAL TIME(LENGTH OF SERVICE): 60 minutes

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

This note is for Ind Tx session on Aug 2, 2011

PT presented without make-up and reporting considerable emotional distress. She reported that she had had a very difficult weekend. Her sister had told her to "act like David (Pt's brother) was dead." PT reported that this made her extremely sad, and that she began crying uncontrollably in the restaurant where they were eating breakfast. When PT came home, she found a letter from disability denying her application, which compounded her distress. PT has been feeling very emotionally labile since, with frequent crying episodes and other physiological problems, including diarrhea. Engaged in cognitive therapy about PT's thoughts regarding the meaning of acting like her brother was dead. PT reported feeling like it was a permanent loss, that things between them would never be better, and that her mother would be terribly disappointed that the siblings were not getting along better. Discussed each of those thoughts, but PT had considerable difficulty maintaining composure. Her affect brightened considerably when talking about her recent news about moving to Puerto Rico. PT also plans to appeal disability ruling.

Name: FLEHER, DIANE

ID: 1783356 SEX:F AGE:52

PLAN: Continue cognitive therapy

RETURN TO CLINIC: Tues 8/9 at 12 noon

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 08/04/2011 04 55PM

Name: FLEHER, DIANE

ID: 1783356 SEX: F AGE: 52

07/20/11 02:59pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA



PATIENT INFORMATION:

NAME: DIANE FLEHER  
 DOB: 05/01/59  
 MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
 Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
 52 year old female

START TIME: 1200 noon  
 END TIME: 1255  
 TOTAL TIME(LENGTH OF SERVICE): 55 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adl D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented on time and in positive mood. She reported being exceedingly relieved to talk with Dr. Guille about pulmonary testing and diagnostic issues. PT reported positive news with respect to her health insurance status at Roper Hospital. PT c/o 'kidney pain' over the past weekend which prevented her from meeting new friends of her husband's. Discussed how PT handled that with husband, and it appears she was appropriately assertive. Continues to have some concerns about inadequacy, which we examined via cognitive therapy. PT also reported considerable (though manageable anxiety) when making doctor visits at Roper facilities, fearing she will encounter her brother there. Discussed this at length using cognitive therapy techniques. PT denies feeling considerable explicit fear that brother will attack her, but is concerned about his causing a scene and the emotional impact a confrontation might have on her. Discussed practical coping methods for addressing this, and will follow up next week. PT denied any suicidal ideation during the previous week.

PLAN: Continue cognitive therapy

Name: FLEHER, DIANE

ID: 1783356

SEX: F AGE: 52

RETURN TO CLINIC: RTC for IND Tx on July 26, 2011, 12 noon

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 07/20/2011 03 07PM

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Name: FLEHER, DIANE

ID: 1783356

SEX: F AGE: 52

07/15/11 04 24pm

CLINICAL NOTE

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C

PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE SOVA

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

Last Plan of Care Completed:	NO PLAN OF CARE ON RECORD
Last 90 Day Summary Completed:	NO 90DSUM ON RECORD

DIANE FLEHER  
52 year old female

DATE OF SERVICE 7/13/11  
START TIME 1pm  
END TIME 1 30pm  
TOTAL TIME 30 min

KNOWN ALLERGIES

CURRENT MEDICATIONS

Benazepril/hydrochlorothiazide (20/12 5) daily  
Cymbalta 60 daily  
Wellbutrin XL 300 daily Hydrochloroquine 200 daily  
Synthroid 100 daily  
Temazepam 30 qhs

PRN

Clonopin 0 5qhs  
Tramadol 50  
Prednisone 10  
cyclobenzaprine 10 Q8 hrs  
hydrocodone/APAP 7 5/500  
Rizatriptan 10

MEDICATION SIDE EFFECTS: Yes, steroids, increase anxiety, mood swings, difficulty concentrating

MAJOR PROBLEM LIST -

LUPUS  
HYPOTHYROID  
NEUROGENIC SYNCOPE  
OBSTRUCTIVE SLEEP APNEA  
FIBROMYALGIA

MIGRAINES  
RESTLESS LEG SYNDROME

MENTAL STATUS EXAMINATION

Level of Consciousness Patient is alert and fully oriented and in no apparent discomfort

Activity Level Calm

Attitude Cooperative

Speech Rate Normal

Mood Sad, Anxious

Affect Congruent with mood

Thought Process Goal directed / Coherent

Thought Content Appropriate

Potential for Suicide/Self-Harm Intermittent SI while on steroids, but reports nto wanting to end her life or having any intent or plan to harm herself

Potential for Assault/Violence None

Tics None

Axis I: 1) 309 28 Adi D/O with Anxious and Deoress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

**OBJECTIVE:** Reports some improvement in mood, concentration, sleep and anxiety since taper of steroids however still experiencing residual symptoms of fatigue, some sleep disturbance, poor concentration and low mood and feeling 'easily tearful' Expressed concern regarding current pul/sleep tests Sleep study did rule out OSA but PFT's concerning for possibly pul HTN which will be r/o with echo and f/u CT was ordered to monitor pul nodule

**RESPONSE:** Discussed 'residual' symptoms related to depression, anxiety and possibly fibromyalgia and potential treatment options to augment current therapy including increasing cymbalta as well as using TCA, cyclobenzaprine already prescribed Given side effects and overall prior efficacy, we decided to increase cymbalta Discussed sleep problems and recommended short term increase in klonopin which she is taking regularly with temazapine recommended using only 1 medication and short term increase until symptoms improve Discussed pul and sleep tests at length and followed up with pulmonologist regarding current status and further work up (see AOR and records in PP)

**ASSESSMENT:** 52 year old female with multiple medical problems presenting with continued low mood, anxiety and excessive fatigue While there are a number of co-occurring conditions that can worsen patients mood, anxiety and energy, medical management of conditions are adequate and OSA was ruled out with sleep test Will attempt to further address mood/anxiety and fatigue with increase in cymbalta and klonopin in addition to continued work with primary therapist

**PLAN:**

- 1) Mood, Anxiety, fibromyalgia increase cymbalta from 60 to 120mg daily
- 2) Sleep, increase klonopin to 1mg am /1 5mg qhs short term c/w sleep hygiene
- 3) psychological stressor pt to continue to meet with primary therapist
- 4) RTC in 2-3 weeks

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 07/15/2011 04 47PM  
# REVISED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 07/15/2011 04 48PM  
# REVIEWED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 08/04/2011 05 27PM

Name: FLEHER, DIANE

ID: 1783356 SEX: F AGE: 52

07/12/11 03 34pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C

26D

graphic

PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12 00 noon  
END TIME: 12 50 pm  
TOTAL TIME(LENGTH OF SERVICE): 50 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adl D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented in moderate emotional distress today. She reported that upon a return visit to her pulmonologist, she was given a diagnosis of Primary Pulmonary Hypertension, which she had investigated online. The prognosis for the disease, which she learned is quite rare, is not particularly good, and she was concerned. PT reported using reasonably good cognitive coping strategies to cope with this information. Spent some time discussing the situation and determined that the pulmonologist's diagnosis was almost certainly provisional, and that additional tests were necessary to confirm/disconfirm the condition. PT was relieved by this and her affect brightened considerably. She reported that on Sunday she had finished her most recent round of steroid medication, which was effective in reducing her lupus symptoms. She reported that her emotional and cognitive symptoms were already improving. She also stated that her mood/suicidal ideation was improved over the previous week, and that she was not significantly troubled by thoughts of self-harm. PT has results of sleep study and will share them with Dr. Guille at tomorrow's appointment. Plan is to see Dr. Guille, comply with recommendations for additional imaging testing from pulmonologist, and continue ind tx.

PLAN: Continue CBT

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Page: 2

Date Printed: 09/19/11

Name: FLEHER, DIANE

ID: 1783356

SEX: F AGE: 52

RETURN TO CLINIC: July 13 for appt with Dr Guille, July 19th at 12 noon for continuing CBT

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 07/12/2011 03 43PM  
# REVIEWED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 07/13/2011 12 24PM

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of SOUTH CAROLINA

National Crime Victims Research & Treatment Center  
(NCVC)

Institute of Psychiatry  
ADULT Screen

16. What is your therapist's name and telephone number?
17. Please tell me the names of the medication you are currently taking for any emotional problems.

Alcohol and Drug Usage

18. Sometimes people use alcohol to help them relax or help them with nerves or emotional problems. During the past six months, have you drunk any alcoholic beverages (wine, beer, liquor)?

- Yes  
 No (Skip to Question 22)

19. During the past two weeks, about how many days did you drink some type of alcoholic beverage? 1

20. During the past two weeks, what is the greatest number of alcoholic drinks you consumed in one day? 1

21. During the past year, have any of your family members or friends told you that they thought you have a drinking problem?

- Yes  
 No

22. Some people use drugs that are not prescribed by a doctor to help them sleep, relax, or just have fun. During the past year, have you taken any other drugs (marijuana, cocaine, crack, heroin)?

Yes Drugs:

Frequency of use (days in past two weeks):

No

23. Have you ever received treatment for alcohol or drug abuse problems?

- Yes  
 No

24. Did you receive inpatient treatment, outpatient treatment, or both?

Inpatient Dates and Duration:

Outpatient Dates and Duration:



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ADULT Screen

**CV COMP/SOVA – ASK ALL SELF-PAY PATIENTS**

30. South Carolina has a Crime Victims Compensation program that pays for mental health counseling for some crime victims if they are eligible. Have you already applied for Crime Victims Compensation (CV Comp)?

- Yes- Continue with Question #31
- No- Discuss eligibility criteria outlined below
- Not sure (proceed as if 'no')

31. Has the application been approved?

- Yes (Please bring your approval letter with you)
- No – application was denied
- Waiting to hear back from SOVA

**Eligibility Criteria for SOVA:**

- The incident must be reported to law enforcement within 48 hours of the crime.
- The claim must be filed with SOVA within 180 days of the crime (may be waived depending on extenuating circumstances).
- The crime must have happened in South Carolina.
- The crime must have caused physical injury or emotional trauma.
- The victim has to cooperate with the criminal justice system; that is, they must be willing to prosecute the case.
- The victim must not have been engaged in illegal activity during the incident and illegal activity must not have contributed to his/her injury.

32. Based on what I've told you about the Crime Victims Compensation program do you think you might be eligible?

- Yes
- No
- Not sure (proceed as if 'YES')

**If Yes or Not Sure:** I will mail you some information about the program. Please review it and bring it with you to your appointment. Please note that if your application is not approved by CV comp, you will be responsible for payment of services.

**PROBLEM SOLVE** around concrete obstacles to care:

What could stand in the way of coming in?

- Transportation
- Childcare
- Payment for services
- Taking time off of work
- Distance
- Other:
- No barriers to treatment



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Notes: already have a claim number with Worker's Comp

On the basis of the patient's responses and your clinical judgment about their prior history and current status, make a judgment about which of the following categories the patient appears to best fit into.

Category One: Patient appears to be an appropriate candidate for NCVC treatment (Patient's traumatic event-related problems are the type of problems that relatively brief cognitive-behavioral therapy is generally effective in treating.)

Category Two: Patient appears not to be an appropriate candidate for NCVC treatment (Apparent history of major psychopathology that predates index traumatic event; currently on antipsychotic medication; presence of thought disorder; abusing alcohol or drugs during the past month (major abuse problems); no clear relationship between traumatic event history and presenting problems; serious Axis II problems that would preclude ability to benefit from brief cognitive-behavioral therapy; presenting problems would not appear to be effectively treated by brief trauma-focused cognitive-behavioral therapy).

Record reason:

Category Three: Patient's appropriateness for NCVC is unclear (Patient is currently being treated by another mental health professional; patient recently discharged from inpatient mental health or substance abuse treatment program; it is unclear as to whether patient's mental health problems are traumatic event-related; unclear as to the extent of current substance use/abuse (current consumption exceeds moderate amounts; recent completion of a substance abuse treatment program); unclear as to the extent of Axis II disorders; unclear whether traumatic event-related mental health problems are the type that would respond to CBT).

Record reason:

Patient will be paying via:

- Self Pay (uninsured with discount)
- SOVA
- Medicaid
- Medicare
- Workman's Comp
- Some other way

**Scheduling Intake:**

The intake process will take about two hours. In addition, we ask that you come 30 minutes ahead of time to fill out new patient paperwork. I'd like to schedule this intake appointment for you. Is there a particular day and time that works best for you?

Your intake is scheduled for \_\_\_\_\_ (date/time) with \_\_\_\_\_ (clinician).



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Institute of Psychiatry  
ADULT Screen

Any additional notes:

10/14/10 @ 9:11am - Diane: got workers comp info

10/14/10 @ 9:17am - workers comp TC  
IM w/ Debbie Dozier

10/14/10 - Debbie Dozier - will call you once complete investigation

10/14/10 @ 1:44pm - Nave Fikes

Call ended:

Workers Comp -  
1-877-497-2637  
policy # BNUWCO108002  
claim # 10100845

called yesterday (10/14/10)

Coastal Marine Enterprises, Inc.  
DDA Dolphin Cove Marina

Debbie Dozier:  
adjuster

10/22/10 : 03:46pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: SELF PAY - HPA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
51 year old female

START TIME: 10:00  
END TIME: 12:00  
TOTAL TIME(LENGTH OF SERVICE): 2 hrs

SERVICE TYPE: Initial Intake Evaluation

CURRENT MEDICATIONS: Cymbalta, Wellbutrin, Synthroid, Plaquenil, Benazepril, Promethazine, Temazepam, Clonazepam, Maxalt, and unspecified "steroids" for lupus flare-ups.

Axis I: 1) Adjustment Disorder with Anx/Dep Mood	
Axis II: 1) deferred	
Axis III: 1) Lupus (per PT report) 2) Fibromyalgia (per PT report) 3) Neurogenic syncope (per PT report) 4) stomach ulcer (per PT report) 5) hypertension	
Axis IV: employment and family problems	
Axis V: 72 current, 85 past year	

PSYCHIATRIC PROBLEM ADDRESSED: 1

Conducted intake evaluation with PT, who presented as markedly emotionally labile. She was initially quite tearful as she described a problematic interaction with her half-brother (who is also her employer) and her adjustment following that incident. At other times, however, she was very upbeat, used humor appropriately, and appeared to have a healthy perspective. She described a history of "verbal abuse" by her brother in the work place that apparently consisted primarily of vulgar speech and very demeaning remarks about work performance. Last week, an interaction between the PT and her brother escalated to the point of her brother's yelling at her and shoving her down the hall. This incident has been extremely distressing to the PT. It has reminded her of several incidents of extreme distress from her past, including incidents of physical violence between her and her first husband. PT acknowledged fleeting thoughts about suicide, but denied any intent, or plan, and reported that she had many reasons to live. Social history, trauma history, medical history, and mental health history were all obtained.

Name: FLEHER, DIANE

Date Printed: 06/09/11  
ID: 1783356 SEX:F AGE:52

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See the Intake for a full description.

PLAN: Commence individual cognitive-behavioral therapy.

RETURN TO CLINIC: Wed 10/27/10, 1 pm.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 10/22/2010 04:19PM

07/05/11 05 10pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C  
26D

graphic

PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 1205  
END TIME: 105  
TOTAL TIME(LENGTH OF SERVICE): 60 mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Luopus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented complaining of having a "rough week," which she attributed primarily to the resumption of steroid medication to combat a lupus flare up in her back. She described concentration difficulties and mood problems that she attributes to the steroid regime. She has begun tapering off the medication and should be off of steroids by "the end of the week." PT expressed some anticipatory distress related to wedding planning for her son, and the meaning of inviting/not inviting different family members. Engaged in cognitive therapy around this issue, clarifying what the thoughts were that produced her sad and anxious emotions, and challenged the thoughts that were inaccurate and unhelpful (e.g., "I am putting family members in the middle of family conflict if I invite them"). PT also described intense feeling of sadness last night coming home from holiday get-together, during which she acknowledged some transient suicidal ideation. She stated that this type of ideation has been happening several times per week, but not every day, and that she is able to combat it effectively by reminding herself how "full of blessings" her life is at the moment. She stated that she has considered a method (medication overdose). However, she specifically denied any intent at present. In particular, she is invested in her marriage and her son's upcoming wedding. Provided PT with my mobile phone number and instructed her to contact me if she had difficulty with suicidal ideation in the next week. Also reminded her how to get help in an emergency (page Resident on call or present to an emergency room). At present, suicide risk is deemed to be low but will need to be

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monitored. Role of current steroid regimen on her mood must also be considered. A follow-up appointment with psychiatrist is also recommended.

**PLAN:** Continue cognitive therapy, monitor suicidal ideation. PT will also seek results of sleep study (conducted 2 weeks ago) and schedule follow-up appointment with Dr. Guille.

**RETURN TO CLINIC:** RTC 7/12/11, 12 noon

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# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 07/05/2011 05 23PM  
# REVIEWED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 07/06/2011 12 48PM

06/23/11 11 02am

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE THE STATE OFFICE OF

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Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12 00 noon  
END TIME: 12 55 pm  
TOTAL TIME(LENGTH OF SERVICE): 55 mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS

Axis I: 1) 309 28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Luopus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1  
Session held on 6/21/11

PT presented on time and stated that she had had a "rough week " However, in following up with that, the problems this week were primarily physical in nature, as PT has been suffering from what sounds like nerve pain in her back She states that this is something of a chronic, intermittent condition Her tingling/stinging shoulder and arm pain, however, has resolved

PT did not complete A-B-C sheets this week, due in part to pain symptoms and in part to being busy with some family matters Much of the discussion centered around PT's marital relationship and the impact that her psychological and physical symptoms are having in that area Used examples from recent disagreements between PT and her husband to reinforce cognitive coping (A-B-C) approach to understanding her emotional reactions PT demonstrated improving understanding, and exhibited greater self-confidence and reported increased assertiveness in her interactions with her husband PT noted that this was the second consecutive session in which she did not become intensely emotional and tearful Framed this as both positive indicator of improved coping, but also that we have been avoiding certain topics (her

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Name: FLEHER, DIANE

Date Printed: 09/19/11  
ID: 1783356 SEX:F AGE:52

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past relationships) that continue to be difficult for her. We agreed to revisit these topics in upcoming sessions.

**PLAN:** Continue cognitive therapy

**RETURN TO CLINIC:** Thurs 6/30/11 at 11 am

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 06/23/2011 11 16AM

06/07/11 : 04:06pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C  
26D



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: SOVA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12:25  
END TIME: 1:20  
TOTAL TIME(LENGTH OF SERVICE): 55 mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented 25 mins late for appointment after calling to say she was stuck in traffic. PT appeared much better today and was more emotionally composed despite traffic stress. PT has been rx'ed steroid treatment for her lupus by her MD and has responded favorably. She reported experiencing some cognitive side effects, but these were seemingly mild. PT produced two A-B-C sheets which were completed appropriately and thoroughly and discussed. PT had strong emotional reaction to identification of catastrophic thinking as a common cognitive error. Discussion centered around her difficulty with interpreting issues pertaining to her brother as anything other than "awful." It was acknowledged that these issues paralleled other relationships in her life, and self-blame was identified as a related type of cognitive error. Finally, her concerns about her marital relationship (while relatively minor) were also discussed in the context of the A-B-C model. Overall, a good session with PT beginning to grasp importance of identifying and modifying unhelpful thinking habits.

PT has had other medical follow-up with pulmonologist and has sleep study related to apnea scheduled later this week, after which she will follow up with Dr. Guille for continued psychiatric consultation.

PLAN: Continue cognitive-behavioral therapy.

Confidential

Page: 2

Name: FLEHER, DIANE

Date Printed: 06/09/11

ID: 1783356 SEX:F AGE:52

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RETURN TO CLINIC: 6/14/2011 at 12 noon.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 06/07/2011 04:18PM

05/25/11 : 02:56pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 11:55 am  
END TIME: 12:45  
TOTAL TIME(LENGTH OF SERVICE): 50 minutes

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented in extreme agitation. She was hyperventilating and expressed enormous concern about a painful muscle spasm in her face. She was concerned she might be having a stroke or a relapse of Bell's palsy. After a quick cranial nerve screen performed by attending psychiatrist, it was determined that she was having an anxiety-related facial muscle spasm. PT was educated about the impact of anxiety and panic symptoms on physiological functioning, and in vivo relaxation skills were demonstrated and practiced. PT continues to have poor sleep and suffer from a lupus flare up, which is negatively affecting her overall well-being. In addition, on the way to the session, she received some negative information from her attorney. Discussed her processing of this information and her fears regarding how other people might perceive her, emphasizing clear thinking about what is and is not under PT's control. PT was able to calm down and relax and process the information accordingly. Briefly joined in session by PT's sister and husband, who verbalized their support for her, which PT found reassuring. PT reported having had a bad week previous to session, including fainting (which she described as postural neurogenic syncope) while doing laundry. PT did not complete A-B-C sheets this week, but promised to continue them for next week.

Name: FLEHER, DIANE

Date Printed: 06/09/11  
ID: 1783356 ... SEX:F AGE:52

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PLAN: Continue CBT.

RETURN TO CLINIC: Tues May 31, 1 pm

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 05/25/2011 03:24PM

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06/06/11 : 02:36pm  
PHONE MESSAGE - PSYCHIATRY  
MEDICAL UNIVERSITY OF SOUTH CAROLINA

TIME CALL RECEIVED: 02:36 PM

PATIENT: DIANE FLEHER, 52 year  
DOB: 05/01/59  
MRN: 1783356

CALLER'S NAME: Patient

RELATION TO PATIENT: Self

PHONE NUMBER WHERE CALLER CAN BE REACHED: Home: (865)805-4550  
Pt did not show for scheduled appointment. Pt to re-schedule when needed.

\*\*\*\*\*REASON FOR CALL:

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 06/06/2011 02:37PM

05/20/11 : 02:41pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24c



PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: SOVA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 12:05 pm  
END TIME: 1:00 pm  
TOTAL TIME(LENGTH OF SERVICE): 55 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adi D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented in some distress due to lack of sleep that was precipitated by a lupus flare up. She winced and scratched her arms (on which sores were visible) throughout the session. Discussed her meeting with her physician and his plan to have her get a consultation related to re-instituting CPAP. PT completed her homework assignment of A-B-C sheets, and much of session was spent discussing them. She struggles somewhat with common problems associated with beginning A-B-C sheets - writing down overlong descriptions of scenarios and differentiating thoughts from feelings. Provided feedback on this and assigned an additional week of monitoring using these sheets. PT reports some ongoing misunderstandings and conflicts with husband that is causing her additional stress at this time.

PLAN: Continue CBT and A-B-C sheet assignment.

RETURN TO CLINIC: Tues May 24 at 12 noon.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 05/20/2011 03:46PM

05/10/11 : 04:46pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24c



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
52 year old female

START TIME: 11:00  
END TIME: 11:50  
TOTAL TIME(LENGTH OF SERVICE): 50 Mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT did not complete A-B-C homework assignment due to having a stressful/busy week preparing for family event. Agreed to complete for next week. Reviewed purpose of assignment. PT discussed appointment with Dr. Guille yesterday and was very satisfied with guidance and plan provided at that appointment. PT reported having very low BP over the weekend with considerable fatigue. Framed as possible rebound reaction from excitement and build-up to family event, which went "perfectly" according to PT. Much of session was spent discussing PT's relationship with her father, and her thoughts and feelings about his "betrayal" of her later in his life, and how that contrasted with the warm, loving relationship PT reports from her childhood. Explored the relations among PT's thoughts and feelings about father, and their relation to most recent conflict with her older brother.

PLAN: Continue CBT, with emphasis on cognitive coping. Complete A-B-C homework assignment.

RETURN TO CLINIC: 5/17/2011 at 11 am.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 05/10/2011 04:52PM

05/09/11 : 02:01pm  
INSTITUTE OF PSYCHIATRY - PMA  
MEDICAL UNIVERSITY OF SOUTH CAROLINA  
PSY PMA: 05/09/11

24C

graphic

**PATIENT INFORMATION:**

NAME: DIANE FLEHER  
DOB: 05/01/59  
MUH: 1783356

INSURANCE: THE STATE OFFICE OF

START TIME: 12  
END TIME: 1  
TOTAL TIME: 1hr

**HISTORY OF PRESENT ILLNESS:**

DIANE is a 52 year old female who presents for a medical and psychiatric evaluation. Pt reports being in her usual state of health until Oct. 2010 when her brother became agitated and angry and physically pushed her 3 times. Since then patient reports 'not being able to hold it together' and feeling 'overwhelmed by everything' and 'unable to function'. She denies reexperiencing the event or symptoms consistent with hyperarousal. She does report that she has not spoken with her brother since the event but denies other avoidance. She believes that the event may have 'triggered' her recollection of past physical abuse by her first ex-husband but again denies re-experiencing, avoidance or hyperarousal associated with prior D.V. She reporting being tearful and upset at least 2 days out of the week, but denies depressed mood or anhedonia. She reports excessive fatigue which proceeded the event but seems to be more frequent and excessive. Reports feeling anxious but denies panic attacks or generalized constant worries. She denies perceptual disturbances or using alcohol or other substances.

**PPH:**

Reports a history of 'depression' and 'anxiety' which coincided with the onset of Lupus diagnosed in 1988. Has had several trials of antidepressant medications with unknown response including zoloft, prozac and effexor. Was prescribed lyrica for fibromyalgia but experienced side effects. Denies prior psychiatric hospitalizations. Denies h/o SA.

**PMH:**

Lupus (discoid and systemic): diagnosed in 1998, unknown last flare but required short course of prednisone in march, 2011.  
Neurogenic Syncope: diagnosed in 1998  
Hypothyroidism: (TSH completed 2 months ago- wnl)  
Fibromyalgia  
Obstructive Sleep Apnea (has not used CPAP in many months).  
RLS  
Migraines

**PSH:**

2 c-sections

**Allergy:**

ancef-anaphylactic shock

**WEIGHT:**

**HEIGHT:**

**BP: \**

**HR:**

Name: FLEHER, DIANE

Date Printed: 06/09/11  
ID: 1783356 SEX:F AGE:52

Appearance: Wellgroomed (but pt reports unusual to not be wearing make-up etc.)  
 Eye Contact: good  
 Energy: poor  
 Concentration: poor  
 Appetite: good  
 Thought processes: Circumstantial  
 Thought content: Suicidal Ideation - but no intent or plan to end her life. thoughts are egodystonic  
 Perception: Normal  
 Behavior: Cooperative  
 Interest: good  
 Interactions: interacting well-only decreased with energy poor  
 Insight: good  
 Judgement: good  
 Speech: normal rate, volume, tone  
 Motor: Normal  
 Level of Consciousness: awake  
 Mood: Depressed  
 Affect: Labile anxious  
 Oriented to person, place, time and situation  
 Medication compliant: yes  
 Anxiety symptoms: shakes  
 Sleep: Sleeps well with medication approximately 9hrs/night with 3-4 awakenings (bathroom, 'gasping for air) but able to fall back to sleep quickly  
 Safety: Agrees to be safe

Patient able to ensure safety: yes

Patient agrees to notify therapist if they cannot maintain safety: yes

**MEDICATION RECONCILIATION:** Reviewed all medications and doses, Assess for effectiveness, Assessed for side effects**MEDICATIONS:**

Plaquenil  
 Cymbalta 60  
 Wellbutrin XL 300  
 Hydrochloroquine 200  
 Synthroid .100  
 benazepril/HCTZ 20/12.5  
 Temazepam 300

## PRN:

Clonopin 0.5  
 Tramadol 50  
 Prednisone 10  
 cyclobenzaprine 10  
 hydrocodone?APAP 7.5/500  
 Rizatriptan 10

**CURRENT MEDICATION SIDE EFFECTS:** None**REVIEWED:** Compliant with medications, Reviewed recent events, Discussed patients response; Explored triggers to recent symptoms**EDUCATION:** Education provided about patients diagnosis, Education provided about patients treatment, Education

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provided about coping strategies

**MEDICAL PROBLEMS:**

- Lupus
- Hypothyroid
- Neurogenic syncope
- Obstructive Sleep Apnea
- Fibromyalgia
- Migraines
- Restless Leg Syndrome

**LAB REVIEW:** recent lab results unavailable

Discussed strategies to cope with: fatigue

Discussed strategies to communicate with: husband, providers

**ASSESSMENT:** 52 year old female with multiple medical problems presenting with worsening of mood, anxiety and excessive fatigue in the context of recent assault, history of DV and untreated obstructive sleep apnea. While there are a number of co-occurring conditions that can worsen patients mood, anxiety and energy i.e., trauma, Lupus, hypothyroidism, neurogenic syncope, OSA there is no current evidence of lupus flare and TSH was recently normal. Worsening of neurogenic syncope is possible given report of sx and low BP but more likely pt's mood and energy would benefit from re-instating CPAP for OSA. Once this is treated, we can then re-evaluate her mood and fatigue and adjust medications as needed.

<b>Axis I:</b> 1) 309.28 Adj D/O with Anxious and Depress	
<b>Axis II:</b>	
<b>Axis III:</b> 1) Fibromyalgia (by report) 2) Lupus (by report)	
<b>Axis IV:</b>	
<b>Axis V:</b>	

**PLAN:**

- 1) OSA: meeting with internist Wednesday 5.11.11 to readjust CPAP settings
- 2) Neurogenic Syncope: patient given written instructions to discuss new symptoms with internist.
- 3) Mood, Anxiety, fibromyalgia: first treat OSA and then readjust medications.
- 4) psychological stressor: pt to continue to meet with primary therapist.
- 5) RTC in 2 weeks after starting CPAP.

# SIGNED BY CONSTANCE GUILLE, MD (ATTENDING) (26D) 05/09/2011 02:41PM  
 # REVIEWED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 05/10/2011 10:44AM

05/03/11 : 12:35pm

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA



PATIENT INFORMATION:

NAME: DIANE FLEHER  
 DOB: 05/01/59  
 MRN: 1783356

INSURANCE: THE STATE OFFICE OF

Confidential patient information  
 Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
 52 year old female

START TIME: 11:05 am  
 END TIME: 12:05 pm  
 TOTAL TIME(LENGTH OF SERVICE): 60 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adi D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT reported having a somewhat improved week but still suffered from considerable lethargy, depressed mood, and concentration problems. Also reported some other apparently stress-related physical problems. Discussed the A-B-C model of cognitive coping with PT, using example from her ongoing frustration with organizing a luncheon. PT appeared to understand quite well. Assigned A-B-C sheets as homework exercise for next week. Also discussed PT's goals and expectations for treatment. PT is willing to discuss impact of past traumas on her current functioning, even though she recognizes that doing so will have emotional repercussions. Plan is to continue ind tx with a focus on cognitive therapy and cognitive processing of past traumas.

PLAN: Continue cognitive-behavior therapy (using elements of cognitive processing therapy).

RETURN TO CLINIC: May 9 at noon to see Dr. Guille; May 10 at 11 am to see me.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 05/03/2011 12:40PM

04/26/11 : 03:24pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: SOVA

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
51 year old female

START TIME: 10:55 am  
END TIME: 11:55 am  
TOTAL TIME(LENGTH OF SERVICE): 60 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adi D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT presented for first appointment after returning from extended vacation last week. She reported ongoing difficulties with mood, concentration, and anxiety since her return. Problems were present during her vacation, also, but at decreased frequency. She described several pleasurable aspects of her vacation, as well, and it seems that overall the time away was beneficial for her. In particular, she reported an increase in tension and stress since her return. Discussed the importance of relaxation to help manage anxiety symptoms, and of not engaging in too much worry about the presence of her current symptoms, as this will only exacerbate stress and anxiety. PT reported that she has applied for disability due to both psychological and physical (fibromyalgia pain) symptoms.

PLAN: Resume weekly Ind Tx to address symptoms of anxiety and depression.

RETURN TO CLINIC: Tues 5/3/2011 at 11 am.

Name: FLEHER, DIANE

Date Printed: 06/09/11  
ID: 1783356 SEX:F AGE:52

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# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 04/26/2011 04:28PM

11/23/10 : 04:26pm

CLINICAL NOTE- CRIME VICTIMS CENTER  
INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA  
24C



PATIENT INFORMATION:

NAME: DIANE FLEHER  
DOB: 05/01/59  
MRN: 1783356

INSURANCE: GRANT OTHER

Confidential patient information  
Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
51 year old female

START TIME: 1 pm  
END TIME: 1:50 pm  
TOTAL TIME(LENGTH OF SERVICE): 50 Mins

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I: 1) 309.28 Adj D/O with Anxious and Depress	
Axis II:	
Axis III: 1) Fibromyalgia (by report) 2) Lupus (by report)	
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT was on time and appeared to be doing much better. She reported that the past week had been very busy planning and preparing for upcoming extended vacation, which had helped keep her mind off of her emotions. She did say that occasionally her feelings "swept over" her and were overwhelming, but these were less frequent. Discussed how such episodes were to be expected and coping methods for managing them. PT plans to keep journal while on vacation and begin to explore how her past abusive relationship with 1st husband might be affecting her current functioning. Explained over-filled closet metaphor to PT, which she embraced. Discussed contingency plans for any crises that might occur while PT is on vacation.

PLAN: PT plans to recontact NCVC for appointment in 5-6 months after she returns from vacation.

RETURN TO CLINIC: Not scheduled pending return from vacation.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 11/23/2010 04:30PM

Name: FLEHER, DIANE

Date Printed: 06/09/11

ID: 1783356 SEX:F AGE:52

11/03/10 : 10:07am

CLINICAL NOTE- CRIME VICTIMS CENTER

INSTITUTE OF PSYCHIATRY - MEDICAL UNIVERSITY OF SOUTH CAROLINA

24C

PATIENT INFORMATION:

NAME: DIANE FLEHER

DOB: 05/01/59

MRN: 1783356

INSURANCE: GRANT OTHER

Confidential patient information

Do not release without express written consent of patient or parent/legal guardian

DIANE FLEHER  
51 year old female

START TIME: 9:05

END TIME: 10:00

TOTAL TIME(LENGTH OF SERVICE): 55 min

SERVICE TYPE: Individual Therapy

CURRENT MEDICATIONS:

Axis I:	AXIS I(1): 309.28 Adj D/O with Anxious and Depressed Mood
Axis II:	
Axis III:	AXIS III(1): Fibromyalgia (by report) AXIS III(2): Lupus (by report)
Axis IV:	
Axis V:	

PSYCHIATRIC PROBLEM ADDRESSED: 1

PT was distressed but less overtly tearful today (though she did cry occasionally). PT reported that she had court upcoming next Tuesday and was anxious about it. Discussed her rationale for going to court and what she perceived to be possible positive and negative outcomes. Discussed PT's perceptions about the presence/absence of support from her siblings. Encouraged PT to use positive self-talk and cognitive coping to manage court-related anxiety; also challenged some of PT's unhelpful cognitions regarding her choices about her work situation, particularly her concerns about "abandoning" her brother/job.

Name: FLEHER, DIANE

Date Printed: 06/09/11  
ID: 1783356 SEX:F AGE:52

PLAN: Continue supportive and cognitive therapy.

RETURN TO CLINIC: Wed 11/10/10, 11 am.

# SIGNED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 11/03/2010 10:13AM  
# REVISED BY DANIEL W SMITH, PhD (ATTENDING) (24C) 11/03/2010 10:14AM



MUSC  
MEDICAL UNIVERSITY  
of SOUTH CAROLINA

National Crime Victims Research & Treatment Center  
(NCVC)

Institute of Psychiatry  
ADULT Screen

Intake Appt Date and Time: 10/22/10 @ 9:30 am Clinician: -- Dan Smith

DATE and TIME of phone screen 10/13/10 at 444pm

MRN # 1783356

Insurance Authorization:  Yes  No  Pending

Thanks for calling the NCVC. My name is Jami. In order to help you get the services you are requesting, I need to get some basic information from you.

1. Have you called the NCVC before?  Yes  No (If yes, when: )  
If yes, have you been seen here before?  Yes  No (If yes, pull chart)

2. What is your name? Diane Fleher

3. Date of Birth 05 01 1959

4. Social Security Number 251 23 3523

5. What is your address (please include zip code):

7720 Eagle Lake Rd

N Charleston, SC 29418

6. What is your telephone number: Home: 865.805.4550

Work:

Other:

7. If we need to contact you, is it OK for us to leave a message? (We never say where we are calling from, only MUSC).

At home:  Yes  No  
Answering machine:  Yes  No  
Other number:  Yes  No  
Work:  Yes  No

8. If we cannot reach you by phone, can we send a letter to the address you provided?

Yes  No  
 Send to another address:



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National Crime Victims Research & Treatment Center  
(NCVC)  
Institute of Psychiatry  
ADULT Screen

Insurance Information

Now I need to ask you a few questions about your method of payment for services.

9. Do you have private insurance?

- Yes
- No- Continue with screen

10. Do you have Medicare or Medicaid?

- Yes, Medicare
- Yes, Medicaid                      Medicaid number
- Medicaid pending
- No

For patients with NO insurance: Our fee for the initial intake appointment is **\$165**. However, since you do not have insurance, there is a **50%** discount for services so that the fee for this initial evaluation will be **\$82.50** (for a trainee). You will be required to make an initial payment of **\$30** at the intake. Our established fee for one hour of individual therapy is **\$120**; with the 50% discount, this fee will be **\$60**. You will be required to make an initial payment of **\$30** at each session and our financial counselor can work with you to establish a payment plan.

If patient is interested in speaking with financial counselor, give name and number: Jean Hodnett at 792-5143

Now, in order to determine whether the NCVC is the best treatment option for you, I will need to get some more information from you. If we determine that the NCVC is not the best treatment option at this time, I will be happy to provide referrals to the community.

**Crime and Symptom Information**

1. As you probably know, the NCVC provides specialized mental health treatment for people who have experienced a crime or other type of traumatic event. Did you experience a crime or was it some other type of traumatic event?

- Crime
- Other event
- Neither

2. What type of crime was it? (Don't read this)

- |   |   |                                   |  |
|---|---|-----------------------------------|--|
| <input type="checkbox"/> Adult SA           | <input checked="" type="checkbox"/> PA-non-accidental | <input type="checkbox"/> Robbery  | <input type="checkbox"/> Homicide of family member |
| <input type="checkbox"/> Drunk driver death | <input type="checkbox"/> DV                           | <input type="checkbox"/> Accident | <input type="checkbox"/> Witness DV                |
| <input type="checkbox"/> Childhood SA       | <input type="checkbox"/> Childhood PA                 | <input type="checkbox"/> Other    |  |

3. Was the crime reported to police or other authorities?

- Yes, police **CPD**
- No
- Unsure



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**MEDICAL UNIVERSITY**  
**of SOUTH CAROLINA**  
**National Crime Victims Research & Treatment Center**  
**(NCVC)**  
**Institute of Psychiatry**  
**ADULT Screen**

Other

4. When and where did the incident happen? **yesterday at place of business, 1017254 is case number - Dolphin Cove Marina in Charleston, SC**

5. Is there ongoing legal involvement due to this crime/trauma?  
 Yes  
 No (Skip to Question 8)

6. Does this involve family, criminal, or civil court?  
 Family Charges:  
 Criminal Charges:  
 Civil Charges:

7. What was the court decision? (Note if still pending)

*(Note: If civil court is still pending, stop the interview at this point and provide the following information: We would like to explain that there is a difference between legal and clinical evaluations, and we need to clarify this. If you are calling for purely clinical services, we would be glad to continue with this interview. Please note that if you were to come into the NCVC for treatment, you would be financially responsible for the bill at the time of service. Unfortunately, we are not allowed to delay billing until the case is heard and there is a settlement. Sometimes attorneys recommend an evaluation for clients at the NCVC. If this is the case, the attorney should contact a faculty member at the NCVC directly and arrange for an evaluation. In this case, the attorney pays for the evaluation. Based on that evaluation, a recommendation for further treatment at the NCVC or elsewhere may or may not be made. Given this information, would you like to request clinical services, or do you want to have your attorney's office contact us?)*

Clinical Services (Continue with interview)  
 Attorney's office will call (End interview)

8. Please tell me briefly about the abuse/crime/trauma that you experienced. (i.e. what happened, where the event occurred, identity of the perpetrator.) **my boss is also my brother (78 years old) has been verbally abusing me all the time, and he also started shoving me down the hall yesterday, made a lot of threats, I called the police and now I'm having to deal with pressing charges on my brother issues**

9. Please tell me briefly about the most important emotional and behavioral problems you have been having as a result of



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ADULT Screen

the crime (other traumatic event) that you would like us to help you with. (Summarize description of problems):  
**incessant crying, couldn't catch my breath/hyperventilating, also 25 years ago, I was a DV victim, and this incident has triggered feelings regarding that, anxiety and fear**

10. How did you hear about our clinic? (Check all that apply.)

- Physician
- Therapist
- Police
- Solicitor's office
- Lawyer
- DSS
- Mental Health Center
- PAR
- DNLCC
- Family member or friend
- Someone else

May we contact them?  Yes  No

11. Please get referrer's name and phone number: **Ron Acierno - 792.2949**

**Mental Health Treatment**

12. I need to get some additional information about emotional problems you might have had in the past. Have you ever received help from a mental health professional (e.g., psychologist, social worker, psychiatrist, or counselor) for any emotional problems?

- Yes
- No (Skip to Question 14)

13. What type of mental health treatment did you get (outpatient? inpatient?)

Outpatient Dates and duration **1987 -- had a child inpatient in 1995**

For what kinds of problems? **DV victim -- had treatment dealing with my child's diagnosis**

Inpatient Dates and duration

For what kinds of problems?

14. Are you currently receiving any type of mental health treatment? By mental health treatment, I mean any type of outpatient therapy or medication prescribed for any emotional problems.

- Yes, therapy only
- Yes, medication only
- Yes, both
- No (Skip to Question 18)

15. For what problems are you currently receiving therapy? (If for trauma-related problems, end screen. Explain that we can't overlap services unless there are extenuating circumstances, i.e. present therapist is moving soon.)

Name: DIANE G FLEHER

Ref NO: K96445

A review of medical information in your patient's record indicates that he/she may have a mental condition. To better determine if a mental condition significantly limits this patient's ability to work, please complete the following questions:

Your records indicated that this patient's most recent date of treatment was 06/23/11. If there are subsequent treatment records, please attach.

What is his/her mental diagnosis? Post-traumatic Stress Disorder

What medications are being prescribed for the mental condition?  
See attached

Has the medication(s) helped his/her condition? X Yes \_\_\_\_\_ No

Has psychiatric care been recommended? X Yes \_\_\_\_\_ No If yes, to whom did you refer this patient?  
I did not refer

Please comment on mental status by circling the appropriate response:

<u>Orientation:</u>	time	person	place	situation	<u>all</u>
<u>Thought Process:</u>	intact	racing	slowed	<u>distractible</u>	
<u>Thought Content:</u>	<u>appropriate</u>	suspicious	obsessive	<u>paranoid</u>	
<u>Mood/Affect:</u>	normal	<u>worried/anxious</u>	flat	<u>depressed</u>	angry withdrawn
<u>Attention/Concentration:</u>	good	<del>poor</del>	poor		
<u>Memory:</u>	good	<u>adequate</u>	poor		

Does the patient exhibit any work-related limitation in function due to the mental condition? (Circle the appropriate response.) None Slight Obvious Serious Very Serious

Please use the space below to provide any comments on this patient's work-related limitations as a result of his/her mental condition. (If additional space is needed, please attach another page, including the patient's name and SSN or Ref. No.)

Is this patient capable of managing his/her funds? X Yes \_\_\_\_\_ No

Physician's Signature Cain Lackey Maguire & Oliverio Date 7/2/11

L2MS

615 Wesley Drive, Suite 300  
Charleston, SC 29407  
Phone (843) 266-4400  
Fax (843) 577-0455

Robert W. Cain, M.D., F.A.C.P.  
Robert O. Oliverio, Jr., M.D.  
William F. Maguire, Jr., M.D.  
Keith W. Lackey, M.D.

SCHOOL / WORK EXCUSE

TO WHOM IT MAY CONCERN \_\_\_\_\_

This is to certify that

Diane Fleher

Is or has been under my medical care from

11/5/10 to 11/19/10

And has been unable to perform his or her regular duties during this time.

Additional comments: \_\_\_\_\_

MD Signature: \_\_\_\_\_

Date: 11/19/10

615 Wesley Drive, Suite 300  
Charleston, SC 29407  
Phone (843) 266-4400  
Fax (843) 577-0455

Robert W. Cain, M.D., F.A.C.P.  
Robert O. Oliverio, Jr., M.D.  
William F. Maguire, Jr., M.D.  
Keith W. Lackey, M.D.

**SCHOOL / WORK EXCUSE**

**TO WHOM IT MAY CONCERN**

This is to certify that

Diane Fleher

~~is or~~ has been under my medical care from

\_\_\_\_\_ to \_\_\_\_\_

And has been unable to perform his or her regular duties during this time.

Additional comments:

to be out for 2 weeks

MD Signature: \_\_\_\_\_

[Signature]

Date:

10/22/10

615 Wesley Drive, Suite 300  
Charleston, SC 29407  
Phone (843) 266-4400  
Fax (843) 577-0455

Robert W. Cain, M.D., F.A.C.P.  
Robert O. Oliverio, Jr., M.D.  
William F. Maguire, Jr., M.D.  
Keith W. Lackey, M.D.

SCHOOL WORK EXCUSE

TO WHOM IT MAY CONCERN

This is to certify that

Diane Fleher

Is or has been under my medical care from

10/12/10 to 10/22/10

And has been unable to perform his or her regular duties during this time.

Additional comments: \_\_\_\_\_

MD Signature: \_\_\_\_\_

Date: 10/18/10

615 Wesley Drive, Suite 300  
Charleston, SC 29407  
Phone (843) 266-4400  
Fax (843) 577-0455

Robert W. Cain, M.D., F.A.C.P.  
Robert O. Oliverio, Jr., M.D.  
William F. Maguire, Jr., M.D.  
Keith W. Lackey, M.D.

SCHOOL / WORK EXCUSE

TO WHOM IT MAY CONCERN

This is to certify that

Diana Fisher

Is or has been under my medical care from

10/12/10 to 10/18/10

And has been unable to perform his or her regular duties during this time.

Additional comments: \_\_\_\_\_

MD Signature: [Signature] Date: 10/12/10

744-2562 296-7148  
David Rose @ Dolphin  
Cove called & wanted  
Verification that this  
is DR's signature  
on excuse. Confirmed  
that it is - Could  
not give any other  
info due to  
HIPAA  
laws  
RD 10/14/10

COATED  
TABLETS  
NIASPAN®  
NIACIN EXTENDED-RELEASE TABLETS

Patient name **Diane Fleher**

Chart Number

15472

DOB

05/01/59

Date of Visit

10/12/2010

Reason for visit

Sick visit

Current Concerns

patient had an altercation at work which precipitated an anxiety attack. The patient's crying, hyperventilating. He's also developed migraine headache. She does have clonazepam available at home, but she thought this was only for nighttime use.

Past Medical History  None

Past Surgical History  None

Lupus 1988  
proteinuria  
Varicella  
ITP  
Fibromyalgia  
neurogenic syncope  
migraines  
hypothyroidism  
Asthma

other

C-sections  
B clavical resection  
Breast augmentation x 2  
hysterectomy

Pneumovax

flu vaccine

Colonoscopy 1999

Medications  None

Cymbalta 60		Vicoprofen 7.5/200	p.r.n.
tramadol 50, 1-2	q.i.d.	Advair 250/50	
Valtrex 1 g tid	p.r.n.	Maxalt 10	
Wellbutrin XL 300	daily	clonazepam 0.5 mg	q.h.s.
Synthroid 0.1		Plaquenil 200	
benazepril/HCT 20/12.5	daily	temazepam 30	q.h.s.
		Toprol xl 25	daily

Social History

No  current tobacco pack-years 8/d

prior tobacco

No  Alcohol drinks per day

Drug Use  detox

No Known Drug Allergies

Allergies Ancef

Family History Lupus

Occupation

run marina

Patient name Diane Comer

Chart Number 15472

Date of Visit 10/12/10

Review of Systems

Denies headaches, visual changes, double vision, neck swelling, sore throat, chest pain, palpitations, dizziness or loss of consciousness, shortness of breath, cough or wheezing, abdominal pain, nausea, vomiting, bright red blood per rectum or dark tarry stool, heartburn, difficulty swallowing, urinary frequency, burning, pain, incontinence or hesitancy. Denies focal weakness, seizures, numbness or tingling. Denies significant weight gain, weight loss, fatigue, fevers or sweats

Negative As above with the Exception of the Following

Physical Exam

Pulse 90

BP 120/60

RR

Temp

Weight 212

- HEENT: Normocephalic, atraumatic PERRLA/EOMI EAC clear,  Other
- TM intact, pharynx clear, neck supple, no JVD carotid bruit or thyromegaly  Other
- CV: Regular rate and rhythm, normal S1, normal S2, PMI nondisplaced, no murmurs, rubs or gallops  Other
- Lungs: Clear to auscultation, percussion, no wheezes, rales or rhonchi, good air movement bilaterally  Other
- Abdomen: Soft, non tender, bowel sounds positive, no hepatosplenomegaly, no abdominal masses or bruits  Other
- Extremities: No cyanosis, clubbing or edema. Peripheral pulses are two plus bilaterally in the upper and lower extremities.  Other
- GU:  normal male external genitalia, no testicular masses, no penile lesions, no hernias noted  Other
- normal female external genitalia, no vaginal lesions, no cervical lesions, no discharge.  Other
- Pap done  Breast Exam Normal  Other
- Prostate: Non-nodular not enlarged.  Other
- Rectal: Heme-negative brown stool in vault, normal tone,  Other
- Neuro: Alert and oriented times three, grossly nonfocal  Other
- Derm: No abnormal rashes, malignant appearing lesions or significant skin changes  Other

Results

Impression:

history of lupus-now on Plaquenil after baseline eye exam  
panic-clonazepam 0.5 mg 1-2 po bid prn

Follow-Up: one month

Signed By

Robert Oliverio, MD

Digitally signed by Robert Oliverio, MD  
DN: cn=Robert Oliverio, MD, o, ou,  
email=Robert.oliverio@RSFH.com,  
c=US  
Date: 2010.10.12 15:57:12 -04'00'

- 80 -

**CAROLINA NEUROLOGICAL CLINIC, L.L.P.**

**JAMES L. BUMGARTNER, M.D.**  
**THOMAS H. DUKES, III, M.D.**  
**CHARLES S. JERVEY, M.D.**  
**HAMID R. BAHADORI, M.D.**

**125 Doughty Street**  
**Suite 460**  
**Charleston, SC 29403**  
**(843) 723-0202**  
**Fax (843) 723-1052**

**PATIENT: DIANE FLEHER**  
**DATE: SEPTEMBER 27, 2011**  
**FOR: NEUROLOGIC CONSULTATION**  
**REFERRED BY: ROPER EMERGENCY DEPARTMENT**

**HISTORY OF PRESENT ILLNESS:** The patient is a 52-year-old female referred from the Roper ED. The patient reports awakening two nights ago with severe neck pain associated with numbness of both hands and intermittent pain of both hands with a sense of diminished grip strength and dexterity. There is no antecedent history of trauma. She denies any prior similar symptoms.

She did have a CT brain scan because of headache on 09/16/11 but reports only a minimal headache presently. CT of brain was normal.

Additionally, the patient complains of low back pain and prominent intermittent "rectal spasm" since she was assaulted about one year ago while working as a manager of a marina. She becomes quite tearful in relating this event and has been followed by psychiatrist and psychologist at MUSC.

Additionally, the patient reports a history of neurocardiogenic syncope, first diagnosed about 15 years ago. She recalls having a positive tilt test. She has continued to experience recurrent syncope and estimates having had 10 such spells this year, most recently about two weeks ago.

**PAST MEDICAL HISTORY:** Status post cholecystectomy in 2009. Prior bilateral shoulder procedures in Knoxville. Hysterectomy in 1990. Status post two cesarean sections 1982 and 1984.

**CURRENT MEDICATIONS:** See attached list.

**REPORTED ALLERGIES:** Ancef and latex.

**SYSTEMS REVIEW:** Documented and reviewed new patient form.

**FAMILY HISTORY:** The patient's father had dementia.

**SOCIAL HISTORY:** The patient has had two children. She reports that she is moving with her husband to Puerto Rico in about five weeks. She is not presently employed.

RE: DIANE FLEHER

09/27/11

Page - 2 -

**PHYSICAL EXAMINATION:** The patient is alert, pleasant, and cooperative. She appears sad and becomes tearful while relating her history. The head is atraumatic. There is restricted cervical range of motion in all directions with complaint of increased neck pain on attempted range of motion maneuvers. There are no cervical bruits. Lungs are clear. Cardiac exam with regular rate and rhythm without murmur. Speech is well articulated and fluent. Pupils are equal and reactive. Motility is full and conjugate with slight gaze-evoked nystagmus on lateral gaze. Facial movements are symmetric. The patient moves extremities actively and symmetrically. There is no drift. Fine motor movements appear normal. Muscle stretch reflexes are 1+ and symmetric in upper and lower extremities. Plantars are neutral. Ambulation appears stable.

**IMPRESSION:**

1. Recent onset of prominent neck pain, with bilateral upper extremity pain/paresthesias, etiology undetermined.
2. History of lupus and fibromyalgia, documentation uncertain, though followed by rheumatologist Dr. Roane.
3. Posttraumatic stress disorder.
4. Low back pain, posttraumatic in onset.
5. History of neurocardiogenic syncope.

**PLANS:**

1. MRI of cervical and lumbar spine.

*JLB*  
James L. Bumgartner, M.D.

JLB/sun

cc: Robert R. Oliverio, M.D.

Fax: 843-577-0455

*raised 9/20/11*

Georgia Roane, M.D.

Fax: 843-769-4853

*raised 9/30/11*

**Carolina Lung & Critical Care**  
Pulmonary and Critical Care Medicine  
Sleep Related Disorders

Bon Secours St. Francis Hospital  
2097 Henry Tecklenburg Dr., Suite 305 Charleston, SC 29414

Phone: (843) 763-3360

Fax: (843) 763-3038

NEW PATIENT PULMONARY CONSULTATION

Date: 5/26/2011

Robert Oliverio, MD.  
615 Wesley Dr. Ste 300  
Charleston, SC 29407.

Re: Diane Fleher  
DOB: 5/1/1959  
**Reason for Request:** Obstructive sleep apnea.

Dear Dr. Oliverio

Thank you for the kind referral of Diane Fleher.

**History of Present Illness:** As you know, the patient is a 52 year old female who presents for initial evaluation of obstructive sleep apnea. She notes she was diagnosed via polysomnogram in 2005. This was performed in Tennessee. She has a CPAP machine at home but has been noncompliant with it for over 3 years. Since her last polysomnogram, she does note a significant weight gain of about 30 pounds. Over the last several years she has had frequent nighttime awakening and attributes that to restless leg syndrome. She typically goes to bed around 10 p.m. but cannot fall asleep until around midnight. She does exhibit a lot of late night eating but denies use of alcohol nightly and probably does not drink more than a glass of wine a week. She is not dependent on caffeinated beverages during the day. She does wake up about 2-3 times per night to urinate and will eventually get out of bed around 7 in the morning. She does nap throughout the day. Patient has a history of chronic depression, recently diagnosed with posttraumatic stress disorder after an assault in October 2010. She has been following up with a psychiatrist at MUSC who would like to refer her to be re-studied and initiated on treatment for sleep apnea before initiating any further treatment. She also has a history of chronic tobacco abuse at most one pack per day. She has cut down to a half pack per day. She is considering quitting and has used Chantix in the past. She currently has prescription available to her. She denies shortness of breath at rest or with exertion or daily, productive cough. She does report possible history of a lung nodule that has been followed up radiographically. The patient was diagnosed with lupus in 1988. At that time, diagnosis was made via kidney biopsy when she had difficulties with proteinuria. She denies prior history of renal failure requiring dialysis. She does have a discoid type rash on her upper extremities and chest and photosensitivity. She has also had lupus cerebritis and pleurisy in the past and ITP. She currently follows up with Dr. Roane and is being treated with Plaquenil. She has been noncompliant with prednisone use as it exacerbates her mood disorder.

**Past Medical History:** GI Hx: peptic ulcer disease. **Hematologic / Lymphatic Hx:** iron deficiency

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9 5

Fleher, Diane 5/26/2011 - 17389

anemia, ITP. **Neurological Hx:** syncope neurogenic, migraine headaches. **Immunologic Hx:** Discoid lupus. **Endocrine Hx:** hypothyroidism. **Cardiovascular Hx:** hypertension. **Musculoskeletal Hx:** fibromyalgia. **Respiratory Hx:** COPD, obstructive sleep apnea, restless legs syndrome. **Psychiatric Hx:** anxiety, depression, PTSD. **Vaccination Hx:** varicella

**Past Surgical History:** Patient admits past surgical history of C-section in 1982, 1984, hysterectomy in 1990, breast augmentation in 1985, shoulder surgery, right, cholecystectomy, partial claviclectomy in left shoulder.

**Medication History: Active:** benazepril-hydrochlorothiazide 20 mg-12.5 mg tablet (One PO QD) (active), bupropion 300 mg (One PO QD) (active), clonazepam 0.5 mg Tablet (po-bid) (active), cyclobenzaprine 10 mg tablet (One PO Q8h) (active), Cymbalta 60 mg Capsule, Delayed Release (E.C.) (one tab po qd) (active), hydrochloroquine sulfate tablets 200 mg (2 tab daily) (active), klonopin (active), Lortab 7.5-500 mg Tablet (1 tab p.r.n.) (active), Maxalt 10 mg tablet (every 2 hrs) (active), prednisone 10 mg tablet (1 po qd) (active), Promethazine 25 mg tablet (One PO Q6h) (active), Protonix 40mg tablet (1 po qd) (active), Synthroid 100 mcg Tablet (1 tab po qd) (active), temazepam 30 mg capsule (1 po Q HS) (active), valacyclovir 500 mg tablet (every 12 hrs) (active).

**Allergies:** Patient admits allergies to Ancef, latex. anaphylactic shock.

**Family History:** Patient admits a family history of cancer, lupus.

**Social History:** She was born in Charleston and has lived in Atlanta and Columbia. She is currently unemployed but has worked in the marina in the last 5 years. She has been smoking for 35 years at half pack per day. She has tried Chantix in the past and drinks one glass of wine per week. Denies drug use. She has not had the flu or pneumonia vaccine. She has no known exposure to TB. She has had PPDs that were negative in the past.

**Review of Systems: General:** She complains of weight gain, fatigue **HEENT:** No recent change in vision, hearing, sinus problems, difficulty swallowing or neck pain. **Endocrine:** No diabetes or thyroid disease. **Respiratory:** See HPI. **Heme/Onc:** No history of cancer, anemia, bleeding or clotting disorder. **Cardiovascular:** No chest pain, chest discomfort, PND, orthopnea, lower extremity edema, heart racing or palpitations. **GI:** Diarrhea, abdominal pain **GU:** No hematuria, dysuria or kidney stones. **Skin:** skin rashes itching. **Rheumatologic:** Joint pain **Neurologic:** loss of consciousness, headaches, weakness **Psychiatric:** lack of interest, anxiety.


**Physical Examination:** BP Sitting: 130/78 Resp: 18 HR: 85 Height: 5 ft. 8.000 in. Weight: 209 lbs. BMI: 32 SPO2: 98% Patient is a pleasant, 52 year old female. **HEENT:** Normocephalic, atraumatic, sclerae anicteric, external auditory canals and tympanic membranes are normal. **Oral Cavity:** Inspection of oral cavity reveals moist mucous membranes. **Nasopharynx:** Examination of nasopharynx reveals inferior turbinates are normal without lesions, discharge, or significant edema. Trachea is midline. No thyromegaly is noted. No lymphadenopathy is appreciated. **Respiratory:** Chest demonstrates normal fremitus, percussion, and volumes. Lung fields are clear to auscultation. No accessory muscle usage is seen. **Cardiovascular:** Normal S1, normal S2, No S3, No S4. No murmur, rub or gallop. No neck vein distension. JVD is not seen. Pulses are intact and normal. **GI:** Soft, nontender, Bowel sounds are present. Organomegaly is not appreciated. **Extremities:** She has a discoid-type, erythematous rash bilateral upper extremities and on shoulders and chest of shoulder girdle. The rest of the exam is normal. **Back:** No CVA tenderness. No spinal tenderness. **Neurological:** The patient is alert and oriented. Exam appears nonfocal. **Psychiatric:** The patient appears euthymic. **Skin:** No rashes. **Rheumatologic:** No joint abnormalities.

Fleher, Diane 5/26/2011 - 17389

**PULMONARY FUNCTION TESTS:** She has a normal spirometry without significant bronchodilator response. Normal lung volumes. Reduced diffusion capacity that is moderately reduced even when adjusted for lung volumes. However, this has not been adjusted to patient's hemoglobin which could explain the isolated reduction as could pulmonary hypertension. Flow volume loops are consistent with above data.

**ASSESSMENT AND PLAN:**

1. Obstructive sleep apnea. The patient has been recommended to be re-tested. She will be referred to St. Francis sleep lab for polysomnogram. Discussed need to avoid sedating medications and/or alcoholic beverages, avoidance of driving when feeling sleepy or operating machinery. Discussed availability of caffeinated beverages for long car rides and efforts of weight loss via diet and exercise.
2. History of pulmonary nodule. She does not appear to have prior CT of the chest on the Roper St. Francis system. We will schedule at next visit.
3. Isolated reduction in diffusion capacity, likely related to patient's known iron deficiency anemia, though will consider echocardiogram to assess for pulmonary hypertension. This will be scheduled at next visit. The patient is at risk having lupus.
4. Restless leg syndrome. May be related to underlying iron deficiency anemia. If patient's iron stores are adequately repleted but still exhibits significant symptomatology would consider initiation of treatment with Requip. This will be addressed after she obtains the sleep study.
5. At risk for COPD. This has been discussed in great detail with the patient. She is in the pre-contemplation stage. She is encouraged to continue her effort at cutting down her use of tobacco. Despite chronic tobacco dependence her lung function is preserved. She is asked to follow-up in 6 weeks.

  
Tal Klatchko, DO  
TK/ilw

Thank you very much for this kind referral. I greatly appreciate the opportunity to be involved in the care of your patient and look forward to working with you in the future.

A repeat spirometry and oximetry will be obtained upon return.

Patient Education: The diagnosis, pathophysiology, prognosis, treatment, and alternatives have been discussed with the patient.

Dictated but not read.

cc: Robert Oliverio, M.D. fax: (843) 577-0455. Roper,

1541A

CARLYSLE BARFIELD, M.D.  
 ALAN L. NUSSBAUM, M.D.  
 GEORGIA C. ROANE, M.D.  
 ERICA ANDERSON, D.O.

14 E FARMFIELD AVENUE  
 CHARLESTON, SC 29407  
 (843) 571-6067  
 FAX (843) 769-4853

RE: Diane Fleher

DATE OF VISIT: 11-1-2010

Mrs. Fleher is overall better. The Plaquenil has definitely helped. Unfortunately, she has been through a very stressful event with her brother and this has left her somewhat traumatized. She is seeing Dr. Oliverio for this and is also seeing a counselor.

She tells me that she has had protein in her urine and had a little workup including a CT scan which was unremarkable. It is partially because she had some back pain. In any event, she feels that her lupus is under better control in terms of rash and arthralgias. She will be leaving to go to the Bahamas in about four weeks.

PE: 134/95, P-86, 212 lb. Exam is unremarkable. No edema through the distal legs. The hands, wrists and shoulders move well and are non-tender. There is no active synovitis. The lungs were clear bilaterally. Cardiac exam showed a regular rate and rhythm.

IMPRESSION:

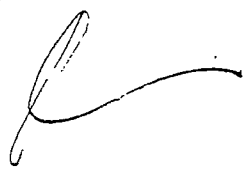
1. Systemic lupus characterized predominately by rash and arthralgias. However, she has a history of proteinuria and thrombocytopenia.
2. Irritable-bowel syndrome.
3. Recent episode of severe stress and she is undergoing counseling.

PLAN:

1. Continue the Plaquenil 400 mg Q.D.
2. I have given her prednisone 10 mg tablets to take 1 Q.D. if needed for a flare. She has #60 tablets and no refills. She can always call us from the Bahamas if she has a flare which cannot be brought under control.
3. Urinalysis and culture are ordered. I do want to reevaluate the proteinuria.
4. She will speak with Dr. Hadzizahic regarding the GI issues and I will see her in four months after she returns.

Georgia C. Roane, M.D.

CC: Robert R. Oliverio, M.D. (Fax: 577-0455)  
 Neven Hadzizahic, M.D. (Fax: 723-7850)



GCR/cah

**FAKED**  
**FILED**

CARLYSLE BARFIELD, M.D.  
 ALAN I. NUSSBAUM, M.D.  
 GEORGIA C. ROANE, M.D.  
 ERICA ANDERSON, D.O.

14 E FARMFIELD AVENUE  
 CHARLESTON, SC 29407  
 (843) 571-6067  
 FAX (843) 769-4853

RE: Diane Fleher

DATE OF VISIT: 9-10-2010

Mrs. Fleher has been kindly referred by Dr. Oliverio for further opinion regarding management of systemic lupus. She is a 51 year-old white female who tells me that she was diagnosed with lupus in 1988. Her symptoms began in 1984 after the birth of her second child. She had proteinuria during the pregnancy, but after delivery, this was a persistent problem. However, there was no further investigation or treatment initiated until 1988 when she underwent a kidney biopsy. At that time, she was diagnosed with lupus and begun on steroids. During this time, she also had issues with thrombocytopenia. She has a long history of photosensitive rash. On review of systems, she has had hair loss in the past, nasal ulcers and migraine headaches. She has not had problems with significant joint inflammation or swelling. She does have fibromyalgia and aches all over. She has had very subtle neurological symptoms including some subtle issues with word finding and memory.

She was treated with steroids along with Plaquenil and heavy sunscreen use. She did well, but she was quite bothered by the prednisone. She transferred her care from an immunologist to an internist years ago and he stopped the Plaquenil. This was approximately 1990. Since that time, she has taken prednisone when needed for flares. Currently, she feels that her lupus is under good control and she rarely needs the prednisone. However, if she is out in the sun, her rash will become quite active, and she has, on occasion, taken Medrol dose packs. She has just moved to Charleston and has also just remarried. She is establishing with new physicians here.

Her past medical history is notable for several other remarkable episodes. During the delivery of her second child, she developed anaphylactic shock as a reaction to a dose of Ancef. She came close to death, but did recover. At age 29, she developed chicken pox complicated by pneumonia and meningitis. Again, she was very, very ill, but has recovered.

Current medical issues include sleep apnea, migraine headaches, hypothyroidism, fibromyalgia, hypertension and esophageal reflux. She also has occasional outbreaks of herpes lesions. She has had a hysterectomy, cholecystectomy and two breast augmentations, most recently with saline implants.

Current medications are levothyroxine 0.1 mg Q.D., Cymbalta 60 mg Q.D., Wellbutrin XL 300 mg Q.D., benazepril/HCTZ 20/12.5 mg Q.D., tramadol 50 mg P.R.N., Restoril 30 mg Q.H.S., clonazepam 0.5 mg as needed for restless leg syndrome. She has Nexium 40 mg Q.D., metoprolol ER 25 mg Q.D., prednisone, hydrocodone and Maxalt when needed.

She is severely allergic to Ancef.

She smokes ½ pack per day and rarely drinks alcohol.

She had a maternal aunt who developed renal failure related to lupus early in life and was deceased at a young age.

Laboratory testing from July 13<sup>th</sup> of 2010 includes a creatinine of 1.3 which is in the normal range. CBC was normal including a platelet count of 243,000. Urinalysis was completely negative. Total cholesterol was 200 with an LDL level of 129. TSH was 2.18 which is normal.

Re: Diane Fleher  
Date of Visit: 9-10-2010

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PE: On physical exam, BP 140/90, T-98.2, P-80. The skin exam was notable for scattered, hypopigmented and occasional small scaling lesions of the arms. There was mild erythema on the chest. No lesions were noted on the face. Both wrists moved normally, but were mildly tender. No active synovitis. The elbows and shoulders moved normally. The feet, ankles, knees and hips moved adequately. There was soft tissue tenderness. The medial malleolar regions, anserine bursa regions, lateral epicondyles, and upper and lower back soft tissues were all tender. The lungs were clear bilaterally. Cardiac exam showed a regular rate and rhythm without murmur. The abdomen revealed some leftover quadrant tenderness, but no rebound guarding or splenomegaly was noted.

IMPRESSION: This patient has a long history of systemic lupus. Currently, she is doing extremely well with manifestations predominately of photosensitive rash and mild arthralgias. However, in the past, she has had some serious complications including proteinuria and thrombocytopenia. She has taken Plaquenil in the past with no adverse effects. In addition to lupus, she does have features of fibromyalgia.

RECOMMENDATIONS:

1. I would like for her to try the Plaquenil again. I have reassured her regarding the overall safety of this medication as well as the potential side effects. This medication has been found to have excellent long-term data in systemic lupus in terms of prevention of progression of more serious complications of the disease. She will start with 400 mg Q.D.
2. I did give her some prednisone to take if needed for a flare of skin disease. She will take 20 mg Q.D. for five days and then down to 10 mg Q.D. for seven days and then discontinue. She has 10 mg tablets.
3. She also has a prescription for Valtrex to take 500 mg once daily. This is a preventative dose for the herpes outbreaks which seem to be occurring frequently.
4. She should also resume the use of her CPAP. She has sleep apnea and I feel that regulating her sleep pattern will likely help the fibromyalgia. She is currently on Cymbalta and Wellbutrin as well as Restoril at night and all of this also should be helpful for fibromyalgia.
5. Definitely continue walking for exercise.
6. Follow up in eight weeks or call sooner if needed.



Georgia C. Roane, M.D.

CC: Robert R. Oliverio, M.D. (Fax: 577-0455)

GCR/eah

INDEXED  
9/21/10

JEAN R. HUTCHINSON, M.ED., CRC, CVE  
*Vocational-Consultant*

715 N. Godfrey Park Place  
Charleston, S.C. 29407

(843)766-1418  
Fax(843)763-0501

January 31, 2012

Paul D. G. Ribeiro  
Attorney at Law  
8068 Rivers Avenue, Suite A  
North Charleston, South Carolina 29406

RE: Diane Gerald Fleher

Dear Mr. Ribeiro:

At your request, the case file concerning the above referenced individual has been reviewed to determine her employability following an assault in her workplace on October 12, 2010. In determining employability, it is necessary to consider many factors. These factors include age, educational background, past work experience, and physical limitations, emotional/psychological problems, and pain.

Ms. Fleher is fifty-two years of age. Her age may affect her ability to adjust to a significant number of jobs in the national economy.

Ms. Fleher graduated from college in 1980 with a bachelor's degree in psychology and English. Education at this level refers to abilities in reasoning, arithmetic, and language skills that would enable the individual to perform the required job tasks of semi-skilled through skilled work.

Past work experience for Ms. Fleher includes work as a marketing administrator for one year, manager/director of commercial sales of a retail store for two years, senior executive sales consultant for a wireless communications company for seven years, account executive for a telecommunications company for one year, account executive for network services for a telecommunications company for one year, business account executive for a wireless telecommunications company for one year, major account executive for a communications company for one year, and business account executive for a telecommunications provider for three years. She last worked as a manager of a marina four years, last working on October 12, 2010.

The 1991 Edition of the Dictionary of Occupational Titles further defines these jobs as sedentary to light, skilled work. Sedentary work involves lifting no more than ten pounds at one time and occasionally lifting or carrying articles such as docket files, ledgers, and small tools. Walking and standing for brief periods of time is often necessary in carrying out sedentary work duties. Light work is defined as the ability to lift twenty pounds occasionally and up to ten pounds frequently. The abilities to walk and stand to a significant degree, to sit and push or pull arm or leg controls, or to work at a production rate are also required. Skilled work requires qualifications in which an individual uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustment to control or regulate the work. Dealing with people, facts, or figures or abstract ideas at a high level of complexity may be required as well.

Ms. Fleher was physically assaulted at her place of employment on October 12, 2010, by her supervisor who is also her brother. In her Statement dated October 29, 2010, she indicated that her brother/supervisor shouted obscenities at her, threatened her, and began shoving and pushing her. Ms. Fleher made a police report on October 12, 2010, in reference to this assault.

Ms. Fleher has diagnoses of post traumatic stress disorder, adjustment disorder with anxiety and depression following an assault by a relative, mood disorder associated with a medical condition, systemic lupus characterized by photosensitive rash and arthralgias, proteinuria, varicella, fibromyalgia, neurocardiogenic syncope, migraine headaches, hypothyroidism, asthma, irritable bowel syndrome, severe stress, esophageal reflux, sleep apnea, chronic cholecystitis, sensorineural hearing loss, dizziness, obstructive sleep apnea, restless leg syndrome, peptic ulcer disease, osteoporosis, anemia, affective disorder, anxiety related disorder, broad-based disc bulge with moderate facet arthropathy at L2-3, disc dessication with broad-based disc bulge, moderate facet arthropathy and ligamentous hypertrophy, with mild to moderate right foraminal narrowing at L3-4, moderate broad-based disc bulge with left foraminal disc herniation, moderate facet arthropathy and ligamentous hypertrophy, moderately severe left foraminal narrowing, and mild right foraminal narrowing at L4-5, minor disc bulge at L5-S1, grade I retrolisthesis with a prominent central disc herniation, cord deformity centrally to the right, and mild foraminal narrowing to the left at C4-5, central disc protrusion and cord deformity centrally at C5-6, broad based annular bulging and

probable central disc protrusion with mild foraminal narrowing bilaterally at C3-4, and broad based annular bulging with mild cord deformity centrally and to the right at C6-7.

Ms. Fleher has significant physical, psychological, and emotional problems and limitations. On a form dated July 23, 2011, Dr. Robert Oliverio indicates that psychiatric care has been recommended for Ms. Fleher and her thought process is "distractable", her mood/affect is "worried/anxious and depressed", and she exhibits "obvious" work-related limitations due to her mental condition.

Dr. Georgia Roane indicates on August 23, 2011, that Ms. Fleher is disabled and unable to work due to the severity of her symptoms.

In a letter dated September 8, 2011, Dr. Constance Guille and Daniel W. Smith, Ph.D. of the National Crime Victims Research and Treatment Center at MUSC indicate that Ms. Fleher has stress-related physical problems (lupus, fibromyalgia) that exacerbate, and are exacerbated by, her mental health morbidities. They are of the opinion that Ms. Fleher has been unable to function in a capacity that would enable her to perform any substantial work during her time in treatment, and it is expected that her conditions will continue to prevent her from doing so until her symptoms improve considerably.

In a telephone consultation with Daniel W. Smith, Ph.D. dated October 6, 2010, Kathleen Broughan, Ph.D. indicates that Ms. Fleher was found to have significant mood symptoms that are directly related to and exacerbate her physical conditions (lupus, fibromyalgia) and although she has shown some improvement and is very motivated to return to her former level of competence, she could find it very difficult to function in a work setting due to her inability to show up on a regular basis due to the interruption of psychological symptoms, her inability to manage interpersonal conflict, and the frequency and intensity of "triggering" situations that unpredictably result in overwhelming emotion and dysfunction. Concentration and attention has been affected adversely as has memory functions, and Ms. Fleher becomes easily frustrated by her inability/slowness in completing activities that once were easy for her. This opinion is shared by Dr. Constance Guille as well.

On a form entitled "Medically Determinable Impairments and Severity" dated October 6, 2011, Kathleen Broughan, Ph.D. indicates that Ms. Fleher has moderate restrictions of activities of daily living, marked difficulties maintaining social functioning, and marked difficulties in maintaining concentration, persistence, and pace. Dr. Broughan notes that

given the totality of file evidence, it is concluded that Ms. Fleher's symptoms and impairments currently are severe enough to preclude the performance of work tasks. Ms. Fleher's impairment diagnoses of spine disorders, systemic lupus erythematosus, anxiety disorders, and affective disorders were listed as "severe".

On a form entitled "Residual Functional Capacity" dated October 6, 2011, Kathleen Broughan, Ph.D. indicates that Ms. Fleher has understanding and memory limitations, is markedly limited in understanding and remembering detailed instructions, and is experiencing disruptive and overwhelming emotions that markedly interfere with her ability to consistently remember and carry out tasks and activities that she formerly performed.

Dr. Broughan further notes that Ms. Fleher has sustained concentration and persistence limitations and is moderately limited in carrying out detailed instructions, is markedly limited in maintaining attention and concentration for extended periods, is markedly limited in her ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, is markedly limited in her ability to work in coordination with or in proximity with others without being distracted by them, and is markedly limited in her ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

Dr. Broughan also indicates that Ms. Fleher has social interaction limitations and is markedly limited in her ability to interact appropriately with the general public, is moderately limited in her ability to ask simple questions or request assistance, is markedly limited in her ability to accept instructions and respond appropriately to criticism from superiors, is markedly limited in her ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes, is markedly limited in her ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and is fragile and easily triggered in interpersonal settings.

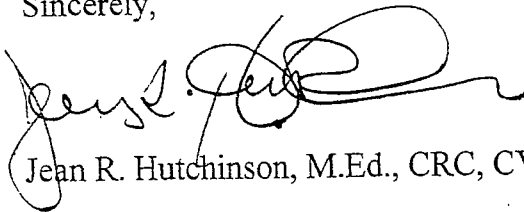
Additionally, Dr. Broughan notes that Ms. Fleher has adaptation limitations and is moderately limited in her ability to respond appropriately to changes in the work setting, is moderately limited in her ability to be aware of normal hazards and take appropriate precautions, is markedly limited in her ability to travel in unfamiliar places or use public transportation, is moderately limited in her ability to set reasonable goals or make plans

independently of others, and she is likely to overreact to normal hazards and may see innocuous situations as being hazardous.

In considering these aforementioned factors, approaching advanced age, college level of education, past work experience as a marketing administrator, manager/director of commercial sales of a retail store, senior executive sales consultant, account executive for network services, business account executive for a telecommunications company, account executive for a communications company, business account executive for a telecommunications provider, and marina manager, and significant physical limitations and severe psychological/emotional problems of more than one year's duration, I am of the opinion that Ms. Fleher is unable to perform the required job tasks of her former work as a marina manager and is unable to return to any past employment. I am further of the opinion that Ms. Fleher is not able to engage in an eight-hour workday in a substantial number of jobs and cannot perform work tasks on a sustained basis. Her impairments prevent her from making an adjustment to any work that exists in significant numbers in the national economy and she is unable to meet all of exertional requirements for sedentary work, the lightest exertional level of work. It is therefore concluded that Ms. Fleher is and remains unemployable. She is unable to compete on the open job market and is unable to perform substantial gainful work activity.

I hope that this information will be helpful to you in clarifying Ms. Fleher's situation with regard to employability. Should you need anything further, please do not hesitate to contact me.

Sincerely,



Jean R. Hutchinson, M.Ed., CRC, CVE

JRH/hf

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**Jean Robertson Hutchinson, M.Ed., CRC, CVE**

715 North Godfrey Park Place  
Charleston, South Carolina 29407  
(843)766-1418  
(843)763-0501 (fax)

EMPLOYMENT

Vocational Consultant

Private Practice  
April, 1980 - present

Provide comprehensive evaluation (educational background, work history, transferable skills, accident/injury information) of vocational and occupational outlook in personal injury, worker's compensation, disability, medical negligence, wrongful termination, and domestic cases. Prepare written reports, provide labor market information, and provide courtroom testimony.

Rehabilitation Consultant

Therapy Resources  
May, 1991 - 2005

Provided rehabilitation consultation services to assess vocational factors involved in patients' rehabilitation. Provided counseling, make appropriate referrals, and determine rehabilitation services.

Vocational Rehabilitation Counselor II

South Carolina Vocational Rehabilitation Department  
July, 1986 - January, 1988

Provided personal and job-related counseling for disabled individuals. Assessed job skills, aptitudes, interests, and functional limitations (physical, mental, and/or emotional disabilities), and eligibility for VR services. Developed self-generated network of job placement services, employers, and medical, psychological, and social services for client referral.

Vocational Evaluator II

August, 1982 - June, 1986

Planned, administered, and supervised assessment services for clients entering federally-funded job training program. Utilized and interpreted the following diagnostic tools: psychometric tests (functional grade levels, non-verbal IQ level, occupational interests, and personal problems) and vocational evaluation systems (work task simulation). Chaired planning and assessment team for county-wide program.

Career and Vocational Guidance Counselor

Educational Opportunity Center (Higher Education Consortium)

November, 1980 - August, 1982

Provided career, vocational, and academic counseling to in-school and drop-out high school students in nine local area high schools through individual counseling sessions and workshops covering post-secondary school admissions, financial aid, career information, and job readiness/finding/keeping skills.

Employment Counselor II and Instructor

Work Incentive Program

South Carolina Employment Security Commission

November, 1979 - October, 1980 (Charleston)

August, 1976 - November, 1979 (Greenville)

Provided personal and job-related individualized and group counseling. Assessed/tested job skills, aptitudes, and interests. Provided job placement services. Classified jobs by the Dictionary of Occupational Titles and for computerized job matching. Coordinated referrals to related social service organizations. Created and taught week-long classes focusing on full range of job-finding skills, grooming, personal department, application and interview techniques, and job-keeping skills.

EDUCATION AND CERTIFICATIONS

M. Ed., 1976

Vocational Rehabilitation Counseling

University of South Carolina, Columbia, SC

B.A., 1974

Studio Art

Furman University, Greenville, SC

1989 - present

Certified Rehabilitation Counselor

1982 - 1987

1991 - present

Certified in Vocational Evaluation

National certifications based on educational level, work experience, and examinations

QUALIFICATIONS

Qualified to administer/interpret the following evaluation and assessment tools:

Revised BETA-II

Self Directed Search

Mooney Problem Checklist

Kuder Occupational Profile

Test of Adult Basic Education

General Aptitude Test Battery

Wide Range Interest and Opinion Test

Singer Vocational Evaluation System

Jewish Employment Vocational System

Hutchinson, Jean Robertson, page 3

Qualified as an expert in employability and vocational rehabilitation in Court of Common Pleas, Social Security Hearings, Worker's Compensation Hearings, Federal Worker's Compensation Hearings, Family Court, and Federal Court.

PUBLICATIONS/SPECIAL PROJECTS/AFFILIATIONS

A Guide to Post-Secondary Institutions in South Carolina 1982

A compact reference booklet of pertinent facts useful in choosing a post-secondary school in South Carolina.

Target Jobs 1981

An intensive five-day workshop plan to introduce and clarify reusable job-finding and job-keeping skills.

Placement Coordinator 1988

Coordinated marketing and job placement activities for Johnson and Wales Culinary College JTPA-sponsored vocational skills training program.

Advisory Board Member 1986 - 2002

Educational Opportunity Center - Higher Education Consortium

Member 1989 - 2005

Charleston Mayors' Committee on Disabilities

State Coordinator 1989 - 1990

AU PAIR/Homestay Program, Experiment for International Living

Charter Member, Board of Directors 1989 - 1998

Communities in Schools, Charleston County Drop-Out Prevention Program

State Vice Chairperson, Leadership Seminar 1990 - 1992

Board of Governors 1992 - 1995

Hugh O'Brian Youth Foundation

National Rehabilitation Association - member

South Carolina Counseling Association - member

01/12

## INCIDENT/INVESTIGATION REPORT

I  
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Agency Name  
**Charleston Police Department**

ORI  
**SC0100100**

Case#  
**10-17254**

Date / Time Reported  
**10/12/2010 14:59 Tue**

Last Known Secure  
**10/12/2010 13:20 Tue**

At Found  
**10/12/2010 14:59 Tue**

Location of Incident  
**2079 Austin Ave, Charleston SC 29405-**

Premise Type  
**Restaurant**

Zone/Tract  
**128**

#1	Crime Incident(s) <b>Simple Assault 13B</b>	(Com)	Weapon / Tools <b>Hands, personal Weapons</b>				Activity <b>N</b>
			Entry	Exit	Security		
#2	Crime Incident	( )	Weapon / Tools				Activity
			Entry	Exit	Security		
#3	Crime Incident	( )	Weapon / Tools				Activity
			Entry	Exit	Security		

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# of Victims **1** Type: **INDIVIDUAL/ NOT LAW** Injury: **None**

VI	Victim/Business Name (Last, First, Middle) <b>FLEHER, DIANE</b>	Victim of Crime # <b>1.</b>	DOB <b>05/01/1959</b> Age <b>51</b>	Race <b>W</b>	Sex <b>F</b>	Relationship To Offender <b>1SB</b>	Resident Status	Military Branch/Status
Home Address <b>2079 AUSTIN AVE, Charleston, SC 29405-</b>						Home Phone <b>843-744-2562</b>		
Employer Name/Address <b>DOLPHIN COVE MARINA 2079 AUSTIN AVE. (MANAGER)</b>						Business Phone <b>843-744-2563</b>		Mobile Phone
VYR	Make	Model	Style	Color	Lic/Lis	VIN		

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CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: **INDIVIDUAL/ NOT LAW ENFORCEMENT** Injury:

CO	Name (Last, First, Middle) <b>FLEHER, DIANE</b>	Victim of Crime #	DOB <b>05/01/1959</b> Age <b>51</b>	Race <b>W</b>	Sex <b>F</b>	Relationship To Offender	Resident Status	Military Branch/Status
Home Address <b>2079 Austin Ave Charleston, SC 29405</b>						Home Phone <b>843-744-2562</b>		
Employer Name/Address <b>Dolphin Cove Marina, 2079 Austin Ave. (MANAGER)</b>						Business Phone <b>843-744-2563</b>		Mobile Phone
Type:	Injury:							
Code	Name (Last, First, Middle)	Victim of Crime #	DOB Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
Home Address						Home Phone		
Employer Name/Address						Business Phone		Mobile Phone

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1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown  
("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Frm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number

Officer/ID# **BARRON, R. S. (SUPP, DESK) (498)** Supervisor **NICK, M. L. (SUPP, DESK) (187)**

Invest ID# **SIERKO, S. (PATL, TMII) (549)** Case Status **Pending Active 10/12/2010** Case Disposition: Page 1

Status Complainant Signature

# INCIDENT/INVESTIGATION REPORT

By: JONASONS, C...

Charleston Police Department

Case# 10-17254

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

IBR	Status	Quantity	Type Measure	Suspected Type	Up to 3 types of activity

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Assisting Officers

Suspect Hate / Bias Motivated:

**NARRATIVE**

The above victim Diane Gerald Fleher came to the Charleston Police Department on 10-12-10 to file a police report reference to an Assault. The victim stated that she went to work this morning for training at her job, Dolphin Cove Marina at 2079 Austin Ave Charleston, SC 29405. The suspect David G Race (manager) which is her brother got into an altercation which resulted into him shoving and pushing the victim three times on the shoulder. The victim stated that the suspect said to " GET THE FUCK OUT OF HIS OFFICE " he also stated that "HE`S`GOING TO MAKE HER LIFE A LIVING HELL`". The victim stated that the suspect also stated he is not going to fire her because he`s not going to pay her unemployment . The victim was advised and given a case number.

# Incident Report Suspect List

Charleston Police Department

OCA: 10-17254

<b>1</b>	Name (Last, First, Middle) <i>Race, David G</i>					Also Known As					Home Address <i>1118 JOHN RUTLEDGE AVE HANAHAN, SC 29410 843-553-1509</i>		
	Business Address												
DOB.	Age	Race	Sex	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State.			
<i>03/14/1932</i>	<i>78</i>	<i>W</i>	<i>M</i>	<i>N</i>	<i>507</i>	<i>200</i>	<i>GRY</i>	<i>BLU</i>	<i>FAR</i>				
Scars, Marks, Tattoos, or other distinguishing features													
<i>Reported Suspect Detail</i>		Suspect Age			Race	Sex	Eth	Height	Weight	SSN			
Weapon, Type	Feature	Make	Model		Color	Caliber	Dir of Travel		Mode of Travel				
Veh Yr/Make/Model	Drs	Style	Color	Lic/St	VIN								
Notes								Physical Char					

October 29, 2010

~~STATEMENT of DIANE G. FLEHER~~

I am here today to sign a warrant for David G. Race, because I believe he needs to be held accountable for physically assaulting me at my place of employment on the afternoon of October 12, 2010. The decision to go forward with this action has been a difficult one. Mr. Race is not only my boss, he is my brother and I love him very much and would not want him to suffer any harm due to this action. However, my hope is that following through with this action will result in a recommendation by the courts for Mr. Race to participate in an Anger Management Program where he has an opportunity to learn appropriate and less hostile behavior. This is why I believe this action can provide an opportunity for a positive outcome.

I have been employed at Dolphin Cove Marina since May of 2006 when my brother, David Race, asked me to move from Knoxville, Tennessee to Charleston, South Carolina in order to serve as Manager of the marina. I was told I needed to learn as much as possible about running the company so that I would be prepared to "step in" to serve in his place in the unfortunate event he would be unable to perform his duties at some point in the future.

Over the past four years, I have not been the only one to suffer the intolerable behavior of Mr. Race. I have witnessed my brother's rages against other employees and customers. His verbal aggression includes cursing, insults, shouting, name-calling, threats, talking about someone behind his/her back, humiliating an employee in the presence of others, ridicule, teasing, sarcasm and false accusations. Also flaunting status, mood swings, ignoring a person, aggressive posturing, undermining someone and spreading stories, trumping up charges against co-workers, making snide innuendoes, are a few more examples of his "Bullying Behavior".

Before it happened to me, I used to think that employees who were given a hard time by their bosses probably deserved it. As long as I worked hard and took pride in my work, I had nothing to worry about. I was wrong.

Over the past six months the work environment became so unbearably hostile my psychological and physical well being began to deteriorate. But I continued to try and deal with it because I felt an obligation to our company and our employees to "tough it out".

On the afternoon of October 12, 2010, yet another verbal altercation occurred, however this time the aggression became physical when my brother began shoving me backward down the hall as he continued to shout obscenities and threaten me. I was shocked and upset because I never imagined my brother would lay a hand on me. Having been a victim of Domestic Violence in the late 1980's I learned that once the threats and aggression become physical it will continue to get worse and I knew it was time to take action to protect myself and others.

I am currently under the care of my family physician, Dr. Robert Oliverio and Dr. Daniel Smith at MUSC where I am receiving care through intensive, one-on-one therapy as I try to resolve issues of depression, anger, fear, humiliation, guilt and shattered self-esteem. I have not been back to my place of employment since the incident. The Doctors are very concerned for my well being and have written "out of work excuses" as they believe it is unsafe for me to return to work at this time.

Psychological bullying, undermining an individual's self esteem and status and creating unnecessary stress is most insidious; it is akin to a rape of the spirit and the mind that leaves scars on an individual for years to come. Professionals and the public are often misled by the vulnerability of the post-bullied person. Generally, the trauma of the experience leaves the victim feeling powerless, disorientated, confused, helpless and paralyzed. It tends to be sudden and overwhelming - as if it owns the person. I don't know how to predict how long it will take or what it will take for me to feel safe again. But I am willing to do the work with my Doctors to hopefully find a positive outcome for my future.

DOLPHIN COVE MARINA  
REQUEST FOR DAY(S) OFF

EMPLOYEE NAME: Diane Fleher DATE: 9/18/10

POSITION: MANAGER DEPT.: \_\_\_\_\_

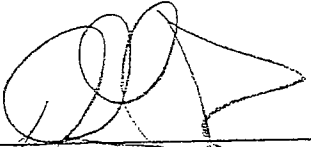
REQUEST: October 6, 7 + 8 (Knoxville, TN)  
WED THURS FRIDAY

December 1<sup>st</sup> 2010 - February 28<sup>th</sup> 2011  
BAHAMAS WITH CLAY

WILL RETURN TO WORK ON: March 6, 2010 (Sunday)

Diane S. Fleher  
EMPLOYEE SIGNATURE

9/10/10  
DATE

  
SUPERVISOR SIGNATURE

\_\_\_\_\_  
DATE

**WORKERS' COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS**

EMPLOYER (NAME & ADDRESS INCL ZIP) Coastal Marine Enterprises Inc 2079 AUSTIN AVE CHARLESTON, SC 29405		CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG NUMBER	REPORT PURPOSE CODE
INDUSTRY CODE 4493		EMPLOYER FEIN 570816074		PHONE # 843-744-2562
CARRIER/CLAIMS ADMINISTRATOR		CARRIER (NAME, ADDRESS, & PHONE #) CAROLINA CASUALTY INSURANCE CO 2445 Kuser Road Suite 201 HAMILTON, NJ 08690 609-584-4563		
POLICY PERIOD 12/14/09 TO 12/13/10		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) KEY RISK P.O. Box 49129 GREENSBORO, NC 27419 800 942 0225		
CHECK IF APPROPRIATE <input type="checkbox"/> SELF INSURANCE		POLICY/Self-INSURED NUMBER ENJWC0108002		
ADMINISTRATOR FEIN		AGENT NAME & CODE NUMBER		
<b>EMPLOYEE/WAGE</b>				
NAME (LAST, FIRST, MIDDLE) FLEER, DIANE		DATE OF BIRTH 05/01/59	SOCIAL SECURITY NUMBER 251-23-3523	DATE HIRED 05/15/06
ADDRESS (INCL ZIP) 7720 EAGLE LAKE RD. NORTH CHARLESTON, SC 29418		SEX <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female <input type="checkbox"/> Unknown	MARITAL STATUS <input type="checkbox"/> Unmarried/Single/Divorced <input checked="" type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unknown	STATE OF HIRE SC
PHONE 865-805-4550		# OF DEPENDENTS 0	OCCUPATION/JOB TITLE MANAGER	
RATE PER: 20.0 DAY MONTH WEEK OTHER <input checked="" type="checkbox"/> Hourly		DAYS WORKED/WEEK	EMPLOYMENT STATUS Full-time	
FULL PAY FOR DAY OF INJURY? <input type="checkbox"/> YES <input type="checkbox"/> NO		DID SALARY CONTINUE? <input type="checkbox"/> YES <input type="checkbox"/> NO		
<b>OCCURRENCE/TREATMENT</b>				
TIME EMPLOYEE BEGAN WORK <input type="checkbox"/> AM <input type="checkbox"/> PM	DATE OF INJURY/ILLNESS 10/12/10	TIME OF OCCURRENCE 1:20 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	LAST WORK DATE 10/12/10	DATE EMPLOYER NOTIFIED DATE DISABILITY BEGAN 10/12/10
CONTACT NAME/PHONE NUMBER DAVID RAC/843-744-2562	TYPE OF INJURY/ILLNESS Contusion		PART OF BODY AFFECTED by shoulder	
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	TYPE OF INJURY/ILLNESS CODE 10		PART OF BODY AFFECTED CODE 38	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED 2079 AUSTIN AVE, CHARLESTON, SC 29405		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED as reported ee alleges the owner of the		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL L/R shoulder contusions, mental stress				CAUSE OF INJURY CODE 74
DATE RETURNED TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? <input type="checkbox"/> YES <input type="checkbox"/> NO		
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) Roper St. Francis Healthcare 615 Wesley Drive #300 CHARLESTON, SC 29407		WERE THEY USED? <input type="checkbox"/> YES <input type="checkbox"/> NO		
HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS)		INITIAL TREATMENT 0 <input type="checkbox"/> NO MEDICAL TREATMENT 1 <input type="checkbox"/> MINOR: BY EMPLOYER 2 <input checked="" type="checkbox"/> MINOR CLINIC/HOSP 3 <input type="checkbox"/> EMERGENCY CARE 4 <input type="checkbox"/> HOSPITALIZED > 24 HOURS 5 <input type="checkbox"/> FUTURE MAJOR MEDICAL/LOST TIME ANTICIPATED		
<b>OTHER</b>				
WITNESSES (NAME & PHONE #) MICHAEL SAGE				
DATE ADMINISTRATOR NOTIFIED	DATE PREPARED 10/13/10	PREPARER'S NAME & TITLE EE: DIANE FLEER	PHONE NUMBER 865-805-4550	

WCC FORM 12-A  
REV. DATE 04/06

SEE INSTRUCTIONS FOR IMPORTANT INFORMATION

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# Intake Information

## Case Summary:

Account: CAROLINA CASUALTY INSURANCE CO      Claim No.:      DOI: 10/12/2010  
Employer: Coastal Marine Enterprises Inc      County: CHARLESTON      Date Rpt: 10/12/2010  
Core DBA:      Contract Service: WC Managed Care      Case#: BNUW-11165163  
Patient: FLEHER, DIANE      Jurisdiction: SC      Closed: 10/13/2010  
SS#: 251-23-3523      Case Manager:      Reopen:  
Entered: 10/13/2010      Case Status: FRI  
Updated: 10/13/2010      Deactivate Claim:

## Patient Information:

Last Name: FLEHER      First Name: DIANE      Middle Init:  
Address1: 7720 EAGLE LAKE RD.      Address2:  
City: NORTH CHARLESTON      State/Zip: SC 29418      County: CHARLESTON  
Home Phone: (865)805-4550      Work Phone: (843)744-2562 x      Cell Phone:  
SS#: 251-23-3523      Birth Date: (05/01/1959)      Age: 51  
Marital Status: Married      Gender: Female      Dependents: 0  
Date Of Loss: 10/12/10      Time of Injury: 1:20 pm  
Initiated By: EE: DIANE FLEHER      Initiated Phone: (865)805-4550      Initiated Date: 10/13/10  
Account Adjust: Debra Lee      Phone: (800)942-0225      Fax: (336)605-1429

## Witness Information      Any Witness?      yes

Last Name: SAGE      First Name: MICHAEL  
Address:  
City:      State:  
Home Phone:      Work Phone:

## Contact Information:

Last Name:      Contact Type:  
Address1:      First Name      Middle Init:  
City:      Address2:  
Home Phone:      State:      Zip:      Ext:  
Work Phone:

## Employer Information:

Employer: Coastal Marine Enterprises Inc  
Core DBA: Dolphin Cove Marina  
Policy: Num BNUWC0108002      Policy Effective: 12/14/2009      Policy Expiration: 12/13/2010  
Nature of Business: Unknown      Number of Employees: 1      EER REG No.: 570816074  
Employer Contact: DAVID RACE      SIC #: 4493  
Employer DBA Loc:  
Employer  
Correspond. Addr: 2079 AUSTIN AVE  
City, State, Zip: CHARLESTON, SC 29405      County: CHARLESTON  
Work Phone: (843)744-2562      Ext:      Fax:

## Employment Information:

Department:      Date Of Hire: 05/15/2006      Report To: OFFICE  
Occupation: MANAGER      Employment Status: Full-Time      # Hours Worked 40  
Salary: \$20.00      Salary Type: Hourly      Shift From: 8:30 am  
Injury Reported Date: 10/12/2010      Date Intro Letter Sent:      To: 5:30 pm  
Full Pay for Date of Injury: Unknown      Did Salary Continue: Unknown  
State of Hire: SC

## WC Injury Details:

Accident Location: On Premises      Out of State:  
2079 AUSTIN AVE      CHARLESTON, SC 29405  
Employee Action: as reported ee alleges the owner of the company began laughing out and cursing at her then proceeded to push her down the hallway  
Accident Object:  
Work Process:

Printed: 10/13/2010

Page 1 of 2

Intake Information

Date of Death:
Date Last Worked: 10/12/2010
Date Last Paid:
Returned to Work:
Were Sulf/Gauzes Provided?: U
Were They Used?: U
Is Restricted Duty Available?: U
Was there any Prior Work Injury?: U
Type/Nature of Injury: Contusion(10)
Cause of Injury: Struck or Injured By-Fellow Worker

Body Parts: Shoulder(s)(38):
Description of Injury: L/R shoulder contusions, mental stress
Rehab Nurse:
Rehab Date:
Initial Treatment: Minor By Clinic/Hospital 10/12/2010 12:00:00A

Appointment Information:

Appt Date: 10/12/2010
Provider: Roper St. Francis Healthcare
Address: 615 Wesley Drive #300 CHARLESTON, SC 29407
Visit Type: Initial Appointment
Appt Time:
Specialty: Family Practice
Phone: (843)266-4400
Appt Referred By: Yolanda Meler
Referrer Type: FMCO Employ
Appt MMI Date:
Follow-Up Date:
Visit Status: Pending

Provider's Findings:

Diagnosis:
Clinical Findings:
Treatment Plan:
Diagnostic:
Qualified to Return to Work:
Qualified Duty:
MRI 0
CT 0
X-Ray 0
EMG 0
Surgery 0

Specialties/MMI:

Specialty Last Appt Date MMI Date
Family Practice

ICD-9 Codes:

923.00 Contusion of shoulder region
308.9 Unspecified acute reaction to stress

Case Closure/Reopen History

Closure Date Closure Reason Reopen Date
10/13/2010 <None>

# Notes

FMCO Auth. Number: BNUW-11165163

Note ID: 2540008

Contact Date: 10/13/2010

Date Entered: 10/13/2010

Case Manager Name:

Entered By: Yolanda Melendez

Patient Name: DIANE FLEHER

Total Time Amount: 0.60

injury called in by ee who is the office manager who regularly calls in injuries for the company diane fleher 865-805-4530. as reported ee alleges on 10/12/10 the owner of the company began lashing out and cursing at her then proceeded to physically push her down the hallway. ee states that the owner of the company is also her brother and he has recently began lashing out at work over the last few weeks. ee went to Roper St. Francis Healthcare at 615 Wesley Drive #300 Charleston, SC 29407 (843) 266-4400 for tx. ee will need additional tx and is currently oow.

advised ee of claim representative and pharmacy information.

0.25 - Received call and completed intake: 0.25 - Notes: 0.1 - Faxed injury report:

*Tues, Thurs.*  
*Dr King (ackey)*  
*Oberio*  
*(843) 261 2606*



# State of South Carolina

## Office of the Governor

NIKKI R. HALEY  
GOVERNOR

OFFICE OF EXECUTIVE  
POLICY AND PROGRAMS

May 25, 2011

Mrs. Diane G. Fleher  
7720 Eagle Lake Road  
North Charleston, SC 29418

RE: Claim # C2011-081252

Dear Mrs. Fleher:

Your claim meets the eligibility criteria established by state law. However, because the incident occurred while you were on the job, your claim with Worker's Compensation would have to be resolved with a final conclusion before the claim can be forwarded to the Processing Services Department for payment consideration. After your claim has been resolved with Worker's Compensation and there are still compensable expenses, please provide this agency with the documentation from Worker's Compensation. We will be glad to consider your bills at that time. Because the State Office of Victim Assistance is the payer of last resort, you must ensure that all bills have been filed with your Worker's Compensation carrier before submitting them to this office. This also includes any prescription medications.

Section 16-3-1180(E) of the South Carolina Code of Laws, states that a claim cannot be reopened if SOVA has not received requests for payment for 18 months. Additionally, if the file is inactive for 18 months, the case will be closed.

Section 16-3-1170(A) of the South Carolina Code of Laws states that the claimant or award recipient must fully cooperate with all law enforcement agencies and with the State Office of Victim Assistance. This also pertains to the prosecution of the defendant in court.

Should you have any questions regarding the status of your claim, please contact our office at 1-800-220-5370 or locally at 734-1900. Please provide your claim number when calling, sending letters or documents.

Thank you for your patience and assistance.

Sincerely,

A handwritten signature in cursive script that reads "Genita L. Snipes".

Genita L. Snipes  
Eligibility Services Manager

VICTIMS' COMPENSATION • VICTIM/WITNESS ASSISTANCE • TRAINING • INFORMATION • REFERRALS

STATE OFFICE OF VICTIM ASSISTANCE  
1205 PENDLETON STREET, EDGAR A. BROWN BUILDING, ROOM 401  
COLUMBIA, SC 29201 (803) 734-1900  
[WWW.SOVA.SC.GOV](http://WWW.SOVA.SC.GOV)

# Disability Determination Explanation

## CLAIMANT INFORMATION

This Disability Determination Explanation is for the ~~DIB~~ claim at the ~~Reconsideration~~ level.

### CLAIMANT INFORMATION

#### Claimant Information

Name: Diane Gerald Fleher

SSN: 251-23-3523

Phone Number: 865-805-4550

Secondary Phone Number

Address:

Mailing	Residence
7720 EAGLE LAKE ROAD NORTH CHARLESTON, SC 29418	7720 EAGLE LAKE ROAD NORTH CHARLESTON, SC 29418

Claimant Gender: F

Self Reported Height: 68 inches

Self Reported Weight: 203.0 lbs

Special Indications: None.

#### Relevant Dates

Below table represents the Relevant Dates

Date of Birth	Current Age	AOD	Age at AOD	DFI	DLI	Age at DLI
05/01/1959	52 years 5 months (Closely approaching advanced age)	10/12/2010	51 years 5 months (Closely approaching advanced age)	10/01/2005	12/31/2014	

Is there vocational rehabilitation involvement? No

Does the individual have an attorney/appointed representative? No

### ALLEGATIONS OF IMPAIRMENTS

The individual filed for Initial claim for disability on 04/25/2011 due to the following illnesses, injuries, or conditions:

Depression, PTSD, lupus, fibromyalgia, anxiety, tearfulness; pain; neurogenic syncope; low blood pressure; in victim's assistance program; malaise/fatigue;

The individual reports the following limitations:

The individual alleges inability to function and/or work as of 10/12/2010

Has there been any change (for better or worse) in the illness, injuries, or conditions since last completing a disability report?

Yes

Approximate date the changes occurred: have worsened Summer 2011

**Claimant-supplied Information:**

I have had worsening depression along with thoughts of suicide and continue my weekly counseling at MUSC. I cry every day and have anxiety attacks. I had a neurogenic-syncope episode on 8/4/11 while at the Pulmonary Dr's Office & was immediately admitted to the ER at Roper; now I am restricted from any driving until a Neurologist releases me for driving. I continue to faint without warning an average of at least 1-2 x per month. The pain from the Fibromyalgia is so severe there are days I can barely function. I have "brain fog" or else I am losing my mental capacities because I continue to forget things, have difficulty staying on task or completing tasks. I continue to have severe diarrhea and at times have rectal spasms and rectal incontinence. There is absolutely no way I can work. I rarely leave my house except to go to Doctor's appointments or have tests done. Please, Please, Please, I beg you to approve my claim; I don't know how much longer I can take this.

Have there been any new physical or mental limitations as a result of the illness, injuries, or conditions since last completing a disability report?

Yes

Approximate date the changes occurred: Continued worsening 2011

**Claimant-supplied Information:**

I have had worsening depression along with thoughts of suicide and continue my weekly counseling at MUSC. I cry every day and have anxiety attacks. I had a neurogenic-syncope episode on 8/4/11 while at the Pulmonary Dr's Office & was immediately admitted to the ER at Roper; now I am restricted from any driving until a Neurologist releases me for driving. I continue to faint without warning an average of at least 1-2 x per month. The pain from the Fibromyalgia is so severe there are days I can barely function. I have "brain fog" or else I am losing my mental capacities because I continue to forget things, have difficulty staying on task or completing tasks. I continue to have severe diarrhea and at times have rectal spasms and rectal incontinence. There is absolutely no way I can work. I rarely leave my house except to go to Doctor's appointments or have tests done. Please, Please, Please, I beg you to approve my claim; I don't know how much longer I can take this.

Have there been any new illnesses, injuries or conditions since last completing a disability report?

Yes

Approximate date the changes occurred: Worsening Summer of 2011

**Claimant-supplied Information:**

Many of the conditions are really a continuation of what has been going on for a long time but are worsening and having a negative impact on my abilities to function normally. Since the assault happened, there is much worsening depression with suicidal thoughts and this is very frightening to deal with and I cry a lot more frequently and for longer times than I did. I find I am experiencing more anxiety attacks not only at home but in public. For example, recently had a total break down of uncontrollable crying when I was at the Vet's Office with my two dogs. The dogs were fine, they were just there for a booster shot. However, I became so upset when a nurse asked about the brother that assaulted me (She doesn't know about the incident and was just being nice) and I broke down. I immediately and cried so hard they had to take me from the lobby to a private room. The crying lasted for over thirty minutes before I was composed enough to leave.

Has the individual worked since last completing a disability report?

No

**Prior Electronic Filing**

There are no prior electronic filings.

Alleged Onset Date:

10/12/2010

Has the individual performed work after the Alleged Onset Date(AOD)?

No

Has any period(s) of work been determined to be an Unsuccessful Work Attempt, Subsidized/Sheltered Work or involved Impairment-Related Work Expenses, or other technical issue?

No

**EVIDENCE OF RECORD**

The following reconsideration evidence has been received

<b>Source of Evidence</b>	ROPER HOSPITAL INC
<b>EF Received</b>	09/23/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	DAWSON, HEATHER
<b>EF Received</b>	09/20/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	DAWSON, HEATHER
<b>EF Received</b>	09/20/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	CAROLINA LUNG & CRITICAL CA
<b>EF Received</b>	09/13/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	MUSC-MED RECS
<b>EF Received</b>	09/08/2011
<b>Opinion</b>	Yes
<b>Evidence Type</b>	MER

<b>Level</b>	RC
<b>Opinion</b>	1 of 1
<b>Opinion Source Name</b>	MUSC-MED RECS
<b>Opinion Date</b>	09/08/2011
<b>Is the Opinion from an Acceptable Medical Source</b>	Yes
<b>Type of Source Relationship</b>	Treating Source
<b>Type of Opinion</b>	Medical Opinion

**Record Source Statement**

Diane G. Fleher has been undergoing psychiatric and psychological treatment at our center since October 2010. In addition, Ms. Fleher has stress-related physical problems (lupus, fibromyalgia) that exacerbate, and are exacerbated by, her mental health morbidities. It is our professional opinion that Ms. Fleher has been unable to function in a capacity that would enable her to perform any substantial work during her time in treatment, and it is expected that her conditions will continue to prevent her from doing so until her symptoms improve considerably

<b>Source of Evidence</b>	KNOXVILLE INTERNAL MED
<b>EF Received</b>	09/06/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	ROPER MT PLEASANT HOSPITAL
<b>EF Received</b>	09/01/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	LOWCOUNTRY CARDIOLOGY ASSOC
<b>EF Received</b>	08/31/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	CAIN LACKEY MAGUIRE & OLIVE
<b>EF Received</b>	08/31/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	SURGICAL ASSOCS OF CH - 1 1 1 -
<b>EF Received</b>	08/30/2011 1 3 1

<b>Opinion</b>	No
<b>Evidence Type</b>	Msc Dib Dev/Docmntn
<b>Level</b>	RC

<b>Source of Evidence</b>	BON SECOURS ST FRANCIS XAVI
<b>EF Received</b>	08/27/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	Claimant
<b>EF Received</b>	08/26/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	3373-Funct Rprt-Adult
<b>Level</b>	RC

<b>Source of Evidence</b>	ROANE, GEORGIA C
<b>EF Received</b>	08/23/2011
<b>Opinion</b>	Yes
<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Opinion</b>	1 of 1
<b>Opinion Source Name</b>	ROANE, GEORGIA C
<b>Opinion Date</b>	08/15/2011
<b>Is the Opinion from an Acceptable Medical Source</b>	Yes
<b>Type of Source Relationship</b>	Treating Source
<b>Type of Opinion</b>	Medical Opinion

Record Source Statement

SHE IS DISABLED AND UNABLE TO WORK DUE TO THE SEVERITY OF HER SYMPTOMS

<b>Source of Evidence</b>	ROSEN, MARIANNE
<b>EF Received</b>	08/22/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Medical - No MER Available
<b>Level</b>	RC

<b>Source of Evidence</b>	ROPER HOSPITAL INC
<b>EF Received</b>	08/22/2011
<b>Opinion</b>	No

<b>Evidence Type</b>	MER
<b>Level</b>	RC

<b>Source of Evidence</b>	CHARLESTON GASTRO SPECIALIS
<b>EF Received</b>	08/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Medical - No MER Available
<b>Level</b>	RC

<b>Source of Evidence</b>	CHARLESTON GASTRO SPECIALIS
<b>EF Received</b>	08/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	RC

The following initial evidence has been received

<b>Source of Evidence</b>	CAIN LACKEY MAGUIRE & OLIVE
<b>EF Received</b>	07/25/2011
<b>Opinion</b>	Yes
<b>Evidence Type</b>	MER
<b>Level</b>	IN
<b>Opinion</b>	1 of 1
<b>Opinion Source Name</b>	CAIN LACKEY MAGUIRE & OLIVE
<b>Opinion Date</b>	07/21/2011
<b>Is the Opinion from an Acceptable Medical Source</b>	Yes
<b>Type of Source Relationship</b>	Treating Source
<b>Type of Opinion</b>	Medical Opinion

**Record Source Statement**

Dr noted pt has obvious work-related limitation in function due to the mental condition

Less weight is given to this PCP as clmt had no f/u for months (10/10-06/11) and MUSC psych records/MSE reveals that clmt has slight limitations if any.

<b>Source of Evidence</b>	CAIN LACKEY MAGUIRE & OLIVE
<b>EF Received</b>	07/21/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER

<b>Level</b>	IN
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<b>Source of Evidence</b>	CAROLINA LUNG & CRITICAL CA
<b>EF Received</b>	07/14/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	ROANE, GEORGIA C
<b>EF Received</b>	06/23/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	BON SECOURS ST FRANCIS XAVI
<b>EF Received</b>	06/22/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	CHARLESTON ENT ASSOCS
<b>EF Received</b>	06/21/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	MUSC-MED RECS
<b>EF Received</b>	06/21/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	CAROLINA LUNG & CRITICAL CA
<b>EF Received</b>	06/17/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	Claimant
<b>EF Received</b>	06/16/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	3369-Work Hx

<b>Level</b>	IN
<b>Source of Evidence</b>	HADCIJAHIC, NEVEN
<b>EF Received</b>	06/16/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

Notes

records on file do not reflect time period request

<b>Source of Evidence</b>	MUSC-MED RECS
<b>EF Received</b>	05/31/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	CAIN LACKEY MAGUIRE & OLIVE
<b>EF Received</b>	05/27/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	GRICE, GEORGE
<b>EF Received</b>	05/25/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	MER
<b>Level</b>	IN

<b>Source of Evidence</b>	Unknown Name
<b>EF Received</b>	05/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Clmt Submit Evidnce
<b>Level</b>	IN

<b>Source of Evidence</b>	SOUTHERN MEDICAL GROUP
<b>EF Received</b>	05/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Misc MER
<b>Level</b>	IN

<b>Source of Evidence</b>	Unknown Name
<b>EF Received</b>	05/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Misc MER
<b>Level</b>	IN

<b>Source of Evidence</b>	Unknown Name
<b>EF Received</b>	05/19/2011
<b>Opinion</b>	No
<b>Evidence Type</b>	Clmt Submit Evidnce
<b>Level</b>	IN

### CLAIM COMMUNICATIONS

No Claim Communications have been created.

### CONSULTATIVE EXAMINATION(S) (CE)

Is a CE(s) required?

No

### FINDINGS OF FACT AND ANALYSIS OF EVIDENCE

#### Reconsideration Analysis

#### PHYSICAL:

#### ROPER HOSPITAL

12/26/09- s/p gall bladder surgery, hx of gastic ulcers, hx hypothyroidism, FMS, laceration of left side of forehead, pain in soft tissue area of facial area, local injury affecting anterior frontal scalp

12/27/09- CT HEAD shows no intracranial abnormality

6/4/10- unremarkable xray left ankle

9/22/10- ct pelvis: unremarkable

7/15/11- ct abdomen/pelvis: no abnormality, propr cholecystectomy, small amount of pelvic ascitis

8/4/11- syncope, echo= EF 58.9; normal msk, full rom in all extremities, normal abdomen; unremarkable ct head

9/16/11- headache

#### ROPER ST FRANCIS

7/20/11- echo: EF= 58.8

7/20/11- ct chest: proior granulomatous exposure, no worrisome pulmonary nodules; pulmonary artery is nondilated, no heart strain, no pulmonary htn

#### DR. ROANE

8/15/11- normal ROM, no tenderness on exam; lupus has recently been active with rash and arthritis, has features of FMS

#### LOWCOUNTRY CARDIO

8/8/11- c/o recurrent syncope; has no chest pain or palpitations; she has obvious neurocardiogenic syncope

-----  
 \*\*\* MENTAL- BOTH INITIAL AND RECON TOGETHER

#### SOUHTERN MED GROUP

- no mental

#### DR. GRICE

- no mental

#### CAIN LACKEY MAGUIRE AND OLIVE 10/4/09- 7/21/11

10/1/10- had an altercation at work which prompted an anxiety attack

07/21/11 L2MS: Dx: PTSD, Meds: (See Attached), Meds help condition, Yes, psych recommended "I did not refer", Orientation; all, Thought Process: distractible, Thought Content: appropriate, Mood/Affect:

worried/anxious, depressed, Attention/Concentr - 1 1 6 - e, Memory: adequate, Exhibit any work-related limitation in function due to the mental conditi

MUSC 10/13/10- 6/7/11

- counseling for adjustment d/o with anxiety and depression

~~5/25/11- presented in extreme agitation~~

6/7/11- counseling for unhelpful thinking habits; much better today, more emotionally composed

CAROLINA LUNG AND CRITICAL CARE 5/26/11-8/4/11

5/26/11- seen for physical reasons; psych noted to be euthymic

7/7/11- seen for physical reasons; psych noted to be euthymic

8/4/11- seen for physical reasons; psych noted to be euthymic

CHAS ENT

- no mental

BON SECOURS ST FRANCIS

- no mental

DR. ROANE 9/10/10- 08/15/11

11/1/10- seen for physical reason, but noted to have a recent episode of severe stress and is undergoing counseling

8/15/11- has been under a great deal of stress which she feels have exacerbated her symptoms; she has increased her cymbalta which has helped

ROPER 12/26/09- 9/16/11

12/26/09- peice of metal hit head; normal mood and affect

12/27/09- negative ct head

8/4/11- seen for syncope; no mental; negative CT brain

9/16/11- headache, no mental

KNOXVILLE INTERNAL MED

7/16/11- orientated, memory intact, normal/appropriate mood; diagnosis does include a depressive state

LOWCOUNTRY CARDIO

- no mental

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## 416 - CASE ANALYSES

### 416-Case Analysis1

Indicate whether this 416-Case Analysis is for:

Current Assessment

**Subject:**

Telephone Consultation-MUSC

**Details:**

10/06/11 Telephone consultation with Daniel W. Smith, PhD, treatment provider for clmnt. New Dx of Mood DO associated w/medical condition has been added. Dr. Smith and treating psychiatrist Constance Guille, MD are seeing significant mood symptoms tht are directly related to and exacerbate physical conditions (Lupus, fibromyalgia)Although showing some improvement and being very motivated to return to her former level of competence and agency, the claimant would find it very difficult to function in a work setting due to her inability to show up on a regular basis due to the interruption of psychological symptoms, her inability to manage interpersonal conflict and the frequency and intensity of 'triggering' situations that unpredictably result in overwhelming emotion and dysfunction. Concentration and attention has been affected adversely as has memory functions, and the claimant becomes easily frustrated by her inability /slowness in completing activities that once were easy for her. This opinion is shared by Dr. Guille.

- 117 -

These findings complete the medical portion of the disability determination.

Broughan Kathleen PhD 10/06/2011

**MEDICALLY DETERMINABLE IMPAIRMENTS AND SEVERITY**

Does the individual have one or more medically determinable impairments?

Yes

<u>IMPAIRMENT DIAGNOSIS</u>	<u>PRIORITY</u>	<u>SEVERITY</u>
7240 - Spine Disorders	Primary	Severe
7100 - Systemic Lupus Erythematosus	Secondary	Severe
3000 - Anxiety Disorders	Other	Severe
2960 - Affective Disorders	Other	Severe

PSYCHIATRIC REVIEW TECHNIQUE (PRT)

PRT1

Indicate whether this Psychiatric Review Technique (PRT) assessment is for:  
Current Assessment

'A' CRITERIA OF THE LISTINGS

**12.04-Affective Disorders**

A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above

**12.06-Anxiety-Related Disorders**

A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above

'B' CRITERIA OF THE LISTINGS

- 12.04-Affective Disorders
- 12.06-Anxiety-Related Disorders

Restriction of Activities of Daily Living: Moderate  
 Difficulties in Maintaining Social Functioning: Marked  
 Difficulties in Maintaining Concentration, Persistence or Pace: Marked  
 Repeated Episodes of Decompensation, Each of Extended Duration: None

PRT - ADDITIONAL EXPLANATION

Controlling weight given to opinions of Dan W. Smith, PhD and Constance Guille, MD of the MUSC-Nat'l Crime Victims Ctr., who have been treating the clmnt. for an adjustment Do w/anxiety and depression following an assault by a relative. Dx of Mood DO associated w/medical condition (lupus, fibromyalgia) has recently been added. Given the totality of file evidence, it is concluded that the claimant's symptoms and impairments currently are severe enough to preclude the performance of work tasks.

18 mo. diary recommended

These findings complete the medical portion of the disability determination.

Broughan Kathleen PhD 10/06/2011

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LISTINGS CONSIDERED

<u>Listing</u>	<u>Description</u>	<u>Subsection</u>	<u>PRT Assessment</u>
12.04	Affective Disorders		PRT 1
12.06	Anxiety Disorders		PRT 1
1.04	Spine Disorders		
14.02	Systemic Lupus Erythematosis		

MEDICAL DISPOSITION

RFC Assessment Necessary (Physical and/or Mental)

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**ASSESSMENT OF POLICY ISSUES**

SYMPTOMS AND CREDIBILITY

Can one or more of the individual's medically determinable impairment(s) MDI(s) reasonably be expected to produce the individual's pain or other symptoms?

Yes

Are the individual's statements about the intensity, persistence, and functionally limiting effects of the symptoms substantiated by the objective medical evidence alone?

No

When considering the following factors, which were the most informative in assessing the credibility of the individual's statements?

ADLs

What is your assessment of the credibility of the individual's statements regarding symptoms considering the total medical and non-medical evidence in file?

Partially Credible

**Explain the credibility assessment:**

Clmt's statements about her alleged impairments & functional limitations are partially credible; clmt states that she cannot do any housework other than dusting, husband hires help, but she can do cooking of simple meals with resting periods, clmt states she can hardly drive, has neighbor to take her to groceries, dr appts, has constant back pain, can't stand or walk for long periods of time. The clmt's DD of C and L-spine, along with sxs of lupus and fibromyalgia could reasonably be expected to produce pain, difficulty walking & functional limitations, but not to the degree as described by the clmt. Her sxs are somewhat consistent with the objective findings from evidence in the file.

WEIGHING OF OPINION EVIDENCE

The following displays Treating Sources with medical opinions:

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Source of Evidence	Opinion Source Name	Level	Opinion Date	Weight
MUSC-MED RECS	MUSC-MED RECS	Reconsideration	09/08/2011	
ROANE, GEORGIA C	ROANE, GEORGIA C	Reconsideration	08/15/2011	
CAIN LACKEY MAGUIRE & OLIVE	CAIN LACKEY MAGUIRE & OLIVE	Initial	07/21/2011	Other

Explain how you weighed the opinion(s) above:

Dr noted pt has obvious work-related limitation in function due to the mental condition

Less weight is given to this PCP as clmt had no f/u for months (10/10-06/11) and MUSC psych records/MSE reveals that clmt has slight limitations if any.

## RESIDUAL FUNCTIONAL CAPACITY

### MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

#### MRFC1

Indicate whether this Mental Residual Functional Capacity (MRFC) assessment is for:

Current Assessment

The questions below help determine the individual's ability to perform sustained work activities. However, the actual mental residual functional capacity assessment is recorded in the narrative discussion(s) in the explanation text boxes.

Does the individual have understanding and memory limitations?

Yes

Rate the individual's understanding and memory limitations:

The ability to remember locations and work-like procedures.

Not significantly limited

The ability to understand and remember very short and simple instructions.

Not significantly limited

The ability to understand and remember detailed instructions.

Markedly limited

Explain in narrative form the presence and degree of specific understanding and memory limitations indicated above:

Although pre-morbidly functioning on high level, clmt is experiencing disruptive and overwhelming emotions that markedly interfere with her ability to consistently remember and carry out tasks and activities that she formerly performed

Does the individual have sustained concentration and persistence limitations?

Yes

Rate the individual's sustained concentration and persistence limitations:

The ability to carry out very short and simple instructions.

Not significantly limited

The ability to carry out detailed instructions.

Moderately limited

The ability to maintain attention and concentration 1 2 0 extended periods.

Markedly limited

The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

Markedly limited

The ability to sustain an ordinary routine without special supervision.

Not significantly limited

The ability to work in coordination with or in proximity to others without being distracted by them.

Markedly limited

The ability to make simple work-related decisions.

Not significantly limited

The ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

Markedly limited

Explain in narrative form the sustained concentration and persistence limitations indicated above:

MUSC MER; 416 -consultation w/ treating provider; Marked interference w/ concentration, performance and pace. Easily triggered by interpersonal stress/conflict, resulting in debilitating physical/emotional symptoms.

Does the individual have social interaction limitations?

Yes

Rate the individual's social interaction limitations:

The ability to interact appropriately with the general public.

Markedly limited

The ability to ask simple questions or request assistance.

Moderately limited

The ability to accept instructions and respond appropriately to criticism from supervisors.

Markedly limited

The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.

Markedly limited

The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

Markedly limited

Explain in narrative form the social interaction limitations indicated above:

Clinic is fragile and easily triggered in interpersonal settings. This response is currently unpredictable. Last incidence occurred 1 week ago in neurologist's office in response to benign question, requiring psych intervention.

Does the individual have adaptation limitations?

Yes

Rate the individual's adaptation limitations:

The ability to respond appropriately to changes in the work setting.

Moderately limited

The ability to be aware of normal hazards and to take appropriate precautions.

Moderately limited

The ability to travel in unfamiliar places or use public transportation.  
Markedly limited

The ability to set realistic goals or make plans independently of others.  
Moderately limited

Explain in narrative form the adaptation limitations indicated above:

Clmnt's emotional fragility would not allow her to travel to unfamiliar places. She would be likely to overreact to normal hazards and may see innocuous situations as being hazardous. She is easily triggered by stress and would have difficulty responding appropriately to changes in the workplace.

#### MRFC - Additional Explanation

Cl is in tx at MUSC for an adjustment d/o and mood d/o associated w/ medical conditions. She has some regressions and progressions associated w her physical conditions which are triggered and exacerbated by her psychological impairments. Both treatment providers at MUSC opine that the clmnt's functioning is significantly impaired at the present time and would preclude her performance of even routine work tasks and activities.

#### MC/PC Signature

Broughan Kathleen PhD 10/06/2011

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### ASSESSMENT OF POLICY ISSUES - CONTINUED

#### RECONCILING OF SOURCE OPINION

This section has been considered but does not apply to this claim.

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### ASSESSMENT OF VOCATIONAL FACTORS

#### ASSESSMENT OF THE INDIVIDUAL'S ABILITY TO PERFORM PAST RELEVANT WORK

##### Past Relevant Work:

Job Title: manager  
Start Date: 05 2006  
End Date: 10/2010  
DOT Title: manager sales  
DOT Code: 163.167-018

Job Title: account executive  
Start Date: 1998  
End Date: 2004  
DOT Title: account executive  
DOT Code: 164.167-010

Job Title: communication consult  
Start Date: 05/01/1997  
End Date: 03/01/1998  
DOT Title: account executive  
DOT Code: 164.167-010

Job Title: sales rep  
Start Date: 06/01/1996  
End Date: 04/01/1997  
DOT-Title: account executive  
DOT Code: 164.167-010

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Does the individual have any past relevant work (PRW)?  
Yes

This RFC assessment, based on all of the relevant evidence, is a function-by-function (SSR 96-8p) evaluation of the individual's exertional and non-exertional capabilities which are required to perform work activities.

Does the individual have the RFC to perform PRW?  
No

Explain why the individual cannot perform past jobs (optional)  
Due to limitations of non-exertional (mental) unable to perform above SVP 2

SPECIAL MEDICAL-VOCATIONAL PROFILES: Arduous Unskilled Work

Does the individual have a work history of 35 years or more of arduous, unskilled, physical labor?  
No

APPLICATION OF MEDICAL - VOCATIONAL RULES: Other Work

What was the highest skill level of the individual's PRW?  
Skilled

Is the individual limited to unskilled work because of the impairments?  
Yes

Based on the seven strength factors of the physical RFC (lifting/carrying, standing, walking, sitting, pushing, and pulling), the individual demonstrates the maximum sustained work capability for the following:  
LIGHT

The highest grade of school completed by the individual is:  
15

Indicate the rule used to direct a determination or as a framework (20 CFR Pt. 404, Subpt. P, App. 2).  
202.14 - Cl App Adv Age HS Skilled-Semi No Trans

Select one of the following:  
Rule Used as a Framework

Based on the individual's exertional and/or non-exertional limitations, make the appropriate selection below:  
Non-exertional limitations do not significantly erode the occupational base and the same rule is appropriate

Cite three occupations in which there are a significant number of jobs that exist in the national economy OR Select the appropriate Social Security Ruling (SSR):

Surveillance System Monitor  
Chaperone/Personal  
Call-Out Operator

**DETERMINATION**

Based on the documented findings, select the determination:

**Disabled**

Indicate which of the following Acquiescence Rulings are applicable

None of the ARs considered apply to this claim

Is there medical evidence of DAA?

No medical evidence of DAA

**REGULATION BASIS CODE**

Regulation Basis Code:

C1-20CFR404.1520(g)-DIB CLAIM

Alleged onset date:

10/12/2010

Enter the established onset date:

10/12/2010

Is this a closed period?

No

Diary type and reason code:

Medical Improvement Expected (MIE) - Improvement Unpredictable

Diary date:

04/06/2014

Assess the individual's capability:

Individual capable per doctor.

Doctor Name:

First Name

Dr.

Last Name

Oliverio

Report Date:

07/21/2011

**Personalized Decision Notice (PDN)**

PDN Text:

PDNIN

**SIGNATURES**

MC/PC Signature

Broughan Kathleen PhD 10/06/2011

This reconsideration file has been thoroughly reviewed to ensure that the total evidence of record is sufficient and consistent to support the proposed determination.

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Disability Adjudicator/Examiner Signature:

Stephanie Barnett 10/06/2011

FUNCTION REPORT - ADULT

How your illnesses, injuries, or conditions limit your activities



For SSA Use Only  
Do not write in this box.

RQID:0071413521L29296 SITE:S86 DR:S  
SSN:\*\*\*\*\* DOCTYPE:0075 RF:D CS:18e3

Related SSN \_\_\_\_\_

Number Holder \_\_\_\_\_

SECTION A - GENERAL INFORMATION

1. NAME OF DISABLED PERSON (First, Middle Initial, Last)

DIANE GERALD FLEHER

2. SOCIAL SECURITY NUMBER

251-23-3523

3. YOUR DAYTIME TELEPHONE NUMBER (If there is no telephone number where you can be reached, please give us a daytime number where we can leave a message for you.)

(865) 805-4550  
Area Code Phone Number

Your Number  Message Number  None

4. a. Where do you live? (Check one.)

House  Apartment  Boarding House  Nursing Home  
 Shelter  Group Home  Other (What?) \_\_\_\_\_

b. With whom do you live? (Check one.)

Alone  With Family  With Friends

Other (Describe relationship.) My husband and we have a gentleman named John who helps me with the things I can't do in our home

SECTION B - INFORMATION ABOUT YOUR ILLNESSES, INJURIES, OR CONDITIONS

5. How do your illnesses, injuries, or conditions limit your ability to work?

I am extremely tired most of the time and have to lay down or sit in my lazyboy recliner many times during the day. I also have trouble concentrating and remembering things. I have anxiety attacks or cry sometimes without warning. And, I have rectal spasms and have accidents that after this happens I have to take a shower and change my clothes.

**SECTION C - INFORMATION ABOUT DAILY ACTIVITIES**

6. Describe what you do from the time you wake up until going to bed.

~~I have a cup of coffee, check my calendar to see if I have a Doctors appointment, rest, make a list of things I need to do, do what I can, rest, ask for help with the things I can't do, rest, cook dinner, talk on the phone~~

7. Do you take care of anyone else such as a wife/husband, children, grandchildren,  Yes  No  
parents, friend, other?

If "YES," for whom do you care, and what do you do for them? \_\_\_\_\_

8. Do you take care of pets or other animals? ~~I have two little white~~  Yes  No  
Maltese named "BB" & Harley they are so sweet.

~~If "YES," what do you do for them? I check their water and food bowls but mostley they like to sit with me or take naps with me~~

9. Does anyone help you care for other people or animals?  Yes  No

If "YES," who helps, and what do they do to help? ~~My Husband or John~~  Yes  No  
~~Feeds and Check Water if I~~

~~can't (A dog groomer takes care of their baths and haircuts A VET Takes care of their health~~

10. What were you able to do before your illnesses, injuries, or conditions that you can't do now?

~~I would take them for walks and play more with them. Also, I'm embarrassed to admit this but they don't get brushed as much.~~

11. Do the illnesses, injuries, or conditions affect your sleep?  Yes  No

If "YES," how? ~~A Sleep study showed I never went past Stage II sleep so I don't get restorative sleep. But more than that the pain from fibromyalgia and anxiety keeps me up abot~~

12. PERSONAL CARE (Check here  if NO PROBLEM with personal care.)

a. Explain how your illnesses, injuries, or conditions affect your ability to:

Dress ~~I can dress myself but not everyday; if I feel bad I stay in my nightdown unless I have to go to the doctor.~~

Bathe ~~I soak in the tub every day to help with the pain~~

Care for hair ~~I usually just air dry my hair now because it is too much difficult to blow dry or roll on hot rollers~~

Shave ~~I used to shave my legs & underarms more often, but it is alot less now because I am just too tired~~

Feed self ~~I have no problem~~

Use the toilet ~~Sometimes I don't make it in time if I have an accident or rectal spasms.~~

Other \_\_\_\_\_

b. Do you need any special reminders to take care of personal needs and grooming?

Yes  No

021108260003613

If "YES," what type of help or reminders are needed? Sometimes my husband will say "Do you plan to change out of your nightgown before you go outside?"

c. Do you need help or reminders taking medicine?

Yes  No

If "YES," what kind of help do you need? My husband asks me everyday to make sure I take it. The hardest thing is when I am filling my weekday container and I get confused and have to start over. This makes me very anxious

13. MEALS

a. Do you prepare your own meals?

Yes  No

If "Yes," what kind of food do you prepare? (For example, sandwiches, frozen dinners, or complete meals with several courses.) Sandwich or soup for lunch. For

dinner I make those tyson meats that you only have to put in the microwave for 4 minutes.

How often do you prepare food or meals? (For example, daily, weekly, monthly.)

daily

How long does it take you? About an hour - sometimes have to sit down in between dishes

Any changes in cooking habits since the illness, injuries, or conditions began?

I used to cook alot of fresh vegetables and bake but it takes too much effort than the "steam in package" vegetables

b. If "No," explain why you cannot or do not prepare meals.

As far as baking goes - I don't know if I forget an item or what but my baking turned out so bad I buy already prepared instead and put on a pretty plate and who knows, right?

14. HOUSE AND YARD WORK

a. List household chores, both indoors and outdoors, that you are able to do. (For example, cleaning, laundry, household repairs, ironing, mowing, etc.)

Dust, laundry, (I insist on sorting so the whites & colors are properly separated.)

b. How much time does it take you, and how often do you do each of these things?

Dusting, I do a little at a time with a swiffer. I do it when I feel like it or ask John for help if I feel overwhelmed

c. Do you need help or encouragement doing these things?

Yes  No

If "YES," what help is needed? John vacuums and mops for me.

He will move clothes from the washer to dryer because I get dizzy if I lean over and he takes clothes out of the dryer to fold + hang - 128 -

d. If you don't do house or yard work, explain why not. I don't do yard work  
Because I cannot tolerate sun and heat at all.  
John does all the yard work.

15. GETTING AROUND

a. How often do you go outside? Seldom  
If you don't go out at all, explain why not. Same reason I don't do yard  
Work - sun + heat - getting dizzy

b. When going out, how do you travel? (Check all that apply.)

- Walk  Drive a car  Ride in a car  Ride a bicycle  
 Use public transportation  Other (Explain) \_\_\_\_\_

c. When going out, can you go out alone? sometimes  Yes  No

If "NO," explain why you can't go out alone. I wrote sometimes because  
if I am really Dizzy or have an anxiety attack I  
must have someone with me

d. Do you drive? Seldom  Yes  No

If you don't drive, explain why not. I only drive if I feel it is safe  
to do so. I rely on John, my husband + my neighbor the  
majority of the time

16. SHOPPING

a. If you do any shopping, do you shop: (Check all that apply.)

- In stores  By phone  By mail  By computer

b. Describe what you shop for. Groceries, birthday cards, clothes  
stamps, prescriptions and drugstore items

c. How often do you shop and how long does it take? 1 time a week at a  
store for food and I might go out with my friend  
to Belk or JC Penney. And Walgreens is close by.  
An hour is about all I can do at a time + that  
is with resting periods.

17. MONEY

a. Are you able to:

- Pay bills  Yes  No Handle a savings account  Yes  No  
Count change  Yes  No Use a checkbook/money orders  Yes  No

Explain all "NO" answers. \_\_\_\_\_

b. Has your ability to handle money changed since the illnesses, injuries, or conditions began? @21108260003613

Yes  No

If "YES," explain how the ability to handle money has changed. ~~I count and double~~  
check if I get confused

### 18. HOBBIES AND INTERESTS

a. What are your hobbies and interests? (For example, reading, watching TV, sewing, playing sports, etc.) reading, watching some TV (NO soap operas!)

singing, riding on our sailboat

b. How often and how well do you do these things? I try to read every day and/or watch TV. Not singing lately - Not on the sailboat in almost 5 months (sun + heat)

c. Describe any changes in these activities since the illnesses, injuries, or conditions began.

I have not read an entire book since April. Short Magazine stories/articles are easier to recall. I sing to my little doggies but not in public.

### 19. SOCIAL ACTIVITIES

a. Do you spend time with others? (In person, on the phone, on the computer, etc.)  Yes  No

If "YES," describe the kinds of things you do with others. My friend comes to see me almost daily (she lives 5 houses away) And my friends who live out of town call me on the phone

How often do you do these things? Regularly because it's in my home

b. List the places you go on a regular basis. (For example, church, community center, sports events, social groups, etc.)

The only social place I normally go to is the yacht club because our friends there understand my condition & offer a place for me to lie down if I need to.

Do you need to be reminded to go places? That's why I have calendar  Yes  No

How often do you go and how much do you take part? Not enough if you ask my husband. But I go with him whenever I feel like I can

Do you need someone to accompany you?

Yes  No

c. Do you have any problems getting along with family, friends, neighbors, or others?

Yes  No

021108260003613

If "YES," explain.

d. Describe any changes in social activities since the illnesses, injuries, or conditions began.

I just don't feel like I can handle crowds - I worry I might have a problem and be embarrassed

**SECTION D - INFORMATION ABOUT ABILITIES**

20. a. Check any of the following items that your illnesses, injuries, or conditions affect:

- |  |   |  |  |
|--|---|--|--|
| <input checked="" type="checkbox"/> Lifting  | <input type="checkbox"/> Walking            | <input type="checkbox"/> Stair Climbing              | <input checked="" type="checkbox"/> Understanding          |
| <input type="checkbox"/> Squatting           | <input type="checkbox"/> Sitting            | <input type="checkbox"/> Seeing                      | <input checked="" type="checkbox"/> Following Instructions |
| <input checked="" type="checkbox"/> Bending  | <input type="checkbox"/> Kneeling           | <input checked="" type="checkbox"/> Memory           | <input checked="" type="checkbox"/> Using Hands            |
| <input checked="" type="checkbox"/> Standing | <input type="checkbox"/> Talking            | <input checked="" type="checkbox"/> Completing Tasks | <input type="checkbox"/> Getting Along With Others         |
| <input type="checkbox"/> Reaching            | <input checked="" type="checkbox"/> Hearing | <input checked="" type="checkbox"/> Concentration    |  |

Please explain how your illnesses, injuries, or conditions affect each of the items you checked. (For example, you can only lift [how many pounds], or you can only walk [how far])

Lifting, bending & then standing often make me dizzy. I can't hear as well but this could just be "old age catching up"  
The <sup>loss of</sup> concentration makes it hard to complete tasks. There are times when my husband asks me to do something and I get it wrong; so that

b. Are you:  Right Handed?  Left Handed? falls under the understanding

c. How far can you walk before needing to stop and rest? I can walk inside only  
If you have to rest, how long before you can resume walking? for a short period of time  
I cannot & do not walk outside because the sun & heat are terrible for me (because of Lupus)

d. For how long can you pay attention? at least one hour if I am having a session with my therapist for example

e. Do you finish what you start? (For example, a conversation, chores, reading, watching a movie.)  Yes  No

f. How well do you follow written instructions? (For example, a recipe.) pretty well I thought (until I forgot to add oil to the brownie mix last week)

g. How well do you follow spoken instructions? often I will write down what is said or ask the person to repeat what they said

h. How well do you get along with authority figures? (For example, police, bosses, landlords or teachers.)

fine - in fact I have held many leadership positions in the community in the past. In the past I have always been highly regarded by my co-workers + friends

i. Have you ever been fired or laid off from a job because of problems getting along with other people?  Yes  No

If "YES," please explain. The last boss I had was mean (he was also my brother) I am including a copy of the statement I gave to the courts at the hearing that

If "YES," please give name of employer. was held because he

j. How well do you handle stress? shoved me down the hall last October 12  
NOT well at all! ←

k. How well do you handle changes in routine? It seems more difficult since I began having anxiety attacks.

l. Have you noticed any unusual behavior or fears?  Yes  No

If "YES," please explain. I check, recheck + check again to make sure I locked the doors, have my cellphone, have my keys

21. Do you use any of the following? (Check all that apply.)

- Crutches
- Cane
- Hearing Aid
- Walker
- Brace/Splint
- Glasses/Contact Lenses
- Wheelchair
- Artificial Limb
- Artificial Voice Box
- Other (Explain) \_\_\_\_\_

Which of these were prescribed by a doctor? Glasses

When was it prescribed? Been wearing glasses for about 10 years

I try to get an annual exam or more frequent if my medication affects my vision.

When do you need to use these aids? Wear glasses all the time.

22.. Do you currently take any medicines for your illnesses, injuries, or conditions?

Yes  No

If "YES," do any of your medicines cause side effects?

Yes  No

If "YES," please explain. (Do not list all of the medicines that you take. List only the medicines that cause side effects.)

NAME OF MEDICINE	SIDE EFFECTS YOU HAVE
Clonazepam	Constipation, dry mouth, difficulty concentrating
Cyclobenzaprine 10mg <sup>(only as needed)</sup>	Tired and lethargic (more than usual)
Prednizone <sup>As needed for lupus flares</sup>	HORRID Side Effect! Gain weight, messes with my mental health!
Valacyclovir 500mg <sup>As needed shingles</sup>	Nausea, diarrhea, stomach hurts
Metoprolol ER Succinate 25mg	Cannot tolerate well

SECTION E - REMARKS

Use this section for any added information you did not show in earlier parts of this form. When you are done with this section (or if you didn't have anything to add), be sure to complete the fields at the bottom of this page.

1. Please read the statement I have enclosed  
 In all honesty, I was beginning to work less and less at my last job because if I did not feel good, I could stay home or clock out and lay on a couch until I felt better. (My brother was pretty understanding about my Lupus & Fibromyalgia) But the episode where he "exploded" and assaulted me broke my heart, broke my will - it caused such an emotional & stressful effect that I have "gone downhill" ever since. I doubt I will ever be what I used to be

Name of person completing this form (Please print)

Diane G. Fleher

Date (month, day, year)

08-24-2011

Address (Number and Street)

7720 Eagle Lake Road

Email address (optional)

dfleher@gmail.com

City

North Charleston

State

SC

Zip Code

29418

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State of South Carolina  
Before the  
South Carolina Workers' Compensation Commission  
WCC File No.: 1014489

Diane Fleher, )  
 )  
Claimant, )  
 )  
vs. )  
 )  
Dolphin Cove Marina, )  
 )  
Employer, )  
 )  
and )  
 )  
Carolina Casualty )  
Insurance Company, )  
 )  
Carrier, Defendants. )  
\_\_\_\_\_ )

**HEARING**

March 1, 2012

**COPY**

Hearing reported by Deborah S. Thomas,  
Certified Verbatim Reporter and Notary Public in and  
for the State of South Carolina; said hearing held  
before Commissioner T. Scott Beck, and in accordance  
with the South Carolina Workers' Compensation Laws,  
at the South Carolina Workers' Compensation  
Commission, 102 Courthouse Drive, St. Matthews,  
South Carolina, on March 1, 2012, at the hour of  
10:48 a.m.

\_\_\_\_\_  
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Appearances

Representing the Claimant:

PAUL D. G. RIBEIRO, ESQUIRE  
Attorney at Law  
8086 Rivers Avenue, Suite A  
North Charleston, South Carolina 29406

Representing the Defendants:

LYNNLEY ROSS, ESQUIRE  
Willson Jones Carter & Baxley  
421 Wando Park Boulevard, Suite 100  
Mt. Pleasant, South Carolina 29464

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18 EXHIBIT INDEX

19	Exhibits:	Marked at Page
20	(None were proffered.)	

22 \* \* \* \* \*

23

24

25

## Fleher vs. Dolphin

1                   This hearing is conducted in  
2 accordance with the South Carolina Workers'  
3 Compensation Commission Laws.

4                   COMMISSIONER BECK: Today's date is  
5 March 1st, 2012. This is Workers' Compensation File  
6 Number 1014489. The Claimant in this matter is  
7 Diane Fleher.

8                   MS. FLEHER: Fleher.

9                   COMMISSIONER BECK: Fleher  
10 represented today by Attorney Paul Ribeiro. The  
11 Employer is Dolphin Cove Marina. The Carrier is  
12 Carolina Casualty Insurance Company both represented  
13 today by Attorney Lynnley Ross. The date of alleged  
14 accident is October 12, 2010. The average weekly  
15 wage and compensation rate are in dispute.

16                   We are here based on a motion for hearing  
17 requested by the Defendants. That matter was argued  
18 via a telephone conference approximately a month ago  
19 resulting in an order setting this hearing in  
20 accordance with Regulation 67-601.a.

21                   During a prehearing conference in this  
22 matter there were a number of objections dealt with.  
23 Claimant raised an objection to Defendants' A.P.A.  
24 145 to 179. I've sustained that objection. And the  
25 Defendants have asked that that be proffered and

## Fleher vs. Dolphin

1 remain in the A.P.A.s. And I've done that.

2 Defense objected to Claimant A.P.A. 108 to  
3 125 and 126 to 133. I've overruled both of those  
4 objections and will apply the applicable weight in  
5 my deliberations. Other than that, are there any  
6 objections to A.P.A.s, jurisdiction, venue, or any  
7 other matter, Mr. Ribeiro?

8 MR. RIBEIRO: No, Your Honor.

9 COMMISSIONER BECK: Ms. Ross?

10 MS. ROSS: No, sir.

11 COMMISSIONER BECK: All right.

12 Without further objection the Commission file  
13 becomes a part of the record with the exception of  
14 self-serving declarations and unstipulated medical  
15 reports.

16 During -- also during the prehearing  
17 conference the respective positions of both the  
18 parties was discussed. From the standpoint of the  
19 Claimant, Ms. Fleher asserts that she is not at  
20 M.M.I. She is here seeking a finding of  
21 compensability for a mental/mental injury. Further  
22 asserts that her preexisting Lupus and Fibromyalgia  
23 have been aggravated as a result of this injury.  
24 And that she has developed a facial tic and  
25 incontinence due to this injury. And she is asking

## Fleher vs. Dolphin

1 for medical care for those conditions.

2 She seeks ongoing medical care for the  
3 psychological injury. Asserts that she is entitled  
4 to an award of temporary total disability benefits  
5 from October 12, 2010, to December 1st, 2010. And  
6 then from April 26, 2011, through the present and  
7 continuing.

8 Further, she asserts that her average  
9 weekly wage is \$800 and her corresponding  
10 compensation rate is \$532.80.

11 Mr. Ribeiro, anything in addition to that  
12 with regard to the Claimant's position, sir?

13 MR. RIBEIRO: No, Your Honor.

14 COMMISSIONER BECK: All right. From  
15 the standpoint of the Defendants, they deny  
16 compensability of the claim in its entirety  
17 asserting that the -- Number 1, the event did not  
18 occur as indicated by the Claimant. Secondly, that  
19 even assuming that it had, it does not rise to the  
20 level of unusual and extraordinary.

21 However, if I find the claim is  
22 compensable, Defendants would assert an average  
23 weekly wage of \$555.69 and a compensation rate of  
24 \$370.48. They would assert that she would not be  
25 entitled to any temporary total disability benefits,

## Fleher vs. Dolphin

1 but if I find that she is entitled to any, that she  
2 wouldn't be due any T.T.D. until at least August 15,  
3 2011.

4 Defendants further assert that the Lupus,  
5 Fibromyalgia, facial tic and incontinence are not  
6 related to Claimant's alleged injury.

7 Ms. Ross, anything in addition to that  
8 with regard to the Defendants' position?

9 MS. ROSS: Yes, Commissioner. If we  
10 could add to the record that we are also taking the  
11 position that if the case is compensable, no, T.T.D.  
12 would be due after October 19th, 2011, due to the  
13 Claimant's failure to keep her October 27th  
14 appointment and her lack of follow-up since that  
15 time.

16 COMMISSIONER BECK: What is the date  
17 again?

18 MS. ROSS: It is -- October 19th was  
19 the last day she visited the doctor. October 27th  
20 is the date that she had an appointment, but there  
21 is no report for that day. So we assert that no  
22 T.T.D., if it is compensable, after the 19th, the  
23 last time she was seen. We also took the position  
24 that the case has already been to Magistrates' Court  
25 and it was dismissed. And it was res judicata. I

## Fleher vs. Dolphin

1 believe you overruled that, but just for the record  
2 so that is in there.

3 COMMISSIONER BECK: And you are  
4 correct. I don't think the Magistrate hearing has  
5 any bearing on this Workers' Compensation claim.  
6 And I can rule on the record that this is not res  
7 judicata. Anything else?

8 MS. ROSS: No, sir.

9 COMMISSIONER BECK: All right. Mr.  
10 Ribeiro, you may call your first witness, sir.

11 MR. RIBEIRO: Call Ms. Diane Fleher.

12 COMMISSIONER BECK: Ms. Fleher, would  
13 you raise your right hand, please. Do you swear or  
14 affirm the testimony you are about to give today is  
15 the truth, the whole truth, and nothing but the  
16 truth, ma'am?

17 MS. FLEHER: Yes, sir, I do.

18 COMMISSIONER BECK: All right.

19 Please state your name for the record.

20 MS. FLEHER: Diane, D-i-a-n-e,  
21 Gerald, G-e-r-a-l-d, Fleher, F-l-e-h-e-r.

22 COMMISSIONER BECK: All right. Mr.  
23 Ribeiro?

24 WHEREUPON:

25 DIANE FLEHER, being duly sworn and

## Fleher vs. Dolphin

1 cautioned to speak the truth, the whole truth and  
2 nothing but the truth, testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. RIBEIRO:

5 Q. Now, Ms. Fleher, as you know the reason  
6 that we are here today is to talk to Commissioner  
7 Beck about the Workers' Comp claim that you filed as  
8 a result of an event in the workplace back on  
9 October 12th, 2010. But before we get to the actual  
10 date itself of October 12th, I would like to cover  
11 some preliminary matters first surrounding your  
12 employment at Dolphin Cove Marina and your medical  
13 symptoms and treatment.

14 A. Yes.

15 Q. So, first of all, please tell the  
16 Commissioner when did you start working at Dolphin  
17 Cove.

18 A. I started working there on May 15th, 2006  
19 full-time.

20 Q. And what were you doing there?

21 A. I was brought in to be the manager and  
22 also the line of succession in the event that my  
23 brother David Race and his partner Tom Blocker, that  
24 something happened to one of them. And so I was in  
25 training during that entire time to learn all of the

## Fleher vs. Dolphin

1 operations of the marina and to act on their behalf  
2 in the event that one of them wasn't able to perform  
3 their duties.

4 Q. Who was your direct supervisor?

5 A. David Race.

6 Q. Why did he need a line of succession?

7 A. Well, he has a number of health problems.

8 For example, he's had bypass, stints,  
9 defibrillators. He is about to turn 80 years old.  
10 He wanted to make sure -- what he told me is that  
11 say he were to pass away or something, he said the  
12 vultures would start circling. And he needed  
13 somebody that he felt was competent and able to take  
14 over the marina and act in his stead so that it  
15 would keep the marina in a safe position.

16 Q. How many employees did the marina have?

17 A. It varies because it's a seasonal  
18 business. There are times when we would have maybe  
19 13 and then other times it might drop down to 11.  
20 You know, it varied.

21 Q. Were you in a supervisory capacity?

22 A. Yes, I was.

23 Q. How many people did you supervise?

24 A. I would supervise everyone, actually,  
25 because I was being trained to take over. And so,

## Fleher vs. Dolphin

1 you know, often times he would have me write up  
2 incident reports and hold safety meetings, check on  
3 things, report back to him, write up -- when I say  
4 an incident report, say if an employee, you know,  
5 failed to perform a duty or was late to work, write  
6 up their letter of concern.

7 Q. When was the last time that you worked at  
8 Dolphin Cove?

9 A. October 12th, 2010.

10 Q. How much were you making?

11 A. Nineteen dollars an hour Monday through  
12 Friday and \$20 an hour on the weekends, Saturday and  
13 Sunday.

14 Q. How many hours per week were you working?

15 A. Well, at that time we had made an  
16 agreement that I would work two days less a week  
17 without pay so that I would have an advertising  
18 budget because I had no money for advertising. So I  
19 volunteered to give up two days a week of pay so  
20 that that money could be allocated for an  
21 advertising budget.

22 Q. So in the year leading up to October 12th,  
23 on average how many hours per week were you working?

24 A. Well, before I gave up my two days a week  
25 I worked anywhere from 32 to 40 hours and sometimes

## Fleher vs. Dolphin

1 more than 40 hours. And if I worked more than 40  
2 hours, then he would pay me on a 1099 because he  
3 didn't pay overtime.

4 Q. Did you also receive bonuses in addition  
5 to wages?

6 A. I did. I was over the wet slips. And so  
7 depending on how many boats were in the wet slips at  
8 any given time I was compensated at \$20 per boat per  
9 month.

10 Q. And how much did that amount to on a  
11 monthly basis?

12 A. At over 16 boats. Like 16 was the, you  
13 know, baseline. So any boats over 16. So it just  
14 depended. It could be like anywhere from 380 to  
15 160. It depended because there was a function in  
16 number of boats.

17 Q. Excuse me. Moving on to your medical  
18 condition?

19 A. Uh-huh.

20 Q. Following October 12, 2010, what medical  
21 symptoms did you have as a result of the event in  
22 the workplace?

23 A. Okay. Immediately after the event I was  
24 quite hysterical, crying and upset. I went to my  
25 Dr. Oliverio who is my internal medicine physician.

## Fleher vs. Dolphin

1 My husband drove me there. First we went and filed  
2 a police report. And then we went to my doctor's  
3 office. And, I mean, for days on end I cried and  
4 was just inconsolable. And was advised to go to  
5 SOVA.

6 And they wanted me to see a Dr. Dan Smith.  
7 However, he was out of town. So on a temporary  
8 basis they had me see a therapist just to calm me  
9 down enough to get me to the point that I could  
10 start seeing him.

11 Q. What kind of doctor is Dr. Oliverio?

12 A. Dr. Oliverio is my internal medicine  
13 doctor.

14 Q. Okay. What kind of doctor is Dr. Smith?

15 A. Dr. Smith is a psychologist.

16 Q. Okay.

17 A. He has a Ph.D. as a psychologist.

18 Q. What medical symptoms were you  
19 experiencing at that time when you were seeing those  
20 doctors?

21 A. Well, I was hyperventilating. I was  
22 having anxiety. I couldn't sleep. And I have  
23 fibromyalgia and Lupus. And stress is one of the  
24 worst things for that. And it really exasperated  
25 that. I was in pain every day, but it was worse

## Fleher vs. Dolphin

1 because when you are under stress and when you are  
2 distressed it really aggravates those symptoms, but  
3 I've had that for a long time, the fibromyalgia and  
4 Lupus, but had not had a severe flare-up in quite  
5 awhile.

6 Q. When was the last time you had a flare-up?

7 A. Before that I can't -- I don't recall.  
8 You know, they come and go.

9 Q. Were there any medical symptoms that you  
10 experienced for the first time after October 12,  
11 '10?

12 A. Yes.

13 Q. What were those?

14 A. I started having these rectal spasms.

15 Q. Did you ever have anything like that  
16 before October 12, 2010?

17 A. No.

18 Q. Why do you believe that it related to  
19 October 12, 2010?

20 A. Because stress -- my doctors told me  
21 stress can bring that on. And then I had these  
22 episodes where like the whole left side of my face  
23 would start twitching on its own like that.

24 Q. Did you ever those facial --

25 A. Never.

## Fleher vs. Dolphin

1 Q. -- tics before October 12, 2010?

2 A. No. And I was in the psychiatrist's --  
3 psychologist's office. And he had to call the  
4 psychiatrist in to check me out. It was just like  
5 my face was moving all by itself.

6 Q. Why?

7 A. And they said that that happens because --

8 MS. ROSS: Objection.

9 THE WITNESS: -- when you get  
10 stressful --

11 COMMISSIONER BECK: Sustained. You  
12 can't testify to what a doctor said, ma'am.

13 THE WITNESS: Okay. When you -- can  
14 I say what I understand then?

15 COMMISSIONER BECK: Certainly.

16 THE WITNESS: That when a person gets  
17 really stressed out that their blood chemistry  
18 changes. And that that can cause the involuntary  
19 movement like that. So they worked with me on  
20 breathing techniques to try to calm down. And with  
21 the rectal spasms, I started having incontinence  
22 where I would lose control of my bowels. It's  
23 embarrassing. Sorry.

24 COMMISSIONER BECK: That's okay.

25 BY MR. RIBEIRO:

## Fleher vs. Dolphin

1 Q. Did you have any other medical conditions  
2 or symptoms that you felt were related to the events  
3 of October 12, 2010?

4 A. I experienced severe depression, anxiety.  
5 I mean, the impact it had on my family just upset me  
6 so much.

7 Q. Did you see any other doctors other than  
8 Dr. Oliverio and Dr. Smith?

9 A. Yes. I saw Dr. Constance Guille.

10 Q. What does she do?

11 A. She's a psychiatrist.

12 Q. Okay.

13 A. I saw my Lupus doctor, Georgia Roane.  
14 She's a rheumatologist.

15 Q. Now, you had already had Lupus in your  
16 life before October 2010. So is that something that  
17 you would have done anyways?

18 A. No. I went to see her because I was  
19 breaking out in sores on my arms. I mean, I follow  
20 up with her occasionally, but I wanted -- I needed  
21 to see her before we went to the Bahamas and let her  
22 see what I was going through. I told her what I was  
23 going through.

24 Q. Did you see any other medical providers as  
25 a result of this?

## Fleher vs. Dolphin

1           A.     Later on when I got back from the Bahamas  
2 I ended up my psychiatrist sent me to -- talk to Dr.  
3 Oliverio and felt like I needed to have a sleep  
4 study done because they wanted to change my  
5 medication and increase my antidepressant, but  
6 wanted to make sure with the sleep study that that  
7 would be an appropriate thing. And then I ended up  
8 seeing a pulmonologist after that.

9           Q.     Who were those doctors?

10          A.     The pulmonologist was Dr. Tal Klatchko.  
11 And then from that I was sent from her office, she  
12 wanted me to see a neurologist and a cardiologist.

13          Q.     Who were they?

14          A.     The neurologist Baumgartner and Dr.  
15 Hanger, I think, is the cardiologist. I only saw  
16 him briefly.

17          Q.     Were you taking prescription medications  
18 following October 12th, 2010?

19          A.     Yes.

20          Q.     What were you on?

21          A.     Cymbalta, Wellbutrin, Synthroid for my  
22 thyroid, hydrocodone for the pain, Benazepril,  
23 Cyclobenzaprine I think is the name of it. There is  
24 a -- I don't know the generic name, but it's  
25 Clonopin which is like for anxiety or sleeping.

## Fleher vs. Dolphin

1 Clonopin. And I forget what the generic name is.  
2 And then a medication to help with the rectal  
3 spasms. I can't remember that one's name.

4 Q. Would you have been taking these  
5 medications otherwise? Were you already taking  
6 these medications before October --

7 A. Some of them. Some of them. For example,  
8 I was taking the Cymbalta before, but they ended up  
9 having to double my dose. I was taking the thyroid  
10 medication before. The Clonopin, no, I wasn't  
11 taking that before that I know of. Temazepam, that  
12 is another one. I don't remember taking that  
13 before. The one for the rectal spasms.

14 Q. When did you start taking a double dose of  
15 Cymbalta, if you recall?

16 A. When I got back from the Bahamas, because  
17 when we took that vacation we thought that might  
18 help.

19 Q. Okay.

20 A. And it didn't.

21 Q. Well, you've mentioned the Bahamas a  
22 couple times now, so let's talk about that.

23 A. Okay.

24 Q. What were the dates that you went to the  
25 Bahamas?

## Fleher vs. Dolphin

1           A.    December the 1st through April 28th. I  
2 was supposed to come back -- I had permission from  
3 my brother, written permission, leave without pay  
4 for the dates of December the 1st through like  
5 February 28th or something like that. Returning to  
6 work on March the 8th.

7           Q.    And when did you get that permission  
8 granted to you?

9           A.    In September.

10          Q.    Of 2010?

11          A.    Uh-huh.

12          Q.    Okay.

13          A.    It was agreed upon because we are slow in  
14 the winter.

15          Q.    Okay.

16          A.    And so it was a mutually beneficial thing.  
17 You know, I could afford to take time off from work.

18          Q.    So he wrote you out through the end of  
19 February, but you said that you ended up staying  
20 through April?

21          A.    Uh-huh. Because my husband felt I wasn't  
22 well enough to come back.

23          Q.    Okay. And just to be clear, you are not  
24 claiming temporary total benefits for the period of  
25 time that you would have been off --

## Fleher vs. Dolphin

1           A.   Not at all.  That wouldn't be right, no.

2           Q.   For that period you would have been off  
3           anyways --

4           A.   Yeah, without pay.

5           Q.   -- because of a leave request?  What were  
6           you doing in the Bahamas?  What did you do while you  
7           were there?

8           A.   We were on our sailboat.  We had gone the  
9           past several winters with the same agreement, time  
10          off without pay.  And we sailed in the Bahamas.  And  
11          we would like drop anchor at different islands.  
12          And, you know, just relax and snorkel and ride in  
13          our dingy.

14          Q.   Okay.  Now, Ms. Fleher, you've mentioned a  
15          number of medical symptoms that you were  
16          experiencing following October 12th?

17          A.   Uh-huh.

18          Q.   You've also mentioned six doctors that you  
19          were treating with during that period?

20          A.   Uh-huh.

21          Q.   And a bunch of medications that you are on  
22          as a result of it?

23          A.   Uh-huh.

24          Q.   So during that period of time that you  
25          went to the Bahamas, how were you doing?

## Fleher vs. Dolphin

1           A.    I calmed down somewhat, but then I would  
2           have outbursts of just crying for no reason.  Or I  
3           would wake up with nightmares.  And it wasn't like  
4           the trips before.  And we just dealt with it the  
5           best that we could.  I did seek some doctors while I  
6           was in the Bahamas.

7           Q.    What kind of doctors?

8           A.    I saw two general practitioners in  
9           Georgetown Exumas for both of those doctors because  
10          we spent --

11          Q.    I'm sorry.  What is that?

12          A.    Georgetown in the Exumas.  That is a place  
13          in the Bahamas.

14          Q.    That is where you saw the doctors?

15          A.    Yes.

16          Q.    Okay.  How were you doing symptom-wise?  
17          Medically-speaking how were you doing at that point?  
18          How were you feeling at that point?

19          A.    I was not feeling well.  I was very  
20          fatigued.  And, you know, just --

21          Q.    Did your symptoms improve during that  
22          period of time or get worse or stay the same?

23          A.    I was in a calmer atmosphere.  So as  
24          long -- you know, I wasn't having to listen to stuff  
25          every day about it.  And so, yes, it was better

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1 during that time, but I still had episodes of  
2 depression, not nearly as frequent as before I went  
3 or when I returned.

4 Q. How often were you having a depressive  
5 episode?

6 A. I would say once a week.

7 Q. What about anxiety attacks?

8 A. Probably twice a week.

9 Q. What about facial tics or incontinence?

10 A. The facial tics did not develop until I  
11 heard that we were going to have to deal with  
12 Workman's Comp again because I thought that was all  
13 over with. And --

14 Q. So that was after the Bahamas then?

15 A. Yes.

16 Q. Okay. What about the incontinence issue?  
17 You still dealing with that?

18 A. Yes.

19 Q. Okay. What about your Lupus and your  
20 fibromyalgia during that period?

21 A. Oh, yeah. I mean, that never really goes  
22 away. That is under the surface all the time. I've  
23 just learned to live with it. I mean, I was  
24 diagnosed in 1988. And --

25 Q. But you did say -- you did testify that

## Fleher vs. Dolphin

1 you hadn't had any recent flare-ups leading up to  
2 October 12th, 2010?

3 A. No. Exactly. Exactly. So when I say  
4 it's always there and underlying, it's like I had  
5 learned to ignore a lot of the pain and the  
6 symptoms. It was exasperated after that time.

7 Q. And did that continue -- that  
8 exacerbation, did that continue while you were in  
9 the Bahamas?

10 A. Yes, it did.

11 Q. Okay.

12 A. And like there was more pain. There was  
13 more being tired.

14 Q. Was it an enjoyable vacation?

15 A. Not like it has been in the past. I mean,  
16 there was a marked difference.

17 Q. Did you change any of your meds while you  
18 were there?

19 A. No.

20 Q. Did you get any --

21 A. Except I had to get some -- I did become  
22 anemic, so I had to get some iron pills.

23 Q. Okay. Did you get psychiatric or  
24 psychological treatment while you were in the  
25 Bahamas?

## Fleher vs. Dolphin

1 A. No.

2 Q. When did you next get treatment?

3 A. As soon as I got back.

4 Q. And that was end of April or beginning of  
5 May --

6 A. Yes.

7 Q. -- of 2011?

8 A. Uh-huh. And Dr. Smith was really glad I  
9 came right back in.

10 Q. Now, where do you live currently?

11 A. In Puerto Rico.

12 Q. When did you move there?

13 A. October 31st.

14 Q. Of 2011?

15 A. Uh-huh. And we moved there because my  
16 husband, he -- he thought it would help me to get  
17 away. And it has somewhat, I mean, I have to tell  
18 you. Coming back here to Charleston just for this  
19 time period and the phone calls from my sisters and  
20 all of that, just the whole drama about this whole  
21 thing, it really makes it a lot worse. I still have  
22 depressive episodes in Puerto Rico. I still have  
23 anxiety. I've had two rectal spasms and  
24 incontinence while I've been in Puerto Rico but that  
25 is lessened from what it was.

## Fleher vs. Dolphin

1 Q. Have you -- I'm sorry?

2 A. It's peaceful there. It's calm there.

3 And we were just trying to regain our life back.

4 Q. Was the main reason that you moved then  
5 because of your husband's wanting to move there?

6 A. I had had a session with my psychiatrist.

7 And she said, Diane --

8 MS. ROSS: Objection.

9 COMMISSIONER BECK: Sustained.

10 THE WITNESS: Okay.

11 BY MR. RIBEIRO:

12 Q. Just your understanding. Not actual  
13 statements of doctors.

14 A. We talked about was it worth my losing my  
15 sanity over this. And we had always talked in the  
16 past about one day retiring to Puerto Rico. And so  
17 I was really bad in July. And he came home one day  
18 and he said, we are going to Puerto Rico. Get on  
19 the internet and start looking. And I found a  
20 house. And he bought it.

21 Q. Have you treated with your psychiatrist or  
22 psychologist since your move to Puerto Rico?

23 A. Yes. I've called and called to Dr. Dan  
24 when I've had like, you know, a really bad day and  
25 needed to calm down. And then we were going to

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1 Skype, but I just got internet access.

2 Q. Do you have plans to do Skype sessions?

3 A. Yes.

4 Q. Have you seen Dr. Smith again in person --

5 A. Yes.

6 Q. -- since leaving for Puerto Rico?

7 A. Yes.

8 Q. When did you see him?

9 A. I saw him last Friday and I'll see him  
10 again tomorrow. As soon as I got to Charleston --  
11 excuse me. Thursday. I flew in last Wednesday  
12 night. And I saw him Thursday. And I saw Dr.  
13 Oliverio Thursday.

14 Q. So it would be February 23rd, 2012?

15 A. Uh-huh. Yeah. I got here --

16 Q. Thereabouts?

17 A. -- the 22nd, and it was on Thursday.

18 Q. And you said that you had follow-up care  
19 scheduled?

20 A. Uh-huh. Yes. And he told me if I needed  
21 him any time this week, I have his home -- I have  
22 his phone number.

23 Q. Do you feel that you need ongoing care?

24 A. Oh, yes. Definitely.

25 Q. Why do you say that?

## Fleher vs. Dolphin

1           A.    Because I have been such a strong person  
2 my whole life. And this incident has just crushed  
3 me. It has made me feel like I'm a shell of the  
4 person that I was. I never ever thought that my  
5 brother would shove me. I never thought that he  
6 would get physical with me. He was supposed to  
7 protect me.

8           Q.    Okay. Now, take your time, Ms. Fleher. I  
9 know this is upsetting. You know, since we are on  
10 that subject I would like to go back now and  
11 actually talk about the events leading up to  
12 October 12th, 2010. Can you describe for the  
13 Commissioner leading up to that day --

14          A.    Uh-huh.

15          Q.    -- what was going on there in the  
16 workplace for -- let's say for the week leading up  
17 to this event?

18          A.    Okay. I had gone to Knoxville, Tennessee.  
19 I had permission for days off to see my son.

20          Q.    When did you do that?

21          A.    The week -- like through the 9th of  
22 October.

23          Q.    Was that a weekend?

24          A.    Well, I took three days off and -- with  
25 pay. Two days without pay, you know, vacation time.

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1 So I went and spent time with my son in Knoxville,  
2 Tennessee, where he teaches first grade to meet his  
3 little class. And I came back.

4 And driving home that Saturday night my  
5 brother called me and he goes, are you back in town?  
6 And I said, I'm driving in to Charleston right now.  
7 I said, I would be at work tomorrow morning just  
8 like I said I would be. He said, well, David  
9 Ackerman, he was the restaurant manager, he's  
10 quitting. And so I need you to be ready to step in.  
11 In fact, I may even have you come in tonight. And I  
12 said, whatever you need me to do, I'll do.

13 And so then he said, no, it should be okay  
14 there tonight. Just plan to come in tomorrow and  
15 start learning all you can. Well, I got to work the  
16 next morning. And we have a brother named Dickie,  
17 and he's a little bit slow. And I help take care of  
18 him. And Dickie is 78. And --

19 Q. What do you mean when you say he's slow?

20 A. He exhibits -- and this is my opinion --  
21 almost Asperger-like symptoms. And when I say that  
22 is that -- like we've always known Dickie was slow.  
23 My mother used to have to -- my mother -- he always  
24 lived with us when I was growing up until our mother  
25 died in 1998. He -- mother was always with him. He

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1 didn't know how to balance a checkbook. He knows  
2 how to sign a check, but you have to make the check  
3 out for him. He --

4 Q. Is he autistic?

5 A. He's never had that formal diagnosis, but,  
6 for example, when he comes to work he mops, he  
7 ta-da, ta-da, ta-da. And if you stop him even for a  
8 minute to say can you help me get this box, it just  
9 throws his whole day off, but he's the sweetest  
10 kindest man. But mother asked me to always take  
11 care of him after she was gone, and that is one  
12 reason I came to Charleston, too.

13 So anyhow, he had a trailer that he lived  
14 in. And before I went to Knoxville, my brother  
15 David was building apartments up above the marina.  
16 And so before I left for Knoxville, he made sure I  
17 packed all of Dickie's thing up, which I did,  
18 because --

19 Q. From the trailer?

20 A. Uh-huh.

21 Q. Where was the trailer?

22 A. On the property of the marina.

23 Q. Okay.

24 A. And he had made -- he said make sure you  
25 get all of that packing down. And, I mean, the

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1 apartments weren't even finished hardly. So I did  
2 that. So I got back. And on that Sunday morning I  
3 went up to see Dickie in his apartment because I was  
4 told he got moved up there. And I looked around  
5 and, you know being told him how nice it looked  
6 because I had bought him like a sofa and all of this  
7 other stuff.

8 And I said, well, where is your rug? He  
9 said, it's over at the trailer. I said, but I  
10 bought you that rug. It cost a lot of money. Why  
11 didn't you bring your rug. He said, oh, well, I  
12 guess I didn't need it because he had tile floors.  
13 So, I mean, just the way he thinks, he doesn't need  
14 a rug. So I went over there to get the rug.

15 Q. You went where to get the rug?

16 A. To the trailer.

17 Q. Okay.

18 A. And it was all beat up. The windows were  
19 busted out. The paneling was busted. The cupboards  
20 which I paid for. I had remodeled his trailer. The  
21 cabinets were busted. The bar we built was busted.  
22 And I was in shock. And the rug was covered with  
23 glass. And so this man -- this black guy named Tony  
24 Ford who works for us, he went with me. And, I  
25 mean, I just started crying. I was like, I can't

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1 believe somebody did this. And he goes, well, you  
2 know who did it, Ms. Diane. It was Alex and Eric.

3 Q. Who are Alex and Eric?

4 A. They are workers who work at the  
5 waterfront as dockhands. And I said, why on earth  
6 would they do this? What sense does this make? And  
7 so as I was walking out, two of our customers were  
8 riding in a golf cart; Eddie Canaris and his wife.  
9 And they said, oh --

10 MS. ROSS: I'm going to object to  
11 hearsay at this point.

12 COMMISSIONER BECK: Sustained.

13 BY MR. RIBEIRO:

14 Q. Okay. Without going into statements made  
15 by the customers, what happened next?

16 A. Okay. So I learned that Eric and Alex had  
17 done this by people I saw. So then when my brother  
18 came in to work -- so I called Eric and Alex up to  
19 the office. I said, do you want to tell me what  
20 happened to Dickie's trailer? And they said,  
21 Mr. Race has told us we can't discuss it.

22 Q. Okay. What happened next?

23 A. And so then a little while later Eric came  
24 back to me. And he said, Ms. Diane, I've never lied  
25 to you and I won't lie now. He said, we did do it.

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1 And I said, why would you do it? And I started  
2 crying. And then I was like, why would you do this  
3 Eric? I mean, I paid for that stuff. That was  
4 Dickie's home. How do you think that makes him  
5 feel?

6 He said, well, we thought we were supposed  
7 to do it. I said you thought you were supposed to  
8 do it? You were instructed to do it? And he said,  
9 well, that is kind of what we thought. He said, but  
10 you can't say anything because we were told --  
11 Mr. Race said we cannot discuss it.

12 Q. Okay. So what happened next?

13 A. So then my brother came -- he comes in  
14 late on Sundays. He comes in and he has his little  
15 cup of coffee. And he goes, oh, by the way, Diane,  
16 I need you to call the police. Some vandals went  
17 and messed up Dickie's trailer. I need you to make  
18 a police report and then I need you to call the  
19 insurance company and file an insurance claim. And  
20 I said, you've got to be kidding. Our own employees  
21 did that. And you know why they did it. And I will  
22 not file a fraudulent police report or insurance  
23 claim.

24 Q. So you refused to do as he asked you?

25 A. I refused. And he said -- he said, you

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1 don't know that. I said, I do know they did it  
2 because they told me -- Eric told me they did it.

3 Q. So what happened after you refused to do  
4 that?

5 A. And so he said, well, then just -- he  
6 said, well -- he said something. And then he goes,  
7 just get up to that restaurant and start doing your  
8 job and learning everything you need to learn to  
9 take over when David Ackerman leaves.

10 Q. Okay. What happened?

11 A. Get the hell out of my sight.

12 Q. What day was this that this -- that  
13 conversation --

14 A. That was on Sunday.

15 Q. Okay.

16 A. And he said I don't want to see your face.

17 Q. That was October 10th?

18 A. Uh-huh.

19 Q. Okay.

20 A. Uh-uh. And then as I was getting my  
21 things together to go up to the restaurant, he came  
22 running. He goes, just understand one thing. Your  
23 job is to keep your mouth shut. And so for the next  
24 couple days I tried to learn everything I could  
25 because I had been out of the restaurant for four

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1 months. And, you know, it's hard. You have to like  
2 relearn the P.O.S. system and everything. And even  
3 at that, I hadn't worked at the restaurant much,  
4 just when they needed.

5 So I was trying to learn everything I  
6 could. So then on Tuesday -- and my brother, he  
7 really -- I mean, for the next two days -- I mean, I  
8 was the enemy. He wouldn't even hardly speak to me.

9 Q. What happened on Monday?

10 A. Monday was -- I don't really remember  
11 seeing my brother a whole lot that day because I was  
12 up at the restaurant trying to take notes of  
13 everything that had to be done. I don't really  
14 remember that day very clearly at all.

15 Q. What happened Tuesday, October 12th, 2010?

16 A. Uh-huh. Tuesday I was sitting at my desk.  
17 And I was trying to get in touch -- I was texting  
18 this girl named Portia. She was a brand new  
19 bartender. And because I was sitting there trying  
20 to make up a schedule of who was going to work when.

21 Q. Where was this?

22 A. At my desk.

23 Q. Okay.

24 A. Okay? And I was texting Portia saying --  
25 because Annie told me, she said Portia is making up

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1 the schedule. I said, fine. If I have to open  
2 tomorrow morning, I need to know who is opening with  
3 me. And the reason that is important is because I  
4 have neurogenic syncope. In order to open the  
5 restaurant, you have to lean over and put beer in  
6 this case. And if I lean at a certain degree, I'll  
7 pass out.

8 I said, so I need to know the schedule.  
9 So I had texted Portia and said, you know, can you  
10 tell me who is working Wednesday? And she said,  
11 I've got the schedule made up. I'll fax it to you.  
12 So then I texted her back and texted her the fax  
13 number. And so then I said, well, I am only  
14 supposed to work half a day today. So I need it as  
15 soon as possible so I'll be prepared for in the  
16 morning.

17 And then my brother came up to the window.  
18 There is this like little glass window right by my  
19 desk where you can see into his office and into  
20 mine. And he goes -- he goes get off that phone. I  
21 said I'm just trying to get the schedule, David.  
22 And he goes, I know about all the hate and  
23 discontent you caused up in the restaurant Sunday  
24 night.

25 And I was like, what is he talking about

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1 because all I did -- that was my first day back, was  
2 do my best effort of trying to learn everything.  
3 And he is the one who told me I want you behind the  
4 bar. I want you watching everything. I want you to  
5 learn everything. You just -- I need you to stick  
6 with it Sunday. So I thought, if I was doing 110  
7 percent in my opinion of my job, who would have said  
8 this?

9 And so what I did was, I went and I  
10 asked -- I went to his door and I said, excuse me.  
11 Gentlemen. Mike Sage, Tom Blocker, David Ackerman  
12 were in there with my brother. I said, I have a  
13 quick question.

14 Q. Where did you go? I'm sorry to interrupt.  
15 Where was this?

16 A. To the door of my brother's office.

17 Q. Okay. And those four gentlemen were  
18 seated in the office?

19 A. Yes, they were.

20 Q. Okay. What happened next?

21 A. And I said, excuse me, gentlemen. Can I  
22 ask David a quick question, David Ackerman? And  
23 then he went okay. I said, David, did you tell my  
24 brother that I caused hate and discontent Sunday  
25 night? And he goes, no. And my brother said, get

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1 out of here. So that is all he said at that point.

2 So then I went to Annie, because Annie was  
3 working up there Sunday night, too. And I said,  
4 Annie, did you tell my brother I was causing hate  
5 and discontent because I don't understand where this  
6 is coming from because --

7 Q. Was Annie in the room?

8 A. No, she was at the other end of the  
9 building.

10 Q. Okay.

11 A. And she said, no. I told him it went  
12 great. So I walked back to my brother's office and  
13 I said, okay. I need to know who said this. And he  
14 jumped up from his desk and he came around the desk  
15 at me. And he started shoving me. And he said, get  
16 the fuck -- am I allowed to say this? Get the fuck  
17 out of my office. You are trying to embarrass me.

18 And he kept shoving me. And when I say  
19 down the hall -- let's say that is his office door,  
20 that door right there. It was from there to there.  
21 Three times shoving me backwards down the hall. And  
22 he said, you need to understand one thing. Your job  
23 is to keep your mouth shut. And you go home now.  
24 And you show up here tomorrow morning and you show  
25 up and you better keep your mouth shut. And you do

## Fleher vs. Dolphin

1 your job because believe me when I tell you this, he  
2 said, if you don't do exactly what I say I am going  
3 to make your life such a living hell each and every  
4 day that you are going to feel like you've been  
5 kicked to the curb at the end of the day.

6 First of all, I couldn't believe he shoved  
7 me three times. Boom, boom, boom. I was going  
8 backwards. And I couldn't believe this happened.  
9 So I went -- I sat down at my desk because I just --  
10 I couldn't even think where my purse was. And I sat  
11 there for a minute trying to remember where is my  
12 purse. Where is my purse? When is my purse? I  
13 don't even know if I clocked out that day. I got in  
14 my car. I just started sobbing. And I called my  
15 husband. And he said, I'll come and get you. And I  
16 said --

17 THE WITNESS: I'm sorry. I've got  
18 the worst headache.

19 COMMISSIONER BECK: That's okay.

20 THE WITNESS: I said, I have to  
21 leave. So I drove. And then when I got to my  
22 husband he saw what a mess I was in. And he took me  
23 to -- he said, this is it. This is it, Diane. And  
24 he took me to the police station. And I told them  
25 what happened. And then I went to the doctor

## Fleher vs. Dolphin

1 because I was crying so hard I couldn't even catch  
2 my breath. And I was getting a migraine like I am  
3 right now. And Dr. Oliverio saw me.

4 BY MR. RIBEIRO:

5 Q. Where did you go first after the marina?

6 A. I went to my house against -- my husband  
7 was like, pull over. Pull over, but I was like,  
8 I've just got to get home. I've just got to get  
9 home. And really I shouldn't have been driving, but  
10 I was just -- I just had to get home is all I could  
11 think of is get home. And then my husband, he took  
12 me to the police station. And then he took me to  
13 the doctor's office. And Dr. Oliverio talked to me.  
14 And tried to calm me down.

15 Q. Was that the same day as the incident?

16 A. Yes.

17 Q. Okay.

18 A. Immediately after the police station  
19 because I had -- I couldn't quit crying. And Dr.  
20 Oliverio, when I told him what happened, he said,  
21 you know --

22 MS. ROSS: Objection.

23 THE WITNESS: Anyways --

24 BY MR. RIBEIRO:

25 Q. Just your understanding. Not --

## Fleher vs. Dolphin

1 COMMISSIONER BECK: I'm not sure what  
2 your objection was on her response.

3 MS. ROSS: She got to Dr. Oliverio  
4 told me. And that is when I objected to hearsay.

5 THE WITNESS: Why can't I say -- why  
6 am I not allowed to say what my doctors tell me?

7 COMMISSIONER BECK: Because it's  
8 hearsay, ma'am. He's not here to testify.

9 THE WITNESS: Okay. So I was -- I  
10 understood that I needed to report it to the police.  
11 And I said I already have. I had just left there.  
12 He said this needs to be reported. I understood  
13 that it needed to be reported and I told him I  
14 already had.

15 BY MR. RIBEIRO:

16 Q. Thank you for relating that, Ms. Fleher.  
17 Now, my understanding is that you were shoved three  
18 times?

19 A. Uh-huh.

20 Q. But your shoulders were not injured? You  
21 didn't have any contusions or physical injuries or  
22 anything like that?

23 A. No. No. I mean, shoving, yes. It was  
24 just that -- to be shoved and screamed at like that  
25 and --

## Fleher vs. Dolphin

1 Q. Had your brother ever in the four years  
2 that you had worked there laid hands on you before?

3 A. Never.

4 Q. Did you expect that he was going to?

5 A. Never.

6 Q. How -- and forgive me for asking this. I  
7 think I know the answer to this, but we need to tell  
8 the Commissioner everything here. How is it that  
9 three simple little shoves could cause all of these  
10 medical symptoms?

11 A. Okay. There is a couple of reasons.  
12 First of all, I was a victim of domestic violence in  
13 the '80s. My husband was put on the chain gang for  
14 threatening to kill me and my attorney in a  
15 courtroom in front of a judge. It was so bad that  
16 the judge told me no restraining order on earth  
17 would protect me. And that is how I ended up in  
18 Knoxville, Tennessee. The judge told me I needed to  
19 move over the mountain. And I did. And I went on  
20 to have a successful life there.

21 But not only that, I cared for my brother.  
22 Like when my brother had heart surgery I took two  
23 weeks off of vacation in Knoxville from my job to  
24 come care for him. When he went on to have other  
25 surgeries like stints and all, I cared for him. I

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1 lived with him for a year. I mean, I cleaned the  
2 catheter around his penis when he had prostate  
3 surgery. I mean, I took care of him. I lived with  
4 him. I gave up my life in Knoxville to come home  
5 and take care of my elderly brothers and sisters. I  
6 loved my brother. I never thought he would do this  
7 to me.

8 I was -- I came back to Charleston to take  
9 care of him and Dickie. He asked me to come. And  
10 then I don't know if he was -- I mean, he got so mad  
11 when I refused to do the insurance claim. And I  
12 called our sister that same night, that Sunday  
13 night. I mean, I was like, what should I do  
14 Marilyn? Can you talk to him? If he files this  
15 insurance claim it's going to -- he's going to get  
16 in trouble because it's fraud.

17 And, you know, it was the first time I  
18 ever really stood up to him and said, no, I'm not  
19 going to lie for you. I'm not going to go to jail  
20 for you. And from that point on he made me feel  
21 like I was the enemy. Because he was my older  
22 brother of course I wanted his love. I wanted his  
23 respect.

24 After our mother died he -- my parents  
25 died 28 days apart. And I lived in Knoxville then.

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1 And he said to me, I'll never forget. I wrote a  
2 song about it. Diane, you will always have a place  
3 to come home. The most tender words of comfort I  
4 could have ever been given. You will always have a  
5 place to come home.

6 And he violated me that day, not just  
7 physically, but psychologically. He violated me.  
8 Can we just stop for a minute so I can get my  
9 breath?

10 COMMISSIONER BECK: How much more do  
11 you have? All right. Why don't we go off the  
12 record for a moment.

13 (Recess 11:35 to 11:46.)

14 COMMISSIONER BECK: All right. Any  
15 other questions, Mr. Ribeiro?

16 MR. RIBEIRO: No, sir.

17 COMMISSIONER BECK: All right. Ms.  
18 Ross, you may begin your cross examination.

19 MS. ROSS: Okay.

20 CROSS EXAMINATION

21 BY MS. ROSS:

22 Q. It's good to see you again. I'm here  
23 representing Dolphin Cove Marina and their carrier.  
24 I have a couple of questions for you, first about  
25 your testimony and then some other questions that

## Fleher vs. Dolphin

1 I've prepared.

2 You talked about a rash that you -- that  
3 you've had. Is that only since the date of accident  
4 or have you gotten the rash before, before October  
5 of 2010?

6 A. Okay. I have two kinds of Lupus, I have  
7 discoid and systemic. Systemic affects the internal  
8 organs. Discoid is under skin. And when I get  
9 really upset one of two things happens. I either  
10 get shingles or I get a discoid Lupus rash.

11 Q. Okay. But you've had shingles for years,  
12 right?

13 A. It comes and goes with stress.

14 Q. Okay. Because you've been on Valtrex  
15 which is the medicine for shingles --

16 A. Yes.

17 Q. -- since at least March of '08 or before;  
18 is that correct?

19 A. That's correct.

20 Q. Okay.

21 A. And it's exasperated by stress.

22 Q. Okay. Before we come to a Workers' Comp  
23 hearing the parties put together medical records,  
24 exhibits, that type of thing. They look like this.  
25 This one is mine and this one is your lawyer's.

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1 Have you seen these before? Inside of them are, you  
2 know, some medical records or some doctor records.  
3 Have you had the opportunity to review these  
4 submissions?

5 A. Uh-huh.

6 Q. Is that a yes?

7 THE WITNESS: Well, is that like what  
8 I looked at or is it different?

9 BY MS. ROSS:

10 Q. Well, he's not going to be able to help  
11 you. So we need to know what you remember about  
12 what you've reviewed. His looks like this and mine  
13 looks like -- looks like this. Have you reviewed  
14 these or no?

15 A. I've reviewed his.

16 Q. You've reviewed his but not mine?

17 A. Not yours.

18 Q. Okay. Fair enough. And the ones that you  
19 reviewed in his, were there any medical records from  
20 any doctors from the Bahamas?

21 A. No.

22 Q. Okay. Now, you talked about coming to  
23 Charleston for this hearing. Did you come directly  
24 to Charleston from Puerto Rico?

25 A. No. I went to Knoxville.

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1 Q. Okay. So -- and why did you go to  
2 Knoxville?

3 A. My son had a C.D. release party. And  
4 then -- but he was having surgery last Wednesday,  
5 two weeks ago. And I -- actually we had already  
6 planned to go be with him while he had surgery. And  
7 it just happened his C.D. release party was three  
8 days before his surgery.

9 Q. Okay. So you went to the C.D. release  
10 party. You took care of your son when he had  
11 surgery. And then you came to Charleston?

12 A. Well, he more or less took care of me  
13 because I was sick the whole time I was with him if  
14 you want to know the truth. It kind of back fired.

15 Q. Okay. What kind of C.D. release party did  
16 he have?

17 A. He writes music, his own.

18 Q. Okay. Are there videos of that C.D.  
19 release party on UTube?

20 A. Yes.

21 Q. Okay. From the medical records that you  
22 reviewed from your lawyer, when you talked to Dr.  
23 Dan and planned to do Skype, is there any record of  
24 any of that in the medical records that you  
25 reviewed?

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1           A.    No.  We weren't able to set up Skype.

2           Q.    Okay.

3           A.    Because I couldn't get internet, high  
4 speed internet at my house, although now I have a  
5 new thing called Elevate by AT&T.  It's a hot spot  
6 thing.  Have you heard of it?  Just got it.  And you  
7 can like -- we have an AT&T tower right by our  
8 house.  And I get full bars.  So now I'll be able  
9 to.

10          Q.    Okay.  So for the past --

11          A.    Just telephone conversations.

12          Q.    Okay.  Any record of that?  Any phone  
13 conversations in the records that you reviewed?

14          A.    I don't know if he wrote about them or not  
15 because he was away from work at home when I talked  
16 to him one time.  For example, his mother was  
17 visiting him.  And he was at his house.  So I don't  
18 know -- like when I talk to him when he's not at the  
19 office if that counts as a real visit.

20          Q.    Okay.  So as far as you know were any  
21 records made of any of these conversations that you  
22 had?

23          A.    I don't know.

24          Q.    Okay.  Now, you talk about and we are  
25 going to go over --

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1           A.    I mean, I know when he called me back he  
2 was walking his two dogs. And he said his mom was  
3 visiting. I mean, that is how I know that he was  
4 home.

5           Q.    Okay. All right. Now, we talked about  
6 the accident.

7           A.    Uh-huh.

8           Q.    What happened on October 12th, 2010. And  
9 what you said -- something that you said really kind  
10 of stuck with me and I wrote it down. And you  
11 talked about to be shoved and screamed like that is  
12 what bothered you. Is that really what got to you  
13 here?

14          A.    Being shoved.

15          Q.    Being shoved and being screamed or just  
16 being shoved?

17          A.    When he said that my job was to keep my  
18 mouth shut and that he -- and to show up the next  
19 day while he was shoving me. And that I better keep  
20 my mouth shut or he would make my life a living hell  
21 and I would feel like I had been kicked to the curb  
22 at the end of each and every day, that in  
23 combination with being shoved.

24          Q.    Okay. That is the crux of it? That is  
25 what really got you, really affected you mentally?

## Fleher vs. Dolphin

1 A. Being shoved and him saying that.

2 Q. Okay. Now, you talked about you were  
3 coming back from Knoxville on Sunday?

4 A. No, on Saturday I came back.

5 Q. On Saturday you came back?

6 A. He called me that night.

7 Q. And then you worked on Sunday?

8 A. Sunday morning.

9 Q. And that is when the conversation was had  
10 about the insurance claim?

11 A. Yes.

12 Q. Okay. But then Monday you testified that  
13 you didn't remember anything funny or off-putting on  
14 Monday. Is that fair?

15 A. I told you I really couldn't remember what  
16 happened on Monday.

17 Q. Okay. Well, if I asked you in the  
18 deposition if anything on Monday caused you any type  
19 of mental distress and you told me no --

20 A. I did.

21 Q. Would that be appropriate?

22 A. Yes.

23 Q. Okay. And then Tuesday -- we talked about  
24 what happened Tuesday. You were up at the bar. You  
25 were trying to get the schedule. You texted with

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1 Portia. She faxed you something.

2 A. No, I was down in my office.

3 Q. Excuse me. You were in the office. You  
4 texted with Portia. She is faxing you the schedule.  
5 Did you mention anything about the insurance claim  
6 being mentioned on Tuesday the 12th?

7 A. Yeah, my brother mentioned it that  
8 morning.

9 Q. Okay. What did you say that morning?

10 A. That he thought about it and he probably  
11 wouldn't do it.

12 Q. Okay. Why didn't you mention that just a  
13 minute ago when your lawyer was asking you?

14 A. Because I didn't think about that part.

15 Q. Okay.

16 A. But that was just because he was trying to  
17 get me to shut up and not tell anybody else about  
18 it.

19 Q. Okay. But what your testimony is, is that  
20 he told you that he thought about it and he would  
21 not file the insurance claim? Is that a yes?

22 A. Uh-huh.

23 Q. You have to say yes because she's taking  
24 everything down.

25 A. Oh, okay.

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1 Q. It's like your deposition.

2 A. Yes.

3 Q. Okay.

4 A. But he was just doing -- I mean, but that  
5 is when he also told me I had to keep my mouth shut,  
6 again.

7 Q. Okay. And that was Tuesday?

8 A. When he shoved me, yes.

9 Q. Okay. As he was shoving you, that is what  
10 he said?

11 A. My job was to keep my mouth shut.

12 Q. Okay.

13 A. He had also told me that on Sunday.

14 Q. Okay.

15 A. That my job was to keep my mouth shut.

16 Q. Okay. And I --

17 A. And he was referring to the insurance  
18 claim.

19 Q. That is the way you interpreted it,  
20 correct?

21 A. I know that is what he meant.

22 Q. Okay. Word for word what did he say?

23 A. On Sunday he said, your job and your only  
24 job then is to keep your mouth shut when I said, I  
25 will not file a fraudulent claim for you. And don't

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1 think there won't be an investigation because I  
2 can't believe there wouldn't be. I mean, it was a  
3 further conversation, you know, like that this will  
4 get investigated, but da-ta-da-ta-da, but he said  
5 then your job is to keep your mouth shut.

6 Q. Okay.

7 A. And I said, I will not lie for you. I  
8 will not perjure myself for you. If I am asked by  
9 an insurance adjustor, then I will tell the truth.

10 Q. Okay. Now, I was looking down and taking  
11 notes. And so I did not see you when you indicated  
12 the distance that he -- that he pushed you.

13 A. Uh-huh.

14 Q. So I want you to do it again because I  
15 missed it. Starting at this door?

16 A. From that door to there.

17 Q. To -- you see that little --

18 A. You see that light fixture.

19 Q. To that fixture right there? Okay. That  
20 is the distance?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. Okay. Three shoves?

25 A. Yes.

## Fleher vs. Dolphin

1 Q. Not four, not two. Three?

2 A. Three.

3 Q. Okay. Now, you talked about how much  
4 money you made, bonuses, that type of thing?

5 A. Uh-huh.

6 Q. In the evidence that you have reviewed are  
7 there any pay records, taxes, check stubs, anything  
8 at all that you put into evidence supporting your  
9 claim for compensation rate?

10 A. I'm sure we could get Dolphin Cove to  
11 print up all of my pay stubs.

12 Q. Okay. But as far as what we have here  
13 today, nothing today?

14 A. No.

15 Q. Okay. Okay. So --

16 A. I haven't been asked for a pay stub.

17 Q. Okay. Fair enough.

18 A. But wait a minute. I do think there was  
19 one that I gave to Steve Bell.

20 Q. Okay. But is it in evidence? Because we  
21 have to submit our evidence in advance?

22 A. Oh, I don't know if it's in that packet or  
23 not.

24 Q. Okay. All right. Now, would you agree  
25 with me that the only people who saw or could have

## Fleher vs. Dolphin

1 seen what happened to you on the 12th was you, David  
2 Race, David Ackerman, Tom Blocker, and Mike Sage?

3 A. Yes.

4 Q. Is there anybody else?

5 A. No.

6 Q. Okay. No one else could have heard it  
7 either; is that correct?

8 A. Now, that I don't know.

9 Q. Okay. Well, I asked you about that in  
10 your deposition. And you told me, no, so --

11 A. Yeah. I mean, you know, I didn't think  
12 anybody could hear because Annie was on the other  
13 side of the building, but he was screaming pretty  
14 loud.

15 Q. Okay. But there was nobody that you saw  
16 in the immediate vicinity --

17 A. No.

18 Q. -- that you thought would hear what was  
19 going on?

20 A. No.

21 Q. Okay. Okay. Was that the first time that  
22 you had ever heard Mr. Race curse at work?

23 A. Oh, heavens, no.

24 Q. Okay. Would you say -- if you had to pick  
25 one, would you say he curses rarely, occasionally,

## Fleher vs. Dolphin

1 or frequently?

2 A. Frequently.

3 Q. Okay. What about hear him tell somebody  
4 what to do? Is that the first time you ever heard  
5 him tell somebody what to do; get out of my office,  
6 keep your mouth shut, anything like that? Telling  
7 somebody what to do?

8 A. Yeah, I've heard him tell people to get  
9 out of his office.

10 Q. Okay. Rarely, occasionally, or  
11 frequently, same question?

12 A. Rarely.

13 Q. Okay. What about yelling? That wasn't  
14 the first time you heard him yell, was it?

15 A. He yells all the time.

16 Q. Okay. Now, he's also --

17 A. Never seen him shove. Never seen him  
18 push.

19 Q. Okay.

20 A. Never seen him touch anybody.

21 Q. But he's touched you before, right? You  
22 are his sister.

23 A. A hug.

24 Q. Okay. Fair enough. Hugs. What about to  
25 like help you over a curb or some uneven terrain

## Fleher vs. Dolphin

1 there at the marina? Has he touched you for that?

2 A. He helped me when I hurt my foot and he  
3 took me to the doctor.

4 Q. Okay. He helped you walk then?

5 A. Yeah, but he doesn't remember taking me to  
6 the doctor. He doesn't remember sitting with me in  
7 the waiting room. He doesn't remember being there  
8 for the x-rays.

9 Q. Huh.

10 A. Isn't that interesting?

11 Q. But everything at the marina is not paved,  
12 is it?

13 A. What does --

14 Q. Like the road. There is uneven terrain  
15 there at the marina?

16 A. Yeah.

17 Q. Okay. And he's touched you. He helped  
18 you with your foot. He would give you a hug, those  
19 types of things?

20 A. I don't think a hug and a gesture of being  
21 helped is the same as being shoved. That is --  
22 shove is not helping.

23 Q. Okay. So touching you in and of itself  
24 doesn't bother you. It's the shoving that is the  
25 problem here?

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1 A. Yes.

2 Q. Okay.

3 A. The shoving and being cursed at while he  
4 was pushing me backwards. Let's be clear. There  
5 are two things that happened at the same time.

6 Q. Okay. So the cursing and the shoving,  
7 that is --

8 A. Being told that he was going to make my  
9 life miserable and I would feel like I had been  
10 kicked to the end of the curb at the end of every  
11 day. That is a threat.

12 Q. Okay. All right. Now I want to talk  
13 about some of your complaints. You talked about the  
14 facial tic?

15 A. Yes.

16 Q. Okay. Now, you mentioned it today and you  
17 told me in your deposition as well. The first time  
18 you had it when you got a call from your attorney  
19 and you learned that there was going to be a  
20 hearing; is that correct?

21 A. Yes.

22 Q. Okay.

23 A. Because I thought Workman's Comp had  
24 denied it. Thought that was over with. I would  
25 never have to talk about this again, you know. I

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1 went to my therapist.

2 Q. Okay. But then you heard from your lawyer  
3 there is going to be a hearing. And then later on  
4 you said it was a deposition. Are you sure whether  
5 it was the hearing or the deposition that started  
6 the facial tic?

7 A. Okay. He called me and said, Diane, I've  
8 received a letter from the Office of the Governor  
9 which I gave you a copy of by the way.

10 Q. Right.

11 A. And it said in their opinion they felt  
12 that because this incident occurred at work that it  
13 needed to be pursued through Workman's Compensation,  
14 that they were payers of last resort.

15 Q. Right.

16 A. And that it was my duty to cooperate  
17 and -- to the fullest, to see it through.

18 Q. Okay.

19 A. That is kind of like how -- I mean, that  
20 is not the exact wording, but you've got the letter,  
21 don't you?

22 Q. So it's this letter that came from the  
23 Office of the Governor that started the facial tics?

24 A. My attorney called and read me the letter.

25 Q. Okay.

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1           A.    Because I didn't want to ever have to see  
2 my brother again, see any of those men.  You know,  
3 it's not just that my brother pushed me.  There were  
4 three grown men sitting there watching a man do that  
5 to me and not one of them stood up and said, stop,  
6 David.  Shame on them.  Shame on them.

7           Q.    Okay.  And you've also talked about some  
8 fecal incontinence?

9           A.    Yes.

10          Q.    And there is -- you've had at least three  
11 occasions where you have lost all voluntary control?

12          A.    Yes.

13          Q.    Yes?  Okay.  Did you talk about that with  
14 your psychiatrist?

15          A.    Yes, I did.

16          Q.    Okay.  Did you talk about that with your  
17 family doctor?

18          A.    Yes, I did.

19          Q.    Okay.  Did you talk about that as you were  
20 going through with everybody?

21          A.    Yes.

22          Q.    Okay.

23          A.    And that is why my family doctor  
24 prescribed the medication for it.

25          Q.    Okay.  And would you agree with me that is

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1 an important symptom?

2 A. A what?

3 Q. An important symptom. That is not, you  
4 know, kind of a snuffy nose that you might forget?

5 A. Oh, no.

6 Q. That's a big deal?

7 A. Yes, it has altered my ability to go out  
8 in public at times.

9 Q. Okay. All right. Now, I want to talk  
10 about the insurance claim now. You indicated that  
11 after the incident on the 12th you went to the  
12 police?

13 A. Yes.

14 Q. And you signed out a warrant?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes.

18 Q. It's like your deposition. I know it's  
19 hard to -- it's hard to remember. And your lawyer  
20 put into evidence, this is Claimant's 100, 102 -- or  
21 101.

22 A. Uh-huh.

23 Q. This document. Did you complete this as  
24 part of your warrant for your brother?

25 A. I gave it to the clerk -- the clerk of

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1 court for the judge on the day of the hearing.

2 Q. Okay.

3 A. And I asked -- I said, I love my brother  
4 very much. I don't want him to be in trouble for  
5 this. However, as you can read in the letter my  
6 thoughts, I just wrote down my thoughts.

7 Q. Okay. Any mention in here about an  
8 insurance claim? In the document that you prepared  
9 to the judge did you talk about the insurance claim  
10 that you are talking about today?

11 A. Oh, Workman's Comp?

12 Q. No. The insurance claim for the problems  
13 with Dickie's trailer?

14 A. No.

15 Q. Okay. But you think that -- what you are  
16 saying today is that is why he was aggressive  
17 towards you?

18 A. Yes.

19 Q. But you didn't tell that to the judge  
20 before?

21 A. Because he had not filed the claim. So, I  
22 mean, I was hoping he listened to me and wouldn't do  
23 it.

24 Q. Okay.

25 A. I'm not trying to get him in trouble. I'm

## Fleher vs. Dolphin

1 trying to get help for me now.

2 Q. Okay.

3 A. Why would I -- I knew he had not filed the  
4 claim yet. I prayed he would listen to me and not  
5 do it. So why would I bring that up to a judge  
6 trying to get him in trouble? I'm not trying to get  
7 him in trouble.

8 Q. Well, he had already told you the day  
9 before that he wasn't going to file it?

10 A. And yet he did file it later, didn't he?  
11 He was just trying to shut me up.

12 Q. Okay. But as far as the police --

13 A. He did file it, didn't he?

14 Q. He's here. We will talk to him. The  
15 police report --

16 A. Uh-huh.

17 Q. Any -- did you tell the police when you  
18 went to the police that day about the insurance  
19 claim?

20 A. I did.

21 Q. You did? Okay. That is 183. What about  
22 the doctors, the M.U.S.C. doctors, Dr. Oliverio?

23 A. Yes, I did.

24 Q. Okay.

25 A. It in the records. They wrote it down.

## Fleher vs. Dolphin

1 Q. Okay.

2 A. If you read the doctor's reports, I've  
3 told every one of them the whole story.

4 Q. Okay. All right. Now, as far as how  
5 Mr. Race acts at work and treats people, you've got  
6 a couple of indications in here that you are not the  
7 only person that he had treated perhaps in a harsh  
8 manner; is that fair?

9 A. But I've never seen him push anybody.

10 Q. Okay. But he would treat others in a  
11 harsh manner?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. Okay.

16 A. Yes. However, I never saw him lay hands  
17 on anybody. And I don't mean -- oh, I've seen him  
18 help little old ladies, yes, get out of a car, but  
19 we are not talking about that kind of laying hands  
20 on somebody. We are talking about shoving.

21 Q. Okay. Now, we went -- you went to a  
22 hearing in Magistrate's Court, correct?

23 A. I did.

24 Q. And everybody testified and everything,  
25 right?

## Fleher vs. Dolphin

1 A. Uh-huh.

2 Q. You have to say yes?

3 A. Yes.

4 Q. Okay. And the judge, using your words, he  
5 threw it out, threw the case out.

6 A. Uh-huh.

7 Q. Is that correct?

8 A. Because my brother, for example, said,  
9 Your Honor, she's just trying to collect  
10 Unemployment while she goes to the Bahamas. How  
11 interesting. Would I go collect unemployment if I  
12 had a letter signed by him asking for time off  
13 without pay? Mike Sage, he said, it's a figment of  
14 her imagination, Your Honor, she made it all up.  
15 But you will see in his deposition he admitted to  
16 it.

17 Q. Okay.

18 A. These men are liars. They get their  
19 stories together. My brother used to do it all the  
20 time. He would get us all in a room and corroborate  
21 our stories before we had to go before a judge.  
22 It's common how he operates.

23 Q. Okay.

24 A. But I wasn't his puppet.

25 Q. But you think he's arranged for all of the

## Fleher vs. Dolphin

1 other people who were in the room to all tell the  
2 same story?

3 A. All I'm saying is that in Magistrate's  
4 Court Mike Sage said, Your Honor, it's a figment of  
5 her imagination. My brother said, she's just trying  
6 to collect Unemployment while she's in the Bahamas.  
7 That is what he told the judge.

8 Q. Okay.

9 A. I have years where I've gone to the  
10 Bahamas, never collected a penny because I didn't  
11 ever file for Unemployment. I mean, I went on  
12 vacation. He has the paperwork. I mean, it was the  
13 most ludicrous thing. I couldn't believe he said  
14 that, you know, but when -- it's hard to keep a lie  
15 straight. You know, the truth you can keep  
16 straight.

17 Q. Okay. I want to talk a little bit about  
18 your lifestyle.

19 A. Uh-huh.

20 Q. Your -- the house that you bought in  
21 Puerto Rico is how many square feet?

22 A. We thought it was 4,000, but now it was  
23 6,000 actually.

24 Q. Okay. And how many acres of land is that  
25 on?

## Fleher vs. Dolphin

- 1 A. Eight acres on top of a mountain.
- 2 Q. Okay. And that cost you \$300,000?
- 3 A. Yeah. We got a heck of a deal.
- 4 Q. Okay. You paid cash for that?
- 5 A. My husband paid for it.
- 6 Q. Okay.
- 7 A. My husband has a trust fund. My husband  
8 is independently wealthy. I am not.
- 9 Q. Okay. But your husband, as you indicated,  
10 he thought that you needed to be in Puerto Rico to  
11 relax, so he bought you and paid cash for a \$300,000  
12 house. Is that fair or not fair?
- 13 A. He -- okay. You say bought for me. It's  
14 still in the trust.
- 15 Q. Okay. So the trust bought the house?
- 16 A. Our finances are totally separate.
- 17 Q. Okay.
- 18 A. I'm poor as a church mouse. He's rich.
- 19 Q. Did you buy it from the guy who created 60  
20 minutes?
- 21 A. Actually from his son Stephen Hewitt, yes.
- 22 Q. Okay. And as far as help around the  
23 house, do you have any servants or caretakers that  
24 came with the house?
- 25 A. Well, we don't call them servants. They

## Fleher vs. Dolphin

1 are caretakers.

2 Q. Okay. So how many -- do you have  
3 caretakers that came with the house?

4 A. They live around the corner.

5 Q. Okay. How many?

6 A. Two.

7 Q. Okay. And you often --

8 A. And, you know, I took my caretaker with me  
9 that helps take care of me.

10 Q. Right. You also have Mr. Zambriski who  
11 takes care of you as well?

12 A. Yes.

13 Q. Okay. And he vacuums, washes the clothes,  
14 loads and unloads the dishwasher, cleans the  
15 bathroom?

16 A. Not anymore. Verine does that.

17 Q. Okay. And you also have a 35-foot  
18 sailboat?

19 A. Yes, we do. My husband does.

20 Q. Okay. That you sail around the Caribbean  
21 for three months or so at least the winters of  
22 '08 to '09 and then '09 to 2010?

23 A. And '11.

24 Q. And then '10 to '11?

25 A. Well, no. '10 to -- yeah, '10 to

## Fleher vs. Dolphin

1 '11 because we moved in -- yeah.

2 Q. Okay. But if not for this Workers'  
3 Compensation claim --

4 A. Uh-huh.

5 Q. -- you would be back working at Dolphin  
6 Cove Marina for \$19 an hour?

7 A. Yes.

8 Q. Okay.

9 A. Because it wasn't just the hourly wage. I  
10 was getting shares of stock.

11 Q. Okay.

12 A. I mean, it was for when the marina sells I  
13 had considerable shares of stock in the marina. So  
14 I had an incentive to make it work and to make it  
15 grow, but to get those shares you have to be  
16 employed there. And I am no longer employed there.

17 Q. Okay. Did you file a request for  
18 financial assistance with Roper St. Francis Health  
19 Care?

20 A. Yes, I did.

21 Q. Okay. Did they write off \$3,700 worth of  
22 charges due to your financial hardship?

23 A. I would say probably more than that.

24 Q. Okay. What financial hardship is that?

25 A. I had no job. I had no savings because I

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1 spent my money on my prescriptions. My husband --  
2 and if you read, I wrote in there my husband gives  
3 me \$1,500 a month. With that \$1,500 a month I made  
4 the house payment. I paid for our power and all of  
5 that. That was my allowance. So they took -- I  
6 mean, I was very honest about that. But my  
7 husband's money is in a trust. I have no legal  
8 right to it.

9 Q. Okay. What about --

10 A. I mean, they set trusts up like that. I  
11 mean, as his spouse I have no legal right to his  
12 money.

13 Q. What about the State Office of Victim's  
14 Assistance which is SCOVA, did you --

15 A. SOVA.

16 Q. SOVA. Excuse me. Did you ask them for  
17 any type of financial assistance.

18 A. They actually handed me an application and  
19 had me fill it out. And said that it was, you know,  
20 compensation -- if they determined that my injury  
21 was compensationable, they would pay for it. And it  
22 fell under the guidelines.

23 Q. So did you have to indicate financial  
24 hardship to SOVA?

25 A. No.

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1 Q. Okay.

2 A. No, it had nothing to do with financial  
3 hardship as far as I understood it.

4 Q. Okay. Did you have a service animal  
5 prescribed for you?

6 A. Yes, I do. I have two white Maltese dogs;  
7 Beebee and Harley.

8 Q. But you had the dogs before you were  
9 injured?

10 A. Exactly. But we found that me taking them  
11 with me helped me with my anxiety. I wish they were  
12 here today sitting on my lap.

13 Q. Do you take them everywhere?

14 A. I do.

15 Q. Like to the grocery store and places why  
16 seeing eye dogs can go?

17 A. Uh-huh. I have my note. You want to see  
18 it?

19 Q. No. I've got it. But, I mean, you take  
20 them everywhere just like they were a seeing eye  
21 dog?

22 A. Yeah.

23 Q. Why didn't you bring them today?

24 A. Because Harley got really sick. We don't  
25 know if he got poisoned or not. And, I mean, we

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1 thought he was going to die.

2 Q. Okay.

3 A. And so my husband had to keep him because  
4 he was too sick to travel.

5 Q. What about the other one?

6 A. Because Beebee can't -- I mean, they are  
7 together.

8 Q. Okay.

9 A. He almost died a couple weeks ago. I  
10 don't know if he got bitten by something or what.  
11 But they fly on the plane with me. They go with me  
12 to the Home Depot. I have anxiety -- I have anxiety  
13 attacks in my Home Depot, but if I have to  
14 concentrate to keeping little puppies happy it  
15 helps.

16 Q. Okay.

17 A. I'm so afraid that I'm going to have an  
18 episode, you know, like have to go to the bathroom  
19 and not make it.

20 COMMISSIONER BECK: Do you need a  
21 break?

22 THE WITNESS: I'm okay.

23 BY MS. ROSS:

24 Q. I just have one last question. Well, a  
25 short series of questions. You have a FaceBook

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1 profile?

2 A. I do.

3 Q. And is your work status that you are  
4 happily retired enjoying Puerto Rico with my  
5 wondering full husband Clayton?

6 A. Yes, because I do not want the whole world  
7 to know about this horrible incident.

8 MS. ROSS: That is all I have.

9 COMMISSIONER BECK: Anything further?

10 MR. RIBEIRO: Just two things,  
11 briefly.

12 REDIRECT EXAMINATION

13 BY MR. RIBEIRO:

14 Q. Ms. Fleher, do you know the amount,  
15 approximately, of your medical bills to date for the  
16 treatment that we've discussed after October 12th,  
17 2010?

18 A. Okay. You see that Roper wrote off 3,700.  
19 If you actually go back -- and I told them that I  
20 would reimburse them in full for anything if ever  
21 was able to get money. For example, SOVA, they will  
22 be paid. Roper would be paid back because they are  
23 due that. And the moneys at Roper far exceed that.  
24 I would say the last thing I saw was about \$70,000  
25 worth of tests and all.

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1 Q. Is that only since October 12th, 2010?

2 A. Yes.

3 Q. Okay.

4 A. It may be more than that, actually,  
5 because, I mean, I've got different -- like I've  
6 got -- you've got the physicians and you've got  
7 Roper. And like some physicians aren't part of the  
8 Roper Network. So I had to pay that out-of-pocket.  
9 Out-of-pocket alone I think I've paid 6,000 out of  
10 my pocket, what wasn't covered.

11 Q. Okay.

12 A. Not counting prescriptions.

13 Q. Okay. The other thing I wanted to ask you  
14 about, Ms. Ross has questioned you on the fraudulent  
15 insurance claim that your brother asked you to file?

16 A. Uh-huh.

17 Q. Wanted to bring out that you hadn't told  
18 anybody else about this, the Magistrate, the  
19 doctors, nobody?

20 A. Right.

21 Q. But do you remember speaking to Debbie  
22 Dozier at Key Risk Claims Management on --

23 A. Yes. I told her.

24 Q. On October 14th at approximately 12:20?

25 A. Uh-huh.

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1 Q. Page 165 of Defendants' brief.

2 A. I just didn't tell the judge because the  
3 issue was not -- you know.

4 Q. And you did explain to her that your  
5 brother was asking you to file a fraudulent claim?

6 A. Yes.

7 Q. And you told her -- this is two days after  
8 the event, right?

9 A. Yes.

10 Q. And you told her that that was what the  
11 disagreement was about when she asked you?

12 A. Yes.

13 MR. RIBEIRO: Okay. No further  
14 questions, Your Honor.

15 COMMISSIONER BECK: Anything further?

16 MS. ROSS: Just one more.

17 RECROSS EXAMINATION

18 BY MS. ROSS:

19 Q. You told me and you told Ms. Dozier, but  
20 is your testimony that you also told all of your  
21 treating physicians?

22 A. Yes.

23 MS. ROSS: Nothing else.

24 COMMISSIONER BECK: Anything else?

25 MR. RIBEIRO: No, sir.

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1 COMMISSIONER BECK: Any other  
2 witnesses on behalf of the Claimant.

3 MR. RIBEIRO: The Claimant calls  
4 David Race.

5 COMMISSIONER BECK: All right.  
6 Please get Mr. Race.

7 MS. ROSS: Commissioner, if I could  
8 ask, David Ackerman no longer works at the marina.  
9 He has been kind enough to drive down from  
10 Hendersonville to be here today. Is there any  
11 objection to getting him in and then out and then  
12 you can call Mr. Race? I'm not trying to mess up  
13 the flow of your case. I just feel bad for him. He  
14 took the day off. He wants to head back, but if  
15 that will mess it up I --

16 COMMISSIONER BECK: Mr. Ribeiro?

17 MR. RIBEIRO: I don't guess it would  
18 mess it up.

19 COMMISSIONER BECK: I mean, it's your  
20 case.

21 MR. RIBEIRO: We are going to hear  
22 from everybody, so the order doesn't matter. I  
23 wasn't going to call him as a witness. I was only  
24 going to call Mr. Race. So --

25 MS. ROSS: I was going to call him.

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1 I just -- I feel kind of bad for him, but if it's --  
2 it not my call.

3 MR. RIBEIRO: Mr. Race's wouldn't  
4 take me -- I mean, a couple minutes.

5 COMMISSIONER BECK: Let's go ahead  
6 and get the Claimant's case in first.

7 MS. ROSS: I'll do it.

8 (Discussion off the record.)

9 COMMISSIONER BECK: Would you raise  
10 your right hand, sir. Do you swear or affirm the  
11 testimony you are about to give today is the truth,  
12 the whole truth, and nothing but the truth, sir?

13 MR. RACE: I do.

14 COMMISSIONER BECK: Please state your  
15 full name for the record.

16 MR. RACE: David G. -- David Gerald  
17 Race.

18 COMMISSIONER BECK: Mr. Ribeiro?

19 WHEREUPON:

20 DAVID RACE, being duly sworn and  
21 cautioned to speak the truth, the whole truth and  
22 nothing but the truth, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. RIBEIRO:

25 Q. Mr. Race, you are an owner of Dolphin Cove

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1 Marina; is that right?

2 A. That's correct.

3 Q. And you've owned it since about 1985?  
4 1985, sir?

5 A. Roughly speaking, yes.

6 Q. You own that 50-50 with Mr. Tom Blocker?

7 A. That's correct.

8 Q. You have a 50 percent ownership interest  
9 in the marina?

10 A. That's correct.

11 Q. And you've known Mr. Blocker since you say  
12 about 1966?

13 A. I've known him since 1953, but we've been  
14 in business since 1966.

15 Q. And you would say that you were like  
16 brothers?

17 A. Yes.

18 Q. When your sister Diane was working at the  
19 marina you were her direct supervisor?

20 A. That's correct.

21 Q. Okay. I want to call your attention to  
22 the events of the beginning of October 2010. I've  
23 deposed you, right?

24 A. Yes.

25 Q. Okay. And your story is that Diane was

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1 interfering in the management of the restaurant,  
2 right?

3 A. That's correct.

4 Q. Okay. You do admit however that your  
5 brother Dickie's trailer was vandalized, right?

6 A. Yes.

7 Q. And it was done by the dockhands Eric and  
8 Alex, right?

9 A. That is what I understand, yes.

10 Q. They still work there?

11 A. Yes.

12 Q. You didn't take any disciplinary action  
13 against them, did you?

14 A. No.

15 Q. Okay.

16 A. Because they agreed to pay for the damage  
17 once we found out who it was.

18 Q. So your employees vandalized your  
19 property. You found out about it and --

20 A. My brother's property.

21 Q. And you did -- which is on the marina  
22 grounds, right?

23 A. That's correct, yes.

24 Q. And yet they are still working for you  
25 today?

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1 A. That's correct.

2 Q. And no disciplinary action taken?

3 A. None.

4 Q. Okay. Now --

5 A. Because they agreed to pay for the damages  
6 they created.

7 Q. And after this damage was created by them,  
8 your employees, you then told Diane that you all  
9 should file an insurance claim, didn't you?

10 A. No. It was before I found out that they  
11 were the ones who caused the problem. And we were  
12 going to call the cops. And I told Diane that we  
13 should set up a vandalism claim. That's correct.  
14 But you got to watch -- be careful of the timing.

15 Q. When she refused to file that claim, you  
16 felt like she was challenging your authority, didn't  
17 you?

18 A. Probably.

19 Q. October 12th, 2010?

20 A. Uh-huh.

21 Q. You admit to pushing her out of your  
22 office, right?

23 A. That's correct.

24 Q. You placed both your hands on both of her  
25 shoulders, didn't you?

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1           A.    That's correct.

2           Q.    And your story is that you pushed her  
3 backwards out of your office?

4           A.    That's correct.

5           Q.    You would say that it was a single push,  
6 not three shoves?

7           A.    It was a single push.

8           Q.    And you would say that it was just out of  
9 the office, not down the hallway?

10          A.    That is exactly correct.

11          Q.    And you would say that you told her to get  
12 the hell out. And you didn't --

13          A.    Prior to the -- prior to getting up and  
14 pushing her out of the door, that's correct.

15          Q.    And your story is that you did not use any  
16 stronger language than that?

17          A.    That's correct.

18          Q.    And your story is that you did not  
19 threaten her at no point did you tell her she was  
20 going to feel like she was in hell or kicked to the  
21 curb?

22          A.    No, sir, I did not.

23          Q.    Okay. And you were charged with assault  
24 and battery in this matter?

25          A.    It was dismissed.

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1 Q. And then it was dismissed, right?

2 A. That's correct.

3 Q. Okay. Mr. Race, you don't see any problem  
4 with laying hands on an employee, do you?

5 A. I don't see any problem with telling  
6 someone who comes in my office uninvited, will not  
7 leave my office, and because I don't have a security  
8 guard to remove them physically, then if I have to  
9 do that, I have no problem with that, no, sir.

10 MR. RIBEIRO: I have no further  
11 questions.

12 COMMISSIONER BECK: Ms. Ross?

13 CROSS EXAMINATION

14 BY MS. ROSS:

15 Q. Mr. Race, could you provide a little more  
16 detail about what happened on October 12th, 2010?

17 A. The morning of October 12th I got a call  
18 from the bar manager who had -- was a recent hire  
19 mainly because David Ackerman was leaving due to  
20 Diane's interference. And the girl told me that  
21 Diane had come in the day before on a Sunday and had  
22 interfered with her deliberately behind the bar and  
23 had taken over all of her duties on a certain  
24 segment of the bar because it was her friends that  
25 came in from another marina. And she was going to

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1 show that they was going to run that part of the  
2 operation.

3 And the new hire, the new manager who was  
4 the only other person there that -- except that  
5 Diane had walked in there. Now, Diane was not part  
6 of that operation until she walked in -- with her  
7 friends and started doing whatever she was doing.

8 Q. Okay. When you say she wasn't part of  
9 the --

10 A. The manager said --

11 Q. Part of the --

12 A. I'm sorry?

13 Q. What did you say? She wasn't part of  
14 what?

15 A. She wasn't part of that -- of the work  
16 force that morning.

17 Q. Okay. Keep going.

18 A. She had nothing to do with that activity  
19 as far as the bar was concerned. And that is what I  
20 had a bar manager for.

21 Q. Okay. So what happened?

22 A. So Diane interfered with her, the bar  
23 manager, who was a new person. Said that she  
24 couldn't -- she couldn't do her paperwork. She  
25 couldn't do -- Diane was interfering with her

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1 collecting her bills, the whole works. And that if  
2 she was going to be -- if Diane was going to dictate  
3 to her her schedules and different things that was  
4 going on up there, that she was going to quit.

5 Q. Okay. So what happened?

6 A. So I told Portia that I would talk to  
7 Diane. That don't worry about it, she is not going  
8 to interfere with the activity up there because you  
9 are the bar manager.

10 Q. Okay. Had you had trouble in the past  
11 about Ms. Fleher going into the bar area or  
12 interfering to use the word you are using?

13 A. Well, I mean, no. Not in that regard.  
14 Not while Portia was there.

15 Q. Okay. So what happened?

16 A. So -- where did I leave off on that?

17 Q. You left off that you told Portia that Ms.  
18 Fleher was not going to interfere.

19 A. Yes.

20 Q. So what happened after that?

21 A. I then went to her office.

22 Q. Ms. Fleher's office?

23 A. That's right.

24 Q. Okay.

25 A. And told her that I had had complaints

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1 about her and her activities at the restaurant. And  
2 that she no longer would be doing any of the  
3 activity up there as far as the bar was concerned.  
4 And that her only duties were to make sure that the  
5 employees were there on time, did their -- was set  
6 up for that. And I had a manager at the bar that  
7 would take care of that bar.

8 Q. Okay. What happened after that?

9 A. Then I left and went back to a meeting  
10 which was going to be held at that time with the  
11 regular restaurant manager who had quit or given me  
12 notice that he quit two weeks before because of  
13 Diane's interference mostly. And --

14 Q. Who was present at the meeting?

15 A. Tom Blocker and Mike Sage and David  
16 Ackerman and myself.

17 Q. Okay. And then what happened?

18 A. Then Diane suddenly barges in and starts  
19 hollering that I was a liar. That none of this  
20 happened and that she was accusing -- just making,  
21 you know, wild statements and screaming and  
22 hollering. And I said, Diane, you are not invited  
23 to this meeting. I want you to leave. And so she  
24 told me that she would leave whenever she got good  
25 and ready to.

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1                   And I said, no. I said, no, you are  
2 not -- you are interfering with this meeting. Get  
3 out of my office. And she still didn't leave. So I  
4 said, Diane, get the hell out of my office. And she  
5 just buckles up and she's -- you know, she's not  
6 going to go anyplace. So I got up. I walk over to  
7 her.

8                   And when I walked over to her she comes to  
9 me. And I just pushed her out the door. And I  
10 was -- I physically pushed her out the door. And  
11 when she was outside the door, then I said, now you  
12 go to your office and you punch out. And after you  
13 punch out, then you leave. And I'll see you  
14 tomorrow morning and we will discuss this little  
15 situation. I went back into the meeting so we  
16 finished our meeting.

17                   MS. ROSS: Okay. I would like to act  
18 it out very shortly if I can have leave to do that?

19                   COMMISSIONER BECK: Very well.

20                   MS. ROSS: Okay.

21                   THE WITNESS: I would like to make  
22 one other comment.

23                   MS. ROSS: Sure.

24                   THE WITNESS: That there was no file  
25 claimed against the vandalism on my brother's

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1 trailer. All right? Once we found out that this --  
2 that whoever it was was the -- was employees at the  
3 marina and they were young kids, and they agreed  
4 that they would pay for the damages to Richard's  
5 trailer, then we didn't want our customers to think  
6 that they -- that their boats would be compromised  
7 by having the people out there if all of this was  
8 spread around. So we thought the best thing to do  
9 was just not get -- let it die as it stood since it  
10 was -- the damage was being taken care of.

11 BY MS. ROSS:

12 Q. Okay. So you didn't file a claim for the  
13 problems with the trailer?

14 A. That's correct.

15 Q. Okay. I want to go ahead and do a short  
16 demonstration. I will be Ms. Fleher in this role if  
17 that is all right.

18 A. Okay.

19 Q. And you be you. All right.

20 A. You want to go in the doorway?

21 Q. There is step there, but sure.

22 COMMISSIONER BECK: Okay. Be careful  
23 with that step down. I don't want anybody tripping.

24 MS. ROSS: How about that door?

25 COMMISSIONER BECK: Well, there is

## Fleher vs. Dolphin

1 somebody working in there.

2 MS. ROSS: I'm sorry. I thought it  
3 was a hallway. Okay.

4 THE WITNESS: How about --

5 MS. ROSS: We'll just do it like  
6 right here.

7 THE WITNESS: All right. This is the  
8 doorway right here.

9 BY MS. ROSS:

10 Q. We're in the doorway right here.

11 A. All right. And I came over here. And  
12 when I come over here you went like this. Okay?

13 Q. Okay.

14 A. And I said, okay. Get the hell out of my  
15 office. And I went like that.

16 Q. Okay. Anything more severe than that?

17 A. No.

18 Q. One touch? Two touches.

19 A. But I was serious about pushing her back  
20 and I did that.

21 Q. Okay.

22 A. And if I would have had a security guy on  
23 my site I would have called him in and had him  
24 physically remove her from the property.

25 Q. Okay. Now, we've talked about your role.

## Fleher vs. Dolphin

1 You are the boss at the marina?

2 A. I'm the owner.

3 Q. You are the owner. So are you in charge?

4 A. Absolutely.

5 Q. Okay. Is it unusual for you to curse from  
6 time to time at the office?

7 A. I don't do it too much, but I do do it.

8 Q. Okay. What about yell from time to time?

9 A. Probably.

10 Q. Okay. What about argue with Ms. Fleher?

11 A. Yes, we do.

12 Q. Okay. What about -- go ahead.

13 A. She's a very possessive person. And she  
14 likes to have her way.

15 Q. Okay.

16 A. And that ain't how it works when you are  
17 in the business.

18 Q. What about touching Ms. Fleher? Not  
19 necessarily on the shoulders, but a hug, maybe  
20 helping her when she injured her foot she talked  
21 about. Is it unusual for her to -- for you to touch  
22 her?

23 A. No.

24 MS. ROSS: Okay. I don't have  
25 anything else.

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1 COMMISSIONER BECK: Anything further?

2 MR. RIBEIRO: No, Your Honor.

3 COMMISSIONER BECK: All right. You  
4 may step down, sir. Thank you very much.

5 THE WITNESS: Thank you, sir.

6 COMMISSIONER BECK: Any other  
7 witnesses on behalf of the Claimant?

8 MR. RIBEIRO: No, Your Honor.

9 COMMISSIONER BECK: All right. Ms.  
10 Ross, you may call your first witness, please.

11 MS. ROSS: Okay. We call David  
12 Ackerman.

13 COMMISSIONER BECK: All right. Mr.  
14 Ackerman, would you raise your right hand, please.  
15 Do you swear or affirm the testimony you are about  
16 to give today is the truth, the whole truth, and  
17 nothing but the truth, sir?

18 MR. ACKERMAN: I do.

19 COMMISSIONER BECK: Please state your  
20 full name for the record.

21 MR. ACKERMAN: David Lee Ackerman.

22 COMMISSIONER BECK: All right. Ms.  
23 Ross?

24 WHEREUPON:

25 DAVID ACKERMAN, being duly sworn and

## Fleher vs. Dolphin

1 cautioned to speak the truth, the whole truth and  
2 nothing but the truth, testifies as follows:

## 3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. Okay. Mr. Ackerman, how are you  
6 affiliated or were you affiliated with Dolphin Cove  
7 Marina?

8 A. I worked for them. I was the restaurant  
9 manager.

10 Q. When was that?

11 A. Oh, I guess that was 2000 -- it had to be  
12 2010.

13 Q. Why did you leave there?

14 A. I can't remember the exact dates.

15 Q. Okay.

16 A. I left mainly because of the interactions  
17 that started with Diane.

18 Q. Okay. Like what?

19 A. Well, just constant drama. And starting  
20 problems where there didn't need to be problems.

21 Q. Okay.

22 A. It was just too much to take.

23 Q. Okay. Were you present at the meeting on  
24 October 12th, 2010, with Mr. Sage, Mr. Blocker, and  
25 Mr. Race?

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1           A.    Yes.

2           Q.    And what was the purpose of the meeting?

3           A.    I think the meeting was -- I think I was  
4 turning over some things to him because I was -- I  
5 had resigned. And I was leaving. And I think it  
6 was like one of the final meetings.

7           Q.    Okay. And what happened with Ms. Fleher  
8 at that meeting?

9           A.    What happened with -- oh. We were having  
10 a meeting. And then she was yelling something down  
11 the hall. And then came into the meeting. And she  
12 was standing at the door. And Mr. Race told her  
13 that we were having a private meeting. And asked  
14 her if she would leave. And this was a long time  
15 ago, but I'm trying to recall it the best I can.

16                   And she kept yelling about somebody said  
17 something about somebody or somebody was talking  
18 about her or something. And was accusing someone  
19 of -- accusing someone of saying that she was  
20 starting trouble or something. And then he told her  
21 to get out. And then she came further into the  
22 office. And he said get out of my office or get the  
23 hell out of my office and go clock out. And she  
24 kept coming. She was still in the office.

25                   And Mr. Race stood up out of his chair and

## Fleher vs. Dolphin

1 walked toward her. And when he walked toward her he  
2 stopped. And she came -- and he said get out of my  
3 office. And then she came further into the office,  
4 closer to him. And then I don't remember whether he  
5 actually touched her or whether he put his hands on  
6 her. It was something like this.

7 And then I don't know whether he turned  
8 her around or whether she actually turned around  
9 herself and went out of the room, but Mr. Race  
10 did -- did put his hands up like this, but I  
11 can't -- like I said, I can't remember exactly. I  
12 think he probably grabbed her and turned her around  
13 physically, but I don't remember exactly what  
14 happened. So anyway, she left. And she went out of  
15 the office. And that is pretty much it.

16 Q. Okay. Did he shove her three times from  
17 the distance of that door to that fixture right  
18 there, like push?

19 A. No. The office isn't even that big.

20 Q. Okay.

21 A. There is -- no. It would be like --

22 MS. FLEHER: Hallway.

23 THE WITNESS: It would be like if  
24 his -- if he was sitting right there where he is  
25 sitting and then she walked in to him and he pushed,

## Fleher vs. Dolphin

1 it would probably be to about where you are, if he  
2 pushed, but I can't remember whether he pushed or  
3 whether she just -- whether she just turned around.  
4 But it wouldn't even be a distance of even -- the  
5 whole thing wouldn't even have taken place in more  
6 than this space from you to him.

7 BY MS. ROSS:

8 Q. Okay. What was said by Mr. Race? You  
9 talked about a few things that were said. Was  
10 anything else said by Mr. Race that you remember?

11 A. That is all I remember. Like I said, this  
12 happened a long time ago, and I've been doing other  
13 things. And I haven't really even thought about it  
14 until I was subpoenaed to come here. So I'm just  
15 trying to recall as much as I can, but it was just  
16 more or less he was telling her to get out of the  
17 office. They were having a private meeting and  
18 she's not part of it. She's not invited into the  
19 meeting and asked her to leave several times. And I  
20 do -- I think he did say something like, get the  
21 hell out of my office, but that was only after it  
22 had elevated from one level to the next.

23 Q. Have you heard Mr. Race curse at work  
24 before?

25 A. Yeah.

## Fleher vs. Dolphin

1 Q. Okay. What about tell somebody what to  
2 do?

3 A. Yeah. He's the boss. He's got to tell  
4 people what to do.

5 Q. What about yell? Have you seen him yell  
6 at work before?

7 A. Yeah.

8 MS. ROSS: I don't have anything  
9 else.

10 COMMISSIONER BECK: Mr. Ribeiro?

11 CROSS EXAMINATION

12 BY MR. RIBEIRO:

13 Q. You wouldn't consider you and Diane Fleher  
14 to be friends, would you?

15 A. I don't think that there is -- I mean, we  
16 are not friends if that -- I mean, if that is your  
17 question, but I don't think --

18 Q. That is my question.

19 A. Okay. Yeah. Why would we be? No.

20 MR. RIBEIRO: No further questions.

21 COMMISSIONER BECK: Anything else?

22 MS. ROSS: I would offer to act it  
23 out again if anybody has any objection to that. We  
24 can do that really fast.

25 COMMISSIONER BECK: I have no

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1 objection to it if --

2 MS. ROSS: All right. You want to  
3 act it out?

4 THE WITNESS: Sure.

5 BY MS. ROSS:

6 Q. All right.

7 COMMISSIONER BECK: I would only  
8 caution this. The testimony that I heard -- I'm not  
9 sure how you are going to act it out because I'm not  
10 sure based on his testimony he recalls exactly how  
11 it happened to begin with.

12 THE WITNESS: Yeah. I'm just  
13 recalling the only things that I'm pretty sure about  
14 is the fact that he told her several times to get  
15 out of the office. And instead of leaving the  
16 office like she was told, she came in to the office.  
17 And when he stood up, she walked even more toward  
18 him into his direction.

19 COMMISSIONER BECK: But if I recall  
20 your testimony, you weren't sure whether he put both  
21 hands on her shoulder, whether he turned her --

22 THE WITNESS: Right. And I didn't  
23 say I was sure about that. I just said what --

24 COMMISSIONER BECK: That is my point.

25 THE WITNESS: Right. What I just --

## Fleher vs. Dolphin

1 COMMISSIONER BECK: So I'm not sure  
2 what you are going to act out.

3 MS. ROSS: Nothing to act out then.

4 COMMISSIONER BECK: All right.

5 THE WITNESS: Yeah. The only thing  
6 is I know that she came in and that was it as far as  
7 this situation because I was sitting down here. I  
8 was sitting over here. I can't -- I don't know what  
9 transpired here.

10 COMMISSIONER BECK: All right.

11 THE WITNESS: But I do know that he  
12 told her to get out several times. And she walked  
13 in and then walked even closer into his area.

14 COMMISSIONER BECK: All right. Any  
15 other questions?

16 MR. RIBEIRO: No, Your Honor.

17 COMMISSIONER BECK: Thank you, sir.

18 THE WITNESS: Okay. Thank you.

19 COMMISSIONER BECK: You may call your  
20 next witness, please.

21 MS. ROSS: Okay. Is Mr. Ackerman  
22 free to go?

23 COMMISSIONER BECK: Mr. Ribeiro?

24 MR. RIBEIRO: I'm not going to call  
25 him back.

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1 MS. ROSS: Okay. Me neither.

2 COMMISSIONER BECK: You are free to  
3 go. Thank you, sir.

4 (Discussion off the record.)

5 COMMISSIONER BECK: Are you  
6 Mr. Blocker?

7 MR. BLOCKER: Yes.

8 COMMISSIONER BECK: Mr. Blocker,  
9 would you raise your right hand, please. Do you  
10 swear or affirm the testimony you are about to give  
11 today is the truth, the whole truth, and nothing but  
12 the truth, sir?

13 MR. BLOCKER: I do.

14 COMMISSIONER BECK: Please state your  
15 full name for the record.

16 MR. BLOCKER: Thomas A. Blocker,  
17 Junior.

18 COMMISSIONER BECK: All right. Ms.  
19 Ross?

20 MS. ROSS: Okay.

21 WHEREUPON:

22 TOM BLOCKER, being duly sworn and  
23 cautioned to speak the truth, the whole truth and  
24 nothing but the truth, testifies as follows:

25 DIRECT EXAMINATION

## Fleher vs. Dolphin

1 BY MS. ROSS:

2 Q. Mr. Blocker, how are you affiliated with  
3 Dolphin Cove Marina?

4 A. I'm one of the owners.

5 Q. Okay. Who is the other owner?

6 A. David Race.

7 Q. Anybody else?

8 A. No.

9 Q. Okay. How long have you been working with  
10 Mr. Race?

11 A. We started working together in 1953.

12 Q. Okay. Of your workday, do you spend most  
13 of it at the marina, somewhere else, where do you  
14 spend your workday?

15 A. At the marina.

16 Q. Okay. Were you a party to a meeting that  
17 occurred on October 12th, 2010, with Mr. Race,  
18 Mr. Sage, and Mr. Ackerman?

19 A. Yes.

20 Q. Okay. What happened?

21 A. We were having a meeting. David Ackerman  
22 had given us his resignation. And he had a point of  
23 sale system for the restaurant. And we were  
24 getting -- he was there to give us a turnover on how  
25 the system worked. And that was what he was there

## Fleher vs. Dolphin

1 for. And I was in there because I do the technical  
2 stuff. And I needed to know what was going on with  
3 the system. It was computer-based.

4 Q. Okay. So what, if anything, happened as  
5 the meeting began?

6 A. Well, we were in the meeting and we were  
7 going over the things. And then Diane came in and  
8 created a scene. And she disrupted the meeting.

9 Q. Okay. Be as specific as you can with what  
10 you remember?

11 A. That is what I remember.

12 Q. Okay. Keep going.

13 A. And she was yelling about something about  
14 her being -- having creating hate and discontent at  
15 the cafe. And wanted to know who said it. I know  
16 David said it. And I might have said it, but she  
17 was just interrupting the meeting. And she wouldn't  
18 back off.

19 And David told her -- David Race told her  
20 several times that she had to leave, that she was  
21 not invited to our meeting. She didn't need to be  
22 there. And he said the best thing you can do is  
23 punch out and go home. And she just wouldn't leave.  
24 He said, okay. Diane, you've got to leave, and then  
25 she kept not leaving. So he got up out of his

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1 chair. He was behind his desk. And he went out to  
2 the door and where Diane was standing. Said, Diane,  
3 you need to leave.

4 And she bulled up to him and got right in  
5 his face and said she wasn't leaving. And he told  
6 her, you've got to leave, Diane. Just punch out and  
7 go home for the rest of the day. And she wouldn't  
8 move. So he got up from his chair, went around his  
9 desk. Went to the door and pushed her by her  
10 shoulders with both hands out the door about two  
11 steps, maybe not even but one step, but it was  
12 outside. And he told her again, punch out and go  
13 home. And take the rest of the day off.

14 Q. Okay. Is it unusual for Mr. Race  
15 sometimes to curse at work?

16 A. Everybody does it on occasion.

17 Q. What about yell? Is it unusual for him to  
18 yell?

19 A. Yeah, sometimes he does. Yeah.

20 Q. Okay. Sometimes it's unusual or sometimes  
21 he yells?

22 A. No, it's not unusual. I mean, around a  
23 marina sometimes it gets loud.

24 Q. Fair enough. What about telling somebody  
25 what to do? Is it unusual for him to tell somebody

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1 what to do?

2 A. It depends on what is going on. If -- I  
3 mean, he's the Number 1 man. And he's the top man.  
4 If he tells you something, you need to do it.

5 Q. Okay. Is it unusual for him to argue with  
6 Ms. Fleher from time to time?

7 A. They are brother and sister, and they  
8 sometimes have little discussions.

9 Q. Okay. If it's all right I would like to  
10 act out what you remember. And then I won't have  
11 any other questions.

12 A. Okay.

13 MS. ROSS: Any objection?

14 COMMISSIONER BECK: Very well.

15 BY MS. ROSS:

16 Q. All right. Do you need the cane?

17 A. No.

18 Q. Okay. All right. Well, let's do it right  
19 here just so you don't have to go very far.

20 A. Okay.

21 Q. Okay. So what happened?

22 A. Well, he went to the door and he talked to  
23 Diane. And she's like this, you know. And she was  
24 not moving. And so he said, Diane, you've got to  
25 leave. And she kept not leaving. So he finally

## Fleher vs. Dolphin

1 just did like this and just pushed her that much,  
2 about that far. That was it.

3 MS. ROSS: Okay. All right. I don't  
4 have any other questions.

5 COMMISSIONER BECK: Mr. Ribeiro?

6 MS. ROSS: You can sit down.

7 CROSS EXAMINATION

8 BY MR. RIBEIRO:

9 Q. Mr. Race, you are the secretary of the  
10 corporation? I mean Mr. Blocker. I'm sorry.  
11 Mr. Blocker, you are the secretary of the  
12 corporation?

13 A. Right, uh-huh.

14 Q. You work about seven days a week, don't  
15 you?

16 A. Uh-huh.

17 Q. Okay. And you've been working with  
18 Mr. Race since 1953?

19 A. Uh-huh.

20 COMMISSIONER BECK: You need to say  
21 yes or no, sir.

22 THE WITNESS: Yes.

23 COMMISSIONER BECK: The court  
24 reporter has got to be able to record your answer.  
25 Thank you.

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1 THE WITNESS: Okay. Yes.

2 BY MR. RIBEIRO:

3 Q: So it's fair to say that you spend a lot  
4 of time together, don't you?

5 A. Oh, yes.

6 Q. And you've been together at Dolphin Cove  
7 since the early '80s?

8 A. When we built the marina, yes.

9 Q. And you are a 50-50 owner with --

10 A. Right.

11 Q. -- Mr. Race?

12 MR. RIBEIRO: I have no further  
13 questions for you, sir.

14 COMMISSIONER BECK: Anything further?

15 MS. ROSS: Nothing else from me.

16 COMMISSIONER BECK: All right. Thank  
17 you, Mr. Blocker.

18 THE WITNESS: Okay. Thanks.

19 COMMISSIONER BECK: Ms. Ross, any  
20 other witnesses?

21 MS. ROSS: Mike Sage.

22 COMMISSIONER BECK: Okay.

23 (Discussion off the record.)

24 COMMISSIONER BECK: Mr. Sage, would  
25 you raise your right hand, please. Do you swear or

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1 affirm the testimony you are about to give today is  
2 the truth, the whole truth, and nothing but the  
3 truth, sir?

4 MR. SAGE: I do.

5 COMMISSIONER BECK: All right.

6 Please state your full name for the record.

7 MR. SAGE: Michael John Sage.

8 COMMISSIONER BECK: All right. Ms.  
9 Ross?

10 MS. ROSS: Okay.

11 WHEREUPON:

12 MICHAEL SAGE, being duly sworn and  
13 cautioned to speak the truth, the whole truth and  
14 nothing but the truth, testifies as follows:

15 DIRECT EXAMINATION

16 BY MS. ROSS:

17 Q. Mr. Sage, what is your affiliation with  
18 Dolphin Cove Marina?

19 A. I'm in management there. I've been there  
20 for 32 years.

21 Q. Okay. Day-to-day do you spend your time  
22 at the marina or somewhere else?

23 A. Yes, at the marina.

24 Q. Marina? Were you party to a meeting that  
25 occurred on October 12th, 2010, with Mr. Race,

## Fleher vs. Dolphin

1 Mr. Blocker, and Mr. Ackerman?

2 A. Yes, I was.

3 Q. What, if anything, occurred with Ms.  
4 Fleher at the beginning of that meeting?

5 A. Well, at the beginning of the meeting she  
6 wasn't there, but after -- as a result of some  
7 previous conversation she came in and interrupted  
8 the meeting.

9 Q. Okay. What did she say?

10 A. She wanted to know why everybody was  
11 saying that she was causing hate and discontent up  
12 in the restaurant. And actually no one answered her  
13 other than to tell her that she wasn't part of the  
14 meeting and to please leave.

15 Q. Okay. What happened after that?

16 A. She wouldn't leave. And she just got  
17 louder. And then her brother, which is David Race,  
18 told her to leave and get out, she wasn't part of  
19 the meeting. And on the third time that he told her  
20 she still didn't leave, he got up, walked around  
21 her -- walked around his desk and table and it  
22 looked to me at that time, because I was sitting  
23 fairly close, that she kind of stepped into him a  
24 little bit. And then when she did that he just  
25 pushed her by the shoulders out the door.

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1 Q. Okay. How far?

2 A. Two feet.

3 Q. What did he say, if anything?

4 A. He told her to get the hell out of his  
5 office and not come back until tomorrow. Well, let  
6 me rephrase that. He told her to clock out and go  
7 home and not -- and he would get with her tomorrow  
8 or something to that effect.

9 Q. Is it unusual for Mr. Race to curse from  
10 time to time while at the marina?

11 A. No.

12 Q. What about yell?

13 A. He has a fairly short fuse and he will  
14 raise his voice.

15 Q. Okay. What about tell somebody what to  
16 do, was that unusual?

17 A. Tell them what to do?

18 Q. Yes.

19 A. Yes. He's the owner of the company. He  
20 tells everybody what to do.

21 Q. Okay. So that wouldn't be unusual?

22 A. No.

23 Q. Okay. What about argue with Ms. Fleher,  
24 was that unusual for that to occur from time to  
25 time?

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1 A. No.

2 Q. Okay. I'd like to act it out again and  
3 then I wouldn't have any other questions.

4 A. Okay.

5 COMMISSIONER BECK: All right.

6 BY MS. ROSS:

7 Q. Okay. All right. Tell me what to do.

8 A. Well, say that this is the desk that he  
9 walked around. The distance from here to the door  
10 would be right about here. So she stepped inside  
11 the door one or two small steps. And when he came  
12 around the table he was yelling at her. Now, David  
13 is slightly lower in stature. And when he said  
14 something, she kind of like invaded his space and  
15 came in to him a little bit. And he said, get the  
16 hell out and just shoved her like that.

17 Q. Okay.

18 A. And I'm not sure if he grabbed her much,  
19 but just it was kind of a -- and he shoved her twice  
20 I do believe, not --

21 Q. Okay.

22 A. Not just once.

23 Q. Twice?

24 A. May have been twice. It's hard to tell.  
25 I mean, it was pretty quick.

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1 Q. Okay. What about the distance that she  
2 covered?

3 A. Well, just enough to get her out the door.  
4 It couldn't have been more than two feet, maybe  
5 three feet at the most.

6 MS. ROSS: Okay. All right. I don't  
7 have anything else.

8 COMMISSIONER BECK: Mr. Ribeiro?

9 CROSS EXAMINATION

10 BY MR. RIBEIRO:

11 Q. Now, Mr. Sage, a second ago you just --  
12 when you were demonstrating that you said she  
13 invaded his space?

14 A. Yes.

15 Q. But I've deposed you, haven't I?

16 A. Yes.

17 Q. And in the deposition you said that she  
18 chest bumped him?

19 A. That is what I said. Invaded his space.  
20 Came up like that.

21 Q. So it was a chest bump?

22 A. That is what I would call it, yeah.

23 Q. Okay.

24 A. Not as violent as say you would see at a  
25 football game or something when people are

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1           congratulating each other, but she definitely got in  
2           his face with it.

3           Q.    Okay.  And you are aware that you are the  
4           only person in the room who would say that there  
5           was --

6           A.    I was the closest person.

7           Q.    That she --

8           A.    I was sitting -- I was sitting in a chair  
9           right here.  The doorway is right here.  She is  
10          standing here.  He came around.

11          Q.    Uh-huh.  You've known Tom blocker for 35  
12          to 40 years?

13          A.    Closer to 35.

14          Q.    And you've known David Race for 35 to 40  
15          years, right?

16          A.    Yes.

17          Q.    In fact, you were in business with David's  
18          son Gary in the '70s, right?

19          A.    Yes.

20          Q.    You work six days a week at the marina?

21          A.    Yes.

22          Q.    So it's fair to say you've spent a lot of  
23          time together, right?

24          A.    Yes.

25          Q.    And you have never seen Dave Race and

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1 Diane Fleher have physical contact before, have you?

2 A. No.

3 Q. And, in fact, you would say if you were in  
4 David's position in that event that you just  
5 reenacted, that you would have pushed her, too?

6 A. I can't say that I would have, but I  
7 may --

8 Q. That is what you did tell me.

9 A. Well, events change. I may have done it.  
10 I may not have. It's just everything is different.

11 MR. RIBEIRO: Okay. I've got no  
12 further questions.

13 COMMISSIONER BECK: Anything further.

14 MS. ROSS: Nothing, Commissioner.

15 COMMISSIONER BECK: Any other  
16 witnesses today?

17 MS. ROSS: No, Commissioner.

18 COMMISSIONER BECK: Mr. Ribeiro,  
19 anything else?

20 MR. RIBEIRO: No, sir.

21 COMMISSIONER BECK: All right. That  
22 will conclude this proceeding.

23 (Whereupon, the hearing  
24 was concluded at 12:49 p.m.)

25

Fleher vs. Dolphin

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Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Fleher vs. Dolphin on the 1st day of March, 2012: that the witnesses were first duly sworn, and that the foregoing 110 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Commissioner T. Scott Beck, South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina 29201.

In witness whereof I set my hand and seal this 30th day of March, 2012.



Deborah S. Thomas, CVR  
and Notary Public for the  
State of South Carolina

My Commission  
expires 1/4/18

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State of South Carolina  
Before the  
South Carolina Workers' Compensation Commission  
WCC File No.: 1014489

Diane Fleher, )  
Claimant, )  
vs. ) HEARING )  
Dolphin Cove Marina, )  
Employer, ) March 1, 2012 )  
and )  
Carolina Casualty )  
Insurance Company, )  
Carrier, Defendants.)

Hearing reported by Deborah S. Thomas,  
Certified Verbatim Reporter and Notary Public in and  
for the State of South Carolina; said hearing held  
before Commissioner T. Scott Beck, and in accordance  
with the South Carolina Workers' Compensation Laws,  
at the South Carolina Workers' Compensation  
Commission, 102 Courthouse Drive, St. Matthews,  
South Carolina, on March 1, 2012, at the hour of  
10:48 a.m.

ABACTIS REPORTING SERVICES  
2117 PINE LAKE DRIVE  
WEST COLUMBIA, SOUTH CAROLINA 29169  
(803) 206-7390

ABACTIS REPORTING SERVICES

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Appearances

Representing the Claimant:  
PAUL D. G. RIBEIRO, ESQUIRE  
Attorney at Law  
8086 Rivers Avenue, Suite A  
North Charleston, South Carolina 29406

Representing the Defendants:  
LYNNLEY ROSS, ESQUIRE  
Willson Jones Carter & Baxley  
421 Wando Park Boulevard, Suite 100  
Mt. Pleasant, South Carolina 29464

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Fleher vs. Dolphin

This hearing is conducted in  
accordance with the South Carolina Workers'  
Compensation Commission Laws.

COMMISSIONER BECK: Today's date is  
March 1st, 2012. This is Workers' Compensation File  
Number 1014489. The Claimant in this matter is  
Diane Fleher.

MS. FLEHER: Fleher.

COMMISSIONER BECK: Fleher  
represented today by Attorney Paul Ribeiro. The  
Employer is Dolphin Cove Marina. The Carrier is  
Carolina Casualty Insurance Company both represented  
today by Attorney Lynnley Ross. The date of alleged  
accident is October 12, 2010. The average weekly  
wage and compensation rate are in dispute.

We are here based on a motion for hearing  
requested by the Defendants. That matter was argued  
via a telephone conference approximately a month ago  
resulting in an order setting this hearing in  
accordance with Regulation 67-601.a.

During a prehearing conference in this  
matter there were a number of objections dealt with.  
Claimant raised an objection to Defendants' A.P.A.  
145 to 179. I've sustained that objection. And the  
Defendants have asked that that be proffered and

ABACTIS REPORTING SERVICES

1 remain in the A.P.A.s. And I've done that.  
 2 Defense objected to Claimant A.P.A. 108 to  
 3 125 and 126 to 133. I've overruled both of those  
 4 objections and will apply the applicable weight in  
 5 my deliberations. Other than that, are there any  
 6 objections to A.P.A.s, jurisdiction, venue, or any  
 7 other matter, Mr. Ribeiro?  
 8 MR. RIBEIRO: No, Your Honor.  
 9 COMMISSIONER BECK: Ms. Ross?  
 10 MS. ROSS: No, sir.  
 11 COMMISSIONER BECK: All right.  
 12 Without further objection the Commission file  
 13 becomes a part of the record with the exception of  
 14 self-serving declarations and unstipulated medical  
 15 reports.  
 16 During -- also during the prehearing  
 17 conference the respective positions of both the  
 18 parties was discussed. From the standpoint of the  
 19 Claimant, Ms. Fleher asserts that she is not at  
 20 M.M.I. She is here seeking a finding of  
 21 compensability for a mental/mental injury. Further  
 22 asserts that her preexisting Lupus and Fibromyalgia  
 23 have been aggravated as a result of this injury.  
 24 And that she has developed a facial tic and  
 25 incontinence due to this injury. And she is asking

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1 for medical care for those conditions.  
 2 She seeks ongoing medical care for the  
 3 psychological injury. Asserts that she is entitled  
 4 to an award of temporary total disability benefits  
 5 from October 12, 2010, to December 1st, 2010. And  
 6 then from April 26, 2011, through the present and  
 7 continuing.  
 8 Further, she asserts that her average  
 9 weekly wage is \$800 and her corresponding  
 10 compensation rate is \$532.80.  
 11 Mr. Ribeiro, anything in addition to that  
 12 with regard to the Claimant's position, sir?  
 13 MR. RIBEIRO: No, Your Honor.  
 14 COMMISSIONER BECK: All right. From  
 15 the standpoint of the Defendants, they deny  
 16 compensability of the claim in its entirety  
 17 asserting that the -- Number 1, the event did not  
 18 occur as indicated by the Claimant. Secondly, that  
 19 even assuming that it had, it does not rise to the  
 20 level of unusual and extraordinary.  
 21 However, if I find the claim is  
 22 compensable, Defendants would assert an average  
 23 weekly wage of \$555.69 and a compensation rate of  
 24 \$370.48. They would assert that she would not be  
 25 entitled to any temporary total disability benefits,

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1 but if I find that she is entitled to any, that she  
 2 wouldn't be due any T.T.D. until at least August 15,  
 3 2011.  
 4 Defendants further assert that the Lupus,  
 5 Fibromyalgia, facial tic and incontinence are not  
 6 related to Claimant's alleged injury.  
 7 Ms. Ross, anything in addition to that  
 8 with regard to the Defendants' position?  
 9 MS. ROSS: Yes, Commissioner. If we  
 10 could add to the record that we are also taking the  
 11 position that if the case is compensable, no, T.T.D.  
 12 would be due after October 19th, 2011, due to the  
 13 Claimant's failure to keep her October 27th  
 14 appointment and her lack of follow-up since that  
 15 time.  
 16 COMMISSIONER BECK: What is the date  
 17 again?  
 18 MS. ROSS: It is -- October 19th was  
 19 the last day she visited the doctor. October 27th  
 20 is the date that she had an appointment, but there  
 21 is no report for that day. So we assert that no  
 22 T.T.D., if it is compensable, after the 19th, the  
 23 last time she was seen. We also took the position  
 24 that the case has already been to Magistrates' Court  
 25 and it was dismissed. And it was res judicata. I

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1 believe you overruled that, but just for the record  
 2 so that is in there.  
 3 COMMISSIONER BECK: And you are  
 4 correct. I don't think the Magistrate hearing has  
 5 any bearing on this Workers' Compensation claim.  
 6 And I can rule on the record that this is not res  
 7 judicata. Anything else?  
 8 MS. ROSS: No, sir.  
 9 COMMISSIONER BECK: All right. Mr.  
 10 Ribeiro, you may call your first witness, sir.  
 11 MR. RIBEIRO: Call Ms. Diane Fleher.  
 12 COMMISSIONER BECK: Ms. Fleher, would  
 13 you raise your right hand, please. Do you swear or  
 14 affirm the testimony you are about to give today is  
 15 the truth, the whole truth, and nothing but the  
 16 truth, ma'am?  
 17 MS. FLEHER: Yes, sir, I do.  
 18 COMMISSIONER BECK: All right.  
 19 Please state your name for the record.  
 20 MS. FLEHER: Diane, D-i-a-n-e,  
 21 Gerald, G-e-r-a-l-d, Fleher, F-l-e-h-e-r.  
 22 COMMISSIONER BECK: All right. Mr.  
 23 Ribeiro?  
 24 WHEREUPON:  
 25 DIANE FLEHER, being duly sworn and

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1 cautioned to speak the truth, the whole truth and  
 2 nothing but the truth, testifies as follows:  
 3 DIRECT EXAMINATION  
 4 BY MR. RIBEIRO:  
 5 Q. Now, Ms. Fleher, as you know the reason  
 6 that we are here today is to talk to Commissioner  
 7 Beck about the Workers' Comp claim that you filed as  
 8 a result of an event in the workplace back on  
 9 October 12th, 2010. But before we get to the actual  
 10 date itself of October 12th, I would like to cover  
 11 some preliminary matters first surrounding your  
 12 employment at Dolphin Cove Marina and your medical  
 13 symptoms and treatment.  
 14 A. Yes.  
 15 Q. So, first of all, please tell the  
 16 Commissioner when did you start working at Dolphin  
 17 Cove.  
 18 A. I started working there on May 15th, 2006  
 19 full-time.  
 20 Q. And what were you doing there?  
 21 A. I was brought in to be the manager and  
 22 also the line of succession in the event that my  
 23 brother David Race and his partner Tom Blocker, that  
 24 something happened to one of them. And so I was in  
 25 training during that entire time to learn all of the

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1 operations of the marina and to act on their behalf  
 2 in the event that one of them wasn't able to perform  
 3 their duties.  
 4 Q. Who was your direct supervisor?  
 5 A. David Race.  
 6 Q. Why did he need a line of succession?  
 7 A. Well, he has a number of health problems.  
 8 For example, he's had bypass, stints,  
 9 defibrillators. He is about to turn 80 years old.  
 10 He wanted to make sure -- what he told me is that  
 11 say he were to pass away or something, he said the  
 12 vultures would start circling. And he needed  
 13 somebody that he felt was competent and able to take  
 14 over the marina and act in his stead so that it  
 15 would keep the marina in a safe position.  
 16 Q. How many employees did the marina have?  
 17 A. It varies because it's a seasonal  
 18 business. There are times when we would have maybe  
 19 13 and then other times it might drop down to 11.  
 20 You know, it varied.  
 21 Q. Were you in a supervisory capacity?  
 22 A. Yes, I was.  
 23 Q. How many people did you supervise?  
 24 A. I would supervise everyone, actually,  
 25 because I was being trained to take over. And so,

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1 you know, often times he would have me write up  
 2 incident reports and hold safety meetings, check on  
 3 things, report back to him, write up -- when I say  
 4 an incident report, say if an employee, you know,  
 5 failed to perform a duty or was late to work, write  
 6 up their letter of concern.  
 7 Q. When was the last time that you worked at  
 8 Dolphin Cove?  
 9 A. October 12th, 2010.  
 10 Q. How much were you making?  
 11 A. Nineteen dollars an hour Monday through  
 12 Friday and \$20 an hour on the weekends, Saturday and  
 13 Sunday.  
 14 Q. How many hours per week were you working?  
 15 A. Well, at that time we had made an  
 16 agreement that I would work two days less a week  
 17 without pay so that I would have an advertising  
 18 budget because I had no money for advertising. So I  
 19 volunteered to give up two days a week of pay so  
 20 that that money could be allocated for an  
 21 advertising budget.  
 22 Q. So in the year leading up to October 12th,  
 23 on average how many hours per week were you working?  
 24 A. Well, before I gave up my two days a week  
 25 I worked anywhere from 32 to 40 hours and sometimes

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1 more than 40 hours. And if I worked more than 40  
 2 hours, then he would pay me on a 1099 because he  
 3 didn't pay overtime.  
 4 Q. Did you also receive bonuses in addition  
 5 to wages?  
 6 A. I did. I was over the wet slips. And so  
 7 depending on how many boats were in the wet slips at  
 8 any given time I was compensated at \$20 per boat per  
 9 month.  
 10 Q. And how much did that amount to on a  
 11 monthly basis?  
 12 A. At over 16 boats. Like 16 was the, you  
 13 know, baseline. So any boats over 16. So it just  
 14 depended. It could be like anywhere from 380 to  
 15 160. It depended because there was a function in  
 16 number of boats.  
 17 Q. Excuse me. Moving on to your medical  
 18 condition?  
 19 A. Uh-huh.  
 20 Q. Following October 12, 2010, what medical  
 21 symptoms did you have as a result of the event in  
 22 the workplace?  
 23 A. Okay. Immediately after the event I was  
 24 quite hysterical, crying and upset. I went to my  
 25 Dr. Oliverio who is my internal medicine physician.

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1 My husband drove me there. First we went and filed  
 2 a police report. And then we went to my doctor's  
 3 office. And, I mean, for days on end I cried and  
 4 was just inconsolable. And was advised to go to  
 5 SOVA.

6 And they wanted me to see a Dr. Dan Smith.  
 7 However, he was out of town. So on a temporary  
 8 basis they had me see a therapist just to calm me  
 9 down enough to get me to the point that I could  
 10 start seeing him.

11 Q. What kind of doctor is Dr. Oliverio?  
 12 A. Dr. Oliverio is my internal medicine  
 13 doctor.

14 Q. Okay. What kind of doctor is Dr. Smith?  
 15 A. Dr. Smith is a psychologist.  
 16 Q. Okay.  
 17 A. He has a Ph.D. as a psychologist.  
 18 Q. What medical symptoms were you  
 19 experiencing at that time when you were seeing those  
 20 doctors?  
 21 A. Well, I was hyperventilating. I was  
 22 having anxiety. I couldn't sleep. And I have  
 23 fibromyalgia and Lupus. And stress is one of the  
 24 worst things for that. And it really exasperated  
 25 that. I was in pain every day, but it was worse

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1 because when you are under stress and when you are  
 2 distressed it really aggravates those symptoms, but  
 3 I've had that for a long time, the fibromyalgia and  
 4 Lupus, but had not had a severe flare-up in quite  
 5 awhile.

6 Q. When was the last time you had a flare-up?  
 7 A. Before that I can't -- I don't recall.  
 8 You know, they come and go.

9 Q. Were there any medical symptoms that you  
 10 experienced for the first time after October 12,  
 11 '10?  
 12 A. Yes.  
 13 Q. What were those?  
 14 A. I started having these rectal spasms.  
 15 Q. Did you ever have anything like that  
 16 before October 12, 2010?  
 17 A. No.  
 18 Q. Why do you believe that it related to  
 19 October 12, 2010?  
 20 A. Because stress -- my doctors told me  
 21 stress can bring that on. And then I had these  
 22 episodes where like the whole left side of my face  
 23 would start twitching on its own like that.  
 24 Q. Did you ever those facial --  
 25 A. Never.

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1 Q. -- tics before October 12, 2010?  
 2 A. No. And I was in the psychiatrist's --  
 3 psychologist's office. And he had to call the  
 4 psychiatrist in to check me out. It was just like  
 5 my face was moving all by itself.

6 Q. Why?  
 7 A. And they said that that happens because --

8 MS. ROSS: Objection.  
 9 THE WITNESS: -- when you get  
 10 stressful --

11 COMMISSIONER BECK: Sustained. You  
 12 can't testify to what a doctor said, ma'am.

13 THE WITNESS: Okay. When you -- can  
 14 I say what I understand then?

15 COMMISSIONER BECK: Certainly.  
 16 THE WITNESS: That when a person gets  
 17 really stressed out that their blood chemistry  
 18 changes. And that that can cause the involuntary  
 19 movement like that. So they worked with me on  
 20 breathing techniques to try to calm down. And with  
 21 the rectal spasms, I started having incontinence  
 22 where I would lose control of my bowels. It's  
 23 embarrassing. Sorry.

24 COMMISSIONER BECK: That's okay.  
 25 BY MR. RIBEIRO:

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1 Q. Did you have any other medical conditions  
 2 or symptoms that you felt were related to the events  
 3 of October 12, 2010?  
 4 A. I experienced severe depression, anxiety.  
 5 I mean, the impact it had on my family just upset me  
 6 so much.

7 Q. Did you see any other doctors other than  
 8 Dr. Oliverio and Dr. Smith?  
 9 A. Yes. I saw Dr. Constance Guille.  
 10 Q. What does she do?  
 11 A. She's a psychiatrist.  
 12 Q. Okay.  
 13 A. I saw my Lupus doctor, Georgia Roane.  
 14 She's a rheumatologist.

15 Q. Now, you had already had Lupus in your  
 16 life before October 2010. So is that something that  
 17 you would have done anyways?  
 18 A. No. I went to see her because I was  
 19 breaking out in sores on my arms. I mean, I follow  
 20 up with her occasionally, but I wanted -- I needed  
 21 to see her before we went to the Bahamas and let her  
 22 see what I was going through. I told her what I was  
 23 going through.

24 Q. Did you see any other medical providers as  
 25 a result of this?

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1 A. Later on when I got back from the Bahamas  
 2 I ended up my psychiatrist sent me to -- talk to Dr.  
 3 Oliverio and felt like I needed to have a sleep  
 4 study done because they wanted to change my  
 5 medication and increase my antidepressant, but  
 6 wanted to make sure with the sleep study that that  
 7 would be an appropriate thing. And then I ended up  
 8 seeing a pulmonologist after that.  
 9 Q. Who were those doctors?  
 10 A. The pulmonologist was Dr. Tal Klatchko.  
 11 And then from that I was sent from her office, she  
 12 wanted me to see a neurologist and a cardiologist.  
 13 Q. Who were they?  
 14 A. The neurologist Baumgartner and Dr.  
 15 Hanger, I think, is the cardiologist. I only saw  
 16 him briefly.  
 17 Q. Were you taking prescription medications  
 18 following October 12th, 2010?  
 19 A. Yes.  
 20 Q. What were you on?  
 21 A. Cymbalta, Wellbutrin, Synthroid for my  
 22 thyroid, hydrocodone for the pain, Benazepril,  
 23 Cyclobenzaprine I think is the name of it. There is  
 24 a -- I don't know the generic name, but it's  
 25 Clonopin which is like for anxiety or sleeping.

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1 A. December the 1st through April 28th. I  
 2 was supposed to come back -- I had permission from  
 3 my brother, written permission, leave without pay  
 4 for the dates of December the 1st through like  
 5 February 28th or something like that. Returning to  
 6 work on March the 8th.  
 7 Q. And when did you get that permission  
 8 granted to you?  
 9 A. In September.  
 10 Q. Of 2010?  
 11 A. Uh-huh.  
 12 Q. Okay.  
 13 A. It was agreed upon because we are slow in  
 14 the winter.  
 15 Q. Okay.  
 16 A. And so it was a mutually beneficial thing.  
 17 You know, I could afford to take time off from work.  
 18 Q. So he wrote you out through the end of  
 19 February, but you said that you ended up staying  
 20 through April?  
 21 A. Uh-huh. Because my husband felt I wasn't  
 22 well enough to come back.  
 23 Q. Okay. And just to be clear, you are not  
 24 claiming temporary total benefits for the period of  
 25 time that you would have been off --

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1 Clonopin. And I forget what the generic name is.  
 2 And then a medication to help with the rectal  
 3 spasms. I can't remember that one's name.  
 4 Q. Would you have been taking these  
 5 medications otherwise? Were you already taking  
 6 these medications before October --  
 7 A. Some of them. Some of them. For example,  
 8 I was taking the Cymbalta before, but they ended up  
 9 having to double my dose. I was taking the thyroid  
 10 medication before. The Clonopin, no, I wasn't  
 11 taking that before that I know of. Temazepam, that  
 12 is another one. I don't remember taking that  
 13 before. The one for the rectal spasms.  
 14 Q. When did you start taking a double dose of  
 15 Cymbalta, if you recall?  
 16 A. When I got back from the Bahamas, because  
 17 when we took that vacation we thought that might  
 18 help.  
 19 Q. Okay.  
 20 A. And it didn't.  
 21 Q. Well, you've mentioned the Bahamas a  
 22 couple times now, so let's talk about that.  
 23 A. Okay.  
 24 Q. What were the dates that you went to the  
 25 Bahamas?

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1 A. Not at all. That wouldn't be right, no.  
 2 Q. For that period you would have been off  
 3 anyways --  
 4 A. Yeah, without pay.  
 5 Q. -- because of a leave request? What were  
 6 you doing in the Bahamas? What did you do while you  
 7 were there?  
 8 A. We were on our sailboat. We had gone the  
 9 past several winters with the same agreement, time  
 10 off without pay. And we sailed in the Bahamas. And  
 11 we would like drop anchor at different islands.  
 12 And, you know, just relax and snorkel and ride in  
 13 our dingy.  
 14 Q. Okay. Now, Ms. Fleher, you've mentioned a  
 15 number of medical symptoms that you were  
 16 experiencing following October 12th?  
 17 A. Uh-huh.  
 18 Q. You've also mentioned six doctors that you  
 19 were treating with during that period?  
 20 A. Uh-huh.  
 21 Q. And a bunch of medications that you are on  
 22 as a result of it?  
 23 A. Uh-huh.  
 24 Q. So during that period of time that you  
 25 went to the Bahamas, how were you doing?

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1 A. I calmed down somewhat, but then I would  
2 have outbursts of just crying for no reason. Or I  
3 would wake up with nightmares. And it wasn't like  
4 the trips before. And we just dealt with it the  
5 best that we could. I did seek some doctors while I  
6 was in the Bahamas.

7 Q. What kind of doctors?

8 A. I saw two general practitioners in  
9 Georgetown Exumas for both of those doctors because  
10 we spent --

11 Q. I'm sorry. What is that?

12 A. Georgetown in the Exumas. That is a place  
13 in the Bahamas.

14 Q. That is where you saw the doctors?

15 A. Yes.

16 Q. Okay. How were you doing symptom-wise?  
17 Medically-speaking how were you doing at that point?  
18 How were you feeling at that point?

19 A. I was not feeling well. I was very  
20 fatigued. And, you know, just --

21 Q. Did your symptoms improve during that  
22 period of time or get worse or stay the same?

23 A. I was in a calmer atmosphere. So as  
24 long -- you know, I wasn't having to listen to stuff  
25 every day about it. And so, yes, it was better

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1 during that time, but I still had episodes of  
2 depression, not nearly as frequent as before I went  
3 or when I returned.

4 Q. How often were you having a depressive  
5 episode?

6 A. I would say once a week.

7 Q. What about anxiety attacks?

8 A. Probably twice a week.

9 Q. What about facial tics or incontinence?

10 A. The facial tics did not develop until I  
11 heard that we were going to have to deal with  
12 Workman's Comp again because I thought that was all  
13 over with. And --

14 Q. So that was after the Bahamas then?

15 A. Yes.

16 Q. Okay. What about the incontinence issue?  
17 You still dealing with that?

18 A. Yes.

19 Q. Okay. What about your Lupus and your  
20 fibromyalgia during that period?

21 A. Oh, yeah. I mean, that never really goes  
22 away. That is under the surface all the time. I've  
23 just learned to live with it. I mean, I was  
24 diagnosed in 1988. And --

25 Q. But you did say -- you did testify that

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1 you hadn't had any recent flare-ups leading up to  
2 October 12th, 2010?

3 A. No. Exactly. Exactly. So when I say  
4 it's always there and underlying, it's like I had  
5 learned to ignore a lot of the pain and the  
6 symptoms. It was exasperated after that time.

7 Q. And did that continue -- that  
8 exacerbation, did that continue while you were in  
9 the Bahamas?

10 A. Yes, it did.

11 Q. Okay.

12 A. And like there was more pain. There was  
13 more being tired.

14 Q. Was it an enjoyable vacation?

15 A. Not like it has been in the past. I mean,  
16 there was a marked difference.

17 Q. Did you change any of your meds while you  
18 were there?

19 A. No.

20 Q. Did you get any --

21 A. Except I had to get some -- I did become  
22 anemic, so I had to get some iron pills.

23 Q. Okay. Did you get psychiatric or  
24 psychological treatment while you were in the  
25 Bahamas?

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1 A. No.

2 Q. When did you next get treatment?

3 A. As soon as I got back.

4 Q. And that was end of April or beginning of  
5 May --

6 A. Yes.

7 Q. -- of 2011?

8 A. Uh-huh. And Dr. Smith was really glad I  
9 came right back in.

10 Q. Now, where do you live currently?

11 A. In Puerto Rico.

12 Q. When did you move there?

13 A. October 31st.

14 Q. Of 2011?

15 A. Uh-huh. And we moved there because my  
16 husband, he -- he thought it would help me to get  
17 away. And it has somewhat, I mean, I have to tell  
18 you. Coming back here to Charleston just for this  
19 time period and the phone calls from my sisters and  
20 all of that, just the whole drama about this whole  
21 thing, it really makes it a lot worse. I still have  
22 depressive episodes in Puerto Rico. I still have  
23 anxiety. I've had two rectal spasms and  
24 incontinence while I've been in Puerto Rico but that  
25 is lessened from what it was.

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1 Q. Have you -- I'm sorry?  
 2 A. It's peaceful there. It's calm there.  
 3 And we were just trying to regain our life back.  
 4 Q. Was the main reason that you moved then  
 5 because of your husband's wanting to move there?  
 6 A. I had had a session with my psychiatrist.  
 7 And she said, Diane --  
 8 MS. ROSS: Objection.  
 9 COMMISSIONER BECK: Sustained.  
 10 THE WITNESS: Okay.  
 11 BY MR. RIBEIRO:  
 12 Q. Just your understanding. Not actual  
 13 statements of doctors.  
 14 A. We talked about was it worth my losing my  
 15 sanity over this. And we had always talked in the  
 16 past about one day retiring to Puerto Rico. And so  
 17 I was really bad in July. And he came home one day  
 18 and he said, we are going to Puerto Rico. Get on  
 19 the internet and start looking. And I found a  
 20 house. And he bought it.  
 21 Q. Have you treated with your psychiatrist or  
 22 psychologist since your move to Puerto Rico?  
 23 A. Yes. I've called and called to Dr. Dan  
 24 when I've had like, you know, a really bad day and  
 25 needed to calm down. And then we were going to

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1 Skype, but I just got internet access.  
 2 Q. Do you have plans to do Skype sessions?  
 3 A. Yes.  
 4 Q. Have you seen Dr. Smith again in person --  
 5 A. Yes.  
 6 Q. -- since leaving for Puerto Rico?  
 7 A. Yes.  
 8 Q. When did you see him?  
 9 A. I saw him last Friday and I'll see him  
 10 again tomorrow. As soon as I got to Charleston --  
 11 excuse me. Thursday. I flew in last Wednesday  
 12 night. And I saw him Thursday. And I saw Dr.  
 13 Oliverio Thursday.  
 14 Q. So it would be February 23rd, 2012?  
 15 A. Uh-huh. Yeah. I got here --  
 16 Q. Thereabouts?  
 17 A. -- the 22nd, and it was on Thursday.  
 18 Q. And you said that you had follow-up care  
 19 scheduled?  
 20 A. Uh-huh. Yes. And he told me if I needed  
 21 him any time this week, I have his home -- I have  
 22 his phone number.  
 23 Q. Do you feel that you need ongoing care?  
 24 A. Oh, yes. Definitely.  
 25 Q. Why do you say that?

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1 A. Because I have been such a strong person  
 2 my whole life. And this incident has just crushed  
 3 me. It has made me feel like I'm a shell of the  
 4 person that I was. I never ever thought that my  
 5 brother would shove me. I never thought that he  
 6 would get physical with me. He was supposed to  
 7 protect me.  
 8 Q. Okay. Now, take your time, Ms. Fleher. I  
 9 know this is upsetting. You know, since we are on  
 10 that subject I would like to go back now and  
 11 actually talk about the events leading up to  
 12 October 12th, 2010. Can you describe for the  
 13 Commissioner leading up to that day --  
 14 A. Uh-huh.  
 15 Q. -- what was going on there in the  
 16 workplace for -- let's say for the week leading up  
 17 to this event?  
 18 A. Okay. I had gone to Knoxville, Tennessee.  
 19 I had permission for days off to see my son.  
 20 Q. When did you do that?  
 21 A. The week -- like through the 9th of  
 22 October.  
 23 Q. Was that a weekend?  
 24 A. Well, I took three days off and -- with  
 25 pay. Two days without pay, you know, vacation time.

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1 So I went and spent time with my son in Knoxville,  
 2 Tennessee, where he teaches first grade to meet his  
 3 little class. And I came back.  
 4 And driving home that Saturday night my  
 5 brother called me and he goes, are you back in town?  
 6 And I said, I'm driving in to Charleston right now.  
 7 I said, I would be at work tomorrow morning just  
 8 like I said I would be. He said, well, David  
 9 Ackerman, he was the restaurant manager, he's  
 10 quitting. And so I need you to be ready to step in.  
 11 In fact, I may even have you come in tonight. And I  
 12 said, whatever you need me to do, I'll do.  
 13 And so then he said, no, it should be okay  
 14 there tonight. Just plan to come in tomorrow and  
 15 start learning all you can. Well, I got to work the  
 16 next morning. And we have a brother named Dickie,  
 17 and he's a little bit slow. And I help take care of  
 18 him. And Dickie is 78. And --  
 19 Q. What do you mean when you say he's slow?  
 20 A. He exhibits -- and this is my opinion --  
 21 almost Asperger-like symptoms. And when I say that  
 22 is that -- like we've always known Dickie was slow.  
 23 My mother used to have to -- my mother -- he always  
 24 lived with us when I was growing up until our mother  
 25 died in 1998. He -- mother was always with him. He

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1 didn't know how to balance a checkbook. He knows  
2 how to sign a check, but you have to make the check  
3 out for him. He --

4 Q. Is he autistic?

5 A. He's never had that formal diagnosis, but,  
6 for example, when he comes to work he mops, he  
7 ta-da, ta-da, ta-da. And if you stop him even for a  
8 minute to say can you help me get this box, it just  
9 throws his whole day off, but he's the sweetest  
10 kindest man. But mother asked me to always take  
11 care of him after she was gone, and that is one  
12 reason I came to Charleston, too.

13 So anyhow, he had a trailer that he lived  
14 in. And before I went to Knoxville, my brother  
15 David was building apartments up above the marina.  
16 And so before I left for Knoxville, he made sure I  
17 packed all of Dickie's thing up, which I did,  
18 because --

19 Q. From the trailer?

20 A. Uh-huh.

21 Q. Where was the trailer?

22 A. On the property of the marina.

23 Q. Okay.

24 A. And he had made -- he said make sure you  
25 get all of that packing down. And, I mean, the

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1 believe somebody did this. And he goes, well, you  
2 know who did it, Ms. Diane. It was Alex and Eric.

3 Q. Who are Alex and Eric?

4 A. They are workers who work at the  
5 waterfront as dockhands. And I said, why on earth  
6 would they do this? What sense does this make? And  
7 so as I was walking out, two of our customers were  
8 riding in a golf cart; Eddie Canaris and his wife.  
9 And they said, oh --

10 MS. ROSS: I'm going to object to  
11 hearsay at this point.

12 COMMISSIONER BECK: Sustained.

13 BY MR. RIBEIRO:

14 Q. Okay. Without going into statements made  
15 by the customers, what happened next?

16 A. Okay. So I learned that Eric and Alex had  
17 done this by people I saw. So then when my brother  
18 came in to work -- so I called Eric and Alex up to  
19 the office. I said, do you want to tell me what  
20 happened to Dickie's trailer? And they said,  
21 Mr. Race has told us we can't discuss it.

22 Q. Okay. What happened next?

23 A. And so then a little while later Eric came  
24 back to me. And he said, Ms. Diane, I've never lied  
25 to you and I won't lie now. He said, we did do it.

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1 apartments weren't even finished hardly. So I did  
2 that. So I got back. And on that Sunday morning I  
3 went up to see Dickie in his apartment because I was  
4 told he got moved up there. And I looked around  
5 and, you know being told him how nice it looked  
6 because I had bought him like a sofa and all of this  
7 other stuff.

8 And I said, well, where is your rug? He  
9 said, it's over at the trailer. I said, but I  
10 bought you that rug. It cost a lot of money. Why  
11 didn't you bring your rug. He said, oh, well, I  
12 guess I didn't need it because he had tile floors.  
13 So, I mean, just the way he thinks, he doesn't need  
14 a rug. So I went over there to get the rug.

15 Q. You went where to get the rug?

16 A. To the trailer.

17 Q. Okay.

18 A. And it was all beat up. The windows were  
19 busted out. The paneling was busted. The cupboards  
20 which I paid for. I had remodeled his trailer. The  
21 cabinets were busted. The bar we built was busted.  
22 And I was in shock. And the rug was covered with  
23 glass. And so this man -- this black guy named Tony  
24 Ford who works for us, he went with me. And, I  
25 mean, I just started crying. I was like, I can't

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1 And I said, why would you do it? And I started  
2 crying. And then I was like, why would you do this  
3 Eric? I mean, I paid for that stuff. That was  
4 Dickie's home. How do you think that makes him  
5 feel?

6 He said, well, we thought we were supposed  
7 to do it. I said you thought you were supposed to  
8 do it? You were instructed to do it? And he said,  
9 well, that is kind of what we thought. He said, but  
10 you can't say anything because we were told --  
11 Mr. Race said we cannot discuss it.

12 Q. Okay. So what happened next?

13 A. So then my brother came -- he comes in  
14 late on Sundays. He comes in and he has his little  
15 cup of coffee. And he goes, oh, by the way, Diane,  
16 I need you to call the police. Some vandals went  
17 and messed up Dickie's trailer. I need you to make  
18 a police report and then I need you to call the  
19 insurance company and file an insurance claim. And  
20 I said, you've got to be kidding. Our own employees  
21 did that. And you know why they did it. And I will  
22 not file a fraudulent police report or insurance  
23 claim.

24 Q. So you refused to do as he asked you?

25 A. I refused. And he said -- he said, you

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1 don't know that. I said, I do know they did it  
 2 because they told me -- Eric told me they did it.  
 3 Q. So what happened after you refused to do  
 4 that?  
 5 A. And so he said, well, then just -- he  
 6 said, well -- he said something. And then he goes,  
 7 just get up to that restaurant and start doing your  
 8 job and learning everything you need to learn to  
 9 take over when David Ackerman leaves.  
 10 Q. Okay. What happened?  
 11 A. Get the hell out of my sight.  
 12 Q. What day was this that this -- that  
 13 conversation --  
 14 A. That was on Sunday.  
 15 Q. Okay.  
 16 A. And he said I don't want to see your face.  
 17 Q. That was October 10th?  
 18 A. Uh-huh.  
 19 Q. Okay.  
 20 A. Uh-uh. And then as I was getting my  
 21 things together to go up to the restaurant, he came  
 22 running. He goes, just understand one thing. Your  
 23 job is to keep your mouth shut. And so for the next  
 24 couple days I tried to learn everything I could  
 25 because I had been out of the restaurant for four

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1 months. And, you know, it's hard. You have to like  
 2 relearn the P.O.S. system and everything. And even  
 3 at that, I hadn't worked at the restaurant much,  
 4 just when they needed.  
 5 So I was trying to learn everything I  
 6 could. So then on Tuesday -- and my brother, he  
 7 really -- I mean, for the next two days -- I mean, I  
 8 was the enemy. He wouldn't even hardly speak to me.  
 9 Q. What happened on Monday?  
 10 A. Monday was -- I don't really remember  
 11 seeing my brother a whole lot that day because I was  
 12 up at the restaurant trying to take notes of  
 13 everything that had to be done. I don't really  
 14 remember that day very clearly at all.  
 15 Q. What happened Tuesday, October 12th, 2010?  
 16 A. Uh-huh. Tuesday I was sitting at my desk.  
 17 And I was trying to get in touch -- I was texting  
 18 this girl named Portia. She was a brand new  
 19 bartender. And because I was sitting there trying  
 20 to make up a schedule of who was going to work when.  
 21 Q. Where was this?  
 22 A. At my desk.  
 23 Q. Okay.  
 24 A. Okay? And I was texting Portia saying --  
 25 because Annie told me, she said Portia is making up

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1 the schedule. I said, fine. If I have to open  
 2 tomorrow morning, I need to know who is opening with  
 3 me. And the reason that is important is because I  
 4 have neurogenic syncope. In order to open the  
 5 restaurant, you have to lean over and put beer in  
 6 this case. And if I lean at a certain degree, I'll  
 7 pass out.  
 8 I said, so I need to know the schedule.  
 9 So I had texted Portia and said, you know, can you  
 10 tell me who is working Wednesday? And she said,  
 11 I've got the schedule made up. I'll fax it to you.  
 12 So then I texted her back and texted her the fax  
 13 number. And so then I said, well, I am only  
 14 supposed to work half a day today. So I need it as  
 15 soon as possible so I'll be prepared for in the  
 16 morning.  
 17 And then my brother came up to the window.  
 18 There is this little glass window right by my  
 19 desk where you can see into his office and into  
 20 mine. And he goes -- he goes get off that phone. I  
 21 said I'm just trying to get the schedule, David.  
 22 And he goes, I know about all the hate and  
 23 discontent you caused up in the restaurant Sunday  
 24 night.  
 25 And I was like, what is he talking about

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1 because all I did -- that was my first day back, was  
 2 do my best effort of trying to learn everything.  
 3 And he is the one who told me I want you behind the  
 4 bar. I want you watching everything. I want you to  
 5 learn everything. You just -- I need you to stick  
 6 with it Sunday. So I thought, if I was doing 110  
 7 percent in my opinion of my job, who would have said  
 8 this?  
 9 And so what I did was, I went and I  
 10 asked -- I went to his door and I said, excuse me.  
 11 Gentlemen. Mike Sage, Tom Blocker, David Ackerman  
 12 were in there with my brother. I said, I have a  
 13 quick question.  
 14 Q. Where did you go? I'm sorry to interrupt.  
 15 Where was this?  
 16 A. To the door of my brother's office.  
 17 Q. Okay. And those four gentlemen were  
 18 seated in the office?  
 19 A. Yes, they were.  
 20 Q. Okay. What happened next?  
 21 A. And I said, excuse me, gentlemen. Can I  
 22 ask David a quick question, David Ackerman? And  
 23 then he went okay. I said, David, did you tell my  
 24 brother that I caused hate and discontent Sunday  
 25 night? And he goes, no. And my brother said, get

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1 out of here. So that is all he said at that point.  
 2 So then I went to Annie, because Annie was  
 3 working up there Sunday night, too. And I said,  
 4 Annie, did you tell my brother I was causing hate  
 5 and discontent because I don't understand where this  
 6 is coming from because --  
 7 Q. Was Annie in the room?  
 8 A. No, she was at the other end of the  
 9 building.  
 10 Q. Okay.  
 11 A. And she said, no. I told him it went  
 12 great. So I walked back to my brother's office and  
 13 I said, okay. I need to know who said this. And he  
 14 jumped up from his desk and he came around the desk  
 15 at me. And he started shoving me. And he said, get  
 16 the fuck -- am I allowed to say this? Get the fuck  
 17 out of my office. You are trying to embarrass me.  
 18 And he kept shoving me. And when I say  
 19 down the hall -- let's say that is his office door,  
 20 that door right there. It was from there to there.  
 21 Three times shoving me backwards down the hall. And  
 22 he said, you need to understand one thing. Your job  
 23 is to keep your mouth shut. And you go home now.  
 24 And you show up here tomorrow morning and you show  
 25 up and you better keep your mouth shut. And you do

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1 your job because believe me when I tell you this, he  
 2 said, if you don't do exactly what I say I am going  
 3 to make your life such a living hell each and every  
 4 day that you are going to feel like you've been  
 5 kicked to the curb at the end of the day.  
 6 First of all, I couldn't believe he shoved  
 7 me three times. Boom, boom, boom. I was going  
 8 backwards. And I couldn't believe this happened.  
 9 So I went -- I sat down at my desk because I just --  
 10 I couldn't even think where my purse was. And I sat  
 11 there for a minute trying to remember where is my  
 12 purse. Where is my purse? When is my purse? I  
 13 don't even know if I clocked out that day. I got in  
 14 my car. I just started sobbing. And I called my  
 15 husband. And he said, I'll come and get you. And I  
 16 said --  
 17 THE WITNESS: I'm sorry. I've got  
 18 the worst headache.  
 19 COMMISSIONER BECK: That's okay.  
 20 THE WITNESS: I said, I have to  
 21 leave. So I drove. And then when I got to my  
 22 husband he saw what a mess I was in. And he took me  
 23 to -- he said, this is it. This is it, Diane. And  
 24 he took me to the police station. And I told them  
 25 what happened. And then I went to the doctor

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1 because I was crying so hard I couldn't even catch  
 2 my breath. And I was getting a migraine like I am  
 3 right now. And Dr. Oliverio saw me.  
 4 BY MR. RIBEIRO:  
 5 Q. Where did you go first after the marina?  
 6 A. I went to my house against -- my husband  
 7 was like, pull over. Pull over, but I was like,  
 8 I've just got to get home. I've just got to get  
 9 home. And really I shouldn't have been driving, but  
 10 I was just -- I just had to get home is all I could  
 11 think of is get home. And then my husband, he took  
 12 me to the police station. And then he took me to  
 13 the doctor's office. And Dr. Oliverio talked to me.  
 14 And tried to calm me down.  
 15 Q. Was that the same day as the incident?  
 16 A. Yes.  
 17 Q. Okay.  
 18 A. Immediately after the police station  
 19 because I had -- I couldn't quit crying. And Dr.  
 20 Oliverio, when I told him what happened, he said,  
 21 you know --  
 22 MS. ROSS: Objection.  
 23 THE WITNESS: Anyways --  
 24 BY MR. RIBEIRO:  
 25 Q. Just your understanding. Not --

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1 COMMISSIONER BECK: I'm not sure what  
 2 your objection was on her response.  
 3 MS. ROSS: She got to Dr. Oliverio  
 4 told me. And that is when I objected to hearsay.  
 5 THE WITNESS: Why can't I say -- why  
 6 am I not allowed to say what my doctors tell me?  
 7 COMMISSIONER BECK: Because it's  
 8 hearsay, ma'am. He's not here to testify.  
 9 THE WITNESS: Okay. So I was -- I  
 10 understood that I needed to report it to the police.  
 11 And I said I already have. I had just left there.  
 12 He said this needs to be reported. I understood  
 13 that it needed to be reported and I told him I  
 14 already had.  
 15 BY MR. RIBEIRO:  
 16 Q. Thank you for relating that, Ms. Fleher.  
 17 Now, my understanding is that you were shoved three  
 18 times?  
 19 A. Uh-huh.  
 20 Q. But your shoulders were not injured? You  
 21 didn't have any contusions or physical injuries or  
 22 anything like that?  
 23 A. No. No. I mean, shoving, yes. It was  
 24 just that -- to be shoved and screamed at like that  
 25 and --

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1 Q. Had your brother ever in the four years  
 2 that you had worked there laid hands on you before?  
 3 A. Never.  
 4 Q. Did you expect that he was going to?  
 5 A. Never.  
 6 Q. How -- and forgive me for asking this. I  
 7 think I know the answer to this, but we need to tell  
 8 the Commissioner everything here. How is it that  
 9 three simple little shoves could cause all of these  
 10 medical symptoms?  
 11 A. Okay. There is a couple of reasons.  
 12 First of all, I was a victim of domestic violence in  
 13 the '80s. My husband was put on the chain gang for  
 14 threatening to kill me and my attorney in a  
 15 courtroom in front of a judge. It was so bad that  
 16 the judge told me no restraining order on earth  
 17 would protect me. And that is how I ended up in  
 18 Knoxville, Tennessee. The judge told me I needed to  
 19 move over the mountain. And I did. And I went on  
 20 to have a successful life there.  
 21 But not only that, I cared for my brother.  
 22 Like when my brother had heart surgery I took two  
 23 weeks off of vacation in Knoxville from my job to  
 24 come care for him. When he went on to have other  
 25 surgeries like stints and all, I cared for him. I

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1 lived with him for a year. I mean, I cleaned the  
 2 catheter around his penis when he had prostate  
 3 surgery. I mean, I took care of him. I lived with  
 4 him. I gave up my life in Knoxville to come home  
 5 and take care of my elderly brothers and sisters. I  
 6 loved my brother. I never thought he would do this  
 7 to me.  
 8 I was -- I came back to Charleston to take  
 9 care of him and Dickie. He asked me to come. And  
 10 then I don't know if he was -- I mean, he got so mad  
 11 when I refused to do the insurance claim. And I  
 12 called our sister that same night, that Sunday  
 13 night. I mean, I was like, what should I do  
 14 Marilyn? Can you talk to him? If he files this  
 15 insurance claim it's going to -- he's going to get  
 16 in trouble because it's fraud.  
 17 And, you know, it was the first time I  
 18 ever really stood up to him and said, no, I'm not  
 19 going to lie for you. I'm not going to go to jail  
 20 for you. And from that point on he made me feel  
 21 like I was the enemy. Because he was my older  
 22 brother of course I wanted his love. I wanted his  
 23 respect.  
 24 After our mother died he -- my parents  
 25 died 28 days apart. And I lived in Knoxville then.

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1 And he said to me, I'll never forget. I wrote a  
 2 song about it. Diane, you will always have a place  
 3 to come home. The most tender words of comfort I  
 4 could have ever been given. You will always have a  
 5 place to come home.  
 6 And he violated me that day, not just  
 7 physically, but psychologically. He violated me.  
 8 Can we just stop for a minute so I can get my  
 9 breath?  
 10 COMMISSIONER BECK: How much more do  
 11 you have? All right. Why don't we go off the  
 12 record for a moment.  
 13 (Recess 11:35 to 11:46.)  
 14 COMMISSIONER BECK: All right. Any  
 15 other questions, Mr. Ribeiro?  
 16 MR. RIBEIRO: No, sir.  
 17 COMMISSIONER BECK: All right. Ms.  
 18 Ross, you may begin your cross examination.  
 19 MS. ROSS: Okay.  
 20 CROSS EXAMINATION  
 21 BY MS. ROSS:  
 22 Q. It's good to see you again. I'm here  
 23 representing Dolphin Cove Marina and their carrier.  
 24 I have a couple of questions for you, first about  
 25 your testimony and then some other questions that

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1 I've prepared.  
 2 You talked about a rash that you -- that  
 3 you've had. Is that only since the date of accident  
 4 or have you gotten the rash before, before October  
 5 of 2010?  
 6 A. Okay. I have two kinds of Lupus, I have  
 7 discoid and systemic. Systemic affects the internal  
 8 organs. Discoid is under skin. And when I get  
 9 really upset one of two things happens. I either  
 10 get shingles or I get a discoid Lupus rash.  
 11 Q. Okay. But you've had shingles for years,  
 12 right?  
 13 A. It comes and goes with stress.  
 14 Q. Okay. Because you've been on Valtrex  
 15 which is the medicine for shingles --  
 16 A. Yes.  
 17 Q. -- since at least March of '08 or before;  
 18 is that correct?  
 19 A. That's correct.  
 20 Q. Okay.  
 21 A. And it's exasperated by stress.  
 22 Q. Okay. Before we come to a Workers' Comp  
 23 hearing the parties put together medical records,  
 24 exhibits, that type of thing. They look like this.  
 25 This one is mine and this one is your lawyer's.

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1 Have you seen these before? Inside of them are, you  
 2 know, some medical records or some doctor records.  
 3 Have you had the opportunity to review these  
 4 submissions?  
 5 A. Uh-huh.  
 6 Q. Is that a yes?  
 7 THE WITNESS: Well, is that like what  
 8 I looked at or is it different?  
 9 BY MS. ROSS:  
 10 Q. Well, he's not going to be able to help  
 11 you. So we need to know what you remember about  
 12 what you've reviewed. His looks like this and mine  
 13 looks like -- looks like this. Have you reviewed  
 14 these or no?  
 15 A. I've reviewed his.  
 16 Q. You've reviewed his but not mine?  
 17 A. Not yours.  
 18 Q. Okay. Fair enough. And the ones that you  
 19 reviewed in his, were there any medical records from  
 20 any doctors from the Bahamas?  
 21 A. No.  
 22 Q. Okay. Now, you talked about coming to  
 23 Charleston for this hearing. Did you come directly  
 24 to Charleston from Puerto Rico?  
 25 A. No. I went to Knoxville.

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1 Q. Okay. So -- and why did you go to  
 2 Knoxville?  
 3 A. My son had a C.D. release party. And  
 4 then -- but he was having surgery last Wednesday,  
 5 two weeks ago. And I -- actually we had already  
 6 planned to go be with him while he had surgery. And  
 7 it just happened his C.D. release party was three  
 8 days before his surgery.  
 9 Q. Okay. So you went to the C.D. release  
 10 party. You took care of your son when he had  
 11 surgery. And then you came to Charleston?  
 12 A. Well, he more or less took care of me  
 13 because I was sick the whole time I was with him if  
 14 you want to know the truth. It kind of back fired.  
 15 Q. Okay. What kind of C.D. release party did  
 16 he have?  
 17 A. He writes music, his own.  
 18 Q. Okay. Are there videos of that C.D.  
 19 release party on UTube?  
 20 A. Yes.  
 21 Q. Okay. From the medical records that you  
 22 reviewed from your lawyer, when you talked to Dr.  
 23 Dan and planned to do Skype, is there any record of  
 24 any of that in the medical records that you  
 25 reviewed?

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1 A. No. We weren't able to set up Skype.  
 2 Q. Okay.  
 3 A. Because I couldn't get internet, high  
 4 speed internet at my house, although now I have a  
 5 new thing called Elevate by AT&T. It's a hot spot  
 6 thing. Have you heard of it? Just got it. And you  
 7 can like -- we have an AT&T tower right by our  
 8 house. And I get full bars. So now I'll be able  
 9 to.  
 10 Q. Okay. So for the past --  
 11 A. Just telephone conversations.  
 12 Q. Okay. Any record of that? Any phone  
 13 conversations in the records that you reviewed?  
 14 A. I don't know if he wrote about them or not  
 15 because he was away from work at home when I talked  
 16 to him one time. For example, his mother was  
 17 visiting him. And he was at his house. So I don't  
 18 know -- like when I talk to him when he's not at the  
 19 office if that counts as a real visit.  
 20 Q. Okay. So as far as you know were any  
 21 records made of any of these conversations that you  
 22 had?  
 23 A. I don't know.  
 24 Q. Okay. Now, you talk about and we are  
 25 going to go over --

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1 A. I mean, I know when he called me back he  
 2 was walking his two dogs. And he said his mom was  
 3 visiting. I mean, that is how I know that he was  
 4 home.  
 5 Q. Okay. All right. Now, we talked about  
 6 the accident.  
 7 A. Uh-huh.  
 8 Q. What happened on October 12th, 2010. And  
 9 what you said -- something that you said really kind  
 10 of stuck with me and I wrote it down. And you  
 11 talked about to be shoved and screamed like that is  
 12 what bothered you. Is that really what got to you  
 13 here?  
 14 A. Being shoved.  
 15 Q. Being shoved and being screamed or just  
 16 being shoved?  
 17 A. When he said that my job was to keep my  
 18 mouth shut and that he -- and to show up the next  
 19 day while he was shoving me. And that I better keep  
 20 my mouth shut or he would make my life a living hell  
 21 and I would feel like I had been kicked to the curb  
 22 at the end of each and every day, that in  
 23 combination with being shoved.  
 24 Q. Okay. That is the crux of it? That is  
 25 what really got you, really affected you mentally?

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1 A. Being shoved and him saying that.  
 2 Q. Okay. Now, you talked about you were  
 3 coming back from Knoxville on Sunday?  
 4 A. No, on Saturday I came back.  
 5 Q. On Saturday you came back?  
 6 A. He called me that night.  
 7 Q. And then you worked on Sunday?  
 8 A. Sunday morning.  
 9 Q. And that is when the conversation was had  
 10 about the insurance claim?  
 11 A. Yes.  
 12 Q. Okay. But then Monday you testified that  
 13 you didn't remember anything funny or off-putting on  
 14 Monday. Is that fair?  
 15 A. I told you I really couldn't remember what  
 16 happened on Monday.  
 17 Q. Okay. Well, if I asked you in the  
 18 deposition if anything on Monday caused you any type  
 19 of mental distress and you told me no --  
 20 A. I did.  
 21 Q. Would that be appropriate?  
 22 A. Yes.  
 23 Q. Okay. And then Tuesday -- we talked about  
 24 what happened Tuesday. You were up at the bar. You  
 25 were trying to get the schedule. You texted with

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1 Portia. She faxed you something.  
 2 A. No, I was down in my office.  
 3 Q. Excuse me. You were in the office. You  
 4 texted with Portia. She is faxing you the schedule.  
 5 Did you mention anything about the insurance claim  
 6 being mentioned on Tuesday the 12th?  
 7 A. Yeah, my brother mentioned it that  
 8 morning.  
 9 Q. Okay. What did you say that morning?  
 10 A. That he thought about it and he probably  
 11 wouldn't do it.  
 12 Q. Okay. Why didn't you mention that just a  
 13 minute ago when your lawyer was asking you?  
 14 A. Because I didn't think about that part.  
 15 Q. Okay.  
 16 A. But that was just because he was trying to  
 17 get me to shut up and not tell anybody else about  
 18 it.  
 19 Q. Okay. But what your testimony is, is that  
 20 he told you that he thought about it and he would  
 21 not file the insurance claim? Is that a yes?  
 22 A. Uh-huh.  
 23 Q. You have to say yes because she's taking  
 24 everything down.  
 25 A. Oh, okay.

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1 Q. It's like your deposition.  
 2 A. Yes.  
 3 Q. Okay.  
 4 A. But he was just doing -- I mean, but that  
 5 is when he also told me I had to keep my mouth shut,  
 6 again.  
 7 Q. Okay. And that was Tuesday?  
 8 A. When he shoved me, yes.  
 9 Q. Okay. As he was shoving you, that is what  
 10 he said?  
 11 A. My job was to keep my mouth shut.  
 12 Q. Okay.  
 13 A. He had also told me that on Sunday.  
 14 Q. Okay.  
 15 A. That my job was to keep my mouth shut.  
 16 Q. Okay. And I --  
 17 A. And he was referring to the insurance  
 18 claim.  
 19 Q. That is the way you interpreted it,  
 20 correct?  
 21 A. I know that is what he meant.  
 22 Q. Okay. Word for word what did he say?  
 23 A. On Sunday he said, your job and your only  
 24 job then is to keep your mouth shut when I said, I  
 25 will not file a fraudulent claim for you. And don't

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1 think there won't be an investigation because I  
 2 can't believe there wouldn't be. I mean, it was a  
 3 further conversation, you know, like that this will  
 4 get investigated, but da-ta-da-ta-ta, but he said  
 5 then your job is to keep your mouth shut.  
 6 Q. Okay.  
 7 A. And I said, I will not lie for you. I  
 8 will not perjure myself for you. If I am asked by  
 9 an insurance adjustor, then I will tell the truth.  
 10 Q. Okay. Now, I was looking down and taking  
 11 notes. And so I did not see you when you indicated  
 12 the distance that he -- that he pushed you.  
 13 A. Uh-huh.  
 14 Q. So I want you to do it again because I  
 15 missed it. Starting at this door?  
 16 A. From that door to there.  
 17 Q. To -- you see that little --  
 18 A. You see that light fixture.  
 19 Q. To that fixture right there? Okay. That  
 20 is the distance?  
 21 A. Uh-huh.  
 22 Q. Yes?  
 23 A. Yes.  
 24 Q. Okay. Three shoves?  
 25 A. Yes.

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- 1 Q. Not four, not two. Three?
- 2 A. Three.
- 3 Q. Okay. Now, you talked about how much
- 4 money you made, bonuses, that type of thing?
- 5 A. Uh-huh.
- 6 Q. In the evidence that you have reviewed are
- 7 there any pay records, taxes, check stubs, anything
- 8 at all that you put into evidence supporting your
- 9 claim for compensation rate?
- 10 A. I'm sure we could get Dolphin Cove to
- 11 print up all of my pay stubs.
- 12 Q. Okay. But as far as what we have here
- 13 today, nothing today?
- 14 A. No.
- 15 Q. Okay. Okay. So --
- 16 A. I haven't been asked for a pay stub.
- 17 Q. Okay. Fair enough.
- 18 A. But wait a minute. I do think there was
- 19 one that I gave to Steve Bell.
- 20 Q. Okay. But is it in evidence? Because we
- 21 have to submit our evidence in advance?
- 22 A. Oh, I don't know if it's in that packet or
- 23 not.
- 24 Q. Okay. All right. Now, would you agree
- 25 with me that the only people who saw or could have

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- 1 seen what happened to you on the 12th was you, David
- 2 Race, David Ackerman, Tom Blocker, and Mike Sage?
- 3 A. Yes.
- 4 Q. Is there anybody else?
- 5 A. No.
- 6 Q. Okay. No one else could have heard it
- 7 either; is that correct?
- 8 A. Now, that I don't know.
- 9 Q. Okay. Well, I asked you about that in
- 10 your deposition. And you told me, no, so --
- 11 A. Yeah. I mean, you know, I didn't think
- 12 anybody could hear because Annie was on the other
- 13 side of the building, but he was screaming pretty
- 14 loud.
- 15 Q. Okay. But there was nobody that you saw
- 16 in the immediate vicinity --
- 17 A. No.
- 18 Q. -- that you thought would hear what was
- 19 going on?
- 20 A. No.
- 21 Q. Okay. Okay. Was that the first time that
- 22 you had ever heard Mr. Race curse at work?
- 23 A. Oh, heavens, no.
- 24 Q. Okay. Would you say -- if you had to pick
- 25 one, would you say he curses rarely, occasionally,

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- 1 or frequently?
- 2 A. Frequently.
- 3 Q. Okay. What about hear him tell somebody
- 4 what to do? Is that the first time you ever heard
- 5 him tell somebody what to do; get out of my office,
- 6 keep your mouth shut, anything like that? Telling
- 7 somebody what to do?
- 8 A. Yeah, I've heard him tell people to get
- 9 out of his office.
- 10 Q. Okay. Rarely, occasionally, or
- 11 frequently, same question?
- 12 A. Rarely.
- 13 Q. Okay. What about yelling? That wasn't
- 14 the first time you heard him yell, was it?
- 15 A. He yells all the time.
- 16 Q. Okay. Now, he's also --
- 17 A. Never seen him shove. Never seen him
- 18 push.
- 19 Q. Okay.
- 20 A. Never seen him touch anybody.
- 21 Q. But he's touched you before, right? You
- 22 are his sister.
- 23 A. A hug.
- 24 Q. Okay. Fair enough. Hugs. What about to
- 25 like help you over a curb or some uneven terrain

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- 1 there at the marina? Has he touched you for that?
- 2 A. He helped me when I hurt my foot and he
- 3 took me to the doctor.
- 4 Q. Okay. He helped you walk then?
- 5 A. Yeah, but he doesn't remember taking me to
- 6 the doctor. He doesn't remember sitting with me in
- 7 the waiting room. He doesn't remember being there
- 8 for the x-rays.
- 9 Q. Huh.
- 10 A. Isn't that interesting?
- 11 Q. But everything at the marina is not paved,
- 12 is it?
- 13 A. What does --
- 14 Q. Like the road. There is uneven terrain
- 15 there at the marina?
- 16 A. Yeah.
- 17 Q. Okay. And he's touched you. He helped
- 18 you with your foot. He would give you a hug, those
- 19 types of things?
- 20 A. I don't think a hug and a gesture of being
- 21 helped is the same as being shoved. That is --
- 22 shove is not helping.
- 23 Q. Okay. So touching you in and of itself
- 24 doesn't bother you. It's the shoving that is the
- 25 problem here?

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- 1 A. Yes.  
 2 Q. Okay.  
 3 A. The shoving and being cursed at while he  
 4 was pushing me backwards. Let's be clear. There  
 5 are two things that happened at the same time.  
 6 Q. Okay. So the cursing and the shoving,  
 7 that is --  
 8 A. Being told that he was going to make my  
 9 life miserable and I would feel like I had been  
 10 kicked to the end of the curb at the end of every  
 11 day. That is a threat.  
 12 Q. Okay. All right. Now I want to talk  
 13 about some of your complaints. You talked about the  
 14 facial tic?  
 15 A. Yes.  
 16 Q. Okay. Now, you mentioned it today and you  
 17 told me in your deposition as well. The first time  
 18 you had it when you got a call from your attorney  
 19 and you learned that there was going to be a  
 20 hearing; is that correct?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. Because I thought Workman's Comp had  
 24 denied it. Thought that was over with. I would  
 25 never have to talk about this again, you know. I

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- 1 went to my therapist.  
 2 Q. Okay. But then you heard from your lawyer  
 3 there is going to be a hearing. And then later on  
 4 you said it was a deposition. Are you sure whether  
 5 it was the hearing or the deposition that started  
 6 the facial tic?  
 7 A. Okay. He called me and said, Diane, I've  
 8 received a letter from the Office of the Governor,  
 9 which I gave you a copy of by the way.  
 10 Q. Right.  
 11 A. And it said in their opinion they felt  
 12 that because this incident occurred at work that it  
 13 needed to be pursued through Workman's Compensation,  
 14 that they were payers of last resort.  
 15 Q. Right.  
 16 A. And that it was my duty to cooperate  
 17 and -- to the fullest, to see it through.  
 18 Q. Okay.  
 19 A. That is kind of like how -- I mean, that  
 20 is not the exact wording, but you've got the letter,  
 21 don't you?  
 22 Q. So it's this letter that came from the  
 23 Office of the Governor that started the facial ties?  
 24 A. My attorney called and read me the letter.  
 25 Q. Okay.

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- 1 A. Because I didn't want to ever have to see  
 2 my brother again, see any of those men. You know,  
 3 it's not just that my brother pushed me. There were  
 4 three grown men sitting there watching a man do that  
 5 to me and not one of them stood up and said, stop,  
 6 David. Shame on them. Shame on them.  
 7 Q. Okay. And you've also talked about some  
 8 fecal incontinence?  
 9 A. Yes.  
 10 Q. And there is -- you've had at least three  
 11 occasions where you have lost all voluntary control?  
 12 A. Yes.  
 13 Q. Yes? Okay. Did you talk about that with  
 14 your psychiatrist?  
 15 A. Yes, I did.  
 16 Q. Okay. Did you talk about that with your  
 17 family doctor?  
 18 A. Yes, I did.  
 19 Q. Okay. Did you talk about that as you were  
 20 going through with everybody?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. And that is why my family doctor  
 24 prescribed the medication for it.  
 25 Q. Okay. And would you agree with me that is

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- 1 an important symptom?  
 2 A. A what?  
 3 Q. An important symptom. That is not, you  
 4 know, kind of a snuffy nose that you might forget?  
 5 A. Oh, no.  
 6 Q. That's a big deal?  
 7 A. Yes, it has altered my ability to go out  
 8 in public at times.  
 9 Q. Okay. All right. Now, I want to talk  
 10 about the insurance claim now. You indicated that  
 11 after the incident on the 12th you went to the  
 12 police?  
 13 A. Yes.  
 14 Q. And you signed out a warrant?  
 15 A. Uh-huh.  
 16 Q. Is that a yes?  
 17 A. Yes.  
 18 Q. It's like your deposition. I know it's  
 19 hard to -- it's hard to remember. And your lawyer  
 20 put into evidence, this is Claimant's 100, 102 -- or  
 21 101.  
 22 A. Uh-huh.  
 23 Q. This document. Did you complete this as  
 24 part of your warrant for your brother?  
 25 A. I gave it to the clerk -- the clerk of

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- 1 court for the judge on the day of the hearing.
- 2 Q. Okay.
- 3 A. And I asked -- I said, I love my brother
- 4 very much. I don't want him to be in trouble for
- 5 this. However, as you can read in the letter my
- 6 thoughts, I just wrote down my thoughts.
- 7 Q. Okay. Any mention in here about an
- 8 insurance claim? In the document that you prepared
- 9 to the judge did you talk about the insurance claim
- 10 that you are talking about today?
- 11 A. Oh, Workman's Comp?
- 12 Q. No. The insurance claim for the problems
- 13 with Dickie's trailer?
- 14 A. No.
- 15 Q. Okay. But you think that -- what you are
- 16 saying today is that is why he was aggressive
- 17 towards you?
- 18 A. Yes.
- 19 Q. But you didn't tell that to the judge
- 20 before?
- 21 A. Because he had not filed the claim. So, I
- 22 mean, I was hoping he listened to me and wouldn't do
- 23 it.
- 24 Q. Okay.
- 25 A. I'm not trying to get him in trouble. I'm

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- 1 trying to get help for me now.
- 2 Q. Okay.
- 3 A. Why would I -- I knew he had not filed the
- 4 claim yet. I prayed he would listen to me and not
- 5 do it. So why would I bring that up to a judge
- 6 trying to get him in trouble? I'm not trying to get
- 7 him in trouble.
- 8 Q. Well, he had already told you the day
- 9 before that he wasn't going to file it?
- 10 A. And yet he did file it later, didn't he?
- 11 He was just trying to shut me up.
- 12 Q. Okay. But as far as the police --
- 13 A. He did file it, didn't he?
- 14 Q. He's here. We will talk to him. The
- 15 police report --
- 16 A. Uh-huh.
- 17 Q. Any -- did you tell the police when you
- 18 went to the police that day about the insurance
- 19 claim?
- 20 A. I did.
- 21 Q. You did? Okay. That is 183. What about
- 22 the doctors, the M.U.S.C. doctors, Dr. Oliverio?
- 23 A. Yes, I did.
- 24 Q. Okay.
- 25 A. It in the records. They wrote it down.

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- 1 Q. Okay.
- 2 A. If you read the doctor's reports, I've
- 3 told every one of them the whole story.
- 4 Q. Okay. All right. Now, as far as how
- 5 Mr. Race acts at work and treats people, you've got
- 6 a couple of indications in here that you are not the
- 7 only person that he had treated perhaps in a harsh
- 8 manner; is that fair?
- 9 A. But I've never seen him push anybody.
- 10 Q. Okay. But he would treat others in a
- 11 harsh manner?
- 12 A. Uh-huh.
- 13 Q. Yes?
- 14 A. Yes.
- 15 Q. Okay.
- 16 A. Yes. However, I never saw him lay hands
- 17 on anybody. And I don't mean -- oh, I've seen him
- 18 help little old ladies, yes, get out of a car, but
- 19 we are not talking about that kind of laying hands
- 20 on somebody. We are talking about shoving.
- 21 Q. Okay. Now, we went -- you went to a
- 22 hearing in Magistrate's Court, correct?
- 23 A. I did.
- 24 Q. And everybody testified and everything,
- 25 right?

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- 1 A. Uh-huh.
- 2 Q. You have to say yes?
- 3 A. Yes.
- 4 Q. Okay. And the judge, using your words, he
- 5 threw it out, threw the case out.
- 6 A. Uh-huh.
- 7 Q. Is that correct?
- 8 A. Because my brother, for example, said,
- 9 Your Honor, she's just trying to collect
- 10 Unemployment while she goes to the Bahamas. How
- 11 interesting. Would I go collect unemployment if I
- 12 had a letter signed by him asking for time off
- 13 without pay? Mike Sage, he said, it's a figment of
- 14 her imagination, Your Honor, she made it all up.
- 15 But you will see in his deposition he admitted to
- 16 it.
- 17 Q. Okay.
- 18 A. These men are liars. They get their
- 19 stories together. My brother used to do it all the
- 20 time. He would get us all in a room and corroborate
- 21 our stories before we had to go before a judge.
- 22 It's common how he operates.
- 23 Q. Okay.
- 24 A. But I wasn't his puppet.
- 25 Q. But you think he's arranged for all of the

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- 1 other people who were in the room to all tell the  
2 same story?
- 3 A. All I'm saying is that in Magistrate's  
4 Court Mike Sage said, Your Honor, it's a figment of  
5 her imagination. My brother said, she's just trying  
6 to collect Unemployment while she's in the Bahamas.  
7 That is what he told the judge.
- 8 Q. Okay.
- 9 A. I have years where I've gone to the  
10 Bahamas, never collected a penny because I didn't  
11 ever file for Unemployment. I mean, I went on  
12 vacation. He has the paperwork. I mean, it was the  
13 most ludicrous thing. I couldn't believe he said  
14 that, you know, but when -- it's hard to keep a lie  
15 straight. You know, the truth you can keep  
16 straight.
- 17 Q. Okay. I want to talk a little bit about  
18 your lifestyle.
- 19 A. Uh-huh.
- 20 Q. Your -- the house that you bought in  
21 Puerto Rico is how many square feet?
- 22 A. We thought it was 4,000, but now it was  
23 6,000 actually.
- 24 Q. Okay. And how many acres of land is that  
25 on?

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- 1 A. Eight acres on top of a mountain.
- 2 Q. Okay. And that cost you \$300,000?
- 3 A. Yeah. We got a heck of a deal.
- 4 Q. Okay. You paid cash for that?
- 5 A. My husband paid for it.
- 6 Q. Okay.
- 7 A. My husband has a trust fund. My husband  
8 is independently wealthy. I am not.
- 9 Q. Okay. But your husband, as you indicated,  
10 he thought that you needed to be in Puerto Rico to  
11 relax, so he bought you and paid cash for a \$300,000  
12 house. Is that fair or not fair?
- 13 A. He -- okay. You say bought for me. It's  
14 still in the trust.
- 15 Q. Okay. So the trust bought the house?
- 16 A. Our finances are totally separate.
- 17 Q. Okay.
- 18 A. I'm poor as a church mouse. He's rich.
- 19 Q. Did you buy it from the guy who created 60  
20 minutes?
- 21 A. Actually from his son Stephen Hewitt, yes.
- 22 Q. Okay. And as far as help around the  
23 house, do you have any servants or caretakers that  
24 came with the house?
- 25 A. Well, we don't call them servants. They

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- 1 are caretakers.
- 2 Q. Okay. So how many -- do you have  
3 caretakers that came with the house?
- 4 A. They live around the corner.
- 5 Q. Okay. How many?
- 6 A. Two.
- 7 Q. Okay. And you often --
- 8 A. And, you know, I took my caretaker with me  
9 that helps take care of me.
- 10 Q. Right. You also have Mr. Zambriski who  
11 takes care of you as well?
- 12 A. Yes.
- 13 Q. Okay. And he vacuums, washes the clothes,  
14 loads and unloads the dishwasher, cleans the  
15 bathroom?
- 16 A. Not anymore. Verine does that.
- 17 Q. Okay. And you also have a 35-foot  
18 sailboat?
- 19 A. Yes, we do. My husband does.
- 20 Q. Okay. That you sail around the Caribbean  
21 for three months or so at least the winters of  
22 '08 to '09 and then '09 to 2010?
- 23 A. And '11.
- 24 Q. And then '10 to '11?
- 25 A. Well, no. '10 to -- yeah, '10 to

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- 1 '11 because we moved in -- yeah.
- 2 Q. Okay. But if not for this Workers'  
3 Compensation claim --
- 4 A. Uh-huh.
- 5 Q. -- you would be back working at Dolphin  
6 Cove Marina for \$19 an hour?
- 7 A. Yes.
- 8 Q. Okay.
- 9 A. Because it wasn't just the hourly wage. I  
10 was getting shares of stock.
- 11 Q. Okay.
- 12 A. I mean, it was for when the marina sells I  
13 had considerable shares of stock in the marina. So  
14 I had an incentive to make it work and to make it  
15 grow, but to get those shares you have to be  
16 employed there. And I am no longer employed there.
- 17 Q. Okay. Did you file a request for  
18 financial assistance with Roper St. Francis Health  
19 Care?
- 20 A. Yes, I did.
- 21 Q. Okay. Did they write off \$3,700 worth of  
22 charges due to your financial hardship?
- 23 A. I would say probably more than that.
- 24 Q. Okay. What financial hardship is that?
- 25 A. I had no job. I had no savings because I

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- 1 spent my money on my prescriptions. My husband --  
 2 and if you read, I wrote in there my husband gives  
 3 me \$1,500 a month. With that \$1,500 a month I made  
 4 the house payment. I paid for our power and all of  
 5 that. That was my allowance. So they took -- I  
 6 mean, I was very honest about that. But my  
 7 husband's money is in a trust. I have no legal  
 8 right to it.
- 9 Q. Okay. What about --  
 10 A. I mean, they set trusts up like that. I  
 11 mean, as his spouse I have no legal right to his  
 12 money.
- 13 Q. What about the State Office of Victim's  
 14 Assistance which is SCOVA, did you --  
 15 A. SOVA.  
 16 Q. SOVA. Excuse me. Did you ask them for  
 17 any type of financial assistance.  
 18 A. They actually handed me an application and  
 19 had me fill it out. And said that it was, you know,  
 20 compensation -- if they determined that my injury  
 21 was compensationable, they would pay for it. And it  
 22 fell under the guidelines.
- 23 Q. So did you have to indicate financial  
 24 hardship to SOVA?  
 25 A. No.

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- 1 Q. Okay.  
 2 A. No, it had nothing to do with financial  
 3 hardship as far as I understood it.  
 4 Q. Okay. Did you have a service animal  
 5 prescribed for you?  
 6 A. Yes, I do. I have two white Maltese dogs;  
 7 Beebee and Harley.  
 8 Q. But you had the dogs before you were  
 9 injured?  
 10 A. Exactly. But we found that me taking them  
 11 with me helped me with my anxiety. I wish they were  
 12 here today sitting on my lap.  
 13 Q. Do you take them everywhere?  
 14 A. I do.  
 15 Q. Like to the grocery store and places why  
 16 seeing eye dogs can go?  
 17 A. Uh-huh. I have my note. You want to see  
 18 it?  
 19 Q. No. I've got it. But, I mean, you take  
 20 them everywhere just like they were a seeing eye  
 21 dog?  
 22 A. Yeah.  
 23 Q. Why didn't you bring them today?  
 24 A. Because Harley got really sick. We don't  
 25 know if he got poisoned or not. And, I mean, we

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- 1 thought he was going to die.  
 2 Q. Okay.  
 3 A. And so my husband had to keep him because  
 4 he was too sick to travel.  
 5 Q. What about the other one?  
 6 A. Because Beebee can't -- I mean, they are  
 7 together.  
 8 Q. Okay.  
 9 A. He almost died a couple weeks ago. I  
 10 don't know if he got bitten by something or what.  
 11 But they fly on the plane with me. They go with me  
 12 to the Home Depot. I have anxiety -- I have anxiety  
 13 attacks in my Home Depot, but if I have to  
 14 concentrate to keeping little puppies happy it  
 15 helps.
- 16 Q. Okay.  
 17 A. I'm so afraid that I'm going to have an  
 18 episode, you know, like have to go to the bathroom  
 19 and not make it.
- 20 COMMISSIONER BECK: Do you need a  
 21 break?  
 22 THE WITNESS: I'm okay.  
 23 BY MS. ROSS:  
 24 Q. I just have one last question. Well, a  
 25 short series of questions. You have a FaceBook

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- 1 profile?  
 2 A. I do.  
 3 Q. And is your work status that you are  
 4 happily retired enjoying Puerto Rico with my  
 5 wondering full husband Clayton?  
 6 A. Yes, because I do not want the whole world  
 7 to know about this horrible incident.  
 8 MS. ROSS: That is all I have.  
 9 COMMISSIONER BECK: Anything further?  
 10 MR. RIBEIRO: Just two things,  
 11 briefly.
- 12 REDIRECT EXAMINATION  
 13 BY MR. RIBEIRO:  
 14 Q. Ms. Fleher, do you know the amount,  
 15 approximately, of your medical bills to date for the  
 16 treatment that we've discussed after October 12th,  
 17 2010?  
 18 A. Okay. You see that Roper wrote off 3,700.  
 19 If you actually go back -- and I told them that I  
 20 would reimburse them in full for anything if ever  
 21 was able to get money. For example, SOVA, they will  
 22 be paid. Roper would be paid back because they are  
 23 due that. And the moneys at Roper far exceed that.  
 24 I would say the last thing I saw was about \$70,000  
 25 worth of tests and all.

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1 Q. Is that only since October 12th, 2010?  
 2 A. Yes.  
 3 Q. Okay.  
 4 A. It may be more than that, actually,  
 5 because, I mean, I've got different -- like I've  
 6 got -- you've got the physicians and you've got  
 7 Roper. And like some physicians aren't part of the  
 8 Roper Network. So I had to pay that out-of-pocket.  
 9 Out-of-pocket alone I think I've paid 6,000 out of  
 10 my pocket, what wasn't covered.  
 11 Q. Okay.  
 12 A. Not counting prescriptions.  
 13 Q. Okay. The other thing I wanted to ask you  
 14 about, Ms. Ross has questioned you on the fraudulent  
 15 insurance claim that your brother asked you to file?  
 16 A. Uh-huh.  
 17 Q. Wanted to bring out that you hadn't told  
 18 anybody else about this, the Magistrate, the  
 19 doctors, nobody?  
 20 A. Right.  
 21 Q. But do you remember speaking to Debbie  
 22 Dozier at Key Risk Claims Management on --  
 23 A. Yes. I told her.  
 24 Q. On October 14th at approximately 12:20?  
 25 A. Uh-huh.

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1 Q. Page 165 of Defendants' brief.  
 2 A. I just didn't tell the judge because the  
 3 issue was not -- you know.  
 4 Q. And you did explain to her that your  
 5 brother was asking you to file a fraudulent claim?  
 6 A. Yes.  
 7 Q. And you told her -- this is two days after  
 8 the event, right?  
 9 A. Yes.  
 10 Q. And you told her that that was what the  
 11 disagreement was about when she asked you?  
 12 A. Yes.  
 13 MR. RIBEIRO: Okay. No further  
 14 questions, Your Honor.  
 15 COMMISSIONER BECK: Anything further?  
 16 MS. ROSS: Just one more.  
 17 RECROSS EXAMINATION  
 18 BY MS. ROSS:  
 19 Q. You told me and you told Ms. Dozier, but  
 20 is your testimony that you also told all of your  
 21 treating physicians?  
 22 A. Yes.  
 23 MS. ROSS: Nothing else.  
 24 COMMISSIONER BECK: Anything else?  
 25 MR. RIBEIRO: No, sir.

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1 COMMISSIONER BECK: Any other  
 2 witnesses on behalf of the Claimant.  
 3 MR. RIBEIRO: The Claimant calls  
 4 David Race.  
 5 COMMISSIONER BECK: All right.  
 6 Please get Mr. Race.  
 7 MS. ROSS: Commissioner, if I could  
 8 ask, David Ackerman no longer works at the marina.  
 9 He has been kind enough to drive down from  
 10 Hendersonville to be here today. Is there any  
 11 objection to getting him in and then out and then  
 12 you can call Mr. Race? I'm not trying to mess up  
 13 the flow of your case. I just feel bad for him. He  
 14 took the day off. He wants to head back, but if  
 15 that will mess it up I --  
 16 COMMISSIONER BECK: Mr. Ribeiro?  
 17 MR. RIBEIRO: I don't guess it would  
 18 mess it up.  
 19 COMMISSIONER BECK: I mean, it's your  
 20 case.  
 21 MR. RIBEIRO: We are going to hear  
 22 from everybody, so the order doesn't matter. I  
 23 wasn't going to call him as a witness. I was only  
 24 going to call Mr. Race. So --  
 25 MS. ROSS: I was going to call him.

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1 I just -- I feel kind of bad for him, but if it's --  
 2 it not my call.  
 3 MR. RIBEIRO: Mr. Race's wouldn't  
 4 take me -- I mean, a couple minutes.  
 5 COMMISSIONER BECK: Let's go ahead  
 6 and get the Claimant's case in first.  
 7 MS. ROSS: I'll do it.  
 8 (Discussion off the record.)  
 9 COMMISSIONER BECK: Would you raise  
 10 your right hand, sir. Do you swear or affirm the  
 11 testimony you are about to give today is the truth,  
 12 the whole truth, and nothing but the truth, sir?  
 13 MR. RACE: I do.  
 14 COMMISSIONER BECK: Please state your  
 15 full name for the record.  
 16 MR. RACE: David G. -- David Gerald  
 17 Race.  
 18 COMMISSIONER BECK: Mr. Ribeiro?  
 19 WHEREUPON:  
 20 DAVID RACE, being duly sworn and  
 21 cautioned to speak the truth, the whole truth and  
 22 nothing but the truth, testifies as follows:  
 23 DIRECT EXAMINATION  
 24 BY MR. RIBEIRO:  
 25 Q. Mr. Race, you are an owner of Dolphin Cove

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- 1 Marina; is that right?
- 2 A. That's correct.
- 3 Q. And you've owned it since about 1985?
- 4 1985, sir?
- 5 A. Roughly speaking, yes.
- 6 Q. You own that 50-50 with Mr. Tom Blocker?
- 7 A. That's correct.
- 8 Q. You have a 50 percent ownership interest
- 9 in the marina?
- 10 A. That's correct.
- 11 Q. And you've known Mr. Blocker since you say
- 12 about 1966?
- 13 A. I've known him since 1953, but we've been
- 14 in business since 1966.
- 15 Q. And you would say that you were like
- 16 brothers?
- 17 A. Yes.
- 18 Q. When your sister Diane was working at the
- 19 marina you were her direct supervisor?
- 20 A. That's correct.
- 21 Q. Okay. I want to call your attention to
- 22 the events of the beginning of October 2010. I've
- 23 deposed you, right?
- 24 A. Yes.
- 25 Q. Okay. And your story is that Diane was

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- 1 interfering in the management of the restaurant,
- 2 right?
- 3 A. That's correct.
- 4 Q. Okay. You do admit however that your
- 5 brother Dickie's trailer was vandalized, right?
- 6 A. Yes.
- 7 Q. And it was done by the dockhands Eric and
- 8 Alex, right?
- 9 A. That is what I understand, yes.
- 10 Q. They still work there?
- 11 A. Yes.
- 12 Q. You didn't take any disciplinary action
- 13 against them, did you?
- 14 A. No.
- 15 Q. Okay.
- 16 A. Because they agreed to pay for the damage
- 17 once we found out who it was.
- 18 Q. So your employees vandalized your
- 19 property. You found out about it and --
- 20 A. My brother's property.
- 21 Q. And you did -- which is on the marina
- 22 grounds, right?
- 23 A. That's correct, yes.
- 24 Q. And yet they are still working for you
- 25 today?

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- 1 A. That's correct.
- 2 Q. And no disciplinary action taken?
- 3 A. None....
- 4 Q. Okay. Now --
- 5 A. Because they agreed to pay for the damages
- 6 they created.
- 7 Q. And after this damage was created by them,
- 8 your employees, you then told Diane that you all
- 9 should file an insurance claim, didn't you?
- 10 A. No. It was before I found out that they
- 11 were the ones who caused the problem. And we were
- 12 going to call the cops. And I told Diane that we
- 13 should set up a vandalism claim. That's correct.
- 14 But you got to watch -- be careful of the timing.
- 15 Q. When she refused to file that claim, you
- 16 felt like she was challenging your authority, didn't
- 17 you?
- 18 A. Probably.
- 19 Q. October 12th, 2010?
- 20 A. Uh-huh.
- 21 Q. You admit to pushing her out of your
- 22 office, right?
- 23 A. That's correct.
- 24 Q. You placed both your hands on both of her
- 25 shoulders, didn't you?

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- 1 A. That's correct.
- 2 Q. And your story is that you pushed her
- 3 backwards out of your office?
- 4 A. That's correct.
- 5 Q. You would say that it was a single push,
- 6 not three shoves?
- 7 A. It was a single push.
- 8 Q. And you would say that it was just out of
- 9 the office, not down the hallway?
- 10 A. That is exactly correct.
- 11 Q. And you would say that you told her to get
- 12 the hell out. And you didn't --
- 13 A. Prior to the -- prior to getting up and
- 14 pushing her out of the door, that's correct.
- 15 Q. And your story is that you did not use any
- 16 stronger language than that?
- 17 A. That's correct.
- 18 Q. And your story is that you did not
- 19 threaten her at no point did you tell her she was
- 20 going to feel like she was in hell or kicked to the
- 21 curb?
- 22 A. No, sir, I did not.
- 23 Q. Okay. And you were charged with assault
- 24 and battery in this matter?
- 25 A. It was dismissed.

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1 Q. And then it was dismissed, right?  
 2 A. That's correct.  
 3 Q. Okay. Mr. Race, you don't see any problem  
 4 with laying hands on an employee, do you?  
 5 A. I don't see any problem with telling  
 6 someone who comes in my office uninvited, will not  
 7 leave my office, and because I don't have a security  
 8 guard to remove them physically, then if I have to  
 9 do that, I have no problem with that, no, sir.  
 10 MR. RIBEIRO: I have no further  
 11 questions.  
 12 COMMISSIONER BECK: Ms. Ross?  
 13 CROSS EXAMINATION  
 14 BY MS. ROSS:  
 15 Q. Mr. Race, could you provide a little more  
 16 detail about what happened on October 12th, 2010?  
 17 A. The morning of October 12th I got a call  
 18 from the bar manager who had -- was a recent hire  
 19 mainly because David Ackerman was leaving due to  
 20 Diane's interference. And the girl told me that  
 21 Diane had come in the day before on a Sunday and had  
 22 interfered with her deliberately behind the bar and  
 23 had taken over all of her duties on a certain  
 24 segment of the bar because it was her friends that  
 25 came in from another marina. And she was going to

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1 show that they was going to run that part of the  
 2 operation.  
 3 And the new hire, the new manager who was  
 4 the only other person there that -- except that  
 5 Diane had walked in there. Now, Diane was not part  
 6 of that operation until she walked in -- with her  
 7 friends and started doing whatever she was doing.  
 8 Q. Okay. When you say she wasn't part of  
 9 the --  
 10 A. The manager said --  
 11 Q. Part of the --  
 12 A. I'm sorry?  
 13 Q. What did you say? She wasn't part of  
 14 what?  
 15 A. She wasn't part of that -- of the work  
 16 force that morning.  
 17 Q. Okay. Keep going.  
 18 A. She had nothing to do with that activity  
 19 as far as the bar was concerned. And that is what I  
 20 had a bar manager for.  
 21 Q. Okay. So what happened?  
 22 A. So Diane interfered with her, the bar  
 23 manager, who was a new person. Said that she  
 24 couldn't -- she couldn't do her paperwork. She  
 25 couldn't do -- Diane was interfering with her

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1 collecting her bills, the whole works. And that if  
 2 she was going to be -- if Diane was going to dictate  
 3 to her her schedules and different things that was  
 4 going on up there, that she was going to quit.  
 5 Q. Okay. So what happened?  
 6 A. So I told Portia that I would talk to  
 7 Diane. That don't worry about it, she is not going  
 8 to interfere with the activity up there because you  
 9 are the bar manager.  
 10 Q. Okay. Had you had trouble in the past  
 11 about Ms. Fleher going into the bar area or  
 12 interfering to use the word you are using?  
 13 A. Well, I mean, no. Not in that regard.  
 14 Not while Portia was there.  
 15 Q. Okay. So what happened?  
 16 A. So -- where did I leave off on that?  
 17 Q. You left off that you told Portia that Ms.  
 18 Fleher was not going to interfere.  
 19 A. Yes.  
 20 Q. So what happened after that?  
 21 A. I then went to her office.  
 22 Q. Ms. Fleher's office?  
 23 A. That's right.  
 24 Q. Okay.  
 25 A. And told her that I had had complaints

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1 about her and her activities at the restaurant. And  
 2 that she no longer would be doing any of the  
 3 activity up there as far as the bar was concerned.  
 4 And that her only duties were to make sure that the  
 5 employees were there on time, did their -- was set  
 6 up for that. And I had a manager at the bar that  
 7 would take care of that bar.  
 8 Q. Okay. What happened after that?  
 9 A. Then I left and went back to a meeting  
 10 which was going to be held at that time with the  
 11 regular restaurant manager who had quit or given me  
 12 notice that he quit two weeks before because of  
 13 Diane's interference mostly. And --  
 14 Q. Who was present at the meeting?  
 15 A. Tom Blocker and Mike Sage and David  
 16 Ackerman and myself.  
 17 Q. Okay. And then what happened?  
 18 A. Then Diane suddenly barges in and starts  
 19 hollering that I was a liar. That none of this  
 20 happened and that she was accusing -- just making,  
 21 you know, wild statements and screaming and  
 22 hollering. And I said, Diane, you are not invited  
 23 to this meeting. I want you to leave. And so she  
 24 told me that she would leave whenever she got good  
 25 and ready to.

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1 And I said, no. I said, no, you are  
2 not -- you are interfering with this meeting. Get  
3 out of my office. And she still didn't leave. So I  
4 said, Diane, get the hell out of my office. And she  
5 just buckles up and she's -- you know, she's not  
6 going to go anyplace. So I got up. I walk over to  
7 her.

8 And when I walked over to her she comes to  
9 me. And I just pushed her out the door. And I  
10 was -- I physically pushed her out the door. And  
11 when she was outside the door, then I said, now you  
12 go to your office and you punch out. And after you  
13 punch out, then you leave. And I'll see you  
14 tomorrow morning and we will discuss this little  
15 situation. I went back into the meeting so we  
16 finished our meeting.

17 MS. ROSS: Okay. I would like to act  
18 it out very shortly if I can have leave to do that?

19 COMMISSIONER BECK: Very well.

20 MS. ROSS: Okay.

21 THE WITNESS: I would like to make  
22 one other comment.

23 MS. ROSS: Sure.

24 THE WITNESS: That there was no file  
25 claimed against the vandalism on my brother's

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1 trailer. All right? Once we found out that this --  
2 that whoever it was was the -- was employees at the  
3 marina and they were young kids, and they agreed  
4 that they would pay for the damages to Richard's  
5 trailer, then we didn't want our customers to think  
6 that they -- that their boats would be compromised  
7 by having the people out there if all of this was  
8 spread around. So we thought the best thing to do  
9 was just not get -- let it die as it stood since it  
10 was -- the damage was being taken care of.

11 BY MS. ROSS:

12 Q. Okay. So you didn't file a claim for the  
13 problems with the trailer?

14 A. That's correct.

15 Q. Okay. I want to go ahead and do a short  
16 demonstration. I will be Ms. Fleher in this role if  
17 that is all right.

18 A. Okay.

19 Q. And you be you. All right.

20 A. You want to go in the doorway?

21 Q. There is step there, but sure.

22 COMMISSIONER BECK: Okay. Be careful  
23 with that step down. I don't want anybody tripping.

24 MS. ROSS: How about that door?

25 COMMISSIONER BECK: Well, there is

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1 somebody working in there.

2 MS. ROSS: I'm sorry. I thought it  
3 was a hallway. Okay.

4 THE WITNESS: How about --

5 MS. ROSS: We'll just do it like  
6 right here.

7 THE WITNESS: All right. This is the  
8 doorway right here.

9 BY MS. ROSS:

10 Q. We're in the doorway right here.

11 A. All right. And I came over here. And  
12 when I come over here you went like this. Okay?

13 Q. Okay.

14 A. And I said, okay. Get the hell out of my  
15 office. And I went like that.

16 Q. Okay. Anything more severe than that?

17 A. No.

18 Q. One touch? Two touches.

19 A. But I was serious about pushing her back  
20 and I did that.

21 Q. Okay.

22 A. And if I would have had a security guy on  
23 my site I would have called him in and had him  
24 physically remove her from the property.

25 Q. Okay. Now, we've talked about your role.

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1 You are the boss at the marina?

2 A. I'm the owner.

3 Q. You are the owner. So are you in charge?

4 A. Absolutely.

5 Q. Okay. Is it unusual for you to curse from  
6 time to time at the office?

7 A. I don't do it too much, but I do do it.

8 Q. Okay. What about yell from time to time?

9 A. Probably.

10 Q. Okay. What about argue with Ms. Fleher?

11 A. Yes, we do.

12 Q. Okay. What about -- go ahead.

13 A. She's a very possessive person. And she  
14 likes to have her way.

15 Q. Okay.

16 A. And that ain't how it works when you are  
17 in the business.

18 Q. What about touching Ms. Fleher? Not  
19 necessarily on the shoulders, but a hug, maybe  
20 helping her when she injured her foot she talked  
21 about. Is it unusual for her to -- for you to touch  
22 her?

23 A. No.

24 MS. ROSS: Okay. I don't have  
25 anything else.

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1 COMMISSIONER BECK: Anything further?  
 2 MR. RIBEIRO: No, Your Honor.  
 3 COMMISSIONER BECK: All right. You  
 4 may step down, sir. Thank you very much.  
 5 THE WITNESS: Thank you, sir.  
 6 COMMISSIONER BECK: Any other  
 7 witnesses on behalf of the Claimant?  
 8 MR. RIBEIRO: No, Your Honor.  
 9 COMMISSIONER BECK: All right. Ms.  
 10 Ross, you may call your first witness, please.  
 11 MS. ROSS: Okay. We call David  
 12 Ackerman.  
 13 COMMISSIONER BECK: All right. Mr.  
 14 Ackerman, would you raise your right hand, please.  
 15 Do you swear or affirm the testimony you are about  
 16 to give today is the truth, the whole truth, and  
 17 nothing but the truth, sir?  
 18 MR. ACKERMAN: I do.  
 19 COMMISSIONER BECK: Please state your  
 20 full name for the record.  
 21 MR. ACKERMAN: David Lee Ackerman.  
 22 COMMISSIONER BECK: All right. Ms.  
 23 Ross?  
 24 WHEREUPON:  
 25 DAVID ACKERMAN, being duly sworn and

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1 cautioned to speak the truth, the whole truth and  
 2 nothing but the truth, testifies as follows:  
 3 DIRECT EXAMINATION  
 4 BY MS. ROSS:  
 5 Q. Okay. Mr. Ackerman, how are you  
 6 affiliated or were you affiliated with Dolphin Cove  
 7 Marina?  
 8 A. I worked for them. I was the restaurant  
 9 manager.  
 10 Q. When was that?  
 11 A. Oh, I guess that was 2000 -- it had to be  
 12 2010.  
 13 Q. Why did you leave there?  
 14 A. I can't remember the exact dates.  
 15 Q. Okay.  
 16 A. I left mainly because of the interactions  
 17 that started with Diane.  
 18 Q. Okay. Like what?  
 19 A. Well, just constant drama. And starting  
 20 problems where there didn't need to be problems.  
 21 Q. Okay.  
 22 A. It was just too much to take.  
 23 Q. Okay. Were you present at the meeting on  
 24 October 12th, 2010, with Mr. Sage, Mr. Blocker, and  
 25 Mr. Race?

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1 A. Yes.  
 2 Q. And what was the purpose of the meeting?  
 3 A. I think the meeting was -- I think I was  
 4 turning over some things to him because I was -- I  
 5 had resigned. And I was leaving. And I think it  
 6 was like one of the final meetings.  
 7 Q. Okay. And what happened with Ms. Fleher  
 8 at that meeting?  
 9 A. What happened with -- oh. We were having  
 10 a meeting. And then she was yelling something down  
 11 the hall. And then came into the meeting. And she  
 12 was standing at the door. And Mr. Race told her  
 13 that we were having a private meeting. And asked  
 14 her if she would leave. And this was a long time  
 15 ago, but I'm trying to recall it the best I can.  
 16 And she kept yelling about somebody said  
 17 something about somebody or somebody was talking  
 18 about her or something. And was accusing someone  
 19 of -- accusing someone of saying that she was  
 20 starting trouble or something. And then he told her  
 21 to get out. And then she came further into the  
 22 office. And he said get out of my office or get the  
 23 hell out of my office and go clock out. And she  
 24 kept coming. She was still in the office.  
 25 And Mr. Race stood up out of his chair and

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1 walked toward her. And when he walked toward her he  
 2 stopped. And she came -- and he said get out of my  
 3 office. And then she came further into the office,  
 4 closer to him. And then I don't remember whether he  
 5 actually touched her or whether he put his hands on  
 6 her. It was something like this.  
 7 And then I don't know whether he turned  
 8 her around or whether she actually turned around  
 9 herself and went out of the room, but Mr. Race  
 10 did -- did put his hands up like this, but I  
 11 can't -- like I said, I can't remember exactly. I  
 12 think he probably grabbed her and turned her around  
 13 physically, but I don't remember exactly what  
 14 happened. So anyway, she left. And she went out of  
 15 the office. And that is pretty much it.  
 16 Q. Okay. Did he shove her three times from  
 17 the distance of that door to that fixture right  
 18 there, like push?  
 19 A. No. The office isn't even that big.  
 20 Q. Okay.  
 21 A. There is -- no. It would be like --  
 22 MS. FLEHER: Hallway.  
 23 THE WITNESS: It would be like if  
 24 his -- if he was sitting right there where he is  
 25 sitting and then she walked in to him and he pushed,

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1 it would probably be to about where you are, if he  
 2 pushed, but I can't remember whether he pushed or  
 3 whether she just -- whether she just turned around.  
 4 But it wouldn't even be a distance of even -- the  
 5 whole thing wouldn't even have taken place in more  
 6 than this space from you to him.  
 7 BY MS. ROSS:  
 8 Q. Okay. What was said by Mr. Race? You  
 9 talked about a few things that were said. Was  
 10 anything else said by Mr. Race that you remember?  
 11 A. That is all I remember. Like I said, this  
 12 happened a long time ago, and I've been doing other  
 13 things. And I haven't really even thought about it  
 14 until I was subpoenaed to come here. So I'm just  
 15 trying to recall as much as I can, but it was just  
 16 more or less he was telling her to get out of the  
 17 office. They were having a private meeting and  
 18 she's not part of it. She's not invited into the  
 19 meeting and asked her to leave several times. And I  
 20 do -- I think he did say something like, get the  
 21 hell out of my office, but that was only after it  
 22 had elevated from one level to the next.  
 23 Q. Have you heard Mr. Race curse at work  
 24 before?  
 25 A. Yeah.

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1 Q. Okay. What about tell somebody what to  
 2 do?  
 3 A. Yeah. He's the boss. He's got to tell  
 4 people what to do.  
 5 Q. What about yell? Have you seen him yell  
 6 at work before?  
 7 A. Yeah.  
 8 MS. ROSS: I don't have anything  
 9 else.  
 10 COMMISSIONER BECK: Mr. Ribeiro?  
 11 CROSS EXAMINATION  
 12 BY MR. RIBEIRO:  
 13 Q. You wouldn't consider you and Diane Fleher  
 14 to be friends, would you?  
 15 A. I don't think that there is -- I mean, we  
 16 are not friends if that -- I mean, if that is your  
 17 question, but I don't think --  
 18 Q. That is my question.  
 19 A. Okay. Yeah. Why would we be? No.  
 20 MR. RIBEIRO: No further questions.  
 21 COMMISSIONER BECK: Anything else?  
 22 MS. ROSS: I would offer to act it  
 23 out again if anybody has any objection to that. We  
 24 can do that really fast.  
 25 COMMISSIONER BECK: I have no

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1 objection to it if --  
 2 MS. ROSS: All right. You want to  
 3 act it out?  
 4 THE WITNESS: Sure.  
 5 BY MS. ROSS:  
 6 Q. All right.  
 7 COMMISSIONER BECK: I would only  
 8 caution this. The testimony that I heard -- I'm not  
 9 sure how you are going to act it out because I'm not  
 10 sure based on his testimony he recalls exactly how  
 11 it happened to begin with.  
 12 THE WITNESS: Yeah. I'm just  
 13 recalling the only things that I'm pretty sure about  
 14 is the fact that he told her several times to get  
 15 out of the office. And instead of leaving the  
 16 office like she was told, she came in to the office.  
 17 And when he stood up, she walked even more toward  
 18 him into his direction.  
 19 COMMISSIONER BECK: But if I recall  
 20 your testimony, you weren't sure whether he put both  
 21 hands on her shoulder, whether he turned her --  
 22 THE WITNESS: Right. And I didn't  
 23 say I was sure about that. I just said what --  
 24 COMMISSIONER BECK: That is my point.  
 25 THE WITNESS: Right. What I just --

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1 COMMISSIONER BECK: So I'm not sure  
 2 what you are going to act out.  
 3 MS. ROSS: Nothing to act out then.  
 4 COMMISSIONER BECK: All right.  
 5 THE WITNESS: Yeah. The only thing  
 6 is I know that she came in and that was it as far as  
 7 this situation because I was sitting down here. I  
 8 was sitting over here. I can't -- I don't know what  
 9 transpired here.  
 10 COMMISSIONER BECK: All right.  
 11 THE WITNESS: But I do know that he  
 12 told her to get out several times. And she walked  
 13 in and then walked even closer into his area.  
 14 COMMISSIONER BECK: All right. Any  
 15 other questions?  
 16 MR. RIBEIRO: No, Your Honor.  
 17 COMMISSIONER BECK: Thank you, sir.  
 18 THE WITNESS: Okay. Thank you.  
 19 COMMISSIONER BECK: You may call your  
 20 next witness, please.  
 21 MS. ROSS: Okay. Is Mr. Ackerman  
 22 free to go?  
 23 COMMISSIONER BECK: Mr. Ribeiro?  
 24 MR. RIBEIRO: I'm not going to call  
 25 him back.

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1 MS. ROSS: Okay. Me neither.  
 2 COMMISSIONER BECK: You are free to  
 3 go. Thank you, sir.  
 4 (Discussion off the record.)  
 5 COMMISSIONER BECK: Are you  
 6 Mr. Blocker?  
 7 MR. BLOCKER: Yes.  
 8 COMMISSIONER BECK: Mr. Blocker,  
 9 would you raise your right hand, please. Do you  
 10 swear or affirm the testimony you are about to give  
 11 today is the truth, the whole truth, and nothing but  
 12 the truth, sir?  
 13 MR. BLOCKER: I do.  
 14 COMMISSIONER BECK: Please state your  
 15 full name for the record.  
 16 MR. BLOCKER: Thomas A. Blocker,  
 17 Junior.  
 18 COMMISSIONER BECK: All right. Ms.  
 19 Ross?  
 20 MS. ROSS: Okay.  
 21 WHEREUPON:  
 22 TOM BLOCKER, being duly sworn and  
 23 cautioned to speak the truth, the whole truth and  
 24 nothing but the truth, testifies as follows:  
 25 DIRECT EXAMINATION

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1 BY MS. ROSS:  
 2 Q. Mr. Blocker, how are you affiliated with  
 3 Dolphin Cove Marina?  
 4 A. I'm one of the owners.  
 5 Q. Okay. Who is the other owner?  
 6 A. David Race.  
 7 Q. Anybody else?  
 8 A. No.  
 9 Q. Okay. How long have you been working with  
 10 Mr. Race?  
 11 A. We started working together in 1953.  
 12 Q. Okay. Of your workday, do you spend most  
 13 of it at the marina, somewhere else, where do you  
 14 spend your workday?  
 15 A. At the marina.  
 16 Q. Okay. Were you a party to a meeting that  
 17 occurred on October 12th, 2010, with Mr. Race,  
 18 Mr. Sage, and Mr. Ackerman?  
 19 A. Yes.  
 20 Q. Okay. What happened?  
 21 A. We were having a meeting. David Ackerman  
 22 had given us his resignation. And he had a point of  
 23 sale system for the restaurant. And we were  
 24 getting -- he was there to give us a turnover on how  
 25 the system worked. And that was what he was there

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1 for. And I was in there because I do the technical  
 2 stuff. And I needed to know what was going on with  
 3 the system. It was computer-based.  
 4 Q. Okay. So what, if anything, happened as  
 5 the meeting began?  
 6 A. Well, we were in the meeting and we were  
 7 going over the things. And then Diane came in and  
 8 created a scene. And she disrupted the meeting.  
 9 Q. Okay. Be as specific as you can with what  
 10 you remember?  
 11 A. That is what I remember.  
 12 Q. Okay. Keep going.  
 13 A. And she was yelling about something about  
 14 her being -- having creating hate and discontent at  
 15 the cafe. And wanted to know who said it. I know  
 16 David said it. And I might have said it, but she  
 17 was just interrupting the meeting. And she wouldn't  
 18 back off.  
 19 And David told her -- David Race told her  
 20 several times that she had to leave, that she was  
 21 not invited to our meeting. She didn't need to be  
 22 there. And he said the best thing you can do is  
 23 punch out and go home. And she just wouldn't leave.  
 24 He said, okay. Diane, you've got to leave, and then  
 25 she kept not leaving. So he got up out of his

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1 chair. He was behind his desk. And he went out to  
 2 the door and where Diane was standing. Said, Diane,  
 3 you need to leave.  
 4 And she bulled up to him and got right in  
 5 his face and said she wasn't leaving. And he told  
 6 her, you've got to leave, Diane. Just punch out and  
 7 go home for the rest of the day. And she wouldn't  
 8 move. So he got up from his chair, went around his  
 9 desk. Went to the door and pushed her by her  
 10 shoulders with both hands out the door about two  
 11 steps, maybe not even but one step, but it was  
 12 outside. And he told her again, punch out and go  
 13 home. And take the rest of the day off.  
 14 Q. Okay. Is it unusual for Mr. Race  
 15 sometimes to curse at work?  
 16 A. Everybody does it on occasion.  
 17 Q. What about yell? Is it unusual for him to  
 18 yell?  
 19 A. Yeah, sometimes he does. Yeah.  
 20 Q. Okay. Sometimes it's unusual or sometimes  
 21 he yells?  
 22 A. No, it's not unusual. I mean, around a  
 23 marina sometimes it gets loud.  
 24 Q. Fair enough. What about telling somebody  
 25 what to do? Is it unusual for him to tell somebody

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1 what to do?  
 2 A. It depends on what is going on. If -- I  
 3 mean, he's the Number 1 man. And he's the top man.  
 4 If he tells you something, you need to do it.  
 5 Q. Okay. Is it unusual for him to argue with  
 6 Ms. Fleher from time to time?  
 7 A. They are brother and sister, and they  
 8 sometimes have little discussions.  
 9 Q. Okay. If it's all right I would like to  
 10 act out what you remember. And then I won't have  
 11 any other questions.  
 12 A. Okay.  
 13 MS. ROSS: Any objection?  
 14 COMMISSIONER BECK: Very well.  
 15 BY MS. ROSS:  
 16 Q. All right. Do you need the cane?  
 17 A. No.  
 18 Q. Okay. All right. Well, let's do it right  
 19 here just so you don't have to go very far.  
 20 A. Okay.  
 21 Q. Okay. So what happened?  
 22 A. Well, he went to the door and he talked to  
 23 Diane. And she's like this, you know. And she was  
 24 not moving. And so he said, Diane, you've got to  
 25 leave. And she kept not leaving. So he finally

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1 just did like this and just pushed her that much,  
 2 about that far. That was it.  
 3 MS. ROSS: Okay. All right. I don't  
 4 have any other questions.  
 5 COMMISSIONER BECK: Mr. Ribeiro?  
 6 MS. ROSS: You can sit down.  
 7 CROSS EXAMINATION  
 8 BY MR. RIBEIRO:  
 9 Q. Mr. Race, you are the secretary of the  
 10 corporation? I mean Mr. Blocker. I'm sorry.  
 11 Mr. Blocker, you are the secretary of the  
 12 corporation?  
 13 A. Right, uh-huh.  
 14 Q. You work about seven days a week, don't  
 15 you?  
 16 A. Uh-huh.  
 17 Q. Okay. And you've been working with  
 18 Mr. Race since 1953?  
 19 A. Uh-huh.  
 20 COMMISSIONER BECK: You need to say  
 21 yes or no, sir.  
 22 THE WITNESS: Yes.  
 23 COMMISSIONER BECK: The court  
 24 reporter has got to be able to record your answer.  
 25 Thank you.

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1 THE WITNESS: Okay. Yes.  
 2 BY MR. RIBEIRO:  
 3 Q. So it's fair to say that you spend a lot  
 4 of time together, don't you?  
 5 A. Oh, yes.  
 6 Q. And you've been together at Dolphin Cove  
 7 since the early '80s?  
 8 A. When we built the marina, yes.  
 9 Q. And you are a 50-50 owner with --  
 10 A. Right.  
 11 Q. -- Mr. Race?  
 12 MR. RIBEIRO: I have no further  
 13 questions for you, sir.  
 14 COMMISSIONER BECK: Anything further?  
 15 MS. ROSS: Nothing else from me.  
 16 COMMISSIONER BECK: All right. Thank  
 17 you, Mr. Blocker.  
 18 THE WITNESS: Okay. Thanks.  
 19 COMMISSIONER BECK: Ms. Ross, any  
 20 other witnesses?  
 21 MS. ROSS: Mike Sage.  
 22 COMMISSIONER BECK: Okay.  
 23 (Discussion off the record.)  
 24 COMMISSIONER BECK: Mr. Sage, would  
 25 you raise your right hand, please. Do you swear or

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1 affirm the testimony you are about to give today is  
 2 the truth, the whole truth, and nothing but the  
 3 truth, sir?  
 4 MR. SAGE: I do.  
 5 COMMISSIONER BECK: All right.  
 6 Please state your full name for the record.  
 7 MR. SAGE: Michael John Sage.  
 8 COMMISSIONER BECK: All right. Ms.  
 9 Ross?  
 10 MS. ROSS: Okay.  
 11 WHEREUPON:  
 12 MICHAEL SAGE, being duly sworn and  
 13 cautioned to speak the truth, the whole truth and  
 14 nothing but the truth, testifies as follows:  
 15 DIRECT EXAMINATION  
 16 BY MS. ROSS:  
 17 Q. Mr. Sage, what is your affiliation with  
 18 Dolphin Cove Marina?  
 19 A. I'm in management there. I've been there  
 20 for 32 years.  
 21 Q. Okay. Day-to-day do you spend your time  
 22 at the marina or somewhere else?  
 23 A. Yes, at the marina.  
 24 Q. Marina? Were you party to a meeting that  
 25 occurred on October 12th, 2010, with Mr. Race,

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1 Mr. Blocker, and Mr. Ackerman?  
 2 A. Yes, I was.  
 3 Q. What, if anything, occurred with Ms.  
 4 Fleher at the beginning of that meeting?  
 5 A. Well, at the beginning of the meeting she  
 6 wasn't there, but after -- as a result of some  
 7 previous conversation she came in and interrupted  
 8 the meeting.  
 9 Q. Okay. What did she say?  
 10 A. She wanted to know why everybody was  
 11 saying that she was causing hate and discontent up  
 12 in the restaurant. And actually no one answered her  
 13 other than to tell her that she wasn't part of the  
 14 meeting and to please leave.  
 15 Q. Okay. What happened after that?  
 16 A. She wouldn't leave. And she just got  
 17 louder. And then her brother, which is David Race,  
 18 told her to leave and get out, she wasn't part of  
 19 the meeting. And on the third time that he told her  
 20 she still didn't leave, he got up, walked around  
 21 her -- walked around his desk and table and it  
 22 looked to me at that time, because I was sitting  
 23 fairly close, that she kind of stepped into him a  
 24 little bit. And then when she did that he just  
 25 pushed her by the shoulders out the door.

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1 Q. Okay. How far?  
 2 A. Two feet.  
 3 Q. What did he say, if anything?  
 4 A. He told her to get the hell out of his  
 5 office and not come back until tomorrow. Well, let  
 6 me rephrase that. He told her to clock out and go  
 7 home and not -- and he would get with her tomorrow  
 8 or something to that effect.  
 9 Q. Is it unusual for Mr. Race to curse from  
 10 time to time while at the marina?  
 11 A. No.  
 12 Q. What about yell?  
 13 A. He has a fairly short fuse and he will  
 14 raise his voice.  
 15 Q. Okay. What about tell somebody what to  
 16 do, was that unusual?  
 17 A. Tell them what to do?  
 18 Q. Yes.  
 19 A. Yes. He's the owner of the company. He  
 20 tells everybody what to do.  
 21 Q. Okay. So that wouldn't be unusual?  
 22 A. No.  
 23 Q. Okay. What about argue with Ms. Fleher,  
 24 was that unusual for that to occur from time to  
 25 time?

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1 A. No.  
 2 Q. Okay. I'd like to act it out again and  
 3 then I wouldn't have any other questions.  
 4 A. Okay.  
 5 COMMISSIONER BECK: All right.  
 6 BY MS. ROSS:  
 7 Q. Okay. All right. Tell me what to do.  
 8 A. Well, say that this is the desk that he  
 9 walked around. The distance from here to the door  
 10 would be right about here. So she stepped inside  
 11 the door one or two small steps. And when he came  
 12 around the table he was yelling at her. Now, David  
 13 is slightly lower in stature. And when he said  
 14 something, she kind of like invaded his space and  
 15 came in to him a little bit. And he said, get the  
 16 hell out and just shoved her like that.  
 17 Q. Okay.  
 18 A. And I'm not sure if he grabbed her much,  
 19 but just it was kind of a -- and he shoved her twice  
 20 I do believe, not --  
 21 Q. Okay.  
 22 A. Not just once.  
 23 Q. Twice?  
 24 A. May have been twice. It's hard to tell.  
 25 I mean, it was pretty quick.

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1 Q. Okay. What about the distance that she  
 2 covered?  
 3 A. Well, just enough to get her out the door.  
 4 It couldn't have been more than two feet, maybe  
 5 three feet at the most.  
 6 MS. ROSS: Okay. All right. I don't  
 7 have anything else.  
 8 COMMISSIONER BECK: Mr. Ribeiro?  
 9 CROSS EXAMINATION  
 10 BY MR. RIBEIRO:  
 11 Q. Now, Mr. Sage, a second ago you just --  
 12 when you were demonstrating that you said she  
 13 invaded his space?  
 14 A. Yes.  
 15 Q. But I've deposed you, haven't I?  
 16 A. Yes.  
 17 Q. And in the deposition you said that she  
 18 chest bumped him?  
 19 A. That is what I said. Invaded his space.  
 20 Came up like that.  
 21 Q. So it was a chest bump?  
 22 A. That is what I would call it, yeah.  
 23 Q. Okay.  
 24 A. Not as violent as say you would see at a  
 25 football game or something when people are

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1 congratulating each other, but she definitely got in  
 2 his face with it.  
 3 Q. Okay. And you are aware that you are the  
 4 only person in the room who would say that there  
 5 was --  
 6 A. I was the closest person.  
 7 Q. That she --  
 8 A. I was sitting -- I was sitting in a chair  
 9 right here. The doorway is right here. She is  
 10 standing here. He came around.  
 11 Q. Uh-huh. You've known Tom blocker for 35  
 12 to 40 years?  
 13 A. Closer to 35.  
 14 Q. And you've known David Race for 35 to 40  
 15 years, right?  
 16 A. Yes.  
 17 Q. In fact, you were in business with David's  
 18 son Gary in the '70s, right?  
 19 A. Yes.  
 20 Q. You work six days a week at the marina?  
 21 A. Yes.  
 22 Q. So it's fair to say you've spent a lot of  
 23 time together, right?  
 24 A. Yes.  
 25 Q. And you have never seen Dave Race and

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1 Diane Fleher have physical contact before, have you?  
 2 A. No.  
 3 Q. And, in fact, you would say if you were in  
 4 David's position in that event that you just  
 5 reenacted, that you would have pushed her, too?  
 6 A. I can't say that I would have, but I  
 7 may --  
 8 Q. That is what you did tell me.  
 9 A. Well, events change. I may have done it.  
 10 I may not have. It's just everything is different.  
 11 MR. RIBEIRO: Okay. I've got no  
 12 further questions.  
 13 COMMISSIONER BECK: Anything further.  
 14 MS. ROSS: Nothing, Commissioner.  
 15 COMMISSIONER BECK: Any other  
 16 witnesses today?  
 17 MS. ROSS: No, Commissioner.  
 18 COMMISSIONER BECK: Mr. Ribeiro,  
 19 anything else?  
 20 MR. RIBEIRO: No, sir.  
 21 COMMISSIONER BECK: All right. That  
 22 will conclude this proceeding.  
 23 (Whereupon, the hearing  
 24 was concluded at 12:49 p.m.)  
 25

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1 Certificate of Reporter  
 2  
 3 I, Deborah S. Thomas, Certified Verbatim  
 4 Reporter and Notary Public in and for the State of  
 5 South Carolina, do hereby certify that I reported  
 6 the hearing of Fleher vs. Dolphin on the 1st day of  
 7 March, 2012; that the witnesses were first duly  
 8 sworn, and that the foregoing 110 pages constitute a  
 9 true and correct transcription of the said hearing.  
 10  
 11 I further certify that I am neither  
 12 attorney nor counsel for, nor related to or employed  
 13 by, any of the parties connected with this action,  
 14 nor am I financially interested in said cause.  
 15  
 16 I further certify that the original of  
 17 said transcript shall be hereafter delivered to  
 18 Commissioner T. Scott Beck, South Carolina Workers'  
 19 Compensation Commission, 1333 Main Street, 5th  
 20 Floor, Columbia, South Carolina 29201.  
 21  
 22 In witness whereof I set my hand and seal  
 23 this 30th day of March, 2012.  
 24  
 25  
 Deborah S. Thomas, CVR  
 My Commission and Notary Public for the  
 expires 1/4/18 State of South Carolina

ABACTIS REPORTING SERVICES

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1014489

Diane Fleher,	)	
Employee,	)	
Claimant,	)	
vs.	)	
Dolphin Cove Marina,	)	ORDER
Employer,	)	
and	)	
Carolina Casualty Insurance Co.,	)	
Carrier,	)	
Defendants.	)	

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Procedural History

This matter came before the Commission pursuant to a Petition for Hearing filed by the Employer/Carrier on December 2, 2012. Via the Petition, the Employer/Carrier asserted that the Claimant filed a Form 50 on July 18, 2011 and claimed that, on October 12, 2010, she sustained a compensable injury to her "brain and nervous system." Via a timely and properly filed Form 51, the Employer/Carrier denied that the Claimant suffered a compensable injury.

A hearing was set for September 27, 2011 based on the Claimant's request for hearing. However on September 7, 2011, the Claimant withdrew her request for hearing. As of the date of the Petition, the Claimant had not re-filed her Form 50 or requested a hearing via other means. Thus, because the Employer/Carrier was entitled to a timely adjudication of the Claimant's entitlement to benefits, the Employer/Carrier petitioned for a hearing on the merits. It should be noted that on December 2, 2011, the Employer/Carrier also filed a Motion to Compel MUSC to

produce medical records.

On December 13, 2011, the Commission served a Notice of Hearing, setting the case for adjudication on December 21, 2011. Regarding the purpose of the hearing, the Hearing Notice stated "To Determine the Issues in the Motion."

On December 14, 2011, the Claimant filed a Motion for Continuance, asserting that the Claimant's assigned counsel had changed that that "the new attorney has not had a chance to do necessary things in the file that will be prejudicial to the Claimant's case should it go forward on the scheduled docket." The Claimant further indicated that the Employer's outstanding Motion to Compel (MUSC) had not yet been heard. On December 27, 2011, the Commission entered an order compelling MUSC to produce medical records.

On February 7, 2012, a telephonic hearing was held pursuant to the Employer/Carrier's Petition for Hearing and the Claimant's Motion for Continuance.

Arguments of the Employer/Carrier

The Employer/Carrier asserted that this case involved a denied mental/mental injury, which is necessarily a very fact-specific inquiry. The Employer/Carrier indicated that there were five people in the room at the time of the alleged "incident." Two of the people are elderly, and one has already moved out of state. The Employer/Carrier asserted that prejudice was present in further delay of the claim in that witnesses may be lost.

The Employer/Carrier further asserted that, upon information and belief, the Claimant continued to seek medical treatment with non-authorized providers. The Employer/Carrier took the position that the Claimant's decision to seek unauthorized medical care unfairly, and prejudicially, denied the Employer/Carrier the right to select the medical provider. The right to choose the medical providers specifically vests in the Employer/Carrier, and the Claimant's

decision to pursue unauthorized care, while not requesting a hearing in which compensability can be established, further prejudices the Employer/Carrier.

Similarly, the Employer/Carrier posited that the Claimant was likely to request temporary total disability benefits from the date of injury and ongoing. Thus, the Employer/Carrier asserted that it was extremely prejudiced in the Claimant's failure to pursue her claim, in that exposure for temporary benefits was accruing with the Employer/Carrier holding no control over the medical aspect of the claim.

Regarding the Employer/Carrier's right to request a hearing, the Employer/Carrier asserted that Section 42-17-20 clearly indicates that the Employer/Carrier can request a hearing. Section 42-17-20 states that

if the employer and the injured employee...fail to reach an agreement in regard to compensation under this Title within fourteen days after the employer has knowledge of the injury..., either party may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon. Immediately after such application has been received the Commission shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing.

McMillan v. Midlands Human Resources, 409 S.E.2d 443, 305 S.C.532 (Ct. App. 1991) interprets this statute and specifically states that "the statute still allows for either party to make application for a hearing where the employer and employee have failed to reach an agreement for compensation within fourteen days of knowledge of the injury by the employer." In the McMillan case, "the only issue on appeal is whether the ... Employer/Carrier had the right to petition for a hearing when the Claimant was not ready to proceed with his claim." The Court held that since the employer had knowledge of the injury for more than fourteen days and the parties had failed to reach an agreement "the Employer/Carrier had the right to petition for a hearing under Code § 42-17-20."

Similarly, in Richey v. Dickinson, 598 S.E.2d 307, 359 S.C. 609 (2004), the Court of Appeals indicated that, in some circumstances, the Employer/Carrier has an affirmative duty to request a hearing. The Court stated that the parties have a “shared responsibility in requesting a hearing” and that “the responsibility to request a hearing following a Form 50 filing rests not only on the Claimant, but also on the responding parties and the Commission.”

In light of the governing law and its interpreting caselaw, the Employer/Carrier asserted that it had the right to request a hearing on the merits and requested that a hearing be set for the next available hearing date. In light of the continued prejudice to the Employer/Carrier in the Claimant’s failure to request a hearing, the Employer/Carrier asserted that the petition for hearing should be granted.

#### Arguments of the Claimant

In response, the attorney for the Claimant asserted that the claim was not yet ready for a hearing on the merits, although he suspected that it would be ready shortly. The Claimant asserted that she had two years to develop her case and that the two year time period had not yet expired. The Claimant thus objected to the Petition and requested that it be Denied. The Claimant’s attorney also asserted that the Claimant resides in Puerto Rico and, thus, requested a “date certain” for hearing so that firm travel arrangements could be made for the Claimant.

#### Decision

In determining whether to Order a hearing on the merits, the undersigned is particularly concerned about whether or not the Claimant has had the opportunity to develop her case. In this case, it has been over fifteen (15) months since the date of accident. While mindful of the requirements of Section 42-1-160, the undersigned hereby finds as a fact that the Claimant has had ample opportunity in which to develop her claim and obtain the necessary medical and

factual documentation and witnesses to support her claim of compensability.

Regarding the Claimant's argument of a two-year time period in which to develop her case, the undersigned finds that the two-year period is relevant to the date upon which a claim is barred for failing to bring it in the first place. The undersigned finds the two-year statute of limitations inapplicable in this case.

Regarding the Employer/Carrier's ability to request a hearing via Petition, the undersigned hereby finds as a fact that Section 42-17-20, and the caselaw interpreting this Section, permit the Employer/Carrier to request a hearing in these circumstances.

As an administrative matter, the Claimant's Motion for a Continuance is also granted. The issue of the Petition for Hearing did not proceed on December 13, 2011 as originally scheduled, so clearly the Motion had been granted, but no order had been entered to that effect. Thus, this Order will serve to grant the Claimant's Motion for a Continuance, effective December 13, 2011.

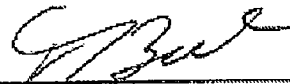
In this case, after informally reviewing the Commission's file and hearing arguments of counsel, the undersigned finds that this case should proceed to a hearing. Thus, a hearing is hereby Ordered, not pursuant to Section 42-17-20 but pursuant to Regulation 67-601 which provides that "The Commission may, on its own Motion, Order a hearing." The undersigned is mindful of part (B) of that regulation, which requires that "The Commission will not set a hearing until a conflict arises." Clearly, in this case, a conflict among the parties has arisen based on the failure to agree as to compensability of the claim as well as benefits owed to the Claimant, so the requirements of part (B) have been met. Thus, the undersigned hereby ORDERS that a hearing be set pursuant to Regulation 67-601.

This matter is hereby set for a hearing on the merits on March 1, 2012 at 10:00 am in St.

Matthews, SC. At the telephonic Hearing, the parties agreed to waive venue requirements and to have the case heard in St. Matthews. The parties further agreed to waive any specific notice requirements for notice of a merits hearing. Forms 58 and APA Submissions will be due from the parties pursuant to the Regulations, with the Employer/Carrier considered the Moving Party for administrative purposes only.

**AND IT IS SO ORDERED.**

South Carolina Workers'  
Compensation Commission

  
\_\_\_\_\_  
T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

March 23, 2012

By: Amy Bracy, Administrative Assistant to Commissioner Beck

DECISION AND ORDER OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1014489.

Diane Fleher,	)
Employee,	)
Claimant,	)
vs.	)
Dolphin Cove Marina,	)
Employer,	)
and	)
Carolina Casualty Insurance Co.,	)
Carrier,	)
Defendants.	)

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**HEARING:** Held in St. Matthews, South Carolina on March 1, 2012.

**APPEARANCES:** Claimant represented by Paul Ribeiro, Esquire of Wigger Law Firm, North Charleston, South Carolina.

Defendants represented by Lynnley D. Ross, Esquire of Willson Jones Carter & Baxley, P.A., Mount Pleasant, South Carolina.

**PURPOSE OF HEARING:** To determine any issues which may properly come before the Commission, including but not limited to the compensability of the Claimant's claim for benefits resulting from events occurring October 12, 2010

**DECISION AND ORDER:** By **T. Scott Beck, Commissioner**

**FILED:** July 25, 2012

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

For the Employer/Carrier:

- APA #1: Records of MUSC, dated 10/13/11 – 10/22/10, consisting of pages 1-76.
- APA #2: Records of Georgia Roane, MD, dated 8/15/11, consisting of pages 77-78.
- APA #3: Records of Robert R. Oliverio, Jr., MD, dated 8/5/11 – 11/29/10, consisting of pages 79-93.
- APA #4: Records of Tal Klatchko, MD, dated 8/4/11 – 5/26/11, consisting of pages 94-108.
- APA #5: Reports of Mount Pleasant Hospital, dated 8/4/11, consisting of pages 109-113.
- APA #6: Records of Kenneth Hanger, MD, dated 8/8/11, consisting of pages 114-116.
- APA #7: Records of Robert G. Thompson, II, MD, dated 7/13/10 – 7/14/05, consisting of pages 117-142.
- Exhibit A Correspondence from Roper St. Francis regarding Claimant's request for financial assistance, dated 7/14/11, consisting of pages 143-144.
- Exhibit B Correspondence regarding signed release for records from State Office of Victim's Assistance, consisting of pages 145-149.
- Exhibit C Claimant's Facebook page, consisting of pages 150-159.
- Exhibit D Recorded statement, consisting of pages 160-172.
- Exhibit E Correspondence regarding records concerning Claimant's Summons and Complaint filed against David Race, consisting of pages 173-181.
- Exhibit F Incident/Investigation Report, consisting of pages 182-184.

\*\*Defendants APA 145-149 were objected to by the Claimant, and that objection was sustained. The documents were proffered without objection.

For the Claimant:

- APA #1: Records of MUSC – I.O.P., dated 10/22/10 – 2/16/12, consisting of pages 1-73.
- APA #2: Records of Dr. Robert Oliverio, dated 10/12/10 – 7/21/11, consisting of pages 74-80.
- APA #3: Records of Dr. James L. Burngartner, dated 9/27/11, consisting of pages 81-82.
- APA #4: Records of Dr. Tal Klatchko, dated 5/26/11, consisting of pages 83-85.
- APA #5: Reports of Dr. Georgia C. Roane, dated 9/10/10 – 11/1/10, consisting of pages 86-88.
- APA #6: Records of Jean R. Hutchinson, CVE – Employability Evaluation, dated 1/31/12, consisting of pages 89-96.
- APA #7: Records of Incident Report – Charleston Police Department, dated 10/12/10, consisting of pages 97-99.
- APA #8: Records of Statement of Diane G. Fleher, dated 10/29/10, consisting of pages 100-101.
- APA #9: Records of Days Off Request, dated 9/18/10, consisting of pages 102.
- APA #10: Records of WCC Form 12-A, dated 10/13/11, consisting of pages 103-106.
- APA #11: Records of S.O.V.A. Letter, dated 5/25/11, consisting of pages 107.
- APA #12: Records of S.S.A. – Disability Determination, dated 10/6/11, consisting of pages 108-125.
- APA #13: Records of S.S.A. – Function Report, dated 8/24/11, consisting of pages 126-133.

\*\*Claimant's APA 108 – 125 and 126 – 133 were objected to by the Employer/Carrier. Those objections were overruled.

## II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The admissibility of the APA Submissions, with the exception of the objections outlined above.

2. The South Carolina Workers' Compensation Commission's jurisdiction over the parties and the claim.
3. That venue, set in St. Matthews, SC, was proper.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

### III. STATEMENT OF THE CASE

The Claimant asserted that she suffered a mental/mental injury arising out of events occurring on October 12, 2010, where she was involved in an altercation with the owner of Dolphin Cove Marina, where she was employed. In addition, she asserts that her pre-existing lupus and fibromyalgia have been aggravated as a result of the injury. She also alleges that she has developed a facial tic and incontinence due to the injury. She is requesting medical treatment for the physical conditions and psychological and/or psychiatric care for the psychological injury. She requests TTD from October 12, 2010 to December 1, 2010, then from April 26, 2011 to the present and continuing. She asserts that she was on a pre-planned vacation between December 1, 2010 and April 26, 2011 and does not allege an entitlement to TTD for that period of time. She also alleges an average weekly wage of \$800, which results in a compensation rate of \$532.80.

The Employer/Carrier denies compensability of the claim in its entirety. The Employer/Carrier asserts that the events of October 12, 2010 did not occur as alleged by the Claimant. Secondly, even if the events did occur as the Claimant alleges, the events still do not rise to the level of unusual or extraordinary, as required by the Workers' Compensation Act. Employer/Carrier asserts an average weekly wage of \$555.69, which results in a compensation rate of \$370.40. If the case were to be found to be compensable, the Employer/Carrier asserts that no TTD would be due from the date of accident until at least August 15, 2011, then only until October

19, 2011, due to her noncompliance with treatment after October 19, 2011.

The Employer/Carrier further asserted that the Claimant's entire claim was barred by res judicata. After the October 12, 2010 incident, the parties appeared in magistrate's court to determine issues related to a warrant issued by the Claimant against the owner of Dolphin Cove Marina. This matter was dismissed by Magistrate's Court. Thus, the Employer/Carrier asserted that the doctrine of res judicata applied and that the Claimant could not re-litigate these issues. This position was overruled by the undersigned.

#### **IV. EVIDENCE OF THE CASE**

##### **Testimony of the Claimant – Direct Examination**

The Claimant was the first witness to testify. She has been employed at Dolphin Cove Marina ("the Marina") since May 2006. Tr. 9. The owner of Dolphin Cove Marina was her half-brother, David Race. Tr. 9. She began work to be the manager perhaps to take over when Mr. Race and another owner, Mr. Blocker, were unable to run the Marina. Tr. 9. Mr. Race is nearly 80 years old, with health problems, including bypass, stents, and defibrillators. Tr. 10. She earned \$19.00 per hour Monday through Friday and \$20 per hour on the weekends. Tr. 11. The Claimant testified that she and the Marina had an agreement where the Claimant would work two fewer days per week of pay so that those funds could be used for advertising the Marina to customers. Tr. 11. Before she agreed to give up two days' of pay, the Claimant testified she worked between 32 and 40 hour. Tr. 11-12. If she worked more than 40 hours she would be paid via 1099, not overtime. Tr. 12. She also received a bonus of \$20 for every boat, over 16 boats – which served as a baseline, in the wetslips at the Marina. Tr. 12. She testified the bonuses were between \$160 and \$380. Tr. 12.

From a medical standpoint, she testified that, after the incident, she was “quite hysterical, crying and upset.” Tr. 12. She went to the police department and filed a police report, then she went to her doctor’s office. Tr. 13. She testified she cried “for days on end” and was “inconsolable.” Tr. 13. She was hyperventilating, had anxiety, and couldn’t sleep. Tr. 13. She testified that stress is bad for her pre-existing fibromyalgia and lupus, so she was in worse pain than normal every day. Tr. 13-14. She also started suffering from rectal spasms due to stress. Tr. 14. She also had facial tics where the entire left side of her face would start twitching on its own. Tr. 14. She testified that she believed that stress caused changes to blood chemistry which caused involuntary spasms and rectal incontinence. Tr. 15. She also has suffered from severe depression and anxiety. Tr. 16.

She alleges that, as a result of events of October 12, 2010, she has seen her primary care provider, Dr. Oliverio (internal medicine), Dr. Smith (psychologist), Dr. Guille (psychiatrist), Dr. Roane (rheumatologist – for Lupus), Dr. Klatchko (pulmonologist), Dr. Bumgartner (neurologist), and Dr. Hanger (cardiologist). Tr. 12, 13, 16, 17. After October 12, 2010, the Claimant was taking multiple medicals, including Cymbalta, Wellbutrin, Synthoid (for her thyroid), Hydrocodone (for pain), Benazepril, cyclobenzaprine, generic Klonopin (which is “like for anxiety or sleeping”), and Temazepam (for the rectal spasms). Tr. 17-18. Prior to October 12, 2010, the Claimant had been taking only Cymbalta, but at half her current dose, and the thyroid medication. Tr. 18.

The Claimant indicated that she went to the Bahamas on December 1, 2010 through April 28, 2011. Tr. 19. She had permission from the Marina for leave without pay from December 1, 2010 to March 8, 2011. Tr. 18-19. She testified that she stayed beyond her original March 8, 2011 return date because “my husband felt I wasn’t well enough to come back.” Tr. 19. Again, she did not request TTD for the time she was in the Bahamas. Tr. 20. She spent the vacation time on her

sailboat. Tr. 20. She had been to the Bahamas over the winter for “several winters” in the past. Tr. 20. She testified that she would drop anchor at different islands, relax, snorkel, and ride in the dinghy. Tr. 20. While she was in the Bahamas, she would have “outbursts of just crying for no reason.” Tr. 21. she would also have nightmares and saw two physicians in the Bahamas for her complaints. It is noted that no medical records were introduced from any physician in the Bahamas. During the time in the Bahamas, she felt very fatigued, with episodes of depression. Tr. 21-22. She had depressive episodes once per week and anxiety attacks twice per week. Tr. 22. The facial spasms did not start until after she returned from the Bahamas, when she learned she was going to have to “deal with” workers’ compensation. Tr. 22. Regarding the lupus and fibromyalgia, she indicated that “its always there and underlying” but that she had “learned to ignore a lot of the pain and symptoms.” However, after October 12, 2010, it was “exasperated.” Tr. 23. She indicated that she had more pain and more instances of being tired. Tr. 23.

She did not seek psychiatric or psychological treatment while she was in the Bahamas. Tr. 23-24. She did return to Dr. Smith (psychologist) when she returned to the US. Tr. 24.

The Claimant currently lives in Puerto Rico, having moved there on October 31, 2011. She testified that she “moved there because my husband, he – he thought it would help me to get away.” Tr. 24. She testified that, since she has been back to Charleston, presumably for the hearing, her condition was much worse. Tr. 24. In Puerto Rico, she still suffered from depressive episodes, anxiety, incontinence, and rectal spasms, but those symptoms were lessened from what she suffered from previously. Tr. 24. She testified that she has called and talked “to Dr. Dan” (presumably Dr. Daniel Smith – psychologist) when she has had “a really bad day and needed to calm down.” In contrast to her testimony, there are no medical records indicating that the Claimant has had any telephonic contact with Dr. Smith while she has been in Puerto Rico. She also

testified that she saw Dr. Smith the Friday prior to the hearing and that she would see him the day after the hearing. Tr. 26.

The Claimant testified that she felt like she required ongoing care. She testified that the October 12, 2010 incident “has just crushed me” and that, prior to this incident she had been “a strong person my whole life.” Tr. 27. She testified that the October 12, 2010 incident “has made me feel like I’m a shell of the person that I was.” Tr. 27. She testified that she never thought her brother would shove her, than she never though he would get physical with her, and that she thought he would protect her. Tr. 27.

Regarding the circumstances of the October 27, 2010 incident, the Claimant has been in Knoxville, Tennessee for a few days prior to the work incident. Tr. 27. On her way back to Charleston, David Race, her half-brother, called her and notified her that David Ackerman, the restaurant manager, was quitting. Tr. 28. The Claimant claimed that Mr. Race told her that she needed “to be ready to step in.” Tr. 28. The Claimant claimed she was instructed to come in the next day and “start learning all you can.” Tr. 28.

The Claimant and Mr. Race also have another brother, Dickie, age 78, who the Claimant described as being “a little bit slow” and perhaps has some learning disabilities. Tr. 28-29. Dickie lived in a trailer on the Marina property, but he had recently moved to an apartment above the Marina. Tr. 29. A rug of Dickie’s had been left at the trailer, so the Claimant went to obtain the rug from the trailer. Tr. 30. When she got there, the trailer “was all beat up.” Tr. 30. The windows had been broken, the paneling was busted, the cabinets were busted, etc. Tr. 30. Two employees, Alex and Eric, were accused of the vandalism. Tr. 31. The Claimant testified that Eric admitted to the vandalism, told the Claimant that he was “supposed to do it” and that Mr. Race had told him not to discuss it. Tr. 32.

The Claimant testified that Mr. Race instructed the Claimant to file a police report and an insurance claim for the damage to the trailer. Tr. 32. The Claimant refused, as she believed that Marina employees vandalized the trailer. Tr.32. The Claimant testified that Mr. Race told her that Eric admitted to the vandalism. Tr. 32-33. Then, Mr. Race instructed the Claimant to “jut get up to that restaurant and start doing your job and learning everything you need to learn to take over when David Ackerman leaves.” Tr. 33. The Claimant testified that Mr. Race told her “get the hell out of my sight” and that he didn’t “want to see your face.” Tr. 33. The Claimant testified that Mr. Race also told her to “just understand one thing. Your job is to keep your mouth shut.” Tr. 33. The discovery of the vandalism to the trailer and this conference with Mr. Race occurred on October 10, 2010. Tr. 33.

The Claimant testified that, as she worked at the restaurant over the next two days, Mr. Race “was the enemy” and that he “wouldn’t even hardly speak to me” Tr. 34. She did not remember any specific instances of contact with Mr. Race on Monday, October 11, 2010.

On Tuesday, October 12, 2010, the date in question for this case, the Claimant began texting “Portia,” a new bartender. Tr. 34. The Claimant initially testified that the Claimant was trying to prepare the schedule, but then she testified that she was trying to determine who was going to work with her. Tr. 34-35. In addition to the ailments outlined above, the Claimant suffers from neurogenic syncope, which means that if she leans over at a certain degree, she faints, so she wanted to know who would be with her the next morning. Tr. 35.

Mr. Race then came up to a little glass window near the Claimant’s desk. He instructed the Claimant to “get off that phone.” Tr. 36. Mr. Race then stated that he knew “about all the hate and discontent you caused up in the restaurant Sunday night.” Tr. 36. The Claimant was surprised, as she believed that she was supposed to be watching and learning everything about the job. Tr. 35-

36. It appears that, after making this statement, Mr. Race went to his office, as the Claimant testified that he was in his office with three other people, Mike Save, Tom Blocker, and David Ackerman. Tr. 36. As the Claimant explained:

A: ... And so what I did was, I went and I asked – I went to his door and I said, excuse me. Gentlemen. Mike Sage, Tom Blocker, David Ackerman were in there with my brother. I said, I have a quick question.

Q: Where did you go? I'm sorry to interrupt. Where was this?

A: To the door of my brother's office.

Q: Okay. And those four gentlemen were seated in the office?

A: Yes, they were.

Q: Okay. What happened next?

A: And I said, excuse me gentlemen. Can I ask David a quick question, David Ackerman? And then he went okay. I said, David, did you tell my brother that I caused hate and discontent Sunday night? And he goes, no. And my brother said, get out of here. So that is all he said at that point. Tr. 36-37.

The Claimant then asked Annie, another co-worker who was on the other side of the building, whether Annie accused the Claimant of causing hate and discontent. Tr. 37. The Claimant claimed Annie denied doing so. Tr. 37. The Claimant then returned to Mr. Race's office and explained the encounter as follows:

A: ....So I walked back to my brother's office and I said, okay. I need to know who said this. And he jumped up from his desk and he came around the desk at me. And he started shoving me. And he said, get the fuck – am I allowed to say this? Get the fuck out of my office. You are trying to embarrass me.

And he kept shoving me. And when I say down the hall – let's say that this is his office door, that door right there. It was from there to there. Three times shoving me backwards down the hall. And he said, you need to understand one thing. Your job is to keep your mouth shut. And you go home now. And you show up here tomorrow morning and you show up and you better keep your mouth shut. And you do your job because believe me when I tell you this, he said, if you don't do exactly what I say I am going to make your life such a living hell each and every day that you are going to feel like you've been kicked to the curb at the end of the day." Tr. 37-38.

The Claimant clarified again that she was claiming that David Race "shoved me three times. Boom, boom, boom." Tr. 38. The Claimant "couldn't believe this happened." Tr. 38. She retrieved her purse, although she "couldn't even think where [her] purse was." Tr. 38. She went to

her car and began sobbing. Tr. 38. She left and went home to her husband, then went to the police station. Tr. 38-39. She then went to Dr. Oliverio (internal medicine) because she “was crying so hard [she] couldn’t even catch [her] breath.” Tr. 38-39.

The Claimant admitted that she did not suffer a physical injury to her shoulders or any other type of physical injuries. Tr. 40.

The Claimant further testified that, in the four years she worked at the Marina, Mr. Race had never laid hands on her before and she did not expect that he was going to do so. Tr. 41.

When asked how it was that three shoves could cause the Claimant litany of complaints, including rectal spasms, the Claimant testified that she had a history of domestic violence, which led to the incarceration of a prior husband. Tr. 41. The Claimant also cared for Mr. Race after multiple heart surgeries and even cleaned his catheter. Tr. 41-42. She took care of him and “gave up my life in Knoxville to come home and take care of my elderly brothers and sisters.” Tr. 42. The Claimant indicated that Mr. Race “got so mad when I refused to do the insurance claim” and that refusing to file the insurance claim “was the first time I ever really stood up to him and said, no, I’m not going to live for you. I’m not going to go to jail for you. And from that point on he made me feel like I was the enemy. Because he was my older brother of course I wanted his love. I wanted his respect.” Tr. 42. The Claimant also indicated that, in the past, Mr. Race told the Claimant that she “will always have a place to come home.” But on October 12, 2010, Mr. Race “violated me that day, not just physically, but psychologically. He violated me.”

#### **Testimony of Claimant – Cross by Employer/Carrier’s Attorney**

On cross-examination, the Claimant admitted that she had been taking medication for shingles for years before October 12, 2010, which is a symptom of her lupus. Tr. 44. The Claimant also admitted that she introduced no medical records supporting her claim that she sought

medical treatment while in the Bahamas. Tr. 45. The Claimant also indicated that, prior to coming to Charleston for the hearing, she attended a CD release party for her son and also helped him recuperate after a surgery. Tr. 46. The Claimant also admitted that there are no medical records supporting her claim that she sought treatment via telephone with Dr. Smith and that she did not know if any records were made. Tr. 47.

Regarding her average weekly wage and compensation rate, the Claimant indicated that there was no documentary evidence in the record supporting her claim for an average weekly wage of \$800, “no pay records, taxes, check stubs, anything at all.” Tr. 53.

Regarding the events of October 12, 2010, the Claimant indicated that, of the events that she recounted, what really affected her most was “being shoved” and “when he said that my job was to keep my mouth shut and that he – and to show up the next day while he was shoving me. And that I better keep my mouth shut or he would make my life a living hell and I would feel like I had been kicked to the curb at the end of each and every day, that in combination with being shoved.” Tr. 48.

On cross-examination, the Claimant also admitted that, on the morning of the 12<sup>th</sup>, David Race specifically told her that had considered the possible insurance claim for Dickie’s trailer and had decided to not file a claim. Tr. 50. The Claimant indicated that she believed that, when Mr. Race told her to “keep her mouth shut” that he was referring to the alleged insurance claim. Tr. 51. However, the Claimant did not explain why Mr. Race would continue to insist that the Claimant “keep her mouth shut” when no claim, fraudulent or otherwise, was being filed.

On further cross-examination, the Claimant was certain that she had been shoved three times. Tr. 52-53. The Claimant also agreed that the only people who saw or could have seen what happened to her on the 12<sup>th</sup> were 1) the Claimant, 2) David Race, 3) David Ackerman, 4) Tom

Blocker, and 5) Mike Sage and that no other persons were close enough by that they could reasonably have heard the incident. Tr. 53-54.

The Claimant readily admitted that she had heard Mr. Race curse at work before. Tr. 54. When asked "was that the first time that you had ever heard Mr. Race curse at work?" the Claimant's response was "oh, heavens, no." Tr. 54. The Claimant admitted that the Mr. Race curses frequently. Tr. 54-55. The Claimant also admitted that she has also heard him tell people to get out of his office, but only rarely. Tr. 55. The Claimant further testified that Mr. Race "yells all the time." Tr. 55. The Claimant also admitted that Mr. Race has also treated others in a harsh manner. Tr. 63. Although the Claimant has never seen Mr. Race shove or push anyone, the Claimant admitted that Mr. Race has touched her before. Tr. 55. She admitted that he has given her hugs, helped the Claimant walk over uneven terrain, etc. Tr. 55-56. The Claimant testified that simple touching of her by Mr. Race was not bothersome, it was "the shoving and being cursed at while he was pushing me backwards" which has allegedly caused her symptoms. Also contributing was "being told that he was going to make my life miserable and I would feel like I had been kicked to the curb at the end of every day" which the Claimant interpreted as a threat. Tr. 57.

Regarding her physical complaints, the Claimant testified that the facial tic began after she received a letter from the Office of the Governor that, because this incident occurred at work, it needed to be pursued through workers' compensation. Tr. 57-58. When her attorney called her and read her the letter, the facial tics began. Tr. 58. Regarding the fecal incontinence, the Claimant admitted that it was an "important symptom" and claimed that it "has altered my ability to go out in public at times." Tr. 59-60. The Claimant claimed that she discussed loss of voluntary control of her bowels with her psychiatrist, her family physician, and all other providers. Tr. 59.

The Claimant also indicated that she signed out a warrant for her brother's arrest and that she filled out a document to support that warrant, and the document was introduced as Claimant's APA 100-01. As indicated above, the Claimant has testified that she believed the aggression towards her was due to the fact that she refused to file an insurance claim for Dickie's trailer. Tr. 33, 42. However, there is no indication in that document of any allegation that Mr. Race wanted the Claimant to file a fraudulent insurance claim. Claimant's APA 100-01. There is also no indication in the warrant itself that the Claimant was being punished for not filing an insurance claim. Employer/Carrier's APA 183. When confronted with this fact, the claim claimed simply that she didn't mention the alleged insurance claim because Mr. Race had not filed the claim and she did not want to get him in trouble. Tr. 61-62. The Claimant also alleges that she told her physicians that she was being punished for failing to file a fraudulent insurance claim. Tr. 62-63.

The Claimant testified that the allegations in the warrant went to a hearing in Magistrate's Court, where witnesses testified as to what happened on October 12, 2010. Tr. 63-64. The Claimant further admitted that the judge threw the case out. Tr. 64. The Employer/Carrier's Exhibit F shows the Employer/Carrier's attempts to obtain records from the hearing, but the response from the clerk is that there were "no records available." Employer/Carrier's APA 173. The Claimant claimed that Mr. Race and the other witnesses "get their stories together" and that Mr. Race would "get us all in a room and corroborate our stories before we had to go before a judge." Tr. 64.

The Claimant was also questioned about her lifestyle. Her home in Puerto Rico is 6000 square feet on eight acres on top of a mountain. Tr. 65-66. Her husband paid \$300,000 cash for the home. Tr. 66. The Claimant and her husband keep their finances separate, but her husband is independently wealthy. Tr. 66. The Claimant has two caretakers for the home and also a Mr.

Zambriski who takes care of the Claimant. Tr. 67. The Claimant and her husband also have a 35-foot sailboat which they sail around the Caribbean in the winter and have done so in the winters of 2008-09, 2009-10, and 2010-11. Tr. 67-68. Despite the favorable conditions enjoyed by the Claimant in Puerto Rico, she testified that, if not for this workers' compensation claim, she would be back at work at Dolphin Cove Marina earning \$19 per hour. Tr. 68. She claimed that she was also getting stock in the marine. Tr. 68.

Also, despite the Claimant's opulent lifestyle, the Claimant filed for financial assistance for the medical care she received. Tr. 68. Roper St. Francis Health Care wrote off \$3700 worth of charges due to the Claimant's "financial hardship." Tr. 68, Employer/Carrier's APA 143-44. The Claimant claimed her financial hardship was the fact that she had no job and no savings. Tr. 68-69. However, the Claimant's husband gives her \$1500 per month as an allowance, which equals \$18,000 per year of tax-free income. Tr. 69.

The Claimant also testified that her condition was so severe that she needed for her two Maltese dogs to be prescribed to her as service animals. Tr. 70. She testified she takes them everywhere and only didn't bring them to the hearing because one of them became too sick to travel. Tr. 70-71.

The Claimant also confirmed that her Facebook status is that she is "happily retired enjoying Puerto Rico with my wonderful husband Clay." Tr. 72, Employer/Carrier's APA 154. She claimed that she did not want everyone to know about "this horrible incident." Tr. 72.

#### **Testimony of Claimant – Redirect by Claimant's Attorney**

On redirect, the Claimant testified that she had incurred more than \$70,000 worth of medical treatment as a result of this injury. Tr. 72-73. The Claimant further testified that she would pay back the written-off funds if she "was ever able to get money." Tr. 72. She testified

that she had also paid \$6000 out of pocket. Tr. 73. Finally, the Claimant pointed out that she did bring up the alleged fraudulent insurance claim as a part of her recorded statement in this claim. Tr. 73-74.

**Testimony of David Race – Direct by Claimant’s Attorney**

The Claimant then called David Race to the stand. Tr. 75. Mr. Race is 50% owner of the Marina and has owned it since about 1985. Tr. 76-77. His partner in the business is Tom Blocker, who owns the other 50%. Tr. 77. Mr. Race has known Mr. Blocker since 1953, and they have been in business together since 1966. Tr. 77. Mr. Race testified that he and Mr. Blocker are “like brothers.” Tr. 77. Mr. Race was the Claimant’s direct supervisor at the Marina. Mr. Race testified that the Claimant was interfering with the management of the Marina’s restaurant. Tr. 77-78. Mr. Race further confirmed that Dickie’s trailer was vandalized by two employees, Eric and Alex, and that Eric and Alex agreed to pay for the damage that they caused. Tr. 78. Eric and Alex were not subject to any other punishment, and they are both still employed with the Marina. Tr. 78-79.

Mr. Race testified that he asked the Claimant to file an insurance claim *before* he knew that the trailer was vandalized by employees. Tr. 79. Mr. Race conceded that the Claimant’s refusal to file the claim “probably” felt like a challenge to his authority. Tr. 79.

Mr. Race readily admitted to pushing the Claimant out of his office, placing both hands on both her shoulder and pushing a single time. Tr. 79-80. Mr. Race testified that he did not shove her down the hallway. Tr. 80. Mr. Race also readily admitted to instructing the Claimant to “get the hell out” of his office. Tr. 80. Mr. Race denied using stronger language than “hell.” Tr. 80. Mr. Race emphatically denied threatening the Claimant, telling the Claimant that she was going to feel like she was in hell, or telling the Claimant that she was going to be kicked to the curb. Tr. 80. Mr. Race also testified that the Claimant’s claim that Mr. Race committed an assault and battery

was dismissed. Tr. 81.

With regard to the propriety of laying hands on an employee, Mr. Race testified that he did not “see a problem with telling someone who comes in my office uninvited, will not leave my office, and because I don’t have a security guard to remove them physically, then if I have to do that, I have no problems with that, no, sir.” Tr. 81.

**Testimony of David Race – Cross by Employer/Carrier’s Attorney**

Counsel for the Marina then asked Mr. Race to explain what happened on October 12, 2010. He explained that David Ackerman was leaving the Marina “due to Diane’s interference.” Tr. 81. A new manager, Portia, had recently been hired and told Mr. Race that, on October 10, 2010, the Claimant “interfered with her deliberately behind the bar” and that “if Diane was going to dictate to her her schedules and different things that was going on up there, that she was going to quit.” Tr. 81-83. Mr. Race testified that, due to the Claimant’s interference, the new bar manager was not able to do her job. Tr. 82-83. Thus, Mr. Race told Portia that he would talk to the Claimant and instruct her to not interfere with the bar area. Tr. 83. Mr. Race then went to the Claimant and told her that he “had had complaints about he rand her activities at the restaurant. And that she no longer would be doing any of the activity up there as far as the bar was concerned.” Tr. 84. Mr. Race then left and went to a meeting with Tom Blocker, Mike Sage, and David Ackerman. Tr. 84. Then, as Mr. Race explained:

Then Diane suddenly barges in and starts hollering that I was a liar. That none of this happened and that she was accusing – just making, you know, wild statements and screaming and hollering. And I said, Diane, you are not invited to this meeting. I want you to leave. And so she told me that she would leave whenever she got good and ready to.

And I said, no. I said, no, you are not – you are interfering with this meeting. Get out of my office. And she still didn’t leave. So I said, Diane, get the hell out of my office. And she just buckles up and she’s – you know, she’s not going to go anyplace. So I got up. I walk over to her.

And when I walked over to her she comes to me. And I just pushed her out the door. And I was – I physically pushed her out the door. And when she was outside the

door, then I said, now you go to your office and you punch out. And after you punch out, then you leave. And I'll see you tomorrow morning and we will discuss this little situation. I went back into the meeting so I finished our meeting. Tr. 84-85

Mr. Race also confirmed that he never filed an insurance claim for the damage done to Dickie's trailer. Tr. 85-86. Once they realized who had done the damage, the perpetrators agreed to pay for the damage. Tr. 86. Mr. Race did not want the customers to think that their boats would be compromised if word got out of the vandalism. Tr. 86. So they thought the best thing to do was to keep quiet about the situation. Tr. 86.

Without objection, a short demonstration was held with counsel for the Employer/Carrier acting as the Claimant, and Mr. Race acting as himself. It is noted by the undersigned that the demonstration was consistent with Mr. Race's testimony that he placed his hands on the Claimant's shoulders and pushed her in one motion a short distance of a few inches. The demonstration was not consistent with the Claimant's version involving three shoves over a distance of approximately six feet.

Mr. Race further confirmed that he is "absolutely" in charge at the Marina. Tr. 88. He further testified that he curses and yells at the office. Tr. 88. He also argues with the Claimant at work. Tr. 88. He also testified it was not unusual for him to touch the Claimant. Tr. 88.

#### **Testimony of David Ackerman**

Mr. Ackerman was the restaurant manager of the Marina from 2000 to 2010. Tr. 90. He left because of "constant drama" involving the Claimant. Tr. 90. He testified that the Claimant would "start problems where there didn't need to be problems." Tr. 90. He was present at the October 12, 2010 meeting with David Race, Tom Blocker, and Mike Sage. Tr. 90-91. The purpose of the meeting was to turn over some items to the Marina due to his departure. Tr. 91. He described the incident with the Claimant as follows:

We were having a meeting. And then she was yelling something down the hall. And then she came into the meeting. And she was standing at the door. And Mr. Race told her that we were having a private meeting. And asked her if she would leave. And this was a long time ago, but I'm trying to recall it the best I can.

And she kept yelling about somebody said something about somebody or somebody was talking about her or something. And was accusing someone of – accusing someone of saying that she was starting trouble or something. And then he told her to get out. And then she came further into the office. And he said get out of my office or get the hell out of my office and go clock out. And she kept coming. She was still in the office.

And Mr. Race stood up out of his chair and walked toward her. And when he walked toward her he stopped. And she came – and he said get out of my office. And then she came further into the office, closer to him. And then I don't remember whether he actually touched her or whether he put his hands on her. It was something like this.

And then I don't know whether he turned her around or whether she actually turned around herself and went out of the room, but Mr. Race did – did put his hands up like this, but I can't – like I said, I can't remember exactly. I think he probably grabbed her and turned her around physically, but I don't remember exactly what happened. So anyway, she left. And she went out of the office. And that is pretty much it. Tr. 91-92.

Upon further questioning, Mr. Ackerman was clear that Mr. Race did not shove the Claimant three times over a distance, as the Claimant claimed. Tr. 92. He testified that he could not remember whether Mr. Race pushed the Claimant or whether she just turned around, but certainly the encounter did not involve any type of distance. Tr. 93.

Mr. Ackerman testified that he had not thought about the incident until he had been subpoenaed to come to the hearing. Tr. 93. He testified as follows:

So I'm just trying to recall as much as I can, but it was just more or less he was telling her to get out of the office. They were having a private meeting and she's not part of it. She's not invited into the meeting and asked her to leave several times. And I do – I think he did say something like, get the hell out of my office, but that was only after it had elevated from one level to the next. Tr. 93.

With regard to the working conditions at the Marina, Mr. Ackerman also indicated that he has heard Mr. Race curse at work before. Tr. 93-94. He has also heard Mr. Race tell someone what to do before and also Mr. Race has yelled at work before. Tr. 94.

On cross-examination, Mr. Ackerman confirmed that he is not friends with the Claimant.

It was discussed among the parties whether to conduct a short demonstration of the

incident, with the Employer/Carrier's attorney again portraying the Claimant and Mr. Ackerman portraying Mr. Race. Tr. 94-96. However, as outlined above, Mr. Ackerman was not sure of whether Mr. Race put both hands on the Claimant, whether the Claimant turned on her own, or whether Mr. Race turned her. Tr. 95-96. Mr. Ackerman testified that he was "recalling the only things that I'm pretty sure about is the fact that he told her several times to get out of the office. And instead of leaving the office like she was told, she came into the office. And when he stood up, she walked even more toward him into his direction." Tr. 95. He confirmed "but I do know that he told her to get out several times. And she walked in and then walked even closer into his area." Tr. 96. No demonstration was performed.

#### **Testimony of Tom Blocker**

Mr. Blocker is co-owner of the Marina with David Race. Tr. 98. He started working with Mr. Race in 1953. Tr. 98. He testified that he spends his workday at the Marina. Mr. Blocker was also present at the October 12, 2010 meeting at issue in this case. He testified that the purpose of the October 12, 2010 meeting was for him to learn the restaurant computer point of sale system. Tr. 98-99. He testified that "Diane came in and created a scene. And she disrupted the meeting." Tr. 99. Mr. Blocker continued:

And she was yelling about something about her being – having creating [sic]hate and discontent at the café. And wanted to know who said it. I know David said it. And I might have said it, but she was just interrupting the meeting. And she wouldn't back off.

And David told her – David Race told her several times that she had to leave, that she was not invited to our meeting. She didn't need to be there. And he said the best thing you can do is punch out and go home. And she just wouldn't leave. He said, okay. Diane, you've got to leave, and then she kept not leaving. So he got up out of his chair. He was behind his desk. And he went out to the door and where Diane was standing. Said, Diane, you need to leave.

And she bulled up to him and got right in his face and said she wasn't leaving. And he told her, you've got to leave, Diane. Just punch out and go home for the rest of the day. And she wouldn't move. So he got up from his chair, went around his desk. Went to the door and pushed her by her shoulder with both hands out the door about two steps, maybe not even but one step, but it was outside. And he told her again, punch out and go home.

And take the rest of the day off. Tr. 99-100

Mr. Blocker further testified that, with regard to cursing at the Marina, “everyone does it on occasion.” Tr. 100. Mr. Blocker further testified that it is not unusual for Mr. Race to tell while at the Marina. Tr. 100. With regard to issuing instructions and telling people what to do, Mr. Blocker testified that Mr. Race was in charge that “if he tells you something, you need to do it.” Tr. 100-01. Mr. Blocker also confirmed that Mr. Race and the Claimant would also sometimes argue. Tr. 101.

Without objection, another short demonstration was held, with the attorney for the Employer/Carrier acting as the Claimant and Mr. Blocker acting as Mr. Race. It is noted by the undersigned that the demonstration was consistent with Mr. Race’s testimony that he placed his hands on the Claimant’s shoulders and pushed her in one motion a short distance of a few inches. The demonstration was not consistent with the Claimant’s version involving three shoves over a distance of approximately six feet.

On cross-examination, Mr. Blocker confirmed that he is the Secretary of the Marina and that he works seven days per week. Tr. 102. Mr. Blocker confirmed that he spends a lot of time together with Mr. Race. Tr. 103.

#### **Testimony of Mike Sage**

Mr. Sage is in management at the Marina and has been employed there for 32 years. Tr. 104. Mr. Sage was present at the October 12, 2010 meeting at issue in this case. Tr. 104-05. Mr. Sage testified that the Claimant interrupted the meeting and the following occurred:

She wanted to know why everybody was saying that she was causing hate and discontent up in the restaurant. And actually no one answered her other than to tell her that she want part of the meeting and to please leave. Tr. 105.

She wouldn’t leave. And she just got louder. And then her brother, which is David Race, told her to leave and get out, she wasn’t part of the meeting. And on the third time that he told her she still didn’t leave, he got up, walked around her – walked around his desk and table and it

looked to me at that time, because I was sitting fairly close, that she kind of stepped into him a little bit. And then when she did that he just pushed her by the shoulders out the door.” Tr. 105.

He told her to get the hell out of his office and not come back until tomorrow. Well, let me rephrase that. He told her to clock out and go home and not – and he would get with her tomorrow or something to that effect. Tr. 106.

So she stepped inside the door one or two small steps. And when he came around the table he was yelling at her. No, David is slightly lower in stature. And when he said something, she kind of like invaded his space and came into him a little bit. And he said, get the tell out and just shoved her like that... I’m not sure if he grabbed her much, but it was kind of a – and she shoved her twice I do believe....May have been twice. It’s hard to tell. It mean, it was pretty quick. Tr. 107.

With regard to the distance traveled by the Claimant during the pushing, Mr. Sage testified that it was “just enough to get her out the door. It couldn’t have been more than two feet, maybe three feet at the most.” Tr. 108.

Mr. Sage confirmed that it is not unusual for Mr. Race to curse from time to time at the Marina. Tr. 106. Mr. Sage also confirmed that Mr. Race “has a fairly short fuse and he will raise his voice.” Tr. 106. With regard to issuing instructions and telling people what to do, Mr. Sage testified that “He tells everybody what to do.” Tr. 106. Mr. Sage testified that it would not be unusual for Mr. Race to tell someone what to do. Tr. 106. Finally, Mr. Sage testified that it is not unusual for the Claimant and Mr. Race to argue. Tr. 106-07.

Without objection, another short demonstration occurred, with the attorney for the Employer/Carrier acting as the Claimant and Mr. Sage acting as Mr. Race. It is noted by the undersigned that the demonstration was generally consistent with Mr. Race’s testimony. The demonstration showed that Mr. Race he placed his hands on the Claimant’s shoulders and pushed her, but this demonstration showed two pushes of a distance of approximately two feet. The demonstration was not consistent with the Claimant’s version involving three shoves over a distance of approximately six feet.

On cross-examination, Mr. Sage was questioned about his deposition testimony that the

Claimant had “chest bumped” Mr. Race. Tr. 108. Mr. Sage explained that the Claimant invaded Mr. Race’s space and “came up like that.” Tr. 108. Mr. Sage testified that the action was not like a chest bump at a football game, but that the Claimant “definitely got in his face with it.” Tr. 108-09. When asked why he was the only person to mention this action, Mr. Sage explained that he was the closest person to the confrontation. Tr. 109. Mr. Sage also confirmed that he has known Tom Blocker and David Race for 35 or more years and that he works six days a week at the Marina. Tr. 109.

Mr. Sage further testified that he had not seen the Claimant have physical contact with Mr. Race. Tr. 110. Finally, Mr. Sage testified that, had he been place in Mr. Race’s position at the time, he may or may not have also pushed the Claimant. Tr. 110.

#### **Medical Evidence**

Notably, as this case is a mental/mental injury, for which the Claimant must prove that she was subject to unusual or extraordinary circumstances of employment. This showing is a condition precedent to compensability. The medical records, while thoroughly reviewed by the Undersigned, are less relevant when it comes to determining compensability. While the medical records speak for themselves, they will be outlined herein.

The Claimant initially presented to MUSC indicating that she suffered “a history of ‘verbal abuse’ by her brother in the workplace that apparently consisted primarily of vulgar speech and every demeaning remarks about work performance.” Claimant’s APA 72. The Claimant described the October 12, 2010 incident as involving “her brother’s yelling at her and shoving her down the hall.” *Id.* The Claimant described the incident as “my boss is also my brother (78 years old) has been verbally abusing me all the time, and he also started shoving me down the hall yesterday, made a lot of threats and now I’m having to deal with pressing charges on my brother

issues.” Claimant’s APA 66. The Claimant indicated that this incident reminded her of several incidents of extreme distress from her past, including physical violence between her and her first husband. Claimant’s APA 72. The Claimant complained of “incessant crying, couldn’t catch my breath/hyperventilating, also 25 years ago I was a DV victim, and this incident has triggered feelings regarding that, anxiety, and fear.” Claimant’s APA 67. Therapy was recommended. Claimant’s APA 73.

The Claimant attended counseling/therapy sessions with Dr. Smith (psychologist) on November 3, 2010 (Claimant’s APA 62), November 23, 2010 (Claimant’s APA 60), April 26, 2011 (Claimant’s APA 58), May 3, 2011 (Claimant’s APA 56), May 10, 2011 (Claimant’s APA 51), May 20, 2011 (Claimant’s APA 49), May 25, 2011 (Claimant’s APA 46), June 7, 2011 (Claimant’s APA 44), June 23, 2011 (Claimant’s APA 42), July 5, 2011 (Claimant’s APA 40), July 12, 2011 (Claimant’s APA 38), July 20, 2011 (Claimant’s APA 33), August 4, 2011 (Claimant’s APA 31), August 9, 2011 (Claimant’s APA 27), August 16, 2011 (Claimant’s APA 25), August 23, 2011 (Claimant’s APA 23), September 9, 2011 (Claimant’s APA 18), September 15, 2011 (Claimant’s APA 15), September 21, 2011 (Claimant’s APA 13-14), October 5, 2011 (Claimant’s APA 6-7), October 14, 2011 (Claimant’s APA 10-11), and October 19, 2011 (Claimant’s APA 9, 12). The Claimant was not seen again by Dr. Smith after October 19, 2011. At no point in any of these evaluations did the Claimant mention fecal incontinence. While she mentioned one episode of diarrhea (Claimant’s APA 31), there is no indication that the diarrhea complaint is related in any way to the October 12, 2010 incident. On two occasions she mentioned a muscle spasm in her face. Claimant’s APA 46, 23. Otherwise, no complaint was lodged regarding a facial tic.

On May 9, 2011, the Claimant underwent a more comprehensive examination by a medical

physician, Dr. Guille (psychiatrist). Claimant's APA 53-55. She again indicated that, on October 12, 2010, her brother "became agitated and angry and physically pushed her three times." Claimant's APA 53. Since that time, she claimed she was "not able to hold it together," was "overwhelmed by everything," and was "unable to function." Id. She complained of tearfulness and excessive fatigue which preceded the incident but was worse afterwards. Id. She complained of additional problems, including shakes, difficulty sleeping, poor concentration, etc. but again there was no indication of any fecal incontinence. Also, Dr. Guille noted that "there is no current evidence of lupus flare." Claimant's APA 55. Dr. Guille indicated that the Claimant's mood and energy would benefit from reinstating CPAP for obstructive sleep apnea. Id. As indicated above, the Claimant conceded that fecal incontinence is an important symptom which, allegedly, had a significant effect on her life. Yet, she does not mention it whatsoever to Dr. Guille at this visit.

The Claimant was seen again by Dr. Guille on July 13, 2011. Claimant's APA 35-37. The Claimant complained only of "improvement in mood, concentration, sleep and anxiety" although she was continuing to complain of fatigue, sleep disturbance, poor concentration, low mood, and being easily tearful. Claimant's APA 36. Again, there is no mention of facial tics or fecal incontinence. The Claimant's next visit with Dr. Guille on August 4, 2011 shows that the Claimant continued to complain of psychological symptoms but, again, no mention of facial tics or fecal incontinence. Claimant's APA 29-30. She was seen by Dr. Guille again on September 7, 2011, again complaining of psychological problems but no mention of fecal incontinence or a facial tic. Claimant's APA 20-22.

On September 8, 2011, Drs. Guille and Smith prepared a joint letter to the Social Security Administration indicating that the Claimant is unable to work and that she cannot return to work until her symptoms improve significantly. On October 5, 2011, Dr. Guille prepared a letter

indicating that the Claimant's "animals accompanying her is necessary to her mental health treatment." Claimant's APA 8.

The Claimant's final appointment with Dr. Guille was October 5, 2011. She was noted to have a relatively stable mood and more positive feelings which she attributed to her husband, her friends, and her upcoming move to Puerto Rico. Claimant's APA 4.

Notably, via letter dated February 16, 2012, Dr. Smith (psychologist) states that the Claimant reported to him that Mr. Race pushed her 3-4 times, all while verbally abusing her. Claimant's APA 1. The Claimant also "reported numerous instances of verbal abuse (yelling, making demeaning remarks in front of other) by her half-brother in the past." Id. However, the Claimant reported that the October 12, 2010 injury was the first and only time he had been "physically aggressive with her." Id. Dr. Smith indicated that the Claimant's history of being a victim of domestic violence made her uniquely and especially vulnerable to psychological harm related to the incident at work with her half-brother. Id. The Claimant claimed to him that she had significant problems with mood (depression and anxiety), concentration, and her physical health which she believes were due to the October 12, 2010 injury. Id. Dr. Smith states that, within a reasonable degree of professional certainty, the Claimant's current psychological impairments are indeed causally related to the assault she experienced at her place of work (ie being berated and shoved by her half-brother). Id. Dr. Smith indicates that if not for this incident, the Claimant would not be experiencing the degree and severity of the psychological and physical symptoms for which she is currently suffering. Id. Dr. Smith simply states the Claimant's medical condition, in turn, exacerbate the emotional distress that the Claimant experiences. Claimant's APA 2. Dr. Smith indicated that the Claimant is unable to return to work and that she cannot return to work "without significant improvement." Id. Dr. Smith indicated that "without ongoing medical and

psychological intervention, these problems are very unlikely to resolve.” Id.

The Claimant also treated with Dr. Oliverio (internal medicine). See Claimant’s APA #2. Dr. Oliverio wrote the Claimant out of work from October 12, 2010 to October 18 2010. Claimant’s APA 78. He then wrote her out again until October 22, 2010. Claimant’s APA 77. However, Employer/Carrier’s APA 91 shows that the Claimant actively solicited the work note, calling and asking for a work excuse extension. Notably, the Claimant was complaining of muscle spasms in her back, so it is reasonable that the work excuse extension was granted for back pain, which is not a part of this claim. See Employer/Carrier’s APA 91. Then, on October 22, 2010, he wrote her out of work for an additional two (2) weeks. Claimant’s APA 76. Finally, he wrote her out of work from November 5, 2010 until November 19, 2010. Claimant’s APA 75. The Claimant visited Dr. Oliverio on June 2, 2011 complaining of a rash on the parts of her body exposed to the sun. Employer/Carrier’s PAA 85. While she complained of “a difficult time emotionally,” no other complains were noted. Id. She was seen again on June 23, 2011 complaining of back pain, exacerbated by trying to get in shape by exercising. Employer/Carrier’s APA 83. Other than the rash mentioned above, there were no other complaints. Id. On July 11, 2011, the Claimant called to complain of a sore throat and also to check on medical records which were supposed to be sent to disability. Employer/Carrier’s APA 82. On July 15, 2011, the Claimant visited Dr. Oliverio to complain for right sided flank and abdominal discomfort. She was referred for a CT of the abdomen and pelvis, but no other complaints were noted. Employer/Carrier’s APA 80. Via questionnaire dated July 21, 2011, Dr. Oliverio diagnosed the Claimant with Post-Traumatic Stress Disorder and recommended additional psychiatric care. Claimant’s APA 74. He indicated that the Claimant had an obvious work-related limitation in function due to her mental condition. Claimant’s APA 74.

The Claimant has also treated with Dr. Bumgartner, neurologist, to whom she did mention her alleged “rectal spasm” but did not mention fecal incontinence. Claimant’s APA 81. Considering the Claimant’s allegation that the rectal spasms and fecal incontinence were caused by stress, it does not make sense to the undersigned that the Claimant would not mention it to her psychologist or her psychiatrist, with whom she had an ongoing treatment relationship, but she did mention it to Dr. Bumgartner, whom she apparently saw only one time. It also does not make sense to the undersigned that the Claimant complained of rectal spasms to Dr. Bumgartner on September 27, 2011, but she did not mention this complaint to Dr. Smith (psychologist) on her visits on September 21, 2011 or October 5, 2011, nor did she mention this complaint to Dr. Guille (psychiatrist) on her September 7, 2011 or October 5, 2011 evaluations.

She was seen by Dr. Klatchko (pulmonologist) on May 26, 2011. The Claimant indicated to Dr. Klatchko that she has a history of nighttime awakening and difficulty falling asleep, which predated her alleged work injury. Claimant’s APA 83. Notably, Dr. Klatchko indicates that the Claimant is “euthymic” which the undersigned understand to mean a non-depressed, reasonably positive mood. Claimant’s APA 84. There was no indication of a facial tic or rectal spasm. *Id.* The Claimant visited Dr. Klatchko again on July 7, 2011, where her test results were noted to be “consistent with sleep onset and maintenance insomnia.” Employer/Carrier’s APA 96. She was also complaining of back pain and was scheduled for an MRI. *Id.* While she indicated a psychiatric history of anxiety, depression, and PTSD, the Claimant lodged no psychological complaints at that visit. *Id.* The Claimant last visited Dr. Klatchko on August 4, 2011 where she again complained of neurogenic syncope while in the spirometry room. Employer/Carrier’s APA 94. The Claimant was given the choice of being taken home by her family versus being admitted to the emergency room. *Id.* The Claimant chose to be admitted to the ER. *Id.* The ER records

were introduced which show the Claimant's statements to the ER that her physician overreacted and that she had been dealing with these symptoms for years. Employer/Carrier's APA 110. Despite specifically choosing to go to the ER, the Claimant told the Emergency Room that her physician instructed her to go to the ER. Contrast Employer/Carrier's APA 94 with 110. Once at the ER, the Claimant stated that she did not need to be admitted and that she declined to speak with a hospitalist to discuss admission. Employer/Carrier's APA 111. It is not clear to the Undersigned why she chose to go to the ER when Dr. Klatchko offered to simply permit a family member to take her home.

The Claimant has also seen Dr. Roane (rheumatologist). She saw Dr. Roane on September 10, 2010, which pre-dated the October 12, 2010 incident. At that visit, the Claimant complained of problems resulting from her lupus. Claimant's APA 87. She also complained of migraines, aching all over, and neurological symptoms such as word finding and memory. *Id.* Dr. Roane's records reveal that the Claimant was on Levothyroxine, Cymbalta, Wellbutrin, Tramadol, Restoril, Clonazepam, Nexium, Meoprolol, prednisone, Hydrocodone, and Maxalt. *Id.* The Claimant was seen by Dr. Roane again on November 1, 2010 where she indicated that the October 12, 2010 incident "has left her somewhat traumatized." Claimant's APA 86. Interestingly, on this date, *after* the October 12, 2010 incident, the Claimant felt "that her lupus is under better control." Claimant's APA 86. The Claimant also saw Dr. Roane on August 15, 2011, where she did not make any complaint of a facial tic, rectal spasms, or fecal incontinence. Employer/Carrier's APA 77-78.

The Claimant was evaluation from a vocational standpoint by Jean Hutchinson. Claimant's APA #6. It is not clear whether Ms. Hutchinson ever met the Claimant, as her report indicates simply that she reviewed the case file. Claimant's APA 89. There is no indication of the results of

an interview with the Claimant, not even a telephone interview. See Claimant's APA #6. Ms. Hutchinson's report indicates that the Claimant was physically assaulted, and that her brother/supervisor shouted obscenities at her, that he threatened her, and that he began shoving and pushing her. Claimant's APA 90. Ms. Hutchinson concludes that the Claimant is unable to return to work at the Marina and at any job which she held in the past. Claimant's APA 93. Ms. Hutchinson further concludes that the Claimant is unable to return to work even at a sedentary level and thus cannot engage in substantial gainful work activity. Claimant's APA 93.

As mentioned above, the Claimant completed a personalized statement as part of her warrant application. The warrant application was entered into evidence as Claimant's APA #8 and the personal statement was entered into evidence as Claimant's APA #9. In the personal statement, the Claimant indicates as follows

Over the past four years, I have not been the only one to suffer the intolerable behavior of Mr. Race. I have witnessed my brother's rages against other employees and customers. His verbal aggression includes cursing, insults, shouting, name-calling, threats, talking about someone behind his/her back, humiliating an employee in the presence of others, ridicule, teasing, sarcasm and false accusations. Also flaunting status, mood swings, ignoring a person, aggressive posturing, undermining someone and spreading stories, trumping up charges against co-workers, making snide innuendos, are a few more examples of his "Bullying Behavior." Claimant's APA 100 . . .

Over the past six months the work environment became so unbearably hostile my psychological and physical well-being began to deteriorate. But I continued to try and deal with it because I felt an obligation to our company and our employees to "tough it out." Claimant's APA 100 . . .

The Claimant again recounted her allegations regarding the events of October 12, 2010. Claimant's APA 101.

The Claimant also introduced into evidence a Disability Determination Explanation as APA #12. To the disability determinator, she made multiple complaints, including rectal spasms and incontinence. Claimant's APA 109. She alleged an worsening to her pre-existing depression

and suicidal thoughts since the October 12, 2010 injury. Claimant's APA 109. She claimed an inability to work as of October 12, 2010. Claimant's APA 108. The disability determinator specifically stated that the Claimant's subjective statements are only "partially credible" and that, while her conditions "could reasonably be expected to produce pain, difficulty walking & functional limitations, but not to the degree as described by the clmt." Claimant's APA 119. Her symptoms were only "somewhat consistent" with the objective evidence. Id.

The Claimant's application for disability was entered into evidence as Claimant's APA #13. The undersigned notes that the Claimant indicated that "in all honesty, I was beginning to work less and less at my last job because if I did not feel good, I would stay home or clock out and lay on a couch until I felt better (my brother was pretty understanding about mu lupus and fibromyalgia). But the episode where he 'exploded' and assaulted me broke my heart, broke my will – it caused such an emotional and stressful effect that I have 'gone downhill' ever since. I doubt I will ever be what I used to be." Claimant's APA 133.

The Claimant was also evaluated by Dr. Hanger, who diagnosed her with neurocardiogenic syncope. Employer/Carrier's APA 114. Although the note is undated, a handwritten intake form was submitted with it, dated August 8, 2011. Employer/Carrier's APA 115. Via the handwritten note, the Claimant fails to mention anything about a facial tic, rectal spasms, or fecal incontinence. Id. The Claimant indicates, however, that she spends 30 to 45 minute per day on the treadmill, when possible. Employer/Carrier's APA 116.

Medical records were also introduced from the Claimant's family physician in Knoxville, where she lived before she moved to Charleston. Employer/Carrier's APA #7. They reveal the Claimant had ongoing problems with anxiety, depression, lupus, and other issues. Id.

The Claimant's recorded statement was also introduced into the record.

Employer/Carrier's Exhibit D. The Claimant's statements in her recorded statement were generally consistent with her testimony at the hearing. The Claimant indicated in her recorded statement that, in addition to her work at the Marina, she also was the bookkeeper for a business owned by the Claimant and her husband, Revel Enterprises. Employer/Carrier's APA 163. The Claimant did not indicate that she received any income as a result of her work with Revel Enterprises. See the record as a whole. Regarding the circumstances of the October 12, 2010 incident, the Claimant stated that she and Mr. Race had been having a verbal disagreement and that Mr. Race has "been acting lately even more angry and cussing you out and just, he's been doing that more lately." Employer/Carrier's APA 164.

The Claimant further indicated as follows:

But in this incidence I don't know if he just got extra mad or what because I caught him in a lie and so he came around his desk and started shoving me backwards and screaming at me, telling me to get the goddamn, I'm, I'm going to say it, I don't normally talk this way. Employer/Carrier's APA 164 . . .

Get the goddamn fuck out of his office and to take my fucking ass home and I said this is my job. And he goes well you better goddamn very well know I'm, I sure as hell am not going to fire you 'cause I wouldn't ever let you get on unemployment but I'll make your life so goddamn fucking miserable you're going to feel like you've been kicked to the curb and you will leave on your own. And, and he talked like that before but he never ever laid his hands on me.

The Claimant also explained that the disagreement was about the issue relating to Dickie's trailer and also the pending resignation of David Ackerman. Employer/Carrier's APA 165. The Claimant indicated that she simply went to the door of Mr. Race's office and asked David Ackerman if he told David Race that the Claimant was causing hate and discontent in the restaurant. Id. The Claimant claimed that Mr. Race then "jumped up from his desk and came around after me and started telling me to get the fuck out of there. Shut the fuck up. It was his goddamn office he could do what the fuck he wanted." Id. The Claimant also admitted that she had no bruises as a result of the shoving. Employer/Carrier's APA 166. The Claimant also

admitted that Mr. Race “treats a lot of people this way.” Id. The Claimant claimed that Mr. Race’s “verbal abuse” he been going on the entire 4 ½ years she had been employed with the Marina. Id.

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

#### V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That the parties are subject to the Workers’ Compensation Act, as the Claimant was employed with the Marina and the incident of October 12, 2010 occurred in the course and scope of her employment.
2. While I place greater weight on the testimony of the defendant’s witnesses, the outcome would not differ even assuming I adopted the Claimant’s testimony in its entirety.
3. I specifically and emphatically find that the Claimant’s employment conditions were not extraordinary and unusual in comparison to the normal conditions of said employment, and her request for benefits is denied.
4. As a result of finding of fact #3, any causation established by medical evidence is rendered moot.
5. As I have found Claimant’s mental injury is not compensable, her claims for aggravation to her lupus, fibromyalgia, and two facial tics are not compensable as they allegedly emanate from her mental claim.
6. As I am at an utter loss to understand why this claim was ever filed, hearing costs of \$1014.86 are assessed to the Claimant as I find this case was prosecuted without reasonable grounds.
7. The claimant’s average weekly wages is \$555.69, which results in a compensation rate of

\$370.48. I base this finding on the Form 20 filed by the Employer. The Claimant introduced no documentary evidence to support a deviation from the figures shown by the Form 20. I decline to use the Claimant's testimony that she earned \$19 per hour for work during the week, and \$20 per hour on the weekend, to calculate her compensation rate. The Claimant was not clear in her testimony about how many hours she worked, and she also admitted to taking lengthy and extensive vacations. Plus, work at the Marina is seasonal, so I give greater weight to the figures on the Form 20.

8. I specifically find that the Claimant was the aggressor in the October 12, 2010 incident. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
9. I specifically find that the Claimant interrupted a business meeting between David Race, Tom Blocker, David Ackerman, and Mike Sage, a meeting to which she was not invited. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
10. I specifically find that the Claimant was loud, screaming, yelling, and making accusations when she interrupted this meeting. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
11. I specifically find that David Race instructed the Claimant numerous times to leave his office, which she ignored. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
12. I specifically find that David Race placed his hands on the Claimant's shoulders to guide her out of his office because she would not leave. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.

13. I specifically find that, in the process of “guiding” the Claimant out of his office, David Race placed pressure on the Claimant’s shoulders to move her but that the pressure constituted only a mild amount of force.
14. I find that David Race did not shove the Claimant three times down the hallway. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
15. I find that David Race did not tell the Claimant that she would feel like she was being kicked to the curb every day and also that he did not tell her that he would make her life a living hell. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
16. I find that the basis of the altercation did not involve Dickie’s trailer. This finding is based on the testimony of the Claimant and David Race, who both indicated that the immediately precipitating event was an allegation that she was “causing hate and discontent” in the restaurant.
17. I find that the basis of the altercation was the Claimant’s unauthorized involvement in the restaurant. I base this finding on the testimony of David Ackerman (who resigned due to the Claimant’s interference), the testimony of David Race (that the new bar manager, Portia, threatened to resign based on the Claimant’s interference), and the testimony of the Claimant (that the immediately precipitating event was an allegation that she was causing “hate and discontent” in the restaurant).
18. I find that the October 12, 2010 incident involved normal employer/employee relations. I find that the Claimant was being instructed by her supervisor, David Race, to limit her involvement in the Marina, which is an issue relating to the scope of her employment. In

the process of that normal employer disciplinary action (and/or demotion), the Claimant became agitated. I find that David Race's instruction to the Claimant to avoid the restaurant, given at her desk prior to the meeting in question, was not performed in an extraordinary or unusual manner.

19. I find that David Race's removal of the Claimant from the meeting in question was also not conducted in an extraordinary or unusual manner. David Race asked the Claimant multiple times to leave his office, to which she only became more belligerent. Mr. Race was forced to leave his desk, approach the door, and physically guide the Claimant out of his office. I find that these actions were not taken in an extraordinary or unusual manner. I further find that David Race instructed the Claimant to punch out and go home and that they would discuss the issue the next day. That action was also not performed in an unusual or extraordinary manner.
20. I find that David Race is in charge of the marina. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
21. I find that David Race often curses while at the Marina and, thus, cursing is not unusual or extraordinary. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight. Notably, the Claimant admitted that Mr. Race often curses while at the Marina.
22. I find that David Race often yells while at the Marina and, thus, that yelling is not unusual or extraordinary. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight. Notably, the Claimant admitted multiple times that Mr. Race often yells while at the Marina.
23. I find that David Race often tells people what to do while at the Marina. This finding is

based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight. Notably, the Claimant admitted that Mr. Race often tells people what to do while at the Marina.

24. I find that there is nothing unusual or extraordinary in the fact that, on October 12, 2012, David Race cursed, yelled, and told the Claimant what to do (ie, to get out of his office).

25. I find that Mr. Race touched the Claimant on the shoulders on October 12, 2010 but that touch was not unusual or extraordinary. It was not unusual or extraordinary for numerous reasons, including but not limited to because Mr. Race is the Claimant's brother and they touch from time to time. Indeed, the Claimant testified that she cleaned his catheter after his surgery, so clearly Mr. Race and the Claimant have touched each other. Further, it is not unusual or extraordinary because it is the action that the Claimant should have expected after standing in the doorway, berating those involved, and refusing to move or to leave.

26. I give little weight to the Claimant's version of events occurring on October 12, 2010.

27. I have greater weight to the version of events testified to by David Race, David Ackerman, Tom Blocker, and Mike Sage.

28. I also note the Claimant's physical size, 5'8" and 200 pounds. See Employer/Carrier's APA 161. I note that David Race is approximately 80 years old and in poor health. I note that Tom Blocker is also of advanced age and requires use of a cane. I do not reasonably believe that the Claimant felt herself to be in danger from Mr. Race.

29. I give little weight to the informal demonstrations performed at the hearing. I give greater weight to the spoken testimony of the witnesses.

30. I find that the Claimant appeared at the hearing with an extremely emotional presentation. The Claimant cried on multiple occasions and even had to leave the room at least once to

take a break from her testimony.

31. I find that, even if I were to believe the Claimant's testimony in its entirety, and discount completely the testimony of the defendants' witnesses, the story recounted by the Claimant nevertheless fails to qualify as usual or extraordinary conditions of employment.
32. I find that the medical evidence fails to support the Claimant's allegations that she suffered a facial tic. While two instances of a facial tic were noted in her medical records, I find that the Claimant's complaints of a tic were exaggerated, as there is no reasonable explanation for her failure to report the alleged facial tic to her physicians during the course of her treatment.
33. I find that the medical evidence fails to support the Claimant's allegations that she suffered from rectal spasms and fecal incontinence. I base this finding on the fact that, despite her extensive psychological treatment, the Claimant made no complaints of rectal spasms or incontinence to Dr. Smith or Dr. Guille, save for one notation of diarrhea.
34. I find that the medical evidence fails to support the Claimant's allegations of an aggravation to her lupus and fibromyalgia. I am cognizant of certain records, including the February 16, 2012 letter from Dr. Smith, which ostensibly establishes causation. However, I find that his opinion was based on the Claimant's version of events, which is not true. Therefore, any causation stemming from that version of events must necessarily fail.
35. As I find that the Claimant's mental injury is not compensable, however, any medical evidence supporting her claim is rendered moot.
36. I also find that the Claimant was noncompliant with treatment based on her failure to continue her medical treatment with MUSC after October 19, 2011.
37. I find there is no reasonable basis for the Claimant to have brought this claim. I am

cognizant that the claim was activated pursuant to a Petition for Hearing filed by the Employer/Carrier. I am also cognizant that the hearing was set pursuant to Regulation 67-601, not any pleading of the Claimant. However, the Claimant indicated at a telephone conference that she intended on pursuing her claim. The Claimant could have dismissed her case with prejudice at any time, but she did not do so. She prosecuted her claim, despite the fact that there was no legal or factual basis for doing so, and it is for that reason that I assess hearing costs in the amount of \$1,014.86, this sum being the Commission's calculation of the cost of a hearing.

## VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under Section 42-1-160, mental injuries are not compensable unless the Claimant's conditions of employment were "extraordinary and unusual in comparison to the normal conditions of the particular employment.
3. Under Section 42-1-160, mental injuries are not compensable "if they result from any event or series of events which are incidental to the normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

4. Under Section 42-9-35, benefits can be awarded, under certain circumstances, when a work injury aggravates a pre-existing condition.
5. Under Section 42-17-80, if the Commission determines that proceedings "have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them."

**VII. ORDER/AWARD**

**IT IS HEREBY ORDERED** that the Claimant's claim for workers' compensation benefits is hereby denied.

**IT IS FURTHER ORDERED** that the Claimant is assessed hearing costs in the amount of \$1014.86.

**IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
\_\_\_\_\_  
T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the

attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

July 25, 2012

By: Amy Bracy, Administrative Assistant to Commissioner Beck

# Wigger Law Firm, Inc.

ATTORNEYS AT LAW

8086 Rivers Avenue, Suite A  
North Charleston, SC 29406

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August 6, 2012

SC Workers' Compensation Comm:  
ATTN: Eugenia Hollmon or Valerie Deller  
P. O. Box 1715  
Columbia, SC 29202-1715

**RE: CLAIMANT: Diane Fleher**  
**EMPLOYER: Dolphin Cove Marina**  
**D/LOSS: 10/12/2010**  
**WCC FILE # 1014489**

Dear Ms. Hollmon or Ms. Deller:

Please find enclosed a Form 30 Requesting an Appeal to be filed on the Claimant's behalf regarding the above matter. Our office has served a copy of the same to the attorney for the Defendants, Lynnley D. Ross.

Enclosed is a check in the amount of \$150.00, which represents the fee for processing this request. Thank you for your assistance and please call if you have any questions.

Respectfully,



Paul D.G. Ribeiro

PDGR/ste  
Enclosures

Cc: Lynnley D. Ross

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



WCC File #: 1014489  
Carrier File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: Diane Fleher SSN: 251-23-3523 Employer's Name: Dolphin Cove Marina  
Address: P.O. Box 142 Address: 2079 Austin Avenue  
City: Las Piedras State: PR Zip: 00771-0142 City: Charleston State: SC Zip: 29405  
Home Phone: 775 771 2340 Work Phone: \_\_\_\_\_ Insurance Carrier: Carolina Casualty Insurance Co.  
Preparer's Name: Paul D.G. Ribeiro Law Firm: Wigger Law Firm, Inc. Preparer's Phone #: 843 553 9800

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  claimant  employer (check one) Date of Injury: 10/12/2010

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

Did the Commissioner have jurisdiction to hear the claim on his own Motion pursuant to Regulation 67-601?

If the Commissioner did have jurisdiction, and he ordered the Claimant to appear over her jurisdictional objection, can the Commissioner then order the Claimant to pay the costs of the hearing?

Should the Order be amended to reflect what actually transpired at the hearing?

Did the Commissioner err in ruling that the Claimant's injuries were not compensable?

Did the Commissioner err in finding that it was not "extraordinary and unusual" for the Claimant's supervisor to physically and verbally assault her after she refused to file a fraudulent insurance claim at his request?

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Lynnley D. Ross

Name

Willson, Jones, Carter & Baxley, 421 Wando Park Boulevard, Suite 100, Mount Pleasant, SC 29464

on the 6th day of August, 2012 by  first class mail  personal service  certified mail.

Paul D.G. Ribeiro Attorney for Claimant August 6, 2012  
Preparer's Signature Title Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party, R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision, R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

# Wigger Law Firm, Inc.

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October 19, 2012

Ms. Virginia Crocker, Judicial Director  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, SC 29202-1715

**RE: Claimant: Diane Fleher**  
**EMPLOYER: Dolphin Cove Marina**  
**CARRIER: Carolina Casualty Insurance, Co.**  
**DOL: 10/12/2010**  
**WC file: 1014489**

Dear Ms. Crocker:

Enclosed please find the Claimant's original Brief and 3 copies in regards to the above referenced matter. By copy of this letter, I am serving the same upon Lynnley D. Ross, Attorney for the Defendant.

If you have any questions regarding this matter, please do not hesitate to call. Thank you for your assistance.

Respectfully,



Paul D.G. Ribeiro

PDGR/seb  
Enclosures

cc: Lynnley D. Ross, Esq.

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1014489

Diane Fleher,	)	
Employee,	)	
Claimant,	)	
vs.	)	
Dolphin Cove Marina,	)	CLAIMANT'S BRIEF
Employer,	)	
and	)	
Carolina Casualty Insurance Co.,	)	
Carrier,	)	
Defendants.	)	

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STATEMENT OF THE CASE

This case arises out of a workplace conflict at Dolphin Cove Marina between the Claimant, Ms. Diane Fleher, and her half-brother, Mr. David Race, who was also her direct supervisor as well as the Marina Manager.

The Claimant asserts that Mr. Race ordered her to file a fraudulent insurance claim, following an incident wherein two employees, Eric and Alex, were directed by the Employer to vandalize a trailer on the Marina grounds in order to collect the insurance money. When the Claimant refused, a conflict escalated over several days, culminating in Mr. Race's physical and verbal assault on his sister on October 12, 2010. The Claimant asserts that Mr. Race shoved her out of his office and down the hall, cursing her as he did so.

While the assault was both physical and verbal (Mr. Race shoved the Claimant three times, with both his hands on both of her shoulders), the injury sustained was primarily

psychological (Post-traumatic Stress Disorder). The Claimant asserts that she is not at Maximum Medical Improvement. She further asserts that her preexisting Lupus and Fibromyalgia have been aggravated as a result of this injury, and that she has developed a facial tic and incontinence due to this injury. Claimant seeks medical care for those conditions, ongoing medical care for the psychological injury, and an award of Temporary Total Disability benefits.

This matter came before the Commission in St. Matthews, SC at 10:00 A.M. on March 1, 2012. The Employer/Carrier filed a Petition for Hearing on December 2, 2012. The Employer/Carrier were paying no benefits at the time and had denied Claimant's claim.

On February 7, 2012, a telephonic hearing was held by Commissioner T. Scott Beck pursuant to the Petition. The attorney for the Claimant requested that the Petition be denied, asserting that the claim was not yet ready for a hearing on the merits, that the Claimant had a two-year Statute of Limitations to develop her case and file for a hearing on the merits, that the Employer/Carrier were paying no benefits, and that accordingly the Commission lacked jurisdiction to hear the Claim. The attorney for the Employer/Carrier asserted that they were entitled to a timely adjudication of the Claim. Over Claimant's objection, Commissioner Beck ruled that there would be a hearing pursuant to Regulation 67-601 which provides that "the Commission may, on its own Motion, Order a hearing."

During the pre-trial conference on March 1, 2012, the attorney for the Claimant reasserted his jurisdictional objection and objected to going forward. Regulation 67-601 part (B) states that "the Commission will not set a hearing until a conflict arises." Commissioner Beck ruled that clearly a conflict among the parties has arisen based on the failure to agree as to compensability of the claim as well as benefits owed to the Claimant, so the requirements of part (B) have been met. Therefore, it was Ordered that the hearing go forward.

On July 25, 2012, Commissioner Beck issued a Decision and Order finding that the Claimant's employment conditions were not extraordinary and unusual, that the Claimant's mental injury is not compensable, that her claims for aggravation to Claimant's lupus, fibromyalgia, and two facial tics are not compensable as they emanate from her mental claim, and that any causation established by medical evidence is moot. The Commissioner then ordered hearing costs of \$1,014.86 be assessed to the Claimant, stating that "this case was prosecuted without reasonable grounds" and "[the Commissioner is] at an utter loss to understand why this claim was ever filed." Claimant timely filed a Form 30 appealing the Decision and Order on August 6, 2012.

#### ISSUES PRESENTED

- I. Did the Hearing Commissioner err in asserting jurisdiction to hear the claim on the merits even though neither a Form 50 nor Form 21 had been filed?
- II. Did the Hearing Commissioner err in ordering the Claimant to pay the costs of the hearing, even though the Commissioner ordered the Claimant to appear at the hearing, on his own motion, and over the Claimant's objection?
- III. Did the Hearing Commissioner err in finding that the Claimant's injuries were not compensable because her employment conditions were not extraordinary and unusual, even though the Claimant's supervisor physically and verbally assaulted the Claimant after she refused to file a fraudulent insurance claim at the supervisor's request?

#### ARGUMENTS/DISCUSSION

- I. The Hearing Commissioner erred in asserting jurisdiction to hear the merits of the claim because neither a Form 50 nor a Form 21 was properly before the Commission.

Traditionally the only mechanism established by the legislature to schedule a hearing on the merits was via filing of a Form 50 by the Claimant. The Employer/Carrier was not permitted to request a hearing, neither on compensability nor on paying final compensation. The General

Assembly later amended the Worker's Compensation statute. Regulation 67-208 now provides for a mechanism whereby the Employer/Carrier can request a hearing via a Form 21, but only in limited situations. In the case at bar, there was neither a Form 50 nor a Form 21 properly before the Commission. The Employer/Carrier had filed a Petition requesting a hearing, but there were no circumstances that would have allowed them to file a Form 21 as provided for under our statute.

In the February 7, 2012 telephonic hearing on the Petition, the Claimant, through her attorney, objected to the Commissioner's jurisdiction. She indicated that she was not ready to go forward and that she had a two-year statute of limitations in which to assert her claim. She also noted that it was a denied claim and that there was thus no prejudice to the Employer/Carrier. The Employer/Carrier argued that it was entitled to request a hearing pursuant to Section 42-17-20. The Commissioner overruled the Claimant's objection and Ordered that the hearing go forward. However, he specifically stated in his Order of March 23, 2012 that "a hearing is hereby Ordered, not pursuant to Section 42-17-20 but pursuant to Regulation 67-601 which provides that 'The Commission may, on its own Motion, Order a hearing.'"

During the pre-trial conference on March 1, 2012, the Claimant reasserted her jurisdictional objection and objected to going forward. Regulation 67-601 part (B) states that "the Commission will not set a hearing until a conflict arises." Commissioner Beck ruled that clearly a conflict among the parties has arisen based on the failure to agree as to compensability of the claim as well as benefits owed to the Claimant, so the requirements of part (B) have been met. Therefore, it was Ordered that the hearing go forward, which it did.

The Commissioner abused his discretion and erred in asserting jurisdiction. If there is no jurisdiction to hear the claim, any rulings must be set aside as erroneous.

II. The Hearing Commissioner erred in ordering the Claimant to pay the costs of the hearing, because the Commissioner ordered the Claimant to appear at the hearing, on his own motion, and over the Claimant's objection.

a. The Commissioner abused his discretion by punishing the Claimant for obeying his Order

The Commissioner's Order for the costs of the hearing to be assessed to the Claimant constitutes a per se abuse of discretion. The Claimant, through her attorney, objected to going forward with the hearing during the February 7, 2012 telephonic hearing and again during the March 1, 2012 pre-trial conference. The Claimant asserted that the claim was not yet ready for a hearing on the merits, that the Claimant had a two-year Statute of Limitations to develop her case and file for a hearing on the merits, that the Employer/Carrier was paying no benefits (and therefore would not be prejudiced by delay), and that accordingly the Commission lacked jurisdiction to hear the Claim. The Employer/Carrier argued that it was entitled to request a hearing pursuant to Section 42-17-20. The Commissioner Ordered that the hearing go forward. However, he specifically stated in his Order of March 23, 2012 that "a hearing is hereby Ordered, not pursuant to Section 42-17-20 but pursuant to Regulation 67-601 which provides that 'The Commission may, on its own Motion, Order a hearing.'"

Following the merits hearing of March 1, 2012, the Commissioner then sanctioned the Claimant for appearing and prosecuting a claim at the hearing that he himself had Ordered. In his Decision and Order dated July 25, 2012, the Commissioner made the following Finding of Fact: "As I am at an utter loss to understand why this claim was ever filed, hearing costs of \$1014.86 are assessed to the Claimant as I find this case was prosecuted without reasonable grounds." Order p. 33. It is inherently abusive to sanction a party for complying with an Order.

b. The Commissioner erred by disregarding relevant evidence in making his finding

The Commissioner also abused his discretion and erred by disregarding evidence in making his finding that the Claimant had no reasonable grounds for prosecuting the claim. Claimant APA exhibit 11, admitted into evidence without objection, is a letter to the Claimant from the State of South Carolina, Office of the Governor, State Office of Victim Assistance, dated May 25, 2011, which states:

Your claim meets the eligibility criteria established by state law. However, because the incident occurred while you were on the job, your claim with Worker's Compensation would have to be resolved with a final conclusion before the claim can be forwarded to the Processing Services Department for payment consideration. After your claim has been resolved with Worker's Compensation and there are still compensable expenses, please provide this agency with the documentation from Worker's Compensation. We will be glad to consider your bills at that time. Because the State Office of Victim Assistance is the **payer of last resort**, you must ensure that all bills have been filed with your Worker's Compensation carrier before submitting them to this office. (Boldface in original.)

Because the Claimant reasonably believed that she was *required* to resolve her claim with Worker's Compensation, it constitutes an abuse of discretion for the Commissioner to find as a fact that her Worker's Compensation claim "was prosecuted without reasonable grounds."

**III. The Hearing Commissioner erred in finding that the Claimant's injuries were not compensable, because her employment conditions were extraordinary and unusual, as the Claimant's supervisor physically and verbally assaulted the Claimant after she refused to file a fraudulent insurance claim at the supervisor's request.**

**a. The Commissioner erred in a matter of law**

The Hearing Commissioner made a specific finding of fact as follows: "I find that, even if I were to believe the Claimant's testimony in its entirety, and discount completely the testimony of the defendants' witnesses, the story recounted by the Claimant nevertheless fails to qualify as unusual or extraordinary conditions of employment." Order p. 38. Therefore, the Commissioner's

decision on compensability rests squarely on his determination that as a matter of law, the conditions of employment described—and endured—by the Claimant were not extraordinary and unusual. This finding reveals a serious misapprehension of employment law in South Carolina.

Under South Carolina law, “whistleblowers” are protected from retaliation in employment. In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment, and an at-will employee may be terminated at any time for any reason or for no reason, with or without cause. However, under the “public policy exception” to the at-will employment doctrine, an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. The public policy exception clearly applies in cases where either: (1) the employer requires the employee to violate the law, or (2) the reason for the employee’s termination itself is a violation of criminal law. See *Ludwick v. This Minute of SC, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985); *Barron v. Labor Finders of South Carolina*, 393 S.C. 609, 713 S.E.2d 634 (S.C. 2011). The fact that an entire area of law has developed in South Carolina to protect employees in these situations demonstrates that it is not usual or ordinary for an employer to require an employee to break the law.

The Claimant testified as follows regarding the circumstances leading up to the October 12, 2010 incident. The Claimant had been in Knoxville, Tennessee for a few days prior to the work incident. Tr. 27. On her way back to Charleston, David Race, her half-brother, called her and notified her that David Ackerman, the restaurant manager, was quitting. Tr. 28. Mr. Race told her that she needed “to be ready to step in.” Tr. 28. The Claimant was instructed to come in the next day and “start learning all you can.” Tr. 28.

The Claimant and Mr. Race also have another brother, Dickie, age 78, who the Claimant

described as being "a little bit slow" and perhaps has some learning disabilities. Tr. 28-29. Dickie lived in a trailer on the Marina property, but he had recently moved to an apartment above the Marina. Tr. 29. A rug of Dickie's had been left at the trailer, so the Claimant went to obtain the rug from the trailer. Tr. 30. When she got there, the trailer "was all beat up." Tr. 30. The windows had been broken, the paneling was busted, the cabinets were busted, etc. Tr. 30. Two employees, Alex and Eric, were accused of the vandalism. Tr. 31. The Claimant testified that Eric admitted to the vandalism, told the Claimant that he was "supposed to do it" and that Mr. Race had told him not to discuss it. Tr. 32.

The Claimant testified that Mr. Race instructed the Claimant to file a police report and an insurance claim for the damage to the trailer. Tr. 32. The Claimant refused, as she believed that Marina employees vandalized the trailer. Tr. 32. The Claimant testified that Mr. Race told her that Eric admitted to the vandalism. Tr. 32-33. Then Mr. Race instructed the Claimant, "[J]ust get up to that restaurant and start doing your job and learning everything you need to learn to take over when David Ackerman leaves." Tr. 33. The Claimant testified that Mr. Race told her, "Get the hell out of my sight" and that he didn't "want to see [her] face." Tr. 33. The Claimant testified that Mr. Race also told her, "[J]ust understand one thing. Your job is to keep your mouth shut." Tr. 33. The discovery of the vandalism to the trailer and this conference with Mr. Race occurred on October 10, 2010. Tr. 33.

The Claimant testified that, as she worked at the restaurant over the next two days, she "was the enemy" to her brother and that he "wouldn't even hardly speak to [her]." Tr. 34. She did not remember any specific instances of contact with Mr. Race on Monday, October 11, 2010. The Claimant testified that on Tuesday, October 12, 2010, the date in question for this case, she was at work trying to prepare the schedule. Tr. 34-35. Mr. Race then came up to a little glass window

near the Claimant's desk. He instructed the Claimant to "get off that phone." Tr. 36. Mr. Race then stated to the Claimant, "I know about all the hate and discontent you caused up in the restaurant Sunday night." Tr. 35. After making this statement, Mr. Race went to his office, and was in his office with three other people, Mike Sage, Tom Blocker, and David Ackerman. Tr. 36.

The conflict that began with Mr. Race instructing the Claimant to file a fraudulent insurance claim then culminated in Mr. Race's verbal and physical assault on the Claimant when she followed him to his office. Tr. 36-37. Mr. Race began cursing the Claimant and "shoving [her] backwards down the hall." The Claimant testified that as he shoved her, he said:

[Y]ou need to understand one thing. Your job is to keep your mouth shut. And you go home now. And you show up here tomorrow morning and you show up and you better keep your mouth shut. And you do your job because believe me when I tell you this, . . . if you don't do exactly what I say I am going to make your life such a living hell each and every day that you are going to feel like you've been kicked to the curb at the end of the day.

The Claimant clarified that David Race "shoved [her] three times. Boom, boom, boom." Tr. 38. The Claimant "couldn't believe this happened." Tr. 38. She retrieved her purse, although she "couldn't even think where [her] purse was." Tr. 38. She went to her car and began sobbing. Tr. 38. She left and went home to her husband, then went to the police station. Tr. 38-39. She then went to Dr. Oliverio (internal medicine) because she "was crying so hard [she] couldn't even catch [her] breath." Tr. 38-39.

The Claimant further testified that, in the four years she worked at the Marina, Mr. Race had never laid hands on her before and she did not expect that he was going to do so. Tr. 41.

The Claimant also testified that she had a history of domestic violence, which led to the incarceration of a prior husband. Tr. 41. The Claimant also cared for Mr. Race after multiple heart surgeries and even cleaned his catheter. Tr. 41-42. She took care of him and "gave up [her] life in

Knoxville to come home and take care of [her] elderly brothers and sisters.” Tr. 42. The Claimant explained, “[Mr. Race] got so mad when I refused to do the insurance claim” and that refusing to file the insurance claim “was the first time I ever really stood up to him and said, no, I’m not going to lie for you. I’m not going to go to jail for you. And from that point on he made me feel like I was the enemy.” Tr. 42. The Claimant said that on October 12, 2010, “[Mr. Race] violated me that day, not just physically, but psychologically. He violated me.”

The Hearing Commissioner erred in finding that as a matter of law, the conditions of Claimant’s employment were not unusual and extraordinary and that her claim was therefore not compensable. It is objectively unusual and extraordinary for an employee (1) to be directed to file a fraudulent insurance claim, (2) to be harassed when she refuses, or (3) to be physically and verbally assaulted as a result. Even if a subjective standard is applied, the undisputed testimony is that Mr. Race had never before laid his hands on the Claimant in anger, and that she did not reasonably expect that he would ever do so.

**b. The Commissioner erred by completely disregarding relevant evidence**

The Hearing Commissioner also abused his discretion and erred in completely disregarding the medical evidence. The Commissioner stated: “As a result of finding [that the Claimant’s employment conditions were not extraordinary and unusual], any causation established by medical evidence is rendered moot.” Order p. 33. The Claimant presented clear medical evidence of causation. Claimant APA exhibit (1) includes a statement dated February 16, 2012 from Claimant’s Psychologist, Dr. Daniel W. Smith, in which he states:

It is my opinion, within a reasonable degree of medical certainty, that Ms. Fleher’s current psychological impairments are indeed causally related to the assault she experienced at her place of work (i.e., being berated and shoved by her half-brother). That is, had this incident not happened, it is extremely unlikely that Ms. Fleher would currently be experiencing the

degree and severity of psychological and physical symptoms that she is currently suffering. I therefore conclude that she should be entitled to receive ongoing medical benefits in order to help her recover from these symptoms.

Claimant exhibit (1) also includes a joint statement dated September 8, 2011 signed by both Dr. Daniel W. Smith and Dr. Constance Guille, M.D., stating:

Diane G. Fleher has been undergoing psychiatric and psychological treatment at our center since October 2010. Ms. Fleher has stress-related physical problems (lupus, fibromyalgia) that exacerbate, and are exacerbated by, her mental health morbidities. It is our professional opinion that Ms. Fleher has been unable to function in a capacity that would enable her to perform any substantial work during her time in treatment, and it is expected that her conditions will continue to prevent her from doing so until her symptoms improve considerably.

Claimant exhibit (2) includes a statement dated July 21, 2011 signed by Dr. Robert R. Oliverio, Jr., M.D., certifying that the Claimant's "mental diagnosis" is "post-traumatic stress disorder," that she has been recommended for psychiatric care, and that the Claimant exhibits an "obvious" work-related limitation "due to the mental condition." Claimant exhibit (2) also contains four work excuses signed by Dr. Oliverio, stating that the Claimant "has been unable to perform...her regular duties" from October 12, 2010 through November 19, 2010. Lastly, Claimant exhibit (2) contains a medical record from the date of the workplace assault, October 12, 2010, in which Dr. Oliverio states, "Patient had an altercation at work which precipitated an anxiety attack," and prescribes clonazepam.

Claimant exhibit (3) includes a medical record dated September 27, 2011 signed by Dr. James L. Bumgartner, M.D., which states that the Claimant complains of "prominent intermittent 'rectal spasm' since she was assaulted about one year ago while working as a manager of a marina," and which includes a diagnosis of "Posttraumatic stress disorder."

Claimant exhibit (4) includes a medical record dated May 26, 2011 signed by Dr. Tal

Klatchko, DO, which states that Claimant was “recently diagnosed with posttraumatic stress disorder after an assault in October 2010.”

Claimant exhibit (5) includes a medical record dated November 1, 2010 signed by Dr. Georgia C. Roane, M.D., which states that Claimant “has been through a very stressful event with her brother and this has left her somewhat traumatized,” and includes a diagnosis “recent episode of severe stress.”

Claimant exhibit (6) includes a statement dated January 31, 2012, by Vocational Consultant Jean R. Hutchinson, M.ED., CRC, CVE, who reviewed the Claimant’s medical records listed above, noting that “Ms. Fleher was physically assaulted at her place of employment on October 12, 2010, by her supervisor who is also her brother,” and then states, “I am of the opinion that Ms. Fleher is unable to perform the required job tasks of her former work as a marina manager and is unable to return to any past employment.”

Claimant exhibit (12) is a Social Security Administration Disability Determination Explanation dated October 6, 2011, approving the Claimant for Social Security Disability benefits, with a disability onset date of October 12, 2010, the same date as the workplace assault.

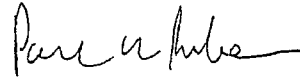
In light of the extensive medical evidence of causation, it constitutes an abuse of discretion for the Hearing Commissioner to simply brush it aside as “moot” in light of his finding that the conditions of employment were not unusual and extraordinary.

### CONCLUSION

For the above stated reasons, the Claimant respectfully requests that the Commission reverse the Order and Decision of the Hearing Commissioner, and Order other such remedies as the Commission deems fair and just.

Respectfully submitted,

**WIGGER LAW FIRM, INC.**



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Paul D. G. Ribeiro, Esquire  
8086 Rivers Ave., Suite A  
N. Charleston, SC 29406  
Attorneys for Claimant

Dated: 10/19/12

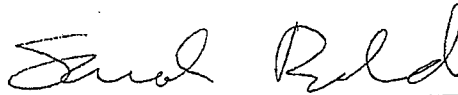
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

CERTIFICATE OF SERVICE

The Undersigned assistant to the Attorney for the Claimant, 8086 Rivers Avenue, North Charleston, South Carolina, 29406, does hereby certify that she has served the following named individuals and/or companies with a copy of the pleading indicated below by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked, on the date indicated below:

**PARTIES SERVED:** Willson Jones Carter & Baxley, P.A.  
Attn: Lynnley D. Ross, Esq.  
421 Wando Park Blvd., Suite 100  
Mount Pleasant, SC 29464

**PLEADING:** Diane Fleher v. Dolphin Cove Marina  
CLAIMANT'S BRIEF



\_\_\_\_\_  
Sarah Boland Paralegal for Paul Ribeiro, Esq.  
**WIGGER LAW FIRM, INC.**  
8086 Rivers Ave, Ste. A  
North Charleston, SC 29406  
(843) 553-9800

THIS 19<sup>th</sup> DAY OF October, 2012  
NORTH CHARLESTON, SOUTH CAROLINA

**DECISION AND ORDER  
OF THE APPELLATE PANEL  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**SCWCC FILE NO.: 1014489**

Diane Fleher,

Claimant

v.

Dolphin Cove Marina,

Employer, and

Carolina Casualty Ins. Co.,

Carrier, Defendants.

Hearing held in Richland County  
South Carolina

Commission Panel: The Honorable Avery B. Wilkerson; The Honorable Gene  
McCaskill; The Honorable Derrick L. Williams

Per notice timely and properly served upon all Parties of Interest.

Appearances: Paul D.G. Ribeiro, Attorney for Claimant/  
Appellants

Lynnley D. Ross, Attorney for Defendants/  
Respondents

Filed:

1-31-13

## STATEMENT OF THE CASE

This matter was set for review and rehearing as requested by the Claimant pursuant to S.C. Code § 42-17-50 (1976). Claimant was represented by Paul D.G. Ribeiro, Esquire. Defendants were represented by Lynnley D. Ross, Attorney at Law. The Merits of this claim were addressed in a previous Order of the undersigned panel filed on January 31, 2013. The sole purpose of this Decision and Order is to sanction the Claimant for bringing an appeal without merit before the Commission.

## FINDINGS OF FACT

It is found as a fact that:

1. The merits of the Claimant's application for review and rehearing were decided in a separate Order of the undersigned Appellate Panel filed January 31, 2013. All findings of fact contained therein are hereby incorporated by reference.
2. The Commission specifically and emphatically finds that no reasonable basis was asserted at the hearing for the Claimant to have brought this claim.
3. The Commission is at an utter loss as to why this claim was appealed to the Full Commission and finds as a fact that the Claimant failed to present any adequate grounds for review and rehearing to the Full Commission.
4. After review of the Order of the Single Commissioner, the evidence submitted into the record at the Hearing, the objections raised in the Claimant's Form 30, the issues presented in the parties' briefs, the oral arguments made before this Panel, and all other evidence made part of the Commission's file, the Commission determines that this appeal was without merit.

**RULINGS OF LAW**

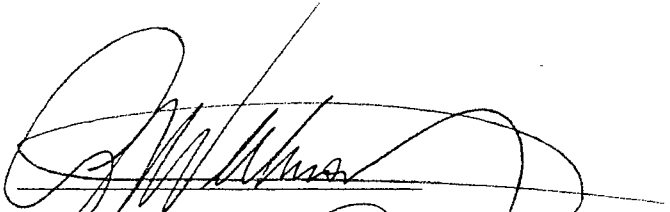
1. The merits of the Claimant's application for review and rehearing were decided in a separate Order of the undersigned Appellate Panel filed January 31, 2013. All rulings of law contained therein are hereby incorporated by reference.
2. The Commission has the authority to charge, in its sole discretion, the appellant a fee not to exceed two-hundred fifty dollars when it has determined that an appeal has been brought without merit. S.C. Code Ann. § 42-17-50 (1976); 25A S.C. Code Regs. 67-703 (1985).

**ORDER**

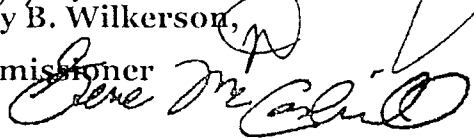
**IT IS THEREFORE ORDERED** that Claimant is charged an additional fee of two-hundred fifty dollars (\$250.00) for bringing an appeal without merit before the Commission for review and rehearing.

**IT IS FURTHERMORE ORDERED** that this fee shall be paid to the Commission within thirty days of the date of this Order.

**AND SO IT IS ORDERED!**



Avery B. Wilkerson,  
Commissioner

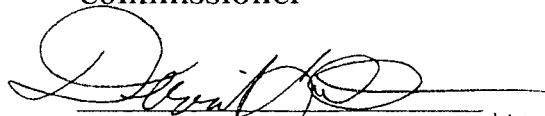


**CERTIFICATE OF SERVICE**

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

*By Valerie Deller on January 31, 2013*

Gene McCaskill,  
Commissioner



Derrick L. Williams, 1/31/13  
Commissioner

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 1014489

DIANE FLEHER,

EMPLOYEE  
CLAIMANT/APPELLANT

vs.

DOLPHIN COVE MARINA,

EMPLOYER,

AND

CAROLINA CASUALTY INSURANCE CO.,

CARRIER,  
DEFENDANTS/RESPONDENTS

---

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

Appellate Panel Decision and Order filed

1-31, 2013

**AFFIRMS IN FULL**

APPEARANCES:

Claimant represented by Paul D.G. Ribeiro, Esquire  
of Wigger Law Firm,  
North Charleston, South Carolina.

Defendants represented by Lynnley D. Ross, Esquire  
of Willson Jones Carter & Baxley, P.A., Mount  
Pleasant, South Carolina.

### PROCEDURAL HISTORY

The procedural history of this case is rather long but relevant to the issues before the Panel, so it will be recited herein. The Claimant herself filed a Form 12A on October 13, 2010, the day after the alleged work injury. See Commission's file. On July 18, 2011, the Claimant's attorney filed a Form 50 requesting a hearing and alleging an injury to Claimant's "brain and nervous system." Id. On August 15, 2011, the Employer/Carrier denied the case via a timely filed Form 51. Id. A hearing was set for September 27, 2011, to determine issues set on the Forms 50 and 51. Id. On September 7, 2011, the Claimant withdrew her request for a hearing. Id.

On December 2, 2011, three months after the Claimant withdrew her Form 50 and over a year after the alleged work injury, Defendants filed a Petition for Hearing to determine whether Claimant sustained a compensable injury. Id. On that date, December 2, 2011, Defendants also filed a Motion to Compel MUSC to produce medical records. Id. On December 13, 2011, the Commission served a Notice of Hearing, setting the case for adjudication on December 21, 2011 "to determine issues in the Motion." Id.

On December 14, 2011, the Claimant filed a Motion for Continuance, asserting that the Claimant's assigned counsel had changed and that "the new attorney has not had a chance to do necessary things in the file that will be prejudicial to the Claimant's case should it go forward on the scheduled docket." Id. An informal telephone conference was held on December 15, 2011 with the then-Jurisdictional Commissioner, Commissioner Wilkerson. Id. On December 22, 2011, Commissioner Wilkerson executed an Order compelling MUSC to produce medical records for the Claimant. Id. Via correspondence from Commissioner Wilkerson's office dated January 9, 2012, it was determined that Commissioner Wilkerson ruled only on the Motion to Compel MUSC and that the Defendant's Petition for Hearing remained pending. Id.

A hearing was set for January 31, 2012 to “determine the issues in the Motion.” Id. For this hearing, Defendants timely filed a Form 58 outlining their position regarding the request for a merits hearing. Id. Via the Form 58, the Employer/Carrier argued that the case involved a denied mental/mental injury, which is necessarily a very fact-specific inquiry. Id. The Defendants indicated that there were five people in the room at the time of the alleged incident. Id. Two of the people were elderly and one had already moved out of state. Id. The Defendants argued that prejudice was present in further delay of the claim because the witnesses may be lost. Id. Further, the Defendants asserted that the facts of the case and the testimony of the witnesses would not change with time. Id. Thus, there was no prejudice to the Claimant in proceeding with the case, but there may be significant harm to the Defendants, should the case be delayed. Id. Finally, the Defendants argued that pursuant to § 42-17-20 and relevant caselaw, the Defendants can request a hearing at any point fourteen days after the employer has knowledge of the injury. Id. The Claimant did not file a Form 58 or any APA submissions for the January 31, 2012 hearing. Id.

The January 31, 2012 hearing was canceled in favor of an informal telephone conference, which occurred on February 7. Id. At the February 7, 2012 telephonic hearing, the Defendants argued consistently with Defendants Form 58 and further asserted that the Claimant continued to seek treatment with unauthorized providers, which caused additional prejudice to Defendants should the case be found compensable, as the Act vests the right to control medical treatment with the Defendants. Id. Finally, Defendants argued that the Claimant would certainly request TTD and that the Defendants were extremely prejudiced in that exposure for TTD was accruing with the Defendants having no control over the medical aspect of the claim. Id.

In response, the Claimant asserted that the Workers’ Compensation Act allowed her a two year time period to develop her claim. Id. Claimant asserted that her claim was “not yet ready”

although it “would be soon.” Id. After hearing arguments of Counsel, the Commissioner ordered that a hearing take place pursuant to Regulation 67-601, which provides that “the Commission may, on its own Motion, order a hearing.” Id. As an administrative matter, the Commissioner retroactively granted the Motion for Continuance, effective December 13, 2011, as no Order had yet been rendered on that Motion, which had clearly been granted. Id. A hearing was set for March 1, 2012.

At the hearing, the Claimant alleged an entitlement to workers’ compensation benefits for the December 12, 2010 incident. Tr. 5-6. In addition to medical treatment, she requested TTD from October 12, 2010 to December 1, 2010, as well as from April 26, 2011 to the date of the hearing and continuing. Id. The Claimant acknowledged that she was on a pre-planned vacation to the Bahamas between December 1, 2010 and April 26, 2011 and did not allege an entitlement to TTD for that period of time. Tr. 18-20. She alleged an average weekly wage of \$800, which resulted in a compensation rate of \$532.80. Tr. 6. The Claimant did not object to going forward with a merits hearing on March 1, 2012. Tr. 5, 6, 110.

The Defendants denied compensability of the claim in its entirety. Tr. 6. The Defendants asserted that the events of October 12, 2010, did not occur as alleged by the Claimant. Id. Further, even if the events did occur as the Claimant alleged, the events still failed to rise to the level of unusual or extraordinary as required by the Workers’ Compensation Act. Id. The Defendants alleged that the Claimant had an average weekly wage of \$555.69, which resulted in a compensation rate of \$370.40. Id. Defendants also asserted that any TTD, if owed, should only be paid from August 15, 2011 and should only extend until October 19, 2011 due to Claimant’s non-compliance with her treatment after October 19, 2011. Tr. 6-7. Lastly, the Defendants asserted that the Claimant’s entire claim was barred by *res judicata*. Tr. 7-8. The Defendants argued that after

the October 12, 2010 incident, the parties appeared in Magistrate's Court to determine issues related to a warrant issued by the Claimant against the owner of the Marina. Tr. 7-8. This matter was dismissed by the Magistrate's Court. Id. Thus, the Defendants asserted that the doctrine of *res judicata* applied and the claim should be dismissed by the Commission. Id. Commissioner Beck ruled that the Magistrate Court's decision had no bearing on the workers' compensation claim and declined to apply the doctrine of *res judicata*. Tr. 8.

On July 25, 2012, the Hearing Commissioner issued a Decision and Order in which he denied Claimant's assertions and "specifically and emphatically" found that the Claimant's mental injuries did not rise to the level of extraordinary and unusual as required by the Workers' Compensation Act. See Commission's File. The Commissioner also found that any medical evidence ostensibly establishing medical causation was moot, in light of the fact that the events of October 12, 2010 did not occur as claimed by the Claimant. Further, the Hearing Commissioner assessed hearing costs in the amount of \$1,014.86. Id.

On August 6, 2012, the Claimant filed a Form 30, Application for Review. In his Brief to the Appellate Panel, the Claimant submits the following issues presented:

1. **Did the Hearing Commissioner err in asserting jurisdiction to hear the claim on the merits, even though no Form 50 nor Form 21 was properly before the Commission?**
2. **Did the Hearing Commissioner err in ordering the Claimant to pay the costs of the hearing, even though the Commissioner ordered the Claimant to appear at the hearing, on his own motion, and over the Claimant's objection?**
3. **Did the Hearing Commissioner err in finding that the Claimant's injuries were not compensable because her employment conditions were not extraordinary and unusual, even though the Claimant's supervisor physically and verbally assaulted the Claimant after she refused to file a fraudulent insurance claim at the supervisor's request?**

All proffered testimony has been taken. Such, together with all documentary evidence,

and oral argument, has been delivered to the individual members of the Appellate Panel and has since been under careful consideration.

### STANDARD OF REVIEW

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. §42-17-50, review the award, weigh the evidence as presented at the hearing and, if good grounds be shown therefore, make its findings of facts and reach its own conclusions of law consistent or inconsistent with those of the Hearing Commissioner. *See Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967); *see also Lowe v. An-Can Transport Services, Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).

### STATEMENT OF THE FACTS

#### **I. Claimant's Testimony**

As outlined thoroughly in the Order, pages 8-11, the Claimant alleges that she became aware of some vandalism to a trailer on the Marina property on October 10 and that her half-brother, David Race, instructed her to file an insurance claim, but she refused, as she believed that Marina employees were responsible for the damage. See also Tr. 30-32. After that date, the Claimant felt that she was "the enemy" for refusing to file the insurance claim, although she testified to no problems or difficulty with Mr. Race or any other employee the next day, October 11. Tr. 34.

On the morning of the alleged accident, the Claimant began texting Portia, a new bartender, about the work schedule. Tr. 34. Then, according to the Claimant, David Race approached her and accused her of causing "hate and discontent" in the restaurant. Tr. 36. David Race then went into a meeting with David Ackerman, Tom Blocker, and Mike Sage. Tr. 36. The Claimant went to the meeting and, according to the Claimant, politely asked David Ackerman if he said that she

was causing hate and discontent. Tr. 36-37. When he said no, the Claimant asked another employee, Annie, who said no, and the Claimant returned to the meeting. *Id.* At that point, according to the Claimant she simply asked who said that she was causing hate and discontent when, unprovoked, David Race jumped up, shoving, yelling, and cursing at her. Tr. 37-38. She claimed that David Race “shoved me three times. Boom, boom, boom.” Tr. 38. She claimed that David Race yelled at her, while shoving her, and told her to “get the fuck out of [his] office.” Tr. 37. She claimed that he also said that he was going to “make [her] life such a living hell each and every day that [the Claimant was] going to feel like you’ve been kicked to the curb at the end of the day.” Tr. 38. She then left work and went to the police station to file a police report. Tr. 38-39.

## **II. Defense Witness Testimony**

David Race testified and confirmed that the trailer was vandalized by two Marina employees but explained that he asked the Claimant to file an insurance claim *before* he knew that the Marina employees were the vandals. Tr. 79. Mr. Race testified that the vandals paid for the damage and that no insurance claim was filed. Tr. 85-86.

With regard to the events on October 12, Mr. Race explained that David Ackerman was resigning from the Marina “due to Diane’s interference” and that the new bartender had also complained about the Claimant’s interference with the Marina restaurant. Tr. 81-83. Mr. Race testified that he instructed the Claimant to not involve herself with the restaurant any more, then immediately went into the meeting in question. Tr. 84. Mr. Race then testified that the Claimant began hollering, asserting that Mr. Race was a liar, and was making “wild statements and accusations.” Tr. 84-85. Mr. Race testified that he instructed the Claimant to leave and she refused, so he physically pushed her out the door, one time. Tr. 79-80. Mr. Race testified that he

did not have a security guard at the Marina so he felt it his responsibility to remove someone who comes into his office uninvited and refuses to leave. Tr. 81.

David Ackerman was next to testify. He testified that the Claimant caused "constant drama" and that she would "start problems where there didn't need to be problems." Tr. 90. Mr. Ackerman confirmed the testimony of David Race with regard to the incident on October 12. Tr. 91-92. In short, he confirmed that the Claimant was yelling about someone talking about her (claiming that she was starting trouble), that Mr. Race asked her to leave several times, and that the Claimant refused. Id., APA 95. Mr. Ackerman did not specifically recall whether Mr. Race pushed the Claimant or whether she left on her own, but "certainly the encounter did not involve any type of distance" traveled. Tr. 93.

Tom Blocker testified next. Mr. Blocker again confirmed that the Claimant entered the meeting, "created a scene," and "disrupted the meeting." Tr. 99. Mr. Blocker also confirmed that the Claimant was yelling about someone saying that she was "causing hate and discontent" in the restaurant. Mr. Blocker confirmed that Mr. Race told her several times to leave but she refused. Then, Mr. Race went by the door and pushed her by the shoulders with both hands, but only until she was outside the door. Tr. 99-100.

Mike Sage was the last person to testify. He also confirmed that the Claimant entered the meeting to find out "why everybody was saying that she was causing hate and discontent up in the restaurant." Tr. 105. Mr. Sage testified that the Claimant would not leave and that David Race told her three times to leave, but she refused. He testified Mr. Race then pushed her by the shoulders out the door, maybe twice, but he was not sure. Tr. 107. Mr. Race was clear that she was pushed "just enough to get her out the door." Tr. 108.

### III. Medical Evidence

The Claimant claims a litany of complaints resulting from this alleged injury, including fecal incontinence, a facial tic, and aggravation of her pre-existing lupus and fibromyalgia. Tr. 5. Indeed, she has introduced some medical records which ostensibly establish medical causation. See APA 1, 17, 74. Claimant alleges that these medical records demonstrate the extent of her injury and provide the requisite medical causation. In contrast, the defense asserts that these records are based on the Claimant's version of events, a version which is affirmatively disputed by every single person that witnessed or was involved in the encounter. As a result, the defense argues the Commissioner was correct to give little weight to the medical records relied upon by the Claimant.

Along with all the medical records in evidence, the Panel has considered APA 1, a letter from the Claimant's psychologist, which says that the Claimant's current psychological impairments are related to the assault she experienced at work. However, APA 1 also says that David Race pushed her three to four times, all while verbally abusing the Claimant and being physically aggressive, which is inconsistent with the testimony of the Defendants' witnesses.

The Panel also specifically notes APA 17, which states that the Claimant's stress-related physical problems are exacerbated by her mental health condition. This submission is signed by the Claimant's psychologist, the same one who signed APA 1. APA 17 is also signed by Dr. Guille, the Claimant's psychiatrist. Thus, the Panel turns to the evidence demonstrating Dr. Guille's impression of the events of October 12, 2010. As evidenced by APA 53, Dr. Guille believed that the Claimant's "brother became agitated and angry and physically pushed her three times."

Additionally, the Panel notes APA 74, from the Claimant's family MD, which states that

the Claimant has PTSD but does not provide a cause. It is undisputed that the Claimant suffered from a number of medical problems prior to her work injury. See APA 117, dated July 13, 2010, only a few months prior to the work injury, which shows that the Claimant “has a history of neurogenic syncope, cutaneous lupus, hypertension, hyperlipidemia, hypothyroidism, obesity, osteoarthritis, depression, and an anxiety disorder.” APA 74, which the Claimant asserts provides causation for PTSD, does not indicate the cause of the Claimant’s PTSD or whether it was caused by or aggravated by anything that occurred on October 12, 2010.

With regard to the fecal incontinence, the Claimant claimed an utter inability to control her bowels. Tr. 15. The Claimant treated with Dr. Smith (psychologist) twenty two (22) times and did not mention fecal incontinence, although she did mention one episode of diarrhea. (See page 24 of the Order which shows specific dates and APA pages, and APA 31). She also treated with Dr. Guille five times (May 9, 2011 - APA 53; July 15, 2011 - APA 35; August 4, 2011 – APA 29; September 7, 2011 – APA 20, October 5, 2011 – APA 6) and did not mention any type of fecal incontinence. The Claimant also saw her family physician, Dr. Oliverio, on June 2, 2011 (APA 85), June 23, 2011 (APA 83), and July 15, 2011 (APA 80) and mentioned nothing about fecal incontinence. She also called two additional times to complain of other problems – but not of fecal incontinence. (APA 79, 82). She mentioned rectal spasms one time to Dr. Bumgartner, a neurologist, but did not complain of any type of incontinence to him. APA 81.

Additional records submitted by the Claimant include the May 26, 2011 report of Dr. Klatchko, a pulmonologist, which re-states the Claimant’s statement to him that she had been diagnosed with PTSD. APA 83. However, there is no evidence that Dr. Klatchko rendered this diagnosis, as opposed to simply reporting what had been told to him by the Claimant, nor is there evidence that he would be qualified to render a PTSD diagnosis. The November 1, 2010 note of

Dr. Roane states that the Claimant has been through a stressful event. APA 86. The January 31, 2012 note from Jean Hutchinson, a vocational evaluator, indicates that the Claimant suffered an assault in her workplace, where the Claimant's brother "shouted obscenities at her, threatened her, and began shoving and pushing her." APA 89-90. The Social Security Disability Determination indicates that the Claimant has significant difficulties, including depression, difficulty concentrating, rectal spasms, and rectal incontinence. APA 109. The records indicate that "many of the conditions are really a continuation of what has been going on for a long time" but that "since the assault happened, there is much worsening depression with suicidal thoughts." *Id.*

The Claimant asserts that these records are sufficient to support a finding of compensability of the Claimant's mental/mental injuries. The defense asserts that the records that rely on the Claimant's version of events are not supported by the testimony and should be disregarded. The defense further asserts that certain records are simply re-statements by her physicians (or the Social Security Disability determinator) of statements made by the Claimant, not independent diagnoses from qualified medical providers.

### **DECISION/ANALYSIS**

#### **1. The Commission Properly Proceeded with a Merits Hearing on March 1, 2012.**

##### **a. The Commission Has Jurisdiction to Set a Merits Hearing Pursuant to Regulation 67-601.**

Regulation 67-601 provides that "The Commission may, on its own motion, order a hearing" once "a conflict arises." Citing no statute, caselaw, or even a treatise, the Claimant makes a conclusory argument that the Hearing Commissioner erred in asserting jurisdiction pursuant to Regulation 67-601.

It is well-established that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581

(2000). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quotation omitted). Thus, we must follow the plain and unambiguous language in a statute and have "no right to impose another meaning." *Id.*

It cannot reasonably be argued that the words "the Commission may, on its own motion, order a hearing" once "a conflict arises" mean anything other than the Commission may order a hearing once a conflict arises. The Panel finds that Regulation 67-601 provides a mechanism for the Commission to order that a merits hearing proceed once a conflict has arisen.

It cannot be argued that in a denied mental/mental claim no conflict had arisen. The pleadings themselves are evidence of a conflict, as the claimant, in such a case, alleges an entitlement to benefits under the Act, and the defendants deny both the claimant's entitlement to benefits and also the facts alleged by the claimant. Here, the Claimant alleged that she was "injured when she was physically assaulted by her employer" and the Defendants denied the Claimant suffered a compensable injury. See Forms 50 and 51. Therefore, the Panel finds as a fact that a conflict had clearly arisen in this claim. The Panel further finds as a fact that the Hearing Commissioner properly asserted jurisdiction over this claim pursuant to Regulation 67-601.

**b. The Claimant Either Affirmatively Waived Any Objection to Going Forward on March 1, 2012, or Any Objection Was Not Preserved For Review.**

At the March 1, 2012 hearing, counsel for the Claimant failed to make an objection to going forward with a merits hearing. The Claimant's counsel was specifically asked "Are there any objections to APAs, jurisdiction, venue, or any other matter?" Tr. 5. The response was "No, Your Honor." *Id.* After the Commissioner outlined the Claimant's position on the record – with no mention of any objection to going forward – the Commissioner asked again "Anything in

addition to that with regard to the Claimant's position, sir?" Tr. 6. The response was, again, "No, Your Honor." Id. The witness testimony then proceeded. At the end of the hearing, counsel for the Claimant was specifically asked, "Anything else?" Tr. 110. The response was "No, sir." Id. No objection was lodged by the Claimant, on the record, to going forward on March 1, 2012. Therefore, any objection to personal jurisdiction, notice, venue, or any similar issue was waived.

In the alternative, the Panel specifically finds that any objection of the Claimant to going forward on March 1, 2012 was not preserved for review due to the Claimant's failure to raise the issue and obtain a ruling thereon. See Poch v. Bayshore Concrete Prods., 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

**c. Subject Matter Jurisdiction Was Present at the March 1, 2012 Hearing.**

The only "jurisdictional issue" which cannot be waived is subject matter jurisdiction. "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." Majors v. S.C. Sec. Comm'n, 373 S.C. 153, 159, 644 S.E.2d 710, 713 (2007). "The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental." Peterson v. Peterson, 333 S.C. 538, 547, 510 S.E.2d 426, 431 (Ct.App.1998). The General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over an employee's work-related injuries. Poch v. Bayshore Concrete Prods., 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

"The Workers' Compensation Act provides the exclusive remedy against an employer for an employee's work-related accident or injury." Posey v. Proper Mold & Engineering, 378 S.C. 10, 661 S.E.2d 395 (Ct. App. 2008) (citing Edens v. Bellini, 359 S.C. at 441, 597 S.E.2d at 867

and Fuller v. Blanchard, 358 S.C. 536, 541, 595 S.E.2d 831, 833 (2004). See also Strickland v. Galloway, 348 S.C. 644, 646, 560 S.E.2d 448, 449 (Ct.App.2002) ("In circumstances in which the South Carolina Workers' Compensation Act covers an employee's work-related accident, the Act provides the exclusive remedy against the employer.").

At no point was subject matter jurisdiction an issue. Via the Form 50, the Claimant alleged that the Claimant and the employer were subject to the Workers' Compensation Act and that the employer/employee relationship existed. See Commission's file. Via the Defendants' Form 51, the Defendants agreed that the parties were subject to the Workers' Compensation Act and that the Claimant was an employee on the date of accident. Id. The Claimant testified that she was an employee of Dolphin Cove Marina at the time of her alleged injury. Tr. 9-11. She testified that she suffered a mental injury occurring as part of her job at Dolphin Cove Marina. Thus, the Workers' Compensation Commission was vested with exclusive original jurisdiction to adjudicate a claim for an injury occurring at work.

As subject matter jurisdiction was present, and any other objection to going forward was waived and/or not preserved for review, the Panel finds that the Commissioner correctly proceeded with a merits hearing on March 1, 2012.

**2. The Panel Finds that The Claimant Did Not Carry Her Burden of Proving She Suffered a Compensable Mental/Mental Injury.**

After extensively considering and carefully weighing the evidence, the Panel agrees with the Hearing Commissioner that the March 12, 2010 incident did not occur as testified to by the Claimant. The Panel gives great weight to the testimony of David Race, David Ackerman, Thomas Blocker, and Mike Sage. The Panel gives little weight to the testimony of the Claimant.

In support of this decision, the Panel notes that the Claimant agreed that the Defense called to the stand everyone who witnessed (or heard) or could have witnessed (or heard) the events of

March 12, 2010. Tr. 53-54. As outlined above, each and every witness to the event testified that the Claimant interrupted a meeting, began yelling, and would not leave the meeting, despite being asked to do so. Tr. 84-85, 91-93, 99-100, 106-107. Each and every witness to the event, besides the Claimant, testified that David Race asked the Claimant to leave, but she refused. Tr. 84-85, 91-93, 99-100, 106-107. Each and every witness testified that David Race simply pushed the Claimant outside the door when she refused to leave and that he did not shove her three times down the hallway. Tr. 84-85, 91-93, 99-100, 106-107. Further, not one of the witnesses corroborated the Claimant's story of being told by David Race that he would "make her life a living hell" or that she would feel like she had "been kicked to the curb." Tr. 84-85, 91-93, 99-100, 106-107.

With regard to the precipitating event, this Panel finds that the event that began the dispute was the allegations that the Claimant was "causing hate and discontent" in the restaurant, and not any allegations of vandalism. At the hearing, the Claimant testified that she asked at the meeting who had been saying that she was causing hate and discontent. Tr. 36-38. David Ackerman testified that he left his job because of the Claimant's interference in the restaurant. Tr. 90. David Race testified that the current restaurant manager also complained of the Claimant's interference in the restaurant. Tr. 83. David Ackerman testified that part of what the Claimant was yelling at the meeting was that someone was "saying that she was starting trouble. . . ." Tr. 91. Tom Blocker testified that the Claimant was yelling, not about an insurance claim, but about the allegations of "having creating [sic] hate and discontent at the café." Tr. 99. Mike Sage testified that the Claimant interrupted the meeting and "wanted to know why everybody was saying that she was causing hate and discontent in the restaurant." Tr. 105.

Considering that the greater weight of the evidence supports a finding that the events of October 12, 2010, occurred as testified to by David Race, David Ackerman, Tom Blocker, and

Mike Sage, then this Panel must determine whether those facts as presented arise to the level of "unusual or extraordinary circumstances of employment."

The evidence is clear that it was not unusual or extraordinary for the Claimant and Mr. Race to touch. As stated, they are half-siblings. APA 1. The Claimant testified that she cleaned Mr. Race's catheter after he had a surgery. Tr. 41-42. The Claimant also admitted under cross-examination that David Race has touched her before, given her hugs, helped her walk over uneven terrain, etc. Tr. 55-56.

Further, the evidence is clear that the Claimant has caused trouble in the restaurant for years, as evidenced by the testimony of David Ackerman, who quit his job at the restaurant due to the Claimant's interference and the testimony of David Race, who indicated that the current bar manager complained of the Claimant's interference. Tr. 90, 83. Thus, it is not unusual or extraordinary for the Claimant to be accused of causing trouble in the restaurant.

Although multiple witnesses indicated that David Race did tell the Claimant to get the "hell" out of his office, the evidence is clear that it is not unusual for David Race to curse from time to time at the Marina. Each witness, including the Claimant, agreed that David Race does curse at work from time to time. Tr. 84-85, 91-93, 99-100, 106-107.

Finally, this Panel, like the Hearing Commissioner, finds that the Claimant's claim involved normal employer/employee relations, specifically the Claimant being instructed by her supervisor to limit her involvement in the restaurant. In fact, the Claimant agreed that, immediately prior to the meeting in question, David Race talked with her about allegations that she was causing hate and discontent in the restaurant. Tr. 36. David Race testified that he told the Claimant that "she would no longer be doing any of the activity up there as far as the bar is concerned." Tr. 83. The Panel finds that the precipitating event to the March 12, 2010 encounter

was David Race's instruction to the Claimant regarding the scope of her employment as applied to her involvement in the restaurant.

The Panel further finds that this instruction did not occur in an unusual or extraordinary manner. . The Claimant testified that David Race approached a window in the Claimant's office and instructed her to stop texting Portia. Tr. 35. He then indicated that the Claimant caused hate and discontent in the restaurant recently. Id. There is no testimony that this interaction was performed in an unusual or extraordinary manner or that anyone could even overhear the conversation.

Based on the above, the Panel agrees with the Hearing Commissioner and finds that the Claimant did not suffer a compensable mental-mental injury because what happened on October 12, 2010 is not compensable under the Act.

**3. The Panel Finds that the Medical Evidence Submitted is Moot in Light of The Finding That The Claimant Did Not Demonstrate that She Was Subjected to Unusual or Extraordinary Circumstances of Employment.**

The law is clear that a Claimant must prove two prongs in a "mental/mental" claim. The first is that she was subjected to unusual or extraordinary circumstances of employment; the second is that the unusual or extraordinary circumstances of employment caused psychological injury. See Frame v. Resort Services Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004). Frame states specifically that

In order for [a claimant] to recover workers compensation benefits, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

In this case, the Claimant fell well short of sustaining her burden as to the first prong. Thus, the Panel does not need to even consider any type of medical evidence. The Claimant's claim necessarily fails.

**4. The Panel Finds that, Even if The Medical Evidence Were Not Moot, That It is Unworthy of Credence Based on the Additional Evidence in the Record.**

**a. Medical Evidence**

The Claimant initially presented to MUSC indicating that she suffered “a history of verbal abuse” by her brother in the workplace that apparently consisted primarily of vulgar speech and every demeaning remarks about work performance.” Claimant’s APA 72. The Claimant described the October 12, 2010 incident as involving “her brother’s yelling at her and shoving her down the hall.” *Id.* The Claimant described the incident as “my boss is also my brother (78 years old) has been verbally abusing me all the time, and he also started shoving me down the hall yesterday, made a lot of threats and now I’m having to deal with pressing charges on my brother issues.” Claimant’s APA 66. The Claimant indicated that this incident reminded her of several incidents of extreme distress from her past, including physical violence between her and her first husband. Claimant’s APA 72. The Claimant complained of “incessant crying, couldn’t catch my breath/hyperventilating, also 25 years ago I was a DV victim, and this incident has triggered feelings regarding that, anxiety, and fear.” Claimant’s APA 67. Therapy was recommended. Claimant’s APA 73.

The Claimant attended counseling/therapy sessions with Dr. Smith (psychologist) on November 3, 2010 (Claimant’s APA 62), November 23, 2010 (Claimant’s APA 60), April 26, 2011 (Claimant’s APA 58), May 3, 2011 (Claimant’s APA 56), May 10, 2011 (Claimant’s APA 51), May 20, 2011 (Claimant’s APA 49), May 25, 2011 (Claimant’s APA 46), June 7, 2011 (Claimant’s APA 44), June 23, 2011 (Claimant’s APA 42), July 5, 2011 (Claimant’s APA 40), July 12, 2011 (Claimant’s APA 38), July 20, 2011 (Claimant’s APA 33), August 4, 2011 (Claimant’s APA 31), August 9, 2011 (Claimant’s APA 27), August 16, 2011 (Claimant’s APA 25), August 23, 2011 (Claimant’s APA 23), September 9, 2011 (Claimant’s APA 18), September

15, 2011 (Claimant's APA 15), September 21, 2011 (Claimant's APA 13-14), October 5, 2011 (Claimant's APA 6-7), October 14, 2011 (Claimant's APA 10-11), and October 19, 2011 (Claimant's APA 9, 12). The Claimant was not seen again by Dr. Smith after October 19, 2011. At no point in any of these evaluations did the Claimant mention fecal incontinence. While she mentioned one episode of diarrhea (Claimant's APA 31), there is no indication that the diarrhea complaint is related in any way to the October 12, 2010 incident. On two occasions she mentioned a muscle spasm in her face. Claimant's APA 46, 23. Otherwise, no complaint was lodged regarding a facial tic.

On May 9, 2011, the Claimant underwent a more comprehensive examination by a medical physician, Dr. Guille (psychiatrist). Claimant's APA 53-55. She again indicated that, on October 12, 2010, her brother "became agitated and angry and physically pushed her three times." Claimant's APA 53. Since that time, she claimed she was "not able to hold it together," was "overwhelmed by everything," and was "unable to function." *Id.* She complained of tearfulness and excessive fatigue which preceded the incident but was worse afterwards. *Id.* She complained of additional problems, including shakes, difficulty sleeping, poor concentration, etc. but again there was no indication of any fecal incontinence. Also, Dr. Guille noted that "there is no current evidence of lupus flare." Claimant's APA 55. Dr. Guille indicated that the Claimant's mood and energy would benefit from reinstating CPAP for obstructive sleep apnea. *Id.* As indicated above, the Claimant conceded that fecal incontinence is a important symptom which, allegedly, had an significant effect on her life. Yet, she does not mention it whatsoever to Dr. Guille at this visit.

The Claimant was seen again by Dr. Guille on July 13, 2011. Claimant's APA 35-37. The Claimant complained only of "improvement in mood, concentration, sleep and anxiety" although she was continuing to complain of fatigue, sleep disturbance, poor concentration, low mood, and

being easily tearful. Claimant's APA 36. Again, there is no mention of facial tics or fecal incontinence. The Claimant's next visit with Dr. Guille on August 4, 2011 shows that the Claimant continued to complain of psychological symptoms but, again, no mention of facial tics or fecal incontinence. Claimant's APA 29-30. She was seen by Dr. Guille again on September 7, 2011, again complaining of psychological problems but no mention of fecal incontinence or a facial tic. Claimant's APA 20-22.

On September 8, 2011, Drs. Guille and Smith prepared a joint letter to the Social Security Administration indicating that the Claimant is unable to work and that she cannot return to work until her symptoms improve significantly. On October 5, 2011, Dr. Guille prepared a letter indicating that the Claimant's "animals accompanying her is necessary to her mental health treatment." Claimant's APA 8.

The Claimant's final appointment with Dr. Guille was October 5, 2011. She was noted to have a relatively stable mood and more positive feelings which she attributed to her husband, her friends, and her upcoming move to Puerto Rico. Claimant's APA 4.

Notably, via letter dated February 16, 2012, Dr. Smith (psychologist) states that the Claimant reported to him that Mr. Race pushed her 3-4 times, all while verbally abusing her. Claimant's APA 1. The Claimant also "reported numerous instances of verbal abuse (yelling, making demeaning remarks in front of other) by her half-brother in the past." *Id.* However, the Claimant reported that the October 12, 2010 injury was the first and only time he had been "physically aggressive with her." *Id.* Dr. Smith indicated that the Claimant's history of being a victim of domestic violence made her uniquely and especially vulnerable to psychological harm related to the incident at work with her half-brother. *Id.* The Claimant claimed to him that she had significant problems with mood (depression and anxiety), concentration, and her physical health

which she believes were due to the October 12, 2010 injury. Id. Dr. Smith states that, within a reasonable degree of professional certainty, the Claimant's current psychological impairments are indeed causally related to the assault she experienced at her place of work ( ie being berated and shoved by her half-brother). Id. Dr. Smith indicates that if not for this incident, the Claimant would not be experiencing the degree and severity of the psychological and physical symptoms for which she is currently suffering. Id. Dr. Smith simply states the Claimant's medical condition, in turn, exacerbate the emotional distress that the Claimant experiences. Claimant's APA 2. Dr. Smith indicated that the Claimant is unable to return to work and that she cannot return to work "without significant improvement." Id. Dr. Smith indicated that "without ongoing medical and psychological intervention, these problems are very unlikely to resolve." Id.

The Claimant also treated with Dr. Oliverio (internal medicine). See Claimant's APA #2. Dr. Oliverio wrote the Claimant out of work from October 12, 2010 to October 18 2010. Claimant's APA 78. He then wrote her out again until October 22, 2010. Claimant's APA 77. However, Employer/Carrier's APA 91 shows that the Claimant actively solicited the work note, calling and asking for a work excuse extension. Notably, the Claimant was complaining of muscle spasms in her back, so it is reasonable that the work excuse extension was granted for back pain, which is not a part of this claim. See Employer/Carrier's APA 91. Then, on October 22, 2010, he wrote her out of work for an additional two (2) weeks. Claimant's APA 76. Finally, he wrote her out of work from November 5, 2010 until November 19, 2010. Claimant's APA 75. The Claimant visited Dr. Oliverio on June 2, 2011 complaining of a rash on the parts of her body exposed to the sun. Employer/Carrier's APA 85. While she complained of "a difficult time emotionally," no other complaints were noted. Id. She was seen again on June 23, 2011 complaining of back pain, exacerbated by trying to get in shape by exercising. Employer/Carrier's APA 83. Other than the

rash mentioned above, there were no other complaints. Id. On July 11, 2011, the Claimant called to complain of a sore throat and also to check on medical records which were supposed to be sent to disability. Employer/Carrier's APA 82. On July 15, 2011, the Claimant visited Dr. Oliverio to complain for right sided flank and abdominal discomfort. She was referred for a CT of the abdomen and pelvis, but no other complaints were noted. Employer/Carrier's APA 80. Via questionnaire dated July 21, 2011, Dr. Oliverio diagnosed the Claimant with Post-Traumatic Stress Disorder and recommended additional psychiatric care. Claimant's APA 74. He indicated that the Claimant had an obvious work-related limitation in function due to her mental condition. Claimant's APA 74.

The Claimant has also treated with Dr. Bumgartner, neurologist, to whom she did mention her alleged "rectal spasm" but did not mention fecal incontinence. Claimant's APA 81. Considering the Claimant's allegation that the rectal spasms and fecal incontinence were caused by stress, it does not make sense to the Panel that the Claimant would not mention it to her psychologist or her psychiatrist, with whom she had an ongoing treatment relationship, but she did mention it to Dr. Bumgartner, whom she apparently saw only one time. It also does not make sense to the Panel that the Claimant complained of rectal spasms to Dr. Bumgartner on September 27, 2011, but she did not mention this complaint to Dr. Smith (psychologist) on her visits on September 21, 2011 or October 5, 2011, nor did she mention this complaint to Dr. Guille (psychiatrist) on her September 7, 2011 or October 5, 2011 evaluations.

She was seen by Dr. Klatchko (pulmonologist) on May 26, 2011. The Claimant indicated to Dr. Klatchko that she has a history of nighttime awakening and difficulty falling asleep, which predated her alleged work injury. Claimant's APA 83. Notably, Dr. Klatchko indicates that the Claimant is "euthymic" which the Panel understands to mean a non-depressed, reasonably positive

mood. Claimant's APA 84. There was no indication of a facial tic or rectal spasm. Id. The Claimant visited Dr. Klatchko again on July 7, 2011, where her test results were noted to be "consistent with sleep onset and maintenance insomnia." Employer/Carrier's APA 96. She was also complaining of back pain and was scheduled for an MRI. Id. While she indicated a psychiatric history of anxiety, depression, and PTSD, the Claimant lodged no psychological complaints at that visit. Id. The Claimant last visited Dr. Klatchko on August 4, 2011 where she again complained of neurogenic syncope while in the spirometry room. Employer/Carrier's APA 94. The Claimant was given the choice of being taken home by her family versus being admitted to the emergency room. Id. The Claimant chose to be admitted to the ER. Id. The ER records were introduced which show the Claimant's statements to the ER that her physician overreacted and that she had been dealing with these symptoms for years. Employer/Carrier's APA 110. Despite specifically choosing to go to the ER, the Claimant told the Emergency Room that her physician instructed her to go to the ER. Contrast Employer/Carrier's APA 94 with 110. Once at the ER, the Claimant stated that she did not need to be admitted and that she declined to speak with a hospitalist to discuss admission. Employer/Carrier's APA 111. It is not clear to the Panel why she chose to go to the ER when Dr. Klatchko offered to simply permit a family member to take her home.

The Claimant has also seen Dr. Roane (rheumatologist). She saw Dr. Roane on September 10, 2010, which pre-dated the October 12, 2010 incident. At that visit, the Claimant complained of problems resulting from her lupus. Claimant's APA 87. She also complained of migraines, aching all over, and neurological symptoms such as word finding and memory. Id. Dr. Rhoane's records reveal that the Claimant was on Levothyroxine, Cymbalta, Wellbutrin, Tramadol, Restoril, Clonazepam, Nexium, Meoprolol, prednisone, Hydrocodone, and Maxalt. Id. The Claimant was

seen by Dr. Roane again on November 1, 2010 where she indicated that the October 12, 2010 incident "has left her somewhat traumatized." Claimant's APA 86. Interestingly, on this date, *after* the October 12, 2010 incident, the Claimant felt "that her lupus is under better control." Claimant's APA 86. The Claimant also saw Dr. Roane on August 15, 2011, where she did not make any complaint of a facial tic, rectal spasms, or fecal incontinence. Employer/Carrier's APA 77-78.

The Claimant was evaluation from a vocational standpoint by Jean Hutchinson. Claimant's APA #6. It is not clear whether Ms. Hutchinson ever met the Claimant, as her report indicates simply that she reviewed the case file. Claimant's APA 89. There is no indication of the results of an interview with the Claimant, not even a telephone interview. See Claimant's APA #6. Ms. Hutchinson's report indicates that the Claimant was physically assaulted, and that her brother/supervisor shouted obscenities at her, that he threatened her, and that he began shoving and pushing her. Claimant's APA 90. Ms. Hutchinson concludes that the Claimant is unable to return to work at the Marina and at any job which she held in the past. Claimant's APA 93. Ms. Hutchinson further concludes that the Claimant is unable to return to work even at a sedentary level and thus cannot engage in substantial gainful work activity. Claimant's APA 93.

The Claimant also introduced into evidence a Disability Determination Explanation as APA #12. To the disability determinator, she made multiple complaints, including rectal spasms and incontinence. Claimant's APA 109. She alleged a worsening to her pre-existing depression and suicidal thoughts since the October 12, 2010 injury. Claimant's APA 109. She claimed an inability to work as of October 12, 2010. Claimant's APA 108. The disability determinator specifically stated that the Claimant's subjective statements are only "partially credible" and that, while her conditions "could reasonably be expected to produce pain, difficulty walking &

functional limitations, but not to the degree as described by the clmt.” Claimant’s APA 119. Her symptoms were only “somewhat consistent” with the objective evidence. Id.

The Claimant’s application for disability was entered into evidence as Claimant’s APA #13. The undersigned notes that the Claimant indicated that “in all honesty, I was beginning to work less and less at my last job because if I did not feel good, I would stay home or clock out and lay on a couch until I felt better (my brother was pretty understanding about my lupus and fibromyalgia). But the episode where he ‘exploded’ and assaulted me broke my heart. broke my will – it caused such an emotional and stressful effect that I have ‘gone downhill’ ever since. I doubt I will ever be what I used to be.” Claimant’s APA 133.

The Claimant was also evaluated by Dr. Hanger, who diagnosed her with neurocardiogenic syncope. Employer/Carrier’s APA 114. Although the note is undated, a handwritten intake form was submitted with it, dated August 8, 2011. Employer/Carrier’s APA 115. Via the handwritten note, the Claimant fails to mention anything about a facial tic, rectal spasms, or fecal incontinence. Id. The Claimant indicates, however, that she spends 30 to 45 minute per day on the treadmill, when possible. Employer/Carrier’s APA 116.

Medical records were also introduced from the Claimant’s family physician in Knoxville, where she lived before she moved to Charleston. Employer/Carrier’s APA #7. They reveal the Claimant had ongoing problems with anxiety, depression, lupus, and other issues. Id.

**b. The Medical Evidence Fails to Provide the Requisite Medical Causation Pursuant to Section 42-1-160**

Section 42-1-160 requires that mental injuries arising out of and in the course of employment unaccompanied by physical injuries are not compensable unless the Claimant establishes “the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.”

In this case, the Claimant's treating physicians have rendered their diagnoses and treatment plans based solely on the Claimant's version of the events of October 12, 2010. See APA 1, 72, 53, 2, et seq. The Panel specifically and emphatically finds that the events of October 12, 2010 did not occur as indicated by the Claimant. As outlined herein (with citations to the record throughout this opinion, including Tr. 84-85, 91-93, 99-100, 106-107), the Panel finds that the Claimant was the verbal and physical instigator of the incident. The Panel further finds that David Race approached the Claimant at her desk and instructed her in the scope of her employment which is to not involve herself in the operations of the Marina restaurant. The Panel further finds that this instruction was not given in an unusual or extraordinary manner. The Panel also finds that the Claimant interrupted a meeting, to which she was not invited, and began yelling and cursing. The Panel finds that David Race asked the Claimant numerous times to leave, but she refused. Finally, David Race approached the Claimant, which caused her to "buck up" at his approach. The Panel finds that, once he reached her, he placed his hands upon her shoulders and pushed her out of his office; with a minimal amount of force, only sufficient to move her outside the threshold of the door. The Panel finds that David Race did not tell her to get the "fuck" out of his office, that he did not tell her that he would "make her life a living hell," and did not tell her that "she would feel as if she had been kicked to the curb every day."

**There is no medical evidence or report that establishes that the facts as found by the Panel caused any type of mental injury or aggravated the Claimant's pre-existing conditions. Thus, the Claimant has failed to carry her burden of proof pursuant to Section 42-1-160.**

In addition, the Claimant has failed to prove medical causation, as the medical records she did produce do not support her claim. As indicated above, the Claimant claims to suffer from fecal incontinence, but attended twenty-two (22) counseling/therapy sessions with Dr. Smith and never

once mentioned fecal incontinence. The Claimant also never complained of fecal incontinence to Dr. Guille, Dr. Oliverio, or Dr. Klatchko. While the Claimant did mention it to Dr. Bumgartner, the Panel chooses to disregard those statements of the Claimant. This decision to disregard is based on the fact that the Claimant complained of rectal spasms to Dr. Bumgartner on 9/27/11 but did not mention it to Dr. Smith on 9/21 or 10/5, nor did she mention it to Dr. Guille on 9/7 or 10/5. There is no explanation in the record of why she would mention these alleged rectal spasms and/or fecal incontinence – caused by mental stress and anguish - to a neurologist, with whom she was treating for neck pain and numbness in her hands. APA 81. The Panel, in its authority as Finder of Fact, chooses to disregard the Claimant's testimony with regard to fecal incontinence as it is not supported by the medical records in evidence.

The Claimant further complains of a facial tic resulting from the October 12, 2010 incident. Again, the Claimant attended twenty-two (22) counseling sessions with Dr. Smith and never once mentioned a facial tic. To be sure, she mentioned a muscle spasm in her face on two occasions. Claimant's APA 46, 23. However, the Claimant never introduced any evidence or explained in any way whether a facial tic is the same as a muscle spasm. The Panel gives greater weight to the multiple medical records which fail to support the Claimant's claims, over that of the Claimant.

**5. The Panel Affirms the Decision of the Hearing Commissioner to Assess Hearing Costs.**

The law permits the Commission to order a party to pay hearing costs under certain circumstances. Specifically "if the Commission or any court before whom any proceedings are brought under this Title shall determine that such proceedings have been brought...without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought...them." SC Workers' Compensation Law Ann., § 42-1-80. The Hearing Commissioner found that the proceedings were brought "without reasonable grounds" and

assessed hearing costs against the Claimant.

The Claimant first argues that the Hearing Commissioner erred by disregarding relevant evidence in making his finding, specifically including a letter from the State of South Carolina, Office of the Governor, State Office of Victim Assistance, dated May 25, 2011, which states:

“Your claim meets the eligibility criteria established by state law. However, because the incident occurred while you were on the job, your claim with Worker’s Compensation would have to be resolved with a final conclusion before the claim can be forward to the Processing Services Department for payment consideration. After your claim has been resolved with Worker’s Compensation and there are still compensable expenses, please provide this agency with the documentation from Worker’s compensation. We will be glad to consider your bills at that time. Because the State Office of Victim Assistance is the payer of last resort, you must ensure that all bills have been filed with your Worker’s Compensation carrier before submitting them to this office.”

The Claimant asserts that since she believed that she was required to resolve her claim within the Workers’ Compensation system, the Hearing Commissioner should not have found that the claim was prosecuted without reasonable grounds. However, the Claimant cites no testimony in the record that the May 25, 2011 letter from the State Office of Victim Assistance had anything to do with her decision to bring a workers’ compensation claim. Indeed, the Claimant filed a Form 12A on October 13, 2010, the day after the accident. The filing of the Form 12A clearly demonstrates that the Claimant considered herself to be injured as a result of an occurrence related to her work and that the Claimant desired to submit a First Report of Injury for her “mental stress” with “no physical injury.”

The Claimant’s second argument against the assessment of hearing costs is that the Hearing Commissioner should not have ordered the Claimant to pay the hearing costs for a hearing which the Commissioner ordered himself pursuant to Regulation 67-601.

The Panel notes that the Claimant continuously took the position that this case was compensable and that she was going to pursue it. See the March 26, 2012 Administrative Order.

Further, the Claimant did not object on the record to the hearing going forward. Tr. 6.

Despite the overwhelming evidence disputing her claim, the Claimant insisted on pursuing this claim, and because of the overwhelming evidence disputing her version of events, the Hearing Commissioner assessed hearing costs. At no point throughout the hearing or on appeal has the Claimant alleged that, if she were given more time, then she would have obtained additional, supporting evidence for her claim, which would provide a legitimate basis for her to have pursued this claim. She demonstrated no prejudice in going forward at the March 1, 2012 hearing as opposed to any other day. She has alleged no evidence that would be different and no avenue of cross-examination that, had she been given more time, would have given credence to her claim. Thus, whether the Commission waited until the Claimant requested a hearing, or set a hearing on its own Motion, the evidence submitted by the Claimant would be the same, and it would utterly fail to support any type of award.

The Panel agrees with the Hearing Commissioner that this case was prosecuted "without reasonable grounds." The Panel is also "at an utter loss to understand why this claim was ever filed" and agrees with the assessment of hearing costs.

#### **FINDINGS OF FACT**

After a thorough review of the evidence, including the hearing testimony, and medical evidence, exhibits, and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission File in this matter, and arguments of counsel, the Appellate Panel finds as a fact:

1. That the parties are subject to the Workers' Compensation Act, as the Claimant was employed with the Marina and the incident of October 12, 2010 occurred in the course and scope of her employment.

2. That greater weight should be given to the testimony of the defendant's witnesses, over the testimony of the Claimant.
3. We specifically and emphatically find that the Claimant's employment conditions were not extraordinary and unusual in comparison to the normal conditions of said employment, and her request for benefits is denied.
4. As a result of finding of fact #3, any causation established by medical evidence is rendered moot.
5. As outlined above and below, even if any medical causation were not rendered moot, the medical evidence nevertheless fails to satisfy the standards of Section 42-1-160.
6. As the Panel has found Claimant's mental injury is not compensable, her claims for aggravation to her lupus, fibromyalgia, and two facial tics are not compensable as they allegedly emanate from her mental claim.
7. As the Panel is at an utter loss to understand why this claim was ever filed, hearing costs of \$1,014.86 are assessed to the Claimant as we find this case was prosecuted without reasonable grounds. This finding is an affirmation of the Hearing Commissioner's assessment of hearing costs, not separate assessment of \$1,014.86.
8. That the claimant's average weekly wages is \$555.69, which results in a compensation rate of \$370.48. We base this finding on the Form 20 filed by the Employer. The Claimant introduced no documentary evidence to support a deviation from the figures shown by the Form 20. We decline to use the Claimant's testimony that she earned \$19 per hour for work during the week, and \$20 per hour on the weekend, to calculate her compensation rate. The Claimant was not clear in her testimony about how many hours she worked, and she also admitted to taking lengthy and extensive vacations. Plus, work at the Marina is

seasonal, so we give greater weight to the figures on the Form 20.

9. That the Claimant was the aggressor in the October 12, 2010 incident. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which I give great weight.
10. The Panel notes that David Race testified that as he approached the Claimant, she “buckle[d] up.” Tr. 84-85. Tom Blocker testified that, as David Race approached the Claimant, she “bulled up to him and got right in his face.” Tr. 99-100. Mike Sage testified that, as the Claimant was approached by David Race, the Claimant “invaded his space and came into him a little bit.” Tr. 107. Although David Ackerman did not testify to any physically aggressive actions on the Claimant’s part, the Panel specifically finds that the Claimant “bucked up” when approached by David Race and instigated the physical touching between the Claimant and David Race.
11. That the Claimant was also the “instigator” of the event, in a non-physical sense.
12. That that the Claimant interrupted a business meeting between David Race, Tom Blocker, David Ackerman, and Mike Sage, a meeting to which she was not invited. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.
13. That the Claimant was loud, screaming, yelling, and making accusations when she interrupted this meeting. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.
14. That David Race instructed the Claimant numerous times to leave his office, which she ignored. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.

15. That David Race placed his hands on the Claimant's shoulders to guide her out of his office because she would not leave. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.
16. That, in the process of "guiding" the Claimant out of his office, David Race placed pressure on the Claimant's shoulders to move her but that the pressure constituted only a mild amount of force.
17. That David Race did not shove the Claimant three times down the hallway. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.
18. That David Race did not tell the Claimant that she would feel like she was being kicked to the curb every day and also that he did not tell her that he would make her life a living hell. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight.
19. That the basis of the altercation did not involve Dickie's trailer or any request of the Claimant to file an insurance claim for damage to the trailer. This finding is based on the testimony of the Claimant and David Race, who both indicated that the immediately precipitating event was an allegation that she was "causing hate and discontent" in the restaurant.
20. That the basis of the altercation was the Claimant's unauthorized involvement in the restaurant. We base this finding on the testimony of David Ackerman (who resigned due to the Claimant's interference), the testimony of David Race (that the new bar manager, Portia, threatened to resign based on the Claimant's interference), and the testimony of the Claimant (that the immediately precipitating event was an allegation that she was causing

“hate and discontent” in the restaurant).

21. That the October 12, 2010 incident involved normal employer/employee relations. We find that the Claimant was being instructed by her supervisor, David Race, to limit her involvement in the Marina, which is an issue relating to the scope of her employment. In the process of that normal employer disciplinary action (and/or demotion), the Claimant became agitated.
22. We find that David Race’s instruction to the Claimant to avoid the restaurant, given at her desk prior to the meeting in question, was not performed in an extraordinary or unusual manner. The Claimant testified that David Race approached a window in the Claimant’s office and instructed her to stop texting Portia. Tr. 35. He then indicated that the Claimant caused hate and discontent in the restaurant recently. Id. There is no testimony that this interaction was performed in an unusual or extraordinary manner or that anyone could overhear the conversation.
23. That David Race’s removal of the Claimant from the meeting in question was also not conducted in an extraordinary or unusual manner. David Race asked the Claimant multiple times to leave his office, to which she only became more belligerent. Mr. Race was forced to leave his desk, approach the door, and physically guide the Claimant out of his office. We find that these actions were not taken in an extraordinary or unusual manner. We further find that David Race instructed the Claimant to punch out and go home and that they would discuss the issue the next day. That action was also not performed in an unusual or extraordinary manner.
24. That David Race is in charge of the marina. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great

weight.

25. That David Race often curses while at the Marina and, thus, cursing is not unusual or extraordinary. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight. Notably, the Claimant admitted that Mr. Race often curses while at the Marina.
26. That David Race often yells while at the Marina and, thus, that yelling is not unusual or extraordinary. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight. Notably, the Claimant admitted multiple times that Mr. Race often yells while at the Marina.
27. That David Race often tells people what to do while at the Marina. This finding is based on the testimony of David Race, Tom Blocker, David Ackerman, and Mike Sage, to which we give great weight. Notably, the Claimant admitted that Mr. Race often tells people what to do while at the Marina.
28. That there is nothing unusual or extraordinary in the fact that, on October 12, 2012, David Race cursed, yelled, and told the Claimant what to do (ie, to get out of his office).
29. That Mr. Race touched the Claimant on the shoulders on October 12, 2010 but that touch was not unusual or extraordinary. It was not unusual or extraordinary for numerous reasons, including but not limited to because Mr. Race is the Claimant's brother and they touch from time to time. Indeed, the Claimant testified that she cleaned his catheter after his surgery, so clearly Mr. Race and the Claimant have touched each other. Further, it is not unusual or extraordinary because it is the action that the Claimant should have expected after standing in the doorway, berating those involved, and refusing to move or to leave.
30. The Panel give little weight to the Claimant's version of events occurring on October 12.

2010.

31. The Panel gives greater weight to the version of events testified to by David Race, David Ackerman, Tom Blocker, and Mike Sage.
32. The Panel affirms the Hearing Commissioner's finding with regard to the Claimant's physical size as compared to David Race and Tom Blocker, which is: I also note the Claimant's physical size, 5'8" and 200 pounds. See Employer/Carrier's APA 161. I note that David Race is approximately 80 years old and in poor health. I note that Tom Blocker is also of advanced age and requires use of a cane. I do not reasonably believe that the Claimant felt herself to be in danger from Mr. Race.
33. The Panel affirms the Hearing Commission's finding with regard to the informal demonstrations performed at the hearing, which is: I give little weight to the informal demonstrations performed at the hearing. I give greater weight to the spoken testimony of the witnesses.
34. The Panel affirms the Hearing Commission's finding with regard to the presentation and affect of the Claimant, which is: I find that the Claimant appeared at the hearing with an extremely emotional presentation. The Claimant cried on multiple occasions and even had to leave the room at least once to take a break from her testimony.
35. The Panel affirms the Hearing Commissioner's finding with regard to the compensability of the Claimant's testimony alone, which is: I find that, even if I were to believe the Claimant's testimony in its entirety, and discount completely the testimony of the defendants' witnesses, the story recounted by the Claimant nevertheless fails to qualify as usual or extraordinary conditions of employment.
36. That the medical evidence fails to support the Claimant's allegations that she suffered a

facial tic. While two instances of a facial tic were noted in her medical records, we find that the Claimant's complaints of a tic were exaggerated, as there is no reasonable explanation for her failure to report the alleged facial tic to her physicians during the course of her treatment.

37. That the medical evidence fails to support the Claimant's allegations that she suffered from rectal spasms and fecal incontinence. We base this finding on the fact that, despite her extensive psychological treatment, the Claimant made no complaints of rectal spasms or incontinence to Dr. Smith or Dr. Guille, save for one notation of diarrhea.
38. The Panel specifically finds that the one complaint of diarrhea in the medical records is different than the Claimant's complaint of an inability to control her bowels. See Tr. 15.
39. That the medical evidence fails to support the Claimant's allegations of an aggravation to her lupus and fibromyalgia. We are cognizant of certain records, including the February 16, 2012 letter from Dr. Smith, which ostensibly establishes causation. However, we find that his opinion was based on the Claimant's version of events, which is not true. Therefore, any causation stemming from that version of events must necessarily fail.
40. That any and all medical evidence introduced into evidence and based on the Claimant's version of events is unworthy of credence and fails to satisfy the Claimant's burden of proof pursuant to §41-1-160.
41. As we find that the Claimant's mental injury is not compensable, however, any medical evidence supporting her claim is rendered moot.
42. That the Claimant was noncompliant with treatment based on her failure to continue her medical treatment with MUSC after October 19, 2011.
43. That, even if the case were found to be compensable, the Claimant would not be entitled to

TTD after October 19, 2011.

44. The Panel specifically and emphatically finds that there is no reasonable basis for the Claimant to have brought this claim. We are cognizant that the claim was activated pursuant to a Petition for Hearing filed by the Employer/Carrier. We are also cognizant that the hearing was set pursuant to Regulation 67-601, not any pleading of the Claimant. However, the Claimant indicated at a telephone conference that she intended on pursuing her claim. The Claimant could have dismissed her case with prejudice at any time, but she did not do so. She prosecuted her claim, despite the fact that there was no legal or factual basis for doing so, and it is for that reason that we affirm the Hearing Commissioner's assessment of hearing costs in the amount of \$1,014.86, this sum being the of the cost of a hearing.
45. The Panel, like the Hearing Commissioner, is at an utter loss to why this claim was not only prosecuted, but later appealed to this Panel. The Claimant, at no point throughout the hearing or on appeal has alleged that if she were given more time she would have obtained additional, supporting evidence for her claim, which would provide a legitimate basis for her to have pursued this claim. She demonstrated no prejudice on appeal in the claim going forward at the March 1, 2012 hearing as opposed to any other day. She also has alleged no evidence that would be different and no avenue of cross-examination that, had she been given more time, would have given credence to her claim. Therefore, this Panel affirms the Hearing Commissioner's award of hearing costs in the amount of \$1,014.86. It is only after vigorous discussion that this Panel chooses not to assess a penalty against the Claimant for filing an appeal without merit.
46. The Panel finds that the counsel for the Claimant failed to make an objection to going

forward on March 1, 2012. Therefore, any objection to personal jurisdiction, notice, venue, or any similar issue was affirmatively waived.

47. In the alternative to Finding of Fact #46, the Panel also finds that the Claimant failed to preserve for review any objection to going forward on March 1, 2012, as no objection is noted in the Record.

48. The Panel finds that the Hearing Commissioner properly asserted subject matter jurisdiction over this claim since the Workers' Compensation Commission is vested with exclusive original jurisdiction to adjudicate a claim for an injury occurring at work, and it is undisputed that this claim involves an injury arising out of and occurring the course and scope of the Claimant's employment.

49. A conflict had arisen between the parties prior to the Commissioner's decision to set a hearing pursuant to Regulation 67-601. This finding is based on the pleadings and allegations of the parties.

### **CONCLUSIONS OF LAW**

In view of those Findings of Fact, and as provided in the South Carolina Code of Law, WE, THE APPELLATE PANEL, AFFIRM THE CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER AS IF FULLY SET FORTH HEREIN AND FURTHER CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to Posey v. Proper Mold & Engineering, 378 S.C. 10, 661 S.E.2d 395 (Ct. App. 2008), the Workers' Compensation Act provides the exclusive remedy against an employer for an employee's work-related accident or injury.
2. Pursuant to Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C.

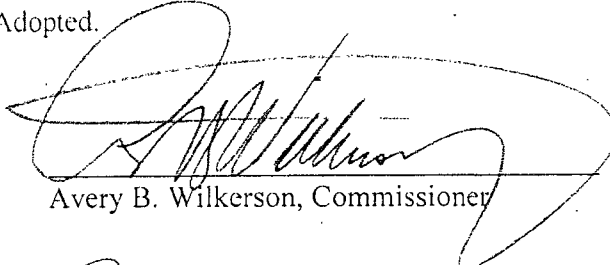
24, 491 S.E.2d 571 (1997), an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.

3. Pursuant to Regulation 67-601, the Hearing Commissioner properly asserted jurisdiction over this claim on its own motion because a conflict had arisen.

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** Commissioner Beck's Decision and Order dated July 25, 2012, is affirmed, and all statements and findings are adopted as if fully set forth here. Commissioner's Beck's decision shall remain in effect. Further, the above additional Findings of Fact and Conclusions of Law are hereby Adopted.

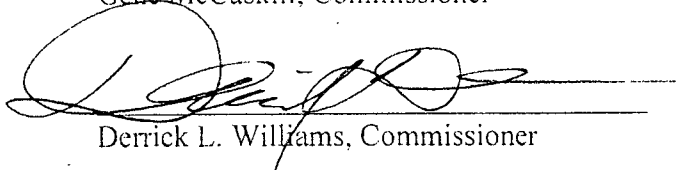
**AND IT IS SO ORDERED.**



Avery B. Wilkerson, Commissioner



Gene McCaskill, Commissioner



Derrick L. Williams, Commissioner

#### CERTIFICATE OF SERVICE

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

***By Valerie Deller on January 31, 2013***

**DECISION AND ORDER  
OF THE APPELLATE PANEL  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**SCWCC FILE NO.: 1014489**

Diane Fleher,

Claimant

v.

Dolphin Cove Marina,

Employer, and

Carolina Casualty Ins. Co.,

Carrier, Defendants.

Hearing held in Richland County  
South Carolina

Commission Panel: The Honorable Avery B. Wilkerson; The Honorable Gene McCaskill; The Honorable Derrick L. Williams

Per notice timely and properly served upon all Parties of Interest.

Appearances: Paul D.G. Ribeiro, Attorney for Claimant/  
Appellants

Lynnley D. Ross, Attorney for Defendants/  
Respondents

Filed:

1-31-13

## STATEMENT OF THE CASE

This matter was set for review and rehearing as requested by the Claimant pursuant to S.C. Code § 42-17-50 (1976). Claimant was represented by Paul D.G. Ribeiro, Esquire. Defendants were represented by Lynnley D. Ross, Attorney at Law. The Merits of this claim were addressed in a previous Order of the undersigned panel filed on January 31, 2013. The sole purpose of this Decision and Order is to sanction the Claimant for bringing an appeal without merit before the Commission.

## FINDINGS OF FACT

It is found as a fact that:

1. The merits of the Claimant's application for review and rehearing were decided in a separate Order of the undersigned Appellate Panel filed January 31, 2013. All findings of fact contained therein are hereby incorporated by reference.
2. The Commission specifically and emphatically finds that no reasonable basis was asserted at the hearing for the Claimant to have brought this claim.
3. The Commission is at an utter loss as to why this claim was appealed to the Full Commission and finds as a fact that the Claimant failed to present any adequate grounds for review and rehearing to the Full Commission.
4. After review of the Order of the Single Commissioner, the evidence submitted into the record at the Hearing, the objections raised in the Claimant's Form 30, the issues presented in the parties' briefs, the oral arguments made before this Panel, and all other evidence made part of the Commission's file, the Commission determines that this appeal was without merit.

**RULINGS OF LAW**

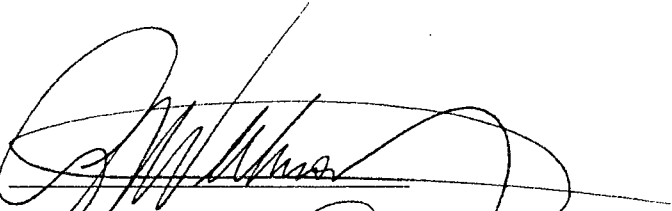
1. The merits of the Claimant's application for review and rehearing were decided in a separate Order of the undersigned Appellate Panel filed January 31, 2013. All rulings of law contained therein are hereby incorporated by reference.
2. The Commission has the authority to charge, in its sole discretion, the appellant a fee not to exceed two-hundred fifty dollars when it has determined that an appeal has been brought without merit. S.C. Code Ann. § 42-17-50 (1976); 25A S.C. Code Regs. 67-703 (1985).

**ORDER**

**IT IS THEREFORE ORDERED** that Claimant is charged an additional fee of two-hundred fifty dollars (\$250.00) for bringing an appeal without merit before the Commission for review and rehearing.

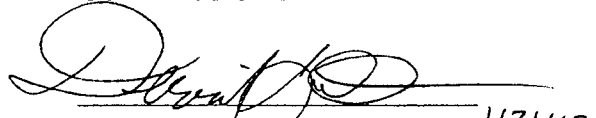
**IT IS FURTHERMORE ORDERED** that this fee shall be paid to the Commission within thirty days of the date of this Order.

**AND SO IT IS ORDERED!**



Avery B. Wilkerson,  
Commissioner

Gene McCaskill,  
Commissioner



Derrick L. Williams, 1/31/13  
Commissioner

**CERTIFICATE OF SERVICE**

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

By Valerie Deller on January 31, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Gene McCaskill, Derrick L. Williams, Commissioners

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WCC File No. 1014489

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Diane Fleher, Claimant, Appellant,

v.


Dolphin Cove Marina, Employer, and Carolina Casualty Ins. Co., Respondents.

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CERTIFICATE OF COUNSEL

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I certify that the Record on Appeal contains all material proposed to be included by the Appellants and not any other material.

  
\_\_\_\_\_  
Paul D. G. Ribeiro  
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8086 Rivers Avenue, Ste. A  
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pribeiro@wiggerlawfirm.com

Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Gene McCaskill, Derrick L. Williams, Commissioners

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WCC File No. 1014489

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Diane Fleher, Claimant, Appellant,

v.

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PROOF OF SERVICE

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I, Paul D. G. Ribeiro, attorney for the Appellant, do hereby certify that I have served the following named individuals and/or companies with a copy of the Record on Appeal by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked, on the date indicated below:

**PARTIES SERVED:**

Lynnley D. Ross, Esquire  
Willson Jones Carter & Baxley, P.A.  
421 Wando Park Boulevard, Suite 100  
Mt. Pleasant, SC 29464

August 21, 2013

  
\_\_\_\_\_  
Paul D. G. Ribeiro  
Wigger Law Firm, Inc.  
8086 Rivers Avenue, Ste. A  
N. Charleston, SC 29406  
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pribeiro@wiggerlawfirm.com

Attorney for Appellant

**RECEIVED**  
AUG 26 2013  
SC COURT OF APPEALS