

**RECEIVED**

**Mar 06 2026**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

Appeal from The South Carolina  
Workers' Compensation Commission

---

Cynthia C. Dooley, Commissioner  
Gene McCaskill, Commissioner  
R. Michael Campbell, Commissioner

---

Appellate Case No. 2025-000026  
WCC File No. 1921668

---

Evaristo Verdugo Morales, Claimant,

Respondent-Appellant,

v.

Insulation by Cohen's, LLC, Employer,  
and Builders Premier Insurance Company, Carrier,

Appellants-Respondents.

---

**RECORD ON APPEAL  
Volume II  
Pages 438-877**

---

MCDANIEL LAW FIRM  
Preston F. McDaniel (SC Br No. 3770)  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

GIBSON LAW FIRM, LLC  
Don C. Gibson (SC Bar No. 2466)  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

*Attorneys for Respondent-Appellant*

CLEMENT RIVERS, LLP  
Stephen L. Brown (SC Bar No. 66468)  
Robert P. Gruber (SC Bar No. 15581)  
Russell G. Hines (SC Bar No. 72100)  
Graydon V. Olive, IV (SC Bar No.: 105319)  
25 Calhoun Street, Suite 400 (29401)  
P.O. Box 993  
Charleston, South Carolina 29402  
(843) 720-5488  
*Attorneys for Appellants-Respondents*

**INDEX**

	<b><u>Page</u></b>
<b><u>Orders, Judgments, Decrees, or Decisions</u></b>	
Consent Order, filed April 14, 2020 .....	1
Decision & Order, filed January 11, 2021 .....	3
Decision & Order, filed March 22, 2022 .....	13
Order, dated October 3, 2022.....	27
Appellate Panel Decision & Order, filed April 4, 2023 .....	28
Administrative Order, dated October 30, 2023 .....	41
Decision & Order, filed June 21, 2024.....	43
Order, dated July 18, 2024.....	56
Appellate Panel Decision & Order, filed December 3, 2024 .....	57
Order denying Claimant’s Motion for Reconsideration, dated January 13, 2025.....	77
Order denying Defendants’ Motion for Reconsideration, dated January 13, 2025.....	79
<b><u>Transcripts</u></b>	
<i>Hearing Transcripts</i>	
Transcript of Hearing, dated April 26, 2021 .....	81
Transcript of Hearing, dated February 29, 2024 .....	157
<i>Deposition Transcripts</i>	
Deposition Transcript of Evaristo Verdugo Morales, dated September 25, 2023 .....	219
Deposition Transcript of Dr. Douglas Stofko, dated February 13, 2024 ....	250
<b><u>Other Material or Documents</u></b>	
Form 50, dated January 22, 2020.....	320
Form 50, dated June 16, 2020.....	322
Form 51, dated June 19, 2020.....	323
Functional Capacity Evaluation from Grace PT & Sports Rehab, dated October 23, 2020.....	325

Form 50, dated January 11, 2021.....	335
Form 14B, dated January 12, 2021 .....	336
Form 21, dated February 5, 2021.....	337
Form 51, dated February 5, 2021.....	338
Letter of Representation, dated February 26, 2021 .....	339
Emails between E. Courtney Gruber, Preston F. McDaniel, Kadoves (for Gibson), and Commissioner Taylor’s Administrative Assistant, with Reset Notice, dated March 24, 2021 .....	341
Defendants’ Prehearing Brief, dated March 25, 2021 .....	349
Letter, dated March 29, 2021.....	354
Letter, dated March 29, 2021.....	355
Reset Notice of Hearing, dated April 2, 2021 .....	356
Letter, dated April 8, 2021.....	357
Defendants’ Amended Prehearing Brief, dated April 9, 2021 .....	360
Claimant’s Prehearing Brief, dated April 12, 2021 .....	363
Letter and Form 27 Subpoena, dated April 13, 2021 .....	377
Claimant’s Amended Prehearing Brief, dated April 14, 2021 .....	385
Defendants’ 2 <sup>nd</sup> Amended Prehearing Brief and APA Submissions, dated April 15, 2021 .....	397
Letter, dated December 15, 2021.....	407
Order Instructions, dated February 23, 2022.....	409
Request for Reconsideration, dated March 24, 2022.....	412

Volume II

Return, dated April 1, 2022 .....	438
Letter, dated August 12, 2022.....	444
Form 30, dated October 14, 2022 .....	445
Appellant’s Brief, dated January 23, 2023 .....	470
Respondents’ Brief, dated February 7, 2023 .....	502
Notes for Decision, dated March 2, 2023 .....	519

Form 70, dated July 19, 2023 .....	520
Form 50, dated August 1, 2023 .....	521
Form 21, dated August 8, 2023 .....	526
Letter, dated August 22, 2023.....	527
Form 51, dated August 29, 2023 .....	532
Motion, dated August 29, 2023 .....	533
Letter, dated September 1, 2023 .....	541
Motion, dated September 7, 2023.....	543
Reply, dated September 18, 2023 .....	549
Amended Form 21, dated September 19, 2023 .....	555
Letter, dated October 4, 2023 .....	562
Letter, dated October 13, 2023 .....	564
Letter, dated October 18, 2023 .....	565
Dr. Poletti’s IME, dated November 21, 2023.....	568
Notice of Hearing, dated December 1, 2023 .....	571
Letter and Form 58, dated February 8, 2024 .....	572
Claimant’s 2 <sup>nd</sup> Amended APA Submissions, dated February 9, 2024.....	599
Defendant’s APA pp. 65-157, dated February 28, 2024 .....	608
Letter, dated May 31, 2024.....	701
Defendants’ Form 30, dated June 25, 2024 .....	703
Motion for Reconsideration, dated June 26, 2024.....	708
Return, dated June 28, 2024.....	720
Claimant’s Form 30, dated June 28, 2024 .....	723
Claimant’s Amended Form 30, dated July 1, 2024 .....	742
Claimant’s/Appellant’s Brief to the Full Commission, dated September 26, 2024.....	761
Defendants’/Respondents’ Brief to the Full Commission, dated September 27, 2024 .....	800
Defendants’/Appellants’ Brief to the Full Commission, dated October 7, 2024.....	818

Claimant’s/Respondent’s Brief to the Full Commission, dated October 10, 2024.....	828
Claimant’s Motion for Reconsideration, dated December 5, 2024.....	838
Defendants’ Motion for Reconsideration, dated December 12, 2024.....	853
<b><u>Certificate of Counsel</u></b> .....	<b>877</b>



# CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

E. Courtney Gruber  
Partner

Direct Dial: (843) 720-5410  
Direct Fax: (843) 579-4304  
E-mail: cgruber@yrlaw.com

April 1, 2022

Amy A. Braey, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Re: Evaristo Verdugo Morales v. Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
WCC File Number: 1921668  
Claim Number: WCV001062422  
Date/Accident: 10/10/2019  
YCR File: 10857-20200118

Dear Amy:

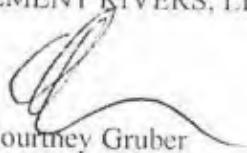
Enclosed please find the original and a copy of the Defendants' Return To Claimant's Request For Reconsideration. Please ensure this is properly filed, returning a copy to me in the envelope provided for that purpose.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP



E. Courtney Gruber

ECG/dff

Enclosures

cc: Don C. Gibson, Esquire, Gibson Law Firm, LLC  
Preston F. McDaniel, Esquire, McDaniel Law Firm  
Jancy Wilson, Builders Mutual Insurance Company  
Ethan Gaskins, Insulation By Cohen's & Sprayfoam by Cohen's, LLC

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 Insulation By Cohen's & Sprayfoam by )  
 Cohen's, LLC, )  
 )  
 Employer, )  
 )  
 Builders Premier Insurance Company, )  
 )  
 Carrier/ )  
 Defendants. )  
 \_\_\_\_\_ )

**RETURN TO CLAIMANT'S  
REQUEST FOR  
RECONSIDERATION**

NOW COMES the attorney for the Defendants and hereby responds to the Claimant's request for reconsideration with the following return.

The Defendants respectfully request that the request for reconsideration be denied based on the following grounds:

The Single Commissioner found that MMI had been reached on January 8, 2020, based upon the opinions rendered by the authorized treating physician that no additional medical treatment would reduce the Claimant's disability for causally related injuries. The Single Commissioner further denied compensability for alleged injury to cervical spine, lumbar spine, and both shoulders based upon the fact that all of those claims had previously been adjudicated and ruled upon in a prior Order filed January 11, 2021. In that Order, the Single Commissioner found that the only compensable injury was the injury to the thoracic spine. That Order was unappealed.

On February 5, 2021, Defendants timely filed the Form 21 to stop payment of temporary total compensation upon receipt of the Form 14B finding MMI to have been reached on January 8, 2020. There was no unreasonable delay on behalf of the Defendants to request a hearing immediately upon having received the Form 14B from the authorized doctor indicating that MMI had been reach.

The Claimant, through his attorneys, alleges that he has been prejudiced because of the deduction for credit paid for overpayment of weekly compensation after the date of MMI. S.C. Code Ann. Section 42-9-210 defines deductions from compensation of payments made by employer when not due and payable. Defendants have continued to pay the Claimant on a weekly basis in the amount of \$845.74 per week since January 8, 2021, as required by statute. It is well established in the case law that workers' compensation benefits accrue along a time continuum and that temporary benefits are paid from the date of injury (or disability) to the date of MMI. After the date of MMI, the benefits paid cease to be temporary and become permanent. Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999). Claimant, through his attorneys, submitted no medical evidence to contradict the only medical opinion in the record that MMI had been reached.

In the present case, the Single Commissioner awarded the Claimant 20% permanent partial disability to his back based in part on an impairment rating of 5% rendered by the authorized treating physician. The Defendants continued paying the Claimant weekly, and in effect, the Claimant received the benefit of payment of the award for permanent partial disability on a weekly basis rather than in a lump sum. In fact, the Claimant had received the full benefit of payment of his permanent partial disability award by March 2, 2021. Defendants properly continued payment of those weekly benefits until the Single Commissioner's Order instructions

were received on February 23, 2022, resulting in an overpayment to the Claimant of 51 weeks, which, at the weekly rate of \$845.74, is \$45,669.96. Furthermore, the Form 17 was presented to the Claimant's attorney on February 4, 2021. Had the Claimant signed that Form 17, which would have given the Defendants permission to terminate temporary benefits, this case would be in a much different posture than it is now.

As it stands with regard to the issue of credit for overpayment of compensation, it appears that the Claimant not only received the benefit of his permanent partial disability award but an additional \$45,669.96 also paid in weekly increments of \$845.74. It would appear at this point that the Claimant has received a windfall of \$45,669.96 over the award. The only parties "prejudiced" by this portion of the Order are the carrier, which had to overpay the award by \$45,669.96, and the Claimant's attorneys, who may have some difficulty pursuing their fee under these circumstances.

In Paragraph 2 of his request for reconsideration, the Claimant alleges that the Single Commissioner failed in her Order to sufficiently address what they consider to be "essential issues." As stated earlier, based upon the previous Order of the Commission filed January 11, 2021, which was not appealed, the only compensable injury in this matter was the thoracic spine. Finding of Fact No. 18 stated that the finding of 20% permanent partial disability to the back was based upon the greater weight or preponderance of the evidence as a whole, including the permanent impairment rating issued by CORA Physical Therapy and Dr. Stofko's medical opinion that the Claimant's additional complaints to the cervical spine and lumbar spine are not causally related to his work injury, as well as the Claimant's testimony regarding overall disability resulting from his injury.

Defendants contend that finding, as well as other findings in the Commissioner's Order, are sufficient to address the essential facts necessary to support her decision in this matter. Claimant's request for reconsideration alleges other errors were made concerning procedural issues surrounding the subpoena of a physician's assistant. Defendants simply contend that those issues are discretionary with the Commission and are not in themselves sufficient grounds for reconsideration of the decision.

Based on the foregoing, Defendants respectfully request that the Claimant's request for reconsideration be denied.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: 

E. Courtney Gruber  
P. O. Box 993  
Charleston, SC 29402-0993  
(843) 720-5410  
[cgruber@vclaw.com](mailto:cgruber@vclaw.com)  
Attorneys for the Defendants

Charleston, South Carolina

Dated: April 1, 2022.

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
Claimant, )  
vs. )  
Insulation By Cohen's & Sprayfoam by )  
Cohen's, LLC, )  
Employer, )  
Builders Premier Insurance Company, )  
Carrier/ )  
Defendants. )

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 1, 2022, I served the **Return To Claimant's Request For Reconsideration** on:

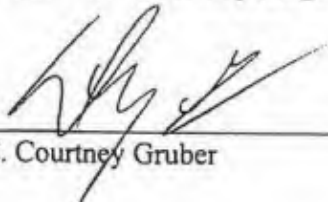
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202-1715

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

VIA FIRST CLASS MAIL

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 12, 2022

**VIA EMAIL - rsmith@wcc.sc.gov**

Commissioner Aisha Taylor  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales vs. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668  
Request to take Depositions**

Dear Commissioner Taylor:

I'm following-up on my Motion for Reconsideration that was filed on March 28, 2022, to which Ms. Gruber filed a response on April 4, 2022. Our records show no Ruling on the Motion. Part of the request was the long delay between the Hearing and the written notes for decision and the ruling on our Motion to take depositions, which was taken under advisement at the April 27, 2021 Hearing. At this point I believe a Hearing on the Motion would be appropriate.

Sincerely yours,



Preston F. McDaniel  
Attorney at Law

PFM/rmt

cc: E. Courtney Gruber, Esq. (via email)  
Don Gibson, Esq. (via email)  
Amy Bracy, Judicial Director (via email)

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

October 14, 2022

Amy Bracy, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's LLC  
& Spray Foam by Cohen's, LLC  
WCC File No.: 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the Form 30 - Request for Commission Review in the above-referenced matter, along with the required \$150.00 filing fee. I am, by copy of this letter, serving opposing counsel with a copy of the Form 30.

I hope this is sufficient for filing with the Commission, however, if additional information or further clarification is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosure

cc: Don C. Gibson, Esquire  
E. Courtney Gruber, Esquire ✓



Claimant's Name: Evaristo Verdugo Morales SSN: \_\_\_\_\_  
Address: REDACTED Address: 1415 Old Highway  
City: \_\_\_\_\_ State: SC Zip: REDACTED City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - - Work Phone: ( ) - - Insurance Carrier: Builders Premier Insurance Co.  
Preparer's Name: Preston F. McDaniel, Esquire Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  Claimant  Employer (check one) Date of Injury or Illness: 10/10/2019

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).

Please see Attachment.

(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form. I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the \_\_\_ day of \_\_\_ 20\_\_\_, by  first class postage  certified mail  personal service  electronic service

  
Preparer's Signature

Attorney for Claimant  
Title

preston@pfmcdilaw.com  
Email

October 14, 2022  
Date

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

**ATTACHMENT TO FORM 30**

**Evaristo Verdugo Morales v. Insulation by Cohen, LLC**  
**WCC File No. 1921668**

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That where in an accepted case the Claimant in his Form 50 and Form 21 response alleged that he was totally and permanently disabled both under SC Code §42-9-10 and 42-9-30(21), did the Commissioner err in hearing the case and failing to order mandatory mediation pursuant to the Commission Regulations. In addition, where the parties have signed a Consent Order to mediate the case which had been filed with the Commission for signature, but the Commissioner had delayed in signing it, did the Commissioner err by allowing the Defendants to withdraw from a signed Consent Agreement and scheduling the case for a hearing and scheduling that hearing within one (1) month.

3. Should the Commission, based on a review of the evidence on the essential issue for decision concerning the loss of use of the Claimant's back, where not only does a preponderance of the evidence but the only evidence in the Record on that essential issue for decision establishes that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back, award permanent and total disability. That evidence includes:

A. The Functional capacity evaluation performed at the request of Dr. Stofko by Grace Physical Therapy establishes that the Claimant only demonstrated the ability to perform light duty work and recommended that he should not return to his prior work of installing insulation and noted that he exhibited moderate to high pain and that that was without exaggerated or inorganic pain behavior being present.

B. Dr. Leonard Forrest opined that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back.

C. Dr. Jeffrey Buncher opined that the Claimant had lost 50% or more of the functional use of his back to do work requiring the use of his back.

D. Mr. Morales testified that in his opinion he had lost 50% or more of the functional use of his back and in fact testified that he had lost 80% of the use of his back.

Note, there is no other evidence in the Record of the loss of use of the back and Dr. Stofko does not even mention the functional capacity evaluation that he ordered.

4. Should the Commission based on a review of the evidence concerning the loss of earning capacity, award the Claimant under SC Code §42-9-10 total and permanent disability for having sustained a total loss of his earning capacity based on the criteria for total and permanent disability under the Act, which is that where based on the age, education, background and experience, and the physical facts of the injury, the jobs which the Claimant can perform on a residual basis are so limited in quality, quantity, or dependability that a reasonably stable job market for them does not exist. In reference to loss of earning capacity, the evidence establishes that:

A. The Claimant does not speak English and has only a limited 4<sup>th</sup> grade education.

B. He has always performed jobs in the medium to heavy duty physical demand classification.

C. Dr. Leonard Forrest opined that the Claimant, from a physical demand standpoint, is not gainfully employable due to the condition of his back including having to alternate positions in reference to his thoracic spine fusion.

D. Dr. Buncher concurred and concurs based on a review of all of the evidence available that from a medical standpoint the Claimant is physically incapable of performing work within his capacity.

E. The vocational expert, Ms. Harriet Fowler, opined that the Claimant from a vocational standpoint is not capable of gainful employment.

F. There is no evidence in the Record that the Defendants have complied with SC Code §42-9-190 in that there is no evidence that they have either offered or procured work within the residual capacity to do work, which the Defendants claim the Claimant is capable of doing.

G. There is no evidence that the Claimant has been able to work or has worked in any capacity since this accident.

The Supreme Court has held that where a Claimant is not capable of any other employment other than physical manual labor the inability to do physical manual labor is total and permanent disability under the Act.

5. Where an Order is issued, such as in this case on January 11, 2021, which Order is based upon a hearing held on August 13, 2020 based on a Form 50 filed on June 16<sup>th</sup> of 2020 requesting additional medical care and where after the evidence that was presented at that August hearing, the Defendants had a functional capacity evaluation performed on October 23, 2020 at the request of Dr. Douglas Stofko which documented problems with range of motion and pain, limitations in both the cervical and thoracic lumbar areas of the back, and thus the Claimant continued to receive treatment and evaluation by the Defendants post-hearing and where the claim is thus in an ongoing capacity is a claimant foreclosed from requesting medical care based on additional medical evaluation during the pendency of the claim? Also, did the Commissioner err by not considering the variation between the Hearing Commissioner's notes for drafting the January 11<sup>th</sup> Order and the specific Order that was drafted by the Defendants and submitted to the Commissioner for signature?; particularly wherein the Defendants attempt to rely on that additional wording added by the Defendants to the original Findings and directions of the Hearing Commissioner to deny the Claimant medical care.

6. Since the Commission is committed to swift and sure benefits to an injured worker as part of its policy under the provisions of the Workers' Compensation Act, did the Hearing Commissioner err by not issuing a ruling until approximately eleven (11) months after the original hearing and then ordering a credit all the way back to the original date Defendants requested as being maximum medical improvement?

7. Where a Subpoena had been issued and served upon PA Alana Cole for attendance at the hearing and where she did not appear at the time of the hearing after being called in the hall to make sure she had not appeared, did the Commission err by not ordering and allowing the Claimant to take the deposition of Alana Cole prior to a decision in this case? In addition, did the Commissioner err by not ruling on that request to take the deposition until entering a Finding on that issue in her final Order Instructions for an Order that was issued eleven (11) months after the hearing? Does this deny the Claimant due

process of law and was it an error to deny the Claimant the right to take the deposition of PA Cole?

8. Where as specifically noted that PA Cole was the provider that was providing treating throughout the entire course of treatment and where the evidence establishes that there was no qualified and certified interpreter present at any of the treatment events prior to July 22, 2020, and where the only translation for the Claimant who does not speak English was through two (2) adolescent cousins, age approximately 12 and 14 years old, was it error for the Commission to even consider whether or not and what the Claimant was reporting given this lack of a certified translator?

9. Where in the last authorized treatment visit of July 22, 2020 PA Alana Cole ordered an MRI of the lumbar spine and prescribed a Medrol dose pack to help with lower extremity radiation and ordered medications and made a reference to physical therapy with potential trigger point injections and ordered a follow-up visit for two (2) weeks and where in the Form 14B which was issued on January 12, 2021 stating a date of maximum medical improvement of January 8, 2020 and wherein there is no record that the Claimant was seen or treated any date since July 22, 2020 and wherein on the Form 14B completed by PA Alana Cole on the date indicated that the Claimant would need further medical care in reference to an MRI of the lumbar spine ordered for assessment and the Form 14B states that this medical care is needed,

**"as a result of the injury for an additional time that will tend to lessen the period of disability or maintain the current level of function"**.

The Hearing Commissioner erred by concluding and finding as a fact that the Claimant reached maximum medical improvement on January 8, 2020 where there is absolutely no substantial evidence, medical or otherwise, of maximum medical improvement on that date. The medical treatment record of January 8<sup>th</sup> reflects that the patient was to do three (3) more weeks of physical therapy and was released to attempt to return to work on January 27<sup>th</sup> and there is no statement that the Claimant had reached maximum medical improvement stated to a reasonable degree of medical certainty on January 8<sup>th</sup>. Further he was to return if further complaints and contains a diagnoses of both acute bilateral low back pain, unspecified and closed fracture of the 12<sup>th</sup> thoracic vertebrae which he did as authorized on July 22<sup>nd</sup>. (Def. APA, pp. 10, 12).

10. That the Hearing Commissioner erred as a matter of law and fact by making Findings of Fact #6 and #7 which are contrary to the first Order of the Commission and contrary to the evidence in the Record. The Interim Order requesting additional medical care simply denied further medical care for the cervical lumbar and left and right shoulders based on the evidence at that time.

11. That the Hearing Commissioner erred in making Findings of Fact #8 and #9 based on the questionnaire that was submitted by the Defendants. Especially where after PA Alana Cole did not appear at the hearing pursuant to a Subpoena and the Claimant asked to have the Record left open for the Claimant to take her deposition, which Motion was taken under advisement and not ruled on until eleven (11) months later and where the evidence is clear that Alana Cole, not Dr. Stofko, treated the Claimant following the surgery, the Hearing Commissioner erred by taking that questionnaire into consideration.

12. That the Hearing Commissioner erred as a matter of law and fact in making Findings of Fact #10 and #11 and concluding in those facts that the Order of January 11, 2021 was a final Order of the Commission and not an Interim Order of the Commission.

13. That the Hearing Commissioner erred as a matter of law in making Finding of Fact #13 for the reasons as set out in other grounds for review, but in addition in that Finding of Fact making the following statements as a fact,

"PA Cole did sign a 14B on January 12, 2021; however, that 14B is given little to no weight when viewing the evidence as a whole as this is a Commission form that requires a signature of a physician as opposed to a PA."

**Whereas in Finding of Fact #4 the finding of maximum medical improvement is based specifically and solely on that Form 14B.**  
(Def. APA, p. 20).

The Hearing Commissioner also erred in that Finding of Fact by making a legal argument outside of the arguments presented to her by the parties and thus outside of the Record and citing case law not presented to the Commissioner by the parties and actually giving a legal interpretation to the case law which is outside of the province of the Commission.

14. That the Hearing Commissioner erred in making Finding of Fact #14 wherein there was no argument made by either party

to the effect that the hearing was not within fifty (50) miles of the PA Cole's office nor was the argument made that service was not proper on the witness. That is also a legal conclusion, not a Finding of Fact.

15. That the Hearing Commissioner erred in making Finding of Fact #15 and basing it upon the Form 14B, which she stated earlier was given little or no weight, and on an impairment rating issued by a physical therapy group.

16. That the Hearing Commissioner erred by making Findings of Fact #16 and #17 in that there is nothing in the January 8, 2020 report stating maximum medical improvement; and it clearly refers to bilateral lumbar pain as a diagnosis; and the Claimant was treated after that date for the thoracic spine. The Findings of Fact are contrary to the evidence and law.

17. That the Hearing Commissioner erred by making Findings of Fact #18 and #19 wherein there is absolutely no evidence in the Record to substantiate a 20% permanent partial disability to the Claimant's back wherein the issue before the Commissioner was loss of use and the loss of use of the back after the accident. Referenced to the thoracic spine fusion are the opinions of two (2) medical doctors, stated to a reasonable degree of medical certainty; and the Claimant's testimony is in reference to the loss of use of his back. There is absolutely no evidence that the loss of use is caused by anything other than the injury sustained in the accident. Further, the objective physical evidence from the functional capacity evaluations states that the Claimant is limited to, at best, light duty work. Under the US Department of Labor's Dictionary of Occupation Titles Physical Demand Classification System of sedentary, light duty, medium duty, heavy duty, and very heavy duty work classifications. He is thus excluded from over 60% of the jobs in the economy in reference to the condition of his back after the accident.

18. That the Hearing Commissioner erred as a matter of law by making Finding of Fact #21 which is contrary to the recommendations on the Form 14B completed by PA Cole which recommended further medical care as causally related to the Claimant's work-related injury as tending to lessen the period of disability. The Findings of Fact flip-flop between relying on the Form 14B and not relying on the Form 14B in reference to the Findings of Fact made.

19. That the Hearing Commissioner erred as a matter of law in making Finding of Fact #22 which goes outside of her authority. The current Commission has stated in numerous

decisions the opinion that the Order of a Commissioner is not final until reviewed by the Full Commission; and that being the case the Hearing Commissioner has no authority to stop or terminate temporary total disability benefits. The statute and Reg. 67-506 refer to as law that temporary compensation is not to be suspended, "until the Commission finds" that temporary benefits may be stopped. Further, there is no Finding that the disability has ended and there is no evidence to that effect.

20. That the Hearing Commissioner erred as a matter of law in her Findings of Fact #1-22 by failing to make any reference to or that confirms that there was any consideration given to any of the evidence presented by the Claimant to the Commissioner. There is specifically no reference to any of the evidence concerning the essential issue before the Commissioner for determination; that being loss of use of the back to do work requiring the use of the back.

21. That the Hearing Commissioner erred as a matter of law in her Conclusions of Law by failing to properly apply the dictates of SC Code §42-9-260, §42-15-60, and §42-9-30 in general and specifically by 1) referencing injury by accident when this is an accepted injury; and 2) by immediately terminating benefits wherein she does not have the authority to do that as only the Commission does; and 3) treating an Order based on a request for additional medical care as a final Order of the Commission in an ongoing case.

22. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law #5 by failing to leave the Record open in accordance with Supreme Court decisions and in making Conclusion of Law #6 and #7 where those are irrelevant to the issues before the Commissioner for decision. Section 42-17-60 refers to a final Order of the Commission on a claim, not Interim Orders pursuant to our Appellate Court decisions.

23. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law #8 wherein there is absolutely no evidence of any payments made by the employer in lieu of compensation; and wherein that was not an issue before the Commission for decision.

24. That the Hearing Commissioner erred as a matter of law in all respects in reference to the Order which is based on the Findings of Fact and Conclusions of Law and specifically by:

A. Allowing the Defendants to terminate temporary total disability benefits effective immediately where she has no authority to do that.

B. Granting an overpayment from the date of maximum medical improvement where there is evidence in the Record to sustain that date.

C. Finding that the Claimant sustained a 20% permanent partial disability to his back wherein partial disability was not the issue before the Commissioner and wherein the essential issues for decision were in reference to "disability" as defined in the Act, that being loss of earning capacity, and "loss of use" of the back to do work requiring the use of his back as a scheduled member wherein disability has absolutely nothing to do with that Award and by giving the Defendants a credit against that Award back to the date of maximum medical improvement, especially where there is no evidence that the disability to do work has ended.

D. Finding that the Claimant did not meet his burden of proof to show that he was entitled to any additional medical treatment for the thoracic spine which is contrary to the evidence presented especially whenever that evidence is not even referred to by the Hearing Commissioner, nor is there any evidence that the problems that the Claimant has does not stem from the thoracic spine fusion.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

October 14, 2022

DECISION & ORDER  
BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

EVARISTO VERDUGO MORALES,  
Claimant,

vs.

INSULATION BY COHEN'S & SPRAYFOAM  
BY COHEN'S, LLC,  
Employer,

BUILDERS PREMIER INSURANCE  
COMPANY,  
Carrier/  
Defendants

HEARING:

Hearing held in Walterboro, South Carolina,  
on April 26, 2021.

APPEARANCES:

E. Courtney Gruber, Esquire, on behalf of the  
Employer/Carrier.

Preston F. McDaniel, Esquire and Don  
Gibson, on behalf of the Employee/Claimant.

PURPOSE OF HEARING:

To determine issues as set forth on Forms  
50/51 and 21 to determine if the Employer/  
Carrier may stop payment, and if so, to



determine if Claimant is entitled to any further benefits.

DECISION & ORDER BY:

Aisha Taylor, Commissioner

DATE FILED:

March 22, 2022

### STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. That both the Claimant and the Defendants were subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That jurisdiction and sufficiency of the notice of the hearing were admitted.
3. That the date of accident was October 10, 2019.
4. That, at the time of the injury, the average weekly wage being earned by the Claimant was the sum of \$1,302.27, resulting in a compensation rate of \$845.74.
5. That venue for this hearing was proper in Colleton County, South Carolina, pursuant to stipulation by the parties.
6. That the Claimant sustained an injury to his back.

### APA SUBMISSIONS

The following APAs were submitted on behalf of the Employee/Claimant:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>Page Nos.</u>
1.	Grace Physical Therapy Rod Tyler, PTR/L, CHT, CSFA (FCE)	10/23/2020	1-11
2.	Southeastern Spine Institute Leonard Forrest, MD	4/1/2021	12-20
3.	Charleston Pain & Rehab. Ctr. Jeffrey Buncher, MC	1/28/2021	21-31
4.	Harriet Fowler, M.Ed., CRC	4/12/2021	32-44

Harriet Fowler VR Services

5. Consent Order 45-46

The following Exhibits were submitted on behalf of the Employee/Claimant:

None.

The following APAs were submitted on behalf of the Employer/Carrier:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>Page Nos.</u>
1.	Trident Orthopaedic Specialists	10/23/2019-1/12/2021	1-20
	Supplemental filing: Trident Orthopaedic Specialists	10/15/2020-11/18/2020	20A-D
2.	CORA Physical Therapy	12/24/2020	21-22
3.	Trident Health System	10/10/2019-10/12/2019	23-59

The following Exhibits were submitted on behalf of the Employer/Carrier:

A.	Deposition of claimant	3/13/2020	60-72
B.	Decision & Order	1/11/2021	73-82

**STATEMENT OF THE CASE**

The above case came on to be heard before the undersigned Commissioner in Walterboro, South Carolina, on April 26, 2021, pursuant to notice timely and properly given to all parties of record.

This matter was brought before the Commission on a Form 21 filed by the Defendants. The Defendants contended that the Claimant had reached maximum medical improvement on January 8, 2020, with no permanent physical limitations. Defendants contended that the only compensable injury was to the thoracic spine and further that other injuries alleged by the Claimant, including shoulders, neck, and lumbar spine, had

previously been denied by Order of the Commission dated January 11, 2021, and were, therefore, *res judicata*. Defendants were seeking a finding of MMI and a credit for overpayment of temporary total compensation since the date of MMI. The Defendants had also filed a motion to compel the Claimant to appear in person for a vocational evaluation. That motion was denied.

It was the position of the Claimant that the Defendants had entered into a Consent Order on April 14, 2020, in which they agreed that the Claimant had sustained a compensable injury to his back on October 10, 2019. Claimant further contended that the Consent Order essentially bound the Defendants to provide medical treatment for all parts of the back, not just the thoracic spine, and that the Consent Order filed April 14, 2020, superseded the Order filed January 11, 2021. The Claimant was seeking additional medical treatment for the lumbar spine, cervical spine, bilateral shoulders, and lumbar radiculopathy and continuation of benefits. Claimant's attorneys also filed an oral motion to postpone or leave the record open for the purpose of taking the deposition of Elaine Cole, P.A. That motion was taken under advisement at the hearing to be considered after review of all of the other evidence in the record.

#### EVIDENCE OF THE CASE

The medical records in the case indicate that the Claimant was injured on the date of the accident when he fell from a ladder. An MRI performed October 10, 2019, reflected that he had sustained an acute compression fracture at T12. The hospital notes indicated that he denied any pain down his legs, numbness, tingling, or weakness of his lower extremities. (Defendants APA p. 46). Claimant underwent surgery on October 11,

2019, for the fracture at T12. Specifically, the surgery involved percutaneous fusion for T12 fracture from T11 to L1. (Defendants APA p. 1). The Claimant was followed by Elaine Cole, physician's assistant for Dr. Stofko who is a neurosurgeon and the treating physician. The medical note of January 8, 2020, indicates a recommendation for physical therapy and return to work without restrictions. It was noted the Claimant did not have to wear the brace any longer unless for comfort and did not need to return to see that medical practice unless an issue arose. (Defendants APA p. 10).

The Claimant returned to the treating physician on July 22, 2020, complaining for the first time of pain in the neck and upper back into the bilateral shoulders. He was also complaining of low back pain with radiation into the bilateral lower extremities into the bottom of the feet and complaining of radiating pain in the left thigh. He denied numbness, tingling, weakness, or bladder dysfunction and complained of muscle spasms in his low back. (Defendants APA p. 14).

Dr. Stofko completed a medical questionnaire at the request of the Claimant's attorney, after the evidentiary hearing was held August 13, 2020. He stated to a reasonable degree of medical certainty that the complaints of pain in the neck and upper back into the bilateral shoulders were not causally related to the October 10, 2019, accident. He also opined that the low back pain with radiation into the bilateral lower extremities was not causally related to the work-related injury of October 10, 2019. He also opined that the lumbar radiculopathy was not causally related to the work accident. (Defendants APA p. 20a – 20e).

A 14B was completed by Elaine Cole on January 12, 2021, noting that the Claimant had 5% permanent impairment to his back and had reached MMI on January 8, 2020. (Defendants APA p. 20).

The Claimant underwent an evaluation for an impairment rating performed by CORA Physical Therapy, at which time it was opined that he had sustained 5% permanent impairment to the whole person based on the *AMA Guides 6<sup>th</sup> Edition* noting that the class was Class 1C fracture of one or more vertebral bodies with less than 25% compression – healed with surgery. (Defendants APA p. 21-22).

A review of the record reflects that an evidentiary hearing had previously been held on August 13, 2020, in response to a Form 50 filed June 16, 2020. The issues litigated were the extent of compensable injury as the Claimant at that time was seeking additional medical treatment for the low back, shoulders, and cervical spine. Defendants at that time took the position that the only compensable injury was the compression fracture at T12. The Commissioner filed an Order on January 11, 2020, finding that the Claimant's injuries related to the accident were limited to the fracture at T12 and denied the Claimant's request for additional medical treatment to the lumbar spine, cervical spine, and shoulders. The Order found that the Claimant had failed to meet his burden of proof that shoulders, neck, and lumbar spine were causally related to this accident. This Order was unappealed.

The Claimant testified that he was in a lot of pain as a result of the accident and that he did not believe he would be able to work as a result of it. He testified that he was able to drive his car for an hour-and-a-half. He had a fourth grade education but was able to calculate percentage. He also agreed that he could probably work cleaning up for

six hours a day, although he thought there would be people who could do it faster and better than he could.

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

#### FINDINGS OF FACT

##### IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the average weekly wage is \$1,302.27, with a compensation rate of \$845.74.
3. That the date of injury was October 10, 2019, on which date the Claimant sustained a compensable injury to his thoracic spine.
4. That the Claimant reached maximum medical improvement for the injury to the thoracic spine on January 8, 2020. (Defendants APA p. 20).
5. That the issues of whether or not the Claimant sustained compensable injuries to the cervical spine, lumbar spine, and left & right shoulders had previously been litigated at an evidentiary hearing from which an Order denying compensability of those claims was filed on January 11, 2021, and was not appealed. (Defendants APA B).

6. That the unappealed Order denying compensability for injury to the cervical spine, lumbar spine, and left & right shoulders was not appealed and is the law of the case. (Defendants APA B).

7. That the unappealed Decision & Order filed January 11, 2020, is the law of the case with regard to causal connection and compensability of alleged injury to the cervical spine, lumbar spine, and left & right shoulders. (Defendants APA B).

8. That the opinion of the authorized treating physician, Dr. Stofko, obtained by Claimant's attorney would not support a finding of compensability for the cervical spine, lumbar spine, and radiculopathy. (Defendants APA pp. 20d, 20e).

9. That Dr. Stofko stated unequivocally that the Claimant's complaints of pain in his neck, shoulders, lumbar spine, and lumbar radiculopathy are not causally related to the October 10, 2019, work injury. (Defendants APA p. 20d, 20e).

10. That the previous unappealed Decision & Order dated January 11, 2021, stated specifically in Finding of Fact No. 20 that, "... Claimant has failed to meet his burden of proof to show that the shoulder, neck, and lumbar spine were injured or that those injuries were causally related to the accident." (Defendants APA p. 80).

11. To the extent that the Claimant was requesting compensability or additional medical treatment for his shoulders, neck, or lumbar spine, those issues

had been previously adjudicated by way of Commissioner James' Decision & Order dated January 11, 2021, and are *res judicata*.

12. The Defendants' motion to compel the Claimant to appear for a vocational evaluation is denied.

13. That the Claimant's oral motion to postpone or leave the record open to take the deposition of Elaine Cole, P.A., is denied. Although PA Cole did see the Claimant for follow-up medical appointments after his surgery, PA Cole's last visit with the Claimant was on July 22, 2020, and those records had properly been before Commissioner James at the August 3, 2020, hearing on compensability for which there is already an unappealed Order of the Commission. PA Cole did sign a 14B on January 12, 2021; however, that 14B is given little to no weight when viewing the evidence as a whole as this is a Commission form that requires the signature of a physician as opposed to a PA. Additionally, PA Cole's supervising physician, Dr. Stofko, completed a medical questionnaire and an identical impairment rating was issued by CORA for physical therapy in their report. (Defendants APA p. 20d, 20e; Defendants APA p. 22); (R. 67-612(E) referencing the Hearing Commissioner's "discretionary authority...to accept reports, depositions or other evidence at the conclusion of the scheduled hearing...."); (See also Holcombe v. Dan River Mills/Woodside Div., 286 SC 223, 333 SE2d 338 (Ct. App 1985), "The single Commissioner did not abuse his discretion in refusing to allow the deposition of a particular doctor to be taken and admitted into evidence.")

14. The Claimant did send a Form 27 Subpoena to PA Cole for her attendance at the hearing; however, counsel did not make personal service upon PA Cole

and could not confirm that PA Cole resided within the 50 mile requirement to enforce the subpoena. (Hr. Tr. P. 21, ll. 1-10).

15. That the greater weight or preponderance of the evidence supports a finding that the Claimant reached MMI on January 8, 2020, that no additional medical treatment for the only compensable injury, *to wit*: the thoracic spine, would be likely to decrease the Claimant's disability, and that the Claimant sustained permanent impairment to the back of 5%. This finding is supported by the 14B as well as the impairment rating issued by CORA Physical Therapy.

16. The Claimant was released at MMI for his work-related injury to the thoracic spine on January 8, 2020, when he was released by the authorized treating physician and cleared to return to work without restriction. (Defendants APA p. 10).

17. That the Claimant did continue to treat with PA Cole after January 8, 2020, which treatment was for the other alleged injuries not related to the work injury as per the previous Order of the Commission. (Defendants APA B; p. 20d, 20e).

18. That the Claimant sustained 20% permanent partial disability to his back as a result of the injury to the thoracic spine, specifically the compression fracture at T12. This finding is based on the greater weight or preponderance of the evidence as a whole, including the permanent impairment rating issued by CORA Physical Therapy and Dr. Stofko's medical opinion that the Claimant's additional complaints to the cervical spine and lumbar spine are not causally related to his work injury, as well as the Claimant's testimony regarding overall disability resulting from his injury.

19. That the opinions stated by the authorized treating physician are given greater weight than those of doctors providing independent medical evaluations in preparation for litigation.

20. That the Claimant is entitled to receive his award in a lump sum.

21. That the Claimant is not entitled to any additional medical treatment as none has been recommended as causally related and tending to lessen the Claimant's period of disability relative to the fracture at T12.

22. That the Defendants are entitled to terminate temporary total disability benefits immediately and are entitled to a credit for overpayment of all benefits paid beyond the date of MMI, which was January 8, 2020.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

#### CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. S.C. Code Ann. § 42-9-260 defines when payments can be terminated.
3. S.C. Code Ann. § 42-15-60 provides time when medical treatment shall be provided.
4. S.C. Code Ann. § 42-9-30 defines scheduled injuries.
5. S.C. Code Ann. § 42-17-40 defines conduct of hearing.

6. S.C. Code Ann. § 42-17-50 defines review and re-hearing by Commission.

7. S.C. Code Ann. § 42-17-60 defines conclusiveness of an award of the Commission if not reviewed in due time as conclusive and binding on all questions of fact.

8. S.C. Code § 42-9-210 defines deduction from compensation of payments made by employer when not due and payable.

Based upon the above Statement of Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

**ORDER**

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Defendants are entitled to terminate temporary total compensation effective immediately; it is further

ORDERED, ADJUDGED, AND DECREED that Defendants are entitled to a credit for overpayment of weekly benefits paid at the rate of \$845.74 since January 8, 2020, the date of maximum medical improvement for the thoracic spine; it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant has sustained 20% permanent partial disability to his back as a result of his work-related injury and payment is to be made in lump sum, subject to the Defendants' credit for weekly benefits paid since January 8, 2020; it is further

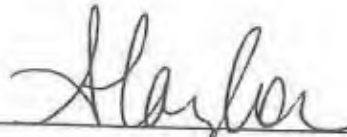
ORDERED, ADJUDGED, AND DECREED that the Claimant's award of 20% permanent partial disability to his back (60 weeks x \$845.74) is subject to the

Defendants' credit for overpayment of weekly benefits paid since January 8, 2020; it is further

ORDERED, ADJUDGED, AND DECREED that the Claimant did not meet his burden of proof to show that he is entitled to any additional medical treatment for the thoracic spine.

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION



\_\_\_\_\_  
Commissioner Aisha Taylor

**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 22, 2022

By: Renee Smith, Administrative Assistant to Commissioner Taylor

**Order Served via Email 3-22-22:**

E. Courtney Gruber [cgruber@ycrlaw.com](mailto:cgruber@ycrlaw.com)

Don C. Gibson [dgibson@dgibsonlaw.com](mailto:dgibson@dgibsonlaw.com)

Preston F. McDaniel [preston@pfmcdlaw.com](mailto:preston@pfmcdlaw.com)

**CERTIFICATE OF SERVICE**

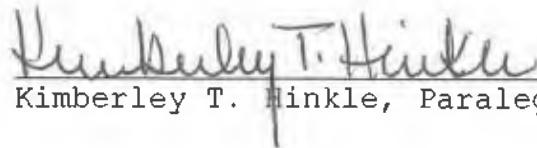
WCC File No. 1921668

I hereby certify that I have on this day, October 14, 2022, served a copy of the document described below in the matter of **Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC**, addressed as follows:

TO: E. Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: FORM 30 - REQUEST FOR COMMISSION REVIEW

DATE OF MAILING: October 14, 2022

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
14 day of October, 2022.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission Expires: 2/19/2025

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC File No.: 1921668

EVARISTO VERDUGO MORALES, )  
Employee/Claimant, )  
v. )  
INSULATION BY COHEN'S & )  
SPRAY FOAM BY COHEN'S, LLC )  
Employer, and )  
BUILDERS PREMIER INSURANCE )  
COMPANY, )  
Carrier. )

---

**APPELLANT'S BRIEF  
TO THE FULL COMMISSION**

**STATEMENT OF THE CASE**

On February 26, 2021 Co-Counsel Preston F. McDaniel notified Commissioner Barden that Don Gibson was in the hospital and in the response to the Form 21 advised that it was their position that the Claimant was totally and permanently disabled under either or both the back statute or the wage loss statute and in the Form 50, alleged total and permanent disability, and in the Consent Order signed by both parties and submitted to the Commission by Defense Counsel cancelling an April 12, 2021 Hearing.

On March 24, 2021 at 2:36 p.m. Defense Counsel notified the Commission the Defendants were withdrawing from the signed/submitted consent to mediate and asked that the matter be put back on the Hearing Docket. At 2:57 p.m. that same day the

matter was put back on the Hearing Docket for April 12<sup>th</sup>. At 5:45 p.m. Counsel for the Claimant cited the Commission Regulations on Mediation and asked that it again be removed from the Hearing Docket. On March 29<sup>th</sup> Co-Counsel McDaniel advised that Don Gibson was on 24/7 oxygen and requested that at least the matter be reset to a later date in April. After repeated requests on April 2<sup>nd</sup>, the matter was postponed and was then reset for April 26<sup>th</sup>. The Commission made no further comment about mediation and the mediation Regulations.

The Defendants filed a Pre-Hearing Brief and then filed a 1<sup>st</sup> Amended Pre-Hearing Brief on April 9<sup>th</sup>. A Subpoena was served on Alaina N. Cole, PA-C with Trident Orthopaedic Specialists on April 13, 2021 via mail and facsimile. On April 15<sup>th</sup>, 2021 the Defendants filed a 2<sup>nd</sup> Amended Pre-Hearing Brief adding APA Submissions under the guise of medical records from Trident Orthopaedic Specialists submitted two (2) letters and an accompanying document/questionnaire from Don Gibson to Dr. Douglas Stofko, MD. [Note: the 2<sup>nd</sup> Amended Pre-Hearing Brief was filed on April 15<sup>th</sup>, eleven (11) days before the Hearing adding APAs was filed in violation of the Commission's Regulations 67-612(B)(3) concerning the submission of APA Submissions by the Defendant as the moving party requesting the Hearing.]

On April 12<sup>th</sup> the Claimant filed both a Pre-Hearing Brief and an Amended Pre-Hearing Brief.

The Hearing was then held on April 26<sup>th</sup> in Walterboro, SC.

As part of the Defendants' APA Submissions, the Defendants submitted a Form 14B completed and signed by Alaina Cole, PA dated January 12, 2021 containing a 5% whole person impairment but noting that there was a fusion from T11-L1; noting that the Claimant had retained medical hardware including pedicle screws and rods involving the T11-L1 levels of the spine, i.e. thoracic and lumbar vertebrae; and the Form 14B also referenced additional medical care to include an MRI of the lumbar spine ordered for assessment.

The Defendants' APA Submissions also included an impairment rating recommendation from CORA Physical Therapy; the records from Trident Orthopaedics; and per the amendment the two (2) letters. Of note, the APAs did not include the Functional Capacity Evaluation ordered to be performed by Grace Physical Therapy upon the referral and order of Dr. Douglas Stofko, MD and paid for by the insurance carrier, Builders Mutual/Bardavon. The Claimant submitted that Functional Capacity Evaluation.

That Functional Capacity Evaluation conducted on October 23, 2020 established that the Claimant gave valid and consistent effort and placed him at most in the light duty physical demand classification under the Dictionary of Occupational Titles, Physical Demand Classification System of the US Dept. of Labor.

The Claimant also submitted medical opinion evidence from Dr.

Leonard Forrest stating the opinion among other things that the Claimant had lost 50% or more of the functional use of his back to do work requiring the use of his back. Also, notably Dr. Leonard Forrest expressed the opinion that:

"To a reasonable degree of medical certainty, Mr. Morales current symptoms and limitations were caused by the 10/10/19 work injury." Encounter, July 22, 2020.

In a further evaluation performed on January 20, 2021 Dr. Forrest further stated and reiterated:

"Mr. Morales' most significant symptoms continue to be his mid-back as they were when I evaluated him last July. As I noted at that time, to a reasonable degree of medical certainty, Mr. Morales' ongoing symptoms and limitations were caused by the 10/10/19 work injury."

He also recommended numerous procedures and medical care to lessen the period of disability including removal of hardware, physical therapy, injections, etc.

The medical opinions of Dr. Jeffrey Buncher were also placed into evidence. He concurred with Dr. Forrest and agreed with the impairment rating and more importantly agreed to a reasonable degree of medical certainty that the T12 fracture was causally related to the fall of 10/10/2019. He also stated the opinion that the problems in the lumbar spine were causally related to the fall on 10/10/2019. He also agreed with Dr. Forrest and Dr. Stofko that the components of the neck and trapezius pain were myofascial in nature and causally related to .

the fall. In his opinion, Mr. Morales was disabled from gainful employment due to his severe injuries and importantly he also stated the opinion based on his evaluation and the Functional Capacity Evaluation that Mr. Morales had lost 50% or more of the functional use of his back to do work requiring the use of his back.

The Claimant also submitted the report of vocational expert Ms. Harriet Fowler who after review of all of the medical records and medical opinions and the Functional Capacity Evaluation and based on the Claimant's age, education, background and experience determined that the Claimant was capable of performing zero (0) jobs based on his transferable skills and his current abilities. She further opined that, per the Functional Capacity Evaluation and considering his advanced age, his work history, attendance skills, education including illiteracy, need for an interpreter to communicate well in English, and his severe and significant restrictions, he was unable to obtain and maintain gainful employment of any kind.

The Claimant also put in the signed Consent Order between the parties which required mandatory mediation pursuant to the Commission's mediation regulations.

At the Hearing, first the Commissioner dealt with the Motion to Compel the Claimant to attend an in-person evaluation by a vocational defense expert. For the first time and only

after the agreement to mediate and after the claim was subject to mandatory mediation, Defendants had requested an in-person evaluation of the Claimant while Mr. Gibson was in the hospital and with the full knowledge that the Claimant was requesting total and permanent disability. (R. pp. 5 and 8-9). Importantly, prior to and in response at the Hearing, Claimant's Counsel had suggested and agreed to limit the Hearing to the Defendants' Motion and had agreed to abide by the ruling of the Commission. (R. p. 10, 11. 1-5). In response, Claimant also pointed out that the Defendants for whatever reason would not agree to that, not agree to move venue to Charleston, and would not agree to anything in reference to the case.

Commissioner Taylor then promptly cited the case of Tetter v. Darlington County Community Action Agency decided in 2019 holding that the Defendants did not have a right to a vocational evaluation and it was improper to exclude the evaluation of the Claimant who has the burden of proof because the Defendants do not have a vocational evaluation and denied the Motion. (R. pp. 11-12).

Next, the Defendants made a Motion to Exclude evidence in reference to the cervical and lumbar spine and to limit the evidence to the T11-L1 fusion performed in reference to the T12-L1 and involving L2 fracture.

In responding the Claimant first noted, most importantly to the Commission, the discrepancy between the Commissioner's Notes at that first Hearing and what she advised the Defendants to write in the Order and what the Defendants actually wrote in the Order. In her Notes Commissioner James specifically found that based on the requirements in the 2007 Amended statute a Commissioner cannot issue an equivalent medical opinion and that a Commissioner "cannot order medical treatment ten weeks beyond the injury by accident date without an opinion to a reasonable degree of medical certainty ...". However, in the Order drafted by the Defendants they added language not only denying the request at that time for lack of medical opinion evidence meeting that standard, but also further set out in the Order that it was adjudged and decreed that "Claimant's injuries related to this accident are limited to the fracture at T12". Very importantly, in arguing the Motion it was noted that all the treatment provided after the initial surgery which was performed by Dr. Stofko including all the treatment visits had been performed and was with PA Alaina Cole. Defendants noted the Claimant had issued a Subpoena and served a Subpoena by mail and facsimile on PA Alaina Cole to be present at the Hearing and that she had not appeared. (R., p. 21, ll. 1-10). After Defense further response that Claimant could have taken the deposition, Counsel for the Claimant again noted Don Gibson's severe medical

condition and being in and out of the hospital and Co-Counsel McDaniel's involvement of approximately one (1) month in this case prior to the Hearing that had been forced upon the Claimant in this matter. He also specifically noted as set out above that they had subpoenaed PA Cole to attend the Hearing. [Note: The Commission will find no written communication in the Record, nor was there any appearance by anyone to establish why PA Cole did not appear at the Hearing, or challenging her requirement to appear at any time before, during or after the Hearing.] Co-Counsel for the Claimant, Preston F. McDaniel, then made the following motion on the Record:

"What I am asking for is simply this; that the Record be left open for me to have the opportunity to question her pursuant to Morgan v. JPS. Her opinions are extremely important to this entire case...".

After further discussion, the Commissioner then took the Defendants' Motion under advisement, allowed the Claimant to proffer any evidence in reference to the lower back and any subsequent medical records on those issues would be proffered for the Record. In reference to the deposition, she took the Motion to take deposition under advisement. (R., p. 24-25). After discussion between the Commissioner and Counsel, it was agreed that all the doctors have opined that the Claimant's injuries stem from his thoracic spine injury and that the testimony would focus on his problems as related to the thoracic

spine injury. The Claimant then placed his position on the Record that as a result of his thoracic spine injury and fusion from T11-L1, he was entitled to an Award for both total and permanent disability based on wage loss and entitled to an Award for total and permanent disability based on the character of the injury for having lost 50% or more of the functional use of his back to do work requiring the use of his back. The Defendants noted that they have the responsibility of rebutting the presumption of more than 50% loss of the functional use of the back and referenced a lack of "a vocational evaluation" as in some way being involved in a rebuttal of that presumption. The Defendants then claimed that the Claimant had reached maximum medical improvement and requested a credit for temporary total and noted that the Claimant had been assigned a 5% impairment to the back by the treating providers.

Testimony was then taken from Mr. Morales. After Mr. Morales was duly and properly sworn through the certified interpreter, Mr. Morales testified that he was 55 years old; has a 4<sup>th</sup> grade education in Mexico; is married and has seven (7) children, two of whom live with him in the United States, and the other five (5) live with his wife in Mexico, and all of whom are dependent upon him for support. (R. p. 41 l. 14- p. 42, l. 22).

Mr. Morales testified that he had lived in the United States for 20 years, first living in North Carolina where he did restaurant work and then landscaping, then moved to Georgia working on golf courses and that he had also worked two shifts at the airport in Charlotte, NC. He testified that all of his work experience involved lifting, bending, stooping, and squatting, carrying objects, planting such items as grass, and working on his knees and hands, and all was very physical work. As he put it, "it was hard work". (R., p. 44, l. 9). After moving back to North Carolina and again doing very heavy work including landscaping and restaurant work, all involving lifting, bending, stooping, and squatting and using such equipment such as gas powered back-pack weed eaters that he moved to Hardeeville, SC where he first became involved in insulation work as a helper. It is on that job that he learned to do insulation work. He stayed in the insulation business transferring to a job with Ecofoam where he was doing the same type of insulation work involving spraying insulation, carrying insulation and all types of equipment and testified that the insulation work was very physical. (R. pp. 45-47). After his first job in insulation, he went with Ecofoam, and then went to the employer Insulation by Cohen's in the Charleston area. (R. p. 47, ll. 15-17).

In reference to the insulation work, he testified that all the insulation work involved getting underneath houses and in low areas having to bend, stoop and crawl, and spraying insulation and carrying heavy materials, and that much of the time he was either on his knees or on his back spraying insulation. He also testified that his position had to constantly change depending on how low the ceilings or crawlspace were. Some he had to lay down on, some he had to squat, some he had to stand bending, some were on his knees, and on some he had to reach. (R., p. 48, ll. 1-21).

Mr. Morales was asked, knowing the condition of his back after the surgery and at the present time, could he go back to doing the work on a golf course, to which he testified he could not. In reference to that job, he could possibly do 20% of the job but he would have to go easy and would have pain. In reference to bending, twisting or lifting he would have pain upon any movement in reference to the hardware in his back. He also testified that he would not be able to do the job for a very long time, maybe an hour to an hour and a half, and then he would have to move really slowly. He cannot do the job in North Carolina in reference to the highways or commercial landscaping; that he could not even pick up the garbage bags for the trash in reference to that job, and knowing what it took to do that job he testified that he could not do that job any longer, and again

specifically referenced the screws in his back and the pain around the hardware. He then testified:

"I wish I could do that. I wish I could work and they liked me. My employers in all those jobs liked me because I was a hard worker, and I was very obedient." (R. p. 51, ll. 1-4).

He testified that that he could not return to doing the insulation work in Hardeeville, again mentioning the screws and pain in his back around the screws, and his inability to do all the movements required; it was very heavy work. The witness was then shown photographs of his work which required him to work in a full protective clothing and respirator, and which showed and he testified how he would have to get down and lay down and slide under the various pipes and equipment and that trying to move around would cause his back to hurt, or if he had to do any reaching in the high parts (R. pp. 51-52).

In reference to the medical evidence, from the Subpoena for Alaina Cole, PA and the request to take the deposition of Ms. Cole, Mr. Morales testified concerning his treatment and the information given about his condition to his treating provider, Ms. Cole, as follows:

"Q: You saw the doctor on October 23, 2019 at the office?

A: No. When they gave me the appointment, they told me the doctor would see me. When I got there, it was the lady.

Q: You saw the lady. Mr. Morales, did you ever know her name?

A: No, I didn't.

Q: According to the medical records, 'the patient is accompanied by a family member who is interpreting'. Mr. Morales did the lady that saw you in the doctor's office speak Spanish to you ever?

A: No.

Q: Mr. Morales, who was it that was there at each visit and interpreted for you for the lady that you were seeing?

A: My niece and nephew.

(Tr. p. 56, ll. 3-19).

Mr. Morales went on to testify concerning his niece and nephew that: "She is 14, and he's 15". (R. p. 57, l. 3). He further testified that at the time we are talking about his niece was 12 or 13 and his nephew was 13 or 14. They were both born in the United States.

He then confirmed that what Mr. Morales was telling the doctor PA Cole was being interpreted by a 13 or 14 year old girl or boy, his niece/nephew, for the doctor. After stating that the law and Regulations in reference to medical treatment interpretation did not need to be put in the Record and the Commissioner did confirm in the Record that the doctors were relying upon the translation to and from a 13 year old girl and/or a 14 year old boy for what they recorded as far as what the Claimant's complaints were. Mr. Morales confirmed that his niece and nephew translated for all of the visits, with one exception, that being the last visit in July 2020 at which the

lady doctor recorded the problems with the lumbar and cervical spine. (R. p. 60, ll. 1-14).

Mr. Morales then testified that in his opinion based on the condition of his back and his thoracic spine fusion that he could not return to any of the jobs in which he had a past work experience. He testified that he had pain on a daily basis just performing simple tasks and activities around the house such as while cooking, lifting anything; doing light sweeping; anything like that. He has problems just putting on his clothes which is difficult, but he finds a way around it; he has problems with his shoes and he has to get on his knee and slightly bend over which he does very slowly. He then walked over in front of the Commissioner and showed the Commissioner the screws in his back, with heads sticking out and testified concerning his constant pain particularly over the screws. He then testified that in his opinion he had approximately 20% remaining of the use of his back and that he had lost approximately 80% of the use of his back to do work requiring the use of his back. (R. p. 63, 16 and 1. 21).

After brief cross-examination concerning whether the Claimant could drive and his testimony that he could drive very slowly maybe for an hour and that he normally only drives to pay bills or to visit his lawyer, and that he finished the 4<sup>th</sup> grade, the Defendants then asked him if he knew how to calculate a

percentage. Mr. Morales responded that he knew what 100% was and he knew what less than 100% was. The Defense then asked him a question, if you have 100 pennies how many is 20% to which Mr. Morales responded 20. He was then asked how he came up with 80% loss of use to which he responded because of 20. He then responded what 20 meant in reference to a percentage and responded that that meant, "if I had 100, and I lost 80, that means I have 20 now." (R. p. 73, ll. 2-3). The Hearing was then adjourned.

After the Hearing held on April 26, 2021 and after numerous requests by the parties concerning the status of the Order, mainly from the Defense, as recorded in the Record on February 23, 2022 ten (10) months later the Commissioner sent her Notes for Decision and for the first time made a ruling on the Claimant's Motion to Postpone or Leave the Record Open for the deposition of Alaina Cole, PA which was denied. Although proper service was not challenged at the Hearing, the Commissioner made a Finding of Fact in reference to the Subpoena that there had not been personal service and the Claimant could not confirm that she lived within 50 miles of the Hearing site. In her Notes for Decision, there was no reference at all to any of the medical opinion evidence or evidence submitted by the Claimant including no reference to the Functional Capacity Evaluation performed at the request of Dr. Stofko which found the Claimant

was limited to light duty work and could not return to his previous job in insulation. The Commissioner's Order was issued on March 22, 2022 approximately eleven (11) months after the Hearing and a Motion for Reconsideration was filed March 24, 2022 on which a decision was finally entered by an Administrative Order on October 3, 2022 over six (6) months later. This Request for Review follows.

#### ARGUMENTS

I. THIS MATTER SHOULD BE REVERSED AND REMANDED FOR MANDATORY MEDIATION.

This is an accepted case, and it is admitted by the Defendants that the Claimant alleged he was entitled to an Award for total and permanent disability both under §42-9-10 and §42-9-30(21). In addition, the parties entered into an Agreement to mediate the case, which was signed and submitted to the Commission, but the Defendants improperly sought to withdraw from that Agreement, even though it was already signed; which is an enforceable Agreement in any other Court.

The provisions of §67-1802(A) are mandatory and quoting, "the Commission orders that the following claims must be mediated prior to a Hearing". Therefore, this matter should have been referred to the Mediation Department for mandatory Mediation and the Commissioner should have, before or at the scheduled Hearing, referred the case for mandatory Mediation.

For those reasons, the Decision of the Hearing Commissioner should be reversed, and this case remanded for mandatory Mediation pursuant to the Commission Rules.

II. THE HEARING COMMISSIONER SHOULD HAVE AWARDED MR. MORALES AN AWARD OF TOTAL AND PERMANENT DISABILITY FOR A TOTAL LOSS OF EARNING CAPACITY AS DEFINED BY OUR COURTS.

In Dent v. East Richland County Public Service District, 423 S.C. 193, 813 S.E.2d 886, reh. den. (SC App. 2018), the Court quoted the time honored definition and application that the Courts and this Commission have applied holding that an injured worker is entitled to an Award for permanent total disability when the incapacity for work resulting from an injury is total, and quoting that definition from Wynn v. Peoples Natural Gas Co. of SC, 238 S.C. 1, 118 S.E.2d 812 (1966) [which you as Commissioners really do not need to hear because you apply it daily]:

“Disability in a compensation case is to be measured by loss of earning capacity. Total disability does not require complete helplessness. Inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment. On the other hand, the Rule in most states is that an employee who is capable of performing other work that is continuously available to him will not be deemed totally disabled because he is unable to resume the duties of a particular occupation in which he was engaged at the time of his injury. The generally accepted test of total disability is the inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” (Emp. add.)

Actually, Wynn is inappropriately cited as the case that originally set out that as the standard. The standard was actually set out in Colvin v. E.I. DuPont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955). In Colvin the injured worker had a limited education and was unskilled, and was employed as a messenger and sustained a pneumothorax when he pushed open a heavy fire protection door operated by hydraulic pressure. In Colvin, the Court set out more fully that disability is a relative term and is related to the occupation of the claimant. Where a claimant is disabled to perform common labor and cannot obtain employment at such and he is not qualified by training or experience for any other, he is entitled to an Award for total disability. Mr. Colvin had a limited education, was unskilled, and was employed as a messenger and was unqualified for anything other than physically demanding work, referred to a "common labor". In Colvin, and in later decisions, the Court has also reminded the insurance carriers that if they claim a person is not totally and permanently disabled under the statutes they can be relieved of payment of that Award by simply offering or procuring a job within the residual capacity of the injured worker under SC Code §42-9-190; which is referred to in the Colvin decision. In this case, there is no evidence that the carrier has done that. Thus, the undisputed evidence, and again the undisputed evidence and agreed to evidence, is as follows in

reference to his age, education, background and experience, and the physical facts of the injury: Mr. Morales is 55 years old and has always performed heavy duty work. There is absolutely no evidence to the contrary that he is capable or qualified to do any other. He has at best a 4<sup>th</sup> grade education and he does not speak English and had to have an interpreter available at the Hearing. However, the evidence also substantiates that he was well liked by all his employers, was damn good at his job, and was a high wage earner based on his physical ability and abilities to perform that heavy duty, common labor job. His testimony which is uncontested is he cannot go back to that heavy common labor job.

Also, there are two (2) medical opinions that he is totally disabled from gainful employment and a vocational expert that says he is totally disabled from gainful employment.

**However and more importantly**, Dr. Stofko, the authorized treating orthopaedic surgeon ordered a Functional Capacity Evaluation be performed and that objective testing established that Mr. Morales gave valid and consistent effort and that he was only qualified for, at best, **light duty work**. Mr. Morales is a common laborer although but innate ability(ies) allowed him to, while performing heavy duty common labor in an industrial setting, to be able to do a very good job entitling him to a very high wage and his employer thinking so much of him that

they paid his full salary for much of the time he was out of work until they couldn't any longer.

Mr. Morales was only qualified for common labor before the injury and there is absolutely no contradictory evidence on the residual services for which he is qualified and there is not a job market out for those services of sufficient quality, quantity, or dependability so that a reasonably stable job market for them exists. The Commissioner erred by not awarding him total and permanent disability for a total loss of earning capacity under our standard.

**III. THE HEARING COMMISSIONER ERRED BY NOT AWARDING MR. MORALES AN AWARD FOR TOTAL AND PERMANENT DISABILITY FOR HAVING LOST 50% OR MORE OF THE FUNCTIONAL USE OF HIS BACK TO DO WORK REQUIRING THE USE OF HIS BACK.**

Under S.C. Code 42-9-30(21), a Claimant is entitled to an Award of the balance of 500 weeks of compensation due to the character of the injury of having lost 50% or more of the functional use of their back to do work requiring the use of their back under the substantial evidence in the Record. The Award under The Scheduled Member statute is based solely on the character of the injury and not upon the earnings or the earning capacity of the injured worker. G.E. Moore Company v. Walker, 232 S.C. 320, 102 S.E.2d 106 (1958). McCullum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App. 1989).

There is no need or necessity to prove nor is it pertinent as to whether or not the Claimant has actually lost earnings.

"loss of earnings is not required for recovery under 42-9-30; compensation is based on the character of the injury." Bateman v. Town and Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (S.C. App. 1985), Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993) (Reh. Denied, Cert. Denied.)

Where the substantial evidence in the Record establishes that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back, the Claimant is entitled to an Award for the maximum Award under a Scheduled Member Award which is the equivalent of a permanent and total disability Award for loss of use of the back. Clemmons v. Lowe's Home Centers, Inc.-Harbison, 420 S.C. 282, 803 S.E.2d 268 (2018).

Due to the position being taken by THE defendants in this case and referencing the need for vocational testimony in reference to rebutting the presumption, the following memorandum is submitted:

**AWARD IS PAID FOR CHARACTER OF THE INJURY.**

While the presumption under SC Code §42-9-30 (19) was always rebuttable, the 2007 amendment was to simply set that out in Statutory Language. The effect of any presumption under our Law was and is as is stated in SC Rules of Evidence §301:

"In all civil actions . . . , a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption but does not shift to such

party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words, the Claimant had, has and will always have the burden of proof to put forth evidence, either lay, medical and/or otherwise, that the injured worker has lost 50% or more of the functional use of the worker's back to do work requiring the use of the worker's back which must be sufficient enough to prove that fact by a preponderance of the evidence.

The misperception that the Claimant has to prove wage loss or loss of earning capacity has been around long before the 2007 amendments and has been put to rest repeatedly by our Appellate Courts in the cases of Bateman, McCollum, and Lyles, supra:

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra.

A worker is entitled to an award for total and permanent disability for loss of "earning" capacity under SC §42-9-10 **(A)** or due to "the character of the injury" under SC Code §42-9-10 **(B)**.

The pertinent part of S.C. Code §42-9-30 (21) (as Amended 2007) (the scheduled member back section) reads:

"where there is fifty percent or more loss of use of the back the injured employee shall be

presumed to have suffered total and permanent disability and compensated under §42-9-10 (B). (Emp. Add.)

S.C. Code §42-9-10 (B) provides for Awards based on the character of the injury and provides that the loss of both hands, arms, feet, legs, or vision in both eyes or any two thereof, constitutes total and permanent disability to be compensated according to the provisions of this section.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) are paid due to the character of the injury, not wage loss.

"Compensation depends on the functional loss rather than the loss of earnings." Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as under §42-9-10 (A). They are paid for the functional loss of use without any consideration of wage loss. A left-handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back.

In this case, the undisputed evidence on the essential issue before the Commission under a scheduled member award, loss of use of the back to do work requiring the use of the back, is that Mr. Morales has lost 50% or more of the functional use of

his back to do work requiring the use of his back. What is that undisputed testimony?

1. Dr. Stofko had a Functional Capacity Evaluation performed that established that Mr. Morales is only qualified for light duty work, thus he is excluded totally from three (3) out of the five (5) physical capacity work classifications under the Dictionary of Occupational Titles, Physical Demand Classification System of the US Department of Labor into which all jobs in the United States are classified. Mr. Morales is totally disqualified from all medium duty work, heavy duty work, and very heavy duty work; one of which is the category into which his job fell. In addition, he is disqualified from many jobs within the light duty category and also under the entire physical capacity criteria to do work, including sitting and standing tolerances, etc., he is excluded from many jobs within the sedentary category. However, if you look only at being excluded totally from three (3) out of the five (5) categories, he is excluded from over 60% of the job classifications in the US economy.

2. Mr. Morales testified that he has lost 80% of the functional use of his back to do work.

3. Dr. Leonard Forrest stated the medical opinion to a reasonable degree of medical certainty that Mr. Morales has lost 50% or more of the functional use of his back to do work.

4. Dr. Buncher stated the medical opinion to a reasonable degree of medical certainty that Mr. Morales had lost 50% or more of the functional use of his back to do work.

5. The vocational expert applying the Physical Demand Classification System and the Physical Demand results of the Functional Capacity Evaluation found that Mr. Morales is disabled from gainful employment from a physical capacity standpoint. Also, notably all of that evidence on his physical capacity is directly related to his thoracic fusion involving plates and rods.

Based on the Commission Panel's review of even the higher standard of the reliable, probative and substantial evidence in the Record, although a preponderance of the evidence is the standard the Claimant must meet, the Claimant is entitled to an Award for total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back.

**IV. THE DECISION OF THE HEARING COMMISSIONER SHOULD BE REVERSED DUE TO THE DELAY IN ISSUING THE NOTES FOR DECISION AND DECISION AND IN FAILING TO RULE ON THE MOTION TO POSTPONE TO TAKE DEPOSITIONS.**

On April 8<sup>th</sup> prior to the Hearing Co-Counsel Preston F. McDaniel was associated because of Mr. Gibson's severe health condition, and at that time advised Commissioner Taylor that in addition to questioning whether or not this matter was subject to mandatory Mediation, that once he knew the Hearing location

that he would be subpoenaing Alaina Cole, PA to the Hearing. In addition, he advised if he could not get the deposition set or if she was not subject to attend the Hearing citing Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (SC App. 1996), he requested that the Record be left open for the purpose of her deposition.

The Hearing was held on April 26, 2021 and the Commissioner did not issue Notes for decision until March 24, 2022, eleven (11) months later. In addition, at the April 26<sup>th</sup> Hearing she took under advisement the Motion to take Alaina Cole, PA's deposition and did not rule on that Motion, and again did not rule on that Motion, until the Notes for Decision and as part of the Notes for Decision, eleven (11) months later. In her Decision issued March 22, 2022 there is absolutely no reference in the Findings of Fact to any of the evidence submitted by the Claimant. Also, in reference to delay, the Decision was issued on March 22, 2022 and on March 24<sup>th</sup> a Motion for Reconsideration was filed. A Decision on that Motion for Reconsideration was not issued until October 3, 2022, over six (6) months later.

While the Supreme Court and Court of Appeals have repeatedly addressed the need for prompt Decisions in workers' compensation cases, quoting from Russell v. Walmart Stores, Inc., 426 S.C. 282, 826 S.E.2d 863, and omitting citations:

"One primary goal of the Workers' Compensation Act is to provide quick and efficient resolution of

work-related claims so neither employers nor employees become bogged down in complicated and protracted litigation ... The Workers' Compensation Act sets forth the procedure the Commission should follow to fulfil its purpose ... (the Court then quotes statute §42-17-40(A))... in most instances, therefore a claim filled with the Commission will be assigned to one Commissioner who must **promptly conduct a Hearing** and 'determine the dispute **in a summary manner**' (citations omitted). If the Commissioner's decision is appealed, an Appellate Panel must **promptly hear the appeal ... when the Commission follows this procedure it will have fulfilled the legislative goal to 'provide a system focusing on quick recovery, relatively ascertainable Awards, and limited litigation.'**"

The eleven (11) month delay was prejudicial to both parties no matter who prevailed and based on the Commissioner's Order which resulted in a credit to the Defendants from January 8<sup>th</sup> and at least through March 22, 2022, a period of over **26 months**, the delay was extremely unfair to the Claimant. Here the Defendants should be given no credit under the criteria of Sanders v. Meadwestvaco, 371 S.C. 284, 638 S.E.2d 66 (SC App. 2006). Mr. Morales had nothing to do with either the delay in the Defendants filing a Form 21 or the eleven (11) month delay in the Commissioner's Decision; and at the Hearing Mr. Morales wanted more medical care.

While there is no way to un-do the irreparable harm caused by this delay, at a minimum this matter must be either reversed and remanded for mandatory mediation or reversed and remanded for a de novo Hearing where all evidence can be considered, or

the parties be granted a completely new Hearing before the Panel requiring the attendance of all parties before the Commission and for the Commission to allow for all evidence to be presented at that Hearing.

V. THE COMMISSIONER ERRED BY NOT GRANTING THE MOTION TO LEAVE THE RECORD OPEN TO TAKE THE DEPOSITION OF PA ALAINA COLE.

On April 8<sup>th</sup>, prior to the actual Hearing in this matter, the Claimant advised the Commissioner that he intended to either take the deposition if it could be obtained prior to a Hearing, or once a Hearing was set and he knew the place, to subpoena PA Cole to attend the Hearing pursuant to a Subpoena. Barring her appearance or the Claimant being able to get the deposition set prior to the Hearing, the Claimant made a request at that time for the Record to be left open for the deposition of PA Cole. Subsequently PA Cole was subpoenaed but did not appear at the Hearing and at the Hearing pursuant to Regulations the Claimant asked that the Record be left open for depositions and specifically the deposition of PA Cole. Under Regulation 67-613 a Hearing may be postponed or adjourned. First, it may be "postponed" for good cause shown; for example that additional discovery is necessary, although that subsection also lists illness, which was a factor in this case as well. Under subsection (C), a party may move for adjournment to obtain additional evidence where that evidence is in existence identified and necessary for decision, but unavailable at the

time of the Hearing. That subsection applies in this case in reference to the records that were submitted and the need for the deposition for clarification, the truth, and cross-examination. In addition, under subsection (2) the witness, PA Cole, was subpoenaed to the Hearing. In that case, the Commission may allow the testimony to be made a part of the Record, by a de bene esse deposition which was the request made by the injured worker at the Hearing due to Ms. Cole's non-appearance.

In addition, and more importantly, in the case of Morgan v. JPS Automotives, supra, the Court first quoted from the Regulation applicable at that time which is identical to the Regulation section dealing with adjournment or postponement now. The Court then held:

"When the claimant notifies the Commissioner and her employer of her request for adjournment to provide additional proof of disability, as Ms. Morgan did in her Form 58, an adjournment causes no prejudice to the employer. The Commissioner should have permitted the adjournment in the interest of justice ... we therefore find the Commissioner erred in denying Morgan's Motion for Adjournment."

The Commissioner erred by not granting the Motion and also erred by waiting eleven (11) months to make a decision on that Motion.

VI. THE CLAIMANT WAS EXTREMELY PREJUDICED BY THE COMMISSISONER'S RULING GRANTING A CREDIT TO THE DEFENDANTS BACK TO JANUARY 10, 2020.

First, the Defendants sought a credit back to January 10, 2020 but yet did not file a Form 21 until February of 2021, a period of over one (1) year. The Commission seldom gives a credit back that far when the Defendants have unreasonably delayed the request for a stop payment.

In addition, and further, the Commissioner then held a Hearing in April 2021 and did not rule on that stop payment application until eleven (11) months later. Thus, the delay in requesting the credit was caused by the Defendants and then was compounded by the Commissioner not making a ruling for approximately a year later. As cited in the Motion for Reconsideration, a credit should not be given where the credit and delay is at no fault of the Claimant. In this case and for the above-stated reasons, the Defendants should not be granted a credit against any Award made.

CONCLUSION

For the foregoing reasons, the matter should be reversed and remanded for mandatory Mediation; or reversed for procedural reasons and granted a new Hearing either before the Panel or a Commissioner; or the Commission based on the undisputed evidence in the Record, change the Award and grant Mr. Morales an Award for total and permanent disability, either or both under §42-9-

10(A) or under SC Code §42-9-30(21) for having lost 50% or more of the functional use of his back to do work requiring the use of his back.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

January 23, 2023

**CERTIFICATE OF SERVICE**

Evaristo Verdugo Morales v. Insulation by Cohen's  
& Spray Foam by Cohen's LLC

WCC File No. 1921668

I HEREBY CERTIFY that on this date:

I uploaded a copy of the **APPELLANT'S BRIEF TO THE FULL COMMISSION** to:

**VIA eCASE UPLOAD**

Amy Bracy, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202


And I mailed a copy of the **APPELLANT'S BRIEF TO THE FULL COMMISSION** to:

**VIA FIRST CLASS MAIL ONLY**

E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, SC 29402

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
23rd day of January, 2023.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/25/28



In a decision filed March 22, 2022, the Single Commissioner granted the Respondents' request to stop payment of temporary total compensation, found that maximum medical improvement had been reached on January 8, 2020, that the Appellant had sustained 20% permanent partial disability to his back as a result of the work-related injury, and that the Respondents were entitled to a credit for weekly benefits paid since January 8, 2020, the date of maximum medical improvement as per the authorized treating physician.

Appellant filed a request for reconsideration on March 24, 2022. On October 3, 2022, an Administrative Order was issued denying the request for reconsideration. A Form 30 was filed on October 14, 2022. The Form 30 alleged the following grounds for appeal:

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.
2. That where in an accepted case the Claimant in his Form 50 and Form 21 response alleged that he was totally and permanently disabled both under SC Code §42-9-10 and 42-9 30(21), did the Commissioner err in hearing the case and failing to order mandatory mediation pursuant to the Commission Regulations. In addition, where the parties have signed a Consent Order to mediate the case which had been filed with the Commission for signature, but the Commissioner had delayed in signing it, did the Commissioner err by allowing the Defendants to withdraw from a signed Consent Agreement and scheduling the case for a hearing and scheduling that hearing within one (1) month.
3. Should the Commission, based on a review of the evidence on the essential issue for decision concerning the loss of use of the Claimant's back, where not only does a preponderance of the evidence but the only evidence in the Record on that essential issue for decision establishes that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back, award permanent and total disability. That evidence includes:

- A. The Functional capacity evaluation performed at the request of Dr. Stofko by Grace Physical Therapy establishes that the Claimant only demonstrated the ability to perform light duty work and recommended that he should not return to his prior work of installing insulation and noted that he exhibited moderate to high pain and that that was without exaggerated or inorganic pain behavior being present.
- B. Dr. Leonard Forrest opined that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back.
- C. Dr. Jeffrey Buncher opined that the Claimant had lost 50% or more of the functional use of his back to do work requiring the use of his back.
- D. Mr. Morales testified that in his opinion he had lost 50% or more of the functional use of his back and in fact testified that he had lost 80% of the use of his back.

Note, there is no other evidence in the Record of the loss of use of the back and Dr. Stofko does not even mention the functional capacity evaluation that he ordered.

- 4. Should the Commission based on a review of the evidence concerning the loss of earning capacity, award the Claimant under SC Code §42-9-10 total and permanent disability for having sustained a total loss of his earning capacity based on the criteria for total and permanent disability under the Act, which is that where based on the age, education, background and experience, and the physical facts of the injury, the jobs which the Claimant can perform on a residual basis are so limited in quality, quantity, or dependability that a reasonably stable job market for them does not exist. In reference to loss of earning capacity, the evidence establishes that:
  - A. The Claimant does not speak English and has only a limited 4<sup>th</sup> grade education.
  - B. He has always performed jobs in the medium to heavy duty physical demand classification.
  - C. Dr. Leonard Forrest opined that the Claimant, from a physical demand standpoint, is not gainfully employable due to the condition of his back including having to alternate positions in reference to his thoracic spine fusion.
  - D. Dr. Buncher concurred and concurs based on a review of all of the evidence available that from a medical standpoint the Claimant is physically incapable of performing work within his capacity.

- E. The vocational expert, Ms. Harriet Fowler, opined that the Claimant from a vocational standpoint is not capable of gainful employment.
- F. There is no evidence in the Record that the Defendants have complied with SC Code §42-9-190 in that there is no evidence that they have either offered or procured work within the residual capacity to do work, which the Defendants claim the Claimant is capable of doing.
- G. There is no evidence that the Claimant has been able to work or has worked in any capacity since this accident

The Supreme Court has held that where a Claimant is not capable of any other employment other than physical manual labor the inability to do physical manual labor is total and permanent disability under the Act.

- 5. Where an Order is issued, such as in this case on January 11, 2021, which Order is based upon a hearing held on August 13, 2020 based on a Form 50 filed on June 16<sup>th</sup> of 2020 requesting additional medical care and where after the evidence that was presented at that August hearing, the Defendants had a functional capacity evaluation performed on October 23, 2020 at the request of Dr. Douglas Stofko which documented problems with range of motion and pain, limitations in both the cervical and thoracic lumbar areas of the back, and thus the Claimant continued to receive treatment and evaluation by the Defendants post-hearing and where the claim is thus in an ongoing capacity is a claimant foreclosed from requesting medical care based on additional medical evaluation during the pendency of the claim? Also, did the Commissioner err by not considering the variation between the Hearing Commissioner's notes for drafting the January 11<sup>th</sup> Order and the specific Order that was drafted by the Defendants and submitted to the Commissioner for signature?; particularly wherein the Defendants attempt to rely on that additional wording added by the Defendants to the original Findings and directions of the Hearing Commissioner to deny the Claimant medical care.
- 6. Since the Commission is committed to swift and sure benefits to an injured worker as part of its policy under the provisions of the Workers' Compensation Act, did the Hearing Commissioner err by not issuing a ruling until approximately eleven (11) months after the original hearing and then ordering a credit all the way back to the original date Defendants requested as being maximum medical improvement?
- 7. Where a Subpoena had been issued and served upon PA Alana Cole for attendance at the hearing and where she did not appear at the time of the hearing after being called in the hall to make sure she had not appeared, did the Commission err by not ordering and allowing the Claimant to take the deposition of Alana Cole prior to a decision in this case? In addition, did the

Commissioner err by not ruling on that request to take the deposition until entering a Finding on that issue in her final Order Instructions for an Order that was issued eleven (11) months after the hearing? Does this deny the Claimant due process of law and was it an error to deny the Claimant the right to take the deposition of PA Cole?

8. Where as specifically noted that PA Cole was the provider that was providing treating throughout the entire course of treatment and where the evidence establishes that there was no qualified and certified interpreter present at any of the treatment events prior to July 22, 2020, and where the only translation for the Claimant who does not speak English was through two (2) adolescent cousins, age approximately 12 and 14 years old, was it error for the Commission to even consider whether or not and what the Claimant was reporting given this lack of a certified translator?
9. Where in the last authorized treatment visit of July 22, 2020 PA Alana Cole ordered an MRI of the lumbar spine and prescribed a Medrol dose pack to help with lower extremity radiation and ordered medications and made a reference to physical therapy with potential trigger point injections and ordered a follow-up visit for two (2) weeks and where in the Form 14B which was issued on January 12, 2021 stating a date of maximum medical improvement of January 8, 2020 and wherein there is no record that the Claimant was seen or treated any date since July 22, 2020 and wherein on the Form 14B completed by PA Alana Cole on the date indicated that the Claimant would need further medical care in reference to an MRI of the lumbar spine ordered for assessment and the Form 14B states that this medical care is needed,

**"as a result of the injury for an additional time that will tend to lessen the period of disability or maintain the current level of function"**.

The Hearing Commissioner erred by concluding and finding as a fact that the Claimant reached maximum medical improvement on January 8, 2020 where there is absolutely no substantial evidence, medical or otherwise, of maximum medical improvement on that date. The medical treatment record of January 8<sup>th</sup> reflects that the patient was to do three (3) more weeks of physical therapy and was released to attempt to return to work on January 27<sup>th</sup> and there is no statement that the Claimant had reached maximum medical improvement stated to a reasonable degree of medical certainty on January 8<sup>th</sup>. Further he was to return if further complaints and contains a diagnoses of both acute bilateral low back pain, unspecified and closed fracture of the 12<sup>th</sup> thoracic vertebrae which he did as authorized on July 22<sup>nd</sup>. (Def. APA, pp. 10, 12).

10. That the Hearing Commissioner erred as a matter of law and fact by making Findings of Fact #6 and #7 which are contrary to the first Order of the Commission and contrary to the evidence in the Record. The Interim Order requesting additional medical care simply denied further medical care for the cervical lumbar and left and right shoulders based on the evidence at that time.
11. That the Hearing Commissioner erred in making Findings of Fact #8 and #9 based on the questionnaire that was submitted by the Defendants. Especially where after PA Alana Cole did not appear at the hearing pursuant to a Subpoena and the Claimant asked to have the Record left open for the Claimant to take her deposition, which Motion was taken under advisement and not ruled on until eleven (11) months later and where the evidence is clear that Alana Cole, not Dr. Stofko, treated the Claimant following the surgery, the Hearing Commissioner erred by taking that questionnaire into consideration.
12. That the Hearing Commissioner erred as a matter of law and fact in making Findings of Fact #10 and #11 and concluding in those facts that the Order of January 11, 2021 was a final Order of the Commission and not an Interim Order of the Commission.
13. That the Hearing Commissioner erred as a matter of law in making Finding of Fact #13 for the reasons as set out in other grounds for review, but in addition in that Finding of Fact making the following statements as a fact,

"PA Cole did sign a 14B on January 12, 2021; however, that 14B is given little to no weight when viewing the evidence as a whole as this is a Commission form that requires a signature of a physician as opposed to a PA."

**Whereas in Finding of Fact #4 the finding of maximum medical improvement is based specifically and solely on that Form 14B.** (Def. APA, p. 20).

The Hearing Commissioner also erred in that Finding of Fact by making a legal argument outside of the arguments presented to her by the parties and thus outside of the Record and citing case law not presented to the Commissioner by the parties and actually giving a legal interpretation to the case law which is outside of the province of the Commission.

14. That the Hearing Commissioner erred in making Finding of Fact #14 wherein there was no argument made by either party to the effect that the hearing was not within fifty (50) miles of the PA Cole's office nor was the argument made that service was not proper on the witness. That is also a legal conclusion, not a Finding of Fact.

15. That the Hearing Commissioner erred in making Finding of Fact #15 and basing it upon the Form 14B, which she stated earlier was given little or no weight, and on an impairment rating issued by a physical therapy group.
16. That the Hearing Commissioner erred by making Findings of Fact #16 and #17 in that there is nothing in the January 8, 2020 report stating maximum medical improvement; and it clearly refers to bilateral lumbar pain as a diagnosis; and the Claimant was treated after that date for the thoracic spine. The Findings of Fact are contrary to the evidence and law.
17. That the Hearing Commissioner erred by making Findings of Fact #18 and #19 wherein there is absolutely no evidence in the Record to substantiate a 20% permanent partial disability to the Claimant's back wherein the issue before the Commissioner was loss of use and the loss of use of the back after the accident. Referenced to the thoracic spine fusion are the opinions of two (2) medical doctors, stated to a reasonable degree of medical certainty; and the Claimant's testimony is in reference to the loss of use of his back. There is absolutely no evidence that the loss of use is caused by anything other than the injury sustained in the accident. Further, the objective physical evidence from the functional capacity evaluations states that the Claimant is limited to, at best, light duty work. Under the US Department of Labor's Dictionary of Occupation Titles Physical Demand Classification System of sedentary, light duty, medium duty, heavy duty, and very heavy duty work classifications. He is thus excluded from over 60% of the jobs in the economy in reference to the condition of his back after the accident.
18. That the Hearing Commissioner erred as a matter of law by making Finding of Fact #21 which is contrary to the recommendations on the Form 14B completed by PA Cole which recommended further medical care as causally related to the Claimant's work-related injury as tending to lessen the period of disability. The Findings of Fact flip-flop between relying on the Form 14B and not relying on the Form 14B in reference to the Findings of Fact made.
19. That the Hearing Commissioner erred as a matter of law in making Finding of Fact #22 which goes outside of her authority. The current Commission has stated in numerous decisions the opinion that the Order of a Commissioner is not final until reviewed by the Full Commission; and that being the case the Hearing Commissioner has no authority to stop or terminate temporary total disability benefits. The statute and Reg. 67-506 refer to as law that temporary compensation is not to be suspended, "until the Commission finds" that temporary benefits may be stopped. Further, there is no Finding that the disability has ended and there is no evidence to that effect.

20. That the Hearing Commissioner erred as a matter of law in her Findings of Fact # 1-22 by failing to make any reference to or that confirms that there was any consideration given to any of the evidence presented by the Claimant to the Commissioner. There is specifically no reference to any of the evidence concerning the essential issue before the Commissioner for determination; that being loss of use of the back to do work requiring the use of the back.
21. That the Hearing Commissioner erred as a matter of law in her Conclusions of Law by failing to properly apply the dictates of SC Code §42-9-260, §42-15-60, and §42-9-30 in general and specifically by 1) referencing injury by accident when this is an accepted injury; and 2) by immediately terminating benefits wherein she does not have the authority to do that as only the Commission does; and 3) treating an Order based on a request for additional medical care as a final Order of the Commission in an ongoing case.
22. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law #5 by failing to leave the Record open in accordance with Supreme Court decisions and in making Conclusion of Law #6 and #7 where those are irrelevant to the issues before the Commissioner for decision. Section 42-17-60 refers to a final Order of the Commission on a claim, not Interim Orders pursuant to our Appellate Court decisions.
23. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law #8 wherein there is absolutely no evidence of any payments made by the employer in lieu of compensation; and wherein that was not an issue before the Commission for decision.
24. That the Hearing Commissioner erred as a matter of law in all respects in reference to the Order which is based on the Findings of Fact and Conclusions of Law and specifically by:
  - A. Allowing the Defendants to terminate temporary total disability benefits effective immediately where she has no authority to do that.
  - B. Granting an overpayment from the date of maximum medical improvement where there is evidence in the Record to sustain that date.
  - C. Finding that the Claimant sustained a 20% permanent partial disability to his back wherein partial disability was not the issue before the Commissioner and wherein the essential issues for decision were in reference to "disability" as defined in the Act, that being loss of earning capacity, and "loss of use" of the back to do work requiring the use of his back as a scheduled member wherein disability has absolutely nothing to do with that Award and by giving the Defendants a credit

against that Award back to the date of maximum medical improvement, especially where there is no evidence that the disability to do work has ended.

- D. Finding that the Claimant did not meet his burden of proof to show that he was entitled to any additional medical treatment for the thoracic spine which is contrary to the evidence presented especially whenever that evidence is not even referred to by the Hearing Commissioner, nor is there any evidence that the problems that the Claimant has does not stem from the thoracic spine fusion.

This matter is now set for oral argument before the Appellate Panel.

#### STATEMENT OF THE CASE

This matter originally arose when the Appellant fell off a ladder and injured his back on October 10, 2019, sustaining a fracture at T-12. A Form 50 alleging injury to back, left shoulder, right shoulder, and concussion and requesting a hearing was originally filed January 24, 2020, and the claim was originally denied. The hearing set for April 7, 2020, was canceled on a Consent Order filed April 14, 2020. Respondents admitted compensability for the back only, although the Appellant reserved the right to pursue other body parts. The parties agreed that Dr. Stofko, a neurosurgeon, was the authorized treating physician and that, at that time, the Appellant had not yet reached maximum medical improvement.

A subsequent Form 50 was filed on June 16, 2020, alleging the same body parts as the original one, and a hearing was held on August 13, 2020. Order instructions were issued September 10, 2020, and a proposed Order was sent to the Appellant's attorney on October 5, 2020. A Decision & Order was filed January 11, 2021, denying the Appellant's request for additional medical treatment for his shoulder, neck, and low back and finding that the only body part injured in this accident was the thoracic spine. There was a specific finding that there were no medical opinions in the record that any conditions regarding the Appellant's shoulder and neck were causally related to this injury by accident. The Commissioner further found that there was no

indication that an MRI requested by Dr. Stofko on July 22, 2020, was for evaluation of the surgical site or another part of the back and noted that there was no medical opinion stated to a reasonable degree of medical certainty that there was a causal relationship between the accident and the lumbar spine. The Decision & Order further made a specific finding that the Appellant had failed to meet his burden of proof to show that the shoulder, neck, and lumbar spine were injured or that those injuries were causally related to the accident. This Decision & Order was not appealed and is the law of the case.

A subsequent Form 50 was filed on January 11, 2021, requesting a hearing and alleging the same body parts as were alleged in the previous Forms 50 (and denied in the Decision & Order that was not appealed). In fact, the 50 filed January 11, 2021, was identical to the one that had been addressed in the previous hearing and subsequent Order filed January 11, 2021. There was no statement on the 50 that the Appellant was permanently and totally disabled, and mediation was not mandatory. Respondents also filed a Form 21 on February 5, 2021, in addition to the responsive Form 51. These pleadings were the basis for the hearing on April 26, 2021, and the Decision & Order that is currently before the Appellate Panel on appeal.

At the hearing, the Appellant again sought medical treatment for both shoulders, the neck, and the lumbar spine as he had in the previous hearing. Respondents contended that those issues had been litigated in the earlier hearing and previously been denied by the unappealed Decision & Order dated January 11, 2021, and were, therefore, *res judicata*. Respondents were seeking a finding of MMI on January 8, 2020, based upon the medical records and requested credit for overpayment of temporary total compensation. It should be noted that a 14B was completed by the treating doctor on January 12, 2021, finding MMI had been reached on January 8, 2020. The 21 was filed as soon as the Respondents received the 14B.

The medical records indicated that the Appellant had undergone a percutaneous fusion for T12 fracture from T11 to L1. The Appellant was followed by Alana Cole, physician's assistant for Dr. Stofko, a neurosurgeon and the treating physician. The medical note of January 8, 2020, indicated a recommendation for physical therapy and return to work without restrictions. It was noted that the Appellant did not have to wear the brace any longer unless for comfort and did not need to return to see that medical practice unless an issue arose. The Appellant did return to the treating physician on July 22, 2020, complaining for the first time of pain in the neck and upper back into the bilateral shoulders as well as lower back pain with radiation into the bilateral lower extremities.

At the request of the Appellant's attorney following the first evidentiary hearing of August 13, 2020, Dr. Stofko stated to a reasonable degree of medical certainty in a report dated November 18, 2020, that the complaints of pain in the neck and upper back into the bilateral shoulders were not causally related to the October 10, 2019, accident. He also opined that the low back pain with radiation into the bilateral lower extremities was not causally related to the work-related injury of October 10, 2019. He also opined that the lumbar radiculopathy was not causally related to the work accident. A Form 14B was completed by Alana Cole on January 12, 2021, noting that the Appellant had 5% impairment to his back and had reached MMI on January 8, 2020.

The Appellant also underwent an evaluation for an impairment rating performed by CORA Physical Therapy on October 23, 2020, at which time it was opined the Appellant had sustained 5% permanent impairment to the whole person based upon the *AMA Guides 6<sup>th</sup> Edition*, noting that he had sustained a Class 1 "C" fracture of one or more vertebral bodies with less than 25% compression – healed with surgery.

In the Order on appeal, the Commissioner specifically found that the Claimant was barred from pursuing the additional body parts, *to wit*: cervical, lumbar, and both shoulders as the compensability of those body parts had previously been litigated and were, therefore, *res judicata*. She further found that the medical records, when taken as a whole, support a finding that the Claimant reached MMI on January 8, 2020. She also granted the Respondents' stop pay request and awarded a credit for overpayment of temporary total compensation after that date. She also quadrupled the impairment rating of 5% to 20% to the back.

**The Single Commissioner's decision that MMI had been reached on January 8, 2020, was supported by the substantial evidence in the record.**

The parties had agreed in a Consent Order filed April 14, 2020, that Dr. Stofko, a neurosurgeon, was to be the treating doctor. At the first hearing in August, 2020, the Appellant was seeking findings of compensability and medical treatment for bilateral shoulders and lumbar and cervical spines. In a Decision & Order filed January 11, 2021, the Single Commissioner found that the Appellant had not met his burden to prove that the other body parts alleged, *to wit*: bilateral shoulders, cervical spine, and lumbar spine with bilateral radiculopathy were causally related to the original accident and that, therefore, the only compensable body part was the thoracic spine. This Order was not appealed and the only compensable body part was the thoracic spine. The Single Commissioner's findings that those issues had previously been litigated and were *res judicata* were supported by the record. At the time of that earlier hearing, there was no medical evidence that maximum medical improvement had been reached as to the fracture to the thoracic spine.

After the first hearing, but before the Order instructions were issued, Appellant's attorney sent Dr. Stofko a medical questionnaire on October 15, 2020. In response, Dr. Stofko stated on November 18, 2020, that the bilateral shoulders, cervical spine, and lumbar spine

complaints and bilateral radiculopathy were not causally related to the original accident. He also pointed out that those complaints were not made until nine months after the surgery. This report was obviously not part of the record for the first hearing as it had not yet been drafted but was in the defense APAs for the second hearing. No attempt was made to depose him or otherwise question his opinions. Furthermore, the findings on the FCE prepared October 23, 2020, supported a finding that MMI had been reached as to the thoracic spine and that the Appellant had sustained 5% impairment for the causally related accident.

In rebuttal, Appellant submitted reports from Dr. Forrest and Dr. Buncher, both of whom submitted opinions as to causal connection between the accident and the neck and low back. Dr. Forrest had prepared one report prior to the first hearing, but it was not submitted into evidence until the second hearing. He prepared a second report for the second hearing. As stated earlier, the unappealed Decision & Order filed January 21, 2021, which denied compensability to any other body parts beyond the thoracic spine, became the law of this case when the appeal period ran. Any opinions rendered by Dr. Buncher or Dr. Forrest as to any body parts beyond the thoracic spine were not relevant to this case. The Single Commissioner considered all of the medical evidence submitted by the parties and awarded 20% permanent disability to the back, which was well in excess of the impairment ratings of 5% from the FCE as well as the treating doctor, Dr. Stofko.

It is well established that the hearing commissioner decides the weight to be afforded medical evidence, and as long as the decision is supported by the substantial evidence in the record, it should be affirmed. In this case, the Commissioner's decision is supported by the substantial evidence in the record.

**The Single Commissioner's decision to award credit for overpayment of temporary total compensation was supported by the substantial evidence in the record.**

On February 5, 2021, Respondents timely filed the Form 21 to stop payment of temporary total compensation upon receipt of the Form 14B finding MMI to have been reached on January 8, 2020. There was no unreasonable delay on behalf of the Respondents to request a hearing immediately upon having received the Form 14B from the authorized doctor indicating that MMI had been reached. That report was not prepared until January 8, 2021, but the medical evidence and, in particular, the questions answered by Dr Stofko solicited by the Appellant's attorney, support the finding of MMI on January 8, 2020, as no medical treatment was recommended as treatment likely to reduce the Appellant's disability for the thoracic spine.

S.C. Code Section 42-9-210 provides that payments made by an employer which are not due and payable may be deducted from the amount of compensation. In the present case, the hearing was held on April 26, 2021, and the Order was filed March 22, 2022, following instructions sent February 23, 2022. The Respondents had continued to pay the Claimant TTD as required by the Act through February 23, 2022. The Single Commissioner found the Appellant had sustained 20% PPD to the back, which was four times the impairment rating. Appellant had been offered a Form 17 to sign on February 4, 2021, which he refused to sign. Temporary total compensation benefits were paid through February 23, 2022, when the Order instructions were received. Respondents paid a total of 111 weeks, which included an overpayment of \$45,669.96. Appellant continued to receive weekly payments of \$845.74 through February 23, 2022.

The S.C. Court of Appeals addressed overpayment of TTD in the 2006 decision of Sanders v. Meadwestvaco Corporation, 317 S.C. 284, 638 S.E.2d 66, citing Hendricks v.

Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999), which held that once an employee had reach MMI, it was appropriate to terminate TTD benefits in favor of either permanent partial or permanent total disability benefits if warranted by the substantial evidence of the record. The rationale for ceasing temporary benefits is to allow for entry of a permanent award. Benefits for temporary disability cannot be awarded during the same time as benefits for permanent disability; a person is either temporarily disabled or permanently disabled, he cannot be both at the same time.

One of the issues on appeal in the Sanders case concerned the denial of credit for temporary benefits paid after MMI had been reached. The Commission had basically found that the credit should be denied because the hearing had been delayed several times and that, therefore, the Carrier should be denied credit for overpayment. The Court in Sanders disagreed with this finding based on the fact that both parties had requested the delay and, therefore, neither party should be penalized for it and remanded the case back to the Commission for further review on this issue.

In the present case, the opinion of the authorized treating physician as well as the medical professional who performed the FCE was that MMI had been reached as to the thoracic spine, which was the only compensable and causally related body part. While it is true that there was some delay between the hearing date of April 26, 2021, and the filed Order dated March 22, 2022 (TTD was stopped pursuant to Order instructions received on February 23, 2022), Respondents were not responsible for this delay and should not be penalized for something beyond their control. Contrary to Appellant's attorney's argument, the Appellant was not penalized for the continued payment of temporary total benefits as he was paid \$45,669.96 over

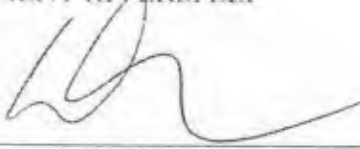
the disability award of \$50,744.40, representing 20% permanent partial disability to the back at the weekly rate of \$845.74.

In conclusion, the Appellant had his opportunity to prove compensability of cervical and lumbar spine as well as both shoulders at the original hearing held in August, 2020. The Order of the Single Commissioner finding that the burden of proof as to compensability of any body part beyond the fracture at T12 was not appealed and is the law of this case. Appellant tried to re-litigate the same issues in the second hearing held in April, 2021. The Single Commissioner correctly found that not only were those issues *res judicata* but continued denial of findings of compensability to the back, neck, and shoulders was supported by the substantial evidence in the record.

The undersigned respectfully requests that the Decision & Order of the Single Commissioner be affirmed in its entirety.

Respectfully submitted,

CLEMENT RIVERS, LLP

By:   
E. Courtney Gruber  
P. O. Box 993  
Charleston, SC 29402-0993  
(843) 720-5410  
[cgruber@cr-law.com](mailto:cgruber@cr-law.com)  
Attorneys for the Defendants-Respondents

Charleston, South Carolina

Dated: February 7, 2023.

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
Claimant/Appellant, )  
vs. )  
Insulation By Cohen's & Sprayfoam by )  
Cohen's, LLC, )  
Employer, )  
Builders Premier Insurance Company, )  
Carrier/Defendants- )  
Respondents. )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2023, I served the **Respondents' Brief** on:

Eugenia Hollmon  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202-1715

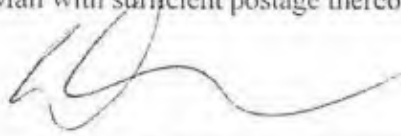
VIA eCASE UPLOAD

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

VIA FIRST CLASS MAIL

by placing said document in the United States Mail with sufficient postage thereon.



\_\_\_\_\_  
E. Courtney Gruber

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**Evaristo Verdugo Morales v Insulation by Cohen  
SCWCC: 1921668  
Commission Panel: McCaskill, Dooley, Campbell; Chair  
Order Assigned to Commissioner: McCaskill  
Court Reporter – Amber Scarborough- 803-252-3445**

Preston F. McDaniel  
E. Courtney Gruber

Claimant/Appellants  
Defendants/Respondents

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Vacate** the decision and order of the Single Commissioner. The hearing was premature. This is an acceptable claim to the back. The claimant asserts permanent and total disability as a result of this work-related accident. As such, the claim is subject to regulation 67-1802(A) which requires mandatory mediation

**Mr. McDaniel please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov) and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.**

**The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.**

If you have any questions, please do not hesitate to email me at [ehollmon@wcc.sc.gov](mailto:ehollmon@wcc.sc.gov) or call at 803.737.5737

**Judicial**

Transmitted via email this 2 March 2023

**South Carolina Workers' Compensation Commission**  
 1333 Main Street, Suite 500  
 Post Office Box 1715  
 Columbia, South Carolina 29202-1715  
 (803) 737.5675 [www.wcc.sc.gov](http://www.wcc.sc.gov)



WCC File #: 1921668  
 Carrier File #: WCV001062422  
 Carrier Code #: \_\_\_\_\_  
 Employer FEIN #: \_\_\_\_\_

Claimant's Name: Evaristo Verdugo Morales Employer's Name: Insulation by Cohen's & Sprayfoam by Cohen's  
 Address: \_\_\_\_\_ Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Insurance Carrier: Builders Premier Insurance Company

Claimant's Attorney: Don C. Gibson; Preston F. McDaniel Employer Carrier Attorney: E. Courtney Gruber  
 Phone: (843) 744-1887 Email: dgibson@dgibsonlaw.com; law2@dgibsonlaw.com; preston@pfmcclaw.com; Phone: (843) 720-5432 Email: cgruber@ycrlaw.com; dhendriks@ycrlaw.com

*Allison M. Carter*

Preparer's Signature \_\_\_\_\_ Mediator Title \_\_\_\_\_ amcarter@wicblaw.com Email \_\_\_\_\_ 07/19/2023 Date

Pursuant to Reg. 67-1803 A. and 67-1809, the undersigned duly qualified Mediator reports the following results of the mediation held on : July 19, 2023

The following issues mediated and are settled or contested as indicated below:

ISSUE	SETTLED	CONTESTED
Benefits due under the Act		XX

Per agreement of the Parties the matter is to be:

- Rescheduled pursuant to Reg. 67-1804 C. on \_\_\_\_\_.
- Set for hearing to determine all issues.
- Set for hearing to determine remaining issues pursuant to the Forms 58.
- Returned to General Files pending request for hearing from either Party.

The \_\_\_\_\_ Claimant \_\_\_\_\_ Defendants shall submit the Final Agreement & Release, Consent Order, Form 16A, or other appropriate documentation regarding the agreement to the Commission.

The costs of the mediation is : \$ 1,455.00.

XX The cost was shared equally by the Parties.

~~The total cost was paid by the~~  Claimant  Defense.

The cost was paid pursuant to an Order of the Commission pursuant to Reg. 67-1807.

Mediator: Allison M. Carter Address: 4922 O'Hear Ave., Suite 301, North Charleston, SC, 29405 Phone: (843) 284-1083 Email: amcarter@wicblaw.com

**This report is to be returned to the Commission in all cases, whatever the mediation results. This form is used solely for tracking purposes and does not become a part of the Commission file.**

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov). Refer to Regulation 67-1801.

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 1, 2023

Amy Bracy, Judicial Director  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's &  
Sprayfoam by Cohen's, LLC  
WCC File No. 1921668**

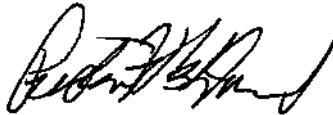
Dear Ms. Bracy:

*For RE Filing*  
Enclosed is our Form 50 requesting a hearing with regards to the above-referenced matter along with my proof of service upon the opposing counsel in this matter. I have also enclosed this firm's check in the amount of \$50.00 representing the appropriate filing fee.

I am requesting that this matter be set for hearing as soon as the Commission calendar will permit.

I hope this is sufficient for filing with the Commission. Should you require anything further, kindly advise.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosure

cc: Don C. Gibson, Esquire  
E. Courtney Gruber, Esquire

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500 • Post Office Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5723 www.wcc.sc.gov



WCC File #: 1921668  
Carrier File #: \_\_\_\_\_  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: Evaristo Verdugo Morales SSN: - - Employer's Name: Insulation by Cohen's & Sprayfoam by Cohen's, LLC  
Address: REDACTED Address: 1415 Old Hwy 52  
City: REDACTED State: SC Zip: REDACTED City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: Builders Premier Insurance Co.  
Preparer's Name: Preston F. McDaniel, Esquire Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

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

- Injury  Illness  Repetitive Trauma  Occupational Disease  Physical Brain Injury  Concurrent Jurisdiction
- The claimant sustained an injury to upper, middle and lower back, left shoulder, right shoulder, interval posterior, spinal fusion from T11-L1, T12 vertebral fracture
  - concession (Part(s) of Body Injured) on 10/10/2019 (Month/Day/Year) in Colleton county, state of SC.  
Body part(s) affected are: listed above  
Briefly describe how the accident occurred. Putting up plastic around garage. Claimant fell off ladder feet approx. 4 ft landing on back. He lost consciousness and his co-worker took him to the hospital. He was admitted and treated including fusion.
  - Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
  - The relationship of employer and employee existed at the time of injury.
  - At the time of the injury the claimant was performing services arising out of and in the course of employment.
  - Notice of the accidental injury was given to the Employer on 10/10/2019 (Month/Day/Year) in the following manner: Verbally by coworker. Accepted case. Taken by ambulance from the scene.
7. Due to injury, the claimant is in need of (check one):  
 (a) medical examination and treatment for: See Attachment #11.  
 (b) additional medical examination and treatment for: \_\_\_\_\_
8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: N/A - being paid.
9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):  
 (1) General Disability:  Total  Partial  (2) Specific Disability:  Total  Partial  (3) Wage Loss  
9a. Claimant at MMI:  Yes  No
10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: N/A at this hearing.
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$1,302.22, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: N/A
11. Further grounds or unusual aspects of claim: See Attachment #11.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: See Attachment #11a.
- 11b. To the best of your knowledge, did you have any prior permanent disability? \_\_\_\_\_  
If yes, describe: \_\_\_\_\_
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
13. I am filing a claim. I am not requesting a hearing at this time. Estimated time needed for hearing: 1.5 hrs.
14. I am requesting a hearing. A \$50 fee is required.
- Mediation  
 a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.  
 b. Mediation is required pursuant to Reg. 67-1802.  
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.  
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.  
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SEE ATTACHED CERTIFICATE OF SERVICE on the \_\_\_ day of \_\_\_ 20\_\_\_, by  first class postage  certified mail  personal service  electronic service

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

Preston F. McDaniel Attorney for the Claimant preston@pfmcdlaw.com Replied  
Preparer's Signature Title Email Date  
August 1, 2023

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

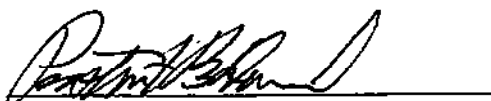
ATTACHMENT TO FORM 50.

Evaristo Verdugo Morales v. Insulation by Cohen's,  
& Sprayfoam By Cohen's LLC  
WCC File No. 1921668

11. Immediately following the accident after being transferred from Moncks Corner to Trident, Mr. Morales had an emergent thoracic fusion for a chance fracture of the T12 from T11 thru the L1 vertebrae with hardware by Dr. Douglas Stofko. The Claimant has four (4) screws and plates in his back. From the point of surgery through the current time, Mr. Morales has had a significant problem with pain, particularly over the screws themselves, and the fusion site and is having problems adjacent to the fusion site, both above and below. Dr. Leonard Forrest in consultation with other specialists at Southeastern Spine that due to the continuing pain that Mr. Morales recommended waiting for one (1) year, but if he continued to have pain one (1) year after the fusion that he have further diagnostic testing and an evaluation for hardware removal. After that visit conducted on July 22, 2020, Dr. Forest saw the Claimant again on January 20, 2021, more than a year after the original fusion, and due to continuing pain recommended at that time further diagnostic testing and evaluation for surgical removal. Due to the continuing problems, the Claimant would request that the Commission pursuant to its authority under §42-17-30 order the Defendants to provide an evaluation by a duly qualified orthopaedic surgeon to evaluate the screws and fusion and whether or not he would benefit from hardware removal; further treatment concerning the fusion; and whether or not Mr. Morales is having problems in the back structure immediately above and below the fusion site, and/or problems with the back stemming from the fusion and authorization for treatment if that physician determines treatment to be necessary. Having already seen the orthopaedic specialists at Southeastern Spine for evaluation, the Claimant would request that the Commission consider ordering the Defendants to pay for an evaluation and treatment, if any is found to be necessary, with an agreed upon specialist or a designated specialist, or specialists with Southeastern Spine Institute.

11a. Charles T. Staples, Jr., MD & Charles Geilfuss, MD of Moncks Corner Medical Center, 401 Live Oak Dr, Moncks Corner, SC 29461; Seon Jones, MD, Douglas Stofko, MD & Richard M Thompson, MD of Trident Medical Center, 9330 Medical Plaza Drive, Charleston, SC 29406; Alana N. Cole, PA-C of Trident Orthopaedic Specialists/Trauma Care and Acute Surgical Services - Trident Health, 9300 Medical Plaza Dr, Ste B, Charleston, SC 29406; Roper St Francis ATI Physical Therapy, 2061 Highway 52, Moncks Corner, South Carolina 29461; Grace Physical Therapy, N. Charleston, SC; Leonard Forrest, MD, Southeastern Spine Institute. Mt. Pleasant, SC; Jeffrey Buncher, MD, Charleston Pain & Rehab. Center, Charleston, SC; Harriet Fowler, M.Ed., CRC, Harriet Fowler VR Services, Columbia, SC.

Respectfully submitted,




Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

  
August 1, 2023

CERTIFICATE OF SERVICE

WCC File No. 1921668

I hereby certify that I have on this day, August 1, 2023, served a copy of the document described below in the matter of Evazisto Verdugo Morales v. Insulation by Cohen's & Sprayfoam by Cohen's, LLC, addressed as follows:

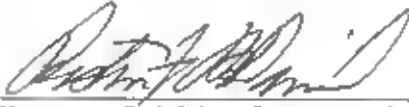
TO: E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: Form 50 - Request for Hearing

DATE OF MAILING: August 1, 2023

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
1<sup>st</sup> day of August, 2023.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: 10/25/28

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Post Office Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5675 [www.wcc.sc.gov](http://www.wcc.sc.gov)

WCC File # 1921668  
Carrier File # WCV001062422  
Carrier Code # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

Evaristo Verdugo Morales **REDACT**  
Claimant's Name Social Security Number  
**REDACTED**  
Address City State Zip  
( )  
Home Phone Work Phone

Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
Employer's Name  
1415 Old Highway 52, Moncks Corner, SC 29461  
Address City State Zip  
Builders Premier Insurance Company  
Insurance Carrier

E. Courtney Gruber P.O. Box 993, Charleston, SC 29402 (843) 720-5410  
Preparer's Name Address Phone #

The date of injury reported on the Form 12A is: **10/10/2019**

**Check appropriate section(s). The employer's representative requests a hearing to:**

- I.  **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on 1/8/2020 (m/d/yyyy) (copy of medical report must be attached).  
Compensation payments are current as of 8/7/2023 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.  
A Form 17 was offered and refused on 8/8/2023 (m/d/yyyy).

- II.  **Address suspension, termination, or reduction of temporary disability payments for any cause.**

- a. At any time pursuant to § 42-9-260(E).  
 b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/suspension is: \_\_\_\_\_

- III.  **Determine if compensation is due** pursuant to § 42-9-10, §42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:  
Claimant reached MMI and received an impairment rating.

Claimant reached maximum medical improvement on 1/8/2020 (m/d/yyyy) (copy of medical report must be attached).

- IV.  **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V.  **Determine amount of compensation for claims involving a fatality.**

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.  
 b. Amount of compensation of death of employee due to accident pursuant to § 42-9-290.

- VI.  **Mediation**

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.  
 b. Mediation is required pursuant to Reg. 67-1801.  
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.  
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.

Questions regarding mediation may be submitted to [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov).

**I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: SEE ATTACHED CERTIFICATE OF SERVICE.**

**A \$50.00 filing fee and updated Form 18 is required.**

Preparer's Signature \_\_\_\_\_ Attorney for Employer/Carrier cgruber@yclaw.com August 8, 2023  
Title Email Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or [jud@wcc.sc.gov](mailto:jud@wcc.sc.gov) or [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov). Refer to Regulations 67-211, 67-504, 67-506; and 67-510.

WCC Form # 21  
Revised 7/15

21

Employer's Request for Hearing

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

August 22, 2023

**VIA EMAIL ONLY - [acardwell@wcc.sc.gov](mailto:acardwell@wcc.sc.gov)**

Commissioner Cynthia C. Dooley  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668**

Dear Commissioner Dooley:

I am in receipt of the Hearing Notice setting the Form 21 filed by Courtney Gruber on August 8<sup>th</sup>. I have multiple requests in reference to the hearing date and location, but it is important to give you some information and history on this co-counsel claim, which you are probably aware of, but to make sure you are, as one of the requests is to move the hearing to somewhere in Charleston or Summerville as the furthest hearing site as I will explain below.

While the history/information is in the Commission file, I was associated by Don Gibson initially while he was still hospitalized for Covid. He has now, for all intents and purposes, closed his office due to his health. After numerous operations to his heart and multiple, multiple hospitalizations he recently had another very serious operation involving his lungs wherein they found that his shortness of breath was being caused by the paralysis of his diaphragm on the right side, he then contracted an infection, and then was sent to a rehab facility where he currently is. I have not been able to communicate with Don since that surgery and I have only limited access to Don's paralegal, Deb. Mr. Morales is a Spanish-speaking only individual, and Mr. Morales does not have a car and is driven most places by his family. We had to stop once or twice going to the last hearing out of town.

So first, I need to request that the hearing be reset somewhere in the Charleston area because of transportation

Commissioner Cynthia C. Dooley

August 22, 2023

Page 2

issues for Mr. Morales, and I have to arrange for an interpreter for the hearing, and I have to arrange for a place for him and me to meet prior to the hearing.

Second, the Commission remanded this case for mandatory mediation, which we went to, and which resulted in an impasse almost immediately, and the Form 70 provides that this matter was supposed to be reset pursuant to the impasse for hearing on all issues; so it should be set on the Form 70, not the Form 21. Note: we just checked and eCase shows the Form 70 has not been filed. **However, a copy with confirmation of filing with the SCWCC is attached.**

Next, I would really like to find out about the Form 50 I filed. I filed a Form 50 originally on July 20<sup>th</sup> but come to find out my receptionist used a form in our file which was the one prior to the last revision to the Form 50. So, unbelievably to me, instead of filing the Form 50 the Commission kicks it back, delaying the request for hearing by the injured worker, but we still refiled that **Form 50 on August 1, 2023**. Ms. Gruber's Form 21 was not filed until seven (7) days later and I really don't understand the filing of the Form 21 given the context of the case. However, it is what it is. I would simply like to know where my Form 50 is requesting the Commission order an evaluation by an orthopaedic surgeon on the need for further treatment in reference to the plates, rods, and screws that are in his back, and the vertebrae immediately above and below the fusion.

Next, based on a review of the file you will find that the Full Commission Panel by vacating the original Hearing Commissioner's Order and simply ordering mandatory mediation avoided multiple, multiple issues, including most importantly that we had subpoenaed PA Alana Cole to the hearing, and she did not appear and so at the hearing we requested pursuant to case law and Statute, that the Record be left open for her deposition. Instead of ruling, the Commissioner took that under advisement **and then did not rule on that until she issued her award on the entire case, including her denial eleven (11) months and almost a whole year later.** Based on our Form 50 and the Form 70, and not realizing that the Defendants would try to obtain another "rush to judgment", I had put off scheduling both Ms. Cole's deposition and Dr. Stofko's, and I now have less than sixty (60) days. However, since I do not know whether or not we will be granted a further evaluation on the back or will be facing a final Award at the upcoming hearing, I have no choice but to try to schedule their depositions and will immediately

Commissioner Cynthia C. Dooley

August 22, 2023

Page 3

try to do so.

If history serves as a lesson, I will probably not be given dates by their office and will have to issue subpoenas and have them personally served for a deposition.

Next, and while this issue is going to have to be taken up at some point for further clarification by the Courts, I would request an advance ruling as to whether or not you will consider limiting the hearing to the issues of whether or not the Defendants are entitled to a stop payment, and our request on the Form 50 for further medical care by sending him to an orthopaedic surgeon for evaluation on further treatment above and below the fusion site and/or on the plates, rods and screws that are in his back and whether or not removal would be helpful to him.

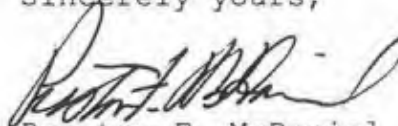
Finally, please consider this my response to the Form 21 pursuant to Regulation. It continues to be our position that Mr. Morales is totally and permanently disabled having lost more than 50% of the use of his back, and also from a vocational/wage loss standpoint based on his age, education, background and experience, and the physical facts of the injury, wherein the jobs which he can perform on a residual basis are so limited in quality, quantity, or dependability that a reasonably stable job market for them does not exist.

By copy of this letter sent via email, I am notifying Courtney Gruber of this response and of these requests.

I would welcome a conference call.

As always, I appreciate all the courtesies and kindnesses shown to me by you, your office, and the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Debra Kadoves, Paralegal to Don C. Gibson, Esquire  
(via email only: [law2@dgibsonlaw.com](mailto:law2@dgibsonlaw.com))  
E. Courtney Gruber, Esquire (via email only)

## Kim Hinkle

---

**From:** Lauren Blanton <lmlanton@wjcblaw.com>  
**Sent:** Wednesday, July 19, 2023 3:14 PM  
**To:** Mediation@wcc.sc.gov  
**Cc:** cgruber@ycrlaw.com; dhendriks@ycrlaw.com; Preston F. McDaniel;  
dgibson@dgibsonlaw.com; law2@dgibsonlaw.com; Kim Hinkle  
**Subject:** WCC #1921668 Form 70 re Evaristo Verdugo Morales vs. Insulation by Cohen's &  
Sprayfoam by Cohen's WCV001062422:  
**Attachments:** Form 70.pdf

Please see the attached Form 70.

Thank you,

**COPY**



willson jones  
carter & baxley

**Lauren Blanton**  
Legal Assistant

email: [lmlanton@wjcblaw.com](mailto:lmlanton@wjcblaw.com)  
phone: 843.284.1085  
4922 O'Hear Ave., Suite 301  
North Charleston, South Carolina 29405

---

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

---

# COPY

**South Carolina Workers' Compensation Commission**  
 1333 Main Street, Suite 500  
 Post Office Box 1715  
 Columbia, South Carolina 29202-1715  
 (803) 737.5675 [www.wcc.sc.gov](http://www.wcc.sc.gov)



WCC File #: 1921668

Carrier File #: WCV001062422

Carrier Code #: \_\_\_\_\_

Employer FEIN #: \_\_\_\_\_

Claimant's Name: Evaristo Verdugo Morales Employer's Name: Insulation by Cohen's & Sprayfoam by Cohen's

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_ Insurance Carrier: Builders Premier Insurance Company

Claimant's Attorney: Don C. Gibson; Preston F. McDaniel

Employer Carrier Attorney: E. Courtney Gruber

Phone: (843) 744-1887 Email: dgibson@dgibsonlaw.com;  
law2@dgibsonlaw.com; preston@pfmcdlaw.com;

Phone: (843) 720-5432 Email: cgruber@ycrlaw.com; dhendriks@ycrlaw.com

*Allison M. Carter*

Preparer's Signature \_\_\_\_\_ Mediator \_\_\_\_\_ amcarter@wicblaw.com \_\_\_\_\_ 07/19/2023  
 Title \_\_\_\_\_ Email \_\_\_\_\_ Date \_\_\_\_\_

Pursuant to Reg. 67-1803 A. and 67-1809, the undersigned duly qualified Mediator reports the following results of the mediation held on : July 19, 2023

The following issues mediated and are settled or contested as indicated below:

ISSUE	SETTLED	CONTESTED
Benefits due under the Act		XX

Per agreement of the Parties the matter is to be:

- Rescheduled pursuant to Reg. 67-1804 C. on \_\_\_\_\_
- Set for hearing to determine all issues.
- Set for hearing to determine remaining issues pursuant to the Forms 58.
- Returned to General Files pending request for hearing from either Party.

The \_\_\_\_\_ Claimant \_\_\_\_\_ Defendants shall submit the Final Agreement & Release, Consent Order, Form 16A, or other appropriate documentation regarding the agreement to the Commission.

The costs of the mediation is : \$ 1,455.00.

XX The cost was shared equally by the Parties.

The total cost was paid by the  Claimant  Defense.

The cost was paid pursuant to an Order of the Commission pursuant to Reg. 67-1807.

Mediator: Allison M. Carter Address: 4922 O'Hear Ave., Suite 301, North Charleston, SC, 29405 Phone: (843) 284-1083 Email: amcarter@wicblaw.com

**This report is to be returned to the Commission in all cases, whatever the mediation results. This form is used solely for tracking purposes and does not become a part of the Commission file.**

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov). Refer to Regulation 67-1801.

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500 • P.O. Box 1715  
Columbia, South Carolina 29202-1715  
(803) 737-5739 www.wcc.sc.gov

WCC File # 1921668  
Carrier File # WCV001062422  
Carrier Code #  
Employer FEIN

Evaristo Verdugo Morales  
Claimant's Name SSN  
Address City State Zip  
Home Phone: ( ) Work Phone: ( )  
Date of Injury: 10/10/2019

Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
Employer's Name  
1415 Old Highway 52, Moncks Corner, SC 29461  
Address City State Zip  
Builders Premier Insurance Company  
Insurance Carrier

E. Courtney Gruber  
Preparer's Name: Law Firm: (843) 720-5410  
Phone #

Date of Injury or Illness: 10/10/2019 Estimated time for hearing: 1 hour  
Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier, in answer to the claim, respectfully shows:

- 1. It is ADMITTED/DENIED the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are: Admitted as to thoracic spine; denied as to other body parts alleged in Form 50.
- 2. It is ADMITTED/DENIED both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
- 3. It is ADMITTED/DENIED the relationship of employer and employee existed at the time in question. The reasons for denial are:
- 4. It is ADMITTED/DENIED at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
- 5. It is ADMITTED/DENIED notice of injury was given the employer. The reasons for denial are:
- 6. It is ADMITTED/DENIED the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are: Claimant has reached MMI.
- 7. It is ADMITTED/DENIED the employee is entitled to temporary total disability for the period(s) of: Claimant reached MMI and Defendants request credit for overpayment since that date.
- 8. It is ADMITTED/DENIED the employee is permanently disabled. The reasons for denial are: No medical evidence.
- 9. It is ADMITTED/DENIED the employee has serious disfigurement.
- 10. It is contended that an average weekly wage of \$ Form 20 to be provided applies, according to attached Form 20 as provided by law.
- 11. Further contentions, grounds of defense, or unusual aspects are: See No. 1; all affirmative defenses available under the Code; reserve right to amend. Defendants maintain their position that MMI was reached on 1/8/2020 by the authorized treating physician. In response to claimant's request for additional medical treatment, Defendants have notified claimant's attorney that an appointment to return to the authorized treating physician has been scheduled for 9/11/2023. Defendants request a credit for overpayment of compensation based on an MMI date of 1/8/2020.

Mediation
a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
b. Mediation is required pursuant to Reg. 67-1802.
c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: SEE ATTACHED CERTIFICATE OF SERVICE.

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

Preparer's Signature Attorney for Employer/Carrier Title cgruber@ycrlaw.com Email August 29, 2023 Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803.737.5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



of the issues until after, and to be allowed to take the depositions of Alana Cole, PA, and Dr. Douglas Stofko.

The Claimant would respectfully show unto the Commissioner:

1. SC Code §42-9-260(F) specifically provides that after 150 days the Commission "shall provide by Regulation" for the procedure to stop payment. Regulation 67-506 does not require a Hearing within sixty (60) days and Regulation 67-613(B) provides that a Commissioner may postpone a Hearing for good cause which specifically includes: (B)(1)(c) Additional discovery is necessary; and (B)(1)(e) it is premature to hear the case.

2. That the Full Commission in its Order vacated the Decision and Order of the Single Commissioner on the basis that:

"The hearing was premature; this is an accepted claim to the back. The Claimant asserts permanent and total disability as a result of this work-related accident. As such, the claim is subject to Reg. 67-1802(A) which requires mediation."

3. That the matter was mediated on July 19, 2023, and on that same date the mediator filed a Form 70 via email with the Commission noting that the matter was to be set to, "determine all issues". **Note:** eCase does not show that the Form 70 was filed. Reg. 67-1809 provides "The Commission shall not process a Form 19 or further request for Hearing until a Form 70 has been filed with the Commission."

4. That on July 20<sup>th</sup> the Claimant filed a Form 50 requesting a hearing and that the Commission, pursuant to its authority under §42-15-60 and §42-17-30, order an evaluation either by one of the previous doctors who had seen the Claimant and who had recommended hardware removal and/or treatment, or with a doctor chosen by the Commission to determine whether or not the Claimant needs additional medical care in reference to the surgery, removal of the hardware and/or whether or not he has developed further and additional problems at the vertebrae above and/or below the fusion site. That Form 50, as the Commission file will show, was delayed and returned requiring the submission of a, "newly revised Form 50". It was refiled with the Commission on August 1, 2023.

5. That the Record will show that numerous substantial procedural and substantive issues were not reached by the Full Commission as to the Commissioner's original Order including the Hearing Commissioner taking under advisement the Claimant's request to take the depositions of Alana Cole, PA, and Douglas Stofko, DO, the physician assistant and medical doctor who performed the original fusion. While knowing that the Claimant for years had wanted to take the depositions of the doctor and physician assistant; and knowing that the Claimant had just requested a hearing to have the Claimant sent for evaluation for further medical care, on August 7<sup>th</sup> the Defendants, with copy to

Claimant's counsel, sent Dr. Stofko a written request for an appointment date for an extensive Independent Medical Evaluation by Dr. Douglas Stofko, far in excess of the request for evaluation for further medical care. A copy of the questions in that letter are attached hereto and include a reference to and question concerning the November 18, 2020 letter from co-counsel Don Gibson, and the reply to that.

6. That thereafter on August 8<sup>th</sup>, twenty (20) days after Claimant's request for treatment and the day after notification of setting up an appointment for medical evaluation by Dr. Stofko, the Defendants filed a Form 21 and in that Form 21 based on Dr. Stofko's opinion **took the diametrically opposed position that "the Claimant reached maximum medical improvement on 1/8/2020"**.

7. That thereafter the Defendants returned to the first contradictory position on August 23<sup>rd</sup> by notifying Claimant's counsel that the Defendants were scheduling a return evaluation with Dr. Stofko and were setting up the appointment with Dr. Stofko for further evaluation and treatment and that should Mr. Morales miss the appointment, that they would take the position that **"he has refused authorized medical evaluation and treatment"**.

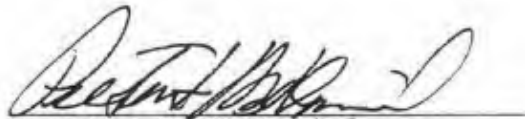
**Wherefore** the Claimant verily believes he is entitled to and prays for an Order finding that the Claimant has just cause or excuse for not attending any appointment with Dr. Douglas Stofko.

Wherein the Defendants in the past have relied on Dr. Stofko's opinion that the Claimant had reached maximum medical improvement and did not need any further medical care when at the same time other doctors were stating that he did in fact need further medical care including consideration of the removal of the hardware; but now in their new Form 21 filing the Defendants reassert Dr. Stofko's opinion that he is at maximum medical improvement to support that position which is a mandatory prerequisite and requirement to ask this Commission to set a hearing on the Form 21, while at the same time trying to compel the Claimant to attend an appointment with Dr. Stofko. Under SC Code §42-15-60 the Claimant, "shall accept 1) an attending physician," and "2) any medical care and treatment that is considered necessary by the attending physician" unless otherwise ordered by the Commission for good cause shown." This authorized physician has stated Mr. Morales is at maximum medical improvement and he is not offering any medical care and treatment.

Further, for numerous reasons including that this matter should have been reset on the Form 70; should have been set for hearing on the Claimant's Form 50 filed weeks before the Defendants sought to file a Form 21; and because there has been no ruling on the Claimant's request to obtain the testimony of Ms. Alana Cole and Dr. Douglas Stofko, wherein Ms. Alana Cole, PA was subpoenaed to the first hearing and the Commissioner did not rule

on the Claimant's right to take the deposition of both Alana Cole, PA and Dr. Douglas Stofko; and due to the contradictory positions of the Defendants, the hearing set on the Form 21 should be cancelled and reset for hearing only after the depositions of Alana Cole, PA and Dr. Stofko have been held, and a decision is made on the Claimant's request for an evaluation for further medical care.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

August 29, 2023

1. Do you have an opinion as to whether or not Mr. Morales remains at MMI from injuries sustained in his work-related accident of October 10, 2019, as you had indicated on January 12, 2021?
2. Has your evaluation of Mr. Morales caused you to change your opinions expressed in response to the questionnaire from Mr. Morales attorney dated November 18, 2020 that the lumbar spine and cervical spine complaints were not causally related to the original accident of 10/10/2019?
3. Do you have an opinion as to whether Mr. Morales has suffered any change in his physical condition that would be causally related to the original fracture at T12?
4. Do you have an opinion as to whether any subsequent injuries or accidents sustained by Mr. Morales since October 10, 2019, would be likely to have any effect on his current physical condition and complaints?
5. Do you have an opinion to a reasonable degree of medical certainty as to whether or not additional medical treatment would be likely to lessen disability for any complaints that are causally related to the original accident.
6. With regard to the FCE performed on 10/23/2020, do you have an opinion as to whether those findings with regard to permanent restrictions were relevant to the causally related injury to the thoracic spine?

Please express all of your opinions to a reasonable degree of medical certainty.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP



E. Courtney Gruber

ECG/dff



CERTIFICATE OF SERVICE

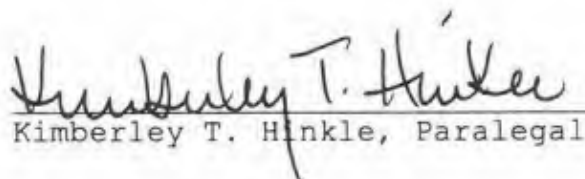
WCC File No. 1921668

I hereby certify that I have on this day served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

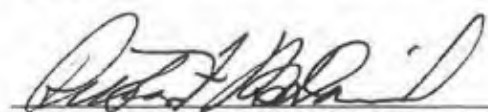
TO: E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: MOTION FOR A FINDING OF JUST CAUSE OR EXCUSE' PURSUANT TO SC CODE §42-15-80 FOR NOT ATTENDING AN APPOINTMENT WITH DOUGLAS STOFKO, DO, AND FOR AN ORDER CANCELLING THE FORM 21 HEARING AND POSTPOING A HEARING BASED ON THE FORM 70; AND CLAIMANT'S REQUEST FOR EVALUATION PURSUANT TO SC CODE §42-17-30; DEFENDANTS CONTRADICTORY POSITIONS ON MMI/FURTHER MEDICAL AND UNRESOLVED ISSUES FROM THE VACATED ORDER

DATE OF MAILING: August 29, 2023

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
29 day of August, 2023.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission Expires: 10/25/28

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 1, 2023

**VIA EMAIL ONLY - acardwell@wcc.sc.gov**

Commissioner Cynthia C. Dooley  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668**

**REQUEST FOR POSTPONEMENT OF HEARING**

Dear Commissioner Dooley:

After the Labor Day holiday, I would respectfully request a decision on the Motion for Postponement. While Ms. Gruber responded to my "additional bases" concerning the Claimant's deposition and the depositions of Dr. Stofko and Alana Cole, PA, that in no way addressed the original bases for the request.

My client is Spanish-speaking only and has trouble with transportation for an out-of-town Hearing. We have to arrange for an interpreter for an out-of-town Hearing, thus creating an additional expense. We had, way before the Defendants filed a 21, requested an evaluation and further treatment for possible removal of hardware and evaluation concerning treatment for the vertebrae above and below the fusion site.

The Defendants have taken contradictory positions, one necessary to file a 21, that the client is at maximum medical improvement, and the other being that they want an evaluation by Dr. Stofko?? Finally, there is absolutely, again absolutely, no requirement after 150 days under the Act for holding a Form 21 Hearing within sixty (60) days of the date of filing, and, more importantly, the Form 21 was only filed weeks after we had filed our request for an evaluation and treatment. The Commission may, and should, postpone a Hearing when it is premature for hearing

Commissioner Cynthia C. Dooley

September 1, 2023

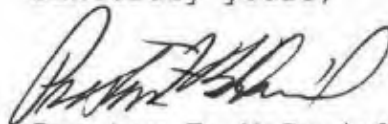
Page 2

and/or where additional discovery is needed. It is overstating the obvious that if it is found that Mr. Morales needs additional medical care in the evaluation a Form 21 would be premature.

By copy of this email I am notifying Defense Counsel of this communication.

I hope that you have a wonderful Labor Day holiday and that we all remember it is the very laborers that I represent that we are celebrating this weekend, who make this country work and without many of whose unfortunate injuries we would not make a living and be able to feed our families. May we pray for all injured workers as part of our Labor Day celebrations.

Sincerely yours,



Preston F. McDaniel

PFM/kecs

cc: Debra Kadoves, Paralegal to Don C. Gibson, Esquire  
(via email only: [law2@dgibsonlaw.com](mailto:law2@dgibsonlaw.com))  
E. Courtney Gruber, Esquire (via email only)



# CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

E. Courtney Gruber  
Partner

Direct Dial: (843) 720-5410  
Direct Fax: (843) 579-1304  
E-mail: egruber@ycrlaw.com

September 7, 2023

Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Re: Evaristo Verdugo Morales v. Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
WCC File Number: 1921668  
Claim Number: WCV001062422  
Date/Accident: 10/10/2019  
YCR File: 10857-20200118

Dear Amy:

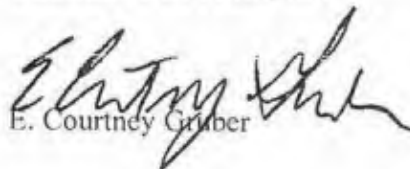
Enclosed please find the original and a copy of the Defendants' Motion to Compel relative to this case. Please ensure this is properly filed, returning a copy to me in the envelope provided for that purpose. I have included the \$50.00 filing fee.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

  
E. Courtney Gruber

ECG/dff

Enclosures

cc: Don C. Gibson, Esquire, Gibson Law Firm, LLC  
Preston F. McDaniel, Esquire, McDaniel Law Firm  
Janey Wilson, Builders Mutual Insurance Company  
Ethan Gaskins, Insulation By Cohen's & Sprayfoam by Cohen's, LLC

25 CALHOUN STREET, SUITE 400, P.O. BOX 993, CHARLESTON, SC 29402 • (843) 577-1000 • www.ycrlaw.com

Charleston • Columbia

ROA 543

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 Insulation By Cohen's & Sprayfoam by )  
 Cohen's, LLC, )  
 )  
 Employer, )  
 )  
 Builders Premier Insurance Company, )  
 )  
 Carrier/ )  
 Defendants. )

**MOTION TO COMPEL**

NOW COMES the undersigned attorney for the Defendants with a motion to compel the Claimant to appear for his deposition and provide such testimony relevant to this claim.

This motion is based upon the following:

1. That the Claimant sustained an injury by accident on October 10, 2019.
2. That the Claimant has been paid weekly benefits since that time at the rate of \$845.74 and remains on a running award.
3. That the Claimant has provided one deposition on March 13, 2020, and presented testimony at an evidentiary hearing held April 26, 2021.
4. That the Defendants have not had an opportunity to depose the Claimant since March 13, 2020.
5. That the procedural history of this case is as follows:
  - a. An evidentiary hearing was held April 12, 2021, based on Forms 21 and 50 and 51.

b. A Decision & Order was filed March 22, 2022, granting the Defendants' request to stop payment of temporary total compensation and finding maximum medical improvement had occurred on January 8, 2020.

c. Weekly benefits were stopped based on that Order and Claimant filed a request for reconsideration on March 24, 2022.

d. The Administrative Order denying Claimant's motion for reconsideration was filed October 3, 2022, and an appeal was filed to the Appellate Panel on October 14, 2022.

e. The Appellate Panel Decision & Order was filed April 4, 2023, vacating the Decision & Order of the Single Commissioner and ordering the parties to mediation.

f. In response to that Order, Defendants reinstated weekly benefits in a lump-sum check in the amount of \$54,127.36 to bring weekly benefits current and put the Claimant on a running award pending either consent of the Claimant to terminated weekly benefits or an Order of the Commission.

g. Mediation was held on July 19, 2022, but the parties were unable to reach an agreement.

h. Forms 21 and 50 were filed with the Commission and a hearing has recently been set for October 18, 2023, on the Form 21.

6. That the Claimant is seeking additional medical treatment and continuing weekly benefits, contending that he has been disabled and unable to work since the date of this accident. Claimant is also taking the position that he has been incapable of performing gainful employment and is permanently & totally disabled if additional medical treatment is not ordered.

7. That the Defendants continue to take the position that the Claimant reached MMI on January 8, 2020, and will be seeking a credit for overpayment of weekly compensation benefits paid.

8. That the Defendants have made attempts to coordinate a time convenient to the parties with the Claimant's attorney for the taking of the Claimant's deposition.

9. That the Claimant's attorney has noticed and scheduled the depositions of the authorized treating physician Dr. Douglas Stofko and his P.A., Alana Cole, for September 25, 2023.

10. That the Defendants have suggested the Claimant's deposition be scheduled for the same day, September 25, 2023, when the attorneys will be available.

11. That, in response to that suggestion, Claimant's attorney stated in an e-mail of September 1, 2023 (Attachment 1), that he would only consent to a limited update deposition, agreeing to an update from the date of the hearing forward and with the further limitation that Mr. Morales will be instructed to plead the Fifth Amendment as to any questions related to work between the time that "you stopped benefits and the time they reinstated weekly compensation benefits to him."


12. That the Defendants seek an Order of the Commission compelling the Claimant to submit to his deposition and answer any questions that would be relevant to the subject matter involved in the pending action.

13. That, if, in fact, the Claimant has been working at any time since October 10, 2019, while he was receiving weekly benefits intended to compensate him for an inability to work, it would certainly be relevant to this claim.

14. That the relief sought is an Order compelling the Claimant to comply with discovery and provide testimony relevant to the pending action.

Respectfully submitted,

CLEMENT RIVERS, LLP

By:   
E. Courtney Gruber  
P. O. Box 993  
Charleston, SC 29402-0993  
Phone: (843) 720-5410  
Fax: (843) 579-1304  
Email: cgruber@ycrlaw.com

Charleston, South Carolina

Date: September 7, 2023.

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,  
Employee,

-versus-

**CERTIFICATE OF SERVICE**

Insulation By Cohen's & Sprayfoam by Cohen's, LLC,  
Employer,

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on September 7, 2023, I served the Defendants' Motion To Compel on:

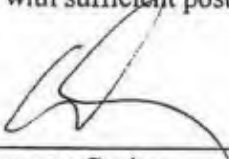
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

**VIA FIRST CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 18, 2023

**VIA EMAIL AND US MAIL**

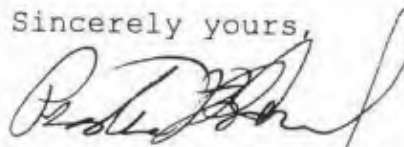
Amy Bracy, Judicial Director  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's, LLC  
& Spray Foam By Cohen's LLC  
WCC File No. 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our **REPLY TO DEFENDANTS' MOTION TO COMPEL** in the above-referenced matter, along with a self-addressed stamped envelope for returning a clocked-in copy to me. Since this is assigned to Commissioner Dooley, I am hereby sending a copy to her office, and also serving a copy of same on the Defendants.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosures

cc: Commissioner Cynthia Dooley (Via email only)  
Don Gibson, Esquire (Via US mail & email)  
Debra Kadoves (Via email only)  
E. Courtney Gruber, Attorney at Law (Via US mail & email)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 EVARISTO VERDUGO MORALES, )  
 )  
 Claimant/Employee, )  
 )  
 v. )  
 )  
 INSULATION BY COHENS, LLC )  
 & SPRAY FOAM BY COHENS, LLC, )  
 )  
 as Employer, )  
 )  
 BUILDERS PREMIER INSURANCE )  
 COMPANY, )  
 )  
 as Insurance Carrier, )  
 )  
 Defendants. )  
 )

BEFORE THE SOUTH CAROLINA  
 WORKERS' COMPENSATION COMMISSION  
 WCC FILE NO.: 1921668

**REPLY TO DEFENDANTS'  
 MOTION TO COMPEL**

To Commissioner Cindy Dooley,

The Claimant would respectfully submit to the Commission by way of reply this short response:

1. As stated in the Motion, the Defendants stopped Mr. Morales' weekly benefits from March 24, 2022 until after, again, after April 4, 2023.
  
2. While the Defendants are not entitled to an Update Deposition except by consent or Court Order and while Depositions are taken pursuant to the Circuit Court Rules; and of course the

Circuit Court can order the Claimant to attend an Update Deposition, the Commission has absolutely no authority to compel the Claimant to attend anything. The Defendants never cite any statute under the Workers' Compensation Act or otherwise granting the Commission the authority to compel the Claimant to attend a Deposition; and Counsel for the Claimant knows of none. Of course, the Commission is limited to the authority granted it by statute, and either a Circuit Court judge and an Administrative Law Court judge have the authority to compel an Update Deposition under the Circuit Court Rules and the Administrative Procedures Act.

**Enough said on that, as the Claimant has agreed to attend an Update Deposition.**

3. That neither this Commission nor any Court has the authority to Compel anybody to answer any question in a Deposition or Trial where the objection is based on the witness standing on his Fifth Amendment right against self-incrimination. In fact, it is also black letter law and beyond challenge that it is unconstitutional to draw any inference if a witness chooses to plead the Fifth Amendment, and in fact since Commissioner you sit as a fact-finder and the Hearing officer, judge and jury in this matter, the mere making of this Motion to you should

require your recusal. To quote an old legal maxim, you cannot un-ring the bell.

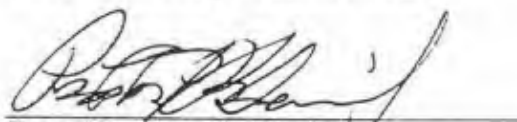
Also, the Defendants in making this Motion obviously misspoke, since they refer in Paragraph 13 that whether or not the Claimant has worked since October 10, 2019 while he was receiving weekly benefits intended to compensate him for an inability to work would be relevant. This is incorrect since the Defendants first took the Claimant's deposition on March 13, 2020 and the Defendants also exercised their right to cross-examination at the Hearing on April 26, 2021. So, any questions concerning work prior to April 26, 2021 would be inappropriate and should not be the subject of an Update Deposition.

4. That the Defendants further misstate the basis of the payment of temporary total disability benefits. This man was making over \$1600 a week as an average weekly wage and was paid at the maximum compensation rate in the year of his injury. Thus, even if he was working part time and was not receiving at least \$400 a week in wages, it would not alleviate the Defendants responsibility to pay temporary total disability benefits.

5. That the Claimant would point out that the Defendants do not note or state in the Motion that the Claimant has signed a release authorizing the Defendants to obtain any and all records of wages from the Employment and Workforce Commission concerning any wages he has made as reported to the South Carolina Department of Employment and Workforce. They also do not cite any evidence in support of the Motion that they have that the Claimant was working to any extent or that would eviscerate his entitlement to weekly temporary total disability checks.

6. That again and finally in Reply, the simple making of this Motion by implication should require serious consideration of your recusal as a fact-finding officer on this case.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

September 18, 2023

CERTIFICATE OF SERVICE

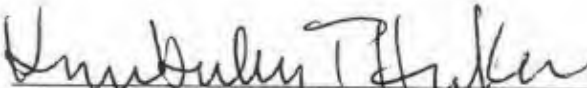
WCC File No. 1921668

I hereby certify that I have on this day, September 18, 2023, served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:


TO: E. Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: REPLY TO DEFENDANTS' MOTION TO COMPEL

DATE OF MAILING: September 18, 2023

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
18 day of September, 2023.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 10/25/28



CLEMENT RIVERS, LLP  
ATTORNEYS AT LAW

E. Courtney Gruber  
Partner

Direct Dial: (843) 720-5410  
Direct Fax: (843) 579-1304  
E-mail: egruber@yrlaw.com

September 19, 2023

Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Re: Evaristo Verdugo Morales v. Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
WCC File Number: 1921668  
Claim Number: WCV001062422  
Date/Accident: 10/10/2019  
YCR File: 10857-20200118

Dear Ms. Bracy:

Your records should reflect that I represent the employer/carrier in this case. Enclosed please find our **Amended** Form 21, along with supporting documentation and a current Form 18.

A hearing is currently set in this matter for October 24, 2023, before Commissioner Dooley.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

E. Courtney Gruber

ECG/dff

Enclosures

cc: Don C. Gibson, Esquire, Gibson Law Firm, LLC  
Preston F. McDaniel, Esquire, McDaniel Law Firm  
Janey Wilson, Builders Mutual Insurance Company  
Ethan Gaskins, Insulation By Cohen's & Sprayfoam by Cohen's, LLC

25 CALHOUN STREET, SUITE 400, P.O. Box 993, CHARLESTON, SC 29402 • (843) 577-4000 • www.yrlaw.com

Charleston • Columbia

ROA 555

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
Post Office Box 1715  
Columbia, South Carolina 29202-1715 (803) 737-5675 www.wcc.sc.gov

WCC File # 1921668  
Carrier File # WCV001062422  
Carrier Code # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

Evaristo Verdugo Morales Claimant's Name		REDACTED		Insulation By Cohen's & Sprayfoam by Cohen's, LLC Employer's Name					
REDACTED		Social Security Number		1415 Old Highway 52, Moncks Corner, SC 29461 Address					
Address		City	State	Zip	City	State	Zip		
( )		( )		Builders Premier Insurance Company Insurance Carrier					
Home Phone		Work Phone		E. Courtney Gruber Preparer's Name		P.O. Box 993, Charleston, SC 29402 Address		(843) 720-5410 Phone #	

The date of injury reported on the Form 12A is: 10/10/2019

Check appropriate section(s). The employer's representative requests a hearing to:

- I.  **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on \_\_\_\_\_ (m/d/yyyy) (copy of medical report must be attached).  
Compensation payments are current as of \_\_\_\_\_ (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.  
A Form 17 was offered and refused on \_\_\_\_\_ (m/d/yyyy).

- II.  **Address suspension, termination, or reduction of temporary disability payments for any cause.**

- a. At any time pursuant to § 42-9-260(E).  
 b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/suspension is: Claimant refused an examination and evaluation as provided in Section 42-15-80.

- III.  **Determine if compensation is due** pursuant to § 42-9-10, §42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on \_\_\_\_\_ (m/d/yyyy) (copy of medical report must be attached).

- IV.  **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V.  **Determine amount of compensation for claims involving a fatality.**

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.  
 b. Amount of compensation of death of employee due to accident pursuant to § 42-9-290.

- Amendment to Prior Hearing Request**

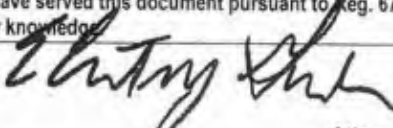
- a. I am adding a party pursuant to Reg. 67-610(C). Party Name/Address: \_\_\_\_\_  
 b. I am removing a party pursuant to Reg. 67-610(C). Party Name/Address: \_\_\_\_\_  
 c. Other amendment: Suspend weekly benefits until claimant's refusal to attend evaluation per Section 42-15-80 has stopped

- Mediation**

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B  
 b. Mediation is required pursuant to Reg. 67-1801.  
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.  
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing may result in ordered mediation pursuant to Reg. 67-1801 B.  
Questions regarding mediation may be submitted to [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov).

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service. I verify the contents of this form are accurate and true to the best of my knowledge.

  
Preparer's Signature \_\_\_\_\_ Attorney for Employer/Carrier \_\_\_\_\_ Title \_\_\_\_\_ cgruber@ycrlaw.com \_\_\_\_\_ Email \_\_\_\_\_ September 19, 2023 \_\_\_\_\_ Date

Refer to Regulations 67-211, 67-504, 67-505, 67-506, and 67-510.



# CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

E. Courtney Gruber  
Partner

Direct Dial: (843) 720-5410  
Direct Fax: (843) 579-1304  
E-mail: [cgruber@ycrlaw.com](mailto:cgruber@ycrlaw.com)

August 24, 2023

**Via First-Class and Electronic Mail**

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

Re: Evaristo Verdugo Morales v. Insulation By Cohen's & Sprayfoam by Cohen's, LLC  
WCC File Number: 1921668  
Claim Number: WCV001062422  
Date/Accident: 10/10/2019  
YCR File: 10857-20200118

Dear Preston:

We have scheduled your client to return to see Dr. Stofko, the authorized treating physician, on September 11, 2023, at 12:00 Noon. He needs to get there by 11:30. If he requires interpretation, the doctor's office has a company that will provide an interpreter. The address is 9221 University Boulevard, Suite 102, North Charleston, SC 29406. Please let your client know about this appointment date and time.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP

E. Courtney Gruber

ECG/dff

cc: Don C. Gibson, Esquire, Gibson Law Firm, LLC  
Janey Wilson, Builders Mutual Insurance Company

25 CALIBORN STREET, SUITE 400, P.O. BOX 993, CHARLESTON, SC 29402 • (843) 577-4000 • [www.ycrlaw.com](http://www.ycrlaw.com)

Charleston • Columbia

ROA 557

**Gruber, Courtney**

---

**From:** Hendriks, Donna  
**Sent:** Tuesday, September 12, 2023 11:22 AM  
**To:** Gruber, Courtney  
**Subject:** FW: Evaristo Verdugo Morales - 9/11/23 appointment with Dr. Stofko

Here is written confirmation of the no show yesterday.

Donna Hendriks  
Paralegal  
Clement Rivers, LLP  
25 Calhoun Street, Suite 400, Charleston, SC  
P.O. Box 993, Charleston, SC 29402  
Phone: 843-720-5414  
Fax: 843-579-1341  
[dhendriks@ycrlaw.com](mailto:dhendriks@ycrlaw.com)



**CLEMENT RIVERS, LLP**  
25 Calhoun Street • Suite 400 • Charleston, SC 29401  
[ycrlaw.com](http://ycrlaw.com)

---

**From:** Rouse-Watson Carol <[Carol.RouseWatson@hcahealthcare.com](mailto:Carol.RouseWatson@hcahealthcare.com)>  
**Sent:** Tuesday, September 12, 2023 11:15 AM  
**To:** Hendriks, Donna <[DHendriks@ycrlaw.com](mailto:DHendriks@ycrlaw.com)>  
**Subject:** Re:Evaristo Verdugo Morales - 9/11/23 appointment with Dr. Stofko

Hi Donna,

Evaristo Verdugo Morales did not show to his 9/11/23 appt with Dr. Stofko. No future appointment made.

Carol

---

**From:** Hendriks, Donna <[DHendriks@ycrlaw.com](mailto:DHendriks@ycrlaw.com)>  
**Sent:** Tuesday, September 12, 2023 11:12 AM  
**To:** Rouse-Watson Carol <[Carol.RouseWatson@hcahealthcare.com](mailto:Carol.RouseWatson@hcahealthcare.com)>  
**Cc:** Gruber, Courtney <[CGruber@ycrlaw.com](mailto:CGruber@ycrlaw.com)>  
**Subject:** (EXTERNAL) Evaristo Verdugo Morales - 9/11/23 appointment with Dr. Stofko

**CAUTION!** This email originated from outside of our organization. DO NOT CLICK links or open attachments unless you recognize the sender and know the content is safe.

Hi Carol,

Would you please confirm via return e-mail that Mr. Morales was a no show for the 9/11/23 appointment with Dr. Stofko? Thank you, and have a good Tuesday!

Donna Hendriks  
Paralegal  
Clement Rivers, LLP  
25 Calhoun Street, Suite 400, Charleston, SC  
P.O. Box 993, Charleston, SC 29402  
Phone: 843-720-5414

Fax: 843-579-1341  
[dhendriks@ycrlaw.com](mailto:dhendriks@ycrlaw.com)



**CLEMENT RIVERS, LLP**  
25 Calhoun Street • Suite 400 • Charleston, SC 29401  
[ycrlaw.com](http://ycrlaw.com)

Clement Rivers, LLP  
<http://www.ycrlaw.com>  
Charleston: (843) 577-4000

Attachments larger than 40MB may be rejected by the firm's server. If you are sending an attachment of this size or larger, please contact the intended recipient to inform him/her of your transmission.

"ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION." The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or by email to [email@ycrlaw.com](mailto:email@ycrlaw.com) or by replying to this message and destroy all copies of this message and all attachments.

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
P.O. BOX 1715  
Columbia, SC 29202-1715  
(803) 737-5723



WCC File #: 1921668  
Carrier File #: WCV001062422  
Carrier Code #: 1135  
Employer FEIN #: 46-1499167

Claimant's Name: Evaristo Verdugo Morales SSN: REDACTED Employer's Name: Insulation By Cohen Llc  
Address: c/o Atty. Don Gibson P.O. Box 60669 Address: & Spray Foam By Cohens Llc 1415 Old Hwy 52  
City: North Charleston State: SC Zip: 29419 City: Moncks Corner State: SC Zip: 294615239  
Home Phone: REDACTED Work Phone: REDACTED Insurance Carrier: Premier Insurance Company  
Preparer's Name: Janey Wilson Law Firm: \_\_\_\_\_ Preparer's Phone #: (800) 809-4861 Ext:0294

1 Date of injury: 10/10/2019 2 Total Weeks Compensation Paid: 204 5/7  
(m/d/yyyy)

3 Type of Compensation Paid (TP or TT)/Periods of Payment:  
(m/d/yyyy) (m/d/yyyy)  
Type: Temporary Partial From: 10/10/2019 To: 04/01/2020  
Type: Temporary Total From: 04/02/2020 To: 09/11/2023  
Type: \_\_\_\_\_ From: \_\_\_\_\_ To: \_\_\_\_\_

4 Date of First Payment: 04/21/2020  
(m/d/yyyy)

5 Total Amount Paid  
(a) Compensation: \$159,674.34  
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$5,425.22

Janey Wilson 919-227-0294 09/17/2023  
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after Number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,  
Employee,

-versus-

**CERTIFICATE OF SERVICE**

Insulation By Cohen's & Sprayfoam by Cohen's, LLC,  
Employer,

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on September 19, 2023 I served the *Amended* **Form 21, with supporting documentation and a current Form 18**, on:

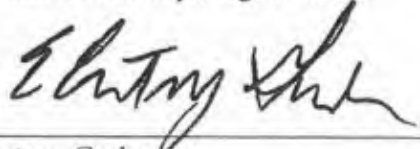
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202-1715

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

**VIA FIRST CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 4, 2023

**VIA EMAIL ONLY - acardwell@wcc.sc.gov**

Commissioner Cynthia C. Dooley  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668**

Dear Commissioner Dooley:

While the purpose of this letter is to address the Amended Form 21, first my co-counsel and long time friend Don Gibson is basically disabled, has closed his office, and his long time paralegal with limited assistance from Don is operating his office out of a home office at her home and is handling his remaining files with again Don's very limited assistance. In fact, you will see from the file that I became involved in this case due to Don's original illness caused by Covid which attacked his heart and from which he has never recovered and has had multiple operations to his heart and most recently to his right diaphragm which was not functioning. I say that simply to say that Deb Kadoves, his long time paralegal, is handling interpreters for Mr. Morales and setting up depositions in Charleston. In that regard, we originally had a miscommunication between our offices and depositions we have set of Dr. Stofko and PA Alana Cole had to be cancelled and rescheduled. It now appears we will not be able to reset those until November, which of course is after the current hearing date. So I need to request that the Record be left open for those depositions. They are highly important to this very contentious case.

Now as to the purpose of this letter. As to the Amended Form 21, since this has been set before you, I am directing this letter to you with a copy to Ms. Bracy. The Defendants have filed an Amended Form 21 which was received by the Claimant on September 25<sup>th</sup> by mail. I am not sure what effect the filing of an Amended Form 21 has on the 60 day hearing requirement that the Defendants are claiming under §42-9-260.

As you know, we had first filed a Form 50 prior to the filing of the Form 21, requesting a medical evaluation by any doctor other than Dr. Stofko. We have been and are still willing to attend any evaluation provided by the Defendants other than Dr. Stofko. I have previously responded on this issue, but I am going to respond further as their request is not for an Independent Medical Evaluation under §42-15-80; it is a request for an evaluation by the original treating neurosurgeon scheduled only after our request for an evaluation. I previously submitted that that alone was just cause and excuse for not attending that appointment; and again we will attend any appointment by any other physician that the Defendants want to offer for evaluation of the Claimant's condition and current needs for medical care.

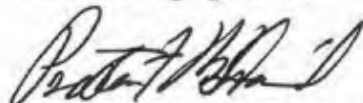
My previous legal position remains that a Form 21 is not subject to the 60 day hearing provision in §42-9-260 after the 150 days, which is made clear by §42-9-260(F) and particularly when contrasted to sections (C) and (D) which apply a 60 day requirement in specific, and again specific, situations in reference to section (B).

Next, on the one hand their position is that the Claimant has reached maximum medical improvement years ago and then on the other hand after we file for an evaluation particularly on hardware removal and the vertebral segments above and below the fusion site their position is that he has failed to comply with the Act by not attending an evaluation by Dr. Stofko. I would submit those positions constitute contradictory, paradoxical and inconsistent positions.

Again, a hearing should be held limited to our request for evaluation before addressing the other issues.

By copy of this email, I am notifying and serving Counsel for the Defense with a copy of this reply.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Amy Bracy, Judicial Director (via email only)  
Debra Kadoves, Paralegal to Don C. Gibson, Esquire  
(via email only)  
E. Courtney Gruber, Esquire (via email only)

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 13, 2023

**VIA EMAIL ONLY - [acardwell@wcc.sc.gov](mailto:acardwell@wcc.sc.gov)**

Commissioner Cynthia C. Dooley  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**URGENT! IMMEDIATE  
ATTENTION REQUESTED!**

**RE: Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668**

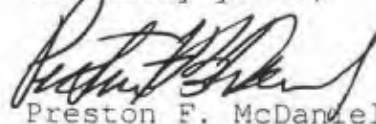
Dear Commissioner Dooley:

I apologize for requesting immediate attention, but this will affect what we will be doing at the hearing. As I read Ms. Gruber's response it appears that she wants to limit the hearing to just a decision on whether or not we had just cause or excuse for not attending the appointment that the Defendants set up with Dr. Stofko. Quoting from her letter:

"Defendants seek an Order finding that the Claimant unreasonably refused to attend the examination as scheduled, compelling the Claimant to attend the examination with Dr. Stofko and further suspending his weekly benefits and right to prosecute his claim until the refusal ceases and he attends the examination. Once the Claimant has attended that examination, Defendants contend that the parties can proceed with their respective claims." (Emp. add.)

I would ask Ms. Gruber to confirm that my reading is correct and if so, we can limit the hearing to just that issue. That will also eliminate my request that the Record be left open, or in other words, the hearing be adjourned to allow for the deposition of Dr. Stofko and Alana Cole, PA. I look to hear from you.

Sincerely yours,



Preston F. McDaniel

PFM/kth/rmt

cc: Debra Kadoves, Paralegal to Don C. Gibson, Esquire  
(via email only)  
E. Courtney Gruber, Esquire (via email only)

McDANIEL LAW FIRM  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

October 18, 2023

VIA EMAIL ONLY - [acardwell@wcc.sc.gov](mailto:acardwell@wcc.sc.gov)  
Commissioner Cynthia C. Dooley  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

RE: Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC  
WCC File No. 1921668

Dear Commissioner Dooley:

Without a Hearing the defendants have stopped Mr. Morales' TTD checks again.

SC Code §42-17-20 provides that after compensation benefits are begun and the parties then disagree as to the continuance of weekly payments, "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 practical..."

Section 42-9-260(F) provides that after the 150 days that the Commission shall provide, "by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and Commission approval prior to termination or suspension... Subsection (F) further provides that the defendants cannot prosecute any action to "suspend" benefits until they are current in payment. Subsection (G) provides that failure to comply with this section shall result in a 25% penalty imposed on the carrier or employer.

Section 42-15-80 provides that where a employee fails to attend an examination that his right to compensation and his right to take or prosecute a proceeding shall be suspended, "unless in the opinion of the Commission, the circumstances justify the refusal or obstruction".

Commissioner Cynthia C. Dooley

October 18, 2023

Page 2

Just like in the stop payment situation, the defendants may be entitled to credit, if the Commission after hearing determines that the claimant's refusal to attend under the circumstances was not justified. Thus, the Statutes mandate a hearing before any "suspension" or termination can take place.

It is the claimant's position unless the defendants bring Mr. Morales current that they have violated the Statutes, and he is entitled to the 25% penalty and back payments until they are current.

By copy of this letter, via email, I am notifying the defendants of our position going into the hearing and I look forward to hearing on this issue.

Sincerely yours,



Preston F. McDaniel

PFM/rmt.

cc: Debra Kadoves, Paralegal to Don C. Gibson, Esquire  
(via email only)  
E. Courtney Gruber, Attorney at Law (via email only)

CERTIFICATE OF SERVICE BY EMAIL

I hereby certify that I have on this day served the following in the matter of Evaristo Verdugo Morales v Insulation by Cohen's with a copy of the improper suspension of weekly compensation without Hearing and Commission Decision-Reinstatement and Penalties by email, addressed as follows:

**VIA EMAIL:**

E. Courtney Gruber, Esq.  
Clement Rivers, LLP  
25 Calhoun St, Suite 400  
Charleston, SC 29401  
Email: cgruber@ycrlaw.com



\_\_\_\_\_  
Rose Thielke

SWORN TO BEFORE ME this

18<sup>th</sup> day of October, 2023

Humboldt Thielke (L.S.)  
Notary Public for South Carolina

My Commission Expires: 6-19-30



Patient Name: Evaristo Verdugo  
Morales

Encounter Date: 11/21/2023

Date of Birth: REDACTED

Account Number: REDACTED

**History of Present Illness:** Mr. Morales was involved in a work-related injury on 10-10-19 from a ladder. He sustained a T12 Chance fracture and appropriately underwent operative intervention by Dr. Stofko on the day of injury to involve pedicle screw fixation and stabilization of the fracture at the T12 level as this was an unstable fracture extending through the vertebra and the posterior lamina and spinous process. He is accompanied by a translator who noted he was placed in a brace (TLSO) postoperatively, and he had physical therapy for about six weeks in the spring of 2020. He has remained with pain across his mid back, aching symptoms into his feet and thighs, and has significant mid back pain. He has no prior history of any similar problems before the 10-10-19 accident.

He was seen again by Dr. Leonard Forrest at Southeastern Spine Institute on 01-20-21 at which point it was noted he was having pain across his upper back and also pain into his low back and leg. He underwent a functional capacity evaluation which placed him at potential light to medium level work capability. Dr. Forrest opined that he was not able to continue to be active throughout a day and he was recommended for future breaks and to lay down on most days sometimes twice a day. Dr. Forrest noted despite Mr. Morales' ability to lift and carry up to 35 pounds for a short time he most likely was not capable of meaningful gainful employment.

Per Mr. Morales, he did try to work part time for 5 to 6 hours per day for approximately three months with one employer. Per his records he was doing light duty makeshift work so he did attempt to return to work but was unable to. Beyond this he was involved in two motor vehicle accidents one of which was minor and the other of which was involving injury to his leg to include a broken leg for which he was treated nonoperatively with crutches. These automobile accidents are unrelated to his work accident and back injury of 10-10-19.

**Past Medical History:** Hypertension

**Drug Allergies:** No known allergies

**Physical Examination:** He has guarding with flexion, extension and rotation of his mid back which is limiting and painful. He has tenderness to palpation over his hardware which is palpable on his left side at the thoracolumbar junction. He has straight leg raising producing back and posterior thigh pain. He has bilateral weakness in his toe extensors and dysesthesia in the posterior aspect of his legs. His symptoms are more profound on the left than the right.

**Imaging Orders:** 2 views of the thoracic spine were ordered, obtained and interpreted from an orthopedic standpoint.

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

1 of 3

19a

ROA 568

Patient Name: Verdugo Morales, Evaristo  
Account number: REDACTED  
DOB: REDACTED  
Encounter Date: 11/21/2023

**Imaging Findings:** CT scan on date of injury indicating the T2 flexion distraction injury which greater than 50 percent compression of the vertebral body is noted.

Intraoperative x-rays from 10-11-19 show bilateral fixation and kyphosis across the fracture segment.

X-rays of the lumbar spine dated 01-08-20 show evidence of screw fixation from T11 through L1 with evidence of the angulated fracture at the T12 level.

AP and lateral x-rays of the lumbar spine are obtained today and reviewed by me. He has not had any specific imaging in three years as it relates to his back. The images do indicate there has been some backing out of the left L1 pedicle screw where there is increased halo around the left L1 screw when compared to the x-ray from 2019, consistent with probable loosening of the hardware at the L1 level.

MRI scan of lumbar spine shows disc bulging at L3/3 and L4/5 producing moderate spinal stenosis on a congenital basis.

**Diagnosis Codes:**

M54.16 Radiculopathy, lumbar region  
G89.4 Chronic pain syndrome  
G89.4 Chronic pain syndrome  
M54.6 Pain in thoracic spine

**Impression:**

1. T12 fracture status post fusion of the thoracolumbar junction with probable hardware loosening post fracture fixation
2. Stenosis lumbar spine L3/4 and L4/5

**Treatment Plan:** The fracture obviously was the direct consequence of him falling from the ladder. This probably aggravated pre-existing symptoms as it relates to low back or lumbar spinal stenosis as well. He has impairment of 28% to the whole person utilizing the fifth edition of the AMA Guides related to a fracture of greater than 50 percent with residual neurologic compromise. This is per DRE category 5 of the AMA Guides to the Evaluation of Permanent Impairment. His regional impairment would be arrived by dividing this impairment by 0.2 utilizing the regional impairment guides giving him a regional impairment to the thoracic spine impairment of greater than 100%. This would be rounded to a total disability which I think is the appropriate thing given the severity of this fracture. Based on the loosening of the hardware, he is a candidate to consider elective hardware removal. Per Dr. Forrest, he was noted to have this recommendation as well and this is consistent with prior recommendation for re-evaluation as it relates to his hardware.

I do not believe this man can work a 5-hour day or 20-hour week. I am in agreement with the recommendations by Dr. Forrest that he is functionally unemployable and a candidate to pursue permanent disability. I do not believe that he sustained further injury to his back as a consequence of the motor vehicle accident that he was involved in. I concur with Dr. Forrest's opinion particularly in reference to loss of use of the back to do work requiring the use of his back separate from impairment rating. I have discussed the situation in detail with him through his interpreter.

I would be glad to answer any further questions with regard to this. I have reviewed all of his imaging studies to date. My above opinions are held to a reasonable degree of medical certainty most probably.

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

2 of 3

196

ROA 569

Patient Name: Verdugo Morales, Evaristo  
Account number: REDACTED  
DOB: REDACTED  
Encounter Date: 11/21/2023

The patient is instructed to return if pain or symptoms arise.

Steven C. Poletti, MD

SCP/jbe

cc: Preston McDaniel, Esquire

---

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

3 of 3

19c

ROA 570

## South Carolina Workers' Compensation Commission

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



WCC File #: 1921668  
Carrier File #: WCV001062422  
December 1, 2023

### NOTICE OF HEARING

Evaristo Verdugo Morales v. INSULATION BY COHEN LLC

**Subject:** To determine issues as set forth on Forms 50/51 and Form 21 to determine if the employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits.

**Date:** February 8, 2024 at 01:45 PM

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

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

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

Commissioner T. Scott Beck  
803-737-5698, [sdebruhl@wcc.sc.gov](mailto:sdebruhl@wcc.sc.gov)

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

By: Shawnee M DeBruhl, SC Workers' Compensation, December 1, 2023

Party

Employee: Evaristo Verdugo Morales

Employee: Evaristo Verdugo Morales

Employer: INSULATION BY COHEN LLC  
Carrier: Builders Premier Insurance Company

Attorney

Don C. Gibson  
[dgibson@dgibsonlaw.com](mailto:dgibson@dgibsonlaw.com)  
843-744-1887

Preston F. McDaniel  
[preston@pfmcdlaw.com](mailto:preston@pfmcdlaw.com)  
803-771-7211

E. Courtney Gruber  
[cgruber@ycrlaw.com](mailto:cgruber@ycrlaw.com)  
843-720-5410

**McDANIEL LAW FIRM**  
**ATTORNEYS AND COUNSELORS AT LAW**  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

January 24, 2024

**VIA eCASE UPLOAD**

Commissioner T. Scott Beck  
SC Workers Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's &  
Spray Foam by Cohens, LLC  
WCC File No.: 1921668**

Dear Commissioner Beck:


Please find enclosed a copy of the Claimant's **Amended** Pre-Hearing Brief in the above referenced matter.

By copy of this letter, with enclosures, we are forwarding a copy of our **Amended** Pre-Hearing Brief and **Amended** APA submissions to opposing counsel on this date.

I hope this is sufficient for filing this matter with the Commission. However, if additional information is needed, please feel free to contact me at your convenience.

I look forward to seeing you at the hearing and to a resolution in the best interest of all parties concerned.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosures

cc: Don C. Gibson, Esquire  
E. Courtney Gruber, Esquire ✓



**AMENDED**

Claimant's Name: Evaristo Verdugo Morales Employer's Name: Insulation by Cohen's & Spray Foam by Cohen's, LLC  
Address: REDACTED Address: 1415 Old Highway 52  
City: REDACTED City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - Work Phone: ( ) - Carrier: Builders Premier Insurance Company  
Preparer's Name: Preston F. McDaniel, Esquire Preparer's Phone #: (803) 771-7211

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

Injury  Illness  Repetitive Trauma

1. Compensation Rate: \$845.74 2. AWW: \$1,302.27 Date of Injury: 10/10/2019
3. Type of injury and body part(s): Upper, middle and lower back, left shoulder, right shoulder, interval posterior spinal fusion from T11-L1; T12 vertebral fracture; concussion.
4. Facts in controversy: See Attachment.
5. Legal issues involved: See Attachment.
6. Unusual aspects: Injured worker is Spanish speaking only. See Attachment.
7. Witnesses (designate if expert):\* Evaristo Verdugo Morales, Marina Diaz Verdugo, and Jacqueline Verdugo; see attached Notice of Witnesses.
8. Exhibits: Claimant request that WCC File No. 1921668 be made a part of the Record; see attached Notice of APAs.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):  
All medical records and other supporting documentation is attached hereto and identified in the Notice of Witnesses and Written Medical Reports to be introduced as Direct Evidence on behalf of the Claimant.
10. Name, address, and specialty, if any, of the treating physician: See Attachment.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Leonard Forrest, 7/22/20, WP 22%; Dr. Jeffrey Buncher, 1/28/21, WP 22%, T-Spine 100%; Steven C. Poletti, MD, 11/21/23, WP 28%, T-Spine 100%.
12. I am amending my Form 50/51 in the following manner: Total and permanent disability per Form 21 response.

**Mediation**

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov).

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

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

Signature:   
Date of hearing: February 8, 2024

Email: preston@pfmcdlaw.com  
Time needed for hearing: 1.5 hrs.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. 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.

**ATTACHMENT TO FORM 58**

**Evaristo Verdugo Morales v. Insulation by Cohen's  
& Spray Foam by Cohen's, LLC**  
WCC File No. 1921668

4. **SUMMARY OF FACTS:**

As to the Form 21 and Form 50, Mr. Evaristo Verdugo Morales, a 53-year-old Hispanic male, spray-foam installer for Insulation by Cohen's and Spray Foam by Cohen's, LLC, was working at REDACTED Walterboro, SC 29488 on 10/10/2019. At noon, while covering the wall of a garage door with plastic in preparation for his co-worker to spray insulation on a newly constructed home, Mr. Morales fell from a ladder with his feet approximately 4 ft. off the ground, landing on concrete on his back and buttock and hitting his head, and briefly losing consciousness. His co-worker tried to help him up, and the co-worker called their boss to inform him of the accident. Mr. Verdugo Morales immediately felt pain in his back and was unable to continue working due to the pain. He was transported from the jobsite by a co-worker to the office and thereafter presented to the hospital.

Claimant was first seen at Moncks Corner Medical Center under the care of Charles T. Staples, Jr., MD, who opined immediate transfer via ambulatory to Trident Medical Center as having the capability and capacity to provide appropriate treatment and evaluation with MRI and neurosurgery consultation and operative intervention for the T-spine fracture, as the CT scans performed at Moncks Corner Medical Center indicated T-12 fracture. Richard M. Thompson, MD assumed his care when he arrived at Trident Medical Center. Claimant underwent a CT of both the T and L-spine as well as MRI of the thoracic spine, which revealed a 3-column injury with posterior ligamentous disruption.

On 10/11/2019, Douglas L. Stofko, MD performed interval posterior spinal fusion from T11 through L1 procedure to repair his T-12 fracture. The T11-T12-L1 percutaneous fusion required the implementation of hardware; Claimant had eight (8) screws and two (2) rods implanted. On 10/12/2019, Claimant was discharged to home, instructed to wear a Thoracic Lumbar Sacral Orthosis (TLSO) Brace at all times, other than while in the shower; was given pain medication to include Flexeril, Neurontin, Ultram, and

Colace; and he was told to follow-up with Neurosurgery on 10/23/2019.

On 10/23/2019, Claimant had his follow-up appointment with Dr. Stofko and saw Alana Cole, PA with interpretation by 13 or 14 year old niece and nephew (hereinafter "family interpreter"). On 11/20/2019, Claimant met with Alana Cole, PA-C of Trauma Care and Acute Surgical Services of Trident Health (family interpreter), who indicated Claimant was unable to return to work until he followed up in the office in six (6) weeks. On 1/8/2020, Claimant presented to Alana Cole, PA-C for follow-up (family interpreter) and indicated he continued to wear the TLSO brace and that he had not returned to work as he works in construction and was awaiting work clearance for their service. Claimant complained of pain in his left side when he lies down on that side. PA Cole's assessment indicated Claimant suffered (1) acute bilateral low back pain, unspecified whether sciatica present; and (2) other closed fracture of 12<sup>th</sup> thoracic vertebra with routine healing. PA Cole recommended Claimant start with physical therapy, as he was somewhat deconditioned from being out of work and on restrictions for twelve (12) weeks. PA Cole recommended Claimant undergo physical therapy for 2-3x weekly for 6 weeks and advised him it was no longer necessary to continue to use his TLSO brace.

On 2/20/2020. Builders Mutual Insurance Company, the authorized workers' compensation provider for Defendant Insulation by Cohen, authorized evaluation and treatment for physical therapy two times per week for a total of six weeks and provided a certified interpreter at all visits ("Vanessa"). Claimant attended his first physical therapy appointment on March 16, 2020 at Roper St. Francis, ATI Physical Therapy - Moncks Corner, located at 2061 Hwy 52, Moncks Corner, SC 29461. Claimant participated in physical therapy until 4/23/2020.

This matter was set for a hearing on April 7, 2020 before Commissioner Susan S. Barden. Prior to the hearing, Commissioner Barden was notified that the parties had reached an agreement as to the issues and agreed to forego the hearing. In the Consent Order, the parties agreed among other things: (1) Claimant sustained a compensable injury by accident to his **back**; (2) Claimant reserves the right to pursue other body parts as part of this claim; however the Defendants' admitted compensability only for the **back**; (3) the authorized treating physician is Dr. Stofko, and the Defendants will provide casually related medical treatment

until such time as the Claimant has reached maximum medical improvement in the opinion of his treating doctor. [Note: at the time of this Agreement the Claimant had been diagnosed and treated for both his thoracic and lumbar spine.]

Throughout his physical therapy treatment, Claimant continuously voiced his complaints of pain in his thoracic and lumbar spine. He complained of pain "where I have the screws" and indicated he cannot move too much or lie against a chair because it causes him pain; he further complained of tightness in his back. Physical therapy recorded lumbar objective limitations throughout. Although Claimant did receive some relief from the pain as a consequence of his participation in physical therapy, his Discharge Note indicates the therapist believed he would benefit from more physical therapy to progress to Work Hardening Program, but he was not quite ready for the transition at that time.

On 7/22/2020, Claimant returned to see PA Cole complaining of pain in the neck and upper back into the bilateral shoulders. [Note: for the first time a Certified Interpreter was provided by the Carrier.] He also complained of low back pain with radiation into the bilateral lower extremities into the bottom of the feet; he further complained of radiating pain in the left anterior thigh. Additionally, Claimant complained of muscle spasms in his low back; PA Cole noted that Claimant has not had any conservative treatment for this. PA Cole diagnosed Claimant's cervical pain, indicating that the neck pain and bilateral trapezius pain seems to be musculoskeletal in nature. PA Cole recommended Claimant begin physical therapy, again, for conservative treatment of his pain. She further ordered Claimant to take a muscle relaxer, Flexeril.

Since July 22, 2020 and as of the time of this submission, the Carrier has never authorized and scheduled Claimant's 6-8 weeks of physical therapy, despite the order coming from his authorized treating physician (see Consent Order, paragraph 6 noted above).

As for his lumbar radiculopathy, PA Cole recommended obtaining an MRI of the lumbar spine without contrast for further assessment of Claimant's low back pain with bilateral lower extremity radiation. PA Cole opined that she believed Mr. Morales did have a musculoskeletal component to this pain as he did have palpable tenderness

of the rectus spinae muscles. However, he did have a radicular component to this pain with bilateral lower extremity radiation; Plan - Claimant will likely be sent for physical therapy for this pain as well as potential trigger point injections to treat the musculoskeletal pain. Once an MRI is ordered, PA Cole will assess to determine if claimant would benefit from epidural steroid injections with pain management.

Since July 22, 2020 and as of the time of this submission, **(Note: after the Consent Order as part of the evaluation by Dr. Stofko mandated by the Defendants, Dr. Stofko ordered MRIs of the cervical spine and lumbar spine as well as a CT of the thoracic and lumbar spine on November 27, 2023)** the Carrier has failed to authorize an MRI of lumbar spine without contrast as well as Claimant's 6-8 weeks of physical therapy, despite the order coming from his authorized treating physician (see Consent Order, Paragraph 6 noted above).

Claimant was unable to return to work since the date of the accident. The Carrier had not continued to provide medical treatment; however, Claimant continued to experience pain in his thoracic (mid), upper, and lower back, and bilateral shoulders and specifically in his mid-back, where the screws are located. Additionally, he has continued to experience neck pain and low back pain, the same accepted body part, the back, injured at the time of the accident. Further, Claimant has continued to feel pain when lifting both of his arms and when attempting to lift his arms up above his head he feels shooting pain in his back (over his surgical area and especially where his hardware (screw heads) is located).

At the first Form 21 hearing, since Claimant had only received treatment related to the mid-back, he respectfully requested he be allowed to attend evaluation and/or treatment at the Southeastern Spine Institute, as this will afford him the ability to receive treatment for the full spine to include his lower back and thigh and leg pain; and his neck pain; as well as his continued thoracic pain treatment stemming from his thoracic and lumbar level one fusion.

At the first Form 21 hearing held on April 26, 2021, based on the position of the Defendants to seek stop payment on the basis that Mr. Morales has reached maximum medical improvement for his injuries as causally related to the accident, the Claimant's position was based on the medical

evidence that he has sustained a total loss of earning capacity; and had lost 50% or more of the functional use of his back to do work requiring the use of his back and thus was entitled to an Award for total and permanent disability under the Act.

**ADDITIONAL FACTS AS TO THE FORM 50 AND FORM 21 PRESENTLY FILED FOR HEARING BEFORE THE COMMISSION:**

Prior to the first hearing, the parties entered into an agreement for voluntary mediation and based on that Agreement which had been signed and filed with the Commission, and the Claimant's position that he was entitled to an Award for total and permanent disability, the Claimant noted to the Commissioner that the case was subject to mandatory mediation and requested that the hearing be cancelled. The Hearing Commissioner, Commissioner Taylor, proceeded with the hearing. In addition, the Claimant subpoenaed Alana Cole, PA to the hearing, who provided the majority of treatment for the Claimant following the surgery, and prior to the hearing entered a request that the Record be left open for the deposition instead of requiring the appearance of PA Cole at the hearing. No pre-hearing decision was made by the Commissioner and at the hearing those positions were reiterated but the Commissioner proceeded with the hearing. Although subpoenaed PA Cole did not appear at the hearing and the Claimant at the hearing again requested that due to the witness' failure to appear and pursuant to Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (SC App. 1996), cert. dismissed, 326 S.C. 261, 486 S.E.2d 263 that the Commissioner leave the Record open for the deposition of PA Cole. The Hearing Commissioner took that Motion and request under advisement.

**Almost twelve (12) months later** Commissioner Taylor issued her Order and in that same Order denied the Motion to leave the Record open for the Claimant to be allowed to take the deposition of PA Cole. The failure of PA Cole to appear at the hearing, the failure of the Commissioner to leave the Record open pursuant to Morgan v. JPS, supra, failure of the Commissioner to rule on the case for twelve (12) months and the failure of the Commissioner to cancel the hearing since it was subject to mandatory mediation, were all taken up as issues before the Commission. The Commission reversed the case on the simple basis that the Commissioner should have allowed mandatory mediation and the case was remanded for mandatory mediation. The Full Commission did not

address any of the other substantial errors of law in the initial Commissioner's Order.

As a result of the Commissioner's decision entering stop payment, the Defendants stopped payment of the Claimant's temporary total disability benefits beginning in March 2022 and only resumed payments of temporary total disability benefits with back payment following the Order of the Full Commission filed April 4, 2023. During this time, to assist his family with whom he lived, the testimony will show that Mr. Morales tried to find employment which he could do within his residual limited capacity and did in fact work for two (2) separate employers 5-6 hours per day, working for each employer for a period of approximately two (2) and no more than three (3) months. His testimony will show that due to his high wage earning capacity prior to the injury, and even assuming that the average weekly wage of \$1,302.27 is accurate, the Claimant's compensation rate would have still exceeded the maximum compensation rate for the year in which the injury occurred. The financial records available to the Claimant will be submitted at the hearing and will establish that the minimal amount of wages that he was able to earn in these two jobs will not allow for even a small credit against the maximum compensation rate for the date of the injury which the Claimant was receiving and which was stopped during this period of time pursuant to Commissioner Taylor's Order which was overturned.

As to the Form 50 requesting additional evaluation, immediately following the accident after being transferred from Moncks Corner to Trident, Mr. Morales had an emergent thoracic fusion for a chance fracture of the T12 from T11 thru the L1 vertebrae with hardware by Dr. Douglas Stofko. The Claimant has four (4) screws and plates in his back. From the point of surgery through the current time, Mr. Morales has had a significant problem with pain, particularly over the screws themselves, and the fusion site and is having problems adjacent to the fusion site, both above and below. Dr. Leonard Forrest in consultation with other specialists at Southeastern Spine that due to the continuing pain that Mr. Morales recommended waiting for one (1) year, but if he continued to have pain one (1) year after the fusion, that he have further diagnostic testing and an evaluation for hardware removal. After that visit conducted on July 22, 2020, Dr. Forest saw the Claimant again on January 20, 2021, more than a year after the original fusion, and due to continuing pain recommended at that time further diagnostic testing and evaluation for surgical removal. Due to the continuing problems, the

Claimant would request that the Commission, pursuant to its authority under SC Code §42-17-30, order the Defendants to provide an evaluation by a duly qualified orthopaedic surgeon to evaluate the screws and fusion and whether or not he would benefit from hardware removal; further treatment concerning the fusion; and whether or not Mr. Morales is having problems in the back structure immediately above and below the fusion site, and/or problems with the back stemming from the fusion and authorization for treatment if that physician determines treatment to be necessary. Having already seen the orthopaedic specialists at Southeastern Spine for evaluation, the Claimant would request that the Commission consider ordering the Defendants to pay for an evaluation and treatment, if any is found to be necessary, with an agreed upon specialist or a designated specialist, or specialists with Southeastern Spine Institute.

***Subsequent to the filing of the Form 50 and the Form 21, the Defendants then suddenly decided to request and authorize an evaluation with Dr. Stofko to which the Claimant objected and after the filing of a Motion to Compel, entered into a Consent Order to attend an evaluation with Dr. Stofko. After the additional MRIs and CT scans as referred to above, Dr. Stofko in a report dated January 10, 2024 recommended a referral to a pain management specialist for the problems in reference to the thoracic spine and the fusion, and treatment as deemed necessary. The Claimant hereby requests that this medical care be provided before this case is brought to a conclusion.***

**FACTS IN CONTROVERSY:**

Based on the Defendants' position that the Claimant has reached maximum medical improvement:

- a. 1. An Award for total and permanent disability due to wage loss. This is an accepted case and the issue is whether or not the Claimant is entitled to an Award for total and permanent disability for having sustained a total loss of earning capacity based on his age, education, background and experience, the physical facts of the injury wherein the jobs which he can perform on a residual basis are so limited in quality, quantity or dependability that a reasonably stable job market for them does not exist; and/or
2. Whether the Claimant has sustained a 50% or greater loss of use of the back and therefore is entitled to an Award for

total and permanent disability under the Scheduled Member Statute for the functional loss of USE OF his back to do work requiring the use of his back, which is greater than 50% of the functional use of his back. Under the Dictionary of Occupational Titles Physical Demand Classification System, does not even qualify, based on the objective testing of the Functional Capacity Evaluation that the Claimant does not even qualify for light duty work, the lowest physical demand classification of jobs under the Dictionary of Occupational Titles Physical Demand Classification System. Therefore he is excluded on a physical basis alone due to the injury to his back from at least 60% of the jobs available in the American economy.

- b. Whether the Claimant is at maximum medical improvement and whether he is entitled to further evaluation and treatment for his lumbar, thoracic spine, and neck pain and specifically including hardware removal as suggested by Dr. Forrest **and Dr. Poletti and as previously recommended by Dr. Stofko in his January 10, 2024 report** and treatment for the vertebrae above and below the thoracic/lumbar fusion site, and to include physical therapy sessions, possible trigger point and epidural steroid injections; **and other pain management modalities**; and/or

The Claimant's entitlement to lifetime medical care due to being totally and permanently disabled due to his injury.

- c. Lump sum of Award requested.

5. **LEGAL ISSUES INVOLVED:**

- a. 1. Under SC Code §42-1-120 and §42-9-10 where based on the Claimant's age, education, background and experience and the physical facts of the injury the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for them does not exist, the Claimant is entitled to an Award for total and permanent disability under the Act for a total loss of earning capacity-wage loss. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont De Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (just because a claimant can perform sporadic work or part-time work, or occasional work does not obviate or establish that a claimant is not totally disabled within the Act. The inability to perform common labor on a full time basis at a minimum of 8 hrs./day, five (5) days per week, fifty-two (52) weeks out of the year is

total disability for one that is not qualified for any other position. Colvin, supra); and/or

2. Under SC Code 42-9-30(21), the Claimant is entitled to an Award of 500 weeks of compensation due to the character of the injury for having lost more than 50% of the functional use of his back to do work requiring the use of his back under the substantial evidence in the Record. The Award under The Scheduled Member statute is based solely on the character of the injury and not upon the earnings or the earning capacity of the injured worker. G.E. Moore Company v. Walker, 232 S.C. 320, 102 S.E.2d 106 (1958). McCullum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App. 1989).

There is no need or necessity to prove nor is it pertinent as to whether or not the Claimant has actually lost earnings.

**"loss of earnings is not required for recovery under 42-9-30; compensation is based on the character of the injury."** Bateman v. Town and Country Furniture, 287 S.C. 158, 336 S.E.2d 890 (S.C. App. 1985), Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (S.C. App. 1993) (Reh. Denied, Cert. Denied.)

Where the substantial evidence in the Record establishes that the Claimant has lost 50% or more of the functional use of his back to do work requiring the use of his back, the Claimant is entitled to an Award for the maximum Award under a Scheduled Member Award which is the equivalent of a permanent and total disability Award for loss of use of the back. Clemmons v. Lowe's Home Centers, Inc.-Harbison, 420 S.C. 282, 803 S.E.2d 268 (2018).

Due to the position being taken by some defendants and some indications from some Commissioners that the Commission or some members of the Commission believe that after the 2007 amendments that wage loss has been infused into a determination and as evidence to be considered concerning an Award under SC Code §42-9-30(21) for loss of use of the back, the following memorandum is submitted:

**AWARD IS PAID FOR CHARACTER OF THE INJURY.**

While the presumption under SC Code §42-9-30 (19) was always rebuttable, the 2007 amendment was to simply set that out in Statutory Language. The effect of any presumption under our Law was and is as is stated in SC Rules of Evidence §301:

"In all civil actions..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption but does not shift to such party the burden of proof in the sense of the risk of non-persuasion which remains throughout the trial upon the party on whom it was originally cast."

In other words the Claimant had, has and will always have the burden of proof to put forth evidence, either lay, medical and/or otherwise, that the injured worker has lost 50% or more of the functional use of the worker's back to do work requiring the use of the worker's back which must be sufficient to prove that fact by a preponderance of the evidence.

The misperception that the Claimant has to prove wage loss or loss of earning capacity has been around long before the 2007 amendments and has been put to rest repeatedly by our Appellate Courts in the cases of Bateman, McCollum, and Lyles, supra:

"The Workers' Compensation Commission properly ruled that a Claimant is entitled to benefits even though the injury did not affect his performance in his subsequent job because compensation is based on the character and extent of the injury and not whether the Claimant lost earnings or is otherwise employable in another occupation". Lyles, supra.

A worker is entitled to an award for total and permanent disability for loss of earning capacity under SC §42-9-10 (A).

The pertinent part of SC Code §42-9-30 (21) (as Amended 2007) (the scheduled member back section) reads:

"where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under §42-9-10 (B).  
(Emp. Add.)

SC Code §42-9-10 (B) provides the loss of both hands, arms, feet, legs, or vision in both eyes or any two thereof,

constitutes total and permanent disability to be compensated according to the provisions of this section.

An Award under Section (B) of §42-9-10 like an Award under §42-9-30 (21) are paid due to the character of the injury, not wage loss.

"Compensation depends on the functional loss rather than the loss of earnings." Dykes v. Daniel Construction Co., 262 S.C. 98, 202 S.E.2d 646.

Therefore, Awards under §42-9-30 (21) are not paid nor have they ever been paid for wage loss as under §42-9-10 (A). They are paid for the functional loss of use without any consideration of wage loss. A left-handed lawyer is entitled to total and permanent disability if he loses his right foot and right hand and the same is true if he loses 50% of the use of his back.

- b. Under SC Code §42-15-60 and under a PTD Award, the Claimant is entitled to lifetime medical care for all causally related medical care which will affect a cure or provide relief from the Claimant's disabling symptoms stemming from his work-related injury.

Claimant in the Form 50 requests an evaluation pursuant to the Commission's authority under SC Code §42-17-30 and as provided for under SC Code §42-15-60.

- c. Claimant's entitlement to a lump sum award pursuant to SC Code § 42-9-301 and R. 67-1605 with language in the award that such lump sum as awarded by the Commission is being ordered to be paid in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime (as established by the South Carolina Mortality Table, SC Code of Laws §19-1-150) which payment method the Commission may order under SC Code of Laws §42-9-240:

"The first installment of compensation payable under the terms of an award...shall become due seven days from the date of such an award . . . Thereafter compensation shall be paid in installments weekly, except when the Commission determines that payment shall be made monthly OR in some other manner."

6. As noted, the Claimant subpoenaed Alana Cole, PA to the hearing in 2021 and she did not appear. Both prior to and at the hearing, the Claimant asked that the Record be left open, or in other words adjourned, for the purpose of the Claimant taking the deposition of PA Cole and Dr. Stofko. Subsequent to the failed mediation in July, the Claimant scheduled the deposition of PA Cole and Dr. Stofko but even though those were scheduled, the Claimant was unable to go forward with those depositions. As the Claimant has previously made the Commission aware of and has requested that the hearing be adjourned to allow for the depositions, and those depositions **were reset for December 8, 2023 but had to be continued at the request of the doctors and then they were reset for January 15, 2024. Due to the report of Dr. Stofko making the referral pain management for evaluation and treatment of the Claimant's thoracic spine, and the mandate by Dr. Stofko during the week of January 8<sup>th</sup>-12<sup>th</sup> that the depositions be conducted by Zoom wherein they had to be conducted in person, the Claimant cancelled the depositions on January 12<sup>th</sup>. Since the Defendants have refused to provide the medical care as recommended by their authorized doctor, and since the Commission has directed that the Hearing go forward on February 8<sup>th</sup>, Claimant's Counsel has contacted Dr. Stofko's office several times in an attempt to reset the depositions but has been unable to obtain a date prior to the date of the February 8<sup>th</sup> hearing.** Therefore, pursuant to Reg. 67-613 and case law, and specifically Morgan v. JPS, supra (where an injured worker requests adjournment of a hearing to provide additional proof of disability "an adjournment causes no prejudice to the employer" and should be granted in the best interest of justice.
10. Charles T. Staples, Jr., MD & Charles Geilfuss, MD of Moncks Corner Medical Center, 401 Live Oak Dr, Moncks Corner, SC 29461; Seon Jones, MD, Douglas Stofko, MD & Richard M Thompson, MD of Trident Medical Center, 9330 Medical Plaza Drive, Charleston, SC 29406; Alana N. Cole, PA-C and **Josephine L. Jennings, PA**, Trident Neurosurgical Specialists/Trauma Care and Acute Surgical Services - Trident Health, 9300 Medical Plaza Dr, Ste B, Charleston, SC 29406; Roper St Francis ATI Physical Therapy, 2061 Highway 52, Moncks Corner, South Carolina 29461; Grace Physical Therapy, N. Charleston, SC; Leonard Forrest, MD, **Steven Poletti, MD**, Southeastern Spine Institute. Mt. Pleasant, SC; Jeffrey Buncher, MD, Charleston Pain & Rehab. Center, Charleston, SC; Harriet Fowler, M.Ed., CRC, Harriet Fowler VR Services, Columbia, SC.

Respectfully submitted,



---

Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

January 24, 2024

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC File No.: 1921668

EVARISTO VERDUGO MORALES, )  
 )  
Employee/Claimant, )  
 )  
v. )  
 )  
INSULATION BY COHEN'S & )  
SPRAY FOAM BY COHEN'S, LLC )  
 )  
Employer, and )  
 )  
BUILDERS PREMIER INSURANCE )  
COMPANY, )  
 )  
Carrier. )  
 )

AMENDED

NOTICE OF WITNESSES AND  
WRITTEN MEDICAL REPORTS TO  
BE INTRODUCED AS DIRECT  
EVIDENCE ON BEHALF OF THE  
CLAIMANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND  
E. COURTNEY GRUBER, ESQUIRE, ATTORNEY FOR THE EMPLOYER/  
CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Claimant, pursuant to the  
provisions of the South Carolina Workers' Compensation Act and  
South Carolina Code §1-23-330 (1976, as amended), herewith  
submits the following reports/physician or other evidence on  
behalf of the Claimant, to wit:

#	<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGE #</u>
1.	Grace Physical Therapy Rod Tyler, PTR/L, CHT, CSFA (FCE)	10/23/20	1-11
2.	<b>Southeastern Spine Institute</b> Leonard Forrest, MD <b>Steven C. Poletti, MD</b>	04/01/21-12/11/23	12-19a-c
3.	Charleston Pain & Rehab. Ctr. Jeffrey Buncher, MD	01/28/21	20-30
4.	Harriet Fowler, M.Ed., CRC Harriet Fowler VR Services	04/12/21	31-43
5.	Consent Order		44-45

- |     |  |                   |           |
|-----|--|-------------------|-----------|
| 6.  | Trident Health Systems and<br>Moncks Corner Medical Center   | 10/10/19-10/11/19 | 46-81     |
| 7.  | <b>Trident Orthopaedic Specialists</b><br>Douglas Stofko, MD-<br>Alana N. Cole, PA-C<br><b>Josephine L. Jeanings, PA</b> | 10/23/19-01/10/24 | 82-103a-e |
| 8.  | Roper St. Francis PT   | 03/16/20-04/23/20 | 104-110   |
| 9.  | Flores Contracting records   | 11/22/22-01/12/23 | 111-117   |
| 10. | Photographs of Claimant  |                   | 118-122   |
| 11. | Deposition Transcript of<br>Alana N. Cole, PA-C  |                   |           |
| 12. | Deposition Transcript of<br>Douglas Stofko, MD   |                   |           |

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 deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred 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: The Claimant; Alana N. Cole, PA (Commission Witness), any witness listed, named or called by the Defendants; and other lay witnesses to be named.

Respectfully Submitted,



Preston F. McDaniel  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
N. Charleston, SC 29419  
(843) 744-1887

Attorneys for Claimant

January 24, 2024



Patient Name: Evaristo Verdugo  
Morales

Encounter Date: 11/21/2023

Date of Birth: REDACTED

Account Number: REDACTED

**History of Present Illness:** Mr. Morales was involved in a work-related injury on 10-10-19 from a ladder. He sustained a T12 Chance fracture and appropriately underwent operative intervention by Dr. Stofko on the day of injury to involve pedicle screw fixation and stabilization of the fracture at the T12 level as this was an unstable fracture extending through the vertebra and the posterior lamina and spinous process. He is accompanied by a translator who noted he was placed in a brace (TLSO) postoperatively, and he had physical therapy for about six weeks in the spring of 2020. He has remained with pain across his mid back, aching symptoms into his feet and thighs, and has significant mid back pain. He has no prior history of any similar problems before the 10-10-19 accident.

He was seen again by Dr. Leonard Forrest at Southeastern Spine Institute on 01-20-21 at which point it was noted he was having pain across his upper back and also pain into his low back and leg. He underwent a functional capacity evaluation which placed him at potential light to medium level work capability. Dr. Forrest opined that he was not able to continue to be active throughout a day and he was recommended for future breaks and to lay down on most days sometimes twice a day. Dr. Forrest noted despite Mr. Morales' ability to lift and carry up to 35 pounds for a short time he most likely was not capable of meaningful gainful employment.

Per Mr. Morales, he did try to work part time for 5 to 6 hours per day for approximately three months with one employer. Per his records he was doing light duty makeshift work so he did attempt to return to work but was unable to. Beyond this he was involved in two motor vehicle accidents one of which was minor and the other of which was involving injury to his leg to include a broken leg for which he was treated nonoperatively with crutches. These automobile accidents are unrelated to his work accident and back injury of 10-10-19.

**Past Medical History:** Hypertension

**Drug Allergies:** No known allergies

**Physical Examination:** He has guarding with flexion, extension and rotation of his mid back which is limiting and painful. He has tenderness to palpation over his hardware which is palpable on his left side at the thoracolumbar junction. He has straight leg raising producing back and posterior thigh pain. He has bilateral weakness in his toe extensors and dysesthesia in the posterior aspect of his legs. His symptoms are more profound on the left than the right.

**Imaging Orders:** 2 views of the thoracic spine were ordered, obtained and interpreted from an orthopedic standpoint.

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

1 of 3

19a

ROA 590

Patient Name: Verdugo Morales, Evaristo  
Account number: REDACTED  
DOB: REDACTED  
Encounter Date: 11/21/2023

**Imaging Findings:** CT scan on date of injury indicating the T2 flexion distraction injury which greater than 50 percent compression of the vertebral body is noted.

Intraoperative x-rays from 10-11-19 show bilateral fixation and kyphosis across the fracture segment.

X-rays of the lumbar spine dated 01-08-20 show evidence of screw fixation from T11 through L1 with evidence of the angulated fracture at the T12 level.

AP and lateral x-rays of the lumbar spine are obtained today and reviewed by me. He has not had any specific imaging in three years as it relates to his back. The images do indicate there has been some backing out of the left L1 pedicle screw where there is increased halo around the left L1 screw when compared to the x-ray from 2019, consistent with probable loosening of the hardware at the L1 level.

MRI scan of lumbar spine shows disc bulging at L3/3 and L4/5 producing moderate spinal stenosis on a congenital basis.

**Diagnosis Codes:**

M54.16 Radiculopathy, lumbar region  
G89.4 Chronic pain syndrome  
G89.4 Chronic pain syndrome  
M54.6 Pain in thoracic spine

**Impression:**

1. T12 fracture status post fusion of the thoracolumbar junction with probable hardware loosening post fracture fixation
2. Stenosis lumbar spine L3/4 and L4/5

**Treatment Plan:** The fracture obviously was the direct consequence of him falling from the ladder. This probably aggravated pre-existing symptoms as it relates to low back or lumbar spinal stenosis as well. He has impairment of 28% to the whole person utilizing the fifth edition of the AMA Guides related to a fracture of greater than 50 percent with residual neurologic compromise. This is per DRE category 5 of the AMA Guides to the Evaluation of Permanent Impairment. His regional impairment would be arrived by dividing this impairment by 0.2 utilizing the regional impairment guides giving him a regional impairment to the thoracic spine impairment of greater than 100%. This would be rounded to a total disability which I think is the appropriate thing given the severity of this fracture. Based on the loosening of the hardware, he is a candidate to consider elective hardware removal. Per Dr. Forrest, he was noted to have this recommendation as well and this is consistent with prior recommendation for re-evaluation as it relates to his hardware.

I do not believe this man can work a 5-hour day or 20-hour week. I am in agreement with the recommendations by Dr. Forrest that he is functionally unemployable and a candidate to pursue permanent disability. I do not believe that he sustained further injury to his back as a consequence of the motor vehicle accident that he was involved in. I concur with Dr. Forrest's opinion particularly in reference to loss of use of the back to do work requiring the use of his back separate from impairment rating. I have discussed the situation in detail with him through his interpreter.

I would be glad to answer any further questions with regard to this. I have reviewed all of his imaging studies to date. My above opinions are held to a reasonable degree of medical certainty most probably.

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

2 of 3

196

ROA 591

Patient Name: Verdugo Morales, Evaristo  
Account number: REDACTED  
DOB: REDACTED  
Encounter Date: 11/21/2023

The patient is instructed to return if pain or symptoms arise.

Steven C. Poletti, MD

SCP/jbe

cc: Preston McDaniel, Esquire

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD  
12/1/2023

3 of 3

19c

ROA 592

VERDUGO MORALES, Evaristo DOB: REDACTED (58 yo M) Acc No. REDACTED DOS: 01/10/2024



**VERDUGO MORALES, Evaristo**

58 Y old Male, DOB: 10/26/1965  
Account Number: REDACTED

REDACTED

Home: REDACTED

Guarantor: Verdugo Morales, Evaristo Insurance: WC

BUILDERS MUTUAL

Appointment Facility: 437711TO2 TRIDENT NEUROSURG SPEC

01/10/2024

PROGRESS NOTE: JOSEPHINE L JENNINGS, PA CHN#: 1184348849

**Reason for Appointment**

1. f/u P CT t-spine & MRI C & L spine- American Health Imaging

**History of Present Illness**

First Point of Contact Screening:

Do any of the following apply to you?

New rash or open sores *No*

Fever and/or chills in the past 7 days *No*

Cough *No*

Muscle or body aches (other than from an injury) *No*

Sore throat *No*

In the past 3 weeks, have you or a close contact traveled outside the United States and you are now ill? *No*

Patient is Spanish-speaking. Translator used for entirety of visit.

58-year-old male who presents to our office today for reevaluation/to reestablish care. He is known to our practice from previous T11-L1 percutaneous fusion for stabilization of T12 fracture on 10/11/19 with Dr. Stofko. See summary of previous clinical course below:

10/10/19 - 10/12/19: TMC admit. fall from ladder w T12 fx, 3 column injury

10/11/19: T11-L1 percutaneous fusion with Dr. Stofko

10/23/19: 2 week office visit for wound check. Doing well without issues. F/u 6 weeks postop

11/20/19: 6 week postop visit, doing well without complaints, xrays without issues. F/u 12 weeks postop

1/8/20: 12 week postop visit, doing well without issues other than mild L sided pain w lying down. Cleared from TLSO.

Ordered PT x3 weeks then return to work without restrictions. tF/u prn

7/22/20: Pt c/o neck pain w radiation into shoulders/ptraps and LBP w LE radiation into bottom of foot and L anterior thigh.

Felt c-spine issues to be musculoskeletal, ordered PT and muscle relaxant. MRI l spine ordered, medrol dose pack, PT, pain management referral.

3/26/21 TMC ED visit - MVC, restrained, rear ended, no airbag deployment or LOC, hit head on headrest and reported head and neck pain. Negative workup, dc'ed w PCP f/u.

12/31/22-1/3/23 - hospitalized TMC s/p MVC, head on collision. L tibial plateau fx, sternal fx, multiple rib fx's, underwent ORIF L tibial plateau fx Dr. Gottlich.

11/27/2023 - Right evaluated for complaints of mid back pain located in the upper thoracic scapula as well as new complaints of left trapezius pain that radiates into the left upper extremity posteriorly into the hand with associated numbness of the entire hand plus dropping objects. No complaints of lumbar radiculopathy into the left lower extremity to the top and bottom of the foot that is worse with driving. MRI C & L spine as well as CT T & L ordered.

patient presents today for discussion of his MRI and CT test results. Patient reports no change in his symptoms. He continues to have constant midthoracic back pain that worsens with cold and movement. The left upper extremity and left lower extremity continued to have numbness in the same distribution as the radiating pain. He continues to deny any gait instability or bladder/ bowel dysfunction. MRI cervical spine, MRI L-spine, CT spine obtained prior to the appointment.

Spanish interpreter utilized throughout the entirety of the patient provider interaction.

Progress Note: JOSEPHINE L JENNINGS, PA 01/10/2024

Note generated by eClinicalWorks EMR/EMR Interface Software (p://www.eClinicalWorks.com)

Generated for Printing/Faxing/Transmitting on: 01/12/2024 09:29 AM EST

103a

ROA 593

VERDUGO MORALES, Evaristo DOB: REDACTED (58 yo M) Acc No. REDACTED DOS: 01/10/2024

**Current Medications**

**Not-Taking**

- Colace 100 MG Capsule 1 capsule as needed Orally Once a day
- Cyclobenzaprine HCl 5 MG Tablet 1 tablet as needed Orally Three times a day
- Cyclobenzaprine HCl 10 MG Tablet 1 tablet as needed Orally Three times a day
- Gabapentin 300 MG Capsule 1 capsule Orally Once a day
- MethylPREDNISolone 4 MG Tablet Therapy Pack as directed Orally Take as directed on package
- Tramadol HCl 50 MG Tablet 1 tablet as needed Orally Once a day
- Tylenol

Medication List reviewed and reconciled with the patient

**Past Medical History**

T11-S1 fracture.  
Bicondylar tibial plateau fracture.

**Surgical History**

Fusion T11-L1 10/11/2019  
Open treatment & internal fixation 1/2/2023

**Family History**

Non-Contributory

**Social History**

**Alcohol Use**

Patient *does not use alcohol*

**Tobacco Status**

Patient is *a never smoker*

\*DO NOT USE \* Tobacco Status (CQW)

Patient is *Never smoker*

If using tobacco, advised to quit? *07/22/2020*

**Hospitalization/Major Diagnostic Procedure**

See Surgical History

**Vital Signs**

Ht: 67 in, Ht-cm: 170.18 cm, Wt: 203.8 lbs, Wt-kg: 92.44 kg, BMI: 31.92, Weight Change: 0 lbs, Body Surface Area: 2.09, BP: 129/79, HR: 89.

**Examination**

General Examination:

Constitutional: Vital signs as stated above. Patient is well-developed, well-nourished in no acute distress.

Mental Status: Awake, alert and oriented to person, place, time and situation. Normal mood and affect. Recent and remote memory intact. Normal attention span and concentration. Appropriate fund of knowledge.

Skin: warm and dry.

Head: Normocephalic. Atraumatic.

Eyes: No conjunctival injection. No scleral icterus. PERRL. EOMI.

ENT: Ears and nose normal on external inspection. Mucous membranes moist.

Neck: Trachea midline. Normal ROM.

Speech: Fluent

**Progress Note: JOSEPHINE L JENNINGS, PA 01/10/2024**

Note generated by eClinicalWorks EMR/EMR Software (www.eClinicalWorks.com)

Generated for Printing/Faxing/eTransmitting on: 01/12/2024 09:29 AM EST

103b

ROA 594

VERDUGO MORALES, Evaristo DOB: REDACTED (58 yo M) Acc No. REDACTED DOS:  
01/10/2024

Musculoskeletal: Normal gait and station. Normal muscle bulk and tone. No atrophy, fasciculations, or abnormal movements.

**Motor:**

Right Deltoid: 5/5  
 Right Bicep: 5/5  
 Right Tricep: 5/5  
 Right Wrist Extension: 5/5  
 Right Grip Strength: 5/5  
 Left Deltoid: 5/5  
 Left Bicep: 5/5  
 Left Tricep: 5/5  
 Left Wrist Extension: 5/5  
 Left Grip Strength: 5/5  
 Right Hip Flexion: 5/5  
 Right Quadricep: 5/5  
 Right Ankle Dorsiflexion: 5/5  
 Right Ankle Plantarflexion: 5/5  
 Right Extensor Hallucis Longus: 5/5  
 Left Hip Flexion: 5/5  
 Left Quadricep: 5/5  
 Left Ankle Dorsiflexion: 5/5  
 Left Ankle Plantarflexion: 5/5  
 Left Extensor Hallucis Longus: 5/5

**Reflexes:**

Right Biceps Reflex (C5/6) 2+  
 Right Patellar Reflex (L3-4) 2+  
 Left Biceps Reflex (C5/6) 2+  
 Left Patellar Reflex (L3-4) 2+

Right Hoffman's sign: negative  
 Left Hoffman's sign: negative  
 Right Clonus: negative  
 Left Clonus: negative

TTP L trapezius and scapula to the shoulder posteriorly  
 No TTP over percutaneous screw sites or at the midline thoracic spine  
 TTP L SI joint

**Previous imaging and reports reviewed:**

- CT thoracic spine completed on 12/18/2023 at American Health imaging: Imaging and report reviewed which demonstrate stable posterior fusion hardware at T11-L1 with a demonstrate an old T12 compression deformity. no acute compression fractures noted. The remaining vertebral bodies are of normal height. The disc spaces are maintained. No aggressive or destructive bone lesions evident.
- CT lumbar spine bleed on 12/18/2023 at American Health imaging: Imaging report reviewed which demonstrates the inferior portion of the posterior hardware. No acute compression fractures of the lumbar spine. Normal alignment.
- MRI cervical spine without contrast completed on 12/19/2023 at American Health imaging: Imaging and report reviewed which demonstrates no significant central canal stenosis of the cervical spine. normal alignment of the cervical spine cervical spinal cord is normal in caliber and signal intensity.
- MRI lumbar spine without contrast completed on 12/19/2023 at American Health imaging: Imaging report reviewed which demonstrate no significant central canal stenosis of the lumbar spine. There is mild foraminal stenosis noted at the L2-3 and L3-4 levels but no impingement or compression of the thecal sac or exiting nerve roots. No STIR enhancement of the vertebral bodies that would suggest any acute compression deformities or fractures.

**Assessments**

**Progress Note: JOSEPHINE L JENNINGS, PA 01/10/2024**

Note generated by iClinika EMR and Software powered by eClinicalWorks.com

Generated for Printing/Faxing/Transmitting on: 01/12/2024 09:29 AM EST

1030

ROA 595

VERDUGO MORALES, Evaristo DOB: **REDACTED** (58 yo M) Acc No. **REDACTED** DOS: **01/10/2024**

1. Fusion of spine of thoracic region - M43.24 (Primary)
2. Cervical radiculopathy - M54.12
3. Lumbar radiculopathy - M54.16

### Treatment

#### 1. Fusion of spine of thoracic region

Clinical Notes: 58-year-old male who presents to our office today for reevaluation/to reestablish care. He is known to our practice from previous T11-L1 percutaneous fusion for stabilization of T12 fracture on 10/11/19 with Dr. Stofko.

patient has been having ongoing midthoracic back pain since his surgery in 2019 after he was a trauma requiring emergent stabilization of a T12 fracture. Extensive imaging of the cervical, thoracic, and lumbar spine have been obtained which do not demonstrate any findings that would warrant neurosurgical intervention. Patient's main complaints are in regards to his chronic mid back pain overlying the pedicle screws as well as new complaints of radicular-type pain in the left upper and left lower extremity. There is no significant central canal stenosis on either the cervical or lumbar MRI imaging that demonstrate any signs of cord compression or cord signal abnormality nor compression of exiting nerve roots. There may be an underlying inflammatory component causing these radicular symptoms, therefore, will send in a Medrol Dosepak for the patient to trial while he is being referred to pain management. At this time, there is no neurosurgical intervention warranted based on the patient's imaging in current symptoms, recommend referral to Carolina Pain Management for discussion of a pain treatment plan for his chronic mid back pain s/p thoracic fusion in 2019. Based on physical exam findings, patient may also benefit from left SI joint injection therapy with pain management for his left lower extremity radicular pain. It is also recommended patient undergo physical therapy in separate intervals for range of motion and strengthening of the cervical and lumbar spine. Patient demonstrated understanding for the discussed plan and agrees. He can follow-up with our clinic on an as-needed basis. It is recommended that if he has any worsening symptoms this is weakness in the extremities, gait instability, changes in speech, changes in vision, or urinary retention then he should present to the emergency department for evaluation.

#### 2. Cervical radiculopathy

Refill MethylPREDNISolone Tablet Therapy Pack, 4 MG, as directed, Orally, Take as directed on package, 1, Refills 0  
Notes: Back Pain: Care Instructions material was published

#### 3. Others

##### Clinical Notes:

Patient is to call our office or present to the ED with any questions or concerns as well as any new or worsening symptoms of numbness, tingling, weakness, difficulty with speech, changes in vision, altered mental status, bowel/bladder dysfunction, severe headache or bleeding complications. All of the above was discussed in detail with the patient who had ample opportunity for all questions to be addressed and does wish to proceed with the treatment plan. Discussed the above treatment plan with Dr. Stofko who agrees with plan.

Of note, a total time of 53 minutes was spent on this encounter including personal review of the available imaging and radiology reports as well as for previous records, face-to-face time spent with the patient obtaining history, performing physical assessment, discussion of radiology results, counseling, education, coordination of care, ordering of medication/imaging/referrals, discussion of patient's case was supervising physician and documentation.

### Preventive Medicine

#### Quality Measures:

Weight Assessment

Above Normal BMI Follow-Up *Lifestyle education regarding diet*

### Care Plan Details

Progress Note: JOSEPHINE L JENNINGS, PA 01/10/2024

Copyright © 2012 by Lippincott Williams & Wilkins Software and e-Books

Generated for Printing/Faxing/eTransmitting on: 01/12/2024 09:29 AM EST

103d

ROA 596

VERDUGO MORALES, Evaristo DOB: REDACTED (58 yo M) Acc No. REDACTED DOS: 01/10/2024

Electronically signed by JOSEPHINE JENNINGS, PA, 4600 on 01/11/2024 at 06:11 PM EST  
Sign off status: Completed

---

437711TO2 TRIDENT NEUROSURG SPEC  
9221 UNIVERSITY BLVD  
STE 102  
CHARLESTON, SC 29406-9148  
Tel: 843-302-0272  
Fax: 843-302-0273

---

Progress Note: JOSEPHINE L JENNINGS, PA 01/10/2024

Generated for Printing/Faxing/eTransmitting on: 01/12/2024 09:29 AM EST

103e

ROA 597

**CERTIFICATE OF SERVICE**

**Evaristo Verdugo Morales v. Insulation by Cohen's &  
Spray Foam by Cohen's, LLC**

WCC File No. 1921668

I HEREBY CERTIFY that on this date:

I uploaded to eCase a copy of the **Amended Pre-Hearing Brief and  
Notice of Witnesses and Written Reports(s)/Physician or other  
Evidence** to:

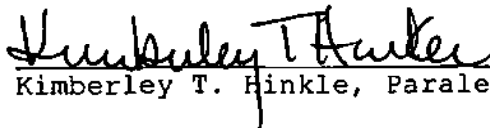
**VIA eCASE UPLOAD**

Commissioner T. Scott Beck  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

And I mailed a copy of the **Amended Pre-Hearing Brief, Notice of  
Witnesses and Written Reports(s)/Physician or other Evidence,  
and Amended APA Submissions with enclosures** to:

**VIA FIRST CLASS MAIL**

E. Courtney Gruber, Esquire  
CLEMENT RIVERS  
Post Office Box 993  
Charleston, SC 29402

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this

24<sup>th</sup> day of January, 2024.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: 12/25/25

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC File No.: 1921668

EVARISTO VERDUGO MORALES, )  
 )  
Employee/Claimant, )  
 )  
v. )  
 )  
INSULATION BY COHEN'S & )  
SPRAY FOAM BY COHEN'S, LLC )  
 )  
Employer, and )  
 )  
BUILDERS PREMIER INSURANCE )  
COMPANY, )  
 )  
Carrier. )  
 )

**2<sup>nd</sup> AMENDED**

APA SUBMISSIONS

Date of Hearing: 02/29/2024

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 Preston F. McDaniel, the Attorney for the Claimant, submits the following report(s) in support of and on behalf of the Claimant in this matter:

<u>#</u>	<u>NAME OF REPORT(S)/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORT(S)</u>	<u>PAGE #</u>
1.	Grace Physical Therapy Rod Tyler, PTR/L, CHT, CSFA (FCE)	10/23/20	1-11
2.	Southeastern Spine Institute Leonard Forrest, MD Steven C. Poletti, MD	04/01/21-12/11/23	12-19a-c
3.	Charleston Pain & Rehab. Ctr. Jeffrey Buncher, MD	01/28/21	20-30
4.	Harriet Fowler, M.Ed., CRC Harriet Fowler VR Services	04/12/21	31-43
5.	Consent Order		44-45
6.	Trident Health Systems and Moncks Corner Medical Center	10/10/19-10/11/19	46-81

7. Trident Orthopaedic Specialists Douglas Stofko, MD- Alana N. Cole, PA-C Josephine L. Jeanings, PA	10/23/19-01/10/24	82-103a-e
8. <i>Roper St. Francis PT</i>	03/16/20-03/24/20 03/25/20-04/23/20	104-110a-e
9. Flores Contracting records	11/22/22-01/12/23	111-117
10. Photographs of Claimant		118-122
11. Deposition Transcript of Alana N. Cole, PA-C		To Be Submitted at Hearing
12. Deposition Transcript of Douglas Stofko, MD		To Be Submitted at Hearing
13. <i>Order Instructions</i>	09/10/2020	123-124



2061 Highway 52 South, Moncks Corner, SC 29461  
Phone: 843-761-4622  
Fax: 843-761-4625

Initial Evaluation/Plan of Care - 3/16/2020

WC Claim #: WCV001062422

Name: Morales, Evaristo (23008442)  
DOB: REDACT Age: 54 Sex: M  
Date of Injury: 10/11/2019

Physician: Stoiko DO, Douglas

Occupation: Construction-foam sprayer  
Off Work Date: 10/10/2019  
Estimated Current PDL: Sedentary  
Surgery Date: 10/11/2019  
Adjuster: Wilson,Janey

Primary/Rehab Diagnosis: Fracture: Thoracic  
Pain: Myofascial  
Pain: Thoracic  
Fusion: Lumbar, 1 Level  
ICD10 Codes: S22.009D, M54.6, Z47.89

Assessment:

Rehab Potential/Prognosis: Good

Evaristo Morales is a 54 y/o male who presents to Physical Therapy with signs and symptoms consistent with physician's diagnosis of Fracture: Thoracic, Pain: Myofascial, Pain: Thoracic, Fusion: Lumbar, 1 Level. Patient presents today with decreased thoracic/lumbar ROM, strength, LE flexibility and increased pain, as well as impairments with posture and gait. Patient demonstrates a need for HEP education and gait training. These deficits limit the patient's ability to perform these tasks: Ascending stairs, Bathing, Bed mobility, Bending, Carrying, Cleaning: Vacuuming, sweeping, Climbing ladder, Descending stairs, Dressing: Donning/doffing shoes/socks, Driving, Kneeling, Lifting from floor, Lifting overhead, Overhead tasks, Sleeping > 6 hours, Squatting, Sustained sitting, Sustained standing, Twisting/turning/shoveling, Walking. Prior to injury, patient worked in Construction as a foam sprayer that requires a PDL of Medium-Heavy. Patient will benefit from skilled therapy to allow the patient to meet set goals and return to PLOF, in which the above noted functional activities were not impaired.

Primary Complaint: "It hurts where I have the screws, I cannot move too much or lie against the chair because it hurts, and when I drive a little bit it hurts too. Lifting anno also bothers me." PT reports he doesn't lift anything heavy at home.

Nature of Injury: Pt presents to outpatient PT s/p T12-L1 percutaneous fusion for T12 fracture after fall from ladder (10/10/19) and surgery on 10/11/2019 by Dr. Stoiko at Trident Hospital. Interpreter, Vanessa, present at appt. Pt says that he had difficulty coming to PT due to issues getting authorization, communicating with office, and getting transportation established.

Current Level of Function: Patient reports limitations with Ascending stairs, Bathing, Bed mobility, Bending, Carrying, Cleaning: Vacuuming, sweeping, Climbing ladder, Descending stairs, Dressing: Donning/doffing shoes/socks, Driving, Kneeling, Lifting from floor, Lifting overhead, Overhead tasks, Sleeping > 6 hours, Squatting, Sustained sitting, Sustained standing, Twisting/turning/shoveling, Walking

Precautions/Info/Recommendations: s/p T12-L1 percutaneous fusion for T12 fracture after fall from ladder on 10/11/2019 by Dr. Stoiko at Trident Lumbar program, relaxation exercises, therapist exercises, ROM and strengthening, eval and treat, functional activities 2-3x/week for 6 weeks

Prior Level of Function: Unimpaired with all activities

Medications: Please refer to patient's complete medical record for a full list of medications.

Pain Level: Pain Comment: 8/10 alleviating factors: no lifting heavy, changing positions in bed

PMH: Chest Pain Yes, less than 1 year, Night Sweats / Night Pain Yes, less than 1 year, pain to stomach-cramps

Diagnoses: Tests: X-ray, 01/08/2020, post op x-rays showed healing well

Movement Loss:		Hip/Knee		MMT (0-5 scale)		Significant Findings
		R	L	R	L	
Lumbar Flexion:	Major; ERP			5	5	<b>Observations:</b> Postural Assessment: Other - fwd, rounded shoulders Gait/Weight Bearing: TLSO brace, decreased cadence Brace/Ambulatory Device: TLSO Wound Assessment: Mature Scar Observation Comment: Interpreter present during initial evaluation-helped pt complete paperwork as well as BP taken by sitting on the R UE 128/99 Per MD notes from 1/8/20, therapist explained to pt that TLSO brace is no longer needed, unless for comfort. We will remove it for exercises in clinic. <b>Functional Assessment:</b> Functional Assessment Comment: bed mobility; pt able to demonstrate kneeling technique independently, to maintain neutral spine position Flexibility: Hamstrings: (R) mod restriction; (L) mod restriction Sensation: Sensory Comment: occasional N/T to B feet BMI: BMI above normal. Patient provided nutrition or exercise counseling information.
Lumbar Extension:	Major; ERP			5	5	
Lumbar Side Bending (R):	Major; ERP			5	5	
Lumbar Side Bending (L):	Major; ERP			5	5	
				4+	4+	
				MMT (0-5 scale)		
				R	L	
				5	5	

Plan of Treatment: 2-3x a week for 6 weeks; 12 total visits

Treatments: 97110 Therapeutic exercises, 97140 Manual therapy, 97112 Neuromuscular re-education, 97116 Gait training, 97530 Therapeutic activities, 97163-97163 PT Evaluation, 97010 Cold pack, 97154 PT Re-evaluation, 97010 Hot pack, 97035 Ultrasound, 97014 Electrical stimulation (Unattended), 20560-20561 Dry Needling  
To address: Bed mobility, Decreased functional ability, Gait Ability, Inflammation, Neural Mobilization, Pain, Posture Deficits, ROM, Stair function, Strength Deficits, Transfer Ability, Improper body mechanics, Joint Mobility

The patient will be advanced safely and appropriately in order for the patient to progress towards his/her prior level of function. Additional exercises will be introduced, with progression to a comprehensive home exercise program upon discharge, to ensure carry over of functional gains achieved in the clinic. This treatment plan has been reviewed and agreed upon by the patient.

Short Term Goals to be completed by 8 weeks

1. Patient will increase ROM to minimally restricted lumbar flexion to improve ability to bend forward to don/doff shoes.
2. Pt will demonstrate independence with prescribed HEP in order to improve carry-over from clinic to home.
3. Pt will be able to demonstrate correct squat mechanics with pain <4/10 in his back to prepare for return to work duties.

Long Term Goals to be completed by 04/22/2020

1. Patient will increase ROM to pain-free thoracic/lumbar ext in order to allow for completion of: Climbing ladder
2. Patient will increase strength to 5/5 R hip IR in order to allow for completion of: Carrying
3. Patient will be able to squat and lift 15 lbs. for return to work duties.
4. Patient will be able to lift and carry 15 lbs. for return to work duties.

Electronically Signed By: Lauren Moore, PT, License 8202 March 16, 2020 6:26 PM

110a

ROA 601

Name: Morales, Everisto (23008442)		Evaluation - 3/16/2020		DOB: REDACTE		Fax: 843-761-4625		Page 2 of 2	
to be completed by Physician									
<input type="checkbox"/> I certify the need for these services furnished under this plan of treatment and while under my care.									
<input type="checkbox"/> Revise plan of care as follows:									
Physician: Stofo DO, Douglas			Physician Signature:				Date:		

110b



2081 Highway 52 South Moncks Corner, SC 29401  
 Phone 843-761-4822  
 Fax 843-761-4825

Daily Note

Patient: Morales, Evaristo (23008442) DOB: REDACTE Fax: 843-761-4825 Page 1 of 1  
 WC Claim #: WCV001082422

Date: 3/19/2020 Visit#: 2 Time In: 8:28 AM Time Out: 9:30 AM

Visit Summary:

Minutes	Procedure	Units	Total Treatment Time Minutes: 60
8	Hot pack	1	Timed Code Minutes: 62
34	Therapeutic exercises	2	Unlimited Code Minutes: 8
8	Neuromuscular re-education	1	
10	Therapeutic activities	1	

Treatment Notes:

Subjective: Doing good, some soreness still where screws are present. He reports exercises went OK at home. Interpreter, Vanessa, present during session today.

Objective: Objective Comments: See flowsheet for additions to program.

Assessment: The pt tolerated all of treatment well today. He required frequent cues from therapist for neutral posture (cervical and shoulders) during completion of bike and standing postural/core ex. Pt appears apprehensive with lumbar mobility, however, he tolerated all other ex with less fearful movement. Pt to benefit from continued skilled PT interventions to improve his endurance, spinal mobility, and core/LE strength to allow for return to work and lifting/larrying.

Plan: Continue per plan of care.

Flowsheet:

Activity	Type	Details
Recumbent Bike	TherEx	5 Min(s); seat 15
Seated Lumbar Flexion	TherEx	1 x 10; center only with rolling stool
Calf Raises	TherAct	2 x 10; UE support at    bars
3 Way Hip - Standing	TherAct	1 x 10; Bilateral; UE support at    bars
Rows	Neuro Re-ed	2 x 10 x Red; for posture
Shoulder Extension	Neuro Re-ed	2 x 10 x Red; for posture
Lower Trunk Rotation	TherEx	2 x 10; Bilateral
Supine Marches	TherEx	1 x 10; Bilateral; neutral core
Hip Add Squeeze	TherEx	1 x 10; hookying with ball, 5 sec hold
Knee Fall Outs	TherAct	3 x 20 x Orange; hookying SL/DL orange rloop
Hip Abd Isometric	TherEx	1 x 10; hookying with ball
Hamstring Stretch	TherEx	3 x 30 Sec(s); Bilateral; o strap and assist from PT
TA Braing with B Hip/Knee Flex	Neuro Re-ed	2 x 10; neutral core
Clams	TherEx	2 x 10; Bilateral
Reverse Clams	TherEx	2 x 10; Bilateral

Other Treatment:

Activity	Details
Hot pack	Location: thoracolumbar Minutes: 8

Electronically Signed by: Lauren Moore, PT, License 8202 March 19, 2020 09:36 AM

llde

ROA 603



2061 Highway 62 South Moncks Corner, SC 29461  
 Phone 843-761-4622  
 Fax 843-761-4625

Daily Note

Patient: Morales, Evaristo (23008442) DOB: REDACTED Fax: 843-761-4625 Page 1 of 2  
 WC Claim #: WCV001082422

Date: 3/24/2020 Visit#: 3 Time In: 9:00 AM Time Out: 10:02 AM

Visit Summary:

Minutes	Procedure	Units	Total Treatment Time Minutes: 60
8	Hot pack	1	Timed Code Minutes: 62
32	Therapeutic exercises	2	Unlimed Code Minutes: 8
8	Neuromuscular re-education	1	
12	Therapeutic activities	1	

Treatment Notes:

**Subjective:** Pt reports he is still feeling some pain/tightness to his back. He would occasionally get sharp pains to the R side of his back/abdomen right after injury and surgery, but not getting this any more. R feels light on that side though. Pt feels a little bit better since coming to PT. Interpreter, Vanessa, present for treatment session.

**Objective:** Please refer to flowsheet

**Assessment:** Attempted AirDyne with UEs and LEs this session, however, pt was unable to complete full revolutions with his LEs. Less frequent cueing provided for pt to relax his shoulders with exercises this session. Pt tolerated all tx well without issue. Ended tx with moist heat to L/S region in sitting.

**Plan:** Continue per plan of care.

Flowsheet:

Activity	Type	Details
Recumbent Bike	TherEx	6 Min(s); seat 15
3 Way Hip - Standing	TherAol	1 x 10; Bilateral; UE support at    bars
Calf Raises	TherAol	3 x 10; UE support at    bars
Rows	Neuro Re-ed	2 x 10 x Red; for posture
Shoulder Extension	Neuro Re-ed	2 x 10 x Red; for posture
Bike	TherEx	6 Min(s); AirDyne-UEs only
Waist to Shelf	TherAol	3 Min(s); Bilateral; oup stacks
Hip Add Squeeze	TherEx	2 x 10; hookying with belt, 5 sec hold
Clams	TherEx	2 x 10; Bilateral
Reverse Clams	TherEx	2 x 10; Bilateral
TA Braing with B Hip/Knee Flex	Neuro Re-ed	2 x 10; neutral core
Lower Trunk Rotation	TherEx	2 x 10; Bilateral
Hip Abd Isometric	TherEx	1 x 10; hookying with belt
Hamstring Stretch	TherEx	3 x 30 Sec(s); Bilateral; o strap and assist from PT
Knee Fall Outs	TherAol	3 x 20 x Orange; hookying SL/DL orange r;loop
Seated Lumbar Flexion	TherEx	1 x 10; center only with rolling stool

Other Treatment:

Activity	Details
Hot pack	Location: thoracolumbar Minutes: 8

110d

Fax Server

7/7/2020 7:58:11 AM PAGE 35/067 Fax Server

Patient: Morales, Everisto (23008442)  
WC Claim #: WCV001062422

DOB: REDACT

Fax: 843-761-4626

Page 2 of 2

Electronically Signed by: Lauren Moore, PT, License 8202 March 24, 2020 10:26 AM

110e

ROA 605

**Kim Hinkle**

---

**From:** Gibson, Don <DGibson@dgibsonlaw.com>  
**Sent:** Monday, April 5, 2021 11:47 AM  
**To:** Preston F. McDaniel; Kim Hinkle; Bonnie Kelly; Rose Thielke  
**Cc:** Kadoves, Debra; Dobrich, Erica  
**Subject:** FW: Morales, Evaristo 1921668 Order Instructions

With kindest regards, I remain

Don C. Gibson  
Gibson Law Firm, LLC  
5422 Rivers Avenue  
North Charleston, SC 29406  
Telephone: 843-744-1887  
Facsimile: 843-744-5320  
E-Mail: [dqibson@dqibsonlaw.com](mailto:dqibson@dqibsonlaw.com)

This electronic communication (including attachments) may contain attorney privileged and confidential information intended only for the use of the named recipient. If you are not the intended recipient, you are prohibited from disseminating, distributing or copying this communication. If you have received this communication in error, please immediately notify us by return message or by telephone at 843-744-1887 and delete this communication from your system. Thank you.

**From:** Morris, Tamara <TMorris@wcc.sc.gov>  
**Sent:** Thursday, September 10, 2020 2:28 PM  
**To:** CGruber@yrcrlaw.com; Hendriks, Donna <DHendriks@yrcrlaw.com>; Gibson, Don <DGibson@dgibsonlaw.com>; Kadoves, Debra <law2@dgibsonlaw.com>  
**Subject:** FW: Morales, Evaristo 1921668 Order Instructions

Court Reporter Jan Whitworth (864) 494-2705

Order Instructions:  
Morales, Evaristo 1921668

AWW: \$1,302.27. CR: \$845.74. Stipulated

Ms. Gruber to draft.

1. The Claimant has an admitted injury to his T-12 vertebrae. This was the pre-operative and post-operative diagnosis of Dr. Stofko. (Defs. APA 41 and Cl. APA 140)
2. The Claimant is requesting an upper shoulder and neck evaluation pursuant a note of Dr. Stofko dated July 22, 2020. (Cl. APA 238A). The Claimant has not met his burden that the shoulder and neck are injured body members.
3. The Claimant never reported shoulder pain prior to the July 22, 2020 note. The initial hospital records deny any pain other than the mid and lower back. (Cl. APA 36 and 54) The October 10, 2019 report specifically states that the patient denied any neurologic symptoms. (Cl. APA 54) A CT of the Claimant's head and cervical spine was performed during the hospital evaluation (APA 150-152). There has been no treatment to the Claimant's neck. Dr. Stofko's office note of January 1, 2020 indicates that the Claimant complains of some mid pain in his mid left side, but otherwise is without complaints. (Cl. APA 234). Prior to the July 22, 2020 note, there were no cervical complaints in Dr. Stofko's records. The Claimant testified in his deposition that the shoulder does not hurt; it was just when he lifted his arm that it hurts his back. (Deposition at 37 (As indicated below, drafter may provide additional discussion and/or findings from the deposition testimony.)) There are no medical opinions that any conditions of the Claimant's shoulder and neck are related to the injury by accident. The Commission can not issue the equivalent of medical opinion. (Bumette v. City of Greenville)
4. Additionally, the Commission can not order medical treatment 10 weeks beyond the injury by accident date without an opinion to a degree of reasonable medical certainty. Section 42-15-60. This requirement was reiterated by the Supreme Court in Hartzell v. Palmetto Collision; the Court in reviewing the construction of the statute stated that the statute does require a heightened medical evidence standard in order for the Commission to award medical treatment beyond ten (10) weeks from the date of the injury.

5. The Claimant is also requesting an MRI for his lumbar spine. He initially complained of mid and low back pain at the ER. Scans were performed of the thoracic and lumbar spine. The diagnosis was ultimately fracture of the T-12. The surgery involved the initial part of lumbar spine in that the fusion was from T-11 to L-1. Whether Dr. Stofko wants the MRI for evaluation of the surgical site is unknown. He does not speak to the purpose of the diagnostic. At this time, his opinion as to whether there is a relationship is unknown. Even though, it may sound like a logical evaluation, the undersigned can not issue the equivalent of a medical opinion. As the Court has indicated in Hartzell in its interpretation of Section 42-15-60, the Commission can not award medical care that is beyond ten (10) weeks without a medical opinion to a degree of reasonable medical certainty.
6. The above paragraphs are an instruction and guidance for the preparation of the decision and order. They do not have to be used verbatim. (Please correct any legal cites or cites to the record.) The drafter may add additional factual or legal basis in the order. (For instance, the deposition testimony of the Claimant's complaints at the time of the deposition.) Any legal citation should include relevant analysis. The drafting attorney should provide discussion of evidence, findings of facts, and conclusions of law in the proposed order.
7. If there are any questions during the drafting of the order, please contact Tamara and she will set up a telephone conference that is convenient for both parties.

Sent from my iPad

---

### CONFIDENTIAL & PRIVILEGED

The preceding email message, including any attachments, may be confidential and/or protected by the attorney-client or other applicable privileges. It is intended for the sole use of the individual or entity named above. If the reader of this transmission is not the intended recipient, please notify the sender immediately and destroy any copies, electronic, paper or otherwise, that you may have of this communication. Any unauthorized review, use, disclosure or distribution is strictly prohibited and may be unlawful.

Trident Health Systems - Moncks Corner  
9330 Medical Plaza Drive, Charleston, South Carolina 29406 (843)797-7000

ACCOUNT#: D00063737239 ADM DATE: 10/10/19 UNIT RGRD #: D0000859052 ARRIVAL: WI  
ROOM/BED: ADM TIME: 1549 MARKET URN: D9S2773 CONF: VIP:  
PT. TYPE: REG OR ADMIT PRI/SRC: EM / PR LOCATION(S): PD MED PC: 04

NAME: VERDUGO MORALES, EVARISTO OTHER NAME:  
STREET: REDACTED DOB: REDACTE SS#: REDACTE  
STREET: AGE: 53 RACE: WHITE/CAUC  
C/S/ZP: REDACTED SC RED SEX: M MAR STATUS: S  
PHONE#: REDACTED CNTY/RES: 008 REL: LANG: SPANISH  
PHONE2:  
EMAIL:

VERDUGO, ELVER  
REDACTED

RELTN: SON WORK PH: (704) 724-6816 RELTN:  
COHENS DRY WALL VERDUGO MORALES, EVARISTO  
1415 OLD US HWY 52 REDACTED

MONCKS CORNER, SC 29461 OCC: WORKER  
1843 761-6587  
COHENS DRY WALL REDACTED RELTN: SELF  
1415 OLD US HWY 52 CONFERENCE CODES: 04 10/10/19 CONDITION CODES: 02

PRIMARY: WORK1 - 99870 SECONDARY: TERTIARY:  
622 WORK COMP  
1415 OLD U.S. 52

MONCKS CORNER, SC 29461 POLICY #: 999999999 POLICY #:  
COVERAGE #: COVERAGE #:  
INS PHONE #: (843) 761-6587 INS PHONE #:  
GRP #: GRP#:  
AUTH #: NR/E AUTH #: VER DTs: AUTH DT: VER DT:  
SUB: VERDUGO MORALES, EVARISTO SUB: RELAT: SA DOB: REDACTED RELAT: DOB:  
ADM: PCP: NO PCP No Primary or Family Physician  
HCS: HCS: 7943  
ATT: RSF: SELF SELF REFERRED  
HCS: HCS: 9715  
ER: STACH Staples, Charles T Jr MD, 0262  
REASON FOR VISIT/CHIEF COMPL: FALL FROM LADDER

COMMENTS:  
PRT BY: IRSIC06497 ON: 10/10/19 1637

ADVANCE DIRECTIVE: No  
DISCH DATE: TIME: DISPO:



TRIDENT HEALTH SYSTEMS (COCTR)  
EMERGENCY PROVIDER REPORT  
REPORT#:1010-1131 REPORT STATUS: Signed  
DATE:10/10/19 TIME: 1746

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000859052  
ACCOUNT#: D00063737239 ROOM/BED: D.608-A  
AGE: 53 SEX: M PCP PHYS: No Primary or  
Family Physician  
SERVICE DT: 10/10/19 AUTHOR: Staples, Charles T  
Jr MD  
REP SRV DT: 10/10/19 REP SRV TM:1746  
\* ALL edits or amendments must be made on the electronic/computer document \*

**STAPLES, CHARLES 10/10/19 1746:**

HPI Trauma Minor/Fall

**Presentation**

Chief Complaint Fall

Hx Obtained From Patient, Friend, Interpreter

Onset Occurred Sudden, just prior to arrival

Symptom Duration Since onset

Progression since Onset Unchanged

Context of Onset FELL BACKWARDS OFF LADDER(4FT HIGH)

Caused by Accidental, Fall from height (4FT)

Location Back

Quality Painful

Severity: Onset Moderate, Severe

Severity: Current Moderate, Severe

Associated with

Reports: Difficulty breathing, Headache, Loss of consciousness, Shortness of breath (FROM PAIN). Denies: Abdominal pain, Chest pain, Inability to bear weight, Nausea, Neck pain, Numb extremities, Syncope, Vision change, Vomiting.

Associated Other Pt denies other symptoms

Exacerbated by Movement, Palpation

Relieved by Nothing

**Context**

Recent Healthcare No recent doctor visit, No recent hospitalization

Similar Sx Previous No

Risk Trauma Minor/Fall

**Risk Stratification**

Nexus C-Spine Criteria

Distracting injury pres

Glasgow Coma Score > Age 5

Glasgow Coma Score > Age 5	Response	Value
----------------------------	----------	-------

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/10/19  
Acct#: D00063737239

Eye Opening	Open spontaneously (4)	4
Verbal Response	Oriented (5)	5
Motor Response	Obeys commands (6)	6
Total		15

Intracranial Bleed Risk factors reviewed, No risk factors  
Bleeding Risk factors reviewed, No risk factors  
Spine Injury Risk factors reviewed, No risk factors

Review of Systems

**ROS Statements**

All systems rev & neg except as marked.

**Basic Review of Systems**

Basic ROS PSYCH: NL thought content

**Focused Review of Systems**

**Constitutional**

Denies: Fatigue, Weakness - generalized.

**Eyes**

Denies: Blurred bilat, Eye pain bilat, Visual loss bilat.

**Ears/Nose/Throat**

Denies: Nose bleeding.

**Respiratory**

Denies: Shortness of breath.

**Musculoskeletal**

Reports: Lumbar pain, Thoracic pain. Denies: Extremity pain, Extremity swelling, Neck pain.

**Skin**

Denies: Laceration.

**Neurologic**

Denies: Bladder dysfunction, Bowel dysfunction, Focal weakness, Numbness, Syncope.

Past Medical History - Adult

Stated Complaint FALL FROM LADDER

**Allergies**

**Coded Allergies:**

No Known Drug Allergies (10/10/19)

Smoking status for patients 13 years old or older: Never Smoker

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/10/19  
 Acct#: D00063737239

Physical Exam

Vital Signs  
 Vital Signs  
 First Documented:

	Result	Date/Time
Pulse Ox	95	10/10 1555
B/P	143/84	10/10 1555
B/P Mean	103	10/10 1555
O2 Delivery	Room air	10/10 1555
Temp	99.1	10/10 1555
Pulse	75	10/10 1555
Resp	17	10/10 1555

Last Documented:

	Result	Date/Time
Pulse Ox	100	10/10 2047
B/P	133/84	10/10 2047
B/P Mean	100	10/10 2047
O2 Delivery	Room air	10/10 2047
Temp	98.7	10/10 2047
Pulse	84	10/10 2047
Resp	18	10/10 2047

Review of Vital Signs Reviewed

Basic Physical Exam

Basic PE EXT: No gross abnormality (from, nt, neg edema, nvi), PSYCH: NL thought content

Focused PE

General/Const \*\*

General/Const Awake, Alert, No acute distress, Well appearing, Well developed, Well hydrated, Well nourished, Cooperative, Not toxic appearing

MS Head \*\*

Head Atraumatic, Normocephalic

Eyes

Eyes Atraumatic, PERL, EOMI, No nystagmus, No periorbital redness, No periorbital swelling, No scleral icterus, Conjunctiva NL, Eyelids NL

Ears/Nose/Throat

Ears/Nose/Throat Atraumatic, Airway patent, Mucous membranes moist, Pharynx NL, No

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/10/19  
Acct#: D00063737239

peritonsillar abscess, No pooling of secretions, No trismus, Nose exam NL, No facial swelling

**MS Neck \*\***

Neck Atraumatic, Supple, No meningismus, Full range of motion, No adenopathy, No swelling, Non-tender, No midline vertebral tend, No masses, No crepitus, No JVD, No carotid bruit, Thyroid NL, No tracheal deviation

**Resp/Chest**

Respiratory/Chest Atraumatic, Breath sounds NL, Breath sounds = bilat, No respiratory distress, No rales, No rhonchi, No wheezing, No retractions, No stridor, No chest tenderness, No chest wall deformity, No crepitus

**Cardiovascular**

Cardiovascular Heart rate NL, Regular rhythm, Heart sounds NL, No gallop, No murmurs, No rubs, Cap refill not delayed, Peripheral circulation NL, Pulses = bilaterally

**Abdomen/GI**

Abdomen/GI Atraumatic, Soft, Non-tender, McBurney's non-tender, No guarding, No rebound, BS non-negative, No distention, No hernia, No palpable mass, No pulsatile mass

**MS Back**

**Text/Dict Notes**

ttp lower ml spine and upper l spine

**Skin**

Skin Atraumatic, Color NL, No rash, Warm, Dry, Intact, Turgor NL, No swelling

**Neurologic**

Neurologic Oriented X3, Speech NL, No motor deficits, No sensory deficits, Cerebellar NL

**Cranial Nerve Deficit**

Negative: 3 - ptosis, 3 - medial gaze asym, 4 - vertical gaze asym, 6 - lateral gaze asym, 7 - upper asymmetric frown, 7 - lower asymmetric smile, 10 - abnl cultural sounds, 11 - asym shoulder shrug, 12 - tongue tremor/fascic, 12 - tongue deviation.

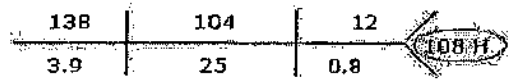
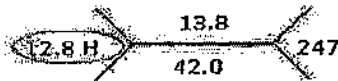
**Interpretation & Diagnostics**

**Lab Results Interpretation**

**Results**

**Laboratory Tests**

10/10/19 1627:



**Laboratory Tests:**

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/10/19  
 Acct#: D00063737239

	10/10 1627
<b>Chemistry</b>	
Sodium (136 - 145 mg/dL)	138
Corrected Sodium (mg/dL)	138
Potassium (3.6 - 5.1 mg/dL)	3.9
Chloride (101 - 111 mg/dL)	108
Carbon Dioxide (22 - 32 mg/dL)	25
Ammon Cap (3 - 12)	9.0
BUN (6 - 20 mg/dL)	12
Creatinine (0.7 - 1.2 mg/dL)	0.8
Estimated GFR (MDRD) (>=60)	> 60
Est GFR (Cockcroft-Cr) (>=60 ml/min)	96.0
Glucose (70 - 100 mg/dL)	108 H
Calcium (8.9 - 10.2 mg/dL)	9.2
Total Bilirubin (<=1.0 mg/dL)	0.2
AST (<=35 Units/L)	73 H
ALT (10 - 65 Units/L)	58
Alkaline Phosphatase (32 - 101 Units/L)	114 H
Total Protein (6.1 - 8.0 gm/dL)	7.6
Albumin (3.4 - 4.8 gm/dL)	4.0
Lipase (22 - 51 Units/L)	25
<b>Hematology</b>	
WBC (4.0 - 10.9 K/mm3)	12.8 H
RBC (4.10 - 5.69 M/mm3)	4.55
Hgb (13.5 - 16.5 g/dL)	13.8
Hct (39.0 - 50.0 %)	42.0
MCV (80.0 - 95.0 fL)	92.3
MCH (26.0 - 32.0 pg)	30.3
MCHC (32.0 - 35.0 g/dL)	32.9
RDW Std Deviation (35 - 46 fl)	44.0
RDW Coeff of Var (11.5 - 15.0 %)	13.0
Plf Count (135 - 350 K/mm3)	247
MPV (9.0 - 12.4 fl)	9.6
Immature Gran % (Auto) (0.1 - 0.5 %)	0.6 H
Neut % (Auto) (40.1 - 76.4 %)	89.3 H
Lymph % (Auto) (14.8 - 45.8 %)	5.2 L
Mono % (Auto) (4.0 - 12.7 %)	4.4
Eos % (Auto) (0.0 - 5.4 %)	0.2
Baso % (Auto) (0.0 - 1.2 %)	0.3
Neut # (Auto) (1.3 - 8.4 K/mm3)	11.5 H
Lymph # (Auto) (0.5 - 5.0 K/mm3)	0.7
Mono # (Auto) (0.1 - 1.2 K/mm3)	0.6

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/10/19  
 Acct#: D00063737239

Hes # (Auto) (0.0 - 0.8 K/mm <sup>3</sup> )	0.0
Base # (Auto) (0.0 - 0.1 K/mm <sup>3</sup> )	0.0
Urine	
Urine Color (YELLOW)	YELLOW
Urine Appearance (CLEAR)	CLEAR
Urine pH (5.0 - 7.0)	6.0
Ur Specific Gravity (1.003 - 1.030)	1.020
Urine Protein (NEGATIVE mg/dL)	NEGATIVE
Urine Ketones (NEGATIVE mg/dL)	NEGATIVE
Urine Blood (NEGATIVE)	1+ *
Urine Nitrite (NEGATIVE)	NEGATIVE
Urine Bilirubin (NEGATIVE)	NEGATIVE
Urine Urobilinogen (< 2.0 mg/dL)	NORMAL
Ur Leucocyte Esterase (NEGATIVE Leu/uL)	NEGATIVE
Urine RBC (0 - 2 #/hpf)	0-2
Urine WBC (0 - 1 #/hpf)	0-2
Ur Epithelial Cells (0 - 5 #/hpf)	0-2
Urine Bacteria (RARE #/hpf)	FEW
Urine Mucus (VARIABLE #/hpf)	RARE
Urine Glucose (NEGATIVE mg/dL)	NEGATIVE

Recent Impressions:  
**MAGNETIC RESONANCE IMAGING - MRI SPINE-THORACIC WO CONTR 10/10 1020**  
 \*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 2256

IMPRESSION:  
 Nondisplaced chance fracture of T12 as seen on CT scan. No central stenosis, epidural hematoma or evidence of cord injury.

Impression By: PHY.CARJ03 - Jon A. Carman, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT ABDOMEN IV Cont Only 10/10 1700**  
 \*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 1802

IMPRESSION:  
 1. Acute nondisplaced Chance fracture of T12 vertebral body. Mild loss of height.  
 2. No acute findings in the chest.

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 10/10/19  
Acct#:D00063737239

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.CARJ03 - Jon A. Carmain, M.D.  
COMPUTERIZED TOMOGRAPHY - CT THORAX WITH CONTRAST 10/10 1700  
\*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 1802

**IMPRESSION:**

1. Acute nondisplaced Chance fracture of T12 vertebral body. Mild loss of height.
2. No acute findings in the chest.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.CARJ03 - Jon A. Carmain, M.D.  
COMPUTERIZED TOMOGRAPHY - CT LUMBAR SPINE W/O CONTRAST 10/10 1700  
\*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 1805

**IMPRESSION:**

Chance fracture T12. No displacement. Mild loss of height.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.CARJ03 - Jon A. Carmain, M.D.  
COMPUTERIZED TOMOGRAPHY - CT CERVICAL SPINE W/O CONTRST 10/10 1700  
\*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 1756

**IMPRESSION:**

No acute osseous injury to the cervical spine.

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/10/19  
Acct#: D00063737239

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY:CARJO3 - Jon A. Carmain, M.D.  
COMPUTERIZED TOMOGRAPHY - CT THORACIC SPINE WITHOUT CONT 10/10 1700  
\*\*\* Report Impression - Status: SIGNED Entered: 10/10/2019 1805

IMPRESSION:  
Chance fracture T12. No displacement. Mild loss of height.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY:CARJO3 - Jon A. Carmain, M.D.

**Lab & Imaging Statement**  
Laboratory & radiographic studies reviewed and considered in the medical decision-making.

### Re-Evaluation & MDM

#### Free Text MDM Notes

##### Free Text MDM Notes

Status post fall 4 ft off a ladder with isolated lower T and upper L-spine pain that is reproducible on exam. Patient is neuro logically intact. Will check CTs and give pain medicine. c/vl spine precautions.  
Recheck: Workup unremarkable other than a T12 Chance fracture. Discussed with Dr. Jones who will accept the transfer. Will keep patient supine. No new complaint on recheck.  
d/w ns apc, Laura, who will await to here from trauma team. no other recommendations.  
HDS, abd/abd E asnt; psnt; c/vl cc w/ nl neuro; ext w/o i; nvi; no s/s for sig ich/cord  
//cardiothoracic/peritoneal/retroperitoneal/gu/ext fx nor subax/ocular i/dental//other sig  
injury/other all.

Page 8 of 12

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/10/19  
 Acct#: D00063737239

**ED Course**  
**Medication(s) Ordered**  
**Medication(s) Ordered:**  
**Central Nervous System Agents**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Acetaminophen	650 MG	Q6HR PO	10/11 0000 11/10 0001	AC	10/12 0534
Gabapentin	300 MG	Q8HR PO	10/10 2200 10/12 1401	AC	10/12 0533
Magnesium	50 ML	ASDIR PRN IV	10/10 2200 11/09 2201	AC	
Morphine Sulfate	2 MG	Q2H PRN PRN IV	10/10 2200 11/09 2201	AC	10/11 0605
Oxycodone HCl	5 MG	Q4H PRN PRN PO	10/10 2200 11/09 2201	AC	10/12 0758
Tramadol HCl	50 MG	Q6H PRN PRN PO	10/10 2200 11/09 2201	AC	

**Electrolytic, Caloric, And Wat**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Potassium Chloride	See Dose Insts (1)	ASDIR PRN PO	10/10 2200 11/09 2201	AC	
Potassium Chloride	100 ML	ASDIR PRN IV	10/10 2200 11/09 2201	AC	
Potassium Phos/ Sodium Phos	2 PKT	ASDIR PRN PO	10/10 2200 11/09 2201	CRD	
Sodium Chloride	1,000 ML	Q13H20M IV	10/10 2200 11/09 2201	DC	10/10 2214
Sodium Chloride	10 ML	Q8HR IV	10/10 2200 11/09 2201	AC	10/12 0534
Sodium Chloride	10 ML	PRN PRN IV	10/10 2200 11/09 2201	AC	

**Gastrointestinal Drugs**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Docusate Sodium	100 MG	BID PO	10/10 2200 11/09 2201	AC	10/11 2041

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/10/19  
 Acct#: D00063737239

Famondine	20 MG	Q12HR IV	10/10 2200 11/09 2201	BC	10/11 1328
Magnesium Oxide	400 MG	ASOIR PRN PO	10/10 2200 11/09 2201	AC	
Ondansetron HCl	4 MG	Q6H PRN PRN IV	10/10 2200 11/09 2201	AC	

Dose Instructions:  
 (1)Potassium Chloride:  
 SEE LABEL COMM

**Patient Discharge & Departure**

**Vital Signs/Condition**

**Vital Signs**

First Documented:

	Result	Date Time
Pulse Ox	95	10/10 1555
B/P	143/84	10/10 1555
B/P Mean	103	10/10 1555
O2 Delivery	Room air	10/10 1555
Temp	99.1	10/10 1555
Pulse	75	10/10 1555
Resp.	17	10/10 1555

Last Documented:

	Result	Date Time
Pulse Ox	100	10/10 2047
B/P	133/84	10/10 2047
B/P Mean	100	10/10 2047
O2 Delivery	Room air	10/10 2047
Temp	98.7	10/10 2047
Pulse	84	10/10 2047
Resp.	18	10/10 2047

All vital signs available at the time of this entry have been reviewed.

Condition Stable

Disposition Decision

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/10/19  
Acct#: D00063737239

**Admit**

Admit Physician Name  
Jones, Seon MD  
Request Time 1830  
Request Date 10/10/19  
( Admission Accepts Yes  
( Accepted Time 1842  
( Accepted Date 10/10/19

**Discharge/Care Plan**

**Referrals**

No Primary or Family Physician (PCP)

**THOMPSON, RICHARD M 10/10/19 2159:**

ICU-Trauma Minor/Fall

**General**

Initial Greet Date/Time 10/10/19 1556

Past Medical History - Adult

Review of Nursing Notes Rev avail, and agree  
Pt reports no significant Past medical history, Past surgical history

Physical Exam

Basic Physical Exam

Basic PE ENT: Membranes moist, RESP: No resp distress, ABD: Soft/non-tender, SKIN: No rashes, warm/dry

Focused PE

General/Const \*\*  
General/Const Awake, Alert, No acute distress  
Neurologic  
Text/Dict Notes  
Strength 5/5 and symmetrical both lower extremities

Re-Evaluation & MDM

Page 11 of 12

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/10/19  
Acct#: D00063737239

### Free Text MDM Notes

#### Free Text MDM Notes

53-year-old male with a T12 Chance fracture status post fall. Assumed care from Dr. Staples when he arrived at Trident. He reports pain to his mid back. Neurovascularly intact. Strength 5/5 and symmetrical throughout both lower extremities. Talking normally and in no distress. Denies any other complaints. Patient being admitted to Trauma.

### Patient Discharge & Departure

#### Clinical Impression

Clinical Impression

Primary Impression: T12 CHANCE FRACTURE

Secondary Impressions: Acute thoracic back pain

#### Discharge/Care Plan

(Auto) Prescriptions

Current Visit Scripts

CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID PRN PRN MUSCLE SPASMS

GABAPENTIN (NEURONTIN) 300 MG PO Q8HR

tramadol (ULTRAM) 50 MG PO Q6H PRN PRN PAIN SCALE 4-6

DOCUSATE SODIUM (COLACE) 100 MG PO DAILY

#### Pt/Provider Handoff

Care Transferred to

Dr Thompson

Electronically Signed by Staples, Charles T Jr MD on 10/12/19 at 0823

Electronically Signed by Thompson, Richard M MD on 10/12/19 at 1204

RPT #: 1010-1131  
\*\*\*END OF REPORT\*\*\*

Page 12 of 12



# TRIDENT HEALTH INTRA-SYSTEM TRANSPORT

To be used only for transporting patients between Trident Health facilities

Current Location: TMC \_\_\_\_\_ SMC \_\_\_\_\_ Centre Pointe \_\_\_\_\_ Moncks Corner X

Receiving Location: TMC X SMC \_\_\_\_\_

Transporting Physician Signature: \_\_\_\_\_

Date: 10.10.19

Time: 18:50

Receiving Facility: \_\_\_\_\_

Receiving Physician: Shan-ee / Jones - trauma

Report Called To: Megan Johnson - Trauma

Date: 10.10.19

Time: 18:50 19:33 pm

Diagnosis: Trauma - T12 fx

Reason for Transport: Admission

Mode/Support/Treatment During Transport:

a) Mode of Transportation:  BLS  ALS  Helicopter  Other: \_\_\_\_\_

b) Support/Treatment During Transport:  None:

Oxygen (liters): \_\_\_\_\_  Pulse Oximeter  Cardiac Monitor

IV Pump IV Fluid: N/A Rate: \_\_\_\_\_

Restraints type: N/A  Mental Health Hold: Y Form: 103 PAC

Nurse Signature: [Signature] Date: 10.10.19 Time: 19:34

Vital Signs Just Prior to Departure: Temp: 38.4 Pulse: 90 R: 20 BP: 154/72

Time Vitals Taken: 19:41 pm Time of Departure: 19:50 pm SpO2 96 %

### Patient Consent to Transport

I understand that my further care will require transport to the receiving facility that has the capability and capacity to provide examination and/or treatment that the treating providers at this facility have determined I need. The reasons for transport identified above. My condition has been explained to me by my physician and I understand his/her recommendations. I hospital's responsibilities and the potential risks and benefits of transport have been explained to me and I fully understand that I have had the opportunity to ask questions and receive answers to my satisfaction. With this knowledge and understanding, I consent to the transport recommended by my physicians.

Signature of:  Patient  Responsible Person: [Signature] Date: 10/10/19 Time: 19:14

Patient unable to sign

Witness: Charity Shaver Date: 10/10/19 Time: 19:44

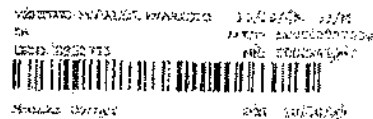
Trident Health  
TRIDENT HEALTH INTRA-SYSTEM TRANSPORT



TR-TH-03009 (1/2018)

Page 1 of 1

Patient Information Label



MCNC2 18/19/2019 15:45

**EMERGENCY INFORMATION - PLEASE COMPLETE THIS AND PART B**

Today's Date: **REDACTED** Have you received care at this facility before?  Yes  No

I came to the Emergency Department today because \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Sex  Male  Female

Address \_\_\_\_\_ **REDACTED**

Phone \_\_\_\_\_ Sex/Doc Number \_\_\_\_\_ Date of Birth \_\_\_\_\_

**FOR FEMALE PATIENTS ONLY** Are you pregnant?  Yes  No

Last menstrual period: \_\_\_\_\_ Have you had a baby with one or more health needs?  Yes  No

Form completed by:  Self  Other Relationship \_\_\_\_\_

**CURRENT SYMPTOMS**

Please check any of the following symptoms you currently have:

- Persistent cough greater than 3 weeks
- Fever greater than 102.4°F
- Night Sweats
- Cough with blood production
- Fatigue
- History of TB or Positive TB Skin Test
- Close contact with person who has TB
- Shortness of breath
- Body aches
- Swelling of feet due to a cough or COPD
- Rash
- Weight loss (not related to changes in diet or exercise)
- Chest pain, especially if persistent or has influenza-like illness
- Unexplained weight loss

**PART C - TRIAGE INFORMATION (For Family Use Only)**

1st Call for Triage at: \_\_\_\_\_ AM/PM

2nd Call for Triage at: \_\_\_\_\_ AM/PM

3rd Call for Triage at: \_\_\_\_\_ AM/PM

4th Call for Triage at: \_\_\_\_\_ AM/PM

Triage Nurse Notes: \_\_\_\_\_

**PART B - RAPID-INITIAL TRIAGE (For Family Use Only)**

Time: \_\_\_\_\_ First Point of Contact Screening Positive:  Yes  No Patient requested to mask?  Yes  No

AIRWAY:  Patent  Impaired BREATHING/Respiratory Distress:  None  Mild  Moderate  Severe

CIRCULATION:  Vitals/Normal Color  Pale  Cyanotic

Pulse Rate:  WNL  Rapid Capillary Refill:  < 2 seconds  > 2 seconds

DEFORMITY/DISABILITY - Loss of Consciousness:  Yes  No No head/neck/eye  No Neuro Changes

Extremity: Neurovascular/Integumentary:  Yes  No  No

CHIEF COMPLAINT: \_\_\_\_\_

TRIAGE ACUITY: 1 (Respiratory) 2 (Cardiac) 3 (Trauma)

DISPOSITION:  Admit to Bed  Send to ED/ICU

Comments: \_\_\_\_\_

Barcode: \_\_\_\_\_

PACIFIC HEALTH SYSTEM  
In-Shield for Emergency Services



75  
202  
143/84

PATIENT IDENTIFICATION

UN DATE: 10/10/19  
UN TIME: 1923  
UN USER: DNRJ.CS21

Trident Health System EDM \*\*LIVE\*\*  
Physician Summary

PAGE 1

atient: VERDUGO MORALES, ENRIQUE  
D Provider: Staples, Charles T Jr MD  
admitting Physician:

Age/Sex: 53/M

Acct No: 00006337239

Unit No: 0000859052

Primary or Family Physician

Known Drug Allergies

Known Home Medications

01/10/19 1603 BODIPORD, SONYA H, RNSHC

Subjective assessment:  
FELL OFF LADDER 4FT FLAT ON BACK ONTO CONCRETE, UNABLE TO  
WALK R/T PAIN 1.5HR AGO

Objective assessment:  
GCS, CAME IN BY W/C, NEUROVASCULAR INTACT, SKIN PINK  
/D/I

DATE	TIME	TEMP	TEMP SOURCE	PULSE	RESP	BP	DE	Source	SP02%
0/10/19	1555	99.1	Oral	75	17	143/84	White		95

0/10/19 1607 BODIPORD, SONYA H, RNSHC

Medications/Treatments prior to arrival: None

Weight	Height
9	5
2.727	6

0/10/19 1608 Fall Risk Assessment

BODIPORD, SONYA H, RNSHC

able to comprehend and follow directions: Yes; Is patient at high risk for falls: Yes;  
all interventions in use: Supervised/assist ambulat, Family presence;  
all precautions observed: Yes

0/10/19 1608 Trauma

BODIPORD, SONYA H, RNSHC

Mechanism of injury: Fall; Type of impact surface: Concrete;  
Is this a trauma alert activation: No; Trauma level: Level 4; Pelvis: Stable;  
Spinal immobilization: None; Document injuries: No; Airway: Patent;  
Respirations even and unlabored: Yes; Bilateral lung sounds clear, equal and undiminished;  
Circulation: Cardiac monitor: None; Pulses strong and equal bilaterally: Yes;  
Level of consciousness: No; Alert and oriented: Yes;  
Abdomen is soft, symmetrical, and non-tender: Yes;  
Extremities equal and strong bilaterally: Yes;

TRIDENT REGIONAL MEDICAL CNTR  
9330 MEDICAL PLAZA DRIVE  
CHARLESTON, SC 29406

PHONE # 843-847-4900  
FAX # 843-847-4563

Name: VERDUGO MORALES, EVARISTO  
Phys: Jones, Sean MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.TE01 A  
Exam Date: 10/10/2019 Status: ADM IN  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936498 MRI SPINE-THORACIC WO CON

Reason for Exam: 4

HISTORY:  
Trauma fall pain, T12 fracture

COMPARISON:  
None heading

TECHNIQUE:  
Multi sequence multiplanar MR imaging thoracic spine performed  
without contrast.

FINDINGS:  
Thoracic spine is in normal alignment.

There is an acute compression fractures T12 as seen on the CT scan.  
There is edema of the vertebral body and mild loss of height  
approximate 25%. The edema extends in the pedicles and is consistent  
with a chance fracture seen on CT scan. No additional fractures are  
seen.

The spinal cord and conus are unremarkable. No significant areas of  
central canal stenosis.

There is no epidural fluid collection.

Paraspinal retroperitoneal soft tissues are unremarkable.

IMPRESSION:  
Nondisplaced chance fracture of T12 as seen on CT scan. No central  
stenosis, epidural hematoma or evidence of cord injury.

\*\* Electronically Signed by M.D. Jon A. Carmain \*\*  
\*\* on 10/10/2019 at 2252 \*\*  
Reported and signed by: Jon A. Carmain, M.D.

PAGE 1

Signed Report

(CONTINUED)

MONCKS CORNER MEDICAL CENTER  
401 N LIVE OAK DRIVE  
MONCKS CORNER, SC 29461

PHONE #: 843-761-8721  
FAX #: 843-723-3345

Name: VERDUGO MORALES, EVARISTO  
Phys: Staples, Charles T Jr MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.MED  
Exam Date: 10/10/2019 Status: REG ER  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936276 CT THORAX WITH CONTRAST  
004936277 CT ABDPEL IV Cont Only

Reason for Exam:

**HISTORY:**

Fell 4 feet onto back mid and lower back pain

**COMPARISON:**

None

**TECHNIQUE:**

Axial images through the chest, abdomen, and pelvis were obtained following 100 mL Isovus 370 intravenous contrast. Multiplanar reformats were performed.

**FINDINGS:**

**Chest:**

Lymphadenopathy: There is no lymphadenopathy.  
Vasculature: There is no aneurysm.  
Heart and pericardium: Heart is normal in size. There is no pericardial abnormality.  
Lungs: Lungs are clear.  
Pleura: Unremarkable.  
Other: None

**Abdomen and Pelvis:**

Liver: The liver is unremarkable.  
Gallbladder: The gallbladder is normal.  
Spleen: Unremarkable.  
Pancreas: No acute findings. No pancreatic ductal dilatation.  
Adrenals: Unremarkable.  
Kidneys and ureters: There is no stone, mass, or obstruction.  
Bowel: There is no bowel obstruction or dilatation. There is no bowel wall thickening. The appendix is normal.  
Aorta: No acute findings.  
Lymphadenopathy: There is no lymphadenopathy.  
Pelvis: No acute findings. No free fluid.  
Other: None

Bones: There is a compression fracture of T12. Mild loss of height approximate 25%. There is a horizontal fracture component extending to the pedicles and spinous process. There is no displacement.

**IMPRESSION:**

1. Acute nondisplaced Chance fracture of T12 vertebral body. Mild loss of height.

PAGE 1

Signed Report

(CONTINUED)

MONCKS CORNER MEDICAL CENTER  
401 N LIVE OAK DRIVE  
MONCKS CORNER, SC 29461

PHONE #: 843-761-8721  
FAX #: 843-723-3345

Name: VERDUGO MORALES, EVARISTO  
Phys: Stanley Charles T Jr MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.MED  
Exam Date: 10/10/2019 Status: REG ER  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936276 CT THORAX WITH CONTRAST  
004936277 CT ABDPEL IV Cont Only  
<Continued>

Reason for Exam:

2. No acute findings in the chest.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

\*\* Electronically Signed by M.D. Jon A. Carmain \*\*  
\*\* on 10/10/2019 at 1758 \*\*  
Reported and signed by: Jon A. Carmain, M.D.,

CC:

Dictated Date/Time: 10/10/2019 (1758)  
Technologist: PATTI A. GRIMSLEY, RT(R) (M)  
Transcribed Date/Time: 10/10/2019 (1758)  
Prepared By: PHY. CARJOS  
Electronic Signature Date/Time: 10/10/2019 (1758)  
Orig Print D/T: S: 10/10/2019 (1802) BATCH NO: N/A

PAGE 2

Signed Report

MONCKS CORNER MEDICAL CENTER  
401 N LIVE OAK DRIVE  
MONCKS CORNER, SC 29461

PHONE #: 843-761-8721  
FAX #: 843-723-3345

Name: VERDUGO MORALES, EVARISTO  
Phys: Staples, Charles T Jr MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.MED  
Exam Date: 10/10/2019 Status: REG ER  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936274 CT CERVICAL SPINE W/O CON

Reason for Exam: %

HISTORY:  
Fell onto back, pain

COMPARISON:  
None

TECHNIQUE:  
Axial images through the cervical spine were performed without contrast. Multiplanar reformats are submitted.

FINDINGS:

Fracture: None  
Alignment: Normal.  
Degenerative disk disease: There is mild C5/C6 and 6/7 degenerative disc disease with disc osteophyte formation and loss of disc height.  
Osseous stenosis: No areas of significant osseous stenosis.  
Soft tissues: No acute findings.  
Other: None.

IMPRESSION:  
No acute osseous injury to the cervical spine.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

\*\* Electronically Signed by M.D. Jon A. Carmain \*\*  
\*\* on 10/10/2019 at 1751 \*\*  
Reported and signed by: Jon A. Carmain, M.D.

PAGE 1

Signed Report

(CONTINUED)

MONCK'S CORNER MEDICAL CENTER  
401 N LIVE OAK DRIVE  
MONCK'S CORNER, SC 29461

PHONE #: 843-761-8721  
FAX #: 843-723-3345

Name: VERDUGO MORALES, EVARISTO  
Phys: Staples, Charles T Jr MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.MED  
Exam Date: 10/10/2019 Status: REG ER  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936273 CT THORACIC SPINE WITHOUT  
004936275 CT LUMBAR SPINE W/O CONTR

Reason for Exam:

HISTORY:  
Back pain after fall

COMPARISON:  
None

TECHNIQUE:  
Axial reconstructed images through the thoracic and the lumbar spine were performed from trauma CT. Multiplanar reformats are submitted.

FINDINGS:

From T1 through T11 there is no acute injury. Vertebral body heights remain normal there is no significant degenerative disc disease or osseous stenosis. The paraspinal soft tissues and ribs show no acute finding.

There is a T12 compression fracture with approximate 25% loss of height anteriorly. There is extension through the posterior elements including the pedicles, facets and spinous process consistent with a chance fracture. No displacement.

Lumbar vertebral bodies are in normal alignment and normal in height. No additional fractures are seen.

There is mild degenerative disc disease L4 through S1 without significant osseous stenosis.

IMPRESSION:  
Chance fracture T12. No displacement. Mild loss of height.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

\*\* Electronically Signed by M.D. Jon A. Carmain \*\*  
\*\* on 10/10/2019 at 1801 \*\*  
Reported and signed by: Jon A. Carmain, M.D.

PAGE 1

Signed Report

(CONTINUED)

TRIDENT REGIONAL MEDICAL CNTR  
9330 MEDICAL PLAZA DRIVE  
CHARLESTON, SC 29406

PHONE #: 843-647-4900  
FAX #: 843-647-4563

Name: VERDUGO MORALES, EVARISTO  
Phys: Stoffo Douglas L DO  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.606 A  
Exam Date: 10/11/2019 Status: ADM IN  
Radiology No:  
Unit No: D000659052

EXAMS:  
004937104 THORACIC/LUMBAR SPINE AP

Reason for Exam: :

HISTORY:

Postop fusion. Fracture. Comparison CT thoracic and lumbar spine studies dated 10/10/2019.

FINDINGS:

3 views of the thoracic/lumbar spine were obtained.

Interval posterior spinal fusion from T11 through L1 traversing the known T12 chance fracture. Intact hardware. Stable compression deformity is present at T12.

Normal alignment.

IMPRESSION:

Interval posterior spinal fusion from T11 through L1 traversing the known T12 chance fracture.

\*\* Electronically Signed by BRIAN LUCIEN BURKE \*\*  
\*\* on 10/11/2019 at 1726 \*\*  
Reported and signed by: BURKE, BRIAN LUCIEN

CC:

Dictated Date/Time: 10/11/2019 (1726)  
Technologist: BRENNA KELLER

Transcribed Date/Time: 10/11/2019 (1726)  
Prepared By: PHY.BURBR  
Electronic Signature Date/Time: 10/11/2019 (1726)  
Orig Print D/T: S: 10/11/2019 (1730)

BATCH NO: N/A

PAGE 1

Signed Report

TRIDENT REGIONAL MEDICAL CNTR  
9330 MEDICAL PLAZA DRIVE  
CHARLESTON, SC 29406

PHONE #: 843-847-4900  
FAX #: 843-847-4563

Name: VERDUGO MORALES, EVARISTO  
Phys: Jones, Seon MD  
DOB: REDACTED Age: 53 Sex: M  
Acct: D00063737239 Loc: D.727 A  
Exam Date: 10/11/2019 Status: ADM IN  
Radiology No:  
Unit No: D000859052

EXAMS:  
004936542 CT HEAD WITHOUT CONTRAST

Reason for Exam:

HISTORY:

HI - Head Injury

COMPARISON:  
None.

TECHNIQUE:  
Multiple axial CT images were obtained from the vertex to the skull base without the use of intravenous contrast.

FINDINGS:  
The ventricles are normal in size. No midline shift or mass effect. No evidence of intracranial hemorrhage. No mass lesions. No evidence of acute infarct. Grey-white differentiation is normal. The paranasal sinuses are clear. No acute osseous findings. The superficial soft tissues are unremarkable.

IMPRESSION:  
No evidence of intracranial injury.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

\*\* Electronically Signed by James G. Ravenel MD \*\*  
\*\* on 10/11/2019 at 0857 \*\*  
Reported and signed by: James G. Ravenel, MD

PAGE 1

Signed Report

(CONTINUED)

Trident Health Systems (COCTR)  
Neurosurgical Consultation  
REPORT#: 1011-0514 REPORT STATUS: Signed  
DATE: 10/11/19 TIME: 1108

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000859052  
ACCOUNT#: D00063737239 ROOM/BED: D.608-A  
DOB: REDACTED AGE: 53 SEX: M ATTEND: Jones, Sean MD  
ADM DT: 10/10/19 AUTHOR: Cole, Alana Noelle  
PA  
REP SRV DT: 10/11/19 REP SRV TM: 1108  
\* ALL edits or amendments must be made on the electronic/computer document \*

History of Present Illness

Requesting clinician: Dr. Jones

Reason for consult:

fall from ladder w T12 chance fracture

Chief complaint:

back pain

HPI:

53-year-old man who is Spanish-speaking only, fell off of a ladder falling about 4 ft and landing on his buttock with possible fall on his head as well with a brief loss of consciousness. Patient's only complaint was lower back pain without any neurologic symptoms specifically denying any pain down his legs, numbness, tingling, or weakness of his lower extremities. Patient also denied any urinary or bowel incontinence. Also denies any saddle anesthesia. Patient was seen at Colleton Medical Center with CT scans and Neurosurgery was consulted. Patient is transferred to Trident Medical Center for further evaluation with MRI and neurosurgery consultation with likely need for operative intervention for the T-spine fracture.

History - Adult longitudinal

Additional medical history:

denies

Additional surgical history:

denies

Additional family history:

denies

Smoking status for patients 13 years old or older: Never Smoker

Allergies:

Coded Allergies:

No Known Drug Allergies (10/10/19)

Pt reports no significant: past medical history, past surgical history, family history, social history

Review of Systems

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/11/19  
 Acct#: D00063737239

**ROS**

**Additional notes:**

**Constitutional:** Denies fever, chills, night sweats, recent weight loss or weight gain.  
**Eyes:** Denies photophobia, blurred vision, double vision, or visual field defects.  
**ENT:** Denies rhinorrhea, otorrhea. Denies ringing in the ears. Denies oral lesions.  
**Cardiovascular:** Denies chest pain, palpitations. Denies history of Afib.  
**Respiratory:** Denies shortness of breath, wheezing. Denies cough, hemoptysis.  
**Gastrointestinal:** Denies constipation, diarrhea, nausea and vomiting.  
**Genitourinary:** Denies dysuria, hematuria.  
**Musculoskeletal:** Denies joint pain, joint swelling.  
**Neurological:** Denies numbness, weakness, difficulty with speech.  
**Psychiatric:** Denies anxiety, depression, SI/HI.  
**Hematologic/Lymphatic:** Denies easy bruising, bleeding issues.  
**Skin:** Denies rash, itching, or skin issues.  
**Endocrine:** Denies temperature intolerance. Denies polyphagia/polydipsia.

**Objective**

VST/ISO:

Last Documented:

	Result	Date/Time
Pulse/Ox	97	10/11 1308
B/P	120/69	10/11 1308
O2 Delivery	Nasal cannula	10/11 1308
O2 Flow Rate	1.00000	10/11 1308
Pulse	63	10/11 1308
Resp	12	10/11 1308
Temp	97.7	10/11 1248
B/P Mean	100.7	10/11 0757

24 hour I&O ending at 0700:

	10/11 0700	10/10 T900
Intake Total	535.00	
Output Total		
Balance	535.00	
Intake IV	535.00	
Patient Weight		160 lb
Weight Measurement Method		Estimated

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/11/19  
Acct#: D00063737239

Patient Weight

Weight (lb):  
Weight (oz):  
Weight (kg): 72.727

General appearance: alert, awake, oriented, no acute distress, pleasant, conversational, mental status normal  
Neuro/CNS: alert, oriented X 3, CN II-XII intact, EOMI, PERRL, normal reflexes, normal speech, reflexes equal bilat, no motor deficits, no sensory deficits, + breakaway pain in bilateral lower extremities on straight leg raise

**Results**

Results: labs reviewed, CT personally reviewed, MRI personally reviewed, current med profile rev'd

Diagnosis, Assessment & Plan

Free Text A&P:

T12 fx POD0 s/p T11-L1 percutaneous fusion  
Postop abx  
Thoracolumbar xrays today to eval hardware  
Resume diet  
DC Foley  
Pain control  
TLSO brace when ambulating- floyd brace consult entered  
Ok to start lovenox tomorrow  
DC dressing on POD2 or prior to discharge  
Ok for discharge from neurosurgery standpoint once ok with trauma service.  
F/u 2 weeks for wound check

Discussed w Dr. Stofko who agrees.

Electronically Signed by Colby Alana Noelle PA on 10/11/19 at 1320  
Electronically Signed by Stofko, Douglas L DO on 10/14/19 at 1436

RPT #: 1011-0514  
\*\*\*END OF REPORT\*\*\*

Trident Health Systems (COCTR)  
Neurosurgical Consultation  
REPORT#:1011-0712 REPORT STATUS: Signed  
DATE:10/11/19 TIME: 1241

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000859052  
ACCOUNT#: D00063737239 ROOM/BED: D.608-A  
DOB: REDACTE AGE: 53 SEX: M ATTEND: Jones, Seon MD  
ADM DT: 10/10/19 AUTHOR: Cole, Alana Noelle  
PA  
REP SRV DT: 10/11/19 REP SRV TM: 1241  
\* ALL edits or amendments must be made on the electronic/computer document \*

History of Present Illness

Requesting clinician: Dr. Jones

Reason for consult:

T12 fx

Chief complaint:

fall from ladder

History - Adult longitudinal

Smoking status for patients 13 years old or older: Never Smoker

Allergies:

Coded Allergies:

No Known Drug Allergies (10/10/19)

Electronically Signed by Cole, Alana Noelle PA on 10/11/19 at 1322  
Electronically Signed by Stofko, Douglas L DO on 10/14/19 at 1436

RPT #: 1011-0712  
\*\*\*END OF REPORT\*\*\*

Page 1 of 1

Patient: VERDUGO MORALES, EVARISTO MRN: D000859052 Encounter: D00063737239 Page 1 of 1

TRIDENT MEDICAL CENTER  
9330 MEDICAL PLAZA DRIVE  
CHARLESTON, SC 29406

NAME: VERDUGO MORALES, EVARISTO  
UNIT#: D000859052  
Adm Date: 10/10/19  
Dictated By: Stofko, Douglas L DO

ROOM #: D.608-A  
Acc #: D00063737239

Report Name: OPERATIVE REPORT

DATE OF PROCEDURE: 10/11/2019

SURGEON:  
Douglas L Stofko, DO

ATTENDING PHYSICIAN: Seon Jones, MD

PRIMARY CARE PHYSICIAN: No Primary or Family Physician

ASSISTANT:  
None.

PREOPERATIVE DIAGNOSIS:  
T12 fracture.

POSTOPERATIVE DIAGNOSIS:  
T12 fracture.

PROCEDURES PERFORMED:  
1. T11 to L1 posterior instrumentation with pedicle screws and rods.  
2. T11 to L1 arthrodesis posterior technique.  
3. Intraoperative use of C-arm fluoroscopy for localization.

DRAINS:  
None.

COMPLICATIONS:  
None.

DISPOSITION:  
Stable to postanesthesia recovery.

INDICATIONS FOR PROCEDURE:  
Evaristo Morales Verdugo is a 53-year-old male who fell off a ladder. He was found have a T12 fracture, transferred to Trident Medical Center. He underwent a CT of the T and L-spine as well as MRI of the thoracic spine, which revealed a 3-column injury with posterior ligamentous disruption. It was then discussed with the patient via translator that he could benefit from formal surgical correction, for which, he understood and agreed.

SURGICAL RISKS:  
The patient via translation phone, were all apprised of risks, benefits, and

Patient Name: VERDUGO MORALES, EVARISTO Account #: D00063737239

potential complications of the procedure including but not limited to, failure to improve, need for further procedure, failure of hardware, failure to fuse, risk of infection, headaches, CSF leak, possible nerve injury resulting in paralysis, injury to major vessels causing hemorrhage, stroke, loss of language function, coma, and even death. An informed consent was obtained and secured in the chart after the patient voiced their understanding of these risks and decided to proceed with the operation.

**DESCRIPTION OF PROCEDURE:**

The patient was taken to the operating theater, he was correctly identified, sedated and intubated without difficulty by Anesthesia Service. He was given prophylactic antibiotics as well as 10 mg of Decadron and then positioned prone on open Jackson table with all pressure points carefully padded. C-arm fluoroscopy was brought in the field and the correct level L1 and T11 were then identified. Using AP and lateral C-arm fluoroscopy, the pedicles were then marked. Pre-prepping was done using Betadine scrub.

The patient was prepped and draped in usual sterile fashion. Starting at the L1 level, using an 11-scalpel blade, a transverse incision was made over the pedicle and then using the Viper Prime system by DePuy, a 5 x 45 mm screw was then placed under direct C-arm fluoroscopy in the AP and lateral in the right L1. This was followed by the left L1 in the same process. The same screw a 5 x 45 mm was then placed at L1 on the left. Next, the C-arm fluoroscopy was then centered over the T11 area, again a transverse incision was made over the right and left pedicle using 11-scalpel blade and then using the Viper Prime 4.5 x 45 mm screw, 1 was placed on the right followed by the left, both of these were under direct C-arm fluoroscopy, good placement of the screws. L1 screws were then checked with stimulation, which both stimulated over 20. AP and lateral showed good placement of the screws and 100 mm rod was then placed on the right followed by the left under direct C-arm fluoroscopy confirming it is within the tulips, both on the right and the left, at both levels. Four locking caps were then placed, all 4 were final tightened. The tulip wings were then removed. Final AP and lateral were taken, which showed good placement of the hardware as well as a recount from the bottom up, confirming the correct levels. Copious amounts of bacitracin were used to irrigate out all 4 holes. Then the fascia was closed with interrupted 2-0 vicryl sutures in all 4 holes, followed by subcutaneous closure with inverted 2-0 vicryl suture skin closure all 4 holes, followed by thin layer of Dermabond. The patient was then flipped supine, found to move all extremities following commands, at his neurological baseline, taken to the postanesthesia recovery unit in stable condition. I was present and performed all aspects of this case. All needle and sponge counts were correct at end of the case x2.

Dictated By: Douglas L Stofko, DO

DLS:MODL

D: 10/11/2019 12:24:42 / T: 10/11/2019 15:32:33

Voice ID: 688858 / Job ID: 857477187

Authenticated by Douglas Stofko On 10/14/2019 02:32:41 PM

Patient Name: VERDUGO MORALES, EVARISTO

Account #: D00063737239

Electronically Signed by Douglas L Stofko, DO on 10/14/19 at 1433

Patient Name: VERDUGO MORALES, EVARISTO

Account #: D0006373239

Patient: VERDUGO MORALES, EVARISTO MRN: D000859052 Encounter: D0006373239 Page 3 of 3

Trident Health Systems (COCTR)  
Discharge Summary  
REPORT#: 1012-0326 REPORT STATUS: Signed  
DATE: 10/12/19 TIME: 1004

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000859052  
ACCOUNT#: D00063737239 ROOM/BED: D.608-A  
DOB: REDACTE AGE: 53 SEX: M ATTEND: Jones, Seon MD  
ADM DT: 10/10/19 PA AUTHOR: Rosen, David Joshua  
REP SRV DT: 10/12/19 REP SRV TM: 1004  
\* ALL edits or amendments must be made on the electronic/computer document \*

**ROSEN, DAVID 10/12/19 1004:**  
**Med Rec**

**Med Rec**

**Discharge meds:**

~~Start taking the following new medications:~~

~~CYCLOBENZAPRINE (FLEXERIL) 5 MG TAB~~

5 MILLIGRAM ORAL (by mouth) THREE TIMES DAILY AS NEEDED as needed for  
MUSCLE SPASMS

Days = 14  
No Refills

GABAPENTIN (NEURONTIN) 300 MG CAP  
300 MILLIGRAM ORAL (by mouth) EVERY 8 HOURS  
Days = 14  
No Refills

tramADoI (ULTRAM) 50 MG TAB  
50 MILLIGRAM ORAL (by mouth) EVERY 6 HOURS AS NEEDED as needed for PAIN  
SCALE 4-6  
Days = 7  
No Refills

DOCUSATE SODIUM (COLACE) 100 MG CAP  
100 MILLIGRAM ORAL (by mouth) DAILY  
Days = 30  
No Refills

**Objective**

VS/I&O

Last Documented:

	Result	Date Time
Pulse OX		9:51 10/12 0622

Page 1 of 5

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 10/12/19  
 Acct#: D00063737239

B/P	123/76	10/12 0622
B/P Mean	91.8	10/12 0622
Temp	98.2	10/12 0622
Pulse	81	10/12 0622
Resp	17	10/12 0622
O2 Delivery	Nasal cannula	10/11 1400
O2 Flow Rate	3.000000	10/11 1400

24 hour I&O ending at 0700:

	10/12 0700	10/11 1900
Intake Total		240
Output Total	2000	
Balance	-2000	240
Intake, Oral		240
Number Voids		2
Output, Urine	2000	

Patient Weight:

Weight (lb):  
 Weight (oz):  
 Weight (kg): 72.727

**General appearance:** alert, awake, oriented, no acute distress, conversational, no respiratory distress

**Head/eyes:** atraumatic, normal conjunctiva/sclera

**ENT:** moist mucosal membranes, normal nose

**Neck:** full range of motion, non-tender

**Cardiovascular:** regular rate & rhythm

**Respiratory:** aerating well, symmetric expansion, no distress, no tenderness

**GI:** non-tender, soft, no distention

**Extremities:** moves all, no gross neurovasc change

**Musculoskeletal:** decreased ROM, midline spine tenderness

**Neuro/CNS:** alert, oriented X 3

**Skin:** dry, intact

**Psychiatry:** normal affect, normal judgment/insight, normal mood

**Results**

**Findings/Data:**

**Laboratory Tests:**

	10/12
	0540

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 10/12/19  
Acct#:D00063737239

Chemistry	
Sodium (136 - 145 meq/L)	135
Corrected Sodium (meq/L)	137
Potassium (3.6 - 5.1 meq/L)	3.9
Chloride (101 - 111 meq/L)	103
Carbon Dioxide (23 - 32 meq/L)	26
Anion Gap (8 - 13)	7
BUN (6 - 20 mg/dL)	9
Creatinine (0.7 - 1.2 mg/dL)	0.7
Estimated GFR (MDRD) (>=60)	> 60
Est. GFR (Cockcroft-G) (> 60 mL/min)	110.0
Glucose (70 - 100 mg/dL)	136 H
Calcium (8.9 - 10.3 mg/dL)	8.4 L
Phosphorus (2.4 - 4.7 mg/dL)	2.9
Magnesium (1.8 - 2.5 mg/dL)	2.1

**Radiology data:**

Recent Impressions:

**RADIOLOGY - THORACIC/LUMBAR SPINE AP & LAT 10/11 1710**

\*\*\* Report Impression - Status: SIGNED Entered: 10/11/2019 1730

**IMPRESSION:**

Interval posterior spinal fusion from T11 through L1 traversing the known T12 chance fracture.

Impression By: PHY,BURBR - BURKE,BRIAN LUCIEN

Results: labs reviewed

**General Information**

**Problem List/A&P:**

1. T12 vertebral fracture (Acute, Onset: 10/10/19)
2. Fall from ladder (Acute, Onset: 10/10/19)
3. Concussion with loss of consciousness of 30 minutes or less (Acute, Onset: 10/10/19)

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/12/19  
Acct#: D00063737239

Date of admission:  
Date of admission: 10/10/19

Discharge date: 10/12/19

Admission diagnosis:

1. T12 vertebral fracture (Acute, Onset: 10/10/19)
2. Fall from ladder (Acute, Onset: 10/10/19)
3. Concussion with loss of consciousness of 30 minutes or less (Acute, Onset: 10/10/19)

Discharge diagnosis:

1. T12 vertebral fracture (Acute, Onset: 10/10/19)
2. Fall from ladder (Acute, Onset: 10/10/19)
3. Concussion with loss of consciousness of 30 minutes or less (Acute, Onset: 10/10/19)

**Hospital course:**

Patient is a 53-year-old male who sustained a fall from a ladder approximately 4 ft on 10/10/2019. Imaging revealed a T12 fracture. Neurosurgery (Dr. Stolko) all was notified and the patient was taken to the OR on 10/11/2019 for fusion of T11 through L1. Surgery was successful and without complications. Patient is to wear a TLSO brace while out of bed and ambulating. Patient progressed as expected while on the floor. He is currently afebrile, hemodynamically stable, adequately mobile, has proper pain control, and is tolerating regular diet. As such, he is discharged to home. Patient will follow up on 10/23/2019 with Neurosurgery.

Consultants: neurosurgery, PT/OT

Pt. condition on discharge: fair

Allergies:

Allergies:

No Known Drug Allergies (Coded, 10/10/19)

**Discharge Instructions:**

Diet: regular

Oral fluid restriction: No

Weight monitoring: Not Required

Activity: as tolerated, remove brace to shower, wear brace

Wound/dressing care: Keep wound clean and dry, OK to shower tomorrow

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 10/12/19  
Acct#: D00063737239

Prescriptions: e-prescribe  
Discharge management: greater than 30 mins  
Time spent:  
Time spent with patient (minutes): 20

**Follow-up Appointments**

**Attending Physician:**

Attending Physician:

Jones, Sean MD

Phone: 8437641730

Special instructions:

f/u prn

Consulting provider 1:

Provider 1:

Stolko, Douglas L DO

Phone: 8437641730

Special instructions:

F/u on 10/23/19 @ 10:30am

9300 Medical Plaza Drive, Suite B

Charleston, SC 29406

**RHODES, STANCIE C 10/14/19 1105:**

**ATTESTATION**

**ATTESTATION**

I have personally interviewed and examined the patient. All charts, labs, and imaging studies were reviewed. I agree with the PA/NP's findings, exam, and plan.

53 y/o male s/p ORIF T12 fracture. He has TLSO in the room and great family support. His pain is controlled and he is tolerating a diet. We will plan for d/c home with family later today.

Electronically Signed by Rosen, David Joshua PA on 10/12/19 at 1012

Electronically Signed by Rhodes, Stancie C MD on 10/14/19 at 1112

RPT #: 1012-0326  
\*\*\*END OF REPORT\*\*\*

Page 5 of 5

## DISCHARGE INSTRUCTIONS

VERONICA ROSALES, EVARISTO  
DOB 06/17/1979 / 0660859052

## TRIDENT HEALTH

It has been a pleasure caring for you. If you have questions or concerns, or your symptoms worsen after discharge, please contact your physician.

## DISCHARGE INFORMATION

DISCHARGE TO:  
home

## YOUR DIET

regular

Oral fluid restriction: No  
Mls allowed per day:

Weight monitoring: Not Required

## YOUR ACTIVITY

as tolerated remove brace to shower wear brace

## WOUND / DRESSING CARE

Keep wound clean and dry  
OK to shower tomorrow

## PHYSICIAN FOLLOWUP APPOINTMENTS

Attending Physician: Jones, Sean MD  
Attending Physician Phone: (843) 764-1730  
Special Instructions: f/u AS NEEDED

Consulting Provider Lt. Strifko, Douglas L. DC  
Specialty: NEURO/TRAUMA  
Phone: 843 764 1730  
Appointment Date: 10/23/19  
Appointment Time: 10:30 am

Consult special instructions:  
F/u on 10/23/19 @ 10:30am  
9300 Medical Plaza Drive, Suite B  
Charleston, SC 29406

Most recent Hemoglobin A1C result:

TRIDENT HEALTH

Trident Medical Center  
9330 Medical Plaza Drive  
Charleston, SC 29406  
Tel: (843) 799-7000

Summerville Medical Center  
295 Midland Parkway  
Summerville, SC 29485  
Tel: (843) 832-5000

Name: VERDUGO, MORALES, EVARISTO

DOB: **REDACTED**

This patient has been a patient of this facility for the time period

From 10/10/19 to: 10/23/19

and has been medically cleared to return to work/school on:

special instructions: **DO NOT WORK UNTIL SEEN NEURO SURGERY**  
**Dr. Stoffis**

TO/NO: 10/12/19  
Provider: DR. [Signature]  
Nurse: [Signature]

Issued Date:  
10/12/19

Compiled on 10/22/19 at 2:09pm

Trident Health Systems - Moncks Corner  
9330 Medical Plaza Drive, Charleston, South Carolina 29406 (843)797-7000

IN / OUT / ER PATIENT ADMISSION RECORD  
ACCOUNT#: D00068342129 ADM DATE: 03/26/21 UNIT RCRD #: D000859052 ARRIVAL: AMB  
ROOM/BED: ADM TIME: 1244 MARKET URN: D952773 CONF: VIP:  
PT. TYPE: REG ER ADMIT PRI/SRC: EM / PR LOCATION(S): D.MED FC: 99

PATIENT INFORMATION  
NAME: VERDUGO MORALES, EVARISTO OTHER NAME:  
STREET: REDACTED DOB: REDACTE SS#: REDACTED  
STREET: AGE: 55 RACE: WHITE/CAUC  
C/S/ZP: SEX: M MAR STATUS: S  
PHONE#: REDACTED CNTY/RES: 008 REL: NONE LANG: SPANISH  
CELL#: EMAIL:

HOUSE / NOK / COMPANION  
VERDUGO, ELVER  
REDACTED  
SON

PERSON TO NOTIFY  
VERDUGO, ELVER  
REDACTED  
SON

PATIENT EMPLOYER  
COHENS DRY WALL  
1415 OLD US HWY 52  
MONCKS CORNER, SC 29461  
(843)761-6587 OCC: WORKER

GUARANTOR  
VERDUGO MORALES, EVARISTO  
REDACTED  
SELF

SIGNARIN FOR EMPLOYEE  
COHENS DRY WALL  
1415 OLD US HWY 52  
MONCKS CORNER, SC 29461  
(843)761-6587

OCCURRENCE CODES CONDITION CODES  
11 03/26/21

INSURANCE INFORMATION  
PRIMARY: MCAID13 - 06935 SECONDARY: TERTIARY:  
MEDICAID SC PENDING  
PO BOX 1458

COLUMBIA, SC 29202-1458	POLICY #:	POLICY #:
POLICY #: 999999999	COVERAGE #:	COVERAGE #:
COVERAGE #:	INS PHONE #:	INS PHONE #:
INS PHONE #: (888)549-0820	GRP#:	GRP#:
GRP #:	AUTH #:	AUTH #:
AUTH #:	AUTH DT:	VER DT:
AUTH DT: VER DT: 03/26	AUTH DT:	VER DT:
SUB: VERDUGO MORALES, EVARISTO	SUB:	SUB:
RELAT: SA DOB: REDACTED	RELAT: DOB:	RELAT: DOB:

PHYSICIAN INFORMATION / DOCUMENTATION  
ADM: PCP: NO PCP No Primary or Family Physician  
HCS: HCS: 7943  
ATT: REF: SELF SELF REFERRED  
HCS: HCS: 9715  
ER: KRAKA Kraemer, Kari E. DO, 4203  
REASON FOR VISIT/CHIEF COMPL: MVC- NECK/HEAD/BACK PAIN

COMMENTS:  
PRT BY: IRSLEF7502 ON: 03/26/21 1310

ADVANCE DIRECTIVE: No  
DISCH DATE: TIME: DISPO:



TRIDENT HEALTH SYSTEMS (COCTR)  
EMERGENCY PROVIDER REPORT  
REPORT#:0326-0621 REPORT STATUS: Signed  
DATE:03/26/21 TIME: 1254

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000859052  
ACCOUNT#: D00068342129 ROOM/BED:  
AGE: 55 SEX: M PCP PHYS: No Primary or  
Family Physician  
SERVICE DT: 03/26/21 AUTHOR: Kraemer, Kari E DO  
REP SRV DT: 03/26/21 REP SRV TM:1254  
\* ALL edits or amendments must be made on the electronic/computer document \*

## HPI-MVC

### General

Initial Greet Date/Time 03/26/21 1254

### Presentation

Chief Complaint Neck pain  
Hx Obtained From Spouse  
Onset Occurred Just prior to arrival

### Free Text HPI Notes

#### Free Text HPI Notes

55 year old hispanic male presents to the ED after being involved in a minor MVC prior to arrival. Patient was a restrained driver who was rear ended. Damage only to back of vehicle according to EMS. No airbag deployment. No LOC. Patient states he hit his head on back of chair head rest and is having head pain and neck pain. No glass breakage.

## Risk-MVC

### Risk Stratification

#### Nexus C-Spine Criteria

Post midline tenderness. No: Intoxicated, Altered LOC/alertness, Focal neuro deficit pres, Distracting injury pres.

#### Glasgow Coma Score:

Copyright Sir Graham Teasdale Copyright Sir Graham Teasdale

Eye opening: (4) Spontaneous

Verbal response: (5) Oriented

Best motor response: (6) Obeys commands

GCS Score: 15

Intracranial Bleed Risk factors reviewed

Bleeding Risk factors reviewed

Spine Injury Risk factors reviewed

## Review of Systems

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 03/26/21  
Acct#: D00068342129

### ROS Statements

All systems rev & neg except as marked.

### Focused Review of Systems

#### Constitutional

Denies: Chills, Fatigue, Fever.

#### Ears/Nose/Throat

Denies: Sinus problem, Sore throat.

#### Respiratory

Denies: Cough, non-productive, Cough, productive, Pleuritic pain, Shortness of breath.

#### Cardiovascular

Denies: Chest pain, Edema, Palpitations.

#### GI

Denies: Abdominal pain, Diarrhea, Nausea, Vomiting.

#### Musculoskeletal

Reports: Myalgia, Neck pain. Denies: Lumbar pain.

#### Skin

Denies: Rash, Swelling.

#### Neurologic

Reports: Headache. Denies: Confusion, Dizziness, Focal weakness, Generalized weakness.

### Past Medical History - Adult

Stated Complaint MVC- NECK/HEAD/BACK PAIN

#### Allergies

##### Coded Allergies:

No Known Drug Allergies (03/26/21)

### Home Medications

#### Active Scripts

CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID PRN PRN MUSCLE SPASMS

GABAPENTIN (NEURONTIN) 300 MG PO Q8HR

tramADol (ULTRAM) 50 MG PO Q6H PRN PRN PAIN SCALE 4-6

DOCUSATE SODIUM (COLACE) 100 MG PO DAILY

Review of Nursing Notes reviewed

#### Additional Medical History

denies

#### Additional Surgical History

denies

#### Additional Family History

Page 2 of 7

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 03/26/21  
Acct#:D00068342129

denies

**Smoking status:**

Smoking status for patients 13 years old or older: Never Smoker

**Physical Exam**

**Vital Signs**

**Vital Signs**

First Documented:

	Result	Date Time
Pulse Ox	96	03/26 1251
B/P	149/103	03/26 1251
B/P Mean	118	03/26 1251
O2 Delivery	Room air	03/26 1251
Temp	36.3	03/26 1251
Pulse	102	03/26 1251
Resp	18	03/26 1251

Last Documented:

	Result	Date Time
Pulse Ox	96	03/26 1251
B/P	149/103	03/26 1251
B/P Mean	118	03/26 1251
O2 Delivery	Room air	03/26 1251
Temp	36.3	03/26 1251
Pulse	102	03/26 1251
Resp	18	03/26 1251

**Review of Vital Signs Reviewed**

**Focused PE**

**General/Const \*\***

General/Const Awake, Alert, No acute distress, Well appearing, Well developed, Well hydrated, Well nourished, Cooperative

**MS Head**

Head Atraumatic, Normocephalic

**Eyes**

Eyes Atraumatic, PERRL, EOMI, No nystagmus, No periorbital redness, No periorbital swelling

**Ears/Nose/Throat**

Ears/Nose/Throat Atraumatic, Airway patent, Mucous membranes moist, Pharynx NL

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 03/26/21  
Acct#:D00068342129

**MS Neck \*\***

Neck Atraumatic, Supple, No meningismus, No adenopathy, No swelling, No masses, No crepitus, No carotid bruit

**Text/Dict Notes**

Patient with generalized tenderness to posterior cervical spine worse in b/l paraspinal areas (especially on left) without any obvious deformity, no step off.

No seat belt sign

No expanding hematoma

No bruit

**Resp/Chest \*\***

**Respiratory/Chest** Atraumatic, Breath sounds NL, Breath sounds = bilat, No respiratory distress, No rales, No rhonchi, No wheezing, No retractions

**Cardiovascular \*\***

**Cardiovascular** Heart rate NL, Regular rhythm, Heart sounds NL, No murmurs, Cap refill not delayed, Peripheral circulation NL, Pulses = bilaterally

**Text/Dict Notes**

pulses equal in the UE b/l

**Abdomen/GI \*\***

**Abdomen/GI** Atraumatic, Non-tender, McBurney's non-tender, No guarding, No rebound, BS normoactive, No distention

**Text/Dict Notes**

no seatbelt sign, no abrasion, abdomen soft and NT

**MS Back \*\***

**Back** Atraumatic, Inspection NL, Full range of motion, No midline vertebral tend

**MS Wrist/Hand**

**Wrist/Hand** Atraumatic, Inspection NL, Full range of motion, No deformity, Neurologic intact

**Text/Dict Note**

mild tenderness over posterior left shoulder without any obvious deformity, patient with full ROM of left shoulder, NVI distally

**Skin**

**Skin** Warm, Dry, Intact

**Neurologic \*\***

**Neurologic** Oriented X3, Speech NL, No motor deficits, No sensory deficits, CN II - XII intact

**Interpretation & Diagnostics**

**Lab Results Interpretation**

**Results**

Recent Impressions:

**RADIOLOGY - SPINE CERVICAL COMP 03/26 1325**

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 03/26/21  
Acct#: D00068342129

\*\*\* Report Impression - Status: SIGNED Entered: 03/26/2021 1341

**IMPRESSION:**

1. No acute osseous findings.
2. Mild to moderate degenerative disc disease at C5-6 and C6-7.

Impression By: PHY.BJM1 - Benjamin J. Mullenbach, MD

**Imaging Statement**

Radiographic studies reviewed and considered in the medical decision-making.

**Re-Evaluation & MDM**

**Re-Evaluation/Progress #1**

Time of Re-Eval 1312

**Re-Eval Status** Patient very stable, nontoxic appearing. Has some mild midline neck tenderness but pains really seems worse over the left paraspinal area. Patient does have a C-collar in place. No other acute signs of traumatic injury. Patient without loss of consciousness, non severe mechanism of injury. CT head not indicated. Patient with full range of motion of all extremities. Abdomen soft and nontender, lungs are clear, no seatbelt sign. Discussed with patient I suspect is likely has a neck strain sprain, will obtain an x-ray of the cervical spine but I suspect this will be negative. Discussed when this comes back negative, we will remove the C-collar. Patient understands.

**Re-Evaluation/Progress #2**

Time of Eval 1356

**Re-Eval Status** Discussed all test results with interpreter, xray negative. Discussed likley msk in nature, discussed anti inflammatores at hoem as well as muscle relaxants. Discussed follow up with PCP, return to hte ED if worse .

**ED Course**

**Medication(s) Ordered**

Medication(s) Ordered:

**Central Nervous System Agents**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Ibuprofen	600 MG	XTED ONE PO	03/26 1330 03/26 1331	DC	03/26 1308

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 03/26/21  
Acct#:D00068342129

## Patient Discharge & Departure

### Vital Signs/Condition

#### Vital Signs

First Documented:

	Result	Date Time
Pulse Ox	96	03/26 1251
B/P	149/103	03/26 1251
B/P Mean	118	03/26 1251
O2 Delivery	Room air	03/26 1251
Temp	36.3	03/26 1251
Pulse	102	03/26 1251
Resp	18	03/26 1251

Last Documented:

	Result	Date Time
Pulse Ox	96	03/26 1251
B/P	149/103	03/26 1251
B/P Mean	118	03/26 1251
O2 Delivery	Room air	03/26 1251
Temp	36.3	03/26 1251
Pulse	102	03/26 1251
Resp	18	03/26 1251

All vital signs available at the time of this entry have been reviewed.

Condition Stable

### Clinical Impression

#### Clinical Impression

Primary Impression: Cervical strain, acute

Secondary Impressions: MVC (motor vehicle collision)

### Disposition Decision

#### Discharge

Discharged to Home Yes

Time 1358

Date 03/26/21

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 03/26/21  
Acct#: D00068342129

**Discharge/Care Plan**

**Counseled Regarding** Diagnosis, Imaging studies, Prescriptions, Need for follow-up, When to return to ED

**(Auto) Prescriptions**

**Current Visit Scripts**

IBUPROFEN (MOTRIN) 600 MG PO TID PRN PRN PAIN  
IBUPROFEN (MOTRIN) 600 MG PO TID PRN PRN PAIN #20 TAB

CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID  
CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID #20 TAB

**Patient Instructions** ED MVA, General Precautions, ED Neck Sprain or Strain

**Referrals**

.PRIMARY CARE PROVIDER

**Discharge Note**

I have spoken with the patient and/or caregivers. I have explained the patient's condition, diagnoses and treatment plan based on the information available to me at this time. I have answered the patient's and/or caregiver's questions and addressed any concerns. The patient and/or caregivers have as good an understanding of the patient's diagnosis, condition and treatment plan as can be expected at this point. The vital signs have been stable. The patient's condition is stable and appropriate for discharge from the emergency department.

The patient will pursue further outpatient evaluation with the primary care physician or other designated or consulting physician as outlined in the discharge instructions. The patient and/or caregivers are agreeable to this plan of care and follow-up instructions have been explained in detail. The patient and/or caregivers have received these instructions in written format and have expressed an understanding of the discharge instructions. The patient and/or caregivers are aware that any significant change in condition or worsening of symptoms should prompt an immediate return to this or the closest emergency department or a call to 911.

Electronically Signed by Kraemer, Kari E DO on 03/26/21 at 1359

RPT #: 0326-0621  
\*\*\*END OF REPORT\*\*\*

Trident Health Systems - Summerville Medical Center  
295 Midland Parkway, Summerville, South Carolina 29485 (843)832-5000

ACCOUNT#: **D00072632152** ADM DATE: 07/12/22 UNIT RCRD #: **D000859052** ARRIVAL: WI  
ROOM/BED: ADM TIME: 1438 MARKET URN: 0952773 CONF: VIP:  
PT. TYPE: DEP ER ADMIT PRI/SRC: EM / PR LOCATION(S): D.SED FC: 99

NAME: **VERDUGO MORALES, EVARISTO** OTHER NAME:  
STREET: **REDACTED** DOB: **REDACTED** SS#: **REDACTED**  
STREET: AGE: 56 RACE: WHITE/CAUC  
C/S/ZP: SEX: M MAR STATUS: S  
PHONE#: REL: NONE LANG: SPANISH  
CELL#: EMAIL:

VERDUGO, ELVER  
**REDACTED**  
SON

VERDUGO, ELVER  
**REDACTED**  
SON

COHENS DRY WALL  
1415 OLD US HWY 52

VERDUGO MORALES, EVARISTO  
**REDACTED**

MONCKS CORNER, SC 29461  
(843)761-6587 OCC: WORKER

SELF

COHENS DRY WALL  
1415 OLD US HWY 52  
MONCKS CORNER, SC 29461  
(843)761-6587

05 07/12/22

PRIMARY:	SECONDARY:	TERTIARY:
MCAID13 - 06935	CHAX050 - 09950	UNINSURED - 09940
MEDICAID SC PENDING	CHARITY PENDING	UNINSURED DISCOUNT PLAN
PO DOX 1458	.	.
COLUMBIA, SC 29202-1458	., SC 29572	., SC 29572
POLICY #: 999999999	POLICY #: 999999999	POLICY #: 999999999
COVERAGE #:	COVERAGE #:	COVERAGE #:
INS PHONE #: (888)549-0820	INS PHONE #: (678)421-7000	INS PHONE #: (999)999-9999
GRP #:	GRP#:	GRP#:
AUTH #:	AUTH #:	AUTH #:
AUTH DT: VER DT:	AUTH DT: VER DT:	AUTH DT: VER DT:
SUB: VERDUGO MORALES, EVARISTO	SUB: VERDUGO MORALES, EVARISTO	SUB: VERDUGO MORALES, EVARISTO
RELAT: SA DOB: <b>REDACTED</b>	RELAT: SA DOB: <b>REDACTED</b>	RELAT: SA DOB: <b>REDACTED</b>

ADH: PCP: URGENT URGENT CARE CENTER  
HCS: HCS: 9996  
ATT: REF: SELF SELF REFERRED  
HCS: HCS: 9715  
ER: ADAJE1 Adair, Jennifer A MD, 4517  
REASON FOR VISIT/CHIEF COMPL: LAC L-WRIST

COMMENTS: PRT BY: HPF.FEED ON: 07/23/22 0416

ADVANCE DIRECTIVE: DISCH DATE: 07/12/22 TIME: 1700 DISPO: HOM



TRIDENT HEALTH SYSTEMS (COCTR)  
EMERGENCY PROVIDER REPORT  
REPORT#:0712-1003 REPORT STATUS: Signed  
DATE:07/12/22 TIME: 1605

PATIENT: VERDUGO MORALES, EVARISTO UNIT #: D000659052  
ACCOUNT#: D00072632152 ROOM/BED:  
AGE: 56 SEX: M PCP PHYS: URGENT CARE CENTER  
SERVICE DT: 07/12/22 AUTHOR: Homer, Kellen PA  
REP SRV DT: 07/12/22 REP SRV TM:1605  
\* ALL edits or amendments must be made on the electronic/computer document \*

**HOMER, KELLEN PA 07/12/22 1605:**  
**HPI-Should/Arm Prob/Inj**

**Free Text HPI Notes**

**Free Text HPI Notes**

56-year-old male with no documented past medical history presenting the ER for evaluation of laceration to the left forearm. Patient states that he was using a cutting knife and he subsequently lost control and he felt he was cutting some plastic and sustained laceration to the anterior aspect of his left forearm. Tetanus shot not up-to-date. Patient right-hand dominant. Denies numbness, tingling, foreign body sensation. Patient did apply tourniquet prior to arrival. Denies any other injuries or complaints at this time.

**General**

**Initial Greet Date/Time 07/12/22 1443**

**Presentation**

**Chief Complaint Arm injury L**

**Review of Systems**

**Basic Review of Systems**

**Basic ROS EYES: No redness, ENT: No sore throat, RESP: No SOB, CV: No chest pain, GI: No abd pain/vomiting, GU: No dysuria/frequency, HEM: No bleeding/bruising, PSYCH: NL thought content**

**Focused Review of Systems**

**Musculoskeletal**

**Denies: Joint pain, Joint swelling.**

**Skin**

**Reports: Laceration.**

**Neurologic**

**Denies: Numbness, Tingling.**

**Past Medical History - Adult**

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 07/12/22  
Acct#:D00072632152

**Stated Complaint** LAC L-WRIST

**Allergies**

**Coded Allergies:**

No Known Drug Allergies (03/26/21)

**Home Medications**

**Active Scripts**

IBUPROFEN (MOTRIN) 600 MG PO TID PRN PRN PAIN  
IBUPROFEN (MOTRIN) 600 MG PO TID PRN PRN PAIN #20 TAB  
Prov: 03/26/21  
CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID  
CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID #20 TAB  
Prov: 03/26/21  
CYCLOBENZAPRINE (FLEXERIL) 5 MG PO TID PRN PRN MUSCLE SPASMS  
GABAPENTIN (NEURONTIN) 300 MG PO Q8HR  
traMADol (ULTRAM) 50 MG PO Q6H PRN PRN PAIN SCALE 4-6  
DOCUSATE SODIUM (COLACE) 100 MG PO DAILY

**Review of Nursing Notes** Rev avail, and agree

**Additional Medical History**

denies

**Additional Surgical History**

denies

**Additional Family History**

denies

**Smoking status for patients 13 years old or older:** Never Smoker

**Physical Exam**

**Vital Signs**

**Vital Signs**

First Documented:

	Result	Date Time
Pulse Ox	99	07/12 1439
B/P	148/103	07/12 1439
B/P Mean	118	07/12 1439
O2 Delivery	Room air	07/12 1439
Temp	99.3	07/12 1439
Pulse	76	07/12 1439
Resp	18	07/12 1439

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 07/12/22  
Acct#:D00072632152

Last Documented:

	Result	Date Time
Pulse Ox	100	07/12 1711
B/P	140/90	07/12 1711
B/P Mean	106	07/12 1711
O2 Delivery	Room air	07/12 1711
Temp	98.8	07/12 1711
Pulse	78	07/12 1711
Resp	18	07/12 1711

### Review of Vital Signs Reviewed

#### Basic Physical Exam

**Basic PE GEN:** Well appearing/NAD, **HEAD:** Atraumatic/NC, **EYES:** PERRL, conj clear, **ENT:** Membranes moist, **NECK:** Supple, **RESP:** No resp distress, **CV:** Reg rate & rhythm, **ABD:** Soft/non-tender, **LOW EXT:** No gross abnl, **SKIN:** No rashes, warm/dry, **NEURO:** alert & oriented, **NEURO:** gross movement NL, **PSYCH:** NL thought content

#### Focused PE

##### General/Const

General/Const Awake, No acute distress

##### Resp/Chest

Respiratory/Chest Atraumatic, No respiratory distress

##### Cardiovascular

Cardiovascular Heart rate NL, Regular rhythm

##### MS Upper Extrem \*\*

###### Text/Dict Notes

Range of motion at the left forearm is decreased. Patient does maintain full active range of motion at the left wrist. Brisk capillary refill noted. Strong radial pulse palpated. No deficits noted to the median, radial, ulnar nerve. Grip strength is 5/5.

##### Skin

###### Text/Dict Notes

An approximate 2 cm horizontal laceration noted to the volar aspect of the left forearm with a partial flexor tendon laceration as well. Bleeding controlled. No evidence of foreign body when explored down to its base.

### Interpretation & Diagnostics

#### Lab Results Interpretation

##### Results

Recent Impressions:

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 07/12/22  
Acct#:D00072632152

**RADIOLOGY - Wrist Left 07/12 1505**

\*\*\* Report Impression - Status: SIGNED Entered: 07/12/2022 1525

**IMPRESSION:**

No radiopaque foreign body

Impression By: PHY.MACJO1 - Joshua Macatol, M.D.

**Re-Evaluation & MDM**

**Free Text MDM Notes**

**Free Text MDM Notes**

56-year-old male presents to the ER for evaluation of left forearm laceration. No signs of neurovascular deficit. Tetanus shot updated. X-ray of the left forearm negative for foreign body. Wound copiously cleansed and irrigated. Discussed the risks, benefits, alternatives to laceration repair. See procedure note above. Will place on Keflex for home as there was some dirt surrounding the area, however none in the actual laceration. Patient does have tendon laceration on exam. I spoke with orthopedic hand who will see the patient tomorrow. Patient is updated on results and is comfortable with discharge plan and will closely follow-up with orthopedic Hand for definitive care.

Questions have been invited in fully answered. I have instructed the patient to follow up with primary care provider within 1-2 days to ensure resolution of symptoms. The patient is being discharged from the emergency department in a stable, nontoxic, and improved condition. Patient is to return for worsening or persistence of symptoms or new concerns. I provided the patient with strict return precautions. Patient disposition completed in compliance with APC guidelines for supervision. The chart was designated for review and at the station by the supervising physician on duty.

Portions of this document were created using voice recognition and inadvertent, undetected areas and/or omissions may be present as a result. This document has been electronically signed however, not proofread.

**ED Course**

**Medication(s) Ordered**

Medication(s) Ordered:

**Serums, Toxoids, And Vaccines**

Patient: VERDUGO MORALES, EVARISTO  
 Unit#: D000859052  
 Date: 07/12/22  
 Acct#: D00072632152

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Tetanus/Diphtheria Toxoids	0.5 ML	XTED ONE IM	07/12 1500 07/12 1501	DC	07/12 1637

**Consultation  
 Consultation**

**Referral/Consult Name**

Brooker, Reginald C MD

Consultant Called Ortho hand

Requested Call Time 1601

Requested Call Date 07/12/22

Call Returned Call returned

Call Returned Time 1601

Call Returned Date 07/12/22

Consultant Will see in office

**Free Text Consult Notes**

Agrees with laceration repair, Ace wrap, and will follow with the patient in the office tomorrow.

**Patient Discharge & Departure**

**Vital Signs/Condition**

**Vital Signs**

First Documented:

	Result	Date Time
Pulse Ox	99	07/12 1439
B/P	148/103	07/12 1439
B/P Mean	118	07/12 1439
O2 Delivery	Room air	07/12 1439
Temp	99.3	07/12 1439
Pulse	76	07/12 1439
Resp	18	07/12 1439

Last Documented:

	Result	Date Time
Pulse Ox	100	07/12 1711
B/P	140/90	07/12 1711
B/P Mean	106	07/12 1711
O2 Delivery	Room air	07/12 1711

Patient: VERDUGO MORALES, EVARISTO  
Unit#: D000859052  
Date: 07/12/22  
Acct#: D00072632152

Temp	98.8	07/12 1711
Pulse	78	07/12 1711
Resp	18	07/12 1711

All vital signs available at the time of this entry have been reviewed.

Condition Stable, Improved

**Clinical Impression**

Clinical Impression

Primary Impression: Flexor tendon laceration of left forearm with open wound

Secondary Impressions: Laceration of left forearm

**Disposition Decision**

Discharge

( Discharged to Home Yes

( Time 1700

( Date 07/12/22

**Discharge/Care Plan**

(Auto) Prescriptions

Current Visit Scripts

CEPHALEXIN (KEFLEX) 500 MG PO Q6H

CEPHALEXIN (KEFLEX) 500 MG PO Q6H #20 CAP

x 5 days

**ADAIR, JENNIFER A MD 07/13/22 1621:**

**Patient Discharge & Departure**

**Discharge/Care Plan**

Referrals

Provider Referral: Brooker, Reginald C MD

Follow-Up: Tomorrow

Address:

8950 UNIVERSITY BLVD STE 200

N. CHARLESTON, SC 29406

Patient: VERDUGO MORALES, EVARISTO  
Unit#:D000859052  
Date: 07/12/22  
Acct#:D00072632152

**Supervising Physician Note**  
MidLv Saw Pt Alone

I have reviewed the P/ANP's note and plan of care. I was available for consultation as needed at all times during the patient's visit in the emergency department. I agree with the clinical impression, plan and disposition.

Electronically Signed by Homer,Kellen PA on 07/12/22 at 1816  
Electronically Signed by Adair,Jennifer A MD on 07/13/22 at 1621

RPT #: 0712-1003  
\*\*\*END OF REPORT\*\*\*

Page 7 of 7

Trident Health Systems - Trident Medical Center  
9330 Medical Plaza Drive, Charleston, South Carolina 29406 (843)797-7000

IN / OUT / ER PATIENT ADMISSION RECORD  
ACCOUNT#: D00074270852 ADM DATE: 12/31/22 UNIT RCRD #: D000992141 ARRIVAL: AMB  
ROOM/BED: D.715-A ADM TIME: 1547 MARKET URN: D1076011 CONF: VIP:  
PT. TYPE: DIS IN ADMIT PRI/SRC: EM / PR LOCATION(S): D.T7FL FC: 99

PATIENT INFORMATION

NAME: MORALES, EVARISTO OTHER NAME:  
STREET: REDACTED DOB: REDACTED SS#: REDACTED  
STREET: AGE: 57 RACE: WHITE  
C/S/ZP: SEX: M MAR STATUS: S  
PHONE#: REL: UNKNOWN LANG: SPANISH  
CELL#: EMAIL:

S.P.O.U.S.E./N.O.K./C.O.M.P.A.N.I.O.N.  
NONE, PER

REDACTED

SELF

P.E.R.S.O.N T.O N.O.T.I.F.Y  
NONE, PER

REDACTED

SELF

P.A.T.I.E.N.T. E.M.P.L.O.Y.E.R.

UNKNOWN  
UNKNOWN

UNKNOWN, SC 29406  
(999)999-9999 OCC: N

G.U.A.R.A.N.T.O.R. E.M.P.L.O.Y.E.R.

UNKNOWN  
UNKNOWN

UNKNOWN, SC 29406  
(999)999-9999

G.U.A.R.A.N.T.O.R.

TRAUMA, JULIETT314  
REDACTED

SELF

O.C.C.U.R.R.E.N.C.E C.O.D.E.S C.O.N.D.I.T.I.O.N C.O.D.E.S  
01 12/31/22

INSURANCE INFORMATION

PRIMARY: TPLK099 - 90699 SECONDARY: MCAID13 - 06935 TERTIARY: CHAX050 - 09950  
TRAUMA LAWYER MEDICAID SC PENDING CHARITY PENDING

.. SC 99999 COLUMBIA, SC 29202-1458 .. SC 29572  
POLICY #: 9999999999 POLICY #: 999999999 POLICY #: 9999999999  
COVERAGE #: COVERAGE #: COVERAGE #:  
INS PHONE #: (999)999-9999 INS PHONE #: (888)549-0820 INS PHONE #: (678)421-7000  
GRP #: 99999 GRP#: GRP#:  
AUTH #: AUTH #: AUTH #:  
AUTH DT: VER DT: AUTH DT: VER DT: AUTH DT: VER DT:  
SUB: TRAUMA, JULIETT314 SUB: TRAUMA, JULIETT314 SUB: TRAUMA, JULIETT314  
RELAT: SA DOB: REDACTED RELAT: SA DOB: REDACTED RELAT: SA DOB: REDACTED

PHYSICIAN INFORMATION / DOCUMENTATION  
ADM: AMOKE Amodeo, Kellie MD PCP: NO PCP No Primary or Family Physician  
HCS: 6331 (843)767-1730 HCS: 7943  
ATT: AMOKE Amodeo, Kellie MD REF: AMOKE Amodeo, Kellie MD  
HCS: 6331 (843)767-1730 HCS: 6331 (843)767-1730  
ER: MCCJ001 McCarthy, Jordan MD, 1596  
REASON FOR VISIT/CHIEF COMPL: TRAUMA, WVE

COMMENTS:  
PRT BY: IRSNAL7467 ON: 01/04/23 1337



ADVANCE DIRECTIVE:  
DISCH DATE: 01/03/23 TIME: 1825 DISPO: HOM



Trident Health Systems (COCTR)  
History & Physical - Adult  
REPORT#:1231-0964 REPORT STATUS: Signed  
DATE:12/31/22 TIME: 1355

PATIENT: TRAUMA, JULIETT314 UNIT #: D000992141  
ACCOUNT#: D00074270852 ROOM/BED: D.TE08-A  
DOB: REDACTED AGE: 57 SEX: M ATTEND: Amodeo, Kellie MD  
ADM DT: 12/31/22 AUTHOR: Saric, Andriana DO  
R1  
REP SRV DT: 12/31/22 REP SRV TM: 1355  
\* ALL edits or amendments must be made on the electronic/computer  
document \*

**SARIC, ANDRIANA S 12/31/22 1355:**  
**HPI and HX**

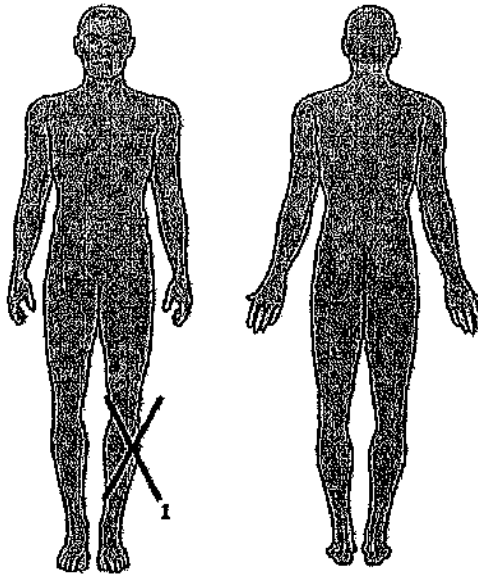
**Pre-Hospital**

**Activation Level:** Level 2  
**Arrival Mode:** EMS  
**Mechanism of Injury:** motor vehicle crash  
MVC Type: head on  
**Complaints/Injuries:**  
L Leg pain  
**Pre-Hospital Treatment:**  
breathing: NC  
circulation: IV access  
GCS: 15

**Primary Survey**

**Airway:** adequate  
**Breathing:** adequate, eq breath snds bilateral, no distress, spontaneous  
**Circulation:** palpable distal pulses, perfusion  
**Disability:** open eyes, PERRLA, communication well, moves face, moves RLE, moves LUE,  
moves RUE, moves LLE  
**Exposure:** normothermic, warming measrs after exam  
**Body - Front & Back**

Patient: TRAUMA, JULIETT314  
Unit#:D000992141  
Date: 12/31/22  
Acct#:D00074270852



1) deformity, pain  
**Additional hpi notes:**  
50M presents to the ED as a Level 2 trauma activation for evaluation s/p MVC. Unknown speed, Unknown if pt was restrained, unknown LOC. Head on collision. Patient was noted to have a L lower leg deformity and pain. GCS 15. Ccollar in place on arrival. Pt received 100mcg fentanyl, 4mg zofran prior to arrival.

**Past History**

**Past medical history:** denies PMH  
**Past surgical history:** denies PSH  
**Past social history:** no alcohol use, no drug abuse  
**Allergies**  
**Coded Allergies:**  
No Known Drug Allergies (12/31/22)

**Review of Systems**

**Respiratory:**  
Denies: SOB.  
**Cardiovascular:**

Patient: TRAUMA, JULIETT314  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

Denies: chest pain.  
GI:  
Reports: nausea. Denies: abdominal pain.  
Musculoskeletal:  
Extremity pain:  
Reports: left lower.  
All systems rev & neg: except as marked

### Secondary Survey

#### Physical Exam

**General appearance:** alert, awake, no acute distress  
**Head/Eyes:** normal conjunctiva/sclera  
**ENT:** moist mucosal membranes, normal ear left, normal ear right, dried blood in L nares  
**Cardiovascular:** regular rate & rhythm  
**Respiratory:** aerating well, clear to auscultation, symmetric expansion  
**Abdomen:** soft, non-tender, no distention  
**Genitourinary:** normal external inspectio  
**Extremities:** deformity (LLE), moves all, normal capillary refill  
**Musculoskeletal** no midline vertebral tend  
**Neuro/CNS:** alert, oriented X 3, no motor deficits, no sensory deficits  
**Glasgow Coma Score:**

Glasgow Coma Score:	Response	Value
Glasgow eyes:	eyes open spontaneously	4
Glasgow speech:	oriented	5
Glasgow motor:	obeys commands	6
Total		15

Skin: dry, intact

#### Results

##### Radiology data

Recent Impressions:

**RADIOLOGY - Portable Chest 12/31 1355**

\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1400

##### IMPRESSION:

Hypoventilatory changes. No definite acute intrathoracic process visualized.

Impression By: PHY.BJM1 - Benjamin J. Mullenbach, MD

Patient: TRAUMA, JULIETT314  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

**Results:** labs reviewed, vital signs stable, x-ray personally reviewed

### Diagnosis, Assessment & Plan

#### Free Text A&P:

50M presents to the ED as a Level 2 trauma activation for evaluation s/p MVC. Unknown speed, Unknown if pt was restrained, unknown LOC. Head on collision. Patient was noted to have a L lower leg deformity and pain. GCS 15. Ccollar in place on arrival. Pt received 100mcg fentanyl, 4mg zofran prior to arrival.

Family history: reviewed noncontributory.

PRIMARY SURVEY: HDS, GCS 15  
SECONDARY SURVEY: LLE deformity

#### IMAGING:

- CXR: neg
- CT H: neg
- CT C-spine: neg
- CT C/A/P/T/L:

#### IMPRESSION:

1. *Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.*

2. *Nondisplaced sternal body fracture with overlying soft tissue stranding.*

3. *No acute osseous abnormality in the thoracic or lumbar spine.*

4. *No acute intrathoracic or abdominal post-traumatic abnormality.*

- XR Tib/Fib L:

#### IMPRESSION:

*Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the lateral tibial plateau with large joint lipohemarthrosis.*

Patient: TRAUMA, JULIETT314  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

- XR Knee L:  
**IMPRESSION:**

*Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the tibial plateau and large joint lipohearthrosis.*

- XR Femur L:  
**IMPRESSION:**

- 1. No femur fracture.*
- 2. Comminuted fracture through the proximal tibia again noted with lipohearthrosis.*

- CT LE Left noncon:  
**IMPRESSION:**

*Heavily comminuted fracture of the proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus.*

CONSULTS:  
- ORTHO (Gottlich)

ASSESSMENT/PLAN:

NEURO:  
- multi-modal pain control

CV:  
- tachycardia following nondisplaced sternal fracture  
- troponin negative  
- EKG demonstrated tachycardia in 110s

PULM:  
- oxygenating well, encourage pulm toilet/IS

GI:  
- DIET: Regular diet  
- bowel regimen

Page 5 of 7

Patient: TRAUMA, JULIETT314  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

GU:

- avoid foley
- replace electrolytes per protocol

HEME:

- LABS

ID:

- no indications for antibiotics at this time

MSK:

- Heavily comminuted fracture of proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus
  - ortho recs: L knee immobilizer, elevation and ice, plan for OR this week (possible 1/02/22)
- nondisplaced acute anterior rib fractures on the R at 5 and 6
- nondisplaced acute anterior rib fractures on the left at 3-6
- nondisplaced sternal body fracture with overlying soft tissue stranding

PROPHY:

- Lovenox

DISPO:

- admit to trauma floor

I personally spent 10 minutes evaluating patient, labs, clinical data and formulating plan with multidisciplinary team and consultants.

Patient was seen and discussed with Dr. Amodeo.

We are available 24/7 at the numbers listed below. Please do not hesitate to call.

The Trauma / General surgery team (Dr. Clark, Dr. Jewett, Dr. Jones, Dr. Rhodes, and Dr. Smear) can be reached by the following numbers 24 hours/day.

Trauma PA on call - 843.276.3532  
Trauma Surgeon on call (24/7) - 843.729.2630  
General Surgeon on call (24/7) - 843.998.0569  
Trauma ICU Attending on call (24/7) - 843.729.2746  
Office - 843.764.1730

Patient: TRAUMA, JULIETT314  
Unit#:D000992141  
Date: 12/31/22  
Acct#:D00074270852

**AMODEO,KELLIE 01/01/23 0517:**

Attestations

Attestation needed: teaching physician

**Physician Attestation**

Agree w/findings & plan:

Agree with the findings and plan as documented by resident.

57-year-old male status post MVC, airbag deployed. Brought to Trident Medical Center by EMS as a level 2 trauma. Reportedly stable on route. 18 gauge in the left AC, 28 in the right AC, 100 of fentanyl and 4 of Zofran given. On 6 L oxygen. Noted left lower extremity deformity by EMS. Primary survey: Airway intact. Bilateral breath sounds. 2+ pulses in all 4 extremities. Vital signs stable. Secondary survey, left lower extremity deformity, with left knee point tenderness. No other external signs of trauma. Pan scans with left tibial plateau/metaphysis fracture, right rib fractures 5 through 6, left rib fractures 3 through 6, and sternal fracture. Tachycardia, likely secondary to pain. Troponin negative. Orthopedics consult in notified, plan to take patient back to the operating room on Monday January 2nd. Plan, admit to floor. Lovenox for DVT prophylaxis. Regular diet, NPO midnight for surgery on Monday. Pain control p.r.n.. Encourage bone toilet, incentive spirometry. Nonweightbearing to left lower extremity. -KA

**Time spent on patient care:**

47 minutes

Electronically Signed by Saric,Andriana DO R1 on 12/31/22 at 1643  
Electronically Signed by Amodeo,Kellie MD on 01/01/23 at 0523

RPT #: 1231-0964  
\*\*\*END OF REPORT\*\*\*

Page 7 of 7

TRIDENT HEALTH SYSTEMS (COCTR)  
EMERGENCY PROVIDER REPORT  
REPORT#:1231-0762 REPORT STATUS: Signed  
DATE:12/31/22 TIME: 1357

PATIENT: MORALES, EVARISTO UNIT #: D000992141  
ACCOUNT#: D00074270852 ROOM/BED: D.715-A  
AGE: 57 SEX: M PCP PHYS: No Primary or  
Family Physician  
SERVICE DT: 12/31/22 AUTHOR: Shank, Tori DO R1  
REP SRV DT: 12/31/22 REP SRV TM:1357  
\* ALL edits or amendments must be made on the electronic/computer  
document \*

**SHANK, TORI 12/31/22 1357:**  
**HPI-Trauma Multiple**

**Free Text HPI Notes**

**Free Text HPI Notes**

50-year-old male presenting to the ED after MVC he was the driver in the vehicle that T-boned another vehicle. Car was going unknown speed, it was unknown if patient was seatbelted. She is not complaining of left leg pain. EMS reports vitals stable throughout transport and he was given 100 fentanyl in route. He is Spanish-speaking and some history obtained through interpreter.

**General**

**Initial Greet Date/Time** 12/31/22 1343

**Presentation**

**Chief Complaint** Extremity pain/injury  
**Hx Obtained From** Patient, EMS  
**Caused by** Motor vehicle collision  
**Location** Lower extremity L

**Review of Systems**

**Free Text ROS Notes**

**Free Text ROS Notes**

CONSTITUTIONAL: Denies fevers, chills  
EYES: Denies any visual symptoms.  
EARS, NOSE, AND THROAT: Denies rhinorrhea, nasal congestion  
CARDIOVASCULAR: Denies chest pains, palpitations  
RESPIRATORY: No shortness of breath, no wheezing or cough.  
GI: No nausea, vomiting, diarrhea, constipation, abdominal pain  
GU: No urinary frequency, dysuria  
MUSCULOSKELETAL: Admits to left leg pain denies back pain  
NEUROLOGIC: No headaches, lightheadedness  
DERM: No skin changes or rash

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

**Past Medical History - Adult**

**Stated Complaint** TRAUMA, MVC

Review of Nursing Notes Rev avail, and agree

**Physical Exam**

**Vital Signs**

Review of Vital Signs Reviewed

**Focused PE**

**General/Const** \*\*

General/Const Awake, Alert

**MS Head**

Head Atraumatic, Normocephalic

**Eyes**

Eyes Atraumatic, PERRL, EOMI

**Ears/Nose/Throat**

Ears/Nose/Throat Atraumatic, Airway patent, Mucous membranes moist

**MS Neck** \*\*

Neck Atraumatic, Supple, No meningismus, Non-tender

**Resp/Chest** \*\*

Respiratory/Chest Atraumatic, Breath sounds NL, Breath sounds = bilat, No respiratory distress

**Cardiovascular** \*\*

Cardiovascular Heart rate NL, Regular rhythm, Heart sounds NL, Peripheral circulation NL

**Abdomen/GI** \*\*

Abdomen/GI Atraumatic, Soft, Non-tender, McBurney's non-tender, No guarding, No rebound, No distention

**MS Back** \*\*

Back Atraumatic, Inspection NL, Non-tender

**MS Upper Extrem**

Upper Extremity/MS Atraumatic, Inspection NL

**MS Lower Extrem**

Text/Dict Notes

Both legs neurovascularly intact, obvious swelling and tenderness of the left lower thigh, decreased range of motion due to pain

**Neurologic** \*\*

Neurologic Oriented X3, Speech NL, No motor deficits, No sensory deficits

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 12/31/22  
 Acct#: D00074270852

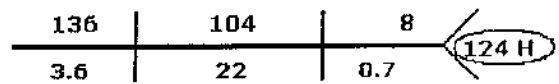
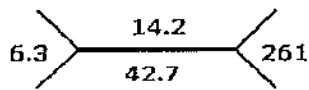
**Interpretation & Diagnostics**

**Lab Results Interpretation**

Considerations Independ review imaging  
 Results

Laboratory Tests

12/31/22 1346:



Laboratory Tests:

	12/31 1346	12/31 UNK
<b>Chemistry</b>		
Sodium (136 - 145 mEq/L)	136	
Corrected Sodium (mEq/L)	136	
Potassium (3.6 - 5.1 mEq/L)	3.6	
Chloride (101 - 111 mEq/L)	104	
Carbon Dioxide (22 - 32 mEq/L)	22	
Anion Gap (3 - 13)	10	
BUN (6 - 20 mg/dL)	8	
Creatinine (0.7 - 1.2 mg/dL)	0.7	
Est GFR (CKD-EPI) (> -60)	112	
Glucose (70 - 100 mg/dL)	124 H	
Calcium (8.9 - 10.3 mg/dL)	8.5 L	
Corrected Calcium (mg/dL)	8.6	
Total Bilirubin (< 1.0 mg/dL)	0.5	
AST (< 35 Units/L)	71 H	
ALT (10 - 63 Units/L)	58	
Alkaline Phosphatase (32 - 101 Units/L)	111 H	
Troponin I (< 0.04 ng/mL)		< 0.03
Total Protein (6.1 - 8.0 gm/dL)	7.9	
Albumin (3.4 - 4.8 gm/dl)	3.9	
<b>Hematology</b>		
WBC (4.0 - 10.9 k/mm3)	6.3	
RBC (4.10 - 5.60 M/mm3)	4.70	
Hgb (13.5 - 16.5 g/dL)	14.2	
Hct (39.0 - 50.0 %)	42.7	
MCV (80.0 - 95.0 fL)	90.9	
MCH (26.0 - 32.0 pg)	30.2	

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 12/31/22  
 Acct#: D00074270852

MCHC (32.0 - 35.0 g/dl)	33.3
RDW Std Deviation (35 - 46 fL)	44.1
RDW Coeff of Var (11.5 - 15.0 %)	13.2
Plt Count (135 - 350 K/mm3)	261
MPV (9.0 - 12.4 fL)	9.6
Immature Gran % (Auto) (0.1 - 0.3 %)	0.3
Neut % (Auto) (40.1 - 76.4 %)	49.6
Lymph % (Auto) (14.8 - 45.8 %)	41.0
Mono % (Auto) (4.0 - 12.7 %)	7.0
Eos % (Auto) (0.0 - 5.4 %)	1.3
Baso % (Auto) (0.0 - 1.2 %)	0.8
Neut # (Auto) (1.3 - 8.4 K/mm3)	3.1
Lymph # (Auto) (0.5 - 5.0 K/mm3)	2.6
Mono # (Auto) (0.1 - 1.3 K/mm3)	0.4
Eos # (Auto) (0.0 - 0.6 K/mm3)	0.1
Baso # (Auto) (0.0 - 0.1 K/mm3)	0.1
Toxicology	
Plasma/Serum Alcohol (<10 mg/dL)	218 H

Recent Impressions:

**RADIOLOGY - Portable Chest 12/31 1355**

\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1400

IMPRESSION:

Hypoventilatory changes. No definite acute intrathoracic process visualized.

Impression By: PHY.BJM1 - Benjamin J. Mullenbach, MD

**COMPUTERIZED TOMOGRAPHY - CT Lumbar Spine No Chg 12/31 1400**

\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

Patient: MORALES, EVARISTO  
Unit#:D000992141  
Date: 12/31/22  
Acct#:D00074270852

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
COMPUTERIZED TOMOGRAPHY - CT Thorax With Contrast 12/31 1400  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Thoracic Spine No Chg 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

**IMPRESSION:**

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

**DOSAGE DATA:**  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT ABDPEL IV Cont Only 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

**IMPRESSION:**

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

4. No acute intrathoracic or abdominal post-traumatic abnormality.

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Cervical Spine W/O Contrst 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1422

IMPRESSION:  
No evidence of acute fracture or dislocation.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Head Without Contrast 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1421

IMPRESSION:  
No evidence of acute intracranial hemorrhage, infarct, mass or mass effect.

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Knee Complete (3 Views) Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1512

**IMPRESSION:**

Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the tibial plateau and large joint lipohemarthrosis.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Femur (2 Views) Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1511

**IMPRESSION:**

1. No femur fracture.
2. Comminuted fracture through the proximal tibia again noted with lipohemarthrosis.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Lower Leg Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1510

**IMPRESSION:**

Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the lateral tibial plateau with large joint lipohemarthrosis.

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Low Extremity W/O Cont Lt 12/31 1540**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1615

**IMPRESSION:**  
Heavily comminuted fracture of the proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.MAHBR - Brian H Mahon, MD

#### **Lab & Imaging Statement**

Laboratory & radiographic studies reviewed and considered in the medical decision-making.

#### **Re-Evaluation & MDM**

##### **Free Text MDM Notes**

##### **Free Text MDM Notes**

57 y/o M presenting after T-bone car accident he was a driver unknown speed unknown if restrained, no known loss of consciousness. Complaining of left leg pain. Hemodynamically stable on arrival. Airway breathing and circulation intact. He does have swelling and deformity of otherwise no tenderness and atraumatic exam.

Imaging reveals heavily comminuted fracture of the proximal aspect of the tibia. He also has multiple rib fractures bilaterally as well as sternal fracture. Head and neck imaging is negative.

Continues to be stable here in the ED. Admitted to Trauma Service and to be seen by Orthopedics.

##### **ED Course**

##### **Medication(s) Ordered**

Page 9 of 13

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 12/31/22  
 Acct#: D00074270852

Medication(s) Ordered:  
**Blood Formation, Coagulation &**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Enoxaparin Sodium	30 MG	Q12H SUBQ	12/31 1700 01/30 1701	AC	01/03 0608

**Central Nervous System Agents**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Acetaminophen	1,000 MG	Q6HR PO	12/31 1800 01/30 1601	AC	01/03 1223
Acetaminophen	650 MG	Q6H PRN PRN PO	12/31 1600 01/30 1601	AC	
Magnesium	50 ML	ASDIR PRN IV	12/31 1600 01/30 1601	AC	
Morphine Sulfate	2 MG	Q2H PRN PRN IV	12/31 1600 01/30 1601	AC	01/02 0853
Oxycodone HCl	5 MG	Q4H PRN PRN PO	12/31 1600 01/30 1601	AC	01/03 1650
Tramadol HCl	50 MG	Q6H PRN PRN PO	12/31 1600 01/30 1601	AC	12/31 1942

**Electrolytic, Caloric, And Wat**

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Sodium Chloride	10 ML	Q8HR IV	12/31 2200 01/30 2201	AC	01/03 1224
Electrolyte Protocol	1 EACH	0800,2000 MISC	12/31 2000 01/30 2001	AC	
Sodium Chloride	1,000 ML	.Q13H20M IV	12/31 1700 01/30 1701	AC	01/02 0841
Potassium Chloride	See Dose Insts (1)	ASDIR PRN PO	12/31 1600 01/30 1601	AC	
Potassium Chloride	100 ML	ASDIR PRN IV	12/31 1600 01/30 1601	AC	
Potassium Phos/ Sodium Phos	2 PKT	ASDIR PRN PO	12/31 1600 01/30 1601	CKD	
Sodium Chloride	10 ML	PRN PRN IV	12/31 1600 01/30 1601	AC	

**Gastrointestinal Drugs**

	Sig/Sch	Start time	Last
--	---------	------------	------

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 12/31/22  
 Acct#: D00074270852

Medication	Dose	Route	Stop Time	Status	Admin
Docusate Sodium	100 MG	BID	12/31 2200	AC	01/03 1020
		PO	01/30 2201		
Magnesium Oxide	400 MG	ASDIR PRN	12/31 1600	AC	
		PO	01/30 1601		
Ondansetron HCl	4 MG	Q6H PRN PRN	12/31 1600	AC	
		IV	01/30 1601		

Dose Instructions:  
 (1)Potassium Chloride:  
 SEE LABEL COMM

**Patient Discharge & Departure**

**Vital Signs/Condition**

**Vital Signs**

All vital signs available at the time of this entry have been reviewed.

**Discharge/Care Plan**

**Admit Note**

I have spoken with the patient and/or caregivers. I have explained the patient's condition, diagnoses and treatment plan based on the information available to me at this time. I have answered the patient's and/or caregiver's questions and addressed any concerns. The patient and/or caregivers have as good an understanding of the patient's diagnosis, condition and treatment plan as can be expected at this point. The patient has been stabilized within the capability of the emergency department. The patient will be transported for further care and management or will be moved to an observation or inpatient service. I have communicated with the staff or medical practitioner taking over this patient's care.

**MCCARTHY, JORDAN MD 12/31/22 1402:**

**Past Medical History - Adult**

**Allergies**

**Coded Allergies:**

No Known Drug Allergies (12/31/22)

**Home Medications**

**Reported Medications**

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

Med List Information (z-Med List Information) 1 EACH MISC .CANCEL AT DISCHARGE

## Patient Discharge & Departure

### Clinical Impression

#### Clinical Impression

**Primary Impression:** Fracture of left tibial plateau

**Secondary Impressions:** Multiple fractures of ribs, bilateral, initial encounter for closed fracture, Sternal fracture

### Disposition Decision

#### Admit

Admit Physician Name

Amodeo, Kellie MD

( Admission Accepts Yes

( Accepted Time 1523

( Accepted Date 12/31/22

### Discharge/Care Plan

#### (Auto) Prescriptions

#### Current Visit Scripts

traMADol (ULTRAM) 50 MG PO Q6H PRN PRN moderate pain

traMADol (ULTRAM) 50 MG PO Q6H PRN PRN moderate pain #30 TAB Ref 1

oxyCODONE (ROXICODONE) 5 MG PO Q6H PRN PRN Severe pain

oxyCODONE (ROXICODONE) 5 MG PO Q6H PRN PRN Severe pain #20 TAB

APIXABAN (ELIQUIS) 2.5 MG PO BID

APIXABAN (ELIQUIS) 2.5 MG PO BID #60 TAB

### Referrals

**Provider Referral:** No Primary or Family Physician

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 12/31/22  
Acct#: D00074270852

**Supervising Physician Note**  
**Resident Saw Pt**

This patient was seen by a resident. I have personally seen the patient, performed the critical or key portions of the service, and participated in the management of the patient. I have reviewed and agree with the resident's note, and I have reviewed all labs, ECGs, and imaging studies or reports. I agree with this resident's findings, exam and plan.

**ADDITIONAL MDM COMMENTS:**

I have personally seen and evaluated this patient in conjunction with resident physician Shank.

Patient is a 50 y/o M who presents today for evaluation following MVC. Unknown speed or mechanism of collision. Unknown whether pt was wearing seatbelt. Pt has obvious deformity and swelling about L knee and some abrasions of R knee. Peripheral P/M/S intact.

On my exam, pt has lower extremity findings as noted above. Mild bleeding from L nare but no other facial trauma or abnormality on exam. No thoracic or abdominal or back tenderness to palpation. No other obvious abnormalities.

Pt evaluated in conjunction with trauma team based on mechanism. CTs and trauma labs ordered. Pt found to have sternal frx and multiple rib fractures and L tibial plateau frx, admitted to trauma service for further mgmt.

Electronically Signed by Shank, Tori DO R1 on 12/31/22 at 2227  
Electronically Signed by McCarthy, Jordan MD on 01/03/23 at 1720

RPT #: 1231-0762  
\*\*\*END OF REPORT\*\*\*

TRIDENT MEDICAL CENTER  
9330 MEDICAL PLAZA DRIVE  
CHARLESTON, SC 29406

NAME: TRAUMA, JULIETT314  
UNIT #: D000992141  
ADM Date: 12/31/22  
D/C Date:  
Dictated By: Gottlich, Malcolm D MD  
Report Name: Consultation

ROOM #: D.TE07-H  
Acc #: D00074270852  
  
Loc: D.TEDH

DATE OF CONSULTATION: 12/31/2022

ATTENDING PHYSICIAN: Kellie Amodeo, MD

CONSULTING PHYSICIAN: Malcolm D Gottlich, MD

PRIMARY CARE PHYSICIAN: No Primary or Family Physician

REASON FOR CONSULTATION:  
Left proximal tibial plateau fracture, bicondylar.

CHIEF COMPLAINT:  
Left knee pain.

HISTORY OF PRESENT ILLNESS:  
Mr. Trauma Juliet314 is a 57-year-old gentleman involved in a motor vehicle accident, sustained an injury to his left knee as a level 2 trauma. During the course of his workup, he was found to have a proximal tibial plateau fracture, comminuted, minimally angulated. The undersigned was consulted for orthopedic evaluation and treatment.

The patient is Spanish-speaking and we did have to use a Spanish translator for the history and physical.

PAST MEDICAL HISTORY:  
Unremarkable.

PAST SURGICAL HISTORY:  
Unremarkable.

SOCIAL HISTORY:  
The patient does drink alcohol. Does not smoke cigarettes. Does not use recreational drugs.

ALLERGIES  
None.

REVIEW OF SYSTEMS:  
The patient denies chest pain, shortness of breath, dyspnea on exertion, fever, chills, urinary changes, nausea, vomiting, abdominal changes, visual changes, olfactory changes, auditory changes, weight loss, bleeding tendency, or skin rash.

Patient Name: TRAUMA, JULIETT314

Account #: D00074270852

**ALLERGIES**

No known drug allergies.

**MEDICATIONS:**

Include sodium docusate 100 mg p.o. b.i.d., Lovenox 30 mg subcu q.12 hours, tramadol 50 mg p.o. q.6 hours p.r.n., Percolone 5 mg p.o. q.4 hours p.r.n., Zofran 4 mg IV q.6 hours p.r.n., morphine 2 mg IV q.2 hours p.r.n., Tylenol 650 mg p.o. q.6 hours p.r.n.

**PHYSICAL EXAMINATION:**

**GENERAL:** The patient does appear alert. He does answer my questions appropriately with a Spanish translator. The patient has a Glasgow Coma Scale of 15.

**VITAL SIGNS:** All vital signs reviewed and within normal limits.

**HEENT:** Normocephalic, atraumatic.

**NECK:** Supple without adenopathy or bruits.

**HEART:** Regular rate and rhythm without murmur, rub, or gallop.

**LUNGS:** Clear bilaterally.

**ABDOMEN:** Soft, nontender, without mass.

**EXTREMITIES:** Examination of the left knee reveals mild swelling and pain. No significant angulation is noted about the knee. He can move his foot and ankle up and down. Dorsalis pedis and posterior tib pulses are palpable. Foot is warm with excellent capillary refill with passive flexion and extension of the ankle and the digits does not elicit any pain to suggest developing compartment syndrome.

Dorsalis pedis and posterior tibial pulses are palpable.

**DIAGNOSTIC DATA:**

X-rays; AP and lateral x-ray of the left knee in conjunction with CT scan does reveal a comminuted tibial plateau fracture in good alignment and only mildly shortened.

**ASSESSMENT:**

Left bicondylar tibial plateau fracture.

**PLAN:**

Lengthy discussion with patient using Spanish translator regarding nature of his diagnosis, treatment options. At this point, I would recommend immobilization with the knee immobilizer, ice, elevation, and if swelling is down, I do believe the patient would benefit from open treatment internal fixation to allow for earlier range of motion and weightbearing.

I have explained on the risks and benefits including infection, damage to major nerve or vessel, possible anesthetic complications. We also discussed anticoagulation for 30 days to prevent DVTs. We also discussed nonweightbearing for at least 8 weeks. All questions answered to the patient's satisfaction. Full informed consent has been obtained.

Dictated By: Malcolm D Gottlich, MD

MDG:MODL

D: 12/31/2022 19:21:07 / T: 12/31/2022 19:50:10

Patient Name: TRAUMA,JULIETT314

Account #: D00074270852

Voice ID: 489971 / Job ID: 979218469  
Authenticated by Malcolm D Gottlich, MD on 01/01/2023 05:36:03 PM

Electronically Signed by Malcolm D Gottlich, MD on 01/01/23 at 0536

Patient Name: TRAUMA, JULIETT314

Account #: D00074270852



made a standard lateral incision curved over the lateral tibial plateau and sharp dissection was carried through the skin and subcutaneous tissue. The anterior musculature was subperiosteally elevated from the tibial shaft and a 1 cm incision was made over the medial tibial plateau. Using a King Kong clamp, the bicondylar portion of the fracture was anatomically reduced, held in place with a clamp and then two 5.0 mm 80 screws were placed across it, holding it in anatomic position. When this was completed, we used the subperiosteal elevator and a 10-hole plate was adequately aligned along the course of the tibia, proximally, we used a cortical screw to draw the plate to the bone, then followed by locking screws and then distally we used 2 cortical screws and 3 locking screws, proximally, we filled all the holes with locking screws, 5 total and the wounds were copiously irrigated. X-rays in both the AP and lateral plane confirmed near-anatomic reduction of the fracture, anatomic positioning of all hardware. The tourniquet was released. Hemostasis was achieved. Proximal wound was closed with #1 Vicryl Plus followed by 2-0 Monocryl, followed by 3-0 nylon. The percutaneous holes were closed with 3-0 nylon. Sponge and needle counts were correct x2. A TROM brace was applied. The patient was taken to recovery room in stable condition.

Dictated By: Malcolm D Gottlich, MD

MDG:MODL

D: 01/02/2023 14:22:23 / T: 01/02/2023 14:37:39

Voice ID: 480623 / Job ID: 979287411

Authenticated by Malcolm D Gottlich, MD on 01/02/2023 02:46:55 PM

Electronically Signed by Malcolm D Gottlich, MD on 01/02/23 at 0246

Patient Name: TRAUMA,JULIETT314

Account #: D00074270852

Trident Health Systems (COCTR)  
Discharge Summary  
REPORT#: 0103-0533 REPORT STATUS: Signed  
DATE: 01/03/23 TIME: 1115

PATIENT: MORALES, EVARISTO UNIT #: D000992141  
ACCOUNT#: D00074270852 ROOM/BED: D.715-A  
DOB: REDACTED AGE: 57 SEX: M ATTEND: Amodeo, Kellie MD  
ADM DT: 12/31/22 AUTHOR: Hussein, Helweh  
MBBS RI  
REP SRV DT: 01/03/23 REP SRV TM: 1115  
\* ALL edits or amendments must be made on the electronic/computer document \*

**HUSSEIN, HELWEH T 01/03/23 1115:**

**General Information**

**Problem List/A&P:**

1. Fracture of left tibial plateau (Acute, Onset: 12/31/22)
2. Sternal fracture (Acute, Onset: 12/31/22)
3. Multiple fractures of ribs, bilateral, initial encounter for closed fracture

**Date of admission:**

Observation Start Date:  
Date of admission: 12/31/22

Discharge date: 01/03/23

**Discharge diagnosis:**

1. Fracture of left tibial plateau
2. Sternal fracture
3. Multiple fractures of ribs, bilateral, initial encounter for closed fracture

**Hospital course:**

50M spanish speaking presents to the ED as a Level 2 trauma activation for evaluation s/p MVC. Unknown speed, Unknown if pt was restrained, unknown LOC. Head on collision. Patient was noted to have a L lower leg deformity and pain. GCS 15. C-collar in place on arrival. Pt received 100mcg fentanyl, 4mg zofran prior to arrival.

Family history: reviewed noncontributory.

PRIMARY SURVEY: HDS, GCS 15  
SECONDARY SURVEY: LLE deformity

**IMAGING:**

- CXR: neg
- CT H: neg
- CT C-spine: neg

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

- CT C/AP/T/L:  
IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

- XR Tib/Fib L:  
IMPRESSION:

Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the lateral tibial plateau with large joint lipohearthrosis.

- XR Knee L:  
IMPRESSION:

Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the tibial plateau and large joint lipohearthrosis.

- XR Femur L:  
IMPRESSION:

1. No femur fracture.
2. Comminuted fracture through the proximal tibia again noted with lipohearthrosis.

- CT LE Left noncon:  
IMPRESSION:

Heavily comminuted fracture of the proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus.

Page 2 of 14

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

CONSULTS:  
- ORTHO (Gottlich)

daily course :

12/31:MVC (BAL 218, +amph)

\*sternal fx, rt ribs 5/6, lt ribs 3-6, Left tib plat fx (Gottlich)

1/1: left knee immobilizer. IS (1000-1500).

1/2: no acute events overnight, patient looks ok. going for surgery with ortho Dr. Gottlich for ORIF of left tibial plateau. NPO. left knee immobilizer. T -100 today. patient is on CIWA protocol for alcohol withdrawal.

1/3: patient is POD #1 from perc fixation of the left tib plateau. patient is doing well. no acute events overnight, complaining of little bit of pain and tingling sensation in the leg however can wiggle the toes ok and sensation intact. tolerating diet, no BM yet but passing flatus .IS ( 1500cc) ortho complete. PT/OT > rolling walker upon DC.  
Dispo: NWB LLE, no sternal precautions

ASSESSMENT/PLAN:

NEURO:

- multi-modal pain control

CV:

- tachycardia following nondisplaced sternal fracture  
-troponin negative  
-EKG demonstrated tachycardia in 110s

1/1: HR 102 today.

PULM:

- oxygenating well, encourage pulm toilet/IS  
1/1: encourage using IS . IS(1000-1500CC)  
1/3: IS 1500cc , pain controlled.

GI:

- DIET: NPO for surgery today  
- bowel regimen  
- 1/2 : regular diet

GU:

- avoid foley

Page 3 of 14

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

- replace electrolytes per protocol

HEME:  
- LABS

ID:  
- no indications for antibiotics at this time

MSK:  
- Heavily comminuted fracture of proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus  
- ortho recs: L knee immobilizer, elevation and ice, plan for OR this week (possible 1/0222)  
- nondisplaced acute anterior rib fractures on the R at 5 and 6  
- nondisplaced acute anterior rib fractures on the left at 3-6  
- nondisplaced sternal body fracture with overlying soft tissue stranding

1/2: OR today with Dr. Gottlitch for ORIF of left tibial plateau.  
1/3 : ortho complete , need 30 days DVT prophylaxis upon discharge

PROPHY:  
- Lovenox

DISPO:  
- admit to trauma floor  
- PT/ OT - roller walker. DC home

### Med Rec

#### **Med Rec**

##### **Discharge meds:**

##### **Continue taking these medications:**

Med List Information (z-Med List Information) 1 EACH EACH  
1 EACH MISCELLANEOUS .CANCEL AT DISCHARGE

##### **Start taking the following new medications:**

traMADol (ULTRAM) 50 MG TAB

50 MILLIGRAM ORAL (by mouth) EVERY 6 HOURS AS NEEDED as needed for moderate pain

Qty = 30  
Refills = 1

Patient: MORALES, EVARISTO  
 Unit#:D000992141  
 Date: 01/03/23  
 Acct#:D00074270852

oxyCODONE (ROXICODONE) 5 MG TAB  
 5 MILLIGRAM ORAL (by mouth) EVERY 6 HOURS AS NEEDED as needed for Severe pain  
 Qty = 20  
 No Refills

APIXABAN (ELIQUIS) 2.5 MG TAB  
 2.5 MILLIGRAM ORAL (by mouth) TWICE DAILY  
 Qty = 60  
 No Refills

**Objective**  
**VS/I&O**

Last Documented:

	Result	Date Time
Pulse Ox	96	01/03 0739
B/P	132/81	01/03 0739
B/P Mean	98.2	01/03 0739
Temp	98.1	01/03 0739
Pulse	89	01/03 0739
Resp	14	01/03 0739
O2 Delivery	Room air	01/02 1820
O2 Flow Rate	2	01/02 1800

24 hour I&O ending at 0700:

	01/03 0700	01/02 1900
Intake Total		
Output Total	800	
Balance	-800	
Output, Urine	800	
Patient Weight		89 kg
Weight Measurement Method		Standing scale

**PATIENT WEIGHT:**

Weight (lb): 196

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 01/03/23  
 Acct#: D00074270852

Weight (oz): 3.38  
 Weight (kg): 89.000

**General appearance:** alert, awake, oriented  
**Neck:** full range of motion, non-tender, no masses or swelling  
**Respiratory:** aerating well, symmetric expansion, no distress  
**GI:** non-tender, soft, no distention  
**Extremities:** decreased range of motion (LLE), normal motor function, normal sensory  
**Musculoskeletal:** full range of motion, normal inspection, painless range of motion  
**Neuro/CNS:** alert, normal speech, oriented X 3  
**Glasgow Coma Score:**  
 Copyright Sir Graham Teasdale Copyright Sir Graham Teasdale  
**Eye opening:** (4) Spontaneous  
**Verbal response:** (5) Oriented  
**Best motor response:** (6) Obeys commands  
**GCS Score:** 15  
**Psychiatry:** normal affect, normal judgment/insight, normal mood

**Results**  
**Findings/Data:**  
 Laboratory Tests:

	01/03 0318
<b>Chemistry</b>	
Sodium (136 - 145 mEq/L)	135 L
Corrected Sodium (mEq/L)	136
Potassium (3.6 - 5.1 mEq/L)	3.9
Chloride (101 - 111 mEq/L)	102
Carbon Dioxide (22 - 32 mEq/L)	26
Anion Gap (3 - 13)	7
BUN (6 - 20 mg/dL)	10
Creatinine (0.7 - 1.2 mg/dL)	0.7
Est GFR (Cockcroft-G) (> 60 mL/min)	112.0
Est GFR (CKD-EPI) (> = 60)	108
Glucose (70 - 100 mg/dL)	140 H
Calcium (8.9 - 10.3 mg/dL)	8.4 L
Phosphorus (2.4 - 4.7 mg/dL)	2.9
Magnesium (1.8 - 2.5 mg/dL)	2.1
<b>Hematology</b>	
WBC (4.0 - 10.9 k/mm <sup>3</sup> )	12.1 H
RBC (4.10 - 5.60 M/mm <sup>3</sup> )	4.01 L
Hgb (13.5 - 16.5 g/dL)	12.4 L

Patient: MORALES, EVARISTO  
 Unit#: D000992141  
 Date: 01/03/23  
 Acct#: D00074270852

Hct (39.0 - 50.0 %)	36.9 L
MCV (80.0 - 95.0 fL)	92.0
MCH (26.0 - 32.0 pg)	30.9
MCHC (32.0 - 35.0 g/dl)	33.6
RDW Std Deviation (35 - 46 fL)	44.3
RDW Coeff of Var (11.5 - 15.0 %)	13.0
Plt Count (135 - 350 K/mm3)	203
MPV (9.0 - 12.4 fL)	10.0
Immature Gran % (Auto) (0.1 - 0.3 %)	0.4 H
Neut % (Auto) (40.1 - 76.4 %)	88.8 H
Lymph % (Auto) (14.8 - 45.8 %)	6.0 L
Mono % (Auto) (4.0 - 12.7 %)	4.7
Eos % (Auto) (0.0 - 5.4 %)	0.0
Baso % (Auto) (0.0 - 1.2 %)	0.1
Neut # (Auto) (1.3 - 8.4 K/mm3)	10.7 H
Lymph # (Auto) (0.5 - 5.0 K/mm3)	0.7
Mono # (Auto) (0.1 - 1.3 K/mm3)	0.6
Eos # (Auto) (0.0 - 0.6 K/mm3)	0.0
Baso # (Auto) (0.0 - 0.1 K/mm3)	0.0

**Treatments & Procedures**

**Lab:**

Chemistry last 24 hrs:

	01/03 0318
Chemistry	
Sodium (136 - 145 mEq/L)	135 L
Potassium (3.6 - 5.1 mEq/L)	3.9
Chloride (101 - 111 mEq/L)	102
BUN (6 - 20 mg/dL)	10
Creatinine (0.7 - 1.2 mg/dL)	0.7
Glucose (70 - 100 mg/dL)	140 H

Hematology last 24 hrs:

	01/03 0318
Hematology	
WBC (4.0 - 10.9 k/mm3)	12.1 H
Hgb (13.5 - 16.5 g/dL)	12.4 L
Hct (39.0 - 50.0 %)	36.9 L

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

Plt Count (135 - 350 K/mm3)	203
Neut % (Auto) (40.1 - 76.4 %)	88.8 H

**Imaging:**

Recent Impressions:

**RADIOLOGY - Portable Chest 12/31 1355**

\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1400

**IMPRESSION:**

Hypoventilatory changes. No definite acute intrathoracic process visualized.

Impression By: PHY.BJM1 - Benjamin J. Mullenbach, MD

**COMPUTERIZED TOMOGRAPHY - CT Lumbar Spine No Chg 12/31 1400**

\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

**IMPRESSION:**

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

**DOSAGE DATA:**

Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.

1 injection(s) performed.

Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Thorax With Contrast 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Thoracic Spine No Chg 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

Patient: MORALES, EVARISTO  
Unit#:D000992141  
Date: 01/03/23  
Acct#:D00074270852

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
COMPUTERIZED TOMOGRAPHY - CT ABDPEL IV Cont Only 12/31 1400  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1430

IMPRESSION:

1. Nondisplaced acute anterior rib fractures on the right at 5 and 6 and on the left from 3-6.
2. Nondisplaced sternal body fracture with overlying soft tissue stranding.
3. No acute osseous abnormality in the thoracic or lumbar spine.
4. No acute intrathoracic or abdominal post-traumatic abnormality.

DOSAGE DATA:  
Administered 100.0 ml of 370.00 mg/ml ISOVUE

Delivered 40.0 ml of saline.  
1 injection(s) performed.  
Injection Event (Yes or No): No.

Patient: MORALES, EVARISTO  
Unit#: D000992141  
Date: 01/03/23  
Acct#: D00074270852

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Cervical Spine W/O Contrst 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1422

**IMPRESSION:**  
No evidence of acute fracture or dislocation.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Head Without Contrast 12/31 1400**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1421

**IMPRESSION:**  
No evidence of acute intracranial hemorrhage, infarct, mass or mass effect.

CT scans at this facility use dose modulation, iterative reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Knee Complete (3 Views) Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1512

**IMPRESSION:**  
Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the tibial plateau and large joint lipohearthrosis.

Patient: MORALES, EVARISTO  
Unit#:D000992141  
Date: 01/03/23  
Acct#:D00074270852

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Femur (2 Views) Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1511

**IMPRESSION:**

1. No femur fracture.
2. Comminuted fracture through the proximal tibia again noted with lipohemarthrosis.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**RADIOLOGY - Lower Leg Left 12/31 1425**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1510

**IMPRESSION:**

Comminuted fracture through the proximal tibial metaphysis with fracture lines extending to the lateral tibial plateau with large joint lipohemarthrosis.

Impression By: PHY.DUNMA - MATTHEW ALAN DUNN, M.D.  
**COMPUTERIZED TOMOGRAPHY - CT Low Extremity W/O Cont Lt 12/31 1540**  
\*\*\* Report Impression - Status: SIGNED Entered: 12/31/2022 1615

**IMPRESSION:**

Heavily comminuted fracture of the proximal aspect of the tibia with involvement of the medial and lateral tibial plateaus.

CT scans at this facility use dose modulation, iterative

Patient: MORALES, EVARISTO  
Unit#:D000992141  
Date: 01/03/23  
Acct#:D00074270852

reconstruction, and/or weight based dosing when appropriate to reduce radiation dose to as low as reasonably achievable.

Impression By: PHY.MAHBR - Brian H Mahon, MD

### Discharge Instructions

PCP

PCP:

PCP: No Primary or Family Physician

### Discharge Instructions

**Additional Discharge Routines:** Consultant Follow-Up

(**Diet:** Resume Home Diet/Feeds

(**Activity:** As Tolerated, Do not Submerge Incision, Light Duty, non weight bearing left lower extremity, keep brace on all the time

(**Wound/dressing care:** Do not submerge incision, Keep cast clean and dry, Keep wound clean and dry

(**Equipment/supplies:** Rolling walker

**Prescriptions:** on chart

**Rx drug database reviewed:** yes

**Discharge management:** greater than 30 mins

**Time spent:**

Time spent on patient care (minutes): 45

### Follow-up Appointments

PCP follow up:

PCP:

No Primary or Family Physician

**Consulting provider 1:**

**Provider 1:**

Gottlich, Malcolm D MD

**Consult follow up timeframe:** In 2-3 weeks

### Quality: Discharge

**Advanced Care Plan 65 or Older**

**Discussed with:** patient

Patient: MORALES, EVARISTO  
Unit#:D000992141  
Date: 01/03/23  
Acct#:D00074270852

**RHODES, STANCIE C 01/10/23 0810:**

**ATTESTATION**

**ATTESTATION**

I have personally interviewed and examined the patient. All charts, labs, and imaging studies were reviewed. I agree with the Resident's findings, exam, and plan.

Patient is stable for discharge home. I spent 35 minutes in the coordination of discharge plan with Nursing, Therapy, Case Management, all involved subspecialties, the patient, and patient's caregivers.

Electronically Signed by Hussein, Helweh MBBS R1 on 01/03/23 at 1558  
Electronically Signed by Rhodes, Stancie C MD on 01/10/23 at 0950

RPT #: 0103-0533  
\*\*\*END OF REPORT\*\*\*

Page 14 of 14

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years

Preston F. McDaniel

Telephone (803) 771-7211

Daniel E. Peagler

Facsimile (803) 252-0709

May 31, 2024

**VIA EMAIL: [sradcliff@wcc.sc.gov](mailto:sradcliff@wcc.sc.gov)**  
Commissioner T. Scott Beck  
SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, SC 29202

**RE: Evaristo Verdugo Morales v. Insulation by  
Cohen, LLC  
WCC File No. 1921668**

Dear Commissioner Beck,

I am sending a copy of this to Ms. Gruber, but per your Order that Mr. Morales is entitled to further medical care with Dr. Stofko. As we previously advised Ms. Gruber and her client and as is in the Record, Mr. Morales wants that additional medical care. It is my understanding from Dr. Stofko's deposition, he concurs in the opinions of his PA's and that those represent his opinions and that they want to provide Mr. Morales with physical therapy, and then progress to injections and then if those don't work to then consider screw removal. Since this is part of your Order as to his entitlement to future medical care, I hope we can go ahead and get that provided.

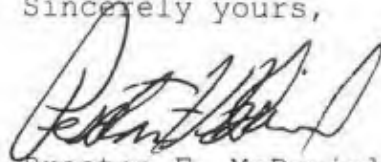
Next, just FYI as I won't be responding a lot after this, as I have a heart catheterization on Monday and already know that I need an aortic valve replacement. The purpose of the catheterization on Monday is to do measurements and to make sure there is nothing else going on, which they do not think there is. If it is only the valve, they can do that intravenously and I plan to have it done the latter part of June, pending their schedule. Everybody tells me how great I am going to feel afterwards, and I am really looking forward to having energy, being able to work out and do my walks in the morning with my wife and our dogs.

Commissioner T. Scott Beck  
May 31, 2024  
Page 2

I'm sending a copy of this to Ms. Gruber and simply would ask her to confirm whether or not they will go ahead and agree to provide the medical care.

At this point, whatever happens with the Order happens.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel". The signature is fluid and cursive, with a large initial "P" and "M".

Preston F. McDaniel  
Attorney at Law

PFM/rmt

cc: Don C. Gibson, Esquire (via email)  
Debra Kadoves (via email)  
Courtney Gruber (via email)



# CLEMENT RIVERS, LLP

ATTORNEYS AT LAW

E. Courtney Gruber  
Partner

Direct Dial: (843) 720-5410  
Direct Fax: (843) 579-1304  
E-mail: cgruber@ycrlaw.com

June 25, 2024

Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

7/4

Re: Evaristo Verdugo Morales v. Insulation By Cohen's, LLC  
WCC File Number: 1921668  
Claim Number: WCV001062422  
Date/Accident: 10/10/2019  
YCR File: 10857-20200118

Dear Amy:

Enclosed please find the original and three copies of a Form 30 Request for Commission Review on behalf of the Defendants, along with the \$150.00 filing fee. Pursuant to the Commission's request, also attached are three copies of the Order from which this appeal arises.

I am, by copy of this letter, notifying the claimant's attorneys of this filing and providing them with a copy of same.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

E. Courtney Gruber

5148 OF 100

SCWCC

JUN 27 2024

JUDICIAL

ECG/dff

Enclosures

cc: Don C. Gibson, Esquire, Gibson Law Firm, LLC  
Preston F. McDaniel, Esquire, McDaniel Law Firm  
Janey Wilson, Builders Mutual Insurance Company  
Ethan Gaskins, Insulation By Cohen's, LLC

South Carolina Workers' Compensation Commission  
1333 Main Street, Suite 500  
P.O. BOX 1715  
Columbia, SC 29202-1715  
803-737-5700 [www.wcc.sc.gov](http://www.wcc.sc.gov)



WCC File #: 1921668  
Carrier File #: WCV001062422  
Carrier Code #: \_\_\_\_\_  
Employer FEIN #: \_\_\_\_\_

Claimant's Name: Evaristo Verdugo Morales SSN: - - - Employer's Name: Insulation By Cohen, LLC  
Address: REDACTED Address: 1415 Old Highway 52  
City: REDACTED City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - - - - - Work Phone: ( ) - - - - - Insurance Carrier: Builders Premier Insurance Company  
Preparer's Name: E. Courtney Gruber, Esq. Law Firm: Clement Rivers, LLP Preparer's Phone #: (843) 720-5410

**REQUEST FOR COMMISSION REVIEW**

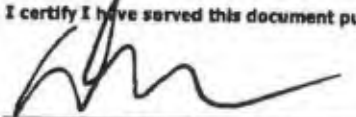
Request for Commission Review by  Claimant  Employer (check one) Date of Injury or Illness: 10/10/2019

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.)

**SEE ATTACHMENT TO FORM 30.**

(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

  
Preparer's Signature

Attorney for Defendants  
Title gruber@vcrlaw.com  
Email   
Check this box if you are not represented by an attorney

6/25/2024  
Date

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

**ATTACHMENT TO FORM 30  
WCC FILE 1921668**

**GROUND FOR APPEAL:**

1. The Single Commissioner erred in finding as a fact (paragraph 31) that the Defendants are entitled to credit for overpayment of temporary total compensation only since 7/19/2023 in that the finding is not supported by the greater weight of evidence and statutory and case law.
2. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Defendants are entitled to a credit for overpayment of temporary total compensation since 7/19/2023 in that Finding of Fact No. 31(b) contains incorrect factual information and cannot be a legitimate basis for Finding of Fact No. 31. Contrary to Finding of Fact No. 31(b), Defendants filed their Form 21 on 2/5/2021, not 2/5/2023, and the hearing was held on 4/26/2021, not 4/26/2022.
3. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the credit for overpayment of temporary total compensation should be limited to payments made since 7/19/2023 based upon the finding that the delays in getting a final Order for this matter are not attributable to the Claimant and, therefore, it would be fundamentally unfair to give Defendants credit back to the date of MMI. The error in this matter is that the delays in getting the final Order for this matter are not attributable to either party and that Defendants have paid to the Claimant a total of \$182,875.16 in indemnity since the date of MMI (\$3,578.28 TPD from 1/9/2020 to 4/1/2020; \$845.74 per week from 4/2/2020 to 2/23/2022; \$57,127.36 lump sum following remand for mediation paid 5/18/2023; and \$845.74 weekly until 4/25/2024 when Order instructions were received, for a total of 216 weeks).
4. The Single Commissioner erred in finding as a fact and concluding as a matter of law that Defendants are only entitled to a credit for overpayment of benefits since 7/19/2023 in spite of the fact that MMI was reached on 1/9/2020 in that such a finding is an abuse of discretion and not supported by current case law.
5. The Single Commissioner erred in Finding of Fact 31 in that the finding, to wit: that awarding credit back to the date of MMI would be fundamentally unfair to the Claimant, does not take into account the fact that he has been paid a total of \$182,875.16 since 1/9/2020, the date of MMI, and is erroneously based upon a presumption that failure to pay his award in lump sum rather than weekly installments is in itself "fundamentally unfair." Further, the findings do not take into account the fact that the Claimant did receive a lump-sum payment of \$57,127.36 following Appellate Panel remand for mediation.
6. The Single Commissioner erred in finding as a fact that the Defendants were only entitled to credit for weekly payments after 7/19/2023 in that the finding does not take into consideration the fact that the Claimant was gainfully employed from at least May 2022 to January 2023.

7. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Claimant had sustained 45% permanent partial disability to the back, the error being that the only credible medical evidence in the record is that the Claimant had sustained 5% permanent partial impairment to his back and had no physical limitations resulting from this injury.



---

E. Courtney Gruber  
Attorney for the Defendants

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,  
Employee,

-versus-

**CERTIFICATE OF SERVICE**

Insulation By Cohen's, LLC,  
Employer,

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on June 25, 2024, I served the Form 30 on:

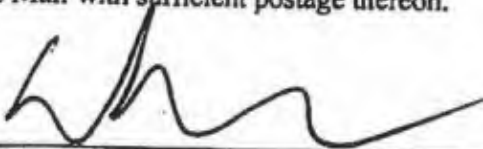
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715 ✓

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669 ✓

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201 ✓

**[ X ] VIA FIRST-CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 26, 2024

**VIA EMAIL AND US MAIL**

Amy Bracy, Judicial Director  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's, LLC  
& Spray Foam By Cohen's LLC  
WCC File No. 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our **MOTION FOR RECONSIDERATION PURSUANT TO SC CODE §1-23-380 AND REG. 67-215(B)(2)** in the above-referenced matter, along with the required \$50.00 filing fee, as well as a self-addressed stamped envelope for returning a clocked-in copy to me. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,

  
Preston F. McDaniel

PFM/kth  
Enclosures

cc: Don C. Gibson, Esquire (via email and US Mail)  
E. Courtney Gruber, Esquire (via email and US Mail)



plates and screws in the Claimant's back. In your Notes for Decision, you order the Defendants to pay for the treatment but it only states in reference to the "T-12" fracture, and the same is true in the Decision and Order in that you ordered that he is entitled to ongoing treatment for his injury, "to his T-12 vertebrae as recommended by the authorized treating physician, Dr. Douglas Stofko". You will recall from the evidence that Dr. Stofko confirmed the recommendations of his PA/Nurse Practitioners' that Mr. Morales was in need of treatment due to the pain over the screw sites and over the site of the fusion with the recommendation of physical therapy to be followed by injections if necessary, to be followed by possible hardware removal to address the pain over the fusion site and specifically over the screw sites. We simply ask for reconsideration and an Addendum to the Order to provide that the Defendants are responsible for that causally related medical care. You clearly in your Notes are contemplating the provision of that ongoing medical care in reference to the T-12 but if it is not clearly set out that that includes the plates, rods, fusion and the involved vertebrae T-11-L1, the Defendants will refuse to provide any care other than that directly related to the T-12 vertebrae.

2. Under "Evidence of the Case", Defense Counsel made specific reference to the Order of Commissioner Taylor which was

vacated on appeal. Therefore, any reference to the Findings in that Order should not be set forth anywhere in your Decision.

3. In reference to the Functional Capacity Evaluation, your Finding was that no weight was given to the Functional Capacity Evaluation because of the statement by the evaluator on the front page. Findings of Fact #7, #8, and #9 go far beyond that Finding and make additional Findings and additional reasons for no consideration of the Functional Capacity Evaluation. Commissioner, most respectfully, you are charged with making the Findings and while I of course disagree with your Findings, I have no problem with your Findings but I would ask for your reconsideration as to Findings #7, #8, and #9 because they are not your Findings and basis for your decision.

4. In reference to Findings of Fact #10 and #11, first I would ask your reconsideration in reference to the vocational evaluation because the vocational expert, Ms. Harriet Fowler, on p. 39 of the APAs thoroughly goes through the entire Functional Capacity Evaluation and notes that it was not considered valid but also that the evaluator found him to give maximum, valid and consistent effort with no exaggeration of pain during the actual Functional Capacity Evaluation. More importantly, on p. 38 she goes through the other physical therapy records that he had had and the determination by that physical therapist at the conclusion of physical therapy that he was only capable of doing sedentary work. Thus, the vocational evaluator notes the

discrepancies and problems with the vocational evaluation and clearly did not give, "heavy reliance on the Functional Capacity Evaluation" but especially the additional Findings made by Ms. Gruber.

Further, I would ask for reconsideration on the basis of law. The Defendants are not entitled to a vocational evaluation. I know of no section nor over the entire course of my practice have I ever had the Defendants be found to be entitled to a vocational evaluation. The Defendants are entitled to medical evaluations under SC Code §42-15-80. Also, specifically under the Act as we all know, the Claimant has the burden of proof. Again, I know of no section of the Code that gives the Defendants a right to a vocational evaluation. As I know you are aware, §42-15-80 deals with medical evaluations and has absolutely nothing, nothing to do with a vocational evaluation. There is no authority for a vocational evaluation under SC Code §42-15-80 and you will find no case law ordering the Claimant to go to a vocational evaluation under that statute or under the Act or criticizing the Claimant or affecting the weight of his evidence based on the failure to attend a vocational evaluation.

5. Commissioner, as to your Finding #9 in your Notes for Decision, I would ask for reconsideration on two bases. First, most respectfully, you went outside of the Record whereas your decisions are supposed to be based on the Record before you. Second, I know of no basis under law to not give credibility to

the testimony and opinions of a doctor because he is a patient's advocate and I know of no objection made in the Record to Dr. Poletti's opinions on that basis or any of the bases set forth in #9. Also, I thought all doctors, like Dr. Poletti, were subject to the Hippocratic Oath.

6. As to your Finding #10 which is #13 in the Order, in reference to Dr. Leonard Forrest, you do not cite what the greater weight of the relevant medical evidence is in the case that outweighs his opinions or that consideration of loss of use of the Claimant's entire back is not the essential issue before you for decision. In fact, Dr. Forrest's opinion is directed at the mid-back. In reference to the back, under SC Code §42-9-30(21), the essential issue before you for decision is after injury the loss of use to the Claimant's back to do work requiring the use of the Claimant's back. There is no bifurcation in the statute and there are cases throughout the Supreme Court and Court of Appeals decisions and opinions over the years where the worker had a significant injury to the back prior to the accident, but where the Commission and our Appellate Courts noted that the question was after the accident, the loss of use of the back. While the insurance industry and those seeking to limit awards wish that the cervical, thoracic, and lumbar segments of the spine were separately rated members, they are not. I would ask for reconsideration on the basis that the essential issue before you for decision was loss of use of

the back subsequent to the injury, the uncontested physical therapist records established that he was only qualified for sedentary work. In the contested Functional Capacity Evaluation the physical therapist found that he gave valid and consistent effort during the actual Functional Capacity Evaluation and limited him to at most to light duty work. Dr. Forrest's first opinion in the first report of July 22, 2020 found at APA p. 18 was that Mr. Morales remains with significant mid-back pain, and his activities are severely limited, "dating directly back to the work injury of 10\10\19 noted above". In fact, his entire report is directed at the mid-back. He goes on to state that that is his opinion to a reasonable degree of medical certainty. Then in his follow-up evaluation of January 20, 2021 he again states that, "Mr. Morales' most significant symptoms continue to be in his mid-back as they were when I evaluated him last July" and then goes on to state that that is his opinion as stated to a reasonable degree of medical certainty. Thus, Finding of Fact #10 and Finding of Fact #13 in the Order are inaccurate as Dr. Forrest clearly states that the major focus of his evaluations was, is, and will be the thoracic spine injury. Again, the essential issue before you for decision was the loss of use of the Claimant's back to do work requiring the use of his back subsequent to injury, and any loss of use of the back related or unrelated to the injury are to be considered as the question of loss of use of the back after the injury, not to the lumbar

spine, thoracic spine or the cervical spine. Dr. Forrest gave an opinion as did Dr. Poletti on the loss of use of the back, not the thoracic spine. Like it or not, Ellison v. Frigidaire Home Products, Inc., 360 S.C. 236, 600 S.E.2d 120 (SC App. 2004); Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007); Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (SC App. 2012).

7. As to #14 I would ask for reconsideration because Dr. Jeffrey Buncher stated an opinion concerning the loss of use of the Claimant's back, and whether or not that loss of use related or unrelated wholly to the injury is not the question. The question is, again, after the injury the loss of use of the Claimant's back to do work requiring the use of the Claimant's back.

8. While Finding of Fact #17 in the Order is basically in accordance with your Finding #12 that the Record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions in the Form 14B, in Finding #17 Ms. Gruber refers to the second deposition of Dr. Stofko. Commissioner, most respectfully you did not allow into the evidence the deposition taken by Ms. Gruber and so I think the deposition should simply be referred to as the deposition of Dr. Stofko.

9. Most respectfully, Commissioner you did not make in your Findings of Fact any reference to the following Findings of Fact in the Order or the issues raised by those Findings of

Fact, including Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, and #28. There is absolutely no reference to any of that testimony or any of those issues in your Notes and there is absolutely no reference to Mr. Morales' depositions testimony. In fact, I thought those were placed into the Record simply if reference was made to those as any discovery deposition or in accordance with proper use of a deposition where the person testifies.

10. In reference to Finding of Fact #30, Commissioner no where in your Notes did you make any such Finding. To the contrary, you actually found that Dr. Stofko no where endorsed the impairment rating in the Form 14B. That Finding of Fact should be stricken as not being reflective of your Findings of Fact and decision.

11. Remaining Finding of Fact #31 is directly in accordance with your Findings.

12. As to the Conclusions of Law, I do not recall either party citing you the US Supreme Court Opinion in Ashe v. Swenson. If I am wrong, please forgive me.

13. In reference to Conclusion of Law #4, I simply would request as noted above that that wording be modified to reflect that the ongoing treatment for his injury is not limited to his T-12 vertebrae but includes the fusion from the T11 through the L1 and required hardware, plates and screws. I am sure you would agree that we are simply wanting the medical care related to the

actual injury and the medical care provided for that injury which included the fusion and also I believe you will agree with me that should he develop problems at the vertebrae above or below the fusion site and if the doctor states that that is causally related to the fusion, Mr. Morales would be entitled to that medical care.

14. As to the actual Order, I believe the first paragraph of the Order is contrary to law. I am acutely aware that it is the Commission's position that the decision of a Commissioner is not final until a decision is entered by the Full Commission, assuming that the Order is appealed. Thus, I would request that the first part of the Order be stricken as not being in accordance with law. The Defendants have to keep paying the Claimant at least until this Order comes out and I believe it is a reasonable position particularly under the current Commission's position that the Order, if appealed, is not final until the Full Commission rules that the Defendants cannot stop payment until the Order of the Commission is final. I am acutely aware that the Defendants regularly stop payment after the Hearing Commissioner's Order is filed, but I know of no case law on that point that if appealed allows them to stop payment prior to the Full Commission decision.

As to the third part of the Order that It Is Further Ordered about the ongoing treatment of T12 vertebrae, again I simply request that the ongoing medical care from the authorized

treating physician, Dr. Douglas Stofko, be in reference to the T12 vertebrae fracture and the fusion that was necessary to repair it, which was from the T11 through the L1 vertebrae requiring plates and screws, that is to say hardware. I simply want to avoid any further litigation in reference to the medical care that you have found Mr. Morales to be entitled to.

Due to the foregoing reasons, the Claimant would request reconsideration of the Order issued on June 21, 2024.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

June 26, 2024

CERTIFICATE OF SERVICE

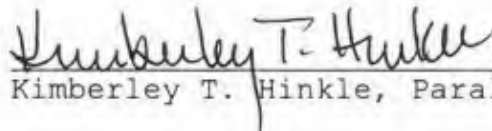
WCC File No. 1921668

I hereby certify that I have on this day served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

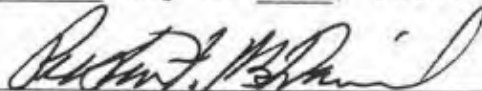
TO: VIA EMAIL - cgruber@ycrlaw.com  
AND US MAIL  
E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: MOTION FOR RECONSIDERATION PURSUANT TO SC  
CODE §1-23-380 AND REG. 67-215(B) (2)

DATE OF MAILING: June 26, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
26<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/25/28



**CLEMENT RIVERS, LLP**  
ATTORNEYS AT LAW

**E. Courtney Gruber**  
Partner

Direct Dial: (843) 730-5410  
Direct Fax: (843) 579-1304  
E-mail: [egruber@ycrlaw.com](mailto:egruber@ycrlaw.com)

June 28, 2024

**Amy A. Bracy, Judicial Director**  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

Re: **Evaristo Verdugo Morales v. Insulation By Cohen's & Sprayfoam by Cohen's, LLC**  
WCC File Number: **1921668**  
Claim Number: **WCV001062422**  
Date/Accident: **10/10/2019**  
YCR File: **10857-20200118**

Dear Ms. Bracy:

Enclosed please find the original and a copy of Defendants' Return to Claimant's Motion for Reconsideration. Please ensure this document is properly filed, returning a copy to me via e-mail. By copy of this letter, I am providing all parties of interest with the Return.

Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely,

CLEMENT RIVERS, LLP



E. Courtney Gruber

ECG/dlf

Enclosure

cc: **Don C. Gibson, Esquire, Gibson Law Firm, LLC**  
**Preston F. McDaniel, Esquire, McDaniel Law Firm**  
**Janey Wilson, Builders Mutual Insurance Company**  
**Ethan Gaskins, Insulation By Cohen's & Sprayfoam by Cohen's, LLC**

25 CALHOUN STREET, SUITE 400, P.O. Box 993, CHARLESTON, SC 29402 • (843) 577-4000 • [www.ycrlaw.com](http://www.ycrlaw.com)

Charleston • Columbia • Greenville

**ROA 720**



BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
  ) Claimant, )  
  ) )  
  ) vs. )  
  ) )  
Insulation By Cohen's, LLC, )  
  ) )  
  ) Employer, )  
  ) )  
Builders Premier Insurance Company, )  
  ) Carrier/ )  
  ) Defendants. )

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 28, 2024, I served the Defendants' Return to Claimant's Motion for Reconsideration Pursuant to SC Code § 1-23-380 and Reg. 67-215(b)(2) on:

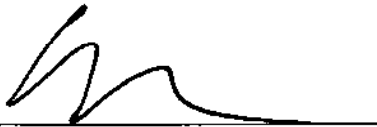
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, SC 29202-1715

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

**VIA FIRST-CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber



Claimant's Name: Evaristo Verdugo Morales SSN: xxx - xx - xxx Employer's Name: Insulation by Cohen's & Spray Foam by Cohen's, LLC  
Address: REDACTED Address: 1415 Old Highway 52  
City: \_\_\_\_\_ City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - \_\_\_\_\_ Work Phone: ( ) - \_\_\_\_\_ Insurance Carrier: Builders Premier Insurance Co.  
Preparer's Name: Preston F. McDaniel, Esquire Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771-7211

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  Claimant  Employer (check one) Date of Injury or Illness: 10/10/2019

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).

SEE ATTACHMENT.

Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form. I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

  
Preparer's Signature

Attorney for the Claimant \_\_\_\_\_  
Title

preston@pfmcdlaw.com  
Email

June 28, 2024  
Date

Check this box if you are not represented by an attorney

**SCWCC**  
**JUL 03 2024**  
**JUDICIAL**

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-05 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Evaristo Verdugo Morales v. Insulation by Cohen's & Spray  
Foam by Cohen's LLC

WCC File No. 1921668

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Claimant requests review for all the reasons as set forth in the Motion for Reconsideration that were filed with the Commission electronically on June 26, 2024, attached hereto and incorporation herein by reference. The Decision of the Hearing Commissioner should be reversed as a matter of law and in fact based on the errors as set forth in the Motion.

3. That wherein the Claimant made a request for an Award for total and permanent disability based on a total loss of earning capacity under SC Code §42-9-10(A), the Hearing Commissioner erred as a matter of law by failing to make one single Finding of Fact or Conclusion of Law or decision on the Claimant's entitlement to an Award for total and permanent disability for a total loss of earning capacity as defined in the Act. The Claimant's burden is by a preponderance of the evidence, which wherein if the scales and evidence tip ever so slightly in favor of the injured worker, the Award must be made. Quoting from Broughton v. SC Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951):

"Claimant who asserts the right to compensation carries the burden of establishing the necessary facts to entitle him to such compensation. The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and prove a basis from which they reasonable may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures."

4. The Hearing Commissioner erred by not awarding the Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back. Mr. Morales testified that in his opinion he had lost 80% of the functional use of his back to do work requiring the use of his back. There is no Finding of Fact on that testimony or challenging that opinion.

Further, while the Commissioner gave no weight to the testimony of Dr. Leonard Forrest due to the contested Functional Capacity Evaluation, Dr. Forrest's impairment evaluation was based on his evaluation and was made under the AMA Guides. Dr. Forrest assigned a regional impairment to the thoracic spine injury of greater than 100% to the thoracic spine and 22% to the whole person. Dr. Steven Poletti whose opinion was not given any weight because he is a "patient's advocate", in addition Dr. Poletti also based on his evaluation assigned a 28% whole person impairment which converted to over 100% impairment to the thoracic spine as a Regional impairment. The treating physical therapist stated at the end of treatment that the Claimant could return to no more than "sedentary" work. The physical therapist who conducted the contested Functional Capacity Evaluation based on the first summary page found the results to be valid based on the valid and consistent effort he gave during the evaluation and limited him to light duty work. Thus, under the decisions of the SC Supreme Court and Court of Appeals, the Commissioner should have awarded the Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back based on the medical testimony, testimony of the Claimant, and other evidence in the Record other than the contested Functional Capacity Evaluation.

5. That the Hearing Commissioner erred by failing to set out the evidence upon which he relied in arriving at his disability award of 45% to the back.

6. That the Hearing Commissioner erred by not addressing the overall loss of use of the Claimant's back regardless of whether or not the upper or lower back were compensable under the SC Supreme Court and Court of Appeals decisions. This Commission cannot ignore or change the law and is not only duty bound to a liberal construction of the Act and to resolve every inference and ambiguity and presumption in favor of benefits to the injured worker, but the Commission is duty bound to decide cases under a preponderance of the evidence and view the evidence in the light most favorable to the injured worker. The preponderance of the evidence standard dictates that benefits should be awarded where if the scales of justice tip ever so

slightly in favor of benefits to the injured worker, benefits are to be awarded.

7. That the Hearing Commissioner erred as a matter of law by failing to make Conclusions of Law or even cite Conclusions of Law in reference to SC Code §42-9-10(A) and failing to note the SC Supreme Court and Court of Appeals decisions on total and permanent disability for a loss of earning capacity including by not following the directions to this Commission under SC Code §42-9-190. That section requires that where a Claimant claims that he is disabled and the employer and its insurance carrier do not offer or procure suitable work within his residual capacity pursuant to their claim that he is not disabled and the worker establishes a prima facie case that he is totally disabled as defined in the Act under SC Code §42-1-120 and §42-9-10(A) and thus makes a prima facie case entitled him to an award, the Defendants must put up evidence to the contrary of, which there is none in this case.

8. That the Hearing Commissioner erred as a matter of law by failing to apply the preponderance of the evidence standard to the evidence in this matter.

9. That the Hearing Commissioner erred as a matter of law by going outside of the Record before him in making his decision and specifically including citing case law that was not cited to the Commissioner by either party and making such Findings of Fact as Finding #12 wherein he states and gives no weight to the opinion of Dr. Poletti based on information outside of the Record. That very Finding is arbitrary and capricious and constitutes an abuse of discretion and requires a de novo hearing.

10. That having found that Dr. Douglas Stofko did not endorse the Form 14B and thus the impairment or anything else on the Form 14B, by making Finding of Fact #30. The Commissioner nowhere, and the Claimant would reiterate nowhere, makes in his Notes for Decision makes a finding that the greater weight of the evidence indicates that the Claimant sustained a 5% impairment to his back. This is simply as the defense lawyer advised the Commission, which is part of the Record, her attempt to bolster the decision.

11. That the Hearing Commissioner erred in the Order by endorsing and making Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, and #30 where as there is absolutely no mention of any of those Findings of Fact or about that evidence in the Commissioner's Notes for Decision. It is the Commissioner's responsibility to make Findings of Fact upon

which he bases his decision and the defense lawyer admitted that these Findings of Fact are entered by her to augment/bolster the Commissioner's Decision.

12. That the Hearing Commissioner erred as a matter of law in his Notes for Decision Finding #8 and Order Finding of Fact #11 in reference to giving no weight to the vocational evaluation based on due process concerns. Without citing any cases or statutory provisions allowing for such evaluations, the Hearing Commissioner due to the Defendants' inability to obtain expert vocational and neurological evaluations in this claim and in order to, "protect Defendants' due process rights Claimant's vocational evaluation is given no weight." The Defendants have absolutely no right to a vocational evaluation under the Act requiring the Claimant to submit to an evaluation by a neuropsychologist or a vocational expert, which seems to be the Commissioner's problem. The Defendants have every right to take the Claimant's discovery deposition and have a vocational analysis done based on that and other evidence, which they did not do in this case. Therefore the Claimant did not obstruct, even assuming that the Defendants had some kind of due process right by not agreeing to attend such an evaluation, the Commissioner erred in making this decision because it was not violated. The only conceivable violation that could be thought of would be that the Claimant would not submit to an evaluation by their vocational expert, which is not required by law nor allowed for under the Act.

13. That the entire Hearing Commissioner's Order is the subject of bias and prejudice, and is arbitrary and capricious, an abuse of discretion in the consideration of the evidence with a bias towards denying the Claimant an award for total and permanent disability either on the basis of wage loss or having lost 50% or more of the functional use of his back to do work requiring the use of his back. The Commissioner goes as far as to not making one Finding of Fact or Conclusion of Law in reference to an Award for total loss of earning capacity.

14. That the Hearing Commissioner failed in his statutory duty to make detailed Findings of Fact and Conclusions of Law under SC Code §42-9-5; §42-17-40; and §1-23-380.

The above-referenced Exceptions and Requests for Review to the Hearing Commissioner's Order is subject to amendment upon receipt of the Hearing Transcript.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for Claimant

June 28, 2024

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 26, 2024

**VIA EMAIL AND US MAIL**

Amy Bracy, Judicial Director  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's, LLC  
& Spray Foam By Cohen's LLC  
WCC File No. 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our **MOTION FOR RECONSIDERATION PURSUANT TO SC CODE §1-23-380 AND REG. 67-215(B) (2)** in the above-referenced matter, along with the required \$50.00 filing fee, as well as a self-addressed stamped envelope for returning a clocked-in copy to me. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,

  
Preston F. McDaniel

PFM/kth  
Enclosures

cc: Don C. Gibson, Esquire (via email and US Mail)  
E. Courtney Gruber, Esquire (via email and US Mail)



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 1921668

EVARISTO VERDUGO MORALES, )  
 )  
Claimant/Employee, )  
 )  
v. )  
 )  
INSULATION BY COHENS, LLC )  
& SPRAY FOAM BY COHENS, LLC, )  
 )  
as Employer, )  
 )  
BUILDERS PREMIER INSURANCE )  
COMPANY, )  
 )  
as Insurance Carrier, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

**MOTION FOR RECONSIDERATION  
PURSUANT TO SC CODE §1-23-380  
AND REG. 67-215(B) (2)**

TO: SC WORKERS' COMPENSATION COMMISSION AND E. COURTNEY  
GRUBER, ATTORNEY AT LAW, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to SC Code §1-23-380 and Commission Reg. 67-215(B)(2), the Claimant hereby moves for reconsideration of the Decision and Order filed on June 21, 2024, as to the following:

1. Commissioner, we request reconsideration as to your Findings that Mr. Morales is in entitled to the medical care as recommended by the authorized treating physician Dr. Stofko simply to make it perfectly clear that the medical care to be provided is in reference to the T-12 fracture and the resulting treatment needed to treat the T-12 fracture which includes the fusion from the T-11 through the L1 vertebrae and involving the

plates and screws in the Claimant's back. In your Notes for Decision, you order the Defendants to pay for the treatment but it only states in reference to the "T-12" fracture, and the same is true in the Decision and Order in that you ordered that he is entitled to ongoing treatment for his injury, "to his T-12 vertebrae as recommended by the authorized treating physician, Dr. Douglas Stofko". You will recall from the evidence that Dr. Stofko confirmed the recommendations of his PA/Nurse Practitioners' that Mr. Morales was in need of treatment due to the pain over the screw sites and over the site of the fusion with the recommendation of physical therapy to be followed by injections if necessary, to be followed by possible hardware removal to address the pain over the fusion site and specifically over the screw sites. We simply ask for reconsideration and an Addendum to the Order to provide that the Defendants are responsible for that causally related medical care. You clearly in your Notes are contemplating the provision of that ongoing medical care in reference to the T-12 but if it is not clearly set out that that includes the plates, rods, fusion and the involved vertebrae T-11-L1, the Defendants will refuse to provide any care other than that directly related to the T-12 vertebrae.

2. Under "Evidence of the Case", Defense Counsel made specific reference to the Order of Commissioner Taylor which was

vacated on appeal. Therefore, any reference to the Findings in that Order should not be set forth anywhere in your Decision.

3. In reference to the Functional Capacity Evaluation, your Finding was that no weight was given to the Functional Capacity Evaluation because of the statement by the evaluator on the front page. Findings of Fact #7, #8, and #9 go far beyond that Finding and make additional Findings and additional reasons for no consideration of the Functional Capacity Evaluation. Commissioner, most respectfully, you are charged with making the Findings and while I of course disagree with your Findings, I have no problem with your Findings but I would ask for your reconsideration as to Findings #7, #8, and #9 because they are not your Findings and basis for your decision.

4. In reference to Findings of Fact #10 and #11, first I would ask your reconsideration in reference to the vocational evaluation because the vocational expert, Ms. Harriet Fowler, on p. 39 of the APAs thoroughly goes through the entire Functional Capacity Evaluation and notes that it was not considered valid but also that the evaluator found him to give maximum, valid and consistent effort with no exaggeration of pain during the actual Functional Capacity Evaluation. More importantly, on p. 38 she goes through the other physical therapy records that he had had and the determination by that physical therapist at the conclusion of physical therapy that he was only capable of doing sedentary work. Thus, the vocational evaluator notes the

discrepancies and problems with the vocational evaluation and clearly did not give, "heavy reliance on the Functional Capacity Evaluation" but especially the additional Findings made by Ms. Gruber.

Further, I would ask for reconsideration on the basis of law. The Defendants are not entitled to a vocational evaluation. I know of no section nor over the entire course of my practice have I ever had the Defendants be found to be entitled to a vocational evaluation. The Defendants are entitled to medical evaluations under SC Code §42-15-80. Also, specifically under the Act as we all know, the Claimant has the burden of proof. Again, I know of no section of the Code that gives the Defendants a right to a vocational evaluation. As I know you are aware, §42-15-80 deals with medical evaluations and has absolutely nothing, nothing to do with a vocational evaluation. There is no authority for a vocational evaluation under SC Code §42-15-80 and you will find no case law ordering the Claimant to go to a vocational evaluation under that statute or under the Act or criticizing the Claimant or affecting the weight of his evidence based on the failure to attend a vocational evaluation.

5. Commissioner, as to your Finding #9 in your Notes for Decision, I would ask for reconsideration on two bases. First, most respectfully, you went outside of the Record whereas your decisions are supposed to be based on the Record before you. Second, I know of no basis under law to not give credibility to

the testimony and opinions of a doctor because he is a patient's advocate and I know of no objection made in the Record to Dr. Poletti's opinions on that basis or any of the bases set forth in #9. Also, I thought all doctors, like Dr. Poletti, were subject to the Hippocratic Oath.

6. As to your Finding #10 which is #13 in the Order, in reference to Dr. Leonard Forrest, you do not cite what the greater weight of the relevant medical evidence is in the case that outweighs his opinions or that consideration of loss of use of the Claimant's entire back is not the essential issue before you for decision. In fact, Dr. Forrest's opinion is directed at the mid-back. In reference to the back, under SC Code §42-9-30(21), the essential issue before you for decision is after injury the loss of use to the Claimant's back to do work requiring the use of the Claimant's back. There is no bifurcation in the statute and there are cases throughout the Supreme Court and Court of Appeals decisions and opinions over the years where the worker had a significant injury to the back prior to the accident, but where the Commission and our Appellate Courts noted that the question was after the accident, the loss of use of the back. While the insurance industry and those seeking to limit awards wish that the cervical, thoracic, and lumbar segments of the spine were separately rated members, they are not. I would ask for reconsideration on the basis that the essential issue before you for decision was loss of use of

the back subsequent to the injury, the uncontested physical therapist records established that he was only qualified for sedentary work. In the contested Functional Capacity Evaluation the physical therapist found that he gave valid and consistent effort during the actual Functional Capacity Evaluation and limited him to at most to light duty work. Dr. Forrest's first opinion in the first report of July 22, 2020 found at APA p. 18 was that Mr. Morales remains with significant mid-back pain, and his activities are severely limited, "dating directly back to the work injury of 10\10\19 noted above". In fact, his entire report is directed at the mid-back. He goes on to state that that is his opinion to a reasonable degree of medical certainty. Then in his follow-up evaluation of January 20, 2021 he again states that, "Mr. Morales' most significant symptoms continue to be in his mid-back as they were when I evaluated him last July" and then goes on to state that that is his opinion as stated to a reasonable degree of medical certainty. Thus, Finding of Fact #10 and Finding of Fact #13 in the Order are inaccurate as Dr. Forrest clearly states that the major focus of his evaluations was, is, and will be the thoracic spine injury. Again, the essential issue before you for decision was the loss of use of the Claimant's back to do work requiring the use of his back subsequent to injury, and any loss of use of the back related or unrelated to the injury are to be considered as the question of loss of use of the back after the injury, not to the lumbar

spine, thoracic spine or the cervical spine. Dr. Forrest gave an opinion as did Dr. Poletti on the loss of use of the back, not the thoracic spine. Like it or not, Ellison v. Frigidaire Home Products, Inc., 360 S.C. 236, 600 S.E.2d 120 (SC App. 2004); Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007); Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (SC App. 2012).

7. As to #14 I would ask for reconsideration because Dr. Jeffrey Buncher stated an opinion concerning the loss of use of the Claimant's back, and whether or not that loss of use related or unrelated wholly to the injury is not the question. The question is, again, after the injury the loss of use of the Claimant's back to do work requiring the use of the Claimant's back.

8. While Finding of Fact #17 in the Order is basically in accordance with your Finding #12 that the Record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions in the Form 14B, in Finding #17 Ms. Gruber refers to the second deposition of Dr. Stofko. Commissioner, most respectfully you did not allow into the evidence the deposition taken by Ms. Gruber and so I think the deposition should simply be referred to as the deposition of Dr. Stofko.

9. Most respectfully, Commissioner you did not make in your Findings of Fact any reference to the following Findings of Fact in the Order or the issues raised by those Findings of

Fact, including Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, and #28. There is absolutely no reference to any of that testimony or any of those issues in your Notes and there is absolutely no reference to Mr. Morales' depositions testimony. In fact, I thought those were placed into the Record simply if reference was made to those as any discovery deposition or in accordance with proper use of a deposition where the person testifies.

10. In reference to Finding of Fact #30, Commissioner no where in your Notes did you make any such Finding. To the contrary, you actually found that Dr. Stofko no where endorsed the impairment rating in the Form 14B. That Finding of Fact should be stricken as not being reflective of your Findings of Fact and decision.

11. Remaining Finding of Fact #31 is directly in accordance with your Findings.

12. As to the Conclusions of Law, I do not recall either party citing you the US Supreme Court Opinion in Ashe v. Swenson. If I am wrong, please forgive me.

13. In reference to Conclusion of Law #4, I simply would request as noted above that that wording be modified to reflect that the ongoing treatment for his injury is not limited to his T-12 vertebrae but includes the fusion from the T11 through the L1 and required hardware, plates and screws. I am sure you would agree that we are simply wanting the medical care related to the

actual injury and the medical care provided for that injury which included the fusion and also I believe you will agree with me that should he develop problems at the vertebrae above or below the fusion site and if the doctor states that that is causally related to the fusion, Mr. Morales would be entitled to that medical care.

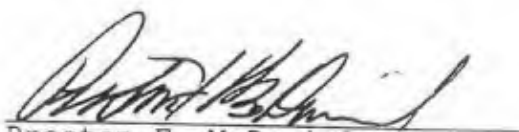
14. As to the actual Order, I believe the first paragraph of the Order is contrary to law. I am acutely aware that it is the Commission's position that the decision of a Commissioner is not final until a decision is entered by the Full Commission, assuming that the Order is appealed. Thus, I would request that the first part of the Order be stricken as not being in accordance with law. The Defendants have to keep paying the Claimant at least until this Order comes out and I believe it is a reasonable position particularly under the current Commission's position that the Order, if appealed, is not final until the Full Commission rules that the Defendants cannot stop payment until the Order of the Commission is final. I am acutely aware that the Defendants regularly stop payment after the Hearing Commissioner's Order is filed, but I know of no case law on that point that if appealed allows them to stop payment prior to the Full Commission decision.

As to the third part of the Order that It Is Further Ordered about the ongoing treatment of T12 vertebrae, again I simply request that the ongoing medical care from the authorized

treating physician, Dr. Douglas Stofko, be in reference to the T12 vertebrae fracture and the fusion that was necessary to repair it, which was from the T11 through the L1 vertebrae requiring plates and screws, that is to say hardware. I simply want to avoid any further litigation in reference to the medical care that you have found Mr. Morales to be entitled to.

Due to the foregoing reasons, the Claimant would request reconsideration of the Order issued on June 21, 2024.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

June 26, 2024

CERTIFICATE OF SERVICE

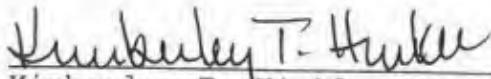
WCC File No. 1921668

I hereby certify that I have on this day served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

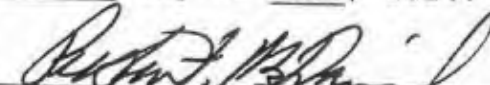
TO: VIA EMAIL - cgruber@ycrlaw.com  
AND US MAIL  
E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: MOTION FOR RECONSIDERATION PURSUANT TO SC  
CODE §1-23-380 AND REG. 67-215(B) (2)

DATE OF MAILING: June 26, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
26<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/25/28

CERTIFICATE OF SERVICE

WCC File No. 1921668

I hereby certify that I have on this day, June 28,  
2024, served a copy of the document described below in the  
matter of Evaristo Verdugo Morales v. Insulation by Cohens,  
LLC & Spray Foam by Cohens, LLC, addressed as follows:

TO: E. Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: FORM 30 - REQUEST FOR COMMISSION REVIEW

DATE OF  
MAILING: June 28, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
28 day of June, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/25/24



**AMENDED**

Claimant's Name: Evaristo Verdugo Morales SSN: xxx - xx - xxxx Employer's Name: Insulation by Cohen's & Spray Foam by Cohen's, LLC  
Address: **REDACTED** Address: 1415 Old Highway 52  
City: \_\_\_\_\_ City: Moncks Corner State: SC Zip: 29461  
Home Phone: ( ) - Work Phone: ( ) - Insurance Carrier: Builders Premier Insurance Co.  
Preparer's Name: Preston F. McDaniel, Esquire Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  Claimant  Employer (check one) Date of Injury or Illness: 10/10/2019

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).

SEE ATTACHMENT.

(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form. I certify I have served this document pursuant to Reg. 67-211. See attached certificate of service.

Preston F. McDaniel  
Preparer's Signature

(KFA)

Attorney for the Claimant  
Title

preston@pfmcdlaw.com  
Email

July 1, 2024  
Date

Check this box if you are not represented by an attorney

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov).

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO AMENDED FORM 30

Evaristo Verdugo Morales v. Insulation by Cohen's & Spray  
Foam by Cohen's LLC

WCC File No. 1921668

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Claimant requests review for all the reasons as set forth in the Motion for Reconsideration that were filed with the Commission electronically on June 26, 2024, attached hereto and incorporation herein by reference. The Decision of the Hearing Commissioner should be reversed as a matter of law and in fact based on the errors as set forth in the Motion.

3. That wherein the Claimant made a request for an Award for total and permanent disability based on a total loss of earning capacity under SC Code §42-9-10(A), the Hearing Commissioner erred as a matter of law by failing to make one single Finding of Fact or Conclusion of Law or decision on the Claimant's entitlement to an Award for total and permanent disability for a total loss of earning capacity as defined in the Act. The Claimant's burden is by a preponderance of the evidence, which wherein if the scales and evidence tip ever so slightly in favor of the injured worker, the Award must be made. Quoting from Broughton v. SC Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951):

"Claimant who asserts the right to compensation carries the burden of establishing the necessary facts to entitle him to such compensation. The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and prove a basis from which they reasonable may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures."

4. The Hearing Commissioner erred by not awarding the Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back. Mr. Morales testified that in his opinion he had lost 80% of the functional use of his back to do work requiring the use of his back. There is no Finding of Fact on that testimony or challenging that opinion.

Further, while the Commissioner gave no weight to the testimony of Dr. Leonard Forrest due to the contested Functional Capacity Evaluation, Dr. Forrest's impairment evaluation was based on his evaluation and was made under the AMA Guides. Dr. Forrest assigned a regional impairment to the thoracic spine injury of greater than 100% to the thoracic spine and 22% to the whole person. Dr. Steven Poletti whose opinion was not given any weight because he is a "patient's advocate", in addition Dr. Poletti also based on his evaluation assigned a 28% whole person impairment which converted to over 100% impairment to the thoracic spine as a Regional impairment. The treating physical therapist stated at the end of treatment that the Claimant could return to no more than "sedentary" work. The physical therapist who conducted the contested Functional Capacity Evaluation based on the first summary page found the results to be valid based on the valid and consistent effort he gave during the evaluation and limited him to light duty work. Thus, under the decisions of the SC Supreme Court and Court of Appeals, the Commissioner should have awarded the Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back based on the medical testimony, testimony of the Claimant, and other evidence in the Record other than the contested Functional Capacity Evaluation.

5. That the Hearing Commissioner erred by failing to set out the evidence upon which he relied in arriving at his disability award of 45% to the back.

6. That the Hearing Commissioner erred by not addressing the overall loss of use of the Claimant's back regardless of whether or not the upper or lower back were compensable under the SC Supreme Court and Court of Appeals decisions. This Commission cannot ignore or change the law and is not only duty bound to a liberal construction of the Act and to resolve every inference and ambiguity and presumption in favor of benefits to the injured worker, but the Commission is duty bound to decide cases under a preponderance of the evidence and view the evidence in the light most favorable to the injured worker. The preponderance of the evidence standard dictates that benefits should be awarded where if the scales of justice tip ever so

slightly in favor of benefits to the injured worker, benefits are to be awarded.

7. That the Hearing Commissioner erred as a matter of law by failing to make Conclusions of Law or even cite Conclusions of Law in reference to SC Code §42-9-10(A) and failing to note the SC Supreme Court and Court of Appeals decisions on total and permanent disability for a loss of earning capacity including by not following the directions to this Commission under SC Code §42-9-190. That section requires that where a Claimant claims that he is disabled and the employer and its insurance carrier do not offer or procure suitable work within his residual capacity pursuant to their claim that he is not disabled and the worker establishes a prima facia case that he is totally disabled as defined in the Act under SC Code §42-1-120 and §42-9-10(A) and thus makes a prima facia case entitled him to an award, the Defendants must put up evidence to the contrary of, which there is none in this case.

8. That the Hearing Commissioner erred as a matter of law by failing to apply the preponderance of the evidence standard to the evidence in this matter.

9. That the Hearing Commissioner erred as a matter of law by going outside of the Record before him in making his decision and specifically including citing case law that was not cited to the Commissioner by either party and making such Findings of Fact as Finding #12 wherein he states and gives no weight to the opinion of Dr. Poletti based on information outside of the Record. That very Finding is arbitrary and capricious and constitutes an abuse of discretion and requires a de novo hearing.

10. That having found that Dr. Douglas Stofko did not endorse the Form 14B and thus the impairment or anything else on the Form 14B, by making Finding of Fact #30. The Commissioner nowhere, and the Claimant would reiterate nowhere, makes in his Notes for Decision makes a finding that the greater weight of the evidence indicates that the Claimant sustained a 5% impairment to his back. This is simply as the defense lawyer advised the Commission, which is part of the Record, her attempt to bolster the decision.

11. That the Hearing Commissioner erred in the Order by endorsing and making Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, and #30 where as there is absolutely no mention of any of those Findings of Fact or about that evidence in the Commissioner's Notes for Decision. It is the Commissioner's responsibility to make Findings of Fact upon

which he bases his decision and the defense lawyer admitted that these Findings of Fact are entered by her to augment/bolster the Commissioner's Decision.

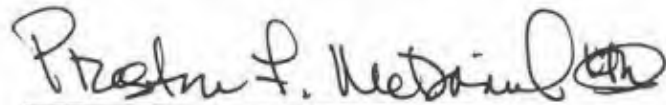
12. That the Hearing Commissioner erred as a matter of law in his Notes for Decision Finding #8 and Order Finding of Fact #11 in reference to giving no weight to the vocational evaluation based on due process concerns. Without citing any cases or statutory provisions allowing for such evaluations, the Hearing Commissioner due to the Defendants' inability to obtain expert vocational and neurological evaluations in this claim and in order to, "protect Defendants' due process rights Claimant's vocational evaluation is given no weight." The Defendants have absolutely no right to a vocational evaluation under the Act requiring the Claimant to submit to an evaluation by a neuropsychologist or a vocational expert, which seems to be the Commissioner's problem. The Defendants have every right to take the Claimant's discovery deposition and have a vocational analysis done based on that and other evidence, which they did not do in this case. Therefore the Claimant did not obstruct, even assuming that the Defendants had some kind of due process right by not agreeing to attend such an evaluation, the Commissioner erred in making this decision because it was not violated. The only conceivable violation that could be thought of would be that the Claimant would not submit to an evaluation by their vocational expert, which is not required by law nor allowed for under the Act.

13. That the entire Hearing Commissioner's Order is the subject of bias and prejudice, and is arbitrary and capricious, an abuse of discretion in the consideration of the evidence with a bias towards denying the Claimant an award for total and permanent disability either on the basis of wage loss or having lost 50% or more of the functional use of his back to do work requiring the use of his back. The Commissioner goes as far as to not making one Finding of Fact or Conclusion of Law in reference to an Award for total loss of earning capacity.

14. That the Hearing Commissioner failed in his statutory duty to make detailed Findings of Fact and Conclusions of Law under SC Code §42-9-5; §42-17-40; and §1-23-380.

The above-referenced Exceptions and Requests for Review to the Hearing Commissioner's Order is subject to amendment upon receipt of the Hearing Transcript.

Respectfully submitted,

A handwritten signature in black ink that reads "Preston F. McDaniel". The signature is written in a cursive style and is positioned above a horizontal line.

Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for Claimant

July 1, 2024

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Daniel E. Peagler

Telephone (803) 771-7211

Facsimile (803) 252-0709

June 26, 2024

**VIA EMAIL AND US MAIL**

Amy Bracy, Judicial Director  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202

**RE: Evaristo Verdugo Morales v. Insulation by Cohen's, LLC  
& Spray Foam By Cohen's LLC  
WCC File No. 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our **MOTION FOR RECONSIDERATION PURSUANT TO SC CODE §1-23-380 AND REG. 67-215(B)(2)** in the above-referenced matter, along with the required \$50.00 filing fee, as well as a self-addressed stamped envelope for returning a clocked-in copy to me. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,

  
Preston F. McDaniel

PFM/kth  
Enclosures

cc: Don C. Gibson, Esquire (via email and US Mail)  
E. Courtney Gruber, Esquire (via email and US Mail)



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 1921668

EVARISTO VERDUGO MORALES, )  
 )  
Claimant/Employee, )  
 )  
v. )  
 )  
INSULATION BY COHENS, LLC )  
& SPRAY FOAM BY COHENS, LLC, )  
 )  
as Employer, )  
 )  
BUILDERS PREMIER INSURANCE )  
COMPANY, )  
 )  
as Insurance Carrier, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

**MOTION FOR RECONSIDERATION  
PURSUANT TO SC CODE §1-23-380  
AND REG. 67-215(B) (2)**

TO: SC WORKERS' COMPENSATION COMMISSION AND E. COURTNEY  
GRUBER, ATTORNEY AT LAW, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to SC Code §1-23-380 and Commission Reg. 67-215(B) (2), the Claimant hereby moves for reconsideration of the Decision and Order filed on June 21, 2024, as to the following:

1. Commissioner, we request reconsideration as to your Findings that Mr. Morales is in entitled to the medical care as recommended by the authorized treating physician Dr. Stofko simply to make it perfectly clear that the medical care to be provided is in reference to the T-12 fracture and the resulting treatment needed to treat the T-12 fracture which includes the fusion from the T-11 through the L1 vertebrae and involving the

plates and screws in the Claimant's back. In your Notes for Decision, you order the Defendants to pay for the treatment but it only states in reference to the "T-12" fracture, and the same is true in the Decision and Order in that you ordered that he is entitled to ongoing treatment for his injury, "to his T-12 vertebrae as recommended by the authorized treating physician, Dr. Douglas Stofko". You will recall from the evidence that Dr. Stofko confirmed the recommendations of his PA/Nurse Practitioners' that Mr. Morales was in need of treatment due to the pain over the screw sites and over the site of the fusion with the recommendation of physical therapy to be followed by injections if necessary, to be followed by possible hardware removal to address the pain over the fusion site and specifically over the screw sites. We simply ask for reconsideration and an Addendum to the Order to provide that the Defendants are responsible for that causally related medical care. You clearly in your Notes are contemplating the provision of that ongoing medical care in reference to the T-12 but if it is not clearly set out that that includes the plates, rods, fusion and the involved vertebrae T-11-L1, the Defendants will refuse to provide any care other than that directly related to the T-12 vertebrae.

2. Under "Evidence of the Case", Defense Counsel made specific reference to the Order of Commissioner Taylor which was

vacated on appeal. Therefore, any reference to the Findings in that Order should not be set forth anywhere in your Decision.

3. In reference to the Functional Capacity Evaluation, your Finding was that no weight was given to the Functional Capacity Evaluation because of the statement by the evaluator on the front page. Findings of Fact #7, #8, and #9 go far beyond that Finding and make additional Findings and additional reasons for no consideration of the Functional Capacity Evaluation. Commissioner, most respectfully, you are charged with making the Findings and while I of course disagree with your Findings, I have no problem with your Findings but I would ask for your reconsideration as to Findings #7, #8, and #9 because they are not your Findings and basis for your decision.

4. In reference to Findings of Fact #10 and #11, first I would ask your reconsideration in reference to the vocational evaluation because the vocational expert, Ms. Harriet Fowler, on p. 39 of the APAs thoroughly goes through the entire Functional Capacity Evaluation and notes that it was not considered valid but also that the evaluator found him to give maximum, valid and consistent effort with no exaggeration of pain during the actual Functional Capacity Evaluation. More importantly, on p. 38 she goes through the other physical therapy records that he had had and the determination by that physical therapist at the conclusion of physical therapy that he was only capable of doing sedentary work. Thus, the vocational evaluator notes the

discrepancies and problems with the vocational evaluation and clearly did not give, "heavy reliance on the Functional Capacity Evaluation" but especially the additional Findings made by Ms. Gruber.

Further, I would ask for reconsideration on the basis of law. The Defendants are not entitled to a vocational evaluation. I know of no section nor over the entire course of my practice have I ever had the Defendants be found to be entitled to a vocational evaluation. The Defendants are entitled to medical evaluations under SC Code §42-15-80. Also, specifically under the Act as we all know, the Claimant has the burden of proof. Again, I know of no section of the Code that gives the Defendants a right to a vocational evaluation. As I know you are aware, §42-15-80 deals with medical evaluations and has absolutely nothing, nothing to do with a vocational evaluation. There is no authority for a vocational evaluation under SC Code §42-15-80 and you will find no case law ordering the Claimant to go to a vocational evaluation under that statute or under the Act or criticizing the Claimant or affecting the weight of his evidence based on the failure to attend a vocational evaluation.

5. Commissioner, as to your Finding #9 in your Notes for Decision, I would ask for reconsideration on two bases. First, most respectfully, you went outside of the Record whereas your decisions are supposed to be based on the Record before you. Second, I know of no basis under law to not give credibility to

the testimony and opinions of a doctor because he is a patient's advocate and I know of no objection made in the Record to Dr. Poletti's opinions on that basis or any of the bases set forth in #9. Also, I thought all doctors, like Dr. Poletti, were subject to the Hippocratic Oath.

6. As to your Finding #10 which is #13 in the Order, in reference to Dr. Leonard Forrest, you do not cite what the greater weight of the relevant medical evidence is in the case that outweighs his opinions or that consideration of loss of use of the Claimant's entire back is not the essential issue before you for decision. In fact, Dr. Forrest's opinion is directed at the mid-back. In reference to the back, under SC Code §42-9-30(21), the essential issue before you for decision is after injury the loss of use to the Claimant's back to do work requiring the use of the Claimant's back. There is no bifurcation in the statute and there are cases throughout the Supreme Court and Court of Appeals decisions and opinions over the years where the worker had a significant injury to the back prior to the accident, but where the Commission and our Appellate Courts noted that the question was after the accident, the loss of use of the back. While the insurance industry and those seeking to limit awards wish that the cervical, thoracic, and lumbar segments of the spine were separately rated members, they are not. I would ask for reconsideration on the basis that the essential issue before you for decision was loss of use of

the back subsequent to the injury, the uncontested physical therapist records established that he was only qualified for sedentary work. In the contested Functional Capacity Evaluation the physical therapist found that he gave valid and consistent effort during the actual Functional Capacity Evaluation and limited him to at most to light duty work. Dr. Forrest's first opinion in the first report of July 22, 2020 found at APA p. 18 was that Mr. Morales remains with significant mid-back pain, and his activities are severely limited, "dating directly back to the work injury of 10\10\19 noted above". In fact, his entire report is directed at the mid-back. He goes on to state that that is his opinion to a reasonable degree of medical certainty. Then in his follow-up evaluation of January 20, 2021 he again states that, "Mr. Morales' most significant symptoms continue to be in his mid-back as they were when I evaluated him last July" and then goes on to state that that is his opinion as stated to a reasonable degree of medical certainty. Thus, Finding of Fact #10 and Finding of Fact #13 in the Order are inaccurate as Dr. Forrest clearly states that the major focus of his evaluations was, is, and will be the thoracic spine injury. Again, the essential issue before you for decision was the loss of use of the Claimant's back to do work requiring the use of his back subsequent to injury, and any loss of use of the back related or unrelated to the injury are to be considered as the question of loss of use of the back after the injury, not to the lumbar

spine, thoracic spine or the cervical spine. Dr. Forrest gave an opinion as did Dr. Poletti on the loss of use of the back, not the thoracic spine. Like it or not, Ellison v. Frigidaire Home Products, Inc., 360 S.C. 236, 600 S.E.2d 120 (SC App. 2004); Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007); Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (SC App. 2012).

7. As to #14 I would ask for reconsideration because Dr. Jeffrey Buncher stated an opinion concerning the loss of use of the Claimant's back, and whether or not that loss of use related or unrelated wholly to the injury is not the question. The question is, again, after the injury the loss of use of the Claimant's back to do work requiring the use of the Claimant's back.

8. While Finding of Fact #17 in the Order is basically in accordance with your Finding #12 that the Record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions in the Form 14B, in Finding #17 Ms. Gruber refers to the second deposition of Dr. Stofko. Commissioner, most respectfully you did not allow into the evidence the deposition taken by Ms. Gruber and so I think the deposition should simply be referred to as the deposition of Dr. Stofko.

9. Most respectfully, Commissioner you did not make in your Findings of Fact any reference to the following Findings of Fact in the Order or the issues raised by those Findings of

Fact, including Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, and #28. There is absolutely no reference to any of that testimony or any of those issues in your Notes and there is absolutely no reference to Mr. Morales' depositions testimony. In fact, I thought those were placed into the Record simply if reference was made to those as any discovery deposition or in accordance with proper use of a deposition where the person testifies.

10. In reference to Finding of Fact #30, Commissioner no where in your Notes did you make any such Finding. To the contrary, you actually found that Dr. Stofko no where endorsed the impairment rating in the Form 14B. That Finding of Fact should be stricken as not being reflective of your Findings of Fact and decision.

11. Remaining Finding of Fact #31 is directly in accordance with your Findings.

12. As to the Conclusions of Law, I do not recall either party citing you the US Supreme Court Opinion in Ashe v. Swenson. If I am wrong, please forgive me.

13. In reference to Conclusion of Law #4, I simply would request as noted above that that wording be modified to reflect that the ongoing treatment for his injury is not limited to his T-12 vertebrae but includes the fusion from the T11 through the L1 and required hardware, plates and screws. I am sure you would agree that we are simply wanting the medical care related to the

actual injury and the medical care provided for that injury which included the fusion and also I believe you will agree with me that should he develop problems at the vertebrae above or below the fusion site and if the doctor states that that is causally related to the fusion, Mr. Morales would be entitled to that medical care.

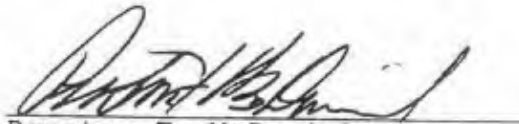
14. As to the actual Order, I believe the first paragraph of the Order is contrary to law. I am acutely aware that it is the Commission's position that the decision of a Commissioner is not final until a decision is entered by the Full Commission, assuming that the Order is appealed. Thus, I would request that the first part of the Order be stricken as not being in accordance with law. The Defendants have to keep paying the Claimant at least until this Order comes out and I believe it is a reasonable position particularly under the current Commission's position that the Order, if appealed, is not final until the Full Commission rules that the Defendants cannot stop payment until the Order of the Commission is final. I am acutely aware that the Defendants regularly stop payment after the Hearing Commissioner's Order is filed, but I know of no case law on that point that if appealed allows them to stop payment prior to the Full Commission decision.

As to the third part of the Order that It Is Further Ordered about the ongoing treatment of T12 vertebrae, again I simply request that the ongoing medical care from the authorized

treating physician, Dr. Douglas Stofko, be in reference to the T12 vertebrae fracture and the fusion that was necessary to repair it, which was from the T11 through the L1 vertebrae requiring plates and screws, that is to say hardware. I simply want to avoid any further litigation in reference to the medical care that you have found Mr. Morales to be entitled to.

Due to the foregoing reasons, the Claimant would request reconsideration of the Order issued on June 21, 2024.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

June 26, 2024

CERTIFICATE OF SERVICE

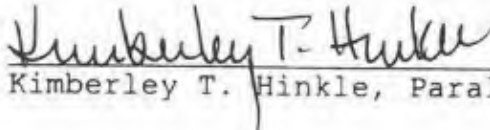
WCC File No. 1921668

I hereby certify that I have on this day served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

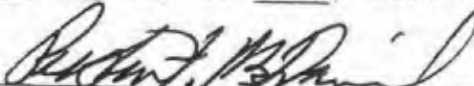
TO: **VIA EMAIL - cgruber@ycrlaw.com**  
**AND US MAIL**  
E. Courtney Gruber, Esquire  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: **MOTION FOR RECONSIDERATION PURSUANT TO SC CODE §1-23-380 AND REG. 67-215 (B) (2)**

DATE OF MAILING: June 26, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
26<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 10/25/28

CERTIFICATE OF SERVICE

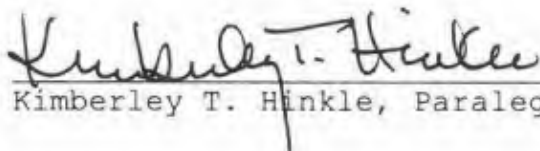
WCC File No. 1921668

I hereby certify that I have on this day, July 1, 2024, served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

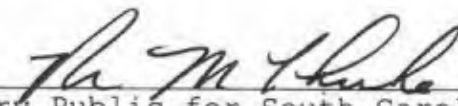
TO: E. Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: AMENDED FORM 30 REQUEST - FOR COMMISSION REVIEW

DATE OF MAILING: July 1, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
1 day of July, 2024.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: 2/2/34

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF COLLETON )  
 )  
 EVARISTO VERDUGO MORALES, )  
 )  
 Employee, )  
 Claimant/Appellant, )  
 )  
 v. )  
 )  
 INSULATION BY COHEN'S & )  
 SPRAY FOAM BY COHEN'S, LLC )  
 )  
 Employer, and )  
 )  
 BUILDERS PREMIER INSURANCE )  
 COMPANY, )  
 )  
 Carrier, )  
 Defendants/Respondents. )  
 )

BEFORE THE SOUTH CAROLINA  
 WORKERS' COMPENSATION COMMISSION  
 WCC File No.: 1921668

**APPELLANT'S BRIEF  
 TO THE FULL COMMISSION**

**SYNOPSIS/PREFACE**

1. Based on the Defendants' mandated re-updated evaluation by Dr. Stofko's office, at the second visit after new MRIs/CT scan, the Physician Assistants with Dr. Stofko's office on January 10, 2024 found Mr. Morales needed additional medical care **specifically** in reference to his thoracic spine fusion, Dr. Stofko in his deposition affirmed/concurred in their opinions; and based on Dr. Forrest's opinion back in 2020 in which Dr. Buncher concurred which was identical to Dr. Stofko's, Commissioner Beck should have found the Claimant not at maximum medical improvement and ordered the additional treatment as found to be necessary.

2. Regardless of the fact that his Findings of Fact are arbitrary and capricious and are volative of the Judicial Code of Ethics, the Commissioner should have awarded Mr. Morales total and permanent disability for having lost 50% or more of the functional use of his back. While unbelievably the Hearing Commissioner disregarded/"gave no weight" to the opinions of Dr. Poletti, Dr. Forrest, and Dr. Buncher citing reference to the Functional Capacity Evaluation. Contrary to that finding, Dr. Forrest first expressed his opinions on July 22, 2020, which was prior to the Functional Capacity Evaluation on October 23, 2020; and his second evaluation opinions are not based on the Functional Capacity Evaluation! The Commissioner did not find Mr. Morales not credible and he testified that he had lost 80% of the use of his back to do work requiring the use of his back. Dr. Stokfo stated no opinion on loss of use; so even if you disregard the Functional Capacity Evaluation and all the doctors' loss of use opinions, Mr. Morales testimony stands alone on loss of use.

3. The Commissioner should have awarded total and permanent disability benefits for wage loss based on the uncontradicted evidence in the Record, due to his age, education, background and experience, and most importantly, the physical facts of the injury in that the jobs which he can perform are so limited in quality, quantity or dependability that a reasonably stable job market for them does not exist. There is absolutely no evidence in the Record

that Mr. Morales can work a full time job, 52 weeks per year. None! While Commissioner Beck wrongfully "gave no weight" to the Claimant's, admitted without objection, vocational evaluation concerning both loss of use and loss of earning capacity, the undisputed evidence from Mr. Morales is he has a fourth grade education in Mexico, cannot read, write or speak English and has background and experience only in heavy labor and is limited to light duty work.

4. As the Commission knows, the Hearing Commissioner was supposed to hold to the basic objectives of the Workers' Compensation Act which include to provide "swift and sure" benefits to the injured worker and to resolve all doubts in his favor. However, here the Commissioner did not try to find evidence to award benefits but instead culled through the evidence to discredit the evidence on loss of use and loss of earning capacity and even went outside of the Record in an effort to limit the benefits to which this worker is entitled.

5. Evidence of bias, prejudice, or motive to misrepresent by a witness under Rule 608(c), SCRE. In reviewing the deposition testimony and evidence from Dr. Stofko and Alana Cole, PA, the Panel should take into consideration, concerning bias or motive to misrepresent by Dr. Stofko and Alana Cole, PA, the evidence in the Record that six (6) days after Alana Cole, PA was served with a Subpoena by Don Gibson's office to appear at the April 26, 2021

hearing, Dr. Stofko filed a Disciplinary Complaint against Mr. Gibson concerning a letter, sent in July of 2020 some eight months before the Subpoena as to whether Dr. Stofko's opinions are biased, prejudicial and/or evidence a motive to misrepresent.

#### STATEMENT OF THE CASE

The Claimant knows that the Panel will fulfil its statutory responsibility and in accordance with SC Code §42-17-40 review the entire Record before the Hearing Commissioner in making its decision. So, the Claimant will simply reference specific evidence from the Record to support the Award that should have been made in this matter as part of each Argument.

#### ARGUMENTS

**IA. THE HEARING COMMISSIONER SHOULD HAVE FOUND THE CLAIMANT NOT AT MAXIMUM MEDICAL IMPROVEMENT AND PROVIDED MEDICAL CARE DIRECTLY RELATED TO THE THORACIC SPINE FUSION AND THE CAUSALLY RELATED ISSUES.**

The Defendants requested an independent medical evaluation but mandated it be with the same doctor that had performed the surgery, Dr. Davis Stofko. By Consent Agreement and Order of the Commission, Mr. Morales attended an evaluation conducted by Alana Cole, PA on November 27, 2023 at which time she ordered a CT scan and MRIs.

After the CT Scan and the MRIs that were paid for by the Defendants as part of the recommended treatment by Dr. Stofko's office, Mr. Morales was again seen on January 10, 2024, and

specifically by Josephine L. Jennings, PA, at which time (the Defendants have been/are hell bent on trying to deny medical care outside of the thoracic spine) specifically in reference to the T12 fracture and fusion which was from lumbar vertebrae 1 through and involving thoracic vertebrae 11, she recorded:

"Patient's main complaints are in regards to his thoracic mid-back pain overlying the pedicle screws...".

In reference to the mid-back thoracic back pain:

"recommend referral to Carolina Pain Management for discussion of a pain treatment plan for his chronic mid-back pain s/p thoracic fusion in 2019."

In reference to the thoracic spine fusion, she noted that:

"Thoracic back pain, status post T11-L1 percutaneous fusion for stabilization of T12 fracture with three column injury. Will obtain CT thoracolumbar spine to assess fusion and hardware."

She then noted that she

"discussed all of the above in detail with Dr. Stofko who reviewed patient's available imaging and treatment plan and does agree with the plan."

In the History she had recorded that:

"Patient presents today complaining of pain in his mid-back, that he reports is at the screw sites from his previous surgery." (Def. APA pp. 49-50) (Emp. add.)

In his Pre-Hearing Brief and at the hearing, the Claimant requested that medical care, "We want the medical care. He wants the screws removed." (Tr. p. 10, 11. 11-12). As stated by the

Hearing Commissioner as to the position of Mr. Morales:

"From the standpoint of the claimant, Mr. Verdugo asserts that he is not at maximum medical improvement, he is entitled to future medical care per the recommendations of Dr. Stofko." (Tr. p. 16, ll. 5-9).

In his deposition, Dr. Stofko testified he agreed with what his PA had recorded and that the Claimant should first go through the progression of what she had recorded before considering the hardware removal; in other words, he should go through pain management to see if that would alleviate the symptoms that he continued to have with pain and particularly if he is having pain over the incision site like he was reporting and then if that could not be relieved by conservative management, at that point Dr. Stofko would recommend hardware removal. At p. 26, he stated that those were his opinions as stated to a reasonable degree of medical certainty. (Depo. Tr. p. 23, l. 1 - p. 26, l. 7)

Dr. Stofko confirmed in his deposition that he relies on his physician assistants and that after the initial surgery that he did not treat or evaluate Mr. Morales. (Depo. Tr. p. 38, ll. 21-23). He also confirmed that the entire time during treatment that they did not use a translation service but relied on a family member to translate what Mr. Morales was telling them. He further confirmed that he did not know that a 13 or 14 yr. old niece or nephew was the family member that was doing the translation. (Depo. Tr. p. 39, ll. 1-21).

Dr. Stofko also tried to state that the first report of problems over the screw sites was not made until the latter visits with his PA in November 2023 and January 2024. However, that attempt to make the report of pain over the screw sites only in 2023 and 2024 was proven to be not true by Dr. Stofko's own testimony. In reviewing the records from the physical therapist where Alana Cole, his physician assistant whom he testified is an extension of him and whose opinions he confirmed as being his opinions, the physical therapist recorded in March 2020 and Dr. Stofko recited (Synopsis/Preface): "Doing good. Some soreness still where the screws are present. He reported --" and

"patient says that his lower back hurts all the time where the screws -- where he has the screws ...". (Depo. Tr. p. 41, ll. 12-13 and p. 45, ll. 1-2).

In addition to the recommendations of PA Alana Cole and PA Josephine Jennings, which Dr. Stofko again stated are his opinions as well, because they are an extension of him, Dr. Leonard Forrest when he saw Mr. Morales for his initial evaluation on July 22, 2020, in his "Impression" stated that:

"Mr. Morales remains with significant mid-back pain and his activities are severely limited, dating back to the work injury of 10/10/19 noted above. With reasonable degree of medical certainty, Mr. Morales' current symptoms and limitations were caused by that 10/10/19 work injury.

The location of the hardware in the low thoracic/upper lumbar region is such that the

hardware itself may be significantly contributing to Mr. Morales' pain, including the prominent pain he describes with sitting back.

In my opinion, Mr. Morales is not at maximum medical improvement."

He also recorded:

"There is tenderness directly over the surgical area." (Cl. APA pp. 15-16)

Dr. Forrest when he again saw Mr. Morales on January 20, 2021 for evaluation, found the "most prominent" problems he was having was "his most prominent pain being in his mid-back. It is directly in the area of his fusion." (Cl. APA p. 14).

After Dr. Stofko stated that he would first go through the conservative treatment recommended and would only then consider the hardware removal, confirmed the 2024 treatment recommendations of his physician assistants, who are an extension of him. He then stated it was his opinion that the Claimant should have that recommended treatment available in reference to his pedicle screws and stated that they would not recommend that treatment if they did not believe it would help him, that he needed it and that he should have it available, and

"Q: So that is your office's recommendations at this time?

A: Correct

Q: In reference to his thoracic --

A: Thoracic. Yes, sir.

Q: And those are, all of your opinions have been stated to a reasonable degree of medical certainty?

A: Yes, sir."

(Depo. Tr. p. 25, l. 25 - p. 26, l. 7).

The original pictures of Mr. Morales' back that were presented at the first hearing before Commissioner Taylor when the Claimant first asked for a second opinion and/or for further medical treatment as recommended by Dr. Forrest and Dr. Buncher, were again submitted into evidence at the hearing in February 2024. He again asked for the medical care before being determined at maximum medical improvement. He testified on both occasions and in every deposition specifically about the pain that he is having over the screw sites in reference to his thoracic fusion.

Mr. Morales testified at the hearing on February 29, 2024:

"Q: Where are you having problems with your back? Tell me where.

A: Here where my screws are.

Q: Where the screws are? I noticed you are sitting up in the chair. Why is that?

A: Because it -- the back, in the back.

Q: Do you have any problems like driving? For instance?

A: Yes. I cannot be laying on the seat.

(Tr. p. 47, ll. 14-24).

In Dr. Stofko's own words while trying to dismiss the pain Mr. Morales is having or differentiate it from the fusion, Dr.

Stofko told us the type of pain that he would consider the kind of pain that would call for hardware removal and also the type of pain that would exhibit that he was really having a problem over the hardware site (Synopsis/Preface). Quoting Dr. Stofko's own words from his deposition:

So, if he is having incision site pain, like I lean back, I am on a chair, I can feel the screws...".

**Mr. Morales: "I don't sit back in a chair or back against the seat when driving".**

This Panel should review the Record, find Mr. Morales not at maximum medical improvement and provide the medical care that Dr. Stofko opines that Mr. Morales needs so that this man can hopefully get some pain relief and maybe, just maybe, even be able to go back to work full time and start back making the type of money he was making before this injury to the tune of \$1,800.00+ per week. As is noted in the Commission Record, his employer thought so much of him that for many months after the accident they continued him on full salary and he did not go on temporary until long after the injury when it was finally determined that he was not, in his present condition, going to be able to go back to work. Give this man the treatment he needs.

**IB. THE HEARING COMMISSIONER ERRED BY APPLYING THE LAW OF THE CASE CONCEPT TO MEDICAL CARE IN A WORKERS' COMPENSATION CLAIM.**

In both Commissioner James' Notes for Decision and in her

final Order in reference to the Claimant's original request back in 2020 for medical care, she simply found that she could not award medical care at that time because the Claimant did not have medical opinion evidence stated to a reasonable degree of medical certainty that he needed the medical care. Counsel for the Claimant knows of absolutely no cases or decisions ever denying a claimant medical care prior to a final decision on the case. The only cases wherein that decision has been made are as part of a final award and the issue of medical care for that particular body part is considered and the Commission denies or does not address that medical care at the time of that final decision in the workers' compensation claim. Here, Mr. Morales was still under medical care and there had been no final decision. The current decision is the final decision of the Commission and the Commissioner should have reviewed the medical evidence as to whether or not at this time he is entitled to additional medical care. In fact, the Commissioner as part of his Order specifically ordered that the Claimant is entitled to hardware removal. The Commission is required to liberally construe the statutes in favor of benefits to the injured worker. Here, the Hearing Commissioner did not liberally construe, but strictly construed the Act against benefits and applied legal concepts to medical care in a workers' compensation case that simply do not apply.

II. THE FULL COMMISSION ON REVIEW SHOULD AWARD MR. MORALES TOTAL AND PERMANENT DISABILITY FOR HAVING LOST 50% OR MORE OF THE FUNCTIONAL USE OF HIS BACK TO DO WORK REQUIRING THE USE OF HIS BACK; AND BECAUSE THE HEARING COMMISSIONER'S DECISION EVIDENCES A FORMED INTENT TO DENY MR. MORALES AN AWARD ON THIS BASIS AND IS THUS ARBITRARY AND CAPRICIOUS.

The Claimant is confident that upon review of the evidence submitted, the Panel will unfortunately find that the Hearing Commissioner's Findings of Fact are arbitrary and capricious and evidence a formed intent to deny an Award to the Claimant for having lost 50% or more of the use of his back; and that such awards should be made under the evidence. In his attempt to deny the Claimant an award based on loss of use the Commissioner failed to exclude all the evidence on "loss of use" based upon which the Supreme Court reversed this Commission on in Clemmons v. Lowe's Home Centers - Harbison and upon which it affirmed this Commission in awarding benefits in the case of Paulino v. Diversified Products. First, to establish a basis for denying all of the evidence on loss of use which was in the Record on that essential issue before the Commissioner "functional loss of use", in this case of the back, the Commissioner had to completely discredit the Functional Capacity Evaluation.

The Commissioner in Finding of Fact #7 in discrediting the Functional Capacity Evaluation relied on one statement by the physical therapist who conducted the evaluation concerning the hand grip test and based on that reached the false conclusion that

the results of the evaluation were not considered valid. However, this is what the physical therapist actually stated in reference to his observations while he conducted the Functional Capacity Evaluation:

"The claimant demonstrated consistent participation during the evaluation. No inorganic or exaggerated pain behaviors were noted. He completed all testing areas without declination (i.e., refusal)". (Cl. APA p. 2)

The only reason for the Functional Capacity Evaluation being considered invalid was the handgrip test because that test did not produce a bell-shaped curve. Quoting from the American Medical Association "Guide to the Evaluation of Functional Ability", p. 247 in reference to the hand grip analysis and the production of a bell-shaped curve as being an indicator of exerting maximum voluntary effort, the Guide notes the fallacy in this:

"This test is used to measure evaluatee effort. Multiple studies have been performed to assess the validity of this protocol and have produced conflicting results. People with UE injuries and people with a weak grip may not produce a bell-shaped curve even when performing with maximum effort."

Since the Commissioner went out of his way to declare the entire results of the Functional Capacity Evaluation invalid based on the handgrip analysis statement, the Claimant would ask the Commission to look at pp. 7 and 10 of the Functional Capacity Evaluation as to the Claimant's grip as compared to the norm; he has a very weak grip.

The Commissioner then totally discredits the vocational evaluator's analysis on several bases but one of which is reliance on the invalid Functional Capacity Evaluation. Quoting from the vocational expert's, Ms. Harriet Fowler's, copious and lengthy review of all medical records and her copious review of the Functional Capacity Evaluation and after noting that the physical therapist did not have medical records; that the Claimant was sent for various reasons for the Functional Capacity Evaluation; and that he did not have a job description, she then made specific detailed statements and opinions about the invalidity and the validity of the Functional Capacity Evaluation as follows:

"FCE evaluator noted that in relation to the client's grip and pinch strength testing on the JAMAR dynamometer there were discrepancies and thus this evaluation could 'not be considered valid'. However, he went on to state that testing embedded in the FCE for maximum and consistent effort/validity revealed material handling testing, range of motion testing, and complaints were valid/consistent and demonstrated maximum effort. He noted 'the claimant demonstrated consistent participation during the evaluation. No inorganic or exaggerated pain behaviors were noted. He completed all testing areas without declination. Exaggerated or inorganic pain behaviors were not noted however, with material handling assessment ...." (Cl. APA p. 39)

She then stated as to her opinions and report:

"Therefore, only the areas of testing that were considered valid with maximum and consistent effort will be noted herein." (Emp. add.) (Cl. APA p. 40)

Ms. Fowler did not reply on the Functional Capacity Evaluation or its invalid portions in stating her opinions.

Obviously either the Commissioner overlooked this or failed to consider, as the vocational evaluator clearly stated, that she only considered the parts of the Functional Capacity Evaluation which the physical therapist found to be valid and in which the Claimant gave maximum effort. She then explains the US Dept. of Labor's Dictionary of Occupational Titles Physical Demand Classification System upon which the Functional Capacity Evaluation, like all Functional Capacity Evaluations, is based and found that he was not qualified, again based on the valid parts of the Functional Capacity Evaluation, for even sedentary work and was limited physically to light duty work; again based on the valid parts of the Functional Capacity Evaluation which is all that she considered. This is also relevant to all opinions in reference to functional loss of use of the back to do work.

The Commissioner also erred as a matter of law by not giving consideration to the vocational expert's report because the Defendants were not allowed to get one and disregarded the Claimant's evidence based on due process grounds.

First, there is no reference to a due process exception or argument being made by Defense Counsel in either the Prehearing Brief or in the Hearing Transcript. While the Hearing Commissioner is an attorney he is no different than any other Commissioner and

cannot go out outside of the arguments made and the issues presented to him for consideration, nor can he consider outside legal authority in reaching his decision, all of which he did in this case. In addition, he went outside of the Record before him to reach his decision.

Next, and importantly as a matter of law, the Defendants are not entitled to a Functional Capacity Evaluation under the Act and everybody knows that. The Defendants have a right to take the Claimant's deposition under SC Code §42-3-160 and they have a right to independent medical evaluations conducted by a qualified physician or surgeon under SC Code §42-15-80, but nowhere in the Act are they entitled to have a vocational evaluation performed which includes the personal involvement of the Claimant which is what was requested here and only one time before the 2020 hearing. In fact, they only have a right to a Functional Capacity Evaluation if it is ordered as part of authorized treatment or is made a part of an independent medical evaluation. Thus, there is no due process right involved. Therefore, as a matter of law the Commissioner was wrong in excluding the report on this basis.

Next, the Commissioner after declaring the Functional Capacity Evaluation invalid and after disregarding the vocational evaluation systematically attacks and discredits the opinions of three (3) different medical doctors including their opinions on functional loss of use (the essential issue before him for

decision), of the back to do work requiring the use of the back; all of whom stated the Claimant in their opinion had lost 50% or more of the functional use of his back to do work requiring the use of his back. This again establishes a formed intent to discredit all of the evidence on loss of use so that the Commissioner could make an award for less than that.

As to Dr. Stephen Poletti, the Commissioner gave no weight to Dr. Poletti's opinion because:

**"of his inability to objectively assess claimant's impairments. In multiple different cases, Dr. Poletti has described himself on the Record as an 'unabashed patient advocate', these statements preclude him from being able to give a truly independent medical evaluation."**

While this Finding of Fact is absolutely unbelievable, regardless of that, the Commissioner went outside the Record in making his Finding which clearly evidences a bias and prejudice in review of the evidence. See: Kiser v. Dorchester County Voc. Edu. Bd. of Trust., 287 S.C. 545, 340 S.E.2d 144 (1986). It also has absolutely nothing to do with a substantive review of the weight to be given to Dr. Poletti's report and opinions including his objective findings and his review of the medical evidence including all the various x-rays, MRIs and CT scans that have been performed on the Claimant. The Finding constitutes and contains absolutely no valid reason for discrediting or not considering Dr. Poletti's opinion and is clearly an **"arbitrary"** and **"capricious"**

Finding.

Under SC Code §42-3-250, Commissioners are subject to the Code of Judicial Conduct and under Rule 501, SCACR, Judicial Conduct, Canon 3(B)(2) a judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interest, public clamor or fear of criticism. Under Canon 3(B)(5), a Commissioner shall perform their judicial duties without "bias or prejudice". The Commissioner's comments concerning information obtained from other matters and his specific reference to another Order as a basis for giving no weight to Dr. Poletti's opinion is violative of the Canons of ethics and also makes his decision arbitrary, capricious and characterized by an abuse of discretion.

An administrative decision is "arbitrary" within the meaning of SC Code §1-23-380(5)(f) if it is without a rational basis, is based not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed Rules or standards. Jordan v. Harford Financial Group, 435 S.C. 501, 868 S.E.2d 400 (2021) (WC Commission Decision was arbitrary and capricious. The reasons stated in Finding of Fact #7 for giving no weight constitute no rational basis and are actually violative of both the Act and the Judicial Code of Conduct including because they are outside of the Record and are not based on any facts within the Record and are

made at the pleasure of the Commissioner without any adequate determining principles. In fact, evidences a clear personal pre-existing bias prior to hearing the case that should have disqualified the Commissioner from hearing the case. Rule 501, SCACR, Judicial Conduct Canon 3, (E) Disqualification (1) A Judge shall disqualify himself in a proceeding in which the Judge's partiality might reasonably be questioned including where (a) the Judge has a personal bias or personal knowledge of disputed evidentiary facts concerning the proceeding. A Judge should recuse himself when the bias results in a decision based on information other than what the Judge learned from his participation in the case.

A decision is properly said to be "capricious" if it is against the overwhelming weight of the evidence. Tool v. Tool, 195 S.E.2d 389, 260 S.C. 235 (1973). This decision should be set aside based on the finding concerning Dr. Poletti alone because it is so shockingly and manifestly shows that the decision of the Commissioner was not "founded on the evidence" in the Record. It establishes clear bias. The federal standard is the same as the state standard and that standard is that the Court will review the Record to ensure that the agency has examined the relevant evidence and articulated a satisfactory explanation based on that evidence for its action. Sierra Club v. West Virginia Dept. of Env. Protection, 64 F.4th 487 (2023).

Next, as to Dr. Forrest' opinion, the Commissioner makes the finding that Dr. Forrest' opinion is: 1) outweighed by the greater weight of the relevant medical evidence in the case, but does not state what that relevant medical evidence is; and 2) is based largely on the injuries that go far beyond the T12 fracture and are not compensable in the case; and 3) Dr. Forrest' opinions are "heavily based on findings in the FCE" which were not relevant to the only compensable injury and based on those three factors, the Commissioner assigned it no weight.

As to the first, the Commissioner does not state what the "greater weight" is or what the relevant medical is that outweighs that opinion. To escape being arbitrary and capricious, the Commissioner would have to do a comparison or show what that evidence is as compared to the opinions of Dr. Forrest, which he does not do.

As to the second, the Commissioner states that Dr. Forrest's opinions are based "heavily" on other parts of the back not related to the injury. First, the Claimant hopes that he does not have to remind the Commission or this Panel that the issue before the Commission is not loss of use of the cervical spine or the lumbar spine, it is functional loss of use of the back after the injury. Also, the Claimant is sure he does not have to remind the Commission that unrelated injuries are considered part of the injury after the work-related injury. There is a plethora of

cases, plethora, where the person has preexisting problems or impairments but then due to related and unrelated issues and conditions, the claimant is found to have lost 50% or more of the use of his back subsequent to the injury. However, more importantly here, the Commissioner's Finding of Fact is simply **not true!**

In his reports and in his first report of July 24, 2020, when he found that Mr. Morales was not at maximum medical improvement, Dr. Forrest first records in the History that:

"Mr. Morales reports that his pain is in his mid-back. He relates pain that varies from 5 to 10 on a scale of 0 to 10. Certain positions feel better and certain positions feel worse. Activities including bending increase his pain. He reports that sitting back is particularly painful. Mr. Morales also reports occasionally having aching symptoms in his feet and left thigh. **However, he states that it is his mid-back that is his constant and most significant**".

Then in his Impression he states:

"Mr. Morales remains with significant mid-back pain, and his activities are severely limited, dating directly back to the work injury 10/10/19 noted above. To a reasonable degree of medical certainty Mr. Morales current symptoms and limitations were caused by the 10/10/19 work injury.

**The location of the hardware in the low thoracic/upper lumbar region is such that the hardware, itself, may be significantly contributing to Mr. Morales' pain, including the prominent pain he describes with sitting back ...."**

Then in his second evaluation of Mr. Morales on 01/20/2021 in the

History he records:

"Mr. Morales' most significant symptoms continue to be in his mid-back as they were when I evaluated him last July."

Then Dr. Forrest states his impairment rating which, while somebody may dreamingly want it to be to other parts of the Claimant's back so it can be disregarded, is specific to the thoracic spine and he accorded Mr. Morales a 22% whole person impairment to the thoracic spine due to the thoracic spine fusion and he converts that, per the AMA Guides Conversion Table, to a regional rating of over 100% thus 100% to the thoracic back. The Commissioner's review of Dr. Forrest's opinion again evidences a bias and arbitrary and capricious decision in reference to Dr. Forrest's opinions and the refusal of the Hearing Commissioner to give any weight to his opinion.

In reference to #3, it is clear from Dr. Forrest' report, again it is clear from Dr. Forrest's report, that Dr. Forrest paid little attention to the Functional Capacity Evaluation in reference to his assessment as to the amount of loss of use that Mr. Morales has. He states:

"I reviewed Mr. Morales' Functional Capacity Evaluation which was done on 10/23/20. I see that Mr. Morales tested at what would be a light/medium level of work capacity however, as I noted in my 07/22/20 report and confirmed today again with Mr. Morales, although he can do such level of activity, he is not able to continue to be active throughout the day. I confirmed again with him that he needs to take frequent breaks and

also lay down most days and sometimes twice per day. If he does not, his symptoms get worse. As such, despite Mr. Morales ability to lift and carry up to 35 lbs. for a short time, he is most probably not capable of meaningful, gainful employment." (Cl. APA pp. 15-16)

His Questionnaire Response is the only place that Dr. Forrest references the Functional Capacity Evaluation.

Next, the Commissioner only made a cursory Finding in reference to Dr. Buncher's opinions and gives his opinions no weight because they are "largely based upon body parts that are found not to be compensable".

Unfortunately, for somebody trying to discredit his opinions to limit this claim based on that finding, Dr. Buncher only gives an impairment rating, only gives an impairment rating, to the thoracic spine concurring with Dr. Forrest's opinion on the impairment rating. Then after stating his main problem is to the thoracic spine, he states his opinion that based on all the information available Mr. Morales had lost 50% or more of the functional use of his back to do work requiring the use of his back and most probably was incapable of any gainful employment.

Also in reference to the Functional Capacity Evaluation, Dr. Bucher noted the discrepancy between formal grip strength in the JAMAR dynamometer and the "observed material handling capacities" which were consistent and that exaggerated or inorganic pain

behaviors in positions were not noted nor with material handling assessments.

Thus, Finding of Fact #14 is not a detailed Finding of Fact listing substantive evidence as to why the Commissioner gave "no weight" to Dr. Buncher's opinion cited from the Record and is definitely inadequate to allow for Judicial Review. This is clearly evidence of bias and prejudice and that the Commissioner's decision is arbitrary and capricious.

Therefore, based on this Panel's review, the Panel will find that Dr. Buncher actually reviewed the impairment rating from CORA Physical Therapy (not a medical doctor by the way) and then did a thorough examination, did his own assessments (including consulting with a radiologist), and then reviewed the reports of Dr. Forrest and entered his diagnoses, number 1 of which was a T12 compression fracture and noting that he had a very serious injury with an unstable transfracture at T12 requiring emergent surgery and from which he had chronic thoracic pain. (Again, he even consulted with a radiologist.)

Thus, the Commissioner's review of Dr. Buncher's opinions and report are totally inaccurate and show a total lack of review. Again, cursory Finding #14 evidences an intent to deny Mr. Morales benefits for having lost 50% or more of the functional use of his back to do work. There is just no basis in fact to discredit the opinion of Dr. Buncher.

Finally, having discredited all of the medical opinion evidence submitted by the Claimant all of which was that the Claimant had lost 50% or more of the functional use of his back to do work requiring the use of his back in accordance with the Clemmons decision, the Commissioner forgot one piece of evidence in his efforts to discredit all of the evidence in the Record on loss of use, which is that the Claimant testified at the hearing that he had lost 80% or more of the functional use of his back to do work requiring the use of his back. That is the only remaining evidence in the Record specifically on the **essential issue before the Commission for decision** which is and quoting from Roper v. Kimbrell's Furniture Co. cited in practically all the decisions by the Supreme Court and Court of Appeals, through Clemmons and now Paulino, the "**functional loss of use**" of the Claimant's back to do work requiring the use of his back. Thus, if the Panel agrees to discredit all the evidence discredited/given "no weight" by the Hearing Commissioner, the Commission is left with the Claimant's testimony on loss of use which has always been found to be sufficient to sustain an award for loss of use.

Thus, this Panel should review the evidence and on the essential issue before the Commission, loss of use of the back to do work requiring the use of the back, award the Claimant total and permanent disability for having lost 50% or more of the use of his back to do work requiring the use of his back. There is simply

no evidence on loss of use to the contrary.

III. THE COMMISSION PANEL SHOULD FIND THAT MR. MORALES IS ENTITLED TO AN AWARD FOR TOTAL AND PERMANENT DISABILITY UNDER §42-9-10(A) FOR A TOTAL LOSS OF EARNING CAPACITY AS DEFINED IN THE ACT AND BY OUR COURTS.

The Commissioner's decision not to Award the Claimant total and permanent disability based on wage loss is not only against the preponderance of the evidence, but it is against the totality of the evidence in the Record on loss of earning capacity. The definition of total and permanent disability as established by our Supreme Court and which has been applied by this Commission since the inception of the Act is that:

"where based upon the age, education, background and experience, and the physical facts of the injury the jobs which the Claimant can perform as so limited in quality, dependability or quantity that a reasonably stable job market for them does not exist, the injured worker is entitled to an award for total and permanent disability".

The Act does not require abject helplessness and just because a claimant can perform some part-time work or seasonable work, or even low level work or even the few jobs available in the economy, is insufficient to deny a worker an award for total and permanent disability based on loss of earning capacity. Colvin v. E.I.

DuPont De Nemours Co., 327 S.C. 465, 88 S.E.2d 581 (1955)

(hemothorax worker only qualified for manual labor); Wynn v.

Peoples Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961);

Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E.2d 699

(1996) (Stephenson was working at the time of his injury but was already totally disabled as defined in the Act). McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (SC App. 1989) (Mr. McCollum was working three days per week). While the claimant's burden is supposedly to have to prove a preponderance of the evidence that he is entitled to an award, in this case there is simply no evidence in the Record nor a factual finding that would deny the Claimant of an award for total and permanent disability under §42-9-10(A). Like Clark v. Phillips Electronics/Shakespeare, 433 S.C. 186, 857 S.E.2d 378 (SC App. 2021), the Commissioner's failure to award "floats on air, unsupported by any visible explanation or evidence". Unfortunately, it appears that the latter is the burden of proof that the Claimant has to meet, contrary to our Supreme Court decisions and the long time application of that definition by the Workers' Compensation Commission over the years. While the Claimant is absolutely positive that the Commission will fulfil its statutory duty and review the Record and the Briefs, the Claimant would appreciate it if each Commissioner on the Panel would acknowledge that the Commissioner has read this section of the Brief.

In this case, the Hearing Commissioner looked for ways to exclude the Claimant's vocational evaluation as set out in Arguments I & II. However, as set forth in the Record which is not supposed to be culled through to deny benefits, the Claimant's

vocational evaluator did not consider any part of the Functional Capacity Evaluation that the physical therapist did not state was valid and as set out in her report, her opinions were based on the totality of all the evidence including the valid parts of the Functional Capacity Evaluation. As to due process, that issue was not raised by the Defendants and the Commissioner again was culling through the Record to find a way or a basis to deny benefits instead of awarding benefits and to maximize benefits under the Act. The Claimant veribly believes that the Panel will find upon review to consider the vocational evaluator's opinions and fulfill its purpose under the Act which is to award "the largest amount payable under this Title."

Based on the vocational evaluator's thorough and exhaustive review of medical records and the Claimant's education, background and experience the evaluator determined from a vocational standpoint the Claimant was unqualified for any jobs in the economy and could not return to gainful employment. In addition, Dr. Leonard Forrest, Dr. Buncher and Dr. Poletti all stated the opinion that it was their opinion stated to a reasonable degree of medical certainty that Mr. Morales was incapable of gainful employment. Actually, Dr. Stofko did not express an opinion on the Claimant's ability to work.

While the Commission should consider all this evidence assuming it does not, based on the preponderance of the evidence

standard or even all the remaining evidence in the Record concerning the definition of total and permanent disability for wage loss, which is from the Claimant's testimony which was not challenged in any way, establishes that he is entitled to that award.

Mr. Morales testified that he is 58 years old; that he has a 4<sup>th</sup> grade education while living in Mexico; that he is married and has seven (7) children and has lived in the United States for 23 years. (Tr. p. 22, l. 8 - p. 23, l. 11). He testified as to his jobs which are all in the medium to heavy duty range of working: dishwashing to construction to golf course maintenance; laying grass and sod; insulation work all requiring all types of physical strenuous type work involving heavy lifting, bending, stooping, squatting, standing, pushing, and pulling; and that in his opinion due to his thoracic fusion and his current physical condition he could not return to any of those jobs. (Tr. p. 23, l. 17 - p. 27, l. 9). After testifying concerning the current problems he is having with having to sit up/out away from the back of a chair because of pain over the screws in his thoracic spine and his back, he then testified concerning the physical requirements of his job doing insulation work using a sprayer and describing the special equipment he had to use and the requirement for him to lay on his back and get into crawlspaces and do work, both lying down, crouching down, and also extending

overhead. (Tr. p. 27, l. 12 - p. 31, l. 21). Having already testified earlier in his testimony that he wanted to work and would love to work and would love to be able to go back to work. (Tr. p. 27, ll. 10-11). He testified after stating that he could not go back to that job about wanting to work that:

"A: No. Because I used to make good money. I used to make good money but I can't.

Q: Why? -- Why not? What kind of problems do you have trying to do that job?

A: Because -- because of the surgery. Because of the screws I have in my back.

Q: Mr. Morales could you do that job for a full day?

A: No. Not anymore.

(Tr. p. 31, l. 22 - p. 32, l. 6).

He then testified about the part-time work he did for several months on two occasions following the Defendants stopping payment of his temporary total disability benefits. He testified he work at the most 4, 5 or maybe 6 hours for a little bit and he worked each of those jobs for approximately 3 months. He testified that these were jobs that friends and family helped him get and when on the jobs they would assign the lightest work available for him to do and that they had helped him get these jobs because they knew he needed money. He testified that he left these part-time occasional accommodated positions because of discomfort and pain and problems from his thoracic fusion. He

then confirmed there was no job in which he had a past experience that he knew he could perform or that he felt he could perform 8 hours per day, 5 days per week. (Tr. p. 38, l. 12 - p. 41, l. 24). He then testified to continuing problems that limits his ability to do even the activities of daily living and life in general, or even driving, and that he had continually told the doctors about these problems following the accident. (Tr. p. 41, l. 25 - p. 44, l. 1). Then relevant to both an award for loss of use of his back and to his inability to work for wage loss, he testified that in his opinion he had lost 80% of the use of his back to do work requiring the use of his back. (Tr. p. 44, ll. 2-21).

Therefore, based solely on his testimony he has a 4<sup>th</sup> grade education in Mexico; does not read, write or speak English; he has no drivers' license; he cannot return physically to any of the jobs in which he has a past experience; he cannot work a full days' work in any job and the evidence establishes that he is only capable of physical manual labor and there is no evidence in the Record that he can now return to physical, manual labor on a full-time basis. Also, there is no evidence that the Defendants who claim that the disability has ended have offered or procured him a job within his residual capacity as required by the decisions of the SC Supreme Court and the SC Court of Appeals where the Defendants take the position that the

disability to earn wages has ended. Coleman v. Quality Concrete Products, 245 S.C. 625, 142 S.E.2d 43 (1965) (Mr. Coleman was a bulldozer operator and construction worker who had multiple hernia surgeries but was incapable of returning to physical, manual labor work and the Defendants had not offered him a job or procured him a job that they said he could do, and the Supreme Court said the disability had not ended and he was entitled to continuing to total disability benefits); Swinton v. SC Dept. of Mental Health, 314 S.C. 202, 442 S.E.2d 215 (SC App. 1994) (finding maximum medical improvement does not establish that the employee is no longer disabled and without such finding his disability is presumed to continue).

Therefore, upon review this Panel should award the Claimant total and permanent disability based on a total loss of earning capacity as defined by our Supreme Courts based not only on the preponderance of the evidence in the Record, which is his burden, but based on a review of all the evidence in the Record regardless.

**IV. THE HEARING COMMISSIONER ERRED BY REVIEWING AND RELYING ON THE CLAIMANT'S DEPOSITION TESTIMONY INSTEAD OF HIS TESTIMONY AT HEARING.**

While it may not be important since the Claimant's testimony in his deposition most probably mirrors his testimony in the hearings before the Commission, the Commissioner went outside of the Record and his responsibility by reviewing and

citing from that deposition testimony.

The depositions were admitted into evidence for the purpose for which depositions are usually admitted pursuant to the Circuit Court Rules, which is set out in the Circuit Court Rules under Rule 32(a)(1-3), SCACR. Under that Rule the deposition can be used when the witness is not there and testifying and may be used to contradict or impeach the testimony of the deponent as a witness at the hearing or trial. Subsection 2 does not apply since this is not a corporate officer and under subsection 3 the deposition may also admitted into evidence in lieu of testimony where the witness is dead; greater distance than 100 miles from the place of trial; or the witness is unable to attend to testify because of age, illness, infirmity or imprisonment or the party offering the deposition is unable to obtain the attendance of the witness; or for exceptional circumstances to make it desirable to use the deposition in lieu of testimony in an open Court and with due regard to the:

**"importance of presenting the testimony of witnesses orderly in open Court"**.

In this case, again the deposition was admitted into evidence for the purposes for which discovery deposition are usually used. It was not admitted for the purpose of substituting or going outside of the testimony presented in open Court. Mr. Morales testified at the hearing. The Commissioner's

review should have been limited to that testimony unless there is some reason as set out under the Rules for it to be used in lieu of that testimony. It should not be used and it is not **allowed to be used** to try to find a discrepancy or information upon which to deny benefits to an injured worker; in this case, Mr. Morales. There is not one mention of the Claimant's testimony at hearing in the Commissioner's Notes for Decision or his Decision. Again, he went outside of the Record and that is an error of law that hopefully this Panel will correct without appeal.

**V. THE COMMISSIONER SPECIFICALLY ERRED IN MAKING FINDING OF FACT #30 WHICH IS CONTRARY TO HIS NOTES FOR DECISION AND THE RECORD.**

In his Notes for Decision the Commissioner found that nowhere did Dr. Stofko endorse the impairment rating in the Form 14B that was completed by Alana Cole, PA. It is in that Form 14B that the 5% rating is found. It is also found in the CORA Physical Therapy impairment rating. **However**, nowhere did Dr. Stofko or any other doctor endorse that medical impairment rating. In fact, while finding that Dr. Stofko nowhere endorsed that rating, Finding of Fact #30 cites specifically to that Form 14B. "(Def. APA I, p. 24)." The Panel will find that that rating is the Form 14B. The only other place that it is found is in the CORA impairment rating which does not contain a statement that it is made to a reasonable degree of medical certainty and no

doctor as stated by the Commissioner has endorsed that impairment rating and/or has stated that it is their opinion stated to a reasonable degree of medical certainty. Thus, the Finding of Fact is wrong and it is contrary and contradictory to the Commissioner's other Findings and is not justified under the evidence or law.

**VI. THE DECISION SHOULD BE REVERSED BECAUSE THE HEARING COMMISSIONER WENT OUTSIDE OF THE RECORD AND CITED LEGAL AUTHORITY NOT PRESENTED TO HIM, ASHE V. SWENSON, CONCERNING DUE PROCESS REQUIRING REVERSAL OF THE DECISION.**

As stated above while Commissioner Beck is an attorney, he cannot go outside of the legal authority and the arguments presented to him at the hearing and in the Prehearing Briefs and the issues before him. While the Defendants argued "law of the case" they did not cite to him the case of Ashe v. Swenson. In fact, in their Prehearing Brief they list no legal issues at all. In trying to justify the "law of the case" argument made by the Defendants, the Commissioner by citing actual legal authority, Ashe v. Swenson, not cited to him of, not only went outside of the Record but cited a legal principle that does not apply to that concept. Ash applies to the situation where the parties have litigated an ultimate fact and have reached a valid and final judgment after which that issue cannot be again litigated between the same parties in any "future lawsuit". This actually supports the Claimant's position that the only final

decision reached in this workers' compensation claim was the one entered by Commissioner Beck. Before the current decision, the other decisions are intermediary decisions. The Claimant knows of no Appellate Court opinion that precludes a Claimant at any time during the pendency of an open workers' compensation claim from seeking further medical care for causally related conditions related to the original injury. The question is simply whether or not at that time the Commission finds under the evidence presented as to whether the condition is causally related. However, in reference to this point the Commissioner went outside of the Record, cited legal authority not submitted to him in support of any position by either party. That is an error of law.

**VII. THE HEARING COMMISSIONER ERRED AND THIS COMMISSION PANEL MUST FULFIL ITS STATUTORY DUTY UNDER THE DECISIONS OF THE SUPREME COURT BY MAKING DETAILED FINDINGS OF FACT AND CONCLUSION OF LAW.**

Multiple statutes including SC Code §42-17-40, §42-9-5, and §1-23-350 mandate that the Commission in its final decision must make Findings of Fact and Conclusions of Law separately stated and the Supreme Court has held repeatedly that that statutory responsibility:

"requires that not only must Findings of Fact be made upon essential factual issues but they must be sufficiently definite and detailed to enable the Appellate Court properly to determine whether Findings of Fact are supported by evidence and that the law has been

properly applied to them." Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962).

As cited throughout this Brief, the Commissioner did not make detailed Findings of Fact and did not properly apply the law and went outside of the Record. The Findings of Fact upon Appellate Review will be determined to be totally inadequate to address from a factual standpoint the decisions and the Findings of Fact made. Thus, the Hearing Commissioner did not fulfil his responsibility under the Act and this Commission Panel must under law fulfil the responsibility of the Commission no matter what its decision is in reference to sustaining the Award or amending the Award and awarding this man total disability for having lost 50% or more of the functional use of his back to do work and/or based on a total loss of earning capacity as defined by our Supreme Court which this Commission is duty bound to apply.

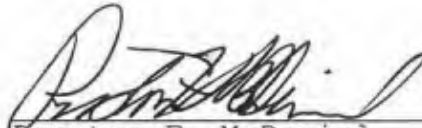
#### CONCLUSION

For the foregoing reasons, the Panel should review the Decision of the Hearing Commissioner and at a minimum award the Claimant an award for total and permanent disability. The Commission Panel should make decisions on each of the errors of law committed by the Hearing Commissioner and address his failure to make adequate Findings of Fact and Conclusions of Law and enter a decision addressing specifically whether or not the Hearing

Commissioner's Findings of Fact and Conclusions of Law are arbitrary, capricious and constitute an abuse of discretion.

It is hoped by Claimant's Counsel that the Commission will avoid all of these unpleasant decisions and simply review the Record and based on the evidence submitted award Mr. Morales the award to which he is entitled under evidence and under law and under the Act for total and permanent disability based either or both on his having lost 50% or more of the functional use of his back to do work requiring the use of his back and/or his total loss of earning capacity.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

September 26, 2024

CERTIFICATE OF SERVICE

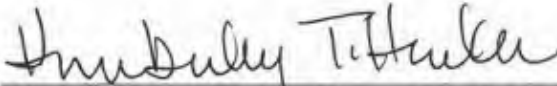
WCC File No. 1921668

I hereby certify that I have on this day, September 26, 2024, served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

TO: Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: Appellant's Brief to the Full Commission

DATE OF MAILING: September 26, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
26 day of September, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)

My Commission Expires: 2/2/34

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
  Claimant-Respondent, )  
  ) )  
  vs. ) )  
  ) )  
Insulation By Cohen, LLC, ) )  
  Employer, ) )  
  ) )  
Builders Premier Insurance Company, ) )  
  Carrier/Defendants- ) )  
  Appellants. ) )  
\_\_\_\_\_ )

**BRIEF OF APPELLANTS  
INSULATION BY COHEN, LLC  
and BUILDERS PREMIER  
INSURANCE COMPANY**

This is an admitted claim as to a T12 vertebra fracture but is denied as to all other body parts alleged on the Form 50, which were back, left shoulder, right shoulder, and concussion. The procedural history of this case is lengthy and complicated. This matter was heard for the first time on 8/13/2020. In an Order filed 1/11/2021, the Single Commissioner denied the Respondent's request for additional medical treatment to the lumbar spine, cervical spine, and shoulders, found that the Respondent's injuries related to this accident were limited to the fracture at T12, and found that the Respondent had not yet reached MMI. That Order was not appealed, and a Form 50 requesting a hearing was filed 1/11/2021. Appellants filed a Form 21 on 2/5/2021 requesting permission to stop payment based upon a Form 14B dated 1/12/2021 that found MMI had been reached on 1/8/2020. The hearing on the Forms 50/51 and 21 was held on 4/26/2021; however, Order instructions were not issued until 2/23/2022. In an Order filed 3/22/2022, the Single Commissioner granted Appellants' stop pay request, ordered credit for overpayment of weekly benefits since 1/8/2020 (the date of MMI for the thoracic spine), found the Respondent had sustained 20% permanent partial disability to his back subject to the Appellants' credit for weekly benefits paid since 1/8/2022, and found that the Respondent did not meet his burden of proof to

show he was entitled to additional medical treatment for the thoracic spine. The Respondent filed a request for reconsideration on 3/24/2022, which was denied on 10/3/2022. The Respondent then filed an appeal on 10/14/2022, and in an Order filed 4/4/2023, the Appellate Panel vacated the lower Order and ordered the parties to mandatory mediation. The Appellate Panel did not rule on the merits of the appeal. Appellants had paid TPD from 1/9/2020 to 4/1/2020 in the amount of \$3,578.28 (\$845.00 per week from 4/2/2020 to 2/23/2022) when the Order instructions regarding the stop pay request were received. Appellants then paid the Respondent the lump sum of \$57,127.36, representing weekly benefits from 2/23/2022 to 5/8/2023 and \$845.74 weekly until 4/25/2024 when Order instructions were received for the Order that is currently on appeal. Respondent has received a total of 216 weeks of weekly benefits through 4/25/2024.

Mediation was attempted on 7/19/2023 but was unsuccessful, and the parties respectively filed their Forms 50/51 and 21 requesting hearings. A hearing was held on 2/29/2024, and a Decision & Order was filed 6/21/2024. The Appellants timely filed a Form 30 on 6/25/2024.

The Findings of Fact and Conclusions of Law are listed below:

#### V. FINDINGS OF FACT

Based upon the above stipulations and evidence of the case, the undersigned commissioner finds the following facts based upon the preponderance of the evidence:

1. All parties are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Jurisdiction and venue are proper.
3. That Claimant's average weekly wage is \$1,302.27 with a resulting compensation rate of \$845.74.
4. Claimant sustained a compensable injury to the thoracic spine (T12 fracture) on 10/10/2019.
5. The only compensable injury in this case is the fracture at T12.

6. The issue of whether or not Claimant sustained compensable injuries to the cervical spine, lumbar spine, and both shoulders was already litigated at an evidentiary hearing held on 8/13/2020. The resulting order, filed on 1/11/2021, denied compensability of those other claimed body parts, and that order was not appealed.
7. With regard to the functional capacity evaluation (FCE) dated 10/23/2020 (Claimant APA 1), it is found as a fact that the evaluator stated at page 1: "The results of this evaluation cannot be considered valid."
8. The findings in the functional capacity evaluation carry no evidentiary weight because (1) the evaluator stated that the results cannot be considered valid and (2) the deficits noted on page 3 of the FCE, which are the basis for the evaluation's findings, concern body parts that are not compensable and, therefore, not relevant to this case.
9. Dr. Stofko stated in his deposition that paragraphs 1-4 on page 3 of the FCE were not causally related to the T-12 fracture. (Second Deposition of Dr. Stofko, Defendants' APA p. 482, lines 18-25; p. 483, lines 1-23; p 484, lines 6-14).
10. Claimant's vocational evaluation (Claimant APA 4) is not given any weight due to its reliance the findings of the functional capacity evaluation, which has been found to carry no evidentiary weight, as the stated limitations were based upon body parts that are not causally related to the compensable injury.
11. Furthermore, Claimant's vocational evaluation is also excluded due to due process concerns. Defendants requested that Claimant undergo a neuropsychological evaluation and a second evaluation with a vocational expert; however, Claimant declined. Defendants filed a motion to compel, which was denied by the commission pursuant to S.C. Code Ann. § 42-15-80 because neither of the requested evaluators was a physician or surgeon. Because of Defendants' inability to obtain expert vocational and neuropsychological evaluations in this claim, to protect Defendants' due process rights, Claimant's vocational evaluation is given no weight.
12. No weight is given to Dr. Poletti's opinion because of his inability to objectively assess claimants' impairments. In multiple different cases, Dr. Poletti has described himself on the record as an "unashamed patient advocate"; these statements preclude him from being able to give a truly independent medical evaluation. (See the order from SC Workers' Compensation Commission case number 2205977, issued on March 15, 2024, pages 10-13.

13. The opinions stated by Dr. Leonard Forrest (Claimant's APA 2) are outweighed by the greater weight of the relevant medical evidence in the case and are based largely on injuries that go beyond the T12 fracture and are not compensable in this case. Furthermore, Dr. Forrest's opinions were heavily based on findings from the FCE which were not relevant to the only compensable injury in this case, the T12 fracture. Therefore, Dr. Forrest's opinions in this case are afforded no evidentiary weight.
14. Dr. Jeffrey Buncher's opinions are largely based upon body parts that are found not to be compensable; therefore, Dr. Buncher's opinions in this case are also given no weight.
15. Claimant was treated in the emergency room by Dr. Douglas Stofko, a board-certified neurosurgeon who was on call the date of the accident.
16. Dr. Stofko performed a two-level fusion from T11 to L1 for the T12 fracture, which was the compensable injury resulting from this accident.
17. Dr. Stofko testified in his deposition that Physician's Assistant Alana Cole was an "extender of me. So all her orders, anything that she's doing is acting under me." (Second Deposition of Dr. Stofko, Defendants' APA p. 457, lines 1-11). However, the record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions contained in her 14B.
18. Dr. Stofko testified that the opinions he had rendered in a questionnaire he had completed at the request of Claimant's Attorney Don Gibson on 11/18/2020 were still his opinions. (Second Deposition of Dr. Stofko, Defendants' APA p. 478, lines 1-25, p. 479, lines 1-7).
19. Claimant's radicular pain noted in the left upper and left lower extremities is not causally related to the T12 fracture. (Second Deposition of Dr. Stofko, Defendants' APA p. 479, lines 2-7).
20. The cervical complaints and medical treatment noted in Claimant's medical records were not causally related to the T12 fracture. (Second Deposition of Dr. Stofko, Defendants' APA p. 482, lines 2-12).
21. Complaints expressed by Claimant to PA Alana Cole, specifically that he was having pain at the screw sites from his previous surgery, are not supported by the greater weight of medical evidence in the record; PA Cole testified in her deposition that the area he was referencing as being painful was above the screw sites. (PA Cole deposition p. 6, 1-24).
22. Dr. Stofko further testified that he did not believe Claimant's complaints noted in the 1/10/2024 visit were due to his original accident that Dr. Stofko

- treated him for in October, 2019. (Second Deposition of Dr. Stofko, Defendants' APA p. 482, lines 1-12).
23. Claimant reached maximum medical improvement on 1/8/2020. (Defendants' APA 1, p. 24).
  24. The MRI of the lumbar spine ordered in the 14B is no longer necessary in light of the lumbar MRI that was done 8/8/2020. (PA Cole deposition, p. 38, lines 9-24).
  25. Claimant testified in his deposition that he was gainfully employed at Integrated Site Management (ISM) from around the last days of May 2022 until August 2022, earning \$15.00 an hour working 5-6 hours a day, Monday through Friday. (Morales Deposition, p. 14, lines 9-24, p. 20 lines 10-14, p.18, lines 9-20).
  26. Claimant testified in his deposition that from August 2022 to November 2022, he worked at Flores Construction making \$16.00 an hour working 30, 32, 35, and sometimes 40 hours a week. (Morales deposition p. 18, lines 20-25, p. 19, lines 1-16, p. 20 lines 2-9).
  27. Payroll records from Flores Contracting LLC indicate Claimant received checks beginning on 11/22/2022 and continuing through 1/12/2023. (Defendant APA Exhibit C).
  28. Claimant was on non-weight-bearing status for his left leg and on crutches for approximately four months as a result of a car wreck which occurred 12/31/2022, resulting in fractures to seven ribs (right at 5 & 6, left at 3-6), a sternum fracture, and a severely comminuted fracture to the tibial plateau necessitating surgery and permanent installation of orthopedic hardware. (Defendant APA 4, p. 122,123,142,143). (Claimant deposition, p. 12, lines 3-19).
  29. The parties attempted to resolve the issues at mediation on 7/19/2023, but mediation was unsuccessful.
  30. The greater weight of medical evidence indicates that Claimant sustained 5% impairment to his back as a result of the T12 fracture. (Defendant APA 1, p. 24).
  31. Defendants are entitled to credit for overpayment of temporary total compensation since 7/19/2023 for the following reasons:
    - (a) Even though MMI was reached on 1/8/2020, Defendants' authorized provider did not submit a Fonn 14B stating Claimant was at MMI until 1/12/2021.

- (b) Following Defendants' filing of their Form 21 on 2/5/2023, a hearing was held on 4/26/2022, order instructions were not received until 2/23/2022, and the subsequent order was filed on 3/22/2022.
- (c) Following the single commissioner's order, the case underwent an appeal process by which the single commissioner's order was vacated for being premature, as the case needed to go to mandatory mediation before an order could be issued.
- (d) The delays in getting a final order for matter are not attributable to the claimant; therefore, it would be fundamentally unfair to give Defendants credit dating back to the date of MMI.

## VI. CONCLUSIONS OF LAW

Based upon the above stipulations, statement of the case, APA submissions, evidence of the case, findings of fact, and South Carolina law, the following conclusions of law are made:

1. S.C. Code Ann. § 42-1-160 defines injury by accident and further defines medical evidence as "an expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed healthcare provider."
2. Pursuant to *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469 (1970), "[w]hen an issue of ultimate fact has once been determined by a valid and final judgement, that issue cannot again be litigated between the same parties in any future lawsuit."
3. Claimant is entitled to lifetime maintenance, repair, and replacement for any hardware he retains as a result of treatment of his compensable T12 vertebra injury.
4. Claimant is entitled to any ongoing treatment for his injury to his T12 vertebra as recommended by the authorized treating physician, Dr. Douglas Stofko.
5. Claimant is entitled to an award of 45% permanent partial disability to the back, which, pursuant to S.C. Code Ann. § 42-9-30 (21), equates to 135 weeks of permanent partial disability. At a compensation rate of \$845.74, 135 weeks equals \$114,174.90.
6. S.C. Code Ann. § 42-9-210 provides for deduction from compensation of payments made by employer when not due and payable.

7. Pursuant to the commission's authority under § 42-9-210, I find that Defendant is only entitled to credit dating back to 7/19/2023, the date of the failed mediation.

Appellants timely filed a Form 30 on 6/25/2024 alleging the following errors:

#### **GROUND FOR APPEAL**

1. The Single Commissioner erred in finding as a fact (paragraph 31) that the Defendants are entitled to credit for overpayment of temporary total compensation only since 7/19/2023 in that the finding is not supported by the greater weight of evidence and statutory and case law.
2. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Defendants are entitled to a credit for overpayment of temporary total compensation since 7/19/2023 in that Finding of Fact No. 31(b) contains incorrect factual information and cannot be a legitimate basis for Finding of Fact No. 31. Contrary to Finding of Fact No. 31(b), Defendants filed their Form 21 on 2/5/2021, not 2/5/2023, and the hearing was held on 4/26/2021, not 4/26/2022.
3. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the credit for overpayment of temporary total compensation should be limited to payments made since 7/19/2023 based upon the finding that the delays in getting a final Order for this matter are not attributable to the Claimant and, therefore, it would be fundamentally unfair to give Defendants credit back to the date of MMI. The error in this matter is that the delays in getting the final Order for this matter are not attributable to either party and that Defendants have paid to the Claimant a total of \$182,875.16 in indemnity since the date of MMI (\$3,578.28 TPD from 1/9/2020 to 4/1/2020; \$845.74 per week from 4/2/2020 to 2/23/2022; \$57,127.36 lump sum following remand for mediation paid 5/18/2023; and \$845.74 weekly until 4/25/2024 when Order instructions were received, for a total of 216 weeks).
4. The Single Commissioner erred in finding as a fact and concluding as a matter of law that Defendants are only entitled to a credit for overpayment of benefits since 7/19/2023 in spite of the fact that MMI was reached on 1/9/2020 in that such a finding is an abuse of discretion and not supported by current case law.
5. The Single Commissioner erred in Finding of Fact 31 in that the finding, to wit: that awarding credit back to the date of MMI would be fundamentally unfair to the Claimant, does not take into account the fact that he has been paid a total of \$182,875.16 since 1/9/2020, the date of MMI, and is erroneously based upon a presumption that failure to pay his award in lump sum rather than weekly installments is in itself "fundamentally unfair." Further, the findings do not take into account the fact that the Claimant did

receive a lump-sum payment of \$57,127.36 following Appellate Panel remand for mediation.

6. The Single Commissioner erred in finding as a fact that the Defendants were only entitled to credit for weekly payments after 7/19/2023 in that the finding does not take into consideration the fact that the Claimant was gainfully employed from at least May 2022 to January 2023.
7. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Claimant had sustained 45% permanent partial disability to the back, the error being that the only credible medical evidence in the record is that the Claimant had sustained 5% permanent partial impairment to his back and had no physical limitations resulting from this injury.

**1. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Defendants are only entitled to credit for overpayment of temporary total compensation paid since 7/19/2023 in spite of the fact that it was found that MMI was reached on 1/8/2020 for the following reasons:**

S.C. Code Ann. § 42-9-260 provides the procedure for termination of weekly benefits as being triggered when a claimant is declared to have reached maximum medical improvement. Implicit in that statute is the presumption that weekly benefits are temporary until the date of MMI and then weekly benefits become permanent benefits.

S.C. Code Ann. § 42-9-210 provides that: "Any payments made by an employer to an injured employee during his period of disability ... which, by the terms of this Title, were not due and payable when made, may... be deducted from the amount to be paid as compensation."

It is well established in South Carolina case law that workers' compensation benefits accrue along a time continuum. Temporary total disability benefits are available from the date of injury through the date of MMI; post-MMI benefits may then be awarded either as permanent total or permanent disability or as a percentage of impairment to a scheduled member. Date of MMI signals the end of entitlement to temporary total benefits. Murjel v. Environmental Management Services, 376 S.C. 23 (2007), 655 S.E.2d 482 (S.Ct. 2007). The Act does not provide for benefits to be paid to a claimant unless they are intended for temporary or permanent disability.

Once it is determined that MMI has been reached, temporary benefits should be terminated in favor of either permanent partial or permanent total benefits if warranted by the substantial evidence in the record. O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct. App.1995); Hendricks v. Pickens Cnty., 335 S.C. 405, 414, 517 S.E.2d 698, 703 (Ct. App. 1999). Compensation paid to the claimant is either temporary or permanent and becomes permanent after the date of MMI.

MMI, also known as maximum medical improvement, is a term used to indicate that a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S.C. 69, 89, 636 S.E.2d 876, 887 (S.C. Ct. App. 2006); Lee v. Harborside Café, 350 S.C. 74, 84, 564 S.E.2d 354, 358 (Ct. App. 2002). Maximum medical improvement is a factual determination by the Commission.

In the present case, the Claimant has received weekly payments of \$845.74 for 148.5 weeks and a lump-sum payment of \$57,127.36 for a total of 216 weeks or \$182,678.84 paid **after** the date of MMI. The Single Commissioner's Order limiting the credit for overpayment to benefits paid after 7/19/2023 is not supported by the case law cited above. Muriel held that the date of MMI signals the end of temporary benefits and the start of permanent benefits. The failure of the Single Commissioner to award credit back to the date of MMI effectively continues temporary benefits after the date of MMI.

The Single Commissioner's stated reason for limiting credit for overpayment of temporary total compensation paid since 7/19/2023 is not grounded in law or reality of this particular situation. His finding stated that the delays in getting a final Order for this matter are not

attributable to the Claimant and, therefore, it would be fundamentally unfair to the Claimant to give Defendants credit back to the date of MMI.

The error in this finding is that it is based on a presumption that the Claimant has been prejudiced in some way in spite of the fact that he has gotten \$834.73 a week for 148 weeks (nearly three years) and a lump-sum payment of \$57,127.36 representing over a year in benefits. The Single Commissioner's Order fails to explain how Claimant would be prejudiced by or be the victim of "fundamental unfairness" if credit were to be awarded back to the date of MMI.

S.C. Code Ann. § 42-9-210 provides for the deduction of payments made by employer when not due and payable, and Defendants contend that payments made for temporary total compensation after the date of MMI were not due and payable as temporary total compensation. The Act does not provide for benefits other than temporary or permanent. Failure to find that payments made in this case after 1/9/2020 were not due and payable as permanent disability payments has no legal justification and is erroneous as a matter of law.

Defendants agree that the statutory language of 42-9-210 allows for discretion on the part of the Commission to determine whether or not payments are due and payable or, rather, whether or not the Carrier can take credit for those payments against permanent benefits. In this case, there is no justification for finding that the awarding of credit back to the date of MMI would be "fundamentally unfair" to the Claimant who has been on a running award since that date. He has not suffered any financial hardship. He would simply not receive a lump-sum payment for permanency unless his disability award exceeded 216 weeks.

There is no statutory presumption that a claimant is entitled to lump-sum payment of permanency award. The purpose of a workers' compensation award is to provide a substitute

for the wages of the injured employee and the ordinary payment of compensation is in installment payments. Swilling v. Pride Masonry, 401 S.C. 178, 736 S.E.2d 672 (Ct. App. 2012).

Swilling was cited in an Illinois case, Iannoni v. City of Chicago, 219 Il. App 182526, 144 N.E.3d 1284 (2019), which addressed a similar question of lump-sum payments versus weekly payments. It noted that workers' compensation provides income replacement similar to income continuation and that the purpose of workers' compensation is to provide injured workers with periodic payments which are a substitute for regular wages, citing Swilling "the ordinary payment of compensation is in installment payments."

82 Am.Jur.2d Workers Compensation Section 11, Wage Replacement stated as follows: "The core function or primary goal of workers' compensation statutes is to provide wage replacement for employees who are injured on the job."

In the present case, Claimant received wage replacement for 216 weeks, including a lump-sum payment of \$57,127.36. He is not by law entitled to a lump-sum payment for his injury. The Single Commissioner's failure to order credit back to the date of MMI simply based on the assumption that it would be "fundamentally unfair" to the Claimant is an abuse of discretion and is not grounded in statutory or case law. Furthermore, the Carrier was not at fault for the delays in this case and has been forced to grossly overpay this claim. Furthermore, the permanent disability award of 45% to the back coupled with the credit only being granted back to 7/19/2023 would result in an additional 95 weeks of benefits totaling \$80,343.30. The end result would be that the Claimant would have received a total of \$263,023.14 representing a total of 311 weeks paid after the date of MMI on a permanency award of 45% to the back.

Failure on the part of the Single Commissioner to award Defendants credit back to the date of MMI constitutes an abuse of discretion. His stated reason for doing so is that the

Claimant is not responsible for the delay in getting a final Order for this matter and, therefore, it would be fundamentally unfair to give Defendants credit back to the date of MMI. Defendants were also not responsible for the delay in getting a final Order and have been paying the Claimant as outlined above.

Finding of Fact 31(b), which was used as a basis for limiting the credit Defendants were entitled to deduct from the permanency award, erroneously stated the Defendants filed their Form 21 request for a hearing on 2/5/2023 when the 21 was actually filed on 2/5/2021, not two years later. Furthermore, the hearing was held on 4/26/2021, not 4/26/2023. Finding of Fact 31(a) correctly stated that the 14B stating that Claimant had reached MMI on 1/8/2020 was not submitted until 1/12/2021 but neglects to mention that the 14B in question was not completed by the treating healthcare provider until 1/12/2021. The implication from the incorrect application of the dates on which Defendants sought to terminate temporary total compensation by filing the 21 is that Defendants failed to use due diligence in pursuing their stop pay application and were, in some way, responsible for the delay in these proceedings. In reality, Defendants filed their request for a hearing seeking to terminate temporary total compensation within a month after the 14B was prepared.

The Single Commissioner seemingly ignored the fact that the Claimant was gainfully employed from at least May of 2022 until January of 2023, even though Findings of Fact 25-27 clearly reference the fact that the Claimant was working and earning wages during that period of time. Nowhere in the Act is a claimant entitled to receive temporary total compensation during a period of time that he is employed and earning wages. In fact, return to work is, in itself, justification to stop temporary total compensation or for Defendants to request a hearing to

terminate temporary benefits. Failure to grant credit during that period of time is clearly erroneous as a matter of law.

**2. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the Claimant had sustained 45% permanent partial disability to the back, the error being that the only credible medical evidence in the record is that the Claimant has sustained 5% permanent partial impairment to his back and had no physical limitations resulting from this injury.**

As earlier stated, the compensable injury was the fracture at the thoracic spine, level T12. The Functional Capacity Evaluation performed on 10/23/2020 stated that the results of the testing could not be considered valid. (Defendant APA p. 596). Further, it stated at the second page that the doctor had requested evaluation for the thoracic spine but that was beyond the scope of the FCE. (Defendant APA p. 597). Finally, none of the deficits noted in the FCE were relevant to the thoracic spine but were all related to cervical and lumbar issues.

Dr. Stofko was asked in his deposition about the specific deficits noted in the FCE and whether they were causally related to the fracture at T12. He testified that they were not. (Defendant APA, pgs. 482, lines 15-25, 483, lines 1-25, and 484, lines 1-14). None of the deficits noted in the FCE can be used as a basis for a disability award.

The Single Commissioner found the opinions expressed by Dr. Poletti, the Claimant's expert, not credible. Although he specifically stated that he believed Dr. Poletti not to be credible because of testimony he had given in an unrelated hearing, there are other reasons that Dr. Poletti's opinion is not credible in this case.

Dr. Poletti performed an IME on the Claimant on 11/21/2023 in preparation for litigation. Dr. Poletti's statements regarding previous medical treatment do not reflect a careful reading of prior records. For example, Claimant was in a significant auto accident on 12/31/2022 resulting in nondisplaced fractures of ribs 5 and 6 on the right side and ribs 3, 4, 5, 6 on the left

side, sternal fracture, and heavily comminuted fracture of left proximal tibia with involvement of the medial and lateral tibial plateaus. (Defendant APA p. 123, 124). Claimant's leg fracture required surgery and internal fixation resulting in implantation of plates and screws on 1/2/2023 (Defendants APA p. 142). Dr. Poletti characterized this accident as one "which was involving injury to his leg to include a broken leg for which he was treated nonoperatively with crutches." (Claimant APA p. 19a). Clearly, Dr. Poletti either didn't actually read the medical records concerning injuries sustained in that accident or failed to appreciate the seriousness of the injury sustained by the Claimant.

He wrote on page 2 of his report (Claimant APA 19a) that "CT scan on date of injury indicating the 'T2' flexion distraction injury which was greater than 50% compression of the vertebral body is noted." Even assuming the reference to "T2" is a scrivener's error, nowhere in the medical records generated on the date of injury does it say that Claimant had greater than 50% compression. In fact, the CT report to which he was referring simply states under Impression: "Chance fracture T12. No displacement. Mild loss of height." Under Findings, it states in relevant part: "There is a T12 compression fracture with approximate 25% loss of height anteriorly." (Defendant APA p. 85). Dr. Poletti goes on to opine that Claimant had sustained the maximum allowable impairment available under the *AMA Guides*, 5<sup>th</sup> Edition, for compression greater than 50%. Dr. Poletti's report does not reflect that he reviewed the CT scans of thoracic and lumbar spines and MRI of cervical and lumbar spines done on 12/18/2023 which showed stable posterior fusion hardware at T11-L1 (Defendant APA p. 55, 58-61) before rendering an opinion that the hardware was "probably" loosening. Dr. Poletti's IME report on its face is based on an inaccurate review of the medical records and is a blatant attempt to bolster the Claimant's

case. The Single Commissioner was correct in his decision not to afford probative value to Dr. Poletti's opinion.

The Single Commissioner further found that the opinions of the other two physicians relied upon by the Claimant, Dr. Forrest and Dr. Buncher, are outweighed by the greater weight of the relevant medical evidence in the record as they are based on injuries that go beyond the T12 fracture and are based on findings from the FCE that are not relevant to the only compensable injury in this case.

The Single Commissioner found that the only credible medical opinions in this matter were those expressed by Dr. Stofko, the treating doctor, who was of the opinion that the Claimant had sustained 5% impairment to his back as a result of the T12 fracture. (Defendant APA p. 24). His opinion as to permanent impairment was not contradicted by other medical evidence in the record noted to be credible by the Single Commissioner. Defendants acknowledge that disability awards include other factors besides permanent impairment but contend that a disability award of 45% is greatly in excess of a medical condition for which the treating doctor has rendered a permanent impairment of 5%.

The record indicates that Physician's Assistant Alana Cole actually prepared the 14B, but Dr. Stofko testified in his deposition that she was an "extension" of him. He also testified that everything she ordered was ordered under him. (Defendant APA p. 457). The actual 14B states at the bottom a certification that the person who signs the form is a physician or other licensed healthcare provider. Medical evidence is defined in 42-1-160 (G) as "expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed healthcare provider."

The 14B that states the Claimant had 5% permanent impairment to his back as a result of the T12 fracture was prepared by Alana Cole, who is a licensed physician's assistant and who works as an "extension" of Dr. Stofko. The Single Commissioner's Order states at Finding of Fact 17 that all of PA Cole's orders, anything she is doing, was under Dr. Stofko, then goes on to find that there is nothing in the record to show that Dr. Stofko specifically endorsed PA Cole's opinions in the 14B. There is no such requirement that Dr. Stofko specifically endorse the 14B prepared by his PA, a licensed healthcare provider, for the opinions contained in it to have validity or probative value. The Single Commissioner appears to use this as a justification to effectively ignore the impairment rating of 5% to the back in the 14B.

Expert medical testimony is designed to aid the SCWCC in coming to the correct conclusion; therefore, the Commissioner determines the weight and credit to be given to expert testimony. Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999). When the Commission in effect disregards expert testimony, it must find other competent evidence in the record upon which to base its findings. Herndon v. Morgan Mills, Inc., 246 S.C. 201, 143 S.E.2d 376 (1965).

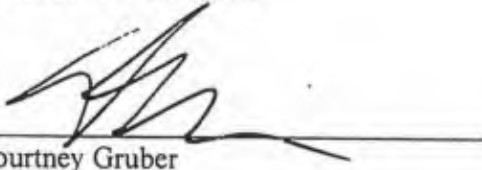
In the present case, the Single Commissioner clearly gave more weight to the opinions of Dr. Stofko than the other experts retained by the Claimant for purposes of this litigation. It is inexplicable, however, that he chose to disregard Dr. Stofko's opinion in the 14B that the Claimant had sustained 5% impairment simply because Dr. Stofko did not specifically endorse the opinions of his PA, whom he said worked directly under him.

In conclusion, Appellants contend first that they are entitled to credit for overpayment of temporary compensation from the date of MMI for the reasons stated above. They

further contend that the PPD award of 45% to the back is excessive in light of the probative medical evidence in the record.

Respectfully submitted,

CLEMENT RIVERS, LLP

By:   
E. Courtney Gruber  
P. O. Box 993  
Charleston, SC 29402-0993  
Phone: (843) 720-5410  
Fax: (843) 579-1304  
Email: [cgruber@ycrlaw.com](mailto:cgruber@ycrlaw.com)  
Attorneys for Appellants Insulation By  
Cohen, LLC, and Builders Premier  
Insurance Company

Charleston, South Carolina

Dated: September 27, 2024.

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,

Employee,

-versus-

**CERTIFICATE OF SERVICE**

Insulation By Cohen's & Sprayfoam by Cohen's, LLC,  
Employer,

and

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on September 27, 2024, I served the **Brief of Appellants Insulation by Cohen, LLC, and Builders Premier Insurance Company** on:

S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

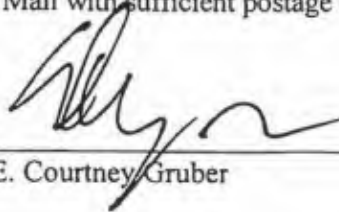
**VIA E-CASE UPLOAD**

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

**VIA FIRST CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber



When asked if any of the medical treatment recommended in the 1/10/2024 note was causally related to the T12 fracture resulting from the accident of 10/10/2019, Dr. Stofko replied: "I do not believe that his complaints from this note of 1/10/2024 are due to his original accident that I treated him for in October of 2019." (Stofko Depo. p. 65, lines 10-12; Defendants APA p. 42).

A Functional Capacity Evaluation was performed on 10/23/2020. (Claimant APA 1). The first page of the FCE states: "The results of this evaluation cannot be considered valid however. Co-efficient variations for grip and pinch strength were not suggestive of maximal effort and gaussian distribution was not noted for five-level grip testing with inconsistencies noted in grip strength readings and observant material handling loads." (Claimant APA p. 2). Claimant's attorney's statement in his brief that "the 'ONLY' reason for the FCE being considered invalid was the hand grip test because that test did not produce a bell-shaped curve" is merely opinion and not stated anywhere in the medical records. Furthermore, any findings concerning grip strength are not relevant in this case as they would have been related to the cervical spine, not the thoracic as per Dr. Stofko's deposition. (Stofko Depo. p. 67, lines 12-14; Defendants APA p. 484; see also Stofko Depo. p. 65, line 15, through p. 67, line 14).

The FCE further stated: "MD has requested IRE for the thoracic spine which is outside the scope of this evaluation." (Claimant APA p. 3). Client deficits noted were as follows: (1) Client demonstrates significant deficits in cervical and lumbar spine AROM, functional limitations were most notable for safe positioning for material handling in the lumbar spine as well as overhead activities with the cervical spine; (2) Client demonstrates decreased bilateral shoulder elevation AROM. Functional ROM was noted, however, with overhead activities; (3) Client demonstrates mild BUE proximal weakness. He reports pain in the upper back with resistance of MMT testing of bilateral shoulders; (4) Client demonstrates significant deficits of bilateral grip and pinch strength. Inconsistencies in presentation is noted, however, with dynamo meter testing of his bilateral grip strength with ranges inconsistent with observed unilateral material handling loads.

In his deposition, Dr. Stofko was asked specifically whether each of those four deficits noted on the FCE were causally related to the compensable fracture at T12. He stated: "It's my opinion with a medical degree of reasonable certainty that these were not caused by T12 fracture. They're all upper cervical issues, etiologies." (Stofko Depo. p. 67, lines 12-14; Defendants APA p. 484; see also Stofko Depo. p. 65, line 15, through p. 67, line 14). The limitations noted in the FCE were based on findings that were not related to the T12 fracture, which is the only compensable injury in this case. The findings of the FCE concerning physical limitations are not relevant to this case and rightfully should have been given no probative value.

With regard to the Single Commissioner's finding that Dr. Forrest's opinions were afforded little weight, Dr. Forrest had not seen the Claimant since 1/20/2021. His report documenting his examination on that date clearly reflects that he was evaluating the neck, upper back, low back, and leg symptoms. He did actually agree with Dr. Stofko's impression at that time that the neck and upper back symptoms were myofascial and the low back symptoms were also myofascial. He recommended an MRI scan of the lumbar spine, which had been performed in August of 2020. It does not appear that Dr. Forrest had the benefit of that lumbar MRI, which was normal.

Dr. Forrest further went on to reference the results of the FCE. The findings on that FCE were based entirely on limitations related to the cervical spine, which is not causally related to this accident.

On 4/1/2021, Dr. Forrest completed a questionnaire apparently sent by the Claimant's attorney. His opinion that the Claimant had lost 50% or more of his back was based entirely upon the FCE. Once again, the limitations imposed on the FCE were based on issues with the cervical spine, which is not relevant to this case. In addition to basing his opinion as to loss of the back on the findings on the FCE, he didn't have all of the relevant medical records, in particular the MRI of the lumbar spine performed in August 2020 which was normal. On 12/18/2023, Claimant underwent a second MRI of the lumbar spine, which was normal, and CT of the thoracic spine, which showed the fusion

was stable. Given the diagnostic testing done in December 2023 and the length of time that has passed since Dr. Forrest evaluated the Claimant in January 2021, Dr. Forrest's opinions rendered at that time are not particularly relevant 3-1/2 years later. The Single Commissioner was correct in affording little weight to Dr. Forrest's opinion regarding the principal injury in this case.

The Claimant has also taken issue with the finding that the Single Commissioner did not afford much weight to Dr. Buncher's medical opinions. Dr. Buncher's assessment of the Claimant's reported complaints to him were as follows: T12 compression fracture, concussion with loss of consciousness, lumbar radiculitis, neck pain, cervical strain, strain of left trapezius muscle, strain of thoracic back region, lumbar strain, left shoulder strain, cervical radiculitis, TMJ tenderness right. (Claimant APA p. 27). With the exception of the reference to the T12 compression fracture, none of the other ten items listed bear any relevance to this case. Dr. Buncher recommended a CT of the thoracolumbar junction to assess the stability of the T12 fracture.

The CT of the thoracic spine was performed on 12/18/2023, which showed a stable fusion. (Defendants APA p. 55, 59). Most of Dr. Buncher's report resulting from a one-time examination on 1/28/2021 was based upon injuries that have no relevance to this case. Furthermore, the diagnostic treatment he recommended, which was a CT of the thoracic spine, was performed and did not reflect any instability in the fusion. Dr. Buncher hadn't seen the Claimant in over three years prior to the hearing. The Single Commissioner was correct in affording Dr. Buncher's opinion little probative value.

The Single Commissioner's failure to afford probative value to Dr. Poletti's opinions in this case is supported by the substantial evidence in the record. He performed an IME on the Claimant on 11/21/2023 in preparation for litigation. Dr. Poletti's statements regarding previous medical treatment do not reflect a careful reading of prior records. For example, Claimant was in a significant auto accident on 12/31/2022 resulting in nondisplaced fractures of ribs 5 and 6 on the right side and ribs 3, 4, 5, 6 on the left side, sternal fracture, and heavily comminuted fracture of left proximal tibia with

involvement of the medial and lateral tibial plateaus. (Defendant APA p. 123, 124). Claimant's leg fracture required surgery and internal fixation resulting in implantation of plates and screws on 1/2/2023. (Defendants APA p. 142). Dr. Poletti characterized this accident as one "which was involving injury to his leg to include a broken leg for which he was treated nonoperatively with crutches." (Claimant APA p. 19a). Clearly, Dr. Poletti either didn't actually read the medical records concerning injuries sustained in that accident or failed to appreciate the seriousness of the injury sustained by the Claimant.

He wrote on page 2 of his report (Claimant APA 19a) that "CT scan on date of injury indicating the 'T2' flexion distraction injury which was greater than 50% compression of the vertebral body is noted." Even assuming the reference to "T2" is a scrivener's error, nowhere in the medical records generated on the date of injury does it say that Claimant had greater than 50% compression. In fact, the CT report to which he was referring simply states under Impression: "Chance fracture T12. No displacement. Mild loss of height." Under Findings, it states in relevant part: "There is a T12 compression fracture with approximate 25% loss of height anteriorly." (Defendant APA p. 85). Dr. Poletti goes on to opine that Claimant had sustained the maximum allowable impairment available under the *AMA Guides*, 5<sup>th</sup> Edition, for compression greater than 50%. Dr. Poletti's report does not reflect that he reviewed the CT scans of thoracic and lumbar spines and MRI of cervical and lumbar spines done on 12/18/2023 which showed stable posterior fusion hardware at T11-L1 (Defendant APA p. 55, 58-61) before rendering an opinion that the hardware was "probably" loosening. Dr. Poletti's IME report on its face is based on an inaccurate review of the medical records and is a blatant attempt to bolster the Claimant's case. The Single Commissioner was correct in his decision not to afford probative value to Dr. Poletti's opinion.

It is well established that expert medical testimony is designed to aid the Workers' Compensation Commission and the Commission determines the weight and credit to be given to expert testimony. Tiller v. National Healthcare Center of Sumter, 334 S.C. 333, 513 S.E.2d 843 (S.C. 1999).

The Single Commissioner exercised his discretion in the weight and probative value of expert opinions in this matter and his findings are supported by the evidence in the record.

With regard to the vocational evaluation performed by Harriet Fowler, a review of that evaluation reflects that the physical limitations she uses to come to her opinion are based on the physical limitations noted in the FCE, which has been shown not to be relevant to the only compensable injury in this case. She is basing his physical restrictions on notes in the FCE that were related to the cervical spine, which has nothing to do with this accident. For that reason, her opinion regarding the Claimant's ability to pursue gainful employment is not relevant in this case.

Fletcher v. Medical University of South Carolina, 390 S.C. 458, 702 S.E.2d 372 (Ct. App. 2010), is a medical malpractice case that held, in part: "The probative value of expert testimony stands or falls upon an evidentiary showing of the facts upon which the opinion is or must logically be predicated." The Single Commissioner's finding that the opinions of Dr. Buncher, Dr. Forrest, and Harriet Fowler were to be afforded little probative value is supported by the substantial evidence in the record because they were all based largely on findings of the FCE, which, in themselves, are not relevant to this case.

With regard to the Claimant's consistent reporting of pain where his "screws" are, those complaints have been contradicted by the opinions stated of PA Alana Cole and Dr. Stofko. In her deposition, which was taken on 2/13/2024, when asked about the examination performed 11/27/2023, PA Cole testified that the Claimant did not indicate that he had pain where his screw sites were located:

Q. Well, this visit it says, 'the patient reports, presents today complaining of pain in his mid-back , that the screw sites from his previous surgery.'

A. Yes.

Q. And he points to the pain in the upper thoracic region at the scapula. Is he pointing to the screw sites?

A. He is not. So he actually pointed to a different location than his screw sites were located. That's why I noted it.

Q. But could you say that's adjacent to the screw sites?

A. He was pointing in the like upper thoracic spine like near the scapula.

Q. And the screw sites are a little bit below that?

A. Uh huh.

Q. Did you actually palpate his back?

A. Yes. It looks like I did in the note. So that's tenderness to palpation is TTP, so it's the exam portion towards the bottom. Tenderness to palpation of the left trapezius and scapula. And no tenderness to palpation over the screw sites. Tenderness to palpation of the left SI joint.

Q. No tenderness over the screw sites?

A. Correct.

(Cole Depo. p. 6, lines 1-24; Defendants APA, p. 381).

Q. Now, again, in your report it says that he reports at the screw sites from his previous surgery. So he was reporting to you pain over the screw sites?

A. Uh huh.

Q. But in palpation, you did not palpate tenderness?

A. Correct. And in his description, it was separate from the screw sites. He was touching the area that is higher up than his screw sites were located.

Q. Like mid-back right here?

A. The shoulder blade kind of in this area, yeah, it's where he's pointing to.

(Cole Depo. p. 7, lines 13-24; Defendants APA, p. 382).

PA Cole was then asked about the subsequent examination that was performed by her co-worker after imaging had been performed of the thoracic and lumbar spines. The Claimant was seen by Josephine Jennings on 1/10/2024.

Dr. Stofko testified that none of the medical treatment recommended on 1/10/2024 was causally related to the fracture at T12 resulting from the accident of 10/10/2019. (Defendants APA p. 482).

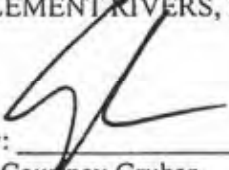
There is substantial evidence supporting the Single Commissioner's finding that MMI was reached on 1/8/2020. Claimant did testify at the hearing that his back hurt him when he sat back, but that testimony was given after Dr. Stofko had testified in his deposition that "if" Claimant had reported "incision site pain" that he described as "like when I lean back, I'm on a chair, I can feel the screws." (Stofko Depo. p. 23, lines 11-18). That testimony was during direct examination by Claimant's attorney and intended to justify the need for additional medical treatment. Dr. Stofko did not recommend additional medical treatment for the Claimant; he simply responded to questions posed by his lawyer. Claimant did not report pain in his back when he leaned back in a chair until after his lawyer had elicited testimony from Dr. Stofko that would be an example of a complaint that could indicate a problem with the incision site or the screws. Dr. Stofko has stated that the Claimant is at MMI for the compensable injury in this accident. There is no evidence that the fusion is unstable. Dr. Stofko also testified that none of the treatment recommended in the 1/20/2021 report was relevant to the compensable injury to T12.

The Decision & Order filed 1/11/2021 is correct in finding that Claimant had not met his burden of proof that body parts other than the fracture at T12 were causally related to this accident. Any argument alleging that Order or any subsequent ones were improper because they went beyond the scope of the Order Instructions is specious and without merit. Order instructions, which are simply a request for a proposed order, direct the drafter to add findings of fact as long as they are consistent with the decision and the Order is "proposed" at the time it is filed. The Commissioner has the right to modify and/or delete any portion before signing the Order. The South Carolina Court of Appeals has already ruled on this argument, calling it "without merit" in Turner v. Saha Construction, 796 S.E.2d 150, 419 S.C. 98 (2016).

In conclusion and in response to Claimant/Appellant's Brief, Defendants/ Appellants respectfully request that the Single Commissioner's findings that MMI was reached on 1/8/2020 be affirmed. Defendants/Appellants have previously appealed other findings in the Single Commissioner's Order in their Appellants' Brief filed 9/27/2024.

Respectfully submitted,

CLEMENT RIVERS, LLP

  
By: \_\_\_\_\_  
E. Courtney Gruber  
P. O. Box 993  
Charleston, SC 29402-0993  
Phone: (843) 720-5410  
Fax: (843) 579-1304  
Email: [cgruber@ycrlaw.com](mailto:cgruber@ycrlaw.com)  
Attorneys for Appellants Insulation By  
Cohen, LLC, and Builders Premier  
Insurance Company

Charleston, South Carolina

Dated: October 7, 2024.

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,  
Employee,

-versus-

**CERTIFICATE OF SERVICE**

Insulation By Cohen, LLC,  
Employer,

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on October 7, 2024, I served the **Appellants Insulation by Cohen, LLC, and Builders Premier Insurance Company Reply Brief** on:

S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715

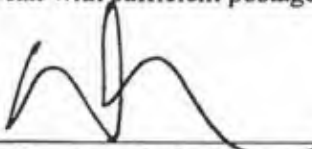
**VIA E-CASE UPLOAD**

Preston F. McDaniel, Esquire  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201

Don C. Gibson, Esquire  
Gibson Law Firm, LLC  
P. O. Box 60669  
North Charleston, SC 29419-0669

**VIA FIRST CLASS MAIL**

by placing said documents in the United States Mail with sufficient postage thereon.

  
\_\_\_\_\_  
E. Courtney Gruber

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC File No.: 1921668

EVARISTO VERDUGO MORALES, )  
Employee, )  
Claimant/Appellant, )

v. )

INSULATION BY COHEN'S & )  
SPRAY FOAM BY COHEN'S, LLC )

Employer, and )

BUILDERS PREMIER INSURANCE )  
COMPANY, )

Carrier, )  
Defendants/Respondents. )

**CLAIMANT'S/RESPONDENT'S BRIEF  
TO THE BRIEF OF APPELLANTS  
INSULATION BY COHEN'S, LLC  
AND BUILDERS PREMIER  
INSURANCE COMPANY**

By way of Response to the Appeal (Request for Review) filed  
by the Defendants:

**I. THE SINGLE COMMISSIONER DID NOT ERR BY NOT AWARDING A  
CREDIT TO THE DEFENDANTS FROM JANUARY 8, 2020 BUT DID  
EITHER ERR BY GIVING THE DEFENDANTS ANY CREDIT BEFORE THE  
DATE OF THE HEARING OR AT THE MOST WAS CORRECT IN GIVING A  
CREDIT BACK TO THE DATE OF MEDIATION.**

First, this argument should not be entertained because the  
Commissioner also found that the Form 14B asserting MMI on  
January 8, 2020 was not filed until January 12, 2021, over a  
year later. He also found that the Form 14B was never endorsed  
by the authorized treating physician, Dr. Stofko.

Further, following the failed mediation on August 1<sup>st</sup>, the  
Claimant filed a Form 50 requesting an additional evaluation

concerning the removal of the screws and whether or not he needed further medical treatment above and below the fusion site and the Form 50 alleged that the Claimant was not at maximum medical improvement.

In response on August 7<sup>th</sup>, the Defendants scheduled an appointment with Dr. Stofko for evaluation.

Totally contradictory to that position, on August 8, 2023 the Defendants filed a new Form 21 requesting to stop payments citing the original Form 14B from 2020.

The Defendants then filed a Motion to Compel the Claimant to attend the evaluation and as set forth in the Record and in the Order of Commissioner Beck that resulted in a Consent Order. Mr. Morales attended the evaluation and Dr. Stofko's office recommended further treatment for the T11-L1 fusion and fusion site. Thus, based on the Defendants actions they waived any request for a credit back to the original MMI date since they filed a new Form 21 and mandated that the Claimant attend an evaluation at which it was determined that he needed additional medical care specifically in reference to the fusion site and the hardware.

Further, as a matter of law the Defendants have to establish both that the claimant is at maximum medical improvement and that the employee is no longer disabled to be allowed a credit for temporary total disability benefits. Swinton

v. SC Dept. of Mental Health, 314 S.C. 202, 442 S.E.2d 215 (SC App. 1994). In this case, regardless of the date of maximum medical improvement Commissioner Beck found made no Finding on the disability and the Defendants failed to establish the disability had ended, plus they were not entitled to a credit for all the reasons as stated above plus as a matter of law because they were not entitled to a credit under Swinton.

In addition, in this case in accordance with SC Code §42-9-190 the Defendants have not established that they have offered or procured work within the Claimant's residual capacity and they did not establish that the disability has ended. In Coleman v. Quality Concrete Products, 245 S.C. 625, 142 S.E.2d 43 (1965), the claimant had admittedly had multiple surgeries and had reached maximum medical improvement but could not return to work as a bulldozer operator or any job in which he had experience. The evidence established that he was actively looking for work and that the defendants had not offered or procured him any work within his residual capacity. The Supreme Court found that the disability continued since nothing in the Record established the disability had ended. Therefore, there is justification in this case for the Commissioner to choose the date of the failed mediation, which had been mandated by the Commission pursuant to the Mediation Rules, to constitute a date that could be looked at as a reasonable date to give a credit back to for the Defendants

against the Award.

However, in accordance with law since the Claimant was taking the position that he was not at maximum medical improvement and needed additional medical care, a decision on disability could not be made until the date of the hearing when the Commissioner heard the evidence and made a decision based on that evidence as to whether or not the Claimant was entitled to additional medical care or that the disability was in fact permanent and entitled to an Award. Just because the Commissioner chose to make an Award does not change the issues before him for decision, which was based on the evidence before him to decide whether or not to grant the Claimant additional medical care or make a permanent Award.

**II. THE CLAIMANT AGREES THAT THE COMMISSIONER ERRED IN FINDING AS A FACT THAT THE CLAIMANT HAD SUSTAINED A 45% PARTIAL DISABILITY TO THE BACK; HOWEVER THE ERROR IS THAT HE ERRED BY NOT AWARDING THE CLAIMANT TOTAL AND PERMANENT DISABILITY FOR HAVING LOST 50% OR MORE OF THE FUNCTIONAL USE OF HIS BACK TO DO WORK REQUIRING THE USE OF HIS BACK BASED ON NOT ONLY THE PREPONDERANCE OF THE EVIDENCE, BUT ALL THE EVIDENCE ON LOSS OF USE IN THE RECORD.**

This issue has been copiously briefed in the Claimant's appeal but in response to the arguments made by the Defendants.

First, as to the reference to 5% permanent partial impairment to the back, that is actually a whole person rating and even that rating translates to a thoracic spine rating of 40%. The Supreme Court has held that the regional ratings are the impairment ratings to be used in consideration of awards for

injuries to the back. Without citation see Clemmons v. Lowe's Home Centers, Inc. - Harbison and also the recent case of Paulino v. Diversified Products, Inc.

However, even that conversion is not a valid impairment rating. As set forth in the Commissioner's Findings nowhere in the Record did Dr. Stofko, the authorized treating physician, sign off on any impairment rating or had even seen or considered the Form 14B. The 5% whole person impairment rating was given by someone at CORA. There is no evidence in the Record that it was made by a qualified medical professional in accordance with the AMA Guides. The cover page of the two page impairment evaluation is truly instructive as to how the impairment evaluation was skewed to achieve a result. While referencing the AMA Guides' criteria for a valid evaluation including a functional history and physical exam and clinical studies, the Commission need only look at the AMA Guides in reference to all of the tests that are supposed to be performed as part of a physical exam. The only test this person performed was, according to the report, the straight leg raising test. Under clinical studies, the examiner did not review any of the clinical studies; instead under "Clinical Studies and Objective Test Results" the so-called examiner and qualified person to perform the impairment rating under the AMA Guides stated in reference to clinical studies that the report is based on "per verbal discussion with doctor's

staff. Patient had mild loss of vertebral height". That is hearsay and not a review of the clinical studies.

Again, even a 5% whole person rating is a 40% impairment of the thoracic spine.

Next, the Defendants recite one statement from the findings of the physical therapist who conducted the Functional Capacity Evaluation on Mr. Morales for CORA taken out of context to argue the Claimant did not give consistent effort and the results were thus invalid. What the physical therapist actually found based on his observations and work with the patient during the Functional Capacity Evaluation was that:

**"The client demonstrated consistent participation during the evaluation. No inorganic or exaggerated pain behaviors were noted. He completed all testing areas without declination."**  
(Cl. APA p. 2).

The only reason, the only reason, the evaluator stated that the Functional Capacity Evaluation could not be considered as valid was because of the results of grip and pinch strength tests were not suggestive of maximum volition effort. It is not only wrong but it is abhorrent according to the American Medical Association's Guide To The Evaluation Of Functional Ability to rely on the hand grip test to make a determination on validity one way or the other as previously set out in the Claimant's Appeal Brief.

Next, in reference to Dr. Poletti, it is very clear from the

Commissioner's Finding that the reason he did not take Dr. Poletti's opinions into consideration and gave them no weight was because in numerous other cases Dr. Poletti had stated that he was an "unabashed patient's advocate". The Claimant must be mistaken but would submit that Dr. Poletti's statement is in accordance with the Hippocratic Oath. It is unbelievable that a Commissioner would criticize and give no weight to a doctor's opinions because he was a patient's advocate. However, while that Finding of Fact gives no weight to Dr. Poletti's opinions because of his inability to give an "unbiased" evaluation because he is such a patient's advocate, what the Finding of Fact actually sets forth clearly is that the Commissioner had a bias and prejudice against any evidence from Dr. Poletti going into the hearing. He should have recused himself because he is biased against those opinions and could not give the Claimant a fair hearing.

As to Dr. Forrest, the Finding is absolutely absurd. Dr. Forrest saw this man before the Functional Capacity Evaluation, he made all of his objective findings before that, he stated the man's condition before that and there is absolutely no reason which is not arbitrary and capricious as to why his opinions should not have been given any weight. In fact, he is a licensed medical physician as is Dr. Poletti, as is Dr. Buncher and all three of them assigned an impairment rating to the thoracic spine of 100% and their evaluations in this regard were based on a

review of the records and the scans and their examination. Dr. Poletti reviewed the scans and found that the man had a greater than 50% compression fracture, not greater than 25% as set out by CORA. Dr. Buncher not only reviewed the scans but reviewed the scans with a neuroradiologist, Dr. Marlow, in expressing his opinion on impairment.

As set forth in the Claimant's Brief, the issue before the Commissioner is loss of use and not only does a preponderance of the evidence establish but all of the evidence on loss of use in the Record establishes that this man has lost more than 50% of the use of his back to do work requiring the use of his back.

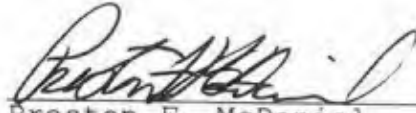
There is simply no evidence in the Record to justify the position taken by the Defendants in reference to the amount of loss of use that this man has to do work requiring the use of his back.

Also, the Defendants do not even touch nor mention whether or not this man is entitled to an award for loss of earning capacity as defined by the Supreme Court under SC Code §42-9-10.

#### **CONCLUSION**

For the foregoing reasons, the exceptions to the Order raised by the Defendants should be denied and the Order affirmed in that regard and the Award per the Claimant's Brief should be amended.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for the Claimant

October 10, 2024

CERTIFICATE OF SERVICE

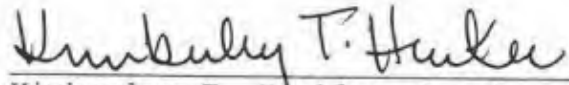
WCC File No. 1921668

I hereby certify that I have on this day served a copy of the document described below in the matter of Evaristo Verdugo Morales v. Insulation by Cohens, LLC & Spray Foam by Cohens, LLC, addressed as follows:

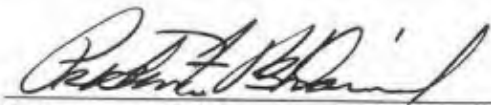
TO: E. Courtney Gruber, Attorney at Law  
Clement Rivers, LLP  
Post Office Box 993  
Charleston, South Carolina 29402

DOCUMENT: CLAIMANT'S/RESPONDENT'S BRIEF TO THE BRIEF OF APPELLANTS INSULATION BY COHEN'S, LLC, AND BUILDERS PREMIER INSURANCE COMPANY

DATE OF MAILING: October 10, 2024

  
\_\_\_\_\_  
Kimberley T. Hinkle, Paralegal

SWORN TO BEFORE ME this  
10<sup>th</sup> day of October, 2024.

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission Expires: 10/25/28

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 1921668

EVARISTO VERDUGO MORALES, )  
 )  
Claimant/Employee, )  
 )  
v. )

**MOTION FOR RECONSIDERATION  
PURSUANT TO REG. 67-215(B)**

INSULATION BY COHENS, LLC )  
& SPRAY FOAM BY COHENS, LLC, )

as Employer, )

BUILDERS PREMIER INSURANCE )  
COMPANY, )

as Insurance Carrier, )

Defendants. )

**SCWCC  
DEC 10 2024  
JUDICIAL**

TO: SC WORKERS' COMPENSATION COMMISSION AND E. COURTNEY  
GRUBER, ATTORNEY AT LAW, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Claimant hereby moves  
for reconsideration in the above-referenced matter pursuant to  
the Regulations. This is not an attempt to reargue the merits of  
the case but is to ask for reconsideration of the entire Record  
for the reasons as set forth hereinbelow due to the errors of  
law and procedure. The Claimant would request review pursuant to  
the following:

1. On a general procedural basis, this matter was heard  
on October 14, 2024. Reg. 67-709(C) requires that the  
Commissioners vote within ten (10) days of the date of the  
review. The Full Commission Order states that the decision

**SCWCC  
DEC 10 2024  
JUDICIAL**

the Full Commission, "fully **AFFIRMED**" decision of the Hearing Commissioner. As such, subsection E contemplates that the Panel shall issue its Order thirty (30) days after the hearing. Thus, this hearing was held on October 14<sup>th</sup> and this Decision was not entered until December 3, 2024.

2. As to the Panel's Finding of Fact #7, there is no indication in that Finding or any other Finding of Fact that the Panel addressed the issues raised for review of the physical therapist's opinion that conducted the Functional Capacity Evaluation as stated in the Functional Capacity Evaluation that he found Mr. Morales gave valid and consistent effort throughout the entire evaluation. The statement that the results could not be considered valid are only in reference simply to the hand-grip analysis. Further, not only is there no reference in the Full Commission's Decision to the physical therapist's opinions/findings, the Decision does not address the **untrustworthiness** of the **handgrip analysis alone for validity of effort** in certain circumstances. Failure to address these is an error of law.

3. As to Full Commission Finding of Fact #8, there is no evidence that the Commission addressed the issue raised for review that the deficits as stated in the Finding concerned "body parts" that are not compensable does not address the legal issue that the issue before the Commission is loss of use of the

back and that the "body parts" that are referred to are in fact not separate body parts, but are in fact parts of the back. So, under law even if and assuming there is loss of use of the back unrelated to the specific injury, the issue before the Commission and with which the Commission is charged decide is loss of use of the Claimant's back to do work requiring the use of his back. There is no bifurcation in the statute of the cervical thoracic or lumbar spine, the essential issue is loss of use of the back. Thus, under this Commission's Oath of Office and a liberal interpretation of the wording of the Act in favor of the injured worker is an error of law. Further, the attempt to bifurcate the back makes this an arbitrary and capricious Finding and contrary to law.

4. As to Commission Finding of Fact #10, this Finding of Fact is contrary to the law and the undisputed evidence. The undisputed evidence establishes the evaluator, Ms. Harriet Fowler, gave absolutely no weight to the invalid parts of the Functional Capacity Evaluation as clearly stated in her report. Thus, this Finding supposedly based on fact and evidence is arbitrary and capricious. If the Commission wants to make this Finding, it needs to cite from the Record the evidence substantiating that Finding of Fact. There is none.

5. As to Commission Finding of Fact #11, this is clearly an error of law for multiple reasons. The Defendants have no due

process rights as alleged in the Finding in reference to having their own Functional Capacity Evaluation performed. First, there is no such due process right and Counsel for the Claimant has absolutely no idea what the Commission is referring to. Due process according to the SC Supreme Court and under the SC Constitution in reference to Administrative Agencies requires notice and an opportunity to be heard and the right to cross-examine witnesses adverse to your position. SC Constitution Art. 1 §22 provides for notice and an opportunity to be heard, and the right to cross-examine the witnesses as does SC Supreme Court decisions including Garris v. Governing Board of SC Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998). The only conceivable due process right would be the inability to present evidence in the form of a vocational evaluation and thus the Defendants would have to have a property interest in and a statutory right to that. There is no such right under the Workers' Compensation Act no matter how much the Defendants or any anti-worker elements seek to push it into the Act. Under the Act, defendants have a very limited right to challenge a worker's right to workers' compensation and the Act is set up that way as a tradeoff and to achieve its beneficial purposes, one of which is to provide swift and sure benefits without extensive litigation. So, under the Act: and §42-3-140, the Defendants have 1) the right to subpoena witnesses, books, and records; and under §42-3-160 they have the

right to 2) take the depositions of witnesses. Under §42-15-80 they have the right to 3) request as many independent medical evaluations as desired, and actually under the statute, require the claimant to submit to "examination at reasonable times and places by a qualified physician or surgeon" which is paid for by the employer or its insurance carrier. Without citation, as the Commission knows the Courts and this Commission have held repeatedly that that is limited to qualified physicians or surgeons and does not encompass neuropsychological testing or even a psychologist unless it is part of an evaluation performed by a qualified physician or surgeon. The Claimant knows of no statute (because there is) that allows for the Defendants to have a vocational evaluation performed requiring participation by the claimant. Thus, the Defendants have no right to a vocational evaluation under the Act requiring the claimant to participate. Yes, the Defendants, as has traditionally been the way that vocational evidence is presented by the defendants, have the right to take a discovery deposition of the claimant and subpoena records and then submit that to a vocational expert along with medical records and other documentation and obtain that expert's records review opinion. Least we not forget as this Commission regularly reminds the claimant and takes note of, the claimant has the burden of proof and that is why there is no limitation on the claimant's right to present evidence.

Further, the Finding of Fact is based on an error of law in that the Finding of Fact clearly sets out that the Defendants filed a Motion to Compel which was denied by the Commission. That decision is the "Law Of The Case" so even if they were entitled to an examination under a distorted concept of due process, which they are not under the Act, that issue has been decided and so there is no right to exclude based on due process grounds. This is another blatant error of law.

6. As to Finding of Fact #12, again, quoting from Garris, supra:

"The persons legally responsible for an Administrative Agency's decision must be informed and unbiased, must hear the case, and must in fact make the decision."

The Claimant raised three (3) issues of law in reference to this Finding by the Hearing Commissioner which Finding was simply regurgitated by the Full Commission. One is that the Commissioner went outside of the Record. There is no question that the Commissioner cited to an Order of this Commission which was not presented to him by the parties and was thus outside of the Record. If the Commission is going to sanction this Finding of Fact, they must state how that is not true. Further, the Claimant alleged as a matter of law that the Finding was arbitrary and capricious. If the Full Commission is going to sanction that Finding as written, then the Commission must state based on evidence in the Record how Dr. Poletti assuming him to

be an "unashamed patient advocate" in some way prejudices him and makes him incapable of rendering a, "truly independent medical evaluation". While that is an absurd basis for no weight, in and of itself, if that basis were to be applied the Claimant would be glad to list numerous doctors and ask each Commissioner to take notice under their expertise in hearing workers' compensation cases that those doctors are so far in the insurance companies' pockets that they would never see the light of day who on a regular basis give Independent Medical Evaluations for the defendants.

Lastly, as cited in Garris, the Claimant raised as a legal issue, whether or not the Commissioner was biased and the Finding was arbitrary and capricious. That Finding of Fact clearly shows a bias or prejudice in his consideration of the evidence. Clearly, Commissioner Beck without notice to the parties had a clear predisposition to not give any weight to the opinions of Dr. Poletti. This clearly evidences as a matter of law bias and prejudice in review of the Claimant's evidence.

7. Finding of Fact #13 of the Full Commission constitutes a violation of law as clearly set out to the Commission previously. First, if the Commission is going to sanction this Finding then it must set forth evidence and basically, "fill in the gaps" in reference to the Commissioner's Finding. by citing specific evidence to establish that Dr. Forrest's opinions were

based largely on injuries that go beyond the T12 fracture. As a matter of law that is contrary to the evidence. Under any rational reading of his reports and his impairment rating, they are based on the thoracic spine. Also, the Finding states that Dr. Forrest's opinions are heavily based on the findings from the Functional Capacity Evaluation, which again is simply not true. If the Commission is going to sanction that inadequate Finding of Fact, which is not a detailed and definite Finding of Fact based on evidence, then it must cite evidence from the Record supporting that part of the Finding of Fact. That is simply not true and there is no evidence to support that and the Commission's decision to sanction that Finding of Fact constitutes an error of law.

8. As to Finding of Fact #14, it is totally inadequate as a matter of law. This Commission is required to make detailed Findings of Fact based on the evidence which is sufficiently detailed and definite enough to allow for judicial review. The Finding of Fact simply sets forth no evidence from the Record to establish the assertions in the Finding of Fact. To make a detailed Finding of Fact in reference to Dr. Buncher's opinions, Commissioner Beck and this Commission would have to cite from his report evidence that establishes that his opinions are based on body parts that are not found to be compensable. By the way, again, "the essential issue for decision before the Commission

and before Commissioner Beck was and is loss of use of the back to do work requiring the use of the back. Last time Claimant's Counsel checked, the cervical spine and the lumbar spine are not separate parts of the body. They are anatomical sections of the spine, i.e., the back. Although Dr. Buncher's report is specifically tailored to the thoracic spine and the treatment which involved the thoracic injury (again, which Commissioner Beck wanted to ignore and this Commission obviously also wants to ignore in trying to deny this worker benefits) including the screws, and plates, and the involvement of the T11 thru and including the L1, in other words, first vertebrae of the lumbar spine; the Finding of Fact as a matter of law is a totally inadequate Finding and the Commission at the least should go back and at least if it is going to reject Dr. Buncher's opinion, set forth the evidence in the Record that would substantiate that Finding and rejection of his opinions.

9. Finding of Fact #16 is actually contrary to the other Findings and is actually accurate in that the fusion involved the T11 thru the L1, and thus the injury involved the T11 vertebrae and through and including the L1 vertebrae. So, if the Commission wants to limit consideration to what the injury itself actually involved, the Commission must include T11 (thoracic spine) and L1 (lumbar spine) as the part of the back that was involved in the actual injury and the treatment

necessary to treat the injury. Any references in the other sections of the Order and any Findings of Fact limiting any of the Award to simply the T12 is contrary to the evidence and this Findings of Fact makes all Findings an error of law and makes this Finding of Fact and the other Findings of Fact contradictory, particularly as to the Award part of the Decision.

10. As to Finding of Fact #17, it in fact sets forth the basis for why the other Findings of Fact are arbitrary and capricious, are not detailed and definite enough, and are also contrary to the facts and evidence in the case. In Finding of Fact #17 as found by Commissioner Beck and reiterated by this Commission Panel, Dr. Stofko never sanctioned the opinions of Alana Cole, PA in her Form 14B. The Form 14B is the only place for a medical doctor to set forth any opinions on impairment to the spine contrary to those set forth by Dr. Poletti, Dr. Forrest, and Dr. Buncher. The Form 14B does not even refer to the impairment rating that was provided by CORA, which is the only, again the only, other evidence in the Record on medical impairment (not loss of use) to the back. Thus, all the other Findings of Fact in reference to the medical opinion evidence and the dog-whistle reference to, "the greater weight of the medical evidence" is an error of law under the facts in this

case requiring review and the making of detailed Findings of Fact.

11. As to Finding of Fact #21, in reference to the complaints the Claimant was and is still having of pain over the screw sites from his surgery that those complaints are not supported "by the greater weight of the medical evidence" is contrary to the medical evidence in the Record. This is an error of law because it states that the complaint is not "supported by the greater weight of medical evidence in the Record" without citing what that greater weight of medical evidence is. The only reference is to PA Cole and that the areas which he was "pointing" to are above the screw sites. All of the other medical evidence including from Dr. Stofko's multiple PAs Alana Cole, and Josephine Jennings, all of the physical therapist's reports from Roper St. Francis and Dr. Poletti, Dr. Forrest, Dr. Buncher and even PA Cole's initial review all refer to the pain over the screw sites (quoting from 11/27/23 O/V of Alana, "he reports is at the screw sites from his previous surgery" (Def. APA, p. 49) and there is no other statement that the complaints are not in reference to the screw sites. What greater weight of what medical evidence.

12. As to all Findings of Fact as set forth in the original Hearing Commissioner's Order as repeated in the Full Commission's Order verbatim, the Hearing Commissioner in his

Notes made no references to any of the testimony or evidence presented in the case, which as a matter of law he is required to do in his Findings of Fact. The references to specific evidence to support the non-detailed, inadequate Findings of Fact referencing the evidence upon which they are based, was added by defense counsel in the final Order. It is an error of law for the Commission under SC Code §42-9-5, §42-17-40, §42-17-50, and SC Code §1-23-350 to fail in its responsibility, not anyone else, to make detailed Findings of Fact and Conclusions of Law which is sufficiently definite and detailed enough to allow for judicial review. Thus, all of the Findings of Fact that list references to the evidence which were not made by either the Commissioner or the Full Commission constitute an error of law and are in strict violation of the statutory responsibility of the Commission who is charged with the responsibility of reviewing the evidence and making Awards.

13. Again, the Commission is charged with the responsibility to make Awards and to make detailed Findings of Fact and Conclusions of Law based on the law contained within the Act itself or submitted by the parties for the consideration of the Commissioner at the hearing. It is going outside of the Record for the Commissioner to cite case law not cited to him for consideration or cited by a party under the statutory provisions as part of a Conclusion of Law made at the direction

of the Commissioner in reference to the Commission's Findings on the Findings of Fact. In this case, the Commissioner in support of his decision on "Law of the Case" cited Ashe v. Swinson, a United States Supreme Court decision that was not cited by either party in reference to this case and is not part of the Record. Thus, it is going outside of the Record and replying on legal precedent not cited by either party in support of the decision of the Commission.

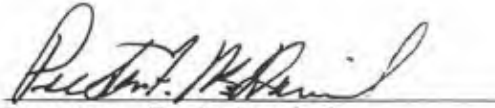
14. The Hearing Commissioner and the Commission erred by not making any Findings of Fact or any Conclusions of Law on whether the Claimant was entitled to an Award for total and permanent disability based on wage loss under SC Code §42-9-10. The Full Commission failed in its responsibility because this was brought to their attention, and yet the Commission as a matter of law did not make any Findings of Fact or Conclusions of Law in reference to the Claimant's request for benefits based on wage loss.

15. The Hearing Commissioner and the Commission erred as a matter of law requiring reconsideration in reference to the failure to cite the evidence relied upon in making a 45% partial disability to the back Award especially in light of the Findings of Fact excluding from consideration the evidence on loss of use of the back.

16. The Claimant requests reconsideration as a matter of law because the Commission while making a Conclusion of Law that the Claimant was entitled to ongoing treatment for his injury to his T12 fracture as recommended by Dr. Stofko, and where the evidence established that his PAs recommended further treatment for his T12 fracture now by not detailing that the Claimant is in fact at this time entitled to that further medical treatment as uncontested in the Record in reference to determining whether or not the Claimant needs to have screw removal to improve his condition. The Commission, while making this a part of the Order did not detail, although the evidence is undisputed in the Record as a matter of law, as to what further medical care the Claimant is entitled to under the treating physician, Dr. Stofko.

For to the foregoing reasons due to the legal errors committed by the Full Commission in its review, the Claimant would request reconsideration of the Appellate Panel Decision and Order in this matter and would submit that this matter needs to, at a minimum, be reset for further hearing by the Full Commission for a detailed Order addressing all the issues raised on appeal or the Order of Commissioner Beck needs to be vacated and this matter remanded for a hearing on all issues.

Respectfully submitted,



Preston F. McDaniel  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Don C. Gibson  
GIBSON LAW FIRM, LLC  
Post Office Box 60669  
North Charleston, SC 29419  
(843) 744-1887

Attorneys for Claimant

December 5, 2024

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 Insulation By Cohen's & Sprayfoam by )  
 Cohen's, LLC, )  
 Employer, )  
 )  
 Builders Premier Insurance Company, )  
 Carrier, )  
 Defendants. )

**MOTION TO ALTER OR AMEND  
JUDGEMENT PURSUANT TO SOUTH  
CAROLINA RULES 52 AND 59 AND  
SOUTH CAROLINA REGULATION  
67-215**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; AND, TO EVARISTO VERDUGO MORALES BY AND THROUGH HIS ATTORNEY, DON C. GIBSON, ESQUIRE

**PLEASE TAKE NOTICE** that Defendant moves the South Carolina Workers' Compensation Commission to alter or amend its Final Judgement entered on December 3, 2024 and attached hereto. The grounds for this Motion follow:

1. Regarding Finding of Fact number 31 (and all subparts), the Commission fails to consider S.C. Code Ann. §§42-9-210, 42-9-260 and Muriel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d (2007) in **not** finding that all payments made after the date of MMI (January 8, 2000) were payments of permanent disability. This was an error of law, and Defendants respectfully request that the Commission reconsider the record and apply the law properly to the facts of this case and find that all weekly payments of benefits made after claimant's MMI date (January 8, 2020) we payments of permanent disability.
2. Regarding Finding of Fact number 31 (and all subparts), the Commission fails to consider S.C. Code Ann. §§42-9-210, 42-9-260 and Muriel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d (2007) in **not** finding that all payments of permanent disability received by Mr. Morales between January 8, 2020 (MMI) and April 22, 2024 (the date Commissioner Beck awarded claimant 45% permanent partial disability to the back) were not due and payable to

claimant when made because the claimant did not received an award permanent disability until Commissioner Beck's award. This was an error of law and Defendants respectfully request that the Commission reconsider the record and apply the law properly to the facts of this case and find that claimant received 223 weeks of permanent disability between January 8, 2020 and April 22, 2024;


3. Regarding finding of fact number 31(f) the Commission made errors of law in finding that it would be "fundamentally unfair to give Defendant's credit back to the date of MMI" as fairness is not a proper foundation for such a finding when the law as set forth above proscribes the proper finding. This was an error of law and Defendants respectfully request that the Commission reconsider the record and apply the law properly to the facts of this case and delete finding of fact number 31 (f);
4. Regarding finding number 31(b), the Commission commits an error of law in using its own dereliction to support its finding that Defendants should only receive a credit to July 19, 2023. The error being that the Commission's failure to consider Defendant's F21 in a timely manner is not proper factor in determining Defendant's credit, and Defendants respectfully request that Commission reconsider the record, apply the law properly and delete finding of fact 31 (b).
5. Regarding Finding of Fact number 31 (and all subparts), the Commission fails to consider any credit for periods of time between May 2022 and November 2022 when claimant was working and earning wages. Claimant testified to these periods of work on February 29, 2024 before Commissioner Beck (*see* pages 52-57 of hearing transcript), and the Commission made factual findings of the dates claimant worked and the hours and wages earned (*see* Finding numbers 25, 26, 27 of Full Commission Order). The Commission's already erroneous finding awarding credit for overpayment of TTD does not even account for wages claimant earned between November 22, 2022 and January 12, 2023 as set forth in Defendant's APA Exhibit C. Defendant's Exhibit C shows that claimant earned \$4, 787.10 for eight (8) weeks of work between November 22, 2022

and January 12, 2023<sup>1</sup>. The average weekly wage for this eight-week period is \$598.38. At the very least, the Commission should have allowed Defendant to pay temporary partial disability for this period of time at the weekly compensation rate of \$469.28 for the eight (8) weeks that claimant was earning wages between November 22, 2022 and January 12, 2023<sup>2</sup>. Defendants respectively request that the Commission reconsider the record and reduce claimant's compensation to \$469.28 for the eight weeks between November 22, 2022 and January 12, 2023 and award Defendants credit for TTD overpayment of \$376.45 for those eight weeks (total TTD overpayment for these eight weeks is \$3, 011.65<sup>3</sup>).

For the reasons set forth above, Defendants respectfully request that the Commission alter or amend its December 3, 2024 Order, which is attached hereto.

Respectfully submitted,

CLEMENT RIVERS, LLP

By:   
Robert Gruber  
Post Office Box 993  
Charleston, SC 29402-0993  
Phone: (843) 720-5482  
Fax: (843) 579-2933  
Email: rgruber@ycrlaw.com

Charleston, South Carolina

Date: December 12, 2024

<sup>1</sup> The check dates and amounts follow:

11/22/2022	\$663.00
11/26/2022	\$484.50
12/7/2022	\$766.50
12/14/2022	\$603.50
12/21/2022	\$901.00
1/5/2023	\$637.50
1/12/2023	\$110.60

<sup>2</sup> TPC calculation is \$1, 302.27 AWW--\$598.38=\$703.89 X .6667=\$469.28 temporary partial compensation rate

<sup>3</sup> Defendant maintains that Claimant is not entitled to any temporary compensation for this period or for any time post MMI.

STATE OF SOUTH CAROLINA  
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NUMBER 1921668

Evaristo Verdugo Morales,

Employee,

-versus-

CERTIFICATE OF SERVICE

Insulation By Cohen's & Sprayfoam by Cohen's, LLC,  
Employer,

and

Builders Premier Insurance Company,  
Carrier.

I HEREBY CERTIFY that on December 12, 2024, I served a copy of the attached Motion to Alter or Amend Judgement on:

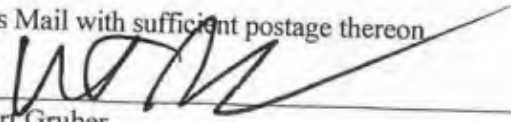
Amy A. Bracy, Judicial Director  
S.C. Workers' Compensation Commission  
P. O. Box 1715  
Columbia, SC 29202-1715  
[judicial@wcc.sc.gov](mailto:judicial@wcc.sc.gov)

Preston F. McDaniel  
McDaniel Law Firm  
1315 Elmwood Avenue  
Columbia, SC 29201  
[PRESTON@pfmcdlaw.com](mailto:PRESTON@pfmcdlaw.com)  
[kim@pfmcdlaw.com](mailto:kim@pfmcdlaw.com)

Don C. Gibson  
Gibson Law Firm, LLC  
Post Office Box 60669  
North Charleston, SC 29419-0669  
[dgibson@dgibsonlaw.com](mailto:dgibson@dgibsonlaw.com)  
[law2@dgibsonlaw.com](mailto:law2@dgibsonlaw.com)

- VIA EMAIL  
 VIA FIRST CLASS MAIL  
 VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

by placing a copy of said documents in the United States Mail with sufficient postage thereon

  
Robert Gruber

State of South Carolina  
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Cynthia C. Dooley; The Honorable Gene McCaskill  
and The Honorable R. Michael Campbell.

SCWCC File No.: 1921668

Evaristo Verdugo Morales,

Claimant,

v.

Insulation by Cohen, LLC,

Employer,

and

Builders Premier Insurance Co.,

Carrier,

Defendants.

---

**AFFIRMED**

---

Hearing held in Richland County, South Carolina,  
on October 14, 2024

Per notice timely and properly served upon all Parties of Interest.

Appearances: Preston McDaniel, of McDaniel Law Firm, appeared on behalf  
of Claimant/2<sup>nd</sup> Appellant.

E. Courtney Gruber, of Clement Rivers, LLP, appeared on behalf  
of Defendants/1<sup>st</sup> Appellants.

Court Reporter: Amber Scarborough, 1230 Richland St, Columbia, SC 29201,  
803-252-3445, [contact@creelreporting.com](mailto:contact@creelreporting.com).

Filed:

December 3, 2024

## I. STATEMENT OF THE CASE

### Single Commissioner

On February 29, 2024, a hearing was held before a Single Commissioner to determine issues set forth on the parties' Forms 50, 51 and 21. Claimant sustained a compensable injury limited to his thoracic spine at T-12 on October 10, 2019, pursuant to the unappealed Single Commissioner's Decision and Order filed on January 11, 2021. Claimant maintained he was not at maximum medical improvement (MMI) for his injury and sought ongoing medical care for the same. In the alternative, Claimant sought a permanent total disability determination and future medical care. Claimant further sought a finding that Defendants were not entitled to a credit for the overpayment of temporary compensation, but if awarded, the credit should date back to Defendants' Form 21, Request for Hearing, on August 8, 2023.

Defendants maintained that Claimant reached MMI on January 8, 2020, but continued to receive temporary compensation. Defendants based this contention on the Form 14B, Physician's Statement, dated January 12, 2021. Defendants sought to stop payment of Claimant's temporary compensation. Defendants further sought a permanent partial disability determination and a credit for the overpayment of Claimant's temporary compensation from his date of MMI.

The Single Commissioner determined, *inter alia*:

[D]efendants may stop payments of temporary disability. [D]efendants will pay Claimant permanent partial disability in accordance with his 45% disability rating to the back at a compensation rate of \$845.74, minus credit for weekly benefits paid since 7/19/23. [C]laimant is entitled to any ongoing treatment for his injury to his T12 vertebra as recommended by the authorized treating physician, Dr. Douglass Stofko. [C]laimant is entitled to lifetime maintenance, repair, and replacement for any hardware he retains as a result of treatment of his compensable T12 vertebra injury.

(Single Commissioner's Decision and Order filed on June 21, 2024, p. 12.)

### Full Commission

This matter is now before the South Carolina Workers' Compensation Commission's Appellate

Panel pursuant to issues raised on appeal by the parties. Within the statutory period, Claimant and Defendants each filed a Form 30, Request for Commission Review. Accordingly, the parties presented for oral arguments before the Appellate Panel on October 14, 2024.

## II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

### FINDINGS OF FACT

Based upon the above stipulations and evidence of the case, the [Single Commissioner] finds the following facts based upon the preponderance of the evidence:

1. All parties are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Jurisdiction and venue are proper.
3. That Claimant's average weekly wage is \$1,302.27 with a resulting compensation rate of \$845.74.
4. Claimant sustained a compensable injury to the thoracic spine (T12 fracture) on 10/10/2019.
5. The only compensable injury in this case is the fracture at T12.
6. The issue of whether or not Claimant sustained compensable injuries to the cervical spine, lumbar spine, and both shoulders was already litigated at an evidentiary hearing held on 8/13/2020. The resulting Order, filed on 1/11/2021, denied compensability of those other claimed body parts, and that Order was not appealed.
7. With regard to the functional capacity evaluation (FCE) dated 10/23/2020 (Claimant APA 1), it is found as a fact that the evaluator stated at page 1: "The results of this evaluation cannot be considered valid."
8. The findings in the functional capacity evaluation carry no evidentiary weight because (1) the evaluator stated that the results cannot be considered valid and (2) the deficits noted on page 3

- of the FCE, which are the basis for the evaluation's findings, concern body parts that are not compensable and, therefore, not relevant to this case.
9. Dr. Stofko stated in his deposition that paragraphs 1-4 on page 3 of the FCE were not causally related to the T-12 fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 18-25; p. 483, lines 1-23; p. 484, lines 6-14).
  10. Claimant's vocational evaluation (Claimant APA 4) is not given any weight due to its reliance (sic) the findings of the functional capacity evaluation, which has been found to carry no evidentiary weight, as the stated limitations were based upon body parts that are not causally related to the compensable injury.
  11. Furthermore, Claimant's vocational evaluation is also excluded due to due process concerns. Defendants requested that Claimant undergo a neuropsychological evaluation and a second evaluation with a vocational expert; however, Claimant declined. Defendants filed a motion to compel, which was denied by the Commission, pursuant to S.C. Code Ann. § 42-15-80, because neither of the requested evaluators was a physician or surgeon. Because of Defendants' inability to obtain expert vocational and neuropsychological evaluations in this claim, to protect Defendants' due process rights, Claimant's vocational evaluation is given no weight.
  12. No weight is given to Dr. Poletti's opinion because of his inability to objectively assess Claimants' impairments. In multiple different cases, Dr. Poletti has described himself on the record as an, "unashamed patient advocate"; these statements preclude him from being able to give a truly independent medical evaluation. (See the Order from SC Workers' Compensation Commission case number 2205977, issued on March 15, 2024, pages 10-13.)
  13. The opinions stated by Dr. Leonard Forrest (Claimant APA 2) are outweighed by the greater weight of the relevant medical evidence in the case and are based largely on injuries that go

beyond the T12 fracture and are not compensable in this case. Furthermore, Dr. Forrest's opinions were heavily based on findings from the FCE which were not relevant to the only compensable injury in this case, the T12 fracture. Therefore, Dr. Forrest's opinions in this case are afforded no evidentiary weight.

14. Dr. Jeffrey Buncher's opinions are largely based upon body parts that are found not to be compensable; therefore, Dr. Buncher's opinions in this case are also given no weight.
15. Claimant was treated in the emergency room by Dr. Douglas Stofko, a board-certified neurosurgeon who was on call the date of the accident.
16. Dr. Stofko performed a two-level fusion from T11 to L1 for the T12 fracture, which was the compensable injury resulting from this accident.
17. Dr. Stofko testified in his deposition that Physician's Assistant Alana Cole was an "extender of me. So all her orders, anything that she's doing is acting under me." (Second Deposition of Dr. Stofko, Defendants' APA p. 457, lines 1-11). However, the record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions contained in her 14B.
18. Dr. Stofko testified that the opinions he had rendered in a questionnaire he had completed at the request of Claimant's Attorney Don Gibson on 11/18/2020 were still his opinions. (Second Deposition of Dr. Stofko, Defendants APA p. 478, lines 1-25, p. 479, lines 1-7).
19. Claimant's radicular pain noted in the left upper and left lower extremities is not causally related to the T12: fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 479, lines 2-7).
20. The cervical complaints and medical treatment noted in Claimant's medical records were not causally related to the T12 fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 2-12).
21. Complaints expressed by Claimant to PA Alana Cole, specifically that he was having pain at the

- screw sites from his previous surgery, are not supported by the greater weight of medical evidence in the record; PA Cole testified in her deposition that the area he was referencing as being painful was above the screw sites. (PA Cole Deposition p. 6, 1-24).
22. Dr. Stofko further testified that he did not believe Claimant's complaints noted in the 1/10/2024 visit were due to his original accident that Dr. Stofko treated him for in October, 2019. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 1-12).
  23. Claimant reached maximum medical improvement on 1/8/2020. (Defendants APA 1, p. 24).
  24. The MRI of the lumbar spine ordered in the 14B is no longer necessary in light of the lumbar MRI that was done 8/8/2020. (PA Cole Deposition, p. 38, lines 9-24).
  25. Claimant testified in his deposition that he was gainfully employed at Integrated Site Management (ISM) from around the last days of May 2022 until August 2022, earning \$15.00 an hour working 5-6 hours a day, Monday through Friday. (Morales Deposition, p. 14, lines 9-24, p. 20 lines 10-14, p.18, lines 9-20).
  26. Claimant testified in his deposition that from August 2022 to November 2022, he worked at Flores Construction making \$16.00 an hour working 30, 32, 35, and sometimes 40 hours a week. (Morales Deposition p.18, lines 20-25, p. 19, lines 1-16, p. 20 lines 2-9).
  27. Payroll records from Flores Contracting LLC indicate Claimant received checks beginning on 11/22/2022 and continuing through 1/12/2023. (Defendants APA Exhibit C).
  28. Claimant was on non-weight-bearing status for his left leg and on crutches for approximately four months as a result of a car wreck which occurred 12/31/2022, resulting in fractures to seven ribs (right at 5 & 6, left at 3-6), a sternum fracture, and a severely comminuted fracture to the tibial plateau necessitating surgery and permanent installation of orthopedic hardware. (Defendants APA 4, p. 122,123,142,143). (Claimant Deposition, p. 12, lines 3-19).

29. The parties attempted to resolve the issues at mediation on 7/19/2023, but mediation was unsuccessful.
30. The greater weight of medical evidence indicates that Claimant sustained 5% impairment to his back as a result of the T12 fracture. (Defendants APA 1, p. 24).
31. Defendants are entitled to credit for overpayment of temporary total compensation since 7/19/2023 for the following reasons:
- (a) Even though MMI was reached on 1/8/2020, Defendants' authorized provider did not submit a Form 14B stating Claimant was at MMI until 1/12/2021.
  - (b) Following Defendants' filing of their Form 21 on 2/5/2023 (sic), a hearing was held on 4/26/2022 (sic), Order instructions were not received until 2/23/2022, and the subsequent Order was filed on 3/22/2022.<sup>1</sup>
  - (c) Following the Single Commissioner's Order, the case underwent an appeal process by which the Single Commissioner's Order was vacated for being premature, as the case needed to go to mandatory mediation before an Order could be issued.
  - (d) The delays in getting a Final Order for this matter are not attributable to Claimant; therefore, it would be fundamentally unfair to give Defendants credit dating back to the date of MMI.

### CONCLUSIONS OF LAW

Based upon the above stipulations, statement of the case, APA submissions, evidence of the case, findings of fact, and South Carolina law, the following conclusions of law are made:

1. S.C. Code Ann. § 42-1-160 defines injury by accident and further defines medical evidence as "an

---

<sup>1</sup> The Single Commissioner's Decision and Order contained scrivener's errors under Finding of Fact No. 31(b). Specifically, the dates of the hearing and Defendants' Form 21 filing are incorrect. Those dates have been amended in accord with the record under the Appellate Panel's Findings of Fact, *infra*.

expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed healthcare provider."

2. Pursuant to *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469 (1970), "[w]hen an issue of ultimate fact has once been determined by a valid and final judgement, that issue cannot again be litigated between the same parties in any future lawsuit."
3. Claimant is entitled to lifetime maintenance, repair, and replacement for any hardware he retains as a result of treatment of his compensable T12 vertebra injury.
4. Claimant is entitled to any ongoing treatment for his injury to his T12 vertebra as recommended by the authorized treating physician, Dr. Douglas Stofko.
5. Claimant is entitled to an award of 45% permanent partial disability to the back, which, pursuant to S.C. Code Ann. § 42-9-30 (21), equates to 135 weeks of permanent partial disability. At a compensation rate of \$845.74, 135 weeks equals \$114,174.90.
6. S.C. Code Ann. § 42-9-210 provides for deduction from compensation of payments made by an employer when not due and payable.
7. Pursuant to the Commission's authority under § 42-9-210, I find that Defendant (sic) is only entitled to credit dating back to 7/19/2023, the date of the failed mediation.

### III. ISSUES ON APPEAL

#### Defendants/ 1<sup>st</sup> Appellants

1. The Single Commissioner erred in finding as a fact (paragraph 31) that Defendants are entitled to credit for overpayment of temporary total compensation only since 7/19/2023 in that the finding is not supported by the greater weight of evidence and statutory and case law.
2. The Single Commissioner erred in finding as a fact and concluding as a matter of law that Defendants are entitled to a credit for overpayment of temporary total compensation since 7/19/2023 in that Finding of Fact No. 31 (b) contains incorrect factual information and cannot be a legitimate basis for Finding of Fact No. 31. Contrary to Finding of Fact No. 31(b), Defendants filed their Form 21 on 2/5/2021, not 2/5/2023, and the hearing was held on 4/26/2021, not 4/26/2022.

3. The Single Commissioner erred in finding as a fact and concluding as a matter of law that the credit for overpayment of temporary total compensation should be limited to payments made since 7/19/2023 based upon the finding that the delays in getting a final Order for this matter are not attributable to Claimant and, therefore, it would be fundamentally unfair to give Defendants credit back to the date of MMI. The error in this matter is that the delays in getting the final Order for this matter are not attributable to either party and that Defendants have paid to Claimant a total of \$182,875.16 in indemnity since the date of MMI (\$3,578.28 TPD from 1/19/2020 to 4/1/2020; \$845.74 per week from 4/2/2020 to 2/23/2022; \$57,127.36 lump sum following remand for mediation paid 5/18/2023; and \$845.74 weekly until 4/25/2024 when Order instructions were received, for a total of 216 weeks).
4. The Single Commissioner erred in finding as a fact and concluding as a matter of law that Defendants are only entitled to a credit for overpayment of benefits since 7/19/2023 in spite of the fact that MMI was reached on 1/8/2020 in that such a finding is an abuse of discretion and not supported by current case law.
5. The Single Commissioner erred in Finding of Fact No. 31 in that the finding, to wit: that awarding credit back to the date of MMI would be fundamentally unfair to Claimant, does not take into account the fact that he has been paid a total of \$182,875.16 since 1/8/2020, the date of MMI, and is erroneously based upon a presumption that failure to pay his award in lump sum rather than weekly installments is in itself "fundamentally unfair." Further, the findings do not take into account the fact that Claimant did receive a lump-sum payment of \$57,127.36 following the Appellate Panel remand for mediation.
6. The Single Commissioner erred in finding as a fact that Defendants were only entitled to credit for weekly payments after 7/19/2023 in that the finding does not take into consideration the fact that Claimant was gainfully employed from at least May 2022 to January 2023.
7. The Single Commissioner erred in finding as a fact and concluding as a matter of law that Claimant had sustained 45% permanent partial disability to the back, the error being that the only credible medical evidence in the record is that Claimant had sustained 5% permanent partial impairment to his back and had no physical limitations resulting from this injury.

**Claimant/2<sup>nd</sup> Appellant**

1. That pursuant to S.C. Code of Laws §42-17-50, Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.
2. That Claimant requests review for all the reasons as set forth in the Motion for Reconsideration that was filed with the Commission electronically on June 26, 2024, and incorporated herein by

reference. The Decision of the Hearing Commissioner should be reversed as a matter of law and in fact based on the errors as set forth in the Motion.

3. That wherein Claimant made a request for an Award for total and permanent disability based on a total loss of earning capacity under SC Code §42-9-10 (A), the Hearing Commissioner erred as a matter of law by failing to make one single Finding of Fact or Conclusion of Law or decision on Claimant's entitlement to an Award for total and permanent disability for a total loss of earning capacity as defined in the Act. Claimant's burden is by a preponderance of the evidence, which wherein if the scales and evidence tip ever so slightly in favor of the injured worker, the Award must be made. Quoting from *Broughton v. SC Game & Fish Dept.*, 219 S.C. 50, 64 S.E.2d 152 (1951):

Claimant who asserts the right to compensation carries the burden of establishing the necessary facts to entitle him to such compensation. The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and prove a basis from which they reasonable may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures.

4. The Hearing Commissioner erred by not awarding Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back. Mr. Morales testified that in his opinion he had lost 80% of the functional use of his back to do work requiring the use of his back. There is no Finding of Fact on that testimony or challenging that opinion.

Further, while the Commissioner gave no weight to the testimony of Dr. Leonard Forrest due to the contested Functional Capacity Evaluation, Dr. Forrest's impairment evaluation was based on his evaluation and was made under the AMA Guides. Dr. Forrest assigned a regional impairment to the thoracic spine injury of greater than 100% to the thoracic spine and 22% to the whole person. Dr. Steven Poletti whose opinion was not given any weight because he is a "patient's advocate", in addition Dr. Poletti also based on his evaluation assigned a 28% whole person impairment which converted to over 100% impairment to the thoracic spine as a Regional impairment. The treating physical therapist stated at the end of treatment that Claimant could return to no more than "sedentary" work. The physical therapist who conducted the contested Functional Capacity Evaluation based on the first summary page found the results to be valid based on the valid and consistent effort he gave during the evaluation and limited him to light duty work. Thus, under the decisions of the SC Supreme Court and Court of Appeals, the Commissioner should have awarded Claimant total and permanent disability for having lost 50% or more of the functional use of his back to do work requiring the use of his back based on the medical testimony, testimony of Claimant, and other evidence in the record other than the contested Functional Capacity Evaluation.

5. That the Hearing Commissioner erred by failing to set out the evidence upon which he relied in arriving at his disability award of 45% to the back.

6. That the Hearing Commissioner erred by not addressing the overall loss of use of Claimant's back regardless of whether or not the upper or lower back were compensable under the SC Supreme Court and Court of Appeals decisions. This Commission cannot ignore or change the Law and is not only duty bound to a liberal construction of the Act and to resolve every inference and ambiguity and presumption in favor of benefits to the injured worker, but the Commission is duty bound to decide cases under a preponderance of the evidence and view the evidence in the light most favorable to the injured worker. The preponderance of the evidence standard dictates that benefits should be awarded where if the scales of justice tip ever so slightly in favor of benefits to the injured worker, benefits are to be awarded.
7. That the Hearing Commissioner erred as a matter of law by failing to make Conclusions of Law or even cite Conclusions of Law in reference to SC Code §42-9-10 (A) and failing to note the SC Supreme Court and Court of Appeals decisions on total and permanent disability for a loss of earning capacity including by not following the directions to this Commission under SC Code §42-9-190. That section requires that where a Claimant claims that he is disabled and the employer and its insurance carrier do not offer or procure suitable work within his residual capacity pursuant to their claim that he is not disabled and the worker establishes a prima facie case that he is totally disabled as defined in the Act under SC Code §42-1-120 and §42-9-10 (A) and thus makes a prima facie case entitling him to an award, Defendants must put up evidence to the contrary of, which there is none in this case.
8. That the Hearing Commissioner erred as a matter of law by failing to apply the preponderance of the evidence standard to the evidence in this matter.
9. That the Hearing Commissioner erred as a matter of law by going outside of the record before him in making his decision and specifically citing case law that was not cited to the Commissioner by either party and making such Findings of Fact, as Finding #12, wherein he states and gives no weight to the opinion of Dr. Poletti based on information outside of the record. That very Finding is arbitrary and capricious and constitutes an abuse of discretion and requires a de novo hearing.
10. That having found that Dr. Douglas Stofko did not endorse the Form 14B and thus the impairment or anything else on the Form 14B, by making Finding of Fact #30. The Commissioner nowhere, and Claimant would reiterate nowhere, makes in his Notes for Decision a finding that the greater weight of the evidence indicates that Claimant sustained a 5% impairment to his back. This is simply as the defense lawyer advised the Commission, which is part of the record; her attempt to bolster the decision.
11. That the Hearing Commissioner erred in the Order by endorsing and making Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, #28, and #30 whereas there is absolutely no mention of any of those Findings of Fact or about that evidence in the Commissioner's Notes for Decision. It is the Commissioner's responsibility to make Findings of Fact upon which he bases his decision and the defense lawyer admitted that these Findings of Fact are entered by her to augment/bolster the Commissioner's Decision.
12. That the Hearing Commissioner erred as a matter of law in his Notes for Decision Finding #8 and

Order Finding of Fact #11 in reference to giving no weight to the vocational evaluation based on due process concerns. Without citing any cases or statutory provisions allowing for such evaluations, the Hearing Commissioner due to Defendants' inability to obtain expert vocational and neurological evaluations in this claim and in order to, "protect Defendants' due process rights, Claimant's vocational evaluation is given no weight." Defendants have absolutely no right to a vocational evaluation under the Act requiring Claimant to submit to an evaluation by a neuropsychologist or a vocational expert, which seems to be the Commissioner's problem. Defendants have every right to take Claimant's discovery deposition and have a vocational analysis done based on that and other evidence, which they did not do in this case. Therefore Claimant did not obstruct, even assuming that Defendants had some kind of due process right by not agreeing to attend such an evaluation, the Commissioner erred in making this decision because it was not violated. The only conceivable violation that could be thought of would be that Claimant would not submit to an evaluation by their vocational expert, which is not required by law nor allowed for under the Act.

13. That the entire Hearing Commissioner's Order is the subject of bias and prejudice, and is arbitrary and capricious, an abuse of discretion in the consideration of the evidence with a bias towards denying Claimant an award for total and permanent disability either on the basis of wage loss or having lost 50% or more of the functional use of his back to do work requiring the use of his back. The Commissioner goes as far as to not making one Finding of Fact or Conclusion of Law in reference to an Award for total loss of earning capacity.
14. That the Hearing Commissioner failed in his statutory duty to make detailed Findings of Fact and Conclusions of Law under SC Code §42-9-5; §42-17-40; and §1-23-380.

#### IV. DECISION OF THE APPELLATE PANEL

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the respective Appellant and Respondent briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby fully **AFFIRM** the Decision and Order of the Single Commissioner filed on June 21, 2024.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.

### FINDINGS OF FACT

1. All parties are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Jurisdiction and venue are proper.
3. That Claimant's average weekly wage is \$1,302.27 with a resulting compensation rate of \$845.74.
4. Claimant sustained a compensable injury to the thoracic spine (T12 fracture) on 10/10/2019.
5. The only compensable injury in this case is the fracture at T12.
6. The issue of whether or not Claimant sustained compensable injuries to the cervical spine, lumbar spine, and both shoulders was already litigated at an evidentiary hearing held on 8/13/2020. The resulting Order, filed on 1/11/2021, denied compensability of those other claimed body parts, and that Order was not appealed.
7. With regard to the functional capacity evaluation (FCE) dated 10/23/2020 (Claimant APA 1), it is found as a fact that the evaluator stated at page 1: "The results of this evaluation cannot be considered valid."
8. The findings in the functional capacity evaluation carry no evidentiary weight because (1) the evaluator stated that the results cannot be considered valid and (2) the deficits noted on page 3 of the FCE, which are the basis for the evaluation's findings, concern body parts that are not compensable and, therefore, not relevant to this case.
9. Dr. Stofko stated in his deposition that paragraphs 1-4 on page 3 of the FCE were not causally related to the T-12 fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 18-25; p. 483, lines 1-23; p 484, lines 6-14).
10. Claimant's vocational evaluation (Claimant APA 4) is not given any weight due to its reliance

on the findings of the functional capacity evaluation, which has been found to carry no evidentiary weight, as the stated limitations were based upon body parts that are not causally related to the compensable injury.

11. Furthermore, Claimant's vocational evaluation is also excluded due to due process concerns. Defendants requested that Claimant undergo a neuropsychological evaluation and a second evaluation with a vocational expert; however, Claimant declined. Defendants filed a motion to compel, which was denied by the Commission, pursuant to S.C. Code Ann. § 42-15-80, because neither of the requested evaluators was a physician or surgeon. Because of Defendants' inability to obtain expert vocational and neuropsychological evaluations in this claim, to protect Defendants' due process rights, Claimant's vocational evaluation is given no weight.
12. No weight is given to Dr. Poletti's opinion because of his inability to objectively assess Claimants' impairments. In multiple different cases, Dr. Poletti has described himself on the record as an, "unashamed patient advocate"; these statements preclude him from being able to give a truly independent medical evaluation. (See the Order from SC Workers' Compensation Commission case number 2205977, issued on March 15, 2024, pages 10-13.)
13. The opinions stated by Dr. Leonard Forrest (Claimant APA 2) are outweighed by the greater weight of the relevant medical evidence in the case and are based largely on injuries that go beyond the T12 fracture and are not compensable in this case. Furthermore, Dr. Forrest's opinions were heavily based on findings from the FCE which were not relevant to the only compensable injury in this case, the T12 fracture. Therefore, Dr. Forrest's opinions in this case are afforded no evidentiary weight.
14. Dr. Jeffrey Buncher's opinions are largely based upon body parts that are found not to be compensable; therefore, Dr. Buncher's opinions in this case are also given no weight.

15. Claimant was treated in the emergency room by Dr. Douglas Stofko, a board-certified neurosurgeon who was on call the date of the accident.
16. Dr. Stofko performed a two-level fusion from T11 to L1 for the T12 fracture, which was the compensable injury resulting from this accident.
17. Dr. Stofko testified in his deposition that Physician's Assistant Alana Cole was an "extender of me. So all her orders, anything that she's doing is acting under me." (Second Deposition of Dr. Stofko, Defendants' APA p. 457, lines 1-11). However, the record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions contained in her 14B.
18. Dr. Stofko testified that the opinions he had rendered in a questionnaire he had completed at the request of Claimant's Attorney Don Gibson on 11/18/2020 were still his opinions. (Second Deposition of Dr. Stofko, Defendants APA p. 478, lines 1-25, p. 479, lines 1-7).
19. Claimant's radicular pain noted in the left upper and left lower extremities is not causally related to the T12: fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 479, lines 2-7).
20. The cervical complaints and medical treatment noted in Claimant's medical records were not causally related to the T12 fracture. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 2-12).
21. Complaints expressed by Claimant to PA Alana Cole, specifically that he was having pain at the screw sites from his previous surgery, are not supported by the greater weight of medical evidence in the record; PA Cole testified in her deposition that the area he was referencing as being painful was above the screw sites. (PA Cole Deposition p. 6, 1-24).
22. Dr. Stofko further testified that he did not believe Claimant's complaints noted in the 1/10/2024 visit were due to his original accident that Dr. Stofko treated him for in October, 2019. (Second Deposition of Dr. Stofko, Defendants APA p. 482, lines 1-12).

23. Claimant reached maximum medical improvement on 1/8/2020. (Defendants APA 1, p. 24).
24. The MRI of the lumbar spine ordered in the 14B is no longer necessary in light of the lumbar MRI that was done 8/8/2020. (PA Cole Deposition, p. 38, lines 9-24).
25. Claimant testified in his deposition that he was gainfully employed at Integrated Site Management (ISM) from around the last days of May 2022 until August 2022, earning \$15.00 an hour working 5-6 hours a day, Monday through Friday. (Morales Deposition, p. 14, lines 9-24, p. 20 lines 10-14, p.18, lines 9-20).
26. Claimant testified in his deposition that from August 2022 to November 2022, he worked at Flores Construction making \$16.00 an hour working 30, 32, 35, and sometimes 40 hours a week. (Morales Deposition p.18, lines 20-25, p. 19, lines 1-16, p. 20 lines 2-9).
27. Payroll records from Flores Contracting LLC indicate Claimant received checks beginning on 11/22/2022 and continuing through 1/12/2023. (Defendants APA Exhibit C).
28. Claimant was on non-weight-bearing status for his left leg and on crutches for approximately four months as a result of a car wreck which occurred 12/31/2022, resulting in fractures to seven ribs (right at 5 & 6, left at 3-6), a sternum fracture, and a severely comminuted fracture to the tibial plateau necessitating surgery and permanent installation of orthopedic hardware. (Defendants APA 4, p. 122,123,142,143). (Claimant Deposition, p. 12, lines 3-19).
29. The parties attempted to resolve the issues at mediation on 7/19/2023, but mediation was unsuccessful.
30. The greater weight of medical evidence indicates that Claimant sustained 5% impairment to his back as a result of the T12 fracture. (Defendants APA 1, p. 24).
31. Defendants are entitled to credit for overpayment of temporary total compensation since 7/19/2023 for the following reasons:

- (a) Even though MMI was reached on 1/8/2020, Defendants' authorized provider did not submit a Form 14B stating Claimant was at MMI until 1/12/2021.
- (b) Following Defendants' filing of their Form 21 on 2/5/2021, a hearing was held on 4/26/2021, Order instructions were not received until 2/23/2022, and the subsequent Order was filed on 3/22/2022.
- (c) Following the Single Commissioner's Order, the case underwent an appeal process by which the Single Commissioner's Order was vacated for being premature, as the case needed to go to mandatory mediation before an Order could be issued.
- (d) The delays in getting a Final Order for this matter are not attributable to Claimant; therefore, it would be fundamentally unfair to give Defendants credit dating back to the date of MMI.

#### CONCLUSIONS OF LAW

1. S.C. Code Ann. § 42-1-160 defines injury by accident and further defines medical evidence as "an expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed healthcare provider."
2. Pursuant to *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469 (1970), "[w]hen an issue of ultimate fact has once been determined by a valid and final judgement, that issue cannot again be litigated between the same parties in any future lawsuit."
3. Claimant is entitled to lifetime maintenance, repair, and replacement for any hardware he retains as a result of treatment of his compensable T12 vertebra injury.
4. Claimant is entitled to any ongoing treatment for his injury to his T12 vertebra as recommended by the authorized treating physician, Dr. Douglas Stofko.
5. Claimant is entitled to an award of 45% permanent partial disability to the back, which, pursuant to S.C. Code Ann. § 42-9-30 (21), equates to 135 weeks of permanent partial disability. At a

compensation rate of \$845.74, 135 weeks equals \$114,174.90.

6. S.C. Code Ann. § 42-9-210 provides for deduction from compensation of payments made by an employer when not due and payable.
7. Pursuant to the Commission's authority under § 42-9-210, We conclude that Defendants are only entitled to credit dating back to 7/19/2023, the date of the failed mediation.

**ORDER**

**THEREFORE IT IS HEREBY ORDERED** that the Decision of the Single Commissioner filed in the above-captioned matter on June 21, 2024, is hereby fully **AFFIRMED**.

**ACCORDINGLY:**

**IT IS FURTHER ORDERED** that Defendants may stop payments of temporary disability.

**IT IS FURTHER ORDERED** that Defendants will pay Claimant permanent partial disability in accordance with his 45% disability rating to the back at a compensation rate of \$845.74, minus credit for weekly benefits paid since 7/19/2023.

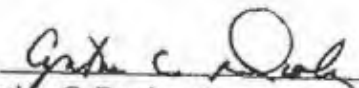
**IT IS FURTHER ORDERED** that Claimant is entitled to any ongoing treatment for his injury to his T12 vertebra as recommended by the authorized treating physician, Dr. Douglas Stofko.

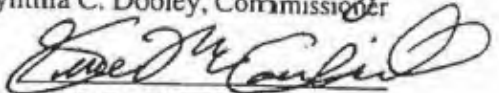
**IT IS FURTHER ORDERED** that Claimant is entitled to lifetime maintenance, repair, and replacement for any hardware he retains as a result of treatment of his compensable T12 vertebra injury.

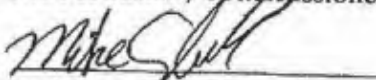
**IT IS FURTHER ORDERED** that no hearing costs or penalties are assessed in this matter.

**AND SO IT IS ORDERED.**

\_\_\_\_\_(date)  
Columbia, SC

  
Cynthia C. Dooley, Commissioner

  
Gene McCaskill, Commissioner

  
R. Michael Campbell, Commissioner

Appellate Panel Decision and Order

<p><u>Served via E-Mail:</u></p> <p>E. Courtney Gruber, Esquire <a href="mailto:cgruber@ycrlaw.com">cgruber@ycrlaw.com</a></p> <p>Robert P. Gruber, Esquire <a href="mailto:rgruber@ycrlaw.com">rgruber@ycrlaw.com</a></p> <p>Don C. Gibson, Esquire <a href="mailto:dgibson@dgibsonlaw.com">dgibson@dgibsonlaw.com</a></p> <p>Preston F. McDaniel, Esquire <a href="mailto:preston@pfmcdlaw.com">preston@pfmcdlaw.com</a></p>
--

Brief Served via USPS:

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

---

December 3, 2024

By: Valerie D. Deller, Judicial Department

**Certificate of Counsel**

The undersigned counsel for Appellants-Respondents certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,  
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown  
Stephen L. Brown (SC Bar No. 66468)  
Robert P. Gruber (SC Bar No. 15581)  
Russell G. Hines (SC Bar No. 72100)  
Graydon V. Olive, IV (SC Bar No.: 105319)  
25 Calhoun Street, Suite 400 (29401)  
P.O. Box 993  
Charleston, South Carolina 29402  
(843) 720-5488  
*Attorneys for Appellants-Respondents*

Charleston, South Carolina

March 6, 2025