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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED
JUN 29 2011
SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, ... Defendants,

of whom S.C. Workers' Compensation Uninsured Employers' Fund is Appellant.

RECORD ON APPEAL

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Timothy B. Killen, Esquire
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UNINSURED EMPLOYERS' FUND**
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Rec'd 12/4/02

ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO.: 0115236, 0115237

William G. Ketron, Jr.,

Employee-Claimant,

vs.

Delta Woodside Industries, Inc.,

Self-insured Employer-Defendant.

Hearing: Held in Greenville, South Carolina on February 5, 2002.

Appearances: Kathryn Williams, Esq. of Kathryn Williams, P.A. for claimant.

David Hill Keller, Esq. of Haynsworth Sinkler Boyd, P.A. for defendant.

Purpose: To determine issues as set forth on the Forms 50 and 51.

Decision & Order: Lisa D. Chavis, Commissioner

Filed: November 27, 2002

APA SUBMISSIONS

- APA #1 Reports of Dr. Charles B. Thomas, Jr. of Hillcrest Orthopaedics, P.A., dated 8/29/01 through 9/27/01, consisting of 8 pages (pages 1-4d).
- APA #2 Reports of Vaughn, Buchanan, Shelley & Associates Physical Therapists, Inc., dated 9/4/01 through 9/12/01, consisting of 5 pages (pages 5-9).
- APA #3 Report of HealthSouth Diagnostic Center of Greenville, dated 9/17/01, consisting of 2 pages (pages 10-11).
- APA #4 Report of Dr. S. Emmett Lucas, III of The Spine Clinic, dated 10/2/01 through 1/11/02, consisting of 8 pages (pages 12-19).
- APA #5 Reports of St. Francis Hospital, dated 10/19/01 through 11/6/01, consisting of 58 pages (pages 20-77).
- APA #6 Reports of NHC of Anderson, dated 11/7/01 through 11/17/01, consisting of 105 pages (pages 78-182).
- APA #7 Report of Dr. David L. Shallcross of Upstate Medical Rehabilitation, P.C., dated 12/26/01, consisting of 2 pages (pages 183-184).
- APA #8 Reports of Dr. Charles B. Thomas, Jr. of Hillcrest Orthopaedics, P.A., dated 4/28/00 through 11/6/01, consisting of 13 pages (pages 186-198).
- APA #9 UNUM Disability Claim Form, dated 9/27/01, consisting of 1 page (page 199).

EXHIBITS

- #1 Form 12-A for date of accident August 27, 2001.
- #2 Form 12-A for date of accident September 2, 2001.
- #3 Statement of Dr. S. Emmett Lucas, III of The Spine Clinic, dated 3/12/02, consisting of 1 page.

DEPOSITIONS

- #1 Deposition of claimant, dated December 27, 2001, consisting of 32 pages.
- #2 Deposition of Dr. S. Emmett Lucas, III of The Spine Clinic, dated 3/12/02, consisting of 17 pages.

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issues set forth in the hearing notice, issues pled in the Forms 50 and 51, and any other issues which may timely come before the Commissioner.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Greenville County, is proper.
4. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged accidental injury occurring on or about August 27, 2001 and September 2, 2001 while employed by employer-defendant and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.
5. The Commission's file and the Hearing Commissioner's notes are a part of the record of this case, with the exception of self-serving declarations and unstipulated medical reports.

CLAIMANT'S BIOGRAPHICAL INFORMATION

Age:	58
Sex:	Male
Education:	High School diploma, some college
Work History:	U.S. Navy; electrical and mechanical work, nursing assistant, mortgage lending, police officer; with this employer for approximately 2 years

STATEMENT OF THE CASE

Claimant seeks benefits for injury by accident he sustained to his back, left hip, and both lower extremities on or about August 27, 2001 and September 2, 2001 while working for employer-defendant. Claimant specifically seeks payment of past and continuing medical treatment and temporary total disability compensation from September 2, 2001 to the present and continuing. Defendant denies claimant sustained injury by accident arising out of and in the course of his employment on the dates alleged and deny claimant's entitlement to any benefits.

EVIDENCE OF THE CASE

Claimant has worked with employer for approximately two years as an electrician and mechanic, a job that involved repairing, rebuilding, and modifying the plant's looms. Claimant testified that his work required him to be on his feet, standing and walking, most of the day and required bending, stooping, lifting, and carrying. Claimant further testified that he had some prior difficulty with his back. He explained that he experienced left leg and groin pain while working in July 2000 and eventually underwent back surgery with Dr. Charles Thomas in September 2000. However, claimant was able to return to work following this surgery. Claimant testified that he was written out of work by his family doctor in July 2001 for general

fatigue, but he returned to work about three weeks later. He stated that his supervisors moved him to the day shift when he returned to watch him closely and make sure that he was able to do his job.

Claimant testified that he was climbing down from one of the machines on August 27, 2001 when his foot missed the next to last rung of the ladder causing him to fall to the cement floor. He stated that he landed hard on his buttocks. As he sat still for a moment on the floor, Theresa Foster, one of the supervisors in another area, walked by and waved to him, but he did not respond and did not know if she actually saw him fall. Claimant stated that he got up and pushed his cart back to the shop trying to "walk it off." He further stated that he did not immediately report the incident to his supervisors because they were already watching him so closely and he was wary of an adverse reaction. Furthermore, at that time he did not think that his problems were anything more than a strain. However, claimant testified that his supervisor, Mike Smith, inquired about his limp when he returned to work the next day, and claimant told him that he had strained his back getting down from a ladder the day before. Claimant explained that he did not press the issue because he was unsure of Mr. Smith's appraisal of him and did not want to lose his job. He testified that he worked his full shift that day and that at the end of the day, Mike Smith told him that he would be returning to his regular third-shift when he returned to work in the coming days.

Claimant testified that he reported to Dr. Charles Thomas the following day and received some medication. Though he continued to have back pain, he returned to work and worked two full days. However, claimant testified that on September 2, 2001, he was replacing some heaters in the steam chamber on one of the looms when he injured his back again. He explained that he bent to sit on a short, homemade stool, but misjudged the distance and hit the edge of the stool causing it to flip out from under him. Claimant stated that he again landed hard on the concrete floor on his buttocks. He continued to work as best he could that night despite his pain and even managed to crawl under the heaters to get better leverage while working to replace them. Claimant stated that he did leave a few minutes early that night at the suggestion of supervisor Bill Patterson, and he recalled struggling to get into his truck to go home; however, he stated that he did not tell Mr. Patterson about his back pain at that time. Claimant testified that he did tell a co-employee about his back pain at some point during the evening.

Claimant testified that he had planned to go to a Labor Day cookout the following day, but he found that he was in too much pain. On Tuesday, September 4, he returned to Dr. Thomas and was sent for physical therapy. He stated that he also called his supervisor, Mike Smith, and told him that he had back pain from an injury he sustained while working and that he was unable to work. Unfortunately, the

physical therapy simply increased his back pain, and radiology films were obtained which showed a fracture in his back. Claimant stated that Dr. Thomas referred him to Dr. Emmett Lucas, who eventually performed surgery.

A short while after he was unable to continue working following his second injury, claimant was called into the plant offices to meet with Mike Smith and a human resources manager, Doug Thackston. Claimant placed the date of this meeting at around September 22. He testified that he told these men that Dr. Thomas had found a fracture in his back, but that he did not know at that point whether his problems were related to his previous back problems or his new injuries. Claimant testified that he related all the details of his August 28, 2001 and September 2, 2001 injuries, but he stated that Mr. Thackston told him that it was too late to do anything about those injuries at that point.

Claimant testified that he continues to have low back pain and pain in both legs. He is unable to stand without support from a brace and a walker, and he is unable to drive. He stated that he struggles with worsening depression, though he admitted that he has had some difficulty with depression before. Claimant testified that he has difficulty caring for himself as a result of all these problems and has to seek assistance from other residents at the Salvation Army facility where he is staying. He explained that he

has been unable to work since September 3, 2001 and is staying with the Salvation Army due to lack of income. Claimant specifically requested additional medical treatment for his problems.

Mike Smith also testified that claimant was out of work from July 2001 until August 8, 2001 at the request of his family doctor due to fatigue, and he stated that he moved claimant to first-shift when he returned so that he could watch him. Mr. Smith stated that claimant did well through August 28 when he informed claimant that he was moving him back to his regular shift. He explained that Bill Patterson, who had originally trained claimant, was working on third-shift at that time and could continue to keep an eye on claimant. However, Mr. Smith denied that claimant said anything to him about injuring his back on August 28 when they talked, and he stated that he would have filled out a report and contacted Doug Thackston, the human resources manager, if he had. Mr. Smith further testified that claimant worked on the night shift through the evening of September 2, but he received a message from claimant on September 5, 2001 indicating that he had returned to the doctor for a routine visit, had been referred for additional physical therapy, and would not be in to work. He stated that the first time claimant said anything to him about hurting his back on the job was when he called again on September 27. Mr. Smith testified that he relayed the injury report to Doug Thackston and that Mr. Thackston told him to get claimant to a doctor.

On cross-examination, Mr. Smith admitted that the two reports of injury filed by the employer in this matter show that the company knew of claimant's injuries by at least September 20. He also admitted that he had, in fact, personally talked with claimant twice on the phone before September 5 and that he knew by September 5 that claimant was alleging that he had hurt his back while working; however, he did not fill out a report concerning that injury despite company policy. Mr. Smith testified that he talked with Bill Patterson and other employees who were working around claimant at the time he said that he was hurt and that Mr. Patterson and these other employees knew nothing of an injury. However, he also admitted that he made no notes of any of these conversations.

Theresa Foster, a service manager, testified that she did not recall ever seeing claimant fall from a ladder and that she did not know of any accidents or reports of injury. However, she admitted that she was not claimant's direct supervisor. She also admitted that she might have waived to him if she had seen him sitting on the floor and not thought anything about it.

Bill Patterson, the electrician who was working with claimant on the evening of September 2, 2001, testified that he and claimant were replacing the boiler-room steamers on that evening. He testified that he got claimant started and left the area to do something else. When he returned, he found claimant under the

heaters and noticed that claimant crawled out very slowly and carefully. However, he testified that claimant did not say anything about hurting himself and said nothing about falling off of the stool, though he did notice that claimant was using the stool in doing his work. Mr. Patterson testified that claimant continued working but did not want to get back under the terminal to reconnect some wires, which forced them to find another way to rewire the heaters. Mr. Patterson stated that he knew claimant had previous back problems, but he did not notice that claimant was having any additional difficulty as he left. He admitted that claimant probably did leave a little early that night.

Doug Thackston, the human resources manager, stated that he met with claimant and Mike Smith on September 12, 2001 to discuss why claimant was not working. He testified that claimant told them that he had recently been involved in two different work accidents, and he explained falling from the ladder and missing the stool. He stated that claimant told them that he had injured his back, both legs, and left hip in the accidents, but he was unsure of the exact medical problem or of Dr. Thomas's diagnosis. However, Mr. Thackston admitted that he did not fill out an accident report. He stated that he talked with employees who normally worked around the slasher but was unable to find anyone who saw or knew of any accidents and was unable to find the employee claimant had said he talked to about his

back pain on the evening of September 2. Mr. Thackston admitted that he took no statements and made no written notes of any conversations during this investigation, though it was normal procedure to do so. He stated that the plant nurse filled out the 12-A forms, and he admitted that the dates of notice used on those forms were incorrect.

The medical evidence reveals that claimant reported to Dr. Charles Thomas on August 29, 2001 complaining of back pain and mild numbness and tingling in his lower extremities after injuring his back "the other day." On September 12, Dr. Thomas noted that claimant gave him a more complete description of his injury, stating that claimant described falling some four feet from a ladder. Based on this description, Dr. Thomas obtained x-rays which showed a new compression fracture. A subsequent MRI scan showed a burst fracture at L4 with retropulsion of fragments causing spinal stenosis. Dr. Thomas restricted claimant from working and referred him to Dr. Emmett Lucas for operative treatment and fusion.

Dr. Lucas first evaluated claimant on October 2, 2001, and he noted claimant's description of constant back and bilateral leg pain following two injuries at work, the first on August 27, 2001 when he fell several feet from a ladder and the second a few days later when he sat down hard on a concrete floor after missing a stool. Dr. Lucas also noted claimant's description of a previous low back injury resulting in surgery by Dr. Thomas in August 2000; however, claimant

stated that he was able to work without difficulty following that surgery until his work accident on August 27, 2001. After examining claimant's x-rays and MRI scan, Dr. Lucas opined that claimant had a significant vertical fracture of the L4 disc and vertebra with retropulsion of bone fragments causing deformity and stenosis. He stated that claimant's spine was very unstable as a result of this fracture and would require surgical fusion for adequate healing. Following surgery on October 19, 2001, Dr. Lucas stated that claimant had a very difficult postoperative course requiring significant rehabilitation and medication. On November 15, 2001, Dr. Lucas noted that claimant was having difficulty ambulating and was using a wheelchair. On January 11, 2002, he noted that claimant had successfully reduced his medication intake, but was continuing to struggle with significant pain. He also noted that claimant was experiencing complications due to osteopenia and poor bracing.

In his deposition, Dr. Lucas opined that claimant's injury was caused or aggravated by the work injuries claimant described on August 27 and September 2, 2001. He stated that a severe fracture such as the one he found in claimant's back would have required medical treatment and been disabling to claimant to the point that he would not have been able to work without great difficulty and would not have been able to stand upright. Dr. Lucas opined that since claimant was able to work without much difficulty and received

no significant medical treatment in the several weeks prior to August 27, his condition must have been caused by the injuries described in August and September 2001.

Based on all the evidence presented, including my observations of the witnesses, I make the following findings:

FINDINGS OF FACT

1. An employee/employer relationship existed between the parties on the date of claimant's injury. This finding is based on the parties' stipulation.

2. Claimant's average weekly wage is \$628.62, and his corresponding compensation rate is \$419.10. This finding is based on claimant's testimony, information supplied by the parties, and information in the Commission's file.

3. Claimant sustained injury by accident arising out of and in the course of his employment with employer-defendant on or about August 27, 2001 affecting his back, left hip, and both lower extremities when he slipped from a ladder at work and fell a few feet to the floor landing on his buttocks. This finding is based on claimant's testimony and the medical records.

4. Claimant sustained injury by accident arising out of and in the course of his employment with employer-defendant on or about September 2, 2001 affecting his back, left hip, and both lower

extremities when a stool he was sitting on while doing his work slipped out from under him and caused him to sit down hard on a concrete floor. This finding is based on claimant's testimony and the medical records.

5. The fracture in claimant's spine is not seen on x-rays made on or about February 2001 but is obvious in x-rays and MRI films made in August and September 2001. This finding is based on the medical records and opinions of Doctors Thomas and Lucas.

6. In the weeks prior to August 27, 2001, claimant worked without significant difficulty and required no medical treatment. This finding is based on claimant's testimony, the testimony of Mike Smith, and the medical records.

7. Dr. Lucas opined that a severe fracture such as the one he found in claimant's back would have required medical treatment and been disabling to claimant to the point that he would not have been able to work without difficulty and would have not been able to stand upright; therefore, since claimant was able to work without much difficulty and received no significant medical treatment in the several weeks prior to August 27, his condition must have been caused by the injuries described in August and September 2001. This finding is based on the medical records and opinions of Dr. Lucas.

8. Claimant timely notified his employer of his accidental injuries. This finding is based on claimant's testimony, the

testimony of Mike Smith, the testimony of Doug Thackston, and the 12-A forms placed into the record as Exhibits #1-2.

9. Claimant's significant spinal fracture required corrective fusion surgery. This finding is based on claimant's testimony and the medical records.

10. Claimant continues to have significant low back and bilateral lower extremity pain, such that he is unable to stand without support from a brace and a walker, is unable to drive a vehicle, and has difficulty and need assistance in caring for himself. This finding is based on claimant's testimony and the medical records.

11. Claimant has required medical treatment since August 27, 2001, including treatment from Doctors Thomas, Lucas, and Shallcross and treatment at St. Francis Hospital, NHC of Anderson, and Wellspring, and he is in need of additional medical treatment. This finding is based on claimant's testimony and the medical records.

12. Claimant has been totally disabled from working since September 3, 2001 and remains totally disabled from working. This finding is based on claimant's testimony and the medical records.

13. Claimant has not reached maximum medical improvement from his injuries. This finding is based on claimant's testimony and the medical records.

14. Any determination of permanent disability is premature and that and all other issues are held in abeyance until a future hearing before the Commission.

RULINGS OF LAW

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits arising from his accident on or about August 27, 2001 and September 2, 2001.

2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$628.62, and his corresponding compensation rate is \$419.10.

3. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident on or about August 27, 2001 and September 2, 2001 affecting his back, left hip, and both lower extremities.

4. Under S.C. Code Ann. § 42-15-20, claimant timely notified his employer of his accidental injuries.

5. Claimant has not reached maximum medical improvement from his injuries. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999).

6. Under S.C. Code Ann. § 42-15-60, claimant is in need of and is entitled to and defendants are responsible for all causally

related medical treatment and expenses from August 27, 2001 to the present and continuing, including treatment rendered by and through Dr. Thomas, Dr. Lucas, Dr. Shallcross, St. Francis Hospital, NHC of Anderson, and Wellspring.

7. Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, claimant is entitled to and defendants are responsible for temporary total disability benefits from September 3, 2001 to the present and continuing until further Order of the Commission or agreement of the parties.

ORDER

It is ordered that defendants shall make the following payments:

1. All causally related medical treatment and expenses from August 27, 2001 to the present and continuing, including treatment rendered by and through Dr. Thomas, Dr. Lucas, Dr. Shallcross, St. Francis Hospital, NHC of Anderson, and Wellspring.

2. Temporary total disability compensation at the rate of \$419.10 per week from September 3, 2001 to the present and continuing until further Order of the Commission or agreement of the parties.

3. No hearing costs are assessed in this instance.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Lisa D. Chavis
Lisa D. Chavis, Commissioner

Date: 11-22-02

Copy of this order of service
This is to certify that the undersigned has this date
served this order of service upon all
parties to this case, and enclosing a copy hereto,
postage paid, in which the cost is addressed to
the attorney or attorneys for said parties.
This 27th day of November, 2002
By Baibara Chesebrow
Administrative Assistant to the Commissioner

KW
DHK

ORDER
of the
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
File Nos.: 0115236, 0115237

William G. Ketron, Jr.,

Employee/Claimant,

vs.

Delta Woodside Industries, Inc.,

Self-insured Employer, and

S.C. Uninsured Employers' Fund,

Defendants.

Hearing: Held in Greenville, South Carolina on September 21, 2007

Appearances: Kathryn Williams, Esq. of Kathryn Williams, P.A. for claimant
David Hill Keller, Esq. of David Hill Keller, P.A. for defendant
Delta Woodside
Lisa C. Glover, Esq. for defendant Uninsured Employers' Fund

Purpose: To determine issues as set forth on the Forms 50 and 51

Decision & Order: G. Bryan Lyndon, Commissioner

Filed: October 25, 2007

APA SUBMISSIONS

By claimant:

#1	Charles B. Thomas, Jr., M.D.	8/29/01 - 9/27/01	pages 1 - 9
#2	VBS Physical Therapy	9/5/01 - 9/12/01	10 - 13
#3	HealthSouth Diagnostic Center	9/17/01	14 - 15
#4	S. Emmiett Lucas, III, M.D.	10/2/01 - 2/4/05	16 - 26
#5	St. Francis Hospital	10/19/01 - 11/6/01	27 - 80
#6	NHC of Anderson	11/7/01 - 11/17/01	81 - 175
#7	David L. Shallcross, M.D.	12/26/01	176 - 177
#8	HealthSouth Physical Therapy	5/14/02 - 6/24/02	178 - 205
#9	S.T. Yoon, M.D. & Wm. C. Horton, M.D.	5/17/05 - 5/15/06	206 - 215
#10	Woodward Medical Clinic	5/8/06	216 - 219
#11	High Energy Weight Control Center	6/27/06 - 3/12/07	220 - 224
#12	John R. Satterthwaite, M.D.	8/15/07 - 9/10/07	225 - 230a
#13	Randy L. Adams, M.Ed., CVE	8/27/07	231 - 238

By defendant Delta Woodside:

#1	William. C. Horton, M.D.	1/9/06 - 5/15/06	1 - 10
#2	Letter to Kathryn Williams	9/6/07	11
#3	Letter to John S. Nichols	9/6/07	12
#4	Letter to David H. Keller	9/13/07	13

By defendant Uninsured Employers Fund:

None

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issues set forth in the hearing notice, issues pled in the Forms 50 and 51, and other issues timely brought before the Commissioner.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Greenville County, is proper.

4. Claimant seeks additional benefits under the South Carolina Workers' Compensation Act based upon admitted injuries by accident which occurred on August 27, 2001 and September 2, 2001 while he was working for employer-defendant, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

5. The Commission's file and the Hearing Commissioner's notes are a part of the record of this case, with the exception of any self-serving declarations or unstipulated medical reports.

6. By previous Order of the Commission, claimant's average weekly wage is \$628.62, for a corresponding compensation rate of \$419.10.

7. Defendant Delta Woodside was a qualified self-insurer as of the dates of accident in these claims, August 27, 2001 and September 2, 2001.

CLAIMANT'S BIOGRAPHICAL INFORMATION

Age:	64
Education:	High School diploma, some college
Work History:	U.S. Navy; electrical and mechanical work, nursing assistant, mortgage lending, police officer, with this employer for approximately two years

STATEMENT OF THE CASE

By previous Order of the Commission dated November 27, 2002, and affirmed on July 3, 2003, claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities. The Commission awarded continuing medical and temporary compensation benefits. The Commission's Order was

subsequently affirmed by the Honorable John C. Few of the Circuit Court for Greenville County on July 22, 2004.

Claimant now contends that he has also sustained injury to his lungs, aggravation of his diabetes, and injury to his psyche (psychological overlay) as a result of his injuries by accident and his other compensable injuries. He further contends that he has reached maximum medical improvement and seeks permanent total disability benefits. In the alternative, he seeks substantial permanent partial disability compensation for loss of use of his back, legs, and lungs, and continuing medical treatment needed to maintain his current level of functioning. Claimant requests a lump-sum payment of any award, with a lifetime allocation of the compensation benefits so as to reduce any potential offsets from other disability sources.

Defendant Delta Woodside joins in the request for a determination of permanent disability but denies that claimant is permanently and totally disabled as a result of his injuries by accident.

Defendant Delta Woodside, who was a qualified self-insurer at the time of these injuries by accident, has filed for bankruptcy protection. Claimant joined defendant Uninsured Employers' Fund as a party contending the Fund is liable to him under the terms of the Act if Delta Woodside is unable to meet all of its obligations. Defendant Uninsured Employers' Fund appeared at the hearing of this matter and moved to be dismissed contending that it is not a proper party; however, the motion was denied. Defendant Uninsured Employers' Fund contends that it has no obligation to claimant under the Act arguing that the date of accident controls and that defendant Delta Woodside was acting as a qualified self-insurer at the time of these injuries by accident.

EVIDENCE OF THE CASE

Claimant testified that the surgery that was performed prior to the previous hearing ultimately proved unsuccessful and that he was referred to Emory University in Atlanta, Georgia for further evaluation. He stated that the surgeon there recommended a three-stage surgical procedure but insisted that claimant lose a certain amount of weight before the surgery could be undertaken. Claimant testified that he has tried to lose that weight with the help of a weight-loss program, but due to his many medical problems and inability to be active or to exercise, he has been unable to reduce his weight significantly.

Claimant stated that he continues to experience pain in his back and pain and numbness in his legs, and he also has problems with his right shoulder. However, he is unable to take narcotic medications to help manage his pain. He is dependent on a walker for ambulation, and he walks bent over at the waist and is unable to stand up straight. He is unable to climb ladders or crawl under houses in order to work and has been incapacitated because of his injuries since his injuries by accident occurred. Claimant stated that he is unable to be active and is very sedentary because of his condition, and as a result, he has increased problems with his diabetes. In addition, because he is unable to straighten up and is always bent over, he has difficulty breathing. Claimant stated that also deals with significant depression as a result of all these problems.

Claimant poignantly testified that he feels abandoned by defendants and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since defendants have not provided such assistance.

Claimant requested a lump-sum payment of any award that he receives, and he testified that he would use the money to secure stable housing, as he is currently living in a temporary shelter. He is

now eligible for and is receiving Social Security retirement benefits, and he is eligible for Medicare benefits.

The medical evidence reveals that claimant reported to Dr. Charles Thomas on August 29, 2001 complaining of back pain and mild numbness and tingling in his lower extremities after injuring his back at work when he fell from a ladder. Based on this description, Dr. Thomas obtained x-rays which showed a new compression fracture. A subsequent MRI scan showed a burst fracture at L4 with retropulsion of fragments causing spinal stenosis. Dr. Thomas restricted claimant from working and referred him to Dr. Emmett Lucas for operative treatment and fusion.

Dr. Lucas first evaluated claimant on October 2, 2001, and he noted claimant's description of constant back and bilateral leg pain following two injuries at work, the first on August 27, 2001 when he fell several feet from a ladder and the second a few days later when he sat down hard on a concrete floor after missing a stool. Dr. Lucas also noted claimant's description of a previous low back injury resulting in surgery by Dr. Thomas in August 2000; however, claimant stated that he was able to work without difficulty following that surgery until his work accident on August 27, 2001. After examining claimant's x-rays and MRI scan, Dr. Lucas opined that claimant had a significant vertical fracture of the L4 disc and vertebra with retropulsion of bone fragments causing deformity and stenosis. He stated that claimant's spine was very unstable as a result of this fracture and would require surgical fusion for adequate healing.

Following surgery on October 19, 2001, Dr. Lucas stated that claimant had a very difficult postoperative course requiring significant rehabilitation and medication. On November 15, 2001, he noted that claimant was having difficulty ambulating and was using a wheelchair. On January 11, 2002, Dr. Lucas noted that claimant had successfully reduced his medication intake, but was continuing

to struggle with significant pain. He also noted that claimant was experiencing complications due to osteopenia and poor bracing. On November 10, 2004, Dr. Lucas noted that claimant's fusion had collapsed again into kyphotic deformity causing him to be forward flexed and requiring the use of a walker to get around. He recommended further surgery to correct this condition and straighten claimant's back, but he noted that this would be a very difficult surgery that was beyond his capabilities and referred claimant to Emory University in Atlanta, Georgia.

Dr. Sangwook Yoon evaluated claimant at Emory on May 17, 2005 and noted his failed posterior spinal fusion resulting in severe kyphosis such that he cannot walk without assistance and has to use a walker at all times. Given the degree of deformity, he recommended posterior surgery to remove the hardware from the multilevel osteotomies, an anterior procedure to resect the bony bridging, and very thorough radical discectomies with hardware implantation from the thoracic level to the sacrum. However, he noted that it may be very difficult to put in screws or to perform osteotomies due to the previous failed surgery, and he referred claimant to his partner, Dr. William Horton, as he stated Dr. Horton is the only person who has a remote chance of performing the procedure. Following evaluation on January 9, 2006, Dr. Horton stated that claimant would need to lose more than 30 pounds to minimize risks and improve the safety of the recommended surgery, and he referred him for nutritional counseling.

Dr. Raana Naidu performed a medical examination on May 8, 2006 in preparation for possible surgery. Dr. Naidu found that claimant presented in a bent-over position due to his back problems and that he was very motivated to undergo surgery to correct the problem. While Dr. Naidu opined that he found no absolute contraindications to the proposed surgery, she did note that claimant was experiencing restrictive lung disease limiting him to some 58% of normal lung capacity and that this

would need to be taken into account when planning the surgery. Dr. Naidu opined that claimant's restrictive lung disease was likely due to his bent-over, kyphotic position.

Notes from the weight-loss clinic show that claimant made some progress on his weight-loss goal until he began having some difficulty with his bladder and kidneys and regressed somewhat. While he returned to his program after treatment on his bladder and kidneys, this treatment was discontinued due to unavailability of workers' compensation funds.

Dr. John Satterthwaite evaluated claimant on August 16, 2007 and noted that claimant stated that he had been unable to lose the required weight and was no longer able to consider the surgery recommended at Emory; therefore, Dr. Satterthwaite opined that he has reached maximum medical improvement. He opined that based on the 25% compression fracture at L4, the small compression fracture at T12, ankylosis of the lumbar spine in flexion at about 45 degrees, reduction in lateral bending, and mild restrictive ventilatory impairment secondary to the kyphosis, claimant has sustained 48% whole person impairment. He broke this down as 43% impairment of the lumbar spine and 2% whole person impairment for the restrictive ventilatory impairment secondary to the kyphosis. Dr. Satterthwaite further opined that claimant is restricted to sedentary work, where he could remain seated all day, and is further restricted from any standing, walking, stooping, squatting, bending, reaching overhead, working at unprotected heights, lifting more than ten pounds, and from carrying any weight. He stated that claimant should use his walker for support at all times. Dr. Satterthwaite opined that claimant's right shoulder problems were caused or aggravated by his use of this walker.

Randy Adams, a certified vocational evaluator, evaluated claimant on August 20, 2007 to assess his residual employability. He administered various occupational tests and reviewed claimant's medical records and his medical and work histories. Mr. Adams noted the restrictions placed by Dr.

Satterthwaite, and further noted claimant's description of the need to utilize his walker 100% of the time for ambulation, inability to stand for more than about three minutes without his walker, inability to sit more than an hour before changing positions, and inability to lift more than four or five pounds or to carry any weight at all. He also noted that these activities are performed on his good days and that he cannot do anything at all on bad days, which he experiences about four or five days in each week. Mr. Adams noted that claimant described depression and inability to sleep without medications. After reviewing claimant's work history, Mr. Adams noted that claimant's work as a certified electrician required that he lift up to 50 pounds, was medium to heavy exertional skilled work, and provides him with no skills transferable to the sedentary level. Academic testing revealed that claimant functions below average in reading, spelling, and arithmetic and would therefore not be a good candidate for any clerical work. Furthermore, he performed so poorly on hand and finger dexterity testing that the tests had to be discontinued, and Mr. Adams opined that claimant would not be a candidate for any jobs that would require using his hand or fingers on a regular basis. Mr. Adams concluded that claimant's activities of daily living are very low and do not reflect a level of functioning that would indicate that he could perform competitive employment. He opined that claimant would be a poor candidate for clerical or sales positions due to his academic functioning and is not a good candidate for service or industrial positions due to his permanent restrictions and low hand and finger dexterity. Mr. Adams stated that claimant is not capable of obtaining or maintaining any substantial, gainful work activity found in the economy and should be considered permanently and totally disabled.

FINDINGS OF FACT

1. By previous Order of the Commission, claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities.

2. By previous Order of the Commission, claimant's average weekly wage is \$628.62, for a corresponding compensation rate of \$419.10.

3. As a result of his compensable back injury, claimant was diagnosed with a fracture of the T12 disc and vertebrae and a significant vertical fracture of the L4 disc and vertebra with retropulsion of bone fragments causing deformity and stenosis, for which he underwent multilevel posterolateral fusion surgery in October 2001 with placement of hardware and bone grafted from the iliac crest. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Lucas and St. Francis Hospital.

4. Claimant had a very difficult postoperative course due to osteopenia and poor bracing and required significant rehabilitation and medication. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Lucas.

5. Claimant's surgical fusion ultimately failed and collapsed into kyphotic deformity causing him to be forward flexed at an approximate 45 degree angle and requiring the constant use of a walker for ambulation. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Lucas, Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

6. Dr. Yoon and Dr. Horton, both of Emory Spine Center, opined that claimant's only hope for improvement of his condition is an extremely complex multi-stage surgery involving posterior

surgery to remove the hardware from the previous multilevel osteotomies, an anterior procedure to resect the bony bridging, and very thorough radical discectomies with hardware implantation from the thoracic level to the sacrum, but Dr. Horton would only consider attempting the surgery if claimant could lose more than 30 pounds to minimize risks and improve the safety of the recommended surgery. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

7. Claimant was referred to a weight-loss clinic for assistance in reaching his weight-loss goal, but he was ultimately unable to lose any significant amount of weight due to his inability to be active and partake in formal exercise secondary to his work injuries. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

8. Because of his inability to reach the weight loss goal set by Dr. Horton, claimant will not be able to undergo additional corrective surgery on his low back. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

9. Claimant continues to experience pain in his back, pain and numbness in his legs, and pain in his right shoulder, and he is unable to stand up straight and walks bent over at the waist which requires that he rely on a walker for ambulation and prevents him from performing many activities of daily living and the activities that he would need to perform in order to be able to return to any type of work. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, Dr. Naidu, and Dr. Satterthwaite.

10. Because of his forced reliance on a walker for ambulation secondary to his work injuries, claimant has experienced continuing right shoulder pain and has sustained injury to his right shoulder that further limits his ability to function. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Satterthwaite.

11. Claimant has sustained compensable injury to his right shoulder as a result of his injury by accident and the effects of his compensable back injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Satterthwaite.

12. Because of the forward-flexed, kyphotic posture resulting from his failed fusion, claimant experiences restrictive lung disease and a reduced lung capacity that further limits his ability to function. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Naidu and Dr. Satterthwaite.

13. Claimant has sustained compensable injury to his lungs, including restrictive lung disease and a reduced lung capacity, as a result of his injury by accident and the effects of his compensable back injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Naidu and Dr. Satterthwaite.

14. Because of his injuries, his continuing pain, and his inability to walk upright and function as he did prior to his injuries by accident, claimant has developed depression and psychological overlay, which further reduces his ability to function. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

15. Claimant has sustained compensable injury to his psyche, or psychological overlay, as a result of his injury by accident and the effects of his compensable back injury. This finding is based

on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

16. Because of his injuries and his continuing pain, claimant has difficulty sleeping, which requires medications and further reduces his ability to function. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

17. Claimant has sustained compensable injury to his ability to sleep as a result of his injury by accident and the effects of his compensable back injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

18. Claimant has reached maximum medical improvement from his injuries. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Satterthwaite.

19. Claimant requires continued medical treatment and medications, including but not limited to over-the-counter and prescription medications and assistive devices, in order to maintain his current level of functioning and prevent further deterioration of his condition. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

20. Claimant has been incapacitated and unable to work because of his injuries by accident and his compensable injuries since his injuries by accident occurred, and he remains incapacitated and unable to work. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

21. Claimant has received impairment ratings including 48% whole person impairment, which consists of 43% impairment of the lumbar spine and 2% whole person impairment for the

restrictive ventilatory impairment secondary to the kyphosis. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Satterthwaite.

22. Claimant has been restricted to sedentary work and from any work that includes any standing, walking, stooping, squatting, bending, reaching overhead, working at unprotected heights, lifting more than ten pounds, or carrying any weight, and he must be allowed to use his walker for support at all times. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Satterthwaite.

23. Claimant's previous work experience as an electrician was medium to heavy exertional skilled work requiring lifting up to 50 pounds and provides no skills transferable to the sedentary work level. This finding is based on all the evidence on the record, including but not limited to the records of vocational evaluator Randy Adams.

24. Academic testing, which was administered as a part of a vocational evaluation, revealed that claimant functions at a below average level in reading, spelling, and arithmetic. This finding is based on all the evidence on the record, including but not limited to the records of vocational evaluator Randy Adams.

25. Claimant performed so poorly on hand and finger dexterity testing, which was administered as a part of a vocational evaluation, that the tests had to be discontinued. This finding is based on all the evidence on the record, including but not limited to the records of vocational evaluator Randy Adams.

26. Vocational evaluator Randy Adams opined that claimant's activities of daily living are very low and do not reflect a level of functioning that would indicate that he could perform competitive employment; that the sedentary work level to which he has been restricted includes work in clerical,

sales, service, and industrial categories; that claimant is a poor candidate for clerical or sales positions due to his below-average academic functioning; that claimant is not a good candidate for service or industrial positions due to his permanent restrictions and low hand and finger dexterity; and that claimant is therefore not capable of obtaining or maintaining any substantial, gainful work activity found in the economy and should be considered permanently and totally disabled from a vocational standpoint. This finding is based on all the evidence on the record, including but not limited to the records of vocational evaluator Randy Adams.

27. Claimant has sustained 50% or greater loss of use of his back as a result of his injuries by accident, the resulting injury to his back, the affect of his back injury on his legs, his failed lumbar fusion, his resulting kyphotic condition and inability to stand erect or walk without the assistance of a walker, and the effect his kyphotic condition and posture has on his ability to breathe. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Satterthwaite.

28. Claimant has sustained complete loss of earning capacity as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work. This finding is based on all the evidence on the record, including but not limited to claimant's testimony, the medical records and opinions of Dr. Satterthwaite, and the records and opinions of vocational evaluator Randy Adams.

29. Claimant is permanently and totally disabled as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work and complete loss of earning capacity. This finding is based on all the evidence on the record, including but not limited to claimant's testimony, the medical records and

opinions of Dr. Satterthwaite, and the records and opinions of vocational evaluator Randy Adams.

30. In making this determination, I rely heavily on the vocational assessment which was submitted into the record, and I specifically note that no contrary evidence or report was submitted into the record.

31. In making this determination, I rely on objective evidence on the record, including but not limited to the physicians' impairment rating of 48% of the whole person (which includes 43% impairment of the lumbar spine and 2% whole person impairment for the restrictive ventilatory impairment secondary to the kyphosis), objective evidence of 58% lung capacity function, and objective vocational testing.

32. In making this determination, I have strictly applied the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th edition, and specifically note that section 1.2b of that treatise states that

[t]he impairment evaluation, however, is only one aspect of disability determination. A disability determination also includes information about the individual's skills, education, job history, adaptability, age, and environment requirements and modifications. Assessing these factors can provide a more realistic picture of the effects of the impairment on the ability to perform complex work and social activities. . . . The Guides is not intended to be used for direct estimates of work disability. Impairment percentages derived according to the Guides criteria do not measure work disability. Therefore, it is inappropriate to use the Guides' criteria or ratings to make direct estimates of work disability.

33. Claimant has a plan for use of the proceeds of his award in that he intends to secure stable housing, as he is currently living in temporary shelter housing due to lack of adequate funding. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

34. It is in claimant's best interest that his award be paid in a commuted lump-sum payment so that he can pay his attorney fees related to this claim and secure stable housing. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

35. Because of his current receipt of Social Security benefits, it is in claimant's best interest that his award of 500 weeks of permanent total disability compensation, which is compensation for disability which will affect him for the rest of his life, be allocated into a theoretical stream of periodic payments extending over his expected lifetime so as to minimize, to the extent allowed by law, any potential offset or reduction he may experience in Social Security disability benefits or other disability benefits. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

36. Defendant Delta Woodside was a qualified self-insurer as of the dates of accident in these claims, August 27, 2001 and September 2, 2001. This finding is based on the parties' stipulation.

37. Due to bankruptcy, defendant Delta Woodside defaulted on its responsibilities to pay its self-insured workers' compensation liabilities on February 27, 2007, and on that date, the Commission's Self-Insurance Division drew down on the company's surety deposit of \$750,000.00 to pay the open claims; however, because defendant Delta Woodside intentionally under-reserved their open claims and failed to comply with a July 19, 2006 request from the Self-Insurance Division for a surety increase, the surety held by the Commission is insufficient to meet all of defendant Delta Woodside's workers' compensation claim liabilities. This finding is based on information in the Commission's file.

38. Defendant Delta Woodside has failed to acquire necessary coverage, or to provide necessary and acceptable surety, for its employees. This finding is based on information in the

Commission's file.

39. As of February 28, 2007, defendant Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act. This finding is based on information in the Commission's file.

40. The purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

41. Pursuant to the Act, a tax is levied on self-insured employers in order to establish and maintain the Uninsured Employers' Fund.

42. While defendant Delta Woodside was operating as a qualified self-insurer on the dates of accident in these claims, defendant Delta Woodside failed to maintain such coverage as required by the Act in that they failed to provide acceptable security and became an unqualified self-insurer within the meaning of the Act.

43. Claimant poignantly testified that he feels abandoned by defendant and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since defendant have not provided such assistance, and it is apparent that if defendant Delta Woodside does not or cannot meet its obligations to claimant under the Act and defendant Uninsured Employers' Fund is not made to pay the obligation to claimant as provided in the Act, claimant will become a public charge dependent on Medicare, the Veterans' Administration, and other sources for compensation and medical care that is the responsibility of his employer, and such is directly contrary to the purposes of the Workers' Compensation Act.

44. If defendant Delta Woodside is unable to meet all of its obligation to claimant as provided in this Order, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order.

RULINGS OF LAW

1. By previous Order of the Commission, claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities. See Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999)(unappealed order of the Commission is the law of the case and not subject to collateral attack).
2. By previous Order of the Commission, claimant's average weekly wage is \$628.62, for a corresponding compensation rate of \$419.10. See Reese.
3. Under S.C. Code Ann. § 42-1-160, and as a result of his injuries by accident and/or his compensable back injury, claimant has also sustained compensable injuries to his right shoulder, lungs, psyche, and his ability to sleep.
4. Claimant has reached maximum medical improvement from his injuries. See Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment).
5. Claimant is in need of and is entitled to continuing medical treatment, including but not limited to over-the-counter and prescription medications and any assistive devices, in order to maintain his current level of functioning and prevent further deterioration of his condition. See Dodge v.

Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999)(injured worker is entitled to additional medical treatment to maintain current level of functioning and prevent a worsening of condition despite a finding of maximum medical improvement).

6. Under S.C. Code Ann. § 42-9-30(19), claimant has sustained 50% or greater loss of use of his back as a result of his injuries by accident.

7. Under S.C. Code Ann. §§ 42-9-30(19) and 42-9-10, claimant is permanently and totally disabled as a result of 50% or greater loss of use of his spine. See also Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (Ct.App.1993)(claimant who has sustained greater than 50% loss of use of back is deemed permanently and totally disabled under the Act despite any residual earning capacity).

8. Claimant has sustained complete loss of earning capacity as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work. Colvin v. E.I. DuPont de Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955).

9. Under S.C. Code Ann. § 42-9-10, claimant is permanently and totally disabled as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work and complete loss of earning capacity. See also Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961)("inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment"); Brown v. Owen Steel Co., 316 S.C. 278, 450 S.E.2d 57 (Ct.App.1994)(when injuries are not confined to a single body part, a claimant is not limited to the scheduled loss statute and is entitled to determination of disability based on loss of earning capacity).

10. Under S.C. Code Ann. § 42-9-10, claimant is entitled to and defendants are responsible for a total of 500 weeks compensation for permanent total disability, though defendants are entitled to credit for any temporary total disability benefits paid to date in this claim.

11. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for all causally-related medical treatment and expenses from August 27, 2001 to the present and continuing for claimant's lifetime, including but not limited to such over-the-counter and prescription medications and any assistive devices that he may need to maintain his current level of functioning and prevent further deterioration of his condition. Defendants are not responsible for any evaluation or treatment provided to date by Dr. Satterthwaite or Randy Adams.

12. Under S.C. Code Ann. § 42-9-301, it is in claimant's best interest that his permanent total disability benefits be paid in commuted lump-sum, as calculated by the Commission.

13. Under Regulation 67-1605, the Commission shall hereafter calculate the commuted value of claimant's remaining award.

14. This award, which is compensation for permanent impairment that will affect claimant for life, is estimated and allocated into a theoretical stream of periodic payments, as follows: \$26,721.25 for attorney's fees and costs in prosecuting this action and \$44,367.79 for future disability benefits at the rate of \$210.79 per month for 210.48 months (based on information in the Commission's file, 315.7143 weeks of temporary total disability compensation benefits had been paid to claimant as of the date of the hearing, leaving 184.2857 weeks to be paid on his permanent total disability award, which has a commuted value of \$71,089.04)(claimant, who was born on July 3, 1943 and was 64 years of age at the time of the hearing in this matter, has a life expectancy of 17.54 years, or 210.48 months, according to the mortality tables set forth in S.C. Code Ann. § 19-1-150)(\$44,367.79

divided by 210.48 months equals \$210.79 per month). See Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); S.C. Code Ann. §§ 42-9-10, 42-9-240 (2005). See also Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); Sciarotta v. Secretary of Health & Human Serv., 735 F.Supp. 148 (D.N.J. 1989); POMS 11501.235(c).

15. Under S.C. Code Ann. §§ 42-5-10, et seq., and 42-7-200, defendant Delta Woodside has failed to acquire necessary coverage, or to provide necessary surety, for its employees.

16. Under S.C. Code Ann. §42-7-200, as of February 28, 2007, defendant Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act.

17. Under S.C. Code Ann. §42-7-200, the purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

18. If defendant Delta Woodside does not or cannot meet its obligations to claimant under the Act and defendant Uninsured Employers' Fund is not made to pay the obligation to claimant as provided in the Act, claimant will become a public charge dependent on Medicare, the Veterans' Administration, and other sources for compensation and medical care that is the responsibility of his employer, and such is directly contrary to the purposes of the Workers' Compensation Act. See Anderson v. Baptist Medical Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001) (the Act must be given liberal construction in furtherance of the purposes for which it was designed); Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) (purpose of the Act is to compensate worker for his loss of earnings because of injury and to enable the worker to live without being a burden to others, to aid in preventing the worker from becoming a public charge); Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943) (purpose of the Act is to place upon the employer, and not the injured worker, the economic

burden of the casualties of doing business).

19. Under S.C. Code Ann. §42-7-200, if defendant Delta Woodside is unable to meet all of its obligation to claimant as provided in this Order, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order.

ORDER

It is ordered that defendant Delta Woodside shall provide the following:

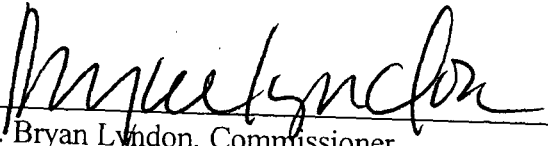
1. Permanent total disability compensation at the rate of \$419.10 per week for a total of 500 weeks in commuted lump-sum payment as hereafter calculated by the Commission and as allocated herein, though defendants may take credit for any temporary total disability benefits paid to date in this claim.

2. All causally-related medical treatment and expenses from August 27, 2001 to the present and continuing for claimant's lifetime, including but not limited to such over-the-counter and prescription medications and any assistive devices that he may need to maintain his current level of functioning and prevent further deterioration of his condition. Defendants are not responsible for any evaluation or treatment provided to date by Dr. Satterthwaite or Randy Adams.

However, if defendant Delta Woodside is unable to provide the above awarded benefits, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order.

[signature page follows]

S.C. Workers' Compensation Commission


G. Bryan Lyndon, Commissioner

Date: _____

CERTIFICATE OF SERVICE

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

This 25th day of October, 2007

By Jahara Morris

Administrative Assistant to the Commissioner

KW

CG

DHK

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0115236 and 0115237

WILLIAM G. KETRON, JR.,

EMPLOYEE,
CLAIMANT/RESPONDENT,

- V -

DELTA WOODSIDE INDUSTRIES,

EMPLOYER,

AND

S. C. UNINSURED EMPLOYERS' FUND,

CARRIER,
DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia,
South Carolina on April 29, 2008 per notices
timely and properly served on all parties of
interest.

Appellate Panel Decision and Order filed
June 4/, 2008.

APPEARANCES:

Claimant/Respondent represented by Kathryn
Williams, Esquire, of Greenville, South
Carolina.

Employer/Respondent represented by David
Hill Keller, Esquire, of Greenville, South
Carolina.

Defendants/Appellants represented by Lisa C.
Glover, Esquire, of Columbia, South Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner G. Bryan Lyndon on September 21, 2007 in Greenville, South Carolina. On December 14, 2007, he issued the following Order:

It is ordered that defendant Delta Woodside shall provide the following:

1. Permanent total disability compensation at the rate of \$419.10 per week for a total of 500 weeks in commuted lump sum payment as hereafter calculated by the Commission and as allocated herein, though defendants may take credit for any temporary total disability benefits paid to date in this claim.
2. All causally-related medical treatment and expenses from August 27, 2001 to the present and continuing for claimant's lifetime, including but not limited to such over-the-counter and prescription medications and any assistive devices that he may need to maintain his current level of functioning and prevent further deterioration of his condition. Defendants are not responsible for any evaluation or treatment provided to date by Dr. Satterthwaite or Randy Adams.

However, if defendant Delta Woodside is unable to provide the above awarded benefits, defendant Uninsured Employers' Fund shall pay the claim pursuant to this Order.

Within the statutory period, counsel for the Uninsured Employers' Fund filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 29, 2008. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, the Uninsured Employers' Fund respectfully submits the following:

1. The hearing commissioner erred as a matter of law in finding the SCUEF is maintained by a tax on self-insured employers.
2. The hearing commissioner erred as a matter of law in finding Claimant will become a public charge if Delta Woodside Industries, Inc., and/or the SCUEF do not meet the obligations under the Act.
3. The hearing commissioner erred as a matter of law in finding the SCUEF liable for this claim if Delta Woodside Industries, Inc. is unable to meet its obligations to the Claimant.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission, by unanimous vote, has determined all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety.

FINDINGS OF FACT

1. By previous Order of the Commission, Claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities.

2. By previous Order of the Commission, Claimant's average weekly wage is \$628.62 with a corresponding compensation rate of \$419.10.

3. As a result of his compensable back injury, Claimant was diagnosed with a fracture of the T12 disc and vertebrae and a significant vertical fracture of the L4 disc and vertebra with retropulsion of bone fragments causing deformity and stenosis, for which he underwent multilevel posteriolateral fusion surgery in October 2001 with placement of hardware and bone grafted from the iliac crest. This finding is based on all the evidence in the record, including but not limited to the medical records of Dr. Lucas and St. Francis Hospital.

4. Claimant had a very difficult postoperative course due to osteopenia and poor bracing and required significant rehabilitation and medication. This finding is based on all the evidence in the record, including but not limited to the medical records of Dr. Lucas.

5. Claimant's surgical fusion ultimately failed and collapsed into kyphotic deformity causing him to be forward flexed at an approximate 45 degree angle and requiring the constant use of a walker for ambulation. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Lucas, Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

6. Dr. Yoon and Dr. Horton, both of Emory Spine Center, opined Claimant's only hope for improvement of his condition is an extremely complex multi-stage surgery involving posterior surgery to remove the hardware from the previous multilevel osteotomies, an anterior procedure to resect the bony bridging, and very thorough radical diskectomies with hardware implantation from the thoracic level to the

sacrum, but Dr. Horton would only consider attempting the surgery if Claimant could lose more than 30 pounds to minimize risks and improve the safety of the recommended surgery. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

7. Claimant was referred to a weight loss clinic for assistance in reaching his weight loss goal, but he was ultimately unable to lose any significant amount of weight due to his inability to be active and partake in formal exercise secondary to his work injuries. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

8. Because of Claimant's inability to reach the weight loss goal set by Dr. Horton, Claimant will not be able to undergo additional corrective surgery on his low back. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, and Dr. Satterthwaite.

9. Claimant continues to experience pain in his back, pain and numbness in his legs, and pain in his right shoulder, and he is unable to stand up straight and walks bent over at the waist which requires he rely on a walker for ambulation and prevents him from performing many activities of daily living and the activities he would need to perform in order to be able to return to any type of work. This finding is based on the evidence in the record, including but not limited to

Claimant's testimony and the medical records of Dr. Yoon, Dr. Horton, Dr. Naidu, and Dr. Satterthwaite.

10. Because of his forced reliance on a walker for ambulation secondary to his work injuries, Claimant has experienced continuing right shoulder pain and has sustained injury to his right shoulder that further limits his ability to function. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Satterthwaite.

11. Claimant has sustained a compensable injury to his right shoulder as a result of his injury by accident and the effect of his compensable back injury. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Satterthwaite.

12. Because of the forward flexed, kyphotic posture resulting from his failed fusion, Claimant experiences restrictive lung disease and reduced lung capacity that further limits his ability to function. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Naidu and Dr. Satterthwaite.

13. Claimant has sustained compensable injury to his lungs, including restrictive lung disease and reduced lung capacity as a result of his injury by accident and the effects of his compensable back injury. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Naidu and Dr. Satterthwaite.

14. Because of his injuries, his continuing pain, and his inability to walk upright and function as he did prior to his injuries by accident, Claimant has developed

depression and psychological overlay which further reduces his ability to function. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

15. Claimant has sustained compensable injury to his psyche, or psychological overlay, as a result of his injury by accident and the effects of his compensable back injury. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

16. Because of his injuries and his continuing pain, Claimant has difficulty sleeping, which requires medications and further reduces his ability to function. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

17. Claimant has sustained compensable injuries to his ability to sleep as a result of his injury by accident and the effects of his compensable back injury. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

18. Claimant has reached maximum medical improvement from his injuries. This finding is based on the evidence in the record, including but not limited to the medical records of Dr. Satterthwaite.

19. Claimant requires continued medical treatment and medications, including but not limited to over the counter and prescription medications and assistive devices, in order to maintain his current level of functioning and prevent further deterioration of his condition. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

20. Claimant has been incapacitated and unable to work because of his injuries by accident and his compensable injuries since his accident occurred, and he remains incapacitated and unable to work. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

21. Claimant has received impairment ratings including 48% whole person impairment, which consists of 43% impairment of the lumbar spine and 2% whole person impairment for the restrictive ventilatory impairment secondary to the kyphosis. This finding is based on the evidence in the record, including but not limited to the medical record of Dr. Satterthwaite.

22. Claimant has been restricted to sedentary work and from any work that includes any standing, walking, stooping, squatting, bending, reaching overhead, working at unprotected heights, lifting more than 10 pounds, or carrying any weight, and he must be allowed to use his walker for support at all times. This finding is based on the evidence in the record, including but not limited to the medical records of Dr. Satterthwaite.

23. Claimant's previous work experience as an electrician was medium to heavy exertional skilled work requiring lifting up to 50 pounds and provides no skills transferable to the sedentary work level. This finding is based on the evidence in the record, including but not limited to the records of vocational evaluator Randy Adams.

24. Academic testing, which was administered as a part of a vocational evaluation, revealed Claimant functions at a below average level in reading, spelling, and arithmetic. This finding is based on the evidence in the record, including but not limited to the record of vocational evaluator Randy Adams.

25. Claimant performed so poorly on hand and finger dexterity testing, which was administered as a part of vocational evaluation, the tests had to be discontinued. This finding is based on the evidence in the record, including but not limited to the records of vocational evaluator Randy Adams.

26. Vocational evaluator Randy Adams opined Claimant's activities of daily living are very low and do not reflect a level of functioning that would indicate he could perform competitive employment; that the sedentary work level to which he has been restricted includes work in clerical, sales, service, and industrial categories; that Claimant is a poor candidate for clerical or sales positions due to his below-average academic functioning; that Claimant is not a good candidate for service or industrial positions due to his permanent restrictions and low hand and finger dexterity; and that Claimant is therefore not capable of obtaining or maintaining any substantial, gainful work activity found in the economy and should be considered permanently and totally disabled from a vocational standpoint. This finding is based on the evidence in the record, including but not limited to the record of vocational evaluator Randy Adams.

27. Claimant has sustained 50% or greater loss of use of his back as a result of his injuries by accident, the resulting injury to his back, the effect of his back injury on his legs, his failed lumbar fusion, his resulting kyphotic condition and inability to stand erect or walk without the assistance of a walker, and the effect his kyphotic condition and posture has on his ability to breathe. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records of Dr. Satterthwaite.

28. Claimant has sustained a complete loss of earning capacity as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work. This finding is based on the evidence in the record, including but not limited to Claimant's testimony, the medical records and opinions of Dr. Satterthwaite, and the record and opinions of vocational evaluator Randy Adams.

29. Claimant is permanently and totally disabled as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work and complete loss of earning capacity. This finding is based on the evidence in the record, including but not limited to Claimant's testimony, the medical records and opinions of Dr. Satterthwaite, and the records and opinions of vocational evaluator Randy Adams.

30. In making this determination, the Panel relies heavily on the vocational assessment submitted into the record and notes no contrary evidence or report was submitted.

31. In making this determination, the Panel relies on objective evidence in the record, including but not limited to the physicians' impairment rating of 48% of the whole person (which includes 43% impairment of the lumbar spine and 2% whole person impairment for the restrictive ventilatory impairment secondary to the kyphosis), objective evidence of 58% lung capacity function, and objective vocational testing.

32. In making this determination, the Panel has strictly applied the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th Edition, and specifically note Section 1.2b of the treatise states:

[t]he impairment evaluation, however, is only one aspect of disability determination. A disability determination also includes information about the individual's skills, education, job history, adaptability, age, and environment requirements and modifications. Assessing these factors can provide a more realistic picture of the effects of the impairment on the ability to perform complex work and social activities. ... The Guides is not intended to be used for direct estimates of work disability. Impairment percentages derived according to the Guides criteria do not measure work disability. Therefore, it is inappropriate to use the Guides' criteria or ratings to make direct estimates of work disability.

33. Claimant has a plan for use of the proceeds of his award in that he intends to secure stable housing, as he is currently living in temporary shelter housing due to lack of adequate funding. This finding is based on the evidence in the record, including but not limited to Claimant's testimony.

34. It is in Claimant's best interest that his award be paid in a commuted lump sum payment so he can pay his attorney fees related to this claim and secure stable housing. This finding is based on the evidence in the record, including but not limited to Claimant's testimony.

35. Because of his current receipt of Social Security benefits, it is in Claimant's best interest that his award of 500 weeks of permanent total disability compensation, which is compensation for disability which will affect him for the rest of his life, be allocated into a theoretical stream of periodic payments extending over his expected lifetime so as to minimize, to the extent allowed by law, any potential offset or reduction he may experience in Social Security disability benefits or other disability benefits. This finding is based on the evidence in the record, including but not limited to Claimant's testimony and the medical records.

36. Defendant/Delta Woodside was a qualified self-insurer as of the dates of accident in these claims, August 27, 2001 and September 2, 2001. This finding is based on the parties' stipulation.

37. Due to bankruptcy, Defendant/Delta Woodside defaulted on its responsibilities to pay its self-insured workers' compensation liability on February 27, 2007, and on that date, the Commission's Self-Insurance Division drew down on the company's surety deposit of \$750,000.00 to pay the open claims; however, because Defendant/Delta Woodside under-reserved their open claims and failed to comply with a July 19, 2006 request from the Self-Insurance Division for a surety increase, the surety held by the Commission is insufficient to meet all of Defendant/Delta Woodside's workers' compensation claim liabilities. This finding is base on information in the Commission's file.

38. Defendant/Delta Woodside has failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees. This finding is based on information in the Commission's file.

39. As of February 28, 2007, Defendant/Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act. This finding is based on information in the Commission's file.

40. The purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

41. Pursuant to the Act, a tax is levied on self-insured employers in order to establish and maintain the Uninsured Employers' Fund.

42. While Defendant/Delta Woodside was operating as a qualified self-insurer on the dates of accident in these claims, Defendant/Delta Woodside failed to maintain such coverage as required by the Act because they failed to provide acceptable security, and they became an unqualified self-insurer within the meaning of the Act.

43. Claimant poignantly testified he feels abandoned by Defendant/Delta Woodside and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since Defendant/Delta Woodside has not provided such assistance, and it is apparent that if Defendant/Delta Woodside does not or cannot meet its obligations to Claimant under the Act and Defendant/Uninsured Employers' Fund is not made to pay the obligation to Claimant as provided by the Act, Claimant will become a public charge dependent on Medicare, the Veterans' Administration, and other sources for compensation and medical care that is the responsibility of the Employer, and such is directly contrary to the purposes of the Workers' Compensation Act.

44. If Defendant/Delta Woodside is unable to meet its entire obligation to Claimant as provided in this Order, Defendant/Uninsured Employers' Fund shall pay the claim pursuant to this Order.

CONCLUSIONS OF LAW

1. By previous Order of the Commission, Claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities. See Reese v.

CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct. App. 1999)(unappealed order of the Commission is the law of the case and not subject to collateral attack).

2. By previous Order of the Commission, Claimant's average weekly wage is \$628.62 for a corresponding compensation rate of \$419.10. See Reese.

3. Under S. C. Code Ann. § 42-1-160, and as a result of his injuries by accident and/or his compensable back injury, Claimant has also sustained compensable injuries to his right shoulder, lungs, psyche, and his ability to sleep.

4. Claimant has reached maximum medical improvement from his injuries. See Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment).

5. Claimant is in need of, and is entitled to, continuing medical treatment, including but not limited to over the counter and prescription medications and any assistive devices, in order to maintain his current level of functioning and prevent further deterioration of his condition. Dodge, supra.(injured worker is entitled to additional medical treatment to maintain current level of functioning and prevent a worsening of condition despite a finding of maximum medical improvement).

6. Under S. C. Code Ann. § 42-9-30(19), Claimant has sustained 50% or greater loss of use of his back as a result of his injuries by accident.

7. Under S. C. Code Ann. § 42-9-30(19) and 42-9-10, Claimant is permanently and totally disabled as a result of 50% or greater loss of use of his spine. See also Lyles v. Quantum Chemical co., 315 S.C. 440, 434 S.E.2d 292. (Ct. App.

1993)(claimant who has sustained greater than 50% loss of use of back is deemed permanently and totally disabled under the Act despite any residual earning capacity.).

8. Claimant has sustained a complete loss of earning capacity as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work. Colvin v. E.I. DuPont de Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955).

9. Under S. C. Code Ann. § 42-9-10, Claimant is permanently and totally disabled as a result of his injury by accident; the combination of his related physical and psychological injuries, restrictions, and limitations; and his inability to return to work and complete loss of earning capacity. See also Wynn v. People's Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1961)(inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment); Brown v. Owen Steel Co., 316 S.C. 278, 450 S.E.2d 57 (Ct. App. 1994)(when injuries are not confined to a single body part, claimant is not limited to the scheduled loss statute and is entitled to determination of disability based on loss of earning capacity).

10. Under S. C. Code Ann. § 42-9-10, Claimant is entitled to and Defendants are responsible for a total of 500 weeks compensation for permanent total disability, though Defendants are entitled to credit for any temporary total disability benefits paid to date in this claim.

11. Under S. C. Code Ann. § 42-15-60, Claimant is entitled to and Defendants are responsible for all causally-related medical treatment and expenses from August 27, 2001 to the present and continuing for Claimant's lifetime, including but

not limited to such over the counter and prescription medications and any assistive devices he may need to maintain his current level of functioning and prevent further deterioration of his condition. Defendants are not responsible for any evaluation or treatment provided to date by Dr. Satterthwaite or Randy Adams.

12. Under S. C. Code Ann. § 42-9-301, it is in Claimant's best interest that his permanent total disability benefits be paid in a commuted ~~lump~~ sum, as calculated by the Commission.

13. Under Regulation 67-1605, the Commission shall hereafter calculate the commuted value of Claimant's remaining award.

14. This award, which is compensation for permanent impairment that will affect Claimant for life, is estimated and allocated into a theoretical stream of periodic payments, as follows: \$26,721.25 for attorney's fees and costs in prosecuting this action and \$44,367.79 for future disability benefits at the rate of \$210.79 per month for 210.48 months (based on information in the Commission's file, 315.7143 weeks of temporary total disability compensation benefits had been paid to Claimant as of the date of the hearing, leaving 184.2857 weeks to be paid on his permanent total disability award, which has a commuted value of \$71,089.04)(Claimant, who was born on July 3, 1943 and was 64 years of age at the time of the hearing in this matter, has a life expectancy of 17.54 years, or 210.48 months; according to the mortality tables set forth in S. C. Code Ann. § 19-1-150)(\$44,367.79 divided by 210.48 months equals \$210.79 per month). See Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); S. C. Code Ann. § 42-9-10, 42-9-240 (2005). See also Sciarotta v. Bowen, 837 F.2d 135 (3^d

Cir. 1988); Sciarotta v. Secretary of Health & Human Serv., 735 F.Supp. 148 (D.N.J. 1989); POMS 11501.235(c).

15. Under S. C. Code Ann. § 42-5-10, et seq., and 42-7-200, Defendant/Delta Woodside has failed to acquire necessary coverage or to provide necessary surety for its employees.

16. Under S. C. Code Ann. § 42-7-200, as of February 28, 2007, Defendant/Delta Woodside was operating without insurance or as an unqualified self-insurer within the meaning of the Act.

17. Under S. C. Code Ann. § 42-7-200, the purpose of the statutory section creating the Uninsured Employers' Fund is to insure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

18. If Defendant/Delta Woodside does not or cannot meet its obligations to Claimant under the Act and Defendant/Uninsured Employers' Fund is not made to pay the obligation to Claimant as provided in the Act, Claimant will become a public charge dependent on Medicare, the Veterans' Administration, and other sources for compensation and medical care that is the responsibility of his employer, and such is directly contrary to the purposes of the Workers' Compensation Act. See Anderson v. Baptist Medical Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001). The Act must be given liberal construction in furtherance of the purposes for which it was designed. Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960)(purpose of the Act is to compensate worker for his loss of earnings because of injury and to enable the workers to live without being a burden to others, to aid in preventing the worker from becoming a

public charge); Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943)(purpose of the Act is to place upon the employer, and not the injured workers, the economic burden of the casualties of doing business).

19. Under S. C. Code Ann. § 42-7-200, if Defendant/Delta Woodside is unable to meet all of its obligations to Claimant as provided in this Order, Defendant/Uninsured Employers' Fund shall pay the claim pursuant to this Order.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on December 14, 2007 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED Defendant/Delta Woodside shall provide permanent total disability compensation at the rate of \$419.10 per week for a total of 500 weeks in commuted lump sum payment as hereafter calculated by the Commission and as allocated herein, though Defendants may take credit for any temporary total disability benefits paid to date in this claim.

IT IS FURTHER ORDERED Defendant/Delta Woodside shall be responsible for all causally related medical treatment and expenses from August 27, 2001 to the present and continuing for Claimant's lifetime, including but not limited to such over the counter and prescription medications and any assistive devices he may need to maintain his current level of functioning and prevent further deterioration of his condition. Defendants are not responsible for any evaluation or treatment provided to date by Dr. Satterthwaite or Randy Adams.

IT IS FURTHER ORDERED if Defendant/Delta Woodside is unable to provide the above awarded benefits, Defendant/Uninsured Employers' Fund shall pay the claim pursuant to this Order.

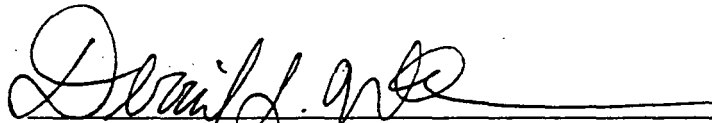
AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION


David W. Huffstetler, Commissioner

FULL AFFIRMATION

CONCUR:


Derrick L. Williams, Commissioner

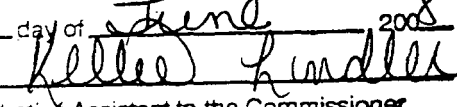

Andrea Pope Roche, Commissioner

(L:\0115236.dwh.app)

CERTIFICATE OF SERVICE

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

This 4 day of June, 2008

By 
Administrative Assistant to the Commissioner

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DWH
LG

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

William G. Ketron, Jr., Employee,

C.A. No. 2008-CP-23-5220

Claimant/Respondent,

WCC File Nos. 0115236, 0115237

vs.

Delta Woodside Industries, Inc.,
Self-insured Employer and S.C.
Uninsured Employers' Fund,

ORDER

Defendants,

of whom S.C. Uninsured Employers' Fund
is

Appellant.

ENTERED COMPUTER

This is an appeal from the Workers' Compensation Commission. By previous Order of the Commission dated July 3, 2003, claimant sustained compensable injuries by accident on August 27, 2001 and September 2, 2001 causing compensable injuries to his back, left hip, and both lower extremities and was entitled to continuing medical and temporary compensation benefits. The Commission's Order was subsequently affirmed by the Honorable John C. Few of the circuit court for Greenville County on July 22, 2004.

Claimant now contends that he has also sustained injury to his lungs, aggravation of his diabetes, and injury to his psyche (psychological overlay) as a result of his injuries by accident and his other compensable injuries. He further contends that he has reached maximum medical improvement and seeks permanent total disability benefits. Defendant Delta Woodside joins in the

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request for a determination of permanent disability but denies that claimant is permanently and totally disabled as a result of his injuries by accident.

Defendant Delta Woodside, who was a qualified self-insurer at the time these injuries occurred, has filed for bankruptcy protection. Claimant joined defendant Uninsured Employers' Fund (hereafter "UEF") as a party contending the Fund is liable to him under the terms of the Workers' Compensation Act if Delta Woodside is unable to meet all of its obligations. Defendant UEF appeared at the hearing of this matter and moved to be dismissed contending that it is not a proper party; however, the motion was denied. Defendant UEF contends that it has no obligation to claimant under the Act arguing that the date of accident controls and that defendant Delta Woodside was acting as a qualified self-insurer at the time of these injuries by accident.

By Order dated December 14, 2007, the Hearing Commissioner found claimant is entitled to permanent total disability benefits, including lifetime causally-related medical treatment. The Commissioner also found that defendant Delta Woodside has failed to acquire necessary workers' compensation coverage for its employees and was operating without insurance or as an unqualified self-insurer within the meaning of the Act as of February 28, 2007. The Commissioner directed that claimant's permanent total disability benefits be provided by defendant Delta Woodside; however, if defendant Delta Woodside proved unable to provide such benefits, the Commissioner determined that defendant UEF shall pay the benefits pursuant to S.C. Code Ann. §42-7-200.

Defendant UEF appealed to the Full Commission Panel contending primarily that the Commissioner erred in finding that it should pay benefits pursuant to S.C. Code Ann. § 42-7-200 if defendant Delta Woodside proved unable to provide such benefits. Defendant UEF did not challenge the Commissioner's findings concerning claimant's entitlement to permanent total

disability. Defendant Delta Woodside did not appeal. By Order dated June 4, 2008, the Commission's Appellate Panel affirmed and adopted the Hearing Commissioner's Order without change.

Defendant UEL's subsequent appeal came before this Court on June 19, 2009.

SCOPE OF REVIEW

In *Brown v. Greenwood Mills, Inc.*, the Court of Appeals explained at length the standard of review in workers' compensation cases.

The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the

evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence.

Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54 (Ct.App.2005)(citations omitted).

ANALYSIS

Defendant UEF appeals to this Court contending the Commission erred in finding and ruling that defendant Delta Woodside failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees (specifically Finding of Fact #38 of the Hearing Commissioner's Order), in finding and ruling that defendant Delta Woodside became an unqualified self-insurer (Finding of Fact #42), in finding a tax is levied on self-insured employers in order to establish and maintain the Uninsured Employers' Fund (Finding of Fact #41), in finding and ruling claimant will become a public charge if defendant Delta Woodside is unable to meet its obligations (Ruling of Law #18), and in finding and ruling that defendant UEF shall pay benefits to claimant if defendant Delta Woodside is unable to do so (Ruling of Law #19). Because I find all of the Commission's decisions to be supported by substantial evidence in the record and find no error of law, I affirm the Order of the Commission.

Finding of Fact #41. Defendant UEF's contention that the Commission erred in finding it is maintained by a tax levied on self-insured employers is incorrect. Section 42-7-200(C) clearly provides that "[t]o establish and maintain the South Carolina Workers' Compensation Uninsured Employers' Fund . . . there must be earmarked from the collections of the tax on insurance carriers and self-insured persons . . . an amount sufficient to establish and annually maintain the fund" S.C. Code Ann. § 42-7-200 (2001). See also S.C. Code Ann. § 42-5-190 (2001)(assessing a tax on self-insurers). The point of defendant UEF's argument seems to be that self-insured companies do not *solely* fund the UEF; however, the Commission did not so find, and this argument is rejected.

Finding of Fact #38. Defendant UEF's contention that the Commission erred in finding defendant Delta Woodside failed to acquire necessary coverage or to provide necessary and acceptable surety for its employees is also rejected, as substantial evidence on the record viewed in light of relevant statutory law supports the Commission's finding. Such evidence includes a letter from Hewitt Coleman, defendant Delta Woodside's workers' compensation administrator, stating that Delta Woodside is in bankruptcy and no longer able to meet its obligations and a letter from W.C. Smith of the Commission stating that defendant Delta Woodside defaulted on its responsibilities to pay its claims on February 27, 2007 and under-reserved their surety causing it to be insufficient to meet its liabilities. (See defendant Delta Woodside's APA pp. 11, 13) As such, the Commission's finding that defendant Delta Woodside violated the Workers' Compensation Act's requirements that an employer acquire necessary coverage or provide necessary and acceptable surety for its employees is clearly correct. See S.C. Code Ann. § 42-5-10 (2001)(every employer who accepts the compensation provisions shall secure the payment of compensation to

his employees); S.C. Code Ann. § 42-5-20 (2001)(self-insurers shall deposit an acceptable security, indemnity, or bond to secure the payment of compensation liabilities).

Of note, defendant UEF did not appeal the Commission's Finding of Fact #37 that defendant Delta Woodside's security held by the Commission is insufficient to meet its liabilities since Delta Woodside under-reserved their open claims and failed to comply with a request from the Commission for a surety increase. Accordingly, that finding is now the law of this case. Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999)(unappealed finding of the Commission is the law of the case). See also Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(appeal is limited to consideration of the issues contained in the appellate exceptions by the parties and that all other findings of the Hearing Commissioner are final and not subject to review or reversal). That fact cuts against UEF's argument that the Commission erred in its Finding of Fact #38 and essentially requires affirmation of that finding.

Defendant UEF's contention that there has never been a finding that defendant Delta Woodside was operating without insurance and in violation of the Act is incorrect and is rejected, as that is the specific finding of the Commission in the Order now on appeal. (See Findings of Fact #37, 38, 39 and Rulings of Law #15, 16 in both the Hearing Commissioner's Order and the Appellate Panel's Order)

Defendant UEF's argument that the relevant time period for the determination of whether an employer is operating without coverage or as an unqualified self-insurer is the date of accident is without support in the Act. Defendant UEF argues that the phrase "when an employee makes a claim for benefits" in § 42-7-200(A) indicates that the relevant date is the date of accident, but the word "claim" is not so defined in the Act. In fact, the word is not defined in the Act at all. The

record shows that claimant here made a claim for benefits under the Act on July 19, 2007 when he filed a Form 50 requesting a hearing and contending that he is entitled to permanent total disability benefits. Such would seem to satisfy the requirements of § 42-7-200(A), and as shown above, since defendant Delta Woodside was determined to be operating without insurance or as an unqualified self-insurer at that time, it has clearly violated the Act.

Defendant UEF also argues extensively to this Court concerning defendant Delta Woodside's bankruptcy and claimant's alleged failure to file a claim in the bankruptcy proceeding. However, it does not appear that this argument was raised to the Commission, and the Appellate Panel certainly made no ruling on the issue. The contention was certainly not raised in UEF's Form 30 appeal to the Appellate Panel. Defendants' failure to mention the issue in their Form 30 appeal to the Commission's Appellate Panel is abandonment of the issue, and the issue cannot now be raised to this Court. Roche v. S.C. Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (the purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and where the appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). See also Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Cl.App.1999); Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Frier v. South Carolina Penitentiary, 216 S.C. 84, 56 S.E.2d 752 (1949). Furthermore, the several bankruptcy related documents attached to defendant UEF's brief to this Court are not a part of the record, were apparently not presented to the Commission, and cannot be considered in this appeal. Claimant's objection to such documents is sustained.

Finding of Fact #42. Defendant UEF's contention that the Commission erred in finding and ruling that defendant Delta Woodside became an unqualified self-insurer is also rejected, as

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that finding was not appealed to the Appellate Panel below. Defendant UEF's failure to mention the issue in their Form 30 is abandonment of the issue. Kiawah Resort Assoc. v. S.C. Tax Comm'n, 318 S.C. 502, 458 S.E.2d 542 (1995); Reese v. CCI Constr. Co., 334 S.C. 600, 514 S.E.2d 144 (Ct.App.1999). See also Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940)(appeal is limited to consideration of the issues contained in the appellate exceptions by the parties and that all other findings of the Hearing Commissioner are final and not subject to review or reversal).

Ruling of Law #18. Defendants next contend the Commission erred in ruling claimant will become a public charge if defendant Delta Woodside does not meet its obligations under the Workers Compensation Act. The Commission made a related finding at Finding of Fact #43. However, again, this finding and ruling are supported by substantial evidence on the record.

Before the Hearing Commissioner, claimant testified that he feels abandoned by defendant Delta Woodside and has had to rely on treatment and assistance from the Veterans' Administration for things such as his walker since Delta Woodside has not provided such assistance. (tr. p. 25, line 8-p. 26, line 3) He also stated that he needs a lump-sum payment of his award in order to obtain stable housing, as he was at that time living in a temporary shelter. Claimant stated that he is eligible for and is receiving Social Security retirement benefits, and he is eligible for Medicare benefits. (tr. p. 22, lines 5-21)

Obviously, if defendant Delta Woodside is unable to provide the benefits that the Commission has ordered, claimant will be forced to continue to rely on various charities and the federal government, through the Veterans' Administration and Medicare, for assistance and his

medical needs and supplies. Accordingly, there is substantial evidence to support the Commission's finding on this issue.

Furthermore, the Commission correctly determined that it is contrary to the purposes of the Act to force claimant to rely on the federal government or the public at large for his compensation and medical needs, as the Act places such responsibility on the employer. See Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960)(purpose of the Act is to compensate worker for his loss of earnings because of injury and to enable the worker to live without being a burden to others, to aid in preventing the worker from becoming a public charge); Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943)(purpose of the Act is to place upon the employer, and not the injured worker, the economic burden of the casualties of doing business).

Ruling of Law #19. Defendant UEF finally contends the Commission erred in determining that, pursuant to S.C. Code Ann. § 42-7-200, it should pay benefits to claimant if defendant Delta Woodside proved unable to provide such benefits.

Section 42-7-200(A) provides for the establishment of the Uninsured Employers' Fund and specifically states that the Fund's purpose is to

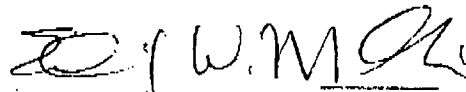
ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

S.C. Code Ann. § 42-7-200(A)(2001). The code section goes on to mandate that the Fund pay benefits under the Act when the Commission determines that an employer is subject to the Act and is operating as an unqualified self-insurer. The Commission found that such has occurred in this case, and as stated above, those findings are either supported by substantial evidence and unaffected

by any error of law or were not appealed by defendant UEF. Therefore, the Commission's findings and award must be affirmed.

For the foregoing reasons, the Commission's Order in this matter is affirmed on all issues.

IT IS SO ORDERED.



Edward W. Miller
Judge, Thirteenth Judicial Circuit

Dated:

10/12/02

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

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

William Ketron 574-16-3545
Claimant's Name SSN
15 Cool Springs Road Greenville, SC 29609
Address City State Zip
(864) 271-5244
Home Phone # Work Phone #

Delta Woodside Industries, Inc.
Employer's Name
710 Woods Drive Fountain Inn, SC 29644
Address City State Zip
Hewitt, Coleman & Assoc., Inc.
Insurance Carrier

Kathryn Williams

(864) 235-6254

Preparer's Name

Phone #

Complete each information blank. To request a hearing, check box 13b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate. A claim for worker's compensation benefits is made based on the following grounds:

- 1a. That Claimant sustained an accidental injury to Back, left leg, right leg, left hip on 9/2/01 in Greenville County, State of South Carolina.
- 1b. Describe briefly how the accident occurred Claimant sat on stool to fix machine, stool turned over, Claimant fell on floor.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
3. The relationship of employer and employee existed at the time of the injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on 9/2/01 in the following manner: Claimant notified his supervisor.
- [X] 6. Due to the injury, the claimant is in need of (check one):
[X] (a) medical examination and treatment for Back, left leg, right leg, left hip.
[] (b) additional medical examination and treatment for
- [X] 7. Due to the injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 9/2/01 to present and continuing
- [] 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
[] (1) General Disability [] Total [] (2) Specific Disability [] Total
[] Partial [] Partial
- Body part(s) affected are: Premature at this time.
- [] 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of .
- 10a. At the time of injury the claimant was paid weekly wages of \$to be determined; 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. Delta Mills - Beattie Plant.
- 11a. Further grounds of claim: Claimant makes claim to any and all rights he is entitled to under the Workers' Compensation laws of South Carolina.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident. Charles Thomas, M.D., Hillcrest Orthopaedics, 741 SE Main Street, Simpsonville, SC 29681; VBS Physical Therapy, 319 Mills Avenue, Greenville, SC 29605; Healthsouth Diagnostic Center, 1 Cannon Drive, Greenville, SC 29605; S. Emmett Lucas, III, M.D., The Spine Clinic, 317 St. Francis Drive, Ste. 120, Greenville, SC 29601
- 11c. To the best of your knowledge, did you have any prior permanent disability? Unknown
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers Compensation Commission may direct as just and proper.
- [] 13a. I am filing a claim. I am not requesting a hearing at this time.
- [X] 13b. I am requesting a hearing.

Signature of Claimant/Representative

Date

10/3/01

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

South Carolina Workers' Compensation Commission
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(803) 737-5700

WCC File # _____
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Carrier Code # _____
Employer FEIN _____

William Ketron 574-16-3545
Claimant's Name SSN
15 Cool Springs Road Greenville, SC 29609
Address City State Zip
(864) 271-5244
Home Phone # Work Phone #

Delta Woodside Industries, Inc.
Employer's Name
710 Woods Drive Fountain Inn, SC 29644
Address City State Zip
Hewitt, Coleman & Assoc., Inc.
Insurance Carrier

Kathryn Williams

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Preparer's Name

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3. The relationship of employer and employee existed at the time of the injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
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Signature of Claimant/Representative

Date 10/3/01

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0115237
Carrier File #
Carrier Code #
Employer FEIN

William Ketron	574-16-3545	Delta Woodside Industries, Inc.	
Claimant's Name	SSN	Employer's Name	
24 Bruce Road	Greenville, SC 29609	710 Woods Drive	Fountain Inn, SC 29644
Address	City State Zip	Address	City State Zip
(864) 271-5244		Hewitt, Coleman & Assoc., Inc.	
Home Phone #	Work Phone #	Insurance Carrier	
		(864) 235-6254	

Preparer's Name

Phone #

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- 11a. Further grounds of claim: See # 12. Claimant makes claim to any and all rights he is entitled to under the Workers' Compensation laws of South Carolina. Claimant requests payment of any award in lump sum with allocation as provided in Utica Mohawk v. Mills and related cases.
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Signature of Claimant/Representative

Date

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WCC FORM #50 Rev. Date 9/90

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

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0115236
Carrier File # 0010101927001
Carrier Code #
Employer FEIN

William Ketron 574-16-3545
Claimant's Name SSN
24 Bruce Road Greenville, SC 29609
Address City State Zip
Home Phone # Work Phone #

Delta Woodside Industries, Inc.
Employer's Name
710 Woods Drive Fountain Inn, SC 29644
Address City State Zip
Hewitt, Coleman & Assoc., Inc.
Insurance Carrier

Kathryn Williams

(864) 235-6254

Preparer's Name

Phone #

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Signature of Claimant/Representative

Date

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WCC FORM #50 Rev. Date 9/90

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

KATHRYN WILLIAMS, P.A.

ATTORNEYS AT LAW
POST OFFICE BOX 10693
GREENVILLE, SC 29603

Lyndon
9-4-07

619 N. MAIN STREET
GREENVILLE, SC 29601
TELEPHONE (864) 235-6254
FAX (864) 233-6591

KATHRYN WILLIAMS
DONALD E. KAMB, JR.
TOM J. ERVIN
OF COUNSEL

July 19, 2007

Ms. Virginia L. Crocker
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: William Ketron v. Delta Woodside Industries, Inc.
Dates of Injury : August 27, 2001 & September 2, 2001
WCC File Nos.: 0115236 & 0115237

Dear Ms. Crocker:

Enclosed please find an amended Form 50 requesting a hearing in the above-referenced claim. I am amending this Form 50 to add the South Carolina Uninsured Employers' Fund. A \$25.00 filing fee was sent with my letter of May 17, 2007. **If possible, I would appreciate it if you would set this matter for an emergency hearing because the defendants have filed for bankruptcy.**

Kindest regards,

Yours truly,

Kathryn Williams

Kathryn Williams

KW/ess

Enclosures

cc: David Hill Keller, Esq.
Hewitt, Coleman & Assoc., Inc.
SC Uninsured Employers' Fund

3975 JK 80000
RECEIVED

JUL 23 2007

JUDICIAL

S.C. WORKERS' COMP. COMM.
OFFICE OF COMM. LYNDON

P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

AMENDED

File #
Carrier Code #
Employer FEIN

0010101927001

William Ketron 574-16-3545
Claimant's Name SSN
24 Bruce Road Greenville, SC 29609
Address City State Zip
Home Phone # Work Phone #

Delta Woodside Industries, Inc.
Employer's Name
710 Woods Drive Fountain Inn, SC 29644
Address City State Zip
Hewitt, Coleman & Assoc., Inc. /SC Uninsured Fund
Insurance Carrier

Kathryn Williams

(864) 235-6254

Preparer's Name

Phone #

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- Body part(s) affected are: Premature at this time.
- [] 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of .
- 10a. At the time of injury the claimant was paid weekly wages of \$to be determined; 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. .
- 11a. Further grounds of claim: See # 12. Claimant makes claim to any and all rights he is entitled to under the Workers' Compensation laws of South Carolina. Claimant requests payment of any award in lump sum with allocation as provided in Utica Mohawk v. Mills and related cases.
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident. Charles B. Thomas, Jr., M.D., 741 SE Main St, Simpsonville, SC 29681; St. Francis Hospital, 1 St. Francis Dr, Greenville, SC 29601; VBS PT, 319 Mills Ave, Greenville, SC 29605; Healthsouth Diagnostic Center, 1 Cannon Dr, Greenville, SC 29605; S. Emmett Lucas, III, M.D., 35 International Dr, Greenville, SC 29615; David L. Shallcross, M.D., 1003 Grove Rd, Ste E, Greenville, SC 29605; Healthsouth PT, 712 Congaree Rd, Greenville, SC 29607; Greenville Radiology, 1210 W. Faris Rd, Greenville, SC 29605; Emory Spine Clinic, 59 Executive Park South, Ste 3000, Atlanta, GA 30329; Woodward Medical Clinic, Post Office Box 9078, Greenville, SC 29604
- 11c. To the best of your knowledge, did you have any prior permanent disability? Unknown
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers Compensation Commission may direct as just and proper.
- [] 13a. I am filing a claim. I am not requesting a hearing at this time.
- [X] 13b. I am requesting a hearing.

Signature of Claimant/Representative

Date

7/19/07

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

WCC FILE NO. 0115236 & 0115237

William Ketron,
Employee-Claimant,

vs.

Delta Woodside Industries, Inc.,
Employer-Defendant

and

Hewitt, Coleman & Assoc., Inc.,
Defendants.

CERTIFICATE OF SERVICE

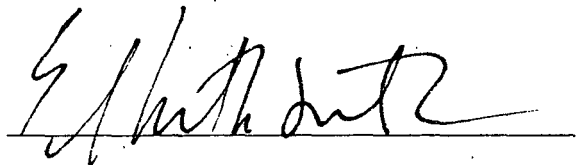
This is to certify that the undersigned did cause the Form 50s to be served upon the Judicial Department of the South Carolina Workers' Compensation Commission and the Defendants by mailing a copy of the same to the below named as addressed by United States Mail, proper postage prepaid on the 19th day of July, 2007.

Ms. Virginia L. Crocker
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

David Hill Keller, Esq.
Post Office Box 9037
Greenville, SC 29604

Hewitt, Coleman & Assoc., Inc.
Post Office Box 6528
Greenville, SC 29606

South Carolina Uninsured Fund
Koger Center
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210



South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0115237

Carrier File # _____

Carrier Code # _____

Employer FEIN _____

William Ketron 574-16-3545
Claimant's Name SSN
24 Bruce Road Greenville SC 29609
Address City State Zip
(864)271-5244 ()
Home Phone Work Phone

Delta Woodside Industries, Inc.
Employer's Name
710 Woods Drive Fountain Inn SC 29644
Address City State Zip
Hewitt Coleman & Associates, Inc.
Insurance Carrier

David Hill Keller
Preparer's Name

(864)298-2707
Phone #

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

1. It is (admitted) (~~denied~~) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Per Order of South Carolina Workers' Compensation Commission dated 11/27/02; there is nothing further for the Commission to determine
2. It is (admitted) (~~denied~~) that 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~~) that the relationship of employer and employee existed at the time in question. The reasons for denial are: _____
4. It is (admitted) (~~denied~~) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: _____
5. It is (admitted) (~~denied~~) that notice of injury was given the employer. The reasons for denial are: _____
6. It is (admitted) (~~denied~~) that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: _____
7. It is (admitted) (~~denied~~) that the employee is entitled to temporary total disability for the period(s) of: All temporary total compensation is current
8. It is (admitted) (~~denied~~) that the employee is permanently disabled. The reasons for denial are: _____
9. It is (admitted) (~~denied~~) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: _____

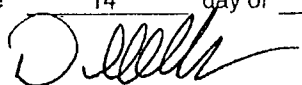
I certify that I have served this document pursuant to R.67-212 by delivering a copy to _____

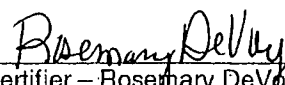
Kathryn Williams
Name

P.O. Box 10693, Greenville, SC 29603

Address

on the 14th day of June, 2007 by ☒ first class mail; ☐ personal service; ☐ certified mail.


Preparer's Signature — David Hill Keller
David Hill Keller, P.A.
P.O. Box 9037
Greenville, SC 29604


Certifier — Rosemary DeVoy

June 14, 2007
Date

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

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0115236

Carrier File # 0010101927001

Carrier Code #

Employer FEIN

William Ketron 574-16-3545

Claimant's Name SSN

24 Bruce Road Greenville SC 29609

Address City State Zip

(864)271-5244 ()

Home Phone Work Phone

Delta Woodside Industries, Inc.

Employer's Name

710 Woods Drive Fountain Inn SC 29644

Address City State Zip

Hewitt Coleman & Associates, Inc.

Insurance Carrier

David Hill Keller

Preparer's Name

(864)298-2707

Phone #

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10. It is contended that an average weekly wage of \$ _____ applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: _____

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

Kathryn Williams

Name

P.O. Box 10693, Greenville, SC 29603

Address

on the 14th day of June, 2007 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Preparer's Signature – David Hill Keller

David Hill Keller, P.A.

P.O. Box 9037

Greenville, SC 29604

Certifier – Rosemary DeVoy

June 14, 2007

Date

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South Carolina Workers' Compensation Commission
P.O. Box 1715 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

WCC File # 0115237
Carrier File # 006035
Carrier Code #
Employer FEIN

WILLIAM KETRON 574-16-3545

Claimant's Name

24 BRUCE RD., GREENVILLE, SC 29609

Address City State Zip

Home Phone # Work Phone #

LISA C. GLOVER

Preparer's Name

Address

DELTA WOODSIDE INDUSTRIES

Employer's Name

710 WOODS DRIVE, FT. INN, SC 29644

Address City State Zip

HEWITT COLEMAN & ASSOC

Insurance Carrier

220 Executive Center Dr.

Suite 119, Columbia, SC 29210

803 798-2722 EXT. 124

Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☐ Injury by Accident ☐ Occupational Disease ☒ Both Injury by Accident and Disease ☐ Other

1. Date of accident: 09/02/2001 2. AWW: \$ unknown Comp. Rate: \$ unknown

3. Type of injury and body part(s) back, legs, left hip and psyche

4. Facts in controversy: Was claimant within the course and scope of employment when an accident occurred? Amount and type of disability; Amount and type of benefits.

5. Legal issues involved: Whether or not case is compensable; see number 4 above.

6. Unusual problems: Employer is Self-insured

7. Witnesses (designate if expert)* None

8. Exhibits: None

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)

10. Name, address, and specialty, if any, of the treating physician:

11. Impairment rating(s); body part(s); physician and date of opinion:

DATE OF HEARING: 09/21/2007 TIME OF HEARING: 12:30pm

SIGNATURE Lisa C. Glover DATE 9/10/07

On behalf of ☐ Claimant ☐ Employer ☒ SC Uninsured Employers' Fund

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.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0115236 & 0115237

EMPLOYEE/CLAIMANT: WILLIAM G. KETRON

EMPLOYER: DELTA WOODSIDE INDUSTRIES, INC.

INSURER:



SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 21ST DAY OF
SEPTEMBER, 2007, COMMENCING AT THE HOUR OF 11:36 A.M., IN
GREENVILLE, SOUTH CAROLINA, BEFORE THE HONORABLE
BRYAN LYNDON, ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

KATHRYN WILLIAMS, ESQUIRE,
POST OFFICE BOX 10693
GREENVILLE, SOUTH CAROLINA 29603

ATTORNEY FOR THE EMPLOYEE,

DAVID H. KELLER, ESQUIRE,
POST OFFICE BOX 9037
GREENVILLE, SOUTH CAROLINA 29604

ATTORNEY FOR THE EMPLOYER,

LISA C. GLOVER, ESQUIRE
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210

ATTORNEY FOR THE S.C. UNINSURED EMPLOYERS' FUND.

I N D E X

PAGE

WILLIAM G. KETRON:

DIRECT EXAMINATION BY MS. WILLIAMS.....	17
CROSS EXAMINATION BY MS. GLOVER.....	23
EXAMINATION BY COMMISSIONER LYNDON.....	23
CERTIFICATE OF NOTARY PUBLIC.....	27

*RECORDED TAPES RETAINED FOR SIX (6) MONTHS FROM DATE OF
CERTIFICATION.

1. PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN GREENVILLE,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 **BY COMMISSIONER LYNDON:**

7 TODAY'S DATE IS SEPTEMBER THE 21ST, 2007. THIS
8 IS SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
9 NUMBER 0115236. THE CLAIMANT IS WILLIAM KETRON
10 REPRESENTED BY ATTORNEY KATHRYN WILLIAMS VERSUS THE
11 EMPLOYER DELTA WOODSIDE. THEY ARE WITHOUT COVERAGE,
12 AND HERE ON BEHALF -- WELL, TODAY, THEY ARE HERE
13 WITHOUT COVERAGE. THEY AT ONE TIME WERE SELF
14 INSURED, BUT HERE ON BEHALF OF DELTA WOODSIDE IS
15 ATTORNEY DAVID KELLER. ALSO, HERE ON BEHALF OF THE
16 SOUTH CAROLINA UNINSURED EMPLOYERS' FUND IS ATTORNEY
17 LISA GLOVER. THE PURPOSE OF THE HEARING IS TO
18 DETERMINE ISSUES RAISED ON FORMS 50 AND 51. THE
19 CLAIMANT'S COMP RATE IS \$419.10. THAT'S THE LAW OF
20 THE CASE BASED ON A PREVIOUS ORDER ACTUALLY ISSUED
21 BY COMMISSIONER CHAVIS AT THE TIME, AND THE DATE OF
22 ACCIDENT IS 8/27/01.

23 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
24 VENUE, OR ANY OTHER ITEMS?

25 **BY MS. GLOVER:**

1 THE FUND WOULD OBJECT TO JURISDICTION.

2 **BY COMMISSIONER LYNDON:**

3 AND SPECIFICALLY, IF YOU WOULD, JUST PUT ON THE
4 RECORD THE BASIS FOR YOUR OBJECTION, MA'AM.

5 **BY MS. GLOVER:**

6 THE FUND OBJECTS TO JURISDICTION BECAUSE WE
7 BELIEVE THAT THE FUND IS NOT A PROPER PARTY TO THIS
8 ACTION IN THAT THE EMPLOYER DELTA WOODSIDE WAS SELF
9 INSURED ON THE DATES OF ACCIDENT OF AUGUST 27TH OF
10 2001, AND SEPTEMBER 2ND OF 2001, AND THE FUND WOULD
11 MOVE TO BE DISMISSED FROM THIS CLAIM WITH PREJUDICE.
12 ALSO, WE WERE NOT A PARTY TO THE ORIGINAL ACTION OR
13 THE HEARING, WHICH AN ORDER WAS FILED NOVEMBER 22ND
14 OF 2002.

15 **BY COMMISSIONER LYNDON:**

16 AND MS. WILLIAMS, YOUR RESPONSE TO THAT, MA'AM?

17 **BY MS. WILLIAMS:**

18 YOUR HONOR, IT'S OUR CONTENTION, NUMBER ONE,
19 THAT THEY ARE A PROPER PARTY TO THE HEARING, AND
20 THAT UNDER SECTION 42-7-200, THAT CREATES THE
21 UNINSURED EMPLOYERS' FUND, AND THE ATTORNEY
22 GENERAL'S OPINION THAT I'VE HANDED UP THAT IS DATED
23 OCTOBER 25TH, 1990, WHICH SAYS THAT THE FUND WAS
24 ESTABLISHED TO SECURE PAYMENT OF COMPENSATION TO
25 EMPLOYEES WHOSE EMPLOYERS DID NOT HAVE ADEQUATE

1 COVERAGE, AND THAT THE SELF INSURED ARE TAXED TO
2 CREATE THIS FUND, AND THE ATTORNEY GENERAL'S OPINION
3 STATES THAT IF THE EMPLOYER HAS FAILED TO DEPOSIT
4 ADEQUATE SECURITY, THEN THEY HAVE FAILED TO SECURE
5 THE NECESSARY COVERAGE PURSUANT TO THE STATUTE AND
6 BECAUSE THEY PAY THE TAX, THE EMPLOYEE SHOULD BE
7 ENTITLED TO THE BENEFITS OF THE UNINSURED EMPLOYERS'
8 FUND SHOULD DELTA MILLS AND THE AMOUNT REMAINING ON
9 THE SURETY BE INSUFFICIENT. I WOULD ALSO POINT OUT
10 THE LETTER THAT'S IN THE RECORD FROM W.C. SMITH WHO
11 IS THE DIRECTOR OF THE SELF-INSURANCE DEPARTMENT AT
12 THE COMMISSION DATED SEPTEMBER 13TH, 2007, WHERE HE
13 SPECIFICALLY STATES THAT DELTA WOODSIDE DEFAULTED ON
14 ITS RESPONSIBILITIES TO PAY ITS SELF INSURED
15 WORKERS' COMPENSATION CLAIMS LIABILITIES ON FEBRUARY
16 THE 27TH, 2007. SO, WE WOULD CONTEND THAT SINCE THAT
17 TIME, THAT THEY HAVE FAILED TO SECURE COMPENSATION
18 NECESSARY, AND HE ALSO GOES ON AND SPECIFICALLY
19 STATES THAT THE SURETY HELD BY THE COMMISSION IS
20 GOING TO BE INSUFFICIENT TO MEET ALL OF THE WORKERS'
21 COMPENSATION CLAIM LIABILITIES. WITH REGARD TO THE
22 WAY THEY WERE JOINED, THEY WERE SERVED WITH A FORM
23 50 THAT NAMED THEM AS A PARTY DEFENDANT, SO THEY HAD
24 ADEQUATE NOTICE AND OPPORTUNITY TO RESPOND, SO I
25 THINK IT'S PROPER TO GO AHEAD AND HAVE THEM JOINED.

1 BY MS. GLOVER:

2 COMMISSIONER, IF I COULD RESPOND BRIEFLY?

3 BY COMMISSIONER LYNDON:

4 ALL RIGHT.

5 BY MS. GLOVER:

6 ALSO, I WOULD INDICATE UNDER SECTION 42-7-200,
7 IT SAYS THAT OPERATING WITHOUT INSURANCE OR AS AN
8 UNQUALIFIED SELF-INSURED. IT WOULD BE THE FUND'S
9 POSITION THAT DELTA WOODSIDE WAS A QUALIFIED SELF-
10 INSURED ON THESE DATES OF ACCIDENT, AND ONLY BECAME
11 UNQUALIFIED SINCE BECOMING INSOLVENT AND BEING
12 DECLARED BANKRUPT, WHICH OCCURRED IN 2006 AND 2007.

13 BY COMMISSIONER LYNDON:

14 OKAY. THANK YOU. I'VE HEARD THE ARGUMENTS,
15 AND I HAVEN'T HEARD FROM MR. KELLER. MR. KELLER,
16 ANYTHING TO ADD?

17 BY MR. KELLER:

18 I HAVE NOTHING TO ADD.

19 BY COMMISSIONER LYNDON:

20 ALL RIGHT, SIR, THANK YOU. WE DISCUSSED THIS
21 AT GREAT LENGTH IN OUR PROTRACTED PREHEARING
22 CONFERENCE, AND I'VE HEARD THE ARGUMENTS. I'VE
23 CONSIDERED THE ATTORNEY GENERAL'S, AND I DO AGREE
24 WITH CLAIMANT'S COUNSEL THAT THE FUND SHOULD BE HERE
25 SINCE THIS PERSON MAY BE WITHOUT NOT ONLY WHATEVER

1 INDEMNITY IS LEFT IN THIS CASE BUT ALSO THE LIFETIME
2 MEDICALS. SO, RESPECTFULLY, I DECLINE TO GRANT THE
3 MOTION TO BE DISMISSED, AND WE WILL PROCEED. IF
4 THERE ARE NO OTHER OBJECTIONS, THE COMMISSION FILE
5 BECOMES A PART OF THE RECORD WITH THE EXCEPTION OF
6 SELF-SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
7 REPORTS.

8 PRIOR TO GOING ON THE RECORD, WE HAD, AS I
9 STATED, A VERY LONG PREHEARING CONFERENCE. THIS IS
10 AN UNUSUAL CASE. THE CIRCUMSTANCES, I THINK, ARE
11 VERY RARE. I'M NOT SURE THERE'S BEEN ANOTHER ONE,
12 OR MAYBE ONE OR TWO, LIKE IT. BUT THE CLAIMANT HAS
13 A PREVIOUS ORDER BY AT THAT TIME COMMISSIONER CHAVIS
14 FINDING THE CLAIMANT HAD INJURED HIS BACK, LEGS, AND
15 ALSO HIS LUNGS, AND PSYCHOLOGICAL OVERLAY WERE A
16 PART OF HIS PROBLEMS. THE CLAIMANT HAS BEEN OUT FOR
17 -- IT APPEARS TO BE ABOUT 300 WEEKS WITH 500
18 MAXIMUM. LET'S PUT IT THIS WAY: THE LAST 18 I HAVE,
19 WHICH IS FEBRUARY OF THIS YEAR INDICATES THAT
20 \$130,519 HAS BEEN PAID OUT IN WEEKLY BENEFITS THUS
21 FAR, AND IT'S THE POSITION OF THE CLAIMANT, WHO IS A
22 64-YEAR-OLD GENTLEMAN, THAT AS A RESULT OF THE
23 PROBLEMS HE HAS WITH HIS BACK AND LEGS AND THE
24 ADDITIONAL PROBLEMS THAT ARE ADMITTED, HIS LUNGS AND
25 DEPRESSION; I BELIEVE HE ALSO HAS DIABETES, AND HE

1 HAS NEUROPATHIC DIFFICULTIES WITH HIS ARMS, THAT HE
2 IS PERMANENTLY AND TOTALLY DISABLED EITHER UNDER 42-
3 9-30 WITH MORE THAN 50 PERCENT TO THE BACK, THE BACK
4 AND THE RADICULAR PAIN TO THE LEGS, OR 42-9-10 GIVEN
5 THE COMBINATION OF HIS INJURIES, WHICH ARE SEVERAL.
6 THE VOCATIONAL ASSESSMENT OF THE CLAIMANT INDICATES
7 HE HAS ABSOLUTELY NO OPPORTUNITY TO FIND WORK WITHIN
8 HIS RESTRICTIONS, AND COUNSEL STATES THAT PLUS HIS
9 CREDIBLE TESTIMONY WILL JUSTIFY CERTAINLY THE
10 REQUEST FOR PERMANENT AND TOTAL DISABILITY. THERE'S
11 NOT A LOT OF MONEY LEFT ON THIS CASE AS FAR AS
12 INDEMNITY. COUNSEL STATES THE BIG CONCERN OBVIOUSLY
13 IS FUTURE MEDS, AND IT'S REQUESTED THAT THIS BE
14 DISBURSED IN A LUMP SUM WITH UTICA MOHAWK LANGUAGE.

15 THE POSITION OF THE DEFENDANT, DELTA, IS THAT
16 IT'S DENIED THE CLAIMANT IS PERMANENTLY AND TOTALLY
17 DISABLED. HE DOES NOT MEET THE REQUIREMENTS THAT HE
18 HAS MORE THAN 50 PERCENT PERMANENT PARTIAL
19 DISABILITY TO THE BACK, AND WHILE IT'S AGREED HE
20 MIGHT HAVE SUBSTANTIAL P.P.D., IT WOULD BE MORE IN
21 LINE WITH, I BELIEVE, THE 43-PERCENT RATING HE HAS.

22 **BY MR. KELLER:**

23 OUR POSITION WOULD BE HE IS BOUND TO THE 43
24 PERCENT.

25 **BY COMMISSIONER LYNDON:**

1 RIGHT. THE POSITION OF THE FUND, MS. GLOVER
2 HAS ALREADY STATED THAT SHE FEELS THEY SHOULDN'T BE
3 A PARTY, BUT IF THEY ARE DEEMED TO BE A PARTY THAT
4 ALSO THE CLAIMANT IS NOT PERMANENTLY AND TOTALLY
5 DISABLED. BOTH THE FUND AND DELTA WOODSIDE DENY
6 THAT THE CLAIMANT SHOULD BE PAID IN A LUMP SUM WITH
7 UTICA MOHAWK LANGUAGE. IS THAT RIGHT?

8 BY MR. KELLER:

9 YES, SIR.

10 BY MS. GLOVER:

11 TWO MORE THINGS I WOULD LIKE TO ADD FOR THE
12 RECORD. YOUR HONOR, WE WOULD LIKE TO RELY OF THE
13 CASE OF SOUTH CAROLINA PROPERTY AND CASUALTY
14 INSURANCE GUARANTY ASSOCIATION VERSUS CAROLINAS
15 ROOFING AND SHEET METAL SELF-INSURED FUND. THE CITE
16 IS 446 SOUTHEASTERN 2ND 442. THAT WAS A 1994 CASE
17 HEARD BY THE SUPREME COURT WHERE IN A SELF-INSURED
18 APPLIED FOR REIMBURSEMENT OR COMPENSATION FROM THE
19 GUARANTY ASSOCIATION AFTER BEING DECLARED INSOLVENT,
20 AND THE SUPREME COURT DENIED THAT, AND I WOULD JUST
21 LIKE FOR THE COMMISSION FILE TO REFLECT THAT OR
22 CONSIDER THAT.

23 BY COMMISSIONER LYNDON:

24 OKAY.

25 BY MS. GLOVER:

1 AND ALSO, WE WOULD MOVE TO LEAVE THE RECORD
2 OPEN FOR THE DEPOSITION OF MR. W.C. SMITH.

3 BY MS. WILLIAMS:

4 TO RESPOND TO THE CASE ---

5 BY COMMISSIONER LYNDON:

6 OKAY, GO AHEAD.

7 BY MS. WILLIAMS:

8 WELL, YOU MAY NOT NEED ME TO. I WILL SHUT UP.

9 BY COMMISSIONER LYNDON:

10 I WAS GOING TO ADDRESS THIS LEAVING THE RECORD
11 OPEN. WHAT I WOULD LIKE TO DO TODAY IS THIS WOULD
12 BE FINAL. I UNDERSTAND THIS WAS A UNIQUE SET OF
13 CIRCUMSTANCES, SPECIFICALLY THE SURETY AMOUNT THAT
14 WAS RECOMMENDED BY THE COMMISSION. THAT WOULD BE
15 WHAT YOU WOULD WANT TO DEPOSE HIM ABOUT?

16 BY MS. GLOVER:

17 YES.

18 BY COMMISSIONER LYNDON:

19 AND I'M NOT SO SURE THAT SHOULDN'T BE A PART OF
20 THIS.

21 BY MR. KELLER:

22 I'M SORRY, WHAT?

23 BY COMMISSIONER LYNDON:

24 WELL, WHAT MS. GLOVER IS SAYING, AS I
25 UNDERSTAND IT, IS ONE OF THE PROBLEMS WE HAVE IS

1 THERE WAS A SURETY AMOUNT THAT WAS TO BE POSTED BY
2 DELTA, AND APPARENTLY THAT OBLIGATION WAS NOT MET,
3 OR EITHER THE AMOUNT WAS NOT ENOUGH, AND YOU WANT
4 TO, AS I UNDERSTAND IT, EXPLORE THAT; IS THAT RIGHT,
5 MA'AM?

6 BY MS. GLOVER:

7 YES.

8 BY COMMISSIONER LYNDON:

9 AND I WOULD GRANT THAT. TO THE EXTENT THAT THE
10 COMMISSION MAY HAVE HAD SOME PART IN THIS, I WILL
11 LET YOU DETERMINE THAT. THE OTHER, THERE WAS
12 SOMETHING ELSE THAT WAS GOING TO BE MENTIONED?

13 BY MS. GLOVER:

14 NO, I JUST SUBMITTED THAT CASE.

15 BY MS. WILLIAMS:

16 WELL, AND THE DISTINCTION IS THAT'S A CASE
17 AGAINST THE GUARANTY FUND.

18 BY MR. KELLER:

19 THE CASE I WAS LOOKING AT ISN'T THE CASE I
20 THOUGHT IT WAS. THE EXCESS CARRIER OF THE ROOFERS
21 WENT BANKRUPT, AND THEY WERE UNABLE TO PAY THE
22 EXCESS CLAIMS. THE FUND ITSELF WAS ABLE TO PAY THE
23 CLAIM, BECAUSE THEY FILED A CLAIM FOR WHATEVER THEIR
24 RETENTION WAS. THEY WENT OVER THEIR RETENTION AND
25 THAT COMPANY HAD GONE BANKRUPT, AND THEY WANTED TO

1 GET MONEY BACK FROM THE REINSURANCE COMPANY, AND
2 THEY SAID THAT WAS NOT SUBJECT TO THE GUARANTY FUND
3 /ACT FOR WHATEVER REASON. I ACTUALLY DIDN'T AGREE.
4 WITH THAT OPINION WHEN IT CAME OUT, BUT THAT'S THE
5 LAW.

6 **BY MS. WILLIAMS:**

7 BUT THE GUARANTY FUND AND THE U.E.F. ARE TWO
8 DIFFERENT THINGS.

9 **BY MR. KELLER:**

10 TWO DIFFERENT THINGS, RIGHT.

11 **BY MS. GLOVER:**

12 BUT THAT'S THE ONLY THING ---

13 **BY COMMISSIONER LYNDON:**

14 RIGHT, I THINK WE ALL AGREE THAT THERE IS
15 NOTHING TO DATE THAT'S EXACTLY LIKE THIS CASE.

16 **BY MS. GLOVER:**

17 CORRECT.

18 **BY MR. KELLER:**

19 THAT'S TRUE.

20 **BY MS. GLOVER:**

21 THAT CASE LAW THERE IS THE ONLY THING THAT'S
22 SIMILAR TO IT.

23 **BY COMMISSIONER LYNDON:**

24 RIGHT, AND MY RULING WAS REALLY BASED ON THAT
25 SIMPLY BECAUSE SINCE THERE'S NOTHING LIKE THAT, WE

1 HAVE A PERSON WHO IS IN A GRAVE CONDITION. I THINK
2 IT'S ADMITTED BY ALL. HE'S BEEN OUT FOR MOST OF THE
3 500 WEEKS, AND CERTAINLY I WILL DO WHAT I CAN TO
4 EXPLORE WHAT REMEDY HE MAY HAVE IF FOR WHATEVER
5 REASON DELTA CAN'T PAY. I UNDERSTAND THERE ARE SOME
6 ASSETS LEFT; WE DON'T KNOW HOW MUCH.

7 **BY MS. WILLIAMS:**

8 CAN I RESPOND TO THE MOTION THAT THE RECORD BE
9 LEFT OPEN?

10 **BY COMMISSIONER LYNDON:**

11 CERTAINLY.

12 **BY MS. WILLIAMS:**

13 I'M NOT SURE EXACTLY WHAT THE PURPOSE OF THAT
14 IS. W.C. SMITH HAS ISSUED A LETTER STATED WHAT THE
15 FACTS ARE. HE IS NOT QUALIFIED TO RENDER AN OPINION
16 AS TO WHETHER THEY MEET THE TERMS OF 42-7-200.
17 THAT'S THE ULTIMATE DECISION THAT YOU HAVE TO MAKE.
18 SO, I'M NOT SURE THAT HIS TESTIMONY BEYOND WHAT HE
19 STATED IN THIS LETTER IS RELEVANT.

20 **BY COMMISSIONER LYNDON:**

21 LET'S GO OFF THE RECORD.

22 (OFF THE RECORD DISCUSSION)

23 **BY COMMISSIONER LYNDON:**

24 WE'RE BACK ON THE RECORD. WE HAD AGAIN ANOTHER
25 LONG OFF-THE-RECORD DISCUSSION, AND IT WAS ABOUT THE

1 DEPOSITION OF MR. SMITH AT THE COMMISSION. ONE OF
2 THE CONCERNS, AND I DON'T PRESUME TO SPEAK FOR MS.
3 GLOVER, BUT I BELIEVE IT CAME TO WHETHER OR NOT
4 DELTA WOODSIDE WAS A QUALIFIED SELF-INSURED ON
5 8/27/01.

6 BY MS. GLOVER:

7 AND 9/2/01.

8 BY COMMISSIONER LYNDON:

9 AND 9/2/01.

10 BY MS. WILLIAMS:

11 WHAT WAS 9/2/01?

12 BY MS. GLOVER:

13 THERE WAS A SECOND DATE OF ACCIDENT.

14 BY MR. KELLER:

15 TWO DATES OF ACCIDENT.

16 BY MS. WILLIAMS:

17 OH, YES, THERE WERE TWO DATES.

18 BY COMMISSIONER LYNDON:

19 THERE WERE TWO DATES OF ACCIDENT, AND THERE ARE
20 TWO W.C.C. FILE NUMBERS, AND I MAY NOT HAVE READ BUT
21 ONE INTO THE RECORD. JUST FOR THE RECORD, LET ME
22 MAKE CERTAIN. IT'S 0115236 AND 0115237. I JUST
23 READ THE 236 NUMBER IN THE FILE, AND THERE ARE TWO
24 DATES OF ACCIDENT, AND BOTH MS. WILLIAMS AND MR.
25 KELLER AND AGAIN, I WILL LET YOU ALL SAY YOU WILL

1 STIPULATE THAT DELTA WAS A QUALIFIED SELF-INSURER ON
2 THOSE TWO DATES OF ACCIDENT?

3 **BY MR. KELLER:**

4 THAT'S CORRECT.

5 **BY COMMISSIONER LYNDON:**

6 AND ALSO ONE OTHER THING THAT CROSSED MY MIND,
7 SHE IS NOW MS. GLOVER, BUT COMMISSIONER CHAVIS AT
8 THE TIME ORIGINALLY RULED ON THIS CASE. SHE IS HERE
9 ON BEHALF OF THE FUND, AND I WANT TO MAKE ABSOLUTELY
10 CERTAIN THERE IS NO PROBLEM WHATSOEVER WITH MS.
11 WILLIAMS OR MR. KELLER WITH HER BEING HERE?

12 **BY MR. KELLER:**

13 NONE AT ALL.

14 **BY MS. WILLIAMS:**

15 NO OBJECTION. SO GIVEN THAT, ARE WE NOT
16 LEAVING THE RECORD OPEN?

17 **BY COMMISSIONER LYNDON:**

18 RIGHT, AND I SHOULD HAVE STATED THAT. IT'S NOT
19 NECESSARY. I APPRECIATE YOU BRINGING THAT TO MY
20 ATTENTION. IT'S NOT NECESSARY TO LEAVE THE RECORD
21 OPEN. THAT STIPULATION HAS BEEN MADE. THAT WAS MY
22 UNDERSTANDING. THAT WAS THE REAL CRUX OF THE NEED
23 FOR THE DEPOSITION, AND THE PARTIES HAVE AGREED TO
24 THAT. THAT BEING THAT DELTA WOODSIDE WAS A
25 QUALIFIED SELF-INSURER ON BOTH DATES OF ACCIDENT.

1 BY COMMISSIONER LYNDON:

2 * * * * *

3 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
4 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
5 MATTER HEREIN:

6 WILLIAM G. KETRON,

7 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

8 BY COMMISSIONER LYNDON:

9 ALL RIGHT. ANSWER ANY QUESTIONS YOUR LAWYER
10 MAY HAVE, PLEASE.

11 DIRECT EXAMINATION BY MS. WILLIAMS:

12 Q. WILLIAM, HOW OLD ARE YOU NOW?

13 A. SIXTY-FOUR.

14 Q. AND YOU'VE DONE ELECTRICAL WORK ALL YOUR WORKING
15 LIFE; IS THAT CORRECT?

16 A. YES, MA'AM.

17 Q. AND THAT'S WHAT YOU WERE DOING FOR DELTA MILLS WHEN
18 YOU WERE INJURED?

19 A. YES, MA'AM.

20 Q. SINCE WE HAD THE HEARING, AND I KNOW THE CASE WAS ON
21 APPEAL FOR A GOOD WHILE, YOU'VE HAD MEDICAL
22 TREATMENT, AND THAT'S BEEN PRIMARILY -- YOU WERE
23 TREATED BY DR. LUCAS AND HAD SURGERY; IS THAT
24 CORRECT?

25 A. YES, MA'AM.

1 Q. THAT SURGERY WAS NOT SUCCESSFUL; IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND HE SENT YOU DOWN TO EMORY FOR THEM TO EVALUATE
4 WHETHER THERE WAS ANYTHING THEY COULD DO FOR YOU?

5 A. THAT'S RIGHT.

6 Q. AND THEY TALKED TO YOU AT EMORY ABOUT HAVING
7 SURGERY?

8 A. YES, THAT'S RIGHT.

9 Q. AND THIS SURGERY, ASSUMING YOU COULD BE MEDICALLY
10 CLEARED FOR IT, WAS GOING TO BE A THREE-STAGE
11 PROCEDURE; IS THAT CORRECT?

12 A. THAT'S CORRECT.

13 Q. A VERY BIG SURGERY?

14 A. THAT'S RIGHT.

15 Q. AND THE DOCTORS AT EMORY WANTED YOU TO LOSE WEIGHT
16 BEFORE ATTEMPTING TO DO THE MAGNITUDE OF THAT
17 SURGERY; IS THAT CORRECT?

18 A. THAT'S RIGHT.

19 Q. AND HAVE YOU BEEN ABLE TO LOSE THE WEIGHT?

20 A. NO, MA'AM.

21 Q. I THINK YOU'VE BEEN AT THIS NOW -- I THINK YOU WENT
22 TO EMORY IN 2005; IS THAT CORRECT?

23 A. YES, MA'AM.

24 Q. AND YOU'VE BEEN TRYING SINCE THAT TIME TO LOSE
25 WEIGHT?

1 A. THAT'S RIGHT.

2 Q. AND IN FACT, YOU'VE ACTUALLY BEEN TO A WEIGHT-LOSS
3 PROGRAM?

4 A. YES, MA'AM.

5 Q. AND THAT HAS NOT BEEN SUCCESSFUL?

6 A. NO, MA'AM.

7 Q. WHY DO YOU THINK THAT HAS NOT BEEN SUCCESSFUL?

8 A. BECAUSE I HAD SOME MEDICAL PROBLEMS TO COME UP, AND
9 I WOULD NO LONGER BE ABLE TO RIDE A BICYCLE AND GO
10 SWIMMING AT THE "Y" AND EXERCISE.

11 Q. OKAY. AND YOU'RE ON A WALKER NOW; IS THAT CORRECT?

12 A. YES, MA'AM.

13 Q. ARE YOU ABLE TO WALK ANY DISTANCE WITHOUT THAT
14 WALKER?

15 A. NO, MA'AM.

16 Q. SO, YOU'RE NOT ABLE TO BE ACTIVE AND EXERCISE TO
17 LOSE WEIGHT?

18 A. NO, MA'AM.

19 Q. ARE YOU ABLE TO STAND UP STRAIGHT NOW?

20 A. NO, MA'AM.

21 Q. WHAT OTHER PROBLEMS ARE YOU HAVING AS A RESULT OF
22 THE ACCIDENT?

23 A. I HAVE PROBLEMS WITH MY LEGS, PAIN IN THEM AND
24 NUMBNESS THAT ---

25 Q. IS IT BOTH LEGS?

1 A. YES, MA'AM.

2 Q. AND I'M HAVING REAL BAD PROBLEMS WITH MY SHOULDER,
3 PAIN.

4 **BY MR. KELLER:**

5 WHICH SHOULDER?

6 **BY THE WITNESS:**

7 THE RIGHT SHOULDER.

8 **BY MR. KELLER:**

9 THANK YOU.

10 **DIRECT EXAMINATION RESUMED BY MS. WILLIAMS:**

11 Q. OKAY.

12 A. I DON'T MEDICATE. YOU KNOW, I DON'T TAKE ANY
13 NARCOTICS OR ANYTHING LIKE THAT. I JUST RELY ON THE
14 NSAIDS, ANTI-INFLAMMATORY MEDICINES.

15 Q. OKAY. DO YOU HAVE DIFFICULTY BREATHING?

16 A. YES, I DO.

17 Q. AND IS THAT THE RESULT OF YOUR HAVING BEEN BENT
18 OVER?

19 A. YES, MA'AM.

20 Q. OKAY. HAVE YOU HAD PROBLEMS WITH DEPRESSION?

21 A. YES, I HAVE.

22 Q. AND WHY IS THAT?

23 A. THE COMBINATION OF THE DISABILITY TO MY BACK AND
24 BEING DIABETIC.

25 Q. TELL US ABOUT YOUR DIABETES; HOW DOES THAT AFFECT

1 YOU?

2 A. AS YOU MAY OR MAY NOT KNOW, BUT THE RISING OF SUGAR
3 AND LOWERING OF SUGAR LEVELS IN YOUR BODY CAUSES
4 DEPRESSION, AND MY DIABETES HAS SLOWLY GOTTEN WORSE
5 DUE TO MY SEDENTARY LIVING STANDARDS, AND THE
6 NUMBNESS IN MY LEGS HAS INCREASED DUE TO MY
7 INABILITY TO WALK AND KEEP MY SUGAR LEVELS LOW.

8 Q. OKAY. DO YOU HAVE PROBLEMS USING YOUR HANDS BECAUSE
9 OF NEUROPATHY?

10 A. YES, I CAN NO LONGER FEEL WHAT MY FINGERS ARE DOING.
11 I ATTEMPTED TO TAKE A SCREW OFF A LIGHT, AND I
12 COULDN'T FEEL THE SCREW.

13 Q. OKAY. IS THERE ANY WORK THAT YOU THINK YOU ARE
14 CAPABLE OF DOING IN THE CONDITION THAT YOU ARE IN
15 NOW?

16 A. I DON'T KNOW OF ANY.

17 Q. WHY NOT; WHY COULDN'T YOU GO BACK TO DOING
18 ELECTRICAL WORK?

19 A. I'M JUST NOT ABLE TO CLIMB LADDERS. I'M NOT ABLE TO
20 CRAWL UNDER HOUSES, AND I DON'T TRUST MYSELF
21 SOLDERING ANYMORE, BECAUSE I CAN'T FEEL WHAT I'M
22 DOING.

23 Q. OKAY. WOULD YOU RATHER BE WORKING?

24 A. YES, MA'AM.

25 Q. WOULD YOU WORK IF YOU COULD BE WORKING?

1 A. YES, MA'AM.

2 Q. YOU'RE DRAWING SOCIAL SECURITY DISABILITY NOW; IS
3 THAT CORRECT?

4 A. NO, I'M NOT.

5 Q. YOU'VE APPLIED FOR SOCIAL SECURITY?

6 A. WELL, I'M DRAWING RETIREMENT. I AM NO LONGER
7 ELIGIBLE FOR DISABILITY.

8 Q. OKAY, YOU'RE DRAWING RETIREMENT?

9 A. YES.

10 Q. BECAUSE YOU'RE 64?

11 A. YES, MA'AM.

12 Q. OKAY. AND YOU ARE ALSO ON MEDICARE OR ELIGIBLE FOR
13 MEDICARE?

14 A. YEAH, I RECEIVED MEDICARE FROM MY BENEFITS.

15 Q. OKAY. IF THE COMMISSIONER FINDS YOU TOTALLY
16 DISABLED, ARE YOU ASKING THAT HE AWARD ANY BENEFITS
17 TO YOU IN A LUMP SUM?

18 A. I GUESS SO.

19 Q. ANY WHY, WHAT WOULD YOU DO WITH THAT?

20 A. I WOULD SECURE ME SOME PERMANENT HOUSING. I AM
21 LIVING IN A TEMPORARY SHELTER RIGHT NOW.

22 Q. OKAY.

23 **BY MS. WILLIAMS:**

24 OKAY. THAT'S ALL THE QUESTIONS I HAVE.

25 **BY COMMISSIONER LYNDON:**

1 OKAY. LET'S START WITH MR. KELLER FIRST.

2 ANSWER ANY QUESTIONS HE MAY HAVE, PLEASE.

3 BY MR. KELLER:

4 I DON'T HAVE ANY QUESTIONS. THANK YOU, SIR.

5 BY COMMISSIONER LYNDON:

6 OKAY. AND ANSWER ANY QUESTIONS THAT MS. GLOVER
7 MAY HAVE, PLEASE.

8 CROSS EXAMINATION BY MS. GLOVER:

9 Q. MR. KETRON, WHEN THESE ACCIDENTS OCCURRED BACK IN
10 2001, TO YOUR KNOWLEDGE, WAS DELTA WOODSIDE STILL A
11 FUNCTIONAL OPERATING BUSINESS?

12 A. OH, YES, MA'AM.

13 BY MS. GLOVER:

14 OKAY, THANK YOU.

15 BY COMMISSIONER LYNDON:

16 ANY OTHER WITNESSES? LET'S GO OFF THE RECORD.

17 (OFF THE RECORD DISCUSSION)

18 BY COMMISSIONER LYNDON:

19 WE ARE BACK ON THE RECORD.

20 EXAMINATION BY COMMISSIONER LYNDON:

21 Q. SIR, YOU BROKE YOUR BACK, DIDN'T YOU?

22 A. YES.

23 Q. YOU ACTUALLY HAD A BACK FRACTURE, IS THAT RIGHT?

24 A. FOUR PLACES.

25 Q. SIR?

1 A. FOUR PLACES.

2 Q. FOUR PLACES, RIGHT. AND YOU HAD A FUSION, IS THAT
3 RIGHT?

4 A. YES, SIR.

5 Q. AND IT IS CONSIDERED A FAILED FUSION, IS THAT RIGHT,
6 SIR?

7 A. YES, SIR.

8 Q. RIGHT. AND YOU HAVE BEEN INCAPACITATED, SIR, FOR
9 HOW MANY YEARS NOW? THIS HAPPENED IN 2001?

10 A. SINCE THEN.

11 Q. SINCE THAT ACCIDENT, YOU'VE BEEN TOTALLY
12 INCAPACITATED AND HAVE BEEN PAID FOR THAT, IS THAT
13 RIGHT, SIR?

14 A. YES, SIR.

15 **BY COMMISSIONER LYNDON:**

16 I DON'T HAVE ANY OTHER QUESTIONS.

17 **BY THE WITNESS:**

18 MAY I SAY SOMETHING?

19 **BY COMMISSIONER LYNDON:**

20 WELL, YOUR ATTORNEY -- BACK ON RE-DIRECT, DO
21 YOU WANT TO ASK HIM IF HE HAS SOMETHING?

22 **BY MS. WILLIAMS:**

23 LOOKING AT PAGE 218, WHERE IT SAYS HE'S GOT
24 RESTRICTIVE LUNG DISEASE.

25 **BY COMMISSIONER LYNDON:**

1 YES, I DOG EARED THAT.

2 **BY MS. WILLIAMS:**

3 RIGHT, AND IT SAYS THAT HIS KYPHOTIC POSITION
4 MAY EXPLAIN SOME OF THIS, AND THAT'S REPEATED
5 ELSEWHERE, TOO, MEANING, YOU KNOW, IT CRAMS YOUR
6 LUNGS UP.

7 **BY COMMISSIONER LYNDON:**

8 RIGHT, AND YOUR ATTORNEY MAY ASK YOU IF YOU
9 HAVE SOMETHING TO SAY IF YOU WANT TO SAY SOMETHING.

10 **BY MS. WILLIAMS:**

11 GO AHEAD.

12 **BY THE WITNESS:**

13 WHAT I WANT TO SAY IS I AM A VETERAN, AND
14 BECAUSE OF BEING A VETERAN, THEY GAVE ME THIS
15 WALKER. THE WORKMANS' COMP PEOPLE HAVE NEVER GIVEN
16 ME ANYTHING AS FAR AS MEDICAL TREATMENT OR ANYTHING,
17 YOU KNOW, LIKE A WALKER. I MEAN, IN THE FUTURE, I
18 MAY NEED EVEN A CHAIR TO GET ME AROUND, AND YOU
19 KNOW, I REALLY FEEL LIKE, YOU KNOW, THIS ACCIDENT
20 WAS WORLD SHAKING TO ME.

21 **BY COMMISSIONER LYNDON:**

22 I UNDERSTAND.

23 **BY THE WITNESS:**

24 BUT I CAN'T UNDERSTAND WHY THEY HAVEN'T COME
25 FORTH AND KIND OF CHECKED ON ME OR DONE SOMETHING

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0115236 & 0115237

EMPLOYEE/CLAIMANT: WILLIAM G. KETRON

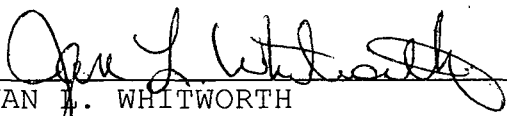
EMPLOYER: DELTA WOODSIDE INDUSTRIES, INC.

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **26** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **WILLIAM G. KETRON** TAKEN ON THE 21ST DAY OF SEPTEMBER, 2007.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 29TH DAY OF SEPTEMBER, 2007.



JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-12-2014

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
CASE NUMBER 0115236

WILLIAM KETRON,	)	
	)	
CLAIMANT,	)	
	)	
VS.	)	FULL-COMMISSION
	)	HEARING
	)	
DELTA WOODSIDE INDUSTRIES,	)	
INC.,	)	
	)	
EMPLOYER,	)	
and	)	
	)	
SOUTH CAROLINA UNINSURED	)	
EMPLOYERS FUND,	)	
	)	
CARRIER,	)	
	)	
DEFENDANT (S).	)	
	)	

A FULL-COMMISSION HEARING WAS HELD BEFORE
COMMISSIONERS DAVID W. HUFFSTETLER, ANDREA POPE ROCHE,
AND DERRICK WILLIAMS, ON TUESDAY, APRIL 29, 2008, AT THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, 1612
MARION STREET, COLUMBIA, SOUTH CAROLINA, IN THE ABOVE-
CAPTIONED MATTER, BEFORE PAULA JACKSON BLANDSHAW, A
CERTIFIED VERBATIM REPORTER, AND NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA.

COPY

Paula Jackson Blandshaw, CVR
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*Post Office Box 210431 * Columbia, SC 29221*
(803) 798-0403

APPEARANCES

FOR THE CLAIMANT: KATHYRN WILLIAMS, ESQUIRE
P.O. Box 10693
GREENVILLE, SC 29603

FOR THE DEFENDANT DAVID HILL KELLER, ESQUIRE
DELTA WOODSIDE DAVID HILL KELLER, PA
INDUSTRIES, INC.: P.O. BOX 9037
GREENVILLE, SC 29604

FOR THE DEFENDANT LISA C. GLOVER, ESQUIRE
SOUTH CAROLINA 220 EXECUTIVE CENTER DRIVE
STATE ACCIDENT COLUMBIA, SC 29210
FUND:

COURT REPORTER: PAULA JACKSON BLANDSHAW, CVR
A+ REPORTING
P.O. BOX 210431
COLUMBIA, SC 29221

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EXHIBITS

(There were no exhibits marked.)

* * * * *

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1 COURT REPORTER: Today's date is
2 April 29, 2008. This is South Carolina
3 Workers' Compensation case number 0115236.
4 This is the case of William Ketron, claimant,
5 versus Delta Woodside Industries,
6 Incorporated, and they are self-insured.

7 The appellant is the defendant,
8 represented by Attorney Lisa C. Glover. The
9 respondents are represented by Attorney David
10 Hill Keller and Attorney Kathryn Williams.

11 Each side is allowed 10 minutes for oral
12 argument and the appellant three minutes in
13 reply. You are requested to argue the grounds
14 of exception and stay within the record.

15 MS. GLOVER: May it please the panel.
16 Commissioners, I believe that we're here this
17 morning on a novel issue before the South
18 Carolina Workers' Compensation Commission,
19 that issue being whether or not the South
20 Carolina Uninsured Employer's Fund should be
21 liable for a claim wherein and mutually the
22 defendant employer was a self-insurer.

23 In this case, Mr. Ketron suffered two
24 compensable work-related accidents, on
25 September 27, 2001, and -- excuse me, August

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1 27 of 2001 and September 2, 2001. The
2 Commission issued an order in November 2002
3 awarding Mr. Ketron benefits. The Fund was
4 not a party to that action at that time.
5 Subsequently the defendant, Delta Woodside,
6 filed for bankruptcy protection.
7 Ms. Williams, on behalf of her client, filed
8 another Form 50 to get the case back before
9 the Commission to make a determination of
10 permanency and added the South Carolina
11 Uninsured Employers Fund because Delta
12 Woodside had filed for bankruptcy protection.

13 At that hearing before the single
14 commissioner, which was held on September 21
15 of '07, the single commissioner found that
16 Mr. Ketron was permanently and totally
17 disabled and ordered that the Fund be liable
18 for payment of these benefits since Delta
19 Woodside was insolvent. The Fund has appealed
20 on several issues.

21 The first issue was whether or not the
22 commissioner found that the South Carolina
23 Uninsured Employers Fund is maintained by a
24 tax mainly by -- on the self-insured
25 employers. The self-insured employers do pay

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1 money in to support the Fund, the South
2 Carolina Uninsured Employers Fund, per section
3 42-7-200(c), and we find that that -- the Fund
4 is not solely funded by self-insurers. The
5 Fund is also funded by insurance carriers and
6 others as outlined in that section.

7 We contend that on both dates of
8 accident, Delta Woodside was a qualified self-
9 insurer and that's outlined in finding of fact
10 number 36. And self-insured employers do not
11 solely fund the Uninsured Employers Fund.

12 Section 42-7-200(a) states that when an
13 employee makes a claim for benefits under the
14 South Carolina Workers' Compensation Act, the
15 Commission determines that the employer is
16 subject to the Act and operating as an
17 unqualified self-insurer in order for the Fund
18 to be brought into a claim. We contend that
19 there has never been a finding by the
20 Commission that Delta Woodside was operating
21 without insurance in violation of the Act
22 pursuant to Section 42-7-200(d).

23 We contend that the relevant time period
24 for this action is the date of injury. We
25 have dates of August 27 of '01 and September 2

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1 of '01.

2 COMMISSIONER WILLIAMS: Mr. Chairman. I
3 think under finding of fact 36, Delta Woodside
4 was found to be a qualified self-insurer on
5 the dates of these accidents --

6 MS. GLOVER: Correct.

7 COMMISSIONER WILLIAMS: -- already in
8 this order..

9 MS. GLOVER: Correct.

10 COMMISSIONER WILLIAMS: Let me see can I
11 streamline this slightly. Obviously your
12 claim is that the Uninsured Employers Fund
13 should not have to pay in this matter if Delta
14 Woodside is a qualified self-insurer on the
15 date of these two accidents. They then --
16 they go into bankruptcy. There are no funds
17 there to pay it. Who pays it? Does the
18 guaranty fund somehow step in or --

19 MS. GLOVER: The guaranty fund, I guess,
20 is only liable for claims from insurance
21 carriers. The guaranty fund doesn't address
22 self-insurers and that's, I think, what makes
23 this issue novel --

24 COMMISSIONER HUFFSTETLER: So when a
25 company goes individually self-insured, are

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1 they not required to post a bond or show
2 financial resources to cover those claims?

3 MS. GLOVER: Yes, they are, and Delta
4 Woodside did that. But the problem with Delta
5 Woodside is that they've had other claims and
6 all the funds have been exhausted.

7 COMMISSIONER HUFFSTETLER: So they're out
8 of money?

9 MS. GLOVER: Yes.

10 COMMISSIONER HUFFSTETLER: So they
11 obviously did not post a high enough bond?

12 MS. GLOVER: I guess that could be it,
13 yes.

14 COMMISSIONER HUFFSTETLER: I'm not saying
15 that to be judgemental. It's just --

16 MS. GLOVER: Right. I understand.

17 COMMISSIONER HUFFSTETLER: -- a matter of
18 fact they ran out of money.

19 MS. GLOVER: Right.

20 It's the Fund's position that the Fund
21 is --

22 COMMISSIONER HUFFSTETLER: So there is no
23 coverage?

24 MS. GLOVER: No, there is no coverage.

25 COMMISSIONER ROCHE: It's not that

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1 there's no coverage; there's just no money.

2 COMMISSIONER HUFFSTETLER: Maybe I said
3 that poorly, but --

4 MS. GLOVER: There's no longer any money.

5 COMMISSIONER HUFFSTETLER: -- there's no
6 money to pay the claim.

7 MS. GLOVER: Right.

8 COMMISSIONER ROCHE: Is the bankruptcy
9 finished, do you know?

10 MS. GLOVER: I'm not quite sure what the
11 status of the bankruptcy action is.

12 COMMISSIONER HUFFSTETLER: They created
13 the -- it's similar to what we have in another
14 case. I'll try not to call the name of that
15 insurance company. It's also in a bankruptcy
16 action out of state where the end result is
17 claims are not getting paid. Should there --
18 and I'll ask this as a question not as -- I
19 don't have any preconcieved idea about it.
20 Should there be a role for the Uninsured
21 Employers Fund when we have a situation,
22 whether it's a self-insured or an insurance
23 company that's in this kind of legal tangle,
24 that could take years to unravel, should it be
25 the role of the Fund to pay benefits and then

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1 get in line with the other folks in the
2 bankruptcy action to get reimbursed? Would
3 that be consistent with the role of what the
4 Fund was created for?

5 MS. GLOVER: I would have to say no based
6 on the statute, Commissioner. Under -- it
7 says when an employee makes a claim for
8 benefits pursuant to Title 42 and the state
9 Workers' Compensation Commission determines
10 that the employer is subject to Title 42 and
11 is operating without insurance as an
12 unqualified self-insurer, the Commission shall
13 be notified upon the claim. The Fund was
14 never notified of this claim initially.

15 As I stated before, the Fund -- the
16 Commission has never made a finding that Delta
17 Woodside was operating as an unqualified self-
18 insurer under 42-7-200(a), and we further
19 state that under section 42-5-20, it says the
20 Commission shall require the deposit of the
21 self-insurer indemnity or bond to secure the
22 payment of compensation liabilities as they
23 incur. The Fund's position is that these
24 liabilities incurred on the dates of accident.

25 In Workers' Compensation we have things

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1 that are set. Claimants have to file a claim
2 alleging the date of accident and what body
3 parts they injured. For a self-insured to
4 come back and say once we've gone belly up
5 that the Fund needs to step and pay is not
6 fair to the Fund based on the statute --

7 COMMISSIONER HUFFSTETLER: Without it
8 being fair or unfair, because I think when I
9 read this order, there seems to be some
10 concern about that and the social issues and
11 everything that goes with it, which I think we
12 all are concerned about. If I hear your
13 argument, if I understand it correctly, what
14 you're saying is the statute requires a
15 finding of an unqualified self-insured; and as
16 much as we might want to make that different,
17 we don't change the law -- I'm not agreeing or
18 disagreeing. I think that's -- what I hear
19 you saying is we may like the law to be
20 different than that, but we can't change the
21 law.

22 MS. GLOVER: I believe that would be a
23 fair assessment, Commissioner.

24 I think that we also have to look at the
25 -- I believe the legislative intent. This

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1 section, 42-7-200, was amended in 1990, and
2 initially that paragraph stated that the
3 purpose of the Fund is to ensure payment of
4 awards of Workers' Compensation benefits which
5 are unpaid because of the insolvency of
6 employers who fail to acquire necessary
7 coverage for employees. That was changed to
8 read in 1990 to -- it says to ensure payment
9 of Workers' Compensation benefits to injured
10 employees whose employers have failed to
11 acquire necessary coverage for the employees.

12 The initial statute, which was in 1989,
13 provided that the Fund be administered --
14 excuse me. We contend that the Fund was not
15 put on any notice of the initial claim and
16 that there has to be a finding by the
17 Commission that a self-insurer is operating as
18 unqualified self-insurer, that they'd become
19 unqualified.

20 COMMISSIONER WILLIAMS: I believe, based
21 on finding of fact 36, the parties stipulated
22 they were a qualified self-insurer.

23 MS. GLOVER: Yes, the parties stipulated
24 that on the date of accident that Delta
25 Woodside was a qualified self-insurer.

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1 COMMISSIONER WILLIAMS: Under any
2 circumstances that would pose a big problem
3 under 42-7-200 because you all have already
4 stipulated that Delta Woodside was a qualified
5 self-insurer in this case.

6 MS. GLOVER: Correct.

7 COMMISSIONER WILLIAMS: So it can't be
8 both. It can't be on one hand unqualified and
9 then be qualified.

10 MS. GLOVER: Correct. Yet still, the
11 Commission found that the Uninsured Employers
12 Fund was liable for payments in this case.

13 COMMISSIONER HUFFSTETLER: Thank you,
14 ma'am.

15 MS. WILLIAMS: May it please the
16 Commission. Let me address the stipulation
17 first. We stipulated that as of the date of
18 the accident -- not -- yeah, as of the date of
19 the accident, that they were operating as a
20 qualified self-insurer. What we did not
21 stipulate to was that they later -- the
22 question is did they later become a
23 unqualified self-insurer, okay. What
24 Ms. Glover argues is that everything hinges on
25 the date of the accident. If I can approach

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1 -- I know you all have all got your books, but
2 I just made a copy of 42-7-200 for all of you.

3 As of the -- the question becomes does it
4 -- if somebody subsequently becomes an
5 unqualified self-insurer, then are they
6 subject to the Act, and I think they
7 definitely are. If you look at 42- --

8 COMMISSIONER ROCHE: When did they become
9 -- just because they ran out of money doesn't
10 necessarily make them an unqualified self-
11 insurer.

12 MS. WILLIAMS: They became an unqualified
13 self-insurer -- and I'm pointing to a letter
14 that W. C. Smith wrote to Mr. Keller that's in
15 the record, and it says that Delta Woodside
16 Industries defaulted on -- what happened was
17 they ran out of money, and they drew down the
18 surety bond. W. C. Smith requested on
19 February -- excuse me, July 19, 2006, he
20 requested that Delta Mills pay more money for
21 the surety bond so they would have adequate
22 funds to pay. They did not, and so they
23 defaulted -- according to the letter from
24 W. C. Smith, they defaulted on its
25 responsibility to pay its self-insured.

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1 Workers' Compensation claims on February 27,
2 2007. That was the day that they drew down
3 the deposit, but before that, they could see
4 that it was not going to be enough, asked them
5 to pay more, and they refused to do it.

6 What she argues is that there's never
7 been a finding that they were operating as an
8 unqualified self-insurer, and there absolutely
9 is. If you look at finding of fact number 42,
10 the commissioner finds that while Delta
11 Woodside was operating as a qualified self-
12 insurer on the dates of accident in these
13 claims, defendant Delta Woodside failed to
14 maintain such coverage required by the Act in
15 that they failed to provide acceptable
16 security and that's required by 42-5-20, I
17 think, and became an unqualified self-insurer
18 within the meaning of the Act. So there has
19 been a finding that they were operating as --
20 they are now operating as an unqualified self-
21 insurer.

22 The other thing I want to point out is
23 that the statute does not say as of the date
24 of the accident. The statute refers to --
25 that I handed up to you, refers to as of the

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1 date the claim for benefits were made. We did
2 not file a claim for these benefits until
3 after Delta had -- we filed the original claim
4 -- but we had not filed a claim asking for
5 permanent and total disability benefits and
6 lifetime medical -- and I would point out
7 lifetime medical is what we're arguing about
8 here.

9 The idemnity has been paid; I've been
10 paid. What we're arguing about here is the
11 most important part of his claim. And that's
12 future medical care for Mr. Ketron, who's
13 obviously been very seriously injured in this
14 accident and is dependent on a walker and is
15 bent over at a 45 degree angle, and it affects
16 his ability to breathe even. It has
17 significant consequences for him.

18 If you buy the argument that it's the
19 date of the accident that controls, you've
20 basically eliminated -- if you take that
21 argument to its logical extreme, the guaranty
22 fund, in most cases, would never have to pay a
23 claim because most cases that arise under the
24 guaranty fund when an insurer goes belly up,
25 they go belly up in the middle of a claim and

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1 then the guaranty fund has to be drawn in to
2 pay the remainder of it. So if you reach that
3 logic, then you're going to let the guaranty
4 fund out of a whole bunch of claims.

5 Most claims under the guaranty fund don't
6 arise before -- if an insurer goes belly up,
7 the employer knows it, and they get insurance
8 somewhere else. So somebody's got insurance
9 as of the date of the claim. The problem that
10 the guaranty fund, and I believe the UEF was
11 intended to solve, was what happens if they go
12 belly up in the -- one of the things -- what
13 happens when they go belly up in the middle of
14 a claim. If you're an insured -- if you're an
15 insurance company, rather, not an insured. If
16 you're an insurance company, then that that
17 goes to the guaranty fund. If you're not an
18 insurance -- and I think you only have to
19 construe --

20 COMMISSIONER WILLIAMS: Mr. Chair. Can I
21 ask this, though, Ms. Williams. If we take
22 that logic concerning when the date of the
23 accident versus the date of filing of a claim,
24 let's just think about a claim where there
25 typically is coverage. If we don't go by that

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1 date of accident and that employer switches
2 carrier two or three times from when the
3 filing of a claim is, who would be on the
4 hook, then? Isn't it the carrier who had
5 coverage on the date of the accident or is it
6 XYZ carrier who was --

7 MS. WILLIAMS: That depends on if --

8 COMMISSIONER WILLIAMS: -- whenever you
9 file your Form 50?

10 MS. WILLIAMS: We've had a lot of
11 different answers about that. It depends on
12 if it's a repetitive trauma claim --

13 COMMISSIONER WILLIAMS: Obviously.

14 MS. WILLIAMS: -- then you've got
15 Gathers, or if you've got an aggravation of a
16 pre-existing condition, then you've got
17 Gathers. So more than one can be on the hook.
18 But we're not talking about that instance
19 where you've got insurance carriers that
20 actually contract for and get paid a premium
21 to cover claims. We're talking about insurers
22 or companies that default on their obligations
23 and that's what's happened here.

24 I think you have to interpret this, too,
25 in the light of the whole statutory scheme.

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1 We have a very complex statutory scheme that
2 is Title 42 that is designed to provide
3 coverage for injured employees, and all of our
4 rules of statutory construction say that you
5 construe it for inclusion not exclusion; you
6 interpret if they were coverage, whether
7 they're noncoverage.

8 Here, if you look at the statute itself
9 clearly, what it says is that the purpose of
10 that particular statute is to ensure -- is to
11 ensure payment of Workers' Compensation
12 benefits to injured employees whose employers
13 have failed to acquire necessary coverage for
14 employees. In this case, Delta Wood had
15 failed to acquire it and failed to secure it
16 and has been found to be an unqualified self-
17 insurer.

18 They go on later on in the Act in that
19 particular statute, they foresee bankruptcy.
20 They talk about that if a self-insurer goes
21 bankrupt, then the UEF has a priority claim in
22 bankruptcy court for that. So they place the
23 responsibility for that loss not on the
24 injured employee, but on the UEF, who has a
25 priority claim.

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1 Finally, what I would -- well, not
2 finally, but another thing I would point out
3 is that there is a tax levy -- Commissioner
4 Lyndon did find out that was the sole source
5 of support for the UEF, but there is -- self-
6 insureds pay a tax that goes to support the
7 Uninsured Employers Fund. If they don't get a
8 benefit out of that, then they're paying a tax
9 to maintain this fund that doesn't -- for
10 nothing, that does not give them any benefit
11 whatsoever. So I don't think that's fair to
12 the self-insureds who -- or even Delta Mills
13 in this -- who I don't think has done what
14 they were supposed to do with this case. But
15 they paid a tax at some point for a self-
16 insured fund to fund it, and I think that it
17 was intended to cover these situations.
18 Otherwise, we have this very narrow sliver of
19 people that the legislature overlooked. I
20 can't believe the legislature would have
21 intended that in enacting this complex a
22 scheme as they did to ensure -- to ensure
23 coverage.

24 I would also point out there is an
25 attorney general's opinion on the subject that

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1 was handed in and made a part of the record.
2 The attorney general, who was asked to address
3 this claim in 1990, said that if the condition
4 determines that a bankrupt self-insurer has
5 not deposited an acceptable security,
6 indemnity or bond, that self-insured would be
7 considered unqualified and claims should be
8 paid by the Fund. This is consistent with
9 section C of -- and talks about the original
10 act -- which requires that funds be earmarked
11 from the elections of the tax on self-insurers
12 in order to establish and maintain the
13 insolvent -- it's still the case today.

14 She argues that the case had been amended
15 because it no longer says that if the self-
16 insured due to insolvency is unable to pay.
17 That broadened the statute; it didn't shrink
18 it. It used to be that you couldn't recover
19 against the UEF unless -- unless they hadn't
20 posted a bond and they were insolvent; that --
21 it removed the requirement that they actually
22 be insolvent. If they don't pay the claim and
23 they're self-insured, then -- and the UEF is
24 still on the hook. So that was an amendment
25 that broadened the scope of it rather than

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1 restrict it. I would urge that the UEF's
2 construction of the Act in this case is
3 totally contrary to the basic intent and
4 purpose of the Workers' Compensation Act.

5 MS. GLOVER: You look like you're about
6 to ask me a question.

7 COMMISSIONER HUFFSTETLER: I'm just
8 thinking through -- the bankruptcy part of it
9 is -- I suppose if the Fund were required to
10 pay, they could go with the other folks in a
11 bankruptcy action trying to get any money that
12 might be there --

13 MS. WILLIAMS: And the --

14 COMMISSIONER HUFFSTETLER: -- but if not,
15 then, does your client have to get in line or
16 does your client have that same option -- I'm
17 trying to think through -- there's a case Hand
18 vs. Public Service Commission that says -- as
19 I read it, it says no matter how clear a
20 statute is that they would not accept an
21 absurd result. It would seem to me that if
22 the employer did not pay in the sufficient
23 amount of money to cover claims, had been
24 notified of that, and were able to walk away
25 from this paying nothing, that would be a bit

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1 absurd. So I'm assuming your client would
2 have the same right the Fund would have --

3 MS. WILLIAMS: No, sir.

4 COMMISSIONER HUFFSTETLER: I see you're
5 shaking your head.

6 MS. WILLIAMS: In bankruptcy court my
7 client is not without rights. He does have a
8 claim, but he is an unsecured, back of the
9 line, far down the road creditor in the
10 bankruptcy action. He gets paid last.
11 Whereas, if the UEF pays, they have been
12 accorded by this statute priority status as a
13 creditor. They are accorded the same status
14 as the -- the only person they're behind is
15 the IRS.

16 COMMISSIONER HUFFSTETLER: Okay. Thank
17 you.

18 MS. WILLIAMS: Thank you.

19 COMMISSIONER HUFFSTETLER: Ms. Glover, you
20 want to reply?

21 MS. GLOVER: Commissioners, it's still
22 the position that if, as Ms. Williams said,
23 the legislative intent is for the Fund to pay
24 out claims as they've been levied a tax, we
25 believe that the legislative intent or their

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1 actions would have made that part of the
2 statute. That is not a part of the statute.
3 Statute 42-7-200 is very clear. It says
4 uninsured, subject to the Act. There's been
5 no finding by this commission that Delta
6 Woodside was an unqualified self-insurer.

7 Ms. Williams points to the order that
8 Commissioner Lyndon filed saying that they are
9 an unqualified. The Fund's position will be
10 that that is not sufficient, is not
11 sufficient. A finding of that needed to be
12 done, as she stated, by Mr. Smith. Mr. Smith
13 heads up that department. Mr. Smith comes
14 before the Commission and says these employers
15 have applied to be self-insured, and he says
16 that they have met all of the requirements,
17 and the Commission approves that based on what
18 Mr. Smith tells them. You won't find in your
19 commission file anything from W. C. Smith
20 stating that "I have now made a determination
21 that Delta Woodside is an unqualified self-
22 insured."

23 In regard to the attorney general's
24 opinion that Ms. Williams mentioned, that is a
25 part of the commission file. I believe it was

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1 submitted into the record. I would invite you
2 to read that because the author of that
3 opinion goes both ways. She says that what
4 really would make a determination as to
5 whether or not the Fund is liable is whether
6 or not -- or what the definition is of an
7 unqualified self-insurer. We need to make a
8 determination that Delta Woodside is an
9 unqualified self-insured in order for the Fund
10 to be liable for this claim. We do not
11 believe that --

12 COMMISSIONER HUFFSTETLER: You're talking
13 about -- I'm sorry, I didn't mean to interrupt
14 you. You're talking about finding of fact 42?
15 I don't see an exception taken to finding of
16 fact number 42 in your Form --

17 MS. GLOVER: No, there isn't an exception
18 to that.

19 COMMISSIONER HUFFSTETLER: So then is
20 that the law of the case?

21 MS. GLOVER: That would be the law of the
22 case based on the order that the Commission
23 filed. The Fund's contention is we get -- you
24 all get notice of, I guess, the status of a
25 self-insurer, whether or not they're holding

1 their bond or whatever is going on with them
2 from a department within this Commission that
3 -- that department has the authority to
4 regulate that action of the self-insurer.
5 There's no information in the commission file
6 that says that Delta Woodside has become an
7 unqualified self-insured. I think that that
8 determination needs to be made. I don't think
9 a determination that needs to be made --

10 COMMISSIONER HUFFSTETLER: My only
11 question -- I agree with you it would nice for
12 Mr. Smith to come into the full commission and
13 say "We need to revoke their right to be self-
14 insured." I don't know the details of all
15 that. I'll probably ask about them, but my
16 only question was do we have an unappealed
17 finding of fact in finding of fact number
18 42 --

19 MS. GLOVER: I did not appeal that issue
20 because I believe that was encompassed in all
21 my other arguments.

22 COMMISSIONER HUFFSTETLER: Thank you,
23 ma'am.

24 MS. GLOVER: Thank you.

25 COMMISSIONER HUFFSTETLER: If nothing

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1 else, then this concludes the hearing.

2 (WHEREUPON, THE HEARING WAS CONCLUDED AT

3 11:25 a.m.)

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STATE OF SOUTH CAROLINA)
)
 WORKERS' COMPENSATION COMMISSION)

CERTIFICATE

BE IT KNOWN THAT I, PAULA JACKSON BLANDSHAW,
 TOOK THE FOREGOING PROCEEDINGS IN WORKERS' COMPENSATION
 CASE NUMBER 0115236 ON APRIL 29, 2008;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT BY VIRTUE THEREOF I WAS DULY COMMISSIONED
 AND QUALIFIED TO ADMINISTER AN OATH;

THAT ANY WITNESS WAS FIRST DULY SWORN TO
 TESTIFY THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
 TRUTH, CONCERNING THE MATTER IN CONTROVERSY AFORESAID;

THE FOREGOING TRANSCRIPT OF 26 PAGES
 REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION
 OF THE TESTIMONY SO GIVEN AT THE TIME AND PLACE
 AFORESAID TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
 ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
 NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 8TH DAY OF MAY,
 2008.

The State of South Carolina
Notary Public
My Commission Expires
October 31, 2013

Paula Jackson Blandshaw
 Paula J. Jackson Blandshaw

PAULA JACKSON BLANDSHAW, CVR
 CERTIFIED VERBATIM REPORTER
 A NOTARY PUBLIC IN AND FOR THE
 STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 08-CP-23-5220
	)	
William G. Ketron, Jr.,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Delta Woodside Industries,	)	
Inc., et al	)	
	)	
Defendant.	)	
	)	

June 19, 2009
Greenville, South Carolina

B E F O R E:

HONORABLE EDWARD J. MILLER, Judge.

A P P E A R A N C E S:

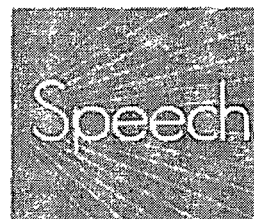
KATHRYN WILLIAMS, Esquire
Attorney for the Plaintiff

DAVID H. KELLER, Esquire
Attorney for Defendant Delta Woodside

LISA C. GLOVER, Esquire
Attorney for Defendant S.C. Uninsured Employers Fund

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Certified Verbatim Reporter
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Greenville, S.C. 29602

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

PLAINTIFF'S EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

THE COURT: All right. Are there any preliminary matters before we --

MR. KELLER: Yes, sir. If I may, this case involves Mr. William Ketron. He was injured in 2001 while he was working for Delta Mills. I represented Delta Mills in the original hearings, multiple hearings. The employment entity has paid to Mr. Ketron. He has lifelong, he's entitled to lifetime benefits.

Long story short, Delta Mills, as you are probably are aware went bankrupt. They could not reorganize. They no longer exist. I have actually so far been to two hearings for which I have not been paid representing an entity that no longer exists.

So I'm requesting at this time to be relieved of counsel for Delta Mills and be relieved from the pleadings and a necessity for continuing to appear. The case right now is, the fight between the Plaintiffs and the Uninsured Employers Fund as to whether the law allows him to get his medicals from them. Delta Mills is completely out of it. My understanding is neither Mrs. Williams nor Lisa objects to me being relieved.

1 **THE COURT:** Okay. Anybody object to his
2 motion?

3 **MRS. WILLIAMS:** No, Your Honor.

4 **MRS. GLOVER:** No objection from the Fund.

5 **MR. KELLER:** I got a petition and a proposed
6 order.

7 **THE COURT:** Okay.

8 **MR. KELLER:** If I may, I'll be excused.

9 **THE COURT:** All right.

10 **MR. KELLER:** You want me to send that to Mr.
11 Wickensimmer?

12 **THE COURT:** We will get it to him.

13 **MR. KELLER:** Thank you, sir.

14 **THE COURT:** Thank you, sir. Okay.

15 **MRS. GLOVER:** May it please the Court.

16 **THE COURT:** Yes, ma'am.

17 **MRS. GLOVER:** Judge Miller, I am Lisa
18 Glover. I work with Mr. Tim Keller representing
19 the South Carolina Uninsured Employers Fund. We
20 appear before the Court today and request that
21 you review the evidence in the case presented by
22 the South Carolina Workers Compensation
23 Commission filed, the orders and the applicable
24 statutory case law and reverse the findings held
25 by the South Carolina Workers Compensation

1 Commission.

2 Specifically, we ask that you reverse the
3 finding that the employer Delta Woodside failed
4 to acquire the necessary coverage. Secondly, we
5 ask that you find that Delta Woodside, uh,
6 reverse the finding that Delta Woodside became an
7 unqualified self insurer while coverage remained
8 available to the Plaintiff, Mr. Ketron. Further,
9 we ask that the finding be reversed, that the
10 Fund is maintained by a tax levy on self
11 insurers. And finally, we ask that you reverse
12 the finding that Mr. Ketron will become ward or a
13 public charge if the Fund does not pay out this
14 claim. Finally, we ask that you reverse the
15 finding that the Fund is required to pay the
16 claim that Delta Woodside is obligated to pay.

17 In an order filed by the South Carolina
18 Workers Compensation Commission on November the
19 27th of 2002, the Commission found that Mr.
20 Ketron suffered compensable work related injuries
21 on two occasions, being August 27th, 2001 and
22 September the 2nd of 2001. The Commission ordered
23 that Mr. Ketron be provided with medical
24 treatment and placed him on a running award of
25 temporary total benefits in the amount of \$419.10

1 per week until further order of the Commission or
2 until the parties reached an agreement. The South
3 Carolina Uninsured Employers Fund was not a party
4 to that action.

5 The Claimant received these benefits up until
6 the time he filed for a new hearing on September
7 the 21st of 2007. At that time, Mr. Ketron, by
8 and through his attorney, added the South
9 Carolina Uninsured Employers Fund to the claim.
10 Before that new case came about, Delta Woodside
11 filed for Chapter 11 Bankruptcy on October the
12 13th, 2006, and notified the South Carolina
13 Workers Compensation Commission on February the
14 27th of 2007 that they would no longer being
15 paying claims, workers compensation claims as
16 they became due and consented to the Commission's
17 draw down of the \$750,000 line of credit that had
18 been posted.

19 All during this time, Mr. Ketron was still
20 receiving his benefits as ordered to include the
21 medical and the temporary total benefits from
22 Delta Woodside. Mr. Ketron was notified by the
23 bankruptcy court of the proceedings and of what
24 his responsibilities were. Mr. Ketron was
25 required to file a proof of claim with the

1 bankruptcy court on or before April the 11th of
2 2007 by 4 p.m. Mr. Ketron did not file that
3 proof of claim.

4 **MRS. WILLIAMS:** Your Honor, I'm not in the
5 habit of objecting during an argument because
6 that's what it is is argument. I would like to
7 interpose an objection here in that we are
8 talking about matters outside of the record.
9 There was no record presented at any hearing
10 about what had or had not happened in bankruptcy
11 court. I was handed a brief just now at the
12 counsel table that includes some forms and orders
13 of the bankruptcy court, none of which were
14 issued below. I don't think that these things can
15 be raised for the first time on appeal.

16 **THE COURT:** Okay. Thank you.

17 All right.

18 **MRS. GLOVER:** We would take issue with that
19 in that the bankruptcy was discussed during the
20 Single Commission hearing and it was discussed
21 during the Full Commission hearing. Both of
22 those, the Single Commission was affirmed by the
23 Full Commission panel. I believe if you would go
24 to --

25 **MRS. WILLIAMS:** It was discussed, Your

1 Honor, in the sense that the statute which we
2 think makes them liable for the payment of these
3 benefits specifically grants them a priority lien
4 in bankruptcy court. My fellow, which is enforced
5 by the claimant, he goes to the back of the line.
6 This statute, in my opinion, says we're going to
7 make the Uninsured Employers Fund pay it but
8 we're going to put him at the front of the line
9 in bankruptcy court. It was discussed to that
10 extent. But what had gone on with vis-a-vis the
11 claimant and the bankruptcy case wasn't discussed
12 at all.

13 **THE COURT:** Okay.

14 **MRS. GLOVER:** And we would take issue with
15 that. We don't think the Fund would have a
16 priority status in bankruptcy court simply
17 because Mr. Ketron did not file a claim
18 protecting his interest and therefore protecting
19 our interest. We understand how the Uninsured
20 Employers Fund works. Basically, we pay out
21 claims to the employees if the employers are
22 uninsured to insure that they get benefits, but
23 what we are able to do is go back after the
24 employer to recoup our loses.

25 We are not able to do that in this case

1 simply because Mr. Ketron failed to meet his
2 obligation. We would not have any priority status
3 such as Mrs. Williams stated, the same status as
4 the IRS. That is not the way it would happen. All
5 the Fund would be able to do is post a bankruptcy
6 lien on any properties that Delta Woodside may
7 own in trying to recoup money that way. But that
8 does not give us priority status in bankruptcy
9 court.

10 **THE COURT:** Okay.

11 **MRS. GLOVER:** That's our position on that.

12 **THE COURT:** All right. That is the
13 procedure. That was not part of the ruling of the
14 Commission, is that right?

15 **MRS. GLOVER:** We believe that it was
16 something that the Single Commissioner hung his
17 hat on at that hearing. The Single Commissioner
18 indicated at the hearing that they are in
19 bankruptcy so there is no coverage, there is no
20 money. So we believe that the bankruptcy
21 proceeding is a big part of this.

22 **THE COURT:** Well, the record is what it
23 is, to use an overused phrase. So I'll have to
24 review that.

25 **MRS. WILLIAMS:** And subject to my

1 compensation insurance on the dates of accidents
2 and was a qualified self-insurer. October 13th,
3 2006, Delta Woodside filed for bankruptcy
4 protection therefore subjecting this claim to the
5 bankruptcy proceedings. Mr. Ketron, as I stated
6 earlier, was properly notified on March the 12th
7 of 2007 that he was required to file a proof of
8 claim on or before April the 11th of 2007. That's
9 found in Exhibit A of our brief.

10 Mr. Ketron failed to file these filings and
11 thereby did not protect his claim. If the Fund is
12 ordered to pay out the claim due to the
13 Claimant's lack of diligence, we would be
14 significantly prejudiced in trying to recoup any
15 of our losses. We dis -- as I stated, we disagree
16 that the Fund has any priority status as a
17 creditor in these bankruptcy proceedings.

18 **THE COURT:** I'm kind of concerned that you
19 characterize it as losses. I mean, isn't that
20 what the Fund is there for?

21 **MRS. GLOVER:** The Fund is there to pay out
22 benefits to injured workers whose employers don't
23 have insurance if they are found to be subject to
24 the Act or an unqualified self-insurer. There is
25 no finding -- the Commission specifically found

1 that Delta Woodside was a qualified self-insurer
2 on the dates of accident. There are two dates of
3 accidents in '01, in '01. Mr. Ketron received
4 all his benefits up until 2007.

5 The Fund also contends that there is still
6 monies available to pay out Mr. Ketron's claim.
7 As early as January 30th of this year, the
8 bankruptcy court, on behalf of Delta Woodside,
9 paid out about five or six workers compensation
10 claims in the amount of \$653,273 on behalf of
11 injured workers who have been with Delta
12 Woodside.

13 Your Honor, moving next to the argument that
14 the Fund should pay out these claims because of
15 the tax levy on self insurers. The Fund is not
16 solely funded by self-insurer employers. The Fund
17 is also insured by insurance carriers who
18 participate.

19 On both dates of accident, Delta Woodside was
20 a qualified self-insurer. They had money. They
21 were paying out claims if an injury occurred.
22 There has never been a finding by the South
23 Carolina Workers Compensation Commission that
24 Delta Woodside was operating without insurance in
25 validation of Section 42-7-400(d). The Fund is

1 only liable when an employee makes a claim and
2 the Commission indicates that the employer is
3 operating without insurance or is an unqualified
4 self-insurer. The Fund has never made that, the
5 Commission has never made that finding.

6 And in regards to whether or not Mr. Ketron
7 will become a public charge, the Fund contends
8 that there has been no proof presented of that.
9 On the contrary, Mr. Ketron testified at the
10 hearing on September the 21st of '07 that he
11 received the timely benefits and received his
12 Medicare benefits.

13 Finally, the Fund would contend that the
14 parties stipulated that Delta Woodside was
15 operating as a qualified self-insurer on both
16 dates of accident. On 42-7-200(a), that requires
17 the Workers Compensation Commission to make a
18 determination that Delta Woodside was an
19 unqualified self-insurer. Liability occurred,
20 incurred on the dates of accident, that being
21 September and August of 2001.

22 We hold that we are not a proper party to
23 this action. We ask that you reverse the findings
24 of the Workers Compensation Commission because
25 there is substantial evidence in the record

1 warranting it. Thank you.

2 **THE COURT:** Okay. All right.

3 Mrs. Williams.

4 **MRS. WILLIAMS:** May it please the Court.

5 Uh, I'm going to hand up before I get started
6 talking an Attorney General's opinion.

7 **THE COURT:** Okay.

8 **MRS. WILLIAMS:** I'm not sure if it's in the
9 record or not, but it holds the situation that
10 the Uninsured Employers Fund should pay. I
11 understand that that's not binding but it
12 represents that the State of South Carolina has
13 read all of this and thinks it applies.

14 I'm going to give you some background.
15 Mr. Ketron has already been found to be totally
16 and permanently disabled by this order. That,
17 they don't contest. They paid the --

18 **THE COURT:** Lump sum?

19 **MRS. WILLIAMS:** Yeah. That.

20 **THE COURT:** Okay.

21 **MRS. WILLIAMS:** That's been paid.

22 **THE COURT:** Okay.

23 **MRS. WILLIAMS:** But we are talking about
24 medical care which for this gentleman is very
25 significant. He had a spinal fracture in the

1 thoracic area. They tried to repair it. It
2 collapsed. He walks, he can not walk without the
3 assistance of a walker. He's bent over at about a
4 45-degree angle which affects his lung capacity,
5 breathing and all that.

6 They had him at Emory trying to figure out
7 how to fix it and do surgery on him. They wanted
8 him to lose weight before they do the surgery.
9 It's tough enough to lose weight if you are 30
10 years old and active. When you are 66 years old
11 and on a walker, it is --

12 **THE COURT:** Mrs. Williams, I know you have
13 no personal experience with that.

14 **MRS. WILLIAMS:** Well --

15 **THE COURT:** I do, and, uh, you are
16 correct.

17 **MRS. WILLIAMS:** Mr. Ketron has found it's
18 very difficult to lose weight. Whether he ever
19 gets this surgery or not, he's got a world of
20 medical issues that confront him with regard to
21 the treatment of his back and the effects on his
22 health. So it's not like the kind of -- trying to
23 treat a hangnail. This is a serious case.

24 There are two standards -- you are aware of
25 the Workers Compensation Act and the

1 comprehensiveness of it and the fact that Mr. .
2 Ketron has no right against Delta Woodside other
3 than through the Workers Compensation Act. There
4 are two mechanisms in the statute to deal with
5 people who can't pay claims. One is that the
6 insurer goes bankrupt, then you've got the
7 guaranty fund and they step in and pay the claim.

8 If the employer goes bankrupt, if they are a
9 self-insurer, then you have to -- you can't just
10 decide you are going to be a self-insurer. You
11 have to apply for it. You have to get permission
12 from the Commission. You have show proof of
13 financial stability and pay a surety bond. The
14 statute in 42-7-200 specifically provides -- I
15 don't know if you've got a copy of it handy.

16 **THE COURT:** Huh-uh. That would be great.

17 **MRS. WILLIAMS:** That statute specifically
18 states that the intent of it is to, uh, and we
19 can talk about statutory construction all you
20 want to, but when it's so clearly set out at the
21 beginning of the statute like that is and what it
22 is really says specifically is that it is
23 intended to pay claims when an employer goes
24 bankrupt. That is how the whole scheme unfolds.

25 It also requires -- it recognizes later on in

1 the statute the possibility of bankruptcy. Like
2 what has happened here. And like I said, it
3 doesn't require the Claimant to file a claim of
4 bankruptcy, but what it does is it says we're
5 going to make you to where you have to pay these
6 claims. The intent of the act is not that a
7 claimant should be unable to get his medical care
8 when, the intent of the act is to cover them.
9 We're going to make you pay it but we will give
10 you a priority lien in bankruptcy.

11 It also goes on to, uh, require that self-
12 insurers, like Delta Mills was, pay a tax to fund
13 the UEF. They are actually paying sort of like a
14 premium into the UEF by statute to fund it. So --
15 and that was really what the Attorney General's
16 opinion turned on. And what makes sense is that
17 if they are going to pay a tax into this thing,
18 they need to get something back. If they are
19 going to fund the UEF, it only makes sense that
20 the UEF would step in and pay the claim if they
21 go bankrupt.

22 Now, the argument about the date of accident
23 being the applicable time just simply does not
24 make sense. They were qualified self-insurers at
25 the time the accidents happened. But later on, as

1 the claim progressed, they went into bankruptcy.
2 The Commission recognized that they were in
3 bankruptcy. The Commission recognized that the
4 surety bond was not going to be enough to pay the
5 claims. They knew how many claims were out there.
6 They knew that the bond wasn't enough and ordered
7 Delta Mills to up the bond. They failed to do
8 that. At that point, what this order finds, it
9 was at that point that they became an unqualified
10 self-insurer.

11 She says there's been no finding that they
12 were operating as an unqualified self-insurer.
13 There certainly is. Finding of fact number 39 in
14 this order says that they were operating as an
15 unqualified self-insurer and that they are liable
16 for the claim. We have bankruptcies all the time
17 -- well, not all the time. It's not a common
18 occurrence, but it does happen that in the middle
19 of a claim, an insurer will go bankrupt. The
20 guaranty fund has to step in and pay the claim.
21 An employer will go bankrupt and they have to
22 step in.

23 The statute recognizes that as a possibility.
24 It would make no sense to say well because the
25 accident occurred before they went bankrupt, but

1 they are still incurring all this expense after
2 they went bankrupt and well he's just out of luck
3 because they went bankrupt. The whole statutory
4 scheme is so comprehensive and exclusive in terms
5 of his remedy that there is no way that he think
6 that the legislature intended that this narrow
7 sliver of people like Mr. Ketron is just out of
8 luck in terms of their future medical care.

9 Now, uh, there were a couple of other things
10 that I -- as I said before, she argues this stuff
11 about what Mr. Ketron did or did not do in
12 bankruptcy before. That's never been raised at
13 any level. I looked through her exceptions as she
14 was talking after she brought that up. There is
15 nothing in there that raises any issue in regards
16 to what he might or might not have done in
17 bankruptcy. That simply was not before the
18 Commission. It can't be raised for the first time
19 here.

20 I would point out that the Commission picked
21 this up, there is a finding of fact in the
22 Hearing Commission's order, and it is Finding of
23 Fact number 42 that says while Defendant Delta
24 Woodside was operating as a qualified self-
25 insurer on the date of these accidents, accident

1 in these claims, the Defendant Delta Woodside
2 failed to maintain such coverage as required by
3 the Act in that they failed to provide acceptable
4 security and became an unqualified self-insurer
5 within the meaning of the Act. That finding was
6 not appealed to the Full Commission. The Full
7 Commission, if you read the transcript of the
8 oral argument, they recognized that. So
9 essentially, that finding becomes the law of the
10 case at this point and you couldn't reverse it
11 even if you thought they were wrong.

12 But given the comprehensiveness of the
13 Workers Compensation statute in terms of the
14 provision of benefits and the provision of
15 medical care and even to the point of
16 anticipating bankruptcies and providing, and
17 setting up the guaranty fund that's going to pay
18 the insured if it is bankrupt and if an employer
19 goes bankrupt, the Uninsured Employers Fund is
20 going to pay, it's just not comprehensible that the
21 legislature intended this result, and Mr. Ketron
22 would as a result of Delta Mills bankruptcy now
23 be facing a lifetime of really expensive and
24 extensive medical treatment.

25 **THE COURT:** All right. Thank you very

1 much.

2 Anything in reply?

3 **MRS. GLOVER:** Just briefly, Your Honor. In
4 regards to Mrs. Williams arguments about the date
5 of accidents not applying, we contend that they
6 do. Whenever a person files a workers
7 compensation claim, you have to have a date of
8 accident. Otherwise, there would be absolutely no
9 need for a statute of limitations in workers
10 compensation cases.

11 In regards to the Attorney General's opinion,
12 we contend that there is a finding in -- well,
13 it's not binding but this opinion states that the
14 employer has to be an unqualified self-insurer.
15 If you look at page 2 of 3 in the last paragraph,
16 it says it is unclear as to whether or not an
17 employer is an unqualified self-insurer just
18 because they may have failed to acquire coverage
19 for their employees. It's ambiguous on that
20 point.

21 **THE COURT:** Where are you?

22 **MRS. GLOVER:** The Attorney General's
23 opinion, I believe, is three pages long.

24 **THE COURT:** Right.

25 **MRS. GLOVER:** It's on page 2 at the bottom.

1 **THE COURT:** Which column?

2 **MRS. GLOVER:** The last paragraph that says
3 "based on my previous analysis".

4 **THE COURT:** Okay.

5 **MRS. GLOVER:** Okay.

6 **THE COURT:** Okay.

7 **MRS. GLOVER:** And finally, in regards to the
8 bankruptcy argument, in regards to whether or not
9 the Fund would have priority status under 42-7-
10 200, we contend that we wouldn't. We contend that
11 would be defined under the code, the U.S. code
12 outlines all the priorities for who gets priority
13 status. We still contend that the Fund would not
14 have priority status in this bankruptcy action,
15 and we wouldn't have that priority status. We are
16 at the back of the line. Mr. Ketron had the
17 opportunity to file his proof of claim and he did
18 not.

19 **THE COURT:** So your position is because he
20 didn't do that -- you agree that the intent of
21 42-7-200 is to provide benefits for workers whose
22 employers go belly up basically.

23 **MRS. GLOVER:** No, sir. My position is that
24 employees who are injured are entitled to have
25 benefits as funded by the South Carolina



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Certified Mail

September 6, 2007

Kathryn Williams
Attorney at Law
P.O. Box 10693
Greenville, SC 29603

RE: Delta Mills Bankruptcy
Your Client: William Ketron D/A: 8/27/2001 and 9/2/2001

Dear Attorney Williams:

As previously advised, Delta Mills was a qualified self-insurer for workers' compensation in South Carolina. As a result of their bankruptcy they are no longer able to meet their workers' compensation financial obligations. The South Carolina Workers' Compensation Commission assumed the management of their claims and our office was engaged to be the claims administrator.

Please accept this letter as our notice that we currently have cases awaiting hearings. We are obligated to pay any award issued by the Commission as a result of these hearings. Our current funds as of this date are \$173,679.39 and those funds could be exhausted as a result of orders. Also, there are several large medical bills being processed for payment, and this will decrease the remaining funds. We continue to have ten remaining open claims. We will continue to pay weekly indemnity checks and medical bills on those we are currently paying until the funds are exhausted.

We have been advised there is no guaranty fund in South Carolina for a self-insured employer. You are welcome to confirm this by contacting the self-insurance department of the State of South Carolina Workers' Compensation Commission. The telephone number there is (803) 737-5706.

Your attention to this matter is appreciated.

Sincerely,

Cheryl Holland, AIC, AIS
Assistant Manager-Claims

CH:ms

Property and Casualty Claim Division
850 South Pleasantburg Drive, Suite 205 • P.O. Box 6528, Greenville, SC 29606-6528
Phone: (864) 240.5800 • (800) 421.9139 • Fax: (864) 233.2486
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and Alternative Risk Programs

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Certified Mail

September 6, 2007

John S. Nichols
Attorney at Law
P O Box 7963
Columbia, SC 29302

RE: Delta Mills Bankruptcy
Your Client: Alan L. Herndon D/A: 11/4/03

Dear Attorney Nichols:

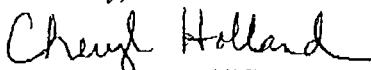
As previously advised, Delta Mills was a qualified self-insurer for workers' compensation in South Carolina. As a result of their bankruptcy they are no longer able to meet their workers' compensation financial obligations. The South Carolina Workers' Compensation Commission assumed the management of their claims and our office was engaged to be the claims administrator.

Please accept this letter as our notice that we currently have cases awaiting hearings. We are obligated to pay any award issued by the Commission as a result of these hearings. Our current funds as of this date are \$158,525.01 and those funds could be exhausted as a result of orders. Also, there are several large medical bills being processed for payment, and this will decrease the remaining funds. We continue to have ten remaining open claims. We will continue to pay weekly indemnity checks and medical bills on those we are currently paying until the funds are exhausted.

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State of South Carolina



1612 Marion Street
P.O. Box 1715
Columbia, S.C. 29202-1715

TEL: (803) 737-5700
FAX: (803) 737-5768

Workers' Compensation Commission

September 13, 2007

David Hill Keller, P.A.
400 East Washington St. Unit 3
Post Office Box 9037
Greenville, South Carolina 29604-9037

Re: Delta Woodside Industries, Inc.

Dear Mr. Keller:

I am writing in response to your question concerning the surety deposit for the former self-insured workers' compensation program of Delta Woodside Industries, Inc. Delta Woodside Industries defaulted on its responsibilities to pay its self-insured workers' compensation claims liabilities on February 27, 2007. On that date the Self-Insurance Division of the South Carolina Workers' Compensation Commission drew down on the company's surety deposit of \$750,000 to pay the companies open claims. Due to Delta's failure to comply with a July 19, 2006 request for a surety increase by the Commission's Self-Insurance Division and Delta Woodside's admitted intentional under reserving of their open claims the surety held by the Commission will be insufficient to meet all of Delta Woodside's workers' compensation claim liabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "W.C. Smith, III", with a long horizontal flourish extending to the right.

W.C. Smith, III, CPCU, ARM
Director, Self-Insurance

WCS/sar

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

JUN 20 2011

SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

v.

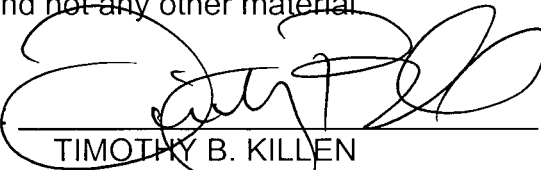
Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, ... Defendants,

of whom S.C. Workers' Compensation Uninsured Employers' Fund is Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains material proposed
to be included by any of the parties and not any other material

BY



TIMOTHY B. KILLEN

**S.C. WORKERS' COMPENSATION
UNINSURED EMPLOYERS' FUND**

100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
Telephone: 803-798-2722, ext. 124
Facsimile: 803-798-5290

ATTORNEY FOR THE APPELLANT FUND

June 20, 2011
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2008-CP-23-5220

RECEIVED

JUN 20 2011

SC Court of Appeals

William G. Ketron, Jr., Employee Respondent,

v.

Delta Woodside Industries, Inc., Self-insured Employer and S.C. Workers'
Compensation Uninsured Employers Fund, ... Defendants,

of whom S.C. Workers' Compensation Uninsured Employers' Fund is Appellant.

PROOF OF SERVICE

I certify that on the 20th of June 2011, I have served the Record on Appeal on
William G. Ketron by depositing a copy of it in the United States Mail, postage prepaid,
on May 14, 2010, addressed to his attorney of record

Kathryn Williams, Esquire
KATHRYN WILLIAMS, P.A.
Post Office Box 10693
Greenville, South Carolina 29603
Attorney for Respondent Claimant



TIMOTHY B. KILLEN

100 Executive Center Drive, Suite 101
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Ph.: 803-798-2722
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