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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

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.

**SUPPLEMENTAL RECORD ON APPEAL**

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**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: December 14, 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. Emmett 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 an 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, 5<sup>th</sup> 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 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.

S.C. Workers' Compensation Commission

*G. Bryan Lyndon*  
G. Bryan Lyndon, Commissioner

Date: 11/27/07

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 14th day of December, 2007

By *Samara Mims*  
Administrative Assistant to the Commissioner

LC  
DHC  
KW

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

WCC File No. 0115237  
Carrier File No. UEF 006035  
Carrier Code No. \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

WILLIAM KETRON 574-16-3545  
Claimant's Name SSN

24 BRUCE RD., GREENVILLE, SC 29609  
Address City State Zip

Home Phone Work Phone

LISA C. GLOVER  
Preparer's Name

DELTA WOODSIDE INDUSTRIES  
Employer's Name

710 WOODS DRIVE, FT. INN, SC 29644  
Address City State Zip

HEWITT COLEMAN & ASSOC

(803) 798-2722  
Phone

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The South Carolina Uninsured Employers' Fund in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:  
General; there has been no proof.
2. It is denied that both the employer and employee were subject to the Worker's Compensation Act at the time in question. The reasons for denial are:
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is denied that the notice of injury was given the employer. The reasons for denial are:
6. It is denied that the employee (needs)(is entitled to additional) medical care as a result of injury. The reasons for denial are:
7. It is denied that the employee is entitled to temporary total disability for the period(s) of:
8. It is denied that the employee is permanently disabled. The reasons for denial are:
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$(unknown) applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are:

See Attachment.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to  
See Attached Certificate Of Service

Lisa C. Glover  
Preparer's Signature  
220 Executive Center Drive, Suite 119 Columbia, South Carolina 29210  
Address

DEPUTY GENERAL COUNSEL  
Title  
8/14/07  
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 of filing this form.

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing \_\_\_\_\_ Filing a Claim \_\_\_\_\_, dated \_\_\_\_\_.

Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing ~~\_\_\_\_\_~~ 7-19-07 Filing a Claim \_\_\_\_\_, dated \_\_\_\_\_.

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.



Claimant's Name: William Ketron SSN: 574 - 16 - 3545 Employer's Name: Delta Woodside Industries, Inc.  
Address: 24 Bruce Road Address: 710 Woods Drive  
City: Greenville State: SC Zip: 29609 City: Fountain Inn State: SC Zip: 29644  
Home Phone: ( 864 ) 271 - 5244 Work Phone: ( ) - Insurance Carrier: Self-Insured  
Preparer's Name: Lisa C. Glover Law Firm: SCUEF Preparer's Phone #: ( 803 ) 798 - 2722

**REQUEST FOR COMMISSION REVIEW**

Request for Commission Review by  claimant  employer (check one) Date of injury: 8/27/2001 & 9/2/2001 (m/d/yyyy)  
SCUEF

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

**The Hearing Commissioner erred as a matter of law in that Finding of Fact #41 holds the SCUEF is maintained by a tax levied on Self-Insured Employers.**

**The Hearing Commissioner erred as a matter of law in that Finding of Fact #43 and Ruling of Law #18 holds the Claimant will become a public charge if Delta Woodside Industries and/or the SCUEF does not meet the obligations under the Act. There is no proof of such.**

**The Hearing Commissioner erred as a matter of law in that Finding of Fact #44 and Ruling of Law #19 holds the SCUEF is liable for this claim if Delta Woodside Industries is unable to meet its obligations to the Claimant.**

**The Hearing Commissioner erred as a matter of law in that Finding of Fact #38 and Ruling of Law #17 holds Delta Woodside Industries failed to acquire necessary coverage for its employees.**

(Check one) Oral argument  is  is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to \_\_\_\_\_

Name

SEE CERTIFICATE OF SERVICE

Address

on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by  first class mail  personal service  certified mail.

SEE CERTIFICATE OF SERVICE

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

1 FOR ME, AND I FEEL LIKE THAT THAT PLACE IS IN THE  
2 SITUATION WHERE YOU MAY NOT BE LIABLE LEGALLY BUT  
3 MORALLY.

4 **BY COMMISSIONER LYNDON:**

5 I UNDERSTAND, AND I APPRECIATE YOUR MAKING THAT  
6 STATEMENT. IS THERE ANYTHING ELSE?

7 **BY MS. WILLIAMS:**

8 NO, SIR.

9 **BY COMMISSIONER LYNDON:**

10 IF THERE IS NOTHING ELSE, THAT CONCLUDES THE  
11 HEARING.

12 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS  
13 CONCLUDED AT THE HOUR OF 12:08 P.M.)

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Case No. 2008-CP-23-5220

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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.

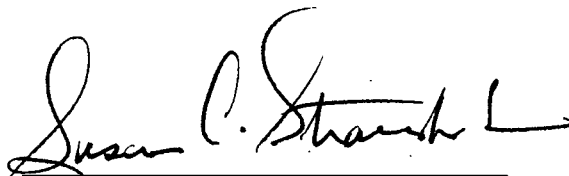
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**PROOF OF SERVICE**

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I certify that on the 8<sup>th</sup> of August 2011, I have served the Supplemental Record on Appeal on William G. Ketron by depositing a copy of it in the United States Mail, postage prepaid, 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



---

Susan G. Strausbaugh  
100 Executive Center Drive, Suite 101  
Columbia, South Carolina 29210  
Ph.: 803-798-2722  
Fax: 803-798-5290

**RECEIVED**

AUG 08 2011

**SC Court of Appeals**

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**

AUG 25 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 Supplemental 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

August 23, 2011  
Columbia, South Carolina