

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1002263

Jeronimo Hernandez Jimenez
PLAINTIFF(S)

Rolando Medrano
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court upon a Motion for Summary Judgment on March 20th. Present at the hearing was Joshua Fester, on behalf of the Plaintiff, and Payton Hoover, on behalf of the Defendant.

After reviewing the evidence and arguments of counsel, this Court finds that no genuine issue of material fact exists and that the Defendant is entitled to judgment as a matter of law pursuant to Rule 56(c), SCRPC.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment is hereby GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/27/2025 .

RECEIVED

Aug 07 2026

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Jeronimo Hernandez Jimenez VS Rolando Medrano

Case Number: 2023CP1002263

Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2025-03-27 15:44:46 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Civil Action No: 2023-CP-10-_____
Jeronimo Hernandez Jimenez,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	(Jury Trial Demanded)
	)	
Rolando Medrano,	)	
	)	
Defendant.	)	
	)	

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office located at THE LAW OFFICE OF DARRELL THOMAS JOHNSON, JR., LLC., P.O. Box 1125, Hardeeville, South Carolina, 29927, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC

By: s/Joshua R. Fester
Darrell Thomas Johnson, Jr. (3010)
Warren P. Johnson (71759)
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File No:
Attorneys for the Plaintiff

May 10, 2023
Hardeeville, SC 29927

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Civil Action No: 2023-CP-10-_____
Jeronimo Hernandez Jimenez,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	(Jury Trial Demanded)
	)	
Rolando Medrano,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE NAMED:

The Plaintiff complaining of the above-named Defendant, would respectfully show unto this honorable court the following:

1. The Plaintiff, Jeronimo Hernandez Jimenez, is a resident and citizen of the County of Charleston, in the State of South Carolina.
2. The Defendant, Rolando Medrano, upon information and belief, is a resident and citizen of the County of Charleston, in the State of South Carolina.
3. On June 30, 2020, Jeronimo Hernandez Jimenez fell from a ladder while trimming the branches of a palmetto tree, injuring his back, legs, head, and arms.
4. The Plaintiff was incapacitated after his fall, and unable to move, due to his injuries.
5. Rather than calling an ambulance to have Plaintiff safely transported to a hospital, the Defendant took it upon himself to physically move the Plaintiff from the place he fell and placed him sitting upright in Defendant's truck.
6. Perplexingly and unfortunately for Plaintiff, Defendant drove Plaintiff to a fire station, physically removed him from the vehicle, and left him lying alone at the fire station, rather than driving Plaintiff to an emergency room.

7. Plaintiff was ultimately taken to the hospital, where he was diagnosed with a burst fracture of a thoracic vertebra, a spinal cord injury, and paraplegia.

**FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE AND GROSS NEGLIGENCE)**

8. Defendant was negligent, grossly negligent, reckless, and wanton in his treatment of Plaintiff after his accident in the following particulars:

- a. In physically moving the Plaintiff with an apparent back injury, which caused and/or aggravated Plaintiff's back and spinal cord injury;
- b. In failing to alert or call emergency personnel that Plaintiff was grievously injured, despite being at the scene at the time of Plaintiff's accident;
- c. In failing to immediately take the Plaintiff to the hospital once he had placed Plaintiff in his truck;
- d. In leaving the Plaintiff at a fire station unattended and without alerting emergency personnel;
- e. In delaying Plaintiff's treatment for his injuries.

9. As a result of Defendant's negligent, grossly negligent, reckless and wanton conduct, Plaintiff suffered irreparable bodily harm as he was prevented from getting prompt treatment that would have improved his medical outcome and his chances of recovery from his injuries.

10. In loading Plaintiff into Defendant's truck and driving him to a fire station where he was left unattended, Defendant failed to act in good faith while rendering aid.

11. Defendant acted in a grossly negligent and wanton manner by loading Plaintiff into Defendant's truck and driving him to a fire station where he was left unattended, and without alerting emergency personnel.

12. In addition to failing to render aid in a good faith manner once he had undertaken to render aid, Defendant was also grossly negligent in the use of his automobile to transport the Plaintiff, the negligent use of which exacerbated and worsened Plaintiff's injuries.

13. Defendant was grossly negligent in failing to transport Plaintiff to the closest appropriate emergency care facility, once he had undertaken to render aid and transport Plaintiff.

14. As a result of Defendant's grossly negligent conduct, Plaintiff expended monies and will continue to expend monies for medical care, he experienced and continues to experience pain and suffering, and is permanently disabled.

Wherefore, Plaintiff prays for judgment in an appropriate amount of actual and punitive damages, along with attorneys' fees, costs, and any and all other relief deemed appropriate by this Honorable Court.

Respectfully Submitted,

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC

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File No:
Attorneys for the Plaintiff

May 10, 2023
Hardeeville, SC 29927

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CIVIL ACTION NO: 2023-CP-10-02263

JERONIMO HERNANDEZ JIMENEZ,)
)
 Plaintiff,)
)
 vs.)
)
 ROLANDO MEDRANO,)
)
 Defendant.)

ANSWER TO PLAINTIFF'S
COMPLAINT

The Defendant, Rolando Medrano, answering the Complaint of the Plaintiff would allege unto this Honorable Court as follows:

1. That each and every allegation contained in the Plaintiff's Complaint not specifically admitted hereinafter is denied and strict proof demanded thereof.
2. Upon information and belief, this Defendant admits paragraphs 1 and 2 of Plaintiff's Complaint.
3. This Defendant lacks sufficient information to form a belief as to the allegations contained in paragraphs 3, 4, 5, and 6 of the Plaintiff's Complaint.
4. The Defendant lacks sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 7 of the Plaintiff's Complaint and demand strict proof thereof.
5. This Defendant denies paragraph 8 of Plaintiff's Complaint and demands strict proof thereof.

6. The Defendant lacks sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.

7. This Defendant denies paragraphs 10, 11, 12 and 13 of Plaintiff's Complaint.

8. The Defendant lacks sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 14 of the Plaintiff's Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSE

9. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

10. In further answering the Complaint, herein, the Defendant alleges and says that the imposition of excessive punitive damages on the basis of the accident giving rise to this lawsuit would deprive the Defendant of liberty and property without the due process of law, impose a cruel and unusual punishment and excessive fines, and would deny the equal protection of the laws in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and the comparable provisions of the Constitution of the State of South Carolina.

AFFIRMATIVE DEFENSE

11. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

12. This Defendant would show that the Plaintiff, by and through his actions or inactions with regard to the subject property, have assumed the risk of any damages

alleged by the Plaintiff, and such assumption of the risk is a bar to the claims against this Defendant.

AFFIRMATIVE DEFENSE

13. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

14. The Defendant alleges that the injuries or damages allegedly sustained by the Plaintiff, were due to and caused by the negligent, reckless, willful, wanton, careless and grossly negligent acts and conduct of the Plaintiff, which said acts were greater than any acts of negligence on the part of the Defendant, which negligence on the part of the Defendant is hereby specifically denies, to produce such injury or damage, and without which the same would not have occurred; such negligent and grossly negligent actions on the part of the Plaintiff were the direct and proximate cause of the damages allegedly sustained by the Plaintiff.

AFFIRMATIVE DEFENSE

15. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

16. This Defendant would allege unto this Honorable court that any injuries received by the Plaintiff, if any, were the direct and proximate result of his sole negligence.

AFFIRMATIVE DEFENSE

17. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

18. That this Defendant would show that the available remedies have been properly and effectively excluded by this Defendant.

AFFIRMATIVE DEFENSE

19. That each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

20. This Defendant does not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired during the course of discovery or otherwise.

WHEREFORE, the Defendant prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing this matter, with an award of attorneys' fees and costs to the Defendant.

HOWELL, GIBSON & HUGHES, P.A.

By: s/Thomas A. Bendle, Jr.

Thomas A. Bendle, Jr.

PO Box 40

Beaufort, SC 29901-0040

(843) 522-2400

Attorney for Defendant

Beaufort, South Carolina
June 20, 2023

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer to Plaintiff's Complaint upon counsel of record via email only, in accordance with §(c)(13) of Order 2020-04-22-01 issued by the Supreme Court of South Carolina, using the primary email address listed in the Attorney Information System (AIS) and said document was filed electronically with the clerk of court via CM/ECF, which will then send a notification of such filing to all counsel of record and those who have registered for notice on the 20th day of June, 2023.

s/Thomas A. Bendle, Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NITH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2023-CP-10-02263
	)	
Jeronimo Hernandez Jimenez,	)	
	)	
Plaintiff,	)	MOTION FOR SUMMARY
	)	JUDGMENT
v.	)	
	)	
Rolando Medrano,	)	
Defendant.	)	

NOW COMES Defendant, Rolando Medrano Torrez, in the above captioned matter, by and through his counsel, moving this court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for Summary Judgment in its favor. In support of said motion, Defendant would show as follows:

I) Nature of Case

On May 10, 2023, Plaintiff filed the present tort action against Defendant Rolando Medrano alleging that Plaintiff was injured when he fell from a ladder while trimming the branches of a palmetto tree, injuring his back, legs, head and arms. See Complaint, ¶3. At the time Plaintiff was trimming the tree, he was in the course and scope of his employment with the Defendant. (See Exhibit “A” Plaintiff Dep. T. p.8, l. 15-18 and Exhibit “B” Defendant Dep. T. p. 11, l. 3-17 .) As a part of the employee/employer relationship, Defendant would provide transportation to and from the job sites for Plaintiff. (See Ex. “A” Plaintiff Dep. T. p. 13, l. 6-8 and Ex. “B” Defendant Dep. T. p. 32, l. 15-19 and p. 33, l. 8-13.)

Plaintiff alleges he was incapacitated after his fall and unable to move due to his injuries. See Complaint, ¶4 and Ex. “A” Plaintiff Dep. T., p. 22, l. 18-21 and p. 37, l. 20 - p. 38, l. 1. Plaintiff

was eventually loaded into Defendant's truck and brought to a fire station to receive care.¹ During the trip, Defendant noticed Plaintiff's condition decline and, as a result, brought him to the nearest emergency facility, a fire station that was two minutes away. (See Ex. "A" Plaintiff Dep. T. p. 24, l. 17 and Ex. "B" Defendant Dep. T. p. 19, l. 1-10.) Defendant stayed with Plaintiff until he was loaded into an ambulance and taken to the hospital. (See Ex. "A" Plaintiff Dep. T. p. 25, l. 24 – p. 26, l. 7 and Ex. "B" Defendant Dep. T. p. 15, l. 18-20.)

As a result of his injuries, Plaintiff filed a workers' compensation claim against his employer, Medrano Tree Services, LLC and Rolando Medrano Torrez, which was settled via a clincher agreement on or about April 10, 2023. (See Exhibit "C", attached hereto and incorporated by reference.) In the settlement agreement, Plaintiff alleged that he sustained injuries to his back, legs, head, arms and shoulders as a result of an accident arising out of and in the course of his employment. *Id.* He further alleges that, as a result of the accident, he sought and received medical treatment. *Id.* The workers' compensation claim settled "every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said injury by accident occurring on or about June 30, 2020, while Plaintiff was an employee or alleged employee of Medrano Tree Service, LLC and/or Rolando Medrano Torrez". *Id.* **The settlement agreement states in underlined bold lettering, "Defendants deny payment of any and all medical expenses of whatsoever nature or kind, including past, present, and future medical,** and it shall be the express liability of the Claimant, and the Defendants shall have no liability whatsoever". *Id.* Lastly, the Settlement Agreement states that in consideration for the lump sum payment, the Defendants, including Medrano, are "fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind

¹ Plaintiff and Defendant disagree on whether Plaintiff requested to be brought home or to a hospital.

under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions".

Plaintiff's current tort action against his employer, Rolando Medrano Torrez followed on May 10, 2023.

II) Standard of Review

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCPP; *see Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (*quoting Tupper v. Dorchester Cnty.*, 326 S.C. 318, 487 S.E.2d 187 (1997)).

"Once the moving party meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent may not simply rest on the mere allegations contained in the pleadings." *Grant v. Mount Vernon Mills*, 370 S.C. 138, 150, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* at 151. Unsupported allegations or denials that simply create an inference are insufficient to withstand summary judgment. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hedgepath v. AT&T*, 348 S.C. 340, 354, 559 S.E.2d 327 (Ct. App. 2001).

In *The Kitchen Planners, LLC v. Samuel E. Friedman and Jane Breyer Freidman and BB&T*, Op. No. 28173 the South Carolina Supreme Court established the “mere scintilla” standard is not to be applied under Rule 56(c), SCRCP. The Court held that the “mere scintilla” standard does not apply under Rule 56(c). Rather, the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule, *citing Town of Hollywood v. Floyd*, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” 403 S.C. at 477, 744 S.E.2d at 166.

III) Argument

When an employee’s claim arises out of and in the course of his employment, the South Carolina Workers’ Compensation Act provides the exclusive remedy. *See Sabb v. S.C. State Univ.*, 350 S.C. 416, 422, 567 S.E.2d 231, 234 (2002). “Every employer and employee . . . shall be presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.” S.C. Code Ann. § 42-1-310 (Supp. 2010).

“When an employee and his employer accept the provisions of the Act, the employee’s remedies under the Act exclude all other rights and remedies of the employee.” *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 325-26, 523 S.E.2d 766, 772 (1999) (citing S.C. Code Ann. § 42-1-540 (1985)). This section is known as the “exclusive remedy provision,” and it shrouds an employer with immunity from any actions at law instituted by the employee. Such immunity is part of the broader quid pro quo arrangement imposed upon the employer and employee by the Act. The employee “receives the right to swift and sure compensation” in exchange for giving up the right to sue in tort; the employer receives such tort immunity in exchange for complying with those provisions of the Act that insure swift and sure compensation for the employee. *Id.* at 326,

523 S.E.2d at 772. “The Act achieves such’ swift and sure compensation’ by requiring the employer to secure the payment of compensation under [section 42-5-10 of the South Carolina Code (1985)].” *Id.* at 326, 523 S.E.2d at 773. Section 42-5-10 provides: “Every employer who accepts the compensation provisions of this Title shall secure the payment of compensation to his employees in the manner provided in this chapter.”

However, an employer that fails to secure such compensation becomes liable either under the Act or in an action at law. *Harrell*, 337 S.C. at 327, 523 S.E.2d at 773 (citing S.C. Code Ann. § 42-5-40 (1985)), *emphasis added*. “[T]he Act prohibits an employee from recovering both workers’ compensation and a tort judgment from an employer who fails to secure compensation.” *Id.* at 329, 523 S.E.2d at 774.

In this case, Medrano, Plaintiff’s employer and Defendant in the workers’ compensation action, did not have workers’ compensation insurance at the time of Plaintiff’s fall. As a result, Plaintiff was not subject to the exclusivity provision of the act. He could either: (1) file a claim under the Act against his employer or (2) file a tort action against his employer. He could not do both. Plaintiff chose to file a workers’ compensation claim. As a result, his employer is shielded from tort liability per the Act and immune from suit. Wherefore, the Plaintiff’s Complaint should be summarily dismissed.

IV) Conclusion

Since Plaintiff elected to file a workers’ compensation claim against his employer as a result of the injuries sustained when he fell from a tree while trimming it during the course and scope of his employment, Plaintiff waived his right to file a subsequent tort action against his employer for the same event. As a result, this current tort claim is banned as a matter of law the defendant employer is immune from any tort liability and Summary Judgment is required.

Respectfully submitted,

s/ Payton D. Hoover

Payton D. Hoover, SC Bar No. 75967

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**ATTORNEYS FOR DEFENDANT ROLAND
MEDRANO**

May 23, 2024

Mt. Pleasant, South Carolina

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

INTERPRETED DEPOSITION OF JERONIMO JIMENEZ
MAY 20, 2024

JERONIMO HERNANDEZ JIMENEZ,

Plaintiff,

vs. CASE NO. 2023-CP-10-02263

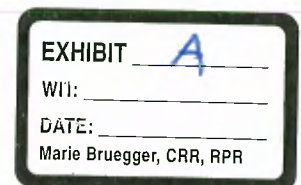
ROLANDO MEDRANO,

Defendant.

TIME: 10:03 A.M.

LOCATION: RICHARDSON PLOWDEN & ROBINSON
MOUNT PLEASANT, SC

REPORTED BY: BETHANY MORSE, RSR, CCR (WA)
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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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ALSO PRESENT:

Beverly Neiderhiser, Spanish interpreter

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I N D E X

EXAMINATION:	PAGE
By Mr. Bendle	4
By Mr. Fester	36
By Mr. Hoover	37
EXHIBITS:	REFERENCED
Exhibit 1 Settlement Agreement and Release	32
Reporter's Certificate	40

1 between seven and eight years, since I came from
2 Florida.

3 Q. Okay. And where did you live in Florida
4 prior to you moving to Charleston?

5 A. Tampa, Florida.

6 Q. Okay. And how long did you live in
7 Tampa?

8 A. I was in 11 -- I was in Tampa for
9 11 years -- well, almost ten.

10 Q. Okay. And prior to Tampa, where did you
11 live?

12 A. In Mexico.

13 Q. Are you currently employed?

14 A. No.

15 Q. On the date of the accident, which I
16 believe was June 30th, 2020, you were employed by
17 Mr. Medrano; is that correct or incorrect?

18 A. Yes.

19 Q. Did you have any other jobs at the time
20 that you were working for -- I'm sorry -- that
21 you were working for Mr. Medrano?

22 A. No.

23 Q. And prior to the accident, how long had
24 you worked for Mr. Medrano?

25 THE INTERPRETER: I'm sorry.

1 Q. I believe the date of the accident was
2 June 30th, 2020. Do you remember what day of the
3 week that was?

4 A. No, I don't remember what day it was
5 really.

6 Q. Okay. Do you recall -- how did you get
7 to work the morning of June 30th, 2020?

8 A. In one of Mr. Medrano's cars.

9 Q. Okay. And at the time of the accident,
10 did you own a vehicle?

11 A. No.

12 Q. Okay. Did you have access to a vehicle
13 that you drove?

14 A. No.

15 Q. Do you have a driver's license?

16 A. No.

17 Q. Did you have one at the time of the
18 accident?

19 A. No.

20 Q. Okay. Who picked you up for work the
21 morning of June 30th, 2020?

22 A. One of my work mates took me to
23 Mr. Medrano's home.

24 Q. Okay. And do you remember who the
25 friend was that took you to Mr. Medrano's house?

1 They were down below, and they saw me fall.

2 Q. And who were those coworkers?

3 A. Efrain, Dolores, and Fernando.

4 Q. Were there any other coworkers that were
5 there at the job site?

6 A. Yes, Jaime. But he wasn't there at the
7 moment. He was looking for another tool.

8 Q. You just mentioned that Mr. Medrano came
9 after your fall with another employee or another
10 coworker. Who was that?

11 A. Dolores and Fernando.

12 Q. And when Dolores, Fernando, and
13 Mr. Medrano came to you, did they say anything to
14 you or did you say anything to them prior to them
15 trying to pick you up?

16 A. I heard Mr. Medrano say to them, Help me
17 pick him up.

18 Q. Did you attempt to try to get up
19 yourself before Mr. Medrano came over?

20 A. Yes, I did. But my legs just didn't
21 work.

22 Q. Okay. So Mr. Medrano and one of your
23 coworkers lifted you up from under your arms to
24 put you in the truck; is that right?

25 A. Yes. They took me here, and my legs

1 Mr. Medrano to just take you home?

2 A. No.

3 Q. And I understand that at the time you
4 were living on Johns Island at the time of the
5 accident?

6 A. Yes.

7 Q. And at any point during that car ride,
8 did you ask Mr. Medrano why he had not yet
9 dropped you off at a hospital?

10 A. They sat me in the -- in the truck, and
11 I was leaning to the side, and I told him that I
12 couldn't stand it. I was leaning because I
13 couldn't sit there. I was going towards his
14 shoulder. I told him I couldn't stand it. And
15 he said, Hold on; we're almost there. And then I
16 thought that we were at a hospital, and it turned
17 out he took me to a fire station.

18 Q. At any point during that ride from the
19 job site to the fire station, did you lose
20 consciousness?

21 A. I don't know how to explain how I was
22 like this. I can't really explain it, but I was
23 still conscious.

24 Q. Once you guys arrived at the fire
25 station -- well, let me ask you this. Sorry. Do

1 you recall what fire station that you were
2 dropped off at?

3 A. No.

4 Q. And once you guys arrived at the fire
5 station, did Mr. Medrano stay with you?

6 A. No. He left me there.

7 Q. And when he left you at the fire
8 station, was there someone else there attending
9 to you?

10 A. Just the firemen.

11 Q. And how did you exit the vehicle of
12 Mr. Medrano's?

13 A. The firefighters or firemen got me out
14 of it.

15 Q. And did they place you on a stretcher?

16 A. Yes, on a stretcher, the firefighter
17 stretcher.

18 Q. Okay. And ultimately an ambulance came
19 to the fire station; is that right?

20 A. Yes. They put me in an ambulance. And
21 after that, I -- they asked me my name. I gave
22 them my name, and that's it. I don't -- that's
23 it. I didn't know anything else.

24 Q. Okay. And do you recall if Mr. Medrano
25 was still at the fire station at the time that

1 the ambulance arrived?

2 A. No. They put me in the ambulance. He
3 just left me there, and he left.

4 Q. So did he leave once they put you in the
5 ambulance? I'm trying to understand exactly when
6 you recall him leaving.

7 A. Yes.

8 Q. And my understanding is that the
9 ambulance took you to the Medical University of
10 South Carolina; is that right?

11 A. So I didn't know what was going on for
12 days. But, yeah, in the -- yes, days later.

13 Q. Okay. How long were you at the
14 hospital?

15 A. I don't remember exactly. Like, three
16 to four months.

17 Q. Okay. And during your time in the
18 hospital, do you recall all the surgeries that
19 you had?

20 A. No, no, I don't know.

21 Q. When you were discharged from the
22 hospital, did you seek treatment anywhere else?

23 A. When I left the hospital, and they
24 discharged me, they gave me some pills to take
25 for anxiety and for pain.

1 all I have.

2 MR. HOOVER: Do you want me to just
3 kind of relay my questions through him, or are
4 you okay with me just asking a couple?

5 MR. FESTER: No, you can go ahead.
6 I don't care.

7 EXAMINATION

8 BY MR. HOOVER:

9 Q. Okay. On the trip to the fire station,
10 where was the pain located? What part of your
11 body?

12 A. Back here and below --

13 Q. Okay. And you're pointing to your lower
14 back?

15 A. Yes. From here all the way up, the
16 whole thing.

17 Q. All the way up to the lower part of your
18 neck?

19 A. Yes. All of it.

20 Q. Were you experiencing any pain in your
21 legs on that ride?

22 A. No. I couldn't feel them.

23 Q. Okay. And that was the same from the
24 time that you landed on the ground?

25 A. From the time I fell, I couldn't feel

1 anything from here down.

2 Q. Fair enough. Have you done anything to
3 try to look for a job that you could perform in
4 your wheelchair?

5 A. I don't think anybody seeing me like
6 this would give me a job.

7 Q. Are you aware that there are people on
8 this planet that work even though they are in
9 wheelchairs?

10 MR. FESTER: Object to the form.

11 A. I don't have a license to drive. I have
12 no insurance.

13 (By Mr. Hoover)

14 Q. Okay. But you didn't have any of that
15 when you were working for Mr. Medrano, did you?

16 A. Yes. But I had my legs, and I could do
17 things.

18 Q. I guess going back to my original
19 question, have you done anything to see what kind
20 of jobs you would qualify for in your current
21 condition?

22 A. No. I take care of myself the best I
23 can.

24 Q. Have you ever been to see an
25 occupational therapist?

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

INTERPRETED DEPOSITION OF ROLANDO MEDRANO
MAY 20, 2024

JERONIMO HERNANDEZ JIMENEZ,

Plaintiff,

vs.

CASE NO. 2023-CP-10-02263

ROLANDO MEDRANO,

Defendant.

TIME: 11:47 A.M.

LOCATION: RICHARDSON PLOWDEN & ROBINSON
MOUNT PLEASANT, SC

REPORTED BY: BETHANY MORSE, RSR, CCR (WA)
CLARK BOLEN
CHARLESTON, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM



A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

LAW OFFICES OF DARRELL THOMAS
JOHNSON JR. LLC
BY: JOSHUA R. FESTER, ESQ.
300 Main Street, Suite 5931
Hardeeville, SC 29927
jffester@johnsonslawoffice.com

ON BEHALF OF THE DEFENDANT:

HOWELL GIBSON & HUGHES, PA
BY: THOMAS A. BENDLE JR, ESQ.
25 Rue Du Bois
Beaufort, SC 29901
tbendle@hghpa.com

AND

RICHARDSON PLOWDEN & ROBINSON, P.A.
BY: PAYTON D. HOOVER, ESQ.
235 Magrath Darby Blvd, Suite 100
Mount Pleasant, SC 29464
phoover@richardsonplowden.com

ALSO PRESENT:

Beverly Neiderhiser, Spanish interpreter

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I N D E X

EXAMINATION:	PAGE
By Mr. Fester	4
By Mr. Hoover	31
By Mr. Fester	33
EXHIBITS:	REFERENCED
[No exhibits marked.]	
Reporter's Certificate	35

1 Q. Okay. Let's go to the date of the
2 accident or incident, June 30th, 2020.

3 How many people did you have working for
4 you or Medrano Tree Services that day?

5 A. Yes. That day in -- that day we had
6 four people. Yes, four people. No, five.

7 Q. Okay. And was that five including you?

8 A. Yes.

9 Q. Can you tell me who the other four were?

10 A. So because two or three of them didn't
11 work with me daily -- only one of them worked
12 with me daily -- I don't know their name -- their
13 full names. I don't know their last names, but I
14 know I do know their names.

15 Q. Okay. What names do you recall?

16 A. Fernando, Dolores, Efrain, and
17 Mr. Jeronimo, who I did not know by that name.

18 Q. Okay. Where were you and Jeronimo
19 working that day?

20 A. We were working basically together. I
21 was on one tree, and he was on another one, and
22 we were about 6 or 7 feet apart.

23 Q. Okay. Can you tell me -- well, can you
24 give me, in your own words, what happened
25 after -- well, what happened to Jeronimo that

1 A. -- it was very hot outside. There was
2 no one from the fire station outside. I got out
3 of the truck, and I went to knock on the door.
4 Very quickly, they came to see, and I told them I
5 had a worker that was in the truck that had
6 fallen, and he needed an ambulance, because I
7 didn't think he looked good. They came right
8 out. One called the ambulance, and the others
9 were tending to him.

10 The ambulance didn't take long. I don't
11 remember much, but five to ten minutes. When the
12 ambulance came, they put him in the stretcher.
13 They asked me for his information, and I really
14 didn't know it. In fact, I knew him by another
15 name. So they were asking him for his name, his
16 address, and his telephone number to get all the
17 information correct.

18 They put him in the ambulance. And
19 before they did, I asked where they were going to
20 take him so I could go visit him later. And up
21 to then, we still -- we didn't know how serious
22 the problem that he had was.

23 (By Mr. Fester)

24 Q. Okay. Did you see Mr. Medrano after the
25 accident? Or Mr. Jimenez. I'm sorry.

1 Q. Okay. So you didn't think it was best
2 to turn around and take him to MUSC or Roper
3 St. Francis, instead drop him off at a fire
4 station?

5 A. At that moment I was basically two
6 minutes away from the fire station. I thought it
7 was better, more prudential to take him so that
8 in two minutes he could get some attendance
9 rather than turn around and go back, which might
10 have been 15 or 20 minutes.

11 Q. Bear with me a moment.

12 Earlier you stated at a hearing -- at a
13 workers' comp hearing -- in April of 2022 that
14 the reason you didn't go to the hospital was
15 because your truck was malfunctioning. Is that
16 not correct?

17 A. So the truck did have problems with the
18 revolutions. They would get stuck, and it would
19 accelerate. But the real reason was because it
20 was closer to take him here. But the truck did
21 actually have problems with the revolutions
22 getting stuck.

23 Q. Can you explain what problems that
24 caused? How the truck was acting?

25 A. It was a sensor somewhere in the

1 Q. And were you relying on what he was
2 telling you about how he was feeling?

3 A. Yes. We were talking in the truck. I
4 asked how he was doing. He said I was fine, I'm
5 fine. Until I noticed one -- at one point that
6 he was fainting or falling asleep or I don't
7 know.

8 Q. Regardless of whether he was injured
9 that day or not, you still had to take him home;
10 correct?

11 A. He always asked me -- he constantly or
12 always was asking me to just take him home.
13 Nobody knew how serious it was that day.

14 Q. And I'm not talking about in
15 particularly that day. But you transported the
16 employees to and from job sites; correct?

17 A. Yes. Efrain would bring them to my
18 house, and then we would go from my house to the
19 work site or job site.

20 Q. The only way the plaintiff was going
21 home that day was to ride home with you; correct?

22 A. Well, I think that would be the most
23 correct, because the other guys stayed there
24 working. I could take him.

25 Q. Forget that the accident even took

1 place. What I'm asking is, was it -- on the date
2 that this happened, you were transporting him not
3 only to the work site, but the intent was,
4 assuming that he didn't fall from a tree, to
5 transport him back?

6 A. Yes. We would go to work, we would go
7 back, and then they would leave.

8 Q. Okay. And that's a service you provided
9 as their employer?

10 A. Yes. Because they would come to my
11 house at 7:30, 8:00. We would get together, we
12 would go to work, work together, and then come
13 back to my house. And they would leave.

14 MR. HOOVER: Okay. Those are my
15 questions. I appreciate your time.

16 MR. BENDLE: I don't have any.

17 EXAMINATION

18 BY MR. FESTER:

19 Q. Just quickly in follow-up.

20 At any point on the ride -- well, what
21 ended up being the fire station in West Ashley,
22 at any point during that ride, did my client,
23 Jeronimo, complain of pain in his back?

24 A. No, never. He never said it's not
25 hurting. He never says, You know what? It's

STATE OF SOUTH CAROLINA

) BEFORE THE SOUTH CAROLINA

) WORKERS' COMPENSATION

) COMMISSION

)

Jeronimo Hernandez Jimenez,

)

)

SETTLEMENT AGREEMENT

Employee,

)

AND RELEASE

)

Claimant,

)

W.C.C. FILE NO.: 2012178

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-vs-

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RECEIVED

APR 10 2023

Division of Claims
SC Workers' Comp. Comm.

Medrano Tree Services, LLC and

)

Rolando Medrano Torrez,

)

)

Employers,

)

)

and S.C. Workers' Compensation

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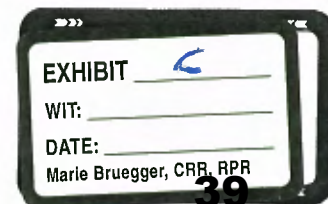
Uninsured Employers' Fund,

)

)

Defendants.

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This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Jeronimo Hernandez Jimenez. The Claimant is represented by Matthew R. Cook, Esquire of Hoffman Law Firm, the Employers, Medrano Tree Services, LLC, and Rolando Medrano Torrez are unrepresented, and the S.C. Workers' Compensation Uninsured Employers' Fund is represented by Timothy B. Killen, Esquire of Holder, Padgett, Littlejohn, & Prickett, LLC. The South Carolina Workers' Compensation Commission has authority to receive this settlement agreement.

The Claimant alleges that on or about June 30, 2020, he sustained an injury by accident arising out of and in the course of said employment when he injured back, right leg, left leg, back, head, right arm, left arm, right shoulder, and left shoulder. As a result of this accident, the Claimant sought and received medical treatment from medical providers. Defendants **DENIED** the claim and continue to contest compensability.

The parties hereto now advise that in their opinion the matter is in *bona fide* dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety on a doubtful and disputed full and final basis, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement the Defendants have agreed to pay and the Claimant has agreed to accept the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said injury by accident occurring on or

about June 30, 2020, while the Claimant was an employee or alleged employee of Medrano Tree Services, LLC and/or Rolando Medrano Torrez. As an integral part of this settlement agreement, and as approved by this Commission, **Defendants deny payment of any and all medical expenses of whatsoever nature or kind, including past, present, and future medical**, and it shall be the express liability of the Claimant, and the Defendants shall have no liability whatsoever. Again, the settlement of the claim is on **a doubtful and disputed basis** with no portion of the settlement being paid for past, present, or future medical. The resolution of this claim is to resolve the allegations and is not an admission of liability or compensability.

The Defendants contend that the employers were not subject the South Carolina Workers' Compensation Act citing that the employers are exempt from the Act having regularly employed less than four individuals and thereby is not subject to the Act per Section 42-1-360. The Defendants deny the SC Workers' Compensation Act has jurisdiction based on the lack of four regularly employed employees within the State.

The Defendants maintain that the relevant time period for determining whether an employer had consistently employed at least four (4) employees so as to be subject to the Workers' Compensation Act, should be identified by considering (1) the employer's mode of operation, (2) whether the employer generally employs the jurisdictional number at any time during his operation; and (3) the period during which employment is definite and recurrent rather than occasional, sporadic, or indefinite pursuant to Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (S.C. App. 2007). The Defendants dispute the Claimant's assertion that there were four or more regularly

employed individuals. These disputes, as well as any and all other disputes, are resolved herein as part of settlement:

The Claimant asserts he is entitled to a lifetime award, which Defendants deny. The Claimant has not submitted to an exam with a medical provider chosen by the Defendants. The extent of the injury is disputed. The Defendants assert the Claimant is young, employable, and cannot otherwise prove he is permanently and totally disabled as a result of the alleged accident and even if compensable, the Defendants assert the Claimant would only be eligible for a scheduled award or at best commuted 500-week award, and would not receive a lifetime award should the claim be adjudicated compensable upon exhausting all appeals.

Compensability arguments aside, the Claimant asserts that the compensation rate should be increased to each year to reflect the maximum rate for the year in which the Claimant is receiving benefits. The Claimant relies on the Act, specifically section 42-1-40 and Regulation 67-1603, along with SC case law including the cases of Stokes v. First Nat'l Bank, 306 S.C. 46 (1991), Sellers v. Pinedale Residential Center, 350 SC 183 (S.C. App. 2002), Booth v. Midland Train Heating and Air Conditioning, 290 S. C. 251 (Ct. App. 1989), McCummings v. Anderson Theatre Co., 225 S. C. 187 (1954), Brunson v. Walmart Stores Inc., 344 S. C. 107 (Ct. App. 2001), Elliott v. South Carolina Department of Transp., 607S. E.2d 90(Ct. App. 2004), Forrest v. A.S. Price Mechanical, 373 S.C. 303 (Ct. App. 2007) and Brown v. Peoplease Corp. 402 S.C. 476 (S.C. App. 2013) which Claimant alleges allows for an increase in the AWW/CR. Further, Claimant asserts the principles of equity and fundamental fairness apply to the Claimant's

argument. The Defendants deny and dispute the Claimant's assertion as to the average weekly wage and compensation rate. The average weekly wage and compensation rate are in dispute and any and all disputes as to the Claimant's legal argument/theory regarding the compensation rate are resolved herein as part of this doubtful and disputed settlement.

The Claimant disputes the dollar amount as to the lifetime value calculation, disputes commutation of same, and the Defendants disagree with the Claimant's assertions. The disputes as to the dollar amount as to the lifetime value calculation and any and all disputes as to the Claimant's legal argument/theory regarding the lifetime value calculation are resolved herein as part of this doubtful and disputed settlement.

The Claimant disputes life expectancy calculations as set forth Section 19-1-150. The disputes as to life expectancy calculations and any and all disputes as to the Claimant's legal argument/theory regarding life expectancy calculations are resolved herein as part of this doubtful and disputed settlement.

As previously recited, the settlement of this claim is on a **doubtful disputed basis** without any admission by the Defendants of compensability or liability as the claim has been denied from its inception and remains denied through this settlement. The payment of this settlement resolves any and all allegations asserted by the Claimant, but again does not constitute acceptance of the claim nor an admission of liability or compensability. Absolutely no portion of this One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) settlement agreement represents payment of past, present, or future medical treatment.

The claimant hereby requests this Commission to approve the allocation of the proposed settlement follows:

Pursuant to Utica-Mohawk v. Orr, 227 S. C. 226, 87 S. E.2d 589 (1955), the total settlement proceeds shall be allocated as follows:

The parties further stipulate that the aggregate settlement proceeds, which amount to One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00), shall be allocated in the following fashion:

1. The sum of \$500,000.00 as attorney fees pursuant to Commission Regulation 67-1205(C), and the agreement between the Claimant and this attorney;
2. The sum of \$13,666.89 to this attorney as reimbursement for litigation costs pursuant to Commission Regulation 67-1206;
3. The sum of \$986,333.11 as compromise settlement for disputed permanent disability at the rate of \$413.245 per week commencing on the date of the SCWCC's approval of this agreement for a period of 2386.8 weeks thereafter, representing the Claimant's life expectancy of 45.90 years, pursuant to the provisions of S.C. Code Ann. Section 19-1-

150 (1976) and the decisions of the South Carolina Supreme Court in Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

It is expressly understood that Defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of Defendants.

This settlement resolves only the Workers' Compensation Claim and no additional claims, suits, actions, or allegations other than the Workers' Compensation claims of July 30, 2020 (WCC# 2012178) are hereby resolved. The parties stipulate that the resolution of the Workers' Compensation Claim does not in any way prohibit, restrict, bar, or otherwise infringe upon the Claimant's right to pursue other causes of action outside of the Workers' Compensation claim against third party defendants. Nothing in this agreement shall be construed against the Claimant to bring any additional claims, suits, causes of action, etc. The Uninsured Employers' Fund does not waive its lien against any proceeds on any third-party case, if so entitled.

Any and all details of this settlement, including but not limited to the existence, nature, terms, conditions, and settlement amount, are to be kept strictly confidential and shall not be disclosed or released in any manner or form, directly, or indirectly, to any person or entity under any circumstances to any third party whatsoever except as required by law.

NOW, THEREFORE, IT IS SETTLED AND AGREED that upon the payment of the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) by Defendants, and the acceptance of said sum by Claimant, Defendants are fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions. The Claimant enters into this Agreement and Final Release of sound mind and body, freely, and voluntarily, without undue influence, coercion, or duress of any kind.

The Claimant hereby asserts that he has been fully advised by his attorney of record of all rights under the South Carolina Workers' Compensation Act, and that the Claimant is of the opinion that the proposed settlement is reasonable and the Claimant's attorney asserts that he has fully advised the Claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. The Claimant hereby asserts that he recognizes that his consent to, and the approval of, this Settlement Agreement and Release is a final settlement of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about June 30, 2020, while the Claimant was an employee of Employer.

The Claimant hereby affirms that he has not applied for and is not receiving Social Security disability, is not on Medicare, is not enrolled in Medicare Advantage, and is not aware of any Medicare liens. The parties have taken into consideration Medicare's potential interest in the resolution of this claim and believe Medicare has no interest.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for the claimant that the Claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the employee's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, employee, employer, and carrier and/or servicing agent agree that this settlement agreement cannot be voided in the future on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

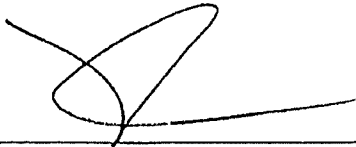
Any payment made or benefit provided by the South Carolina Workers' Compensation Uninsured Employers' Fund is made with all rights of indemnification and reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the South Carolina Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. Section 42-7-200 or otherwise.

NOW, THEREFORE, IT IS ORDERED that upon the payment of the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) by the Defendants, and the acceptance of said sum by the Claimant, the Defendants be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the alleged injury by accident occurring on or about June 30, 2020, or any other date, while the Claimant was an employee of Employer, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, *res judicata* and not subject to review under any conditions. This settlement agreement, including the approval of attorney's fees and costs as recited herein, shall serve as a Final Order of the South Carolina Workers' Compensation Commission and constitutes a final judgment and shall not be subject to review or appeal. The Commission has the power to approve a Clincher and make it final and binding and not subject to review by the courts under any conditions. Atkins v. Charleston Shipbuilding & Drydock, 206 S.C. 63, 68, 33 S.E.2d 46, 48 (1945); Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960). Spivey v. Carolina Crawler, 367 S.C. 154, 624 S.E.2d. 435 (S.C. Court App. 2005).

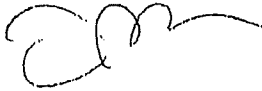
WE CONSENT TO THE FOREGOING ORDER:



Jeronimo Hernandez Jimenez, Claimant



Matthew R. Cook, Esquire
Attorney for Claimant



Timothy Killen, Esquire
S.C. WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

(11)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2023-CP-10-02263
	)	
Jeronimo Hernandez Jimenez,	)	
	)	
Plaintiff,	)	Memorandum in Opposition to
	)	Motion for Summary Judgment
v.	)	
	)	
Rolando Medrano,	)	
	)	
Defendant.	)	
	)	

COMES NOW the Plaintiff, Jeronimo Hernandez Jimenez (hereinafter “Mr. Hernandez” or Plaintiff) and would show unto this Honorable Court in opposition to Defendant’s motion for summary judgment the following:

STATEMENT OF THE CASE

On June 30, 2020, Mr. Hernandez was injured in an accident after he fell from a tree that he was trimming. Rolando Medrano, (hereinafter, “Mr. Medrano” or “Defendant”), who was on site with his employees trimming trees noticed that Mr. Hernandez had fallen from the tree. Despite the fact that Defendant knew that Mr. Hernandez had suffered a potentially catastrophic injury due to the fall, Defendant directed his employees to physically lift Mr. Hernandez and place him in Defendant’s work truck to transport him off site. At no point did Defendant call or attempt to call for emergency medical services, and instead took it upon himself to transport Mr. Hernandez. Where Defendant was attempting to transport Mr. Hernandez is unclear, as he passed multiple hospitals on his route and finally settled upon taking him to a fire station, from whence Mr. Hernandez was ultimately taken to the hospital. Ex. 1. One rationale for stopping at a fire station provided by Defendant was that he had previously noticed mechanical issues, specifically with acceleration, in the truck in which Mr. Hernandez was transported.

Mr. Hernandez filed a workers' compensation claim against Defendant and Medrano Tree Services, LLC. In the process of litigating the workers' compensation claim, it was discovered that neither Mr. Medrano nor Medrano Tree Services, LLC maintained workers compensation insurance as required by the South Carolina Workers' Compensation Act (hereinafter, "the Act"), despite having sufficient employees to be subject to the Act. Mr. Medrano also denied that Mr. Hernandez was an employee of his or the LLC. Mr. Hernandez reached a settlement with the South Carolina Uninsured Employer's Fund (UEF). The present action against the Defendant followed. Mr. Hernandez has alleged that Defendant was grossly negligent in his attempt, or lack thereof, to render aid to Mr. Hernandez, and that he was also grossly negligent in the use, maintenance, and operation of his automobile in doing so, or failing to do so, which caused him injuries. When Mr. Hernandez finally received emergency medical treatment, Mr. Hernandez was diagnosed with a burst fracture of the thoracic spine, and he was rendered paraplegic due to his injury and injuries sustained as a result of Defendant's grossly negligent behavior. It was later determined by Dr. Shailesh Patel that due to the "lack of following proper spinal cord injury protocol at the onset of his work injury surely worsened the magnitude of his spinal cord injury from an incomplete injury . . . to a complete spinal cord injury." Ex.2.

STANDARD OF REVIEW

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56 SCRPC. To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Management*

Co., Inc., 381 S.C. 326 (2009). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. See *Fronenberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013). Furthermore, summary judgment may only be granted when the pleadings, depositions, affidavits, and discovery in the record show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.

ARGUMENTS

Defendant argues that the present action is barred by the exclusive remedy and/or Mr. Hernandez' election of remedies. This is an erroneous assertion for several reasons. At the most basic level, an issue of material fact exists based upon the position taken by Defendant in a workers' compensation claim. The Defendant originally denied that Mr. Hernandez was his employee and attempted to coerce another to commit insurance fraud by admitting that Mr. Hernandez was the employee of this third party. Ex. 3. More importantly, the complaint alleges, and Plaintiff intends to prove, gross negligence and resulting injuries separate and distinct from those initially sustained by Mr. Hernandez when he fell from a tree that he was trimming. Specifically, Mr. Hernandez is not alleging negligence by the Defendant causing his fall. Rather, Mr. Hernandez alleged that Defendant's acts of gross negligence occurring after Mr. Hernandez fell which were completely unrelated to the work being done, or Defendant's trade, business, or occupation, caused him injuries. Defendant directed his employees in a grossly negligent manner to move Mr. Hernandez, who severely injured his back from the site of his fall and into a truck owned by Defendant. The Defendant was also grossly negligent in his maintenance and operation of the vehicle, causing Mr. Hernandez injury while transporting him to a fire station instead of a hospital or simply calling emergency services, which is what any reasonably prudent person would do in that situation. Thus, because Mr. Hernandez is alleging separate occurrences not related to,

or arising out of any work, neither the exclusive remedy nor the election of remedies poses a challenge to Mr. Hernandez' claims.

In support of their argument that Defendant is shielded from liability under the Act, Defendants cite to the exclusive remedy provision of the Act, which provides that “the rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee.” S.C Code Ann. § 42-1-540. Such immunity described in that section is “part of the broader *quid pro quo* arrangement imposed upon the employer and employee by the Act.” *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 326 (1999). As part of this *quid pro quo*, which is referred to as the “Grand Bargain” between employer and employee, the employee “receives the right to swift and sure compensation in exchange for giving up the right to sue in tort; the employer receives such tort immunity in exchange for complying with those provisions of the Act that insure swift and sure compensation for the employee.” *Id* (quoting *Parker v. William and Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980)(internal quotations omitted)). However, an employer loses its immunity in tort for refusing or neglecting to secure payment of compensation under the Act, and “shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer for personal injury or death.” S.C. Code Ann. § 42-5-40. Because the Defendant was not compliant with the Act in securing payment of compensation by purchasing workers' compensation insurance, the Defendant is not shielded from tort liability under the Act.

Defendant argues that despite his failure to comply with the Act, that Mr. Hernandez must either avail himself of his remedies under the Act or in an action at law, citing *Harrell*. The present case is distinguishable from *Harrell*, wherein the Supreme Court held that an employee could sue an upstream statutory employer when they failed to secure compensation, although he had chosen to accept compensation under the Act from his direct employer. In the present case, Defendant neither offered to pay, and the Plaintiff never received the “swift and sure compensation” guaranteed him under the Act; rather, the Defendant denied Mr. Hernandez’ claim for benefits, leaving him without necessary medical treatment due to a catastrophic injury. Due to Defendant’s evasion of his duties to Plaintiff under the Act, it was nearly three years before Plaintiff entered a settlement agreement with the UEF. The fact that the UEF, which is not an insurance carrier under the Act, settled a claim with Mr. Hernandez does not make Mr. Hernandez subject to the exclusive remedy provision of the Act, or evince an election of remedies as suggested by Defendant. Additionally, as discussed above, this case is factually distinguishable from the court’s determination in *Harrell* in that Mr. Hernandez is proceeding in an action at law for completely separate acts of negligence not stemming from work or a workplace accident and having no relationship with Defendant’s work or any employment relationship.

It is important to note that at the time of Mr. Hernandez’ injuries, Defendant was operating a tree trimming business through an LLC, which although denied by the Defendant during the prosecution of the workers’ compensation claim, would have had the employment relationship with Mr. Hernandez. Medrano Tree Services, LLC is a legal entity separate from Mr. Medrano as a natural person. South Carolina recognizes the “dual persona” doctrine, under which another entity associated with or related to the employer may be sued in tort if a “second set of obligations that forms the basis of the tort suit is entirely independent of the defendant’s obligations as an

employer.” *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251, 254 (2013). For the “dual persona” doctrine to apply, there must be separate duties that arise “solely from the nonemployer persona.” Defendant’s LLC is in the business of trimming trees, in which Defendant was engaged immediately before his grossly negligent behavior injured Mr. Hernandez. Defendant’s business of trimming trees has absolutely no relationship to his personal responsibilities and duties to act in good faith and with reasonable prudence as a bystander to an accident and witness to an injury, when rendering or attempting to render first aid to an injured person. Thus, the “dual persona” doctrine applies such that Defendant may be sued in tort for his gross negligence as alleged by Mr. Hernandez.

To the extent that Defendant argues that the settlement agreement attached as an exhibit to his motion contractually forecloses Mr. Hernandez’ claims against him, the plain language of the settlement agreement cited by Defendant clearly does not. As noted by Defendant’s in their motion the settlement agreement was a settlement of “every liability of whatsoever nature or kind ***under the Workers’ Compensation Act*** growing out of, or in any way connected with, said injury by accident occurring on or about June 30, 2020.” Ex. 4. This settlement agreement, which was entered upon a “doubtful and disputed” basis after Mr. Hernandez workers’ compensation claim was denied, only foreclosed any claims “under the Workers’ Compensation Act.” Moreover, the settlement agreement explicitly provides that “[n]othing in this agreement shall be construed against the claimant to bring any additional claims, suits, causes of action, etc.” *Id.* Therefore, the plain language of the settlement agreement does not foreclose Mr. Hernandez rights to legal action not arising under the Act.

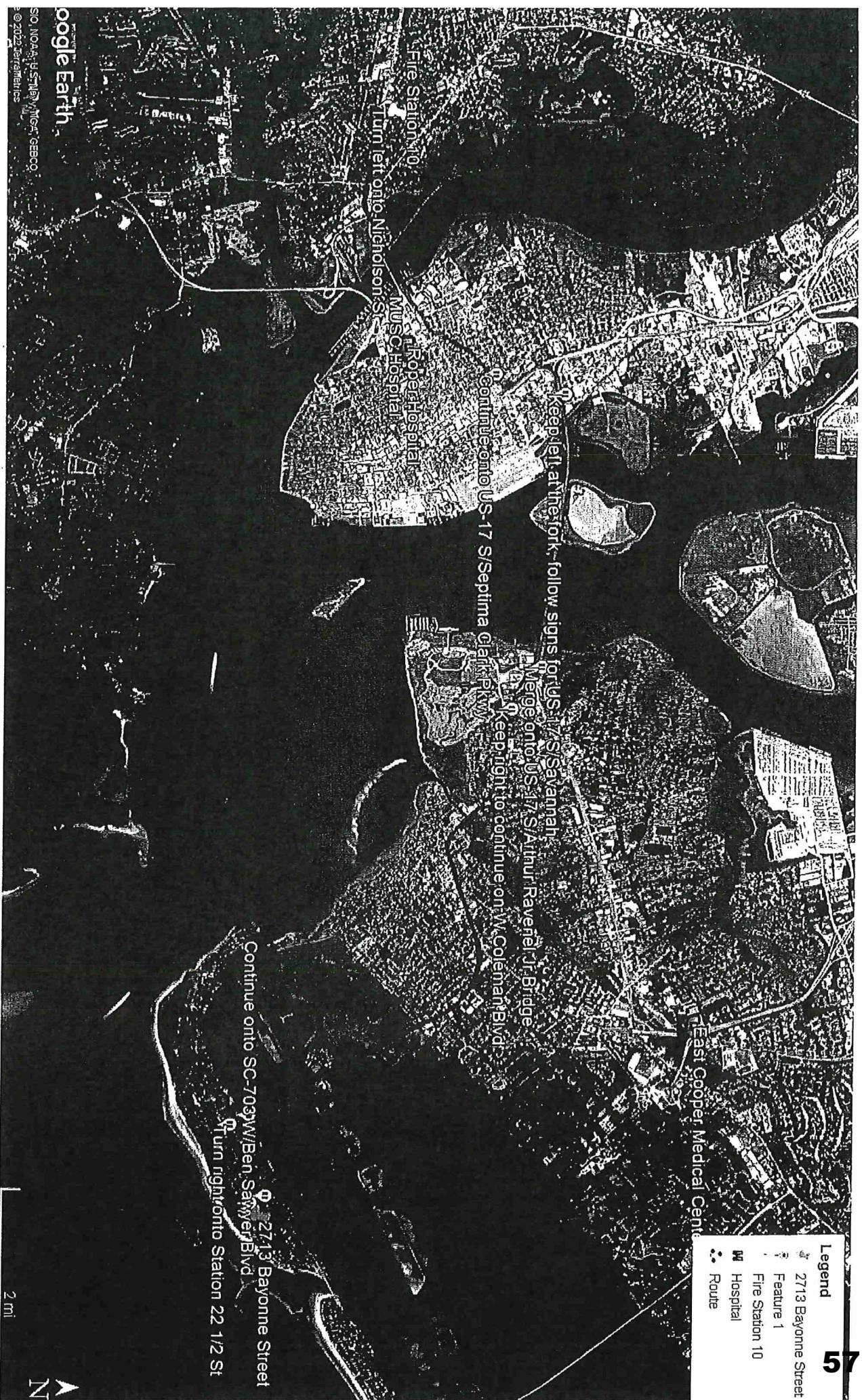
Given the foregoing, Plaintiff would respectfully submit that Defendant’s motion for summary judgment should be DENIED.

[signature page to follow]

LAW OFFICE OF
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File No: 08-1146-01-200-23
Attorneys for the Plaintiff

January 6, 2025



Lowcountry Orthopaedics Member of Arcis Healthcare • 2880 Tricom Street, CHARLESTON SC 29406-9171

JIMINEZ, JERONIMO (id #2268119, dob: [REDACTED] 1990)

LOWCOUNTRY ORTHOPAEDICS & SPORTS MEDICINE a member of Arcis Healthcare LLC

2880 Tricom Street

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Encounter Summary - Progress Note

Date Printed: 05/19/2021

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Patient	Jiminez, Jeronimo (30yo, M) #2268119
DOB	[REDACTED] 1990

Patient Demographics:

Address	3869 Viola Ct Johns Island, SC 29455-3621	Home Phone	(843) 489-5882
		Work Phone	

Encounter Notes:

Encounter Reason/Date	Lower Back/L-spine problem, Workers' Compensation 05/14/2021 - 11:20AM - LCO Tricom
History of Present Illness	L-T spine 7388* Reported by patient. Location: bilateral Quality: aching Severity: pain level 5/10; worst pain 10/10 Duration: date of onset: (06/30/2020) Timing: abrupt Context: work injury (06/30/2020, fell off ladder, landed on dirt, and his back) Alleviating Factors: rest Aggravating Factors: bending/squatting; weather Associated Symptoms: weakness; numbness; tingling; radiation down right leg; radiation down left leg; paraplegic, in wheelchair. Prior Imaging: MRI (MUSC) Previous Injections: none Previous PT: helped a little Work Related: yes Working: no Notes: no hx of injury prior to work fall, is now PARAPLEGIC suppository and catheter daily. lives with cousin, uncle.
Assessment and Plan	Jerónimo Jiminez is a 30-year-old male here today for an independent medical evaluation in regards to his lower back pain and bilateral lower extremity pain due to work-related fall on 6/30/2020. He reports working for a tree trimming service and was on a ladder when he fell 14 feet to the ground. SUMMARY OF MEDICAL CARE: The patient is here with his cousin today who is interpreting for the patient. He reports immediately feeling pain after the fall in his legs and back. He

Lowcountry Orthopaedics Member of Arcis Healthcare

Jiminez, Jeronimo (ID:2268119), DOB [REDACTED] 1990

reports asking for an ambulance. EMS was not called and proper spinal precautions were ignored by his employer and coworkers. He reports he was grabbed and pulled by his arms away from the fall site and put into a truck upright. He was not sure where he was being driven to but he began complaining of severe pain in the back and legs and the driver deposited him at a fire station.

He was transported to MUSC where he was found to have an acute spinal cord injury with no movements in the legs and a T10 sensory level. Imaging revealed an unstable T11 burst fracture with cord transection. He is status post T11 corpectomy and T8-L2 fusion on 6/30/2020 and 7/2/2020 (Dr. Rowland). He was discharged on 9/21/20 with daily suppository and bladder catheterization. He was diagnosed with a complete spinal cord injury at the T11 level. He ambulates with a wheelchair, and is paraplegic.

CURRENT SYMPTOMS:

Today he reports continued back and leg pains. He is unable to move his legs and has no feeling. He reports feeling "sad" and anxious, is not sleeping or eating well. He is requiring daily rectal suppository and bladder catheterizations. He denies having any back or leg symptoms prior to the 6/30/2020 fall.

RECOMMENDATIONS:

It is my opinion to a reasonable degree of medical certainty Mr. Jimenez was involved in a significant work accident on 6/30/2020 when he was cutting a tree and fell approximately 14 feet to the ground. Per the patient he reports feeling severe pain in his lower back and legs after the fall. He states he asked for his employer to call 911 but reports the employer and the coworkers grabbed him by his arms and moved him to a vehicle. He was not in a neck brace or on a backboard or stabilized with any spinal precautions.

During the drive the patient's condition deteriorated and he was deposited at a fire department station where EMS was contacted and transferred the patient to MUSC hospital. He was diagnosed with a burst fracture of T11, unstable and required a T8-L2 fusion on 6/30/2020 and 7/2/2020. He suffered a complete spinal cord injury at T11 with no sensation or movement in the lower extremities and no voluntary bowel or bladder function, commonly referred to as paraplegia.

He has suffered a multitude of very serious and life altering injuries including injuries to his bilateral lower extremities and spine which have permanently rendered him a complete paraplegic. Unfortunately, the lack of following proper spinal cord injury protocol at the onset of his work injury surely worsened the magnitude of his spinal cord injury from an incomplete injury (feeling pain/sensation in his lower exts) to a complete spinal cord injury (no sensation/no movement). It is my opinion to a reasonable degree of medical certainty, transporting this patient with an unstable thoracic burst fracture, instead of waiting for emergency services to arrive, worsened his neurologic sequela leading to permanent neurologic impairment. He is not expected to improve beyond his current paraplegic state and has reached maximum medical improvement. He has the following impairments:

Thoracic Spine: 28% Impairment of the whole person in relation to the thoracic spine (140% regional impairment) pursuant to the AMA Guides 5th Ed, Chapter 15: The Spine, pg 389, Table 15-4, DRE Thoracic Category IV.

Neurogenic bladder and Neurogenic bowel: 60% and 50% Impairment of the whole person respectively, pursuant to the AMA Guides 5th Ed, Chapter 13: The Central and Peripheral Nervous System, pg 340, Table 13-19-Class 4 and Table 13-20-Class 3.

Given the extent of his injuries he is on a no work status and this would have been indicated from the date of the accident, June 30, 2020.

Mr. Jimenez will require extensive lifetime medical treatment for his spinal cord injury including the following: Pharmaceuticals for pain, sleep assistance, and emotional/psychological issues; handicap vehicle/vehicle modifications; manual wheelchair with replacements as needed; lightweight collapsible wheelchair preferably titanium framed collapsible manual wheelchair for home use and for more efficient at home ambulation with wheelchair maintenance/repair; motorized wheelchair; replacement wheelchairs as needed; architectural modifications and renovations of the family home to provide wheelchair accessibility, grab bars in the bath.

shower and commode areas, pulls in the kitchen, guardrails at each entrance/exit, bath and shower stall renovation, modifications to do hardware, light switches and plumbing fixtures for wheelchair height access; handyman services to assist with maintaining the residence; a homemaker/chore person services for physically demanding aspects of house work; companion intended services from a license bonded home health agency for companion and attendant care; needs access on an as-needed basis to medical doctors including neurology, urologist, psychiatry, orthopedics, psychiatry, dermatology, with diagnostic studies being performed as needed; access to physical therapist, occupational therapist, kinesiologist, pain management therapy and support services; alternative medical treatment sources such as chiropractic, osteopathic, naturopathic, acupuncture/acupressure, etc.; catheters, diapers; suppositories; wound care to monitor for sores with access to an infectious disease physician with appropriate medications and lab work. He will need multidisciplinary inpatient rehabilitation program inclusive of PT, OT, speech therapy, neuropsych, recreational therapy, and medication management (this list is not meant to be exhaustive and other treatment needs may arise and be indicated)

Mr. Jimenez is profoundly impacted from a mental health standpoint and is showing signs of depression and anxiety from his accident and will require treatment from a mental health professional.

The above examination was carried out for the purpose of an IME only and did not constitute forming a doctor/patient relationship. No treatments were accomplished and no medications were prescribed. The nature of the IME, reasoning behind this examination and the importance of the patient questionnaire was explained to the examinee. The examinee was informed to notify the examiner of any pain, discomfort, numbness or other symptomatology produced by any portion of the examination or any maneuver accomplished during the examination. If further information becomes available, such additional information may or may not change the opinion rendered in this evaluation.

The treatment outlined and recommended in my IME report is reasonable, medically necessary, and calculated to lessen the period of the patient's disability. All my opinions herein are to a reasonable degree of medical certainty.

Shallesh Patel, MD

Lowcountry Orthopaedics and Sports Medicine

Charleston, SC

Board Certified in PM&R and Pain Medicine

1. **Spinal paraplegia**
G82.20: Paraplegia, unspecified
2. **Disorder due to work-related activity accident**
Z57.9: Occupational exposure to unspecified risk factor
3. **Neurogenic bowel**
K59.2: Neurogenic bowel, not elsewhere classified
4. **Neurogenic bladder**
N31.9: Neuromuscular dysfunction of bladder, unspecified
• NEUROGENIC BLADDER: CARE INSTRUCTIONS
5. **Fall from ladder**
W11.XXXD: Fall on and from ladder, subsequent encounter
6. **Injury of thoracic spinal cord**
S24.113D: Complete lesion at T7-T10 level of thoracic spinal cord, subsequent encounter
7. **Burst fracture of thoracic vertebra**
S22.002D: Unstable burst fracture of unspecified thoracic vertebra, subsequent encounter for fracture with routine healing
8. **History of fusion of thoracolumbar spine**
Z98.1: Arthrodesis status

9. Depressive disorder

F32.9: Major depressive disorder, single episode, unspecified
 • LEARNING ABOUT MOOD DISORDERS

Return to Office

None recorded

Results/Interpretations

None recorded

Physical Exam

Patient is a 30-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, and normal body habitus.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: abnormal affect; flat.

Gait and Station: Appearance: paraplegic in wheelchair.

Cardiovascular System: Arterial Pulses Right: femoral normal and posterior tibials normal. Arterial Pulses Left: femoral normal and posterior tibials normal. Edema Right: none. Edema Left: none. Varicosities Right: no varicosities and capillary refill test normal. Varicosities Left: no varicosities and capillary refill test normal.

Lymph Nodes: Inspection/Palpation Right: no inguinal LAD. Inspection/Palpation Left: no inguinal LAD.

Skin: Lumbosacral Spine: normal skin.

Lumbar Spine: Inspection: no induration, ecchymosis, or swelling and normal alignment. Bony Palpation of the Lumbar Spine: tenderness of the spinous process at L 4, the transverse process on the left at L, the sacral promontory, and the sacrum. Bony Palpation of the Right Hip: no tenderness of the iliac crest. Bony Palpation of the Left Hip: no tenderness of the iliac crest. Soft Tissue Palpation on the Right: tenderness of the paraspinal region at L 4. Soft Tissue Palpation on the Left: tenderness of the paraspinal region at L 4. Active Range of Motion: flexion normal and extension normal. Passive Range of Motion: flexion normal and extension normal.

Neurological System: Ankle Reflex Right: hyperactive (3). Ankle Reflex Left: hyperactive (3). Knee Reflex Right: hyperactive (3). Knee Reflex Left: hyperactive (3). Sensation on the Right: T12 normal and decreased sensation of the inguinal region (L1); T10 sensory level. Sensation on the Left: T10 sensory level. Special Tests on the Right: no movements in the legs. Special Tests on the Left: no movements in the legs..

+hyperreflexic in legs.

Review of Systems

Patient reports difficulty urinating. He reports muscle aches, muscle weakness, arthralgias/joint pain, and back pain but reports no swelling in the extremities; See HPI. He reports no rashes; See HPI. He reports weakness, numbness, and frequent or severe headaches but reports no loss of consciousness; See HPI. He reports depression and sleep disturbances. He reports no fever. He reports no vision change. He reports no nose/sinus problems. He reports no sore throat. He reports no chest pain. He reports no cough and no wheezing. He reports normal appetite. He reports no fatigue. He reports no runny nose and no sinus pressure.

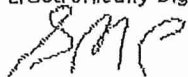
Vitals

Ht:	5 ft 5 in Stated 05/14/2021 11:46 am	Wt:	Not Performed - Patient refused 05/14/2021 11:46 am	BP:	118/72 sitting 05/14/2021 11:51 am
Pulse:	88 bpm regular 05/14/2021 11:51 am				

Patient Medical History:

Allergies List	Reviewed Allergies NKDA
Medications	No medications reported
Family History	Reviewed Family History Father - Malignant neoplastic disease
Past Medical History	Reviewed Past Medical History Insomnia: Y
Vaccine History	None recorded

Electronically Signed by: SHAILESH M. PATEL, MD



Page 1

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

JERONIMO HERNANDEZ JIMENEZ,
Employee,

vs. WCC NO. 2012178
MEDRANO TREE SERVICES, LLC,
Employer,

and

SC WORKERS' COMPENSATION
UNINSURED EMPLOYERS' FUND,
Insurer.

DEPOSITION OF: JORGE H. RAMIREZ
DATE: April 1, 2021
TIME: 10:17 AM
LOCATION: Hoffman Law Firm, LLC
7087 Rivers Avenue
North Charleston, SC
TAKEN BY: Counsel for the Employee
REPORTED BY: Priscilla Nay,
Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEYS FOR EMPLOYEE:

HOFFMAN LAW FIRM, LLC

BY: MATTHEW COOK

7087 Rivers Avenue

North Charleston, SC 29406

(843) 769-7077

matt@hoffmanlawfirm.com

ATTORNEYS FOR EMPLOYER and INSURER:

HOLDER PADGETT LITTLEJOHN

+ PRICKETT, LLC

BY: TIMOTHY B. KILLEN

945 Houston Northcutt Blvd.

Mt. Pleasant, SC 29464

(843) 277-0826

tkillen@hplplaw.com

ALSO PRESENT:

Jeronimo Hernandez Jimenez

Rolando Madreno Torrez

(INDEX AT REAR OF TRANSCRIPT)

1 LUNA GAINER

2 being first duly sworn, interpreted the proceedings
3 from English to Spanish and Spanish to English as
4 follows:

5 JORGE HERNANDEZ RAMIREZ

6 being first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. COOK:

9 Q. Good morning again, Mr. Hernandez.
10 My name is Matt Cook. I represent Jeronimo
11 Hernandez Jimenez, the claimant in this workers'
12 compensation claim.

13 You 'have been subpoenaed here today to
14 give your deposition which is a formal legal
15 process where we ask you questions and then you
16 have to provide answers. The nice lady seated at
17 the head of the table is our court reporter. She
18 is going to literally take down word for word what
19 everybody says here today.

20 She will make what's known as a
21 court transcript. It's really just a book of our
22 conversation here today. In order for our court
23 reporter's job to be a little bit easier I need you
24 to do a few things.

25 First, please let me get my question

Page 4

1 all the way out. Then let our translator fully
2 translate it before you answer. Obviously I'll be
3 asking my questions today in English. Then they
4 will be translated into Spanish. For consistency's
5 sake I would ask that you reply my in Spanish and
6 allow our translator to translate it into English.

7 Please provide audible responses.

8 We're not allowed for our purposes today to say
9 things like uh-huh, huh-uh or nod or shake our
10 head. That can create some ambiguity. So
11 I need a yes where appropriate or a no where
12 appropriate.

13 If you don't understand a question,
14 please ask me to rephrase it. If you don't hear a
15 question, please just ask me to repeat it. I don't
16 anticipate us to be here that long today, but if we
17 need to take a break for any reason just let us
18 know and we can take a break.

19 We cannot talk about the case while
20 we're on break unless we just go off the record
21 for a point of clarification in front of all the
22 other parties here. You have been sworn in today.
23 Your testimony is under oath. So obviously you
24 have to testify truthfully.

25 You are here today under subpoena as

1 a witness in this case. Be that as it may, I am
2 going to advise you of your right to have an
3 attorney present here today if you would so desire.
4 Otherwise we can go forward without an attorney.
5 To clarify, I represent Jeronimo Hernandez Jimenez.
6 I am not your attorney.

7 A. Okay.

8 Q. I cannot and will not be providing you
9 with legal counsel.

10 A. Okay.

11 Q. Do you wish to have an attorney present
12 here with you today?

13 A. No.

14 Q. At the end of the deposition you
15 will have the right to read and sign your
16 deposition transcript. In other words, in the
17 coming week or so our court reporter will have a
18 transcript ready. If you wanted to, that could be
19 sent to you.

20 You could read it, but you can't
21 change anything. You could initial anything that
22 you thought was taken down incorrectly or you can
23 waive that right. Doctors, engineers or experts
24 are usually inclined to read and sign. For most
25 people in general -- I think lay witnesses for the

1 most part waive that right.

2 A. Okay.

3 Q. Would you want to read and sign your
4 deposition transcript or would you want to waive
5 that right?

6 A. I waive the right.

7 (The witness, after having been advised
8 of his right to read and sign this transcript,
9 waives that right.)

10 BY MR. COOK:

11 Q. Are you ready to begin?

12 A. Yes.

13 Q. Have you taken any prescription
14 medications or are you under the influence of any
15 drugs or alcohol before we get started?

16 A. No.

17 Q. What is your full name for the record?

18 A. Jorge Hernandez Ramirez.

19 Q. What is your physical address?

20 A. 3869 Viola Court, Johns Island, South
21 Carolina 29455.

22 Q. Do you also receive mail at that
23 aforementioned address?

24 A. Yes.

25 Q. Have you ever been arrested or

1 convicted of a crime?

2 A. No.

3 Q. Do you work?

4 A. Yes.

5 Q. Where do you work?

6 A. In my own company.

7 Q. What is the name of your company?

8 A. Nice Landscaping of Charleston, LLC.

9 Q. You heard me say earlier that I
10 represent Jeronimo Hernandez Jimenez, the gentleman
11 seated to my right and your left. Who is this
12 individual as he relates to you?

13 A. He's my cousin.

14 Q. We have that Mr. Hernandez was injured
15 on or about June 30th of 2020. Was Mr. Hernandez
16 working for you on June 30th, 2020?

17 A. When I saw him?

18 Q. We have down that the accident occurred
19 on June 30th, 2020.

20 A. No.

21 Q. To the best of your recollection was
22 your company, Nice Landscaping, working on
23 Sullivan's Island on June 30th, 2020?

24 A. No.

25 Q. There's another gentleman present here

1 today, Mr. Rolando Medrano Torrez. He is seated to
2 your right. Who is this individual to the best of
3 your knowledge?

4 A. The person that employs my cousin.

5 Q. And do you understand that Mr. Medrano
6 at one point owned and operated Medrano Tree
7 Service, LLC?

8 A. Yes.

9 Q. Have you ever worked for Medrano Tree
10 Service, LLC?

11 A. No.

12 Q. And I believe you testified to us just
13 a few minutes ago that it is your understanding
14 that Mr. Hernandez was working for Medrano Tree
15 Service, LLC on the day of this accident on June
16 30th, 2020?

17 A. Yes.

18 Q. All right. Following Mr. Hernandez'
19 June 30, 2020 accident did you have an opportunity
20 to have any discussions with Mr. Medrano?

21 A. Yes.

22 Q. In these discussions did Mr. Medrano
23 represent to you that he had workers' compensation
24 insurance?

25 A. Yes.

1 Q. Did Mr. Medrano represent to you that
2 he filed a workers' compensation claim on behalf of
3 Mr. Hernandez?

4 A. Yes.

5 Q. Did Mr. Medrano later represent to
6 you that his workers' comp insurance policy
7 had a low coverage amount?

8 A. Yes.

9 Q. Did Mr. Medrano express doubts on
10 whether or not his coverage would be sufficient
11 to cover the extent of Mr. Hernandez' injuries?

12 A. Yes.

13 Q. Later did Mr. Medrano cite that because
14 Mr. Hernandez didn't have a Social Security number
15 he could not file the claim?

16 A. Yes.

17 Q. Ultimately did Mr. Medrano admit to you
18 that he did not carry workers' comp coverage at the
19 time of the accident?

20 A. Correct.

21 Q. So, in other words, these prior
22 statements about having workers' comp insurance,
23 having a low coverage amount, the Social Security
24 number or the lack thereof, all of these statements
25 were not true?

1 MR. KILLEN: Object to the form of
2 the question.

3 THE WITNESS: Yes. That was true.

4 MR. COOK: Sorry. I need to clarify
5 based on that response. Off the record.

6 (Off-the-record conference.)

7 MR. COOK: We can go back on the
8 record. I just had a brief conference with counsel
9 noting his objection off the record, but I'm going
10 to just proceed as is.

11 BY MR. COOK:

12 Q. At some point did Mr. Medrano suggest
13 a new solution to Mr. Hernandez' problem?

14 A. Yes.

15 Q. What was his solution?

16 A. He said that I should say that my
17 cousin was working for me in the past, that my
18 cousin was working for me and that he was working
19 for me when the accident occurred.

20 Q. Was your cousin working for you when
21 the accident occurred?

22 A. At the time of the accident, no.

23 Q. So to say such a thing, would this have
24 been a lie?

25 MR. KILLEN: Object to the form of the

1 question.

2 THE WITNESS: Yes.

3 BY MR. COOK:

4 Q. Is it your understanding based on this
5 proposal that Mr. Medrano was essentially asking
6 you to engage in insurance fraud?

7 A. Yes. It's true.

8 Q. What did you do in response to
9 Mr. Medrano's request? Did you comply with his
10 request?

11 A. No. I told him that I loved my cousin
12 very much, but that I could not do that.

13 Q. And why could you not do that?

14 A. Because mainly it's fraud and I don't
15 want to be in trouble.

16 MR. COOK: Thank you. I have no
17 further questions. Please answer additional
18 questions either gentlemen may have.

19 EXAMINATION

20 BY MR. KILLEN:

21 Q. Good morning. My name is Tim Killen
22 and I represent the South Carolina Workers'
23 Compensation Uninsured Employer's Fund. What
24 is the name of your company?

25 A. Nice Landscaping of Charleston, LLC.

1 Q. And what kind of work do you do?

2 A. Landscaping.

3 Q. Do you ever do work on Sullivan's
4 Island?

5 A. Yes.

6 Q. Is the business run out of your home?

7 A. Yes.

8 Q. When did you form this business?

9 A. I don't remember exactly. I think
10 about five years ago maybe.

11 Q. Did you have an attorney or an
12 accountant help you form the LLC?

13 A. A tax preparer helped me to form it.

14 Q. Who did that?

15 A. I think her name is Karina Alvarez.

16 Q. And where does she work?

17 A. I think it's in Goose Creek. I think
18 it's Moore Taxes or something like that. It is in
19 Goose Creek.

20 Q. Moore's Tax Service?

21 A. Yes. It's on the main road, like 52 I
22 think.

23 Q. Is it Goose Creek Boulevard?

24 A. Yes.

25 Q. Do they continue to help you with your

1 taxes?

2 A. Just the next year after I formed the
3 company.

4 Q. Does your company file tax returns?

5 A. They're preparing it now, yes.

6 Q. Okay. Over the last five years has
7 your company filed a tax return each year?

8 A. No. I'm preparing it now, in the end,
9 because Ms. Karina -- in the year that she helped
10 me form the company she committed a mistake. So
11 now I'm working with her in fixing that mistake.

12 In terms of South Carolina I am up to
13 date, but in the federal I am still resolving the
14 mistake that Ms. Karina made.

15 Q. So you owe a balance to the Internal
16 Revenue Service?

17 A. I have already given them a good down
18 payment.

19 Q. So you owe a balance still to the IRS.
20 Is that right?

21 A. Yes, exactly. Yes, until the problem
22 is solved that Ms. Karina has created.

23 Q. So your tax returns for 2020 are due
24 this month. Are they still working on those?

25 A. Yes.

1 Q. Okay. Did you file federal and state
2 tax returns still for the year 2019?

3 A. Yes.

4 Q. Did you file federal and state tax
5 returns for the year 2018?

6 A. I'm doing like three years together,
7 but yes.

8 Q. Why didn't you file your tax returns
9 for those three years?

10 A. Because I didn't want to -- well, since
11 that error was made by Ms. Karina I waited like a
12 year for my tax to come. Since it wasn't coming I
13 had to find another tax preparer to help.

14 Q. Okay. So who is the other tax
15 preparer?

16 A. I think his name is Brian Multi Service
17 (sic).

18 Q. All right. How many employees does
19 your company have now?

20 A. At this point seven.

21 Q. And do you have workers' compensation
22 insurance for your company?

23 A. Yes.

24 Q. Do you pay your employees by check,
25 cash or some other method?

1 A. Check.

2 Q. Do you always pay all of your employees
3 by check?

4 A. Yes.

5 Q. Okay. Where does your company bank?

6 A. Bank of America.

7 Q. In what name is the Bank of America
8 account?

9 A. Nice Landscaping of Charleston.

10 Q. And what kind of accounts do you have
11 at Bank of America for Nice Landscaping of
12 Charleston?

13 A. The normal ones. A checking account,
14 a savings account and a credit card.

15 Q. And do you have any personal bank
16 accounts?

17 A. Yes.

18 Q. Where are those held?

19 A. Also at Bank of America.

20 Q. Are there any other members of Nice
21 Landscaping of Charleston, LLC?

22 A. No. Do you mean like they are
23 associates of mine? Is that what you mean?

24 Q. Any other owners of the LLC.

25 A. No.

1 Q. What is your e-mail address?

2 A. Jorge1203hernandez@Gmail.com.

3 Q. What is your phone number?

4 A. (843)489-5882.

5 Q. Is that a cell phone?

6 A. Yes.

7 Q. Who is your cell phone service
8 provider?

9 A. AT&T.

10 MR. KILLEN: Madam Court Reporter,
11 please redact all but the last four.

12 BY MR. KILLEN:

13 Q. What is your Social Security number?

14 A. I don't have one.

15 Q. Do you have a green card?

16 A. No.

17 Q. How long have you been in the United
18 States?

19 A. More or less 15 years.

20 Q. Are you a citizen?

21 A. No.

22 Q. Do you pay payroll taxes on what you
23 pay your employees?

24 A. Yes. With the new accountant that I
25 have, yes.

1 Q. How long have you been paying payroll
2 taxes on your employees?

3 A. More or less two years.

4 Q. Before two years ago did you just
5 pay -- you didn't pay any payroll taxes. Is that
6 correct?

7 A. Always -- well, no. I always pay with
8 check, but I didn't have anyone that could help me
9 with that.

10 Q. Have you attempted to make up the
11 payroll taxes that were unpaid?

12 A. What are you referring to?

13 Q. All the payroll taxes that you didn't
14 pay for the approximately three years, have you
15 attempted to make up those payments?

16 A. Yes. Yes. I'm in the process of
17 fixing the problem that Ms. Karina created. The
18 new accountant that I have is helping me with that.

19 Q. What is your debt? Is that personal?
20 Is it company? Is it income tax? Is it payroll
21 tax? What is the debt to the IRS?

22 A. It's the company.

23 Q. Okay. LLCs can be taxed like sole
24 proprietors, partnerships or corporations. Which
25 way is your LLC taxed?

1 A. From what I remember it's sole
2 proprietor.

3 Q. When people hire your company do they
4 pay you by check, cash or some other method?

5 A. Check.

6 Q. Okay. And how do they make out the
7 checks?

8 A. Nice Landscaping.

9 Q. And do you always deposit your checks
10 into your Bank of America account for Nice
11 Landscaping?

12 A. Yes.

13 Q. When you applied for your most recent
14 workers' compensation policy did you report all of
15 your employees to the insurance company?

16 A. Yes. In the last two years -- in the
17 last year I have had more workers. Some have gone
18 and some have come.

19 Q. Did you report -- have you even been
20 audited by any of your workers' compensation
21 carriers?

22 A. Audits? I don't think so because the
23 new accountant is becoming in charge of that.

24 Q. Have you accurately reported your
25 payroll to your workers' compensation carriers each

1 year you have had workers' compensation coverage?

2 A. Yes. As I said, this new accountant I
3 had for about a year. I report everything to him
4 and he reports it.

5 Q. Has your cousin, the claimant, ever
6 worked for your company?

7 A. Yes, for a while.

8 Q. When?

9 A. The last time was about two years ago,
10 I think. I don't remember exactly.

11 Q. What do you mean by the last time?

12 A. That he stopped working for me.

13 Q. Okay. And how long did he work for
14 you?

15 A. More or less 10 months. One year.

16 Q. Did you have any discussions with
17 Mr. Cook about your testimony here today?

18 A. Yes, when I came for the case. We have
19 been talking about the case.

20 Q. What do you mean when you came for the
21 case?

22 A. I am helping my cousin because my
23 cousin doesn't have a phone. So I'm the one that
24 communicates with the secretary and things like
25 that.

1 Q. Okay. So you're basically handling
2 your cousin's case with the lawyers for him. Is
3 that right?

4 A. No. I only pass on the messages.

5 Q. Okay. So what did you and Mr. Cook
6 last discuss?

7 A. About this. I mean, that this had to
8 be -- I mean, how do I say it? About this, that we
9 were going to have this meeting.

10 Q. Okay. Did you discuss what you were
11 going to say?

12 A. Yes.

13 Q. Okay. Did you tell him that you were
14 going to say all that stuff that Mr. Torrez is
15 talking about with his workers' compensation
16 insurance?

17 A. Can you repeat it, please.

18 Q. Did you tell him that you were -- about
19 Mr. Torrez supposedly telling you that he had
20 workers' compensation insurance?

21 A. Yes. I told him that.

22 Q. How many times did you speak to
23 Mr. Torrez?

24 A. Two or three times. Like one, two or
25 three weeks before the accident. Interpreter

1 corrects herself. After the accident.

2 Q. By Mr. Torrez I'm referring to
3 Mr. Medrano as well. Is it possible that
4 Mr. Medrano or Mr. Torrez was mistaken?

5 A. What do you mean by that?

6 MR. COOK: Object to the form. You may
7 answer.

8 BY MR. KILLEN:

9 Q. Mr. Cook was asking you whether or
10 not he lied. Is it possible he was mistaken?

11 A. Oh, no.

12 Q. How is that not possible?

13 A. Can I explain the entire process about
14 what I have been talking with Mr. Medrano about?

15 Q. How is that not possible?

16 A. What? That it wasn't a lie? Because
17 if you don't allow me to explain to you then you're
18 not going to understand me.

19 Q. Well, just tell me how it's not
20 possible that he wasn't mistaken.

21 A. Because how is it possible that
22 somebody who has an insurance that person doesn't
23 want to report the case to his insurance?

24 Q. Okay. Just tell me whatever you want
25 to tell me about this situation with you and

1 Mr. Medrano.

2 A. Do you want me to tell you what I spoke
3 with him about or what do you mean?

4 Q. You said you wanted to tell me about
5 this situation. Go ahead. Tell me about the
6 situation.

7 A. First, Mr. Medrano would say that he
8 had insurance but that he did not want to report
9 it. He said that he was going to be in charge of
10 the expenses of the hospital but that he was not
11 going to report the case to the insurance.

12 Q. Have you been providing financial
13 support for your cousin, the Claimant?

14 A. Yes. He lives with me.

15 Q. Where does he bank?

16 A. He doesn't have a bank.

17 Q. If he receives money from this case are
18 you going to get repaid what you've paid for him?

19 A. We have not talked about this even and
20 I'm not thinking about doing this if he offers it.

21 Q. So you do not stand to gain financially
22 at all if he recovers money. Is that right?

23 A. No. I'm helping him because he is in a
24 very big problem.

25 Q. Okay. What are you going to do if he

1 is awarded benefits and if he gets -- well, if he
2 is awarded benefits are you going to continue to
3 help him?

4 A. Yes, as much as I can.

5 Q. Financially?

6 A. If he doesn't have money then I would
7 continue helping him as I have been doing it.

8 Q. If he does have money are you going to
9 continue helping him financially?

10 A. Well, no because he would have money.

11 Q. Is he paying you rent?

12 A. No.

13 Q. Is he paying for the groceries?

14 A. Unfortunately, at this point he has not
15 even a cent for himself.

16 Q. Have you kept track of the expenses you
17 have incurred as a result of taking care of him?

18 A. No.

19 MR. KILLEN: That's all the questions I
20 have. Thank you for your time.

21 MR. COOK: No further questions. That
22 will conclude your deposition.

23 (The deposition was concluded at 10:59
24 AM.)
25

CERTIFICATE OF REPORTER

I, Priscilla Nay, Court Reporter and
Notary Public for the State of South Carolina, do
hereby certify that the foregoing transcript is a
true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 5th day of April,
2022 at Charleston, Charleston County, South
Carolina.



Priscilla Nay

Priscilla Nay,
Court Reporter
My Commission expires
December 10, 2031

STATE OF SOUTH CAROLINA) **BEFORE THE SOUTH CAROLINA**
) **WORKERS' COMPENSATION**
) **COMMISSION**
)
Jeronimo Hernandez Jimenez,)
) **SETTLEMENT AGREEMENT**
Employee,) **AND RELEASE**
)
Claimant,) W.C.C. FILE NO.: 2012178
)
-VS-)
)
Medrano Tree Services, LLC and)
Rolando Medrano Torrez,)
)
Employers,)
)
and S.C. Workers' Compensation)
Uninsured Employers' Fund,)
)
Defendants.)

RECEIVED
APR 10 2023
Division of Claims
SC Workers' Comp. Comm.

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Jeronimo Hernandez Jimenez. The Claimant is represented by Matthew R. Cook, Esquire of Hoffman Law Firm, the Employers, Medrano Tree Services, LLC, and Rolando Medrano Torrez are unrepresented, and the S.C. Workers' Compensation Uninsured Employers' Fund is represented by Timothy B. Killen, Esquire of Holder, Padgett, Littlejohn, & Prickett, LLC. The South Carolina Workers' Compensation Commission has authority to receive this settlement agreement.

The Claimant alleges that on or about June 30, 2020, he sustained an injury by accident arising out of and in the course of said employment when he injured back, right leg, left leg, back, head, right arm, left arm, right shoulder, and left shoulder. As a result of this accident, the Claimant sought and received medical treatment from medical providers. Defendants **DENIED** the claim and continue to contest compensability.

The parties hereto now advise that in their opinion the matter is in *bona fide* dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety on a **doubtful and disputed** full and final basis, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement the Defendants have agreed to pay and the Claimant has agreed to accept the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said injury by accident occurring on or

about June 30, 2020, while the Claimant was an employee or alleged employee of Medrano Tree Services, LLC and/or Rolando Medrano Torrez. As an integral part of this settlement agreement, and as approved by this Commission, **Defendants deny payment of any and all medical expenses of whatsoever nature or kind, including past, present, and future medical**, and it shall be the express liability of the Claimant, and the Defendants shall have no liability whatsoever. Again, the settlement of the claim is on **a doubtful and disputed basis** with no portion of the settlement being paid for past, present, or future medical. The resolution of this claim is to resolve the allegations and is not an admission of liability or compensability.

The Defendants contend that the employers were not subject the South Carolina Workers' Compensation Act citing that the employers are exempt from the Act having regularly employed less than four individuals and thereby is not subject to the Act per Section 42-1-360. The Defendants deny the SC Workers' Compensation Act has jurisdiction based on the lack of four regularly employed employees within the State.

The Defendants maintain that the relevant time period for determining whether an employer had consistently employed at least four (4) employees so as to be subject to the Workers' Compensation Act, should be identified by considering (1) the employer's mode of operation, (2) whether the employer generally employees the jurisdictional number at any time during his operation; and (3) the period during which employment is definite and recurrent rather than occasional, sporadic, or indefinite pursuant to Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (S.C. App. 2007). The Defendants dispute the Claimant's assertion that there were four or more regularly

employed individuals. These disputes, as well as any and all other disputes, are resolved herein as part of settlement.

The Claimant asserts he is entitled to a lifetime award, which Defendants deny. The Claimant has not submitted to an exam with a medical provider chosen by the Defendants. The extent of the injury is disputed. The Defendants assert the Claimant is young, employable, and cannot otherwise prove he is permanently and totally disabled as a result of the alleged accident and even if compensable, the Defendants assert the Claimant would only be eligible for a scheduled award or at best commuted 500-week award, and would not receive a lifetime award should the claim be adjudicated compensable upon exhausting all appeals.

Compensability arguments aside, the Claimant asserts that the compensation rate should be increased to each year to reflect the maximum rate for the year in which the Claimant is receiving benefits. The Claimant relies on the Act, specifically section 42-1-40 and Regulation 67-1603, along with SC case law including the cases of Stokes v. First Nat'l Bank, 306 S.C. 46 (1991), Sellers v. Pinedale Residential Center, 350 SC 183 (S.C. App. 2002), Booth v. Midland Train Heating and Air Conditioning, 290 S. C. 251 (Ct. App. 1989), McCummings v. Anderson Theatre Co., 225 S. C. 187 (1954), Brunson v. Walmart Stores Inc., 344 S. C. 107 (Ct. App. 2001), Elliott v. South Carolina Department of Transp., 607S. E.2d 90(Ct. App. 2004),) Forrest v. A.S. Price Mechanical, 373 S.C. 303 (Ct. App. 2007) and Brown v. Peoplease Corp. 402 S.C. 476 (S.C. App. 2013) which Claimant alleges allows for an increase in the AWW/CR. Further, Claimant asserts the principles of equity and fundamental fairness apply to the Claimant's

argument. The Defendants deny and dispute the Claimant's assertion as to the average weekly wage and compensation rate. The average weekly wage and compensation rate are in dispute and any and all disputes as to the Claimant's legal argument/theory regarding the compensation rate are resolved herein as part of this doubtful and disputed settlement.

The Claimant disputes the dollar amount as to the lifetime value calculation, disputes commutation of same, and the Defendants disagree with the Claimant's assertions. The disputes as to the dollar amount as to the lifetime value calculation and any and all disputes as to the Claimant's legal argument/theory regarding the lifetime value calculation are resolved herein as part of this doubtful and disputed settlement.

The Claimant disputes life expectancy calculations as set forth Section 19-1-150. The disputes as to life expectancy calculations and any and all disputes as to the Claimant's legal argument/theory regarding life expectancy calculations are resolved herein as part of this doubtful and disputed settlement.

As previously recited, the settlement of this claim is on a **doubtful disputed basis** without any admission by the Defendants of compensability or liability as the claim has been denied from its inception and remains denied through this settlement. The payment of this settlement resolves any and all allegations asserted by the Claimant, but again does not constitute acceptance of the claim nor an admission of liability or compensability. Absolutely no portion of this One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) settlement agreement represents payment of past, present, or future medical treatment.

The claimant hereby requests this Commission to approve the allocation of the proposed settlement follows:

Pursuant to Utica-Mohawk v. Orr, 227 S. C. 226, 87 S. E.2d 589 (1955), the total settlement proceeds shall be allocated as follows:

The parties further stipulate that the aggregate settlement proceeds, which amount to One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00), shall be allocated in the following fashion:

1. The sum of \$500,000.00 as attorney fees pursuant to Commission Regulation 67-1205(C), and the agreement between the Claimant and this attorney;
2. The sum of \$13,666.89 to this attorney as reimbursement for litigation costs pursuant to Commission Regulation 67-1206;
3. The sum of \$986,333.11 as compromise settlement for disputed permanent disability at the rate of \$413.245 per week commencing on the date of the SCWCC's approval of this agreement for a period of 2386.8 weeks thereafter, representing the Claimant's life expectancy of 45.90 years, pursuant to the provisions of S.C. Code Ann. Section 19-1-

150 (1976) and the decisions of the South Carolina Supreme Court in *Utica-Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in *Sciarotta v. Bowen*, 837 F.2d 135 (3rd Cir. 1988).

It is expressly understood that Defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of Defendants.

This settlement resolves only the Workers' Compensation Claim and no additional claims, suits, actions, or allegations other than the Workers' Compensation claims of July 30, 2020 (WCC# 2012178) are hereby resolved. The parties stipulate that the resolution of the Workers' Compensation Claim does not in any way prohibit, restrict, bar, or otherwise infringe upon the Claimant's right to pursue other causes of action outside of the Workers' Compensation claim against third party defendants. Nothing in this agreement shall be construed against the Claimant to bring any additional claims, suits, causes of action, etc. The Uninsured Employers' Fund does not waive its lien against any proceeds on any third-party case, if so entitled.

Any and all details of this settlement, including but not limited to the existence, nature, terms, conditions, and settlement amount, are to be kept strictly confidential and shall not be disclosed or released in any manner or form, directly, or indirectly, to any person or entity under any circumstances to any third party whatsoever except as required by law.

NOW, THEREFORE, IT IS SETTLED AND AGREED that upon the payment of the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) by Defendants, and the acceptance of said sum by Claimant, Defendants are fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged work accident occurring so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions. The Claimant enters into this Agreement and Final Release of sound mind and body, freely, and voluntarily, without undue influence, coercion, or duress of any kind.

The Claimant hereby asserts that he has been fully advised by his attorney of record of all rights under the South Carolina Workers' Compensation Act, and that the Claimant is of the opinion that the proposed settlement is reasonable and the Claimant's attorney asserts that he has fully advised the Claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. The Claimant hereby asserts that he recognizes that his consent to, and the approval of, this Settlement Agreement and Release is a final settlement of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about June 30, 2020, while the Claimant was an employee of Employer.

The Claimant hereby affirms that he has not applied for and is not receiving Social Security disability, is not on Medicare, is not enrolled in Medicare Advantage, and is not aware of any Medicare liens. The parties have taken into consideration Medicare's potential interest in the resolution of this claim and believe Medicare has no interest.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for the claimant that the Claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the employee's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, employee, employer, and carrier and/or servicing agent agree that this settlement agreement cannot be voided in the future on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

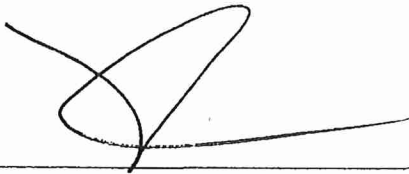
Any payment made or benefit provided by the South Carolina Workers' Compensation Uninsured Employers' Fund is made with all rights of indemnification and reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the South Carolina Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. Section 42-7-200 or otherwise.

NOW, THEREFORE, IT IS ORDERED that upon the payment of the sum of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) by the Defendants, and the acceptance of said sum by the Claimant, the Defendants be, and they hereby are, fully and forever discharged of all liability of whatsoever nature and kind, under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the alleged injury by accident occurring on or about June 30, 2020, or any other date, while the Claimant was an employee of Employer, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, *res judicata* and not subject to review under any conditions. This settlement agreement, including the approval of attorney's fees and costs as recited herein, shall serve as a Final Order of the South Carolina Workers' Compensation Commission and constitutes a final judgment and shall not be subject to review or appeal. The Commission has the power to approve a Clincher and make it final and binding and not subject to review by the courts under any conditions. Atkins v. Charleston Shipbuilding & Drydock, 206 S.C. 63, 68, 33 S.E.2d 46, 48 (1945); Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960). Spivey v. Carolina Crawler, 367 S.C. 154, 624 S.E.2d. 435 (S.C. Court App. 2005).

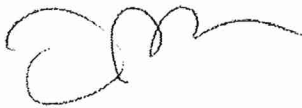
WE CONSENT TO THE FOREGOING ORDER:



Jeronimo Hernandez Jimenez, Claimant



Matthew R. Cook, Esquire
Attorney for Claimant



Timothy Killen, Esquire
S.C. WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NITH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2023-CP-10-02263
	)	
Jeronimo Hernandez Jimenez,	)	
	)	
Plaintiff,	)	DEFENDANT'S REPLY BRIEF IN
	)	SUPPORT OF MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
Rolando Medrano,	)	
	)	
Defendant.	)	

NOW COMES Defendant, Rolando Medrano Torrez, in the above captioned matter, by and through his counsel, replying to Plaintiff's Response Brief in Opposition to Defendant's Motion for Summary Judgment as follows:

I) Plaintiff's Claims are Clearly Barred by Statute

The relevant language of the South Carolina Workers Compensation Act is broad and clear. Once the commission entered its Order Approving the Plaintiff's Settlement under the Act, courts have no jurisdiction to challenge or alter it. The parties are bound by its terms. In this case, there is no dispute the Plaintiff voluntarily chose, with advice of counsel, to file a workers compensation claim against Defendant Medrano for the injuries he sustained on the job when he fell out of the tree while working on the job site. During the workers' compensation case, Plaintiff found out that Defendant Medrano did not have a valid workers' compensation insurance policy in place at the time of Plaintiff's fall. As a result, he and his counsel had two options under the Workers' Compensation Act. He could continue with the Workers' Compensation case and the settlement or reward would be paid by the Uninsured Employer's Fund (which would then subrogate against the employer Medrano) **or** he could pursue his employer Medrano in tort. The statute is clear, he

could not do both. *Harrell*, 337 S.C. at 327, 523 S.E.2d at 773 (citing S.C. Code Ann. § 42-5-40 (1985)), *emphasis added*. Defendant Medrano’s penalty for not having the workers’ compensation insurance in place, per the Act, is that he shall be liable to the employee “**either** for compensation under the Act (via subrogation by the uninsured employer’s fund) **or** at law in an action instituted by the employee”. See S.C. Code §42-5-40, *emphasis added*.

Plaintiff and his counsel chose not to sue Defendant Medrano in tort, but rather proceed with the Workers’ Compensation Claim. As a result of that choice, the employer, defendant Medrano, became shrouded with immunity from any actions at law instituted by the employee for the injury under the “exclusive remedy provision” of the Act. When an employee and his employer accept the provisions of the Act, the employee’s remedies under the Act exclude all other rights and remedies of the employee.” *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 325-26, 523 S.E.2d 766, 772 (1999) (citing S.C. Code Ann. § 42-1-540 (1985)). Notice the statute does not predicate the applicability of the exclusivity provision on whether the employer pays the award through insurance or whether the award is paid under the Uninsured Employers Fund for the exclusivity provision to kick in. The only requirement is that the parties agree to proceed under the provisions of the Act. Once the parties do so, all other rights and remedies of the employee against his employer are excluded. This would include all acts and omissions, including but not limited to: grossly negligent orders given by an employer to employees on the job site; grossly negligent assistance provided to the employee by the employer/fellow employees at the job site; or transportation from the job site in a work vehicle specifically used by the employer to transport employees to and from the job site.

Plaintiff has not identified any provision in the Act that would support his argument that there is a carve out for claims against the employer for providing assistance to the employee at the job

site. To the contrary, the Act specifically provides immunity for the employer for “all other rights and remedies” of the employee. More importantly, the Act states that negligent rendering aid would be incorporated into the workers’ compensation claim. This is specifically addressed at S.C. Code § 42-15-70, entitled: Liability of the Employer for Medical Treatment and Effect of Malpractice. This section of the Act states that the consequences of any such treatment by the employer shall be deemed part of the injury resulting from the accident and shall be compensated under the Act as such.

II) Plaintiff’s Claims are Barred by Release

The Plaintiff, with advice of counsel, entered into a “Settlement Agreement and Release” at the conclusion of the Worker’s Compensation Claim he filed against his employer Medrano. It was approved by the South Carolina Industrial Commission and is binding on this court. The Release, like most releases, is broad in scope. It specifically covers Plaintiff’s injuries to his “back, right leg, left leg, head, right arm, left arm, right shoulder and left shoulder”. See Ex. C to Defendant’s Original Motion, p. 2. The release states that as a result of the injury he received medical treatment from medical providers. *Id.* The settlement amount specifically covers “every liability of whatsoever nature or kind under the South Carolina Workers’ Compensation Act **growing out of, or in any way connected with, said injury** by accident occurring on or about June 30, 2020, while the Claimant was an employee or alleged employee of Medrano Tree Services, LLC and/or Rolando Medrano Torrez”. *Id.*, p. 2-3 (*emphasis added*). The Release isn’t just releasing the employer from Workers’ Compensation Claim, but any claim growing out of or in any way connected with the injury.

Plaintiff asserts in the Release that he is entitled to a lifetime award for permanent and total disability. *Id.*, p. 4. Plaintiff submitted lifetime value calculations and life expectancy calculations

as a part of the claim for permanent disability in the workers' compensation case. *Id.*, p. 5. The release goes on to state that the settlement payment resolves all allegations asserted by the Claimant, which would obviously include the claims of permanent and total disability asserted in the Release. *Id.*, p. 5. The Plaintiff and Defendant stipulated, in the Release, that a sum of \$986,333.11 was settlement of the "disputed permanent disability"; "representing a life expectancy of 45.90 years". *Id.*, p. 6.

Plaintiff and employer agree, in the Release, that the settlement agreement cannot be voided in the future on the basis that either or both parties relied on statements or opinions from physicians or other medical providers in entering this agreement. This would include the Independent Medical Exam of Plaintiff by Dr. Patel attached to Plaintiff's Brief in Opposition. Plaintiff used this I.M.E. as a part of his claim for permanent disability in his workers' compensation case. The opinions of Dr. Patel included in that report were certainly known to the Plaintiff and his counsel at the time he executed and clinched the workers' compensation claim he brought against Defendant Medrano.

Finally, the Settlement Agreement and Release clearly states it constitutes a final Judgment and Order of the South Carolina Industrial Commission and "not subject to review by the courts under any conditions". *Id.*, p. 10

III) The "Dual Persona" Doctrine is not Applicable

The employee-Plaintiff's tort claim against his employer is barred by the plain language of the South Carolina Worker's Compensation Act and the Settlement Agreement and Release he entered in the workers' compensation case, which he brought voluntarily/with the advice of counsel, against Defendant Medrano. The court's inquiry should end there based on factual, procedural, and jurisdictional grounds. However, to the extent the court would entertain Plaintiff's

argument regarding the “dual persona” doctrine, it is completely inapplicable to the established and undisputed facts of this case.

Plaintiff attempts to claim that the current action is brought for “separate acts of negligence not stemming from work or a workplace accident and having no relationship with Defendant’s work or any employment relationship”. See Plaintiff’s Response Brief, p. 5. This argument is made despite: (1) the accident taking place on the job site; (2) the employer allegedly giving instructions to fellow employees, on the job site, to assist Plaintiff-employee; and (3) the employer transporting Plaintiff-employee from the job site in a work vehicle used to regularly transport employees of the employer to and from the job sites.

The Plaintiff argues that these acts could have exacerbated the original injury causing permanent/total disability. Plaintiff makes this argument despite taking the exact opposite position in the workers’ compensation claim he filed which sought an award for permanent and total disability for the **work-related injury**. See Settlement Agreement and Release (Ex. C to original Motion for Summary Judgment, *generally*.) Remarkably, the Plaintiff argues that the transportation of the employee, by the employer, from the job site to the fire station in the work vehicle owned and operated by the employer somehow exacerbated his conditions due to the employer’s grossly negligent maintenance of the vehicle. Plaintiff makes this argument despite testifying, under oath, that it played no factor.

Q: Do you recall during that ride there being issues with the truck that you were in? Car problems?

A: No. As far as I know, the truck was good.

See Ex. D, p. 31, l. 2-96.

Furthermore, Plaintiff testified under oath that his legs “didn’t work” as he was lying on the ground on the job site, prior to him being assisted to the work vehicle by his fellow employees at the instruction of the employer.

Q: Were you experiencing any pain in your legs on that ride?

A: No. I couldn’t feel them.

Q: Okay. And that was the same from the time that you landed on the ground?

A: From the time I fell, I couldn’t feel anything from here down.

See Ex D, p. 22, l. 18-21 and p. 37, l. 20-p. 38, l. 1, *attached hereto*. Plaintiff’s own testimony defeats his argument that the assistance or transportation caused the permanent disability.

The Supreme Court annunciated the dual persona doctrine in *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251 (2013). In so adopting this doctrine, the Court determined that it is “applicable **only where** the second set of obligations that forms the basis of the tort suit is entirely independent of the defendant's obligations as an employer.” *Id.* at 563-64, 738 S.E. 2d at 254, *emphasis added*. If the dual person doctrine is to apply, it must be possible to say that the duty arose *solely* from the *non-employer* persona ... For only in such case can the second persona be really distinct from the employer persona. In other words, it is not enough ... that the second persona impose additional duties. They must be totally separate from and unrelated to those of the employment. *Id.* at 564, 738 S.E.2d at 254. Exceptions to the exclusive remedy “are premised on the notion that the employee is not suing his employer, but rather a separate legal entity that allegedly caused his injury.” *Id.* at 563, 738 S.E.2d 253. The dual persona doctrine is a narrow exception, applicable only where the second set of obligations that forms the basis of the tort suit is entirely independent of the defendant's obligations as an employer. *See Mendenall v. Anderson Hardwood Floors, LLC, citing Larson Workmen’s Compensation Law,*

§ 113.01[4]. The dual persona doctrine will apply only in truly exceptional situations. *Id. See also, e.g., Herbolsheimer v. SMS Holding Co.*, 608 N.W.2d 487, 493 (Mich. Ct. App. 2000) ("These exceptional situations are found only where there is a genuine case of a separate legal personality and the relationship between the cause of action and the plaintiff's employment is no more than incidental.").

Here, the employee-Plaintiff is attempting to sue his employer for an alleged exacerbation of a work-related injury he claims was proximately caused by the assistance he received by fellow employees, ordered by the employer, on the job site, to assist him. The assistance was limited to transporting the employee from the job site to the fire department in the work vehicle, owned and operated by the employer, and regularly used to transport employees, including the Plaintiff, to and from job sites. These are the exact set of facts that would make the "dual persona" doctrine inapplicable. The facts of this case all stem from the work, the work workplace (job site) and employer provided transportation. All alleged acts and omissions were performed by the employer or by fellow employees at the instruction of the employer. All alleged acts and omissions took place on the job site or in the work vehicle. As a result, they are not "entirely independent" from the employer's obligations as an employer. Specifically, employer Medrano undertook the responsibly to transport his employees, including Plaintiff, to and from the work site in the employer's work vehicle. Certainly, getting employees to and from the work site was essential and integral to the employer's business. Additionally, the employer was directing fellow employees to assist an employee that just fell from a tree on the job site.¹ This provides another nexus to the employer-employee relationship. Finally, maintaining/servicing the work vehicles

¹ Again, such assistance given to the plaintiff-employee on the job site is covered under the provision of the South Carolina Workers' Compensation Act, which Plaintiff accepted by settling that claim.

was certainly integral to the employer's business. Without these vehicles, the work could not be performed.

IV) The "Natural Consequence" Doctrine is Applicable

Under the South Carolina Workers' Compensation Act, every natural consequence that flows from a work-related compensable injury is also compensable unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation. *Whitfield v. Daniel Constr. Co.*, 226 S.C. 37, 40–41, 83 S.E.2d 460, 462 (1954); *see also 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law* § 10.01, 10–1 (2010) (stating that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent, intervening cause attributable to the claimant's own intentional conduct). Our courts have clearly held the natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable.... [N]ew injuries resulting indirectly from treatment for the original injury are also compensable. The causal sequence ... may be more indirect or complex, but as long as the causal connection is in fact present, the compensability of the subsequent condition is beyond question. *Mullinax*, 318 S.C. at 436–37, 458 S.E.2d at 79–80 (citations and internal quotation marks omitted).

In the case of *Tims v. J.D. Kitts Const.*, an employee was injured at work and became a quadriplegic. The South Carolina Court of Appeals was asked to determine whether the employee's heatstroke, suffered because of his inability to extricate himself from an overheated car, provided by the employer, was compensable under the Workers' Compensation Act. The Court found it was compensable under the Act based on the "Natural Consequence" Doctrine. *See Tims v. J.D. Kitts Const.*, 393 S.C. 496, 713 S.E.2d 340 (2011). The *Tims* Court also rejected the

employer's argument that the caregiver's negligence was an independent and intervening act that broke the causal chain of the work-related injury. *Id.* The Court held that negligence of orderlies, first aid personnel, physical therapist and even hospital maintenance staff were within the compensable range of consequences of the original work place injury. *Id.* The Court noted that the services of transportation were connected with the process of treating the work-related injury, and thus the negligent delivery of the service by the employer's chosen transportation service was a foreseeable consequence of the work-related condition. *Id. at p. 345.* The Court also noted that injuries due to the negligence of non-physicians connected with the process of treatment or convalescence are within the compensable range of consequences of the original work-related injury. *Id., citing Larson's § 10.09(3).*

V) Conclusion

The clear and unequivocal language contained in the South Carolina Workers' Compensation Act and the Settlement Agreement and Release bar Plaintiff-employee's tort claims against his employer, Medrano. The "dual persona" doctrine is inapplicable as the assistance and transportation provided to the Plaintiff-employee by his fellow employees and employer at the job site were inextricably connected with the Plaintiff's employment. This includes being transported by the employer to and from the job site in the work vehicle owned and operated by the employer. Lastly, any exacerbation of Plaintiff-employee's work-related injury are covered under the Act; both by its plain language and under its interpretation by our appellate courts under the "Natural Consequence" doctrine. Wherefore, Defendant renews his Motion for Summary Judgment as the Plaintiff's claims are barred as a matter of law.

Respectfully submitted,

s/ Payton D. Hoover

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MEDRANO**

January 29, 2025

Mt. Pleasant, South Carolina

EXHIBIT D

(Deposition Transcript Excerpts of Plaintiff Jeronimo Jimenez)

1 They were down below, and they saw me fall.

2 Q. And who were those coworkers?

3 A. Efrain, Dolores, and Fernando.

4 Q. Were there any other coworkers that were
5 there at the job site?

6 A. Yes, Jaime. But he wasn't there at the
7 moment. He was looking for another tool.

8 Q. You just mentioned that Mr. Medrano came
9 after your fall with another employee or another
10 coworker. Who was that?

11 A. Dolores and Fernando.

12 Q. And when Dolores, Fernando, and
13 Mr. Medrano came to you, did they say anything to
14 you or did you say anything to them prior to them
15 trying to pick you up?

16 A. I heard Mr. Medrano say to them, Help me
17 pick him up.

18 Q. Did you attempt to try to get up
19 yourself before Mr. Medrano came over?

20 A. Yes, I did. But my legs just didn't
21 work.

22 Q. Okay. So Mr. Medrano and one of your
23 coworkers lifted you up from under your arms to
24 put you in the truck; is that right?

25 A. Yes. They took me here, and my legs

1 Q. And we talked a little bit about the
2 ride to the fire station. Do you recall during
3 that ride there being issues with the truck that
4 you were in? Car problems?

5 A. No. As far as I know, the truck was
6 good.

7 Q. Okay. And then we also spoke a bit
8 about your medical treatment and some therapy
9 that you received. Have you ever sought
10 treatment or therapy to try to get you to a place
11 where you can work again?

12 MR. FESTER: I'm going to object to
13 the form, but you can go ahead and answer.

14 A. I didn't understand you well.

15 (By Mr. Bendle)

16 Q. Yes, sir. I'm just trying to know if
17 you've received any treatment for the purposes of
18 trying to go out and find a job that you could
19 perhaps perform.

20 A. They told me I can't walk again.

21 Q. And have you received any therapy to try
22 to find work that you could do from a wheelchair?

23 A. The therapy that I get is so that I can
24 get from my chair to somewhere else, to a chair,
25 or to do -- take a shower, and do things like

1 all I have.

2 MR. HOOVER: Do you want me to just
3 kind of relay my questions through him, or are
4 you okay with me just asking a couple?

5 MR. FESTER: No, you can go ahead.
6 I don't care.

7 EXAMINATION

8 BY MR. HOOVER:

9 Q. Okay. On the trip to the fire station,
10 where was the pain located? What part of your
11 body?

12 A. Back here and below --

13 Q. Okay. And you're pointing to your lower
14 back?

15 A. Yes. From here all the way up, the
16 whole thing.

17 Q. All the way up to the lower part of your
18 neck?

19 A. Yes. All of it.

20 Q. Were you experiencing any pain in your
21 legs on that ride?

22 A. No. I couldn't feel them.

23 Q. Okay. And that was the same from the
24 time that you landed on the ground?

25 A. From the time I fell, I couldn't feel

1 anything from here down.

2 Q. Fair enough. Have you done anything to
3 try to look for a job that you could perform in
4 your wheelchair?

5 A. I don't think anybody seeing me like
6 this would give me a job.

7 Q. Are you aware that there are people on
8 this planet that work even though they are in
9 wheelchairs?

10 MR. FESTER: Object to the form.

11 A. I don't have a license to drive. I have
12 no insurance.

13 (By Mr. Hoover)

14 Q. Okay. But you didn't have any of that
15 when you were working for Mr. Medrano, did you?

16 A. Yes. But I had my legs, and I could do
17 things.

18 Q. I guess going back to my original
19 question, have you done anything to see what kind
20 of jobs you would qualify for in your current
21 condition?

22 A. No. I take care of myself the best I
23 can.

24 Q. Have you ever been to see an
25 occupational therapist?

STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
)
 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Jeronimo Hernan Jimenez,)
)
 Plaintiff,) Case No. 2023-CP-10-02263
)
 vs)
)
 Rolando Medrano)
)
 Defendant.

H E A R I N G

BEFORE THE HONORABLE COURTNEY CLYBURN POPE

DATE: March 20, 2025
 LOCATION: South Carolina Circuit Court 9
 TRANSCRIBER: Jessica Antonucci

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On behalf of the Defendant

INDEX

Proceedings.....	4
Certificate of Transcriber.....	22

EXHIBITS

(No Exhibits Were Marked)

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

1 THE COURT: I'm going to start with number 17, which
2 is case number 2023-CP-1002263, Jeronimo Hernandez
3 Jimenez versus Rolando Medrano. This is a personal
4 injury motion for summary judgment submitted by the
5 Defendant. Are the attorneys on the line for this one?

6 MR. HOOVER: Your Honor, Payton Hoover, I'm here on
7 behalf of the defendant Medrano.

8 THE COURT: Very good. Good afternoon, Mr. Hoover.
9 Mr. Hoover, are you aware if the Plaintiff's attorneys
10 will be here to defend against the motion for summary
11 judgment?

12 MR. HOOVER: (Inaudible) and I haven't heard
13 anything from them that they would not be (inaudible).
14 Probably shoot them an email is what (inaudible)
15 something in the meantime to see where they are.

16 THE COURT: Okay, Ms. Valkenburgh, I don't know why
17 my computer is transferring everything to you. I don't
18 know what's happening. I'm not sure why it did that.

19 MR. VAN VALKENBURGH: Your Honor, I apologize, it
20 could be me. I became the old man who doesn't know how
21 to use technology, so I apologize. But, I'll just --

22 THE COURT: I don't think it's on you. It's done
23 this earlier today. I don't know what it is. But I just
24 wanted you to know I wasn't expecting you to do anything.

25 MR. VAN VALKENBURGH: Thank you. I will stop my

1 video and mute myself and let y'all carry on.

2 THE COURT: All right. Thank you. All right, Mr.
3 Hoover, we're going to check the other courtroom to see
4 if perhaps they are in the other courtroom. It does not
5 appear that they are. Madam Clerk, have you heard from
6 the Plaintiff's attorneys in this case, that would be Mr.
7 Fester, Mr. Johnson, or -- Mr. Darrell Johnson or Mr.
8 Warren Johnson?

9 CLERK: No, ma'am, I have not.

10 THE COURT: Okay. All right, Mr. Hoover, we're
11 going to -- I'm just going to -- let's see if they log on
12 in the next few minutes, just to give them the
13 opportunity. They may be having some issues or just may
14 be a little bit late, okay.

15 MR. HOOVER: That works. And I'll try to email them
16 in the meantime as well.

17 THE COURT: All right, thank you.

18 (COURT IN RECESS)

19 THE COURT: Madam Clerk, I am going to go back to
20 case number 17, which is Jeronimo Hernandez Jimenez
21 versus Rolando Medrano. And we will hear argument for
22 that. Mr. Bendle, can you hear us? All right, Mr.
23 Bendle, can you hear us? I saw him just a moment ago.
24 Mr. Bendle? Oh, his microphone is not working, that's
25 okay. But it appears that he can hear us. And he's

1 noted that in the chat. Mr. Bendle, why don't you call
2 in so that you can make your argument or any objections
3 that are necessary. Ms. Ware, will you please place that
4 in the chat for Mr. Bendle so that he can give us a call?

5 CLERK: Yes, ma'am, I did.

6 THE COURT: Thank you. So, Mr. Bendle, you'll see
7 in the chat where my law clerk has given you a call-in
8 number. We'll just wait a few moments and allow you to
9 call in so that we can hear you. All right, Mr. Bendle?

10 MR. BENDLE: Yes, ma'am, can you hear me now?

11 THE COURT: Yes, I certainly can hear you. I'm just
12 going to place the phone on mute. Well -- no, I won't do
13 that. All right, we'll go ahead -- I think, Mr. Bendle,
14 you need to turn the volume off of your computer and just
15 listen and talk through the phone so that way we don't
16 get an echo. All right. Mr. Hoover, this is your
17 motion. I'll allow you to make your motion.

18 MR. HOOVER: Thank you, Your Honor. Yes, I
19 represent the Defendant employer, Rolando Medrano, in
20 this lawsuit brought by his employee, Mr. Jimenez. Stop
21 me at any point in time if it's too simplistic. I know
22 you have probably forgotten more about workers' comp law
23 than I'll ever know. But I think the issues here are
24 pretty simple and the motion is based mainly on the
25 exclusive remedy rule of workers' comp. Once you decide

1 that's the route you're going to take, and you square
2 things up and the Industrial Commission issues you an
3 order, you have foregone any right (inaudible) employer
4 in tort.

5 This case involves the Plaintiff employee, he worked
6 for my client, who owned a tree cutting service, and we
7 show up every day at the home office and get in a work
8 truck, provided by my client, that would bring him to and
9 from various job sites to trim palm trees.

10 On the date of this accident he was up on a ladder
11 in one of the palm trees and fell off. His testimony in
12 this case, which was provided in the briefing that we
13 did, says that from that point on he could not feel his
14 legs. My client, the employer, at the job site,
15 instructed some fellow employees to help him move the
16 plaintiff into the work truck vehicle.

17 There's a little bit of discrepancy that really
18 doesn't matter in this case, it's an issue of fact it
19 doesn't really pertain or have any impact on this motion.
20 There's some discrepancy about whether they were going to
21 bring him to a medical facility or take him home. They
22 ended up taking him to a fire station where EMS took it
23 from there.

24 He, as a result, filed a workers' compensation
25 action and naming my client as the defendant. During the

1 course of that action it became apparent that my client
2 did not have in place at the time workers' compensation
3 insurance.

4 Under, I guess, it's South Carolina Code 42-5-40 it
5 tells you what happens in that circumstance when the
6 Uninsured Employer Fund kicks in and pays for any
7 settlement or award. They turn around and then have
8 subrogation rights against the employer who didn't have
9 insurance. So, the employer doesn't get out, you know,
10 scot-free, it's just a matter of who pays. But once you
11 decide to proceed under the Act, at that point the road
12 kind of splits, you can either proceed under the Act or
13 you can file a court claim against the employer, you
14 cannot do both.

15 In the Harrell case, I think it was Justice Toal
16 that decided that one, makes that pretty clear. It's an
17 either/or, it's not both. He decided with the advice of
18 counsel that he would proceed under the Act. Once he
19 does that the exclusivity provision kicks in and the
20 employer becomes immune from tort (inaudible).

21 (Inaudible) that, the Industrial Commission approved it
22 and the Clincher Agreement is attached as Exhibit C to
23 our motion and it says, you know, that he's releasing
24 everything under the Act, any and all claims arising out
25 of this particular incident.

1 In their response brief, the defendants have said
2 but wait a minute, there's this dual persona and that
3 could be an exception. The problem with that is, in
4 order for that particular provision to apply, according
5 to the case law, you've got to have absolutely no
6 relationship with the actual (inaudible) and here you've
7 got the incident happening on the job site, the movement
8 from the job site to the work vehicle, owned, operated,
9 and maintained by the employer, the trip in that work
10 vehicle to the fire station where he received his medical
11 treatment. All of those are ties to the work that they
12 can't get around. And all of those are tied to the work
13 that would make the Dual Persona Doctrine inapplicable in
14 this case. I think the case law explains that's a narrow
15 exception, it only applies to truly exceptional cases and
16 it's got to -- the claim has to arise solely from a non-
17 employer persona independent of any employer obligations.

18 Again, here you've got the incident happening on a
19 job site, the employer's instructions to the co-employees
20 that help him move the plaintiff employee to the work
21 vehicle, given by the employer, he's removed by fellow
22 employees with the assistance of the employer, travels in
23 the work transport truck to the medical facility that's
24 operated and maintained by the employer.

25 I don't know how we can go around all of those

1 things that (inaudible) the work to make the Dual Persona
2 Doctrine applicable to the extent that they're alleging
3 that something -- some exacerbation or new injury
4 resulted from this particular moving him from the work
5 site to the medical facility.

6 What the Plaintiff has testified to, it's
7 uncontested, we don't contest it, is that he couldn't
8 feel his legs from the time he hit the ground, never has
9 since then. The other thing he testified to and it's in
10 Exhibit -- in his deposition testimony, that's an exhibit
11 to the motion, is he didn't notice anything wrong with
12 the truck, whereas now in litigation somehow the truck
13 exacerbated his injuries. (Inaudible) and he said so in
14 his deposition. He didn't notice anything wrong with the
15 truck that day.

16 They give an argument that Dr. Patel had done an IME
17 where Dr. Patel says that, you know, somehow this
18 transportation exacerbated his injury. A, I think it's
19 important to look at and read the Clincher Agreement that
20 their client signed with counsel that says and alleges a
21 permanent injury to his back. They're turning around and
22 saying no, that's not really what we meant, we don't
23 think he is permanently injured at the time until he was
24 transported, but that's not what the Clincher Agreement
25 says and the order from the Industrial Commission says.

1 I mean, they were submitting the Patel IME, they
2 were submitting life tables, they were submitting
3 permanent injury documentation, all of that was a part of
4 the workers' compensation case, all of that claim was a
5 claim for permanent disability. So, it's the exact same
6 disability they're claiming in this tort action.

7 Regardless, I think that the -- what does apply here
8 is the Natural Consequence Doctrine, and what that says
9 is that anything that the workers' compensation case
10 would cover any natural consequences that flow from the
11 work related injury, including new injury, or
12 exacerbation, or a new injury resulting indirectly from
13 negligent treatment, both medical treatment and non-
14 medical treatment. Matter of fact the Tims/J.D. Kitts
15 case that we cited, very similar, this is a guy that was
16 a quadriplegic from a work related injury. He was being
17 transported to treatment by a vehicle provided by the
18 employer, and unfortunately was left on a 100 degree day
19 inside the vehicle, he suffered a heat stroke. And what
20 the Court said in that case was that was part and parcel
21 of the workers' compensation claim, almost on all fours,
22 with what we're dealing with here to some kind of claim
23 that this transportation exacerbated his injury is
24 admitted, I guess, more permanent than the permanency
25 they were claiming in the workers' compensation.

1 But I think here certainly the Natural Consequence
2 Doctrine applies. This is part and parcel to the actual
3 injury itself in getting him to a medical facility. If
4 that was done negligently, that is part of the workers'
5 compensation case, this isn't a separate tort claim and,
6 you know, that Tims vs. J.D. Kitts Construction case
7 makes it clear that it's not only negligent the hospital
8 staff treatment but non-medical too, and that could
9 include anything from orderlies to the hospital
10 maintenance staff.

11 And I say all that to say that look, he has decided
12 which road he wanted to take, and he took that road, he
13 doesn't get a second bite at the apple for the tort
14 claim, that's clear under the -- the very clear language
15 in the agreement that was made an order by the Industrial
16 Commission. It's also included in the statutory language
17 of the Act, it's also included in the case law that we
18 cited that interprets that act.

19 So we'd ask that summary judgment be granted. My
20 client is going to have to deal with the Uninsured
21 Employers Fund in reimbursing them, but he shouldn't have
22 to reimburse and pay again on a tort claim, he's admitted
23 to that and that's pretty clear by the statutory
24 language. And I'm sorry, Judge, you're on mute.

25 THE COURT: Mr. Hoover, thank you so much for your

1 argument. Mr. Bendle? All right, Mr. Bendle, can you
2 hear us?

3 MR. BENDLE: Your Honor, can you hear me?

4 THE COURT: Yes.

5 MR. BENDLE: I apologize for my technical
6 difficulties. I was just letting you know that Mr.
7 Hoover and I share a mutual client; we both represent the
8 defendant, Mr. Medrano. And I would just join in on Mr.
9 Hoover's motion on behalf of our mutual client. I don't
10 have anything to add, Your Honor. I think he said it all
11 well.

12 THE COURT: All right, very good. I'm sorry, how
13 did I get that confused. I kept calling you Mr. Bendle.
14 I should have been calling it -- is Mr. Johnson or --

15 MR. FESTER: Your Honor -- yes, Your Honor, Josh
16 Fester. And I do apologize for coming in late. I was
17 having some technical difficulties on my side. But can
18 you hear me okay?

19 THE COURT: I can. Mr. Johnson, did you hear the
20 motion for summary judgment? I know you came in a little
21 bit after it started, but were you able to hear the
22 majority of the argument?

23 MR. FESTER: The majority of it, the gist of it,
24 Your Honor. And I'm happy to address anything that you
25 think I might have missed. But, Your Honor, it's our

1 position here that this is a completely separate and
2 distinct injury. I'm sure Payton went over the basic
3 facts. But, Your Honor, I didn't catch the beginning of
4 his argument, but this was a situation where my client
5 falls from a tree on a job site. Mr. Medrano, the sole
6 member of the LLC is present, directs other workers of
7 his to load the client up, even though he's clearly
8 sustained a serious back injury; load the client up into
9 a truck and then hastily try to instead of taking him to
10 a hospital, and by the way he passed three on the way to
11 dropping him off at a fire station, which, you know, is
12 egregious. But -- and the purpose of that in his workers
13 comp deposition testimony, I believe, was he took a
14 different route because he had issues with acceleration
15 in his vehicle. That was the excuse at that time.

16 Your Honor, importantly the -- and we have medical
17 documentation of this in Dr. Patel's opinion, that this
18 was a separate and distinct event, separate injury caused
19 by gross negligence of Mr. Medrano. Also key to this is
20 Mr. Medrano is not the employer technically; the LLC is
21 the employer. He's the sole member of the LLC and, Your
22 Honor, that -- he's a separate and distinct legal entity
23 all together. And we have in South Carolina the Dual
24 Persona Doctrine.

25 This issue was hit straight on by -- or amended on

1 the Anderson, the '06 -- or the 2011 case, I believe,
2 where you have an employer who purchases a -- an LLC,
3 takes over a previously running LLC, who had produced a
4 vat for, you know, their operations on the job site, it
5 was a wood treatment facility. It was a vat of boiling
6 solution to put the wood in that a prior LLC related to
7 the employer had created.

8 The court in that case stated that because it was a
9 separate legal entity from the actual employer, and that
10 separate legal entity took on a completely distinct role
11 in the injury, that the Dual Persona Doctrine applied and
12 that the plaintiff could pursue in tort against the
13 employer in that case. And that's what we have here.

14 We have two separate legal entities; we have an LLC
15 and an actual person. And tree trimming business has
16 nothing at all to do with rendering medical aid. Nothing
17 at all to do with his duties as a decent human being to
18 act reasonably -- reasonable and prudent under the
19 situation to call the ambulance. It has nothing to do
20 with his duties as a bystander that has chosen to take on
21 that duty of rendering aid, and he was grossly negligent
22 in the process. That's like straight -- it's the exact
23 same situation legally as what we have in Anderson v.
24 Mendenall. I heard, you know, Mr. Hoover mention
25 (inaudible) persona I think, Your Honor, again the

1 distinction here is Mr. Medrano isn't the employer, the
2 LLC is.

3 And I was that the Court of Appeals just last week,
4 last Wednesday, on this issue, Workers' Comp Commission
5 found that the sole member of an LLC was not an employer,
6 that the LLC was an employer for purposes of counting the
7 statutory minimum to -- for coverage under the Act. And
8 that is consistently what the Commission has done in
9 those situations. A sole member is not an employer, a
10 sole member of an LLC, it doesn't act -- that person
11 doesn't act as like a general partner or sole proprietor,
12 it's when you create an LLC it's a distinct legal entity.
13 And so we do have a non-employer persona in this case.

14 As to the issue regarding the Clincher Agreement.
15 The Clincher Agreement is pretty clear; it's for all
16 injuries arising under the Act. Plain and simple. It
17 releases any claims under the Act. That's it. That is
18 all that is released by that language, not anything else.
19 And, again, the release is as to his employer, not to Mr.
20 Medrano as a third party.

21 The Natural Consequence Doctrine mentioned by Mr.
22 Hoover doesn't apply either, simply because -- so, since
23 it is -- it naturally flows from the injury, the
24 workplace injury, the fall itself, and that we're just,
25 you know, pointing to some sort of ancillary consequence

1 of that fall.

2 First of all, again, Dr. Patel's opinion that this
3 is a distinct injury, that it did worsen his outcome.
4 That -- but also natural -- the Natural Consequence
5 Doctrine doesn't apply because we have dual persona. In
6 Mendenall it was the same injury we were talking about,
7 we weren't talking about two different injuries. And the
8 Court found that they could proceed in tort.

9 So, the Natural Consequence Doctrine doesn't apply.
10 This isn't a situation -- and I guess for further
11 clarification, this isn't a situation where a third-party
12 like, for instance, in the context of medical
13 malpractice, if you suffer a workplace injury and go to
14 the doctor, your authorized treating physician, and that
15 doctor commits malpractice, that -- that's compensable
16 under the Act but that doesn't prevent you from suing in
17 tort against the physician or the physician group.

18 The one case that I did want to bring up that wasn't
19 in my memorandum was the Tatum v. MUSC case. In this
20 case they -- the Court, the Supreme Court, discussed dual
21 persona in South Carolina and in this case --

22 THE COURT: Mr. Johnson, can you hold on for just
23 one moment?

24 MR. FESTER: Sure.

25 THE COURT: All right, go ahead, Mr. Johnson.

1 MR. FESTER: It's Josh Fester.

2 THE COURT: Sorry.

3 MR. FESTER: It's all right.

4 THE COURT: I'm sorry; I'm looking at the name on
5 the screen.

6 MR. FESTER: Yeah. But, in the Tatum v. MUSC case,
7 we have an employee of the hospital that is referred for
8 medical treatment by her employer under the workers' comp
9 act, and the doctor is alleged to have committed
10 malpractice in treating the claimant there. In that case
11 we have -- well the Court says that you can't sue the
12 employer due to the exclusive remedy. The exclusive
13 remedy doesn't apply here because the employer in the
14 present case didn't have insurance. But aside from that
15 I think the distinction here is again we have a separate
16 legal entity, a person -- natural person versus an LLC.
17 And unlike in Tatum -- in Tatum MUSC is in the business
18 of medical treatment. They're in the healthcare
19 industry. Mr. Medrano's tree trimming business, unless
20 he's on the side illegally practicing medicine in South
21 Carolina, it has nothing to do with rendering medical
22 aid, much like in the Tatum v. MUSC case. So, I guess I
23 bring that up to underscore the point of they're two
24 distinct sets of duties, one of which having nothing to
25 do with my client's employment with the LLC or the

1 related entity.

2 Mr. Hoover mentioned it's the exact same disability,
3 that's inaccurate as, you know, we have again medical
4 evidence to the contrary. And the Tims case that he
5 mentioned referred to medical treatment by a third-party,
6 unlike the Tatum case, negligent acts by third parties.
7 So, that's sort of not relevant to the present situation.

8 Again, Your Honor, I think this is absolutely a case
9 in which dual persona applies, and for that reason,
10 again, also because it's just a distinct injury from that
11 which he suffered in the fall that we pled, we would ask
12 that the Court deny this motion for summary judgment.

13 There's also genuine issues and material fact as to
14 an employment situation, defendant in this case denied
15 initially that my client was an employee. And there's
16 issue -- a genuine issue of material fact as to whether
17 the injury sustained in defendant's negligent acts are
18 separate and distinct from the injury, you know, he
19 sustained due to the fall. That's essentially my
20 argument, Your Honor.

21 THE COURT: All right. Any response?

22 MR. HOOVER: Yeah, sure, Your Honor. Here's the
23 problem with all of that. Mr. Medrano was a named
24 defendant in the workers' compensation case. He was
25 alleged by the Plaintiff in that workers' compensation

1 case as the employer, now they're taking a separate
2 position, no, no, no, he wasn't an employer. That's what
3 they alleged in the workers compensation case. He was a
4 named defendant. He was a named released defendant in
5 the workers compensation case and the Court's got the
6 order, it says what it says.

7 But the plaintiff's positions in that are clear, all
8 right. And this was at the time that they had this
9 alleged Patel IME that says it was a separate injury.
10 They had all that in front of them, and they decided to
11 go the workers compensation route regardless, and you can
12 see in the Clincher Agreement where they alleged
13 permanent injury.

14 It's also, you know, the Plaintiff's testimony that
15 he couldn't feel his legs from the get-go, before he was
16 ever moved, before he was ever put in that truck.
17 Whether Patel knows that or not, because his testimony
18 happened after Patel, but regardless, that's the
19 Plaintiff's testimony.

20 As far as, you know, this being a separate -- or
21 dual persona, again, he's the named defendant in the
22 workers compensation case, he's the released defendant in
23 that case, he's alleged to be the employer in that case
24 by the plaintiff, and the J.D. Kitt's case makes it
25 pretty clear that the employer, who in that case was a

1 construction company, that the transportation that was
2 provided by that construction company to and from medical
3 visits was part and parcel under the Natural Consequence
4 Doctrine of the workers compensation case, it wasn't
5 something completely different and did not invoke the
6 Dual Persona Doctrine.

7 That case is the one that's all fours here. It
8 clearly says that, you know, for the natural consequences
9 to come into effect the employer doesn't have to be in
10 the medical profession, they don't have to be in the
11 transportation profession, all they have to do is provide
12 that service, which was provided to the plaintiff on the
13 date, again, in a work vehicle that regularly transported
14 him to and from the job site; a work vehicle that was
15 maintained and operated by the employer. So, we just
16 don't have the special circumstances, the (inaudible)
17 circumstances that the Dual Persona Doctrine needs in
18 order to apply.

19 THE COURT: All right, gentlemen, I'm going to take
20 this under advisement and I will get you a ruling as soon
21 as possible.

22 MR. FESTER: Thank you, Your Honor.

23 MR. HOOVER: Thank you, Your Honor.

24 THE COURT: Thank you both.

25 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

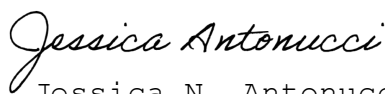
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State of South Carolina

County of Charleston

I, JESSICA ANTONUCCI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 9, on the 20th day of March, 2025.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.


Jessica N. Antonucci

Transcriber

December 24, 2025