

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

Appellate Case No. 2014-001357

Thomas Chad Hilton, Claimant.....Appellant,

v.

Flakeboard America Limited, Employer, and
Liberty Mutual Insurance Company, Carrier, Defendants.....Respondents.

MOTION TO DISMISS

L. Brenn Watson, Esq.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(864) 527-3292

Attorney for Respondents

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents now move to dismiss the appeal. This Motion is based on the following grounds:

1. The Single Commissioner of the Workers' Compensation Commission issued a Decision and Order on June 4, 2013. (Exhibit 1)
2. Respondents timely appealed the Order of the Single Commissioner to the Appellate Panel of the Workers' Compensation Commission, and oral arguments were heard before the Appellate Panel on October 14, 2013. (Exhibit 2)
3. The Appellate Panel issued a Decision and Order on May 21, 2014, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for further proceedings. (Exhibit 2)
4. On June 30, 2014, Appellant filed a Notice of Appeal with the South Carolina Court of Appeals, appealing the May 21, 2014, Decision and Order of the Appellate Panel of the Workers' Compensation Commission. (Exhibit 3)
5. Pursuant to the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A), S.C. Code Ann. § 1-23-390, and *Bone v. U.S. Food Service*, 744 S.E.2d 552, 404 S.C. 67 (S.C. 2013), this appeal is interlocutory.

For the foregoing reasons, Respondents respectfully request the Court of Appeals dismiss Appellant's appeal with prejudice.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



L. Brenn Watson, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorney for Defendants

Date: July 17, 2014

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Flakeboard America Limited, Employer, and
Liberty Mutual Insurance Company, Carrier, Defendants.....Respondents.

MEMORANDUM OF LAW IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS

L. Brenn Watson, Esq.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(864) 527-3292

Attorney for Respondents

STATEMENT OF THE CASE

Appellant sustained an admitted injury by accident arising out of and in the course of his employment on August 17, 2011, when he was bitten by an insect on the left thigh/buttock. Respondents provided appropriate medical treatment and, on July 6, 2012, filed a Request for Hearing before the South Carolina Workers' Compensation Commission, arguing Appellant had reached maximum medical improvement (MMI) and was entitled to no additional benefits. On January 3, 2013, a hearing was held before Commissioner Avery B. Wilkerson (hereinafter, "Single Commissioner"). The Single Commissioner issued a Decision and Order on June 4, 2013, finding Appellant had not reached MMI and was entitled to ongoing temporary disability benefits and medical treatment.

Respondents timely appealed the Order of the Single Commissioner to the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter, "Appellate Panel"), and oral arguments were heard before the Appellate Panel on October 14, 2013. The Appellate Panel issued a Decision and Order on May 21, 2014, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for further proceedings. On June 30, 2014, Appellant filed a Notice of Appeal with the South Carolina Court of Appeals, appealing the May 21, 2014, Decision and Order of the Appellate Panel.¹ For the reasons set forth below, Appellant's appeal is interlocutory, and the appeal should be dismissed, with prejudice.

¹ Appellant has also filed a Petition for Writ of Certiorari with the South Carolina Supreme Court.

ARGUMENT

I. Appeals from the South Carolina Workers' Compensation Commission are controlled by the Administrative Procedures Act, and only final judgments of the Commission are appealable to the Court of Appeals.

“The Administrative Procedures Act (APA) was enacted in 1977 and ‘purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies.’” *Bone v. U.S. Food Service*, 744 S.E.2d 552, 556, 404 S.C. 67, 73 (S.C. 2013) (citing *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981)). The APA establishes the standard for judicial review of decisions of the South Carolina Workers' Compensation Commission. *Bone*, 744 S.E.2d 556; *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010); *Lark*, 276 S.C. at 135, 276 S.E.2d at 306; *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 584 S.E.2d 390 (Ct.App.2003).

Under section 1-23-380(A) of the APA, “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a *final decision* in a contested case is entitled to judicial review....” S.C.Code Ann. § 1-23-380(A) (Supp.2007) (emphasis added). Section 1-23-390 of the APA, governing further appellate review, provides: “An aggrieved party may obtain a review of a *final judgment* of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.” S.C.Code Ann. § 1-23-390 (Supp.2012) (emphasis added).

In *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env'tl Control*, 387 S.C. 265, 692 S.E.2d 894, (2010), the Supreme Court of South Carolina reviewed an appeal from an Administrative Law Court and reasoned that appeals in administrative agency matters are governed solely by the APA, not by the general appealability statute of section 14-3-330(1), which permits review of “[a]ny intermediate judgment” involving the merits. *Charlotte-Mecklenburg*, 692 S.E.2d

at 894. The *Charlotte-Mecklenburg* Court further indicated that concepts applicable in general appeals were not applicable under the APA, as specialized statutes prevail over more general statutes. *Id.* The Supreme Court reviewed this scenario in the workers' compensation context in *Bone*, and after reviewing the Court's reasoning in *Charlotte-Mecklenburg*, the Court stated: "We apply this reasoning in concluding that the meaning of a 'final judgment' as used in section 1-23-390 is not defined by using the exceptions that are present in the general appealability statute, whether or not the statute is specifically referenced." *Bone*, 744 S.E.2d 557.

The term "final judgment" was specifically interpreted by the Supreme Court of South Carolina in *Bone* with regard to workers' compensation appeals:

This Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and enforcement of the judgment."

Bone, 744 S.E.2d 558 (citing *Black's Law Dictionary* 919 (9th ed.2009)). The *Bone* Court further specified: "The legislature, in using a well-known term of art such as 'final judgment,' meant exactly what 'final judgment' has always been understood to mean: something that finally disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to execute the judgment..." *Bone*, 744 S.E.2d 561.

In deciding *Bone*, the Supreme Court made it abundantly clear that (1) the APA governs appeals from the South Carolina Workers' Compensation Commission, and (2) a decision of the Workers' Compensation Commission is not appealable to the Court of Appeals until there has been a final judgment which disposes of the action entirely. In this case, there has been no such final judgment, and the May 21, 2014, Decision and Order is not immediately appealable to the Court of Appeals.

II. The May 21, 2014, Decision and Order of the Appellate Panel does not constitute a final judgment, and the Appellate Panel Order is not immediately appealable.

Appellant sustained an admitted injury on August 17, 2011, when he was bitten by an insect on the left thigh/buttock and developed an abscess. The abscess developed a staph infection, and Respondents provided appropriate medical treatment, including a simple debridement procedure to excise the abscess. On July 6, 2012, Respondents filed a Request for Hearing before the South Carolina Workers' Compensation Commission, alleging Appellant had reached MMI and was entitled to no additional benefits. Respondents further argued that Appellant had made purposeful and material misrepresentations with regard to the workers' compensation claim. On January 3, 2013, a hearing was held before Commissioner Avery B. Wilkerson, who issued a Decision and Order on June 4, 2013, finding Appellant had not reached MMI and was entitled to ongoing temporary disability benefits and medical treatment. The Single Commissioner found that Appellant's misrepresentations throughout the claim were attributable to a level of cognitive dysfunction, which stemmed from a prior motor vehicle accident and brain injury.

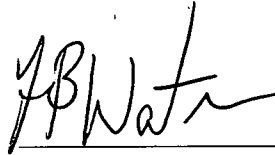
Respondents timely appealed the Order of the Single Commissioner to the Appellate Panel, and the Appellate Panel issued a Decision and Order on May 21, 2014, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for determination of whether Appellant is competent to testify, or whether Appellant requires a Guardian *ad Litem*, pursuant to S.C. Code Ann. § 42-15-55. The Appellate Panel further ordered Respondents to provide a neurological evaluation for Appellant to address the issues of the cause and extent of Appellant's alleged conditions.

Appellant has now appealed the May 21, 2014, Decision and Order of the Appellate Panel, but it is plainly evident that the Order is not a final judgment, and it is not immediately appealable. The Supreme Court very specifically addressed this issue in *Bone*, and there can be no doubt that Appellant's appeal is interlocutory. Not only do *some* issues remain undetermined by the Workers' Compensation Commission, but *every single issue* remains undetermined at this juncture, as the Single Commissioner's Order was vacated and the claim remanded. As there has been no final judgment, the claim is not immediately appealable.

CONCLUSION

For the reasons set forth above, the May 21, 2014, Decision and Order of the Appellate Panel is not immediately appealable to the Court of Appeals, and Respondents respectfully request the appeal be dismissed, with prejudice.

Respectfully submitted,



L. Brenn Watson, Esq.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(864) 527-3282

Attorney for Respondents

July 17, 2014

EXHIBIT 1

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1111934

THOMAS CHAD HILTON, EMPLOYEE, CLAIMANT,

VERSUS

FLAKEBOARD AMERICA LIMITED, EMPLOYER,

AND

LIBERTY MUTUAL INSURANCE COMPANY, CARRIER, DEFENDANTS.

HEARING: Held on January 3, 2013 in Columbia, South Carolina.

APPEARANCES: Claimant represented by Andrew N. Safran, Esquire, Post Office Box 12089, Columbia, South Carolina 29211.

Defendants represented by L. Brenn Watson, Esquire of Willson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

PURPOSE OF HEARING: To determine issues raised by the filing of Form 21, particularly whether: (a) Defendants have established an entitlement to terminate the payment of temporary total disability compensation; (b) Mr. Hilton has achieved maximum medical improvement; (c) he requires further treatment for the consequences of his compensable accident; and (d) Mr. Hilton remains temporarily totally disabled.

DECISION AND ORDER BY: The Honorable Avery B. Wilkerson, Jr., Commissioner.

FILED: June 4, 2013

STATEMENT OF THE CASE

On August 17, 2011, Claimant, Thomas Chad Hilton, sustained a compensable accident while traveling through North Carolina en route to a delivery site in Virginia while performing his job duties for Defendant, Flakeboard America Limited. As this Employer and its Carrier, Liberty Mutual Insurance Company, acknowledged the compensability of Mr. Hilton's resulting injury, they: (a) commenced the payment of temporary total disability compensation effective August 20, 2011; while (b) authorizing his receipt of medical treatment through several providers, primarily Drs. R. Joseph Healy and Chi-Dai Chen of Carolina Surgical Associates.

By Form 21 dated July 6, 2012, Defendants sought authorization to terminate the payment of temporary total disability compensation based upon their contentions: (a) "Claimant has made direct and materially misrepresentations that directly pertain to his alleged disability"; (b) he was "not currently disabled, and ha[d] . . . not been disabled since September 12, 2011"; and (c) "[C]laimant . . . ha[d] reached maximum medical improvement with no impairment"

In response, Mr. Hilton maintained: (a) any inconsistent and/or inaccurate statements contained in the record (deposition testimony or otherwise) were the product of significant cognitive deficits stemming from physical brain damage, rather than a

purposeful/intentional/volitional attempt to mislead; (b) he had not achieved maximum medical improvement as to the consequences of his compensable accident; (c) Defendants were obliged to authorize the various treatment modalities which had been prescribed/recommended by Dr. Healy, their designated treating physician; and (d) he remained temporarily totally disabled at this time.

A hearing relative to this matter was initially scheduled for August 29, 2012. However, this hearing was postponed until November 19, 2012: (a) due to counsel's scheduling conflicts; and (b) so as to allow completion of necessary discovery. On that date, the undersigned: (a) required the parties to engage in a mediation proceeding conducted by Wallace G. Holland, Esquire; (b) determined this claim would be heard no later January 4, 2013 in the event mediation did not lead to a resolution to the current dispute; and (c) granted Defendants' Motion to Compel Production of Documents by the South Carolina Department of Social Services, which had maintained these materials were not discoverable under the present circumstances.

Pending the rescheduling of this hearing, the: (a) parties unsuccessfully mediated this claim on December 5, 2012; and (b) South Carolina Department of Social Services appealed the undersigned's December 12, 2012 production Order per Form 30 dated December 27, 2012.

The undersigned ultimately conducted an extensive hearing on January 3, 2013 in Columbia, South Carolina. At that time, testimony was received from Mr. Hilton, Mrs. Michelle S. Hilton (his wife) and Mr. Gerald Covington. In this regard, the parties entered a stipulation as to the substance of Mr. Frank Smith's proposed testimony, rather than requiring this witness (who was present) to testify.

STIPULATIONS

At the commencement of the hearing, counsel for the respective parties stipulated:

1. The purpose of the hearing was to determine the issues raised by the filing of Form 21, including whether: (a) Defendants have established an entitlement to terminate the payment of temporary total disability compensation; (b) Mr. Hilton has achieved maximum medical improvement; (c) Defendants' were entitled to credit for overpayment of temporary disability compensation should Mr. Hilton be found at maximum medical improvement; (d) he requires further treatment for the consequences of his compensable accident; and (e) Mr. Hilton remains temporarily totally disabled.

2. Notice of the hearing was timely and properly served upon the parties of interest.

3. Venue, set in Richland County, was proper per S.C. Code Ann. Section 42-17-20 (1976) in view of the parties' agreement to

transfer venue from Marlboro County for the purpose of conducting the hearing.

4. Defendants were withdrawing their previous Motion to Compel production of the documents in possession of the South Carolina Department of Social Services, to the extent: (a) the Department of Social Services would not be required to produce any of the previously sought materials; (b) the undersigned's December 12, 2012 Order would be vacated; and (c) this agency's pending appeal, which had been rendered moot, would be dismissed without prejudice.

5. Claimant's average weekly wage and compensation rate are in dispute, and the parties agreed to review this issue post-hearing to determine if a resolution could be reached as to the proper compensation rate.

MEDICAL EVIDENCE/APA SUBMISSIONS

The following documents were submitted into evidence pursuant to the Administrative Procedures Act, without objection, by the respective parties:

CLAIMANT

<u>Exhibit No.</u>	<u>Description</u>	<u>Page Nos.</u>
APA 1:	February 13, 2012 - November 9, 2012 reports/notes/responses of Dr. R. Joseph Healy	1 - 15
APA 2:	August 19, 2012 reports/responses of Dr. Donna Schwartz-Watts, as well as Dr. Donna Schwartz-Watts' August 20, 2012 Curriculum Vitae	16 - 30

APA 3:	August 16, 2012 - November 8, 2012 reports/responses, as well as undated Curriculum Vitae, of Dr. Tora L. Brawley of the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science	31 - 40
APA 4:	August 14, 2012 - November 8, 2012 reports of Dr. Nicholas A. Lind of Post Trauma Resources	41 - 48
APA 5:	August 9, 2012 report of Dr. Ezra B. Riber of Palmetto Pain Management, LLC	49 - 50
APA 6:	August 22, 2011 - October 6, 2011 reports from Agape Senior Primary Care-Bennettsville	51 - 54
APA 7:	August 19, 2011 reports/notes from Marlboro Park Hospital	55 - 65
APA 8:	September 19, 2011 - October 31, 2011 reports of Dr. W. James Evans of Comprehensive Neurological Services, P.C.	66 - 71
APA 9:	October 21, 2011 - November 16, 2011 reports/notes/forms from Marlboro Primary Care Associates	72 - 80
APA 10:	June 9, 2000 - February 11, 2011 reports from Pinehurst Neurology, P.A. (Dr. Bruce S. Solomon)	81 - 89

DEFENDANTS

APA 1:	November 28, 2001 - August 19, 2011 reports/notes from Marlboro Park Hospital	1 - 35
APA 2:	August 22, 2011 - October 21, 2011 reports/notes from Agape Senior Primary Care	36 - 42
APA 3:	August 23, 2011 - September 12,	

	2011 reports/notes from Carolina Surgical Associates (Dr. Chi-Dai Chen)	43 - 51
APA 4:	October 21, 2011 - November 16, 2011 reports/notes from Marlboro Primary Care Associates	52 - 63
APA 5:	February 13, 2012 - April 16, 2012 reports/notes of/obtained from Dr. R. Joseph Healy	64 - 72
APA 6:	February 23, 2011 report from Pinehurst Neurology, P.A. (Dr. Bruce S. Solomon)	73
APA 7:	June 17, 2011 - May 7, 2012 reports/notes/forms obtained from Pee Dee Orthopaedic Associates, P.A. (Dr. Jason B. O'Dell)	74 - 85
APA 8:	September 19, 2011 - October 31, 2011 reports of Dr. W. James Evans of Comprehensive Neurological Services, P.C.	86 - 91
APA 9:	January 13, 2003 - March 29, 2003 reports/notes from Palmetto Wellness and Injury Center (Raymond H. Stroup, B.F., D.C.)	92 - 108
APA 10:	April 16, 2009 - June 21, 2012 records from Carnival Cruise Lines (A1 - A9)	109 - 117
APA 11:	November 30, 2011 note from Marlboro Primary Care Associates (63 (a))	118

Additionally, Defendants submitted: (a) a video surveillance disc generated by InQuest Solutions for the period March 27, 2012 through March 30, 2012; (b) a second video surveillance disc generated by InQuest Solutions for the period October 19, 2012

through October 20, 2012; (c) Dr. R. Joseph Healy's August 20, 2012 deposition transcript (113 pgs.); (d) Dr. Chi-Dai Chen's August 23, 2012 deposition transcript (103 pgs., including exhibits); and (e) Mr. Hilton's May 31, 2012 deposition transcript (110 pgs., including exhibits).

FINDINGS OF FACT

Based upon the testimony of the various witnesses, my assessment of their credibility/demeanor, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, **I FIND AS FACTS:**

1. On August 17, 2011, Mr. Hilton sustained a compensable injury to his left buttocks/upper leg area while transporting material, via tractor trailer, to a location in Virginia. Specifically, while en route to this delivery site, Mr. Hilton was bitten in his buttocks/upper leg area by an insect as he was operating the tractor trailer.

2. At the time he sustained this compensable injury, Mr. Hilton was performing duties arising out of and within the course and scope of his employment as a tractor trailer/delivery driver for Flakeboard America Limited, where had worked since May 3, 2010.

3. After sustaining this injury, Mr. Hilton: (a) reported its occurrence to a representative of Flakeboard America Limited;

(b) continued to experience buttocks/upper leg pain; (c) nonetheless completed his delivery assignment; and (d) ultimately returned to his Bennettsville, South Carolina home, where his wife observed evidence of an insect bite at the focal site of his pain.

4. Although he attempted to continue working, Mr. Hilton's symptoms (pain, swelling and redness emanating from the wound) persisted, to the extent he sought treatment through the Marlboro Park Hospital Emergency Room on August 19, 2011. As confirmed by a review of the records generated by this facility, he: (a) reported the sudden onset of buttocks/upper leg pain two days prior; (b) indicated he had since experienced "pain, redness, skin breakdown . . . [and] swelling [from a] single lesion . . . [that he attributed to] being bitten by a spider"; (c) exhibited "a raised, round, red area with obvious bite mark in the center of the . . . [buttocks/upper leg] lesion"; (d) also manifested skin discoloration ("bright red"), tenderness and swelling ("edematous") in the "area surrounding the bite"; (e) was diagnosed to have experienced a spider bite, for which he received an injection of Decadron, as well as a prescription for Percocet; and (f) was instructed to seek further treatment in the event his symptoms did not improve.

5. When his condition progressively worsened, Mr. Hilton was assessed at Agape Senior Primary Care (August 22, 2011),

where he: (a) related the same history and mechanism of injury; (b) reported high fever the previous day; (c) exhibited a "[l]arge, warm, red abscessed . . . [area in the] left upper posterior thigh . . . [that measured] approx[imately] . . . 5 inches in diameter [and was] . . . exquisitely painful"; (d) received an injection of Marcaine into the center of this abscessed wound; and (d) was directed to Dr. Chi-Dai Chen for surgical assessment.

6. Upon initially examining Mr. Hilton (August 23, 2011), Dr. Chen: (a) noted persistent complaints "of severe pain and drainage from the wound . . . [with] associated symptoms of fever, nausea, and vomiting"; (b) observed "an area of erythema and induration on the left posterior thigh"; (c) similarly identified "an opening with some underlying necrotic subcutaneous tissue . . . consistent with an abscess with surrounding cellulitis"; and (d) admitted Mr. Hilton to the hospital "for IV antibiotics and . . . local debridement . . . [d]ue to the severity of his symptoms"

7. During the course of this August 24, 2011 procedure, Dr. Chen: (a) excised the skin overlying Mr. Hilton's abscess, which led to an "immediate finding of underlying necrotic fat"; (b) engaged in ". . . [b]lunting dissection to breakdown any loculation and purulent draining" after excising this necrotic fat; and (c) obtained an intraoperative culture prior to washing

the wound and packing this area "using moist gauze dressing, 4 x 4, and tape." Following this procedure, Dr. Chen inspected the wound on two occasions (September 1, 2011 and September 12, 2011) prior to placing Mr. Hilton on PRN status.

8. While Mr. Hilton had admittedly encountered and sought treatment for predominant left heel/ankle pain prior to his August 17, 2011 injury, consideration of various reports generated by Dr. Jason B. O'Dell of Pee Dee Orthopaedic Associates, P.A. (from whom he received medical care for this problem) verifies: (a) the diagnosis as of July 28, 2011 was "Achilles Tendonitis"; (b) on that date, Mr. Hilton reported the pain (that Dr. O'Dell had diagnosed to be reflective of "Achilles Tendonitis") radiated up the back of his leg ; and (c) on December 1, 2011, the last day he received treatment from this orthopaedic surgeon, Dr. O'Dell's "FOCUSED EXAM. . . remain[ed] unchanged. . . [with] ongoing insertional pain and tenderness", which this physician continued to characterize as the product of "(Chronic). . . Achilles tendinitis."

9. A review of reports generated by Dr. W. James Evans of Comprehensive Neurologic Services, P.C. (to whom he was referred by Dr. O'Dell) reveals: (a) Mr. Hilton presented to Dr. Evans initially on September 19, 2011 with complaints of bilateral foot pain (worse on the left), mostly involving the heel, which had been present for five (5) months; (b) the upward radiation

referenced by Dr. O'Dell had apparently improved, while "[p]ertinent negatives included decreased mobility, instability, limping, night pain, night-time awakening, numbness, swelling, weakness or foot drop"; (c) an acknowledgement that the left foot pain which Dr. O'Dell attributed to Achilles tendonitis was present prior to his August 17, 2011 spider bite (September 19, 2011); (d) by October 31, 2011, Mr. Hilton's left foot pain had worsened; (e) he had subsequently begun experiencing "pins and needles pain . . . after the spider bite" (October 31, 2011); and (e) based upon the particular elements of Mr. Hilton's history, this neurologist characterized the newly developed left lower extremity symptoms as the "late complications of the brown recluse spider bite."

10. During this time period (October 21, 2011), Mr. Hilton began receiving authorized treatment for the ongoing left leg symptoms Dr. Evans had attributed to the spider bite through Marlboro Primary Care Associates. While treating at this facility: (a) he was diagnosed to be suffering from "neuropathic" left leg pain; (b) Mr. Hilton did not receive appreciable benefit from prescribed medications; (c) staff members were apprised of his previously diagnosed left Achilles condition; and (d) he was ultimately referred for neurological consultation by Dr. Gopalbhai Vaghela of this practice.

11. On February 13, 2012, Mr. Hilton was evaluated by Dr. R. Joseph Healy (identified by Dr. Vaghela's assistant as the only neurologist in Florence that accepted workers' compensation cases), who: (a) noted not only the presence of persistent left leg symptoms, but also the non-traumatic onset of low back pain; (b) prescribed Gralise; and (c) recommended proceeding with electrodiagnostic studies. Significantly, the EMG element of this testing, which was performed on March 14, 2012, revealed abnormal nerve function of the left leg, which Dr. Healy characterized as "a non-discogenic sciatica", prompting him to again prescribe Gralise. This authorized physician also ordered a lumbar MRI scan to further assess Mr. Hilton's back pain.

12. Inspection of Dr. Healy's notes/reports for the period April 16, 2012 through July 17, 2012 indicates: (a) his belief Mr. Hilton's left non-discogenic sciatica was the product of compression stemming from the initial consequences of his compensable brown recluse spider bite; (b) this condition was further compromising Mr. Hilton's gait, affecting the foot and the left ankle, and having a potentially aggravating impact on the pre-injury left Achilles tendon problem ("he had problems with the left achilles tendon prior to the bite but he appears to have an achilles tendonitis at this point which may be from posturing of the left foot"); (c) the neuropathic pain condition was reaching a chronic phase (May 17, 2012); and (d) while the

Gralise "help[ed]", Mr. Hilton was having difficulty obtaining authorization of this medication by Liberty Mutual.

13. On May 31, 2012, Mr. Hilton was deposed by defense counsel. My review of this nearly two hour deposition reveals that on direct examination, Mr. Hilton: (a) disclosed the occurrence of a 2000 motor vehicle accident that produced a head injury initially resulting in a period of unconsciousness; (b) advised that it also required surgery for ". . . [s]ome bleeding"; (c) recalled only one physician visit following this surgery (for staple removal), while denying any problems associated with this head trauma since the single post-injury doctor visit; (d) admitted a June, 2011 vacation cruise, but required review of a card in his wallet to ascertain when this trip occurred; and (e) testified Dr. Healy had been the only neurologist from whom he had ever received treatment.

14. Additionally, Mr. Hilton testified: (a) the radiating left leg pain that was producing the pins/needles sensation in his foot had only begun some time after the August 17, 2011 spider bite and was distinguishable from the Achilles tendonitis sensations documented by Dr. O'Dell (which had actually extended upward approximately two inches beyond the ankle); (b) the current leg pain was likewise not associated with an incident (small piece of metal became embedded in the skin around his left ankle) that had occurred some years prior (creating no residual

problems); (c) the back pain referenced by Dr. Healy developed gradually and had not been present at the time of his August 17, 2011 injury; (d) his driving had substantially decreased since the accident date (estimating once a week when asked to specifically quantify); (e) typical periods of standing fell in the 15 - 20 minute range; (f) the majority of time at his home was spent laying down; (g) he had not joined his wife on a subsequent (October, 2011) cruise; and (h) his appearance/the manner in which he walked, stood, etc. could vary, particularly if he was having a "bad day".

15. In this regard, inspection of records generated by Dr. Bruce S. Solomon of Pinehurst Neurology, P.A. reveals: (a) this motor vehicle accident resulted in "multiple trauma . . . [, including] a closed-head injury"; (b) his particular pathology involved "a subdural and epidural hematoma on the right" that required performance of a craniotomy; (c) receipt of Dilantin therapy for "subsequent seizures", in conjunction with repeated neurological assessment following the 2000 head trauma; (d) he was medically restricted from resuming truck driving until June 13, 2001 ; and (e) Mr. Hilton was continuing to experience "short-term memory problems" (ex. "putting his keys in the refrigerator and a ham in the cabinet") following this injury.

16. Significantly, on February 11, 2011 (approximately six months before sustaining the spider bite), Mr. Hilton was

reevaluated by Dr. Solomon, who noted: (a) reports of persistent "memory loss", as well as "mood swings"; (b) the absence of any complaints of "back pain"; and (c) slightly deficient short-term memory per clinical examination.

17. On August 9, 2012, Mr. Hilton was independently evaluated by Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was aware of all material aspects of Mr. Hilton's post-injury history; (b) specifically noted the various symptoms which were exhibited prior to Dr. Chen's surgery, as well as Dr. Evans' belief the worsening of "pre-injury leg pain was the result of the spider bite"; (c) observed limited lumbar range of motion "particularly with extension and concomitant left lateral flexion"; (d) discovered "significant EHL weakness on the left consistent with an L5 radicular syndrome"; (e) noticed Mr. Hilton's gait favored the left lower extremity; and (f) felt Mr. Hilton had developed "[c]ompensatory low back pain . . . following altered gait" with an associated lumbar facet syndrome.

18. Based upon these findings and Mr. Hilton's medical history, Dr. Riber: (a) recommended initial treatment of the radicular pain through a selective nerve root injection; (b) explained the "clinical EHL weakness is certainly consistent with the results of the electrodiagnostic studies"; (c) attributed the current radiculopathy to "initial compression caused by the expanding wound, as well as the venom, which itself can certainly

produce nerve root irritation and neuropathic pain"; (d) referenced the previously documented "change in his premorbid symptom pattern" as a basis for attributing Mr. Hilton's current neuropathic pain and the "likely compensatory" back pain to the consequences of the spider bite; and (e) determined Mr. Hilton had not reached maximum medical improvement, while indicating his work status would be "restricted to sedentary" activities with the ability "to change positions per tolerance."

19. On August 12, 2012, Mr. Hilton underwent a forensic psychiatric evaluation by Dr. Donna Schwartz-Watts, a clinical professor of forensic psychiatry affiliated with the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science. At that time, Dr. Schwartz-Watts also interviewed Mrs. Hilton, who reported: (a) her husband manifested "violent mood swings which are in part provoked by his lack of memory"; (b) aggressive denial when reminded of statements he could not remember; (c) activity reflective of confabulation, which she described as "a clinical symptom of cognitive impairment, [that] . . . is not volitional"; and (d) a "general expression of decreased . . . emotion . . . unless he is aggressive."

20. Dr. Schwartz-Watts also conducted a mental a status examination, which verified: (a) Mr. Hilton "had cognitive impairment including difficulty with visual spatial design"; (b)

"[h]e perseverated, . . . a clinical symptom of cognitive impairment"; (c) Mr. Hilton "had difficulty abstracting similarities between difficult objects"; (d) he also encountered "difficulty registering and recalling objects and required prompting and forced choice"; (e) poor performance "on a test of verbal fluency", which was also associated with perseveration; and (f) Mr. Hilton "gave a good effort" in connection with this assessment.

21. She further observed: (a) the presence of "end gaze nystagmus" (previously documented by Dr. Solomon); (b) "difficulty performing rapid alternating movements" (which could ultimately be accomplished with practice); (c) Dr. Solomon's records referenced various relevant factors (a right sided subdural and epidural hematoma with a resultant focal motor seizure disorder; "agusia and olfactory impairment"; "short-term memory problems"; "short-term memory impairment on neurological evaluation"); and (d) neuropsychological assessment was warranted.

22. In accordance with Dr. Schwartz-Watts' directive, Mr. Hilton underwent neuropsychological evaluation by Dr. Tora Brawley of the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science (August 16, 2012), who confirmed: (a) her awareness of the fact "discrepancies . . . in his report of personal history facts . . . [had led to]

accusations that he was purposefully being dishonest"; (b) "Mr. Hilton had difficulty correctly recalling some personal information . . . [d]uring the clinical interview"; (c) review of relevant medical records "revealed that he suffered both a subdural and epidural hematoma which required surgical evacuation via a right temporal craniotomy" in 2000; (d) memory issues following the 2000 head trauma; (e) reports of "continued problems with memory loss, mood swings, light headedness and sleep difficulties" to Dr. Solomon in February, 2011; and (f) "his difficulties have worsened following complications from a spider bite in August, 2011."

23. In conjunction with this evaluation, Dr. Brawley, who currently serves as an assistant professor for the University of South Carolina School of Medicine, administered ten neuropsychological instruments, including "the Test of Memory Malingered", which "revealed him to have significant deficits in many areas" These deficits included "immediate verbal learning", "immediate verbal memory for prose passages", "recall of a complex figure", "controlled verbal fluency", "judgment of line orientation", "nonverbal abstract reasoning and problem solving" and "trail making ability".

24. Dr. Brawley also specifically explained that "[f]ormal effort testing was conducted and performance was completely

within normal limits, indicating no evidence of an attempt to exaggerate or malingering cognitive symptoms."

25. Based upon Mr. Hilton's relevant medical history, her clinical interview and the results of this rather extensive neuropsychological testing, Dr. Brawley determined: (a) "testing results revealed the presence of severe cognitive deficits in many areas assessed, including memory"; (b) "[t]hese deficits are consistent with residual organic deficits from his previous head injury and have likely been exacerbated by more recent . . . physical injuries and psychosocial stressors"; (c) "[t]here was no indication of an attempt to malingering on testing"; (d) "any discrepancies noted in his report of personal history or other areas are related to his cognitive deficits, rather than an attempt to purposely report incorrect information"; and (e) "[t]his [conclusion] . . . is further supported by documented reports and medical evidence of continued memory problems in February, 2011."

26. After considering these neuropsychological test results, in light of her own clinical findings, Mr. Hilton's medical history and the content of his deposition, Dr. Schwartz-Watts: (a) concluded "to a reasonable degree of medical certainty that Mr. Hilton has severe cognitive impairments, including memory disturbance, confabulation and perseveration which can account for the obvious discrepancies in his deposition

testimony"; and (b) expressed "grave concerns about his competency to testify in these proceedings due to his memory deficits and inability to learn new information."

27. During this time period (August 14, 2012), Mr. Hilton was also evaluated by Dr. Nicholas A. Lind of Post Trauma Resources, who observed: (a) apparent memory impairment per mental status examination; (b) "Mr. Hilton's score of 84 . . . [on the MMPI-2-RF] is consistent with the memory problems expected from his 2000 head trauma"; (c) his "memory complaints are consistent with his described head injury and appear legitimate as determined by the validity measures of the psychological testing measures used in this evaluation"; (d) "Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate"; and (e) formal neuropsychological testing would better gauge "the validity and extent of Mr. Hilton's memory deficits"

28. In this regard, after reviewing "the findings and conclusions of Dr. Brawley's 16 August, 2012 neuropsychological evaluation", Dr. Lind (also a practicing neuropsychologist) agreed: (a) "[t]he results are consistent with the psychological evaluation . . . [he had] conducted on 14 August, 2012 and suggests significant deficits in memory as well as executive and dexterity impairments"; and (b) "[t]his additional evidence

confirms that Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate and explain the difficulties he continues to experience with recall of his history."

29. During the course of his August 20, 2012 deposition, Dr. Healy was extensively examined as to various contested issues, including the likely source of Mr. Hilton's current symptoms, additional medical needs and work status. He was also repeatedly questioned, through use of medical records and surveillance video footage, relative to various aspects of Mr. Hilton's credibility, particularly as it related to the consequences of his August 17, 2011 spider bite, his physical/functional capabilities and the deposition discrepancies.

30. In discussing the source of Mr. Hilton's current left leg symptoms, Dr. Healy verified: (a) an acknowledgement of pre-injury symptoms that were reflective of some degree of neuropathic pain (Healy Deposition, pp. 31 - 37; 43 - 44); (b) the pins and needles sensation Mr. Hilton was now experiencing, which was clearly indicative of neuropathic pain, had been neither reported nor identified by any medical record prior to August 17, 2011 (Healy Deposition, pp. 95 & 100); (c) the findings documented through pre-surgical treatment notes (pain, redness, skin breakdown, swelling, bite marks, fever, nausea and

vomiting) were not only indicative of a brown recluse spider bite, but also a "systemic effect" produced by the injected venom (Healy Deposition, pp. 76 - 79; 85, 87); (d) toxic venom of this nature can, in and of itself, create neuropathic pain of the type described by Mr. Hilton (Healy Deposition, pp. 41,81 & 122); (e) the nature/degree of Mr. Hilton's pre-surgical symptoms (swelling; size of abscess and surrounding inflammation) were also sufficient to create sciatic nerve compression, even in the absence of muscle tissue damage (Healy Deposition, pp. 80 & 88); (f) Mr. Hilton's current left leg symptoms most probably, to a reasonable degree of medical certainty, result from the consequences of the August 17, 2011 spider bite (venom itself and/or nerve compression caused by pre-surgical wound development) and/or the aggravation/acceleration of preexisting pathology by the consequences of this bite (Healy Deposition, pp. 81 - 84, 89 - 90, 103); (g) the symptoms which temporally resulted from the spider bite, as well as the degree of necrosis documented during surgery, could not be faked (Healy Deposition, pp. 84 - 88); (h) the presence of neuropathic injury had been objectively verified by EMG testing (Healy Deposition, pp. 17 & 125); and (i) he was comfortable with his ability to render this opinion as to causal connection, indicating Mr. Hilton's surgeon was in no better position to address this issue (Healy Deposition, pp. 70 & 90).

31. When questioned as to Mr. Hilton's current back symptoms, Dr. Healy explained: (a) an understanding that "his walking was [not] . . . totally normal" pre-injury (Healy Deposition, p. 44); (b) the consequences of the spider bite had further contributed to gait alteration (Healy Deposition, p. 104); (c) while he noticed this gait disturbance, "it wasn't dramatic" (Healy Deposition, p. 7); (d) the video surveillance footage was consistent with his prior observations (Healy Deposition, p. 63); (e) this gait disturbance had resulted in the development of mechanical low back pain (Healy Deposition, p. 72); (e) Mr. Hilton's current back symptoms were compensatory (due to increased gait alteration attributable to neuropathic pain) and had "come on quicker than . . . might have otherwise [been] . . . expected" due to the aggravating/accelerating impact of the causally related increase in neuropathic pain by the consequences of the brown recluse spider bite (Healy Deposition, pp. 103 - 104, 122 - 123); (g) the EHL weakness identified by Dr. Riber was a relatively objective finding that was consistent with the sciatica confirmed by electrodiagnostic studies and "absolutely" reflective of actual nerve dysfunction (Healy Deposition, pp. 119 - 121, 125 - 126); (i) Mr. Hilton required treatment of the nature outlined by Dr. Riber (Healy Deposition, p. 121); (j) given his longstanding professional relationship with Dr. Riber (who he characterized as "the guru" for pain

management care), it was his wish that Mr. Hilton receive this treatment through Dr. Riber (Healy Deposition, pp. 119 & 122); and (k) Mr. Hilton had not yet achieved maximum medical improvement (Healy Deposition, p. 132).

32. Additionally, Dr. Healy addressed Mr. Hilton's cognitive capacity, specifically confirming/concluding: (a) while the focus of his treatment had been the neuropathic pain component, he had noticed clinical cognitive limitations (Healy Deposition, p. 45); (b) it was not unusual for someone who has experienced head trauma of the nature Mr. Hilton sustained in 2000 to develop cognitive loss (Healy Deposition, p. 108); (c) persistent memory loss was actually "referenced as an ongoing symptom to a neurologist" before the August 17, 2011 accident date (Healy Deposition, pp. 109 - 110); (d) neuropsychological testing of the nature performed by Dr. Brawley included "not only specific tests, but actual portions of other tests, that are specifically geared towards ferreting out exaggeration and malingering" (Healy Deposition, p. 111); (e) the absence of malingering and exaggeration of cognitive symptoms, as well as the valid assessment of cognitive function verified by the neuropsychological test battery administered by Dr. Brawley were consistent with his own intuitive impressions (Healy Deposition, p. 112); (f) the results of this testing did not support allegations that Mr. Hilton's actions (including deposition

testimony) were reflective of dishonesty and deceit (Healy Deposition, p. 112); (g) these test results were indicative of a "significant problem from the head injury" (Healy Deposition, p. 114); (h) his agreement with Dr. Brawley's determination "that any discrepancies noted in his report of personal history or other areas are related to cognitive deficits rather than an attempt to purposefully report incorrect information" (Healy Deposition, pp. 114 - 115); (i) his impressions were also consistent with those of Drs. Schwartz-Watts and Lind (Healy Deposition, pp. 115 - 116); (j) he had no doubt Mr. Hilton was experiencing "noticeable cognitive damage secondary to brain injury . . . [which is] a very reasonable and more than likely explanation for . . . [the various factual] discrepancies" identified by Defendants (Healy Deposition, pp. 116 - 117); and (k) to a reasonable degree of medical certainty, he was "comfortable that [Mr. Hilton] in his efforts to receive treatment . . . and his testimony has done nothing contrived or purposeful, but rather that any of these discrepancies or conflicts are the results of his brain injury and results of cognitive deficits" (Healy Deposition, p. 128)

33. After considering the purportedly dishonest behavior alleged by Defendants, Dr. Healy similarly/consistently validated Mr. Hilton's credibility, testifying: (a) although he recognized the presence of certain discrepancies in Mr. Hilton's medical

history, he had no concerns as to this gentleman's credibility (Healy Deposition, pp. 31 - 38, 45 - 49); (b) his participation in the October, 2011 cruise was an insufficient basis upon which to characterize Mr. Hilton as "a liar" (Healy Deposition, pp. 55 - 60); (c) the presence of cognitive deficits stemming from the prior brain injury was a reasonable explanation for these alleged inconsistencies (Healy Deposition, p. 117); (d) the need for cues (i.e., testifying accurately after looking at a card bearing the date of a prior cruise) "fits" as an explanation for Mr. Hilton's ability to recall certain information (Healy Deposition, pp. 117 - 118); (e) Mr. Hilton's satisfaction of validity criteria, including the absence of malingering or exaggeration per applicable elements of the neuropsychological test battery administered by Dr. Brawley, supported his belief there was no indication this gentlemen was not credible (Healy Deposition, pp. 112 - 113); (f) he would "not . . . blindly support somebody who is faking, malingering or being less than candid" (Healy Deposition, p. 127); and (g) Mr. Hilton was a credible patient (Healy Deposition, pp. 70 - 71, 106, 131 - 132).

34. This authorized treating physician's testimony further establishes: (a) due to his causally related symptoms and the potentially impairing effects of medication, in light of the nature of his occupation, Mr. Hilton had been maintained on out-of-work status (Healy Deposition, pp. 18, 63 - 64, 67); (b) his

primary instructions in terms of activities of daily living were to avoid "anything extreme", while attempting to function within tolerance levels (Healy Deposition, pp. 19, 66 - 67); (c) the surveillance video did not depict Mr. Hilton engaging in any unacceptable activity (Healy Deposition, pp. 66 & 74); and (d) although Mr. Hilton remained on out-of-work status, he had no objection to an attempt to engage in sedentary activity in accordance with Dr. Riber's recommendation (which he felt could be therapeutic) (Healy Deposition, p.127)

35. Shortly after deposing Dr. Healy, Defendants solicited Dr. Chen's testimony. While this general surgeon initially opined that he did not believe Mr. Hilton's abscess or area of inflammation was large enough to create compression on the sciatic nerve, he subsequently conceded: (a) he neither was nor considered himself an expert in the field of neurology (Chen Deposition, p. 38); (b) he likewise was not an expert in terms of the ultimate implications of venomous bites (Id.); (c) he had no reason to dispute Mr. Hilton was bitten by an insect on August 17, 2011 (Chen Deposition, p. 41); (d) Mr. Hilton's post-injury complaints/symptoms were "consistent with . . . ones that are commonly attributable to a Brown Recluse spider bite" (Chen Deposition, p. 43); (e) the presence of the same reported symptoms upon which Dr. Healy had concluded Mr. Hilton was manifesting "a systemic effect" produced by spider venom (Chen

Deposition, pp. 46 - 48); (f) the tissue damage discovered during surgery was consistent with the destructive process caused by venom or infection (Chen Deposition, p. 52); (g) "venom itself can create damage to an underlying nerve" (Id.); and (h) venom can likewise "create nerve irritation and neuropathic pain." (Chen Deposition, p. 53).

36. Dr. Chen also candidly acknowledged/agreed: (a) nerve root injury "would actually fall more within . . . a neurologist['s] . . . area of expertise than a surgeon's in terms of delineating etiology of nerve irritation or nerve damage" (Chen Deposition, pp. 53 - 54); (b) he would "normally defer to a neurologist in terms of making a conclusion as to what is the cause of nerve root damage in a scenario" (Chen Deposition, p. 54); (c) Dr. Healy's finding of non-discogenic sciatic per electrodiagnostic studies had "some degree of objectivity" (Id.); (d) he would defer to the specialist's (Dr. Healy's) opinion relative to the causal relationship of Mr. Hilton's non-discogenic sciatica and the consequences of the spider bite (Chen Deposition, pp. 54 - 55); (e) he did not "have the specialty or knowledge to disagree with" Dr. Healy's opinion (Chen Deposition, p. 55); (f) Dr. Evans' opinion that Mr. Hilton's current left lower extremity symptoms represented the late complication of a brown recluse spider bite was consistent with Dr. Healy's conclusion "in terms of etiology" (Chen Deposition, p. 57); (g)

he would likewise defer to Dr. Evans' opinion on this point (Id.); and (h) he did not "hold [him]self . . . out as being an expert in [n]eurology (Id.).

37. This physician further testified: (a) identification of the source of nerve damage identified by an EMG was outside his area of expertise (Chen Deposition, p. 60); (b) he did not possess the expertise to decide the question of causation (Chen Deposition, p. 60 - 61); (c) he was consequently deferring to the neurologist "in terms of cause and effect as far as what . . . [Mr. Hilton's] current problems are and how they relate to the spider bite" (Chen Deposition, p. 61); (d) any opinions offered in response to defense counsel's questions on this point were "really . . . outside [his] . . . area of specialization and expertise" (Chen Deposition, p. 65); and (e) given this lack of expertise, he "would defer to the [n]eurologist . . . as to his determination of the source of [Mr. Hilton's] . . . symptoms" (Chen Deposition, p. 76).

38. Pursuant to questionnaire responses dated November 7, 2012, Dr. Schwartz-Watts confirmed: (a) ". . . [g]iven the nature/degree of his previous head trauma (involving both subdural and epidural hematoma requiring surgical evacuation via right temporal craniotomy), [her] . . . clinical findings and the results of his valid neuropsychological testing, . . . Mr. Hilton's current cognitive deficits (including severe memory

compromise) most probably result from physical brain damage"; (b) ". . . [i]n view of the nature/degree of Mr. Hilton's previous head trauma, [her] . . . clinical findings and the results of neuropsychological testing, . . . the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of his August 17, 2011 work related injury"; (c) ". . . [g]iven the nature/degree of Mr. Hilton's physical brain damage, [her] . . . clinical findings and the results of neuropsychological testing, . . . inconsistencies/inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory), are most probably the result of this physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead"; (d) "the cognitive deficits produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably negatively effect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) "lapses in behavioral judgment would also most probably be attributable to the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury"

39. A questionnaire executed by Dr. Brawley on November 8, 2012 similarly: (a) attributes "Mr. Hilton's current cognitive deficits (including severe memory compromise) . . . [to] physical brain damage"; (b) recognizes "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of . . . [Mr. Hilton's] August 17, 2011 work related injury"; (c) relates any "inconsistencies/inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory) . . . [to] the result[s]. . . of this physical brain damage, rather than an purposeful/intentional/volitional attempt to mislead"; (d) recognized "the cognitive deficits produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably affect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) ties these "lapses in behavioral judgment . . . to his previous brain damage and the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury" Dr. Lind also offered identical opinions, from a neuropsychological standpoint, via questionnaire responses dated November 8, 2012.

40. Significantly, when asked to address these questions, Dr. Healy verified (agreed): (a) Mr. Hilton's "current cognitive deficits (including severe memory compromise) most probably result from physical brain damage"; (b) "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of Mr. Hilton['s] . . . August 17, 2011 work related injury"; (c) the testimonial inaccuracies (which Defendants alleged to be reflective of a knowing effort to deceive) "are most probably the result of this physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead"; and (d) the negative impact Mr. Hilton's aggravated cognitive deficits are producing on his behavioral judgment.

41. The undersigned also reviewed various medical records (dating back to 2001), which Defendants maintain are relevant to the source of Mr. Hilton's current symptoms. These records include: (a) November 28, 2001 notes from Marlboro Park Hospital that reference complaints of a left knee contusion; (b) January 10, 2003 reports from the same hospital that relate to low back pain following a motor vehicle accident; (c) chiropractic treatment records identifying receipt of spinal (cervical, thoracic and lumbar) care for soft tissue injury stemming from this motor vehicle accident (January 13, 2003 until March 29, 2003), as well as the chiropractor's assignment of a 5%

impairment rating; (d) reports from Marlboro Park Hospital relative to the assessment/removal of the previously referenced piece of metal that had become embedded in Mr. Hilton's left ankle area; and (e) October 13, 2008 x-rays of Mr. Hilton's left foot and knee, which revealed on "an old fifth metatarsal fracture".

42. The undersigned also considered records generated by Carnival Cruise Lines, which reflect: (a) Mr. Hilton traveled on six cruises (ranging from three to five days in duration) from April 15, 2009 through early June, 2012; (b) two of these cruises occurred following his accident date; (c) he participated in an October 24, 2011 - October 29, 2011 cruise; (d) during the course of this cruise, various charges were incurred under the name of Michelle Hilton at several facilities on the ship ("Stars Bar", "Diamonds Disco", "Bogarts Café", "Wine Sensation", "Puttin on Ritz", and "Pool"), while other charges were attributed to Mr. Hilton's "FOLIO" number; (e) two others accompanied he and his wife on the June, 2012 cruise (which also lasted five days); and (f) on-ship charges (identifying substantially the same venues) were incurred through Mrs. Hilton's account.

43. However, the Carnival Cruise Line data offers limited insight as to Mr. Hilton's activity level during these cruises. Essentially, the records confirm unspecified purchases during the duration of the cruise (several of which occurring after

midnight), but generally do not differentiate between purchases of food/beverages, services, etc.

44. Additionally, the undersigned reviewed the video surveillance footage submitted by Defendants. While the surveillance involved observing Mr. Hilton at multiple locations, the bulk of this footage focused on several hours spent at Mr. Covington's place of business ("Collision Repair Center") during the afternoon of March 27, 2012. The surveillance depicts Mr. Hilton standing for finite periods of time, walking short distances, engaging in limited bending/leaning and sitting in a vehicle. This time-stamped footage (conducted between 11:47 AM and 6:25 PM) also contains segments, totaling well over an hour, where Mr. Hilton is either sitting or completely out of sight.

45. During exhaustive cross-examination, Mr. Hilton was noticeably confused and did not always remember what he had said during his previous deposition. He actually apologized more than once for inaccurate/incorrect statements made during the deposition, including his failure to remember going on the October, 2011 cruise. Mr. Hilton also recalled certain elements of his post-head trauma medical history (involving not only treatment received for the August 17, 2011 spider bite, but also previous health issues), while confirming his wife generally attended medical appointment with him in order to assist in the provision of information.

46. In this regard, I find Mr. Hilton's testimony remained consistent relative to: (a) his recollection that the previous incidents referenced by Defendants (involving his left leg and back) had not resulted in any permanent or long term symptoms/limitations; (b) his receipt of treatment from Dr. O'Dell for left leg symptoms prior to the August 17, 2011 accident date; (c) the distinction between symptoms attributable to Achilles tendonitis and the left leg pain which developed in the aftermath of the brown recluse spider bite; and (d) the nature of his current back symptoms.

47. Given Mr. Hilton's well-documented cognitive deficits, the testimony of his wife proved to be particularly enlightening. Specifically, Mrs. Hilton: (a) corroborated the circumstances surrounding her husband's 2000 head trauma (from a standpoint of someone who was in the vehicle at the time of impact, on the scene following his ejection from their vehicle and present for most of his treatment); (b) noted Mr. Hilton had changed following this accident; (c) provided examples of the cognitive problems he had exhibited following the 2000 head trauma; (d) acknowledged his recollection of events occurring prior to the 2000 accident remained good; (e) outlined the "routine" they had implemented to facilitate her husband's continued employment rather than pursuing disability benefits; (f) confirmed Mr. Hilton's cognitive compromise had not resolved with the passage

of time and remained problematic, to the extent they had returned to Dr. Solomon in the hope of obtaining medical assistance approximately six months prior to the August 17, 2011 spider bite; and (g) indicated his memory lapses, mood swings, level of agitation, ability to measure time, attention/focus and frequency of inaccuracy had clearly worsened following the spider bite.

48. She further verified: (a) Mr. Hilton's inability to recall the October, 2011 cruise (absent reviewing something to prompt his memory) was not usual; (b) her husband's physical activities were noticeably limited during each of the cruises; (c) while she and her husband drank alcohol and generally remained at one of the on-ship venues (as opposed to in the cabin) during the cruises, he did not engage in dancing or spend appreciable times on his feet; (d) she was present during a portion of the March 27, 2012 surveillance period; and (e) actually observing Mr. Hilton sitting (either in her vehicle or on a sofa inside Mr. Covington's building) during her husband's March 27, 2012 visit to this location.

49. Mrs. Hilton's testimony was substantially corroborated by Mr. Covington, a longtime friend of her husband. When questioned as to his observations/impressions, Mr. Covington explained: (a) he had been afforded ample opportunity to interact with Mr. Hilton both before and after the 2000 head trauma; (b) Mr. Hilton exhibited no difficulties with memory, focus, mood

disturbance, etc. prior to the 2000 accident; (c) noticeable changes had occurred subsequent to this accident, particularly involving memory and Mr. Hilton's reaction to these memory deficits; and (d) the nature of Mr. Hilton's pre-August 17, 2011 memory dysfunction had caused him to question how his friend was still being allowed to operate a tractor trailer.

50. After thoroughly reviewing all evidence of record and observing each of the witnesses during the course of the hearing, I specifically find: (a) Mr. Hilton's presentation (both live and through deposition) is completely consistent with the material level of cognitive dysfunction confirmed by Drs. Healy, Schwartz-Watts, Brawley and Lind; (b) the inaccuracies/inconsistencies in his testimony, as well as incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage documented by at least four duly qualified specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) Mr. Hilton has been experiencing cognitive dysfunction since the 2000 head trauma, which clearly produced some degree of physical brain damage (as evidenced by his post-motor vehicle accident pathology, need for brain surgery and the symptoms documented through February 11, 2011); (d) the persistent symptoms referenced by Dr. Solomon in 2011, coupled with the unanimous opinions expressed by Drs.

Healy, Schwartz-Watts, Brawley and Lind, firmly establish the presence of appreciable cognitive dysfunction prior to April 17, 2011; (e) these experts, as well as the lay testimony, also verify his current level of cognitive dysfunction; (f) this explanation for any alleged credibility issues is founded upon uncontradicted medical evidence (objective and/or wholly validated through use of devices specifically aimed toward identifying malingering/embellishment); and (g) the current circumstances unquestionably verify the legitimacy of Mr. Hilton's cognitive loss, while dispelling any notion that the implications of his pre-existing brain damage were contrived.

51. I further find: (a) great weight should be afforded to the opinions expressed by Dr. Healy, particularly with respect to the issue of maximum medical improvement, as this authorized treater not only had the opportunity to assess Mr. Hilton on multiple occasions, but also considered Defendants' allegations (including the assertion his current left leg and back symptoms are purely the result of preexisting conditions) and the products of their surveillance; (b) after reviewing the surveillance footage and being apprised as to aspects of prior medical history which Defendants believe to be particularly relevant, Dr. Healy concluded Mr. Hilton had not achieved maximum medical improvement and required further treatment through Dr. Riber; (d) he similarly verified the consequences of Mr. Hilton's compensable

injury continued to prohibit resumption of his pre-injury employment activities; (e) upon reviewing the results of neuropsychological testing, in light of his own clinical observations, Dr. Healy agreed Mr. Hilton's 2000 head trauma had produced appreciable cognitive deficits secondary to physical brain damage; and (f) Defendants' designated authorized treater likewise validated Mr. Hilton's credibility, repeatedly declining to endorse Defendants' contention that this gentleman had presented himself and/or testified in a dishonest, deceptive or misleading fashion.

52. I likewise find Mrs. Hilton's testimony to be a key element in connection with my assessment of her husband's presentation, as she: (a) provided a compelling account of the circumstances surrounding the 2000 head trauma, as well as its impact on Mr. Hilton's cognitive abilities (as compared to his prior state); (b) convincingly outlined the nature/persistence of Mr. Hilton's cognitive dysfunction in a manner which was wholly consistent with his valid neuropsychological test results and the unanimous opinions expressed by the medical experts; (c) made no effort to disavow the occurrence of various activities which were the focus of Defendants' credibility allegations, instead offering explanations for this conduct in the context of his longstanding cognitive problems; and (d) reliably noted the current state of his cognitive disorder.

53. I also find: (a) Mr. Hilton has not achieved maximum medical improvement relative to the consequences of his compensable accident, which continue to produce left leg and back symptoms; (b) his left leg and back symptoms proximately result from the aggravation of preexisting, nondisabling conditions by the consequences of his August 17, 2011 compensable accident; (c) Mr. Hilton requires further treatment for these injury components in accordance with Dr. Healy's recommendations; (d) his receipt of this treatment is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his compensable accident; (e) the current circumstances warrant Dr. Healy's continued service as Mr. Hilton's authorized treating physician, as well as his receipt of particular treatment modalities identified and/or endorsed by this neurological specialist; and (f) Mr. Hilton remains temporarily totally disabled by the consequences of his compensable accident.

54. I finally find: (a) any discrepancies, inconsistencies, errors, etc. in connection with either Mr. Hilton's testimony or conduct result from the cognitive dysfunction confirmed by no less than four medical specialists; (b) the testimony and conduct which Defendants maintain warrants termination of Mr. Hilton's claim were/are neither volitional nor reflective of dishonesty; (c) entry of a finding as to a lack of credibility is not

warranted in this instance; (d) I would not find him not to be credible; (e) the issues currently in dispute, including the presence of cognitive dysfunction explaining/rebutting Defendants' allegations as to a lack of credibility, are clearly medically driven; and (f) the evidence of record amply supports Mr. Hilton's contentions as to this issue.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On August 17, 2011, Mr. Hilton, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2002), sustained a compensable injury to his left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Flakeboard America Limited, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). This injury ultimately produced a back injury component, the consequences of which are likewise compensable per Section 42-1-160. See, Whitfield v. Daniel Construction Company, 226 S.C. 337, 83 S.E. 2d 460, 462 (1954); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C.

431, 458 S.E. 2d 76, 79 (Ct. App. 1995). (Every natural consequence of compensable injury is likewise compensable).

3. "Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment." O'Banner v. Westinghouse Electric Corporation, 319 S.C. 24, 459 S.E. 2d 324, 327 (Ct. App. 1995); Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 887 (Ct. App. 2006).

4. As previously noted, neither Dr. Healy (Defendants' designated treating physician) nor Dr. Riber believe Mr. Hilton has achieved maximum medical improvement as to the consequences of his compensable accident. Similarly, the parties have agreed the issue relating to the current source(s) of Mr. Hilton's cognitive dysfunction needs to be addressed by the Commission at a later date. Further, Dr. Chen's opinions: (a) limit any determination of maximum medical improvement to the August 24, 2011 debridement procedure itself; and (b) consistently defer to Dr. Healy's judgment/conclusions as to the effects of Mr. Hilton's neurologic/nerve injury. I consequently conclude the evidence of record firmly establishes Mr. Hilton has not achieved maximum medical improvement.

5. While Defendants argue Mr. Hilton's purported lack of credibility authorizes a determination that he has reached

maximum medical improvement, I conclude: (a) achievement of maximum medical improvement is a purely medical determination (See, Williams v. South Carolina Department of Mental Retardation, 308 S.C. 438, 418 S.E. 2d 555 (Ct. App. 1992) (Commission finding of maximum medical improvement on date that did not coincide with medical evidence held erroneous); See also, Collins v. Speedway Motor Sport Corp., 165 N.C. App. 113, 598 S.E. 2d 185, 191 (2004) ("MMI is a 'purely medical determination'")); and (b) the evidence of record clearly establishes he has not attained maximum medical improvement.

6. I also conclude: (a) the existence of physical brain damage in the context of the disputes currently before me is a medically driven issue (i.e., the allegations as to Mr. Hilton's lack of credibility); (b) the medical evidence of record, including opinions expressed by Mr. Hilton's designated authorized treating neurologist, unequivocally verifies any inaccuracies/inconsistencies in Mr. Hilton's testimony, as well as incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage confirmed by four duly qualified medical specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) the lay witnesses have likewise provided convincing testimony as to the nature/impact of Mr. Hilton's

previous and current levels of cognitive dysfunction(both following the 2000 motor vehicle accident and at present); and (d) an adverse credibility finding is neither warranted nor justified in this instance.

7. Defendants are financially responsible for all causally related medical modalities which Mr. Hilton has heretofore received/undergone through Dr. Healy or any other authorized providers, as these modalities were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (A) (2007). In this regard, I also conclude: (a) Defendants are financially responsible for the additional medical treatment modalities provided/prescribed/recommended by Dr. Healy relative to Mr. Hilton's compensable left leg and back injury components, including the particular modalities identified by Dr. Riber; (b) Dr. Healy shall remain Mr. Hilton's designated/authorized treating physician for the purposes of this claim, notwithstanding the fact certain treatment modalities may be provided/performed by other specialists; and (c) the parties otherwise retain their respective rights per this statute.

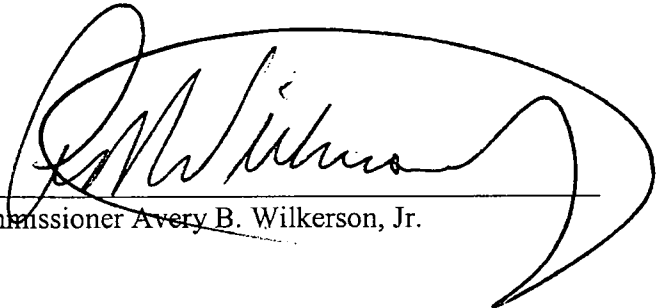
8. I also conclude Mr. Hilton remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (2007).

9. I finally conclude that the issue involving whether the consequences of Mr. Hilton's compensable accident have produced injury components other than his left leg and back shall be held in abeyance pending further agreement of the parties or Order of this Commission. Resolution of the disputed average weekly wage/compensation rate issue shall similarly be held in abeyance.

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) continue to pay Mr. Hilton weekly temporary total disability compensation; (b) accept financial responsibility for all causally related medical modalities heretofore provided/prescribed by any authorized physicians/specialists in connection with the treatment of his compensable injury components; (c) authorize Mr. Hilton's receipt of the causally related treatment modalities provided/prescribed by Dr. Healy; and (d) similarly accept financial responsibility for causally related medical modalities through other specialists in accordance with the prescriptions/recommendations of Dr. Healy, who shall remain Mr. Hilton's designated treating physician for the purposes of this claim.

IT IS SO ORDERED.



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

June 4, 2013

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson

EXHIBIT 2

**DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**COMMISSION PANEL: THE HONORABLE SUSAN S. BARDEN, CHAIR; THE
HONORABLE GENE MCCASKILL; THE HONORABLE ANDREA C. ROCHE**

SCWCC FILE NO.: 1111934

Thomas Hilton,

Claimant

v.

Flakeboard America Limited,

Employer, and

Liberty Mutual Insurance Company,

Carrier, Defendants.

Hearing held in Columbia,
South Carolina on October 14th, 2013

Per notice timely and properly served upon all Parties of Interest.

Appearances: Andrew N. Safran, for Claimant

L. Brenn Watson, for Defendants

Filed:

May 21, 2014

STATEMENT OF THE CASE

The instant proceeding was initiated by Defendant/Employer's Form 21 Employer's Request for Hearing dated July 6, 2012 to address termination of temporary disability benefits pursuant S.C. Code §42-9-206(E) and to request credit for overpayment of temporary compensation pursuant to §42-9-210. Also at issue in the Defendant's pleading was whether: (a) Claimant reached MMI, (b) Claimant required further treatment for the consequences of his compensable accident; and (3) Claimant remains temporarily totally disabled. On October 30, 2012 Defendants also filed a Motion for Court Order to Compel the Department of Social Services to produce records in the above referenced matter.

In response, Claimant maintained: (a) any inconsistent and/or inaccurate statements contained in the record (deposition testimony or otherwise) were the product of significant cognitive deficits stemming from physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead; (b) he had not achieved maximum medical improvement as to the consequences of his compensable accident; (c) Defendants were obliged to authorize the various treatment modalities which had been prescribed/recommended by Dr. Healy, their designated treating physician; and (d) he remained temporarily totally disabled.

On June 4, 2013, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

- 1. On August 17, 2011, Mr. Hilton sustained a compensable injury to his left buttocks/upper leg area while transporting material, via tractor trailer, to a location in Virginia. Specifically, while en route to this delivery site, Mr. Hilton was bitten in his buttocks/upper leg area by an insect as he was operating the tractor trailer.*
- 2. At the time he sustained this compensable injury, Mr. Hilton was performing duties arising out of and within the course and scope of his employment as a tractor trailer/delivery driver for Flakeboard America Limited, where had worked since May 3, 2010.*

3. After sustaining this injury, Mr. Hilton: (a) reported its occurrence to a representative of Flakeboard America Limited; (b) continued to experience buttocks/upper leg pain; (c) nonetheless completed his delivery assignment; and (d) ultimately returned to his Bennettsville, South Carolina home, where his wife observed evidence of an insect bite at the focal site of his pain.

4. Although he attempted to continue working, Mr. Hilton's symptoms (pain, swelling and redness emanating from the wound) persisted, to the extent he sought treatment through the Marlboro Park Hospital Emergency Room on August 19, 2011. As confirmed by a review of the records generated by this facility, he: (a) reported the sudden onset of buttocks/upper leg pain two days prior; (b) indicated he had since experienced "pain, redness, skin breakdown . . . [and] swelling [from a] single lesion . . . [that he attributed to] being bitten by a spider"; (c) exhibited "a raised, round, red area with obvious bite mark in the center of the . . . [buttocks/upper leg] lesion"; (d) also manifested skin discoloration ("bright red"), tenderness and swelling ("edematous") in the "area surrounding the bite"; (e) was diagnosed to have experienced a spider bite, for which he received an injection of Decadron, as well as a prescription for Percocet; and (f) was instructed to seek further treatment in the event his symptoms did not improve.

5. When his condition progressively worsened, Mr. Hilton was assessed at Agape Senior Primary Care (August 22, 2011), where he: (a) related the same history and mechanism of injury; (b) reported high fever the previous day; (c) exhibited a "[l]arge, warm, red abscessed . . . [area in the] left upper posterior thigh . . . [that measured] approx[imately] . . . 5 inches in diameter [and was] . . . exquisitely painful"; (d) received an injection of Marcaine into the center of this abscessed wound; and (d) was directed to Dr. Chi-Dai Chen for surgical assessment.

6. Upon initially examining Mr. Hilton (August 23, 2011), Dr. Chen: (a) noted persistent complaints "of severe pain and drainage from the wound . . . [with] associated symptoms of fever, nausea, and vomiting"; (b) observed "an area of erythema and induration on the left posterior thigh"; (c) similarly identified "an opening with some underlying necrotic subcutaneous tissue . . . consistent with an abscess with surrounding cellulitis"; and (d) admitted Mr. Hilton to the hospital "for IV antibiotics and . . . local debridement . . . [d]ue to the severity of his symptoms"

7. During the course of this August 24, 2011 procedure, Dr. Chen: (a) excised the skin overlying Mr. Hilton's abscess, which led to an "immediate finding of underlying

necrotic fat"; (b) engaged in "... [b]lunting dissection to breakdown any loculation and purulent draining" after excising this necrotic fat; and (c) obtained an intraoperative culture prior to washing the wound and packing this area "using moist gauze dressing, 4 x 4, and tape." Following this procedure, Dr. Chen inspected the wound on two occasions (September 1, 2011 and September 12, 2011) prior to placing Mr. Hilton on PRN status.

8. While Mr. Hilton had admittedly encountered and sought treatment for predominant left heel/ankle pain prior to his August 17, 2011 injury, consideration of various reports generated by Dr. Jason B. O'Dell of Pee Dee Orthopaedic Associates, P.A. (from whom he received medical care for this problem) verifies: (a) the diagnosis as of July 28, 2011 was "Achilles Tendonitis"; (b) on that date, Mr. Hilton reported the pain (that Dr. O'Dell had diagnosed to be reflective of "Achilles Tendonitis") radiated up the back of his leg; and (c) on December 1, 2011, the last day he received treatment from this orthopaedic surgeon, Dr. O'Dell's "FOCUSED EXAM. . . remain[ed] unchanged. . . [with] ongoing insertional pain and tenderness", which this physician continued to characterize as the product of "(Chronic). . . Achilles tendinitis."

9. A review of reports generated by Dr. W. James Evans of Comprehensive Neurologic Services, P.C. (to whom he was referred by Dr. O'Dell) reveals: (a) Mr. Hilton presented to Dr. Evans initially on September 19, 2011 with complaints of bilateral foot pain (worse on the left), mostly involving the heel, which had been present for five (5) months; (b) the upward radiation referenced by Dr. O'Dell had apparently improved, while "[p]ertinent negatives included decreased mobility, instability, limping, night pain, night-time awakening, numbness, swelling, weakness or foot drop"; (c) an acknowledgement that the left foot pain which Dr. O'Dell attributed to Achilles tendonitis was present prior to his August 17, 2011 spider bite (September 19, 2011); (d) by October 31, 2011, Mr. Hilton's left foot pain had worsened; (e) he had subsequently begun experiencing "pins and needles pain . . . after the spider bite" (October 31, 2011); and (e) based upon the particular elements of Mr. Hilton's history, this neurologist characterized the newly developed left lower extremity symptoms as the "late complications of the brown recluse spider bite."

10. During this time period (October 21, 2011), Mr. Hilton began receiving authorized treatment for the ongoing left leg symptoms Dr. Evans had attributed to the spider bite through Marlboro Primary Care Associates. While treating at this facility:

(a) he was diagnosed to be suffering from "neuropathic" left leg pain; (b) Mr. Hilton did not receive appreciable benefit from prescribed medications; (c) staff members were apprised of his previously diagnosed left Achilles condition; and (d) he was ultimately referred for neurological consultation by Dr. Gopalbhai Vaghela of this practice.

11. *On February 13, 2012, Mr. Hilton was evaluated by Dr. R. Joseph Healy (identified by Dr. Vaghela's assistant as the only neurologist in Florence that accepted workers' compensation cases), who: (a) noted not only the presence of persistent left leg symptoms, but also the non-traumatic onset of low back pain; (b) prescribed Gralise; and (c) recommended proceeding with electrodiagnostic studies. Significantly, the EMG element of this testing, which was performed on March 14, 2012, revealed abnormal nerve function of the left leg, which Dr. Healy characterized as "a non-discogenic sciatica", prompting him to again prescribe Gralise. This authorized physician also ordered a lumbar MRI scan to further assess Mr. Hilton's back pain.*

12. *Inspection of Dr. Healy's notes/reports for the period April 16, 2012 through July 17, 2012 indicates: (a) his belief Mr. Hilton's left non-discogenic sciatica was the product of compression stemming from the initial consequences of his compensable brown recluse spider bite; (b) this condition was further compromising Mr. Hilton's gait, affecting the foot and the left ankle, and having a potentially aggravating impact on the pre-injury left Achilles tendon problem ("he had problems with the left achilles tendon prior to the bite but he appears to have an achilles tendonitis at this point which may be from posturing of the left foot"); (c) the neuropathic pain condition was reaching a chronic phase (May 17, 2012); and (d) while the Gralise "help[ed] . . .", Mr. Hilton was having difficulty obtaining authorization of this medication by Liberty Mutual.*

13. *On May 31, 2012, Mr. Hilton was deposed by defense counsel. My review of this nearly two hour deposition reveals that on direct examination, Mr. Hilton: (a) disclosed the occurrence of a 2000 motor vehicle accident that produced a head injury initially resulting in a period of unconsciousness; (b) advised that it also required surgery for ". . . [s]ome bleeding"; (c) recalled only one physician visit following this surgery (for staple removal), while denying any problems associated with this head trauma since the single post-injury doctor visit; (d) admitted a June, 2011 vacation cruise, but required review of a card in his wallet to ascertain when this trip occurred; and (e) testified Dr. Healy had been the only neurologist from whom he had ever received treatment.*

14. Additionally, Mr. Hilton testified: (a) the radiating left leg pain that was producing the pins/needles sensation in his foot had only begun some time after the August 17, 2011 spider bite and was distinguishable from the Achilles tendonitis sensations documented by Dr. O'Dell (which had actually extended upward approximately two inches beyond the ankle); (b) the current leg pain was likewise not associated with an incident (small piece of metal became embedded in the skin around his left ankle) that had occurred some years prior (creating no residual problems); (c) the back pain referenced by Dr. Healy developed gradually and had not been present at the time of his August 17, 2011 injury; (d) his driving had substantially decreased since the accident date (estimating once a week when asked to specifically quantify); (e) typical periods of standing fell in the 15 – 20 minute range; (f) the majority of time at his home was spent laying down; (g) he had not joined his wife on a subsequent (October, 2011) cruise; and (h) his appearance/the manner in which he walked, stood, etc. could vary, particularly if he was having a "bad day".

15. In this regard, inspection of records generated by Dr. Bruce S. Solomon of Pinehurst Neurology, P.A. reveals: (a) this motor vehicle accident resulted in "multiple trauma . . . [, including] a closed-head injury"; (b) his particular pathology involved "a subdural and epidural hematoma on the right" that required performance of a craniotomy; (c) receipt of Dilantin therapy for "subsequent seizures", in conjunction with repeated neurological assessment following the 2000 head trauma; (d) he was medically restricted from resuming truck driving until June 13, 2001 ; and (e) Mr. Hilton was continuing to experience "short-term memory problems" (ex. "putting his keys in the refrigerator and a ham in the cabinet") following this injury.

16. Significantly, on February 11, 2011 (approximately six months before sustaining the spider bite), Mr. Hilton was reevaluated by Dr. Solomon, who noted: (a) reports of persistent "memory loss", as well as "mood swings"; (b) the absence of any complaints of "back pain"; and (c) slightly deficient short-term memory per clinical examination.

17. On August 9, 2012, Mr. Hilton was independently evaluated by Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was aware of all material aspects of Mr. Hilton's post-injury history; (b) specifically noted the various symptoms which were exhibited prior to Dr. Chen's surgery, as well as Dr. Evans' belief the worsening of "pre-injury leg pain was the result of the spider bite"; (c) observed limited lumbar range of motion "particularly with extension and concomitant left lateral flexion"; (d) discovered

"significant EHL weakness on the left consistent with an L5 radicular syndrome"; (e) noticed Mr. Hilton's gait favored the left lower extremity; and (f) felt Mr. Hilton had developed "[c]ompensatory low back pain . . . following altered gait" with an associated lumbar facet syndrome.

18. Based upon these findings and Mr. Hilton's medical history, Dr. Riber: (a) recommended initial treatment of the radicular pain through a selective nerve root injection; (b) explained the "clinical EHL weakness is certainly consistent with the results of the electrodiagnostic studies"; (c) attributed the current radiculopathy to "initial compression caused by the expanding wound, as well as the venom, which itself can certainly produce nerve root irritation and neuropathic pain"; (d) referenced the previously documented "change in his premorbid symptom pattern" as a basis for attributing Mr. Hilton's current neuropathic pain and the "likely compensatory" back pain to the consequences of the spider bite; and (e) determined Mr. Hilton had not reached maximum medical improvement, while indicating his work status would be "restricted to sedentary" activities with the ability "to change positions per tolerance."

19. On August 12, 2012, Mr. Hilton underwent a forensic psychiatric evaluation by Dr. Donna Schwartz-Watts, a clinical professor of forensic psychiatry affiliated with the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science. At that time, Dr. Schwartz-Watts also interviewed Mrs. Hilton, who reported: (a) her husband manifested "violent mood swings which are in part provoked by his lack of memory"; (b) aggressive denial when reminded of statements he could not remember; (c) activity reflective of confabulation, which she described as "a clinical symptom of cognitive impairment, [that] . . . is not volitional"; and (d) a "general expression of decreased . . . emotion . . . unless he is aggressive."

20. Dr. Schwartz-Watts also conducted a mental status examination, which verified: (a) Mr. Hilton "had cognitive impairment including difficulty with visual spatial design"; (b) "[h]e perseverated, . . . a clinical symptom of cognitive impairment"; (c) Mr. Hilton "had difficulty abstracting similarities between difficult objects"; (d) he also encountered "difficulty registering and recalling objects and required prompting and forced choice"; (e) poor performance "on a test of verbal fluency", which was also associated with perseveration; and (f) Mr. Hilton "gave a good effort" in connection with this assessment.

21. She further observed: (a) the presence of "end gaze nystagmus" (previously documented by Dr. Solomon); (b) "difficulty performing rapid alternating movements" (which could ultimately be accomplished with practice); (c) Dr. Solomon's records referenced various relevant factors (a right sided subdural and epidural hematoma with a resultant focal motor seizure disorder; "agusia and olfactory impairment"; "short-term memory problems"; "short-term memory impairment on neurological evaluation"); and (d) neuropsychological assessment was warranted.

22. In accordance with Dr. Schwartz-Watts' directive, Mr. Hilton underwent neuropsychological evaluation by Dr. Tora Brawley of the University of South Carolina School of Medicine's Department of Neuropsychiatry and Behavioral Science (August 16, 2012), who confirmed: (a) her awareness of the fact "discrepancies . . . in his report of personal history facts . . . [had led to] accusations that he was purposefully being dishonest"; (b) "Mr. Hilton had difficulty correctly recalling some personal information . . . [d]uring the clinical interview"; (c) review of relevant medical records "revealed that he suffered both a subdural and epidural hematoma which required surgical evacuation via a right temporal craniotomy" in 2000; (d) memory issues following the 2000 head trauma; (e) reports of "continued problems with memory loss, mood swings, light headedness and sleep difficulties" to Dr. Solomon in February, 2011; and (f) "his difficulties have worsened following complications from a spider bite in August, 2011."

23. In conjunction with this evaluation, Dr. Brawley, who currently serves as an assistant professor for the University of South Carolina School of Medicine, administered ten neuropsychological instruments, including "the Test of Memory Malingering", which "revealed him to have significant deficits in many areas" These deficits included "immediate verbal learning", "immediate verbal memory for prose passages", "recall of a complex figure", "controlled verbal fluency", "judgment of line orientation", "nonverbal abstract reasoning and problem solving" and "trail making ability".

24. Dr. Brawley also specifically explained that "[f]ormal effort testing was conducted and performance was completely within normal limits, indicating no evidence of an attempt to exaggerate or malingering cognitive symptoms."

25. Based upon Mr. Hilton's relevant medical history, her clinical interview and the results of this rather extensive neuropsychological testing, Dr. Brawley determined: (a) "testing results revealed the presence of severe cognitive deficits in many areas assessed, including memory"; (b) "[t]hese deficits are consistent with residual organic deficits

from his previous head injury and have likely been exacerbated by more recent . . . physical injuries and psychosocial stressors”; (c) “[t]here was no indication of an attempt to malingering on testing”; (d) “any discrepancies noted in his report of personal history or other areas are related to his cognitive deficits, rather than an attempt to purposely report incorrect information”; and (e) “[t]his [conclusion] . . . is further supported by documented reports and medical evidence of continued memory problems in February, 2011.”

26. *After considering these neuropsychological test results, in light of her own clinical finding, Mr. Hilton's medical history and the content of his deposition, Dr. Schwartz-Watts: (a) concluded “to a reasonably degree of medical certainty that Mr. Hilton has severe cognitive impairments, including memory disturbance, confabulation and perseveration which can account for the obvious discrepancies in his deposition testimony”; and (b) expressed “grave concerns about his competency to testify in these proceedings due to his memory deficits and inability to learn new information.”*

27. *During this time period (August 14, 2012), Mr. Hilton was also evaluated by Dr. Nicholas A. Lind of Post Trauma Resources, who observed: (a) apparent memory impairment per mental status examination; (b) “Mr. Hilton's score of 84 . . . [on the MMPI-2-RF] is consistent with the memory problems expected from his 2000 head trauma”; (c) his ~~“memory complaints are consistent with his described head injury and~~ appear legitimate as determined by the validity measures of the psychological testing measures used in this evaluation”; (d) “Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate”; and (e) formal neuropsychological testing would better gauge “the validity and extent of Mr. Hilton's memory deficits”*

28. *In this regard, after reviewing “the findings and conclusions of Dr. Brawley's 16 August, 2012 neuropsychological evaluation”, Dr. Lind (also a practicing neuropsychologist) agreed: (a) “[t]he results are consistent with the psychological evaluation . . . [he had] conducted on 14 August, 2012 and suggests significant deficits in memory as well as executive and dexterity impairments”; and (b) “[t]his additional evidence confirms that Mr. Hilton's reported memory deficits are more likely than not, with as much certainty reasonable in the field of psychology, legitimate and explain the difficulties he continues to experience with recall of his history.”*

29. During the course of his August 20, 2012 deposition, Dr. Healy was extensively examined as to various contested issues, including the likely source of Mr. Hilton's current symptoms, additional medical needs and work status. He was also repeatedly questioned, through use of medical records and surveillance video footage, relative to various aspects of Mr. Hilton's credibility, particularly as it related to the consequences of his August 17, 2011 spider bite, his physical/functional capabilities and the deposition discrepancies.

30. In discussing the source of Mr. Hilton's current left leg symptoms, Dr. Healy verified: (a) an acknowledgement of pre-injury symptoms that were reflective of some degree of neuropathic pain (Healy Deposition, pp. 31 – 37; 43 – 44); (b) the pins and needles sensation Mr. Hilton was now experiencing, which was clearly indicative of neuropathic pain, had been neither reported nor identified by any medical record prior to August 17, 2011 (Healy Deposition, pp. 95 & 100); (c) the findings documented through pre-surgical treatment notes (pain, redness, skin breakdown, swelling, bite marks, fever, nausea and vomiting) were not only indicative of a brown recluse spider bite, but also a "systemic effect" produced by the injected venom (Healy Deposition, pp. 76 – 79; 85, 87); (d) toxic venom of this nature can, in and of itself, create neuropathic pain of the type described by Mr. Hilton (Healy Deposition, pp. 41,81 & 122); (e) the nature/degree of Mr. Hilton's pre-surgical symptoms (swelling; size of abscess and surrounding inflammation) were also sufficient to create sciatic nerve compression, even in the absence of muscle tissue damage (Healy Deposition, pp. 80 & 88); (f) Mr. Hilton's current left leg symptoms most probably, to a reasonable degree of medical certainty, result from the consequences of the August 17, 2011 spider bite (venom itself and/or nerve compression caused by pre-surgical wound development) and/or the aggravation/acceleration of preexisting pathology by the consequences of this bite (Healy Deposition, pp. 81 – 84, 89 – 90, 103); (g) the symptoms which temporally resulted from the spider bite, as well as the degree of necrosis documented during surgery, could not be faked (Healy Deposition, pp. 84 – 88); (h) the presence of neuropathic injury had been objectively verified by EMG testing (Healy Deposition, pp. 17 & 125); and (i) he was comfortable with his ability to render this opinion as to causal connection, indicating Mr. Hilton's surgeon was in no better position to address this issue (Healy Deposition, pp. 70 & 90).

31. When questioned as to Mr. Hilton's current back symptoms, Dr. Healy explained: (a) an understanding that "his walking was [not] . . . totally normal" pre-injury (Healy Deposition, p. 44); (b) the consequences of the spider bite had further contributed to gait alteration (Healy Deposition, p. 104); (c) while he noticed this gait disturbance, "it wasn't dramatic" (Healy Deposition, p. 7); (d) the video surveillance footage was consistent with his prior observations (Healy Deposition, p. 63); (e) this gait disturbance had resulted in the development of mechanical low back pain (Healy Deposition, p. 72); (f) Mr. Hilton's current back symptoms were compensatory (due to increased gait alteration attributable to neuropathic pain) and had "come on quicker than . . . might have otherwise [been] . . . expected" due to the aggravating/accelerating impact of the causally related increase in neuropathic pain by the consequences of the brown recluse spider bite (Healy Deposition, pp. 103 - 104, 122 - 123); (g) the EHL weakness identified by Dr. Riber was a relatively objective finding that was consistent with the sciatica confirmed by electrodiagnostic studies and "absolutely" reflective of actual nerve dysfunction (Healy Deposition, pp. 119 - 121, 125 - 126); (h) Mr. Hilton required treatment of the nature outlined by Dr. Riber (Healy Deposition, p. 121); (i) given his longstanding professional relationship with Dr. Riber (who he characterized as "the guru" for pain management care), it was his wish that Mr. Hilton receive this treatment through Dr. Riber (Healy Deposition, pp. 119 & 122); and (k) Mr. Hilton had not yet achieved maximum medical improvement (Healy Deposition, p. 132).

32. Additionally, Dr. Healy addressed Mr. Hilton's cognitive capacity, specifically confirming/concluding: (a) while the focus of his treatment had been the neuropathic pain component, he had noticed clinical cognitive limitations (Healy Deposition, p. 45); (b) it was not unusual for someone who has experienced head trauma of the nature Mr. Hilton sustained in 2000 to develop cognitive loss (Healy Deposition, p. 108); (c) persistent memory loss was actually "referenced as an ongoing symptom to a neurologist" before the August 17, 2011 accident date (Healy Deposition, pp. 109 - 110); (d) neuropsychological testing of the nature performed by Dr. Brawley included "not only specific tests, but actual portions of other tests, that are specifically geared towards ferreting out exaggeration and malingering" (Healy Deposition, p. 111); (e) the absence of malingering and exaggeration of cognitive symptoms, as well as the valid assessment of cognitive function verified by the neuropsychological test battery administered by Dr. Brawley were consistent with his own intuitive impressions (Healy Deposition, p. 112);

(f) the results of this testing did not support allegations that Mr. Hilton's actions (including deposition testimony) were reflective of dishonesty and deceit (Healy Deposition, p. 112); (g) these test results were indicative of a "significant problem from the head injury" (Healy Deposition, p. 114); (h) his agreement with Dr. Brawley's determination "that any discrepancies noted in his report of personal history or other areas are related to cognitive deficits rather than an attempt to purposefully report incorrect information" (Healy Deposition, pp. 114 - 115); (i) his impressions were also consistent with those of Drs. Schwartz-Watts and Lind (Healy Deposition, pp. 115 - 116); (j) he had no doubt Mr. Hilton was experiencing "noticeable cognitive damage secondary to brain injury . . . [which is] a very reasonable and more than likely explanation for . . . [the various factual] discrepancies" identified by Defendants (Healy Deposition, pp. 116 - 117); and (k) to a reasonable degree of medical certainty, he was "comfortable that [Mr. Hilton] in his efforts to receive treatment . . . and his testimony has done nothing contrived or purposeful, but rather that any of these discrepancies or conflicts are the results of his brain injury and results of cognitive deficits" (Healy Deposition, p. 128)

33. After considering the purportedly dishonest behavior alleged by Defendants, Dr. Healy similarly/consistently validated Mr. Hilton's credibility, testifying: (a) although he ~~recognized the presence of certain discrepancies in Mr. Hilton's medical history, he had~~ no concerns as to this gentleman's credibility (Healy Deposition, pp. 31 - 38, 45 - 49); (b) his participation in the October, 2011 cruise was an insufficient basis upon which to characterize Mr. Hilton as "a liar" (Healy Deposition, pp. 55 - 60); (c) the presence of cognitive deficits stemming from the prior brain injury was a reasonable explanation for these alleged inconsistencies (Healy Deposition, p. 117); (d) the need for cues (i.e., testifying accurately after looking at a card bearing the date of a prior cruise) "fits" as an explanation for Mr. Hilton's ability to recall certain information (Healy Deposition, pp. 117 - 118); (e) Mr. Hilton's satisfaction of validity criteria, including the absence of malingering or exaggeration per applicable elements of the neuropsychological test battery administered by Dr. Brawley, supported his belief there was no indication this gentleman was not credible (Healy Deposition, pp. 112 - 113); (f) he would "not . . . blindly support somebody who is faking, malingering or being less than candid" (Healy Deposition, p. 127); and (g) Mr. Hilton was a credible patient (Healy Deposition, pp. 70 - 71, 106, 131 - 132).

34. *This authorized treating physician's testimony further establishes: (a) due to his causally related symptoms and the potentially impairing effects of medication, in light of the nature of his occupation, Mr. Hilton had been maintained on out-of-work status (Healy Deposition, pp. 18, 63 - 64, 67); (b) his primary instructions in terms of activities of daily living were to avoid "anything extreme", while attempting to function within tolerance levels (Healy Deposition, pp. 19, 66 - 67); (c) the surveillance video did not depict Mr. Hilton engaging in any unacceptable activity (Healy Deposition, pp. 66 & 74); and (d) although Mr. Hilton remained on out-of-work status, he had no objection to an attempt to engage in sedentary activity in accordance with Dr. Riber's recommendation (which he felt could be therapeutic) (Healy Deposition, p.127)*

35. *Shortly after deposing Dr. Healy, Defendants solicited Dr. Chen's testimony. While this general surgeon initially opined that he did not believe Mr. Hilton's abscess or area of inflammation was large enough to create compression on the sciatic nerve, he subsequently conceded: (a) he neither was nor considered himself an expert in the field of neurology (Chen Deposition, p. 38); (b) he likewise was not an expert in terms of the ultimate implications of venomous bites (Id.); (c) he had no reason to dispute Mr. Hilton was bitten by an insect on August 17, 2011 (Chen Deposition, p. 41); (d) Mr. Hilton's post-injury complaints/symptoms were "consistent with . . . ones that are commonly attributable to a Brown Recluse spider bite" (Chen Deposition, p. 43); (e) the presence of the same reported symptoms upon which Dr. Healy had concluded Mr. Hilton was manifesting "a systemic effect" produced by spider venom (Chen Deposition, pp. 46 - 48); (f) the tissue damage discovered during surgery was consistent with the destructive process caused by venom or infection (Chen Deposition, p. 52); (g) "venom itself can create damage to an underlying nerve" (Id.); and (h) venom can likewise "create nerve irritation and neuropathic pain." (Chen Deposition, p. 53).*

36. *Dr. Chen also candidly acknowledged/agreed: (a) nerve root injury "would actually fall more within . . . a neurologist['s] . . . area of expertise than a surgeon's in terms of delineating etiology of nerve irritation or nerve damage" (Chen Deposition, pp. 53 - 54); (b) he would "normally defer to a neurologist in terms of making a conclusion as to what is the cause of nerve root damage in a scenario" (Chen Deposition, p. 54); (c) Dr. Healy's finding of non-discogenic sciatic per electrodiagnostic studies had "some degree of objectivity" (Id.); (d) he would defer to the specialist's (Dr. Healy's) opinion relative to the causal relationship of Mr. Hilton's non-discogenic sciatica and the*

consequences of the spider bite (Chen Deposition, pp. 54 - 55); (e) he did not "have the specialty or knowledge to disagree with" Dr. Healy's opinion (Chen Deposition, p. 55); (f) Dr. Evans' opinion that Mr. Hilton's current left lower extremity symptoms represented the late complication of a brown recluse spider bite was consistent with Dr. Healy's conclusion "in terms of etiology" (Chen Deposition, p. 57); (g) he would likewise defer to Dr. Evans' opinion on this point (*Id.*); and (h) he did not "hold [him]self . . . out as being an expert in [n]eurology" (*Id.*).

37. This physician further testified: (a) identification of the source of nerve damage identified by an EMG was outside his area of expertise (Chen Deposition, p. 60); (b) he did not possess the expertise to decide the question of causation (Chen Deposition, p. 60 - 61); (c) he was consequently deferring to the neurologist "in terms of cause and effect as far as what . . . [Mr. Hilton's] current problems are and how they relate to the spider bite" (Chen Deposition, p. 61); (d) any opinions offered in response to defense counsel's questions on this point were "really . . . outside [his] . . . area of specialization and expertise" (Chen Deposition, p. 65); and (e) given this lack of expertise, he "would defer to the [n]eurologist . . . as to his determination of the source of [Mr. Hilton's] . . . symptoms" (Chen Deposition, p. 76).

38. Pursuant to questionnaire responses dated November 7, 2012, Dr. Schwartz-Watts confirmed: (a) ". . . [g]iven the nature/degree of his previous head trauma (involving both subdural and epidural hematoma requiring surgical evacuation via right temporal craniotomy), [her] . . . clinical findings and the results of his valid neuropsychological testing, . . . Mr. Hilton's current cognitive deficits (including severe memory compromise) most probably result from physical brain damage"; (b) ". . . [i]n view of the nature/degree of Mr. Hilton's previous head trauma, [her] . . . clinical findings and the results of neuropsychological testing, . . . the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of his August 17, 2011 work related injury"; (c) ". . . [g]iven the nature/degree of Mr. Hilton's physical brain damage, [her] . . . clinical findings and the results of neuropsychological testing, . . . inconsistencies/ inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory), are most probably the result of this physical brain damage, rather than a purposeful/intentional/ volitional attempt to mislead"; (d) "the cognitive deficits

produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably negatively effect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) "lapses in behavioral judgment would also most probably be attributable to the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury"

39. *A questionnaire executed by Dr. Brawley on November 8, 2012 similarly: (a) attributes "Mr. Hilton's current cognitive deficits (including severe memory compromise) . . . [to] physical brain damage"; (b) recognizes "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of . . . [Mr. Hilton's] August 17, 2011 work related injury"; (c) relates any "inconsistencies/inaccuracies arising in connection with his testimony, as well as any inconsistent/inaccurate information he has provided when questioned as to prior events and/or statements (i.e., requiring reliance on his memory) . . . [to] the result[s]. . . of this physical brain damage, rather than an purposeful/intentional/volitional attempt to mislead"; (d) recognized "the cognitive deficits produced by Mr. Hilton's physical brain damage (including the aggravation created by the consequences of his August 17, 2011 work related injury) most probably affect and/or impair his behavioral judgment, including the manner in which he responds to stressors and conducts his daily activities"; and (e) ties these "lapses in behavioral judgment . . . to his previous brain damage and the aggravation of Mr. Hilton's cognitive deficits by the consequences of his August 17, 2011 work related injury" Dr. Lind also offered identical opinions, from a neuropsychological standpoint, via questionnaire responses dated November 8, 2012.*

40. *Significantly, when asked to address these questions, Dr. Healy verified (agreed): (a) Mr. Hilton's "current cognitive deficits (including severe memory compromise) most probably result from physical brain damage"; (b) "the cognitive deficits attributable to this physical brain damage have most probably been aggravated by the consequences of Mr. Hilton['s] . . . August 17, 2011 work related injury"; (c) the testimonial inaccuracies (which Defendants alleged to be reflective of a knowing effort to deceive) "are most probably the result of this physical brain damage, rather than a purposeful/intentional/volitional attempt to mislead"; and (d) the negative impact Mr. Hilton's aggravated cognitive deficits are producing on his behavioral judgment.*

41. The undersigned also reviewed various medical records (dating back to 2001), which Defendants maintain are relevant to the source of Mr. Hilton's current symptoms. These records include: (a) November 28, 2001 notes from Marlboro Park Hospital that reference complaints of a left knee contusion; (b) January 10, 2003 reports from the same hospital that relate to low back pain following a motor vehicle accident; (c) chiropractic treatment records identifying receipt of spinal (cervical, thoracic and lumbar) care for soft tissue injury stemming from this motor vehicle accident (January 13, 2003 until March 29, 2003), as well as the chiropractor's assignment of a 5% impairment rating; (d) reports from Marlboro Park Hospital relative to the assessment/removal of the previously referenced piece of metal that had become embedded in Mr. Hilton's left ankle area; and (e) October 13, 2008 x-rays of Mr. Hilton's left foot and knee, which revealed an "an old fifth metatarsal fracture".

42. The undersigned also considered records generated by Carnival Cruise Lines, which reflect: (a) Mr. Hilton traveled on six cruises (ranging from three to five days in duration) from April 15, 2009 through early June, 2012; (b) two of these cruises occurred following his accident date; (c) he participated in an October 24, 2011 - October 29, 2011 cruise; (d) during the course of this cruise, various charges were incurred under the name of Michelle Hilton at several facilities on the ship ("Stars Bar", "Diamonds Disco", "Bogarts Café", "Wine Sensation", "Puttin on Ritz", and "Pool"), while other charges were attributed to Mr. Hilton's "FOLIO" number; (e) two others accompanied he and his wife on the June, 2012 cruise (which also lasted five days); and (f) on-ship charges (identifying substantially the same venues) were incurred through Mrs. Hilton's account.

43. However, the Carnival Cruise Line data offers limited insight as to Mr. Hilton's activity level during these cruises. Essentially, the records confirm unspecified purchases during the duration of the cruise (several of which occurring after midnight), but generally do not differentiate between purchases of food/beverages, services, etc.

44. Additionally, the undersigned reviewed the video surveillance footage submitted by Defendants. While the surveillance involved observing Mr. Hilton at multiple locations, the bulk of this footage focused on several hours spent at Mr. Covington's place of business ("Collision Repair Center") during the afternoon of March 27, 2012. The surveillance depicts Mr. Hilton standing for finite periods of time, walking short distances, engaging in limited bending/leaning and sitting in a vehicle. This time-

stamped footage (conducted between 11:47 AM and 6:25 PM) also contains segments, totaling well over an hour, where Mr. Hilton is either sitting or completely out of sight.

45. *During exhaustive cross-examination, Mr. Hilton was noticeably confused and did not always remember what he had said during his previous deposition. He actually apologized more than once for inaccurate/incorrect statements made during the deposition, including his failure to remember going on the October, 2011 cruise. Mr. Hilton also recalled certain elements of his post-head trauma medical history (involving not only treatment received for the August 17, 2011 spider bite, but also previous health issues), while confirming his wife generally attended medical appointment with him in order to assist in the provision of information.*

46. *In this regard, I find Mr. Hilton's testimony remained consistent relative to: (a) his recollection that the previous incidents referenced by Defendants (involving his left leg and back) had not resulted in any permanent or long term symptoms/limitations; (b) his receipt of treatment from Dr. O'Dell for left leg symptoms prior to the August 17, 2011 accident date; (c) the distinction between symptoms attributable to Achilles tendonitis and the left leg pain which developed in the aftermath of the brown recluse spider bite; and (d) the nature of his current back symptoms.*

47. *Given Mr. Hilton's well-documented cognitive deficits, the testimony of his wife proved to be particularly enlightening. Specifically, Mrs. Hilton: (a) corroborated the circumstances surrounding her husband's 2000 head trauma (from a standpoint of someone who was in the vehicle at the time of impact, on the scene following his ejection from their vehicle and present for most of his treatment); (b) noted Mr. Hilton had changed following this accident; (c) provided examples of the cognitive problems he had exhibited following the 2000 head trauma; (d) acknowledged his recollection of events occurring prior to the 2000 accident remained good; (e) outlined the "routine" they had implemented to facilitate her husband's continued employment rather than pursuing disability benefits; (f) confirmed Mr. Hilton's cognitive compromise had not resolved with the passage of time and remained problematic, to the extent they had returned to Dr. Solomon in the hope of obtaining medical assistance approximately six months prior to the August 17, 2011 spider bite; and (g) indicated his memory lapses, mood swings, level of agitation, ability to measure time, attention/focus and frequency of inaccuracy had clearly worsened following the spider bite.*

48. She further verified: (a) Mr. Hilton's inability to recall the October, 2011 cruise (absent reviewing something to prompt his memory) was not usual; (b) her husband's physical activities were noticeably limited during each of the cruises; (c) while she and her husband drank alcohol and generally remained at one of the on-ship venues (as opposed to in the cabin) during the cruises, he did not engage in dancing or spend appreciable times on his feet; (d) she was present during a portion of the March 27, 2012 surveillance period; and (e) actually observing Mr. Hilton sitting (either in her vehicle or on a sofa inside Mr. Covington's building) during her husband's March 27, 2012 visit to this location.

49. Mrs. Hilton's testimony was substantially corroborated by Mr. Covington, a longtime friend of her husband. When questioned as to his observations/impressions, Mr. Covington explained: (a) he had been afforded ample opportunity to interact with Mr. Hilton both before and after the 2000 head trauma; (b) Mr. Hilton exhibited no difficulties with memory, focus, mood disturbance, etc. prior to the 2000 accident; (c) noticeable changes had occurred subsequent to this accident, particularly involving memory and Mr. Hilton's reaction to these memory deficits; and (d) the nature of Mr. Hilton's pre-August 17, 2011 memory dysfunction had caused him to question how his friend was still being allowed to operate a tractor trailer.

50. After thoroughly reviewing all evidence of record and observing each of the witnesses during the course of the hearing, I specifically find: (a) Mr. Hilton's presentation (both live and through deposition) is completely consistent with the material level of cognitive dysfunction confirmed by Drs. Healy, Schwartz-Watts, Brawley and Lind; (b) the inaccuracies/inconsistencies in his testimony, as well as incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage documented by at least four duly qualified specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) Mr. Hilton has been experiencing cognitive dysfunction since the 2000 head trauma, which clearly produced some degree of physical brain damage (as evidenced by his post-motor vehicle accident pathology, need for brain surgery and the symptoms documented through February 11, 2011); (d) the persistent symptoms referenced by Dr. Solomon in 2011, coupled with the unanimous opinions expressed by Drs. Healy, Schwartz-Watts, Brawley and Lind, firmly establish the presence of appreciable cognitive dysfunction prior to April 17, 2011; (e)

these experts, as well as the lay testimony, also verify his current level of cognitive dysfunction; (f) this explanation for any alleged credibility issues is founded upon uncontradicted medical evidence (objective and/or wholly validated through use of devices specifically aimed toward identifying malingering/embellishment); and (g) the current circumstances unquestionably verify the legitimacy of Mr. Hilton's cognitive loss, while dispelling any notion that the implications of his pre-existing brain damage were contrived.

51. *I further find: (a) great weight should be afforded to the opinions expressed by Dr. Healy, particularly with respect to the issue of maximum medical improvement, as this authorized treater not only had the opportunity to assess Mr. Hilton on multiple occasions, but also considered Defendants' allegations (including the assertion his current left leg and back symptoms are purely the result of preexisting conditions) and the products of their surveillance; (b) after reviewing the surveillance footage and being apprised as to aspects of prior medical history which Defendants believe to be particularly relevant, Dr. Healy concluded Mr. Hilton had not achieved maximum medical improvement and required further treatment through Dr. Riber; (d) he similarly verified the consequences of Mr. Hilton's compensable injury continued to prohibit resumption of his pre-injury employment activities; (e) upon reviewing the results of neuropsychological testing, in light of his own clinical observations, Dr. Healy agreed Mr. Hilton's 2000 head trauma had produced appreciable cognitive deficits secondary to physical brain damage; and (f) Defendants' designated authorized treater likewise validated Mr. Hilton's credibility, repeatedly declining to endorse Defendants' contention that this gentleman had presented himself and/or testified in a dishonest, deceptive or misleading fashion.*

52. *I likewise find Mrs. Hilton's testimony to be a key element in connection with my assessment of her husband's presentation, as she: (a) provided a compelling account of the circumstances surrounding the 2000 head trauma, as well as its impact on Mr. Hilton's cognitive abilities (as compared to his prior state); (b) convincingly outlined the nature/persistence of Mr. Hilton's cognitive dysfunction in a manner which was wholly consistent with his valid neuropsychological test results and the unanimous opinions expressed by the medical experts; (c) made no effort to disavow the occurrence of various activities which were the focus of Defendants' credibility allegations, instead offering*

explanations for this conduct in the context of his longstanding cognitive problems; and (d) reliably noted the current state of his cognitive disorder.

53. I also find: (a) Mr. Hilton has not achieved maximum medical improvement relative to the consequences of his compensable accident, which continue to produce left leg and back symptoms; (b) his left leg and back symptoms proximately result from the aggravation of preexisting, nondisabling conditions by the consequences of his August 17, 2011 compensable accident; (c) Mr. Hilton requires further treatment for these injury components in accordance with Dr. Healy's recommendations; (d) his receipt of this treatment is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his compensable accident; (e) the current circumstances warrant Dr. Healy's continued service as Mr. Hilton's authorized treating physician, as well as his receipt of particular treatment modalities identified and/or endorsed by this neurological specialist; and (f) Mr. Hilton remains temporarily totally disabled by the consequences of his compensable accident.

54. I finally find: (a) any discrepancies, inconsistencies, errors, etc. in connection with either Mr. Hilton's testimony or conduct result from the cognitive dysfunction confirmed by no less than four medical specialists; (b) the testimony and conduct which Defendants maintain warrants termination of Mr. Hilton's claim were/are neither volitional nor reflective of dishonesty; (c) entry of a finding as to a lack of credibility is not warranted in this instance; (d) I would not find him not to be credible; (e) the issues currently in dispute, including the presence of cognitive dysfunction explaining/rebutting Defendants' allegations as to a lack of credibility, are clearly medically driven; and (f) the evidence of record amply supports Mr. Hilton's contentions as to this issue.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On August 17, 2011, Mr. Hilton, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2002), sustained a compensable injury to his left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Flakeboard America Limited, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). This injury

ultimately produced a back injury component, the consequences of which are likewise compensable per Section 42-1-160. See, *Whitfield v. Daniel Construction Company*, 226 S.C. 337, 83 S.E. 2d 460, 462 (1954); *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E. 2d 76, 79 (Ct. App. 1995). (Every natural consequence of compensable injury is likewise compensable).

3. "Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment." *O'Banner v. Westinghouse Electric Corporation*, 319 S.C. 24, 459 S.E. 2d 324, 327 (Ct. App. 1995); *Hall v. United Rentals, Inc.*, 371 S.C. 69, 636 S.E. 2d 876, 887 (Ct. App. 2006).

4. As previously noted, neither Dr. Healy (Defendants' designated treating physician) nor Dr. Riber believe Mr. Hilton has achieved maximum medical improvement as to the consequences of his compensable accident. Similarly, the parties have agreed the issue relating to the current source(s) of Mr. Hilton's cognitive dysfunction needs to be addressed by the Commission at a later date. Further, Dr. Chen's opinions: (a) limit any determination of maximum medical improvement to the August 24, 2011 debridement procedure itself; and (b) consistently defer to Dr. Healy's judgment/conclusions as to the effects of Mr. Hilton's neurologic/nerve injury. I consequently conclude the evidence of record firmly establishes Mr. Hilton has not achieved maximum medical improvement.

5. While Defendants argue Mr. Hilton's purported lack of credibility authorizes a determination that he has reached maximum medical improvement, I conclude: (a) achievement of maximum medical improvement is a purely medical determination (See, *Williams v. South Carolina Department of Mental Retardation*, 308 S.C. 438, 418 S.E. 2d 555 (Ct. App. 1992) (Commission finding of maximum medical improvement on date that did not coincide with medical evidence held erroneous); See also, *Collins v. Speedway Motor Sport Corp.*, 165 N.C. App. 113, 598 S.E. 2d 185, 191 (2004) ("MMI is a 'purely medical determination'")); and (b) the evidence of record clearly establishes he has not attained maximum medical improvement.

6. I also conclude: (a) the existence of physical brain damage in the context of the disputes currently before me is a medically driven issue (i.e., the allegations as to Mr. Hilton's lack of credibility); (b) the medical evidence of record, including opinions expressed by Mr. Hilton's designated authorized treating neurologist, unequivocally verifies any inaccuracies/inconsistencies in Mr. Hilton's testimony, as well as

incorrect/erroneous information he has provided in the context of this litigation, result from cognitive deficits produced by physical brain damage confirmed by four duly qualified medical specialists, rather than a purposeful, intentional, volitional or preconceived attempt to mislead and/or knowingly provide false information; (c) the lay witnesses have likewise provided convincing testimony as to the nature/impact of Mr. Hilton's previous and current levels of cognitive dysfunction(both following the 2000 motor vehicle accident and at present); and (d) an adverse credibility finding is neither warranted nor justified in this instance.

7. *Defendants are financially responsible for all causally related medical modalities which Mr. Hilton has heretofore received/undergone through Dr. Healy or any other authorized providers, as these modalities were reasonable, medically necessary and tended to lessen his period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (A) (2007). In this regard, I also conclude: (a) Defendants are financially responsible for the additional medical treatment modalities provided/prescribed/recommended by Dr. Healy relative to Mr. Hilton's compensable left leg and back injury components, including the particular modalities identified by Dr. Riber; (b) Dr. Healy shall remain Mr. Hilton's designated/authorized treating physician for the purposes of this claim, notwithstanding the fact certain treatment modalities may be provided/performed by other specialists; and (c) the parties otherwise retain their respective rights per this statute.*

8. *I also conclude Mr. Hilton remains temporarily totally disabled within the meaning of S.C. Code Ann. Section 42-9-10 (2007).*

9. *I finally conclude that the issue involving whether the consequences of Mr. Hilton's compensable accident have produced injury components other than his left leg and back shall be held in abeyance pending further agreement of the parties or Order of this Commission. Resolution of the disputed average weekly wage/compensation rate issue shall similarly be held in abeyance.*

ORDER AND AWARD

Defendants shall: (a) continue to pay Mr. Hilton weekly temporary total disability compensation; (b) accept financial responsibility for all causally related medical modalities heretofore provided/prescribed by any authorized physicians/specialists in

connection with the treatment of his compensable injury components; (c) authorize Mr. Hilton's receipt of the causally related treatment modalities provided/prescribed by Dr. Healy; and (d) similarly accept financial responsibility for causally related medical modalities through other specialists in accordance with the prescriptions/recommendations of Dr. Healy, who shall remain Mr. Hilton's designated treating physician for the purposes of this claim.

ISSUES ON APPEAL

Defendant filed a Form 30 Request for Commission Review on June 17, 2013. Defendant requested the Commission review the single Commissioner's Decision and Order to address 54 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachments is contained in the Commission's file.

FINDINGS OF THE FULL COMMISSION

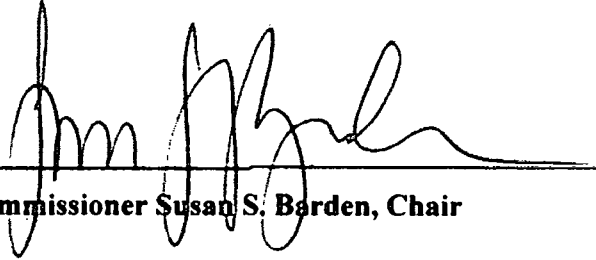
This matter was heard before the above-mentioned South Carolina Workers' Compensation Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Vacate and Remand** the Decision and Order to the Jurisdictional Commissioner to determine whether or not the Claimant is competent to testify and whether or not the Claimant needs a Guardian ad Litem pursuant to §42-15-55. They also order the Defendants to send the Claimant to a neurologist of their choice for an evaluation as to the causation and extent of the Claimant's problems.

ORDER

IT IS THEREFORE ORDERED that this matter is **Vacated and Remanded** to the Jurisdictional Commissioner for the purposes of making a determination as to whether or not the Claimant is competent to testify and whether or not the Claimant needs a Guardian ad Litem pursuant to §42-15-55. It is also Ordered that the Defendants to send the Claimant to a neurologist of their choice for an evaluation as to the causation and

extent of the Claimant's problems. Such evaluation shall be made available to the single Commissioner for his or her consideration.

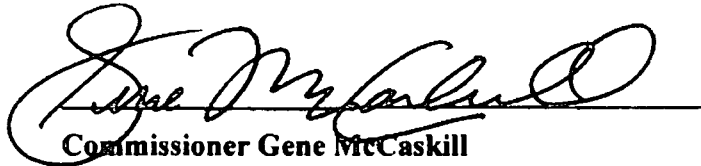
AND SO IT IS ORDERED!



Commissioner Susan S. Barden, Chair



Commissioner Andrea C. Roche



Commissioner Gene McCaskill

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on May 21, 2014

EXHIBIT 3

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 104
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803 256 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

June 20, 2014

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
JUN 20 2014
SC Court of Appeals

RE: Thomas Chad Hilton v. Flakeboard America Limited and
Liberty Mutual Insurance Company
W.C.C. File No.: 1111934

Dear Ms. Kitchings:

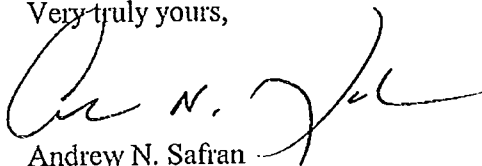
Enclosed please find an original and three copies of a Notice of Appeal, which I am filing on behalf of Mr. Thomas Chad Hilton relative to the above-captioned matter. Additionally, I have: (a) attached copies of the Order from which this appeal arises; and (b) enclosed our firm's check in the amount of \$100.00 in satisfaction of your filing fee. At this time, I would greatly appreciate your filing these documents and returning three clocked copies to my courier.

By copy of this letter, I am serving a copy of this Notice, with attachments, on Brenn Watson, attorney for Respondents. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,



Andrew N. Safran

ANS/rmm

Enclosures

cc: South Carolina Workers' Compensation Judicial Department
L. Brenn Watson, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

W.C.C. FILE NO.: 1111934

RECEIVED

JUN 20 2014

SC Court of Appeals

Thomas Chad Hilton APPELLANT.

v.

Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company,
Carrier RESPONDENTS.

NOTICE OF APPEAL

Thomas Chad Hilton hereby appeals the Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel dated May 21, 2014, which vacates the decision of the Commission's hearing commissioner dated June 4, 2013. Pursuant to S.C. Code Ann. Section 42-17-60 (Supp. 2008), Mr. Hilton states the following grounds for the appeal, as well as the alleged errors of law:

- 1) The Appellate Panel erred as a matter of law in raising "issues" relative to the need for further neurological evaluation, the admissibility of Mr. Hilton's testimony, his competency and the need for a Guardian ad Litem because none of these issues were either raised to the single commissioner or preserved through any exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review.

2) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues” exceeded the statutory authority granted per S.C. Code Ann. Section 42-17-50 (2012 Supp.), as well as prior construction of this statute by our appellate courts and renders the May 21, 2014 Order null and void.

3) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues” resulted in a denial of due process, as our appellate courts have consistently held that: (a) Appellate Panel review is limited to only those issues falling within the exceptions contained in Respondents’ Form 30 Request for Commission Review; and (b) consideration of any other matters not preserved through these exceptions result in a denial of due process and renders the May 21, 2014 Order null and void.

4) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues”: (a) results in a violation of Article I, Section 22 of the South Carolina Constitution; and (b) renders the May 21, 2014 Order null and void.

5) The Appellate Panel erred as a matter of law in remanding this claim for further proceedings (allowing Respondents to obtain another neurological evaluation with concomitant determinations as to competency and need for appointment of Guardian ad Litem) because: (a) this action clearly resulted from impermissible raising/consideration of “issues” that were neither

presented to the single commissioner nor preserved through any exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commissioner Review; (b) exceeded the authority granted through S.C. Code Ann. Section 42-17-50 (Supp.); (c) violated Article I, Section 21 of the South Carolina Constitution; (d) resulted in a denial of due process; and (e) rendered the May 21, 2014 Order null and void.

6) The Appellate Panel erred as a matter of law in issuing an Order which contained no findings of fact, conclusions of law or explanation as to the rationale for its ultimate ruling because this procedure violates: (a) the provisions of S.C. Code Ann. Sections 1-23-350 (2005) and 42-17-40 (1976, as amended), which require an Order of this nature to contain detailed factual findings, identification of controlling legal authorities and an explanation as to the underlying rationale for any rulings; and (b) various appellate court decisions that not only mandate the particular contents required by Sections 1-23-350 and 42-17-40, but also hold that Orders of the nature issued by the Panel in this instance are "illegal".

7) The Appellate Panel erred as a matter of law in vacating the single commissioner's June 4, 2013 Order in its entirety because: (a) inspection of Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review clearly confirms that various factual findings contained in the single commissioner's Order, as well as certain legal conclusions, do not fall within the parameters of Respondents' exceptions; (b) these unappealed findings and conclusions are the law of this case; (c) any attempt to vacate these unappealed factual findings and legal conclusions not only exceeds the statutory authority granted by the General Assembly, but also violates Article I, Section 21 of the South Carolina Constitution and due process; and (d) this legally impermissible action is null and void.

8) The Appellate Panel erred in remanding this matter for the purposes referenced in the May 21, 2014 Order because: (a) none of these “issues” were preserved through the exceptions contained in Respondents’ W.C.C. Form 30 Request for Commission Review; (b) any consideration of or action in connection with these “issues” not only exceeds the authority granted to the Commission by the General Assembly, but also violates Article I, Section 22 of the South Carolina Constitution and results in a violation of due process; (c) these legal errors render the May 21, 2014 ruling null and void; and (d) the implications of these legal errors (including nulling/voiding of May 21, 2014 Order) invalidate any further proceedings within the Commission.

9) The Appellate Panel erred in failing to conclude the issues relative to the source of Mr. Hilton’s back symptoms and persistent left leg pain are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

10) The Appellate Panel erred in failing to conclude the issues relative to Mr. Hilton’s current medical treatment needs are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v.

Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

11) The Appellate Panel erred in failing to conclude the issues relative to the presence and impact of physical brain damage and resulting cognitive deficits are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

12) The Appellate Panel erred as a matter of law in failing to conclude Respondents had failed to submit any evidence which rebutted the single commissioner’s rulings relative to any medical issues (including, but not limited to, causation of Mr. Hilton’s current back and left leg symptoms, his current medical needs, Mr. Hilton’s present functional/work status, the presence of physical brain damage and the nature/impact of any cognitive deficits resulting from this physical brain damage) because: (a) a review of S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), unquestionably verifies that the resolution of these issues require/hinges upon submission of medical evidence; and (b) Respondents introduced no competent evidence which specifically addressed any of these issues.

13) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact Nos. 1 – 7, 11, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 29, 40, 41, 42 and 44, as well as Conclusion of Law Nos. 1 and 3 because: (a) none of these findings of fact or conclusions of law fall within

the parameters of the exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review; and (b) these unappealed factual findings and legal conclusions became an and are the law of this case.

14) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact Nos. 8 – 10, 12 – 13, 16 – 17, 22, 25, 28, 30 – 39, 43 and 45 – 54 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

15) The Appellate Panel erred as a matter of law in failing to affirm/adopt Conclusion of Law Nos. 2, and 4 -9 contained in the single commissioner's June 4, 2013 Order because: (a) each of these legal rulings is amply supported by the only reasonable inference arising from the evidence of record; and (b) these legal conclusions accurately reflect applicable/controlling legal authorities.

16) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 8 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

17) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 9 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

18) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 10 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

19) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 12 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

20) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 16 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

21) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 17 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

22) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 22 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

23) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 25 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

24) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 28 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

25) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 30 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

26) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 31 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

27) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 32 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

28) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 33 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

29) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 34 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

30) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 35 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

31) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 36 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

32) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 37 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

33) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 38 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

34) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 39 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

35) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 50 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

36) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 51 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

37) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 52 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

38) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 53 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

39) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 54 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

40) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 13 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

41) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 43 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

42) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 45 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

43) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 46 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

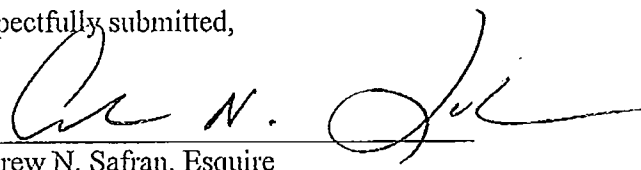
44) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 47 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

45) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 48 because the only reasonable inference which may be gleaned from the evidence contained

in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

46) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 49 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

Respectfully submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
Attorney for Appellant

June 20, 2014

OTHER COUNSEL OF RECORD:

L. Brenn Watson, Esquire
Willson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Attorney for Respondents

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

W.C.C. FILE NO.: 1111934

Thomas Chad Hilton APPELLANT,

v.

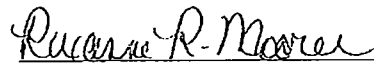
Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company,
Carrier RESPONDENTS.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorer, paralegal for Andrew N. Safran, Esquire, Attorney for Appellant, do hereby certify that on the 20th day of June, 2014, I caused to be filed, via hand delivery, the original and three (3) copies of the Appellant's Notice of Appeal with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Appellant's Notice of Appeal was furnished to counsel for Respondents via first class mail at the following addresses:

L. Brenn Watson, Esquire
Willson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607

South Carolina Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715



Roxanne R. Moorer
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

June 20, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

Appellate Case No. 2014-001357

Thomas Chad Hilton, Claimant.....Appellant,

v.

Flakeboard America Limited, Employer, and
Liberty Mutual Insurance Company, Carrier, Defendants.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss and Memorandum in Support on Thomas Chad Hilton by depositing a copy in the United States Mail, postage prepaid, on July 17, 2014, addressed to his attorney of record, Andrew N. Safran, Esquire, Andrew N. Safran, LLC, Post Office Box 12089, Columbia, South Carolina 29211.



Cheri Evans Coon,
Legal Assistant to L. Brenn Watson
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(864) 527-3275

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH

L. Brenn Watson
Direct (864) 527-3292
Fax (864) 235-6015
lbwatson@wjlaw.net

872 S. Pleasantburg Drive
Greenville, SC 29607
www.wjclaw.net

July 17, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
JUL 21 2014
SC Court of Appeals

Re: Thomas Hilton vs. Flakeboard America Limited
Appellate Case No. 2014-001357
WCC File No.: 1111934 DOI: 8/17/2011
Carrier: Liberty Mutual - Claim No.: WC555-A26831
WJC&B File No.: 0010.03789

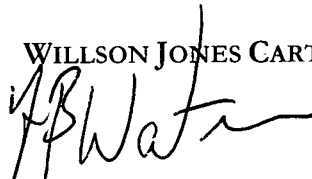
Dear Ms. Kitchings:

Enclosed for filing are an original and six copies of Respondents' Motion to Dismiss and Memorandum in Support in the above-referenced matter. Also enclosed is a Proof of Service of the Motion to Dismiss and Memorandum as well as our filing fee of \$25.00.

By copy of this letter and as indicated by the Proof of Service, we now serve the above-referenced documents on Appellant's Counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



L. Brenn Watson

Enclosure

cc: Andrew N. Safran, Esquire
South Carolina Workers' Compensation Judicial Department
The Honorable Daniel E. Shearouse