

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM THE SC COURT OF APPEALS
AND SC WORKERS' COMPENSATION COMMISSION

Susan S. Barden, SC Workers' Compensation Commissioner

WCC CASE NO.: 0723318

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S.C. Supreme Court

STEPHEN C. WHIGHAM.....APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS RESPONDENTS.
AND THE HARTFORD

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

- I. Record on Appeal - dated 1/22/2011
- II. Final Brief of Appellant - dated 2/16/2011
- III. Final Brief of Respondents - dated 2/16/2011
- IV. Final Reply Brief of Appellant - dated 2/16/2011
- V. Opinion of the South Carolina Court of Appeals - dated 4/11/2012
- VI. Appellant's Petition for Rehearing and Memorandum - dated 4/26/2012
- VII. Order Denying Petition for Rehearing - dated 5/21/2012

unredacted
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I certify that this Appendix complies with SCACR 242(e)

Date

7/13/12

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC CASE NO. 0723318

STEPHEN C. WHIGHAM..... APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

RECORD ON APPEAL

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INDEX

I. ORDERS

Single Commissioner's Decision and Order dated January 4, 2010.....	3
Appellate Panel Decision and Order dated July 21, 2010	20

II. APA PLEADINGS

APA No. 1	28
APA No. 8.....	32

III. TRANSCRIPT

Claimant's Deposition Transcript dated June 2, 2009	33
Transcript of Hearing before Single Commissioner dated October 30, 2009 pages 9-48 and 58-107	60

IV. EXHIBITS

Claimant's Exhibit 1	150
Claimants Exhibit 2.....	172
Claimants Exhibit 3.....	188
Claimants Exhibit 4.....	191
Claimants Exhibit 5.....	194
Claimants Exhibit 6.....	195
Claimants Exhibit 8.....	196
Claimants Exhibit 9.....	197
Defendant's Exhibit 1	198
Defendant's Exhibit A	199

Defendant’s Exhibit B.....	208
Defendant’s Exhibit C.....	212
Defendant’s Exhibit D	222
Defendant’s Exhibit E.....	231

V. CERTIFICATE OF COUNSEL

Executed Certificate of Counsel	232

DECISION AND ORDER OF THE

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0723318

Stephen C. Whigham,	)
Employee,	)
Claimant,	)
	)
vs.	)
	)
Jackson Dawson Communications,	)
	)
Employer,	)
and	)
	)
The Hartford,	)
	)
Carrier,	)
Defendants.	)

HEARING:

Held in Greenville, South Carolina on October 30, 2009.

APPEARANCES:

Claimant represented by Douglas A. Churdar, Esquire of Greenville, South Carolina.

Defendants represented by Benjamin M. Renfrow, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

PURPOSE OF HEARING:

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

DECISION AND ORDER:

By Susan S. Barden, Commissioner

FILED:

JANUARY 4, 2010
2009.

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

BY CLAIMANT:

- APA #1: Records of Greenville County EMS, dated 10/5/07, consisting of pages 1-4.
- APA #2: Records of University Medical Group – Department of Orthopaedics, dated 10/8/07 – 12/16/08, consisting of pages 5-15.
- Exhibit #1: Emails Regarding Ballad Ball Event
- Exhibit #2: Photographs of Ballad Ball Event
- Exhibit #3: 2007 Manager Self Evaluation (by Claimant)
- Exhibit #4: 2007 Associate Performance Evaluation (of Claimant)
- Exhibit #5: Page from Employer Policies and Procedures Manual
- Exhibit #6: Report of Injury by Employer
- Exhibit #7: Physical Demands Analysis of Claimant by Employer
- Exhibit #8: October 5, 2007 Claimant Time Sheet
- Exhibit #9: October 5, 2007 David Madson Time Sheet
- Exhibit #10: Portion of Employer's Web Page
- Exhibit #11: Claimant's Proposed Contract with Northland
- Exhibit #12: Emails from Northland re: Invoices by Claimant

BY DEFENDANTS:

- APA #3: Records of Greenville Hospital System, dated 10/8/07 – 12/15/08, consisting of pages 16-24.
- APA #4: Records of Individualized Physical Therapy, Inc., dated 12/6/07, consisting of pages 25-26.
- APA #5: Claimant's Form 50 and Claim Filing, dated 4/2/09 – 4/13/09, consisting of pages 27-28.
- APA #6: Independent Contractor Agreement, dated 3/1/09, consisting of pages 29-31.

- APA #7: Correspondence with Northland, dated 9/23/09, consisting of pages 32-33.
- APA #8: Claimant Resignation Letter, dated 2/25/09, consisting of page 34.
- Exhibit A: Staff Meeting Agenda, dated 5/10/06, consisting of pages a-i.
- Exhibit B: Staff Meeting Agenda, dated 9/12/06, consisting of pages j-m.
- Exhibit C: Employee Time Sheets, dated 10/5/07, consisting of pages n-w.
- Exhibit D: Time by Tasks Sheets, dated 10/5/07, consisting of pages x-ff.
- Exhibit E: List of Hourly Employees, consisting of page gg.

Depositions Submitted

Claimant deposition transcript dated June 2, 2009

Jennifer Escontrias deposition transcript dated October 5, 2009

Hearing Exhibits

#1 Definition of *Morale*- Merriam-Webster Online Dictionary (2009)

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51, and any other issues which may timely come before the Commission;
2. The Claimant's compensation rate is \$645.94;
3. Notices were timely and properly served upon all parties of interest;
4. Venue, set in Greenville County, is proper as agreed by all parties;
5. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

Prior to the hearing the parties submitted pre-trial briefs/ memorandums which I reviewed prior to making this decision.

III. STATEMENT OF THE CASE

On June 29, 2009, Claimant filed a Request for Hearing alleging that he sustained a compensable injury to his right lower extremity on October 5, 2007 while participating in an employer sponsored activity. Defendants timely filed a Form 51 denying that Claimant sustained an injury by accident arising out of and in the course of his employment with Defendant Employer. A hearing was scheduled for October 30, 2009.

At the hearing, Claimant continued to allege that he sustained a compensable injury on October 5, 2007 and that as a result, he was entitled to benefits under the Act. Claimant contended that he was injured in a company-wide kickball event that he was in charge of planning and that benefited the Defendant Employer by boosting morale and team building. Claimant further asserted that the event was not only sanctioned by the Defendant Employer but that the event was provided by Defendant Employer. Thus, Claimant contended that he was entitled to benefits under the Act. Claimant further contended that he had reached maximum medical improvement on December 15, 2008 and that his disability should be based on Dr. Jeray's 12% rating to Claimant's right leg. Claimant also alleged that, pursuant to *Dodge* medical, he may be entitled to a future right knee surgery/replacement. Defendants maintained that Claimant did not sustain an injury by accident arising out of and in the course of his employment with Defendant Employer. In support of their denial, Defendants cited the Larson's analysis regarding recreational and social activities that has been adopted by the Supreme Court of South Carolina. Defendants asserted that employees were not required to participate in the kickball event. Further, Defendants contended that improving employee morale is not enough for the kickball event to fall within the course of Claimant's employment. Finally, Defendants contended that if Claimant's claim is found to be compensable, Dr. Jeray's 12% impairment rating to the right leg far exceeds Claimant's disability.

IV. EVIDENCE OF THE CASE

CLAIMANT'S TESTIMONY

Claimant is 47 years old and has a master's degree in business-administration. Claimant obtained a bachelor's degree in accounting with a minor in English from Bob Jones University. Claimant has also taken additional business classes at the London School of Economics and writing and copywriting classes at the Dynamic Graphics Education Foundation. Claimant testified that he worked for Defendant Employer for approximately 10 years. He started as manager of media and marketing research and became Director of Creative Solutions in 2005 or 2006. Claimant was Director of Creative Solutions in October 2007. As Director of Creative Solutions, Claimant was a member of upper management.

Claimant testified that he attended upper management meetings in 2006 and 2007. Claimant testified that teambuilding events were discussed during management meetings. Claimant testified that the purpose of teambuilding events was to instill fun, create a better culture for recruiting and hiring, and promote better working relationships between employees. Claimant testified that he helped organize a cook-out and a kickball game in 2007. The kickball game was called Ballad Ball, a name the Claimant himself came up with, as a tribute to rock ballads of the 80s. Claimant volunteered to plan Ballad Ball, and he used the company Intranet, email, and flyers to promote the event. Claimant promoted the event for approximately 30 days.

Claimant testified that Defendant Employer paid all the expenses (around \$440.00 total) for Ballad Ball except travel expenses. These expenses included t-shirts for the teams, snacks, and field rentals at the Simpsonville YMCA. Defendant Employer also provided coolers, chairs, a kickball, a megaphone and an extension cord for use at Ballad Ball. Claimant testified that he did the majority of planning and organizing during business hours and that he clocked his time as administrative time. Claimant spent five hours on the day of Ballad Ball organizing and

participating in the event. Claimant further testified that even though attendance at Ballad Ball was voluntary, he did not feel like it was voluntary for him because he planned it.

Claimant testified that in the fall of 2007, he worked approximately 50 hours per week and normally worked until 5:00 – 5:30 p.m. on Fridays. Most top management worked until 5:30 – 6:00 p.m. on Fridays. Claimant testified that a lot of people did not come to Ballad Ball because they either worked or went home.

Claimant testified that based on the EMS report, he injured his right knee around 4:15 p.m. on Friday October 5, 2007. He was injured while trying to dodge the ball on the last play of the game. Claimant had two surgeries to the right knee/leg as a result of the kickball accident. Claimant testified that his current problems include severe arthritis and swelling. Since his accident, Claimant has tried playing basketball and tennis, but is unable to because of the pain in his right leg. Claimant testified that his personal insurance paid for the surgeries, but he paid deductibles in the amount of \$5,000 - \$6,600. Claimant also had to build a ramp at his house so that he could access his house by wheelchair after his surgeries.

On cross-examination, Claimant testified that he put on his self-evaluation form that the cook-out and Ballad Ball were morale boosters and used to build a team atmosphere. Claimant testified that no clients were invited to Ballad Ball and that the whole thing was done by Defendant Employer's employees for Defendant Employer's employees. Claimant admitted that he would have received the same amount of money if he would have gone home instead of going to Ballad Ball. There was no ultimatum to play kickball because the attendance at the event was voluntary, and attendance at Ballad Ball did not affect an employees pay. Claimant was not injured while organizing the event, but rather while playing in the event.

At the time of Ballad Ball, Claimant's salary was approximately \$100,000. Claimant resigned from Defendant Employer on February 28, 2009 to start his own business. Claimant testified that he did not leave the company on bad terms. In fact, Claimant's new company,

Whigham Consulting, does work for Defendant Employer. Claimant testified that he currently makes \$9,600 per month. He admitted that at his deposition on June 2, 2009, he was making approximately \$12,000 per month.

Claimant only missed five days of work due to his accident. Claimant believes his doctors have done a good job. Claimant testified that he is able to do his work despite his right knee condition because he "thinks for a living." Since his accident, Claimant has flown around the world on business trips. Claimant has been released by his doctors with no restrictions. Claimant further testified that he was not on any medications as a result of his right knee injury. Additionally, Claimant testified that he is still able to hike and walk his dog. On re-direct, Claimant testified that even though he can still hike, his right knee hurts when he does.

KEVIN JOHNSON'S TESTIMONY

Kevin Johnson was called as a witness by Claimant. Kevin Johnson is the Executive Vice President of Defendant Employer, an advertising, marketing and public relations firm. As Executive VP, Mr. Johnson is a salaried employee and member of upper management. He was also Claimant's supervisor in October 2007. Mr. Johnson testified that Claimant, Director of Creative Solutions, was also a salaried employee and member of upper management. Mr. Johnson further testified that Claimant was in charge of the creative department, graphic artists, writers, and designers.

With regards to Claimant's right leg injury, Mr. Johnson testified that Claimant was injured in the last play of a kickball game that Claimant planned and organized. Mr. Johnson testified that Claimant proposed the idea of a kickball game as a way of improving teambuilding in the company. Claimant had planned a couple of other teambuilding activities in the past, including an employee cook-out. Mr. Johnson testified that he approved the kickball game because he believed it would promote employee loyalty to Defendant Employer and create a better atmosphere for employees. Mr. Johnson also authorized the budget for the kickball game. The kickball game was

later named "Ballad Ball." Mr. Johnson testified that Claimant planned Ballad Ball during company hours and that he regularly discussed the event with Claimant.

Mr. Johnson testified that Claimant used the company Intranet to promote Ballad Ball and that the event was for any employee, salary or hourly, that could and wanted to come. Ballad Ball was not a required event for upper management, and no employee was allowed to leave a client "hanging" in order to play kickball. Mr. Johnson hoped that as many people that could come, would come. Mr. Johnson testified that teams were eventually chosen and the event was widely discussed throughout the company. Defendant Employer provided t-shirts for the teams to wear during the game.

Ballad Ball was scheduled to begin at 3:00 p.m. on a Friday afternoon. Mr. Johnson supported the idea of all employees arriving to the event at that time. Mr. Johnson testified that at the time of Ballad Ball, the company was on summer hours, which allowed employees to leave at 3:30 p.m. if their workload permitted. However, Mr. Johnson further testified that Defendant Employer has flexible hours and if an employee worked through lunch, he or she could leave even earlier. Employees did not have to inform management if they planned on leaving at 3:30 during summer hours. The employees that played kickball worked through lunch on that Friday so that they could finish their work and make the event at 3:00 p.m. He was unaware of any employees that lost pay or had to use holiday/vacation time to attend Ballad Ball. Approximately half of Defendant Employer's employees participated in Ballad Ball and the other half either went home or stayed and worked.

With regards to employees on salary, Mr. Johnson testified that in October 2007 upper management employees typically worked more than 40 hours per week. Mr. Johnson and Claimant probably worked closer to 50 hours per week. Mr. Johnson testified that in October 2007, he would typically work a full day, but that it was ultimately up to the individual to decide how long to work.

On the day of Ballad Ball, Mr. Johnson testified that when he arrived to the field, the bases and balls were already on the field. Mr. Johnson further testified that chairs, coolers, a megaphone and other equipment provided by Defendant Employer were also set out around the field. Mr. Johnson believed Claimant did a good job planning and organizing Ballad Ball. Mr. Johnson indicated on a performance evaluation sheet that Claimant was instrumental in bringing back a couple of fun events.

On cross-examination, Mr. Johnson testified that it was not part of Claimant's job to plan internal events for Defendant Employer and that in the past other employees throughout the company have planned internal events. In fact, a warehouse manager created a company softball team. Claimant was not paid any extra for planning Ballad Ball. He testified that internal events are planned to produce a distraction from stressful work, to promote creativity, and to make Defendant Employer a fun place to work. The ultimate goal of these events is to promote company morale and health. Employees were not punished for failing to participate and were not paid more if they played. He also testified that attendance was completely voluntary and that attendance was not taken at the kickball game. No employee ever complained of being pressured to participate in Ballad Ball.

Mr. Johnson testified that on the day of Ballad Ball, employees had food delivered to work so that they could work through lunch and leave early. He further testified that if an employee had work that needed to be done for a client, he had to finish the work instead of playing kickball. He also testified that there was no requirement for salaried employees to clock or record their time for playing kickball because the time spent playing kickball was not billed to any client. Claimant recorded his time preparing and playing kickball as administrative time, but recording his time was irrelevant because Claimant would have been paid the same even if he did not record his time.

Mr. Johnson testified that the t-shirts provided to employees that played kickball were not a marketing tool and that the company name was not on the t-shirt. He further testified that Ballad

ball was played at the Simpsonville YMCA, not on company grounds, and that it did not take place during lunch or recreational periods. He also testified that company cars were not used for transportation and Defendant Employer did not reimburse employees for travel to Ballad Ball.

JENNIFER ESCONTRIAS' TESTIMONY (VIA DEPOSITION)

Jennifer Escontrias' deposition was taken on October 5, 2009, and the transcript of her deposition was submitted into evidence at the hearing without objection. Ms. Escontrias testified that normal Friday business hours in the fall of 2007 were 8:30 a.m. to 3:30 p.m. Ms. Escontrias testified that occasionally she would work past 3:30 on Friday afternoons and that if she left before 3:30 it was because she took PTO time or worked through lunch. She also believed that executive employees worked past 3:30 on most Fridays.

With regards to the kickball game, Ms. Escontrias testified that Kevin Johnson told the hourly employees at a staff meeting that the game was unpaid and voluntary. She was unaware how salaried employees dealt with kickball game. She testified that employees did not have to pay to participate in the kickball game. Ms. Escontrias did not participate in the kickball game, but attended and took pictures, which she later posted on the company Intranet for employees to view. She testified that no one asked her to take the pictures. She also testified that there were other hourly employees that did not participate but showed up to watch the game. Ms Escontrias further testified that Claimant organized the kickball game and that the kickball game ended when Claimant was injured.

MEDICAL RECORDS

Greenville County EMS was called to the Simpsonville YMCA at 4:18 on Friday, October 5, 2007 after Claimant injured his right leg playing kickball. Records indicate that Claimant jumped, landed on his right foot, and his right knee locked. (Claimant's APA #1). Claimant was diagnosed at the Greenville Hospital System with a fractured tibia. Claimant was placed in a knee immobilizer and told that his injury required surgery. (Claimant's APA #2).

On October 9, 2007, Claimant underwent an external fixation of his right tibial plateau fracture. Claimant was non-weight bearing for approximately 10 weeks after his surgery. Following his surgery, Dr. Goetz of the Greenville Hospital System recommended that Claimant perform certain motion exercises to improve the flexibility in his right knee. On December 3, 2007, Claimant reported to Dr. Jeray of the Greenville Hospital System for a follow-up appointment. Dr. Jeray noted that x-rays from this date indicate Claimant was developing an early callus formation. Dr. Jeray recommended Claimant for physical therapy and opined that Claimant could begin weight bearing on his right leg as soon as he increased his extension by 15°. (Claimant's APA #2).

On December 6, 2007, Claimant started physical therapy at Individualized Physical Therapy, Inc. to increase the range of motion in his right knee. (Defendants' APA #4). Following multiple physical therapy appointments, Claimant presented back to Dr. Jeray. Dr. Jeray opined that Claimant was doing well. Dr. Jeray told Claimant to begin weight-bearing as tolerated. (Claimant's APA #2).

On December 15, 2008, Dr. Jeray opined that Claimant had reached maximum medical improvement with regards to right leg injury he sustained on October 5, 2007 while playing kickball. Dr. Jeray opined that as a result of his injury, Claimant sustained 12% impairment to his right lower extremity. (Claimant's APA #2).

Records from the Greenville Hospital System dated October 8, 2009 through December 15, 2009 indicate Claimant paid for his treatment with his personal insurance. (Defendants' APA #3).

EXHIBITS AND OTHER EVIDENCE

A staff meeting agenda from Defendant Employer dated May 10, 2006 indicated that "Summer Hours" would be in effect from Memorial Day through Labor Day. Summer Hours would allow an employee to leave at 3:30 p.m. on Fridays if an employee had entered all of his or her time sheets and none of their work was in jeopardy. (Defendants' Exhibit A). A September

12, 2006 staff meeting agenda from Defendant Employer noted that Summer Hours had been extended to year round. (Defendants' Exhibit B).

Emails dated September 17, 2007 through October 5, 2007 indicate that Defendant Employer authorized Claimant to plan and promote Ballad Ball. Claimant used Defendant Employer's Intranet to promote and "hype" Ballad Ball. (Claimant's Exhibit #1).

Time sheets from Defendant Employer dated October 5, 2007, indicate that no hourly employees entered time for attending Ballad Ball. (Defendants' Exhibits C & D). A list of hourly employees' time sheets dated October 5, 2007 shows that three hourly employees attended Ballad Ball and eight hourly employees did not attend. One employee worked normal hours and one employee was at an out-of-town event. (Defendants' Exhibit E).

In a letter to Kevin Johnson, Executive VP of Defendant Employer, dated February 25, 2009, Claimant announced his resignation from Defendant Employer. Claimant indicated that he was leaving Defendant Employer to pursue contracted work Northland Baptist Bible College. Claimant further indicated that he would remain available to work for Defendant Employer under a contract relationship. (Defendants' APA #8).

On March 1, 2009, Defendant Employer and Claimant entered into an independent contractor agreement. Defendant Employer agreed to pay Claimant \$1,000 each day he rendered training services at Michelin and \$700 each day he performed services at Northland Baptist Bible College. Defendant Employer also agreed to reimburse Claimant for his expenses. The agreement expired on February 28, 2010. (Defendants' APA #6).

An email dated September 23, 2009 from Cary Smith of Northland indicates that Whigham Consulting and Northland entered into a consulting agreement in March 2009. The agreement required Northland to pay Whigham Consulting \$2,400 per week for consulting services. (Defendants' APA #7).

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

1. Claimant alleges that his participation in an Employer-sponsored recreational event (resulting in a right lower extremity fracture) entitles him to receive benefits under the Act, a claim I find is not supported by the greater weight of the evidence.

2. The kickball game/event planned by Claimant was held off-premises (testimony of Claimant; Claimant's Deposition, page 55).

3. Claimant admitted that participation in the kickball game/event was purely voluntary (testimony of Claimant; Claimant's Deposition, pages 50 and 52; *See also* Deposition of Escontrias, pages 4-5).

4. Claimant admitted that his job did not require him to plan such an employee-only event or other events. Instead, Claimant testified that "it was my idea" and "I volunteered to do it" (testimony of Claimant; testimony of Johnson; Claimant's Deposition, pages 53-54).

5. Claimant admitted that he did not usually attend or participate in other employee-only events such as Employer's softball games. This fact is more than a strong indicator that it was not in fact part of Claimant's job to attend or participate in such events, and I find it compelling that Claimant did not feel the need to attend other employee "team building" events as part of his job description (testimony of Claimant).

6. The kickball game in issue was not attended by potential employees (i.e., a recruitment tool) or by prospective or current clients.

7. Employer did provide t-shirts for employee-players, but the shirts did not contain Employer's name or other identifying logo or feature.

8. Employer did not provide transportation to or from the event; nor did Employer provide any employee with mileage reimbursement as is the customary practice for events

attended by clients (testimony of Johnson; testimony of Claimant; Claimant's Deposition, pages 57-58).

9. I do not find surprising or compelling the fact that Claimant participated/attended the event that he himself planned.

10. I find most compelling in my decision the fact that any of Employer's employees (including but not limited to a warehouse worker or graphic designer) could organize recreational activities for Employer's employees. This unrefuted testimony shows that it was not Claimant's job to plan or participate in such events. Nor was it Claimant's job to attend such events, as he himself admitted that he rarely attended employee softball games (testimony of Johnson; testimony of Claimant).

11. The fact that Claimant listed the kickball planning time on his time sheet is not dispositive. Further, Claimant's time sheet entry shows "admin work *plus* organize kickball game," leading the undersigned to the conclusion that organizing the game did not fall under Claimant's administrative duties (Claimant's Exhibit #8, unnumbered page).

12. Claimant's job as Director of Creative Services or Director of Creative Solutions required him to supervise artists, writers, web designers, and web programmers. Claimant did not have supervisory authority over all employees, such as warehouse workers, e.g. I note that the kickball event was not just held for the employees over which Claimant had supervisory authority (testimony of Claimant; Claimant's Deposition, pages 18-19).

13. If Claimant had been required to plan the event as part of his job description/duties, I might well have reached a different conclusion. However, such is not the case.

14. There is no question that Employer derived some benefit from the kickball/event in terms of making Employer a "fun place to work" and for "team building," factors which I fully take into account in reaching my decision. However, I find that there was no substantial

direct benefit beyond the intangible value of improvement of morale. Further, the activity was clearly not a work activity: Claimant himself admits that those employees who had client obligations (i.e., work) could not leave work early to participate in the game (evidence as a whole; Claimant's Deposition, page 56; Leopard; Larson's).

15. Employer's work hours are somewhat fluid, particularly during summer months during which Employees who have no pressing assignments may leave work at 3:30 (testimony of Johnson; testimony of Claimant; Defendants' Supplemental Submission A, pages b and g; Deposition of Escontrias, pages 3-4).

16. I find Kevin Johnson very credible. I base this finding on my observations of this witness and on the delivery of his testimony. I also note that Johnson's humorous responses clearly convey the impression that he and Claimant (who continues to work as a consultant for Employer) enjoy a very amicable relationship.

17. Claimant's credibility was somewhat damaged by the fact that although he testified that he was unable to sit in a chair for any appreciable length of time without significant discomfort, he stayed continuously seated at the hearing for more than 2 hours in no apparent discomfort and with little to no movement. I watched him closely at the hearing. I also note that Claimant was evasive at the hearing about having taken a hike on Parris Mountain. In his deposition, Claimant admitted to having taken a 1 ½ hour hike (observations of the undersigned; testimony of Claimant; Claimant's APA, page 14; Claimant's Deposition, page 46).

18. Claimant's deposition testimony that if any employee was not at the kickball game, he or she was expected to be in the office working is refuted by the credible testimony of Johnson (Claimant's Deposition, pages 50-51; testimony of Johnson).

19. I find very compelling one portion of Claimant's deposition testimony regarding the kickball game and his injury: his statement in this regard is that "a lot of middle-aged people probably shouldn't try to do [it], but it was a lot of fun." What I find telling is that Claimant did

not, instead, say words to the effect that "middle-aged people shouldn't try to do [it], but I felt like I had to/needed to" (Claimant's Deposition, page 48).

20. Because I do not find the claim compensable, I do not reach any issues relating to impairment/loss of use/disability.

21. Because Claimant did not sustain a compensable injury, his request for benefits under the Act is denied.

22. Claimant's compensation rate as stipulated to by the parties is \$645.94.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Pursuant to § 42-1-160, Claimant did not sustain an injury arising out of and in the course of employment with the Defendant Employer. Pursuant to the Supreme Court of South Carolina's decision in *Leopard v. Blackman-Uhler*, 318 S.C. 369, 458 S.E.2d 41 (1995), "Recreational of social activities are within the course of employment when (1) They occur on the premises during a lunch or recreation period as a regular incident of employment; or (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life." [citing A. Arther Larson and Lex Larson, *The Law of Workmen's Compensation* § 22.00 (1994)]. The facts of this case do not support his contention on any of these issues, and as such the Claimant has failed to prove that his injuries resulted from an accident arising out of and in the course of employment with the Defendant Employer

3. In the present case, Claimant has not established any of the above referenced factors that bring recreational and social activities within the scope of employment. The company-wide kickball event did not occur on Defendant Employer's premises during a lunch or recreational time. The kickball event was held at the Simpsonville YMCA. Additionally, Defendant Employer did not expressly or impliedly require participation in the kickball event. Claimant admitted that attendance at the kickball event was purely voluntary. Finally, Defendant Employer derived some benefit from the kickball event in terms of making the company a "fun place to work" and for "team building;" however, there was no substantial direct benefit from the activity beyond the intangible value of improving employee morale or employee health. As a result, Claimant failed to meet his burden of proof in establishing that he sustained an accident arising out of and in the course of employment with Defendant Employer.

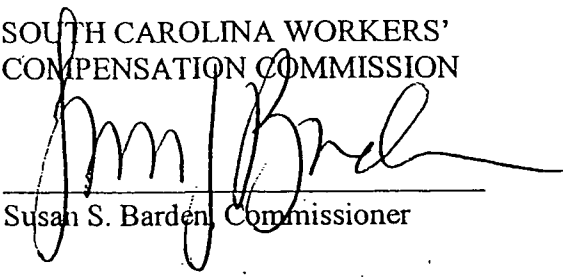
VII. ORDER

IT IS HEREBY ORDERED that the Claimant's request for benefits be, and is hereby, **DENIED.**

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

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

b7C
DC
This 4th day of January, 2012.

By KRISTL LOVE

Administrative Assistant to the Commissioner

APPELLATE PANEL
DECISION AND ORDER OF THE
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0723318

Stephen C. Whigham,	)
Employee,	)
Claimant,	)
	)
vs.	)
	)
Jackson Dawson Communications,	)
	)
Employer,	)
and	)
	)
The Hartford,	)
	)
Carrier,	)
Defendants.	)

**APPELLATE PANEL
DECISION AND ORDER
(FULL AFFIRMATION)**

Appellate Panel Review held in Columbia,
South Carolina on May 18, 2010 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

_____7/21_____, 2010.

APPEARANCES:

Claimant represented by Douglas A. Churdar,
Esquire of Greenville, South Carolina.

Defendants represented by Benjamin M. Renfrow,
Esquire of Willson Jones Carter & Baxley, P.A.,
Greenville, South Carolina.

I. STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on October 30, 2009 in Greenville, South Carolina. On January 4, 2010, she issued the following Order:

IT IS HEREBY ORDERED that the Claimant's request for benefits
be, and is hereby, DENIED.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on May 18, 2010. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. Whether Claimant's injury at a kick ball event is covered in that, among other things: a.) it occurred during Employer's normal hours of operation and Claimant's work hours; b.) Employer not only authorized the event but also expressed a desire that it occur; c.) Employer promoted the event via company email and intranet; d.) Claimant was expected to be at the event; e.) with Employer's consent, Claimant planned and executed the event on company time; f.) Employer supported the event financially and with use of its equipment; g.) the event provided a "business benefit" to Employer by helping it "retain good employees," get better work out of its employees, promote better working relationships between members of different departments, and promote employee loyalty to Employer; and h.) Employer embraced the event by displaying photographs on its intranet and at the company Christmas party; and i.) Claimant's planning and execution of the event formed a basis for Employer's evaluation of Claimant's job performance.

2. Whether the “softball league” cases provide the proper framework for this case, especially since it was Claimant who planned and executed the event as part of his employment.

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

II. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Claimant alleges that his participation in an Employer-sponsored recreational event (resulting in a right lower extremity fracture) entitles him to receive benefits under the Act, a claim I find is not supported by the greater weight of the evidence.

2. The kickball game/event planned by Claimant was held off-premises (testimony of Claimant; Claimant’s Deposition, page 55).

3. Claimant admitted that participation in the kickball game/event was purely voluntary (testimony of Claimant; Claimant’s Deposition, pages 50 and 52; *See also* Deposition of Escontrias, pages 4-5).

4. Claimant admitted that his job did not require him to plan such an employee-only event or other events. Instead, Claimant testified that “it was my idea” and “I volunteered to do it” (testimony of Claimant; testimony of Johnson; Claimant’s Deposition, pages 53-54).

5. Claimant admitted that he did not usually attend or participate in other employee-only events such as Employer's softball games. This fact is more than a strong indicator that it was not in fact part of Claimant's job to attend or participate in such events, and I find it compelling that Claimant did not feel the need to attend other employee "team building" events as part of his job description (testimony of Claimant).

6. The kickball game in issue was not attended by potential employees (i.e., a recruitment tool) or by prospective or current clients.

7. Employer did provide t-shirts for employee-players, but the shirts did not contain Employer's name or other identifying logo or feature.

8. Employer did not provide transportation to or from the event; nor did Employer provide any employee with mileage reimbursement as is the customary practice for events attended by clients (testimony of Johnson; testimony of Claimant; Claimant's Deposition, pages 57-58).

9. I do not find surprising or compelling the fact that Claimant participated/attended the event that he himself planned.

10. I find most compelling in my decision the fact that any of Employer's employees (including but not limited to a warehouse worker or graphic designer) could organize recreational activities for Employer's employees. This unrefuted testimony shows that it was not Claimant's job to plan or participate in such events. Nor was it Claimant's job to attend such events, as he himself admitted that he rarely attended employee softball games (testimony of Johnson; testimony of Claimant).

11. The fact that Claimant listed the kickball planning time on his time sheet is not dispositive. Further, Claimant's time sheet entry shows "admin work *plus* organize kickball

game,” leading the undersigned to the conclusion that organizing the game did not fall under Claimant’s administrative duties (Claimant’s Exhibit #8, unnumbered page).

12. Claimant’s job as Director of Creative Services or Director of Creative Solutions required him to supervise artists, writers, web designers, and web programmers. Claimant did not have supervisory authority over all employees, such as warehouse workers, e.g. I note that the kickball event was not just held for the employees over which Claimant had supervisory authority (testimony of Claimant; Claimant’s Deposition, pages 18-19).

13. If Claimant had been required to plan the event as part of his job description/duties, I might well have reached a different conclusion. However, such is not the case.

14. There is no question that Employer derived some benefit from the kickball/event in terms of making Employer a “fun place to work” and for “team building,” factors which I fully take into account in reaching my decision. However, I find that there was no substantial direct benefit beyond the intangible value of improvement of morale. Further, the activity was clearly not a work activity: Claimant himself admits that those employees who had client obligations (i.e., work) could not leave work early to participate in the game (evidence as a whole; Claimant’s Deposition, page 56; Leopard; Larson’s).

15. Employer’s work hours are somewhat fluid, particularly during summer months during which Employees who have no pressing assignments may leave work at 3:30 (testimony of Johnson; testimony of Claimant; Defendants’ Supplemental Submission A, pages b and g; Deposition of Escontrias, pages 3-4).

16. I find Kevin Johnson very credible. I base this finding on my observations of this witness and on the delivery of his testimony. I also note that Johnson’s humorous responses

clearly convey the impression that he and Claimant (who continues to work as a consultant for Employer) enjoy a very amicable relationship.

17. Claimant's credibility was somewhat damaged by the fact that although he testified that he was unable to sit in a chair for any appreciable length of time without significant discomfort, he stayed continuously seated at the hearing for more than 2 hours in no apparent discomfort and with little to no movement. I watched him closely at the hearing. I also note that Claimant was evasive at the hearing about having taken a hike on Parris Mountain. In his deposition, Claimant admitted to having taken a 1 ½ hour hike (observations of the undersigned; testimony of Claimant; Claimant's APA, page 14; Claimant's Deposition, page 46).

18. Claimant's deposition testimony that if any employee was not at the kickball game, he or she was expected to be in the office working is refuted by the credible testimony of Johnson (Claimant's Deposition, pages 50-51; testimony of Johnson).

19. I find very compelling one portion of Claimant's deposition testimony regarding the kickball game and his injury: his statement in this regard is that "a lot of middle-aged people probably shouldn't try to do [it], but it was a lot of fun." What I find telling is that Claimant did not, instead, say words to the effect that "middle-aged people shouldn't try to do [it], but I felt like I had to/needed to" (Claimant's Deposition, page 48).

20. Because I do not find the claim compensable, I do not reach any issues relating to impairment/loss of use/disability.

21. Because Claimant did not sustain a compensable injury, his request for benefits under the Act is denied.

22. Claimant's compensation rate as stipulated to by the parties is \$645.94.

III. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Pursuant to § 42-1-160, Claimant did not sustain an injury arising out of and in the course of employment with the Defendant Employer. Pursuant to the Supreme Court of South Carolina's decision in *Leopard v. Blackman-Uhler*, 318 S.C. 369, 458 S.E.2d 41 (1995), "Recreational of social activities are within the course of employment when (1) They occur on the premises during a lunch or recreation period as a regular incident of employment; or (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life." [citing A. Arther Larson and Lex Larson, *The Law of Workmen's Compensation* § 22.00 (1994)]. The facts of this case do not support his contention on any of these issues, and as such the Claimant has failed to prove that his injuries resulted from an accident arising out of and in the course of employment with the Defendant Employer.

3. In the present case, Claimant has not established any of the above referenced factors that bring recreational and social activities within the scope of employment. The company-wide kickball event did not occur on Defendant Employer's premises during a lunch or recreational time. The kickball event was held at the Simpsonville YMCA. Additionally, Defendant Employer did not expressly or impliedly require participation in the kickball event. Claimant admitted that

attendance at the kickball event was purely voluntary. Finally, Defendant Employer derived some benefit from the kickball event in terms of making the company a "fun place to work" and for "team building;" however, there was no substantial direct benefit from the activity beyond the intangible value of improving employee morale or employee health. As a result, Claimant failed to meet his burden of proof in establishing that he sustained an accident arising out of and in the course of employment with Defendant Employer.

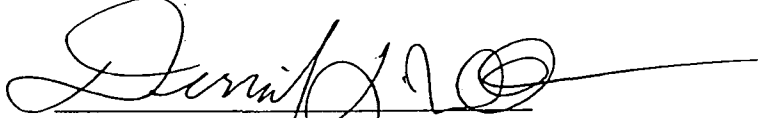
IV. ORDER

IT IS HEREBY ORDERED that the Claimant's request for benefits be, and is hereby, DENIED.

No hearing costs are assessed in this instance.

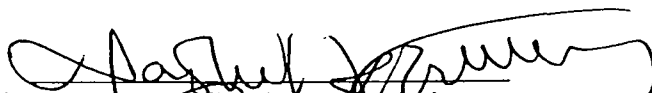
IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


Derrick L. Williams, Commissioner

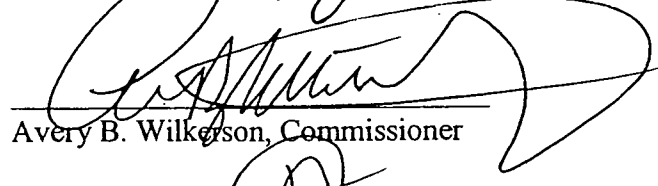
FULL AFFIRMATION

CONCUR:


David W. Huffstetler, Commissioner

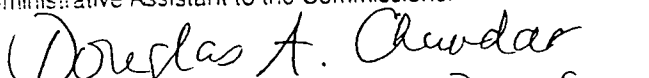
CERTIFICATE OF SERVICE

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


Avery B. Wilkerson, Commissioner

This 21 day of July, 2010
By Valerie D. Decker

Administrative Assistant to the Commissioner




Patient Care Summary Report

GREENVILLE COUNTY

Incident#: 072780193 Report#: 0735400 Unit: 106 Date: 10/05/2007 Call#: 07044182

Patient Information

Patient Name: WHIGHAM, STEVEN
 Address: 161 GREENVISTA LN GREENVILLE SC 29609
 SSN: 426-25-2054 Race: WHITE Sex: M DOB: 19620725

Incident Information

Reported Condition at Dispatch: 387 FALL 17D4-ABNORMAL BREATHING
 Disposition: HOSPITAL ER Type of Incident: T FALL
 To Scene: EMERGENT On Scene: NON URGENT From Scene: NON URGENT
 Incident Location: 906 HWY 14 INTERSECTN SIMPSONVILLE 29681
 ADAMS MILL
 County: GREENVILLE Site: RECREATIONAL Safe Equipment:

Time/Attendants

Call Received: 16:18:23 Call Dispatched: 16:18:52 Departed Base: 16:23:09
 Arrive Scene: 16:30:07 Departed Scene: 16:56:31 Arrive Destination: 17:26:32
 Receiving Agency: GMH-INTERMEDIATE CARE
 Sending Agency: GREENVILLE COUNTY EMS
 DHEC: M-20 Form Left In: ED
 Cause of Delay:
 Reason for Alternate Route to Hospital:
 Report Faxed to: GMH-INTERMEDIATE CARE

Primary Attendant: DARBY, TABATHA 82695
 2nd Attendant/Driver: BRASHIER, JENNIFER 93414
 3rd Attendant/Driver:
 4th Attendant/Driver:

Receiving Nurse/Physician: BONNIE, RN
 Ordering Physician: DR. CLARDY

Age: 45 Yrs - Sex: M

Found: SEATED

COMPLAINING OF:

PAIN -

With associated:

SPRAIN / STRAIN

pt was jumping up while playing kickball, landed on his r- foot w/ a "locked" knee, causing instant pain. pt stated that he fell to the ground lightly to avoid putting weight on the injured extrem, but did not injure anything other than his r- knee.

HPI:

45 y/o male playing kickball, jumped and landed on his feet w/ r- leg in locked position. pain and inability to move his leg followed.

Patient Denies:

COPIES

any loc, dizziness, syncope, vomiting

Allergies:

nkda

Medications:

none

Past Medical History:

none

Physical Exam:

Head Neck:

Pupil:

Equal, Reactive,

Ears:

Clear,

Nose:

Clear,

Mouth:

Clear,

Neck:

Trachea Midline, Carotid Pulse,

no loc, no dizziness, no syncope

Chest-Abdomen:

Breath:

Clear, Equal,

Abdomen:

Soft,

Musculo-Skeleton:

Right Arm:

Without Bony Deformity, Equal Strength, Sensation Present / Equal, Pulse Present / Equal,

Left Arm:

Without Bony Deformity, Equal Strength, Sensation Present / Equal, Pulse Present / Equal,

Right Leg:

Equal Strength, Sensation Present / Equal, Pulse Present / Equal, Tenderness, Crepitus, Pain,

Left Leg:

Without Bony Deformity, Equal Strength, Sensation Present / Equal, Pulse Present / Equal,

Pelvis:

Without Bony Deformity,

COPIED

2

Hip:

Without Bony Deformity,

Spine:

Without Bony Deformity,

pt had r- leg in a bent position, w/ lateral side resting on the ground. tenderness in the patella area and crepitus noted, pt unable to move his r- leg w/o severe pain.

Skin Mental:

Skin:

Warm, Pale, Diaphoretic,

Mental:

Alert,

pt denied any loc. pt alert/oriented to person, place, time, and event.

Trauma Score:

Eye: 4 SPONTANEOUS - SBP 130 4

Verbal: 5 ORIENTED - RR 16 4

Motor: 6 OBEYS COMMANDS

Trauma Sites:

Lower Extr.,

Vital Signs:

BP	Pulse Rate	Resp. Rate	SAT	ETC	Pupils	Consc. Level	Time
130/82	88 REG.	16 REG.	98	0	EQUAL	ALERT	16:35
128/82	88 REG.	16 REG.	0	0	EQUAL	ALERT	16:45
130/P	80 REG.	16 REG.	0	0	EQUAL	ALERT	17:00
132/80	76 REG.	16 REG.	0	0	EQUAL	ALERT	17:15
130/P	76 REG.	16 REG.	0	0	EQUAL	ALERT	17:26

Procedures Performed:

EKG SR

Time 17:06

IV 20 GANS Rate KVO

Vol 50CC

Time 16:40

Blood Glucose 179 mg/dl Assisted Meds Attempts 1

iv initiated 20g w/ aseptic tech, ns flowing w/o infiltration. difficulty securing the iv due to diaphoresis, but accomplished it temporarily until pt could be towed off in the unit.

Limb Splinted, Cold Application, Oxygen Given,

Other,

Medication Administered:

MORPHINE SULFATE

5MG

16:45

DARBY, TABATHA

MORPHINE SULFATE

5MG

17:08

DARBY, TABATHA

Belongings:

Accessories:

Wallet,

Other:

CASE W/ HEADPHONES

Belongings left: With patient

Patient transported NON URGENTLY to GMH-INTERMEDIATE CARE

Hospital Account No:

8010206825

ems unable to splint pt's r- leg in any way prior to medication for pain. iv est
ablished l ac 20g on scene and o2 given per nc at 41pm. order obtained for 5 mg
mso4 iv per dr. clardy on phone patch prior to tport. med given and pt pain free
after admin. pt's r- leg positioned as found, remained good distal pulses, sens
ation and movement of toes before and after immobilization. pt leg secured on ca
rdboard splint. pt assisted to siton stretcher and secured w/ straps and placed
in unit. order obtained for additional 5 mg mso4 from dr. clardy during tport.
pt's pain was a 5 on 1-10 scale after movement to stretcher and beginning tport.
med admin w/ decrease in pain to a 1 on 1-10 scale. pt showing sr on lp12 no ec
topy. pt vitals monitored during tport and noted. pt tported to gmh imc area 4 h
all 2 and moved to bed and rails up. pt leg in position of best comfort, pain a
1-2 on 1-10 scale. pt report given to rn. pt alert/oriented at time of care tran
sfer.

COPIED

4

Steve Whigham
161 Greenvista Lane
Greenville, SC 29609

Wednesday, February 25, 2009

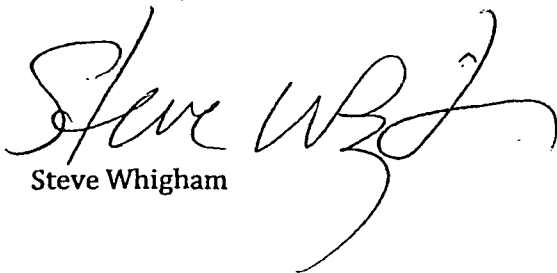
Mr. Kevin Johnson, EVP
Jackson-Dawson Marketing Communications,
2 Task Court
Greenville, SC 29607

Kevin,

This letter is to announce my resignation from Jackson-Dawson Marketing Communications as of February 28, 2009. I will be leaving to pursue contracted work with Northland Baptist Bible College, as discussed, and will remain available to work for Jackson-Dawson under a contract relationship for various work as Jackson-Dawson sees fit.

Thank you for the 9+ years of full-time employment and I hope that our new business relationship will remain active going forward.

Sincerely,



Steve Whigham

SHEET 1 PAGE 1

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. TBP

EMPLOYEE/CLAIMANT: STEPHEN C. WHIGHAM
EMPLOYER: JACKSON DAWSON COMMUNICATIONS
CARRIER: THE HARTFORD

DEPOSITION OF STEPHEN C. WHIGHAM

PURSUANT TO NOTICE, THE WITHIN DEPOSITION OF
STEPHEN C. WHIGHAM WAS TAKEN BY THE EMPLOYER/CARRIER ON
THE 2ND DAY OF JUNE, 2009, COMMENCING AT THE HOUR OF
10:07 A.M., AT THE LAW OFFICES OF DOUGLAS A. CHURDAR,
712 EAST WASHINGTON STREET, GREENVILLE, SOUTH
CAROLINA, ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

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

PAGE 3

I N D E X

	PAGE
EXAMINATION BY MR. RENFROW.....	4
CERTIFICATE OF NOTARY PUBLIC.....	108

EXHIBITS:

NONE MARKED

OBJECTIONS:

BY MR. CHURDAR..... 54, 56

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

PAGE 2

APPEARANCES

DOUGLAS A. CHURDAR, ESQUIRE
DOUGLAS A. CHURDAR, P.C.
712 EAST WASHINGTON STREET
GREENVILLE, SOUTH CAROLINA 29601

ATTORNEY FOR THE CLAIMANT,

BENJAMIN M. RENFROW, ESQUIRE, OF THE FIRM
WILLSON, JONES, CARTER & BAXLEY, P.A.
872 SOUTH PLEASANTBURG DRIVE
GREENVILLE, SOUTH CAROLINA 29607

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MR. LARRY JACKSON
MR. DARRELL JACKSON
MR. BEAU CRESON

PAGE 4

1 PURSUANT TO NOTICE AND/OR AGREEMENT TO TAKE
2 DEPOSITIONS, THE WITHIN DEPOSITION WAS TAKEN BY THE
3 ABOVE-NAMED COURT REPORTER, A NOTARY PUBLIC FOR THE STATE
4 OF SOUTH CAROLINA, BY CONSENT OF ALL PARTIES AT THE LAW
5 OFFICES OF DOUGLAS A. CHURDAR, 712 EAST WASHINGTON
6 STREET, GREENVILLE, SOUTH CAROLINA.

7 * * * * *

8 STIPULATIONS:

9 IT IS AGREED BY AND BETWEEN COUNSEL FOR THE PARTIES
10 AS FOLLOWS:

11 1. THE DEPOSITION IS BEING TAKEN PURSUANT TO THE
12 RULES OF THE SOUTH CAROLINA WORKERS'
13 COMPENSATION COMMISSION.

14 2. THE READING AND SIGNING OF THE DEPOSITION
15 TRANSCRIPT ARE WAIVED BY THE WITNESS AND THE
16 PARTIES.

17 * * * * *

18 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
19 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
20 MATTER HEREIN:

21 STEPHEN C. WHIGHAM,

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

24 EXAMINATION BY MR. RENFROW:

25 Q. ALL RIGHT, STEVE. AGAIN, MY NAME IS BEN RENFROW.

SHEET 2 PAGE 5

1 I'M HERE TODAY ON BEHALF OF JACKSON DAWSON AND THEIR
2 WORKERS' COMP CARRIER, THE HARTFORD. HAVE YOU EVER
3 HAD YOUR DEPOSITION TAKEN BEFORE?
4 A. NEVER HAVE.
5 Q. ALL RIGHT. WELL, I'M SURE YOUR ATTORNEY HAS TOLD
6 YOU HOW THIS IS GOING TO WORK. BUT I'M GOING TO ASK
7 YOU A LOT OF QUESTIONS TODAY.
8 A. OKAY.
9 Q. AND THIS NICE COURT REPORTER HERE IS GOING TO TAKE
10 DOWN EVERY WORD THAT'S SAID IN THIS ROOM.
11 A. OKAY.
12 Q. A COUPLE OF GROUND RULES, IF YOU WILL; GIVE ME
13 VERBAL ANSWERS TO ALL OF MY QUESTIONS.
14 A. OKAY.
15 Q. IF YOU WANT TO SAY "YES," SAY "YES." IF YOU WANT TO
16 SAY "NO," SAY "NO." ONE OF THE THINGS WE RUN INTO
17 FROM TIME TO TIME IS FOLKS THAT LIKE TO SAY "UH-HUH"
18 OR "UH-UH." I DO IT; WE ALL DO IT. BUT IT'S HARD
19 WHEN WE GO TO PREPARE FOR A HEARING TO UNDERSTAND
20 YOUR ANSWERS FROM TIME TO TIME.
21 A. EXACTLY; YES, SIR.
22 Q. SO, AGAIN, IF YOU WANT TO SAY "YES," SAY "YES." IF
23 YOU WANT TO SAY "NO," SAY "NO."
24 A. OKAY.
25 Q. AT SOME POINT TODAY YOU MAY MESS UP AND DO THAT, AND

PAGE 7

1 A. WE OWN IT.
2 Q. AND IF WE GO TO A HEARING IN THREE TO SIX MONTHS IN
3 THIS CASE, DO YOU PLAN ON BEING AT THAT ADDRESS?
4 A. I'M SURE, YEAH.
5 Q. THE HOUSE ISN'T ON THE MARKET OR ANYTHING LIKE THAT?
6 A. NO, IT'S NOT.
7 Q. OKAY. AND DO YOU OWN ANY OTHER HOMES?
8 A. NO.
9 Q. I HAVE YOUR DATE OF BIRTH JULY 25TH, 1962, IS THAT
10 RIGHT?
11 A. THAT'S CORRECT.
12 Q. THAT MAKES YOU 46 YEARS OLD?
13 A. YES.
14 Q. OKAY. AND I HAVE YOUR SOCIAL SECURITY NUMBER AS
15 426-25-2054; IS THAT CORRECT?
16 A. THAT'S CORRECT.
17 Q. ARE YOU CURRENTLY TAKING MEDICATION FOR ANY REASON?
18 A. NO.
19 Q. WHETHER RELATED TO THIS OR NOT?
20 A. NO.
21 Q. YOU HAVEN'T TAKEN ANY MEDICATION TODAY?
22 A. NO.
23 Q. DID YOU DRIVE TO THIS DEPOSITION?
24 A. YES.
25 Q. IS IT STRAIGHT DRIVE OR AUTOMATIC?

PAGE 6

1 I WILL ASK YOU NOT TO. I'M NOT FUSSING AT YOU OR
2 GETTING ON YOU. I JUST WANT TO MAKE SURE THIS IS
3 NICE AND NEAT AND CLEAN WHEN WE GO IN FRONT OF THE
4 COMMISSIONER, OKAY?
5 A. OKAY.
6 Q. THE MOST IMPORTANT RULE THAT I WANT YOU TO
7 UNDERSTAND IS I'M NOT HERE TO TRICK YOU. IF I ASK
8 YOU A QUESTION AND YOU DON'T UNDERSTAND ANY PART OF
9 MY QUESTION, JUST ASK ME TO REPHRASE IT, AND I'LL BE
10 GLAD TO DO SO, OKAY?
11 A. OKAY.
12 Q. WITH THAT SAID, IF I ASK YOU A QUESTION AND YOU
13 ANSWER IT THE WAY I ASK IT, I'M GOING TO ASSUME AND
14 I'M GOING TO ASK THE COMMISSIONER IN A COUPLE OF
15 MONTHS TO RELY ON YOUR ANSWER TO MY QUESTION; IS
16 THAT FAIR?
17 A. THAT'S FAIR.
18 Q. ALL RIGHT. STATE YOUR FULL NAME ONE MORE TIME.
19 A. STEPHEN CLARENCE WHIGHAM.
20 Q. WHAT'S YOUR CURRENT ADDRESS, STEPHEN?
21 A. 161 GREEN VISTA LANE, GREENVILLE, SOUTH CAROLINA
22 29609.
23 Q. HOW LONG HAVE YOU LIVED AT THAT ADDRESS?
24 A. TWELVE YEARS.
25 Q. AND DO YOU OWN OR RENT?

PAGE 8

1 A. AUTOMATIC.
2 Q. WHAT KIND OF CAR DID YOU DRIVE?
3 A. IT IS A TOYOTA AVALON.
4 Q. ARE YOU MARRIED, STEPHEN?
5 A. YES.
6 Q. HOW LONG HAVE YOU BEEN MARRIED?
7 A. TWENTY-FOUR YEARS.
8 Q. FIRST MARRIAGE?
9 A. YES.
10 Q. DO YOU HAVE ANY CHILDREN OR STEPCHILDREN?
11 A. FOUR CHILDREN?
12 Q. WHAT ARE THEIR AGES?
13 A. TWENTY, EIGHTEEN, SIXTEEN, AND FOURTEEN.
14 Q. OKAY. DO ANY OF THEM LIVE WITH YOU?
15 A. ALL OF THEM DO.
16 Q. ALL FOUR OF THEM STILL LIVE AT HOME?
17 A. YES.
18 Q. ALL FOUR OF THEM STILL DEPEND ON YOU FOR FINANCIAL
19 SUPPORT?
20 A. YES.
21 Q. DOES ANYONE ELSE LIVE WITH YOU BESIDES YOUR FOUR
22 CHILDREN AND YOUR WIFE?
23 A. NO.
24 Q. WHAT'S YOUR WIFE'S NAME?
25 A. BETH.

SHEET 3 PAGE 9

1 Q. OKAY. AND DOES BETH WORK?
 2 A. YES.
 3 Q. WHERE DOES SHE WORK?
 4 A. SHE HAS HER OWN BUSINESS.
 5 Q. WHAT'S THE NAME OF IT?
 6 A. FIGGY WHIGS.
 7 Q. WHAT KIND OF BUSINESS IS THAT?
 8 A. THEY MAKE CUPCAKES.
 9 Q. FIGGY WHIGS?
 10 A. YES.
 11 Q. WHERE IS THAT LOCATED?
 12 A. ACTUALLY THEY'RE GOING -- JUST ABOUT TO OPEN A STORE
 13 AT THE CHILDREN'S MUSEUM.
 14 Q. OKAY. NOW, DURING THE 24 YEARS THAT YOU'VE BEEN
 15 MARRIED, HAS YOUR WIFE BEEN INVOLVED IN A WORKERS'
 16 COMP CLAIM THAT YOU KNOW ABOUT?
 17 A. NO.
 18 Q. OKAY. AND IS THERE ANYONE ELSE WHO LIVES AT HOME
 19 WITH YOU OTHER THAN YOUR WIFE AND FOUR KIDS?
 20 A. NO.
 21 Q. IS THERE ANYONE ELSE WHO DEPENDS ON YOU FOR
 22 FINANCIAL SUPPORT?
 23 A. NO.
 24 Q. OKAY. HOW FAR DID YOU GO IN SCHOOL?
 25 A. MASTER'S DEGREE.

PAGE 10

1 Q. WHERE DID YOU GO TO HIGH SCHOOL?
 2 A. I WENT TO HIGH SCHOOL AT BOB JONES ACADEMY.
 3 Q. WHAT YEAR DID YOU GRADUATE FROM HIGH SCHOOL?
 4 A. 1980.
 5 Q. AND THEN DID YOU IMMEDIATELY GO TO COLLEGE?
 6 A. YES.
 7 Q. WHERE DID YOU GO?
 8 A. BOB JONES UNIVERSITY.
 9 Q. WHAT YEAR DID YOU GRADUATE?
 10 A. 1984.
 11 Q. A FOUR-YEAR DEGREE?
 12 A. ACCOUNTING. YES, IN ACCOUNTING.
 13 Q. DO YOU HAVE A RESUME?
 14 A. SOMEWHERE.
 15 Q. A CURRENT RESUME; NOT WITH YOU TODAY, BUT DO YOU
 16 HAVE ONE?
 17 A. YES, I DO.
 18 Q. AND YOU CAN GET ME A RESUME IF I NEEDED THAT?
 19 A. YES.
 20 Q. OKAY. YOU MAJORED IN ACCOUNTING; DID YOU HAVE ANY
 21 MINORS AT BOB JONES?
 22 A. I THINK I MINORED IN ENGLISH. I HAVEN'T THOUGHT
 23 ABOUT THAT IN A LONG TIME.
 24 Q. AND THEN YOU WENT AND GOT A MASTER'S DEGREE?
 25 A. YES.

PAGE 11

1 Q. HOW SOON AFTER GRADUATING FROM COLLEGE DID YOU GO
 2 GET YOUR MASTERS?
 3 A. IT WAS TWO YEARS.
 4 Q. WHAT IS YOUR MASTER'S DEGREE IN?
 5 A. IT'S AN M.B.A., BUSINESS ADMINISTRATION.
 6 Q. DO YOU HAVE ANY OTHER DEGREES?
 7 A. NO.
 8 Q. HAVE YOU TAKEN ANY OTHER COURSES OVER THE COURSE OF
 9 YOUR LIFE?
 10 A. QUITE A FEW ACTUALLY.
 11 Q. GIVE ME AN IDEA OF THE TYPE OF COURSE WORK YOU'VE
 12 TAKEN.
 13 A. INTERNATIONAL POLICY AT LONDON SCHOOL OF ECONOMICS,
 14 INTERNATIONAL BUSINESS THERE.
 15 Q. WHERE?
 16 A. LONDON SCHOOL OF ECONOMICS.
 17 Q. WHEN DID YOU DO THAT?
 18 A. THAT WAS 1987.
 19 Q. WAS THAT DURING THE TIME YOU WERE GETTING YOUR
 20 M.B.A.?
 21 A. YEAH, AT THE CONCLUSION OF IT.
 22 Q. OKAY.
 23 A. I STUDIED THE D.G.F., DIAMIC GRAPHICS EDUCATIONAL
 24 FOUNDATION. I DID SCRIPT WRITING AND COPYRIGHTING.
 25 Q. WHEN DID YOU COMPLETE THAT?

PAGE 12

1 A. THAT WAS IN 1990, I THINK. THOSE WERE THE TWO BIG
 2 ONES.
 3 Q. ALL RIGHT. AND DO YOU HAVE ANY SPECIFIC LICENSES OR
 4 CERTIFICATES OF ANY KIND OTHER THAN WHAT WE'VE
 5 TALKED ABOUT?
 6 A. CERTIFIED BUSINESS COMMUNICATOR FROM THE BUSINESS
 7 MARKETING ASSOCIATION. THE B.M.A. IS WHAT IT'S
 8 CALLED.
 9 Q. AND YOU'VE GOT AN ACTUAL CERTIFICATE AT HOME?
 10 A. YES.
 11 Q. OKAY, ANY OTHER CERTIFICATES?
 12 A. NO.
 13 Q. ALL RIGHT. YOU HAVE A DRIVER'S LICENSE, OBVIOUSLY?
 14 A. YES.
 15 Q. OKAY. DO YOU HAVE ANY RESTRICTIONS ON YOUR LICENSE?
 16 A. NO, BESIDES WEARING EYEGLASSES.
 17 Q. AND YOU DON'T WEAR THOSE ALL THE TIME?
 18 A. I USUALLY WEAR CONTACTS.
 19 Q. HAVE YOU EVER SPENT ANY TIME IN THE MILITARY?
 20 A. NO.
 21 Q. ALL RIGHT. I THINK THIS WILL BE EASY AS YOUNG AS
 22 YOU ARE. LET'S GO BACK TO 1988; LET'S WORK OUR WAY
 23 FORWARD. I WANT TO KNOW THE TYPE OF WORK YOU'VE
 24 DONE SINCE 1988.
 25 A. 1988, I GRADUATED MY M.B.A. PROGRAM BY THEN. I WAS

SHEET 4 PAGE 13

1 WORKING WITH SOUTHEASTERN EQUIPMENT COMPANY IN
2 AUGUSTA, GEORGIA.
3 Q. DOING WHAT?
4 A. I WAS THEIR FINANCIAL ANALYST.
5 Q. HOW LONG DID YOU WORK FOR THAT COMPANY?
6 A. TWO YEARS.
7 Q. AND THAT WAS IN ATLANTA, GEORGIA?
8 A. IN AUGUSTA, GEORGIA.
9 Q. AUGUSTA, GEORGIA. SO YOU WERE LIVING IN AUGUSTA AT
10 THE TIME?
11 A. YES.
12 Q. WHY WERE YOU IN GEORGIA?
13 A. THEY EXTENDED AN OFFER TO ME RIGHT OUT OF GRAD
14 SCHOOL.
15 Q. OKAY. HOW MANY YEARS DID YOU WORK THERE?
16 A. TWO YEARS.
17 Q. AND WHY DID YOU LEAVE?
18 A. I STARTED MY OWN COMPANY.
19 Q. WHAT WAS THE NAME OF YOUR COMPANY?
20 A. AMERICAN MEDICAL VIDEOS.
21 Q. TELL ME A LITTLE BIT ABOUT THAT.
22 A. WE WERE A PRODUCER AND WRITER OF MEDICAL EDUCATION
23 VIDEOS MAINLY FOR INFORMATIVE PURPOSES INSIDE THE
24 MEDICAL INDUSTRY. WE ALSO DID NURSING AND PHYSICIAN
25 EDUCATION VIDEOS.

PAGE 14

1 Q. DOES THAT COMPANY STILL EXIST?
2 A. NO.
3 Q. AND WHEN DID IT CEASE TO EXIST?
4 A. WE STOPPED DOING BUSINESS IN '92.
5 Q. WHY DID YOU STOP?
6 A. I ACCEPTED AN OFFER FROM JACKSON DAWSON.
7 Q. SO YOU JUST SHUT THAT COMPANY DOWN?
8 A. YES.
9 Q. WAS THE COMPANY PROFITABLE?
10 A. ON PAPER. WE HAD SOME BAD DEBT PROBLEMS IS WHY WE
11 COULDN'T CONTINUE.
12 Q. AND DID YOU FILE BANKRUPTCY OR ANYTHING LIKE THAT?
13 A. NO.
14 Q. JUST SHUT IT DOWN?
15 A. SHUT IT DOWN.
16 Q. TELL ME A LITTLE BIT ABOUT IT. I MEAN, DID YOU GO
17 INTO MEDICAL FACILITIES?
18 A. YES, WE WENT ACTUALLY ALL OVER THE UNITED STATES. I
19 HAD CONTRACTS LIKE WITH ETHICON AND KARL STORZ
20 ENDOSCOPY, SURGICAL LASER TECHNOLOGIES, AND THEY
21 BROUGHT ME -- I WORKED IN HOSPITALS WITH THEM. I
22 ACTUALLY FILMED SURGICAL PROCEDURES. AND NEW JERSEY
23 LASER INSTITUTE WAS ANOTHER CLIENT OF MINE, AND WE
24 DID A LOT OF WORK IN LONDON TO WORK IN GYNECOLOGY,
25 GENERAL SURGERY.

PAGE 15

1 Q. DO YOU HAVE ANY TRAINING IN THE MEDICAL PROFESSION?
2 A. NO.
3 Q. OKAY. SO WHAT WAS YOUR ROLE WITH THE COMPANY?
4 A. I WAS THE PRESIDENT/FOUNDER, AND I DID ALL THE
5 WRITING, PRODUCING, AND DIRECTING OF ALL THE VIDEOS.
6 Q. OKAY. AND HOW LONG DID THAT COMPANY EXIST?
7 A. IT STARTED IN -- ABOUT THREE AND A HALF, FOUR YEARS.
8 Q. ALL RIGHT. AND THEN YOU STARTED AT JACKSON DAWSON
9 WHEN?
10 A. 1992, END OF 1992.
11 Q. HOW LONG DID YOU WORK THERE?
12 A. I WORKED THERE TWO AND A HALF YEARS, I THINK.
13 Q. AND WHAT WAS YOUR ROLE BACK IN 1992?
14 A. ACCOUNT EXECUTIVE.
15 Q. AND WHY DID YOU LEAVE AFTER TWO AND A HALF YEARS?
16 A. I ACCEPTED A POSITION WITH ANOTHER AGENCY.
17 Q. SO, YOU VOLUNTARILY LEFT?
18 A. YES.
19 Q. WHAT WAS THE NEW AGENCY THAT YOU WENT TO?
20 A. IT WAS VANTAGE POINT MANAGEMENT.
21 Q. WHERE IS THAT LOCATED?
22 A. HERE IN GREENVILLE.
23 Q. WHAT DID YOU DO FOR THAT COMPANY?
24 A. I WAS THEIR CREATIVE DIRECTOR AND WORKED ON A LOT OF
25 NEW BUSINESS.

PAGE 16

1 Q. ALL RIGHT. TELL ME, WHAT DOES A CREATIVE DIRECTOR
2 DO?
3 A. RESPONSIBLE FOR THE CREATIVE PRODUCT OF THE AGENCY.
4 SO I DID MOST OF THE WRITING AND CREATIVE
5 DEVELOPMENT.
6 Q. OKAY. HOW LONG DID YOU WORK FOR VANTAGE POINT
7 MANAGEMENT?
8 A. 'TIL 1998.
9 Q. AND WHY DID YOU LEAVE?
10 A. ONE OF THE CLIENTS THAT WAS AT VANTAGE POINT MADE ME
11 AN OFFER TO GO TO WORK AS THEIR DIRECTOR OF
12 MARKETING.
13 Q. WHAT WAS THAT CLIENT'S NAME?
14 A. SUN EX INTERNATIONAL.
15 Q. WHERE IS THAT LOCATED?
16 A. IN TRAVELERS REST.
17 Q. AND HOW LONG DID YOU WORK THERE?
18 A. FOR A YEAR.
19 Q. WHAT DID YOU DO FOR THAT COMPANY?
20 A. I WAS THE DIRECTOR OF MARKETING, RESPONSIBLE FOR ALL
21 MARKET ACTIVITIES.
22 Q. WHY DID YOU LEAVE?
23 A. IT WAS MUTUAL. THEY WERE -- IT'S A LONG STORY, BUT
24 IT WAS A MUTUAL DEPARTURE. I WANTED TO GO OUT AND
25 DO MY OWN THING. SO I HELD THEM AS A CLIENT AND

SHEET 5 PAGE 17

1 STARTED MY OWN FIRM.
 2 Q. GIVE ME THE GIST OF THE LONG STORY.
 3 A. THEY WERE -- THE PRESIDENT HAD CONTRACTED CANCER AT
 4 THAT TIME. HE WAS WITHDRAWING FROM INVESTING IN THE
 5 COMPANY. SO, IT WAS DIFFICULT TO BE A DIRECTOR OF
 6 MARKETING WITH NO BUDGET.
 7 Q. I GOTCHA. SO YOU CHOSE TO LEAVE?
 8 A. YES.
 9 Q. OKAY. AND THEN WHERE DID YOU GO NEXT?
 10 A. I STARTED MY OWN COMPANY FOR ABOUT TWO TO THREE
 11 MONTHS.
 12 Q. WHAT WAS THE NAME OF THAT COMPANY?
 13 A. I DIDN'T EVEN -- DIDN'T HAVE TIME TO GIVE IT A NAME.
 14 Q. WELL, WHAT DID YOU DO?
 15 A. I WORKED WITH NAPA AUTO PARTS, AND THEY BECAME A
 16 CLIENT OF MINE. I DID A LOT OF MARKETING WORK FOR
 17 THEM. AND THEN I RECEIVED A CALL THAT SUMMER, WHICH
 18 WAS IN THE SUMMER OF 1999, FROM JACKSON DAWSON
 19 AGAIN.
 20 Q. OKAY. AND SO YOU SHUT YOUR COMPANY DOWN?
 21 A. YEAH.
 22 Q. WAS IT A PROFITABLE COMPANY?
 23 A. YES, IT WAS DOING WELL AT THE TIME.
 24 Q. BUT NOT PROFITABLE ENOUGH TO TURN THE JOB DOWN AT
 25 JACKSON DAWSON?

PAGE 18

1 A. OH, NO. I WANTED TO GO BACK TO JACKSON DAWSON VERY
 2 BADLY.
 3 Q. OKAY. UP TO THE POINT WHEN YOU WENT TO JACKSON
 4 DAWSON, AND MY RECORDS SHOW AUGUST 16TH OF '99, HAD
 5 YOU OWNED ANY OTHER COMPANIES OTHER THAN THE COMPANY
 6 THAT YOU DIDN'T NAME, DOING WORK FOR NAPA AND THEN
 7 AMERICAN MEDICAL?
 8 A. THAT'S IT; THAT'S IT.
 9 Q. AM I RIGHT; YOU WENT BACK TO WORK FOR JACKSON DAWSON
 10 THE SECOND TIME AROUND AUGUST OF 1999?
 11 A. EXACTLY.
 12 Q. AND WHAT WERE YOU HIRED TO DO?
 13 A. HIRED TO RUN THE MEDIA AND MARKET RESEARCH FUNCTIONS
 14 OF JACKSON DAWSON.
 15 Q. NOW, WERE YOU A FULL-TIME EMPLOYEE UP THROUGH THE
 16 DATE YOU RECENTLY RESIGNED?
 17 A. YES.
 18 Q. OKAY. I THINK YOUR DATE OF ACCIDENT YOU'VE ALLEGED
 19 OCTOBER 5TH, 2007; IS THAT CORRECT?
 20 A. RIGHT.
 21 Q. AND WE'LL GET INTO SOME MORE DETAIL ABOUT THAT IN A
 22 MINUTE, BUT WHAT WAS YOUR POSITION ON THAT
 23 PARTICULAR DAY?
 24 A. I WAS DIRECTOR OF CREATIVE SERVICES.
 25 Q. TELL ME WHAT THAT MEANS TO YOU.

PAGE 19

1 A. IT WAS THE MANAGEMENT FUNCTION OF RUNNING THE
 2 CREATIVE DEPARTMENT AND CREATIVE ACTIVITIES AT THE
 3 AGENCY.
 4 Q. TO A LAYPERSON WHO DOESN'T UNDERSTAND WHAT GOES ON
 5 IN JACKSON DAWSON, WHAT DOES THAT MEAN? WHAT DID
 6 YOU HAVE TO DO?
 7 A. YOU HAVE A POOL OF TALENT, CREATIVE TALENT, ARTISTS,
 8 WRITERS, WEB DESIGNERS, WEB PROGRAMMERS, THAT ALL
 9 WORK TOGETHER. MY JOB WAS TO MAKE SURE THAT THEY
 10 HAD ALL THE SUPPLIES AND RESOURCES THEY NEEDED AND
 11 THEY WORKED AND FUNCTIONED PROPERLY.
 12 Q. ON AN AVERAGE, HOW MANY PEOPLE WERE YOU IN CHARGE OF
 13 SUPERVISING?
 14 A. AT THE HIGHEST POINT IT WAS AROUND, I THINK I HAD 19
 15 IN THE DEPARTMENT, AND IT WENT DOWN TO 15. WE HAD A
 16 LAYOFF DURING THAT TIME.
 17 Q. HAVE YOU EVER HAD A JOB WHERE YOU'VE BEEN IN CHARGE
 18 OR HAD TO SUPERVISE MORE THAN 19 PEOPLE?
 19 A. NO, THAT'S THE LARGEST I'VE EVER DONE.
 20 Q. WERE YOU PRETTY GOOD AT YOUR JOB?
 21 A. SOMETIMES IT WAS GOOD; SOMETIMES IT WASN'T.
 22 Q. OKAY. HOW MUCH MONEY WERE YOU TAKING IN AT THE TIME
 23 OF YOUR ALLEGED ACCIDENT ON OCTOBER 5TH?
 24 A. MY BASE SALARY, IT WAS RIGHT AT \$100,000.
 25 Q. WERE THERE ANY INCENTIVES OR ANYTHING ELSE?

PAGE 20

1 A. THERE WERE -- THERE WERE ROUTINE ANNUAL BONUSES THAT
 2 WERE GIVEN OUT.
 3 Q. I THINK I'VE REQUESTED YOUR TAX RETURNS AND HAVEN'T
 4 GOTTEN THOSE YET, BUT LET ME ASK YOU THIS: DO YOU
 5 REMEMBER HOW MUCH MONEY ON AVERAGE YOU MADE IN THE
 6 TWO TO THREE YEARS PRIOR TO THIS ALLEGED ACCIDENT OF
 7 OCTOBER 5TH?
 8 A. IT HAD ESCALATED TO THAT POINT. I WAS PROBABLY
 9 STARTING -- I'LL HAVE TO LOOK AT MY TAX RETURNS TO
 10 KNOW EXACTLY HOW FAST IT ESCALATED. BUT I THINK IT
 11 WAS RIGHT BEFORE THAT, ABOUT TWO OR THREE YEARS
 12 BEFORE THAT, I HAD A SIGNIFICANT BUMP IN MY SALARY.
 13 Q. OKAY. SO, IN 2006, THE YEAR BEFORE THIS ACCIDENT?
 14 A. PROBABLY IT WAS PRETTY CLOSE TO THAT, PROBABLY A
 15 LITTLE BIT UNDER THAT.
 16 Q. PROBABLY A LITTLE BIT UNDER \$100,000?
 17 A. YEAH. I DON'T KNOW EXACTLY THE NUMBERS; I
 18 APOLOGIZE.
 19 Q. THAT'S GOOD. WERE YOU GIVEN ANY OTHER PERKS THAT
 20 WERE PART OF YOUR JOB? WERE YOU GIVEN AN AUTOMOBILE
 21 OR A CELL PHONE OR ANYTHING?
 22 A. JUST A CELL PHONE, AND I USED THE COMPUTER
 23 EQUIPMENT.
 24 Q. OKAY. AND YOU HAD GROUP BENEFITS, IS THAT RIGHT?
 25 A. MM-HMM. (AFFIRMATIVE RESPONSE)

SHEET 6 PAGE 21

- 1 Q. GROUP HEALTH INSURANCE?
 2 A. YES.
 3 Q. WHO WAS THAT WITH AT THE TIME OF THIS ALLEGED
 4 ACCIDENT?
 5 A. WELL, I THINK IT WAS UNITED BACK THEN. WE HAD A
 6 COUPLE OF CHANGES. I CAN'T REMEMBER WHAT THE DATES
 7 OF THOSE CHANGES WERE.
 8 Q. DO YOU HAVE HEALTH INSURANCE RIGHT NOW?
 9 A. YES, I DO.
 10 Q. WHO IS IT WITH?
 11 A. IT'S WITH GOLDEN RULE, A SUBSIDIARY OF UNITED
 12 HEALTHCARE.
 13 Q. SO, THE INSURANCE COMPANY YOU'RE UTILIZING NOW IS A
 14 SUBSIDIARY OF THE GROUP HEALTH POLICY THAT YOU HAD
 15 WHEN YOU WERE EMPLOYED?
 16 A. YES.
 17 Q. OKAY. HOW MANY HOURS A WEEK DID YOU WORK, STEPHEN?
 18 A. IT WAS USUALLY BETWEEN 40 TO 55 DEPENDING UPON HOW
 19 BUSY THINGS WERE.
 20 Q. AND WHO WAS YOUR SUPERVISOR?
 21 A. KEVIN JOHNSON.
 22 Q. HAVE YOU EVER HAD ANY PROBLEMS WITH KEVIN?
 23 A. NO.
 24 Q. HAVE YOU EVER KNOWN KEVIN TO BE DISHONEST?
 25 A. NO.

PAGE 23

- 1 A. I AM SELF-EMPLOYED.
 2 Q. HAVE YOU NAMED THIS COMPANY?
 3 A. YES, I DID. IT'S A VERY ORIGINAL NAME, WHIGHAM
 4 CONSULTING.
 5 Q. OKAY, ALL RIGHT. I WANT TO TALK A LITTLE MORE ABOUT
 6 WHIGHAM CONSULTING IN JUST A MOMENT, BUT LET'S DO
 7 THIS: DO YOU REMEMBER THE EXACT DAY YOU RESIGNED?
 8 A. NO, I DON'T ACTUALLY. I REMEMBER THE DATE OF THE
 9 TERMINATION. IT WAS MARCH 1ST, BUT I DON'T REMEMBER
 10 THE EXACT DAY I RESIGNED.
 11 Q. I THINK I SAW FEBRUARY.
 12 A. IT HAD TO BE SOMETIME IN FEBRUARY. I DON'T KNOW THE
 13 EXACT DAY.
 14 Q. "THIS LETTER IS TO ANNOUNCE MY RESIGNATION FROM
 15 JACKSON DAWSON AS OF FEBRUARY 28TH, '09"; DOES THAT
 16 SOUND ABOUT RIGHT?
 17 A. THAT'S IT.
 18 Q. WHAT WAS THE PURPOSE OF YOUR RESIGNATION?
 19 A. SEVERAL THINGS. ONE OF THEM WAS ACTUALLY A NEED OF
 20 A MINISTRY THAT CAME TO JACKSON DAWSON FOR HELP,
 21 NORTHLAND BAPTIST BIBLE COLLEGE. IT NEEDED A LOT OF
 22 WORK DONE. THEY WERE CHANGING THEIR NAME, AND THEY
 23 CAME TO ME AND NEEDED A LOT OF WORK. AND I KNEW
 24 THAT BEING EMPLOYED AT JACKSON DAWSON AND WHAT THEIR
 25 NEEDS WERE, I WOULD NOT BE ABLE TO GIVE THEM THE

PAGE 22

- 1 Q. DID YOU ENJOY WORKING AT JACKSON DAWSON?
 2 A. I LOVED IT.
 3 Q. AT THE TIME OF THIS ALLEGED ACCIDENT, WERE YOU
 4 WORKING ANYWHERE ELSE?
 5 A. NO.
 6 Q. DID YOU HAVE ANY SIDE JOBS MAKING EXTRA MONEY, ANY
 7 CONSULTING JOBS?
 8 A. NO.
 9 Q. DURING THE TIME THAT YOU WORKED AT JACKSON DAWSON
 10 SINCE BACK IN '99, FROM '99 UNTIL YOU RESIGNED, I
 11 THINK, IN JANUARY OR FEBRUARY OF '09, IS THAT RIGHT,
 12 ---
 13 A. YES.
 14 Q. --- DID YOU HAVE ANY SIDE JOBS WHERE YOU DID
 15 CONSULTING OR DID SOME PART-TIME WORK ON THE SIDE TO
 16 MAKE EXTRA MONEY?
 17 A. I DON'T THINK SO. I MEAN, I ALWAYS HAVE BEEN AROUND
 18 WITH FRIENDS WHO WERE DOING BUSINESSES AND STUFF,
 19 BUT I NEVER DID IT FOR PAY.
 20 Q. BUT IF YOU DID IT, IT WOULD BE REFLECTED ON YOUR
 21 INCOME TAXES?
 22 A. YEAH. IT WOULD BE VERY LITTLE IF ANYTHING.
 23 Q. OKAY, ALL RIGHT. ARE YOU CURRENTLY WORKING?
 24 A. YES, I AM.
 25 Q. WHERE ARE YOU WORKING?

PAGE 24

- 1 ATTENTION THEY NEEDED. I REALLY WANTED TO SEE THEM
 2 WORK. ALSO, I'M WORKING AT STARTING A NEW BUSINESS
 3 RIGHT NOW. SO THAT'S THE SECOND PART OF THE REASON,
 4 IS TO HELP THEM IN THE SHORT-TERM, AND THE SECOND
 5 PART IS TO HELP LAUNCH A NEW BUSINESS I'VE BEEN
 6 WORKING ON FOR SEVERAL MONTHS.
 7 Q. OKAY. SO YOU DIDN'T LEAVE, AT LEAST IN YOUR MIND,
 8 ON BAD TERMS?
 9 A. I HOPE NOT, NOT FROM MY POINT.
 10 Q. SURE. I MEAN YOU WEREN'T DISGRUNTLED OR UPSET OR
 11 ANYTHING LIKE THAT?
 12 A. NOTHING -- NOTHING THAT WAS A DEAL BREAKER.
 13 Q. WERE THERE SOME PROBLEMS THAT PLAYED A ROLE IN YOUR
 14 LEAVING?
 15 A. ANY EMPLOYMENT YOU ALWAYS HAVE PROBLEMS AND
 16 SITUATIONS BUT NOTHING THAT WOULD HAVE ASKED --
 17 WOULD'VE REQUIRED ME TO LEAVE.
 18 Q. OKAY. WHAT WERE SOME OF THE PROBLEMS, THOUGH, THAT
 19 PLAYED A ROLE IN YOUR DECISION?
 20 A. JUST -- JUST PERSONALITY CONFLICTS.
 21 Q. CAN YOU GIVE ME THE NAME OF WHO YOU HAD PERSONALITY
 22 CONFLICTS WITH?
 23 A. JUST PRETTY MUCH JUST ONE.
 24 Q. WHO WAS IT?
 25 A. MIKE ZELLAR.

SHEET 7 PAGE 25

1 Q. MIKE ZELLAR. OKAY. NOW, NORTHLAND BAPTIST BIBLE
2 COLLEGE?
3 A. YES.
4 Q. I'VE SEEN THAT IN SOME OF YOUR PAPERWORK. WHAT
5 EXACTLY; YOU SAID IT IS A MINISTRY?
6 A. IT'S -- IT'S A COLLEGE. NOW, IT'S A UNIVERSITY.
7 IT'S NOW CALLED NORTHLAND INTERNATIONAL UNIVERSITY
8 AS OF APRIL 7TH. BUT BACK THEN, IT WAS NORTHLAND
9 BAPTIST BIBLE COLLEGE. THEY'RE -- YOU KNOW, PRETTY
10 MUCH THEY TRAIN MISSIONARIES AND PREACHERS, PRETTY
11 MUCH.
12 Q. AND WHAT WERE YOU DOING FOR THEM AS AN EMPLOYEE OF
13 JACKSON DAWSON?
14 A. THEY HAD COME TO US TO HELP THEM CRAFT A VISION OF
15 MISSION FOR THEIR BUSINESS, AND THAT HAPPENED LAST
16 -- LATE LAST SUMMER OR EARLY FALL OF 2008. THEN
17 THEY CAME BACK TO US IN LATE JANUARY AND SAID THEY
18 HAD AN IDEA OF CHANGING THEIR NAME. I FLEW UP TO
19 MEET WITH THEM, AND AFTER I REALIZED THE SCOPE OF
20 THE SITUATION, I BECAME EXTREMELY CONCERNED ABOUT
21 THEIR ABILITY TO PULL IT OFF IN THE TIME FRAME.
22 Q. OKAY. AND SO AT SOME POINT, DID THEY MAKE AN OFFER
23 TO YOU TO COME TO WORK FOR THEM EXCLUSIVELY?
24 A. I APPROACHED THEM, AND THEY ACCEPTED ME AND THOUGHT
25 IT WAS A GREAT IDEA, AND THEN I APPROACHED JACKSON

PAGE 26

1 DAWSON.
2 Q. OKAY. AND WHEN WAS IT THAT YOU APPROACHED THEM?
3 A. JUST A MATTER OF DAYS BEFORE I WROTE THAT LETTER. I
4 DON'T REMEMBER HOW MANY, BUT IT WAS -- IT MOVED VERY
5 FAST.
6 Q. SO YOU ACTUALLY WENT TO THEM AND SAID, "LOOK, I
7 CAN'T DO WHAT I NEED TO DO TO HELP YOU AS AN
8 EMPLOYEE OF JACKSON DAWSON; YOU NEED TO HIRE ME
9 EXCLUSIVELY." IS THAT HOW?
10 A. NOT IN SO MANY TERMS. I TOLD THEM IT WAS A BIG JOB.
11 I CAN'T REMEMBER EXACTLY THE VERBIAGE I USED, BUT
12 THE BASIC INTENT WAS, YOU KNOW, IT WOULD BE VERY
13 DIFFICULT BEING A JACKSON DAWSON EMPLOYEE AND DOING
14 WHAT THEY HAD ASKED ME TO DO.
15 Q. OKAY. AND THEY AGREED AND SAID OKAY?
16 A. THEY WERE EXCITED.
17 Q. AND SAID, "COME TO WORK FOR US"?
18 A. YES.
19 Q. DID THEY MAKE YOU AN OFFER?
20 A. NO. THEY JUST BASICALLY SAID, "WELL, IF YOU CAN
21 WORK OUT SOMETHING WITH JACKSON DAWSON." THEY WERE
22 VERY CONCERNED. THEY WERE VERY GOOD FRIENDS WITH
23 LARRY JACKSON, AND THEY WERE EXTREMELY CONCERNED
24 ABOUT THE IMPLICATIONS IN THIS DECISION.
25 Q. SURE, OKAY. AT SOME POINT, DID YOU GO ON BOARD AS

PAGE 27

1 AN EMPLOYEE OF NORTHLAND, OR DID YOU DO IT THROUGH -
2 --
3 A. NO, I JUST DID IT JUST ON CONTRACT.
4 Q. OKAY. SO YOU WERE A CONTRACT EMPLOYEE?
5 A. RIGHT.
6 Q. AND ARE YOU OPERATING UNDER THE WHIGHAM CONSULTING?
7 A. YEAH, WHIGHAM CONSULTING.
8 Q. WHIGHAM CONSULTING. AND WHAT SPECIFICALLY DO YOU DO
9 FOR THEM?
10 A. HELP THEM WITH THEIR MARKETING AND COMMUNICATIONS.
11 Q. OKAY. AND HOW ARE YOU PAID?
12 A. I'M PAID BY A STANDARD RETAINER CONTRACT.
13 Q. ALL RIGHT. HOW MUCH DO THEY PAY YOU PER MONTH?
14 A. 9,000. I CAN'T REMEMBER THE EXACT NUMBER, BUT IT
15 WAS SOMEWHERE RIGHT AROUND \$9,000.
16 Q. OKAY. AND UNDER THE UMBRELLA OF WHIGHAM CONSULTING,
17 DO YOU HAVE OTHER CONTRACTS WITH OTHER COMPANIES?
18 A. YES. I STILL DO SOME WORK WITH JACKSON DAWSON,
19 JACKSON MARKETING GROUP.
20 Q. SO IS IT FAIR TO SAY, THEN, THAT YOU'RE MAKING MORE
21 MONEY NOW THAN YOU WERE MAKING BACK AT THE TIME OF
22 THIS ALLEGED ACCIDENT?
23 A. YEAH, ABOUT 25 PERCENT MORE.
24 Q. WHAT IS YOUR MONTHLY INCOME RIGHT NOW ON AVERAGE?
25 A. I HAVEN'T HAD A CHANCE TO REALLY THINK ABOUT IT; I'M

PAGE 28

1 ONLY THREE MONTHS INTO IT. BUT I WOULD THINK IT'S
2 PROBABLY AROUND -- IT'S EVEN HARD TO GUESS -- ABOUT
3 12,000 A MONTH RIGHT NOW.
4 Q. DO YOU HAVE ANY EMPLOYEES YOURSELF?
5 A. NO.
6 Q. SO ALL THAT INCOME, YOU DON'T HAVE TO SHARE OR
7 PROVIDE TO PEOPLE WHO ARE DOING WORK FOR YOU?
8 A. NO.
9 Q. AND YOU'VE GOT TO HIRE CONTRACT EMPLOYEES TO DO WORK
10 FOR YOU?
11 A. YES, I DID.
12 Q. OKAY. AND THIS NORTHLAND INTERNATIONAL UNIVERSITY,
13 ARE THEY OPERATING IN SOUTH CAROLINA, OR WHERE ARE
14 THEY HEADQUARTERED?
15 A. THEY'RE BASED IN WISCONSIN.
16 Q. DO YOU DO A LOT OF TRAVELING OUT TO WISCONSIN?
17 A. YES.
18 Q. HOW MANY TIMES A MONTH DO YOU GO?
19 A. I'VE BEEN OUT THERE -- I JUST ACTUALLY FIGURED THIS
20 OUT. I'VE BEEN NINE TIMES IN THREE MONTHS.
21 Q. NINE TIMES, AND DO YOU FLY?
22 A. YES.
23 Q. WHEN IS THE LAST TIME YOU WENT?
24 A. I JUST GOT BACK SATURDAY NIGHT.
25 Q. THEY DON'T HAVE ANY KIND OF JET OR ANYTHING LIKE

SHEET 8 PAGE 29

1 THAT?
 2 A. NO.
 3 Q. YOU JUST FLY COMMERCIAL. OKAY. ANY OTHER
 4 INCENTIVES OR PERKS THAT YOU GET THROUGH THAT
 5 CONTRACT?
 6 A. NO.
 7 Q. JUST THE STRAIGHT \$9,000 A MONTH?
 8 A. THAT'S IT.
 9 Q. OKAY. AND THEN YOUR OTHER CONTRACTS WITH OTHER
 10 CLIENTS AND COMPANIES IS AROUND TWO TO THREE
 11 THOUSAND?
 12 A. YEAH, \$3,000 IS PROBABLY THE AVERAGE RIGHT NOW.
 13 Q. AND THIS IS OF INTEREST TO ME. TELL ME SPECIFICALLY
 14 WHAT YOU DO FOR THIS COMPANY, FOR NORTHLAND?
 15 A. WHEN THEY ACTUALLY WENT FOR THE NAME CHANGE, I
 16 PRETTY MUCH MANAGED THAT WHOLE PROCESS, FROM COMING
 17 UP WITH THE -- ACTUALLY WE -- A LOT OF THE BUSINESS
 18 WENT THROUGH JACKSON DAWSON. JACKSON DAWSON HAS AN
 19 EXCLUSIVE RELATIONSHIP WITH NORTHLAND WHEN IT COMES
 20 TO DOING ALL THE CREATIVE WORK. MATTER OF FACT,
 21 WE'RE MEETING THIS WEEK ON REDOING THE WEBSITE WITH
 22 NORTHLAND THROUGH JACKSON MARKETING GROUP.
 23 Q. OKAY.
 24 A. I MANAGED THAT WHOLE PROCESS, THE RELATIONSHIP. WE
 25 DID A LOT OF PUBLIC RELATIONS AND COME UP WITH

PAGE 30

1 LOGOS, A WEBSITE, ALL THAT STUFF. I ALSO MANAGED
 2 THE ANNOUNCEMENT, WHICH WAS A BIG, HUGE TO-DO IN
 3 APRIL. AND THEY'RE ASKING ME, ALSO, TO HELP THEM
 4 ORGANIZE THEMSELVES BETTER THOUGH INTERNAL
 5 COMMUNICATIONS AS WELL AS EXTERNAL. SO I'M WORKING
 6 ON THAT PLAN RIGHT NOW.
 7 Q. OKAY. AND GIVE ME THE NAME OF THESE OTHER COMPANIES
 8 THAT YOU DID WORK FOR.
 9 A. JACKSON MARKETING GROUP, AND THE OTHER ONE I HAD WAS
 10 -- THERE'S ONLY BEEN ONE OTHER ONE BESIDES JACKSON
 11 MARKETING GROUP, AND THAT IS THE CLARITY FUND.
 12 Q. ARE YOU STILL DOING WORK FOR THE CLARITY FUND?
 13 A. NO.
 14 Q. AND SO THOSE ARE REALLY THE THREE BIG CONTRACTS
 15 YOU'VE HAD SINCE FEBRUARY 28TH OF 2009?
 16 A. YES.
 17 Q. AND DO YOU HAVE ANY BIDS OUT FOR MORE CONTRACTS AT
 18 THIS POINT?
 19 A. NO.
 20 Q. WOULD YOU CONSIDER YOUR CONSULTING BUSINESS AT THIS
 21 POINT A SUCCESS?
 22 A. SO FAR; YEAH.
 23 Q. DO YOU HAVE ANY INTENTIONS IN THE FUTURE OF HIRING
 24 EMPLOYEES?
 25 A. THERE IS NO PLAN IN PLACE FOR THAT.

PAGE 31

1 Q. OKAY; ALL RIGHT. NOW, THIS ACCIDENT, ACCORDING TO
 2 YOU, HAPPENED OCTOBER 5TH, 2007; IS THAT CORRECT?
 3 A. YES.
 4 Q. OKAY. WERE YOU OUT OF WORK FOR A WHILE AFTER
 5 OCTOBER 5TH, 2007?
 6 A. YES, I WAS. I HAD TO GO THROUGH TWO SURGERIES.
 7 Q. TOTAL, HOW MANY WEEKS WERE YOU OUT OF WORK?
 8 A. WELL, THANKFULLY, I WAS ABLE TO DO A LOT OF WORK AT
 9 HOME WITH A LAPTOP, SO I WAS ABLE TO WORK OUT OF MY
 10 BED AT THE HOUSE. PHYSICAL PRESENCE INSIDE MY
 11 OFFICE DIDN'T BEGIN AGAIN, I THINK, UNTIL ABOUT FOUR
 12 WEEKS AFTER THE ACCIDENT.
 13 Q. ONE OF THE THINGS IF THIS IS AT SOME POINT
 14 DETERMINED TO BE A COMPENSABLE WORK-RELATED
 15 ACCIDENT, YOU'RE GOING TO BE ENTITLED FOR BENEFITS
 16 FOR THE WEEKS YOU WERE OUT OF WORK AS A RESULT OF
 17 THIS ACCIDENT. WHAT I NEED TO KNOW FROM YOU RIGHT
 18 NOW IS HOW MANY WEEKS YOU WERE OUT OF WORK. AND
 19 WHEN I MEAN OUT OF WORK, NOT EVEN ABLE TO WORK AT
 20 HOME IN YOUR BED.
 21 Q. OKAY. YEAH, I THINK -- ACTUALLY I HAVEN'T BEEN ABLE
 22 TO LOOK AT THIS NUMBER, SO I'M ONLY JUST GIVING YOU
 23 KIND OF A BALLPARK. I THINK IT WAS ABOUT FIVE DAYS
 24 I TOOK AS PAID TIME OFF. I WAS ABLE TO REALLY WORK
 25 WITH THE TELEPHONE AND MY LAPTOP IN THE HOUSE QUITE

PAGE 32

1 A BIT.
 2 Q. SO YOU ONLY REALLY MISSED FIVE DAYS OF ACTUAL PAID
 3 WORK?
 4 A. I THINK SO. I'D HAVE TO LOOK AT -- I COULD BE WRONG
 5 BY A DAY OR TWO.
 6 Q. OKAY. SOMEWHERE BETWEEN FIVE AND TEN?
 7 A. YEAH, I DON'T KNOW THE NUMBER.
 8 Q. AND WERE THERE WEEKS THAT YOU DIDN'T DO ANY WORK AT
 9 ALL AND YOU JUST USED A VACATION WEEK OR A SICK
 10 WEEK?
 11 A. THE FIRST -- AFTER THE SECOND SURGERY, I HAD TO STAY
 12 IN THE HOSPITAL FOR TWO FULL DAYS AFTER THAT
 13 SURGERY. THAT WAS THE MOST SIGNIFICANT OF THE TWO
 14 SURGERIES. THE FIRST SURGERY WAS OUTPATIENT; SECOND
 15 SURGERY IT TOOK -- I HAD TO STAY IN THE HOSPITAL FOR
 16 TWO DAYS. THAT WAS THE MOST SIGNIFICANT PERIOD. SO
 17 IT WAS LIKE THREE DAYS, AND THEN IT BUMPED INTO A
 18 WEEKEND, AND I WAS ABLE TO START WORKING AGAIN BY
 19 THE NEXT MONDAY.
 20 Q. BACK WHEN YOU WORKED FOR JACKSON DAWSON, WHAT WERE
 21 YOUR NORMAL HOURS?
 22 A. THEY AVERAGED BETWEEN, YOU KNOW, -- AROUND THAT TIME
 23 IT WAS PROBABLY 45, 50 HOURS A WEEK.
 24 Q. THAT WASN'T A VERY GOOD QUESTION. I MEAN, DID YOU
 25 COME IN AT EIGHT O'CLOCK AND WORK UNTIL FIVE O'CLOCK

SHEET 9 PAGE 33

- 1 MONDAY THROUGH FRIDAY? DID YOU WORK ---
 2 A. MAINLY IT WAS MONDAY THROUGH FRIDAY, OCCASIONALLY
 3 SOME WEEKEND WORK, BUT IT WAS --PREDOMINATELY IT
 4 WOULD BE CONTAINED IN FIVE DAYS.
 5 Q. OKAY. AND WHAT TIME DID YOU COME IN IN THE MORNING?
 6 A. BETWEEN 7:30 AND 8:00.
 7 Q. WHAT TIME DID YOU GET HOME IN THE AFTERNOON?
 8 A. USUALLY I -- USUALLY I COULD GET OUT BY SIX.
 9 Q. OKAY. AND HAVE YOU DONE ANY WORK OTHER THAN YOUR
 10 CONSULTING WORK SINCE YOU RESIGNED BACK IN FEBRUARY?
 11 A. THAT IS ALL I'VE DONE.
 12 Q. OKAY. AND DURING THE TIME THAT YOU WERE -- THIS
 13 ACCIDENT, ACCORDING TO YOU, TOOK PLACE OCTOBER 5TH,
 14 2007; YOU RESIGNED FEBRUARY 28TH, 2009. DID YOU DO
 15 ANY SIDE WORK DURING THAT TIME PERIOD, CONSULTING
 16 WORK?
 17 A. NO, NOTHING FOR PAY.
 18 Q. ALL RIGHT. STEPHEN, HAVE YOU EVER BEEN INVOLVED IN
 19 A WORKERS' COMP CLAIM BEFORE?
 20 A. NEVER.
 21 Q. ANY OF YOUR CLOSE FAMILY MEMBERS BEEN INVOLVED IN A
 22 WORKER' COMP CLAIM?
 23 A. NO.
 24 Q. HAVE YOU EVER BEEN INJURED ON A JOB BEFORE AND NOT
 25 FILED A WORKERS' COMP CLAIM?

PAGE 34

- 1 A. NO.
 2 Q. HAVE YOU EVER BEEN INVOLVED IN ANY TYPE OF MOTOR
 3 VEHICLE ACCIDENT OR A TRUCK?
 4 A. YEAH, I'VE BEEN INVOLVED IN THOSE BEFORE.
 5 Q. HOW MANY?
 6 A. THE FENDER BENDER ONES?
 7 Q. ANY KIND OF ACCIDENT; YES, FENDER BENDERS.
 8 A. I CAN THINK OF TWO OR THREE RIGHT NOW. ONE WAS
 9 RIGHT OUT IN FRONT OF THIS OFFICE ABOUT FOUR OR FIVE
 10 YEARS AGO. NO, IT MAY BE LONGER THAN THAT. MY --
 11 THIS IS WHERE MY MEMORY IS GOING TO BE REALLY HARD
 12 TO PULL UP ANYTHING OF EXACTITUDE, BUT BEAT UP ONE
 13 CAR HERE AND BEAT UP ONE CAR ON EAST NORTH STREET IN
 14 A WRECK, ONE OF THOSE -- THOSE ARE THE TWO MOST
 15 SIGNIFICANT.
 16 Q. WELL, LET ME DO IT THIS WAY: WE'RE GOING TO GO TO A
 17 HEARING IN THIS CASE JULY 14TH, 2009. IF I DON'T
 18 ASK YOU OR YOUR LAWYER DOESN'T ASK YOU, THE
 19 COMMISSIONER IS GOING TO WANT TO KNOW WHAT PART OR
 20 PARTS OF YOUR BODY WERE INJURED, ---
 21 A. YES.
 22 Q. --- AGGRAVATED, OR AFFECTED IN ANY WAY BY THIS
 23 INCIDENT ON OCTOBER 5TH, 2007.
 24 A. OKAY.
 25 Q. WHAT WILL YOUR ANSWER TO THAT QUESTION BE?

PAGE 35

- 1 A. JUST PRETTY MUCH MY KNEE DOWN.
 2 Q. AND THAT'S YOUR RIGHT KNEE?
 3 A. MY RIGHT KNEE.
 4 Q. HOW FAR DOWN?
 5 A. DOWN ALL THE WAY -- THE TIBIA AND FIBULA WERE BOTH
 6 SHATTERED. NOT SHATTERED, I GUESS, BUT I DON'T KNOW
 7 WHAT THE RIGHT TERM IS.
 8 Q. SO WE'RE TALKING ABOUT YOUR RIGHT LEG?
 9 A. YES, RIGHT LEG.
 10 Q. ANYTHING ELSE INJURED, AGGRAVATED, OR AFFECTED IN
 11 ANY WAY?
 12 A. NO.
 13 Q. OKAY. WITH THAT IN MIND, HAVE YOU EVER BEEN
 14 INVOLVED IN ANY TYPE OF MOTOR VEHICLE ACCIDENT AND
 15 HAD AN INJURY, A PAIN, A PROBLEM OF ANY KIND IN YOUR
 16 RIGHT LEG?
 17 A. NO.
 18 Q. OKAY. SO THIS FENDER BENDER YOU HAD OUT HERE FIVE
 19 OR SIX YEARS AGO?
 20 A. NO.
 21 Q. DO YOU LIVE AROUND HERE, OR WERE YOU HERE MEETING
 22 WITH A LAWYER FIVE OR SIX YEARS AGO?
 23 A. I CAN'T REMEMBER THE PURPOSE FOR MY BUSINESS DOWN
 24 HERE. SOMEWHERE DOWNTOWN I HAD TO BE.
 25 Q. IT WASN'T CHURDAR'S OFFICE?

PAGE 36

- 1 A. NO, NO.
 2 Q. IN HIS DRIVEWAY?
 3 A. NO. IT JUST HAPPEN TO BE IRONICALLY JUST LIKE A
 4 BLOCK FROM HERE.
 5 Q. HOW FAR DO YOU LIVE FROM THIS OFFICE?
 6 A. FIVE MILES, SIX MILES.
 7 Q. HAVE YOU EVER HAD A MOTOR VEHICLE ACCIDENT OF ANY
 8 KIND, BOAT, MOTORCYCLE, ANYTHING WITH A MOTOR, WHERE
 9 YOU INJURED YOUR RIGHT OR LEFT LEG?
 10 A. NO.
 11 Q. IN ALL THESE VEHICLE ACCIDENTS THAT YOU TOLD ME
 12 ABOUT, THESE FENDER BENDERS, HAVE YOU EVER BEEN TO A
 13 DOCTOR OR A HOSPITAL OR A CHIROPRACTOR OR A PROVIDER
 14 OF ANY KIND FOR TREATMENT FOLLOWING THOSE INCIDENTS?
 15 A. NO.
 16 Q. HAVE YOU EVER FILED A LAWSUIT AS A RESULT OF ANY OF
 17 THE CAR ACCIDENTS?
 18 A. NO.
 19 Q. HAVE YOU EVER RECEIVED A SETTLEMENT AS A RESULT OF
 20 ANY OF THOSE?
 21 A. NO.
 22 Q. WAS YOUR CAR MESSED UP IN ANY WAY?
 23 A. I HAD SOME -- I HAD TO REPAIR BOTH OF THEM.
 24 Q. DID YOU FILE A CLAIM AGAINST THE INSURANCE COMPANY
 25 OR YOUR INSURANCE COMPANY?

SHEET 10 PAGE 37

1 A. NO.
2 Q. THE OTHER INSURANCE COMPANY?
3 A. YES.
4 Q. DID THEY PAY TO FIX YOUR CAR?
5 A. YES.
6 Q. AND THAT'S WHAT I MEAN BY CLAIMS. YOU FILED A CLAIM
7 AGAINST THE INSURANCE COMPANY, AND THEY PAID YOU A
8 SUM OF MONEY, OR THEY JUST FIXED THE CAR?
9 A. YES, THEY JUST FIXED THE CAR.
10 Q. GOT YOU.
11 A. I'M SORRY.
12 Q. I ASKED YOU EARLIER ABOUT YOUR DEPOSITION; IS THIS
13 THE FIRST TIME IN YOUR LIFE YOU'VE EVER HAD YOUR
14 DEPOSITION TAKEN?
15 A. FIRST TIME EVER.
16 Q. ANY OTHER CLAIMS AGAINST INSURANCE COMPANIES IN YOUR
17 LIFE, AND I MEAN FOR HAIL DAMAGE TO YOUR HOUSE, YOUR
18 HOUSE CAUGHT ON FIRE, ANYTHING LIKE THAT WHERE YOU
19 FILED A CLAIM AGAINST AN INSURANCE COMPANY?
20 A. BESIDES THOSE AUTO ACCIDENTS, NO.
21 Q. OKAY. HAVE YOU SPENT THE NIGHT IN THE HOSPITAL IN
22 THE LAST 20 YEARS?
23 A. YES.
24 Q. OTHER THAN FOR THE TWO SURGERIES?
25 A. YES.

PAGE 38

1 Q. WHAT FOR?
2 A. I HAD A BULGING DISC IN MY NECK BACK IN THE YEAR
3 2000, 2001 THAT THEY HAD TO FIX.
4 Q. WHO IS "THEY"? YOU SAID "THEY HAD TO FIX"; WHO IS
5 "THEY"?
6 A. WHO IS "THEY"; DR. -- I CAN'T REMEMBER HIS NAME NOW.
7 I CAN PICTURE HIS FACE.
8 Q. WHERE IS HIS OFFICE?
9 A. HERE IN GREENVILLE. THIS IS EMBARRASSING. HE'S
10 ACTUALLY A NICE GUY. IT WAS DONE AT ST. FRANCIS
11 HOSPITAL.
12 Q. ST. FRANCIS HOSPITAL, AND HOW DID YOU DEVELOP A
13 BULGING DISC?
14 A. DON'T KNOW. I HAVE NO IDEA.
15 Q. JUST THE WEAR AND TEAR OF GETTING OLDER?
16 A. YEAH, I WAS WEIGHT LIFTING DURING THAT TIME, AND I
17 STARTED NOTICING DECREASED STRENGTH IN MY LEFT ARM.
18 I WENT TO THE DOCTOR, AND HE SAID I'VE GOT PRESSURE
19 ON MY SPINAL COLUMN FROM A BULGING DISC.
20 Q. GOTCHA. SO IT WASN'T THE RESULT OF ANY KIND OF
21 ACCIDENT OR ANYTHING LIKE THAT?
22 A. NO.
23 Q. JUST SOMETHING THAT DEVELOPED; WOULD YOU SAY MAYBE
24 RELATED TO WEIGHT LIFTING?
25 A. I DON'T HAVE ANY IDEA HOW IT CAME ABOUT.

PAGE 39

1 Q. OKAY. AND YOU SAID YOU WERE WEIGHT LIFTING; WERE
2 YOU A MEMBER OF A GYM?
3 A. NO. I WAS ACTUALLY AT THAT TIME EXERCISING AT BOB
4 JONES UNIVERSITY'S GYM.
5 Q. AND WERE YOU A STUDENT AT THE TIME?
6 A. NO. THEY HAVE A GREAT ALUMNI PROGRAM.
7 Q. DO YOU STILL WORK OUT THERE?
8 A. NO.
9 Q. ARE YOU A MEMBER OF ANY GYMS RIGHT NOW?
10 A. NO.
11 Q. HAVE YOU BEEN A MEMBER OF A GYM SINCE 2007?
12 A. YES.
13 Q. WHERE IS THE LAST GYM YOU WERE A MEMBER OF?
14 A. ACTUALLY I WAS A MEMBER OF A GYM DURING THAT AT THE
15 Y.M.C.A.
16 Q. AND YOU WENT TO THE "Y" IN SIMPSONVILLE?
17 A. I WENT TO ALL OF THEM. I HAD A METRO MEMBERSHIP.
18 Q. GOT YOU; ALL RIGHT. DID THEY ACTUALLY DO SURGERY AT
19 ST. FRANCIS ON THE BULGING DISC?
20 A. YES.
21 Q. DID THEY DO A FUSION?
22 A. YEAH. I'VE GOT SOME KIND OF TITANIUM PLATE IN MY
23 NECK NOW. I DON'T KNOW EXACTLY WHAT THE TECHNICAL
24 TERM IS, BUT THAT'S WHAT THEY DID.
25 Q. THAT HAS NOTHING TO DO WITH THIS WORKERS' COMP CLAIM

PAGE 40

1 THAT WE'RE HERE ABOUT TODAY?
2 A. NO.
3 Q. YOU HAVEN'T AGGRAVATED OR HURT THAT IN ANY WAY?
4 A. NO.
5 Q. OKAY. HAVE YOU HAD ANY OTHER HOSPITALIZATIONS IN
6 THE LAST 20 YEARS?
7 A. I HAD MY APPENDIX REMOVED.
8 Q. WHEN WAS THAT?
9 A. THAT WAS BACK IN THE '90s.
10 Q. OKAY; ANYTHING ELSE?
11 A. THAT'S IT.
12 Q. THOSE ARE THE ONLY TWO SURGERIES YOU'VE HAD OTHER
13 THAN THE TWO LEG SURGERIES?
14 A. THAT'S IT.
15 Q. NOW, WHEN THIS ACCIDENT TOOK PLACE, YOU SAY OCTOBER
16 5TH, 2007, WERE YOU TAKING ANY MEDICATION AT THAT
17 TIME FOR ANY REASON?
18 A. NO.
19 Q. WHO IS YOUR FAMILY DOCTOR, STEVE?
20 A. OH, IT'S ON THE TIP OF MY TONGUE. THEY JUST CHANGED
21 THEIR NAME. I'D HAVE TO CALL MY WIFE; I CAN'T
22 REMEMBER THE NAME. THEY'RE BASED OFF OF EAST NORTH
23 STREET, SOMETHING FAMILY. IT'S A GREAT QUESTION. I
24 JUST HAD TO GIVE MY INSURANCE COMPANY THAT
25 INFORMATION.

SHEET 11 PAGE 41

1 Q. WHEN IS THE LAST TIME YOU WENT TO SEE YOUR FAMILY
2 DOCTOR?
3 A. IT WAS IN JANUARY.
4 Q. WHAT DID YOU SEE HIM FOR?
5 A. I HAD FLU-LIKE SYMPTOMS.
6 Q. AND YOU DON'T REMEMBER THE NAME OF THE DOCTOR?
7 A. I CAN'T; I'M SORRY.
8 Q. BUT YOU THINK YOU COULD GET THAT INFORMATION TO ME
9 QUICKLY?
10 A. YES.
11 Q. IF I NEEDED IT TODAY, YOU COULDN'T PROBABLY GET
12 THAT?
13 A. YEAH, MY WIFE WOULD KNOW OFF THE TOP OF HER HEAD.
14 Q. HAVE YOU EVER SEEN YOUR FAMILY DOCTOR FOR PROBLEMS
15 WITH EITHER ONE OF YOUR LEGS?
16 A. NO.
17 Q. HOW LONG HAS THIS PARTICULAR INDIVIDUAL BEEN YOUR
18 FAMILY DOCTOR?
19 A. A COUPLE OF YEARS.
20 Q. DO YOU REMEMBER WHO YOUR FAMILY DOCTOR WAS BEFORE
21 THIS PERSON?
22 A. I DON'T THINK I REALLY HAD ONE.
23 Q. NEVER?
24 A. NO, NOT ONE WHO I SAW REGULARLY. I'M FROM A MEDICAL
25 FAMILY. MY DAD WAS ALWAYS THERE FOR ME UNTIL HE

PAGE 43

1 A. I DON'T REMEMBER. IT WAS OUT IN WEST GREENVILLE. A
2 FRIEND OF MINE WHEN I WAS WORKING AT SUN EX
3 INTERNATIONAL SAID HE WAS FANTASTIC.
4 Q. WHAT DID YOU SEE HIM FOR?
5 A. I THINK I JUST WAS HAVING A LOT OF TIGHTENING IN MY
6 LOWER BACK AND JUST NEEDED SOMEBODY TO HELP STRETCH
7 IT OUT.
8 Q. IS THAT A NAME YOU CAN GET FOR ME?
9 A. PROBABLY COULD.
10 Q. HOW COULD YOU DO THAT?
11 A. LOOK IT UP IN THE YELLOW PAGES, I GUESS.
12 Q. OKAY. DO YOU THINK YOU COULD GO THROUGH THE YELLOW
13 PAGES AND FIND IT?
14 A. YES.
15 Q. YOU NEVER SAW HIM FOR ANY PROBLEMS IN YOUR LEGS ---
16 A. NO.
17 Q. --- OR HIPS OR ANYTHING LIKE THAT?
18 A. NO.
19 Q. SO, YOU THINK YOU CAN GET YOUR FAMILY DOCTOR FROM
20 YOUR WIFE AND YOU CAN GO THROUGH THE YELLOW PAGES
21 AND GET ME THE CHIROPRACTOR?
22 A. LET ME MAKE A LIST HERE. CAN I BORROW A PIECE OF
23 PAPER?
24 Q. I CAN GIVE YOU ONE RIGHT HERE.
25 A. THANK YOU.

PAGE 42

1 PASSED AWAY, AND THEN I HAD TO MAKE OTHER
2 ARRANGEMENTS.
3 Q. I GOTCHA. WHEN DID YOUR FATHER PASS AWAY?
4 A. 2002.
5 Q. HOW ABOUT YOUR MOM; IS SHE STILL LIVING?
6 A. SHE'S STILL ALIVE.
7 Q. HAS EITHER ONE OF YOUR PARENTS, THAT YOU KNOW OF,
8 HAD ARTHRITIS OR ANY KIND OF DEGENERATIVE PROBLEM IN
9 THEIR JOINTS?
10 A. NO.
11 Q. DO YOU HAVE ANY BROTHERS AND SISTERS?
12 A. YES, I HAVE TWO SISTERS AND A BROTHER.
13 Q. ANY OF THEM HAVE ANY KIND OF DEGENERATION IN THEIR -
14 --
15 A. NOTHING THEY'VE EVER COMPLAINED ABOUT. I'VE NEVER
16 SEEN THEM HAVE ANY PROBLEMS.
17 Q. HAVE YOU EVER KNOWN YOUR BROTHER OR SISTERS TO HAVE
18 ARTHRITIS?
19 A. UH-UH. (NEGATIVE RESPONSE)
20 Q. "YES" OR "NO"?
21 A. NO; I'M SORRY.
22 Q. NO PROBLEM. ALL RIGHT. HAVE YOU EVER BEEN TO A
23 CHIROPRACTOR IN YOUR LIFE, STEPHEN?
24 A. ONE TIME.
25 Q. WHERE DID YOU GO?

PAGE 44

1 Q. NO PROBLEM. YOU LOOK LIKE YOU'RE IN PRETTY GOOD
2 SHAPE; DO YOU STILL WORK OUT A GOOD BIT?
3 A. ACTUALLY I DON'T. I NEED TO START WORKING OUT
4 AGAIN.
5 Q. DO YOU PLAY ANY SPORTS; SOFTBALL, BASKETBALL?
6 A. I USED TO.
7 Q. WHEN IS THE LAST TIME YOU WERE PART OF A SOFTBALL
8 TEAM OR A BASKETBALL LEAGUE?
9 A. IT WAS 2007 RIGHT BEFORE THE INJURY.
10 Q. WHAT LEAGUE?
11 A. I PLAYED WITH THE Y.M.C.A, JUST, YOU KNOW, LOTS OF
12 PICKUP GAMES AND STUFF.
13 Q. HAVE YOU PLAYED A PICKUP GAME OF BASKETBALL SINCE
14 OCTOBER 5TH OF '07?
15 A. I TRIED IT ONE TIME AND COULDN'T.
16 Q. WHY COULDN'T YOU?
17 A. TOO -- IT WAS TOO PAINFUL.
18 Q. HOW SOON AFTER IT DID YOU TRY?
19 A. I THINK IT WAS LIKE THIS PAST SUMMER.
20 Q. DID YOU GO TO ANY DOCTORS AND SAY, "I TRIED TO PLAY
21 SOME PICKUP BALL AND I HURT" ---
22 A. THAT WAS AFTER MY RELATIONSHIP WITH THE DOCTOR WAS
23 KIND OF TERMINATED. "DO WHAT YOU THINK YOU CAN DO,"
24 SO I STARTED INCREASING MY ACTIVITY LEVEL. I
25 STARTED NOTICING MY LIMITATIONS.

SHEET 12 PAGE 45

1 Q. AND SO HAVE YOU ACTUALLY BEEN TO A DOCTOR
 2 COMPLAINING OF MORE PAIN SINCE YOU PLAYED
 3 BASKETBALL?
 4 A. NO, NO.
 5 Q. I GOTCHA. ANY OTHER SPORTING VENUES OR ANYTHING
 6 LIKE THAT?
 7 A. BASKETBALL AND TENNIS WERE MY TWO FAVORITES.
 8 Q. WHEN WAS THE LAST TIME YOU PLAYED TENNIS?
 9 A. I ACTUALLY TRIED TO PLAY ABOUT TWO MONTHS AGO.
 10 Q. DID YOU HAVE ANY PROBLEMS?
 11 A. YES, SIR.
 12 Q. WHAT KINDS OF PROBLEMS?
 13 A. JUST SWELLING, AND I HAD TO STOP.
 14 Q. SO, PLAYING TENNIS MADE YOUR KNEES SWELL?
 15 A. MM-HMM. (AFFIRMATIVE RESPONSE)
 16 Q. "YES" OR "NO"?
 17 A. YES.
 18 Q. AND DID IT CAUSE INCREASED PAIN?
 19 A. YES.
 20 Q. ARE YOU STILL HAVING INCREASED PAIN SINCE THEN?
 21 A. I DO. IT DEPENDS UPON THE TYPE OF ACTIVITY I'M
 22 INVOLVED WITH.
 23 Q. I GUESS WHAT I'M GETTING AT IS ---
 24 A. FROM THE TENNIS PLAYING?
 25 Q. --- YOUR PAIN WAS AT THIS LEVEL, WHATEVER ARBITRARY

PAGE 46

1 LEVEL THAT IS. YOU WENT AND PLAYED TENNIS, AND YOU
 2 GOT SWELLING AND INCREASED PAIN?
 3 A. YES.
 4 Q. DID IT EVER COME BACK DOWN TO THIS LEVEL?
 5 A. YES, IT DID.
 6 Q. OKAY. BUT YOU HAVE CERTAIN THINGS THAT YOU FEEL
 7 LIKE CAUSE THESE FLARE-UPS AND PAIN?
 8 A. RIGHT.
 9 Q. GIVE ME SOME EXAMPLES OF OTHER THINGS.
 10 A. IF I TAKE A LONG WALK, I WILL -- USUALLY I CAN WALK
 11 ABOUT 20 MINUTES, LIKE JUST WALKING MY DOG AND THOSE
 12 KINDS OF THINGS, AND THINGS ARE FINE. I JUST HIT A
 13 THRESHOLD AND THOSE PAINS START TO -- STARTING TO
 14 OCCUR. I DID TAKE AN HOUR-AND-A-HALF LONG HIKE BACK
 15 IN MARCH UP AT PARRIS MOUNTAIN STATE PARK, AND I HAD
 16 PAIN FOR ABOUT 48 HOURS. IT TOOK ABOUT 48 HOURS FOR
 17 IT TO CALM DOWN.
 18 Q. DID YOU GO SEE A DOCTOR?
 19 A. MM-MM. (NEGATIVE RESPONSE)
 20 Q. "YES" OR "NO"?
 21 A. NO.
 22 Q. ALL RIGHT. AND DID YOU GO ON THIS HIKE WITH SOME
 23 GROUP, OR DID YOU JUST DO IT YOURSELF?
 24 A. ME AND MY DOG.
 25 Q. WHAT KIND OF DOG DO YOU HAVE?

PAGE 47

1 A. IT'S A MIX. WE RESCUED IT FROM IMMINENT DANGER AT
 2 THE POUND.
 3 Q. AND YOU LIKE TO HIKE?
 4 A. I LOVE TO HIKE; LOVE IT.
 5 Q. AND THE LAST TIME YOU WENT WAS WHEN?
 6 A. THAT WAS A LONG ONE. I'VE TRIED TO TAKE LITTLE 20,
 7 30-MINUTE HIKES AROUND PARRIS MOUNTAIN AND THE LAKE
 8 DOWN THERE, YOU KNOW, AND EVERYTHING. I LIVE REAL
 9 CLOSE TO PARRIS MOUNTAIN STATE PARK.
 10 Q. ANY OTHER SPORTING ACTIVITY; KAYAKING OR ANYTHING
 11 LIKE THAT THAT YOU'RE IN TO?
 12 A. WELL, I'VE BEEN LOOKING HEAVILY INTO JOINING A SWIM
 13 TEAM 'CAUSE I KNOW I CAN DO THAT WITH MY LEG.
 14 Q. OKAY. HAVE YOU BEEN IN THE POOL SINCE OCTOBER 5TH
 15 OF '07?
 16 A. WELL, I'VE BEEN TRYING TO JOIN THE Y.M.C.A. SO I CAN
 17 START SWIMMING, BUT I'VE BEEN TRAVELING SO MUCH I
 18 CAN'T SEEM TO MAKE SENSE OF JOINING IF I'LL NEVER BE
 19 THERE.
 20 Q. OKAY; ALL RIGHT. IN YOUR LIFE, STEVE, HAVE YOU EVER
 21 APPLIED FOR ANY TYPE OF DISABILITY?
 22 A. NO.
 23 Q. DO YOU HAVE ANY PLANS TO APPLY FOR SOCIAL SECURITY
 24 DISABILITY OR ANYTHING LIKE THAT?
 25 A. NO.

PAGE 48

1 Q. LET'S TALK ABOUT OCTOBER 5TH, 2007. TELL ME WHAT
 2 HAPPENED THAT DAY.
 3 A. WE WERE PLAYING SOME KICKBALL, WHICH IS SOMETHING
 4 THAT PROBABLY A LOT OF MIDDLE-AGED PEOPLE PROBABLY
 5 SHOULDN'T TRY TO DO, BUT IT WAS A LOT OF FUN. IT
 6 WAS A GREAT DAY. WE HAD A LOT OF FUN THAT DAY. AT
 7 SOME POINT YOU'RE ALMOST A LITTLE -- I THINK IT WAS
 8 THE ABSOLUTE LAST PLAY OF THE GAME. I DON'T
 9 REMEMBER MUCH AFTER THAT EXCEPT FOR BEING HAULED OFF
 10 IN AN AMBULANCE. I WAS JUST RUNNING, YOU KNOW,
 11 AROUND THE BASES. A GUY THAT'S A GOOD FRIEND OF
 12 MINE AT THE OFFICE WAS ABOUT TO BEAM ME WITH THE
 13 BALL, AND I TRIED TO JUMP AND AVOID HIS THROW. I
 14 LANDED ALL WRONG. I DIDN'T KNOW HOW BAD IT WAS
 15 UNTIL I TRIED TO STAND UP.
 16 Q. WHO WAS THAT GOOD FRIEND?
 17 A. IT WAS -- I'M DRAWING A BLANK.
 18 BY MR. CHURDAR:
 19 MY GOOD FRIEND WHAT'S HIS NAME.
 20 BY THE WITNESS:
 21 I CANNOT BELIEVE THIS.
 22 BY MR. CHURDAR:
 23 I DO THAT ALL THE TIME; GO AHEAD, STEVE.
 24 WITNESS RESUMES:
 25 A. I'M GETTING OLD. JEFF.

SHEET 13 PAGE 49

1 EXAMINATION RESUMED BY MR. RENFROW:
2 Q. DID HE HIT YOU WITH THE BALL?
3 A. I DON'T REMEMBER.
4 Q. YOU DON'T KNOW IF YOU WERE SAFE OR OUT?
5 A. I THINK I WAS OUT. I'M ALMOST POSITIVE I WAS OUT.
6 I NEVER MADE IT TO HOME PLATE. I MEAN, I JUST PILED
7 UP IN A BIG PILE ON THE THIRD BASE LINE.
8 Q. AND WHAT TIME OF DAY WAS THIS?
9 A. THIS WAS PROBABLY ABOUT 5:30, 6:00. IT WAS GETTING
10 KIND OF LATE IN THE DAY. WE HAD BEEN GONE FOR QUIT
11 A WHILE. THIS WAS THE VERY LAST PART OF THE
12 ACTIVITY.
13 Q. ALL RIGHT. TELL ME ABOUT THE ACTIVITY. IS KICKBALL
14 SOMETHING THAT YOU DO REGULARLY, OR WHAT WAS IT?
15 A. OH, NO. I MEAN, THIS IS ONE OF THOSE THINGS YOU DO,
16 LIKE YOU'RE GOING BOWLING, YOU JUST GET A CRAZY WHIM
17 EVERY ONCE IN A WHILE.
18 Q. AND IS THIS THE FIRST TIME YOU HAD EVER PLAYED
19 KICKBALL?
20 A. YES. AS AN EMPLOYEE GROUP, YES.
21 Q. AND WHEN YOU SAY "EMPLOYEE GROUP," THERE WERE OTHER
22 EMPLOYEES THAT PLAYED WITH YOU?
23 A. YES.
24 Q. HOW MANY PEOPLE WERE OUT THERE THAT DAY PLAYING
25 KICKBALL?

PAGE 50

1 A. I NEVER REALLY GOT THE FULL COUNT, BUT THERE MUST
2 HAVE BEEN WELL OVER 30.
3 Q. OF THOSE 30, HOW MANY OF THEM WERE EMPLOYEES OF
4 JACKSON DAWSON?
5 A. I THINK IT WAS 100 PERCENT.
6 Q. DID YOU HAVE ANY SPOUSES?
7 A. MAYBE THERE WERE SPOUSES THERE. I CAN'T REMEMBER IF
8 THERE WERE SOME SPOUSES THAT SHOWED UP. I THINK IT
9 WAS AN OVERWHELMING MAJORITY OF EMPLOYEES OF JACKSON
10 DAWSON.
11 Q. WERE THE EMPLOYEES REQUIRED TO BE THERE?
12 A. NO. EXCUSE ME.
13 Q. DO YOU NEED A BREAK?
14 A. NO, I JUST GOT A LITTLE CHOKED.
15 Q. LET ME MAKE SURE WE'RE CLEAR ON THIS. THERE WAS NO
16 REQUIREMENT TO BE THERE?
17 A. THERE WAS ACTUALLY -- IF YOU WERE NOT THERE, YOU
18 WERE EXPECTED TO BE IN THE OFFICE WORKING.
19 Q. OKAY. AND WHY IS THAT?
20 A. WELL, ONE THING ABOUT JACKSON DAWSON THAT MAKES IT
21 SO SPECIAL, THEY HAVE SUCH A GREAT ATTENTION TO
22 CUSTOMER SERVICE AND OUR CLIENTS. WE DO ANYTHING WE
23 CAN FOR CLIENTS. AND SO, WE DON'T EVER MAKE -- A
24 THING LIKE THIS, EVEN THOUGH IT'S IS A GREAT TEAM-
25 BUILDING ACTIVITY, CLIENT WORK ALWAYS CAME FIRST.

PAGE 51

1 Q. RIGHT. LET ME MAKE SURE I'M CLEAR, THOUGH.
2 EMPLOYEES GO HOME EVERY DAY AT 5:00?
3 A. 5:30 IS THE END OF THE DAY.
4 Q. 5:30 IS THE END OF THE DAY. THOSE EMPLOYEES WHO
5 CHOSE TO STAY BACK AND WORK WOULD WORK UNTIL 5:00
6 LIKE THEY REGULARLY DO?
7 A. YES.
8 Q. IS THAT WHAT YOU'RE SAYING?
9 A. YES.
10 Q. NOW, THE EMPLOYEES THAT CHOSE TO PLAY KICKBALL, WERE
11 THEY PAID DURING THAT TIME?
12 A. I -- YEAH, I GUESS SO. MOST OF US ARE SALARIED.
13 SO, WE'RE ON A STRAIGHT SALARY.
14 Q. YOU SAID MOST OF THE 30 EMPLOYEES THAT WERE OUT
15 THERE WERE SALARIED?
16 A. YEAH. I DON'T KNOW EXACTLY THE NUMBERS. WE HAVE A
17 FEW PEOPLE THAT ARE ON HOURLY. I DON'T KNOW EXACTLY
18 HOW MANY -- WHAT PERCENTAGE OF THOSE PEOPLE WERE
19 THERE AND HOW THAT ALL WORKED OUT.
20 Q. AND I SEE SOME OF THESE E-MAILS THAT YOU SENT ME OR
21 YOUR ATTORNEY SENT ME; IF SOMEONE HAD A PROJECT THAT
22 WAS GOING ON AT WORK, WOULD THEY HAVE TO JUST NOT GO
23 TO PLAY KICKBALL AND HAVE TO STAY BACK AND GET THEIR
24 PROJECT DONE?
25 A. THAT WAS THE INTENTION, YES.

PAGE 52

1 Q. SO IF IT WAS SOMETHING THAT HAD TO BE DONE IN THE
2 OFFICE, THAT CAME FIRST?
3 A. YES. WE DID HAVE SEVERAL PEOPLE WHO JUST COULD NOT
4 BREAK -- BREAK FREE BECAUSE OF A CLIENT OBLIGATION.
5 Q. OKAY. WAS THERE ANY PRESSURE ON YOU OR ANYBODY THAT
6 YOU KNOW OF THAT YOU'D BETTER BE PLAYING KICKBALL
7 THAT DAY?
8 A. NO, THERE WAS NOT. THERE WAS NEVER AN ULTIMATUM
9 GIVEN TO ANYBODY.
10 Q. I MEAN, I'VE HAD FRIENDS WHO JUST DON'T LIKE SPORTS,
11 AND IF WE SET UP AN EVENT OR HAVE AN EVENT LIKE
12 THAT, THEY WOULD CHOOSE NOT TO GO. I MEAN, IF YOU
13 JUST CHOSE NOT TO GO PLAY KICKBALL, YOU DIDN'T HAVE
14 TO PLAY, CORRECT?
15 A. NO; THAT'S RIGHT.
16 Q. IT WAS TOTALLY VOLUNTARY?
17 A. EITHER THAT OR WORKING.
18 Q. OKAY. BUT YOU WOULD AGREE IT WAS VOLUNTARY TO GO
19 PLAY KICKBALL?
20 A. YES. IT WAS NOT -- IT WAS NOT MANDATORY.
21 Q. OKAY. WAS THERE ANY PRESSURE, THOUGH, LIKE IF
22 YOU'RE NOT THERE THE BOSS MAN'S GOING TO GET MAD AT
23 YOU OR ANYTHING LIKE THAT?
24 A. I THINK MOST OF THE MANAGERS WERE PUSHING IT BECAUSE
25 THEY THOUGHT IT WAS A GREAT TEAM-BUILDING EXERCISE.

SHEET 14 PAGE 53

1 Q. BUT WAS THERE ANY MANAGER OR ANY EMPLOYEE THAT CAME
2 TO YOU AND SAID, "I DON'T REALLY WANT TO DO THIS,
3 BUT MY MANAGER IS GOING TO HOLD IT AGAINST ME IF I
4 DON'T?"
5 A. I CAN'T REMEMBER ANY -- ANY SPECIFIC WHERE THAT
6 ACTUALLY OCCURRED.
7 Q. WHO ORGANIZED THIS EVENT?
8 A. I DID.
9 Q. YOUR IDEA?
10 A. YEAH. I PROPOSED IT TO THE EXECUTIVE COMMITTEE, AND
11 THEY THOUGHT IT WAS PRETTY COOL IDEA, AND SO WE
12 DECIDED TO ACT ON IT.
13 Q. JUST A FUN GUY COMING UP WITH A GOOD IDEA FOR THE
14 COMPANY, IS THAT REALLY WHAT WAS GOING ON, OR WAS
15 THAT PART OF YOUR RESPONSIBILITIES?
16 A. NO, I THINK IT WAS -- WE WERE ALL CONCERNED ABOUT
17 TRYING TO BUILD COMERADERY WITH THE EMPLOYEE GROUPS,
18 AND THAT WAS ALWAYS A POINT OF CONVERSATION WHEN WE
19 HAD OUR EXECUTIVE MEETINGS. SO, A LOT OF US WERE
20 ALWAYS THINKING OF IDEAS ON HOW WE COULD DO THIS.
21 THIS WAS ONE OF THOSE MANIFESTATIONS OF THAT INTENT.
22 Q. BUT THERE WAS NOTHING ABOUT YOUR ROLE WITH THE
23 COMPANY THAT REQUIRED YOU TO COME UP WITH COMPANY
24 EVENTS TO BUILD MORALE?
25 A. NO. NO, NOT AT ALL.

PAGE 54

1 BY MR. CHURDAR:
2 I OBJECT TO THE FORM, BUT ANSWER IT.
3 THE WITNESS ANSWERS:
4 A. OKAY. IT WAS AN INTENT BY EVERYBODY ON THE
5 EXECUTIVE COMMITTEE TO LOOK FOR IDEAS TO HELP BUILD
6 COMRADERY AND ALL THAT. SO, BEING A PART OF THAT, I
7 FELT LIKE I'M OBLIGATED TO TRY TO FIND THINGS. THIS
8 HAPPEN TO BE ONE WAY I THOUGHT OF.
9 Q. WHO WAS ON THE EXECUTIVE COMMITTEE?
10 A. IT WAS DARRELL JACKSON, KEVIN JOHNSON, MIKE ZELLAR,
11 DAVID JONES, JOE CLARK, DAVID MATSON. I WAS ON
12 THERE AT THE TIME. I HOPE I DON'T MISS ANYBODY. I
13 CAN'T REMEMBER ANYBODY ELSE.
14 Q. DID YOU GET A REVIEW FROM THE COMPANY EACH YEAR?
15 A. YES.
16 Q. WAS THERE ANYTHING ON THAT REVIEW THAT SAID YOU GOT
17 MORE POINTS IF YOU WERE DOING THINGS THAT WOULD HELP
18 BUILD COMPANY MORALE, ANYTHING LIKE THAT?
19 A. NOT IN THOSE SPECIFIC TERMS, BUT I THINK IT WAS
20 EXPECTED OF OUR MANAGERS TO BE, YOU KNOW, KIND OF
21 PUSHING THE CULTURE FORWARD. I THINK THAT WAS --
22 WE'VE NOTICED THAT WHEN MANAGERS STEPPED UP AND DID
23 THAT, IT WAS A GOOD THING.
24 Q. WERE THERE ANY OTHER EVENTS THAT HAD BEEN PLANNED
25 IN, LET'S SAY, A YEAR PRIOR TO THIS?

PAGE 55

1 A. WE DID AN EVENT NOT TO -- I CAN'T REMEMBER EXACTLY
2 THE TIME IT WAS. I NEED TO DO SOME RESEARCH ON
3 EXACTLY WHAT DAY, BUT WE -- WE DID A BIG COOKOUT FOR
4 EVERYBODY, A SOCIAL EVENT. IT DIDN'T REQUIRE NEARLY
5 AS MUCH PHYSICAL ACTIVITY THANKFULLY, BUT WE DID
6 THAT IN ORDER TO BUILD SOME COMRADERY. SEVERAL
7 MANAGERS GOT TOGETHER AND GRILLED OUT HAMBURGERS AND
8 HOTDOGS AND INVITED EVERYBODY OUT JUST TO HANG OUT
9 FOR A COUPLE HOURS. WE HAVE A BACK DECK FOR THAT,
10 DEDICATED TO THAT KIND OF THING.
11 Q. THAT WAS SOMETHING YOU ALL DID AT THE COMPANY?
12 A. YES.
13 Q. NOW, WHERE DID THIS TAKE PLACE? WAS THIS ON COMPANY
14 PROPERTY, OR WAS THIS SOMEWHERE ELSE?
15 A. WHAT, THE -- YOU MEAN THIS?
16 Q. THIS KICKBALL EVENT.
17 A. IT WAS DONE AT THE Y.M.C.A. IN SIMPSONVILLE.
18 Q. AND YOU ORGANIZED ALL OF THAT?
19 A. YES. I CONTACTED THEM.
20 Q. AND THE Y.M.C.A. IN SIMPSONVILLE, IS THAT PROPERTY
21 ANYWHERE CLOSE TO JACKSON DAWSON?
22 A. IT'S THE CLOSEST PLACE WE COULD FIND THAT HAD A GOOD
23 FIELD.
24 Q. HOW MANY MILES?
25 A. FIVE OR SIX MILES MAYBE.

PAGE 56

1 Q. OKAY. SO PRACTICALLY THE PEOPLE WOULD JUST CLOCK
2 OUT FOR THE DAY AND GO GET IN THEIR CAR AND DRIVE
3 OVER TO THE Y.M.C.A., IS THAT RIGHT?
4 BY MR. CHURDAR:
5 OBJECT TO THE FORM.
6 EXAMINATION RESUMED BY MR. RENFROW:
7 Q. GO AHEAD AND ANSWER.
8 A. WELL, I THINK PEOPLE, WHEN THEY FELT LIKE THEY WERE
9 FREE FROM, YOU KNOW, THEIR CLIENT OBLIGATIONS THAT
10 WERE REQUIRED THAT DAY, COULD GO OVER THERE.
11 SEVERAL PEOPLE HELPED SET UP STARTING ABOUT LIKE
12 1:00, 1:30, AND A LOT OF PEOPLE WERE HEADING OVER BY
13 ABOUT 2:00, 2:30, AND WE STARTED PLAYING AROUND
14 3:00, I THINK.
15 Q. WAS THERE A VAN OR A CAR POOL OR ANYTHING LIKE THAT,
16 OR DID THE PEOPLE JUST GET IN THEIR OWN CARS AND
17 DRIVE TO THE Y.M.C.A.?
18 A. IT WAS A COMBINATION. THERE WERE A LOT OF PEOPLE
19 WHO CAR POOLED OVER AND WENT BACK TO THE OFFICE
20 AFTERWARDS, BUT A LOT OF PEOPLE CAME DOWN IN THEIR
21 OWN INDIVIDUAL CARS, TOO.
22 Q. WHO DO YOU KNOW THAT CAR POOLED?
23 A. DAVID JONES, I THINK HE TOOK A FEW PEOPLE OVER.
24 THAT'S A GOOD QUESTION. JEFF CARBOROUGH, I THINK,
25 HAD A COUPLE PEOPLE WITH HIM. THAT'S ALL I KNOW.

SHEET 15 PAGE 57

1 THAT WAS A LONG TIME AGO.
 2 Q. WAS THAT SERVICE THAT WAS PROVIDED BY ANYBODY AT
 3 JACKSON DAWSON?
 4 A. NO. IT WAS JUST ORGANIZED TO MAKE IT EASY FOR
 5 EVERYBODY SO ALL OF US COULD GO OVER TOGETHER KIND
 6 OF THING.
 7 Q. SO WHAT YOU THINK HAPPENED WAS DAVID SAID "IF
 8 ANYBODY WANTS TO RIDE WITH ME, JUMP IN THE CAR"?
 9 A. YES. I WENT VERY EARLY. I WAS JUST -- I JUST
 10 REMEMBER PEOPLE TALKING ABOUT, "HEY, LET'S ALL GET
 11 TOGETHER AND GO TOGETHER." I DON'T KNOW HOW IT ALL
 12 ENDED UP, BUT THAT'S KIND OF THE GIST OF IT.
 13 Q. WELL, HOW DO YOU KNOW DAVID AND JEFF ---
 14 A. I JUST REMEMBER THEIR TALKING TO ME ABOUT IT AT ONE
 15 POINT, AND WHETHER THAT ACTUALLY PANNED OUT EXACTLY
 16 THAT WAY, THEY COULD HAVE DONE SOMETHING DIFFERENT,
 17 BUT I JUST REMEMBER -- BECAUSE I WAS THERE EARLY,
 18 AND THEN A STREAM OF CARS STARTED TO COME IN.
 19 JACKSON DAWSON DID NOT TRY TO, YOU KNOW, HIRE A BUS
 20 AND GO OVER, IF THAT'S WHAT YOU'RE GETTING AT.
 21 Q. THAT'S WHAT I'M GETTING AT.
 22 A. WE DID NOT HIRE A BUS OR A VAN OR ANYTHING. I MEAN,
 23 IT WAS ONLY FIVE MILES AWAY. IT WAS VERY EASY TO
 24 GET PEOPLE BACK AND FORTH.
 25 Q. WAS ANYBODY REIMBURSED FOR MILEAGE FOR DRIVING TO

PAGE 59

1 SALARY REGARDLESS OF WHETHER YOU WERE THERE THAT DAY
 2 OR NOT, CORRECT?
 3 A. YES, THAT'S CORRECT.
 4 Q. AND AS FAR AS YOU KNOW, THAT APPLIES TO EVERYBODY
 5 ELSE THAT WAS THERE THAT DAY ON SALARY?
 6 A. AS FAR AS I KNOW. I CAN'T IMAGINE IT BEING ANY
 7 DIFFERENT.
 8 Q. AND THERE IS NO REQUIREMENT THAT YOU HAD EVERY DAY
 9 TO CLOCK IN AND CLOCK OUT?
 10 A. NO.
 11 Q. WHAT ABOUT THE HOURLY EMPLOYEES; IS THERE AN HOURLY
 12 EMPLOYEE THAT YOU KNOW OF?
 13 A. I DON'T KNOW OF ANY THOSE -- THOSE GO THROUGH THE
 14 FINANCIAL SIDE OF THINGS. BUT NOBODY IN MY
 15 DEPARTMENT WAS HOURLY, SO I WASN'T AWARE.
 16 Q. ARE YOU AWARE OF ANY HOURLY EMPLOYEES AT ALL?
 17 A. I KNOW THEY EXIST.
 18 Q. THEY DO EXIST?
 19 A. I JUST CAN'T PUT NAMES AND ALL THAT STUFF TO IT.
 20 Q. DO YOU KNOW IF THEY HAVE TO CLOCK IN AND CLOCK OUT?
 21 A. I WOULD ASSUME SO. I DON'T KNOW IF IT'S A PHYSICAL
 22 MACHINE OR THEY JUST KEEP THEIR OWN RECORDS AND JUST
 23 SUBMIT THOSE TO THEIR SUPERVISOR.
 24 Q. OKAY. AND DID YOU HAVE ANY CONNECTIONS OR FRIENDS
 25 OVER AT THE Y.M.C.A. SINCE YOU HAD BEEN A MEMBER

PAGE 58

1 THE Y.M.C.A.?
 2 A. NO, NOT THAT I KNOW OF. I DIDN'T SEE ANYBODY'S
 3 EXPENSE REPORT. THAT WAS NEVER OFFERED AS PART OF
 4 THIS ACTIVITY.
 5 Q. OKAY. NOW, YOU SAID A LOT OF THE PEOPLE THAT WERE
 6 PLAYING THIS EVENT WERE SALARIED EMPLOYEES, IS THAT
 7 RIGHT?
 8 A. YEAH, I WOULD THINK SO.
 9 Q. OKAY. IS IT POSSIBLE SOME OF THEM WERE NOT SALARIED
 10 BUT WERE HOURLY EMPLOYEES?
 11 A. COULD HAVE BEEN. I WOULD IMAGINE THERE WERE PEOPLE
 12 IN THE WAREHOUSE PROBABLY ON AN HOURLY BASIS OVER
 13 THERE.
 14 Q. LET'S TAKE YOU BECAUSE YOU ARE A SALARIED EMPLOYEE,
 15 CORRECT?
 16 A. YES.
 17 Q. IF YOU HAD NOT BEEN PLAYING KICKBALL ALL AFTERNOON
 18 BUT HAD BEEN IN THE OFFICE, WOULD YOU HAVE GOTTEN
 19 THE SAME SALARY?
 20 A. MM-HMM. (AFFIRMATIVE RESPONSE)
 21 Q. "YES" OR "NO"?
 22 A. YES.
 23 Q. OKAY. SO THERE WAS NOTHING ABOUT GOING TO THIS
 24 KICKBALL EVENT THAT ALLOWED YOU TO GET AN ADDITIONAL
 25 PART OF YOUR SALARY? YOU WOULD'VE GOTTEN YOUR

PAGE 60

1 THERE OR WERE A MEMBER THERE THAT SORT OF HELPED YOU
 2 GET THIS DEAL FOR THE 5TH?
 3 A. I DID CALL OVER THERE AND TOLD THEM I WAS A MEMBER.
 4 I THOUGHT THEY WOULD GIVE US A BETTER PRICE.
 5 Q. I MEAN, THEY DIDN'T GIVE YOU ANY SPECIAL PRICE,
 6 THOUGH, BECAUSE THEY KNEW LARRY AND DARRELL OR
 7 JACKSON DAWSON?
 8 A. NO, I DON'T THINK THEY DID.
 9 Q. WOULD THEY HAVE TOLD YOU THAT?
 10 A. I DON'T KNOW IF THEY WOULD HAVE OR NOT. WE NEVER --
 11 I MEAN, IT SOUNDED LIKE A PRETTY REASONABLE PRICE,
 12 AND WHEN WE GOT IT, AND WE JUST SAID, "HEY, LET'S
 13 GO; LET'S DO IT."
 14 Q. I'M JUST LOOKING AT AN E-MAIL THAT YOU SENT. IT
 15 SAYS, "FIELD RENTAL 3:00 TO 5:00, \$80."
 16 A. YES.
 17 Q. DID THEY TELL YOU WHEN THEY QUOTED YOU THAT PRICE OF
 18 \$80, THAT, "HEY, WE'RE GOING TO GIVE YOU ALL A DEAL
 19 BECAUSE WE REALLY LIKE LARRY AND DARRELL JACKSON OR
 20 WE LIKE JACKSON DAWSON?"
 21 A. NO, THAT WAS NEVER MENTIONED ABOUT THAT.
 22 Q. OKAY.
 23 A. BUT I HAVE NO IDEA TO COMPARE WITH THAT, THE BOOK --
 24 I MEAN, THE PRINTED PRICE OR IF THEY GAVE ME A
 25 SPECIAL DEAL.

SHEET 16 PAGE 61

1 Q. SURE.
 2 A. I WAS TRYING TO PUSH MY CONNECTION WITH ---
 3 Q. BUT ALL I'M GETTING AT IS YOU SET THIS UP; AS FAR AS
 4 YOU KNOW, THE PEOPLE YOU SET IT UP WITH JUST QUOTED
 5 YOU A PRICE, CORRECT?
 6 A. AS FAR AS I KNOW.
 7 Q. THEY DIDN'T SAY, "WE ARE GIVING YOU A SPECIAL DEAL"
 8 OR ANYTHING LIKE THAT?
 9 A. NOT THAT I KNOW OF.
 10 Q. DID ANYBODY RIDE IN THE AMBULANCE WITH YOU THAT DAY?
 11 A. I CAN'T REMEMBER. THEY POPPED ME WITH SOME
 12 MORPHINE. I WAS LIKE SPINNING BY THAT TIME. I
 13 THINK LOWELL ECKART RODE WITH ME. EITHER HE WAS IN
 14 THE AMBULANCE WITH ME OR HE FOLLOWED ME IN HIS CAR,
 15 BUT HE STAYED WITH ME THAT EVENING. HE'S AN
 16 EMPLOYEE OF JACKSON DAWSON.
 17 Q. IS HE A FRIEND, TOO?
 18 A. YES.
 19 Q. ARE THERE ANY OTHER EMPLOYEES THAT STAYED WITH YOU
 20 THAT EVENING?
 21 A. NO, JUST LOWELL.
 22 Q. WAS HE A SUPERVISOR OR MANAGER?
 23 A. HE'S A MANAGER.
 24 Q. AND DID HE STAY WITH YOU BECAUSE HE WAS YOUR
 25 MANAGER, OR DID HE STAY WITH YOU BECAUSE HE WAS A

PAGE 62

1 FRIEND OF YOURS?
 2 A. OH, NO; HE'S A FRIEND. LOWELL IS JUST A GREAT GUY.
 3 Q. WHERE DID THE AMBULANCE TAKE YOU THAT DAY?
 4 A. GREENVILLE HOSPITAL -- MEMORIAL HOSPITAL.
 5 Q. THE ONE DOWNTOWN?
 6 A. RIGHT.
 7 Q. I HAVE SOME MEDICAL RECORDS FROM THE UNIVERSITY
 8 MEDICAL GROUP, DEPARTMENT OF ORTHOPAEDICS; IS THAT
 9 WHO YOU TREATED WITH DURING THE COURSE OF THIS
 10 CLAIM?
 11 A. YES.
 12 Q. DR. GETTYS?
 13 A. DR. GETTYS WAS, I THINK, THE LEADING SURGEON.
 14 Q. DID YOU HAVE ANY PROBLEMS WITH THE TREATMENTS YOU'VE
 15 RECEIVED FROM DR. GETTYS?
 16 A. NO; EXCEPT FOR THE CONSTANT ARTHRITIS, NO.
 17 Q. DO YOU FEEL LIKE HE'S DONE AN ADEQUATE JOB?
 18 A. YEAH. I'D LIKE TO HAVE BETTER RESULTS WITH MY KNEE,
 19 BUT, WHEN HE WORKED ON IT, HE PROBABLY DID THE BEST
 20 JOB HE COULD.
 21 Q. NOW, LET'S GO DOWN THE LIST OF WHERE YOU'VE TREATED.
 22 LET ME PULL OUT YOUR FORM 50 HERE. YOU'VE BEEN TO
 23 GREENVILLE MEMORIAL HOSPITAL, CORRECT?
 24 A. MM-HMM. (AFFIRMATIVE RESPONSE)
 25 Q. "YES"?

PAGE 63

1 A. YES.
 2 Q. OKAY. YOU'VE SEEN DR. GETTYS?
 3 A. YES.
 4 Q. OKAY. YOU'VE BEEN TO INDIVIDUALIZED PHYSICAL
 5 THERAPY?
 6 A. YES.
 7 Q. HAVE YOU HAD ANY OTHER TREATMENT OF ANY KIND AS A
 8 RESULT OF THIS CASE?
 9 A. NO.
 10 Q. SO EVERY MEDICAL RECORD THAT EXISTS ABOUT THIS CASE
 11 IS FROM THOSE THREE PROVIDERS?
 12 A. THAT'S TO MY UNDERSTANDING EXCEPT FOR MAYBE
 13 RADIOLOGISTS.
 14 Q. AND THE E.M.T.?
 15 A. E.M.T.s AND THE ANESTHESIOLOGIST. I DON'T KNOW HOW
 16 THAT'S ALL TIED IN WITH THOSE RECORDS AT GREENVILLE
 17 HOSPITAL SYSTEM; I'M NOT ENTIRELY SURE.
 18 Q. OKAY. ARE YOU RIGHT-HANDED OR LEFT-HANDED?
 19 A. I'M AMBIDEXTROUS. I WRITE LEFT-HANDED; I THROW
 20 RIGHT-HANDED. I'M A MESS WHEN IT COMES TO THAT.
 21 Q. DO YOU KICK A KICKBALL WITH YOUR RIGHT FOOT OR YOUR
 22 LEFT FOOT?
 23 A. RIGHT FOOT.
 24 Q. OKAY. HAVE YOU EVER BROKEN A LIMB BEFORE THIS?
 25 A. I DID BREAK MY LEFT FOOT WHEN I WAS IN COLLEGE. I

PAGE 64

1 JUST BROKE -- WELL, ACTUALLY IT WAS MORE OF A STRESS
 2 FRACTURE.
 3 Q. HOW DID YOU DO IT?
 4 A. RUNNING DOWN STAIRS.
 5 Q. DID YOU PLAY ANY SPORTS IN COLLEGE?
 6 A. YES.
 7 Q. WHAT DID YOU PLAY?
 8 A. I PLAYED BASKETBALL, VOLLEYBALL, AND SOCCER AND
 9 SOFTBALL.
 10 Q. THIS WAS FOR THE UNIVERSITY?
 11 A. AND BADMINTON. WELL, BOB JONES HAS A UNIQUE
 12 SITUATION. IT HAS ALL INTRAMURAL SPORTS, AND I
 13 LEARNED HOW TO PLAY BASIC SPORTS. SO IT WAS EASY TO
 14 GET INVOLVED IN SPORTS AT BOB JONES.
 15 Q. THEY DON'T COMPETE IN THE NCAA OR ANYTHING LIKE
 16 THAT?
 17 A. NO. I THINK THEY DO SOME EXHIBITION GAMES NOW, BUT
 18 THEY DIDN'T DO IT BACK THEN.
 19 Q. OKAY. ALL RIGHT. AND THE ONLY TIME YOU'VE BROKEN A
 20 BONE IN YOUR BODY WAS THAT LEFT FOOT?
 21 A. YES, YES.
 22 Q. HAVE YOU EVER HAD AN INJURY TO YOUR RIGHT OR LEFT
 23 LEG BEFORE OTHER THAN THAT INCIDENT IN COLLEGE?
 24 A. NO.
 25 Q. DO YOU HAVE ANY MEDICAL APPOINTMENTS TO SEE ANY

SHEET 17 PAGE 65

1 DOCTORS IN THE FUTURE AS A RESULT OF YOUR RIGHT LEG?
 2 A. NO, NONE.
 3 Q. NOW, IT'S MY UNDERSTANDING THE DOCTORS HAVE RELEASED
 4 YOU, IS THAT RIGHT; DR. GETTYS?
 5 A. YES.
 6 Q. OKAY. DO YOU KNOW IF HE'S ASSIGNED AN IMPAIRMENT
 7 RATING, OR DO YOU EVEN KNOW WHAT THAT IS?
 8 A. DOUG HAD MENTIONED IT TO ME, BUT I'M NOT REALLY AT
 9 ALL FAMILIAR WITH WHAT ALL THAT STUFF MEANS.
 10 Q. DO YOU KNOW IF YOU HAVE ANY PERMANENT WORK
 11 RESTRICTIONS OF ANY KIND?
 12 A. NO. MOST OF MY STUFF WAS CEREBRAL TO BEGIN WITH. I
 13 DON'T RELY ON MY LEGS TO ACTUALLY PHYSICALLY DO MY
 14 WORK.
 15 Q. IS THERE ANYTHING ABOUT THIS INCIDENT THAT PREVENTS
 16 YOU FROM WORKING?
 17 A. WELL, THERE ARE SOME THINGS THAT MAKE IT MORE
 18 DIFFICULT NOW. I HAVE TO ~~DO A LOT OF TRAVELING.~~
 19 ~~ANY KIND OF LONG WALKS ON THIS LEG, ESPECIALLY~~
 20 ~~LUGGING AROUND LUGGAGE, IT WILL SWELL UP PRETTY BADLY.~~
 21 I ALSO DO STANDUP FULL-DAY PRESENTATIONS AS PART OF
 22 MY WORK. ANYTIME I ~~STAND ON THIS LEG FOR ANY LENGTH~~
 23 ~~OF TIME IT WILL SWELL AND GET VERY PAINFUL.~~
 24 Q. BUT YOU ARE ABLE TO DO IT; IT'S JUST MORE DIFFICULT
 25 NOW?

PAGE 67

1 ACTUALLY SAW ME WHEN I STARTED TO HIM, HE GAVE ME
 2 PERMISSION TO START WALKING ON IT. HE SAID HE WAS
 3 NOT PLEASED WITH THE WAY THAT THE TOP OF MY TIBIA
 4 HAD FUSED TOGETHER. HE SAID I WAS GOING TO HAVE
 5 TROUBLE WITH THAT. HE SAYS, "IT LOOKS VERY LIKELY
 6 THAT YOU'LL HAVE TO HAVE A KNEE REPLACEMENT."
 7 Q. DID HE TELL YOU WHEN?
 8 A. HE DID NOT SAY. HE SAID, JUST EXPECT IT FAIRLY
 9 SOON.
 10 Q. HAVE YOU EVER HAD A FAMILY MEMBER WHO HAD A KNEE
 11 REPLACEMENT?
 12 A. NO.
 13 Q. WHAT ABOUT A HIP REPLACEMENT?
 14 A. NOBODY THAT I KNOW OF.
 15 Q. AND THE DOCTOR SAID TO EXPECT IT VERY SOON?
 16 A. MM-HMM. (AFFIRMATIVE RESPONSE)
 17 Q. "YES"?
 18 A. YES.
 19 Q. AND THAT'S DR. JERVAY?
 20 A. DR. JERVAY.
 21 Q. OKAY. HAVE ANY OF THE DOCTORS YOU'VE SEEN AS A
 22 RESULT OF THIS CASE TOLD YOU THAT YOU HAD SOME
 23 ARTHRITIS OR DEGENERATION IN YOUR KNEE PRIOR TO
 24 THIS?
 25 A. NO, THERE WAS NONE.

PAGE 66

1 A. ~~IT'S EXTREMELY DIFFICULT.~~
 2 Q. I THINK YOU TOLD ME YOU'VE GONE TO WISCONSIN NINE
 3 TIMES SINCE FEBRUARY?
 4 A. YES.
 5 Q. SO YOU'RE ABLE TO GO TO WISCONSIN?
 6 A. YES.
 7 Q. OKAY. AND ON ANY TRIP THAT YOU'VE TAKEN TO
 8 WISCONSIN HAVE YOU COME BACK AND GONE TO A DOCTOR TO
 9 LOOK AT YOU, JUST YOU WERE IN SO MUCH PAIN OR HAD
 10 SWELLING?
 11 A. NO. I ~~DO TAKE TYLENOL QUITE A BIT AT NIGHT WHEN I~~
 12 ~~DO TRAVEL BECAUSE OF THE PAIN AND SWELLING.~~
 13 Q. AND THAT'S STUFF YOU BUY OVER THE COUNTER?
 14 A. MM-HMM. (AFFIRMATIVE RESPONSE)
 15 Q. "YES"?
 16 A. YES.
 17 Q. YOU DON'T HAVE ANY PRESCRIPTION MEDICATION THAT
 18 YOU'VE GOT?
 19 A. NO PRESCRIPTION MEDICATION.
 20 Q. HAS ANY DOCTOR MENTIONED TO YOU THAT YOU MIGHT NEED
 21 A FUTURE MEDICAL OR SURGICAL PROCEDURE AS A RESULT
 22 OF THIS CASE?
 23 A. YES.
 24 Q. WHICH DOCTOR?
 25 A. DR. JERVAY, WHO WORKS WITH DR. GETTYS. WHEN HE

PAGE 68

1 BY MR. CHURDAR:
 2 BEN, CAN I INTERJECT?
 3 BY MR. RENFROW:
 4 SURE, DOUG.
 5 BY MR. CHURDAR:
 6 I THINK HE SAID "FAIRLY SOON." AND THEN I
 7 THINK YOU HEARD "VERY SOON."
 8 BY MR. RENFROW:
 9 I'M SORRY.
 10 BY MR. CHURDAR:
 11 I THINK IT WAS "FAIRLY SOON." I THINK HE SAID
 12 "FAIRLY SOON," FOR WHAT IT'S WORTH.
 13 BY MR. RENFROW:
 14 I'M GLAD YOU CLEARED THAT UP.
 15 WITNESS RESUMES:
 16 A. YEAH, A GOOD POINT. NO, NO ONE HAS EVER SEEN ANY
 17 KIND OF ARTHRITIS IN ANY PART OF MY BODY, AS FAR AS
 18 I KNOW.
 19 EXAMINATION RESUMED BY MR. RENFROW:
 20 Q. HAD YOU EVER HAD AN M.R.I. DONE OR AN X-RAY DONE ON
 21 YOUR RIGHT LEG PRIOR TO THIS INCIDENT?
 22 A. I CAN'T THINK OF A TIME IT WOULD'VE HAPPENED.
 23 Q. NOW, IT'S MY UNDERSTANDING FROM SOME CORRESPONDENCE
 24 I'VE GOTTEN FROM YOUR ATTORNEY THAT MOST OF YOUR
 25 MEDICAL BILLS HAVE BEEN PAID FOR BY YOUR HEALTH

SHEET 18 PAGE 69

PAGE 71

1 INSURANCE?
2 A. YES.
3 Q. DID YOU INITIALLY JUST GO AHEAD AND START PAYING
4 THESE WITH YOUR GROUP HEALTH INSURANCE?
5 A. YES. WHEN WE FOUND OUT THAT -- WHEN I HAD FIRST
6 INQUIRED ABOUT WHETHER WORKMAN'S COMP WAS GOING TO
7 BE A PART OF THIS, IT WAS QUICKLY DETERMINED THAT IT
8 WOULD NOT. SO WE WENT AHEAD AND PROCESSED IT THE
9 NORMAL WAY THROUGH UNITED HEALTHCARE.
10 Q. AND YOU SAY "WE"; WHO IS "WE"? YOU SAID "WE"
11 PROCESSED IT.
12 A. WELL, ACTUALLY -- WELL, THROUGH THE UNIVERSITY
13 MEDICAL CENTER AND GREENVILLE HOSPITAL SYSTEM.
14 Q. YOU ALSO SAID THAT "WE" INQUIRED AS TO WHETHER THIS
15 WOULD BE WORKERS' COMP?
16 A. THAT WOULD'VE BEEN ME AND JACKSON DAWSON. I HAD
17 CALLED BARBARA DeLAURA, WHO IS THE H.R. SPECIALIST,
18 AND SHE CHECK INTO IT FOR ME.
19 Q. SO YOU WENT TO BARBARA AT SOME POINT AND SAID, "I
20 THINK THIS IS WORKERS' COMP" ---
21 A. YES.
22 Q. --- "WILL YOU PAY FOR IT"?
23 A. WELL, I ACTUALLY SAID "IS THIS A WORKERS' COMP
24 CLAIM?"
25 Q. OKAY. SO YOU JUST ASKED HER?

1 ASKING -- WE WERE JUST CATCHING UP, AND I TOLD HIM
2 ABOUT WHAT HAPPENED, AND HE ASKED -- ASKED ABOUT IT.
3 I GUESS HE JUST KICKED IN THE WORK MODE AND STARTED
4 ANALYZING IT.
5 Q. HOW LONG AFTER THIS ACCIDENT, OCTOBER 5TH, 2007?
6 HOW LONG AFTER THAT DID YOU HAPPEN TO TALK WITH
7 BRAD?
8 A. IT HAD TO BE LATE SPRING OR SUMMER OF LAST YEAR WHEN
9 WE WERE SORT OF TALKING, WHEN HE FIRST MENTIONED IT
10 TO ME.
11 Q. SOMETIME IN 2008?
12 A. YEAH. I CAN'T REMEMBER THE DATES. HE AND HIS KIDS
13 WERE -- HIS KIDS AND I AND MY KIDS ARE REAL GOOD
14 FRIENDS.
15 Q. AND I DON'T WANT TO KNOW ANYTHING ABOUT THE
16 CORRESPONDENCE WITH YOUR LAWYER OR ANY TALKING WITH
17 YOUR LAWYER, BUT WHEN DID YOU FIRST FILE YOUR
18 WORKERS' COMP CLAIM IN THIS CASE?
19 A. I DON'T REMEMBER THE DATE. I'M SORRY, BUT IT'S BEEN
20 IN THE LAST FEW -- FEW MONTHS. IT'S JUST BEEN
21 RECENTLY.
22 Q. AND AGAIN, I DON'T WANT ANY STRATEGY THAT YOUR
23 LAWYER HAS GIVEN YOU; I WANT TO KNOW, IN YOUR
24 PERSONAL OPINION, WHY DID YOU WAIT ALMOST TWO YEARS
25 TO FILE A WORKERS' COMP CLAIM?

PAGE 70

PAGE 72

1 A. YES, AND SHE LOOKED INTO IT AND SAID, "NO, IT WOULD
2 NOT BE."
3 Q. WHEN WAS THIS?
4 A. THIS WAS VERY SHORTLY INTO THE FIRST ROUND OF
5 PAYMENTS THAT WE STARTED HAVING IT. I CAN'T
6 REMEMBER EXACTLY HOW CLOSE IT WAS TO OCTOBER 5TH,
7 BUT IT WAS FAIRLY SOON. SO WE -- I MEAN, EVERYBODY
8 WANTED TO KNOW HOW THEY WERE GOING TO GET PAID.
9 Q. SURE. HOW LONG DID YOU WAIT BEFORE YOU DECIDED TO
10 PURSUE THIS AS A WORKERS' COMP CLAIM?
11 A. I HAD A FRIEND OF MINE ACTUALLY TO TALK TO ME ABOUT
12 THIS. HE ACTUALLY WORKS FOR UNITED -- UPS. I TOLD
13 HIM MY STORY. HE'S THE PERSON WHO PUT A BUG IN MY
14 EAR. HE SAID, "BOY, I THINK THAT'S WORKERS' COMP
15 RELATED." AND THEN I MENTIONED IT TO DOUG, AND DOUG
16 SAID, "WELL, IT LOOKS LIKE IT'S A POSSIBILITY."
17 Q. WHO IS THE FRIEND AT UPS?
18 A. HIS NAME IS BRAD SHANK.
19 Q. HAD HE BEEN THROUGH THIS PROCESS BEFORE?
20 A. HE ACTUALLY RUNS -- FROM WHAT I UNDERSTAND, HIS JOB
21 IS RESPONSIBLE FOR ALL THE WORKERS' COMP CLAIMS AT
22 UPS FOR THE STATE OF SOUTH CAROLINA.
23 Q. OKAY. SO YOU JUST HAPPENED TO BE TALKING WITH BRAD
24 ONE DAY, AND HE SAID, "HEY, I THINK" ---
25 A. YEAH. HE JUST CAME OVER ONE NIGHT, AND HE WAS

1 A. FIRST I DIDN'T THINK IT WAS COVERABLE. I WAS TOLD
2 NO, AND BRAD WAS THE FIRST ONE WHO PUT THE QUESTION
3 MARK IN MY MIND THAT MAYBE I -- HE SAID -- HE JUST
4 TOLD ME, HE SAID, YOU KNOW, "WORKERS' COMP INSURANCE
5 COMPANY, THEY'LL TELL YOU NO TO BEGIN WITH ANYWAY,
6 SO DON'T LET THAT PRECLUDE YOU." I DIDN'T THINK
7 ANYTHING ABOUT IT, AND I WALKED AWAY AND SAID, "THIS
8 IS NOT A WORKERS' COMP, FINE. I'M FINE WITH HOW
9 IT'S COMING DOWN."
10 Q. HAD HE ---
11 A. YEAH, HE'S THE ONE THAT SAID, "YEAH, YOU CAN GO TO
12 THE INSURANCE COMMISSIONER." THAT'S WHEN DOUG AND I
13 JUST DID LUNCH; WE STAYED IN TOUCH. I THINK THAT
14 DOUG THOUGHT THE SAME THING THAT BRAD SHANK DID.
15 Q. OKAY. NOW, WHEN YOU RESIGNED IN FEBRUARY, DID YOU
16 SORT OF KNOW IN THE BACK OF YOUR MIND THAT WERE
17 GOING TO FILE A WORKERS' COMP CLAIM AGAINST JACKSON
18 DAWSON?
19 A. THIS WAS ACTUALLY -- THIS PROCESS WAS WELL IN
20 ADVANCE OF MY RESIGNING FROM JACKSON DAWSON. THEY
21 ARE TWO TOTALLY UNRELATED THINGS.
22 Q. WELL, WHAT PROCESS?
23 A. OF GOING -- OF FILING A WORKERS' COMP CLAIM.
24 Q. I'M TRYING TO FIND YOUR FORM 50 HERE. HERE IT IS.
25 IT LOOKS LIKE YOUR FORM 50 WAS FILED APRIL 2ND,

SHEET 19 PAGE 73

1 2009. HAD YOU EVER FILED ANYTHING PRIOR TO THAT
 2 DATE?
 3 A. WE HAD STARTED TALKING, WAS IT -- SEVERAL MONTHS
 4 BEFORE THAT.
 5 BY MR. CHURDAR:
 6 I DIDN'T EVEN KNOW HE RESIGNED UNTIL ABOUT A
 7 WEEK AGO.
 8 EXAMINATION RESUMED BY MR. RENFROW:
 9 Q. NO, I'M ASKING YOU, IS THIS THE FIRST FILING, APRIL
 10 2ND, 2009?
 11 A. YES, THAT'S WHEN THE 50 WAS FILED.
 12 Q. OKAY, GOOD ENOUGH.
 13 A. SO, THERE'S DEFINITELY NO -- NO CONNECTION BETWEEN
 14 THAT AND MY RESIGNING FROM JACKSON DAWSON.
 15 Q. OKAY. SO THAT DIDN'T PLAY A ROLE IN YOUR DECISION
 16 TO LEAVE?
 17 A. NO. IF I WERE STILL EMPLOYED, I WOULD STILL GO
 18 THROUGH THIS PROCESS.
 19 Q. DID YOU TELL ANYBODY AT JACKSON DAWSON THAT YOU WERE
 20 PLANNING ON FILING A WORKERS' COMP CLAIM PRIOR TO
 21 APRIL 2ND OF '09?
 22 A. YES, I TOLD BARBARA DeLAURA.
 23 Q. WHEN DID YOU TELL HER?
 24 A. I DON'T KNOW THE EXACT DATE, BUT IT WAS -- IT WAS
 25 THIS YEAR, PROBABLY -- PROBABLY SOMETIME IN JANUARY

PAGE 74

OR EARLY FEBRUARY.
 2 Q. WAS IT AROUND THE TIME THAT YOU RESIGNED?
 3 A. IT WAS BEFORE. IT WAS BEFORE I EVEN CONSIDERED EVEN
 4 FILING A CLAIM?
 5 Q. AND HOW DID THAT CONVERSATION GO? DID YOU JUST ---
 6 A. I JUST TOLD HER WHAT -- THAT I HAD BEEN TALKING WITH
 7 DOUG CHURDAR ABOUT THIS AND THAT IT LOOKS LIKE THERE
 8 IS A REASON TO CONSIDER THIS. WE HAD BEEN ON A
 9 CONFERENCE CALL LATE FALL AFTER I TALKED WITH BRAD
 10 SHANK WITH THE INSURANCE COMPANY. ~~WE DID A~~
 11 ~~CONFERENCE CALL WITH DAVID MATSON, THE C.F.O. AT~~
 12 ~~JACKSON DAWSON AND BARBARA DeLAURA. I CAN'T~~
 13 ~~REMEMBER THE DATE OF THAT, BUT I THINK IT WAS IN THE~~
 14 ~~FALL SOMETIME OF 2008, AND WE JUST WANTED TO SEE HOW~~
 15 ~~FAR IT WOULD GO AND JUST WITH A CONVERSATION. AND I~~
 16 ~~RECEIVED A LETTER BACK FROM -- THAT THEY WOULD NOT~~
 17 ~~BE -- THEY REJECTED IT.~~
 18 Q. OKAY.
 19 A. THAT'S WHEN WE DECIDED, "WELL, LET'S JUST GO AHEAD
 20 AND SEE IF WE CAN PURSUE IT ANOTHER WAY."
 21 Q. OKAY. NOW, AS I UNDERSTAND IT, YOU HAVEN'T HAD ANY
 22 TROUBLE WITH YOUR GROUP HEALTH PAYING FOR YOUR
 23 MEDICAL TREATMENT, CORRECT?
 24 A. NO.
 25 Q. WITH THE EXCEPTION OF DEDUCTIBLES THEY'VE PAID 100

PAGE 75

1 PERCENT?
 2 A. YES, THEY'VE BEEN -- IT'S BEEN FINE. IT'S BEEN
 3 WORKING JUST AS PLANNED.
 4 Q. AND SO, AS WE SIT HERE TODAY, YOUR OUT-OF-POCKET,
 5 HOW MUCH, WOULD YOU SAY?
 6 A. I HAVEN'T DONE A FULL CALCULATION, BUT, YOU KNOW,
 7 THE TOTAL DEDUCTIBLE IS PROBABLY AROUND FIVE GRAND,
 8 I THINK, FOR THIS, AND THEN I HAD TO BUY SOME STUFF
 9 AROUND.
 10 Q. I NOTICE YOU DON'T HAVE ANY KIND OF CANE, OR ---
 11 A. NO.
 12 Q. --- YOU DON'T HAVE ANY KNEE BRACE OR ANYTHING ON.
 13 A. I CAN WALK. I CAN WALK PRETTY WELL.
 14 Q. AND YOU'VE HAD TWO SURGERIES?
 15 A. TWO SURGERIES.
 16 Q. DO YOU HAVE ANY SCARRING ON YOUR RIGHT LEG?
 17 A. YES, I DO.
 18 Q. CAN I SEE THAT WITHOUT YOUR TAKING YOUR PANTS OFF?
 19 A. OH, YEAH. I'VE GOT TWO SCARS, THIS ONE HERE, THIS
 20 LEG RIGHT HERE.
 21 Q. ALL RIGHT. YOU'RE POINTING TO A SCAR ON THE INSIDE
 22 PORTION TO THE LEFT PORTION OF YOUR RIGHT LEG?
 23 A. YES.
 24 BY MR. RENFROW:
 25 AND IT LOOKS LIKE IT'S SIX TO EIGHT INCHES,

PAGE 76

1 WOULD YOU SAY, DOUG?
 2 BY MR. CHURDAR:
 3 YES.
 4 EXAMINATION RESUMED BY MR. RENFROW:
 5 Q. SIX TO EIGHT INCHES; NOTHING RAISED ABOUT THAT SCAR?
 6 A. NO. IT'S STILL GOT SOME -- IT'S STILL -- IT'S STILL
 7 JOINED AT THE BONE. THERE'S SOME ADHESIONS THAT ARE
 8 HARD TO BREAK.
 9 Q. AND YOU'VE GOT A SECOND SCAR THAT GOES OVER THE
 10 RIGHT SIDE OF YOUR KNEECAP, I'D SAY ON TOP, AND IT'S
 11 PROBABLY FOUR INCHES, WOULD YOU SAY?
 12 A. I THINK SO.
 13 Q. FOUR OR FIVE?
 14 A. YEAH. I ALSO HAVE JUST SOME GENERAL MARKS,
 15 DEPENDING UPON -- IT'S A LITTLE BIT SWOLLEN. HERE'S
 16 ONE RIGHT HERE. I MEAN, IT'S WHERE THEY ATTACHED A
 17 STABILIZING ---
 18 Q. DO YOU HAVE ANY HARDWARE IN YOUR LEG RIGHT NOW?
 19 A. I'VE GOT TWO METAL PLATES, FROM WHAT I UNDERSTAND.
 20 I HAVEN'T ACTUALLY SEEN THEM, BUT TWO METAL PLATES,
 21 ONE ON EITHER SIDE.
 22 Q. AND I THINK THE MEDICAL NOTE SAID THAT IF YOU HAVE
 23 TO HAVE A TOTAL KNEE REPLACEMENT THEY'D TAKE THAT
 24 OUT, IS THAT RIGHT?
 25 A. OH, I WOULD GUESS. I DON'T KNOW EXACTLY WHAT THE

SHEET 20 PAGE 77

1 PROCEDURE IS.
2 Q. OKAY. BUT ASSUMING YOUR LEG FEELS WELL AND YOU
3 DON'T NEED A TOTAL KNEE REPLACEMENT, HAS ANY DOCTOR
4 TOLD YOU YOU'D HAVE TO HAVE THAT HARDWARE TAKEN OUT?
5 A. I'VE NEVER HEARD ANYBODY SAY THAT THAT WOULD HAVE TO
6 BE TAKEN OUT SOMETIME. I GUESS IF IT STARTS CAUSING
7 TROUBLE, WE'D HAVE TO DEAL WITH IT AS IT HAPPENS. I
8 DON'T KNOW.
9 Q. YOU SAID YOU'VE PLAYED SOME SOFTBALL IN YOUR DAY; IS
10 THERE ANY SCARRING ON YOUR RIGHT LEG THAT'S NOT
11 RELATED TO THIS INCIDENT OF OCTOBER 5TH OF '07?
12 A. NO.
13 Q. NONE OF THOSE LITTLE SMALL SCARS?
14 A. THOSE SMALL SCARS WERE FROM THE FIRST SURGERY OF THE
15 TWO.
16 Q. HAVE YOU GOT ANY SCARS ON YOUR LEFT LEG?
17 A. I DON'T THINK SO. I HAVEN'T EVEN THOUGHT ABOUT IT.
18 NO, IT'S A PRETTY NORMAL LOOKING LEG.
19 Q. YOU'VE NEVER HAD ANY CUTS OR SCRAPES FROM SLIDING
20 INTO SECOND BASE?
21 A. IF I HAVE, THEY HAVEN'T LEFT ANY KIND OF MEASURABLE
22 SCARS.
23 Q. NOW, I'VE GOT A BIG STACK OF E-MAILS THAT I GOT
24 RECENTLY THAT I SUBPOENAED AS A RESULT OF THIS CASE.
25 ARE THESE E-MAILS THAT YOU PROVIDED TO ME?

PAGE 78

1 BY MR. CHURDAR:
2 I THINK BY THAT HE MEANS DID YOU GIVE THOSE TO
3 ME AND I GAVE THOSE TO HIM.
4 THE WITNESS ANSWERS:
5 A. YES. I DID -- I DID PROVIDE THESE TO DOUG.
6 EXAMINATION RESUMED BY MR. RENFROW:
7 Q. OKAY.
8 A. AND MAINLY IT WAS I DID NOT KNOW IF THERE WAS -- I
9 DIDN'T KNOW THE EXTENT OF WHAT THIS WAS, AND SO....
10 Q. YOU DIDN'T KNOW THE EXTENT OF WHAT WHAT WAS?
11 A. WHETHER THIS WAS A WORKERS' COMP CLAIM OR NOT. SO I
12 SAID, "HERE IS THE ONLY EVIDENCE I KNOW." AND
13 SO,....
14 Q. ARE YOU AWARE OF ANY OTHER E-MAILS OR CORRESPONDENCE
15 THAT'S OUT THERE OR ANY E-MAILS THAT YOU REMEMBER
16 BUT JUST COULDN'T PUT YOUR FINGER ON?
17 A. OH, I'M SURE THERE ARE. QUITE HONESTLY, IT WOULD BE
18 ALMOST IMPOSSIBLE TO TRACE HOW MANY E-MAILS ARE
19 FLOATING AROUND ABOUT THIS INJURY. I GRABBED ONE I
20 PROBABLY SAVED BY -- JUST BY SHEAR LUCK.
21 Q. WHAT DO YOU MEAN BY SHEAR LUCK?
22 A. STUFF THAT WAS STILL IN MY INBOX OR OUTBOX AT THE
23 TIME THAT DOUG ASKED, "DO YOU HAVE ANY
24 CORRESPONDENCE WHERE WE TALKED ABOUT THE DATE?"
25 Q. NOW, ALL THESE ARE DATED DOWN AT THE BOTTOM RIGHT-

PAGE 79

1 HAND CORNER, JUNE 25TH OF 2008. I MEAN, DID YOU GO
2 SIT DOWN AT YOUR COMPUTER ONE DAY AND JUST PRINT OUT
3 AS MANY E-MAILS AS YOU COULD FIND?
4 A. YEAH. WELL, WHATEVER WAS STILL ON MY -- IN MY INBOX
5 AT THAT TIME WAS THERE.
6 Q. AND WHY DID YOU PRINT THEM OUT?
7 A. BECAUSE I WANTED TO MAKE SURE DOUG UNDERSTOOD REALLY
8 WHAT HAPPENED.
9 Q. SO YOU DID THEM IN PREPARATION FOR THIS LAWSUIT OR
10 WORKERS' COMP CLAIM?
11 A. YEAH, THAT WAS PROBABLY THE FIRST TIME HE AND I HAD
12 TALKED, AND THAT WAS HIS FIRST -- AND I DON'T KNOW
13 EXACTLY WHAT THE LAW IS, WHAT CONSTITUTES A WORKERS'
14 COMP CLAIM. I SAID, "DOUG, ALL I CAN TELL YOU IS
15 WHAT HAPPENED SO I CAN MAIL THOSE COPIES."
16 Q. OKAY.
17 A. SO, THAT GOES BACK TO WHEN I WAS FIRST CONSIDERING
18 WHETHER THERE WAS A POSSIBILITY. THEY GIVE US A
19 DATE, YOU KNOW, WHEN I FIRST TALKED TO DOUG AND
20 FIRST TALKED TO BRAD.
21 Q. GOOD. TELL ME ABOUT ANY PROBLEMS THAT YOU'RE HAVING
22 RIGHT NOW. I THINK YOU DESCRIBED A LITTLE BIT OF
23 PAIN OR SOME PAIN YOU'RE HAVING FROM TIME TO TIME.
24 A. YEAH. ~~ANYTIME I WALK UP AND DOWN STAIRS MY KNEE~~
25 ~~GRINDS~~. AND DR. JERVAY TOLD ME THAT I WOULD

PAGE 80

1 EXPERIENCE THAT. ~~AND IT HURTS, AND IT SOUNDS REALLY~~
2 ~~BAD.~~ WALKING DOWN STAIRS IS MUCH MORE DIFFICULT FOR
3 ME THAN WALKING UP. I ~~GUARANTEE I USUALLY HAVE TO~~
4 ~~WALK ONE STEP AT A TIME AND USE MY LEFT LEG FOR MOST~~
5 ~~OF MY TRANSFER OF WEIGHT FROM ONE STEP TO THE OTHER.~~
6 Q. HOW MANY STEPS DO YOU CLIMB A DAY?
7 A. WELL, I HAVE STEPS IN MY HOUSE.
8 Q. HOW MANY?
9 A. JUST ONE FLOOR; I THINK THAT'S LIKE 17 STEPS,
10 SOMETHING LIKE THAT, SO QUITE A LOT. WHEN I'M JUST
11 -- JUST MOVING ABOUT LIFE THERE'S ALWAYS STEPS.
12 Q. NOW, DO YOU BELIEVE THAT REPETITIVELY GOING UP AND
13 DOWN THOSE STEPS AND BEING ON YOUR FEET EVERY DAY
14 MAKES THAT KNEE WORSE?
15 A. I THOUGHT IT WOULD GET BETTER, TO BE QUITE HONEST.
16 I THOUGHT MAYBE IT WAS JUST WEAK MUSCLES. I THOUGHT
17 MAYBE IF I JUST -- ACTUALLY I STARTED A VERY ACTIVE
18 CAMPAIGN TO START STRENGTHENING MY KNEES AS BEST I
19 COULD AND I STARTED EXERCISING IT, THAT PAIN AND
20 THAT -- AND THAT HAS NEVER GONE AWAY.
21 Q. HAS IT GOTTEN WORSE?
22 A. ~~IT GETS WORSE WHEN I DO IT FOR EXTENDED PERIODS,~~
23 ~~YES.~~
24 Q. I GUESS WHAT I'M GETTING AT, DO YOU FEEL LIKE YOU'RE
25 WORSE TODAY THAN YOU WERE JANUARY 1ST OF '09 OR

SHEET 21 PAGE 81

1 BETTER OR THE SAME?

2 A. PROBABLY IT MAY BE A LITTLE BIT WORSE, BUT PROBABLY

3 ABOUT THE SAME, MORE CLOSELY TO THE SAME. I'M NOT

4 SAYING I HAVE THIS HUGE PRECIPITOUS DROP OFF ON THE

5 USE, BUT IT DOES HURT VERY MUCH. IT COULD BE

6 BETTER. I'M TRAVELING SO MUCH. TRAVELING DOES TAKE

7 A BIG TOLL ON THIS KNEE.

8 Q. DO YOU FEEL LIKE YOUR KNEE TAKES A LOT OF ---

9 A. YES. SITTING IN A -- SITTING IN TIGHT AIRLINE SEATS

10 AND THEN IF I SIT IN THEM FOR TWO TO THREE HOURS AND

11 TRY TO STAND UP, I ACTUALLY FELL OVER SOMEONE THE

12 OTHER DAY WHEN I WAS FLYING JUST BECAUSE MY KNEE

13 JUST GAVE OUT ON ME. IT WAS MOSTLY EMBARRASSING.

14 Q. ARE THERE ANY OTHER PROBLEMS YOU ARE HAVING AS A

15 RESULT OF THIS CASE THAT YOU HAVEN'T TOLD ME ABOUT?

16 A. RESTRICTION OF ACTIVITY IS THE BIGGEST THING, NOT

17 BEING ABLE TO DO THE THINGS THAT I'VE ALWAYS ENJOYED

18 DOING. PLAYING BASKETBALL AND TENNIS. THOSE THINGS

19 DO NOT SEEM POSSIBLE AT THIS POINT. STANDING UP FOR

20 LONG PERIODS OF TIME, WHICH I'M REQUIRED TO DO FOR

21 MY CONTRACT.

22 Q. HOW MANY PRESENTATIONS DO YOU THINK YOU'VE DONE

23 SINCE YOU RESIGNED FROM JACKSON DAWSON?

24 A. I'VE DONE JUST ONE SO FAR, AND I'VE GOT TWO MORE.

25 I'VE GOT TO DO ONE NEXT -- NEXT WEEK AND DO ONE THE

PAGE 83

1 Q. OKAY. WHAT ABOUT SWIMMING; HAVE YOU ---

2 A. I HAVEN'T HAD A CHANCE TO START SWIMMING. I KNOW

3 THAT THAT WOULD BE A GOOD EXERCISE FOR ME. BECAUSE

4 OF MY TRAVEL, I CAN'T MAKE SENSE OF IT.

5 Q. OKAY. IN YOUR LIFE, STEPHEN, HAVE YOU EVER BEEN

6 DIAGNOSED WITH ANY TYPE OF DISEASE OR MEDICAL

7 CONDITION? AGAIN, ARTHRITIS, HIGH BLOOD PRESSURE,

8 CHOLESTEROL, ANYTHING LIKE THAT?

9 A. NO.

10 Q. ANY KIND OF CANCER OR ANYTHING LIKE THAT?

11 A. NO.

12 Q. ALL RIGHT. I HAVE SOME QUESTIONS I ASK AT EVERY

13 DEPOSITION, SO DON'T BE OFFENDED BY THESE.

14 A. OKAY.

15 Q. DO YOU HAVE A CRIMINAL RECORD?

16 A. NO.

17 Q. HAVE YOU EVER PLED GUILTY OR BEEN CONVICTED OF A

18 CRIME?

19 A. NO.

20 Q. DO YOU HAVE ANYTHING CRIMINALLY GOING ON RIGHT NOW

21 THAT HASN'T BEEN ADJUDICATED?

22 A. NO.

23 Q. HAD ANY TREATMENT OR BEEN RECOMMENDED FOR TREATMENT

24 FOR ANY TYPE OF SUBSTANCE ABUSE?

25 A. NO.

PAGE 82

1 WEEK AFTER NEXT.

2 Q. DO YOU FEEL LIKE BEING UP ON YOUR FEET DOING THESE

3 PRESENTATIONS FOR A LONG PERIOD OF TIME MAKES YOUR

4 PROBLEMS WORSE?

5 A. OH, YES. I DEFINITELY HAVE TO TAKE TYLENOL AND

6 RAISE MY LEG FOR A LONG PERIOD OF TIME AFTER A DAY

7 OF LECTURING.

8 Q. I'VE GOT YOU. NOW, HAS ANYTHING HAPPENED SINCE

9 OCTOBER 5TH, 2007, THAT YOU WOULD CONSIDER AN

10 ACCIDENT OR AN EVENT THAT YOU FEEL LIKE HAS MADE THE

11 PROBLEMS WORSE?

12 A. NO.

13 Q. A CAR ACCIDENT OR A SLIP AND FALL OR ANYTHING LIKE

14 THAT, SLIPPED IN THE SHOWER?

15 A. NO. THE ONLY TIME I REALLY HAD ANY PROBLEM WITH IT,

16 WHEN I TRIED TO PLAY SOME BASKETBALL, AND IT JUST

17 GOT -- IT SWELLED UP LIKE A GRAPEFRUIT AFTER THAT.

18 IT TOOK ABOUT TWO DAYS FOR IT TO CALM DOWN.

19 Q. WHEN DID YOU TRY TO PLAY BASKETBALL?

20 A. IT WAS IN THE FALL, SOMETIME IN THE FALL.

21 Q. SO YOU FEEL LIKE PLAYING BASKETBALL AND TENNIS HAS

22 MADE YOUR PROBLEMS WORSE?

23 A. IF I DO, AND I TRIED TENNIS BEFORE JUST RECENTLY TO

24 SEE IF I CAN DO IT, AND I HAD THE SAME PROBLEM. I

25 CAN'T DO IT WITHOUT IT SWELLING UP TERRIBLY.

PAGE 84

1 Q. DO YOU DRINK ALCOHOL?

2 A. NOT ANYMORE.

3 Q. WHEN IS THE LAST TIME YOU HAD AN ALCOHOLIC BEVERAGE?

4 A. FEBRUARY 2009.

5 Q. WHAT WAS GOING ON IN FEBRUARY OF 2009?

6 A. I STARTED WORKING WITH NORTHLAND BAPTIST BIBLE

7 COLLEGE, AND THEY HAVE A POLICY AGAINST IT.

8 Q. OKAY. BUT PRIOR TO THAT, YOU WOULD HAVE AN

9 ALCOHOLIC BEVERAGE?

10 A. YES, AN OCCASIONAL GLASS OF WINE OR A BEER OR

11 SOMETHING.

12 Q. AND DO YOU SMOKE?

13 A. NO.

14 Q. HAVE YOU EVER HAD TREATMENT OR BEEN RECOMMENDED FOR

15 TREATMENT FOR ANY TYPE OF MENTAL OR PSYCHOLOGICAL

16 PROBLEM, DEPRESSION, ANXIETY, OR ANYTHING LIKE THAT?

17 A. NO.

18 Q. DO YOU HAVE ANY PROBLEMS WITH THAT RIGHT NOW?

19 A. NO.

20 Q. I'M GOING TO SHOW YOU A FORM 50. I THINK YOU'VE

21 PROBABLY SEEN IT. IT WAS PREPARED BY YOUR ATTORNEY.

22 A. OKAY.

23 Q. AND ONE OF THE THINGS THAT I WANT TO ASK YOU ABOUT,

24 IT SAYS THAT YOU FELL PARTICIPATING IN AN EMPLOYER-

25 SPONSORED ACTIVITY. TELL ME WHAT THAT MEANS TO YOU.

SHEET 22 PAGE 85

1 WHY WAS THIS AN EMPLOYER-SPONSORED ACTIVITY, OR WHAT
 2 ABOUT THIS EVENT MADE IT AN EMPLOYER-SPONSORED
 3 ACTIVITY?
 4 A. IT WAS FOR THE BENEFIT OF JACKSON DAWSON AND ITS
 5 EMPLOYEES.
 6 Q. HOW WAS IT FOR THE BENEFIT OF THE EMPLOYEES?
 7 A. WE WERE TRYING TO DO TEAM BUILDING, AND, YOU KNOW,
 8 IT WAS JUST A -- WE THOUGHT IT WAS A CLEVER, FUN,
 9 CREATIVE WAY OF DOING THAT, GETTING EVERYBODY
 10 TOGETHER, HAVE SOME FUN TOGETHER. JACKSON DAWSON IS
 11 A GREAT ENVIRONMENT WITH VERY VERY ACTIVE AND FUN
 12 PEOPLE, AND WE'VE ALWAYS LOOKED FOR WAYS OF MAKING A
 13 WORK HARD, PLAY HARD KIND OF ENVIRONMENT. AND SO,
 14 THIS WAS ONE OF THE WAYS WE THOUGHT THIS WOULD BE A
 15 GREAT WAY TO DRAW PEOPLE TOGETHER, CREATE MORE
 16 CONNECTIONS BETWEEN PEOPLE, BLOW OFF SOME STEAM. AT
 17 THAT TIME, WE WERE WORKING PRETTY HARD, SO IT WAS A
 18 GOOD, KIND OF A PRESSURE VALVE FOR US TO PUSH.
 19 Q. LET ME ASK YOU THIS: IF IT WASN'T A KICKBALL EVENT,
 20 WOULD YOU ALL HAVE GONE TO APPLEBEE'S ---
 21 A. YEAH.
 22 Q. --- TO HAVE AN EARLY SUPPER? WOULD THAT BE THE SAME
 23 THING? WOULD YOU BELIEVE THAT TO BE AN EMPLOYEE-
 24 SPONSORED EVENT AS WELL?
 25 A. THIS WAS A LITTLE BIT DIFFERENT BECAUSE WE DID THIS

PAGE 87

1 KICKBALLS, WAS THAT SOMETHING THE Y.M.C.A. HAD, OR
 2 DID YOU PAY FOR THOSE, OR DID JACKSON DAWSON PAY FOR
 3 THOSE?
 4 A. YOU KNOW, I'M HAVING A ROUGH TIME REMEMBERING WHERE
 5 THOSE CAME FROM, BUT WE DID HAVE THEM THERE. IT
 6 COULD HAVE VERY WELL BEEN THAT WE BORROWED THE ONES
 7 FROM THE Y.M.C.A.
 8 Q. WERE THERE ANY REFEREES?
 9 A. WE SUPPLIED OUR OWN.
 10 Q. DID YOU PAY THEM?
 11 A. WELL, THEY WERE -- NO. IT WAS KEVIN AND, I THINK,
 12 DARRELL.
 13 Q. SO THEY WERE EMPLOYEES; IS THAT WHAT YOU'RE SAYING?
 14 A. YEAH. SO, WE -- IT WAS JUST FUN. IT WAS ALL DONE
 15 BY US AND FOR US.
 16 Q. NOW, DURING THE WEEK, BACK WHEN YOU WERE AN EMPLOYEE
 17 OF JACKSON DAWSON, DID YOU ALL EVER GO TO LUNCH
 18 DURING THE DAY?
 19 A. YEAH. YEAH, WE DID.
 20 Q. DID YOU GO AS A GROUP?
 21 A. SOMETIMES AD HOC; SOMETIMES IT WAS ORGANIZED.
 22 Q. ALL RIGHT. HAVE YOU BEEN ON ANY VACATIONS SINCE
 23 OCTOBER 5TH, 2007?
 24 A. YES.
 25 Q. WHERE HAVE YOU BEEN?

PAGE 86

1 DURING WORK HOURS. YOU KNOW, NORMALLY WE WOULD HAVE
 2 BEEN IN THE OFFICE. I THINK THAT'S PROBABLY THE BIG
 3 DIFFERENCE BETWEEN THOSE KINDS OF THINGS.
 4 Q. OKAY.
 5 A. AND THERE WAS -- WE ACTUALLY INVESTED PRETTY HEAVILY
 6 IN IT. I MEAN, WE BOUGHT T-SHIRTS FOR EVERYBODY.
 7 WE RENTED THIS FIELD FOR EVERYBODY, AND WE JUST
 8 ORGANIZED A LOT OF STUFF. I MEAN, IT WAS AN ALL-
 9 HANDS-ON-DECK KIND OF A FUN, CREATIVE ACTIVITY.
 10 Q. OTHER THAN PAYING FOR THE FIELD, WERE THERE T-SHIRTS
 11 MADE, YOU SAID?
 12 A. YES.
 13 Q. OKAY. AND WHO PAID FOR THAT?
 14 A. JACKSON DAWSON DID.
 15 Q. AND THEN WAS THERE ANY OTHER FINANCIAL COMPONENT
 16 THAT JACKSON DAWSON PUT IN?
 17 A. NO. I THINK WE HAD MOST OF THE SUPPLIES. I THINK
 18 WE HAD BOUGHT A FEW KICKBALLS AND, YOU KNOW, KIND OF
 19 SUPPLIES LIKE THAT BUT NOTHING THAT WAS A MAJOR
 20 INVESTMENT. THE TWO BIGGEST INVESTMENTS WERE THE T-
 21 SHIRTS AND THE FIELD.
 22 Q. AND I THINK ONE OF YOUR E-MAILS SAID THE TOTAL COST
 23 WAS AROUND \$440?
 24 A. YEAH, I THINK SO.
 25 Q. WERE THERE THINGS THAT PEOPLE BOUGHT? I MEAN, THE

PAGE 88

1 A. OH, WOW, WHERE HAVE I BEEN ON VACATION SINCE OCTOBER
 2 2007? I WENT TO PENNSYLVANIA.
 3 Q. FOR WHAT?
 4 A. TO VISIT MY WIFE'S FAMILY FOR CHRISTMAS.
 5 Q. WHEN WAS THAT?
 6 A. THAT WAS THIS PAST CHRISTMAS 2008.
 7 Q. OKAY. DID YOU ALL GO ANYWHERE CHRISTMAS 2007?
 8 A. NO, 'CAUSE I WAS -- IT WAS JUST TOO HARD FOR ME TO
 9 MOVE. I WAS STILL ORDERED NOT TO PUT ANY WEIGHT ON
 10 MY LEG AT THAT POINT.
 11 Q. WHERE ELSE HAVE YOU BEEN BESIDES PENNSYLVANIA?
 12 A. ON VACATION; WE DID NOT TAKE AN ORGANIZED FAMILY
 13 VACATION THE SUMMER OF 2008, AND THE KIDS AND BETH
 14 WENT DOWN, AND I STAYED IN GREENVILLE. SO, I DIDN'T
 15 GO, BUT THE FAMILY DID.
 16 Q. DID YOU ALL FLY TO PENNSYLVANIA AND BACK?
 17 A. I FLEW TO PENNSYLVANIA, AND THE FAMILY TRAVELED.
 18 Q. MEANING THEY DROVE?
 19 A. YES.
 20 Q. OKAY. AND YOU'VE BEEN TO WISCONSIN EIGHT OR NINE
 21 TIMES FOR WORK?
 22 A. YES.
 23 Q. HAVE YOU BEEN ON AN OTHER TRIPS OUT OF THE STATE OF
 24 SOUTH CAROLINA?
 25 A. SINCE?

SHEET 23 PAGE 89

1 Q. SINCE OCTOBER 5TH, 2007?
 2 A. I'VE BEEN A LOT OF PLACES, CALIFORNIA.
 3 Q. FOR WHAT?
 4 A. FOR BUSINESS.
 5 Q. BUSINESS WITH JACKSON DAWSON OR BUSINESS WITH ---
 6 A. ON SOME PERSONAL BUSINESS.
 7 Q. PERSONAL BUSINESS.
 8 A. WASHINGTON, D.C.
 9 Q. FOR WHAT?
 10 A. WORK WITH JACKSON DAWSON. SAN DIEGO, THAT'S TWO
 11 TRIPS TO CALIFORNIA. THAT WAS FOR JACKSON DAWSON,
 12 THAT SAN DIEGO TRIP.
 13 Q. OKAY.
 14 A. AKRON, OHIO, THAT WAS FOR JACKSON DAWSON. I'M
 15 PROBABLY MISSING A BUNCH; I'M SORRY. I'M JUST
 16 TRYING TO REMEMBER THE ONES I CAN REMEMBER.
 17 Q. IS THERE SOMETHING, THOUGH, THAT YOU COULD GO BACK
 18 AND IF I NEEDED IT, TO KNOW EXACTLY WHERE YOU
 19 TRAVELED?
 20 A. WELL, I'D TO HAVE ACCESS TO MY DATE, MY OUTLOOK AT
 21 JACKSON DAWSON. I DON'T THINK I HAVE THAT
 22 INFORMATION.
 23 Q. WOULD YOU BE ABLE TO GIVE ME EVERYTHING YOU'VE DONE
 24 SINCE YOU'VE RESIGNED FROM JACKSON DAWSON?
 25 A. YES.

PAGE 91

1 A. REDEEMER PRESBYTERIAN.
 2 Q. ARE YOU INVOLVED IN ANY WAY WITH THE CHURCH AS FAR
 3 AS LIKE A DEACON OR TEACH SUNDAY SCHOOL OR ANYTHING
 4 LIKE THAT?
 5 A. I HAVE BEEN A DEACON. I RESIGNED SHORTLY AFTER MY
 6 ACCIDENT BECAUSE IT WAS JUST TOO DIFFICULT.
 7 Q. DO YOU HAVE ANY PICTURES ON YOUR FACEBOOK ACCOUNT
 8 RIGHT NOW?
 9 A. JUST ONE.
 10 Q. JUST ONE PICTURE? WHAT'S THAT PICTURE OF?
 11 A. IT'S ME SO THAT PEOPLE CAN SEE MY PICTURE.
 12 Q. I GOTCHA.
 13 A. IT'S NOT A VERY ACTIVE FACEBOOK PAGE; IT'S PRETTY
 14 BORING.
 15 Q. I DON'T KNOW IF I ASKED YOU THIS SPECIFICALLY, BUT
 16 AS I UNDERSTAND IT, YOU FRACTURED OR BROKE YOUR
 17 TIBIA, IS THAT RIGHT?
 18 A. YEAH. I WAS TOLD THE TIBIA AND THE FIBULA HAD BOTH
 19 BEEN SHATTERED, AND MOST BREAKS ARE LIKE THE BONE
 20 BREAKS LIKE THIS. MINE BROKE LIKE THAT (WITNESS
 21 GESTURES).
 22 Q. OKAY. AND HOW DID YOUR KNEE COME INTO PLAY WITH
 23 THIS?
 24 A. AT THE VERY TOP OF THE TIBIA, THERE'S WHAT IS CALLED
 25 THE TIBIAL PLATEAU. IT'S USUALLY A NICE, SMOOTH,

PAGE 90

1 Q. OKAY. HAVE YOU BEEN ON ANY TRIPS WITH THE FAMILY IN
 2 THE STATE, MYRTLE BEACH OR CHARLESTON OR ANY OF THE
 3 BEACHES?
 4 A. WE DID GO DOWN FOR A WEEKEND AS A FAMILY LAST AUGUST
 5 TO CHARLESTON.
 6 Q. WHAT DID YOU ALL DO?
 7 A. WE JUST WENT TO THE BEACH AND JUST KIND OF HUNG OUT.
 8 Q. DID YOU ALL TAKE FAMILY PICTURES?
 9 A. I'M SURE THE GIRLS DID. I JUST DON'T READ THEIR
 10 FACEBOOK PAGES, ABOVE ALL THINGS.
 11 Q. FACEBOOK; DO YOU HAVE A FACEBOOK PAGE?
 12 A. YES, I DO.
 13 Q. DO YOU HAVE A MYSPACE?
 14 A. NO.
 15 Q. WHAT ABOUT TAG; HAVE YOU EVER HEARD OF TAG?
 16 A. NO.
 17 Q. DO YOU HAVE ANY OTHER WEBSITES?
 18 A. JUST FACEBOOK, AND THAT'S IT.
 19 Q. DOES STEPHEN WHIGHAM CONSULTING HAVE A WEBSITE?
 20 A. NO.
 21 Q. HOW DO YOU MARKET YOURSELF?
 22 A. PERSONAL RELATIONSHIPS.
 23 Q. ARE YOU A MEMBER OF A CHURCH?
 24 A. YES, I AM.
 25 Q. WHAT CHURCH?

PAGE 92

1 FLAT SURFACE. WELL, MINE SHATTERED, SO IT BROKE UP
 2 INTO ABOUT, I THINK THEY SAID FIVE TO SEVEN PIECES.
 3 SO THEY HAD TO BRING IT ALL BACK TOGETHER AND LET IT
 4 HEAL. AND WHEN IT HEALED, IT DID NOT HEAL A NICE,
 5 SMOOTH PLATEAU LIKE IT NORMALLY IS WHEN THE LEG IS
 6 NOT DAMAGED. IT WAS UNEVEN SO THAT THE -- WHATEVER
 7 THAT WHOLE MEMBRANE IS AT THE TOP OF THAT TIBIAL --
 8 THE TIBIAL PLATEAU THAT USES LUBRICATION, IT GETS
 9 VERY IRRITATED BECAUSE OF THE UNEVEN SURFACE
 10 UNDERNEATH IT, SO IT GETS INFLAMED VERY QUICKLY.
 11 THAT'S WHAT I UNDERSTAND IS MY MAJOR PROBLEM.
 12 Q. HAD YOU EVER HAD ANY SWELLING OR PAIN IN YOUR RIGHT
 13 KNEE PRIOR TO OCTOBER 5TH, 2007?
 14 A. NO.
 15 Q. ZERO?
 16 A. ZERO.
 17 Q. IN YOUR LIFE, HAVE YOU EVER BEEN INVOLVED IN ANY
 18 OTHER LAWSUITS OF ANY KIND?
 19 A. YES.
 20 Q. WHAT KIND?
 21 A. I'VE GOT A BUSINESS LAWSUIT GOING ON IN THE STATE OF
 22 ALABAMA RIGHT NOW.
 23 Q. ARE YOU THE PLAINTIFF OR THE DEFENDANT?
 24 A. I AM THE PLAINTIFF.
 25 Q. SO YOU HAVE FILED A COMPLAINT AGAINST SOMEBODY?

SHEET 24 PAGE 93

1 A. YES.
2 Q. AND THAT HAS SOMETHING TO DO WITH YOUR BUSINESS?
3 A. YES.
4 Q. STEPHEN WHIGHAM CONSULTING?
5 A. NO, ACTUALLY IT'S ESBEER INDUSTRIES.
6 Q. WHAT IS THAT?
7 A. I THINK I MENTIONED THIS TO YOU BEFORE. WE STARTED
8 -- I HAD SOME FRIENDS -- THIS IS AFTER HURRICANE
9 KATRINA. I GREW UP ON THE GULF COAST OF
10 MISSISSIPPI, SO I HAVE A LOT OF CONNECTIONS DOWN
11 THERE. MY PARENTS -- WHEN I WAS A TEENAGER, WE HAD
12 TAKEN SOME FOSTER CHILDREN. ONE OF THOSE KIDS
13 STAYED REALLY CLOSE TO OUR FAMILY. HIS NAME IS
14 STEVE, STEVE PRICE. HE LOST HIS JOB. HE WAS A
15 SHRIMPER DOWN THERE. AFTER HURRICANE KATRINA, IT
16 COMPLETELY WIPED HIM OUT. HE LOST HIS HOME,
17 EVERYTHING. HE CAME UP TO SEE ME AND SAID, "HEY, I
18 CAN START A BUSINESS IF I HAD THE EQUIPMENT, DOING
19 HURRICANE CLEANUP, DEBRIS PICKUP." SO I HELPED HIM
20 GET THAT STARTED. I BOUGHT A QUARTER OF A MILLION
21 DOLLARS WORTH OF EQUIPMENT AND SENT IT DOWN TO HIM
22 WITH TWO OTHER BUSINESSMEN HERE IN GREENVILLE.
23 Q. SO YOU AND TWO OTHER GUYS WENT IN AND SPENT
24 \$250,000?
25 A. YEAH.

PAGE 94

1 Q. OKAY.
2 A. AND SO, WE SHIPPED ALL THE EQUIPMENT DOWN TO HIM SO
3 HE COULD START THE BUSINESS. AND SO, THE FOREMAN
4 THAT WE HIRED THOUGHT HE WAS -- THOUGHT HE HAD A
5 COMPLAINT AGAINST ME, THOUGHT WE WEREN'T PAYING HIM
6 ENOUGH. WE JUST DISSOLVED THE BUSINESS IN MARCH OF
7 2006. HE REFUSED TO GIVE US SOME OF THE EQUIPMENT
8 BACK, SO I HAD TO SUE FOR IT, SUE FOR GETTING THE
9 EQUIPMENT BACK.
10 Q. OKAY. AND THAT'S STILL GOING ON?
11 A. IT'S STILL GOING ON.
12 Q. HAS ANYTHING BEEN DETERMINED?
13 A. SADLY, NO.
14 Q. AND YOU HAVE LAWYERS THERE THAT ARE HELPING YOU WITH
15 THAT?
16 A. YES.
17 Q. AND WHO ARE THE OTHER TWO BUSINESSMEN HERE IN
18 GREENVILLE THAT WENT IN WITH YOU?
19 A. THE ONLY ONE STILL REMAINING IS BOB GLAZEBROOK.
20 Q. OKAY. IS HE A PART OF THE LAWSUIT?
21 A. YES.
22 Q. AND IT IS S & B INDUSTRIES?
23 A. IT'S E-S-B-E-E INDUSTRIES.
24 Q. VERSUS?
25 A. TERRY JOHNSON. IT'S IN MOBILE COUNTY.

PAGE 95

1 Q. ALL RIGHT. ANY OTHER LAWSUITS OF ANY KIND?
2 A. THAT'S IT.
3 Q. HAVE ANY COUNTER CLAIMS BEEN FILED BACK AGAINST YOU?
4 A. NOT YET.
5 Q. OKAY. IS THERE A DATE SET FOR TRIAL?
6 A. WE HAVE BEEN CONTINUED SIX TIMES.
7 Q. I GOT YOU. AND NOBODY HAS DEPOSED YOU?
8 A. I DON'T KNOW HOW DEEP YOU WANT TO GO INTO THIS, BUT
9 IT'S A BAD STORY.
10 Q. SO NOBODY HAS DEPOSED YOU?
11 A. NOBODY HAS EVER DEPOSED ME.
12 Q. HAVE YOU DEPOSED ANYBODY?
13 A. MY ATTORNEYS HAVE DEPOSED THE JOHNSONS, TERRY AND
14 MICHELE.
15 Q. OKAY. HAS IT BEEN A TOUGH LEGAL BATTLE?
16 A. OH, IT'S BEEN HORRIBLE.
17 Q. OKAY. AND ARE YOU INVOLVED IN SPLITTING THE COST OF
18 THE LITIGATION?
19 A. WE HAVE SETTLED, AND I HAVE GOTTEN HIM FREE. AND SO
20 IT'S PRETTY MUCH MY -- IT'S ON MY SHOULDERS NOW.
21 Q. SO YOU ARE BASICALLY FUNDING THE FIGHT?
22 A. YES.
23 Q. A PRETTY EXTENSIVE FIGHT?
24 A. EXTREMELY.
25 Q. HOW MUCH WOULD YOU SAY YOU'RE OUT OF POCKET AT THIS

PAGE 96

1 POINT?
2 A. THE LAST TIME I CALCULATED, IT WAS ALMOST \$100,000.
3 Q. AND THAT'S WITH THE DAMAGES FROM THE EQUIPMENT AND
4 FROM THE LEGAL FEES?
5 A. EVERYTHING. I DON'T KNOW IF YOU HAVE ENOUGH TAPE TO
6 GO THROUGH THAT WHOLE STORY.
7 BY MR. CHURDAR:
8 I HOPE HE DOESN'T.
9 BY MR. RENFROW:
10 WE PROBABLY HAVE ENOUGH TAPE, BUT I'M PROBABLY
11 NOT GOING INTO TOO MUCH OF IT TODAY.
12 EXAMINATION RESUMED BY MR. RENFROW:
13 Q. BUT AT THIS POINT, YOU'RE OUT OF POCKET \$100,000?
14 A. YEAH.
15 Q. OKAY. AND IS THAT SOMETHING YOU JUST HAD TO -- HAVE
16 YOU PAID ALL THOSE DEBTS, OR ARE YOU IN DEBT?
17 A. NO. I'M IN DEBT TO PAY IT.
18 Q. OKAY. DOES THAT HAVE ANYTHING TO DO WITH WHY YOU
19 ARE FILING THIS CLAIM?
20 A. NO.
21 BY THE WITNESS:
22 CAN I MENTION WHY I AM REALLY FILING THIS
23 CLAIM?
24 BY MR. CHURDAR:
25 YES.

SHEET 25 PAGE 97

1 EXAMINATION RESUMED BY MR. RENFROW:
2 Q. PLEASE, TELL ME.
3 A. I AM JUST AFRAID IF I NEED TO HAVE SURGERY ON THIS
4 KNEE AGAIN, I JUST WANT TO KNOW I WOULD BE COVERED,
5 THIS BEING A PREEXISTING CONDITION OR NOT.
6 Q. THAT'S WHY YOU'RE FILING THIS WORKERS' COMP CLAIM?
7 A. YEAH. WHEN I TOLD THAT -- HE WAS PRETTY -- YOU
8 KNOW, JERVAY WAS PRETTY CONVINCING THAT SOMETHING
9 WOULD HAVE TO BE DONE. MY ONLY CONCERN IS THAT I
10 NEEDED IT DONE WITHOUT HAVING TO....
11 Q. WELL, HAS UNITED HEATHCARE COME TO YOU AND SAID,
12 "WE'RE NOT PAYING FOR ANYTHING ELSE FOR THIS"?
13 A. WELL, I JUST -- YOU NEVER KNOW WHAT'S GOING TO
14 HAPPEN IN THE FUTURE; YOU KNOW WHAT I'M SAYING?
15 Q. YEAH.
16 A. IF THIS GETS CLASSIFIED AS A PREEXISTING CONDITION,
17 THAT'S MY BIG CONCERN. AND THAT'S THE WHOLE
18 MOTIVATION BEHIND THIS, NO OTHER.
19 Q. DURING YOUR LIFE, STEPHEN, HAVE YOU EVER FILED FOR
20 BANKRUPTCY?
21 A. NO.
22 Q. DO YOU HAVE ANY PLANS TO?
23 A. NO.
24 Q. AND I DIDN'T KNOW ABOUT ESBEE INDUSTRIES, I DON'T
25 THINK.

PAGE 98

1 A. YEAH.
2 Q. IS THERE ANY OTHER COMPANIES THAT YOU'VE OWNED IN
3 YOUR LIFE OTHER THAN THAT?
4 A. YEAH. THAT ONE IS BECAUSE I WAS NOT REALLY A
5 MATERIAL PARTICIPANT IN THAT. THAT WAS MAINLY JUST
6 TO....
7 Q. VENTURE CAPITAL?
8 A. VENTURE CAPITAL. I DIDN'T REALLY LIST THAT, BUT,
9 YEAH, THAT'S IT.
10 Q. ANY OTHER COMPANIES?
11 A. NONE I CAN THINK OF, NO.
12 Q. WHAT'S YOUR FIRM'S NAME DOWN IN MOBILE?
13 A. BURR AND FORMAN.
14 Q. ALL RIGHT. I THINK WE'RE DONE, BUT CAN YOU GIVE US
15 ONE MINUTE AND LET US WALK OUTSIDE.
16 A. SURE.
17 (OFF THE RECORD)
18 EXAMINATION RESUMED BY MR. RENFROW:
19 Q. STEVE, YOU UNDERSTAND YOU'RE STILL UNDER OATH?
20 A. YES.
21 Q. OKAY. AND I DIDN'T GO INTO THIS AS MUCH EARLIER,
22 BUT I NEED TO BECAUSE IT'S REAL IMPORTANT FOR ME,
23 YOUR CURRENT INCOME AND YOUR INCOME POTENTIAL AT
24 THIS TIME -- AS I UNDERSTAND IT, YOU'RE MAKING ABOUT
25 \$12,000 A MONTH, IS THAT RIGHT?

PAGE 99

1 A. YES. IT'S A LITTLE HARD TO JUDGE AT THIS POINT.
2 I'M ONLY THREE MONTHS INTO IT.
3 Q. OKAY. AND IF THAT CONTINUES, YOU'RE GOING TO BE
4 MAKING ABOUT \$144,000, \$145,000 A YEAR?
5 A. IT WON'T HAPPEN.
6 Q. IT WON'T HAPPEN? WHY?
7 A. IF I STAY ENGAGED WITH NORTHLAND, THEY CAN'T AFFORD
8 MY CURRENT RATE. I'M HAVING TO RENEGOTIATE WITH
9 THEM.
10 Q. HAVE YOU ALREADY DISCUSSED THAT WITH THEM?
11 A. YES.
12 Q. HAVE THEY GIVEN YOU AN OFFER FOR RENEGOTIATION?
13 A. THE BIGGEST THING IS THAT THEY'RE TRYING TO HELP ME
14 GET THROUGH THIS CASE IN ALABAMA.
15 Q. OKAY.
16 A. SO THEY'RE DOING ME A BIG FAVOR BY KEEPING THE
17 RETAINER AS HIGH AS IT IS.
18 Q. SO THEY ARE AWARE OF YOUR HAVING THIS LAWSUIT IN
19 ALABAMA?
20 A. YES.
21 Q. ARE THEY AWARE OF THIS WORKERS' COMP CLAIM?
22 A. THEY ARE NOT.
23 Q. OKAY. WHY WOULD THEY BE WANTING TO HELP YOU GET
24 THROUGH A LAWSUIT IN ALABAMA THAT HAS NOTHING TO DO
25 WITH THEM?

PAGE 100

1 A. THEIR DRUTHERS WOULD BE -- IF THAT'S A WORD,
2 DRUTHERS. THEY WOULD WELCOME ME COME -- TO GO ON
3 STAFF WITH THEM.
4 Q. OH, OKAY.
5 A. AND I JUST SAY, "LISTEN, I CANNOT BECAUSE I'VE GOT
6 ALL THIS HUGE LEGAL" ---
7 Q. DEBT?
8 A. --- "PROBLEM GOING ON." AND MY OBJECTIVE IS TO
9 REDUCE MY RETAINER WITH THEM AS SOON AS I POSSIBLY
10 CAN.
11 Q. I GOT YOU.
12 A. SO, IF I CAN LOAD UP EVEN MORE WORK OUTSIDE OF THAT
13 CONTRACT, I WILL REDUCE MY RETAINER.
14 Q. OKAY. I GUESS WHAT I'M GETTING AT, THOUGH, IS WITH
15 WHIGHAM CONSULTING, ARE YOU BUILDING THAT BUSINESS
16 BECAUSE THAT'S WHAT YOU PLAN TO DO FOR THE NEXT 20
17 YEARS OF YOUR LIFE?
18 A. NO, IT'S A BRIDGE.
19 Q. IT'S JUST A BRIDGE. I GOTCHA. OKAY. SO IN TERMS
20 OF INCOME POTENTIAL, YOU'RE NOT OUT SOLICITING
21 BUSINESS FROM OTHER CLIENTS AND THINGS LIKE THAT?
22 A. NO.
23 Q. YOU'RE NOT PLANNING ON WHIGHAM'S CONSULTING TO
24 EXIST?
25 A. NO.

SHEET 26 PAGE 101

PAGE 103

1 Q. AND THEN WHAT'S THE NEXT STEP, STEVE; WHAT'S YOUR
2 PLAN?
3 A. THERE ARE TWO THINGS FOR POSSIBILITIES. ONE OF THEM
4 IS TO BE FULLY GAINFULLY EMPLOYED AT NORTHLAND
5 INTERNATIONAL UNIVERSITY. OR SECONDLY IS TO BEGIN A
6 NEW VENTURE THAT I'VE BEEN WORKING ON FOR QUITE SOME
7 TIME.
8 Q. AND WHAT'S THAT VENTURE?
9 A. IT'S ON PAPER RIGHT NOW. IT'S CALLED STEPHEN NEAL'S
10 MUSIC STORE.
11 Q. WHAT IS THAT?
12 A. SELLS MUSICAL EQUIPMENT. I'M A MUSICIAN.
13 Q. OKAY. WHAT DO YOU PLAY?
14 A. PIANO AND DRUMS.
15 Q. SO YOU WOULD JUST SELL MUSIC EQUIPMENT?
16 A. MUSIC EQUIPMENT, YEAH.
17 Q. NOW, WHAT WOULD YOU DO IF YOU WERE HIRED BY
18 NORTHLAND?
19 A. DO WHAT I'M DOING NOW.
20 Q. CREATIVE DESIGN; IS THAT WHAT YOU CALL IT?
21 A. NO, IT'D BE MORE LIKE MARKETING AND MANAGEMENT.
22 Q. AND WOULD YOU BE HEADQUARTERED IN SOUTH CAROLINA OR
23 WISCONSIN?
24 A. THEY WANT ME TO COME TO WISCONSIN.
25 Q. IS THAT SOMETHING YOU WOULD CONSIDER?

1 RELATIONSHIPS THAT YOU HAD AS AN EMPLOYEE OF JACKSON
2 DAWSON THAT YOU ARE CURRENTLY DOING CONSULTING WORK
3 OTHER THAN NORTHLAND?
4 A. WHAT I'M DOING NOW IS I'M HELPING THEM CONTINUE A
5 RELATIONSHIP THAT THEY HAD WITH MICHELIN.
6 Q. HELPING WHO?
7 A. JACKSON DAWSON. AND THEY PRIMARILY AT ---
8 Q. ARE YOU DOING ANY SIDE CONSULTING FOR MICHELIN
9 SEPARATE AND APART FROM THAT RELATIONSHIP?
10 A. NO.
11 Q. ANYBODY ELSE?
12 A. JUST THE CLARITY FUND.
13 Q. SO THOSE THREE: THE CLARITY FUND, JACKSON DAWSON,
14 AND NORTHLAND.
15 A. YES, AND NORTHLAND. JACKSON DAWSON IS AWARE OF THE
16 CLARITY FUND AS WELL.
17 Q. SURE, BUT WHAT I'M ASKING YOU, THOUGH, ARE YOU OUT
18 LOOKING AT OTHER CLIENTS, TOO, AT THIS TIME TO SORT
19 OF BRIDGE THAT GAP?
20 A. IF THEY COME, I PROBABLY WILL PAY ATTENTION, YOU
21 KNOW. I WOULD NOT -- I WOULD NOT TURN WORK AWAY.
22 Q. HAVE YOU PURSUED ANY CLIENT, THOUGH, THAT YOU ALSO
23 HAD AS A CLIENT WHEN YOU WERE AN EMPLOYEE AT JACKSON
24 DAWSON?
25 A. NO.

PAGE 102

PAGE 104

1 A. I WOULD IF THAT'S WHERE THE LORD LEADS.
2 Q. SURE.
3 A. RIGHT NOW THEY CAN'T -- THEY CAN'T AFFORD ME TO COME
4 UP AND STILL -- WE'VE GOT TO -- WE'VE GOT TO FIGURE
5 SOMETHING OUT. I'M IN NEGOTIATIONS WITH THEM.
6 RIGHT NOW, I'M NOT.
7 Q. NOW, WOULD THAT POSITION ALLOW YOU TO MAKE AT LEAST
8 \$100,000 A YEAR?
9 A. NO WAY. THEY'VE ALREADY SHARED WHAT KIND OF NUMBERS
10 I WOULD GET.
11 Q. WHAT ARE WE TALKING ABOUT?
12 A. \$41,000.
13 Q. OKAY. SO IT WOULD HAVE TO BE SOMETHING YOU FELT THE
14 LORD WAS LEADING YOU TO DO BECAUSE YOU'D TAKE A
15 SIGNIFICANT PAY CUT?
16 A. EXACTLY, AND I'VE JUST GOT TO GET FREE FROM ALL THIS
17 STUFF IN ORDER FOR THAT TO OCCUR.
18 Q. SURE. AND FREE FROM ALL OF THIS STUFF; WHAT DO YOU
19 MEAN?
20 A. MAINLY THE LAWSUIT IN ALABAMA.
21 Q. AS FAR AS THIS CASE, YOU'RE OUT OF POCKET \$6,000?
22 A. YEAH. THAT'S ALREADY BEEN -- WE'VE ALREADY PAID
23 MOST OF THAT. WE'RE STILL MAKING A FEW PAYMENTS, I
24 THINK, TO THE ANESTHESIOLOGIST OR SOMETHING, BUT....
25 Q. I GOT YOU. ARE THERE ANY OTHER BUSINESS

1 Q. OKAY. AND WHEN I SAY PURSUE, HAVE YOU CONTACTED
2 THEM, WANTED TO SIT DOWN WITH THEM TO DISCUSS IT,
3 DOING BUSINESS?
4 A. THE ONLY ONE I'VE EVER SAT DOWN AND DISCUSSED IT
5 WITH IS T.C.I., WHICH IS A -- I DID A TRAINING
6 SESSION FOR THEM ON BEHALF OF MICHELIN.
7 Q. NOW, LET'S SAY THIS IS A PERFECT WORLD; YOUR LAWSUIT
8 WENT AWAY AND THAT ALABAMA THING, AND YOU HAD \$6,000
9 TO MAKE YOU WHOLE FROM THIS WORKERS' COMPENSATION
10 CLAIM. IF THAT WERE TRUE TODAY AND TOMORROW YOU
11 WERE OFFERED A JOB BY NORTHLAND, WOULD YOU TAKE IT?
12 A. REGARDLESS OF THE WORKERS' COMP, WHATEVER HAPPENS
13 THERE, IF ALABAMA CLEARS UP, I WOULD TAKE THE
14 NORTHLAND JOB. THAT'S THE ONLY CONTINGENCY.
15 ~~Q. MAKING \$41,000 A YEAR?~~
16 ~~A. MM-HMM (AFFIRMATIVE RESPONSE)~~
17 Q. "YES"?
18 A. IF I COULD SELL MY HOUSE AS WELL.
19 Q. I GOTCHA.
20 A. I CANNOT AFFORD MY HOUSE ON THAT SALARY.
21 Q. OKAY. AND WOULD YOU HAVE ANY OTHER JOBS WITH THE
22 UNIVERSITY OR WITH THE COLLEGE?
23 A. I HAVE ALWAYS TOLD JACKSON DAWSON -- JACKSON
24 MARKETING GROUP, THAT I WOULD BE EAGER TO HELP THEM
25 WITH MICHELIN CONTRACTS, AND I'VE TOLD NORTHLAND

SHEET 27 PAGE 105

1 THAT AS WELL.
 2 Q. SO IT'S SOMETHING YOU COULD DO; YOU COULD STILL WORK
 3 FOR NORTHLAND AND STILL DO SOME OF THIS STUFF ON THE
 4 SIDE?
 5 A. YES. RIGHT, I CAN HELP OUT. JACKSON MARKETING
 6 GROUP HAS TWO CONTRACTS THAT NEED MY SERVICES
 7 PRIMARILY TO MICHELIN. ONE OF THEM IS TO TRAIN SOME
 8 OF THEIR DEALERS IN ADVERTISING AND PROMOTIONS.
 9 ANOTHER ONE IS TO TRAIN THEIR MARKETING GROUPS IN
 10 THE MARKETING PRINCIPLES. THOSE TWO CONTRACTS ARE
 11 THE TWO THAT I HAVE TOLD JACKSON MARKETING GROUP I
 12 WOULD FULLY SUPPORT AND HELP THEM WITH REGARDLESS OF
 13 MY RELATIONSHIP WITH NORTHLAND.
 14 Q. WHO IS YOUR CONTACT OVER AT MICHELIN?
 15 A. MY CONTACT IS THROUGH JACKSON DAWSON.
 16 Q. WELL, WHO IS IT?
 17 A. IT'S LOWELL ECKART.
 18 Q. LOWELL ECKART, AND HE IS WITH ---
 19 A. JACKSON DAWSON.
 20 Q. JACKSON DAWSON?
 21 A. YES.
 22 Q. DO YOU NOT HAVE A CONTACT THAT YOU DEAL WITH AT
 23 MICHELIN?
 24 A. I PURPOSELY DO NOT. THIS ALL GOES THROUGH MICHELIN.
 25 Q. WHY DO YOU PURPOSELY NOT?

PAGE 106

1 A. BECAUSE I WANT THEM TO UNDERSTAND THAT IT'S A
 2 JACKSON MARKETING GROUP RELATIONSHIP.
 3 Q. I GOT YOU.
 4 A. BUT I DO DEAL WITH MICHELIN PEOPLE, BUT IT ALL GOES
 5 THROUGH THE JACKSON MARKETING GROUP ASSOCIATION.
 6 Q. WHO IS THE CONTACT OVER THERE, THOUGH, TO DO
 7 BUSINESS WITH?
 8 A. JOHN HARGRAVE.
 9 Q. AND YOU'VE NEVER APPROACHED HIM ABOUT DOING BUSINESS
 10 SEPARATE AND APART FROM ---
 11 A. NO.
 12 Q. ALL RIGHT.
 13 A. WE HAVE KEPT THE E-MAIL ACCOUNT AT JACKSON MARKETING
 14 GROUP JUST TO MAINTAIN THAT RELATIONSHIP.
 15 Q. THIS IS A PERSONAL QUESTION: HOW MUCH DO YOU WEIGH?
 16 A. TWO HUNDRED AND FIFTY POUNDS.
 17 Q. DO YOU WEIGH ANY MORE OR ANY LESS THAN YOU WEIGHED
 18 OCTOBER 5TH, '07?
 19 A. I WEIGH ABOUT SEVEN OR EIGHT POUNDS LESS.
 20 Q. SO YOU'VE LOST SOME WEIGHT.
 21 BY MR. RENFROW:
 22 ALL RIGHT. I HAVE NO FURTHER QUESTIONS FOR YOU
 23 AT THIS TIME.
 24 BY THE WITNESS:
 25 ALL RIGHT.

PAGE 107

1 BY MR. RENFROW:
 2 THANK YOU.
 3 BY THE WITNESS:
 4 THANK YOU.
 5 BY MR. CHURDAR:
 6 I DON'T HAVE ANY QUESTIONS.
 7 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION WAS
 8 CONCLUDED AT THE HOUR OF 11:55 A.M.)

PAGE 108

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

EMPLOYEE/CLAIMANT: STEPHEN C. WHIGHAM
 EMPLOYER: JACKSON DAWSON COMMUNICATIONS
 CARRIER: THE HARTFORD

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE
 OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS
 SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 107 PAGES
 REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING
 DEPOSITION OF STEPHEN C. WHIGHAM, TAKEN ON THE 2ND DAY OF
 JUNE, 2009.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL
 SEAL THIS 17TH OF JUNE, 2009.

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

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

1 does?

2 MR. CHURDAR: I would like to call him now.

3 THE COURT: Okay. All right.

4 KEVIN JOHNSON,

5 having been first duly sworn, testified as follows:

6 THE COURT: Please state your full name for the
7 record.

8 THE WITNESS: Kevin Johnson.

9 THE COURT: Thank you. Please answer any
10 questions Mr. Churdar has for you first, sir.

11 DIRECT EXAMINATION

12 BY MR. CHURDAR:

13 Q Would you prefer Kevin or Mr. Johnson?

14 A Kevin is a little more friendly.

15 Q All right. I will call you Kevin. You are the
16 executive vice president at Jackson Dawson; is that
17 correct?

18 A Yes.

19 Q And in that capacity you are a member of upper
20 management?

21 A Yes.

22 Q You are satisfied with that term upper management as a
23 formal term to describe -

24 A Yes.

25 Q - the guys at the top or the people at the top?

1 A Correct.

2 Q In October 2007 Steve Whigham was also a member of
3 upper management at Jackson Dawson, correct?

4 A Yes.

5 Q And Steve was a director of the creative department
6 there?

7 A Correct.

8 Q And he reported directly to you?

9 A Yes.

10 Q And this group of upper management people met
11 approximately two times a month during 2006 and
12 2007?

13 A Yes.

14 Q And the upper management group wanted to have events
15 to return the fun to Jackson Dawson, correct?

16 A Yes.

17 Q And these events - there was consensus in upper
18 management that these events, these team-building
19 events were wanted.

20 THE COURT: Wanted by whom?

21 MR. CHURDAR: Wanted by upper management.

22 THE WITNESS: Yes. We wanted to have - we needed
23 to do things or wanted to do things that would promote
24 fun within the business, break the stress.

25 BY MR. CHURDAR:

1 Q And as a member of upper management, of course, Steve
2 would have known this.

3 A Oh, yes.

4 Q And after that Steve Whigham organized and executed a
5 couple of events such as we are talking about, these
6 team-building events.

7 A Right. Correct.

8 Q And the purpose for these events, I want to talk about
9 those. One of those purposes would be to promote
10 creativity, correct?

11 A Well, it depends on who is involved in the event.
12 With the warehouse people you are not really promoting
13 creativity, or the accounting people. But we are, in
14 general, a creative business so creative thinking is a
15 good thing.

16 Q You agree that these team building events were about
17 being fun, being different, promoting creativity?

18 A Being fun? Yes, sure.

19 Q Do you recall you testified to that before?

20 MR. RENFROW: I object to the form. Why does
21 that matter?

22 THE WITNESS: I don't recall the exact words.

23 THE COURT: You apparently got his deposition
24 testimony that you are referring to.

25 MR. RENFROW: Right.

1 THE COURT: If he says something inconsistent
2 then I think you can impeach him, but as long as you -
3 I don't have that in front of me. If it's consistent
4 I -

5 MR. RENFROW: Exactly.

6 BY MR. CHURDAR:

7 Q But promoting creativity for your business is an
8 important thing, correct?

9 A We have to be creative to exist.

10 Q And being different is also an important thing?

11 A Yes.

12 Q That was your term. I don't know what that means
13 exactly.

14 A Being a non-typical employer, having fun, making it a
15 fun place to work.

16 Q And this is part of what JD or Jackson Dawson needs to
17 do, right?

18 A It's part of what helps us retain good employees and
19 keep people happy.

20 THE COURT: This is a public relations firm?

21 THE WITNESS: Advertising, marketing, public
22 relations, integrated marketing communications, just a
23 wide variety of things.

24 THE COURT: Thank you, sir.

25 BY MR. CHURDAR:

1 Q These particular activities are needed for Jackson
2 Dawson to succeed as a marketing agency; isn't that
3 true?

4 A Yes. We have to have motivated people.

5 Q In your opinion is there a business benefit to these
6 team-building activities?

7 A The benefit is frankly about what we are talking about
8 here, promoting fun, promoting - JD is a place people
9 want to come to work. They look forward to coming to
10 work today. Maybe there's not an event today but they
11 are coming to work today. They enjoy it because the
12 atmosphere creates something that they enjoy being
13 there.

14 Q And the fact that they enjoy being there also allows
15 you to get better work out of your employees; does it
16 not?

17 A That's the idea.

18 Q So that's the idea behind these team-building events?

19 A A happy employee is generally a better performing
20 employee.

21 Q To be specific these team-building events hopefully
22 lead to getting better work out of your employees?

23 A Yes.

24 Q And they also promote better working relationships
25 between members of different departments?

1 A They could. I mean, a cookout isn't really going to
2 do that, but it depends on what it is.

3 Q If I could I've got your deposition here. Do you
4 remember giving your deposition?

5 A Oh, yes.

6 Q Let me, if I can, show you your deposition.

7 MR. CHURDAR: How do you want to do this, just
8 open this up?

9 THE COURT: Does he have a copy he can look at?
10 Is there a particular -

11 MR. CHURDAR: I've got it.

12 THE COURT: I'm not sure what your purpose - are
13 you impeaching him?

14 MR. CHURDAR: Yes. Well, you know -

15 THE COURT: He's agreed with everything you said
16 so far.

17 MR. CHURDAR: I can ask him again. I mean, I'm
18 looking -

19 THE COURT: I don't have it in front of me. I'm
20 sure you know what you are talking about. I was just
21 - one, he's going to need to see what he said once you
22 ask him about it is. And then I will need the
23 original if you are going to impeach him.

24 BY MR. CHURDAR:

25 Q Would a purpose to be to promote a better working

1 relationship between members of different departments
2 allowing them to enjoy each other's company in a
3 different setting so that they could take that into
4 the workplace?

5 A Sure.

6 Q Would a purpose of these team-building events be to
7 promote employee loyalty toward Jackson Dawson?

8 A Yes.

9 Q Was it a consensus in upper management then and even
10 today that all of these team-building events are
11 important for Jackson Dawson?

12 MR. RENFROW: Object to the form, Commissioner.
13 He's asking about a consensus of other members of
14 management. They are not -

15 MR. CHURDAR: Do you have -

16 THE COURT: Ask him his opinion about that.

17 BY MR. CHURDAR:

18 Q What is your opinion regarding whether there was
19 consensus in upper management about the importance of
20 these events?

21 A We all agree that having events that are fun are
22 good.

23 Q I want to talk about this event that brings us here
24 today. Ballard ball, I believe it is called -

25 A Yes. That was the highly creative name that was

1 developed.

2 Q Okay. Several weeks before this ballad ball event do
3 you recall that you and Steve Whigham had discussed
4 the event generally?

5 A Yes.

6 Q And I've got copies of an exhibit that I want to refer
7 to.

8 MR. CHURDAR: This is Exhibit 1, Commissioner.

9 THE COURT: Here? I've got them. Is it with the
10 email?

11 MR. CHURDAR: Yes.

12 THE COURT: I have them. Okay. Thank you.

13 MR. CHURDAR: Do you have a copy of these?

14 MR. RENFROW: Not on me. I figured you would
15 bring them.

16 BY MR. CHURDAR:

17 Q In any event, before this event was officially
18 conceived and kicked off did you and Steve actually
19 talk about such an event as this kick ball event?

20 A Yes. Frankly, Steve came up with the idea. So he
21 came to me and said I have a crazy idea. What if we
22 had a kickball game? I said yes, that is a crazy
23 idea, but let's talk more about it.

24 Q And this Exhibit 1, which consists of a number of
25 pages, 22 pages of emails contains some emails

- 1 regarding those initial planning stages, correct?
- 2 A Yes.
- 3 Q It looks like on September 17 Steve came to you and
- 4 proposed spending some money on this kickball event.
- 5 A Correct.
- 6 Q And you said yes, I'm okay with this.
- 7 A Yes.
- 8 Q And prior to that it appears he had already been in
- 9 touch with the local YMCA about renting some
- 10 facilities, correct?
- 11 A Correct.
- 12 Q Okay. And so you authorized this event and the rental
- 13 of these facilities and the expenditure of money.
- 14 A Correct.
- 15 Q And then Steve responded to you, "cool, we will start
- 16 the hype machine". Do you remember receiving that?
- 17 A Yes.
- 18 Q At this point would you say you had authorized Steve
- 19 to organize and plan this ballad ball or kick ball
- 20 event?
- 21 A Yes.
- 22 Q And did you authorize the budget that he proposed to
- 23 you?
- 24 A Yes.
- 25 Q And he indicates that he would "start the hype

1 machine". Did he, in fact, "start the hype machine"
2 throughout the company?

3 A Yes.

4 Q Now, I want to show you the fourth page of Exhibit 1.
5 Do you recall seeing this before?

6 A Yes.

7 Q In promoting the event and starting the hype machine,
8 did he use the company intranet?

9 A Yes.

10 Q And this Page 4 of Exhibit 1, what is this?

11 A It looks like the draft of something to put on the
12 intranet.

13 Q Do you recall seeing this either on the intranet or
14 attached to an email within the company?

15 A Yes.

16 Q And did this announcement go to all Jackson Dawson
17 employees?

18 A Yes.

19 Q Do you feel like this announcement encouraged all
20 Jackson Dawson employees to play and participate in
21 this particular event?

22 MR. RENFROW: Object to the form.

23 THE COURT: Which email are you referring to
24 right now?

25 MR. CHURDAR: Page 4.

1 THE COURT: Who sent - who wrote this? First I
2 need to establish who - did you write this Page 4?

3 THE WITNESS: No.

4 THE COURT: Okay. I don't know whether he can
5 say what it was designed to do. I think your client
6 can testify to that.

7 Did you approve this or would you have to approve
8 it? You approved the concept?

9 THE WITNESS: Sure. Yes.

10 BY MR. CHURDAR:

11 Q You figured Steve could pull off the event?

12 A Yes.

13 Q So you didn't micromanage what he did.

14 A He can hype with the best of them, how's that?

15 Q In any event, did you receive this announcement?

16 A Yes.

17 Q Did you note the time that the ballad ball event was
18 scheduled to start?

19 A Yes. I had to be part of the pre-discussions, when
20 are we going to do it, where are we going to do it,
21 how much is it going to cost, all of that.

22 Q And it appears it was scheduled to start at 3:00 PM on
23 a Friday; is that correct?

24 A Yes.

25 Q And it also appears - did it concern you that Steve

1 was telling players, and I'm using his language "Get
2 your kickball playing patooti out there before 3:00
3 PM"?

4 A Did that concern me?

5 Q Yes.

6 A No.

7 Q Were you supportive of the idea that all of the
8 salaried employees would be going out to the field at
9 that time?

10 A Yes.

11 Q Okay.

12 A As many as could.

13 THE COURT: So did you ask the upper management
14 employees to go if they could?

15 THE WITNESS: Basically this is for anybody and
16 everybody who wanted to or could.

17 THE COURT: Right. But Mr. Churdar asked you a
18 question about - I believe it was about upper
19 management and whether it was that upper management.
20 That's my question. Did you encourage other upper
21 level managers to attend? Was there any discussion
22 that you recall?

23 THE WITNESS: you know, nothing other than just
24 what was going to everybody.

25 THE COURT: Okay.

1 THE WITNESS: Nothing special to upper
2 management.

3 THE COURT: When you said something about go if
4 you could, I guess that's what stuck in my head.

5 THE WITNESS: Well, if you've got to work you've
6 got to work. It's not a required activity. It's an
7 optional activity. And we expect our people to use
8 their common sense and not leave a client hanging so
9 they can go play kickball.

10 THE COURT: Okay.

11 BY MR. CHURDAR:

12 Q Other than not leaving the client hanging or leaving
13 work undone was it your hope or expectation that
14 everyone would be there?

15 MR. RENFROW: Object to the form, Commissioner.
16 That's actually two separate questions. Hope is one
17 thing. Expectation is another.

18 BY MR. CHURDAR:

19 Q Was it your hope?

20 A Was it my hope that everyone would come?

21 Q Yes.

22 A Sure. As many as could.

23 Q Was it your expectation that those who were not tied
24 up with client work would be there?

25 A Yes. My expectation would be that those that had the

1 opportunity would come.

2 Q We have talked about the intranet. Did Steve also use
3 company email to plan and execute this ballad ball
4 event?

5 A Yes.

6 Q I'm looking at Page 5 of Exhibit 1 which appears to be
7 - let me ask you if you have seen that. Look at Page
8 5, please.

9 A Okay.

10 Q Do you recall seeing that email before?

11 A Yes.

12 Q And in the address to, who are all of these people?

13 A That's likely all the employees that live in this city
14 or area.

15 Q Okay. And as best you know, did this email go to all
16 the employees at Jackson Dawson here in Greenville?

17 A Yes. I didn't select the names, but yes. That's a
18 lot of people there.

19 Q As Steve continued to organize and plan and execute
20 this ballad ball event, aside from the intranet and
21 the email did he keep you updated through discussions?

22 A Yes. We had regular meetings and we would talk
23 briefly about it.

24 Q It looks like at some point teams were actually
25 chosen. I'm looking at Page 8 of Exhibit 1. Do you

1 recall receiving this email?

2 A Yes.

3 Q It indicates there's going to be quite a throw down,
4 I know it speaks for itself, come Friday. Let the
5 trash talking begin. Did trash talking begin?

6 A Sure.

7 Q Was this widely discussed throughout the company
8 leading up to the event?

9 A Yes.

10 Q Now -

11 A Most of the trash talking was on an email basis. It's
12 not like people were in the hallway throwing down on
13 the kickball game.

14 Q And let's be clear when we are talking about trash
15 talking. I understand that it was all, I would
16 assume, in good fun?

17 A Yes. Exactly.

18 Q Okay. But was there a substantial amount of email
19 traffic going back and forth that you saw involving
20 trash talking?

21 A Yes.

22 THE COURT: I don't want to stop you from putting
23 up your case, but I'm not real sure how that is
24 relevant.

25 MR. CHURDAR: All right. Certainly there's

1 enough in the record about it already.

2 THE COURT: It's all in there.

3 MR. CHURDAR: All right.

4 BY MR. CHURDAR:

5 Q And Steve came back to you even with t-shirt designs,
6 correct?

7 A Yes.

8 Q And let you see those?

9 A Correct.

10 Q And those ended up - even the t-shirts themselves,
11 they were created by somebody who was an employee of
12 Jackson Dawson?

13 A Yes.

14 Q And they were created on company time?

15 A Yes.

16 Q And they were paid for by the company?

17 A Correct.

18 Q And even the names on the t-shirts make some reference
19 to the company -

20 A Acronyms.

21 Q Acronyms, thank you. PTO meaning -

22 A Paid tag off.

23 Q And LOEs meaning -

24 A Letters of estimate.

25 Q Now, if I asked you this already I will move on

- 1 quickly, but was it your understanding that the work
2 that Steve was doing to promote and plan and execute
3 this event he was doing on company time?
- 4 A Yes.
- 5 Q He was doing it during his work day?
- 6 A Likely.
- 7 Q Okay. And ultimately as the event approached did it
8 appear that there was going to be a high percentage of
9 employees involved in some way in this ballad ball
10 event?
- 11 A Yes, probably about half.
- 12 Q And the other half, do you know why they did not
13 participate?
- 14 A Not specifically, but generally you've got some that
15 just went home. You've got others that stayed and
16 worked.
- 17 Q Was Steve doing everything that you expected him to do
18 in terms of organizing and executing this event as it
19 approached?
- 20 A Yes.
- 21 Q Do you know whether any salaried Jackson Dawson
22 employees lost pay to attend this event?
- 23 A Lost pay?
- 24 Q Yes. Were they told they weren't going to be paid a
25 full day?

1 A No.

2 Q No. Were they told to use paid time off or vacation
3 time?

4 A No.

5 Q Were salaried employees - did you know any salaried
6 employees who was paid anything less than a full week
7 for that week?

8 A No.

9 Q I want to talk about business hours. That's come up
10 as an issue. When I first took your deposition did
11 you remember the summer hours, the issue with summer
12 hours?

13 A Yes.

14 Q I was curious because that issue I don't recall -
15 maybe it did come up. I don't know. But in October
16 2007 isn't it true that normal business hours were
17 8:30 to 5:30 Monday through Friday?

18 A When at what point?

19 Q At that time, October '07.

20 A 8:30 to 5:30 are our normal business hours. And then
21 we have the summer hours allowance, which we
22 instituted - I'm not sure of the exact date. But it
23 allows people to leave early on Fridays if their work
24 would allow such.

25 Q And the phone was answered - even at that time it was

1 answered 8:00 to 6:00.

2 A Yes, correct.

3 Q And upper management people like you and Steve Whigham
4 typically worked more than 40 hours a week in October
5 of '07; is that correct?

6 A Yes.

7 Q I assume that is still the case?

8 A That's correct.

9 Q As a matter of fact I believe you worked about 50
10 hours a week and Steve worked about 50 hours a week.

11 A Probably so.

12 Q So in October of 2007 did you and Steve Whigham and
13 other upper management people typically work until
14 5:30 on Fridays?

15 A Generally - I mean, who knows. That's an individual
16 thing. That's part of the beauty of working for us.
17 We don't make you come into my office and punch a card
18 or sign a sheet. You manage yourself in a respectful
19 way to the business that has to be done. If you can
20 leave early, then you've left early.

21 Q Well, you typically work a whole day on Friday,
22 correct?

23 A Yes.

24 Q And Steve Whigham typically works a whole day on
25 Friday?

1 A Likely so.

2 Q At the end of the year do you recall evaluating his
3 performance and noting that he often came in early and
4 stayed late?

5 A Yes, right. That is one of his strengths.

6 Q So Steve was hurt at 4:30 or 5:00 on a Friday, that
7 would have been during his normal work hours, correct?

8 MR. RENFROW: I object to the form of the
9 question. I think it calls for speculation,
10 Commissioner.

11 THE COURT: Well, I think that is a determination
12 that I am going to have to make.

13 MR. RENFROW: Okay.

14 THE COURT: You have established what their
15 ordinary working hours are, and you established when
16 the injury occurred, or at least I'm sure you will
17 through the testimony, that you suggested to me that
18 it occurred between 4:30 and 5:00.

19 BY MR. CHURDAR:

20 Q You said that some employees could leave at 3:30 under
21 certain circumstances; is that correct?

22 A That is correct.

23 Q And if these employees had chosen not to go to the
24 ballad ball event at 3:00 PM they would have had to
25 stay until at least 3:30 PM; is that correct?

1 A Unless they worked through lunch and decided to leave
2 at 2:30 or 3:00, which is what we encourage people to
3 do with this event.

4 Q Well, that was those who went to the event; was it
5 not?

6 A Yes. But if I put that out to everybody then I have
7 to let everybody take advantage of that.

8 Q Do you know whether anyone did?

9 A I have no idea.

10 Q And as far as that issue they were expected to leave
11 at 3:30 and not before 3:30 that day if they did not
12 go to the ballad ball event?

13 A It's what I said earlier. There's not really an
14 expectation of exactly when they leave. They might
15 leave at 4:00. They might leave before 3:30 if the
16 circumstances of their particular day allowed that to
17 happen.

18 Q They might leave before 3:30, you say?

19 A They could.

20 Q I guess my question is whether they could sneak out at
21 11:00 or sneak out at 2:00, what was company policy?

22 A Policy is a term that makes it sound like a mandatory
23 thing. Okay. Stated desired company time 8:30 to
24 5:30. That's the hours we are open. We answer the
25 phones from 8:00 to 6:00. But on Friday if your

1 workload permits it you can leave early, 3:30. .

2 That's the time that we established. Here's what we
3 allow.

4 THE COURT: That's every Friday?

5 THE WITNESS: Yes.

6 THE COURT: So anybody could leave at 3:30 on any
7 Friday if they have done their work?

8 THE WITNESS: Correct. Anyone.

9 BY MR. CHURDAR:

10 Q And also if they had, I guess, filled out their time
11 sheets?

12 A Yes. That's part of doing your job, you know, keeping
13 up to date with your work.

14 Q But if players and spectators weren't heading to
15 ballad ball say at 2:45 or 3:00 according to company
16 policy they would have been expected to still be there
17 until 3:30?

18 MR. RENFROW: Objection to the form. It's been
19 asked and answered.

20 THE COURT: I think it has, but if there is some
21 other information that you are trying to elicit I
22 might -

23 MR. CHURDAR: I'm trying to elicit what I believe
24 is a clear answer. I don't -

25 THE COURT: Ask it again. I'll let him answer it

1 again.

2 BY MR. CHURDAR:

3 Q If the players and spectators - while players and
4 spectators were heading to ballad ball at 2:45, those
5 who weren't going were expected to stay until 3:30,
6 correct, according to company policy?

7 A They are on their own discretion. Okay. So if they
8 were going to leave early they could leave early at
9 3:30. They could leave at 4:30. They might stay
10 until 7:30.

11 Q Okay. They could leave no earlier than 3:30 according
12 to company policy, correct?

13 A They could leave earlier than 3:30 if they had a
14 circumstance that led to that. If they worked through
15 lunch, they had an appointment at 2:30, they'd leave
16 at 2:30. The word policy in my read here is that it
17 assumes a time clock or some kind of a punch clock.
18 That's not how we operate.

19 Q I'm going to show you plaintiff's Exhibit 5.

20 THE COURT: Page 5, you are talking about?

21 MR. CHURDAR: Plaintiff's Exhibit 5. It is a
22 page from the Employer's policy and procedures manual.

23 THE COURT: Okay. I see, these are not tabbed.

24 Okay.

25 BY MR. CHURDAR:

1 Q If you look at the paragraph that's in the middle of
2 the page would you agree that company policy states
3 that associates are expected to be on time and not to
4 leave early?

5 A Correct.

6 Q Would it be fair to say that is company policy?

7 A Yes.

8 Q And the earliest - according to company policy the
9 earliest they were allowed to leave on Fridays was
10 3:30?

11 A That's not here.

12 Q Okay.

13 A So obviously there's something that's said somewhere
14 else that is not in the company manual.

15 Q Uh-huh.

16 A They could leave at 3:30.

17 THE COURT: They could leave at 3:30 without
18 having to go ask anybody or tell anybody.

19 THE WITNESS: Correct.

20 THE COURT: If they've got a dentist appointment
21 at 2:30, from what you are saying and as I'm hearing,
22 and I'm not trying to put words in your mouth, I'm
23 just trying to speed this thing along; that if
24 somebody had to leave at 2:30 for a dentist
25 appointment they could leave.

1 THE WITNESS: Right.

2 THE COURT: But ordinarily absent some
3 appointment -

4 THE WITNESS: Right. They would be there until -

5 THE COURT: 3:30.

6 THE WITNESS: Right. 3:30. I mean, that's loose
7 but yes.

8 THE COURT: All right.

9 BY MR. CHURDAR:

10 Q And as a matter of fact the number of people who
11 worked past 3:30 was fairly substantial?

12 A That day?

13 Q Period, typically.

14 A Yes. Again, I'd say it's half, 50 to 60 percent
15 depending on how busy we are at the time.

16 Q Now assuming that the - all right. That day, the day
17 of the event, Steve Whigham went out to the field
18 early, correct?

19 A I don't know.

20 Q When you got there were things set up?

21 A Yes. There were bases on the field.

22 Q There were bases on the field. There were balls?

23 A Yes.

24 Q There were company extension cords or a company
25 extension cord?

1 A Yes.

2 THE COURT: Did you see them?

3 THE WITNESS: I -

4 THE COURT: I mean, if you don't know say I don't
5 know.

6 THE WITNESS: Yes.

7 THE COURT: You think there were?

8 THE WITNESS: Yes. I'm sure there were.

9 BY MR. CHURDAR:

10 Q Were there company chairs?

11 A Yes.

12 Q Company coolers?

13 A Yes.

14 Q Company megaphone?

15 A Yes.

16 Q Was there any other company equipment out there?

17 A I think so.

18 Q And when you got to the field Steve Whigham was there?

19 A Yes.

20 Q Okay. And then we will let him tell about how he was
21 hurt. But during this event, the ballad ball event,
22 was he hurt?

23 A Yes, the last play.

24 Q Were photos taken of the ballad ball event?

25 A Yes.

- 1 Q After that event were those photos posted on the
2 Jackson Dawson intranet?
- 3 A Yes.
- 4 Q Were they displayed at the company Christmas party?
- 5 A Yes.
- 6 Q Do you think Steve did a good job with this event?
- 7 A Other than getting hurt.
- 8 Q Did he do everything you expected him to do with
9 regard to planning and executing of this event?
- 10 A Yes.
- 11 Q I want to show you some evaluations that both you and
12 Steve did at the end of the year or early in 2008. Do
13 you recall -
- 14 A That's the timing, yes.
- 15 Q And these are Exhibits 3 and 4. First I'm going to
16 show you - Exhibit 3 is a manager's self evaluation.
17 Okay. Is that something that Steve would typically
18 fill out for you?
- 19 A Yes.
- 20 Q And I note that on the first page Steve is asked to
21 identify his major accomplishments over the past year
22 and he mentions about five things. Do you see that?
- 23 A Yes.
- 24 Q And one of those things was quote "the internal esprit
25 de corps activities of a cookout in early summer and

1 the kickball game both had very positive lifts to the
2 working culture at Jackson Dawson". Did you see that
3 he put that on his manager self evaluation?

4 A Yes.

5 Q Did you tell him that that had nothing to do with his
6 work at Jackson Dawson?

7 A No.

8 Q Do you believe that it did have something to do with
9 his work at Jackson Dawson?

10 A That's part of the restoring fun activities, doing
11 something to have fun. He is acknowledging or felt
12 the need to acknowledge that he participated in
13 that.

14 Q Let me show you Exhibit 4, please. Exhibit 4 is your
15 associate performance evaluation of Steve; is that
16 correct?

17 A Yes.

18 Q If you look on Page 2 at the top there's a category
19 for effective team player/engages in team efforts.

20 A Right.

21 Q And there you are to evaluate him on whether there is
22 an obvious display of team engagement, interest in
23 team efforts and support the overall goal of the team,
24 willing to work with associates at all levels. What
25 did you say there?

1 A I said, "Steve is a team player. He has been
2 instrumental in bringing back a couple of fun events,
3 a cookout and dare I say it, kickball."

4 Q And then he was rated. And those two events were the
5 only events that you cited in this category; is that
6 correct?

7 A Yeah, when I stated a team player.

8 Q Okay.

9 A So that doesn't refer only to those events.

10 Q All right.

11 MR. CHURDAR: Kevin, I don't have any further
12 questions. Thank you very much.

13 THE COURT: All right. Mr. Renfrow.

14 MR. RENFROW: Thank you.

15 CROSS EXAMINATION

16 MR. RENFROW:

17 Q All right. Mr. Johnson, let's establish one more
18 time, what is your exact title with Jackson Dawson
19 Marketing?

20 A Executive Vice President.

21 Q You are a salaried employee of that company?

22 A That's correct.

23 Q And the company also has hourly employees, correct?

24 A Yes.

25 Q Tell me specifically, because I don't know that we

1 have identified this but what type of company is
2 Jackson Dawson?

3 A Marketing, advertising, communications company. So we
4 are helping other companies amplify their messages,
5 their brands.

6 Q Okay.

7 A Building brand value, that's what I'm supposed to say.

8 Q Building brand value. I've got you. One of the
9 things you mentioned earlier when you were asked some
10 questions, you talked about there are warehouse people
11 involved in Jackson Dawson. What do warehouse people
12 do?

13 A They fulfill orders for trade show materials or
14 posters and banners or pick and pack mailers. They
15 load trucks for events, all kinds of stuff.

16 Q Okay. So there are just various departments that do
17 various tasks within the company, correct?

18 A Yes.

19 Q You also have a group that deals with a race team or
20 something, correct?

21 A Yes, we have a motor sports division.

22 Q That's part of what the company does?

23 A We assist in motor sports activities.

24 Q Obviously you know who Steve Whigham is. What was
25 Steve Whigham's title at the time this accident took

1 place?

2 A Director of creative services or solutions, whichever
3 one was - probably solutions is what I think it was.

4 Q And were you his supervisor at the time this accident
5 took place, this incident took place?

6 A Yes.

7 Q And Steve reported directly to you?

8 A Yes.

9 Q Within that title, because that title can consume a
10 lot of things, but what were the expectations of the
11 creative services director?

12 A As director of creative services he's responsible for
13 the overall creative department, creative messaging.
14 So it could include graphic artists, writers,
15 designers; the people that developed the creative
16 product. In most cases that's print or web related.

17 Q And the focus on creativity, though, is the creativity
18 that's provided for a client; is that right?

19 A Yes.

20 Q You would be designing platforms or designing events,
21 designing things for your clients, correct?

22 A Yes.

23 Q Was there anything about Steve Whigham's specific job
24 requirements that would require him to create
25 activities internally for his people?

1 A No.

2 Q Was there anything about his job that required him to
3 plan events for the company internally?

4 A No requirement.

5 Q Okay. Was there any expectation that Mr. Whigham
6 would do this?

7 A I mean, when you talk about doing those things you
8 throw it open to anybody.

9 Q Yeah, but if the guy in the warehouse said I'm a
10 creative guy. I want to plan a kickball event. Could
11 he have done it?

12 A Yes.

13 Q Okay. So there wasn't anything specific about his job
14 that had him planning a kickball event or a summer
15 cookout?

16 A Other than he thought of it.

17 Q And he was good at it?

18 A Yes.

19 Q He sort of approached you about him doing it versus
20 you going to him and saying Steve we need you. You
21 have got to do this.

22 A No, it was his idea.

23 THE COURT: Let me ask this, sir. Are you saying
24 it's coincidental that he happened to be the person
25 that planned it?

1 THE WITNESS: Definitely. That he got hurt - he
2 planned it and got hurt at the event is extremely
3 ironic.

4 THE COURT: So a graphic designer or a person
5 doing a - designing a webpage for a company could have
6 planned it and would have had the authority to plan
7 the same thing?

8 THE WITNESS: Yes. We've done many things like
9 that where - frankly, we had a couple of web guys that
10 used to plan all kinds of crazy things like this.

11 THE COURT: And they were company sanctioned?

12 THE WITNESS: Yes. I mean it was -

13 THE COURT: They would have to come get your
14 permission?

15 THE WITNESS: Yeah. We want to do career day.
16 Okay. So we are going to have everybody dress up in a
17 uniform or outfit of the career they really wanted to
18 have. Okay. So the people that come up with these
19 ideas, then we say okay. That sounds like a lot of
20 fun. Go ahead. Put it together. And then they will
21 say, okay, we want to do these announcements. We want
22 to talk about it here and put this there.

23 THE COURT: When those events like that one you
24 mentioned, career day, do you provide any equipment or
25 anything else?

1 THE WITNESS: Well, there is really nothing
2 necessary for that except that they just show up. We
3 might have a gathering in the big room and vote for
4 who is the best.

5 THE COURT: What about off premises? Let's move
6 to off premises because you are saying there would be
7 no real expense to holding something on the premises
8 of the company. Let's say like - is there anything
9 you can use as an analogy to this particular event
10 that the kickball event was off premises? Was there
11 anything like that before where somebody - like my
12 example of a graphic designer or a web page designer
13 coming to you and saying we want to have a cookout off
14 premises but we want to do it - we want to use the
15 company email to tell everybody about it. Has
16 anything like that ever happened?

17 THE WITNESS: We have softball teams that we
18 sponsor, so they asked me to sponsor a softball team.
19 Then they would use the email to say does anybody want
20 to play and have a team, you know, during this fall
21 season? And anybody who wants to play, you know, let
22 me know. Generally - frankly it's the warehouse
23 manager who kind of spearheads that because he loves
24 that.

25 THE COURT: Okay.

1 THE WITNESS: So that - I don't know if that's
2 in direct correlation or not but -

3 THE COURT: Right. Well, given my example of the
4 graphic designer who may have planned this kickball
5 outing, you all would supply all of that?

6 THE WITNESS: Yes.

7 THE COURT: Go ahead, Mr. Renfrow. Thank you.

8 MR. RENFROW:

9 Q Steve Whigham, and getting back to his sort of focus
10 of his job, he was not paid extra to plan events for
11 the internal people at Jackson Dawson, correct?

12 A No.

13 Q Okay. And you didn't hire Steve Whigham because you
14 had heard on the street that he was great at planning
15 internal events for the employees?

16 A No.

17 Q Okay. Now, we are here today obviously because
18 Mr. Whigham was injured in a kickball game; is that
19 correct?

20 A Yes.

21 Q All right. And from time to time you have testified
22 management supports events like this, correct?

23 A Yes.

24 Q You gave a number of events - in fact, you have had a
25 cookout event before on the premises, correct?

1 A Yes.

2 Q And Mr. Whigham ironically, in that case, cooked the
3 spam, he grilled spam or something.

4 A Yes.

5 Q Okay. So every once in a while you do events like
6 this, correct?

7 A Yes.

8 Q But nothing - we talked about several events, and you
9 threw out this event to the Commissioner, but it's not
10 a focus of the company to throw 12 or 15 events every
11 year because there is something unique about this job
12 that requires that kind of thing to get it done?

13 A No. I mean, it's something we try to do when we can.
14 I mean, part of what we talked about earlier about
15 upper management talking about it is because there had
16 been a long period of time that we hadn't done
17 anything.

18 Q And you gave a number of reasons earlier when you
19 answered Mr. Churdar's questions, and I wrote down
20 some of them. It's to have fun. It's a distraction
21 from the routine and stressful work, correct?

22 A Yes.

23 Q It promotes creativity and health for the employees?

24 A Correct. It's about making it a fun place to work so
25 that -

1 Q In your opinion are all of these things you testified
2 to Mr. Churdar and in answering these questions, is
3 the ultimate goal to promote company morale and
4 general health?

5 A Yes.

6 Q Now, you talked about some things the company paid for
7 in this event. I think the email showed the company
8 spent about \$400 to \$440 on this event?

9 A Correct.

10 Q You paid for some t-shirts; is that correct?

11 A Yes.

12 Q You also paid for some snacks?

13 A Yes.

14 Q You paid for the field rental?

15 A Yes.

16 Q Let's talk about these t-shirts. There's pictures of
17 these t-shirts.

18 MR. RENFROW: And Commissioner, I would ask if
19 you would, it's in Mr. Churdar's exhibits, exhibits -
20 it's just part of the email so it's 1 through 16. I
21 think it's number 14 and 15. It's actually in the
22 front, Commissioner, with the emails. The first 16
23 pages of these exhibits are numbered.

24 THE COURT: Okay.

25 MR. RENFROW: And it's 14 and 15.

1 THE COURT: All right.

2 MR. RENFROW:

3 Q Are these the two t-shirts that were created for this
4 event?

5 A Yes.

6 Q And this was not a company idea. I take that back.
7 This wasn't your idea for the company, let's do TVOs
8 and LOEs?

9 A No.

10 Q That was Steve Whigham's idea?

11 A Yes.

12 Q Is there anything on this t-shirt that you utilized as
13 a marketing tool to someone who saw you all walking
14 around with these t-shirts on?

15 A No.

16 Q For example, I've got a t-shirt from my office and
17 this has my law firm's name on it. There's nothing
18 about these t-shirts that say anything about Jackson
19 Dawson or the company, correct?

20 A The name's not on there or phone number or web site.
21 It's just fun.

22 Q Is it fair to say, then, that these t-shirts weren't
23 used or being utilized in this event as a marketing
24 tool?

25 A No. Right. No.

1 Q And all we can see is the front of these two
2 t-shirts. But on the back was there anything that
3 said I'm a Jackson Dawson employee, call me if you
4 want -

5 A No. The backs were blank. It was cheaper that way.

6 Q And I think I saw on some of the pictures maybe
7 someone had put with tape maybe put their name on the
8 back.

9 A Sure.

10 Q Okay. Nothing that the t-shirt had on it that
11 marketed your company?

12 A No.

13 Q Okay. We talked about the hype machine. And you said
14 Mr. Whigham was good at hyping events like this. Let
15 me ask you this. It's fair to say employees could
16 participate in this event, correct?

17 A Yes.

18 Q Did employees have to participate in this event?

19 A No.

20 Q Was anyone punished in any way for not participating?

21 A No.

22 Q Was any employee's pay docked if they decided not to
23 play?

24 A No.

25 Q Are you aware of any employee who was looked down upon

1 by you or from anybody else in management who didn't
2 play in this event?

3 A No.

4 Q Did you personally look down on anyone who chose not
5 to play in this event?

6 A No.

7 Q Is it possible that if someone wanted to go home at
8 3:30 on that Friday afternoon they could have?

9 A Yes.

10 Q Is it possible if they worked through lunch like
11 everybody else that they could have actually gone home
12 that day at 3:00?

13 A Yes.

14 Q And actually you all take an hour for lunch, correct?

15 A Yes.

16 MR. RENFROW: And one of the emails that's of
17 special interest to me is No. 16, Commissioner. It's
18 the bottom right hand corner, Page 16.

19 THE COURT: Okay.

20 MR. RENFROW:

21 Q It says, remember a couple of rules. This is an
22 email. Let me show you this. This is an email that
23 was sent from Steve Whigham to at least - well, it
24 says to all JD associates, correct?

25 A Yes.

1 MR. RENFROW: I have no further questions.

2 THE COURT: All right. Anything on redirect?

3 MR. CHURDAR: Yes.

4 REDIRECT EXAMINATION

5 BY MR. CHURDAR:

6 Q You indicated that there was not a roster. There
7 wasn't attendance taken. Do you recall, though, that
8 a roster of participants was circulated in the
9 company?

10 A Yeah, there were teams, correct.

11 Q And that those that were not on the roster in the
12 email were described as holdouts?

13 A Right.

14 Q As far as the timesheets go, there were no
15 instructions given to salaried employees as to what to
16 put on their timesheets for this event?

17 A I don't recall any.

18 Q I don't have it as an exhibit but I recall that you
19 put on yours "stuff".

20 A I put that. That's a very descriptive term of what
21 I'm doing administratively.

22 Q In any event did that stuff include this game?

23 A I don't know.

24 Q Do you review - by chance, do you review Mr. Whigham's
25 timesheets ever?

1 A Rarely.

2 Q Are you supposed to?

3 A No. I don't have to.

4 Q Okay.

5 A If there's a problem then I can. If there's no
6 problem, if he's working 10, 12 hours a day I really
7 don't need to go look at the timesheets.

8 Q Were other - did you have a chance to look at other
9 people's timesheets or do you have any idea as to what
10 other salaried people put on their timesheets?

11 A I'm sure there's a mixed bag. Some put it on. Some
12 didn't. In a non-billable situation it's not a
13 critical issue.

14 Q You mentioned earlier or you were asked earlier
15 whether this event was completely voluntary, that
16 people would not have been looked down upon if they
17 hadn't gone to this, correct?

18 A Yes.

19 Q Let's say after all this build-up, all this hype the
20 day of the event Steve Whigham comes to you and says,
21 you know, Kevin, I really don't want to do this. I
22 think I'm going to a movie. What would you have
23 thought of that?

24 MR. RENFROW: Objection to the form of the
25 question. Calls for speculation.

1 THE COURT: Well, I think you can ask it in a
2 different way that wouldn't merit an objection, but I
3 think he asked would you have been upset.

4 BY MR. CHURDAR:

5 Q Would you have been upset if he hadn't been involved
6 that day?

7 A I would have been surprised and shocked, because he
8 spent all the time planning the thing.

9 Q Right.

10 A Could we have pulled it off without him there at that
11 point? Certainly.

12 Q Would he have - go ahead.

13 A It's just a matter of some balls and bases and, you
14 know, it's pretty simple.

15 Q Would you have thought he was irresponsible if he had
16 dropped the ball, if you will?

17 A I don't know. I would have thought - he wouldn't do
18 that. I'll just say that. He wouldn't do that.

19 Q That would have been irresponsible, correct?

20 A It would have been just unexpected, unbelievable. I
21 mean, you don't plan something and then not show up to
22 it.

23 MR. CHURDAR: I don't have any further questions.

24 THE COURT: Anything else, Mr. Renfrow?

25 MR. RENFROW: Just real quickly.

1 THE COURT: All right.

2 RE-CROSS EXAMINATION

3 MR. RENFROW:

4 Q Because he showed up you evaluated him and in addition
5 to other things you designated he was a team player.

6 A Yes, correct.

7 Q But had he not shown up or had he not done the cookout
8 he wouldn't have been fired or terminated for that; is
9 that right?

10 A No.

11 Q There are other ways to build teams other than firing
12 people.

13 A Correct.

14 Q Okay..

15 A It would take a little more than that.

16 MR. RENFROW: I have no further questions.

17 REDIRECT EXAMINATION

18 BY MR. CHURDAR:

19 Q At any time if he didn't show up for work, for
20 example, and he just said he felt like sleeping in and
21 watching Jerry Springer you wouldn't have fired him
22 for that just one time?

23 MR. RENFROW: Object to the form of the question.

24 THE WITNESS: One time, no.

25 MR. RENFROW: Okay. We are done.

1 THE COURT: Let's see. Mr. Churdar, you have
2 Mr. Whigham?

3 MR. CHURDAR: Yes, ma'am.

4 THE COURT: That's your second witness.

5 MR. CHURDAR: Yes, ma'am.

6 STEPHEN CLARENCE WHIGHAM,

7 having been first duly sworn, testified as follows:

8 THE COURT: Please state your full name for the
9 record.

10 THE WITNESS: Stephen Clarence Whigham.

11 THE COURT: All right. Please answer any
12 questions your lawyer has.

13 DIRECT EXAMINATION

14 BY MR. CHURDAR:

15 Q All right. Steve, how long did you work for Jackson
16 Dawson?

17 A Just shy of ten years.

18 Q What position were you hired to initially?

19 A Manager of media and market research.

20 Q Is that the position you held in October of 2007?

21 A They had changed my position.

22 Q To -

23 A Director of creative solutions.

24 Q Kevin described that position. Was that a fairly
25 accurate description -

1 A Accurate.

2 Q - that he provided? Okay. And in that position as
3 director of creative solutions were you a member of
4 upper management?

5 A Yes.

6 Q Did you attend executive level or upper management
7 meetings during 2006 and 2007?

8 A Yes.

9 Q At those meetings were team building events discussed?

10 A Among many other things, yes.

11 Q Let me also ask you this. Does Jackson Dawson promote
12 team building events even for its clients?

13 A It's part of what we do is try to encourage people to
14 build brand value. So we happen to think that a brand
15 needs to be supported.

16 Q Have you seen, for example, the promotion of team
17 building events for clients on the Jackson Dawson
18 website?

19 A I think it's currently on the Jackson Dawson website
20 as it stands today.

21 Q Did upper management promote team building events at
22 Jackson Dawson, as well? Not just for clients but at
23 Jackson Dawson?

24 A We tried to do as much as we could to have a team.
25 It's like what Kevin was talking about increasing the

1 fun and trying to get the team working better.

2 Q And the benefits of these events, were these discussed
3 as well among the upper management executives?

4 A It grew out of our management focus.

5 Q What, in your opinion, were the benefits of those
6 events at Jackson Dawson?

7 A Instilling fun. Like Kevin was talking about,
8 increasing communication pathways between departments
9 is a really important part. Mainly we are a creative
10 agency and a lot of the people that we try to hire are
11 looking for a creative place to work. It's an
12 important part of the fun. It's important to the way
13 most people would look at a creative agency. It is a
14 creative agency, having fun.

15 Q You are talking about hiring. What do you mean? Are
16 you saying that - tell me what you mean by that. Tell
17 the Commissioner what you mean. How was this used in
18 recruiting or hiring?

19 A This wasn't directly used, but it's the whole culture
20 of fun that we've been talking about. It's part of
21 how we go after young artists and writers and web
22 developers. They are looking for a fun and creative
23 place to work. This is one of the manifestations of
24 that.

25 Q Was there ever a discussion about the desire to

1 promote better working relationships between
2 employees?

3 A Yes. We are always concerned about that.

4 Q You mentioned the promotion of better working
5 relationships between departments. You are the
6 manager of a department. Are you aware of any
7 specific issues that needed to be addressed by team
8 building events during 2007?

9 A Well, team building events is just a technique, you
10 know. We have a natural tension in our business
11 between account service and creative. Account
12 service, of course, is always trying to get their work
13 done in time for the client. The creative office is
14 trying to be as creative as possible. So there's a
15 natural tension. We've always had that problem.
16 David Jones, who was the manager of the creative
17 services side of the business, and we always tried to
18 resolve those tensions, trying to blend the people so
19 they could work better together. We thought this
20 could be a technique that could help.

21 Q How about loyalty to the company? Were these team
22 building events intended to create loyalty to Jackson
23 Dawson?

24 A We would hope so.

25 Q Were these things actually discussed or was that just

1 something that that was your opinion?

2 A I don't know if we discussed it in so many terms, but
3 I think it's all part of the whole presence because we
4 were hoping that a fun environment would keep the best
5 talent around.

6 THE COURT: Did you participate in the softball
7 tournament?

8 THE WITNESS: No.

9 THE COURT: Did you attend?

10 THE WITNESS: I think I attended a couple of them
11 back in the late nineties.

12 THE COURT: Okay.

13 THE WITNESS: But I did not ever participate.

14 BY MR. CHURDAR:

15 Q In your opinion was team building a part of your
16 position as a member of upper management?

17 A I'm sorry. Rephrase that.

18 Q In your opinion was team building a part of your
19 position as upper management?

20 A Not specifically, but I think all upper management was
21 concerned about it.

22 Q Were you, in fact, evaluated by Kevin Johnson, your
23 executive vice president, with regard to team
24 building?

25 A It did, because I chose to play a very active role in

1 that. Team building is something extremely important
2 to the health of the company.

3 Q Well, we looked at an evaluation earlier for the 2007
4 year. Was that the first time you had ever been
5 evaluated for your team building contributions?

6 A I don't think so. I think it's been on that form for
7 a couple of years now. I think I would have been
8 evaluated year after year on that.

9 Q Now, in 2007 it's already been established that you
10 organized and executed a couple of team building
11 events. What was the first one, very generally?

12 A We did a cookout. We have this back deck at the
13 office that we use. A bunch of people brought some
14 grills in and we grilled hamburgers, hot dogs and
15 Spam. It was a little strange but amazingly that all
16 got eaten. It was just a fun event.

17 Q And for this event and also the ballad ball event did
18 you receive support from the other members of upper
19 management?

20 A Yes. Everybody was supportive of it.

21 Q I want you to be very brief, but this ballad ball
22 event, what was that just generally? What was
23 involved in that?

24 A It was primarily a kickball event. But we wanted to
25 make it, of course, fun and creative. And that's why

1 we went to the extent that we did, like the t-shirts
2 and just really making it just something more than we
3 just threw this together on a whim. We wanted it to
4 feel very special so we did a lot of work, creative
5 things.

6 Q Why was it called ballad ball?

7 A We actually paid tribute to the rock ballads of the
8 eighties. It was all kind of based on this trailer
9 trash kind of thing. So that was the reason why.

10 Q All right. We will get into a little more detail
11 later about what equipment was used and that sort of
12 thing. But is there any doubt that Jackson Dawson
13 wanted you to organize and execute that ballad ball
14 event?

15 A It was my idea. When they heard it it seemed like it
16 really took well. People seemed to be excited about
17 it. So I volunteered to push it all the way through.

18 Q Was there any doubt in your mind this was part of your
19 work as a member of upper management?

20 A I think all of upper management was looking for ways.
21 I think we all were trying to hold each other, expect
22 each other to do this kind of work.

23 Q You used the company intranet, correct?

24 A Yes.

25 Q Company email?

1 A Yes.

2 Q Anything else? Did you use anything else to promote
3 this in the company?

4 A No. Besides just trash talking in the hallways and we
5 used - I think Kevin made an announcement at the staff
6 meeting. We did put a few flyers in people's boxes
7 leading up to it to give them details.

8 Q So in addition to intranet and email, staff meeting
9 announcements, flyers and hall talk; is that it?

10 A That's pretty much it.

11 Q And this went on for how long leading up to the event?

12 A I would say about 30 days. We first started it and we
13 hit it hard in the last week.

14 THE COURT: When did you become the director of
15 creative solutions? What year was that?

16 THE WITNESS: Good question.

17 THE COURT: You can't get any help.

18 THE WITNESS: I can't get any help with it?

19 THE COURT: No.

20 MR. CHURDAR: You can't phone a friend.

21 THE WITNESS: Can I pole the audience? I think
22 it was probably 2005. Or maybe 2006.

23 THE COURT: 2005 or 2006, you think?

24 THE WITNESS: Yeah, it was a year or so ahead of
25 this.

1 BY MR. CHURDAR:

2 Q Did Jackson Dawson pay for everything associated with
3 ballad ball?

4 A Besides travel and expenses, yes.

5 Q What was the travel?

6 A It was five miles from the office.

7 Q Did anybody ask to turn in travel vouchers?

8 A Nobody did.

9 Q But they paid for field rentals, bats, drinks,
10 t-shirts, anything else you can think of?

11 A I think that's about it.

12 Q Who arranged for the facility?

13 A I did.

14 Q Did you act as a facility - was it the YMCA?

15 A Yes.

16 Q Did anyone other than you act as a liaison between
17 Jackson Dawson and the YMCA?

18 A No.

19 Q Did you get equipment from the YMCA?

20 A I think they provided the bases and some of the balls.

21 Q We heard earlier about this event being hyped up. Did
22 you basically take a primary role in that, hyping it
23 up?

24 A Yes.

25 Q Were employees encouraged to attend?

1 A Yes.

2 Q Were they encouraged more than once to attend?

3 A Yes.

4 Q And as you organized and executed this event did you
5 do all of this work during normal business hours?

6 A I'd say the majority of it. I'm sure I did some late
7 night stuff.

8 Q Did you put that time on your time sheets?

9 A As administrative time.

10 Q Were you ever admonished you are wasting time, this
11 isn't something you are supposed to be doing?

12 A No.

13 Q Did you prepare and post announcements on the
14 intranet, send out emails, talk to Kevin, etcetera;
15 all on company time?

16 A Yes.

17 Q How much company time do you think you spent
18 organizing and executing this ballad ball event?

19 A I don't know. I never even calculated it. It was a
20 good handful of hours.

21 Q The day of the event how much time do you think you
22 devoted to the event the day of the event?

23 A I think you showed me a time sheet. It was several
24 hours, maybe four or five hours, I think, on that day.
25 It was raining that morning. We were really concerned

1 about whether we could pull it off. So I spent time
2 going and checking the fields and talking to the Y.
3 We had standing water on the field that morning. It
4 cleared up pretty quickly and drained pretty fast. So
5 we could then go ahead with the ballad ball.

6 Q All right. I'm going to show you Claimant's Exhibit
7 8. This is your time sheet for that day. Would you
8 please read that for the Commissioner what you put
9 down?

10 A Yes. It's that Friday October 5 and it says
11 administrative work "has organized kickball game along
12 with playing kickball." I charged like five hours to
13 that.

14 Q Okay. Did anyone ever tell you before you filed this
15 claim that that was inappropriate and you shouldn't
16 put that on your timesheet?

17 A No.

18 Q Do you know of other people who put their
19 participation of this event on their timesheets?

20 A I haven't done a full look at it. We had this one
21 exhibit provided by Barbara who said that they had
22 asked me.

23 Q All right.

24 A That's the only one. I haven't looked at anybody
25 else's.

1 Q You took company equipment out there?

2 A Yes. There was a little bit.

3 Q There are some photographs that show extension cords,
4 coolers, chairs, a big ball, a megaphone. Was all of
5 that stuff company equipment?

6 A Yes.

7 Q When did you go out there for the event?

8 A I think I officially went - I went in the morning to
9 check on the fields and then came back to the office.
10 And we helped organize getting the coolers put
11 together and all of that. Then I went back out a
12 second time right around lunch time. Then I think
13 permanently I was there from 1:00 on.

14 Q Was the - when you were out there setting up was that
15 during normal work hours?

16 A Yes.

17 Q When you went out there to begin the event was that
18 during normal work hours?

19 A Yes.

20 Q When you were hurt was that during normal work hours?

21 A It was beyond summer hours but yes, it was during the
22 typical hours when most of us were working.

23 Q Let's talk about summer hours. What were - JD,
24 Jackson Dawson was normally open 8:30 to 5:30,
25 correct?

- 1 A Correct.
- 2 Q The phone was answered 8:00 to 6:00; do you agree with
3 that?
- 4 A I think that's right.
- 5 Q How many hours a week did you work typically during
6 the fall of '07?
- 7 A Pushing 50 most weeks.
- 8 Q Were you normally working on Friday afternoons at 5:00
9 or 5:30?
- 10 A That was pretty much routine.
- 11 Q Was Kevin typically working those kinds of hours?
- 12 A Yes.
- 13 Q Were most of the executive level people working until
14 the end of the day meaning 5:30 or 6:00 on Fridays
15 during October 2007?
- 16 A Most of the top management, we are not skaters.
- 17 Q Now, these people who did not participate or play in
18 the ballad ball event what was your understanding that
19 they were supposed to do?
- 20 A Well, you know, a lot of people - the reason why a lot
21 of people didn't come is because of company work. And
22 one thing that makes Jackson Dawson so good of a
23 company is we take care of our clients. The client
24 work always comes first.
- 25 Q Would that be the case at 7:00 in the evening?

1 A Yes. If we had a real big problem we would call
2 people in and ask them to stay.

3 Q 8:00 in the evening?

4 A Yes.

5 Q What were people who did not come to participate or
6 spectate at the ballad ball event, what were they
7 expected to do as best as you remember?

8 A Well, they if they got all their time in they would of
9 course leave at 3:30. But most people were working.

10 Q As far as the percentage of people who were able to
11 come to the ballad ball event, would you - do you have
12 any idea what percentage of those people did, in fact,
13 come?

14 A I don't know.

15 Q Now, this event was scheduled to begin at 3:00; is
16 that correct?

17 A Correct.

18 Q And was it your understanding that was during normal
19 work hours under any definition that we discussed here
20 today?

21 A It was a general policy. Yes.

22 Q Was it your understanding that people left Jackson
23 Dawson even earlier than 3:00 to get to the ballad
24 ball event?

25 A They would have had to because we kicked off at

1 3:00.

2 Q I want to talk about the event itself. We've got some
3 photographs that were given to me by Barb Delora who
4 is going to testify in a few minutes.

5 MR. CHURDAR: I tell you what. I will go over
6 those with her.

7 THE COURT: Okay.

8 MR. CHURDAR: I won't go over those with
9 Mr. Whigham.

10 BY MR. CHURDAR:

11 Q In any event, what did you do at the ballad ball
12 event?

13 A I pretty much got it going. We had - of course Kevin
14 and Darrell also participated very well in making
15 everything happen.

16 Q Was Kevin involved in any way in the leadership of the
17 event?

18 A Yes. He pitched for the other team.

19 Q Did you have a role in leadership in this event?

20 A Yes. I pitched for our team.

21 Q Did you at this time feel any responsibility to keep
22 things hyped up, if you will?

23 A During the thing?

24 Q Yes.

25 A Yes. We were constantly whipping it up and making it

1 as exciting as possible.

2 Q I'm going to show - I tell you what, I think I will.

3 But these pictures. You have seen them, Exhibit 2.

4 In your opinion do those kind of show that? These

5 were given to us by Barbara Delora.

6 A Yes.

7 MR. RENFROW: I will stipulate to those.

8 MR. CHURDAR: Okay.

9 MR. RENFROW: Pictures showing what they show.

10 MR. CHURDAR: Okay.

11 BY MR. CHURDAR:

12 Q Now, eventually you were injured. And what time were

13 you injured?

14 A I first thought it was later in the evening than it

15 was, but when I saw the EMT report it was like 4:15 or

16 4:18 or something like that.

17 Q So I represent you testified at your deposition you

18 thought it was around 5:30.

19 A Yes.

20 Q But have you changed your position on that?

21 A Yes. I didn't see the EMT report. They put me on

22 morphine there and I was feeling pretty good.

23 Q So according to the EMT report that you saw you were

24 injured at - or the call was made at what time?

25 A I think if I remember it was around 4:15, 4:18 that

1 they made the call.

2 Q What type of injury - tell Commissioner Barden how you
3 were injured.

4 A Running around third base to home. Actually, it was
5 kind of ironic. It was the last play of the game. If
6 I could have gotten an extra 30 feet we would have an
7 wonderful day, no injures. But a friend of mine, Jeff
8 Carver, who played football tried to get me out. I
9 tried to jump and I landed full weight and my knee
10 locked on my right leg.

11 Q And what type of injury did you sustain?

12 A They called it a fracture of the tibia, I think is
13 what it was called. But it basically shattered the
14 top to bottom of the bone in about five or six pieces.

15 Q You went through surgery and physical therapy; is that
16 correct?

17 A Yes. It took two surgeries.

18 Q I want to talk about the problems that you have with
19 your leg now. Okay. Which leg is it again?

20 A My right leg.

21 Q What types of problems do you have with your right
22 leg?

23 A Severe arthritis and when I walk for any length of
24 time, if it's 15 to 20 minutes it starts to hurt real
25 badly. It swells any time I put any kind of pressure

1 on it. Or if I stand for any length of time, it ,
2 swells. I do a lot of public speaking and usually
3 after I speak I have to take Tylenol and ice it
4 down.

5 Q Anything else?

6 A I travel a lot, and traveling is not really nice on
7 this leg. If I have to sit on the airplane seat for
8 very long it gets very, very painful.

9 Q I'm going to ask you some more specific questions.
10 How does your leg affect your ability to stand for
11 long periods of time? You said something about doing
12 presentations.

13 A Yes.

14 Q What in your work involves or what part of your work
15 involves doing presentations?

16 A I do a lot of training. I actually have a contract I
17 work with through Jackson Dawson, Jackson Marketing
18 Group where I do two full day training sessions for
19 Michelin. So I stand up in front of a group of people
20 all day for two days and present and train. So by the
21 end of those days it's just really bad.

22 Q What do you mean when you say it's really bad?

23 A Swelling, it gets to the size of a grapefruit. It
24 just gets swollen, especially on this side over here.
25 I have to keep it raised and take some Tylenol to calm

1 it down.

2 Q Do you have a particular amount of time that it takes
3 to recover from that?

4 A Usually I don't see the swelling go down until about
5 48 hours after I give it a rest.

6 Q How about walking?

7 A Walking I can do a modest amount, walking here to the
8 car and to the grocery store and things like that.
9 But I can't walk much more than 20 minutes without
10 swelling occurring.

11 Q How about using stairs?

12 A Stairs are problematic. Not terrible, but they do
13 create pain. Walking downstairs is harder than
14 walking up.

15 Q How about sitting for extended periods of time?

16 A Sitting is - I have to walk around a lot usually when
17 I'm sitting. Usually I can get a good hour or so and
18 then it starts to hurt.

19 Q I need you to speak up. When you say you walk around
20 a lot when you are sitting are you saying you have to
21 sit and stand?

22 A Yes. I sit for a little bit and then I have to get up
23 and start walking a little bit to keep the pain from
24 recurring.

25 Q Mr. Renfrow has mentioned that you have been flying to

1 Wisconsin a lot. How does your knee affect your
2 ability to fly as an air passenger and travel?

3 MR. RENFROW: Object to the form. I think he's
4 answered that.

5 THE COURT: He's already said it's difficult to
6 sit in the airline seat.

7 BY MR. CHURDAR:

8 Q Have you had any specific instances that you would
9 like to tell the Commissioner about with regard to
10 problems with your leg?

11 A Well, traveling, I think I have given that in my
12 deposition. I just happened to fly right before I
13 came for my deposition. My knee gave out and I fell
14 over some passengers.

15 Q Okay. Have you tried to be active since injuring your
16 leg and having your surgery and physical therapy?

17 A Yes. I thought if I just worked it hard enough it
18 would actually start healing better. It hasn't proven
19 to be the case. I tried to play some basketball once
20 last fall. It was a really bad idea. It swelled up
21 very badly. It took a couple of days for it to calm
22 down. I also tried to play tennis - tennis and
23 basketball are my two favorite sports. But I can't
24 play tennis. I tried several times to do that. It's
25 just - every time it's just too painful.

1 Q On this particular day if you had not been out at the
2 YMCA with this ballad ball event, where would you have
3 been? Do you know?

4 A I would have been at the office.

5 Q This particular event you heard Mr. Renfrow say and
6 talk about how it was voluntary. I believe you
7 testified nobody was forced to go.

8 A No.

9 Q Did you feel like it was voluntary for you?

10 A I think I would have been upset if a lot of people
11 hadn't shown up. I mean, I planned the event. I
12 think it would have been a poor reflection on
13 management if I decided not to show up.

14 Q Did you consider it to be part of your job?

15 A On that particular day, yes.

16 Q You mentioned in the self evaluation that we have
17 already seen, did you and Kevin discuss your
18 performance at that ballad ball event?

19 A Yes.

20 Q Did he say anything that led you to believe that at
21 any time he didn't think it was related to your job?

22 A No.

23 Q And when he evaluated you in February 2008, which is
24 Exhibit 4, did he again talk about the ballad ball
25 event?

1 A Yes. I put it on my self evaluation. He put it on
2 his review, I think, that it contributed to team
3 building. That is important. The thing about top
4 management, we are responsible for pushing ideas
5 forward. Even I did when I created that. I think all
6 of us do that.

7 Q Did this - do you agree that the photographs of the
8 event were on the intranet and used at the Christmas
9 party?

10 A Yes.

11 Q And in what context were these photographs used at the
12 Christmas party?

13 A It was a review of the year. That was just one of the
14 big events of the year we wanted to place emphasis on.
15 It was our point that we were just showing all the
16 great things that have happened through the year.
17 That made the list.

18 Q Did this end up costing you out of pocket, this event
19 or this injury?

20 A This event, yes. Insurance paid for the majority of
21 it, but I had to paid my deductibles and had to buy
22 some equipment.

23 Q Do you know approximately how much you are out of
24 pocket for this?

25 A I think the deductible is between 5,000 and 6,600,

1 something in that area. I can't remember the exact
2 number. And then I ended up buying a wheelchair for
3 \$350. I bought some lumber so we could build a ramp
4 to my house for four months. I don't know what the
5 total cost of that would have been.

6 Q You need to speak up.

7 A We built a ramp out the back of the house. We ended
8 up buying some lumbar from Home Depot so we could do
9 that and stuff like that.

10 MR. CHURDAR: I don't have any further questions.

11 Mr. Renfrow will have some for you.

12 THE COURT: Okay.

13 Mr. Renfrow?

14 CROSS EXAMINATION

15 BY MR. RENFROW:

16 Q Let's dive into this, Mr. Whigham.

17 A Okay.

18 Q One of the questions you were just asked by your
19 attorney was about your self evaluation. Is this your
20 self evaluation?

21 A Yes, it is.

22 MR. RENFROW: This is Exhibit 3 of Mr. Churdar's
23 exhibit, Commissioner. It's the 2007 manager self
24 evaluation by the Claimant.

25 MR. RENFROW:

1 Q What word did you use to describe what these events
2 or what these events did for building a positive
3 working culture at Jackson Dawson?

4 A I guess you want me to read the underlined one, right?

5 Q Yes.

6 A Esprit de corps.

7 Q Do you know what that word means?

8 A I think I do.

9 Q What do you think it means?

10 A It's building a team atmosphere, making a team work
11 better together.

12 Q Ironically I pulled the definition of morale and
13 esprit de corps because that's not a word we use where
14 I'm from a whole lot. Look at one of the words that's
15 synonymous with morale. Do you see the esprit de
16 corps in that definition?

17 A Yes.

18 Q So would you agree that your self evaluation of what
19 effect these events had on Jackson Dawson was
20 essentially a morale booster for the company?

21 A It had that. Yes. That was one of the elements of
22 it. There were others.

23 Q Very good. You are 47 years old; is that correct?

24 A Yes.

25 Q You are 48, 47?

- 1 A 47. I had to do the math.
- 2 Q All right. Do you have a driver's license?
- 3 A Yes, I do.
- 4 Q You drove to the deposition that I took several months
5 ago?
- 6 A Yes.
- 7 Q Did you drive to this hearing today?
- 8 A Yes, I did.
- 9 Q We didn't establish this, but I think it's real
10 important. You went to Bob Jones Academy for high
11 school.
- 12 A Yes.
- 13 Q You went to college at Bob Jones University.
- 14 A Yes, I did.
- 15 Q You graduated in '84 with a four-year degree in
16 accounting?
- 17 A Yes.
- 18 Q You also minored in English.
- 19 A Yes.
- 20 Q You have a Master's degree in business administration?
- 21 A Yes, I do.
- 22 Q Okay. You have also taken additional coursework over
23 the years at the international policy at London School
24 of Economics?
- 25 A Yes.

1 Q You studied at the Dynamic Graphics Educational
2 Foundation?

3 A I studied there and I took some courses.

4 Q Specifically script writing and copy writing?

5 A Yes.

6 Q You are a certified business communicator from the
7 Business Marketing Association?

8 A Yes.

9 Q Out of college you went to work for a company
10 called Southeastern Equipment Company in Augusta,
11 right?

12 A Yes.

13 Q You left there to start your own company?

14 A Uh-huh.

15 Q Correct?

16 A Yes.

17 Q The name of that company was American Medical Videos?

18 A Yes.

19 Q You produced and wrote medical education videos for
20 informative purposes?

21 A Yes.

22 Q You also did nursing and physician education videos?

23 A Yes.

24 Q You did this work all over the world, right?

25 A Yes.

1 Q You went to London, New Jersey, all over the United
2 States?

3 A Yes.

4 Q Then you went and had a couple of years' stint with
5 Jackson Dawson the first time, right?

6 A Right.

7 Q You worked there a couple of years as an account
8 executive?

9 A Yes.

10 Q You also worked for a company or an agency called
11 Vantage Point Management, right?

12 A Yes.

13 Q You were hired there to be their creative director?

14 A Yes.

15 Q You did writing and creative development for four
16 years for that company?

17 A Yes.

18 Q You also have been the director of marketing at other
19 companies?

20 A Yes.

21 Q Then you had another brief stint where you had your
22 own company doing work for NAPA Auto Parts, right?

23 A Yes.

24 Q And you were helping them develop a - what was the
25 focus of your company when you were working with NAPA?

1 A I was doing marketing communications services. They
2 had me help them launch some new products into their
3 market.

4 Q All right. Now the base salary, your base salary at
5 the time this accident took place was \$100,000,
6 right?

7 A Something like that.

8 Q And your supervisor at that time was Kevin Johnson?

9 A Yes.

10 Q You never had any problems with Kevin before?

11 A No.

12 Q You have never known Kevin to be dishonest?

13 A No.

14 Q Okay. You love working at Jackson Dawson?

15 A Very much.

16 Q You resigned there in February 28, 2009 to go help or
17 go start another business venture, correct?

18 A I went there as really a response to a need at
19 Northland Bible College.

20 Q And so you are actually helping Northland, it's
21 Northland International University now, correct?

22 A They changed their name. That was part of the reason
23 why I was doing that work.

24 Q We will get into that in a minute. You didn't leave
25 the company on bad terms, though.

1 A No. At least not from my viewpoint.

2 Q In fact, you currently have your own consulting
3 company, right?

4 A Yes.

5 Q And part of that job or part of that work includes
6 working for Jackson Dawson?

7 A Yes.

8 Q The name of your current company is Whigham
9 Consulting?

10 A Yes, very original.

11 Q Now, your current activity with Northland University
12 they pay you a standard retainer; is that right?

13 A Yes. It's based on a certain block of hours.

14 Q And they pay you around 9,000 or \$9,600 per month?

15 A Yes.

16 MR. CHURDAR: Your Honor, I would object to this
17 on the grounds of relevancy. This is a scheduled
18 injury claim.

19 THE COURT: Well, I agree. It certainly is. And
20 you are not alleging wage loss. But I do think just
21 by way of background - I mean, this is typical for any
22 Workers' Compensation claim is what someone was making
23 before and what they are making afterwards. I realize
24 - I am fully aware of Singleton at this juncture,
25 today it is.

1 MR. CHURDAR: All right.

2 THE COURT: So I'm going to allow the question.

3 MR. RENFROW: Thank you, Commissioner.

4 THE COURT: This is cross examination. But
5 you've got a running objection and your objection is
6 noted.

7 MR. RENFROW: Thank you.

8 THE WITNESS: Can I elaborate on that?

9 MR. RENFROW: Sure.

10 THE WITNESS: I give them credits back on their
11 retainer for other work that I do. So the work I've
12 done with Jackson Dawson, my job is at a Christian
13 university, small. They don't have a lot of money
14 sometimes. I do as much as I possibly can, minimize
15 my effect on them financially.

16 MR. RENFROW:

17 Q And your attorney has submitted your paid records from
18 that university. So those are in the records. But in
19 addition to working for Northland International
20 University you also do work for other companies like
21 Jackson Dawson, correct?

22 A Yes.

23 Q And then you also do some work or have done some work
24 since you started this venture with the Clarity Fund?

25 A Yes. They never paid me.

1 Q They have never paid you?

2 A No. So 180 days accounts receivable.

3 Q How much do they owe you?

4 A \$4,000.

5 Q Okay. Is it fair to say that you are making a good
6 bit more money now than you were making at the time
7 this accident took place?

8 A As of right now, the difference in what my deposition
9 - I'm actually making probably about the same or a
10 little bit less.

11 Q At the time I took your deposition I think you told me
12 you were making about 25 percent more then; is that
13 right?

14 A Yes. That was exactly right at that time.

15 MR. RENFROW: And that was back on the second day
16 of June, Commissioner. Okay.

17 MR. RENFROW:

18 Q At that time you were making about \$12,000 a month.

19 A Right.

20 Q Okay. Also as part of your venture, part of your
21 company, at least when I took your deposition you
22 didn't have any employees, correct?

23 A That's correct.

24 Q So the money you earn you don't have to put toward
25 expenses. It is your money?

1 A Yes.

2 Q Okay. Northland, this university you are doing a lot
3 of work for is in Wisconsin, right?

4 A That's correct.

5 Q And at the time I took your deposition you had been
6 there nine times in three months?

7 A Yes.

8 Q So you are going still about three times a month?

9 A Yes, I think so. I haven't done the math.

10 Q Just this past week or a couple of weeks ago you flew
11 to Turkey?

12 A Yes.

13 Q How long were you in Turkey?

14 A About a week.

15 Q Were you there for business?

16 A Yes.

17 Q Okay. And part of what you do for Northland you
18 manage the name change of the university. Are you
19 redoing their website?

20 A Yes.

21 Q Creating logos and that kind of thing?

22 A Yes.

23 Q Now, the accident that we are here about, the incident
24 we are here about, you never missed any time from work
25 as a result of this claim other than a couple of days,

1 right?

2 A I missed five days where I could not bill. But I
3 worked at the house. I was at home for a solid month
4 where I could come into work in the office.

5 Q Do you feel like the doctors have done the best job
6 they could do with your treatment?

7 A That's what they tell me. I think so.

8 Q And you have been released. No question about that,
9 right?

10 A Yes.

11 Q You are not aware of any restrictions you have as a
12 result of this case?

13 A What do you mean by that?

14 Q Has any doctor given you any specific work
15 restrictions?

16 A No.

17 Q And you also - I think you described your work at your
18 deposition as being mostly cerebral, right?

19 A Yes.

20 Q What does that mean?

21 A I think for a living.

22 Q You are able to do your work despite the fact that you
23 may have a bad knee from time to time?

24 A Yes. Except that when I am asked to give training
25 sessions I have to be present, physical and open, in

1 front of people.

2 Q But there is nothing about your injury that prevents
3 you from doing your work?

4 A No.

5 Q In addition to the trips to Wisconsin and the trip to
6 Turkey you have been on a family trip to Pennsylvania
7 since this incident?

8 A I'm trying to think. When did I go to Pennsylvania?

9 Q You told me at your deposition you had been since this
10 incident.

11 A Yes. Since the incident, I was thinking of since the
12 deposition.

13 Q Sure.

14 A I apologize. I went to Pennsylvania. Yes.

15 Q You have been to California twice for business since
16 this incident?

17 A I know at least once but possibly twice.

18 Q And to Washington DC?

19 A Yes.

20 Q And Akron, Ohio?

21 A Yes.

22 Q You are currently taking no prescription medication as
23 a result of this incident?

24 A No.

25 Q You told the Commissioner earlier you had two

1 surgeries. The first surgery was outpatient,
2 correct?

3 A Yes. It was the same day.

4 Q And the second surgery you missed two full days of
5 work?

6 A I was two days post surgical and in the hospital.

7 Q Okay. You admitted you continued to remain active.
8 You told us about basketball. You told us about
9 tennis. But you also like to hike, right?

10 A Yes.

11 Q And you have taken some hikes up Paris Mountain since
12 this incident, right?

13 A Yes.

14 Q You have a dog at home. You walk your dog?

15 A Yes.

16 Q You testified earlier that this kickball event where
17 you were injured was the last play of the game; is
18 that right?

19 A Well, it ended up being it no matter what. But I
20 think it was the last play of the game. If no injury
21 had occurred we would have finished the game.

22 Q Did you expect or did the company expect folks when
23 the game ended, since it ended based on your testimony
24 and based on the EMS report, since it ended at 4:15
25 did you or the company expect those players to go back

1 and work for the rest of the day?

2 A No. It's the same thing that Kevin was talking about.

3 We have a very fluid way that we actually take care of

4 time.

5 Q Kickball is not something you regularly do as an

6 employee of Jackson Dawson?

7 A No.

8 Q This is the first time you had ever played kickball as

9 a company?

10 A As a company, yes.

11 Q And there were about 30 or more players that

12 participated that afternoon; is that right?

13 A That would be a reasonable number.

14 Q And I think you testified all of the employees or all

15 of the players were employees of Jackson Dawson?

16 A Yes. As best as I can remember.

17 Q You didn't invite any clients to play?

18 A No.

19 Q No perspective clients were invited to play?

20 A No.

21 Q And there were some spouses and children that came to

22 watch but none played?

23 A No, none that I know of.

24 Q In essence, this whole event was done by Jackson

25 employees for Jackson Dawson employees?

1 A Yes.

2 Q Now, you kept referencing earlier we. I think you
3 said we put fliers somewhere. We did different
4 things. Was there more than one person that set this
5 up or was it just you?

6 A I was - being the director of a department as a way of
7 getting other people to help. I would actually ask an
8 artist to do something for me or whatever.

9 Q All right. Is it fair to say no employee was required
10 to be at the event?

11 A Not required.

12 Q Some employees stayed back and worked until going home
13 that day, correct?

14 A Yes, sir. I would think so. I was at the game.

15 Q You told me at your deposition that some employees
16 stayed at work?

17 A I would think so.

18 Q Okay. And some just went home?

19 A I would think so.

20 Q And some others went to play kickball?

21 A Yes.

22 Q Okay. Based on your emails the intention was that if
23 someone had work to do they had to stay back and get
24 their project done?

25 A Yes.

1 Q You told me at your deposition that you knew some
2 people who did not stop working. They stayed back and
3 worked while the kickball game was going on, right?

4 A Yes.

5 Q And there was no pressure from anybody, including
6 yourself, for people to play in this event?

7 A No. We encouraged, we were hoping. As Kevin said we
8 were hoping a lot of people would participate.

9 Q But there was no ultimatum given by -

10 A No. We did not make it a requirement of their job to
11 participate.

12 Q Let me finish that question. Never a direct or even
13 an implied ultimatum by executives to the associates
14 to be at that kickball event.

15 A No. But we encouraged them.

16 Q Totally voluntary?

17 A Yes.

18 Q Has any employee come to you - since you were in
19 charge of a few at the time, has any employee come to
20 you and told you that they felt that they were
21 pressured to play in this kickball event?

22 A No.

23 Q Was there anything about your role with the company
24 that required you to come up with a company event to
25 boost morale or the esprit de corps?

1 A I think they expected all of our top managers to be
2 involved in that role.

3 Q Do you remember when I took your deposition back on
4 June 2, 2009?

5 A Yes.

6 Q Do you remember me asking you that question?

7 A No, I don't.

8 Q Let me show it to you.

9 MR. CHURDAR: What page?

10 MR. RENFROW: Page 53 of the Claimant's
11 deposition.

12 BY MR. RENFROW:

13 Q Let me read you this question.

14 A Okay.

15 Q My question to you was "but there was nothing about
16 your role at the company that required you to come up
17 with company events to build morale." What was your
18 answer?

19 A "No, not at all".

20 Q Your answer was "no, no, not at all", right?

21 A Okay.

22 Q Did something change?

23 A No. That's exactly - there's no requirement. We also
24 wanted our top management to be involved in this kind
25 of thing.

1 MR. CHURDAR: Your Honor, I don't know whether
2 it's appropriate now or later for him to read the
3 prior question and answers.

4 THE COURT: Well, I think what would be best
5 would be for me to read the entire deposition because
6 sometimes 20 pages later there might be a
7 clarification.

8 MR. RENFROW: I think that's great. I've got the
9 original.

10 THE COURT: I will read it. Anytime somebody
11 uses a portion to impeach, I will read it. Thank you.

12 MR. RENFROW: Thank you.

13 THE COURT: Okay. Go ahead.

14 BY MR. RENFROW:

15 Q We have established this, I think, but I want to hear
16 it from you. This event was at the Simpsonville YMCA,
17 correct?

18 A Yes.

19 Q I think you told me at your deposition it was five to
20 ten miles away from the company?

21 A Yes.

22 Q Jackson Dawson did not provide any transportation to
23 the event or reimburse people for mileage?

24 A No.

25 Q They did not hire a bus or a van to transport people.

- 1 A No.
- 2 Q You are a salaried employee, correct?
- 3 A That's correct.
- 4 Q If you hadn't been playing kickball that afternoon but
5 had just gone home would you have received your same
6 salary that day?
- 7 A Yes.
- 8 Q And you would have gotten the same salary if you had
9 stayed in the office and worked that day?
- 10 A Yes.
- 11 Q You weren't paid extra for organizing this event?
- 12 A No.
- 13 Q And let's be real clear about this. You weren't
14 injured organizing the event. You were injured
15 playing in the event, correct?
- 16 A That's correct.
- 17 Q You referenced earlier that because you were the
18 pitcher that gave you a leadership role. But what
19 about you being a pitcher made that a leadership
20 role?
- 21 A It was just the - we wanted Kevin to pitch and also to
22 get some of the top managers involved in it.
- 23 Q But if one of those hourly employees just wanted to
24 pitch there was no problem with an hourly employee
25 pitching?

1 A I don't know.

2 Q And you are aware that the company has hourly
3 employees?

4 A Yes.

5 Q And as far as you know they clock - did they have to
6 clock in or out the day of this event?

7 A I had no dealings with them, so I wouldn't be a good
8 person to ask.

9 Q Okay. Do you agree the company did not keep a record
10 of attendance?

11 A No.

12 Q Did not punish people who chose not to attend?

13 A No.

14 Q Didn't dock pay for not attending?

15 A No.

16 Q They did not - people didn't get paid more if you did
17 attend?

18 A No.

19 Q This Friday afternoon kickball event was not something
20 that the company did every week or every month?

21 A No. It was very special.

22 Q The results of the game, you all didn't publish them
23 in the local newspaper?

24 A No.

25 Q No indirect or direct pressure by anybody at the

1 company to have people play in this event?

2 A No.

3 Q You testified to your attorney earlier that you kept
4 track, at least on the day of the accident, of the
5 hours that day; is that correct, preparing for and
6 playing in the kickball event?

7 A Yes. I put that on my timesheet, if that's what you
8 are asking.

9 Q But you also said there were some times where you did
10 some work on this whole event at home, correct?

11 A I can't remember exactly when I did what I did. More
12 than likely I did most of the work on the premises.
13 But it could have been 5:30. It could have been 5:30
14 to 7:30 at night. It's just hard to know.

15 Q Every bit of work that you did did you keep track of
16 the hours?

17 A I'm not sure. It wasn't billable to a client. I
18 mean, we were most concerned about client billables.
19 So the administrative time, we were just trying to
20 make sure that our timesheets were filled out.

21 Q Okay.

22 A Saying, you know, we're doing this kind of work.

23 MR. RENFROW: No further questions.

24 THE COURT: Mr. Churdar, anything on redirect?

25 MR. CHURDAR: Yes.

REDIRECT EXAMINATION

2 BY MR. CHURDAR:

3 Q You were asked earlier about hiking. Explain to the
4 Commissioner what you mean about hiking.

5 A Hiking?

6 Q Yes. I mean, do you hike a couple of times a
7 month?

8 A Not anymore.

9 Q Did you used to like to hike?

10 A Yes. I would take long - five- or six-mile hikes and
11 small hikes.

12 Q I'm not talking about a walk. I'm talking about
13 hiking. How many times have you tried to hike since
14 this injury?

15 A I don't know the exact amount of times, but I did once
16 or twice try real long hikes to see if I could do it.

17 Q How did that go?

18 A It did not go well.

19 Q What happened?

20 A The pain really started to rise in my leg and the
21 swelling was pretty heavy.

22 Q As far as your work for Northland Bible College, have
23 they offered you a package, a contract?

24 A Yes, they have.

25 Q I'm going to show you Plaintiff's Exhibit 1. What is

1 that?

2 A This is something they handed me back in the late
3 spring. They wanted me to go on full time. They were
4 offering me an annual salary of \$41,500.

5 Q Are they offering other benefits as well?

6 A Yes. A housing allowance of \$9,600.

7 Q Tell you what, the Commissioner is going to read all
8 of this. But that was the annual salary, 41,500?

9 A Yes.

10 Q Would you like to be able to accept that?

11 A I would love to be able to accept it.

12 Q You were asked earlier about the benefits of this
13 particular team building event. Mr. Renfrow showed
14 you a definition of the term either morale or esprit
15 de corps, I'm not sure which. Was that the only
16 benefit to having this event as far as you are
17 concerned?

18 A That was a big part of it. There was a lot of other
19 benefits, as well.

20 Q Were those the same ones that we talked about almost
21 45 minutes to an hour ago in your earlier testimony?

22 A Yes.

23 MR. CHURDAR: I don't have any further questions.
24 Thank you.

25 THE COURT: Anything else, Mr. Renfrow?

1 MR. RENFROW: No further questions. I'm just
2 going to mark the Webster's online definition of
3 morale into evidence.

4 THE COURT: Okay. Without objection?

5 MR. RENFROW: Defendants' 1.

6 MR. CHURDAR: That's what Mr. Webster thought it
7 was. My intention of that definition is more
8 important.

9 THE COURT: He's explained what he believed it to
10 be. You asked him that question and that's in the
11 record.

12 MR. CHURDAR: Correct.

13 THE COURT: That concludes this proceeding.

14 MR. RENFROW: I've got one hourly employee who is
15 here. I'm sorry, not hourly, but an employee who did
16 not participate in the event.

17 THE COURT: I don't know that there's been any
18 evidence to dispute that.

19 MR. RENFROW: You are right. Let's just leave it
20 alone. Our case is done.

21 THE COURT: All right. That concludes this
22 proceeding.

23 (The hearing concluded at 2:03 PM)

From: Steve Whigham
Sent: Monday, September 17, 2007 3:27 PM
To: Kevin Johnson
Subject: RE: Kickball on Oct. 5

Cool. We'll start the hype machine.

Steve

From: Kevin Johnson
Sent: Monday, September 17, 2007 3:08 PM
To: Steve Whigham
Subject: RE: Kickball on Oct. 5

Yes I'm OK with this.

From: Steve Whigham
Sent: Monday, September 17, 2007 1:50 PM
To: Kevin Johnson
Subject: Kickball on Oct. 5

Kickball... do you think we can spend a bit on it?
 What do you think about the following budget:

Field rental (3-5p) = \$80.00 (see below)
 Drinks/snacks (\$3/per x 36) = \$108
 T-Shirts, screen-printed (\$7/per x 36) = \$252

Total = \$440.

Possible? Or not? Let me know...

Steve

From: Branham Biggers [mailto:bbiggers@ymcagreenville.org]
Sent: Thursday, September 13, 2007 11:23 AM
To: Steve Whigham
Subject: RE: Interested in the softball field on October 5

Hi there! Our fields are available for rental, when there are no other programs going on. That afternoon is actually open, and the rental fees are \$40 per hour. Please let me know if you would like to book it and we can finalize the details. Thanks and have a great day!

Branham Biggers
 Sports Director
 Golden Strip Family YMCA
 864.963.3605

Check out what's happening at the YMCA!
 Click here: http://www.ymcagreenville.org/golden_strip.php

-----Original Message-----

From: Steve Whigham [mailto:Steve.Whigham@jdsouth.com]

Sent: Wednesday, September 12, 2007 9:55 AM

To: Branham Biggers

Subject: Interested in the softball field on October 5

Mr. Biggers,

My name is Steve Whigham and I have a metro membership to the YMCA. I work for a company named Jackson-Dawson. We were wanting to do something fun with our staff on October 5th. We were wanting to hold a kickball game mid-afternoon (between 2pm and 5pm). It would involve 20 to 25 people. I wanted to know if the Golden Strip YMCA makes the softball field available to the community like that? If so, how do we go about making arrangements with you?

I look forward to hearing back from you. Thank you in advance.

Sincerely,

Steve Whigham
Director, Creative Solutions

Jackson-Dawson Marketing Communications
2 Task Court
Greenville, SC 29607
864.272.3015 (ph)
864.272.3040 (fx)

www.jdsouth.com

From: Steve Whigham
Sent: Monday, September 24, 2007 4:39 PM
To: Judy Lail
Subject: RE: I have your travel cash....for the Ballad Bowl, please order me a 2X shirt.

Many thanks! And you're in on the kickball!

From: Judy Lail
Sent: Monday, September 24, 2007 1:17 PM
To: Steve Whigham
Subject: I have your travel cash....for the Ballad Bowl, please order me a 2X shirt.

Judy Lail
Operations Accountant

Jackson-Dawson Communications/South, Inc.
2 Task Industrial Court • Greenville, SC 29607
(864) 272-3050 (direct) • (864) 272-3040 (fax)
www.JDSouth.com judy.lail@jdsouth.com

"We are Plantings of the Lord; for the Display of His Splendor."

From the deeply disturbed minds that brought you "Afternoon Delight—Salute to the One-Hit Wonders!" Cookout, Jackson-Dawson announces...

Stupid Distraction #2:

Ballad Ball!

(The First Annual "Trailer Trash" Kickball Championship)

Eloise's Bag-O-Hammers vs. Petey O's Box-O-Rocks

Combining the time-honored sport of Kickball with a salute to the ear-wrenching sounds of Heavy Metal Power Ballads, JD will take to the field like Hyped-Up-On-Skittles 3rd Graders and play a rousing game of kickball. All JDers are encouraged to play.

Who: JDers and JDMers

When: 3pm, Friday, October 5th.

Where: Softball Field at the Golden Strip YMCA

Why: Because.

How to get in on this...

Email Steve Whigham your plan to participate—along with your t-shirt size—no later than 10am on Thursday, September 27th. That's it.

From that pool of talent, we will pick two captains who will then go through a draft process of selecting team members. Each participant will be assigned to a team—Eloise's or Petey O's.

Then... It will be your responsibility to put on your team t-shirt and get your kickball-playin' patooty to the Golden Strip YMCA before 3pm on Friday, Oct. 5.

We'll probably tire out by 5pm. At that point, we can all go home and soak in a warm tub shortly thereafter (but preferably *not* in the same tub.)

And another thing...

As a way of saying "Thanks!" to JD for the t-shirt and the outing, we are asking all participants to do a brown-bag, work-through-lunch gesture on Friday, October 5 to get our work in before we hit the diamond. Cool with that?

Questions? See either Dean Bryant or Steve Whigham. *And get ready to kick some ball!*

From: Joshua Lyall
Sent: Wednesday, September 26, 2007 7:35 PM
To: Steve Whigham
Subject: RE: Ballad Ball is just 9 Shop-Lifting Days Away!

Why not, right? I'll make every effort to be there - everyone could use a few more Power Ballads in their life.

Shirt size = Large

Josh

From: Steve Whigham
Sent: Monday, September 24, 2007 4:50 PM
To: Alicia Pflug; Amanda Rubel; Amy Bustos; Ansley Welchel; Ashli Jarrett; Barbara DeLaura; Brett Turner; Brian Calloway; Bryan Lehman; Christa Bryson; Christi Fuson; Dale Carver; Darrell Jackson; Dave Koss; David Jones; David Madson; Dean Bryant; Debra Griffin; Drew Stauffer; Eric Bachert; Eric Jackson; Erin Ridgeway; Faye Ward; Frank DeAngelo; Gary Moneypenny; Ginny Knight; Jamie Demumbreum; Jeff Baker; Jeff Carver; Jeff Martinez; Jen Smith; Jennifer Escontrias; Jennifer Sutton; Jim Loucks; Joe Clark; Joey Perry; John Gilbert; John Mininger; John Vandermeij; Jonathan Burr; Joshua Lyall; Judy Lail; Julia Mangan; Julie Froehlich; Karis Lane; Ken Bartlett; Kevin Johnson; Kirk Flinte; Lara Disher; Larry Jackson; Lindsay Hazle; Lowell Eckart; Mark Gerdy; Mary McCurley; Matt Caldwell; Matt Slocum; Matthew Ziehl; Melea Mauldin; Mike Zeller; Misty Burgio; Monique Bearden; Myles Grimm; Nancy Moore; Nikki Brown; Pamela Wilcoxson; Paul Hanna; Raleigh Buckner; Receptionist; Richard Burr; Ryan Fisher; Scott Elwart; Shepard Wallace; Steve Whigham; Steven Mathena; Tracy Wall; Vicki Newsome; Victor Angon; Wes Unfried; Whitney King
Subject: Ballad Ball is just 9 Shop-Lifting Days Away!

Many have already responded, but there still are a few hold-outs. Bounce me back an email and your t-shirt size if you want in. Details are on the intranet.

Don't forget! Deadline for sign-up is Thursday morning. That's the day after the day after tomorrow. (And, no whinin' on Friday about, "Oh, I forgot to send you an email!" or nothin', 'kay?)

Pop off an email right now, ya' hear?

Steve

07JDS0010 - Kick Ball T-shirts

From: Jamie Demumbreum
Sent: Thursday, September 27, 2007 8:42 AM
To: Steve Whigham
Cc: Dean Bryant
Subject: 07JDS0010 - Kick Ball T-shirts

The only size that will change the price will be XXL's which add about \$1.50 per shirt. Please get the final count and quantity breaks to me as soon as you can.

Thanks,
Jamie

-----Original Message-----

From: Steve Whigham
Sent: Wednesday, September 26, 2007 7:16 PM
To: Jamie Demumbreum
Cc: Dean Bryant
Subject: RE: 07JDS0010 - Kick Ball T-shirts

We need to get certain sizes for people, not all XL. Will that change the price?

Also, we're going to have more than 30 people who need tshirts. I gave everyone until tomorrow morning to get in on the deal. Can we wait for the final count, like right after lunch tomorrow?

Steve

-----Original Message-----

From: Jamie Demumbreum
Sent: Wed 9/26/2007 5:20 PM
To: Steve Whigham
Cc: Dean Bryant
Subject: 07JDS0010 - Kick Ball T-shirts

Please approve cost for T-shirts.

15 XL White/Black Ringer Tees

Printing Black Ink

15 XL Dark Gray/Black Ringer Tees

Printing White Ink

Delivered by Thursday 10/4.

\$295.50 plus tax

Jamie Demumbreum

07JDS0010 -- Kick Ball T-shirts

Production Manager

Jackson-Dawson Communications/South, Inc.
2 Task Industrial Court . Greenville, SC 29607
(864) 272-3054 (direct) . (864) 272-3040 (fax)
(864) 561-3118 (mobile)

www.JDSouth.com <<http://www.JDSouth.com>>

From: Steve Whigham
Sent: Thursday, September 27, 2007 3:19 PM
To: !All JD Associates
Subject: Rosters for the First Annual Ballad Ball--Check It Out!

Importance: High

Appears we're gonna have quite a throw-down come Friday next (Oct 5)! Check out the team selections. Christi and Judy were selected at random as coaches. Let the trash talking begin!!

Eloise's Bag-O-Hammers Roster:

- Amy Bustos
- Ansley Welchel
- Christi Fuson (Head Coach)
- Drew Stauffer
- Eric Bachert
- Jeff Baker
- Jen Smith
- Jennifer Sutton
- Jennifer Escontrias
- Josh Lyall
- Julia Mangan
- Matthew Ziehl
- Mike Zeller
- Misty Burgio (3rd Base Coach)
- Nikki Brown
- Raleigh Buckner
- Scott Elwart
- Shep Wallace
- Steve Whigham
- Whitney King
- Dean Bryant
- Dave Koss (1st Base Coach)

Petey O's Box-O-Rocks Roster:

- Erin Ridgeway
- Barbara DeLaura
- Brian Calloway
- Christa Bryson
- David Jones
- David Madson
- Gary Money Penny
- Jeff Carver
- Jim Loucks (1st Base Coach)
- Judy Lail (Head Coach)
- Kevin Johnson

Lindsay Hazle
Lowell Eckart
Mark Gerdy
Matt Caldwell
Melea Mauldin
Myles Grimm
Pamela Wilcoxson
Ryan Fisher
Steven Mathena
Vicki Newsome (3rd Base Coach)

From: Steve Whigham
Sent: Monday, October 01, 2007 2:19 PM
To: Judy Lail
Subject: RE: Interested in the softball field on October 5

Thanks.

From: Judy Lail
Sent: Monday, October 01, 2007 11:52 AM
To: Steve Whigham
Subject: RE: Interested in the softball field on October 5

I don't have a check signer today..Kevin and Darrell are both at the golfing event for meals on wheels. Will be tomorrow.

Judy Lail
Operations Accountant

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2 Task Industrial Court • Greenville, SC 29607
(864) 272-3050 (direct) • (864) 272-3040 (fax)
www.JDSouth.com judy.lail@jdsouth.com

"We are Plantings of the Lord; for the Display of His Splendor."

From: Steve Whigham
Sent: Monday, October 01, 2007 10:55 AM
To: Judy Lail
Subject: FW: Interested in the softball field on October 5

Here is the YMCA address and stuff.

From: Branham Biggers [mailto:bbiggers@ymcagreenville.org]
Sent: Tuesday, September 18, 2007 12:30 PM
To: Steve Whigham
Subject: RE: Interested in the softball field on October 5

You got it, I'll pencil you in, and confirm when payment is received! You can send the check to:

Golden Strip Family YMCA
100 Adams Mill Rd.
Simpsonville, SC 29681
Attn: Branham Biggers

Thanks, let me know if you need anything (kick balls, scrimmage vests) etc...

Have a great day.

Branham Biggers
Sports Director
Golden Strip Family YMCA
864.963.3605

Check out what's happening at the YMCA!

Click here: http://www.ymcagreenville.org/golden_strip.php

-----Original Message-----

From: Steve Whigham [mailto:Steve.Whigham@jdsouth.com]
Sent: Monday, September 17, 2007 3:31 PM
To: Branham Biggers
Subject: RE: Interested in the softball field on October 5

Branham,

Thank you for your response. We are interested in one of your fields. We'd like to use it between 3pm and 5pm on October 5th. We will be playing a fun rendition of kickball (nothing competitive or serious). Can you pencil us in for that afternoon and you can tell me how we can arrange payment? Thanks.

Steve Whigham
Director, Creative Solutions

Jackson-Dawson Marketing Communications
2 Task Court
Greenville, SC 29607
864.272.3015 (ph)
864.272.3040 (fx)

www.jdsouth.com

From: Branham Biggers [mailto:bbiggers@ymcagreenville.org]
Sent: Thursday, September 13, 2007 11:23 AM
To: Steve Whigham
Subject: RE: Interested in the softball field on October 5

Hi there! Our fields are available for rental, when there are no other programs going on. That afternoon is actually open, and the rental fees are \$40 per hour. Please let me know if you would like to book it and we can finalize the details. Thanks and have a great day!

Branham Biggers
Sports Director
Golden Strip Family YMCA
864.963.3605

Check out what's happening at the YMCA!

Click here: http://www.ymcagreenville.org/golden_strip.php

-----Original Message-----

From: Steve Whigham [mailto:Steve.Whigham@jdsouth.com]

Sent: Wednesday, September 12, 2007 9:55 AM

To: Branham Biggers

Subject: Interested in the softball field on October 5

Mr. Biggers,

My name is Steve Whigham and I have a metro membership to the YMCA. I work for a company named Jackson-Dawson. We were wanting to do something fun with our staff on October 5th. We were wanting to hold a kickball game mid-afternoon (between 2pm and 5pm). It would involve 20 to 25 people. I wanted to know if the Golden Strip YMCA makes the softball field available to the community like that? If so, how do we go about making arrangements with you?

I look forward to hearing back from you. Thank you in advance.

Sincerely,

Steve Whigham
Director, Creative Solutions

Jackson-Dawson Marketing Communications
2 Task Court
Greenville, SC 29607
864.272.3015 (ph)
864.272.3040 (fx)

www.jdsouth.com

From: Steve Whigham
Sent: Wednesday, October 03, 2007 10:29 AM
To: Kevin Johnson
Subject: FW: 07JDS0010 - Kickball T-Shirts
Attachments: Petey o's ringershirts.pdf; Petey o's white imprint ringershirts.pdf; Eloise ringershirts.pdf

Thought you'd want to see these t-shirts... For Petey O's team, we're doing black ink.

Steve

From: Jamie Demumbreum
Sent: Friday, September 28, 2007 12:30 PM
To: Dean Bryant; Steve Whigham
Subject: 07JDS0010 - Kickball T-Shirts

Please take a look at the attached proofs. The black ink on the PTOs shirt may work better than white.

Jamie Demumbreum
Production Manager

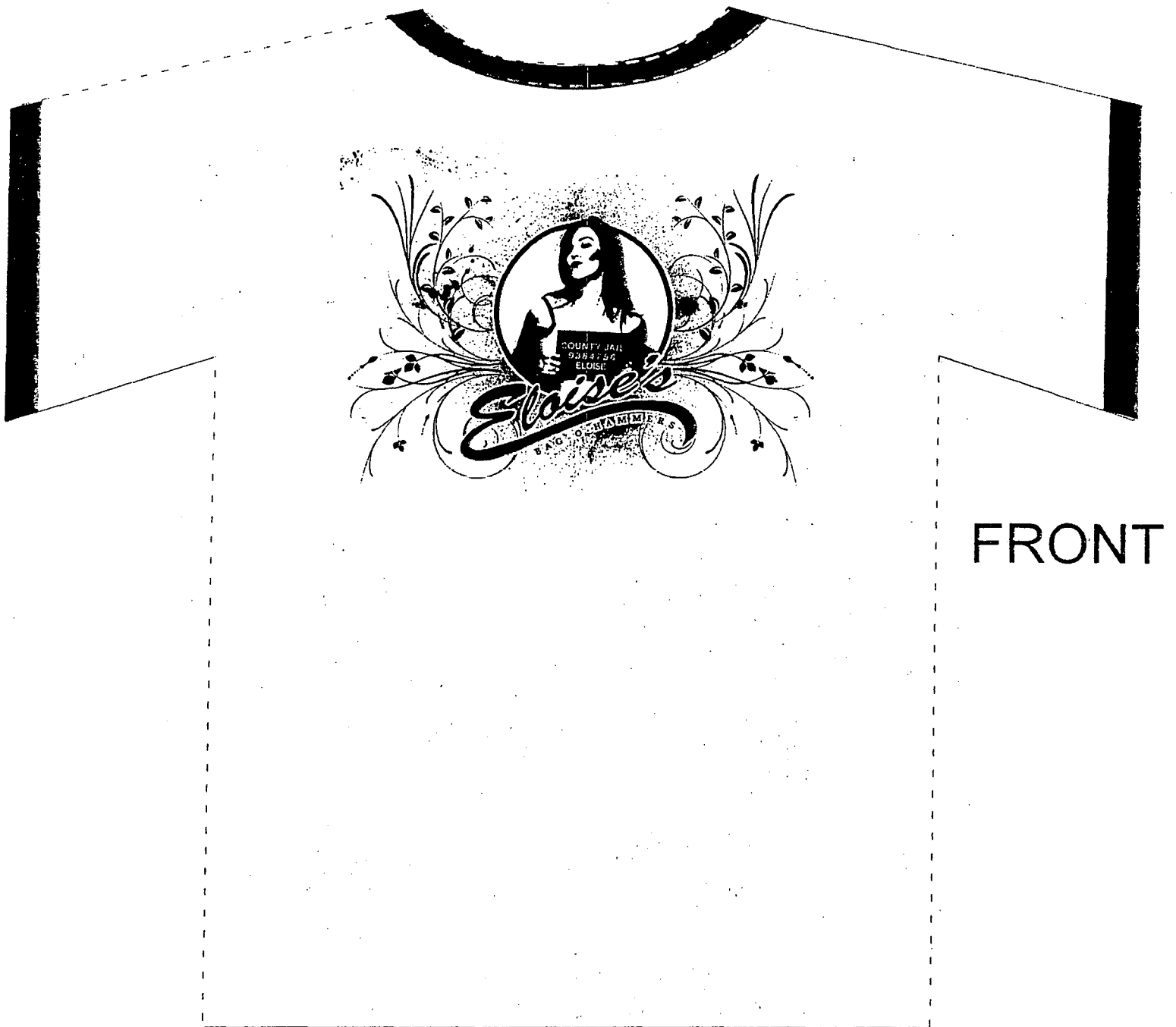
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10.5" across by 8.5" tall



FRONT

10.5" across by 8.5" tall



FRONT

15

From: Lowell Eckart
Sent: Wednesday, October 03, 2007 3:47 PM
To: Steve Whigham
Subject: RE: Ballad Ball This Friday! Only Two Tobacco-Spittin' Days Left!

Thanks for doing this!

From: Steve Whigham
Sent: Wednesday, October 03, 2007 2:36 PM
To: !All JD Associates
Subject: Ballad Ball This Friday! Only Two Tobacco-Spittin' Days Left!
Importance: High

The Kickball Event of the century is nigh upon us.

DATE: This Friday (Oct 5)
 TIME: 3pm.
 WHERE: The Golden Strip YMCA

Whether you're a player—or a person coming out just to make fun of the players (some call that cheerleading)—be there at 3pm for the Opening Ceremony. According to Google, it will take you 10 – 11 minutes to get there from the office. (For DJ, that's about 3 minutes.)

REMEMBER A COUPLE OF THE RULES:

1. Friday is "brown bag" day. We're working through lunch so we can do this. (If some of you don't know what a brown bag is, it's possible to rangle up a posse of other players/cheerers on Friday and go in together for a pizza and have it delivered.)
2. Also, please note that no client work can be compromised in order for any of us to play. If client work has to get done, it has to get done. Let's watch everyone's back the last part of this week so no one gets stung the last minute with client work that could have been handled if managed properly. It's clients that give us the opportunity to work together, so no dissin' clients for Kickball!
3. Wear your team t-shirt proudly to the game. The t-shirts will be in sometime tomorrow.

If any of you have a hankering to help us record this momentous occasion (like digital photos, video, charcoal sketches, full Plaster-of-Paris body casts, macramé pillows, etc.), please let me know.

Other than that, let's kick ball!

DIRECTIONS TO THE GAME:

Control+click the link below to see a map to the Golden Strip YMCA...

<http://maps.google.com/maps?f=d&hl=en&geocode=&time=&date=&ttype=&saddr=2+Task+Court+Greenville+SC+29607&daddr=34.814719,-82.274466+to:100+Adams+Mill+Rd.,+Simpsonville,+SC+29681&mrcr=0,1&mrsr=1&sz=14&mra=dpe&sll=34.7979,-82.270835&sspn=0.050253,0.083084&ie=UTF8&z=14&om=1>

Steve Whigham
 Director, Creative Solutions

Jackson-Dawson Marketing Communications

2 Task Court
Greenville, SC 29607
864.272.3015 (ph)
864.272.3040 (fx)

www.jdsouth.com

From: Steve Whigham
Sent: Thursday, October 04, 2007 5:17 PM
To: Judy Lail
Subject: RE: Kickball T-Shirts Have Arrived!!!

I don't think any self-respecting person would want to be a Rock! (Sorry, I'm a Hammer!) There are a couple warehouse guys that are looking to get plugged in. I'll make sure you get one. Scott Elwart is hooking them up for us.

Steve

From: Judy Lail
Sent: Thursday, October 04, 2007 5:14 PM
To: Steve Whigham
Subject: RE: Kickball T-Shirts Have Arrived!!!

Steve...DJ is not going to be able to play on my team tomorrow....do you know of anyone else that would like to be a Rock?

Judy Lail
 Operations Accountant

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www.JDSouth.com judy.lail@jdsouth.com

"We are Plantings of the Lord; for the Display of His Splendor."

From: Steve Whigham
Sent: Thursday, October 04, 2007 1:28 PM
To: Barbara DeLaura
Cc: Judy Lail
Subject: RE: Kickball T-Shirts Have Arrived!!!

You're not trying to get out of this thing, now are you?? I mean, HR Manager, and all, right?

From: Barbara DeLaura
Sent: Thursday, October 04, 2007 1:27 PM
To: Steve Whigham
Cc: Judy Lail
Subject: RE: Kickball T-Shirts Have Arrived!!!

That's what I mean, she is playing full out for me.

Barbara DeLaura
 Human Resources Manager

Jackson-Dawson Communications/South, Inc.

2 Task Industrial Court • Greenville, SC 29607
(864) 272-3036 (direct) • (864) 272-3040 (fax)
www.JDSouth.com

From: Steve Whigham
Sent: Thursday, October 04, 2007 1:26 PM
To: Barbara DeLaura
Cc: Judy Lail
Subject: RE: Kickball T-Shirts Have Arrived!!!

She can play full-out if you'd like.

From: Barbara DeLaura
Sent: Thursday, October 04, 2007 1:25 PM
To: Steve Whigham
Cc: Judy Lail
Subject: RE: Kickball T-Shirts Have Arrived!!!

Kristen Turner is going to be my pinch kicker. David and I agree that she should have the opportunity to join in on the fun.

Barbara DeLaura
Human Resources Manager

Jackson-Dawson Communications/South, Inc.
2 Task Industrial Court • Greenville, SC 29607
(864) 272-3036 (direct) • (864) 272-3040 (fax)
www.JDSouth.com

From: Steve Whigham
Sent: Wednesday, October 03, 2007 5:13 PM
To: !All JD Associates
Subject: Kickball T-Shirts Have Arrived!!!

If you signed up for a team and you're on the roster, we have a t-shirt awaiting you in the War Room. Please come and secure your t-shirt. Please take the size you ordered and nothing more so we don't have a problem.

Eloise's Bag of Hammers... look for white.
Petey O's Box of Rocks... look for heather grey.

And don't forget to wear them to the game on Friday!!!

Steve Whigham
Director, Creative Solutions

Jackson-Dawson Marketing Communications
2 Task Court
Greenville, SC 29607
864.272.3015 (ph)
864.272.3040 (fx)

www.jdsouth.com

From: Scott Elwart
Sent: Friday, October 05, 2007 12:04 PM
To: !All JD Associates
Subject: RE: Ballad Ball is On!!

That's actually Level VII (be sure to read the last sentence...this rule doesn't apply to kickball).

Level VII: The Drive-By Shooting

Definition: A first cousin of The "This Can't Be Happening" Game, we created this one four weeks ago to describe any college football upset in which a 30-point underdog shocks a top-5 team in front of 108,000 of its fans and kills its title hopes before Labor Day.

Best Example: The unprecedented "Assassination in Ann Arbor," which trumped The "This Can't Be Happening" Game for three reasons. First, it's an understatement to say that nobody saw Appalachian State coming. Second, it was one of the most humiliating defeats in college football history. And third, it killed any realistic chance for Michigan to win the national title, only it happened in Week 1 and the Wolverines still had to play out the rest of their suddenly meaningless season. Just for the record, the "Drive-By Shooting" can only happen in college football.

Go BLUE! (at least we're not Notre Dame)

Scott R. Elwart
 Warehouse Manager
 Jackson-Dawson
 864-272-3003

From: Matt Caldwell
Sent: Friday, October 05, 2007 11:34 AM
To: Scott Elwart; Steven Mathena; !All JD Associates
Subject: RE: Ballad Ball is On!!

But we aren't Michigan

From: Scott Elwart
Sent: Friday, October 05, 2007 11:33 AM
To: Steven Mathena; !All JD Associates
Subject: RE: Ballad Ball is On!!

Petey seems to be doing a lot of trash talking; I've seen many of the players acting as if the game has already been won. Let me quote Bill Simmons of ESPN.com, who talks about the "16 Levels of Losing" in sports, I think it applies here.

Level VIII: The "This Can't Be Happening"

Definition: You're supposed to win, you expect to win, the game is a mere formality. ... Suddenly your team falls behind, your opponents are fired up, the clock is ticking and it dawns on you for the first time, "Oh no, this can't be happening."

Just remember this, Petey, when Eloise is marching off the field in victory.

Game ON!

Scott R. Elwart
Warehouse Manager
Jackson-Dawson
864-272-3003

From: Steven Mathena
Sent: Friday, October 05, 2007 10:34 AM
To: !All JD Associates
Subject: RE: Ballad Ball is On!!

"Rocks rule!"
"Hammers drool!"
(Etc., etc....)

From: Ryan Fisher
Sent: Friday, October 05, 2007 10:31 AM
To: Steve Whigham; !All JD Associates
Subject: RE: Ballad Ball is On!!

Elwart's an easy out!

From: Steve Whigham
Sent: Friday, October 05, 2007 10:20 AM
To: !All JD Associates
Subject: Ballad Ball is On!!

Dudes, lacquer up those mulletts!
Big-haired babes, spray on another coat of Aquanet!

Cuz, this afternoon we're playin' kickball!

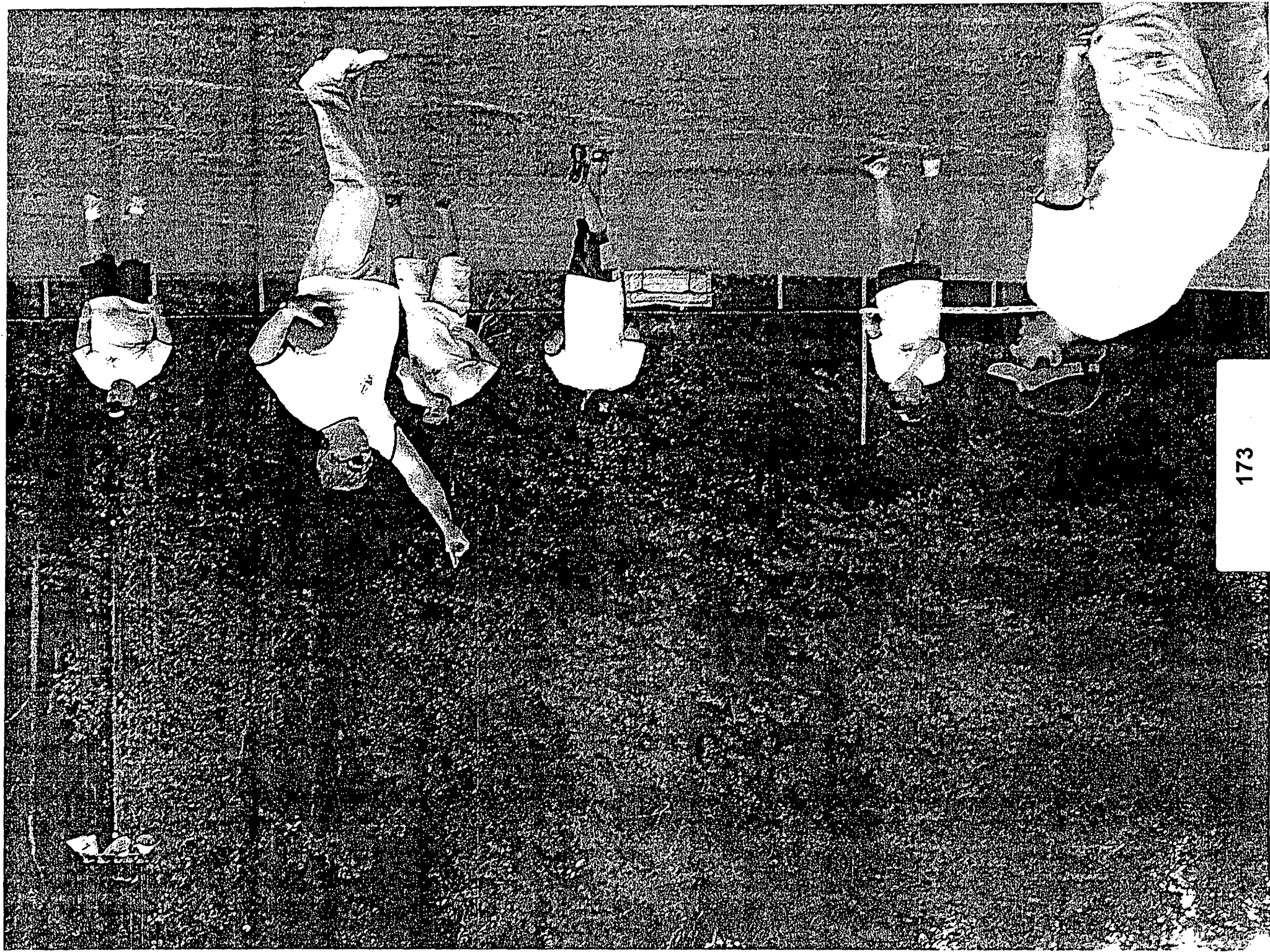
The weather is threatening, but the kickball is just fine. Same place. Same time. But be prepared to get a bit wet and messy.

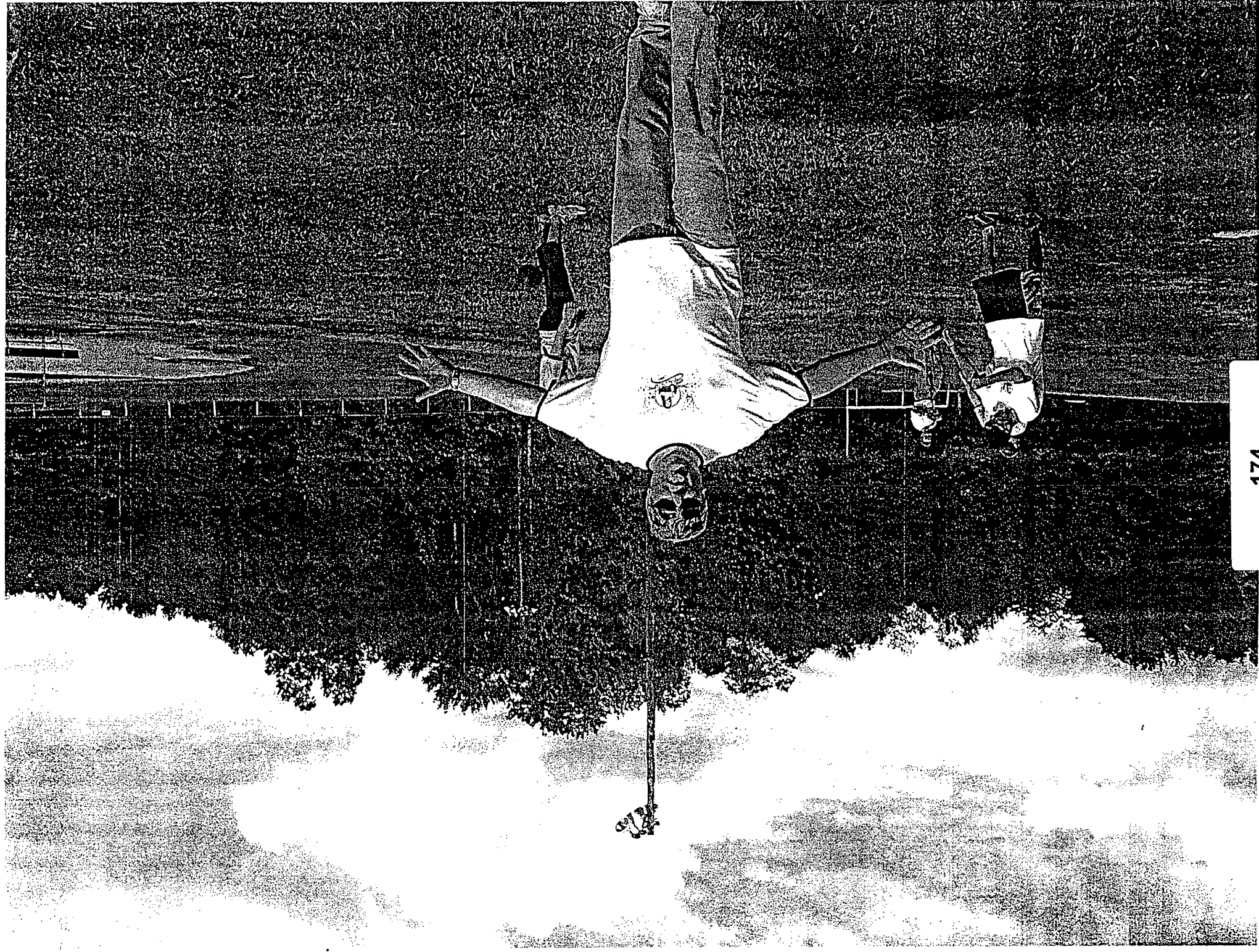
Steve Whigham
Director, Creative Solutions

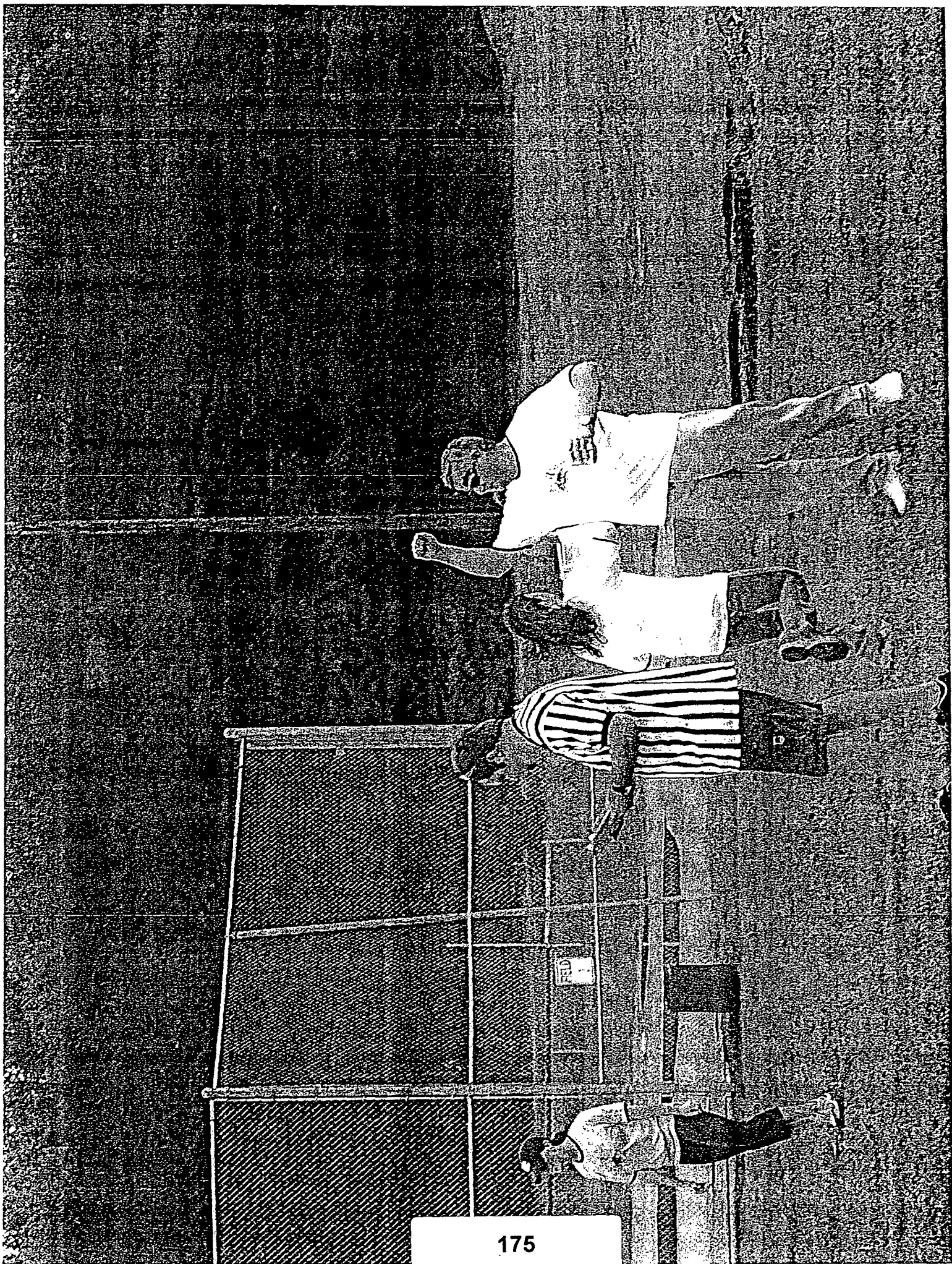
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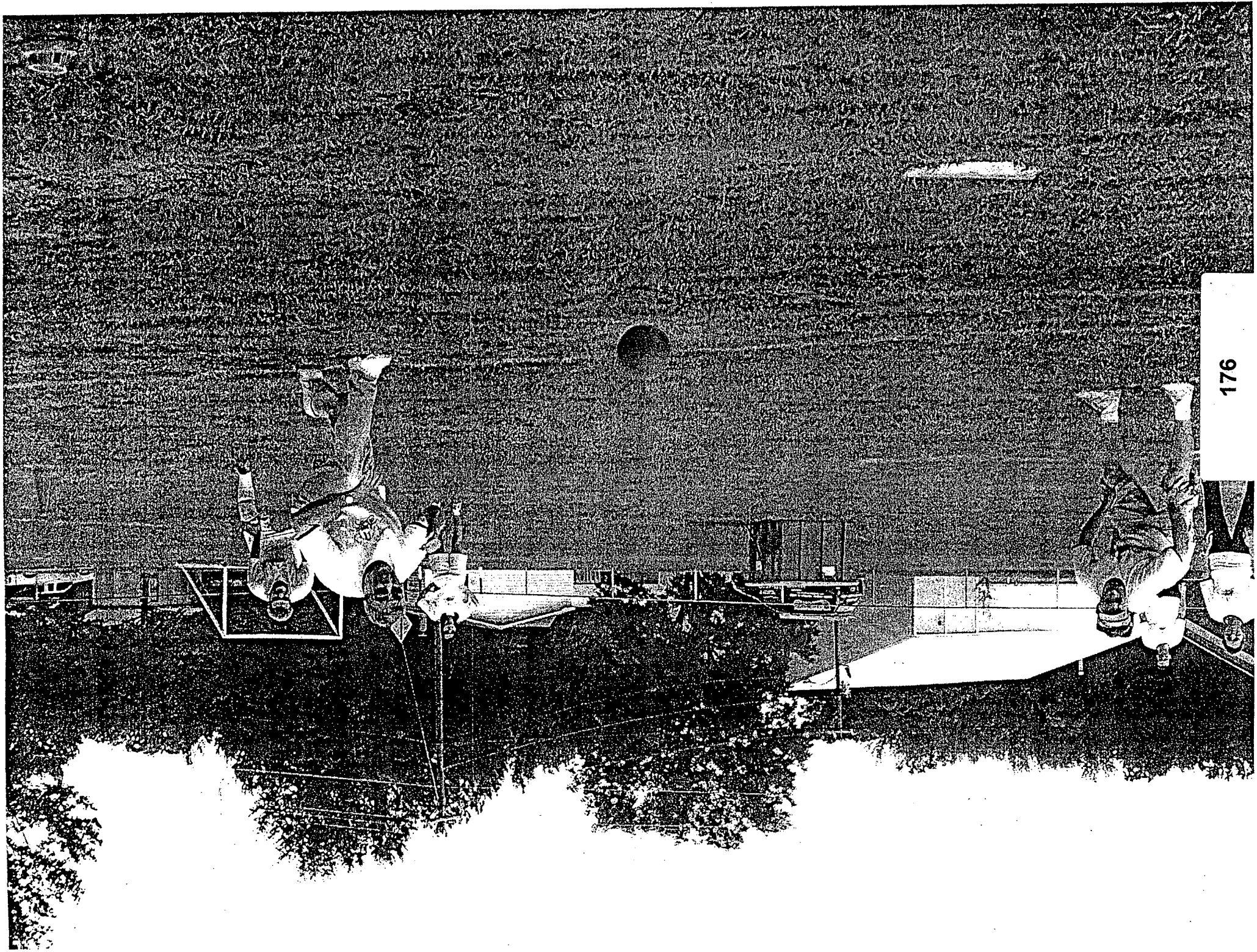
www.jdsouth.com

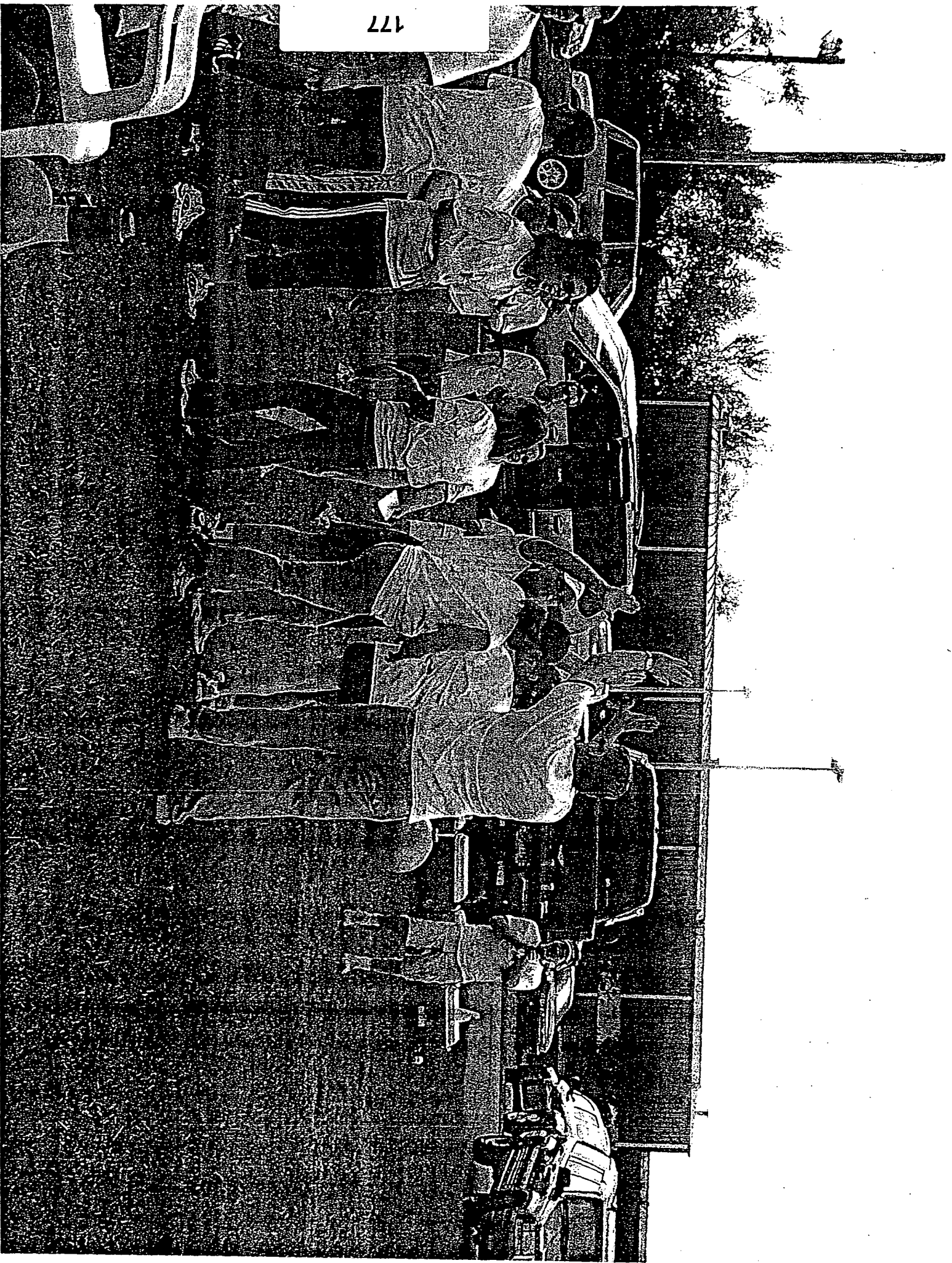


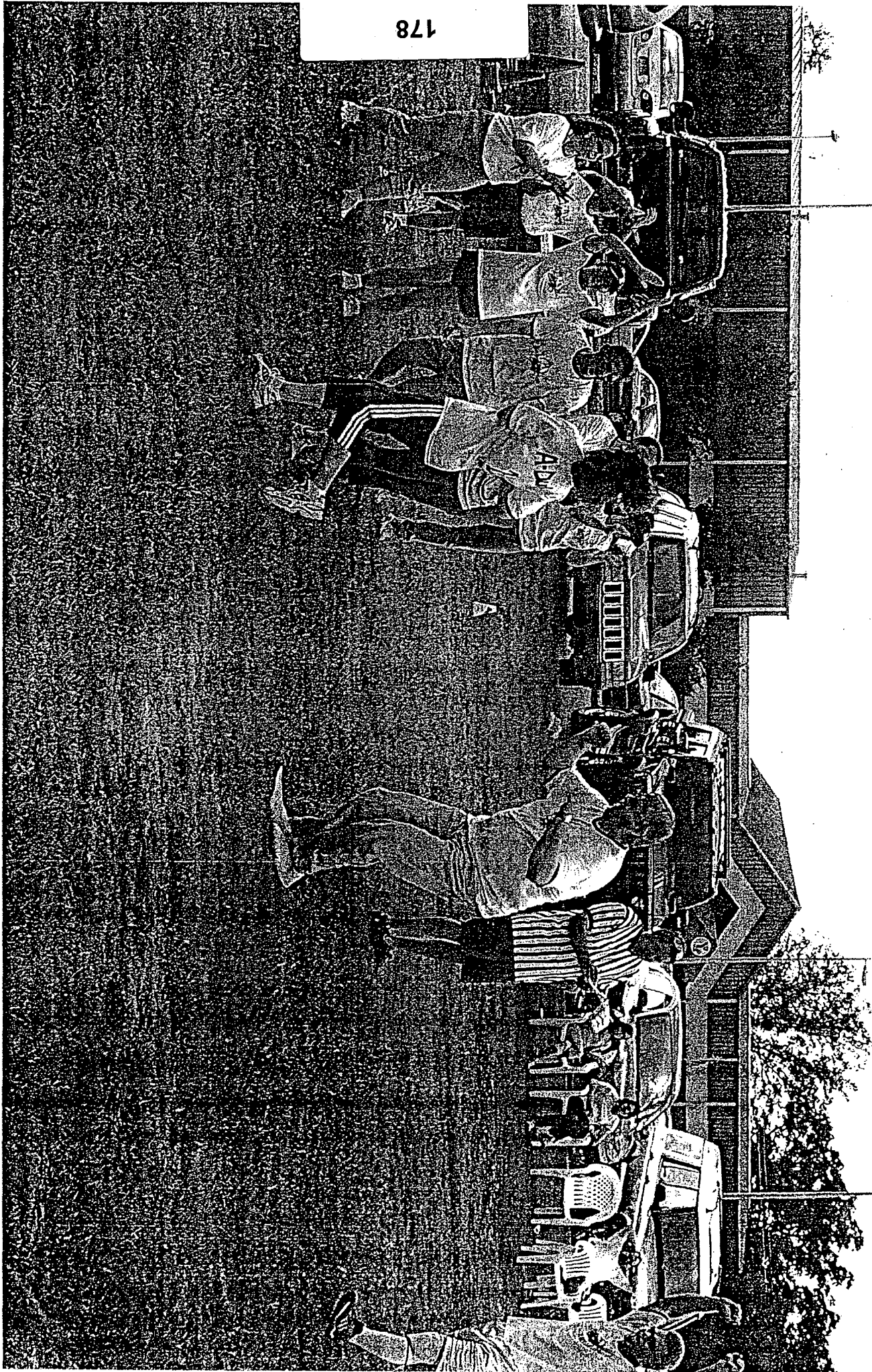




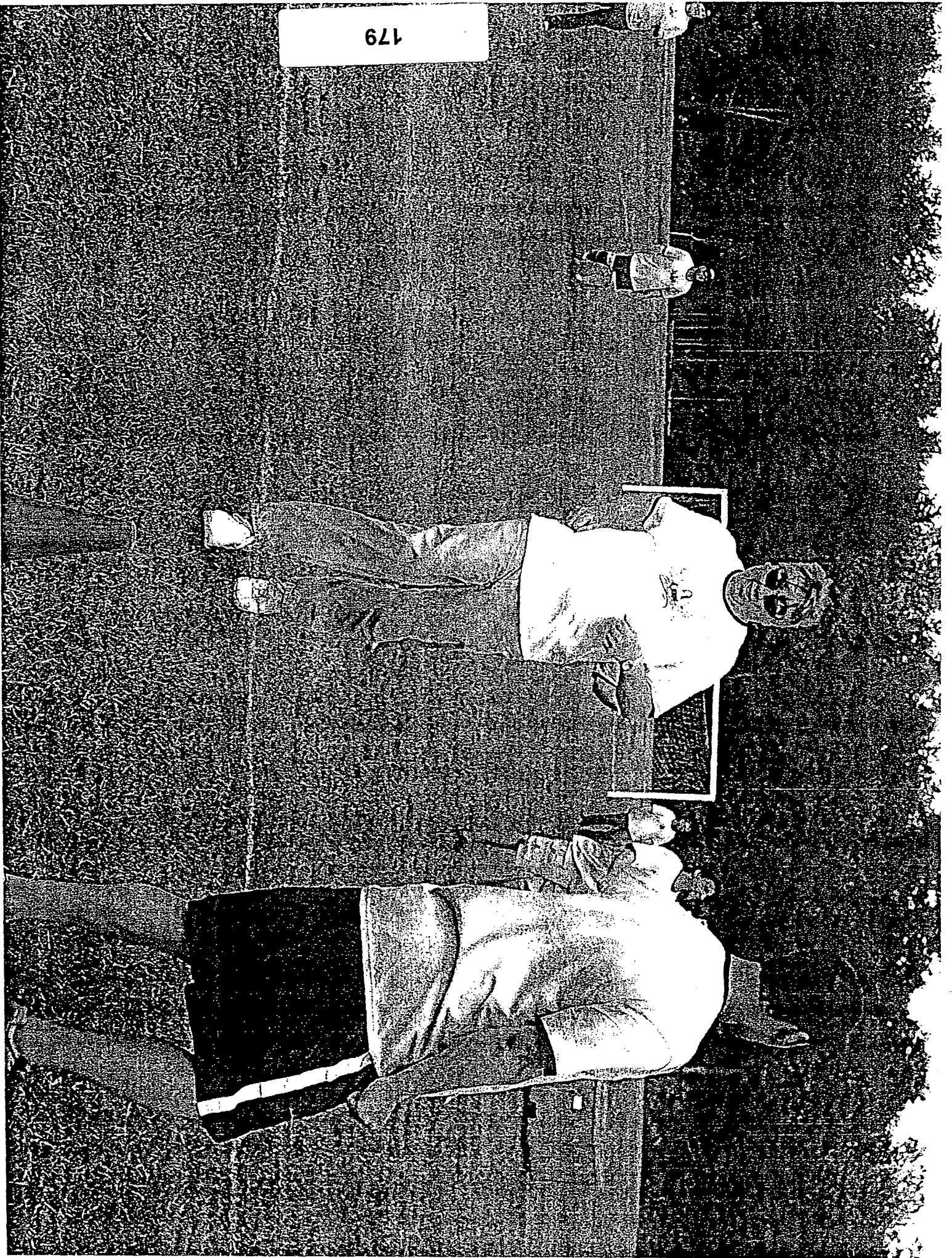


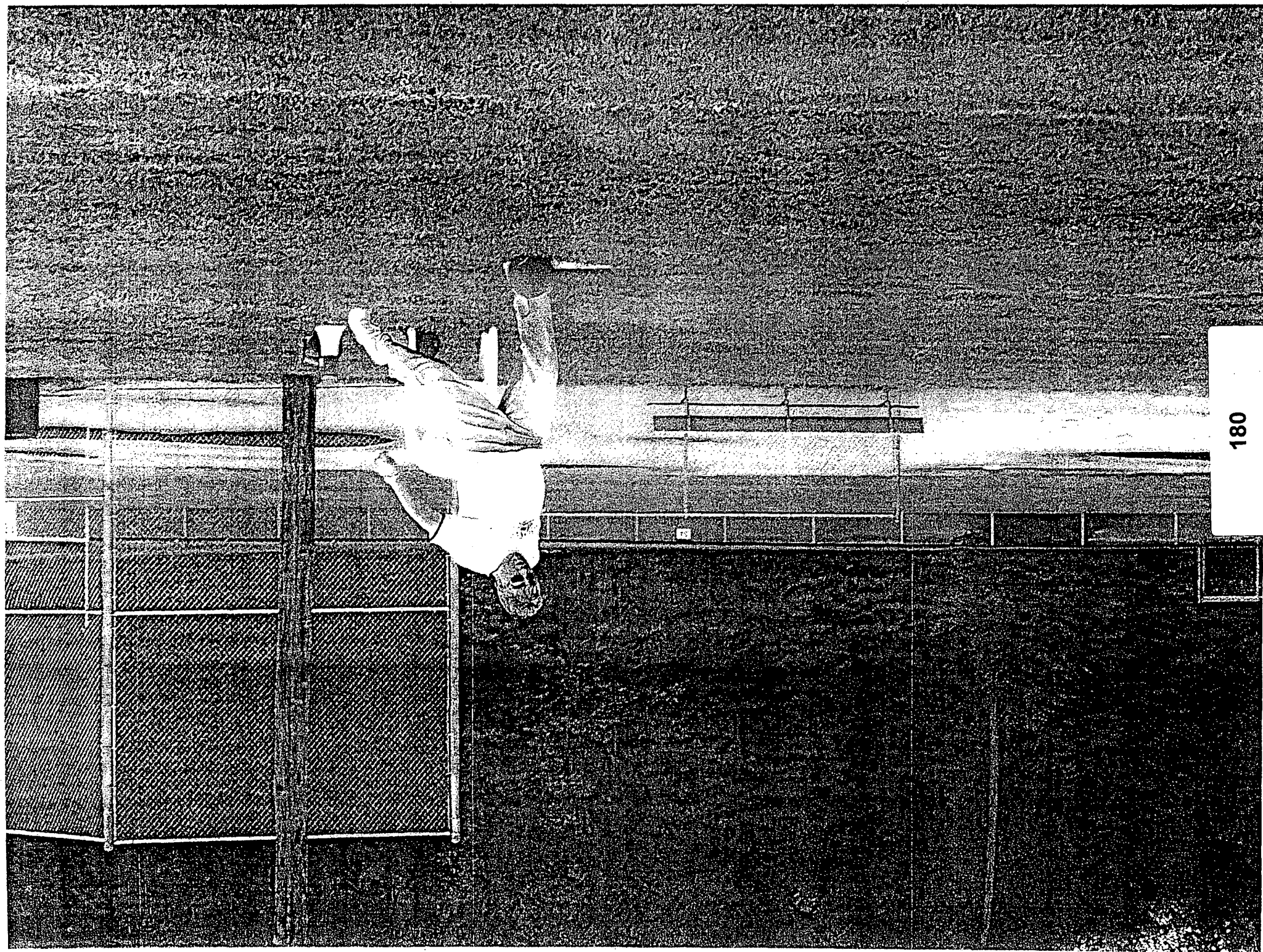


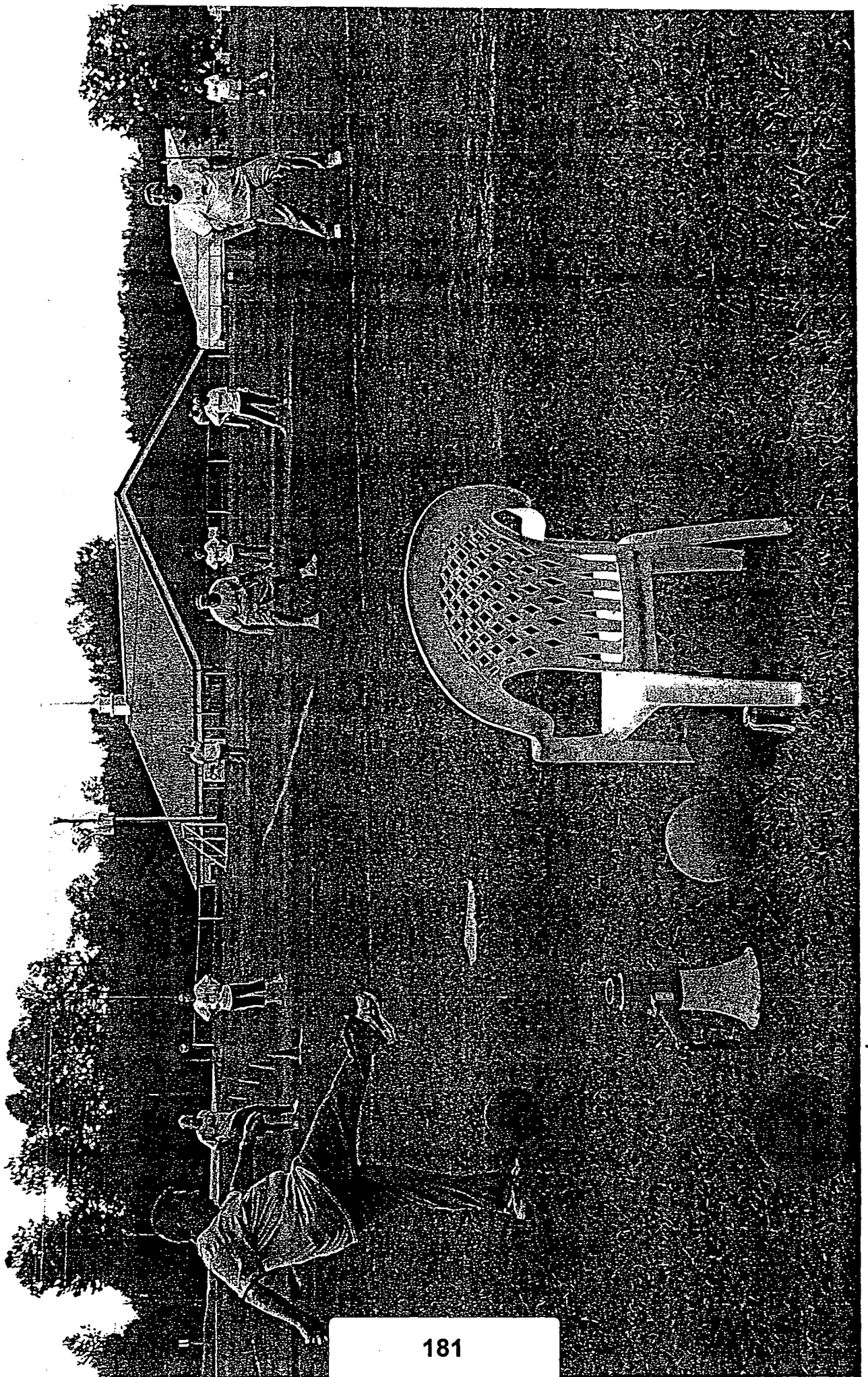


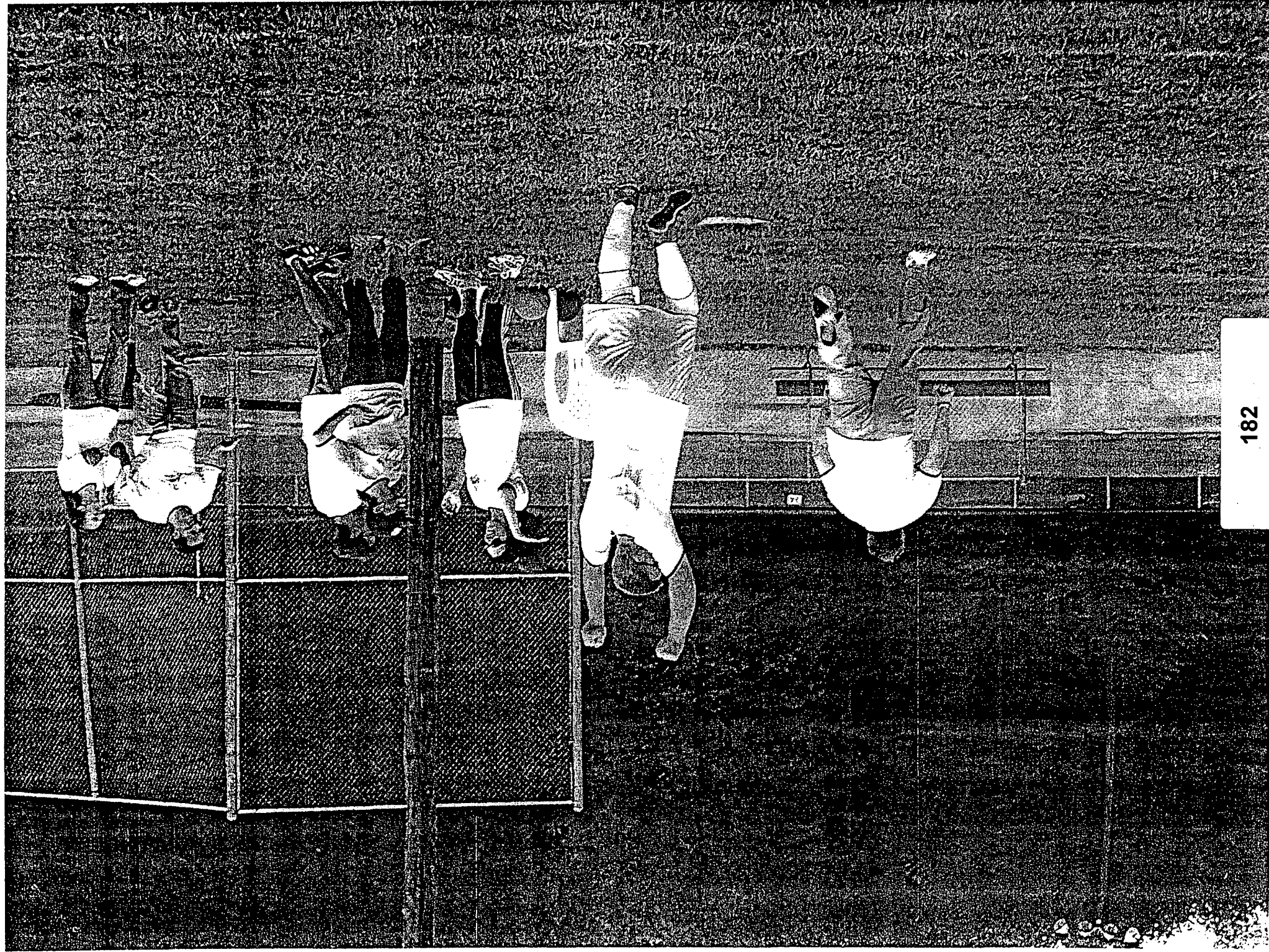


179

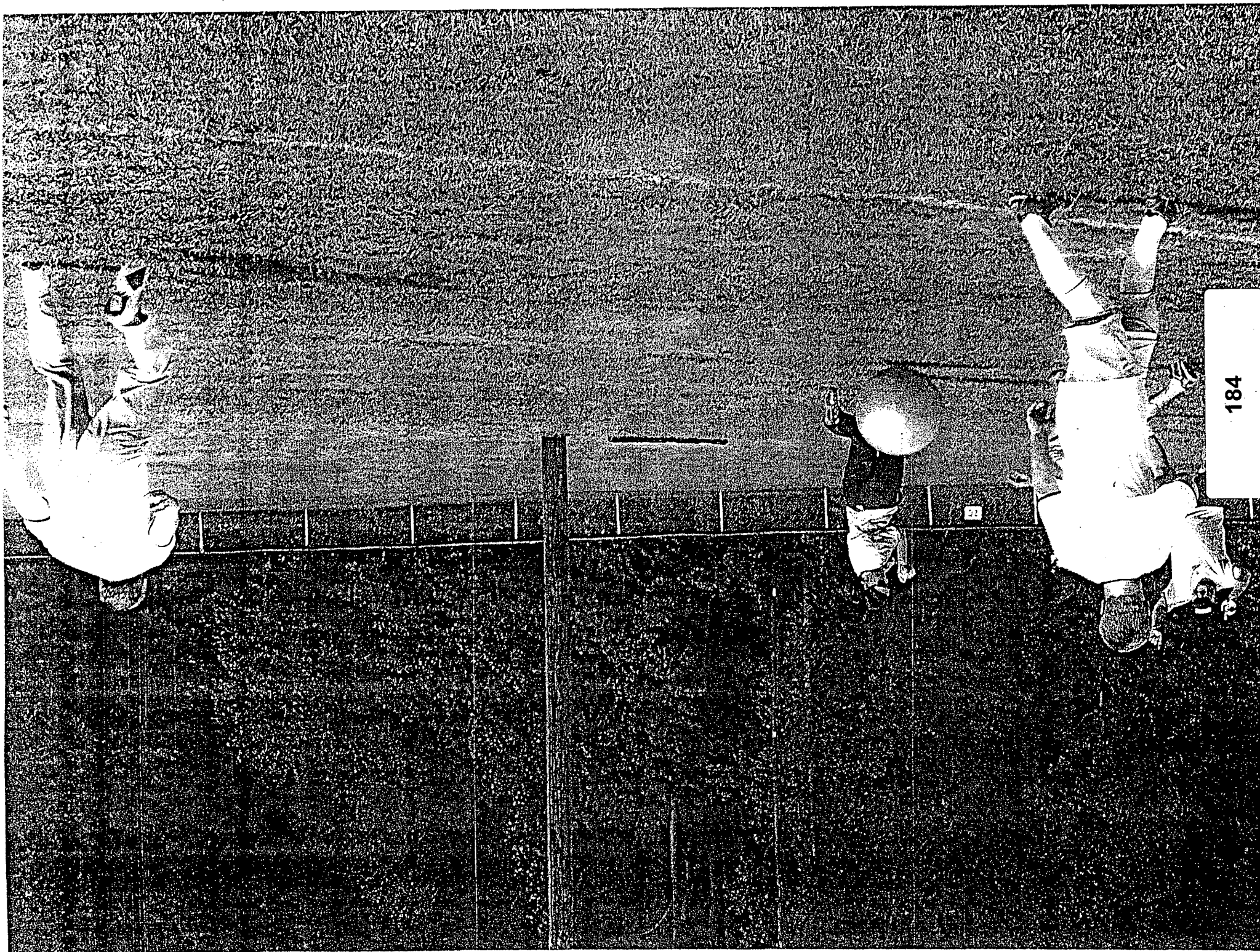




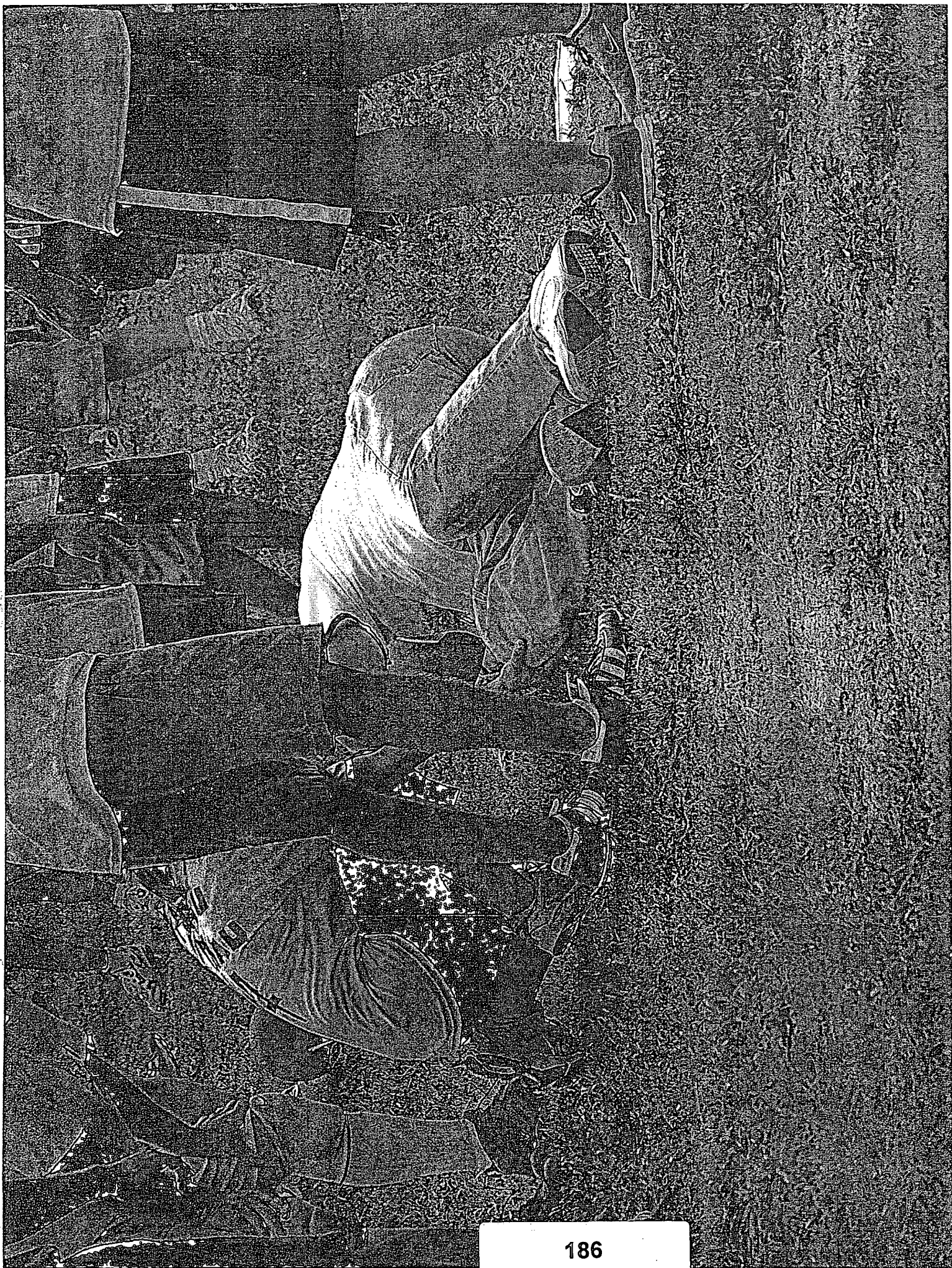


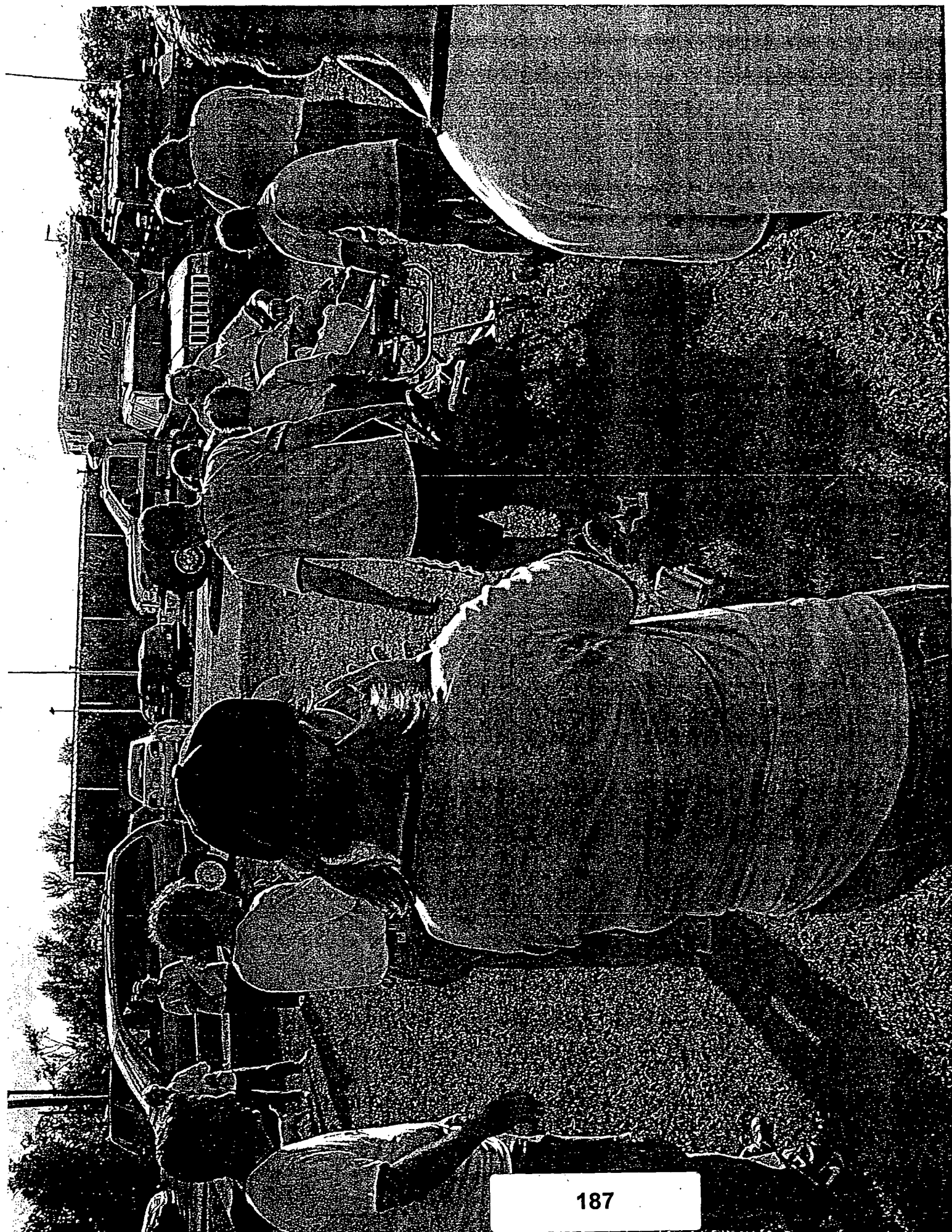














Manager Self Evaluation



Associate Name:	Steve Whigham
Date of Review:	
Date of Hire:	8-15-99

Do you possess a "whatever it takes attitude"? If you answered yes, how do you demonstrate it? If you answered no, please explain.

Yes. Because, when it comes to getting client work done, I'll do whatever it takes to get the job done right and on time.

How well do you think you communicate with and lead your direct report(s)?

I have daily contact with my direct reports. We have a 5 min to 15 min touch base every morning at 9am in my office. We also do weekly 1 hour sit down meetings to discuss issues that are happening. We also do monthly in-depth discussions where we try to find new and better ways to do our work. This monthly meeting is where a lot of new ideas surface and get implemented.

I also make a point of stopping in my direct reports' offices daily to check on progress of things during the day—usually in the afternoon.

I give my direct reports plenty of opportunity to share their ideas and offer constructive criticism. From all appearances, this method of communication has been working.

I am willing to roll up my sleeves and work with my direct reports in solving problems. I want them to perceive me as a leader who leads by example. I'm willing to get into the ditch and slug it out with the rest of them when the going gets tough.

What do you consider to be your major accomplishments over the past year?

The GHS creative development project. It really set the groundwork for a healthy collaboration between two teams. Because of budgetary issues and the like, full implementation of ideas hasn't occurred. It also helped forge a real team atmosphere around the account early.

The internal *esprit d'corps* activities of a cookout in early Summer and the kickball game. Both had very positive lifts to the working culture at J-D.

The retooling of the New Media department without too much blood-letting. The merging of the new media and traditional media teams together on new website projects. Just begun and we're already reaping the benefits of it.

The new business pitch to Milliken StainSmart—fully integrated marketing plan. Led to several new open doors outside of the Napery Division.

The creative development for Red Cross. On strategy and very well received by client.

Do you consider being promoted to the next level in your department (if applicable) part of your desired career path? If you answered yes, please provide a brief career outline below. If you answered no, what is your desired career path?

188

I want to do as much as I can in this business. I'm still very confused about my role at Jackson-Dawson and the expectation top management has of my position. At the very onset of my work in the Creative Department, I worked hard to build a stronger culture of creativity within my department, pushing a lot of new initiatives and



JACKSON-DAWSON

Manager Self Evaluation



strategies forward. I was chastised for that and accused by top management of having different goals than top management—and that was holding me back from being promoted to Vice President.

I want to grow as much as I can in this business, but I've been feeling quite fatalistic about my career path at Jackson-Dawson, that Jackson-Dawson does not really want me to push forward any further than where I am. When John Vandermeij was put into a VP role and not me—that really put a damper on my outlook. I began to see that promotion at Jackson-Dawson was no longer linked to dedication and quality of work, but on something entirely different. During that time I heard rumors from various sources that the leaders of the Account Service teams were instructing their people to not involve me in the development of client work. I never got a really good explanation of why that was occurring, but it smacked of something conspiratorial. Some have speculated it to be professional jealousy. I hope that's not the case.

I want to advance as much as I can in this business. I'm just not sure how to go about doing that any more. If top management could help me figure that out, I'd greatly appreciate it. I'm kind of at a loss these days.

I want to pull out of my fatalistic mindset and get back on the positive, can-do warpath. However, I don't want to expend a lot of wasted energy if top management does not want that kind of effort from me.

Career Goal-Setting and Action Plan for 2008

- Reestablish myself as a forward-thinking marketing consultant to our clients. I think Jackson-Dawson needs a lot of work in this area. I've tried not to step on toes and simply play the role I've been given, but I don't think we can go on under the current plan we have in place. Our lack of consultancy to our clients is blatantly lacking.
- Develop better management analytics for my department: establish more tangible, measurable performance measures for our department, such as:
 - Better output measurements by associate.
 - Quality control measures within department.
 - Associate profitability measurements.
 - Better project planning: better timelines, critical path identification and milestone management.
- Continue to develop myself as a trainer and featured speaker. I've had great success with this and would like to continue my development in this area.
- Become a better creative leader. I've found myself too easily compromising on work and finding out that the work is hurt by that. I need to display more courage on our projects. I am taking art lessons and expanding my visual eye as well as my writing ability. Both are needed to improve the quality of our overall product.

Department Development Goals for 2008

- Full integration of new media and traditional media—even to the point of merging their work areas.
- Begin marketing training again for the creative team, hasn't been done in over a year. I need for my direct reports to be trained in the thinking required of Creative Directors. Right now, we're not there.
- Establish a more open, positive work environment throughout the agency. This will take some systematic changes in the way work is handled throughout the agency. Right now, everything is so fragmented and divided internally that mere intra-departmental changes will not be enough. It will require inter-departmental changes. I will need top management to play an active role in this. I've tried to get things started with the Account Service team, but so far have been ignored.
- Establish a constraint management program with the Production Department. One of our biggest problems is that we don't manage towards capacity constraints. All we manage are deadlines and not the resource allocation against those deadlines. This is a critical organizational management step we have to



Manager Self Evaluation



take in order to increase the quality of our service to our clients. This is a major upgrade that John Gilbert and the Production team can help with.

- Go back to our Creative Spark Plug and Internal QC requirements established in 2005. These have been lost along the way and now we've gotten lazy with how we set up and initiate work within the agency.
- Increase the quality of our creative work. Our work is not as spectacular as I know it can be. There are many hurdles and reasons why this is so. There are several factors contributing to this:
 - Some in our department who have become content and comfortable. This must change. Also, they are not growing as fast professionally as the environment around us is. We're becoming less and less of a creative leader than we were in the past.
 - Our account service team has little to no regard for creative quality, therefore discourages it by the way they set up work to be done in the agency. They need to be in favor of great creative, too. Most of our account service team has a blind eye towards this.
 - Our operating philosophy of "whatever it takes" is a double-edged sword and we need to learn what it does to help us and what it does to hurt us. We've been swinging it one direction only — get the job done on time, no matter what. Don't get me wrong, this is an extremely important thing. The "whatever it takes" sword also swings towards making sure the job we are doing is actually the best possible solution for the business problem it is addressing. In most cases this part of "whatever it takes" is not being addressed by our culture. This will need to change. It's not an "either/or" proposition—it's a "both/and."
- Make the work environment more spontaneous, risk-taking, energetic and fun. We are in a highly creative industry that depends so heavily on the right culture to work. Our creative product is like a beautiful orchid that needs to be grown in a controlled hothouse in order to survive and thrive. We need to make sure we protect that culture.
- Redundancy. Make sure we have several options to fulfill every potential client request. We are too large not to have several people skilled at every potential creative service role we can sell. This is a major undertaking for 1st Quarter 2008.

Associate's Signature

Supervisor's Signature



JACKSON-DAINSON

Associate Performance Evaluation



JD MOTORSPORTS

Associate Name: Steve Whigham

Date of Review: 2/14/2008

Title: Executive Director, Training, Consulting

Date of Hire: 8/16/1999

General Summarization

Specific Department Subjectives

Rating

Managers - Actively participates in professional development of staff

Comments are required below:

5

Steve has a passion to see his people develop professionally, especially the understanding of marketing/advertising practices & principles.

Managers - Ability to deal with problem situations/timeliness in problem resolution

Comments are required below:

3

Steve has a tendency to shy away from problems. He has improved in the area of timely resolution of problems. Steve has a tendency to pole or solicit others as he develops a possible solution. This has proven to not be the most effective way to deal with many issues.

Managers - Leadership

Comments are required below:

5

Steve has done a good job of leading his people, by developing ideas and plans to direct them. Several of these plans have been started and then dropped due to lack of time to invest in them. Steve is also a hands on leader, often performing difficult tasks to help/lead others.

Managers - Respected by subordinates

Comments are required below:

5

Steve is respected by his subordinates for his strategic abilities and his ability to help/train them in mar/com.

Creative/New Media Developer - Follows Project Requirements

Comments are required below:

4

Steve's tendency is to go above and beyond the project requirements, which is a good thing, unless it takes too much time to get there. Steve needs to work on the balance between these two items.

191

Rating Scale

Level 6 - Far exceeds job requirements (Superior contribution to the objective of her/his performance in assigned areas of responsibility)

Level 5 - Consistently exceeds job requirements (Significant contribution to objectives of department and functional area)

Level 4 - Meets and usually exceeds job requirements (Performance is of high quality and is achieved on a consistent basis)

Level 3 - Consistently meets job requirements (Performance is consistent with expectations)

Level 2 - Inconsistent in meeting job requirements (Results do not consistently meet expectations)

Level 1 - Does not meet job requirements (Performance does not meet expectations - action is required to improve performance)

Comments are required

General Subjectives**Rating****Effective team player/engages in team efforts**

Is there an obvious display of team engagement, interest in team efforts and support of the overall goal of the team? Willing to work with associates at all levels?

5

Steve is a team player, he has been instrumental in bringing back a couple of fun events (cook out and dare I say it kick ball).

Job/industry knowledge

Does the associate possess the job/industry knowledge to perform her/his job effectively? Strive to keep up to date with changes in the applicable industry?

5

Steve stays very current with industry thinking, by reading and studying.

Takes initiative/owns work; quantity/volume of work

Does the associate have reoccurring downtime; if yes, is she/he proactive in seeking opportunities to assist other team members? Does the associate embrace change in procedures/processes? Is the associate actively seeking self-development?

5

Steve does not shy away from work, in fact sometimes he may over commit, his work-load has been heavy. He is constantly showing initiative in thinking about what's next.

Quality of work

Is the associate's work thorough and accurate? Does the associate make decisions that reflect careless thinking?

5

Steve's work is consistently of very high quality.

Interpersonal skills/demonstrates positive can-do attitude

Is the associate easy to get along with; cooperative when given an unpleasant assignment? Has the associate been involved in little disputes and personality clashes? Does the associate appear to have their own agenda?

4

Steve is a fun and caring person. He does still struggle to interact well with everyone. For some reason (unknown to me) there are some difficult relationships which require work by both parties.

General Objectives**Rating****Does the associate possess an overall knowledge of and follow office policies and procedures?**

Is the associate aware of JD/JDM policies and procedures? If applicable, has the associate displayed integrity when faced with a potential violation to company policy or procedure?

4

Steve follows procedures well.

Time sheet entries

Does the associate enter their time accurately (using the type of project/what am I budgeted methodology to determine the correct function)? Are her/his time sheets being entered on a daily/weekly basis? Is billable time being entered in 2-hour increments?

3

Time sheets get done, not always daily. Since the switch to Advantage it has improved.

Quantity/volume of work

Is the associate's volume of work about average, more or less for what you would expect for this position? Do you consider the workload manageable?

5

Steve can and has often carried a very heavy work load, yet I have never heard one complaint about this. Thanks!

192

Meets or beats deadlines

Is the associate occasionally slow/late with assignments or unusually quick, efficient and prompt? Does she/he gather information at the commencement of a project/task to gain sufficient knowledge on what is needed and the due date?

3

This is an area where the fight between getting it done "on-time" and "right" comes in to play for Steve. Of course we expect both, but that's not realistic all the time. I lean toward on-time and Steve leans toward right. We must both come toward each other on this to be sure we are providing the best possible product on-time.

Punctuality - on time arrival/leave early/absenteeism Does the associate get to work on time? Leave early as often as possible? Above average absenteeism?	5

Often arrives early and stays late, works from home. Steve was extremely conscientious of this during his recovery from the broken leg.

Notes:	Total Specific Subjectives	22
	Total General Subjectives	24
	Total General Objectives	20
	Total Rating	66
	Overall Rating	4.40

Professional Development Plan

Identify the associate's strengths:

Excellent work ethic, can-do attitude, presuasive skills, logical thinking ability, to name a few.

Identify the areas the associate needs to develop:

Balance between always pressing for new ideas and timeliness and efficiency of completion.
Consistently doing time sheets daily - all year long.

Suggested steps for development:

Continue to work more closely together, so I can assist and pave the way for some of Steve's ideas.

Associate's Signature:		Date:	2/13/08
Supervisor's Signature:		Date:	
Approvals:			
Department	193	Date:	
Manager/Director:		Date:	
President/COO/CFO/VP:		Date:	2/13/08

Annual Review

A more formal review generally will be held annually on or before the anniversary of the associate's hire date. The associate's salary will be discussed during this formal review. Salary increases may or may not be given at this time, depending on circumstances and on other factors determined by the Company in its sole discretion.

ASSOCIATE RESPONSIBILITIES

Each associate's contribution is critical to the performance level of our Company. Being at work consistently and on time is important to the flow and continuity of work at the Company.

If an associate cannot make it to work for some reason, he/she should notify his/her supervisor as soon as possible, preferably before the time he/she is expected to begin work. If the associate's absence goes unreported for one day, the associate's employment may be terminated.

Associates are expected to be on time and not to leave work early. Continued tardiness or early departures may result in disciplinary action, up to and including termination. If you must be late for work or need to depart early, you must contact your supervisor, preferably well in advance of the time you need to be late or depart early, to apprise him/her of the matter, and of any critical deadlines. In your supervisor's absence, you may contact Human Resources.

JDM Associates are expected to be on time for every race and/or event they are scheduled to work.

WORK HOURS

The Company's official hours in the Greenville location are Monday through Friday, 8:30 a.m. to 5:30 p.m. Based on the type of work performed, hours may vary and should be approved in advance by the associate's supervisor. The management of the Company expects associates to devote full attention and time to their job responsibilities during scheduled hours of employment and for whatever additional time may be required.

Lunch should not last more than one hour, except in specific cases where lunch is business-related or where prior approval has been obtained. The lunch period should be determined ahead of time by the associate and his/her supervisor.

It is the associate's responsibility to clear outside appointments with his/her supervisor a week ahead of time, if at all possible.

WORKERS' COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

EMPLOYER (NAME & ADDRESS INCL ZIP) JACKSON DAWSON COMMUNICATIONS 2 TASK CT GREENVILLE, SC 29607		CARRIER/ADMINISTRATOR CLAIM NUMBER YRYC 34368	OSHA LOG NUMBER	REPORT PURPOSE CODE
INDUSTRY CODE		EMPLOYER FEIN 57-0858638	JURISDICTION SC	JURISDICTION CLAIM NUMBER
INSURED REPORT NUMBER		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) 2 TASK CT GREENVILLE SC 29607		
LOCATION #		PHONE # (864) 272-3000		
CARRIER/CLAIMS ADMINISTRATOR				
CARRIER (NAME, ADDRESS, & PHONE #) HARTFORD INSURANCE CO. OF ONE HARTFORD PLAZA HARTFORD CT 06115		POLICY PERIOD 09/12/2007 TO 09/12/2008 CHECK IF APPROPRIATE ☐ SELF INSURANCE	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO) ClaimXchange Syracuse SEWCCC Jurisdictions PO Box 14187 LEXINGTON KY 40512 (888) 353-2304	
CARRIER FEIN 061008026	POLICY/SELF-INSURED NUMBER 22WECJN9374		ADMINISTRATOR FEIN 060383750	
AGENT NAME & CODE NUMBER				
EMPLOYEE/INVOICE				
NAME (LAST, FIRST, MIDDLE) STEVE C WHIGHAM		DATE OF BIRTH 07/25/1962	SOCIAL SECURITY NUMBER 426-25-2054	DATE HIRED 08/16/1999
ADDRESS (INCL ZIP) 161 GREENVISTA LN GREENVILLE SC 29609		SEX ☒ Male ☐ Female ☐ Unknown	MARITAL STATUS ☐ Unmarried/Single/Divorced ☒ Married ☐ Separated ☐ Unknown	OCCUPATION/JOB TITLE DIRECT OF CREATIVE S
PHONE (864) 275-0497	# OF DEPENDENTS 4	EMPLOYMENT STATUS FULL-TIME		
RATE PER: ☐ DAY ☒ WEEK ☐ MONTH ☐ OTHER	DAYS WORKED/WEEK 5	FULL PAY FOR DAY OF INJURY? ☒ YES ☐ NO DID SALARY CONTINUE? ☒ YES ☐ NO		
OCCURRENCE/TREATMENT				
TIME EMPLOYEE BEGAN WORK 08:30 ☒ AM ☐ PM	DATE OF INJURY/ILLNESS 10/05/2007	TIME OF OCCURRENCE (☐) CANNOT BE DETERMINED 05:30 ☒ AM ☐ PM	LAST WORK DATE 10/05/2007	DATE EMPLOYER NOTIFIED 10/05/2007 DATE DISABILITY BEGAN 10/08/2007
CONTACT NAME/PHONE NUMBER BARBARA DELAURA (864) 272-3036	TYPE OF INJURY/ILLNESS 28		PART OF BODY AFFECTED 54	
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? ☐ YES ☒ NO	SPECIFIC INJURY/ILLNESS CODE FRACTURE		PART OF BODY AFFECTED CODE LOWER LEG / CALF	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED THE GOLDEN STRIP YMCA - OUTSIDE 100 ADAMS MILL RD SIMPSONVILLE SC 29681		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED PLAYING KICKBALL		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED PLAYTING KICKBALL		
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECT SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL EE WAS PARTICIPATING IN A VOLUNTARY WORK OUTING (KICKBALL) WHEN HE JUMPED & LANDED IMPROPERLY ON HIS RIGHT				CAUSE OF INJURY CODE 54
DATE RETURN(ED) TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? ☐ YES ☒ NO WERE THEY USED? ☐ YES ☒ NO		
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) GREENVILLE HOSPITAL SYSTEM MEMORIAL HOSPITAL		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS) GREENVILLE MEMORIAL HOSPITAL 701 GROVE RD GREENVILLE SC 29605		
INITIAL TREATMENT				
0 ☐ NO MEDICAL TREATMENT				
1 ☐ MINOR: BY EMPLOYER				
2 ☐ MINOR: CLINIC/HOSP				
3 ☒ EMERGENCY CARE				
4 ☐ HOSPITALIZED > 24 HOURS				
5 ☐ FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED				
OTHER				
WITNESSES (NAME & PHONE #) DAVID MADSEN				
DATE ADMINISTRATOR NOTIFIED 02/22/2008	DATE PREPARED 02/22/2008	PREPARER'S NAME & TITLE BARBARA DELAURA HRM		PHONE NUMBER (864) 272-3036

WCC FORM 12-A
REV. DATE 04/06

SEE INSTRUCTIONS FOR IMPORTANT INFORMATION

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Timesheet for
[STEWE] Steve Whigham

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
bes bes bes 47 07-BES-CD Inventory Collection 01 pmestm - Project Planning 07BES118	0.25
Transfer estimate to Advantage for tracking purposes	
ghs ghs ghs 74 07-GHS-2007-2008 Account 01 csintr - Brainstorming Session Management (07GHS700)	1.25
Meeting on "Gang Ad" construction and plan for future ads	
Total Direct Time:	1.50
Non Direct Time	
ohadms - Administrative Time	5.00
Admin work plus organize Kickball game, along with playing kickball	
ohs - Entering Time Sheets	0.25
Time sheets	
Total Non Direct Time:	5.25
Total for 10/5/2007:	6.75

Total Direct Time: 1.50
Total Non Direct Time: 5.25
Direct %: 22.22%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 97.00

Total for Steve Whigham: 6.75

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[DAVM/ David T. Madson]

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
jdm jdm jdm 94 07-JDM-Management Tracking 01 acadms - Account Support	3.50
ca audit,	
Total Direct Time:	3.50
Non Direct Time	
ohacct - Accounting Finance	3.50
forecast, acctg	
ohstmg - Staff Meetings	2.75
kick ball	
Total Non Direct Time:	6.25
Total for 10/5/2007:	9.75

Total Direct Time: 3.50
Total Non Direct Time: 6.25
Direct %: 35.90%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 65.00

Total for David T. Madson: 9.75

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date



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morale

One entry found. @On Off

Main Entry: *mō·ra·le*
Pronunciation: \m?-'rāl\
Function: *noun*
Etymology: in sense 1, from French, from feminine of *moral*, adjective; in other senses, modification of French *moral* *morale*, from *moral*, adjective
Date: 1752

1 : moral principles, teachings, or conduct

2 a : the mental and emotional condition (as of enthusiasm, confidence, or loyalty) of an individual or group with regard to the function or tasks at hand b : a sense of common purpose with respect to a group : **ESPRIT DE CORPS**

3 : the level of individual psychological well-being based on such factors as a sense of purpose and confidence in the future

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Pronunciation Symbols

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198

Prayer

Larry

- Allie's Mom – Corrine Holmes, recovery from brain surgery
- Jennifer Sutton's grandfather, Elbert Johns passing
- Continued improvement in health Ginny Dutton's Dad – Martin Carlton
- Willie
- Cindy Smith's mother, Joann Cape's passing
- Blessings for the healthy birth of Ryan Scott Elwart – to Susan and Scott
- Blessings for the healthy birth of William Elmore Spaulding Turner – to Brett and Suzanne
- Upcoming birth of Terri and Tony Jones first born child in June
- Angi and Steve Fleury expecting their 3rd child
- Ryan Fisher and fiancé, Danielle Latini, being married on May 15, 2006
- Alicia Reynolds and fiancé, Ryan Pflug, being married on May 20, 2006
- Men/women in uniform – those that have given their lives for our country

Motorsports Section

Darrell

May Birthdays – Motorsports

Nancy Moore	05/03
Frank Broughman	05/08
Bob Oliver	05/22
Brandon Hoover	05/24

May Anniversaries-Motorsports

Alicia Reynolds	05/02/05	1 year
Ginny Dutton	05/13/04	2 years

- New Business – UROC, Gresham Motorsports
- Childs Haven - Update
- Amanda Head, Mark Schlepfer

JD Birthdays

Kevin

Apology to Kirk for omission of his 3/17 birthday in last staff meeting

April Birthdays

John Mininger	4/11
Paul Hanna	4/20
Tom Duke	4/24

April Anniversaries

David Jones	4/01/02	4 years
Misty Burgio	4/11/05	1 year + 2 prior
Terri Jones	4/19/04	2 years
Vicki Newsome	4/22/03	3 years
Mitch Branstetter	4/24/02	4 years

May Birthdays

Ansley Welchel	5/02
Larry Jackson	5/21
David Jones	5/21

May Anniversaries

Faye Ward	5/01/00	6 years
John Mininger	5/01/05	1 year
Brigitte Cohoon	5/03/04	2 years
Myles Grimm	5/03/04	2 years
Matt Caldwell	5/13/04	2 years
Eric Jackson	5/17/04	2 years
Dave Breeze	5/19/03	3 years
David Madson	5/21/01	5 years

First Meeting – Amanda Head, Ansley Welchel, Jennifer Parnell, Ryan Fisher

Special Recognition – NCAA winners: Shep Wallace – Men's, David Madson – Women's (Judy has cash),
Brett Turner \$500.00 associate referral fee for Shep (need empty envelope)

Angi Barbara
Finder Fee - Associates.

JD Tips

- How to save attachments from an e-mail
- PTO – Sign-up don't use – re-submit to get it back

Announcements

- New Biz update – Verizon Wireless, Gibeon ✓
- Summer Hours – Memorial Day through Labor Day – Friday's at 3:30pm ✓
(time sheets done, no work in jeopardy)
- Congratulations Myles promotion to Senior Designer ✓
- JD Dart Tournament – Myles, Shep ✓
- Show & Tell – SC Film Commission - Dean ✓
- .pdf conversion software – Julia has at front desk ✓
- New Expense report - Perdiem, break out taxes & shipping, Checking sum ✓
- new JD job # 06JDS0010 ✓
- Show & Tell – Bloom - Ansley ✓
- 5/12/06 Cookout has been changed to Movie/Pizza lunch ✓
- 6/16/06 Company picnic date ✓
- Show & Tell – SCDPS - Steve
- Organizational changes ✓

Name		Name	
1 Bachert, Eric	✓	50 Smith, Jennifer	✓
2 Bearden, Monique	✓	51 Sutton, Jennifer	✓
3 Branstetter, Mitch	✓	52 Unfried, Wes	✓
4 Breeze, Dave	✓	53 Van Bergen, Jane	✓
5 Brown, Nikki	✓	54 Vandermeij, John	✓
6 Bryant, Dean	✓	55 Wallace, Shep	✓
7 Buckner, Raleigh	✓	56 Wamsley, Kelly	✓
8 Burgio, Misty	✓	57 Ward, Faye	✓
9 Caldwell, Matt	✓	58 Welchel, Ansley	✓
10 Carver, Dale	✓	59 Whigham, Steve	✓
11 Carver, Jeffery	✓	60 Zeller, Mike	✓
12 Clark, Joe	✓	61 Ziehl, Matthew	✓
13 Cohoon, Brigitte	BMW		
14 DeAngelo, Nick	✓	1 Angon, Victor	✓
15 DeLaura, Barbara	✓	2 Broughman, Frank	
16 Disher, Lara	lost phone	3 Chen, Wayne	
17 Duke, Tom	✓	4 Dashier, David	
18 Eckart, Lowell	✓	5 Davis, George	
19 Elwart, Scott	✓	6 DeAngelo, Frank	
20 Fisher, Ryan	✓	7 DeAngelo, Sam	
21 Flinte, Kirk	✓	8 Drivere, Jonas	
22 Froehlich, Julie	✓	9 Dutton, Ginny	✓
23 Fuson, Christi	PTO	10 Dyck, Mark	
24 Gilbert, John	✓	11 Fleury, Angi	✓
25 Gray, Kim	✓	12 Gerdy, Mark	✓
26 Grimm, Myles	✓	13 Griffin, Debra	✓
27 Hanna, Paul	✓	14 Hammond, Norman	
28 Hazle, Lindsay	✓	15 Hammond, Beth	
29 Jackson, Eric	✓	16 Hoover, Brandon	
30 Jackson, Larry	✓	17 Hoover, Tom	
31 James, Catherine	Jury Duty	18 Hunt, Nate	
32 Johnson, Kevin	✓	19 Ignacio, Joe	✓
33 Johnson, Terry	✓	20 Jackson, Darrell	
34 Jones, David	PTO	21 Joseph, Jacques	
35 Jones, Terri	✓	22 Lake, Lorene	✓
36 Koss, Dave	✓	23 Lippert, Matthew	
37 Lail, Judy	✓	24 Markowitz, Bob	
38 Lehman, Bryan	✓	25 Minton, Tom	
39 Littlefield, Linda	✓	26 Moore, Nancy	✓
40 Loucks, Jim	✓	27 Moneypenny, Gary	✓
41 Madson, David	✓	28 Oliver, Robert	✓
42 Mangan, Julia	✓	29 Reynolds, Alicia	✓
43 March, Ann	✓	30 Rhinehart, Scott	
44 Mathena, Steven	✓	31 Shuttleworth, Bruce	
45 Mathena, Allie	✓	32 Turner, Brett	✓
46 Mininger, John	✓	33 Van Honk, Drew	
47 Newsome, Vicki	✓	34 Walker, Tim	
48 Parnell, Jennifer	✓	35 Weaver, Dennis	
49 Richardson, Charles	✓	36 Williams, John	

Head, Amanda

5/10/06

JDM-

New Boy Brett Frank hard work - UROC official PR agency.

Following up

Amadeo had started on so. formerly with MX

not working on MX new boy JDM add in off road
contracting mag.

working on leads on along Russia MS -
periodic.

One of the
IRL teams - conference call this afternoon

Childs Hauer - summer picnic - Tractor trailer
motorized coach Face paint, - tractor trailer.
Picnic -

Mark Sch. MTX audio - 15 years - "SARG"
is Hernandez parking here, connected.
Xm radio, Best Buy, Mountain Dew, has CDL
will be here next week. Door opener, tours

Kevin

Birthdays / Anniversaries
Aug. charts.

d

10 years

Map companies together

refrain

Darrell President President CEO
KDJ EVP COO

Daniel Mason VP CFO

Quite reports to Kevin

operationally / structurally 10 changes

Why - VISION / TIME - ^{Planning} all business issues.
future of JD/JDM.

They keep each other informed

Darrell is still responsible for JDM -

myths - Darrell served 2 year probation period in JDM
E is now coming back.

Kevin wasn't cutting it running the company so
Darrell's coming back to save the day.

Darrell is getting some space - 2 offices

KDJ - quick history

1990 KDJ / DJ are running sales are running production

KDJ - production for a MT

e

wanted to ~~from~~ official VP.

2008 - named Darrell President Kevin EVP

2009 somebody has to lead up TOM (make sense for Darrell) (lower can)

TOM will be 10 next year

If your job is not working tell us -

Kevin has been swamped - take a # to speak with him

Darrell - accounts side John/DJ

Kevin - vision / operations / planning

Are we abandoning TOM? Absolutely not, it is critical to our strategy. Concerned for Kevin - done a superb job.

LBJ - try to cut back, not retreating fully.

stay in rebuilding.

not a big deal externally, letter to Client -

JD Tips

Save attachments from email -

Save all - without changing name FILE SAVE ATTACH.

bring up file location box

highlight the ones you want to save

same
same
same one - same as Name -

NOTE! when you rename file don't forget to save the file location.

f

3 things to same

grab attachments - drag.

PTD - submitted time, approved don't take it KOS approved

your file, send updates master.

TURN IN, DON'T TAKE, RESUBMIT - TAKE OUT DAY, NOTE IN COMMENT SECTION. YOU MANAGE PTD.

NB

Urgo Wireless - annual meetings Cardinal & regional
Greenville, Greensboro, Nashville final 2.

summer more questions maybe this week working
an meeting that they you can do -

WIT last week met with group from CIBBON DEV. Builders
codes, safety family home, low maintenance
references - new posture - CIBBON has selected the
design projects - previously spent quite a bit

SUMMER HOURS

ARC Council beginning monday - lab day
Fridays - if all of your time slots are entered, and
you are not going any more you can leave at 3:30.

promotion of Myles Orman to Senior Designer
Myles Ship - Art's Lament - names of everyone
interested send Myles Ship your name by Friday

9

h

Dear - good morning/afternoon
 please back data of SC you do all now produce -
 perform plots of actual money what we get in SC.
 Ads - B to B - investments / local

bought new software - converts pdf to word format
 load on Jolids ^{converts} and to Jolie
 tell her what type the letters do saw it.
 due to keep formatting.

change the export report - was short cut -
 go everything you see it you are getting
 copy of the latest version of the template.
 Borden / near

on that packet multiple goes same check.
 New volume shipping by
 will you buy something from a vendor - previously ordered
 this amount - separate this out -
 shipping
 check sum - (overriding)

break out all the food hotel

NO MORE JDS-2010 now 06JDS0010

Also paper mounts
 And delivery - with like help
 And last - weight group community
 And - Bloom - units - glasson sharing
 And - sharing / power

This Friday - Bookout - changed Pizza/Movie
realized that KDJ & Darrell will be gone
all day.

11:30 - 1:30

June 16 - company picnic Southside Park -

Steve show & tell SC Dept Public Safety.

Shaw & Tell expose us to a greater knowledge of
what we do here, realize what we have here is an
awesome group of people here producing great work

creation

addres from people outside of the Police Department
sign boards - commercial, posters, billboards -

local St. of Police -

over at 10:15

Prayer

Kevin

- Improved progress in recovery for Larry's father
- Prayers for comfort for John Gilbert's father-in-law (he is terminally ill)
- Condolences to the Pamela & Jay Wilcoxson in the loss of Jay's father - Tom Wilcoxson
- Kirk and Rebecca Flinte in the loss of Rebecca's father - James Swingle
- Holly Bryant recovery from gallbladder surgery
- ~~Monique Angon~~ prayers for quick recovery from surgery and complications incurred post surgery *Christine & Matt baby birthday*
- Unspoken
- Men/women in uniform - those that have given their lives for our country

Announcements

Kevin

- Julia Mangan - With child

Monique Faye's 60th

Motorsports Section

Darrell

September Birthdays - Motorsports

September Anniversaries - Motorsports

Victor Angon	09/01
Tom Hoover	09/09
Brett Turner	09/10
Ginny Dutton	09/22
Amanda Head	09/23

- New Business *Kraker Stereo - next week. NOP! this weekend.*
- Finders Fee to Nate for Joe Ignacio? - waiting on approval from Darrell
- Amanda - Wedding this month

JD Birthdays

Darrell

September Birthdays

September Anniversaries - JD

Faye Ward	09/03
Barbara DeLaura	09/08
Wes Unfried	09/20

Matt Ziehl	09/30/03	3 years
Lara Disher	09/16/02	4 years

First Meeting - Joey Perry as contract person - *we could ask her to dance*

JD Tips

- Long distance codes for Client calls, personal calls
- Right Click - Pop-up help.

-tone Kevin - long distance requires code

Announcements

- New Biz Updates
- JD Softball team congrats for a good year
- Guardian - VSP vision plan, new beneficiary forms - DeLaura
- Environmental Report - BMW - Breeze

UNITED WAY - Ryan - Whitney

New Biz ops

4 significant RFP's

TCAR 5 RFP next week (Friday)

Bm bike " " "

Ashville 2 week Friday

Capitol this week.

UNITED WAY

Art 16-20

Due back next Friday - Pledge cards -

LOCATION CLUES -

COOLEST CAR -

DAY OF PTO - FOR EACH MEMBER OF THE TEAM.

k

1

Shirley - business leads
 Phil Clark

Kode
 4 months -

Tell - Ben on Monday

2002 thebestnews.com

Impressed that your team ~~is~~ ^{was} all the work
 was done instead of just nothing.

Time Sheets -
 If yours are completed through 9/1 year round!
 In reference to summer hrs. that you bear

DJ - IMG process - DJ
 VP Planning - DJ
 VP Account Service - John Vandermey
 DJ

Good
 Tow/Ryger
 Butt

Structure

We don't announce anything as soon
 as we find out because we believe
 in advanced planning.

Line -
 Traffic

RFP 31 - BMW motorcycles
 9/12 9/12
 9/10/06 Staff meeting

Kicker
 Optimabattens

Name		Name	
1 ~~Bachert, Eric~~		47 Smith, Jennifer	at of town
2 ~~Beardon, Monique~~		48 ~~Sutton, Jennifer~~	
3 ~~Breeze, Dave~~		49 Unfried, Wes	PTO
4 Brown, Nikki	not attending	50 ~~Vandemey, John~~	
5 ~~Bryant, Dean~~		51 Wallace, Shep	PTO
6 ~~Buckner, Raleigh~~		52 ~~Wamsley, Kelly~~	Client meeting
7 ~~Burgio, Misty~~		53 ~~Ward, Faye~~	
8 ~~Caldwell, Matt~~		54 ~~Welch, Andy~~	
9 ~~Carver, Dale~~		55 ~~Whigham, Steve~~	
10 ~~Carver, Jeffery~~		56 ~~Wilcoxson, Pamela~~	
11 Clark, Joe	BMW not attending	57 ~~Zeller, Mike~~	
12 Cohoon, Brigitte		58 Ziehl, Matthew	PTO
13 DeAngelo, Nick			
14 ~~DeLauro, Barbara~~			
15 ~~Disher, Lara~~			
16 ~~Duke, Tom~~			
17 Eckart, Lowell		1 Angon, Victor	
18 ~~Elwart, Scott~~		2 Broughman, Frank	
19 ~~Fisher, Ryan~~		3 Chen, Wayne	
20 ~~Flinto, Kirk~~		4 Dashier, David	
21 ~~Frechlich, Julie~~		5 Davis, George	
22 ~~Fuson, Christi~~		6 DeAngelo, Frank	
23 ~~Gilbert, John~~		7 DeAngelo, Sam	
24 ~~Grimm, Myles~~		8 Drivere, Jonas	
25 Hanna, Paul		9 Dutton, Ginny	
26 ~~Hazle, Lindsay~~		10 ~~Gerdy, Mark~~	
27 ~~Jackson, Larry~~		11 ~~Griffin, Dobra~~	
28 ~~James, Catherine~~		12 Hammond, Norman	
29 ~~Johnson, Kevin~~		13 Hammond, Beth	
30 Johnson, Terry		14 ~~Head, Amanda~~	
31 ~~Jones, David~~		15 Hoover, Brandon	
32 Jones, Terri	FMLA	16 Hoover, Tom	
33 ~~King, Whitney~~		17 Hunt, Nate	
34 ~~Koss, Dave~~		18 Ignacio, Joe	
35 ~~Leil, Judy~~		19 ~~Jackson, Darrell~~	
36 Lehman, Bryan	out all day	20 ~~Jackson, Eric~~	
37 ~~Littlefield, Linda~~		21 Joseph, Jacque	
38 Loucks, Jim	PTO	22 ~~Lake, Lorene~~	
39 ~~Eyall, Josh~~		23 Lippert, Matthew	
40 ~~Madsen, David~~		24 Markowitz, Bob	
41 Mangan, Julia	Sick	25 Minton, Tom	
42 Mathena, Steven		26 ~~Moore, Nancy~~	
43 Mininger, John		27 ~~Money Penny, Gary~~	
44 ~~Newsome, Vicki~~		28 Oliver, Robert	
45 ~~Parnell, Jennifer~~		29 ~~Phug, Alicia~~	
46 ~~Ramos, Andrew~~		30 Rhinehart, Scott	
		31 Shuttleworth, Bruce	
		32 ~~Turner, Brett~~	
		33 Van Honk, Drew	
		34 Walker, Tim	
		35 Weaver, Dennis	
		36 Williams, John	
		~~Bob Williams~~	

Timesheet for
[BARDE Barbara A. DeLaura

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
jdm jdm jdm 94 07-JDM-Management Tracking 01 acsp - AC-Account Support	1.00
UHC - October, 401k 9/28/07, communicate with Geoff	Total Direct Time: 1.00
Non Direct Time	
ohacct - Accounting Finance	1.00
401k auditor, Lincoln Life rep	
ohadms - Administrative Time	6.00
overnight-uhc, 401k, BMW agreement	
tweeks, follow up on associate with company property, create company property spreadsheet for associates	
ohstmg - Staff Meetings	1.00
meet with Kristen	Total Non Direct Time: 8.00
Total for 10/5/2007:	9.00

Total Direct Time: 1.00
Total Non Direct Time: 8.00
Direct %: 11.11%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 65.00

Total for Barbara A. DeLaura: 9.00

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[DARJA Darrell B. Jackson

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date
10/5/2007

Hours

Total for 10/5/2007: 0.00
0.00

Total Direct Time: .00
Total Non Direct Time: .00
Direct %: 0.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 155.00

Total for Darrell B. Jackson: 0.00

I certify that the time posted on the date(s) listed is
accurate and complete.

I have reviewed and approved this timesheet for
accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[KEVJO Kevin Johnson]

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
mich mna mna 105 07-MNA-US1 Robot Photoshoot 01 acplan - AC-Account Planner	0.50
Take call, order work.	
Total Direct Time:	0.50
Non Direct Time	
ohbizm - Business Management	6.00
stuff	
Total Non Direct Time:	6.00
Total for 10/5/2007:	6.50

Total Direct Time: .50
Total Non Direct Time: 6.00
Direct %: 7.69%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 30.00

Total for Kevin Johnson: 6.50

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

P

Timesheet for
[LARDI: Lara Disher

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
ohadms - Administrative Time	1.00
phone	
ohs - Entering Time Sheets	0.25
entering time	
Total Non Direct Time:	1.25
Total for 10/5/2007:	1.25

Total Direct Time: .00
Total Non Direct Time: 1.25
Direct %: 0.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 155.00

Total for Lara Disher: 1.25

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[JENES Jennifer C. Escontrias

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
mich mna mna 103 07-MNA-MoM Opening Event Support 01 acadms - Account Support	0.50
work order for flash presentation; revised work order after talking with Myles about presentation; changed work order for A/V group to do a video clip	
mich mna mna 105 07-MNA-US1 Robot Photoshoot 01 acadms - Account Support	0.50
work order for photographer; talk to John M. about photographer; talk with Jim Loucks and discudss details of photoshoot; Jim booked Rob Belknap for photoshoot on Wednesday, October 10th	
Total Direct Time:	1.00
Non Direct Time	
ohadms - Administrative Time	1.00
admin tasks; get mail/sort mail; misc requests for Larry; new BiLo Center event/email; scan invoices for Larry/email pdfs	
Total Non Direct Time:	1.00
Total for 10/5/2007:	2.00

Total Direct Time: 1.00
Total Non Direct Time: 1.00
Direct %: 50.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 70.00

Total for Jennifer C. Escontrias: 2.00

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[PAUHA Paul Hanna

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date	Hours
10/5/2007	
Direct Time	
mich tear mx 35 07-MX-Oktoberfest Support 01 eleswd - Event Support	10.00
event (07MX117)	
Total for 10/5/2007:	10.00

Total Direct Time: 10.00
Total Non Direct Time: .00
Direct %: 100.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 155.00

Total for Paul Hanna: 10.00

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[KARLA Karis Lane]

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

Date					Hours
10/5/2007					
Direct Time					
mich tcar mx	33	07-MX-2007 EuroAuto Fest Support (07MX119)	01	acadms - Account Support	1.00
		check inventory of posters and count out 500 poster bags for Alicia			
mich tcar mx	33	07-MX-2007 EuroAuto Fest Support (07MX119)	01	acadms - Account Support	-1.00
mich tcar mx	33	07-MX-2007 EuroAuto Fest Support (07MX119)	01	eaac - EA-Account Coordinator	1.00
Total Direct Time:					1.00
Non Direct Time					
		ohadms - Administrative Time			5.75
		misc office/whse; warehouse inventory; go to Sam's with Mark to buy food for warehouse appreciation party			
		ohls - Entering Time Sheets			0.50
		time for Thursday and Friday			
Total Non Direct Time:					6.25
Total for 10/5/2007:					7.25

Total Direct Time: 1.00
Total Non Direct Time: 6.25
Direct %: 13.79%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 155.00

Total for Karis Lane: 7.25

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for

[MATSL Matthew Slocum

Jackson-Dawson Communications South, Inc

For Dates 10/5/2007 through 10/5/2007

Number of weeks selected: 0.14

Date

Hours

10/5/2007

Direct Time

ohadms - Administrative Time

6.75

misc

Total Non Direct Time:

6.75

Total for 10/5/2007:

6.75

Total Direct Time: .00

Total for Matthew Slocum:

6.75

Total Non Direct Time: 6.75

Direct %: 0.00%

Standard Work Week: 0.00

Monthly Billable Hours Goal: 163.00

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Timesheet for
[WESUI Wes W. Unfried

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007
Number of weeks selected: 0.14

<u>Date</u>	<u>Hours</u>
10/5/2007	
Direct Time	

ohadms - Administrative Time	5.25
Conducted courier runs to Greenville and Kinkos Parkway	
Total Non Direct Time:	5.25

Total for 10/5/2007: 5.25

Total Direct Time: .00
Total Non Direct Time: 5.25
Direct %: 0.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 55.00

Total for Wes W. Unfried: 5.25

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date



Timesheet for
[ALIPFL Alicia E. Pflug

Jackson-Dawson Communications South, Inc
For Dates 10/5/2007 through 10/5/2007

Number of weeks selected: 0.14

Date					Hours
10/5/2007					
Direct Time					
mich tcar mx	33	07-MX-2007 EuroAuto Fest Support (07MX119)	01	eaep - EA-Event Producer	3.00
		MEETING INTITAL LOAD LIST			
mich tcar mx	36	07-MX-Michelin SEMA Support (07MX113)	01	eaep - EA-Event Producer	3.00
		MADE FORMS ORGANIZED CREW			

Total for 10/5/2007: 6.00

Total Direct Time: 6.00
Total Non Direct Time: .00
Direct %: 100.00%
Standard Work Week: 0.00
Monthly Billable Hours Goal: 155.00

Total for Alicia E. Pflug: 6.00

I certify that the time posted on the date(s) listed is accurate and complete.

I have reviewed and approved this timesheet for accuracy and reasonableness.

Employee Signature / Date

Supervisor Signature / Date

Time by Task

Time dated from 10-05-07 to 10-05-07

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

HOTR (Hotel Reservation Specialist)

10-05-07	Fr	GT307-024	2007 GT-3	AER	22	1.00	\$ 9.00	—	\$ 9.00	— 36388
						1.00		\$ 9.00		—

HOTR SUB-TOTAL

					1.00		\$ 9.00		—

REPORT TOTAL: * Overtime

					1.00		\$ 9.00		—

222

X

Time by Task

Eric Jackson

ADMS (Office Support)

7.50

7.50

7.50

223

5

Time by Task

Time dated from 10-05-07 to 10-05-07

Virginia Knight

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

ADMS (Office Support)

10-05-07	Fr	07JDM023	2007 Jackson Dawson Mo...	GLD	22	2.00	\$ 25.02	--	\$ 50.04	-- 35973

AP & Check run

10-05-07	Fr	TRE07025	2007 Tire Sales Line	GLD	22	0.50	\$ 25.02	--	\$ 12.51	-- 35974

audit

2.50

\$ 62.55

ADMS SUB-TOTAL

2.50

\$ 62.55

VACA (PTO)

10-05-07	Fr	07JDM023	2007 Jackson Dawson Mo...	GLD	22	4.00	\$ 25.02	--	\$ 100.08	-- 35972

pto

4.00

\$ 100.08

VACA SUB-TOTAL

4.00

\$ 100.08

REPORT TOTAL: * Overtime

6.50

\$ 162.63

224

2

Time by Task

Time dated from 10-05-07 to 10-05-07

Mary McCurley

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

ADMS (Office Support)

10-05-07	Fr	JDM07-035 gt3	2007 GT3 Appreciation Bre...	MKM	22	6.00	--	\$ 70.00	--	\$ 420.00 36098

6.00

\$ 420.00

ADMS SUB-TOTAL

6.00

\$ 420.00

REPORT TOTAL: * Overtime

6.00

\$ 420.00

225

99

Time by Task

Time dated from 10-05-07 to 10-05-07

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:
AVPS (A/V Production Supervision)										
10-05-07	Fr	07JDS729	2007 Metropolitan Arts Cou...	MBS	22	0.50	--	--	--	-- 760339
					Create :15s DVD and mp3					
					0.50			--	--	
AVPS SUB-TOTAL					0.50			--	--	
REPORT TOTAL:					* Overtime	0.50		--	--	

226

bb

Time by Task

Time dated from 10-05-07 to 10-05-07

Vicki Newbome

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

ADMS (Administrative)

10-05-07	Fr	07BFG102	2007 BFGoodrich Sponsor...	VLN	22	5.00	\$ 25.00	\$ 44.66	\$ 125.00	\$ 223.30	760589

Calls, emails, updates for sponsorship. SEMA orders.

Monthly report for Mercedes.

10-05-07	Fr	07MX101	2007 Michelin Brand Sponsor	VLN	22	5.00	\$ 25.00	\$ 44.66	\$ 125.00	\$ 223.30	760590

Calls, emails, voicemails for sponsorships. SEMA orders, finding the tires. Updating the site with confirmations.

Monthly report for Mercedes. Took 1/2 hour for lunch and worked until 7:00.

10.00

\$ 250.00

\$ 446.60

ADMS SUB-TOTAL

10.00

\$ 250.00

\$ 446.60

REPORT TOTAL: * Overtime

10.00

\$ 250.00

\$ 446.60

227

CC

Time by Task

Time dated from 10-05-07 to 10-05-07

Jennifer Escobedo

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

ADMS (Administrative)

10-05-07	Fr	07MNA157	2007 Challenge Bibendu...	JCE	22	5.00	\$ 25.00	\$ 44.36	\$ 100.00	\$ 177.44	760274
<i>send out email to all journalists with information about starting the visa application process/attach completed visa applications; fill out equipment declaration forms and attach to email; revise a few visa applications with comments from journalists; create merge letter to go in FedEx with directions for visa; call Warren Brown & Matt Bennett for additional information needed; print out letters; sign letters & visa applications; print out equipment declaration forms; prepare FedEx packages; prepare pre-addressed/pre-paid FedEx envelopes to send passports/ applications back to me</i>											

5.00

\$ 100.00

\$ 177.44

ADMS SUB-TOTAL

5.00

\$ 100.00

\$ 177.44

REPORT TOTAL: * Overtime

5.00

\$ 100.00

\$ 177.44

Time by Task

Time dated from 10-05-07 to 10-05-07

Kare Disher

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:

ADMS (Administrative)

10-05-07	Fr	07BLM142	Bloom Fort Mill Baskets	LWD	22	0.75	\$ 25.00	\$ 70.00	\$ 18.75	\$ 52.50	760266
						0.75			\$ 18.75	\$ 52.50	

ADMS SUB-TOTAL

0.75

\$ 18.75

\$ 52.50

PROF (Proofing)

10-05-07	Fr	07MIL100	Military Websites	LWD	22	2.00	\$ 25.00	\$ 75.00	\$ 50.00	\$ 150.00	760265
						2.00			\$ 50.00	\$ 150.00	

PROF SUB-TOTAL

2.00

\$ 50.00

\$ 150.00

PRSP (PR Support)

10-05-07	Fr	07SAK750	2007 PR Account Manag...	LWD	22	0.25	\$ 25.00	\$ 75.00	\$ 6.25	\$ 18.75	760268
						0.25			\$ 6.25	\$ 18.75	

PRSP SUB-TOTAL

0.25

\$ 6.25

\$ 18.75

REPORT TOTAL: * Overtime

3.00

\$ 75.00

\$ 221.25

229

ee

Time by Task

Time dated from 10-05-07 to 10-05-07

Date:	Job:	Job Name:	Staff:	Per:	Hours:	Cost Rate:	Bill Rate:	Cost:	Billable:	Number:
INTR (Internal Input Meeting)										
10-05-07	Fr	07JDS773	Blue Bird Logo Development	SCW	22	1.50	\$ 80.00	\$ 75.00	\$ 120.00	\$ 112.50 761742
						1.50			\$ 120.00	\$ 112.50
INTR SUB-TOTAL						1.50			\$ 120.00	\$ 112.50
WEBS (Web/Internet Supervision)										
10-05-07	Fr	07JDS773	Blue Bird Logo Development	SCW	22	0.50	\$ 80.00	\$ 75.00	\$ 40.00	\$ 37.50 761742
						0.50			\$ 40.00	\$ 37.50
WEBS SUB-TOTAL						0.50			\$ 40.00	\$ 37.50
REPORT TOTAL:						2.00			\$ 160.00	\$ 150.00
										* Overtime

230

33

Hourly Associates Employed with Jackson-Dawson Communications Jackson-Dawson Motorsports on 10/05/07

First Name	Last Name	Status	Hours on 10/05/07	Database	Comments
Lara	Disher	Part-Time 4 - 6 hours per day	3.00 <u>1.25</u> 4.25	C&P Advantage	Did not attend Kickball game after working normal hours
Jennifer	Escontrias	Full-Time, Non-Exempt	5.00 <u>2.00</u> 7.00	C&P Advantage	Attended Kickball game
Paul	Hanna	Full-Time, Non-Exempt	10.00	Advantage	Did not attend Kickball game, out of town working an event
Karl	Lane	Full-Time, Non-Exempt	7.50	Advantage	Did not attend Kickball game
Vicki	Newsome	Full-Time, Non-Exempt	10.00	C&P	Did not attend Kickball game
Matt	Slocum	Full-Time, Non-Exempt	6.75 <u>0.50</u> 7.25	C&P Advantage	Did not attend Kickball game
Wes	Unfried	Full-Time, Non-Exempt 35-40 hours per week	5.25	Advantage	Attended Kickball game
Eric	Jackson	Full-Time, Non-Exempt	7.50	C&P	Did not attend Kickball game
Virginia	Knight	Full-Time, Non-Exempt	6.50	C&P	Attended Kickball game
Mary	McCurley	Full-Time, Non-Exempt	6.00	C&P	Did not attend Kickball game
Allcia	Pflug	Full-Time, Non-Exempt	1.00 <u>6.00</u> 7.00	C&P Advantage	Did not attend Kickball game

99

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO. 2010169926

STEPHEN C. WHIGHAM..... APPELLANT,

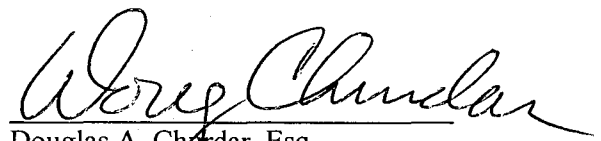
v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

CERTIFICATE OF COUNSEL

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

January 27, 2011



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC CASE NO. 0723318

STEPHEN C. WHIGHAM..... APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

FINAL BRIEF OF APPELLANT

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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC CASE NO. 0723318

STEPHEN C. WHIGHAM..... APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

FINAL BRIEF OF APPELLANT

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Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	iv
Statement of the Case	1
Facts	2
Argument	
I. Appellant's injury is compensable because it occurred during his normal work hours at an Employer-sponsored "team- building" event, which Appellant was responsible for planning, organizing, promoting, and executing, and from which Employer derived substantial direct benefit	11
Conclusion	18

TABLE OF AUTHORITIES

CASES

<u>Fishburne v. ATI Systems Intern.</u> 384 S.C. 76, 681 S.E. 2d 595 (S.C. App. 2009).....	11
<u>Hall v. Desert Aire, Inc.</u> 376 S.C. 338, 656 S.E. 2d 753 (S.C. App. 2007).....	11
<u>Hicks v. Piedmont Cold Storage, Inc.</u> 335 S.C. 46, 515 S.E. 2d 532 (S.C. 1999)	16
<u>Jones v. Georgia-Pacific Corp.</u> 355 S.C. 413, 586 S.E. 2d 111 (S.C. 2003)	11
<u>Leopard v. Blackman-Uhler</u> 318 S.C. 369, 458 S.E. 2d 41 (S.C. 1995)	12
<u>Mullinax v. Winn-Dixie Stores, Inc.</u> 318 S.C. 431, 458 S.E. 2d 76 (S.C. App. 1995).....	11
<u>Pierre v. Seaside Farms, Inc.</u> 386 S.C. 534, 689 S.E. 2d 615 (S.C. 2010)	12
<u>Thompson ex rel. Harvey v. Cisson Constr. Co.</u> 377 S.C. 137, 659 S.E. 2d 171 (S.C. App. 2008).....	11

OTHER AUTHORITIES

1A Arthur Larson and Lex Larson, <i>The Law of Workers' Compensation</i> §22.00 (1994).....	12
1A Arthur Larson and Lex Larson, <i>The Law of Workers' Compensation</i> §22.21(a) (1994)	13

STATEMENT OF ISSUES ON APPEAL

- I. Whether Appellant's injury is compensable because it occurred during his normal work hours at an Employer-sponsored "team-building" event, which Appellant was responsible for planning, organizing, promoting, and executing, and from which Employer derived substantial direct benefit.

STATEMENT OF CASE

This case will expand or clarify South Carolina law relating to when a recreational or social event and, more specifically, employment that includes planning, organizing, promoting, and executing such event, arises out of and in the course of employment. Here, Appellant (hereinafter "Claimant") sustained injury to his right knee on October 6, 2007, resulting in permanent impairment/disability to the right lower extremity. The injury occurred during an Employer-sponsored "team building" event. Claimant contends that his injury arose out of and in the course of employment. Respondent (hereinafter "Employer") contends the opposite.

The case was heard by the Single Commissioner on January 4, 2010. The Single Commissioner found that Claimant's injury did not arise out of and in the course of employment. Claimant appealed to the Full Commission, which heard the case on May 18, 2010 and fully affirmed the Single Commissioner by Order dated July 21, 2010. Claimant filed his Notice of Intent to Appeal the Full Commission's Order on August 18, 2010.

FACTUAL BACKGROUND

As noted previously, this case will expand or clarify South Carolina law relating to when a recreational or social event and, more specifically, employment that includes planning, organizing, promoting, and executing such event, arises out of and in the course of employment. The facts will show that Employer impliedly required Claimant to participate in a recreational activity or made the activity part of Claimant's services, thereby bringing the activity within the orbit of his employment. Additionally, Employer derived substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

During 2007, Claimant was a member of upper management at Employer. Employer is a marketing, advertising, and communications company that helps other companies amplify their messages and build brand value. (R. p. 89, lines 1-7) Claimant's title was Director of Creative Services. (R. p. 90, lines 2-3) His direct supervisor was Kevin Johnson, Employer's Executive Vice President. (R. p. 88, lines 17-20; p. 90, lines 4-8) Claimant answered directly to Mr. Johnson. (R. p. 90, lines 7-8).¹

Both Claimant and Mr. Johnson attended upper management meetings on a regular basis. Prior to 2007, Employer testified it had been "a non-typical employer" with an emphasis on "being different" and "having fun" and "making it a fun place to work." (R. p. 63, lines 10-19) Employer's upper management saw such an atmosphere as a business benefit, and accordingly upper management began discussing the need for

¹ As Mr. Johnson was the highest ranking and sole executive who appeared for Employer at the hearing, the terms "Mr. Johnson" and "Employer" will at times be used interchangeably. Though Claimant answered to Mr. Johnson, he was in effect "Employer" himself in that he was a member of upper management.

“team building” events to “bring back the fun.” It is undisputed that the consensus in upper management was that “team-building” events, such as the one at which Claimant was injured, were desired and should occur. (R. p. 61, lines 17-24; p. 105, lines 6-10, lines 21-25) (Per Mr. Johnson: “Yes. [W]e needed to do things or wanted to do things that would promote fun within the business, break the stress.” R. p. 61, lines 22-24) (“Team building is something extremely important to the health of the company” R. p. 109, lines 1-2) “[A]ll upper management was concerned about [team building].” (R. p. 108, lines 18-21) As a member of upper management, Claimant knew that Employer wanted more “team-building” events to occur that year.² (R. p. 62, lines 1-7; p. 105, lines 6-10)

Here is a significant aside. Employer promotes and encourages its own clients to use “team-building” events and markets its services in staging such “team-building” events. (R. p. 105, lines 11-20) At the time of the hearing, Employer’s website specifically promoted its services in staging “team-building” events (R. p. 105, lines 11-20).

According to Employer, “team-building” events serve the following business purposes:

- “Promote fun within the business” (R. p. 61, line 24)
- “Break the stress” (R. p. 61, line 24)
- “Promote creativity” (R. p. 63, lines 7-9)

² Claimant was responsible for two team-building events in 2007. The first was “Afternoon Delight – Salute to the One-Hit Wonders”, which was a cookout during normal business hours. The staff ate grilled spam (among other things), and played Name that Tune. Additionally, they were treated to a play list of “one-hits” by otherwise obscure musical groups, e.g. “Afternoon Delight” by Starland Vocal Band, “Safety Dance” by Men Without Hats, “Mickey” by Tony Basil, “Whip It” by Devo, “Puttin on the Ritz” by Taco, etc.

- “Being different” (R. p. 63, lines 10-11)
- “Being a non-typical employer” (R. p. 63, lines 14-15)
- “Helps us retain good employees and keep people happy” (R. p. 63, lines 16-19)
- “Needed for [Employer] to succeed as a marketing agency” (R. p. 64, lines 1-4)
- “Get better work out of your employees” (R. p. 64, lines 14-23)
- “Promote a better working relationship between members of different departments” (R. p. 65, line 25-p. 66, line 5)
- “Promote employee loyalty to [Employer]” (R. p. 66, line 6-8)

According to Claimant, team-building events serve the following business purposes:

- “Instill fun” (R. p. 106, line 7)
- “Increase communication pathways between departments” (R. p. 106, lines 7-8)
- Help with hiring – “people we try to hire are looking for a creative place to work” (R. p. 106, lines 10-11)
- Helps specifically in hiring “young artists, writers, and web developers” (R. p. 106, lines 15-24)
- Promotes “better working relationships between employees” (R. p. 106, line 25-p. 107, line 3)

- Promotes “better working relationships between departments” (R. p. 107, lines 4-20), specifically between creative service department and account service department in 2007
- “Create loyalty to [Employer]” (R. p. 107, lines 21-24)

Approximately one month before Claimant’s injury, he proposed a “team-building” event to Mr. Johnson. (R. p. 67, lines 1-5) This event was a kickball game – “Ballad Ball” – that “paid tribute to the rock ballads of the eighties.” (R. p. 110, lines 6-9) Mr. Johnson authorized Ballad Ball and specifically authorized Claimant to organize, plan, and execute Ballad Ball. (R. p. 68, lines 18-21; p. 70, lines 7-9)

Still, many of the details for Ballad Ball were ironed out between Claimant and Mr. Johnson. According to Mr. Johnson: “I had to be part of the pre-discussions, when are we going to do it, where are we going to do, how much is it going to cost, all of that.” (R. p. 70, lines 19-21) Among other things, Mr. Johnson approved when and where Ballad Ball would be held, rental of a field at the YMCA, and the expenditure of money, including a budget. (R. p. 68, lines 12-14, lines 22-24; p. 70, lines 19-24) (R. pp. 150-171) Mr. Johnson’s involvement continued: “We had regular meetings, and we would talk briefly about it.” (R. p. 73, lines 19-23).

With Employer’s full knowledge and blessing, Claimant started “the hype machine” company-wide. (R. p. 69, lines 1-3) (See generally R. pp. 150-171 – Emails regarding Ballad Ball) Per Mr. Johnson, Claimant “can hype with the best of them...” (R. p. 70, line 14) Ballad Ball was “hyped up” for about thirty (30) days (R. p. 111, lines 11-13). With Employer’s full knowledge and blessing, Claimant did the following:

- Used Employer's intranet (R. p. 69, lines 7-9; p. 110, lines 23-24) to encourage *all* employees to participate in Ballad Ball (R. p. 69, lines 10-21; p. 70, lines 7-9)
- Used Employer's email to plan, organize, and execute Ballad Ball (R. p. 73, lines 2-5; p. 110, line 23-p. 111, line 1). Emails were sent to *all* employees for the purpose of encouraging them to attend/participate (R. p. 73, lines 10-18)
- Put flyers in employee's boxes (R. p. 111, lines 2-7)

In addition, Mr. Johnson promoted Ballad Ball at a staff meeting (R. p. 111, lines 2-7)

Claimant's efforts were successful. As Ballad Ball approached, it was "widely discussed throughout the company" (R. p. 74, lines 7-9). There was a "substantial amount" of "trash talk" going back and forth between employees via Employer's email (R. p. 74, lines 18-21). (For *some* examples – see R. pp. 157, 170-171) As Claimant continued to "organize, and plan, and execute this event", he continued to report back to Mr. Johnson. (R. p. 73, lines 19-23) Mr. Johnson testified that Claimant was doing everything he expected him to do in terms of planning, organizing, and executing Ballad Ball (R. p. 76, lines 17-20)

Claimant divided the employees into two (2) teams and requested that Employer produce t-shirts for these Ballad Ball teams. He sent the proposed designs to Mr. Johnson (R. p. 75, lines 5-9). (R. pp. 162-164) Employer paid for the t-shirts (R. p. 75, lines 16-17). The t-shirts were designed and created by another employee, who created and designed the t-shirts while on company time (R. p. 75, lines 10-15). The t-shirts displayed team names, which were based upon professional acronyms, i.e. PETEY-O's

(PTO = paid time off) and ELOISE'S (LOE - Letter of estimate). (R. p. 75, lines 18-24)
(R. pp. 163-164)

With Employer's knowledge, Claimant worked on Ballad Ball during his work day, i.e. on company time (R. p. 76, lines 1-6; p. 113, lines 4-7; 13-16). Claimant recorded the time he spent on Ballad Ball as "administrative time." (R. p. 113, lines 8-9) Claimant was never admonished by Employer not to spend "work" time on Ballad Ball (R. p. 113, lines 8-12). Nor was he told that it was inappropriate to record the time he spent on his time sheets (R. p. 114, lines 14-17). The day of his injury, Claimant reported five (5) hours on his time sheet as administrative time (R. p. 114, lines 6-13). (R. p. 196) Likewise, Employer's CFO recorded his time as "kick ball." (R. p. 197)

Ballad Ball was scheduled to begin at 3:00 p.m. on Friday, October, 7, 2008 (R. p. 70, lines 22-24), though employees were encouraged to get their "kickball playing patooti[s] out there before 3:00 p.m." (R. p. 70, line 25 – p. 71, line 12). Normal working hours at Employer were 8:30 a.m. to 5:30 p.m. Employer's phones, however, were answered from 8:00 a.m. to 6:00 p.m. (R. p. 77, line 15-p. 78, line 2) As with most other members of upper management, Claimant typically and routinely worked about fifty (50) hours per week (R. p. 78, lines 3-11; p. 116, lines 5-7). Accordingly, Claimant typically and routinely worked until 5:30 p.m. on Friday (R. p. 78, line 12 – p. 79, line 1; p. 116, lines 8-10). If Claimant had not been at the event, he would have been in his office (R. p. 234, lines 1-4 – see Appendix).

Though attendance at Ballad Ball was not explicitly required, Employer wanted "as many as could" to attend and participate in Ballad Ball (R. p. 71, lines 7-12). It was Mr. Johnson's "hope that everyone would come." (R. p. 72, lines 19-22), and it was his

“expectation that those who were not tied up with client work would be there.” (R. p. 72, lines 23-25). All employees were encouraged more than once to attend (R. p. 112, line 25 – p. 113, line 3). Mr. Johnson made at least one announcement about Ballad Ball at a staff meeting. (R. p. 111, lines 2-7) A roster of participants was circulated before the event via company email (R. p. 100, lines 6-10), and in the email those who were not on a team roster were described as “holdouts.” (R. p. 100, lines 11-13) (R. p. 154) In the end, Mr. Johnson estimates that 50 or 60% of employees attended. (R. p. 84, lines 10-15; p. 236, lines 12-14 – see Appendix). Not all were in town. Some stayed back and worked, and some may have gone home at 3:30 p.m. if their work and time sheets were completed. (R. p. 80, line 20 – p. 81, line 8; p. 83, lines 8-19)

Salaried employees were paid for their time at Ballad Ball. They were not required to use vacation time (R. p. 76, line 24 – p. 77, line 8). All salaried employees received a full week’s pay. As noted previously, the time sheets for Claimant and Employer’s CFO show they recorded their time for Ballad Ball (R. pp. 196-197). Though no other time sheets are part of the record, Employer acknowledges other employees recorded their time at Ballad Ball on their time sheets. (R. p. 101, lines 8-13).

Regardless of whether attendance at Ballad Ball was impliedly required or voluntary for *other* employees, Claimant considered *his* attendance at Ballad Ball to be part of his job (R. p. 234, lines 14-15 –see Appendix). Claimant believed he would have upset a lot of people had he not shown up; “it would have been a poor reflection on management if [he] would have not shown up.” (R. p. 234, lines 9-13 – see Appendix)

Employer’s expectations of Claimant were consistent with his belief: he was *expected* to be at the event. Mr. Johnson indicated he “would have been surprised and

shocked” if Claimant had not shown up at the team-building event because he “spent all the time planning the thing.” (R. p. 102, lines 5-8) Mr. Johnson could not imagine Claimant not showing up. “[H]e wouldn’t do that. I’ll just say that. He wouldn’t do that.” (R. p. 102, lines 15-18) According to Mr. Johnson, had Claimant failed to show up at the event, it “would have been unexpected, unbelievable. I mean, you don’t plan something and then not show up to it.” (R. p. 102, lines 19-22)

In addition to paying to rent the field, paying for snacks, paying for t-shirts, and paying salaried employees for their time, Employer also provided the following equipment: chairs, coolers, a megaphone, “other equipment” (R. p. 85, lines 10-17), cones, a “big ball”, and extension cords (R. p. 115, lines 1-6).

The morning of Ballad Ball, Claimant went to the YMCA early, met with people at the YMCA, set up the field, and set up speakers and music. This occurred during normal work hours. (R. p. 115, lines 14-16) Ballad Ball itself began during normal work hours (R. p. 115, lines 17-19). Claimant got the event started at about 3:00 p.m. (R. p. 118, lines 11-13). He and other upper management proceeded to hype it up during Ballad Ball, thus keeping enthusiasm at a high level. (R. p. 118, line 21- p. 119, line 1) (See R. pp. 172-187) At about 4:15 p.m., while participating in Ballad Ball, Claimant was injured. (R. p. 119, lines 12-16) (R. pp. 28-31)

Ballad Ball was fully embraced by Employer even after the event. Photographs of Ballad Ball were taken. (R. p. 85, lines 24-25) (R. pp. 172-187) These photographs, which serve to underscore Claimant’s leadership role, were posted on Employer’s intranet for a period of time (R. p. 86, lines 1-3). Further, these photographs were displayed at Employer’s 2007 Christmas party (R. p. 86, lines 4-5; p. 125, lines 7-10).

The context for showing the photographs at the Christmas party was part of a “review of the year”. The event was “one of the big events of the year we wanted to place emphasis on. ...[We] were just showing all the great things that had happened through the year. That made the list.” (R. p. 125, lines 11-17)

In February 2008, Claimant underwent a 2007 employee performance evaluation. This included a self-evaluation (R. pp. 188-190) and an evaluation by Mr. Johnson (R. pp. 191-193). When Claimant evaluated himself, he listed Ballad Ball as a major accomplishment that had a “very positive lift to the working culture at [Employer].” (R. p. 86, line 15 – p. 88, line 4) (R. pp. 188-190)

Mr. Johnson’s response to Claimant’s self-evaluation confirms that Ballad Ball was part of Claimant’s employment. (R. p. 87, lines 5-13). More importantly, when Mr. Johnson evaluated Claimant, he also referred to Ballad Ball. Mr. Johnson indicated that Claimant was a “team player” and brought back “a couple of fun events”, including Ballad Ball. (R. p. 87, line 14 – p. 88, line 13) (R. pp. 191-193) Accordingly, Mr. Johnson gave Claimant one of the highest ratings possible under the category “Effective Team Player/Engages in Team Efforts.” (R. pp. 191-193).

ARGUMENT

I. STANDARD OF REVIEW

An appellate court should reverse or modify the Full Commission's decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Fishburne v. ATI Systems Intern.*, 384 S.C. 76, 84, 681 S.E. 2d 595, 599-600 (S.C. App. 2009) (citing S. C. Code Ann. §1-23-380). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action." *Thompson ex. rel. Harvey v. Cisson Const. Co.*, 377 S.C. 137, 151, 659 S.E. 2d 171, 178 (S.C. App. 2008); and *Jones v. Georgia-Pacific Corp.*, 355 S.C. 413, 417, 586 S.E. 2d 111, 113 (S.C. 2003). "When the evidence is susceptible of but one reasonable inference, the question becomes a matter of law." *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 437, 458 S.E. 2d 76, 80 (S.C. App. 1995).

II. APPLICABLE LAW

"In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances." *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 349, 656 S.E. 2d 753, 759 (S.C. App. 2007). "The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant." *Id.* at 350, 656 S.E. 2d at 759.

“Where employer and employee are subject to the compensation act,...an injured employee should not be excluded from the benefits of the law upon the ground that the accident did not arise out of and in the course of his employment when there is substantial doubt (arising from the proven facts) of the propriety of such conclusion.” *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 541, 689 S.E. 2d 615, 618 (S.C. 2010) citing *Pelfrey v. Oconee County*, 207 S.C. 433, 440, 36 S.E. 2d 297, 300 (1945). “These words are construed broadly and should continue to be so construed.” *Id.* “Common sense indicates that a compensation law passed to increase workers’ rights (because their common law rights were too narrow) should not thereafter be narrowly construed.” *Id.* at 542, 689 S.E. 2d at 619.

As to whether an injury at a recreational or social activity falls within the course and scope of employment, the Supreme Court has adopted an analysis proposed by Professor Larson. *Leopard v. Blackman-Uhler*, 318 S.C. 369, 370-71, 458 S.E. 2d 41-42 (S.C. 1995). Professor Larson identifies two factors that support a finding that Claimant’s injury at Ballad Ball arose out of and in the course of his employment:

(2) The employer, by...impliedly requiring participation or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or

(3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

1A Arthur Larson and Lex Larson, *The Law of Workers’ Compensation* § 22.00 (1994).

III. EMPLOYER MADE BALLAD BALL PART OF CLAIMANT'S SERVICES OR IMPLIEDLY REQUIRED CLAIMANT'S PARTICIPATION, THUS BRINGING BALLAD BALL WITHIN THE ORBIT OF CLAIMANT'S EMPLOYMENT.³

A. EMPLOYER MADE BALLAD BALL PART OF CLAIMANT'S SERVICES.

Clearly Employer made Ballad Ball “part of Claimant’s services”. Just because Ballad Ball was a recreational or social activity does not mean Claimant wasn’t working both before and during the activity. As Professor Larson explains, “A certain amount of work has to be done to keep the play going.” 1A Arthur Larson and Lex Larson, *The Law of Workers’ Compensation* § 22.21(a) (1994). An employee who performs *some* duty in connection with an employer sponsored recreational activity is acting within the course and scope of employment. *Id.*

As Mr. Johnson testified, Claimant knew Employer desired to have “team-building” events, such as Ballad Ball. Mr. Johnson approved Ballad Ball in general concept and in specifics. Claimant then planned, organized, and executed Ballad Ball with the full knowledge and blessing of Employer. All of Claimant’s work with regard to Ballad Ball was done during normal work hours. Claimant reported his efforts to Mr. Johnson and

³ Although a very strong argument can be made that *all* employees who attended ballad ball were impliedly required to attend, given the promotion by upper management, including both Claimant and Mr. Johnson, the “hope” and “expectation” of Employer, the numerous messages on Employer’s intranet and email systems urging participation, the description of those who were not signing up as “holdouts”, and the fact that attending ballad ball allowed employees to leave work early, such a determination is irrelevant to whether *Claimant* was impliedly required to attend ballad ball or whether ballad ball was part of *his* services as an employee, thus bringing ballad ball within the orbit of Claimant’s employment.

even had meetings with Mr. Johnson at which the event was discussed. Claimant recorded all of his Ballard Ball time on his time sheets. Other employees, including the company CFO, associated the activity with their employment in that they recorded on their time sheets that they were at Ballard Ball the day and time of Claimant's injury. Ballard Ball occurred during normal business hours. Finally, Claimant's injury occurred at 4:15 p.m., more than an hour before he normally ended his work day.

Lest there be any doubt as to whether Employer made Ballard Ball part of Claimant's services, there is Exhibit 4 (R. pp. 191-193). Exhibit 4 (R. pp. 191-193) is an admission *per se* by Employer that it made Ballard Ball a part of Claimant's services. In Exhibit 4 (R. pp. 191-193), Claimant's performance as an employee was evaluated. Ballard Ball was mentioned in his evaluation and formed the basis for a high score in the category "Effective Team Player/Engages in Team Efforts". It is disingenuous to now assert that Ballard Ball was just Claimant's zany, clever idea that bore no relation to his employment.

The Full Commission focused on, among other things, whether Claimant's written job description⁴ included planning, organizing, promoting, and executing such an event. That issue is beside the point. He, like most upper level employees, does what Employer desires and expects him to do. And it is undisputed that Employer desired and expected Claimant to plan, organize, promote, and execute Ballard Ball. His work is not limited to a written job description. In that regard, the Full Commission mistakenly relies on the fact that Employer didn't attend softball games involving Employer's sponsored team. These games involved competition during softball season against other company softball teams. (R. p. 93, lines 17-22). Accordingly, even Mr. Johnson questioned whether there was any correlation between attendance at these games and attendance at Ballard Ball. (R.

⁴ There is no evidence that Claimant had a written job description.

p. 94, lines 1-2).

**B. EMPLOYER IMPLIEDLY REQUIRED CLAIMANT TO PARTICIPATE
IN BALLAD BALL.**

It is clear that Employer expected Claimant to plan, organize, promote, and execute Ballad Ball (R. p. 86, lines 8-10), “execute” being the operative word with regard to this issue. In that regard, it was absolutely unimaginable that he would not see Ballad Ball through to the end, including making sure the field was picked up and Employer’s equipment returned afterward. After all, Claimant believed Ballad Ball was part of his job on the day of his injury (R. p. 234, lines 14-15 – see Appendix). Thus, he also believed that a lot of people would have been upset and that it would have been a very poor reflection on management had he decided not to show up. (R. p. 234, lines 9-13)

Employer’s expectations regarding Claimant’s participation were similar. Mr. Johnson simply could not imagine that Claimant would fail to show up for Ballad Ball. He would have been “surprised and shocked” had Claimant not been there. (R. p. 102, lines 5-8) “He wouldn’t do that. I’ll just say that. He wouldn’t do that.” For Claimant to skip Ballad Ball **“would have been just unexpected, unbelievable. I mean, you don’t plan something and then not show up to it.”** (R. p. 102, lines 15-22)

It is irrelevant and beside the point whether Claimant was threatened with having his pay docked or with suspension or termination for not participating. Likewise, it is irrelevant and beside the point whether Claimant was explicitly told: “You *must* show up.” Responsible people, such as executive level employees, do not deal in those types of absolutes. Threats are not typically required. Executive level employees, as most

employees, do what is expected of them.

The bottom line is this. Claimant was doing what his Employer wanted and expected him to do at the time of his injury. What an employer desires or expects an employee to do is an implied requirement.

IV. THE EMPLOYER DERIVED SUBSTANTIAL DIRECT BENEFIT FROM THE ACTIVITY BEYOND THE INTANGIBLE VALUE OF IMPROVEMENT IN EMPLOYEE HEALTH AND MORALE THAT IS COMMON TO ALL KINDS OF RECREATION.

The “key factor” in determining whether an injury is in the course and scope of employment is whether the activity “benefited the employer.” *Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 515 S.E. 2d 532, 533 (S.C. 1999), citing *Fountain v. Huntsville Oil Mill*, 207 S.C. 119, 32 S.E. 2d 11 (1945) (benefits denied because the employee’s activity provided no benefit to the employer.)

In typical cases involving recreational activity, most of which involve company softball teams, this factor has typically resulted in a negative outcome for the employee. Not surprisingly, Commissioners and courts typically find that participation by an employee in a softball league does not provide a substantial direct benefit to the employer. The value to the employer of having the employee play softball is nominal. Likewise, playing in a softball league is something an employee may do regardless of his work for the employer. He will play for his church or another entity. His play has little or nothing to do with whether he works for a particular employer or who buys the t-shirts. There is no connection to his employment. Though he may experience an improvement

in health and morale, it is no more than if he plays tennis or racquetball or goes hunting; thus Professor Larson's qualifier "that is common to all kinds of recreation and social life."

Ballad Ball was an entirely different matter. Here, Employer promotes the business benefit of "team-building" events to its clients. In this era, "sophisticated" employers use events like Ballad Ball, ropes courses, "trust falls", and other unconventional methods to achieve a desired corporate culture, employee cohesion, better communication, loyalty to their employer, etc. Employer was using just such a team-building event at the time of Claimant's injury.

It is undisputed that Employer desired to create a certain atmosphere and chose to use Ballad Ball to do it. That is why both Employer and Claimant himself were able to list numerous substantial, direct benefits to Employer. Clearly it is important to Employer for people from different departments to be able to work together. Clearly it is important to Employer for upper management and rank and file employees to have a working relationship. Clearly attracting and retaining creative talent is important to Employer. Clearly it is important to create loyalty to Employer. These benefits were recognized by Claimant.

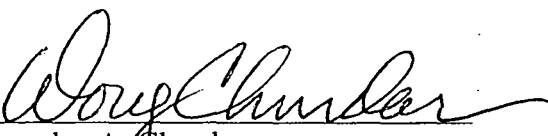
But whether these benefits are important to Claimant or to outsiders is less important than this: these substantial, direct benefits were recognized, valued, and desired by Employer. That is why everyone in upper management supported Ballad Ball (R. p. 109, lines 17-20). That is why Employer invested so much of its resources in it, i.e. Claimant's time, other employees' time, money, and equipment. That is why Employer embraced the event by displaying photos on its company intranet and at its

2007 Christmas party. And that is why Claimant received accolades from Employer when it evaluated his 2007 performance as an employee.

CONCLUSION

For the foregoing reasons, the Commission should reverse the Single Commissioner's finding that Claimant's injury did not occur within the course and scope of employment and remand the case for a hearing on disability and other benefits.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO. 2010169926

STEPHEN C. WHIGHAM..... APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this FINAL BRIEF complies with Rule 211(b),
SCACR.

February 16, 2011


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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 0723318

Stephen C. Whigham, Employee/Claimant, ...Appellant,

v

Jackson Dawson Communications, Employer,
And The Hartford, Carrier, ... Respondents.

FINAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	4
STANDARD OF REVIEW	6
ARGUMENT	8
I. APPELLANT’S ALLEGED ACCIDENT NEITHER AROSE OUT OF HIS EMPLOYMENT NOR OCCURRED IN THE COURSE OF HIS EMPLOYMENT	8
A. Appellant’s alleged accident did not arise out of his employment with Employer.....	8
B. Applying <i>Larson’s</i> factors to this claim, Appellant’s injury did not occur within the course and scope of his employment.	10
II. RESPONDENT DID NOT DERIVE ANY SUBSTANTIAL DIRECT BENEFIT FROM THE KICKBALL GAME BEYOND THE INTANGIBLE VALUE OF IMPROVEMENT IN EMPLOYEE HEALTH AND MORALE THAT IS COMMON TO ALL KINDS OF RECREATION.....	16
CONCLUSION.....	18

TABLE OF AUTHORITIES

CASES

<u>Brown v. Jordan Oil Co.</u> , 291 S.C. 272, 353 S.E.2d 280 (1987)	6
<u>Bursey v. South Carolina Dep't of Health & Environmental Control</u> , 369 S.C. 176, 186, 631 S.E.2d 899, 905 (2006)	7
<u>Charleston County Parks & Rec. Comm'n v. Somers</u> , 319 S.C. 65, 67 459 S.E.2d 841 (1995)	7
<u>Eaddy v. Smurfit-Stone Container Corp.</u> , 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003).....	8
<u>Gibson v. Spartanburg County Sch. Dist. No. 3</u> , 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000).....	8
<u>Hardee v. McDowell, et al.</u> , 372 S.C. 413, 417 642 S.E.2d 632, 634 (Ct. App. 2007).....	7
<u>Hendricks v. Pickens County</u> , 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999).....	7
<u>Houston v. Deloach & Deloach</u> , 378 S.C. 543, 669 S.E.2d 628 (Ct. App. 2008).....	10
<u>Howell v. Pacific Columbia Mills</u> , 291 S.C. 469, 354 S.E.2d 384 (1987)	6
<u>Hunter v. Patrick Construction Co.</u> , 289 S.C. 46, 344 S.E.2d 613 (1986)	6
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981)	6
<u>Leopard v. Blackman-Uhler</u> , 318 S.C. 369 (1995)	11, 12
<u>Lowe v. Am-Can Transport Services, Inc.</u> , 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).....	6
<u>Osteen v. Greenville County Sch. Dist.</u> , 333 S.C. 43, 508 S.E.2d 21 (1998)	8

<u>Pizza Hut of America, Inc. v. Hood,</u> 198 Ga. App. 112, 400 S.E.2d 657 (1991).....	11
<u>Rodriquez v. Romero,</u> 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005)	7
<u>Rogers v. Kunja Knitting Mills,</u> 312 S.C. 377, 440 S.E.2d 410 (Ct. App. 1994).....	9
<u>Shade v. Ayars & Ayars,</u> 513 N.W.2d 881 (Neb. App. 1994).....	11-12

STATUTES

S.C. Code § 42-1-160 (Supp. 2006)	8
S.C. Code § 1-23-380(A)(5) (2007).....	6, 7

OTHER AUTHORITIES

A. Arthur Larson and Lex Larson, <u>The Law of Workmen's Compensation</u> § 22.00 (1994)	11, 15
<u>Merriam-Webster Online Dictionary</u>	16

STATEMENT OF ISSUES ON APPEAL

- I. DID THE COMMISSION PROPERLY DETERMINE THAT CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH DEFENDANT EMPLOYER ON OCTOBER 5, 2007?

STATEMENT OF THE CASE

On June 29, 2009, Appellant filed a Request for Hearing alleging that he sustained a compensable injury to his right lower extremity on October 5, 2007 while participating in a kick ball game. Defendants timely filed a Form 51 denying that Appellant sustained an injury by accident arising out of and in the course of his employment with Employer. A hearing was held on October 30, 2009.

At the hearing, Appellant alleged that he sustained a compensable injury. Appellant contended that he was injured in a company-wide kickball event that he was in charge of planning¹ and that benefited the Employer by boosting morale and team building. Appellant further asserted that the event was sanctioned and provided by Employer. Thus, Appellant contended that he was entitled to benefits under the Act.

Defendants maintained that Appellant did not sustain an injury by accident arising out of and in the course of his employment with Employer. In support of their denial, Defendants cited among other things the Larson's analysis regarding recreational and social activities that has been adopted by the Supreme Court of South Carolina. Defendants contended that improving employee morale is not enough for the kickball event to fall within the course of Appellant's employment.

Following a lengthy hearing and both parties' submission of Memorandums of Law, the Hearing Commissioner found, among other things, that Appellant has not established any of the factors that bring recreational and social activities within the course and scope of employment with Employer. As a result, Appellant failed to meet his burden of proof in establishing that he sustained an accident arising out of and in the course of employment with Employer.

¹ It is undisputed that the Claimant was not injured while planning this kickball game, but was actually injured while playing in the game (R. p. 144, lines 13-16). Specifically, he was injured on the last play of the game when he jumped in the air to miss being hit by a kickball thrown at him by one of his friends and playmates.

Appellant appealed to the Full Commission, which heard the case on May 18, 2010. On July 21, 2010, the Commission issued a Decision and Order fully affirming the Hearing Commissioner's Decision and Order. Appellant filed his Notice of Intent to Appeal the Full Commission's Decision and Order on August 18, 2010. This appeal follows.

STATEMENT OF THE FACTS

It is undisputed that nothing about his job required Appellant to organize company events to build morale (R. p. 141, line 23-p. 142, line 23). A kickball event was voluntarily planned by Appellant and a few others (R. pp. 150-171). Employer paid the rental fee for the field and provided t-shirts (R. p. 96, lines 10-15). Those t-shirts did not bear the company name or logo on them (R. p. 97, lines 12-25). The kickball event occurred on October 5, 2007 at the Y.M.C.A. in Simpsonville, South Carolina, miles from the company itself (R. p. 143, lines 15-21). The participants in the game were responsible for transportation to the field. Employer did not rent a bus or reimburse employees for mileage (R. p. 143, line 22-p. 144, line 1). No company automobiles were utilized for transporting employees. Id.

Appellant was injured when he was running around the bases on the very last play of the game (R. p. 120, lines 2-14). Appellant jumped to avoid a ball thrown at him, landed awkwardly, and injured his right tibia and fibula. Id. Employees were not required to attend the kickball event, and attendance was absolutely voluntary (R. p. 140, line 15-p. 141, line 6). No clients or customers were present or even invited to participate, and no advertising was done by the company during the event (R. p. 139, lines 17-20). Spouses and children of employees attended the event to watch and cheer (R. p. 139, lines 21-23). Appellant testified that absolutely no pressure was placed on employees to attend (R. p. 141, lines 5-8). In fact, if an employee had a project at work, it was expected the employee would miss the event to complete their project (R. p. 140, lines 22-25). Some employees chose to play in the event, some chose to stay

back and work and some just decided to go home for the day as was customary due to the company "summer hours" policy.² (R. p. 140, lines 12-21)

² Company policy allowed all employees to "clock out" or leave on Friday afternoons at 3:30 pm if company business was completed. It is also undisputed that they could leave even earlier than 3:30 if they needed to and could work through their lunch breaks.

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark v. Bi-Lo, Inc., 276 S.C. at 136, 276 S.E.2d at 307.

The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987).

Section 1-23-380(A)(5) of the South Carolina Code also provides:

The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand a case for further proceedings. The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007).

Thus, “review is limited to deciding whether the Commission’s decision is unsupported by substantial evidence or is controlled by some error of law.” Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005) (citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)). “The determination of legislative intent is a matter of law.” Charleston County Parks & Rec. Comm’n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841 (1995).

It is also well settled that:

In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. [Citation omitted] Notwithstanding, this Court will afford the most respectful consideration to the interpretation of the statute by the agency charged with its administration. [Citation omitted]

Hardee v. McDowell, et. al., 372 S.C. 413, 417, 642 S.E.2d 632, 634 (Ct. App. 2007) (citing Bursey v. South Carolina Dep’t of Health & Environmental Control, 369 S.C. 176, 186, 631 S.E.2d 899, 905 (2006)).

ARGUMENT

I.

APPELLANT'S ALLEGED ACCIDENT NEITHER AROSE OUT OF HIS EMPLOYMENT NOR OCCURRED IN THE COURSE OF HIS EMPLOYMENT.

In order to be entitled to compensation for an injury under the South Carolina Workers' Compensation Act, a claimant must show he or she suffered an "injury by accident arising out of and in the course of the employment." S.C. Code Ann. § 42-1-160 (Supp. 2006). The question of whether an accident arises out of and is in the course and scope of employment is largely a question of fact. Gibson v. Spartanburg County Sch. Dist. No. 3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (Ct. App. 2000).

"[T]he two parts of the phrase 'arising out of and in the course of employment' are not synonymous." Osteen v. Greenville County Sch. Dist., 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998). Rather, "[b]oth parts must exist simultaneously before any court will allow recovery." Id.

A. Appellant's alleged accident did not arise out of his employment with Employer.

The substantial evidence in the record establishes that Appellant's alleged accident did not arise out of his employment with Employer. According to the Court of Appeals in Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 161, 584 S.E.2d 390, 394 (Ct. App. 2003) (internal citations omitted): The term "arising out of" refers to the origin of the cause of the accident. An accidental injury is considered to arise out of one's employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.

The overwhelming weight of evidence reveals that Appellant simply fails to meet this requirement. Kevin Johnson, Appellant's direct supervisor at the time of the accident and

Executive Vice President of the Employer, testified at the hearing.³ He testified that there was nothing about the Appellant's specific job that required him to create activities internally for employees, such as the kickball event giving rise to this litigation. (R. p. 90, line 23-p. 91, line 1). He indicated that there was nothing about the Appellant's position that required him to plan events for the company and there was no expectation for him to do this. (R. p. 91, lines 2-8). He also testified that hypothetically if someone in the warehouse department, or any other department for that matter, wanted to plan this kickball event they could have also volunteered to do the same thing. (R. p. 91, lines 9-12). Mr. Johnson testified that Appellant was not paid extra to plan events for the employees at Employer. (R. p. 94, lines 9-12). He admitted that Appellant came up with the idea for this kickball event and approached him about planning it. (R. p. 67, line 17 & p. 69, lines 7-9).

Mr. Johnson also testified a couple of the company's Web technicians had planned these types of activities in the past. (R. p. 92, lines 8-10). He also had a warehouse manager that planned a softball team from time to time. (R. p. 93, lines 17-24). He testified that members of upper management were given information about the event just like everyone else but were not encouraged above and beyond that to attend.⁴ (R. p. 71, lines 13-24). It is clear from the evidence in this case that Appellant's alleged accident did not "arise out of" his position at Employer, as there was clearly no causal connection between the conditions under which Appellant's work is required to be performed and the resulting injury.

³ The Commissioner and Full Commission specifically found Mr. Johnson's testimony to be "very credible" based on her observations of him and the delivery of his testimony (R. p. 17). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the full commission . . ." Rogers v. Kunja Knitting Mills, 312 S.C. 377, 440 S.E.2d 410 (Ct. App. 1994).

⁴ Appellant admitted that he did not usually attend or participate in other employee only events such as games for the company softball team, which is a strong indicator that it was not part of his job description to attend or participate in such events.

Appellant himself even admitted at his deposition, and later clarified at the hearing that there was nothing about his role at the company that required him to come up with company events like this kickball event to build company morale. (R. p. 142, lines 13-25). At the hearing, Appellant also testified that in his opinion teambuilding was not part of his position in upper management. (R. p. 108, lines 18-21). He testified that planning the kickball event was his idea and that he volunteered to push it all the way through. (R. p. 110, lines 12-17).

Appellant admitted that had he not been playing kickball that afternoon but had just gone home he would have received the same salary that day. (R. p. 144, lines 4-7). He further testified that he would have received the same salary if he had stayed in the office and worked that day, as opposed to playing in the kickball event. *Id.* He was not paid anything extra for organizing this event (R. p. 144, lines 11-12). He also clarified again that he was not injured organizing the event but was injured playing in the game (*emphasis added*). (R. p. 144, lines 13-16). The substantial evidence in the record, including Appellant's very own testimony, reveals the alleged accident did not arise out of his position at Employer. As a consequence, the Commission's decision denying benefits in this claim should be affirmed in its entirety.

B. Applying *Larson's* factors to this claim, Appellant's injury did not occur within the course and scope of his employment.

The substantial evidence in the record supports the Commission's finding that Appellant's injury did not occur within the course and scope of his employment with Employer. An injury occurs "in the course of employment" when it occurs within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto, Houston v. Deloach & Deloach, 378 S.C. 543, 669 S.E.2d 628 (Ct. App. 2008). In determining when recreational or social activities are within the course of employment, there are three factors to consider. Our

Supreme Court has determined that recreational or social activities are within the course and scope of employment when:

- (1) they occur on the premises during a lunch or recreation period as a regular incident of the employment; or
- (2) the employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
- (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

Leopard v. Blackman-Uhler, 318 S.C. 369 (1995) and A. Arthur Larson and Lex Larson, The Law of Workmen's Compensation § 22.00 (1994).

In Leopard, the Court held that furnishing equipment, uniforms and league dues coupled with remote advertising was not enough to bring the claimant's softball injury within the course and scope of his employment. Two other cases of note are Pizza Hut of America, Inc. v. Hood, 198 Ga.App. 112, 400 S.E.2d 657 (1991) and Shade v. Ayars & Ayars, 513 N.W.2d 881 (Neb.App. 1994).

In Hood, the employee drowned at an employer sponsored picnic. The picnic was sponsored by the employer, attendance was encouraged but not required, and the employer used the event as a promotional tool to sell its latest product. Despite these factors, the Georgia Court of Appeals found that the employee's death did not arise out of or occur during the course and scope of his employment and, therefore, it was not a compensable workers' compensation claim.

In Shade, an employee was injured at an employer sponsored picnic. The event was sponsored by the employer, attendance was encouraged, all expenses were paid by the employer, and the event was advertised by the employer within the place of employment. However, the Nebraska Court of Appeals analyzed the *Larson* factors and found that employee's injury was not a compensable event.

The facts are even weaker in the case at hand than under Leopard, a case where the event and subsequent injury were found not to be within the course of employment. In the case at hand, the kickball event did not occur during work hours. Employer instituted flexible summer hours in which employees were off on Fridays during the summer starting at 3:30 p.m. (R. p. 77, lines 14-24 & p. 79, lines 20-22). In this case, employees were allowed to work through the standard 30 minute lunch so they could leave work, clock out and get to the event at 3:00 (R. p. 99, lines 10-13). While most employees at this company are salaried, hourly employees were required to "clock out" to participate in the kickball event (R. p. 103, lines 5-18). No employee believed the kickball event to be mandatory (R. p. 141, lines 5-17).

Appellant's testimony reveals that this is not a compensable claim. Appellant admitted that many of the employees did not come to the kickball event. (R. p. 140, lines 12-19). He explained that the reason that a lot of people did not come is because they had to do company work and that client work always comes first. (R. p. 116, lines 17-24). Appellant testified that nobody was forced to go to this kickball event. (R. p. 124, lines 5-8). Appellant testified that kickball was not something he regularly does as an employee of Employer. (R. p. 139, lines 5-7). Appellant admitted that no clients were invited to play and no prospective clients were invited to play. (R. p. 139, lines 17-20). Appellant admitted there was no pressure from anyone, including him, for employees to play in this kickball event. (R. p. 141, lines 5-7). He also

admitted there was no ultimatum given either directly or impliedly from upper management for the associates to attend this kickball event. (R. p. 141, lines 9-15). He specifically admits that it was totally voluntary to attend this event. (R. p. 141, lines 16-17). He indicated that no employee has come to him and told him they were pressured to play in this kickball event. (R. p. 141, lines 18-22).

Appellant also admitted that Employer did not provide any transportation to the event or reimburse people for mileage. (R. p. 143, lines 22-24). He admitted that no one hired a bus or van company to transport people to the event. (R. p. 143, line 25-p. 144, line 1). He went on to admit that people were not punished and pay was not docked for those who did not attend the event. (R. p. 142, lines 12-15). He indicated that the results of the game were not published in any local newspaper and no pressure was put on any employee to participate. (R. p. 142, line 22-p. 146, line 2). This evidence is overwhelming in support of the Commission's decision to deny compensability of this claim.

The "very credible" testimony of the Employer also supports the decision of the Hearing Commissioner. Mr. Johnson testified the game was not a required activity and attendance was completely optional. (R. p. 72, lines 5-9).

It is undisputed that some employees played kickball, some just went home for the day as they normally would, and others stayed at work. (R. p. 76, lines 12-16). Mr. Johnson indicated that about half of the employees participated or attended the kickball event, and he has no idea why the other half did not. (R. p. 76, lines 7-11). He went on to emphasize that no employee had to participate in this event, no employee was punished for not participating, and no employee's pay was docked if they decided not to play in the kickball game. (R. p. 98, lines 18-24).

He indicated he did not personally look down on anyone who chose not to play in this event and that there were many people who chose not to play. (R. p. 99, lines 4-6). He clarified that some people worked through their lunch, went home at 3:00 o'clock that day, and did not play kickball. (R. p. 99, lines 10-13). He again emphasized that attendance or participation in the kickball event was completely voluntary and again about 40 or 50 percent of the company did not participate in this event. (R. p. 236, lines 12-14).

He explained that there was no roll call at the event or an attendance sheet to sign. (R. p. 37, lines 10-14). He even went on to give the hypothetical that if someone was in transit to the kickball game and decided that their back was hurting and did not want to play, they could turn around and go home without any consequences as far as he was concerned. (R. p. 237, lines 15-19). He admitted that there was no client who was being billed for this event. (R. p. 238, lines 8-10). He testified that there was no requirement for a salaried employee to clock in or record their time for playing in the kickball event. (R. p. 238, lines 15-22).

Mr. Johnson testified that the company did not provide any reimbursement for travel to and from the kickball event and that they did not provide any carpooling to the event. (R. p. 239, lines 9-11). He went on to say that if Appellant had not clocked in as administrative time he still would have received his normal salary that day. (R. p. 239, lines 4-7).

Mr. Johnson clarified that this event did not take place on company premises and that the company does not have a recreation period. (R. p. 243, lines 3-4). He explained that there was nothing about the kickball event that is a regular incident of employment at Employer. Id. Mr. Johnson very strongly testified that if Appellant had not shown up or had not done the event he would not have been fired or terminated for this. (R. p. 103, lines 7-10).

It is clear from the record in this case that Employer did not make the kickball game part of Appellant's services. Employer also did not impliedly require Appellant to participate in this game. Appellant admits that he volunteered to plan the game, and he made the decision to use the company Intranet, email, and flyers to promote the event. In fact, Appellant admits that he put on his self-evaluation form that the kickball event was a morale booster and used to build a team atmosphere. Appellant testified that no clients were invited to the kickball game and that the whole thing was done by employees for employees. Appellant admitted that he would have received the same amount of money in his paycheck if he would have gone home instead of going to the kickball game. There was no ultimatum to play kickball, attendance at the event was voluntary, and attendance at the kickball game did not affect any employees pay. Appellant was not injured while organizing the event, but rather while playing in the event (*emphasis added*). Appellant's injury occurred on a field at a YMCA five miles away from Employer's premises. The time of the event was not during work hours. The Larson's time and place factor cannot be met. Employer did not require employees to attend and only loosely encouraged attendance. Therefore, the Larson's degree of employer initiative factor cannot be met. As a consequence of all of the above, it is clear Appellant's alleged accident also did not take place within the course of his employment with Employer. As a consequence, the hearing Commissioner's decision denying benefits in this claim should be affirmed in its entirety.

II.

RESPONDENT DID NOT DERIVE ANY SUBSTANTIAL DIRECT BENEFIT FROM THE KICKBALL GAME BEYOND THE INTANGIBLE VALUE OF IMPROVEMENT IN EMPLOYEE HEALTH AND MORALE THAT IS COMMON TO ALL KINDS OF RECREATION.

The preponderance of the evidence supports the Commission's finding that Employer did not derive any substantial direct benefit from the kickball game beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation. Employer paid the field rental fee and provided t-shirts, but had no intent to advertise or market. Employer received no profitable benefit by having a kickball event other than improving employee health and boosting company morale. Boosting company morale, by itself, does not subject an employer-sponsored recreational or social activity to the Workers' Compensation Act. Appellant relies solely on boosting morale – "We thought it was a clever, fun, creative way of (team building)." (R. p. 54). Kickball is a clever and fun way of team building and an avenue to "blow off steam," but provides Employer no substantial direct benefit from the activity beyond improvement in employee health and morale.

In fact, Appellant's own "2007 Manager Self Evaluation" which he has submitted as Appellant's Exhibit #3, indicates that "[one of my major accomplishments over the past year was] [t]he internal *esprit d'corps* activities of a cookout in early Summer and the kickball game. Both had very positive lifts to the working culture at J-D;" (R. p. 188).

According to Merriam-Webster Online Dictionary, the definition of "morale" is "the mental and emotional condition (as of enthusiasm, confidence, or loyalty) of an individual or group with regard to the function or tasks at hand; a sense of common purpose with respect to a

group; ESPRIT DE CORPS.”⁵ The Appellant’s very own words from his self evaluation clearly show that the benefit of this kickball event to the company, if any, was nothing more than the intangible value of improvement in employee health and morale.

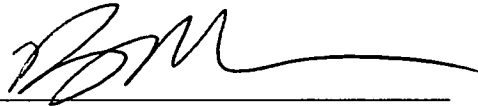
Mr. Johnson testified at the hearing that in his opinion all of the positive things that come from an event like this kickball game were ultimately promotion of company morale and general health.⁶ (R. 96:1-5). Mr. Johnson also testified that the T-shirt design was Appellant’s idea. (R. 97:3-11). He indicated there was nothing on the T-shirts that would or could be used in marketing his company. (R. 97:12-15). As a consequence of all of the above, it is clear the Appellants alleged accident also did not take place within the course of his employment with Employer. As a consequence, the Commission’s decision denying benefits in this claim should be affirmed in its entirety.

⁵ Note Appellant used this very phrase ‘esprit de corps’ in his own personal self evaluation following the kickball event. The term ‘*Esprit de corps*’ is synonymous with the term ‘morale’.

⁶ In providing this testimony Mr. Johnson was responding to a question that took into consideration each and every element cited and bulleted in the Appellant’s Brief at pages 3-4.

CONCLUSION

Appellant's injury should not be deemed compensable because Appellant's alleged accident did not "arise out of" his position at Employer and because it fails to fall within the course and scope of employment when analyzed by the *Larson* factors. The kickball event did not occur on Employer's premises, it was not a required event, and Employer did not derive substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life. As a consequence this case should be denied as a matter of law, and the Commission's Decision and Order should be affirmed in its entirety.



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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 0723318

Stephen C. Whigham, Employee/Claimant, ... Appellant,

v.

Jackson Dawson Communication, Employer, and The Harford, Carrier,..Respondent,

CERTIFICATE OF COUNSEL

The undersigned attorney certifies that the Final Brief of Respondent complies
with Rule 211(b), SCACR.

February 16, 2011



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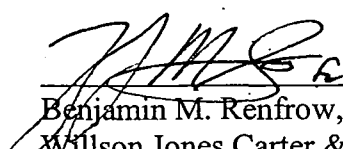
Jackson Dawson Communication, Employer, and The Harford, Carrier,..Respondent,

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I hereby certify that I have this 16th day of February, 2011 served a copy of the Final Brief of Respondent by mailing copies of the same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

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TABLE OF CONTENTS

Table of Authorities	iii

Argument

I. CLAIMANT'S INJURY AROSE OUT OF HIS EMPLOYMENT.....	1
II. CLAIMANT'S INJURY OCCURRED IN THE COURSE OF HIS.....	3
EMPLOYMENT	

Conclusion	8

TABLE OF AUTHORITIES

CASES

<u>Barbara Ludwinski v. National Courier</u> 873 S.W. 2d 890 (MO. App. E.D. 1994)	4, 5, 8
<u>Engle v. Thompson Murray, Inc.</u> 239 S.W. 3d 561 (Ark. App. 2006).....	6, 7, 8
<u>Hall v. Desert Aire, Inc.</u> 376 S.C. 338, 656 S.E. 2d 753 (S.C. App. 2007).....	1, 2, 3, 4
<u>Pizza Hut of America, Inc. v. Hood</u> 198 Ga. App. 112, 400 S.E. 2d 657 (Ga. App. 1990).....	4
<u>Shade v. Ayars and Ayars</u> 513 N.W. 2d 881 (Neb. 1994).....	4, 5

OTHER AUTHORITIES

1A Arthur Larson, <i>The Law of Workers' Compensation</i> §22.21(a) (1993).....	5
1A Arthur Larson and Lex Larson, <i>The Law of Workers' Compensation</i> §22.21(a) (1994).....	4

ARGUMENT

I. CLAIMANT'S INJURY AROSE OUT OF HIS EMPLOYMENT

In its brief, Employer supports its position that Claimant's injury did not "arise out of his employment" by incorrectly focusing on whether Claimant's written job description (he doesn't have one) explicitly required him to plan, organize, and execute team-building events. It is clear from a review of Employer's actual testimony, as opposed to paraphrases, that Claimant's efforts were expressly desired, expected, and compensated by Employer. Employer cannot cite any authority for the position that, for an injury to arise out of Claimant's employment, the Employer must have included the specific act resulting in the injury in a job description or explicitly commanded or insisted that he perform the specific act that resulted in injury or threatened him with termination for not performing the act.

This Court heard a similar argument by the employer in *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E. 2d 753 (S.C. App. 2007). There Hall enjoyed a meal and alcoholic beverages at the home of a business associate. 656 S.E. 2d at 756. Later that evening, while riding around the block in a jeep owned by his host, Hall was injured. *Id.* Hall claimed he was still discussing business during the jeep ride. *Id.* at 761. The employer contended the jeep ride was personal recreation and had nothing to do with Hall's employment.

Finding that Hall's injury arose out of his employment, this Court stated that the employment need merely be "a contributing proximate cause of the accident." (Citations omitted) *Id.* at 759. "The injury must be fairly traced to the employment..." (Citations

omitted) Id. Hall's injury was covered because his activities "were consistent with and logically related to Hall's employment responsibilities." Id. at 761.

Whether Claimant's injury may be "fairly traced" to his employment can really be answered by asking a few other questions. Would Claimant have had regular meetings with Employer about Ballad Ball, then played Ballad Ball, on a field rented by his Employer, during his normal work hours, while being compensated, with only his fellow employees, if the event had nothing to do with his employment? Would his Employer have exhibited photographs of the event on the company intranet, and at the annual Christmas party, and then praised Claimant in his annual review for executing the event, if the event had nothing to do with his employment?

It is beside the point whether a few of Employer's web technicians planned "these types of activities" in the past (They did not. They proposed dressing for "career day." (R. p. 92, lines 15-22)) If the web technicians had been injured under identical facts, their injuries would have been covered by workers' compensation as well. It is also beside the point that Employer's warehouse manager occasionally organized a softball team, which played in a softball league against other company softball teams. In both of these instances, there is no evidence that Employer expressly desired or expected employees to do these things nor provided the level of support or involvement outlined in the paragraph above.

II. CLAIMANT'S INJURY OCCURRED IN THE COURSE OF HIS EMPLOYMENT

Also in its brief, Employer supports its position that Claimant's injury did not occur "in the course of his employment" by contending "the kickball event didn't occur during work hours". Although this issue is not dispositive, it may be important to note that the kick-ball event did, in fact, occur during work hours. The event started across town at 3:00 p.m. when, by Employer's own admission, the earliest anyone could leave work was 3:30 p.m. absent a dentist appointment or something like that. (R. p. 83, line 16 – p. 84, line 7) And typically the percentage of employees who worked past 3:30 p.m. was 50-60% anyway. (R. p. 84, lines 10-15) However, the focus is *not* on other employees but on Claimant. By Employer's own admission, Claimant typically and routinely worked about fifty (50) hours per week. (R. p. 78, lines 3-11; p. 116, lines 5-7) He typically and routinely worked until 5:30 p.m. on Friday. (R. p. 78, line 12 – p. 79, line 1; p. 116, lines 8-10) If Claimant had not been at this event, he would have been in his office. (R. p. 124, lines 1-4)

Here again Employer also contends that the fact Claimant wasn't explicitly commanded to organize or execute the team-building event is dispositive. *Hall* specifically undermines Employer's contention. This Court stated: "*an employee need not be in the actual performance of the duties for which he was expressly employed in order for his injury to be 'in the course of' employment*" and, further, that "*an act outside an employee's regular duties which is undertaken in good faith to advance the employer's interest, whether or not the employee's own assigned work is thereby further, is within the course of employment.*" (Citations omitted) (Emphasis provided) 656 S.E.

2d at 762. It is enough to show that the activity was “consistent with and logically related to [Claimant’s] employment responsibilities.” *Id.* at 761.

Employer in this case had maintained a tradition of holding team-building events. According to Employer, the whole point of holding these events in 2007 was “to return the fun to Jackson Dawson.” (R. p. 61, lines 14-16) Claimant was working to advance Employer’s interest, i.e. obtaining numerous benefits Employer itself recognized. Employer admitted as much at the hearing

Employer also relies on two (2) cases from other jurisdictions that simply do not apply here. *Pizza Hut of America, Inc. v. Hood*, 198 Ga. App. 112, 400 S.E. 2d 657 (Ga. App. 1990) and *Shade v. Ayars and Ayars*, 513 N.W. 2d 881 (Neb. 1994). Both cases involve injuries at employer-sponsored picnics. However, both cases involve injuries to employees who were at picnics solely as participants and not being paid to be there. *Neither* case involves claims by employees that they were performing any duty in connection with the event. In other words, neither of those employees were “involved in keeping the play going,” as Professor Larson puts it. 1A Arthur Larson and Lex Larson, *The Law of Workers’ Compensation* §22.21 (a) (1994). Thus, those employees were not found to be acting within the course of their employment.

An analogous case but with much less compelling facts is *Barbara Ludwinski v. National Courier*, 873 S.W. 2d 890 (MO. App. E.D. 1994). There the employer planned a company picnic at a local park facility, i.e. away from the place of employment. *Id.* at 891. The purpose of the picnic was to “develop good relationships between the employees and management and to boost morale within the company.” *Id.* The picnic was promoted by the employer, and the employer paid for the event, including food. *Id.*

Ludwinski was not in charge of the picnic. However, she asked the person who was in charge of the picnic “if there was anything she could do to assist in coordinating the picnic.” Id. Ludwinski was asked to meet the ice truck at the park between 10:00 and 10:30 in the morning, though she had originally planned to arrive at the picnic at around 1:00 p.m. Id. Ludwinski met the ice truck. Then, before the picnic began, she fell and seriously injured her ankle while attempting to walk on stilts. Id. The court found that the picnic coordinator had delegated one of her duties to Ludwinski. Id. at 893. The delegation of that duty required Ludwinski to arrive at the park at a particular time and deliver a company check for the ice. Id. (Incidentally, she didn’t end up delivering the check.) The court quoted Larson for the proposition that “‘a certain amount of work has to be done to keep the play going’ and if an employee performs *some duty* in connection with an employer-sponsored recreational activity, any resulting injury is compensable.” Id., citing 1A Arthur Larson, *The Law of Workers’ Compensation* §22.21 (a) (1993). (Emphasis provided) The court noted that the principles applied in recreational injury cases are “‘closely analogous to those...of lunch-time injuries, coming and going, and personal comfort cases;...’” Id. In Ludwinski’s particular case, the court found that “claimant’s business and personal purposes were concurrent, combined at employer’s request and at its convenience.” Id. at 894. Of great significance is the fact that the concurrent purpose doctrine rendered it insignificant whether Ludwinski’s “work” had ended and her play begun. Id. Thus, the court found Ludwinski’s claim to be compensable.

Another analogous case is *Engle v. Thompson Murray, Inc.*, 239 S.W. 3d 561 (Ark. App. 2006). With one distinction, this case is directly on point.¹ In that case Engle was in charge of an offsite event and was injured. According to the employer, the event was held “to recharge” and “most importantly have fun” *Id.* at 563. After a brief meeting at employer’s office on the morning of the event, a group of employees went to a lake to rent a pontoon boat and wave runners. Engle led the group to cliffs or rocks, where the group of employees jumped from the cliffs into the lake. *Id.* at 563. While attempting such a jump, Engle fell from the edge, striking the rocks protruding from the ledge below. *Id.*

The employer argued that Engle’s injury was not covered because “it occurred when employment services were not being performed.” *Id.* at 564. The Commission had found that Engle was not “expressly directed by her employer to attempt to jump from the cliff” and further that it was “obvious that this activity was neither directly nor indirectly necessary for her to perform her job duties.” *Id.*

The court disagreed, noting that its analysis did not merely require determination of whether the worker was performing a “job task” when the accident occurred. *Id.* It stated that a determination of “‘employment services’ must be made within the context of individual cases, employments, and working relationships, not generalizations made devoid of practical working conditions.” *Id.* The court found that, because Engle had planned and facilitated the events, her job duties required an even more active, participatory role. *Id.* It found further that Engle “was engaging in conduct permitted and

¹ The distinction is that in *Engle* the court found: “participation in the retreat was mandatory and participants were paid while attending the event.” *Id.* at 563. Such a distinction may be more significant if Claimant’s presence in this case was not absolutely expected (R. p. 102, 11.5-22; p. 124, 11.9-22), thus at least impliedly required, and he was not compensated while attending the event.

anticipated by the employer” and accordingly that she was engaged in “employment services”, despite the fact that “employer did not expressly direct appellant to jump from the cliff.” Id. at 565.

A concurring opinion quoted liberally from Larson regarding many of the recreational and social activities, including company retreats, that raise questions about whether an injury is within the course and scope of employment, including the statement by Larson: “As employment-related recreation and teams become more elaborately organized, a certain amount of work has to be done to keep the play going.” Id. at 565. Toward the end, the concurring opinion described Engles’ activities as follows:

“Appellant was facilitating her employer’s interest while at the retreat; she was engaged in an activity that was an expected part of her employment; the activity constituted a known (in fact, planned) departure from her work activities; she was compensated while at the retreat; and she would have been expected to cease what she was doing to advance employment objectives. In other words, claimant was clearly engaged in employment services at the time of her injury.” Id.

Essentially everything that can be said about the employees in *Ludwinski* and *Engle* can be said about Claimant in this case. But Claimant’s case is stronger because, among other things, in neither *Ludwinski* or *Engle* were the employees positively evaluated in annual reviews for their contribution to the event. The Ballad Ball event was elaborately organized, and Claimant was the organizer who “kept the play going”, to meet his Employer’s expectations.

Ludwinski, *Engle*, and other cases discussed by Larson also squarely address Employer’s distinction that claimant was injured by *participating in* the Ballad Ball event rather than *planning* the Ballad Ball event. Such a distinction is insignificant in light of

the fact that Employer expected Claimant to plan, organize, and execute the Ballard Ball event. (R. p. 73, lines 19-23; p. 76, lines 17-20; p. 86, lines 8-10; p. 102, lines 5-9 and 15-22) Regardless of whether playing kickball was personally gratifying to Claimant, he, like Ludwinski, was also concurrently working at the team-building event. 873 S.W. 2nd at 894. (In addition to testimony, see R. pp. 172-187). It is equally insignificant that Employer did not expressly direct Claimant to participate in the event or more specifically to run around the bases after kicking the ball, just as it was insignificant in *Engle* that the employee was not expressly told to jump off a cliff. 239 S.W. 3rd 565.

CONCLUSION

For the foregoing reasons, the Commission should reverse the Single Commissioner's finding that Claimant's injury did not occur within the course and scope of employment and remand the case for a hearing on disability and other benefits.

Date: _____

2/16/11


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO. 2010169926

STEPHEN C. WHIGHAM..... APPELLANT,

v.

JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this FINAL REPLY BRIEF complies with Rule
211(b), SCACR.

February 16, 2011



Douglas A. Churdar, Esq.
Douglas A. Churdar, P.C.
712 East Washington Street
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(864) 233-0203

Attorney for Appellant

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Stephen C. Whigham,
Employee, Appellant,

v.

Jackson Dawson
Communications, Employer,
and The Hartford, Carrier, Respondents.

Appeal From the Appellate Panel
South Carolina Workers' Compensation Commission

Unpublished Opinion No. 2012-UP-223
Heard March 20, 2012-Filed April 11, 2012

AFFIRMED

Douglas A. Churdar, of Greenville, for Appellant.

Benjamin M. Renfrow, of Greenville, for
Respondents.

PER CURIAM: In this workers' compensation case, Stephen C. Whigham argues the South Carolina Workers' Compensation Commission (the Commission) erred in finding Whigham failed to satisfy the burden of proving the occurrence of a compensable accident. We find no error of law in the Commission's decision to deny Whigham's claim and we find the decision to be supported by substantial evidence of record; therefore, we affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2011) (providing this court may not substitute its judgment for that of the Commission as to the weight of the evidence, but may reverse when the decision is affected by an error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record); Hill v. Eagle Motor Lines, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007) ("Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached."); Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999) ("The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence."); Leopard v. Blackman-Uhler, 318 S.C. 369, 371, 458 S.E.2d 41, 42 (1995) (finding an injury sustained while participating in a company sponsored softball game did not arise out of and in the course of employment); Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 458, 280 S.E.2d 52, 54 (1981) (finding injury sustained while participating on company sponsored softball team not compensable); Grice v. Nat'l Cash Register Co., 250 S.C. 1, 5, 156 S.E.2d 321, 323 (1967) (finding death from automobile accident while returning from company picnic was not compensable because picnic was mere recreational activity); Pate v. Plymouth Mfg. Co., 198 S.C. 159, 164-66, 17 S.E.2d 146, 148-49 (1941) (finding injury sustained while returning from company baseball team's game not compensable because game was merely a recreational activity); 2 Lex K. Larson, Larson's Workers' Compensation Law § 22.01 (Matthew Bender, Rev. Ed. 2011) (outlining test for determining when recreational or social activities are within the course of employment).

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

COPY

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC CASE NO. 0723318

RECEIVED
APR 26 2012
SC Appellate

STEPHEN C. WHIGHAM.....
v.
JACKSON DAWSON COMMUNICATIONS RESPONDENTS.
AND THE HARTFORD

PETITION FOR REHEARING OR FOR A FULL OPINION

Now comes the Appellant, Stephen C. Whigham, and files this Petition for Rehearing pursuant to Rule 221(a) SCRAP, on the grounds that the court overlooked or misapprehended the following:

1. In Leopard v. Blackman-Uhler, 318 S.C. 369, 370-71, 458 S.E. 2d 41-42 (S.C. 1995), the Supreme Court outlined several *alternative* bases for bringing a recreational activity under workers' compensation coverage. Proof of any *one* basis is sufficient to bring a recreational activity under workers' compensation coverage.
2. If the Employer makes the activity a part of an Employee's services, the activity is covered. *Id.* With regard to the evidence here this basis is susceptible of but

one reasonable inference, making it a matter of law for the court: Employer made the activity a part of Appellant's services, as evidenced by the following undisputed facts:

- A. Employer wanted Appellant to plan, organize, and execute the activity and explicitly authorized it.
- B. Appellant then planned, organized, and executed the activity during work hours and recorded the time he spent on his time sheets.
- C. Appellant regularly met with Employer to discuss his progress on planning, organizing, and executing the activity.
- D. In advance of the activity, Employer promoted it on the company intranet and email and at employee meetings.
- E. Employer committed substantial resources to the activity, i.e. Appellant's time, company intranet and email, direct expenditures, the use of equipment (megaphone, ice chests), etc.
- F. Employer expected Appellant to attend the activity, such that Employer would have been "surprised and shocked" had he not been at the activity. Per Employer, Appellant's failure to attend the activity "would have been just unexpected, unbelievable. I mean, you don't plan something and then not show up to it."
- G. The activity occurred during Employer's normal business hours and during Appellant's normal work day.
- H. Subsequent to the activity, Employer posted photographs on its intranet and at its Christmas party.

I. Most significant of all, Employer praised Appellant for planning, organizing, and executing the activity in writing as a part of his annual review.

3. If the Employer derives a direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common with all kinds of recreation and social life, the activity is covered.

Id. With regard to this basis, the evidence here is susceptible of but one reasonable inference, making it a matter of law for the court: Employer derived a direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common with all kinds of recreation and social life.

As outlined in paragraph 2 above, the circumstances involved in this case distinguish it significantly from the softball league cases such as Leopard v. Blackman-Uhler. In the softball league cases, the employer never contended, as Employer did here, that it derived substantial direct benefit from the activity, which in every case consisted of a handful of employees going out into the community and playing in a softball league. In the softball league cases, there was no evidence that the employer wanted or desired a softball team, allowed the players to practice and play softball during their normal work hours or record their time for doing so, nor derived any benefit from the softball team similar to those identified by the Employer and outlined on pages 3 and 4 of Appellant's Brief, i.e. helping retain good employees, helping the Employer succeed in business, getting better work out of

employees, promoting a better working relationship between members of different departments, etc. As emphasized at oral argument, it was the Employer here who considered the activity beneficial and, thus, wanted it, promoted it, and committed resources to it, and rewarded Appellant for it.

Alternatively, Appellant hereby petitions this Court to issue a full opinion, as opposed to a “per curiam affirmed” opinion, so as to outline its reasoning with regard to Appellant’s appeal.

April 25, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Doug Churdar", written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CASE NO. 2010169926

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APR 26 2012

SC Court of Appeals

STEPHEN C. WHIGHAM..... APPELLANT,

v.

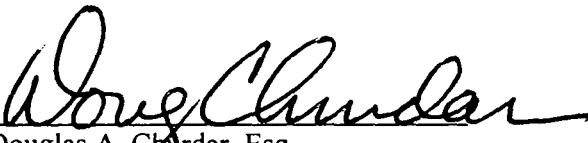
JACKSON DAWSON COMMUNICATIONS.....RESPONDENTS.
AND THE HARTFORD

PROOF OF SERVICE

I hereby certify that I have this 25th day of April, 2012 served the PETITION FOR
REHEARING OR FOR A FULL OPINION on Respondents, by depositing a copy of it in the
United States Mail, postage prepaid, addressed to his attorney of record:

Benjamin M. Renfrow, Esq.
Willson Jones Carter & Baxley, PA
872 S. Pleasantburg Drive
Greenville, SC 29607

4/25/12
Date


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Attorney for Appellant

The South Carolina Court of Appeals

Stephen C. Whigham, Appellant,

v.

Jackson Dawson Communications, Employer, and The
Hartford, Carrier, Respondents.

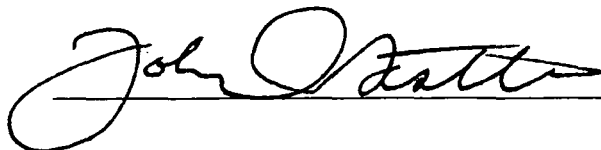
Appellate Case No. 2010-169926

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc: Benjamin M. Renfrow
Douglas A. Churdar

FILED

21 May 2012