

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1001074

JEROME SUMTER,

Employee,

Claimant.

vs

EMS CHEMIE (NORTH AMERICA) INC.,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants.

1001704
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SC Court of Appeals

CONSENT ORDER

The above-referenced claim was scheduled to be heard before the undersigned Commissioner at a hearing in Sumter, South Carolina on July 20, 2011 at 10:15 p.m. The hearing was set pursuant to Form 50 alleging injuries to both upper extremities and amended Form 50 alleging a burn injury to the right upper extremity with carpal tunnel syndrome and a psychological/anxiety component. The parties have now reached an agreement on the contested issues, and this Consent Order sets forth the agreement of the parties.

Defendants have previously accepted the compensability of the right arm chemical burn which arose out of and in the course and scope of employment on February 26, 2010. Defendants have provided causally-related care for that burn injury and have been paying Claimant temporary total disability benefits. Defendants now accept the allegation of right hand carpal tunnel syndrome that developed from prolonged inflammation and swelling of tissues. Claimant is not at maximum medical improvement for his right hand carpal tunnel syndrome. In fact, he requires carpal tunnel release surgery as recommended

by Dr. Mullins, Dr. Healy, and Dr. Moore. Defendants now agree to provide Claimant with his carpal tunnel release surgery and associated medical care through Dr. Moore. Claimant may also continue his causally-related medical care with Dr. Healy and Dr. Mullins for his right hand chemical burn, as well as follow up for the right hand carpal tunnel injury until he reaches maximum medical improvement.

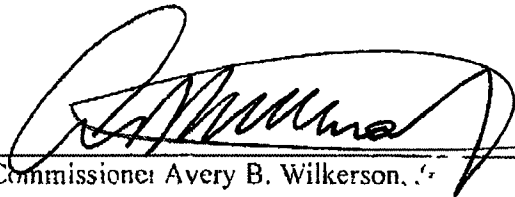
Because Claimant has not been released to work within restrictions that the Employer can accommodate, Claimant is entitled to continued payment of temporary total disability benefits while he treats for his carpal tunnel syndrome in the right hand. His average weekly wage is \$768.63, and his compensation rate is \$512.450. His weekly benefits will continue at this rate until Claimant reaches maximum medical improvement.

Claimant also alleges the development and existence of carpal tunnel syndrome in the left hand. Defendants have denied this allegation as a causally-related condition. Defendants continue the assertion of their denial, and Claimant retains his right to later argue the compensability of this condition. For now, all issues relating to the left hand carpal tunnel syndrome are specifically held in abeyance.

Claimant filed an amended Form 50 on July 8, 2011 withdrawing the claim for the left arm, but adding a claim for the psyche/anxiety. Defendants deny that Claimant has sustained psychological overlay or anxiety as a result of this accident. Defendants continue the assertion of their denial, and Claimant waives no rights to later plead this condition as part of his compensable injuries. All issues relating to the psyche/anxiety are specifically held in abeyance for the future.

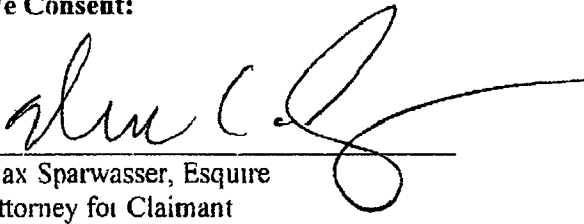
Because Defendants have accepted the compensability of the right hand carpal tunnel syndrome and agree to provide causally-related medical care, and because Claimant is not at maximum medical improvement for his accepted injuries, and because Claimant will continue receiving temporary total disability benefits pursuant to statute, and because the contested issues are being held in abeyance, all issues relative to the July 20, 2011 hearing are resolved. This Consent Order fully sets forth the agreement of the parties. All other issues are held in abeyance if not specifically disposed of within this Consent Order. This file shall now be returned to the General Files to be re-set for a hearing at the request of either party.

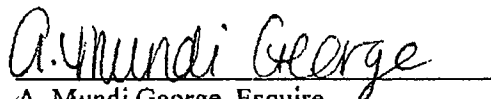
AND IT IS SO ORDERED.


Commissioner Avery B. Wilkerson, Jr.

8-1, 2011.

We Consent:


Max Sparwasser, Esquire
Attorney for Claimant


A. Mundi George, Esquire
Attorney for Defendants

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 first class a copy hereof,
posting paid in the United States mail addressed to
the attorney or attorney for said parties.
This 2 day of August, 2011
By Eddie M. Boyd
Administrative Assistant to the Commissioner

MCS
AMG

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

JEROME SUMTER,)

Claimant,)

-vs-)

EMS CHEMIE, INC.,)

Employer,)

HARTFORD INSURANCE CO.,)

Carrier,)

Defendants.)

ORDER OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1001704

ORDER

Hearing:

Held in Camden, South Carolina on September 11, 2012

Appearances:

Claimant represented by Max Sparwasser, John Price Law Firm, LLC.

Defendants represented by A. Mundi George, McAngus, Goudelock & Courie, LLC

Purpose of Hearing:

To determine issues if employer may stop payment, and if so, to determine if Claimant is entitled to any further benefits and any other issues which may have timely come before the Commissioner.

Decision and Order:

By Melody L. James, Commissioner.

Filed:

December 7, 2012

STIPULATIONS AND OBJECTIONS

1. The Commission has jurisdiction to hear the matters presented;
2. Proper venue is Sumter County,
3. The parties had notice of the hearing which was scheduled for September 11, 2012, and were represented by counsel;
4. This matter came before the commission on a Form 21 filed by the Defendants seeking a stop pay.
5. The Commission's file and the Administrative Procedures Act submissions are a part of the record.

APA SUBMISSIONS

The APA submissions are as follows.

		Dates	Pages
1. Joseph R. Healy, MD	Questionnaire	06/22/2011	1 - 2
2. Robert W. Moore, MD	Hand Surgery Assoc.	08/30/2011-05/03/2012	3 - 9
3. Dean Lorenz, MD	Florence Rehab	12/06/2011	10 - 11
4. Earl B. McFadden, Jr., MD	Moore Ortho	04/09/2012	12 - 15
5. Charles S. Jervey, MD	Carolina Neuro	06/12/2012	16 - 18
6. R. Joseph Healy MD		09/16/2010 - 08/20/2012	19 - 43
7. Robert Mullins, MD	JMS Burn Center	03/03/2010 - 08/15/2012	44 - 140
8. Robert Moore, MD	Hand Surgery	02/14/2011- 05/03/2012	141-160
9. Michael Drakeford, MD		08/01/2012	161-162

STATEMENT OF THE CASE

This is a worker's compensation case with a date of accident of February 26, 2010. The Claimant alleges he injured his right upper extremity, and psyche/depression subsequent to a chemical burn while at work. The Claimant maintains that he is not at maximum medical improvement (MMI) and is in need of additional medical treatment for his right upper extremity, and psyche/depression. Defendants maintain the Claimant is at MMI for the right upper extremity and that depression, if any exists, is not causally related to the work injury of February 26, 2010.

EVIDENCE OF THE CASE

Jerome Sumter was the only witness at the hearing. His wife was also present but she did not testify. Mr. Sumter stated that his date of birth was July 4, 1963. He is married and lives in Sumter with three children that still live at home, two sons that are 14 and 17 years old and one daughter that is 18 years old. His fourth daughter lives in Sumter and she is 26 years old but she is not dependent upon him for support

Mr. Sumter has been employed with EMS Chemie since 2002, and his job title has been a level 4 Extrusion Operator. His job description duties require him to lift bags weighing 50 pounds or more, climb ladders and to clean silos with an air hose, among others.

On February 26, 2010, he suffered a burn on his right arm from a chemical. His right hand had to have skin grafting and has been in constant pain ever since February 26, 2010. He is depressed because he is having trouble using his right hand. Prior to his injury he was able to wash cars, play basketball and fish but now he is having trouble performing those activities.

At the present time Mr. Sumter takes Cymbalta for depression and Abilify for depression. He has Lidoderm patches for the pain and also takes Gralise for the nerve pain. He also wears isotoner gloves at night. He is still on work restrictions and he is not able to go back to work because his work does not have light duty. He is still receiving treatment from Dr. Healy and Dr. Mullins.

No other witnesses or evidence was presented to the Commissioner at the hearing on September 11, 2012.

FINDINGS OF FACT

Based on the review of the evidence presented, as well as a personal observation of the Claimant's demeanor, there is substantial and reliable probative evidence to support the following Findings of Fact by the greater weight of the evidence:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Claimant sustained an injury to his right hand by accident arising out of and in the course of his employment on February 26, 2010.
3. That the injury began as a burn injury to the hand but progressed into carpal tunnel syndrome and he had carpal tunnel release surgery on August 17, 2011.
4. That the Claimant has not reached MMI and the Claimant is entitled to additional medical treatment. Neither Dr. Healy nor Dr. Mullins, who are both authorized doctors, have released Mr. Sumter at maximum medical improvement.

5. That additional testing is needed in order for Mr. Sumter to be at maximum medical improvement. Additional treatment recommended by Dr. Healy is outlined on APA page 43.
6. That the Defendants are responsible for all causally-related medical expenses to date.
7. That the Claimant has depression secondary to his physical injury as noted on APA pages 42-43.
8. That an evaluation is to be provided by a psychologist to determine what if any treatment is necessary for depression.
9. That the defendants stop pay application is denied.

CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact and under the Code of Laws of South Carolina, as amended, it is concluded that.

1. Under Section 42-1-160, Claimant sustained an injury to his right hand by accident arising out of and in the course of his employment.
2. Claimant is entitled to additional medical treatment necessary to lessen the period of his disability. S.C. Code § 42-15-60; Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974).
3. Under Section 42-15-20, proper notice of the injury was given to his employer.
4. Under Section 42-15-40, a claim was filed in a timely manner.
5. Under Section 42-15-60, Claimant is entitled to future medical treatment for his

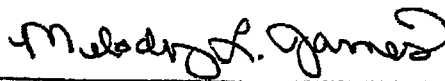
right hand.

6. Under Section 42-15-60, Claimant is entitled to future medical treatment for his depression.

ORDER

It is therefore ordered:

1. That the Defendants shall provide further treatment for Claimant's right hand
2. That the Defendants shall provide further treatment for Claimant's depression.
3. That the Defendants shall provide continued treatment as recommended by Dr. Healy to include any additional testing necessary.
4. That the Defendants shall provide an evaluation by a psychologist to determine what, if any, treatment is necessary for his depression.
5. That the Defendants shall be responsible for all causally related medical costs, including mileage, prescriptions, and other benefits provided under the Workers' Compensation Act.



Commissioner Melody L. James

CERTIFICATE OF SERVICE

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

December 7, 2012

By: Tamara Morris, Administrative Assistant to Commissioner James

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

~~COMMISSION PANEL: THE HONORABLE GENE MCCASKILL, CHAIR; THE
HONORABLE ANDREA C. ROCHE; THE HONORABLE AISHA TAYLOR~~

SCWCC FILE NO.: 1001704

JEROME SUMTER,

Claimant

v.

EMS CHEMIE, INC.,

Employer, and

HARTFORD INSURANCE CO.,

Carrier, Defendants.

Hearing held in Columbia,

South Carolina on April, 30, 2013

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

Appearances: **Lee Gremillion for Defendants/Appellants**
 Max C. Sparwasser for Claimant/ Respondents

Filed:

7-16-13

STATEMENT OF THE CASE

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

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions on the South Carolina Workers' Compensation Act
2. That the Claimant sustained an injury to his right hand by accident arising out of and in the course of his employment on February 26, 2010
3. That the injury began as a burn injury to the hand but progressed into carpal tunnel syndrome and he had carpal tunnel release surgery on August 17, 2011
4. That the Claimant has not reached MMI and the Claimant is entitled to additional medical treatment. Neither Dr. Healy nor Dr. Millins, who are both authorized doctors, have released Mr. Sumter at maximum medical improvement.
5. That additional testing is needed in order for Mr. Sumter to be at maximum medical improvement. Additional treatment recommended by Dr. Healy is outlined on APA page 43.
6. That the Defendants are responsible for all causally-related medical expenses to date
7. That the Claimant has depression secondary to his physical injury as noted on APA pages 42-43.
8. That an evaluation is to be provided by a psychologist to determine what if any treatment is necessary for depression.
9. That the defendants stop pay application is denied.

RULINGS OF LAW

1. Under Section 42-1-160, Claimant sustained an injury to his right hand by accident arising out of and in the course of his employment
2. Claimant is entitled to additional medical treatment necessary to lessen the period of his disability S.C. Code § 42-15-60; Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E. 2d 593 (S.C. 1999), Dykes v. Daniel constr. Co., 202 S.E. 2d 646 (S.C. 1974)
3. Under Section 42-15-20, proper notice of the injury was given to his employer
4. Under Section 42-15-40, a claim was filed in a timely manner
5. Under Section 42-15-60, Claimant is entitled to future medical treatment for his right hand

6. *Under Section 42-15-60, Claimant is entitled to future medical treatment for his depression.*

ORDER AND AWARD

1. *The Defendants shall provide further treatment for Claimant's right hand.*
2. *The Defendants shall provide further treatment for Claimant's depression.*
3. *The Defendants shall provide continued treatment as recommended by Dr. Healy to include any additional testing necessary.*
4. *The Defendants shall provide an evaluation by a psychologist to determine what, if and, treatment is necessary for his depression.*
5. *The Defendants shall be responsible for all causally related medical costs, including mileage, prescriptions, and other benefits provided under the Workers' Compensation Act.*

ISSUES ON APPEAL

Employer filed a Form 30 Request for Commission Review on December 20, 2012. Claimant raised the following questions as grounds for appeal:

1. The Hearing Commissioner erred in Finding of Fact Number Four (4) by finding that Claimant has not reached MMI and that he is entitled to additional medical treatment, the error being that such finding is not supported by substantial evidence and is contrary to the medical records put into evidence.
2. Hearing Commissioner erred in Finding of Fact Number Five (5) by finding that Claimant is entitled to additional testing in order to obtain MMI, the error being that such finding is not supported by substantial evidence and is contrary to the medical records put into evidence.
3. Hearing Commissioner erred in Finding of Fact Number Six (6) by finding that Defendants are responsible for all causally-related medical expenses to date, the error being that such finding is not supported by substantial evidence and is contrary to the medical records put into evidence.
4. Hearing Commissioner erred in Finding of Fact Number Seven (7) by finding that Claimant has depression secondary to the physical injury, the error being that such finding is not supported by substantial evidence.
5. The Hearing Commissioner erred in Finding of Fact Number Eight (8) by finding that Claimant is entitled to an evaluation by a psychologist, the error being that such finding is not supported by substantial evidence.

6. Hearing Commissioner erred in Finding of Fact Number Nine (9) by finding that Defendants Stop-Pay Application is denied, the error being that this finding is not supported by substantial evidence.
7. The Hearing Commissioner erred in Conclusion of Law Number Two (2) by concluding that Claimant is entitled to additional medical treatment pursuant to S.C. Code Section 42-15-60, Dodge v. Bruccoli, 518 S.E.2d 593 (S.C. 1999), and Dykes v. Daniel Construction Co., 202 S.E.2d 646 (S.C. 1974), the error being that this conclusion is inconsistent with all of the evidence in the record.
8. The Hearing Commissioner erred in Conclusion of Law Number Five (5) by concluding that Claimant is entitled to future medical treatment for his right hand, the error being that this conclusion is inconsistent with all of the evidence in the record.
9. The Hearing Commissioner erred in Conclusion of Law Number Six (6) by concluding that Claimant is entitled to future medical treatment for his depression, the error being that this conclusion is inconsistent with all of the evidence in the record.
10. The Hearing Commissioner erred in Ordering that Defendants shall provide further treatment for Claimant's right hand, the error being that this Order is not supported by substantial evidence and is inconsistent with the evidence in the record.
11. The Hearing Commissioner erred in Ordering that Defendants shall provide further treatment for Claimant's depression, the error being that this Order is not supported by substantial evidence and is inconsistent with the evidence in the record.
12. The Hearing Commissioner erred in Ordering that Defendants shall provide continued treatment as recommended by Dr. Healy, the error being that this Order is not supported by substantial evidence and is inconsistent with the evidence in the record.
13. The Hearing Commissioner erred in Ordering that Defendants shall provide an evaluation by a psychologist, the error being that this Order is not supported by substantial evidence and is inconsistent with the evidence in the record.
14. The Hearing Commissioner erred in Ordering that Defendants are responsible for all causally-related medical costs, including mileage, prescriptions and other benefits provided under the Worker's Compensation Act, the error being that this Order is not supported by substantial evidence and is inconsistent with the evidence in the record.

FINDINGS OF THE FULL COMMISSION

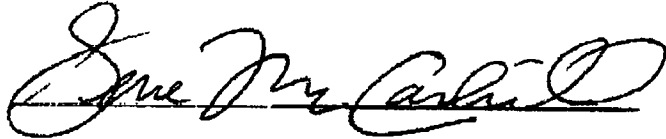
The South Carolina Workers' Compensation Full Commission Appellate Panel considered the matter and Vacates and orders a Hearing *de novo* by the Jurisdictional Commissioner.

ORDER

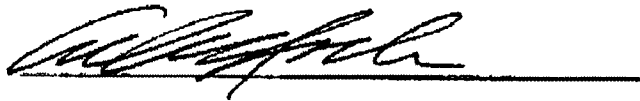
IT IS THEREFORE ORDERED that,

the Decision and Order of the Single Commissioner in this matter is Vacated and the matter is Remanded to the Jurisdictional Commissioner for a Hearing *de novo*.

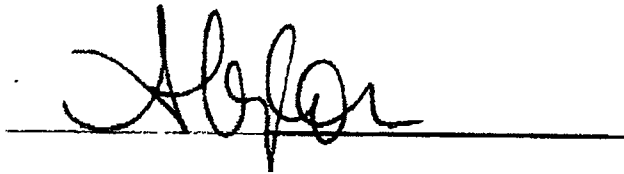
AND SO IT IS ORDERED!



Commissioner McCaskill, Chair



Commissioner Roche



Commissioner Taylor

Columbia, South Carolina

CERTIFICATE OF SERVICE

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

By Valerie Deller on July 16, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO 1001704

JEROME SUMTER,

Employee,

Claimant,

vs.

EMS CHEMIE (NORTH AMERICA) INC.,

Employer,

AND

THE HARTFORD,

Carrier,

Defendants

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Sumter, S C. on September 30, 2013.

APPEARANCES:

Claimant appeared and represented by Max C Sparwasser, Esquire of Sparwasser Law Firm, LLC of Mt. Pleasant, South Carolina

Defendants represented by A. Mundi George, Esquire of McAngus Goudelock & Courie, L L C. of Columbia, South Carolina

PURPOSE OF THE HEARING:

To determine all issues as set forth in Form 21 originally filed July 25, 2012, heard and decided by Commission James via Order dated December 7, 2012; appealed to the Appellate Panel with Order to Vacate and Remand to the Jurisdictional Commissioner for a Hearing de novo by Order dated 7/16/13; To determine all issues as set forth by Full Commission Order.

COMMISSIONER:

Commissioner Aisha Taylor

FILED:

May 12, 2014

STIPULATIONS

1. Jurisdiction is proper with the South Carolina Workers' Compensation Commission.
2. Venue is proper in Sumter, South Carolina
3. No objections from either party to the APA submissions
4. Claimant has an average weekly wage of \$768.63 with a corresponding compensation rate of \$512.45.

APA SUBMISSIONS

1. Joseph R. Healy, M.D., records dated 06/22/11-05/29/13, consisting of 5 pages;
 2. Robert W. Moore, M.D., Hand Surgery Associates, records dated 08/30/11-05/03/12, consisting of 7 pages;
 3. Dean Lorenz, M.D., Florence Rehabilitation Medicine (right upper extremity EMG report), dated 12/06/11, consisting of 2 pages;
 4. Earl B. McFadden, Jr., M.D., Moore Orthopaedic Clinic (IME report), dated 04/09/12, consisting of 4 pages;
 5. Charles S. Jervy, M.D., Carolina Neurological Clinic, LLP (IME report), dated 06/12/12, consisting of 3 pages;
 6. Joseph M. Still Burn Center, record dated 11/14/12, consisting of 1 page;
 7. Dyana Lowndes-Rosen, M.D., records dated 08/22/13, consisting of 9 pages;
- Ex. 1. Claimant's deposition transcript, dated 07/07/11, consisting of 45 pages;

Ex 2. South Carolina Workers' Compensation Hearing Transcript from 09/11/12
Hearing, consisting of 25 pages,

8. Joseph M. Healy, M.D., records dated 09/16/10-08/20/12, consisting of 25 pages;
9. Robert Mullins, M.D., JMS Burn Center, records dated 03/03/10-08/15/12, consisting of 97 pages;
10. Robert Moore, M.D., Hand Surgery Associates, records dated 02/14/11-05/03/12, consisting of 20 pages;
11. Michael Drakeford, M.D., records dated 08/01/12, consisting of 2 pages;
12. Roger W. Deal, M.D. and Lawrence H. Bergmann, Ph.D., LPC, LPC/S, Post Trauma Resources, records dated 09/07/13, consisting of 6 pages;
13. Joseph R. Healy, M.D., records dated 05/29/13-09/10/13, consisting of 4 pages

STATEMENT OF THE CASE

Claimant sustained an admitted accident to his right hand on February 26, 2010. This claim was originally heard and decided on September 11, 2012. Thereafter, on July 16, 2013, the Full Panel remanded this claim for a de novo hearing on Defendants Form 21.

Defendants' position is that Claimant has reached maximum medical improvement. Defendants assert that Claimant sustained a thermal burn to his right hand that ultimately resulted in carpal tunnel syndrome in his right hand. Claimant underwent carpal tunnel release with Dr. Moore. Dr. Moore placed Claimant at maximum medical improvement on May 3, 2012 with a 0% rating. Defendants also obtained a 3% rating with maximum medical improvement from Dr. McFadden on April 9, 2012 and a neurological IME with Dr. Jervey on June 12, 2012 that resulted in no impairment rating and no restrictions. Additionally, Defendants relied on the opinions of Dr. Lowndes-Rosen to support their position that Claimant does not have a

psychological disorder. Defendants sought an order terminating benefits, awarding permanency, if any, and a credit for temporary total disability benefits back to June 12, 2012—the date of maximum medical improvement

Claimant's position is that he was not at maximum medical improvement. Claimant relied on opinions by Dr. Healy, Dr. Deal, and Dr. Bergmann that he still needs medical treatment in order to lessen his period of disability. Specifically, Claimant requested the Commission authorize a triple phase bone scan and a prescription for Abilify to medicate his alleged psychological overlay. Claimant also objected to any finding of permanency as Claimant contended this claim was subject to mandatory mediation.

EVIDENCE OF THE CASE

Claimant testified on his behalf. Claimant is a 53 year old male with three children who are all dependent on him for support (Hr'g Tr. 9:12-20). Claimant has worked for Employer since May 2002 as an extrusion operator. (Hr'g Tr. 9:23-25). Claimant testified that his job consists of maintenance, setting up lines, loading buckets, and cleaning silos (Hr'g Tr. 10:3-6).

Claimant testified that he suffered a burn injury to his right hand in 2010. (Hr'g Tr. 10:19-20). Claimant first treated with Dr. Mullins. Claimant indicated that Dr. Mullins did a skin graft to treat the burn injury. (Hr'g Tr. 11:4-5). Claimant stated that the graft did not help and he eventually underwent carpal tunnel surgery (Hr'g Tr. 11:7-21). Claimant's carpal tunnel surgery was to both hands but Claimant indicated that only the right hand was work-related (Hr'g Tr. 12:3-9). Claimant also underwent a cervical fusion that was not work-related. (Hr'g Tr. 12:10-13). The surgery was performed by Dr. DeHoll in January 2013. Claimant testified he had not been released from care by Dr. DeHoll or from pain management treatment with Dr. Cooper.

Claimant indicated that his left hand got better following surgery but that his right hand did not get better. (Hr'g Tr. 11:15-23) Claimant stated that he wears lipoderm patches twelve hours per day to assist with his ongoing pain. (Hr'g Tr. 14:2-7)

Claimant also called his wife, Jennifer Sumter to testify. Mrs. Sumter testified she has been married to Claimant for ten (10) years. (Hr'g Tr.23:25). Mrs. Sumter testified that Claimant suffers from some limitations because he does not have strength in his right hand that he used to have (Hr'g Tr. 24:18-19). Mrs. Sumter also testified that Claimant is depressed since the accident. (Hr'g Tr. 24:22-23).

MEDICAL EVIDENCE

Claimant suffered a thermal burn to the back of his right hand and treated with JMS Burn Center and Dr. Healy, a neurologist. Claimant was initially evaluated and treated at the Joseph M. Still Burn Center for the chemical burn he sustained on February 26, 2010. He presented for his initial visit on March 3, 2010 (Cl. APA, p. 44). He underwent skin grafting. On September 21, 2011, Dr. Mullins notes that he has a well healing late effect burn injury to the right hand; he should continue present treatment by the orthopedist and his work restrictions will be instituted and monitored by the orthopedist. (Cl. APA, p. 123) He saw Dr. Mullins on August 15, 2012, at which time, Dr. Mullins notes that Claimant's right hand reveals well healed completely re-epithelialized burn injury; there are no open areas noted at this time; there is no purulence, malodor, or active bleeding; no scar banding, contracture or fibrosis; the patient's burn scars are barely visible at this time (Cl. APA, p. 140) Dr. Mullins indicates that the Claimant should wear an Isotoner glove daily and should continue to follow-up with his neurologist. Dr. Mullins does not indicate the need for additional future medical treatment. At

the November 14, 2012 appointment, Dr Mullins stated claimant's burn scars were completely resolved and said claimant "may be released for MMI." (Def. APA p. 22)

Claimant was also being treated by Dr. R Joseph Healy, a neurologist, for his continued complaints of paresthesias in his fingers and right hand since the date of the injury Dr. Healy treated him on a regular basis from September 19, 2010 through September 10, 2013 Dr. Healy initially indicates that Claimant is likely suffering from carpal tunnel syndrome and recommended diagnostic testing to determine the etiology of the Claimant's complaints (Cl APA, p. 20) Claimant continued to see Dr Healy regarding his complaints of carpal tunnel syndrome and was ultimately referred to an orthopaedist in February 2011 On January 31, 2012, Dr. Healy notes that updated studies from December show normal ulnar medical function in the right hand. (Cl APA, p 38). On March 28, 2012, Dr. Healy notes that Claimant has poor grasp, and fine motor abilities are reduced, however the grip strength testing a month later indicates otherwise Claimant returns to Dr. Healy in July and is prescribed depression medication which he indicates in his note dated August 20, 2012 is related to his loss of functional abilities (Cl. APA, p. 43). By August 20, 2013, three other physicians had evaluated claimant and placed him at MMI.). Yet, Dr. Healy ignored the normal exams by Dr. Moore, Dr. McFadden and Dr Jervey as outlined below and continued attempts to treat claimant for a growing and worsening list of complaints. Dr. Healy also continued to treat claimant after his cervical fusion surgery which took place in January 2013 Dr Healy changed and increased claimant's medication dosage and noted that claimant was asking for narcotic pain medication (Cl APA. p. 170).

Claimant underwent a right handed carpal tunnel release with Dr Moore on August 17, 2011. (Def. APA p. 9). Following the surgery, Claimant continued to follow up with Dr Moore

for ongoing treatment. Dr Moore noted various complaints of pain following the surgical intervention in Claimant's right hand. (Def. APA p 6-12) Dr Moore noted on April 6, 2012 that Claimant was reporting pain that was out of proportion to the objective findings (Def. APA p. 10). Dr. Moore also noted on April 6, 2012 that Claimant's skin graft "clinically looked great " Id. On May 3, 2012, Dr. Moore noted that Claimant underwent grip strength testing during which the testing facility indicated that his test was "consistent with submaximal effort " (Def APA p. 12) Dr. Moore noted that Claimant continued to complain of pain in his hand that "is not coming from his carpal tunnel syndrome" and that is "certainly out of proportion to his clinical findings " Id. Dr Moore indicated that Claimant reached maximum medical improvement on May 3, 2012 and that Claimant had a 0% impairment rating with no future medical needs. Id.

On December 6, 2011, Claimant underwent a nerve conduction study with Florence Rehabilitation Medicine That report indicated that there was "no significant difference between nerves " (Def APA p. 13) Further, the report indicated that "EMG is normal with no evidence of radiculopathy or plexopathy. Given this, these findings are considered normal." Id.

Claimant was also seen by Dr. Earl McFadden for a second opinion on April 9, 2012. Dr McFadden noted that Claimant presented with a chemical burn on his right hand followed by a carpal tunnel surgery. (Def. APA p. 15) Dr. McFadden noted that a clinical exam revealed Claimant's hand to be "completely normal." Id. Claimant had "full extension" and "he has full active range of motion of his hand, wrist, and elbow." Id. Dr McFadden indicated that Claimant was "right off the bat very hostile" and that Claimant accused Dr. McFadden of "working for the Workers' Compensation and I am just trying to say he can do whatever he wants to." Id. Following the exam, Dr McFadden stated that this was "one of the most normal exams I have seen" and "there is no reason why this gentleman shouldn't be working or couldn't be doing

regular duty” Id. Dr. McFadden indicated that an IME could be performed but that Claimant would likely give “less than full effort.” Id. In addition, Dr. McFadden issued a 3% impairment rating to the upper extremity which converts to a 2% whole person impairment Id. Dr. McFadden issued a supplemental addendum to clear up language in his initial report. In that report, Dr. McFadden indicated that “I felt like his complaints were out of proportion to any clinical findings.” (Def. APA p. 17)

Claimant was also sent to Dr. Charles Jervey for an independent medical examination on June 12, 2012. Dr. Jervey indicated that he was “unable to explain patient’s two-point discrimination sensory loss from a neurologic/anatomic etiology . meaning noncompliance with subjective testing.” (Def. APA p. 20) Dr. Jervey also indicated that Claimant’s carpal tunnel etiology was most likely not from the burn injury as Claimant had identical nerve studies in each hand. Id. Dr. Jervey agreed that Claimant is at maximum medical improvement and agreed with Dr. McFadden’s ratings as reasonable (Def. APA p. 21)

Claimant was sent to the Joseph M. Still Burn Center on November 14, 2012. During that visit, Dr. Brandigi and Shay Seymour PA-C visited with Claimant. (Def. APA p. 22) Dr. Brandigi noted a complete resolution of the burn injury. Dr. Brandigi noted that Claimant was at maximum medical improvement. Id.

For the alleged psychological conditions, Claimant was sent to Dr. Dyana Lowndes-Rosen on August 22, 2013. (Def. APA p. 23). Dr. Lowndes-Rosen met with Claimant and conducted an extensive interview to uncover any underlying psychological issues. Dr. Lowndes-Rosen concluded that Claimant would not benefit from any psychological treatment (Def. APA p. 28) Dr. Lowndes-Rosen indicated that Claimant may suffer from “situational despondency” but that would not be treatable as a neurochemical depression Id. Dr. Lowndes-Rosen released

Claimant at maximum medical improvement. Id Claimant also attended psychological IME with Post Trauma Resources obtained by his attorney. That IME fails to mention the report and opinion of Dr Lowndes-Rosen

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following Findings of Fact:

1. This claim is not subject to mandatory mediation. Claimant contested MMI and identified determination of MMI and a request for triple phase bone scan as the facts in controversy on his Form 58 Pre-Hearing brief for this hearing.
2. Claimant is a 53 year old male with three children who are all dependent on him for support. (Hr'g Tr. 9.12-20).
3. Claimant sustained a compensable injury to his right arm on February 26, 2010. This finding of an injury to the arm as opposed to the hand is based on Claimant's development of CTS after the burn injury, which I find affects the wrist and thus, the arm as a whole.
4. On December 6, 2011, Claimant underwent a nerve conduction study with Florence Rehabilitation Medicine. That report indicated that there was "no significant difference between nerves." Further, the report indicated that "EMG is normal with no evidence of radiculopathy or plexopathy. Given this, these findings are considered normal." (Def. APA p. 13).

5. On April 9, 2012, Dr. McFadden noted that a clinical exam revealed Claimant's hand to be "completely normal." Claimant had "full extension" and "he has full active range of motion of his hand, wrist, and elbow " (Def APA p 15)
6. Dr. McFadden indicated that Claimant was "right off the bat very hostile" and that Claimant accused Dr McFadden of "working for the Workers' Compensation and I am just trying to say he can do whatever he wants to." (Def. APA p. 15)
7. Following the exam, Dr. McFadden remarked that Claimant was "one of the most normal exams I have seen" and "there is no reason why this gentleman shouldn't be working or couldn't be doing regular duty." Dr McFadden indicated that an IME could be performed but that Claimant would likely give "less than full effort " In addition, Dr. McFadden issued a 3% impairment rating to the upper extremity which converts to a 2% whole person impairment (Def APA p. 15)
8. Dr McFadden issued a supplemental addendum to clear up language in his initial report In that report, Dr McFadden indicated that "I felt like his complaints were out of proportion to any clinical findings " (Def APA p 17).
9. On May 3, 2012, Dr. Moore noted that Claimant underwent grip strength testing during which the testing facility indicated that his test was "consistent with submaximal effort." Dr. Moore noted that Claimant continued to complain of pain in his hand that "is not coming from his carpal tunnel syndrome" and that is "certainly out of proportion to his clinical findings" Dr. Moore indicated that Claimant reached maximum medical improvement on May 3, 2012 and that Claimant had a 0% impairment rating with no future medical needs (Def APA p 12)

- 10 On June 12, 2012, Dr Jervy indicated that he was “unable to explain patient’s two-point discrimination sensory loss from a neurologic/anatomic etiology ..meaning noncompliance with subjective testing ” (Def APA p 20).
- 11 On November 14, 2012, Dr. Brandigi and Shay Seymour PA-C visited with Claimant Dr Brandigi noted a complete resolution of the burn injury. Dr Brandigi noted that Claimant was at maximum medical improvement. (Def. APA p 22).
- 12 Claimant is at maximum medical improvement for his right arm injury as of June 12, 2012 per Dr. Jervy (who references at least one other physician with an even earlier MMI date). (Def APA p. 12, 15, 17, 21)
13. I find Claimant has sustained 5% permanent partial disability to his right arm I base this finding on the evidence as a whole including the impairment rating issued by Dr. McFadden and concurred with by Dr Jervy More importantly, I found the numerous references and inferences to symptom magnification throughout the medical records to be quite persuasive. (Def. APA p. 12, 15, 17, 21).
- 14 Claimant is entitled to future medical treatment in the form of Cymbalta for his neuropathic pain. I base this finding on the totality of the medical evidence. Although Dr. Healy did recommend a triple phase bone scan on August 20, 2012, past the date that Defendants asserted maximum medical improvement, this recommendation was based on the subjective complaints of Claimant, which increased drastically after other physicians had placed him at maximum medical improvement Additionally, this recommendation fell silent until the eve of hearing when it was again mentioned by Dr. Healy, more than a year after the original recommendation. It is not enough that Dr Healy, who is an authorized treating physician, made a recommendation Inquiry must be

made into the basis for the recommendation as well as the opinions of other physicians who may have treated and evaluated Claimant. In this case there were two orthopedists and one neurologist who had placed Claimant at maximum medical improvement with little to no permanent impairment. After these evaluations, I find Claimant's subjective complaints to his physicians increased substantially leading to requests for additional treatment. The triple phase bone scan requested by Dr. Healy is not supported by the preponderance of the medical evidence as a whole. Again the numerous references and inferences to symptom magnification weighed on this finding (Def APA p. 12, 15, 17, 21)

15. Claimant also alleged psychological overlay, which I do not find to be credible and hereby deny. I base this finding on the medical evidence as a whole including Claimant's minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length (Def APA p. 23).

16 Claimant is awarded a lump-sum and no hearing costs are assessed.

17 Defendants are entitled to a credit back to June 12, 2012 as they preserved this issue at all required points throughout this claim's procedural history. Defendants filed the original Form 21 seeking a stop payment, pay compensation and credit on July 25, 2012. The Single Commissioner issued a Decision and Order on December 7, 2012 indicating claimant was not at MMI, among other findings, so that the stop payment and credit were not appropriate. Defendants timely filed their appeal to the Appellate Panel who subsequently vacated the original Single Commissioner Decision and Order and remanded the claim to the Jurisdictional Commissioner for a Hearing de novo. The hearing set before the Undersigned and held on September 30, 2013 stemmed from the

original Form 21 filed on July 25, 2012 Defendants' request for credit for overpayment of temporary compensation after MMI of June 12, 2012 is clearly part of the original Form 21

CONCLUSIONS OF LAW

It is concluded under the South Carolina Workers' Compensation Act that

1. S.C. Code Ann. § 42-1-160 governs injuries by accident arising out of and in the course and scope of employment
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained admitted compensable injury to his right hand with resulting carpal tunnel syndrome in his right arm
3. S.C. Code Ann. § 42-15-60 governs the provision of medical treatment.
4. The term maximum medical improvement means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S C 69, 89, 636 S E.2d 876, 887 (Ct. App. 2006).
5. Maximum medical improvement is a factual determination by the Commission Hall, *supra*.
6. Pursuant to S C. Code Ann. § 42-15-60 and Hall, Claimant reached maximum medical improvement on June 12, 2012.
7. Pursuant to S.C. Code Ann § 42-15-60, Claimant is entitled only to future medical treatment in the form of Cymbalta as long as it is authorized by an authorized treating physician.
8. S.C. Code Ann § 42-9-30 governs the amount of compensation and period of disability for specific injuries.

9. Pursuant to S.C. Code Ann. § 42-9-30, Claimant sustained a 5% permanent partial disability to his right upper extremity
- 10 Pursuant to S.C. Code Ann. § 42-9-30, Claimant is entitled to eleven (11) weeks of permanent partial disability benefits less any credit owed to Defendants.
- 11 S.C. Code Ann. § 42-9-260 governs the suspension, termination, and credit for overpayment of temporary disability benefits.
12. Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482, workers' compensation benefits accrue along a time continuum: temporary disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded as either permanent total or permanent partial disability, or as a percentage of impairment to a scheduled member.
- 13 Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482, the date of maximum medical improvement signals the end of entitlement to temporary total benefits
- 14 Pursuant to Watson v. Xtra Mile Driver Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (S.C. App. 2012), equity indicates that an Employer is entitled to a credit for any temporary disability benefits paid after the date of maximum medical improvement.
15. Pursuant to Regions Bank v. Wingard Props, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011), a court may not ignore statutes, rules, and other precedent when providing an equitable remedy
- 16 Pursuant to S.C. Code Ann. § 42-9-260, Curiel, Watson, and Regions Bank, Defendants are entitled to a credit for overpayment of temporary disability benefits after the date of maximum medical improvement—June 12, 2012.

17 Claimant also alleged psychological overlay, which I do not find to be credible and hereby deny. I base this finding on the medical evidence as a whole including Claimant's minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length. (Def. APA p. 23).

ORDER

IT IS HEREBY ORDERED that Claimant has reached maximum medical improvement as of June 12, 2012

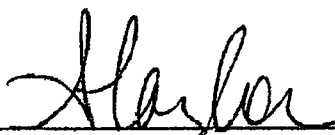
IT IS FURTHER ORDERED that Claimant sustained a 5% permanent partial disability to his right upper extremity, equivalent to eleven (11) weeks of compensation.

IT IS FURTHER ORDERED that Claimant's alleged psychological overlay is **DENIED**.

IT IS FURTHER ORDERED that Claimant is entitled to ongoing medical treatment only in the form of a causally-related prescription for Cymbalta, with associated office visits with an authorized treating physician as causally-related and medically-necessary to monitor and prescribe this medication

IT IS FURTHER ORDERED that Defendants are entitled to a credit for all temporary disability payments from the date of MMI—June 12, 2012 This credit shall be applied against and deducted from the final award of 5% permanent partial disability to the right upper extremity with Claimant to pay the difference to Defendants, as the credit exceeds the award.

AND IT IS SO ORDERED.



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

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

May 14, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

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MAX SPARWASSER
ATTORNEY AT LAW

July 30, 2014

VIA US MAIL

Judicial Department
SC Workers' Compensation Commission
P O Box 1715
Columbia, SC 29202-1715

RE: Jerome Sumter vs. EMS Chemie (North America) Inc.
WCC File Number: 1001704
Date of Injury: 02/26/2010

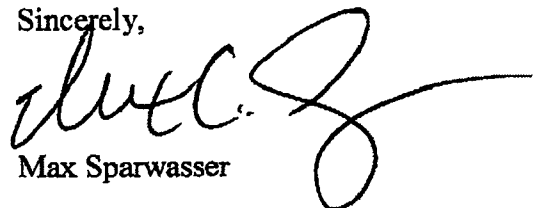
Dear Sir or Madam:

Enclosed please find the original and three copies of the Claimant/Appellant's Brief in connection with the above referenced case along with three copies of the hearing transcript.

By copy of this letter to A. Mundi George, Esquire, I am serving the defendants with a copy of the Brief.

Thank you for your attention to this matter.

Sincerely,



Max Sparwasser

Enclosure: Claimant/Appellant's Brief (3 copies)
Hearing Transcript (3 copies)

cc: A. Mundi George, Esquire (w/o hearing transcript)

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
JEROME SUMTER,)
Claimant/Appellant,)
-vs-)
EMS CHEMIE, INC.,)
Employer,)
THE HARTFORD,)
Carrier,)
Defendants/Respondent.)
_____)

SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1001704

**CLAIMANT/APPELLANT'S BRIEF
TO THE FULL COMMISSION**

The Claimant, by and through his undersigned attorney, hereby submits his Appellant's Brief to the Full Commission.

STATEMENT OF THE CASE

This is the second Full Commission hearing on the same issues of 1) determination of maximum medical improvement (MMI) and date thereof, 2) compensability of psychological overlay, and 3) future medical treatment. Claimant relies on the authorized treating physicians and not independent medical examinations that he is not yet at MMI and needs future medical treatment.

As to the hearing history on this case, on September 11, 2012, a Form 21 stop pay hearing was held in front of Commissioner James. She ordered the Defendants to provide further treatment for Claimant's right hand and an evaluation to determine what treatment, if any, treatment was necessary for his depression. Defendants appealed. As a result of Defendant's

appeal, on July 16, 2013, the Full Panel of Commissioners remanded Claimant's case for a de novo hearing.

This de novo hearing was held on September 30, 2013, before Commissioner Aisha Taylor. Commissioner Taylor determined that Claimant's admitted hand injury was at MMI and gave a 5% permanent partial disability rating. Commissioner Taylor ordered Defendants to continue to pay for Cymbalta for his neuropathic pain but was silent on approving Dr. Healy's other prescriptions for Gralise and Lidoderm patches. (See Para. 14; Order dated May 14, 2014). She determined Jerome Sumter reached MMI as of June 12, 2012, and ordered a temporary total disability (TTD) credit dating back to June 12, 2012, amounting to over a two year credit to the insurance carrier. Commissioner Taylor denied the psychological overlay claim. This appeal follows.

The Claimant injured his right upper extremity, and psyche/depression subsequent to a chemical burn while at work on February 26, 2010. The Claimant maintains that he is not at maximum medical improvement (MMI) and is in need of additional medical treatment for his right upper extremity, and psyche/depression. Dr. Joseph Healy is the authorized treating neurologist. He prescribed Gralise, Lidoderm patches and Cymbalta for Jerome Sumter's upper extremity. He prescribed Abilify for his depression.

Defendants maintain the Claimant is at MMI for the right upper extremity and that depression, if any exists, is not causally related to the work injury of February 26, 2010.

STANDARD OF REVIEW

When reviewing evidence in the award of the Single Commissioner, the Full Commission makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transport Services, Inc.,

324 S.E.2d 87 (S.C. Ct. App. 1984); S.C. Code Ann. § 42-17-50. An administrative order may be reversed or modified if substantial rights of the appellant are prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) affected by other error of law; (4) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (5) arbitrary or capricious or characterized by an abuse of discretion. S.C. Code Ann. § 1-23-380.

ISSUES PRESENTED

1. Did the Hearing Commissioner err in finding that the Claimant was at Maximum Medical Improvement?
2. Did the Hearing Commissioner err in not addressing the need for Claimant to treat with Lidoderm patches and Gralise medications?
3. Did the Hearing Commissioner err in denying Claimant's psychological overlay and his abilify medication?

ARGUMENT

- 1. The Commissioner incorrectly ruled that the Claimant was at Maximum Medical Improvement.**

The evidence supports a finding that Mr. Sumter is not yet at MMI. After receiving chemical burns to his hands Mr. Sumter underwent a pig skin graft and then developed carpal tunnel syndrome in both wrists. After receiving a carpal tunnel release Mr. Sumter's left wrist improved but his right wrist did not. Mr. Sumter testified that his right hand "... still hurts, still every day. I had carpal tunnel release on my left hand, and my right hand still feels different than my left hand." Transcript, 12. Mr. Sumter's right hand never improved the way his left hand did. Mr. Sumter has always been a hard worker and accustomed to manual labor but not having strength in his dominant hand has

been very stressful for him. "cause this is my livelihood, my hand ... now all that gone."

Transcript, 13. When asked how often he experiences pain in his right hand, Mr. Sumter testified "Every day of my life, can't sleep." Id.

Dr. Robert Mullins with the Joseph M. Still Burn Center is the authorized doctor treating Mr. Sumter for his burns. The medical records from Dr. Mullins and Dr. Healy in this case are void of any documentation by an authorized treating physician stating that Mr. Sumter is at MMI.

Mr. Sumter is still in need of a triple-bone scan before either of his treating physicians will rate him at MMI. Mr. Sumter was seen by Dr. Mullins, Mr. Sumter recounted what Dr. Mullins told him "he can't do nothing until Dr. Healy had the bone scan, 'cause he wanted to do a rating on my hand 'cause he did the surgery on my hand. He said he can't do the rating on my hand 'til Dr. Healy releases me or get that bone scan and everything go." Transcript, 19.

The Claimant appeals the temporary total disability credit going back all the way to June 12, 2012. As of the drafting of this brief, the credit totals almost fifty-seven thousand dollars (\$57,000.00). His neurologist, Dr. Healy, still has Jerome Sumter written out of work and Dr. Mullins recommendation for an MMI exam still has not been approved. He was terminated from his job at EMS Chemie. He has a wife and three children dependent on him for support. Jerome Sumter is not able to repay this large TTD credit of almost fifty-seven thousand dollars (\$57,000.00).

2. The Facts Overwhelmingly Support that Jerome Sumter Needs Lidoderm and Gralise prescriptions approved.

Dr. Healy, Mr. Sumter's neurologist chosen to treat the Claimant by the Respondents, opined that the Claimant was clearly still in pain and in need of his Lidoderm patch and Gralise.

Claimant testified that the Lidoderm patch has a significant impact on his life. "When I get up in the morning, I got to put this on my hand; I know it. When I put it on my hand I can feel a difference." Transcript, 14.

There is no record from a treating physician stating that Cymbalta is an alternative to Claimant taking Lidoderm patches and Gralise. Claimant testified that he is still in pain and cannot function in his day-to-day life without the relief he receives from the Lidoderm patch and Gralise. Dr. Healy, Claimant's treating neurologist, acknowledges that the Claimant still has issues with pain in his hand and requires further medication with a Lidoderm patch and Gralise.

Simply put, we have a compensable, admitted injury to the Claimant's right upper extremity and Commissioner Taylor ordered ongoing medical treatment for only one of the three medications prescribed by Dr. Healy, the authorized treating neurologist for this admitted injury.

3. The Commissioner incorrectly ruled that the Claimant's depression is not causally related to his injury.

Since Mr. Sumter was injured he has suffered from depression from the loss of use of his right hand. As Mr. Sumter's wife testified "Ever since his injury he's depressed because he was always a worker. He can't work." Transcript, 24. Due to his injuries Mr. Sumter is only able to perform light work, "I can lift something real light. Like I got two-pound weights, I try to do

that.” Transcript, 13. Mr. Sumter’s depression is a result of his injury and subsequent surgery’s. He is not able to perform the same tasks he did prior to the surgery and his wife has noticed “After this injury he really cannot use his hand like he can ... he attempts to do it, but it doesn’t last long because the pain hits it. I know my husband, and I know that his right hand is injured.” Transcript, 24.

Dr. Healy, the neurologist, that the Defendants picked to treat Mr. Sumter stated that his depression is secondary to his injury and loss of function. APA pgs. 42-43. He noted that he does not have a reliable grip in the dominant hand and as consequence he is not going to be able to go back to his previous job which involves lifting 50lbs at a time. Id. The patient would not be reliable and subject to injury if he returned to work. Dr. Healy was concerned that Mr. Sumter was developing reflex sympathetic dystrophy in the right upper extremity and he recommended a triple phased bone scan and repeat electrical studies in the right upper extremity. Id.

Following his chemical burn injury, his right hand had to have skin grafting. He is depressed because he is having trouble using his right hand. Prior to his injury he was able to wash cars, play basketball and fish but now he is having trouble performing those activities.

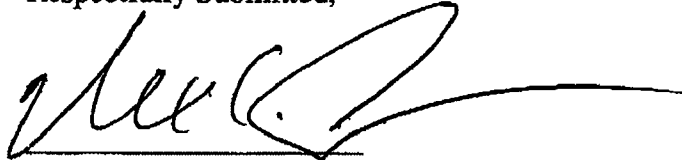
Jerome Sumter was evaluated at Post Trauma Resources on September 4, 2013 by Lawrence Bergmann, Ph.D., LPC, LPC/S and Roger Deal, M.D. They stated in their report that “it is our opinion to a reasonable degree of professional and medical certainty that Mr. Sumter developed psychological symptoms as a result of continued pain and physical limitations.” APA Pg. 167-168. As to recommended treatment, they opine that Mr. Sumter requires mental health treatment including psychotherapy and the continued use of psychotropic medication prescribed by a psychiatrist

CONCLUSION

Claimant's authorized treating neurologist, Dr. Healy has not released Mr. Sumter at MMI and recommends further treatment. Dr. Mullins, his authorized treating burn doctor, has not released Mr. Sumter at MMI and recommends further treatment. Dr. Healy believes he has depression secondary to his injury and loss of function. Doctors Bergmann and Deal also believe his depression is secondary to his injury.

For the foregoing reasons, this Full Commission should reverse the ruling of the single Commissioner and rule that Jerome Sumter is not yet at MMI and needs future treatment for his upper extremity including Gralise, Cymbalta, and Lidoderm Patches and treatment for his depression.

Respectfully Submitted,



Max C. Sparwasser
Max Sparwasser Law Firm, LLC
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(843) 864-6444
Attorney for Claimant/Appellant

Mt. Pleasant, South Carolina
July 30, 2014

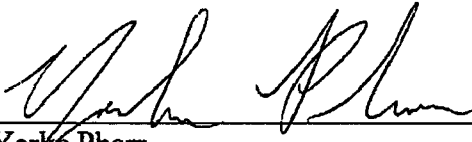
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2014, I mailed a copy of the attached Claimant/Appellant's Brief by depositing a copy of same in the U.S. Postal Service mail to the S.C. Workers' Compensation Commission and Defendant's attorney, addressed as follows:

Judicial Department
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

A. Mundi George, Esquire
McAngus, Goudelock & Courie
P.O. Box 12519
Columbia, SC 29211-2519

MAX SPARWASSER LAW FIRM, LLC



Yorke Pharr
Law Clerk to Max Sparwasser

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1001704

EMPLOYEE/CLAIMANT: JEROME SUMTER

EMPLOYER: EMS - CHEMIE NORTH AMERICA, INC.

CARRIER: HARTFORD INSURANCE COMPANY OF THE MIDWEST

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 30TH DAY
OF SEPTEMBER, 2013, COMMENCING AT THE HOUR OF 11:08
A.M., IN SUMTER, SOUTH CAROLINA, BEFORE THE HONORABLE
AISHA TAYLOR, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

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ATTORNEY FOR THE CLAIMANT,

A. MUNDI GEORGE, ESQUIRE, OF THE FIRM
McANGUS, GOUDELOCK & COURIE, LLC
POST OFFICE BOX 12519
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MRS. JENNIFER SUMTER

I N D E X

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JENNIFER RENEE SINGLETON SUMTER:

DIRECT EXAMINATION BY MR. SPARWASSER.....	23
CERTIFICATE OF NOTARY PUBLIC.....	29

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

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

6 **BY COMMISSIONER TAYLOR:**

7 TODAY IS SEPTEMBER 30TH, 2013. WE ARE HERE ON
8 WORKERS' COMP FILE NUMBER 1001704. THIS IS THE
9 CLAIM OF MR. JEROME SUMTER, WHO IS REPRESENTED TODAY
10 BY MR. MAX SPARWASSER. THE EMPLOYER IS EMS - CHEMIE
11 NORTH AMERICA, INCORPORATED. THE CARRIER IS
12 HARTFORD INSURANCE COMPANY OF THE MIDWEST, BOTH OF
13 WHOM ARE REPRESENTED TODAY BY MS. MUNDI GEORGE. I
14 HAVE AN ORIGINAL DATE OF ACCIDENT OF FEBRUARY 26TH,
15 2010. THE CLAIMANT'S AVERAGE WEEKLY WAGE IS
16 \$768.63, YIELDING A COMPENSATION RATE OF \$512.45.
17 WE ARE HERE TODAY ON A DE NOVO HEARING FROM A FULL
18 REMAND FROM THE FULL COMMISSION DATED JULY 16, 2013.
19 THE ORIGINAL HEARING WAS PERFORMED ON SEPTEMBER 11,
20 2012, BY COMMISSIONER JAMES. THE ORIGINAL HEARING
21 WAS PLED ON THE EMPLOYER/CARRIER'S FORM 21 TO
22 TERMINATE TEMPORARY TOTAL DISABILITY BENEFITS AND TO
23 PAY AN AWARD OF PERMANENT PARTIAL DISABILITY
24 BENEFITS TO THE HAND, PURSUANT TO STATEMENTS OF
25 MAXIMUM MEDICAL IMPROVEMENT AND IMPAIRMENT BY

1 TREATING PHYSICIANS AND/OR OTHER EXPERTS.

2 I WILL ALLOW THE PARTIES TO PUT FORMAL POSITION
3 STATEMENTS ON THE RECORD. HOWEVER, PRIOR TO DOING
4 SO, ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
5 VENUE, OR ANY OTHER ITEMS?

6 **BY MS. GEORGE:**

7 NONE FROM THE DEFENDANTS.

8 **BY MR. SPARWASSER:**

9 NONE FROM THE CLAIMANT, YOUR HONOR.

10 **BY THE COMMISSIONER:**

11 THANK YOU. WITHOUT OBJECTION THE COMMISSION
12 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
13 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
14 MEDICAL REPORTS.

15 MS. GEORGE, WE ARE HERE ON YOUR ORIGINAL FORM
16 21, SO I WILL ALLOW A POSITION STATEMENT.

17 **BY MS. GEORGE:**

18 THANK YOU, COMMISSIONER. WE ASSERT THAT MR.
19 SUMTER HAS REACHED MAXIMUM MEDICAL IMPROVEMENT FROM
20 HIS FEBRUARY 26, 2010, DATE OF ACCIDENT, WHICH WAS A
21 THERMAL BURN TO THE BACK OF HIS RIGHT HAND, WHICH
22 CAUSED CARPAL TUNNEL SYNDROME IN HIS RIGHT WRIST.
23 HE HAD CARPAL TUNNEL RELEASE SURGERY PERFORMED BY
24 DR. MOORE, WHO WAS THE AUTHORIZED TREATING
25 ORTHOPEDIST. DR. MOORE PLACED THE CLAIMANT AT

1 MAXIMUM MEDICAL IMPROVEMENT ON MAY 3RD, 2012, WITH A
2 ZERO PERCENT RATING. AND WE ALSO GOT A SECOND
3 ORTHOPEDIC OPINION FROM DR. McFADDEN, WHO PLACED THE
4 CLAIMANT AT MAXIMUM MEDICAL IMPROVEMENT ON APRIL THE
5 9TH OF 2012, WITH A THREE PERCENT UPPER EXTREMITY
6 RATING. AND WE ALSO GOT A NEUROLOGICAL I.M.E. FROM
7 DR. JERVEY, WHO PLACED THE CLAIMANT AT MAXIMUM
8 MEDICAL IMPROVEMENT ON JUNE 12, 2012, AND SAID THAT
9 DR. McFADDEN'S IMPAIRMENT RATING WAS REASONABLE, BUT
10 HE ASSIGNED NO RATING OF HIS OWN AND NO
11 RESTRICTIONS. AND WE DENY THAT DR. HEALY'S OPINION
12 IS CREDIBLE. HE CONTINUES TO TREAT THE CLAIMANT,
13 REFUSES TO PLACE HIM AT M.M.I. WHEN THREE OTHER
14 REPUTABLE, CREDIBLE PHYSICIANS HAVE SAID OTHERWISE,
15 AND WE WOULD LIKE TO RELY ON THOSE OPINIONS. THE
16 CLAIMANT HAS ALSO ALLEGED A PSYCHOLOGICAL COMPONENT,
17 WHICH WE'VE DENIED. AND WE RELY ON THE OPINION OF
18 DR. DYANA LOWNDES-ROSEN TO SUPPORT THAT THERE IS NO
19 TRUE DEPRESSION OF A PSYCHOLOGICAL DISEASE, THAT THE
20 CYMBALTA THE CLAIMANT IS TAKING IS GOOD FOR NERVE
21 PAIN, AND THAT EVEN IF THERE IS SOME SORT OF
22 PSYCHOLOGICAL ISSUE, IT'S NOT A DISEASE THAT CAN BE
23 TREATED. THERE'S NO RESTRICTIONS, NO PERMANENT
24 IMPAIRMENT, AND NO NEED FOR ONGOING TREATMENT. AND
25 WE ARE SEEKING CREDIT BACK TO THE M.M.I. DATE OF DR.

1 JERVEY OF JUNE 12, 2012.

2 **BY THE COMMISSIONER:**

3 OKAY, THANK YOU. MR. SPARWASSER.

4 **BY MR. SPARWASSER:**

5 THANK YOU, COMMISSIONER. WE ARE CONTENDING
6 THAT MR. SUMTER IS STILL NOT AT MAXIMUM MEDICAL
7 IMPROVEMENT. DR. HEALY IS STILL WAITING FOR THIS
8 TRIPLE-PHASE BONE SCAN TO BE APPROVED AND ALSO FOR
9 THE ABILIFY TO BE APPROVED FOR HIS PSYCHOLOGICAL
10 OVERLAY. AUGUST 20, 2012, DR. HEALY FIRST
11 RECOMMENDED THE TRIPLE-PHASE BONE SCAN, AND THEN
12 AGAIN THIS MONTH, SEPTEMBER 10TH, 2013, HE
13 RECOMMENDED IT AGAIN. THAT'S PAGE 171 AND 172 OF
14 THE APA SUBMISSIONS. ADDITIONALLY, WE ARE SEEKING
15 COMPENSABILITY OF THE PSYCHOLOGICAL OVERLAY. MR.
16 SUMTER SAW DR. HEALY, DR. DEAL, AND DR. BERGMANN,
17 AND ALL SUPPORT -- BECAUSE OF HIS PAIN AND BECAUSE
18 OF HIS PHYSICAL LIMITATIONS, SUPPORT THAT HE HAS A
19 COMPONENT OF PHYSICAL OVERLAY. EVEN DR. DYANA
20 LOWNDES-ROSEN SAID THAT THE CYMBALTA IS APPROPRIATE
21 FOR HIS NERVE PAIN. SO WE CONTEND THAT HE IS NOT AT
22 M.M.I. NOW. WE ARE ASKING FOR YOU TO PLEASE APPROVE
23 THE TRIPLE-PHASE BONE SCAN AND ALSO THE ABILIFY FOR
24 HIS PSYCHOLOGICAL OVERLAY. IF, FOR SOME REASON, YOU
25 DEEM HIM TO BE NOT AT M.M.I., WE ARE PLACING AN

1 OBJECTION ON THE RECORD FOR ANY DETERMINATION OF
2 PERMANENT PARTIAL DISABILITY BASED UPON EITHER 42-9-
3 10 OR 42-9-20 OR 42-9-30, BASED UPON THE CASE BEING
4 SUBJECT TO MEDIATION. AND THAT'S ALL FOR NOW, YOUR
5 HONOR.

6 **BY THE COMMISSIONER:**

7 OKAY. THANK YOU. MS. GEORGE, WE ARE HERE ON
8 YOUR FORM 21. YOU MAY CALL THE CLAIMANT FIRST OR
9 RESERVE YOUR RIGHT TO CROSS EXAMINATION.

10 **BY MS. GEORGE:**

11 I WOULD LIKE TO RESERVE THE RIGHT, PLEASE.
12 THANK YOU.

13 **BY THE COMMISSIONER:**

14 OKAY, THANK YOU. MR. SPARWASSER, YOU MAY CALL
15 YOUR FIRST WITNESS.

16 **BY MR. SPARWASSER:**

17 YES; MR. SUMTER.

18 **BY THE COMMISSIONER:**

19 MADAM COURT REPORTER, WOULD YOU PLEASE SWEAR
20 THE WITNESS.

21 **BY THE COURT REPORTER:**

22 SIR, IF YOU WOULD RAISE YOUR RIGHT HAND,
23 PLEASE.

24 * * * * *

25 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE

1 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
2 MATTER HEREIN:

3 JEROME SUMTER,

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

6 DIRECT EXAMINATION BY MR. SPARWASSER:

7 Q. YOUR FULL NAME FOR THE RECORD.

8 A. JEROME SUMTER.

9 Q. ALL RIGHT. DO YOU HAVE A MIDDLE NAME?

10 A. NO, SIR.

11 Q. YOUR DATE OF BIRTH?

12 A. 7-4-63.

13 Q. ALL RIGHT. AND HOW MANY CHILDREN DO YOU AND MRS.
14 SUMTER HAVE?

15 A. ME AND MRS. SUMTER GOT THREE.

16 Q. AND HOW MANY ARE DEPENDENT UPON YOU FOR SUPPORT?

17 A. ALL THREE OF THEM STILL. I GOT TWO GROWN -- I GOT A
18 GROWN DAUGHTER AND A GROWN SON THAT GRADUATES THIS
19 YEAR HERE, BUT HE'S STILL AT THE HOUSE. MY BABY SON
20 IS STILL IN HIGH SCHOOL.

21 Q. ALL RIGHT. AND WHEN DID YOU START WORKING FOR EMS -
22 CHEMIE?

23 A. MARCH 12TH, 2002. I MEAN MAY THE 12TH; EXCUSE ME.

24 Q. AND WHAT WAS YOUR JOB TITLE?

25 A. EXTRUSION OPERATOR.

1 Q. WHAT IS AN EXTRUSION OPERATOR? PLEASE DESCRIBE WHAT
2 AN EXTRUSION OPERATOR IS TO THE COMMISSIONER.

3 A. IT'S VARIOUS JOBS. YOU DO MAINTENANCE; YOU SET
4 LINES UP; YOU BAGS; YOU BAG OUT 20 KGs; YOU BUCKET
5 LOAD; YOU CLEAN -- GO IN AND OUT SILOS. IT -- IT
6 VARIES. IT VARIES.

7 Q. IS IT A PHYSICAL JOB?

8 A. YES, SIR; IT'S PHYSICAL.

9 Q. NOW, EMS - CHEMIE, CORRECT ME IF I'M WRONG, BUT
10 DON'T THEY MAKE THE LITTLE PLASTIC BEADS?

11 A. YES, SIR.

12 Q. THEY ARE A PLASTIC MANUFACTURER?

13 A. YES, SIR.

14 Q. DID YOU HAVE TO DO A LOT OF LIFTING WHEN YOU WORKED
15 THERE?

16 A. YOU HAD TO LIFT. LIFTING WAS YOUR JOB.

17 Q. ALL RIGHT. WHAT'S YOUR EDUCATION LEVEL?

18 A. G.E.D.

19 Q. ALL RIGHT. SO YOU WERE INITIALLY INJURED BACK IN
20 2010, AND AS I UNDERSTAND IT, YOU HAD A BURN, IS
21 THAT RIGHT?

22 A. YES, SIR.

23 Q. AND WHAT DID DR. MULLINS DO FOR YOU WHEN HE TREATED
24 YOU FOR THE BURN?

25 A. WHEN I GOT -- WHEN I GOT TO CHARLESTON, DR. MULLINS

1 SAID I HAD TO GO IN SURGERY.

2 Q. ALL RIGHT. AND WHAT KIND OF SURGERY DID THEY DO?

3 A. A PIG -- A PIG SKIN.

4 Q. ALL RIGHT. SO YOU HAD A PIG SKIN GRAFT?

5 A. YES, SIR.

6 Q. ALL RIGHT. AND DID THAT HELP?

7 A. NO, SIR.

8 Q. YOU ULTIMATELY HAD CARPAL TUNNEL IN YOUR RIGHT
9 WRIST?

10 A. WHAT HAPPENED, I STARTED COMPLAINING ABOUT MY HAND;
11 IT STILL HURTING. I TELL THEM ABOUT MY HAND, AND I
12 FEEL LIKE IT'S STILL GETTING SHARP PAINS IN IT,
13 THROUGH MY HAND. SO HE SAY IT WAS ---

14 **BY MS. GEORGE:**

15 I'M SORRY; GO AHEAD.

16 **WITNESS RESUMES:**

17 A. HE SAID, "MR. SUMTER, JUST GIVE IT TIME." THEN I
18 WENT BACK AGAIN. MY HAND WAS STILL HURTING, SO HE
19 TOLD ME TO GO SEE A NEUROLOGIST. THAT'S WHEN DR.
20 HEALY DID A NERVE STUDY TEST, AND HE FOUND OUT --
21 SAID I HAD NERVE DAMAGE IN MY RIGHT HAND.

22 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

23 Q. AND SO YOU HAD CARPAL TUNNEL RELEASE?

24 A. YES, SIR.

25 Q. AND YOU ALSO HAD CARPAL TUNNEL RELEASE IN YOUR LEFT

1 HAND?

2 A. YES, SIR.

3 Q. IN ADDITION TO THE RIGHT HAND?

4 A. YES, SIR.

5 Q. AND AS I UNDERSTAND IT, THE RIGHT HAND WAS PAID FOR
6 BY WORKERS' COMP, RIGHT?

7 A. YES, SIR.

8 Q. THE LEFT HAND WAS NOT PAID FOR BY WORKERS' COMP?

9 A. NO, SIR.

10 Q. AND YOU ALSO HAD A CERVICAL FUSION?

11 A. YES, SIR.

12 Q. AND THAT WAS NOT PAID FOR BY WORKERS' COMP, WAS IT?

13 A. NO, SIR.

14 Q. ALL RIGHT. HOW IS YOUR RIGHT HAND NOW?

15 A. IT STILL HURTS, STILL EVERY DAY. I HAD CARPAL
16 TUNNEL RELEASE ON MY LEFT HAND, AND MY RIGHT HAND
17 STILL FEELS DIFFERENT THAN MY LEFT HAND, BECAUSE I
18 HAD CARPAL TUNNEL IN MY LEFT HAND. AFTER FIVE DAYS
19 I STARTED USING MY LEFT HAND AGAIN. THIS HAND HERE
20 WAS BACK IN 2010. I STILL CAN'T....

21 Q. ALL RIGHT. SO YOUR LEFT HAND GOT BETTER, YOU'RE
22 SAYING? IS THAT WHAT YOU'RE SAYING? (

23 A. YES; YES, SIR.

24 Q. BUT YOUR RIGHT HAND IS STILL BOTHERING YOU?

25 A. YES, SIR.

1 Q. OKAY. TELL ME -- PLEASE TELL THE COMMISSIONER ABOUT
2 THE STRENGTH IN YOUR RIGHT HAND. DO YOU HAVE
3 STRENGTH IN IT?

4 A. NO, SIR.

5 Q. ALL RIGHT. AND ARE YOU ABLE TO LIFT ANYTHING?

6 A. I CAN LIFT SOMETHING REAL LIGHT. LIKE I GOT TWO-
7 POUND WEIGHTS, I TRY TO DO THAT. I TRY TO DO THAT
8 WITH MY RIGHT HAND, 'CAUSE THIS IS MY LIVELIHOOD, MY
9 HAND. SINCE I WAS 11 YEARS OLD, I USE MY LEFT HAND
10 TO MAKE MY MONEY, PULLING WEEDS OUT OF BEAN FIELDS
11 STARTING OUT WORKING. NOW ALL THAT GONE. AND I TRY
12 TO USE MY LEFT HAND -- I MEAN MY RIGHT HAND; I TRY.

13 Q. HOW OFTEN DO YOU HAVE PAIN IN IT?

14 A. EVERY DAY OF MY LIFE. CAN'T SLEEP.

15 Q. WHY CAN'T YOU SLEEP?

16 A. PAIN.

17 Q. DOES ANYTHING HELP WITH THE PAIN?

18 A. SOMETIMES. I TAKE HYDROCODONE FOR MY NECK, MY NECK;
19 THAT RELIEVE THE PAIN SOME. THE HYDROCODONE I TAKE
20 FOR MY NECK PAIN, IT RELIEVES MY HAND PAIN, TOO.
21 THAT'S THE BEST PAIN I GET WHEN I TAKE THE
22 HYDROCODONE.

23 Q. AND WHAT IS THAT ON YOUR HAND RIGHT NOW?

24 A. A LIDODERM PATCH.

25 Q. DOES THAT HELP IT?

1 A. YES, SIR.

2 Q. AND HOW OFTEN DO YOU WEAR THOSE PATCHES?

3 A. I WEAR IT 12 HOURS A DAY EVERY DAY. WHEN I GET UP
4 IN THE MORNING TIME, I GOT TO PUT THIS ON MY HAND; I
5 KNOW IT. WHEN I PUT IT ON MY HAND, I CAN FEEL A
6 DIFFERENCE. I CAN FEEL A DIFFERENCE. IF I DON'T
7 WEAR IT, I CAN FEEL THE DIFFERENCE.

8 Q. AND DO YOU WANT THE TRIPLE-PHASE BONE SCAN?

9 A. YES, SIR.

10 Q. AND WHY DO YOU WANT IT?

11 A. I WANT TO SEE WHAT'S GOING ON WITH MY HAND.

12 Q. YOU UNDERSTAND THIS CASE HAS BEEN TAKING A LONG
13 TIME, DON'T YOU?

14 A. YES, SIR.

15 Q. ALMOST FOUR YEARS?

16 A. YES, SIR.

17 Q. AND SOMEBODY FROM THE OUTSIDE LOOKING IN COULD
18 POSSIBLY THINK THAT YOU SHOULD BE BETTER BY NOW; DO
19 YOU REALIZE THAT?

20 A. YES, SIR; THAT'S SAME THING McFADDEN SAID. THAT'S
21 THE SAME THING DR. McFADDEN SAID, WHEN I WENT TO SEE
22 DR. McFADDEN. AND I TRY TO TELL -- WHEN I WENT TO
23 SEE DR. McFADDEN, WE HAD GOT -- HE HAD COME IN THE
24 ROOM, HE HAD COME STRAIGHT TO ME, AND HE SAID, "MR.
25 'SUMTER, AIN'T NOTHING WRONG WITH YOU; YOU GOING TO

1 GO BACK TO WORK WITH NO RESTRICTIONS, BUT NOTHING
2 WRONG WITH YOU." AND I SAID, "MAN, MY HAND HURT."
3 HE SAID, "I'VE BEEN DOING THIS FOR 20 YEARS." I
4 SAID, "MR. McFADDEN, I'VE HAD MY HAND FOR 48 YEARS."
5 I WAS 48 YEARS OLD AT THE TIME. AND I SAID, "I'VE
6 HAD MY HAND FOR 48 YEARS." HE GOT HOSTILE AND SENT
7 A LETTER TO WORKERS' COMP AND SAID I WAS REAL
8 HOSTILE. I WASN'T HOSTILE. I JUST WANTED TO KNOW
9 WHAT'S WRONG WITH MY HAND, WHY I KEEP HAVING THESE
10 PAINS.

11 Q. WHAT MEDICATIONS ARE YOU TAKING NOW?

12 A. CYMBALTA, GRALISE.

13 **BY THE COMMISSIONER:**

14 WHAT WAS THAT LAST ONE? I'M SORRY.

15 **BY THE WITNESS:**

16 GRALISE.

17 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

18 Q. IS IT GRALISE?

19 A. YES, SIR.

20 Q. SPELLED G-R-A-L-I-S-E?

21 A. S-E.

22 Q. ALL RIGHT.

23 A. LIDODERM, AND DR. HEALY GOT ME ON TWO HIGH BLOOD
24 PRESSURE PILLS, WHICH I AIN'T NEVER HAD HIGH BLOOD
25 PRESSURE, NEVER TOOK A HIGH BLOOD PRESSURE PILL.

1 NOW I GOT TO TAKE TWO PILLS EVERY MORNING BEFORE
2 11:00, TWO.

3 Q. YOU ALSO SAW DR. DYANA LOWNDES-ROSEN IN CHARLESTON,
4 IS THAT RIGHT, MR. SUMTER?

5 A. YES, SIR.

6 **BY MR. SPARWASSER:**

7 AND LET THE RECORD REFLECT I'M ON APA
8 SUBMISSION PAGE 27.

9 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

10 Q. MR. SUMTER, DURING THIS MEETING -- FIRST OF ALL, HOW
11 LONG DID THIS APPOINTMENT LAST?

12 A. ABOUT 45 MINUTES.

13 Q. AND DID SHE EVER ASK YOU IF YOU WERE SUICIDAL OR
14 HOMICIDAL OR UNDULY AGGRESSIVE?

15 A. NO, SIR.

16 Q. ARE YOU AWARE THAT IN HER REPORT SHE SAID THAT YOU
17 DENY BEING SUICIDAL, HOMICIDAL, OR UNDULY
18 AGGRESSIVE?

19 A. SHE NEVER ASKED ME THAT.

20 Q. ALL RIGHT. AND WHAT ABOUT WHETHER OR NOT -- DID SHE
21 ASK YOU IF YOU -- ABOUT YOUR HOME ADDRESS? DID SHE
22 ASK YOU WHERE YOU LIVED?

23 A. NO, SIR.

24 Q. DID SHE ASK YOU ABOUT ANY KIND OF RECALL, TO REPEAT
25 THINGS THAT SHE WAS SAYING?

1 A. NO, SIR.

2 Q. AND WHAT ABOUT THE APPOINTMENT WITH DR. DEAL AND DR.
3 BERGMANN; HOW LONG DID THAT LAST?

4 A. ABOUT FIVE TO SIX HOURS.

5 Q. ALL RIGHT. AND WHAT DID YOU DO DURING THAT FIVE OR
6 SIX HOURS?

7 A. TESTS.

8 Q. WHAT KIND OF TESTS?

9 A. HAD ME ON -- DOING A COMPUTER, HAD ME DOING SOME
10 PAPER TESTS. THEN I WENT BACK TO TALK TO HIM. THEN
11 I WENT TO TALK TO ANOTHER DOCTOR.

12 Q. ANOTHER DOCTOR BESIDES DR. DEAL OR DR. BERGMANN?

13 A. NO, JUST IT WAS DR. DEAL AND DR. BERGMANN. HE HAD
14 -- I TALKED TO ONE, AND THEN I WENT BACK TO TALK TO
15 THE OTHER ONE.

16 Q. WHAT IS YOUR JOB STATUS WITH EMS - CHEMIE?

17 A. THEY SAY -- THEY SAY I'M TERMINATED, BUT I AIN'T
18 NEVER GOT A LETTER.

19 Q. WHO TOLD YOU THAT YOU WERE TERMINATED?

20 A. I HAD CALLED THERE ABOUT TWO MONTHS AGO AND CHECKED
21 ON MY LIFE INSURANCE, AND THEY SAID, "MR. SUMTER, WE
22 DON'T HAVE YOUR NAME IN THE FILE NO MORE." AND I
23 SAID, "I GOT HURT ON THE JOB IN 2010." AND SHE SAID
24 -- AND THEN SHE -- THEN SHE SAID, "I'M GOING TO GET
25 YOU BACK TO SOMEBODY ELSE, MR. SUMTER." THEN SHE

1 HAD ME SITTING ON THE PHONE ABOUT TEN MINUTES.

2 ANOTHER LADY COME IN THERE, AND SHE SAID, "YOU WAS
3 TERMINATED." AND THEN THAT'S ALL SHE SAID.

4 Q. THEY NEVER WROTE YOU A LETTER?

5 A. NEVER WROTE ME A LETTER, NEVER GAVE ME A COURTESY
6 CALL.

7 Q. AND YOU HAD HEALTH INSURANCE WITH THEM?

8 A. I HAD HEALTH INSURANCE 'TIL I CHANGED TO MY WIFE'S
9 INSURANCE IN 2011.

10 **BY MRS. SUMTER:**

11 _____ '12.

12 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

13 Q. WHAT ABOUT ANY OTHER BENEFITS WITH EMS - CHEMIE?

14 A. I HAD A 401. I HAD HEALTH -- LIFE INSURANCE, AND
15 THAT'S IT.

16 Q. DO YOU STILL HAVE THAT LIFE INSURANCE?

17 A. SINCE I'M TERMINATED, NO.

18 Q. WHAT ABOUT DR. MULLINS? HAS DR. MULLINS FINISHED
19 TREATING YOU?

20 A. DR. MULLINS SAID WHEN I GO HAVE THAT -- WHEN DR.
21 HEALY OR SOMEBODY GIVE ME THAT TRIPLE-BONE SCAN, HE
22 WANTS ME TO COME BACK TO HIS OFFICE ONE MORE TIME SO
23 HE CAN LOOK AT MY HAND AGAIN. BUT HE REALLY CAN'T
24 DO NOTHING 'CAUSE HE SAID MY -- MY SKIN GRAFT LOOKED
25 REAL GOOD. HE SAID THAT LOOKED GOOD, BUT HE CAN'T

1 DO NOTHING UNTIL DR. HEALY HAD THE BONE SCAN, 'CAUSE
2 HE WANTED TO DO A RATING ON MY HAND 'CAUSE HE DID
3 THE SURGERY ON MY HAND. HE SAID HE CAN'T DO THE
4 RATING ON MY HAND 'TIL DR. HEALY RELEASES ME OR GET
5 THAT BONE SCAN AND EVERYTHING GO, THAT HE CAN DO A
6 RATING. THAT'S WHAT -- HE SAID HE CAN'T DO A
7 RATING, 'CAUSE HE WANTED TO RATE MY HAND.

8 Q. DURING THIS OVER THREE-YEAR PERIOD OF TIME THAT
9 YOU'VE BEEN ON WORKERS' COMPENSATION, HAVE THERE
10 BEEN ANY PRIVATE INVESTIGATORS FOLLOWING YOU OR YOUR
11 FAMILY?

12 A. YES, SIR.

13 Q. HOW MANY TIMES?

14 A. ABOUT THREE TIMES.

15 Q. DID THEY JUST FOLLOW YOU?

16 A. FOLLOWED ME, MY WIFE, MY BABY DAUGHTER. SHE HAD
17 JUST GOT HER DRIVING LICENSE. SOMEBODY TRAILING HER
18 'CAUSE SHE WAS DRIVING MY TRUCK I HAD. SHE WAS
19 DRIVING MY TRUCK A LOT, AND SHE CAME BACK HOME, SHE
20 SAID, "DADDY," ---

21 **BY MS. GEORGE:**

22 OBJECTION, HEARSAY.

23 **BY THE COMMISSIONER:**

24 I'M GOING TO SUSTAIN THE OBJECTION.

25 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

1 Q. WHAT WAS YOUR UNDERSTANDING AFTER SHE FINISHED
2 TALKING WITH YOU?

3 A. I GOT SCARED FOR HER, 'CAUSE SHE'S A YOUNG DRIVER; I
4 DON'T WANT NOBODY FOLLOWING HER. SHE'S A YOUNG
5 GIRL. THEN MY WIFE, SHE WAS GOING TO WORK ONE
6 MORNING. SHE GOES AND LEAVES HOME AT 4:00 IN THE
7 MORNING. SHE GOES DOWN A LONG, DARK ROAD CALLED
8 BLACK RIVER ROAD. SOMEBODY FOLLOWED HER TO HER JOB
9 AND SAT THERE AND WATCHED HER GO IN AND OUT OF HER
10 PLANT. THAT AIN'T RIGHT.

11 Q. MR. SUMTER, WHAT ARE YOU ASKING THE COMMISSIONER TO
12 DO TODAY?

13 A. I JUST WANT TO BE TREATED FAIR; THAT'S ALL. I JUST
14 WANT TO BE TREATED FAIR; THAT'S ALL.

15 **BY MR. SPARWASSER:**

16 THANK YOU, MR. SUMTER.

17 **BY THE COMMISSIONER:**

18 MS. GEORGE?

19 **BY MS. GEORGE:**

20 THANK YOU, COMMISSIONER.

21 **CROSS EXAMINATION BY MS. GEORGE:**

22 Q. MR. SUMTER, THE EPISODE YOU WERE JUST TESTIFYING
23 ABOUT WHEN YOU THINK THAT PRIVATE INVESTIGATORS
24 FOLLOWED YOUR FAMILY, THAT WAS OVER A YEAR AGO,
25 CORRECT?

1 A. YES. NO. IT WAS ---

2 Q. IT WAS SOMETHING YOU TESTIFIED ABOUT AT THE LAST
3 HEARING?

4 A. YES, IT WAS A YEAR AGO. YOU'RE RIGHT.

5 Q. THANK YOU. AND THE EVALUATION YOU HAD IN EARLY
6 SEPTEMBER WITH DR. DEAL AND DR. BERGMANN, DID YOU
7 DISCUSS WITH THEM THAT YOU HAD BEEN EVALUATED BY DR.
8 DYANA LOWNDES-ROSEN?

9 A. MA'AM?

10 Q. AND THEY DON'T REFERENCE DR. DYANA LOWNDES-ROSEN'S
11 EVALUATION IN THEIR REPORT, DO THEY?

12 A. NO, I AIN'T NEVER -- I DIDN'T SAY I WENT TO SEE DR.
13 ---

14 Q. AND ARE YOU AWARE THAT THE TESTING -- SOME OF THE
15 TESTING THEY PERFORMED, THE MMPI-2 TEST WAS NOT A
16 VALID INDICATION AND COULD NOT BE INTERPRETED
17 BECAUSE THE RESULTS WERE INVALID; WERE YOU AWARE OF
18 THAT?

19 A. NO, MA'AM.

20 Q. AND ARE YOU AWARE THAT THREE OTHER DOCTORS, DR.
21 MOORE, DR. McFADDEN, AND DR. JERVEY, HAVE ALL SAID
22 THAT YOU'VE REACHED YOUR MAXIMUM HEALING FOR YOUR
23 HAND AND THAT THERE'S NO OTHER TREATMENT THAT NEEDS
24 TO BE DONE FOR YOUR HAND; ARE YOU AWARE OF THAT?

25 A. YES, MA'AM.

1 Q. YOU HAD NECK SURGERY IN JANUARY OF THIS YEAR?

2 A. YES, MA'AM.

3 Q. WHAT KIND OF SURGERY DID YOU HAVE?

4 A. I HAD CERVICAL SPINE SURGERY.

5 Q. WHAT KIND OF SURGERY, THOUGH? FUSION SURGERY?

6 A. YES. I GOT A PLATE.

7 Q. WHO DID THAT SURGERY?

8 A. DR. DeHOLL.

9 Q. DR. DeHOLL?

10 A. YES, MA'AM.

11 Q. AND ARE YOU SEEING A PAIN MANAGEMENT DOCTOR NOW?

12 A. YES, MA'AM.

13 Q. WHO IS THAT?

14 A. DR. COOPER.

15 Q. HAVE YOU BEEN RELEASED FROM DR. DeHOLL'S CARE?

16 A. NO, MA'AM.

17 Q. HAVE YOU BEEN RELEASED FROM DR. COOPER'S CARE?

18 A. NO, MA'AM.

19 Q. SO YOU ARE STILL ACTIVELY TREATING FOR CERVICAL
20 FUSION SURGERY WITH AN ORTHOPEDIC SURGEON AND A PAIN
21 MANAGEMENT DOCTOR?

22 A. YES, MA'AM.

23 **BY MS. GEORGE:**

24 I DON'T HAVE ANY OTHER QUESTIONS, COMMISSIONER.

25 **BY THE COMMISSIONER:**

1 MR. SPARWASSER, ANY REDIRECT?

2 **BY MR. SPARWASSER:**

3 NO, YOUR HONOR.

4 **BY THE COMMISSIONER:**

5 THE WITNESS IS EXCUSED. YOU MAY CALL YOUR NEXT
6 WITNESS.

7 **BY MR. SPARWASSER:**

8 YES. JENNIFER SUMTER, PLEASE, YOUR HONOR.

9 **BY THE COMMISSIONER:**

10 OKAY. MADAM COURT REPORTER, WILL YOU PLEASE
11 SWEAR THE WITNESS.

12 **BY THE COURT REPORTER:**

13 IF YOU WOULD RAISE YOUR RIGHT HAND, PLEASE.

14 * * * * *

15 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
16 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
17 MATTER HEREIN:

18 **JENNIFER RENEE SINGLETON SUMTER,**

19 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
20 FOLLOWS:

21 **DIRECT EXAMINATION BY MR. SPARWASSER:**

22 Q. YOUR FULL NAME FOR THE RECORD.

23 A. JENNIFER RENEE SINGLETON SUMTER.

24 Q. AND HOW LONG HAVE YOU BEEN MARRIED TO MR. SUMTER?

25 A. TEN -- IT WILL BE TEN YEARS IN JULY.

1 Q. ALL RIGHT. AND PLEASE TELL THE COMMISSIONER ABOUT
2 HIS HAND, IF HE'S HAVING ANY ISSUES WITH HIS HAND.
3 HIS RIGHT HAND I AM REFERRING TO.

4 A. COMMISSIONER, MY HUSBAND, WHEN I FIRST MET HIM HE
5 WAS ACTIVELY WORKING AT E.M.S. HE WENT TO WORK
6 EVERY DAY. HE NEVER MISSED A DAY, NEVER WAS LATE,
7 AND ALWAYS ON TIME. HE USED HIS HAND FOR EVERYTHING
8 THEN. AFTER THIS INJURY HE REALLY CANNOT USE HIS
9 HAND LIKE HE CAN -- HE ATTEMPTS TO DO IT, BUT IT
10 DOESN'T LAST LONG BECAUSE THE PAIN HITS IT. I KNOW
11 MY HUSBAND, AND I KNOW THAT HIS RIGHT HAND IS
12 INJURED.

13 Q. IS HE RESTRICTED IN ANY WAY AS FAR AS PERFORMING ANY
14 ACTIVITIES?

15 A. YES. HE TRIES TO HELP ME AROUND THE HOUSE, BUT --
16 AND AT FIRST, YOU KNOW, I WOULD FUSS ABOUT IT, BUT I
17 REALIZED THAT HIS HAND REALLY -- HE DOESN'T HAVE THE
18 STRENGTH IN IT THAT HE USED TO HAVE.

19 Q. AND, MRS. SUMTER, WHAT ABOUT FROM A PSYCHOLOGICAL OR
20 EMOTIONAL STANDPOINT; HAS THIS AFFECTED MR. SUMTER
21 IN ANY WAY?

22 A. YES. EVER SINCE HIS INJURY HE'S DEPRESSED BECAUSE
23 HE WAS ALWAYS A WORKER. HE CAN'T WORK. THEN WE
24 RECENTLY FOUND OUT THAT HE WAS TERMINATED. WE
25 DIDN'T GET ANY NOTIFICATION OF THAT IN THE MAIL.

1 HE'S AGITATED ALL THE TIME AND DISTURBED. I DON'T
2 HAVE A -- MY MASTER'S DEGREE IS IN BUSINESS. I
3 DON'T HAVE ONE IN PSYCHOLOGY, BUT I KNOW MY HUSBAND,
4 AND HE IS DEFINITELY DISTURBED EMOTIONALLY.

5 Q. DID YOU GO TO THAT APPOINTMENT WITH DR. DYANA
6 LOWNDES-ROSEN?

7 A. I DID.

8 Q. DID DR. ROSEN ASK MR. SUMTER'S HOME ADDRESS?

9 A. NO, SIR. WHEN WE FIRST WALKED IN, SHE ASKED US
10 WHERE WE WERE FROM. I TOLD HER THAT WE WERE FROM
11 SUMTER. SHE TOLD ME THAT THAT'S WHERE HER MOM WAS
12 FROM. THAT'S HOW SHE KNOWS THAT WE WERE FROM
13 SUMTER.

14 Q. AND HOW LONG WERE YOU THERE?

15 A. FORTY-SEVEN MINUTES, TO BE EXACT.

16 Q. ALL RIGHT. IT SAYS HERE, "MR. SUMTER DENIES BEING
17 SUICIDAL, HOMICIDAL, OR UNDULY AGGRESSIVE." WAS
18 THAT EVER ADDRESSED?

19 A. NO, SIR. THE ENTIRE ASSESSMENT WITH HER WAS READING
20 DOCUMENTATION, AS YOU HAVE IN YOUR HAND, FROM ALL OF
21 THE DOCTORS WHO HE HAS SEEN. SHE RAN ACROSS ONE
22 PAPER FROM ONE OF THE DOCTORS AND NOTICED THAT HE
23 WAS ON A MEDICATION, ABILIFY, I BELIEVE THE NAME OF
24 IT, AND SAID, "THAT IS THE CORRECT MEDICINE THAT
25 YOU'RE ON; I WOULDN'T CHANGE ANYTHING." SHE SAID,

1 "FROM WHAT I SEE, FROM WHAT THEY PRESENTED ME WITH,"

2 ---

3 **BY MS. GEORGE:**

4 OBJECTION TO HER OPINION.

5 **WITNESS RESUMES:**

6 A. "--- IT'S SITUATIONAL DEPRESSION."

7 **BY THE COMMISSIONER:**

8 THERE'S AN OBJECTION ON RECORD. I'M GOING TO
9 SUSTAIN THE OBJECTION. HOWEVER, JUST FOR THE
10 RECORD, SHE TESTIFIED AS TO WHAT'S IN THE MEDICAL
11 REPORT.

12 **BY THE WITNESS:**

13 RIGHT.

14 **BY THE COMMISSIONER:**

15 I HAVE THE MEDICAL REPORTS. YOU JUST CAN'T
16 TELL ME WHAT THEY SAY, BUT I HAVE IT WRITTEN DOWN.

17 **BY THE WITNESS:**

18 OKAY. OKAY, THANK YOU.

19 **DIRECT EXAMINATION RESUMED BY MR. SPARWASSER:**

20 Q. DO YOU REMEMBER WHAT OTHER QUESTIONS DR. LOWNDES-
21 ROSEN ASKED EITHER YOU OR MR. SUMTER?

22 A. YES. SHE ASKED ME HOW THE MARRIAGE WAS, AND I TOLD
23 HER THE MARRIAGE WAS GOOD, YOU KNOW. HE'S JUST
24 DEPRESSED, AGITATED ALL THE TIME, AND EASILY
25 AGGRAVATED. AND SHE SAID, "WELL, SEEMS TO ME LIKE

1 YOU'RE SITUATIONAL DEPRESSED. YOU NEED TO BE
2 GRATEFUL FOR WHAT YOU DO HAVE AND STOP FOCUSING ON
3 WHAT YOU DON'T HAVE, AND THERE'S NOTHING ELSE
4 FURTHER THAT I CAN DO." AND WE LEFT. IT WAS
5 EXACTLY 47 MINUTES. WE NEVER TOOK A TEST. HE NEVER
6 WAS ASSESSED TO SEE IF HE WAS SUICIDAL.

7 BY MR. SPARWASSER:

8 ____THANK YOU, MRS. SUMTER. PLEASE ANSWER ANY
9 QUESTIONS MS. GEORGE MAY HAVE FOR YOU.

10 BY MS. GEORGE:

11 I DON'T HAVE ANY FOLLOWUP. THANK YOU.

12 BY THE COMMISSIONER:

13 ALL RIGHT. THE WITNESS IS EXCUSED. DOES THE
14 CLAIMANT HAVE ANY OTHER WITNESSES?

15 BY MR. SPARWASSER:

16 NOTHING FURTHER, YOUR HONOR. NO FURTHER
17 WITNESSES.

18 BY THE COMMISSIONER:

19 ALL RIGHT. THANK YOU. DO THE DEFENDANTS HAVE
20 ANY WITNESSES?

21 BY MS. GEORGE:

22 WE DON'T.

23 BY THE COMMISSIONER:

24 ALL RIGHT. WELL, THEN THAT CONCLUDES THIS
25 PROCEEDING. THANK YOU ALL VERY MUCH.

1 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
2 CONCLUDED AT THE HOUR OF 11:35 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1001704

EMPLOYEE/CLAIMANT: JEROME SUMTER

EMPLOYER: EMS - CHEMIE NORTH AMERICA, INC.

CARRIER: HARTFORD INSURANCE COMPANY OF THE MIDWEST

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **28** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **JEROME SUMTER**, TAKEN ON THE 30TH DAY OF SEPTEMBER, 2013.

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 21ST DAY OF FEBRUARY, 2014.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

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