

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001815

RECEIVED

SEP 25 2015

SC Court of Appeals

Clarence Winfrey, Employee, ... Appellant,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

RECORD ON APPEAL
Volume III of III

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INDEX

Order of Commissioner Beck regarding Motions, dated December 5, 2013	1
Order of Commissioner Beck regarding Form 15III Hearing, dated December 5, 2013	7
Order of Full Commission, dated July 25, 2014	16
Form 50 Filing a Claim with letter of representation, dated June 6, 2013 (accepted claim)	34
WCC Form 15II and WCC Form 19 with Denial Letter, noting copy to Landon Hughey, Esquire, dated September 12, 2013	37
WCC Form 15III Request for Hearing, dated September 18, 2013	40
Subpoena w/ Deposition Notice of Terry Hughes, as managing agent, dated September 18, 2013	43
Motion to Quash Deposition Subpoena and for Production of Adjuster's File, dated September 27, 2013	47
Hearing Notice, dated September 27, 2013	57
Reply to Motion to Quash, dated October 7, 2013	58
Deposition Notice of Claimant served via regular US Mail, dated October 11, 2013	65
Motion for Continuance and/or Postponement, dated October 21, 2013	68
Motion to Compel Deposition, dated October 21, 2013	138
Deposition Notice of Claimant, dated October 29, 2013	147

Claimant's Pre-Hearing Brief and APA Submissions, dated October 30, 2013	150
Reply to Motion for Continuance and/or Postponement, dated October 31, 2013	184
Reply to Motion to Compel Deposition of Claimant, dated October 31, 2013	192
Defendants' Pre-Hearing Brief and APA Submissions, dated November 4, 2013	209
Defendants' Amended Pre-Hearing Brief and Supplemental Notice of Witnesses and Written Medical Reports, dated November 5, 2013	266
Claimant's Form 30 Request for Commission Review, dated December 18, 2013	273
Appellant's Brief to the Full Commission, dated February 28, 2014	293
Respondents' Brief to the Full Commission, dated March 14, 2014	320
Notice of Appeal, dated August 25, 2014	339
Transcript of Hearing, dated November 13, 2013	375
Deposition Transcript of Dr. Jeffrey A. Travis, dated December 16, 2013	403
Deposition Transcript of Dr. Karen Greenfield, dated January 9, 2014	437
Transcript of Hearing, dated January 13, 2014	474
Deposition Transcript of Dr. Lanneau D. Lide, Jr., dated January 23, 2014	535
Transcript of Full Commission Hearing, dated May 19, 2014	583

Letter from Commission regarding failure to file WCC Form 12A and Coverage Form, dated June 12, 2013	611
Check of American Fire and Casualty (Liberty Mutual) for \$200.00 fine, dated July 23, 2013	613
Claimant's Letter to Judicial Director filing Form 15III with Affidavits of Service of September 18, 2013 and September 23, 2013, dated September 23, 2013	614
Claimant's Objection Letter to Defendants' Pre-Hearing Brief and APA Submissions, and Amended Pre-Hearing Brief and Supplemental APA Submissions, dated November 7, 2013	622
Claimant's Letter to Commissioner Beck regarding status of Order, dated November 27, 2013	625
Defendants' Letter to Commissioner Beck, dated December 3, 2013	627
Claimant's Letter to Commissioner Beck requesting Conference, dated December 5, 2013	629
Request for Proposed Order, dated June 6, 2014	630
Certificate of Counsel	632

1 EXPLAINED TO HIM THEY GOT MORE PROBLEMS THAN A--
2 THE LIGHT THAT I WAS WORKING ON. THEY GOT WIRES
3 BUSTING OFF THE SWITCH. AND THAT'S WHAT HAPPENED AT
4 THAT PUBLIX. AND I PUT EVERYTHING BACK TOGETHER AND
5 -- WELL, FIRST I HAD TO GO OUTSIDE TO GET MY
6 COMPOSURE BACK. THEN I CALLED BOBBY RUPPE. ~~THE~~ I
7 TOOK PICTURES OF THE WIRES AND THE SWITCHES AND ALL
8 OF THAT, AND I SENT THEM TO BOBBY.

9 BY MR. MCDANIEL:

10 COMMISSIONER, IF I -- I CAN STOP CLARENCE ~~RIGHT~~
11 THERE JUST A MINUTE. LOOK AT THAT, IF YOU WILL LOOK
12 AT PAGE 78, BOTH OF US ---

13 BY COMMISSIONER BARDEN:

14 YOURS?

15 BY MR. MCDANIEL:

16 --- BOTH THE DEFENDANTS AND WE HAVE PUT IN MR.
17 RUPPE'S STATEMENT CONFIRMING MR. WINFREY'S TESTIMONY
18 ABOUT THAT -- THAT HE CALLED MR. RUPPE.

19 BY COMMISSIONER BARDEN:

20 OKAY.

21 BY MR. MCDANIEL:

22 PAGE 78.

23 BY COMMISSIONER BARDEN:

24 AND THAT'S R-U-P-P-E.

25 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

1 Q. AND THEN SO YOU CALLED?

2 A. I CALLED BOBBY AND TOLD HIM WE'RE HAVING MORE
3 PROBLEMS THAN THE LIGHT WITH THE WIRES WERE BROKEN
4 OFF THE SWITCH. I SENT HIM ALL THE PICTURES OF THE
5 WIRES AND THE WIRE BROKEN OFF. AND HE TOLD ME IF
6 THERE WAS NOTHING ELSE I COULD DO WITH THAT STORE TO
7 GO TO MY NEXT JOB, AND I WENT TO ---

8 Q. DID YOU TELL HIM ABOUT THE SHOCK?

9 A. OH, YEAH. I TOLD HIM I WAS HURT.

10 Q. OKAY.

11 A. I TOLD HIM I WAS HURT. I SAID, "I'VE NEVER BEEN HIT
12 THIS HARD BEFORE IN MY LIFE."

13 Q. OKAY.

14 A. AND THAT'S WHEN I WENT TO MY NEXT JOB, AND THAT WAS
15 I HAD TO DRIVE TO AIKEN, AND IT WAS GETTING WORSE,
16 AND WORSE, AND WORSE DURING THE DAY.

17 BY MR. MCDANIEL:

18 COMMISSIONER, IF YOU WILL LOOK AT PAGE 80.
19 THEY ACTUALLY HAVE GIVEN US A COPY, AND THEY HAD --
20 THEY SUBMITTED AND WHEN -- WHEN THEY SUBMITTED IT,
21 WE WERE ABLE TO OBTAIN A COPY, AND IT'S THE ACTUAL
22 DRIVER'S LOG SHOWING THAT HE WAS -- THE TIME HE WAS
23 AT PUBLIX AND WHAT HE'D LIKE ---

24 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

25 Q. WERE YOU ABLE -- CLARENCE, WERE YOU ABLE TO FINISH -

1 - AFTER THE ELECTRICAL SHOCK, YOU WENT OUTSIDE AND
2 CLEARED YOUR HEAD AND GOT -- GOT YOUR COMPOSURE AND
3 ALL THAT; HOW WERE YOU FEELING? WHERE WERE YOU HURT
4 AND ALL?

5 A. MY ARM AND NECK AND DOWN THROUGH HERE WAS
6 (INDICATING).

7 BY COMMISSIONER BARDEN:

8 YOUR CHEST?

9 BY THE WITNESS:

10 YES, AND IT WAS ---

11 BY COMMISSIONER BARDEN:

12 YOUR LEFT SIDE OF YOUR CHEST?

13 BY THE WITNESS:

14 YES, MA'AM.

15 BY COMMISSIONER BARDEN:

16 OKAY.

17 BY THE WITNESS:

18 AND THEN I'M SAYING THE NEXT DAY WHEN I GOT UP,
19 I WAS GOING TO GO TO WORK.

20 BY COMMISSIONER BARDEN:

21 YOUR SHOULDER AREA?

22 BY THE WITNESS:

23 YES.

24 BY COMMISSIONER BARDEN:

25 WHEN YOU ARE EXTENDING THAT -- WHEN YOU SAY

1 THAT IT'S DOWN. ---

2 BY THE WITNESS:

3 MY -- RIGHT THROUGH HERE (INDICATING).

4 BY COMMISSIONER BARDEN:

5 HOW FAR DID IT EXTEND?

6 BY THE WITNESS:

7 RIGHT -- LEFT THROUGH HERE.

8 BY COMMISSIONER BARDEN:

9 THROUGH YOUR SHOULDER OR YOUR SHOULDER AREA?

10 BY THE WITNESS:

11 YEAH. AND THE NEXT MORNING WHEN I GOT UP, I
12 WAS JUST DRIPPING SWEAT. AND I TRIED TO WORK. I
13 WENT TO THE WAL-MART ON ---

14 BY COMMISSIONER BARDEN:

15 WHEN DID THE SWEATING OCCUR, THE NEXT MORNING?

16 BY THE WITNESS:

17 I MEAN, I WAS DRIPPING.

18 BY COMMISSIONER BARDEN:

19 OKAY.

20 BY THE WITNESS:

21 AND I WENT TO THREE SEVENTY-EIGHT, THE WAL-
22 MART, AND I CAN'T -- I THINK IT WAS EIGHT EIGHTY-ONE
23 OR SOMETHING LIKE THAT, EIGHT -- EIGHT ONE EIGHT. I
24 CAN'T REMEMBER THE NAME OF THE -- THE NUMBER.

25 BY COMMISSIONER BARDEN:

1 THAT'S OKAY.

2 BY THE WITNESS:

3 AND I WAS LAYING ON MY BACK 'CAUSE THAT'S THE --
4 - YOU KNOW WHAT I MEAN? IT HURT IF I STOOD UP AND
5 THEN ON MY HEAD, SO I LAID DOWN. I HAD TO GO TO
6 WHALEY'S TO GET SOME FUSES. I DROVE TO WHALEY'S IS
7 DOWN THE ROAD, CAME BACK, PUT THE FUSES IN. THAT'S
8 WHEN I CALLED BOBBY RUPPE, AND I SAID, "MAN, I CAN'T
9 DO IT. I'M SORRY." I EVEN APOLOGIZED TO PEOPLE IN
10 THE DELI, BUT I WAS IN TOO MUCH PAIN. AND WHEN I
11 LEFT THAT WAL-MART, BOBBY HAD PEGGY DUNCAN CALL ME.
12 SHE WORKS FOR THE COMPANY AND SAID THAT THEY JUST
13 CALLED -- WAL-MART JUST CALLED AND SAID ALL THE
14 FRYERS ARE DOWN. AND I SAID, "WELL, PEGGY, I'M
15 SEVERELY HURT, BUT I WILL GO BACK 'CAUSE I JUST LEFT
16 THERE." SO I WENT BACK AND THEY LOST POWER TO ALL
17 THE FRYERS. THAT'S WHEN I CALLED BOBBY BACK AND
18 SAID "THEY LOST POWER, AND THEY NEED AN
19 ELECTRICIAN." AND I TOLD HIM "I CAN'T DO NOTHING
20 ELSE. I'VE GOT TO GO HOME," AND THAT'S WHAT I DID.

21 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

22 Q. AND THEN WHAT DID YOU DO BETWEEN THEN AND -- WE'RE
23 GOING TO TALK ABOUT THE 27TH IN JUST A MINUTE, BUT
24 BETWEEN THAT -- THE DAY THAT YOU CALLED BOBBY AND
25 SAID "I CAN'T DO IT ANY MORE; I'M GOING HOME," DID

1 YOU -- WHAT DID YOU DO BETWEEN THEN AND WHEN YOU
2 FINALLY WENT TO I BELIEVE WE'RE GOING TO TALK ABOUT
3 THE MINUTE CLINIC IN A SECOND?

4 A. YEAH, THAT WAS A MONDAY; THAT WAS A HOLIDAY.

5 Q. SO WHAT DID YOU DO -- SO OVER THE WEEKEND?

6 A. OH, I HAD -- I WENT BY WALGREENS AND BOUGHT MOTRIN
7 AND TYLENOL, YOU KNOW, ANYTHING TO WHAT I THOUGHT
8 WOULD HELP.

9 BY COMMISSIONER BARDEN:

10 SO YOU WERE EXPERIENCING PAIN ---

11 BY THE WITNESS:

12 BAD, SEVERE.

13 BY COMMISSIONER BARDEN:

14 OKAY.

15 BY THE WITNESS:

16 YEAH.

17 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

18 Q. AND IT WAS -- IT -- IT WAS IN THE SAME PLACE AS IT
19 WAS FROM THE -- FROM THE MINUTE OF THE SHOCK?

20 A. YES.

21 Q. IS THAT CORRECT?

22 A. YES, IT WAS MY ARM. IT WENT UP TO MY EAR, AND IT
23 DROPPED LIKE THAT (INDICATING). BUT I JUST ATE
24 MOTRIN AND TYLENOL AND THINGS LIKE THAT, IBUPROFEN.
25 I WAS TRYING TO GET THE PAIN TO GO AWAY, AND I JUST

1 -- I LAID IN BED. THEN MONDAY WAS A HOLIDAY, ~~AND~~ I
2 WENT TO THE MINI CLINIC AT THE C.V.S. ON LAKE ~~MURRAY~~
3 BOULEVARD, AND I SAT THERE FOR AN HOUR AND TWENTY
4 MINUTES. THE NURSE FINALLY CALLED ME IN, AND ~~SHE~~
5 GOES, "I CAN'T DO NOTHING FOR YOU. YOU'RE IN ~~TOO~~
6 MUCH PAIN." I MEAN, SHE COULD TELL BY JUST LOOKING
7 AT ME. AND I SAID, "WHY DID YOU LET ME SIT OUT
8 THERE FOR A HOUR AND TWENTY MINUTES?" SHE SAID SHE
9 CAN'T TALK AROUND OTHER PEOPLE, YOU KNOW WHAT I
10 MEAN, SO SHE HAD TO WAIT 'TIL IT WAS MY TURN TO CALL
11 ME IN. I CALLED BOB SMITH. HE'S PARTIAL OWNER OF
12 THIS COMPANY. I SAID, "BOB, Y'ALL GOT TO -- BOB
13 SMITH IS THE ONE WHO CAME HERE TO INTERVIEW ME;
14 HE'S IN GEORGIA. AND I SAID, "WE GOT TO DO
15 SOMETHING." I SAID, "I'M -- I'M -- I'M IN A LOT OF
16 PAIN. I'VE GOT TO GO TO THE DOCTOR." AND AT THE
17 C.V.S. CLINIC, THE LADY TOLD ME, THE NURSE, SAID
18 "YOU HAVE TO HAVE A DOCTOR. YOU NEED A DOCTOR,"
19 AND THAT'S WHEN I CALLED BOB SMITH WHEN I LEFT
20 THERE, AND ITOLD HIM, I SAID, "I MEAN, WHAT -- I
21 DON'T KNOW IF Y'ALL ARE GOING TO PAY THIS OUT OF
22 POCKET OR WHAT ARE Y'ALL GOING TO DO, BUT I GOT TO
23 GO TO THE DOCTOR." AND THEN THAT FOLLOWING MONDAY -
24 - I MEAN THAT TUESDAY, I WENT TO DR. GREENFIELD AT
25 URGENT CARE, AND SHE'S BASICALLY THE ONE THAT SAVED

1 MY LIFE.

2 Q. NOW, ALSO ON MONDAY THE 27TH, DID YOU -- WHAT KIND
3 OF A -- OF -- OF EQUIPMENT DID YOU HAVE TO
4 COMMUNICATE WITH BOBBY RUPPE? WHAT DID YOU USE TO
5 COMMUNICATE?

6 A. I HAD A COMPANY CELL PHONE, AND THEY FAX -- THEY
7 SENT ALL OF MY WORK ORDERS ON THE IPAD AND WENT BACK
8 AND FORTH.

9 Q. SO YOU HAD A COMPANY PHONE AND A COMPANY IPAD?

10 A. YES.

11 Q. SO THE COMMUNICATIONS YOU'RE TALKING ABOUT WITH MR.
12 RUPPE AND EVERYBODY ELSE WAS EITHER ON THAT COMPANY
13 PHONE OR THAT COMPANY IPAD?

14 A. RIGHT.

15 Q. OKAY. NOW, WHERE -- DO YOU STILL HAVE THOSE?

16 A. NO. THEY CAME AND GOT THE VAN I THINK THE FIRST
17 WEEK I WAS IN THE HOSPITAL.

18 Q. NOW, SO THE -- THE COMPANY PHONE ANE THE COMPANY
19 IPAD, THAT ---

20 A. THEY COME AND GOT IT, YEAH.

21 Q. OKAY. THAT'S FINE. AND BUT THE REASON I SAY THAT
22 IS THAT WE DO HAVE THE BENEFIT ON PAGE 79, YOU
23 ACTUALLY HAD COMMUNICATED VIA THE IPAD WITH MR.
24 RUPPE?

25 A. YEAH.

1 Q. ON THE 27TH?

2 A. YES. HE WANTED ME TO WRITE SOMETHING ABOUT WHAT
3 HAPPENED. AND I TOLD HIM BASICALLY I WAS TRACING
4 THE WIRE DOWN FROM THE LIGHTS, AND THE THING BLEW
5 UP. THE WIRE WAS BROKEN OFF THE SWITCH.

6 Q. OKAY.

7 A. AND ---

8 Q. OKAY. AND -- AND SO -- AND SO THE SERIES OF --
9 WE'VE LOOKED AT THESE BEFORE, CLARENCE, ON PAGE 79,
10 THIS SERIES OF COMMUNICATION BETWEEN YOU AND MR.
11 RUPPE. THAT'S -- THAT'S THE COMMUNICATIONS YOU HAD
12 THAT DAY ON THE 27TH?

13 A. I BELIEVE SO. YES.

14 Q. ALL RIGHT. NOW, THEN ON THE 20 -- SO TELL ME BASED
15 ON YOUR CONVERSATIONS WITH THE -- WHO WAS THE
16 GENTLEMAN FROM THE COMPANY THAT YOU TALKED TO?

17 A. FOR?

18 Q. OTHER -- NO -- THAN MR. RUPPE?

19 A. OH. BOB SMITH.

20 Q. ALL RIGHT. AND THEN YOU TALKED TO MR. RUPPE, AND
21 THEN WHAT DID THEY TELL YOU TO DO?

22 A. THE REASON I TALKED TO BOB SMITH WAS BECAUSE HE'S
23 THE ONE THAT GOT THE PUBLIX ACCOUNT. THAT WAS HIS
24 ACCOUNT, PUBLIX. AND HE'S A VERY NICE MAN, AND I
25 JUST TOLD HIM "WE GOT TO DO SOMETHING FOR ME. YOU

1 KNOW, WE GOT TO PUT THIS UNDER WORKMAN'S COMP, OR
2 Y'ALL GOING TO PAY FOR IT OUT OF CASH. LET ME KNOW
3 SOMETHING, PLEASE, YOU KNOW WHAT I MEAN?" AND SO
4 THE NEXT DAY THAT'S WHEN I WENT TO GREENFIELD. I --
5 I PAID HER FOR MY VISIT, CASH. SHE, DR. GREENFIELD,
6 I THINK TALKED TO PEGGY, AND THAT'S -- SHE GOT THE
7 WORKMAN'S COMP INSTATED 'CAUSE THIS HAPPENED AT WORK
8 AND ---

9 BY MR. MCDANIEL:

10 COMMISSIONER, DR. GREENFIELD'S INITIAL REPORT
11 IS FOUND ON PAGE 66.

12 BY COMMISSIONER BARDEN:

13 THANK YOU.

14 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

15 Q. ALL RIGHT. TELL ME -- BASICALLY BETWEEN THE DATE OF
16 THE ELECTRICAL SHOCK AND -- AND WHEN YOU FINALLY
17 WENT TO THE MINUTE CLINIC AND THEN THE NEXT DAY,
18 WHAT WERE YOU HOPING WAS GOING TO HAPPEN WITH THIS
19- PAIN THAT YOU WERE HAVING IN THE LEFT HAND, ARM, AND
20 ALL THAT?

21 A. I THOUGHT THE IBUPROFEN, MOTRIN WAS GOING TO MAKE IT
22 GO AWAY, BUT LIKE I SAY EVERY DAY IT JUST GOT WORSE
23 AND WORSE, I MEAN, EXCRUCIATING.

24 Q. AND IT WAS ALL UP IN THROUGH YOUR HAND, ARM, LEFT --
25 -

1 A. ALL THE WAY UP.

2 Q. --- LEFT SHOULDER?

3 A. TO MY EAR.

4 Q. AND UP IN WHAT YOU'VE DESCRIBED IT ---

5 A. --- AND DOWN THROUGH HERE (INDICATING).

6 Q. OKAY. AND REFERRING TO THE FRONT PART OF YOUR
7 SHOULDER?

8 A. YEAH.

9 Q. OKAY. ALL RIGHT. NOW, TELL ME WHAT DR. GREENFIELD
10 DID FOR YOU, AND TELL ME ABOUT WHAT HAPPENED AFTER
11 THAT?

12 A. I WENT TO HER. I JUST WANTED SOME MUSCLE RELAXER,
13 AND I WAS GOING TO GO BACK TO WORK. AND A MATTER OF
14 FACT, I THINK SHE WROTE OUT A PRESCRIPTION FOR
15 MUSCLE RELAXER, FLEXERIL I THINK IT WAS. AND THEN
16 SHE PUT THIS LITTLE THING ON MY FINGER. IT MONITORS
17 I GUESS YOUR HEART BEAT. AND SHE SAID, "WHOA,
18 THERE'S SOMETHING WRONG." SHE SAID, "I THINK" -- I
19 -- I CAN'T REMEMBER EXACTLY. IT WAS LIKE 112 OVER
20 SOMETHING, I CAN'T REMEMBER, BEATS PER MINUTE. IT'S
21 SUPPOSED TO BE 70 BEATS OR SOMETHING LIKE THAT, AND
22 IT WAS 112. AND THAT'S WHEN SHE DID THE WHERE YOU
23 LOOK WITH THE -- THEY PUT THIS GEL ON YOU, AND YOU
24 CAN LOOK, YOU KNOW, AND AT THE HEART. SHE SAID I
25 DONE BLEW A HOLE IN MY HEART, AND THAT'S WHEN SHE

1 STARTED FREAKING OUT, AND SHE SENT ME TO DASGUPTA AT
2 LEXINGTON. AND DASGUPTA, I MEAN I WAS RIGHT ACROSS
3 THE STREET FROM THE LEXINGTON HOSPITAL. HE GOT AN
4 AMBULANCE TO DRIVE ME FROM ACROSS -- THAT'S WHERE
5 DR. LIDE WAS WAITING ON ME. AND THAT'S WHEN I MET
6 DR. TRAVIS, WHICH IS A -- A -- A -- PREVENTATIVE --
7 GOOD PEOPLE.

8 Q. AND THEN YOU -- THEY IMMEDIATELY TOOK YOU INTO
9 SURGERY RIGHT AFTER THAT, AFTER THEY DID SOME
10 TESTING?

11 A. MY MEMORY'S NOT SO GREAT, BUT I REMEMBER MEETING DR.
12 LIDE. HE STUCK SOME STUFF INTO MY VEIN AND LOOK --
13 LOOKED AT MY HEART, AND THEN THEY SHAVED ME. AND I
14 THINK IT WAS THE NEXT MORNING I BELIEVE, I MIGHT BE
15 WRONG, THAT'S WHEN TRAVIS -- DR. TRAVIS, AND HE TOLD
16 ME THAT IT WAS A GOOD CHANCE I WOULDN'T BE COMING
17 BACK OUT OF SURGERY. SO THAT'S HOW ALL THAT WENT.

18 BY MR. MCDANIEL:

19 COMMISSIONER, YOU'LL FIND IT IN DR. TRAVIS'S
20 DEPOSITION, DR. TRAVIS SAID THAT WITH THE
21 VENTRICULAR SEPTAL DEFECT, THE HOLE IN HIS HEART,
22 BETWEEN -- THAT IT'S -- MANY TIMES PEOPLE DON'T LIVE
23 THROUGH THAT SURGERY, AND THAT CLARENCE WAS VERY
24 FORTUNATE TO HAVE LIVED THROUGH IT, AND THAT'S --
25 THAT'S IN HIS DEPOSITION SO...

1 BY COMMISSIONER BARDEN:

2 I'LL READ IT ALL.

3 BY MR. MCDANIEL:

4 I KNOW.

5 BY COMMISSIONER BARDEN:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

8 Q. AND SINCE THAT TIME, YOU'VE BEEN UNDER THE TREATMENT
9 OF DR. LIDE AND DR. TRAVIS?

10 A. TRAVIS WANTED ME TO COME BACK IN TEN MONTHS SO HE
11 CAN CHECK THE PATCH. AND I'VE BEEN SEEING DR. LIDE
12 UNTIL THIS -- ALL THIS HAPPENED, AND I DON'T HAVE NO
13 MONEY.

14 Q. HOW ARE YOU -- HOW -- HOW ARE ABLE TO PAY FOR YOUR
15 MEDICATIONS NOW THAT YOU ---

16 A. I WENT TO DR. LIDE THE LAST TIME AND I SAID, "WHAT
17 PILLS DO I -- IF I DON'T GET THESE PILLS, WILL I
18 DIE?" AND HE SAID, "MOST LIKELY." AND THAT'S WHEN I
19 SAID, "PLEASE GIVE ME WHAT I NEED TO EAT," AND HE
20 CUT IT DOWN TO FIVE PILLS. SO -- BUT I FOUND A
21 CHEAPER PLACE, WHICH WAS BI-LO GROCERY STORE, TO
22 HAVE THEM FILLED. AND IF IT WASN'T FOR FRIENDS
23 HELPING ME, I WOULDN'T BE ABLE TO AFFORD THEM.

24 Q. AND YOU'VE BEEN OUT OF WORK SINCE THEN?

25 A. YEAH.

1 Q. AND SO SINCE THEY'VE STOPPED BENEFITS YOU'VE HAD NO
2 MONEY COMING IN. DO YOU HAVE ANY OTHER SOURCE OF
3 INCOME?

4 A. FRIENDS HAVE BEEN HELPING ME; THAT'S IT.

5 Q. I BELIEVE ONE FRIEND UNDER THE DEALERSHIP EXTENDED A
6 LOAN; IS THAT RIGHT?

7 A. OH, YEAH. MR. WAYNER HELPED ME.

8 Q. AND THEN ALSO WE'VE NOW GOT YOU A -- A -- A LOAN?

9 A. YEAH. THE LOAN FOR THE -- AT HICKORY WHATEVER IT
10 WAS. AND MY LANDLORD, SHE BRINGS ME FOOD EVERY
11 NIGHT, JUST ABOUT EVERY NIGHT, TO MAKE SURE I'M
12 EATING.

13 Q. OKAY. LET'S TALK BRIEFLY ABOUT ONE OTHER THING. IT
14 -- IT'S -- IT'S IN HIS RECORD, BUT BASICALLY DR.
15 LIDE -- I MEAN EXCUSE ME -- DR. TRAVIS, WHO'S THE
16 CARDIOVASCULAR SURGEON, WHAT DID HE TELL YOU ABOUT
17 THAT HE FOUND IN -- IN YOUR HEART?

18 A. HE SAID HE HAS PICTURES AND VIDEO OF WHERE THE POWER
19 WENT IN ---

20 BY MR. BAYNE:

21 WE'LL OBJECT, YOUR HONOR. TO ANY ---

22 BY COMMISSIONER BARDEN:

23 SUSTAINED AS TO HEARSAY.

24 BY MR. BAYNE:

25 --- ANY REFERENCE OF PICTURES OR VIDEOS.

1 BY MR. MCDANIEL:

2 WELL, YOU KNOW.

3 BY COMMISSIONER BARDEN:

4 I'LL READ THE RECORDS, AND THEY'LL SPEAK FOR
5 THEMSELVES.

6 BY MR. MCDANIEL:

7 I KNOW YOU WILL. IT'S ---

8 BY MR. BAYNE:

9 THOSE HAVE NEVER BEEN PRODUCED, SO WE DON'T
10 HAVE ---

11 BY COMMISSIONER BARDEN:

12 OH, OKAY. WELL, I THOUGHT YOU WERE OBJECTING
13 TO HEARSAY, BUT YOU DON'T HAVE THOSE.

14 BY MR. BAYNE:

15 AND -- AND TO HEAR -- I MEAN IT'S HEARSAY AS
16 WELL.

17 BY COMMISSIONER BARDEN:

18 OKAY. ALL RIGHT.

19 BY MR. MCDANIEL:

20 WELL, THAT'S FINE, YOU KNOW.

21 BY COMMISSIONER BARDEN:

22 ALL RIGHT. GO AHEAD, MR. MCDANIEL.

23 BY MR. MCDANIEL:

24 THAT'S ALL RIGHT, COMMISSIONER. IT -- IT --
25 THE FACT THAT HE FOUND A CLEAR ENTRANCE AND EXIT

1 WOUND, HIS TESTIMONY, HIS BACKGROUND EXPERIENCE IS
2 ALL THE ---

3 BY COMMISSIONER BARDEN:

4 I WILL READ IT, SIR.

5 BY MR. MCDANIEL:

6 I KNOW YOU WILL, AND I -- I'M NOT GOING TO
7 BELABOR IT ANY LONGER. I -- AT THIS ---

8 BY COMMISSIONER BARDEN:

9 OKAY.

10 BY MR. MCDANIEL:

11 I HAVE NO FURTHER QUESTIONS.

12 BY COMMISSIONER BARDEN:

13 YES, SIR. THANK YOU. ALL RIGHT. MR. BAYNE.

14 BY MR. BAYNE:

15 THANK YOU, COMMISSIONER.

16 BY COMMISSIONER BARDEN:

17 AND YOU ARE FREE TO USE THE CHAIR OR STAND OVER
18 HERE AS WELL.

19 BY MR. BAYNE:

20 CERTAINLY.

21 BY COMMISSIONER BARDEN:

22 I THINK IT'D BE EASIER FOR HIM AS FAR AS
23 PROJECTING HIS VOICE TOO.

24 BY MR. BAYNE:

25 SURE.

1 BY THE WITNESS:

2 THANK YOU.

3 BY COMMISSIONER BARDEN:

4 YES, SIR. IF YOU WANT TO SIT YOU CAN. YOU
5 MIGHT WANT TO SPREAD YOUR STUFF OUT SO...

6 BY MR. BAYNE:

7 SURE. IT'LL MAKE IT EASIER. THANK YOU.

8 CROSS EXAMINATION BY MR. BAYNE:

9 Q. MR. WINFREY, HOW ARE YOU TODAY?

10 A. ALL RIGHT.

11 Q. I JUST WANT TO TALK A LITTLE BIT ABOUT SOME OF THE
12 STUFF YOU JUST TESTIFIED TO. YOU -- YOU TALKED
13 ABOUT THE WIRE, THE LOOSE WIRE HIT YOU ON THE LEFT
14 HAND; IS THAT CORRECT?

15 A. YEAH.

16 Q. AND THAT IS -- THAT'S WHAT YOU CONSIDER TO BE THE
17 ENTRANCE WOUND FOR ---

18 A. THAT'S WHAT ---

19 Q. --- THE ELECTRICAL SHOCK?

20 A. THAT'S WHAT DR. GREENFIELD TOLD ME. IT WENT IN HERE
21 (INDICATING). IT CAME THROUGH MY TOES, AND I WAS
22 TOLD THAT'S WHERE THE POWER TRIED TO GET OUT.

23 Q. OKAY. YOU DON'T HAVE AN EXIT WOUND ON YOUR TOES, DO
24 YOU?

25 A. NO. THEY'RE JUST NUMB.

1 Q. TO -- TO YOUR KNOWLEDGE, ARE THERE ANY EXIT WOUNDS
2 ANYWHERE IN YOUR BODY FROM THIS ELECTRICITY?

3 A. NOT THAT I KNOW OF.

4 Q. OKAY. YOU ALSO TALKED ABOUT AFTER THE ELECTRICAL
5 SHOCK, YOU WERE POINTING TO YOUR LEFT ARM, YOUR
6 SHOULDER, UP INTO YOUR NECK, AND I BELIEVE THE
7 COMMISSIONER WAS TRYING TO CLARIFY. YOU WEREN'T
8 EXPERIENCING ANY CHEST PAIN AT THAT TIME, WERE YOU?

9 A. WELL, THIS IS CHEST TO ME (INDICATING).

10 Q. OKAY. SO YOU WERE HAVING CHEST PAIN?

11 A. WELL, I MEAN, WHEN IT ORIGINALLY HAPPENED, AT THIS -
12 - ALL THIS HURT (INDICATING) HERE AND DOWN THROUGH
13 HERE.

14 Q. OKAY.

15 BY COMMISSIONER BARDEN:

16 SO WOULD YOU SAY, JUST SO THAT THE RECORD IS
17 CLEAR, WHEN YOU SAY SHOULDER I KNOW -- WELL, YOU'RE
18 POINTING BELOW ---

19 BY THE WITNESS:

20 YEAH. RIGHT -- RIGHT THROUGH IT -- AND THEN
21 DROPPED DOWN (INDICATING).

22 BY COMMISSIONER BARDEN:

23 SO YOU MEAN THE FRONT OF YOUR SHOULDER AND YOUR
24 ---

25 BY THE WITNESS:

1 YES.

2 BY COMMISSIONER BARDEN:

3 --- TOP OF YOUR SHOULDER?

4 BY THE WITNESS:

5 YES, MA'AM.

6 BY COMMISSIONER BARDEN:

7 ALL THE WAY UP TO YOUR NECK?

8 BY THE WITNESS:

9 YES, MA'AM.

10 BY COMMISSIONER BARDEN:

11 AND INTO YOUR HEAD?

12 BY THE WITNESS:

13 YES, MA'AM.

14 BY COMMISSIONER BARDEN:

15 OKAY.

16 CROSS EXAMINATION RESUMED BY MR. BAYNE:

17 Q. SO YOU WERE HAVING PAIN IMMEDIATELY AFTER THE SHOCK
18 IN YOUR CHEST; IS THAT RIGHT?

19 A. COMING DOWN, YE'AH.

20 Q. OKAY. IN YOUR EMAIL, AND IT'S DEFENDANT'S 99, I
21 BELIEVE WE'VE ALREADY TALKED ABOUT IT. IT WAS A
22 CALL BETWEEN BOBBY RUPPE AND YOURSELF THAT YOU SENT
23 FROM THE IPAD. YOU STATED THAT ---

24 BY COMMISSIONER BARDEN:

25 THIS IS MAY 22ND?

1 BY MR. BAYNE:

2 MAY ---

3 BY COMMISSIONER BARDEN:

4 I MEAN 27TH?

5 BY MR. BAYNE:

6 MAY 27, 2013.

7 BY COMMISSIONER BARDEN:

8 THANK YOU. I GOT IT. THANK YOU.

9 CROSS EXAMINATION RESUMED BY MR. BAYNE:

10 Q. YOU STATED THAT YOU GOT HIT BY POWER, JERKED MY NECK
11 TO GET AWAY FROM THE ROTISSERIE; DO YOU REMEMBER
12 SAYING THAT?

13 A. OH, YEAH. UH-HUH. IF IT WASN'T FOR THE FRYER, I'D
14 A BEEN ON MY BACK.

15 Q. DID YOU MAKE ANY MENTION AT THAT TIME OF PAIN IN
16 YOUR LEFT ARM OR IN YOUR CHEST?

17 A. I TOLD BOBBY "I'VE NEVER BEEN HIT THIS HARD BEFORE
18 IN MY LIFE."

19 Q. OKAY. DID YOU ASK -- DID YOU TELL HIM THAT YOU WERE
20 HAVING PAIN IN YOUR LEFT ARM OR IN YOUR CHEST AT
21 THAT TIME?

22 A. I SENT HIM PICTURES.

23 Q. OKAY. AGAIN MY -- MY QUESTION WAS DID YOU TELL
24 BOBBY THAT YOU WERE HAVING PAIN? DID YOU TELL BOBBY
25 YOU WERE HAVING PAIN IN EITHER YOUR LEFT ARM OR YOUR

1 CHEST AT THAT TIME?

2 A. I CAN'T SAY EXACTLY 'CAUSE I DON'T REALLY REMEMBER.

3 Q. OKAY.

4 A. BUT I THINK I DID TELL HIM IT HIT ME IN THE FINGER,
5 AND I BELIEVE I DID, BUT I MIGHT BE WRONG.

6 BY MR. BAYNE:

7 COMMISSIONER, I WOULD POINT YOU ALSO TO
8 DEFENDANTS' NUMBER 98, WHICH IS THE LETTER FROM
9 BOBBY RUPPE, THAT INDICATES ONLY PAIN IN HIS NECK AT
10 THE TIME.

11 CROSS EXAMINATION RESUMED BY MR. BAYNE:

12 Q. I WANT TO TALK ABOUT ALSO AFTER THIS -- THIS SHOCK,
13 WHICH OCCURRED I BELIEVE IN LOOKING AT YOUR DAILY
14 DRIVER'S LOG AT DEFENDANTS' 100, YOU ARRIVED AT
15 PUBLIX AT ABOUT 5:30 IN THE MORNING; IS THAT RIGHT?

16 A. I THINK IT WAS MORE LIKE 6:00.

17 Q. OKAY. WOULD IT HELP YOU TO LOOK AT THE DRIVER'S LOG
18 REAL QUICK JUST TO GET THE TIMES?

19 A. I CAN'T; I AIN'T GOT MY READING GLASSES.

20 Q. OKAY. IF IT SAYS START TIME 5:30, END TIME 6:00.
21 START TIME 6:00, END TIME 7:45, WOULD THAT BE ABOUT
22 RIGHT?

23 A. IT SOUNDS -- IT'S CLOSE.

24 Q. OKAY. SO THE SHOCK THAT -- THAT YOU HAD ON YOUR
25 LEFT HAND OCCURRED SOME TIME BETWEEN 5:30 AND 7:45

1 WHEN YOU LEFT PUBLIX?

2 A. IT HAPPENED ABOUT 7:15, 7:20, 'CAUSE I CALLED BOBBY.
3 BOBBY WAS STILL AT HOME.

4 Q. SO IT WAS SOME TIME BETWEEN 7:15 AND 7:20 IN THE
5 MORNING ---

6 A. YES.

7 Q. --- AT PUBLIX. OKAY. AFTER THE PUBLIX, YOU WENT TO
8 A WAL-MART FROM IT LOOKS LIKE ABOUT 7:45 UNTIL
9 10:15; IS THAT ABOUT RIGHT?

10 A. DOWN IN AIKEN.

11 Q. OKAY. THAT WAS THE AIKEN WAL-MART?

12 A. AND I WORKED ON TWO ROTISSERIES THERE, AND I PUT
13 COTTER PINS IN THEM, GOT THEM RUNNING. AND TOLD
14 BOBBY "I CAN'T -- I'M DONE." I COULDN'T DO NOTHING
15 ELSE, AND IT WAS GETTING WORSE AND WORSE.

16 Q. AND THAT WAS ABOUT 12:15 WHEN YOU ENDED THE DAY?

17 A. LIKE THREE-AND-A-HALF HOURS, SO I GOT BACK PROBABLY
18 AT 1:30 I THINK IT WAS -- 1:00. _

19 Q. OKAY. AND YOU STATED YOU WENT HOME AFTER THAT?

20 A. YEAH.

21 Q. AFTER THAT LAST APPOINTMENT. ALL RIGHT. BUT YOU
22 DIDN'T START EXPERIENCING ANY SWEATING UNTIL THE
23 NEXT MORNING?

24 A. NEXT MORNING 'CAUSE I MEAN I JUST WANTED TO WORK. I
25 LOVE MY JOB. AND WHEN I WAS PUTTING MY BOOTS ON, IT

1 LOOKED LIKE RAIN.

2 Q. AND THE -- WHAT TIME DID YOU WAKE UP THAT MORNING?

3 A. I USUALLY WAKE UP AROUND 6:00 EVERY MORNING.

4 Q. SO IT WAS ABOUT 24 HOURS, 23 HOURS AFTER THE SHOCK
5 THAT YOU STARTED EXPERIENCING ALL THAT SWEATING?

6 A. YEAH. WELL, I MEAN, I -- I WOKE UP SWEATING, YOU
7 KNOW.

8 Q. YOU WOKE UP SWEATING. ALL RIGHT. AND YOU WENT TO
9 WORK THAT DAY AT A WAL-MART, WHERE WAS THAT WAL-MART
10 AGAIN?

11 A. THREE SEVENTY-EIGHT, I THINK IT WAS EIGHT EIGHT ONE
12 OR EIGHT ONE EIGHT.

13 Q. OKAY. AND THE -- THE DRIVER'S LOG, WHICH IS AT PAGE
14 101 OF THE DEFENDANTS' APAs SAYS START TIME OF 8:00
15 A.M. AND END TIME OF 3:30; IS THAT CORRECT?

16 A. WELL, LIKE I SAID I -- I WENT TO WHALEY'S. I GOT
17 SOME FUSES, CAME BACK, PUT THE FUSES IN, AND I
18 COULDN'T DO IT NO MORE. I EVEN APOLOGIZED TO THE
19 PEOPLE IN THE DELI. THEY ALL SAID SORRY. I MEAN I
20 WAS IN TOO MUCH PAIN. I LEFT AND THEN THEY -- PEGGY
21 DUNCAN CALLED ME, AND SHE'S NOT THE NORMAL -- BOBBY
22 RUPPE OR, YOU KNOW, THE GUY NAMED DREW THAT WOULD
23 CALL, BUT SOMEWHERE IN THERE PEGGY CALLED ME AND
24 SAID ALL THE FRYERS WERE DOWN. AND I SAID, "WELL,
25 PEGGY, I'M SEVERELY HURT," AND I SAID, "I'M BAD." I

1 SAID, "BOBBY KNOWS THIS." AND I SAID, "BUT I JUST
2 LEFT THERE, AND I'LL TURN AROUND AND GO BACK." AND
3 THAT'S -- I CHECKED THE POWER, AND THEY LOST ALL THE
4 POWER TO ALL THE FRYERS SO THEY HAVE TO -- WAL-MART,
5 IF IT'S A POWER ISSUE THEY HAVE TO HAVE AN
6 ELECTRICIAN. I CAN'T DO IT. DO YOU SEE WHAT I'M
7 SAYING? WORKING ON EQUIPMENT I CAN DO, CERTAIN
8 EQUIPMENT. SO I TOLD THEM THEY HAD LOST THE POWER
9 AND THEY GOT TO GET A ELECTRICIAN. THAT'S THE THIRD
10 TIME THAT I'VE BEEN AT THE SAME WAL-MART WHERE THEY
11 LOST POWER TO THEM FRYERS.

12 Q. SO MY QUESTION WAS YOUR TIME SHEET SAYS 8:00 A.M.
13 'TIL 3:30, WAS -- WERE YOU THERE UNTIL 3:30, OR DO
14 YOU THINK YOU LEFT BEFORE THEN?

15 A. I -- I CAN'T REMEMBER.

16 Q. OKAY. WHO -- WHO FILLS OUT THESE TIME SHEETS?

17 A. I THINK I JUST -- THIS IS IN THEM, RIGHT?

18 BY COMMISSIONER BARDEN:

19 JUST -- YOU CAN'T GIVE ME ---

20 BY THE WITNESS:

21 I CAN'T LOOK ---

22 BY COMMISSIONER BARDEN:

23 --- JUST BEST YOU CAN. IT'S ALL RIGHT.

24 BY THE WITNESS:

25 AGAIN, I MEAN, IT'S HARD.

1 BY COMMISSIONER BARDEN:

2 IF YOU DON'T KNOW THE ANSWER, YOU DON'T ~~KNOW~~
3 THE ANSWER.

4 BY THE WITNESS:

5 I DID -- ON THE IPAD, I WRITE DOWN WHERE I
6 WENT, AND THERE'S TIME AND THEN IF I WENT TO FOUR OR
7 FIVE PLACES THAT DAY, THAT'S HOW YOU DETERMINE THE
8 TIME AND EVERYTHING, TIME THAT YOU LEAVE, TIME YOU
9 GET HOME.

10 CROSS EXAMINATION RESUMED BY MR. BAYNE:

11 Q. SO YOU WOULD OF ---

12 A. SO I THINK ---

13 Q. --- YOU WOULD HAVE SUBMITTED THOSE TIMES?

14 A. I THINK SO. OKAY.

15 Q. OKAY.

16 A. I'M NOT SURE.

17 Q. THAT'S FINE. SO YOU -- YOU ARRIVED HOME SOMEWHERE
18 AROUND 3:30 THEN?

19 A. I'M -- I'M SAYING I'M NOT SURE.

20 Q. OKAY. BUT IF THAT'S WHAT YOU SUBMITTED THAT WOULD
21 PROBABLY BE CORRECT?

22 A. YES.

23 Q. OKAY. IN YOUR DEPOSITION THAT WE TOOK, DO YOU
24 RECALL ---

25 A. YOU AND ME?

1 Q. --- GIVING YOUR DEPOSITION?

2 A. YEAH.

3 Q. YES, SIR. I HAD ASKED YOU SEVERAL TIMES IN VARIOUS
4 COURSES OF YOUR TREATMENT BOTH THE DAY OF, THE DAY
5 AFTER, THE TIMES THAT YOU TALKED TO BOBBY RUPPE, IF
6 YOU HAD TALKED ABOUT ANY CHEST PAIN AT ALL; DO YOU
7 REMEMBER THE ANSWERS YOU GAVE AT THAT TIME?

8 A. I BELIEVE I SAID ALL THIS PAIN UP HERE (INDICATING)
9 WAS SO EXCRUCIATING I COULDN'T FEEL NOTHING ELSE. I
10 BELIEVE THAT'S WHAT I SAID, I MEAN ---

11 Q. CORRECT. AND ---

12 BY COMMISSIONER BARDEN:

13 AND YOU'RE POINTING TO YOUR SHOULDER AND TO
14 YOUR ---

15 BY THE WITNESS:

16 MY ARM. THERE, YEAH. MY -- WENT THROUGH HERE
17 AND DOWN MY BACK. YOU KNOW WHAT I MEAN?

18 CROSS EXAMINATION RESUMED BY MR. BAYNE: - -

19 Q. - AND MY -- MY QUESTION IS TODAY YOU'VE TALKED ABOUT
20 YOU TALKED TO BOBBY ABOUT SOME CHEST PAIN, AND I'D
21 LIKE TO -- TO READ YOU A -- A QUESTION AND YOUR
22 ANSWER, AND LET ME KNOW IF THAT HAS CHANGED OR IF --
23 IF YOUR ANSWER IS STILL THE SAME. YOU WERE ASKED,
24 AND THIS IS ON PAGE 19 OF MR. WINFREY'S DEPOSITION
25 AT LINE 24, "ON THE NEXT DAY THAT YOU WORKED, DID

1 YOU TALK TO BOBBY AT ALL ABOUT HAVING CHEST PAIN?"
2 AND YOUR ANSWER WAS, "I JUST TOLD HIM I HAD A LOT OF
3 PAIN IN MY NECK"; IS THAT CORRECT?

4 A. MY ARM AND NECK, YEAH.

5 Q. OKAY. SO YOU WEREN'T -- AT THE TIME, YOU DID NOT
6 TELL HIM YOU WERE HAVING ANY CHEST PAIN; IS THAT
7 RIGHT?

8 A. AND LIKE I SAID THEN TOO WAS THIS PAIN WAS SO GREAT
9 I COULDN'T FEEL NOTHING ELSE.

10 Q. OKAY. WHEN YOU WENT TO DR. GREENFIELD ON THE 28TH
11 OF MAY, YOU INDICATED YOU WEREN'T HAVING ANY CHEST
12 PRESSURE AT THAT TIME; IS THAT RIGHT?

13 A. JUST MY ARM AND NECK.

14 Q. AND YOU INDICATED TO HER THAT IT WAS DUE TO A SHOCK
15 OF 480 VOLTS; IS THAT RIGHT?

16 A. I TOLD HER HIGH VOLTAGE.

17 Q. DID YOU TELL HER 480 VOLTS?

18 A. I SAID 240, 480, YES. I MEAN, I'VE NEVER BEEN HIT
19 LIKE THIS BEFORE, NEVER.

20 Q. TODAY I THINK YOU WERE TALKING EARLIER ABOUT IT WAS
21 240 VOLTS, IS THAT ---

22 A. OR GREATER IS WHAT I SAID.

23 Q. OR GREATER, SO IS AT LEAST 240 VOLTS?

24 A. WELL, YEAH. IT SAYS HIGH VOLTAGE.

25 Q. OKAY. YOU ALSO INDICATED THAT DR. GREENFIELD TOLD

1 YOU THAT YOU HAD A HOLE IN YOUR HEART; IS THAT
2 RIGHT?

3 A. WHEN SHE DID THE -- I THINK THEY CALL IT ECHO, I'M
4 NOT SURE. YEAH, SHE SAID "YOU GOT MORE PROBLEMS
5 THAN JUST YOUR, YOU KNOW, YOUR NECK AND" -- SHE
6 SAID, "YOU DONE BLEW A HOLE IN YOUR HEART." AND
7 THEN SHE GOES, "WHERE DID THIS HAPPEN AT?" AND I
8 SAID -- SHE'S THE ONE THAT POINTED OUT THE HOLE IN
9 MY FINGER. AND SHE SAID, "THAT'S WHERE THE POWER
10 WENT IN," AND SHE SAID, "IT'S BEGIN WITH, BOOM, LIKE
11 THAT AND BLEW A HOLE IN HEART." THAT'S WHAT SHE
12 TOLD ME.

13 Q. DID -- DID DR. GREENFIELD TELL YOU AT ALL ABOUT THE
14 PAIN IN YOUR LEFT ARM OR SHOULDER AND -- AND WHAT
15 THAT INDICATED OR WHAT THAT CAME FROM?

16 A. SHE SAID THE POWER PROBABLY WENT UP, HIT THIS MAIN
17 MUSCLE HERE (INDICATING) AND THEN DROPPED DOWN.

18 BY MR. BAYNE:

19 OKAY. I HAVE NO FURTHER QUESTIONS.

20 BY COMMISSIONER BARDEN:

21 THANK YOU, MR. BAYNE. ANY QUESTIONS, OTHER
22 QUESTIONS, MR. MCDANIEL?

23 BY MR. MCDANIEL:

24 NONE, COMMISSIONER.

25 BY COMMISSIONER BARDEN:

1 OKAY. THAT'S THE CLAIMANT'S CASE.

2 BY MR. MCDANIEL:

3 CLAIMANT'S CASE, COMMISSIONER.

4 BY COMMISSIONER BARDEN:

5 ALL RIGHT. MR. BAYNE, YOU HAVE A WITNESS HERE?

6 BY MR. BAYNE:

7 COMMISSIONER, I HAVE AN EMPLOYER REPRESENTATIVE
8 THAT I'D LIKE TO PUT UP FOR JUST A MINUTE TO ---

9 BY COMMISSIONER BARDEN:

10 SURE. ALL RIGHT.

11 BY MR. BAYNE:

12 --- ASK A COUPLE OF QUESTIONS.

13 BY COMMISSIONER BARDEN:

14 SIR, I'M GOING TO LET YOU GO SIT NEXT TO MR.
15 MCDANIEL.

16 BY THE WITNESS:

17 THANK YOU.

18 BY COMMISSIONER BARDEN:

19 THANK YOU, SIR.

20 BY MR. BAYNE:

21 AND IF -- IF IT'S ALL RIGHT WITH YOUR HONOR,
22 ONCE WE'RE DONE WITH THAT I HAVE A COUPLE OF
23 SECTIONS IN THE DEPOSITIONS I'D JUST LIKE TO POINT
24 YOUR ATTENTION TO.

25 BY COMMISSIONER BARDEN:

1 YOU'RE WELCOME TO DO THAT. AND I'D LIKE TO
2 SPEAK TO Y'ALL ANYWAY ---

3 BY MR. BAYNE:

4 OKAY. ALL RIGHT.

5 BY COMMISSIONER BARDEN:

6 --- AFTERWARDS.

7 BY MR. BAYNE:

8 MR. WARREN.

9 BY COMMISSIONER BARDEN:

10 SIR, ONCE YOU GET SEATED AND SITUATED, IF
11 YOU'LL FACE ME. OKAY. THANK YOU.

12 BY MR. WARREN:

13 THANK YOU.

14 BY COMMISSIONER BARDEN:

15 DO YOU SWEAR OR AFFIRM --- RAISE YOUR HAND
16 PLEASE. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU'RE
17 ABOUT TO GIVE IN THIS PROCEEDING IS THE TRUTH, THE
18 WHOLE TRUTH, AND NOTHING BUT THE TRUTH?

19 BY THE WITNESS:

20 I DO.

21 MARK WARREN

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

23 BY COMMISSIONER BARDEN:

24 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

25 BY THE WITNESS:

1 WESLEY MARK WARREN.

2 BY COMMISSIONER BARDEN:

3 IS THAT M-A-R-K?

4 BY THE WITNESS:

5 YEP.

6 BY COMMISSIONER BARDEN:

7 THANK YOU. PLEASE ANSWER ANY QUESTIONS MR.
8 BAYNE HAS.

9 DIRECT EXAMINATION BY MR. BAYNE:

10 Q. MR. WARREN, WHAT DO YOU DO FOR A LIVING?

11 A. RIGHT NOW, I'M ASSISTANT SERVICE MANAGER FOR ARCHWAY
12 SERVICE.

13 Q. OKAY. AND ARE YOU FAMILIAR WITH MR. WINFREY?

14 A. YES.

15 Q. ARE YOU FAMILIAR WITH THE DEVICES THAT MR. WINFREY
16 WAS WORKING ON THE DAY THAT HE WAS INJURED?

17 A. AS FAR AS I CAN TELL YOU, IT WAS A ROTISSERIE AND
18 IT, YOU KNOW, IT'S THREE PHASE CURRENT.

19 Q. THOSE ROTISSERIE OVENS, WE -- WE'VE HEARD SOME
20 TESTIMONY THAT IT MIGHT HAVE BEEN BETWEEN 240 AND
21 480 VOLTS. ARE YOU FAMILIAR AT ALL WITH THE ACTUAL
22 VOLTAGE RUNNING THROUGH THOSE MACHINES?

23 A. WITHOUT CHECKING IT WITH A METER, I COULDN'T TELL
24 YOU THE ACTUAL VOLTAGE, BUT THE MACHINE IS RATED FOR
25 480 VOLT, BUT IT CAN ALSO RUN ON 208 VOLT, THREE

1 PHASE.

2 Q. OKAY. DO YOU HAVE ANY IDEA ON A GIVEN DAY WHAT KIND
3 OF VOLTAGE IS RUNNING THROUGH THAT MACHINE?

4 A. NORMALLY IT SHOULD BE 208 VOLT PER LEG.

5 Q. OKAY.

6 A. YEAH.

7 BY MR. BAYNE:

8 COMMISSIONER, I HAVE NO FURTHER QUESTIONS.

9 BY COMMISSIONER BARDEN:

10 MR. MCDANIEL, ANY QUESTIONS OF THIS WITNESS?

11 CROSS EXAMINATION BY MR. MCDANIEL:

12 Q. TELL ME ABOUT THE THREE LEGS AND THE...

13 A. WELL, YOU GOT -- YOU GOT THREE LEGS OF CURRENT.
14 YOU'VE GOT YOUR -- IF YOU CHECK BETWEEN EACH LEG,
15 YOU'LL HAVE 208 VOLT NORMALLY.

16 Q. RIGHT.

17 A. NOW, I -- I DON'T -- I DON'T KNOW ABOUT THIS UNIT,
18 IF IT'S A -- IF IT WAS -- IT COULD BE WIRED 480. I
19 DO NOT KNOW WITHOUT CHECKING WITH A METER.

20 Q. OKAY.

21 BY MR. MCDANIEL:

22 NOTHING -- NOTHING FURTHER, COMMISSIONER.

23 BY COMMISSIONER BARDEN:

24 THANK YOU.

25 BY MR. MCDANIEL:

1 OH.

2 BY COMMISSIONER BARDEN:

3 GO AHEAD.

4 CROSS EXAMINATION RESUMED BY MR. MCDANIEL:

5 Q. NO. I WAS JUST GOING TO SAY, IS MR. RUPPE STILL
6 WITH THE COMPANY?

7 A. YES.

8 Q. OKAY. AND THE OTHER -- ARE ALL THE OTHER FOLKS
9 WE'VE REFERRED -- YOU'VE HEARD REFERRED TO TODAY,
10 ARE THEY STILL WITH Y'ALL?

11 A. YEAH, EVERYBODY'S STILL THERE. YEAH.

12 BY MR. MCDANIEL:

13 NOTHING FURTHER.

14 BY COMMISSIONER BARDEN:

15 ALL RIGHT.

16 BY MR. BAYNE:

17 NO REDIRECT.

18 BY COMMISSIONER BARDEN:

19 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.
20 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
21 CONCLUDED AT THE HOUR OF 10:19 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1306305

EMPLOYEE/CLAIMANT: CLARENCE WINFREY

EMPLOYER: ARCHWAY SERVICE, INC.

INSURER: AMERICAN FIRE & CASUALTY COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 60 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF CLARENCE WINFREY TAKEN ON THE 13TH DAY OF JANUARY, 2014.

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 THIS 6TH DAY OF FEBRUARY, 2014.

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

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

1 South Carolina Workers' Compensation Commission
WCC File No.: 1306305

2 - - -

3 CLARENCE WINFREY, :

4 Employee, :

5 Claimant, :

6 vs. :

7 ARCHWAY SERVICES, :

8 Employer, :

9 and :

10 AMERICAN FIRE & CASUALTY :

11 INSURANCE, :

12 Carrier, :

13 Defendants. :

14 - - -

15 Thursday, January 23, 2014

16 - - -

17 ORAL DEPOSITION OF DR. LANNEAU D. LIDE,

18 JR., taken at South Carolina Heart Center, 2001

19 Laurel Street, Columbia, South Carolina,

20 commencing at 7:52 a.m., before Deidre Osborne, a

21 Court Reporter and Notary Public.

22 - - -

23

24

25 Job No. CS1795646

1 APPEARANCES:

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Representing the Defendants

11
12
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18 (INDEX AT REAR OF TRANSCRIPT.)
19
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25

1 (It is hereby stipulated and agreed by and
2 between counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Workers'
5 Compensation Commission and the Administrative
6 Procedures Act; and that the deponent waives
7 reading and signing of this deposition
8 transcript.)

9 - - -

10 DR. LANNEAU D. LIDE, JR., after having
11 been first duly sworn, was examined and
12 testified as follows:

13 - - -

14 EXAMINATION

15 - - -

16 BY MR. BAYNE:

17 Q. Dr. Lide, how are you doing today?

18 A. Fine. Thank you.

19 Q. My name's Brett Bayne. I'm an attorney
20 with McAngus Goudelock & Courie. We represent the
21 defendants in this workers' compensation claim,
22 and I'm here today just to ask you a few questions
23 about some opinions that you've -- you've issued
24 as well as the medical records related to
25 Mr. Clarence Winfrey's heart case.

1 Can we start with -- just give me a brief
2 background of your medical qualifications, that
3 type of stuff.

4 A. I'm a cardiologist. I've been in
5 practice here in Columbia since 1981. I've been
6 board-certified since 1981 in cardiology. I've
7 been in practice continually.

8 Q. All right. And how did you get involved
9 in this case?

10 A. Mr. Winfrey went to see his -- to see a
11 doctor and was referred to my partner,
12 Dr. Dasgupta, who saw him in the office, and
13 Dr. Dasgupta realized that Mr. Winfrey was sick
14 and admitted him to the hospital for a heart
15 catheterization and other treatment.

16 Q. And --

17 A. And I did the heart catheterization.

18 Q. And your records reflect that he
19 presented on May 28th, 2013?

20 A. If you say so.

21 Q. And --

22 A. I won't challenge it.

23 Q. That's fine.

24 A. I know that's the date of the heart
25 catheterization, May 28th.

1 Q. And the -- the process of Mr. Winfrey's
2 treatment, I think you -- you mentioned was that
3 he went to a doctor. He was referred to
4 Dr. Dasgupta, and then eventually he ended up with
5 you before moving on to Dr. Travis. Is that
6 correct?

7 A. Yes.

8 Q. Okay. And the visit with you as the
9 cardiologist was to, I guess, run some tests,
10 observe Mr. Winfrey and determine whether or not
11 additional treatment was needed. Is that right?

12 A. Well, Dr. Dasgupta admitted him to the
13 hospital.

14 Q. Okay.

15 A. And Dr. Dasgupta is my partner, and --
16 and I did the heart catheterization.

17 Q. And then after you did the
18 catheterization, did you refer him to Dr. Travis?

19 A. Yes. Yes.

20 Q. Okay. Let's step back for a second. You
21 have a patient history, I believe. There's a
22 catheterization report that we'll enter as Exhibit
23 1 for this deposition purposes.

24 MR. BAYNE: Do you want to tag it real
25 quick?

1 THE COURT REPORTER: Yes, please.

2 MR. BAYNE: And this is a document that
3 neither Mr. McDaniel or myself, we believe,
4 have seen before today, but we're going to
5 enter it into the record.

6 - - -

7 (Catheterization Report Dated 5/28/2013
8 marked Lide Exhibit Number 1, for
9 identification.)

10 - - -

11 BY MR. BAYNE:

12 Q. When Mr. Winfrey presented to
13 Dr. Dasgupta and then to you, what history did you
14 have at that time before you took a history from
15 him? In other words, were you provided with
16 any -- with any background on this case or did you
17 take an initial history when you first saw him?

18 A. Well, I -- of course, I spoke to the
19 patient before we did the -- the procedure. The
20 history that would have been given to me was the
21 history that Dr. Dasgupta had from the office.

22 Q. Okay.

23 A. And I should have a copy of that here on
24 this computer, but you should also have it.

25 Q. If you can just give me a brief rundown

1 of what the history that -- that Dr. Dasgupta gave
2 you was, I would appreciate it.

3 A. I'm going to pull up Dr. Dasgupta's
4 office note on the computer. You want me to read
5 this?

6 Q. If you can, just -- what I'm looking for
7 is what symptoms he complained of to
8 Dr. Dasgupta --

9 A. Okay.

10 Q. -- and then what your understanding of
11 the history was.

12 A. All right. Well, he says that
13 Mr. Winfrey was 50 years old and been found to
14 have an abnormal EKG and a heart murmur when he
15 went to see Dr. Greenfield, that he had an
16 electric shock five days before, complained of
17 pain in his shoulder going into the left scapula
18 region, left side of the neck, left upper
19 extremity, et cetera, been sweaty, been short of
20 breath with exertion and that he'd gotten some
21 relief with Tylenol and Motrin, had no -- no
22 previous heart history.

23 And Dr. Dasgupta did an echocardiogram in
24 the office, and he saw that the -- the inferior
25 segment of the left ventricle was not moving and

1 that there was a defect in the interventricular
2 septum with blood flowing abnormally from the left
3 ventricle to the right ventricle through that
4 defect'.

5 Q. Did Dr. Dasgupta make any notes about any
6 complaints of chest pain at that time?

7 A. I don't see anything in -- in this about
8 pain in the chest itself.

9 Q. Did he make any notes about any history
10 of chest pain leading up to his admission to the
11 hospital that day?

12 A. I don't see it in here, but --

13 Q. Have you -- in addition to Dr. Dasgupta's
14 notes, were you ever given the opportunity to
15 review Dr. Greenfield's notes who was the
16 referring physician to your office?

17 A. I probably did not see any notes from
18 Dr. Greenfield.

19 Q. And just referencing her notes, if her
20 notes indicated that he did not have any chest
21 pain on both presentation and leading up to coming
22 to the office, would you have any reason to
23 dispute that he was not having any chest pain?

24 A. I don't have any -- any reason to dispute
25 it based on what you say. Although, I do see my

1 little note here in which I reference chest pain.

2 Q. And that -- that was my next question,
3 Doctor. In Exhibit 1 you mentioned that he's
4 complained of chest pain, I believe, since the
5 accident. Do you know where that particular note
6 came from?

7 A. Well, this -- this note would have been
8 the note that I generated as part of the -- the
9 cardiac catheterization report.

10 Q. Right. Did that come -- if you recall,
11 was that something that Mr. Winfrey told you or
12 was that something that came from another doctor?

13 A. It would have been what he told me.

14 Q. Okay. If Mr. Winfrey had told
15 Dr. Dasgupta he was having chest pain, would that
16 have been in Dr. Dasgupta's notes to your
17 knowledge?

18 A. Probably. However, I can't speak for
19 what everybody else is going to think and put in
20 their notes.

21 Q. Certainly. Doctor, Mr. Winfrey was
22 ultimately diagnosed with -- I think you said a
23 ventricular septal defect. And that was caused by
24 a myocardial infarction; is that correct?

25 A. Well, we say it was caused -- cause by a

1 myocardial infarction. I mean, we do blood tests
2 and EKGs and all that, and I can't say it wasn't
3 caused by -- by an electrical shock. I don't know
4 how we would tell the difference.

5 Q. Well, you -- the VSD could have been
6 caused by an electrical shock or the --

7 A. Sure.

8 Q. -- heart attack could have been caused by
9 the electrical shock?

10 A. I mean, an electrical shock creates a
11 burn.

12 Q. And so in your opinion it's possible that
13 an electrical shock actually just punched a hole
14 in the heart?

15 A. Possibly.

16 Q. Okay. Is -- typically, a ventricular
17 septal defect is caused by a myocardial infarction;
18 is that correct?

19 A. Well, most ventricular septal defects are
20 congenital.

21 Q. Okay.

22 A. I mean, they're not caused by -- by
23 anything. They're just a developmental
24 abnormality. You can end up with a ventricular
25 septal defect by being shocked through the heart,

1 which you have other injuries, and -- but I guess
2 the most common cause for an acquired ventricular
3 septal defect would be a myocardial infarction.

4 Q. Okay. And a myocardial infarction, it's,
5 I believe, in this case and, according to
6 Dr. Travis, was caused by what's called a plaque
7 rupture. Are you aware of his opinion on that?

8 A. I -- I don't know that we could -- you
9 know, a myocardial infarction is damage to heart
10 muscle due to lack of blood flow, so I don't know
11 how you separate that out from damage due to a
12 burn in a case like this.

13 Q. Correct. My -- my question --

14 A. We don't have specific tests. We don't
15 have chemical tests that tell us that damage was
16 due to -- to a burn instead of -- instead of lack
17 of blood flow. You know, all our tests are
18 focused on the common disease of myocardial
19 infarction due to the lack of blood flow.

20 Q. So there's no way to know for sure
21 whether or not any of the injuries to his heart
22 were from electrical shock or were from just, I
23 guess, a congenital defect or from a poor heart
24 condition. Is that --

25 A. Oh, it's not a congenital defect.

1 Q. Okay.

2 A. A congenital defect causing a ventricular
3 septal defect would -- would have been known. I
4 mean, that -- he would have had a -- a murmur from
5 birth.

6 Q. Okay.

7 A. And that would have been diagnosed long
8 ago.

9 Q. But it would either -- so it would either
10 be something that would have been developed over
11 time such as coronary artery disease that would
12 have caused this or it would be the electrical
13 shock. Is that what your opinion is?

14 A. I guess so.

15 Q. In other words --

16 A. Yeah.

17 Q. -- your statement was --

18 A. Yeah.

19 Q. -- that we can't know whether it was
20 shock. He did have three vessel artery disease,
21 so it's possible it was that. It's possible it
22 was electrical shock. Is that a correct
23 statement?

24 A. He had -- he had heart muscle damage
25 which resulted in -- in -- in this rupture of the

1 septum which means -- which is the wall between
2 the left ventricle and the right ventricle.

3 Q. And what causes heart muscle damage?

4 A. Well, he had the electrical shock. We
5 know that. And it's also true that we saw that
6 the artery going into that area was blocked.

7 Q. And can you --

8 A. But it's hard to know which came first.

9 Q. Okay. So the artery block can cause
10 heart muscle damage. The electrical shock can
11 cause heart muscle damage. Is that right?

12 A. That's right.

13 Q. Okay. In your written opinion that you
14 issued, it was a questionnaire you filled out, you
15 indicated that it was your opinion that the
16 electrical shock caused the symptoms that
17 Mr. Wihfrey was suffering from, and you indicated
18 that it was when he was shocked with 480 volts of
19 electricity. Where did that information come
20 from?

21 A. I'm sure I had nothing in any note that I
22 generated about 400 volts.

23 Q. Okay. So when you --

24 A. That's not something I would have known.

25 Q. When you indicated that it was caused by

1 a 480-volt shock, that information would have come
2 from Mr. Winfrey, I guess?

3 A. I don't know what document you're
4 referring to.

5 Q. I apologize. I'll show you. There's a
6 questionnaire that you filled out, Dr. Lide, that
7 asked for your medical opinion, and you checked
8 the box that indicated this was caused by 480
9 volts of electricity.

10 A. I imagine that part was probably -- I
11 don't know whether that was generated by workers'
12 comp or whatever, but I -- I don't see any way
13 that we can say that that is not secondary to the
14 shock.

15 Q. Okay.

16 A. The details of the shock are beyond me.

17 Q. And I understand that. My -- my question
18 was -- was, getting to the amount of the shock
19 that your opinion indicates caused this -- the
20 symptoms Mr. Winfrey's suffering from, do you have
21 any evidence or do you have any research you've
22 done that indicates it was actually 480 volts that
23 he suffered electrical shock from?

24 A. I don't -- I don't -- I did not
25 investigate the scene. I don't know what

1 equipment he was working on. I'm taking everybody
2 else's word for it that he had an electrical
3 shock, and I certainly would have no data to
4 indicate to me whether 480 volts would be strong
5 enough to cause the problem that 120 volts
6 wouldn't cause.

7 Q. Okay. What about 10 volts?

8 A. I have no -- I have done no research on
9 this.

10 Q. Okay. And in your day-to-day practice as
11 a cardiologist, you use electrical current to
12 stimulate the heart or stop a heart murmur or
13 apply electrical shock to hearts; is that correct?

14 A. Occasionally, yes.

15 Q. How many volts are you using when you do
16 that?

17 A. It can be as much as 360 joules, but
18 physics at this point in my life is not my strong
19 suit. And I can't tell you exactly how that
20 translates into volts. I can tell you it's a very
21 brief shock. If someone has an electrical shock
22 for -- for a termination of a cardiac arrhythmia,
23 it's typically given over one millisecond or less.

24 Q. Okay. And those shocks, have you ever
25 caused a myocardial infarction by applying those

1 shocks?

2 A. Not that I know of.

3 Q. Have you ever caused a ventricular septal
4 defect by providing those shocks?

5 A. No.

6 Q. In your practice have you ever had the
7 chance to look at the heart -- actually look at
8 the heart after providing those electrical shocks?

9 A. I suspect I probably have seen some
10 autopsy hearts after patients have had cardiac
11 arrests.

12 Q. And in those cases have you ever
13 discovered what would be called entrance and exit
14 wounds on either side of the heart from that
15 electrical current that you've provided?

16 A. I have not. But I am quite sure I would
17 not be able to recognize them.

18 Q. Have you had a chance to review
19 Dr. Travis's medical records in the course of
20 providing care to Mr. Winfrey both of the surgery
21 and of the follow-up that he provided before he, I
22 believe, returned him back to you for care?

23 A. We have -- we probably have received
24 some -- some limited notes from Dr. Travis.

25 Q. And I'll -- my question is, Dr. Travis's

1 opinion, at least the mechanism of injury, is that
2 Mr. Winfrey suffered a plaque rupture in his
3 coronary artery that caused a myocardial
4 infarction that caused the ventricular septal
5 defect. And I think we talked a minute ago about
6 what can cause the damage in the heart. Would
7 that be a -- would that be a correct order of
8 events that would cause the damage in
9 Mr. Winfrey's heart?

10 A. I think it's one of the possibilities.

11 Q. Okay. And a plaque rupture occurs --
12 what causes a plaque rupture?

13 A. Would you like to win the Nobel Prize?

14 Q. I would love to win the Nobel Prize.

15 A. Well, explain that then.

16 Q. And that was -- that was, I believe,
17 Dr. Travis's opinion and Dr. Feldman's opinion.
18 Their statements were, "We don't really know what
19 causes plaque rupture. There's no way to test for
20 it."

21 Is that an accurate statement?

22 A. That's -- that's correct.

23 Q. And -- and their opinion was that the
24 electrical shock caused -- or Dr. Travis's opinion
25 was that the electrical shock caused the plaque

1 rupture. Dr. Feldman's opinion was that it was
2 not. And, again, we -- we don't know for sure
3 whether or not electrical shock caused the plaque
4 rupture or not. Is that right?

5 MR. MCDANIEL: I'm going to object on --
6 and I don't think that's an accurate statement
7 of Dr. Feldman's testimony. But with that

8 MR. BAYNE: That's fine.

9 BY MR. BAYNE:

10 Q. The question is, we don't know for sure
11 whether or not electrical shock can cause a plaque
12 rupture or did cause a plaque rupture in this
13 case. Is that right?

14 A. I don't know whether the electrical shock
15 caused the plaque rupture. I don't know which
16 came first, whether -- whether -- because it does
17 seem to me this could have all started off as a
18 burn injury, and I can tell you that for decades
19 after people began to have myocardial infarctions,
20 there was a -- a big debate about which came
21 first, blood clot in the coronary artery or the
22 injury of the -- of the tissue, and I think that
23 if you have -- it does seem to me if you had badly
24 damaged tissue, you're not going to have perfect
25 blood flow through there.

1 This doesn't apply only to the heart, and
2 you'll end up with the artery to the area being
3 blocked, so I don't know which came first.

4 Q. Okay. In your review of Mr. Winfrey, I
5 think it's not disputed that he touched a wire
6 with his left hand, and -- and the question is
7 what happened with the electricity; did it go into
8 his neck, heart.

9 Did you ever find an exit wound on
10 Mr. Winfrey's body where the electricity would
11 have exited?

12 A. I did not look for an exit wound.

13 Q. Okay. Has he ever reported that he has
14 an exit wound to you from the electricity leaving
15 his body?

16 A. I don't know why he would report that to
17 me.

18 Q. As far as the VSD or the heart attack,
19 the plaque rupture, whatever came first in this
20 case, when would -- following the electrical
21 shock, when would he have first started
22 experiencing symptoms of the actual heart
23 condition that he suffered from? In other words,
24 if -- if he -- if he suffers this shock that goes
25 into his heart, is there going to be an immediate

1 "I've got a problem with my heart" or is it
2 something that may develop over several days where
3 he later starts realizing he's got a problem with
4 his heart?

5 A. Well, he probably felt worse when he
6 developed the VSD. And VSDs, after myocardial
7 infarction, they can occur in the first 24 hours.
8 They can occur any time up to a week later.

9 Q. Would he have felt any or noticed any
10 symptoms of the myocardial infarction following
11 electrical shock or would it have been the VSD
12 that triggered him to know something was wrong?

13 A. I think after he developed VSD and after
14 it became large enough for him to have significant
15 flow, he would have become more short of breath.

16 Q. Okay.

17 A. Now, that may not have occurred in a few
18 seconds. It may have been hours before that --
19 before that occurred.

20 Q. In Dr. Dasgupta's notes, on the day he
21 was admitted he talks about -- I believe it was
22 diaphoresis. And that is intense sweating; is
23 that right?

24 A. It's sweating.

25 Q. And that is a symptom of suffering from a

1 myocardial infarction; is that right?

2 A. That is a symptom of suffering from
3 illness, period.

4 Q. Okay.

5 A. That is so non-specific a symptom that it
6 doesn't tell you. It doesn't lead you in any --
7 any specific direction.

8 Q. If the sweating was a -- was a symptom of
9 the myocardial infarction he experienced, when
10 would you expect that sweating to start as a
11 result of the myocardial infarction?

12 A. Well, it could start right away.

13 Q. Would it start before he suffered the
14 myocardial infarction?

15 A. He could have been sweating because he
16 had an electric shock. He could have been
17 sweating because he had an electric shock and he
18 was frightened.

19 Q. If the sweating didn't start until 24
20 hours after the electrical shock, would that be
21 indicative of when the myocardial infarction
22 occurred?

23 A. I don't think that -- I don't think you
24 can time anything by the onset of sweating.

25 Q. Can --

1 A. Maybe his temperature went up a little
2 bit a day after he had the shock.

3 Q. Are you able to time when the myocardial
4 infarction occurred based on any of the tests you
5 were able to run?

6 A. No. Some time after the shock.

7 Q. Is there -- is there any -- any window
8 that we're looking at or it's just sometime
9 between when he suffered the shock and when he was
10 entered -- admitted into the hospital?

11 A. I think we'd be on safer ground
12 considering that to be the window.

13 Q. Okay. Are you -- in your work as a
14 cardiologist and any research you've done, do you
15 have any -- any information about electrical
16 shocks causing a myocardial infarction or causing
17 a VSD and the time period related to that as far
18 as how soon after the shock do these things
19 occur? Can they occur a week later? A month
20 later? What are we looking at as far as timeline
21 with an electrical shock?

22 A. I have not done any research on this, and
23 I'm not -- I don't know of -- of specific
24 research. Somebody's probably done some. The --
25 so, no, I don't have any specific information on

1 that.

2 Q. Would it be safe to say that the farther
3 we get away from the event, the less likely it is
4 that the -- the heart condition is related to that
5 event?

6 A. Yes. I think that's right. I think
7 that -- that it would be unlikely for him to pop
8 up with a VSD a month after having the -- the
9 original injury or a myocardial infarction.

10 Q. In other words, it's more likely that he
11 would suffer a heart attack an hour later than it
12 is a day later, than it is a week later, than it
13 is a month later. The farther we get removed from
14 it, the less likely the odds become that that was
15 the precipitating event.

16 A. I -- I think to the extent that the heart
17 muscle was damaged by the electric shock, that
18 would have occurred immediately.

19 Q. Okay.

20 A. Now, at what point later the
21 interventricular septum gave way and he actually
22 had the defect allowing blood to flow from the
23 left ventricle to the right ventricle, that could
24 have been any time.

25 Q. And related to -- you mentioned, and you

1 said it previously as well, that the -- the shock
2 caused the heart muscle damage. You did say --

3 A. It could have.

4 Q. Could have caused it.

5 A. It could have, yeah.

6 Q. But there's no way to know for sure
7 whether or not his -- the condition his heart was
8 in caused that damage or whether the shock caused
9 that damage; is that right?

10 A. I don't have any way that I can say that
11 the shock was not related to the injury.

12 Q. Okay.

13 A. There's no way I can say that.

14 Q. You don't have any way to say it was not
15 related or that it was related?

16 A. I don't have any way to say that it was
17 not related to it.

18 Q. Do you have any way to say that it was
19 related other than the proximity in time?

20 A. No. The proximity in time is -- is -- is
21 overwhelming evidence as far as I'm concerned.

22 Q. And that's the sole evidence that -- that
23 shock caused the heart damage; is that right?

24 A. Well, that and Dr. Travis's description.

25 Q. And which description are you referring

1 to from Dr. Travis?

2 A. That what he saw in the operating room
3 was, and I think he's given this to you in a
4 deposition, something to the effect that -- that
5 he saw tissue that looked like it had been burned.

6 Q. Okay. And are you referring to the white
7 patches that I think he called plaques on either
8 side of the heart?

9 A. I'm just referring to -- to -- no. I --
10 I can't -- I can't relate that back to anything
11 specific, just that I think he's given you that
12 opinion in a -- in a deposition.

13 Q. So it's -- your opinion's based on the
14 timing and then Dr. Travis's -- what you
15 understand Dr. Travis's opinions to be.

16 A. Right. That's right.

17 Q. Okay. As far as providing Mr. Winfrey
18 care after the surgery, what -- what ongoing care
19 are you providing him at this time?

20 A. I have seen him a few times in the
21 office, and he's on some medications. He's -- I
22 think he's been through -- he's been involved in
23 the cardiac rehab program.

24 Q. What is the cardiac rehab program?

25 A. Basically it's supervised exercise.

1 Q. And is that part of a standard program to
2 be able to return him to, hopefully, the life he
3 was living before --

4 A. Yes.

5 Q. -- he suffered this event?

6 In your experience is that a -- does that
7 program usually work as far as getting people back
8 to what they were doing beforehand?

9 A. It usually results in improvement in
10 functional status. Now, whether it's enough
11 improvement to get somebody back to work depends
12 on the individual case.

13 Q. Have you -- at this point do you have
14 any -- any idea or any opinion about where
15 Mr. Winfrey's going to end up once he completes
16 all of his cardiac rehab or is it too early to
17 tell?

18 A. It may be too early to tell, but I -- I
19 don't know that he's going to be able to get back
20 to work.

21 Q. In general or work as an electrician?

22 A. In general.

23 Q. Okay. And other than here today at this
24 deposition, have you had any -- any contact with
25 Mr. McDaniel or Mr. Winfrey outside of the

1 appointments that -- that Mr. Winfrey comes to?

2 A. Had no contact with Mr. Winfrey except
3 here in the office, and I've not had any contact
4 with Mr. McDaniel.

5 Q. Other than the -- the questionnaire
6 that --

7 A. Yes.

8 Q. That you filled out.

9 A. Yes.

10 MR. BAYNE: Okay. I have no further
11 questions.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. MCDANIEL:

16 Q. Doctor, let me ask you a few questions.
17 Let's just -- I believe that I sent you a copy of
18 a report that Dr. Travis -- it was briefly after
19 the report that you were kind enough to fill out
20 whenever --

21 A. Uh-huh.

22 Q. -- causation became a question in
23 September, and, first, I'm going to -- this has
24 been put into evidence, and I'm going to ask you
25 if you can look at that --

1 A. If I can look at this? Uh-huh.

2 Q. -- of Dr. Travis and if you -- if that
3 is, in fact, a copy of a report that you have in
4 your records that I sent to you after we received
5 it.

6 A. I think this is, yes.

7 Q. And just in reference to -- Counsel asked
8 you some questions about what Dr. Travis had found
9 and the information. If you would -- does it not
10 refer to the -- his observations during surgery in
11 reference to the entrance and exit wounds in
12 paragraph -- I believe it's paragraph two. You
13 can look at that.

14 A. Uh-huh.

15 Q. Does this concur with what your
16 understanding is in either your discussion with
17 Dr. Travis and/or review of the records and this
18 information?

19 A. I think that Dr. Travis's opinion is
20 probably correct, and I certainly don't have any
21 reason to challenge him.

22 Q. And what I was referring to is, Counsel
23 asked you some questions. In other words, he
24 refers in there that he's never seen anything like
25 this in his 15 years of cardiovascular surgery and

1 that he identified what he -- in his opinion was a
2 clear entrance and exit wound to the heart and
3 damage caused by the electrical shock.

4 Now, I want to look -- ask you a few
5 questions. Counsel back -- bounced back and forth
6 between using the term "VSD" and a "heart attack"
7 in asking his questions in timing. And I want to
8 ask you just a couple questions. We -- you've
9 kindly provided us a report that we should have
10 received from Lexington Medical Center. For some
11 reason we didn't.

12 And if you would, that history -- I know
13 that Counsel asked you about the history that was
14 taken by Dr. Dasgupta, and he specifically asked
15 you about reference to chest pain, and then you've
16 recorded a history there. I know you've stated
17 earlier in your testimony that you reviewed
18 Dr. Dasgupta's history, and you also talked to the
19 patient.

20 A. Yes.

21 Q. Now, is this -- the history that's
22 recorded in this report, is that the history that
23 your -- that you dictated based on both your
24 conversation with Mr. Winfrey and Dr. Dasgupta's
25 report?

1 A. I'm sure this is the only history that I
2 recorded at the time.

3 Q. Right.

4 A. It's -- it was not my role to do a
5 detailed history and physical examination at the
6 time I saw him. I needed no focus on -- on those
7 aspects of the history and the exam that would be
8 relevant for the testing that we were doing.

9 Q. Okay.

10 A. And so, you know, I don't have anything
11 in this little note about how long he had chest
12 pain, where it was, et cetera. It's just a little
13 summary, and as such, I certainly stand by what
14 I've got in this brief paragraph.

15 Q. Okay. And -- and -- and you record in
16 there that he was having left arm, shoulder and
17 chest pain.

18 A. I just have here he had left shoulder and
19 chest pain.

20 Q. Now -- and Counsel asked you about
21 whether Dr. Dasgupta had recorded anything in his
22 history about chest pain. And I'm going to ask
23 you to look at Dr. -- do you have Dr. Dasgupta's
24 on your --

25 A. I should. I do have it here.

1 Q. I've got it right here. I'll just --

2 A. Yeah.

3 Q. -- ask you.

4 MR. BAYNE: It's the May -- the office
5 consultation?

6 MR. MCDANIEL: May 28th.

7 THE WITNESS: May 28th, 2013?

8 BY MR. MCDANIEL:

9 Q. Office consultation. That's would be the
10 report we're referring to.

11 A. Yeah. Uh-huh.

12 Q. Look at the second sentence that begins,
13 "A review of his records today shows."

14 A. Uh-huh.

15 Q. All right. And then after that he goes
16 on. He says, "Since -- since -- he had electrical
17 shock five days ago and since then." So in
18 reference to the symptoms that Dr. Dasgupta -- and
19 him being your partner, records that. And since
20 then he has complained of pain.

21 Would it be your understanding and is it
22 consistent with the history that you took from
23 Mr. Winfrey that everything started after this
24 electrical shock?

25 A. That's my understanding.

1 Q. Okay. All right. Now, let's look at,
2 then, what Dr. Dasgupta recorded. He said, "He
3 has complained of pain in his left shoulder
4 radiating to his left scapula region, the left
5 side of his neck, left infraclavicular region."

6 Am I right that when you refer to the
7 scapula and clavicular region we're talking about
8 the shoulder and front part of the shoulder?

9 A. Well, infraclavicular means below the
10 collarbone.

11 Q. Okay.

12 A. Yeah.

13 Q. So, in other words, if Mr. Winfrey was
14 reporting that his pain was -- after the shock he
15 had pain in his hand, arm, up into his shoulder
16 and when he -- when he uses his hand and would
17 place it in -- with my fingers on top of the
18 shoulder and then my hand extending into the front
19 of the chest, would that be consistent with the
20 description that he's given Dr. Dasgupta there?

21 A. Yes.

22 Q. All right. And then so is that basically
23 the same thing that he's recording here as saying
24 that he's having pain in the upper part of his
25 chest or on the left side?

1 A. It's all consistent.

2 Q. Okay. I just wanted to clarify that
3 because -- because of just the word -- the very
4 detailed description Dr. Dasgupta gave versus just
5 simply saying "chest pain." Now ...

6 A. I will also tell you that the next person
7 to take a history gets a different history.

8 Q. Right. Actually, as a matter of fact,
9 Doctor, I use that. I tell my clients all the
10 time if they -- if I ask them the same thing five
11 different days in a row, they're going to tell me
12 five different things, not because they're trying
13 to lie to me, but because it's just -- it'll be a
14 little different consistency.

15 Let me ask you this. There's been some
16 discussion about 480 volts, and I'm going to show
17 you Dr. Greenfield's note who referred him to
18 Dr. Dasgupta, and I'll just ask you to look at the
19 right side of that note under the history that she
20 took. Do could you see "480 V rotisserie shock"?

21 A. I see that.

22 Q. And it shows that it occurred on
23 Thursday, and I believe it refers to sweating
24 that -- that evening. Is that -- do you see that?

25 A. Well, it may be referring to woke up

1 sweating this a.m.

2 Q. Well, it's also sweating and -- okay.

3 A. It's a little hard to tell --

4 Q. Okay.

5 A. -- what -- what that --

6 Q. Well, she testified that -- that she --
7 what she recorded, the shock on Thursday, sweating
8 Thursday p.m., woke up sweating this a.m.

9 A. Uh-huh.

10 Q. That he had had sweating following the --
11 the evening after the shock. Let me ask you. I
12 don't want to make this -- I'm trying to make this
13 not too long. You referred that when you did the
14 heart catheterization that you took some
15 pictures.

16 A. Yes.

17 Q. Is there anything -- and you say would we
18 like to see them. And my question to you, really,
19 though, is, Dr. Travis has testified that he held
20 this man's heart in his hands. He looked at it.
21 You actually did a heart catheterization and you
22 have pictures. Dr. Feldman said the only thing
23 he's reviewed is records.

24 The -- would -- would those picture that
25 you took lend anything in reference to your

1 opinion in this case as far as, you know -- I
2 mean, is it your opinion that -- that his problems
3 with his heart, based on the history and
4 everything you saw, is it still your opinion that
5 it was caused by this electrical shock?

6 A. It is. We did find -- you know, we did
7 find that he had atherosclerosis as well.

8 Q. Okay. I mean, so Dr. Feldman actually
9 testified that many times a plaque rupture is
10 caused by some type of stress, either physical or
11 emotional stress, there's many, many studies that
12 show that, and that -- that the shock was a
13 possible cause to the stress that caused the
14 sheering force causing the plaque rupture.

15 My question to you is -- here again, I
16 want to go back to the pictures. Are there any --
17 do you think there's anything you could tell that
18 would help us one way or the other in reference to
19 what you saw and what those pictures reveal as far
20 as damage that would, you know, either strengthen
21 or add to your opinion in -- in reference to
22 the -- the electrical shock?

23 A. There's nothing on the pictures that's
24 not reflected in the written report.

25 Q. Okay. And so there's -- is there any

1 question that a plaque rupture can lead to --
2 well, lead to a myocardial infarction which can
3 lead to a VSD? Is that a --

4 A. That -- there's no question that that
5 sequence of events can occur.

6 Q. Okay. All right. And -- and so either
7 the shock in your opinion could have caused the
8 damage that resulted in the myocardial infarction
9 and the VSD or it could have caused the rupture
10 that lead to the blockage, the myocardial
11 infarction which lead to the VSD. Is that a fair
12 statement of --

13 A. I think there's no question that the
14 shock can cause the burn injury that -- that
15 damages the heart muscle and -- and then leads to
16 the VSD. I don't know of any -- I don't know the
17 mechanism --

18 Q. Right.

19 A. -- by which the shock would -- would --
20 would exactly lead to blockage in the coronary
21 artery causing the -- the myocardial infarction in
22 the conventional sense. Certainly there's lots of
23 data indicating that in stressful times they're
24 more myocardial infarctions and more cardiac
25 deaths, and there have been population studies of

1 people after earthquakes and fires and whatever
2 that usually show a slight increase in -- in
3 occurrence.

4 You know, how many people died in South
5 Carolina after Hurricane Hugo. You know, it
6 looked like there was a little blip in the death
7 rate in the next few days, maybe ten extra deaths,
8 something like that.

9 Q. Right.

10 A. But -- but I don't know exactly what the
11 mechanism is -- is for that.

12 Q. Okay. But there's a clear correlation
13 between stress as being a -- a cause of myocardial
14 infarction or, you know, in other words, the
15 plaque rupture and that type of thing.

16 A. There -- there is a temporal association
17 between stressful events and increased risk of
18 myocardial infarction.

19 Q. And the reason I asked you originally
20 about the -- the -- the domino effect, either that
21 the heart attack -- it -- it -- by the way, let me
22 ask you this. Is it unusual that somebody has a
23 heart attack and then they don't show up for like
24 five days later?

25 A. Most people show up before five days but

1 population studies would suggest that perhaps as
2 many as 25 percent of -- of heart attacks that
3 people survive are not recognized immediately. A
4 person who has it doesn't have enough symptoms to
5 recognize that it's a heart attack, doesn't go to
6 the hospital, and it's discovered later and --
7 when they have an EKG or some other test.

8 Q. Of course, in this case we have -- and
9 one of the normal -- a very usual presentation is
10 left hand and arm and shoulder pain for a heart
11 attack, correct?

12 A. (Witness nodding head.)

13 Q. And so -- and we all agree that this
14 man's electrical shock came to his left hand and
15 he immediately and since then up until the time he
16 went to Dr. Greenfield was experiencing hand, arm
17 and shoulder pain.

18 A. Right. Right.

19 Q. Would it -- there -- would there be any
20 way for the patient to distinguish between those
21 two, just an average layperson?

22 A. Probably not.

23 Q. Okay. Now -- now I want to go back to
24 what I was asking you about, the -- the one series
25 of plaque rupture leading to the myocardial

1 infarction leading to the VSD or the heart muscle,
2 as you said, being damaged immediately from the
3 electrical shock. Let's just refer to one of
4 those as being absolutely direct and the other one
5 being indirect cause.

6 But in your opinion, based on this
7 history and everything you observed and your
8 conversations with Mr. Winfrey and this history
9 and development of his problems, is it your
10 opinion that -- that this electrical shock, is it
11 still your opinion that this electrical shock
12 caused all the problems that lead to him coming to
13 see you?

14 A. That is my opinion --

15 Q. Okay.

16 A. -- that -- that the electrical shock was
17 the proximate cause of -- of all this illness.

18 Q. Okay. And that's stated to a reasonable
19 degree of medical certainty?

20 A. As certain as I can be.

21 MR. MCDANIEL: Okay. All right. Doctor,
22 I'm not going to belate anything any further.
23 Thank you very much.

24 - - -

25 REEXAMINATION

1

2

BY MR. BAYNE:

3

4

Q. Doctor, I just have a few follow-up questions.

5

A. Uh-huh.

6

7

8

9

10

11

12

Q. The left arm and shoulder pain that -- that Mr. Winfrey(sic) just asked you about, in a heart attack case when you're experiencing the left arm and shoulder pain, it is not pain that is tender to the touch or it's not typically pain associated with, for example, running into a door and bashing your shoulder into it, is it?

13

14

15

16

17

18

A. It's typically not pain relieved by changes in position, but people are different. Some people have, you know, as I say, no pain that they recognize as being something serious, and other people have excruciating pain, and it's very variable.

19

20

21

22

23

24

25

Q. Okay. And Dr. Greenfield, when she observed Mr. Winfrey and when she gave her deposition, she talked about the fact that the left arm pain and shoulder pain that Mr. Winfrey was having was tender to the touch. It was more indicative of an injury to the arm than it was of a heart attack. Would you agree that -- that --

1 would you agree with her assessment, I guess, that
2 when you have pain that's more indicative of an
3 actual injury to the arm that it is not the same
4 type of pain you're going to suffer with a heart
5 attack injury?

6 A. Well, I don't have any opinion about
7 Dr. Greenfield and her assessment of it that was,
8 you know, before me, and I didn't have any
9 specific contact with -- with Dr. Greenfield. I
10 can just say the -- you know, we would probably
11 have expected this patient to have pain related to
12 the shock, and if the shock was in the left upper
13 extremity, it wouldn't surprise me if it involved
14 the arm and shoulder as well as the hand. I can't
15 say anything about any other pain that he had.

16 Q. I think you mentioned that -- that
17 every -- every person who takes a history may get
18 a different -- you know, there may be something
19 added, may be something removed depending on what
20 exactly is going on at that time when they
21 presented to you.

22 Again, going back to Dr. Greenfield
23 briefly, if her testimony and her records indicate
24 that the -- Mr. Winfrey had no chest pressure and
25 that he did not experience any chest pain or heart

1 attack symptoms from Thursday on the day of the
2 shock until he presented that morning, would --
3 would you have any reason to dispute her
4 understanding of his history at that time?

5 A. I don't have any reason to -- to dispute
6 it. Although, as I've said, he's got all this
7 pain in his upper extremity from -- from the
8 shock. If he has pain in the same area from his
9 myocardial infarction, he's not going to be able
10 to tell the difference.

11 Q. But that pain in the upper extremity, you
12 can't say for a certainty that it was caused
13 because of the heart attack versus simply jerking
14 away from the machine and landing against another
15 machine at the facility he was working at.

16 A. I think that's correct. Yeah.

17 Q. Mr. McDaniel had asked you about stress
18 causing the plaque rupture, if the -- if the
19 mechanism of injury was plaque rupture infarction,
20 VSD, that -- that, for example, the stress of the
21 electrical shock can cause that plaque rupture.

22 Is it correct or am I correct in saying that there
23 is no way to know, though, what stress would cause
24 a plaque rupture?

25 A. That is correct.

1 Q. In other words --

2 A. And it's also true -- you know, y'all
3 keep using the term "plaque rupture." That's not
4 the only mechanism by which blood clots in
5 arteries and blocks arteries.

6 Q. Well --

7 A. A lot of these plaques are not ruptured.
8 They're just -- when they have an eroded surface
9 and -- and platelets aggregate on them, and the
10 next thing you know, you have a clot there
11 without -- without plaque rupture. Plaque rupture
12 is not an essential component to -- to coronary
13 thrombosis.

14 Q. Well, for either the -- I guess the
15 plaque rupture or just where you said it erodes
16 away and stops blood flow. Is that right? To
17 the -- certain parts of the heart.

18 A. You may have an erosion of the
19 endothelium, the -- the thin layers of cells that
20 is the innermost lining of the artery such that
21 blood clots there.

22 Q. And would that also be caused by an
23 outside stressor of some sort?

24 A. Hard to know.

25 Q. It could be caused by -- by nothing at

1 all? It could just happen?

2 A. Most of the time when people have
3 myocardial infarctions, we don't -- we're not able
4 to identify any specific stressor most of the
5 time.

6 Q. And in this case there is no way other
7 than, again, the proximity in time to electrical
8 shock to identify any stressor that -- that could
9 have caused his heart condition; is that right?

10 A. I guess that's correct.

11 MR. BAYNE: That's all the questions I
12 have.

13 MR. MCDANIEL: I did forget to ask you a
14 couple of questions. I'm trying to be very
15 brief.

16 (Pause.)

17 Actually, no further questions. No more
18 questions.

19 MR. BAYNE: Thank you, Doctor.

20 - - -

21 (Witness excused.)

22 - - -

23 (Deposition concluded at 8:39 a.m.)

24 - - -

25

CERTIFICATE OF REPORTER

I, Deidre Osborne, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify:

That the proceedings and evidence are
contained fully and accurately in the notes taken
by me in the above cause and that it is a correct
transcript of the same.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my
official seal this 23rd day of January, 2014, at
Lexington County, South Carolina.

Deidre Osborne,
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 12, 2019

I N D E X

PAGE

Stipulations	3
Examination	
By Mr. Bayne	3
By Mr. McDaniel	27
Reexamination	
By Mr. Bayne	39
Certificate of Reporter	45

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E X H I B I T S

LIDE	DESCRIPTION	MARKED
1	Catheterization Report Dated 5/28/2013	6

Winfrey, Clarence B (MR # M002010261)

Patient Information		
Patient Name	Sex	DOB
Winfrey, Clarence B	Male	

Procedures signed by Lide, Lanneau D, MD at 05/29/13 1318					
Author:	Lide, Lanneau D, MD	Service:	(none)	Author Type:	Physician
Filed:	05/29/13 1318	Note Time:	05/28/13 1503	Trans ID:	3M926593
Trans Status:	Available				
Dictation Time:	05/28/13 1503	Trans Time:	05/28/13 1831	Trans Doc Type:	Cath Lab Report

DATE: May 28, 2013

SUMMARY: Triple-vessel coronary artery disease. Recent acute inferior myocardial infarction with inferior left ventricular akinesis on left ventriculography. Ventriculoseptal defect.

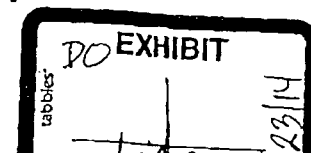
CLINICAL ABSTRACT: A 50-year-old man who has had left shoulder and chest pain since last Thursday when he experienced an electric shock through his left hand while at work. There is no previous history of heart disease, hypertension, diabetes or hyperlipidemia, although the patient smokes cigarettes. He will be considered for coronary bypass grafting and repair of ventriculoseptal defect.

RIGHT CORONARY ARTERY: The dominant right coronary artery was a large-caliber vessel. There was diffuse atherosclerosis including 50 - 60% stenosis in the proximal 1/3rd. The posterior descending branch was a medium-caliber vessel and was completely occluded in its middle 1/3rd. The left ventricular extension branch beyond the posterior descending artery was at least 70% stenotic over a short distance. The terminal posterolateral ventricular branch appeared free of severe focal stenosis, but appeared likely to be no more than 2 mm in diameter proximally and smaller distally. The left ventricular extension branch itself may be graftable. It is possible that the posterolateral ventricular branch is graftable proximally.

LEFT CORONARY ARTERY: The left main coronary artery was a medium length, medium-caliber segment, probably no more than 30% stenotic distally. The left anterior descending artery was a medium-caliber vessel with 75% stenosis distal to the 1st diagonal branch. The LAD beyond that point appeared diffusely atherosclerotic. Whether the LAD is graftable is not clear. The 1st diagonal had moderate plaque proximally and divided into 2 smaller caliber limbs distally. There was diffuse disease in these diagonal branches. The ramus intermedius branch of the left main coronary artery was a 2.5 mm diameter vessel proximally with 90% proximal stenosis. The ramus intermedius is probably graftable distally. The nondominant circumflex was a medium-caliber vessel with 90% proximal stenosis. The circumflex had only 1 branch which extended very far from the AV groove. This is the terminal posterolateral branch. It may not be graftable. The circumflex itself could probably be stented proximally.

LEFT VENTRICULOGRAM: Left ventriculograms were recorded in both 25-degree RAO and 45-degree

Winfrey, Clarence B (MR # M002010261) Printed by Soles, Cheryl M [4708] at 1/23/14
7:43 AM



Winfrey, Clarence B (MR # M002010261)

LAO

projections. The RAO view showed the left ventricular cavity to be at the upper limit of normal size. The diaphragmatic segment was akinetic, but the posterobasal segment appeared to contract well, as did the apex, anterobasal and anterolateral segment. No mitral regurgitation was evident. There was prompt flow into the right ventricle through an inferior ventriculoseptal defect. The pulmonary artery and aorta opacified about equally well after left ventricular injection. In the LAO projection, all left ventricular segments appeared to contract well. Again, there was prompt flow from the left ventricle through the VSD into the right ventricle, and only slightly less opacification of the right ventricular outflow tract, then of the aorta itself.

HEMODYNAMICS: Initial aortic pressures was approximately 130/75 mmHg. LV pressure was 140/32 when the aortic valve was crossed. Final left ventricular and aortic pressures following coronary arteriography and ventriculography were 140/25 and 140/75 mmHg, respectively.

PROCEDURE: The patient was transferred to the Cardiac Catheterization Laboratory from Dr. Dasgupta who saw this patient in the office. The echocardiogram done in the office showed a ventriculoseptal defect. In the Cardiac Catheterization Laboratory, the patient was found to have a normal right radial pulse and normal right Allen test. Skin and subcutaneous tissues were anesthetized with 2% Xylocaine before the right radial artery was cannulated percutaneously with a 6-French sheath. Heparin 5000 units was given IV. Initially a 6-French TIG guide catheter was used for measurement of left ventricular and aortic pressure, and for selective right coronary arteriography. This catheter appeared too stiff at the secondary curve to cannulate the left coronary artery. A 5-French diagnostic TIG catheter cannulated the left coronary artery; however, and was used for selective left coronary arteriography. A pigtail catheter was then used for a power injected 25-degree RAO left ventriculogram, followed by a 45-degree LAO power injected left ventriculogram. The patient tolerated the procedure well. We have consulted Dr. Travis to consider this patient for coronary bypass grafting and surgical repair of his ventriculoseptal defect. In the meantime, the patient has been transferred to Intensive Care for further treatment. Following cardiac catheterization, the catheter and sheath were removed, and a TR band was applied. Patient received several doses of intraarterial verapamil during this procedure. There were no apparent immediate complications.

cc:Karen Greenfield, MD
Lanneau Lide, MD
Jeffrey A. Travis, MD

T: 05/28/2013 06:31 P/saw

Winfrey, Clarence B (MR # M002010261) Printed by Soles, Cheryl M [4708] at 1/23/14 7:43 AM

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION FULL COMMISSION
WCC No. 1306305

Clarence Winfrey,)
)
Claimant/Appellant,)
)
v.)
)
Archway Services, Inc.,)
)
Employer/Respondent,)
)
and)
)
American Fire & Casualty,)
)
Carrier/Respondent.)
-----)

COPY

FULL COMMISSION HEARING

Monday, May 19, 2014
1:38 p.m. - 2:03 p.m.

The Full Commission Hearing before Commissioner Aisha Taylor, Commissioner Melody L. James, and Commissioner Avery B. Wilkerson, Jr., Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 19th day of May, 2014 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:**Preston F. McDaniel, Esquire**

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INDEX

	<u>PAGE</u>
ARGUMENT BY:	
Mr. McDaniel	3
ARGUMENT BY:	
Mr. Bayne	14
REPLY BY:	
Mr. McDaniel	20
REPLY BY:	
Mr. Bayne	25
Certificate	28

1 THE COURT REPORTER: Today is Monday, May 19, 2014.

2 This is South Carolina Workers' Compensation
3 Case Number 1306305. This is the case of
4 Clarence Winfrey, Claimant, versus Archway
5 Services, Incorporated, Employer, and American
6 Fire and Casualty, Carrier.

7 The Appellant is the Claimant represented by
8 Preston McDaniel. The Respondent is
9 represented by Brett Bayne.

10 Each side is allowed ten minutes for oral
11 argument and the Appellant three minutes in
12 reply. You are requested to argue the grounds
13 of exception and stay within the record.

14 COMMISSIONER WILKERSON: Mr. McDaniel.

15 ARGUMENT BY MR. MCDANIEL:

16 MR. MCDANIEL: May it please the Commission. We're
17 here on -- this is from the decision of
18 Commissioner Beck on the Form 15 hearing.

19 The Commission -- the decision should be
20 reversed and the benefits reinstated with
21 penalty because the Defendants did not comply
22 with the mandatory provisions of 42-9-260(A)
23 and (B); number two, the Defendants are the
24 moving party and the Commissioner made a legal
25 error by shifting the burden of proof from the

1 Defendants to us. And the Defendants did not
2 meet -- even if you look at it from the
3 standpoint of the burden of proof as far as the
4 evidence goes, the Commission -- the Defendants
5 did not prove their -- did not meet their
6 burden of proof.

7 Now, let's talk about the first issue and that
8 is the mandatory provisions of 42-9-260(A) and
9 (B). First off, the first -- the first
10 provision of that section (A) provides
11 specifically: Upon making the first payment,
12 the Employer immediately shall notify the
13 Commission in accordance with the form
14 prescribed by the Commission that payment of
15 compensation has begun.

16 In this case, they did not file that form.
17 They did not send us a form. The Commission,
18 as you will find in the record, fine them.
19 They agreed that they did not properly file.

20 So number one, they have violated the
21 provisions of the Act, the section which allows
22 them to stop payment at any point in time,
23 particularly during the first 150 days. They
24 have to file that form and notify the Claimant
25 that benefits have been started. That's a

1 mandatory requirement of the -- it's a
2 mandatory requirement, number one.

3 Number two, section -- Regulation 67-503 says
4 under (B), the Employer's representative shall
5 file the Form 15 with the claims department
6 within ten days of the date of the first
7 payment of compensation. Two, the Employer's
8 representative shall serve the Form 15 on the
9 Claimant, according to the Rule 67-211, with
10 the Claimant's first -- with the Claimant's
11 first check. That has not been done. It was
12 never done.

13 (C), another provision provides that -- and
14 I've quoted this. In my brief at page two,
15 you'll find the first quotation of the statute.
16 The second provision provides -- in 67-504, it
17 provides that they have to serve us with two
18 copies of the Form 15, three, when they stop
19 benefits. They did not do that.

20 And, more importantly, they are also required
21 under that code section, under 504, to do the
22 following: The Employer's representative shall
23 file a Form 15 immediately with the claims
24 department and shall serve two copies of the
25 Form 15 immediately on the Claimant according

1 to Regulation 67-211.

2 **COMMISSIONER JAMES:** Mr. McDaniel, with regard -- I
3 see the inclusiveness of your argument, but as
4 far as the two copies, that's -- that is -- and
5 I know what you're pointing out. It's one
6 wrong upon one wrong. But if it was just that
7 one issue, that is -- we all know why the two
8 copies. I mean --

9 **MR. MCDANIEL:** Right, so we'll have one to send
10 y'all back.

11 **COMMISSIONER JAMES:** Right. And -- so that's
12 more -- that in itself is more of a ministerial
13 (sic) issue. Just like there's some case law
14 with regards to search warrants that require
15 them to be turned in within ten days of
16 execution, but that doesn't invalidate the
17 search warrant. So that --

18 **MR. MCDANIEL:** Right, Commissioner.

19 **COMMISSIONER JAMES:** Right. But I understand -- I
20 understand what you're saying.

21 **MR. MCDANIEL:** Right.

22 **COMMISSIONER JAMES:** But that's not the big --
23 that's not the big issue here.

24 **MR. MCDANIEL:** No, Commissioner, it's not. I
25 think -- I think in reference to the mandatory

1 requirements of the Act, if I don't file
2 a -- if I bring a third-party action and within
3 30 days I do not file that form with the
4 Commission, it voids my right to bring that
5 third-party action. I can get kicked out of
6 Court. I can lose my client's benefits.

7 That -- the Supreme Court's already said that's
8 a -- that's a mandatory requirement under 42 --
9 because the Act says you shall do this.

10 Now, what we have to look at first off is
11 42-9-260 creates what? An exception to what
12 the general rule has always been ever since the
13 inception of the Act and that is, once you
14 start benefits, you can no longer deny the
15 case. That statute carved out six specific
16 exceptions that would allow them to stop
17 benefits.

18 So, you're right, Commissioner. In my opinion,
19 they first did not comply with some mandatory
20 requirements; that's to notify -- it goes along
21 with 42-17-10 which provides that the
22 Commission shall approve the agreement of the
23 parties.

24 In other words, like when you file that
25 agreement with the parties, it has the same

1 force and effect as an order. That's the
2 same -- that statute there contemplates the
3 same thing as under 42-17-10.

4 Now -- so -- and the provisions of the Act are
5 mandatory in that when you don't do that, when
6 you don't comply with the Act, when you do not
7 comply with the Act, they're mandatory and
8 provide that you shall reinstate benefits and
9 the Commission shall penalize him 25 percent
10 for improper stop payment.

11 So, my first argument is, they failed to comply
12 with the Act. The second argument is, that the
13 Defendants are the moving parties.

14 Now, first off, the statute, which creates a --
15 and if you'll look at page seven, I've quoted
16 this, here again from the Act. And it provides
17 that once temporary disability benefits are
18 commenced, the payments may be terminated if --
19 and then it goes on to provide -- and one of
20 the reasons is "a good faith investigation is
21 conducted by the Employer reveals a grounds for
22 denial."

23 The word is "if" is in there because it sets a
24 condition precedent. You can stop benefits if
25 you have conducted a good faith investigation.

1 The statute clearly contemplates that the
2 Defendants are the moving party. If there's
3 any doubt in that, if there's any doubt in
4 anybody's mind that they're the moving party,
5 okay, the regulation that this Commission has
6 adopted provides -- 67, you know, 504 provides
7 that the Defendants are declared to be the
8 moving party.

9 This Commission has decided that in any action
10 brought under that section to stop benefits,
11 the Defendants are declared to be the moving
12 party.

13 Now, this Commission says that. General law,
14 I quote general law on page 8, CJS, Corpus
15 Juris Secundum, generalized Black Letter Law,
16 it says: The moving party has the burden of
17 proof going forward, as well as the burden of
18 persuasion in any administrative hearing.

19 To say that I was somewhat shocked whenever I
20 was told that we had to prove -- we had to
21 disprove -- we had to prove that they had not
22 conducted a good faith investigation ...

23 The -- now, let's go to the testimony and the
24 evidence. Did they put up anybody from the
25 insurance company? No. Did they put up

1 anybody from the Employer? No. What did they
2 rely on? Medical records. That's all they
3 relied on.

4 They had no testimony, no evidence put into the
5 record saying that we formed a good faith
6 belief that we had -- based on our good faith
7 investigation, we formed a belief that the
8 Claimant had failed to prove compensable injury
9 by accident. They had nothing in there. This
10 was -- the Commissioner's decision was based
11 clearly on his review -- his review of medical
12 records.

13 And as he found in his order, the Defendants
14 represented to the Commission they conducted a
15 good faith investigation. They didn't put any
16 proof of that. I move for a -- can't move for
17 a directed verdict, but I would basically --
18 asked them that I not even be required to put
19 up any evidence because they hadn't had anybody
20 testify.

21 Now -- so, next issue is the Commissioner erred
22 by shifting the burden of proof to the Claimant
23 in a Form 15 hearing. The Form 15 hearing is
24 a specific limited right given to the
25 Defendants within the first 150 days. It's an

1 exception to the entire concept of workers'
2 compensation, which is they can stop benefits
3 for certain specific reasons. And one of those
4 reasons is a good faith investigation.

5 Commissioner, another thing -- going to your
6 point about the two copies, another thing they
7 didn't do is it requires that you attach
8 documentation as to why you're stopping
9 benefits. They didn't attach any
10 documentation. There is nothing.

11 All right. So, the second thing -- the
12 first -- the next thing is the Commissioner
13 committed an error of law by shifting the
14 burden of proof to us, to prove that they had
15 not conducted a good faith investigation.

16 Needless to say, however, also I had filed a
17 Notice of Deposition, gave them ten days
18 notice. They filed a Motion to Quash that way
19 back when this first thing started; that was
20 not ruled on. We didn't get a ruling on that
21 until the hearing and the Commissioner said I
22 didn't have the right to take the --

23 **COMMISSIONER WILKERSON:** Finish your thought, then
24 you'll have three minutes in reply.

25 **MR. MCDANIEL:** And the other thing is --

1 COMMISSIONER WILKERSON: No, don't go to the next
2 thing. Finish your thought because we got --

3 MR. MCDANIEL: My thought is, is that I should have
4 been allowed to take the deposition. Thank
5 you.

6 COMMISSIONER WILKERSON: Okay. Thank you.

7 COMMISSIONER JAMES: Mr. McDaniel, let me ask one
8 question. In your brief, some of the issues
9 there is some question as to whether there was
10 a request for a postponement or not or whether
11 that was offered at the time to -- in other
12 words, to prepare for certain of these issues.

13 MR. MCDANIEL: They filed a Motion for Continuance
14 and -- I think what you're asking me is whether
15 or not, for example, I was given an opportunity
16 to ...

17 COMMISSIONER JAMES: At some point, Defendants
18 indicate in their brief of certain limited
19 number of the issues that you have raised in
20 your brief, that there was an opportunity that
21 there could have been a continuance in order
22 for preparation for those issues.

23 MR. MCDANIEL: Right. In other words -- yes, in
24 other words, they -- of course, here again, a
25 lot of this was an off-the-record conference.

1 But, in other words, they filed a Motion for a
2 Continuance and the Commissioner, I believe, in
3 that off-the-record conference said, you
4 know -- you know, of course, I've got a client
5 without benefits, been there without benefits
6 for three months. We were there on the
7 hearing. I didn't think the Motion for
8 Continuance was proper. The -- but, in other
9 words, I was given -- I think part of that was
10 that, well, you could take the deposition -- it
11 was not in reference to the adjuster. It was
12 in reference to further medical evidence, I
13 believe. I don't even remember specifically
14 what that was in that regard. Mr. Bayne may be
15 able to --

16 **MR. BAYNE:** Commissioner, I'll be happy to address
17 that --

18 **COMMISSIONER JAMES:** Thank you, sir.

19 **COMMISSIONER WILKERSON:** Go ahead.

20 **MR. BAYNE:** -- if you want me to. Just kind of, you
21 know, outside of my time, I'll just address
22 that one issue for you.

23 **COMMISSIONER WILKERSON:** Okay.

24 **MR. BAYNE:** The issue was that we had filed a Motion
25 to Continue based on the Circuit Court claim

1 that was ongoing and Mr. McDaniel had opposed
2 that; obviously, Commissioner Beck declined
3 that. There were a couple of other outstanding
4 motions related to discovery and Mr. McDaniel,
5 I think, had asked or had indicated he
6 didn't -- had either not received one or had
7 not had the chance to address when Commissioner
8 Beck gave him the option to continue the
9 hearing to file a written reply to those, which
10 was declined and we just addressed them off the
11 record in the pre-conference hearing.

12 So, it didn't have anything to do with the
13 deposition of the adjuster. That was something
14 that was just taken up and denied by
15 Commissioner Beck, as was our request related
16 to the deposition of the Claimant. So the
17 discussion about -- about delaying the hearing
18 for the motions didn't have anything to do with
19 the deposition of the adjuster that
20 Mr. McDaniel wished to take.

21 COMMISSIONER WILKERSON: Go ahead and start your
22 comments.

23 MR. BAYNE: Thank you, Commissioner.

24 ARGUMENT BY MR. BAYNE:

25 MR. BAYNE: Commissioner Beck's order at the outset

1 should be affirmed in its entirety. The
2 Claimant has raised a couple of issues that
3 he's talked to you about here today that the
4 Defendants did not comply with 42-9-260 and the
5 discussion about being the moving party and
6 shifting the burden and I want to discuss those
7 very briefly.

8 As -- Commissioner James, as you said, the
9 two-copy rule, we don't dispute that. We did
10 not submit two copies of the Form 15, therefore
11 we did not comply with that. But as
12 Commissioner Beck in his decision and order and
13 as you've spoken about today, that is more of
14 a ministerial rule in that it exists to provide
15 notice to the Claimant.

16 In this case, Commissioner Beck determined that
17 because the Claimant was represented by
18 counsel, that two-copy rule was not a
19 requirement but rather something that should
20 have been done but wasn't. But the fact that
21 it was not done is not a reason to invalidate
22 his decision and order.

23 As far as the attaching a reason to the 49 --
24 or to the Form 15, that was done in this case.
25 When you look at the Form 15, on the face of

1 that Form 15, there is documentation as to the
2 reason why this claim has been denied that
3 complies in all aspects with the South Carolina
4 Workers' Compensation Act.

5 There is no requirement in the Act that
6 documentation be stapled to the back of it, be
7 paper clipped to it. It simply has to be
8 attached to it sufficient to provide notice to
9 the Claimant as to the reason why his claim was
10 being denied. That was done in this case.

11 As far as the deposition issue related to the
12 adjuster -- and this is something that -- is
13 just an issue that's raised in there --
14 Mr. McDaniel sought to take the deposition of
15 the adjuster on this claim by designating her
16 the managing agent of the insurance company,
17 which is not something that you get to chose to
18 do. You have to identify the actual managing
19 agent of a corporation if you wish to take
20 their deposition in this case.

21 When we received that motion or that Notice of
22 Deposition, we filed a Motion to Quash that
23 deposition and we refused to give that
24 deposition. At the time, no matter was taken
25 up on that, but it was handled again before the

1 hearing.

2 Interestingly enough, we filed a notice with
3 Mr. McDaniel to take the deposition of his
4 client, which was also refused and was also
5 turned down at the time because we didn't give
6 15 days notice of the deposition. But there
7 was no hearing requested and no order sought
8 from the Commission in order to deny that
9 deposition, which is the exact same reason when
10 you read the brief of the Claimant as to why
11 there was error in denying the Claimant's
12 deposition of the adjuster.

13 **COMMISSIONER JAMES:** And I don't mean to interrupt
14 your flow of argument --

15 **MR. BAYNE:** Sure.

16 **COMMISSIONER JAMES:** -- but what about the actual
17 crux of this issue as to what was placed into
18 evidence and how -- how is that -- how do we
19 know that that's part of the investigation?

20 **MR. BAYNE:** Commissioner, we know that's part of the
21 investigation because those were documents that
22 were received by the Defendant prior to the
23 denial of benefits of the Claimant. And we
24 know that because, one, they were presented to
25 the Defendants by the Claimant in June of 2013.

1 The second reason we know that is because the
2 Defendant has the absolute right to those
3 documents under statute and receives those
4 documents. It's --

5 **COMMISSIONER JAMES:** But we don't -- there's nobody
6 there to say they received it, right?

7 **MR. BAYNE:** There's no custodian of records to
8 indicate that they were sent, but the subpoenas
9 exist, the documents exist, the email from the
10 Claimant to the Defendant exists indicating
11 that the medical records were sent. References
12 are made throughout. The records, when you
13 look at them, they involve discussions between
14 the Defendant and the Claimant or the insurance
15 company and the Claimant related to the medical
16 records. The fact that the --

17 **COMMISSIONER JAMES:** And that -- and that -- and
18 that's in the -- that's in the APA's?

19 **MR. BAYNE:** It should be in the APA's, Your Honor.
20 If it's not, we can -- we can bring that up.
21 But the issue, again, goes to that the
22 Defendants are paying the medical bills and as
23 part of the statute under the Workers'
24 Compensation Act, the Defendant is entitled to
25 receive those medical bills.

1 And when we go back to the issue just simply on
2 shifting the burden or who had the burden and
3 then we get to whether or not the Defendants
4 even proved that they had the right to deny
5 that claim, when you look at the medical
6 records and you question whether or not a good
7 faith investigation occurred -- when you read
8 the medical records, what you find out is that
9 the Claimant represented to the hospital six
10 days after he suffered an electrical shock,
11 suffering at that time from myocardial
12 infarction; that he had a severe family history
13 of heart disease; that he had a personal
14 history of heart disease; that he had severe
15 risk factors related to known causes of heart
16 disease such as smoking, alcoholism, and a
17 family history; that the doctors when treating
18 him -- and you look at the symptoms he has that
19 morning, it indicates that he didn't suffer a
20 heart attack on the day he was shocked. He
21 suffered a heart attack on the day he presented
22 to the hospital. And that's the medical
23 records that the Defense looked at.

24 And when you look at those records and when
25 Commissioner Beck looked at those records, he

1 looked at them and said, "That's a reason to
2 deny this claim," which is why we're here in
3 the first place.

4 So, I guess to answer the question,
5 Commissioner, we don't have a records custodian
6 to come up and say we received those records on
7 "X" date before the denial of benefits, but I
8 think it's common sense under the law that we
9 would have had those records. And then when
10 you look at communications that were had or you
11 look at the fact that the Claimant himself sent
12 us those medical records in June of 2013, it
13 becomes logical that we would've had those
14 medical records in order to review them and
15 then make a denial of benefits.

16 That's all I have, Commissioner.

17 COMMISSIONER WILKERSON: Any other questions?

18 COMMISSIONER TAYLOR: No.

19 COMMISSIONER WILKERSON: Thank you. In reply.

20 REPLY BY MR. MCDANIEL:

21 MR. MCDANIEL: Real fast. The -- number one,
22 Mr. Bayne just told you what his opinion was
23 reviewing those records. He just told you what
24 the Commissioner's opinion was reviewing those
25 medical records. That's Mr. Bayne's opinion,

1 that's the Commissioner's opinion, but the
2 Commissioner has to base his decision on the
3 evidence.

4 And the evidence presented -- there is no
5 evidence as to what formed the opinion of the
6 insurance company to deny this claim. There is
7 simply no evidence in the record. It is
8 surmise, conjecture and innuendo for the
9 Commissioner to say, "Well, I see where he had
10 these past preexisting conditions and they
11 could have reviewed that and denied it." Well,
12 they could have had -- they could have denied
13 it because -- that's not -- that shoulda,
14 coulda, woulda? That's not what is required.
15 They are required to come in and prove that
16 they conducted a good faith investigation and
17 found grounds and what those grounds were.
18 They didn't do that.

19 **COMMISSIONER WILKERSON:** Mr. McDaniel, let me ask
20 just a general question.

21 **MR. MCDANIEL:** Sure.

22 **COMMISSIONER WILKERSON:** Is there not some concern
23 that every insurance carrier, if you had
24 prevailed, will take 149 days to investigate
25 every claim and not start anything until the

1 150th day?

2 **MR. MCDANIEL:** Commissioner, as a matter of fact --
3 is there not some concern? Sure.

4 **COMMISSIONER WILKERSON:** Yeah, that -- okay.

5 **MR. MCDANIEL:** However -- okay. Another thing that
6 the statute provides under 42-9-260(A), within
7 the first 150 days, they can deny the claim,
8 okay? They can deny the claim and I
9 contemplate that they would file a 21, okay?
10 But --

11 **COMMISSIONER WILKERSON:** But they're not required to.

12 **MR. MCDANIEL:** What we're talking about, though, is
13 under (B).

14 **COMMISSIONER WILKERSON:** I'm following you.

15 **MR. MCDANIEL:** All right. Under (B), they're --
16 they can stop benefits without a hearing, okay?
17 In other words, under certain limited criteria.
18 So, they can still deny the claim and if the
19 claim is only -- but once they've made the
20 decision, unless they establish one of those
21 six reasons.

22 And if you look at the six -- out of the six
23 reasons, the one really that -- that I think it
24 gives me tremendous -- and has always given me
25 heartburn is this good faith denial of

1 benefits.

2 Because, you know, it's easier to attach a
3 doctor's statement "he's released to light ~~du~~ty
4 work." And they say -- you know, they ~~made~~
5 light duty work available. All right.
6 That's -- that's very -- you know, that's --
7 the documentation on all the rest of them and
8 y'all see it all the time, you know, what --
9 and your decisions.

10 I've had y'all decide both sides of the coin on
11 that. Well, it looks like the doctor's
12 restrictions were 20-pound weight restriction
13 and you didn't provide him a job with a
14 20-pound weight restriction, you don't
15 reinstate benefits. But what we talking about
16 there? We're talking about evidence.

17 **COMMISSIONER WILKERSON:** Yeah.

18 **MR. MCDANIEL:** And, Commissioner --

19 **COMMISSIONER WILKERSON:** Go ahead and finish your
20 thought.

21 **MR. MCDANIEL:** If I -- could I -- one other
22 important issue.

23 **COMMISSIONER WILKERSON:** Go ahead.

24 **MR. MCDANIEL:** May I have one minute -- one second?
25 And that's this: Finding two, Commissioner --

1 the issue was whether or not they should
2 reinstate benefits under Form 15. Finding of
3 two is going to become very important and he
4 made a Finding of Fact that Claimant suffered
5 a myocardial infraction on May 28th, 2013.

6 No matter what your decision on anything else,
7 that's an issue that goes towards the day of
8 the heart attack and that was an issue outside
9 of what was before the Commissioner for
10 decision and you're going to see in the later
11 decision. I'd ask that that be struck at a
12 minimum, if you don't agree with me on anything
13 else.

14 MR. BAYNE: And I'd like to address that, if
15 that's --

16 MR. MCDANIEL: And we will -- and we will stand on
17 my brief as to all the other --

18 COMMISSIONER WILKERSON: Let me ask you --

19 COMMISSIONER JAMES: In other words, you say that
20 goes to the merits of whether it was
21 compensable or not.

22 MR. MCDANIEL: Correct.

23 COMMISSIONER JAMES: But it was the allegation of
24 the fact that it was on the 28th that may have
25 been part of the reason for stopping the

1 benefits, not that it actually occurred on the
2 28th.

3 MR. MCDANIEL: Correct. In other words -- but that
4 finding could be argued to be the law of the
5 case, that kind of thing.

6 COMMISSIONER WILKERSON: Go ahead.

7 REPLY BY MR. BAYNE:

8 MR. BAYNE: I'd like to briefly -- since that wasn't
9 addressed in the preliminary, I'd like to rebut
10 that briefly. And that is, Commissioners, that
11 the issue is, did we conduct a good faith
12 investigation, and part of that investigation I
13 talked about earlier is that we looked at the
14 sequential events that occurred. And one of
15 those sequential events is that --

16 COMMISSIONER WILKERSON: Is that outside the record?

17 MR. MCDANIEL: Yeah, I'm going to object. That's
18 outside the record.

19 COMMISSIONER WILKERSON: Yeah, I thought it might
20 be.

21 MR. MCDANIEL: There's no proof --

22 COMMISSIONER WILKERSON: If it's outside the record,
23 we can't --

24 MR. BAYNE: That's fine, Commissioner.

25 COMMISSIONER WILKERSON: Yeah.

1 MR. BAYNE: If the heart attack -- when you look at
2 the record, the heart attack didn't occur until
3 six days after an accident. That in and of
4 itself is sufficient grounds to deny a case.

5 COMMISSIONER JAMES: And, Mr. Bayne, what I'm saying
6 is, the actual date that it may have occurred
7 may be for another Commissioner.

8 MR. BAYNE: It might be.

9 COMMISSIONER JAMES: It's the allegation of it
10 occurring on that date is the basis of your
11 argument --

12 MR. BAYNE: It might be, Commissioner, yes.

13 COMMISSIONER JAMES: -- for good faith. But to
14 actually find in that hearing what transpired
15 medically would be -- would be outside the ...

16 MR. BAYNE: I don't disagree with you that it's
17 outside --

18 COMMISSIONER JAMES: And the shoe could be on the
19 other foot at another hearing.

20 MR. BAYNE: Right.

21 COMMISSIONER JAMES: In other words, it's a finding
22 that would really go onto the merits
23 Commissioner.

24 MR. BAYNE: Correct, but it's not something that's
25 outside the evidence that was in front of

1 Commissioner Beck and he had that evidence and
2 he looked at it and made that determination
3 based on the medical records.

4 COMMISSIONER JAMES: But it wasn't the purpose of
5 the hearing.

6 MR. BAYNE: Well --

7 COMMISSIONER JAMES: The purpose was --

8 MR. BAYNE: -- we think it was.

9 COMMISSIONER JAMES: -- based on what you're looking
10 at is why there's good faith to stop.

11 MR. BAYNE: Correct, Commissioner.

12 COMMISSIONER JAMES: Not (inaudible).

13 MR. BAYNE: We think it was part of the hearing, but
14 that's for another issue.

15 COMMISSIONER WILKERSON: Okay. If y'all would --
16 this concludes the hearing.

17 (The hearing concluded at 2:03 p.m.)

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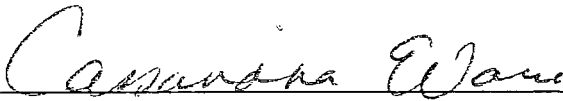
25

CERTIFICATE

This is to certify that the within hearing consisting of twenty-seven (27) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 9, 2014.



Cassandra E. Vance
Court Reporter

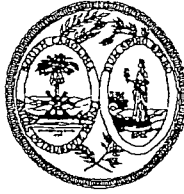
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Workers' Compensation Commission

June 12, 2013

American Fire & Casualty Co
13830 Ballantyne Corp Place
Suite 300
CHARLOTTE, NC 28277
Carrier Code No. 00011

Re: WCC File No. 1306305
Clarence Winfrey

Date of Injury: 05/29/2013

Archway Service, Inc
Carrier Policy No.

The above claim has been filed according to Regulation 67-206. However, we have not received a First Report of Injury (Form 12A) for this claim. According to our records, you are the party responsible for filing the First Report of Injury (Form 12A) for the above claim. Please submit a Form 12A to the Commission within ten days of the date this letter, pursuant to Regulation 67-416, which requests the Form 12A be submitted using electronic data interface.

A copy of the correspondence establishing this claim is enclosed for your information. Please reference the WCC file number on all correspondence and forms filed with the Commission regarding this claim.

Sincerely,

Wayne A. Ducote
Coverage & Compliance Director
803-737-6203

WAD
Enclosure: Claim Filing

I certify this to be a true and correct copy.



POC Online Inquiry

1306305

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Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Address	Names	Addresses	State Exposure	Canc/Remit/Non-Renew	Transaction History	
Policy Nbr	XWA1355266239			Cov Prvdr ID	11266	Pol Eff Dt	09/12/2012
Primary Insured Name	ARCHWAY SERVICE INC					Pol Exp Dt	09/12/2013
						Primary Insured FEIN	518663955

Orig Pol Nbr

Orig Cov Prvdr ID

Orig Pol Eff Dt

Primary Insured Information

Primary Insured Name ARCHWAY SERVICE INC
 Name Type 2 - COMMERCIAL NAME
 Street 2316 KINGS ROAD EXT
 City SHELBY
 State NC
 Zip Code 28152

Coverage Provider Information

Cov Prvdr ID-Cov Prvdr Name 11266 - AMERICAN FIRE AND CASUALTY CO
 Street PO BOX 188060
 City FAIRFIELD
 State OH
 Zip Code 45018
 Group ID 11363
 Branch 909

Orig Pol Rcvd Dt 09/11/2012
 Prior Pol Nbr

Orig POC Rcvd Dt

Last Rcvd Dt 04/16/2013

Last Activity Dt 09/16/2013

Pol Type Plan 01 - VOLUNTARY POLICY
 Pol Type Cvrgr 01 - STANDARD WORKERS' COMPENSATION POLICY
 Wrap-Up Pol 2 - NON-WRAP-UP POLICY
 Legal Nature of Insured 03 - CORPORATION
 Employee Leasing Code 1 - NON-EMPLOYEE LEASING POLICY
 Deductible Losses Code
 Deductible Calc Code

State Cov Prvdr
 State Eff Dt 09/12/2012
 State Exp Dt
 Reason State Added
 Gov Class Code 5191
 State Premium (\$) 958

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Policy No. XWA 55266239 Loss Date 05/22/2013

Claim No. WCCT-1 WC 22-209963 A

For INVOICE NUMBER 252400

WCC1306305 CLARENCE WINFREY

FROM: 07/16/2013 THRU: 07/16/2013

Insured: ARCHWAY SERVICE INC

to the order of
SOUTH CAROLINA WORKERS COMP
PO BOX 1715, 1612 MARION ST.
COLUMBIA SC 29202-1715

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[Signature]

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

*Proudly representing injured workers
for over 25 years*

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

September 23, 2013

VIA HAND DELIVERY
Virginia Crocker - Judicial Director
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

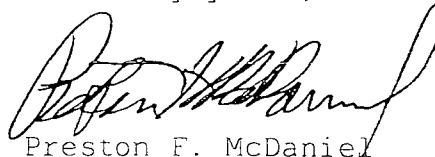
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Ginger:

Please find attached my original letter addressed to the adjuster Ms. Terri Hughes with a copy to Rocky Hughey attorney at law of the Form 15 requesting a Hearing which was hand delivered to the Commission per the attached Affidavit of Hand Delivery on September 18, 2013. In a rush to get this matter filed the envelope was addressed to the Commission and there was no separate letter. By copy of this letter sent via email and regular mail I am again advising Rocky of this filing and serving him with our Affidavits of delivery in this matter.

Pursuant to our telephone conversation I am requesting that this matter be set on an emergency basis by the Commissioner due to the severe situation of my client. By copy of this letter sent via email and mail I am notifying and serving both the adjuster who generated the Form 15 and Rocky Hughey who is now representing them with a copy of this refilling. I am also going to file a Form 50 Requesting a Hearing and would ask that it be set as soon as possible if necessary after the Form 15 Hearing as I have no earthly idea why this claim was denied or what the defendants will present at the Form 15 Hearing.

Sincerely yours,



Preston F. McDaniel

PFM/bre
Enclosures
cc: Landon Hughey, Esquire
Terri Hughes

CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the **FORM 15** by depositing the same in the United States Mail, with adequate postage thereon, AND VIA Electronic Mail, addressed as follows:

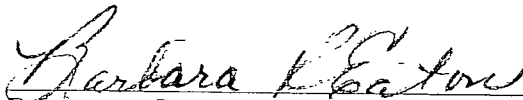
VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

VIA EMAIL - rhughey@mgclaw.com
AND US MAIL

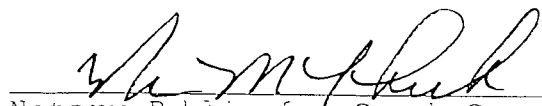
Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211

I also hereby certify that a regular communication by mail exists.


Barbara R. Eaton
Paralegal

SWORN TO BEFORE ME this

23 day of September, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 1/21/14

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1315 ELMWOOD AVENUE
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OF COUNSEL:
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Telephone (803) 771-7211

Facsimile (803) 252-0709

September 18, 2013

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL

Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

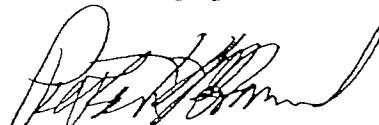
RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305
Claim #: 22209963

Dear Ms. Hughes:

Please find attached the Form 15 which I am today filing with the Commission by hand delivery. While you note on your letter denying the claim that attorney Rocky Hughey of McAngus, Goudelock & Courie will be representing you, we have checked with the Commission and he is not yet on Record as being your attorney nor have we have been notified as such and so I am therefore returning this Form 15 and serving the Form 15 on you.

In addition, I am forwarding a copy to Mr. Rocky Hughey and asking him to confirm whether or not he is in fact representing you on this matter.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: Mr. Clarence B. Winfrey
Landon Hughey, Esquire



Claimant's Name: Clarence Winfrey SSN: _____ Employer's Name: Archway Services
Address: _____ Address: 2316 Kings Road Extn.
City: _____ State: _____ Zip: _____ City: Shelby State: NC Zip: 28152
Home Phone: 803 429 7590 Work Phone: _____ Insurance Carrier: Liberty Mutual Insurance
Preparer's Name: Terri Hughes Law Firm: _____ Preparer's Phone #: 800 334 0078

Date of injury: 5/22/2013 (m/d/yyyy) Date of Notice to Employer of Injury: 5/22/2013 (m/d/yyyy)

I. **Payment of Temporary Compensation** Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☒ A. Temporary Total at the compensation rate of \$426.69 per week. For this period of disability, disability began on 6/1/2013 (m/d/yyyy) and the date of first payment was 7/11/2013 (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of _____ per week. Note: When the Temporary Partial compensation rate varies, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury

-	Current weekly wage	_____
=	Difference in wages before injury and now	\$0.00
x	.6667	\$0.00
	Temporary Partial Compensation Rate	\$0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of _____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation** Temporary compensation payments were stopped on 9/12/2013 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☒ Based on a good faith investigation, the claim is denied. Reason for denial: Employee fails to meet the burden of a compensable injury under the SC Workers' Compensation Act.
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Terri Hughes
- Signature of Claims Administrator

9/12/2013

Date (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: ☒ Form 15 (II) ☐ Has not been received.

Robert H. [Signature]
Signature of Claimant or Legal Representative

9/17/13
Date (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

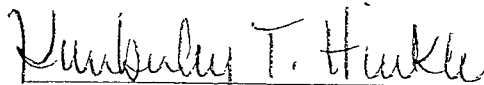
CERTIFICATE OF SERVICE

WCC FILE NO. 1306305

I hereby certify that I have on this day served the following in the matter of Clarence B. Winfrey, Jr. v. Archway Service, Inc. with a copy of the FORM 15 by depositing the same in the United States Mail, with adequate postage thereon, AND VIA Electronic Mail, addressed as follows:

VIA EMAIL - terri.hughes@libertymutual.com
AND US MAIL
Ms. Terri Hughes
Senior Claims Specialist II
Montgomery Insurance
13830 Ballantyne Corp. Place
Suite 300
Charlotte, NC 28277

I also hereby certify that a regular communication by mail exists.



Kimberley T. Hinkle
Paralegal to Preston F. McDaniel

SWORN TO BEFORE ME this
18th day of Sept., 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 05.12.18

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1306305

Clarence Winfrey,)
)
Employee-Claimant,)
)
v.)
)
Archway Service, Inc.,)
)
as Employer, and)
)
American Fire and)
Casualty, Co.)
)
as Carrier,)
)
Respondent-Defendants.)
)

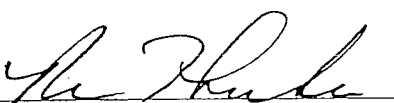
AFFIDAVIT OF ROSE
THIELKE AS TO SERVICE
BY HAND DELIVERY

I, ROSE THIELKE, having been DULY AND PROPERLY SWORN, do
depose and state that on September 18, 2013 I was instructed to
and did hand deliver a copy of the Form 15 in a sealed envelope
which I served upon the South Carolina Workers' Compensation
Commission by delivering a copy of the same to the receptionist
for deliveries at the Commission. To my knowledge the envelope

was addressed to the South Carolina Workers' Compensation
Commission at the following address:

South Carolina Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

FURTHER THE AFFIANT SAYETH NOT



Rose Thielke Affiant

SWORN TO BEFORE ME this

- 23rd day of September, 2013. -



Notary Public for South Carolina

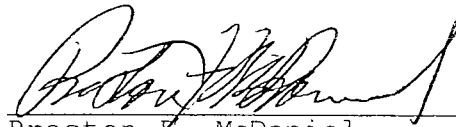
L.S.

My Commission Expires: 10/28/18

CERTIFICATE OF SERVICE BY Hand Delivery

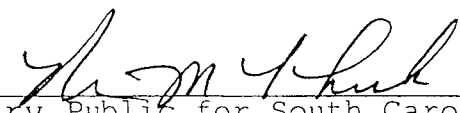
I hereby certify that I have on this day served the following in the matter of Clarence Winfrey v. Archway Services and American Fire and Casualty Insurance, with a copy of the **Form 15** by hand delivery, addressed as follows:

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, South Carolina 29202



Preston F. McDaniel

SWORN TO BEFORE ME this 23
day of September, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: 1/21/14

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 25 years

Preston F. McDaniel
Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 7, 2013

VIA EMAIL - abracy@wcc.sc.gov
& US Mail

Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Objection to Pre-Hearing Brief and APA Submissions of
the Defendants, the Moving Parties, pursuant to Rule
67-612(B)(4) and Supplemented and Amended
Pre-Hearing Brief and APA Submissions

Dear Commissioner Beck:

The above referenced matter is set before you on November 13,
2013.

On November 5th we received a cover letter, a Pre-Hearing
Brief and Affidavit of Service along with alleged APA
Submissions and Exhibits all of which were dated and served
according to the Notice of Service on November 4, 2013.
Obviously the filing and service of the Pre-Hearing Brief is
late and in violation of Commission Rule 67-611 and 67-612(B),
which provides that the Pre-Hearing Brief and APAs and Exhibits
must be filed at least ten (10) days before the Hearing.
Pursuant to Rule 67-211, when service is made by first class
mail, which it was in this case, it is as of the date of service
and mailing. In fact, Rule 67-612(B)(4) provides that the
carrier is the moving party in a Rule 67-504(C) hearing, i.e.,
Form III hearing thus requiring that they file fifteen (15) days
before the Hearing. Obviously this matter was mailed and served
on November 4th which is only 9 days prior to the Hearing.

In addition by letter and Affidavit of Service, we received a
Supplemental Notice of Witnesses and Amended Pre-Hearing Brief

on November 6th, but the Affidavit of Service and the cover letter were all dated for November 5th. Obviously again, this is in violation of Rule 67-611, Rule 67-612, and Rule 67-211.

Therefore, as to both the original Pre-Hearing Brief and the Amended Pre-Hearing Brief and the original Notice of Witnesses and the Supplemental Notice of Witnesses which all were not timely filed, I would move that they be stricken and not be considered by you in reference to the Hearing on November 14th.

In addition, we will also move to strike all of the items listed as exhibits as they are not medical records and are self-serving declarations and/or out of Court hearsay statements that are not admissible into evidence and are prejudicial to the Claimant, specifically because they are hearsay and deny him the right of cross examination as guaranteed both in the Administrative Procedures Act, the Rules of Evidence and our Constitution. Of course, none of these type documents are admissible under any of the Commission Rules wherein the only place that any documents are admissible under the Commission Rules are under 67-612, which provides only for the admission of experts reports as evidence.

In addition, we will object to a document which was part of the supplemental submissions, which is alleged to be some type of a report offering expert opinion, however, the evidence will establish that this alleged expert has never seen Mr. Winfrey and has no personal knowledge of him. There are only two ways that expert opinion evidence is admissible, one is based on the firsthand knowledge of the expert, and the second is based on a properly phased hypothetical question setting out the entire basis for the opinion. While we are moving to strike this without you even seeing this document because of the late filing, we also will object on the basis that there is not foundation laid for this document to be submitted as an expert opinion based upon a properly phrased hypothetical question. In addition, we object to the submission of this document as being in violation of the Administrative Procedures Act, which provides that no document may be admitted into evidence which is prejudicial to the interest of the party and the submission of this written document would violate the Claimant's right of cross-examination and confrontation as guaranteed under the Administrative Procedures Act, the Rules of Evidence and our South Carolina Constitution. The right of confrontation and cross-examination is a fundamental requirement of Due Process.

Commissioner T. Scott Beck

November 7, 2013

Page 2

Please take notice the Defendants apparently are trying to take the position Commissioner that they no burden of proof under the Statute and contrary to that, it is our position as set forth in our Pre-Hearing Brief, that they have the burden of proof to establish that they were entitled to stop payment without a hearing as that Statute specifically provides an exception under very limited bases for stopping benefits without a hearing. In correlation with our position and in support of that, I would quote from the Commission Regulations which specifically clarify that the Defendants have the burden of proof to put forth evidence to prove that they complied with SC Code §42-9-260. Specifically, Rule 67-612(B)(4) provides:

"The carrier shall be deemed the moving party in all hearings scheduled pursuant to a request under R. 67-504(C)." (Emphasis added).

Of course Rule 67-504(C) is the section that provides that,

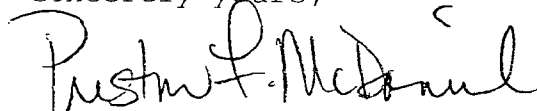
"the claimant may request a hearing to dispute the termination or suspension of temporary compensation by completing section III of the Form 15 and filing it according to Rule 67-207."

I submit this just to confirm that the Defendants are the moving party and have the responsibility of putting forth evidence to support the stopping of benefits.

By copy of this letter I am notifying and serving Mr. Rocky Hughey, Counselor for the Defendants, of this objection to the submission of the Pre-Hearing Briefs and Notice of Witnesses and documents.

I look forward to seeing you at the Hearing and to reinstatement of benefits.

Sincerely yours,



Preston F. McDaniel

PFM/kth

cc: Landon L. Hughey, Esquire

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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for over 25 years

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Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 27, 2013

VIA EMAIL - abracy@wcc.sc.gov
& US Mail

Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Commissioner Beck:

With great reluctance and all due respect for your Honor but with consideration of my client's dire situation of which you are aware, it has now been fourteen (14) days since the Form 15 Hearing was held and we have not received a decision.

Quite frankly this is the first Form 15 Hearing I have had where the Commissioner did not rule at the Hearing but I assumed that you wanted to review the limited documentary evidence before you ruled on the only issue for decision which is whether or not the defendants met their burden of proof of establishing that they had conducted a good faith investigation before they stopped benefits and the grounds for denial that that investigation disclosed.

I fully expected a ruling within days and I am sure you can understand why I waited this long to write this request (sent via email and mail). Knowing you, and knowing your diligence, I know in my heart you have already ruled but that with your workload and the voluminous number of other cases you have to decide, this decision just got misplaced someway. I know also that you will not feel ill of me for having brought this to your attention.

I know also that:

1. You exercised your discretion and considered their untimely

Pre-Hearing Brief and APA Submissions and Notice of Witnesses to give the defendants every opportunity to prove their case.

2. You noted they presented no testimony from the adjuster nor any witness from either the insurance company or employer at the Hearing.
3. You noted they presented no evidence as to whether any documents dated prior to September 13, 2013 were in the possession of or considered by the insurance carrier prior to September 13, 2013.
4. You noted that I allowed Mr. Winfrey to testify even though he was not listed as a witness and that he testified that no one from his company nor the insurance company ever contacted him or in any way stated to him that they were questioning whether his injuries were caused by his electrocution.
5. You noted this was the sum total of the evidence before you.

I look forward to receiving notice of your decision and by copy of this email I am notifying Mr. Hughey and Mr. Bayne of this communication. I also look forward to receiving the separate written Order you indicated you would be issuing confirming your rulings from the bench on the other motions you considered that day.

I hope you have a wonderful Thanksgiving.

Respectfully submitted,

DICTATED BUT FINAL NOT READ

Preston F. McDaniel

PFM/bre

cc: Landon L. Hughey, Esquire
Brett H. Bayne, Esquire



ATTORNEYS AT LAW

REPLY TO
BRETT BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com
COLUMBIA

December 3, 2013

VIA HAND DELIVERY

Commissioner T. Scott Beck
S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

RE: Clarence Winfrey v. Archway Services and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group
Date of Accident: May 22, 2013
WCC File No.: 1306305
Our File No.: 2095.13137
Claim No.: 22209963

Dear Commissioner Beck:

I am in receipt of Mr. McDaniel's letter to you dated November 27, 2013. I would like to briefly address one issue raised by Mr. McDaniel in section number 4 of his letter.

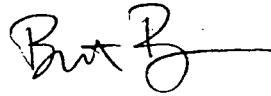
At the time this claim was denied, Mr. Winfrey was represented by counsel. Unless the rules have changed, it would have been improper for anyone from the defense to contact Mr. Winfrey directly to question him or discuss his alleged injuries. Rather, the appropriate course would have been to contact Mr. McDaniel and request to speak to, or get a statement from, Mr. Winfrey.

On July 31, 2013, prior to the denial of this claim, Dave Sanders (an employee of Liberty Mutual) contacted Mr. McDaniel via telephone and asked to get a recorded statement from Mr. Winfrey about the alleged accident. At that time, Mr. McDaniel would not allow the adjuster to get a recorded statement from Mr. Winfrey but instead indicated he would submit a generic statement if he could review the questions to be asked beforehand.

To say that Defendants did not attempt to contact Mr. Winfrey prior to a denial of benefits is incorrect. I know Mr. McDaniel is very busy and I am sure that he simply overlooked this conversation when addressing this issue as it occurred several months ago and before this claim was denied.

With kindest regards,

Very truly yours,

A handwritten signature in black ink, appearing to read "Brett Bayne", with a long horizontal flourish extending to the right.

Brett Bayne

LLH/bhb

cc: Beth Wrinkle, Liberty Mutual Group (via email)
Preston F. McDaniel, Esquire

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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Justin S. Byars
Matthew Robertson
OF COUNSEL
Michael Johnson, P.C.

Telephone (803) 771-7211

Facsimile (803) 252-0709

December 5, 2013

IMMEDIATE ATTENTION
REQUESTED!!

VIA EMAIL - abracy@wcc.sc.gov
AND HAND DELIVERY
Commissioner T. Scott Beck
SC Workers Compensation Commission
1333 Main Street
Columbia, South Carolina 29202

RE: Clarence B. Winfrey v. Archway Service, Inc.
WCC File No. 1306305

Dear Commissioner Beck:

To say that I am livid after receiving the letter from Brett Bayne dated December 3, 2013 would be to say the least. Mr. Bayne has made statements that are not in evidence and has sought to supplement their evidence by making these unsupported statements that are contained in the letter. Those statements are extremely, extremely prejudicial to my client and are definitely improper and constitute statements made by Counsel that are unsupported from the Record.

Mr. Sanders was not called as a witness and there is nothing in reference to this allegation put into the Record. Therefore, there is absolutely no evidentiary basis or support for this comment being made and I would respectfully request a conference on Monday, as I am out of town today and tomorrow, to review this matter for a determination as to whether or not this constitutes unethical conduct on behalf of Defense Counsel; as to whether or not the Defense Counsel should be required to withdraw from representation in this case; and as to whether or not, since you cannot "unring the bell", this matter should be referred to another Commissioner for decision. Also, at this conference which I want on the Record, the letter of December 3rd should be stricken from the Commission Record.

By copy of this letter sent via email and US Mail, I am notifying Mr. Bayne of this communication.

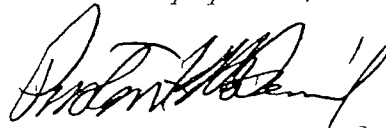
RECEIVED

DEC 05 2013

(FRONT DEL)

PFM/kth SC Workers' Comp Co.

Sincerely yours,


Preston F. McDaniel

cc: Landon L. Hughey, Esquire (Via Email and US Mail)
Brett Bayne, Esquire (Via Email and US Mail)
P.629

Preston mcDaniel

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Friday, June 06, 2014 2:46 PM
To: Brett Bayne (brett.bayne@mgclaw.com); preston@pfmcdlaw.
Cc: BMOORE@MGCLAW.COM
Subject: Winfrey 1

Below is a request for a proposed decision and order.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Clarence Winfrey v Archway Service Inc.
SCWCC: 1306305
Commission Panel: Taylor, James, Wilkerson; Chair
Order Assigned to Commissioner: James
Court Reporter – Cassandra Vance – 803-252-3445

Preston F. McDaniel
Brett Harris Bayne

Claimant/Appellant
Defendants/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **affirms with amendments** the Decision and Order of the Single Commissioner.

The Panel affirms the findings of the Hearing Commissioner while amending Finding of Fact number two (2) to read "The claimant was admitted to Lexington Medical Center on May 28, 2013 and underwent surgery for a myocardial infraction. This is based on the medical records submitted by the Claimant from Lexington Medical Center". Add Finding of Fact number seven (7) to read "Notwithstanding the above, we find that the communications by and through the Claimant's attorney and the Defendants representatives are sufficient to prove that the medical records were provided to the Defendants prior to September 13, 2013, and provide a basis for the Defendants knowledge and good faith denial". Add Finding of Fact number eight (8) to read "Notwithstanding the above, we find that a heart attack and its relationship to a work related injury is a medically complex case".

Mr. Bayne, please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803-737-5737

Judicial

Transmitted via email and regular mail this 6 June 2014

CONFIDENTIAL & PRIVILEGED

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SEP 25 2015
SC Court of Appeals

Appellate Case No. 2014-001815

Clarence Winfrey, Employee, ... Appellant,

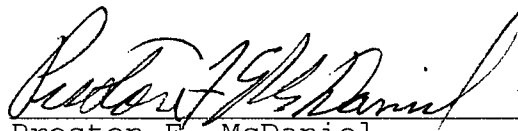
v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the
parties and not any other materials.

Dated: 9/24/15



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

Attorney for Appellant