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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NUMBER: 1403134
APPELLATE CASE NO. 2015-002300

Clyde Williams..... Appellant

v.

Bowman Gin Co., Employer, and American Interstate Ins. Co., d/b/a Amerisage Risk Services, Carrier of whom Bowman Gin Co., is the..... Respondent

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INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES IN APPEAL

1. The SCWCC erred in weighing the opinion of the Employer's expert, i.e., Dr. Pritchard more heavily than the treating physicians submitted by the Claimant? This error was exacerbated by the fact that the Employer's physician never treated, touched, personally examined, or even spoke to the Claimant. (See Employer's APA Exhibit #12, Report of Dr. Paul Pritchard), said evidence should have been excluded or discounted.

2. The SCWCC erred in placing unjustifiable credibility of the Employer's expert, Dr. Pritchard, on the basis that his opinion concerning the non-compensability of the Claimant's injuries was based in part on an opinion of the activities surrounding the fall of the Claimant? (See Employer's APA Exhibit #12, Report of Dr. Paul Pritchard) This opinion was based upon the partial review of the deposition of the Claimant, without the trial testimony of the Claimant, and additionally flawed by Dr. Pritchard's opinion which was partially based upon his opinion of the cause of the fall, which was beyond his competence or expertise and would be more properly within the opinion of a qualified expert and without a prior qualification or voir dire examination of Dr. Pritchard could not be qualified as an accident reconstructionist and that portion of his report should be stricken.

5. The SCWCC erred in accepting the opinion of Dr. Paul Pritchard on the basis that his testimony as presented in his three (3) page opinion was based upon a review of the complete medical records of the Claimant without a certification of exactly what records were reviewed, in the absence of which his opinion lacks appropriate foundation on the basis of his opinion by simply indicating all of the medical records without listing and describing each record reviewed and as such Dr. Pritchard's report should have been excluded from the record or given no weight.

6. The SCWCC erred in weighing more heavily the opinion of Dr. Pritchard over the opinion of physicians who actually treated, evaluated, counseled and spoke to and personally examined the Claimant?

7. The SCWCC erred in failing to properly credit and weigh the evidence of the Claimant who had recovered a partial recollection of the fall, including standing upon the tire of his 18 wheeler tractor while attempting to clean the windows in his slick soled loafers and wet conditions, and his subsequent recovery on the ground? (See Employer's APA Submission, Exhibit B) This was partially corroborated by the witness, Tyrone Johnson, who appeared at trial and who testified that there was a splashing noise prior to discovering the Claimant on the floor beside the truck of the employer. Therefore, the Claimant properly presented testimony unopposed by any witness which combined with the

presumption that an employee found injured in the work place during the work day was a compensable event.

8. The SCWCC erred in failing to apply the rules of construction of the Worker's Compensation statute in favor of the Employee and against the Employer and in favor of coverage and opposed to exclusion from the Act?

9. The SCWCC erred in failing to apply the rules of construction of the Act which require that a reasonable construction of the Worker's Compensation statute be resolved in favor of the Claimant?

10. The SCWCC erred in failing to apply the presumption of one (1) charge with the performance of a duty and injured while performing such duty or found injured at a place where his duty may have required him to be as injured, in the course of and as a consequence of his employment? *Owens v. Ocean Forest Club, Inc.* (1941) 196 SC 97, 12 SE 2d 839. *Halpern v. Dejay Stores, Inc.* (1960), 236 SC 587, 115 SE 2d 297. *Packer v. Corbett Canning Company*, (1961) 238 SC 431, 120 SE 2d 398. *Jake v. Jones* (1962) 240 SC 574, 126 SE 2d 721.

11. The SCWCC erred in finding substantial evidence to support the non-compensability of the Claimant's claim?

12. The SCWCC erred in finding that the Claimant suffered an idiopathic fall when the medical records submitted did not reveal, nor did the depositions and trial testimony of the Claimant, reveal any prior idiopathic fall or syncope event without appropriate supporting evidence? That conclusion of Dr. Pritchard is without evidentiary support and is therefore based on surmise and conjecture and should not be considered by the lower Commission.

13. The SCWCC erred in finding that the Claimant felt dizzy before the fall on the grounds that the record does not support any reported dizziness to emergency medical personnel or otherwise, and only a report of the Claimant feeling weak was after the fall? The prior medical evidence reveals that the Claimant suffered a significant closed brain injury, and the testimony that the Claimant "felt dizzy" before the fall should not have been considered, as credible or competent testimony when the Claimant had most recently sustained a major head injury from a fall from a height of 7-8 feet.

14. The SCWCC erred in failing to weigh the deposition testimony of the Claimant who stated that he had a partial recollection of the events during the process of his recovery, preferring to rely on an EMS report shortly after and in close proximity

to a major brain injury, all while requiring emergent care and under heavy medication.

15. The SCWCC erred and Dr. Paul Pritchard misapprehend the deposition of the Claimant in finding that the Claimant felt dizzy before the initial fall? (See Employer's APA, Exhibit #B, deposition of the Claimant, Page 416 and 417) It is clearly revealed that the Claimant's complaints of being hazy were after the initial fall, specifically lines 1 and 2 on Page 417 of the transcript.

STATEMENT OF THE CASE

The Claimant, Clyde Williams, was employed by Bowman Gin Company. The Claimant's employment involved driving a truck for the employer. The Claimant had been an employee of the employer for approximately fourteen (14) years. The Claimant was 58 years old. The accident occurred in Orangeburg County at Love's Truck Stop at Highway 301 near the junction of Interstate 26. The Claimant had picked-up a load from Gulbrandsen and was where he should have been engaged in an effort to fuel his vehicle and clean the employer's truck windshield. There is no assertion that the Claimant had deviated from his employment duties. His last memory was being on the top of the tire of his employer's truck with the hood open to better access his windshield for cleaning. At this point his memory is broken. However, his next memory after standing on the right front tire of his truck with a brush in his hand is a sensation of awaking while sitting on the pavement and a sensation of moisture. He next believes that he attempted to clean the left hand side of the truck, falling from the truck again on the left hand side of the truck. The Claimant received a traumatic brain injury and has only partial memory of the fall. Dr. White's report confirms his medical expenses and medical treatment are directly related to his fall and causally connected to his employment. Dr. White's independent medical examination prepared after he physically examined and talked to the Claimant provides as follows. After the review of medical records, Dr. White's independent medical examination states "at no point was there any illness or lesion identified other than the traumatic brain injuries that were associated with a hemmoragic concussion, skull fracture, etc. There was absolutely no evidence of any lesion that would have bled and lead to Mr. Williams falling. There was certainly no evidence of ischemic infarction that would have lead to a fall with head trauma. In

fact, all Neurosurgical and neurological lesions identified are traumatic in nature. There was no indication in the record that Mr. Williams had a mild cardial infarction or cardiac arythmia. Mr. Williams provides no history of seizure disorder, paroxysms of loss of consciousness such as syncope. In fact, Mr. Williams reports that he has never lost consciousness in his life. Mr. Williams maintained a commercial driver's license that would not have been granted if this were, in fact, the case. See Page 2, Paragraph 5 and Page 3, Paragraph 1 of APA. There is no other witness to the fall, other than an "ear witness" who heard the sound of water sloshing near the event or near the site of the accident. There are no photographs or videotape available to show the actual fall. The employer's expert, Dr. Pritchard opines that the Claimant had two (2) events of syncope, one on the right side of the truck and the second on the left side of the truck. The Claimant had never had a fainting episode or syncope event prior to this in his entire life and for that matter has not encountered a syncopal event subsequent to the accident.

The Single Commissioner weighed more heavily the report of Dr. Pritchard who never saw, personally examined, treated, touched, or even talked to the Claimant. The Single Commissioner weighed heavily the report of Dr. Pritchard and found that the fall and resulting injuries was a non-compensable event. The Claimant is informed and believes that he is entitled to an award of compensability based upon the presumption set forth in *Owens v. Ocean Forest Club, Inc.*, 196 SC 97, 12 SE 2D 839, which held that a person found injured at a place where he was to be performing his duties, and a place where his duty may have required him to be, to be presumed injured within the course and scope of his employment. This is supported by the Claimant's partial recollection of being on top of the left tire than sitting on the concrete ground wet on the left hand side of the truck. It is further the position of the Claimant that a finding of

compensability is warranted based upon the uncontested fact that he fell from a distance and height under the "increased danger rule" as spoused in Larson's Worker's Compensation Law §9.01 and the case of *George W. Thomas v. Five Star Transportation.* WCC File Number 0725187.

The Single Commissioner found the injuries of the Appellant were noncompensable based primarily on the opinions of Dr. Pritchard and found that the Appellant suffered an idiopathic injury, almost exclusively on the opinion that a prior event of dizziness, which was over two (2) years prior to the accident and based upon the Appellant's past medical history with treatment for hypertension and diabetes and opined that the injury was due to a syncope episode and not the trauma from the fall. A panel of the Full Commission affirmed the Decision and the Appellant appeals the decision of a panel of the Full Commission with a timely appeal.

ARGUMENT

1. **The SCWCC erred in weighing the opinion of the Employer's expert, i.e., Dr. Pritchard more heavily than the treating physicians submitted by the Claimant? This error was exacerbated by the fact that the Employer's physician never treated, touched, personally examined, or even spoke to the Claimant. (See Employer's APA Exhibit #12, Report of Dr. Paul Pritchard), said evidence should have been excluded or discounted.**

2. **The SCWCC erred in placing unjustifiable credibility of the Employer's expert, Dr. Pritchard, on the basis that his opinion concerning the non-compensability of the Claimant's injuries was based in part on an opinion of the activities surrounding the fall of the Claimant? (See Employer's APA Exhibit #12, Report of Dr. Paul Pritchard) This opinion was based upon the partial review of the deposition of the Claimant, without the trial testimony of the Claimant, and additionally flawed by Dr. Pritchard's opinion which was partially based upon his opinion of the cause of the fall, which was beyond his competence or expertise and would be more properly within the opinion of a qualified expert and without a prior qualification or voir dire examination of Dr. Pritchard could not be qualified as an accident reconstructionist and that portion of his report should be stricken.**

5. **The SCWCC erred in accepting the opinion of Dr. Paul Pritchard on the basis that his testimony as presented in his three (3) page opinion was based upon a review of the complete medical records of the Claimant without a certification of exactly what records were reviewed, in the absence of which his opinion lacks appropriate foundation on the basis of his opinion by simply indicating all of the medical records without listing and describing each record reviewed and as such Dr. Pritchard's report should have been excluded from the record or given no weight.**

6. **The SCWCC erred in weighing more heavily the opinion of Dr. Pritchard over the opinion of physicians who actually treated, evaluated, counseled and spoke to and personally examined the Claimant?**

Confronting and contrasting with the Employer's expert, Dr. Paul Pritchard, the Claimant submitted the following APA's. APA, Page 1, Upon arrival Mr. Williams was found, with members of the first responders of the West Middle Fire Department in a squatting position,

being held up by first responders beside the 18 wheel cab and fuel pump island. Note large amount of bright red blood on the ground. See photograph of Claimant. The narrative of the first responders also indicates that the patient, i.e. Claimant, was able to answer some questions but was not fully aware. The patient states that the last thing he remembers is stopping to fuel when he became weak. See Claimant's APA, Page 1. The Appellant respectfully requests the Court to consider that this report came about after the Claimant had been on the ground, unconsciousness, and was suffering from an obvious and significant, traumatic head injury. This summation was subsequently augmented when the Employee was restored to partial memory of the fall when he was cleaning the windows of his truck. See Deposition of the Claimant, Employer's APA, Page 411, Lines 12-25, Page 412, Lines 1-25, Page 413, Lines 1-25, Page 414-418, Lines 1-17. See APA, Page 6, which further states a history of present illness, a 58 year old WM that was found down at work. Employer present at his bedside who states he was down beside his 18 wheeler. He fueled-up around 7:00 a.m. and was then found down beside his truck and was unresponsive. He was flown to Richland Memorial for evaluation. The patient had abnormal head CT scan and neurosurgery was consulted. This is all consistent with a fall and lack of memory more related to the head injury not any syncope or idiopathic fall. **See APA, Page 8. The Claimant's loss of memory is appropriately explained by the skull fracture injury and brain injury he had as set forth in this exhibit.** The South Carolina Supreme Court has recently clarified the idiopathic exception to the worker's compensation commission, as well as the intermediate Appellate Court. *Barnes v. Charter 1 Realty*, 411 SC 391, 767 SE 2d 651; 215 SC. Lexus 4. The holding in *Barnes* was that the employee fell on a level surface as she was walking down a hall of the employer's premises to check her e-mail. Even in the absence of an irregularity in the carpet or

that her fall was precipitated by an internal condition. In this case, the only evidence of an internal condition that was submitted by Dr. Pritchard and his three (3) page report. See Respondent's APA p. 387-389. Dr. Pritchard's opinion is based upon a report of dizziness over two (2) years prior to the accident when a pain medication that was being prescribed by the primary treating physician of the Employee was discontinued. See Respondent APA, p 247 and Appellant's Deposition. In addition, the trial testimony and the deposition testimony confirms that the Appellant's last memory was standing on top of his tire while washing his truck windshield. The Appellant was placed in an enhanced dangerous situation or even if the Claimant had suffered a dizzy spell, the enhanced danger of working from an elevated surface perched on a truck tire, on a concrete fueling station and the wet conditions created an enhanced risk, thereby making the opinion of an idiopathic fall even less applicable. An idiopathic fall is one that is brought on by a purely personal condition unrelated to employment, such as a heart attack or seizure. Idiopathic injuries are generally noncompensable absent evidence that the workplace contributed to the severity of the injury. As mentioned in *Barnes*, the South Carolina Supreme Court found that a finding that a fall is idiopathic is not warranted specifically because the Claimant is unable to point to a specific cause of the fall. The Claimant suffered a fracture of the skull base and occiput, contusion involving the right and left frontal subcoronal cortex, and multiple fracture lines involving the skull base. See Claimant's APA, Page 10, Emergency Department, which states a 58 year old male with a medical history significant for diabetes, type II and hypertension. He was brought to the emergency department this morning via Life Net, after a loss of consciousness and head injury. The patient is unable to describe what happened. Bystanders on scene told Life Net that they think he could have fallen out of his truck cab which

is 6-8 feet off the ground. He was probably unconscious for approximately five (5) to ten (10) minutes. They did not note any seizure like activity. When Life Net EMS arrived they state the patient was alert and somewhat confused. See APA of the Claimant, Page 10. On Page 11 of the Claimant's APA the notes include a skull fracture, intra cranial hemorrhage secondary to trauma, and concussion. Physical examination reveals a small abrasion to the left elbow, left anterior knee, and posterior scalp contusion. This is consistent with a fall guarded by the use of a left elbow and anterior knee and inconsistent with a idiopathic fall caused by a syncope episode, which would have resulted in a non-guarded fall. On Page 12 of the Claimant's APA, the Emergency Department records indicate the clinical history was consistent with a basilar fracture and frontal contusions of the brain parenchyma. Admission diagnosis of basilar skull fracture, intraparenchymal contusions, frontal, bi-lateral and possible subarachnoid bleed, history of diabetes II, and history of hypertension. See APA of the Claimant, Page 14, a 58 year old male, who in the prior note appears to have a basilar skull fracture and frontal contusions and possible subarachnoid secondary to what appears to be a fall from a height of six (6) to eight (8) feet. This medical report is unclear as to the substance of the statement indicating what appears to be a fall from six (6) to eight (8) feet. Rather this was a report of EMS first responders or was due to the medical providers information of the severity of the Appellant's injuries to the head. See APA of the Claimant, Page 18, there is no other evidence of an enlarged draining vein in this area to suggest the presence of vascular malformation which is from Dr. Hubbard. See APA of the Claimant, Page 22, CT of the brain without IV contrast by Renee L. Cohen and verified by Dr. Douglas Bull, with a loss of consciousness after a fall and contusion. See APA of the Claimant, Page 27, presently he is at home with periods of confusion and aggression, dizziness and nausea.

There are no seizures or focal deficit. Assessment, 58 year old male with bifrontal injury status post evacuation of right front hematoma with confusion, possible vertigo and agitation. This was signed by Emily Whitehead, a Physician's Assistant.

See Claimant's APA, Page 28, reports of Dr. Varma, a 58 year old man found down on the morning of 03/27/14 near his 18 wheeler in a puddle of blood. His wallet was missing when he was found. He underwent a CT of the head and was found to have a large intra cranial hemorrhage and basilar skull fractures.

See Claimant's APA, Page 35, report of Dr. Abhay Varma, preoperative diagnosis, right-sided cerebral hemorrhage with a procedure performed of right-sided craniotomy for resection of a right frontal intracerebral hemorrhage. Intraoperative findings included an intracerebral hemorrhage.

See Claimant's APA, Page 37, report of Dr. Chelsea Amanda Conner. This is a 58 year old man found down this morning near his 18 wheeler in a puddle of blood. His wallet was missing when he was found. He was taken to PHS where he was initially alert and oriented but his mental status declined in the ER thereby requiring RSI. He underwent CT of the head and was found to have a large intra cranial hemorrhage and basilar skull fracture. He was transferred to MUSC for neurosurgical evaluation and then taken emergently to the OR for decompressive craniotomy. Once again no evidence of syncope and no diagnosis of syncope by treating physicians. None of the physicians caring personally and professionally for the Claimant has an opinion even close to the opinion to the non-treating, non-participating opinion of Dr. Pritchard who never even met the Claimant or talked to him.

In Respondent's APA, Page 17-19, the employer indicates that there was an episode of syncope and that does not exist in any contemporaneously recorded medical record. It is respectfully submitted that Respondent Noonan cited a previous episode, two (2) years before this incident, in which the Claimant admitted some dizziness, but no syncopal episode and no doctor supported a prior syncope event. There is no evidence of fainting or black-outs. The Claimant craves judicial notice that no medical records exist as to any prior incident of syncope. There is none, because there was no syncope episode. There was no previous documentation of a syncopal event. The Employer even denied knowledge of any past dizziness or black outs. See transcript of the record, Page 71, Lines 6-25, Page 72, Lines 1-6, Page 75, lines 20-25 and Page 76, Lines 1-3. Again, the reason for this is, no prior syncope event existed. None of the reports listed as having been reviewed by Dr. Pritchard provide any evidence of a prior syncope event and at no time did Dr. Pritchard define syncope to establish that the Claimant had two (2) syncopal episodes when there was never a prior history of a single syncope event. This is without evidentiary support and constitutes more of an "incredible miracle" than a true opinion based upon a reasonable degree of medical certainty. Dr. Pritchard's opinion stands without an adequate or sufficient basis and reveals as follows. Initial loss of consciousness had no relation to physical trauma and the circumstances are more consistent with syncope for which he has a prior history of type II diabetes and hypertension put him at risk. Dr. Pritchard's opinion appears to imply a prior syncope episode which does not exist leaving only a history of type II diabetes and hypertension, the nail to support Dr. Pritchard's opinion.

Dr. Pritchard apparently exited the realm of a medical expert and becomes an accident reconstructionist in placing some significance in his review of the testimony without the benefit

of the trial testimony of the Claimant. Dr. Pritchard reports an opinion of syncope to support an idiopathic fall, rather than a fall and a resulting traumatic brain injury, contrary to every other treating physician. In fact, Dr. Pritchard relied on portions of the record and omitted other portions of the medical record in preparing his three (3) page report. If that opinion is based upon human factors or the opinion of an accident reconstructionist expert, then that portion of the opinion is without foundation and beyond the expertise of Dr. Pritchard. The evidence supports, by all the competent evidence, a traumatic brain injury that occurred from a fall while washing the truck's window based upon the following: A fall from a higher than a level surface is indicated by Dr. White the severity of the injury to the brain, as well as the skull fractures, the disorientation, and confusion are directly related to a fall and not syncope. The absence of any conditions specifically related to a syncopal episode, the absence of a fainting episode at any time in Clyde Williams' life history, or at the time of a compensable event, and the absence of any syncopal episode after the event. Dr. Pritchard's opinion is without appropriate foundation and inconsistent with the record and the facts of the case.

The only witness to the occurrence is the Claimant, Clyde Williams, a 58 year old male who had worked for the Employer's company for 13 or 14 years who suffered from a traumatic brain injury from a fall from an 18 wheeler truck while standing on the left wheel as he was cleaning the truck's windshield. The water bucket with cleaning solution used to clean the windshield was overturned on the right and not the left hand side of the truck. See Deposition of Clyde Williams, P. 412 to 417. There was no picture taken of the right side of the vehicle, nor was the Appellant able to go to the right hand side of the truck to photograph the water bucket, based upon his significant and permanent injury. This evidence is uncontradicted by a single

fact witness. The physical evidence and the testimony of Tyrone Johnson all confirm that he was eventually found on the left side of the truck, in a pool of blood unconscious. See photographs of the Appellant, Appellant APA, p. 246. The photographs will also exhibit that he was wearing loafers with canvas uppers, and what appeared to be rubber soled shoes. The medical records confirm that Clyde Williams sustained a substantial, traumatic brain injury. All Claimant's reports surrounding and immediately following the injury are clouded by the fact that the Claimant suffered a traumatic brain injury. Partial recollections of the events were provided by the Claimant, first in a deposition of the Claimant taken on September 2, 2014, and subsequently at trial on September 25, 2014. Dr. Pritchard misapprehended the testimony of the Claimant and, in addition, was not provided with the trial testimony of the Claimant.

The Claimant in this matter has, subsequent to the Single Commissioner hearing, suffered significant financial losses, including the loss of his health insurance, the loss of employment and the pending loss of his home by foreclosure.

It is more likely than not the Claimant was dizzy and disoriented because of the brain injury from the fall. It is more likely than not that the Appellant's reports to the first responders were clouded by the brain injury and not by syncope. Medical providers confirm same, except the only provider who did not treat or even see Mr. Williams, that being Dr. Pritchard. The total absence of syncope in the past is unexplained. The facts and circumstances along with the presumption create only one scenario that he fell from the truck while washing the window. The window brush could have been on the other side or there was substantial time for someone to pick-up the window brush and police the area before Mr. Tyrone Johnson came and discovered the Claimant down and bleeding. The window brush could have been on the right-hand side of

the truck or the passenger's side. The first responders indicated that it looked as if the Claimant had fallen six to eight feet from the truck. The Commission finds this was an error in the records; however, the Single Commissioner seemed to have no problem with accepting the statements recorded by emergency responders that he felt dizzy before the fall. The Single Commissioner erred in finding only credible the first responder's reports when those reports support Dr. Pritchard, but not believable when they do not support Dr. Pritchard's opinion. The Appellant is concerned about the great weight given the physician's opinions who have mixed medical and accident reconstructionist elements, who never treated the patient or even talked to the patient/claimant and the weight given to Dr. Pritchard's opinion is unwarranted and based totally upon a report of dizziness two (2) years before the accident.

Dr. Pritchard's opinion is hinged on three (3) basic factors to support a single conclusion of non-compensability: Factor one (1) was that the Claimant lost consciousness twice, once while working on the passenger side of the vehicle and lost consciousness and fell to the concrete. He described himself as hazy and lightheaded to EMS personnel after the fall and brain injury. At this point Dr. Pritchard assumes that the Claimant "has no physical injury." There is no evidence to support this. Subsequently, after the first fall the Claimant was found unconscious on the right side of the vehicle. Dr. Pritchard believes that the loss of consciousness did not occur as a result of a fall, but from syncope. Most importantly, Dr. Pritchard assumes and opines that he had a prior history of type two diabetes and hypertension that put him at risk. The opinion of Dr. Pritchard is capsulized on page 2 of his report, Page 389 of the Employer's APA. It is respectfully submitted that Dr. Pritchard did not review or have knowledge of the trial testimony of the Claimant. He misapprehended the Claimant's testimony and medical records

and mistakenly believes the records supported that the Appellant felt dizzy before the fall and that he fell from a level surface. Dr. Pritchard omits the following: All of the evidence submitted supports a significant crushing injury to the brain, inconsistent with a level surface fall. The Claimant's last memory was of standing on top of a truck tire washing the windshield. Dr. Pritchard's opinion also omits and does not consider the record or the facts, which exclude Mr. Williams from ever having a prior syncopal event. It is also Dr. Pritchard's testimony, through his three (3) page opinion, implies Mr. Williams may have been non-compliant with his medications. The testimony of Mr. Williams was that he was compliant with his diabetes medicine and that he was off the medicine under the supervision of Dr. Brunson and that he has never had a seizure and had never fainted. See transcript of the record, Page 33, Lines 15-17 and transcript of the record, Page 35, lines 5-9. It is clear from the review of any medical journal that syncope does not occur without a loss of consciousness. This had never occurred in the Claimant's past, nor does any medical record reflect same. The only argument concerning a prior dizzy spell was explained by the Claimant as a lightheadedness he experienced while taking some pain medication before his injury of March 27, 2014, and was related to a prior injury with Bowman Gin Company wherein he suffered a chemical burn and was having the lightheadedness related to pain medication, which ceased after the physician modified his medication. This lightheadedness occurred January 29, 2012, more than two (2) years before this accident and subsided when the pain medication was changed. See Employee APA, Page 247. See Also Employer APA, Page 253, no reports of fainting or dizziness. See transcript of the record, Page 27, lines 19 through Page 28, lines 1-14:

A: The only – the only interval was when I got hurt before when I got the chemical burns.

Q: Okay.

A: Right.

Q: And you treated with Dr. Brunson for that?

A: I treated through the Burn Center at Charleston –

Q: Okay.

A: – but through Dr. Brunson yes.

Q: Okay. Did you have problems with medication with that injury?

A: Yea. I was on too strong a pain medicine –

Q: Well, what did –

A: – at the time.

Q: – what, if any, impact did that have on you?

A: I had to go to him more often than what was normal because I was – I was light headed .

Q: Okay. When you changed your medication did – what – what, if anything happened with the dizziness?

A: It was gone.

It is respectfully submitted that anyone who suffers from hypertension and diabetes and is found on-the-job with a head injury and partial loss of memory as to how it occurred will now be subject to the opinion of Dr. Pritchard in that an unexplained fall is conclusively related to dizziness, syncope, diabetes and hypertension and unrelated to his employment. What would have made Dr. Pritchard's opinion more viable would have been the history of a syncope event

in the past, which is absent from the record, and in fact, does not exist. This is weak glue to hold together an idiopathic fall created by a report of dizziness two (2) years before the fall. This opinion is so speculative, unreliable and lacks probative substance and is incapable of providing substantial evidence of the record to support an idiopathic fall as clarified and defined by *Barnes v. Charter 1 Realty*. It is respectfully submitted that the Single Commissioner and a Panel of the Full Commission affirming an idiopathic fall based upon Dr. Pritchard's report makes the denial of the worker's compensation benefits a matter of law and such testimony and evidence is clearly erroneous in view of the reliable probative and substantial evidence in the whole record.

Dr. Pritchard's opinion is also based upon the Claimant falling twice and the fact that the washing brush was in its' place. This ignores the trial testimony, as well as the testimony of Tyrone Johnson that explains that other people could have moved the brush and that he did hear a sloshing of water as if a bucket was being moved in the direction of the Claimant before he discovered the Claimant on the ground and unconscious. This specific testimony is on Page 58 of the Transcript of the Record, Lines 10-19.

Q: Okay in addition, I think you said you heard a water bucket.

A: Yes

Q: Tell me what you meant by that.

A: You know, usually when you move a water bucket on the ground it is full of water and you can hear it when it drags across the ground.

Q: I heard the bucket like someone had kicked it and you could hear the water go around in it.

In addition, Mr. Johnson testified that he felt that the sound previously described came from the pump when the Claimant was found. The previous testimony indicates that there were generally window brushes on both the left and right side of the trucks. The record shows more likely than not the following events: Mr. Williams was in and about his employer's business, washing the windshield of the employer's truck. He fell first from the passenger's side and from this fall he was disoriented and fell again as he was located on the driver's side. This was where he was found. This is where the majority of the blood was found, but no pictures were made of the passenger side of the truck. His disorientation, dizziness, and loss of consciousness were all related to his fall while washing the windshield and not from two (2) syncopal episodes that he had never experienced in his entire life before, during, or after this accident.

8. **The SCWCC erred in failing to apply the rules of construction of the Worker's Compensation statute in favor of the Employee and against the Employer and in favor of coverage and opposed to exclusion from the Act?**

9. **The SCWCC erred in failing to apply the rules of construction of the Act which require that a reasonable construction of the Worker's Compensation statute be resolved in favor of the Claimant?**

10. **The SCWCC erred in failing to apply the presumption of one (1) charge with the performance of a duty and injured while performing such duty or found injured at a place where his duty may have required him to be as injured, in the course of and as a consequence of his employment? *Owens v. Ocean Forest Club, Inc.* (1941) 196 SC 97, 12 SE 2d 839. *Halpern v. Dejay Stores, Inc.* (1960), 236 SC 587, 115 SE 2d 297. *Packer v. Corbett Canning Company*, (1961) 238 SC 431, 120 SE 2d 398. *Jake v. Jones* (1962) 240 SC 574, 126 SE 2d 721.**

It is respectfully submitted that there is no contest from any direct evidence concerning the fact that the Claimant fell a significant distance onto a concrete parking lot at Love's Truck Stop. While the Single Commissioner finds that Dr. White made an error in describing the

height of the fall, it is clear that there is only one (1) witness to the compensable event, that being the Appellant, Clyde Williams. There is absolutely no evidence to confront the testimony of Mr. Williams indicating that he fell from standing on top of the tire with the hood open, attempting to clean the windows on the passenger side of the vehicle. Therefore, it is uncontroverted that the Claimant's injuries occurred due to an increased danger occasioned by the Claimant attempting to clean the windshield from an elevated and somewhat awkward position. It appears clear that Mr. Williams' injuries were aggravated and worsened by the increased danger of cleaning the windshield a substantial distance above the concrete pavement.

The enhanced danger rule applies when the employment places the employee in a position of increased danger, **such as working above ground,** (emphasis added) near operating machinery, sharp objects, or in moving vehicles and the resulting injury aggravated or worsened by such increased danger, then the resulting injury may be deemed compensable. This is also known as the increased danger rule. *Larson Worker's Compensation Law* §9-.01. South Carolina has applied the increased danger rule involving falls caused by non-occupational heart attacks, epileptic seizures, or FAINTING SPELLS. (emphasis added) In such cases the Court has held employment which places the employee in a position that increases the dangerous affects from a fall is compensable. *Bagwell v. Ernest Burwell Inc.*, 227 SC 444, 87 SE 2d 583, *George W. Thomas v. Five Star Transportation* WCC File Number 0725187. This case is particularly instructive to the case before us and supportive of the compensability of the injury of the Claimant on several grounds. One being that it is clear that the uncontested testimony, of standing on the tire to wash the windshield, of the Claimant before he found himself on the ground and he was working above ground. It is also clear that if Dr. Pritchard is correct, and

under *Bagwell v. Ernest Burwell, Inc.* 227 SC 444, 87 SE 2d 583, *Allred v. Allred-Gardner, Inc.*, 117 SE 2d 476 (NC 1960) and *Crosby v. Wal-Mart Stores, Inc.*, 330 SC 489, 499 SE 2d 253, that the increased danger rule applies in claims involving falls caused by non-occupational heart attacks, epileptic seizures or fainting spells, (i.e. syncope), if the employment places an employee in a position of increased danger, the dangerous affects from a fall, are compensable, especially when the employment contributes to the risk or aggravates the injury. An increased danger can be working above ground. Therefore, regardless of Dr. Pritchard's report, it is established according to his opinion and to a reasonable degree of medical certainty that Clyde Williams suffered from a syncope episode causing the initial fall and has therefore placed Mr. Williams firmly within the embrace of the "enhanced danger rule." The severity of the injuries to the head further document the fall from something other than a level surface. Dr. Pritchard's report cannot invent facts. He cannot assert now that it was a level surface fall, as the only testimony is to the contrary and uncontradicted. According to Dr. Pritchard the Appellant had two (2) syncope episodes. The evidence reveals an increased danger based upon the employee working above ground on a wet surface, standing precariously on the truck tire to wash the windows. The Employer did not see the accident. Once again, it is clear and uncontested that the Claimant suffered a significant head injury from a fall and there is no evidence to contradict a fall which explains the Claimant's loss of memory, his last memory being standing on the tire of the Employer's vehicle, washing the Employer's window of his assigned vehicle.

Essentially, the record is clear that the Claimant fell while washing the windows to his truck. It is clear that the Claimant testified that he had pieces of memory but had not recovered his entire memory of the event. Much like a death claim, Mr. Williams has suffered a brain

injury which has deprived him of the total recollection of the specific details of the accident. However, it is clear and these points remain uncontested. One (1), Mr. Williams never had a syncope event. Prior to his injury on March 24, 2014, or subsequent to his injury on March 24, 2014, he was found bleeding, disoriented, and unconscious by various people who found him in distress. His deprivation of total memory is not indicative of a syncope event which would not affect his memory; however, even if this Court determines there was substantial evidence of an event of syncope and it occurred while he was washing his employer's truck windshield, the enhanced danger rule prevails and makes the case compensable. The enhanced danger rule and the presumptions set forth in *Owens v. Ocean Forest Club, Inc.*, 196 SC 97, 12 SE 2D 839, *Halpern v. Delay Stores, Inc.*, and *Packer v. Corbett Canning Company* prevail, as well as *Jake v. Jones*. The presumption is one (1) charged with the performance of a duty and injured while performing such duty or found injured at a place where his duty may have required him to be as injured, in the course of and as a consequence of his employment.

7. **The SCWCC erred in failing to properly credit and weigh the evidence of the Claimant who had recovered a partial recollection of the fall, including standing upon the tire of his 18 wheeler tractor while attempting to clean the windows in his slick soled loafers and wet conditions, and his subsequent recovery on the ground? (See Employer's APA Submission, Exhibit B) This was partially corroborated by the witness, Tyrone Johnson, who appeared at trial and who testified that there was a splashing noise prior to discovering the Claimant on the floor beside the truck of the employer. Therefore, the Claimant properly presented testimony unopposed by any witness which combined with the presumption that an employee found injured in the work place during the work day was a compensable event.**

11. **The SCWCC erred in finding substantial evidence to support the non-compensability of the Claimant's claim?**

12. **The SCWCC erred in finding that the Claimant suffered an idiopathic fall when the medical records submitted did not reveal, nor did the depositions and trial testimony of the Claimant, reveal any prior idiopathic fall or syncope event without appropriate supporting evidence? That conclusion of Dr. Pritchard is without evidentiary support and is therefore based on surmise and conjecture and should not be considered by the lower Commission.**

It is respectfully submitted that there is no substantial evidence to support the non-compensability of the claim. The Single Commissioner's findings in regards to the non-compensability are based primarily a windshield brush used for cleaning, the report of Dr. Pritchard and an opinion from the evidence that Dr. White incorrectly interpreted the height of the Appellant's fall. There is testimony in the record concerning the height of the fall from bystanders who reported to the first responders that it appeared that the Claimant had fallen from his cab a distance of six (6) to eight (8) feet. In addition, the severity of the Claimant's injuries support a fall from above ground. The finding of an idiopathic fall is unsupported by the evidence. As to the windshield cleaning brush, the evidence is clear that no one checked the right hand side of the truck from which the Claimant fell on the initial fall and only the left hand side where he was found after a second fall. This testimony is uncontradicted; and therefore, Single Commissioner's findings are without evidentiary support. Circumstantial evidence may be sufficient to support an award of compensation under the Worker's Compensation Act, and an award may be based on inferences drawn from circumstantial evidence which need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached. *Owens V. Ocean Forest Club, Inc.* (1941) 196 SC 97, 12 SE 2D 839.

13. **The SCWCC erred in finding that the Claimant felt dizzy before the fall on the grounds that the record does not support any reported dizziness to emergency medical personnel or otherwise, and only a report of the Claimant feeling weak was after the fall? The prior medical evidence reveals that the Claimant suffered a significant closed brain injury, and the testimony that the Claimant "felt dizzy" before the fall should not have been considered, as credible or competent testimony when the Claimant had most recently sustained a major head injury from a fall from a height of 7-8 feet.**

14. **The SCWCC erred in failing to weigh the deposition testimony of the Claimant who stated that he had a partial recollection of the events during the process of his recovery, preferring to rely on an EMS report shortly after and in close proximity to a major brain injury, all while requiring emergent care and under heavy medication?**

15. **The SCWCC erred and Dr. Paul Pritchard misapprehend the deposition of the Claimant in finding that the Claimant felt dizzy before the initial fall? (See Employer's APA, Exhibit #B, deposition of the Claimant, Page 416 and 417) It is clearly revealed that the Claimant's complaints of being hazy were after the initial fall, specifically lines 1 and 2 on Page 417 of the transcript.**

It appears that the Single Commissioner and Dr. Pritchard have taken the liberty of accepting as certain and true the statements of a Claimant who had suffered a significant brain injury if behooves the non-compensability of the claim while ignoring statements made by the Appellant that support the compensability of the claim. For example, first responders indicated that the Claimant said he felt dizzy. This statement was allegedly made almost immediately after the fall and a short period of time the Appellant was unconscious. See Photographs of Appellant. Subsequent medical providers indicated that he could not remember the events of the day and had various partial memories of the accident. However, Dr. Pritchard and the Single Commissioner seem to discount the Claimant's partial recollection of memory many months after the accident and after substantial treatment and partial recovery as exhibited in the deposition of the Claimant, as well as his testimony before the Single Commissioner. It is

respectfully submitted that the recollections of the Claimant taken while he was still bleeding and was suffering from the immediate affects of the significant fall and brain injury reported by EMS workers are less reliable than his partial recollection of the events that occurred (months after the accident, deposition and trial), after substantial medical treatment and partial recovery and partial restoration of his memory.

The Appellant requests the Court to consider the totality of the testimony and the evidence presented, and evaluate the medical testimony and the fact that there is only one (1) eyewitness who had received a significant brain injury affecting his memory and doing so will find the Commissioner's denial of benefits unsupported by reliable, probative and substantial evidence in the whole record and affected by error of law. The relevant testimony is the Appellant's last memory before he became unconscious and was on the ground, not after the asserted second fall. Therefore, based upon the presumption supported by the evidence, the claim should have been found compensable. It is respectfully submitted that the Claimant has met and exceeded his burden of proof by showing that he sustained an injury by accident arising out of and in the course and scope of employment while he was cleaning the windshield of his employer, while in and about his Employer's business and refueling. *Bob Owings v. Anderson County Sheriff's Department*, 315 SC 297, 433 SE 2d 869 (SC 1993). In fact our Courts have even ruled that injuries sustained in a motor vehicle, after the Claimant blacked-out were held to be compensable under the increased risk doctrine. In *Crosby v. Wal-Mart Stores, Inc.*, 433 SE 2d 253, (SC COA 1998). Dr. Pritchard opines two (2) syncope episodes. Syncope is defined by the American Heritage Dictionary as a brief loss of consciousness caused by a temporary deficiency of oxygen to the brain; a swoon. Synonyms are black-out. While the most likely and most

reasonable interpretation of the factual events are that Mr. Williams suffered a slip on wet surface while washing the windows and fell from the top of his tractor trailer tire to a hard surface on the concrete below; what is additionally corroborative of the lack of a syncope event is the fact that he never experienced syncope before. The only previous documented evidence of dizziness occurred while he was recovering from a prior compensable chemical burn, which was remedied when the pain medications were changed. The only prior incident of a report of dizziness was .....

Q: Okay. Did you have any problems with medication with that injury?

A: Yeah. I was on too strong a pain medicine–

Q: Well, what did –

A: – at the time.

Q: –what, if any, impact did that have on you?

A: I had to go to him more often that what was normal because I was – I was light headed.

Q: Okay. When you changed your medication did – what – what, if anything, happened with the dizziness?

A: It was gone.

The Single Commissioner used the term idiopathic fall and according to the American Heritage Dictionary of the English language, idiopathic or idiopathy disease of unknown origin or cause. The second connotation is a primary disease arising spontaneously with no apparent external cause. Therefore, Dr. Pritchard and the employer's representative argue that Clyde Williams suffered an idiopathic fall and by definition he cannot provide the reason for the fall. In contrast Mr. Williams, the only witness has indicated that he fell while washing the window

suffered a brain injury from which he continues to suffer, and therefore, the cause of the fall was slipping and falling while washing the windshield. The Employer's representative demands an interpretation indicating that they don't know the cause of the fall. It is clear that the evidence preserves and presents an uncontested state of events where Mr. Williams was cleaning the window, clearly within the course and scope of his employment and has regained consciousness sitting on the wet ground on the right hand side of the truck. In short, there is a reason for the fall and the reason is clearly within the apprehension and understanding of the trier of fact. The cloudiness of the details and the only witness' memory is explained by the traumatic brain injury and should not be placed in a category of the fall being unexplained or "idiopathic."

According to the MedicineNet.com, syncope is a partial or complete loss of consciousness with interruption of awareness of one's self and one's surroundings. When the loss of consciousness is temporary and there is spontaneous recovery referred to as syncope or in non-medical quarters fainting.

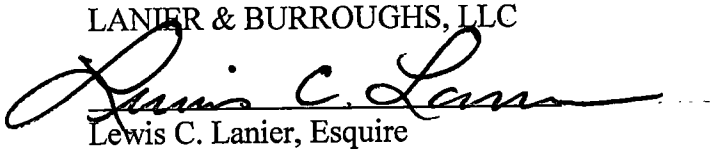
CONCLUSION

It is respectfully submitted that the Claimant proved a compensable event based upon his testimony, the physical events, the severity of his injuries and there was no other evidence other than the Appellant. The Appellant suffered horrific physical injuries, resulting in permanent brain damage. The Commissioner's finding of an idiopathic fall is erroneous and thereby constitutes a decision affected by an error of law and is so clearly erroneous in view of the reliable, probative and substantial evidence of the whole record. The Appellant herein has been denied needed compensation, is justly deserved, and was clearly and unequivocally involved in the Employer's duties at the time of his unfortunate injury.

Should the Court determine based upon the opinion of Dr. Pritchard and the other portions of the record, the Claimant suffered a syncopal episode that he never suffered before, during or after the accident according to the record, he is still entitled to recover under the enhanced risk doctrine. The Employee was clearly and unequivocally on the tire at a raised position to clean his employer's truck windshield and fell not once but twice, suffering severe, permanent and disabling injuries and brain damage. It is respectfully submitted that this Court should reverse the decision of the Commission, find the case compensable, and remand for a determination of the degree of permanent disability

Respectfully Submitted,

LANIER & BURROUGHS, LLC



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Dated: 2-12-16

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NUMBER: 1403134
APPELLATE CASE NO. 2015-002300

Clyde Williams..... Appellant

v.

Bowman Gin Co., Employer, and American Interstate Ins. Co., d/b/a Amerisage Risk Services, Carrier of whom Bowman Gin Co., is the..... Respondent

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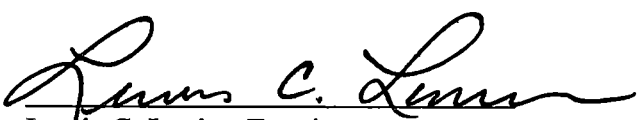
PROOF OF SERVICE

I, Lewis C. Lanier, attorney for the Appellant, hereby certify that I have served the foregoing ***Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal*** on the attorney for the Respondent with proper postage affixed, by US First Class Mail, at the address indicated as follows: Anne Vetch Noonan, WILSON JONES CARTER & BAXLEY, PA, 421 Wando Park Blvd. Suite 100, Mt. Pleasant, SC 29464.

LANIER & BURROUGHS, LLC



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