

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-001788

RECEIVED
FEB 25 2016
SC Court of Appeals

Clarence Winfrey, Employee, Claimant Respondent,

v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company c/o
Liberty Mutual Group, Carrier, ... Appellants,

RECORD ON APPEAL – VOLUME II

Brett H. Bayne
MCANGUS GOUDELOCK & COURIE, LLC
Meridian Building
1320 Main Street, 10th Floor (29201)
Post Office Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300

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

Attorney for Respondent Clarence Winfrey

Attorney for Appellants, Archway Services
Inc., American Fire & Casualty Insurance
Company, and Liberty Mutual Group

INDEX

VOLUME I

Index	i
Notice of Appeal dated August 20, 2014.....	1
Decision and Order of the Single Commissioner dated February 27, 2014	4
Full Commission Decision and Order on Claimant's Appeal from Commissioner Beck's Decision and Order dated July 25, 2014	50
Respondent's Form 15, Section II, dated September 12, 2103.....	68
Claimant's Form 19 dated September 12, 2013.....	69
Claimant's Form 15, Section III, dated September 17, 2013.....	70
Claimant's Form 50 dated October 21, 2013.....	71
Respondent's Form 51 dated November 19, 2013.....	75
Notice of Hearing dated December 6, 2013.....	77
Claimant's Form 58 Pre-Hearing Brief dated December 23, 2013	78
Respondent's Form 58 Pre-Hearing Brief dated January 13, 2014	183
Claimant's Form 30 dated March 6, 2014	215
Brief of Employer/Carrier, Appellant to the Full Workers' Compensation Commission dated April 23, 2014	221
Brief of Claimant/Respondent, to the Full Workers' Compensation Commission dated May 8, 2014	262
Request for Proposed Decision and Order dated June 6, 2014.....	303

Deposition Testimony of Jeffrey Travis (December 16, 2013)	304
Deposition Testimony of Karen Greenfield, MD (January 9, 2014)	344
Deposition Testimony of Dr. Lanneau D. Lide (January 23, 2014)	399
Single Commission Compensation Hearing Transcript dated November 13, 2013	441
Stipulations and Positions of the Parties	444
Testimony	
Clarence Winfrey	
Direct Examination by Mr. Hughey	449
Cross Examination by Mr. McDaniel	459
Redirect Examination by Mr. Hughey	463
Request by Mr. McDaniel	465

VOLUME II

Single Commission Transcript dated January 13, 2014	469
Stipulations and Positions of the Parties	472
Testimony	
Clarence Winfrey	
Direct Examination by Mr. McDaniel	488
Cross Examination by Mr. Bayne	512
Mark Warren	
Direct Examination by Mr. Bayne	526
Cross Examination by Mr. McDaniel	527
Full Commission Transcript dated May 19, 2014/1:38 pm to 2:03 pm	530
Argument by Mr. McDaniel	532

Argument by Mr. Bayne	543
Reply by Mr. McDaniel	549
Reply by Mr. Bayne	554
Full Commission Transcript dated May 19, 2014/2:10 pm to 2:31 pm.....	558
Argument by Mr. Bayne	560
Argument by Mr. McDaniel	571
Reply by Mr. Bayne.....	579
Defendants' APA Submissions dated November 4, 2013	582
Certificate of Counsel	650

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

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 13TH DAY OF
JANUARY, 2014, COMMENCING AT THE HOUR OF 9:27 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE, SUSAN S. BARDEN
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

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

APPEARANCES

PRESTON F. MCDANIEL, ESQUIRE, OF THE FIRM

MCDANIEL LAW FIRM
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

BRETT HARRIS BAYNE, ESQUIRE, OF THE FIRM

MCANGUS GOUDELOCK & COURIE, L.L.C.
1320 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/INSURER

ALSO ATTENDING:

SUSAN KISER
STEVE SHULMEISTER
MARK WARREN
CLARENCE WINFREY

I N D E X

PAGE

CLARENCE WINFREY:

DIRECT EXAMINATION BY MR. MCDANIEL	20
CROSS-EXAMINATION BY MR. BAYNE	44

MARK WARREN:

DIRECT EXAMINATION BY MR. BAYNE	58
CROSS-EXAMINATION BY MR. MCDANIEL	59
CERTIFICATE OF NOTARY PUBLIC	61

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

5 * * * * *

6 **BY COMMISSIONER BARDEN:**

7 TODAY'S DATE IS JANUARY 13TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1306305. THIS IS THE CASE OF THE CLAIMANT
10 MR. CLARENCE WINFREY WHO IS PRESENT TODAY. LET'S GO
11 OFF THE RECORD ONE SECOND.

12 (OFF THE RECORD)

13 **BY COMMISSIONER BARDEN:**

14 MR. WINFREY IS REPRESENTED BY ATTORNEY PRESTON
15 MCDANIEL. THE EMPLOYER IS ARCHWAY SERVICES AND ITS
16 CARRIER AMERICAN FIRE, BOTH OF WHICH ARE REPRESENTED
17 BY ATTORNEY BRETT BAYNE. THE PURPOSE OF TODAY'S
18 HEARING IS TO DETERMINE ISSUES RAISED IN FORMS 50
19 AND 51. CURRENTLY THE CLAIMANT IS BEING PAID A
20 COMPENSATION RATE OF \$442.40. MR. MCDANIEL, YOU
21 MENTIONED THAT AND WE DID NOT, WITH ALL OF THE OTHER
22 THINGS WE TALKED ABOUT IN SPITE OF AN HOUR THAT WE
23 EXPENDED USING OR TALKING ABOUT EVERYTHING, WE
24 REALLY DIDN'T GET INTO THE COMP RATE, ARE YOU --
25 WOULD YOU LIKE THAT HELD IN ABEYANCE? YOU SAID IN

1 YOUR ---

2 BY MR. MCDANIEL:

3 YES.

4 BY COMMISSIONER BARDEN:

5 --- FIFTY-EIGHT, YOU WANTED IT HELD IN
6 ABEYANCE.

7 BY MR. MCDANIEL:

8 YES, COMMISSIONER. WE ARE -- FOR PURPOSES OF
9 HOPEFULLY TRYING TO GET BENEFITS RESTARTED, WE ARE
10 AGREEABLE TO THAT COMP RATE WITH THE ---

11 BY COMMISSIONER BARDEN:

12 STIPULATION THAT YOU WOULD LIKE TO ---

13 BY MR. MCDANIEL:

14 --- THAT WE -- WE HAVEN'T EVER ASKED FOR THE
15 INFORMATION, YOU KNOW, TO CONFIRM THE COMP RATE SO
16 WE -- TO -- THAT WE CAN TRY THAT ISSUE AT A LATER
17 DATE.

18 BY COMMISSIONER BARDEN:

19 OKAY. AND DO Y'ALL HAVE AN OBJECTION TO ---

20 BY MR. BAYNE:

21 HOLDING THAT IN ABEYANCE? NO.

22 BY COMMISSIONER BARDEN:

23 OKAY. THE DATE OF THE INCIDENT, WHICH OCCURRED
24 WHICH WAS ELECTRICAL SHOCK OCCURRED ON MAY 22ND,
25 2013. ALL RIGHT. BUT I'M GOING TO PREEMPT MR.

1 BAYNE BEFORE I ASK IF THERE ARE ANY OBJECTIONS,
2 BECAUSE HE DOES HAVE AN OBJECTION TO GOING FORWARD
3 TODAY. HE SITES FOR HIS OBJECTION THE FACT THAT
4 COMMISSIONER BECK HAD -- HELD A FORM 15 HEARING
5 WHEREIN THE DEFENDANTS WERE FOUND TO HAVE NOT
6 UNLAWFULLY STOPPED MR. WINFREY'S BENEFITS AFTER
7 THEIR INVESTIGATION OF THE CLAIM. IN THAT ORDER,
8 COMMISSIONER BECK MADE A FINDING THAT THE CLAIMANT
9 SUFFERED A MYOCARDIAL INFARCTION ON MAY 28TH, 2013.
10 THE DEFENDANTS BELIEVE AND CONTEND THAT IF I FIND A
11 DIFFERENT ACCIDENT DAY OR IF I FIND A DIFFERENT DATE
12 OTHER THAN THE MAY 28TH, 2013, THAT THAT IS
13 PROCEDURALLY PROBLEMATIC, THAT I SHOULD NOT HOLD
14 THIS HEARING TODAY IN THAT IF THAT -- IF THE APPEAL
15 WERE DROPPED, THE LAW OF THE CASE IS THE MAY 28TH,
16 2013, AND THE DEFENDANTS BELIEVE THAT THAT SHOWS
17 THAT THERE IS NO CAUSAL RELATIONSHIP BETWEEN THE
18 HEART ATTACK AND THE ACCIDENT OF OR THE INJURY OF
19 MAY 22ND, 2013, BECAUSE OF THE TIME GAP. THAT THAT
20 WOULD BE THE LAW OF THE CASE AND, THEREFORE, I WOULD
21 BE SITTING IN A PSEUDO APPELLATE CAPACITY AND THAT
22 IF I FOUND A DIFFERENT DATE OF A HEART ATTACK OR
23 SOME OTHER OCCURRENCE OF AN EVENT THAT I WOULD BE
24 SETTING ASIDE OR REPUDIATING THE ORDER OF ANOTHER
25 COMMISSIONER, WHICH CERTAINLY I DO NOT WANT TO DO.

1 COMMISSIONER BECK DOES MENTION THE DATE, MAY 22ND,
2 2013. I HAVE LISTENED TO THE ARGUMENTS OF COUNSEL,
3 AND MR. BAYNE'S VERY ELOQUENT IN HIS STATEMENT OF
4 WHY I SHOULD NOT GO FORWARD TODAY. BUT CONSIDERING
5 THE FACT THAT THOSE TWO DATES ARE MENTIONED IN THE
6 ORDER, I DO BELIEVE THAT I MAY AND I'M CERTAINLY
7 HOPEFUL THAT I HAVE ENOUGH PROCEDURAL WIGGLE ROOM
8 TODAY TO GO FORWARD. IT MAY BE THAT -- AND I GUESS
9 IT'S THAT ALL THIS WILL HAVE TO COME OUT THROUGH THE
10 APPELLATE PROCESS, AND OF COURSE THINGS ARE WHAT
11 THEY ARE AND THAT -- AND ONCE I SIGN AN ORDER, IT
12 CERTAINLY WON'T BE WITHIN MY PROVENCE TO DETERMINE
13 WHETHER OR NOT I HAVE HELD A HEARING APPROPRIATELY
14 AND LAWFULLY, BUT THAT WILL ALL HAVE TO BE
15 DETERMINED. SO I CERTAINLY HAVE CONSIDERED YOUR
16 ARGUMENTS. THEY WERE CERTAINLY WELL SPOKEN, BUT I
17 AM GOING TO GO FORWARD TODAY AND TO ADJUDICATE THIS
18 CLAIM THAT HAS BEEN ASSIGNED TO ME. MR. BAYNE, ALSO
19 ON BEHALF OF HIS CLIENTS, REQUESTED THAT I LEAVE THE
20 RECORD OPEN, WHICH I ORDINARILY DO NOT DO, BUT
21 THROUGH NO FAULT OF HIS OWN, MR. BAYNE HAD SCHEDULED
22 THE DEPOSITION OF DR. LIDE, WHO -- WELL, NOT THROUGH
23 NO FAULT OF HIS OWN. HE SCHEDULED THE DEPOSITION OF
24 DR. LIDE, AND THEN DR. LIDE THROUGH NO FAULT OF MR.
25 BAYNE'S NOR HIS CLIENTS, DR. LIDE CANCELLED THAT

1 DEPOSITION. SO AT THE REQUEST OF MR. BAYNE, I HAVE
2 AGREED TO LEAVE THE RECORD OPEN. THAT DEPOSITION IS
3 GOING TO BE HELD LATER IN THE MONTH, SO I CANNOT

4 MAKE A DECISION UNTIL I GET THAT DEPOSITION, BUT I
5 CERTAINLY TRUST THAT DEPOSITION TRANSCRIPT WILL BE
6 EXPEDITED, AND I WILL MAKE A DECISION AS SOON AS I
7 FINISH REVIEWING THAT DEPOSITION.

8 ARE THERE ANY FURTHER OBJECTIONS TO APAs,
9 JURISDICTION, VENUE, OR ANY OTHER ITEMS?

10 **BY MR. MCDANIEL:**

11 NONE FROM THE CLAIMANT, COMMISSIONER.

12 **BY MR. BAYNE:**

13 NONE FROM THE DEFENDANT.

14 **BY COMMISSIONER BARDEN:**

15 THANK YOU. WITHOUT FURTHER OBJECTION AND, MR.
16 BAYNE, YOU OBVIOUSLY HAVE A RUNNING OBJECT TO THIS
17 HEARING STRICTLY, YOU KNOW, SIMPLY EVEN BEING HELD,
18 BUT YOU HAVE A -- OBVIOUSLY YOUR OBJECTION IS
19 PRESERVED FOR THE RECORD. WITHOUT FURTHER OBJECTION
20 THE COMMISSION FILE BECOMES A PART OF THE RECORD
21 WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
22 UNSTIPULATED MEDICAL REPORTS.

23 PRIOR TO GOING ON THE RECORD, WE HELD A PRE-
24 HEARING CONFERENCE. IT IS THE POSITION OF THE
25 CLAIMANT THAT NOT ONLY DID HE INJURE HIS NECK AND

1 HIS LEFT SHOULDER AND ARM, WHICH ARE ADMITTED BODY
2 PARTS, THAT HE ALSO SUSTAINED A MYOCARDIAL
3 INFARCTION FROM THE SHOCK, WHICH ULTIMATELY RESULTED
4 IN V.S.D. OR A HOLE IN HIS HEART. HE ALSO CONTENDS
5 THAT HE SUFFERED A HEAD AND POSSIBLY A BRAIN INJURY,
6 BUT BECAUSE THE FOCUS OF HIS TREATMENT HAS BEEN JUST
7 ABOUT EXCLUSIVELY ON THE HEART, HIS HEAD AND HIS --
8 AND POSSIBLE BRAIN INJURY HAVE NOT BEEN EXPLORED OR
9 PROPERLY AND THOROUGHLY EVALUATED. SO HE SEEKS A
10 FINDING OF COMPENSABILITY OF NOT ONLY THE NECK AND
11 THE LEFT SHOULDER, WHICH THE DEFENDANTS ADMIT, AND
12 THOSE ARE THE ONLY ADMITTED BODY PARTS, I WANT TO
13 EMPHASIZE THAT, THE NECK AND THE SHOULDER. BUT HE
14 ALSO BELIEVES AND CONTENDS AND WOULD CONTEND THAT
15 THE MEDICAL EVIDENCE SUPPORTS HIS FINDING BY MORE
16 THAN A GREATER WEIGHT OF THE EVIDENCE STANDARD, BUT
17 HE BUT AT LEAST MEETS THAT STANDARD, AND HE ALSO
18 INJURED HIS HEART AND HIS HEAD. HE SEEKS TEMPORARY
19 TOTAL DISABILITY BENEFITS FROM SEPTEMBER 15TH, 2013,
20 TO THE PRESENT AND CONTINUING. HE SEEKS
21 REIMBURSEMENT FOR THOSE EXPENSES HE'S INCURRED THUS
22 FAR WITH REGARD TO THE EVALUATION AND TREATMENT OF
23 HIS INJURED BODY PARTS. HE SEEKS AN ORDER REQUIRING
24 THE DEFENDANTS TO PROVIDE TREATMENT WITH DR. TRAVIS,
25 WHO IS HIS TREATING CARDIOVASCULAR SURGEON, AS WELL

1 AS DR. LIDE, HIS CARDIOLOGIST. DOCTORS TRAVIS AND
2 LIDE WERE INITIALLY AUTHORIZED BEFORE BENEFITS WERE
3 DENIED. AND IF THIS CLAIM IS COMPENSABLE, THE

4 DEFENDANTS DO NOT -- AND OBVIOUSLY THE DEFENDANTS
5 BELIEVE THIS CLAIM IS NOT COMPENSABLE WITH REGARD TO
6 THE HEART AND BRAIN, BUT IF IT IS FOUND TO BE
7 COMPENSABLE, THE DEFENDANTS WOULD AGREE THAT DR.
8 TRAVIS AND DR. LIDE WOULD BE APPROPRIATE PROVIDERS
9 AND THAT THAT THEY ARE FAMILIAR WITH THE CLAIMANT'S
10 CONDITION AND THEY HAVE TREATED HIM AND THEY
11 INITIALLY WERE SELECTED BY THE DEFENDANTS. AS THE
12 CLAIMANT HAS NOT REACHED MAXIMUM MEDICAL
13 IMPROVEMENT, ANY DETERMINATION OF PERMANENCY WOULD
14 BE PREMATURE. THE CLAIMANT WOULD CONTEND THAT EVEN
15 IF HE HAD PRE-EXISTING HEART PROBLEMS THAT THEY WERE
16 AGGRAVATED SIGNIFICANTLY BY THE ELECTRICAL SHOCK,
17 WHICH CAUSED THE MYOCARDIAL INFARCTION, AND THEN THE
18 BURN CAUSED THE V.S.D. TOWARD HIS CONTENTION THAT
19 THIS IS A COMPENSABLE CLAIM, THE CLAIMANT WOULD
20 POINT TO MY ATTENTION THE FACT THAT THREE TREATING
21 PHYSICIANS HAVE ALL OPINED TO A REASONABLE DEGREE OF
22 MEDICAL CERTAINTY THAT THE CLAIMANT'S CONDITION IS
23 RELATED TO THE SHOCK OF MAY 22ND, 2013. AS FAR AS
24 THE DEFENDANTS' EXPERT, DR. FELDMAN, THE CLAIMANT
25 CONTENDS THAT THAT OPINION SHOULD NOT BE ACCORDED AS

1 MUCH WEIGHT IN THAT DR. FELDMAN NEVER SAW OR
2 EXAMINED THE CLAIMANT. THAT THE -- THAT DR. FELDMAN
3 IS A CARDIOLOGIST, AND THE ONLY CARDIOVASCULAR

4 SURGEON IN THIS CASE, DR. TRAVIS, DOES FIND THAT THE
5 CONDITION IS RELATED TO THE EMPLOYMENT. DR. FELDMAN
6 BY CONTRAST IS A CARDIOLOGIST. AND FINALLY THE
7 CLAIMANT WOULD POINT TO MY ATTENTION THE FACT THAT
8 DR. FELDMAN WAS ONLY ASKED IF THE V.S.D. WAS CAUSED
9 BY THE SHOCK AND NOT THE MYOCARDIAL INFARCTION. SO
10 THE CLAIMANT BELIEVES THAT DR. FELDMAN'S OPINION
11 SHOULD BE VIEWED WITH THOSE DEFICIENCIES. AND EVEN
12 IF DR. FELDMAN'S OPINION IS NOT VIEWED WITH ANY --
13 AS FLAWED OR FAULTY OR WITH ANY DEFICIENCIES, THE
14 CLAIMANT WOULD CONTEND THE FACT THAT DR. FELDMAN,
15 ACCORDING TO THE CLAIMANT'S INTERPRETATION, SAYS HE
16 DOES ADMIT THAT THE SHOCK COULD HAVE CAUSED THE
17 CLAIMANT'S CONDITION.

18 CONVERSELY, IT IS THE POSITION OF THE
19 DEFENDANTS THAT EXCEPT FOR THE NECK AND THE
20 SHOULDER, BENEFITS UNDER THE ACT SHOULD BE DENIED.
21 THE DEFENDANTS DISPUTE THAT THERE IS ANY CREDIBLE
22 MEDICAL EVIDENCE WHICH ESTABLISHES A RELATIONSHIP
23 BETWEEN THE SHOCK OF MAY 22ND, 2013, AND ANY HEART
24 OR BRAIN INJURY. THE DEFENDANTS POINT TO MY
25 ATTENTION THE OPINION OF DR. FELDMAN WHO THE

1 DEFENDANTS BELIEVE OUGHT TO BE GIVEN THE GREATEST
2 WEIGHT OF ALL THE OPINIONS IN THAT -- THAT THERE WAS
3 A SIGNIFICANT TIME GAP BETWEEN THE MAY 22ND, 2013,
4 INJURY AND THE HEART ATTACK. AND AGAIN THE
5 DEFENDANTS WOULD POINT TO MY ATTENTION THAT
6 COMMISSIONER BECK MADE A SPECIFIC FINDING THAT THERE
7 WAS A MYOCARDIAL INFARCTION ON THE 28TH, BUT EVEN
8 NOT WITHSTANDING THAT FINDING THAT COMMISSIONER BECK
9 MADE, JUST THE MEDICAL EVIDENCE ALONE DOES NOT
10 ESTABLISH A SUFFICIENT LINK OR CAUSAL NEXUS BETWEEN
11 THE SHOCK AND THE MYOCARDIAL INFARCTION. THE
12 DEFENDANTS BELIEVE THAT THERE WAS NO CHEST PAIN
13 UNTIL THE CLAIMANT WENT TO THE HOSPITAL ON THE 28TH.
14 AND OF COURSE THE DEFENDANTS CONTEND THAT THE MAIN
15 ISSUE IS WHAT CAUSED THE PLAQUE RUPTURE, WHICH
16 ULTIMATELY CAUSED THE HEART ATTACK. THE DEFENDANTS
17 BELIEVE THAT IT WAS NOT A SHOCK THAT JUST CAUSED A
18 HEART ATTACK. IT WAS THE CLAIMANT'S PLAQUE, HIS
19 DISEASED ARTERIES, WHICH THE DEFENDANTS BELIEVE
20 BECAUSE OF THE TIME GAP THERE CANNOT -- IT CANNOT BE
21 SHOWN THAT THERE WAS AN AGGRAVATION OF THE
22 CLAIMANT'S PRE-EXISTING CONDITION. THAT THE
23 CLAIMANT HAS SEVERE VESSEL DISEASE IN I BELIEVE
24 THREE OF HIS CORONARY VESSELS. SO THE DEFENDANTS
25 BELIEVE THAT THERE WAS A PLAQUE BUILD UP WHICH

1 ULTIMATELY RUPTURED, WHICH IS JUST COINCIDENTAL WITH
2 THE TIME -- WITH THE FACT THAT THERE WAS A SHOCK
3 INCIDENT OR INJURY SIX DAYS PRIOR, AND SO THAT THERE

4 -- THE TIME GAP ALONE AND PER THE OPINION OF DR.
5 FELDMAN IS REASON ENOUGH AND CLEAR AND CONVINCING TO
6 THEM THAT BENEFITS UNDER THE ACT SHOULD BE DENIED,
7 BECAUSE IT CANNOT BE STATED WITH A REASONABLE DEGREE
8 OF MEDICAL CERTAINTY WHEN THE PLAQUE DISRUPTION
9 OCCURRED, AND IT IS THE PLAQUE DISRUPTION WHICH
10 CAUSED THE MYOCARDIAL INFARCTION, WHICH IN TURN
11 CAUSED THE V.S.D.

12 ALL RIGHT. Y'ALL SAID IT FOR AN HOUR, AND YOU
13 SAID IT A LOT BETTER THAN I JUST DID, BUT IF YOU'RE
14 SATISFIED WITH THAT SUMMARY, UNLESS I'VE
15 MISCHARACTERIZED OR MISSTATED ANYTHING, AGAIN, I
16 HAVE NOT -- Y'ALL, I DON'T GET THESE DOCUMENTS UNTIL
17 THE VERY TIME OF THE HEARING. SO I AM -- I HAVEN'T
18 READ THEM. SO IF I'VE MISSTATED SOMETHING, I WANT
19 TO KNOW AND WILL CORRECT IT ON THE RECORD RIGHT NOW.
20 I STARTED WITH YOU AS YOU'RE THE MOVING PARTY,
21 UNLESS YOU'RE SATISFIED WITH THAT SUMMARY, SIR.

22 BY MR. MCDANIEL:

23 COMMISSIONER, I NEVER WAS -- CAN I JUST BRIEFLY

24 PUT ---

25 BY COMMISSIONER BARDEN:

1 YES.

2 BY MR. MCDANIEL:

3 --- MY POSITION ON THE RECORD IN REFERENCE TO

4 THE -- THAT YOU CANNOT GO FORWARD POSITION THAT

5 THEY'RE TAKING?

6 BY COMMISSIONER BARDEN:

7 I GUESS I DID NOT DO THAT ON YOUR BEHALF SO I -

8 - YOU CERTAINLY MAY.

9 BY MR. MCDANIEL:

10 RIGHT. AND I JUST WANT TO JUST FOR -- FOR THE

11 RECORD, NUMBER ONE, THAT WAS NOT AN ISSUE THAT WAS

12 BEFORE COMMISSIONER BECK. NUMBER TWO, THAT ---

13 BY COMMISSIONER BARDEN:

14 WHEN YOU SAY "THAT," YOU MEAN THE DATE?

15 BY MR. MCDANIEL:

16 THE -- THE DATE ---

17 BY COMMISSIONER BARDEN:

18 OKAY.

19 BY MR. MCDANIEL:

20 --- THAT HE REFERRED TO ON THE 28TH, NUMBER

21 ONE. NUMBER TWO, THAT IS NOT THE LAW OF THE CASE.

22 THEIR POSITION IS THAT IT'S THE LAW OF THE CASE.

23 THAT IS ON APPEAL. THAT ISSUE HAS NOT BEEN FOUND TO

24 BE A FINAL FINDING BY THE -- THE ALL THE -- ALL THE

25 APPELLATE PANEL THAT MAY LOOK AT THAT, THE APPELLATE

PANEL OF THE COMMISSION, COURT OF APPEALS, SUPREME COURT. THIRD, AND -- AND MORE IMPORTANTLY IS THAT COMMISSIONER BECK MADE A SPECIFIC FINDING, A FACT

AND CONCLUSION OF LAW. ANY CONCLUSION OF LAW -- NUMBER FIVE, HE SPECIFICALLY STATED, "SPECIFICALLY," COMMA, "THE CLAIMANT HAS REQUESTED A HEARING ON THE MERITS OF WHETHER CLAIMANT SUSTAINED A COMPENSABLE INJURY BY ACCIDENT AS IN -- AND IS ENTITLED TO BENEFITS BY OPERATION OF FORM 50 EMPLOYEES REQUEST FOR HEARING FILED ON OCTOBER 21ST, 2013. THEREFORE, THE QUESTION OF WHETHER THE CLAIMANT SUSTAINED A COMPENSABLE INJURY BY ACCIDENT IS ENTITLED TO -- AND IS ENTITLED TO BENEFITS UNDER THE ACT WILL BE DECIDED BY THE COMMISSION AT THE HEARING SET PURSUANT TO THE CLAIMANT'S FORM 50 REQUEST FOR HEARING." THEN IN HIS ORDER HE FURTHER FOUND, "IT IS FURTHER ORDERED THAT ALL OTHER ISSUES AND CONTENTIONS SPECIFICALLY INCLUDING THE QUESTION OF WHETHER CLAIMANT SUSTAINED AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH DEFENDANTS RESULTING ON COMPENSABLE DISABILITY IS PRESERVED FOR ADJUDICATION AT THE HEARING SET PURSUANT TO THE CLAIMANT'S OCTOBER 21ST, 2013, FORM 50 EMPLOYEE'S REQUEST FOR HEARING." I THINK IT'S VERY CLEAR FROM COMMISSIONER BECK'S ORDER THAT HE

1 WAS IN NO WAY TRYING TO MAKE A DETERMINATION AT THAT
2 HEARING AS TO WHETHER OR NOT BASED ON THE FACTS AS
3 TO WHETHER OR NOT THOSE FACTS WOULD SUBSTANTIATE
4 AFTER THEY WERE DEVELOPED AS TO WHETHER OR NOT
5 CLARENCE SUSTAINED A COMPENSABLE INJURY BY ACCIDENT.
6 I THINK HE MAKES IT VERY CLEAR. I WOULD JUST ADD
7 THAT. THE OTHER THING IS IN REFERENCE TO DR. BARRY
8 FELDMAN, THERE ARE TWO WAYS THAT AN EXPERT'S OPINION
9 MAY BE SUBMITTED INTO EVIDENCE. ONE IS BASED ON
10 THEIR PERSONAL KNOWLEDGE. AS -- AS YOU
11 APPROPRIATELY STATED, COMMISSIONER, DR. FELDMAN HAS
12 NOT REVIEWED, HAS NOT EVALUATED, HAS NOT ANY WAY
13 SEEN NOR ACTUALLY SEEN THE NOT ONLY THE PICTURES BUT
14 HE HAS NOT EVALUATED OR HAD ANY PHYSICAL CONTACT OR
15 EVALUATION OF -- OF MR. WINFREY. HIS -- HE HAS
16 ABSOLUTELY NO PERSONAL KNOWLEDGE. HE DID A RECORDS
17 REVIEW. THE SECOND WAY AN EXPERT OPINIONS MAY BE
18 SUBMITTED INTO EVIDENCE IS BASED ON A PROPERLY
19 PHRASED HYPOTHETICAL QUESTION. THERE IS NO EVIDENCE
20 WHEN YOU REVIEW THIS TRANSCRIPT THAT OF ANY PROPERLY
21 PHASED HYPOTHETICAL QUESTION BEING PRESENTED TO HIM
22 AND, THEREFORE, I BELIEVE THAT HIS EVIDENCE --
23 HOWEVER, FIRST TIME FOR SIMPLICITY SAKE I'M GOING TO
24 PLACE THAT ON THE RECORD, BUT AS I STATED BEFORE, WE
25 WANT TO MOVE FORWARD, AND SO I WOULD ASK YOU TO GIVE

1 IT SUCH WEIGHT AS YOU -- YOU'VE ALREADY PREVIOUSLY
2 STATED TO GIVE IT. HOWEVER, I BELIEVE IT'S ENTITLED
3 TO NO WEIGHT BECAUSE THERE'S NO EVIDENCE THAT HE HAS

4 ANY PERSONAL KNOWLEDGE OF MR. WINFREY AND HIS
5 CONDITION, NOR IS THERE ANY EVIDENCE OF A PROPERLY
6 PHRASED HYPOTHETICAL QUESTION, HOWEVER, I JUST --
7 THAT'S IT. AND WE'RE READY TO MOVE FORWARD.

8 **BY COMMISSIONER BARDEN:**

9 ALL RIGHT. MR. BAYNE, I'M GOING TO ALLOW YOU
10 TO RESPOND, SIR, IF WANT TO.

11 **BY MR. BAYNE:**

12 THANK, YOU, COMMISSIONER. AS FAR AS THE -- THE
13 PROCEDURAL ASPECT OF THE CASE HERE, WE DON'T
14 DISAGREE THAT COMMISSIONER BECK IN HIS DECISION AND
15 ORDER INDICATED THAT COMPENSABILITY WILL BE
16 DETERMINED AT A LATER DATE AND INDICATED THAT THERE
17 WOULD BE A HEARING PURSUANT TO THE FORM 50 FILED BY
18 MR. WINFREY AND MR. MCDANIEL. ALL WE'RE POINTING
19 OUT IN RELATION TO COMMISSIONER BECK'S ORDER AND THE
20 PROCEDURAL ASPECT HERE TODAY IS THAT HE HAS MADE A
21 FINDING OF FACT THAT THE HEART ATTACK, THE
22 MYOCARDIAL INFARCTION, DID NOT OCCUR UNTIL MAY 28TH,
23 2013. THAT SPECIFIC FACT DOES NOT NECESSARILY
24 INDICATE CAUSATION OR DISPROVE CAUSATION, BUT IT IS
25 SOMETHING THAT IS THE LAW OF THE CASE AND THAT IS ON

1 APPEAL AT THIS MOMENT. OUR POSITION IN THE PRE-
2 HEARING AND CONTINUING IS THAT THAT DATE CANNOT BE
3 MODIFIED BY A SUBSEQUENT HEARING ONLY BY THE

4 APPELLATE PANEL ON APPEAL THAT MR. MCDANIEL HAS
5 FILED. SO THAT IS OUR PROCEDURAL APPEAL TO IT. WE
6 DON'T DISAGREE THAT HE INDICATED THAT THAT A
7 COMMISSIONER AT A LATER DATE WOULD DETERMINE
8 COMPENSABILITY AND THAT WE WOULD HAVE THIS HEARING.
9 THAT'S NOT AT -- AT ISSUE. RELATED TO DR.
10 FELDMAN, HE IS A CARDIOLOGIST. HE'S QUALIFIED TO
11 GIVE AN EXPERT OPINION. IN HIS DEPOSITION, HE WAS
12 ASKED HYPOTHETICAL QUESTIONS, RELATED TO MR.
13 WINFREY'S CONDITION. FURTHER, COMMISSIONER, WHILE
14 HE WAS ASKED SPECIFICALLY TO SPEAK ON THE V.S.D.,
15 HIS OPINION AS WELL AS DR. TRAVIS'S AND I BELIEVE
16 DR. LIDE'S WILL INDICATE THAT THE V.S.D. WAS CAUSED
17 BY A MYOCARDIAL INFARCTION THAT WAS CAUSED BY A
18 PLAQUE RUPTURE. SO INDIRECTLY DR. FELDMAN WAS ASKED
19 TO SPEAK AS TO WHETHER OR NOT THE PLAQUE RUPTURE WAS
20 CAUSED BY AN ELECTRICAL SHOCK, WHICH THEN TRIGGERED
21 THE CHAIN OF EVENTS THAT LED US HERE TODAY AND LED
22 MR. WINFREY UNFORTUNATELY TO HAVE TO HAVE AN OPEN
23 HEART SURGERY. SO WHILE MR. -- AND WHAT DR.
24 FELDMAN'S OPINION OR IN HIS DEPOSITION, HE STATED,
25 "I WAS ASKED TO SPEAK ON THE V.S.D.," IMPLICITLY HE

1 IS REFERRING TO THE FACT THAT HE WAS ASKED TO SPEAK
2 ABOUT WHAT CAUSED THE V.S.D., AND WHAT CAUSED THE
3 V.S.D. WAS A MYOCARDIAL INFARCTION, AND WHAT CAUSED

4 THE MYOCARDIAL INFARCTION WAS THE PLAQUE RUPTURE,
5 AND WHAT CAUSED THE PLAQUE RUPTURE IS WHY WE'RE HERE
6 TODAY. WETHER OR NOT IT WAS CAUSED BY ELECTRICAL
7 SHOCK OR NOT IS SOMETHING THAT YOU'RE GOING TO HAVE
8 TO DETERMINE, AND IF IT WAS IT'S COMPENSABLE, IF IT
9 WAS NOT THEN IT IS NOT COMPENSABLE, AND THAT IS OUR
10 POSITION AT THIS HEARING.

11 **BY COMMISSIONER BARDEN:**

12 OKAY. THANK YOU, GENTLEMEN. ANYTHING ELSE
13 BEFORE WE HEAR FROM MR. WINFREY?

14 **BY MR. BAYNE:**

15 NOTHING FROM ME, YOUR HONOR.

16 **BY COMMISSIONER BARDEN:**

17 ALL RIGHT, SIR. DO YOU NEED ANY WATER OR
18 ANYTHING?

19 **BY MR. WINFREY:**

20 I'M FINE. THANK YOU.

21 **BY COMMISSIONER BARDEN:**

22 YOU SURE? ALL RIGHT. WILL YOU RAISE YOUR
23 RIGHT HAND, PLEASE. DO YOU SWEAR OR AFFIRM THE
24 TESTIMONY YOU'RE ABOUT GIVE IN THIS PROCEEDING IS
25 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE

1 TRUTH?

2 BY MR. WINFREY:

3 I DO.

4 CLARENCE WINFREY

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

6 BY COMMISSIONER BARDEN:

7 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 BY THE WITNESS:

9 CLARENCE P. WINFREY, JUNIOR.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT. THANK YOU. AND I KNOW IT'S

12 DIFFICULT TO SPEAK UP, BUT YOUR VOICE HAS TO REACH

13 OVER TO THOSE GENTLEMEN OVER THERE AND THE PEOPLE IN

14 THE BACK AS WELL, AS WELL AS OUR COURT REPORTER AND

15 ME, SO JUST DO THE BEST YOU CAN.

16 BY THE WITNESS:

17 OKAY.

18 BY COMMISSIONER BARDEN:

19 AND IF WE NEED TO BREAK, YOU JUST LET ME KNOW.

20 OKAY?

21 BY THE WITNESS:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 MR. MCDANIEL.

25 DIRECT EXAMINATION BY MR. MCDANIEL:

1 Q. CLARENCE, IS -- IF YOU CAN -- IF -- IF IT'S ALL
2 RIGHT, CAN YOU DIRECT YOUR COMMENTS TO COMMISSIONER
3 BARDEN IF I SIT OVER HERE AND JUST LIKE WHISPER IN

4 YOUR LEFT EAR?

5 A. YEAH.

6 Q. ALL RIGHT. SO I'M GOING TO GO OVER HERE AND JUST
7 LET YOU -- YOU AND COMMISSIONER BARDEN ---

8 BY COMMISSIONER BARDEN:

9 OR IF YOU WANT TO SIT HERE, MR. MCDANIEL,
10 (INDICATING) AND PUT YOUR STUFF THERE AND YOU CAN
11 SIT DOWN. I ---

12 BY MR. MCDANIEL:

13 THAT'S ---

14 BY COMMISSIONER BARDEN:

15 --- THAT'S WHAT ATTORNEYS DO, EITHER STAND OR
16 SIT THERE.

17 BY MR. MCDANIEL:

18 THANK YOU.

19 BY COMMISSIONER BARDEN:

20 AND I'M FINE WITH THAT.

21 BY MR. MCDANIEL:

22 OKAY.

23 BY COMMISSIONER BARDEN:

24 JUST SO THAT HE ISN'T GOING TO BE HEARING YOU
25 OVER THERE AND THEN LOOKING AT ME, THAT MIGHT BE A

1 LITTLE HARD. ALL RIGHT.

2 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

3 Q. CLARENCE, I'M GOING TO DO JUST A LITTLE BIT OF

4 BACKGROUND AND -- AND HOW OLD ARE YOU?

5 A. FIFTY-ONE.

6 Q. FIFTY-ONE. AND I BELIEVE YOU'RE DIVORCED AND HAVE
7 ONE CHILD WHO'S OVER THE AGE OF 18; IS THAT CORRECT?

8 A. YEAH.

9 Q. ALL RIGHT. AND YOU'VE BASICALLY -- YOUR BACKGROUND
10 EXPERIENCE IS IN MECHANICAL AND IN MAINTENANCE WORK
11 AND IN ELECTRICAL?

12 A. YEAH. YEAH.

13 Q. FOR THE LAST 15 YEARS LEADING UP TO THE TIME THAT
14 YOU WENT TO WORK FOR ARCHWAY SERVICES, WHAT -- WHAT
15 TYPES OF JOBS DID YOU DO; WHAT -- WHAT AREA DID YOU
16 WORK IN?

17 A. I WAS THE MAINTENANCE MAN AT F.P. JOHNSON, A PLANT
18 IN CHAPIN; ROOF ELECTRIC; CAROLINA WINGS, I WAS
19 THEIR MAINTENANCE MAN BASICALLY DOING THE SAME THING
20 AS ARCHWAY. AND ---

21 BY COMMISSIONER BARDEN:

22 CAN YOU GENTLEMEN HEAR OKAY?

23 BY MR. BAYNE:

24 OKAY.

25 BY COMMISSIONER BARDEN:

1 YOU CAN? ALL RIGHT.

2 THE WITNESS RESUMES ANSWER:

3 A. AND I WORKED WITH STEVE SCHULMEISTER; HE WAS A
4 MASTER ELECTRICIAN.

5 DIRECT EXAMINATION RESUMED BY MR. MCDANIEL:

6 Q. OKAY. ALL RIGHT. AND SO BASICALLY YOU DID
7 MAINTENANCE WORK BUT DID A LOT OF WORK IN THE
8 ELECTRICAL FIELD?

9 A. ELECTRICAL AND MAINTENANCE. YES, SIR.

10 Q. ALL RIGHT. AND ARCHWAY SERVICES, HOW LONG HAD YOU
11 BEEN WITH THEM BEFORE THIS ACCIDENT?

12 A. I'VE BEEN WITH THEM EIGHT, NINE MONTHS; I MIGHT BE
13 WRONG.

14 Q. ALL RIGHT. AND THEN -- AND SO WHAT -- WHAT WERE YOU
15 DOING, WHAT WAS YOUR JOB AT ARCHWAY SERVICES?

16 A. WE TOOK CARE OF ALL THE WAL-MART DELIS. WE JUST
17 TOOK OVER PUBLIX'S ABOUT TWO MONTHS PRIOR AND WORKED
18 ON ALL OF THEIR EQUIPMENT FOR LIKE THE ROTISSERIES
19 AND FRYERS AND THINGS LIKE THAT.

20 Q. LET ME ASK YOU THIS ON A GENERAL BASIS, WHAT LEVEL
21 OF CURRENT IS IT -- YOU WORKED ON COMMERCIAL
22 EQUIPMENT, ELECTRICAL EQUIPMENT AND -- AND ALL THAT
23 TYPE OF -- AND THAT ARE FOUND IN THE KITCHEN. TELL
24 ME WHAT THE GENERAL VOLTAGE IS OF THAT KIND OF
25 EQUIPMENT?

1 A. LIKE THE ROTISSERIE I WAS WORKING ON WAS HIGH
2 VOLTAGE. I DIDN'T LOOK TO SEE HOW MUCH EXACTLY IT
3 WAS, BUT IT HAD TO BE 240 OR HIGHER.

4 Q. AND BASICALLY, I KNOW IT'S -- IT'S ALWAYS HELPFUL TO
5 ME TO GET THIS EXPLAINED TO ME. HOW DOES -- YOU --
6 YOU HAVE TRUNK LINE FOR A BETTER TERM THAT COMES IN
7 TO -- TO A BUSINESS, AND THEN HOW DOES THAT FILTER
8 DOWN TO LIKE YOUR 220 OR YOUR 240 CURRENT OR YOUR
9 480?

10 A. YOU HAVE BARS ON THE BACK WHERE YOUR MAIN POWER
11 COMES IN, AND THAT'S WHERE YOU PUT YOUR BREAKERS,
12 AND IT DEPENDS ON THE AMP DRAW OF THE EQUIPMENT.
13 'CAUSE LIKE THAT ROTISSERIE THAT HURT ME, IT HAD
14 THREE BREAKERS FOR THAT ONE ROTISSERIE. I MEAN
15 THERE WAS ONE ON TOP, ONE ON BOTTOM. SO THERE ARE
16 THREE MORE FOR THE BOTTOM.

17 Q. AND SO BASICALLY, FOR EXAMPLE, THERE'S VOLTAGE EVEN
18 880 OR HIGHER THAT COMES INTO THE MAIN LINE?

19 A. OH, YES.

20 Q. AND THEN IT'S DISTRIBUTED OUT?

21 A. THAT'S CORRECT. THERE'S GREATER COMING IN.

22 Q. AND THEN -- THEN THAT -- THAT'S DISTRIBUTED ON OUT,
23 SO THIS -- THIS ROTISSERIE HAD AT LEAST THREE
24 BREAKERS. SO IT WAS AT LEAST 220 OR 240?

25 A. IT WAS AT 240. I MEAN, IT'S 240 OR ABOVE, YES.

1 Q. OH. OKAY. NOW, JUST TELL COMMISSIONER BARDEN WHAT
2 HAPPENED, YOU KNOW, WHAT TIME OF DAY AND YOU WERE
3 AND -- AND WHAT -- WHERE YOU WERE AND WHERE THE
4 ACCIDENT OCCURRED?

5 A. I WAS AT A PUBLIX, STORE 67 ON ROSEWOOD DRIVE. THEY
6 HAVE A ROTISSERIE STACKED ON TOP OF ROTISSERIE AND
7 SO I MADE -- I WENT THERE AND MADE ARRANGEMENTS
8 WHERE I COULD GET THERE AT 6:30 IN THE MORNING,
9 BECAUSE YOU ONLY GOT A LITTLE WALKWAY SO I COULD
10 PULL THE ROTISSERIES OUT. SO THE NEXT DAY I WENT,
11 AND I WAS THERE ABOUT 6:15. THE LADY MANAGER LET ME
12 IN, AND THERE WAS ONE GIRL BACK AT THE DELI. AND I
13 PULLED THE ROTISSERIES OUT. THE FRYERS ARE BEHIND
14 ME. I TOOK THE PANEL OFF AND SET IT ON THE BOTTOM
15 ROTISSERIE ON THE -- THE BOTTOM OF THE TOP
16 ROTISSERIE ON THE LITTLE LEDGE, AND I HAD MY HAND
17 LIKE THIS (INDICATING). I WAS TRACING WIRES OUT.

18 BY COMMISSIONER BARDEN:

19 SO YOU WERE HOLDING AND USING WIRES WITH YOUR
20 RIGHT, LEFT HAND?

21 BY THE WITNESS:

22 YEAH, TRACING WIRES WITH MY RIGHT.

23 BY COMMISSIONER BARDEN:

24 RIGHT HAND. OKAY.

25 BY THE WITNESS:

1 AND THEN ONE OF THE WIRE PRONGS WERE BROKEN OFF
2 THE SWITCH, WHICH IS DOWN BY MY HAND.

3 **BY COMMISSIONER BARDEN:**

4 BY YOUR RIGHT HAND?

5 **BY THE WITNESS:**

6 WHICH I DID NOT SEE, AND I JUST LOOKED TO MAKE
7 SURE ALL THE WIRES WERE ATTACHED, BUT IT WAS JUST
8 FLOATING. AND WHEN I WAS MOVING THE WIRES, THAT
9 WIRE MOVED, AND I MEAN IT BLEW UP. I MEAN NOT NO
10 POW, IT WENT KABAM. AND THAT'S WHEN I SNATCHED BACK
11 REAL HARD, BUT I COULD FEEL IT FROM HERE
12 (INDICATING), MY NECK.

13 **BY COMMISSIONER BARDEN:**

14 SO YOU'RE USE -- YOU'RE INDICATING YOUR LEFT
15 ARM ALL THE WAY UP?

16 **BY THE WITNESS:**

17 YEAH, I GOT A SCAR RIGHT THERE.

18 **BY MR. MCDANIEL:**

19 COMMISSIONER, YOU -- YOU CAN STILL SEE THE SCAR
20 WHERE THE ---

21 **BY COMMISSIONER BARDEN:**

22 YOU CAN SIT DOWN. I'LL COME OVER TO YOU.
23 GENTLEMEN, IF Y'ALL WANT TO COME OVER AND LOOK AT
24 THE SCAR YOU'RE WELCOME TO. (COMMISSIONER VIEWS
25 SCAR) OKAY. ALL RIGHT. THANK YOU.

1 BY THE WITNESS:

2 AND THAT'S WHERE THE POWER WENT IT.

3 BY COMMISSIONER BARDEN:

4 ALL RIGHT.

5 BY THE WITNESS:

6 AND IT WENT UP MY ARM AND FROM MY EARS DOWN
7 THROUGH MY SHOULDER.

8 BY COMMISSIONER BARDEN:

9 IS THAT YOUR MIDDLE FINGER THE SCAR WAS ON?

10 BY THE WITNESS:

11 YES, MA'AM.

12 BY COMMISSIONER BARDEN:

13 OKAY. SO IT WENT UP YOUR ARM INTO YOUR NECK?

14 BY THE WITNESS:

15 RIGHT THROUGH HERE AND RUN DOWN THROUGH HERE
16 (INDICATING).

17 BY COMMISSIONER BARDEN:

18 OKAY. AND YOU'RE INDICATING YOUR CHEST AND UP
19 INTO YOUR HEAD A LITTLE BIT?

20 BY THE WITNESS:

21 YEAH.

22 BY COMMISSIONER BARDEN:

23 ALL RIGHT.

24 BY THE WITNESS:

25 AND THAT'S HOW -- WHEN I CALLED BOBBY RUPPE AND

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. THEN 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, YEAH.

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.

BY COMMISSIONER BARDEN:

IF YOU DON'T KNOW THE ANSWER, YOU DON'T KNOW
THE ANSWER.

BY THE WITNESS:

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

CROSS EXAMINATION RESUMED BY MR. BAYNE:

Q. SO YOU WOULD OF ---

A. SO I THINK ---

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

A. I THINK SO. OKAY.

Q. OKAY.

A. I'M NOT SURE.

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

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

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

A. YES.

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

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.

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.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000530

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

McDaniel Law Firm

1315 Elmwood Avenue

Columbia, South Carolina 29201

Attorney for the Claimant/Employee/Appellant

Brett H. Bayne, Esquire

McAngus Goudelock & Courie, LLC

Post Office Box 12519

Meridian, 10th Floor, 1320 Main Street

Columbia, South Carolina 29201

Attorney for the Defendants/Respondents

INDEXPAGE**ARGUMENT BY:**

Mr. McDaniel 3

ARGUMENT BY:

Mr. Bayne 14

REPLY BY:

Mr. McDaniel 20

REPLY BY:

Mr. Bayne 25

Certificate 28

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

000531

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 3

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

This is South Carolina Workers' Compensation
Case Number 1306305. This is the case of
Clarence Winfrey, Claimant, versus Archway

Services, Incorporated, Employer, and American
Fire and Casualty, Carrier.

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

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

COMMISSIONER WILKERSON: Mr. McDaniel.

ARGUMENT BY MR. MCDANIEL:

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

The Commission -- the decision should be
reversed and the benefits reinstated with
penalty because the Defendants did not comply
with the mandatory provisions of 42-9-260(A)
and (B); number two, the Defendants are the
moving party and the Commissioner made a legal
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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 8

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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 10

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 --

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 12

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.

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 13

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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 14

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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 15

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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 16

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.

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 18

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 duty
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 --

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 24

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.

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 26

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

CLARENCE WINFREY V. ARCHWAY SERVICES, INC., ET AL 27

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.

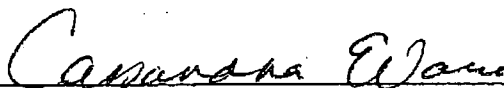
17 (The hearing concluded at 2:03 p.m.)
18
19
20
21
22
23
24
25

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

Notary Public for South Carolina
My Commission Expires: February 26, 2018



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000557

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
2:10 p.m. - 2:31 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.

CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000558

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

McDaniel Law Firm

1315 Elmwood Avenue

Columbia, South Carolina 29201

Attorney for the Claimant/Employee/Respondents

Brett H. Bayne, Esquire

McAngus Goudelock & Courie, LLC

Post Office Box 12519

Meridian, 10th Floor, 1320 Main Street

Columbia, South Carolina 29201

Attorney for the Defendants/Appellants

INDEXPAGE**ARGUMENT BY:**

Mr. Bayne 3

ARGUMENT BY:

Mr. McDaniel 14

REPLY BY:

Mr. Bayne 22

Certificate 24

CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 THE COURT REPORTER: Today is Monday, May 19th,
2 2014.. This is South Carolina Workers'
3 Compensation Case Number 1306305. This is the
4 case of Clarence Winfrey, Claimant, versus

5 Archway Services, Incorporated, Employer, and
6 American Fire and Casualty, Carrier.

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

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. Bayne.

15 ARGUMENT BY MR. BAYNE:

16 MR. BAYNE: Thank you, Commissioners. By way of
17 background on this case, this is a Claimant who
18 was at work working on a rotisserie oven when
19 he was tracing a loose wire and he received an
20 electrical shock somewhere between 220 and 480
21 volts, depending on which testimony you look
22 at.

23 Immediately following that electrical shock, he
24 jerked back and I believe the testimony is that
25 he bumped into a machine behind him. He

1 contacted his employer, indicated that he had
2 been shocked, that he had some pain in his
3 shoulder and in his neck.

4 He continued to work the rest of that day. He

5 worked the following the day. He had a day
6 off. He had a weekend. He presents to
7 Lexington Medical Center -- actually presents
8 to Doctors Care on May 28th complaining of --
9 there's some chest pain and some severe pain in
10 his either upper chest area, shoulder, neck.
11 It's been varied throughout the course of this
12 claim.

13 He is diagnosed at that time with an acute
14 myocardial infarction and an acute ventricular
15 septal defect, which is hole in the heart. In
16 this case, the hole in the heart was located
17 between the two walls at the base of the heart.
18 So there's two chambers and there was a hole in
19 between those two chambers.

20 That hole was formed as a result of the
21 myocardial infarction. It resulted in some
22 deadening of the issue that weakened the wall
23 and caused a hole in the heart.

24 We presented this issue -- as you're aware, we
25 denied this claim. The issue was presented

1 before Commissioner Barden. The issue at that
2 hearing, amongst other things, the main issue
3 related to the heart -- and I'll get to the
4 brain and the other issues in a second -- but

5 for the heart is, what caused the myocardial
6 infarction? And that can be phrased another
7 way is, what caused the plaque rupture?
8 Because in this case, we have two possible
9 causes of the ventricular septal defect.

10 There's a plaque rupture and there's a
11 myocardial infarction. And the doctors in this
12 case have basically said they occurred at about
13 the same time, one caused the other. They both
14 ended up causing the VSD. And what that means
15 is, either the plaque rupture in his coronary
16 artery essentially ruptured and exploded down
17 his heart causing a myocardial infarction that
18 caused the hole or he had a myocardial
19 infarction that caused the plaque to rupture,
20 explode down his heart and cause a hole.

21 It really doesn't matter which order it went
22 in. The question is, what caused that to
23 happen? And that's the answer that
24 Commissioner Barden had to come up with in
25 order to find this claim is compensable,

1 because if there's no causation, obviously
2 there's not a compensable injury.

3 So we approached Commissioner Barden and we
4 addressed that issue. If you look at her order

5 and several of our exceptions, she doesn't
6 address that issue. She does not address what
7 caused the myocardial infarction. She does not
8 address what caused the plaque rupture. And
9 the reason she didn't do that is because of the
10 prior order that we just spoke about in which
11 Commissioner Beck made a finding that the heart
12 attack or the myocardial infarction occurred on
13 May 28th.

14 So in an attempt to avoid, in effect, sitting
15 in an appellate capacity, she did not make
16 those findings. But by not making those
17 findings, her order doesn't reach the requisite
18 level of causation in that there is no
19 causation in her order other than there was an
20 electrical shock and there was a heart attack,
21 which is a logical fallacy.

22 And all of the doctors in this case -- and we
23 can't deny the doctors. There are three
24 medical doctors, two heart doctors, and one
25 general practitioner: Dr. Greenfield, Dr. Lide

1 and Dr. Travis, and they all issued written
2 opinions saying that this heart condition was
3 caused by the electrical shock. We don't deny
4 that.

5 The problem with their opinions is, when you
6 look at the underlying evidence and when you
7 read their deposition testimony, it becomes
8 clear that their reasoning for saying that the
9 electrical shock caused the myocardial
10 infarction is pure speculation. And I'd like
11 to take you through a few of those. They're
12 all in the brief and each of the exceptions,
13 but I'll walk you through those briefly.

14 And there are -- when you look at is, this is
15 piecemealed out of it. There are other times
16 where they revert back to other things, but
17 this was under my questioning when talking to
18 Dr. Travis.

19 He indicates that a plaque rupture can be
20 caused by anything. There's no way to tell
21 what causes a plaque to rupture. He said it
22 could be caused by walking in on your loved
23 one, could be caused by sitting up too fast,
24 coughing too hard. There's any number of
25 things that can cause it.

1 Dr. Lide asked, when I asked him the same
2 question, told me I'd be a millionaire if I
3 could answer what causes plaque to rupture,
4 that there is no way to test for that and there

5 is no way to know.

6 Dr. Lide indicated that there's no research
7 that indicates whether this type of shock can
8 cause a myocardial infarction or a ventricular
9 septal defect, that his overwhelming evidence
10 that the heart condition was caused by
11 electrical shock was proximity in time.
12 Dr. Lide also said that he doesn't know whether
13 a shock can cause a plaque rupture in the
14 heart.

15 Dr. Travis indicated that there's no definitive
16 way to tell whether the plaque rupture caused
17 a shock and he later says in his deposition
18 that the shock "could" have caused the domino
19 effect that led to this heart condition and
20 "could" is not sufficient to establish
21 causation in this case.

22 Whether or not he issued a written opinion on
23 that, when his underlying reasoning is "it
24 could have caused it," that is not sufficient
25 to establish causation for this heart

1 condition.

2 In addition with Dr. Travis -- and Mr. McDaniel
3 is going to talk about this and it's in his
4 brief, as well, that Dr. Travis held the

5 patient's heart in his hand, that he actually
6 did the surgery on this case. And when you
7 look at Dr. Travis' opinion, he talks about
8 seeing some plaques on the side of the heart.
9 Dr. Feldman, who is an expert that we engaged,
10 said those appear in most heart attack patients
11 like that. But the more important thing when
12 you look at Dr. Travis' opinion --

13 **COMMISSIONER JAMES:** Didn't Dr. Travis distinguish
14 those -- I think he called them "soldiers"?

15 **MR. BAYNE:** He --

16 **COMMISSIONER JAMES:** Didn't he distinguish those by
17 saying that they looked like -- that they were
18 actually in this case fused?

19 **MR. BAYNE:** He said that they looked like entrance
20 and exit wounds, like burn marks. But when you
21 read his deposition, this was the first surgery
22 he had done of an electrical shock patient.
23 He --

24 **COMMISSIONER JAMES:** I read the deposition.

25 **MR. BAYNE:** He had never seen these before. He

1 didn't do any research to see if that's what it
2 actually was. He didn't consult any doctors to
3 find out if this is typical in an electrical
4 shock patient. He basically saw them and said,

5 "Yeah, that's what this is. It's an electrical
6 shock. It went through the heart." He guessed
7 when it came down to it:

8 **COMMISSIONER JAMES:** He distinguished them from the
9 other plaques he'd seen.

10 **MR. BAYNE:** He did. He indicated they appeared
11 slightly differing in -- I believe it was
12 "texture," was the word he used, that they
13 were -- they required more effort to get off
14 the side of the heart, because you have to
15 scrape those off the heart. So he did
16 distinguish them, yes.

17 But our -- our position is that he guessed at
18 what they were because he'd never seen them
19 before. He didn't do any research on them. He
20 didn't follow-up with them. He just said,
21 "That's what it is," without any support in
22 either fact or science for that. And that was
23 our position on him.

24 Dr. Greenfield, who is not a heart doctor;
25 she's just the general practitioner that

1 treated Mr. Winfrey first when he went to
2 Doctors Care, indicated again that the
3 myocardial infarction could have occurred five
4 days ago, which at that time would have been

5 about the time that he received the electrical
6 shock, or it could have occurred the evening of
7 May 27th or the morning of May 28th, which is
8 the night before or the day that he presented
9 to Doctors Care. She couldn't give an opinion
10 as to when it actually occurred.

11 She also based her opinion on articles that she
12 researched through the PubMed systems,
13 specifically one of a gentleman that received
14 a myocardial infarction after an electrocution
15 in Brazil. However, that article, when she
16 presented it to us, indicated that he was
17 struck by lightning and received almost ten
18 million volts of electricity, which is about
19 40,000 times the electricity we're dealing with
20 in this case.

21 Dr. Greenfield also indicated that the pain in
22 the Claimant's arm and shoulder that at one
23 point had been described perhaps as heart
24 attack pain was actually muscular pain from
25 either the jolt of the shock or banging back

1 against the machine behind him and was not
2 indicative of the myocardial infarction.

3 As far as the brain condition and the head
4 condition goes, in this case the Claimant filed

5 a Form 50 indicating he suffered a brain injury
6 and a head injury; amongst other things, a
7 hand, an arm, a shoulder, organs, shock
8 symptoms, that type of thing, but specifically
9 with the brain and the head.

10 The Claimant filed a Form 50 indicating he
11 suffered brain and head injuries. He filed --
12 a Form 51 was filed denying the brain and the
13 head injuries. A hearing was set on this claim
14 to address the brain and the head injuries, as
15 well as everything else filed on the Form 50.

16 Claimant filed a Form 58 indicating that he was
17 proceeding on head and brain injuries at this
18 hearing. A Form 58 was filed by the Defendants
19 denying all benefit -- or all injuries related
20 to this claim.

21 At the hearing on this case, we proceeded to it
22 and the head and the brain injury was not
23 withdrawn by the Claimant. The hearing was not
24 restricted in the pretrial and/or on the record
25 or off the record that only the heart would be

1 considered in this case. All aspects of the
2 Form 50 were proceeded upon at the hearing
3 before Commissioner Barden.

4 No evidence has ever been presented related to

5 a brain injury or a head injury. No evidence
6 was presented before the trial. No evidence
7 was presented at the trial. No evidence has
8 been presented since that time. There is no
9 evidence of a head or brain injury.

10 The Claimant was required to present that
11 evidence at the hearing in which he alleged
12 that he suffered a head and a brain injury.
13 Because he did not do that, that specific
14 injury should be denied and it should be denied
15 in its entirety and it should be denied with
16 prejudice and it should not be permitted to be
17 raised at a later date unless evidence is
18 presented that comes to that point.

19 But at this time, the way the order reads is,
20 it's not at this time they're free to go get
21 evidence and present it. It should just be
22 denied because he chose to proceed at the
23 hearing and he did not present any evidence of
24 it.

25 Likewise, with the hand, the arm and the

1 shoulder, the left hand, left arm and left
2 shoulder, those were raised in the pleadings.
3 There was no evidence presented at the hearing
4 related to any injuries resulting to the hand,

5 the arm or the shoulder. There is indication
6 in the medical records that there was pain to
7 the --

8 COMMISSIONER WILKERSON: Go ahead and finish your
9 thought.

10 MR. BAYNE: There was pain to the hand, arm and
11 shoulder. There was no indication or any
12 evidence that that is continuing. And there's
13 a case, as you're well aware, that just aches
14 and pains even if caused by the job are not
15 compensable injuries. There's no evidence that
16 they're anything other than aches and pains to
17 the hand, arm and shoulder. Thank you,
18 Commissioner.

19 COMMISSIONER WILKERSON: Mr. McDaniel.

20 ARGUMENT BY MR. MCDANIEL:

21 MR. MCDANIEL: First off, Mr. Bayne, in his
22 recitation of facts, left out a couple of
23 important points and that is, after my client
24 was not backed -- the testimony first is not at
25 odds, that the machine is rated between 240 and

1 480 volts. He was knocked backwards. He went
2 outside, tried to gather himself, immediately
3 called his employer. No question about that.

4 They decided to accept benefits and then 118
5 days later decided to stop benefits.

6 Now, what happened immediately after the
7 accident is this. He developed arm, shoulder
8 and neck pain radiating from where he got hit
9 on the middle finger on his left hand. He had
10 that pain from the very time of that electrical
11 shock all the way through the time that he went
12 to Dr. Greenfield -- or he first went to the
13 Minute Clinic. They said, "You're in too much
14 pain. You need to see a doctor."

15 Immediately he went to -- then he went to
16 Dr. Greenfield. Dr. Greenfield sent him
17 immediately to the cardiologist. The
18 cardiologist would not even let him cross the
19 road from one side of Lexington Medical Center
20 at 378 to Lexington Medical Center, required an
21 ambulance to take him over there and Dr. Travis
22 did immediate surgery. Now, that pain did
23 nothing but intensify from the very beginning
24 of the accident.

25 Our burden of proof is to prove beyond -- is to

1 prove by preponderance of the evidence that the
2 injuries and conditions for which we are
3 requesting benefits are related to the
4 accident.

5 I would submit to you that this actually almost
6 proves beyond a reasonable doubt that the
7 problems with the condition -- Claimant's heart
8 stem from this accident.

9 Dr. Travis stated -- after they denied
10 benefits, he gave us a report and simply said,
11 you know, in that report that "I find it quite
12 unbelievable that his surgery and post
13 operative course have been considered separate
14 from his electrical injury at work. I see
15 almost no plausible explanation other than a
16 direct cause and effect."

17 Then in his -- in his testimony, in his
18 deposition, he went through and explained what
19 he thought occurred and that is that the
20 electrical -- he explained two things. Number
21 one, there's damage to the heart that clearly
22 appeared to be -- to be an entrance and exit
23 wound to the heart. He had never seen anything
24 like that in his 15 years of surgery in
25 reference to the heart.

1 Now, in reference to Mr. Bayne, Mr. Bayne said
2 this is the first patient he had done surgery
3 on on electrical shock injury, but Dr. Travis
4 ~~said he had extensive experience in recognizing~~
5 the kind of condition that occurs in reference
6 to the condition of skin and tissue in
7 reference to electrical shock injuries. He had
8 treated many of those in surgical residency in
9 his past career.

10 So for him to sit here and say that this man
11 had no background experience in reference to
12 identifying what appears to be electrical shock
13 damage or damage caused by electrical shock
14 injury, is just not right. I mean, this man
15 had -- the doctor testified he had seen many
16 electrical shock and burn injury cases.

17 Now, to the contrary, their doctor said he had
18 never treated any electrical shock injuries and
19 had not ever been involved in an actual
20 surgical situation where he actually held a
21 man's hand in his heart (sic). He did
22 everything by scope.

23 Now, in addition to Dr. Travis, we have
24 Dr. Lide and going -- getting ready for this
25 deposition, I had even forgot about this;

1 didn't even know it -- in the Claimant's APA
2 submissions, right in his treatment record,
3 right after they denied benefits -- actually,
4 ~~this occurred on September the 17th. On that~~
5 date, he wrote, "Workers' comp was paying for
6 his care but he -- but has recently refused.
7 I do not see how anyone could argue that the
8 electrocution on the job was not the proximate
9 cause of his myocardial infarction and
10 ventricular septal defect."

11 All three of the authorized treating doctors
12 said there's no question that all the problems
13 and all the conditions of this man's heart stem
14 from that electrical shock injury.

15 Now, in reference to -- we requested -- they
16 stopped benefits. We then filed a 50 for
17 compensability, to resume temporary total
18 benefits, and to request medical care for
19 all -- and this is in my prehearing brief,
20 everything in there -- all causally related
21 medical care related to the injury.

22 Now, I am required by law -- they got to list
23 all body parts we think might be affected. We
24 were not requesting benefits and I -- clearly,
25 when there was any question -- we got this

1 straight at the beginning of the hearing. We
2 were not requesting treatment for or did we
3 know, in fact, whether or not there'd been any
4 injury to these other body parts because the

5 whole focus of this man's treatment has been on
6 his heart to keep him alive. That's the major
7 injury in this case.

8 Now, I did cite from the record where Dr. Lide
9 had put him on Neurontin because he was having
10 neuropathy in his toes, that Dr. Greenfield
11 talked about, you know, in her deposition that
12 the -- some of the pain and all that he was
13 experiencing, some of the problems he was
14 experiencing in his left hand and arm were more
15 related to muscular damage than they were to
16 actual heart attack pain. You know, in other
17 words, we all know you have the pain running up
18 your arm from heart attack, but this was more
19 consistent with, you know, some type of damage
20 or involvement of the arm from the
21 electrocution injury part of it.

22 There was testimony about the headaches,
23 problems with the head and the ear and the pain
24 radiating up into the head. So, in other
25 words, that's the head. The last time I

1 checked, your ears are attached to the head.
2 So we put all that in.

3 But, again, we were not requesting that. And
4 what did Commissioner Barden do? She

5 appropriately did what should be done.

6 All the cases that we're talking about and most
7 of the cases we're referring to in reference to
8 denying somebody benefits is where somebody's
9 come over here and requested a permanency award
10 for benefits and then they come back again and
11 try to allege permanency benefits for those
12 benefits.

13 There are two -- a couple cases that are
14 exceptions to that and those cases awarded
15 medical care for -- like Andy's case, Andy
16 Safran, who's outside right now waiting to come
17 see y'all or see somebody -- but Andy's case,
18 they found out he had a torn meniscus when
19 nobody had realized that before and they
20 thought it was an undiagnosed condition. They
21 awarded benefits. You awarded benefits and
22 then after that the Supreme Court upheld that.
23 Now -- so, we're not requesting any --
24 Commissioner Barden said, "Okay, they haven't
25 proved -- they're not asking for any benefits

1 right now."

2 The two designated treating physicians,
3 Dr. Travis and Dr. Lide -- and if they
4 determined that anything may stem from this

5 accident, it's not related to that, the Defense
6 had the perfect right to deny those benefits.
7 We then have to come over here and prove that
8 they did stem from the accident. And, also,
9 they had the right to choose the doctor to send
10 him to for treatment for those or a
11 determination. So, no harm, no fowl.

12 There is nothing -- we didn't request any
13 benefits for those injuries. We are required
14 by law to allege that those were affected. I
15 would ask you to sustain the opinion in its
16 entirety in reference to that and in reference
17 to all issues.

18 I wish I had every case this type of medical
19 evidence, so totally uncontroverted in a case.
20 Please give Mr. -- my client, Mr. Winfrey,
21 benefits. He's been out there struggling for
22 quite sometime and I hope you'll decide to
23 sustain the Commissioner's decision.

24 COMMISSIONER WILKERSON: Mr. Bayne, anything in
25 reply?

1 MR. BAYNE: Briefly, Commissioner.

2 REPLY BY MR. BAYNE:

3 MR. BAYNE: I'll try to bring it back to my original
4 ~~simplified point in that the medical causation~~
5 in this case is A then B. It's there was an
6 electrical shock, he had a myocardial
7 infarction; therefore, the electrical shock had
8 to have caused the myocardial infarction.
9 Again, I go back to we don't dispute there are
10 three written medical records or medical
11 opinions that say the shock caused the heart
12 attack. But when you read the underlying data,
13 when you read the underlying medical evidence
14 from the different doctors, and when
15 Dr. Travis, the treating physician, is saying,
16 "It could have been caused by this;" when
17 Dr. Lide and Dr. Travis are saying, "We have no
18 idea whether or not the plaque rupture that
19 caused this VSD is caused by an electrical
20 shock. We have no way to know whether that's
21 the case. We can't test for that. We can't
22 tell you that. The only thing we can tell you
23 is, he had it sometime after he had an
24 electrical shock and, therefore, it had to have
25 been caused by that.

1 That is insufficient evidence under the law to
2 support and sustain a holding of medical
3 compensability. There has to be more than

4 ~~something happened after something else, so we~~

5 think that's what caused it.

6 That's all, Commissioners. Thank you.

7 **COMMISSIONER WILKERSON:** This concludes the hearing.

8 Thank y'all both.

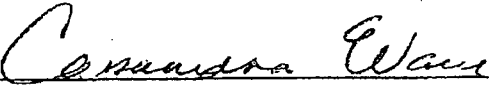
9 (The hearing concluded at 2:31 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of twenty-three (23) 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

Notary Public for South Carolina
My Commission Expires: February 26, 2018



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

000581

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

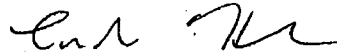
APA#	DOCTOR	PRACTICE	DATES	PAGE #
1.		Doctors Care	05/28/13	1
2.		South Carolina Heart Center	05/28/13	2-4
3.	Jeffrey A. Travis, M.D.	Lexington Cardiovascular Surgery	05/28/13	5-7
Ex. 1	Statement of Bobby Ruppe		09/23/13	8
Ex. 2	Emails Between Bobby Ruppe and Clarence Winfrey		05/27/13	9
Ex. 3	Drivers Daily Log		05/22/13 - 05/23/13	10-11
Ex. 4	Letter from Preston McDaniel to Defense Counsel		10/16/13	12

Ex. 5	Motion to Quash the Deposition of the Adjuster	09/27/13	13-21
Ex. 6	Motion to Compel Deposition and For Costs	10/21/13	22-24
Ex. 7	Motion for Continuance	10/21/13	25-30
Ex. 8	Summons and Complaint Filed by Preston McDaniel	09/27/13	31-48
Ex. 9	Temporary Restraining Order	10/01/13	49-51

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Designated Employer representative.



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
November 4, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

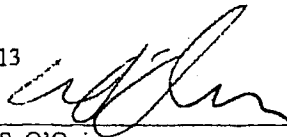
TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

VIA HAND DELIVERY

S. C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

DOCUMENT: Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports

DATE OF MAILING: November 4, 2013


Sharon S. O'Quinn
Secretary to Landon Hughey

000584

(F) 603-334-8122 Claim # 22209963
 BAD COPY 10⁴⁰

FROM ROOM TIME: 05/28/13 08:35am
 ACCOUNT NUMBER: 665509
 NAME & ADDRESS: WINFREY, CLARENCE
 DOB: [REDACTED] (50 years)
 GENDER: M
 IBG: [REDACTED]
 CELL: [REDACTED]
 INSURED: WINFREY, CLARENCE
 INS: WKC
 REASON: NECK PAIN (shocked by 486 volt, jerked
 NICKNAME: (down to @ shoulder) COPY: SP neck)
 RELATION: SELF
 AMOUNT PAID: 0
 NEW BALANCE: 0
 MEDICATIONS: Tylenol/Hydrocodone
 Motrin
 Allergies: NKDA
 Meds/Allergies Reviewed: [X]
 PHYSICAL: (see reverse) Omit if N/A
 HT: 39.4 BMI: 24.5 PULSE: 128 RESP: 20 TEMP: 97.5
 Chief Complaint: 480 V electrical shock on Thursday
 woke up sweating, chills, pain @ neck, no chest pressure
 AGNOSIS: Tachycardia / electrical shock / murder shock
 Patient Care Instructions Discussed: [X]
 Lifestyle Modification: [X]
 Preventative Recommendation(s): [X]
 Prescriptions / OTC Meds: [X]
 Side Effects Discussed: [X]
 Follow-Up: [X]
 Worsening symptoms: [X]
 If not better: [X]
 to ER if: [X]
 Patient Signature: [Signature]
 Date: 7-25-2013
 Physician Signature: Dr. Dasgupta
 Date: 7-25-2013
 Patient Consent: I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctors Care and its associated physicians, office staff and other personnel. I am aware that the practice of medicine is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatment or effectiveness of Doctors Care. I understand that the use and disclosure of my health information for purposes of obtaining payment for services rendered in the patient, treatment and health care operations consistent with the Doctor's Care Notice of Privacy Practices. I authorize payment of medical benefits to Doctors Care physicians or their designees for services rendered.



OFFICE CONSULT

May 28, 2013

CLARENCE WINFREY 50 year old M [REDACTED] Account #: 000009112

Requesting the consult: PCP No

Consultation is requested for

Primary care physician: PCP No

Cardiologist: Himadri Dasgupta M.D.

Chief complaint: New Pt Exam, Palpitations / Arrhythmias, Dyspnea

History of present illness:

Mr. Clarence Winfrey is a 50-year-old male is being seen in consultation at the request of Dr. Greenfield at doctor's care for further workup of an abnormal EKG and new onset heart murmur. A review of his records today shows that he received an electric shock in 5 days ago and since then has complained of a pain in his left shoulder radiating to the left scapular region, the left side of his neck, left infraclavicular region and left arm. He has also been having excessive diaphoresis and has dyspnea with exertion. The patient states that none of his symptoms have really progress. His pain appears to have been responding to Tylenol and Motrin but comes back when the effect wears off. The patient denies any palpitation, syncope or presyncope. He denies any orthopnea or dependent edema. At the time of this interview the patient denied any chest pain but had minimal left shoulder pain.

The patient denied any prior cardiac history and stated that many years ago he had a normal cardiac catheterization. On auscultation today he was found to have a grade 4/6 early and mid systolic murmur in the left parasternal region. A stat echocardiogram cyst and a tiny cyst with possible expansion of the distal and apical inferior and inferoseptal segments with a possible VSD with left to right shunting.

His EKG was reviewed and showed significant ST elevation in leads L2 and L3 with ST depression in V1 through V3 and a right bundle branch block. A repeat EKG in our office was the same as that from doctor's care.

On arrival the patient was found to be tachycardia with a heart rate of around 120 beats per minute. On arrival discussed with the pressure was about 100 but at the time of this interview his blood pressure was 128/88.

Mr. WINFREY has not had palpitations, syncope or near syncope. He denies claudication. There is no discoloration or ulceration of the lower extremities. He has had no TIA or stroke-like symptoms.

CARDIAC HISTORY

Risk Factors:

- 1 Tobacco Abuse: cigarettes [Tobacco per day: 0.50]

CARDIOVASCULAR PROCEDURES

Past medical history: ABN EKG, Gout, Hypertension

SOCIAL HISTORY

Family: Unknown

Diet: Regular

Tobacco Cessation: The patient was counseled on tobacco cessation.

Alcohol: Yes Occasional

Caffeine: Coffee

SEE ATTACHED

WINFREY, CLARENCE B. 000000008969 08/19/1962 05/28/2013 11:00 AM Page: 1/3

Family history: There is a family history of premature coronary artery disease. Father Hypertension, CVA, Myocardial Infarction at 54 (cause of death)

Review of symptoms:

RESP - Negative for snoring, hemoptysis. Positive for dyspnea. CONST - Negative for weight gain, weight loss, fever. EYES - Negative for visual changes. ENT - Negative for hearing loss. CARD - Negative for chest pain, diaphoresis, orthopnea, syncope, pnd. Positive for palpitation. VASC - Negative for claudication, edema. GI - Negative for nausea, reflux, bleeding. GU - Negative for hematuria, nocturia. NEURO - Negative for dizziness, memory loss, seizures. PSYCH - Negative for depression, hallucinations. HEMAT - Negative for acute anemia, thrombocytopenia.

Physical exam: CONST - The patient is 5ft 11in tall, and weighs 240.8lbs. The BMI is 33.7 kg/m2. Blood pressure in the left arm is 138/104 mmHg in the sitting position. The pulse is 122/min. The respirations are 22/min. Nourishment - Obese. Appearance - Well Developed. EYES - Lids/External - Bilateral Normal. Conjunctiva - Bilateral Normal. NMT - Oral Mucosa - Moist, No Cyanosis, No Pallor. NECK - JVP - Less Than 8. RESP - Respirations - Nonlabored. Breath Sounds - Clear Throughout. Rales - Absent. Rhonchi - Absent. Wheezes - Absent. CARDIAC - Rhythm - Regular. Palpation - PMI Normal. Heart Sounds - S1 Normal, S2 Normal, No S3, No S4. Murmurs - IV/VI systolic ejection murmur heard at the left sternal border. VASC - Carotid - Bilateral Normal. Aorta - Normal Size. Femoral - Bilateral Normal Pulse. Post Tibial - Bilateral Normal. ABD - Tenderness - None. Hepatomegaly - Absent. Splenomegaly - Absent. M/S - Gait - Normal. Able to Exercise - Yes. EXT - Clubbing - Absent. Lower Extremity Edema - Absent. SKIN - Venous Stasis Ulcers - Absent. PSYCH - Orientation - Oriented to Time, Person and Place. Mood - Appropriate.

IMPRESSION AND PLAN

01. Acute MI, Inferior
02. Shortness of Breath
03. Chest Pain, Unspecified
04. Limb Pain, Arm
05. Obesity
06. Tobacco Abuse
07. Ventricular Septal Defect

It appears that the patient has had a myocardial infarction in the last few days but has persistent estimation and some symptoms. It is also possible that he has had a VSD is a completion of this MI. I have informed him of our findings, the current diagnosis and his prognosis and a plan of action. STEMI protocol was activated at Lexington Medical Center. The patient is being transferred by ambulance to the cardiac catheterization laboratory. I have discussed with our interventionalists Dr. Lide who do emergent cardiac catheterization and decide further management. A CVTS consultation will be obtained if the VSD is confirmed. The patient will be given beta blockers and aspirin.

Orders:

- 1 Patient counseled on tobacco cessation.

FINAL MEDICATION LIST

Ibuprofen 200 mg tablet	take 2 tablet by ORAL route every 6 hours as needed with food
Tylenol Extra Strength 500 mg tablet	take 2 tablet by ORAL route every day as needed

Electronically signed by: Himadri Dasgupta M.D. 05/28/2013 @ 1:18 PM

D: T: 05/28/2013
2411 he suddenly

05/28/2013 @

05/28/2013 @

SEE ATTACHED

4

000590

Winfrey, Clarence B #M002010261**Admission Info: Inpatient (Adm: 05/28/13)****Hospital Account: 200044872****Description: 50 y.o. M****Primary Service: Med/Surg****Unit Info: Surg 4th NT****Consult Notes****Consults signed by Jeffrey Allen Travis, MD at 05/29/13 0629**

Author:	Jeffrey Allen Travis, MD	Service:	(none)	Author Type:	Physician
Filed:	05/29/13 0629	Note Time:	05/28/13 1553	Trans ID:	3M926468
Trans Status:	Available				
Dictation Time:	05/28/13 1553	Trans Time:	05/28/13 1612	Trans Doc Type:	Consult Note

REQUESTING PHYSICIAN: Dr. Lide**REASON FOR CONSULTATION: Consideration for CABG and repair of VSD.**

HISTORY OF PRESENT ILLNESS: The patient is a 50-year-old white male who states on Wednesday he was working on some electrical equipment and got a shock. He went home from work and experienced significant chest pain as well as back and shoulder pain. This persisted through the weekend and he really did not do much over the weekend other than sit around and watch TV and experienced pain. Due to the persistence of the pain he presented to an Urgent Care Center today where his EKG was abnormal and he was sent to the hospital. He was taken to the Cath Lab emergently where he was found to have occlusion of his posterior descending coronary artery, severe 3-vessel coronary disease, and a VSD. I have been asked to see him for evaluation and management.

PAST MEDICAL HISTORY: None.**PAST SURGICAL HISTORY: None.****HOME MEDICATIONS: None.****ALLERGIES: No known drug allergies.**

SOCIAL HISTORY: The patient is a pack per day smoker for the last 35 years. The patient drinks about a 12-pack per week but does not drink beer on a daily basis. Denies any illicit drug use. He does maintenance type work for grocery stores like Publix.

REVIEW OF SYSTEMS: A 10-point review of systems otherwise negative other than listed in the HPI.

PHYSICAL EXAMINATION**GENERAL:** The patient is a well-developed white male in no apparent distress.**HEENT:** Atraumatic, normocephalic. Extraocular movements intact. Pupils equal, round and react to light. Oropharynx is clear. Sclerae nonicteric.**NECK:** No JVD. No carotid bruits.**CARDIOVASCULAR:** Regular S1, S2. He is very tachycardic. There is a 3/6 systolic murmur heard throughout the precordium.**LUNGS:** Clear to auscultation bilaterally. Good chest expansion bilaterally.**ABDOMEN:** Soft, nontender, nondistended. No hernias or masses.**MUSCULOSKELETAL:** Full range of motion. There is no clubbing, cyanosis, or edema. He has 2+ pulses throughout his vascular exam.**NEUROLOGIC:** Intact. Moves all 4 extremities, 5/5 strength. Sensation is intact.

DIAGNOSTIC STUDIES: I reviewed his cardiac catheterization. He has very severe diffuse 3-vessel disease. On the left side his LAD is diseased but most of this is distally. There is no proximal

obstructive disease. He has a ramus with about an 80-90% proximal lesion. It is graftable. His circumflex vessels again are thready as they get to the distal portions but I do not see a graftable vessel. His right coronary artery is free of proximal disease. His PDA is occluded and has TIMI-2 flow. This is obviously the infarct artery. His ejection fraction looks mildly reduced. It is a little bit difficult to fully ascertain given the tachycardia. He has an obvious VSD with quick filling of the right ventricle and pulmonary artery on ventriculogram.

His laboratory values show his BUN to be 20, creatinine 1. White count is elevated slightly at 17, hemoglobin 15, hematocrit 48. Chest x-ray is pending.

IMPRESSION: Severe 3-vessel coronary disease with acute post-infarct ventral septal defect (VSD).

RECOMMENDATIONS: I think the patient needs to be considered for coronary artery bypass grafting surgery. Right now, he is hemodynamically stable with no evidence of end-organ perfusion difficulties. We will obtain a chest x-ray. Although he has good room air SATs, it does not appear he is in overt failure. We will also get an echo. Certainly if he develops hemodynamic compromise, we will place a balloon pump and speed up the timing of surgery. Right now, I think we have a few moments to better evaluate him and consider him for reparative surgery. Discussed all this with the patient who has no family members at the time to convene with per his report.

T: 05/28/2013 04:12 P/bds

Signed by Jeffrey Allen Travis, MD on 05/29/13-0629

Consult Orders

Consult to Social Work - Equipment (DME) [17195308] Discontinued

Ordering user:	Victor A. Gomez, PA-C 06/05/13 0720	Ordering provider:	Victor A. Gomez, PA-C
Authorized by:	Steven W. Marra	Frequency:	Once 06/05/13 1052 - 1 Occurrences
Electronically signed by:	Victor A. Gomez, PA-C 06/05/13 0720		
Electronically cosigned by:	Steven W. Marra 06/05/13 1134 for Ordering		
Released by:	Erin Sullivan Sisk, RN 06/05/13 1051	Discontinued by:	Automatic Discharge Provider 06/07/13 1736 [Patient Discharge]
Questions:	Reason For Social Work Consult Equipment (DME) Comment - please arrange for him to be fitted for a LifeVest		

Consult to Cardiology [17029085] Discontinued

Ordering user:	Catherine S Gallier, RN 06/01/13 1150	Ordering provider:	Steven W. Marra
Authorized by:	Steven W. Marra	Frequency:	Once 06/01/13 1142 - 1 Occurrences
Electronically signed by:	Catherine S Gallier, RN 06/01/13 1150		
Electronically cosigned by:	Steven W. Marra 06/05/13 1134 for Discontinue on Transfer		
Discontinued by:	Victor A. Gomez, PA-C 06/05/13 1051		
Questions:	Reason for Consult? VT Did you call the consulting provider? Yes Comment - 7943950		

Comments:
Answering service called. Consult placed for pt to be seen today. M Patal on call and notified.

Consult to Nutrition Services [18901901] Completed

Ordering user:	Jeffrey Allen Travis, MD 05/29/13 1827	Ordering provider:	Jeffrey Allen Travis, MD
Authorized by:	Jeffrey Allen Travis, MD	Frequency:	Once 05/29/13 2018 - 1 Occurrences
Electronically signed by:	Jeffrey Allen Travis, MD 05/29/13 1827		
Released by:	Mitzi K Stewart, RN 05/29/13 2017		
Questions:	Reason for Nutrition Consult? Medical Nutrition Therapy Is this a Doctor's Order? Yes		

Pastoral/spiritual care consult [16834606]**Completed**

Ordering user:	Jeffrey Allen Travis, MD 05/28/13 1722	Ordering provider:	Jeffrey Allen Travis, MD
Authorized by:	Jeffrey Allen Travis, MD	Frequency:	Once 05/28/13 1720 - 1 Occurrences
Electronically signed by:	Jeffrey Allen Travis, MD 05/28/13 1722		
Questions:	Reason for Consult? Pre-operative support		

Consult to Cardiovascular Surgery [16825697]**Discontinued**

Ordering user:	Lanneau D Lide, MD 05/28/13 1456	Ordering provider:	Lanneau D Lide, MD
Authorized by:	Lanneau D Lide, MD	Frequency:	Once 05/28/13 1529 - 1 Occurrences
Electronically signed by:	Lanneau D Lide, MD 05/28/13 1456		
Released by:	Angela K Mayo, RN 05/28/13 1528	Discontinued by:	Jeffrey Allen Travis, MD 05/30/13 0147 [Patient Transfer]
Questions:	Reason for Consult? 3 vessel CAD, IMIQ, VSD Did you call the consulting provider? Yes Preferred Group if no MD previously selected? Lexington Cardiovascular 803-936-7095		

Consult to Cardiovascular Surgery [16825701]**Discontinued**

Ordering user:	Lanneau D Lide, MD 05/28/13 1456	Ordering provider:	Lanneau D Lide, MD
Authorized by:	Lanneau D Lide, MD	Frequency:	Once 05/28/13 1529 - 1 Occurrences
Electronically signed by:	Lanneau D Lide, MD 05/28/13 1456		
Released by:	Angela K Mayo, RN 05/28/13 1528	Discontinued by:	Jeffrey Allen Travis, MD 05/30/13 0147 [Patient Transfer]
Questions:	Reason for Consult? 3 vessel CAD, IMIQ, VSD Did you call the consulting provider? Yes Preferred Group if no MD previously selected? Lexington Cardiovascular 803-936-7095		

Statement: Bobby Ruppe

RE: Clarence Winfrey

On May 22, 2012 Clarence called me and said a wire in the rotisserie was broken. Clarence had not seen the wire. While tracing out light wires he got shocked. He jerked his neck to get away and hurt his neck. I told him that if he needed to go to the doctor to go, that worker's compensation would pay. He did not want to go to the doctor because of money and said he would be okay in a few days. I told him if he got hurt at work, worker's compensation would pay. He was told this by me several times. He did go to the doctor on the Tuesday the 27th, and they said it was not his neck, it was his heart. He was sent to the hospital and they performed surgery on him that day.

Bobby Ruppe

Service Manager

09-23-2013

Bobby Ruppe

From: Clarence Winfrey
Sent: Monday, May 27, 2013 12:27 PM
To: Bobby Ruppe
Subject: Re: They can't do anything

Wire in rotisserie broken did not see traced out light wire and got hit by power jerked my neck to get away from rotisserie I do not want to lose my job from being hurt

Sent from my iPad

On May 27, 2013, at 12:21 PM, "Bobby Ruppe" <Bobby.Ruppe@asi-cfc.com> wrote:

> If you did it at work workers comp should pay we will have to talk to Susan tomorrow go ahead and do me a letter on what happened and email it to me

>

> Sent from my iPhone

>

> On May 27, 2013, at 11:52 AM, "Clarence Winfrey" <clarence.winfrey@asi-cfc.com> wrote:

>

>> They can't do anything for neck pain I've been trying to stay away med help do to money but if I have to go to hospital that's means I'm hurt I'm trying to avoid

>>

>> Sent from my iPad

>>

>> On May 27, 2013, at 11:47 AM, "Bobby Ruppe" <Bobby.Ruppe@asi-cfc.com> wrote:

>>

>>> What did they say

>>>

>>> Sent from my iPhone

>>>

>>> On May 27, 2013, at 11:15 AM, "Clarence Winfrey" <clarence.winfrey@asi-cfc.com> wrote;

>>>

>>>>

>>>>

>>>> <photo.JPG>

>>>>

>>>>

>>>>

>>>> Sent from my iPad

5-23/13

DRIVERS DAILY LOG

START TIME: 5:30

END TIME: 1:30

DATE: 5/22/2013

DRIVER: HI57

Clarissa
Winfrey

BEGINNING MILEAGE: 03011.9

ENDING MILEAGE: 03187.3

Store Name and Number: Publix 0067

Mileage Start: 03011.9

Mileage End: 03031.6

Activity: Driving

Activity: On Duty

Start Time: 5:30

End Time: 6:00

Start Time: 6:00

End Time: 7:45

Notes: Found big problem and I got shocked hard

Store Name and Number: Wall mart 514

Mileage Start: 03031.6

Mileage End: 03097.4

Activity: Driving

Activity: On Duty

Start Time: 7:45

End Time: 9:00

Start Time: 9:00

End Time: 10:15

Notes:

Store Name and Number: Wall mart 881

Mileage Start: 03097.4

Mileage End: 03147.5

Activity: Driving

Activity: On Duty

Start Time: 10:15

End Time: 11:30

Start Time: 11:30

End Time: 12:15

Notes:

Store Name and Number:

Mileage Start:

Mileage End:

Activity:

Activity:

Start Time:

End Time:

Start Time:

End Time:

Notes:

Store Name and Number:

Mileage Start:

Mileage End:

/0

DRIVERS DAILY LOG

START TIME: 8:00
END TIME: 3:30

Clearance
Wentby

DATE: 5/23/2013
DRIVER: HI57

BEGINNING MILEAGE: 03189.6

ENDING MILEAGE: 03257.9

Store Name and Number: <u>Wall mart 881</u>	
Mileage Start: <u>03189.6</u>	Mileage End: <u>03196.4</u>
Activity: <u>Driving</u>	Activity: <u>On Duty</u>
Start Time: <u>8:00</u>	End Time: <u>8:30</u>
Start Time: <u>8:30</u>	End Time: <u>3:30</u>
Notes: <u>Went to whaleys two times then get call none of</u>	
<u>The fryers are working go back they lost power going to fryers</u>	

Store Name and Number: _____	
Mileage Start: _____	Mileage End: _____
Activity: _____	Activity: _____
Start Time: _____	End Time: _____
Start Time: _____	End Time: _____
Notes: _____	

Store Name and Number: _____	
Mileage Start: _____	Mileage End: _____
Activity: _____	Activity: _____
Start Time: _____	End Time: _____
Start Time: _____	End Time: _____
Notes: _____	

Store Name and Number: _____	
Mileage Start: _____	Mileage End: _____
Activity: _____	Activity: _____
Start Time: _____	End Time: _____
Start Time: _____	End Time: _____
Notes: _____	

Store Name and Number: _____	
Mileage Start: _____	Mileage End: _____
Activity: _____	Activity: _____
Start Time: _____	End Time: _____
Start Time: _____	End Time: _____
Notes: _____	

Store Name and Number: _____	
Mileage Start: _____	Mileage End: _____
Activity: _____	Activity: _____
Start Time: _____	End Time: _____
Start Time: _____	End Time: _____
Notes: <u>I'm going to a friend doctor tonite to look at my neck he says sounds like wipe lash</u>	

Lunch Hours: _____ Driving Hours: 1 Labor Hours: 7

Standby Hours: _____

EMPLOYEE SIGNATURE: _____ Total Hours: 8

//

000600

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

October 16, 2013

VIA EMAIL: rhughey@mgclaw.com
Landon L. Hughey, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

RE: CLARENCE B. WINFREY, JR. v. ARCHWAY SERVICE, INC.
WCC File No. 1306305

Dear Rocky:

In reference to the Subpoena that we received today by mail October 16, 2013. Obviously we did not receive the 15 day required notice and therefore you do not have proper service and so we will not be attending the Deposition on the 21st.

Second, it is my opinion that the only thing that is pending before the Commission is our request for reinstatement of benefits based on whether or not your clients can establish that they conducted a good faith investigation prior to stopping benefits.

However, because I want to make sure that nothing stupid happens at that Hearing especially considering everything we have given you, I am going to go ahead and file a Form 50 and after I file that you will have every right to take Mr. Winfrey's Deposition and I will be glad to waive notice and will not require any notice once I get that filed. I am going to try to get that out of here by tomorrow but if not it will be filed as soon as I get back from Camp.

Attached is a statement we just received from Mr. Winfrey's doctor.

If you have any questions give me a call.

Sincerely yours,



Preston F. McDaniel

PFM/rmt

THE UNIVERSITY OF CHICAGO PRESS

The following information was obtained from the review of the records of the Department of Health and Human Services, Office of Inspector General, Washington, D.C., dated May 1, 1968:

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

RECEIVED

SEP 27 2013

(FRONT DESK)

SC Workers' Comp Comm

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION TO QUASH SUBPOENA
FOR ATTENDANCE AT
DEPOSITION AND PRODUCTION
OF ADJUSTER'S FILE**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE:

COMES NOW Terri Hughes, by and through counsel for the Defendants, and files this,
her Motion to Quash a Subpoena served on her by Claimant on September 18, 2013 commanding
her attendance at a deposition in Columbia, South Carolina on October 2, 2013 and demanding
that Ms. Hughes produce her entire claim file for investigation into Defendants' decision to deny
compensability of the claim (See Exhibit 1).

In support of her Motion, Ms. Hughes states as follows:

The Claim File

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of

13

000604

the State of North Carolina.

3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.
5. The information sought to be compelled by the subpoena is protected as privileged attorney-client communication and/or work product.
6. Upon information and belief, the purpose of obtaining these documents is to question, harass, and intimidate Ms. Hughes regarding Defendants decision to deny compensability of the underlying claim following a good faith investigation within 150 days pursuant to S.C. Code Ann. § 42-9-160(B)(3). This issue should be resolved by requesting, and at, a hearing¹.

The Deposition

1. Ms. Hughes is an employee of Liberty Mutual Insurance Company.
2. Ms. Hughes is, and has at all times during this pendency of this matter been, a resident of the State of North Carolina.
3. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to issue or enforce a subpoena in the State of North Carolina.
4. No courts, tribunals, commissions, and/or officers within the State of South Carolina have authority to compel compliance with a subpoena served on a North Carolina resident.

¹ Defendants would also point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. See Frady v. Pacific Mills 231 S.C. 601, 99 S.E.2d

5. The information sought to be compelled by the subpoena and during the subsequent deposition is protected as privileged attorney-client communication and/or work-product.
6. The information sought to be compelled by the subpoena is totally irrelevant to the underlying proceeding.

-
7. No circumstances exist demonstrating the relevancy or necessity for the appearance of Ms. Hughes at a deposition.
 8. Upon information and belief, the purpose of the deposition is to question Ms. Hughes about Defendants decision to deny compensability of the underlying claim. This issue should be resolved by requesting, and at, a hearing².
 9. Additionally, the purpose of Claimant's underlying subpoena for the deposition is to harass and intimidate Ms. Hughes.

S.C. Code § 42-3-140 and 42-3-150 both clearly state that the Commission may cause to be issued subpoenas to take depositions and to compel the attendance of witnesses. However, S.C. Code § 1-23-320(C) states that: "[d]epositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the Court of Common Pleas."

It is well settled in this State that a subpoena issued to an out-of-state witness is legally ineffective to compel the attendance of such witness at a trial in this State. See Vaught v. Nationwide Mut. Ins. Co., 156 S.E.2d 627, 250 S.C. 65 (S.C. 1967). This concept is further bolstered by the language of SCRCP 45(c)(3)(A)(ii) which states that "...such a person may, in order to attend trial, be commanded to travel from any such place within the state in which the

398 (S.C. 1957).

² Defendants would again point out that Claimant has the burden of proving compensability for his alleged injuries. Defendants do not have the burden of disproving compensability. See Frady v. Pacific Mills 231 S.C. 601, 99 S.E.2d 398 (S.C. 1957).

trial is held" [emphasis added]. A subpoena issued in this State simply cannot compel an out-of-state witness to do anything.

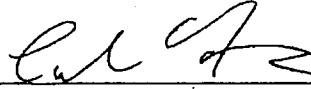
Further, this subpoena was issued in South Carolina commanding a witness located in North Carolina to appear for a deposition in North Carolina. The only connection this subpoena has to South Carolina is its issuance. Any issues regarding enforcement of this subpoena should be resolved by a North Carolina Court. Both South and North Carolina have enacted the Uniform Interstate Depositions and Discovery Act. Claimant should have complied with the existing rules and regulations contained in S.C. Code § 15-47-100 et seq. and served this subpoena pursuant to the Act.

WHEREFORE, Defendants and Terri Hughes respectfully pray that the Commission enter an Order Quashing said Subpoena and that the Commission set for hearing, prior to the issuance of any subsequent subpoena, the issue of whether or not Ms. Hughes can be compelled to appear for a deposition and/or be compelled to produce the entire claims file. Ms. Hughes also requests that this Commission issue a Protective Order pursuant to SCRCP 26(c) ordering that the deposition not be had to protect Ms. Hughes from the annoyance, embarrassment, oppression, and/or undue burden of having her deposition improperly taken and quashing and/or limiting the scope of the subpoena for "a complete copy of the adjuster's file."

Finally, Ms. Hughes requests that an award of expenses be granted to Defendants pursuant to SCRCP 37(a)(4)³.

³ "If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving

Defendants respectfully request that oral arguments on all issues raised in this motion be set before the Jurisdictional Commissioner. Respectfully submitted,



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
September 27, 2013

party the reasonable expenses incurred in obtaining the order, including attorney's fees..."

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

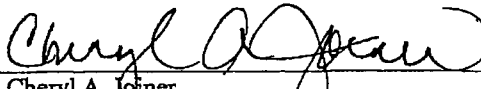
Defendants.

**CERTIFICATE
OF
SERVICE**

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Preston F. McDaniel, Esquire
The McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

DOCUMENT: Motion to Quash Subpoena of Adjuster
DATE OF: September 27, 2013
MAILING:


Cheryl A. Joiner
Legal Assistant to Landon Hughey

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1306305

CLARENCE B. WINFREY, JR.)

Employee-Claimant,)

v.)

ARCHWAY SERVICE, INC.,)

Employer, and)

AMERICAN FIRE AND
CASUALTY, CO.,)

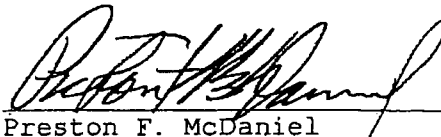
as Carrier,)

Defendants.)

NOTICE OF DEPOSITION OF
TERRI HUGHES

TO: LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that at 11:00 o'clock A.M. on the 2ND day of October, 2013, Counsel for the Claimant will take the deposition of Terri Hughes as managing agent of American Fire and Casualty, Co. at McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, upon oral examination before a Notary Public or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take part as is fit and proper.



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

September 18, 2013



000610

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1306305
Carrier File #: 22209963
Carrier Code #: 00011
Employer FEIN #:

Claimant's Name: Clarence B. Winfrey, Jr. SSN: [REDACTED] Employer's Name: Archway Service, Inc.
Address: [REDACTED] Address: [REDACTED]
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: [REDACTED] State: [REDACTED] Zip: [REDACTED]
Home Phone: [REDACTED] Work Phone: [REDACTED] Insurance Carrier: American Fire & Casualty Co.
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: 803 771 7211

SUBPOENA

To: TERRI HUGHES, SENIOR CLAIMS SPECIALIST II, as Managing Agent for the Insurance Carrier and as a 30(b)(6) Representative of the Insurance Carrier, c/o LONDON HUGHEY, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

- ☐ **YOU ARE COMMANDED** to appear before the above-named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

ROOM:

DATE AND TIME:

- ☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: October 2, 2013
11:00 o'clock a.m.

- ☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below.

LIST OF DOCUMENTS: See attached.

PLACE: McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201

DATE AND TIME: September 30, 2013
10:00 o'clock a.m.

- ☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES:

DATE AND TIME:

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE FOLLOWING ISSUING OFFICER.

ISSUING OFFICER'S SIGNATURE AND TITLE

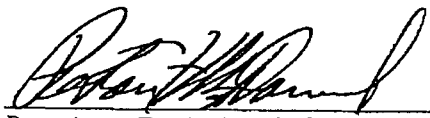
803 771 7211
PHONE NUMBER

DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

ATTACHMENT TO SUBPOENA AND SUBPOENA DUCES TECUM FOR TERRI HUGHES
In Re: Clarence B. Winfrey, Jr. v. Archway Service, Inc.
and American Fire and Casualty, Co.
WCC File No.: 1306305

A complete copy of the adjuster's file, any and all files, of which the adjuster has knowledge or to which the adjuster as managing agent ~~has access to, or which is maintained by the insurance carrier and/or~~ maintained by the employer, specifically including all documents alleged to represent a good faith investigation and to include all documents maintained in whatever format or media, including but not limited to written, typed, electronic, recorded and all photographs or recordings (audio or visual).


Preston F. McDaniel

September 18, 2013

24

000612

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION TO COMPEL
DEPOSITION OF CLAIMANT AND
FOR SANCTIONS, COSTS, FEES,
AND/OR ANY OTHER RELIEF
DEEMED APPROPRIATE BY THE
COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

Pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30, Defendants noticed Claimant's deposition for October 21, 2013 through a subpoena issued and served on October 11, 2013¹. By letter received on October 18, 2013, Claimant and Claimant's attorney informed Defendants that both refused to attend the properly scheduled deposition because Claimant was not given fifteen (15) days notice². Brett Bayne, attorney for Defendants, attended the deposition on October 21, 2013 to create a record of Claimant's willful refusal to attend the deposition³. Defendants ask the Commission to compel Claimant's attendance at a

¹ Attached as Exhibit A is the letter noticing the deposition.

² Attached as Exhibit B is the letter from Claimant's attorney stating that Claimant will not appear for the properly scheduled deposition because he did not received fifteen (15) days notice.

³ The Commission will be provided with a transcript of the deposition as soon as one is available.

future deposition, to sanction Claimant and/or Claimant's attorney for willful refusal to attend a properly scheduled and noticed deposition, and to issue an award for all costs, fees, and attorney's fees associated with the scheduling and attendance the properly scheduled deposition.

S.C. Code Ann. § 1-23-320(C) provides that "[a] party to these proceedings may cause to be taken the depositions of witnesses...**depositions must be taken in accordance with** and subject to the same provisions, conditions, and restrictions as apply to **the taking of like depositions in civil actions at law in the court of common pleas;** and **the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of it, and matters relating to practice apply.**" (emphasis added). South Carolina Rule of Civil Procedure 30(b)(1) provides that "[a] party desiring to take the deposition of any person upon oral examination shall give **ten (10) days notice** in writing to every other party in the action." (emphasis added).

There is no dispute that Defendants gave Claimant ten (10) days notice in compliance with S.C. Code Ann. § 1-23-320(C) and SCRCF Rule 30(b)(1). Claimant's refusal to submit to a deposition, and Claimant's attorney's instruction to his client to not appear at the deposition, is in clear violation of these rules. Defendants have incurred substantial costs associated with the scheduling, preparation, and attendance at the deposition on October 21, 2013. The Commission should order Claimant to appear for a deposition and award Defendants all costs and fees associated with the scheduling, preparation, cancellation, this motion, and the eventual rescheduling of this deposition.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

Copyright © 2006 by John Wiley & Sons, Inc.

000617

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

C LARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE

Carrier,

Defendants.

**MOTION FOR CONTINUANCE
AND/OR POSTPONEMENT OF A
SCHEDULED HEARING**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
AND PRESTON F. MCDANIEL, ESQUIRE:

COMES NOW the Defendants, by and through their undersigned attorney, requesting a postponement or continuance of the Hearing scheduled for November 13, 2013. Pursuant to S.C. Code Ann. Reg. 67-613(B)(2), either party may request a postponement of a scheduled Hearing upon written motion and with ten days notice.

A hearing may be postponed by a showing of good cause including, but not limited to, cases where it is premature to hear the case. *See* S.C. Code Ann. Reg. 67-613(B)(1)(e). Further, a hearing may be postponed when additional discovery is necessary. *See* S.C. Code Ann. Reg. 67-613(B)(1)(c). When a hearing is set pursuant to S.C. Code Ann. § 42-9-260, the requirement to hold the hearing within sixty days is waived pursuant to S.C. Code Ann. Reg. 67-613(B)(3).

25

000618

The hearing will be postponed until the following month. If the commissioner cannot hear the case by the following month, the case will be returned to the Judicial Department for reassignment.

Defendants request a postponement/continuance for the following reasons:

1. Claimant has alleged an injury by accident during the course and scope of his employment due to electrical shock on May 22, 2013.
2. Claimant has alleged injuries to several body parts including his heart.
3. Defendants denied the claim on or about September 16, 2013 following a good faith investigation pursuant to S.C. Code Ann. § 42-9-260(B)(3).
4. Claimant responded to the denial of benefits by filing a Summons and Complaint (*See* Exhibit A, Summons and Complaint with Attachments) on September 27, 2013 in the South Carolina Circuit Court alleging:
 - a. A bad faith denial of benefits;
 - b. That S.C. Code Ann. § 42-9-260 is unconstitutional and requesting a Declaratory Judgment to that effect; and
 - c. Moving for a temporary restraining order to force Defendants to pay benefits outside of the jurisdiction of the South Carolina Workers' Compensation Commission.
5. Claimant improperly sought and obtained a temporary restraining order from Judge Alison Renee Lee on October 1, 2013 ordering Defendants to pay temporary compensation benefits and provide medical care to Claimant. (*See* Exhibit B, Temporary Restraining Order).

6. Defendants filed a Motion to Dismiss and a Brief in Support of the Motion to Dismiss the temporary restraining order and the underlying Summons and Complaint with Judge Lee on or about October 2, 2013. (See Exhibit C, Brief of Defendants).
7. Judge Lee conducted a hearing on the temporary restraining order on October 8, 2013.
8. Judge Lee dismissed the temporary restraining order on October 9, 2013 stating "[t]he Commission has the sole authority to reinstate benefits if appropriate." (See Exhibit D, Judge Lee's Order dated October 9, 2013).
9. Judge Lee did not dismiss the Declaratory Judgment action against Defendants. (See Exhibit D, Judge Lee's Order dated October 9, 2013).
10. Judge Lee explicitly stated that legal challenges to a statute are "...properly raised for the first time...in a declaratory judgment action before the circuit court." (See Exhibit D, Judge Lee's Order dated October 9, 2013).
11. Defendants filed an Answer and Counterclaim with the South Carolina Circuit Court on October 21, 2013. (See Exhibit E, Answer and Counterclaim).
12. Claimant has specifically alleged that "...the provisions of S.C. Code Ann. § 42-9-260...(A) violated the [Claimant's] right to due process of law...(B) that the provisions of §42-9-260 are in direct conflict with provisions of the Administrative Procedures Act concerning notice and hearing...and (C) denies the [Claimant] equal protection of the laws by creating an irrational classification..." (See Exhibit A, Summons and Complaint with Attachments).
13. Claimant has also stated "...pursuant to S.C. Code §42-9-260 the constitutionality of which is the basis of the Declaratory Judgment Relief requested." (See Exhibit A, Summons and Complaint with Attachments).

14. In addition, Claimant presented to the Circuit Court a signed Verification asserting that the allegations and issues raised in the Complaint are true, accurate, and with merit. (See Exhibit A, Summons and Complaint with Attachments).
15. Claimant has also filed a Motion for a New Trial with the South Carolina Circuit Court asking for a "...preliminary or prima facie determination that [S.C. Code Ann. § 42-9-260] is unconstitutional..." (See Exhibit F, Motion for a New Trial dated October 18, 2013).
16. Claimant has simultaneously requested a hearing before this Commission pursuant to S.C. Code Ann. § 42-9-260—the very statute he seeks to invalidate as unconstitutional in the ongoing companion Circuit Court case.
17. It strains belief that on one hand Claimant has argued at length to the Circuit Court that S.C. Code Ann. § 42-9-260 is unconstitutional and on the other hand demands relief from the Commission under the same statute. This inapposite position must be resolved before the Commission can entertain Claimant's allegations related to the workers' compensation claim—including a hearing on the denial of benefits.
18. Further, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the South Carolina Workers' Compensation Commission would have no guidance under the law to conduct a hearing for the suspension or termination of benefits¹.
19. Additionally, if the Circuit Court finds S.C. Code Ann. § 42-9-260 unconstitutional—as Claimant demands—the underlying purpose of the scheduled hearing before the South Carolina Workers' Compensation Commission, specifically to rule on the denial of

¹ Incidentally, Defendants would also have no guidance under the law on how to pay, terminate, and/or suspend benefits.

benefits pursuant to S.C. Code Ann. § 42-9-260, would be rendered unconstitutional.

20. In the interest of judicial economy and to avoid repetitive hearings and/or additional hearings as a result of the companion Circuit Court action filed by Claimant, the South Carolina Workers' Compensation Commission should refrain from conducting any hearings pursuant to S.C. Code Ann. § 42-9-260 in this particular claim until the Circuit Court has had an opportunity to make its ruling on the constitutionality of S.C. Code Ann. § 42-9-260.
21. Defendants contend that the Commission may only conduct the 42-9-260 hearing in this claim once the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demand².
22. Upon information and belief, the Circuit Court will not rule on this issue prior to November 13, 2013.
23. Pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(e), a hearing in this matter pursuant to S.C. Code Ann. § 42-9-260 is premature where the underlying constitutionality issues raised by Claimant and under consideration by the Circuit Court have not yet been adjudicated.
24. Additionally, Defendants have requested a continuance pursuant to S.C. Code Ann. Reg. 67-613(B)(1)(c).
25. Defendants have properly served Claimant with a subpoena for a deposition for October 21, 2013 pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil

² In the event the Commission chooses to go forward with this hearing despite Claimant's contention that the statute authorizing the hearing is unconstitutional, Defendants would request that, should the Commission determine benefits are due, an Order be issued staying payment of benefits until the constitutionality of S.C. Code Ann. § 42-9-260 can be determined by the Circuit Court pursuant to Claimant's suit. As noted in this Motion, if S.C. Code Ann. § 42-9-260 is found to be unconstitutional, Defendants would have no guidance on how to pay, terminate, or suspend benefits.

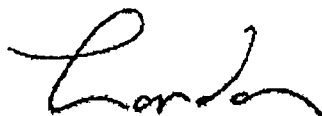
Procedure 30

26. Claimant, by and through his attorney, has refused to appear for the properly noticed deposition because he "...did not receive the 15 day required notice..." (See Exhibit G, Letter from Preston McDaniel dated October 16, 2013).

27. Defendants have filed a Motion to Compel and for Sanctions on this issue.

28. Upon information and belief, Defendants will not be able to take Claimant's deposition prior to the scheduled hearing.

Therefore, for the foregoing reasons, the November 13, 2013 hearing should be postponed until such time as the Circuit Court can rule on the constitutionality of S.C. Code Ann. § 42-9-260 pursuant to Claimant's demands. Only after the Circuit Court has ruled on the constitutionality of S.C. Code Ann. § 42-9-260—as demanded by Claimant—will this issue be ripe for a 42-9-260 hearing before the Commission. Additionally, the hearing should be postponed because of Claimant's willful refusal to submit to a properly noticed deposition pursuant to S.C. Code Ann. § 1-23-320 and South Carolina Rule of Civil Procedure 30.



LANDON L. HUGHEY
BRETT H. BAYNE
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
October 21, 2013

THE UNITED STATES OF AMERICA

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

CLARENCE B. WINFREY, JR.,

C/A No. _____

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

SUMMONS

RECEIVED
C.C.P. & C.S.

2013 SEP 27 PM 4:03

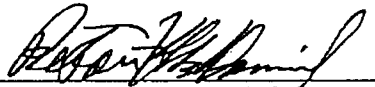
YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served
upon you, and to serve a copy of your Answer to the Complaint on

31

000625

the Plaintiff's attorney, Preston F. McDaniel, at his office,
McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina
29201, within thirty (30) days after the service hereof,
~~exclusive of the day of such service, and if you fail to answer~~
the Complaint within the time aforesaid, the Plaintiff in this
action will apply to the Court for the relief demanded in the
Complaint.

Respectfully submitted,



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

Attorney for the Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,)

C/A No. _____

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,)

Defendant.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,)

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,)

Employer, and

AMERICAN FIRE AND CASUALTY CO.,)

As Carrier,

Defendants.

SEARCHED
SERIALIZED
INDEXED
C.C.P. & C.S.

2013 SEP 27 PM 4:03

COMPLAINT

The Plaintiff, Clarence B. Winfrey, by and through his
undersigned attorney, would respectfully show unto the Court as
follows:

33

000627

INTRODUCTION

1. That this action is filed by the Plaintiff under the Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. ~~to determine whether the provisions of S.C. Code §42-9-260~~ (B) of the S.C. Workers' Compensation Act which provides for the termination or suspension of compensation benefits within one hundred fifty (150) days from the date of the injury without a hearing is unconstitutional and in violation of the Plaintiff's rights to due process of law in violation of The United States Constitution Amendment XIV, §1 and Amendment V, and the S.C. Constitution Article I, §3 and 22, and/or is violative of the provisions of the Administrative Procedures Act, wherein §42-9-260 deprives the Plaintiff of his property interest without providing the Plaintiff with a hearing prior to the termination of said benefits. Thus this denies him his due process rights and equal protection under the law and specifically the right to notice and an opportunity to be heard before a termination of his compensation payments. Where there is either a deprivation of liberty or a property interest, the individual has a right to a hearing prior to a determination or termination of that property interest.

2. That as a result of his work-related injury which occurred in Richland County on May 22, 2013, which was timely and properly reported to his employer Archway Service, Inc. who

in turn reported the accident to its insurance carrier for workers' compensation purposes, American Fire and Casualty Company (pursuant to S.C. §42-5-210 the insurance carrier is subrogated to all the rights and duties of the employer and may enforce any such rights in its own name), the Defendant in this action, agreed to authorize and started paying benefits including temporary weekly compensation benefits, medical benefits and other benefits as provided under the South Carolina Workers' Compensation Act. (S.C. Code §42-17-10 provides that an agreement to pay compensation has the same effect as on order/award of the Commission.)

3. That after providing benefits to the Plaintiff including Temporary Total Disability compensation, medical care and other benefits under the Act from June 1, 2013 through September, veribly on Friday, September 13, 2013 and by letter received Monday, September 16, 2013, the carrier abruptly and without notice and without a hearing, filed a Form 15 with the South Carolina Workers' Compensation Commission terminating benefits on the basis checked on the form that, "based on a good faith investigation the claim is denied" and stopped all benefits. This action allegedly taken under the provisions of the statute has given rise for this action.

PARTIES

4. That the Plaintiff is a resident of Lexington County, South Carolina.

5. That the Defendant American Fire and Casualty Company is a corporation chartered under the laws of one of the States in the United States and is licensed to do and does insurance business in South Carolina specifically writing workers' compensation policies for employers to cover their employees in the State of South Carolina. As set forth above, the American Fire and Casualty Company is the insurance carrier for the Employer and pursuant to the Act is subrogated to the rights and benefits of the Employer in this Workers' Compensation Act. Their Attorney of Record in the underlying matter giving rise to this action is:

Landon Hughey, Esquire
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29201

Copy of the Notification of Representation is attached hereto and incorporated herein by reference as Exhibit "A".

JURISDICTION AND VENUE

6. That as set forth in the Introduction, this matter was brought due to a work-related injury which occurred in Richland County where pursuant to the Workers' Compensation Act and

specifically, S.C. Code §42-17-20, jurisdiction and venue are proper.

DECLARATORY JUDGMENT ACTION
RELIEF SOUGHT

7. That this action is brought under the provisions of the South Carolina Uniform Declaratory Judgment Act, §15-53-10 et seq., South Carolina Code of Laws (1976 as amended) on the basis that a real and actual controversy exists between the parties due to the Defendants stopping benefits under the provisions of S.C. Code §42-9-260 and under S.C. Code §15-53-30 wherein any person whose rights, are affected by a statute may have determined any question of construction or validity (constitutionality) arising under the statute and obtain a declaration of rights thereunder.

8. That the Plaintiff would submit that the provisions of S.C. Code §42-9-260 and specifically subsection (B) (1-6):

(A) violate the Plaintiff's right to due process of law by allowing for a deprivation of his property interest without notice and without a hearing and opportunity to be heard;

(B) that the provisions of §42-9-260 are in direct conflict with the provisions of the Administrative Procedures Act concerning notice and hearing in a contested case; and

(C) denies the Plaintiff equal protection of the laws by creating an irrational classification, i.e., " a legislative

classification which excludes ..., (or treats differently) ..., a certain class of persons" ..., which is not, "rationally related to the objective of the statute." The Plaintiff would argue as follows:

A

S.C. CODE §42-9-260 VIOLATES THE FUNDAMENTAL DUE PROCESS RIGHTS OF THE PLAINTIFF UNDER THE UNITED STATES AND SOUTH CAROLINA CONSTITUTIONS.

"In order to be entitled to the procedural safeguards encompassed by the due process clause of the Fourteenth Amendment (notice and an opportunity to be heard) the complaining party must suffer from deprivation of a liberty or property interest."

Board of Regents v. Roth, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.E.2d 548 (1971) (Emphasis added). "Only when such a property interest exists does a constitutional right to a hearing attach." Roth, 408 U.S. at 577, 92 S.Ct. at 2709.

Our Supreme Court has ruled, "workers' compensation benefits constitute a property interest." Last v. MSI Const. Co., Inc., 305 S.C. 349, 409 S.E.2d 334, 336 (1991); Orszula v. Orszula, 292 S.C. 264, 356 S.E. 2d 114 (1987). Therefore, any attempt to deny a Claimant of his "property interest" without a hearing violates the due process clauses of both the United States and South Carolina Constitutions.

In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the United States Supreme Court held that

procedural due process requires that a pre-termination hearing be held when public assistance payments to welfare recipients are discontinued. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). The Court held that even in that situation, the entitlement to welfare benefits constituted a sufficient property interest that due process requirements attached. The Court in Goldberg struck down a New York statute which allowed the termination of benefits prior to a hearing. The Court reasoned that,

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss' . . . and depends upon whether recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication.

* * *

Thus the crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress. .
."

* * *

"[f]rom its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders." Goldberg, 397 U.S. at 262-263, 264, 265-66, 90 S.Ct. at 1019.

Our Courts have similarly stated that compensation laws,

Constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue to obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficial purposes for which they were enacted. Cokeley v. Robert Lee, Inc., 197 (1941) (Emphasis added).

In Goldberg, the Court stated that public assistance "is not mere charity, but a means to promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity." Goldberg, 397 U.S. at 266, 90 S.Ct. at 1019 (Emphasis added). The Court continued and stated that "pre-termination evidentiary Hearings are indispensable to that end." Id. Our Supreme Court in the case of Hamm v. Mullin's Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940) quoting from the United States Supreme Court decision in Powell v. Alabama, 287 U.S. 45 at p. 68, 53 S.Ct. 55 at p. 64, 77 Law Ed. 158 at p. 170, 84 ALR 527 stated:

"It never has been doubted by this Court or any other so as far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment and that they together with a legally competent tribunal having jurisdiction of the case, constitute

basic elements of the constitutional requirement of due process of law. The words of Webster so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns' have been repeated by varying forms of expressions in a multitude of decisions."

In Brown v. S.C. State Bd., of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990), our Court echoed those sentiments and held that "[w]here important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 391 S.E.2d 866, 867 (1990). Therefore, under South Carolina Law, a Claimant, as a matter of fundamental due process, is entitled to a hearing before the termination of his/her disability benefits.

B

THAT S.C. CODE §42-9-260 IS IN DIRECT CONFLICT WITH S.C. CODE §1-23-310(2), AND AS SUCH IS VOID.

Not only does §42-9-260 violate a Claimant's due process rights, it is in direct conflict with S.C. Code §1-23-310(2), which spells out the administrative procedure for all "contested cases". S.C. Code §1-23-310(2) states that a,

"contested case" means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity to be heard. S.C. Code §1-23-310(2) (as amended 1993) (Emphasis added).

Prior to June 18, 1996, a Claimant's temporary benefits could not be terminated until "after an opportunity to be heard". Id. Since then for the first 150 days, a Claimant is forced to seek a hearing long after their benefits have been stopped. Section 1-23-310, of the Administrative Procedures Act which governs the Workers' Compensation Commission, is in direct conflict with §42-9-260. After reading both statutes and reviewing existing case law, there is no way to reconcile §42-9-260's denial of the Plaintiff's property right to temporary compensation without a pre-termination hearing and §1-23-310's requirement of a hearing.

"Where provisions of the APA and the Workers' Compensation Act conflict, the APA controls." Pringle v. Builders Transport, 298 S.C. 494, 381 S.E.2d 731, 732 (1989) (Emphasis added). Section 1-23-310(2) is not alone though; our Supreme Court has held that due process requires a hearing prior to the termination of benefits. "Due process law is that law that hears before it condemns which proceeds upon inquiry and renders judgment only after a full and complete opportunity to be heard." S.C. and G.R. Co. v. American Tel and Tel Co., 65 S.C. 459, 43 S.E. 970 (1903) (Emphasis added). When those fundamental rights are not provided, fundamental due process is not afforded. Stono River Environmental Protection Assn. v.

S.C. Dept. of Health and Environmental Control, 305 S.C. 90, 406
S.E.2d 340 (1991).

C

~~THAT S.C. CODE §42-9-260 VIOLATES THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS BY DENYING A CLAIMANT EQUAL PROTECTION UNDER THE LAW.~~

"The Constitutional guarantee of equal protection under the law requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604, 605 (1978). While the General Assembly has "the right to make reasonable classifications of persons and property for public purposes", those classifications must apply "equally to all members of the class" and must not be "arbitrary but [instead] rest upon some reasonable basis." Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362, 368 (1970) (Emphasis added); Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979).

Section 42-9-260 fails to meet this standard. The statute creates two classes, one class made of up of Claimants who have not yet been receiving temporary benefits one hundred and fifty (150) days and those that have been receiving benefits in excess of amount of time whose benefits cannot be stopped until after a hearing and who are entitled to benefits until after a hearing is held and benefits are stopped by Order of the Commission.

This classification serves absolutely no interest, has no rational basis and is purely arbitrary.

The requirement of equal protection is not fulfilled unless the classification rests upon ~~some difference which bears a reasonable and just~~ relation to the legislative purpose sought to be affected. Marley, 245 S.E.2d at 606.

In this case the indiscriminate choice of one hundred and fifty (150) days bears no reasonable and just relation to the legislative purpose of the Workers' Compensation Act, which, as stated earlier is for the "benefit, protection and welfare of working men and their dependents." Cokeley, 14 S.E.2d at 893-94. (Emphasis added).

The South Carolina Supreme Court struck down a similar statute in Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979), which did not allow a passenger in an automobile accident to be compensated for their injuries unless they could show "reckless disregard." In striking down the guest statute, the Court stated that the justifications for passing the statute did not constitute "a rational basis for the differential treatment it spawned." Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883, 885 (1979). The Court could find no justification for allowing the driver of a car to recover for their injuries, yet hold the passenger to a higher standard in order to recover.

The same logic as applied in Ramey dictates that §42-9-260 be struck down. There is no justification as to why one

claimant is entitled to have a hearing before his benefits can be ended yet another is not entitled to a hearing solely on the basis of whether they have received benefits for one hundred and ~~fifty (150) days. This classification bears no rational basis~~

to the fundamental intent of the Workers' Compensation Act, which is to protect injured workers and to provide disability compensation until their disability to work has ended. Section 42-9-260 and the one hundred and fifty (150) day classification is arbitrary, and serves as absolutely no rational basis for stopping a claimant's benefits without a hearing.

Therefore, S.C. Code §42-9-260 (as amended 1996) does not provide equal protection under the law to Claimants due to its arbitrary, irrational and discriminatory effect.

9. That as to both the payment of temporary compensation benefits prior to the passage of one hundred fifty (150) days and to the payment of temporary compensation benefits after the one hundred fifty (150) days, S.C. Code §42-17-10 and 20 provide that where an agreement is reached to pay compensation by the parties as in this case which is filed with the Commission to pay compensation benefits that agreement is enforceable the same as any other Order of the Commission and that if subsequent to such agreement there is a disagreement as to the continuation of such benefits, either party may request a hearing. Prior case law has repeatedly held that a hearing is required before such

termination of benefits under that statute Halks v. Rust Engineering Co. 208 SC 39, 36 S.C. 2d 852 (1939); Gold v. Moragne 202 SC 281, 24 SE 2d 491 (1943). The only thing that ~~§42-9-260 (A) adds is that during the first one hundred fifty~~ (150) days of the payment of such compensation benefits, the Defendants do not waive any grounds for good faith denial. Subsection (B) then in violation of due process and in violation of Administrative Procedure Act and in violation of the other provisions of the Act seeks to allow the Defendants to stop payment of benefits before a hearing is held, thus depriving the Plaintiff of his entitlement to benefits under the Act without due process.

WHEREFORE, the Plaintiff would respectfully pray that the Court:

1. After review of the verified Complaint and the Affidavit attached hereto, issue a Temporary Restraining Order Without Notice as provided in SCRCF, Rule 65(b) ordering that the Defendants reinstate benefits until a hearing can be held on the Motion to Issue a Temporary Restraining Order after notice and after hearing on that Motion issue a Temporary Restraining Order to remain in place until such time as a hearing may be held on the Summons and Complaint as to the unconstitutionality of the statute. The Temporary Restraining Order Without Notice and a Temporary Restraining Order are necessary to prevent

irreparable harm to the Claimant who is out of work, disabled and has no visible means of support or income and wherein the failure to provide medical care could result in irreparable harm up to and including the death of the Claimant due to his severe medical condition both of which are set forth in the Affidavit in support of this Complaint as attached hereto.

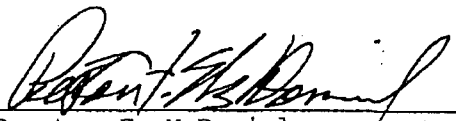
2. Review the provisions of S.C. Code §42-9-260 and specifically those contained in subsection (B) and declare the provisions of subsection (B) unconstitutional and/or in violation of the statutory notice and hearing provisions of the Administrative Procedures Act and the other provisions of the Workers Compensation Act and the Commission Regulations both on the basis of due process and equal protection of the laws as required by both the United States Constitution and our own State Constitution.

3. After making a determination that the statute is unconstitutional and/or in violation of other statutory provisions, issue an Order reinstating benefits and ordering that such benefits may be stopped without a due process hearing giving the Claimant notice as required by law and an opportunity to be heard. Ordering that at such hearing the Defendants have the burden of proof to establish one of the six exceptions as created by §42-9-260 unless the Court determines that such statute is in its entirety unconstitutional and cannot be

separated out to allow for any process to exist under the statute as written.

4. For such other and further relief as the Court may
~~deem just and proper in this situation.~~

Respectfully submitted,



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

Attorney for Plaintiff

September 27, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CLARENCE B. WINFREY, JR.,

C/A No. 2013-CP-40-05888

Plaintiff,

v.

AMERICAN FIRE AND CASUALTY CO.,

Defendant.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1306305

CLARENCE B. WINFREY, JR.,

Employee-Claimant,

v.

ARCHWAY SERVICE, INC.,

Employer, and

AMERICAN FIRE AND CASUALTY CO.,

As Carrier,

Defendants.

TEMPORARY RESTRAINING
ORDER ISSUED WITHOUT NOTICE
PURSUANT TO SCRPC RULE 65(b)

RICHLAND COUNTY
FILED
2013 OCT -1 AM 11:59
JEANETTE W. MCGRUE
C.C.P. & G.S.

This Court has reviewed the Affidavit and the verified
Complaint and finds that the Plaintiff ^{appears to be} totally disabled from
gainful employment at this time due to his injuries and condition

SCANNED

49

000644

and has no source of income other than his weekly compensation payments. I further find that failure to continue to provide medical care could result in severe immediate and irreparable damage to the physical condition of the Plaintiff due to his severe medical condition up to and including the death of the Plaintiff.

After due and proper consideration of the verified Complaint and the Affidavit attached thereto and incorporated therein by reference, and a after preliminary determination that the stopping of compensation benefits and medical benefits to the Plaintiff places the Plaintiff in danger of immediate and irreparable injury, loss or damage before a hearing can be properly held on a Motion for a Temporary Restraining Order,

IT IS HEREBY ORDERED that the request for a Temporary Restraining Order Without Notice be and hereby is GRANTED and that the Defendant American Fire and Casualty Co. by and through its Attorneys and Managing Agent, Ms. Terri Hughes, are hereby ordered to reinstitute and bring current temporary compensation benefits and to provide medical care until such time as a hearing may be held on the Motion requesting a Temporary Restraining Order pursuant to the Motion filed with the Court.

Pursuant to the provisions of Rule 65(b) this Order shall expire ten (10) days from the date and time of issuance. This Order is issued on Tuesday, October 1, 2013 (date) at (hour)

11:45, at m. o'clock. Upon notice for good cause shown, which shall be include the fact that a hearing cannot be held on the Motion for a Temporary Restraining Order, this Court ~~will entertain an extension for a like period of time unless the~~ Defendant American Fire and Casualty Co., the Defendant in this action, agrees to that this Temporary Restraining Order remains in place until such time as a hearing can be held on the Motion for a Restraining Order, *on October 8, 2013 at 9:00 am at the Richland County Courthouse and until further order of this Court.*
AND IT IS SO ORDERED.

Lil Anne Lee
PRESIDING JUDGE
Fifth Judicial Circuit

October 1, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1306305

CLARENCE WINFREY,

Employee,

Claimant,

vs.

ARCHWAY SERVICES INC,

Employer,

AND

AMERICAN FIRE & CASUALTY
INSURANCE COMPANY C/O LIBERTY
MUTUAL INSURANCE,

Carrier,

Defendants.

**SUPPLEMENTAL
NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND PRESTON
F. MCDANIEL, ESQUIRE, ESQUIRE:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGE #
4.	Barry J. Feldman, MD, FACC, FACP, FSCAI	Lexington Heart	11/04/13	13

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise
oppose this evidence and, should you desire to exercise this right, you are to promptly schedule

the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Designated Employer representative.



LANDON HUGHEY
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for the Employer/Carrier

Columbia, South Carolina
November 5, 2013



120 West Hospital Drive • West Columbia, SC 29169
T 803.739.6500 • F 803.739.6300
www.lexheart.com

J. Kevin Baugh, MD, FACC
Barry J. Feldman, MD, FACC, FACP
Jennifer A. Feldman, MD, FACP
J. Kyle Hewett, MD, FSCAI

Guillermo Pineda, MD, FACC
Vince M. Vismara, MD, FSCAI
Grace Kludo, RN, MSN, ACNP
Phyllis Williamson, MSN, ACNP, CLS

Eric B. Shoup, MS, PAC, CLS
Sandi VanHoosier, PA-C

04 November 13

To Whom It May Concern:

Re: Clarence Winfrey v. Archway Services (Claim No: 22209963)

Dear Sirs:

I am writing to summarize my professional impression after review of the hospital records from Mr. Clarence Winfrey. Mr. Winfrey appears to have presented with a delayed myocardial infarction approximately five days from his initiation of chest pain. He underwent a semi-emergent heart catheterization which demonstrated an occluded right posterior descending artery. This appeared to be a relatively fresh occlusion according to his angiographic report. He was also found to have a VSD in the inferior lateral portion of his ventricular septum which was consistent with this acute occlusion.

His heart appeared to have a focal area of necrosis in the anatomical distribution of this occluded artery consistent with an acute inferior infarct. Overall his ejection fraction was preserved in the 50% range at this time.

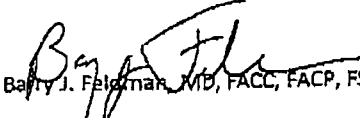
In my opinion with reasonable certainty the highest likelihood was that his VSD was acquired from his acute myocardial infarction. His diagnostic arteriogram demonstrated extensive coronary artery disease with the only vessel that could be grafted being a moderate sized ramus intermedius branch.

It is coincidental that he happened to have a myocardial infarction that appears to have occurred the same evening of the day he had an electrocution event. It is possible that this was a spontaneous plaque rupture which had no relation to the electrical shock. This is of the highest certainty since there is no clear cut correlation between plaque ruptures and electrical shocks.

The description of pericardial inflammation is most likely consistent with a possible post MI Dresslers syndrome. It was also noted to have thickened plaque which was calcified in the pericardium which most likely is chronic. The odds of having electrical shock to account for the VSD are quite low given the anatomical relationship of his VSD to his occluded PDA vessel.

If I can shed any further light or offer any additional opinion regarding this case please feel free to contact me personally at any time.

Sincerely yours,


Barry J. Feldman, MD, FACC, FACP, FSCAI

RECEIVED

FEB 25 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-001788

Clarence Winfrey, Employee, Claimant Respondent,

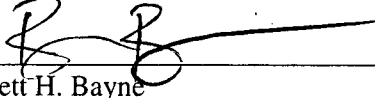
v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company c/o
Liberty Mutual Group, Carrier, ... Appellants,

CERTIFICATE OF COUNSEL

The undersigned certified that the Record on Appeal contained all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014, revised order concerning personal identifying information and other sensitive information in appeal court findings from the South Carolina Supreme Court.

McANGUS GOUDELOCK & COURIE, L.L.C.


Brett H. Bayne
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

Attorneys for Appellants, Archway Services Inc,
Employer, and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier

January 28, 2016

000650