THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

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Case Tracking No.: 2015-002300

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Clyde Williams, Employee.....Appellant/Appellant,

v.

Bowman Gin Co., Employer, and American Interstate Ins. Co., d/b/a Amerisafe Risk Services,.....Carrier,

Of whom Bowman Gin Co. is the Respondent.

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# FINAL BRIEF OF RESPONDENTS

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## STATEMENT OF THE CASE

This is a denied claim. The Appellant testified in his deposition and at the hearing that he has absolutely no memory of the fall and does not know what happened. Appellant therefore constructively alleges that on March 27, 2014, he sustained a compensable work-related injury when he fell off a truck for unknown reasons while cleaning the driver's side windshield. Specifically, Appellant alleges that he originally fell after cleaning the passenger side windshield but he does not recall how and he was not injured. He "came to" sitting on the wet ground. He then moved to the driver's side and got up on a tire to clean the windshield. He does not recall anything subsequent to this. He constructively alleges that he must have again fallen off the

truck, striking his head on the concrete. The Appellant alleges he has suffered a traumatic brain injury as a result of this accident and that the fall causing his brain injury was causally related to his employment with Bowman Gin. The Appellant admits there was no witness to the fall and he does not recall the fall or the accident.

In support of his position, Appellant relies primarily on the medical opinion evidence of Dr. Marshall White, as Appellant admits there were no known witnesses to the accident nor does he have any recollection of the event. Dr. White's opinion assumes Appellant fell six to eight feet striking his head. Dr. White's report indicates that he bases his opinion on the emergency room records and indicated that he obtained a history of accident including the fall from those reports. However, the emergency room reports relied upon do not match the history quoted from them by Dr. White and specifically, contrary to his report, do not present a history of falling six to eight feet.

Contrary to the Appellant's allegation, the evidence supports a finding that Appellant's injury did not arise out of or in the course of his employment, i.e. falling while cleaning the truck windshield, but was instead caused by an idiopathic fall or condition personal to Appellant, while standing on a flat, dry concrete surface, and without any causal connection to his employment. Such a finding is specifically supported by Appellant's testimony, by photographic evidence, and witness testimony regarding the conditions in existence at the time Appellant was discovered on the ground. Furthermore, medical evidence reveals that Appellant's fall can be explained by loss of consciousness for which Appellant's prior diagnoses of diabetes and hypertension put him at risk, especially in light of the fact that Appellant's injury causing incident was preceded almost immediately by a fainting-type incident after which Appellant found himself sitting on the ground uninjured with no independent recollection of how he got there. In sum, beyond Appellant's mere speculation, there is no evidence to support Appellant's contention that he fell

from his truck while washing the windshield, while there was abundant evidence supporting that Appellant's pre-existing diagnosis led to his fall and subsequent injury without any causal connection to his employment.

By way of a Decision and Order dated January 14, 2015, the single Commissioner issued a finding that Appellant had not met his burden of proof to show that he suffered an accident arising out of and within the course of his employment. Specifically, the single Commissioner found the evidence proved Appellant did not fall from his truck and sustain a head injury as a result. The single Commissioner concluded that the greater weight of evidence supports a finding that Appellant's fall and subsequent physical injury to his head arose from some physical condition personal to the Appellant and was therefore idiopathic, and without any causal relationship to Appellant's employment.

Following this decision, Appellant appealed to the Full Commission and a hearing was held on April 21, 2015. On October 12, 2015, the Full Commission issued an Order with full affirmation of the single Commissioner specifically finding the photographs, medical evidence, and testimony support the findings that this is an idiopathic injury, and therefore, not compensable under the Workers' Compensation Act. This appeal followed.

## STATEMENT OF THE FACTS

The Appellant testified that he has been working for Bowman Gin for 13 or 14 years. On the morning of March 27, 2014, he drove to Gulbrandsen to pick up his load and then went to Love's Truck Stop for fuel. While at Love's, he went inside, swiped his card to pay for the fuel, and got a couple of snacks for later in the morning. He then went back out and started fueling the truck. The Appellant testified he raised the hood and started cleaning the windshield. He testified he did the right side (passenger side) first.

The Appellant indicated that the next thing he knew, he was sitting on the ground and was all wet. He was wearing rubber sole shoes. He testified that to clean the windshield, he opens the hood of the truck and then stands on the front tire. He was washing the right (passenger) side of the windshield. The Appellant testified that the next recollection he had "I was over there sitting on the ground." (R. p.107, line 4).

The Appellant testified he got up and went around the hood to the driver's side and climbed up on the tire. He then started washing the windshield on that side. The Appellant was then asked "and then what happened?" (R. p.108, line 25). The Appellant responded "Then, I don't know." (R. p.109, line 1). He was then asked "Do you remember anything else about this incident?" (R. p.109, lines 2-3). His response was: "No." (R. p.109, line 4).

The Appellant was then asked about the emergency room medical report showing that he stated he felt dizzy. He was asked whether he recalled telling the emergency room people that information. The Appellant responded "no, I don't." The Appellant was asked if he remembered telling them that he became weak. He responded "no." (R. p.109, line 22-23). The Appellant was then asked "do you know when you became weak, if you became weak?" He responded "no." (R. p.110, line 1).

The Appellant was then asked about the scrub brushes used to clean windshields at Love's Truck Stop. The Appellant then gave the following testimony on direct examination:

Q: Do you have any recollection of the brush?

A: I used the brush on the windshield.

Q: Ok. Do you know what happened to the brush?

A: No, I don't remember.

Q: Do you know long you were unconscious?

A: No.

Q: Do you know whether or not the bucket turned over?

A: No. I - - I don't know that it turned over but I am assuming it did since I was all wet.

(R. p.112, lines 9-17).

The Appellant was asked about his medication prior to the accident. Appellant testified "Now, I had had a talk with my doctor about coming off some of my - - I was diabetic and my diabetes with my blood test every morning had been so - - so normal for a - - a long period of time. And me and Dr. Brunson had been talking about me coming off my medicine and - - just to see what my blood would do over a period - - a short period of time. And he wasn't - - he wasn't too - - too for it but he said I could try it for a week. And so, I did and the blood - - the blood level stayed like it normally did." (R. p.113, lines 23 through p.114 line 7). The Appellant further testified that he checks his blood levels every morning. When asked if he checked his blood levels on the morning of this accident, he stated that he did. When asked the result of the blood test, the Appellant testified "I just can't remember; I'll have to get my notebook to know." (R. p.114, lines 14-15). The Appellant was then asked if he recalls whether it was normal or abnormal. The Appellant responded "No, it - - no, it was never - - it was close to normal." (R. p.114, lines 16-18).

On cross examination, the Appellant indicated he did remember having the conversation with Dr. Brunson on February 25, 2014 that he wanted to go off his diabetes medication. The Appellant was asked if he recalled the conversation with Dr. Brunson that he would have to be really careful about what he ate. The Appellant agreed. The Appellant was then asked whether he told any of his doctors that he remembered what happened to him on March 27, 2014. The Appellant responded "I don't believe I did, no." (R. p.119, line 25). The Appellant then testified that he did not tell any doctors that his memory of that morning had come back to him. However, he stated that his memory came back in bits and pieces while he laid in his hospital bed. The

Appellant agreed that he checked out of the hospital in Charleston on April 17, 2014. When asked again if he told any of his physicians that his memory had come back before or after that time he stated "no." (R. p.120, lines 21-24). When asked whether he thought it would be important to tell his physicians that he now remembers washing windshields on the passenger side and passing out, he stated "no, they never asked that." (R. p.121, line 2). He again later stated "So, no. I didn't - - I didn't see no importance in that." (R. p.121, lines 4-5). When asked if the first time he told somebody that his memory had come back and he recalled washing the windows on the truck was when he gave his deposition, Appellant responded, "No, that wasn't the first time. I told my wife and I told Mr. Lewis." When asked whether he told anybody that was actually treating him he responded "no." (R. p.121, lines 6-12).

The Appellant testified that on March 27, 2014, the date of his accident, he was not taking any medication for his Type II diabetes. He also testified that he had probably five to seven cartons of cigarettes in his truck on the morning of his accident. (R. p.122, lines 5-9).

In regards to the events on the date of accident, the Appellant testified that he was washing the windshield on the passenger side and then all of a sudden he was sitting on the ground soaking wet. He indicated he had no idea why he was wet. When asked if he remembered how he got to the ground and why he was sitting there he indicated that he assumed he fell. When asked not to assume but to describe what he remembers as to how he got on the ground, Appellant testified as follows:

> A: If you - - If you are asking me if I remember falling, specifically, I can't say I specifically remember falling; I just know I did. The next thing I remember is I - - and I'm the ground wet.
>
> Q: Okay. But - - but it's also possible that you could have gotten down and then all of a sudden ended up sitting on the ground

because you don't remember what happened between the time you were cleaning your windshield and all of sudden you were on the ground; is that right?

A: Possibly, yeah. I - - I guess you could say it's possible but not likely though. You don't sit down on the concrete by a diesel pump.

Q: But you don't know why you sat down on the ground by a diesel pump; is that right?

A: Well, you would never to sit down there.

Q: Okay. And - -

A: It's just - - just too nasty.

Q: - - and when you realized you were sitting on the ground on the passenger side, is that when everything was kind of hazy to you?

A: I guess hazy would be the right word.

Q: Okay. And I'm taking this from your prior deposition, you said you were feeling lightheaded and hazy while you were sitting on the ground; is that how you were feeling?

A: Right.

Q: Okay. And then you got up and decided to go wash the other side?

A: Right.

Q: Okay. Now, what is the very last thing you remember?

A: Being up on the driver's side tire washing the driver's side windshield.

Q: So, the very last thing you remember is you were standing on the

tire and you were holding the scrub brush for the windshield?

A: Holding the brush yes.

Q: And that's - - that's where your memory ends?

A: Yes.

Q: Okay. So in reality you could have gotten off of the tire, put your brush up where it is shown in the pictures, and then you could have passed out?

A: Yeah, I mean, you know, there is a lot of possibilities there.

(R. p.123, line 4 – p. 124, line 23).

Respondents then called Mr. Tyrone Johnson as a witness. Mr. Johnson testified that on March 27, 2014 he was at work at Love's Truck Stop. He went outside and started his "oil try" and then went around to the back to get the trash and fill up the water buckets. He testified he was probably at pump 21, 22 when he heard a water bucket noise. He walked up to the front and saw somebody laying on the ground. (R. p.130, lines 14-20).

Mr. Johnson identified the man lying on the ground as the Appellant, Clyde Williams. Mr. Johnson was shown the photograph that was Defendant's Exhibit A. (R. p. 566). He was asked if that was an accurate reflection of how he found Mr. Williams on the morning of March 27, 2014. Mr. Johnson testified "yes, it is." (R. p.131, line 5). Mr. Johnson was asked if anything had been moved in the picture. He responded "no." Mr. Johnson testified that he did not pick up the scrub brushes that are shown leaning against the concrete in the photograph. Mr. Johnson testified that he did not move anything. After he saw Mr. Williams on the ground, he went inside and called 911 and told the manager. He and the manager, Jeff Ruff, went straight back outside and that is when the pictures shown in the exhibits were taken. He testified that when he and Jeff got back outside, the scene around Mr. Williams was no different. Mr. Johnson testified he is not aware of

any witness to the incident or any other drivers that saw Mr. Williams fall.

On cross examination, Mr. Johnson testified that he was unaware of how long it was between the time Mr. Williams fell and the time that he saw him. Mr. Johnson testified that he was approximately two pumps away from Mr. Williams when he heard the water bucket noise. He described it as sounding like somebody kicked it and you could hear water going around it. (R. p.133, lines 18-19). Mr. Johnson then testified that he felt like the sound of the bucket came from the direction of pump 23. He testified Mr. Williams was completely unconscious and did not say anything to him. He testified that it looked like Mr. Williams was bleeding from the nose.

Mr. Johnson was then asked whether there was water around him. He testified "no." (R. p.134, lines 21-23). Mr. Johnson then testified that it looked like Mr. Williams had on a pair of deck shoes.

On re-direct examination, Mr. Johnson was asked if Mr. Williams was wet when he found him. Mr. Johnson testified "no." He was then asked was he soaking wet on the front of him? Mr. Johnson responded "no." He was then asked whether there was water anywhere around him. Mr. Johnson responded "no."

Respondents then called Thad Wimberly as a witness. Mr. Wimberly is the Vice President of Bowman Gin and runs the day to day operations. Mr. Wimberly testified that on March 27, 2014 he received a call about the Appellant being injured. He went to Love's Truck Stop, but when he arrived the Appellant was no longer there and had already been taken by ambulance to the hospital. Mr. Wimberly began inspecting the vehicle to make sure everything was still there and intact. In regards to the windshield, he testified "I won't say it was not visible but it was not like it had just been cleaned." He testified there was some dirt on the windshield and it had not been cleaned by the "bug juice or whatever you put on the window, you know, to clean the bugs or whatever." (R. p.142, lines 1-4). He testified that there were some bugs on the windshield.

Mr. Wimberly testified that he then inspected the inside of the truck. He testified "I noticed his belonging there, you know, his clothes and stuff and his medication bag was still right there in the floor and a cup of coffee was already inside the truck: one of those big travel mugs was inside there." (R. p.142, lines 12-16). He then testified that he found seven cartons of cigarettes laying on the top bed in the truck. In regards to the bag of medicine, Mr. Wimberly testified that it was "like a small cooler, like you would tote - - like a little small zip up type cooler." (R. p.143, lines 11-12). Mr. Wimberly testified he opened the cooler to see what was inside. He found "a lot of medicine in there, yes. It was probably 10 bottles, maybe, of different types of medication." (R. p.143, lines 17-19). Mr. Wimberly further testified that the Appellant was driving a new truck for Bowman Gin. When asked how far a man would fall standing on the wheel of that truck, Mr. Wimberly testified approximately 2 feet. He also testified he would not stand on the wheel to wash a truck.

Respondents submitted the *de benne esse* deposition of Jeffrey D. Ruff. Mr. Ruff testified that he is the former manager of Love's Truck Stop at the time of this incident. He testified that Tyrone Johnson came inside and got him and told him that there was a man injured laying on the concrete. Mr. Ruff came to the scene and took photographs with his cell phone. Mr. Ruff did identify the photographs attached to his deposition (also included in the APA Submissions) as an exact representation of how they found Mr. Williams. (R. p. 419, 566). To his knowledge, nothing had been touched at the scene. He stated that the long handled brushes used to wash the windshield were already propped up and leaning against the gas pump when he first came out to find the Appellant. He did not touch or move the Appellant or any of the items shown in the picture.

The medical evidence presented shows that Appellant has a chronic history of hypertension, hyperlipidemia, and diabetes mellitus Type II. He has treated with Dr. Brunson for

these conditions. Prior to this incident, he reported to Bamberg County Hospital in January, 2012 for his diabetes and indicated he was lightheaded and dizzy. He was to follow up with Dr. Brunson and follow a diabetic diet. Dr. Brunson saw him on January 31, 2012 and cautioned him regarding his diet and to adjust his medication. The Appellant continued to treat with Dr. Brunson for these conditions throughout 2012 and 2013. On February 25, 2014, he reported increased problems sleeping and asked to go off of his medication for diabetes mellitus Type II. He was warned to watch his diet and carbs very closely and to continue his other medication.

On March 27, 2014, the Appellant was then found lying unconscious on the concrete and bleeding from his head. He was originally evaluated by West Middle Fire Department and it was noted he had open trauma to his face and head. He was released to EMS. The Orangeburg County EMS report also dated March 27, 2014 shows he was unconscious and bleeding. He was found near the cab of the 18 wheeler. Per bystanders noted in the report, he was unconscious for several minutes and witnesses were unsure how he fell. It was also indicated that no one saw him fall so he was placed in full spinal precautions. The EMS report further notes the Appellant did state that the last thing he remembers is stopping to fuel when he became weak. The Appellant was then taken by LifeNet to Palmetto Health Richland Hospital.

The medical records from March 27, 2014 from Palmetto Health Richland show the Appellant was found down beside his truck and was unresponsive. He was diagnosed with an extensive fracture of the skull base. The medical records from Palmetto Health state that he was found unconscious on the ground and he was unable to describe what happened to him. He was diagnosed with a possible subarachnoid hemorrhage. He was then immediately transferred to MUSC on the same day.

The medical records from MUSC from March 27, 2014 indicate the Appellant was found down this morning near an 18 wheeler in a puddle of blood. His mental status had declined and a

CT scan showed a large intracranial hemorrhage and skull fracture. It was unknown if the patient fell or was assaulted. The Appellant underwent a right sided craniotomy for resection of the right frontal intra cerebral hemorrhage performed by Dr. Varma on March 27, 2014.

The Appellant was treated at MUSC until he was released to the Regional Medical Center for therapy. He was treated for a traumatic brain injury, recent pneumonia treated, hypertension, diabetes mellitus Type II controlled, and hyperlipidemia.

The Appellant was treated in follow up in May, 2014 by Dr. Varma at MUSC for no evidence of new hemorrhage and a healing skull based fracture.

The Appellant was continuing to treat with MUSC, the Regional Medical Center and RMC Primary Care. The APA Submissions reflect he was seen August 30, 2014 by Dr. Varma at MUSC for post evacuation of right frontal hematoma with cognitive impairment. A referral was made for physical therapy for range of motion of the left shoulder and he was returned to the neurologist when necessary and was to continue on medication. He was not released at maximum medical improvement.

The Appellant met with his IME physician, Dr. White, at his attorney's office on September 4, 2014. Dr. White indicated the Appellant was fueling his truck and washing windows when he fell from his truck, approximately six to eight feet, striking his head on the concrete bolster protecting the pumps. He was diagnosed with a traumatic brain injury and behavioral and cognitive abnormalities. Dr. White indicated that Appellant's injury was consistent with a severe brain trauma associated with skull fracture and that he would never return to gainful employment. It is important to note that the medical records from the date of accident are not consistent with Dr. White's report and the description of accident used by Dr. White was not factual. The emergency room records did not report Appellant fell six to eight feet from his truck as indicated by Dr. White.

All medical records, photographs of the scene, and deposition testimony were reviewed by Dr. Pritchard, III, of MUSC on September 11, 2014. Dr. Pritchard indicated there was a long standing history of hypertension and diabetes mellitus Type II. The Appellant reported immediately preceding this incident to feeling "hazy and lightheaded." Dr. Pritchard indicated that Appellant lost consciousness before this actual accident occurred and then got up and moved to the driver's side where he again suffered a second loss of consciousness consistent with a syncope episode. This is supported by the Appellant's own testimony regarding his passing out and waking up sitting on the concrete, not knowing how he got there or why he was wet. Dr. Pritchard also noted his prior history of Type II diabetes mellitus (for which he had just stopped taking his medication) and his chronic history of hypertension which put him at risk.

## STANDARD OF REVIEW

The Administrative Procedures Act establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *Hargrove v. Titan Textile Co.,* 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). Upon review, appellate courts have the power to reverse or modify a decision if the findings and conclusions of the administrative agency are affected by an error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, arbitrary or capricious, characterized by an abuse of discretion, or a clearly unwarranted exercise of discretion. *Gray v. Club Group, Ltd.,* 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000). The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a workers' compensation decision. *Frame v. Resort Servs., Inc.,* 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004). This Court must affirm the findings of fact made by the Full Commission if they are supported by substantial evidence. *Jordan v. Kelly Co.,* 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009). Substantial evidence is neither a mere scintilla of evidence,

nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 594 S.E.2d 272 (2004). Thus, substantial evidence is a lesser standard than by a preponderance of the evidence. Id.

## ARGUMENT

The parties do not dispute that Appellant was injured while in the course of his employment, so the primary issue is whether Appellant sustained an injury by accident that *arose* out of his employment. An accidental injury is compensable if it arises out of *and* in the course of employment. S.C. Code § 42-1-160(A). An injury arises out of employment if it is proximately caused by the employment. *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175. The burden of proof is on the appellant "to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture or speculation. *Crosby v. Walmart*, 330 S.C. 489, 496 (1998).

At the hearing, the Full Commission was presented with two factually competing theories of injury. The first theory, urged by Appellant, is that he was standing up on the left/driver's side tire of his truck and engaged in washing the windshield when he fell to a concrete surface sustaining a serious head injury, and therefore his injury arose out of his employment. The second theory, which was supported by the greater weight of evidence, is that Appellant's fall was idiopathic in nature and the injury resulting therefrom had no causal connection with Appellant's employment.

An idiopathic fall is one that is "brought on by a purely personal condition unrelated to employment, such as a heart attack or a seizure." 2 Modern Workers' Compensation 110:8

(quoted in *Barnes v. Charter 1 Realty,* Op. No. 27479, (S.C. Sup. Ct. filed Jan. 14, 2015)). In *Barnes*, the South Carolina Supreme Court stated "[t]he idiopathic fall doctrine is based on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere." *Id.* at pg. 3. Idiopathic injuries are generally noncompensable absent evidence the workplace contributed to the severity of the injury. *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 452, 88 S.E.2d 611, 614 (1955).

Contemporaneous to the *Barnes* decision, the South Carolina Supreme Court published another opinion expounding on the idiopathic fall doctrine in *Nicholson v. S.C. Dept. of Soc. Servs.*, Op. No. 27478 (S.C. Sup. Ct. filed Jan 14, 2015). In the *Nicholson* case, the Court discussed *Bagwell*, which involved an appellant that sustained an idiopathic fall and died as a result of a subdural hemorrhage when his head struck a concrete floor. Op. No. 27478 at pgs. 5-6 (citing 227 S.C. at 499). The Court's reading of the *Bagwell* case instructs that noncompensability in cases where an idiopathic fall is implicated hinges on two questions: first, whether the fall was idiopathic, and two, whether a special danger or hazard of an appellant's employment contributed to the resultant injury. *See Nicholson* at pg. 6. As the *Nicholson* Court observed, the Court in *Bagwell* ultimately held the concrete floor upon which appellant fell was not a hazard of employment capable of bringing his idiopathic fall within "the ambit of coverage." *Id.* The *Nicholson* Court did not disturb the holding in *Bagwell* in its analysis, but simply pointed out that *Bagwell* is not applicable to facts where a fall takes place at work that is *not* caused by a condition peculiar to the appellant. In other words, *Bagwell* only applies in cases that involve evidence of an idiopathic fall.

In the present case, *Bagwell* does apply, the Full Commission was presented with evidence, the greater weight of which showed, that Appellant (1) suffered an idiopathic fall from a personal condition, and (2) no special danger or hazard of Appellant's employment contributed

to the resultant injury. Accordingly, the Workers' Compensation Commission's finding that Appellant's injury was not compensable should be upheld.

## I. THE WORKERS' COMPENSATION COMMISSION CORRECTLY GAVE GREATER WEIGHT TO THE MEDICAL OPINION EVIDENCE OF DR. PRITCHARD, WHO REVIEWED APPELLANT'S MEDICAL RECORDS, PHOTOGRAPHS OF THE SCENE OF APPELLANT'S FALL, AND APPELLANT'S DEPOSITION TESTIMONY, AND CONCLUDED THAT APPELLANT SUFFERED NOT ONE, BUT TWO EPISODES OF LOSS OF CONSCIOUSNESS, THE END OF WHICH LEAD TO APPELLANT'S INJURY-CAUSING FALL, AND WHERE THE COMPETING MEDICAL OPINION EVIDENCE OF DR. WHITE ASSUMED FACTS NOT SUPPORTED BY THE EVIDENCE.

The opinions stated in Dr. Pritchard's report of Sept 11, 2014, were appropriately and justifiably given more weight than that of Dr. White. Dr. Pritchard based his opinion on pre-accident medical records, photographs of the scene, and Appellant's deposition testimony that recounts the fainting incident on the passenger side of the truck that immediately preceded the injury-causing fall on the driver's side. As further support that Appellant has had similar symptoms in the past, among the prior medical records, there is a narrative from Bamberg County Hospital dated January 29, 2012, documenting that Appellant presented with a chief complaint of not feeling well for a few days and complaining of lightheadedness. (R. p. 424). In his report, Dr. Pritchard documented that Appellant has a longstanding history of hypertension and diabetes mellitus, Type II, and the circumstances as described by Appellant are more consistent with syncope, for which these diagnoses place him at risk. (R. pp. 563-565). Counter to Appellant's allegation that he must have slipped and fell from the truck while washing the driver's side windshield, Dr. Pritchard opines to a reasonable degree of medical certainty that Appellant had two syncopal events, the second of which caused his fall and subsequent head

injury.

Appellant points to the report of Dr. White to support his theory that he fell from the truck. In his report, which relates to a visit he had with Appellant at the attorney's office on September 4, 2014, which was only two days after Appellant's deposition, Dr. White documents that emergency room records from Palmetto Richland indicate Appellant fell from his truck about six to eight feet. (R. p. 424). Given that this was Dr. White's understanding of Appellant's fall, the single Commissioner and Full Commission were justified in giving less weight to Dr. White's opinions about the mechanism of injury. A close reading of the emergency room records reveal how the "fall from six to eight feet" claim originated: "Bystanders on the scene told Lifenet they think he *could* have fallen out of his truck cab which is about 6-8 feet off the ground (emphasis added)." (R. p. 184)

In contrast, other evidence establishes that Appellant did not fall from his cab, including Appellant's own testimony about the contemporaneous fainting incident, the testimony establishing the tire from which he alleges falling is only about 2 feet high, and the photographs of the scene showing the undisturbed long-handled cleaning brushes standing upright indicating they were not in use at the time Appellant fell. Furthermore, Dr. White's opinion was apparently rendered without any knowledge of the fainting incident that took place on the opposite side of the truck almost immediately before the injury causing fall. At the hearing, when asked whether he thought it would be important to tell his physicians that he now remembers washing the windshield on the *passenger* side and passing out, Appellant stated "no, they never asked that." (R. p.121, line 2). He again later stated "So, no. I didn't - - I didn't see no importance in that." (R. p.121, lines 4-5).

In sum, in rendering his opinion to a reasonable degree of medical certainty, Dr. Pritchard benefited from a key piece of information that came from the Appellant, namely that he

experienced a syncopal episode on the passenger side of the truck before being found on a flat, dry concrete surface on the driver's side of the truck. This critical piece of causation evidence was not available or told to Dr. White. Accordingly, it was proper for the Workers' Compensation Commission to give greater weight to the opinion of Dr. Pritchard. Furthermore, no motion to exclude this evidence was made when submitted and cannot now be made upon Appeal.

## II. THE WORKERS' COMPENSATION COMMISSION WAS CORRECT IN FINDING THAT APPELLANT WAS UNABLE TO MEET HIS BURDEN OF PROOF IN SHOWING THAT HE FELL FROM HIS TRUCK WHILE WASHING THE WINDSHIELD THEREBY, SUSTAINING INJURY WHERE APPELLANT CANNOT RECALL FALLING FROM THE TRUCK, AND WHEN OTHER WITNESS TESTIMONY AND PHOTOGRAPHIC EVIDENCE CONTRADICTS APPELLANTS CONTENTION THAT HE WAS ENGAGED IN WASHING THE TRUCK WINDSHIELD JUST PRIOR TO FALLING AND SUSTAINING INJURY.

In support of his contention that his injury arose out of his employment, Appellant alleges that he fell from his truck on the driver's side while attempting to wash the windshield, such fall causing his head injury. However, Appellant does not remember actually falling from the truck. Witness testimony and photographic evidence support a finding that Appellant was not up on the driver's side tire washing the windshield immediately before his fall, therefore Appellant's fall and subsequent injury did not arise out of his employment.

In his deposition, Appellant testified that while at a Love's Truck Stop, he remembers standing on the tire of the front *passenger-side* washing the windshield when he suddenly found himself on the ground. There is some confusion in the questioning as counsel for Respondent was not aware that Appellant essentially had suffered two falls. The exchange is as follows:

Q: That was after washing the --- I'm sorry I'm not trying to confuse you on this. Okay. So you were on the top of the passengers-side tire?

A: On the passenger tire washing the windshield.

Q: Were you wet at that point?

A: No.

Q: Then you got down?

A: No, I didn't even know I got down, I was down on the concrete like in a sitting position and all -- laying down and I was all wet. I said "Well damn" and I got up and went around to the driver-side and climb up on the tire and start washing the other side.

Q: Okay. So let me back up.

A: Okay.

Q: So you were washing the passenger-side and you don't know how you got down that time?

A: No. I have no idea how I got down.

Q: All of a sudden you were sitting on the ground on the passenger-side?

A: Pretty much laying down, yeah.

(R. p. 591)

...

Q: Okay. And you get up from the passenger-side and do what?

A: I walk around the front of the truck to the driver tire climbed up on it start washing the driver-side and that was the last thing I remember.

Q: Okay. When you realize that you were sitting on the ground on the passenger-side, was there anything else wrong with you other than being soaking wet?

A: Everything was kind of hazy.

Q: Did you have any injuries or any problems?

A: I was like light-headed, hazy, you know what I mean, I hadn't had any problem that I can tell physically.

(R. pp. 592-593)

In sum, Appellant first attempted to wash the passenger-side windshield, and for some unknown reason, he ended up on the ground on the passenger side of the truck. He does not recall getting down from the truck, but when finding himself on the ground he recalled things being hazy. Then, he says he went to the driver's side, stood up on the tire and started washing that part of the windshield, and that is the last thing he remembers. Appellant does not remember falling off the truck.

Mr. Tyron Johnson, who was the first person to discover Appellant on the ground, testified at the hearing. Mr. Johnson identified the man who had been lying on the ground as the Appellant, Clyde Williams. He was shown the photograph that was Defendant's Exhibit A and asked if it was an accurate reflection of how he found Mr. Williams on the morning of March 27, 2014, to which he replied "yes, it is." (R. p.131, line 5). Mr. Johnson was asked if anything had been moved in the picture, and he responded "no." Mr. Johnson testified that he did not pick up the scrub brushes that are shown leaning against the concrete in the photograph nor did he move anything.

Mr. Thad Wimberly, Vice President of the Employer, also testified at the hearing, as he was called to the scene upon being informed of Appellant's injury. In regards to the windshield, he testified "I won't say it was not visible but it was not like it had just been cleaned." He testified there was some dirt on the windshield and it had not been cleaned by the "bug juice or whatever you put on the window, you know, to clean the bugs or whatever." (R. p.142, lines 1-4). Regarding the height of the tires, Mr. Wimberly testified the tires were 24.5 inches, so if someone fell from standing on one of the tires they would fall approximately 2 feet.

During the hearing, on cross-examination, Appellant conceded as follows:

Q: Okay. Now, what is the very last thing you remember?

A: Being up on the driver's side tire washing the driver's side windshield.

Q: So, the very last thing you remember is you were standing on the tire and you were holding the scrub brush for the windshield?

A: Holding the brush yes.

Q: And that's - - that's where your memory ends?

A: Yes.

Q: Okay. So in reality you could have gotten off of the tire, put your brush up where it is shown in the pictures, and then you could have passed out?

A: Yeah, I mean, you know, there is a lot of possibilities there.

(R. p. 124, lines 13-23).

Given this and other evidence, the Full Commission justifiably and correctly found that Appellant had not met his burden of proof in showing that he fell from the truck thereby sustaining his injury. Appellant testified to ending up on the ground, without injury, on the passenger side of the truck just before going to the driver's side, for which he has no explanation as to how he got there, but he recalled feeling light-headed. The photographic evidence submitted clearly shows two long-handle cleaning brushes: one inside a bucket standing upright, and the other leaning upright against a concrete barrier. Appellant does not recall falling from the truck, nor were there any witnesses to the fall, and one witness testified that the windshield of the truck did not appear to be recently cleaned. Overall, taking into account all the evidence, the Workers' Compensation Commission's finding that Appellant did not fall from the truck was supported by the greater weight of evidence.

## III. THE WORKERS' COMPENSATION COMMISSION CORRECTLY APPLIED THE RULES OF CONSTRUCTION OF THE WORKERS' COMPENSATION ACT.

When construing a statute, the Court must ascertain and effectuate the actual intent of the Legislature. *Horn v. Davis Elec. Constructors, Inc.,* 307 S.C. 559, 416 S.E.2d 634 (1992). Workers' compensation laws were intended by the Legislature to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault. *Cokeley v. Robert Lee, Inc.,* 197 S.C. 157, 14 S.E.2d 889 (1941). To give effect to this legislative intent, workers' compensation statutes are construed liberally in favor of coverage. *Mauldin v. Dyna-Color/Jack Rabbit,* 308 S.C. 18, 416 S.E.2d 639 (1992). Specifically, the general and well-established rule is that the South Carolina Worker's Compensation Act is intended to be for the benefit of employees and must be construed liberally in their favor. *Ham v. Mullins Lumber Co., 193 S.C. 66, 89, 7 S.E.2d 712, 722, 1940 S.C. LEXIS 42, *10-11 (S.C. 1940).*

In the present case, even when viewing the evidence in the light most favorable to the Appellant, the evidence still supports a finding that Appellant's injury did not arise out of or in the course of his employment. Specifically, there is no evidence to show Claimant fell off the truck and struck his head. There were no witnesses to the injury and there is no evidence to determine if Appellant fell while standing flat footed on the ground or fell from the truck. The Appellant testified the last thing he remembers is cleaning the windshield with a long brush in his hand. The evidence reflects Appellant was found on the ground, lying on the concrete, and brushes used for cleaning windshields were not in use and were standing/leaning against the gas pumps. This is evidenced by pictures taken at the scene and testimony from the witnesses who found Appellant lying on the ground.

The Full Commission properly considered Appellant's testimony, medical evidence, photographic evidence, and other witness testimony in this matter. In rendering its opinion, the Full Commission properly applied the South Carolina Workers' Compensation Statute, applicable case law, and the rules of construction of the South Carolina Workers' Compensation Act to correctly find in favor of the employer and against the employee that the Appellant's injury is not compensable under the South Carolina Worker's Compensation Act.

## IV. THE WORKERS' COMPENSATION COMMISSION PROPERLY CONCLUDED THAT APPELLANT'S INJURY AROSE FROM SOME PHYSICAL CONDITION PERSONAL TO APPELLANT AND WAS THEREFORE IDIOPATHIC IN NATURE, WITHOUT ANY CAUSAL RELATIONSHIP TO APPELLANT'S EMPLOYMENT.

Based on the evidence as discussed above, the Full Commission correctly found that Appellant did not meet his burden of proof with respect to showing that he fell from the truck, and its decision to give more weight to Dr. Pritchard's opinion was also firmly supported by the evidence. Accordingly, the Workers' Compensation Commission's decision that Appellant's injury was not compensable was correct.

Importantly, this decision is also consistent with the Court's recent decisions in *Nicholson* and *Barnes*, in that the facts and evidence in this case support the conclusion that Appellant fell because of a condition peculiar to him, namely that he had a syncopal episode, and the resulting injury had no causal connection to his employment.

In *Nicholson* and *Barnes*, there was no evidence to support a finding that either appellant suffered some internal breakdown, i.e. an idiopathic event, that led to their falls and subsequent injuries. Here, we have a situation that falls squarely in line with *Bagwell*, where the appellant was found to have suffered an idiopathic fall onto a flat, dry concrete surface suffering a head

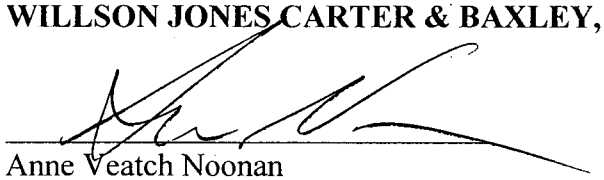
injury, which was ultimately determined noncompensable. However, unlike in *Bagwell,* where the claim was found not compensable even though appellant in that case could not provide any information about his fall because he died from his injuries, Appellant here fortunately survived his fall and was able to provide critical information about events that took place just before his injury that gives the Full Commission even greater justification for a finding of noncompensability. In particular, Appellant's deposition and hearing testimony make it clear that he had a syncopal episode that could have accounted for falling on the concrete in and of itself without the added risk of standing up on a truck tire. The evidence of a prior syncopal episode, together with the photographs and witness testimony proving that Appellant was not engaged in cleaning the truck windows when he fell onto a flat, dry concrete surface, further bolsters the Full Commission's findings that Appellant suffered an idiopathic fall, which resulted in an injury that was not causally related to his employment. In sum, the Full Commission considered Appellant's testimony, medical evidence, photographic evidence, and other witness testimony, all of which supported the conclusion that Appellant's injury is not compensable. Accordingly, the Worker's Compensation Commission's Order and Decision should be affirmed in full.

## CONCLUSION

For the reasons stated herein, the South Carolina Workers' Compensation Commission's decision should be affirmed in full.

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**



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Date: May 9, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

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Case Tracking No.: 2015-002300

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Clyde Williams, Employee.....Claimant/Appellant,

v.

Bowman Gin Co., Employer, and
American Interstate Ins. Co., d/b/a Amerisafe Risk
Services,.....Defendants/Respondents.

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PROOF OF SERVICE

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I certify that copies of the FINAL BRIEF OF RESPONDENTS TO BE INCLUDED IN THE RECORD ON APPEAL were served this day on Appellant by depositing a copy of it in the United States Postal Service, first class to Appellant's attorney of record Lewis C. Lanier, Lanier & Burroughs, LLC, P.O. Drawer 2789, Orangeburg, SC 29116.

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May 9, 2016

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CERTIFICATE OF COUNSEL

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The undersigned certifies that the Final Briefs comply with Rule 211(b), SCACR.

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May 9, 2016

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

Re: Clyde O. Williams vs. Bowman Gin Co.
Appellate Case No.: 2015-002300

Dear Ms. Kitchings:

Pursuant to Rule 210 and Rule 211, I am enclosing 15 copies of the Final Brief of Respondents and a Certificate of Counsel. I am also enclosing Proof of Service indicating that a copy of the Final Brief of Appellants and Final Reply Brief of Appellants have been served on Lewis C. Lanier, Attorney for Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Anne Veatch Noonan

AVN/lmb

Enclosures

cc: Mr. Lewis C. Lanier

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