

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Appellate Case No.: 2016-001398
WCC Number: 1405219

RECEIVED
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SC Court of Appeals

Kevin Wikel, Employee, Claimant,Respondent,

v.

PC Metro Bottling, Employer, and Indemnity Insurance Co. of NA, Carrier,Appellants.

SUPPLEMENTAL RECORD ON APPEAL

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1405219

KEVIN M. WIKEL)	
)	
CLAIMANT,)	
VS.)	SC WORKERS' COMPENSATION COMMISSION
)	
PC METRO BOTTLING)	HEARING OF
)	
EMPLOYER,)	KEVIN M. WIKEL
AND)	VS
)	
Indemnity INS. CO.)	PC METRO BOTTLING
OF NORTH AMERICA)	
CARRIER.)	

This is the Transcript of the South Carolina Workers' Compensation Hearing of Kevin M. Wikel versus PC Metro Bottling, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 11:02 A.M., Tuesday, December 1, 2015, at Yemassee Lowcountry Council of Governments, 634 Campground Road, Yemassee, South Carolina.

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ALSO PRESENT:

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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Commissioner Wilkerson: Today's date is the 1st day of December, 2015. We're here in reference to Workers' Comp file number 1405219. The Claimant in today's case is Kevin M. Wikel; he is represented by -- I've got so many names in here but I don't have Tom Bacon -- Tom Bacon. The Employer is PC Metro Bottling; the Carrier is Indemnity Insurance Company of North America and they are represented by Andy Smith. Here again, the date of accident we have on the 12-A is 5/2/2014; I'm not saying that's right, that's just what I've got on the 12-A, that's how I have to call the case. The average weekly wage is eight fifty-seven, oh seven (\$857.07); thus the comp rate is five seventy-one, sixty-seven (\$571.67). We're here to determine the issues that are set forth on a Form 50 and 51. I know there is one 50 in there that says 5/12, I understand there might be another one that says 5/9; I'm going to let you all straighten all of that out on the record, okay? Are there any objections to APAs, jurisdiction, venue or

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1 any other items by the moving party, Mr.
2 Bacon?

3 Mr. Bacon: None.

4 Commissioner Wilkerson: Mr. Smith?

5 Mr. Smith: None, Your Honor.

6 Commissioner Wilkerson: Without
7 objection the Commission's file becomes part
8 of the record with the exception of
9 self-serving declarations and unstipulated
10 medical reports. Mr. Bacon, I'm going to get
11 you to, hopefully, to clear up your part of
12 it and then maybe Mr. Smith can clear up or
13 verify what it is you've got once in
14 response. So, if you would, put your
15 client's position on the record.

16 Mr. Bacon: Thank you, Commissioner.
17 Tom Bacon on behalf of Kevin Wikel. Kevin
18 was working as a merchandiser for PepsiCo.
19 He had worked a thirteen (13) day stretch
20 from about April 23rd through May 6th of
21 2014. Unloading cases and setting up pallets
22 is essentially what a merchandiser does,
23 Commissioner. It was during this thirteen
24 (13) day period that he developed some low
25 back pain. He was then off work for a

1 scheduled two (2) day off on the 7th and 8th,
2 and then on May the 9th he returned to work
3 and essentially realized, at that point while
4 doing the process, he was having, again,
5 increased low back pain and was not able to
6 perform his job duties. So, he reported the
7 incident on May the 9th to his supervisors,
8 Eric and Landon, was instructed to call
9 JOB-HURT, did so; we've provided you a copy
10 of that transcript for your review. And in
11 that he indicates that he hurt his back. He
12 does tell the lady that he hurt his back
13 while lifting in the process of his
14 employment. He then presents to Doctor's
15 Care as in -- is instructed on May the 9th
16 and those records, again, indicate low back
17 pain from lifting and bending with pain going
18 down the left leg. MRIs were confirmed a
19 disk herniation and Dr. Strohmeyer
20 recommended conservative treatment, which at
21 first was beneficial with a course of three
22 (3) epidural injections. Those epidural
23 injections wore off after a period of three
24 (3) to four (4) months, Commissioner, and he
25 returned to Dr. Strohmeyer with the same

1 complaints and, as such, Dr. Strohmeier
 2 performed a microdiscectomy on April 2nd of
 3 2015. Claimant then went through
 4 post-operative physical therapy and was
 5 released to return to work on June 29 of
 6 2015, at maximum medical improvement, with
 7 ten percent (10%) impairment to the low back,
 8 thirteen percent (13%) impairment to the left
 9 leg and recommendations for future medical
 10 but no work restrictions. It's our position,
 11 Commissioner, that the Claimant suffered a
 12 compensable injury by accident on May the 9th
 13 while lifting the product as part of his
 14 normal job duties. He reported the incident
 15 timely and the Employer then directed his
 16 medical care through Doctor's Care. His case
 17 was later denied on the basis that there was
 18 some discrepancy as to whether his date of
 19 accident was May the 2nd or May the 9th but I
 20 think, Commissioner, based on the testimony
 21 you'll hear today from Mr. Wikel that the
 22 substantial evidence will show that the
 23 injury that took him out of work occurred on
 24 May the 9th.

Mr. Smith: And --

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1 Commissioner Wilkerson: Please, Mr.
2 Smith.

3 Mr. Smith: -- Your Honor, just for
4 clarification, it was -- the original Form 50
5 had a date of accident of May 12 not May 9th
6 when it was denied.

7 Mr. Bacon: Commissioner, the Form 50
8 that we're here on --

9 Mr. Smith: I --

10 Mr. Bacon: -- was amended --

11 Mr. Smith: -- you said it was
12 originally denied based on the fact of -- of
13 --

14 Commissioner Wilkerson: May 2nd.

15 Mr. Smith: -- it would -- date of
16 accident May 9th and -- and you -- May 12th
17 was on the 12-A but that -- when we
18 originally denied the claim --

19 Commissioner Wilkerson: No, May --

20 Mr. Smith: -- we were --

21 Commissioner Wilkerson: -- May 2nd was
22 on the 12-A.

23 Mr. Smith: -- yes, Your Honor. And
24 then they filed -- they originally filed a
25 Form 50, which was for a date of accident is

1 May 12th --

2 Commissioner Wilkerson: Right.

3 Mr. Smith: -- and then that's when we
4 made our denial. But when he was making his
5 statement he indicated we made our denial on
6 the May 9th date.

7 Commissioner Wilkerson: Oh, I see what
8 you're saying, May 9th date. But you --

9 Mr. Smith: So, now -- we're now dealing
10 with a May 9th date.

11 Commissioner Wilkerson: -- okay. I'm
12 fine.

13 Mr. Bacon: Yes.

14 Commissioner Wilkerson: And it's --

15 Mr. Smith: So --

16 Commissioner Wilkerson: -- and it's
17 still denied on May 9th?

18 Mr. Smith: -- yes, Your Honor. And,
19 Your Honor, can I respectfully request that
20 we turn to the addendum on the Form 58 of the
21 submissions so I can essentially -- it's --
22 it's on -- it's right here, Your Honor. I'm
23 sorry.

24 Commissioner Wilkerson: And it was
25 brought today?

1 Mr. Smith: Brought -- no. No.

2 Commissioner Wilkerson: Oh, I'm sorry.
3 I thought you meant that it was filed. Oh,
4 okay, I'm sorry.

5 Mr. Smith: So, we have an individual
6 that calls JOB-HURT on May 9th, 2014, and
7 tells the 1-800-JOB-HURT operator, which we
8 have a transcript of, that the injury
9 occurred on May 2nd, 2014, that's why the
10 12-A reflects an injury on May 2nd. Then he
11 essentially told them that he couldn't
12 remember really what happened and he says he
13 believes it was a Publix. Well, obviously,
14 he has a preponderance of the evidence to
15 meet by the statute that he injured himself
16 at work and it arose out of employment. And
17 he says, I don't even know how it happened;
18 it was at Publix, and truthfully, that's a
19 denial based on -- based on its own, not only
20 -- because they had the wrong date. Then he
21 was questioned by Mark Drutch, which we also
22 have that in on May 12th. And, again, he
23 tells Mark Drutch, the representative, that
24 he didn't know how he injured himself, he
25 believed he injured himself on May 2nd but he

1 had been working three (3) days -- or
2 thirteen (13) days straight. Then the
3 attorney originally filed a Form 50 for May
4 12th, 2014. The deposition was conducted.
5 When I conducted the Claimant's deposition, I
6 was going into it thinking it was going to be
7 a May 2nd alleged date of accident and what
8 he told me during the deposition on September
9 5th, 2014, that he actually injured himself
10 on May 6th at a Walmart and, again, he told
11 the operator -- on the same day that he
12 allegedly hurt himself he called -- so,
13 they're -- saying injury by accident, May
14 9th. He called that 1-800-JOB-HURT operator
15 that same day and said I don't know how I
16 injured myself. Now, I'm deposing him on
17 July of 2000 -- I'm sorry, in September of
18 2014, asking him how did you injure yourself.
19 And then he told me he injured himself on May
20 6th at a Walmart and then he re-injured
21 himself on May 9th, 2014, at a Walmart, and
22 he reported specific mechanisms of injury.
23 Importantly, and again I can't stress the
24 significance of this factor, that he called
25 May 9th, 2014, and his testimony under oath

1 was that he did lift a case of Aquafina on
2 May 9th, 2014, when he felt a pain in his
3 back and that's when he decided he injured it
4 and he was at Walmart. That same day he
5 called 1-800-JOB-HURT said he didn't know how
6 he did it, been working thirteen (13) days
7 straight, it may have been May 2nd, and then
8 he goes on and tells all the other doctors
9 and never mentions the May 6th -- May -- May
10 9th day. So, I'm surprised at the deposition
11 that this is even happening. And then -- and
12 then, we -- we go down further and Dr.
13 Strohmeyer has already opined that the
14 Claimant never reported a specific mechanism
15 of injury to him and with a reasonable degree
16 of medical certainty he said it's not a
17 repetitive trauma. They filed a Form 50; it
18 was a pending motion today alleging both
19 injury by accident and repetitive trauma due
20 to the discrepancies. And it's also
21 important to note, Your Honor, this Claimant
22 stopped working for us in June of 2014,
23 shortly after this accident. He went to
24 Doctor's Care on May 9th and May 16th. He
25 was placed on work restrictions of ten (10)

1 pounds lifting. And then he goes out on --
2 what does he do? He goes to Walmart on May
3 10th, 2014, and applies for a full time
4 position, said -- and has hours open, work
5 evenings, nights, weekends; no matter what.
6 So, right in the midst of this claim he's --
7 he's filling out an application for
8 employment at Walmart and saying that he's
9 ready, willing and able to work any hours,
10 any days when he -- when he's on work
11 restrictions. Then -- and so, he hasn't
12 worked for us for -- since June of 2014.
13 Then he continues to work for Walmart, hasn't
14 worked for us again. And then on November of
15 2014, he reports to Dr. Strohmeyer that he is
16 a hundred percent (100%) better, and this is
17 obviously five (5) months after he's -- he's
18 worked for us. And I can turn you to that
19 page in the -- in the APAs, Your Honor, but
20 he says I'm a hundred percent (100%) better
21 and he is released. He doesn't come back
22 till February, 2015, to -- back to Dr.
23 Strohmeyer and this whole time he has been
24 working for Walmart. And now, they -- we get
25 a new Form 50 alleging a date of accident as

1 May 9th. And then, so I re-depose him. He
2 admittedly read his entire transcript before
3 I re-dosed him. He agreed to all of his
4 prior statements and assertions; he said they
5 were truthful, honest, to the best of his
6 recollection and he testified truthfully
7 under oath. And so, really what we have is,
8 we have him alleging a date of May 2nd to the
9 JOB-HURT operator, we have in the deposition
10 May 9th, May 6th and then him telling the two
11 (2) doctors that he really doesn't know when
12 he hurt himself, and then telling Mark
13 Drutch, I think it was May 2nd; I don't
14 really know how I hurt myself. Obviously
15 they have the burden to prove if it's injury
16 by accident or repetitive trauma; it sounds
17 like they're going from the opening
18 statement, injury by accident on May 9th. So
19 --

20 Commissioner Wilkerson: That's what I
21 heard; their position was injury by accident
22 on May 9th is what I heard.

23 Mr. Smith: -- so --

24 Commissioner Wilkerson: And that's what
25 we are going to try today, injury by accident

1 on May 9th.

2 Mr. Smith: -- and -- and I'll -- I'll
3 refer to all the APAs during cross, Your
4 Honor.

5 Commissioner Wilkerson: Okay.

6 Court Reporter: The Court Reporter
7 needs the spelling of Mark --

8 Mr. Smith: Drutch, D-R-U-T-C-H.

9 Court Reporter: -- thank you.

10 Mr. Smith: Sure.

11 Commissioner Wilkerson: Okay. Anything
12 else? You were standing up earlier; I was
13 trying -- is there anything else?.

14 Mr. Bacon: No, Your Honor, I was
15 allowing Mr. Smith to --

16 Commissioner Wilkerson: Okay.

17 Mr. Bacon: -- speak.

18 Commissioner Wilkerson: Okay. Are we
19 ready?

20 Mr. Smith: Yes.

21 Mr. Bacon: Yes.

22 Commissioner Wilkerson: Sir, I'll get
23 you to raise your right hand; we'll take some
24 testimony after we swear you in.

25 Whereupon;

1 Kevin Matthew Wikel, being duly sworn and cautioned to
2 speak the truth, the whole truth and nothing but the truth,
3 testified as follows:

4 Court Reporter: Please state your full
5 name for the record.

6 Witness: Kevin Matthew Wikel.

7 Court Reporter: Thank you, sir.

8 DIRECT EXAMINATION

9 By Mr. Bacon:

10 Q. Kevin, how old are you?

11 A. Twenty-five (25).

12 Q. What's your highest level of education?

13 A. High school.

14 Q. After you finished high school, tell me about
15 where you went to work?

16 A. I was a -- when I was in high school and after I
17 graduated, I was still with Golden Corral.

18 Q. And what was the highest level you achieved at
19 Golden Corral?

20 A. Manager.

21 Q. Okay. After you left Golden Corral, where did you
22 go to work?

23 A. Dollar General.

24 Q. How long did you work at Dollar General?

25 A. About a year and a couple of months.

- 1 Q. Okay. After that, where did you go?
- 2 A. I went to Food Lion.
- 3 Q. How long were you at Food Lion?
- 4 A. About a year.
- 5 Q. And what position did you have there?
- 6 A. Manager.
- 7 Q. And then after that, where did you go to work?
- 8 A. I went to Pepsi.
- 9 Q. Okay. When did you start working with Pepsi?
- 10 A. I think it was around, like, June.
- 11 Q. Of -- of what year?
- 12 A. 2013, I believe.
- 13 Q. And what job did you have at Pepsi?
- 14 A. Starting off?
- 15 Q. Yes, sir.
- 16 A. A merchandiser.
- 17 Q. And tell me about what a merchandiser does.
- 18 A. A merchandiser waits for the boat truck to deliver
- 19 the merchandise and checks it in, then the merchandiser
- 20 begins breaking down the pallets and putting it on the
- 21 shelves.
- 22 Q. Okay. Does it require a lot of lifting?
- 23 A. Yes, sir.
- 24 Q. Does it require a lot of bending?
- 25 A. Yes, sir.

1 Q. Okay. Prior to April of 2014, did you ever have
2 any problems physically performing your job duties as a
3 merchandiser?

4 A. No, sir.

5 Q. Okay. Now, you've heard back-and-forth here
6 opening statements from both parties, what I want to
7 talk to you about is what happened in the two (2) weeks
8 leading up to May the 9th, okay? Tell me about that
9 time period. Had you worked an extended -- an extended
10 longer than normal shift or days on?

11 Mr. Smith: Objection, leading.

12 A. Just --

13 Mr. Smith: And, Your Honor, I think if
14 -- if we're sticking to the May 9th date of
15 accident, and since we're limited on time,
16 I'm not sure what the thirteen (13) days
17 prior to May 9th -- unless he is alleging an
18 injury before May 9th -- has to do with
19 anything. I just want to make sure I get my
20 cross out.

21 Commissioner Wilkerson: I'm going to
22 give you time; we're going to finish today.

23 Mr. Smith: Okay.

24 Commissioner Wilkerson: It's just, I
25 told you all twenty (20) minutes ago you all

1 don't need to tell me this three (3) times
2 but you all both were -- had to tell it over,
3 and over, and over again. I told you we were
4 out of here at 11:30; you all burned the
5 fifteen (15) minutes, I didn't. We're going
6 to finish today --

7 Mr. Smith: I'm sorry.

8 Commissioner Wilkerson: -- but it might
9 be four o'clock this afternoon but --

10 Mr. Smith: Sorry.

11 Commissioner Wilkerson: -- you all had
12 to get it off your chest, so. He can ask the
13 question, so.

14 Mr. Bacon: I'm sorry, Your Honor, I
15 feel that since we have the burden to prove
16 I've got to present the facts.

17 Commissioner Wilkerson: I agree.
18 That's why -- yes. I mean, we're going to
19 finish today --

20 Mr. Bacon: Okay.

21 Commissioner Wilkerson: -- it just
22 might be four o'clock this afternoon.

23 Mr. Bacon: I just -- I feel like I've
24 got to --

25 Commissioner Wilkerson: Yes, go ahead.

1 Mr. Bacon: -- give you sufficient
2 information to make your decision on.

3 Q. Had you worked several weeks prior to -- or
4 continuously, several weeks prior to May the 9th?

5 A. Yes, sir; I believe.

6 Q. Okay. And during that period of time did you
7 develop low back pain?

8 A. Yes, sir.

9 Mr. Smith: Objection, leading.

10 Mr. Bacon: Okay.

11 Commissioner Wilkerson: Yes. Just get
12 him to tell me what he did.

13 Mr. Bacon: All right.

14 Q. Now, I want to talk about the -- those two (2)
15 weeks. Explain to me during those two (2) weeks what
16 occurred as far as you believe up to May the 6th.

17 A. Up to May 6th? Well, in the beginning I was going
18 as a sales rep in the week prior. I was a sales rep; I
19 worked every day straight, the long hours trying to
20 increase sales like I've always done. And then --

21 Q. And physically what were you doing during that
22 time?

23 A. -- the same thing as a merchandiser.

24 Q. And during that time period did you develop low
25 back pain?

- 1 A. Yes, sir.
- 2 Q. Okay. Explain to me how that happened and what
3 you noticed as far as your low back.
- 4 A. I -- you know, the course of the time I was
5 working consecutively I started feeling pain in my
6 lower back; then I had two (2) days off.
- 7 Q. What did you do during those two (2) days?
- 8 A. Not much at all.
- 9 Q. All right. And would that have been May 7th and
10 May 8th?
- 11 A. I believe so; yes, sir.
- 12 Q. Okay. And then, on the morning of May the 9th,
13 walk me through that; tell me what happened.
- 14 A. The morning of May 9th I showed up at the Walmart
15 probably about 5:30 in the morning, close to 6:00 in
16 the morning, started working the truck, found out I had
17 to change a display out and then, finally, I went to go
18 fill up the water and that's when I just called it
19 quits; I couldn't do it no more and I reported it to my
20 supervisor that I just couldn't continue the day.
- 21 Q. All right. Now, tell me about what you're talking
22 about, specifically with the water; is that a case of
23 Aquafina?
- 24 A. Yes, sir.
- 25 Q. Okay. And what was it about that that led you to

- 1 say I can't do it anymore?
- 2 A. When I picked it up I just -- the pain was too
3 bad; I just couldn't continue the route.
- 4 Q. And at that point did you call your supervisor?
- 5 A. Yes, sir.
- 6 Q. Who was your supervisor?
- 7 A. Eric Smith and Landon Papay.
- 8 Q. What did you tell them?
- 9 A. That I was -- you know, I just needed to go home
10 at that time and because I just -- with the pain in my
11 back I couldn't continue on. And then, Landon
12 instructed me that I had to call JOB HURT,
13 1-800-JOB-HURT.
- 14 Q. Did you do that?
- 15 A. Yes, sir.
- 16 Q. Okay. And what did you tell 1-800-JOB-HURT when
17 you called them?
- 18 A. That I hurt my back while I was at work; I
19 couldn't give them a specific incident.
- 20 Q. Okay. Now, after that did they instruct you to go
21 to Doctor's Care?
- 22 A. Yes, sir.
- 23 Q. Okay. What did Doctor's Care do for you?
- 24 A. They just -- I believe they -- I believe they just
25 did a x-ray on my -- on my back.

- 1 Q. Okay. Did they recommend an MRI for you?
- 2 A. I don't remember.
- 3 Q. Okay. If the records show you had an MRI done on
4 May 27th of 2014, would you have any reason to dispute
5 that?
- 6 A. No, sir.
- 7 Q. Okay. And after that, was it Doctor's Care that
8 referred you to Dr. Strohmeyer?
- 9 A. Yes, sir.
- 10 Q. Okay. What did Dr. Strohmeyer do for you?
- 11 A. Dr. Strohmeyer pretty much assessed me, had me go
12 out for a MRI to confirm that I actually had a -- you
13 know, an issue going on with my back. And then he --
14 he didn't want to do surgery in the beginning; he'd
15 rather do the physical therapy and the injections,
16 which I did.
- 17 Q. Did the injections help?
- 18 A. They helped for a short period of time.
- 19 Q. It looks like Dr. Batson did a series of three (3)
20 injections; is that correct?
- 21 A. Yes, sir.
- 22 Q. With the last one being done October 30th of 2014?
- 23 A. Yes, sir.
- 24 Q. Okay. And after that, did the symptoms resolve
25 for a period of time?

- 1 A. Yes, sir.
- 2 Q. Okay. Did your symptoms then re-occur or come
3 back?
- 4 A. The only symptom that came back was the pain down
5 my left leg.
- 6 Q. Okay. Explain that for me. Did the -- explain
7 what you mean by came back there.
- 8 A. When I had the injections, you know, all the pain
9 in my back went away but the nerve problem I was having
10 down my left leg came back --
- 11 Q. Okay.
- 12 A. -- after the injections wore off.
- 13 Q. Was there anything that you did working at Walmart
14 that caused an -- caused that pain to re-occur?
- 15 A. No, sir.
- 16 Q. Okay. Did Dr. Strohmeyer then recommend surgery
17 for you?
- 18 A. Yes, sir.
- 19 Q. And was that done April 2nd of 2015?
- 20 A. Yes, sir.
- 21 Q. Okay. How did you do after the surgery?
- 22 A. I was -- felt a lot better.
- 23 Q. And did he recommend some additional treatment and
24 physical therapy for you after the surgery?
- 25 A. Yes, sir.

- 1 Q. Okay. And did that help you progress?
- 2 A. Yes, sir.
- 3 Q. Okay. Did he then release you to return to work
- 4 full duty on June 29th of 2015?
- 5 A. Yes, sir.
- 6 Q. Okay. And since that time have you worked
- 7 continuously for Walmart?
- 8 A. Yes, sir.
- 9 Q. Okay. Are you having any problems now with your
- 10 low back?
- 11 A. No, sir.
- 12 Q. Do you have any problems with the pain going down
- 13 your left leg?
- 14 A. No, sir.
- 15 Q. Okay. So, all of that was corrected by the
- 16 surgery?
- 17 A. Yes, sir.
- 18 Q. Okay. Now, I want to show you a medical record
- 19 that is in the Defendant's APA.
- 20 Mr. Bacon: Commissioner, this is page
- 21 169 through 172.
- 22 Q. Kevin, I know this is hard to read but this a
- 23 Beaufort Memorial record dated November 8 of 2008; does
- 24 that look like the date on the top of page 171?
- 25 A. Yes, sir.

1 Q. Okay. And this record indicates that you
2 presented to Beaufort Memorial with complaints of low
3 back pain while lifting in your job at Golden Corral;
4 is that what the medical record says?

5 Mr. Smith: Objection, Your Honor. I
6 don't believe that's what the medical --

7 Commissioner Wilkerson: I can't read
8 it.

9 Witness: Yeah, I can't.

10 Commissioner Wilkerson: So, I don't
11 know what evidence I'm going to produce on
12 it. I can read --

13 Mr. Smith: Well, if -- it's actually on
14 page 171 is where it indicates it --

15 Commissioner Wilkerson: I can't read
16 it.

17 Mr. Smith: -- it's --

18 Commissioner Wilkerson: I can't read
19 that.

20 Mr. Bacon: Well, can -- other than --

21 Commissioner Wilkerson: I've got to
22 have a finding if we're looking at it. I --
23 I can read that. I can't read it. I can't
24 read it. Mr. Smith, I can not read it.

25 Mr. Smith: Okay. I'm sorry, Your

1 Honor.

2 Commissioner Wilkerson: What is it that
3 you don't understand? I can't read it.

4 Mr. Smith: I know it's a blurred
5 interpretation.

6 Commissioner Wilkerson: So, I get to
7 interpret what I want it to say? I don't
8 know. If you don't give me good copies I
9 can't read it.

10 Mr. Bacon: All right.

11 Mr. Smith: Let me see.

12 Commissioner Wilkerson: Please note for
13 the record, page 171 is unreadable; I can't
14 read it, I'm not interpreting it. I don't
15 have a good copy, without a good copy it's
16 just like being a blank page; let that be
17 noted for the record.

18 Mr. Bacon: All right. Commissioner --

19 Commissioner Wilkerson: If you don't --

20 Mr. Bacon: -- I'll withdraw my
21 question.

22 Commissioner Wilkerson: -- if you don't
23 provide me good information, either side, if
24 I can't read it --

25 Mr. Smith: How about -- how about this

1 one?

2 Commissioner Wilkerson: -- I mean, I --
3 I mean --

4 Mr. Smith: Your Honor, maybe this is a
5 better copy here.

6 Commissioner Wilkerson: -- I don't
7 know.

8 Mr. Smith: This is from our prior APA
9 submissions.

10 Commissioner Wilkerson: "This eighteen
11 (18) year old Caucasian male presents to the
12 emergency room with complaints of pain to his
13 low back." I can read this one. This is
14 page 68.

15 Mr. Smith: Yes, Your Honor, and I'm
16 sorry, that was in our prior APAs and so can
17 we --

18 Commissioner Wilkerson: "Patient states
19 he was lifting something heavy and had taken
20 it to the roof of Golden Corral where he
21 worked as a manager." I can read 68.

22 Mr. Smith: -- okay. Could we replace
23 that with 171?

24 Commissioner Wilkerson: Do you agree
25 that 68 is 171?

1 Mr. Bacon: I think that's --

2 Commissioner Wilkerson: Okay.

3 Mr. Smith: 171, can we replace that?

4 Thank you.

5 Commissioner Wilkerson: Page 171, okay.

6 Q. And, Kevin, that -- that's a 2008 -- November of
7 2008 medical record from when you went to Beaufort
8 Memorial Hospital; is that what the records reflect?

9 A. Yeah, that's what the records reflect.

10 Q. Okay. After November 8th of 2008, did you seek
11 any additional medical treatment for your low back?

12 A. No, sir.

13 Q. Okay. Did you have any ongoing problems with your
14 low back between then and late April/early May of 2014?

15 A. No, sir.

16 Q. Did you miss any time from Golden Corral or file a
17 Workers' Compensation claim at Golden Corral for this
18 incident?

19 A. Not that I remember.

20 Q. Okay. Did this resolve without issue?

21 A. Yes, sir. I believe so, it did.

22 Q. Okay. All right, Kevin, those are all the
23 questions that I have. Please answer any that Mr.
24 Smith may have.

25 Commissioner Wilkerson: Please.

1 Mr. Smith: Thank you.

2 CROSS-EXAMINATION

3 By Mr. Smith:

4 Q. On May 9th, 2014, you called the 1-800-JOB-HURT
5 operator, as you stated during direct examination,
6 correct?

7 A. Say that one more time, sir.

8 Q. On May 9th, 2014, you called the 1-800-JOB-HURT
9 operator after you spoke with Landon Papay; is that
10 correct?

11 A. I had spoke with Eric Smith too but, yes, sir.

12 Q. Okay. And then, how did you tell the operator
13 that you injured yourself on the date of your accident,
14 which you are alleging today, on May 9th, 2014?

15 A. What's in the transcript; I can't recall every
16 word I did.

17 Q. Did you have a chance to read over your statement
18 or listen to the statement that I provided to your
19 attorney?

20 A. A while ago; yes, sir.

21 Q. Okay. Would it be fair to say that you told the
22 operator that you could not recall how you injured
23 yourself on May 2nd, 2014, at a Publix?

24 A. If that's what's in the record; yes, sir.

25 Q. Okay. And would it be also fair to say that you

1 told the 1-800-JOB-HURT operator that you thought you
2 hurt yourself in the black -- in the backroom at the
3 Publix on Hilton Head at eleven o'clock?

4 A. If that's in the record; yes, sir.

5 Q. Okay. Are you aware -- that's store 700, is it
6 not?

7 A. I'm not --

8 Q. Oh.

9 A. -- I don't remember the store numbers anymore.

10 Q. Okay. But are you aware that that Publix video
11 from 10:45 until 11:25, that I provided your counsel,
12 does not show you anywhere in the backroom on May 2nd,
13 2014, at the Publix?

14 A. No, sir. I didn't ever see a video about that.

15 Q. Okay. So, you haven't seen the video?

16 A. (Shook head in a side-to-side motion).

17 Q. Okay. Okay. Moving -- we'll go on to the --
18 moving away from the JOB-HURT call. On May 12th --
19 after you called JOB-HURT on May 9th, on May 12th you
20 spoke with Mark Drutch -- Mark -- I'm sorry -- Drutch,
21 the Adjustor with the insurance company; is that
22 correct?

23 A. I don't recall speaking to a Mark but if that's
24 what had happened.

25 Q. Okay. Do you -- and I'll show you APA, page 211.

1 If -- I'll give a chance and tell me after you get
2 finished reading that.

3 A. Okay.

4 Q. Is it fair to say you told him that you could not
5 recall a specific event that occurred on May 2nd, 2014?

6 A. Yes, sir.

7 Q. And is it fair to say you also told him you had
8 never had any prior back injuries?

9 A. Yes, sir. As much as I could recall I couldn't
10 remember ever having any back -- actual back injuries.

11 Q. Okay. And is it fair to say there isn't any
12 mention of a May 2nd, 2014, date of accident when you
13 spoke with the Adjustor or a May 9th, 2014, date of
14 accident when you spoke with the Adjustor?

15 A. I don't see it there.

16 Q. Okay.

17 A. Except for when it said something about --

18 Q. Are --

19 A. -- May 9th when I called.

20 Q. -- oh, okay. Are you aware on July 11th, 2014,
21 that your attorney initial -- initially filed a Form 50
22 alleging you injured yourself on May 12th, 2014, while
23 pulling a pallet of products; are you aware of that?

24 A. If that's what the documentation is; yes, sir.

25 Q. It's -- I can --

- 1 Mr. Bacon: What page?
- 2 Q. -- okay. Are you claiming that you injured
3 yourself on May 12th, 2014?
- 4 A. I don't recall exactly what date.
- 5 Q. You don't recall exactly what date you injured
6 yourself?
- 7 A. No, sir.
- 8 Q. Okay. Now, on May 9th -- I'm sorry. On September
9 5th, 2014, I conducted your deposition for the first
10 time and during the course of the deposition do you
11 recall alleging injuring yourself on May 6th, 2014?
- 12 A. If that's what's in the transcript then, yes. But
13 I remember in the beginning we clarified that the dates
14 were not all accurate.
- 15 Q. Okay. I can present you with your deposition --
- 16 A. Uh-huh.
- 17 Q. -- deposition testimony. Would you or would you
18 not agree that on May 6th, 2014, you told me that you
19 injured your back while working at a Walmart on May
20 6th, 2014?
- 21 A. If it's in my deposition; yes, sir.
- 22 Q. So, do you agree you testified for that?
- 23 A. Yes, sir; if it's in my deposition.
- 24 Q. Okay.
- 25 Mr. Smith: And that's a page 30 of his

1 deposition, Your Honor.

2 Commissioner Wilkerson: I don't have
3 his deposition.

4 Mr. Smith: May I introduce it into the
5 record?

6 Commissioner Wilkerson: Yes. But I
7 don't have it.

8 Court Reporter: You'll need to give it
9 to me so I can mark it.

10 Mr. Smith: Okay, Madame Court Reporter.

11 Commissioner Wilkerson: Are there two
12 (2) of them? Are we going to do both of
13 them?

14 Mr. Smith: Yes, Your Honor, if you
15 don't mind.

16 Commissioner Wilkerson: Sure. No.
17 Absolutely.

18 Court Reporter: Defendant's One and
19 Two.

20 Mr. Smith: Yes. Thank you.

21 Commissioner Wilkerson: We're going to
22 do the one -- he is referencing the first
23 deposition taken on September 5th will be
24 D-1, and then the second one was taken when?

25 (DEFENDANT'S EXHIBIT NUMBER ONE WAS MARKED FOR

1

IDENTIFICATION)

2

Mr. Bacon: October 26 of 2015,

3

Commissioner.

4

Commissioner Wilkerson: Okay. 2015,

5

okay. And that will be D-2.

6

(DEFENDANT'S EXHIBIT NUMBER TWO WAS MARKED FOR

7

IDENTIFICATION)

8

Commissioner Wilkerson: Page 30. Okay.

9

Thank you.

10

Q. During your deposition you did not -- let me ask

11

you this -- to the 1-800-JOB-HURT operator, you didn't

12

mention that you injured yourself on May 6, 2014; is

13

that correct?

14

A: If that's from the recording; yes, sir.

15

Q. Well, you read the recording, did you not --

16

A. Yes, sir; a while ago.

17

Q. -- okay. That's not in the recording, is it?

18

A. If it's not --

19

Q. I mean --

20

A. -- I don't --

21

Q. -- either it is or it isn't; can you recall?

22

A. -- I can't recall.

23

Q. Okay. Did -- also, you didn't allege during your

24

deposition, as you alleged to Mark Drutch on May 12th,

25

2014, that you injured yourself on May 2nd, 2014,

- 1 during your deposition, did you?
- 2 A. During the deposition where Mark -- I don't
- 3 recall.
- 4 Q. No, sir. You reported 1-800-JOB-HURT, as well as
- 5 to Mark Drutch, that you had injured yourself on May
- 6 2nd, 2014, by working at a Publix, correct?
- 7 A. If that's what the transcript says.
- 8 Q. Okay. But did you read the 1-800-JOB-HURT call?
- 9 A. A while ago; yes, sir.
- 10 Q. Okay. Did it say in there that you told the --
- 11 A. I don't recall.
- 12 Q. -- how long ago did you read it?
- 13 A. Probably about -- I think the last time I read it.
- 14 was in October.
- 15 Q. That was right before I took your deposition?
- 16 A. Yes, sir.
- 17 Q. And after I took your deposition, marked Defense
- 18 Exhibit Number Two, you read your entire deposition
- 19 transcript before I took your second deposition,
- 20 correct?
- 21 A. Yes, sir.
- 22 Q. And at the end of that deposition I asked you if
- 23 you read your first deposition; is that correct?
- 24 A. Yes, sir.
- 25 Q. And I asked you, specifically, if everything you

1 stated in your first deposition was true and accurate
2 and to the best of your recollection, and you --

3 A. Yes, sir; I did.

4 Q. -- and you reaffirmed it in your second
5 deposition, correct?

6 A. Yes, sir.

7 Q. All right. Now, during your deposition you also
8 claimed a second injury on May 9th, 2014 --

9 Mr. Smith: -- and, Your Honor, this is
10 on page 35 through 37 of the deposition --

11 Q. -- while lifting a case of Aquafina --

12 Commissioner Wilkerson: Which
13 deposition?

14 Mr. Smith: -- the first deposition,
15 Your Honor. I apologize --

16 Q. -- while lifting a case of Aquafina in the
17 backroom in the backroom of a Walmart, correct?

18 A. Yes, sir.

19 Q. Okay. Again, you didn't allege that to the
20 1-800-JOB-HURT operator on May 9th, 2014 --

21 A. That was --

22 Q. -- correct?

23 A. -- no, sir. Because that was the first time I've
24 ever actually called the 1-800-JOB-HURT; I didn't quite
25 understand what I was supposed to do.

- 1 Q. But you called her on this same day that you're
2 alleging you injured yourself today and spoke with her?
- 3 A. Yes.
- 4 Q. Okay. So, you're alleging the injury of May 9th,
5 2014, and you spoke with the 1-800-JOB-HURT operator on
6 May 9th, correct?
- 7 A. Correct.
- 8 Q. And you told her you injured yourself on May 2nd,
9 correct?
- 10 A. Yes. That's when I started feeling the pain in my
11 lower back.
- 12 Q. Did you mention on May 9th, 2014 -- because what
13 you told her on cross-exam -- make sure I'm not -- I'm
14 sorry, during direct exam -- you said after lifting
15 this case of Aquafina and it was too much on your back,
16 you felt pain so you called your supervisor. And what
17 did they tell you to do?
- 18 A. They told me to call 1-800-JOB-HURT.
- 19 Q. Okay. And how long did that take from that
20 transition from when you lifting that case of Aquafina
21 till when you called the 1-800-JOB-HURT operator?
- 22 A. Less than, probably, fifteen (15) minutes.
- 23 Q. Okay. So, within that fifteen (15) minutes when
24 you called the 1-800-JOB-HURT operator and you injured
25 yourself on May 9th lifting a case of Aquafina, did you

1 ever mention that to the 1-800-JOB-HURT operator, I
2 just injured myself in the backroom of a Walmart today?

3 A. I'm not sure. Have you got a -- if I could read
4 it real quick?

5 Q. Sure, you can --

6 A. If you've got it.

7 Q. -- read your transcription.

8 A. If I --

9 Q. I also --

10 A. -- you know a transcription --

11 Q. -- have it transcribed.

12 A. -- if I didn't.

13 Q. What?

14 A. I'm not sure. I'll have to read it.

15 Mr. Bacon: Is there a specific place
16 you want to ask him about or just have him
17 read the whole thing over again?

18 Mr. Smith: Well, I -- I didn't want him
19 to -- he said that he really doesn't remember
20 the recording; so, I don't know if he should
21 read its entirety or -- from based on
22 deponent's statement I think he probably
23 should. It's six (6) pages on my
24 transcription.

25 Mr. Bacon: Ask him what you want; there

1 is some follow up that can clarify it.

2 Mr. Smith: I'm not -- at this point I'm
3 in a rut because I need to know within that
4 fifteen (15) minute timeframe did he report
5 to the 1-800-JOB-HURT operator the same day
6 he is alleging his date of accident is May
7 9th and he called the JOB-HURT operator on
8 May 9th, did you say I lifted a case of
9 Aquafina at the Walmart.

10 Commissioner Wilkerson: Let me ask a
11 question while he is reading it. Is there
12 any documentation in the recorded statement
13 of what day it was taken?

14 Mr. Bacon: I think it's stipulated to
15 its May the 9th.

16 Commissioner Wilkerson: Okay. Because
17 I -- there's nothing in here.

18 Mr. Bacon: Right.

19 Commissioner Wilkerson: It doesn't say
20 anything in here.

21 Mr. Bacon: It --

22 Commissioner Wilkerson: Are you
23 stipulating?

24 Mr. Smith: Yes.

25 Commissioner Wilkerson: Okay.

1 Mr. Smith: And I -- I -- I believe when
2 you listen to the recording, Your Honor, it
3 will say that --

4 Commissioner Wilkerson: I don't have
5 the recording.

6 Mr. Smith: -- oh, I forgot to hand
7 those up to you; I apologize.

8 Commissioner Wilkerson: I'm not sure
9 why I need to listen to the recording if it's
10 verbatim.

11 Mr. Smith: I -- did you not want these
12 three (3) records I have of it?

13 Commissioner Wilkerson: Oh, I don't
14 know. I just -- it's whatever you want to
15 submit.

16 Mr. Smith: I didn't know what Your
17 Honor's preferences were, rather reading or
18 listening it to yourself; so, I -- I brought
19 a copy.

20 Commissioner Wilkerson: I usually read
21 them because --

22 Mr. Smith: And that -- the Publix is
23 just showing he wasn't in the backroom when
24 he allegedly -- he wasn't there when he
25 called the 1-800-JOB-HURT operator on May

1 2nd. And the second recording is just the
2 1-800-JOB-HURT call while he's speaking with
3 the operator.

4 Q. So, Mr. Wikel, my question to you is, after now
5 reading the transcript, did you on May 9th, when you
6 allegedly injured yourself lifting a case of Aquafina,
7 do you ever mention that to the JOB-HURT operator
8 saying that -- that you had the call; do you see it
9 anywhere in the transcription?

10 A. No, sir. I don't see it anywhere in the
11 transcription.

12 Q. Okay. And you also told her you were at a Publix
13 and you weren't at a Walmart?

14 A. When I got -- I started feeling the back pain was
15 at a Publix --

16 Q. Okay. But --

17 A. -- that's what I told her.

18 Q. -- when -- so, fifteen (15) minutes transpired
19 between you lifting that case of Aquafina in the back
20 in the -- at Walmart and when you called the
21 1-800-JOB-HURT operator, correct?

22 A. Yes, sir.

23 Q. Okay. And you told the JOB-HURT operator that you
24 injured yourself at a Publix on May 2nd; isn't that
25 correct?

1 Mr. Bacon: Can you point him to a
2 specific line?

3 Mr. Smith: I don't want to direct him.
4 Now, he can review the entire transcript.

5 Commissioner Wilkerson: I tell you
6 what; let's take the next case. If you all
7 needed to all this reading you needed to do
8 it way before now. So, we're going to stop;
9 we're way past time. If we're going -- I'm
10 not taking time at a hearing for people to
11 read stuff. I'll get you back in here where
12 we can. Thank you all.

13 Mr. Smith: Thank you, Your Honor.

14 (Off The Record at 11:43 A.M.)

15 (On The Record at 11:55 A.M.)

16 Commissioner Wilkerson: All right. Are
17 you ready?

18 Mr. Bacon: I'm sorry. I was trying to
19 get everything out quickly.

20 Commissioner Wilkerson: I understand.
21 All right, please.

22 Mr. Smith: Thank you, Your Honor.

23 CROSS-EXAMINATION (RESUMED)

24 By Mr. Smith:

25 Q. I believe, Mr. Wikel, when we went off the record

1 we'd -- we had established that you had called the
2 1-800-JOB-HURT operator on May 9th, 2014, correct?

3 A. Yes, sir.

4 Q. And you told your attorney during direct
5 examination that you injured yourself on May 9th, 2014,
6 while lifting a case of Aquafina in the back of a
7 Walmart; is that correct?

8 A. Yes, sir.

9 Q. Have you had a chance to review the transcript
10 from the 1-800-JOB-HURT call to refresh your
11 recollection?

12 A. Yes, sir.

13 Q. Okay. Did you ever mention to the 1-800-JOB-HURT
14 operator that you injured yourself on May 9th, 2014?

15 A. Yes, sir. On line 8.

16 Q. You injured yourself on May 9th, 2014?

17 A. When I called.

18 Commissioner Wilkerson: What page? He
19 said page -- did he say a page?

20 Mr. Smith: He said -- I think he said
21 page 9. What --

22 Witness: Page 5.

23 Commissioner Wilkerson: Page 5. I'm
24 sorry, page what?

25 Witness: Page 5.

1 Commissioner Wilkerson: 5, yes, sir.

2 Page 5, line 9, is all I heard.

3 Witness: Line 8.

4 Commissioner Wilkerson: Line 8, I'm
5 sorry.

6 Witness: Do -- do you want me to read
7 that or --

8 Mr. Smith: -- can we work off of the
9 same transcription or do you have an extra
10 copy, Tom?

11 Mr. Bacon: I do not. The Commissioner
12 has the original and that's the only copy I
13 have.

14 Commissioner Wilkerson: So, hold on.
15 So, we've got -- I'm going to give you page
16 5, line 8. And it says, Answer: I worked a
17 couple of hours today and told them I wasn't
18 going to be able to do it. My back was
19 killing me too bad and they told me I had to
20 call y'all, so. That's through line 10.

21 Mr. Smith: Oh, okay.

22 Q. So, is it your position today that you told her
23 that you injured yourself on May 9th, 2014?

24 A. Well, I -- I reported that I was hurt on May 9.

25 Q. Did you not relate it back to May 2nd, 2014, when

- 1 you spoke with the JOB-HURT operator?
- 2 A. Yes.
- 3 Q. Okay.
- 4 A. Because that's when --
- 5 Q. Did you mention that you hurt yourself with a --
- 6 at a Walmart or at a Publix?
- 7 A. -- I said, I believe a Publix.
- 8 Q. Okay. And did you mention anything about a case
- 9 of Aquafina?
- 10 A. No, sir.
- 11 Q. Okay. And you told her you couldn't exactly
- 12 recall how you injured yourself on May 2nd, 2014,
- 13 correct?
- 14 A. No, sir. That's just when it started hurting.
- 15 Q. Could you give her a specific time or event that
- 16 occurred on May 2nd, 2014?
- 17 A. No, sir. Even with the timeframe at eleven
- 18 o'clock I said I -- I said I might -- might be -- or I
- 19 believe.
- 20 Q. Okay. So, you worked May 6th, 2014, and as your
- 21 attorney established you -- which is a Tuesday and you
- 22 were off that Wednesday and Thursday, correct, before
- 23 May 9th, 2014?
- 24 A. Yes, sir.
- 25 Q. Okay. And during your recorded statement you told

- 1 the 1-800-JOB-HURT operator that you worked thirteen
2 (13) days in a row, correct?
- 3 A. Yes, sir.
- 4 Q. But that's not entirely accurate because you had
5 the Tuesday -- I'm sorry, the Wednesday and the
6 Thursday off, correct?
- 7 A. Before that time, yes --
- 8 Q. Okay.
- 9 A. -- I did work thirteen (13) days straight.
- 10 Q. And you -- on May 9th, 2014, after Landon told you
11 to call 1-800-JOB-HURT they referred you out to
12 Doctor's Care the same day, correct?
- 13 A. Yes, sir.
- 14 Q. And on -- did you tell the physician at Doctor's
15 Care that you injured yourself while lifting a case of
16 Aquafina on May 9th, that same day, 2014?
- 17 A. I don't recall off the top of my head.
- 18 Q. Okay.
- 19 A. I'm not --
- 20 Q. Could you turn to page 183 of the APA submissions?
21 Let me provide you with them.
- 22 A. -- you said 183?
- 23 Q. Yes. And just tell me if -- after you've had the
24 chance to review it so -- to refresh your recollection.
- 25 A. No, it doesn't mention a Aquafina case.

- 1 Q. Okay. But you went to the doctor May 9th, 2014,
2 the same day you allegedly injured yourself, as you
3 stated today, correct?
- 4 A. Yes, sir.
- 5 Q. And you didn't mention that you injured yourself
6 on May 9th, 2014, at least according to the Doctor's
7 Care note, correct?
- 8 A. I -- no, sir. It shows that I showed up with
9 lower back pain one (1) week after a long shift.
- 10 Q. And could you provide any specific date or -- or
11 accident time to him according to the note?
- 12 A. I don't see where it -- it was put down like that;
13 no, sir.
- 14 Q. Okay. It just said you had just been working long
15 shifts at work?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, we didn't send you to Dr. Strohmeyer,
18 as you established before; Doctor's care sent you to
19 Dr. Strohmeyer, correct?
- 20 A. I believe so; yes, sir.
- 21 Q. It was a denied claim. Do you ever remember
22 anybody at PepsiCo, your employer, say go to Dr.
23 Strohmeyer?
- 24 A. I can't recall that. I remember someone appointed
25 me to go to Dr. Strohmeyer.

- 1 Q. Did you not testify during direct that it was
2 Doctor's Care that recommended you to go to --
- 3 A. I believe it was Doctor's Care --
- 4 Q. -- okay.
- 5 A. -- because they're the only ones I seen before I
6 went to Strohmeier.
- 7 Q. Okay. I would like you to look at APA, 198, page
8 198, which is an accident questionnaire from Dr.
9 Strohmeier.
- 10 A. Okay.
- 11 Q. Is that your signature at the bottom?
- 12 A. Yes, sir.
- 13 Q. Okay. And --
- 14 A. I --
- 15 Q. -- is there --
- 16 A. -- I can't really read it.
- 17 Q. -- or is there not a section on the form that you
18 could have indicated whether it was work related or
19 not?
- 20 A. They told me not to -- because I -- it wasn't
21 actually through Workman's Comp case yet; they told me
22 not to.
- 23 Q. Okay. So, you indicated you did not have a work
24 related injury on that form?
- 25 A. Yes, because they told me don't fill it out that

1 way.

2 Q. Okay. But you knew that was going to be submitted
3 to Blue Cross/Blue Shield.

4 A. Because at that time I was already denied.

5 Q. Okay. But you never mentioned to Blue Cross/Blue
6 Shield that you -- that it was pending a Workers'
7 Compensation claim or they may have a lien or might be
8 entitled to recoupment of benefits; you filed this
9 under your health insurance saying no accident,
10 correct?

11 A. Yes. But that was because I was already
12 instructed by Pepsi-Cola through the -- that I wasn't
13 -- I was already denied for my claim.

14 Q. So, why didn't you tell Blue Cross/Blue Shield I
15 was denied for a claim but I need to go forward with
16 the -- instead of just saying no accident?

17 A. Because that's how the office instructed me to do
18 it?

19 Q. Do you realize that's defrauding the insurance
20 company?

21 Mr. Bacon: Objection.

22 Commissioner Wilkerson: Yes. How --

23 Mr. Bacon: That's asking for a legal
24 conclusion.

25 Commissioner Wilkerson: -- yes.

1 Mr. Smith: Okay.

2 Commissioner Wilkerson: If Pepsi-Cola
3 told him to do it.

4 Mr. Smith: No. He's saying the office
5 staff did it; that's what he is referring to.

6 Commissioner Wilkerson: Pepsi-Cola's
7 office staff or the office staff --

8 Witness: No.

9 Mr. Smith: Dr. Strohmeyer's office --

10 Witness: Dr. Strohmeyer --

11 Mr. Smith: -- Your Honor.

12 Witness: -- because he said to --

13 Commissioner Wilkerson: -- oh, I'm
14 sorry. I'm sorry.

15 Witness: -- yeah.

16 Commissioner Wilkerson: That's -- okay.

17 Dr. Strohmeyer -- okay, I'm sorry.

18 Q. And are you aware of that?

19 A. No.

20 Q. Okay.

21 Commissioner Wilkerson: I'm sorry about
22 that. I wrote it down wrong.

23 Q. And during your deposition you testified under
24 oath that you never saw a medical care provider for any
25 kind of back pain in the past; is that correct?

1 A. That I could recall; yes, sir.

2 Q. Okay. But now I've already submitted the Beaufort
3 Memorial Hospital record with that -- your attorney has
4 already gone over on November 8th, 2008, where you were
5 having sharp, shooting pains down your left leg and
6 lower back for two (2) weeks, correct?

7 A. If that's what's on the documentation, yeah.

8 Q. Did you review the medical record when he showed
9 it to you?

10 A. Yes.

11 Q. Okay. And those are the exact same symptoms Dr.
12 Strohmeier was treating you for, correct?

13 A. Yes. Six (6) years later, yes.

14 Q. And you never told me about that during your
15 deposition, did you?

16 A. I didn't remember that at all, sir.

17 Q. Okay. And then, you were also seen at Beaufort
18 Memorial Hospital on July 21st, 2011 -- and if you'd
19 like to refresh your recollection its page 175 of the
20 APAs -- with a ten (10) out of ten (10) complaint of
21 severity of lower back pain.

22 Mr. Bacon: What page?

23 Mr. Smith: 175.

24 A. No, I can -- the one I've got I can't even read,
25 really.

1 Mr. Bacon: And where does it say low
2 back pain?

3 Mr. Smith: It says low back pain --
4 he's got my copy; I've got it highlighted
5 there.

6 A. It's -- it just says severe.

7 Q. Severe ten (10) out of ten (10). And then at the
8 top -- the top of it here it says presents today --
9 here -- it says mid-back at the end of the first
10 sentence?

11 A. Uh-huh.

12 Q. Do you agree with that?

13 A. Yes, sir. That's mid-back though.

14 Q. Okay. And -- but I asked you had you ever been
15 treated for any symptoms with your back or seen a
16 medical care provider in your deposition, correct?

17 A. Yes, sir. But I didn't recall these two (2).

18 Q. Okay. Did you have -- ever have a conversation
19 with Landon Papay two (2) weeks prior to your alleged
20 date of accident on May 9th, 2014, in which you told
21 him you had been treated by a doctor in the past and
22 you knew you had two (2) slipped disks in your back?

23 A. No, sir. Like I told you before, I wasn't able to
24 recall that conversation.

25 Q. So, you don't recall whether or not you had it or

- 1 not?
- 2 A. Yes, sir.
- 3 Q. Okay. And you like Landon Papay, correct?
- 4 A. Yes. He was a all right manager for me.
- 5 Q. You don't know of any reason why he'd have to lie?
- 6 A. No, sir.
- 7 Q. Now, the interesting fact is that you saw Doctor's
8 Care on May 9th and May 16th of 2014, correct?
- 9 A. If that's in the documentation; yes, sir.
- 10 Q. And then they placed you on a ten (10) pound
11 lifting restriction, correct?
- 12 A. Yes, sir.
- 13 Q. Then on May 10th, during those two (2) visits, you
14 go and fill out an application at Walmart saying you're
15 ready, willing and able to work evening, nights, Monday
16 through Sunday; isn't that correct?
- 17 A. I believe so; yes, sir. That shows on the paper.
- 18 Q. And during your deposition you also told me that
19 you had never injured yourself outside of working for
20 PepsiCo; isn't that correct?
- 21 A. Yes, sir. Where I needed to treat -- seek medical
22 condition -- medical treatment but I didn't recall
23 those two (2) that you presented me.
- 24 Q. Okay. But you did injure yourself while working
25 at the Golden Corral when you were trying to lift

- 1 something heavy up to the roof?
- 2 A. Apparently, sir.
- 3 Q. At page 171?
- 4 A. Yes, sir --
- 5 Q. Okay.
- 6 A. -- apparently.
- 7 Q. And you didn't mention that to me at the
8 deposition, correct?
- 9 A. I didn't recall that at all, sir.
- 10 Q. Now, we -- we talked earlier about the Dollar
11 General and your -- your employment at the Dollar
12 General and the Golden Corral, correct?
- 13 A. Yes, sir.
- 14 Q. You were a manager at the Golden Corral, correct?
- 15 A. Yes, sir.
- 16 Q. And you would supervise up to forty (40)
17 employees?
- 18 A. Yes, sir.
- 19 Q. And you were at the -- a manager at the Dollar
20 General, a key manager, correct?
- 21 A. I started as a key manager; yes, sir.
- 22 Q. Okay. And you were responsible for people
23 reporting work related injuries to you as a manager,
24 correct?
- 25 A. Not at that level, sir.

1 Q. Well, how about at the Golden Corral?

2 A. No, sir.

3 Q. Okay. So -- but you did work at the Dollar
4 General, as we established, and did -- why did you
5 leave the Dollar General?

6 A. I left Dollar General because I was being wrongly
7 accused of a incident.

8 Q. Okay. Didn't you tell me during the course of
9 your deposition that you left the Dollar General after
10 the investigation?

11 A. Yes, sir.

12 Q. Okay. Are you aware at page 200 that the record
13 from the Dollar General indicates in the check mark
14 that you left after the investigation began and was
15 ongoing?

16 Commissioner Wilkerson: I can't read
17 that.

18 Mr. Smith: See that check mark right
19 there?

20 Commissioner Wilkerson: No. Well, I
21 don't know what all this is.

22 Mr. Smith: It's --

23 Commissioner Wilkerson: I don't -- page
24 200 is unreadable. I can't read that; I
25 don't know what that is.

1 Mr. Smith: -- Your Honor, I was just
2 asking if you'd look at this entry right
3 there (indicating) there is a check mark.

4 Commissioner Wilkerson: There is a
5 check where it says resigned during
6 investigation by a Deborah Turner. There is
7 no signature by anybody on that page. It
8 says personnel action -- I don't know what --
9 it says Dollar General at the top; I -- I can
10 read nothing on the left hand side.

11 Mr. Smith: Thank you, Your Honor.

12 Q. And so, would you agree that you left during the
13 investigation or not?

14 A. My understanding that I was cleared and they put
15 me -- because I was on suspension without pay; they
16 told me to go on suspension without pay.

17 Q. And then, you haven't worked for PepsiCo since
18 June of 2014, correct?

19 A. Yes, sir.

20 Q. And then, in November of 2014, you told Dr.
21 Strohmeyer you're a hundred percent (100%) better,
22 correct?

23 A. For my pain in my back was gone; yes, sir.

24 Q. Okay. And then, the only person you've worked for
25 since you went -- returned back to Dr. Strohmeyer in

1 February 23rd, 2015, was Walmart?

2 A. Yes, sir.

3 Mr. Smith: I have no further questions,
4 Your Honor.

5 Commissioner Wilkerson: Anything on
6 redirect?

7 Mr. Smith: I just have one (1) witness
8 to call.

9 Commissioner Wilkerson: One (1) what?

10 Mr. Smith: I just have one (1) witness
11 to call.

12 REDIRECT EXAMINATION

13 By Mr. Bacon:

14 Q. Mr. Wikel, the 1-800-JOB-HURT transcript that was
15 presented, when you called that 1-800-JOB-HURT that was
16 what you were instructed to do, correct?

17 A. Yes.

18 Q. Okay. And so, at that point you were notifying
19 them that you had injured your back?

20 A. Yes.

21 Q. Okay. And I think your testimony earlier was that
22 you told them that it started around May the 2nd; is
23 that accurate?

24 A. Yes.

25 Q. Okay. And on May the 2nd were you working at a

- 1 Publix?
- 2 A. Yes.
- 3 Q. Okay.
- 4 A. I believe so.
- 5 Q. And so, that's when the back pain started to you?
- 6 A. Yes.
- 7 Q. To the best of your knowledge, that's when it
- 8 began?
- 9 A. Yes, sir.
- 10 Q. Okay. And so, in that 1-800-JOB-HURT, though, you
- 11 did indicate to the lady that you were working that
- 12 morning and weren't able to complete your job duties
- 13 due to pain?
- 14 A. Yes, sir.
- 15 Q. Okay. And so, at that point -- after that, you
- 16 were referred to Doctor's Care?
- 17 A. Yes, sir.
- 18 Q. Okay. And then, Doctor's Care is who referred you
- 19 to Dr. Strohmeyer?
- 20 A. Yes, sir.
- 21 Q. Okay. Now, are you here today asking the
- 22 Commissioner to find your May 9th, 2014 job injury
- 23 compensable or covered under Workers' Compensation?
- 24 A. Yes, sir.
- 25 Q. Okay. And the treatment that you have received,

1 including surgery with Dr. Strohmeier?

2 A. Yes, sir.

3 Q. And the injections with Dr. Batson?

4 A. Yes, sir.

5 Q. And the physical therapy that you received?

6 A. Yes, sir.

7 Q. Okay. And you -- I think we covered it earlier,

8 but the dates that you were out of work due to the

9 injury were April 2nd, the date of your surgery --

10 Mr. Smith: Your Honor, objection.

11 Outside the scope of cross; I didn't open the
12 door for that.

13 Commissioner Wilkerson: Okay. Well,
14 you can just tell me at the end because I
15 don't know what days TTD --

16 Mr. Bacon: Okay.

17 Commissioner Wilkerson: -- is
18 available, yes. I'll let him do that at the
19 end.

20 Mr. Bacon: Okay. All right, Kevin,
21 those are all the questions I have. Please
22 answer any additional that Mr. Smith or the
23 Commissioner may have.

24 Mr. Smith: Okay.

25 Commissioner Wilkerson: Mr. Smith.

1 A. I don't -- it transpired over the time I was
2 working. There was no -- I can't remember exactly what
3 day, what item exactly hurt me --

4 Q. So, you cannot recall --

5 A. -- but I remember on May 9th when I picked up a
6 Aquafina -- a pack of Aquafina Nice and that's when I
7 gave in --

8 Q. -- do you think that was the mechanism --

9 A. -- I couldn't deal with the pain.

10 Q. -- mechanism of injury or do you think it was
11 working for the thirteen (13) days prior due to
12 repetitive lifting?

13 A. It was probably through the whole time.

14 Q. Probably due to repetitive lifting?

15 A. Yes.

16 Mr. Smith: I have no further, Your
17 Honor.

18 Mr. Bacon: Nothing, Commissioner,
19 unless you have any questions for Mr. Wikel.

20 Commissioner Wilkerson: I don't think
21 so. You may be excused.

22 Mr. Wikel: All right. Thank you, sir.

23 Commissioner Wilkerson: Thank you. Is
24 the person you're calling, is he --

25 Mr. Smith: I have him sequestered, Your

1 Honor. He's in the --

2 Commissioner Wilkerson: -- what --

3 Mr. Smith: -- he's Mr. Landon Papay.

4 Commissioner Wilkerson: -- okay. And
5 what is he going to testify to?

6 Mr. Smith: He's going to testify that
7 Kevin had told him that he had prior two (2)
8 slipped disks on May 2nd.

9 Mr. Bacon: Which I'm not sure what the
10 medical basis for this is going to be; so,
11 this will be entered as --

12 Mr. Smith: Well, obviously, his
13 credibility is at issue. He has alleged --

14 Mr. Bacon: Kevin, you can sit -- sit
15 right there.

16 Mr. Smith: -- May 6th, May 9th.

17 Commissioner Wilkerson: I understand.

18 Mr. Smith: And on two (2) other --
19 three (3) other occasions he said --

20 Commissioner Wilkerson: How long do you
21 think this witness will take?

22 Mr. Smith: -- less than three (3)
23 minutes.

24 Commissioner Wilkerson: Okay. I'll
25 give you all ten (10), a total of ten (10).

1 Go ahead.

2 (Off The Record)

3 Mr. Smith: Your Honor, this is Mr.
4 Landon Papay. If you could, please, sit over
5 there by the microphone.

6 Commissioner Wilkerson: Mr. Papay, if
7 you'll have a seat here and spell your last
8 name for the Court Reporter --

9 Court Reporter: Thank you.

10 Commissioner Wilkerson: -- she will
11 need that once we get you started.

12 Mr. Papay: Okay.

13 Commissioner Wilkerson: Go ahead and
14 raise your right hand.

15 Whereupon;

16 Landon Papay, being duly sworn and cautioned to speak
17 the truth, the whole truth and nothing but the truth,
18 testified as follows:

19 Court Reporter: Please state and spell
20 your name for the record.

21 Witness: Landon Papay, P-A-P-A-Y.

22 Court Reporter: Thank you.

23 Witness: You're welcome.

24 DIRECT EXAMINATION

25 By Mr. Smith:

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- 1 Q. Could you provide the Court with your current
2 address, please?
- 3 A. Home address?
- 4 Q. Yes, sir.
- 5 A. 341 Tucker Drive, Charleston, South Carolina,
6 29414.
- 7 Q. And where are you currently employed?
- 8 A. Pepsi Beverage Company.
- 9 Q. And how long have you been employed there?
- 10 A. With -- almost fourteen (14) years.
- 11 Q. And what's your current position?
- 12 A. Unit sales manager.
- 13 Q. Have you ever had a -- a back injury at PepsiCo?
- 14 A. I have.
- 15 Q. Was it found compensable or not?
- 16 A. I'm sorry?
- 17 Q. Did -- was it denied or accepted?
- 18 A. Accepted.
- 19 Q. Did you immediately report it to your supervisor?
- 20 A. I did.
- 21 Q. Do you know Kevin Wikel?
- 22 A. I do.
- 23 Q. Are you aware that Mr. Wikel has alleged that he's
24 injured himself on May 9th, 2014, while lifting a case
25 of Aquafina at a Walmart --

1 A. I am.

2 Q. -- at least during oral -- oral arguments by his
3 attorney?

4 A. Yes.

5 Q. Okay. Did you ever hear about a work related
6 accident on May 9th, 2014, by Mr. Wikel?

7 A. If I remember correctly, he either called myself
8 or Eric Smith, his direct supervisor, and stated that
9 his back -- he could not -- he could no longer work
10 that day; his back was hurting him too -- at that point
11 in time too much where he could not work. He -- I
12 believe, it was either Eric -- either Eric Smith or
13 myself that told him at that point in time to call the
14 1-800-JOB-HURT number, for him to report it and then to
15 go to see the doctor.

16 Q. Okay. And do you know where he was on May 9th,
17 2014?

18 A. I -- I'd have to look at his sheets and see
19 exactly what day and what -- what store he was at.

20 Q. Do you recall how or -- he told you he injured
21 himself?

22 A. I believe he said he was lifting a case of
23 product.

24 Q. Okay. Did he say on that day or any particular
25 day or --

1 A. He said it was on that -- on that day -- that it
2 was that morning, yes.

3 Q. -- lifted something that morning?

4 A. Uh-huh.

5 Q. You just have to answer verbally yes or no.

6 A. Yes. Sorry.

7 Q. Okay. Prior to this -- that date, did Kevin ever
8 report to you that he ever had any prior problems with
9 his back?

10 A. Yes. Kevin had actually come to me previous to
11 that because I -- well, we had talked about back issues
12 before since he knew that I had had back surgery and he
13 had stated at that point in time that he had a back
14 injury as -- as well. He had stated that he had two
15 (2) slipped disks.

16 Q. Can we clarify it for the Court's sake, when did
17 you have this conversation?

18 A. Prior to that date, several weeks before that.

19 Q. Several weeks before which date, sir?

20 A. May 9th.

21 Q. May 9th?

22 A. Yes.

23 Q. Okay.

24 A. We had -- we were having a conversation outside, I
25 believe it was after one of our -- our town hall

1 meetings. We were outside the facility talking and I
2 -- he was talking about his back was hurting, and I
3 asked him at that point in time, did you hurt it here,
4 and he said that he had not, that he had hurt it at a
5 previous job and that he had two (2) slipped disks.
6 And -- and that -- that was pretty much the -- he -- we
7 had talked about different techniques on trying to get
8 it -- how to get your back better; make it feel better
9 when you're driving in the car and different things
10 like that.

11 Q. So, two (2) weeks prior to this date of alleged
12 accident he was complaining of back pain to you?

13 A. At least two (2) weeks, yes. But I -- I had -- I
14 had asked him if he had hurt himself at Pepsi because,
15 like, one of my first things of doing is to ensure my
16 employees are safe and if they do have a work related
17 accident to call it in immediately. And I had asked
18 him if he was able to do his job and he said that, yes,
19 he was; that it wasn't anything that was prohibiting
20 him from doing his job.

21 Q. Okay. So, did he tell you it wasn't work related
22 in the conversation you had two (2) weeks prior to May
23 9th?

24 A. Correct. It was not work related.

25 Q. Okay. Thank you.

1 Mr. Smith: That's all I have.

2 Mr. Bacon: I just want to clarify one
3 thing.

4 CROSS-EXAMINATION

5 By Mr. Bacon:

6 Q. You indicated that on May 9th, 2014, he called you
7 that morning and indicated that he was lifting
8 something that morning and hurt himself; is that your
9 testimony?

10 A. He -- I cannot recall exactly but he had reported
11 in that morning, I know it was early morning because we
12 had to get someone to cover the -- the remainder of --
13 of his route, but he was -- he had said that he had
14 hurt it that morning.

15 Q. Okay. And that was May the 9th?

16 A. Yes.

17 Q. Okay.

18 Mr. Bacon: Those are all the questions
19 I have. Thank you.

20 Mr. Smith: I have no further questions.

21 Commissioner Wilkerson: Let me ask a
22 question.

23 CROSS-EXAMINATION

24 By Commissioner Wilkerson:

25 Q. I don't know that it matters but --

- 1 A. Yes, sir.
- 2 Q. -- would you work with two (2) slipped disks?
- 3 A. I -- I don't know if I could, sir. My back injury
4 was -- was different but I know it was --
- 5 Q. But your testimony is you're after the employee's
6 safety; is that correct?
- 7 A. -- uh-huh.
- 8 Q. So, if an employee tells you they have two (2)
9 slipped disks you would allow them to continue to work?
- 10 A. He said it was not diagnosed at that point in
11 time. And I asked him if he --
- 12 Q. So, there was no medical opinion you had; it's
13 just what -- it was not diagnosed as a slipped disk?
- 14 A. -- correct.
- 15 Q. He felt it was a slipped disk, based on what you
16 believe he said?
- 17 A. Correct. After -- and after he had his MRI, I
18 believe he had his -- an MRI related to this, he had
19 told me it was not a slipped disk.
- 20 Q. Okay. All right. That's fine.
- 21 A. But I had asked him if he could perform the job
22 duties required for it.
- 23 Q. Sure.
- 24 A. Because I know there's limitations on what we can
25 and can't do within the Americans With Disabilities

1 Act.

2 Q. Okay.

3 Mr. Smith: I just have --

4 REDIRECT EXAMINATION

5 By Mr. Smith:

6 Q. -- did he tell you he was able to physically
7 perform all aspects of his position when he had this
8 conversation with you telling him about the slipped
9 disks --

10 A. Yes.

11 Q. -- did you enquire about that?

12 A. I did.

13 Q. And you -- and can you please tell the Court what
14 you stated to Mr. Wikel?

15 A. My -- I asked him if he was able to perform his
16 duties with Pepsi; he said he was but he would -- he
17 was looking towards to getting a -- a lighter job,
18 something that didn't require as much lifting.

19 Q. Were you aware that he applied for a position at
20 Walmart on May 10th?

21 A. I was not. I was not aware until we saw him at
22 the store.

23 Commissioner Wilkerson: Okay.

24 Mr. Smith: Thank you, Your Honor.

25 That's all I have.

1 Mr. Bacon: Nothing in follow up,
2 Commissioner.

3 Commissioner Wilkerson: Thank you, sir.
4 You may step down.

5 Mr. Papay: Okay.

6 Commissioner Wilkerson: He can go back
7 to work, I guess, right?

8 Mr. Smith: Yes.

9 Mr. Papay: Can I go?

10 Mr. Smith: Yes, sure.

11 Commissioner Wilkerson: Yes, you're
12 done. Okay.

13 Mr. Smith: And I'll give you a call.
14 Thanks, Landon.

15 Mr. Papay: Okay.

16 Commissioner Wilkerson: No other
17 witnesses, I'm guessing?

18 Mr. Smith: None, Your Honor.

19 Commissioner Wilkerson: Okay. Thank
20 you. This concludes the hearing. Let me
21 meet with the attorneys for a few minutes. I
22 think everybody for being here.

23 (THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT

24 12:23 P.M.)

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF BEAUFORT)

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Kevin M. Wikel, vs. PC Metro Bottling;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 72 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 4th Day of January, 2015.

Gloria G. Davis _____
Gloria G. Davis
Notary Public for South Carolina
My Commission Expires 12/21/21

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Appellate Case No.: 2016-001398
WCC Number: 1405219

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SC Court of Appeals

Kevin Wikel, Employee, Claimant,Respondent,

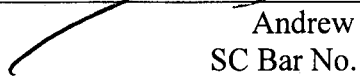
v.

PC Metro Bottling, Employer, and Indemnity Insurance Co. of NA, Carrier,Appellants.

CERTIFICATE OF COUNSEL

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

October 12th, 2016


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Appellate Case No.: 2016-001398
WCC Number: 1405219

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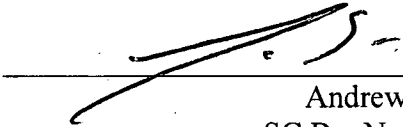
v.

PC Metro Bottling, Employer, and Indemnity Insurance Co. of NA, Carrier,Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Supplemental Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifies and sensitive information.

October 17th, 2016


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