

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

NOV 07 2016

SC Court of Appeals

WCC Case No.: 1316470
Appellate Case No.: 2016-000617

Elias Reyna Respondent,

v.

Fenerly Inc. / Tony's Place of Sumter LLC, Employer, and
Foremost Signature Insurance Co., Carrier..... Appellants.

RECORD ON APPEAL

William R. Harbison, S.C. Bar 15041
Laura W. Jordan, S.C. Bar 100374
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Tel: 803.779.1833
Fax: 803.779.1767

Brett H. Bayne
MCANGUS GOUDELOCK &
COURIE, LLC
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th floor
(29201)
Columbia, South Carolina (29211)
Tel: 803.779.2300
Fax: 803.748.0526

ATTORNEYS FOR APPELLANTS

Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

Stephen B. Samuels, Esquire
Samuels Law Firm
1320 Richland Street
Columbia, South Carolina 29201

ATTORNEYS FOR RESPONDENT

INDEX

Orders

Order Permitting Evidence – February 13, 2015	1
Decision and Order of the Single Commissioner, June 15, 2015	3
Decision and Order of the Appellate Panel, January 12, 2016	17
Appellate Panel Denial of Motion to Alter or Amend Judgment – February 22, 2016	30

Pleadings and Forms

Form 50 – November 20, 2013	31
Amended Form 50 – December 11, 2013	34
Employer/Carrier Denial Letter and Form 19 – January 30, 2014	36
Form 51 – September 25, 2014	38
Form 30 – July 2, 2015	41

Motions and Supporting Memoranda

Employer/Carrier Motion to Bifurcate – December 5, 2014	44
Employer/Carrier Post-Hearing Motion Renewal/To Reconsider– January 19, 2015	54
Employer/Carrier Initial Appellate Brief – August 14, 2015	59
Employer/Carrier Motion to Alter or Amend Judgment, January 22, 2016	91

Transcript of the Deposition of Claimant Elias Reyna, November 20, 2014¹

p. 32, ll. 20-21	95
p. 33, ll. 12-14	96
p. 37, l. 24 - p. 38, l.	97

Transcript of the Deposition of Panagiotis Peidis, November 20, 2014²

p. 6, ll. 17 - p. 7, l. 18	99
p. 8, ll. 9-25	101
p. 8, l. 11- p. 9, l. 21	101
p. 9, ll. 3-8	102
pp. 10-23	103
p. 20, ll. 12-23	113
p. 20, l. 25—p. 21, l. 11	113
p. 22, ll. 2-7	115
p. 26, l. 15	117
p. 27, l. 25	117a
p. 31, ll. 18-19	118

Transcript of the Deposition of Byron Kinney, December 3, 2014³

p. 5, ll. 16-24	119
p. 6, ll. 3-19	120

¹ Submitted into evidence at Single Commissioner Hearing of December 18, 2014.

² Submitted into evidence at Single Commissioner Hearing of December 18, 2014.

³ Submitted into evidence at Single Commissioner Hearing of December 18, 2014, and as Claimaint's APA Exhibit No. 5.

p. 9, l. 18 - p. 13, l. 12	121
pp. 12-13	124

Transcript of the Hearing before the South Carolina Workers' Compensation Commission (Single Commissioner), December 18, 2014

pp. 7-12	126
pp. 23-31	132
p. 25, l. 11- p. 27, l. 18	134
p. 29, ll. 18-23	138
p. 44, ll. 6-13	141
p. 45	142
p. 47.....	143

Transcript of the Hearing before the South Carolina Workers' Compensation Commission (Appellate Panel), September 22, 2015

p. 5, l. 15 - p. 12, l. 12.....	144
p. 17, ll. 4-5	152
p. 20, ll. 9-10	153
p. 22, l. 14- p. 23, l. 9	154

Other Materials

Foremost Workers Compensation and Employers Liability Insurance Policy, April 14, 2013.....	156
--	-----

Claimant's APA Exhibits, including:

- Articles of Organization - Limited Liability Company-Domestic – Tony's Place of Sumter LLC, April 4, 2012.....187
- SC Secretary of State, Certificate of Existence, Tony's Place of Sumter, LLC, April 18, 2012.....189
- Business Purchase Agreement, Tony's Place of Sumter, LLC, April 24, 2012, also Exhibit No. 2 to Deposition of Claimant (Elias Reyna), November 20, 2014.....190

Payroll Records (Exhibit 1 to the Single Commissioner Prehearing Brief).....	197
Incident Report/Form 12A First Report of Injury (Exhibit 7).....	203
Corporate Officer Notice to Reject form (Reyna).....	205
Claimant's Amended Prehearing Brief with Addendum.....	206

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. 1316470:

Elias Reyna,	Employee/Claimant,	)	
		)	
VS.		)	
		)	
Fenerly, Inc. d/b/a Tony's Place of Sumter		)	
		)	
	Employer,	)	
		)	INTERIM ORDER
AND		)	
		)	
Foremost Signature Insurance Company c/o,		)	
Farmers Business Insurance,		)	
	Carrier,	)	
		)	
	<u>Defendants,</u>	)	

A hearing was held in the above-referenced claim on December 18, 2014 before the undersigned. Prior to the hearing, counsel for Defendants filed a written Motion to Bifurcate the question of whether the Commission had jurisdiction over the claim from the actual hearing on the merits of Claimant's Form 50 Request for Hearing. This Motion is DENIED.

At the hearing, counsel for Defendants made two additional oral Motions: (1) Motion to Postpone the hearing for additional discover pursuant to Reg. 67-215(A)(5) and, alternatively, a Motion to leave the record open in order to obtain Claimant's SLED record as well as an independent handwriting analysis and/or to take the deposition of Claimant's handwriting expert. Claimant's Motion to Postpone was DENIED and Claimant's Motion to leave the record open was taken under advisement.

On January 19, 2015, Defendants filed a Post Hearing Motion Renewal/Motion to Reconsider, which was timely responded to by counsel for the Claimant on January 26, 2015. Based upon the new Motion as well as the Motion that was taken under advisement, the undersigned hereby finds as follows:

1. Defendants shall have 45 days from the date of this Order to submit Claimant's SLED record, submit an independent handwriting analysis and/or depose Claimant's handwriting expert, Marvin H. Dawson and submit the deposition transcript to this Commission.
2. This record will close on the 45th day following this Interim Order and no further requests, submissions, or Motions will be considered with the exception of additional time to depose the Defendants' handwriting expert, if requested by the Claimant.

AND IT IS SO ORDERED.


Commissioner Alpha Tauler


Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
February 13, 2015

By: Tamara Morris, Administrative Assistant to Commissioner James

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1316470

ELIAS REYNA,

Employee/Claimant

FENERLY INC./TONYS PLACE OF
SUMTER,

Employer and

FOREMOST SIGNATURE INSURANCE
COMPANY,

Carrier/Defendants.

DECISION AND ORDER

APPEARANCES:

Claimant represented by Mark R. Calhoun
Defendants represented by Barret Burley

HEARING:

Held in Yemmessee, South Carolina on December 18, 2014

PURPOSE OF HEARING: To determine issues as set forth in Claimant's Motion to
Form 50 and any other issues, which may timely come
before the Commissioner.

OPINION AND AWARD: Commissioner Aisha Taylor

FILED:

June 15, 2015

STIPULATIONS

At the call of the case, the parties agreed to the following:

1. The purpose of the hearing was to determine all issues in dispute as set forth
in the hearing notice and any other issues, which may timely come before the
Commissioner.

2. The Claimant and Defendants are subject to and bound by the provisions of the South Carolina Workers Compensation Act.
3. The notice of the hearing was timely and properly served upon all parties of interest.
4. All parties agreed that jurisdiction and venue was proper.
5. The Claimant seeks benefits under the South Carolina Workers Compensation Act based upon an alleged accidental injury that occurred on or about September 27, 2013.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following medical and expert witness reports were submitted into evidence.

Claimant's

APA No. 1	Tuomey Regional Medical Center	9/27/2013	24 pgs.
APA No. 2	Richland Memorial Hospital	9/28 to 12/11/2013	272 pgs.
APA No. 3	Report of Dr. Heath Stewart	9/28 to 10/21/2013	20 pgs.
APA No. 4	Report Dr. Chistopher Watson	9/28 to 11/20/2013	6 pgs.
APA No. 5	Report of Dr. Paul Diegidio	11/26/13 to 9/2/2014	6pgs.
APA No. 6	Report of Dr. Randolph Waid	2/20/14	6 pgs.
APA No. 7	Report of Marvin Dawson Jr.	11/21/2014	6 pgs.

Defendant's

APA No. 1 SLED NCIC Report

1pgs.

APA No. 2 Report of Verle Truman

4pgs.

STATEMENT OF THE CASE

This is a denied claim. The Claimant injured his head, brain, psyche, eyes, ears/hearing, and left leg when he was assaulted leaving his place of business on September 27, 2013. The Claimant was brutally assaulted and robbed of the business cash deposits upon leaving at closing time. He was assaulted and robbed of the cash deposits upon leaving the business at closing time, suffering multiple blunt trauma force to the skull. The Claimant claims he was a minority owner of the restaurant he was working at on September 27, 2013 and the majority owner Peter Peidis controlled the Claimant's means of work, hours, and salary. The Employer maintains that the South Carolina Worker's Compensation Act does not have jurisdiction over these injuries because the Claimant was not an employee as defined in §42-1-130. The Employer also claims that Tony's Pizza is an LLC and the Claimant was a "business partner" in this LLC who would automatically be excluded from workers compensation coverage. More specifically, the Employer alleges that the Claimant signed a Corporate Officer Notice to Reject Form thereby knowingly and voluntarily excluding himself from workers compensation coverage. The Claimant claims that he not only did not sign this form but was never involved in the process of obtaining workers compensation coverage. This responsibility was relegated to Peter Peidis only.

The Claimant maintains that he is not at maximum medical improvement. He seeks a determination of compensability, average weekly wage and compensation rate.

He also seeks a determination of physical brain damage. The Employer made several motions pre-hearing, including a motion to bifurcate, continue the hearing and leave the record open for more discovery. The Employers discovery motions were to submit a handwriting expert report and a Sled criminal record report for the Claimant. These two motions only were granted by separate Order post hearing.

This hearing was set on the Claimant's Form 50 originally on November 20, 2014. At the Employer's request it was reset to December 9, 2014. Again, at the Employer's request it was continued to December 18, 2014.

EVIDENCE OF THE CASE

Mr. Reyna is a 49-year-old Mexican national who is a legal permanent resident of the United States. He has no education in the United States and a very limited ability to speak, understand, read or write in English. (Hearing Tr. p.24) He is married and supports a wife and two daughters. (Hearing Tr. p.24-25) On September 27 of 2013 Mr. Reyna was assaulted. After closing the business and leaving the building with a bag of deposit money, Mr. Reyna was struck from behind. His next memory was waking up in the hospital and his wife explained to him what had occurred. (Hearing Tr. p.26) He continues to have strong headaches, "cant concentrate very much" and gets "confused a lot". He suffers with memory problems. He cannot hear very well in his right ear which has a "buzzing" sound in it. His eye itches and he sometimes cannot blink with it. He also has pain in his left foot and leg. (Hearing Tr. p.25)

Mr. Reyna has limited ability to remember working at Tony's Pizza as a cook. (Hearing Tr. p.26) He attempted to return to work after the assault but was unable to keep working. He is not capable of returning to work at this time. (Hearing Tr. p.27)

Mr. Reyna was shown the Corporate Officer Notice to Reject Form with his alleged signature on it. He testified that he was not capable of reading this form which is in English. He has never seen the form before and denies his signature is on the form. Mr. Reyna states that the signature on the form is different than his own. (Hearing Tr. p.28) He denied that Peter Peidis ever requested that Mr. Reyna sign the form, or had read the form to him. If Mr. Peidis had requested that Mr. Reyna reject workers compensation insurance coverage, Mr. Reyna would not have agreed to.

He explained that working at a restaurant as a cook is dangerous due to risk of burns and slipping on the floor. He would always want workers compensation coverage. He also never spoke with Peter Peidis' insurance agent, Byron Kinney. Mr. Reyna never met or spoke with Mr. Kinney and has never been to Mr. Kinney's office. (Hearing Tr. p.29) He further explained that he typically discussed all business matters between himself and Mr. Peidis with his wife.

The deposition and affidavit testimony (Exhibit 2,3,5 6) of Peter Peidis and insurance agent Byron Kinney shows that Mr. Peidis handled all business matters for Fenerly Inc. (dba Tonys Pizza) such as securing the workers compensation insurance coverage. The three corporate officers of Fenerly Inc. are Mr. Peidis, his wife, and the Claimant. Mr. Kinney gave Peidis two Corporate Officer Notice to reject forms in his office. Peidis signed his form in the presence of Mr. Kinney. Mr. Kinney gave the other form to Peidis who was to take it to Mr. Reyna to sign. Byron Kinney states that Peidis returned the form to him with Mr. Reyna's signature on it. Kinney has never seen or spoken to Mr. Reyna. This is undisputed. What is disputed between Kinney and Peidis is that Peidis claims he took the form to the Claimant and "told him what it was" but did not

read it to him. Then Peidis claims he left the form with Mr. Reyna and did not return it to Byron Kinney. By affidavit, Kinney says Peidis returned the signed form to him. By deposition, Kinney says the form was returned to him but does not know how. Mr. Reyna denies he ever saw or was told about the form from Peidis or Kinney.

Mr. Reyna believes he has suffered physical brain damage as a result of the assault on September 27, 2013. (Hearing Tr. p.31) He explained that his memory is worse on certain days than others, that it "comes and goes". (Hearing Tr. p.34) He uses his wife primarily to remind him of things that have happened in the past. (Hearing Tr. P.35-36) Mr. Reyna explained that if Peter Peidis had ever requested that he reject workers compensation insurance coverage he would have informed his wife of this request. (Hearing Tr. p.46) Mr. Reyna has a 21-year-old daughter from a prior marriage whom he uses to translate documents for him that are written in English. He used her when he purchased the minority share of Tony's Pizza. (Hearing Tr. p.42) Reyna explained that he had no discussions with his wife on rejecting workers compensation insurance coverage at Tony's Pizza. (Hearing Tr. p.47) The Claimant's wife, Nancy Reyna, did not testify because the parties stipulated that her testimony would be that she and her husband never discussed any exclusion agreements regarding workers compensation coverage at Tony's Pizza.

MEDICAL EVIDENCE

Mr. Reyna was first seen by Tuomey Regional Medical Center on September 28, 2013. The CT scan shows the Claimant has multiple fractures to the skull caused by blunt trauma with a direct blow to the head. Blood was draining from the Claimant's right ear and nose. Mr. Reyna complained of headaches, pain to the right side of his head, and loss

of consciousness until he awoke in the hospital. The hospital describes his symptoms as "severe". He had no memory of the assault. (APA p.1-3) The preliminary radiology report shows that Mr. Reyna had a complex right temporal bone fracture and an intracranial bleed. He also had a nondisplaced fracture of the left skull base. There was a nondisplaced fracture of the right zygoma and a right-sided subdural hematoma. There was also a nondisplaced fracture of the right manible body. (APA p.14-15)

Mr. Reyna was immediately transported to Richland Memorial Hospital. He was again diagnosed with skull fractures and a subdural hematoma by Dr. Christopher Watson. (APA p.26) He is noted to have "substantial right-sided facial nerve palsy with inability to close the right eye". (APA p.28) Mr. Reyna's last consult with Dr. Paul Diegidio documents that the Claimant continues to have severe headaches, facial palsy, pain and loss of hearing on the right side of his head. (APA p.328)

On January 3 and February 10 of 2014, Mr. Reyna was evaluated by Dr. Randolph Waid. Dr. Waid found that Mr. Reyna was in need of neurological and psychiatric/psychological intervention before he could attempt to return to employment activities. (APA p.339) He is not at maximum medical improvement. Dr. Waid states that the Claimant should be re-evaluated after a period of at least one year from the date of the assault for permanency issues. (APA p.338)

Forensic document examiner Marvin Dawson Jr. performed a handwriting examination of the Corporate Officer Notice to Reject Form that Peter Peidis claims Mr. Reyna signed. Mr. Dawson's opinion is that there is a strong reason to believe the 'Elias Reyna' signature on this form is not genuine. Mr. Dawson is the only board-certified forensic document examiner in the State of South Carolina.

FINDINGS OF FACT

Based upon the stipulations of both parties and the evidence produced at this hearing, the undersigned Commissioner makes the following Findings of Fact:

1. It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC. As per the Business Purchase Agreement, the Claimant's only condition of minority ownership was payment of \$42,000.00 pursuant to the terms set forth therein, which was satisfied.
2. I find that in addition to owning a minority share of Tony's Place of Sumter LLC, Mr. Reyna was also an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Annotated Section §42-1-130. The Claimant continued to work as a cook in the kitchen at Tony's Place of Sumter, LLC and also to make nightly bank deposits, which was not a condition of his minority ownership status. The Claimant also received weekly paychecks from which federal and state taxes were withheld. I find these paychecks were paid to the Claimant for the work he performed as an employee of Tony's Place of Sumter, LLC and not the result of profit from the minority ownership business purchase agreement. I find the Employer, Peter Peidis controlled the Claimant's means of employment, hours, income, and all other conditions of employment.

3. I find Mr. Reyna did not waive entitlement to workers compensation benefits as I find he did not sign the Corporate Officer Notice to Reject Form. This finding is based on the preponderance of the evidence as a whole including the following:
- a. Only Peter Peidis signed the Corporate Officer Notice to Reject Form in insurance agent Byron Kinney's office. (Deposition of Peter Peidis and Byron Kinney).
 - b. Peter Peidis took the notice to reject form from his insurance agent Byron Kinney to "talk with his business partner and then decide whether he (Mr. Reyna) wanted to be excluded or not". (Deposition of Byron Kinney p.10 ll. 8-19).
 - c. Insurance agent by Byron Kinney testified in his deposition that the form bearing the name of Elias Reyna was returned to his office, but he did not know who returned the form. Mr. Kinney also stated by affidavit that Peter Peidis returned the form bearing the name of Elias Reyna to his office. (Claimants Exhibit No. 3).
 - d. Neither the majority owner Peter Peidis nor his insurance agent Byron McKinney saw the Claimant sign or deliver the Corporate Officer Notice to Reject Form to Mr. Kinney's office.
 - e. Mr. Reyna testified credibly that he did not sign the form, that the form was written in English and he would have needed a third party to translate it for him. Peter Peidis also testified by deposition and affidavit that the

Claimant could not read the form and Mr. Peidis did not read it to him when he allegedly delivered it. (Deposition and Affidavit of Peter Peidis).

f. I have reviewed the reports from each parties' handwriting experts, Marvin Dawson Jr. and Verle Truman. I have also reviewed the deposition testimony of Marvin Dawson Jr. I give greater weight to the expert opinion of Marvin Dawson, Jr., who is the only Board Certified Forensic Document Examiner in private practice here in the state of South Carolina. In his deposition testimony, Mr. Dawson goes into great detail and analysis in explaining why he ultimately concluded the signature on the Corporate Officer Notice to Reject Form does not belong to the Claimant. I find that Mr. Dawson's report is the only report that focuses on the major differences in the letter structure form of the signatures. In contrast, Mr. Truman's report appears to only look for generic similarities. Verle Truman's report noted there was "no persuasive evidence of authorship". (See Report and Deposition of Marvin Dawson Jr dated March 4, 2015 and Report of Verle Truman dated February 6, 2015).

4. A SLED report bearing the Claimant's name and date of birth only was admitted into the record as the Defendants supplemental APA submissions over the Claimant's objection. I find the information contained in the SLED report is not relevant to the issues of coverage or compensability in the instant case. I further find that whether or not the Claimant has ever been convicted of disorderly conduct would not be relevant to any issues in this case. As such very little weight was given to the submitted SLED report.

5. I find the Claimant sustained multiple compensable injuries to his brain, head, right eye, right ear, psyche, resulting psychological, and left leg within the course and scope of his employment with Tony's Place of Sumter, LLC.
6. The Claimant alleges psychological overlay as a result of his injury which I find is supported by a preponderance of the evidence in this claim.
7. The Claimant also alleges physical brain damage as a result of his injury. I find additional medical examination is necessary to determine whether Claimant has sustained physical brain damage to the degree required in order to be awarded benefits under the Act. Dr. Waid opines that the Claimant should be reevaluated after a period of at least one year from the date of injury. As such the undersigned declines to make a finding of physical brain damage at this time as the Claimant is not at maximum medical improvement and said finding is premature.
8. The Claimant has not reached maximum medical improvement.
9. The Claimant is entitled to causally related medical treatment at the direction of the Defendants until he is placed at maximum medical improvement. This includes transportation and interpretation for all medical treatment.
10. The Claimant's average weekly wage is \$751.92. This yields a compensation rate of \$501.31. This finding is based on the evidence as a whole including the wage information provided in Claimant's Exhibit No. 1, from which the payroll information from the 52 weeks immediately preceding the injury (September 24, 2012 to September 23, 2013) was used. I find this method of calculation was the most appropriate method to use given the wage

information admitted into evidence. It yields a compensation rate that is most fair to each party.

11. I find the Claimant is entitled to a lump-sum payment of back temporary partial disability benefits from the October 7, 2013 paycheck through the December 9, 2013 paycheck.
12. I find the Claimant is entitled to temporary total disability benefits from December 10, 2013 through the present and continuing until he is placed at maximum medical improvement or is otherwise released to return to work and a Form 17 is signed and filed with the Commission.
13. The Claimant is entitled to a lump sum payment of any back owed temporary benefits.
14. No hearing costs are assessed.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws 1976, as amended, §42-17-140, it is the determination of this Commissioner that:

1. Under §42-1-160, the Claimant sustained a compensable injury by accident arising out of and in the course of his employment.
2. Under §42-1-40 the Claimant's average weekly wage is \$751.92 with the compensation rate of \$501.31.
3. Under §42-15-60 the Defendants are responsible for all causally related medical treatment allowed under the Act, including transportation and interpretation.

4. Under §42-9-10 the Claimant is entitled to temporary total disability benefits until the date of maximum medical improvement, which is premature at this time. He is entitled to temporary total disability benefits in a lump sum from October 7, 2013 to the present and continuing thereafter weekly in the amount of \$501.31.
5. Under S.C. Code Ann. §42-1-160 and §42-9-30, Claimant sustained a compensable injury to his brain, head, psyche, resulting psychological, right eye, right ear, on September 27, 2013.
6. The Claimant's average weekly wage is \$751.92 with a compensation rate of \$501.31, pursuant to S.C. Code Ann. §42-9-10 and §42-9-200. The Claimant is entitled to weekly compensation benefits in the amount of \$501.31 beginning October 7, 2013 to the present and continuing. (The Claimant is entitled to temporary total disability benefits in a lump-sum from October 7, 2013 to the present).
7. Under SC code Ann 42-15-60, the Employer is financially responsible for all medical treatment, evaluations, testing, transportation, interpretation, etc. as a result of Claimants compensable injuries as these are reasonable and necessary to lessen the period of disability.

ORDER

The Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim, and that the Employer should provide the following benefits:

IT IS THEREFORE ORDERED THAT the Defendants shall pay with regard to injuries sustained on September 27, 2013, for all causally related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, transportation, interpretation, and any other treatment, to the present and continuing.

IT IS THEREFORE ORDERED THAT the Claimant is not at maximum medical improvement and a determination of physical brain damage is premature as alleged by the Employer and is held in abeyance and preserved for a finding regarding the same in the future.

IT IS THEREFORE ORDERED THAT the Defendant shall pay the Claimant all past due temporary total benefits from October 7, 2013 to the present and continuing.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS COMPENSATION COMMISSION



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

June 19, 2015

By: Renee Smith, Administrative Assistant to Commissioner Taylor

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NO.: 1316470

ELIAS REYNA, CLAIMANT

V.

FENERLY INC./TONYS PLACE OF SUMTER LLC, EMPLOYER

AND

FOREMOST SIGNATURE INSURANCE CO., CARRIER

Appellate Panel Review held in Columbia,
South Carolina, on September 22, 2015, per notices
timely and properly served upon all parties
of Interest.

Appellate Panel Decision and Order filed:

January 12th, 2016

APPEARANCES:

Appellant-Defendant represented by
MGC Insurance Defense with
C. Barrett Burley appearing.

Respondent-Claimant represented by Calhoun
Law Firm PA with Mark R. Calhoun appearing.

Within the statutory period, counsel for the Defendant filed Application for Review in the case setting forth the grounds of appeal, copies of which were furnished to all interested parties prior to oral arguments presented before the Appellate Panel on September 22, 2015.

By appeal, Appellant-Defendants respectfully submitted:

1. Did the Hearing Commissioner err in Finding of Fact #2 by determining Claimant was a statutory employee of Tonys Place of Sumter, LLC pursuant to S.C. Code Ann. §42-1-130?
2. Did the Hearing Commissioner err by failing to make any conclusion of law that Claimant was, or was not, a statutory employee pursuant to S.C. Code Ann. §42-1-130?
3. Did the Hearing Commissioner err by failing to issue any findings of fact related to the credibility of Claimant?
4. Did the Hearing Commissioner err in Finding of Fact #5 and #6 and Conclusions of Law #1 and #5 that Claimant sustained injuries in the course and scope of his employment?
5. Did the Hearing Commissioner err in Finding of Fact #9 and Conclusions of Law #3, #6 and #7 that Claimant is entitled to medical treatment?
6. Did the Hearing Commissioner err in Finding of Fact #11 and #13 and Conclusions of Law #4 that Claimant is entitled to back temporary total disability benefits?
7. Did the Hearing Commissioner err in Finding of Fact #12 and Conclusions of Law #4 and #6 that Claimant is entitled to temporary total disability benefits?
8. Did the Hearing Commissioner err in Finding of Fact #3 that Claimant did not sign the Corporate Officer Notice to Reject Form?

STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha Taylor on December 18, 2014, in Yemmessee, South Carolina. Under date of June 15, 2015 the Hearing Commissioner issued the following Findings of Fact, Conclusions of Law and Order which we concur with:

Based upon the stipulations of both parties and the evidence produced at this hearing, the undersigned Commissioner makes the following Findings of Fact:

1. It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC. As per the Business Purchase Agreement, the Claimant's only condition of minority ownership was payment of \$42,000.00 pursuant to the terms set forth therein, which was satisfied.
2. I find that in addition to owning a minority share of Tony's Place of Sumter LLC, Mr. Reyna was also an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Annotated Section §42-1-130. The Claimant continued to work as a cook in the kitchen at Tony's Place of Sumter, LLC and also to make nightly bank deposits, which was not a condition of his minority ownership status. The Claimant also received weekly paychecks from which federal and state taxes were withheld. I find these paychecks were paid to the Claimant for the work he performed as an employee of Tony's Place of Sumter, LLC and not the result of profit from the minority ownership business purchase agreement. I find the Employer, Peter Peidis controlled the Claimants means of employment, hours, income, and all other conditions of employment.

3. I find Mr. Reyna did not waive entitlement to workers compensation benefits as I find he did not sign the Corporate Officer Notice to Reject Form. This finding is based on the preponderance of the evidence as a whole including the following:
- a. Only Peter Peidis signed the Corporate Officer Notice to Reject Form in insurance agent Byron Kinney's office. (Deposition of Peter Peidis and Byron Kinney).
 - b. Peter Peidis took the notice to reject form from his insurance agent Byron Kinney to "talk with his business partner and then decide whether he (Mr. Reyna) wanted to be excluded or not". (Deposition of Byron Kinney p.10 ll. 8-19).
 - c. Insurance agent by Byron Kinney testified in his deposition that the form bearing the name of Elias Reyna was returned to his office, but he did not know who returned the form. Mr. Kinney also stated by affidavit that Peter Peidis returned the form bearing the name of Elias Reyna to his office. (Claimants Exhibit No. 3).
 - d. Neither the majority owner Peter Peidis nor his insurance agent Byron McKinney saw the Claimant sign or deliver the Corporate Officer Notice to Reject Form to Mr. Kinney's office.
 - e. Mr. Reyna testified credibly that he did not sign the form, that the form was written in english and he would have needed a third party to translate it for him. Peter Peidis also testified by deposition and affidavit that the Claimant could not read the form and Mr. Peidis did not read it to him when he allegedly delivered it. (Deposition and Affidavit of Peter Peidis).
 - f. I have reviewed the reports from each parties' handwriting experts, Marvin Dawson Jr. and Verle Truman. I have also reviewed the deposition testimony of Marvin Dawson Jr.. I give greater weight to the expert opinion of Marvin Dawson

Jr., who is the only Board Certified Forensic Document Examiner in private practice here in the state of South Carolina. In his deposition testimony, Mr. Dawson goes into great detail and analysis in explaining why he ultimately concluded the signature on the Corporate Officer Notice to Reject Form does not belong to the Claimant. I find that Mr. Dawson's report is the only report that focuses on the major differences in the letter structure form of the signatures. In contrast, Mr. Truman's report appears to only look for generic similarities. Verle Truman's report noted there was "no persuasive evidence of authorship". (See Report and Deposition of Marvin Dawson Jr dated March 4, 2015 and Report of Verle Truman dated February 6, 2015).

4. A SLED report bearing the Claimant's name and date of birth only was admitted into the record as the Defendants supplemental APA submissions over the Claimant's objection. I find the information contained in the SLED report is not relevant to the issues of coverage or compensability in the instant case. I further find that whether or not the Claimant has ever been convicted of disorderly conduct would not be relevant to any issues in this case. As such very little weight was given to the submitted SLED report.
5. I find the Claimant sustained multiple compensable injuries to his brain, head, right eye, right ear, psyche, resulting psychological, and left leg within the course and scope of his employment with Tony's Place of Sumter, LLC.
6. The Claimant alleges psychological overlay as a result of his injury which I find is supported by a preponderance of the evidence in this claim.

7. The Claimant also alleges physical brain damage as a result of his injury. I find additional medical examination is necessary to determine whether Claimant has sustained physical brain damage to the degree required in order to be awarded benefits under the Act. Dr. Waid opines that the Claimant should be reevaluated after a period of at least one year from the date of injury. As such the Undersigned declines to make a finding of physical brain damage at this time as the Claimant is not at maximum medical improvement and said finding is premature.
8. The Claimant has not reached maximum medical improvement.
9. The Claimant is entitled to causally related medical treatment at the direction of the Defendants until he is placed at maximum medical improvement. This includes transportation and interpretation for all medical treatment.
10. The Claimant's average weekly wage is \$751.92. This yields a compensation rate of \$501.31. This finding is based on the evidence as a whole including the wage information provided in Claimant's Exhibit No. 1, from which the payroll information from the 52 weeks immediately preceding the injury (September 24, 2012 to September 23, 2013) was used. I find this method of calculation was the most appropriate method to use given the wage information admitted into evidence. It yields a compensation rate that is most fair to each party.
11. I find the Claimant is entitled to a lump-sum payment of back temporary partial disability benefits from the October 7, 2013 paycheck through the December 9, 2013 paycheck.
12. I find the Claimant is entitled to temporary total disability benefits from December 10, 2013 through the present and continuing until he is placed at

maximum medical improvement or is otherwise released to return to work and a form 17 is signed and filed with the Commission.

13. The Claimant is entitled to a lump sum payment of any back owed temporary benefits.

14. No hearing costs are assessed.

All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by argument to the individual members of the Panel and has since been under study and consideration. We find:

FINDINGS OF FACT

Based upon the stipulations of the parties, the evidence submitted pursuant to the Administrative Procedures Act, and the testimony and exhibits presented at the hearing, we hereby make the following Findings of Fact:

1. It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC. As per the Business Purchase Agreement, the Claimant's only condition of minority ownership was payment of \$42,000.00 pursuant to the terms set forth therein, which was satisfied.

2. We find that in addition to owning a minority share of Tony's Place of Sumter LLC, Mr. Reyna was also an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Annotated Section §42-1-130. The Claimant continued to work as a cook in the kitchen at Tony's Place of Sumter, LLC and also to make nightly bank deposits, which was not a condition of his minority ownership status. The Claimant also received weekly paychecks from which federal and state taxes were withheld. We find these paychecks were paid to the Claimant for the work he performed as an employee of Tony's Place of Sumter, LLC and not the result of profit

from the minority ownership business purchase agreement. We find the Employer, Peter Peidis controlled the Claimants means of employment, hours, income, and all other conditions of employment.

3. We find Mr. Reyna did not waive entitlement to workers compensation benefits as we find he did not sign the Corporate Officer Notice to Reject Form. This finding is based on the preponderance of the evidence as a whole including the following:

- g. Only Peter Peidis signed the Corporate Officer Notice to Reject Form in Insurance agent Byron Kinney's office. (Deposition of Peter Peidis and Byron Kinney).
- h. Peter Peidis took the notice to reject form from his insurance agent Byron Kinney to "talk with his business partner and then decide whether he (Mr. Reyna) wanted to be excluded or not". (Deposition of Byron Kinney p.10 ll. 8-19).
- i. Insurance agent by Byron Kinney testified in his deposition that the form bearing the name of Elias Reyna was returned to his office, but he did not know who returned the form. Mr. Kinney also stated by affidavit that Peter Peidis returned the form bearing the name of Elias Reyna to his office. (Claimants Exhibit No. 3).
- j. Neither the majority owner Peter Peidis nor his insurance agent Byron McKinney saw the Claimant sign or deliver the Corporate Officer Notice to Reject Form to Mr. Kinney's office.
- k. Mr. Reyna testified credibly that he did not sign the form, that the form was written in english and he would have needed a third party to translate it for him. Peter Peidis also testified by deposition and affidavit that the Claimant could not read the form and Mr. Peidis did not read it to him when he allegedly delivered it. (Deposition and Affidavit of Peter Peidis).

1. We have reviewed the reports from each parties handwriting experts, Marvin Dawson Jr. and Verle Truman. We have also reviewed the deposition testimony of Marvin Dawson Jr.. We give greater weight to the expert opinion of South Carolinas only private Board Certified Forensic Document Examiner Marvin Dawson Jr.. In his deposition testimony, Mr. Dawson goes into great detail and analysis in explaining why he ultimately concluded the signature on the Corporate Officer Notice to Reject Form does not belong to the Claimant. We find that Mr. Dawson's report is the only report that focuses on the major differences in the letter structure form of the signatures. In contrast, Mr. Truman's report appears to only look for generic similarities. Verle Truman's report noted there was "no persuasive evidence of authorship". (See Report and Deposition of Marvin Dawson Jr dated March 4, 2015 and Report of Verle Truman dated February 6, 2015).

4. A SLED report bearing the Claimant's name and date of birth only was admitted into the record as the Defendants supplemental APA submissions over the Claimant's objection. We find the information contained in the SLED report is not relevant to the issues of coverage or compensability in the instant case. We further find that whether or not the Claimant has ever been convicted of disorderly conduct would not be relevant to any issues in this case. As such very little weight was given to the submitted SLED report.

5. We find the Claimant sustained multiple compensable injuries to his brain, head, right eye, right ear, psyche, resulting psychological, and left leg within the course and scope of his employment with Tony's Place of Sumter, LLC.

6. The Claimant alleges psychological overlay as a result of his injury which we find is supported by a preponderance of the evidence in this claim.

7. The Claimant also alleges physical brain damage as a result of his injury. We find additional medical examination is necessary to determine whether Claimant has sustained physical brain damage to the degree required in order to be awarded benefits under the Act. Dr. Waid opines that the Claimant should be reevaluated after a period of at least one year from the date of injury. As such the Undersigned declines to make a finding of physical brain damage at this time as the Claimant is not at maximum medical improvement and said finding is premature.

8. The Claimant has not reached maximum medical improvement.

9. The Claimant is entitled to causally related medical treatment at the direction of the Defendants until he is placed at maximum medical improvement. This includes transportation and interpretation for all medical treatment.

10. The Claimant's average weekly wage is \$751.92. This yields a compensation rate of \$501.31. This finding is based on the evidence as a whole including the wage information provided in Claimant's Exhibit No. 1, from which the payroll information from the 52 weeks immediately preceding the injury (September 24, 2012 to September 23, 2013) was used. We find this method of calculation was the most appropriate method to use given the wage information admitted into evidence. It yields a compensation rate that is most fair to each party.

11. We find the Claimant is entitled to a lump-sum payment of back temporary partial disability benefits from the October 7, 2013 paycheck through the December 9, 2013 paycheck.

12. We find the Claimant is entitled to temporary total disability benefits from December 10, 2013 through the present and continuing until he is placed at maximum medical

improvement or is otherwise released to return to work and a form 17 is signed and filed with the Commission.

13. The Claimant is entitled to a lump sum payment of any back owed temporary benefits.

14. No hearing costs are assessed.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws 1976, as amended, §42-17-140, it is the determination of this Commission that:

1. Under §42-1-130 Tonys Place of Sumter LLC is a corporation and the Claimant was an employee of this corporation.
2. Under §42-1-160, the Claimant sustained a compensable injury by accident arising out of and in the course of his employment.
3. Under §42-1-40 the Claimant's average weekly wage is \$751.92 with the compensation rate of \$501.31.
4. Under §42-15-60 the Defendants are responsible for all causally related medical treatment allowed under the Act, including transportation and interpretation.
5. Under §42-9-10 the Claimant is entitled to temporary total disability benefits until the date of maximum medical improvement, which is premature at this time. He is entitled to temporary total disability benefits in a lump sum from October 7, 2013 to the present and continuing thereafter weekly in the amount of \$501.31.
6. Under S.C. Code Ann. §42-1-160 and §42-9-30, Claimant sustained a compensable injury to his brain, head, psyche, resulting psychological, right eye, right ear. on September 27, 2013.

7. The Claimant's average weekly wage is \$751.92 with a compensation rate of \$501.31, pursuant to S.C. Code Ann. §42-9-10 and §42-9-200. The Claimant is entitled to weekly compensation benefits in the amount of \$501.31 beginning October 7, 2013 to the present and continuing. (The Claimant is entitled to temporary total disability benefits in a lump-sum from October 7, 2013 to the present).
8. Under S.C. Code Ann §42-15-60, the Employer is financially responsible for all medical treatment, evaluations, testing, transportation, interpretation, etc. as a result of Claimants compensable injuries as these are reasonable and necessary to lessen the period of disability.

ORDER

The Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim, and that the Employer should provide the following benefits:

IT IS THEREFORE ORDERED THAT the Defendant shall pay with regard to injuries sustained on September 27, 2013, for all causally related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, transportation, interpretation, and any other treatment, to the present and continuing.

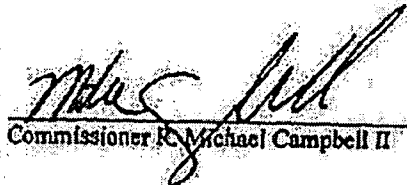
IT IS THEREFORE ORDERED THAT the Claimant is not at maximum medical improvement and a determination of physical brain damage is premature as alleged by the Employer and is held in abeyance and preserved for a finding regarding the same in the future.

IT IS THEREFORE ORDERED THAT the Defendant shall pay the Claimant all past due temporary total benefits from October 7, 2013 to the present and continuing.

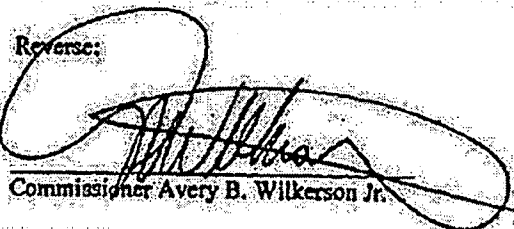
ORDER

The Order of the Single Commissioner filed in the above titled matter on June 15, 2015,
is hereby affirmed by a majority of the panel and the same shall constitute the Decision and
Order of the Appellate Panel.
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION


Commissioner Melody L. James


Commissioner Michael Campbell II

Reverse:


Commissioner Avery B. Wilkerson Jr.

Date: January 12th 2016

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on January 12, 2016

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

Elias Reyna v Tony's Pizza/Fenerly Inc.

SCWCC: 1316470

Commissioners: James, Campbell, Wilkerson

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a Motion to Alter or Amend Judgment. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

_____ Dismissed as Interlocutory.

_____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted.

_____ Denied.

_____ Dismissed

_____ Set for Hearing.

BEFORE THE;

_____ Hearing Comm.

_____ Jurisdictional Comm.

_____ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.

_____ Barden

_____ Beck

_____ James

_____ Campbell

_____ McCaskill

_____ Taylor

_____ Wilkerson

_____ Remand for Order consistent with the Order of the Court.

_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

_____ Other: _____

_____ Remand:

_____ Panel Oral Argument.

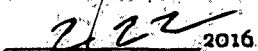
_____ c Oral Argument.

AND IT IS SO ORDERED.



**Scott Beck, Chair
For the Commission**

Columbia, South Carolina

 2016.

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

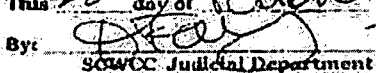
NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY THEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 2nd day of February, 2016.

By: 
SCWCC Judicial Department

SCWCC 000032

CALHOUN LAW FIRM

MARK R. CALHOUN
ATTORNEY AT LAW

714 EAST MAIN STREET
LEXINGTON, S.C. 29072

OFFICE: 803-957-8401
TELECOPIER: 803-957-4709

November 19, 2013

South Carolina Worker's Compensation Commission
Judicial Department
1333 Main Street Suite 500
Columbia, SC 29202

Re: Elias Reyna v. Tonys Pizza/Fenerly Inc.
DOA: 9-27-13.

NE

Dear Madam:

Enclosed please find the Form 50 and 2 (two) copies of the Certificate of Service on the above case. We are requesting a hearing. I am enclosing a check in the amount of twenty five (\$25.00) dollars and 00/100 to cover costs of this file.

If you need further information please give me a call.

RECEIVED

NOV 20 2013

Yours Very Truly,

(FRONT DESK)
SC Workers' Comp Comm

Mark R. Calhoun
Mark R. Calhoun

6053

238462

Cc: Foremost Signature Ins. Co.

SCWCC

NOV 21 2013

JUDICIAL

SCWCC 000477

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.WCC.SC.GOV



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: ELIAS ALTIMA SSN: 465977846 Employer's Name: onyx Pizza/Genery Inc.
Address: 2970 TUCKAWAY DR. Address: 1870 S. US HWY 15
City: SUMTER State: SC Zip: 29154 City: SUMTER State: SC Zip: 29150
Home Phone: 843-840-5191 Work Phone: _____ Insurance Carrier: FOREMOST SIGNATURE INS. CO.
Preparer's Name: MARK R. CALHOUN Law Firm: Calhoun Law Firm Preparer's Phone #: 803-957-8401

A claim for workers' compensation benefits is based on the following grounds: _____ Date of Injury or Illness: 9/27/13

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☒ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to head, psycho, eyes, ears/noising (Part(s) of Body Injured) on 9-27-13 (Month/Day/Year) in Sumter county, state of SC. Body part(s) affected are: brain, psycho, head, eyes, ears/noising, left leg

2. Briefly describe how the accident occurred: claimant robbed/assaulted at business of bank deposit

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

4. The relationship of employer and employee existed at the time of injury.

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 9-27-13 (Month/Day/Year) in the following manner: verbally

☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: pain, cognitive deficits, diagnosis

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 9-27-13 to present and continuing

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

☒ 9a. ☐ A determination of permanent disability is premature at this time.

☒ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of: no nerve control in face

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 800.00 and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: none

11. Further grounds or unusual aspects of claim: claimant requests all benefits due under the act

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Richland Memorial Hospital

11b. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 1:30

☒ 13b. I am requesting a hearing. A \$25 fee is required.

Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

RECEIVED
NOV 20 2013
(FRONT DESK)
SC Workers' Comp Comm

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ FOREMOST SIGNATURE INS. CO.
address P.O. BOX 2487 GRAND RAPIDS MI 49501 on the 19 day of November 20 13 by ☒ first class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Mark R. Calhoun attorney Title: mark@calhounlawfirm.com Email: _____ Date: 11-19-13

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

Employee's Notice of Claim and/or
Request for Hearing

SCWCC 000478

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO:

ELIAS REYNA

Claimant,

Vs.

TONYS PIZZA/FENERLY INC.

Employer,

And

FOREMOST SIGNATURE INS. CO.

Carrier/ Defendant.

CERTIFICATE
OF
SERVICE

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

TO: South Carolina Workers' Compensation Commission
Judicial Department
1333 Main St., Suite 500
Columbia, SC 29202

Foremost Signature Insurance Company
P.O. Box 2487
Grand Rapids, MI 49501

DOCUMENT: FORM 50
DATE OF MAILING: 11/19/2013


Aida Reyes

SCWCC 000479

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: ELIAS HEYNA SSN: [REDACTED] Employer's Name: Tony's Pizza & Energy, Inc.
Address: 890 YORKWAY DR Address: 1870 S. US HWY 15
City: SUMTER State: SC Zip: 29154 City: SUMTER State: SC Zip: 2915
Home Phone: 843-840-5191 Work Phone: _____ Insurance Carrier: FOREMOST SIGNATURE INS. CO.
Preparer's Name: MARK R. CALHOUN Law Firm: Calhoun Law Firm Preparer's Phone #: 803-957-8401

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☒ Physical Brain Injury ☐ Concurrent Jurisdiction

Date of Injury or Illness: 9/27/13

1. The claimant sustained an injury to brain, head, psycho, eyes, ear/mouth (Part(s) of Body Injured) on 9-27-13 (Month/Day/Year) in Sumter county, state of SC. Body part(s) affected are: brain, psycho, hand, eyes, ear/mouth, left leg

2. Briefly describe how the accident occurred: claimant robbed/assaulted at business of bank deposit

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

4. The relationship of employer and employee existed at the time of injury.

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 9-27-13 (Month/Day/Year) in the following manner: verbally

☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: pain, cognitive deficits, discomfort

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 9-27-13 to present and continuing

☐ 9. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

☒ 9a. ☐ A determination of permanent disability is premature at this time.

☒ 10. Due to the injury, the claimant has a serious bodily disfigurement consisting of: no nerve control in face

10a. At the time of the injury, the claimant was paid weekly wages of \$ 800.00 and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident: none

11. Further grounds or unusual aspects of claim: claimant requests all benefits due under the act.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Richland Memorial Hospital

11b. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 1:30

☐ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to FOREMOST SIGNATURE INS. CO.
address: P.O. BOX 2487 GRAND HARRIS MI 4 on the 19 day of November 2013 by ☒ first class postage ☐ certified mail ☐ personal serv.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Mark R. Calhoun attorney Title: mark@calhounlawfirm.com Email: 11-1 913 Date: _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulation 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

Employee's Notice of Claim and/or
Request for Hearing

SCWCC 000471

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO:

ELIAS REYNA

Claimant,

Vs.

TONYS PIZZA/FENERLY INC.

Employer,

And

FOREMOST SIGNATURE INS. CO.

Carrier/ Defendant.

CERTIFICATE
OF
SERVICE

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

TO: South Carolina Workers' Compensation Commission
Judicial Department-Tracy Riddle
1333 Main St., Suite 500
Columbia, SC 29202

Foremost Signature Insurance Company
Farmers WC Imaging Center
P.O. Box 108843
Oklahoma City, OK 73101

DOCUMENT: Amended FORM 50
DATE OF MAILING: 12/10/2013


Aida Reyes

SCWCC 000472



US Property & Casualty
Clay Croom
Service Center Manager
North Carolina - South Carolina

January 30, 2014

Mark Calhoun
Calhoun Law Firm
714 East Main Street
Lexington SC 29072

WCC # : 1316470
Claim no : WC10096121
Employee : Elias Reyna
Employer : Fenerly DBA Tony's Place of Sumter, LLC
Date/Loss : 09/27/13
Our File : 2344177

Dear Mr. Calhoun:

Our office represents the employer and carrier regarding the above workers' compensation claim.

Our principal has requested at this time we are unable to assist your client with any settlement of damages or costs which may have been sustained regarding the above alleged incident.

This claim does not meet the requirements under the S.C. Workers' Compensation Act and therefore is being denied.

Very truly yours,

Cynthia Smith
Claims Adjuster

Cc: Elias Reyna
2970 Tuckaway Drive
Sumter SC 29164

Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

Jose Banuelos
Foremost Signature Insurance Co.
P.O. Box 108843
Oklahoma City, OK 73101

Fenerly Inc
301 N. Main St.
Sumter, SC 29150

3710 Landmark Dr. ■ Suite 100 ■ Columbia, SC 29201 ■ (800) 641-1032 ■ Fax (800) 680-1888
www.claremontfirearmcompany.com

SCWCC 000464

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1316470
Carrier File #: WC10006121
Carrier Code #:
Employer FEIN #:

Claimant's Name: Ellas Reyna SSN: [REDACTED] Employer's Name: Fenety Inc DBA Tony's Place of Sumter
Address: [REDACTED] Address: 301 N. Main St.
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Sumter State: SC Zip: 29150
Home Phone: (803) 840-5191 Work Phone: 803-775-1035 Insurance Carrier: Foremost Signature
Preparer's Name: Cindy M. Smith Law Firm: Calhoun Law Firm Preparer's Phone #: (803) 223-0816

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.				\$
2. Number of Weeks T.P.				\$
3. Number of Weeks P.P.				\$
4. Disfigurement				\$
5. Agreement and Final Release				\$
Total Compensation Paid				\$ 0
6. Total Medical Benefits* Paid				\$ 0
7. Funeral Benefits				\$

X Case Denied

Date of Injury: 09/27/13
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____
Claimant

By: Cindy Smith
Employer's Representative

1-30-14
Date
(m/d/yyyy)

Print only the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party \$ _____
B. Attorney's Fee Paid by Employer \$ _____
C. Attorney's Fee Paid by Claimant \$ _____
(Non-contingent fees only)

File this form with the Claims Department according to R.07-114 and R.07-204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, burial and death certificates and impartial examination. Form 10 must be filed within 18 days of final payment of compensation. Form 10 must be filed when a claim is denied.

WCC Form # 10
Rev. Date 3/98

19

STATUS REPORT AND COMPENSATION RECEIPT

SCWCC 000463

Reply To
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

RECEIVED

SEP 26 2014

(FRONT) - - SK
SC Workers' Comp Comm

mgc | INSURANCE
DEFENSE

September 25, 2014

VIA HAND DELIVERY

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

RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Taylor
11-20

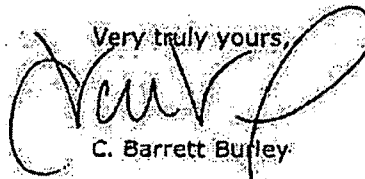
Dear Ms. Bracy:

Please find enclosed the Form 51 on behalf of the Employer and Carrier in the
above matter for filing in your office.

By copy of this letter, we are serving a copy of the Form 51 on the Claimant's
attorney, Mark R. Calhoun, Esquire.

With kindest regards,

Very truly yours,



C. Barrett Burley

CBB/jmm
Enclosures

cc: Panagiotis Peidis, Fenerly Inc. d/b/a Tony's Place of Sumter (via email)
Donna Rebold, Farmers Business Insurance (via email)
Mark R. Calhoun, Esquire, Calhoun Law Firm

SCWCC
SEP 26 2014
JUDICIAL

McANGUS COUDELLOCK & COURIE LLC

1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
COLUMBIA, SC 29211

803.779.2300 PHONE
803.748.0526 FAX
WWW.MGCLAW.COM

SCWCC 000458



Claimant's Name: Elias Reyna SSN [REDACTED] Employer's Name: Fenerly Inc. d/b/a Tony's Place of Sumter
Address: [REDACTED] Address: 301 North Main Street
Home Phone: (803) 840-5191 Work Phone # [REDACTED] Insurance Carrier: Foremost Signature Insurance Co. c/o Farmers Business Insurance
Date of Injury: 9/27/13 Preparer's Name: C. Barrett Burley Law Firm McAngus Goudelock & Courie Preparer's Phone #: (803) 227-4953

Date of Injury or Illness: 9/27/13 Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Pending further investigation, no evidence of same.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Claimant was a part owner of Employer at the time of the alleged incident, and had not opted into coverage as required by S.C. Code §42-1-130, and applicable case law.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 2 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: See No. 2 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are: See No. 2 above.
6. It is ☐ Admitted ☒ Denied the employee ☐ needs ☐ is entitled to additional medical care as a result of injury or illness. The reasons for denial are: No evidence of same; See No. 1 and 2 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are: No evidence of same.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of TBD applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Claimant was not covered under the Act at the time of the alleged incident. Defendants additionally contend the hearing set for November 20, 2014 in this matter was improperly noticed, as outlined in a letter to the Commission dated 09/24/14, which has been provided to all parties.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67.1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for Employer/Carrier: barrett.burley@mcgaw.com September 25, 2014
Title: Email: Date:

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-605, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 7/13

51

Employer's Answer to Request for Hearing

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE CO. C/O
FARMERS BUSINESS INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

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

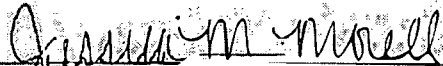
TO: Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

VIA HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 · Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT: Form 51

DATE OF
MAILING: September 25, 2014



Joseph M. Morell

Lib Assistant to C. Barrett Burley

SCWCC 000460

Reply To
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

July 2, 2015

RECEIVED

JUL 02 2015

(FRONT DESK)
SC Workers' Comp Comm

VIA HAND DELIVERY

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

RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Dear Ms. Bracy:

Please find enclosed the original and three (3) copies of our Form 30 and
Decision and Order in this matter, along with our check in the amount of \$150.00,
which represents the filing fee.

By copy of this letter to Mark R. Calhoun, Esquire, Claimant's attorney, we are
notifying him of these submissions and serving a copy of the same upon him by mail.

Very truly yours,


C. Barrett Burley

9589

CBB/ssc
Enclosures

cc: Mark R. Calhoun, Esquire, Calhoun Law Firm
Donna Rebold, Farmers Business Insurance (via email)

SCWCC
JUL 08 2015
JUDICIAL

McANGUS COUDELOCK & COURIE LLC

1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
COLUMBIA, SC 29211

803.779.2300 Phone
803.746.0526 Fax
www.mgcclaw.com

SCWCC 000337

South Carolina Workers' Compensation
1333 Main Street, Suite 500
BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1316170
Carrier File #: WC10096121
Carrier Code #:
Employer FEIN #: 571048710

Claimant's Name: Elias Reyna SSN: [REDACTED] Employer's Name: Fenerly Inc. d/b/a Tony's Place of
[REDACTED] Address: 301 North Main Street
[REDACTED] Address: Sumter, South Carolina 29150
Home Phone: (803) 840-5191 Work Phone: Insurance Carrier: Foremost Signature Insurance Co. c/o
Farmers Business Insurance
Preparer's Name: C. Barrett Burley/Brett Bayne Law Firm: McAnug Goudelock & Courie Preparer's Phone Number: (803) 227-4953

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: September 27, 2013 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).
SEE ATTACHED

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Mark R. Calhoun, Esquire, Calhoun Law Firm
714 East Main Street on the 2nd day of July 2015
address Lexington, South Carolina 29072
by ☒ first class postage ☐ certified mail ☐ personal service.

[Signature] Attorney for Employer/Carrier barrett.burley@mgclaw.com July 2, 2015
Preparer's Signature Title Email Date

Check this box if you are not represented by an attorney. ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-807 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32. If you are unable to pay the filing fee, Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC FORM #30
Revised 7/13

30

REQUEST FOR COMMISSION REVIEW

Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter
WCC File #1316470
Date of Accident: September 27, 2013

GROUND FOR REVIEW

1. Did the Hearing Commissioner err in Finding of Fact #2 by determining Claimant was a statutory employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Ann. § 42-1-130?
2. Did the Hearing Commissioner err by failing to make any conclusion of law that Claimant was, or was not, a statutory employee pursuant to S.C. Code Ann. § 42-1-130?
3. Did the Hearing Commissioner err by failing to issue any findings of fact related to credibility of Claimant?
4. Did the Hearing Commissioner err in Findings of Fact #5 and #6 and Conclusions of Law #1 and #5 that Claimant sustained injuries in the course and scope of his employment?
5. Did the Hearing Commissioner err in Finding of Fact #9 and Conclusions of Law #3, #6, and #7 that Claimant is entitled to medical treatment?
6. Did the Hearing Commissioner err in Findings of Fact #11 and #13 and Conclusion of Law #4 that Claimant is entitled to back temporary total disability benefits?
7. Did the Hearing Commissioner err in Finding of Fact #12 and Conclusions of Law #4 and #6 that Claimant is entitled to temporary total disability benefits?
8. Did the Hearing Commissioner err in Finding of Fact #3 that Claimant did not sign the Corporate Officer Notice to Reject Form?

REPLY TO
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

December 5, 2014

RECEIVED

DEC 05 2014

(FRONT DESK)
SC Workers' Comp Comm

VIA HAND DELIVERY

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

RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Taylor
12-18

Dear Sir or Madam:

Please find enclosed the original and three (3) copies of our Defendants' Motion to Bifurcate for filing. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Mark R. Calhoun, Esquire, the Claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

With kindest regards,

Very truly yours,

E. Barrett Burley

C. Barrett Burley

269819

CBB/jmm
Enclosures

cc: Donna Rebold, Farmers Business Insurance (via email)
Mark R. Calhoun, Esquire, Calhoun Law Firm

SCWCC
DEC 08 2014
JUDICIAL

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

DEFENDANTS' MOTION TO
BIFURCATE

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE, ATTORNEY FOR CLAIMANT:

Defendants hereby move for an Order of the Commission bifurcating the issues for
determination in the above-referenced matter. The grounds for the Motion are as follows:

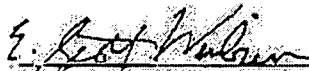
1. Pursuant to South Carolina Code Annotated §42-1-130, Defendants have asserted that the South Carolina Workers' Compensation Commission lacks jurisdiction in this matter, as Claimant is not an employee as defined by §42-1-130. Defendants contend that the Claimant, as partner and owner of the company, failed to properly elect to be included as an employee under the workers' compensation coverage. Therefore, Claimant is not entitled to benefits under the Act.
2. Jurisdiction of the Commission to adjudicate this matter is a threshold question, which must be determined prior to a hearing on the merits.

SCWCC 000432

3. In order to properly answer the quest of jurisdiction, a thorough evidentiary hearing as to jurisdiction must be conducted prior to a hearing on the merits.
4. Defendants would otherwise suffer undue prejudice if a full evidentiary hearing was conducted as to jurisdiction, immediately followed by a full evidentiary hearing on the merits of the case in order to determine compensability of the claim. Such an arrangement would require preparation for both hearings, when the matter may be dismissed for lack of jurisdiction at the outset.
5. For the sake of judicial economy, and fairness to the parties, Defendants contend that an evidentiary hearing as to jurisdiction must be undertaken separate and apart from a hearing on the merits.
6. Should the South Carolina Workers' Compensation Commission determine that jurisdiction is proper following a full evidentiary hearing, Defendants can then properly contest compensability of the claim at a later hearing.
7. Defendants specifically deny compensability, and request bifurcation of the two primary issues in this case, jurisdiction and compensability, for the reasons outlined above.

For the foregoing reasons, Defendants respectfully move for an Order of the Commission bifurcating the issues for determination so that a proper evidentiary hearing may be conducted as to jurisdiction prior to the scheduling of a merits hearing, for the sake of judicial economy and fairness to the parties involved.

Respectfully submitted,



C. BARRETT BURLEY

MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for the Employer/Carrier

Columbia, South Carolina
December 5, 2014

SCWCC 000433

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

E LIAS REYNA,

Employee,

Claimant,

vs.,

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

DEFENDANTS' MOTION TO
BIFURCATE

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE, ATTORNEY FOR CLAIMANT:

Defendants hereby move for an Order of the Commission bifurcating the issues for
determination in the above-referenced matter. The grounds for the Motion are as follows:

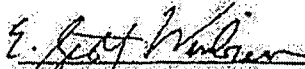
1. Pursuant to South Carolina Code Annotated §42-1-130, Defendants have asserted that the South Carolina Workers' Compensation Commission lacks jurisdiction in this matter, as Claimant is not an employee as defined by §42-1-130. Defendants contend that the Claimant, as partner and owner of the company, failed to properly elect to be included as an employee under the workers' compensation coverage. Therefore, Claimant is not entitled to benefits under the Act.
2. Jurisdiction of the Commission to adjudicate this matter is a threshold question, which must be determined prior to a hearing on the merits.

SCWCC 000434

3. In order to properly answer the quest of jurisdiction, a thorough evidentiary hearing as to jurisdiction must be conducted prior to a hearing on the merits.
4. Defendants would otherwise suffer undue prejudice if a full evidentiary hearing was conducted as to jurisdiction, immediately followed by a full evidentiary hearing on the merits of the case in order to determine compensability of the claim. Such an arrangement would require preparation for both hearings, when the matter may be dismissed for lack of jurisdiction at the outset.
5. For the sake of judicial economy, and fairness to the parties, Defendants contend that an evidentiary hearing as to jurisdiction must be undertaken separate and apart from a hearing on the merits.
6. Should the South Carolina Workers' Compensation Commission determine that jurisdiction is proper following a full evidentiary hearing, Defendants can then properly contest compensability of the claim at a later hearing.
7. Defendants specifically deny compensability, and request bifurcation of the two primary issues in this case, jurisdiction and compensability, for the reasons outlined above.

For the foregoing reasons, Defendants respectfully move for an Order of the Commission bifurcating the issues for determination so that a proper evidentiary hearing may be conducted as to jurisdiction prior to the scheduling of a merits hearing, for the sake of judicial economy and fairness to the parties involved.

Respectfully submitted,



C. BARRETT BURLEY

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

Columbia, South Carolina
December 5, 2014

SCWCC 000435

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

DEFENDANTS' MOTION TO
BIFURCATE

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE, ATTORNEY FOR CLAIMANT.

Defendants hereby move for an Order of the Commission bifurcating the issues for
determination in the above-referenced matter. The grounds for the Motion are as follows:

1. Pursuant to South Carolina Code Annotated §42-1-130, Defendants have asserted that the South Carolina Workers' Compensation Commission lacks jurisdiction in this matter, as Claimant is not an employee as defined by §42-1-130. Defendants contend that the Claimant, as partner and owner of the company, failed to properly elect to be included as an employee under the workers' compensation coverage. Therefore, Claimant is not entitled to benefits under the Act.
2. Jurisdiction of the Commission to adjudicate this matter is a threshold question, which must be determined prior to a hearing on the merits.

SCWCC 000436

3. In order to properly answer the quest of jurisdiction, a thorough evidentiary hearing as to jurisdiction must be conducted prior to a hearing on the merits.
4. Defendants would otherwise suffer undue prejudice if a full evidentiary hearing was conducted as to jurisdiction, immediately followed by a full evidentiary hearing on the merits of the case in order to determine compensability of the claim. Such an arrangement would require preparation for both hearings, when the matter may be dismissed for lack of jurisdiction at the outset.
5. For the sake of judicial economy, and fairness to the parties, Defendants contend that an evidentiary hearing as to jurisdiction must be undertaken separate and apart from a hearing on the merits.
6. Should the South Carolina Workers' Compensation Commission determine that jurisdiction is proper following a full evidentiary hearing, Defendants can then properly contest compensability of the claim at a later hearing.
7. Defendants specifically deny compensability, and request bifurcation of the two primary issues in this case, jurisdiction and compensability, for the reasons outlined above.

For the foregoing reasons, Defendants respectfully move for an Order of the Commission bifurcating the issues for determination so that a proper evidentiary hearing may be conducted as to jurisdiction prior to the scheduling of a merits hearing, for the sake of judicial economy and fairness to the parties involved.

Respectfully submitted,



C. BARRETT BURLEY

MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for the Employer/Carrier

Columbia, South Carolina
December 5, 2014

SCWCC 000437

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

E LIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

**DEFENDANTS' MOTION TO
BIFURCATE**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE, ATTORNEY FOR CLAIMANT:

Defendants hereby move for an Order of the Commission bifurcating the issues for
determination in the above-referenced matter. The grounds for the Motion are as follows:

1. Pursuant to South Carolina Code Annotated §42-1-130, Defendants have asserted that the South Carolina Workers' Compensation Commission lacks jurisdiction in this matter, as Claimant is not an employee as defined by §42-1-130. Defendants contend that the Claimant, as partner and owner of the company, failed to properly elect to be included as an employee under the workers' compensation coverage. Therefore, Claimant is not entitled to benefits under the Act.
2. Jurisdiction of the Commission to adjudicate this matter is a threshold question, which must be determined prior to a hearing on the merits.

SCWCC 000438

3. In order to properly answer the quest of jurisdiction, a thorough evidentiary hearing as to jurisdiction must be conducted prior to a hearing on the merits.
4. Defendants would otherwise suffer undue prejudice if a full evidentiary hearing was conducted as to jurisdiction, immediately followed by a full evidentiary hearing on the merits of the case in order to determine compensability of the claim. Such an arrangement would require preparation for both hearings, when the matter may be dismissed for lack of jurisdiction at the outset.
5. For the sake of judicial economy, and fairness to the parties, Defendants contend that an evidentiary hearing as to jurisdiction must be undertaken separate and apart from a hearing on the merits.
6. Should the South Carolina Workers' Compensation Commission determine that jurisdiction is proper following a full evidentiary hearing, Defendants can then properly contest compensability of the claim at a later hearing.
7. Defendants specifically deny compensability, and request bifurcation of the two primary issues in this case, jurisdiction and compensability, for the reasons outlined above.

For the foregoing reasons, Defendants respectfully move for an Order of the Commission bifurcating the issues for determination so that a proper evidentiary hearing may be conducted as to jurisdiction prior to the scheduling of a merits hearing, for the sake of judicial economy and fairness to the parties involved.

Respectfully submitted,



C. BARRETT BURLEY

MCANGUS GOUDELOCK & COURIE, L.L.C.

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor

Columbia, South Carolina 29211-2519

(803) 779-2300

Attorneys for the Employer/Carrier

Columbia, South Carolina
December 5, 2014

SCWCC 000439

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE CO. C/O
FARMERS BUSINESS INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

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

TO:

Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

VIA HAND DELIVERY

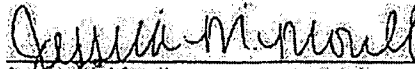
South Carolina Workers Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT:

Other - Defendants' Motion to Bifurcate

DATE OF
MAILING:

December 5, 2014



Jessica Morell
Legal Assistant to C. Barrett Burley

SCWCC 000440

REPLY TO
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

January 19, 2015

RECEIVED

JAN 20 2015

(FRONT DESK)
SC Workers' Comp Comm

VIA HAND DELIVERY

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

RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

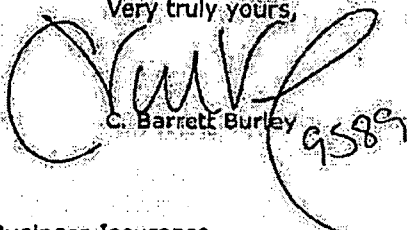
Taylor
"Hearing Held"

Dear Ms. Bracy:

Please find enclosed our Post-Hearing Motion Renewal/Motion to Reconsider for filing regarding the above-referenced matter. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Mark R. Calhoun, Esquire, the claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

Very truly yours,


C. Barrett Burley 9589

2.7.2958

CBB/smg
Enclosures

cc: Donna Rebold, Farmers Business Insurance
Mark R. Calhoun, Esquire, Calhoun Law Firm

SCWCC
JAN 21 2015
*JUDICIAL

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

POST-HEARING MOTION
RENEWAL/MOTION TO
RECONSIDER

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE:

A hearing was held in the above-referenced matter on December 18, 2014, before Commissioner Aisha Taylor. At the hearing, counsel for Defendants made two Motions: to postpone the hearing in order to conduct a complete discovery pursuant to Reg. 67-215(A)(5); and, alternatively, counsel for Defendants moved to leave the Hearing record open in order to obtain and submit Claimant's SLED record, and an independent evaluation of relevant evidence by a handwriting expert. At this time, Defendants respectfully wish to renew these Motions and submit the following Motion to Reconsider. In support of this position, Defendants submit the following:

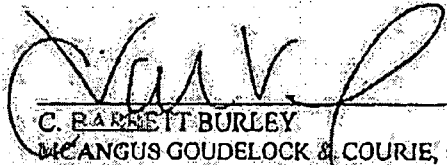
SCWCC 000381

1. At issue in the December 18, 2014 hearing was whether Claimant was covered as an employee under the Workers' Compensation Act for injuries sustained as a result of his September 27, 2013 work-related accident.
2. Claimant is a part-owner and minority partner of Tony's Place of Sumter, LLC. As such, Defendant's maintain that Claimant is not entitled to benefits under the Act, as there is no evidence he sought to elect coverage for himself under the company's workers' compensation policy.
3. Additionally, Defendants maintain Claimant signed a "Corporate Officer Notice to Reject" form executed on April 12, 2013, confirming his intention to be excluded from the company's workers' compensation policy. This form was properly submitted ahead of the hearing pursuant to Defendants' APA Notice according to Regulation 67-612.
4. Claimant submitted a report from "Marvin H. Dawson, Jr., Forensic Document Examiner", dated November 21, 2014, in his APA submissions, which implies Claimant's signature on the Notice to reject form may not be authentic. Defendant's received Claimant's Pre-Hearing Brief on November 24, 2014, which was the first time Defendants were provided this report.
5. Defendants maintain that they should be allowed the opportunity to obtain their own handwriting expert in the interest of fairness and, more importantly, to allow the Hearing Commissioner the opportunity to make a fully informed decision based on a complete evidentiary record. Further, Defendants also reserve the right to depose Claimant's expert regarding his opinion. Not allowing Defendants the opportunity to question Claimant's expert would be a clear violation of due process.

6. Additionally, Defendants contend that Claimant's credibility is relevant to the present claim. As such, Defendants issued a request for Claimant's SLED record following Claimant's deposition, which was conducted on November 20, 2014. However, this SLED record has yet to be received, despite Defendants' due diligence and the fact that it was listed as an exhibit on Defendant's Pre-Hearing Brief.
7. Defendants therefore request the Commissioner leave the record open in order to obtain an expert to review the relevant documents and to depose Claimant's handwriting expert. Further, Defendants request the Commissioner also leave the record open to consider Claimant's SLED record as related to his credibility.

Based on the foregoing, Defendants renew their request, which was made at the hearing, to leave the record open in order to consider critical evidence which was unavailable as of the hearing date -- namely an expert handwriting opinion as related to the "Corporate Officer Notice to Reject" dated October 3, 2013, in addition to Claimant's SLED record, which Defendants requested in a timely manner.

Respectfully submitted,



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

Columbia, South Carolina
January 19, 2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE CO. C/O
FARMERS BUSINESS INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

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

TO: Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

VIA HAND DELIVERY

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

DOCUMENT: Post-Hearing Motion Renewal/Motion to Reconsider
DATE OF Mailing: January 19, 2015


Susan Gosman
Legal Assistant to C. Barrett Burley

SCWCC 000384

Reply To
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

August 14, 2015

VIA eCase

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

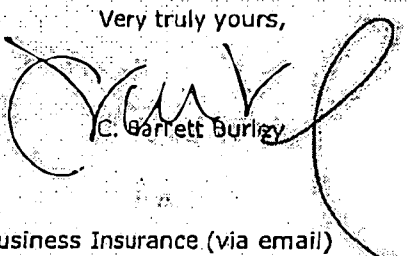
RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Dear Ms. Bracy:

Please find enclosed our Defendants/Appellants' Initial Appellate Brief to the Full Commission in this case. By copy of this letter to Mark R. Calhoun, Esquire, the claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail.

With kindest regards,

Very truly yours,


C. Barrett Burley

Enclosure
CBB/jmm

cc: Donna Rebold, Farmers Business Insurance (via email)
Mark R. Calhoun, Esquire, Calhoun Law Firm (via email & US mail)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

E LIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants/Appellants.

DEFENDANTS'/APPELLANTS'
INITIAL APPELLATE BRIEF TO
THE FULL COMMISSION

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE:

This matter comes before the Full Commission on Defendant/Appellant's Form 30 filed on July 2, 2015. This appeal arises out of a Single Commissioner Hearing conducted on December 18, 2014. The Single Commissioner issued her Decision and Order in this matter on June 15, 2015 and it was received by Defendants on June 19, 2015.

ISSUES RAISED ON APPEAL

1. Did the Hearing Commissioner err in finding of fact #2 by determining Claimant was an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Ann. §42-1-130 and by

failing to deny compensation because Claimant failed to opt-in to insurance coverage as required by S.C. Code Ann. §42-1-130.

2. Did the Hearing Commissioner err in Findings of Fact #5 and #6 and Conclusions of Law #1 and #5 that Claimant sustained injuries in the course and scope of his employment?
3. Did the Hearing Commissioner err in Finding of Fact #9 and Conclusions of Law #3, #6, and #7 that Claimant is entitled to medical treatment?
4. Did the Hearing Commissioner err in Findings of Fact #11 and #13 and Conclusion of Law #4 that Claimant is entitled to back temporary total disability benefits?
5. Did the Hearing Commissioner err in Finding of Fact #12 and Conclusions of Law #4 and #6 that Claimant is entitled to temporary total disability benefits?
6. Did the Hearing Commissioner err in Finding of Fact #3 that Claimant did not sign the corporate officer notice to reject form and by failing to make any findings related to credibility of Claimant?

FACTUAL BACKGROUND

Claimant was assaulted on September 27, 2013 while leaving the premises of Tony's Place of Sumter. Claimant was carrying cash deposits for Tony's Place and was robbed of these deposits at closing time of the business. Claimant was allegedly struck several times by the assailant, including his head. Claimant allegedly suffered injuries to his head, brain, psyche, eyes, ears, hearing, and left leg.

Fenerly Inc. d/b/a/ Tony's Place of Sumter, LLC (hereinafter "Tony's Place") is a business whose employees are eligible for benefits under the Workers' Compensation Act. Tony's Place is an LLC and is classified as domestic partnership with the Secretary of State and

Internal Revenue Service¹. Tony's Place is a domestic limited liability company established under the laws of South Carolina. (See Attachment A). At the time of the assault, Tony's Place had three corporate officers: Claimant, Claimant's wife, and Peter Peidis. Claimant, his wife, and Mr. Peidis are considered business partners in Tony's Place. Claimant's status as a business partner is set out by the Hearing Commissioner in Finding of Fact #1 and that finding has not been appealed by either party. Specifically, the Hearing Commissioner stated "[i]t is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC." At no time after the formation of the business venture did Claimant notify Carrier of his election to be included in the workers' compensation policy of insurance as required by S.C. Code Ann. § 42-1-130.

LEGAL ARGUMENT

I. THE HEARING COMMISSIONER ERRED IN FINDING OF FACT #2 BY DETERMINING CLAIMANT WAS AN EMPLOYEE OF TONY'S PLACE OF SUMTER, LLC PURSUANT TO S.C. CODE ANN. §42-1-130 AND BY FAILING TO DENY COMPENSATION BECAUSE CLAIMANT FAILED TO OPT-IN TO INSURANCE COVERAGE AS REQUIRED BY S.C. CODE ANN. §42-1-130.

The Hearing Commissioner issued Finding of Fact #1 which stated "It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC." This Finding has not been appealed and is, therefore, the law of the case for purposes of this appeal before the Full Commission. Because the Hearing Commissioner has determined Claimant was a business partner in Tony's Place, the sole issue for the determination of compensability in this case is whether or not Claimant, as a business partner, elected to be included as an employee under the

¹ Pursuant to the [irs.gov](http://www.irs.gov), an LLC is an entity created by state statute. Depending on elections made by the LLC and the number of members, the IRS will treat an LLC either as a corporation, partnership, or as part of the owner's tax return (a disregarded entity). Specifically, a domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation. There is no evidence Penderly has filed a Form 8832 with the IRS to remove it from partnership status. This information is located at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/LLC-Filing-as-a-Corporation-or-Partnership>.

workers' compensation coverage of the business as required by S.C. Code Ann. § 42-1-130. S.C.

Code Ann § 42-1-130 states

"Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title."

There are several key components of the statute that need to be viewed individually in order to determine if Claimant's claim is compensable (e.g. whether he, as a business partner, is entitled to coverage under Defendants' policy of insurance pursuant to the Act).

First, the statute states "...any...partner of a business...may elect to be included as employees under the workers' compensation coverage of the business..." This portion of the statute is the precursor to the election of coverage. It states that a partner in a business is not covered by workers' compensation coverage—and is not considered an employee of the business—unless they elect to be included in the insurance coverage as an employee. As noted, it also clearly sets out that **a partner in a business is not considered an employee** of the business because it states the partner "**may elect to be included as [an] employee...**" If a partner were considered an employee, this section of the statute would be unnecessary.

Next, the statute goes on to state "...if [the partner is] actively engaged in the operation of the business..." This contemplates a business partner acting as if he were an employee of the business. It is clear the legislature determined coverage would be unavailable to a silent or uninvolved business partner. However, a partner who works for the business as an employee would and is engaged in the operation of the business—as Claimant was in this case—would be

eligible for workers' compensation benefits subject to the other requirements of the statute (namely the choice to opt in to coverage).

The statute goes on to state workers' compensation coverage is only available **"...if the insurer is notified of [the partner's] election to be included."** This portion of the statute sets out that the only circumstance in which workers' compensation coverage is available to business partners actively engaged in the operation of the business is if—and only if—the business partner notifies the insurer of his choice to be covered by workers' compensation insurance. Failure of the partner seeking coverage to notify the insurer means there is no coverage.

Finally, the statute concludes with **"...any...partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities as prescribed in this title."** This clearly contemplates the fact that a business partner is not entitled to any employee benefits until the election is made. In simple terms, S.C. Code Ann. § 42-1-130 states that a business partner engaged in the business as an employee is not afforded any workers compensation coverage or benefits until the partner wishing to be covered informs the insurer he wishes to be covered by the workers' compensation policy of insurance.

Thus, the sole determination of compensability for Claimant's injuries hinges on only one question: Did Claimant inform Carrier of his wish to be covered by the workers' compensation policy of insurance? **If Claimant did not notify Carrier, then he is not covered by any workers' compensation policy of insurance as set out in S.C. Code Ann. § 42-1-130.**

The undisputed evidence presented at the hearing establishes Claimant was a business partner with Pete Piedis and Claimant's wife in Tony's Place. The evidence further establishes that Claimant never notified Carrier of his desire to be covered by the workers' compensation

policy of insurance for Tony's Place. Tony's Place's insurance agent, Byron Kinney, would be the only person who could have accepted Claimant's notice of intent to be covered by the policy of insurance as set out in S.C. Code Ann. § 42-1-130². The evidence in the record indicates that Claimant admits he has never spoken to anyone with Carrier nor has he ever spoken to Byron Kinney. Further, Claimant has admitted that he never told anyone that he wanted to opt in to the workers' compensation coverage. Specifically, Claimant stated:

"Q: Do you know who Byron Kenny (phonetic) is?

A: I don't know."

Claimant's Depo. Tr. 32:20-21

"Q: And to refresh your memory, Byron Kenny is an insurance agent in Sumter. Do you recall meeting with him?

A: I don't remember."

Claimant's Depo. Tr. 33:12-14

"Q: Do you remember going to Byron Kenny's office to sign any form?

A: No."

Claimant's Depo. Tr. 37:24 - 38:1

"Q: Did you ever discuss with Byron Kinney whether or not you should or should not reject workers' compensation insurance coverage?

A: No. I never talked to him.

Q: Have you ever been to Byron Kinney's office?

A: No."

² Other employees or agents of Carrier could have also accepted the notice to opt in. However, as set out in this brief, Claimant admits he has never spoken to anyone with Carrier (nor has he spoken to Byron Kinney).

Single Comm. Hr'g Trans. 29:18-23

"Q: Did you ever tell your partner, Pete Peidis, that you wanted workers' compensation coverage under the company's workers' compensation policy?"

A: I didn't tell him that."

Single Comm. Hr'g Tran. 44:6-9 (emphasis added)

"Q: Did you ever tell Byron Kinney that you wanted to be covered under workers' comp insurance through the company's policy?"

A: No."

Single Comm. Hr'g Trans. 44:10-13 (emphasis added)

"Q: Okay. You've—no—you've already testified you've never spoken to Byron Kinney?"

A: No."

Single Comm. Hr'g Trans. 45:10-12

The record is abundantly clear that Claimant never met with Byron Kinney nor any other representative of Carrier. It is further abundantly clear that Claimant never told his business partner or Byron Kinney that he wanted to be included in Employer's workers' compensation policy as required by S.C. Code Ann. § 42-1-130³. The record is devoid of any testimony by Claimant that he affirmatively opted in to workers' compensation coverage as required of business partners pursuant to S.C. Code Ann. § 42-1-130.

There is ample case law throughout South Carolina legal history which clearly sets out and upholds the strict requirements of S.C. Code Ann. § 42-1-130. Each time this statute is

³ Even if Claimant had told Pete Piedes, his business partner, that he wanted to be included in the coverage he still

referenced or challenged, the courts have upheld the strict requirement that a business partner must affirmatively inform the insurance carrier of his desire to be included in the coverage as if he were any other employee⁴.

Johnson v. Pennsylvania Millers Mut. Ins. Co., 292 S.C. 33, 354 S.E.2d 791 (S.C. App., 1987) is the seminal case related to S.C. Code Ann. § 42-1-130. The issues in Johnson related to whether an insurance policy issued by the Pennsylvania Millers Mutual Insurance Company provided workers' compensation coverage to the Johnson. In addition, the factual background of Johnson, especially related to the working arrangement, is almost identical to the present case.

Johnson was a partner and the general manager of the Ammons and Johnson Grain Company^{5 6}, a partnership engaged in the grain storage business. Until 1980, INA carried Ammons and Johnson's workers' compensation insurance. Pennsylvania Millers provided other insurance coverage to the partnership. In 1980, Johnson met with representatives of Pennsylvania Millers to discuss changing the partnership's workers' compensation insurance from INA to Pennsylvania Millers. Johnson also testified that he and the Pennsylvania Millers representatives reviewed the INA policy and discussed the premium that would be charged to cover Johnson with workers' compensation under a policy issued by Pennsylvania Millers. James Davis, a Pennsylvania Millers representative, testified that he discussed providing general workers' compensation insurance to Ammons and Johnson and that, so far as he knew, Johnson never specifically requested "coverage as a partner." On September 30, 1980, Ammons and

would not be covered because that is an ineffective method of opting in pursuant to S.C. Code Ann. § 42-1-130.

⁴ One issue Defendants expect will be raised is that Claimant constructively opted in by testifying he would not have signed the rejection form. First, Claimant testifies he was never presented with a rejection form and, therefore, he could not have refused to sign the form. Second, and more importantly, constructive wishes to be included in coverage are not sufficient to be covered under the workers' compensation policy pursuant to S.C. Code Ann. § 42-1-130 and applicable case law. Claimant must have affirmatively informed Carrier of his desire to be covered by the insurance policy.

⁵ Note that Johnson was a full time "employee" but is still considered only a business partner, and not an employee, for the determination of applicability of S.C. Code Ann. § 42-1-130.

Johnson switched its workers' compensation insurance from INA to Pennsylvania Millers. The workers' compensation policy issued by Pennsylvania Millers expressly covered "local managers." Johnson injured himself several months later in an accident arising out of and in the course of his employment as manager of the grain company. Johnson commenced a workers' compensation action on April 30, 1982. Pennsylvania Millers admitted the accident, but denied that its policy with Ammons and Johnson covered Johnson.

The Workers' Compensation Commission held a hearing on Johnson's workers' compensation claim. The single commissioner held that the Pennsylvania Millers policy did not cover Johnson because Johnson did not comply with the requirements of Section 42-1-130 of the South Carolina Code of Laws (1976) in that Johnson "filed" no election to be covered as an employee. Johnson appealed to the circuit court after a majority of the full commission affirmed the single commissioner. The circuit court held that an error of law controlled the single commissioner's finding, which was affirmed by a majority of the full commission, that Pennsylvania Millers' policy did not provide workers' compensation coverage to Johnson. It concluded that the term "local manager," as used in Pennsylvania Millers' policy, included Johnson, Ammons and Johnson's "general manager." The court of appeals reversed the circuit court and held that S.C. Code Ann. § 42-1-130 requires an affirmative election to opt-in to coverage⁷.

The court of appeals stated

"Courts must apply the terms of a clear and unambiguous statute according to their literal and ordinary meaning. Lail v. Richland Wrecking Company, Inc., 280 S.C. 532, 313 S.E.2d 342

⁶ In the present case, Claimant is both a business partner and manager of Employer.

⁷ The court did not specifically rule on whether Johnson actually did—or did not—opt in to coverage because that was not before the court of appeals as it was not ruled upon by the Commission. However, as set out herein, the court of appeals clearly sets out that business partners are required to affirmatively opt-in to coverage (something Claimant failed to do in the present case).

(Ct.App.1984). Section 42-1-130 is clear and unambiguous. When we apply the terms of Section 42-1-130 according to their literal and ordinary meaning, we can only conclude that, to be included as an employee under workers' compensation coverage, the statute requires a partner to notify the insurer of his election to be included as an employee. The partner may give the notice either orally or in writing."

Johnson sets out in no uncertain terms that S.C. Code Ann. § 42-1-130 is clear and unambiguous. Further, the opinion clearly sets out that in order for a partner to be covered by workers' compensation insurance the business partner is required to notify the insurer of his election to be included as an employee. The record, as set out above, is clear that Claimant is a partner in the business and that Claimant did not notify Carrier of his election to be included as an employee for the purposes of workers' compensation insurance coverage. **Because the statute is clear and unambiguous, and Claimant failed to comply with the statute, Claimant is not eligible for benefits under Defendants' workers compensation policy.**

In Marlow v. E.L. Jones & Son, Inc., 151 S.E.2d 747, 248 S.C. 568 (S.C. 1966), another case dealing with S.C. Code Ann § 42-1-130, the court was tasked with determining whether the claimant was a covered employee or an independent contractor at the time of his injury within the context of S.C. Code Ann. § 42-1-130. While the present case does not involve contractors, the Marlow court undertook a discussion of "working partners" in the context of coverage under workers' compensation policies of insurance. In Marlow, the issue was whether a roofing subcontractor was an employee of the general contractor/company. After determining the three roofing subcontractors were not employees of E.L. Jones & Son, the inquiry turned to whether or not the injured roofer/subcontractor was an employee of the other two roofing subcontractors. The court noted that the three roofing subcontractors were working business partners in the same roofing business. Citing to Larson's, the court stated: "**Working partners' are not employees.**"

Larson's Workmen's Compensation Law, Sections 54.30--54.32. The Court went on to state "...the commission has correctly decided that the roofing jobs were performed as subcontracts. However, we find no support in the evidence for the commission's conclusion that claimant was an employee of either or both of his associates. While Brown was the contact man with Jones, as between themselves the three roofers were on an equal basis and regarded each other as partners." Because the testimony in Marlow established that the three roofing subcontractors were all partners in the same business, the court held "[i]t is clear that claimant was not an employee of either or both of his associates." The Marlow court did not reach a determination of benefits because the only issue before it was whether the claimant was an employee of the employer or was an independent contractor/business partner with the roofing company. However, Marlow sets out that business partners engaged in the business are not considered employees. This is a key case law ruling because Finding of Fact #2 appears to suggest that Claimant was somehow both a business partner and an employee of Employer. This result is not possible within the context of both Marlow and S.C. Code Ann. § 42-1-130. Claimant is only eligible to be considered as a working business partner and can never be considered to be an actual employee of Employer. Because Claimant is a working business partner, and pursuant to Marlow working partners are not employees, Claimant was required to opt-in to Defendants' workers' compensation insurance pursuant to S.C. Code Ann. § 42-1-130. Claimant admits he did not elect to be covered pursuant to S.C. Code Ann. § 42-1-130 and, therefore, no coverage is available to him under the Act.

In Smith v. Squires Timber Co., 311 S.C. 321, 428 S.E.2d 878 (S.C., 1993), the court again addressed the "opt-in" provisions of S.C. Code Ann. § 42-1-130. While the case again dealt with independent and/or subcontractors, the court set out and upheld the strict and specific

opt-in language of S.C. Code Ann. § 42-1-130. At the outset, the court stated [a]s a general rule, independent contractors or subcontractors are not included under the Workers' Compensation Act." citing to Marlow v. E.L. Jones & Son, Inc., 248 S.C. 568, 151 S.E.2d 747 (1966) (working partners are not employees and therefore not statutory employees); McDowell v. Stilley Plywood, 210 S.C. 173, 41 S.E.2d 872 (1947). The Smith court then sets out that S.C. Code Ann. § 42-1-130 sets out a "narrow exception to the general rule by allowing an independent contractor or subcontractor to become an "employee" by electing coverage under his business's workers' compensation benefits." citing to Smith v. T.H. Snipes & Sons, Inc., 306 S.C. 289, 411 S.E.2d 439 (1991) (an independent contractor may be a statutory employee if he has elected coverage pursuant to section 42-1-130); Carver v. Bill Pridemore & Co., 278 S.C. 235, 294 S.E.2d 419 (1982) (a subcontractor who elects for coverage under section 42-1-130 may be a statutory employee). Again, while the present case does not involve a subcontractor issue, the Smith court sets out in clear, cohesive detail that partners are required to opt-in to coverage under S.C. Code 42-1-130 and that the narrow exception of this statute allows these parties to "become employees⁸." Again, as set out throughout, Claimant admits he did not opt-in to coverage by notifying Carrier as required by S.C. Code Ann. § 42-1-130 and, therefore, no coverage is available to Claimant under the Act.

In Carver v. Bill Pridemore & Co., 294 S.E.2d 419, 278 S.C. 235 (S.C. 1982), the court discussed S.C. Code Ann. § 42-1-130 and stated:

In addition, § 42-1-130 expands coverage to allow persons working for the benefit of Pridemore, as owner, to elect to be classified as an "employee" for purposes of receiving

⁸ In other words, you cannot be both a business partner/contractor/subcontractor AND an employee. You are one or the other. S.C. Code Ann. § 42-1-130 carves out the exception wherein you can transition from one role to the other (e.g. partner to employee) for the purposes of workers' compensation insurance. However, to be able to make the transition, you are required to affirmatively opt-in to coverage as set out in the statute.

compensation coverage. Section 42-1-130 (1981 Cum.Supp.) provides:

"Any sole proprietor or partner of a business whose employees are eligible for benefits under this Title may elect to be included as employees under the workmen's compensation coverage of such business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be so included. Any sole proprietor or partner shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Title."

(emphasis added)

The Carver court went on to hold:

"[t]he obvious purpose of this section is to expand coverage of the Act by making its benefits available to working partners and sole proprietors who are actively engaged in another's enterprise, and thereby exposed to its risks, and whose employees are covered under the Act, but who would be otherwise excluded because of their status."

(emphasis added).

The Carver decision is important to the present case for two reasons: (1) it clearly sets out those partners covered by S.C. Code Ann. § 42-1-130 must elect to be classified as an "employee" for workers' compensation coverage to expand to cover them (in other words, those partners are not simultaneously considered employees—you are either a partner or an employee⁹); and (2) the purpose of S.C. Code Ann. § 42-1-130 is to make workers' compensation benefits available to working partners (and sole proprietors) only if they affirmatively choose to opt-in to coverage through notification to the company's carrier. At the risk of repetition, Claimant admits in his testimony that he did not inform Carrier of his desire to opt-in to workers' compensation coverage. Therefore, Claimant, as a business partner, was not covered by the workers' compensation policy of insurance at issue.

As set out above, the courts have repeatedly applied the strict and literal reading of S.C. Code Ann. § 42-1-130 to claimants. The statute requires that a business partner affirmatively inform the insurer of his company that he wishes to be included in the workers' compensation insurance policy. In the present case, it is undisputed Claimant was a partner in Employer¹⁰. It is further undisputed Claimant failed to inform Carrier he wished to be covered as an employee under Employer's workers' compensation policy of insurance. In fact, Claimant goes so far as to testify that he has never spoken to anyone with Carrier about the policy of insurance and he admits he never told his business partner (Pete Piedis) and his insurance agent (Byron Kinney) that he wanted to be covered by Defendants' policy of insurance. The result of Claimant's failure to opt-in is that, pursuant to the Act, Claimant is, by law, not covered by Defendants' policy of workers' compensation insurance.

There is no question Claimant has serious injuries, extensive medical bills, and will require future medical care. And the effect of denying Claimant benefits due to a lack of workers' compensation insurance coverage is harsh. However, this Commission cannot abrogate the clear and unambiguous requirement S.C. Code Ann. § 42-1-130 imposed on Claimant because Claimant has suffered serious injuries. The Legislature drafted S.C. Code Ann. § 42-1-130 with the specific intent to exclude business partners from coverage unless they affirmatively opted in to coverage by notifying the insurer. The court of appeals in Johnson stated this statute is clear and unambiguous. The Commission is required to give clear and unambiguous statutes their plain and literal meaning. Therefore, pursuant to the cases cited herein and the clear and unambiguous statute at issue, this Commission is required find there is no coverage for Claimant under the workers' compensation policy of insurance provided by Carrier because Claimant

⁹ This is the same conclusion reached almost twenty years earlier in Marlow, discussed herein.

¹⁰ As stated previously, Employer is considered to be a domestic partnership by both the South Carolina Secretary of

admits he failed to inform Carrier of his choice to be covered by Defendants' workers' compensation insurance policy as required by S.C. Code Ann. § 42-1-130.

II. THE HEARING COMMISSIONER ERRED IN FINDINGS OF FACT #5 AND #6 AND CONCLUSIONS OF LAW #1 AND #5 THAT CLAIMANT SUSTAINED INJURIES IN THE COURSE AND SCOPE OF HIS EMPLOYMENT.

This exception stems from and builds on the main exception of this appeal—that Claimant is not covered by a valid policy of workers' compensation insurance because he failed to notify Carrier of his desire to be covered by Defendants' policy of insurance in compliance with S.C. Code Ann. § 42-1-130. Should the Commission determine Claimant was not required to comply with the plain unambiguous language of S.C. Code Ann. § 42-1-130 as a business partner of Employer, Defendants concede Claimant's injuries were sustained during the course and scope of his work as a business partner of Tony's Place.

III. THE HEARING COMMISSIONER ERRED IN FINDING OF FACT #9 AND CONCLUSIONS OF LAW #3, #6, AND #7 THAT CLAIMANT IS ENTITLED TO MEDICAL TREATMENT.

This exception stems from and builds on the main exception of this appeal—that Claimant is not covered by a valid policy of workers' compensation insurance because he failed to notify Carrier of his desire to be covered by Defendants' policy of insurance in compliance with S.C. Code Ann. § 42-1-130. Should the Commission determine Claimant was not required to comply with the plain unambiguous language of S.C. Code Ann. § 42-1-130 as a business partner of Employer, Defendants concede Claimant's injuries entitle him to medical treatment.

IV. THE HEARING COMMISSIONER ERRED IN FINDINGS OF FACT #11 AND #13 AND CONCLUSION OF LAW #4 THAT CLAIMANT IS ENTITLED TO BACK TEMPORARY TOTAL DISABILITY BENEFITS.

This exception stems from and builds on the main exception of this appeal—that Claimant is not covered by a valid policy of workers' compensation insurance because he failed

to notify Carrier of his desire to be covered by Defendants' policy of insurance in compliance with S.C. Code Ann. § 42-1-130. Should the Commission determine Claimant was not required to comply with the plain unambiguous language of S.C. Code Ann. § 42-1-130 as a business partner of Employer, Defendants concede Claimant's injuries entitle him to back temporary total disability benefits.

V. THE HEARING COMMISSIONER ERRED IN FINDING OF FACT #12 AND CONCLUSIONS OF LAW #4 AND #6 THAT CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS.

This exception stems from and builds on the main exception of this appeal—that Claimant is not covered by a valid policy of workers' compensation insurance because he failed to notify Carrier of his desire to be covered by Defendants' policy of insurance in compliance with S.C. Code Ann. § 42-1-130. Should the Commission determine Claimant was not required to comply with the plain unambiguous language of S.C. Code Ann. § 42-1-130 as a business partner of Employer, Defendants concede Claimant's injuries entitle him to temporary total disability benefits.

VI. THE HEARING COMMISSIONER ERRED IN FINDING OF FACT #3 THAT CLAIMANT DID NOT SIGN THE CORPORATE OFFICER NOTICE TO REJECT FORM AND BY FAILING TO ISSUE ANY FINDINGS RELATED TO CREDIBILITY OF CLAIMANT.

At the outset, Defendants contend the Hearing Commissioner erred by even considering the corporate notice to reject form after reaching Finding of Fact #1 in light of the simple, clear, and unambiguous requirements of S.C. Code Ann. § 42-1-130. The inclusion of the form in the process of reaching further conclusions within the Decision and Order only served to muddy the water as to the real determination which, as set out above, was simply whether or not Claimant, as a business partner, notified Carrier of his opt-in to coverage. The corporate officer notice to reject form is immaterial to this determination for two reasons: (1) the form is only applicable to

corporations (Tony's Place is an LLC/domestic partnership, not a corporation) and (2) it is irrelevant whether the form was signed because S.C. Code Ann. § 42-1-130 requires an affirmative opt-in by business partners and doesn't contemplate an opt-out of coverage (as the Act does with formal corporations).

As stated previously, Tony's Place is an LLC and is considered to be a domestic partnership by the IRS. An LLC is an entity created by state statute. Depending on elections made by the LLC and the number of members, the IRS will treat an LLC either as a corporation, partnership, or as part of the owner's tax return (a disregarded entity). Specifically, a domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation¹¹. No evidence has been presented by Claimant to show Employer filed the Form 8832 to elect status as a corporation.

However, should this Commission determine Employer is a formal corporation and subject to the corporate notice to reject form, the Hearing Commissioner erred by failing to issue findings related to Claimant's credibility. At issue in the hearing was whether or not the corporate notice to reject form bearing Claimant's signature was actually signed by Claimant. Claimant asserted he recalled that he did not sign the form but gave voluminous testimony indicating he had no memory of numerous other events in his past. A review of the deposition and hearing testimony sets out multiple instances of possible selective memory by Claimant. Defendants raised these numerous inconsistencies with the Hearing Commissioner but the Hearing Commissioner failed to issue any findings related to these inconsistencies. Because the main issue surrounding the corporate notice to reject form relies on Claimant's credibility, and Defendants put evidence into the record questioning Claimant's credibility, failing to issue

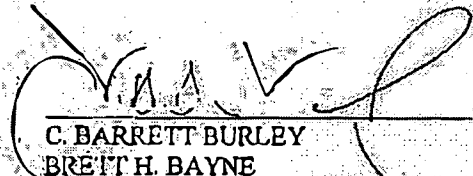
findings of facts related to Claimant's credibility constitutes an error by the Hearing Commissioner. Therefore, if the Commission determines the corporate notice to reject form was required because Employer is a formal corporation, this matter must be remanded to the Hearing Commissioner for additional findings related to credibility of Claimant. However, as noted throughout, this exception should be moot as the record is clear Tony's Place is an LLC/domestic partnership and the Hearing Commissioner ruled Claimant was a partner of Tony's Place (thereby subjecting him to S.C. Code Ann. § 42-1-130).

CONCLUSION

S.C. Code Ann. § 42-1-130 requires a business partner opt-in to workers' compensation insurance coverage by notifying their insurer of the partner's intent to be covered. It is undisputed Claimant was a business partner with his wife and Pete Piedis in Tony's Place (Employer). As a business partner, Claimant is subject to the mandatory opt-in requirements of S.C. Code Ann. § 42-1-130. Claimant admitted during both his deposition and the hearing that he has never spoken to Carrier or Byron Kinney (Employer's insurance agent). Claimant also admitted during the hearing that he did not opt-in to workers' compensation coverage with Carrier. Further, Claimant admitted he never informed Carrier or Byron Kinney he wanted to be covered by Employer's workers' compensation policy. Johnson, Marlow, Smith, and Carver all set out the collective case law in South Carolina related to S.C. Code Ann. § 42-1-130. Collectively, the cases continually reaffirm and uphold the opt-in requirement of S.C. Code Ann. § 42-1-130. In particular, the Johnson court held the statute was clear and unambiguous and requires an affirmative opt-in to coverage. Because Claimant was required by law to opt-in to coverage, and Claimant admits he did not opt-in to coverage as required by statute, the

¹¹ <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/LLC-Filing-as-a-Corporation-or-Partnership>

Commission is required to deny benefits to Claimant under Employer/Carrier's policy of insurance pursuant to S.C. Code Ann. § 42-1-130.



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

Columbia, South Carolina

August 14, 2015

Attachment A

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

APR 04 2012

SECRETARY OF STATE

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203:

1. The name of the limited liability company (Company ending must be included in name*)

TONY'S PLACE OF SUMTER LLC

*NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "LLC", "LLC", "LC", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is

1870 HIGHWAY 15 SOUTH

Street Address

SUMTER

29150

City

Zip Code

3. The initial agent for service of process is

PANAGIOTIS PEIDIS

Name

Panagiotis Peidis
Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

1870 HIGHWAY 15 SOUTH

Street Address

SUMTER

29150

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

(a) PANAGIOTIS PEIDIS

Name

835 OAK BROOK BLVD

Street Address

SUMTER

SC

29150

City

State

Zip Code

(b) ELIAS REYNA

Name

2970 TUCKAWAY DRIVE

Street Address

SUMTER

SC

29154

City

State

Zip Code

Form Revised by South Carolina
Secretary of State, March 2012

TONY'S PLACE OF SUMTER LLC
Filing Fee: \$110.00 ORIG
South Carolina Secretary of State
Mark Hammond

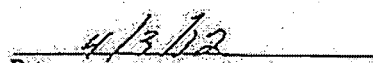
Name of Limited Liability Company

TONY'S PLACE OF SUMTER LLC

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified.
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a)
- Name _____
- Street Address _____
- City _____ State _____ Zip Code _____
- (b)
- Name _____
- Street Address _____
- City _____ State _____ Zip Code _____
7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.
9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign.


Signature of Organizer


Signature of Organizer


Date 4/13/12


Date 4/13/12

Form Revised by South Carolina
Secretary of State, March 2012

SCWCC 000092

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

TONY'S PLACE OF SUMTER LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on April 4th, 2012, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
18th day of April, 2012.

Mark Hammond
Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA

1) BUSINESS PURCHASE AGREEMENT
2) (PARTIAL PURCHASE)

Designation Of Parties

THIS AGREEMENT made and entered into this 24 day of

Whereas Clause

WHEREAS the Seller is the owner of a restaurant business for eat-in and take-out food known as Tony's Place of Sumter, LLC, in the County of Sumter, State of South Carolina, and the Seller desires to sell to the Buyer a thirty (30%) per cent interest in his business including the goodwill thereof, and the Buyer is willing to buy the thirty (30%) per cent interest in the business on the terms and conditions set out below:

Now, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

Consideration and Agreement to Sell and Buy

(1) The Buyer agrees to pay to the Seller as consideration for the transfer of thirty (30%) per cent of said business the sum of \$42,000.00, with the balance to be paid as follows:

a. The sum of \$2,000.00 in cash or certified check as a down payment, as agreed by Parties.

b. The additional sum of \$13,000.00 in cash or certified check at the time of the execution of this Agreement.

c. The balance of \$27,000.00 will be made in thirty-six (36) monthly payments of \$797.15 each commencing the month following the execution of this Agreement, which will be due on or before the fifteenth (15th) of each month.

The Buyer will pay interest at four percent (4%) on the deferred payments annually. The Buyer shall be permitted to make additional payments to be applied to the remaining principal at the Buyer's option.

(2) The Seller agrees to sell thirty (30%) per cent of his business, Tony's Place of Sumter, LLC, to the Buyer. The business includes the following:

a. Furniture, fixtures, furnishings, inventory and other equipment as shown on the attached list.

b. Goodwill.

Adjustment of Purchase Price At The Closing

(3) The balance due on the purchase price at the time of closing shall be adjusted for the following:

- a. Insurance premiums.
- b. Outstanding unpaid invoices for fixtures, equipment or inventory.
- c. Deposits or outstanding bills with utility companies.
- d. Loss, destruction, or damage due to fire or other casualty which is not of such nature as to curtail or interrupt the business.
- e. Accounts receivable.

The net amount of these adjustments shall be added or subtracted, as the case may be, from the balance due on the purchase price at the time of the closing.

Indemnity

(4) a. The Seller shall indemnify and hold the Buyer harmless from any and all claims, demands, losses, or damages arising out of the business prior to the closing date.

b. The Buyer shall indemnify and hold the Seller harmless from any and all claims, demands, losses or damages arising out of the business after the closing date arising from his acts or omissions.

Conduct of Business

(5) Up to the date of closing, the Seller will operate and maintain his business in the normal and regular manner and will not violate the terms of any lease or contract connected with the business.

Breach of Contract

(6) The Buyer agrees that failure on his part to make the purchase payments when due as set out in Paragraph one (1) and after a seven (7) day grace period causes the entire amount of purchase payments remaining to become immediately due. The Buyer further agrees that failure to make the purchase payments when due after the grace period expires entitles the Seller to repossess the business and any equity the Buyer may have in the business shall be prorated to the date of the last made scheduled payment. The Buyer agrees to pay the Seller's legal expenses and all other costs incidental to enforcement or collection if Buyer shall be found to be in breach of contract.

Buyer's Right To Use Seller's Name

(7) The Seller agrees to permit the Buyer to use the name Tony's Place of Sumter, LLC, in connection with the business hereby sold for so long as the Seller and Buyer are co-owners of the business, but the Seller does not convey to the Buyer exclusive rights to said name for so long as the Seller is a co-owner of the business.

Assignment

(8) This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

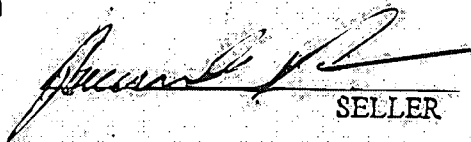
Closing

The Closing shall take place at the law office of James A. Stoddard on the 24th day of APRIL, 2012, or at such alternative date and place as the parties shall agree.

IN WITNESS WHEREOF, the parties have hereunto set their hands and
seals the day and year first above written.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)


SELLER


BUYER

Thus personally appeared the above-named Seller and Buyer to me known,
who acknowledged that they had executed the foregoing as their free act and deed
before me this 24th day of APRIL, 2012.

SWORN to before me this
24th day of APRIL, 2012

Notary Public for South Carolina
My Commission expires: 7/29/14

\$27,000.00

Sumter, South Carolina

April 24, 2012

FOR VALUE RECEIVED, the Undersigned promise(s) to pay to the order of Calvary Bible Church of Sumter, South Carolina, payable at 1870 Highway 15 South, Sumter, South Carolina, the sum of Twenty seven thousand and no/100 (\$27,000.00) DOLLARS, together with interest accruing at the rate of four (4%) per cent per annum, in thirty six (36) consecutive monthly payments of \$797.15 each, beginning May 15, 2012, with a final payment of \$794.71 due and payable on April 15, 2015. Prepayment in whole or in part may be made without penalty or fee.

A late fee of Fifty and no/100 (\$50.00) DOLLARS shall be due and payable if any monthly payment shall be more than fifteen (15) days late.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or said interest, or any portion thereof, on the due date, the holder hereof may at his option declare the entire remaining balance immediately due and payable. The obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. All makers and endorsers do hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

Elias Reyna
Elias Reyna

Address: 2970 Tuckaway Drive
Sumter, SC 29154

SCWCC 000100

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE CO. C/O
FARMERS BUSINESS INSURANCE,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Rule 67-211 of the South Carolina Workers' Compensation Commission, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

VIA HAND DELIVERY

South Carolina Worker's Compensation Commission
1333 Main Street, Suite 500 Post Office Box 1715
Columbia, South Carolina 29202-1715

DOCUMENT: Other - Defendants'/Appellants' Initial Appellate Brief to the Full Commission

DATE OF MAILING: August 14, 2015



Jessica M. Morell
Legal Assistant to C. Barrett Burley

SCWCC 000101

mgc

REPLY TO
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

January 22, 2016

VIA HAND DELIVERY

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

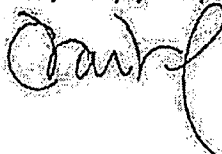
RE: Ellas Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Dear Ms. Bracy:

Please find enclosed Defendants' Motion to Alter or Amend Judgment Pursuant to SCRPC Rule 59(E) and S. C. Code Ann. §1-23-380 for filing in the above-referenced case. Also enclosed is our check in the amount of \$25.00 for the appropriate filing fee.

By copy of this letter to Mark R. Calhoun, Esquire, Claimant's attorney, we are notifying him of this submission and serving a copy of the same upon him by mail. Please do not hesitate to contact us with any questions.

Very truly yours,



C. Barrett Burley

CBB/ssc
Enclosures

cc: Mark R. Calhoun, Esquire, Calhoun Law Firm
Donna Rebold, Farmers Business Insurance (via email)

RECEIVED

JAN 22 2016

(FRONT DESK)

BC Workers' Comp Comm

9589

SCWCC

JAN 25 2016

JUDICIAL

339/185

J.C.

MCANGUS GONDELOCK & COURIE LLC

1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
COLUMBIA, SC 29211

803.779.2300 PHONE
803.748.0526 FAX
WWW.MGCLAW.COM

SCWCC 000033

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF
SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE
CO. C/O FARMERS BUSINESS
INSURANCE

Carrier,

Defendants.

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO SCRC
RULE 59(E) AND S.C. CODE ANN.
§1-23-380**

(Hearing Requested)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND MARK R.
CALHOUN, ESQUIRE:

COMES NOW Defendants and would, pursuant to Rule 59(e) and S.C. Code Ann. §1-23-380, respectfully ask this Commission to alter or amend its Decision and Order issued on January 12, 2016. This motion is made pursuant to Rule 59(e), S.C. Code Ann. §1-23-380, and the Supreme Court's recent decision in Rhame v. Charleston County School District, Opinion No. 27516, Filed April 22, 2015. Defendants respectfully submit this Commission has made errors of both fact and law based on the evidence before the Commission and contained in the Commission file. Specifically, in the subject Decision and Order, this Commission erroneously found or concluded the following:

1. That Claimant was an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Ann. § 42-1-130 despite clear evidence Claimant was a minority shareholder and owner of Tony's Place of Sumter, LLC, which is a partnership and under existing case law Claimant cannot be considered both a partner and an employee.
2. That Claimant did not "opt out" of workers' compensation coverage when the issue before the Commission should be whether Claimant "opted in" to workers' compensation coverage as required by law for partnerships.
3. The Commission failed to make any finding of fact, based on the evidence presented and in the Commission file, as to whether Tony's Place of Sumter, LLC is a partnership or a corporation. Defendants contend the only evidence in the record supports a finding of fact that Tony's Place of Sumter, LLC is a partnership.
4. That, as a matter of law, Tony's Place of Sumter, LLC, which is a partnership, is actually a corporation pursuant to S.C. Code Ann. § 42-1-130.

Other additional grounds may be raised in Defendants' Memorandum in Support of this Motion. Defendants will file a memorandum in support of this Motion at the direction and deadline of the Commission when this matter is set for a hearing. Defendants request a hearing on this Motion be set before the Appellate Panel as soon as is practicable.


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

Columbia, South Carolina
January 22, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1316470

ELIAS REYNA,

Employee,

Claimant,

vs.

FENERLY INC. D/B/A TONY'S PLACE OF SUMTER,

Employer,

AND

FOREMOST SIGNATURE INSURANCE CO. C/O
FARMERS BUSINESS INSURANCE,

Carrier,

Defendants.

**CERTIFICATE
OF
SERVICE**

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

TO:

Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

VIA HAND DELIVERY

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 300
Columbia, South Carolina 29201

DOCUMENT:

Motion to Alter or Amend Judgment Pursuant to
SCRCF Rule 59(E) and S. C. Code Ann. §1-23-380

DATE OF
MAILING:

January 22, 2016



Sharon O'Quinn
Legal Assistant to C. Barrett Burley

SCWCC 000036

1 A. I walk around a little bit, outside.

2 Q. Do you have any other medical conditions or
3 illnesses that you're aware of?

4 A. No.

5 Q. Have you had any other accidents other than this
6 injury that you can recall?

7 A. I don't remember.

8 Q. Do you know if you've currently applied for
9 unemployment?

10 A. I don't remember.

11 Q. Do you have any upcoming doctor appointments with
12 anyone?

13 A. I don't remember.

14 Q. Do you recall meeting with the police after your
15 accident?

16 A. I don't remember.

17 Q. Do you recall going back to work at Tony's Place
18 of Sumter after your accident?

19 A. I don't remember.

20 Q. Do you know who Byron Kenny (phonetic) is?

21 A. I don't know.

22 Q. Do you know who James Stoddard is?

23 A. I don't know.

24 Q. To refresh your memory, James Stoddard is an
25 attorney in Sumter. Do you ever recall meeting with him?

1 A. Yes.

2 Q. When did you meet with Mr. Stoddard?

3 A. I don't remember.

4 Q. Do you remember why you met with Mr. Stoddard?

5 A. I don't remember.

6 Q. Do you remember the nature of the conversations

7 that you had with Mr. Stoddard?

8 A. I don't remember.

9 Q. Were those conversations to discuss your ownership
10 of Tony's Pizza?

11 A. I don't remember.

12 Q. And to refresh your memory, Byron Kenny is an
13 insurance agent in Sumter. Do you recall meeting with him?

14 A. I don't remember.

15 Q. Do you have a South Carolina driver's license?

16 A. Yes.

17 Q. Do you know your number?

18 A. No.

19 Q. Do you have your license with you now?

20 A. No.

21 Q. And you testified earlier that you don't know your
22 Social Security Number, is that right?

23 A. Yes.

24 Q. Do you know who paid for all your medical bills
25 associated with this injury?

1 A. No.

2 Q. If this form had been interpreted for you back in
3 April of 2013, would you have agreed to reject worker's
4 compensation insurance coverage for yourself?

5 MR. BURLEY: Object to form.

6 THE WITNESS: No, I wouldn't have rejected it.

7 BY MR. CALHOUN:

8 Q. Why?

9 A. Because I worked there, and I did lots of things.
10 I could have gotten burned. I could have gotten robbed.
11 And so I couldn't have -- there's no way I could have
12 rejected it -- I could have rejected the insurance.

13 Q. So when I had this form interpreted for you, is
14 that the first time this form had ever been interpreted for
15 you?

16 A. Can you repeat the question?

17 Q. When I had this form interpreted for you here in
18 my office, is it the first time the form has ever been
19 interpreted for you?

20 A. Yes.

21 Q. And is -- was that also the first time you ever
22 remember seeing this form?

23 A. Yes.

24 Q. Do you remember going to Byron Kenny's office to
25 sign any form?

1 A. No.

2 MR. CALHOUN: That's all I have, Barrett.

3 FURTHER EXAMINATION

4 BY MR. BURLEY:

5 Q. When I asked you earlier if you ever worked at
6 Tony's Place of Sumter, you said you don't ever recall
7 working there one day, is that correct?

8 A. Can you repeat the question?

9 Q. When I asked you earlier about ever working at
10 Tony's Place, you told me that you never recalled working
11 there or anywhere in your entire life, is that correct?

12 MR. CALHOUN: Object as to form.

13 THE WITNESS: My wife told me that I worked there.

14 BY MR. BURLEY:

15 Q. But you don't recall ever working there, correct?

16 A. No, I don't remember.

17 Q. Do you ever remember working there?

18 A. No.

19 Q. But you just told your attorney in response to his
20 question that you would not have filled out this Corporate
21 Officer Notice To Reject because you needed the insurance in
22 case you ever got hurt doing all the things that you did, is
23 that correct?

24 A. Yeah.

25 Q. So which is it, do you remember working there or

(PANAGIOTIS PEIDIS - DIRECT BY MR. CALHOUN)

6

PETER PEIDIS 11-20-2014

1 Q. Okay. So there is two Tony's Pizzas?

2 A. Yes.

3 Q. And how long have each of those two
4 stores been in operation?

5 A. One has been -- I owned it for 20
6 years, and the second location, about 15 years.

7 Q. During that period of time, have you
8 had any business partners?

9 A. No.

10 Q. No?

11 A. Only once.

12 Q. Just once.

13 A. With Mr. Reyna.

14 Q. That would be Mr. Reyna. Okay. No
15 other business partners?

16 A. No, sir.

17 Q. How did you meet Mr. Reyna?

18 A. Someone introduced him to me and I
19 believe brought him when I opened the store on 15,
20 Tony's Place, in 1999.

21 Q. Okay. And explain to me how you met
22 him.

23 A. Well, he came in looking for a job --

24 Q. Okay.

25 A. -- basically. That's how I hired

ABC REPORTING SERVICE (803) 730-3015

PETER PEIDIS 11-20-2014

1 him.

2 Q. Applying for a job?

3 A. Yes.

4 Q. And what position did you hire him to
5 perform?

6 A. It was just a cook.

7 Q. A cook?

8 A. Yeah.

9 Q. And during the period of time that he
10 worked for you, did he pretty much stay in the
11 kitchen as a cook? Was that what he did?

12 A. Yeah. Most of the time, yes.

13 Q. I know that at some point the nature
14 of your business relationship changed with him.
15 Tell me about that.

16 A. Meaning?

17 Q. Well, he went from a cook to a
18 minority owner; is that correct?

19 A. That happened probably 13 years
20 after.

21 Q. 13 years after --

22 A. Yes.

23 Q. -- what?

24 A. In the 13 or 14 years period we know
25 each other, he has left a couple times and came

PETER PEIDIS 11-20-2014

1 back to work. He went to open a restaurant with
2 another person in Bishopville, South Carolina. It
3 didn't work out. He came back. He asked me for
4 the job, and then that's when we talked about if
5 he was interested in the partnership, and that he
6 told me, yes.

7 And I told him, To help you out, tell
8 me what you like me to do for you.

9 So he wanted to buy 30 percent of the
10 business at Tony's Place of Sumter in south
11 Sumter. That's when I separated the two
12 locations. One was incorporated, finally
13 incorporated. To give him the 30 percent, I
14 changed it to Tony's Place of Sumter, LLC.

15 Now he's 30 percent partner/operating
16 manager. He's in charge of the operation
17 basically.

18 Q. Okay. And when did that happen?

19 A. In end of April 2012.

20 Q. 2012.

21 A. Yeah.

22 Q. So at that date Elias became the 30
23 percent owner of Tony's Pizza South?

24 A. Tony's Place of Sumter.

25 Q. Tony's Place of Sumter.

PETER PEIDIS 11-20-2014

1 A. LLC.

2 Q. LLC.

3 And the other store remained
4 incorporated and --

5 A. Incorporated.

6 Q. -- and he did not have a 30 percent
7 interest in that store.

8 A. No interest whatsoever.

9 Q. I see. Okay. So in 2012 you all
10 became partners, correct?

11 A. Yes.

12 Q. You owned 30 percent -- I mean 70
13 percent of one store and Elias owned 30 percent of
14 that one store.

15 A. Yes.

16 Q. That's correct?

17 A. That same store, yes.

18 Q. What documents did you execute with
19 him to establish that partnership?

20 A. Purchase and sales agreement of the
21 business, which I have already forwarded it.

22 Q. You have what?

23 A. That been already forwarded it
24 whoever was asking for it, those documents.

25 Q. All right. So it's a purchase and

PETER PEIDIS 11-20-2014

1 sales agreement?

2 A. Yes.

3 Q. Were there any other documents that
4 you executed with Elias other than the purchase
5 and sale agreement?

6 A. Not that right moment.

7 Q. Okay. What other documents have you
8 executed with Elias related to the business?

9 A. The only thing that we done after was
10 probably a week or so, I can't remember the exact,
11 because the company was changing from family to
12 Tony's Place, LLC, was the workers' compensation
13 insurance, which I usually as a owner exclude
14 myself and I have to -- through my agent have to
15 sign a paper stating that I'm excluding myself.

16 I explain to Mr. Reyna that I exclude
17 myself as a owner. Since he's a 30 percent owner,
18 he can, but because he's running the operation,
19 he's working the kitchen, he has to choose if he
20 wants to do it or not.

21 He ask me, Why is it -- What does it
22 help?

23 I say, Just to keep the premiums
24 down, but it's up to you. I understand you
25 working the kitchen, and it's up to you.

PETER PEIDIS 11-20-2014

1 And I went to the agent, signed my
2 paper and brought a blank paper and show it to him
3 and don't explain anything to him because I just
4 don't know what it was. This is the paper we
5 talked about that you have to sign if you want to
6 be excluded, and I left it with him. I have not
7 seen him sign --

8 Q. When you say "him" and "he," who are
9 you talking about?

10 A. Elias Reyna.

11 Q. Okay.

12 A. I give it to him in his hand.

13 Q. Okay. We'll get to that in a bit,
14 but let's get back to your purchase and sales
15 agreement that you executed in 2012. That
16 document was in English; is that correct?

17 A. Yes.

18 Q. Explain to me how you went about
19 getting that document signed and executed with
20 Elias.

21 A. How or where? Where was it
22 executed?

23 Q. How and when and where.

24 A. It was at the lawyer's office.

25 Q. Just tell me everything about it.

PETER PEIDIS 11-20-2014

1 A. Well, we agreed which lawyer, you
2 know, to go to, so we both met. We went to the
3 lawyer's office. He had everything ready for us,
4 purchase sales agreement, percentage, how much
5 money.

6 I finance part, of course, of the 30
7 percent because he didn't have all the money. He
8 gave me a down payment of 15,000 and he was doing
9 installments every month, and that was it.
10 Everything recorded, everything, any legal matter.

11 Q. Okay. So you're saying the purchase
12 sales agreement was executed at the office of an
13 attorney?

14 A. Yes.

15 Q. And who was that?

16 A. James Stoddard.

17 Q. James Stoddard?

18 A. Yes.

19 Q. Did you and Elias go to
20 Mr. Stoddard's office and he had the document
21 there --

22 A. Yes.

23 Q. -- ready?

24 A. Yes.

25 Q. And it was in English, correct?

PETER PEIDIS 11-20-2014

1 A. Both at the same time. In English,
2 yes.

3 Q. And was there a English to Spanish
4 interpreter there?

5 A. No.

6 Q. Okay. Do you remember someone
7 reading the document to Elias?

8 A. The attorney was reading
9 everything --

10 Q. Okay.

11 A. -- before anyone signed.

12 Q. Okay. To your knowledge can Elias
13 read and write in English?

14 A. I don't know how much. I know he has
15 difficulties at certain points, but I don't know
16 exactly how much. I wouldn't know.

17 Q. Have you ever seen him read a
18 document in English?

19 A. Not in front of me, no.

20 Q. No. Okay.

21 Have you ever seen him write
22 something out in English, a paragraph or sentence?

23 A. I don't know. I don't remember.

24 Q. Okay. No paragraphs or sentences.

25 Okay. All right.

PETER PEIDIS 11-20-2014

1 So to the best of your knowledge you
2 don't remember that?

3 A. I don't. I mean, I never paid
4 attention to anything.

5 Q. All right. Was that purchase sales
6 agreement notarized?

7 A. I believe so, yes.

8 Q. And it would have had to have been
9 someone in the attorney's office?

10 A. Someone, yes. I believe so, yes.

11 Q. Okay. And was there another document
12 when you all dissolved the business that was
13 executed when you purchased his 30 percent share
14 back?

15 A. If there was?

16 Q. Yes, sir. Was there?

17 A. Yes.

18 Q. Okay. All right. And was that --
19 that document was in English, correct?

20 A. Yes.

21 Q. Okay. Do you know whether or not
22 Elias signed that document?

23 A. That, you will have to answer.

24 Q. Okay. Well, you can't ask me
25 questions. I'm asking you to the --

PETER PEIDIS 11-20-2014

1 A. When you --

2 Q. -- best of your knowledge.

3 A. When you came, you picked up the
4 check and you never give me a copy of it. I
5 signed it and give it to you at my restaurant.

6 Q. Well, to your knowledge, my question
7 is the same, has Elias ever signed that document?

8 A. I don't know.

9 Q. You don't know. Okay.

10 But you have never seen him sign that
11 third document where you --

12 A. The one I signed?

13 Q. I'm sorry. I'm sorry. You have to
14 let me finish my questions before you can answer.
15 My question is, to your knowledge have you ever
16 seen Elias sign that document?

17 A. The -- we have to -- which document,
18 though?

19 Q. The third document where you
20 purchased the 30 percent interest back. I guess
21 it would be the last document you executed with
22 him, correct?

23 A. He was not present when I signed it.

24 Q. Okay. But did you see him sign that
25 document?

PETER PEIDIS 11-20-2014

1 A. I did not see him because his
2 attorney took it with him.

3 Q. Okay. Where is Elias from?

4 A. What country?

5 Q. What country?

6 A. I think Mexico.

7 Q. Mexico.

8 Do you know what year he came to the
9 United States?

10 A. I don't. '86?

11 Q. About 1986? Okay.

12 All right. We'll talk now about the
13 notice to reject form that you mentioned earlier.

14 MR. CALHOUN: You can mark that as
15 Exhibit 1, please.

16 (PLF. EXH. 1, South Carolina Workers'
17 Compensation Commission Corporate Officer Notice
18 to Reject, was marked for identification.)

19 BY MR. CALHOUN:

20 Q. Is this the document that you're
21 talking about?

22 A. It must be. I don't know.

23 Q. Okay. Well, did you sign that
24 document?

25 A. I sign something like this.

(PANAGIOTIS PEIDIS - DIRECT BY MR. CALHOUN)

17

PETER PEIDIS 11-20-2014

1 Q. All right. Well, take time to read
2 it, to refresh your memory if you need to.

3 A. It was in April. I remember that.
4 It must be it. I mean, I don't know. I don't
5 remember.

6 Q. All right. Do you remember how you
7 obtained possession of this form? Was it given to
8 you or mailed to you?

9 A. This was given to me by the agent.

10 Q. Okay. And which agent gave it to
11 you?

12 A. Bynum Insurance.

13 Q. Bynum Insurance?

14 A. Yes. In Sumter.

15 Q. Was there a particular agent that you
16 dealt with?

17 A. Yes. His name is Byron Kinney.

18 Q. Byron Kinney?

19 A. Uh-huh.

20 Q. Okay. So are you saying Mr. Kinney
21 handed that to you?

22 A. Handed this to me.

23 Q. Okay. And when he handed it to you,
24 what did he tell you he wanted you to do?

25 A. To have Elias Reyna sign it and

ABC REPORTING SERVICE (803) 730-3015

PETER PEIDIS 11-20-2014

1 return it to him.

2 Q. Did he want you to sign it also?

3 A. No. I signed a separate one. I
4 signed one for me that I left it with him, and he
5 give me a blank one for Mr. Reyna.

6 Q. All right. So after Mr. Kinney
7 handed that form to you, what did you do with it?

8 A. I took it to --

9 Q. Took it to Elias.

10 A. To Mr. Reyna.

11 Q. All right. Where did you sign your
12 form?

13 A. At the office.

14 Q. At --

15 A. At the insurance office.

16 Q. -- Mr. Kinney's office?

17 A. Yes.

18 Q. Do you remember if a notary notarized
19 your signature?

20 A. I don't remember.

21 Q. You don't remember? Okay.

22 When did you give it to Elias?

23 A. The same day.

24 Q. The same day?

25 A. The same day I signed it, I took the

PETER PEIDIS 11-20-2014

1 blank one with me.

2 Q. And what did you tell Elias when you
3 gave it to him?

4 A. I explain to him. I told him that
5 this was the paper that he has to sign if he wants
6 to be excluded for workers' compensation, the
7 insurance, so he -- and I give it to him. I
8 didn't even see him sign it or anything. I give
9 it to him and I told him he would have to take it
10 back to the insurance agent.

11 Q. Okay. So you gave him the form. You
12 told him what it was.

13 A. Right.

14 Q. Didn't read it to him but you told
15 him what it was.

16 A. I told him what it was.

17 Q. Okay. You told him that he needed to
18 sign it and return it to the agent; is that
19 correct?

20 A. This is the -- I told him that this
21 is the form that he needs to sign if he wants to
22 be excluded, and he took it off my hand. After
23 that, I have not seen the form.

24 Q. Okay. Based on your experience with
25 Elias, do you think he looked at the form?

PETER PEIDIS 11-20-2014

1 A. Well, he looked at it. I mean, when
2 I give him the form, he just -- he just looked at
3 it, and then I don't know what he did with it.

4 Q. Okay. All right. But as you said,
5 you did not see him sign it. You just left the
6 form with him?

7 A. Yeah. I didn't see him. I just give
8 it to him.

9 Q. And he was supposed to return it to
10 Mr. Kinney?

11 A. Kinney, yes.

12 Q. Okay. Was your wife also an officer
13 in your corporation?

14 A. Well, she worked now and then but not
15 in the legal terms of the papers, no.

16 Q. Okay.

17 A. She used to help me, you know, work
18 and paperwork, you know, orders from the house. A
19 lot of that kind of work.

20 Q. But she's not listed as an officer in
21 any of your legal --

22 A. No.

23 Q. -- papers?

24 A. No.

25 Q. Did you have a separate workers' comp

PETER PEIDIS 11-20-2014

1 policy for each of the two different restaurants?

2 A. No. It was under one.

3 Q. Okay.

4 A. I ask the agent if he -- it was legal
5 to have one and cover both. He told me yes, and
6 we left it like that.

7 Q. So you only had one -- you had one
8 workers' comp insurance policy?

9 A. For both.

10 Q. It covered both restaurants?

11 A. Yes.

12 Q. All right. And that policy was
13 issued when?

14 A. Oh, it was years. I don't remember.

15 Q. And you're saying your wife would not
16 have been listed as an officer?

17 A. No. But I -- I excluded my wife
18 always because she didn't spend much time, you
19 know, in the restaurants.

20 Q. What did you exclude her from?

21 A. From the policies.

22 Q. Well, why would she need to be
23 excluded if she's not in the business?

24 A. Because she wasn't presently inside
25 the restaurants, in the kitchen or anything

PETER PEIDIS 11-20-2014

1 working.

2 Q. But she's not an officer of the
3 corporation or the partnership.

4 A. No. She was an owner of the property
5 once, and then I think -- I'm pretty much sure one
6 of the properties she's actually the owner of the
7 property, not the business.

8 Q. Okay. You're familiar with how
9 Mr. Reyna became injured, correct?

10 A. Yes. I got the phone call.

11 Q. You know how he was robbed and --

12 A. I know everything, yes.

13 Q. And you're --

14 A. I heard, I saw the police report,
15 and, of course, talking with him.

16 Q. Sure. And so --

17 A. Yes.

18 Q. -- you know about his injuries that
19 he suffered --

20 A. Yes.

21 Q. -- through his fractures to his --

22 A. Yes.

23 Q. -- skull and so forth?

24 A. Yes.

25 Q. Did the police ever recover the money

PETER PEIDIS 11-20-2014

1 that was stolen?

2 A. No.

3 Q. No.

4 They never caught the guy?

5 A. Never.

6 Q. Never.

7 Did you ever hear back from the
8 police?

9 A. No. I asked but they had some
10 suspects, which, you know, the same time two other
11 locations got robbed the same way, and just the
12 when people close the business, something like
13 that, so they had the suspect. That's all I
14 know. They never told us that they caught
15 anybody.

16 Q. All right. Are you aware that
17 Mr. Reyna hasn't worked since then?

18 A. Well, he has worked. He came back
19 and tried to work, and I think he might have
20 worked a month, a month and a half. I can't
21 remember the exact time. He tried. I encouraged
22 him. He didn't have to because I knew that, you
23 know, he couldn't, you know, stay there and work.
24 It was just too much for him.

25 Q. He made the effort. He made an

PETER PEIDIS 11-20-2014

1 have any more questions. Thank you.

2 MR. BURLEY: Bear with me just a
3 moment.

4 Mark that as Exhibit 2 -- or
5 Defendants' Exhibit 1.

6 (DFT. EXH. 1, Workers' Compensation
7 and Employers' Liability Insurance Policy, was
8 marked for identification.)

9 EXAMINATION

10 BY MR. BURLEY:

11 Q. Pete, do you recognize this document
12 that I've marked as Defendants' Exhibit 1?

13 A. I might have seen it. I just don't
14 remember at the moment.

15 Q. All right. Does it say what it is at
16 the top?

17 A. "Partners, Officers," yes. It's
18 exclusion.

19 Q. Does it appear to be an exclusion
20 endorsement?

21 A. Yes.

22 Q. And does it appear to exclude certain
23 officers from your workers' compensation --

24 A. Yes.

25 Q. -- insurance?

PETER PEIDIS 11-20-2014

1 A. Yes, sir.

2 Q. Who is listed on there as excluded?

3 A. It's my name, Elias Reyna and my
4 wife's name, Jamila Zaldane.

5 Q. Okay. So that is your wife's name?

6 A. Yes.

7 Q. And this is what you -- was this what
8 you were referring earlier when you said you
9 excluded her?

10 A. Yes. She was excluded.

11 Q. And why was she excluded again?

12 A. Because she was not present at --
13 physical present at the business. She was doing
14 some work for me out of the house.

15 Q. Okay. So she never -- she never went
16 to the -- she never did -- never did any work at
17 to stores, correct?

18 A. Exactly.

19 Q. Okay. But she did work, paperwork
20 and stuff --

21 A. Yes.

22 Q. -- from home? Okay.

23 And did you consider her a part-time
24 secretary?

25 A. Yes.

ABC REPORTING SERVICE (803) 730-3015

PETER PEIDIS 11-20-2014

1 Q. Okay. So you gave it to him but you
2 never saw it again.

3 A. I never saw it again. He took it to
4 the insurance agent.

5 MR. BURLEY: Okay. I don't have any
6 further questions. Please answer any that
7 Mr. Calhoun may have.

8 REEXAMINATION

9 BY MR. CALHOUN:

10 Q. Okay. Peter, your previous testimony
11 was that your wife was not an officer of your
12 corporation or partnership, correct?

13 A. She is not, but she's the -- I mean,
14 she's -- after me, she's the one in charge, but
15 she doesn't come physical to the store. She does
16 a lot of -- she was doing a lot of work through
17 the house.

18 Q. Is your wife an officer of any of
19 your corporations; yes or no?

20 A. No.

21 Q. Okay. You also testified earlier
22 that you gave that form that's in front of you,
23 Exhibit No. 1, to Elias, correct?

24 A. Yes.

25 Q. And you told him what it was --

BYRON KINNEY 12-3-2014

1 so I'm going to ask you a question, and if you
2 don't understand the question, please ask me to
3 repeat it or explain it. I'll do so.

4 But if you don't ask me to do that, I
5 will assume that you understood the question. And
6 we always need a verbal response, yes or no, or
7 the court reporter will not be able to do her job
8 if you nod your head, so just always give me a
9 verbal answer and we'll be fine.

10 Do you have any questions for me
11 before we get started?

12 A. No.

13 Q. Okay. Give me your full name,
14 please.

15 A. William Byron Kinney.

16 Q. Okay. And please explain to me the
17 nature of your relationship with Peter -- is it
18 Peidis or Peidis?

19 A. Peidis.

20 Q. Peidis.

21 A. I believe that's how you say it.

22 Q. Tell me the nature of your
23 relationship with Peter.

24 A. I'm his insurance agent.

25 Q. Okay. And how long have you been his

BYRON KINNEY 12-3-2014

1 insurance agent?

2 A. Twelve years.

3 Q. And which business entities do you
4 insure for him? What's the nature of your
5 business relationship with him?

6 A. I insure through our companies Tony's
7 Place, Tony's Pizza, two different entities.
8 Those are the two businesses that I insure for
9 him.

10 Q. Okay. And you've been insuring them
11 for how many years?

12 A. Well, Tony's Place has not been
13 around but about four years. I've had it the
14 whole time. And Tony's Pizza, 10 years.

15 Q. Okay. And when you communicate with
16 Peter about business matters related to your
17 business relationship with him, is Peter the only
18 one that you ever talk to?

19 A. Yes.

20 Q. Is there anybody else there that you
21 ever have to communicate with or speak with when
22 you're negotiating your insurance coverage for
23 him?

24 A. No.

25 Q. Okay. When is the last time you've

BYRON KINNEY 12-3-2014

1 Q. Signed, executed, filled out.

2 A. In April of 2012?

3 Q. Yes.

4 A. Was that the start of Tony's Place?

5 Q. Well, I'm sorry, but one of the

6 deposition rules is that I --

7 A. I see.

8 Q. -- can't answer questions for you.

9 A. I would have to look at 2012.

10 2013 -- Tony's Place was started in April of 2012

11 is what you're telling me.

12 Q. No. I'm not suggesting that to you.

13 I'm just -- I'm -- let me back up. Do you

14 remember the date that the Corporate Officer

15 Notice to Reject form was executed?

16 A. By whom? By Pete Peidis?

17 Q. Yeah, by Pete Peidis.

18 A. Pete Peidis came by my office to tell

19 me he was forming a new partnership with

20 Elias Reyna and that he was forming an LLC for

21 Tony's Place. At that time he signed his

22 Corporate Officer Notice to Reject form, Pete did,

23 and he -- that's the only one that was signed here

24 at my office.

25 Q. Okay. And was that in April of 2013?

BYRON KINNEY 12-3-2014

1 A. Yes.

2 Q. Okay. So you were present when Peter
3 executed his form, when he signed it.

4 A. Correct. Yes.

5 Q. Okay. What do you know about the
6 Corporate Officer Notice to Reject form that was
7 allegedly signed by Elias Reyna?

8 A. It was that same date that
9 Pete Peidis was here with me, I explained to him
10 that LLC members are automatically excluded under
11 the laws in South Carolina and that if he wanted
12 to sign one to have on file, he could sign one,
13 and he asked me if he could take one with him to
14 talk with his business partner and then decide
15 whether he wanted to be excluded or not, so the
16 only -- my knowledge of that form is that
17 Mr. Peidis took the form with him to discuss with
18 his business partner, Elias Reyna, whether he
19 wanted to be included or not.

20 Q. Okay. Had you ever spoken to
21 Elias Reyna?

22 A. Never have.

23 Q. Ever, period, not before or since
24 that day?

25 A. No, never, period.

BYRON KINNEY 12-3-2014

1 Q. Okay. Have you ever met him?

2 A. Never.

3 Q. Okay. So on that day when Peter
4 executed his Corporate Officer Notice to Reject
5 form, you provided him with another form and he
6 took the form, correct?

7 A. Correct.

8 Q. All right. And at some time that
9 form was returned back to your office?

10 A. Yes.

11 Q. By Peter?

12 A. I don't know who returned the form to
13 us. I did not see who brought the form back to
14 the office.

15 Q. Okay. Well, when you spoke to Peter
16 recently, did Peter tell you that he did not bring
17 the form back to your office?

18 A. Yes.

19 Q. But you don't remember Elias Reyna
20 returning the form to your office?

21 A. I did not see Elias Reyna return the
22 form to this office.

23 Q. Okay. And to your knowledge
24 Mr. Reyna did not return the form to your office.

25 A. I do not know who brought the form

BYRON KINNEY 12-3-2014

1 back to the office.

2 Q. Okay. When you stated earlier that
3 in an LLC corporate officers are automatically
4 excluded, please explain to me what you're basing
5 that on.

6 A. The laws of South Carolina workers'
7 comp.

8 Q. Okay. More specifically, can you
9 refer to me what statute or --

10 A. I don't know.

11 Q. -- case law or anything?

12 A. I don't know the statutes. In my
13 role as an agent, I know which types of entities
14 require that the officers be included, excluded,
15 so I knew that LLC members were excluded, so
16 that's why I felt like I needed to advise him of
17 that.

18 Q. Okay. Well, if there -- if an LLC
19 member is automatically excluded under South
20 Carolina law or workers' comp law, as you stated,
21 what would be the reason for having an LLC
22 corporate officer sign the form? I mean, would --
23 is it still necessary?

24 A. It is not necessary. It's just we've
25 always done it in our agency as an extra layer of

BYRON KINNEY 12-3-2014

1 protection for an insured, to have the officer
2 sign the form to say they are choosing to be
3 excluded even though they are automatically
4 excluded.

5 Q. So if Mr. Reyna or Peter had not
6 signed the form, you still think they would be
7 excluded under South Carolina Workers'
8 Compensation Law.

9 A. Yes.

10 Q. Is that your opinion?

11 A. Yes.

12 Q. Okay. Fair enough. Just a minute.

13 Okay. And it was Mr. Peidis who told you recently
14 that he was not the person that returned the
15 Corporate Officer Notice to Reject form to your
16 office, correct?

17 A. Yes.

18 Q. Okay. Have you spoken to anybody
19 else about this matter?

20 A. Outside of me, you, Barrett,
21 Pete Peidis, that's it.

22 Q. Okay. So you've spoken to
23 Mr. Peidis, Mr. Burley and myself about this
24 matter before today.

25 A. Correct. Yes.

1 BUT THERE ARE NO DISCOVERY ISSUES THAT WOULD HELP
2 THEM. I THINK THEIR MAIN PROBLEM IS THAT THEIR
3 CLIENT DECIDED NOT TO SHOW UP FOR THE SECOND TIME IN
4 THE LAST MONTH, AND THAT'S WHY THEY WANTED THE CASE
5 BIFURCATED. BUT IF MR. PEIDIS DOESN'T WANT TO BE
6 HERE, HE DOESN'T HAVE TO BE, BUT WE CAN STILL GO
7 FORWARD WITH OUR HEARING.

8 BY COMMISSIONER TAYLOR:

9 OKAY. MR. BURLEY. THANK YOU. WITH REGARD TO
10 THE MOTION TO BIFURCATE, I AM GOING TO DENY THE
11 MOTION TO BIFURCATE. I FIND THAT IT IS A
12 JURISDICTIONAL ISSUE THAT CAN BE CONSIDERED PURSUANT
13 TO THE FORM 50 REQUEST. I WILL DECIDE THAT ISSUE
14 PRIOR TO MAKING A DECISION ON ANY OTHER ISSUES. SO
15 THAT WOULD BE THE FIRST FINDING OF FACT IN ANY
16 PROPOSED DECISION IN ORDER, BUT I WILL ADDRESS IT
17 FOR PURPOSES OF THE RECORD.

18 OKAY. MR. CALHOUN, YOUR POSITION WITH REGARD
19 TO THE FORM 50?

20 BY MR. CALHOUN:

21 YES, YOUR HONOR. I KNOW WE'VE ALREADY
22 ADDRESSED THIS AT PRETRIAL, BUT FORGIVE ME IF I -- I
23 TRY TO -- WELL, I TRY TO SAY EVERYTHING I CAN
24 REMEMBER I SAID THE FIRST TIME. MR. PEIDIS WAS A
25 COOK -- I MEAN, MR. REYNA WAS A COOK IN ONE OF MR.

1 PEIDIS'S TWO PIZZA JOINTS. AND IN APRIL OF 2013,
2 MR. REYNA DECIDED TO BECOME A MINORITY PARTNER, AND
3 HE PURCHASED 30 PERCENT OF ONE THE -- ONE OF THE --
4 THE SHAREHOLDINGS OF -- OF ONE OF THE PIZZA JOINTS,
5 BUT HE CONTINUED TO WORK THERE AS A COOK, CONTINUED
6 TO COOK PIZZAS. MR. PEIDIS HANDLED ALL THE BUSINESS
7 MATTERS, PAID THE BILLS, SECURED THE INSURANCE. AND
8 MR. REYNA, IN EVERY ASPECT, WAS CONTINUED TO BE
9 TREATED AS AN EMPLOYEE. WELL, SHORTLY THEREAFTER IN
10 APRIL OF 2013, MR. PEIDIS RENEWED HIS WORKERS' COMP
11 INSURANCE POLICY. THE AGENT, BYRON KINNEY, FOR MR.
12 PEIDIS, WAS UNDER THE MISTAKEN BELIEF THAT MEMBER OF
13 A -- MEMBERS OF L.L.C.s WERE AUTOMATICALLY EXCLUDED
14 FROM THE WORKERS' COMP ACT. BUT AS AN EXTRA MEASURE
15 OF SECURITY, MR. KINNEY TOLD MR. PEIDIS THAT ALL THE
16 CORPORATE OFFICERS SHOULD SIGN THE CORPORATE OFFICER
17 NOTICE TO REJECT FORM, WHICH CONSISTED OF MR.
18 PEIDIS, HIS WIFE, AND MR. REYNA, WERE THE THREE
19 CORPORATE OFFICERS. WHEN THAT HAPPENED, MR. PEIDIS
20 SIGNED HIS REJECTION FORM IN THE OFFICE OF MR.
21 KINNEY, AND MR. KINNEY SAW MR. PEIDIS SIGN HIS FORM.
22 ACCORDING TO THESE TWO GENTLEMEN, ANOTHER REJECTION
23 FORM WAS GIVEN TO MR. PEIDIS, WHO WAS SUPPOSED TO
24 TAKE IT TO MR. REYNA AND GET HIS SIGNATURE ON IT.
25 ACCORDING TO THE UNDISPUTED TESTIMONY OF MR. KINNEY

1 BY AFFIDAVIT AND BY DEPOSITION, IS THAT HE GAVE THE
2 FORM TO MR. PEIDIS, AND THAT MR. PEIDIS RETURNED THE
3 FORM TO MR. KINNEY. MR. PEIDIS HAS A DIFFERENT TAKE
4 ON THAT. HE ADMITS THAT HE SIGNED HIS FORM IN MR.
5 KINNEY'S OFFICE. HE SAYS THAT HE TOOK THE OTHER
6 FORM AND THAT HE -- HE GAVE IT TO MR. REYNA AND HE
7 QUOTE, "TOLD HIM WHAT IT WAS, BUT I DID NOT READ THE
8 FORM TO HIM. I TOLD HIM WHAT IT WAS, BUT I DID NOT
9 READ IT TO HIM." HE ADMITS THAT MR. REYNA DOES NOT
10 READ ENGLISH, AND MR. PEIDIS SAYS THAT HE DID NOT
11 RETURN THE FORM TO MR. KINNEY. HE ASSUMES THAT MR.
12 REYNA DID. MR. KINNEY SAYS "MR. PEIDIS RETURNED THE
13 FORM TO ME. I'VE NEVER SEEN OR SPOKEN TO MR.
14 REYNA." THAT'S WHAT MR. KINNEY SAYS. SO THERE'S A
15 HUGE DISCREPANCY ON A KEY ISSUE AS TO HOW THIS
16 SIGNED FORM MADE ITS WAY BACK INTO MR. KINNEY'S
17 HANDS. BUT WHAT IS NOT IN DISPUTE IS THAT NOBODY
18 SAW HIM, MR. REYNA SIGN THE FORM. EVERYBODY ADMITS
19 THAT NOBODY READ THE -- THIS FORM IN ENGLISH TO A
20 MAN WHO CANNOT READ OR WRITE IN ENGLISH AND HAS
21 LIMITED ABILITY TO SPEAK OR UNDERSTAND ENGLISH.
22 EVERYBODY AGREES THE FORM WAS NOT READ TO MR. REYNA.
23 EVERYBODY AGREES NOBODY WITNESSED MR. REYNA SIGN
24 THIS FORM. MR. REYNA'S DEPOSITION TESTIMONY WAS
25 THAT HE DID NOT SIGN THE FORM, HE DOES NOT REMEMBER

1 THE FORM EVER EVEN BEING PRESENTED TO HIM OR
2 EXPLAINED TO HIM BY PETER PEIDIS OR ANYBODY ELSE.
3 AND IF SOMEONE HAD ASKED HIM TO SIGN THIS FORM, THAT
4 HE WOULD HAVE NOT DONE SO. HE WOULD NOT HAVE
5 REJECTED WORKERS' COMP INSURANCE COVERAGE, BECAUSE
6 HE'S A COOK IN A RESTAURANT, AND OBVIOUSLY THAT'S A
7 POSITION WHERE YOU COULD BECOME HURT VERY BADLY,
8 WHICH HAPPENED ON NOVEMBER 27TH OF 2013 WHEN MR.
9 REYNA CLOSED THE RESTAURANT, WAS WALKING TO HIS CAR
10 IN THE PARKING LOT WITH A CASH BAG WITH \$1500
11 DOLLARS IN IT THAT HE WAS GOING TO TAKE TO THE BANK,
12 AND SOMEONE CAME UP BEHIND HIM AND REPEATEDLY BEAT
13 HIM IN THE HEAD WHERE HE SUFFERED THREE CONCUSSIONS
14 TO HIS SKULL, THREE FRACTURES -- I'M SORRY -- THREE
15 FRACTURES TO HIS SKULL AND WOKE UP IN THE HOSPITAL
16 SOME HOURS LATER, HAS HAD SEVERE, NOT -- NOT MILD,
17 SEVERE PROBLEMS SINCE THAT TIME. THE FIRST TIME I
18 MET MR. REYNA -- HE'S ACTUALLY IN BETTER SHAPE THAN
19 HE IS TODAY. THE FIRST TIME I MET MR. REYNA ALL THE
20 BLOWS, HIS FRACTURES WERE ON THE RIGHT SIDE OF HIS
21 HEAD. HE HAD COMPLETE Palsy ON THE RIGHT SIDE OF
22 HIS FACE LIKE A PERSON WHO HAS A STROKE. HIS ENTIRE
23 RIGHT SIDE OF HIS FACE WAS DROOPING, AND HIS RIGHT
24 EYE WAS JUST GOING AROUND IN DIFFERENT DIRECTIONS.
25 HIS LEFT EYE WAS FOCUSED ON ME, AND -- AND HE COULD

1 NOT CONTROL HIS RIGHT EYE. SO HE HAS IMPROVED SINCE
2 THAT TIME. HE LOOKS MUCH BETTER TODAY THAN -- THAN
3 HE DID OVER A YEAR AGO. BUT HE'S HAD SEVERE MEMORY
4 PROBLEMS SINCE THERE -- SINCE THEN, AND THE PROBLEMS
5 HE -- HE WILL EXPLAIN FOR THE COMMISSIONER. SO
6 OBVIOUSLY WORKING AT A RESTAURANT OR -- OR HELPING
7 MANAGE A RESTAURANT IS A DANGEROUS POSITION, BECAUSE
8 YOU CAN BE ROBBED, YOU CAN GET -- BE BURNED AT A
9 STOVE AND SO FORTH. AND THOSE ARE THE FACTS, AND I
10 DO NOT ANTICIPATE ANYTHING HAPPENING TODAY CHANGING
11 THOSE FACTS, ESPECIALLY SINCE MR. PEIDIS DECIDED NOT
12 TO SHOW UP. BUT BEFORE WE EVEN TOOK MR. PEIDIS'S
13 DEPOSITION, WE HAD HIS TESTIMONY LOCKED DOWN. THERE
14 WASN'T MUCH HE COULD DO TO CHANGE HIS TESTIMONY,
15 BECAUSE WE -- WE HAD OBTAINED AN AFFIDAVIT FROM HIM
16 AND THE SAME WITH MR. KINNEY. MR. KINNEY IS LOYAL
17 TO HIS CLIENT, AND I THINK WAS TRYING TO HELP MR.
18 PEIDIS AS HE COULD, BUT MR. KINNEY HAD ALREADY GIVEN
19 HIS POSITION IN THE AFFIDAVIT, AND IT IS CLEAR THAT
20 NEITHER ONE OF THESE GUYS SAW HIM SIGN THIS FORM.
21 NEITHER ONE OF THESE GUYS READ THIS FORM TO HIM, AND
22 THEY CAN'T AGREE ON HOW THE FORM RETURNED TO MR.
23 KINNEY'S POSSESSION. THE -- THE ORDER I GAVE YOU
24 FROM SEPTEMBER OF 2013 THAT WAS ISSUED BY
25 COMMISSIONER ROCHE CLEARLY STATES THAT CORPORATE

1 OFFICERS ARE COVERED UNDER THE WORKERS' COMPENSATION
2 ACT, AND THAT IF THEY DO NOT WANT TO BE COVERED,
3 THEY HAVE TO AFFIRMATIVELY EXCLUDE THEMSELVES FROM
4 THE ACT BY SIGNING THIS CORPORATE OFFICER TO REJECT
5 FORM. THE -- THE *WILLIS VERSUS AIKEN COUNTY* CASE
6 SAYS, "EXECUTIVE OFFICERS OF A CORPORATION WILL NOT
7 BE DENIED COMPENSABILITY MERELY BECAUSE THEY ARE
8 EXECUTIVE OFFICERS IF AS A MATTER OF FACT AT THE
9 TIME OF THE INJURY THEY ARE ENGAGED IN PERFORMING
10 MANUAL LABOR OR THE ORDINARY DUTIES OF A WORKMAN."
11 SO MR. KINNEY IS WRONG. MEMBERS OF AN L.L.C. ARE
12 STILL COVERED UNDER THE WORKERS' COMPENSATION ACT
13 UNLESS THEY AFFIRMATIVELY EXCLUDE THEMSELVES BY
14 SIGNING THIS FORM, WHICH MR. REYNA DID NOT DO.

15 BY COMMISSIONER TAYLOR:

16 THANK YOU. AND IT IS NOTED FOR THE RECORD THAT
17 THE DECISION, THE PRIOR DECISION OF COMMISSIONER
18 ROCHE IN ANOTHER WORKERS' COMP CASE, IT HAS NO
19 PRECEDENTIAL VALUE, BUT IT WAS JUST BEING SUBMITTED
20 FOR INFORMATIONAL PURPOSES.

21 BY MR. CALHOUN:

22 THAT'S CORRECT.

23 BY COMMISSIONER TAYLOR:

24 OKAY. THANK YOU. MR. BURLEY.

25 BY MR. BURLEY:

1 ACTUALLY GOING TO SWEAR YOU IN FIRST, OKAY?

2 BY MADAM INTERPRETER:

3 OF COURSE.

4 BY THE COURT REPORTER:

5 MADAM INTERPRETER, RAISE YOUR RIGHT HAND,
6 PLEASE.

7 * * * * *

8 THE INTERPRETER WAS DULY SWORN TO INTERPRET TRUE,
9 IMPARTIAL AND FAIR TO THE BEST OF HER ABILITY.

10 LYDIA LESTER

11 BEING FIRST DULY SWORN, INTERPRETS ON HER OATH AS
12 FOLLOWS:

13 BY THE COURT REPORTER:

14 MR. REYNA, RAISE YOUR RIGHT HAND, PLEASE.

15 * * * * *

16 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
17 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
18 MATTER HEREIN:

19 ELIAS REYNA

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

21 BY COMMISSIONER TAYLOR:

22 OKAY. PLEASE BE SEATED.

23 BY MR. CALHOUN:

24 COMMISSIONER, CAN I STAND HERE?

25 BY COMMISSIONER TAYLOR:

1 SURE.

2 BY MR. CALHOUN:

3 THANK YOU.

4 DIRECT EXAMINATION BY MR. CALHOUN:

5 Q. MR. REYNA, PLEASE TELL THE COMMISSIONER HOW OLD YOU

6 ARE?

7 A. I'M 49 YEARS OLD.

8 Q. AND WHERE WERE YOU BORN?

9 A. MEXICO.

10 Q. SINCE YOU HAVE LIVED IN THE UNITED STATES, HAVE YOU

11 RECEIVED ANY TYPE OF EDUCATION THAT YOU CAN

12 REMEMBER?

13 A. NO.

14 Q. CAN YOU READ IN THE ENGLISH LANGUAGE? CAN YOU READ

15 ENGLISH?

16 A. A LITTLE BIT.

17 Q. OKAY. CAN YOU WRITE IN THE ENGLISH LANGUAGE?

18 A. NO.

19 Q. CAN YOU SPEAK ENGLISH?

20 A. A LITTLE BIT.

21 Q. OKAY. AND HOW WELL DO YOU UNDERSTAND ENGLISH?

22 A. JUST A LITTLE BIT AS WELL.

23 Q. OKAY. DO YOU HAVE A FAMILY?

24 A. YES.

25 Q. TELL US WHO THEY ARE.

1 A. WHAT'S THAT?

2 Q. GIVE US THE NAMES OF YOUR WIFE AND CHILDREN?

3 A. MY WIFE'S NAME IS NANCY REYNA; MY OLDEST DAUGHTER IS
4 NAONI CARMEN REYNA; AND THE YOUNGEST ONE'S NAME IS
5 SOCHI REYNA.

6 Q. OKAY. BEFORE I ASK YOU ABOUT WORKING AT TONY'S
7 PIZZA ---

8 BY MR. CALHOUN:

9 I WANT TO BREAK THIS UP FOR YOU, INTERPRETER.

10 BY MR. CALHOUN:

11 Q. I WANT YOU TO FIRST EXPLAIN TO THE COMMISSIONER WHAT
12 PROBLEMS YOU'RE HAVING AS A RESULT OF BEING
13 ASSAULTED ON SEPTEMBER 27TH OF 2013?

14 A. I HAVE STRONG HEADACHES. I HAVE -- WELL, I GET
15 CONFUSED A LOT. I CAN'T CONCENTRATE VERY MUCH. IN
16 MY LEFT EYE, IT'S -- IT ITCHES ME, AND I CAN'T SEE
17 WELL. AND -- AND SOMETIMES I CAN'T BLINK. I HAVE
18 PROBLEMS WITH REMEMBERING. AND MY LEFT FOOT, MY --
19 MY -- MY LEFT ANKLE BOTHERS ME TOO. AND IN MY LEFT
20 EAR -- I'M SORRY -- MY RIGHT EAR, I CAN'T HEAR VERY
21 WELL, AND THAT I HAVE A -- A BUZZING SOUND IN IT.
22 AND I THINK THAT'S ALL.

23 Q. ARE THERE DAYS WHERE YOUR MARK -- YOUR MEMORY IS
24 BETTER THAN IT IS ON OTHER DAYS?

25 A. YES.

1 Q. DO YOU REMEMBER MUCH ABOUT WORKING AT TONY'S PIZZA?
2 A. I DON'T REMEMBER MUCH.
3 Q. DO YOU KNOW WHAT YOUR JOB DUTY WAS WHEN YOU WORKED
4 THERE?
5 A. COULD YOU REPEAT THE QUESTION?
6 Q. WHEN YOU WORKED AT TONY'S PIZZA, WERE YOU A COOK?
7 A. YES, I WAS A COOK.
8 Q. DID YOU DO ANYTHING AT TONY'S PIZZA OTHER THAN COOK?
9 A. YES. I TOOK DEPOSITS TO THE BANK.
10 Q. WHEN YOU WERE AT TONY'S PIZZA, DID YOU PAY ANY
11 BILLS?
12 A. NO.
13 Q. DO YOU KNOW WHO BYRON KINNEY IS?
14 A. NO.
15 Q. DO YOU REMEMBER EVER SPEAKING WITH BYRON KINNEY?
16 A. NO.
17 Q. TELL THE COMMISSIONER WHAT YOU REMEMBER FROM THE
18 ASSAULT THAT HAPPENED ON SEPTEMBER 27TH OF 2013.
19 A. WOULD YOU EXPLAIN THAT AGAIN?
20 Q. TELL US WHAT HAPPENED ON SEPTEMBER 27TH OF 2013,
21 WHEN YOU WERE INJURED.
22 A. WELL, I -- I HAD A -- A BAG OF MONEY THAT I WAS
23 CARRYING AFTER HAVING CLOSED THE BUSINESS, AND I WAS
24 HIT FROM BEHIND, AND THEN I REMEMBER WAKING UP IN
25 THE HOSPITAL, AND MY WIFE EXPLAINED TO ME EVERYTHING

1 THAT HAD HAPPENED.

2 Q. IN THE LAST 40 -- 48 HOURS, HAVE YOU DISCUSSED THIS
3 ASSAULT WITH YOUR WIFE?

4 A. YES.

5 Q. IN THE LAST 48 HOURS, HAVE YOU DISCUSSED THIS
6 ASSAULT WITH ME?

7 A. YES.

8 Q. HAVE YOU WORKED SINCE YOU WERE ASSAULTED ON
9 SEPTEMBER 27TH OF 2013?

10 A. I WORKED A LITTLE BIT.

11 Q. WHERE DID YOU WORK?

12 A. AT THE SAME PLACE, AT TONY'S PIZZA.

13 Q. OKAY. SINCE YOU STOPPED WORKING AT TONY'S PIZZA,
14 HAVE YOU WORKED SINCE YOU WERE ASSAULTED?

15 A. NO.

16 Q. DO YOU FEEL THAT YOU'RE CAPABLE OF RETURNING TO WORK
17 AT THIS TIME?

18 A. NO.

19 BY MR. CALHOUN:

20 COMMISSIONER, I'M GOING TO SHOW MR. REYNA THE
21 CORPORATE OFFICER NOTICE TO REJECT FORM, WHICH IS
22 OUR EXHIBIT NUMBER TWO IN OUR -- IN OUR APAs, AND I
23 WANT TO ASK HIM SOME QUESTIONS ON THIS FORM.

24 BY COMMISSIONER TAYLOR:

25 OKAY.

DIRECT EXAMINATION RESUMED BY MR. CALHOUN:

- 1
2 MR. REYNA, CAN YOU TELL ME WHAT THAT FORM IS
3 JUST HANDED YOU?
4 NO.
5 WHY NOT?
6 BECAUSE I'VE NEVER SEEN IT.
7 CAN YOU READ THAT FORM?
8 NO.
9 WHY CAN'T YOU READ THAT FORM?
10 BECAUSE IT'S IN ENGLISH.
11 CAN YOU READ ANY DOCUMENT THAT'S IN ENGLISH?
12 NO.
13 AT THE BOTTOM LEFT HAND CORNER OF THIS FORM, YOUR
14 NAME IS WRITTEN AS ELIAS REYNA; CAN YOU SEE THAT?
15 A. YES.
16 Q. IS THAT YOUR SIGNATURE?
17 A. NO.
18 Q. HOW DO YOU KNOW THAT'S NOT YOUR SIGNATURE?
19 A. BECAUSE IT -- IT'S DIFFERENT. IT'S SIMILAR, BUT
20 IT'S DIFFERENT.
21 Q. DO YOU REMEMBER PETER PEIDIS -- PETER PEIDIS
22 DISCUSSING WITH YOU A FORM THAT WOULD CAUSE YOU
23 REJECT WORKERS' COMPENSATION INSURANCE COVERAGE
24 YOU SIGNED IT?
25 A. COULD YOU REPEAT THE QUESTION?

1 .Q DID PETER PEIDIS EVER ASK YOU TO REJECT WORKERS'
2 COMPENSATION INSURANCE COVERAGE WHILE YOU WERE A
3 BUSINESS PARTNER WITH HIM?

4 .A NO.

5 .Q DID YOU AND MR. PEIDIS EVER DISCUSS WHETHER OR NOT
6 YOU SHOULD OR SHOULD NOT REJECT INSURANCE COVERAGE
7 FOR THE BUSINESS?

8 .A NO.

9 .Q IF MR. PEIDIS HAD ASKED YOU TO DO SO, WHICH IS
10 REJECT WORKERS' COMP INSURANCE COVERAGE, WOULD YOU
11 HAVE AGREED TO?

12 .A NO.

13 .Q WHY NOT?

14 .A BECAUSE I WORKED THERE ALSO AS A -- AS AN EMPLOYEE.
15 I WORKED, I COULD HAVE GOTTEN BURNED OR SLIPPED ON
16 THE FLOOR, OR, YOU KNOW, EXACTLY WHAT HAPPENED, A --
17 A ROBBERY OR SOMETHING.

18 .Q DID YOU EVER DISCUSS WITH BYRON KINNEY WHETHER OR
19 NOT YOU SHOULD OR SHOULD NOT REJECT WORKERS'
20 COMPENSATION INSURANCE COVERAGE?

21 .A NO. I NEVER TALKED TO HIM.

22 .Q HAVE YOU EVER BEEN TO BYRON KINNEY'S OFFICE?

23 .A NO.

24 .Q AND DO YOU HAVE ANY RECOLLECTION OF EVER DISCUSSING
25 THIS ISSUE WITH PETER PEIDIS?

- 1 A. NO, I DON'T REMEMBER.
- 2 Q. BEFORE YOU WERE INJURED IN SEPTEMBER OF LAST YEAR,
- 3 IF SOMEONE GAVE YOU A FORM IN ENGLISH, WOULD YOU BE
- 4 ABLE TO REMEMBER THAT FORM SINCE YOU COULD NOT READ
- 5 IT?
- 6 A. COULD YOU EXPLAIN THAT AGAIN?
- 7 Q. SURE. BEFORE YOU WERE INJURED IN SEPTEMBER OF LAST
- 8 YEAR, IF SOMEONE GIVES YOU A DOCUMENT IN ENGLISH,
- 9 COULD YOU READ THAT DOCUMENT?
- 10 A. NO.
- 11 Q. IF YOU CAN'T READ THAT DOCUMENT, WOULD YOU BE ABLE
- 12 TO REMEMBER THAT DOCUMENT?
- 13 A. IF I AM REMINDED ABOUT IT, YES.
- 14 Q. IF YOU'RE REMINDED ABOUT IT?
- 15 A. YEAH ---
- 16 Q. DO YOU MEAN THAT IF ---
- 17 A. --- IF I'M REMINDED.
- 18 Q. DO YOU MEAN IF THE DOCUMENT IS INTERPRETED FOR YOU?
- 19 A. WHAT'S THAT?
- 20 Q. IF THE DOCUMENT IS INTERPRETED FOR YOU FROM ENGLISH
- 21 TO SPANISH YOU WOULD BE ABLE TO -- TO REMEMBER THE
- 22 DOCUMENT; IS THAT YOUR -- WHAT YOU'RE TELLING US?
- 23 A. YES.
- 24 Q. MR. REYNA, DO YOU WANT THE TREATMENT THAT DR.
- 25 RANDOLPH WADE HAS RECOMMENDED FOR YOU?

1 A. YES.

2 Q. DO YOU BELIEVE THAT YOU'VE SUFFERED PHYSICAL BRAIN
3 DAMAGE?

4 A. YES.

5 Q. ONE MORE QUESTION: DID YOU TYPICALLY DISCUSS
6 BUSINESS MATTERS BETWEEN YOURSELF AND MR. PEIDIS
7 WITH YOUR WIFE?

8 A. YES.

9 BY MR. CALHOUN:

10 THAT'S ALL I HAVE, COMMISSIONER.

11 BY COMMISSIONER TAYLOR:

12 THANK YOU. MR. BURLEY.

13 CROSS-EXAMINATION BY MR. BURLEY:

14 Q. MR. REYNA, IT'S YOUR TESTIMONY THAT YOU DON'T SPEAK
15 OR WRITE ENGLISH; IS THAT CORRECT?

16 A. YEAH.

17 Q. BUT DESPITE THAT FACT, YOU HAVE BEEN AN OWNER IN TWO
18 SEPARATE RESTAURANTS IN THE UNITED STATES SINCE
19 YOU'VE BEEN HERE; ISN'T THAT CORRECT?

20 A. I DON'T REMEMBER.

21 Q. YOU DON'T REMEMBER WHAT?

22 A. THAT I'VE BEEN A -- THE OWNER OF TWO RESTAURANTS.

23 Q. YOU DON'T HAVE A VERY GOOD MEMORY DO YOU, MR. REYNA?

24 A. NO.

25 Q. ARE YOU AWARE THAT MR. PETE PEIDIS TESTIFIED THAT HE

CROSS-EXAMINATION RESUMED BY MR. BURLEY:

Q. MR. REYNA, DID YOU EVER TELL YOUR PARTNER, PETE PEIDIS, THAT YOU WANTED TO BE INCLUDED UNDER HIS WORKERS' COMPENSATION POLICY FOR YOUR COMPANY?

A. COULD YOU REPEAT THE QUESTION?

Q. DID YOU EVER TELL YOUR PARTNER, PETE PEIDIS, THAT YOU WANTED WORKERS' COMPENSATION COVERAGE UNDER THE COMPANY'S WORKERS' COMPENSATION POLICY?

A. I DIDN'T TELL HIM THAT.

Q. DID YOU EVER TELL BYRON KINNEY THAT YOU WANTED TO BE COVERED UNDER WORKERS' COMP INSURANCE THROUGH THE COMPANY'S POLICY?

A. NO.

BY MR. BURLEY:

COMMISSIONER, RATHER THAN CONTINUE MY CROSS-EXAMINATION, I WOULD JUST RELY ON UPON HIS DEPOSITION TRANSCRIPT IN ITS ENTIRETY AND WOULD -- AND THAT WOULD CONCLUDE MY CROSS AT THIS TIME.

BY COMMISSIONER TAYLOR:

OKAY. MR. CALHOUN.

BY MR. CALHOUN:

JUST A COUPLE

BY COMMISSIONER TAYLOR:

OKAY.

BY MR. CALHOUN:

1 --- MORE QUESTIONS, YOUR HONOR.

2 REDIRECT EXAMINATION BY MR. CALHOUN:

3 Q. ELIAS, WHEN YOU TESTIFIED THAT YOUR DAUGHTER
4 INTERPRETED THE PURCHASE AND THE SALES DOCUMENT FOR
5 YOU, THAT'S A DAUGHTER FROM A PREVIOUS MARRIAGE,
6 CORRECT?

7 A. YES.

8 Q. HOW -- AND HOW OLD IS SHE?

9 A. SHE'S 21 NOW.

10 Q. OKAY. YOU'VE -- NO -- YOU'VE ALREADY TESTIFIED
11 YOU'VE NEVER SPOKEN TO BYRON KINNEY?

12 A. NO.

13 Q. SO BYRON KINNEY NEVER ASKED YOU IF YOU WANTED TO BE
14 EXCLUDED FROM WORKERS' COMPENSATION INSURANCE
15 COVERAGE OR INCLUDED?

16 A. HE NEVER ASKED ME.

17 Q. DID PETE PEIDIS EVER ASK YOU IF YOU WANTED TO BE
18 INCLUDED ON THE WORKER'S COMP INSURANCE POLICY?

19 A. HE NEVER ASKED ME.

20 BY MR. CALHOUN:

21 OKAY. THAT'S ALL I HAVE.

22 BY COMMISSIONER TAYLOR:

23 OKAY.

24 BY MR. BURLEY:

25 BRIEFLY, COMMISSIONER.

ONE MORE QUESTION.

REDIRECT EXAMINATION BY MR. CALHOUN:

Q. ELIAS, DID ANYBODY EVER DISCUSS WITH YOU WHETHER OR
NOT YOU SHOULD OR SHOULD NOT BE COVERED BY WORKERS'
COMPENSATION INSURANCE COVERAGE AT TONY'S PIZZA?

A. NO. NO ONE TALKED TO ME.

BY MR. CALHOUN:

THAT'S ALL I HAVE.

BY COMMISSIONER TAYLOR:

OKAY.

BY MR. BURLEY:

ONE BRIEF QUESTION, COMMISSIONER.

BY COMMISSIONER TAYLOR:

YES.

RECROSS-EXAMINATION BY MR. BURLEY:

Q. IS IT POSSIBLE, MR. REYNA, THAT SOMEONE HAD THAT
CONVERSATION WITH YOU AND YOU SIMPLY FORGOT?

A. I DON'T KNOW.

Q. SO IT IS POSSIBLE THEN THAT YOU'VE JUST FORGOTTEN
THAT CONVERSATION OR WHETHER OR NOT IT HAPPENED?

A. I DON'T THINK THAT I FORGOT IT.

Q. SO YOU'RE CERTAIN AS YOU SIT HERE TODAY THAT NO ONE
EVER TALKED TO YOU ABOUT A WORKERS' COMPENSATION
EXCLUSION POLICY?

A. NO ONE TALKED TO ME ABOUT THAT.

1 MR. BURLEY: Thank you, Commissioners. This case --
2 in this case the Claimant was assaulted on
3 September 27th of 2013 when he was leaving the
4 employer's premises. In this case the Claimant
5 was a minority owner of Tony's Place, LLC. And
6 he was leaving one night with cash deposits.
7 He was attacked, assaulted, and robbed of those
8 cash deposits. None of that is disputed. The
9 claim, however, was denied because it was
10 determined by the Carrier that he was a partner
11 in the LLC and therefore not an employee. As
12 such, it was our position and remains our
13 position that he is not entitled to benefits
14 under the Act.

15 COMMISSIONER JAMES: Actually wouldn't LLC, would it
16 be a shareholder since he's actually a separate
17 legal entity?

18 MR. BURLEY: Well, I think an LLC is, at best, a
19 hybrid. I think that an LLC, pursuant to the
20 IRS, is treated either as a sole
21 proprietorship, a partnership, or ---

22 COMMISSIONER JAMES: You have the flow-through, but
23 that's one of the advantages of it. But as far
24 as it being an entity, it is a separate legal
25 entity. You have the protections, so therefore



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

REYNA V. TONY PIZZA

6

1 we're looking at, for -- like if you were to be
2 sued ---

3 MR. BURLEY: Right.

4 COMMISSIONER JAMES: --- they sue the LLC, you have
5 the corporate umbrella. So, for that purpose,
6 the legal entity status, it is a corporation.
7 And this, in my mind, does make a difference in
8 some of these cases.

9 MR. BURLEY: Right.

10 COMMISSIONER WILKERSON: Did he elect coverage under
11 the -- was it LLC or LLP?

12 MR. BURLEY: This was an LLC.

13 COMMISSIONER WILKERSON: Okay.

14 MR. BURLEY: And he did not elect coverage, which at
15 the end of the day is our position. You have
16 an LLC, which we consider a partnership,
17 despite the fact that it is considered, under
18 the LLC Act, it's referred to a separate
19 entity. And I understand that. But it's not
20 a corporation. And I think it's clear that
21 it's not ---

22 COMMISSIONER JAMES: It's a limited liability
23 company.

24 MR. BURLEY: It's a limited liability company.

25 COMMISSIONER JAMES: So, it is incorporated in some



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

REYNA V. TONY PIZZA

7

1 respect, so it does have! -- and it makes a big
2 difference to y'all's position because if it is
3 a separate company, then itself, being a legal
4 entity, unless it's solely a non-working
5 shareholder, then somebody, if they're working
6 for it, is actually an employee of that legal
7 entity.

8 MR. BURLEY: Right.

9 COMMISSIONER JAMES: At least in my mind. So, the
10 difference between a corporation and a
11 partnership make a ton of difference here.

12 MR. BURLEY: Sure. So, the LLC under the LLC Act
13 provides a shield for personal liability to its
14 members. And that is why it's enacted --
15 that's why people seek out to be filed as LLCs.
16 In my opinion, I still think it's -- that's for
17 the benefit of the individual members for
18 personal liability. I don't think that has any
19 bearing as to whether or not the Workers'
20 Compensation Commission under the Act will see
21 LLCs as -- as not partnerships just because
22 it's under the LLC Act for personal liability,
23 separate entity. If I can approach, I'd like
24 to provide a case, which I'm going to rely
25 upon.



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

1 COMMISSIONER JAMES: Certainly.

2 COMMISSIONER WILKERSON: And also, who is Fenerly,
3 Inc? Is that another entity within or...

4 MR. BURLEY: Fenerly, Incorporated is a separate
5 company under which the workers' compensation
6 policy was written. The employer in this case,
7 P. Peidis -- we're talking about pizzerias. He
8 owns two pizzerias. He owns ---

9 COMMISSIONER WILKERSON: In Sumter.

10 MR. BURLEY: He owns Tony's Pizza and he owns Tony's
11 Place. The way the companies are structured,
12 Tony's Pizza is Fenerly, Incorporated, LLC.
13 The Claimant never had any interest in Fenerly,
14 Incorporated or Tony's Pizza. Under the
15 operating agreement, which is attachment A in
16 our brief and that was in our brief, it's --
17 the operating agreement was clear there were no
18 shares issued, it was a 30/70 split ownership
19 in the company. But that was all toward the
20 LLC, Tony's Place of Sumter. Now, Mr. Peidis
21 owned both and had one workers' compensation
22 policy for both, but it's still -- the LLC is
23 separate. And that's our position. The case
24 I'd like to reference just to answer
25 Commissioner James' question, just a 2013 Court



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

1 of Appeals Case. And I'm going to reference
2 page five. And I've highlighted it. The issue
3 in this case, which is *Richard Hartzell versus*
4 *Palmetto Collision, LLC*, is whether or not the
5 employer employed four or more employees to be
6 included under the Act. The Court of Appeals
7 in its analysis stated under footnote five, "We
8 exclude Stallings from this analysis because,
9 although he worked for Employer as well as
10 being the sole member of its limited liability
11 company, the record does not indicate he
12 elected to be included as an employee for
13 workers' compensation purposes." So, despite
14 the fact that the LLC in South Carolina
15 provides certain individual protection for its
16 members, I don't think it affects the
17 Commission's analysis that it is a partnership.
18 And clearly the Court of Appeals, in my
19 opinion, states here that an LLC with a member,
20 unless that partner elects coverage, he's a
21 partner and not an employee.

22 COMMISSIONER WILKERSON: Let me ask you a question.
23 You said the policy was issued with the LLC and
24 the corporation on it and the Claimant was a
25 corporate member of Fenerly, Inc., correct?



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

REYNA V. TONY PIZZA

10

1 MR. BURLEY: The corporation is -- it's our position
2 the LLC stands alone, it's Tony Place, LLC.

3 COMMISSIONER WILKERSON: Why did they issue the
4 policy with both names on it?

5 MR. BURLEY: I'm not ---

6 COMMISSIONER WILKERSON: The insurance agent
7 testified that the policy was issued knowing
8 that the Claimant was a corporate officer of
9 Fenerly, Inc., which is automatically included
10 unless they exclude themselves.

11 MR. BURLEY: Right. And that's correct, the
12 insurance agent did testify that. I don't
13 think an insurance agent's misunderstanding
14 about a corporate structure is going to turn
15 this LLC into a corporation or something other
16 than a partnership.

17 COMMISSIONER WILKERSON: Unless they're on the same
18 policy.

19 MR. BURLEY: And I don't think necessarily being on
20 the same policy would preclude the Commission
21 finding this is a partnership with workers'
22 compensation coverage. But, again, the issue
23 is the LLC, which is standalone, is a
24 partnership. I understand they were on the
25 same policy, but I don't think that precludes



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

1 us from arguing that ---

2 COMMISSIONER WILKERSON: No, no. I'm not saying
3 preclude you from arguing it, but it's just ---

4 MR. BURLEY: Right.

5 COMMISSIONER WILKERSON: And where does the coverage
6 flow? Does it flow as a corporation or does it
7 flow as an LLC? The coverage on the policy.

8 MR. BURLEY: Right. Under the coverage on the --
9 the coverage flows through the LLC and they
10 have its own -- I think premiums were allocated
11 specifically for the LLC. It's clearly a
12 partnership. And I don't think being on one
13 policy, again, is going to change the corporate
14 structure. My analysis in this case,
15 Commissioner, is that you look at it as two
16 things. Number one, what is the corporate
17 entity? Is the corporate entity a partnership,
18 a sole proprietorship, or a corporation? The
19 IRS is pretty clear that to be a corporation
20 for tax purposes you must file a Form 8832.
21 There was not -- that was not done here. There
22 are no articles of corporation. It's clearly
23 an LLC and the single Commissioner clearly
24 stated that he was a minority owner of this
25 business. That's not in dispute. He's a



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

REYNA V. TONY PIZZA

12

1 minority owner. And I don't think the way the
2 policy written, I also don't think the way the
3 insurance agent's -- excuse me, the insurance
4 agent's misunderstanding of what the corporate
5 structure is is going to change the fact that
6 you have a pizzeria that was a partnership, he
7 was a minority owner. So, once you determine
8 that the corporate structure is an -- is a
9 partnership, the question then solely becomes
10 did he opt into coverage. And I think that's
11 where the record's clear that he did not opt in
12 at any point.

13 COMMISSIONER WILKERSON: What about the form that he
14 allegedly signed or did not sign?

15 MR. BURLEY: Right. Again, what I think that goes
16 to, Commissioner, is the agent's
17 misunderstanding as to the requirements of
18 what's needed for a Workers' Compensation
19 policy. I think that the agent in this case
20 just misunderstood what was needed for an LLC.
21 I think the idea of the LLC versus a
22 corporation or a partnership, frankly I think
23 it confused him. But I don't think the fact
24 that they offered a corporate notice to reject
25 to the Claimant.



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

REYNA V. TONY PIZZA

17

1 he did testify by deposition testimony. The
2 employer's deposition testimony, the insurance
3 carrier's deposition testimony is that this was
4 a corporation, Fenerly, Inc. d/b/a as Tony's
5 Pizza, LLC. So, it's an LLC corporation. The
6 -- Mr. Peidis, his wife, and Mr. Reyna were the
7 three corporate officers of Fenerly, Inc. And
8 Mr. Peidis, the owner, and Mr. Reyna was a
9 minority shareholder in the LLC. Mr. Peidis
10 testified, you know, we -- for us to be
11 excluded, you have to sign this corporate
12 officer to reject form, because we're officers
13 in a corporation. He and his wife had always
14 done this. And then in 2012 Mr. Reyna became
15 a member of the LLC, the year before he was
16 injured, and so that was the first time that
17 Mr. Reyna was ever asked to sign the corporate
18 officer to reject form. So, Mr. Peidis, the
19 employer, admits that this is a corporation and
20 that's why he as his wife and Mr. Reyna, to be
21 excluded from coverage, had to sign the notice
22 to reject form. Mr. Reyna was the only person
23 in that -- the three corporate officers who
24 actually worked at the restaurant as a cook in
25 the kitchen. Fairly dangerous job. And



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

REYNA V. TONY PIZZA

20

1 is no evidence that they did, how the IRS
2 treats the legal designation has nothing to do
3 with how they're actually treated under the
4 South Carolina Statute, 33-44-201 where LLCs
5 are treated as separate legal entities because
6 they're corporations. And that's simply what
7 we have here. We have an appeal that's based
8 on facts and rulings and orders that simply do
9 not exist. This gentleman was working for a
10 corporation LLC. He was a cook in a kitchen
11 and he did not want to opt out of workers'
12 compensation coverage. He was an employee.
13 Mr. Peidis controlled his hours, his pay rate,
14 all business matters. He was treated as
15 employee and so the single Commissioner found
16 he was an employee under 42-1-130. And since
17 he did not sign the corporate officer notice to
18 reject form that the employer and his wife had
19 been signing for years, not just in 2012, but
20 for all previous years, he chose not to opt out
21 of workers' compensation insurance coverage.
22 It's as simple as that. Thank you.

23 COMMISSIONER WILKERSON: Mr. Calhoun, you are aware
24 an LLC, when you sign that form, you're signing
25 to come into the coverage, not signing out of



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

1 agree he didn't sign it.

2 MR. CALHOUN: That's correct.

3 COMMISSIONER WILKERSON: And the expert, the forensic
4 expert said it was not his signature, the
5 holder of the -- well, the majority on an LLC
6 said he never saw him sign it. Never said he
7 didn't sign it, he just said he never saw him
8 sign it. The agent never saw him sign it.

9 MR. CALHOUN: That's correct.

10 COMMISSIONER WILKERSON: Is that correct? Okay. I
11 want to make sure I -- make sure I didn't miss
12 that. But your position is he -- it's an LLC,
13 right?

14 MR. CALHOUN: It's an LLC corporation.

15 COMMISSIONER JAMES: It's filed with the Secretary
16 of State under articles of organization, if I
17 remember from doing these many, many years ago
18 when I was in general practice, and that they
19 have the umbrella of protection. And if you go
20 to sue them, you sue them as an LLC, not as
21 Mr. Reyna and Mr. Peidis d/b/a partnership.

22 COMMISSIONER WILKERSON: But they're treated under
23 workers' compensation as a partnership.

24 MR. CALHOUN: It's registered with -- sir?

25 COMMISSIONER WILKERSON: An LLC is treated as a



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

REYNA V. TONY PIZZA

23

1 partnership underneath the workers'
2 compensation policy.

3 COMMISSIONER JAMES: I think that's the question --

4 COMMISSIONER WILKERSON: Yeah.

5 COMMISSIONER JAMES: That's part of the question
6 before us.

7 COMMISSIONER WILKERSON: Is it a -- it may be an
8 LLC, but it's treated as a partnership
9 underneath the workers' compensation ---

10 MR. CALHOUN: I'm not aware of that.

11 COMMISSIONER WILKERSON: -- policy. That's why I
12 was asking. I'm trying to ---

13 MR. CALHOUN: It's registered ---

14 COMMISSIONER WILKERSON: Can you show me the form?

15 MR. CALHOUN: Yes, sir.

16 COMMISSIONER JAMES: Here it is. It is a rejection
17 and they treated it as a corporation, the
18 agency -- I mean, the agent did.

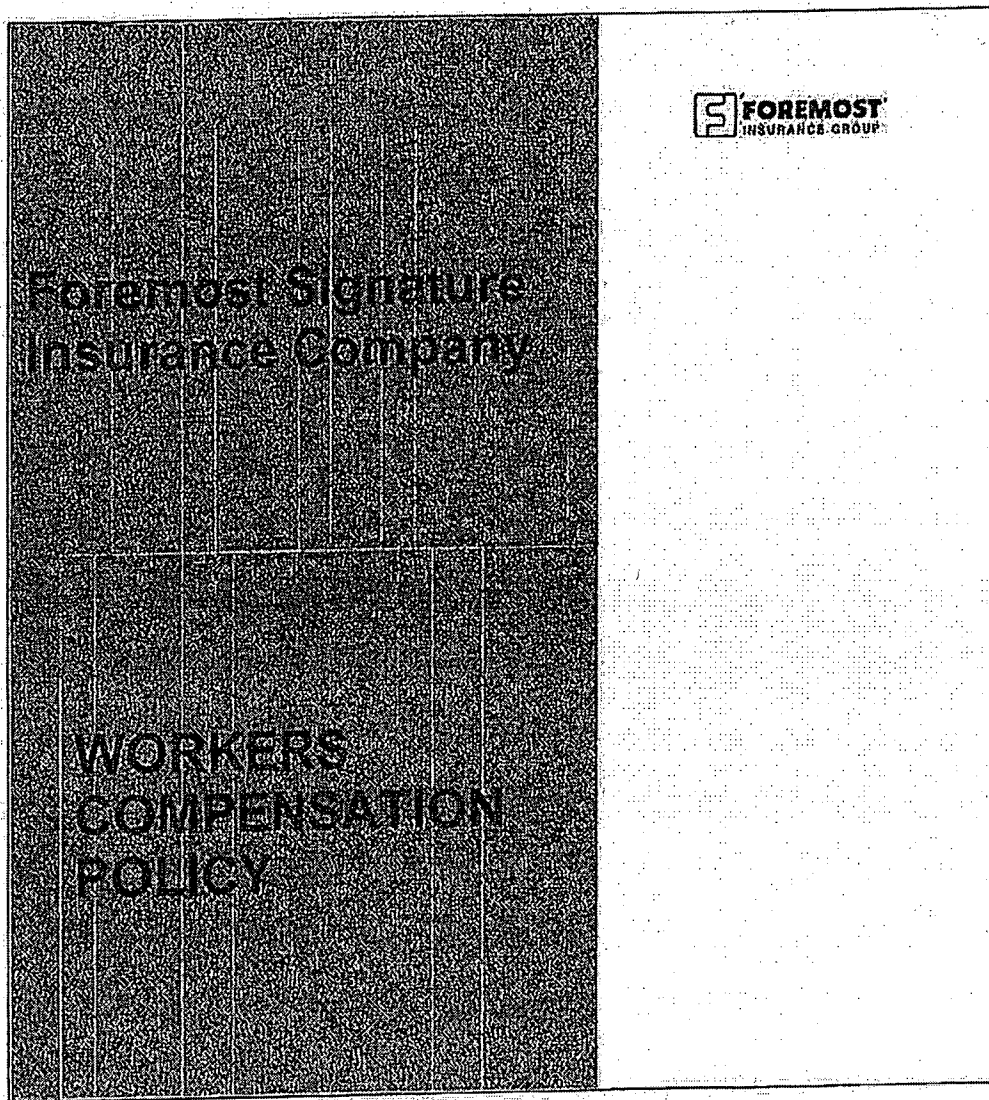
19 COMMISSIONER CAMPBELL: Where did you find that,
20 Melody? I couldn't pull up ---

21 COMMISSIONER JAMES: It's the C. It's in the
22 record, but it's the C to his brief.

23 MR. CALHOUN: It's registered with the Workers'
24 Comp. Commission and it's insured as Fenerly
25 Inc. d/b/a Tony's Pizza of Sumter, LLC.



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





Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

A member of the Foremost Insurance Group of Companies

Foremost Signature Insurance Company
5600 Beech Tree Lane
Grand Rapids, Michigan 49316

Insured

FENERLY INC DBA TONY'S PIZZA
& TONY'S PLACE OF SUMTER LLC
301 N MAIN ST
SUMTER SC 29150

Producer

BYNUM INSURANCE
1170 WILSON HALL RD
SUMTER SC 29150-1831
(803) 489-3030

In Witness Whereof, we have caused this policy to be executed and attested, and this policy shall not be valid unless countersigned on the Information Page by our authorized representative.

President

Secretary

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

List of Additional Forms Enclosed - Agent's Only - Non-Policy Forms

Branch GRAND RAPIDS		Policy Number WC 05537321 00	Producer Code 02362051
Form Number		Form Description	
U-WC-369-A	10-99	AGENT MAIL SHEET	
WC 99-00 71	01-00	INSURED MAIL SHEET	
U-WC-380-A	12-99	COMMISSION MEMORANDUM	

Issue Date: 04/14/2013

INSURED COPY

U-WC-375-A (Ed. 10-99)
PAGE 1 OF 1

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

List of Additional Forms Enclosed - Non-Policy Forms

Branch GRAND RAPIDS		Policy Number WC 05537321 00	Producer Code 02362051
Form Number		Form Description	
U-WC-1046	09-12	NOTICE TO POLICYHOLDER - CLAIMS FORMS AND POSTING NOTICES	
39-1	01-05	APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM	
985087	08-08	NOTICE TO OUR CUSTOMERS VIRTUAL CONSULTING REPORT	

Issue Date: 04/14/2013

INSURED COPY

U-WC-176-A (Ed. 10-99)
PAGE 1 OF 1

APPLICATION FOR DRUG- AND ALCOHOL-FREE WORKPLACE PREMIUM CREDIT PROGRAM

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

☐ 1) Substance Abuse Policy Statement:

Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance abuse-free environment.

☐ 2) Employee Notification:

In order to protect the individual rights of each employee and to begin the employee education process necessary for a well defined, well managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be, and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important to the employee correspondence or benefits delivery.

☐ 3) Testing Procedure:

The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

☐ 4) Test Results Confidentiality Protocols:

Test results, information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his/her designee, unless the release is completed through disclosure by an agency of the state in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information,
- (2) the purpose of the disclosure,
- (3) the precise information to be disclosed,
- (4) the duration of the consent, and
- (5) the signature of a person authorizing release of the information.

Information on test results shall not be released for, or used, or admissible in any criminal proceeding against the employee.

I certify that the above information is accurate and that I may be subject to an additional premium charge, if it is determined that there is any misrepresentation of the established drug- and alcohol-free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name_____
Date_____
Officer/Owner Signature¹_____
Title_____
Notary Public's Signature_____
Date_____
Exp. of Commission

¹ Application must be signed by an officer or owner.

Attention

ACTION REQUIRED

Dear Policyholder;

Thank you for choosing Foremost Insurance Group for your Workers Compensation needs. We appreciate your business.

In order to obtain your state mandated workers compensation forms and information regarding how to report a claim:

- Proceed to the web address: www.mysafetypoint.com
- Register
- Click on the link "Claims Forms and Posting Notices" under the Reference Links section
- Follow the instructions for your state.

Thank you for your business. If you have any questions, please call your agent.

Notice to Our Customers

MySafetyPoint - Loss Control Services

When you purchase insurance from Foremost Insurance Group you are insured by one of the leading insurance carriers. We are always working to improve our products and offer our agents and their clients a little extra. This notice is to advise you of a new offering we hope you will find helpful in your business. We joined forces with our Loss Control team to develop a new service called MySafetyPoint - Loss Control Services. MySafetyPoint - Loss Control Services is a program designed to give you valuable information on risk improvement and loss prevention. By using basic policy information you provided, we are able to generate industry specific loss prevention suggestions including, exposure information, major causes of loss and recommendations to prevent losses.

The document is a detailed report, which identifies causes of loss and discusses possible control strategies you can immediately use in your business. Implementing some of the suggestions has the potential to lead to less workplace accidents and less employee time off.

This service is provided free of charge and available from your agent. Please contact them and they will be able to print or email the document to you. Your agent has also received a notice, asking that they contact you. Make sure you're in contact with your agent to examine the document.

We urge you to take advantage of this service. We are certain you will find this program is a value added feature.

Contact your agent to find out more about MySafetyPoint - Loss Control Services.

The information provided through this service is compiled from sources believed to be reliable. We make no guarantee of results and assume no liability in connection with the information, methods or safety suggestions offered. Moreover, Foremost Insurance Group reminds you that this service cannot be assumed to contain every acceptable safety and compliance procedure or that additional procedures might not be required by abnormal or unusual circumstances.



Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

Information Page

NCCI Company No.: 24082

ACCOUNT NUMBER: F000015732-001-00001

Branch GRAND RAPIDS	Policy Number WC 05537321 00	Producer Code 02362051	Previous Policy Number NEW																																
Servicing Address PO Box 2248		Grand Rapids, MI 49501-2248																																	
ITEM 1. Name Insured and Mailing Address FENRLY INC DBA TONY'S PIZZA & TONY'S PLACE OF SUMTER LLC 301 N MAIN ST SUMTER SC 29150		Producer Name and Servicing Address BYNUM INSURANCE 1170 WILSON HALL RD SUMTER SC 29150-1831 (803) 469-3030																																	
This Information Page, with policy provisions and endorsements, if any, completes this policy.																																			
Insured is: CORPORATION																																			
Risk I.D. No:		F.E.I.N.: 571048740																																	
Other Workplaces Not Shown Above: SEE SCHEDULE OF INSUREDS AND LOCATIONS																																			
ITEM 2. Policy Period: From: 04/12/2013 To: 04/12/2014 12:01 a.m. Standard Time at the Insured's Mailing Address																																			
ITEM 3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here: SC B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3A. The limits of our liability under Part Two are: <table><tr><td>Bodily Injury by Accident</td><td>\$</td><td>100,000</td><td>Each Accident</td></tr><tr><td>Bodily Injury by Disease</td><td>\$</td><td>500,000</td><td>Policy Limit</td></tr><tr><td>Bodily Injury by Disease</td><td>\$</td><td>100,000</td><td>Each Employee</td></tr></table> C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: ALL STATES EXCEPT ND, OH, WA, WY AND THOSE LISTED IN 3A. D. This policy includes these endorsements and schedules: SEE FORMS AND ENDORSEMENTS APPLICABLE LIST				Bodily Injury by Accident	\$	100,000	Each Accident	Bodily Injury by Disease	\$	500,000	Policy Limit	Bodily Injury by Disease	\$	100,000	Each Employee																				
Bodily Injury by Accident	\$	100,000	Each Accident																																
Bodily Injury by Disease	\$	500,000	Policy Limit																																
Bodily Injury by Disease	\$	100,000	Each Employee																																
ITEM 4. The premium for this policy will be determined by our manuals of rules, classifications, rates and rating plans. All information required on the following Classification Schedule (s) is subject to verification and change by audit. SEE CLASSIFICATION SCHEDULE																																			
<table><tr><td>Total Estimated Standard Premium</td><td>\$</td><td>2,524.00</td></tr><tr><td>Premium Discount</td><td>\$</td><td></td></tr><tr><td>Expense Constant</td><td>\$</td><td>160.00</td></tr><tr><td>Premium for Endorsements</td><td>\$</td><td>40.00</td></tr><tr><td>Taxes and Surcharges</td><td>\$</td><td></td></tr><tr><td>Total Estimated Annual Premium</td><td>\$</td><td>2,724.00</td></tr><tr><td>Minimum Premium</td><td>\$</td><td>750.00</td></tr><tr><td>Deposit Premium</td><td>\$</td><td>2,724.00</td></tr></table>		Total Estimated Standard Premium	\$	2,524.00	Premium Discount	\$		Expense Constant	\$	160.00	Premium for Endorsements	\$	40.00	Taxes and Surcharges	\$		Total Estimated Annual Premium	\$	2,724.00	Minimum Premium	\$	750.00	Deposit Premium	\$	2,724.00	If indicated below, adjustments of premium shall be made: <table><tr><td>☐</td><td>Annually</td></tr><tr><td>☐</td><td>Semi-Annually</td></tr><tr><td>☐</td><td>Quarterly</td></tr><tr><td>☐</td><td>Monthly</td></tr></table>		☐	Annually	☐	Semi-Annually	☐	Quarterly	☐	Monthly
Total Estimated Standard Premium	\$	2,524.00																																	
Premium Discount	\$																																		
Expense Constant	\$	160.00																																	
Premium for Endorsements	\$	40.00																																	
Taxes and Surcharges	\$																																		
Total Estimated Annual Premium	\$	2,724.00																																	
Minimum Premium	\$	750.00																																	
Deposit Premium	\$	2,724.00																																	
☐	Annually																																		
☐	Semi-Annually																																		
☐	Quarterly																																		
☐	Monthly																																		

Issue Date: 04/14/2013

INSURED COPY

Countersigned By Authorized Representative

WC 00 00 01 B (Ed. 09-02)

Copyright, 1987 National Council on Compensation Insurance

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

Schedule of Insureds and Locations

Branch GRAND RAPIDS	Policy Number WC 05537321 00	Producer Code 02362051
SCHEDULE OF INSUREDS AND LOCATIONS		
FENERLY INC DBA TONY'S PIZZA & TONY'S PLACE OF SUMTER LLC F.E.I.N.#: 57-1048740	301 N MAIN ST SUMTER	SC, 29150
	1870 HWY 15 S SUMTER	SC, 29150

Issue Date: 04/14/2013

WC 99 00 02 (Ed. 10-99)
PAGE 1 OF 1

INSURED COPY

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY
Classification Schedule

Branch GRAND RAPIDS		Policy Number WC 05537321 00		Producer Code 02362051	
ITEM 4. CLASSIFICATION OF OPERATIONS					
LOC.	Entry in this item, except as specifically provided elsewhere in this policy, does not modify any of the other provisions of this policy.	Code No.	Premium Basis	Rates	Estimated Annual Premium
			Total Estimated Annual Remuneration	Per \$100 of Remuneration	
001	PENERLY INC DBA TONY'S PIZZA & TONY'S PLACE OF SUMTER LLC SOUTH CAROLINA				
	301 N MAIN ST SUMTER SC, 29150				
	DRIVERS, CHAUFFERS, MESSENGERS AND THEIR HELPERS NOC - COMMERCIAL	7380	IF ANY	6.720	0
	CLERICAL OFFICE EMPLOYEES NOC RESTAURANT - FAST FOOD	8810 9083	IF ANY 50,000	.420 2.550	0 1,275
002	1870 HWY 15 S SUMTER SC, 29150				
	DRIVERS, CHAUFFERS, MESSENGERS AND THEIR HELPERS NOC - COMMERCIAL	7380	IF ANY	6.720	0
	CLERICAL OFFICE EMPLOYEES NOC RESTAURANT - FAST FOOD	8810 9083	IF ANY 50,000	.420 2.550	0 1,275
	SCHBOULE RATING PLAN CREDIT	9887		FACTOR .010-	26-
	TOTAL ESTIMATED ANNUAL STANDARD PREMIUM				2,524
	EXPENSE CONSTANT CHARGE	0900			160
	TERRORISM	9740	100,000	.020	20
	CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERROR)	9741		.020	20
	TOTAL ESTIMATED ANNUAL PREMIUM				2,724

Issue Date: 04/14/2013

WC 99 00 05 (Ed. 10-99)
PAGE 1 OF 1

INSURED COPY

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

Forms and Endorsements Applicable List

Branch GRAND RAPIDS		Policy Number WC 05537321 00	Producer Code 02362051
Form Number		Form or Endorsement	
WC 99 00 01	10-99	COVER PAGE	
WC 00 00 00 B	07-11	WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY	
WC 00 00 01 B	09-02	INFORMATION PAGE	
WC 99 00 02	10-99	SCHEDULE OF INSURED AND LOCATIONS	
WC 99 00 05	10-99	CLASSIFICATION SCHEDULE	
WC 00 03 08	04-84	PARTNERS, OFFICERS & OTHERS EXCLUSION ENDORSEMENT	
WC 00 04 14	07-90	NOTIFICATION OF CHANGE OF OWNERSHIP ENDORSEMENT	
WC 00 04 19	01-01	PREMIUM DUE DATE ENDORSEMENT	
WC 00 04 21 C	09-08	CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT	
WC 00 04 22 A	09-08	TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT	

Issue Date: 04/14/2013

WC 99 00 03 (Ed. 10-99)
PAGE 1 OF 1

INSURED COPY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION**A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE**WORKERS COMPENSATION INSURANCE****A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other

insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining Insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:

- a. benefits payable by this insurance;
- b. special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

**PART TWO
EMPLOYERS LIABILITY INSURANCE**

A. How This Insurance Applies

This employers liability Insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;

2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356a.), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Safety

and Health Act (30 USC Sections 801-945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this Insurance and other insurance or self-Insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-Insurance is exhausted, the shares of all remaining insurance and self-Insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.
A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE

OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR

YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX—CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 00 03 08

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 04/12/2013 at 12:01 A.M. standard time, forms a part of
(DATE)

Policy No. WC 05537321 00 of the FOREMOST SIGNATURE INSURANCE COMPANY
(NAME OF INSURANCE COMPANY)

Issued to FENERLY INC DBA TONY'S PIZZA

Premium \$

Authorized Representative

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

Schedule

EXCLUDED EXECUTIVE OFFICER
NAME: PANAGIOTIS PEIDIS
TITLE: PRESIDENT
STATE: SC

EXCLUDED EXECUTIVE OFFICER
NAME: ELIAS REYNA
TITLE: VICE PRESIDENT
STATE: SC

CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00.04 22 A), attached to this policy.

- For purposes of this endorsement, the following definitions apply:
- Catastrophe (other than Certified Acts of Terrorism): Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of \$50 million.
- Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.
- Noncertified Act of Terrorism: An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:
 - a. It is an act that is violent or dangerous to human life, property, or infrastructure;
 - b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and
 - c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- Catastrophic Industrial Accident: A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule**State****Rate****Premium**

SEE CLASSIFICATION SCHEDULE

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04/12/2013

Policy No. WC 05537321 00

Endorsement No.

Insured FENERLY INC DBA TONY'S PIZZA

Premium:

Insurance Company FORBMOST SIGNATURE INSURANCE COMPANY

Countersigned by _____

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act; and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means, for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability

The Act limits our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds \$100,000,000,000; and for aggregate Insured Losses up to \$100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceed \$100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.
2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceed \$100,000,000,000.
3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

WC 00 04 22 A

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

(Ed. 9-08)

Schedule

State

Rate

Premium

SEE CLASSIFICATION SCHEDULE

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04/12/2013

Policy No. WC 05537321 00

Endorsement No.

Insured FENERLY INC DBA TONY'S PIZZA

Premium:

Insurance Company FOREMOST SIGNATURE INSURANCE COMPANY

Countersigned by _____

WC 00 04 22A
(Ed. 9-08)

© 2008 National Council on Compensation Insurance, Inc. All Rights Reserved.

Page 2 of 2

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision.

**PART FIVE
PREMIUM****D. Premium is amended to read:**

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The due date for audit and retrospective premiums is the date of the billing.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04/12/2013

Policy No. WC 05537321 00

Endorsement No.

Insured FENERLY INC DBA TONY'S PIZZA

Insurance Company FOREMOST SIGNATURE INSURANCE COMPANY Countersigned by _____

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 00 04 14 (Ed. 7-90)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 04/12/2013 at 12:01 A.M. standard time, forms a part of
(DATE)

Policy No. WC 05537321 00 of the FOREMOST SIGNATURE INSURANCE COMPANY
(NAME OF INSURANCE COMPANY)

issued to FENERLY INC DBA TONY'S PIZZA

Authorized Representative

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and

other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY
Commission Memorandum

Branch GRAND RAPIDS	Policy Number WC 05537321 00	Producer Code 02362051
------------------------	---------------------------------	---------------------------

COMMISSION MEMORANDUM	
LINE OF BUSINESS	COMMISSION
Workers Compensation	12.0**
* Assessments	0.0

* Includes assessments, surcharge and/or taxes applicable.

** This rate will be applied to all future premium entries except the final audit.
The commission will be adjusted on the final audit.

Issue Date: 04/14/2013

INSURED COPY

U-WC-380-A (12/99)
Page 1 of 1

FOREMOST SIGNATURE INSURANCE COMPANY
Policy Changes

Issue Date: 10/09/2013

INSURED COPY

WC 99 00 07 (Ed. 10-99)
PAGE 1 OF 1

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

List of Additional Forms Enclosed - Agent's Only - Non-Policy Forms

Branch GRAND RAPIDS		Policy Number WC 05537321 00	Producer Code 02362051
Form Number		Form Description	
U-WC-369-A	10-99	AGENT MAIL SHEET	
WC 99 00 71	01-00	INSURED MAIL SHEET	

Issue Date: 10/09/2013

INSURED COPY

U-WC-375-A (Ed. 10-99)
PAGE 1 OF 1

Workers Compensation and Employers Liability Insurance Policy

FOREMOST SIGNATURE INSURANCE COMPANY

Forms and Endorsements Applicable List

Branch GRAND RAPIDS		Policy Number WC 05537321 00	Producer Code 02362051
Form Number		Form or Endorsement	
WC 99 00 07	10-99	POLICY CHANGES FORM	
WC 00 03 08	04-84	PARTNERS, OFFICERS & OTHERS EXCLUSION ENDORSEMENT	

Issue Date: 10/09/2013

WC 99 00 03 (Ed. 10-99)
PAGE 1 OF 1

INSURED COPY

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 00 03 08

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 04/12/2013 at 12:01 A.M. standard time, forms a part of
(DATE)

Policy No. WC 05537321 00 of the FOREMOST SIGNATURE INSURANCE COMPANY
(NAME OF INSURANCE COMPANY)

Issued to FENERLY INC DBA TONY'S PIZZA

Premium \$

Authorized Representative

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

Schedule

EXCLUDED EXECUTIVE OFFICER

NAME: PANAGIOTIS PEIDIS

TITLE: PRESIDENT

STATE: SC

EXCLUDED EXECUTIVE OFFICER

NAME: ELIAS REYNA

TITLE: VICE PRESIDENT

STATE: SC

EXCLUDED EXECUTIVE OFFICER

NAME: JAMILA ZAIDANE

TITLE: SECRETARY

STATE: SC

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CORPORATE OFFICER NOTICE TO REJECT

To the Employer of the Undersigned and the Employer's Insurance Carrier:

The undersigned officer rejects the terms, conditions, and provisions of the South Carolina Workers' Compensation Act and elects to pursue compensation for personal injuries under the common law and statutes of South Carolina.

As provided by law (Section 42-1-520), "An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law."

This notice becomes effective on the date listed below, no sooner than the day following the date signed by the corporate officer.

" PLEASE PRINT OR TYPE ALL INFORMATION " ORIGINAL SIGNATURES REQUIRED "

ELIAS REYNA
Name of Officer Corporate Title

PENGRILY INC DBA TONY'S PIZZA & TONY'S PLACE
Name of Business (Legal Name)

301 N MAIN ST
Street Address Post Office Box

301 N MAIN ST
Street Address Post Office Box

SUMTER SC 29150
City State Zip

SUMTER SC 29150
City State Zip

465 97 784 6
Social Security Number

57-1048740
Federal Employer ID #

(803) 698-6769
Area Code Telephone Number

(803) 773-1025
Area Code Telephone Number

Elias Reyna
Signature of Officer Date

04/12/2013
Effective Date

Subscribed and sworn to me this 12 day of April, 2013
Marie J. Stuber
Notary Public My commission expires: 10-03-13

This form may be used when an officer desires to become exempt from the provisions of the South Carolina Workers' Compensation Act. For additional information regarding the provision of Section 42-1-520 and this form, contact your insurance carrier or the South Carolina Workers' Compensation Commission, Coverage and Compliance Division, Post Office Box 1715, Columbia, South Carolina 29202-1715, (803) 737-6709.

WCC Form #5 Rev. Date 7/98

Corporate Officer Notice To Reject

Form WC 88 39 01 Printed In U.S.A.

EXHIBIT NO. 1

Reply To
C. BARRETT BURLEY
Direct Dial: (803) 227-4953
barrett.burley@mgclaw.com

October 20, 2014

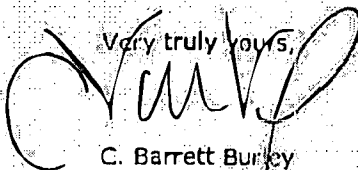
Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, South Carolina 29072

RE: Elias Reyna v. Fenerly Inc. d/b/a Tony's Place of Sumter and Foremost
Signature Insurance Co. c/o Farmers Business Insurance
Date of Accident: September 27, 2013
WCC File No.: 1316470
Our File No.: 20569.14035
Claim No.: WC10096121

Dear Mr. Calhoun:

Enclosed please find the requested documents in response to your Subpoena
Duces Tecum dated September 20, 2014.

Very truly yours,



C. Barrett Burley

CBB/swk

cc: Panagiotis Peidis, Fenerly Inc. d/b/a Tony's Place of Sumter
Donna Rebold, Farmers Business Insurance (via email)

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM THE ORIGINAL ON FILE WITH THE OFFICE

Print Form

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

APR 04 2012

SECRETARY OF STATE

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

TONY'S PLACE OF SUMTER LLC

*NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", "LC", or "Ltd. Co."

2. The address of the initial designated office of the limited liability company in South Carolina is

1870 HIGHWAY 15 SOUTH

Street Address

SUMTER

29150

City

Zip Code

3. The initial agent for service of process is

PANAGIOTIS PEIDIS

Name

Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

1870 HIGHWAY 15 SOUTH

Street Address

SUMTER

29150

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) PANAGIOTIS PEIDIS

Name

835 OAK BROOK BLVD

Street Address

SUMTER

SC

29150

City

State

Zip Code

- (b) ELIAS REYNA

Name

2970 TUCKAWAY DRIVE

Street Address

SUMTER

SC

29154

City

State

Zip Code

Form Revised by South Carolina
Secretary of State, March 2012

SCWCC 000387

TONY'S PLACE OF SUMTER LLC
Filing Fee: \$110.00 ORIG
Alex Hammond
South Carolina Secretary of State

Name of Limited Liability Company TONY'S PLACE OF SUMTER LLC

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) _____
Name

Street Address

City State Zip Code
- (b) _____
Name

Street Address

City State Zip Code
7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign:

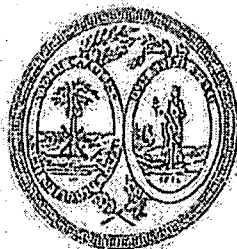
[Signature]
Signature of Organizer

[Signature]
Signature of Organizer

4/3/12
Date

4/3/12
Date

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

TONY'S PLACE OF SUMTER LLC, A Limited Liability Company duly organized under the laws of the State of South Carolina on April 4th, 2012, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to section 33-44-809 of the South Carolina Code, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
18th day of April, 2012.

Mark Hammond
Mark Hammond, Secretary of State

STATE OF SOUTH CAROLINA)
) BUSINESS PURCHASE AGREEMENT
COUNTY OF SUMTER) (PARTIAL PURCHASE)

Designation Of Parties:

THIS AGREEMENT made and entered into this 24th day of April, 2012, by and between Panagiotis Peidis of Sumter County, hereinafter called the Seller, and Elias Reyna, hereinafter called the Buyer.

Whereas Clause

WHEREAS the Seller is the owner of a restaurant business for eat-in and take-out food known as Tony's Place of Sumter, LLC, in the County of Sumter, State of South Carolina, and the Seller desires to sell to the Buyer a thirty (30%) per cent interest in his business including the goodwill thereof, and the Buyer is willing to buy the thirty (30%) per cent interest in the business on the terms and conditions set out below:

Now, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

Consideration and Agreement to Sell and Buy

(1) The Buyer agrees to pay to the Seller as consideration for the transfer of thirty (30%) per cent of said business the sum of \$42,000.00, with the balance to be paid as follows:

a. The sum of \$2,000.00 in cash or certified check as a down payment, as agreed by Parties.

b. The additional sum of \$13,000.00 in cash or certified check at the time of the execution of this Agreement.

c. The balance of \$27,000.00 will be made in thirty-six (36) monthly payments of \$797.15 each commencing the month following the execution of this Agreement, which will be due on or before the fifteenth (15th) of each month. The Buyer will pay interest at four percent (4%) on the deferred payments annually. The Buyer shall be permitted to make additional payments to be applied to the remaining principal at the Buyer's option.

(2) The Seller agrees to sell thirty (30%) per cent of his business, Tony's Place of Sumter, LLC, to the Buyer. The business includes the following:

a. Furniture, fixtures, furnishings, inventory and other equipment as shown on the attached list.

b. Goodwill.

Adjustment of Purchase Price At The Closing

(3) The balance due on the purchase price at the time of closing shall be adjusted for the following:

- a. Insurance premiums.
- b. Outstanding unpaid invoices for fixtures, equipment or inventory.
- c. Deposits or outstanding bills with utility companies.
- d. Loss, destruction, or damage due to fire or other casualty which is not of such nature as to curtail or interrupt the business.
- e. Accounts receivable.

The net amount of these adjustments shall be added or subtracted, as the case may be, from the balance due on the purchase price at the time of the closing.

Indemnity

(4) a. The Seller shall indemnify and hold the Buyer harmless from any and all claims, demands, losses, or damages arising out of the business prior to the closing date.

b. The Buyer shall indemnify and hold the Seller harmless from any and all claims, demands, losses or damages arising out of the business after the closing date arising from his acts or omissions.

Conduct of Business

(5) Up to the date of closing, the Seller will operate and maintain his business in the normal and regular manner and will not violate the terms of any lease or contract connected with the business.

Breach of Contract

(6) The Buyer agrees that failure on his part to make the purchase payments when due as set out in Paragraph one (1) and after a seven (7) day grace period causes the entire amount of purchase payments remaining to become immediately due. The Buyer further agrees that failure to make the purchase payments when due after the grace period expires entitles the Seller to repossess the business and any equity the Buyer may have in the business shall be prorated to the date of the last made scheduled payment. The Buyer agrees to pay the Seller's legal expenses and all other costs incidental to enforcement or collection if Buyer shall be found to be in breach of contract.

Buyer's Right To Use Seller's Name

(7) The Seller agrees to permit the Buyer to use the name Tony's Place of Sumter, LLC, in connection with the business hereby sold for so long as the Seller and Buyer are co-owners of the business, but the Seller does not convey to the Buyer exclusive rights to said name for so long as the Seller is a co-owner of the business.

Assignment

(8) This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

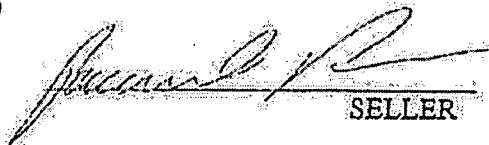
Closing

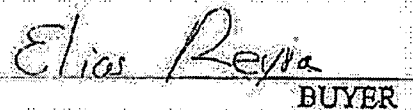
The Closing shall take place at the law office of James A. Stoddard on the 24th day of APRIL, 2012, or at such alternative date and place as the parties shall agree.

IN WITNESS WHEREOF, the parties have hereunto set their hands and
seals the day and year first above written.

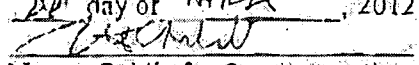
STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)


SELLER


BUYER

Thus personally appeared the above-named Seller and Buyer to me known,
who acknowledged that they had executed the foregoing as their free act and deed
before me this 24th day of APRIL, 2012.

SWORN to before me this
24th day of APRIL, 2012

Notary Public for South Carolina
My Commission expires: 1/28/14

\$27,000.00

Sumter, South Carolina

April 24, 2012

FOR VALUE RECEIVED, the Undersigned promise(s) to pay to the order of Calvary Bible Church of Sumter, South Carolina, payable at 1870 Highway 15 South, Sumter, South Carolina, the sum of Twenty seven thousand and no/100 (\$27,000.00) DOLLARS, together with interest accruing at the rate of four (4%) per cent per annum, in thirty six (36) consecutive monthly payments of \$797.15 each, beginning May 15, 2012, with a final payment of \$794.71 due and payable on April 15, 2015. Prepayment in whole or in part may be made without penalty or fee.

A late fee of Fifty and no/100 (\$50.00) DOLLARS shall be due and payable if any monthly payment shall be more than fifteen (15) days late.

PROVIDED, HOWEVER, that should default be made in the payment of said principal, or said interest, or any portion thereof, on the due date, the holder hereof may at his option declare the entire remaining balance immediately due and payable. The obligor hereunder agrees to pay all costs of collection, including a reasonable attorney's fee, in case payment shall not be made at maturity. All makers and endorsers do hereby waive demand, presentment, notice of non-payment, dishonor, protest, and notice of protest.

Elias Reyna
Elias Reyna

Address: 2970 Tuckaway Drive
Sumter, SC 29154

SCWCC 000396

CLS T95007

Run Date: 9/15/14

TONY'S PLACE OF SUMTER, LLC
Year-to-Date Payroll Journal

Page: 2

P.Y. Date: 12/31/12

				(1)* Gross Pay *****	(2)A FICA 41100	(3)M MEDICARE 41100	(4)B Fed W/H 41200	(5)C St W/H 41300
Net	Ref	For	Date					
101	10224.64	CURT QTR		11040.00	547.88-	189.06-	1312.00-	746.60-
101	38838.93	CURT YTD		16840.00	1547.29-	534.18-	1791.00-	2128.60-
102	ELIAS MEYNA			2970 TUCKAWAY DR			SUMTER, SC 29150	
101	469-97-7846							
102		Bal Fwd						
102	472.93	1005	5 5/07	550.00	31.07-		24.00-	22.00-
102	472.93	1010	5 5/14	550.00	31.07-		24.00-	22.00-
102	472.93	1020	5 5/21	550.00	31.07-		24.00-	22.00-
102	472.93	1028	5 5/28	550.00	31.07-		24.00-	22.00-
101	0.00	FICA Adj	5 5/11		31.89	31.89-		
102	472.93	1034	6 6/04	550.00	31.07-		24.00-	22.00-
102	542.10	1049	6 6/11	600.00	33.90-		24.00-	
102	512.21	1057	6 6/18	600.00	33.90-		19.00-	14.89-
102	549.27	1043	6 6/25	650.00	36.73-		35.00-	29.00-
102	0.00	FICA Adj	6 6/10		34.80	34.80-		
102	549.27	1076	7 7/02	650.00	36.73-		35.00-	29.00-
102	534.78	1084	7 7/16	650.00	36.73-		46.00-	32.50-
102	549.27	1094	7 7/23	650.00	36.73-		35.00-	29.00-
102	534.78	1102	7 7/30	650.00	36.73-		46.00-	32.50-
102	0.00	FICA Adj	7 7/11		37.70	37.70-		
102	534.78	1111	8 8/06	650.00	36.73-		46.00-	32.50-
102	583.45	1124	8 8/13	700.00	39.55-		42.00-	35.00-
102	534.27	1134	8 8/20	650.00	36.73-		46.00-	33.00-
102	549.27	1141	8 8/27	650.00	36.73-		35.00-	29.00-
102	0.00	FICA Adj	8 8/11		38.43	38.43-		
102	558.27	1149	9 9/01	650.00	36.73-		26.00-	29.00-
102	558.27	1159	9 9/10	650.00	36.73-		26.00-	29.00-
102	566.45	1168	9 9/17	700.00	39.55-		42.00-	32.00-
102	566.45	1176	9 9/24	700.00	39.55-		42.00-	32.00-
102	0.00	FICA Adj	9 9/10		39.18	39.18-		
102	586.45	1182	10 10/01	700.00	39.55-		42.00-	32.00-
102	586.45	1191	10 10/08	700.00	39.55-		42.00-	32.00-
102	731.15	1205	10 10/15	900.00	50.85-		72.00-	46.00-
102	586.45	1208	10 10/22	700.00	39.55-		42.00-	32.00-
102	731.15	1219	10 10/29	900.00	50.85-		72.00-	46.00-
102	0.00	FICA Adj	10 10/11		56.55	56.55-		
102	731.15	1223	11 11/05	900.00	50.85-		72.00-	46.00-
102	721.15	1237	11 11/12	900.00	50.85-		72.00-	46.00-
102	587.45	1248	11 11/19	700.00	39.55-		41.00-	32.00-
102	512.10	1251	11 11/26	600.00	33.90-		29.00-	25.00-
102	0.00	FICA Adj	11 11/10		44.95	44.95-		
102	586.45	1257	12 12/03	700.00	39.55-		42.00-	32.00-
102	586.05	1269	12 12/10	700.00	39.55-		42.00-	32.00-
102	500.01	1278	12 12/17	600.00	33.90-		38.00-	28.09-
102	500.01	1288	12 12/24	600.00	33.90-		38.00-	28.09-
102	1928.75	1312	12 12/31	2500.00	141.25-		230.00-	200.00-
102	0.00	FICA Adj	12 12/31		73.95	73.95-		

SCWCC 000397

CRS T2S.007
Run Date: 9/15/14

TONY'S PLACE OF SUMMER, LLC
Year-to-Date Payroll Journal

Page: 3
P.E. Date: 12/31/12

				(1)* Gross Pay *****	(2)A FICA 41100	(3)M MEDICARE 41100	(4)S Fed W/H 41200	(5)C St W/H 41300
	Nut	Ref	Per Date					
102	4101.27	Curr Per		5100.00	214.20-	73.95-	390.00-	320.58-
102	9884.77	Curr Otr		12100.00	508.20-	175.45-	874.00-	657.58-
102	20512.31	Curr YTD		24650.00	1033.29-	357.43-	1549.00-	1195.97-
103								
103								
103		Bal Fwd						
103	327.64	1003	5 5/07	378.00	21.16-		15.00-	14.00-
103	350.15	1008	5 5/14	363.00	20.85-		14.00-	14.00-
103	357.89	1017	5 5/21	382.50	21.61-		16.00-	15.00-
103	284.50	1026	5 5/25	324.00	18.30-		10.00-	11.00-
103	0.00	FICA Adj	5 5/31		21.08	21.08-		
103	282.45	1035	6 6/04	319.50	18.05-		9.00-	10.00-
103	327.40	1044	6 6/11	373.50	21.10-		14.00-	14.00-
103	327.64	1053	6 6/18	378.00	21.34-		14.00-	14.00-
103	302.42	1064	6 6/25	255.50	20.98-		13.00-	13.00-
103	0.00	FICA Adj	6 6/30		20.68	20.68-		
103	317.66	1077	7 7/07	360.00	20.34-		13.00-	13.00-
103	329.19	1085	7 7/16	382.50	21.61-		16.00-	15.00-
103	321.40	1095	7 7/23	373.50	21.10-		15.00-	14.00-
103	327.64	1100	7 7/30	378.00	21.34-		15.00-	14.00-
103	0.00	FICA Adj	7 7/31		21.66	21.66-		
103	317.66	1111	8 8/06	360.00	20.34-		13.00-	13.00-
103	315.91	1122	8 8/13	364.50	20.85-		14.00-	14.00-
103	315.91	1133	8 8/20	364.50	20.85-		14.00-	14.00-
103	323.40	1139	8 8/27	373.50	21.10-		15.00-	14.00-
103	0.00	FICA Adj	8 8/31		21.20	21.20-		
103	328.64	1147	9 9/01	391.77	22.13-		16.00-	15.00-
103	250.24	1156	9 9/10	293.00	15.76-		5.00-	8.00-
103	293.19	1167	9 9/17	313.00	18.61-		11.00-	10.00-
103	189.94	1174	9 9/24	328.50	18.56-		10.00-	10.00-
103	0.00	FICA Adj	9 9/30		19.32	19.32-		
103	289.94	1181	10 10/01	328.50	18.56-		10.00-	10.00-
103	288.94	1189	10 10/08	328.50	18.56-		10.00-	11.00-
103	290.66	1202	10 10/15	342.00	19.32-		12.00-	12.00-
103	252.40	1210	10 10/22	283.50	16.02-		9.00-	9.00-
103	305.17	1217	10 10/29	351.00	19.83-		13.00-	13.00-
103	0.00	FICA Adj	10 10/31		23.62	23.62-		
103	309.12	1225	11 11/05	358.50	20.06-		13.00-	13.00-
103	305.17	1234	11 11/12	351.00	19.83-		13.00-	13.00-
103	320.15	1241	11 11/19	369.00	20.85-		14.00-	14.00-
103	250.74	1249	11 11/26	279.00	15.76-		5.00-	7.00-
103	0.00	FICA Adj	11 11/30		19.64	19.64-		
103	305.17	1255	12 12/03	351.00	19.83-		13.00-	13.00-
103	305.17	1267	12 12/10	351.00	19.83-		13.00-	13.00-
103	311.66	1276	12 12/17	360.00	20.34-		13.00-	13.00-
103	302.92	1298	12 12/24	346.50	19.58-		12.00-	12.00-
103	0.00	FICA Adj	12 12/31		20.43	20.43-		

CUS TPE.0019
Run Date: 03/15/14

TONY'S PLACE OF SUMTER, LLC
Year-to-Date Payroll Journal: (1/01/13-12/31/13)

Page: 1
P.E. Date: 12/31/13

			(1) *	(2) A1	(3) A2	(4) B	(5) C
			Gross Pay	FICA	Medicare	Fed W/H	St W/H
Net	Ref	Date		411.00	411.00	412.00	413.00
Series 100: TONY'S PLACE OF SUMTER, LLC							
101							
101							
101	0.00	Sal Pwd					
101	769.50	1306 01/14/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1317 01/21/13	1000.00	76.50-		98.00-	56.00-
101	910.20	1326 01/28/13	1200.00	91.00-		128.00-	70.00-
101	0.00	FICA Adj 01/31/13		46.40	46.40-		
101	769.50	1333 02/04/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1344 02/11/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1355 02/18/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1366 02/25/13	1000.00	76.50-		98.00-	56.00-
101	0.00	FICA Adj 02/28/13		58.00	58.00-		
101	910.20	1374 03/04/13	1200.00	91.00-		128.00-	70.00-
101	1044.90	1384 03/11/13	1400.00	107.10-		158.00-	90.00-
101	1044.90	1394 03/18/13	1400.00	107.10-		158.00-	90.00-
101	1044.90	1404 03/25/13	1400.00	107.10-		158.00-	90.00-
101	0.00	FICA Adj 03/31/13		78.30	78.30-		
101	910.20	1410 04/01/13	1200.00	91.00-		128.00-	70.00-
101	1034.90	1421 04/08/13	1400.00	107.10-		158.00-	90.00-
101	910.20	1432 04/15/13	1200.00	91.00-		128.00-	70.00-
101	910.20	1441 04/22/13	1200.00	91.00-		128.00-	70.00-
101	1044.90	1448 04/29/13	1400.00	107.10-		158.00-	90.00-
101	0.00	FICA Adj 04/30/13		92.80	92.80-		
101	1044.90	1458 05/06/13	1400.00	107.10-		158.00-	90.00-
101	1120.25	1468 05/13/13	1500.00	114.75-		175.00-	90.00-
101	1120.25	1478 05/20/13	1500.00	114.75-		175.00-	90.00-
101	755.50	1485 05/26/13	1000.00	76.50-		98.00-	56.00-
101	0.00	FICA Adj 05/31/13		78.30	78.30-		
101	1044.90	1492 06/03/13	1400.00	107.10-		158.00-	90.00-
101	900.20	1500 06/10/13	1200.00	91.00-		128.00-	70.00-
101	765.50	1512 06/17/13	1000.00	76.50-		98.00-	56.00-
101	906.10	1519 06/24/13	1000.00	76.50-		98.00-	56.00-
101	0.00	FICA Adj 06/30/13		80.90	80.90-		
101	518.60	1525 07/01/13	800.00	61.20-		68.00-	35.00-
101	1042.50	1545 07/22/13	1400.00	107.10-		158.00-	90.00-
101	1125.25	1556 07/29/13	1500.00	114.75-		175.00-	90.00-
101	0.00	FICA Adj 07/31/13		92.80	92.80-		
101	1052.90	1563 08/05/13	1400.00	107.10-		158.00-	90.00-
101	1052.90	1575 08/12/13	1400.00	107.10-		158.00-	90.00-
101	765.50	1583 08/19/13	1000.00	76.50-		98.00-	56.00-
101	822.85	1591 08/26/13	1100.00	84.15-		112.00-	60.00-
101	0.00	FICA Adj 08/31/13		71.05	71.05-		
101	765.50	1600 09/02/13	1000.00	76.50-		98.00-	56.00-
101	788.50	1608 09/09/13	1000.00	76.50-		98.00-	56.00-
101	558.45	1617 09/16/13	700.00	53.55-		53.00-	35.00-
101	0.00	FICA Adj 09/30/13		39.15	39.15-		
101	490.10	1631 10/07/13	600.00	49.00-		39.00-	26.00-
101	920.20	1648 10/14/13	1200.00	91.00-		128.00-	70.00-
101	920.20	1658 10/21/13	1200.00	91.00-		128.00-	70.00-
101	1029.90	1667 10/28/13	1400.00	107.10-		158.00-	90.00-
101	0.00	FICA Adj 10/31/13		63.00	63.00-		
101	769.50	1675 11/04/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1686 11/11/13	1000.00	76.50-		98.00-	56.00-
101	769.50	1694 11/18/13	800.00	61.20-		68.00-	35.00-
101	769.50	1704 11/25/13	750.00	57.38-		61.00-	35.00-
101	0.00	FICA Adj 11/30/13		51.48	51.48-		
101	625.80	1731 12/15/13	800.00	61.20-		68.00-	35.00-
101	0.00	FICA Adj 12/31/13		11.60	11.60-		
101	36996.27	Activity	48550.00	3016.30-	703.43-	5062.00-	2870.00-
101	5775.62	Curr Qtr	8750.00	542.50-	126.08-	849.00-	456.00-
101	36996.27	Curr YTD	48550.00	3016.30-	703.43-	5062.00-	2870.00-
1970 TUCKAWAY DR SUMTER, SC 29150							
102	RYAN, JULIA						
102	(465-97-7046)						
102	0.00	Sal Pwd					
102	424.75	1297 01/07/13	500.00	38.25-		19.00-	18.00-
102	572.45	1305 01/14/13	700.00	53.55-		42.00-	32.00-
102	427.75	1316 01/21/13	500.00	38.25-		19.00-	18.00-
102	572.45	1325 01/28/13	700.00	53.55-		42.00-	32.00-
102	0.00	FICA Adj 01/31/13		34.80	34.80-		
102	572.45	1330 02/04/13	700.00	53.55-		42.00-	32.00-

CR6 TP6.0019
Run Date: 09/15/14

TONY'S PLACE OF COMFORT, LLC
Year-to-Date Payroll Journal (1/01/13-12/31/13)

Page: 2
P.R. Date: 12/31/13

			(1) Gross Pay	(2) FICA	(3) MEDICARE	(4) D	(5) C
	Net	Ref Date		411.00	411.00	412.00	413.00
102	606.62	1343 02/11/13	750.00	57.38-		50.00-	38.00-
102	572.45	1354 02/18/13	700.00	63.55-		47.00-	31.00-
102	606.62	1355 02/25/13	750.00	57.38-		50.00-	36.00-
102	0.00	FICA Adj 02/28/13		42.06	42.05-	0.01-	
102	606.62	1375 03/04/13	750.00	57.38-		50.00-	36.00-
102	640.80	1383 03/11/13	800.00	61.20-		53.00-	39.00-
102	640.80	1393 03/18/13	800.00	61.20-		53.00-	39.00-
102	640.80	1401 03/25/13	800.00	61.20-		53.00-	39.00-
102	0.00	FICA Adj 03/31/13		45.68	45.68-		
102	640.80	1409 04/01/13	800.00	61.20-		53.00-	39.00-
102	640.80	1419 04/08/13	800.00	61.20-		53.00-	39.00-
102	606.62	1429 04/15/13	750.00	57.38-		50.00-	36.00-
102	606.62	1440 04/22/13	750.00	57.38-		50.00-	36.00-
102	606.62	1447 04/29/13	750.00	57.38-		50.00-	36.00-
102	0.00	FICA Adj 04/30/13		53.84	53.82-	0.02-	
102	642.80	1455 05/06/13	800.00	61.20-		53.00-	39.00-
102	642.80	1467 05/13/13	800.00	61.20-		53.00-	39.00-
102	642.80	1477 05/20/13	800.00	61.20-		53.00-	39.00-
102	607.62	1484 05/25/13	750.00	57.38-		50.00-	36.00-
102	0.00	FICA Adj 05/31/13		45.68	45.68-		
102	642.80	1491 06/03/13	800.00	61.20-		53.00-	39.00-
102	607.62	1499 06/10/13	750.00	57.38-		50.00-	36.00-
102	572.45	1511 06/17/13	700.00	63.55-		47.00-	31.00-
102	424.75	1518 06/24/13	500.00	38.25-		19.00-	18.00-
102	0.00	FICA Adj 06/30/13		39.88	39.87-	0.01-	
102	607.62	1528 07/01/13	750.00	57.38-		50.00-	36.00-
102	606.62	1548 07/22/13	750.00	57.38-		50.00-	36.00-
102	641.80	1555 07/29/13	800.00	61.20-		53.00-	39.00-
102	0.00	FICA Adj 07/31/13		33.34	33.34-	0.01-	
102	641.80	1562 08/05/13	800.00	61.20-		53.00-	39.00-
102	641.80	1574 08/12/13	800.00	61.20-		53.00-	39.00-
102	572.45	1589 08/19/13	700.00	63.55-		47.00-	31.00-
102	641.80	1591 08/26/13	800.00	61.20-		53.00-	39.00-
102	0.00	FICA Adj 08/31/13		44.95	44.95-		
102	564.45	1597 09/03/13	700.00	53.55-		42.00-	32.00-
102	564.45	1603 09/09/13	700.00	53.55-		42.00-	32.00-
102	572.45	1614 09/16/13	700.00	53.55-		42.00-	32.00-
102	498.10	1623 09/23/13	600.00	45.90-		29.00-	26.00-
102	0.00	FICA Adj 09/30/13		39.13	39.13-		
102	422.75	1636 10/07/13	500.00	38.25-		19.00-	18.00-
102	350.40	1647 10/14/13	400.00	30.60-		9.00-	10.00-
102	317.23	1657 10/21/13	350.00	26.77-		4.00-	2.00-
102	350.40	1666 10/28/13	400.00	30.60-		9.00-	10.00-
102	0.00	FICA Adj 10/31/13		23.92	23.92-	0.01-	
102	350.40	1677 11/04/13	400.00	30.60-		9.00-	10.00-
102	350.40	1685 11/11/13	400.00	30.60-		9.00-	10.00-
102	564.45	1693 11/18/13	700.00	53.55-		42.00-	32.00-
102	500.10	1703 11/25/13	600.00	45.90-		29.00-	25.00-
102	0.00	FICA Adj 11/30/13		30.45	30.45-		
102	351.40	1711 12/02/13	400.00	30.60-		9.00-	9.00-
102	92.35	1721 12/09/13	100.00	7.45-			
102	0.00	FICA Adj 12/31/13		7.25	7.25-		
102	14973.88	Activity	10556.00	1094.10-	142.96-	1854.04-	1385.00-
102	1649.88	Curr Str	4256.00	243.50-	61.63-	138.99-	135.00-
102	14973.88	Curr LTD	10556.00	1094.10-	142.98-	1854.04-	1385.00-
103							
103							
103	0.00	Del Pwd					
103	181.05	1355 01/07/13	300.00	22.95-		7.00-	9.00-
103	998.15	1383 01/14/13	351.00	26.85-		13.00-	13.00-
103	998.15	1314 01/21/13	351.00	26.85-		13.00-	13.00-
103	998.15	1323 01/28/13	351.00	26.85-		13.00-	13.00-
103	0.00	FICA Adj 01/31/13		19.62	19.62-		
103	298.15	1332 01/24/13	351.00	26.85-		13.00-	13.00-
103	298.15	1341 01/31/13	351.00	26.85-		13.00-	13.00-
103	213.77	1351 02/07/13	351.00	26.85-		13.00-	13.00-
103	298.15	1363 02/14/13	351.00	26.85-		13.00-	13.00-
103	0.00	FICA Adj 02/28/13		20.82	20.82-	0.01-	
103	298.15	1371 03/04/13	351.00	26.85-		13.00-	13.00-
103	298.15	1381 03/11/13	351.00	26.85-		13.00-	13.00-
103	298.15	1391 03/18/13	351.00	26.85-		13.00-	13.00-
103	210.41	1399 03/25/13	243.00	18.59-			

CLS TPE.003

Run Date: 8/23/14

TONY'S PLACE OF SUMTER, LLC

Year-to-Date Payroll Journal

7/01/12 through 8/31/12

Page: 1

P.E. Date: 8/31/12

Net	Ref	Per	Date	(1)* Gross Pay *****	(2)A FICA 41100	(3)M MEDICARE 41100	(4)B Fed W/M 41200	(5)C St W/M 41300
-----	-----	-----	------	----------------------------	-----------------------	---------------------------	--------------------------	-------------------------

Series: 100 TONY'S PLACE OF SUMTER, LLC

101								
101								
101	6529.04	Bal Fwd		8300.00	248.61-	126.15-	830.00-	472.00-
101	1091.90	1075	7 7/02	1400.00	79.10-		149.00-	80.00-
101	1091.90	1087	7 7/16	1200.00	67.80-		128.00-	67.00-
101	1091.90	1097	7 7/23	1400.00	79.10-		149.00-	80.00-
101	1091.90	1103	7 7/30	1400.00	79.10-		149.00-	80.00-
101	0.00	FICA Adj	7 7/31		79.10-	79.30-		
101	1091.90	1114	8 8/06	1400.00	79.10-		149.00-	80.00-
101	1091.90	1125	8 8/13	1400.00	79.10-		149.00-	80.00-
101	934.20	1135	8 8/20	1200.00	67.80-		128.00-	70.00-
101	1091.90	1142	8 8/27	1400.00	79.10-		149.00-	80.00-
101	0.00	FICA Adj	8 8/31		79.30-	79.30-		
101	14948.84	Activity		10800.00	453.60-	156.60-	1150.00-	620.00-
101	14948.84	YTD		19100.00	802.21-	276.95-	1980.00-	1092.00-

102 ELIAS REYNA				2970 TUCKAWAY DR		SUMTER, SC 29150		
102	465.97-7846							
102	3968.23	Bal Fwd		4600.00	193.19-	66.69-	208.00-	163.89-
102	549.27	1076	7 7/02	650.00	36.73-		35.00-	29.00-
102	534.78	1084	7 7/16	650.00	36.72-		46.00-	32.50-
102	549.27	1094	7 7/23	650.00	36.73-		35.00-	29.00-
102	534.78	1102	7 7/30	650.00	36.72-		46.00-	32.50-
102	0.00	FICA Adj	7 7/31		37.70-	37.70-		
102	534.78	1113	8 8/06	650.00	36.72-		46.00-	32.50-
102	503.45	1124	8 8/13	700.00	39.55-		42.00-	35.00-
102	534.27	1134	8 8/20	650.00	36.73-		46.00-	33.00-
102	549.27	1141	8 8/27	650.00	36.73-		46.00-	29.00-
102	0.00	FICA Adj	8 8/31		38.43-	38.43-		
102	4369.87	Activity		5250.00	220.50-	76.13-	331.00-	252.50-
102	8338.10	YTD		9850.00	417.69-	142.82-	539.00-	416.39-

103								
103								
103	2505.29	Bal Fwd		2880.00	120.95-	41.76-	107.00-	105.00-
103	113.66	1077	7 7/02	360.00	20.34-		13.00-	13.00-
103	108.00	1085	7 7/16	382.50	21.61-		15.00-	15.00-
103	323.40	1098	7 7/23	373.50	21.10-		15.00-	14.00-
103	327.64	1108	7 7/30	376.00	21.10-		15.00-	14.00-
103	0.00	FICA Adj	7 7/31		21.66-	21.66-		
103	313.66	1113	8 8/06	360.00	20.34-		13.00-	13.00-
103	315.91	1122	8 8/13	364.50	20.59-		14.00-	14.00-
103	315.91	1131	8 8/20	364.50	21.10-		14.00-	14.00-
103	315.91	1135	8 8/27	373.50	21.10-		15.00-	14.00-
103	0.00	FICA Adj	8 8/31		21.20-	21.20-		

SCWCC 000401

CLM TFS.0016
Run Date: 12/30/13

TONY'S PLACE OF SUMTER, LLC
Year-to-Date Payroll Journal (1/01/13-9/27/13)

Page: 2
P.R. Date: 09/30/13

			(1) *	(2) A1	(3) A2	(4) B	(5) C
			Gross Pay	FICA	MEDICARE	Ret N/H	St N/H
Net	Ref	Date		111.00	111.00	112.00	112.00
102	REYNA, ELIAS						
102	(465-97-7846)						
102	0.00	Bel Fwd					
102	424.75	1297 01/07/13	500.00	38.25-		19.00-	18.00-
102	572.45	1305 01/14/13	700.00	53.55-		42.00-	32.00-
102	427.75	1316 01/21/13	500.00	38.25-		19.00-	15.00-
102	572.45	1325 01/28/13	700.00	53.55-		42.00-	32.00-
102	0.00	FICA Adj 01/31/13		34.80	34.80-		
102	572.45	1330 02/04/13	700.00	53.55-		42.00-	32.00-
102	606.62	1343 02/11/13	750.00	57.38-		50.00-	36.00-
102	572.45	1354 02/18/13	700.00	53.55-		42.00-	32.00-
102	606.62	1365 02/25/13	750.00	57.38-		50.00-	36.00-
102	0.00	FICA Adj 02/28/13		42.06	42.06-	0.01-	
102	606.62	1377 03/04/13	750.00	57.38-		50.00-	36.00-
102	640.80	1383 03/11/13	800.00	61.20-		59.00-	39.00-
102	640.80	1393 03/18/13	800.00	61.20-		59.00-	39.00-
102	640.80	1401 03/25/13	800.00	61.20-		59.00-	39.00-
102	0.00	FICA Adj 03/31/13		45.68	45.68-		
102	640.80	1409 04/01/13	800.00	61.20-		59.00-	39.00-
102	640.80	1419 04/08/13	800.00	61.20-		59.00-	39.00-
102	606.62	1429 04/15/13	750.00	57.38-		50.00-	36.00-
102	606.62	1440 04/22/13	750.00	57.38-		50.00-	36.00-
102	606.62	1447 04/29/13	750.00	57.38-		50.00-	36.00-
102	0.00	FICA Adj 04/30/13		55.44	55.44-	0.02-	
102	642.80	1455 05/06/13	800.00	61.20-		57.00-	39.00-
102	642.80	1467 05/13/13	800.00	61.20-		57.00-	39.00-
102	642.80	1477 05/20/13	800.00	61.20-		57.00-	39.00-
102	607.62	1494 05/25/13	750.00	57.38-		50.00-	35.00-
102	0.00	FICA Adj 05/31/13		45.68	45.68-		
102	642.80	1491 06/03/13	800.00	61.20-		57.00-	39.00-
102	607.62	1499 06/10/13	750.00	57.38-		50.00-	35.00-
102	572.45	1511 06/17/13	700.00	53.55-		42.00-	32.00-
102	424.75	1518 06/24/13	500.00	38.25-		19.00-	18.00-
102	0.00	FICA Adj 06/30/13		39.88	39.87-	0.01-	
102	607.62	1528 07/01/13	750.00	57.38-		50.00-	35.00-
102	606.62	1540 07/22/13	750.00	57.38-		50.00-	36.00-
102	641.00	1555 07/29/13	800.00	61.20-		57.00-	40.00-
102	0.00	FICA Adj 07/31/13		33.36	33.35-	0.01-	
102	641.80	1562 08/05/13	800.00	61.20-		57.00-	40.00-
102	641.80	1574 08/12/13	800.00	61.20-		57.00-	40.00-
102	572.45	1580 08/19/13	700.00	53.55-		42.00-	32.00-
102	641.80	1591 08/26/13	800.00	61.20-		57.00-	40.00-
102	0.00	FICA Adj 08/31/13		44.95	44.95-		
102	564.45	1597 09/03/13	700.00	53.55-		42.00-	30.00-
102	564.45	1603 09/09/13	700.00	53.55-		42.00-	30.00-
102	572.45	1614 09/16/13	700.00	53.55-		42.00-	32.00-
102	499.10	1623 09/23/13	600.00	45.90-		29.00-	26.00-
102	21324.00	Activity	26300.00	1669.75-	342.20-	1715.05-	1249.00-
102	21324.00	Curr YTD	26300.00	1669.75-	342.20-	1715.05-	1249.00-

SCWCC 000402

01/09/14
FILEID009215

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI CREATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: FENERLY INC DBA TONY'S PLACE
301 N MAIN STREET
SUMTER, SC 29150

CARRIER CLAIM#: WC10096121

SCWCC CLAIM#: 1316470

NAICS CODE: 722513

FED. TAX I.D. NO.: 571048740

INSURANCE FOREMOST INS

CLAIMS CRAWFORD USP&C

CARRIER: Farmers WC Imaging Center
PO Box 108843
OKLAHOMA CITY, OK 73101-

ADMIN: 121 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210

CARRIER ID: 01208 CARRIER FEIN: 382430150

EMPLOYEE NAME (Last, First, Middle)
ELIAS, REYNA

SOCIAL SECURITY NUMBER

PHONE NO.

(803) 840-5191

ADDRESS: 2748 TUCKER DR
SUMTER, SC 29150

DATE OF BIRTH: 02/17/1986 MARITAL STATUS: M

MALE/FEMALE: F # DEPENDENT CHILDREN: 0

DATE OF HIRE: 09/27/13

OCCUPATION: OWNER/MANAGER

WAGE INFORMATION

RATE: \$10.00

WAGE PERIOD:

DATE RETURNED TO WORK:

FULL DAY PAY FOR DAY OF INJURY: N

DID SALARY CONTINUE: N

OCCURRENCE

PLACE OF ACCIDENT OR OCCURRENCE:

DATE OF INJ: 09/27/13 TIME OF INJ: 10:00 PM

EMPLOYER'S PREMISES: N

LAST WORKDATE:

DATE EMPLOYER NOTIFIED: 09/28/13

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 80 OBJECT HANDLED BY OTHERS

NATURE: 10 CONTUSION

LOCATION: 10 OTHER SOFT TISSUE

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURRED WITH DETAILS OF HOW EVENT OCCURRED

LOCKING THE DOOR FOR THE DAY AND WAS ASSAULTED /HEAD INJURY

IF FATAL GIVE DATE OF DEATH:

** Amended **

<1>: <2>:

ELECTRONIC FILING

ORIGINAL DATE SENT:

DATE PROCESSED: 01/09/14

TRADING PARTNER: Broadspire Services Inc
1 Corporate Drive
Suite 120
Lake Zurich, IL 60047

SCWCC 000470

EXHIBIT NO. 2

SCWCC 000403

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CORPORATE OFFICER NOTICE TO REJECT

To the Employer of the Undersigned and the Employer's Insurance Carrier:

The undersigned officer rejects the terms, conditions, and provisions of the South Carolina Workers' Compensation Act and elects to pursue compensation for personal injuries under the common law and statutes of South Carolina.

As provided by law (Section 42-1-520), "An officer of a corporation who elects not to operate under this title, shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this title, proceed at common law and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant, and assumption of risk, as such defenses exist at common law."

This notice becomes effective on the date listed below, no sooner than the day following the date signed by the corporate officer.

PLEASE PRINT OR TYPE ALL INFORMATION ** ORIGINAL SIGNATURES REQUIRED **

ELIAS REYNA
Name of Officer Corporate Title

PEREYRE INC DBA TONY'S PIZZA & TONY'S PLACE
Name of Business (Legal Name)

301 N MAIN ST
Street Address Post Office Box

301 N MAIN ST
Street Address Post Office Box

SUMTER SC 29160
City State Zip

SUMTER SC 29160
City State Zip

465 97 784 6
Social Security Number

97-1030760
Federal Employee ID

(803) 698-6769
Area Code Telephone Number

(803) 773-1035
Area Code Telephone Number

Elias Reyna
Signature of Officer Date

04/12/2013
Effective Date

Subscribed and sworn to me this 12 day of April, 2013
[Signature] My commission expires: 10-03-13
Notary Public

This form may be used when an officer declines to become exempt from the provisions of the South Carolina Workers' Compensation Act. For additional information regarding the provision of Section 42-1-520 and this form, contact your insurance carrier or the South Carolina Workers' Compensation Commission, Coverage and Compliance Division, Post Office Box 1715, Columbia, South Carolina 29202-1715, (803) 737-5709.

CALHOUN LAW FIRM

MARK R. CALHOUN
ATTORNEY-AT-LAW

714 EAST MAIN STREET
LEXINGTON, S.C. 29072

OFFICE: 803-957-8401
TELECOPIER: 803-957-4709

December 4, 2014

RECEIVED

DEC 04 2014

(FRONT DESK)
SC Workers' Comp Comm

Commissioner Aisha Taylor
SCWCC
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
HAND DELIVERED

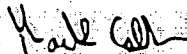
Re: Elias Reyna v. Tonys Pizza/Fenerly Inc., WCC File No. 1316470.

Dear Commissioner Taylor:

In response to the Employers Pre-Hearing Brief dated December 1, 2014 and received on December 3, 2014 (No APA submissions or exhibits attached), I am enclosing our Amended Pre-Hearing Brief, APA, and Notice of Witnesses in the above referenced matter. By copy of this letter I am also serving the same on counsel for the Defendant.

Thank you in advance for your consideration.

Yours very truly,


Mark R. Calhoun

MRC/air
Enclosure

cc: Barrett Burley, Esquire

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov



PRE-HEARING BRIEF

WCC File

No: 1316470

Claimant's Name: Eli as Reyna Employer's Name: Tony's Pizza/Fanelli's Inc.
Address: 1870 US HWY 15 Address: 1870 US HWY 15
City: Sumter State: SC Zip: 29154 City: Sumter State: SC Zip: 29154
Home Phone: (843-840-5181) Work Phone: () Carrier: Foremost Signature Ins. Co.
Preparer's Name: Mark R. Calhoun Preparer's Phone #: (803) 957-8401

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: To be determined 2. AWW: to be determined Date of Injury: 9/27/13
3. Type of Injury and body part(s): Brain, psyche, head, eyes, ears/hearing, left leg
4. Facts in controversy: See Addendum

5. Legal issues involved: A) Is Claimant at MMI? (we say he is not) b) Post due TTD. c) Dodge v. Brucoli Medical treatment d) Determine AWW and Comp. rate. e) Compensability f) Has Claimant suffered physical brain damage (we say he has)

6. Unusual aspects: Claimant cannot speak or understand fluent English and an interpreter will be provided.

7. Witnesses (designate if expert):* Elias Reyna, Nancy Reyna, Marvin Dawson Jr., Byron Kinney, and any witnesses listed on behalf of Employer.

8. Exhibits: 1) Personnel file and wage records. 2) Notice to Reject Form 3) Affidavits of Peter Peldis and Byron Kinney 4) Insurance Policy 5) Deposition of Byron Kinney 6. Deposition of Peter Peldis 7) Police Incident Report

2) Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
Medical records and Expert Reports will be submitted pursuant to R.67-612 and the APA.

3. Name, address, and specialty, if any, of the treating physician: Dr. Randolph Wald

4. Impairment rating(s); body part(s); physician and date of opinion: Claimant is not at MMI.

12. I am amending my Form 50/51 in the following manner: none

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Barret Burley

address 1320 Main St Columbia SC 29211 on the 4 day of Dec. 20 14 by: ☐ first class postage ☐ certified mail ☒ personal service.

Signature: Mark Calhoun

Date of hearing: December 9, 2014

Email: mark@calhounlawfirm.com

Time needed for hearing: 1:35

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not

RECEIVED

DEC 04 2014

(FR
SC Work

SCWCC 000423

ADDENDUM

4. Elias Reyna is a 48 year old legal permanent resident with a wife and two daughters. He was born and raised in Mexico. He has received no education in the United States. He cannot read or write in English, understands and speaks very limited English. The Employer owns two pizza restaurants in Sumter South Carolina. Before April of 2013 Elias was a cook at one of these restaurants. The Employer Peter Peidis then made Elias a minority owner (30%) of one restaurant but in all other practical aspects Elias remained the employee of Mr. Peidis. Peidis handled all business matters such as securing Insurance coverage.

Insurance Coverage was obtained by Mr. Peidis with agent Byron Kinney at Byum Insurance Company. Mr. Kinney's opinion is that officers of a corporation are automatically excluded by South Carolina law. (The only three corporate officers of Fenerly Inc. are Mr. Peidis, his wife and Elias.) Mr. Peidis rejected workers compensation Insurance coverage for himself and his wife to lower the Insurance premium which he was responsible for paying. (Exhibit 4) Mr. Kinney requested that Mr. Peidis also have a Corporate Officer Notice to Reject form signed by Elias. (Mr. Kinney has never seen or spoken to Elias). Mr. Kinney witnessed Mr. Peidis sign his form (to reject WC Insurance coverage) in Mr. Kinney's office. He then handed another rejection form to Mr. Peidis and requested that he have Elias execute and return it. (Exhibits 5 and 6).

In February of 2014 Mr. Kinney stated by affidavit that he gave the Notice to Reject Form (Exhibit 2) to Mr. Peidis to take to Elias to read, sign and return. In February 2014, Mr. Kinney states Peter Peidis returned the signed form to him (See Exhibit 3). On December 3, 2014, Mr. Kinney states in deposition that he spoke to Mr. Peidis within the last week (after Mr. Peidis's deposition on November 20, 2014) and that Peidis told Mr. Kinney that Peidis did not return the rejection form to Kinney's Office. (On December 3, 2014 Mr. Kinney defers to Mr. Peidis's recollection but nine months earlier Mr. Kinney remembered Peidis returning the rejection form). Mr. Peidis claims that he took the rejection form to Elias, "told Elias what it was, to sign and return it to Mr. Kinney. Peidis admits he did not read the form to Elias and never saw Elias sign the form. (Exhibits 3, 5, 6). Mr. Peidis claims Elias signed the rejection form. (Exhibit 2). Elias did not sign the form, read the form or ever see Exhibit 2. Forensic Document Examiner Marvin Dawson Jr. confirms the signature on Exhibit 2 is not that of Elias Reyna (APA #7).

Therefore, the Claimant submits the Employer; 1) Does not have a Corporate Officer Notice to Reject Form executed by the Claimant and 2) Even if the Employer did, he cannot prove someone can legally execute a document that he, the Claimant, cannot read.

On September 27, 2013 Elias had closed the restaurant at 10 pm and was walking in the business parking lot to his car with a bank deposit bag of approximately \$1500.00 in cash. An assailant assaulted him from behind and repeatedly beat Elias in the head with a hard blunt object (likely a club) causing three (3) different skull fractures and a subdural hematoma (APA p.26-35) to his skull. Elias awoke in the parking lot and the bank bag was gone. He remembers very little about the assault, only waking in the hospital.

Elias has severe memory problems, headaches, dizziness, concentration/focus issues, palsy on the right side of his head, right eye vision problems, right ear hearing problems, difficulty eating and

drinking, depression, all due to the nerve damage on the right side of his skull (where the 3 fractures were received) and the physical brain damage. He has not worked since 9-27-13 other than a brief attempt to return to work. He is in need of medical treatment. (Dr. Wald p.333-339)

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1316470

ELIAS REYNA,
Employee/Claimant,

v.

TONY'S PIZZA/FENERLY INC.

Employer,
and

FOREMOST SIGNATURE INS. CO.

Carrier/Defendants,

NOTICE OF SUBMISSION
OF DIRECT EVIDENCE
ON BEHALF OF CLAIMANT

TO: BARRETT BURLEY, ESQUIRE:

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of Rule 67-30 of the South Carolina Worker's Compensation Commission and Chapter 23, Article 1, Section 1-23-330, *Code of Laws of South Carolina* (1976) as amended, hereby submits:

<u>EXHIBIT</u>	<u>PROVIDER</u>	<u>SERVICE DATES</u>	<u>PAGE #</u>
1	Tuomey Regional Medical Center	09/27/2013	1 to 24
2	Richland Memorial Hospital	9/28/13 to 12/11/13	25 to 297
3	Dr. Heath Stewart	9/28/13 to 10/21/13	298 to 318
4	Dr. Christopher Watson	9/28/13 to 11/20.13	319 to 325

5	Dr. Paul Diegidio	11/26/13 to 9/2/14	326 to 332
6	Dr. Randolph Waid	2/10/14	333 to 339
7	Marvin Dawson, Jr.	11/21/14	340 to 346

You are hereby furnished with a copy of the above-listed reports and evidence and are further notified that you have the right of cross-examination, and should you desire to exercise said right, you are to forthwith schedule the deposition(s) of the aforementioned witnesses, including but not limited to health care providers, for the purpose of cross-examination.

CALHOUN LAW FIRM


 Mark R. Calhoun
 714 East Main Street
 Lexington SC 29072
 803-957-8401

ATTORNEY FOR CLAIMANT

December 4, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1316470

ELIAS REYNA,

Claimant,

Vs.

TONYS PIZZA/ FENERLY INC.,

Employer,

FOREMOST SIGNATURE INS. CO.

Carrier.

CERTIFICATE
OF
SERVICE

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

TO: South Carolina Workers' Compensation Commission
Commissioner Aisha Taylor
1333 Main St., Suite 500
Columbia, SC 29202
HAND-DELIVERED

Barrett Burley, Esquire
P.O. Box 12519
Columbia, SC 29211
HAND-DELIVERED

DOCUMENT: AMENDED PRE-HEARING BRIEF
DATE OF DELIVERY: December 4, 2014

Aida I. Reyes
Aida I. Reyes

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Case No.: 1316470
Appellate Case No.: 2016-000617

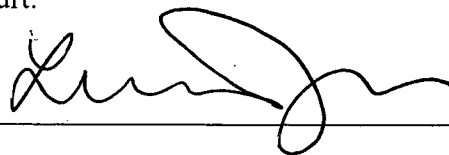
Elias Reyna Respondent,

v.

Fenerly Inc. / Tony's Place of Sumter LLC, Employer, and
Foremost Signature Insurance Co., Carrier..... Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies, pursuant to South Carolina Court of Appeals Rule 210(g), that Record on Appeal contains all material proposed to be included by any of the parties and no other material and it also complies with the August 13, 2007 Order of the South Carolina Supreme Court.



William R. Harbison, S.C. Bar 15041
Laura W. Jordan, S.C. Bar 100374
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
Tel: 803.779.1833
Fax: 803.779.1767

RECEIVED
NOV 07 2016
SC Court of Appeals

Brett H. Bayne
MCANGUS GOUDELOCK & COURIE, LLC
Post Office Box 12519, Capitol Station

CONFIDENTIAL

SECRET

CONFIDENTIAL

Meridian, 1320 Main Street, 10th floor (29201)
Columbia, South Carolina (29211)
Tel: 803.779.2300
Fax: 803.748.0526

ATTORNEYS FOR APPELLANTS

November 7, 2016