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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5458
(SC Ct. App. heard June 9, 2016;
filed December 7, 2016)

William Lee Turner, Employee, ...Petitioner,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

APPENDIX
VOLUME II OF II

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1204039

EMPLOYEE/CLAIMANT: LEE TURNER

EMPLOYER: SAIIA CONSTRUCTION

INSURER: OLD REPUBLIC GENERAL INSURANCE CORPORATION

 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE
WITHIN HEARING WAS TAKEN ON THE 4TH DAY OF FEBRUARY, 2014,,
COMMENCING AT THE HOUR OF 1:50 P.M., IN COLUMBIA, SOUTH CAROLINA,
BEFORE THE HONORABLE SUSAN S. BARDEN, ATTENDED BY COUNSEL AS
FOLLOWS:

SHEILA ROBISON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
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APPEARANCES

STEPHEN H. COOK, ESQUIRE, OF THE FIRM
JOHN K. KOON, ESQUIRE, OF THE FIRM
KOON & COOK, P.A.
2016 GADSDEN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEYS FOR THE EMPLOYEE/CLAIMANT,

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ALSO PRESENT: ROBERT BENNETT

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

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS FEBRUARY 4TH, 2014. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1204039. THIS IS THE CASE OF THE CLAIMANT
10 MR. LEE TURNER WHO IS PRESENT TODAY AND REPRESENTED
11 BY ATTORNEY STEVE COOK VERSES THE EMPLOYER BUCKHORN
12 MATERIALS AND ITS CARRIER OLD REPUBLIC, BOTH OF
13 WHICH ARE REPRESENTED BY ATTORNEY JASON LOCKHART.
14 THE PURPOSE OF TODAY'S HEARING IS TO DETERMINE THE
15 ISSUES RAISED IN FORMS 50 AND 51. THIS IS A DENIED
16 CLAIM. HOWEVER, THE PARTIES DO AGREE AND STIPULATE
17 THAT THE CORRECT AND APPROPRIATE AVERAGE WEEKLY WAGE
18 IN THIS CASE IS \$684.18 YIELDING A COMPENSATION RATE
19 OF \$456.14. THE DATE OF THIS ALLEGED ACCIDENT WAS
20 APRIL 19TH, 2012.

21 ARE THERE ANY OBJECTIONS TO THE APAs,
22 JURISDICTION, VENUE, OR ANY OTHER ITEMS? MR. COOK?

23 BY MR. COOK:

24 NONE FROM THE CLAIMANT.

25 BY COMMISSIONER BARDEN:

1 MR. LOCKHART?

2 BY MR. LOCKHART:

3 NONE FROM THE DEFENDANTS, YOUR HONOR.

4 BY COMMISSIONER BARDEN:

5 THANK YOU, BOTH. WITHOUT OBJECTION, THE
6 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
7 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND UN-
8 STIPULATED MEDICAL REPORTS.

9 PRIOR TO GOING ON THE RECORD, WE HELD A
10 PREHEARING CONFERENCE. IT IS THE POSITION OF THE
11 CLAIMANT THAT HE SUFFERED COMPENSABLE INJURIES BY
12 ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE
13 OF HIS EMPLOYMENT ON APRIL 19TH, 2012, ON WHICH DATE
14 HE INJURED HIS THORACIC SPINE AND HIS HEAD AND HIS
15 BRAIN. HE SEEKS TEMPORARY TOTAL DISABILITY BENEFITS
16 FROM APRIL 19TH, 2012, THROUGH JANUARY 2ND, 2013; HE
17 SEEKS CAUSALLY-RELATED MEDICALS FOR THOSE EXPENSES
18 HE HAS INCURRED THIS FAR WITH REGARD TO THE
19 EVALUATION AND TREATMENT OF HIS SPINE AND HIS HEAD
20 AND BRAIN. HE SEEKS AN ORDER REQUIRING THE
21 DEFENDANTS TO PROVIDE HIM WITH MEDICAL TREATMENT,
22 AND HE SPECIFICALLY REQUESTS THAT DR. PETERSON BE
23 NAMED THE TREATING PHYSICIAN AS THE CLAIMANT HAS
24 ALREADY ESTABLISHED A TREATING RELATIONSHIP WITH DR.
25 PETERSON, AND THAT IT WOULD BE UNWISE OR EVEN FOLLY

1 TO DISRUPT OR DISREGARD THE FACT OF THAT ONGOING
2 TREATMENT, AND DR. PETERSON IS INFINITELY FAMILIAR
3 WITH THE CLAIMANT'S CONDITION AND NECESSARY COURSE
4 OF TREATMENT. AS THE CLAIMANT HAS NOT REACHED
5 MAXIMUM MEDICAL IMPROVEMENT, ANY DETERMINATION OF
6 PERMANENCY IS PREMATURE.

7 AND AT THIS TIME, I'M GOING TO ASK MR. COOK TO
8 ELABORATE FURTHER, OTHER THAN THE RELIEF THAT I
9 BELIEVE I'VE COVERED, AND OF COURSE IF I DIDN'T, YOU
10 CAN ADD SOMETHING TO THAT LIST. BUT ALSO, IS THE
11 LEGAL MEMO THAT YOU HAVE -- AND OF COURSE I HAVEN'T
12 READ IT YET. YOU'VE JUST HANDED TO ME. IF YOU WANT
13 TO SUMMARIZE THAT AND ANY OTHER ISSUE THAT YOU WANT
14 TO TELL ME, SIR.

15 **BY MR. COOK:**

16 THANK YOU, YOUR HONOR. MAY IT PLEASE THE
17 COMMISSION. THE AFTERNOON OF THURSDAY, APRIL THE
18 19TH, THE CLAIMANT WAS FINISHING HIS SHIFT WITH
19 SAIIA CONSTRUCTION COMPANY OVER IN EASTOVER. HE HAD
20 JUST WASHED HIS DUMP TRUCK WITH SOAP AND WATER. HE
21 HAD TO CLIMB THE FIRST AND SECOND STEP OF THAT DUMP
22 TRUCK TO PUT A BOOK BAG IN THE SEAT ACCORDING TO
23 WHAT WITNESS PAUL BARNETT, AND I'VE QUOTED FROM MR.
24 BARNETT IN THE BRIEF; "IT," WHICH REFERRING TO THE
25 BACKPACK, "HAD BEEN PUT ON THE SEAT. AND TO BE ABLE

1 TO GET UP AND PUT MY STUFF ON THERE -- IT WASN'T
2 THROWN IN. IT WASN'T IN THE FLOORBOARD. IT WAS IN
3 THE SEAT." SO SOMETIME OR ANOTHER, HE DID GET UP ON
4 THE FIRST STEP AND THEN THE SECOND STEP. TO ACCESS
5 THE CAB, HE DID HAVE TO GET ON THOSE TWO STEPS. AND
6 THE CAB IS APPROXIMATELY FIVE FEET, SIX INCHES OFF
7 THE GROUND. THE REASONABLE INFERENCE -- HE WAS
8 FOUND LAYING STRAIGHT ON HIS BACK. THE REASONABLE
9 INFERENCE IS THAT HE FELL WHILE ON THESE STEPS OR
10 POSSIBLY WHILE HE WAS INSIDE THE CAB. HE FELL ON
11 THE GROUND HITTING THE BACK OF HIS HEAD AGAINST THE
12 GROUND, AND THERE WAS A BLOODY AREA THERE. AS A
13 RESULT OF THE FALL, HE DOESN'T REMEMBER ANYTHING
14 FROM THE DAY BEFORE THAT DAY OR THE DAY AFTER;
15 THAT'S NOT IN DISPUTE. DAVID BOLDEN AND PAUL
16 BENNETT, WHO WERE TWO OF THE DRIVERS WHO WORKED WITH
17 THE CLAIMANT, THEY WERE ABOUT 30 YARDS AWAY FROM HIM
18 WHEN HE FELL. NEITHER PERSON ACTUALLY SAW HIM FALL,
19 BUT EACH SAW HIM LYING ON THE GROUND IMMEDIATELY
20 AFTER THE FALL WITH THE BACK OF HIS HEAD BLEEDING.
21 HIS INJURIES: HE HAD A SUBDURAL HEMATOMA AND
22 HEMORRHAGE. HE HAD A CONTUSION TO THE LEFT LOBE.
23 HE HAD A FRACTURE DEFORMITY AT THE ENDPLATES OF T3
24 AND T4, AND ON THE WAY TO THE HOSPITAL, HE SUFFERED
25 A SEIZURE. HE HAS NO FAMILY HISTORY OF EPILEPSY OR

1 SEIZURES, AND HE HAS NEVER HAD SEIZURES HIMSELF
2 BEFORE THIS HAPPENED. AND ALL THE WITNESSES, IF YOU
3 READ THE DEPOSITIONS, WILL TESTIFY HE HAD NOT
4 COMPLAINED OF ANY DIZZINESS OR ANY PROBLEMS THAT DAY
5 OR EXPRESSED THAT HE WAS HAVING ANY PROBLEMS THAT
6 DAY BEFORE THIS FALL.

7 PAGE 37 OF THE APA IS A QUESTIONNAIRE FROM DR.
8 ALAN PETERSON WHO IS BOARD CERTIFIED IN INTERNAL
9 MEDICINE AND IS LEE'S FAMILY DOCTOR. HE TESTIFIES
10 TO THREE THINGS IN THERE: THAT IT'S MORE LIKELY THAN
11 NOT THAT THE INJURIES TO THE HEAD WERE CAUSED BY THE
12 FALL; IT'S MORE LIKELY THAN NOT THAT THE FALL GAVE
13 RISE TO THE SEIZURES THAT HE'S EXPERIENCED SINCE THE
14 FALL, AND IT'S MORE LIKELY THAN NOT THAT THE FALL
15 WAS NOT A RESULT OF A PREEXISTING SEIZURE CONDITION.
16 THE APPLICABLE LAW HERE, YOUR HONOR, IS GENERALLY
17 THERE'S A PRESUMPTION OF FACT THAT ONE CHARGED WITH
18 THE PERFORMANCE OF A DUTY AND INJURED WHILE
19 PERFORMING SUCH DUTY OR FOUND INJURED AT THE PLACE
20 WHERE THE DUTY MAY OF BEEN -- REQUIRED HIM TO BE WAS
21 WORKING IN THE COURSE OF EMPLOYMENT. AND AS A
22 CONSEQUENCE OF THE EMPLOYMENT WITHIN THE ACT, THAT'S
23 THE *OWENS VERSES OCEAN FOREST* CASE, WHICH I KNOW
24 YOUR HONOR'S FAMILIAR WITH, AND THAT WAS A DEATH
25 CASE. AND THESE CASES ARE SIMILAR BECAUSE THE

1 CLAIMANT'S NOT ABLE TO TESTIFY AS TO EXACTLY WHAT
2 HAPPENED. IN OWENS, THE GAME WARDEN WAS EMPLOYED BY
3 THE OCEAN FOREST CLUB AND WAS FOUND DECEASED IN A
4 PORTION OF THE WOODED PREMISES HE HAD BEEN EMPLOYED
5 TO PATROL. THE CAUSE OF HIS DEATH WAS A BULLET
6 WOUND THROUGH THE HEAD. THE GAME WARDEN'S WIDOW
7 FILED A CLAIM. IT WAS DENIED, AND A HEARING WAS
8 HELD, AND THE CASE WAS FOUND TO BE COMPENSABLE. AND
9 THE DEFENDANT APPEALED. THE SOUTH CAROLINA SUPREME
10 COURT HELD THAT THE EVIDENCE WAS CLEAR THAT AT THE
11 TIME OF THE DEATH THE GAME WARDEN WAS ON THE
12 COMPANY'S PROPERTY DURING HIS HOURS OF EMPLOYMENT,
13 AND HE WAS FOUND DEAD FROM A GUNSHOT WOUND. THE
14 COURT SAID THAT THE EVIDENCE RELATING TO THE CAUSE
15 OF DEATH WAS CIRCUMSTANTIAL, BUT THE COURT WENT ON
16 TO SAY, AND THIS IS THE CRUX OF OUR CASE YOUR HONOR,
17 "CIRCUMSTANTIAL EVIDENCE MAY BE SUFFICIENT TO
18 SUPPORT A FINDING OF FACT OR AN AWARD, AND THE
19 FINDING OF AN AWARD MAY BE BASED ON INFERENCES DRAWN
20 FROM CIRCUMSTANTIAL EVIDENCE. THE EVIDENCE NEED NOT
21 -- ALTHOUGH IT MAY BE DIRECT OR POSITIVE,
22 CIRCUMSTANTIAL EVIDENCE TO ESTABLISH A CLAIM NEED
23 NOT REACH SUCH A DEGREE OF CERTAINTY AS TO EXCLUDE
24 EVERY REASONABLE OR POSSIBLE CONCLUSION OTHER THAN
25 THAT REACHED." AND OF COURSE THAT WAS A DEATH CASE,

1 BUT HE SAID, "WHEN A DEATH OCCURS, THERE'S A NATURAL
2 PRESUMPTION OR PRESUMPTION OF FACT THAT ONE CHARGED
3 WITH THE PERFORMANCE OF A DUTY AND INJURED WHILE
4 PERFORMING THAT DUTY FOUND AT THE PLACE WHERE HIS
5 DUTY WAS TO HAVE DONE ON THOSE HOURS WAS A
6 CONSEQUENCE OF THE EMPLOYMENT." AND THE COURT ALSO
7 WENT TO THE *JAKE VERSES JONES* CASE, WHICH WE CITE IN
8 THE BRIEF, AND IN THAT CASE THE DECEDENT'S ACCIDENT
9 AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT WHERE
10 HE WAS FOUND DROWNED BY A BARGE WHERE HE WORKED.
11 "DECEASED WAS FOUND DISROBED AND COULD NOT SWIM,"
12 AND SWIMMING IN THAT AREA WAS PROHIBITED BY THE
13 EMPLOYER. BUT IN THAT CASE, THE COURT STILL FOUND
14 IT COMPENSABLE BECAUSE HE WAS IN AN AREA WHERE HE
15 WAS SUPPOSED TO BE WORKING, FOUND THERE. IN THIS
16 CASE, THE BACKPACK WAS ON THE SEAT. HE HAD TO CLIMB
17 -- ACCORDING TO EMPLOYER'S TESTIMONY HAD TO CLIMB
18 THE FIRST AND SECOND STEPS TO PUT THE BACKPACK IN
19 THE SEAT. THE STEPS WERE WET FROM BEING WASHED WITH
20 SOAP AND WATER IMMEDIATELY BEFORE HE MOVED THE TRUCK
21 TO THAT AREA. SO THE CIRCUMSTANTIAL EVIDENCE ALONG
22 WITH THE MORE DIRECT EVIDENCE POINTS TO THE FACT
23 THAT HIS FALL CAUSED THE SEIZURES, DR. PETERSON
24 EXPLAINED IN THE APA SUBMISSION. AND YEAH, THEY
25 SAID, "A LADDER." THERE'S ONE REPORT THAT SAYS "A

1 LADDER." WE ASSUME THAT WHAT THEY ACTUALLY --
2 SOMEONE REPORTED "STEPS." AND LEE DID NOT -- LEE
3 STILL HAS NO MEMORY OF WHAT HAPPENED THAT DAY. BUT
4 THE WITNESSES' TESTIMONY'S IMPORTANT. AND I WOULD
5 JUST DIFFERENTIATE THAT THIS IS -- WE HAVE A LEVEL
6 FLOOR, THE IDIOPATHIC FALL CASE THAT CAME OUT. IN
7 THAT SITUATION, WE HAVE A LEVEL FLOOR, AND IT'S
8 ESSENTIALLY THE PERSON FALLS WHILE WALKING ON A
9 LEVEL FLOOR. THIS IS NOT THE CASE HERE, BECAUSE THE
10 EVIDENCE POINTS OUT THAT HE HAD THE WORK WITH THE
11 DUMP TRUCK, AND THE CIRCUMSTANTIAL EVIDENCE WOULD
12 INDICATE HE FELL -- THE DEGREE OF THE INJURY AND THE
13 AMOUNT IF HE JUST FALL FROM THE FLOOR, HE'S UNLIKELY
14 TO HAVE THE SUBDURAL HEMATOMA, THE CUT ON THE BACK
15 OF HIS HEAD AND BROKEN TWO THORACIC VERTABRA. IT'S
16 JUST COMMON SENSE. AND THE PRESUMPTION THAT WHERE
17 HE'S ON THE WORKPLACE WOULD LEAD ONE TO BELIEVE THAT
18 HE FELL OFF THE STEPS AND CAUSED HIS INJURIES, YOUR
19 HONOR. AND IF ANYTHING, LEE IS TO A FAULT HONEST;
20 HE HASN'T EVER CHANGED HIS TESTIMONY. IT'S BEEN
21 FROM DAY ONE, "I DON'T REMEMBER." HE HASN'T CHANGED
22 IT TRY TO MAKE HIS CLAIM VALID OR NOT. HE'S BEEN
23 HONEST ALL THE WAY THROUGH THIS PROCESS, AND I
24 ADMIRE HIM FOR THAT. AND I HOPE THAT DOESN'T
25 PREVENT A RECOVERY WHEN WE HAVE THE PRESUMPTIONS IN

1 THE PRIOR CASE LAW, YOUR HONOR. THANK YOU.

2 BY COMMISSIONER BARDEN:

3 THANK YOU. MR. LOCKHART.

4 BY MR. LOCKHART:

5 YOUR HONOR, MAY IT PLEASE THE COURT. I
6 APPRECIATE MR. TURNER'S HONESTY THROUGHOUT THIS
7 ENTIRE PROCESS, AND I THINK HIS HONESTY -- AND OF
8 COURSE, IT'S OUR CONTENTION THAT HIS CLAIM IS NOT
9 COMPENSABLE. THERE'S NO ONE WHO HAS TESTIFIED AS TO
10 THE FACTS AND CIRCUMSTANCES SURROUNDING A FALL FROM
11 A CAB. THERE'S NO EVIDENCE OF THAT. MR. TURNER
12 DOESN'T REMEMBER WHAT OCCURRED ON THE DATE OF
13 ACCIDENT, AND THERE'S BEEN NO TESTIMONY FROM ANY
14 WITNESS WHATSOEVER TO CORROBORATE THE THEORY THAT'S
15 NOW BEING PRESENTED TO YOU TODAY THAT HE WAS
16 STANDING ON THE STEPS OF A TRUCK AND THAT HE FELL.
17 AS A MATTER OF FACT, TWO WITNESSES THAT WERE CITED
18 TO BY CLAIMANT'S COUNSEL, MR. BARNETT AND MR.
19 BOLDEN, WHOSE DEPOSITIONS HAVE BEEN OFFERED UP INTO
20 EVIDENCE. BOTH OF THOSE FOLKS SAID UNDER OATH THEY
21 DID NOT WITNESS MR. TURNER FALL. SO NO ONE KNOWS
22 WHAT HAPPENED TO HIM. NOW I WILL -- IN LOOKING AT
23 THE BRIEF THAT WAS PROVIDED TO ME TODAY, THE COURT
24 IN OWENS DOES SAY "THE CIRCUMSTANTIAL EVIDENCE MAY
25 BE SUFFICIENT TO SUPPORT A FINDING OF FACT OR AN

1 AWARD." BUT WHAT IT DOESN'T SAY IS THAT
2 CIRCUMSTANTIAL EVIDENCE SHALL BE SUFFICIENT. IT
3 GIVES YOU THE OPPORTUNITY TO CONSIDER CIRCUMSTANTIAL
4 EVIDENCE, BUT I'LL ALSO POINT OUT TO YOUR HONOR, AND
5 YOU'RE VERY FAMILIAR WITH THE CASE LAW THAT SAYS "AN
6 AWARD CANNOT BE BASED UPON SPECULATION OR SURMISE OR
7 CONJECTURE," AND I THINK IN THIS CASE TO CONCLUDE
8 THAT MR. TURNER WAS STANDING ON THE STEPS OF THE CAB
9 OF HIS TRUCK WHEN HE FELL, IT REQUIRES A CERTAIN
10 LEVEL OF SPECULATION. BECAUSE, AGAIN, THERE'S NO
11 EVIDENCE TO SUPPORT THAT CONCLUSION. I THINK WE
12 POINTED OUT IN OUR PREHEARING CONFERENCE, BUT I'LL
13 REMIND YOUR HONOR THAT THE MEDICAL RECORDS PROVIDE
14 AN INACCURATE DESCRIPTION OF MR. TURNER'S FALL. MY
15 UNDERSTANDING TODAY IS THE ALLEGATION IS THAT HE WAS
16 STANDING ON THE TRUCK ABOUT FIVE TO SIX FEET OFF THE
17 GROUND WHEN HE FELL. THERE'S REFERENCE IN THE
18 MEDICAL RECORDS TO HIM BEING ON A LADDER. MR.
19 TURNER REFUTES THAT IN HIS DEPOSITION. AS A MATTER
20 OF FACT, HE WASN'T COGNIZANT OR COHERENT ENOUGH TO
21 PROVIDE SUCH A HISTORY TO HIS POSITION CONSIDERING
22 THAT HE DOESN'T REMEMBER THE EVENTS BOTH PRIOR TO
23 AND SUBSEQUENT TO THE DATE OF ACCIDENT. WE'RE
24 MAINTAINING TODAY, YOUR HONOR, THAT THE CLAIM SHOULD
25 ALSO BE DENIED NOT ONLY BECAUSE MR. TURNER CAN'T

1 SATISFY HIS BURDEN OF PROOF UNDER 42-1-160, BUT THAT
2 THE ACCIDENT ITSELF WAS IDIOPATHIC IN NATURE, AND
3 UNDER THE RECENT CASE FROM THE COURT OF APPEALS IN
4 NICHOLSON, THE CLAIM SHOULD BE DENIED. THERE'S NO
5 EVIDENCE OF A WORK-RELATED REASON FOR HIS FALL. THE
6 PURPORTED CAUSE OF DANGER, PRESUMABLY IF HE WAS
7 STANDING ON THE GROUND WHEN HE FELL, THAT'S A LEVEL
8 SURFACE; IT'S NOT PECULIAR TO HIS WORK PLACE. IT'S
9 COMMON TO THE NEIGHBORHOOD, AND THEREFORE IT WOULD
10 SUPPORT THE TEST IN NICHOLSON. AND THEN IN THE
11 ABSENCE OF A SPECIAL CONDITION, HIS PLACE OF
12 EMPLOYMENT DIDN'T REPRESENT A HAZARD THAT IN ESSENCE
13 GAVE RISE TO HIS INJURIES AS FAR AS IDIOPATHIC
14 BECAUSE HE'S UNABLE TO IDENTIFY A SPECIFIC NON-
15 INTERNAL REASON FOR HIS FALL, AND THAT'S REFUTED BY
16 HIS DEPOSITION TESTIMONY IN WHICH HE SAYS HE HAS NO
17 MEMORY OF WHAT HAPPENED ON THE DAY IN QUESTION.

18 WE'D ALSO POINT OUT TO YOUR HONOR THAT THE
19 MEDICAL EVIDENCE DOES ALSO REFLECT THAT MR. TURNER
20 HAS SOME PREEXISTING BACK PROBLEMS FOR WHICH HE
21 SOUGHT MEDICAL TREATMENT AS RECENTLY AS TWO TO THREE
22 DAYS BEFORE THE DATE OF ACCIDENT. THIS CAN BE FOUND
23 AT PAGES 26 AND 29 OF THE APA SUBMISSIONS. WITH
24 REGARDS TO THE CAUSATION STATEMENT PROVIDED BY DR.
25 PETERSON, I WILL POINT OUT THIS TO YOUR HONOR, IN

1 OUR APA SIX IS A LETTER FROM MR. KOON THAT HE WROTE
2 TO DR. PETERSON THAT RESULTED IN THE PRODUCTION OF
3 THIS CAUSATION STATEMENT, AND IN THAT LETTER MR.
4 KOON SAYS (AS READ) "WE REPRESENT WILLIAM L. TURNER
5 IN A WORKERS' COMPENSATION CLAIM IN REGARDS TO THE
6 INJURIES HE SUSTAINED WHEN HE FELL FROM THE CAB OF
7 HIS EMPLOYER'S TRUCK ON APRIL 19TH, 2012." SO DR.
8 PETERSON'S GIVING A RESPONSE TO A LETTER BASED ON A
9 FACT THAT IS YET TO BE ESTABLISHED INTO EVIDENCE.
10 AND SO I THINK THAT DR. PETERSON'S -- THE WEIGHT TO
11 BE GIVEN TO HIS CAUSATION OPINION HAS TO BE CALLED
12 INTO QUESTION WHEN THE BASIS FOR THAT OPINION IS A
13 PIECE OF INFORMATION THAT IS YET TO BE ESTABLISHED
14 BY ANYBODY. MR. TURNER DOESN'T REMEMBER WHAT
15 HAPPENED TO HIM ON THAT DAY.

16 WITH REGARDS TO THE REQUEST THAT ADDITIONAL
17 MEDICAL TREATMENT BE AUTHORIZED, I'M UNAWARE OF
18 ANYTHING IN THE APA SUBMISSIONS THAT INDICATES THAT
19 THERE'S A NEED FOR ADDITIONAL MEDICAL TREATMENT FOR
20 THE INJURIES HE SUSTAINED IN HIS ACCIDENT. NOW IF
21 THERE IS SOMETHING IN THERE I'VE OVERLOOKED, I'D BE
22 HAPPY TO TAKE A LOOK AT IT. I KNOW THAT DR.
23 PETERSON RECOMMENDED TO MR. TURNER THAT HE BE SEEN
24 BY A PAIN MANAGEMENT PHYSICIAN, DR. GIRAULT, FOR
25 TREATMENT RELATED TO HIS BACK. DR. GIRAULT SAW MR.

1 TURNER A COUPLE OF TIMES AS RECENTLY AS OCTOBER,
2 OFFERED HIM INJECTIONS INTO HIS BACK, AND MR. TURNER
3 DECLINED THAT RECOMMENDATION FOR TREATMENT. HE
4 TESTIFIED TO THIS IN HIS MOST RECENT DEPOSITION.
5 HE'S BEEN BACK AT WORK FOR MY CLIENT SINCE JANUARY
6 OF 2013 WORKING FULL DUTY WITHOUT RESTRICTIONS AS A
7 HEAVY EQUIPMENT OPERATOR. SO I THINK WE WOULD ARGUE
8 THERE'S AN INFERENCE BASED ON HIS CURRENT WORK
9 STATUS AND HIS DECLINING MEDICAL CARE THAT WAS
10 OFFERED TO HIM AS RECENTLY AS OCTOBER, THAT HE HAS
11 REACHED MAXIMUM MEDICAL IMPROVEMENT. HE WAS ALSO
12 SEEN IN OCTOBER OF 2012 BY DR. SCOTT AT MOORE
13 ORTHOPEDIC CLINIC, DIAGNOSED WITH MYOFASCIAL PAIN
14 RELATED TO THE FALL. HE WAS OFFERED INJECTIONS AND
15 ASKED TO RETURN IN FOUR WEEKS, AND I DON'T SEE WHERE
16 HE EVER WENT BACK. SO THERE HAVE BEEN OFFERS OF
17 MEDICAL CARE IN THE PAST THAT HAVEN'T BEEN FOLLOWED
18 UP ON. AND SO, AGAIN, COMBINE THAT WITH THE ABSENCE
19 OF MEDICAL EVIDENCE TO SUPPORT ADDITIONAL MEDICAL
20 TREATMENT, WE WOULD ASK THAT EVEN IF YOU FIND IT
21 COMPENSABLE, THAT YOU FIND THAT MR. TURNER HAS
22 REACHED MAXIMUM MEDICAL IMPROVEMENT.

23 WITH REGARDS TO THE CLAIM FOR TEMPORARY TOTAL
24 DISABILITY BENEFITS, WE WOULD RELY UPON CERTAIN
25 MEDICAL RECORDS INDICATING THAT MR. TURNER WAS

1 RELEASED TO RETURN TO WORK, THE FIRST OF WHICH IS
2 PAGE 40 OF OUR APA SUBMISSIONS. MR. TURNER WAS SEEN
3 BY A DR. MARYANOV AT U.S.C. ON 5/29/12, IN WHICH DR.
4 MARYANOV SAID, "I'M OKAY THAT HE GOES BACK TO WORK
5 WITHOUT ANY RESTRICTIONS STARTING ON JUNE 4."

6 THAT'S, AGAIN, ON PAGE 40 OF OUR APAs. DR. SCOTT,
7 WHEN HE EXAMINED THE CLAIMANT ON 10/29/12, RELEASED
8 HIM TO RETURN TO WORK. THIS IS AT PAGE 20 OF OUR
9 APA SUBMISSIONS, AND DR. PETERSON RELEASED THE
10 CLAIMANT TO RETURN TO WORK ON JULY 26TH OF 2012.

11 THIS IS AT PAGE 36 OF THE CLAIMANT'S APA
12 SUBMISSIONS. ALSO MR. TURNER AT HIS DEPOSITION, AND
13 I PRESUME TODAY IS GOING TO TESTIFY, THAT DURING THE
14 PERIOD OF TIME HE WAS OUT OF WORK, WHICH IS ABOUT
15 SIX TO EIGHT MONTHS, HE ENGAGED IN SUBSTANTIAL
16 PHYSICAL ACTIVITY DURING THAT TIME INCLUDING FARMING
17 ON HIS PROPERTY AND ALSO BUILDING A HOME THAT I
18 THINK ULTIMATELY HE HAS PLANS ON LIVING IN, AND
19 AGAIN HE WAS RETURNED TO WORK FULL DUTY -- OR
20 RETURNED TO WORK RATHER FULL DUTY FOR MY CLIENTS IN
21 JANUARY OF 2013. IF YOU WERE TO FIND HE'S AT
22 MAXIMUM MEDICAL IMPROVEMENT TODAY, AND I KNOW THAT
23 PERMANENCY IS NOT BEING REQUESTED, BUT WE WOULD
24 MAINTAIN THERE'S NO EVIDENCE TO SUPPORT A CLAIM FOR
25 PERMANENT PARTIAL DISABILITY.

1 AND THEN FINALLY, YOUR HONOR, JUST A VERY BRIEF
2 HOUSEKEEPING MATTER, WHEN YOU CALLED THE CASE, FOR
3 SOME REASON THE CAPTION HAS MY CLIENT LISTED -- THEY
4 SHOULD BE LISTED AS SAIIA, S-A-I-I-A, CONSTRUCTION.
5 AND I DON'T KNOW, ON THE HEARING NOTICE FOR SOME
6 REASON IT IS SHOWING UP AS ANOTHER ENTITY. BUT I
7 JUST WANT TO POINT THAT OUT TO YOUR HONOR.

8 BY COMMISSIONER BARDEN:

9 I HAVE NO IDEA WHY THAT IS.

10 BY MR. LOCKHART:

11 I DON'T EITHER. AND THAT COULD HAVE BEEN ---

12 BY COMMISSIONER BARDEN:

13 WELL, I NEED TO CHECK ON THAT I GUESS.

14 BY MR. LOCKHART:

15 YES, MA'AM. BUT IT'S ALWAYS BEEN -- SAIIA'S

16 ALWAYS BEEN THE ---

17 BY COMMISSIONER BARDEN:

18 SAIIA CONSTRUCTION?

19 BY MR. LOCKHART:

20 YES, YOUR HONOR. THE CARRIER AND THE T.P.A.

21 ARE CORRECT, BUT THE EMPLOYER, WE JUST NEEDED TO
22 POINT THAT OUT.

23 BY COMMISSIONER BARDEN:

24 DO YOU AGREE? I MEAN, I'LL HAVE TO GET
25 JUDICIAL TO MAKE THAT CHANGE IF YOU AGREE THAT IT'S

1 SO.

2 BY MR. COOK:

3 WE HAVE NO OBJECTION.

4 BY COMMISSIONER BARDEN:

5 NO OBJECTION TO THAT, OKAY. I WILL ENDEAVOR TO
6 GET THAT DONE, MR. LOCKHART.

7 BY MR. LOCKHART:

8 THANK YOU, YOUR HONOR.

9 BY COMMISSIONER BARDEN:

10 ALL RIGHT. DO YOU WANT TO REPLY, MR. KOON -- I
11 MEAN, MR. COOK, OR ARE YOU SATISFIED WITH ---

12 BY MR. COOK:

13 YOUR HONOR, I THINK WE'LL JUST CALL OUR FIRST
14 WITNESS.

15 BY COMMISSIONER BARDEN:

16 OKAY, MR. TURNER, IF YOU'LL COME SIT -- I THINK
17 THE CHAIR'S BEEN MOVED. I THINK WE MOVED IT BECAUSE
18 THE CHAIR IS SO UNCOMFORTABLE. SO IF YOU CAN BRING
19 THAT WITH YOU, IF YOU CAN, OR HAVE ONE OF YOUR
20 ATTORNEYS DO THAT. THANK YOU, SIR. AND ONCE YOU
21 GET SEATED IN THAT CHAIR AND SITUATED AND FACE ME,
22 PLEASE RAISE YOUR RIGHT HAND.

23 * * * * *

24 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH,
25 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING

1 THE MATTER HEREIN:

2 LEE TURNER

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

4 BY COMMISSIONER BARDEN:

5 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

6 BY THE WITNESS:

7 WILLIAM LEE TURNER, JUNIOR.

8 BY COMMISSIONER BARDEN:

9 THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS
10 THAT MR. KOON HAS FOR YOU. AND EXCUSE ME, MR.

11 TURNER IS REPRESENTED BY BOTH STEVE COOK AND JOHN
12 KOON, JUST FOR THE RECORD. THANK YOU.

13 BY MR. KOON:

14 AND WE'RE WITH THE SAME OFFICE, YOUR HONOR.

15 BY COMMISSIONER BARDEN:

16 RIGHT.

17 DIRECT EXAMINATION BY MR. KOON:

18 Q. ALL RIGHT. HOW LONG HAVE YOU WORKED FOR SAIIA?

19 A. A LITTLE OVER SIX YEARS.

20 Q. AND WHEN DID YOU GO TO WORK FOR THEM, WHAT YEAR?

21 A. I WENT TO WORK FOR THEM IN 2007.

22 Q. HOW OLD WERE YOU THEN?

23 A. I WAS 21.

24 Q. AND WHAT ARE YOUR JOB DUTIES THERE, AND WHAT HAS IT
25 BEEN THROUGHOUT THE TIME YOU'VE BEEN EMPLOYED THERE?

1 A. HEAVY EQUIPMENT OPERATOR.

2 Q. AND WHAT DOES THAT ENTAIL?

3 A. BULLDOZERS, TRACKHOES AND DUMP TRUCKS AND BACKHOES.

4 Q. SO, YOU ARE DRIVING AND OPERATING HEAVY EQUIPMENT;
5 THAT'S YOUR ONLY JOB?

6 A. YES, SIR.

7 Q. ALL RIGHT. AND WHENEVER YOU WENT TO WORK FOR THEM,
8 DID YOU TAKE A PHYSICAL?

9 A. YES, SIR.

10 Q. DID THEY GIVE YOU A COMPLETE PHYSICAL?

11 A. YES, SIR.

12 Q. AND DID YOU PASS THAT?

13 A. YES, SIR.

14 Q. NOW, IT'S BEEN SOME MENTION THUS FAR ABOUT A COUPLE
15 OF DAYS BEFORE YOU FELL ON 4/19 OF '12. DID YOU GO
16 SEE A DOCTOR THAT MONDAY?

17 A. YES, SIR.

18 Q. WHAT WAS THAT FOR?

19 A. THAT WAS WITH MY LOWER BACK. IT WAS JUST GIVING ME
20 SOME ISSUES. IT WASN'T NOTHING MAJOR. IT WAS JUST
21 IRRITATING ME.

22 Q. AND THAT WAS THE LOWER BACK?

23 A. YES, SIR.

24 Q. DID YOUR UPPER BACK HURT YOU ON THAT DATE THAT YOU
25 WENT TO SEE THE ---

1 A. NO, SIR, AND I HAD X-RAYS DONE OFF MY BACK
2 COMPLETELY, AND THERE WAS NOTHING.

3 Q. OKAY, LET ME FINISH MY QUESTION.

4 A. OKAY.

5 Q. YOU'RE JUMPING ON TOP WITH YOUR ANSWERS. THE RECORD
6 WILL COME OUT BETTER IF YOU LET ME FINISH. DID YOU
7 TELL THE DOCTORS ON THAT MONDAY, WHICH WAS ONLY A
8 FEW DAYS BEFORE THE THURSDAY ACCIDENT THAT YOU HAVE
9 ANY PROBLEMS WITH DIZZINESS?

10 A. NO, SIR.

11 Q. DID YOU HAVE ANY PROBLEMS WITH THE ABILITY TO WALK,
12 ---

13 A. NO, SIR.

14 Q. --- OR FEELING FAINT?

15 A. NO, SIR.

16 Q. ALL RIGHT. WERE YOU UNSTEADY ON YOUR FEET FOR ANY
17 REASON WHENEVER YOU WENT TO SEE THE DOCTOR ON THAT
18 MONDAY?

19 A. NO, SIR.

20 Q. AND WHAT DID THE DOCTOR DO FOR YOU WHEN YOU WENT
21 THAT MONDAY?

22 A. THEY TOOK X-RAYS, AND THEN SHE GIVE ME SOME MEDICINE
23 AND SENT ME ON MY WAY.

24 Q. DO YOU REMEMBER WHAT THE NAME OF THE MEDICINE WAS?

25 A. I BELIEVE IT WAS ULTRAM.

1 Q. AND WAS THAT 50 MILLIGRAMS?

2 A. YES, SIR.

3 Q. ALL RIGHT. NOW, THERE'S BEEN SOME MENTION THUS FAR
4 ABOUT YOU BUILDING YOU A HOUSE AND THAT TYPE THING.

5 A. YES, SIR.

6 Q. DO YOU THINK THE INCIDENT THAT CAUSED YOU TO GO TO
7 THE DOCTOR ON MONDAY WAS BECAUSE OF YOU WORKING AT
8 YOUR HOUSE?

9 A. POSSIBLY.

10 Q. DID YOU DO ANY HEAVY LIFTING THERE?

11 A. YES, SIR.

12 Q. ALL RIGHT. WAS THE HOUSE THAT YOU AND YOUR DAD WERE
13 BUILDING, WAS THAT A LOG HOME?

14 A. YES, SIR.

15 Q. ALL RIGHT. NOW, WE'VE HEARD ALSO THAT YOU WERE OUT
16 WORKING, AND I THINK IT WAS BAILING HAY AND THAT
17 TYPE OF THING, WHEN YOU WERE NOT WORKING AT SAIIA AS
18 A RESULT OF THE INJURY THERE AT THE WORK PLACE?

19 A. CAN YOU REPEAT THE QUESTION?

20 Q. ALL RIGHT. YOU WERE DOING SOME TYPE OF FARMING WHEN
21 YOU COULD NOT DRIVE A TRUCK. WERE YOU KEPT FROM
22 DRIVING A TRUCK FOR A PERIOD OF TIME?

23 A. YES, SIR.

24 Q. ALL RIGHT. WERE YOU ALLOWED TO DRIVE AT ALL DURING
25 THIS PERIOD TIME AFTER YOU WERE INJURED?

1 A. NO, SIR.

2 Q. ALL RIGHT. WHAT PERIOD OF TIME WAS THAT?

3 A. I -- WHEN I FIRST GOT HURT, I COULDN'T DRIVE FOR A
4 MONTH. THEN I HAD THAT SECOND SEIZURE, SO THAT PUT
5 ME UP TO SIX MONTHS.

6 Q. ALL RIGHT. NOW, COULD YOU DRIVE YOUR PERSONAL CAR
7 AS WELL?

8 A. NO, SIR.

9 Q. ALL RIGHT. AND YOUR JOB AT SAIIA WAS DRIVING A
10 TRUCK ---

11 A. YES, SIR.

12 Q. --- EXCLUSIVELY?

13 A. YES, SIR.

14 Q. ALL RIGHT. NOW, YOU TALKED ABOUT A SECOND SEIZURE.
15 HAD DR. PETERSON SEEN YOU ADDITIONALLY FOR THIS
16 INJURY AT WORK?

17 A. LIKE BEFORE THE INJURY?

18 Q. YES.

19 A. NO, SIR.

20 Q. DID HE SEE YOU AFTER THE INJURY?

21 A. YES, SIR.

22 Q. AND WAS THAT THE FIRST TIME YOU SAW HIM, DR.
23 PETERSON?

24 A. YES, SIR.

25 Q. AND WHENEVER YOU WENT TO SEE HIM ON THAT PARTICULAR

1 DAY, DID YOU TELL HIM WHAT HAPPENED; DID YOU KNOW
2 WHAT HAPPENED?

3 A. I TOLD HIM WHAT I HEARD.

4 Q. ALL RIGHT. DID YOU -- WAS THERE ANYONE FROM SAIIA
5 THAT WENT WITH YOU OVER TO THE HOSPITAL? YOU WERE
6 TAKEN TO RICHLAND MEMORIAL, CORRECT?

7 A. YES, SIR, AND I BELIEVE JIMMY AND PAUL BARNETT HAD
8 ARRIVED AT THE SAME TIME I DID.

9 Q. DO YOU KNOW WHO MAY HAVE GIVEN THE HOSPITAL THAT
10 RENDITION OF WHAT HAD HAPPENED?

11 A. I'M ASSUMING JIMMY SPIEGEL DID.

12 Q. WERE YOU TOLD THAT BY SOMEONE AT SAIIA?

13 BY MR. LOCKHART:

14 YOUR HONOR, I HAVE TO OBJECT TO THE FORM OF THE
15 QUESTION. IT REQUIRES HEARSAY TESTIMONY.

16 BY MR. KOON:

17 WELL, IT'S NOT HEARSAY, YOUR HONOR, IF IT'S BY
18 ONE OF THEIR EMPLOYEES.

19 BY MR. LOCKHART:

20 HE'S ASKING THE CLAIMANT, WHO WAS UNCONSCIOUS
21 AND HAS NO MEMORY OF BEING HOSPITALIZED, WHO GAVE A
22 HISTORY OF HIS WORK ACCIDENT TO PHYSICIANS.

23 BY COMMISSIONER BARDEN:

24 WELL, IF YOU'RE NOT SURE WHERE THEY GOT THE
25 INFORMATION, OR YOU THINK YOU KNOW BUT YOU'RE NOT

1 SURE; IS THAT CORRECT?

2 BY THE WITNESS:

3 WHEN I RETURNED BY TO WORK, JIMMY HAD TOLD ME
4 EVERYTHING BASICALLY. BUT AS FAR AS I KNOW, I GOT
5 KNOCKED OUT WHEN I FELL OFF THE TRUCK, AND THEN I
6 WAS PUT IN A COMA FOR THREE DAYS.

7 BY COMMISSIONER BARDEN:

8 ALL RIGHT, WE' LL MOVE ON.

9 DIRECT EXAMINATION RESUMED BY MR. KOON:

10 Q. AND YOU HAD MENTIONED JUST A MINUTE AGO ABOUT A
11 SECOND SEIZURE THAT YOU HAD. HAD YOU EVER HAD ANY
12 TYPE OF SEIZURES BEFORE THIS INCIDENT AT WORK?

13 A. NO, SIR.

14 Q. HAD YOU EVER BEEN ON MEDICATION FOR THAT?

15 A. NO, SIR.

16 Q. HAS YOUR MOTHER OR FATHER OR ANYBODY IN YOUR
17 IMMEDIATE FAMILY OR ANYWHERE IN THE HISTORY OF YOUR
18 MOTHER AND FATHER'S FAMILY EVER HAD A SEIZURE?

19 A. NO, SIR.

20 Q. HAVE ANY OF THEM EVER BEEN ON ANY MEDICATION TO
21 PREVENT SEIZURES?

22 A. NO, SIR.

23 Q. AND THIS SECOND INCIDENT THAT TOOK PLACE, HAD YOU
24 BEEN ON KEPPRA BEFORE YOU HAD THAT SEIZURE?

25 A. I WAS ON A TYPE OF SEIZURE -- KEPPRA WHEN THEY

1 RELEASED ME FROM THE HOSPITAL.

2 Q. ALL RIGHT. AND DID YOU STAY ON THAT UNTIL YOU HAD
3 THE SECOND SEIZURE?

4 A. I WAS ON IT FOR APPROXIMATELY TWO WEEKS UNTIL I WENT
5 BACK TO THE NEUROLOGIST, AND HE TOOK ME OFF OF IT.
6 A WEEK LATER I HAD ANOTHER SEIZURE.

7 Q. ONCE YOU CAME OFF OF THE KEPRA IS WHEN YOU HAD THE
8 SEIZURE?

9 A. YES, SIR.

10 Q. AND HAVE YOU EVER HAD ANYTHING HAPPEN TO YOU LIKE
11 THAT BEFORE?

12 A. NO, SIR.

13 Q. AND WHILE YOU WERE BUILDING YOUR HOUSE AND WORKING
14 ON THE FARM, WERE YOU ALLOWED BY SAIIA TO WORK
15 THERE, OR DID YOU HAVE TO STAY OFF BECAUSE OF THE
16 INABILITY TO DRIVE?

17 A. I HAD TO STAY OFF BECAUSE OF THE INABILITY TO DRIVE.

18 Q. ALL RIGHT. NOW, ON THAT TUESDAY YOU WENT BACK TO A
19 DOCTOR A SECOND TIME. WHAT WAS THAT FOR?

20 A. THAT WAS BASICALLY EVIDENTIALLY I ATE SOMETHING. MY
21 STOMACH WAS MESSED UP, AND MY WIFE WAS FREAKING OUT
22 BECAUSE MY STOMACH WAS MESSED UP, I KEPT USING THE
23 BATHROOM. SO SHE CALLED MY MOTHER, AND THEN MY
24 MOTHER TOLD HER TO TAKE ME TO THE DOCTOR. SO THEY
25 DID. I GOT TO THE DOCTOR. THEY CHECKED ME OUT.

1 EVERYTHING WAS FINE. HE SAID -- BASICALLY THE
2 DOCTOR SAID, "IT WAS JUST SOMETHING YOU ATE."

3 BY MR. LOCKHART:

4 YOUR HONOR, I'M SORRY, I HAVE TO OBJECT TO
5 ANYTHING THAT'S ---

6 BY COMMISSIONER BARDEN:

7 SUSTAINED AS TO WHAT THE DOCTOR SAID.

8 BY MR. KOON:

9 DON'T SAY WHAT THE DOCTOR SAID.

10 BY THE WITNESS:

11 OH, OKAY.

12 DIRECT EXAMINATION RESUMED BY MR. KOON:

13 Q. AND THAT WAS ON A TUESDAY BEFORE THE INJURY ON A
14 WEDNESDAY?

15 A. YES, SIR.

16 Q. DID YOU GO TO WORK ON WEDNESDAY?

17 A. YES, SIR.

18 Q. DID YOU HAVE ANY STOMACH ISSUES ON A WEDNESDAY ---

19 A. NO, SIR.

20 Q. --- AS FAR AS YOU CAN RECALL?

21 A. NO, SIR.

22 Q. DID YOU GET OVER THAT STOMACH ISSUE PRETTY RAPIDLY?

23 A. YES, SIR.

24 Q. WHAT ABOUT YOUR LOWER BACK, DID THAT RESOLVE WITHOUT
25 ANY PROBLEMS AS WELL?

1 A. YES, SIR.

2 Q. HAVE YOU EVER HAD HIGH BLOOD PRESSURE?

3 A. NO, SIR.

4 Q. WHAT ABOUT DIABETES?

5 A. NO, SIR.

6 Q. HEART CONDITION?

7 A. NO, SIR.

8 Q. YOU EVER HAD ANY HEALTH PROBLEMS AT ALL BEFORE THIS

9 FALL?

10 A. NO, SIR.

11 Q. DOES ANYONE IN YOUR IMMEDIATE FAMILY HAVE ANY OF

12 THOSE CONDITIONS THAT I JUST ASKED YOU ABOUT?

13 A. NO, SIR.

14 Q. HAVE YOU EVER HAD SURGERY BEFORE?

15 A. NO, SIR.

16 Q. HAVE YOU EVER HAD ANY TYPE OF DIZZY SPELLS OR WHAT'S

17 CALLED SYNCOPE OR ANYTHING THAT WOULD CAUSE YOU TO

18 FALL OUT SO-TO-SPEAK OR LOSE YOUR BALANCE OR GET

19 DIZZY TYPE OF SITUATION?

20 A. NO, SIR.

21 Q. DID YOU WORK ON THAT WEDNESDAY, 4/18?

22 A. YES, SIR.

23 Q. ALL RIGHT. AND THE INCIDENT HAPPENED ON 4/19?

24 A. YES, SIR.

25 Q. AS PART OF YOUR JOB RESPONSIBILITIES AT SAIIA, DO

1 YOU DRIVE THE TRUCK ALL DURING THE DAY?

2 A. YES, SIR, WHEN I'M TOLD TO, I DO.

3 Q. ALL RIGHT. AND DOES THAT USUALLY GO FOR EARLY
4 MORNING 'TIL YOU GET OFF AT NIGHT?

5 A. YES, SIR.

6 Q. AND WERE YOU WORKING OVERTIME THAT PARTICULAR DAY AS
7 YOU UNDERSTAND IT?

8 A. YES, SIR.

9 Q. ALL RIGHT. WHAT WERE YOU DOING THAT DAY?

10 A. WHAT I WAS TOLD, I WAS HAULING FOR THE WOOD YARD.

11 BY MR. LOCKHART:

12 AND, YOUR HONOR, AGAIN, I'M SORRY, I'M GOING TO
13 HAVE TO OBJECT TO THIS BEING HEARSAY UNLESS WE LAY A
14 FOUNDATION AS TO WHO IS TELLING HIM THIS. AND WITH
15 ALL DUE RESPECT, THESE DEPOSITIONS WERE TAKEN -- I
16 ALLOWED THEM INTO EVIDENCE.

17 BY COMMISSIONER BARDEN:

18 RIGHT.

19 BY MR. LOCKHART:

20 THEY WERE NOT DESIGNATED AS DE BENE ESSE
21 DEPOSITIONS AT THE TIME.

22 BY COMMISSIONER BARDEN:

23 THEY WERE DISCOVERY DEPOSITIONS AT THE TIME, --

24 -

25 BY MR. LOCKHART:

1 THEY WERE.

2 BY COMMISSIONER BARDEN:

3 --- AND NOW THEY'RE BEING USED ---

4 BY MR. LOCKHART:

5 THEY WERE. THEY WERE. I MEAN, I'LL GIVE SOME
6 LATITUDE, BUT WE'RE GETTING TO A POINT IN TIME WHERE
7 THIS IS CALLING FOR HEARSAY TESTIMONY BECAUSE WE'VE
8 ALREADY ESTABLISHED THAT HE HAS NO MEMORY OF THE DAY
9 BEFORE AND THE DAY OF THE INJURY.

10 BY COMMISSIONER BARDEN:

11 ALL RIGHT, I AGREE.

12 DIRECT EXAMINATION RESUMED BY MR. KOON:

13 Q. WHAT HAD YOU BEEN THAT ENTIRE WEEK BEFORE YOU FELL;
14 MONDAY AND TUESDAY, WHAT WERE YOU DOING?

15 A. I DON'T RECALL.

16 Q. ON MONDAY AND TUESDAY BEFORE YOU FELL?

17 A. I -- IT'S BEEN SO LONG AGO, ---

18 Q. LET ME ASK YOU THIS WAY. WOULD YOU HAVE BEEN
19 DRIVING A TRUCK MONDAY, TUESDAY, WEDNESDAY, AND
20 THURSDAY IF YOU WERE DOING YOUR NORMAL JOB?

21 A. YES, SIR.

22 Q. ALL RIGHT. AS PART OF YOUR JOB DUTIES, DO YOU WASH
23 TRUCKS?

24 A. YES, SIR.

25 Q. DO YOU WASH YOUR TRUCK?

1 A. YES, SIR.

2 Q. DO YOUR RECALL WHAT TYPE OF LIQUID SOAP, IF ANY, IS
3 USED WHEN YOU WASH ---

4 A. WE USE DAWN DISH DETERGENT.

5 Q. ALL RIGHT. AND IS THAT -- HOW DO YOU USE THAT?

6 A. WE JUST PUT IT IN A BUCKET AND PUT WATER IN IT AND
7 SCRUB IT WITH A BRUSH.

8 Q. AND DO YOU WASH DOWN THE ENTIRE TRUCK?

9 A. YES, SIR.

10 Q. ALL RIGHT. AND DO YOU RINSE IT OFF THEN ONCE YOU
11 WASH IT DOWN?

12 A. YES, SIR.

13 Q. AFTER YOU LEAVE THE WASH AREA, IS THE TRUCK WET WHEN
14 IT LEAVES?

15 A. YES, SIR.

16 Q. HOW FAR DID YOU PULL AWAY NORMALLY FROM WHERE YOU
17 WASHED TO WHERE IT DRIES?

18 A. APPROXIMATELY 75 FEET.

19 Q. WHAT ABOUT FUEL; WHAT TYPE OF FUEL DOES YOUR OIL
20 TRUCK USE?

21 A. DIESEL FUEL.

22 Q. AND HAD YOU BEEN DRIVING A STERLING?

23 A. YES, SIR.

24 Q. AND DESCRIBE HOW YOU GET UP INTO THAT STERLING
25 VEHICLE.

1 A. YOU GOT A HANDLE RIGHT BESIDE THE DOOR WHERE IT
2 OPENS AT.

3 Q. SPEAK A LITTLE LOUDER.

4 A. AND THEN YOU GOT TWO STEPS. THEN YOU GOT A HANDLE
5 ON THE SIDE OF THE TRUCK RIGHT HERE (DEMONSTRATING).
6 THEN YOU GOT THE DOOR HANDLE ON THE DOOR. THEN YOU
7 CLIMB UP TWO STEPS AND PULL YOURSELF INTO THE TRUCK.

8 Q. DO YOU HAVE TO ADD FUEL TO IT?

9 A. NO, SIR.

10 Q. IS IT A DIESEL VEHICLE?

11 A. YES, SIR.

12 Q. AND WHO FUELS THOSE VEHICLES?

13 A. EASTOVER OIL.

14 Q. IS THAT GENERALLY THROUGHOUT THE DAY, OR IS IT ANY
15 GIVEN TIME?

16 A. ANY GIVEN TIME.

17 Q. AND HAVE YOU SEEN DIESEL FUEL THAT HAS GOTTEN ONTO
18 PARTS OF THE TRUCK BEFORE?

19 A. YES, SIR.

20 Q. AND IS THE AREA WHERE YOU WORK, IS IT DUSTY?

21 A. YES, SIR, IT CAN BE DUSTY. YES.

22 Q. IS THAT ONE OF THE REASONS YOU'RE REQUIRED TO WASH
23 YOUR OWN TRUCK?

24 A. NO, SIR, WE'RE REQUIRED TO WASH OUR OWN AFTER USE NO
25 MATTER WHAT THE CIRCUMSTANCES ARE.

1 Q. DO YOU KNOW WHERE THE FILL CAP IS FOR THESE TANKS ON
2 THE DIESEL TANKS?

3 A. IT'S ABOUT -- APPROXIMATELY ABOUT SIX, SEVEN INCHES
4 FROM THE TOP STEP.

5 Q. SINCE YOU DON'T KNOW WHAT YOU SLIPPED ON, IF
6 ANYTHING, THAT PARTICULAR DAY SINCE YOU HAVE NO
7 RECOLLECTION, YOU DON'T KNOW WHETHER YOU SLIPPED ON
8 DIESEL FUEL OR SOAP OR NOTHING, DO YOU?

9 A. NO, SIR.

10 Q. AND IT IS TRUE, YOU DON'T RECALL THAT PARTICULAR
11 DAY, DO YOU?

12 A. NO, SIR.

13 Q. AND AS A MATTER OF FACT, THE PREVIOUS DAY, A
14 WEDNESDAY ON THE 18TH, YOU DON'T REMEMBER THAT DAY
15 AS WELL, DO YOU?

16 A. NO, SIR.

17 Q. YOU HAD MENTIONED EARLIER YOUR WIFE WAS KIND OF
18 CONTROLLING ABOUT YOUR HEALTH AND SHE CALLED YOUR
19 MOTHER, ---

20 A. YES, SIR.

21 Q. --- AND THEY TEAMED UP ON YOU AND MADE YOU GO TO THE
22 DOCTOR.

23 A. BASICALLY, PRETTY MUCH, 'CAUSE I WAS ALREADY FEELING
24 BETTER WHEN THEY WANTED ME TO GO TO THE DOCTOR. SO
25 SINCE SHE CALLED MY MOTHER, I WENT.

1 Q. IF YOU HAD INDICATED YOU WERE FEELING BAD ON THAT
2 THURSDAY MORNING OR HAD ANY PROBLEMS AT ALL, WOULD
3 THAT SAME THING LIKELY HAVE HAPPENED A SECOND TIME
4 ABOUT HER SAYING "YOU'RE GOING TO THE DOCTOR"?

5 A. PROBABLY.

6 Q. HAVE YOU RECOVERED FROM THAT BACK ISSUE AND STOMACH
7 PROBLEMS THAT YOU HAD?

8 A. YES, SIR.

9 Q. WHAT TIME DO YOU NORMALLY GET TO WORK IN THE
10 MORNING?

11 A. SEVEN O'CLOCK.

12 Q. ANY REASON TO BELIEVE IT WOULD HAVE BEEN ANY
13 DIFFERENT THAT MORNING?

14 A. NO, SIR.

15 Q. DO YOU RIDE TO WORK BY YOURSELF?

16 A. YES, SIR.

17 Q. RIDE HOME BY YOURSELF?

18 A. YES, SIR.

19 Q. DO YOU CARRY A BACKPACK?

20 A. YES, SIR.

21 Q. IS THAT NORMALLY YOUR DRINKS AND FOOD ---

22 A. YES, SIR.

23 Q. --- AND ALL IN THERE?

24 A. YES, SIR.

25 Q. AND YOU DON'T REMEMBER PLACING IT ON THE SEAT IN THE

1 TRUCK?

2 A. NO, SIR.

3 Q. IF ANYONE HAD PLACED THE -- WELL LET ME ASK YOU
4 THIS: DID YOU NORMALLY KEEP YOUR BACKPACK IN A
5 DIFFERENT PLACE THROUGHOUT THE DAY, OR DID YOU KEEP
6 IT IN YOUR ---

7 A. NO, SIR, I KEPT IT WITH ME.

8 Q. AND DO YOU REMEMBER -- DO YOU KNOW IF YOU HAVE TO
9 CLIMB UP THOSE TWO STEPS YOU JUST TALKED ABOUT IN
10 APRIL IN ORDER TO PUT THE BACKPACK IN ---

11 A. YES, SIR.

12 Q. IS THE STERLING TRUCK -- DOES IT HAVE AIR
13 CONDITIONING?

14 A. YES, SIR.

15 Q. POWER STEERING?

16 A. YES, SIR.

17 Q. POWER BRAKES?

18 A. IT'S AIR BRAKES.

19 Q. AIR BRAKES?

20 A. BASICALLY THE SAME THING.

21 Q. AND IS IT DIFFICULT TO DRIVE ONE OF THOSE TRUCKS?

22 A. NO, SIR.

23 Q. IS IT DEMANDING -- VERY DEMANDING FOR YOU TO DO IT?

24 A. NO, SIR.

25 Q. DO YOU NORMALLY KEEP THE WINDOWS UP THROUGHOUT THE

1 DAY AND ENJOY THE AIR CONDITIONING?

2 A. YES, SIR.

3 Q. HAS ANYBODY WITH SAIIA SINCE 4/19/12 COMPLAINED
4 ABOUT HOW YOU WERE DOING YOUR JOB ON 4/19?

5 A. NO, SIR.

6 Q. WHAT'S THE FIRST THING YOU RECALL AFTER THAT FALL?

7 A. MY SUPERINTENDENT, JIMMY SPIEGEL, WHEN I CAME TO, HE
8 WAS STANDING RIGHT IN FRONT OF ME.

9 Q. ALL RIGHT. SO, YOU WERE ON THE JOB THAT DAY?

10 A. AFTER THE ACCIDENT, YES.

11 Q. WHEN YOU WOKE UP, YOU WERE STILL ON THE JOB AT
12 SAIIA?

13 A. NO, SIR, I WAS IN THE HOSPITAL.

14 Q. ALL RIGHT. SO, YOU DON'T HAVE ANY RECOLLECTION OF
15 BEING ON THE GROUND AT SAIIA ON THE 19TH?

16 A. NO, SIR.

17 Q. SO, WHEN WAS IT WHENEVER YOU WOKE UP AND YOUR BOSS
18 WAS THERE?

19 A. ABOUT THREE DAYS AFTER I ARRIVED AT THE HOSPITAL.

20 Q. WERE YOU PLACED IN A COMA, OR DO YOU KNOW?

21 A. YES, SIR.

22 Q. NOW, IT'S BEEN SOME INDICATION ABOUT THE KEPpra.
23 ARE YOU STILL TAKING THAT?

24 A. YES, SIR.

25 Q. AND HAS DR. PETERSON KEPT YOU ON THAT?

1 A. YES, SIR.

2 Q. NOW, WHEN IS THE LAST TIME YOU SAW HIM ABOUT
3 MEDICATION?

4 A. LAST THURSDAY.

5 Q. AND WAS THERE SOME DISCUSSION AT SOME POINT IN TIME
6 ABOUT DR. PETERSON TAKING YOU OFF THE KEPPRA?

7 BY MR. LOCKHART:

8 YOUR HONOR, I'M GOING TO HAVE TO OBJECT TO ANY
9 DISCUSSIONS BETWEEN THE CLAIMANT AND DR. PETERSON.

10 I DON'T ---

11 BY COMMISSIONER BARDEN:

12 SUSTAINED.

13 BY MR. LOCKHART:

14 THANK YOU.

15 DIRECT EXAMINATION RESUMED BY MR. KOON:

16 Q. ARE YOU STILL ON THE MEDICINE TODAY?

17 A. YES, SIR.

18 Q. WHEN DID HE TELL YOU TO COME BACK?

19 A. (ANSWER STRICKEN FROM THE RECORD PER COMMISSIONER
20 BARDEN).

21 BY COMMISSIONER BARDEN:

22 IF THAT'S IN A RECORD AND CORROBORATED, THEN
23 THE TREATMENT RECORDS WILL SPEAK FOR THEMSELVES.

24 BY MR. KOON:

25 YOUR HONOR, I DON'T KNOW IF IT'S IN THERE, BUT

1 I WOULD ALLEGE THAT HE IS STILL ON THE MEDICATION.
2 HE'S ON THE MEDICATION BECAUSE THE DOCTOR KEPT HIM
3 ON IT.

4 BY COMMISSIONER BARDEN:

5 I THINK HE CAN ANSWER THAT HE'S ON MEDICATION.
6 I CERTAINLY THINK HE CAN ANSWER THAT QUESTION. BUT
7 AS FAR AS ANY INSTRUCTIONS OR DIRECTIVES FROM THE
8 DOCTOR AS TO WHEN TO COME BACK, IF THEY'RE NOT IN
9 THE MEDICAL RECORDS, I DO BELIEVE THAT'S HEARSAY,
10 AND IT SHOULD BE STRICKEN.

11 BY MR. KOON:

12 OKAY.

13 BY COMMISSIONER BARDEN:

14 I AGREE WITH MR. LOCKHART ON THAT ONE.

15 DIRECT EXAMINATION RESUMED BY MR. KOON:

16 Q. MR. TURNER, DO YOU STILL TAKE ONE -- I BELIEVE IT'S
17 TWO TABLETS A DAY?

18 A. YES, SIR.

19 Q. AND YOU TAKE THEM TWO DIFFERENT TIMES A DAY?

20 A. YES, SIR, I TAKE ONE IN THE MORNING AND ONE IN THE
21 AFTERNOON.

22 Q. AND ARE YOU ON THAT MEDICATION FOR THE IMMEDIATE
23 FUTURE? DO YOU HAVE ANY TIME YOU HAVE TO GO BACK TO
24 THE DOCTOR TO BE CONCERNED ABOUT WHETHER YOU COME
25 OFF OF IT OR NOT?

1 A. NO, SIR.

2 Q. AND WERE YOU TAKING BLOOD TESTS OCCASIONALLY TO SEE
3 IF IT WAS ANY PROBLEMS WITH TAKING THE MEDICATION?

4 A. YES, SIR, I HAD A BLOOD WORK DONE TWO WEEKS AGO.

5 Q. ALL RIGHT. HOW OFTEN DO YOU HAVE TO DO THAT?

6 A. EVERY SIX MONTHS.

7 Q. AND ARE YOU STILL REQUIRED TO DO THAT?

8 A. YES, SIR.

9 Q. SO, WHEN IS YOUR NEXT APPOINTMENT TO GO BACK?

10 A. UMM...

11 Q. LET ME ASK YOU THIS WAY: WOULD IT BE SIX MONTHS FROM
12 THE LAST TIME THAT YOU WENT TO HAVE IT CHECKED?

13 A. YES, SIR.

14 Q. WHENEVER YOU WOULD WASH THE TRUCK AND FINISH DOING
15 THAT AND PUT IT OVER WHERE YOU SAID SOME NUMBER OF
16 FEET AWAY, WHAT WOULD YOU DO THEN; WOULD YOU GO
17 SOMEWHERE?

18 A. YES, SIR, I'D GO TO THE OFFICE AND FILL OUT ALL OF
19 THE PAPERWORK, TURN IT IN AND GET MY PERSONAL
20 BELONGINGS AND GO BACK OUT TO THE TRUCK AND GET
21 READY TO LEAVE.

22 Q. ALL RIGHT. WHAT WAS YOUR PERSONAL BELONGINGS?

23 A. MY BACKPACK.

24 Q. SO, YOU DID HAVE IT OUT OF THE TRUCK THAT DAY?

25 A. WELL, I TAKE IT JUST ABOUT EVERYWHERE I GO 'CAUSE

1 IT'S GOT MY MONEY AND EVERYTHING ELSE IN IT.

2 Q. SO, YOU DON'T KNOW WHETHER YOU HAD IT OUT OR HAD IT
3 WITH YOU THAT DAY?

4 A. NO, SIR, I DON'T RECALL.

5 Q. YOU SAID YOU NORMALLY TAKE IT WITH YOU EVERYWHERE?

6 A. YES, SIR. USUALLY I HAVE IT WITHIN REACH OR WITHIN
7 WHERE I CAN SEE IT 'CAUSE, LIKE I SAID, IT'S GOT ALL
8 MY MONEY AND EVERYTHING IN IT.

9 Q. ALL RIGHT. AND DO YOU EVER TAKE IT TO WHAT'S CALLED
10 A "SHACK" OR A BUILDING WHERE DRINKS AND ALL ARE
11 STORED?

12 A. YES, SIR.

13 Q. DO YOU NORMALLY TAKE IT WITH YOU WHEN YOU GO THERE?

14 A. YES, SIR.

15 Q. AND WHERE DID YOU GO JUST BEFORE OR JUST AFTER
16 WASHING THE TRUCK; DO YOU RECALL?

17 A. I PARKED THE TRUCK. THEN I GOT OUT OF THE TRUCK AND
18 WENT TO THE OFFICE, LIKE I SAID, AND FILLED OUT THE
19 PAPERWORK AND GOT MY STUFF AND COME BACK OUT AND PUT
20 IT IN THE TRUCK AND GET READY TO LEAVE.

21 Q. THAT'S WHAT YOU NORMALLY DID?

22 A. YES.

23 Q. AND YOU WOULD NORMALLY WHILE DOING THAT HAVE YOUR
24 BACKPACK WITH YOU?

25 A. YES, SIR.

1 Q. HAVE YOU HAD ANY SEIZURES SINCE ABOUT -- AND I THINK
2 THAT WOULD FIGURE OUT TO BE ABOUT THE FIRST OF JUNE
3 OF 2012?

4 A. NO, SIR.

5 Q. YOU WERE MAKING FOURTEEN TWENTY-FIVE PER HOUR?

6 A. YES, SIR.

7 Q. THAT'S WHAT YOU STILL MAKE?

8 A. YES, SIR.

9 Q. YOU ENJOY WORKING OVER AT SAIIA?

10 A. YES, SIR, I ENJOY -- I ENJOY WHAT I DO.

11 Q. AND YOU'RE STILL DOING THE SAME JOB TODAY THAT YOU
12 WERE DOING BACK THEN?

13 A. YES, SIR.

14 Q. DO YOU STILL USE ANY TYPE OF DEVICES TO HELP WITH
15 SOME OF THE PROBLEMS YOU'RE HAVING NOW?

16 A. NO, SIR.

17 Q. WHAT ABOUT MEDICATION, DO YOU TAKE ANY PRESCRIPTION
18 MEDICATION?

19 A. THE ONLY PRESCRIPTION MEDICATION I'M TAKING IS THE
20 KEPPRA.

21 Q. ALL RIGHT. YOU TAKE ANY ACROSS-THE-COUNTER
22 MEDICATION FOR YOUR BACK?

23 A. NO, SIR.

24 Q. JUST TO CLEAR ONE THING UP, I THOUGHT IT WAS FAIRLY
25 CLEAR, BUT IS THERE ANY REASON YOU DIDN'T GO BACK

1 FROM THE TIME OF YOUR INJURY UNTIL JANUARY THE 3RD
2 OF 2013?

3 A. THE TIME I DIDN'T GO BACK TO WORK?

4 Q. YEAH, WHY DIDN'T YOU GO BACK TO WORK?

5 A. I WENT BACK TO WORK APPROXIMATELY A MONTH AFTER I
6 HAD GOT OUT OF THE HOSPITAL. BUT THE WEEKEND
7 BEFORE, I HAD ANOTHER SEIZURE. AND WHEN I WENT
8 BACK, I WASN'T ABLE TO DRIVE OR ANYTHING, SO
9 THEREFORE I COULDN'T STAY, I COULD NOT WORK.

10 Q. WAS THE REASON YOU DIDN'T GO BACK WAS BECAUSE OF
11 YOUR INABILITY TO DRIVE?

12 A. YES, SIR.

13 Q. AND THAT WAS DIRECTIONS FROM SAIIA OUT -- THEY HAD
14 TO PUT YOU OUT OF WORK UNTIL YOU WERE ABLE TO GO
15 BACK DRIVING?

16 A. YES, SIR.

17 **BY MR. KOON:**

18 ALL RIGHT. THANK YOU VERY MUCH. ANSWER ANY
19 QUESTIONS HE HAS.

20 **BY COMMISSIONER BARDEN:**

21 MR. LOCKHART.

22 **CROSS EXAMINATION BY MR. LOCKHART:**

23 Q. MR. TURNER, GOOD AFTERNOON.

24 A. GOOD AFTERNOON.

25 Q. I THINK THIS POINT HAS BEEN MADE, BUT I JUST WANT TO

1 MAKE SURE I UNDERSTAND YOUR TESTIMONY CORRECTLY.
2 YOU HAVE NO MEMORY AT ALL OF THE DATE OF YOUR
3 ACCIDENT, CORRECT?

4 A. NO, SIR. I MEAN, PEOPLE TELL ME THINGS, AND SOME
5 THINGS WILL KIND OF COME BACK. BUT AS FAR AS BEING
6 ACCURATE WITH IT, I'M NOT SURE.

7 Q. AND I BELIEVE YOU TOLD ME IN A DEPOSITION, OR RATHER
8 TOLD ONE OF MY LAW PARTNERS IN A DEPOSITION THAT YOU
9 GAVE A COUPLE OF YEARS AGO, YOU DON'T REMEMBER THE
10 DAY BEFORE YOUR ACCIDENT, THE DAY OF YOUR ACCIDENT,
11 OR THE DAY AFTER YOUR ACCIDENT?

12 A. NO, SIR.

13 Q. AND I BELIEVE YOU TOLD YOU LAWYER A FEW MOMENTS AGO
14 THAT ONE OF YOUR FIRST MEMORIES IS BEING IN THE
15 HOSPITAL AND COMING TO AND SEEING YOUR SUPERVISOR?

16 A. YES, SIR.

17 Q. ALL RIGHT. NOW, LET ME CLEAR UP A COUPLE OF THINGS
18 THAT ARE REFERENCED IN YOUR MEDICAL RECORDS, AND I
19 BELIEVE YOU WERE ASKED ABOUT THIS AT SOME PRIOR
20 DEPOSITIONS. SOME OF YOUR MEDICAL RECORDS
21 IMMEDIATELY AFTER YOUR ACCIDENT OCCURRED MADE
22 REFERENCE TO YOU BEING ON A LADDER. WOULD YOU HAVE
23 BEEN ON A LADDER FOR ANY REASON AT ALL AT WORK ON OR
24 ABOUT APRIL THE 19TH OF 2012?

25 A. NO, SIR.

1 Q. OKAY. THERE ARE OTHER REFERENCES TO YOU STANDING ON
2 TOP OF A TRUCK. WOULD YOU HAVE BEEN STANDING ON TOP
3 OF A TRUCK FOR ANY REASON AT ALL ON APRIL 19TH OF
4 2012?

5 A. NO, SIR.

6 Q. IT'S MORE LIKELY THAN NOT THAT YOU WERE STANDING ON
7 THE GROUND ON OR ABOUT APRIL 19TH OF 2012, CORRECT?

8 BY MR. KOON:

9 OBJECTION, YOUR HONOR. I DON'T SEE WHERE IT
10 HAS ANY PROBATIVE VALUE WHATSOEVER. IT'S JUST ---

11 BY COMMISSIONER BARDEN:

12 WELL, THIS IS CROSS EXAMINATION. I'M GOING TO
13 GIVE HIM SOME LATITUDE. BUT YOU HAVE A RUNNING
14 OBJECTION TO THAT QUESTION, THE ANSWER, AND A
15 CONTINUING RUNNING OBJECTION. GO AHEAD.

16 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

17 Q. I MEAN, YOU SAID A FEW MOMENTS AGO THAT YOUR NORMAL
18 ACTIVITY WAS TO WALK FROM THE TRUCK TO THE SHACK AND
19 THEN FROM THE SHACK BACK TO YOUR TRUCK IN ORDER TO
20 GO HOME, RIGHT?

21 A. UH-HUH.

22 BY COMMISSIONER BARDEN:

23 IS THAT A "YES"?

24 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

25 Q. IS THAT A "YES"?

1 EXAMINATION. WHEN YOU COME TO WORK OR WHEN -- LET'S
2 GO BACK TO 2012 FOR A MOMENT.

3 A. OKAY.

4 Q. WHEN YOU WOULD COME TO WORK ON A NORMAL DAY, WHAT
5 WOULD BE IN THAT BACKPACK?

6 A. I'D HAVE MY WALLET IN THERE, USUALLY GATORADE, A
7 COUPLE BOTTLES OF WATER AND SOME SNACKS, AND LIKE MY
8 WALLET. SO I'LL TAKE THAT AND I'LL CARRY THAT WITH
9 ME, AND MY KEYS. BUT OTHER THAN THAT, THAT'S ABOUT
10 IT.

11 Q. AND I ASSUME THAT THOSE DRINKS AND WATER AND SNACKS
12 ARE IN THERE FOR YOU TO CONSUME THOSE THROUGHOUT THE
13 COURSE OF A REGULAR DAY?

14 A. YES, SIR.

15 Q. SO, I ASSUME THAT IT'S PRETTY SAFE TO SAY THAT YOU
16 WOULD SHOW UP WITH A BACKPACK THAT HAD WATER AND
17 SNACKS, AND THAT YOU'D LEAVE WORK AND THAT BACKPACK
18 WOULDN'T HAVE SNACKS IN IT ANYMORE BECAUSE YOU'D
19 EATEN THEM. AND THE WATER OR THE GATORADE YOU HAD
20 BROUGHT WITH YOU AT THE BEGINNING OF THE DAY, YOU
21 HAD DRANK AT THE END OF THE DAY?

22 A. YEAH, MORE THAN LIKELY.

23 Q. OKAY. WHEN YOU WOULD GET TO WORK IN THE MORNING,
24 YOUR BACKPACK HAD SNACKS AND WATER AND GATORADE IN
25 IT, HOW MUCH DO YOU THINK THAT BACKPACK WOULD HAVE

1 WEIGHED?

2 A. MAYBE TEN POUNDS.

3 Q. AND AT THE CONCLUSION OF THE DAY WHEN YOU HAD EATEN
4 YOUR SNACKS AND DRANK YOUR WATER AND GATORADE, HOW
5 MUCH DO YOU THINK THAT BACKPACK WOULD HAVE WEIGHED?

6 A. I -- I -- I'LL GUESS ON IT, SEVEN POUNDS.

7 Q. IT WAS LIGHTER WHEN YOU WOULD LEAVE WORK THAN IT WAS
8 WHEN YOU GOT TO WORK?

9 A. YES, MORE THAN LIKELY. A LOT OF TIMES I'LL -- WHEN
10 I'D RUN OUT OF MY WATER OR MY GATORADE, I'LL FILL
11 THE BOTTLES RIGHT BACK UP.

12 Q. BUT THE BACKPACK WEIGHED ANYWHERE FROM SEVEN TO TEN
13 POUNDS?

14 A. YEAH, POSSIBLY.

15 Q. AND IT WEIGHED ENOUGH THAT YOU COULD THROW IT UP
16 INTO THE CAB IF YOU WANTED TO?

17 A. YOU COULD, BUT I WOULDN'T -- I'VE NEVER THROWN
18 ANYTHING IN THE CAB 'CAUSE THEN YOU GOT A CHANCE OF
19 IT COMING BACK DOWN AND HITTING YOU AND ALL THAT
20 GOOD STUFF.

21 Q. YOU COULD HAVE THROWN YOUR BACKPACK UP INTO THE CAB
22 ON THE DATE OF YOUR ACCIDENT; YOU JUST DON'T
23 REMEMBER WHAT HAPPENED THAT DAY?

24 BY MR. KOON:

25 COMPOUND QUESTION, YOUR HONOR. THE FIRST PART

1 OF IT'S ASKED AND ANSWERED.

2 BY COMMISSIONER BARDEN:

3 SUSTAINED. JUST REPHRASE.

4 BY THE WITNESS:

5 IF I WOULD HAVE THROWN IT IN THERE, ---

6 BY MR. KOON:

7 WAIT -- WAIT -- LET HIM ASK THE QUESTION.

8 BY COMMISSIONER BARDEN:

9 WAIT. LET HIM RE-ASK HIS QUESTION.

10 BY MR. LOCKHART:

11 I'LL MOVE ON, YOUR HONOR.

12 BY COMMISSIONER BARDEN:

13 OKAY.

14 BY MR. LOCKHART:

15 I THINK I MADE MY POINT.

16 BY COMMISSIONER BARDEN:

17 ALL RIGHT.

18 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

19 Q. NOW, YOU WENT BACK TO WORK WITH SAIIA IN JANUARY OF
20 2013; IS THAT CORRECT?

21 A. YES, SIR, THE SECOND.

22 Q. I BELIEVE YOU TOLD ME JANUARY THE 2ND; IS THAT
23 CORRECT?

24 A. YES, SIR.

25 Q. AND YOU RETURNED TO WORK AS A HEAVY EQUIPMENT

1 OPERATOR, CORRECT?

2 A. YES, SIR.

3 Q. AND YOU'RE EARNING THE SAME AMOUNT OF MONEY NOW THAT
4 YOU WERE EARNING WHEN YOUR WORK ACCIDENT HAPPENED?

5 A. YES, SIR.

6 Q. AND YOU'RE WORKING THE SAME NUMBER OF HOURS?

7 A. IT VARIES. WE -- IT ALL DEPENDS. IT REALLY DOES.

8 Q. YOUR HOURS VARY BECAUSE OF YOUR EMPLOYER'S NEEDS AND
9 THEIR CUSTOMERS, NOT BECAUSE OF YOUR PHYSICAL
10 CONDITION, ---

11 A. NO, SIR.

12 Q. RIGHT? OKAY. AND JUST SO COMMISSIONER BARDEN
13 UNDERSTANDS, A HEAVY EQUIPMENT OPERATOR -- YOU
14 OPERATE A VARIETY OF EQUIPMENT ON BEHALF OF SAIIA,
15 CORRECT?

16 A. YES, SIR.

17 Q. IT INCLUDES TRUCKS?

18 A. YES, SIR.

19 Q. IT INCLUDES BACKHOES?

20 A. YES, SIR.

21 Q. ARE THERE ANY OTHER PIECES OF EQUIPMENT THAT YOU
22 OPERATE ON A REGULAR BASIS?

23 A. EVERYTHING WE GOT OUT THERE I CAN OPERATE IT. AND
24 WE'VE GOT BULLDOZERS, TRACKHOE, AND A FARM TRACTOR,
25 AND EVERYTHING ELSE IS TRUCKS.

1 Q. WHEN YOU'RE OPERATING THE BACKHOES AND THE
2 BULLDOZERS, THOSE PIECES OF EQUIPMENT REQUIRE YOU TO
3 USE YOUR HANDS AND YOUR FEET TO OPERATE THEM,
4 CORRECT?

5 A. YES, SIR.

6 Q. IT REQUIRES YOU TO CONCENTRATE?

7 A. YES, SIR.

8 Q. THE TRUCKS OBVIOUSLY, YOU'RE DRIVING ON I BELIEVE IS
9 INTERNATIONAL -- ARE Y'ALL STILL DOING WORK OUT AT
10 INTERNATIONAL PAPER?

11 A. YES, SIR.

12 Q. SO, YOU HAVE TO CONCENTRATE WHEN YOU'RE DRIVING OUT
13 THERE, I ASSUME?

14 A. YES, SIR.

15 Q. OKAY. SO, YOUR JOB AS A HEAVY EQUIPMENT OPERATOR,
16 IT REQUIRES NOT ONLY YOUR PHYSICAL ABILITY, BUT IT
17 REQUIRES YOU TO REALLY THINK ABOUT WHAT YOU'RE
18 DOING?

19 A. YES, SIR.

20 Q. BECAUSE IF YOU'RE NOT THINKING CLEARLY, YOU COULD
21 INJURE SOMEBODY, YOU COULD CAUSE SOME DAMAGE OUT
22 THERE. THERE'S A LOT OF REASONS WHY YOU WOULD HAVE
23 TO BE MENTALLY ENGAGED IN WHAT YOU'RE DOING,
24 CORRECT?

25 A. YES, SIR.

1 Q. ALL RIGHT. AND YOU'RE PHYSICALLY ABLE TO PERFORM
2 ALL OF YOUR CURRENT JOB DUTIES AND RESPONSIBILITIES,
3 CORRECT?

4 A. YES, SIR.

5 Q. AND YOU'RE MENTALLY CAPABLE OF PERFORMING ALL OF
6 YOUR JOB DUTIES AND RESPONSIBILITIES?

7 A. YES, SIR.

8 Q. OKAY. NOW, SINCE YOU HAVE RETURNED TO WORK SINCE
9 JANUARY 2ND OF 2013, YOU'VE MISSED NO TIME FROM WORK
10 AT ALL BECAUSE OF ANY OF THE INJURIES YOU SUSTAINED
11 IN THIS FALL, CORRECT?

12 A. JUST HAVING TO GO TO DOCTORS AND STUFF JUST FOR LIKE
13 FOLLOW-UPS AND STUFF LIKE THAT.

14 Q. BUT AS FAR AS BEING UNABLE TO WORK BECAUSE OF ANY
15 PROBLEMS THAT YOU'RE HAVING, YOU HAVEN'T MISSED ANY
16 TIME FROM WORK?

17 A. NO, SIR.

18 Q. AS A MATTER OF FACT, THE REASON YOU WENT BACK IN
19 JANUARY IS BECAUSE DR. PETERSON RELEASED YOU TO GO
20 BACK TO WORK; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND DR. PETERSON RELEASED YOU TO RETURN TO WORK
23 WITHOUT RESTRICTIONS?

24 A. YES, SIR.

25 Q. NOW, AS FAR AS YOUR CURRENT PROBLEMS ARE CONCERNED,

1 PROBLEMS THAT YOU WOULD RELATE BACK TO THIS FALL,
2 ARE YOU HAVING ANY PROBLEMS WITH YOUR BACK AT THE
3 PRESENT TIME?

4 BY COMMISSIONER BARDEN:

5 WELL, PERMANENCY IS NOT BEING DECIDED, SO...

6 BY MR. LOCKHART:

7 IS IT OKAY -- I MEAN, BECAUSE I GUESS I'M -- I
8 WAS ARGUING IN THE ALTERNATIVE IF YOU FIND THAT HE
9 IS AT MAXIMUM MEDICAL IMPROVEMENT, I WOULD AT LEAST
10 LIKE TO GET SOME OF THIS...

11 BY COMMISSIONER BARDEN:

12 WELL, I'M NOT GOING TO BE DECIDING PERMANENCY,
13 AND YOU'RE ASKING WHAT HIS PROBLEMS ARE TODAY.

14 BY MR. LOCKHART:

15 OKAY.

16 BY COMMISSIONER BARDEN:

17 YOU HAVE ESTABLISHED THAT HE WAS RELEASED BY
18 DR. PETERSON WITH NO RESTRICTIONS.

19 BY MR. LOCKHART:

20 OKAY, THANK YOU, YOUR HONOR.

21 BY COMMISSIONER BARDEN:

22 YES, SIR.

23 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

24 Q. MR. TURNER, LET ME ASK YOU THIS: HAVE YOU HAD ANY
25 RECENT INJURIES TO YOUR BACK?

1 A. NO, SIR.

2 Q. ISN'T IT TRUE THAT IN SEPTEMBER OF LAST YEAR YOU
3 FELL OFF OF A HORSE AND RE-INJURED YOUR BACK?

4 A. I DIDN'T REINJURE MY BACK 'CAUSE I NEVER ACTUALLY
5 HIT MY BACK; I FELL ON MY BUTT, AND IT WASN'T THAT I
6 FELL OFF. I JUMPED OFF, AND I LANDED ON MY FEET. I
7 JUST STUMBLED BACK, AND THEN I LANDED ON MY BUTT.
8 BUT IT WASN'T NOTHING HORRIFIC. IT DIDN'T KNOCK ME
9 OUT. IT DIDN'T HURT OR ANYTHING LIKE THAT.

10 **BY MR. LOCKHART:**

11 YOUR HONOR, I'M LOOKING AT PAGE 12 OF THE
12 DEFENDANTS' APA SUBMISSIONS.

13 **CROSS EXAMINATION RESUMED BY MR. LOCKHART:**

14 Q. MR. TURNER, DO YOU RECALL SEEING DR. GIRAULT ON OR
15 ABOUT SEPTEMBER THE 18TH OF 2013?

16 A. YES, SIR.

17 Q. I'M READING FROM HER MEDICAL RECORD, AND THIS IS IN
18 HER RECORD, AND I WANT TO -- LET ME READ THIS TO
19 YOU, AND I WANT TO ASK YOU SOME QUESTIONS ABOUT IT.
20 AT THE BOTTOM OF PAGE 12, IT SAYS (AS READ) "STORY:"
21 IT SAYS "PLEASANT W.M. WHO HAD A FALL OFF OF A TRUCK
22 LAST YEAR AND HAD T3/4 VERTEBRAL FRACTURE WITH
23 CLOSED HEAD INJURY. HE WAS DOING WELL UNTIL HE FELL
24 OFF A HORSE A FEW WEEKS AGO, AND HE HAS PAIN IN THE
25 SAME T3/4 AREA AND HAS SEVERE MUSCLE SPASM." SO LET

1 ME ASK YOU AGAIN; WHEN YOU SAW DR. GIRAULT IN
2 SEPTEMBER, DID YOU TELL HER THAT YOU HAD FALLEN OFF
3 OF A HORSE AND RE-INJURED THE SAME PART OF YOUR BACK
4 YOU INJURED IN THIS ACCIDENT?

5 A. I TOLD HER I FELL OFF A HORSE, BUT AS FAR AS LANDING
6 ON MY BACK IN THE SAME PLACE, NO. AND I TOLD HER
7 THAT COULD BE A POSSIBILITY FOR IT HURTING A LITTLE
8 BIT MORE THAN WHAT IT WAS, BUT STILL TO THIS DAY IT
9 STILL BOTHERS ME A LITTLE BIT, BUT IT'S NOTHING
10 THAT'S KEEPING ME FROM DOING ANYTHING. BUT THAT WAS
11 JUST SOMETHING I HAD BROUGHT UP TO HER.

12 BY COMMISSIONER BARDEN:

13 SO, WHEN YOU FELL OFF THE HORSE, WAS IT TO YOUR
14 BUTTOCKS, OR WAS IT TO YOUR THORACIC SPINE, YOUR
15 UPPER SPINE? WHICH ---

16 BY THE WITNESS:

17 NO, I DIDN'T HIT MY SPINE AT ALL WHEN I FELL
18 OFF OF IT. LIKE I SAID, I JUMPED OFF THE HORSE. I
19 LANDED ON MY FEET, AND LIKE I SAID, THE HORSE WAS
20 GOING CRAZY, SO I KIND OF STUMBLED, THEN I FELL ON
21 MY BUTT. BUT I DIDN'T KNOW THAT WOULD CAUSE
22 SOMETHING TO INFLAME OR SOMETHING. BUT WHAT HE'S
23 TALKING ABOUT WITH THE MUSCLE SPASMS AND ALL THAT,
24 SHE SAID, "WHENEVER YOU FRACTURE YOUR T ---"

25 BY MR. LOCKHART:

1 ACCEPT THE BACK BRACE 'CAUSE MY M.R.I. SHOWED THAT
2 EVERYTHING IS HEALED. I DIDN'T SEE WHERE I NEEDED A
3 BACK BRACE. SHE HAD TALKED ABOUT PHYSICAL THERAPY,
4 BUT THEN IT WENT RIGHT BACK TO THE INJECTIONS. AND
5 THE SECOND TIME I WENT TO DR. GIRAULT, I DIDN'T EVEN
6 SEE DR. GIRAULT; I SEEN THE NURSE PRACTITIONER. AND
7 I WANTED TO SEE THE DOCTOR, BUT ALL THEY KEPT
8 TALKING ABOUT WAS INJECTIONS, AND I NEVER WENT BACK.

9 Q. LET'S TALK ABOUT THESE VISITS THAT YOU HAD TO
10 DOCTORS IN THE DAYS BEFORE YOUR FALL OCCURRED. YOUR
11 LAWYER ASKED YOU ABOUT THAT EARLIER, AND I WANT TO
12 ASK YOU A FEW QUESTIONS ABOUT IT ALSO. THERE ARE
13 SOME RECORDS FROM A GROUP CALLED SANDHILLS MEDICAL
14 FOUNDATION, LUGOFF, A DR. MINHAS, M-I-N-H-A-S. DO
15 YOU RECALL SEEING THIS DOCTOR IN THE DAYS BEFORE
16 YOUR WORK ACCIDENT OCCURRED?

17 A. YES, SIR.

18 **BY MR. LOCKHART:**

19 YOUR HONOR, I'M LOOKING AT PAGE 26 OF THE
20 DEFENDANTS' APA SUBMISSIONS.

21 **CROSS EXAMINATION RESUMED BY MR. LOCKHART:**

22 Q. NOW, YOUR TESTIMONY EARLIER WAS THAT WHEN YOU WENT
23 TO SEE DOCTORS IN THE DAYS BEFORE YOUR ALLEGED WORK
24 ACCIDENT, YOU WERE COMPLAINING OF LOWER BACK PAIN; -

25 --

1 A. YES, SIR.

2 Q. --- IS THAT CORRECT? ALL RIGHT. NOW, DR. MINHAS,
3 IN HER APRIL 16, 2012, NOTE; THIS IS THREE DAYS
4 BEFORE YOUR FALL.

5 A. CORRECT.

6 Q. SAYS (AS READ) "PATIENT NOW HAS PAIN IN THE UPPER
7 BACK AS WELL." SO DID YOU COMPLAIN TO DR. MINHAS OF
8 UPPER BACK PAIN AS WELL?

9 A. NO, SIR, IT WAS ALL MY LOWER BACK, WHICH IT WAS I'D
10 SAY FROM LIKE RIGHT HERE TO ABOUT RIGHT HERE
11 (INDICATING), AND I DON'T CONSIDER THAT MY UPPER
12 BACK.

13 BY COMMISSIONER BARDEN:

14 IF YOU WANT TO SHOW ME AGAIN.

15 BY THE WITNESS:

16 YEAH, LIKE FROM LIKE RIGHT HERE, LIKE RIGHT
17 HERE (INDICATING). IT'S IN MY LOWER BACK. IT WAS
18 LIKE BENDING OVER PICKING UP LOGS AND STUFF,
19 STRAINING A LITTLE BIT MORE IN OTHER AREAS.

20 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

21 Q. DR. MINHAS APPEARS TO HAVE EXAMINED YOU ON THIS DAY.

22 BY MR. LOCKHART:

23 I'M AT PAGE 27 OF THE DEFENDANTS' APAs, YOUR
24 HONOR.

25 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

1 Q. SHE NOTES UNDER YOUR -- DURING HER EXAMINE OF YOU,
2 (AS READ) "TENDERNESS BETWEEN THORACIC VERTEBRA AND
3 TENDERNESS OVER LUMBAR VERTEBRA." SO, AGAIN, WERE
4 YOU HAVING MID OR UPPER BACK PAIN WHEN YOU SAW DR.
5 MINHAS BEFORE APRIL 19TH?

6 A. NO, SIR, NOT THAT I RECALL. 'CAUSE LIKE I SAID,
7 THAT DAY THEY DID X-RAYS, AND EVERYTHING IN THERE
8 WAS -- EVERYTHING COME BACK GREAT. IT WAS I
9 STRAINED MYSELF, A STRAINED MUSCLE OR SOMETHING.

10 Q. NOW, LET'S TALK A LITTLE BIT ABOUT THIS VISIT TO THE
11 EMERGENCY ROOM TWO DAYS BEFORE YOUR WORK ACCIDENT,
12 OR ALLEGED WORK ACCIDENT, OCCURRED. I THINK YOU
13 TOLD THE COURT EARLIER THAT YOU WENT THERE KIND OF
14 AT THE BEHEST OF YOUR WIFE AND OF YOUR MOM. AND
15 ISN'T IT TRUE THAT YOU HAD BEEN HAVING SOME
16 VOMITING, YOU'D HAD SOME DIARRHEA, YOU'D HAD SOME OF
17 THOSE SIMILAR ISSUES?

18 A. YEAH, I -- I THINK I HAD THROWN UP LIKE ONCE, AND I
19 WAS USING THE BATHROOM SEVERAL TIMES. MY STOMACH
20 WAS UPSET, BUT ABOUT THE TIME LIKE WHEN MY WIFE HAD
21 CALLED MY MOTHER AND ALL THAT, I TOLD THEM I DIDN'T
22 NEED TO GO TO THE DOCTOR, AND THEY INSISTED THAT I
23 DID. SO I WENT AHEAD AND WENT, BUT. AND HE RAN
24 TESTS AND ALL THAT KIND OF STUFF AND GIVE ME I.V.
25 FLUIDS, BUT ALL THE TESTS AND EVERYTHING CAME BACK

1 GOOD. HE SAID I WAS FINE AND EVERYTHING CHECKED
2 OUT.

3 Q. WERE YOU DEHYDRATED?

4 A. NO, SIR.

5 Q. LET'S GO BACK AND FOR A MOMENT TALK ABOUT THIS
6 PERIOD OF TIME THAT YOU WERE OUT OF WORK. YOU SAY
7 IT WAS EIGHT MONTHS -- SIX MONTHS, EIGHT MONTHS?

8 A. YES, SIR.

9 Q. ALL RIGHT. NOW, OTHER THAN THOSE EIGHT MONTHS, WAS
10 THERE ANY PERIOD OF TIME DURING WHICH YOU RECEIVED
11 LONG-TERM OR SHORT-TERM DISABILITY BENEFITS FROM
12 SAIIA?

13 A. I RECEIVED LONG-TERM DISABILITY A HUNDRED AND EIGHTY
14 DAYS AFTER I'D GOT HURT, AND THAT'S LIKE AN EXTRA
15 THING THAT I GET WITH MY INSURANCE THAT I PAY FOR
16 MYSELF.

17 Q. ALL RIGHT. NOW -- GO AHEAD.

18 A. WELL, NO, NO, NO, I -- SORRY ABOUT THAT. THE
19 COMPANY PAYS FOR THE LONG-TERM DISABILITY. IF YOU
20 WANT A SHORT TERM, YOU HAVE TO PAY FOR THAT
21 YOURSELF, AND I DIDN'T GET IT, SO I DIDN'T HAVE
22 SHORT TERM.

23 Q. OKAY, THANK YOU FOR THAT CLARIFICATION. NOW, DURING
24 THAT PERIOD OF TIME THAT YOU WERE OUT OF WORK, YOU
25 WERE AT YOUR HOME DOING A VARIETY OF DIFFERENT

1 THINGS, CORRECT?

2 A. I WAS OUT AND ABOUT DOING WHAT I COULD DO, AND IT
3 WASN'T A WHOLE LOT, BUT I'M NOT THE TYPE -- I CAN'T
4 SIT AROUND AND DO ABSOLUTELY NOTHING. BUT WHEN I
5 GOT OUT OF THE HOSPITAL, I'D GO OUT THERE AND I'D
6 TRY TO GET ON MY TRACTOR AS MUCH AS I COULD, AND IT
7 DIDN'T WORK OUT LIKE I THOUGHT IT WAS 'CAUSE I
8 COULDN'T STAND IT 'CAUSE IT WAS BOUNCING AROUND,
9 AND I ACTUALLY HAD MY WIFE PLOW THE FIELDS FOR ME.

10 Q. WHAT TYPE OF FARMING ACTIVITIES WERE YOU PERFORMING
11 DURING THAT EIGHT-MONTH PERIOD OF TIME THAT YOU WERE
12 NOT WORKING?

13 A. JUST LIKE WE'D BAIL HAY IS BASICALLY WHAT WE'D DO IS
14 JUST BAIL HAY. I HAVE HORSES.

15 Q. TELL ME FROM A PHYSICAL STANDPOINT WHAT BAILING HAY
16 REQUIRES YOU TO DO. IF I HAD SEEN YOU DURING THAT
17 EIGHT-MONTH PERIOD OF TIME BAILING HAY, WHAT WOULD I
18 HAVE SEEN YOU DOING?

19 A. WELL, THE WORST PART OF BAILING HAY FOR ME WOULD BE
20 HOOKING UP ATTACHMENTS AND STUFF AS FAR AS PHYSICAL
21 'CAUSE I'VE ACTUALLY GOT A THING THAT WE USE THAT
22 HOOKS BEHIND THE TRACTOR. AFTER YOU BAIL THE HAY,
23 IT GOES ALONG. IT PICKS IT UP, AND IT STACKS IT,
24 AND THEN YOU GO AND DUMP IT. AS FAR AS LIKE
25 PHYSICALLY GRABBING BAILS OF HAY AND THROWING 'EM ON

1 A TRAILER, I DIDN'T -- I DIDN'T DO THAT.

2 Q. BUT YOU HAD TO ATTACH EQUIPMENT TO YOUR TRACTOR?

3 A. YEAH, AND LIKE -- LIKE I SAID, I CAN DO THINGS. IT
4 WOULD TAKE ME A WHILE TO DO IT, BUT. AND IT HURTS
5 SOMETIMES TO DO STUFF LIKE THAT, BUT I'M NOT THE
6 TYPE THAT'S GOING TO SIT AROUND. IF I'M NOT DYING,
7 I'M NOT GOING TO SIT THERE AND DO ABSOLUTELY
8 NOTHING.

9 Q. OTHER THAN BAILING HAY, WHAT OTHER TYPES OF FARMING
10 ACTIVITIES DID YOU DO DURING THAT EIGHT-MONTH PERIOD
11 OF TIME?

12 A. BUSH HOGGING AND STUFF LIKE THAT. AS FAR AS LIKE
13 WORKING ON MY HOUSE, I WAS ABLE TO WORK ON MY HOUSE
14 A PERIOD AFTER I'D GOT HURT, BUT IT WASN'T RIGHT
15 AFTER I'D GOT HURT. 'CAUSE, I MEAN, RIGHT AFTER I'D
16 GOT OUT OF THE HOSPITAL, I WAS REALLY IN PRETTY BAD
17 SHAPE. I WAS USING A CANE JUST TO KEEP MYSELF
18 STABLE 'CAUSE I COULDN'T KEEP MY BALANCE VERY WELL
19 'CAUSE MY LEGS WERE KILLING ME AS SOON AS I GOT OUT
20 OF THE HOSPITAL. I DON'T KNOW IF THAT WAS BECAUSE
21 OF BEING IN THE BED FOR SO LONG OR WHAT IT WAS. I
22 STILL PUT EFFORT IN TO DOING THINGS.

23 Q. WHAT PERIOD OF TIME SORT OF LAPSED BETWEEN WHEN YOU
24 GOT OUT OF THE HOSPITAL AND WHEN YOU STARTED WORKING
25 BACK -- BACK WORKING ON YOUR HOME AGAIN?

1 A. I'D SAY I DIDN'T START DOING ANY KIND OF LIKE
2 PHYSICAL STUFF UNTIL ABOUT SIX MONTHS AFTER I'D
3 GOTTEN OUT OF THE HOSPITAL. AND I'D GO DOWN THERE
4 AND KEEP STUFF CLEANED UP AND TRY TO DO A LITTLE BIT
5 OF WIRING. BUT OTHER THAN THAT, I COULDN'T LIFT
6 LOGS. I COULDN'T BEND OVER FOR A LONG PERIOD OF
7 TIME OR ANYTHING LIKE THAT. SO BASICALLY, EVER
8 SINCE I'VE GOT HURT, WE HAVEN'T DONE A WHOLE LOT TO
9 THE HOUSE. WE GOT THE ROOF SYSTEM BUILT. WE USED
10 THE CRANE, AND WE HAD HELP; WE HAD PEOPLE COME DOWN
11 THERE AND HELP DO THAT. BUT EVER SINCE THEN, I
12 HAVEN'T BASICALLY DONE ABSOLUTELY NOTHING TO IT.

13 Q. HOW ABOUT ELECTRICAL WORK, HAVE YOU DONE ANY
14 ELECTRICAL WORK ON IT AT ALL?

15 A. I'VE DONE A LITTLE BIT HERE AND THERE. BUT LIKE MY
16 DAD, HE HAD A BONE MARROW TRANSPLANT. AND HE'S LIKE
17 THE BRAINS OF THIS PROJECT, SO. AND I KNOW A LITTLE
18 BIT ABOUT ELECTRICAL, AND I CAN DO IT, BUT MY
19 BIGGEST THING IS I DON'T KNOW IF I'M DOING IT
20 COMPLETELY RIGHT. SO EVER SINCE -- SEE, I GOT HURT,
21 AND THEN THE YEAR AFTER THAT HE WAS -- OR NOT EVEN A
22 YEAR HE HAD TO GO GET THAT BONE MARROW TRANSPLANT,
23 AND IT JUST PUT EVERYTHING ON -- BASICALLY ON HOLD.

24 Q. DURING THAT EIGHT-MONTH PERIOD OF TIME THAT YOU WERE
25 OUT OF WORK, WERE YOU RIDING HORSES?

1 A. NO, SIR.

2 Q. WERE YOU DOING ANY TYPE OF HUNTING AT ALL DURING
3 THAT EIGHT-MONTH PERIOD OF TIME?

4 A. YES, SIR, I DID A LITTLE BIT OF HUNTING.

5 Q. AND WHAT TYPE HUNTING WOULD YOU HAVE DONE DURING
6 THAT EIGHT-MONTH PERIOD OF TIME?

7 A. I THINK I BELIEVE I TOLD YOU I DEER HUNTED A FEW
8 TIMES BUT BASICALLY DUCK HUNTING.

9 Q. AND DURING THAT EIGHT-MONTH PERIOD OF TIME THAT YOU
10 WERE OUT OF WORK, WERE YOU DRIVING ALL TERRAIN
11 A.T.V. VEHICLES ON YOUR PROPERTY?

12 A. YES, SIR, I DRIVE A FOUR-WHEELER.

13 Q. AND THE DUCK HUNTING, IS THAT AN ACTIVITY THAT
14 REQUIRES A CERTAIN LEVEL OF CONCENTRATION?

15 A. YES, SIR.

16 Q. ALL RIGHT. AND IT REQUIRES YOU TO HOLD A FIREARM IN
17 YOUR HANDS?

18 A. YES, SIR.

19 Q. AND LOCATE A BIRD AND PULL A TRIGGER?

20 A. YES, SIR.

21 Q. OKAY. IN ORDER TO BE SUCCESSFUL AT IT, RIGHT?

22 A. CORRECT.

23 Q. AND THAT WAS SOMETHING YOU WOULD HAVE DONE DURING
24 THAT PERIOD OF TIME THAT YOU WERE OUT OF WORK,
25 CORRECT?

1 A. YES, SIR.

2 Q. JUST FOR CLARIFICATION PURPOSES, WHO IS YOUR CURRENT
3 SUPERVISOR AT SAIIA?

4 A. ROBERT BENNETT.

5 Q. AND MR. BENNETT'S HERE IN THE COURT ROOM HERE TODAY?

6 A. YES, SIR.

7 Q. AND HOW LONG'S HE BEEN YOUR SUPERVISOR?

8 A. APPROXIMATELY SIX MONTHS.

9 Q. WHEN WAS THE LAST TIME THAT YOU WOULD HAVE SOUGHT
10 MEDICAL TREATMENT WITH A DOCTOR FOR ANY OF THE
11 PROBLEMS RELATED TO YOUR BACK?

12 A. LAST TIME I WENT TO THE PAIN MANAGEMENT DOCTOR.

13 Q. AND THAT WAS DR. GIRAULT?

14 A. THAT WAS DR. GIRAULT.

15 Q. AND THAT WAS IN OCTOBER?

16 A. YES, SIR. LIKE I SAID, THE LAST TIME I WENT TO HER,
17 I DIDN'T EVEN SEE THE DOCTOR; I SEEN THE NURSE
18 PRACTITIONER.

19 **BY MR. LOCKHART:**

20 CAN I BEG THE COURT'S INDULGENCE FOR JUST A
21 BRIEF MOMENT?

22 **BY COMMISSIONER BARDEN:**

23 GO AHEAD.

24 **CROSS EXAMINATION RESUMED BY MR. LOCKHART:**

25 Q. MR. TURNER, LET ME ASK YOU ONE MORE QUESTION ABOUT

1 THIS PERIOD OF TIME THAT YOU'RE OUT OF WORK, AND I
2 APOLOGIZE FOR GOING BACK TO IT, BUT THERE'S
3 SOMETHING THAT I WANTED TO ASK YOU ABOUT REAL QUICK.

4 BY MR. LOCKHART:

5 AND I'M LOOKING AT PAGE 20 OF THE DEFENDANTS'
6 APAS.

7 CROSS EXAMINATION BY MR. LOCKHART:

8 Q. DO YOU RECALL GOING TO SEE AN ORTHOPAEDIC PHYSICIAN
9 NAMED DR. SCOTT OVER AT THE MOORE ORTHOPEDIC CLINIC
10 IN LEXINGTON?

11 A. DR. SCOTT, I DON'T BELIEVE THAT WAS IN LEXINGTON,
12 WAS IT?

13 Q. I'M SORRY, THEY DO HAVE AN OFFICE IN LEXINGTON. IT
14 APPEARS YOU WERE SEEN AT THEIR OFFICE IN COLUMBIA AT
15 RICHLAND MEMORIAL.

16 A. YES, SIR.

17 Q. I APOLOGIZE. THANK YOU, THAT'S MY FAULT, MR.
18 TURNER.

19 BY COMMISSIONER BARDEN:

20 DID YOU SAY PAGE 20?

21 BY MR. LOCKHART:

22 YES, YOUR HONOR.

23 BY COMMISSIONER BARDEN:

24 I'VE GOT A NOTE FROM MARYANOV. DO I HAVE THE
25 WRONG ONE; IS THAT THE WRONG ONE? DID YOU SAY

1 "SCOTT"?

2 BY MR. LOCKHART:

3 I DID, YOUR HONOR. LET ME SEE HERE. I

4 APOLOGIZE ABOUT THAT, YOUR HONOR.

5 BY COMMISSIONER BARDEN:

6 HAVE I GOT THE WRONG...?

7 BY MR. LOCKHART:

8 NO, YOU'VE GOT THE RIGHT -- THERE IT IS

9 (INDICATING).

10 BY COMMISSIONER BARDEN:

11 THERE IT IS, PAGE 21. ALL RIGHT.

12 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

13 Q. MR. TURNER, I HAVE A RECORD -- OR WE'VE SUBMITTED
14 INTO EVIDENCE A RECORD FROM DR. SCOTT FROM OCTOBER
15 29TH OF 2012, WHICH IS ABOUT SIX MONTHS AFTER YOUR
16 ACCIDENT HAPPENED.

17 A. YES, SIR.

18 Q. AND YOU RECALL SEEING DR. SCOTT?

19 A. YES, SIR.

20 Q. OKAY. LET ME READ TO YOU HIS RECORD AND ASK YOU IF
21 THIS IS AN ACCURATE DESCRIPTION OF WHAT YOU TOLD
22 HIM. IT SAYS (AS READ) "MR. TURNER IS HERE FOR AN
23 EVALUATION OF SOME HIGH THORACIC, LOW CERVICAL PAIN.
24 HE HAD A FALL OUT OF A TRUCK BACK IN APRIL. HE DOES
25 HAVE AN M.R.I., WHICH SEEMS TO INDICATE SOME

1 SUPERIOR END PLATE INJURIES AT THE LEVEL OF T3/4.
2 HE HAS NOT WORKED SINCE PRIMARILY BECAUSE HE HAD
3 SOME SEIZURES ASSOCIATED WITH THIS, AND THAT IS WHY
4 HE CANNOT RETURN TO WORK. BUT HE HAS BEEN DOING A
5 LOT OF WORK AROUND THE HOUSE, INCLUDING A LOT OF
6 FARMING AND BUILDING A HOUSE, AND HE HAS NOT BEEN
7 LIMITED BY HIS BACK PAIN. HE ACTUALLY NOTES THAT
8 THE BACK PAIN FEELS BETTER WHEN HE IS WORKING. HE
9 HAS NO NUMBNESS, NO TINGLING, NO WEAKNESS IN HIS
10 EXTREMITIES." DO YOU RECALL TELLING DR. SCOTT --
11 PROVIDING THAT INFORMATION TO HIM?

12 A. YES, SIR, I TALKED TO DR. SCOTT, AND, LIKE I SAID,
13 THE MORE I LIKE MOVE MY ARMS AROUND AND STUFF, LIKE
14 STRETCH AND STUFF LIKE THAT, THE BETTER I FELT. BUT
15 IT'S LIKE SITTING AROUND, DOING ABSOLUTELY NOTHING,
16 IT DIDN'T DO -- IT DIDN'T HELP ME OUT WHATSOEVER.
17 AND DR. SCOTT HAD SENT ME TO PHYSICAL THERAPY, AND
18 THAT HELPED ME OUT PRETTY GOOD.

19 BY MR. LOCKHART:

20 YOUR HONOR, THOSE ARE ALL OF THE QUESTIONS THAT
21 I HAVE. THANK YOU, MR. TURNER.

22 BY COMMISSIONER BARDEN:

23 ANYTHING ON RE-DIRECT, MR. KOON OR MR. COOK?

24 BY MR. KOON:

25 YES, PLEASE.

1 BY COMMISSIONER BARDEN:

2 ALL RIGHT, GO HEAD.

3 RE-DIRECT EXAMINATION BY MR. KOON:

4 Q. WHENEVER YOU GO DUCK HUNTING, IS THAT SOMETHING
5 WHERE YOU SIT IN A BLIND?

6 A. YES, SIR.

7 Q. ALL RIGHT. DO YOU SIT THERE AND HOLD YOUR GUN ALL
8 DAY WHILE YOU'RE WAITING FOR THE DUCKS TO COME?

9 A. YEAH, WE'VE GOT A BLIND THAT WE ACTUALLY JUST -- WE
10 GOT CHAIRS IN THERE, AND WE SIT THERE.

11 Q. DO YOU HOLD THE GUN, OR DO YOU PUT IT UP SOMEWHERE?

12 A. I USUALLY PROP IT UP.

13 Q. DO YOU GET THE GUN WHENEVER YOU SEE A DUCK COMING?

14 A. YEAH, IF I SEE THE DUCK, I'LL GRAB IT.

15 Q. SO, ARE YOU REQUIRED TO HOLD A GUN THE ENTIRE TIME
16 YOU'RE OUT THERE?

17 A. NO, SIR.

18 Q. LET ME CLEAR UP ONE OTHER THING ABOUT LONG-TERM
19 DISABILITY, TOO. HE ASKED YOU IF YOU WERE ON
20 DISABILITY FOR EIGHT MONTHS. HOW MUCH MONEY DID YOU
21 DRAW AS A RESULT OF THE LONG-TERM DISABILITY; DID
22 YOU GET ANYTHING IN THE FIRST SIX MONTHS?

23 A. NO, SIR.

24 Q. WAS THAT DURING THE PERIOD OF TIME THAT WOULD HAVE
25 BEEN COVERED BY SHORT-TERM DISABILITY?

1 A. YES, SIR.

2 Q. ALL RIGHT. AND THEN DID YOU DRAW IT FOR SOME PERIOD
3 AFTER THAT?

4 A. I DREW IT FOR APPROXIMATELY -- I THINK IT WAS A
5 MONTH AND A HALF, TWO MONTHS.

6 Q. ALL RIGHT. DO YOU RECALL HOW MUCH YOU DREW FROM
7 THAT?

8 A. IT WAS -- IT WAS AROUND TWO THOUSAND -- I'M GOING TO
9 SAY TWO THOUSAND, ONE SEVENTY-FIVE. I'M NOT EXACTLY
10 SURE OF THE DOLLAR AMOUNT, BUT IT WAS TWO THOUSAND-
11 AND-SOMETHING.

12 Q. ALL RIGHT. AND DID YOU DRAW THE LONG-TERM
13 DISABILITY UP UNTIL THE TIME YOU WENT BACK TO WORK
14 ON JANUARY THE 2ND?

15 A. YES, SIR. I DREW IT UP TO ABOUT A MONTH BEFORE I
16 WENT BACK TO WORK.

17 Q. AND WHY WAS THAT TERMINATED?

18 A. BECAUSE THEY SAID I WAS PHYSICALLY ABLE TO GO BACK
19 TO WORK EVEN THOUGH THE DOCTOR HAD NOT RELEASED ME.

20 BY MR. KOON:

21 ALL RIGHT, THANK YOU VERY MUCH.

22 BY COMMISSIONER BARDEN:

23 MR. LOCKHART, ANY OTHER QUESTIONS?

24 BY MR. LOCKHART:

25 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

1 BY COMMISSIONER BARDEN:

2 ALL RIGHT, THAT'S THE CLAIMANT'S CASE. AND DO
3 YOU HAVE ANY WITNESSES, MR. LOCKHART?

4 BY MR. LOCKHART:

5 YOUR HONOR, I'LL BRIEFLY CALL MR. BENNETT.

6 BY COMMISSIONER BARDEN:

7 ALL RIGHT, MR. BENNETT, WHEN YOU GET SEATED AND
8 SITUATED, IF YOU'LL RAISE YOUR RIGHT HAND.

9 * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH,
11 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING
12 THE MATTER HEREIN:

13 ROBERT BENNETT

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

15 BY COMMISSIONER BARDEN:

16 PLEASE STATE YOUR FULL NAME FOR THE RECORD.

17 BY THE WITNESS:

18 ROBERT L. BENNETT.

19 BY COMMISSIONER BARDEN:

20 THANK YOU. PLEASE ANSWER ANY QUESTIONS MR.

21 LOCKHART HAS FOR YOU FIRST.

22 DIRECT EXAMINATION BY MR. LOCKHART:

23 Q. MR. BENNETT, GOOD AFTERNOON.

24 A. GOOD AFTERNOON.

25 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

1 A. SAIIA CONSTRUCTION INTERNATIONAL PAPER IN EASTOVER.

2 Q. HOW LONG HAVE YOU BEEN WITH SAIIA CONSTRUCTION?

3 A. I STARTED THERE JULY 12TH OF THIS YEAR.

4 Q. OF 2013?

5 A. CORRECT.

6 Q. OKAY. AND WHAT IS YOUR CURRENT POSITION WITH SAIIA?

7 A. SUPERINTENDENT.

8 Q. OKAY. AND HOW MANY INDIVIDUALS WORK UNDER YOUR
9 SUPERVISION?

10 A. CLOSE TO 14.

11 Q. OKAY. DOES WILLIAM TURNER WORK UNDER YOUR
12 SUPERVISION?

13 A. YES, HE DOES.

14 Q. AND HAS HE WORKED UNDER YOUR SUPERVISION SINCE YOU
15 BEGAN WORKING AS A SUPERINTENDENT?

16 A. YEAH, THAT'S CORRECT.

17 Q. OKAY. WHEN YOU BEGAN WORKING WITH SAIIA, WAS MR.
18 TURNER WORKING THERE AT THE TIME?

19 A. YES, HE WAS.

20 Q. OKAY. YOU'VE BEEN IN THE COURT ROOM TODAY, AND
21 YOU'VE HEARD MR. TURNER DESCRIBE HIS CURRENT JOB
22 WITH SAIIA, AND HIS CURRENT JOB DUTIES AND
23 RESPONSIBILITIES. DID HE PROVIDE AN ACCURATE
24 DESCRIPTION OF HIS JOB?

25 A. YES. YES, HE DID.

1 Q. ALL RIGHT. IS THERE ANYTHING ABOUT HIS JOB THAT HE
2 DID NOT COMMENT ON THAT YOU FEEL LIKE THE COURT
3 NEEDS TO KNOW ABOUT WHAT HE DOES ON A DAY-TO-DAY
4 BASIS?

5 A. AS AN EQUIPMENT OPERATOR, IT TAKES A LOT OF HAND/EYE
6 COORDINATION, DEXTERITY. YOU'RE DEALING WITH A LOT
7 OF REAL CLOSE TOLERANCES WHEN YOU'RE DIGGING AROUND
8 MACHINES AND STUFF LIKE THAT, AND HE SHOWS A -- I
9 MEAN, NO PROBLEMS WHATSOEVER IN DOING THE TASKS OF
10 WHAT HAS TO BE PERFORMED.

11 Q. YOU ARE ABLE TO OBSERVE MR. TURNER PERFORMING HIS
12 JOB ON A REGULAR BASIS?

13 A. YES.

14 Q. OKAY. AND DOES HE PERFORM HIS JOB DUTIES AND
15 RESPONSIBILITIES TO YOUR SATISFACTION?

16 A. OH, DEFINITELY.

17 Q. SINCE YOU BEGAN WORKING FOR SAIIA, AND SINCE YOU
18 BEGAN SUPERVISING MR. TURNER, TO YOUR KNOWLEDGE, HAS
19 HE MISSED ANY TIME FROM WORK AT ALL DUE TO BACK
20 PROBLEMS OR PROBLEMS RELATED TO THIS EVENT IN APRIL
21 OF 2012?

22 A. NO.

23 Q. ALL RIGHT.

24 **BY MR. LOCKHART:**

25 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

1 BY COMMISSIONER BARDEN:

2 ALL RIGHT. MR. KOON.

3 CROSS EXAMINATION BY MR. KOON:

4 Q. MR. BENNETT, HE DRIVES TRUCKS AND OTHER HEAVY
5 EQUIPMENT THERE AT SAIIA?

6 A. YES, SIR, CORRECT.

7 Q. HE'S BEEN DOING THAT THE ENTIRE TIME YOU'VE BEEN
8 THERE?

9 A. YES, SIR.

10 Q. GOOD EMPLOYEE?

11 A. EXCELLENT EMPLOYEE.

12 Q. HONEST?

13 A. DON'T HAVE -- NEVER (WITNESS NODS HEAD UP AND DOWN).

14 Q. STRAIGHTFORWARD?

15 A. YES, SIR.

16 Q. DON'T TRY TO PULL THE WOOL OVER ANYBODY'S EYES?

17 A. NO, SIR.

18 Q. ALL RIGHT. YOU WANT TO KEEP HIM AS AN EMPLOYEE,
19 DON'T YOU?

20 A. OH, DEFINITELY. HE DOES A GOOD JOB.

21 Q. WHERE ARE YOU FROM, BY THE WAY?

22 A. OHIO ORIGINALLY.

23 Q. DID YOU COME HERE FROM OHIO?

24 A. NO, TEXAS.

25 Q. I HEARD YOU SAY OUTSIDE YOU HAD TO GO BACK TO OHIO

1 NEXT WEEK I BELIEVE?

2 A. YEAH, I GOT SOME TRAINING TO GO THROUGH NEXT WEEK.

3 Q. WHO HANDLES YOUR RESPONSIBILITIES WHEN YOU'RE OUT OF
4 TOWN?

5 A. IT WOULD BE CECIL VAUGHAN. HE'S THE -- WHAT YOU
6 WANT TO CALL LIKE THE LABOR FOREMAN.

7 Q. SO, HE DOES A GOOD JOB FOR YOU FOR SAILIA, AND AS FAR
8 AS YOU KNOW EVER SINCE HE'S BEEN THERE HE'S BEEN A
9 VERY GOOD EMPLOYEE?

10 A. AS FAR AS I KNOW. I JUST -- PEOPLE JUST WANT TO
11 TAKE OVER 'CAUSE PEOPLE WORK DIFFERENTLY FOR OTHER
12 PEOPLE, BUT HE'S DONE AN EXCELLENT JOB. ACTUALLY
13 ALL THE GUYS THAT WORK THERE DO A PHENOMENAL JOB.

14 **BY MR. KOON:**

15 THANK YOU VERY MUCH.

16 **BY COMMISSIONER BARDEN:**

17 MR. LOCKHART, ANY OTHER QUESTIONS?

18 **BY MR. LOCKHART:**

19 YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

20 **BY COMMISSIONER BARDEN:**

21 ALL RIGHT. THAT CONCLUDES THIS PROCEEDING.

22 THAY Y'ALL.

23 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
24 CONCLUDED AT THE HOUR OF 3:03 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1204039

EMPLOYEE/CLAIMANT: LEE TURNER

EMPLOYER: SAIIA CONSTRUCTION

INSURER: OLD REPUBLIC GENERAL INSURANCE CORPORATION

I, SHEILA ROBISON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 75 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **LEE TURNER** WAS TAKEN THE 4TH OF FEBRUARY, 2014.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 7TH DAY OF FEBRUARY, 2014.

SHEILA ROBISON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-20-2019

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1204039

Lee Turner,)
)
Claimant,)
)
v.)
)
Saliia Holdings,)
)
Employer,)
)
and)
)
Old Republic,)
)
Carrier/Defendants.)
-----)

COPY

FULL COMMISSION HEARING

Monday, August 11, 2014
3:30 p.m. - 3:52 p.m.

The Full Commission Hearing was heard before Commissioners Gene McCaskill, Melody James and Avery Wilkerson, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 11th day of August, 2014, before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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EXHIBITS

(There were no exhibits marked during the hearing.)



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1 **COURT REPORTER:** Today is Monday, August 11th, 2014.

2 This is South Carolina Workers' Compensation
3 Number 1204039. This is the case of Lee
4 Turner, Claimant, versus Saliia Holdings,
5 Employer, and Old Republic, the Carrier. The
6 Appellant is the Claimant represented by
7 Preston F. McDaniel. The Respondent is
8 represented by Jason W. Lockhart. Each side is
9 allowed 10 minutes for oral argument and the
10 Appellant 3 minutes in reply. You are
11 requested to argue the grounds of exception and
12 stay within the record.

13 **COMMISSIONER WILKERSON:** Mr. McDaniel?

14 **ARGUMENT BY MR. MCDANIEL:**

15 **MR. MCDANIEL:** May it please the Commission? First,
16 let me just state -- start with a basic
17 principle that we will all agree on. And that
18 is that the act is supposed to be liberally
19 construed and favorable benefits to the injured
20 worker. Let me start next with, actually, a
21 quotation from one of the cases that Defendants
22 cite in many cases in regards to this type of
23 claim, and that's from the Bagwell case, which
24 cites enough of the black letter law, and that
25 is that the evidence is supposed to be read in



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1 light most favorable to the injured worker.
2 Now, next, it is undisputed that this was a
3 non-witness event. There were no witnesses.
4 My client has absolutely no memory of what
5 occurred. The Supreme Court has said that in
6 those types of cases, if it is an unwitnessed
7 event, that we must apply the unexplained death
8 or injury presumption. That presumption has
9 been applied by the Commission. And as you'll
10 find in my brief, and then applied by the
11 Supreme Court, every time in favor of the
12 injured worker and found that an injury had
13 occurred, an accidental injury had occurred,
14 except where the evidence established that
15 there was -- it was caused by a physical
16 condition, such as a heart attack or an
17 aneurysm or a pre-existing seizure disorder.
18 Every time, every time, that a case is
19 unwitnessed and the Supreme Court has been
20 called upon to rule in an accidental injury
21 type case, they have found that the presumption
22 is to apply and have awarded benefits, as to
23 this Commission. Now, just for purposes of
24 what is a presumption. We're dealing with an
25 evidentiary presumption here, and an

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P353

1 evidentiary presumption, according to Black's
2 Law Dictionary, is a rule of evidence calling
3 for a certain result in a given case, unless
4 the adversely affected party overcomes that
5 evidence. In other words, it's not a burden
6 shifting, but it's a -- a persuasion shifting.
7 In other words, the presumption establishes a
8 prime aphasia case, and then the adversely
9 affected party to that presumption, that
10 evidentiary presumption, is called upon to put
11 up evidence to more or less rebut that
12 presumption, or in other words, to overcome
13 that presumption of fact that, a prime aphasia
14 case had been established. Now, there must be
15 -- whether this Commission chooses to award
16 benefits or whether or not they choose to deny
17 benefits, the same principle law applies.
18 There must be evidence to award the benefits,
19 or there must be evidence to deny the benefits.
20 Unexplained injury cases, they're basically
21 based on circumstantial evidence. Obviously
22 because there's no witnesses, obviously because
23 either the claimant is dead or the claimant
24 has, in this case, has no memory of what
25 occurred. All the evidence in this case --



1 let's look at it now from a circumstantial
2 evidence standpoint. Look at the medical
3 records, look at all the evidence in the
4 record, and you're going to find that prior to
5 the date of the event, Mr. Turner, there is
6 absolutely no evidence of any problems with
7 dizziness, balance, seizures. He has no pre-
8 existing conditions such as diabetes nor is
9 there any history of anything in his family in
10 reference to a pre-existing condition or
11 condition coming into this event that would
12 have caused this situation. Now, let's go to
13 the day of the event. Everybody agrees, his
14 supervisor testified, he was in great shape
15 that day. He was happy. He was giving thumbs
16 up. He was in the best condition, as one
17 person said, the best condition I've seen him
18 in in weeks. He was great. He was doing fine.
19 There's -- all the testimony was, did you see
20 him have any problems with dizziness that day?
21 No. Any problems with being -- stomach upset
22 or anything like that? No. Any problems with
23 balance issues? No. Any problems with any
24 kind of a seizure or funny situation? No. The
25 evidence is that he was in totally normal



1 condition, as so is the evidence from the
2 medical records. Now, then let's go to the
3 facts surrounding the actual event. At a
4 maximum, we're talking about 10 minutes where
5 he was unseen. Mr. Barnett testified that he
6 and Mr. Turner had washed Mr. Turner's truck.
7 Mr. Turner then goes to the hut to get their
8 time cards straight and to pick up their lunch
9 pails, and to then bring those back. Mr.
10 Turner -- Mr. Barnett testifies that he then
11 saw Mr. Turner on the ground no more than 7 to
12 10 minutes at a maximum from the time that he
13 last saw him to the time that he then saw him
14 on the ground, because he was around the other
15 side of his truck washing his truck. And who
16 should come up and talk to him but Mr. Bolen.
17 Mr. Bolen had been in the hut with Mr. Turner,
18 and he witnessed Mr. Turner walking -- here's
19 what Mr. Bolen does. So we've got Mr. -- this
20 time line cut down to a couple of minutes at
21 max. Mr. Bolen said that during that 7 to 10
22 minutes when Mr. Barnett was not seen, Mr.
23 Bolen had been over at the hut with him, then
24 saw Mr. Turner walk back to his truck, saw him
25 standing on the ground putting their -- the



1 backpacks and their 12-pack cooler into the
2 floorboard -- and this is important, into the
3 floorboard of the truck. Now, why is that
4 important? Because both of them testified that
5 the door was open, both at the time they last
6 saw him and at the time that he was found on
7 the ground. But the reason it's important
8 about the cooler and the backpacks is because
9 they were found placed neatly on the seat, and
10 everybody agrees that if he put those neatly on
11 the seat, he had to have climbed up one or two
12 steps of that truck. In other words, he had to
13 have climbed up. The undisputed testimony is
14 that he would have had to have climbed up into
15 that truck. Then he is then found on the
16 ground, feet first into the truck, laying
17 backwards. And now comes the next important
18 point here. I hadn't picked this up, don't
19 remember too much reference to it in the -- in
20 it, but he was found, and the medical evidence
21 will establish, that they found him, and there
22 was blood on the back of his head. He was
23 found flat backwards with blood on the back of
24 his head. But what did the medical evidence
25 establish? He has a sub-dural hematoma of the



1 left frontal lobe that is generally caused from
2 traumatic origin. How'd he get that? How'd he
3 get that? Now, the Commissioner found it was
4 going to be important that -- that, oh, if they
5 had just testified that they actually saw him
6 on the steps. What you're charged with and
7 what the hearing commissioner was charged with
8 is, how does the evidence preponderate. Is it
9 more likely than not? There is absolutely no
10 evidence of a physical condition causing this
11 man's fall. A fall is caused by two types of
12 things, generally. Number one, it's either
13 traumatic in origin, or number two, it is
14 caused by a physical condition. I would submit
15 to you that there is absolutely no evidence in
16 this record to substantiate that Mr. Turner's
17 injury came from a physical condition. This
18 Commission, I ask you simply to do what the law
19 requires, which is to apply the unexplained
20 injury presumption. It's there for a reason.
21 Nobody knows what happens. And for a better
22 term, the Claimant is supposed to be given the
23 benefit of the doubt unless there's evidence.
24 And if you look at the cases, like for example,
25 there's two electrocution cases. One, the



1 claimant came in and alleged it was
2 electrocution and there was absolutely nothing
3 medical wise or otherwise to connect him with
4 the -- the cause was actually unknown, but
5 there was nothing to connect his injury to that
6 electrocution that they thought he may have
7 had. Now, the other case, the Buff case, when
8 the guy went to repair the Buff case, they
9 didn't know what he died from. There was no
10 cause of death established. But when the guy
11 went to repair the machine that he had been
12 working on, he got shocked. And so there was
13 evidence that it came from electrocution. And
14 the unwitnessed -- and death presumption came
15 into play. He was at a his place work required
16 him to be. He was doing the activities of what
17 he was supposed to be. And by the way, I left
18 out one other thing, everybody agrees that they
19 have fallen or almost fallen -- generally,
20 almost fallen, from -- on those steps of those
21 trucks. They -- you know, so metal -- the grid
22 trucks that are on all the dump trucks. And if
23 you've ever worked on one, then you will know
24 what I'm talking about, how easy it is to catch
25 your foot and turn. So I ask you to apply the



1 presumption, grant Mr. Turner benefits.

2 COMMISSIONER WILKERSON: Thank you.

3 MR. MCDANIEL: Thank you for your time.

4 COMMISSIONER WILKERSON: You have two minutes in
5 reply.

6 ARGUMENT BY MR. LOCKHART:

7 MR. LOCKHART: Your Honor, may it please the
8 Commission? I'm here this afternoon on behalf
9 of the Employer in this case. We maintain that
10 there is substantial evidence to support
11 Commissioner Barden's decision. We maintain
12 that she correctly applied the law in this case
13 to reach the conclusions that she reached.
14 I've enjoyed listening to Mr. McDaniel's
15 arguments this afternoon, but I would -- I
16 would argue in opposition to him today and say
17 that I think he brings more questions to this
18 panel than answers. One of the obligations the
19 Claimant has in any case is to satisfy the
20 burden of proof that's required under Section
21 42-1160 of the act. And in this case,
22 Commissioner Barden found that that burden
23 wasn't satisfied. And I understand that the
24 act says that application should be liberally
25 construed to benefit the injured worker. But



1 at the same time, a liberal construction is not
2 to do damage to or ignore the principles that
3 are outlined in the statute and the case law.
4 And in this particular case, I think the
5 evidence is pretty clear, the Claimant cannot
6 satisfy his burden of proof here, for a number
7 of different reasons. I think, number one, he
8 has no memory of the accident. Not only does
9 he have no memory of his accident, he has no
10 memory of what occurred the day before, the day
11 of or the day after. There were no witnesses
12 to his fall. And so that, in and of itself,
13 would seem to suggest that he can't satisfy his
14 burden of proof. But let's talk for a moment
15 about this unexplained death presumption that's
16 discussed in the Claimant's brief and brought
17 up by Claimant's counsel this afternoon. That
18 presumption deals with one of the two prongs of
19 42-1160. And you -- and you all know what both
20 prongs are. One is that a Claimant has to
21 prove that they were injured in the course of
22 their employment. And the other prong is that
23 they have to prove that their injury arose out
24 of their employment. And the unexplained death
25 presumption, when you read all the case law,



1 particularly the Packer case, which I think is
2 cited by both parties in this case. It says
3 that the unexplained death presumption may not
4 be availed of to establish that a date of
5 accident -- or I'm sorry, that an accident
6 arose out of the Claimant's employment. That
7 presumption is to address whether or not they
8 were injured in the course of their employment.
9 And so even if you apply that presumption to
10 the facts of this case, you're going to reach
11 the same result, which is that the Claimant
12 cannot satisfy his burden of proof. I'd ask
13 the panel to look specifically at Finding of
14 Fact 24, where Commissioner Barden really goes
15 into detail about the basis for her decision.
16 She says, based on the entirety of the
17 evidence, including the medical records
18 submitted, I find that even if the undersigned
19 presumes that the Claimant was in fact injured
20 through his employment, I'm confronted with the
21 following. And then she lists a collection of
22 information, that there is no known case of the
23 fall, the Claimant had been taking prescription
24 medication for back pain in the few days
25 preceding the date of accident, that he sought



1 treatment at an emergency room two days before
2 the date of accident for stomach and
3 dehydration issues, that no one saw the
4 Claimant on the steps of the truck. Someone
5 saw him actually standing on the ground, which
6 we argue even more so supports our idiopathic
7 injury position. And, of course, the Claimant
8 gave sworn testimony in a deposition that was
9 inconsistent with witness testimony regarding
10 where he was and what he was doing when the
11 accident occurred. So clearly, you know,
12 Commissioner Barden, when you review her order,
13 when you look at the evidence in this case, you
14 took all of this into consideration in reaching
15 her decision. So we think clearly there is
16 substantial evidence to support her
17 conclusions. I think Claimant's counsel
18 maintained that Mr. Turner had no problems at
19 all before this accident occurred that could
20 have necessarily given rise to a fall or an
21 event. I think, as I touched on a moment ago,
22 the medical evidence says the exact opposite.
23 He is alleging an injury to his back in this
24 case, by the way, and we have medical evidence
25 clearly saying that two days before the injury

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P363

1 occurred he was in a doctor's office
2 complaining about back problems. They were
3 severe enough to the point he was getting
4 prescription medications. Also I'd point out
5 to the panel that there's medical evidence that
6 shows later on down the road he actually had
7 another injury to his back when he fell from a
8 horse. So -- but with regards to the date of
9 accident, I don't think it's true that he was
10 -- he was perfectly healthy and symptom-free
11 before he had this alleged work-related fall.
12 Let's talk about the issue of whether or not he
13 was involved in or sustained an idiopathic type
14 injury. We maintain that the Commissioner's
15 conclusions regarding those issues or that
16 issue is supported by the Court's decisions in
17 both the Crosby and the Nicholson case. Also,
18 the Bagwell case supports that portion of
19 Commissioner Barden's decision. And Bagwell,
20 as you all know, a claimant must show that the
21 cause of a fall or resulting injury bore some
22 special relation to his work or to the
23 conditions under which it was to be performed.
24 In this case, the Claimant can't satisfy that
25 burden of proof. He can't show you, through



1 the evidence that's been submitted, that the
2 cause of this fall bore some relation to his
3 work. If we think about the last moment that
4 anybody saw him, presumably, he was standing on
5 a level surface, placing his personal items
6 into a company vehicle. If he was standing on
7 a level surface when this fall occurred, the
8 case law that's dealt with this issue many,
9 many times over the years, has said that such
10 a fall would not be considered a compensable
11 work-related injury. So even if we take the
12 last time he was seen and presumably if he fell
13 when he was standing on a level surface, again,
14 we don't know. But if that's where he was when
15 his fall occurred, it would not be a
16 compensable injury under our law. His fall is
17 unexplained. No one remembers it, no one saw
18 it. And an unexplained fall is the definition
19 of an idiopathic fall. And those injuries, as
20 you all know, are not compensable. They have
21 consistently been found not to be compensable
22 by both our appellate courts and by this
23 Commission. You know, again, I think the
24 problem with this case from the Claimant's
25 standpoint is the inability to really piece



1 together the facts and circumstances of what
2 occurred. And I think while the unexplained
3 death presumption is good law in South
4 Carolina, it's not the only obstacle that the
5 Claimant has to overcome in this case to prove
6 that he suffered a compensable injury. And so
7 we would ask this panel to affirm Commissioner
8 Barden's decision. Thank you.

9 **COMMISSIONER WILKERSON:** Mr. McDaniel, any reply?

10 **REPLY BY MR. MCDANIEL:**

11 **MR. MCDANIEL:** Very quickly. Quoting from page nine
12 of my brief, I know there's one thing I want to
13 point out. Here we go again, apples and
14 oranges. This is not an idiopathic fall case.
15 This is an unexplained witness case. In other
16 words, unexplained death or injury case.
17 Idiopathic fall cases do not apply. If you
18 don't believe -- if anybody doesn't want to
19 think that, read Crosby which is what they all
20 cite every time about idiopathic falls. In
21 other words, and -- this is straight from
22 Crosby, those in which the fall is unwitnessed
23 or purely unexplained. That's one type. And
24 those in which the evidence established that
25 the fall, while unexplained, had an apparent



1 lack of work connection. The Crosby case, the
2 lady testified that nothing caused her fall.
3 Bagwell, it was an apparent seizure. They had
4 four witnesses looking at him. The same thing
5 is true in the Miller case. The idiopathic law
6 cases, you must apply -- already, I've been
7 over here and argued this one time before, and
8 the Court -- and over in Circuit Court, the
9 Circuit Court affirmed -- or reversed the
10 decision of this Commission and said, you've
11 got to apply the unexplained death and injury
12 presumption case to this -- the facts of this
13 case. You cannot base it on the idiopathic
14 fall line of cases. That's -- that is a higher
15 level court, and that is the ruling that stands
16 right now. Now, next off -- by the way, my co-
17 counsel wanted me to remind you that my client
18 is aged 26. So in reference to pre-existing
19 conditions and all of that. Next thing is,
20 welcome to reading Bagwell. I told you I cited
21 Bagwell right off the bat. And here's what
22 Bagwell says, you must read the evidence in the
23 light most favorable to the injured worker.
24 The -- what Mr. Lockhart was referencing about
25 special relationship to the work is that even



1 if the fall is not related to the work, if the
2 work increases the effect of the fall. Like,
3 for example, I had a man one time that had a
4 seizure or something happened to him and he
5 fell -- everybody agrees he just fell over into
6 -- but he fell into an auger. Okay? And the
7 -- they said, whether or not it was related
8 that the conditions of the work increased it.
9 You know, in the case of Bagwell, it was on the
10 concrete floor, and they said, no, that's no
11 special relationship, the work didn't --
12 anyway, so that's what that reference to
13 special relationship of the work has to do with
14 it. I ask you to apply the unexplained injury
15 and death presumption, which requires it is a
16 presumption of fact of law that says that where
17 a person is supposed to be -- and I disagree
18 with Mr. Lockhart. And if you read the Supreme
19 Court decisions, you're going to find they
20 disagree with it. It is not to establish the
21 first prong arising out of the course of, but
22 -- in the course of, but arising out of. It's
23 the second prong the presumption applies to.
24 It always applies to that. You know, everybody
25 agrees that the man in Ocean Forest, when he



1 was found with a bullet shot wound to the head,
2 was where he was supposed to be. Everybody
3 agrees to that in Jake's case, every one of
4 them. What it establishes is arising out of
5 the course of -- arising out of the employment.
6 That's the prong it establishes. That's the
7 prong that requires the rebut, and that's the
8 prong that they did not rebut. Thank you.

9 **COMMISSIONER WILKERSON:** Thank y'all. Appreciate
10 y'all being here.

11 **(There being nothing further, the hearing concluded**
12 **at 3:52 p.m.)**

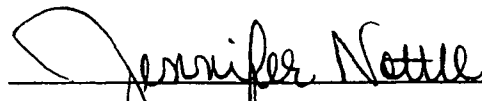


CERTIFICATE

This is to certify that the within hearing consisting of twenty (20) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 6, 2015.



Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

William Lee Turner)
vs. Claimant,)
Saiia Construction,)
and Employer,)
Old Republic General Ins c/o)
Gallagher Bassett Service, Inc.,)
Carrier,)
Defendants.)

COPY

W.C.C. File No.: 1204039

DEPOSITION OF PAUL BARNETTE

August 20, 2012
10:15 a.m. - 10:45 a.m.

The deposition of Paul Barnette taken by John K. Koon, Esquire, at McAngus Goudelock & Courie, LLC, 1320 Main Street, 10th Floor, Columbia, South Carolina on Monday, August 20th, 2012, beginning at 10:15 a.m. pursuant to the South Carolina Rules of Civil Procedure before Susie Kell, Court Reporter and Notary Public for the purpose of discovery, use at trial and all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.

APPEARANCES

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Representing the Defendant

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EXHIBITS

(There were no exhibits marked in this deposition).

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to Section 42-3-160 of the South Carolina Code of Laws, 1976, and any other rules agreed upon by and between counsel.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby WAIVED.

1 PAUL BARNETTE, being duly sworn and cautioned to speak the
2 truth, the whole truth and nothing but the truth, testifies as
3 follows:

4 MR. BARNETTE - DIRECT EXAMINATION BY MR. KOON:

5 Q Mr. Barnette, I introduced myself earlier. I'm John
6 Koon. I represent Lee in the injury out there on the
7 job. I think you referred to him as Lee?

8 A Yes.

9 Q Instead of William?

10 A Yes.

11 Q You've been given a few instructions in how a deposition
12 goes. Have you ever had your deposition taken before?

13 A No, I have not.

14 Q Have you ever been involved in any workers' comp, on-the-
15 job injury, yourself?

16 A I have not.

17 Q Okay. How long have you been with Saiia?

18 A It will be two years this coming -- the middle of March,
19 end of March, a year and a half, seven or eight months.

20 Q What's your job responsibilities with them?

21 A Just an operator. You know, everybody there is a driver
22 and operator.

23 Q You do essentially the same thing that Lee does then?

24 A He had been there a few more years, so he was a little
25 bit more trained, a little bit more than I am on some of

1 the equipment, but, you know, initially the same thing.

2 Q Who did you work for before Saiia?

3 A I worked with ATM Services doing ATM work, building
4 ATM's, and then I worked 21 ½ years inside IP, inside as
5 an operator, industrial operator.

6 Q I'm sorry, did you retire from them?

7 A Didn't really retire from them. My Mother died of
8 alzheimers and I kind of felt like I wanted to do
9 something different. You know, working shift work was
10 kind of hard on me and I got my girls out of college and
11 my house paid for and I decided to relax some.

12 Q Okay. Sounds like a good plan to me. Did you work at
13 Eastover?

14 A Yes, I did.

15 Q What did you do there?

16 A Operating technician.

17 Q Do you know any of the engineers there?

18 A Some.

19 Q Jim Oakley?

20 A Yes, I know Jim, a fine fellow.

21 Q Yes, Jim's a buddy of mine. He retired, too, by the way.

22 A Yeah?

23 Q He actually retired. So you've worked with Lee Turner
24 two years or so?

25 A From the date I started -- Yeah, between a year and a

1 anything like that.

2 Q Whenever you say feeling good, are you talking in general
3 terms or are you talking about the time frame about when
4 he fell?

5 A I'd say within three to three and a half weeks before, in
6 that two to three weeks before, just not having the
7 energy and, you know, a little bit, but never felt
8 anything. I think Lee was the type gentleman if he felt
9 like he was a danger with a truck, he would have went
10 home. He had very good integrity.

11 Q Whenever you're talking about feeling good or not feeling
12 good, do you know if that had anything to do with a
13 stomach problem he may have had?

14 A Yeah, you know, I knew he had went to the emergency room
15 and got some medications or something like that. I don't
16 know all the details. You know, your records show that.
17 But he worked a few days and he was off checking with the
18 doctors in the two or three weeks before that.

19 Q Do you know also that he had seen a doctor for a low back
20 problem, his back was hurting and he went to see a
21 doctor?

22 A He had discussed he had a back problem when he was a
23 teenager, younger, a teenager, you know, and I knew that.

24 Q All right, and did he seem to get over those two problems
25 without any ---

1 A It seemed -- the day that he had the accident, Lee was
2 feeling as good. He was energetic. He was cutting up.
3 He was driving a truck. Every time he seen me he would
4 honk the horn and give me a thumbs up or something, so I
5 thought Lee was a hundred percent that day. I mean, you
6 know, he was back to himself.

7 Q So nothing unusual ---

8 A No.

9 Q --- was going on that day?

10 A No.

11 Q Well, let's say did you come to work about seven o'clock
12 in the morning?

13 A Yes. I come to work at seven. Lee was doing the same
14 job I was. We were hauling for the wood yard. We were
15 hauling debris, sticks, and limbs, and debris, to a
16 landfill and we got to push it up. We were -- I'd say
17 both of us probably hauled 25 loads that day. You know,
18 I'd say we passed each other every 10 or 15 minutes. You
19 know, I met him. I seen him all during the day meeting
20 on back, you know, on dirt roads and going to that
21 landfill.

22 Q How far was the landfill from IT?

23 A It's on IT's property.

24 Q Oh, it is?

25 A We were only going say 250 or 350 yards from where we was

1 being loaded around a wood yard into a little debris, a
2 debris place just dumping debris. It's not really the --
3 we've got a commercial landfill that takes debris out of
4 the company and then we had a little wood yard place that
5 they just put limbs and debris to be taken care of later
6 and it was right beside the hill storage area. There's a
7 place there, the hill storage area, where exterior wood
8 is stored.

9 Q So you think that you, as well as Lee, had hauled 25 plus
10 loads of debris that day?

11 A Yes, I think 25 loads each.

12 Q And he would have also come to work about seven o'clock
13 in the morning?

14 A Yes.

15 Q Did you actually see him when he fell?

16 A No, sir.

17 Q Were you close to where he fell?

18 A Yes, sir.

19 Q Were you on the passenger side of the truck when he fell
20 or were you on the driver side?

21 A His truck was pulled in a wash rack. His truck was
22 pulled head on into the wash rack. I come in and I
23 backed my truck on the outside of his backed in and I got
24 out and helped him. The wash rack, the hose and
25 everything was right here (indicating), and that truck

1 was right there (indicating), and the press was right
2 there (indicating), that pressed out. The truck was
3 being loaded to haul press out. So there were really
4 four trucks within a bay of a 50 or 60 square yard area.
5 And I got -- I pulled my truck out on the left-hand side.
6 I backed in on the left-hand side of his and got out and
7 helped him wash his truck. We, you know, cleaned the
8 hood and the windshield and everything, and it was --
9 don't quote me the exact time, between the two to three
10 o'clock time. We were getting reading to go to work and
11 I said, Lee -- I helped him wash about half of his truck
12 and I said, Lee, if you want to go in and get our time
13 straight and get our time sheets turned in and get my
14 cooler, my lunch cooler and his bag, you could do that
15 while I wash my truck.

16 Q Okay.

17 A So he backed his truck out and drove it over here
18 (indicating), in the parking lot, which is -- I always
19 said 40, 50, 60 feet at the most, and he parked his truck
20 over there, and I was on the blind side of the truck over
21 here where his truck was parked initially washing the
22 truck. So I was over there I would say seven, eight,
23 maybe ten minutes at the most. And, you know, at that
24 time, David stepped out of the hut. The hut is right
25 over here (indicating), and walked over to my truck and

1 was in the blind side talking to me.

2 Q That's David Bolden?

3 A David Bolden. Now you know, when I got finished washing
4 the side of my truck, I went around to the tailgate and
5 was washing the tailgate off and I just turned and caught
6 a glimpse and I just looked to my left and he was on the
7 ground, fell with his hands just like up there and just
8 fell completely backwards on the backside of his head.

9 Q All right. Let me back you up a little bit.

10 A Okay.

11 Q Whenever you're talking about trucks, you're talking
12 about a very large dump truck?

13 A Yes.

14 Q What's the yardage on that, cubic yardage?

15 A I'd say, I think it was 15 or 18 cubic yards, dual wheel.
16 He was driving a KW.

17 Q Is that normally what he drives?

18 A Yeah. He drives the KW or the Sterling. The KW is the
19 truck he preferred. I think he was in -- it was either
20 the KW or the Sterling that he was in. But I'm pretty
21 sure it was the KW.

22 Q Okay. He had mentioned Sterling when his deposition was
23 taken.

24 A Might have been the Sterling.

25 Q That could be right or it could be wrong. We don't know.

1 A He may have been in the sterling that day, but he drove
2 either one of those trucks. And I was driving a Mack.

3 Q And the Mack and the KW or the Sterling all are big dump
4 trucks?

5 A All the same trucks.

6 Q And you had indicated you were about 40 to 60 feet away
7 from where he was going and you also mentioned the hut.
8 Is the hut where he was going?

9 A No. Okay. You can say right here -- here's the wash
10 rack right there (indicating). He pulled the truck in.
11 Right here (indicating), was his truck, and that was the
12 front. I backed mine right here (indicating), and my
13 rear -- and right here is an unloading thing that stuff
14 comes in. The hut is right here (indicating).

15 Q And what's in the hut?

16 A The hut is just a 10, 10 by 12 little personal building
17 that they stay in the air conditioning and stay cool and
18 put their lunch.

19 Q So when you finished his truck or when you were going to
20 wash your truck, he was to go to the hut to get the
21 personal papers?

22 A No, uh-uh. He didn't go to the hut. See you back up and
23 the hut is right here (indicating), with the people, with
24 David in it. We have an office trailer I would say right
25 here (indicating), and he went to the trailer. And this

1 is all parking area here (indicating), and there's a big
2 old water tower right here (indicating), and he backed
3 up, and all this is parking area (indicating), and pulled
4 the truck about right in here (indicating).

5 Q Okay.

6 A And maybe a little bit -- It was more over like in here
7 (indicating).

8 Q A little bit beyond the water tower?

9 A Yes, a little bit beyond. I was washing my truck right
10 here (indicating), and I could not see him right here
11 (indicating). He walked -- he parked the truck and went
12 inside the office and got his time sheets.

13 Q All right. Can I slow you down a little bit?

14 A Okay.

15 Q Whenever he backed out, did he pull forward with the
16 truck? He would have been ---

17 A Yeah, yeah, he pulled forward.

18 Q If I put an arrow here (indicating) ---

19 A He was facing ---

20 Q --- and put "front" ---

21 A Yeah.

22 Q --- that would be the front of his truck?

23 A Yeah.

24 Q Now so the passenger side would have been toward where
25 you were on that truck?

1 A Yes. The passenger door was right here (indicating) and
2 you know in an angle like that (indicating).

3 Q Okay.

4 A And I was washing right over in here (indicating). And
5 then you know when I was washing down that way and I went
6 around to the back. And, you know, this might not --
7 it's not an accurate drawing, but you know we looked at a
8 diagonal over here. When I got back over here and backed
9 off the back of the truck about 6 foot, I looked over and
10 he was laid out.

11 Q Okay. Did you see him at all after he got out of the
12 truck to go into the ---

13 A No, I didn't. I didn't see anything as far as that. I
14 was more focused on getting my truck ready and going home
15 with him, me and him leaving at the same time. He went
16 in to get the time sheets and get our two sacks and our
17 bags and, you know, he brought them up. But when he did
18 fall with my 12-pack lunch sack and his backpack was in
19 the seat of the truck.

20 Q So it had been put in there?

21 A It had been put on the seat and to be able to get up to
22 put my stuff up there -- it wasn't thrown in, it wasn't
23 in the floorboard, it was in the seat. So sometime
24 another he did get up the first step and then the second
25 step.

1 Q Now the trucks, whenever they're washed, is that a daily
2 responsibility ---

3 A Yes.

4 Q --- of cleaning the trucks up ---

5 A Yeah, yes.

6 Q --- before you go home you have to do that?

7 A Before you go home, we will clean them up just for
8 maintenance of the truck and the cleanliness of the
9 truck.

10 Q And that's what you were instructed to do?

11 A Yeah. Yes, sir.

12 Q And do you use a soap on the truck?

13 A On the hood and the windshield a little bit. We've got a
14 -- it's an 8 foot stick with a brush on it and we'll
15 clean it a little bit. But most of it, just being honest
16 with you, most of it is done by a high pressure hose.

17 Q Yes. And the sides where you step up and all ---

18 A They were all -- the trucks were clean.

19 Q Well, what I'm driving at though is would any soap, you
20 think, get over on perhaps the steps as you step up?

21 A Not that type of step. It's one of those perforated
22 steps with the little things sticking up like that
23 (indicating).

24 Q For ---

25 A For traction.

1 Q --- surefootedness?

2 A Surefooted traction, yes. Those steps you don't hardly
3 slip on. If anything happened, he got up there and the
4 step caught his shoe when he was trying to slide -- if
5 you don't pick your shoe up, those steps will grab a
6 cleat on a boot.

7 Q Has that happened to you in the past?

8 A I never fell, but it is something that I realize that can
9 happen.

10 Q Well, what I'm talking about though, have you ever caught
11 your foot and been able to correct it and not fall from
12 climbing up on these?

13 A Yes, sir. Anytime you get up on that truck there's a
14 rail beside the door, a hand rail, a stainless hand rail
15 about this far off (indicating), and, you know, when you
16 open up the door, you almost have to have -- you know,
17 you got to have two or three point connections there. On
18 the record now, I don't know. I know speculation is not
19 really a thing, but my speculation is that he got on the
20 first step, got on the second step, put the lunch box up
21 there and my speculation is he was on the second -- you
22 make sure this is speculation, but my speculation is he
23 was on the top step when he fell backwards because of the
24 amount of injury on the back of his head and the way he
25 fell on the ground.

1 Q Now you've talked about a backpack that was his?

2 A Yes.

3 Q And what was yours, a cooler?

4 A A 12-pack cooler. You know, there's a cooler that you
5 put 12 drinks in and you know.

6 Q Do you know if you had drank all of those or would that
7 be a lot?

8 A Most of them -- most of the time I bring four to six
9 drinks and if there were anything in there, I'd say there
10 was a minimum of two drinks left. I usually drink a
11 drink on the way home and that's the reason one to two
12 drinks, and some empty containers.

13 Q Do you know if he carried both of those up at once?

14 A Do not know that, that would be speculation on my part.

15 Q All right.

16 A Knowing Lee, I would say no, you know.

17 Q Was he pretty safety conscious?

18 A He was a very young man, very agile, very strong for his
19 size. You know Lee didn't weigh 145, 55 pounds soaking
20 wet, but he was real wiry and by knowing Lee, I don't, I
21 wouldn't speculate, but I wouldn't think he would even
22 attempt to take both of them up and hold the guard rail,
23 but that, I did not see that.

24 Q Okay. Now it's two steps. I assume it's a foot or so?

25 A The first step is about this high (indicating) off, and

1 the second step is about ---

2 Q All right now, she can't put down this high. How far off
3 the ground?

4 A Fifteen to 18 inches, the first step, and say 36 to 42
5 inches on the next step.

6 Q And then would you go higher to step into the truck?

7 A No. It's -- the second step is right on the lip of the
8 fuel tank and then you step into the floor bed of the
9 truck and you got a handrail for your left hand. And
10 also, you've got the door open, so you've got the door,
11 the left hand and the steps. And you know, it's only
12 this high (indicating), to the floorboard of the
13 passenger side of the truck.

14 Q And this high?

15 A Six inches.

16 Q Okay. So then the seat is how far above that?

17 A Normally, 30 inches, 28, 30, just normal height of the
18 seat for somebody to sit comfortable.

19 Q And if he were standing on the top steps let's say, when
20 he fell or slipped or whatever caused the fall, you know,
21 how high would his head be above the ground? Any idea?

22 A Yeah. Lee was 5'3", 5'4", so you're talking 8 ½ feet, 8
23 ½, 9 feet at the most.

24 Q Okay. And what about other people, has anybody ever fell
25 from these, slipped off of the steps on trucks that you

1 recall?

2 A I don't know of any, anybody getting injured, you know,
3 so. If you're not careful and you haven't got two or
4 three point connections, it's very easy.

5 Q To?

6 A To lose your balance and have to grab yourself. I've
7 lost my balance and grabbed hold real quick or something
8 like that, just spinning or something like that, you
9 know.

10 Q So would it be fair to say that at all times from seven
11 o'clock that morning until he moved the truck at whatever
12 time it was ---

13 A Between 2:30 and somewhere. I know our time is on our
14 deposition.

15 Q And he had no complaints of headache?

16 A No.

17 Q No complaints of dizziness?

18 A No.

19 Q No complaints of feeling ill?

20 A No.

21 Q Any complaints of feeling unusual?

22 A Not that day. I thought Lee, I -- you know, in the back
23 of my mind, I thought, you know, Lee was back to a
24 hundred percent. I thought Lee was doing "A number one"
25 that day.

1 Q Is he an honest type of fellow?

2 A Very honest.

3 Q Now, whenever he walked away, did you notice him walk
4 away from where you were washing the truck?

5 A Did not, I didn't pay him that much attention. I knew
6 where he was going and the only thing I did, he went
7 around the front side of the truck and I stayed on the
8 blind side of -- I guess it would be the driver's side of
9 the truck, between there and where the wash rack was,
10 right there with the hose washing.

11 Q Now where was David, David Bolden?

12 A He was in the hut, which is approximately 25, 35 feet.
13 He was inside.

14 Q Had David worked alongside the two of you that day?

15 A No, he had not. He was doing a different job hauling
16 inside the place. We were just washing our truck inside
17 his -- where he -- where he stays at when he's waiting on
18 a truck to be loaded.

19 Q Okay. Is it air conditioned?

20 A Yes.

21 Q So it would be unusual for somebody to get overheated?

22 A He is an "A number one" boss. Everybody there knows to
23 stop and get drinks, stop and take a break. There's no
24 extra push or anything where you're going to be fussed at
25 for taking a break.

- 1 Q I guess the trucks are air conditioned?
- 2 A Yes.
- 3 Q Do you run them when it's hot?
- 4 A Oh, yeah.
- 5 Q Do you recall if you had run it that day?
- 6 A The Sterling, which truck he was in, is very good. It
7 would almost make you roll the window down on a hot day.
8 The Mack is not quite as good, the one I was in, but the
9 Sterling had an extra good air conditioner in it, the
10 best one in the fleet of trucks we've got there.
- 11 Q And whenever like the 25 or more loads that you had
12 carried, would you spend most of your time inside the
13 truck?
- 14 A All the time.
- 15 Q All right.
- 16 A You never get out of the truck. You just back up and
17 they blow the horn at you and you stay in the truck in
18 the air conditioner with the radio on. You crack your
19 window and wait for them to blow for you to move on and
20 go unload it. Very seldom do you get out of the truck
21 when you unloading. If you get a tailgate that's got mud
22 or debris on it, you may have to get out and scrape it
23 like every third, fourth load. It's not a physically
24 real draining job.
- 25 Q How did you first learn that he had fallen? Did somebody

1 holler out ---

2 A No.

3 Q --- or did you notice it?

4 A I was the first to notice it. You know, after I washed
5 the blind side of the truck and went around to the
6 tailgate, I looked up and said, Lord, Lee, you know, and
7 David was four foot beside me. And I walked toward Lee
8 and tried to -- you know, Lee, Lee, Lee, and went over
9 and got down to him and he was trying to move a little
10 bit. I was trying to keep him from moving because of the
11 fear of him injuring his neck or anything. And I did not
12 know that he had drank Gatorade. He had went to the
13 cafeteria between when we left hauling and I started
14 washing my truck. He went by the cafeteria and got a 16
15 ounce Gatorade. He had drank half of that Gatorade. It
16 was that Passion Fruit or whatever, so he had scared me
17 to death when I went over and he had red stuff coming out
18 his mouth and I think it was more of the Gatorade, but I
19 did say in my statement he had blood, I thought, in his
20 mouth and I turned his head and made sure that he didn't
21 get choked on any vomit.

22 Q Did he actually vomit?

23 A He, yes. In about a minute and a half, he was starting
24 some -- I don't know if I could say seizure, but that's
25 what I would call it. He was vomiting just from the lick

1 on his head.

2 Q Whenever -- I'm sorry, go ahead.

3 A We turned his head over to the side and tried to keep him
4 as still as we could.

5 Q Whenever you first arrived there, was he throwing up?

6 A No, it was a minute or a minute and a half later.

7 Q Whenever you first arrived there, was he thrashing about?

8 A At first of all, he was not completely.

9 Q Whenever you first arrived there, were his arms flailing
10 about or anything like that?

11 A Straight out.

12 Q By straight out, you're talking about the palms up?

13 A Oh, yes. Palms up, just like he had been in a stickup.

14 Q All right.

15 A I mean that may be just a bad way to say it, but flat on
16 his back, no, no -- he didn't seem to twist, turn or
17 nothing, you know.

18 Q It seems like when you hesitate, I'm wanting to ask
19 another question, but if you want to say something ---

20 A All right.

21 Q --- else, if you'll let me know and you can talk as long
22 as you like.

23 A Okay.

24 Q Now whenever you first got there, you had mentioned a
25 seizure at some point, a minute, a minute and a half

1 after you got there.

2 A He seemed like he just wanted to vomit.

3 Q All right, and that's what you're calling a seizure?

4 A Yeah. I don't know, you know.

5 Q Was he trembling or anything?

6 A Not at that time. You know, like I said, three to five
7 minutes. David was communicating to the 78 (?) and the
8 other people to come and I was making sure he didn't move
9 and hurt himself and just checking on him. And he
10 started vomiting and I was concerned you know about him
11 choking, so I turned his head. And within two to three
12 minutes or in the two to five minute time frame -- we've
13 got First Responders throughout the mill. Within five
14 minutes there were three or four responders there.

15 Q And those are emergency personnel?

16 A They're trained First Responders that's on the fire
17 brigade. They are trained. So as soon as they showed
18 up, I backed up. I was just there for support and trying
19 to -- because Lee knew my voice. You know, I might be
20 able to calm him more than what they could.

21 Q Well, we are now at a pretty critical juncture and I want
22 to ask you and walk through with baby steps on this.

23 A Okay.

24 Q Would you say what you're describing as throwing up or
25 seizure or whatever it may have been, was that different

1 than what you saw when you first got there or did it
2 manifest itself in three to five minutes as you said?

3 A It manifested a little bit later. I think he was knocked
4 so unconscious or silly to start with and as he started
5 coming to and as the different people got around him
6 trying to move him, trying to check his injuries, he got
7 more combative because of that. And seizure might have
8 been the wrong word at the first, the beginning, but as
9 he -- as they moved him around, you know, he was trying
10 to -- Boy, he wanted to get up. You know, as he started
11 coming to a little bit, he wanted to move around. And
12 they were trying to stabilize him and stabilize his neck
13 and get him on a backboard and make sure he was taken
14 care of the best he could be taken care of.

15 Q Did you notice any injuries to the back of his head?

16 A Yes, sir.

17 Q Was he bleeding?

18 A Slightly. It was just a little blood matted in his hair
19 in the middle of his back, in the middle right there
20 (indicating).

21 Q And would it be fair to say that you don't know how long
22 he was laying there before you got to him, before you
23 noticed it?

24 A Yes. You know, I would say I seen it within three to
25 four minutes at the most that he could have been there.

1 Now, you know, David -- when David walked out of the hut
2 now -- and I'm not speaking for David, but he said that
3 he seen him walking toward the truck and he kept
4 continuing walking over to me, where he was blinded when
5 he was putting stuff in the truck or whatever he did on
6 the side of the truck.

7 Q So David indicated he saw him coming back from the
8 trailer?

9 A From the trailer doing the time cards.

10 Q Would that have been a time that he had the cooler and
11 had the backpack?

12 A In speculation, he had to have the cooler and the
13 backpack then, bringing it to the truck, so what happened
14 after that was very critical, of how he -- how he tried
15 to put the stuff in the truck.

16 Q Okay, so did Lee say anything to you? Was he able to
17 speak?

18 A He wasn't able.

19 Q He apparently knew who you were though, do you think?

20 A He knew who I was, but it was vague. He could -- he
21 recognized my voice, but anything else for the first
22 three or four minutes, no, I don't think. He knew my
23 voice. You know, you could see him kind of move around
24 or something like that, but no, I don't think -- besides
25 knowing my voice, he wasn't coherent enough to speak or

1 anything like that.

2 Q Did you guys normally work on Friday? This thing
3 happened on Thursday, right?

4 A We always worked Monday through Friday usually. At that
5 time we wasn't real, real busy. We worked from seven to
6 three, seven to 2:30 in that time frame. When we were
7 hauling for the wood yard, we were on the wood yard's
8 schedule. They sometime worked to four or 4:15. So
9 since we were contract haulers for the wood yard, we
10 worked whatever hours they wanted us to work is what we
11 worked.

12 Q So it could have been as late as 4:15 or 4:30, you're
13 thinking?

14 A No, not that day. My deposition showed -- kind of told
15 the time, you know. I wrote it within two days of the
16 same day of the accident, so whatever time is on my
17 deposition that I wrote as far as the written letter.

18 Q Okay. You had mentioned a statement earlier in the
19 deposition. Now you just gave a statement to somebody?

20 A We'd give a little written statement. Jimmy got us to
21 write down what we saw that day and I think both those
22 lawyers got copies of those.

23 Q Right, but the lawyer didn't take it? Jimmy -- you gave
24 it to Jimmy?

25 A We wrote it down in our words and signed it and then give

1 it to Jimmy Speegle.

2 Q Do you have a copy of that?

3 A No, sir.

4 MR. KOON: Can I get a copy of that?

5 MR. LOCKHART: Sure.

6 MR. KOON: Do you mind if I look at it before we go
7 forward?

8 MR. LOCKHART: Oh, you want it right now? You want
9 it right now?

10 MR. KOON: I want to see if there's anything in
11 there to make sure.

12 (Off the Record while Mr. Koon reviews the statement)

13 Q Paul, it says on this thing that around 4:15 or 4:30, and
14 this was taken the day ---

15 A Yeah.

16 Q You think that may be a little more accurate then?

17 A Yes, that's correct. And all that right there was
18 written down right at the end because that's 4:15 to 4:30
19 when the wood yard probably, you know, knocked off.

20 Q Okay.

21 A Everything there is exactly what happened that day. You
22 know, my memory on that day is a whole lot better than my
23 memory was back in May.

24 Q I'm not being critical. I just want to ---

25 A Oh, yeah, I know that, yes. I know what you're saying,

1 yes. That's why I said that there is the written gospel.

2 Q The only thing I see in here you hadn't already told me
3 and I might have missed it anyway, was the door to the
4 truck was still open whenever he was laying there on the
5 ground?

6 A It was. And like I said, the cooler and the backpack was
7 in the seat in a neatly arranged -- it wasn't thrown
8 from the ground up there.

9 Q And you said Lee appeared to have fallen back, but you
10 didn't witness it?

11 A I did not witness that.

12 Q That's based on how he was laying there?

13 A Yes, sir.

14 Q Now have you only given one statement?

15 A That's it, sir.

16 Q And you're still employed there?

17 A Yes, sir.

18 Q Have you seen him since he was injured?

19 A I talk to Lee two times a week. I invited him to ride up
20 to the farm with me yesterday. Lee seemed like he was
21 doing fairly well.

22 Q Now the EMS personnel there on the plant was not the same
23 people that took him to the hospital, was it?

24 A No, sir.

25 Q Another ambulance was called?

1 A Another ambulance from Richland Memorial, I think, or one
2 of them in Columbia came to the -- came to there and
3 picked him up. And me and Jimmy followed them.

4 Q Would you like to see Lee back to work when he's able?

5 A I would like to see Lee 110 percent better than what he
6 was. Lee's a fine gentleman.

7 Q He's improving okay though, you think, in your
8 conversations with him?

9 A He's improving good. You know, I was concerned the first
10 month, the first five weeks, you know, about how he was
11 acting or when you was carrying on a conversation with
12 him and it seems like he's back to the same Lee.

13 MR. KOON: Thank you very much.

14 MR. BARNETTE: Thank you, I appreciate it.

15 (There being no further questions or testimony, the deposition
16 of Paul Barnette concluded at 10:45 a.m.).

CERTIFICATE OF REPORTER

I, SUSIE KELL, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF PAUL BARNETTE ON MONDAY, THE 20TH DAY OF AUGUST, 2012, AT THE OFFICE OF MCANGUS, GOUDELOCK & COURIE, LLC, 1320 MAIN STREET, COLUMBIA, SOUTH CAROLINA; AND THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION TO THE BEST OF MY ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY, ANY PARTY CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

THE ORIGINAL TRANSCRIPT SHALL BE SEALED AND DELIVERED TO JOHN K. KOON, ESQUIRE OF KOON & COOK, P.A. IN COLUMBIA, SOUTH CAROLINA WHO SHALL BE RESPONSIBLE FOR FILING WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 3RD DAY OF SEPTEMBER, 2012.



SUSIE KELL, COURT REPORTER

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES MARCH 21, 2012

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

COPY

William Lee Turner,)
Claimant,)
vs.)
Saiia Construction,)
Employer,)
and)
Old Republic General Ins c/o)
Gallagher Bassett Service, Inc.,)
Carrier,)
Defendants.)

W.C.C. File No. ~~17~~ 04039

DEPOSITION OF DAVID BOLDEN

August 20, 2012
10:55 a.m. - 11:05 a.m.

The deposition of David Bolden taken by John K. Koon, Esquire, at McAngus Goudelock & Courie, LLC, 1320 Main Street, 10th Floor, Columbia, South Carolina on Monday, August 20th, 2012, beginning at 10:15 a.m. pursuant to the South Carolina Rules of Civil Procedure before Susie Kell, Court Reporter and Notary Public for the purpose of discovery, use at trial and all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.

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EXHIBITS

(There were no exhibits marked in this deposition).

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to Section 42-3-160 of the South Carolina Code of Laws, 1976, and any other rules agreed upon by and between counsel.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby WAIVED.

1 DAVID BOLDEN, being duly sworn and cautioned to speak the
2 truth, the whole truth and nothing but the truth, testifies as
3 follows:

4 MR. BOLDEN - DIRECT EXAMINATION BY MR. KOON:

5 Q David, good morning. I appreciate you coming this
6 morning. Your deposition is being taken, you said, not
7 like this. You had given a deposition before?

8 A Oh, yes, sir, over the phone.

9 Q Just a statement?

10 A Just a statement over the phone.

11 Q Did it have to do with this case?

12 A No, sir, no.

13 Q Okay. Have you given a statement in this case?

14 A I wrote a statement from what I saw that day.

15 Q All right. Do you refer to William Lee Turner as Lee,
16 also?

17 A Yes, sir. Yes.

18 Q Paul said that he did, so I figured everybody called him
19 Lee. How long have you worked with Saiia?

20 A Going on four years.

21 Q Four years?

22 A Yes, sir.

23 Q And is it your responsibility and duty to drive a truck
24 and other heavy equipment?

25 A Mine is just driving a truck.

1 Q All right. You have a CDL though?

2 A No, sir.

3 Q You do not?

4 A Onsite.

5 Q Okay, so you drive a truck there on IP property?

6 A Yes, sir.

7 Q And you have no other responsibilities other than driving

8 the truck itself? And I don't mean like washing it and

9 that type thing. Or any other heavy equipment, you don't

10 operate it?

11 A I don't operate no heavy equipment, no, sir.

12 Q Is truck number 4031, is that a Sterling, or do you know?

13 A I think it's a Sterling, sir.

14 Q All right. I've got a copy of your statement that you

15 apparently gave on the day that Lee was injured. Is that

16 right?

17 A Yes, sir.

18 Q Did you give that to Jimmy Speegle or ---

19 A Yes, sir.

20 Q Okay. Did Jimmy ask you for it?

21 A He wanted for us to give statements of what happened.

22 Q Okay. And as I understand it, you didn't actually see

23 him get injured or fall from the truck, did you?

24 A No, sir.

25 Q I believe the first indication you had that he was

1 injured was that Paul said there's Lee laying on the
2 ground?

3 A Yes, sir.

4 Q And was he laying on his back?

5 A Just like that (indicating). Laying on his back.

6 Q Like a stick up?

7 A Like he was holding his hands up above his head.

8 Q Was the door open on the truck then or do you remember?

9 A Was the door open?

10 Q He was just beside the truck, wasn't he?

11 A Yes, sir.

12 Q And was the door still open?

13 A (No response).

14 Q Let me say this.

15 A Okay.

16 Q It's okay if you don't know. I mean it's ---

17 A I would assume the door was still open, yes, sir.

18 Q Okay. And were his feet nearer to the truck than his
19 head was?

20 A Yes, sir.

21 Q And did he seem to be unconscious whenever you and Paul
22 got there?

23 A Well, when I went over, yes, he was not unconscious, but
24 he wasn't -- he was like in and out.

25 Q All right. And I've asked a lot of questions of Paul I

1 don't intend to repeat with you because I think I got the
2 answers to most of those.

3 A Yes, sir.

4 Q But did you come to work about seven o'clock in the
5 morning, also?

6 A No, sir. I got to work at six o'clock.

7 Q Six. So you would have been leaving before they do?

8 A I would have been leaving at three.

9 Q All right.

10 A Three.

11 Q Do you recall if this thing happened after three then or
12 do you remember?

13 A I know it happened before three.

14 Q All right. And whenever you got over to Lee, were you
15 and Paul essentially rushing over together?

16 A No. Paul went over. I didn't go over.

17 Q You wouldn't?

18 A I didn't go over.

19 Q Was there any particular reason you didn't go over?

20 A I didn't want to see. When you see a man laying flat on
21 the ground, you don't know if he's dead or alive, so I
22 didn't want to go see.

23 Q Did it scare you then?

24 A Yes, sir. So I just called on the radio.

25 Q Okay. And called for help?

1 A Yes, sir.

2 Q And they responded?

3 A Yes, sir.

4 Q All right. Now whenever you first saw him, was he laying
5 still at that time or was he thrashing about?

6 A He was laying -- he was laying flat on his back.

7 Q So he appeared from what you saw to be unconscious?

8 A Yes, sir.

9 Q Did you after or while making the call or after making
10 the call, did you continue to observe from a distance?

11 A Yes, sir.

12 Q And about how far away were you?

13 A I never changed the distance from when he had first
14 fallen and I first saw him. I didn't go nowhere near him
15 at the first beginning of -- before -- when all the EMT
16 people got there and all of them were there, after that,
17 then I went over and just looked.

18 Q Okay.

19 A But I did not go over at first.

20 Q Okay, well, what I'm trying to figure out is about how
21 far do you think you may have been from him whenever you
22 made the call? And you don't have to be that accurate.

23 A From 45 to 50 feet.

24 Q All right. But you were able to observe him even while
25 you were on the radio calling for help?

1 A Yes, sir. All I saw was a man laying flat on the ground.
2 I called on the radio and said we've got a man down and I
3 called the mill supervisor and the Rescue Squad 51.

4 Q Did you know it was Lee?

5 A Yes, sir.

6 Q Okay. You recognized him as being the person on the
7 ground?

8 A Yes, sir.

9 Q All right. Do you know how long it was before he began
10 to stir about or move or indicate he was regaining
11 consciousness, or was it too much going on at that time?

12 A It was -- it was everything. Everybody was running this
13 way and that way. I couldn't give a definite time on it
14 because like I said, I stayed over here (indicating), at
15 the sludge press. You could say five, ten minutes at the
16 most. It ain't been real long because the EMT's were
17 there real quick, BAM, BAM.

18 Q All right. So let me see if I get a better understanding
19 of what five to ten minutes, before he started moving
20 about, is that what you mean?

21 A (No response).

22 Q I asked you earlier did you notice when he started moving
23 about and you gave me an estimate.

24 A Well, they -- when the EMT's got there, he started moving
25 about. To say the time from I called to they getting

1 there, I'm saying five to ten minutes.

2 Q All right. And that's the first time that you noticed he
3 started moving about?

4 A Uh-huh. Yes, sir.

5 Q All right. And would you consider yourself, you and Lee,
6 to be friends?

7 A Yes, sir.

8 Q All right. You've known him the whole time you've been
9 there?

10 A Yes, sir, because he used to work on the same side I work
11 on.

12 Q Right, and he had been there a couple of years longer
13 than you?

14 A Yes, sir.

15 Q All right. And he has more responsibilities, other than
16 driving a truck? He operates other heavy equipment, as
17 well?

18 A Yes, sir.

19 Q All right. At the end of your shift, are you required to
20 wash the truck, also?

21 A Yes, sir.

22 Q Now is your truck about the same height as that Sterling?

23 A One of them. The roll-off is the same height as the
24 Sterling, but we got two 40-yard trucks and they a little
25 bit higher.

1 Q Now a roll-off, does that carry a bin for carrying debris
2 and dumping it?

3 A Yes, sir.

4 Q So it can be separated from the truck?

5 A Yes, sir.

6 Q And it's kind of like a rollback? It rolls on and rolls
7 off?

8 A Yes, sir, right.

9 Q And you climb these steps to get up to these two trucks
10 to operate them as well, do you not?

11 A Yes, sir.

12 Q Have you ever lost your balance going to or from these?

13 A I try not to, but they preach three points of contact.

14 Q All right.

15 A You're supposed to always have three points of contact
16 going in and out.

17 Q I guess what I'm asking you though, David, even with all
18 of the precautions, even being as safe as you possibly
19 can and knowing that it may be dangerous coming and
20 going, do you sometimes just lose your balance and catch
21 yourself before you fall? Has that ever happened to you?
22 And this is not anything to criticize you, I just want to
23 know if that sometimes happens?

24 A Well, being -- being human, all of us do stupid things
25 sometimes. Maybe yes. I might have not paid attention

1 and -- but I never fell.

2 Q Well, that's what I'm driving at.

3 A Yes, sir. No, I never -- I never fell.

4 Q It can be dangerous, that you could fall, they preach
5 don't do this ---

6 A Yes, sir.

7 Q --- maintain three-point contact because it is dangerous,
8 right, going and coming?

9 A Yes, sir.

10 Q All right, sir. Now whenever you made the call, you
11 never had any conversation when you went back over closer
12 to Lee? You didn't talk with him, did you?

13 A No, sir.

14 Q All right. And did you talk to Paul about anything?

15 A That day? No.

16 Q All right.

17 A Not after all of that, no.

18 Q Have you had any conversation or contact with Lee since
19 he's been off the job?

20 A I saw him that one day he came back. He came back for
21 one day and I talked to him. I just said how you doing
22 and he said he was doing pretty good, but I guess he
23 wasn't doing pretty good because he went right back home.

24 Q Have you ever known him to take any type of medicine for
25 seizures or passing out, getting dizzy or syncope ---

1 A No, sir.

2 Q --- or anything of that nature?

3 A No, sir.

4 Q All right. Do you think, or are you close enough friends
5 you think that you would know if he was taking medicine
6 like that or had felt that way? Do you think you would
7 know? Do you think he would discuss that with you?

8 A If he was -- yes, if he was feeling real bad, he would
9 probably tell me, yes, sir.

10 Q And had you noticed anything unusual about him on that
11 particular day, when he fell that Thursday?

12 A No, sir.

13 Q All right. Did he act his same old self that day?

14 A Yes, sir.

15 Q Did he have any complaints at all about how he felt?

16 A No, sir.

17 Q Now I understand the Sterling and the Mack, and some of
18 the trucks have air conditioning in it. Does your truck
19 have air conditioning?

20 A Yes, sir.

21 Q It works pretty good?

22 A Yes, sir.

23 Q It's not common you would get overheated, would it be?

24 A Not -- not in the trucks, no, sir.

25 Q And that's where you are 90 or 95 percent of the day?

1 A Yes, sir.

2 Q Paul had indicated -- and I may be wrong on this -- that

3 you may have seen Lee walking toward the trailer before

4 he fell?

5 A No, walking toward the truck.

6 Q After he went to the trailer?

7 A Yes, sir.

8 Q All right. Do you remember if he had the backpack and

9 the cooler with him at that time?

10 A Yes, sir.

11 Q Okay, did he have both of them?

12 A I saw him putting them in the truck.

13 Q Oh, you did?

14 A Yes, sir.

15 Q Okay.

16 A That's what I saw.

17 Q Did he have both of them carrying them up at one time?

18 A I saw him putting the cooler -- like, he looked like he

19 was putting it in the truck on the floorboard to me.

20 Q And where was the backpack then? Did he have it on the

21 ground?

22 A I'm not really seeing a backpack in my mind. I'm seeing

23 a cooler.

24 Q Okay. And you didn't see a backpack?

25 A I don't remember a backpack. I remember a cooler though.

1 Q But you saw him climbing up?

2 A No, sir. I saw him placing it. I never saw him on the
3 steps of the truck.

4 Q You saw him placing it inside the truck?

5 A Yes, sir. With the door open, the door open, standing on
6 the ground, placing it in the truck. I did not see him
7 on the steps.

8 Q Oh, I see. And he would be able to slide the cooler into
9 the floorboard of the truck?

10 A Yes, sir.

11 Q If that cooler had been on the seat when he fell, you
12 didn't see him move it from the floorboard to the seat?

13 A No, sir.

14 Q All right.

15 MR. KOON: That's all I have then Mr. Bolden. I
16 appreciate you coming and telling us what you know about
17 it.

18 MR. BOLDEN: Okay, yes, sir. I do all I can.

19 (There being no further questions or testimony, the deposition
20 of David Bolden concluded at 11:05 a.m.).

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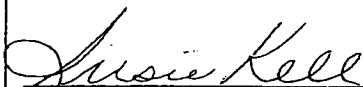
CERTIFICATE OF REPORTER

I, SUSIE KELL, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF DAVID BOLDEN ON MONDAY, THE 20TH DAY OF AUGUST, 2012, AT THE OFFICE OF MCANGUS, GOUDELOCK & COURIE, LLC, 1320 MAIN STREET, 10TH FLOOR, COLUMBIA, SOUTH CAROLINA; AND THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION TO THE BEST OF MY ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY, ANY PARTY CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

THE ORIGINAL TRANSCRIPT SHALL BE SEALED AND DELIVERED TO JOHN K. KOON, ESQUIRE OF KOON & COOK, P.A. IN COLUMBIA, SOUTH CAROLINA, WHO SHALL BE RESPONSIBLE FOR FILING WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 3RD DAY OF SEPTEMBER, 2012.



SUSIE KELL, COURT REPORTER

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES MARCH 21, 2012

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

William Lee Turner
vs.
Saiia Construction,
and
Old Republic General Ins c/o
Gallagher Bassett Service, Inc.,
Carrier,
Defendants.

Claimant,

Employer,

Carrier,

Defendants.

COPY

W.C.C. File No.: 1204039

DEPOSITION OF JAMES SPEEGLE

August 20, 2012
11:15 a.m. - 11:30 a.m.

The deposition of Jimmy Speegle taken by John K. Koon, Esquire, at McAngus Goudelock & Courie, LLC, 1320 Main Street, 10th Floor, Columbia, South Carolina on Monday, August 20th, 2012, pursuant to the South Carolina Rules of Civil Procedure before Susie Kell, Court Reporter and Notary Public for the purpose of discovery, use at trial and all other purposes as are permitted under the rules of the Commission and all applicable statutes and laws.

APPEARANCES

JOHN K. KOON, ESQUIRE

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EXHIBITS

(There were no exhibits marked in this deposition).

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to Section 42-3-160 of the South Carolina Code of Laws, 1976, and any other rules agreed upon by and between counsel.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby WAIVED.

1 JAMES SPEEGLE, being duly sworn and cautioned to speak the
2 truth, the whole truth and nothing but the truth, testifies as
3 follows:

4 MR. SPEEGLE - DIRECT EXAMINATION BY MR. KOON:

5 Q Mr. Speegle, I introduced myself to you. I'm John Koon.
6 I represent Lee in the fallout there at work where he was
7 injured when he fell off the truck. I'm going to ask you
8 a few questions about what you know. And you may not
9 know a whole lot about it because you weren't anywhere
10 near. And I understand that you're the supervisor, Lee's
11 supervisor?

12 A Yes.

13 Q Were you also the supervisor for Paul Barnette and David
14 Bolden?

15 A Yes.

16 Q All right. How many folks do you supervisor?

17 A I've got 11 right now.

18 Q And are they operators, primarily?

19 A Yes.

20 Q Okay. Heavy equipment operators?

21 A Uh-huh (yes).

22 Q And the majority of them have CDLs?

23 A No. I have one I think has a CDL. I think that's Mr.
24 Barnette.

25 Q And so Lee wouldn't have a CDL?

1 A No, sir.

2 Q And they don't need it as long as they're onsite?

3 A Onsite, on the site.

4 Q Onsite. And how long have you been with Saiia?

5 A I've been with Saiia for nine years, I believe.

6 Q So you would have been there when Lee came then?

7 A Not at this site. I was in Alabama.

8 Q Oh, I see.

9 A I have been at this site for right at two years.

10 Q And were you working with the mining operations down

11 there?

12 A I was working at the civil side. We done shopping

13 centers and grade work, subdivisions and such.

14 Q What did they mine in Alabama?

15 A They do mining of -- they remove overburden and stuff for

16 the quarries and sometimes they do production hauling,

17 rock and stuff, not any coal or anything like that, it's

18 just rock.

19 Q So when would you have come from Alabama here?

20 A It was in October 2010, I guess so.

21 Q So you've been here almost three years?

22 A Yes.

23 Q So Lee was already here working ---

24 A Yes, sir.

25 Q --- for Saiia at that time?

- 1 A Yes.
- 2 Q Has his job been essentially the same the entire time
- 3 you've been here?
- 4 A Yes.
- 5 Q Did you understand it was the same even before you got
- 6 here?
- 7 A Yes.
- 8 Q Is he a good employee?
- 9 A Absolutely.
- 10 Q Have you found him to be honest, open, straightforward
- 11 about anything that you've ever quizzed him about?
- 12 A Yes.
- 13 Q Now as I understand it, you didn't see what happened that
- 14 day, did you?
- 15 A No, sir.
- 16 Q As a matter of fact, in your investigation and statements
- 17 you were able to get, you asked Paul and David for
- 18 statements and they've been kind enough to give me a copy
- 19 of those as well as yours?
- 20 A Correct.
- 21 Q But nobody actually saw what happened, did they?
- 22 A No, sir.
- 23 Q And as you understand it, the first person that saw him,
- 24 saw him out on the ground, laying on the ground, right?
- 25 A Right, was Paul Barnette.

1 Q Were you aware of the back problem that he had within say
2 30 days of this fall? He had a low back problem and went
3 to see a doctor about it?

4 A He never told me he went to the doctor, but he had said
5 his back was bothering him just a little bit and he acted
6 like it wasn't no big deal.

7 Q Did he also tell you about some stomach problem? He
8 seemed to eat the wrong thing and he had a stomach
9 problem and went to see the doctor for that?

10 A I don't know what the cause was of him going to the
11 doctor, but I know he was not feeling well and he had
12 went to the doctor.

13 Q Did both of those seem to be -- clear up pretty quickly?
14 Was he out of work any length of time or did he miss any
15 time?

16 A I don't think he missed any time.

17 Q Did he have any complaints shortly before this fall?

18 A Yes. He was complaining he wasn't feeling well, I want
19 to say like on a Monday and the Tuesday of that -- I
20 think it was Thursday that this accident took place.

21 Q Did he say what not feeling well was? What that ---

22 A Just -- just didn't feel well, stomach messed up,
23 couldn't eat. He had -- he had -- said he was wanting to
24 drink all the time. I had recommended to him like on
25 Tuesday or Monday or one of those days, I can't remember

1 which one exactly, that, you know, he's probably
2 dehydrated. He needed to drink plenty of fluids. He
3 just -- he just looked like he was dry-mouthed and just
4 seemed like to me signs of dehydration. I told him that
5 I thought he was dehydrating.

6 Q And is that the time that we were talking about earlier
7 about a stomach issue?

8 A I guess so. I mean he's -- you know, he had had little
9 sicknesses here and there prior to this incident, but the
10 week of the incident is what I'm referring to, is he was
11 not feeling well, sick.

12 Q Did he ever come back and tell you that he had actually
13 gone to the doctor for not feeling well?

14 A He did. He came -- I want to say he went on Tuesday and
15 he came on Wednesday and said he had went and got fluids
16 or something for dehydration.

17 Q Do you remember him saying that he got fluids though?

18 A Yes.

19 Q And that would have been Monday and Tuesday before the
20 fall on Thursday?

21 A Yes. It's been so long now, I can't remember exactly
22 what day it was, but it was before the fall. I want to
23 say it was on Wednesday morning is when he come and told
24 me that or either Tuesday or Wednesday morning.

25 Q And did you see him that week, Monday, Tuesday,

1 Wednesday, Thursday?

2 A Yes.

3 Q Did he seem to be okay the Thursday that he fell?

4 A Oh, absolutely. Thursday he was -- he was like hisself,
5 better than he had been, than he had been all week. I
6 mean he was just -- he was lively and from what I
7 understand he was blowing his horn and having fun,
8 cutting up, you know, when they were driving and working
9 that day, no signs of -- not that I know of that anything
10 was wrong with him prior to that.

11 Q Had he ever complained of getting dizzy at any point in
12 time when you were working for Saiia, after you came from
13 Alabama?

14 A Not that I recollect, no.

15 Q Any claims of not being able to keep his balance or
16 anything like that?

17 A No, sir. He was a very agile individual.

18 Q A good worker?

19 A A good worker, sure of hisself.

20 Q And it's been some claim by Lee at least that he's hoping
21 to be able to get back there, that you all had kept him
22 out of work because of a seizure or passing out ---

23 A Yes.

24 Q --- or whatever it was?

25 A Yes.

1 Q I know since he's not a CDL, that your Federal Motor
2 Carrier regulations don't apply, do they?

3 A They don't, but the mill requirements for inside the mill
4 is they can't, you know. Of course, it does apply if he
5 has a seizure. You know, he's got to be able to -- if he
6 can't drive a vehicle, he can't operate, or if he can't
7 operate a piece of equipment or anything, the mill won't
8 allow it until he's cleared to be able to do it unless
9 there is just strictly labor work to be done.

10 Q But he can't operate heavy equipment?

11 A He can't drive, operate, do anything other than physical
12 labor.

13 Q And that's all he has ever done that entire time, is
14 drive?

15 A Well, he's done a small percentage of physical labor.
16 The rest of it has been drive or operate equipment.

17 Q Well, let me explore that a little bit more then. Is it
18 six months after the last seizure that he's allowed to
19 come back pursuant to IP regulations?

20 A According to his doctor, that he could have came back if
21 he hadn't had the second seizure. He had a second
22 seizure a couple of months after that because they took
23 him off medicine or something.

24 Q Right.

25 A But that first seizure, he was fine as long as the doctor

1 cleared him to come back to work. He came back to work
2 on that Monday with a cleared -- whatever day that was he
3 had that second seizure, he come back that Monday with a
4 clear from Friday to where he could come back to work.

5 On Sunday he had his second seizure while he was working
6 on his house or something, he had his second seizure, and
7 he come back with his excuse saying he couldn't operate
8 or do anything with machines or whatever. He was cleared
9 here and then he brought something back so I had to send
10 him home because that was conflicting statements.

11 Q Yes. Would you like to hire him again if he's cleared to
12 come back to work?

13 A Absolutely. I mean he's still got a job as long as --
14 when he's cleared for work.

15 Q And the last day he's actually worked was 4-19-12, on
16 that Thursday when he fell?

17 A Yes. He came to work, to try to work, on that Monday of
18 his second seizure, after his second seizure, but he did
19 not work.

20 Q Y'all sent him home?

21 A Right.

22 Q He told you about the second seizure?

23 A Yes. He brought me the excuses in and he was -- he
24 wasn't to hisself and I noticed that before he ever got
25 anything to me.

- 1 Q Did you ever go out to where he was laying on the ground?
- 2 A Yes, sir.
- 3 Q Was anybody -- well, who was there whenever you got
- 4 there?
- 5 A Paul and ---
- 6 Q I understand there was a large crowd?
- 7 A There was a large crowd, but you had Paul Barnette and
- 8 David Bolden was there and Troy Miller was there, but he
- 9 was across the shed because he had heard the calls. He
- 10 came in. And then the EMTs and the ambulance had pulled
- 11 up at the same time as I did, and so there was probably
- 12 five of those.
- 13 Q Nobody has ever claimed that they ever actually saw him
- 14 fall?
- 15 A No, sir, no one.
- 16 Q And how long was it do you think, Mr. Speegle, after the
- 17 fall that you got there? Do you have any idea?
- 18 A Probably, three minutes. I heard -- I had an operator
- 19 come and tell me that they had heard that somebody was
- 20 done over at what we call the sludge press and then we
- 21 found out that it was Lee and I was -- I was right in
- 22 behind the ambulance coming to the site.
- 23 Q Did you drive there?
- 24 A Yes.
- 25 Q How far away would you have been?

1 A I would have been less than a quarter of a mile.

2 Q Was he unconscious when you got there?

3 A No. He was sitting up on his side. Not sitting up, but
4 trying to sit up over to the side and he was gagging.

5 Q Did you see him vomit, throw up or anything like that?

6 A Yeah, he was trying to, nothing really coming out. It
7 was either red Gatorade or it was blood coming out his
8 mouth. I don't know which one, couldn't tell you.

9 Q By saying red Gatorade, somebody apparently told you he
10 had been drinking Gatorade?

11 A Yes. He had left from where he was working and went
12 straight to the cafeteria and got him a red Gatorade and
13 he had come back because Polly had told Paul that he had
14 went and got him a Gatorade and he was -- it was in his
15 bag half empty. This had been placed back in his bag and
16 it was half empty, so we didn't know whether it was blood
17 or what it was. We assumed it was blood, but we don't
18 really -- I don't know what it was.

19 Q Whenever you first got there, was he thrashing about, was
20 he having any type of uncontrolled movement or anything?

21 A No. He was just trying to sit up. He wanted to sit up
22 the whole time and that was basically all he wanted, but
23 he wasn't thrashing and kicking. He was just wanting to
24 sit up and he was just gagging. His eyes rolled back in
25 his head. He would look at you and then his eyes would

1 roll back in his head.

2 Q What did you think when you observed him?

3 A I was very concerned that he -- you know, he was injured
4 severely.

5 Q You knew he hit the back of his head?

6 A Yes. I mean that's the first thing I asked is where is
7 he hurt at and they said he's got an abrasion on the back
8 of his head.

9 MR. KOON: Okay, that's all I have, Mr. Speegle.

10 Thank you very much.

11 (There being no further questions or testimony, the deposition
12 of James Speegle concluded at 11:30 a.m.).

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CERTIFICATE OF REPORTER

I, SUSIE KELL, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT I REPORTED THE DEPOSITION OF JAMES SPEEGLE ON MONDAY, THE 20TH DAY OF AUGUST, 2012, AT THE OFFICE OF MCANGUS, GOUDBLOCK & COURIE, LLC, 1320 MAIN STREET, COLUMBIA, SOUTH CAROLINA; AND THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION TO THE BEST OF MY ABILITY.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY, ANY PARTY CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

THE ORIGINAL TRANSCRIPT SHALL BE SEALED AND DELIVERED TO JOHN K. KOON, ESQUIRE OF KOON & COOK, P.A. IN COLUMBIA, SOUTH CAROLINA WHO SHALL BE RESPONSIBLE FOR FILING WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 3RD DAY OF SEPTEMBER, 2012.



SUSIE KELL, COURT REPORTER

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES MARCH 21, 2012

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 1204039

WILLIAM LEE TURNER,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
SAIIA CONSTRUCTION,	)	
	)	WILLIAM LEE TURNER
EMPLOYER,	)	
	)	
OLD REPUBLIC GENERAL	)	
INSURANCE C/O GALLAGHER	)	
BASSETT SERVICES, INC.,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	
	)	

Deposition of William Lee Turner, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 8:59 a.m., Wednesday, August 1st, 2012, at the law offices of Koon & Cook, 2016 Gadsden Street, Columbia, South Carolina.

COPY

Reported by
Sandra M. Snead

SCOTT REPORTING SERVICE
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 736-2408
www.scottreporting.com ♦ bscott@scottreporting.com

Appearances

For the Claimant: John K. Koon, Esquire
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For the Employer/
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McAngus, Goudelock & Courie,
LLC
1320 Main Street, 10th Floor
P.O. Box 12519
Columbia, SC 29211-2519

Reported By: Sandra M. Snead

Also Present: Nicole Turner

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, has been redacted or blacked out.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

William Lee Turner, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: William Lee Turner, Junior.

Examination

By Ms. George:

Q Mr. Turner, my name is Mundi George. We met right before the deposition. I am the attorney that is representing Saiia Construction and their workers' comp insurance carrier. This is a file handled by Jason Lockhart in my office. We work together, --

A Okay.

Q -- and I'm simply covering this deposition for him today because he had a conflict. This deposition is not a test. I know that Mr. Cook has explained this to you and -- I'm sorry -- Mr. Koon has

1 explained this to you. It's not a test. You might
2 not know the answers to some of my questions. You
3 might have to guess or estimate. That's fine with
4 me. If you don't know, tell me that you don't
5 know. If you're guessing or estimating, let me
6 know you're guessing or estimating. If you don't
7 understand my question, if it confuses you or it
8 just did not make sense, feel free to let me know
9 that, and I will repeat it or rephrase it or just
10 try to ask a better question. If you're
11 uncomfortable sitting in that chair, I welcome you
12 --

13 A I'm okay.

14 Q -- to get up and move around. It doesn't usually
15 take any more than about an hour, and sometimes a
16 little less than that, but if you feel like you
17 need to get up and stretch, the recording equipment
18 can probably pick you up just about anywhere in
19 this room. The court reporter will let us know if
20 you've moved too far away from the table and she
21 can't hear you anymore.

22 A Okay.

23 Q Has all that made sense?

24 A Mm-hmm.

25 Q You have to answer yes or no or a spoken word for

1 the record that the court reporter can spell and
2 type out. So, if you give me a gesture or say uh-
3 huh or uh-uh, she won't be able to spell that, --

4 A Okay.

5 Q -- so make sure you say yes or no. Are you taking
6 any prescription medications which will affect your
7 ability to answer my questions today?

8 A No. Well, I'm taking Keppra. It's a seizure
9 medicine, but it does not affect me.

10 Q Okay. All right. And you stated your name
11 earlier, and you are William Lee Turner, Junior?

12 A Yes, ma'am.

13 Q And what is your date of birth?

14 A

15 Q How old are you today?

16 A Twenty-six.

17 Q And how old -- You'll be twenty-seven on your next
18 birthday?

19 A Yes, ma'am.

20 Q And your wife, Nicole, is here today with you?

21 A Yes, ma'am.

22 Q How long have you been married to Nicole?

23 A Two -- About two and a quarter years, since May
24 15th.

25 Mr. Koon: (to the deponent) She didn't

1 have to kick you.

2 The Deponent: Yeah, I think I got that
3 right.

4 Q Okay. May 15th. This past May was your --

5 A Right.

6 Q -- two-year anniversary?

7 A Yeah. Yeah, that's right.

8 Q Okay. And what is your address?

9 A

10 Q What town?

11 A

12 Q And the ZIP code?

13 A

14 Q And is the street address, -- is that the same
15 as your mailing address?

16 A Yes, ma'am.

17 Q Okay. And is it a house or a mobile home or
18 apartment?

19 A It's a mobile home. We're staying --

20 Q I was going to ask you that. Do you rent it or own
21 it, or are you staying --

22 A No.

23 Q -- with someone --

24 A We're staying with her parents. We're building a
25 house on the other side of Camden, but we're

1 working on that for about a year and a half now.

2 Q So, the mobile home on is Nicole's
3 parents' home?

4 A Yes, ma'am.

5 Q And then do you own -- own property in Camden?

6 A Yes, ma'am.

7 Q And you're trying to build a house there?

8 A Yeah, we're actually building it right now.

9 Q Are you doing that yourself?

10 A We were, but now I'm not. We had some -- my
11 situation, and my dad just found out he's got a
12 situation, so we can't do it anymore.

13 Q And I'm not trying to be nosey. Just in general,
14 is your dad's situation a health --

15 A Yeah, --

16 Q -- situation?

17 A -- it's a health situation.

18 Q Okay. You'll have to excuse me. Sometimes we talk
19 a little bit faster than I can write, and I like to
20 take notes, --

21 A No. That's fine.

22 Q -- so I have to catch up with myself. Okay. What
23 is your telephone number?

24 A

25 Q Is that 803?

- 1 A Yes, ma'am.
- 2 Q And is that the home phone or --
- 3 A That's my cell phone.
- 4 Q Your cell phone. Okay. And do you have any
- 5 children?
- 6 A No, ma'am.
- 7 Q And is Nicole your -- Have you ever been married
- 8 before Nicole?
- 9 A No, ma'am.
- 10 Q And Nicole's parents, you and Nicole live at the
- 11 Does anybody else live
- 12 there?
- 13 A No, ma'am.
- 14 Q Does anybody besides Nicole depend on you for
- 15 financial support, or money?
- 16 A No.
- 17 Q Does Nicole work?
- 18 A Yes, ma'am.
- 19 Q Where does she work?
- 20 A Sam's Club on Forest Drive.
- 21 Q That's a busy one.
- 22 A Mm-hmm.
- 23 Q I don't think I've ever driven by there when the
- 24 parking lot wasn't almost full. Okay. How far did
- 25 you go in school, Mr. Turner?

1 A I graduated high school.
2 Q What year?
3 A 2004.
4 Q All right. And did you work while you were in
5 school?
6 A I worked with my dad.
7 Q What kind of work does your dad do?
8 A He was building countertops.
9 Q Is he a carpenter?
10 A Yeah, he was -- Well, yeah, you could say that.
11 Q But when you were in school and you were working
12 for your dad, you were working building
13 countertops?
14 A Yes, ma'am.
15 Q And what type of work did you do when you graduated
16 high school?
17 A The same thing, until I went to work for Saiia.
18 Q So, how long did you work for your dad after high
19 school before you went to work for Saiia?
20 A Until I was twenty-one -- or, actually, it was
21 right before I was twenty-one. I got hired right
22 before I turned twenty-one.
23 Q And, so, the job at Saiia, was that the first job
24 you'd ever done for another company besides working
25 for your dad?

- 1 A Yes, ma'am.
- 2 Q Okay. Do you know what year it was that you
- 3 started working for them?
- 4 A 2007.
- 5 Q And what were you hired to do there?
- 6 A Operator.
- 7 Q Operator of what?
- 8 A Heavy equipment.
- 9 Q And what type of equipment did you have to operate?
- 10 A Bulldozers; trackhoes; backhoes; skeet steers; dump
- 11 trucks.
- 12 Q How did you know how to operate all that equipment?
- 13 A Doing farming and stuff like that. So, I've got a
- 14 little bit of experience with it.
- 15 Q Did you grow up on a farm?
- 16 A No, I didn't grow up on a farm. My mom grew up on
- 17 a farm, and that's where we're building our house
- 18 now, so --
- 19 Q Okay.
- 20 A -- we do a lot of stuff out there.
- 21 Q When you were hired as an operator by Saiia in
- 22 2007, was it a full-time job?
- 23 A Yes, ma'am.
- 24 Q How many hours per week?
- 25 A Average, 40. Most of the time, 45.

1 Q Were you paid --
2 A We never get under 40.
3 Q Were you paid time and a half for overtime?
4 A Yes, ma'am.
5 Q And were you an hourly or a salaried employee?
6 A Hourly.
7 Q What was your hourly rate?
8 A When I started?
9 Q Yes, sir.
10 A It was like 11.50.
11 Q And what about the last time you worked, which was
12 the time of your accident?
13 A 14.25.
14 Q Okay. And is the date of your accident April 19th,
15 2012?
16 A Yes, ma'am.
17 Q Is that the last day that you've worked anywhere?
18 A Yes, ma'am.
19 Q Did you work anywhere at the same time you were
20 working at Saia, or was that your only job?
21 A That was it.
22 Q Before this accident on April 19th, 2012, did you
23 have any serious physical conditions or illnesses
24 or chronic health problems?
25 A No, ma'am. I went to the doctor the Monday before

1 the accident --

2 Q Okay.

3 A -- because my lower back was hurting, --

4 Q Okay.

5 A -- but I didn't have any problems with it, -- did

6 x-rays and all that -- so they just sent me on my

7 way.

8 Q What doctor did you go to?

9 A It was Dr. Minhas -- Minhas. It's -- She's an

10 Indian, so -- It's Minhas, I believe is what it

11 is, but --

12 Q Okay. And she's a female Indian doctor?

13 A Yeah, she's a female out of Lugoff. I guess you

14 consider that Lugoff, Lugoff-Elgin. It's right on

15 the line, but it's --

16 Q What is -- Do you know what the name of her

17 practice is? Is it a Doctors Care or Lugoff Family

18 Medicine?

19 A I think it's Family Medicine. I'm not sure.

20 Q Is she your family doctor?

21 A No. Dr. Peterson, Alan Peterson, is my doctor now.

22 He's my family doctor.

23 Q So, how -- how did Dr. Minhas end up being the one

24 that you saw?

25 A Well, he -- I got Dr. Peterson after I got out of

1 the hospital because he's my -- he's been my
2 parents' doctor for several years.

3 Q Mm-hmm.

4 A So, he's my family doctor now. So, I got him right
5 after I got out of the hospital.

6 Q For you -- For this accident?

7 A No. Just for -- For this and just to be my
8 regular doctor, --

9 Q Okay.

10 A -- because he's a regular doctor. He's not one of
11 them --

12 Q When you went to Dr. Minhas the Monday before this
13 accident, what -- how did -- why did you go to her?
14 Why was she the doctor that you picked to go to?

15 A Because it was close.

16 Q Why was your back hurting on that Monday before the
17 accident?

18 A Probably from lifting up logs and stuff like that.

19 Q Oh. Building your --

20 A I mean, it wasn't --

21 Q Building your house?

22 A Yeah. I mean, it wasn't nothing like -- It was
23 just aggravating, --

24 Q Okay.

25 A -- basically. It wasn't nothing that was killing

1 me.

2 Q And she just did some x-rays and --

3 A Yeah, basically.

4 Q -- released you?

5 A Yeah.

6 Q Did she give you any medications?

7 A She gave me Ultram, like a 50-milligram Ultram.

8 Q Did she give you a sample or a prescription?

9 A A prescription.

10 Q Did you get it filled?

11 A Yes, ma'am.

12 Q Where do you get your prescriptions filled?

13 A Normally, CVS or whatever is close.

14 Q Do you know where you got that particular

15 prescription filled?

16 A I think I got it filled there, because they've got

17 their own pharmacy.

18 Q At Dr. Minhas's office?

19 A Yes, ma'am.

20 Q And when you said typically you get something

21 filled at CVS, is that CVS in Lugoff?

22 A Most of the time it's on Sparkleberry Road, right

23 off of Sparkleberry.

24 Q In Columbia?

25 A Yeah. It's like at the corner of Sparkleberry and

1 Clemson Road.

2 Q Okay. And then did you only see her one time that
3 Monday before your accident for back pain?

4 A Yes, ma'am.

5 Q Did you have any other problems that week?

6 A I did go to the doctor, the emergency room, again
7 the day after that because it -- my stomach was
8 kind of messed up.

9 Q So, this would have been on a Tuesday?

10 A Yeah, and I really didn't want to go because I
11 didn't feel, like, really bad or anything, just my
12 stomach was messed up, but my mom and my wife
13 basically made me go.

14 Q Okay. And where did you go, what --

15 A To Baptist.

16 Q Here in Columbia?

17 A Yes, ma'am.

18 Q Okay. And what did you -- When you checked in,
19 your symptoms were just your stomach was, what,
20 hurting, or did you have --

21 A Yeah, it was just bothering me. And they thought
22 maybe I was dehydrated or something, but I'd been
23 drinking plenty of fluids. And they gave me some
24 IV fluids, and they did some tests, and everything
25 come back good, so they sent me on my way.

1 Q So, you were not dehydrated, or do you know?

2 A No, I was not dehydrated.

3 Q Okay. So, they never figured out why your stomach
4 was bothering you?

5 A No. It might have been something I ate because --
6 It all depends. Some things I eat, I get -- my
7 stomach gets messed up. That's normal.

8 Q Okay. And do you take any, you know, heartburn or
9 antacid kind of medication?

10 A No.

11 Q So, you've told me about the back pain you had and
12 the stomach problems you had in the week leading up

13 to this accident. What about before that? And
14 you're young, so this may not apply to you. You
15 don't have high blood pressure, --

16 A No.

17 Q -- diabetes or any other health conditions? Did
18 you see a doctor regularly or take regular
19 prescription medication before April 19th of --

20 A No, ma'am.

21 Q -- 2012? Okay. All right. And have you ever had
22 surgery before this accident?

23 A No, ma'am.

24 Q Did you have to have any kind of physical or
25 medical clearance in order to get hired at Saiia

1 and be able to operate the equipment?

2 A Yeah, we had to do a physical and all that stuff,
3 but, other than that, -- It was like a physical
4 and vision test and drug test, but they do that
5 everywhere, so --

6 Q Mm-hmm.

7 A But we did have to take a physical.

8 Q Was it at the company and through the company, or
9 did they send you to a doctor to have that done?

10 A They sent us to a doctor.

11 Q Do you remember where they sent you?

12 A Doctors Care in Sumter.

13 Q Okay. And you passed that?

14 A Yes, ma'am.

15 Q No problems with anything?

16 A Uh-uh.

17 Q Make sure you say yes or no.

18 A Yes.

19 Q And do yo have a special kind of driver's license,
20 like a commercial driver's license?

21 A I do.

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

23 A Yes, ma'am.

24 Q Do you have it with you?

25 A Yeah, actually, I do.

1 Q I was -- I'm asking you because I want your
2 driver's license number and the expiration date.

3 A Yeah.

4 Q And while your wife is getting your license for
5 you, does your license have any restrictions on it
6 or limitations on it?

7 A No, ma'am.

8 Q Has your license ever been revoked or suspended?

9 A It has, when I was younger.

10 Q What for?

11 A Simple possession of marijuana.

12 Q Okay. And are all those offenses now resolved and
13 cleared?

14 A Oh, yeah. Yeah. That was before I was even
15 eighteen -- or seventeen.

16 Q Okay. You just handed me your South Carolina
17 driver's license. And the number is and
18 the expiration date is Wow. Did they
19 change the format of the driver's license? The --

20 A Yeah. That's --

21 Q -- pictures used to be longways.

22 A Yeah, that's actually kind of new there.

23 Q Yeah. Very good. Thank you very much. Okay. And
24 the simple possession of marijuana, was that the
25 only charge you ever had?

- 1 A I've had more than that, but --
- 2 Q Within the last ten years?
- 3 A Oh, no.
- 4 Q So, nothing -- It's 2012, --
- 5 A It --
- 6 Q -- so go back ten years. Nothing --
- 7 A No.
- 8 Q -- besides that? Okay.
- 9 A As soon as I become -- not a teenager, I was pretty
- 10 good after that.
- 11 Q Have you ever been injured on the job before?
- 12 A No, ma'am.
- 13 Q So, you've never filed a workers' comp claim before
- 14 this one?
- 15 A No, ma'am.
- 16 Q Have you ever even had a minor injury on the job,
- 17 like cut your finger or anything, that you needed
- 18 medical --
- 19 A Yeah.
- 20 Q -- medical attention for?
- 21 A Yeah, I have drilled a hole in my finger at work,
- 22 but --
- 23 Q Did you just go get treated and go back to work?
- 24 A Yeah, basically.
- 25 Q Have you ever received any money or a settlement

1 from a workers' comp claim?

2 A Never.

3 Q Have you been involved in any other kind of

4 lawsuits, sued anyone, been sued by anyone?

5 A No, ma'am.

6 Q Have you ever had a lawyer take your deposition

7 like I'm doing here today?

8 A No, ma'am.

9 Q Have you ever filed for bankruptcy?

10 A No, ma'am.

11 Q Do you have bank accounts?

12 A Yes, ma'am.

13 Q Do you have checking and savings?

14 A Yes, ma'am.

15 Q What bank do you bank with?

16 A I've got my checking account with BB&T.

17 Q Mm-hmm.

18 A I have a savings account with South Carolina Telco.

19 Q And you know how to manage your own money, balance

20 your own checkbook, --

21 A Yeah.

22 Q -- take care of your own expenses?

23 A Mm-hmm.

24 Q Make sure you say yes or no.

25 A Yes, ma'am. Sorry.

1 Q It's okay. It doesn't bother me a bit. Okay. At
2 your job, other than just simply getting on a piece
3 of equipment and operating it, did you have any
4 other job duties?

5 A No, ma'am.

6 Q Who was your immediate boss or supervisor?

7 A Jimmy Speagle.

8 Q How do you spell his last name?

9 A S-p-e-e-g- -- I have no idea, really.

10 Mr. Koon: It's like beagle, S-p-e-a- --

11 The Deponent: Yeah, --

12 Mr. Koon: -- g-l-e.

13 Q Oh. Speagle. Okay.

14 A Yeah.

15 Q And, so, when you got to work every day, is Jimmy
16 the one that told you what you were doing for the
17 day that day?

18 A Yes, ma'am.

19 Q Did you have to clock in to a time clock?

20 A No, ma'am.

21 Q What were your work hours?

22 A From seven to three. It depends on what we were
23 doing really.

24 Q You told me earlier it was at least 40 and
25 sometimes more, but --

1 A Yeah.

2 Q -- the day started at seven AM?

3 A Yes, ma'am.

4 Q Did you take a break for lunch?

5 A Yes, ma'am.

6 Q An hour or how long?

7 A It's usually about 30 minutes.

8 Q Okay. When you went to work for Saiia, did you

9 have to fill out an employment application, a job

10 application?

11 A Yes, ma'am.

12 Q Do you remember if that employment application

13 asked you about if you'd had any accidents or

14 injuries or health problems --

15 A Yes, --

16 Q -- before you started working there?

17 A -- it did.

18 Q Did you have any accidents, injuries or health

19 problems before you started?

20 A No, ma'am.

21 Q Okay. Since the accident, since April 19th of

22 2012, have you filed for South Carolina

23 unemployment benefits?

24 A No, ma'am.

25 Q Does your company have short-term disability or

1 long-term disability?

2 A Yes, ma'am. I've got long-term, but it does not go

3 in effect until 180 days after your --

4 Q Okay. So, the --

5 A I didn't have short-term, but never would have

6 thought anything like this would have happened

7 either, but --

8 Q So, you don't have short-term?

9 A No, ma'am.

10 Q Meaning it's just not even an option for you to get

11 through the company, right? They don't --

12 A No. You --

13 Q -- even offer -- Oh. You didn't --

14 A They -- They offer it.

15 Q -- pay for it?

16 A I just didn't get it.

17 Q Okay. I understand. And the long-term disability

18 isn't an option for you until 180 days?

19 A Yes, ma'am. I believe 180 days.

20 Q I understand. That's usually about right. Do you

21 have health insurance?

22 A Yes, ma'am.

23 Q And is it through Saiia?

24 A Yes, ma'am.

25 Q What company -- What company is the health

1 insurance through?

2 A Blue Cross Blue Shield.

3 Q Have you applied for Social Security disability

4 benefits --

5 A No, ma'am.

6 Q -- or are you on Medicare?

7 A No, ma'am.

8 Q Are you on Medicaid?

9 A No, ma'am.

10 Q Do you get any government benefits or assistance?

11 A No, ma'am.

12 Q Have you ever been in the U.S. military?

13 A No, ma'am.

14 Q Have you ever had a history of, problems with or

15 treatment for drugs or alcohol?

16 A No, ma'am.

17 Q Have you ever had a history of, problems with or

18 treatment for depression or anxiety or any

19 emotional conditions?

20 A No, ma'am.

21 Q Okay. And you -- Again, you told me about the

22 Monday before your accident when your back was

23 bothering you and the Tuesday before your accident

24 when your stomach was bothering you. Other than

25 that, were you feeling okay before --

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1 A Yeah, I was feeling --
2 Q -- this accident?
3 A -- fine.
4 Q And --
5 A Yeah, -- Wednesday and the whole day Thursday, I
6 was doing pretty good. I don't really remember
7 what happened Wednesday or Thursday, but I do
8 remember Monday and Tuesday.
9 Q Okay. But as far as you know, as time has passed,
10 you weren't sick or having problems on Wednesday
11 and Thursday; you didn't go to any doctors; you
12 weren't having any trouble doing your job?
13 A No, ma'am.
14 Q And I understand very well that you said you don't
15 remember. Sometimes people remind you of things as
16 time passes.
17 A Yeah.
18 Q Okay. And then tell me about, then, Friday. Is
19 Friday the day you got hurt?
20 A Thursday.
21 Q Thursday. Okay. So, Thursday, did you come to
22 work like normal, seven --
23 A Yes, ma'am.
24 Q -- seven o'clock?
25 A (Nods head.)

1 Q What did you do that day?

2 A Drove a truck, I believe. Like I said, I know what
3 people have told me, but --

4 Q Right.

5 A -- I really can't say because I don't really know
6 for sure.

7 Q On a normal day, is that what you would have done,
8 driven a truck or operated a piece of equipment?

9 A Yeah, on a normal day I would have.

10 Q Okay.

11 Mr. Koon: (to the deponent) You've got
12 to speak up.

13 The Deponent: Okay.

14 Q Okay. And, again, I understand that you're piecing
15 some of this together, but what -- what do you
16 think or what do you remember happened that day
17 after driving the truck?

18 A I was told that I was -- I had washed the truck,
19 then I took the truck and parked it and that I was
20 climbing up in the truck to put something in there
21 or do something, and that's all I know. And then
22 they said that they seen me up -- they seen me up
23 on the truck. Then they said after they turned
24 around, they seen me laying on the ground.

25 Q Okay. But washing a truck, driving the truck and

1 parking it, climbing up in the truck and putting
2 stuff in it, is that something that you would
3 normally do --

4 A Yeah.

5 Q -- during a workday? Okay. What kind of truck is
6 it?

7 A It's a Sterling. It's a big dump truck.

8 Q So, when you climb from the ground into the truck,
9 do you have to step on a running board?

10 A Yeah, you've got to step on -- You step on two
11 steps, and then you step up into the cab.

12 Q Is it something where you have to hold onto a
13 handle to pull yourself up into it?

14 A Yes, ma'am.

15 Q How far -- When you step up into the cab -- Let's
16 talk first about your feet. If your feet are
17 standing in the cab, how far is that from the
18 ground?

19 A I'd say -- Let's see. The cab is about level with
20 me. So, about five-foot-six is about the height of
21 the cab floor.

22 Q Okay. So, about five feet, six inches. And --

23 A Yeah.

24 Q -- I think we all understand very well you don't
25 have any specific measurements of this; you're just

1 --

2 A Yeah.

3 Q -- estimating. But about five feet, six inches

4 from the floor of the cab down to the ground?

5 A Yes, ma'am.

6 Q So, then from a seated position, just if you were

7 sitting on the seat of the cab, that would be

8 another -- what, another two feet?

9 A Yeah, maybe two feet.

10 Q And you wouldn't have any reason to be on top of

11 the truck?

12 A No.

13 Q You would have either been sitting on the seat or

14 standing --

15 A Yes, ma'am.

16 Q -- or in between, one or the other?

17 A (Nods head.)

18 Q Okay. And there was no -- Some of your medical

19 records say that you fell from a ladder. You

20 weren't, as far as you know, climbing a ladder?

21 A No, I wasn't on a ladder.

22 Q Did you ever have to climb a ladder at work?

23 A Yeah, I've been on ladders at work, and we -- we

24 wear safety harnesses when we're on ladders and

25 stuff like that, but, normally, we don't do

1 anything like that.

2 Q Okay.

3 A But we have done it before, like working on a
4 building or something.

5 Q But as far as you can piece together from that day,
6 you weren't doing any work that involved you
7 climbing on a ladder?

8 A No, ma'am.

9 Q What's the last thing you remember that day before
10 the accident?

11 A I really don't remember anything that day, really.
12 I can remember all the way up to Tuesday, but I
13 don't even remember what happened Wednesday.

14 Q And you just kind of assume that Wednesday was a
15 normal day?

16 A Mm-hmm.

17 Mr. Koon: (to the deponent) Take your
18 hands down --

19 The Deponent: Oh. Sorry.

20 Mr. Koon: -- because you're talking kind
21 of low anyway.

22 The Deponent: Yeah, I talk quiet.

23 Ms. George: I talk quiet, too. I can
24 hear you just fine.

25 Q Okay. And do you remember or has anyone told you

1 what you might have been putting in the cab of the
2 truck?
3 A Like personal stuff, I guess, getting ready to
4 leave. They said it was at the end of the day.
5 Q Okay. Is that what your understanding is, that you
6 fell very near the end of your --
7 A Yeah.
8 Q -- your shift that day?
9 A Yes, ma'am.
10 Q Do you know what time it was?
11 A It was around 4:30.
12 Q So, it was a -- You already told me you always
13 work 40, usually more than --
14 A Yeah, usually from seven to three, like seven to
15 3:30. That would be 40 hours a week. But we were
16 working over that day.
17 Q Okay. So, it was around 4:30, and you said it was
18 -- you might have been putting your personal stuff
19 in. Would --
20 A Yeah, I might have been..
21 Q Would you have been driving that truck to go home
22 or --
23 A Yeah, we drive it to the front
24 Q Okay. And then is your car parked out front?
25 A Yes, ma'am.

1 Q How far is it from the back, where you keep the
2 truck, up to the front where your car is?
3 A It's probably about 150 yards.
4 Q And I keep saying it. I know that you don't
5 remember, but, as best as you understand, it would
6 make sense that if you were putting some stuff in
7 the cab of the truck, probably your personal
8 belongings, the point would be to take the truck
9 back up to the front and then get your stuff and
10 get in your car and go home?
11 A Yes, ma'am.
12 Q Is that what you would have done on other days?
13 A Yes, ma'am.
14 Q And you don't know if you were in the truck when
15 you fell?
16 A I have -- I don't remember. I don't know.
17 Q You don't know if you could have been standing
18 beside the truck?
19 A I don't know. From where I was laying, I had to
20 have been up on the truck.
21 Q Okay. How do you know where you were laying?
22 A They just told me. They said that I was laying
23 right beside the -- They said it looked like I
24 fell from the truck, from the position where I was
25 at, because I was several feet from the truck with

1 my arms straight behind me. That's what I was
2 told.

3 Q Arms straight behind you like you had fallen
4 backwards?

5 A Yeah.

6 Q And when you hit your head, did you hit the back of
7 your head?

8 A Yes, ma'am.

9 Q And we're going to get -- We're going to talk
10 about all the injuries and the medical treatment in
11 just a minute. Okay. And for the last couple of
12 minutes, we've been talking about what you don't
13 really remember and that people have told you
14 things and you've kind of pieced it together. Who
15 at work have you talked to about it, or who has
16 told you things?

17 A Just about everybody. I've talked to Paul Little.

18 Q Tell me --

19 A I call him Paul Little. He's Paul Barnett. Sorry
20 about that.

21 Q That's okay. And what does -- What's his job?

22 A He's a truck driver.

23 Q Okay. Was he near you when the accident happened?

24 A They were -- Yeah, he was near me. I guess they
25 were probably about -- If they were where they're

1 saying they were at, they were about 25, 30 yards
2 from me.

3 Q Did he actually see you when you fell?

4 A No, ma'am.

5 Q Did he see you before you fell?

6 A Yes, ma'am.

7 Q And then -- So, he saw you before you fell. Where
8 did he see you? Where were you?

9 A Up in the truck.

10 Q And did he see you again after you fell?

11 A Yeah, he seen me laying on the ground.

12 Q Okay. Okay. Paul Little Barnett. And who else?

13 A David Bolden.

14 Q And what's his job?

15 A He's a truck driver.

16 Q And kind of the same questions. Was he near you
17 when you fell?

18 A Him and Paul Little were standing together talking.

19 Q Okay. That was about 25 to 30 yards away?

20 A Yeah.

21 Q And did David see you when you fell?

22 A No, ma'am.

23 Q Did he see you before you fell?

24 A Yes, ma'am. I believe both of them did, because
25 they were standing there talking, and, from what

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1 they told me, they -- they turned around and they
2 seen me climb up in the truck, and they said they
3 turned back around, and as soon as they turned back
4 around again, they said they seen me laying on the
5 ground.

6 Q Okay. Anybody else besides Paul and David?

7 A No, ma'am.

8 Q So, they were the only two people that were really
9 kind of very close to you, saw you before and saw
10 you after?

11 A Yes, ma'am.

12 Q And have you -- I mean, did other people come in
13 later?

14 A Oh, yes, ma'am.

15 Q Okay. Did an ambulance come to get you?

16 A Yes, ma'am. We have an onsite ambulance and
17 paramedics.

18 Q Is that who came to your attention, the onsite
19 ambulance and paramedics?

20 A Yes, ma'am.

21 Q And did they take you to the hospital?

22 A No, ma'am. They took me to the front.

23 Q Okay. The front meaning the front building?

24 A Yeah.

25 Q And then what happened?

1 A Then the ambulance from Richland Hospital came and
2 picked me up.

3 Q Do they have a -- For lack of a better word, do
4 they have a jurisdiction problem? Like the
5 ambulance and paramedics onsite just handle you on
6 the property?

7 A Yeah, they just handle you on the property.

8 Q And you went to Richland Hospital, Richland
9 Memorial?

10 A Yes, ma'am.

11 Q Through a Richland County ambulance?

12 A Yes, ma'am.

13 Q And you know all this just from people filling you
14 in later on?

15 A (Nods head.)

16 Q How long were you in the hospital?

17 A For six days, I believe it was.

18 Q Where did you go after the six days?

19 A I went home.

20 Q Have you been re-hospitalized since then?

21 A No, ma'am. I went to the hospital once after that
22 for probably about five or six hours.

23 Q For what?

24 A Because I had ~~another~~ seizure.

25 Q Okay. And, so, other than the six days after the

1 accident and then one more time in the hospital for
2 a seizure, you've been staying at home?

3 A Yes, ma'am.

4 Q What injuries did you get in the fall?

5 A A head injury. I got --

6 Q What's your head injury? You told me before. Did
7 you get a cut?

8 A A hematoma --

9 Q Did you have a cut on the skin --

10 A Yeah, I had a cut on the skin, --

11 Q -- of your head?

12 A -- but there was like bleeding between my skull and
13 my brain, so they had to put me in a coma to keep
14 my head from swelling.

15 Ms. Turner: A subdural hematoma.

16 Q And did they have to drill a hole in your skull and
17 drain it out, or did it heal on its own?

18 A No, ma'am. They just put me in a coma so it would
19 quit swelling, and it finally started going back
20 down.

21 Q Okay. All right. So, you had the cut on the
22 actual skin on the back of your head, the bleeding
23 between your brain and the skull, which was that
24 hematoma, and they put in you in the coma to help
25 the swelling go down on that. What other injuries

1 did you have?

2 A Two spinal fractures at T3 and T4.

3 Q What kind of treatment did they do for that?

4 A They just give me medicine, and, basically, it's
5 healed on its own, because I just had an MRI done.
6 So, it's starting to heal.

7 Q Okay. No surgery?

8 A No.

9 Q Did you have any surgery related to the hematoma,
10 or was that all just a wait -- a waiting process?

11 A Not that I know of. I didn't have any kind of
12 surgery. I had to go to surgery -- some kind of
13 surgery because they had to put some -- surgically
14 put some kind of tube in me or something like that.

15 Q Was it a drainage tube? Do you know what it I was?

16 A I really don't know. They had everything hooked up
17 to me, I believe.

18 Q All right. When they released you from the
19 hospital after six days -- Do you remember being
20 in the hospital for six days?

21 A Yeah, I remember being in the hospital. I remember
22 I was in -- I went in Thursday, and Sunday I
23 realized I was there.

24 Q Were you in -- Were you in the induced coma from
25 Thursday to Sunday?

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- 1 A They say it was for two days, but I don't remember
2 anything until Sunday, so I don't -- I mean, they
3 had me on medicine and stuff, so I was kind out of
4 it anyway.
- 5 Q Of course. Okay. When they released you from the
6 hospital after the six days, were you able to walk?
- 7 A I could walk, but I was real sore. I had to use a
8 cane.
- 9 Q And then after they released you from the hospital,
10 what doctors did you keep following up with?
- 11 A The ones at the hospital, the ones that did
12 everything. I have no idea what their names are
13 because there are several of them.
- 14 Q There were more than one?
- 15 A Oh, yeah.
- 16 Q And were they checking you for your back and your
17 hematoma --
- 18 A My head, my spine, and stuff like that.
- 19 Q Do you know what kind of medication you were on
20 when they released you from the hospital?
- 21 A Keppra and hydrocodone.
- 22 Q Okay. And Keppra is for seizures?
- 23 A Yes, ma'am.
- 24 Q And hydrocodone is for pain?
- 25 A Yes, ma'am.

- 1 Q Had you ever taken a seizure medication before?
- 2 A No, ma'am.
- 3 Q Are you still taking it now?
- 4 A Yes, ma'am.
- 5 Q Has any doctor explained to you why you're having
- 6 seizures?
- 7 A From head trauma.
- 8 Q Do they think it's something that will be
- 9 permanent?
- 10 A I'm not sure. They're not saying it will be, but
- 11 -- They're saying I'm actually pretty lucky not to
- 12 have any kind of brain damage from having the
- 13 seizures, so I don't know.
- 14 Q Do you have any main doctors that you're following
- 15 up with now regularly?
- 16 A Just Dr. Peterson.
- 17 Q He's your family doctor?
- 18 A Yes, ma'am.
- 19 Q So, all the hospital doctors have released you into
- 20 the hands of your family doctor?
- 21 A Yes, ma'am.
- 22 Q Do you have any appointments with or are you
- 23 supposed to go back and see any kind of specialists
- 24 or any doctors at the hospital?
- 25 A No, ma'am.

1 Q And I think you said a moment ago -- and I wanted
2 to give you a chance to explain that -- you
3 recently had an MRI on your spine?

4 A Yes, ma'am.

5 Q Is that through Dr. Peterson or through the
6 hospital?

7 A Through Dr. Peterson.

8 Q And that was to see how the fractures in your back
9 were doing?

10 A Yeah.

11 Q And what did that show?

12 A They're healing.

13 Q Okay.

14 A That's all he really told me. He didn't really --
15 He just had it on a piece of paper, explaining it
16 to us.

17 Q Are you healing normally, I mean as he would expect
18 you to heal?

19 A Yeah. He said it looks like it's doing pretty
20 good, but --

21 Q Okay.

22 A It still gives me problems, but it's just something
23 I have to deal with.

24 Q And we're going to talk about that in a minute,
25 too. Okay. You told me the company ambulance from

1 the ground to the front, Richland County ambulance
2 from the front to the hospital, and you told me
3 about your stay in your -- in the hospital, and now
4 you're with Dr. Peterson. What is Dr. Peterson
5 doing for you?

6 A He's just checking to make sure -- my seizure
7 problems and just the back. That's about it. But
8 so far I'm doing pretty good on the seizures now. I
9 haven't had no more seizures.

10 Q Okay. Let's -- The back, you said, is -- is still
11 bothering you?

12 A I mean, it does, but it takes time for things like
13 that to heal. It's not like something that's going
14 to keep me from doing anything, but it does bother
15 me.

16 Q Where -- Does it hurt in the middle of your back?

17 A It hurts up at the top.

18 Q At the top?

19 A Yeah, right there (indicating).

20 Q Right before your neck?

21 A Yes, ma'am.

22 Q And you said it bothers you. Is it just painful?

23 A I mean, it's not like it was. I've pretty much got
24 used to it, but, I mean, it does bother me, but
25 there's not a whole lot you can really do with it.

1 Q Are you still taking hydrocodone for it?

2 A No, ma'am.

3 Q Are you taking anything, even over the counter?

4 A No. I mean, I've got pain medicine and stuff, but
5 the only thing I'm taking now is Keppra. You can
6 take pain medicine, but it's not going to really do
7 anything.

8 Q It doesn't solve the problem?

9 A Yeah. That can cause more problems than solving
10 problems.

11 Q Okay. The cut that you had on the back of your
12 head, has that healed?

13 A Yes, ma'am.

14 Q Did you have any stitches for it?

15 A No, ma'am.

16 Q Do you know if you have a scar there?

17 A I don't know.

18 Q If you have a scar, is your hair covering it?

19 A Yeah, I'm -- I doubt I have a scar because it
20 wasn't a bad cut. It was more of a hard blow than
21 a cut, so --

22 Q Okay. And the hematoma in your head, is that all
23 healed now?

24 A It's showing that it's healed, but they were saying
25 that there's still like dried blood or something

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1 like that in there. Until that's completely gone
2 away, you can possibly have a seizure, so -- But
3 it should be pretty much gone.

4 Q Is that something that's supposed to dissolve by
5 itself over time?

6 A Yes, ma'am.

7 Q And they're not doing anything else to treat that
8 other than just look at it to make sure the blood
9 is gone --

10 A Yeah, --

11 Q -- and drying up?

12 A -- basically.

13 Q And -- Okay. Your seizures, when is the last time
14 you had a seizure?

15 A It was about -- a little over a month ago.

16 Q Have they kept you on the same dosage of Keppra, or
17 are they --

18 A Yes, ma'am.

19 Q When you last had a seizure, what can you tell me
20 about it? What kind of seizure was it, or what
21 happens to you?

22 A It was a -- what they call a grand mal seizure, a
23 full-blown seizure. I mean, I had a seizure, but I
24 don't really know what happened --

25 Q Are you aware of it when it's happening?

1 A No, ma'am.

2 Q And has Dr. Peterson told you that he just can't
3 predict if or when you'll have another one?

4 A I shouldn't have another, but you never know. I
5 never would have thought I would have had that one,
6 but, I mean, -- But that was shortly after I got
7 out of the hospital, too, so --

8 Q Right.

9 A Ever since then, no, I've been better.

10 Q And has -- Is Dr. Peterson just going to keep
11 monitoring you until he feels like it's safe to
12 take you off the Keppra?

13 A Yeah. I have to be on it for at least a year.

14 Q Okay. A year after the accident?

15 A Yeah.

16 Q Okay.

17 A Or a year after I had this last seizure.

18 Q I see. So, the last seizure was about a month ago,
19 which means you'll, at minimum, be on the Keppra
20 for at least 11 more months --

21 A Yes, ma'am.

22 Q -- to make it a year? Okay. And that's just as a
23 precaution to keep you from having the seizures.
24 Other than the, I guess, awareness that you might
25 have a seizure and the pain that you're having in

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1 your -- in your back up near your neck, are you
2 having any other problems?

3 A No, ma'am.

4 Q Are you able to care for all of your own personal
5 needs and do everything you need to do to bathe and
6 dress yourself and feed yourself?

7 A Yes, ma'am.

8 Q Are you still kept out of work by your doctors?

9 A No, ma'am. I was released last Monday, but since I
10 had that other seizure and I'm not able to drive --
11 My primary job is operating equipment, so they
12 don't want me to come back for at least five
13 months.

14 Q Okay. Was it Dr. Peterson who released you last
15 Monday?

16 A Yes, ma'am.

17 Q But then who -- Who is it, then, that's deemed you
18 not able to drive?

19 A Dr. Peterson -- Well, after you have a second
20 seizure, you're not able to drive for six months,
21 but that's like a rule of thumb I guess you could
22 say.

23 Q I got you. And it's been -- So, you've got five
24 months left --

25 A Yeah.

1 Q -- in that period? And, so, what happens after no
2 seizure for six months? What will you be able to
3 do then?

4 A I should be able to do what --

5 Q Whatever you want?

6 A -- whatever I was doing, doing the same thing,
7 hopefully.

8 Q Okay. Have you talked to anybody with Saiia about
9 whether you still have a job or if your --

10 A Oh, yes, ma'am.

11 Q -- job is available? Who did you talk to?

12 A I talked to Jimmy last week.

13 Q Okay. Are they going to have a job for you if you
14 can come back to work?

15 A Yeah, he says I'll have a job, but you don't ever
16 know until you see it happen. So, I don't know.

17 Q And as far as you know, does Jimmy understand
18 you've got at least five more months to go?

19 A Yeah, that's -- that's what they come up -- Well,
20 he knows that you're not supposed to drive for six
21 months, and --

22 Q Okay.

23 A -- he said being the case that it's -- that it
24 already is, it'll take at least five more months,
25 just to be careful about it. He had stuff for me

1 to do there, but since my primary job is operating
2 equipment, they want to wait five months.

3 Q What kind of stuff did he have for you to do?

4 A I have no idea.

5 Q So, you -- Was it -- Did you decide to wait it
6 out?

7 A No, ma'am.

8 Q Who decided that you wouldn't go back and do this
9 other stuff?

10 A I guess Saiia. The company.

11 Q So, they just -- They decided just to wait it out?

12 A Yes, ma'am.

13 Q I understand. And you don't know what the job
14 duties were? I mean, is it something in the office
15 or --

16 A I have no idea. I really don't know.

17 Q What are you doing every day?

18 A Well, when my wife is home and she's not working,
19 we do things. We go places. And we've got horses
20 and dogs and stuff. We take care of them.

21 Q Are you able to do everything you want to do?

22 A Some things I can do. Some things I can't do.

23 Q What can't you do?

24 A Like twist my back certain ways. I can't do that,
25 but --

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1 Q Okay.

2 A -- that's about the only thing. If I, like, do
3 like that (demonstrating) a bunch, it gets really
4 bad, but other than that --

5 Q Sort of standing still from the waist down and then
6 twisting from the waist up? That's --

7 A Yeah, that --

8 Q Is that painful?

9 A Yeah, that hurts, but other than that, I seem to be
10 all right.

11 Q What about lifting? Do you have any problems with
12 lifting?

13 A No, ma'am.

14 Q Have you tried to work on your house at all?

15 A I've tried.

16 Q Are you able to do all the stuff that's required?

17 A Not really. I can't lift, like, the heavy stuff
18 like I was lifting. And the main reason to that is
19 I don't want to mess my back up any worse than it
20 already is. I want to let it heal..

21 Q You try to be a little cautious?

22 A Yeah. If I get hardheaded and do stupid stuff,
23 I'll be right be back in the same shape I was.
24 I've just got to take it easy.

25 Q I don't know if you know this, but if you had

1 another seizure, would the six months start over,
2 or do they change how they treat and evaluate you?
3 A Yeah, I think it does start over. I'm not sure. I
4 just know from one seizure to the next. That's
5 really all --
6 Q Of course.
7 A But I'm thinking it's every six months, and it
8 might go to a year. I don't know.
9 Q So, is your -- Does your wife mainly drive you?
10 A Yes, ma'am.
11 Q Have you tried to drive at all?
12 A I have drove once or twice, but I ain't supposed ,
13 to, so I shouldn't do that, but I have --
14 Q When you did, were you able to? I mean, could you
15 drive?
16 A Yeah, I can drive. If I feel like, I don't know,
17 feel real bad or something, I won't do anything
18 like that, but --
19 Q Right.
20 A I'm not supposed to drive, so she's driving me now.
21 Q I understand.
22 A I don't want to take no chance.
23 Q So, have you been getting any money at all since
24 the accident?
25 A No, ma'am.

1 Q How have your medical bills been paid for?

2 A Insurance is still paying for them and --

3 Q And that's your Blue Cross Blue Shield health
4 insurance?

5 A Yes, ma'am.

6 Q What have you had to pay out of your own pocket?

7 A Copays.

8 Q Do you know how much?

9 A Not exactly, but it's -- I don't know. It's a
10 pretty good bit, because I've been, you know, to
11 several doctors since this happened.

12 Q Let me ask you this. Have you had the money to pay
13 every time they've asked you to pay a copay?

14 A Yes, ma'am.

15 Q And then what about the deductible part of your
16 insurance where you have to pay some and they pay
17 the rest? Have you had --

18 A Yeah.

19 Q -- to pay any of that?

20 A They paid -- My insurance company paid like some
21 of the hospital bill, like not even half of it.
22 That's about it.

23 Q So, the other half, is it unpaid?

24 A Yes, ma'am.

25 Q Do you know why workers' comp isn't paying for your

1 case?

2 A No, ma'am, not really. It's denied I guess you
3 could say.

4 Q Do you know why it's denied?

5 A No, ma'am.

6 Q Do you think the best people at Saiia to talk to
7 for any information sort of right before and right
8 after the accident would be Paul Barnett --

9 A Yeah.

10 Q -- and David Bolden?

11 A Yes, ma'am. They were the two there, so that would
12 be the best people to talk to.

13 Q You don't have any problems with anybody at Saiia?
14 Y'all all got along fine?

15 A I had a good -- a good relationship with everybody
16 there pretty much.

17 Q If the other five months goes by with no seizure,
18 and say your back felt in five months the same way
19 it feels right now, do you feel like you could go
20 back to work doing the same job?

21 A I mean, operating equipment is really not a
22 strenuous job, so -- As long as I'm not really
23 lifting real heavy stuff, it doesn't really bother
24 me, but I think by then I should be a lot better
25 than I am now. Like I said, I can do things. I

1 just -- If I get to twisting my back or something,
2 or picking up something real heavy, that'll bother
3 me, but it's healing now, so -- I know it's
4 healing.

5 Q Okay. And other than Dr. Peterson, do you have
6 appointments or plans to see any other doctors?

7 A No, ma'am.

8 Q Do you feel like he's taking good care of you?

9 A Yes, ma'am.

10 Q Does he have all your medical records from the
11 hospital and he's aware of all the treatment and
12 everything you had there?

13 A Yes, ma'am.

14 Ms. George: I don't have any other
15 questions, Mr. Turner. Your attorney may have
16 some for you.

17 Mr. Koon: No, I don't have anything.

18 Ms. George: That's it. That concludes
19 the deposition. Thank you so much.

20 (Whereupon the deposition was concluded at
21 9:51 a.m.)

22 **(Deponent has waived reading and signing.)**

Sandra M. Sneed

P481

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.:1204039

William Lee Turner,)
)
 Claimant,) Deposition
)
 vs.) of
)
 SAIHA Construction,) William Lee Turner
)
 Employer,)
)
 Old Republic General)
 Insurance Corporation c/o)
 Gallagher Bassett Services,)
 Inc.,)
)
 Carrier.)
)

Deposition of William Lee Turner, pursuant to the
Rules of the South Carolina Workers' Compensation
Commission, commencing at 3:02 p.m., Thursday, January
16th, 2014, at the office of Koon and Cook, P.A., 2016
Gadsden Street, Columbia, South Carolina.

Reported by:
Cheri B. Williams, CVR-M

WILLIAM LEE TURNER

Appearances

For the Claimant: John K. Koon, Esquire
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2016 Gadsden Street
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For the Employer/
Carrier: Jason W. Lockhart, Esquire
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Columbia, SC 29211

Also Present: Robert Bennett

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

William Lee Turner, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. Lockhart:

Q Mr. Turner, good afternoon, sir.

A Good afternoon.

Q My name is Jason Lockhart. I'm a lawyer here in Columbia. I represent SAIIA and their workers' comp insurance company in your workers' comp case. We've got a hearing coming up in a few weeks in your case and I'm here to take your deposition today.

A Yeah.

Q You've given a deposition before, so let me just explain to you a little about why I'm here today to ask you some questions. I know you were deposed -- we're going on about a year and a half maybe.

August 1st of 2012 was when you gave a deposition

1 previously. I'm not here today to ask you about
2 all the things you got asked about before, okay?

3 **A Okay.**

4 **Q** What I'm here to do is to talk to you about what's
5 been going on with you since August the 1st of 2012
6 up through today.

7 **A Okay.**

8 **Q** So we're not going to spend any time talking about
9 your accident again. I do want to talk to you
10 about what medical care you've gotten for your
11 injuries since August 1 of 2012. I do want to talk
12 to you about your work status and how you're doing
13 at work from August 1 up through today. Then I
14 want to talk to you about what kind of problems you
15 still may be having today as a result of your work
16 accident.

17 **A Okay.**

18 **Q** So, again, we're not going to spend a lot of time
19 covering a lot of the things that were covered
20 before by Ms. George, who's my law partner here in
21 Columbia. A couple things to keep in mind during
22 the deposition. The first is that the court
23 reporter is taking down everything we say to each
24 other so I need you to speak your answers for me,
25 okay? If you nod your head or you shake your head,

1 she can't make a record of that so I need you to
2 speak or verbalize your answers. The other thing
3 is if I ask you a question at any point that is
4 confusing to you, let me know and I'm happy to
5 repeat myself, okay?

6 **A Yes, sir.**

7 **Q** I'm not here to trick you or mislead you in any way
8 so it's important that you understand my questions.
9 And if you understand my questions and you answer
10 them, I'm going to assume you understood what I was
11 asking you, okay?

12 **A Okay.**

13 **Q** If any point during the deposition you need to take
14 a break or go to the restroom or do anything like
15 that, let me know and I'm happy to let you take
16 whatever breaks you need to, okay? Mr. Turner, I
17 do want to confirm a little bit of the biographical
18 information you gave at the last deposition. I
19 have your full name as William Lee Turner, Jr., is
20 that correct?

21 **A That's correct.**

22 **Q** Are you still living at _____ in
23 _____

24 **A Yes.**

25 **Q** And is that residence -- that's a mobile home, is

1 that correct?

2 **A** **Yes.**

3 **Q** In your previous deposition I saw some discussion
4 between you and Ms. George about you possibly
5 building a home somewhere.

6 **A** **Yes, sir.**

7 **Q** What's the status of that?

8 **A** It's still in the process of getting built because
9 we haven't worked on it in the past year because me
10 and my father are working on it and he had MDS and
11 he went through a bone marrow transplant so he's
12 still recovering from that.

13 **Q** When was the last time that you and your dad did
14 any type of work on this home that y'all were
15 building?

16 **A** We actually did some work over the -- this past
17 weekend.

18 **Q** Okay. And what type of work was that?

19 **A** I was just putting up some plywood, covering up
20 things.

21 **Q** Has the house been framed already?

22 **A** Oh, yeah. Yeah, it's dried in.

23 **Q** Have y'all done any type of electrical, plumbing
24 work or anything?

25 **A** Yeah. We've done electrical work.

1 Q How long ago has it been since you did the
2 electrical work on it?

3 A It's been probably a year and a half. You have --
4 well, it's a log home so you have to do it as
5 you're building the house.

6 Q And the plumbing work, how long ago has it been
7 since you did that?

8 A We haven't done any plumbing yet.

9 Q All right. The roof, I presume, was completed?

10 A The roof's not completed, but it is dried in. It
11 has seven different roofs on it.

12 Q And when did you and your dad do that work?

13 A We did it approximately two weeks before he went to
14 get his bone marrow transplant.

15 Q So how long ago has that been? I'm sorry.

16 A That's been a little over a year.

17 Q How old are you today?

18 A I'm 28.

19 Q Are you still married?

20 A Yes, sir.

21 Q Do you and your wife have any children now?

22 A No, sir.

23 Q Is your wife still employed?

24 A Yes, sir.

25 Q She was working at Sam's, I think, according to

1 this last deposition.

2 **A Yeah.**

3 **Q Is she still there?**

4 **A Yeah, that's correct.**

5 **Q And I think according to your previous deposition**
6 **you graduated from high school in 2004, is that**
7 **correct?**

8 **A That's correct.**

9 **Q Any studies at a college or a technical school or**
10 **any university at all since August 1 of 2012?**

11 **A No, sir.**

12 **Q Have you been arrested at all since August 1 of**
13 **2012?**

14 **A No, sir.**

15 **Q Any work-related injuries with SAIIA since August 1**
16 **of 2012?**

17 **A No, sir.**

18 **Q Have you been in any type of automobile accident at**
19 **all since August 1 of 2012?**

20 **A No, sir.**

21 **Q Since August 1 of 2012, have you been involved in a**
22 **lawsuit as a plaintiff? And when I ask you that**
23 **question, I mean have you sued anyone since August**
24 **1 of 2012?**

25 **A No, sir.**

1 Q Have you been involved in a lawsuit as a defendant?
2 And when I ask you that question, I mean has anyone
3 sued you at all for any reason since August 1 of
4 2012?

5 A No, sir.

6 Q Since August 1 of 2012, have you received
7 unemployment benefits?

8 A No, sir.

9 Q I know there was a period of time -- perhaps even
10 when you were deposed before, but there was a
11 period of time when you were out of work, correct?

12 A Yeah. Yeah. Eight months.

13 Q During that eight months, did you have any income
14 at all besides your wife's wages with Sam's?

15 A No, sir. I started getting -- I had long-term
16 disability and 180 days after you've been out of
17 work you can receive long-term and I received that
18 for two months before I went back to work.

19 Q The long-term disability benefits, was that
20 something that you paid for out of your paycheck?

21 A Yes, sir.

22 Q Okay. And how much did you receive in long-term
23 disability?

24 A It was 2,000 something. I can't remember exact
25 amount, but it was -- it was between 2,000 and

1 \$2500.

2 Q And you received those for about two months?

3 A Yes, sir.

4 Q And the benefits stopped because you went back to
5 work for SAIIA?

6 A Well, I didn't go back to work actually a month
7 after the benefits stopped because I was going
8 through physical therapy and all that and the
9 doctor wouldn't release me until that was complete.

10 Q Okay. So the benefits stopped. Then you were out
11 of work for about another month --

12 A Yeah.

13 Q -- and then you went back to work?

14 A Yeah.

15 Q Do you know why the benefits stopped?

16 A They said because there's no like physical reason
17 why I couldn't return back to work, but the doctor
18 hadn't released me yet and -- because he wanted
19 physical therapy done first.

20 Q And who were you treating with at that time?

21 A It's Dr. Alan Peterson.

22 Q Okay. All right. Since August 1 of 2012, have you
23 worked anywhere at all other than SAIIA?

24 A No, sir.

25 Q When did you go back to work?

WILLIAM LEE TURNER

1 A I went back to work on the 2nd of January, 2013.

2 Q And when you returned to work with SAIIA on January
3 the 2nd of 2013, what was your position? What did
4 you return to doing?

5 A Operating equipment.

6 Q And what type of equipment do you -- or did you
7 begin operating when you returned to work on
8 January 2, 2013?

9 A Excavator, backhoe, dump truck.

10 Q Do you have a CDL?

11 A No, sir.

12 Q When you went back to work for SAIIA in January of
13 2013, what was your rate of pay?

14 A 14.25.

15 Q Is that your rate of pay currently?

16 A Yes, sir.

17 Q Okay. And when you went back to work for SAIIA in
18 January of 2013, how many hours a week were you
19 working?

20 A We work 40 hours and more. Most of the time more.

21 Q Last week, for example, how many hours did you
22 work? Was it 40 or more or less?

23 A I believe it was 51.

24 Q Okay.

25 A Or 50, something like that.

Q When you went back to work in January of 2013, who was your supervisor?

A Jimmy Spiegel.

Q Is Mr. Spiegel still your supervisor?

A No, sir.

Q Who is your supervisor at the present time?

A Robert Bennett.

Q And is Mr. Bennett here at the deposition today?

A Yes, sir.

Q Okay. And how long has Mr. Bennett been your supervisor?

A For about six months. That's about right, yeah.

Q Do you have anybody else besides Mr. Bennett that you answer to on a daily basis?

A No, sir.

Q And you're still working as a heavy equipment operator?

A Yes, sir.

Q Other than the operation of the equipment itself, being in the equipment, utilizing the controls to make the machines do what they do, do you have any other job duties and responsibilities with SAIIA?

A We do several different things, but 90 percent of my job is operating equipment. But sometimes we have to do -- like fix up fences or something like

that.

Q Do you perform any maintenance on the equipment if it, say, were to break down or malfunction?

A We help our mechanic out sometimes.

Q What types of things do you do when you help the mechanic out?

A Just get tools and stuff like that.

Q But as far as actually repairing the equipment itself, do you do any of that?

A No, sir.

Q Do y'all have to wash the equipment, clean it, when it get debris or dirt or things on it? Do you do that?

A Yes, sir.

Q How often do y'all have to clean the equipment?

A We clean it -- say if we like have to go inside the mill or something, then we'll clean it.

Q Is that something you do on a regular basis?

A No, sir.

Q Since January the 2nd of 2013, which is, again, the day you say you went back to work, have you missed any time from work at all for the injuries that you suffered in your work accident?

A No, sir.

Q And did Dr. Peterson, was he the one that released

you to go back to work?

A Yes, sir.

Q Okay. And did he release you to go back to work, would that have been in December at some point or in January? When did you --

A He actually released me to go back to work on December the 27th. I still had vacation left so they let me have my vacation. So that's the reason why I come back on the 2nd of January.

Q Remind me. And I apologize. When you got -- when you were involved in this work event, this alleged accident, was your rate of pay 14.25?

A Yes, sir.

Q So you're making the same amount of money you're making now?

A Yes, sir.

Q Working the same number of hours?

A Yes, sir.

Q Performing the same job?

A Yes, sir.

Q Okay. All right. You mentioned Dr. Peterson a moment ago. And in looking back at your prior deposition, it's my understanding Dr. Peterson did treat you for a period of time -- or rather treated you for the injuries you suffered in this work

1 accident, correct?

2 **A Yes, sir.**

3 **Q** Are you still under the care of Dr. Peterson?

4 **A Yes, sir.**

5 **Q** Okay. Since August 1 of 2012, how frequently have
6 you been seeing Dr. Peterson?

7 **A** It's been several -- several times. I'm not sure
8 right off the top of my head what the number would
9 be, but it's been at least 12 or 15 times if not
10 more.

11 **Q** Okay. Do you see him monthly?

12 **A** I was at first. I was having to come in there
13 every month and now I got to the point where it's
14 every six months.

15 **Q** Let's talk about this visit in December of 2012.
16 You said he released you to go back to work on
17 December 27th?

18 **A Yes, sir.**

19 **Q** Did you see him on or about the 27th of December?

20 **A Yes. I believe it was a week before the 27th.**

21 **Q** Okay. Prior to his releasing you to return to work
22 and during this visit, the visit during which he
23 released you to go back to work, what type of
24 problems, if any, did you tell him you were having
25 as a result of your work accident?

1 A Other than just a little bit of back problems,
2 that's the only thing.

3 Q I know that following your work accident you had
4 some seizures, is that correct?

5 A Yeah. I had a seizure.

6 Q A seizure. I'm sorry. In December of 2012 when he
7 released you to go back to work, were you having
8 any seizures at all?

9 A No, sir.

10 Q Okay. How long had it been in December of 2012
11 since you had last had a seizure?

12 A Seven months.

13 Q So that would have been sometime around May,
14 April/May, of 2012?

15 A Yeah. Yes, sir.

16 Q When Dr. Peterson released you to go back to work
17 in December of 2012, was he providing you with any
18 treatment at all for your work injuries?

19 A I'm still on Keppra, which is a seizure medicine.

20 Q And how do you pay for that? Is that paid by your
21 health insurance or do you pay for that out of
22 pocket?

23 A Yeah. They pay so much and it costs me about \$10 a
24 month.

25 Q Now, since being released to go back to work by Dr.

Peterson, you said you've continued to see him with some regularity?

A Yes, sir.

Q What are you seeing him for?

A It's probably been about four -- well, about four months since the last time I seen him. Maybe a little bit longer than that. And I was having some back issues then so he sent me to a specialist and they gave me medicine like they normally do. Then they wanted to do injections and I didn't want to do the medicine or injections so they basically just started doing what I was doing in physical therapy and that's helped me out better than anything.

Q The -- you said he referred you to another doctor. Who was that?

A I can't even remember her name. It was a -- it was a pain specialist.

Q I've got some records from a lady named Dr. Girault. Does that sound right?

A Yes. That's -- Yeah.

Q G-i-r-u-a-u-l-t.

A Yeah, that's it.

Q Gisele Girault.

A Yeah, that's it.

1 Q Okay. All right. I'll talk to you about her in
2 just a minute, but -- so you think you last saw Dr.
3 Peterson about four months ago?

4 A Yes, sir.

5 Q And you provided him with some complaints about
6 your back?

7 A Yes, sir.

8 Q Were these problems related to your work accident
9 or were they related to something else?

10 A It's -- well, where the problems where I'm having
11 in my back is where I had problems in my back from
12 where I fell off the truck, but it gets better as
13 time goes by.

14 Q Other than your work accident, have you had any
15 other accidents or falls or events where you
16 injured your back?

17 A No, sir.

18 Q So you've had no other back injuries at all since
19 the date of your work accident?

20 A No, sir.

21 Q When you last saw Dr. Peterson, did he provide you
22 with any treatment at all?

23 A No, sir.

24 Q Other than prescribing the medications --

25 A Yeah. Just medicine. But other than that,

1 nothing.

2 Q The medicine that he gave to you, was it just the
3 Keppra or did he give you anything else?

4 A No. It was 525 Hydrocodone.

5 Q And are you still taking it?

6 A No, sir.

7 Q When was the last time you would have taken that
8 pain medication?

9 A Probably about three months ago.

10 Q Do you have a follow up scheduled with Dr.
11 Peterson?

12 A Yes, sir. I've got to get blood work done next
13 week and then the following week I've got to go get
14 the results from him.

15 Q Is that for -- is that a regularly scheduled
16 appointment?

17 A Well, the blood work's to see -- like check your
18 liver and all from taking the seizure medicine.

19 Q Okay. All right. As far as Dr. Peterson goes,
20 does he have any -- has he placed any work
21 restrictions upon you at the present time?

22 A No, sir.

23 Q To your knowledge, has he still released you to go
24 back to doing your regular job?

25 A Yes, sir.

1 Q Is he aware that you've gone back to work?

2 A Yes, sir.

3 Q And is he aware that you've been back to work for
4 about a year?

5 A Yes, sir.

6 Q Okay. Let's talk about Dr. Girault for just a
7 moment. I've got her medical records so I don't
8 need to ask you about each and every time that
9 you've seen her. I'll kind of go through this with
10 you.

11 A Okay.

12 Q It looks like she saw you for the first time on or
13 about September the 18th of 2013. Does that sound
14 about right to you?

15 A Yes, sir.

16 Q Okay. And when you saw her for the first time,
17 what type of problems did you tell her you were
18 having?

19 A Basically the same problems. And she -- about
20 where my T3 and my T4 was where I had fractures and
21 she kind of explained what was going on with it.
22 It's healed and it's doing good, but it's -- like
23 the muscles are tense around it, which I can't
24 really explain it to you the way she explained it
25 to me.

- 1 Q Did you tell her that you had been involved in a
- 2 work accident?
- 3 A Yes, sir.
- 4 Q Did you provide her with a history of any other
- 5 back injuries other than your work accident?
- 6 A No. Which I had told her -- I did tell her that I
- 7 didn't really fall off the horse. I basically
- 8 jumped off the horse, but that really didn't bother
- 9 me.
- 10 Q When did that happen?
- 11 A Sometime before September.
- 12 Q Were you on your property or were you somewhere --
- 13 A Yes, sir.
- 14 Q Kind of tell me about what happened. I assume you
- 15 don't jump off a horse for fun.
- 16 A Well, I got on the horse bareback and the other
- 17 horse was out there being stupid and then that
- 18 horse went stupid so I just jumped.
- 19 Q Okay. Did you land on your feet?
- 20 A I landed on my feet. Then I basically like went
- 21 backwards for a little ways. Then I fell on my
- 22 butt.
- 23 Q Do you still ride horses?
- 24 A Yes, sir.
- 25 Q How frequently do you ride horses?

1 A Not very often. It's maybe once every couple
2 months.

3 Q When was the last time you rode one?

4 A It's probably been four or five months ago.

5 Q Are these ones that belong to you or they belong to
6 somebody else?

7 A No. They belong to me.

8 Q How many do you have?

9 A I've got three.

10 Q Are they boarded, I guess for a better term, on
11 your property?

12 A Yes, sir.

13 Q And so do you have to take care of them?

14 A Yes, sir.

15 Q Do you have to feed them?

16 A Yes, sir.

17 Q And clean them?

18 A Yes, sir.

19 Q And shoe them?

20 A I don't shoe them. They just have -- we have a
21 horse farrier come out there and they trim their
22 feet.

23 Q Okay. Are they -- do you use them, you know, for
24 farming or are they --

25 A They're just basically like yard ornaments.

1 Q Okay. All right. So you saw Dr. Girault in
2 September. You told her that you were having some
3 problems with your back. Did she provide you with
4 any treatment at all at that time?

5 A She had continued me on the same medication Dr.
6 Peterson had given me. Then she had given me like
7 an anti-inflammatory medicine and a muscle relaxer.

8 Q It looks like she recommended that you also have an
9 MRI?

10 A Yes, sir. And I did that.

11 Q And did you go back to see her after you had the
12 MRI?

13 A Yes, sir.

14 Q And I've got a note from October 17, 2013. Does
15 that sound about right to you?

16 A Yes, sir.

17 Q All right. What happened at this follow up visit?

18 A Basically just keep taking like the anti-
19 inflammatory medicine and the muscle relaxers and
20 get off the narcotic pills. Then she wanted to do
21 injections and all that and I wanted to look more
22 into that before I made that decision. And all the
23 stuff I looked up on it, it wasn't nothing but
24 something that causes more problems. So when I
25 went back I told them I didn't want to do the

1 injections and they kept pushing towards that way
2 so I haven't went back.

3 Q So was there another visit with her after October
4 17th?

5 A No, sir. I've only been there twice.

6 Q So did you inform her office that you didn't want
7 to have these injections?

8 A They had set it up. We were going to do it and --
9 well, they had set it up for me to come back and
10 talk to her because when I went back the second
11 time I talked to the nurse practitioner, not
12 actually the doctor.

13 Q Okay.

14 A And I wanted to talk to the doctor.

15 Q Did you ultimately inform them that you didn't want
16 to have the injections?

17 A Yes, sir.

18 Q And so you haven't been back at all since October
19 17th?

20 A No, sir.

21 Q And in her note she talks about giving you a
22 prescription for a back brace. Did you ever go and
23 get a back brace?

24 A No, sir.

25 Q You don't wear one at the present time?

1 **A** No, sir.

2 **Q** Other than Dr. Girault, has Dr. Peterson referred
3 you to see any other doctors at all?

4 **A** The only doctor he referred me to was -- he was
5 like -- this was more towards the beginning. He
6 referred me to like a sports doctor and then he
7 sent me to physical therapy and that's when I
8 started doing that.

9 **Q** Okay. All right. But since, let's say -- let's
10 just go back to when you returned to work, January
11 of last year. Since January of last year, has Dr.
12 Peterson referred you to see any doctors other than
13 Dr. Girault?

14 **A** No, sir.

15 **Q** Since you were deposed on August 1 of 2012, have
16 you been hospitalized for any reason?

17 **A** No, sir.

18 **Q** Since August 1 of 2012, have you had any type of
19 surgery at all?

20 **A** No, sir.

21 **Q** Since August 1 of 2012, have you visited an
22 emergency room at any hospital anywhere?

23 **A** No, sir. No emergency room.

24 **Q** Have you treated with any other doctors at all
25 since August 1 of 2012 other than Dr. Peterson and

1 Dr. Girault?

2 A Yeah. I went like the -- or Doctors Care or
3 Kershaw Health or whatever it is right up there in
4 Elgin because my shin right here. But other than
5 that, no.

6 Q Did you injure your shin somehow?

7 A Well, it's been messed up for a while and then I
8 hit it again and it just made it bruise real bad
9 basically.

10 Q It was messed up from some injury you had had in
11 the past?

12 A Well, I hit a stump driving a four wheeler one time
13 and that's been probably 15 years ago, if not
14 longer.

15 Q All right. Has your lawyer sent you to see a
16 doctor?

17 A No, sir.

18 Q Do you have any visits scheduled with a doctor that
19 have been scheduled by your lawyer?

20 A No, sir.

21 Q And so other than Dr. Peterson and Dr. Girault,
22 those are the two doctors that have essentially
23 seen you since August 1 of 2012 for the injuries
24 you sustained in your accident?

25 A Yes, sir.

1 Q As far as your job is concerned at the present
2 time, are you physically able to perform your job
3 duties and responsibilities?

4 A Yes, sir.

5 Q Do you supervise anyone?

6 A No, sir.

7 Q I've never operated a backhoe. That may be a shock
8 to you.

9 A It would be.

10 Q I assume that when you get on one you have to use
11 your hands?

12 A Yes, sir.

13 Q You have to use your feet?

14 A Yes, sir.

15 Q You have to use your eyes?

16 A Yep.

17 Q You have to use your brain?

18 A Yes, sir.

19 Q You have to use them all at the same time?

20 A Yep.

21 Q Okay. So operating heavy equipment requires -- it
22 requires you to concentrate?

23 A Yes, sir.

24 Q Okay. Sometimes harder than other times, I assume,
25 right?

1 **A** Yes, sir.

2 **Q** You said you drive a dump truck?

3 **A** Yeah. I do every once in a while. Not very often,
4 though.

5 **Q** When you drive it, are you driving it on a job site
6 or are you driving it over the road from point A --

7 **A** No, sir. It's on the site. That's why we don't
8 have CDLs. We don't ever drive on the public
9 roads.

10 **Q** Okay. All right. If you're on a job site and
11 you're driving a dump truck, I assume that requires
12 concentration, too?

13 **A** Yes, sir.

14 **Q** And are these manual transmission trucks?

15 **A** We have manual and automatic.

16 **Q** Any problems operating those vehicles at all?

17 **A** No, sir.

18 **Q** As far as the seizure activity goes, it's been a
19 while since you had one?

20 **A** It's been a while, yeah.

21 **Q** Almost two years now?

22 **A** Yeah.

23 **Q** Okay. All right. Mr. Turner, as far as your
24 current problems are concerned, problems related to
25 this work accident, are you having any problems at

1 the present time?

2 A I still like -- like right now sitting in this
3 chair it bothers me, but I had -- I lean back a lot
4 and put a pillow behind my back so I don't hunch
5 because I hunch a lot and the physical therapy
6 people basically told me if I didn't quit hunching
7 that I was going to be that way forever so -- but
8 other than that, I'm pretty good.

9 Q And when you say -- are you talking about your
10 back?

11 A Yeah.

12 Q Where do you have back pain?

13 A Right almost -- well, a little bit higher than the
14 middle.

15 Q Okay. Is it generally worse in the mornings or in
16 the evenings or does it stay the same throughout
17 the day?

18 A In the mornings I feel pretty good and afternoons
19 I'll be a little bit sore, but other than that, it
20 ain't something that's slowing me down.

21 Q Is there anything that you do from a physical
22 standpoint that causes your back pain to flare up?

23 A If I'm bending over -- bending over a lot. That's
24 usually when it hurts the worst. But other than
25 that, it doesn't really bother me.

1 Q If you had to rate your back pain on a scale of
2 zero to ten, zero being no pain and ten being the
3 most excruciating pain you've ever experienced, how
4 would you rate your daily back pain?

5 A Sometimes it doesn't bother me at all. I'd say
6 around a two, maybe.

7 Q When you have back pain, what do you do to try to
8 alleviate it or make it go away?

9 A Just stretch.

10 Q Do you take any prescription medications for your
11 back?

12 A No, sir.

13 Q Do you take any over-the-counter medications for
14 your back?

15 A I might take Aleve every once in a while.

16 Q How often in the course of an average week do you
17 take Aleve?

18 A Maybe twice.

19 Q Do you ever put an ice pack on your back?

20 A I put heat pads on it.

21 Q How often do you put a heating pad on it?

22 A Probably about three or four times a week.

23 Q Is this something that you do when you get home
24 from work?

25 A Yeah. See, I did the same thing. They did the

1 same thing when I was in physical therapy. It
2 helps out big time. It's like -- it's about the
3 best thing you could possibly do.

4 Q Do you ever do anything -- what we call home
5 exercises? You know, stretching or things that the
6 physical therapists have given to you that you can
7 perform at home, do you ever do anything like that?

8 A Yes, sir.

9 Q How often do you do home exercises?

10 A I do that about three times a week.

11 Q And how long do you spend doing those when you do
12 them?

13 A Approximately 30 minutes.

14 Q Do you ever put any kind of medicated rub at all on
15 your back?

16 A No, sir.

17 Q As far as your head is concerned, do you have any
18 ongoing problems with your head as a result of your
19 work accident?

20 A No, sir.

21 Q No headaches?

22 A No, sir.

23 Q All right. And, again, you haven't had a seizure
24 in almost two years?

25 A That's correct.

1 Q You mentioned a few minutes ago that you injured
2 your shin a few years ago driving a four wheeler.
3 Do you still drive four wheelers on your property?

4 A Yes, sir.

5 Q How often do you do that?

6 A Just about every week.

7 Q Are these four wheelers or are these more like
8 Gators where you're sitting inside the cab?

9 A No. They're not side by sides. They're actually
10 four wheelers.

11 Q All right. Do you do any hunting out on your
12 property?

13 A Yes, sir.

14 Q What type of hunting do you do out there?

15 A Mostly just duck hunt.

16 Q How often do you go duck hunting?

17 A Well, about every weekend when duck season's in.

18 Q In order to shoot duck you've got to be able to use
19 your eyes?

20 A Yeah.

21 Q Hold your gun, kind of concentrate on where they're
22 going and what they're doing. Are you able to do
23 those types of things?

24 A Yes, I can do that.

25 Q Any other hunting at all out there? Deer hunting

1 at all?

2 **A I do it every once in a while.**

3 **Q When was the last time you went deer hunting?**

4 **A I went one time this year. It was right at the**
5 **beginning.**

6 **Q As in 2014? As in this year, 2014?**

7 **A No.**

8 **Q You mean last year, 2013?**

9 **A Yeah. It -- deer season's out on the first.**

10 **Q Sure. Okay. Let me make sure I'm clear about one**
11 **thing, too. You were telling me earlier at the**
12 **very beginning of your deposition about all the**
13 **work you and your dad had done on your house.**

14 **A Yeah.**

15 **Q Was any of this work being done during the period**
16 **of time that you were out of work when you -- you**
17 **told me you were out of work for about eight months**
18 **after your work accident happened. Was any of the**
19 **work that you and your dad did on your home done**
20 **during that period of time?**

21 **A Yeah. I -- I was working. I was doing anything I**
22 **possibly could do.**

23 **Q Were you working anywhere at all for anybody during**
24 **those eight months?**

25 **A No. I was just working on the farm.**

1 Q You were working on the farm and you were working
2 on your house?

3 A Yes, sir.

4 Q And when you say working on the farm, you told me
5 about your horses and taking care of them. What
6 other things would you have been doing during that
7 time?

8 A We cut hay and plant corn.

9 Q All right. And operating a tractor?

10 A Yes, sir.

11 Q And having to do everything that's associated with
12 baling hay and planting corn?

13 A Yes, sir.

14 Q And you were doing that during that time?

15 A I was doing it the best I could, yes, sir.

16 Q Was that with your dad or did y'all have other
17 people that y'all hired to come out there to help?

18 A No. We just do it as -- we're basically hobby
19 farmers.

20 Mr. Lockhart: Mr. Turner, those are all
21 the questions I have. Thank you, sir.

22 Mr. Koon: None. And we'll waive.

23 (Whereupon the deposition was concluded at
24 3:35 p.m.)
25

State of South Carolina)
) Certificate
County of Lexington)

Be it known that the foregoing deposition of William Lee Turner was taken before me;

That I was then and there a notary public in and for the State of South Carolina-at-large;

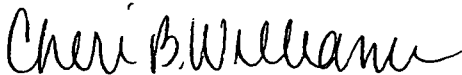
That by virtue thereof I was duly authorized to administer an oath;

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

The foregoing transcript of 34 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

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

Witness my hand and seal this 28th day of January, 2014.


Cheri B. Williams, CVR-M

Notary public for South Carolina
My commission expires May 11, 2015.

This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1204039
Carrier File #: 002979030511WC01
December 16, 2013

NOTICE OF HEARING

LEE TURNER v. BUCKHORN MATERIALS

Subject: To determine issues as set forth on Forms 50 and 51.
Date: February 4, 2014 at 02:30 PM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, klove@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Kristi L. Love, SC Workers' Compensation, December 16, 2013

Party

Employee: LEE TURNER

Attorney

John K. Koon
jkoon@koonandcook.com
803-256-4082

Employer: BUCKHORN MATERIALS
Carrier: Old Republic General Insurance Corporation

Jason W. Lockhart (5)
jlockhart@mgclaw.com
803-227-2283

REQUEST FOR PROPOSED ORDER

This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document.

WCC #: 1204039

DATE OF HEARING: February 4, 2014

PLACE OF HEARING: Columbia, SC

CLAIMANT: Lee Turner

EMPLOYER: SAHA Construction

CARRIER: Old Republic

CLAIMANT'S ATTY: Steve Cook / John Koon

DEFENDANTS' ATTY: Jason Lockhart

FINDINGS OF FACT

1. Claimant alleges that his injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012.
2. Claimant is 28 years of age (medical evidence establishing Claimant's date of birth as Claimant's 2012 Deposition, page 5).
3. Claimant is a high school graduate (Defendants' APA #2, page 9; Claimant's 2012 Deposition, page 9).
4. Claimant's job with Employer was heavy equipment operator (testimony of Claimant; Claimant's 2012 Deposition, pages 10 and 21).
5. In the alleged accident in issue, Claimant was found injured and lying next to Employer's truck. I base this on the testimony of Barnette and Bolden.
6. Claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including "*absolutely no memory of it or what might have precipitated the fall;*" or (c) the day after the date of the alleged accident (testimony of Claimant; Claimant's APA #2, page 25; Claimant's 2012 Deposition, pages 25-26, 29, and 31-32).
7. The alleged accident was unwitnessed. No witness claims to have seen it.
8. Three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). I base this finding on Defendants' APA #8, pages 27-28; Defendants' APA #9, page 30; and Claimant's APA #2, page 25).

9. Two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room. At the ER, Claimant reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA #9, pages 30-32).
10. The temporal medical records are of no real utility: (a) one record from the date of the alleged accident erroneously states that Claimant fell off a *ladder*, and Claimant does not contend that he fell off a ladder (Claimant's APA #1, page 1; Defendants' APA #10, page 33; Claimant's 2012 Deposition, pages 28-29); and (b) another record from the date of the accident states that Claimant fell off the back of a truck, when Claimant in fact contends that he must have fallen from the steps of the cab (Claimant's APA #1, page 20; Defendants' APA #10, page 35).
11. Co-worker Barnette admits he can only "speculate" as to how the fall occurred, as Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap. If Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, the result in this case might be vastly different (evidence in its entirety, including but not limited to Deposition of Barnette, pages 8, 13-17, 21-22, 24-25, and 28).
12. Nor did co-worker/friend Bolden witness the accident, and Bolden specifically admits he "never saw [Claimant] on the steps of the truck." Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Deposition of Bolden, pages 4-7, 9, and 14).
13. Supervisor Speegle did not witness the accident either, and knows of no one who did (Deposition of Speegle, pages 5 and 11).
14. The undersigned does not find persuasive the opinion of Dr. Peterson (Claimant's family doctor): the portion of Claimant's counsel's letter prefacing the request for the causation opinion assumes that Claimant "fell from the cab of" Employer's truck. Further, Dr. Peterson's opinion only states that Claimant's head injuries were "caused by the fall on April 19, 2012." There is no dispute that Claimant injured his head in the fall, whether from a standing position or from the steps of the cab (Defendants' APA #2, page 6; Claimant's APA #3, page 37; Claimant's 2012 Deposition, pages 12-13 and 39).
15. Six months after the date of the alleged accident, Claimant was not limited by back pain, such that he was able to engage in "a lot of farming and building a [log] house" (Defendants' APA #5, page 21; testimony of Claimant; *See also* Claimant's 2014 Deposition, pages 6-7 and 33-34).
16. Claimant sustained an intervening accident in August 2013 (1 year and 4 months after the date of the alleged accident), for which Claimant sought medical treatment. Medical evidence from Claimant's treating physician at this visit states that Claimant was doing well after the alleged fall at work until Claimant "fell off a horse." Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident. Claimant's explanation of the horse incident ("it didn't hurt or anything like that") is not persuasive given the fact that Claimant sought treatment for the after the fall off the horse

(testimony of Claimant; Defendants' APA #3, pages 12-14, 16, and 18; Claimant's 2014 Deposition, pages 18 and 21).

17. In his theory of the case, Claimant contends that circumstantial evidence (the fact that Claimant was on Employer's premises; the presence of Claimant's book bag in the cab; Claimant's testimony that he always climbed the steps to place his book bag in the cab; the fact that Claimant must have fallen from a position higher than the floor to sustain the injuries he sustained, and the fact that Claimant's truck had recently been washed--or that Claimant's shoe caught on the step(s) of the cab) is sufficient to prove that Claimant fell from the steps of the cab of the truck and suffered work-related injuries. However, I find that *Owens v. Oceans Forest Club* does not serve to render the claim in issue compensable. In *Owens*, the claimant (a game warden hired to patrol Employer's premises to prevent poaching and trespassers generally) was found dead on the ground of Employer's premises, but the specific cause of death in *Owens* was a bullet wound through the head (i.e., the bullet clearly caused the death and obvious fall to the ground). The *Owens* court found the claim compensable based upon circumstantial evidence because (a) the claimant was on Employer's property during the claimant's hours of employment, (b) the cause of death was a known gunshot wound, and (c) of the nature of the work duties. The question before the court was whether the death in *Owens* was the result of a suicide or a trespasser.

18. Even if the undersigned presumes that Claimant was in fact injured through his employment, I am confronted with the following: (a) there is no known cause of the fall in the instant case; (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident; (c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant's family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; (e) although not dispositive, Claimant's friend and co-worker said the steps were not cleaned with soap: only a pressure washer; and (f) very importantly, **Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden.** Claimant's sworn testimony in this regard (as cited in this finding) greatly damages his credibility (e.g., Claimant's 2012 Deposition, pages 26 and 29-34: "*I was told... I was climbing up in the truck to put something in there or do something... And then they said that they seen me up—they seen me up on the truck. Then they said after they turned around, they seen me laying on the ground*" is not supported by the testimony of any witness; nor is Claimant's testimony—"they told me, they—they turned around and they seen me climb up in the truck, and they said they turned back around, and as soon as they turned back around again, they said they seen me laying on the ground"—supported by the testimony of any other witness (Claimant's 20-12 Deposition, page 26, lines 18-24; Deposition of Barnette in its entirety; Deposition of Bolden in its entirety).

19. As Claimant did not meet his burden of proof, his request for benefits under the Act is denied.

20. Claimant's average weekly wage is \$684.18, yielding a compensation rate of \$456.14.

INSTRUCTIONS: Attorney Jason Lockhart to prepare proposed Order unless otherwise agreed upon by the parties.

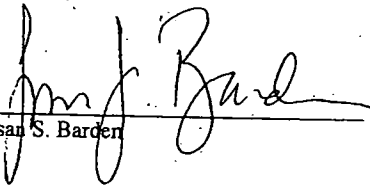
Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included. Proposed Order shall be submitted within 35 days of the date of these order instructions. If you need a transcript order it *immediately* from court reporter Sheila Robison *in writing* at Post Office Box 551, Roebuck, South Carolina 29376. Provide a copy of the proposed order to opposing counsel or *pro se* claimant at least **five (5) days prior to the time** one is submitted to the Commission. **IN YOUR COVER LETTER TO ME, PLEASE INCLUDE A STATEMENT THAT THE OPPOSING PARTY HAS NO OBJECTION TO THE ORDER AS WRITTEN.**



The Commission now requires the proposed order be e-mailed to klove@wcc.sc.gov and all parties in Word format.

FORMAT for DECISION & ORDER:

1. APA Submissions
2. Stipulations
3. Statement of Case (Contentions of parties, stated concisely)
4. Evidence of Case (synopsis of evidence, including testimony and medical reports)
5. Findings of Fact – numbered (*Do NOT delete any of the above findings; however, the prevailing party may add to support decision, except re: credibility.*)
6. Conclusions of Law (Cite code sections and case law as applicable.)
7. Award


Susan S. Barden

South Carolina Workers' Compensation Commission

Preston mcDaniel

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Friday, August 29, 2014 11:21 AM
To: Jason Lockhart; preston@pfmcdlaw.com
Cc: - Katie F. Morris
Subject: Turner

Below is a request for a proposed decision and order

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**Lee Turner v Saliia Holdings
SCWCC: 1204039
Commission Panel: McCaskill, James, Wilkerson; Chair
Order Assigned to Commissioner: James
Court Reporter – Jennifer Nottle – 803-252-3445**

Preston F. McDaniel
Jason W. Lockhart

Claimant/Appellant
Defendants/Respondents

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order.

Mr. Lockhart please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803-737-5737

Judicial

Transmitted via email and regular mail this 29 August 2014

RECEIVED

APR 24 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

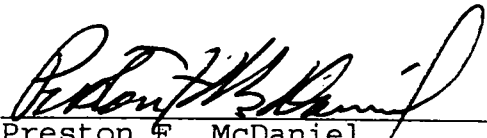
v.

SAIIA Construction, Employer, and Old Republic
General Insurance Corp., c/o Gallagher
Bassett Services, Inc., Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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

Dated: April 24, 2015



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

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

JUN 12 2015

SC Court of Appeals

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and Old Republic
General Insurance Corp., c/o Gallagher
Bassett Services, Inc., Carrier, ... Respondents.

SUPPLEMENTAL
RECORD ON APPEAL

Preston F. McDaniel, Esquire
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(803) 771-7211
Attorney for Appellant

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Mt. Pleasant, SC 29211
(843) 576-2900
Attorneys for Respondents

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STATEMENT OF THE CASE

The hearing was scheduled pursuant to a Form 50 filed by the Claimant's attorney, in the above-referenced case, on November 25, 2013. The Claimant maintained that he sustained a compensable injury to the head and thoracic spine while in the course and scope of the Claimant's employment with the Defendants on April 19, 2012. The Claimant maintained that he was entitled to additional medical treatment with Dr. Peterson as well as temporary total disability benefits from April 20, 2012 until January 1, 2013. In response, the Defendants maintained that the Claimant could not satisfy his burden of proof, pursuant to §42-1-160 of the Act, on the basis that the Claimant had no memory or recollection of the facts or circumstances surrounding his alleged April 19, 2012 work related accident. In addition, the Defendants maintained that the Claimant's fall on April 19, 2012 was idiopathic in nature and, therefore, not compensable pursuant to the South Carolina Workers' Compensation Act. Furthermore, the Defendants took the position that the Claimant had reached maximum medical improvement and was not in need of additional medical treatment. The Defendants also maintained that the Claimant was physically capable of working, during the period of time that he was requesting payment of temporary total disability benefits and, therefore, the Claimant was not entitled to temporary total disability benefits.

EVIDENCE OF THE CASE

Testimony

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 28 years of age and resides in Lugoff, South Carolina with his wife. With regards to the Claimant's alleged April 19, 2012 work related accident, the Claimant stated that he has no memory of the facts and circumstances surrounding his alleged work related accident. (Hr'g Tr.

1 A. YES. YES.

2 Q. ALL RIGHT. SO IT WAS VERY LIKELY YOU WERE STANDING
3 ON THE GROUND.

4 A. WELL, FROM WHERE I HAD HIT MY HEAD AND WHERE I HIT
5 MY BACK, IT'S IF I WOULD HAVE FELL FLAT-FOOTED, THEN
6 IT -- THERE'S NO WAY I WOULD HAVE HIT THE SAME
7 AREAS, WHERE I HIT MY HEAD ESPECIALLY.

8 Q. WELL, HOW DO YOU KNOW THAT 'CAUSE YOU DON'T REMEMBER
9 WHAT HAPPENED. SO HOW DO YOU KNOW?

10 A. I DON'T REMEMBER BEING ON THE TRUCK. I DON'T
11 REMEMBER STANDING ON THE GROUND, BUT FROM THE BLUNT
12 -- OR FROM THE TRAUMA TO MY HEAD, AND THEN MY T3 AND
13 MY T4, IT'S JUST -- I MEAN, TO ME AND WHAT THE
14 DOCTOR SAID, IT'S ABOUT IMPOSSIBLE TO BE STANDING
15 FLAT-FOOTED AND TO DO THAT.

16 Q. BUT YOU DON'T KNOW BECAUSE YOU DON'T REMEMBER?

17 A. I DON'T KNOW.

18 Q. AND YOU'RE ABOUT FIVE FEET...?

19 A. SIX AND A HALF.

20 Q. OKAY. YOU'RE ABOUT FIVE FEET, SIX AND HALF INCHES
21 TALL?

22 A. YES, SIR.

23 Q. OKAY, ALL RIGHT. LET'S TALK ABOUT THIS BACKPACK FOR
24 A MOMENT BECAUSE IT SEEMS TO BE IMPORTANT TO AT
25 LEAST THE QUESTIONS THAT YOU ASKED ON DIRECT

1 YOUR HONOR, I JUST CAN'T ---

2 BY COMMISSIONER BARDEN:

3 YOU GOT TO STAY AWAY FROM WHAT THE DOCTOR SAID,
4 BECAUSE SHE'S NOT HERE FOR ANYBODY TO QUESTION. ALL
5 RIGHT, GO AHEAD, MR. LOCKHART.

6 CROSS EXAMINATION RESUMED BY MR. LOCKHART:

7 Q. YOU SAW DR. GIRAULT AGAIN IN OCTOBER?

8 A. YES, SIR.

9 Q. AND IT'S MY UNDERSTANDING, ACCORDING TO HER RECORDS,
10 RECOMMENDATIONS FOR TREATMENT WERE MADE?

11 A. YES, SIR.

12 Q. INCLUDING INJECTIONS?

13 A. I DIDN'T HAVE ANY INJECTIONS DONE.

14 Q. YOU DECLINED THE OFFER OF TREATMENT?

15 A. I DID DECLINE, AND THERE'S A REASON. 'CAUSE -- I
16 COULD TELL Y'ALL ALL KINDS OF STUFF, BUT. I
17 DECLINED THE INJECTIONS 'CAUSE I'VE HEARD FROM
18 SEVERAL OTHER PEOPLE THAT INJECTIONS, THEY CAUSE YOU
19 EVEN MORE ISSUES LIKE SKIN DETERIORATION AND BONE
20 DETERIORATION AND ALL THAT. AND I DON'T WANT TO
21 CAUSE ANYMORE PROBLEMS THAN I'VE ALREADY GOT.

22 Q. YOU WERE ALSO GIVEN A BACK BRACE AS WELL BY DR.
23 GIRAULT, BUT YOU'RE NOT WEARING A BACK BRACE AT THE
24 PRESENT TIME, CORRECT?

25 A. WE TRIED THE BACK BRACE ON, BUT IT -- I DIDN'T

1 half and two years.

2 Q Do you know if he had been there about three or four
3 years longer than you have then?

4 A I'd say two and a half or something. I would be
5 guessing, but a guess I think he had told me he had been
6 there between three and four years.

7 Q All right. Whenever you came onboard?

8 A It might have been two and a half when I came onboard.
9 I'm not dead sure of that. Don't quote me.

10 Q And do you often work side by side with him?

11 A Yes. Me and Lee was real close and we worked together
12 real good.

13 Q And did you often discuss personal matters between the
14 two of you?

15 A The two of us, somewhat, you know.

16 Q Would he freely discuss if he was having a problem?

17 A Yes, sir.

18 Q Would you do essentially the same thing?

19 A Yes, we would.

20 Q Did he ever tell you or had you heard him complain about
21 any type of dizziness or syncope, it may be called?

22 A Not dizziness, you know, he had discussed about just not
23 feeling good, you know, not being up to par what he was
24 used to feeling. Lee was a very energetic young man, but
25 he never discussed anything about any dizziness or

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

RECEIVED

JUN 12 2015

Appellate Case No. 2014-002416

SC Court of Appeals

William Lee Turner, Employee, ... Appellant,

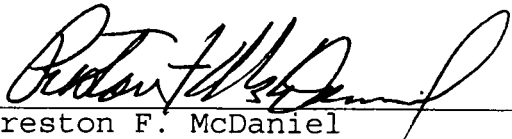
v.

SAIIA Construction, Employer, and Old Republic
General Insurance Corp., c/o Gallagher
Bassett Services, Inc., Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

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

Dated: June 11, 2015


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

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William Lee Turner, Employee, Appellant,

v.

SAIIA Construction, Employer, and Old Republic
General Insurance Corporation c/o Gallagher Bassett
Services, Inc., Carrier, Respondents.

Appellate Case No. 2014-002416

Appeal From The Workers' Compensation Commission

Opinion No. 5458

Heard June 9, 2016 – Filed December 7, 2016

AFFIRMED

Preston F. McDaniel, of McDaniel Law Firm, of
Columbia, for Appellant.

Jason Wendell Lockhart and Helen Faith Hiser, both of
McAngus Goudelock & Courie, LLC, of Mount Pleasant,
for Respondents.

LOCKEMY, C.J.: William Lee Turner appeals the Appellate Panel of the South Carolina Workers' Compensation Commission's (the Commission) decision and order denying him benefits under the Workers' Compensation Act (the Act). Turner argues the Commission erred in: (1) failing to apply the presumption that his injury arose out of and in the course of employment; (2) affirming the single commissioner's findings of fact; (3) finding he did not establish a cause for his

accidental injury; and (4) allowing Respondents¹ to draft the Commission's order. We affirm.

FACTS

Turner began working for SAIIA Construction Company as a heavy equipment operator in 2007. Turner's alleged accident occurred on April 19, 2012, when his co-workers found him lying on his back next to his dump truck. Turner testified he had no memory of the accident or how it happened. Paul Barnette and David Bolden, Turner's co-workers, testified they never saw Turner in or on the truck prior to his fall. However, Turner testified both of his co-workers saw him "up in the truck" at some point before he fell.

Barnette testified that at the end of the work day Turner washed his truck, which was typically done with a high pressure washer. Turner then went into a building adjacent to the wash area to do some paperwork and retrieve his backpack and Barnette's cooler. After Turner left the building, Bolden exited a trailer called "the hut" and walked over to Barnette. They were talking for some time when they noticed Turner lying on his back next to the cab of his truck. Barnette and Bolden found Turner lying on his back on the ground with his arms outstretched and his palms up. Although Barnette could not say for certain how long Turner was lying on the ground before they saw him, he estimated it would not have been more than three or four minutes. Barnette's cooler and Turner's backpack were found lying on the seat of the truck and the truck's door was still open. Bolden testified, "I never saw [Turner] on the steps of the truck," but only "standing on the ground, placing the [cooler] on the truck, I did not see him on the steps."

Turner was taken to Palmetto Health Richland, where he was provided emergency treatment and admitted. Turner was diagnosed with a small subdural hemorrhage, intraparenchymal contusion left lobe, and an endplate compression deformity of T3 and T4. His discharge diagnosis included a small subdural hemorrhage and T3 to T4 endplate fractures; however, CT scans showed Turner did not fracture his skull.

At a follow-up appointment, Dr. James Selph noted Turner, "has a history of back pain and in fact was taking Ultram prior to his fall." All of Turner's remaining follow-up treatment was with Dr. Peterson, his family doctor.

¹ SAIIA Construction Company and Old Republic General Insurance Corp., c/o Gallagher Bassett Services, Inc., are the Respondents in this matter (collectively, Respondents).

On March 27, 2012, a few weeks before his accident, Turner sought medical care for his lower back, which he injured lifting logs while working on a house he was building. He was prescribed Ultram 50MG two times daily and Flexeril 5MG two times daily. On April 16, 2012, three days before his accident, Turner sought medical care again complaining of both lower and upper back pain. Turner was then prescribed Ultram 100MG two times daily and Neurontin 300MG three times daily. On April 17, 2012, two days before his accident, Turner was seen at Palmetto Health Baptist Emergency Department with complaints of vomiting, diarrhea, and suspicion of dehydration. James Speegle, Turner's supervisor at the time of the injury, testified Turner was complaining about not feeling well a couple days before his fall. Speegle recommended Turner take a few days off.

Turner filed a Form 50 on November 25, 2013, alleging he suffered a compensable injury to his back, head, and thoracic spine. Respondents filed a Form 51, denying Turner's injuries were the result of an accident that arose out of and in the course and scope of employment. The parties were heard by the single commissioner on February 4, 2014. In an April 14, 2014 order, the single commissioner found "[Turner] failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the [Respondents] on April 19, 2012." The single commissioner also found Turner's alleged accident was unwitnessed and that he did not remember anything that happened on April 19, 2012, or the day after, and that co-workers found Turner lying on his back next to his truck. The single commissioner further found Turner was impeached at least twice. The single commissioner concluded Turner failed to meet his burden of proving a compensable injury and denied any benefits or medical treatment associated with his alleged accident.

Turner filed a Form 30 raising eleven points of appeal. Following oral arguments, the Commission issued its decision on October 10, 2014, affirming the single commissioner's order in its entirety. In addition, the Commission set forth its standard of review, and responded to Turner's reliance on prior case law. Turner relied on *Packer v. Corbett Canning Co.*, 238 S.C. 431, 120 S.E.2d 398 (1961) and *Owens v. Ocean Forest Club*, 196 S.C. 97, 12 S.E.2d 839 (1941), to establish he suffered from a compensable work related accident due to the unexplained death or injury presumption. The Commission found that because Turner was found on the ground and could not remember or testify as to how he fell, and there were no witnesses to the accident, the presumption could not be applied to establish the accident arose out of his employment. The Commission held Turner failed to meet his burden of proving a compensable injury by accident within the course and

scope of his employment and denied him any benefits under the Act. This appeal followed.

STANDARD OF REVIEW

On appeal from an appellate panel of the Workers' Compensation Commission, this court can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." *Crisp v. SouthCo.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013). In a workers' compensation case, the appellate panel is the ultimate fact-finder. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 272, 273 (2004). However, when there are no disputed facts, the question of whether an accident is compensable is a question of law. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007). "[W]orkers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the [Workers' Compensation] Act; only exceptions and restrictions on coverage are to be strictly construed." *James v. Anne's Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010).

LAW/ANALYSIS

I. Presumption

Turner argues the Commission erred as a matter of law by failing to apply the unexplained death presumption. We disagree.

For an accidental injury to be compensable, it must "aris[e] out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015). An injury arises out of employment if it is proximately caused by the employment. *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965).

The unexplained death presumption is

a natural presumption, or a presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured where his duty

required him to be, is injured in the course of, and as a consequence of, his employment.

Jennings v. Chambers Dev. Co., 335 S.C. 249, 255-56, 516 S.E.2d 453, 456-57 (Ct. App. 1999) (quoting *Packer*, 238 S.C. at 436, 120 S.E.2d at 400). "The presumption is applied simply to establish that the injury occurred in the course of and as a consequence of employment. The presumption cannot be applied to establish the incident of accident." *Id.*

We disagree with Turner's assertion that the unexplained death presumption should apply in cases where the employee survives the injury but has no memory of the events leading up to the injury. Turner failed to cite any South Carolina case law extending the presumption, heretofore applied only in death cases, to cases where the employee survives but has no memory of the injury. In addition, we note other states, including North Carolina, have limited the presumption to cases where the employee is deceased and have refused to apply it where the employee is alive but has no memory of the injury. See *Janney v. J.W. Jones Lumber Co.*, 550 S.E.2d 543, 546 (N.C. Ct. App. 2001) (declining to adopt the unexplained death presumption in a workers' compensation case not resulting in death). "Because South Carolina workers' compensation law is fashioned after North Carolina's statute, our courts often rely on North Carolina precedent for guidance in interpreting the South Carolina Workers' Compensation Act." *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 248-49, 647 S.E.2d 691, 698 (Ct. App. 2007).

We particularly find persuasive the North Carolina Court of Appeals' reasoning in declining to extend the presumption beyond those cases which result in death. With facts very similar to the instant case, a lumber grader in *Janney* was waiting on a board to grade and soon found himself lying on the grading booth floor with an injury to his head. *Id.* at 545. The employee testified that, when he regained consciousness, he had no memory of hitting his head on the grading console or the floor. *Id.* In awarding benefits, the workers' compensation commission found the employee was entitled to the unexplained death presumption of compensability. *Id.* at 546.

On appeal, the North Carolina Court of Appeals reversed the commission's application of the unexplained death presumption in the case. *Id.* The court explained the underlying purpose of the presumption is fairness because employers, rather than a decedent's family, are in a better position to offer evidence surrounding the employee's death. *Id.* Employers and their employees are often the last to see the decedent alive, the first to discover the body, and are familiar

with the decedent's work duties. *Id.* In a case of an unexplained injury where the claimant survives but has no memory of the injury's details, however, no "inequality of information" exists because the employer does not know any more about the circumstances of the claimant's injury than did the claimant himself. *Id.*

Even if we were to extend the presumption in the present case, we find the employer presented sufficient evidence that Turner had very recent, non-work-related preexisting back conditions and rebutted such presumption. Upon our review of the Commission's final order, we believe the Commission weighed this competent evidence in its finding that Turner's alleged injury to his back at the job site did not arise out of his employment. Therefore, we affirm on this issue.

II. Findings of Fact

Turner argues the Commission erred in affirming the following findings of fact made by the single commissioner: (1) Turner suffered a work related accident on April 19, 2012; (2) Turner's age; (3) Turner is a high school graduate; (4) Turner remembered nothing about the day before the accident, the day of the accident, and the day after the accident; (5) the alleged accident was unwitnessed; and (6) no witnesses claimed to have seen Turner's alleged accident. Initially, we note that under our standard of review, this court cannot weigh the evidence on questions of fact because the Commission is the ultimate fact finder. Furthermore, we find Turner's argument is without merit because the findings of fact are all supported by substantial evidence in the record. Thus, we hold the Commission did not err in affirming the single commissioner's findings of fact. *See Matute v. Palmetto Health Baptist*, 391 S.C. 291, 294, 705 S.E.2d 472, 474 (Ct. App. 2011) ("When reviewing an appeal from the Workers' Compensation Commission, this court may not weigh the evidence or substitute its judgment for that of the [Commission] as to the weight of evidence on questions of fact.").

III. Arising Out of Employment

Turner argues the Commission erred in finding he failed to meet his burden of proving he suffered a compensable injury by accident within the course and scope of his employment. We disagree.

For an accidental injury to be compensable, it must "aris[e] out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015). "Arising out of refers to the injury's origin and cause, whereas 'in the course of' refers to the injury's time, place, and circumstances." *Osteen v. Greenville Cty. Sch. Dist.*, 333 S.C. 43, 50,

508 S.E.2d 21, 24 (1998). For an injury to arise out of employment, there must be "a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Grant*, 372 S.C. at 201, 641 S.E.2d at 871.

An unexplained fall is generally not compensable unless the employment contributed to either the cause or the effect of the fall. *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 452-53, 88 S.E.2d 611, 614-15 (1955). The causative danger "need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence." *West v. All. Capital*, 368 S.C. 246, 252, 628 S.E.2d 279, 282 (Ct. App. 2006) (quoting *Douglas*, 245 S.C. at 269, 140 S.E.2d at 175). "The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture or speculation." *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 496, 499 S.E.2d 253, 257 (Ct. App. 1998). "A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim; and the preponderance of evidence rule has been held not to require, as a matter of law, that doubts arising from the evidence be resolved in favor of one party or the other." *Cross v. Concrete Materials*, 236 S.C. 440, 446-47, 114 S.E.2d 828, 832 (1960) (quoting 100 C.J.S. *Workmen's Compensation* § 547(7), pp. 602, 603).

In *Crosby*, a Wal-Mart employee sought benefits for injuries she sustained when she fell at work. 330 S.C. at 490, 499 S.E.2d at 254. The claimant testified she fell while walking through the store on the way to a meeting. *Id.* She stated, "I was just walking on the floor and my feet went from under me." *Id.* This court determined the claimant's fall was an unexplained fall. We stated, "there was no evidence offered in the case at hand as to what caused [the claimant] to fall. It would be wholly conjectural to say under the evidence presented that [the claimant's] employment was a contributing cause of her injury." *Id.* at 495, 499 S.E.2d at 256. This court further reasoned that, while the fall was unexplained, there was an apparent lack of work connection and an implication of a pre-existing physical condition. *Id.* at 496, 499 S.E.2d at 257. This court concluded there was substantial evidence to support the Commission's finding that claimant failed to show a causal connection between her fall and her employment. *Id.*

In *Barnes v. Charter 1 Realty*, 411 S.C. 391, 398, 768 S.E.2d 651, 654 (2015), our supreme court found a causal connection between the claimant's injury and employment where the claimant was performing a work-related task (walking to check another employee's email) when she tripped and fell. The court held the claimant "clearly established that she was performing her job when she sustained

an accidental injury." *Id.* at 399, 768 S.E.2d at 655. In a dissenting opinion, Justice Pleicones asserted "[w]here the claimant presents no evidence as to what caused the fall, it is wholly conjectural to say that 'employment was a contributing cause of [claimant's] injury.'" *Id.* at 400, 768 S.E.2d at 655. Further, because claimant failed to present evidence that her employment caused her fall, she failed to meet the "arises out of employment" component required to prove a compensable injury. *Id.* Justice Pleicones noted South Carolina denies compensation for unexplained falls, and absent special conditions or circumstances, a level floor cannot cause an accident. *Id.*

In *Nicholson v. South Carolina Department of Social Services*, 411 S.C. 381, 383, 390, 769 S.E.2d 1, 2 (2015), the claimant was walking down a hallway to a work-related meeting when she scuffed her foot on the carpet and fell. The supreme court found:

Nicholson was at work on the way to a meeting when she tripped and fell. The circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties she sustained an injury. We hold these facts establish a causal connection between her employment and her injuries—the law requires nothing more. Because Nicholson's fall happened at work and was not caused by a condition peculiar to her, it was causally connected to her employment. Therefore, her injuries arose out of her employment as a matter of law and she is entitled to workers' compensation.

Id. at 390, 769 S.E.2d at 5-6. In a concurring opinion, Justice Pleicones stated the majority erred in absolving the petitioner of her obligation to present evidence that her unexplained fall was the result of special conditions or circumstances. *Id.* at 391, 769 S.E.2d at 6. He concluded it is not enough that a claimant show that she fell while at work but rather, when the fall occurs on a level surface, that she present evidence to explain her fall. *Id.*

We hold substantial evidence supports the Commission's finding that Turner failed to establish a causal connection between his unexplained fall and his employment. *See Bagwell*, 227 S.C. at 452-53, 88 S.E.2d at 614-15 (stating that an unexplained fall is generally not compensable unless the employment contributed to either the cause or the effect of the fall).

Turner was found lying on his back next to his truck; however, he had no recollection of the event and could not describe the circumstances regarding the fall. Turner's co-workers testified they did not see him fall, and only found him after he was lying on the ground. Further, despite Turner testifying his co-workers saw him on the steps of his truck, Bolden testified he never saw Turner on the steps and only found him on the ground after a few minutes. Here, unlike in *Barnes* and *Nicholson*, we cannot determine what Turner was doing at the time of his alleged accident. Although Turner was at work when he fell, no evidence indicates his employment contributed to the cause of his fall. As set forth above, the burden is on Turner to establish facts showing his injury is compensable. *See Crosby*, 330 S.C. at 496, 499 S.E.2d at 257 ("The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture or speculation."). Accordingly, the Commission did not err in finding Turner failed to meet his burden of proving he suffered a compensable injury by accident within the course and scope of his employment.

IV. Drafting the Order

Turner argues the Commission erred in allowing Respondents to draft their own findings of fact and conclusions of law addressing the issues raised for review. We disagree.

In a letter to all counsel, the Commission stated, "This document is not an Order. It is a request for a proposed Order. The undersigned reserves the right to modify or delete any portion of this document." The letter goes on to include instructions stating:

[Respondents] to prepare proposed Order unless otherwise agreed upon by the parties. Proposed Order shall include **VERBATIM** Findings of Fact attached hereto, **unless there is a mistake, in which case, it may be corrected. ATTORNEYS ARE RESPONSIBLE FOR PROOFING ORDERS PRIOR TO SUBMISSION.** Any other Findings of Fact not inconsistent with those attached hereto may also be included.

Here, the Commission asked Respondents to prepare a proposed order and reserved the right to modify and/or delete any portion before signing the order.

Therefore, Turner's argument is without merit. *See Brown v. Peoplease Corp.*, 402 S.C. 476, 486, 741 S.E.2d 761, 766 (Ct. App. 2013) (holding the Commission is not in error when it asks a party to prepare a proposed order reciting the specific findings of fact and rulings of law on the single commissioner's order, and the Commission reserves the right to modify and/or delete any or all portions of the submitted order).

CONCLUSION

We affirm the Commission's denial of compensation.

AFFIRMED.

WILLIAMS and MCDONALD, JJ., concur.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, the Appellant hereby petitions the Court for rehearing as to the Opinion issued in the above-referenced matter filed on December 7, 2016, and on the following points that the Appellant would respectfully submit to the Court that the Court overlooked or misapprehended in its decision in this matter as set forth hereinafter:

1. That in its holding that the unexplained death or

injury presumption does not apply where the employee survives the injury but has no memory of the events leading up to the injury, the Court misapprehended or overlooked several decisions of the Supreme Court; several principles established by several lines of cases of the Supreme Court differentiating the presumption in different fact situations; and the application of several fundamental principles applicable to review in workers' compensation claims in injury by accident claims in South Carolina cases that is antithetical to North Carolina Law. If this decision is allowed to stand as is, not only will this result in a denial of benefits to Mr. Turner but it will be applied to deny benefits to hundreds of workers suffering very common unwitnessed injuries such as third shift police officers found injured in a lonely part of the police station or alone while responding to a potential crime; the night shift nurse found injured in the parking lot or in a lonely part of the hospital; the teacher found after a parent/teacher conference in the evening at school or the hallway or auditorium stage during class; the one car or truck accident; the electrician found on the concrete floor next to a three, six or twelve foot ladder; the fireman injured alone at the back of a house or in the fire station; a night watchman; a third shift plant worker or a construction worker last seen on the third floor, second floor or the first floor or beside scaffolding or found at the base of stairs, etc., etc. Their only crime being they were doing their jobs alone and their injuries resulted in even a brief period of memory loss resulting from even a minor

head injury and their injuries were unwitnessed.

First, in reference to all of the opinions of the Supreme Court referred to by the Court applying the unwitnessed injury or death presumption, the Court will, like the Court's quote, find in every one of those decisions that the Supreme Court refers to the presumption as:

" . . . that one charged with the performance of a duty and injured while performing that duty, or found injured where his duty required him to be, is injured . . . "

In no case does the Supreme Court limit the presumption only to cases where the Claimant died from his injuries. It is simply speculation on behalf of the Court that the Supreme Court would not extend or apply the presumption to cases where the Claimant was simply injured in the course of employment but had no memory of what occurred. Also, in refusing to apply the presumption to non-death injury cases, the Court criticizes the Appellant for his failure to cite to,

"any South Carolina Case Law extending the presumption, heretofore applied only in death cases, to cases to where the employee survives but has no memory of the injury".

In that regard and based on a clear reading of the presumption since its establishment by our Supreme Court and this Court's responsibility to liberally apply those decisions especially where our Supreme Court has clearly spoken which it has in the area of injury by accident wherein South Carolina does not follow and specifically rejects North Carolina law, Counsel for the Appellant

did not think that he had to submit such a case to the Court for its consideration. With that said, the Court in its analysis specifically not only misapprehended but overlooked the decisions of the Supreme Court wherein the Supreme Court has specifically ruled that it would apply the death and injury presumption to cases where the Claimant did not die from his injuries.

Specifically, in the case of Fowler v. Abbott Motor Company, 236 S.C. 226, 113 S.E.2d 737 (1960), the following are the facts presented to the Court in pertinent part:

"The automobile owned by Abbott Motor Company and driven by the Employee was in a collision with a tree ... the Respondent is now mentally and physically disabled and is a patient in a hospital in Columbia, South Carolina."

In Fowler, the Court clearly stated that it would apply the presumption in an injury situation:

"It is true that at the time the Claimant was injured, the direct evidence shows that he was driving an automobile owned by the Employer and furnished to the Employee as part of his contract of employment. Counsel for the Respondent asserts that the other evidence, which is circumstantial, is sufficient to justify the inference and the presumption that Claimant's injury arose out of and in the course of employment."

The Court in making that specific holding in Fowler, cited to the case of Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1947) in regards to the presumption. However, the Court did not apply the presumption not on the basis that his injury did not arise out of the employment but on the basis that the evidence did not establish that his injury occurred during the course of his

employment and again cited to the presumption and to the facts as follows:

"Again, we cannot apply the presumption asserted by the Respondent for the reason that he has failed to show that he was using the automobile of his employer at a place and a time where his duty as an employee required him to be. There is no evidence in the Record that the Respondent, at the time of his injury was performing any duty for his employer."

Also, in Fowler, the Court cited to and reaffirmed the holding in another death or injury presumption case as to the application of the presumption and the two prongs of the presumption, the one being, "arising out of" the employment and the other being, "in the course of" the employment in determining that the injury to Mr. Fowler did not occur, "in the course of" his employment. The Court cited to the unexplained, unwitnessed death or injury presumption as applied in the case of Eargle v. South Carolina Electric & Gas, 205 S.C. 423, 32 S.E.2d 240, wherein the Court specifically cited to and re-cited the long time accepted definition of, "arising out of" the employment. Quoting from Eargle, a case in which Mr. Eargle's death was unwitnessed on his way to work where he had been called in due to an emergency at the plant:

"It (the injury) arises 'out of the employment' when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a

result of the exposure occasioned by the nature of the employment, then it arises out of the employment." (Emp. add.)

Therefore, the Supreme Court has specifically stated that it would apply the unexplained death and injury presumption to a situation where the injured worker lived but had no memory of or due to his injuries could not tell anyone what happened and where the injury was unwitnessed.

Next, in the Opinion the Court misapprehends the two distinct lines of cases involving two different types of injuries that establish a difference in the application of the presumption depending on the type of injury that occurred. There is one line of cases that holds that where the type of injury involved is accidental in nature such as in this case, a fall or slip and fall, "arising out of" is established by the accidental nature of the injury versus the other line wherein the injury results from a natural condition such as a heart attack, seizure or aneurysm which requires additional proof of a causal connection to the work activities such as under the heart attack standard that the Claimant was exposed to unexpected strain or overexertion or to unusual or extraordinary conditions in the employment resulting in the heart attack or natural condition; such as was found sufficient in Buff v. Columbia Baking Company, 215 S.C. 412, 53 S.E.2d 879 (1949) (electrocution) versus Jennings v. Chambers Development Corporation, 335 S.C. 249, 516 S.E.2d 453 (SC App. 1999) (in sufficient evidence of overexertion or exposure to

unusual or extraordinary conditions of employment).

Next, the Court misapprehended or overlooked that as a matter of law whether injury by accident occurred as defined under South Carolina Law is the key and is the basis for the application of the, "arising out of" prong of the presumption and that since 1939 that definition has been exactly and specifically opposite to the definition applied in North Carolina. In 1939, as will be further discussed in the, "Arising Out Of" section of this Petition as set forth hereinafter, our Supreme Court specifically rejected the North Carolina definition of injury by accident and its opinions in this area. As cited in Eargle, South Carolina only requires that there be an unexpected or unintended "result" from the work activity to constitute injury by accident under South Carolina Law. When the worker is at a time and place (in the course of) and sustains an unexpected result from the work activities, the "arising out of" prong is met. This Court reiterated that definition in its decision in Jennings, supra.

The Court also misapprehends that South Carolina has or would recognize the "inequity of information" concept as applied by North Carolina. Our Appellate Courts have always been committed to a liberal construction of the language of the Act in their decisions and in the application of its guiding principles in favor of benefits to the worker to achieve its "beneficent purposes" with its "presumptions" and its interpretations aimed at avoiding any "harsh or incongruous" results and providing coverage versus non-coverage. (Webster, "incongruous" defined - not

harmonious; incompatible). Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). The concept of an "inequality of information" is totally contrary to those guiding principles and in fact it smacks in the face the entire body of our South Carolina workers' compensation jurisprudence. It is also totally illogical. There is no logical or legal difference between a dead worker or a brain dead worker or a worker in a coma and their ability to testify.

Finally, the Court states that even if it were to apply, the unexplained death or injury presumption, that there was substantial evidence upon which the Commission could rely to rebut the presumption. The Court at great length discusses all of the evidence prior to the date of the event and relates none of the specific evidence that applied to the specific day of the event; i.e., the time and place of the accident. All of the witnesses, and the Appellant would reiterate all of the witnesses, including the Appellant's supervisor, all testified that on the date of the accident (as defined in South Carolina, Layton, supra) he was in top notch shape, there was absolutely nothing wrong with him and he was in the best shape that they had seen. Quoting his supervisor, Mr. James Speegle:

"Q: Did he seem to be okay the Thursday that he fell?

A: Oh absolutely. Thursday he was -- he was like himself, better than he had been, than he had been all week. I mean he was just -- he was lively and from what I understand he was blowing his horn and having fun, cutting

up, you know . . . no signs of -- not that I know of that anything was wrong with him prior to that. (Emp. add.) (Tr., p. 330, ll. 3-10).

There is absolutely no contrary evidence in that regard and plus there is absolutely no evidence and the Appellant would reiterate, no evidence, that the Court can cite to or cites to in its opinion or in any way from the Record that the Claimant was suffering from any natural condition that could have resulted in his injury by accident; again, as defined under South Carolina law, not North Carolina law.

2. That as to section **II. Findings of Fact** of the decision the Court misapprehended the argument being made. The Appellant did not to his knowledge, challenge any of the six (6) Findings of Fact (4, 5, 6, 9, 10 and 11) listed in his argument and specifically agrees with those Findings of Fact and would agree that all of those Findings of Fact as set out in the decision are supported by substantial evidence. However, the argument being made was and is, after the conjunctive word, "and", in the argument that the Commission then erred by failing to apply the law as set out under Conclusions of Law #9 and #10 to those Findings; and under Conclusion of Law #10 by trying to "factually" distinguish the legal presumption.

The Appellant agrees that the Court cannot and should not substitute its decision on the weight of the evidence on questions of fact where the Commission is the ultimate fact finder. However, with all of that said, on any, "essential issue" before the

Commission for the decision, the Commission's decision cannot be based on surmise, speculation or innuendo and must be specifically based on substantial evidence in the Record on that specific, "essential" issue for decision and the law applicable to that decision. The essential issue for a finding by the Commission both factually and legally and on which there is absolutely no contrary evidence to that as cited above is the Claimant's condition on the date and time of the accident and whether there is any substantial evidence of any natural occurring condition such as an illness, seizure, etc. from which the Claimant was suffering on the date of injury by accident; if any. It is not an essential issue as to what his condition was the day before and it is not a question of what it was the day after. The evidence in the Record is that he was in top notch shape, feeling wonderful, the best he had been on the date of the accident and there is absolutely no evidence of any seizure, illness, medication or other condition that could have caused (or again that constitutes, "substantial evidence") the injury by accident. The argument was and is that based under the Findings of Fact and applying the presumption and the definition of injury by accident to those facts and the undisputed circumstantial evidence of accidental injury unless there was evidence of a natural condition at that date and time, the Commission erred in the application of the presumption and injury by accident to those facts. The Claimant fell and under the definition of injury by accident in South Carolina, he does not have to prove the cause of the fall, at

least not since 1939 in the case of Layton v. Hammonds-Brown-Jennings Co., 190 S.C. 425, 3 S.E.2d 492 (1939), wherein again the Supreme Court of South Carolina specifically broke with the North Carolina and held under South Carolina law that simply the, "unexpected" result from the work activity constitutes injury by accident under our law. (The Appellant would also note that two (2) members of the Court Panel are former Circuit Court Judges and would submit that the Appellant would be entitled to a directed verdict based on the evidence in the Record.)

3. Under section III Arising Out of Employment holding that Mr. Turner did not establish that his injury arose out of the employment, the Court misapprehended and/or overlooked the holdings of the Supreme Court as to: what constitutes arising out of; and the application of and the definition of injury by accident; and failed to apply the Supreme Court's holdings specifically in the cases of Barnes v. Charter One Realty, 411 S.C. 391, 768 S.E.2d 651 (2015) and Nicholson v. South Carolina Department of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015).

First the Court in this section of the Opinion concerning the, "arising out of" the employment prong of the definition of injury by accident requires, based on a witnessed but, "unexplained fall" situation, that it is not compensable unless the employment contributed to, "either the cause or the effect of the fall", citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955). Cause is not and has never been a part of

the definition of compensable injury by accident under our law. Beginning before but specifically in 1939, the Supreme Court defined injury by accident in the case of Layton v. Hammonds-Brown-Jennings, Co., 190 S.C. 425, 3 S.E.2d 492 (1939). In Layton, and very importantly to the reliance on North Carolina Law by the Court, the Supreme Court was faced with the two competing definitions of injury by accident and again specifically chose not to follow and specifically rejected the definition adopted by North Carolina. Because that case has and still serves as the basis for and sets out the definition of injury by accident which was applied even in Barnes and Nicholson, the Supreme Court's decision in Layton as to the two competing definitions and the one chosen by South Carolina is set out in pertinent part:

"Even so, we have such respect for the North Carolina Court and its Chief Justice, author of the Slade opinion, that we consider the holding therein as highly persuasive and entitled to great weight, **but find that we are circumscribed by the Rule as stated by our own Court** in Goethe v. New York Life Insurance Company, 183 S.C. 199, 217, 190 S.E. 451, 458, as follows:

The Rule clearly deductible from the overwhelming weight of authority is that, **when injury or death follows or results from a voluntary act of the insured, and the act is one which is not manifestly dangerous, but which is ordinarily done or performed without serious consequences to the doer, such result is caused by accidental means.**

This is nowhere better stated than by Sandburn, J. in Western Commercial Travelers Association v. Smith, 85 F. 401, 405, 29 C.C.A. 223, 56 US App. 393, 40 L.R.A. 653, where he says:

'An effect which does not ordinarily follow and cannot be reasonably anticipated from the use of

those means an effect which the actor did not intend to produce and *** cannot be charged with the design of producing, *** is produced by accidental means' ... one of the purposes of the Workmen's Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment irrespective of mishap independent of the injury itself, and/or negligence on the part of either the employee or the actor." (Emp. add.). 3 S.E.2d 492, at 496.

Then in the case of Hiers v. Brunson Construction Company, 221 S.C. 212, 70 S.E.2d 211 (1952) as restated ever since and as restated in Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) the "unexpected" result from the work activity constitutes injury by accident. Quoting in pertinent part from Stokes quoting Hiers:

"No slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury itself considered the compensable accident." (Emp. add.).

This is the exact same definition that is referred to and cited as part of the actual holding, not the dissent in Nicholson which is as quoted by the Court in pertinent part:

"The circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties, she sustained an injury. We hold these facts, establish a causal connection between her employment and her injuries - the law requires nothing more because Nicholson's fall happened at work and was not caused by a condition peculiar to her, it was causally connected to her employment:

Therefore, her injuries arose out of her employment as a matter of law and she is entitled to workers' compensation." (Emp. add.).

In fact, this is the same exact definition quoted in Jennings citing Stokes and in fact this Court in Jennings quotes the same

definition of "arising out of" that is set out in Eargle v. South Carolina Electric & Gas, supra. [On a side note the Court will find based on a search of precedents/research stream that both Eargle and Jennings and all of the decisions in between trace to the Supreme Court decision in Thompson v. J.A. Jones Constr. Co., 199 S.C. 304, 19 S.E.2d 276 (1942).] The definition of "injury by accident" and the prong "arising out of" have not changed since the inception of the Act.

An injured worker has never had to prove cause. He has only ever had to prove an unexpected result from the work activity. Mr. Turner was at a time and place where his job required him to be and all of circumstantial evidence is that he was involved in his work activities when he sustained injury and there is absolutely no evidence in the Record that that injury was caused, "by a condition peculiar to" him or by anything other than it was simply the "unexpected result" of the work activity and therefore causally connected to his employment.

Also, because the Court quotes from the North Carolina Court concerning the, "inequality of information" available to the employer versus the employee and because our Supreme Court has already stated in reference to accidental injury that we do not follow North Carolina precedent in that regard, a further quotation from the Layton v. Hammond-Brown-Jennings Company, supra, decision, is appropriate. After quoting the fundamental construction principle that is to be applied to workers' compensation wherein the Act is to be given a liberal

interpretation in favor of benefits to the injured worker, the Court addresses its opinion in reference to the North Carolina concept of, "inequality of information", quoting:

"One of the purposes of the Workers' Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment **irrespective of mishap independent of the injury itself.**"

It is a fundamental principle that the Act is to be liberally construed as the Supreme Court and this Court have always held. This principle is in no way a reference to what the Court referred to as a, "liberal construction of the evidence". This is in reference to a liberal construction of the law that applies and the Court simply misapprehended or overlooked the definition of injury by accident by requiring the need by an injured worker to prove a cause versus the unexpected result being the accident itself.

Further, the Court actually misapprehended and misapplied its own decision in Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 253 (SC App. 1998) which was specifically reversed, or at least limited to the facts in that case, by the Barnes v. Charter One Realty, supra, and the Nicholson v. South Carolina Department of Social Services, supra, decisions. In Crosby, this Court, contrary to its current decision, in discussing the two lines of cases involving unexplained falls, clearly indicated that it would apply the unexplained injury or death presumption and the, "arising out of" the employment presumption in an unwitnessed fall

situation where the claimant lived. Quoting from the Court's decision in Crosby:

"Unexplained fall cases may be classified into to two main categories: (1) those in which the fall was unwitnessed or purely unexplained; and (2) those in which the evidence establishes that the fall while unexplained, had an apparent lack of work connection, the implication arising that the fall resulted from some pre-existing physical condition ...". (Emp. add.)

The Court went on to state that in those situations "where the fall is unwitnessed . . ." the Court has applied the unexplained injury or death presumption citing Jake v. Jones, 240 S.C. 574, 126 S.E.2d 721 (1962). This Court clearly indicated that if Ms. Crosby had died and since her death would have been occasioned by an unwitnessed unexplained injury accidental in nature, i.e., fall, and not the result of some established internal condition such as a seizure disorder, aneurysm or heart attack that it would have been compensable. It is also ironic that the Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) decision so heavily relied on in both the Crosby Opinion and the current Opinion of the Court on the issue of "arising out of" actually specifically relies on a case applying the unwitnessed, unexplained death or injury presumption for the proposition that that prong may be established by circumstantial evidence surrounding the injury; i.e., Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879.

Further, the Supreme Court decisions in Barnes v. Charter One Realty and in Nicholson v. South Carolina Department of Social

Services are in direct accordance with the definition of injury by accident but are also in direct accord with the application of the unexplained death or injury presumption as applied by the Supreme Court since their injuries were both caused by accidental means, "a fall" in those cases, had they died from their injuries. Even under this Court's Opinion that would be true; See: Crosby quoting Bagwell citing Buff. There was no evidence of an internal condition, "peculiar" to the Appellant causing injury and the arising out of the employment prong would have been filled by the unexplained death or injury presumption based on the undisputed circumstantial evidence at the time and date of injury. See: Buff, supra.

The Appellant would ask the Court to look back at the first part of this argument in reference to police officers, nurses, teachers and all workers for that matter, as to there being no logical difference in the application in reference to death versus no memory. As the Court states in the Opinion, the Commission's decision cannot be based on surmise, speculation or innuendo and it must be based on substantial evidence. There is simply no substantial evidence in the Record of any condition or cause of the fall in reference to the Claimant, Mr. Turner, on the date of the accident other than his work activities. Mr. Turner was at a place and performing duties that were part of his duties as an employee and thus his injury was in the course of his employment and since the unexplained fall was unwitnessed and occurred in the course of employment under our definition of injury by accident,

it is deemed to have arisen out of the employment because it is the, "unexpected result" from the work activity. Again, this has always been the holding by the Supreme Court, and this Court as a matter of fact, throughout the line of cases in reference to internal breakdown and injuries caused by physical conditions such as a heart attack, aneurysm, stroke and the standard applied to those types of conditions versus an injury which is accidental in nature such as a fall.

4. In reference to section IV **"Drafting Order"** of the Court's Opinion, the Appellant would submit that the Court misapprehended the facts and procedure in this case as compared to Brown and the argument made by the Appellant. While the Appellant disagrees and would ask for rehearing on this issue, the Appellant fully understands the Court's reliance on its previous decisions but takes exception not only to the holding but also that the argument that was being made has, "no merit".

There is no question that the law requires the Commission to make Findings of Fact and Conclusions of Law on the, "essential issues" before it for decision under the Administrative Procedures Act, the Workers' Compensation Act and the Commission's own Regulations as cited in the Brief and that the Findings of Fact are binding on appeal subject only to the Substantial Evidence Rule of Review. It is also undisputed, as is set forth in the Brief, that the Decision of the Commission Panel, which meets once a month, is a consensus decision of three members of the

Commission. Therefore, the Appellant would ask the Court to reconsider its decision in this regard in light of the following example. This Court in conjunction with its Law Clerks and Staff Attorneys reaches a consensus opinion and votes on that Opinion. The Court then drafts its Opinion which becomes a consensus opinion of three Judges of this Court. As was argued in the Brief, the opinion of the Full Commission is a consensus opinion and they are required by law to make their own Findings of Fact which are supposed to be set out in the Record. If we were to apply the same procedure that is being followed by the Commission in writing its Full Commission decisions which is being sanctioned by the Court, we could save the State a lot of money in reference to this Court's consensus Opinions if we would simply allow the Court to vote, reach its decision and then ask the prevailing party to fill in the blanks and write the Opinion of the Court for its review. That proposition is probably even more dangerous in this scenario where the Commission's decision on Findings of Fact, like a jury's decision, cannot be invaded unless there is a lack of evidence to sustain the decision.

As is argued in Brief, not only does the law require the Commission to make its own Findings of Fact and Conclusions of Law but the Appellant knows of no other situation wherein the prevailing party is allowed to write a, "consensus" opinion for multiple members of the deciding body. The same principles of due process, the Appellant would submit, applies to the concept of allowing a prevailing party to write the consensus opinion of the

Commission that would apply to allowing the prevailing party to write the opinion of this Court.

The Appellant would simply ask for reconsideration and rehearing on this issue in light of the law and in light of the binding effect of the facts on appeal especially under the facts in this case where without direction numerous Findings of Fact were added. The entire reason for the entire line of cases by the Supreme Court and this Court holding that the Commission must make detailed Findings of Fact and Conclusions of Law to support its decision is that the Commission takes the place of a jury and this Court and the Supreme Court are requiring the Commission to make those detailed Findings of Fact and Conclusions of Law so that the Court can determine the underlying reasoning and basis for the decision by the Commission not the prevailing party. The Appellant would again respectfully point out the danger in this to the Court by allowing a party to put in whatever Findings of Fact it wants to put in the Decision that are not based on any direction from the Commission, and then charge the Commission whose Members three and a half (3 ½) weeks out of every month are reviewing massive records on multiple cases that they are hearing, with having to find the time to go over with a fine tooth comb the decisions that have been written by the prevailing party to insure that Findings of Fact not made by the Commission are not included in that decision.

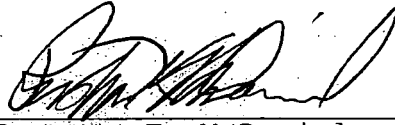
CONCLUSION

For all of the foregoing reasons, the Appellant would respectfully request Rehearing, and in light of the Court's decision finding that the Supreme Court has never applied and would not apply the unexplained death or injury presumption to situations where the injured worker did not die as a result of his injuries but simply has no memory or cannot testify as to what occurred, the Appellant would ask for Rehearing en banc and/or for Certification of the question to our Supreme Court for decision. Further, since the issue was not specifically raised, challenging the application of the unexplained death or injury presumption, under the principle of judicial restraint from deciding issues that need not be decided to reach a conclusion, the Appellant would ask that the opinion be withdrawn or redrawn in light of that Decision.

Further, the Appellant would ask for rehearing on, "arising out of" and the Findings of Fact and the drafting of the order sections for the reasons stated herein and particularly as to "arising out of" in reference to the definition by injury by accident and the definition of arising out of as has been determined by the Supreme Court and this Court of Appeals since the inception of the Act.

Finally, the Appellant would ask for Rehearing or Rehearing en banc or at the citation of precedent for the Court basing its Decision on the dissent in the Supreme Court as opposed to following the decisions of the Supreme Court.

Respectfully submitted by:



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December 21, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1204039

William Lee Turner, Employee, ...Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc., Carrier, ... Respondents.

**RETURN IN OPPOSITION TO
PETITION FOR REHEARING**

Pursuant to Rules 221(a) and 240(e), Respondents SAIIA Construction and Old Republic General Insurance Corporation c/o Gallagher Bassett Services, Inc. hereby oppose Appellant William Lee Turner's ("Claimant") Petition for Rehearing ("Petition") of this Court's Opinion No. 5458, filed December 7, 2016. Claimant has presented no issues that warrant this Court granting his Petition, hearing it *en banc*, or certifying any question to the South Carolina Supreme Court, all of which requests should be denied.

1. This Court properly refused to extend the unexplained death presumption to the facts of this case.

First, Claimant takes issue with this Court's holding that the unexplained death presumption does not apply where the injured worker survives the accident but does not remember what happened. This issue was fully briefed and argued, and Claimant presents no legitimate point that this Court misunderstood or overlooked other than to

raise the specter of hosts of employees suffering unwitnessed and unremembered falls or injuries and being denied workers' compensation benefits. (Pet. pp. 2, 17). The fact that there have not been "hundreds of workers suffering very common unwitnessed injuries" since the inception of the South Carolina Workers' Compensation Act ("Act") demonstrates that his fears are unfounded. The reality is that there have been very few cases involving unwitnessed, unremembered work accidents during the 80+ years since the Act was passed.

Claimant attempts to obfuscate the fact that he can point to no South Carolina precedent extending the unexplained death presumption to the facts of this case, by relying on verbiage in cases applying it in to death cases. That verbiage is dicta. Claimant has not and cannot point to a single South Carolina case where the presumption was applied where the claimant survived. Given Claimant's vision of "hundreds of workers suffering very common unwitnessed injuries," one would think there would be an abundance of South Carolina cases applying the presumption to cases like the instant one. But there are not. Not one.

Instead, this Court properly looked to other states, and to North Carolina in particular. North Carolina, in addition to other states with similar Acts, has limited the presumption to cases where the worker is deceased, and has specifically refused to apply it where the worker is alive but claims no memory of the events leading up to the injury. This Court correctly noted that the facts in Janney v. J.W. Jones Lumber Co., Inc., 145 N.C. App. 402, 550 S.E.2d 543 (N.C. Ct. App. 2001), which involved a claimant who had no memory of falling and hitting the floor, are "very similar to the instant case."

Claimant argues repeatedly that the South Carolina Supreme Court has held that it “does not follow and specifically rejects North Carolina law” in the “area of injury by accident.” (Pet. pp. 3, 7, 11, 12, 14-15). Respondents presume he is referring to the fact that North Carolina requires that “some unusual or unlooked-for mishap” occur whereas, in South Carolina, a compensable injury can occur through normal work activities where an unexpected injurious result ensues. See Pee v. AVM, Inc., 352 S.C. 167, 170-171, 573 S.E.2d 785, 787 (2002). While this is true, that does not answer the question at issue in this case and our Supreme Court’s rejection of the requirement that an unexpected mishap occur does not preclude South Carolina courts from following North Carolina’s well-reasoned precedent concerning unwitnessed and unremembered injuries. In fact, our Supreme Court specifically approved of reliance on North Carolina precedent (*i.e.*, Goodwin v. Bright, 202 N.C. 481, 163 S.E. 576) in adopting the unexplained death presumption in Owen v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941), a case decided a year and a half after Layton v. Hammond-Brown-Jennings Co., 190 S.C. 425, 3 S.E.2d 492 (1939), the case Claimant insists precludes South Carolina courts from relying on North Carolina precedent for any issues dealing with “arising out of.” (Pet. p. 7). Thus, it is more than simple “speculation” on this Court’s part that the Supreme Court would decline to extend the unexplained death presumption to the facts of this case.¹

¹ In his Conclusion, Petitioner makes the perplexing statement that, since how the Supreme Court might resolve this issue “was not specifically raised, challenging the application of the unexplained death or injury presumption, under the principle of judicial restraint from deciding issues that need not be decided to reach a conclusion, the Appellant would ask that the opinion be withdrawn or redrawn in light of that Decision.” (Pet. p. 21). His request should be denied. It is both common sense and the nature of an intermediate appellate court to resolve the cases before it in accordance with any precedent set by a higher court and, where an issue may be novel, to reach a resolution that it believes the higher court would reach.

Jennings v. Chambers Dev. Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999), on which Claimant relies heavily, does not hold differently. In Jennings, the claimant drove a garbage truck and, one morning was found slumped over the wheel, having suffered a heart attack. The claimant's widow argued she should be entitled to the "unexplained death' presumption." This Court clarified that the unexplained death "presumption is applied simply to establish that the injury occurred in the course or and as a consequence of employment. The presumption cannot be applied to establish the incident of accident." 335 S.C. at 256, 516 S.E.2d at 457. In other words, the unexplained death presumption does not eliminate the test for whether a heart attack or brain aneurism – or some other condition peculiar to the claimant, such as taking prescription medications with serious side effects – is work-related. This Court neither misunderstood nor overlooked long-standing precedent concerning the definition of "injury by accident" and/or "what constitutes arising out of."

Claimant incorrectly argues that this Court is bound to "liberally apply" *precedent* interpreting the Act in order to extend the presumption to cover the facts of this case and award him relief. There is no such rule. He also argues incorrectly that the "inequality of information" reasoning put forth in Janney is "totally contrary" to the Act. While provisions of the Act should be construed liberally in order to effect its purposes, it is equally true that the words of the Act "must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Stone v. Roadway Express, 367 S.C. 575, 585, 627 S.E.2d 695, 700 (2006); Wigfall v. Tideland Util., Inc., 354 S.C. 100, 580 S.E.2d 100 (2003) (courts "are not at liberty to extend by construction the meaning implicit in the language found in the *Workmen's*

[sic] *Compensation Act* in order to provide a more liberal rule of compensation than that which the legislature has seen fit to adopt”). In fact, the Act, which represents a balancing of competing interests between workers and employers, Wigfall, 354 S.C. at 116-117, 580 S.E.2d at 108, must be construed “in justice to both parties and must not impose a burden on either.” Hill v. Skinner, 195 S.C. 330, 340, 11 S.E.2d 386, 390 (1940). The “inequality of information” is just such a balance.²

Furthermore, as this Court correctly noted, although “compensation *law* will be construed liberally in order to effect its beneficent purpose the rule of liberal construction has been held not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are.” Cross v. Concrete Materials, 236 S.C. 440, 446, 114 S.E.2d 828, 831-32 (1960). In other words, “our rule which is applicable to the finding of facts is that a claimant must establish by the preponderance of the evidence the facts which will entitle him to an award; the burden of proof is upon him. He cannot prevail by the resolution of doubts.” 236 S.C. at 446, 114 S.E.2d at 832. Claimant’s effort to impose a burden-shifting analysis on this case is just such an attempt.

Claimant asserts wrongly that our “Supreme Court has specifically ruled that it would apply the death and injury presumption to cases where the Claimant did not die from his injuries,” citing Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737

² Furthermore, Claimant’s assertion that there is no logical or legal difference between an employee who has died and one who is in a coma or claims to not remember the events leading up to his or her injury, (Pet. pp. 8, 17), is incorrect. The former is a permanent condition and issues of credibility do not arise where the claimant is deceased – the same cannot be said in the case of a coma (which is not always permanent) or an employee who claims he or she has no memory of an event.

(1960). (Pet. p. 3). However, the language quoted by Claimant was the Court's summation of the claimant's legal argument. It was not a holding and it cannot fairly be construed to be an adoption of the unwitnessed death presumption in cases where the claimant survived. The Court was responding to the claimant's argument that circumstantial evidence was sufficient to support an award in his favor. While the Court agreed that circumstantial evidence can support a finding of fact or an award, the evidence in that case "fail[ed] to disclose or to warrant a reasonable inference that there was any *causal connection* between the employment and the injury to the claimant." 236 S.C. at 231-232, 113 S.E.2d at 740 (emphasis added). Although the claimant also argued he should be entitled to the unexplained death presumption, the Court rejected that argument because the claimant could not show his injury occurred in the course of his employment. And, because that ruling disposed of the case, there was no need for the Court to rule whether it would apply the unexplained death presumption in a case where the claimant survived but could not recall the accident. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding that an appellate court does not need to determine all issues when one is dispositive of the appeal).

Claimant incorrectly states that the Fowler Court referred to Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941), "in regards to the presumption." (Pet. p. 4). The reference to Owens was to the fact that "circumstantial evidence need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached" by the Commission. Fowler, 236 S.C. at 232, 113 S.E.2d at 740.

The second reference to a “presumption” in Fowler that Claimant cites also is not to the unexplained death presumption but, rather, in response to the claimant’s argument that an “injury may be compensable if received at some distance from employer’s place of business, where, at the time and place of injury, employee was doing some work in connection with, or incidental to his employment.” Fowler, 236 S.C. at 234, 113 S.E.2d at 741. That certainly does not apply to the facts of this case. Finally, in Fowler the Supreme Court cited to Eargle v. South Carolina Elec. & Gas Co., 205 S.C. 423, 32 S.E.2d 240 (1944) in reference to the going and coming rule, Fowler, 236 S.C. at 2343, 113 S.E.2d at 741, and not, as Claimant suggests, to the application of the “unexplained, unwitnessed death or injury presumption ...” (Pet. pp. 5, 6). Thus, Claimant’s attempts to cobble together a prior statement or even intimation by the Supreme Court that it would apply the unexplained death presumption to the facts of this case fails.

Contrary to Claimant’s suggestion otherwise, this Court did not fail to apprehend the distinction between cases applying the unexplained death presumption that involved accidental injury versus those where the death was the result of a claimant’s pre-existing health condition. This Court first held that the presumption does not apply where the claimant survives but has no memory of the accident. Then, alternatively, this Court correctly held that, even if the presumption applied in such cases, Claimant still would not be entitled to compensation, where Claimant had recent medical conditions and Respondents rebutted any presumption to which he theoretically might have been entitled. The Commission emphasized the narcotic pain medications Claimant was

taking for his non-work-related preexisting back conditions, and that he had sought emergency medical care just prior to his accident.³

As the Supreme Court stated in Steed v. Mount Pleasant Seafood Co., “[u]n­witnessed deaths have posed grave problems for many learned judges. The distinction between reasonable inferences (which are compensable) and speculation, conjecture and surmise (non compensable) often baffle the wisest. The courts however, *usually abide by the decision of the fact-finding body* unless it can be said that taking all the factors into account it drew an inference that no reasonable man could draw.” 236 S.C. 253, 256, 113 S.E.2d 827, 828-29 (1960) (emphasis added); *see also Buff v. Columbia Baking Co.*, 215 S.C. 41, 51, 53 S.E.2d 879, 883-884 (1949) (upholding inferences drawn by Commission that were both reasonable and sufficient to affirm the Commission’s determination). Here, even if the presumption applied, which it does not, it cannot be said that the Commission drew an inference that no reasonable man could draw.

In this case, the inferences from the circumstantial evidence are in conflict. On one hand, the Commission could have inferred from statements made by Claimant’s co-workers (who, as was noted previously, are not medical professionals and could only testify to what they observed as laymen) that they believed he was in “top notch shape” on the day of the injury, or the Commission could have inferred from Claimant’s visits to doctors, the prescriptions medications he was taking, and his seeking emergency medical

³ Thus, Claimant’s assertion that there is no contrary specific evidence regarding “the time and place of the accident,” (Pet. p. 8), is incorrect. There is evidence that, on the day and at the time of the accident, Claimant was taking the same narcotic medications for a non-work-related back injury that sent him to the emergency room just two days before.

care for side effects from those medications, that the cause of his fall was peculiar to himself. The Commission found significant the fact that “three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily).” (R. p. 28) (emphasis in original) (R. p. 24). Two days before the fall, Claimant was seen in the ER for vomiting and diarrhea. (R. p. 28). The Commission also clearly held that, even if a presumption applied, it was “confronted with the following: (a) there is no known cause of the fall in the instant case, (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident, (c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant’s family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; ... and (f) very importantly, **Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden.** Claimant’s sworn testimony in this regard ... greatly damages his credibility.” (R. pp. 31-32) (all emphasis in the original). There is sufficient evidence, circumstantial and otherwise, to uphold the Commission Decision.

Claimant focuses narrowly on testimony by his supervisor and two co-workers that he seemed to be in good shape on the day of his injury. (Pet. pp. 8-9, 14, 16). However, he is incorrect that “all” of the circumstantial evidence shows he was involved in work activities when he sustained his injury. Instead, circumstantial evidence, which

Claimant agrees is sufficient to prove a case or support a finding, exists that Claimant had preexisting back problems for which he sought medical care and for which he was taking powerful narcotics at the time of his fall. "It is well settled that circumstantial evidence may be relied upon to settle questions of fact in workmen's compensation cases ..." Buff, 215 S.C. at 45, 53 S.E.2d at 881. That is, circumstantial evidence may support the claimant's claim but also may support the Commission's denial of that claim. "Circumstantial evidence may be sufficient to support a finding of fact or an award, and a finding or award may be based on inferences drawn from circumstantial evidence ..." Id., 215 S.C. at 46, 53 S.E.2d at 881.

In this case, there was sufficient circumstantial evidence that Claimant had sought medical care for lower back pain, had been prescribed and was taking at the time of his fall powerful narcotics that have numerous serious side effects, and had sought medical care just days before his fall for some of those side effects. Thus, Claimant is incorrect that "there is absolutely no evidence of any ... medication ... that could have caused ... the injury by accident." (Pet. p. 10, *see also* pp. 17). There is evidence, both direct and circumstantial that Claimant was taking narcotic medications at the time of his injury and had sought emergency medical attention for some side effects associated with those medications. Contrary to Claimant's repeated assertions, it is not only "a natural condition" that can constitute a cause of injury peculiar to the employee. Taking narcotic medications for a non-work-related injury also can constitute an independent cause.

Claimant argues that he does not have to prove the "cause" of his fall or his injury. (Pet. pp. 10, 11-14). However, it is indisputable that, in order "to be compensable, an injury by accident must be one 'arising out of and in the course of

employment,” and that, “[a]rising out of” refers to the injury’s origin and *cause*, whereas ‘in the course of’ refers to the injury’s time, place, and circumstances ... For an injury to ‘arise out of’ employment, the injury must be *proximately caused* by the employment.” Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007) (emphasis added); *see also* Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965) (an injury “arises ‘out of’ the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a *causal connection* between the conditions under which the work is required to be performed and the resulting injury But it excludes an injury which cannot fairly be traced to the employment as a *contributing proximate cause* ...) (emphasis added). In other words, the concept of a causal link to work is embedded in the “arising out of” prong of the definition of a compensable injury.

And, because a claimant bears the burden of proving facts that will “render the injury compensable” under the Act, Packer v. Corbett Canning Co., 238 S.C. 431, 435, 120 S.E.2d 398, 400 (1961), one of the things he must prove is some causal link between his injury and his employment. Nicholson v. South Carolina Dept. of Soc. Services, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) (a claimant must “prove a causal connection between the conditions under which the work is required to be performed and the resulting injury”).⁴ This is true even where the unexplained death presumption applies. That is, even where the deceased employee is “found dead in a place where he may

⁴ Otherwise, the Act simply becomes an insurance plan for workers which clearly was not the Legislature’s intent. Roper Hosp. v. Clemons, 326 S.C. 534, 537 n.1, 484 S.E.2d 598, 599 n.1 (Ct. App. 1997) (although the Act “should be liberally construed in order to accomplish [its] humane purpose, ... liberal construction does not mean that the act should be converted into a form of insurance”).

reasonably be expected to be, [and] the natural presumption arises that his death occurred out of and in the course of his employment,” the presumption alone may be insufficient to prove that the cause of death was a work-related accident, as opposed to some cause peculiar to the claimant. Packer, 238 S.C. at 436-437, 120 S.E.2d at 400-401.

Claimant also attempts to confuse the concepts of proving a causal relationship between an injury and his employment with the concept of whether he has to prove an unexpected “accident” occurred, *citing* Stokes v. First Nat. Bank, 306 S.C. 46, 50, 410 S.E.2d 248, 250 (1991) (nervous breakdown case, where the issue was whether the claimant had suffered an “injury by accident”); Hiers v. Brunson Const. Co., 221 S.C. 212, 232, 70 S.E.2d 211, 220 (1952) (exposure case, where the issue was whether pneumonia was an “injury by accident” under the Act). (Pet. pp. 11-14, 15). Stokes and Hiers are inapplicable to this case because there is no issue regarding whether Claimant’s job subjected him to extreme stressors or weather. Neither this Court nor the Commission held that Claimant had to prove he experienced a sudden, unexpected external event. Instead, both this Court and the Commission held that Claimant was not entitled to a presumption that his injury was work-related and that, even if such presumption applied under these circumstances, Respondents produced sufficient evidence to overcome the presumption.

Claimant argues that all he has to show is “an unexpected result from the work activity.” (Pet. p. 14). However, this is precisely what he has not and cannot do. First, he has not shown that anything related to his work activity caused his “unexpected result.” All he can prove is that he was at work at the time he fell back and hit his head. He cannot prove that anything related to his work either caused or contributed to his fall,

or to the effect of his fall. In this respect, the instant case is distinguishable factually from Nicholson and Barnes v. Charter 1 Realty, 411 S.C. 391, 768 S.E.2d 651 (2015), as is discussed below in Section 3.

Claimant's arguments do not warrant rehearing and his Petition should be denied.

2. This Court did not misapprehend Claimant's argument regarding Findings of Fact no. 4, 5, 6, 9, 10 and 11, and Conclusions of Law 9 and 10.

First, this Court dealt with Claimant's second argument in his Brief precisely as Claimant framed it: "The Commission erred as a matter of law by specifically affirming the Hearing Commissioner's Findings of Fact #4, #5, #6, #9, #10 and #11, and by failing to apply under Conclusions of Law #9 and #10 the unexplained injury or death presumption and by trying to 'factually' distinguish that legal presumption under Conclusion of Law #10." (App. Br. p. 16). Second, Claimant's short "argument" in this section of his Brief did not raise any of the issues in the heading for Argument No. 2 or that are raised in his Petition; instead, he simply re-argued that he was entitled to the unexplained death presumption. Nowhere in this section of his Brief did he state that the six Findings of Fact are correct.

Claimant's arguments do not warrant rehearing and his Petition should be denied.

3. This Court properly held that Claimant failed to prove his injuries arose out of his employment.

Claimant incorrectly argues that this Court failed to follow the Supreme Court's ruling in Barnes and Nicholson. Both of those cases are factually distinguishable from the case at hand. Each of the claimants in Barnes and Nicholson testified that she was performing some task for the employer when she fell. In Barnes, the claimant testified that she had been asked to check a realtor's email, and "was hurrying to the realtor's

office” which caused her to fall. This testimony “clearly established that she was performing her job when she sustained an accidental injury.” 411 S.C. at 393-394, 398, 768 S.E.2d at 652, 654. In Nicholson, the claimant was walking down a hallway to a meeting when she scuffed her foot on the carpet and fell. 411 S.C. at 383, 390, 769 S.E.2d at 2, 5. Here, there simply is no evidence that Claimant was performing any work-related function or activity when he fell. True, he was at work, but there is no evidence whatsoever that he was “performing a work task” when his injury occurred. There is no evidence that he was doing anything other than standing still at the time he fell.

Despite Claimant’s assertion otherwise, this Court did not base its decision “on the dissent in the Supreme Court as opposed to following the decisions of the Supreme Court.” (Pet. p. 21). Although this Court noted Justice Pleicones’ dissent in Barnes and his concurring opinion in Nicholson, it distinguished this case from both of those cases: “Here, unlike in Barnes and Nicholson, we cannot determine what Turner was doing at the time of his alleged accident ... no evidence indicates his employment contributed to the cause of his fall.” (Op. No. 5458, pp. 8-9). Further, it is not unheard of and there is nothing inherently wrong with appellate courts citing to and relying on statements made in prior dissents. *E.g.*, Faulkenberry v. Norfolk S. Ry., 349 S.C. 318, 563 S.E.2d 644 (2002).

Contrary to Claimant’s suggestion, (Pet. pp. 16-17), neither Barnes nor Nicholson applied the “unexplained death or injury presumption” in order to find the claimants’ injuries were compensable. What Barnes and Nicholson establish is that a fall can still be work-related even where a claimant cannot prove a *workplace hazard* caused the injury.

However, a claimant still has to prove *some* causal relationship between the injury and work. In Barnes, the causal link was hurrying to check a co-worker's email; in Nicholson, it was scuffing her foot on the carpet which caused her to fall. Furthermore, both Barnes and Nicholson are distinguishable factually from the case at hand: in neither of those cases was the claimant taking medications that have side effects, such as seizures, dizziness, fainting, loss of balance, etc., that could cause a fall, whereas here, it is undisputed that Claimant had been taking Ultram (50MG) and Flexeril (5MG) weeks prior to his fall and, was taking Ultram ER (100MG) and Neurontin (300MG), at the time of his fall. (R. 109-112).

Furthermore, the Supreme Court did not overrule this Court's ruling in Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998), but, rather, distinguished that case from the facts in Barnes, 411 S.C. 15 396-398, 768 S.E.2d at 653-655 (noting that, in Crosby, there was evidence that the claimant's leg just "gave out" which caused her fall, as opposed to the claimant in Barnes, who was hurrying to check an email, and was "performing a work task when she tripped and fell"). In rejecting application of the idiopathic fall rule to the facts in Barnes, the Supreme Court emphasized that there was evidence of a work connection between the claimant's injury and her employment. 411 S.C. 15 396-397, 768 S.E.2d at 653.⁵ The majority opinion in Nicholson does not even discuss Crosby.

⁵ Here, there is no direct evidence of what caused Claimant's fall because it was unwitnessed and he claims no memory of the moments prior to his fall. However, as noted above, there is competing circumstantial evidence as to what may have caused his fall. Claimant argues that circumstantial evidence shows he was in "top notch shape" on the day of his accident. (Pet. pp. 8, 10). At the same time, there is other evidence, both direct and circumstantial, that indicates Claimant was taking narcotic medications with serious side effects, some of which had sent him to the emergency room just days prior to

Furthermore, the Supreme Court did not overrule Bagwell v. Burwell, 227 S.C. 444, 88 S.E.2d 611 (1955) in either Nicholson or Barnes. Instead, in both cases, the Supreme Court simply distinguished the facts before it from those in Bagwell. In Nicholson, the Supreme Court noted that the Bagwell Court first found that the claimant suffered a non-work-related seizure and then looked to see whether any aspect of his employment caused greater injury; *i.e.*, it did not look to see whether there was a causal connection between the fall itself and the work but only whether a work hazard increased the severity of the injury. Nicholson, 411 S.C. at 387-388, 769 S.E.2d at 4. The Court concluded that, as a result, “Bagwell is thus not relevant to this case.” 411 S.C. at 388, 769 S.E.2d at 4. Similarly, in Barnes, the Supreme Court held that Bagwell was inapplicable to the facts before it because, in Bagwell, “the circumstances of the fall were not simply unexplained, but indicated the cause was internal.”

In fact, Bagwell bears significant similarities to the instant case. There, prior to his fall, the claimant was “apparently in good physical condition.” The only “witness” to the fall saw him only out of the corner of his eye, and “did not see the fall until deceased was about eighteen inches from the floor.” 227 S.C. at 447-448, 88 S.E.2d at 612. The claimant made no sound, took no steps prior to his fall, and appeared to fall straight back. 227 S.C. at 448-449, 88 S.E.2d at 612-613. As was the case in Bagwell, here, “the manner in which he fell and all the surrounding circumstances rather indicate that his fall was due to” something peculiar to the claimant. 227 S.C. at 450, 88 S.E.2d at 614. As was the case in Bagwell, here, “[i]t would be wholly conjectural under these

his fall. (R. 69, 109-115; R. 210, line 18 – 211, line 7). The Commission’s resolution of this conflicting evidence, as well as its credibility findings, are supported by substantial evidence and must be upheld on appeal. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 526, 528 (2001).

circumstances to say that the cause of the fall had any relation to his work or the conditions under which it was performed.” 227 S.C. at 451, 88 S.E.2d at 614. One important difference between Bagwell and the instant case is that, in Bagwell, there was no evidence that the claimant had been suffering from any prior back pain or that he was taking prescription medications with serious side effects. Here there is. However, that factual difference supports the Commission and this Court’s resolution of this case.

Finally, this Court did not misapprehend or misapply its ruling in Crosby. The key ruling from Crosby applied to this case is that, “while the fall was unexplained, there was an apparent lack of work connection and an implication of a pre-existing physical condition.” (Op. No. 5458, p. 7). Here, as was the case in Crosby, there is some evidence, albeit circumstantial evidence, that the cause of Claimant’s fall was peculiar to himself. In other words, this case does not fall within the category of “unwitnessed or *purely unexplained*” falls but, rather, falls within the category of falls that have “an *apparent lack of work connection*.” Crosby, 330 S.C. at 495, 499 S.E.2d at 257 (emphasis added).⁶

Claimant’s arguments do not warrant rehearing and his Petition should be denied.

⁶ Claimant is simply incorrect in his assertion that this Court, “clearly indicated that if Ms. Crosby had died and since her death would have been occasioned by an unwitnessed unexplained injury accidental in nature, i.e., fall, and not the result of some established internal condition such as a seizure disorder, aneurysm or heart attack that it would have been compensable.” (Pet. p. 16). Claimant cites no reference for this startling assertion because it does not appear in Crosby. Instead, this Court indicated that there, as was the case in Bagwell, the “circumstances of the fall ... tended to show the employment was not a contributing cause.” Crosby, 330 S.C. at 496, 499 S.E.2d at 257. The same is true in this case.

4. This Court did not misapprehend any facts or arguments in holding that the Commission did not err in the manner in which its Decision was drafted.

Claimant appears to suggest that this Court misapprehended some distinction between the posture of this case and the posture in Brown v. Peoplelease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013), that warrants a different outcome here. He is incorrect. In both cases, the Commission upheld the findings and conclusions of the Single Commissioner. In both cases, the decision was a “consensus decision.” In both cases, the Appellate Panel sent one of the parties a request to draft a proposed order that provided, “[t]he Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.” Brown, 402 S.C. at 486, 741 S.E.2d at 766. (R. p. 430).

Claimant’s argument does lack merit, and he can find no case law or statutory support for his position. On rehearing, he raises the novel argument that, because “the Commissioner Panel ... meets once a month,” and has to review “massive records on multiple cases,” they cannot be expected to “find the time to go over [a proposed order] with a fine tooth comb” to make sure the decision is what they intend. (Pet. pp. 18, 20). First, this argument was not raised previously and cannot be raised for the first time on rehearing. Herron v. Century BMW, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) (a party cannot raise an issue or argument for the first time on rehearing). Second, Claimant has presented no evidence whatsoever that the Commission is overwhelmed to the point that it is unable to carefully and properly review the proposed orders that it requests from one party or the other. Further, there is absolutely no evidence that the Commission did not fully review and approve the proposed Decision in this case before it issued it.

Finally, Claimant's assertion that "without direction numerous Findings of Fact were added," (Pet. p. 20), is plainly incorrect. *Compare* R. pp. 9-15, *with* R. pp. 26-32. To the extent Claimant intended to repeat his argument that some additional Conclusions of Law were added to the Commission Decision, that issue was addressed in Respondents' Brief. In short, the additional Conclusions of Law that Claimant appeared to find problematic include Conclusions of Law Nos. 3 and 4, which simply set forth the standard of review at the Full Commission level, (Commission Decision, R. 33), Conclusions of Law Nos. 9 and 10, which responded to Claimant's reliance on Packer v. Corbett Canning Co., 238 S.C. 431, 120 S.E.2d 398 (1961), (Commission Decision, R. 34-35), and Conclusion of Law No. 16, which simply affirmed the Commissioner's Decision.

Because there is no merit to Claimant's argument regarding how the Commission Decision was drafted, it provides no reason for this Court to grant his Petition, which should be denied.

CONCLUSION

For all the reasons stated herein, this Court should deny Claimant's Petition for Rehearing and/or for rehearing *en banc*. Certainly there is no need for this Court to "certify" any question to the Supreme Court, which is little more than an attempt to side-step the petition process under Rule 242, SCACR. Finally, Claimant has presented no reason why this Court should rewrite its Opinion to remove its conclusion of how the Supreme Court would rule on the issues before it.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE

January 3, 2017



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 11 2017

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission SC Court of Appeals
Appellate Panel

Appellate Case No. 2014-002416

William Lee Turner, Employee, ... Appellant,

v.

SAIIA Construction, Employer, and
Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.,
Carrier, ... Respondents.

REPLY TO RETURN IN OPPOSITION
TO
PETITION FOR REHEARING

By way of Reply, briefly to the Return the Petitioner and
Appellant, the injured worker, would submit:

1. That as to the Respondents' arguments made under #1:

First as to the number of cases concerning the unwitnessed
death or injury presumption, the Petitioner would submit that upon

review of many what are considered to be settled principles of law that the Court will find the same; i.e., there are very few cases challenging that settled principle of law. For example, the Court will find that the Supreme Court has revisited and restated the definition of injury by accident, not just applied it to the facts of a given case on appeal, approximately only once every decade. Where a principle of law is considered settled, it is not repeatedly appealed. Since it was originally stated in Owens, Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) and since then in reciting the definition in all of its Decisions, the Supreme Court has referred to the presumption as the unexplained, "injury or death" presumption, there is no reason to believe that the Court did not mean to include unwitnessed injuries without death under the presumption. It is also logical to assume that since the Court has always included, "injury" and death in reciting to the presumption that the Commission and the parties appearing before the Commission in contested cases have readily assumed that the presumption would be applied to an injury situation that did not result in death.

Second, in reference to the application of North Carolina law, a fundamental part of the presumption itself is the definition of injury by accident and the definition of injury by accident in North Carolina is diametrically opposed to the definition in South Carolina as is recognized by the Respondents in their Return. There is no difference between a person walking across the floor and not knowing what, "caused" the injury under

our definition versus where the Claimant does not know what caused the fall because of a lack of memory. Again, it is the unexpected result of the work accident not the cause as it is in North Carolina that results in compensable injury under South Carolina Law.

Third, the Petitioner will stand by his reading of the case of Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960). Clearly that case involved an unwitnessed injury that did not result in death and the Court is clear in the Decision as to the presumptions to which it is referring. That case was decided not on the "arising out of" prong of the definition of injury by accident but under the "in the course of" prong. Everybody concedes that Mr. Turner was in the course of his employment and he was performing duties as part of his normal daily work required routine at the time of the accident.

Fourth, and again, the Respondents in the Return are attempting and asking the Court to infuse "cause" into our definition of injury by accident.

Finally, while the Respondents argue otherwise there is a clear distinction in and there are two distinct lines of cases concerning the application of the unexplained injury or death presumption in reference to natural occurring conditions such as heart conditions versus traumatic injury type conditions and there is clearly a different standard. Also, in all of the idiopathic fall cases, and Crosby specifically, there was specific testimony or evidence that the injury was not work related.

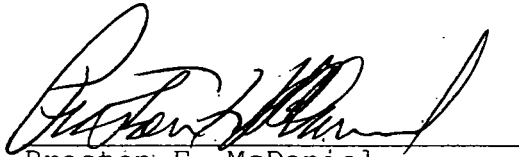
2. That as to Argument #3, the Supreme Court in Barnes and Nicholson did nothing more and nothing less than honor the time-honored definition of injury by accident in South Carolina. Unlike North Carolina, there is no requirement for an untoward, unlooked for event in the cause and as the Respondents admit, in South Carolina the unexpected result constitutes injury by accident. Mr. Turner was in the course of his employment duties at the time that the accident occurred (there is no evidence to the contrary); he sustained a traumatic type injury (medical evidence injuries came from the fall), and there is no evidence of any physical condition causing it. He met his burden of proof specifically under the Decisions of the Supreme Court in Nicholson and Barnes. The Supreme Court did not overrule Crosby and did not overrule Bagwell because they are still good law but the Supreme Court limited them under our definition of injury by accident to situations where there is evidence that the injured worker was in the course of his employment but there is evidence that it did not arise out of his employment duties such as Ms. Crosby, my leg "gave out".

Finally, while the Respondents argue there is substantial evidence to support a physical condition "cause" of the injury there is not only no substantial evidence, there is no evidence of anything of a physical nature causing Mr. Turner's problems on the date of the accident. It is ironic that the Respondents make this argument but yet point the Court to no evidence on the date of the accident.

CONCLUSION

For the foregoing reasons, the Petitioner would request rehearing and would specifically request the right to appear before the Court for further oral argument to address these nuances which were not brought up during the first oral argument in the least. During the first argument there was no questions asked about whether the Supreme Court would apply the presumption to an injury situation. In fairness to both parties, this case should be reargued and because of the sweeping nature and the sea change that results from the Court's Opinion, the Petitioner would request rehearing en banc.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written over a horizontal line.

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January 9, 2017

The South Carolina Court of Appeals

William Lee Turner, Employee, Appellant,

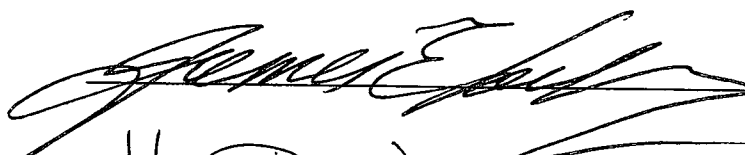
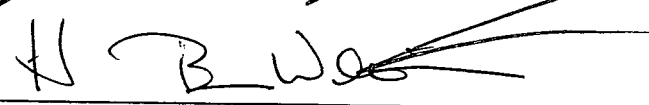
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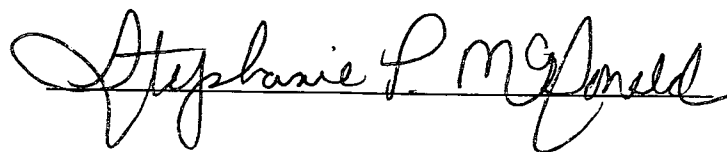
SAIA Construction, Employer, and Old Republic
General Insurance Corporation c/o Gallagher Bassett
Services, Inc., Carrier, Respondents.

Appellate Case No. 2014-002416

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.

 J.

Columbia, South Carolina

cc:
Preston F. McDaniel, Esquire
Jason Wendell Lockhart, Esquire
Helen F Hiser, Esquire

FILED

February 21, 2017