

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

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W.C.C. File No. 0908371

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Timothy Hannah, Employee, Claimant ..... Respondent,

v.

MJV, Inc./Butler Trucking, Employer, and  
Palmetto Timber S.I. Fund c/o  
Walker, Hunter & Associates, Inc., Carrier, ..... Appellants.

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**SUPPLEMENTAL  
RECORD ON APPEAL**

---

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*Attorneys for Respondent Timothy Hannah*

**RECEIVED**

JUN 28 2017

**SC Court of Appeals**

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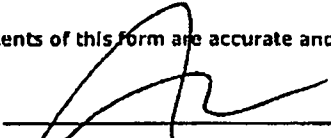


11 Impairment rating(s), body part(s); physician and date of opinion: 0% impairment of the cervical spine and 0% impairment of the left elbow per James F. Bethea, M.D. on 6/6/10.

12 I am amending my Form 50/51 in the following manner: N/A

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

SIGNATURE

 Per PMD

Email: mdavis@mqclaw.com

DATE OF HEARING: January 7, 2013

Time needed for hearing: 45 minutes

On behalf of  Claimant  Employer

---

File this form and proof of service on the opposing party according to R.67-611 and R.67-212 Do not send medical reports  
Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58 REV. DATE 9/07

58

PRE-HEARING BRIEF



Claimant's Name: Timothy Hannah SSN: \_\_\_\_\_  
Address: 356 Azalea Street  
Johnsonville, South Carolina 29555  
Home Phone: (843) 433-4800 Work Phone: \_\_\_\_\_  
Preparer's Name: R. Mark Davis

Employer's Name: MJV/Butler Trucking Inc.  
Address: Post Office Box 1022  
Georgetown, South Carolina 29440  
Carrier: Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc.  
Preparer's Phone #: (843) 576-2782

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

Injury  Illness  Repetitive Trauma

1. Comp. Rate: \$381.32 2. AWW: \$ 571.95 Date of Injury: 07/14/09
3. Type of Injury and body part(s): Cervical spine and left elbow.
4. Facts in controversy: Defendants admit Claimant sustained an injury to his neck and left elbow in the accident of July 14, 2009. However, Defendants contend Claimant reached maximum medical improvement on January 6, 2010, pursuant to the opinion of Dr. James Bethea, who also assigned a 0% Impairment rating. Defendants request a credit for temporary total disability (TTD) benefits paid past the date of maximum medical improvement (MMI) or for any benefits paid while the Claimant received both unemployment benefits and TTD. Claimant executed a Form 17 on August 31, 2011, allowing Defendants to terminate temporary benefits; however, Defendants are entitled to a credit of benefits paid from January 6, 2010 through August 16, 2011. Defendants object to lump sum payment or inclusion of Ulca Mohawk allocation language in any award of the Commission. The issues for determination are (1) Is the Claimant at MMI; (2) Is the Claimant entitled to any permanent partial disability for the cervical spine and, if so, to what extent; (3) Are Defendants entitled to a credit for overpayment of temporary benefits; (4) Is Claimant entitled to any further medical treatment or benefits under the Act; (5) Are Defendants responsible for payment of unauthorized medical treatment; judicial estoppel; collateral estoppel; res judicata; law of the case; Defendants object to consideration of change of condition claim. The proper procedure was not followed pursuant to Section 42-17-90 in the applicable regulation.
5. Legal issues involved: See number 4 above; see defenses raised on Form 51; Section 42-1-160; MMI; causation; Section 42-15-60; natural progression of a pre-existing condition; intervening accident; Section 42-9-35; burden of proof; Defendants reserve the right to supplement this brief in response to any evidence or testimony presented by Claimant.
6. Unusual aspects: Previously, Claimant alleged injury to his lumbar spine, but pursuant to a Court of Appeals' decision dated September 26, 2012, the court found Claimant did not sustain a compensable injury to his lumbar spine.
7. Witnesses (designate if expert):\* Marshall Butler, Terry Butler, John Jamison, and/or other representatives of the Employer may be called upon to testify; Debbie Craig; Tim Sauer (investigator); Claimant; Dr. James Bethea (via deposition); Dr. Mark Triana (via deposition); Dr. James Brennan (via deposition); Defendants reserve the right to call any and all witnesses listed by the Claimant.
8. Exhibits: EX. A: Form 17, dated 8/31/11, consisting of 1 page; EX. B: S.C. Court of Appeals' Decision, dated 9/26/12, consisting of pages; EX. C: South Carolina Workers' Compensation Commission's Decision and Order, dated 11/5/13, consisting of 17 pages; Claimant's personnel and/or payroll records may be submitted; Claimant's deposition transcript; Deposition transcript of Dr. Mark Triana; Deposition transcript of Dr. James Bethea; Deposition transcript of Tama Sauer; surveillance report and video, dated 5/19/10; deposition transcripts of Dr. James Brennan.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):  
Medical records of Georgetown Memorial Hospital, dated 7/14/09 - 11/23/09, consisting of 21 pages; medical records of Doctors Care, dated 7/21/09 - 9/9/09, consisting of 11 pages; medical records of Next Step Rehabilitation Services, dated 7/29/09 - 9/17/09, consisting of 27 pages; medical records of James F. Bethea, MD, Columbia Orthopaedic Specialists, LLC, dated 12/4/09 - 12/10/10, consisting of 6 pages; medical records of Providence Hospital, dated 12/22/09, consisting of 2 pages.
10. Name, address, and specialty, if any, of the treating physician:  
James F. Bethea, M.D.  
Columbia Orthopaedic Specialists, LLC  
1301 Taylor Street, Suite 3-O  
Columbia, SC 29201
11. Impairment rating(s); body part(s); physician and date of opinion: 0% Impairment of the cervical spine and 0% Impairment of the left elbow per Dr. James Bethea on 6/6/10.
12. I am amending my Form 50/51 in the following manner: N/A

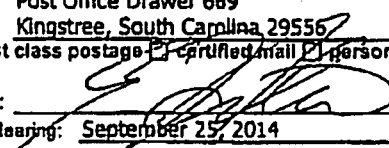
Mediation

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to [mediation@wcc.sc.gov](mailto:mediation@wcc.sc.gov).

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to W.E. Jenkinson, III, Esquire, Jenkinson, Jarrett & Kellahan, PA  
Post Office Drawer 669  
address Kingstree, South Carolina 29556 on the 15th day of September 20 14  
by  first class postage  certified mail  personal service.

Signature:  Email: mdavis@mgclaw.com  
Date of Hearing: September 25, 2014 Time needed for hearing: 45 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-801 through 67-815; as well as Reg. 67-1801. File this form and proof of service on the opposing party according to R.67-511 and R.67-212. Do not send medical reports. \*Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58  
Revised 7/13

58

PRE-HEARING BRIEF

DATE 07/31/09 @ 0129  
USER KHADDEN

GEORGETOWN MEMORIAL EDH \*\*LIVE\*\*  
EDH Patient Record

PAGE 5

Patient HANNAH, TIMOTHY  
Age/Sex 51/M

Account No. G00006010798  
Unit No. M000336533

By LAHONICA POINT

on 07/14/09 at 1621

**ASSESSMENT**

Does patient have pain? Yes

**SOAP/ASSESSMENT**

**Occurrence #1**

Location Modifier	Left
Pain Location	Neck
Description	Sharp
Intensity	9
Scale Used	Numerical Rating 0-10
Pain Behavior	Screaming
Management Techniques prescribed	Rest

**Patient Notes**

PT TO ER VIA EMS FULLY IMOBILIZED. PT STATES HIS 18 WHEELER ROLLED ON ITS SIDE AFTER MAKING A RIGHT TURN. PT PLACED ON MONITORS. PT ALERT AND ORIENTED. C/O LEFT NECK AND ELBOW PAIN. MD IN TO SEE PT.

PT LOG-ROLLED OFF OF BACKBOARD. CERVICAL SPINE SUPPORTED BY HEATHER, RN. C-COLLAR REMAINS IN PLACE.

PT TO CT SCAN VIA STRETCHER PER SHELLY, ERT.

PT BACK FROM CT SCAN AND XRAY. HIGHWAY PATROL IN TO SEE PT.

PT TO XRAY VIA STRETCHER.

IV D/C'D INTACT. WOUND CLEANED. BACITRACIN AND DRESSING APPLIED TO WOUND. SLING APPLIED TO LEFT ARM AS ORDERED. PT. GIVEN PDI. PT. AND FAMILY VOICED UNDERSTANDING OF PDI. WHEELCHAIR OFFERED TO PT FOR TRANSPORT TO POV. PT. DECLINED. PT. AMBULATED WITHOUT DIFFICULTY OUT OF DEPT WITH FAMILY. NAD NOTED UPON DEPARTURE.

**Diagnoses**

847.0	SPRAIN OF NECK
923.11	CONTUSION OF ELBOW
922.1	CONTUSION OF CHEST WALL
922.2	CONTUSION ABDOMINAL WALL
850.0	CONCUSSION W/O COMA
881.01	OPEN WOUND OF ELBOW

009

351

**Georgetown Memorial Hospital**  
608 Black River Rd. Georgetown, SC 29442 843 527 7000

Exam Date: 07/14/09  
Ord #: 0714-0170  
Req #: 09-0075442  
Acct #: G00006010798

Name: HANNAH, TIMOTHY  
DOB: 05/30/1958  
MR# M000336533  
532 HWY 37B

JOHNSONVILLE, SC 29555

Typed Date/Time: 07/14/09 1732  
Transcriptionist: CL  
Rpt #: 0714-0379

Admitting Doctor:  
Ordering Doctor: JOSEPH J GAMMEL MD

Pt. Status: REG ER  
Room No:

Adm Diag: MVA  
Reason For Exam: MVA RM4/ER

tech: HZ LMP: Fluoro Time: Archive#:

HISTORY: TRAUMA

TWO VIEW CERVICAL SPINE:

ANTERIOR OSTEOPHYTES ARE PRESENT C4-C5-C6. NORMAL VERTEBRAL BODY HEIGHTS AND ALIGNMENT. NO FRACTURE IS SEEN ON THIS LIMITED STUDY. COMPLETE CERVICAL SPINE SERIES IS SUGGESTED.

Dictated By: R. T. WHITEHEAD III, MD

<<Signature on File>>

cc: GAMMEL, JOSEPH J MD

**DIAGNOSTIC IMAGING REPORT**

Page 1 of 1

THIS IS A PRELIMINARY REPORT UNLESS REVIEWED AND SIGNED BY A RADIOLOGIST AS INDICATED BY  
<<SIGNATURE ON FILE>> ABOVE.

013

352

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0908371

-----  
TIMOTHY J. HANNAH,

CLAIMANT,

-VS-

MJV, INCORPORATED/BUTLER  
TRUCKING,

HEARING BEFORE  
COMMISSIONER

EMPLOYER,

ANDREA C. ROCHE

AND

TRANSCRIPT

PALMETTO TIMBER FUND,

CARRIER,  
DEFENDANTS,

-----  
THE WORKERS' COMPENSATION HEARING, TAKEN  
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND  
FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE  
HOUR OF 11:25 PM, FRIDAY, JULY 30, 2010, GEORGETOWN  
COUNTY JUDICIAL CENTER, 401 CLELAND STREET,  
GEORGETOWN, SOUTH CAROLINA 29442.

- 1           A    No, sir, not at the time.
- 2           Q    Why is that?
- 3           A    I had ran out.
- 4           Q    Did you tell him that?
- 5           A    Yes, sir.
- 6           Q    Did you tell him you needed some pain  
7 medication?
- 8           A    Yes, sir.
- 9           Q    And did he give you pain medication?
- 10          A    After I asked him for some, yes, sir.
- 11          Q    And that was Darvocet?
- 12          A    That's what it was, Darvocet.
- 13          Q    After going to Dr. Bethea those two office  
14 visits and the surgery you never saw him again?
- 15          A    No, sir, three times.
- 16          Q    You did see Dr. Triana several times?
- 17          A    Yes, sir.
- 18          Q    February and April?
- 19          A    April.
- 20          Q    Now, as a result of your April visit have  
21 you been given excuses from Dr. Triana not to go back  
22 to work?
- 23          A    Yes, sir.
- 24          Q    And he -- you have -- the last time you saw  
25 him was on April the 28th, 2010?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO.: 0908371

Timothy J. Hannah, )  
Employee, )  
Claimant, )  
vs. ) DEPOSITION OF  
MJV, Inc./Butler Trucking, Inc., ) TIMOTHY J. HANNAH  
Employer, )  
and ) March 30, 2010  
Palmetto Timber Fund, )  
Carrier, )  
Defendants. )

Deposition of **TIMOTHY J. HANNAH**, taken by Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, commencing at 2:40 P.M. on March 30, 2010, at the offices of Jenkinson, Jarrett and Kellahan, 120 West Main Street, Kingstree, South Carolina.

**APPEARANCES**

FOR THE EMPLOYEE/CLAIMANT: W. E. Jenkinson, III  
Jenkinson, Jarrett &  
Kellahan  
Post Office Drawer 669  
Kingstree, South Carolina

**COMPRESSED TRANSCRIPT AND WORD INDEX**

*Doris Tompkins Brown*

*COPY*

Certified Verbatim Reporter  
Post Office Box 853  
Sumter, South Carolina 29151

*COPY*

(803) 499-2434

1 Q. Okay. Explain that for me.

2 A. Well, my sight is not as good as it used to be, and  
3 after this accident, headaches, you know, I can't read  
4 for a long period of time, whatever, you know. My  
5 writing, I had an injury to my right hand, and I had  
6 to learn to do it over again; so, that's about my  
7 difficulties.

8 Q. And you showed me your right hand, it looks like you  
9 are missing part of your little finger?

10 A. Yes, sir.

11 Q. Okay. And how long ago did that happen?

12 A. It was back in '83.

13 Q. And was that a work related accident?

14 A. Yes, sir. Wellman Industries.

15 Q. Did you receive Workers' Compensation benefits or an  
16 award or settlement for that?

17 A. Yes, sir.

18 Q. Do you remember how much it was?

19 A. No, sir.

20 Q. All right. So, the trouble you have reading and  
21 writing, you mentioned you can't see as well and you  
22 have headaches and, of course, your finger with  
23 writing?

24 A. Yeah, well, with these fingers.

25 Q. Are you right-handed?

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

TIMOTHY J. HANNAH,  
EMPLOYEE,  
CLAIMANT,

VS.

WCC FILE # 0908371

MJV, INC./BUTLER TRUCKING,  
EMPLOYER,  
AND  
PALMETTO TIMBER SI FUND  
C/O WALKER HUNTER AND ASSOCIATES,  
CARRIER,  
DEFENDANTS.

**COPY**

DEPOSITION OF: MARK E. TRIANA, D.O.

LOCATION: 2185 NORTH FRASER STREET  
GEORGETOWN, SOUTH CAROLINA

DATE: WEDNESDAY, MARCH 31, 2010

TIME: 5:32 P.M. - 6:48 P.M.

COURT REPORTER: LISA MARIE WEESNER

THE DEPOSITION IS TAKEN PURSUANT TO NOTICE AND/OR  
AGREEMENT, IN THE ABOVE-ENTITLED CAUSE PENDING IN  
THE ABOVE-NAMED COURT AND PURSUANT TO THE  
SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

Q & A COURT REPORTING SERVICES  
POST OFFICE BOX 4563 (29502)  
FLORENCE, SOUTH CAROLINA  
TOLL FREE (866) 673-9845 LOCAL (843) 673-9845  
FAX (843) 661-2960  
EMAIL: INFO@QACOURTREPORTING.COM  
VISIT: WWW.QACOURTREPORTING.COM

1 BACK IN A COUPLE OF MONTHS TO SEE HOW HE RESPONDED  
2 TO THAT.

3 Q CAN YOU TELL US WHETHER OR NOT TO A  
4 REASONABLE DEGREE OF MEDICAL CERTAINTY THE ENTIRE  
5 TIME YOU SEE HIM AND PRESENTLY HE NEEDS TO REMAIN  
6 OUT OF WORK AS A RESULT OF HIS CONDITIONS?

7 A YES, HE DOES.

8 Q AND CAN YOU TELL US WHETHER OR NOT TO A  
9 REASONABLE DEGREE OF MEDICAL CERTAINTY HE --  
10 WHETHER OR NOT HE'LL BE ABLE TO RETURN TO WORK  
11 AND -- UNTIL AND AFTER HE RECEIVES THE MEDICAL  
12 CARE AND TREATMENT THAT YOU'VE DESCRIBED?

13 A I WOULD HOPE THAT ONCE WE GET HIS NECK  
14 AND BACK COMPLAINTS TREATED, THEN I MAY INCLUDE  
15 SURGERY, THAT HE'D GO BACK TO THE PREVIOUS LEVEL  
16 OF EMPLOYMENT, YES.

17 Q NOW, CAN YOU TELL US WHETHER OR NOT TO  
18 A REASONABLE DEGREE OF MEDICAL CERTAINTY HE HAS  
19 REACHED MAXIMUM MEDICAL IMPROVEMENT AS OF THIS  
20 DAY?

21 A I DO NOT BELIEVE HE HAS.

22 Q THANK YOU, SIR. OKAY.

23 E X A M I N A T I O N

24 BY MR. DAVIS:

25 Q THANK YOU, DOCTOR. MY NAME IS MARK

1 Q AND THAT WAS THE AUGUST 28TH NOTE I  
2 BELIEVE IT WAS?

3 A YES, BUT I DON'T KNOW WHAT THE DATE IS  
4 ON IT. I SAW IT HERE EARLIER.

5 Q AUGUST 26TH, I BELIEVE --

6 A HERE IT IS.

7 Q -- IT IS -- AUGUST 26TH.

8 A THAT WAS WHAT YOU HAD ASKED ME ABOUT  
9 EARLIER. AND THERE IS A JULY 21ST, 2009. THIS  
10 WAS A WORKMAN'S COMP AUTHORIZATION FORM --

11 Q OKAY.

12 A -- FROM DOCTOR'S CARE.

13 Q YOU MIND IF I SEE THAT --

14 A SURE.

15 Q -- DOCUMENT. THANK YOU. OKAY. AND  
16 YOU'VE SHOWN THIS. IT SAYS WORKER'S COMPENSATION  
17 AUTHORIZATION FORM FROM DOCTOR'S CARE. AND IT'S  
18 GOT SOME HANDWRITING ON IT. AND UNDER -- IT HAS  
19 MR. HANNAH'S NAME. AND UNDER THAT, IT SAYS TYPE  
20 OF INJURY AND IT SAYS NECK AND ELBOW CONTUSION.  
21 IS THAT CORRECT?

22 A YES.

23 Q OKAY. NO MENTION OF LOWER BACK --

24 A NO.

25 Q -- ON THAT FORM?

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
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Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

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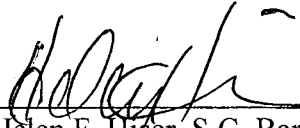
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**PROOF OF COMPLIANCE**

---

The undersigned hereby certifies that the Supplemental Record on Appeal filed in this matter contains all the material proposed to be included by the parties to this matter and does not include any other material. The undersigned further certifies that the Record on Appeal filed in this matter complies with the South Carolina Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

June 27, 2017

  
\_\_\_\_\_  
Helen F. Hiser, S.C. Bar No.: 76124  
735 Johnnie Dodds Blvd., Suite 200  
P.O. Box 650007  
Mount Pleasant, South Carolina 29465  
(843) 576-2900

*Attorneys for Appellants*

**RECEIVED**

JUN 28 2017

**SC Court of Appeals**