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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE PANEL

The Honorable Mike Campbell, The Honorable Melody L. James
and The Honorable Avery B. Wilkerson, Jr.

WCC No. 1504993
Appellate Case No. 2017-000084

Horace L. Adell, Jr.,

Employee/Claimant/Respondent,

-v-

Clean Streak, Inc.,

Employer/ Respondent, and

Builders Mutual Insurance Company,

Carrier/Appellant.

RECORD ON APPEAL

George A. Taylor (S.C. Bar 100245)
Alden G. Terry (S.C. Bar 102851)
Post Office Box 1390
Columbia, SC 29202-1390
Tel: (803) 404-6900
GeorgeTaylor@CallisonTighe.com
Attorney for Carrier/Appellant

Daniel E. Peagler, Esquire (SC Bar #8820)
Michael Johnson & Associates
2001 Lincoln St.
Columbia, SC 29201
(803) 814-0550
epeagler@johnsonscslaw.com
Attorney for Claimant/Respondent

Mikell Wyman, Esquire (SC Bar #70314)
Gallivan White & Boyd, PA
Post Office Box 22768
Charleston, SC 29413
(843) 735-7600
mwyman@gwblawfirm.com
Attorney for Employer/Respondent

John S. Nichols, Esquire (SC Bar #4210)
Bluestein Nichols Thompson & Delgado
Post Office Box 7965
Columbia, SC 29202
(803) 779-7599
jsnichols@bntdlaw.com
Attorney for Claimant/Respondent

Blake A. Hewitt, #73674

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WCC FILE NO. 1504993

V.

and

Carrier,
Defendant(s).

FILED: May 18, 2016

STIPULATIONS

The parties, prior to the Hearing, stipulated as to jurisdiction and venue and that the Commission file with the exception of unstipulated medicals and self-serving declarations is made a part of the Record. The average weekly wage is One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars, with a resulting compensation rate of Seven Hundred Sixty-six and 05/100 (\$766.05) Dollars.

APA SUBMISSIONS

The following documents were submitted into evidence pursuant to the Administrative Procedures Act, without objection, by the respective parties:

Claimant's Submissions:

- APA 1) Reports of Waccamaw/Georgetown Hospitals consisting of 45 pages dated March 25, 2015.
- 2) Reports of Park Ridge Health consisting of 4 pages dated March 27, 2015.
- 3) Reports of Carolina Spine and Neurosurgical consisting of 37 pages dated April 2, 2015 through October 1, 2015.
- 4) Reports of Mission Hospital consisting of 82 pages dated April 3, 2015 through April 10, 2015.
- 5) Statement of Matthew Maziarz consisting of 1 page dated March 26, 2015.
- 6) Statement of Kevin Shay consisting of 1 page dated July 8, 2015.
- 7) X-ray picture of Claimant's neck consisting of 1 page.
- 8) Various pictures of Clean Streak's Myrtle Beach Office consisting of 4 pages.
- 9) Photos of Family Gathering consisting of 4 pages taken on March 24, 2015.

Defendant Clean Streak's Submissions:

- APA 1) Report of Horry County Fire Rescue consisting of 2 pages dated March 25, 2015.
- 2) Reports of Waccamaw Community Hospital consisting of 12 pages dated March 25, 2015.
- 3) Reports of Carolina Spine and Neurosurgery Center consisting of 49 pages dated April 2, 2015 through April 7, 2015.
- 4) Reports of Forge Mountain Medicine consisting of 16 pages dated March 30, 2015 through April 30, 2015.
- 5) Reports of Mills River Physical Therapy consisting of 3 pages dated May 4, 2015 through May 6, 2015.

Exhibits

- A) Tax Returns and other information consisting of 78 pages for years 2012 through 2014.
- B) Form 20 consisting of 1 page.
- C) Payroll records from Clean Streak, Inc. consisting of 4 pages.
- D) Clean Streak Invoicing/Billing documentation consisting of 47 pages.

Defendant Builders Mutual Insurance Company's Submissions:

- APA A) Reports of Mills River Physical Therapy consisting of 66 pages dated May 4, 2015 through December 10, 2015.
- B) Reports of Carolina Spine and Neurosurgery consisting of 3 pages dated June 17, 2015.

Defendant Builders Mutual Insurance Company's Supplemental Submission:

- C) Reports of Forge Mountain Medicine consisting of 61 pages dated May 27, 2014 to December 3, 2015.

OBJECTIONS TO APA's/EXHIBITS

Claimant's objection to the deposition of Susan Adell is overruled and admitted as Defendant's Ex. #1.

Defendant's objection to APA 171 is overruled, as Mr. Maziarz testified.
Defendant's objection to Claimant's APA 172 is sustained.

Defendant's objection to Claimant's APA 178 is sustained and proffered at the request of the Claimant.

STATEMENT/EVIDENCE OF THE CASE

On March 25, 2015, the Claimant, Horace L. Adell, Jr., sustained compensable injuries to his neck while performing his job duties for Defendant Clean Streak, Inc. This is a denied claim. The issues before this Commissioner were for medical care and the Claimant's entitlement to temporary total disability benefits.

On November 3, 2015, the Claimant filed a Form 50, Request for a Hearing, seeking: (1) medical examination and treatment for his neck and (2) temporary total disability benefits.

A Hearing was held before the undersigned on February 17, 2016, in Aynor, South Carolina. At that time, this Commissioner received testimony from Daniel Woron, William "Trey" Trembley III, Matthew Maziarz, and the Claimant Horace Adell. The Defendants offered no witnesses.

The first witness to testify was Daniel Woron, the Claimant's brother-in-law. Mr. Woron testified he attended a family gathering 2 days before the Claimant's date of accident. (Transcript p.8, ll.10-13). Mr. Woron authenticated the photos of the Claimant submitted which showed him holding children, smiling, etc. (T. at p.8 ll.15-25, p.9 ll.1-8, Claimant's APA #9).

Mr. Woron further testified the Claimant did not appear to be in any type of medical distress at the family gathering (T. at p.9, ll.9-11) and the Claimant did not have any issues picking up children (T. at p.9 ll.12-14) or any issues doing any other lifting or any other activity that day. (T. at p.9, ll.15-18). Mr. Woron also testified he did not see any instances that would have caused any concern over the Claimant's medical condition at the family gathering. (T. at p.10, l.5-8).

The next witness called on behalf of the Claimant was William Trembley, III (Trey). Mr. Trembley testified his occupation is the sales and marketing director for Building Industry Synergy Magazine which covers Myrtle Beach, Horry, and Georgetown Counties. (T. at p.13 ll.24-25, p.14 ll.1-5). Mr. Trembley stated he first met Horace and his wife during a home show in February 2015 at the Myrtle Beach Convention Center. (T. at p.14, ll.6-12).

Mr. Trembley further testified he had an ongoing business relationship with the Adells (Claimant Horace Adell and his wife, Susan) (T. at p.15, ll.4-11) and met them in their office on February 25th, 2015 at Cedar Run Trail in Myrtle Beach, South Carolina (T. at p.15, ll.13, p.16 ll.16-19) on . Mr. Trembley also stated there was "no doubt" the office seemed to be set up as an ongoing business office. (T. at p.15, ll.24-25, p. 16, ll.1-3).

When asked whether the Claimant appeared to be in any type of medical distress when they met at the Claimant's office, Mr. Trembley testified "Absolutely not. Just quite contrary. I was very impressed by his physical stature and how he carried himself and the fact he would get in there and do the jobs himself." (T. at p.17, ll.9-14).

Matthew Maziarz was the next witness called on behalf of the Claimant. Mr.

Maziarz testified he was working with the Claimant on or around March 25th, 2015, doing tile work on the Clean Streak office bathroom and help the Claimant unload a trailer of equipment the Claimant brought from Asheville. (T at p.25, ll.13). Mr. Maziarz further testified he finished the tile work, and then sometime in the afternoon he and the Claimant started unloading the trailer of supplies (T. at p.25, ll.23-25), including five-gallon buckets of wax, equipment, sand, and cleaning stuff for the business. (T. at p.26, ll.1-6).

Maziarz further testified the Claimant seemed good, energetic, and definitely not hurt that morning, and he did not notice any type of guarded movement or anything that would indicate kind of medical distress. (T. at 26, ll.13-20). Mr. Maziarz also stated he had never heard Horace (Claimant) complain of any kind of neck problems before that day he was injured. (T. at p.28, ll.11-14).

Maziarz then testified the Claimant had two five-gallon buckets, one in each arm. "And I remember he was carrying them out and when he went to set them down he obviously showed some discomfort and some pain and grabbed at his neck. And then, of course, you know, he said we need to take a break and we - - you know, that's pretty much it for the rest of the day. He end up going in and putting a pack on his neck and, you know, pretty much taking it easy for the rest of the day after that." (T. at p.26 ll.22-25, p.27 ll.1-6).

Mr. Maziarz further testified that later that night he heard something and discovered it was the Claimant, laying in the floor at the bottom of the stairs screaming and needing to go to the hospital. (T. at p.28, ll.2-6). Mr. Maziarz called 911, and the Claimant was picked up by an ambulance. (T. at p.28, ll.7-10). After waiting several

hours while the Claimant was treated at the hospital, Mr. Maziarz and the Claimant went back to Asheville. (T. at 29, ll.2-18).

On cross-examination, Mr. Maziarz testified that at the time of the Claimant's accident he was a sub-contractor (T. at p.30, ll.14-25, p.31, ll.1-3) and at the time of the hearing he longer does work for Clean Streak, as he is manager with Bojangles, working full-time. (T. at .31, ll.19-21).

Mr. Maziarz further testified on cross-examination that he actually saw the Claimant lift u two five-gallon buckets and that is when he said he hurt himself. (T. at p.32, ll.1-7). Mr. Maziarz also testified that he was not aware of any other neck or back problems the Claimant had before March 25th. (T. at p.32, ll.14-17).

On re-direct examination, Mr. Maziarz testified the buckets of wax weighed about 40 pounds each, and the bags of dirt or sand are "usually 80 pounds, or somewhere in there." (T. at p.36, ll.20-25, p.37, ll.1-3).

The Claimant was the last witness to testify at the hearing. The Claimant testified at the time of the Hearing he was Fifty-four years old and was born on November 7, 1961. The Claimant testified he is married, and his wife's name is Susan Adell and they have a daughter named Brittany. (T. at p.40, ll.9-24).

The Claimant further testified he graduated from High School and then went to the military, where he served for five years in the 82nd Airborne, Green Beret, after which he was given an honorable discharge. (T. at p.42, ll.3-11).

The Claimant testified he began cleaning buildings during his off-time from full-time jobs which evolved into Clean Streak. (T. at 43, ll.15-25). The Claimant stated he has been running Clean Streak for some time, and has experienced growth for the

company in the last 15 years (T. at p.44 ll.1-14), with 32 employees at the time of the hearing (T. at p.44, l.25, p.45, l.1), plus three employees in South Carolina (T. at 45 ll.3-9).

The Claimant then testified he and his wife decided to purchase a home in the Myrtle Beach area, and to put the office in the home as he started in Asheville. (T. at p.46, ll.2-6). The Claimant found a foreclosure to purchase which garage and office space, and this was designated as the work location also. (T. at 47, ll.7-24). The office was set up with a P.O. Box for the business mail, with a designated phone line for the business, and a storage facility for the business, and business only. (T. at 47, ll.8-23)

The Claimant testified the morning on or around March 24, 2015 he was meeting with a vendor for paper products, then a salesman. The Claimant further testified that before that day, he had never been diagnosed with any kind of disc problem in his neck (T. at p.49, ll.20-23), nor had the Claimant ever seen a specialist for his neck before the work accident of March 25, 2015. (T. at p.51, ll.15-18).

The Claimant testified he "got hurt" when he was taking stuff off the trailer and putting it in the garage where he kept the materials for the business, including sand used to clean floors, paper products, and five-gallon buckets of wax. (T. at p 52, ll.1-25, p.53, ll.1-18). The Claimant further testified he was moving wax when he was injured, saying "I went to go on the back of the trailer, I picked up two five-gallon buckets like I've always done, just picked it up and I turned around with it and all the sudden it felt like - - you know when you straighten your arm out and your arm pop, well, just ten times that and then it immediately started burning. So I said "Ouch."" (T. at p.53, ll.23-25, p.54, ll.1-4).

The Claimant further testified he felt the pop in the middle of the neck back here and the burn in the same place. (T. at p.54, ll.5-10). Then the Claimant put ice, then heat on his neck and laid down and went to sleep. (T. at p.54, ll.15-24). The Claimant then woke up screaming, hollering, and could hardly breathe. The Claimant called his wife, then pulled himself to the stairwell, calling for Matt, telling him to call 911. (T. at 55, ll.1-16).

The Claimant then testified the ambulance came and he told them his neck hurt all the time, he didn't know what else to say. (T. at p.56, ll.8-12). The Claimant then stated he had never experienced that type of pain before. (T. at p.56, ll.17-19). The Claimant then said he was eventually referred to Dr. Rhoton who performed surgery on the Claimant's neck. (T. at 57 ll.1-2, 22-25).

The Claimant further testified Dr. Rhoton has been his main treating doctor, and that the treatment received from physical therapy has improved his condition, Claimant also feels he needs further treatment, and that he has not been released from his care. (T. at p.58 ll.20-25, p.59 ll.1-6. The Claimant then testified no doctor has said he is at maximum medical improvement, and he hopes to accomplish through additional medical care to go back to work. (T. at p.59, ll.7-21).

The Claimant made a salary of \$1,500.00 per week from Clean Streak, Inc. (T. at p.51, ll.19-21). The Claimant was taken out of work right after this accident, and has not returned to work (as of the time of the hearing) since March 25, 2015. (T. at 58, ll.5-16).

Based on a review of the testimony and evidence presented, it is the opinion of this Commissioner that the Claimant has shown by the preponderance of the evidence

that he is entitled to the benefits sought. Therefore, I have made the following findings of salient fact.

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with Clean Streak, Inc. as the Employer, and Builders Mutual Insurance Company as the insurance carrier; and the Claimant as the employee of the employer on March 25, 2015.

2. I find the testimony of the Claimant to be credible. While discrepancies exist as to the mechanism of injury, said discrepancies do not detract from the Claimant's honesty.

3. The Claimant, Horace L. Adell, Jr., did sustain bodily injury on March 24, 2015, to his neck while employed by Clean Streak, Inc. and such injury arose out of and in the course and scope of his employment.

4. The treatment required by the Claimant at the Waccamaw Community Hospital and Horry County Fire and Rescue (EMS) transportation were necessary emergent care.

5. The Carrier refused to provide medical treatment to the Claimant after the care provided by Waccamaw Community Hospital on March 25, 2015, as they were aware of the claim, did not make any attempts to instruct the Claimant where to go for authorized medical treatment, and denied medical treatment to the Claimant, said denial continuing to the date of the hearing.

6. Claimant is entitled to causally related medical care from March 25,

2015, to the present and continuing.

7. The average weekly wage is \$1,500.00, and the weekly compensation rate is \$766.05.

8. The injury required medical care for the period from March 25, 2016, and continues; the Claimant has not reached maximum medical healing as of this date; and further medical care is necessary, as it will tend to lessen the period of disability.

9. The Claimant has not reached maximum medical improvement, as additional medical care is necessary in order to lessen the period of disability.

10. The Claimant is entitled to temporary total disability benefits from March 25, 2015 to the present and continuing until agreement of the parties or by order of the Commission.

CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code of Laws, (1976, as amended), §42-17-40, it is the determination of this Commission:

1. Under §42-1-160, the Claimant did sustain injury by accident, said accident arising out of and in the course of his employment.

2. Under §42-9-10 and §42-1-120, the Claimant is entitled to continuing compensation for temporary total disability.

3. Under §42-15-60, the Claimant is entitled to medical care, as it will tend to lessen the period of disability.

4. Under §42-1-130, the Claimant was the employee of the Defendant Clean Streak, Inc. at the time of the accident.

ORDER AND AWARD

THEREFORE, it is **Ordered** the Defendants shall make the following payments:

1. The Defendants shall pay temporary total disability benefits in the amount of \$766.05 per week from March 25, 2015 to the present and continuing until further Order of this Commission or agreement of the parties;

2. The Defendants shall pay for charges for the Claimant's causally related medical care from the date of the injury and continuing until further Order of this Commission.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

May 18, 2016

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck

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

WCC FILE NO. 1504993

Horace L. Adell, Jr.,
Employee/Claimant/Respondent,
v.
Clean Streak, Inc.,
Employer,
and
Builders Mutual Insurance Company,
Carrier,
Defendant(s)/Appellants.

**AFFIRMED as to
Compensability,
REVERSED as to
Admissability of
Dr. Clay Siegel's
Statement**

Appellate Panel Review held in Columbia, South Carolina, on August 16, 2016, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed on: December 16, 2016

APPEARANCES:

Claimant/Respondent represented by
Daniel E. Peagler, Esquire

Defendant Clean Streak, Inc. represented by
Mikell Wyman, Esquire

Defendant Builders Mutual Insurance Company
represented by
Richard C. Detwiler, Esquire

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck on February 17, 2016, in Columbia, South Carolina. As a result of the Hearing, the single Commissioner issued an Order dated May 18, 2016, from which the Defendant Builders Mutual Insurance Company, as Appellant, sought review pursuant to S.C. Code Ann. § 42-17-50 (as amended). Within the statutory period, counsel for the Defendant Builders Mutual Insurance Company filed an Application for Review in the case setting forth assignments of error, copies of which were furnished to all interested parties prior to oral argument presented before the Appellant Panel on August 26, 2016, as set forth below:

1. Did the Hearing Commissioner err in finding that, "I find the testimony of the Claimant to be credible? While discrepancies exist as to the mechanism of injury, said discrepancies do not detract from the claimant's honesty" (Finding of Fact No. 2), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.
2. Did the Hearing Commissioner err in finding that, "The Claimant, Horace L. Adell, Jr., did sustain bodily injury on March 24, 2015, to his neck while employed by Clean Streak, Inc. and such injury arose out of and in the course and scope of his employment" (Finding of Fact No. 3), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.
3. Did the Hearing Commissioner err in finding that, "The treatment required by the Claimant at the Waccamaw Community Hospital and Horry County Fire and Rescue (EMS) transportation were necessary emergent care" (Finding of Fact No. 4), the error being that these

and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

4. Did the Hearing Commissioner err in finding that, "The Carrier refused to provide medical treatment to the Claimant after the care provided by Waccamaw Community Hospital on March 25, 2015, as they were aware of the claim, did not make any attempts to instruct the Claimant where to go for authorized medical treatment, and denied medical treatment to the claimant, said denial continuing to the date of the hearing" (Finding of Fact No. 5), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

5. Did the Hearing Commissioner err in finding that, "Claimant is entitled to causally related medical care from March 25, 2015, to the present and continuing" (Finding of Fact No. 6), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

6. Did the Hearing Commissioner err in finding that, "The average weekly wage is \$1,500.00, and the weekly compensation rate is \$766.05" (Finding of Fact No. 7), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

7. Did the Hearing Commissioner err in finding that, "The injury required medical care for the period from March 25, 2016, and continues; the Claimant has not reached maximum medical healing as of this date, and further medical care is necessary, as it will tend to lessen the period of disability" (Finding of Fact No. 8), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error

of law.

8. Did the Hearing Commissioner err in finding that, "The Claimant has not reached maximum medical improvement, as additional medical care is necessary in order to lessen the period of disability" (Finding of Fact No. 9), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

9. Did the Hearing Commissioner err in finding that, "The Claimant is entitled to temporary total disability benefits from March 25, 2015 to the present and continuing until agreement of the parties or by order of the Commission" (Finding of Fact No. 10), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

10. Did the Hearing Commissioner err in finding that, "Under §42-1-160, the claimant did sustain injury by accident, said accident arising out of an in the course of his employment" (Conclusions of Law No. 1), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

11. Did the Hearing Commissioner err in finding that, "Under §42-9-10 and §42-1-120, the Claimant is entitled to continuing compensation for temporary total disability" (Conclusion of Law No. 2), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

12. Did the Hearing Commissioner err in finding that, "Under §42-15-60, the Claimant is entitled to medical care, as it will tend to lessen the period of disability" (Conclusions of Law No. 3), the error being that these and the related findings and conclusions are not supported by a

preponderance of the evidence and are controlled by an error of law.

13. Did the Hearing Commissioner err in finding that, Under §42-1-130, the Claimant was the employee of the Defendant Clean Streak, Inc. at the time of the accident” (Conclusions of Law No. 4), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

14. Did the Hearing Commissioner err in finding that, “The Defendants shall pay temporary total disability benefits in the amount of \$766.05 per week from March 25, 2015 to the present and continuing until further Order of this Commission or agreement of the parties” (Order and Award No. 1), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

15. Did the Hearing Commissioner err in finding that, “The Defendants shall pay for charges for the Claimant’s causally related medical care from the date of the injury and continuing until further Order of this Commission” (Order and Award No. 2), the error being that these and the related findings and conclusions are not supported by a preponderance of the evidence and are controlled by an error of law.

All testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

STATEMENT OF CLAIMANTS APPEAL

The parties were heard by Commissioner T. Scott Beck on February 17, 2016, in Columbia, South Carolina. As a result of the Hearing, the single Commissioner issued an Order

dated May 18, 2016, from which the Claimant Horace Adell, as Appellant, sought review pursuant to S.C. Code Ann. § 42-17-50 (as amended). Within the statutory period, counsel for the Claimant Horace Adell filed an Application for Review in the case setting forth assignments of error, copies of which were furnished to all interested parties prior to oral argument presented before the Appellant Panel on August 26, 2016, as set forth below:

1. Did the Single Commissioner erred as a matter of law and/or fact in sustaining Counsel for Defendant Builders Mutual Insurance Company's objection to Claimant's APA Submission page 178, Statement of Chiropractor Dr. Clay Siegel of Siegel Chiropractic, Inc., finding Chiropractors do not qualify as medical providers under the Administrative Procedures Act

All testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

In an Appellate Panel review under S.C. Code Ann. § 42-17-50, the Commission's Appellate Panel shall review the award, weigh the evidence presented at the initial hearing, and, if good ground be shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Hearing Commissioner.

EVIDENCE OF THE CASE

On March 25, 2015, the Claimant, Horace L. Adell, Jr., sustained compensable injuries to his neck while performing his job duties for Defendant Clean Streak, Inc. This is a denied claim. The issues before this Commissioner were for medical care and the Claimant's entitlement to temporary total disability benefits.

On November 3, 2015, the Claimant filed a Form 50, Request for a Hearing, seeking: (1) medical examination and treatment for his neck and (2) temporary total disability benefits.

A Hearing was held before the undersigned on February 17, 2016, in Aynor, South Carolina. At that time, this Commissioner received testimony from Daniel Woron, William "Trey" Trembley III, Matthew Maziarz, and the Claimant Horace Adell. The Defendants offered no witnesses.

The first witness to testify was Daniel Woron, the Claimant's brother-in-law. Mr. Woron testified he attended a family gathering 2 days before the Claimant's date of accident. (Transcript of Hearing ((Hereinafter "T"))) p.8, ll. 10-13). Mr. Woron authenticated the photos of the Claimant submitted which showed him holding children, smiling, etc. (T. at p.8 ll. 1525, p.9 ll. 1-8, Claimant's APA #9).

Mr. Woron further testified the Claimant did not appear to be in any type of medical distress at the family gathering (T. at p.9, 11.9-1 1) and the Claimant did not have any issues picking up children (T. at p.9 ll. 12-14) or any issues doing any other lifting or any other activity that day. (T. at p.9, ll. 15-18). Mr. Woron also testified he did not see any instances that would have caused any concern over the Claimant's medical condition at the family gathering. (T. at p. 10, 1.5-8).

The next witness called on behalf of the Claimant was William Trembley, III (Trey). Mr. Trembley testified his occupation is the sales and marketing director for Building Industry Synergy Magazine which covers Myrtle Beach, Horry, and Georgetown Counties. (T. at p. 13 11.24-25, p. 14 ll. 1-5). Mr. Trembley stated he first met Horace and his wife during a home show in February 2015 at the Myrtle Beach Convention Center. (T. at p. 14, 11.6-12).

Mr. Trembley further testified he had an ongoing business relationship with the Adells (Claimant Horace Adell and his wife, Susan) (T. at p. 15, 11.4-11) and met them in their office on February 25th, 2015 at Cedar Run Trail in Myrtle Beach, South Carolina (T. at p. 15, 11.13, p. 16 11.16-19) on . Mr. Trembley also stated there was "no doubt" the office seemed to be set up as an ongoing business office. (T. at p. 15, 11.24-25, p. 16) When asked whether the Claimant appeared to be in any type of medical distress when they met at the Claimant's office, Mr. Trembley testified "Absolutely not. Just quite contrary. I was very impressed by his physical stature and how he carried himself and the fact he would get in there and do the jobs himself." (T. at p. 17, 11.9-14).

Matthew Maziarz was the next witness called on behalf of the Claimant. Mr. Maziarz testified he was working with the Claimant on or around March 25th, 2015, doing tile work on the Clean Streak office bathroom and helping the Claimant unload a trailer of equipment the Claimant brought from Asheville. (T. at p.25, 11.13). Mr. Maziarz further testified he finished the tile work, and then sometime in the afternoon he and the Claimant started unloading the trailer of supplies (T. at p.25, 11.23-25), including five-gallon buckets of wax, equipment, sand, and cleaning stuff for the business. (T. at p.26, 11.1-6).

Maziarz further testified the Claimant seemed good, energetic, and definitely not hurt that morning, and he did not notice any type of guarded movement or anything that would indicate any kind of medical distress. (T. at 26, 11.13-20). Mr. Maziarz also stated he had never heard Horace (Claimant) complain of any kind of neck problems before that day he was injured. (T. at p.28, 11.11-14).

Maziarz then testified the Claimant had two five-gallon buckets, one in each arm. "And I remember he was carrying them out and when he went to set them down he obviously showed some discomfort and some pain and grabbed at his neck. And then, of course, you know, he said we need to take a break and we - - you know, that's pretty much it for the rest of the day. He ended up going in and putting a pack on his neck and, you know, pretty much taking it easy for the rest of the day after that." (T. at p.26 11.2225, p.27 ll. 1-6).

Mr. Maziarz further testified that later that night he heard something and discovered it was the Claimant, laying in the floor at the bottom of the stairs screaming and needing to go to the hospital. (T. at p.28, 11.2-6). Mr. Maziarz called 91 1, and the Claimant was picked up by an ambulance. (T. at p.28, 11.7- 10). After waiting several hours while the Claimant was treated at the hospital, Mr. Maziarz and the Claimant went back to Asheville. (T. at 29, 11.2-1 8).

On cross-examination, Mr. Maziarz testified that at the time of the Claimant's accident he was a sub-contractor (T. at p. 30, ll. 14-25, p. 3 1, ll. 1-3) and at the time of the hearing he no longer was doing work for Clean Streak, as he is a manager with Bojangles, working full-time. (T. at .31, 11. 19-21).

Mr. Maziarz further testified on cross-examination that he actually saw the Claimant lift up two five-gallon buckets and that is when he said he hurt himself. (T. at p.32, ll. 1-7). Mr. Maziarz also testified that he was not aware of any other neck or back problems the Claimant had before March 25th. (T. at p.32, ll. 14-17).

On re-direct examination, Mr. Maziarz testified the buckets of wax weighed about 40 pounds each, and the bags of dirt or sand are "usually 80 pounds, or somewhere in there." (T. at p.36, 11.20-25, p.37, 11. 1-3).

The Claimant was the last witness to testify at the hearing. The Claimant testified at the time of the Hearing he was Fifty-four years old and was born on November 7, 1961. The Claimant testified he is married, and his wife's name is Susan Adell and they have a daughter named Brittany. (T at p.40, 11.9-24).

The Claimant further testified he graduated from High School and then went into the military, where he served for five years in the 82nd Airborne, Green Beret, after which he was given an honorable discharge. (T. at p.42, 11.3- 1 1).

The Claimant testified he began cleaning buildings during his off-time from fulltime jobs which evolved into Clean Streak. (T. at 43, ll. 15-25). The Claimant stated he has been running Clean Streak for some time, and has experienced growth for the company in the last 15 years (T. at p.44 ll. 1-14), with 32 employees at the time of the hearing (T. at p.44, 1.25, p.45, l. 1), plus three employees in South Carolina (T. at 45 11.39).

The Claimant then testified he and his wife decided to purchase a home in the Myrtle Beach area, and to put the office in the home as he started in Asheville. (T. at p.46, 11.2-6). The Claimant found a foreclosure to purchase which had garage and office space, and this was designated as the work location also. (T. at 47, 11.7-24). The office was set up with a P.O. Box for the business mail, with a designated phone line for the business, and a storage facility for the business, and business only. (T. at 47, 11.8-23)

The Claimant testified the morning on or around March 24, 2015 he was meeting with a vendor for paper products, then a salesman. The Claimant further testified that before that day, he had never been diagnosed with any kind of disc problem in his neck (T. at p.49, 11.20-23),

nor had the Claimant ever seen a specialist for his neck before the work accident of March 25, 2015. (T. at p. 51, ll. 15-18).

The Claimant testified he "got hurt" when he was taking stuff off the trailer and putting it in the garage where he kept the materials for the business, including sand used to clean floors, paper products, and five-gallon buckets of wax. (T at p 52, ll. 1-25, p. 53, ll. 1-18). The Claimant further testified he was moving wax when he was injured, saying "I went to go on the back of the trailer, I picked up two five-gallon buckets like I've always done, just picked it up and I turned around with it and all the sudden it felt like - you know when you straighten your arm out and your arm pop, well, just ten times that and then it immediately started burning. So I said "Ouch." (T. at p.53, 11.23-25, p.54, The Claimant further testified he felt the pop in the middle of the neck back here and the burn in the same place. (T. at p.54, 11 .5-10). Then the Claimant put ice, then heat on his neck and laid down and went to sleep. (T. at p.54, ll. 15-24). The Claimant then woke up screaming, hollering, and could hardly breathe. The Claimant called his wife, then pulled himself to the stairwell, calling for Matt, telling him to call 911. (T. at 55, ll. 1-16).

The Claimant then testified the ambulance came and he told them his neck hurt all the time, he didn't know what else to say. (T. at p.56, 11.8-12). The Claimant then stated he had never experienced that type of pain before. (T. at p.56, ll. 17-19). The Claimant then said he was eventually referred to Dr. Rhoton who performed surgery on the Claimant's neck. (T. at 57 11. 1-2, 22-25).

The Claimant further testified Dr. Rhoton has been his main treating doctor, and that the treatment received from physical therapy has improved his condition, Claimant also feels he needs further treatment, and that he has not been released from his care. (T. at p. 58 ll 20-25, p.

59 Il 1-6 The Claimant then testified no doctor has said he is at maximum medical improvement, and he hopes to accomplish through additional medical care to go back to work (T at p. 59, 11.7-21).

The Claimant made a salary of \$1,500.00 per week from Clean Streak, Inc. (T. at p. 5 1, Il. 19-21). The Claimant was taken out of work right after this accident, and has not returned to work (as of the time of the hearing) since March 25, 2015. (T. at 58, 11.516).

After careful review of the record in this case, and not considering the statement of Dr. Clay Siegel the Commission, by unanimous vote, has determined that all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated with the exception of the Single Commissioner's decision to exclude the statement of Dr. Clay Siegel. The Hearing Commissioner's Order is affirmed in regard to the compensability of the work accident, with exception to his exclusion of Dr. Siegel's statement, of which his determination that the statement was not admissible is reversed, and the Commissioner's Findings of Fact and Rulings of Law, as adopted below, are hereby the law of this case. The Commission decided the affirmation of the compensability without considering the statement of Dr. Siegel as part of the record. By reversing the exclusion of Dr. Siegel's statement, it should be considered as part of the record in any further appeals of this case.

The following findings of fact and conclusions of law were included in the Single Commissioner's Order of May 18, 2016:

FINDINGS OF FACT

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with Clean

Streak, Inc. as the Employer, and Builders Mutual Insurance Company as the insurance carrier; and the Claimant as the employee of the employer on March 25, 2015.

2. I find the testimony of the Claimant to be credible. While discrepancies exist as to the mechanism of injury, said discrepancies do not detract from the Claimant's honesty.

3. The Claimant, Horace L. Adell, Jr., did sustain bodily injury on March 24, 2015, to his neck while employed by Clean Streak, Inc. and such injury arose out of and in the course and scope of his employment.

4. The treatment required by the Claimant at the Waccamaw Community Hospital and Horry County Fire and Rescue (EMS) transportation were necessary emergent care.

5. The Carrier refused to provide medical treatment to the Claimant after the care provided by Waccamaw Community Hospital on March 25, 2015, as they were aware of the claim, did not make any attempts to instruct the Claimant where to go for authorized medical treatment, and denied medical treatment to the Claimant, said denial continuing to the date of the hearing.

6. Claimant is entitled to causally related medical care from March 25, 2015, to the present and continuing.

7. The average weekly wage is \$1,500.00, and the weekly compensation rate is \$766.05.

8. The injury required medical care for the period from March 25, 2016, and continues; the Claimant has not reached maximum medical healing as of this date; and further medical care is necessary, as it will tend to lessen the period of disability.

9. The Claimant has not reached maximum medical improvement, as additional

medical care is necessary in order to lessen the period of disability.

10. The Claimant is entitled to temporary total disability benefits from March 25, 2015 to the present and continuing until agreement of the parties or by order of the Commission.

CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code of Laws, (1976, as amended), §42-17-40, it is the determination of this Commission:

1. Under §42-1-160, the Claimant did sustain injury by accident, said accident arising out of and in the course of his employment.
2. Under §42-9-10 and §42-1-120, the Claimant is entitled to continuing compensation for temporary total disability.
3. Under §42-15-60, the Claimant is entitled to medical care, as it will tend to lessen the period of disability.
4. Under §42-1-130, the Claimant was the employee of the Defendant Clean Streak, Inc. at the time of the accident.

After review of the Appellant and Respondents briefs on each of the party's respective appeals, and after review of oral arguments, the Appellant panel of the Workers' Compensation Commission Affirms the Order of the Single Commissioner in regard to the Claimant's entitlement to benefits and as a compensable claim, and reverses the Single Commissioner's ruling in regard to the admissibility of the proffered statement of Dr. Clay Siegel, and adopts the below Findings of Fact and Conclusions of Law in making this decision:

FINDINGS OF FACT Affirmed by the APPELLANT PANEL

1. The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended to date, with Clean Streak, Inc. as the Employer, and Builders Mutual Insurance Company as the insurance carrier; and the Claimant as the employee of the employer on March 25, 2015.

2. We find the testimony of the Claimant to be credible. While discrepancies exist as to the mechanism of injury, said discrepancies do not detract from the Claimant's honesty.

3. The Claimant, Horace L. Adell, Jr., did sustain bodily injury on March 24, 2015, to his neck while employed by Clean Streak, Inc. and such injury arose out of and in the course and scope of his employment.

4. The treatment required by the Claimant at the Waccamaw Community Hospital and Horry County Fire and Rescue (EMS) transportation were necessary emergent care.

5. The Carrier refused to provide medical treatment to the Claimant after the care provided by Waccamaw Community Hospital on March 25, 2015, as they were aware of the claim, did not make any attempts to instruct the Claimant where to go for authorized medical treatment, and denied medical treatment to the Claimant, said denial continuing to the date of the hearing.

6. Claimant is entitled to causally related medical care from March 25, 2015, to the present and continuing.

7. The average weekly wage is \$1,500.00, and the weekly compensation rate is \$766.05.

8. The injury required medical care for the period from March 25, 2016, and

continues; the Claimant has not reached maximum medical healing as of this date; and further medical care is necessary, as it will tend to lessen the period of disability.

9. The Claimant has not reached maximum medical improvement, as additional medical care is necessary in order to lessen the period of disability.

10. The Claimant is entitled to temporary total disability benefits from March 25, 2015 to the present and continuing until agreement of the parties or by order of the Commission.

ADDITIONAL FINDINGS OF FACT of The APPELLANT PANEL

11. The medical treatment provided by Dr. Eric L. Rhoton M.D. was causally related to the compensable work accident, and was of an emergent nature.

12. The award is affirmed in full prior to the review of the excluded statement of Dr. Clay Siegel.

13. The Commission determines the statement of Dr. Clay Siegel should have been admitted into evidence, and the statement of Dr. Siegel should be considered part of the record.

14. After inclusion and review of the statement, the award remains affirmed.

CONCLUSIONS OF LAW Affirmed by the APPELLANT PANEL

Accordingly, as provided in S.C. Code of Laws, (1976, as amended), §42-17-40, it is the determination of this Commission:

1. Under §42-1-160, the Claimant did sustain injury by accident, said accident arising out of and in the course of his employment.

2. Under §42-9-10 and §42-1-120, the Claimant is entitled to continuing compensation for temporary total disability.

3. Under §42-15-60, the Claimant is entitled to medical care, as it will tend to lessen the period of disability.

4. Under §42-1-130, the Claimant was the employee of the Defendant Clean Streak, Inc. at the time of the accident.

ADDITIONAL CONCLUSION OF LAW of The APPELLANT PANEL

5. Dr. Clay Siegel's statement is admissible under the Administrative Procedures Act, S.C.Code Ann, 1-23-310, et seq., and Regulations 67-611 and 67-612

DECISION AND ORDER OF THE COMMISSION ON APPEAL

IT IS THEREFORE ORDERED that the Decision and Order of the Hearing Commissioner is hereby **Affirmed** by the Appellate Panel of the Commission as to the compensability of the claim and awarding benefits to the Claimant, and **Reversed** on the issue of the admissibility of the exclusion of the statement of Dr. Clay Siegel making the proffered statement of Dr. Siegel admitted to the record and included as part of the record.

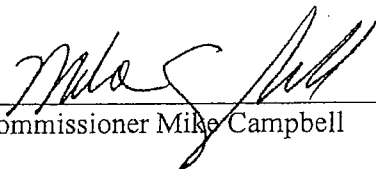
THEREFORE, it is **Ordered** the Defendants shall make the following payments:

1. The Defendants shall pay temporary total disability benefits in the amount of \$766.05 per week from March 25, 2015 to the present and continuing until further Order of this Commission or agreement of the parties;

2. The Defendants shall pay for charges for the Claimant's causally related medical care from the date of the injury and continuing until further Order of this Commission.

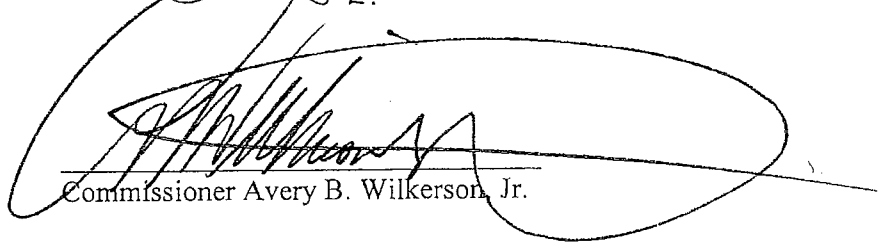
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


Commissioner Mike Campbell

I CONCUR:


Commissioner Melody S. James


Commissioner Avery B. Wilkerson, Jr.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on December 16, 2016

5/18/2015 10:20:36 AM

Workers' Compensation Commission
Suite 500 • Post Office Box 1715
Raleigh, North Carolina 27624-1715
919.723.7223 www.wcc.nc.gov



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

Claimant's Name: Horace L. Adell, Jr. SSN: _____ Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Insurance Carrier: Builders Mutual Ins. Co.
Preparer's Name: Daniel E. Peagler Law Firm: Michael Johnson, P.C. & Associates Preparer's Phone #: (803) 814-0550

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

Date of Injury or Illness: March 24, 2015

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

1. The claimant sustained an injury to neck/back on March 24, 2015 in Horry County, State of South Carolina.
2. Body part(s) affected are: neck/back
Briefly describe how the accident occurred. The Claimant was working on a storage facility when he fell injuring his neck/back.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 03/24/15 in the following manner:
Verbally and written to Susan Adell and Dorina Cook
- ☒ 7. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: neck and back
☐ (b) additional medical examination and treatment for: _____
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
March 24, 2015 to present and continuing
- ☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- 9a. ☒ A determination of permanent disability is premature at this time.
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
Premature
- 10a. At the time of the injury, the Claimant was paid weekly wages of **FORM 20 REQUESTED**, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None
11. Further grounds or unusual aspects of claim:
Any and all benefits available under the Act
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Georgetown Hospital System, 606 Black River road, Georgetown, SC 29550; Park Ridge Health, 100 Hospital Drive, Hendersonville, NC 27992; Carolina Spine & Mission, 7 Vanderbilt Park Drive, Asheville, NC 28803
- 11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time.
14. Estimated time needed for hearing: _____
- ☐ 13b. I am requesting a hearing. A \$25 fee is required. MAY 09 2015
- ☐ Mediation:
☐ a. Mediation is requested to be conducted pursuant to Reg. 67-1801 B.
☐ b. Mediation is requested pursuant to Reg. 67-1801 C.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.nc.gov.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Builders Mutual Insurance Company, P.O. Box 150006, Raleigh, NC 27624-0006 on the 11 day of May, 2015, by ☒ first class postage ☐ certified mail ☐ personal service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for Claimant: Michael Johnson, P.C. & Associates Email: apeagler@johnsonscaw.com Date: May 7 2015

Questions about the use of this form should be directed to the Claims Department at 919.723.7223. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

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

ROA 031

5/22/2015 10:02:22 AM

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



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

Claimant's Name: Horace L. Adell, Jr. SSN: - - - Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Insurance Carrier: Builders Mutual Ins. Co.
Preparer's Name: Daniel E. Peagler Law Firm: Michael Johnson, P.C. & Associates Preparer's Phone #: (803) 814-0550

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

Date of Injury or Illness: March 24, 2015

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

1. The claimant sustained an injury to neck/back on March 24, 2015 in Horry County, State of South Carolina.
2. Body part(s) affected are: neck/back
Briefly describe how the accident occurred. The Claimant was working on a storage facility when he fractured his neck/back. He was carrying a 5 gallon bucket of wax when he felt a crack/pop in his neck. Claimant put ice on his neck just after this happened. Pain got progressively worse through the evening.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 03/24/15 in the following manner:
Verbally and written to Susan Adell and Donna Cook

☒ 7. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: neck and back

☐ (b) additional medical examination and treatment for: _____

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
March 24, 2015 to present and continuing

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

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

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
Premature

10a. At the time of the injury, the Claimant was paid weekly wages of **FORM 20 REQUESTED**, and demands accounting of days worked and wages earned as provided by law.

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

11. Further grounds or unusual aspects of claim:

Any and all benefits available under the Act including but not limited to a Lump Sum Application/Payment, Utica-Mohawk/Social Security language within the Order, and any applicable penalties and fines assessed against the Defendants

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Georgetown Hospital System, 606 Black River road, Georgetown, SC 29550; Park Ridge Health, 100 Hospital Drive, Hendersonville, NC 29792; Carolina Spine & Mission, 7 Vanderbilt Park Drive, Asheville, NC 28803

11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____

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

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

14. Estimated time needed for hearing: 30 minutes

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

☐ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

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

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Builders Mutual Insurance Company, P.O. Box 150006, Raleigh, NC 27624-0006 on the 18 day of May, 2015, by ☒ first class postage ☐ certified mail ☐ personal service. I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Claimant
Title

epeagler@johnsonscaw.com
Email

Date

May 18, 2015

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

ROA 032

5/22/2015 10:02:22 AM

WCC Form # 50
Revised 7/13

50

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

ROA 033

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715-
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov



WCC File #: **1504993**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Horace L. Adell, Jr. SSN: [REDACTED]
Address: 33 Roseland Drive
City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () -
Date of Injury: 03/24/2015

Employer's Name: Clean Streak, Inc.
Address: 235 Old Turnpike Road, Mills River, NC 28759
Insurance Carrier: Builders Mutual Insurance Company

Preparer's Name: Richard C. Detwiler Law Firm: Callison Tighe & Robinson, LLC Preparer's Phone #: (803) 404-6900

Date of Injury or Illness: **03/24/2015**

Estimated time for hearing: **1 hour.**

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

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
No evidence of a compensable injury by accident.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1 above.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1 above.
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of :
See No. 1 above.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1 above.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ **TBD** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
All defenses applicable under the South Carolina Workers' Compensation Act including, but not limited to, §42-1-120; §42-1-130; §42-1-140; §42-1-150; §42-1-160; §42-15-20; §42-15-40; §42-15-60; Cooper v. McDevitt & Street Co.; and the South Carolina Code of Laws (1985 and Cum. Supp. 1995).

☐ **Mediation**

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

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

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

Preparer's Signature

Attorney
Title

RickDetwiler@CallisonTighe.com
Email

Date

SCWCC

JUN 19 2015

JUDICIAL

6/17/15

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

CERTIFICATE OF SERVICE

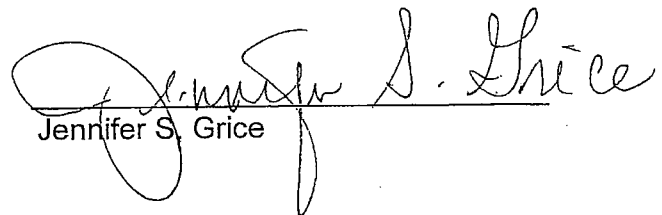
**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorneys for the Defendants, do hereby certify that I have served the below parties with copies of the following document(s), by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on June 17, 2015:

Pleading(s): Form 51 - Employer's Answer to Request for Hearing

Parties served: The Honorable Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201


Jennifer S. Grice

Columbia, South Carolina

June 17, 2015

South Carolina Workers' Compensation Commission
33 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739



WCC File # 1504993
Carrier File # WCV001022567
Carrier Code #:
Employer FEIN #: 205805512

Claimant's Name: Horace Adell, Jr. SSN: [REDACTED] Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: (828) 891-8800 Work Phone: (828) 891-9682
Date of Injury: 3/24/2015 Insurance Carrier: Builders Mutual Insurance Company
Preparer's Name: Mikell H. Wyman Law Firm: Gallivan, White, & Boyd, P.A. Preparer's Phone #: (843) 735-7600

Date of Injury or Illness: 3/24/2015 Estimated time for hearing: 1 hour
Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Employer-Corporation Clean Streak, Inc., is without sufficient information to either admit or deny any compensable injury by accident that would entitle Claimant to benefits under the South Carolina Workers' Compensation Act.
2. It is ☐ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See Number 1 above.
3. It is ☐ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See Number 1 above.
4. It is ☐ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See Number 1 above.
5. It is ☐ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
See Number 1 above.
6. It is ☐ Admitted ☐ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See Number 1 above.
7. It is ☐ Admitted ☐ Denied the employee is entitled to temporary total disability for the period(s) of:
See Number 1 above.
8. It is ☐ Admitted ☐ Denied the employee is permanently disabled. The reasons for denial are:
See Number 1 above.
9. It is ☐ Admitted ☐ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$Form 20 Requested applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The undersigned counsel submits this responsive pleading on behalf of only the Employer-Corporation - Clean Streak, Inc. The Carrier, Builders Mutual Insurance Company has retained separate counsel in this matter. The Employer-Corporation reserves the right to amend/supplement this responsive pleading to include any additional information that may arise through the course of appropriate discovery.

☐ **Mediation**

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Amy A. Bracy, Judicial Director, SCWCC, P.O. Box 1715, Columbia, SC 29201-1715, Daniel Ernest Peagler, Michael Johnson, P.C. & Associates, 2001 Lincoln Street, Columbia, SC, 29201 and Richard C. Metwiler, Esquire, Callison, Tighe & Robinson, LLC, Post Office Box 1390, Columbia, SC 29202 on the 17th day of June, 2015 by ☒ first class postage ☐ certified mail ☐ personal service.

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

[Signature] Attorney for the Employer- Corporation, Clean Streak, Inc June 17, 2015
Preparer's Signature Mikell H. Wyman Title Email Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R.67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov



WCC File #: **1504993**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Horace L. Adell, Jr. SSN: [REDACTED]
Address: 33 Roseland Drive Employer's Name: Clean Streak, Inc.
City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Address: 235 Old Turnpike Road, Mills River, NC 28759
Date of Injury: 03/24/2015 Insurance Carrier: Builders Mutual Insurance Company
Preparer's Name: Richard C. Detwiler Law Firm: Callison Tighe & Robinson, LLC Preparer's Phone #: (803) 404-6900
(For Carrier Only)

Date of Injury or Illness: **03/24/2015**

Estimated time for hearing: **1 hour.**

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

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
No evidence of a compensable injury by accident.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1 above.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1 above.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1 above.
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1 above.
6. It is ☐ Admitted ☒ Denied the employee ☒ Needs ☒ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1 above.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of :
See No. 1 above.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1 above.
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ TBD applies, according to attached Form 20 as provided by law.

11. Further contentions, grounds of defense, or unusual aspects are:

All defenses applicable under the South Carolina Workers' Compensation Act including, but not limited to, §42-1-120; §42-1-130; §42-1-140; §42-1-150; §42-1-160; §42-15-20; §42-15-40; §42-15-60; Cooper v. McDevitt & Street Co.; and the South Carolina Code of Laws (1985 and Cum. Supp. 1995). Claimant is the owner of the employer which has employed said employee to mirror the Claimant's position.

☒ **Mediation**

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

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

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

Richard C. Detwiler
Preparer's Signature

Attorney
Title

RickDetwiler@CallisonTighe.com
Email

12/3/15
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

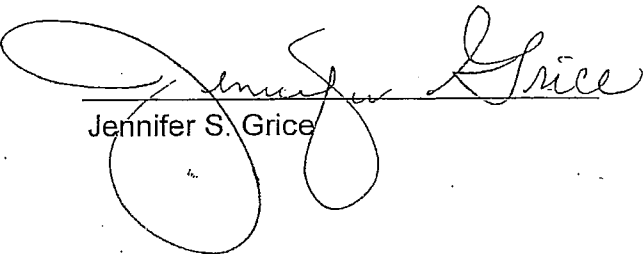
I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorneys for the Defendants, do hereby certify that I have served the below parties with copies of the following document(s), by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on December 3, 2015:

Pleading(s): Form 51 - Employer's Answer to Request for Hearing

Parties served: The Honorable Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer S. Grice

Columbia, South Carolina

December 3, 2015

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739



WCC File #: 1504993
Carrier File #: WCV001022567
Carrier Code #:
Employer FEIN #: 205805512

Claimant's Name: Horace Adell, Jr. SSN: [REDACTED] Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: (828) 891-8800 Work Phone: (828) 891-9682
Date of Injury: 3/24/2015 Insurance Carrier: Builders Mutual Insurance Company
Preparer's Name: Mikell H. Wyman Law Firm: Gallivan, White, & Boyd, P.A. Preparer's Phone #: (843) 735-7600

Date of Injury or Illness: 3/24/2015

Estimated time for hearing: 1 hour

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

1. It is ☒ **Admitted** ☐ **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
2. It is ☒ **Admitted** ☐ **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is ☒ **Admitted** ☐ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☒ **Admitted** ☐ **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is ☒ **Admitted** ☐ **Denied** notice of injury was given the employer. The reasons for denial are:
6. It is ☒ **Admitted** ☐ **Denied** the employee ☐ **Needs** ☐ **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
7. It is ☒ **Admitted** ☐ **Denied** the employee is entitled to temporary total disability for the period(s) of:
8. It is ☒ **Admitted** ☐ **Denied** the employee is permanently disabled. The reasons for denial are:
9. It is ☒ **Admitted** ☐ **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$FORM 20 REQUESTED** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The undersigned counsel submits this responsive pleading on behalf of only the Employer-Corporation - Clean Streak, Inc. The Carrier, Builders Mutual Insurance Company has retained separate counsel in this matter. The Employer-Corporation reserves the right to amend/supplement this responsive pleading to include any additional information that may arise through the course of appropriate discovery.

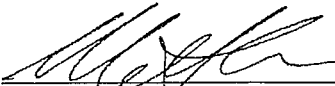
☐ **Mediation**

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Amy A. Bracy, Judicial Director, SCWCC, P.O. Box 1715 Columbia, SC 29201-1715, Daniel Ernest Peagler, Michael Johnson, P.C. & Associates, 2001 Lincoln Street, Columbia, SC, 29201 and Richard C Detwiler, Esquire, Callison, Tighe & Robinson, LLC, Post Office Box 1390, Columbia, SC 29202 on the 3rd day of December, 2015 by ☒ first class postage ☐ certified mail ☐ personal service.

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


Preparer's Signature Mikell H. Wyman Title Attorney for the Employer-Corporation, Clean Streak, Inc. Email mwyman@gwblawfirm.com Date December 3, 2015

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R.67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



Claimant's Name: Horace L. Adell, Jr. Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Carrier: Builders Mutual Insurance Company
Preparer's Name: Daniel E. Peagler Preparer's Phone #: (803) 814-0550

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: MAX 2015 2. AWW: \$ Date of Injury: March 24, 2015
3. Type of Injury and body part(s): Neck and back
4. Facts in controversy: See Attached
5. Legal issues involved: See Attached
6. Unusual aspects: See Attached
7. Witnesses (designate if expert):* The Claimant, Susan Adell, Matthew Mazlarz, Tre Trembly, Brett Woron and Daniel Alexander Woron
Kevin Shay
8. Exhibits: The Claimant requests that WCC File No. 1504993 be made a part of the Record; The Claimant requests that his deposition be made part of the record. Statement of Matthew Mazlarz, Statement of Kevin Shay, Photograph of Claimant's neck surgery. Photographs of Clean Streak, Inc., Photographs of family gathering prior to 3/24/15
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See Attached
10. Name, address, and specialty, if any, of the treating physician:
Tidelands Waccamaw Community Hospital, 4070 Highway 17 Bypass South, Murrells Inlet, SC 29576; Park Ridge Health, 100 Hospital Drive, Hendersonville, NC 28792; Carolina Spine and Mission, 7 Vanderbilt Park Drive, Asheville, NC 28803
11. Impairment rating(s); body part(s); physician and date of opinion: Not an issue at this time.
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

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

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

I verify the contents of this form are accurate and true to the best of my knowledge. I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Mikell Wyman, Esquire, Gallivan White & Boyd, P.O. Box 22768, Charleston, SC 29413 and Richard C. Detwiler, Esquire, Callison Tighe & Robinson, P.O. Box 1390, Columbia, SC 29202 on the 15th day of July, 2015 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature]
Date of hearing: July 30, 2015

Email: epeagler@johnsonscaw.com
Time needed for hearing: 1-1/2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

ATTACHMENT TO FORM 58

Horace L. Adell, Jr. v. Clean Streak, Inc.

WCC File No. 1504993

4.
 - a. Employer/Carrier denies employment relationship;
 - b. Whether Claimant suffered injury by accident arising out of and in the course of his employment;
 - c. Whether or not employer and employee were subject to Workers' Compensation Act;
 - d. Whether Claimant gave timely notice of accident to employer. Claimant verbally reported accident to verbally and written to Susan Adell and Donna Cook on March 24, 2015;
 - e. Claimant's entitlement to medical care for his neck and back; and
 - f. Claimant's entitlement to temporary total disability benefits.
5. **IN CORRELATION WITH RESPONSES UNDER NUMBER 4:**
 - a. Employer/Employee relationship as provided in §42-1-130, §42-1-140, §42-1-150;
 - b. Definition of injury by accident as defined in §42-1-160;
 - c. Employer/Employee being subject to Workers' Compensation Act as provided in §42-1-130, §42-1-150, and §42-1-160;
 - d. Notice of Accident as provided in §42-15-20;
 - e. Claimant's entitlement to medical care as provided in §42-15-60; and
 - f. Claimant's entitlement to temporary total disability benefits as provided in §42-9-10.

9. Pursuant to R. 67-612 and SC Code of Laws Section 1-23-330 (APA) the following medical provider reports may be submitted:

Waccamaw Community Hospital, Park Ridge Health, Carolina Spine and Neurosurgical, Mission Hospital and Siegel Chiropractic

Respectfully Submitted,


Daniel E. "Ernie" Peagler
Attorney for Claimant

July 15, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1504993

Horace L. Adell, Jr.,)
))
Employee-Claimant,)
))
v.)
))
Clean Streak, Inc.,)
))
as Employer and)
))
Builders Mutual Insurance Company,))
))
as Carrier,)
))
Defendants.)
_____)

**NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT HORACE L. ADELL, JR.**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
RICHARD C. DETWILER, ATTORNEY FOR THE CARRIER AND MIKELL
H. WYMAN, ATTORNEY FOR THE EMPLOYER

YOU ARE HEREBY NOTIFIED THAT THE Claimant Horace L. Adell, Jr.,
pursuant to the provisions of the South Carolina Workers' Compensation Act and South
Carolina Code §1-23-330 (1976, as amended), herewith submits the following
reports/physician or other evidence on behalf of the Claimant, to wit:

1.	Waccamaw Community Hospital	03/25/15	Page 1
2.	Park Ridge Health	03/27/15	Pages 2-5
3. Eric L. Rhoton	Caroline Spine & Neurosurgical	04/02/15-05/13/15	Pages 6-42
4.	Mission Hospital	04/03/15-04/10/15	Pages 43-125
5.	Statement of Matthew Maziarz	03/26/15	Page 126
6.	Statement of Kevin Shay	07/08/15	Page 127
7.	X-ray picture of Claimant's neck		Page 128

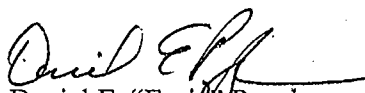
8.	Various pictures of Clean Streak's Myrtle Beach office		Pages 129-132
9.	Siegel Chiropractic Statement	07/10/15	Page 133
10.	Photos of Family Gathering	Prior to 03/24/15	Pages 134-137

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Claimant, any witness listed by the Defendants, and other lay witnesses to be named.

Respectfully submitted,



Daniel E. "Ernie" Peagler
Michael Johnson, P.C. & Associates
2001 Lincoln Street
Columbia, South Carolina 29201

July 12, 2015



Claimant's Name: Horace L. Adell, Jr. Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Carrier: Builders Mutual Insurance Company
Preparer's Name: Richard C. Detwiler, Attorney for Defendant Preparer's Phone #: (803) 404-6900
Builders Mutual Insurance Company

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$TBD 2. AWW: \$TBD Date of Injury: 03/24/2015
3. Type of injury and body part(s): Alleged injury to neck and back.
4. Facts in controversy: (1) Whether Claimant has suffered a compensable accident and injury; (2) Need for wage and/or medical benefits; (3) AWW and CR.
5. Legal issues involved: (1) Compensability; and (2) Entitlement to benefits under the Act; (3) Coverage.
6. Unusual aspects: (1) On information and belief, if an injury by accident occurred at all, it was not within the Employers scope of business but rather occurred while Claimant was working on his "second home." However, medical evidence reveals numerous complaints of similar injury/illness prior to this alleged accident; (2) Claimant is sole owner of Employer; (3) Neither Claimant nor Employer have cooperated in discovery and a Motion to Compel and For Continuance is being filed contemporaneously; (4) Coverage for a SC Claim is an issue, as is the insured Employer's failure to cooperate in the defense of the case.
7. Witnesses (designate if expert):* (1) Representative of Employer; (2) Claimant; (3) Defendants reserve the right to call any witness identified by the Claimant.
8. Exhibits: See attached Notice of Witnesses and APA Submissions.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Witnesses and APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Denied claim.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: (See Certificate of Service) mailed

on the 20 **day of** July, 2015 ☒ **first class postage** ☐ **certified mail** ☐ **personal service.**

Signature: [Signature]
Date of hearing: July 30, 2015

Email: RickDetwiler@CallisonTighe.com
Time needed for hearing: 1 hour.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. File No. 1504993

Horace L. Adell, Jr.,
Claimant,

-vs-

Clean Streak, Inc.,
Employer,

-and-

Builders Mutual Insurance Company,
Carrier/Defendants.

**DEFENDANTS' NOTICE OF WITNESSES
AND APA SUBMISSIONS**

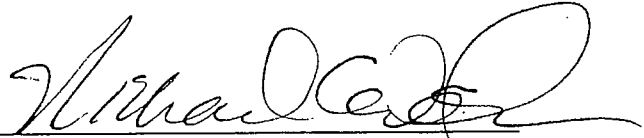
<u>TABS</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
A.	Waccamaw Community Hospital Carol A. Rahter, MD 4070 Hwy 17 Bypass Murrells Inlet, SC 29576	3/25/15	138 - 144

EXHIBITS:

1. Deposition Transcript of Claimant (to be submitted upon receipt).

WITNESSES:

1. Representative of Employer may be called to testify.
2. Claimant.
3. Defendants reserve the right to call any witness identified by the Claimant.



CALLISON TIGHE & ROBINSON, LLC

Richard C. Detwiler

Post Office Box 1390

Columbia, South Carolina 29202

(803) 404-6900

ATTORNEY FOR DEFENDANT BUILDERS
MUTUAL INSURANCE COMPANY

Columbia, South Carolina

July 20, 2015

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

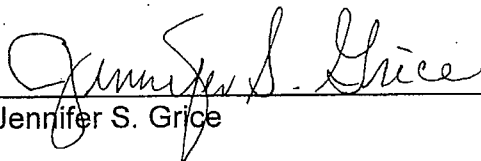
I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorney for Defendant Builders Mutual Insurance Company, do hereby certify that I have served the below parties with copies of the following document(s), in the manner indicated below, on July 20, 2015:

Pleading(s): Form 58 - Pre-Hearing Brief
 Notice of Witnesses and APA Submissions

Parties served: **Via Ecase Only**
 The Honorable Susan S. Barden
 South Carolina Workers' Compensation Commission
 Post Office Box 1715
 Columbia, South Carolina 29202-1715

Via U.S. Mail
Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Via U.S. Mail
Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer S. Grice

Columbia, South Carolina

July 20, 2015

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1504993

Claimant's Name: Horace L. Adell, Jr. Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Carrier: Builders Mutual Insurance Company
Preparer's Name: Richard C. Detwiler, Attorney for Defendant Preparer's Phone #: (803) 404-6900
Builders Mutual Insurance Company

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$TBD 2. AWW: \$TBD Date of Injury: 03/24/2015
3. Type of injury and body part(s): Alleged injury to neck and back.
4. Facts in controversy: (1) Whether Claimant has suffered a compensable accident and injury; (2) Need for wage and/or medical benefits; (3) AWW and CR.
5. Legal Issues Involved: (1) Compensability; and (2) Entitlement to benefits under the Act; (3) Coverage.
6. Unusual aspects: (1) On information and belief, if an injury by accident occurred at all, it was not within the Employers scope of business but rather occurred while Claimant was working on his "second home." However, medical evidence reveals numerous complaints of similar injury/illness prior to this alleged accident; (2) Claimant is sole owner of Employer; (3) Coverage for a SC Claim is an issue, as is the Insured Employer's failure to cooperate in the defense of the case.
7. Witnesses (designate if expert):* (1) Representative of Employer; (2) Claimant; (3) Defendants reserve the right to call any witness identified by the Claimant.
8. Exhibits: See attached Notice of Witnesses and APA Submissions.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Witnesses and APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Denied claim.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: (See Certificate of Service) mailed

on the 21 day of August, 2015 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature]
Date of hearing: August 31, 2015

Email: RickDetwiler@CallisonTighe.com
Time needed for hearing: 1 1/2 hour.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. File No. **1504993**

Horace L. Adell, Jr.,
Claimant,

-vs-

Clean Streak, Inc.,
Employer,

-and-

Builders Mutual Insurance Company,
Carrier/Defendants.

**DEFENDANTS' NOTICE OF WITNESSES
AND APA SUBMISSIONS**

<u>TABS</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
A.	Waccamaw Community Hospital Carol A. Rahter, MD 4070 Hwy 17 Bypass Murrells Inlet, SC 29576	03/25/15	138 - 144
B.	Forge Mountain Medicine Robert Smith, MD 127 Vance Hill Drive Mills River, NC 28759-4996	04/01/15 - 06/04/15	145 - 176
C.	Mission Hospital Scott D. Harrison, MD 509 Biltmore Avenue Asheville, NC 28801	04/02/15	177 - 180
D.	Mills River Physical Therapy 4687 Boylston Hwy. Mills River, NC 28759-6731	05/03/15 - 08/11/15	181 - 241
E.	Carolina Spine & Neurosurgical Rhonda L. Larimore, FNPC 7 Vanderbilt Park Drive Asheville, NC 28803	06/17/2015	242 - 244

ROA 050

EXHIBITS:

1. North Carolina Form 18 (Notice of Accident to Employer).
2. North Carolina Form 19 (Employer's Report of Employee's Injury), completed by Claimant's wife.
3. Deposition Transcript of Claimant (to be submitted upon receipt).

WITNESSES:

1. Representative of Employer may be called to testify.
2. Claimant.
3. Defendants reserve the right to call any witness identified by the Claimant.



CALLISON TIGHE & ROBINSON, LLC
Richard C. Detwiler
Post Office Box 1390
Columbia, South Carolina 29202
(803) 404-6900
ATTORNEY FOR DEFENDANT BUILDERS
MUTUAL INSURANCE COMPANY

Columbia, South Carolina

August 21, 2015

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

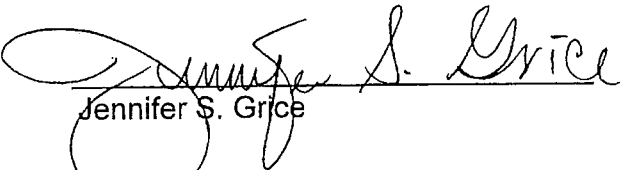
I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorney for Defendant Builders Mutual Insurance Company, do hereby certify that I have served the below parties with copies of the following document(s), in the manner indicated below, on August 21, 2015:

Pleading(s): Pre-Hearing Brief
 Notice of Witnesses and APA Submissions

Parties served: **Via Ecase Only**
 The Honorable Susan S. Barden
 South Carolina Workers' Compensation Commission
 Post Office Box 1715
 Columbia, South Carolina 29202-1715

Via U.S. Mail
Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Via U.S. Mail
Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer S. Grice

Columbia, South Carolina

August 21, 2015



Claimant's Name: Horace Adell, Jr. Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: (828) 891-8800 Work Phone: _____ Carrier: Builders Mutual Insurance Company
Preparer's Name: Mikell H. Wyman Preparer's Phone #: 843.735.7600

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$766.05 2. AWW: \$1,500.00 Date of Injury: March 24, 2015
3. Type of injury and body part(s): Employer admits Claimant suffered a compensable injury to his back/neck. See Number 12 below.
4. Facts in controversy: Whether Claimant sustained a compensable injury by accident within the course and scope of his employment; whether Claimant is entitled to causally-related medical treatment pursuant to the Act; whether Claimant is entitled to temporary disability benefits pursuant to the Act.
5. Legal issues involved: § 42-1-160, §42-15-60; Claimant's entitlement to TTD benefits.
6. Unusual aspects: Claimant is the owner of the Employer/Insured and as such, each party (Claimant, Employer, Carrier) has retained their own counsel.
7. Witnesses (designate if expert)*: Susan Adell; Employer reserves the right to call another representative to testify in response to any evidence presented on behalf of the Claimant or the Carrier. Any and all witnesses identified by Claimant and Carrier.
8. Exhibits: Exhibit A – Tax Returns and other information 2012-2014 consisting of 79 pages; Exhibit B – Form 20 consisting of 1 page; Exhibit C – Payroll records from Clean Streak, Inc. consisting of 4 pages; Exhibit D – Clean Streak Invoicing/billing documentation consisting of 48 pages. Any and all exhibits identified by Claimant or Carrier. Employer reserves the right to submit Claimant's discovery deposition testimony and/or transcript in accordance with the South Carolina Rules of Civil Procedure and Evidence.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): Please see Employer's APA submissions. Employer reserves the right to supplement this response with additional records made available through the course of discovery. Any and all medical records submitted on behalf of Claimant and/or Carrier.
10. Name, address, and specialty, if any, of the treating physician: 1) Horry County Fire Rescue, 2) Waccamaw Community Hospital, 4070 Highway 17, Murrells Inlet, SC 29576, 3) Carolina Spine and Neurosurgery Center, 7 Vanderbilt Park Drive, Asheville, NC 28803, 4) Forge Mountain Medicine, 127 Vance Hill Drive, Mills River, NC 28759, 5) Mills River Physical Therapy, 4687 Boylston Hwy, Mills River, NC 28759
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: Employer hereby moves the Commission for an Order permitting amendment to their Form 51 to formally reflect that Employer admits Claimant suffered injury to his neck and back by accident in the course and scope of his employment. Employer makes this motion pursuant to Reg. 67-610(b). Employer submits that after extensive discussion among all counsel for the parties there is no surprise or prejudice involved in amending Employer's pleadings.

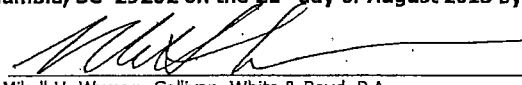
☐ **Mediation**

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Daniel Ernest Peagler, Esquire, Michael Johnson, P.C. & Associates, 2001 Lincoln Street, Columbia, SC 29201 and Richard C. Detwiler, Esquire, Callison Tighe, Post Office Box 1390, Columbia, SC 29202 on the 21st day of August 2015 by ☒ first class postage ☐ certified mail ☐ personal service

Signature: 
Mikell H. Wyman, Gallivan, White & Boyd, P.A.

Email: mwyma@gwblawfirm.com

Date of hearing: August 31, 2015

Time needed for hearing: 2 hours

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 through R.212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horace Adell, Jr.,

Claimant,

-vs-

Clean Streak, Inc.,

Employer,

and

Builders Mutual Insurance Company,

Insurance Carrier,
Defendants.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

NOTICE OF WITNESSES AND WRITTEN
REPORT(S)/PHYSICIAN OR OTHER EVIDENCE TO
BE INTRODUCED ON BEHALF OF DEFENDANTS

W.C.C. FILE NO. 1504993

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND DANIEL
ERNEST PEAGLER, ATTORNEY FOR CLAIMANT AND RICHARD C. DETWILER,
ATTORNEY FOR DEFENDANTS:

YOU ARE HEREBY NOTIFIED THAT THE Employer, pursuant to the provisions of the
South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as
amended), herewith submit the following reports/physician or other evidence on behalf of the
Employer, to wit:

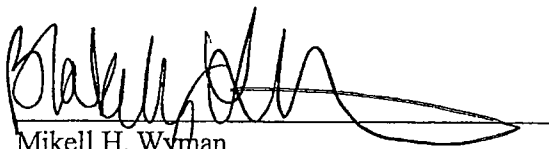
<u>APA No.</u>	<u>Physician</u>	<u>Dates of Treatment</u>	<u>Pages</u>
1	Horry County Fire Rescue	03/25/2015	1-2
2	Waccamaw Community Hospital	03/25/2015	3-14
3	Carolina Spine and Neurosurgery Center	04/02/2015 – 04/07/2015	15-64
4	Forge Mountain Medicine	03/30/2015 - 04/30/2015	65-81
5	Mills River Physical Therapy	05/04/2015 – 05/06/2015	82-85
<u>Exhibit No.</u>			
A	Tax Returns and other information	2012-2014	86-164
B	Form 20		165
C	Payroll records from Clean Streak, Inc.		166-169
D	Clean Streak Invoicing / Billing Documentation		170-217

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/ others, will be submitted to the Commissioner at the hearing for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Employer.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Employer: Susan Adell; Employer reserves the right to call another representative to testify in response to any evidence presented on behalf of the Claimant or the Carrier. Any and all witnesses identified by Claimant and Carrier.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mikell H. Wyman', written over a horizontal line.

Mikell H. Wyman
Gallivan, White & Boyd, P.A.
P.O. Box 22768
Charleston, SC 29413
(843) 735-7600

Attorney for the Employer

Charleston, South Carolina

August 21, 2015

cc: Daniel Ernest Peagler, Esquire
Richard C. Detwiler, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Horace Adell, Jr.,)

Claimant,)

-vs-)

Clean Streak, Inc.,)

Employer,)

and)

Builders Mutual Insurance Company,)

Insurance Carrier,
Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

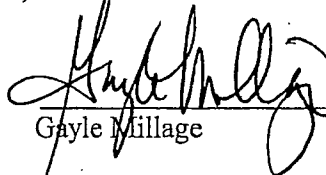
CERTIFICATE OF SERVICE

W.C.C. FILE NO. 1504993

The undersigned Gayle Millage, assistant to Mikell H. Wyman, attorney for the Defendants, certifies that on the 21st day of August, 2015, she served a copy of the DEFENDANTS' FORM 58 and NOTICE OF WITNESSES AND WRITTEN REPORTS BEFORE THE WORKERS' COMPENSATION COMMISSION upon the Claimant's attorney, Daniel Ernest Peagler, Esquire, and Defendants' attorney, Richard C. Detwiler, Esquire, by depositing in the United States Mail, with due and proper postage affixed thereto, a copy of the same addressed to:

Daniel Ernest Peagler, Esquire
Michael Johnson, P.C. & Associates
2001 Lincoln Street
Columbia, SC 29201

Richard C. Detwiler, Esquire
Callison Tighe
Post Office Box 1390
Columbia, SC 29202


Gayle Millage

August 21, 2015



ATTACHMENT TO FORM 58

Horace L. Adell, Jr. v. Clean Streak, Inc.

WCC File No. 1504993

4.
 - a. Employer/Carrier denies employment relationship;
 - b. Whether Claimant suffered injury by accident arising out of and in the course of his employment;
 - c. Whether or not employer and employee were subject to Workers' Compensation Act;
 - d. Whether Claimant gave timely notice of accident to employer. Claimant verbally reported accident to verbally and written to Susan Adell and Donna Cook on March 24, 2015;
 - e. Claimant's entitlement to medical care for his neck and back; and
 - f. Claimant's entitlement to temporary total disability benefits.

5. IN CORRELATION WITH RESPONSES UNDER NUMBER 4:

- a. Employer/Employee relationship as provided in §42-1-130, §42-1-140, §42-1-150;
- b. Definition of injury by accident as defined in §42-1-160;
- c. Employer/Employee being subject to Workers' Compensation Act as provided in §42-1-130, §42-1-150, and §42-1-160;
- d. Notice of Accident as provided in §42-15-20;
- e. Claimant's entitlement to medical care as provided in §42-15-60; and
- f. Claimant's entitlement to temporary total disability benefits as provided in §42-9-10.

9. Pursuant to R. 67-612 and SC Code of Laws Section 1-23-330 (APA) the following medical provider reports may be submitted:

Waccamaw Community Hospital, Park Ridge Health, Carolina Spine and Neurosurgical, Mission Hospital and Siegel Chiropractic

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel E. Peagler", written over a horizontal line.

Daniel E. "Ernie" Peagler
Attorney for Claimant

February 2, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION COMMISSION
) WCC FILE NO. 1504993

Horace L. Adell, Jr.,)
))
Employee-Claimant,)
))
v.)
))
Clean Streak, Inc.,)
))
as Employer and)
))
Builders Mutual Insurance Company,))
))
as Carrier,)
))
Defendants.)
_____)

**NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT HORACE L. ADELL, JR.**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
RICHARD C. DETWILER, ATTORNEY FOR THE CARRIER AND MIKELL
H. WYMAN, ATTORNEY FOR THE EMPLOYER

YOU ARE HEREBY NOTIFIED THAT THE Claimant Horace L. Adell, Jr.,
pursuant to the provisions of the South Carolina Workers' Compensation Act and South
Carolina Code §1-23-330 (1976, as amended), herewith submits the following
reports/physician or other evidence on behalf of the Claimant, to wit:

1.	Waccamaw/ Georgetown Hospitals	03/25/15	Pages 1-45
2.	Park Ridge Health	03/27/15	Pages 46-49
3. Eric L. Rhoton, MD	Caroline Spine & Neurosurgical	04/02/15-10/01/15	Pages 50-87
4.	Mission Hospital	04/03/15-04/10/15	Pages 88-170
5.	Statement of Matthew Maziarz	03/26/15	Page 171
6.	Statement of Kevin Shay	07/08/15	Page 172
7.	X-ray picture of Claimant's neck		Page 173

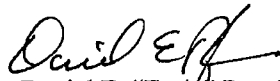
8.	Various pictures of Clean Streak's Myrtle Beach office		Pages 174-177
9.	Siegel Chiropractic Statement	07/10/15	Page 178
10.	Photos of Family Gathering	Prior to 03/24/15	Pages 179-182

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: Claimant, Susan Adell, Matthew Maziarz, Trey Trembly, Kevin Shay, Brett Woron, Daniel Alexander Woron, any witness listed by the Defendants, and other lay witnesses to be named.

Respectfully submitted,



Daniel E. "Ernie" Peagler
Michael Johnson, P.C. & Associates
2001 Lincoln Street
Columbia, South Carolina 29201

February 2, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
) BEFORE THE SOUTH CAROLINA
) WORKERS' COMPENSATION COMMISSION
) WCC FILE NO. 1504993

Horace L. Adell, Jr.,
Employee-Claimant,

v.

Clean Streak, Inc.,
as Employer and
Builders Mutual Insurance Company,
as Carrier,
Defendants.

APA SUBMISSIONS
Hearing: February 17, 2016

Pursuant to South Carolina Code §1-23-330 and Commission Rule 67-612 the Claimant submits the following report(s) in support of and on behalf of his position in this matter:

1.	Waccamaw/ Georgetown Hospitals	03/25/15	Pages 1-45
2.	Park Ridge Health	03/27/15	Pages 46-49
3. Eric L. Rhoton, MD	Caroline Spine & Neurosurgical	04/02/15-10/01/15	Pages 50-87
4.	Mission Hospital	04/03/15-04/10/15	Pages 88-170
5.	Statement of Matthew Maziarz	03/26/15	Page 171
6.	Statement of Kevin Shay	07/08/15	Page 172
7.	X-ray picture of Claimant's neck		Page 173
8.	Various pictures of Clean Streak's Myrtle Beach office		Pages 174-177
9.	Siegel Chiropractic Statement	07/10/15	Page 178
10.	Photos of Family Gathering	Prior to 03/24/15	Pages 179-182



Georgetown Hospital System

Georgetown Memorial Hospital (843) 527-7000
Waccamaw Community Hospital (843) 652-1000

Date: 03/25/15
Acct Num: WCC002097116
Med Rec Num: H000107633
Name: HORACE ADELL JR
Location: WCH EMERGENCY DEPARTMENT
Primary Provider: RAHTER, CAROL

Patient Visit Information

Staff

Your caregivers today were:

Primary Provider: RAHTER, CAROL
Midlevel Provider:
Nurse: LS

Patient Instructions Reviewed

Cervical Strain

received 03/25/15 03:44

Activity Restrictions or Additional Instructions

Follow-up with Dr. Ellison. Applied heat to neck. One Percocet every 4 hours as needed for pain. Caution when taking Percocet. Take prednisone as directed. One Flexeril every 8 hours as needed for muscle spasm. Caution when taking Flexeril.

Follow-up

ADELL, HORACE JR. has been referred to the following clinics/specialists for follow-up care:

OUT OF TOWN PHYSICIAN,

ELLISON, THOMAS SCOTT, MD
WACCAMAW ORTHOPEDICS, 4040 HIGHWAY 17, STE 101
MURRELLS INLET, SC 29576
(843) 652-8160

Horace Adell
Claim #
WCV001021392

Waccamaw Community Hospital

EMERGENCY DEPARTMENT PROVIDER DOCUMENTATION

Pt. Status: REG ER

Rpt#: 0325-0009

Patient: ADELL, HORACE JR

Medical Record #: H000307633 Account#: W00002097116

Date: 03/25/15

Emergency Dept. Provider: RAHTER, CAROL A

HPI

- Provider Sign Up/Triage

Nurse's Note: C/O NECK PAIN X 3 MONTHS. WORSE TONIGHT. HAD HX OF BACK PAIN PER PT

Have you or anyone you've been with traveled out of USA: No

Sepsis criteria met (19 or older only): No

- HPI

Time seen by provider: 02:04

History source: Patient

Chief Complaint: Neck pain

HPI:

53 y/o male pt with h/o pre-diabetes presents with neck pain which he states began about 3 months ago, but has been exacerbated tonight. Pt has seen several physicians concerning this issue and has not had significant relief. Pt states that his pain radiates down his back and down both arms. Pt denies fevers, chest pain, headaches, N/V/D, abdominal pain, dizziness, bowel/bladder incontinence, or dysuria. Pt denies any other medical symptoms or discomfort at this time.

Onset of Symptoms: PTA

Timing: Constant, Waxing and Waning

Location: Neck

Radiation: Down back, across both arms

Quality: Pain

Severity at present: Moderate

Severity at onset: Moderate

Exacerbating factors: None

Relieving factors: None

ROS

- ROS

Except as noted: (+) Reviewed and Negative

Constitutional: (-) Fever, (-) Chills

Eye: (-) Vision Change

Ears/Nose/Throat: (-) Rhinorrhea

Cardiovascular: (-) Chest Pain

Respiratory: (-) Dyspnea

Gastrointestinal: (-) Abdominal Pain, (-) Nausea, (-) Vomiting

THIS IS A DRAFT REPORT UNTIL REVIEWED BY THE PROVIDER AND MARKED
<Electronically signed by.....>

Waccamaw Community Hospital

EMERGENCY DEPARTMENT PROVIDER DOCUMENTATION

Patient: ADELL, HORACE JR

Medical Record #: H000307633

Account #: W00002097116

Date: 03/25/15

- Course

Differential Diagnosis:

Herniated nucleus pulposus

Epidural abscess

Spinal hematoma

Musculoskeletal injury

Medical Decision Making:

Patient had a CAT scan obtained which revealed no acute abnormalities. Patient was medicated with Dilantin and Zofran with improvement. He was then given Toradol IV. Patient was placed on Percocet and Flexeril and prednisone as an outpatient. He was referred to Dr. Ellison. I am certainly concerned that he may have a herniated disc.

EKG RAD Lab

- Labs

Labs:

Laboratory

	03/25/15 02:25	03/25/15 02:28
WBC	10.9	
RBC	6.17 H	
Hgb	15.6	
Hct	47.4	
MCV	76.8 L	
MCH	25.3 L	
MCHC	32.9	
RDW	16.2 H	
RDW Std Deviation	41.9	
Plt Count	231	
MPV	10.5	
Immature Gran % (Auto)	0.3	
Neut % (Auto)	36.5	
Lymph % (Auto)	54.4	
Mono % (Auto)	7.0	
Eos % (Auto)	1.3	
Baso % (Auto)	0.5	
Immature Gran #	0.03	
Lymph #	6.0 H	
Mono #	0.8	

THIS IS A DRAFT REPORT UNTIL REVIEWED BY THE PROVIDER AND MARKED
<Electronically signed by.....>

Waccamaw Community Hospital
4070 Highway 17 Bypass Murrells Inlet SC 29576



Reception Date: 03/25/15
Reception Time: 0146
Account Type: ER

Triage Date:
Triage Time:

Service Date:
Service Time:

EMR Number: L00455468
Unit Number: H000307633
Account Number: W00002097116

Patient's Name: ADELL, HORACE JR
Patient's Address:

Birthdate:

Age: 53

Sex: M

Last Inpatient Visit Date:

Last Outpatient Visit Date:

Race:

Soc Sec #

Patient's Home Phone:
Patient's Local Phone:
GCCN Participant:

ER Physician:
Attending Physician:
Family Physician:

Wayne -> PE
DM

Reason For Visit: SEVERE NECK PAIN TONIGHT

Time Seen By Provider

0210

PROVIDER'S REPORT

Admit Decision Time:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

3-4 months
Chiropractor
Dr. Smith
Flu.

POINT OF CARE TESTING

1-STAT

CHEMS+ CG4
Creat Lactic Acid
Hgb/Hct

LABS:

CBC No Diff

CBC w/ Diff

BMP

LFT's

CMP

Lipase/Amylase

D-Dimer

Cardiac Enzymes

BNP

PT/PTT

Type A Screen

Serum HCG (QUAL OR QUANT)

IMAGING:

CXR

P-CXR

ABD 2 View

ABD 3 View

C-Spine

L-Spine

T-Spine

CT C-Spine

CT Head w/o Contrast

CT Renal

CT Abd/Pelvis (w/IV/PO Cont)

CT Chest (PE Study)

CT Chest/Abd/Pel-Eval Trauma or Aorta

Ultrasound

Vascular Study

UA (Urine dipstick
reflex to Micro)
Urine Preg

NURSING

Monitors Orthostatic VS
PIV Rectal Temp
O2: _____

MICRO:

Urine C&S

Stool C&S

C-Diff

Rapid Strep

Wound Culture

Blood Culture x 2

GC/Chlamydia

Wet Prep

CARDIOPULMONARY:

BBG

ABG

Asresol

PDOC

DIAGNOSIS

Severe Cervical Pain

Disposition of Patient: LMT _____ AMA _____ Treated And Discharged ☒ Admitted _____ Room No. _____ Time Out _____

DOA _____

EXP _____

Transfer/ Trans Port To Other Facility _____

Discharge: _____

DATE:

I UNDERSTAND THESE INSTRUCTIONS

Patient or Responsible Party's Signature

Provider's Signature

Nurse's Signature

W00002097116 H000307633
ADELL, HORACE JR
DOB: _____ AGE: 53 SEX: M
WCH ED
ADM Date 03/25/15



*** MEDICAL RECORD ORIGINAL *** DO NOT REMOVE FROM CHART ***

GEM Live

ALL OF NURSING CHRONO

Page: 1

Date: 03/25/15 05:53

ADELL, HORACE JR

Fac: Waccamaw Community Hospital

Loc: WCH EMERGENCY DEPARTMENT

Bed: -

53 M [REDACTED]

Med Rec Num: H000307633

Visit: W00002097116

Attending:

Reg Date: 03/25/15

Reason: SEVERE NECK PAIN TONIGHT

NOTES

03/25/15 02:04 Emergency Department by SMITH, LINWOOD
PT TO ER 14 WITH REPORT OF PAIN TO BACK OF HIS NECK. PT APPEARS TO BE ANXIOUS UNABLE TO SIT STILL. REPORTS DIFFICULTY SITTING STILL. ROCKING BACK AND FORTH. STATES HE HAS BEEN HURTING FOR 2-3 MONTHS.

InitIALIZED on 03/25/15 02:04 - END OF NOTE

03/25/15 03:20 Emergency Department by SMITH, LINWOOD
PT RETURNED FROM CT. STATES PAIN IS RETURNING. MEDICATED WITH DILAUDID.

InitIALIZED on 03/25/15 03:20 - END OF NOTE

03/25/15 03:43 Emergency Department by SMITH, LINWOOD
PT MEDICATED WITH TORADOL AND DILAUDID FOR PAIN.

InitIALIZED on 03/25/15 03:43 - END OF NOTE

ED ACTIVITY

Last Name: ADELL	Status:	Departed from tracker
First Name: HORACE	Priority:	Level 4
Middle:	Condition:	
Birthdate: [REDACTED]	Arrival Date/Time:	03/25/15 01:46
Age: 53	Arrival Mode:	AMBULANCE
Sex: M	Triaged At:	03/25/15 01:47
Language: ENGLISH	Time Seen by Provider:	

Stated Complaint: SEVERE NECK PAIN TONIGHT

Chief Complaint: Neck Pain

ED Location: WCH ED

Area:

Station:

Group:

ED Provider: PARTER, CAROL

ED Midlevel Provider:

ED Nurse: SMITH, LINWOOD

Primary Care Provider:

Status/Phase	DtTm/Value	User/Action
Pending D/C	03/25/15 03:44:33	SMITH, LINWOOD
Referrals (Provider)	ELLISON, THOMAS S	Added
In Room	03/25/15 02:12:19	Travis, Kelly
Referrals (Provider)	OUT OF TOWN PHYSICIAN	Added
	03/25/15 02:03:59	Travis, Kelly

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ROA 067

Park Ridge Health
100 Hospital Drive
Hendersonville, NC 28792-

Immunization

Vaccine	Date Given	Admin Person	Site	Amount	Manufacturer	Expiration Date
Influenza virus vaccine ⁰¹	11/19/2012	Johnson RN, Shannon	Deltoid, Rt	0.5mL	Merck & Company Inc	6/30/2013
pneumococcal 23-valent vaccine	2/23/2012	McClung RN, Cody	Deltoid, Lt	0.5mL	MERCK & CO., INC.	6/22/2013

Order Comments

O1: INFLUENZA virus vaccine

Please call Pharmacy for dose if patient not previously vaccinated

Emergency Room Record

Neck pain

Patient: ADELL JR, HORACE L MRN: 399529 FIN: 2453241
Age: 53 years Sex: Male DOB: [REDACTED]
Associated Diagnoses: None
Author: STOMBAUGH DO, JASON T

Basic Information

Time seen: Date & time 03/27/2015 15:08:00.

History source: Patient.

Arrival mode: Private vehicle.

History limitation: None.

Additional information: Chief Complaint from Nursing Triage Note: 03/27/2015 12:03 EDT Chief Complaint Pt c/o of neck pain x4 months. Pain increased since last Tuesday. CT scan done last week. Dx with chronic disc and pinch nerve issues. Dr. Robert Smith.

History of Present Illness

The patient presents with neck pain. The onset was chronic. The course/duration of symptoms is constant. Location: Bilateral neck. Type of injury: none. The location where the incident occurred was at home. Radiating pain To the right upper extremity. To the left upper extremity. The character of symptoms is pain. The degree at present is minimal. The exacerbating factor is movement. The relieving factor is rest. Risk factors consist of none. Prior episodes: chronic. Therapy today: prescription medications. Associated symptoms: none.

Review of Systems

Constitutional symptoms: Negative except as documented in HPI.
Skin symptoms: Negative except as documented in HPI.
Eye symptoms: Negative except as documented in HPI.
ENMT symptoms: Negative except as documented in HPI.
Respiratory symptoms: Negative except as documented in HPI.
Cardiovascular symptoms: Negative except as documented in HPI.
Gastrointestinal symptoms: Negative except as documented in HPI.

Laboratory Medical Director: Rory Dalton, MD 828-681-2172

Radiology Medical Director: Carlton Jenkins, MD 828-681-2247

Admit: 3/27/2015

Disch: 3/27/2015

Room:

DOB: [REDACTED] Bed:

Sex: Male Age: 53 years

Patient Type: Emergency

Print Date/Time: 6/22/2015 16:06 EDT

Patient Name: ADELL JR, HORACE L

MR#: 399529

FIN#: 2453241

Admitting Physician: STOMBAUGH DO, JASON T

Attending Physician: STOMBAUGH DO, JASON T

Print ID: Henn, Canissa B

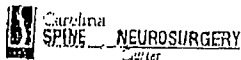
Chart Request ID: 100339055

Page 2 of 4

Privileged and Confidential do not re-release

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ROA 068



AN AFFILIATE OF MICHIGAN HEALTH

7 VANDERBILT PARK DR
ASHEVILLE, NC 28303
Phone: 828-255-7776
Fax: 828-274-7855

HORACE L ADELL JR

Patient #: 244067

DOB [REDACTED] 53 years;

Date of Encounter: 04/02/2015

History of Present Illness

Patient words: "see Dr Rhodon about MRI"

The patient is a 53 year old male

Note: Patient presents today with an 8 daily history of the acute onset of severe posterior neck bilateral shoulder and bilateral upper extremity pain in the triceps forearms and to the fingertips. This occurred when he was working building shelves and burring of new supplies at he and his wife's new business and Myrtle Beach South Carolina. He has no prior history of neck problems. He has had some low back pain and sciatic problems in the past but none currently. He was seen at an emergency room and Myrtle Beach and returned to the actual area where they reside. He was seen again at the Park ridge Hospital emergency room recently but apparently they were unable to get an MRI scan. He was sent to open MRI recently and was found to have severe C5-6 spondylosis stenosis and herniated disc. He was referred to us for urgent neurosurgical consultation.

His pain is 10 out of 10. It is constant severe stabbing throbbing and sharp he has numbness and tingling in the fingertips of all the fingers on both hands sparing the palms. Every activity including standing walking lifting stairs kneeling coughing sneezing twisting lying in bed bending forward bending backward squatting and sitting as well as driving and riding in a car have all severe to exacerbate his pain. He is taking the Percocet per day. He has been to his primary care doctor's office on several occasions to get IM Toradol injections. He has tried standing under a hot shower. He is wearing a soft cervical collar and this helps a little bit.

He denies bowel or bladder dysfunction, he denies gait disturbance although every step severely exacerbates his pain. He denies falls. He denies fevers or chills. He has had some night sweats recently associated with medications.

He is on Coumadin for a history of pulmonary embolus. His first pulmonary embolus was 2 years ago and apparently a complete evaluation was unable to find a reason for this. He thinks he may have been seen by hematologists but no diagnosis was obtained. He was taken off Coumadin after one year but after only a few days he had a second recurrent pulmonary embolus. He was placed back on Coumadin and has been on Coumadin since then. He checks his INR at home and it was 1.9 2 days ago. He is on Coumadin to the present day.

Allergies

No Known Drug Allergies 04/02/2015

No Known Allergies (Environmental or Food) 04/02/2015

Past Medical History

Blood Clot

Blood Pressure Medication

Blood Thinners

Family History

Diabetes; mother, sister and brother

First Degree Relatives

Heart Disease; father

High Blood Pressure; father

Rheumatoid Arthritis; mother

Social History

Alcohol use; occasional

Current some day smoker

Current work status; self employed

Exercise; light

Illicit drug use; prefer to discuss with physician

Marital status; married

Tobacco use; Current, some days, cigarette smoker.

The physical exam findings are as follows.

His motor testing is 5/5 upper extremities. He does note pain with resistance against his deltoids bilaterally.

Sensory exam is present to light touch even though subjectively he has numbness in the tips of his left fingers

X-rays were obtained it shows good positioning of the bone graft with hardware intact

his blood pressure was up slightly today and he has been having headaches.

CERVICAL DISC DISPLACEMENT (722.0 | M50.20)
Current Plans:

- CERVICAL SPINE X-RAY, AP / LAT ONLY (72040); Routine
- Started TramADOL HCl 50MG, 2 (two) Tablet every six hours, as needed, #90, 05/13/2015, No Refill.
- Started Gabapentin 300MG, 1 (one) Capsule See Notes, #90, 05/13/2015, Ref. x2.
- Started Cyclobenzaprine HCl 10MG, 1 (one) Tablet every eight hours, #90, 05/13/2015, No Refill.
- Started OxyCODONE HCl 10MG, 2 (two) Tablet every 4-6 hrs, #100, 05/13/2015, No Refill.
- Physician notes: we have reviewed postop activity and instructions. We did review the x-rays

we discussed postop activity and instructions including range of motion exercises continuing to use ice and light massage to the neck muscles where he has spasms.

We have added gabapentin because he has the burning numbness sensation in his left hand. We have given him instructions on titration of the medication.

He was given a renewal on his oxycodone and Flexeril and his wife thought adding tramadol might help with his pain so he tried a few of hers. He is quite large man semi-take more medicines to give him good pain relief. We reminded him not to take any anti-inflammatory medications for the next 2 months we will the bone graft has a chance to heal.

We have discussed physical activity with postop restrictions.

He may wear his cervical collar as tolerated.

I strongly encouraged him to followup with his primary care physician to have his blood pressure reevaluated. It could be the pain is causing his blood pressure to be elevated but we do want that to be monitored.

I will see him back in the office in one month. Should he have been problems or questions prior to that appointment I have asked him to contact the office and he and his wife verbalized understanding

cc Dr Robert Smith
Forge Mtn Medical (Mills River)

Current Plans:

- Patient Education: Smoking: Ways to Quit: addiction

Rhonda Lawrence FAPR

RHONDA L LARIMORE FNPC

Eric L. Rhoton, M.D.
Carolina Spine & Mission
7 Vanderbilt Park Drive
Asheville, NC 28803
Telephone No. (328) 255-7776

Daniel E. Peagler, Esquire
Michael Johnson, P.C. & Associates
2001 Lincoln Street
Columbia, South Carolina 29201

RE: Horace L. Adell, Jr.
Date of Birth: [REDACTED]
Social Security No. [REDACTED]
Date of Accident: March 24, 2015

Dear Attorney Peagler:

I am aware Horace Adell has some history of back issues predating his work accident of March 24, 2015, where he was working on at his Myrtle Beach office when he fractured/injured his spine. He was carrying a 5 gallon bucket of wax when he felt a crack/pop in his neck. Horace had put ice on his neck just after this happened. Pain got progressively worse through the evening until an ambulance had to be called.

1. To a reasonable degree of medical certainty, it is my professional medical opinion that Horace Adell most probably (more than 50%) needs medical treatment for his ^{neck} back because the work accident of March 24, 2015 caused injury to his spine, making the recommended treatment (including surgery) for his spine necessary.

☒ I Agree

☐ I Disagree

COMMENTS:

2. To a reasonable degree of medical certainty, it is my professional medical opinion that Horace Adell most probably (more than 50%) has and will require medical treatment for his back because the work accident of March 24, 2015 (while carrying 5 gallon containers of floor wax)) aggravated a pre-existing condition to his spine, making the recommended treatment for his spine necessary.

☒ I Agree

☐ I Disagree

COMMENTS:

3. Due to the injuries suffered/aggravated condition to his back, Mr. Horace Adell is not able to work at his regular job at this time

☒ I Agree

☐ I Disagree

COMMENTS:

4. Due to the injuries suffered/aggravated condition to his back, Mr. Horace Adell is able to work with the following restrictions if provided by his employer

☐ I Agree

☒ I Disagree

WORK RESTRICTIONS (If applicable):

5. It is my opinion that Mr. Horace Adell has reached maximum medical improvement for his spine injury. If not at maximum medical improvement or if treatment is necessary to maintain the current level of disability, that treatment is noted below.

☐ I Agree

☒ I Disagree

SIEGEL CHIROPRACTIC, INC.
140 Airport Rd, Arden, NC 28704
828-681-5681

To whom it may concern:

Horace Adell has been a patient of mine for many years. His office visits were purely maintenance visits for his lower back due to his type of work. I would keep him aligned to prevent any injury. He never had any acute or chronic issues. His neck was rarely addressed as there was no concern there. If you have any questions feel free to call me.

Sincerely,



Dr. Clay Siegel



Claimant's Name: Horace L. Adell, Jr. Employer's Name: Clean Streak, Inc.
Address: 33 Roseland Drive Address: 235 Old Turnpike Road
City: Mills River State: NC Zip: 28759 City: Mills River State: NC Zip: 28759
Home Phone: () - Work Phone: () - Carrier: Builders Mutual Insurance Company
Preparer's Name: Richard C. Detwiler, Attorney for Defendant Preparer's Phone #: (803) 404-6900
Builders Mutual Insurance Company only

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$TBD 2. AWW: \$TBD Date of Injury: 03/24/2015 (alleged)
3. Type of Injury and body part(s): Alleged injury to neck and back.
4. Facts in controversy: (1) Whether Claimant has suffered a compensable accident and injury; (2) Need for wage and/or medical benefits; (3) AWW and CR.
5. Legal issues involved: (1) Compensability; and (2) Entitlement to benefits under the Act.
6. Unusual aspects: (1) On information and belief, if an injury by accident occurred at all, it was not within the Employers scope of business but rather occurred while Claimant was working on his "second home"; (2) Claimant is sole owner of Employer and there were no witnesses to this alleged accident; (3) AWW & CR are issues as the Claimant is also the employer and therefore has sole control over all records; (4) This case will take at least 2-3 hours to try.
7. Witnesses (designate if expert):* See attached Notice of Witnesses and APA Submissions.
8. Exhibits: See attached Notice of Witnesses and APA Submissions.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
See attached Notice of Witnesses and APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Denied claim.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

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

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: (See Certificate of Service) mailed

on the 5th day of February 2016 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature]
Date of hearing: February 17, 2016

Email: RickDetwiler@CallisonTighe.com
Time needed for hearing: 2 - 3 hours.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. File No. **1504993**

Horace L. Adell, Jr.,	)	
	)	
Claimant,	)	
	)	
-vs-	)	DEFENDANTS' NOTICE OF WITNESSES
	)	AND APA SUBMISSIONS
Clean Streak, Inc.,	)	
	)	
Employer,	)	
	)	
-and-	)	
	)	
Builders Mutual Insurance Company,	)	
	)	
Carrier/Defendants.	)	

<u>TABS</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
A.	Mills River Physical Therapy 4687 Boylston Hwy. Mill River, NC 28759-6731	05/04/15 - 12/10/15	183 - 249
B.	Carolina Spine and Neurosurgery Rhonda L. Larimore, FNPC 7 Vanderbilt Park Dr. Asheville, NC 28803	06/17/15	250 - 252

EXHIBITS:

1.	North Carolina Form 18 (Notice of Accident to Employer).	253
2.	North Carolina Form 19 (Employer's Report of Employee's Injury), completed by Claimant's wife.	254
3.	Deposition Transcript of Claimant.	

WITNESSES:

1. Representative of Employer may be called to testify.
2. Claimant.
3. Defendants reserve the right to call any witness identified by the Claimant.



CALLISON TIGHE & ROBINSON, LLC
Richard C. Detwiler, Esquire
Post Office Box 1390
Columbia, South Carolina 29202
(803) 404-6900
ATTORNEY FOR DEFENDANT BUILDERS
MUTUAL INSURANCE COMPANY ONLY

Columbia, South Carolina

February 5th, 2016

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

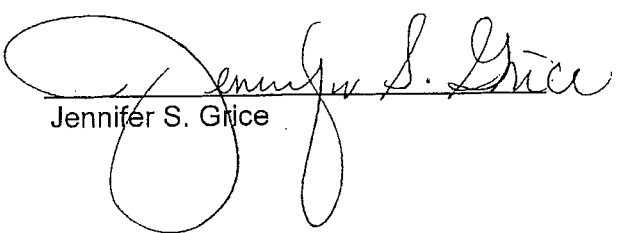
I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorney for Defendant Builders Mutual Insurance Company, do hereby certify that I have served the below parties with copies of the following document(s), in the manner indicated below, on February 5th, 2016:

Pleading(s): Pre-Hearing Brief
Notice of Witnesses and APA Submissions

Parties served: **Via Ecase Only**
The Honorable T. Scott Beck
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Via U.S. Mail
Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Via U.S. Mail
Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer S. Grice

Columbia, South Carolina

February 5th, 2016

North Carolina Industrial Commission

EMPLOYER'S REPORT OF EMPLOYEE'S INJURY OR OCCUPATIONAL DISEASE TO THE INDUSTRIAL COMMISSION

To the Employer:

A copy of this Form 19 accompanied by a blank Form 18 must be given to the employee. It does not satisfy the employee's obligation to file a claim. The filing of this report is required by law. This form MUST be transmitted to the Industrial Commission through your Insurance Carrier.

To the Employee:

This Form 19 is not your claim for workers' compensation benefits. To make a claim, you must complete and sign the enclosed Form 18 and mail it to Claims Administration, N.C. Industrial Commission, 4335 Mail Service Center, Raleigh, NC 27699-4335 within two years of the date of your injury or last payment of medical compensation. For occupational diseases, the claim must be filed within two years of the date of disability or the date your doctor told you that you have a work-related disease, whichever is later.

The use of this form is required under the provisions of the Workers' Compensation Act

IC File # _____

*Emp. Code # _____

*Carrier Code # _____

Employer FEIN _____

Carrier File # _____

***Required Information:**

The IC File # is the unique identifier for each report. It will be provided by claim adjuster and is to be referenced in all future correspondence.

Employee's Name Horace L. Adell, Jr. Employer's Name Clean Streak Inc. Telephone Number 825 891-8800
 Address 33 Roseland Dr. City Mills River NC State NC Zip 28759
 City Mills River State NC Zip 28759 Insurance Carrier Builders Mutual Policy Number WCP 1004894 04
 Home Telephone 828 891-9682 Work Telephone 828 891-8800 Center's Address PO Box 150005 City Raleigh NC State NC Zip 27624-0005
 Social Security Number [REDACTED] Sex M Date of Birth 11 Operator's Telephone Number 919-845-1976 Fax Number _____

Employer	1. Give nature of employer's business	<u>Janitorial</u>		
	2. Location of plant where injury occurred	<u>County</u> _____ <u>Department</u> _____ <u>State</u> <u>NC</u> <u>If employer's premises</u>		
	3. Date of injury	<u>3/25/15</u>	4. Day of week	<u>Wednesday</u> Hour of day <u>4:00</u> ☐ A.M. ☒ P.M.
	5. Was employee paid for entire day	<u>YES</u>	6. Date disability began	<u>3/25/15</u> ☐ A.M. ☐ P.M.
	7. Date you or the supervisor first knew of injury	<u>3/25/15</u>	8. Name of supervisor	<u>SELF</u>
	9. Occupation when injured	_____		
	Person Injured	10. (a) Hours employed by you	(b) Wages per hour \$ _____	
11. (a) No. hours worked per day		(b) Wages per day \$ _____	(c) No. of days worked per week _____	
(d) Avg. weekly wages w/ overtime \$ _____		(e) If board, lodging, fuel or other advantages were furnished in addition to wages, estimated value per day, week or month \$ _____ per _____		
12. Describe fully how injury occurred and what employee was doing when injured:		<u>moving + installing shelving + setting up Temporary Storage Facility for myrtle Beach expansion</u>		
Cause And Nature Of Injury	(Statement made without prejudice and without vouching for correctness of information)			
	13. List all injuries and specify body part involved (e.g. right hand or left hand): <u>NECK</u>			
	14. Date & hour returned to work <u>11</u> at <u>AM</u>			
	15. If so, at what wages \$ _____ per _____			
	16. At what occupation _____			
Fatal Cases	17. Employee's salary continued in full? _____			
	18. Was employee treated by a physician <u>YES</u>			
19. Has injured employee died		20. If so, give date of death (Submit Form 29) <u>11</u>		
Employer name signed by <u>Clean Streak Inc.</u>		Date Completed <u>3/30/15</u>		
Official Title <u>Vice President</u>		_____		

OSHA 301 Information:

Case Number from Log: _____	Date Hired: <u>11</u>	Time Employee began work on date of incident: <u>8:00</u> ☒ A.M. ☐ P.M.	If off-site medical treatment provided, answer entire next line.
Name of facility: _____	Address: Street/City/Zip/Telephone _____		ER visit? ☒ Yes ☐ No Overnight stay? ☐ Yes ☒ No

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

SELF-INSURED EMPLOYER OR CARRIER-MAIL TO:

NCIC - CLAIMS ADMINISTRATION
 4335 MAIL SERVICE CENTER
 RALEIGH, NORTH CAROLINA 27699-4335
 MAIN TELEPHONE: (919) 807-2800
 HELPLINE: (800) 688-8349
 WEBSITE: HTTP://WWW.IC.NC.GOV/

FORM 19
 8/1/08
 PAGE 1 OF 2

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RESEARCHER: _____
CD: _____
EC: _____
DATA ENTRY: _____

FORM 19

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. File No. **1504993**

Horace L. Adell, Jr.,)
)
 Claimant,)
)
 -vs-)
)
 Clean Streak, Inc.,)
)
 Employer,)
)
 -and-)
)
 Builders Mutual Insurance Company,)
)
 Carrier/Defendants.)
 _____)

**SUPPLEMENTAL
DEFENDANTS' NOTICE OF WITNESSES
AND APA SUBMISSIONS**

<u>TABS</u>	<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATES OF REPORTS</u>	<u>APA PAGE NO.</u>
A.	Waccamaw Community Hospital Carol A. Rahter, MD 4070 Hwy 17 Bypass Murrells Inlet, SC 29576	3/25/15	138 - 144

EXHIBITS:

1. North Carolina Form 18 (Notice of Accident to Employer).
2. North Carolina Form 19 (Employer's Report of Employee's Injury), completed by Claimant's wife.
3. Deposition Transcript of Claimant (to be submitted upon receipt).

WITNESSES:

1. Representative of Employer may be called to testify.
2. Claimant.

3. Defendants reserve the right to call any witness identified by the Claimant.



CALLISON TIGHE & ROBINSON, LLC
Richard C. Detwiler
Post Office Box 1390
Columbia, South Carolina 29202
(803) 404-6900
ATTORNEY FOR DEFENDANT BUILDERS
MUTUAL INSURANCE COMPANY

Columbia, South Carolina

August 13th, 2015

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

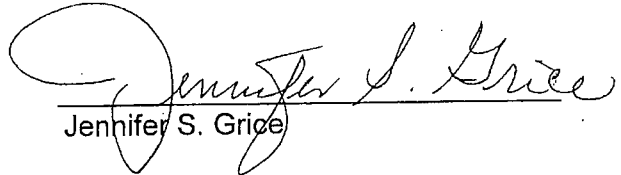
I, the undersigned, Jennifer S. Grice, of the law offices of Callison Tighe & Robinson, LLC, attorney for Defendant Builders Mutual Insurance Company, do hereby certify that I have served the below parties with copies of the following document(s), in the manner indicated below, on August 13, 2015:

Pleading(s): Supplemental
Notice of Witnesses and APA Submissions

Parties served: **Via Ecase Only**
The Honorable Susan S. Barden
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Via U.S. Mail
Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Via U.S. Mail
Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer S. Grice

Columbia, South Carolina

August 13, 2015

FORGE MOUNTAIN
MEDICINE PLLC
A Service of Park Ridge Health

Forge Mountain Medicine
127 Vance Hill Drive
MILLS RIVER, NC 28759-4996
Phone: (828) 890-3883
Fax: (828) 890-3100

PATIENT: HORACE ADELL Jr.
DATE OF BIRTH: [REDACTED]
DATE: 05/27/2014 03:30 PM
HISTORIAN: self
VISIT TYPE: Office Visit

Chief Complaint/reason for visit:

The patient is a 52 year old male who presents with new patient establish care.

History of Present Illness:

1. new patient establish care

Horace is a 53 yo African American male here to est. care. Former pt of Dr. Johnson's. He has hx of diabetes managed on Metformin. Last A1C at 7.4 on 5-1-14, HTN, hyperlipidemia (on lipitor with no myalgia), obesity, anxiety, SMOKER, hx of blood clots, on Coumadin and INR's ck'd with machine at home. There is a family history diabetes mellitus and obesity.

Problem List:

Problem Description	Onset Date	Chronic
Irritable bowel syndrome	03/14/2012	Y
Gastroesophageal reflux disease	04/12/2012	Y
Pure hypercholesterolemia	09/17/2013	N
Anxiety state	04/12/2012	Y
Diabetes	07/31/2013	Y
Blood coagulation disorder	09/17/2013	N
Obstructive sleep apnea syndrome	08/16/2012	N
Malaise and fatigue	03/14/2012	Y

PAST MEDICAL/SURGICAL HISTORY (Detailed)

System	Disease/disorder	Onset Date	Management	Date	Comments
ADLEL, HORACE	Larry. 000000001049	[REDACTED]	5/27/2014 03:30 PM	1/7	

psychiatric Anxiety
 Extensive, bilateral 2012 Hospitalization
 pulmonary emboli,
 recurrent.
 hematology wk/up
 negative
 gastrointestinal GERD
 al
 hematologic Thromboembolic
 Event

DIAGNOSTICS HISTORY:

Test	Ordered	Interpretation	Result	completed
MRI Brain	03/21/2013			04/10/2013
Without And				
With Dye -				
Bun/Cre				

Family History (Detailed)

Relationship	Family Member Name	Deceased	Age at Death	Condition	Onset Age	Cause of Death
				Family history of Diabetes mellitus	N	
				Family history of Cancer, prostate	N	
				Family history of Hypertension	N	
				Family history of CVD	N	
Father				Hypertension	N	
Father				Diabetes mellitus	N	

Social History (Detailed)

Tobacco use reviewed.

Preferred language is English.

The patient does not need an interpreter.

MARITAL STATUS/FAMILY/SOCIAL SUPPORT

Currently married.

SMOKING STATUS

Use Status	Type	Smoking Status	Usage Per Day	Years Used	Total Pack Years
yes	Cigarette	Heavy tobacco smoker	0.5 Packs		

ALCOHOL

There is a history of alcohol use.

1 drink consumed occasionally.

CAFFEINE

The patient uses caffeine: coffee and tea. - more than 6 cups a day.

LIFESTYLE

DIET

regular diet.

ADELL, HORACE Larry. 000000001049 11/07/2013 05/27/2014 03:30 PM 2/7

Medication Reconciliation

Medications reconciled today.

Allergies

No known allergies.

Ingredient	Reaction	Medication Name	Comment
NO KNOWN ALLERGIES			

REVIEW OF SYSTEMS

System	Neg/Pos	Details
Psych	Positive	Insomnia.
Neuro	Positive	Memory impairment.
MS	Positive	Back pain, Joint pain.
Integumentary	Positive	Rash.
GU	Positive	Urinary frequency.
GI	Positive	Blood in stool, Heartburn.
ENMT	Positive	Otagia.
Constitutional	Positive	Chills, Fatigue, Night sweats.
Cardio	Positive	Edema.
Allergic/Immuno	Positive	Seasonal allergies.
Respiratory	Negative	Chronic cough, cough, dyspnea, known TB exposure and wheezing.
Psych	Negative	Anxiety and depression.
Neuro	Negative	Dizziness, extremity weakness, gait disturbance, headache, numbness in extremity, seizures and tremors.
MS	Negative	Joint swelling, muscle weakness and neck pain.
Integumentary	Negative	Brittle hair, brittle nails, change in shape/size of mole(s), hair loss, hirsutism, hives, pruritus and skin lesion.
GU	Negative	Dribbling, dysuria, hematuria, polyuria, slow stream, urinary incontinence and urinary retention.
GI	Negative	Abdominal pain, change in stool pattern, constipation, decreased appetite, diarrhea, nausea and vomiting.
Eyes	Negative	Eye discharge, eye pain and vision changes.
ENMT	Negative	Ear drainage, hearing loss, nasal drainage, sinus pressure and sore throat.
Constitutional	Negative	Fever, malaise, weight gain and weight loss.
Cardio	Negative	Chest pain, claudication and irregular heartbeat/palpitations.
Allergic/Immuno	Negative	Contact allergy, environmental allergies and food allergies.

VITAL SIGNS

Time	Temp	Pulse	Resp	B/P	Ht Ft	Ht In	Wt Lb	Wt oz	Wt Kg	BMI	BSA	Pain	Method
		/min	/min	mm/Hg						kg/m ²	m ²		
3:39 PM	98.7	99		142/78	6	4	284		128.82	34.57		0/10	Numeric Pain Int Scale

Vital Sign Position

ADELL, HORACE Larry. 000000001049 1/27/2014 05/27/2014 03:30 PM 3/7

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ROA 084

Time: 3:39 PM B/P: 142/78 Position: sitting

Time: 3:39 PM PeakFlow L/Min: SPo2% Rest: 97 SPo2% Amb: O2 LPM: L/min

MEASURED BY

Time: 3:39 PM Measured by: Kari Burroughs

Screening Summary:

Pain is described as 0/10. Evaluated pain score with Numeric Pain Intensity Scale. Functional status has not changed. There are no indicators of domestic abuse present. The following were reviewed: nutrition, tobacco use, alcohol use, caffeine use and drugs of abuse. Educational factors were reviewed this visit.

Physical Exam

Exam	Findings	Details
Constitutional	Normal	Patient appears well nourished, well developed, hydrated and is in no apparent distress.
Eyes	Normal	Conjunctiva - Right: Normal, Left: Normal. Sclera - Right: Normal, Left: Normal.
Neck Exam	Normal	Inspection - Neck is supple. No masses or palpable nodules. Thyroid gland - Normal and symmetrical.
Lymph Detail	Normal	No cervical or supraclavicular adenopathy.
Respiratory	Normal	Lungs are clear to auscultation bilaterally. Normal respiratory effort is noted.
Cardiovascular	Normal	Heart rate - Regular rate. Rhythm - Regular. Extremities - No edema.
Abdomen	Normal	Inspection - Normal. Auscultation - Normal. Anterior palpation - Normal. No abdominal tenderness. No palpable mass.
Extremity	Normal	No edema. No calf tenderness.
Psychiatric	Normal	Orientation - Oriented to time, place, person & situation. Appropriate mood and affect.

Completed Orders (this encounter)

Order	Details	Reason	Side	Interpretation	Result	Initial	Region
						Treatment	
						Date	
Referrals: Wingate Pharm D Clinic		Diabetes					

Assessment/Plan

Detail	Type	Description
1.	Assessment Plan Orders	DM2 Controlled (250.00). The patient had the following test(s) completed today Referrals: Wingate Pharm D Clinic.
2.	Assessment	Anxiety (300.00).
3.	Assessment	Dyslipidemia (272.4).
4.	Assessment	GERD (530.81).
5.	Assessment	Hypertriglyceridemia (272.1).

ADELL, HORACE Larry. 000000001049 1 5/27/2014 03:30 PM 4/7

6. Assessment Neck pain (780.1).
7. Assessment Sleep Apnea, Obstructive (327.23).
8. Assessment Blood clotting disorder (286.9).
Plan Orders CBC and Plt w Diff R21685459 85025, Prothrombin Time R892494 85610 and Vitamin B12 Level R891398 82607 to be performed.
9. Assessment Fatigue (780.79).

Medications (Added, Continued or Stopped this visit)

Medication & Dose	Qty	Refills	Directions	Stop Date	Rx Comment
albuterol sulfate 2.5 mg/0.5 mL solution for nebulization	1	0	inhale 0.5 milliliter by nebulization route 4 times every day		
albuterol sulfate HFA 90 mcg/actuation aerosol inhaler	1	1	inhale 2 puff by inhalation route every 4 - 6 hours as needed		
atorvastatin 40 mg tablet	30	5	take 1 tablet by oral route every day		pt. states compliant
BD LUER-LOK SYRINGE 3 ML	10	1	USE AS DIRECTED WITH TESTOSTERONE INJECTIONS		pt. states compliant
Celebrex 200 mg capsule	60	5	TAKE 1 CAPSULE (200MG) BY MOUTH 2 TIMES A DAY AS NEEDED W/ FOOD		pt. states compliant
Coumadin 5 mg tablet	60	5	TAKE 1 1/2 TABLETS (7.5MG) ON MONDAYS AND THURSDAYS AND 2 TABLETS (10MG) THE OTHER 5 DAYS OF THE WEEK		pt. states compliant
Daily Multiple Tab		0	take 1 tablet by oral route every day with food		pt. states compliant
Flexeril 5 mg tablet	30	0	take 1 tablet by oral route 3 times every day		
Flonase 50 mcg/actuation Nasal Spray	2	2	spray 2 spray by intranasal route every morning and bedtime in each nostril		prn use
METFORMIN HCL ER 500 MG TABLET	60	5	TAKE 2 TABLETS BY MOUTH EVERY DAY WITH THE EVENING MEAL.		Pt states that he take one tab in the AM and one in evening 6/10/2014
Miscellaneous MISCELL.	30	0	Alere PT/INR test strip- use as directed		
Neurontin 300 mg capsule	0	0	take 1 capsule by oral route 3 times every day		
omeprazole 20 mg Cap, Delayed Release		0	take 1 capsule (20MG) by oral route prn		prn use
oxycodone 10 mg tablet	0	0	take 1 tablet by oral route every 8 hours prn for pain		
oxycodone-acetaminophen 7.5 mg-325 mg tablet	90	0	take 1/2 - 1 tablet by oral route every 8 - 12 hours as needed for severe pain		prn use

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Percocet 7.5 mg-325 mg tablet	7	0	take 1 tablet by oral route every 6 hours as needed	
PRAVASTATIN SODIUM 20 MG TAB	30	5	TAKE 1 TABLET BY MOUTH EVERY DAY AT BEDTIME	PT IS TOTALLY OUT NEED NEW RX PLEASE THANK YOU
prednisone 10 mg tablet	10	0	take 1 tablet by oral route every day x 10 days for rash	
PROZAC 20 MG PULVULE	30	1	TAKE 1 CAPSULE BY ORAL ROUTE EVERY DAY IN THE MORNING	
Restoril 15 mg capsule	60	5	take 1 - 2 Capsule (15MG) by oral route every day at bedtime as needed	prn use
syringe with needle (disp) 3 mL 20 x 1 1/2"	1	0	Use as directed w/ testosterone injections	prn use
testosterone cypionate 200 mg/mL intramuscular oil	4	5	inject 1 milliliter by intramuscular route every month	pt. states compliant
tramadol 50 mg tablet	0	0	take 2 tablet by oral route every 6 hours as needed	
TRIAMTERENE-HCTZ 37.5-25 MG TB	30	5	TAKE 1 TABLET BY ORAL ROUTE EVERY DAY	Patient not compliant
Viagra 50 mg tablet	8	3	take 1 tablet by oral route every day as needed approximately 1 hour before sexual activity	
Vitamin D3 2,000 unit capsule		0	take 1 by Oral route once	
Xanax 1 mg tablet	90	0	take 1 tablet by oral route 3 times every day	
Zanaflex 2 mg capsule	60	1	take 1/2 pill by oral route every 6 hours prn	Pt states that he is taking 1 or 2 times per week 6/10/2014

Lab Studies:

Status	Lab Study	Timeframe	Date	Comments	Interpretation	Value
Final	CBC and Plt w Diff R21685459					
	85025					
Final	Prothrombin Time R892494					
	85610					
Final	Vitamin B12 Level R891398					
	82607					

Referrals:

Status	Physician	Timeframe	Appointment
completed	Referrals: Wingate Pharm D Clinic		

Status	Diagnosis	Physician	Specialty	Timeframe	Date
completed	Diabetes mellitus	Referrals: Wingate Pharm D Clinic	Wingate Pharm D Clinic		

ADELL, HORACE Larry. 000000001049 10/27/2014 03:30 PM 6/7

Counseling / Educational Factors:
Counseling / educational factors reviewed.

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ADELL, HORACE Larry. 000000001049 [REDACTED] 05/27/2014 03:30 PM 7/7

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ROA 088

FORGE MOUNTAIN
MEDICINE PLLC
A Service of Park Ridge Health

Forge Mountain Medicine
127 Vance Hill Drive,
MILLS RIVER, NC 28759-4996
Phone:(828)890-3883
Fax:(828)890-3100

PATIENT: HORACE ADELL
DATE OF BIRTH: [REDACTED]
DATE: 06/06/2014 04:00 PM
VISIT TYPE: Office Visit

Chief Complaint/reason for visit:

The patient is a 52 year old male who presents with discuss labs and Muscle Pain.

History of Present Illness:

1. discuss labs

Pt is here to discuss labs and f/up on labs and chest X-rays that were performed at PRMA hosp today

2. Muscle Pain

Onset: 1 week ago. Severity level is moderate. It occurs constantly and is worsening. The pain is aching. Context: there is no injury. There are no aggravating factors. There are no relieving factors. Associated symptoms include weakness. Additional information: d dimer negative; cxr negative; wbc a bit high; cough progressing; he is a smoker; no hemoptysis and denies edema or orthopnea; trop was negative.

Problem List:

Problem Description	Onset Date	Chronic
Irritable bowel syndrome	03/14/2012	Y
Gastroesophageal reflux disease	04/12/2012	Y
Pure hypercholesterolemia	09/17/2013	N
Anxiety state	04/12/2012	Y
Blood coagulation disorder	09/17/2013	N
Obstructive sleep apnea syndrome	08/16/2012	N
Malaise and fatigue	03/14/2012	Y

ADELL, HORACE Larry. 000000001049 1 [REDACTED] /06/2014 04:00 PM 1/4

Allergies

Ingredient	Reaction	Medication Name	Comment
NO KNOWN ALLERGIES			

REVIEW OF SYSTEMS

System	Neg/Pos	Details
MS	Positive	Weakness.
Respiratory	Negative	Dyspnea and orthopnea.
GU	Negative	Nocturia.
Cardio	Negative	Chest pain, edema and irregular heartbeat/palpitations.

VITAL SIGNS

HEIGHT	Time	ft.	in	cm	Last Measured	Height Position	%	Measured By
	4:11 PM	6	6	198.12	05/27/2014	Standing		Lisa Love

WEIGHT/BSA/BMI	Time	lb	oz	kg	Context	%	BMI kg/m2	BSA m2	Measured By
	4:11 PM				dressed with shoes				Lisa Love

BLOOD PRESSURE	Time	BP mm/Hg	Position	Side	Site	Method	Cuff Size	Measured By
	4:11 PM	112/80		left	arm	manual	adult	Lisa Love

TEMPERATURE/PULSE/RESPIRATION	Time	Temp F	Temp C	Temp Site	Pulse/min	Pattern	Resp/min	Measured By
	4:11 PM	98.6	37		109	regular	16	Lisa Love

PULSE OXIMETRY/FIO2	Time	Pulse Ox (Rest %)	Pulse Ox (Amb %)	O2-Sat	O2 LPM	Timing	FIO2 %	L/min	Delivery Method	Measured By
	4:11 PM	98		RA		Pre-tx				Lisa Love

Physical Exam

Exam	Findings	Details
Constitutional	*	Overall appearance - non-toxic.
Eyes	Normal	Conjunctiva - Normal lids and conjunctiva. Sclera is anicteric.
Nasopharynx	Normal	Lips/teeth/gums - Normal. Oropharynx - Normal.
Neck Exam	Normal	Inspection - Neck is supple. No masses or palpable nodules.
Respiratory	*	Auscultation - Side: bilateral, Location: posterior, Findings: rhonchi. Effort - shallow.
Cardiovascular	Normal	Regular rate and rhythm. No murmurs, gallops, or rubs.
Extremity	Normal	Extremities appear normal. No edema or cyanosis, or clubbing.

Assessment/Plan

Detail	Type	Description
1.	Assessment	Cough (786.2).

ADELL, HORACE Larry. 000000001049 1 2/26/2014 04:00 PM 2/4

Impression: pneumomoni, b.e. and chf ruled out; i think he has a mor + copd exacerbation with acute bronchitis and will treat him with abx and inhalers; strong, urged tobacco cessation and weight loss. rtc next week if not improved.

Medications (Added, Continued or Stopped this visit)

Medication & Dose	Qty	Refills	Directions	Stop Date	Rx Comment
Zithromax Z-Pak 250 mg tablet	6	0	take 2 tablet by oral route every day for 1 day then 1 tablet (250 mg) by oral route once daily for 4 days	06/10/2014	
albuterol sulfate HFA 90 mcg/actuation aerosol inhaler	1	0	inhale 2 puff by inhalation route every 4 hours as needed		
atorvastatin 40 mg tablet	30	5	take 1 tablet by oral route every day		pt. states compliant
BD LUER-LOK SYRINGE 3 ML	10	1	USE AS DIRECTED WITH TESTOSTERONE INJECTIONS		pt. states compliant
Coumadin 5 mg tablet	60	1	TAKE 1 1/2 TABLETS (7.5MG) ON MONDAYS AND THURSDAYS AND 2 TABLETS (10MG) THE OTHER 5 DAYS OF THE WEEK		pt. states compliant
Daily Multiple Tab		0	take 1 tablet by oral route every day with food		pt. states compliant
Flonase 50 mcg/actuation Nasal Spray	2	2	spray 2 spray by intranasal route every morning and bedtime in each nostril		prn use
hydrocodone 7.5 mg-acetaminophen 325 mg tablet	60	3	take 1 tablet by oral route every 6 hours as needed for pain		prn use
METFORMIN HCL ER 500 MG TABLET	60	2	TAKE 2 TABLETS BY MOUTH EVERY DAY WITH THE EVENING MEAL.		pt. states compliant
omeprazole 20 mg Cap, Delayed Release		0	take 1 capsule (20MG) by oral route prn		prn use
prednisone 10 mg tablet	25	0	TAKE 1 TABLET BY MOUTH 3 TIMES DAILY		not taking
Restoril 15 mg Cap	60	3	take 1 - 2 Capsule (15MG) by oral route every day at bedtime as needed		prn use
syringe with needle (disp) 3 mL 20 x 1 1/2"	1	0	Use as directed w/ testosterone injections		prn use
testosterone cypionate 200 mg/mL intramuscular oil	10	0	inject 1 milliliter by intramuscular route every 2 weeks x 6 doses, then 1 milliliter every month thereafter		pt. states compliant
triamterene 37.5 mg-hydrochlorothiazide 25 mg tablet	30	3	take 1 tablet by oral route every day		Patient not compliant
Vitamin D3 2,000 unit capsule		0	take 1 by Oral route once		
Zanaflex 2 mg capsule	0	0	take 1/2 pill by oral route every 6 hours prn		

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ADELL, HORACE Larry. 000000001049 06/06/2014 04:00 PM 3/4

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ADELL, HORACE Larry. 000000001049 11 [REDACTED] /06/2014 04:00 PM 4/4

P283

ROA 092

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL

W.C.C. File No. 1504993

Horace L. Adell, Jr., ... Employee/Respondent

vs.

Clean Streak, Inc., Employer, and its Carrier
Builders Mutual Insurance Company,

of whom Builders Mutual Insurance Company are Appellant.

**BRIEF OF
BUILDERS MUTUAL INSURANCE COMPANY**

APPEAL FROM THE ORDER OF
COMMISSIONER T. SCOTT BECK
DATED: MAY 18, 2016

Richard C. Detwiler
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: (803) 404-6900
Facsimile: (803) 404-6901
Email: RickDetwiler@CallisonTighe.com

This Appellant's Brief is submitted on behalf of Builders Mutual Insurance Company (Carrier). For the reasons set forth below, the Commissioner's Decision and Order, dated May 18, 2016, should be reversed.

STATEMENT OF THE CASE

The hearing in this matter was held on February 17, 2016, before Commissioner Beck based upon the issues raised in the Forms 50 and 51 filed by the parties. The matter had previously been scheduled before Commissioner Barden for August 31, 2015 but the Claimant's lawyer withdrew his Form 50.

The Claimant is the sole owner of the Employer, Clean Streak, Inc. Clean Streak, Inc. had its own counsel present at the hearing. Naturally, it supported the claim that Horace L. Adell, Jr. was injured by accident arising out of and in the course of his employment. The Carrier denies that the Claimant suffered a compensable injury by accident under the Act and asserts that, even if he did, he is not entitled to a running award of temporary total disability benefits because he admits that he has been working.

At the hearing, the Claimant asserted that he was injured while working at his second home in Myrtle Beach, which he asserts doubled as a new office of the Employer, while lifting two buckets of wax belonging to the Employer. The Carrier asserts that the Claimant himself characterized this so-called "office" as his second home; that Claimant changed his story about how he was injured multiple times; and that the Claimant at times hid and then minimized the fact that he had suffered from back and neck problems for years, treating with doctors and a chiropractor.

The Claimant sought a finding of compensability with regard to his neck injuries, casually-related medical care for that condition and entitlement to temporary total disability benefits from March 25, 2015 to the present and continuing. The Defendants asserted that, even if the Claimant's injuries did occur at work, which they vehemently deny, the evidence shows that the Claimant is and has been continuing to work for Clean Streak, Inc. and that on the advice of others he has deliberately chosen to forego his salary from the business in order to make his claim for temporary total disability benefits. The Carrier also points out that the Claimant admitted that he sought and obtained surgery for his neck injury, which the Carrier maintains was a chronic problem, without notice to or approval from the Carrier.

The Commissioner Beck found the claim compensable and ordered as follows:

1. The Defendants shall pay temporary total disability benefits in the amount of \$766.05 per week from March 25, 2015 to the present and continuing until further Order of this Commission or agreement of the parties;
2. The Defendants shall pay for charges for the Claimant's causally related medical care from the date of the injury and continuing further Order of this Commission.

The Carrier has appealed.

DISCUSSION

1. **Claimant did not suffer an injury by accident arising out of and in the course of his employment with Clean Streak, Inc.**

The Claimant testified that he is 53 years-old and married to Susan D. Adell who also works in the business of Clean Streak, Inc. (Tr. p. 40.) Mrs. Adell, however, is also out on disability, so she takes only a "very minimal" salary. (Tr. p. 85; See also Deposition of Susan Adell, pp. 28-29.) Claimant graduated from high school in North Carolina. (Tr.

p. 41.) Claimant testified that he served in the military for five years and was honorably discharged. (Tr. p. 42.) However on cross-examination, the Claimant admitted that he had received a general discharge after he was encouraged to leave the Army. (Tr. p. 91.) He started Clean Streak, Inc. in approximately 1992. Clean Streak, Inc. is a company which provides industrial cleaning services to businesses and other commercial settings, including hospitals. (Tr. p. 43-45.) At the time of the accident, Clean Streak, Inc. had 32 to 35 employees all in North Carolina. It recently expanded into South Carolina and, according to the Claimant, and it now has three employees in this State. (Tr. p. 45.) According to Susan Adell, who is Vice President and an officer, Clean Streak, Inc. was substantially more profitable in 2016 than it was in 2015 after Mr. Adell stopped his salary. (Deposition of Susan Adell, pp. 39-40.)

Just before this alleged accident occurred the Claimant and his wife purchased a home in Myrtle Beach, which was in foreclosure. Public records in Horry County show that the home is titled in the name of "Susan D. Adell and Horace L. Adell." The Claimant testified that he "designated the home as his work location also" (Tr. p. 46.), but there is no evidence that the Employer leases the home from the Claimant or otherwise pays rent in any way. Claimant testified he gets all of the Employer's work mail at a post office box in Myrtle Beach and receives only his personal mail at the house. (Tr. p. 47.)

The Claimant testified that on the morning of March 24, 2015 he met with a paper supply vendor for about two and half hours. Right after that meeting he had another meeting with a salesman. He did not do any physical work that morning. "That was the only strenuous work I did that morning." (Tr. p. 49.) Later, according to the Claimant, he and a part-time worker, Matt, were unloading materials out of a trailer and into the garage

at his house. (Tr. p. 52.) Claimant testified that they unloaded bags of white play sand and , he said, five gallons buckets of wax used in his business. (Tr. p. 52-53.) According to the Claimant's testimony at the hearing, he injured himself sometime in the early afternoon when he was moving the wax. The Claimant testified that he picked up two five gallon buckets of wax and turned around and "all the sudden it felt – you know when you straighten your arm out and your arm pops, well, just ten times that and then it immediately started burning. So I said, 'ouch'." Claimant testified that he felt a pop and burning in the back of his neck. (Tr. p. 53-54.) The Claimant testified that he continued on with his work during the day. When he quit, he and Matt ordered pizza and he put ice and then hot packs on his neck, laid down and fell asleep. According to the Claimant, "the next thing I know I was waking up screaming and hollering, couldn't hardly breathe and tried to lift my foot up to get out the bed. Couldn't get it. So I just reached over and called my wife and told her there was something bad wrong." (Tr. p. 55.) This was apparently in the early morning hours of March 25, 2015. The Claimant then called 911. (Tr. p. 55.) The Claimant's wife, Susan Adell, testified he told her that he hurt himself building shelves at their home. (Deposition of Susan Adell, pp. 14-15.)

The Claimant's story at the hearing is inconsistent with the documentary evidence in the case and the multiple histories he has given. The Horry County Fire & Rescue (EMS) records reflect a completely different story. They arrived on the scene at approximately 1:00 a.m. on March 25, 2015. According to these EMS records, they found Mr. Adell kneeling against a coffee table in the living room of his home. The EMS record states:

"Pt stated that he is having extreme neck pain. *He stated that*

his pain has been off and on for three months. He went to the chiropractor and got adjusted recently which helped the pain temporarily. Pain was in his neck and went into both arms. Pt stated that he took pain medicine after he ate dinner. He also said that he is supposed to take a muscle relaxer at bedtime but did not take any tonight." (Employer's APA pp. 1-2.)

There is no mention in the EMS records of any injury as a result of picking up buckets of wax or any other accident. The emergency department records from the Waccamaw Community Hospital reflect the same thing. According to those records, the Claimant presented with "neck pain which he states began about three months ago, but has been exacerbated tonight. ***Patient has seen several physicians concerning this issue and has not had significant relief.***" (Claimant's APA p. 2.) Again, there is no mention of any accident occurring earlier in the afternoon. The emergency records also reflect a CT scan obtained which revealed *no acute abnormalities*. (APA p. 5.) Another note in the emergency room records reflect that Claimant had been seen by a chiropractor and a Dr. Smith for three months. (APA p. 8.) The emergency room records further reflect that Claimant "appears to be anxious unable to sit still. Reports difficulty sitting still, rocking back and forth. *States that he has been hurting for two to three months.*" (APA p. 34.)

Two days after being released from the Waccamaw Medical Center emergency room, the Claimant went to Park Ridge Health Hospital in Hendersonville, North Carolina near his permanent residence on March 27, 2015. The history in those records reflect that he had been *complaining of neck pain for four months*. Those records reflect that the onset of his neck pain was "chronic" and that there was no type injury, and that whatever might have occurred was "at home". (Claimant's APA p. 46.)

The Claimant testified that, before this incident which allegedly occurred on March-

24, 2015, he had never been diagnosed with any kind of disc problem with his neck. (Tr. p. 49.) Asked whether he had ever experienced any intense neck pain with radicular symptoms, the Claimant explained that he had because he is 6'6" tall and the machines used to clean and wax floors are not made for someone his height. (Tr. pp. 49-51.)

On cross-examination the Claimant admitted he had been seeing a chiropractor three times a week for back and joint pain "for many years" and had been regularly taking muscle relaxers. He also admitted that the chiropractor had treated his shoulders and neck area. (Tr. pp. 65-66.) He further admitted that he had previously seen medical doctors at the Forge Mountain Medical Center for chronic muscle, back and neck pain before this alleged accident. Those records from May 27, 2014 (See Carrier's APAs at pp. 273-279) reflect he had chronic back pain and joint pain (APA p. 275) and was taking a host of drugs, including Celebrex, Flexeril, Oxycodone, Restoril, Xanax, Prozac and Viagra. (Carrier's APA pp. 277-278.) On June 6, 2014, he returned to Forge Valley Medical Center and presented with chronic "muscle pain" which had increased in severity. (APA pp. 280-283.)

The Employer filed a First Report of Injury with the North Carolina Industrial Commission and the Carrier. There is nothing in the record reflecting when that First Report was actually filed. In that report, *signed by the Claimant's wife* and dated March 30, 2015, she was asked to describe fully how the injury occurred and what the employee was doing when injured. The response reflected on this report was "moving and installing shelving and setting up temporary storage facility for Myrtle Beach expansion." (Carrier's APA p. 254.) There is no mention of a lifting injury of any sort. When quizzed about what her husband told her on the phone the morning of March 25, 2015, Mrs. Adell testified that

the Claimant told her he hurt his neck while "setting up shelves." (Deposition of Susan Adell, pp.14-15.)

The Claimant's original Form 50 (filing a claim only) dated May 7, 2015 stated that "the Claimant was working on a storage facility when he **fell** injuring his neck/back." On May 18, 2015, the Claimant filed a Form 50 requesting a hearing, stating that the "Claimant was working on a storage facility when he fractured his neck/back. He was carrying a five gallon bucket of wax when he felt a crack/pop in his neck. Claimant put ice on his neck just after this happened. Pain got progressively worse through the evening." Both Form 50s, of course, ask, "To the best of your knowledge, did you have any prior permanent disability?" Despite having chronic back and neck problems for years, the Claimant failed to answer this question in either Form 50. When his Form 50 was re-filed following his earlier withdrawal prior to the hearing with Commissioner Barden, he answered, "No."

The Claimant's story evolved dramatically over time, to the date of the hearing. At no time contemporaneously with the accident did the Claimant report having picked up two five-gallon buckets of wax, as he testified at the hearing. Further, the Claimant testified that he had never had any problems with his neck before, but the EMS and emergency room records of March 25, 2015 and March 27, 2015 are replete with references to his serious ongoing neck problems for which he was receiving medical treatment and taking medications. The evolution of the Claimant's story begins shortly afterward, as reflected in the medicals records of Carolina Spine and Neurosurgery on April 2, 2015. There, the Claimant stated he had no prior history of neck problems and that the accident occurred while he was "building shelves and (sic) burring (sic) of new supplies at he (sic) and his wife's new business and (sic) Myrtle Beach." (Claimant's APA p. 55.) The March 30, 2015,

records of Forge Mountain Medical Center, an affiliate of Park Ridge Heath, reflect that the Claimant was there with his wife and they reported that he complained of

"acute severe neck pain that started while he was in Myrtle Beach working on his second home five days ago. He was lifting a sixty pound bag of dirt, had instant pain, and actually caused the patient to scream in pain. The Claimant further reported previous neck pain for about three months, which he said was exacerbated after picking up the bag of dirt."

The Claimant bears the burden of proof, by preponderance of the evidence, that he sustained an injury by accident arising out of and in the course of his employment. That burden is not met when a Claimant's story evolves so dramatically as Mr. Adell's has. The most credible medical history tends to be that which is given contemporaneously with an event. In this case, Mr. Adell woke up in the middle of the night with excruciating neck pain according to him and the EMS records. He told the EMS attendant and the doctors in the emergency room at Waccamaw Medical Center that he had been having significant neck pains for three to four months. Nowhere in those records does he describe any acute injury by accident. Nowhere in those records does Claimant say that he hurt his neck while lifting two five gallon buckets of wax, or while lifting a sixty pound bag of dirt, or from a fall, or while building shelving, or that any incident at all occurred while he was working for Clean Streak, Inc. Indeed, the medical evidence reflects that Claimant had chronic, long-term problems with his neck and back for which he had been treated for years.

The Claimant has not proved by a preponderance of the evidence that he suffered an injury by accident arising out of and in the course of his employment with Clean Streak, Inc. Further, there is no medical evidence to support a claim for the exacerbation of a pre-existing condition under SC Code § 42-9-35, nor does Claimant make such a claim.

2. Even if Claimant suffered a compensable injury, Claimant has not proven by a preponderance of the evidence that he is entitled to temporary total disability benefits.

Total disability, whether temporary or permanent, is defined as "the incapacity for work." South Carolina Code §42-9-10. An employee who is capable of performing other work that is continuously available to him will not be deemed totally disabled because he is unable to resume the duties of the particular occupation in which he was engaged at the time of his injury. Wynn vs. Peoples Natural Gas Company, 238 S.C. 1, 118 S.E. 2d 812 (1961).

The Claimant never quit working following the alleged accident, he just quit paying himself a salary. He stated that this was on the advice of his "bookkeeper." The Claimant did eventually have neck surgery for his long-suffered pain. This occurred in April 2015.

The Claimant admitted that he never sought authorization from the Carrier for such surgery. (Tr. p. 82.) After his surgery, he went back to work in the office and continues to do so to this day. On cross-examination, he remarkably attempted to evade these questions.

Q. And you continue to go into the office and work some, don't you?

A. No, sir.

Q. Okay.

A. Sir, I need to clarify that.

Q. Please do.

A. I can only be on my feet two to three hours a day.

Q. Okay.

A. I can only sit at my desk and I can answer the phone and I can sign payroll checks. That is the extent of what I can do. If there is a job that needs to be estimated, someone has to go with me --

Q. Okay.

A. --and do that. She made that very clear that is the only capacity and that was so the business could still run.

Q. Okay. And so you go in and you sign checks --

A. I'm sorry.

Q. --and do paperwork and then you do some estimating with help from somebody else. What else do you do?

A. There's nothing else I can do. I'll take a meeting. I'll take a meeting. I can take a meeting.

Q. Okay. And who would you meet with? Vendors and advertising people like the man who came in earlier?

A. Yeah. Heads of departments in hospitals, people like that.

Q. Okay. So you're selling if you will? You're selling your company?

A. No. These are what we call quality control meetings.

Q. Okay. I'm with you. And would that be in Myrtle Beach as well as Asheville?

A. Yes, sir.

Q. Okay. So you're traveling down to Myrtle Beach and meeting with these people you just described as well as in Asheville; correct?

A. Yes, sir.

Q. Okay. And when a decision needs to be made about the company -- hiring, firing, anything like that -- you make those decisions, don't you?

A. No, sir.

Q. So you don't have anything to do with those decisions?

A. I did not say --I did not say that. I answered the question you asked me.

Q. Okay. So are you consulted? Do you get involved in the business decisions of the company?

A. I am consulted.

Tr. p. 87, l. 12 - Tr. p. 89, l. 14.

So, the Claimant has continued to go into the office where he answers the phone; signs payroll checks; does paperwork; prepares job estimates; meets with vendors, advertising people, heads of departments in hospitals and "people like that"; attends quality control meetings; and actually travels between Asheville and Myrtle Beach for such meetings, staying a week or more on each visit. He also is involved in the business decisions in the company. These are precisely the same things he did before the alleged injury. In fact, his company has continued to grow such that he now has three employees in South Carolina. He stays at his second home in Myrtle Beach, where he alleges this work accident occurred, six or seven days at a time, traveling back and forth to Asheville. (Tr. pp. 90-91.) His business is more profitable than ever.

How, then, can the Claimant seriously demand temporary total disability? Not only is the Claimant able to perform work, he is working.

3. The Commissioner properly excluded a statement from the Claimant's chiropractor because that statement was not a medical record admissible under the Administrative Procedures Act.

The Claimant proffered a statement from a chiropractor in North Carolina characterizing his years of treatment of the Claimant. However, the Claimant failed to

proffer the actual records of the chiropractor to show what, exactly, the chiropractor had been treating the Claimant for. The Claimant testified that he had been treated "for many years" by the chiropractor for muscle and joint pains, including treatment for his shoulders and neck. However, instead of offering the chiropractor's records as evidence, the Claimant simply submitted a statement from the chiropractor characterizing his years of treatment of Claimant as merely "maintenance." Based upon the Claimant's failure to submit his chiropractor's actual records, this Commission should find the negative inference that the records show years of treatment to the Claimant's neck, consistent with the Claimant's testimony. A bald statement characterizing the records, without the records themselves, was properly excluded by the hearing Commissioner.

4. The hearing Commissioner improperly awarded payment for medical treatment and surgery when Claimant made no attempt to inform the Carrier of this surgery and obtain prior authorization.

The Claimant also sought and received medical attention, including a surgery for his neck, without any prior approval of the Carrier. Instead, he made a claim with his health insurance carrier which, by definition, required a representation that this was not work-related. The claim was still under investigation and at that point had been neither accepted nor denied. However, the Claimant received surgery within a week of his alleged accident and injury and, by his own testimony, he made no attempt to get prior authorization from the Carrier. (Tr. P. 82.)

There is no evidence that this surgery was needed on an emergency basis. The Claimant has a neck injury of dubious origin, a condition for which he suffered for years, but even more so for the three to four months prior to the alleged incident, and now seeks

to hang the cost of surgery around the neck of the Carrier who should not be held responsible. The Commission, therefore, cannot order the Carrier to pay for such medical attention if the Carrier was never given an opportunity to investigate and authorize such surgery.

CONCLUSION

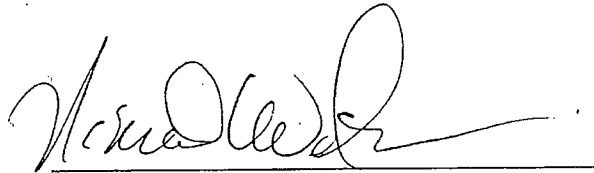
The Claimant failed to carry his burden of proof by preponderance of evidence that he suffered a compensable injury by accident arising out of and in the course of his employment. The Claimant's story was a moving target over the life of the claim. The first medical record showed that the Claimant's neck pain was a continuation of severe neck pain he had been having for three to four months prior. Another medical record indicates that he picked up a sixty pound bag of dirt, which the Claimant himself described as "white play sand." Another medical record indicates that the Claimant injured himself while building shelving. The first Form 50 filed by the Claimant indicates that he injured his back when he *fell*. There is no credible explanation for these many different stories told by the Claimant. If, in fact, the Claimant suffered an injury when he lifted two five gallon buckets that would have been easy enough to remember and tell the EMS technicians and doctors at the emergency room on the night he was first admitted. In fact, it just didn't happen.

The Claimant went back to work immediately after his neck surgery in April 2015, yet demands (and was awarded by the hearing Commissioner) temporary total disability benefits from the date of the alleged accident and continuing. In fact, the Claimant and Employer are one and the same. The Claimant controls his own salary. He chose to not pay himself so he could go on disability, just as his wife has been. In the meantime, he

has continued to work doing precisely the same work he did prior to the accident, running the business as an owner of a business should. The business has continued to thrive, expanding in South Carolina and maintaining operations in North Carolina. It is more profitable than ever. The Claimant by definition is not totally disabled, and has not proven his entitlement to temporary total disability benefits by preponderance of evidence.

For the foregoing reasons, the hearing Commissioner's Decision and Order dated May 18, 2016 should be reversed.

Respectfully submitted,



Richard C. Detwiler
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street
Post Office Box 1390
Columbia, SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6901
Email: RickDetwiler@CallisonTighe.com

ATTORNEY FOR BUILDERS MUTUAL
INSURANCE COMPANY, APPELLANT

Columbia, South Carolina

July 11, 2016

CERTIFICATE OF SERVICE

**Horace L. Adell, Jr. v. Clean Streak, Inc.
and
Builders Mutual Insurance Company
WCC No. 1504993**

I, the undersigned, Jennifer Grice, of the law offices of Callison Tighe & Robinson, LLC, attorneys for Defendants, Builders Mutual Insurance Company, do hereby certify that I have served the below named parties with a copy of the **Appellate Brief** by causing a copy of same to be placed in the United States Mail, first-class postage affixed, addressed as follows, on July 22, 2016:

Parties served:

Via Hand Delivery

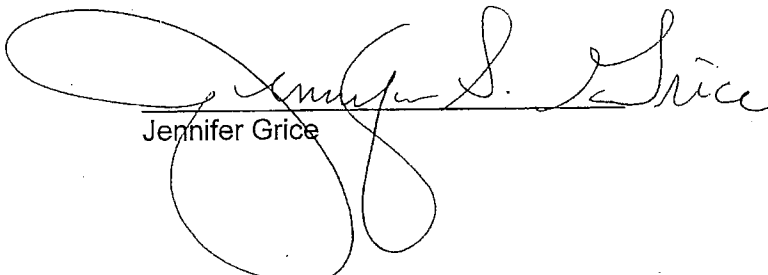
The Honorable Amy Bracy
SC Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

Via U.S. Mail

Daniel E. Peagler, Esquire
Attorney At Law
2001 Lincoln Street
Columbia, SC 29201

Via U.S. Mail

Mikell Wyman, Esquire
Gallivan, White & Boyd P.A.
Post Office Box 22768
Charleston, SC 29413


Jennifer Grice

Columbia, South Carolina

July 22 2016

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL

WCC File No. 1504993

Horace L. Adell, Jr.,.....Claimant/Respondent

VS.

Clean Streak, Inc., Employer, and its Carrier
Builders Mutual Insurance Company.....Appellant

RESPONDENT'S BRIEF OF THE CLAIMANT

Daniel E. "Ernie" Peagler
MICHAEL JOHNSON & ASSOCIATES
2001 Lincoln Street
Columbia, South Carolina 29201

Telephone: (803) 814-0550
Facsimile : (803) 814-0549
Email: epeagler@johnsonsclaw.com

STATEMENT/EVIDENCE OF THE CASE

On March 25, 2015, the Claimant, Horace L. Adell, Jr., sustained compensable injuries to his neck while performing his job duties for Defendant Clean Streak, Inc. This is a denied claim. The issues before this Commissioner were for medical care and the Claimant's entitlement to temporary total disability benefits.

On November 3, 2015, the Claimant filed a Form 50, Request for a Hearing, seeking: (1) medical examination and treatment for his neck and (2) temporary total disability benefits.

A Hearing was held before the undersigned on February 17, 2016, in Aynor, South Carolina. At that time, this Commissioner received testimony from Daniel Woron, William "Trey" Trembley III, Matthew Maziarz, and the Claimant Horace Adell. The Defendants offered no witnesses.

The first witness to testify was Daniel Woron, the Claimant's brother-in-law. Mr. Woron testified he attended a family gathering 2 days before the Claimant's date of accident. (Transcript of Hearing ((Hereinafter "T")) p.8, ll. 10-13). Mr. Woron authenticated the photos of the Claimant submitted which showed him holding children, smiling, etc. (T. at p.8 ll. 1525, p.9 ll. 1-8, Claimant's APA #9).

Mr. Woron further testified the Claimant did not appear to be in any type of medical distress at the family gathering (T. at p.9, ll.9-11) and the Claimant did not have any issues picking up children (T. at p.9 ll. 12-14) or any issues doing any other lifting or any other activity that day. (T. at p.9, ll. 15-18). Mr. Woron also testified he did not see any instances that would have caused any concern over the Claimant's medical condition at the family gathering. (T. at p. 10, ll.5-8).

The next witness called on behalf of the Claimant was William Trembley, III (Trey). Mr. Trembley testified his occupation is the sales and marketing director for Building Industry

Synergy Magazine which covers Myrtle Beach, Horry, and Georgetown Counties. (T. at p. 13 11.24-25, p. 14 ll. 1-5). Mr. Trembley stated he first met Horace and his wife during a home show in February 2015 at the Myrtle Beach Convention Center. (T. at p. 14, 11.6-12).

Mr. Trembley further testified he had an ongoing business relationship with the Adells (Claimant Horace Adell and his wife, Susan) (T. at p. 15, 11.4-11) and met them in their office on February 25th, 2015 at Cedar Run Trail in Myrtle Beach, South Carolina (T. at p. 15, ll. 13, p. 16 ll. 16-19) on . Mr. Trembley also stated there was "no doubt" the office seemed to be set up as an ongoing business office. (T. at p. 15, 11.24-25, p. 16) When asked whether the Claimant appeared to be in any type of medical distress when they met at the Claimant's office, Mr. Trembley testified "Absolutely not. Just quite contrary. I was very impressed by his physical stature and how he carried himself and the fact he would get in there and do the jobs himself." (T. at p. 17, 11.9-14).

Matthew Maziarz was the next witness called on behalf of the Claimant. Mr. Maziarz testified he was working with the Claimant on or around March 25th, 2015, doing tile work on the Clean Streak office bathroom and help the Claimant unload a trailer of equipment the Claimant brought from Asheville. (T. at p. 25, ll. 13). Mr. Maziarz further testified he finished the tile work, and then sometime in the afternoon he and the Claimant started unloading the trailer of supplies (T. at p. 25, 11.23-25), including five-gallon buckets of wax, equipment, sand, and cleaning stuff for the business. (T. at p. 26, ll. 1-6).

Maziarz further testified the Claimant seemed good, energetic, and definitely not hurt that morning, and he did not notice any type of guarded movement or anything that would indicate kind of medical distress. (T. at p. 26, ll. 13-20). Mr. Maziarz also stated he had never heard Horace (Claimant) complain of any kind of neck problems before that day he was injured. (T. at p. 28, 11.11-14).

Maziarz then testified the Claimant had two five-gallon buckets, one in each arm. "And I remember he was carrying them out and when he went to set them down he obviously showed some discomfort and some pain and grabbed at his neck And then, of course, you know, he said we need to take a break and we - - you know, that's pretty much it for the rest of the day. He end up going in and putting a pack on his neck and, you know, pretty much taking it easy for the rest of the day after that." (T. at p.26 11.2225, p.27 ll. 1-6).

Mr. Maziarz further testified that later that night he heard something and discovered it was the Claimant, laying in the floor at the bottom of the stairs screaming and needing to go to the hospital. (T. at p.28, 11.2-6). Mr. Maziarz called 91 1, and the Claimant was picked up by an ambulance. (T. at p.28, 11.7- 10). After waiting several hours while the Claimant was treated at the hospital, Mr. Maziarz and the Claimant went back to Asheville. (T. at 29, 11.2-1 8).

On cross-examination, Mr. Maziarz testified that at the time of the Claimant's accident he was a sub-contractor (T. at p. 30, ll. 14-25, p. 3 1, ll. 1-3) and at the time of the hearing he longer does work for Clean Streak, as he is manager with Bojangles, working full-time. (T. at .31, 11. 19-21).

Mr. Maziarz further testified on cross-examination that he actually saw the Claimant lift u two five-gallon buckets and that is when he said he hurt himself. (T. at p.32, ll. 1-7). Mr. Maziarz also testified that he was not aware of any other neck or back problems the Claimant had before March 25th. (T. at p.32, ll. 14-17).

On re-direct examination, Mr. Maziarz testified the buckets of wax weighed about 40 pounds each, and the bags of dirt or sand are "usually 80 pounds, or somewhere in there." (T. at p.36, 11.20-25, p.37, 11. 1-3).

The Claimant was the last witness to testify at the hearing. The Claimant testified at the time of the Hearing he was Fifty-four years old and was born on November 7, 1961. The Claimant

testified he is married, and his wife's name is Susan Adell and they have a daughter named Brittany. (T at p.40, 11.9-24).

The Claimant further testified he graduated from High School and then went to the military, where he served for five years in the 82nd Airborne, Green Beret, after which he was given an honorable discharge. (T. at p.42, 11.3- 11).

The Claimant testified he began cleaning buildings during his off-time from fulltime jobs which evolved into Clean Streak. (T. at 43, ll. 15-25). The Claimant stated he has been running Clean Streak for some time, and has experienced growth for the company in the last 15 years (T. at p.44 ll. 1-14), with 32 employees at the time of the hearing (T. at p.44, 1.25, p.45, 1. 1), plus three employees in South Carolina (T. at 45 11.39).

The Claimant then testified he and his wife decided to purchase a home in the Myrtle Beach area, and to put the office in the home as he started in Asheville. (T. at p.46, 11.2-6). The Claimant found a foreclosure to purchase which garage and office space, and this was designated as the work location also. (T. at 47, 11.7-24). The office was set up with a P.O. Box for the business mail, with a designated phone line for the business, and a storage facility for the business, and business only. (T. at 47, 11.8-23)

The Claimant testified the morning on or around March 24, 2015 he was meeting with a vendor for paper products, then a salesman. The Claimant further testified that before that day, he had never been diagnosed with any kind of disc problem in his neck (T. at p.49, 11.20-23), nor had the Claimant ever seen a specialist for his neck before the work accident of March 25, 2015. (T. at p. 51, ll. 15-18).

The Claimant testified he "got hurt" when he was taking stuff off the trailer and putting it in the garage where he kept the materials for the business, including sand used to clean floors,

paper products, and five-gallon buckets of wax. (T at p 52, ll. 1-25, p. 53, ll. 1-18). The Claimant further testified he was moving wax when he was injured, saying "I went to go on the back of the trailer, I picked up two five-gallon buckets like I've always done, just picked it up and I turned around with it and all the sudden it felt like - you know when you straighten your arm out and your arm pop, well, just ten times that and then it immediately started burning. So I said "Ouch." (T. at p.53, 11.23-25, p.54, The Claimant further testified he felt the pop in the middle of the neck back here and the burn in the same place. (T. at p.54, 11 .5-10). Then the Claimant put ice, then heat on his neck and laid down and went to sleep. (T. at p.54, ll. 15-24). The Claimant then woke up screaming, hollering, and could hardly breathe. The Claimant called his wife, then pulled himself to the stairwell, calling for Matt, telling him to call 911. (T. at 55, ll. 1-16).

The Claimant then testified the ambulance came and he told them his neck hurt all the time, he didn't know what else to say. (T. at p.56, 11.8-12). The Claimant then stated he had never experienced that type of pain before. (T. at p.56, ll. 17-19). The Claimant then said he was eventually referred to Dr. Rhoton who performed surgery on the Claimant's neck. (T. at 57 11. 1-2, 22-25).

The Claimant further testified Dr. Rhoton has been his main treating doctor, and that the treatment received from physical therapy has improved his condition, Claimant also feels he needs further treatment, and that he has not been released from his care. (T. at p. 58 ll 20-25, p. 59 ll 1-6 The Claimant then testified no doctor has said he is at maximum medical improvement, and he hopes to accomplish through additional medical care to go back to work (T at p. 59, 11.7-21).

The Claimant made a salary of \$1,500.00 per week from Clean Streak, Inc. (T. at p. 5 1, ll. 19-21). The Claimant was taken out of work right after this accident, and has not returned to work (as of the time of the hearing) since March 25, 2015. (T. at 58, 11.516).

STANDARD OF REVIEW

The Full Commission is given great discretion to review the decisions made at the Single Commissioner level as the ultimate finder of fact. However, it is also inherent in this discretion to determine whether to give weight to the Single Commissioner's determination as to the credibility of the witnesses and decide whether to reach conclusions of law and fact that can be consistent with those of the Single Commissioner. "Although it is logical for the Full Commission which did not have the benefit of observing the witness, to give weight to the hearing commissioner's opinion the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the hearing commissioner." McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992) (citing Green Raybestos-Manhattan Inc., 250 S.C. 58, 156 S.E.2d 318 (1967)).

The Full Commission is also given the responsibility to construe the Act liberally to provide coverage rather than deny coverage to injured workers. "The Workers' Compensation Act is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed." Bentley v. Spartanburg County, 398 SC 418, 730 S.E.2d 296, (2012). "Any reasonable doubt as to the construction of the Workers' Compensation Act will be resolved in favor of coverage." Bentley v. Spartanburg County, 398 SC 418, 730 S.E.2d 296, (2012).

ARGUMENT

I. THE SINGLE COMMISSIONER WAS CORRECT IN HIS DETERMINATION THE CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS NECK.

It should first be mentioned that the Single Commissioner, in his order of May 18, 2016, found as a matter of fact "I find the testimony of the Claimant to be credible. While discrepancies

exist as to the mechanism of injury, said discrepancies do not detract from the Claimant's honesty." Single Commissioner Order of May 18, 2016 (Hereinafter "Order") Finding of Fact #2. The Single Commissioner had ample opportunity to review all evidence and arguments of all counsel present, and view the Claimant as he presented his testimony and was subject to cross-examination by Appellants. Claimant would argue this finding of credibility is of much importance, particularly as Appellants appear to place great weight on credibility in their Appellant's brief.

Inconsistencies in the Appellant's brief also need to be addressed. For instance, Appellant's seem to place weight on the status of the Claimant's discharge from the military where he served for 5 years as a green beret in the 82nd Airborne. T. at 52-53. The Hearing Transcript shows where the Claimant indicated the discharge had been upgraded when asked about his answer in his deposition where originally he had been given a general discharge in order to go home and take care of his family. T. at 116.

Another inconsistency is a reference in Appellant's brief stating "Public Records in Horry County show the home is titled in the name of Susan D. Adell and Horace L. Adell." There is no reference to the transcript nor APA's for these records, nor do they appear to be present in the APA submissions by any party. Although most likely true, this statement should not be considered by any appellant review as there appears to be no basis for this statement in the record.

Yet another inconsistency is the mention referencing the Hearing transcript pages 65 and 66 where the Appellants state the Appellant "admitted that the chiropractor had treated his shoulders and neck area." Appellants brief p. 5. The actual testimony at the hearing only has the word "neck" mentioned one time on those cited pages, and it was in Claimant's counsel's question "Had you ever seen a specialist for your neck before the work accident of March 25th, 2015? To which the Claimant replied "No Sir. T. at 65-66.

Appellants also make a general statement on pages 14 and 15 of their brief where they write "Instead, he made a claim with his health insurance carrier which, by definition, *required* a representation that this was not workrelated [sic, emphasis added]. Not only is there no reference to the record for this blanket statement, it is patently false, and the Respondent would ask the Full Commission to take judicial notice of this, as health insurers pay for treatment on denied Workers' Compensation claims on a fairly regular basis. The Claimant directly addressed this issue in his testimony on cross-examination, where he was asked by Defense Counsel "And in order to get your health insurance to pay your bills, you specifically told BlueCross BlueShield that this did not happen at work; isn't that true? To which the Claimant replied "No, sir. I -- no, sir. That is not true." T. at 107, ll. 18-22.

The evidence that supports the Claimant's claim for compensability includes witness testimony, medical causation evidence, and the credible testimony of the Claimant. Appellants contend the Claimant had a pre-existing cervical disc issue for months before this accident, but show no evidence to support this allegation. There are references to prior back treatment and inconsistencies in some of the medical records, but when taken as a whole, the evidence clearly supports the finding of compensability by the Single Commissioner. The Appellants argue the chiropractor records *not* submitted with the proffered Chiropractor's statement should be construed against the Appellants, as they had ample notice of the proffered chiropractor's statement and did not submit any records from the chiropractor that would support the argument that the Claimant had a pre-existing cervical disc issue.

The witness testimony of Dan Woron was brief but important. Mr. Woron testified he was with the Claimant 2 days before the work accident at a family gathering, and noted the Claimant was in a good mood, appeared in no physical distress, had no issues lifting anything and

authenticated photos showing the Claimant smiling and holding children. T. at 10-11, photos at APA #10, pp. 179-182. This is important as it shows no apparent cervical neck issues 2 days before the work accident.

The next witness to testify was Trey Trembley, the sales and marketing director for Building Industry Synergy Magazine. Trey testified he met with Horace the morning of the work accident, and Horace did not appear to be in any type of medical distress (T. at 20). Trey also testified he met with the Claimant at the accident site, where he understood was the working office of Clean Streak's Myrtle Beach operations. T. at 18-20. Mr. Trembley specifically mentioned observing the garage and noticing the business supplies stored there. T. at 18.

Matthew Maziarz was the next witness to testify. Maziarz testified he was hired to help the Claimant unload a trailer of cleaning supplies and to tile the Claimant's office bathroom. T. at 31. Maziarz further testified he was tiling the bathroom that morning while the Claimant was meeting with gentlemen (T. at 32), and made the following observation of the Claimant: "He was good. You know, energetic, I guess and -- I mean, definitely not hurt." T. at 32, 11.15-16.

Maziarz then testified the Claimant was carrying two buckets of wax, one in each arm, and when the Claimant went to set them down he obviously showed some discomfort and some pain and grabbed his neck. T. at 33. Maziarz then testified the Claimant ended up going in and putting a "pack" on it and pretty much taking it easy the rest of the day. T. at 31. Maziarz then testified the Claimant was in excruciating pain later that night and had to go to the hospital. T. at 34. Mr. Maziarz also testified the Claimant was "hysterical" when the ambulance came to pick him up.

The Claimant then testified. The Claimant testified he began Clean Streak out of his home near Asheville North Carolina and has grown the company in North Carolina to where it employs 32 people and 3 people in South Carolina. T. at 57. The Claimant further testified he found a house with garage and office space to start the business in the Myrtle Beach area. T. at 58. He testified the office is set up with a P.O. Box for mail, and a designated phone line for the business at the location. T. at 59-60. The Claimant also stated the location had a garage storage area used exclusively for work supplies. T at 60. (Also see APA #8, pp.174-177 for photos of the Myrtle Beach office of Clean Streak at the work injury location).

The Claimant then testified he had never previously been diagnosed with any type of disc problem with his neck (T. at 62), and was injured while carrying two buckets of wax while unloading the supply trailer into the storage area after unloading some of the sand used for cleaning. T. at 67-68.

The Claimant testified he "got hurt" when he was taking material off the trailer and putting it in the garage where he kept the materials for the business, including sand used to clean floors, paper products, and five-gallon buckets of wax. (T at p 52, ll. 1-25, p. 53, ll. 1-18). The Claimant further testified he was moving wax when he was injured, saying "I went to go on the back of the trailer, I picked up two five-gallon buckets like I've always done, just picked it up and I turned around with it and all the sudden it felt like - you know when you straighten your arm out and your arm pop, well, just ten times that and then it immediately started burning. So I said "Ouch." (T. at p.53, ll.23-25, p.54, The Claimant further testified he felt the pop in the middle of the neck back here and the burn in the same place. (T. at p.54, ll. 5-10). Then the Claimant put ice, then heat on his neck and laid down and went to sleep. (T. at p.54, ll. 15-24). The Claimant then woke

up screaming, hollering, and could hardly breathe. The Claimant called his wife, then pulled himself to the stairwell, calling for Matt, telling him to call 911. (T. at 55, ll. 1-16).

The Claimant then testified the ambulance came and he told them his neck hurt all the time, he didn't know what else to say. (T. at p.56, 11.8-12). The Claimant then stated he had never experienced that type of pain before. (T. at p.56, ll. 17-19). The Claimant then said he was eventually referred to Dr. Rhoton who performed surgery on the Claimant's neck. (T. at 57 11. 1-2, 22-25). It should be noted that even the EMS report indicated an exacerbation, but does not explain what the exacerbation was.

Dr. Rhoton, the Claimant's primary treating physician and neurosurgeon who performed surgery on the Claimant, was the only provider to directly address causation for the Claimant's work injury. Dr. Rhoton opined the Claimant's injury to his neck was caused or aggravated by the work incident where the Claimant was lifting/carrying two buckets of wax, making the surgery to his neck necessary. APA #3, pp. 83-85. No medical evidence was presented to directly challenge Dr. Rhoton's opinion on causation. Dr. Rhoton also opined the Claimant was unable to work and had not reached maximum medical improvement. The Appellants argue there were pre-existing cervical neck issues yet are unable to provide medical reports prior to the Claimant's work accident which support their argument that the Claimant was suffering from a cervical disc issue before the work accident of March 24, 2015.

II. THE CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS AS A RESULT OF THE WORK INJURY OF MARCH 24, 2015

Appellants argue the Claimant should not be entitled to temporary total disability benefits as the Claimant did perform some work while he has been taken out of work by his medical providers and "elected" not to receive his usual salary. The Claimant was not able to do his regular

work with his company, but did do some ministerial-type work such as signing checks, participate in employment decision, and other tasks that could be handled such as occasionally meeting with customers. T. at 112.

The Claimant testified he was taken out of work right after the work accident and has not been able to return to work since the accident, and has not drawn a paycheck since the accident. T. at 73-74. The Claimant testified he was told by his bookkeeper and accountant he could not draw a paycheck until the claim was "all cleared up." T. at 108. This is not a case where the Claimant was able to do his regular job, but as the owner of the company he still had to do some ministerial tasks as described in his testimony. Dr. Rhoton had opined the Claimant was unable to work (APA #3, pp. 83-85) and there was no evidence presented that the Claimant, as an employee of Clean Streak, received any compensation from Clean Streak while his period of disability as documented by Dr. Rhoton has continued from the date of the work injury to the present and continuing. In South Carolina, disability is defined as the loss of earning capacity- in this case, the doctor has taken the Claimant out of work because of his injuries, and he has not been able to draw a paycheck, thus rendering the Claimant entitled to temporary total disability benefits. Defendants assert the Claimant's business "is more profitable than ever" in their brief, yet there is no reference to the record to support this statement.

Claimants also take issue with the Appellant's assertion that the Claimant "Chose not to pay himself so he could go on disability, just has his wife has been." Not only is this assertion patently false, there is no evidence to support this assertion, as the Claimant testified in the hearing "I want to go back to work. I mean, that's all I know." T. at 75, ll. 20-21.

III. THE SINGLE COMMISSIONER WAS CORRECT IN AWARDING CAUSALLY RELATED TREATMENT

Section 42-15-60 (A) provides "The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury...." It goes on further to say "If in an emergency, on account of the employer's failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, or ordered by the Commission."

In the instant case, there is no evidence submitted by the Appellants that suggests, despite being made aware of the Claimant's injury shortly after the work accident that they attempted to direct the Claimant to any authorized medical provider, or instruct him to go to any authorized medical provider selected by them. In fact, the Carrier in this case denied the claim and denied responsibility to provide any medical treatment to the Claimant. The Workers' Compensation Act does not require the Claimant to obtain prior authorization or even inform the Carrier of medical treatment provided in a denied case. To allow the carrier to avoid payment for medical expenses on a denied case for medical treatment not authorized by the carrier would allow the carrier a windfall in this instance, and shift the burden of medical treatment from the Workers' compensation carrier to the Claimant's health insurance carrier.

The extent of the Claimant's injuries point towards the emergent nature of his treatment. In his original history, Dr. Rhoton writes:

Patient presents today with an 8 daily [sic] history of the acute onset of *severe* [emphasis added] posterior neck bilateral shoulder and bilateral upper extremity pain in the triceps forearms and to the fingertips. This occurred when he was working building shelves and burring of new supplies at he and his wife's new business and [sic] Myrtle Beach South Carolina. He has no prior history of neck problems. He has had some low back pain and sciatic problems in the past but none currently. He was seen at an emergency room and Myrtle Beach and returned to the actual area where they reside. He was seen again at the Park Ridge Hospital emergency room recently but they were apparently unable to get an MRI scan. He

was sent to open MRI recently and was found to have *severe* [emphasis added] C5-6 spondylosis stenosis and herniated disc. He was referred to us for *urgent* [emphasis added] neurosurgical consultation. APA #3 p.54.

The above cite clearly indicates the necessity and emergent nature of the treatment provided to the Claimant by Dr. Rhoton, who was the primary treating neurosurgeon for the Claimant. Dr. Rhoton also in this record documents no prior neck issues regarding the Claimant.

It is clear from the nature of the medical treatment and records from Dr. Rhoton that the causally related treatment was necessary, and of an emergent nature. It is also clear from the history of this case the carrier never offered or instructed the Claimant to seek medical care from any specific provider, and never intended to provide medical treatment in this denied case.

IV. THE HEARING COMMISSIONER ERRED BY EXCLUDING A STATEMENT FROM DR. CLAY SIEGEL, THE CLAIMANT'S CHIROPRACTOR.

Respondent feels compelled to respond to Appellant's argument regarding the proffered submission of the expert report of Dr. Clay Siegel, which was proffered and is an issue on cross-appeal by the Claimant. Defendant's request a "negative inference" because the Claimant did not submit the entirety of Dr. Siegel's records into the record, only the summary where Dr. Siegel characterized his treatment of the Claimant as "purely maintenance visits for his lower back due to his type of work." Proffered statement of Dr. Clay Siegel, APA #178. This proffered APA is only referenced in this brief as response to Defense Counsel's reference to the same document.

Defense Counsel was aware of Dr. Siegel's treatment of the Claimant and this statement as early as July, 2015, as a copy of this same statement was provided to defense counsel in a prior scheduled hearing (set for July 30, 2015) as APA submission page 133. Despite having more

than ample time, Defendant's did not submit any of Dr. Siegal's records in their submissions for this hearing. Asking the Commission to find a negative inference for the records to show "years of treatment to the Claimant's neck" is completely without basis, especially given the fact that Defendants had more than ample opportunity to receive and submit the records themselves.

CONCLUSION

The Claimant argues he clearly met his burden of proof in establishing by more than a preponderance of the evidence that he met his burden of proof in establishing he suffered a compensable accident while in the course and scope of his employment, and also established the Claimant is entitled to temporary total disability benefits and causally related medical treatment as a result of the work accident of March 24, 2016. For the foregoing reasons in the record, this brief, and at oral argument, the Claimant requests the Hearing Commissioner's Decision and Order dated May 18, 2016 be AFFIRMED.

Respectfully submitted,



Daniel E. "Ernie" Peagler
Michael Johnson, P.C. & Associates
2001 Lincoln Street
Columbia, South Carolina 29201

Attorney for Claimant/Employee

Columbia, South Carolina

August 12, 2016

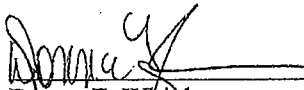
CERTIFICATE OF SERVICE BY MAIL

I, Donna F. Whigham, paralegal with Michael Johnson & Associates, P.C. hereby certify that I have on this day served the following in the matter of Horace L. Adell, Jr. v. Clean Streak, Inc., with a copy of the **Respondent's Brief of the Claimant**, by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

Richard C. Detwiler, Esquire
Callison Tighe
P.O. Box 1390
Columbia, SC 29202

Mikell Wyman, Esquire
Gallivan, White & Boyd, P.A.
P.O. Box 22768
Charleston, SC 29413

I also hereby certify that a regular communication by mail exists.


Donna F. Whigham
Paralegal to
Daniel E. "Ernie" Peagler

August 12, 2016

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1504993

HORACE L. ADELL, JR.,	)	
	)	
CLAIMANT,	)	
	)	
VS.	)	TRANSCRIPT OF PROCEEDINGS
	)	
CLEAN STREAK, INC.,	)	FEBRUARY 17, 2016
	)	
EMPLOYER,	)	
	)	
AND	)	
	)	
BUILDERS MUTUAL INSURANCE	)	
COMPANY,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

THIS HEARING WAS HELD BEFORE COMMISSIONER
T. SCOTT BECK, REPORTED BY SKYLET KEAN, COURT
REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF
SOUTH CAROLINA; SAID PROCEEDINGS WERE HELD AT THE
NEW COUNCIL CHAMBERS, 600 SOUTH MAIN STREET, AYNOR,
SOUTH CAROLINA, ON WEDNESDAY, FEBRUARY 17, 2016,
COMMENCING AT 2:35 P.M.

SKYLET KEAN (803) 609-0134
fttpam@aol.com

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PROCEEDINGS

THE COURT: Today's date is February 17, 2016. This is Workers' Compensation File Number 1504993. The claimant in this matter is Horace Adell, Jr. represented today by Attorney Danny Peagler. The employer is Clean Streak, Inc. represented today by Attorney Mikell Wyman. The carrier is Builders Mutual Insurance Company. They are represented today by Attorney Richard Detwiler. Date of alleged accident in this matter is March 24, 2015. The parties have stipulated to an average weekly wage of \$1500 and a compensation rate of 766.05.

We are here today on Claimant's Form 50. I received APAs from both the claimant and the defendant carrier in this matter.

MR. WYMAN: Commissioner, I have some as well. I apologize they were not prior to the pre-hearing.

THE COURT: And APAs from the defendant employer in this matter. I've also received the deposition testimony of Ms. Susan Adell has been marked as Defendant's Exhibit Number 1.

(DEFENDANT'S EXHIBIT NUMBER 1 WAS MARKED FOR

IDENTIFICATION.)

THE COURT: During the pre-hearing conference in this matter there were objections filed on behalf of the defendant to specifically Claimant's APAs 171, 172 and 178. 172 and 178 that objection is sustained. At the request of claimant's counsel 178 is proffered. Claimant 171 the objection is overruled providing that the testimony of Mr. Maziarz is provided at this proceeding. There's also a claimant objection to the deposition of Ms. Susan Adell. I've overruled that objection. As previously stated, it has been marked as Defendant's Exhibit Number 1.

Are there any other objections to APAs, jurisdiction, venue or any other matter?
Mr. Peagler?

MR. PEAGLER: No, Your Honor.

THE COURT: Mr. Detwiler?

MR. DETWILER: None, Your Honor.

THE COURT: Mr. Wyman?

MR. WYMAN: None, Commissioner.

THE COURT: Without further objection the Commission file becomes a part of the record with the exception of self-serving declarations and unstipulated medical reports.

1 Also, during the pre-hearing conference in
2 this matter the respective positions of the parties
3 was discussed. From the standpoint of the claimant,
4 Mr. Adell is here seeking a finding of compensability
5 to his neck. He is seeking causally related medical
6 care for that condition. Asserts an entitlement to
7 temporary total disability benefits from March 25,
8 2015 to the present and continuing.

9 Mr. Peagler, anything in addition to that
10 with regard to the claimant's position you'd like to
11 get on the record or any other matter you're here to
12 litigate today, sir?

13 MR. PEAGLER: Not that I can recall,
14 Commissioner.

15 THE COURT: All right. With regard to the
16 defendant carrier's position, they dispute any
17 compensable injury occurred and any condition that
18 the claimant currently suffers from is not
19 work-related. However, if I find, in fact, that the
20 neck is compensable, they would dispute the
21 claimant's entitlement to any temporary total
22 disability benefits.

23 Mr. Detwiler, anything in addition to that
24 with regard to defendant insurer's position that you
25 would like to get on the record or any other matter

1 you're here to litigate today, sir?

2 MR. DETWILER: Nothing else, Your Honor.

3 THE COURT: With regard to the defendant
4 employer's position, they mirror the position of the
5 claimant in this matter.

6 Mr. Wyman, anything in addition to that
7 you'd like to get on the record or any other matter
8 you're here to litigate today, sir?

9 MR. WYMAN: None, Your Honor.

10 THE COURT: As we are here on Claimant's
11 Form 50, Mr. Peagler, your first witness today is
12 who?

13 MR. PEAGLER: Mr. Dan Woron. And he's in
14 the witness chair, Commissioner.

15 THE COURT: All right. Sir, would you
16 raise your right hand, please?

17 DANIEL WORON,
18 AFTER BEING DULY SWORN TO TELL THE TRUTH, TESTIFIED
19 AS FOLLOWS:

20 THE COURT: Please state your full name
21 for the record.

22 THE WITNESS: My name is Daniel Alexander
23 Woron.

24 THE COURT: If you would spell your last
25 name, please.

1 THE WITNESS: W-O-R-O-N.

2 THE COURT: Mr. Peagler.

3 DIRECT EXAMINATION

4 BY MR. PEAGLER

5 Q. Mr. Woron, how do you know Horace Adell?

6 A. Horace is my brother-in-law.

7 Q. And how long has he been your
8 brother-in-law?

9 A. Several years.

10 Q. Okay. In regard to an incident that
11 occurred on/or around March 25th of 2015, were you at
12 a family gathering that was also attended by
13 Mr. Adell two days before that?

14 A. Yes, sir, I was.

15 MR. PEAGLER: If I could approach,
16 Commissioner, to show him the photographs?

17 THE COURT: Yes, sir.

18 BY MR. PEAGLER

19 Q. If I could show you. These are some
20 copies of photographs. Do you recall these
21 photographs?

22 A. Yes, I do.

23 Q. And are those photographs a fair and
24 accurate depiction of what you viewed that day?

25 A. Yes, sir, they are.

1 Q. All right. Can you tell me your
2 observations of Mr. Adell that day?

3 A. Horace was in a good mood. He was around
4 people that loved him and family and was enjoying,
5 you know, the family get together. And as always he
6 was enjoying the company of the grandchildren and,
7 you know, having fun with them and, you know, picking
8 them up and just being Horace.

9 Q. Did he appear to be in any type of medical
10 distress?

11 A. He did not.

12 Q. Did he have any issues picking up holding
13 the children?

14 A. He did not.

15 Q. Did he have any issues doing any other
16 kind of lifting or any other type of activity that
17 you could recall that day?

18 A. None that I'm aware of.

19 Q. Okay. Have you had an opportunity to
20 visit or view Horace after the incident of March?

21 A. I have.

22 Q. And what are your observations of him
23 afterwards?

24 A. His ability to do physical activities
25 dramatically changed. He's not able to do the things

1 that gave him for lack of a better term pleasure as
2 far as helping with the children, doing things,
3 physical activities. Very obviously it causes him a
4 great deal of distress.

5 Q. So at the family gathering did you see any
6 instances that would cause you to have any concern
7 over his medical condition at all?

8 A. None at all.

9 MR. PEAGLER: That's all I have of this
10 witness.

11 THE COURT: Mr. Detwiler.

12 MR. DETWILER: Thank you, Commissioner.

13 CROSS-EXAMINATION

14 BY MR. DETWILER

15 Q. Mr. Woron?

16 A. Yes, sir.

17 Q. Mr. Woron, this instance where you were at
18 a family gathering a few days prior to -- can you
19 give us the date of that?

20 A. I cannot give you the date because I don't
21 remember the date. I know when the function was.

22 Q. Okay. Well, when was it?

23 A. It was, you know, in March, I believe.

24 Q. It was in March?

25 A. Uh-huh.

1 Q. Okay. And during this family function,
2 how long were you around Mr. Adell that day?

3 A. Probably eight hours.

4 Q. And was that constantly with Mr. Adell or
5 was that with other family members?

6 A. It wasn't constantly with Mr. Adell.
7 Probably 70 percent. Horace and I have a tendency to
8 get away from the hustle and bustle in the house and
9 get outside and sort of watch the kids.

10 Q. How many people were at this gathering?

11 A. Probably 20, 25 people.

12 Q. So a large family gathering?

13 A. Well, it was a small family gathering for
14 us, but it was a...

15 Q. Now, since Mr. Adell had neck surgery,
16 you're aware of that?

17 A. I am, yes, sir.

18 Q. Okay. And since Mr. Adell's neck surgery,
19 how many times you been around him?

20 A. I probably seen Horace three or four
21 times.

22 Q. Three or four times --

23 A. Yes, sir.

24 Q. -- since April of 2015?

25 A. Yes, sir.

1 Q. Okay. And what you just testified to
2 about what he can do and he can't do is based upon
3 those three or four times you've seen him?

4 A. It's based on those observations. Sure.
5 Those times when I saw him, yes, sir.

6 Q. And when was the last time you saw him?

7 A. Probably for my mother's 80th birthday in
8 September.

9 Q. In September?

10 A. Uh-huh.

11 Q. So you have not seen him since September
12 of 2015?

13 A. I do not believe so.

14 Q. Okay. Until today?

15 A. Yes.

16 MR. DETWILER: Okay. Thank you. That's
17 all I have.

18 REDIRECT EXAMINATION

19 BY MR. PEAGLER

20 Q. Mr. Woron, where do you live?

21 A. I live in Stuart, Florida.

22 Q. And where does Horace live?

23 A. He lives in Asheville or Hendersonville,
24 North Carolina.

25 Q. Would you say that that distance affects

1 how often you're able to see him and his family?

2 A. Oh, absolutely.

3 MR. PEAGLER: That's all I have. Nothing
4 further.

5 (WITNESS EXCUSED.)

6 MR. PEAGLER: The next witness is Trey
7 Trembly.

8 THE COURT: Would you raise your right
9 hand, sir?

10 TREY TREMBLY,
11 AFTER BEING DULY SWORN TO TELL THE TRUTH, TESTIFIED
12 AS FOLLOWS:

13 THE COURT: Please state your full name
14 for the record.

15 THE WITNESS: William Trembly, III.

16 THE COURT: Mr. Peagler.

17 DIRECT EXAMINATION

18 BY MR. PEAGLER

19 Q. Mr. Trembly, I assume Trey comes from you
20 being a third?

21 A. That's exactly right.

22 Q. Do you go by Trey Trembly?

23 A. I go by Trey Trembly. Correct.

24 Q. And what's your occupation?

25 A. I am the sales and marketing director for

1 Building Industry Synergy Magazine.

2 Q. And where is that located or what is the
3 general area of distribution?

4 A. Myrtle Beach, South Carolina is where it's
5 located, and we cover Horry and Georgetown counties.

6 Q. And when did you first come into contact
7 and meet Horace and Susan Adell?

8 A. I met the two of them at the Home Show in
9 the Myrtle Beach Convention Center on February the
10 20th of last year.

11 Q. 2015?

12 A. Of 2015.

13 Q. Did you have opportunity to talk with them
14 at that time?

15 A. I did. I did. Horace and I had a nice
16 conversation. We -- actually, they approached us
17 because they were looking -- they were new to the
18 area and they were looking to get their name out
19 there and approach some building contractors and talk
20 with them about construction cleans and different
21 opportunities with businesses. So they approached me
22 at that time to talk about that and we talked in our
23 booth.

24 Q. Okay. And did you come into contact with
25 them as a result of their business, Clean Sweep?

1 A. Clean Streak, yes.

2 Q. Clean Streak. I'm sorry.

3 A. Yes. That's correct.

4 Q. Now, did you have an ongoing business
5 relationship with them? Did you see them again?

6 A. I did. We met again on the 25th. And I
7 actually met with them both to talk about
8 participating in Building Industry Synergy. It was
9 five days later.

10 Q. And that was February 25th of last year?

11 A. That's correct.

12 Q. And where did you meet them?

13 A. I met them at their home office.

14 Q. Okay. And could you describe the office
15 that you were in?

16 A. Yeah. Well, they have an office in the
17 backside of the home. And we actually did not sit
18 down in their office. We sat down in the -- at the
19 kitchen table. But on the outside the garage area --
20 actually, when I came up I noticed that that's where
21 they had their storage facility where they kept
22 supplies and so forth for the business. But we
23 actually sat down at the table to talk.

24 Q. Now, the office, did it seem to be set up
25 as an ongoing business office?

1 A. Oh, there's no doubt. Yeah. Absolutely.

2 Q. For a business address did they use the
3 address where you met them?

4 A. That is -- that's where I met them.
5 Correct. The Cedar Run, yeah.

6 Q. And your understanding, that was also the
7 same address that they used for their business
8 contacts?

9 A. Absolutely.

10 Q. How about telephone number?

11 A. Yeah. The same number. Matter of fact,
12 at that time they had just established a new
13 telephone number. And I don't have it memorized. I
14 think it was 750. And that was for the business only
15 and that remains to this day.

16 Q. And that's in their office there in --

17 A. Their home office. That's correct.

18 Q. -- Cedar Run Trail?

19 A. That's correct.

20 Q. When you met Horace, what was his outward
21 appearance?

22 A. A man that was in very good shape.
23 Someone that obviously -- you know, I could tell --
24 we struck up a conversation about his past history
25 with basketball and so forth in the context. But

1 somebody who was very energetic, enthusiastic about
2 his business and a hardworking man. And it was very
3 easy for me to see that he was a hands-on guy. You
4 know, that he would not only just get the jobs, but
5 he would participate with the jobs, you know, to show
6 the people that he worked with what needed to be done
7 and he'd get in there and do the work. And I was
8 very impressed. Very impressed.

9 Q. Did he appear to be in any type of medical
10 distress when you met with him?

11 A. Absolutely not. Just quite contrary. I
12 was just very impressed by his physical stature and
13 how he carried himself and the fact that he would get
14 in there and do the jobs himself.

15 Q. And did you have continued correspondence
16 with the Adells after your initial meeting there at
17 their office?

18 A. I did. I did. And a lot of that was by
19 email and phone.

20 Q. And what was the nature of this
21 communication?

22 A. Well, they made the decision to handle
23 some marketing with us, so we could put some display
24 ads in the magazine. We actually did an article on
25 their company and we put it in the March/April issue.

1 And so in order to put the article together, the
2 display, advertising, the photos and everything that
3 needed to be done to get set up online, we had to
4 correspond by phone and email to do that.

5 Q. And some of the marketing materials, did
6 they involve photographs of the work location that
7 you met them at?

8 A. Well, the types of marketing photos that
9 we had were simply jobs, different types of jobs
10 where the cleaning would be needed to show other
11 people in the area what -- you know, what types of
12 products and services they had to offer.

13 Q. Okay. Now, was there ever any
14 correspondence indicating any kind of health issues
15 regarding Mr. Adell?

16 A. None at all. None at all.

17 Q. When did you first find out about any type
18 of issues regarding Horace and his injuries?

19 A. The -- I don't have an exact date for
20 that. I know that it was sometime last spring when
21 Susan and I were having a conversation on the phone.
22 I'm thinking it was --

23 MR. DETWILER: Objection, Your Honor.
24 Hearsay.

25 THE WITNESS: Okay.

1 THE COURT: Sustained. Please proceed.

2 BY MR. PEAGLER

3 Q. Mr. Trembly, in the article that y'all
4 wrote about them, did y'all refer the Myrtle Beach
5 location as where you met them that day?

6 A. At the Home Show?

7 Q. Yes, sir.

8 A. The article referred to them being in the
9 Myrtle Beach area. It didn't refer back to the Home
10 Show.

11 Q. Did it list an address?

12 A. I've got it right here.

13 Q. The article?

14 A. Yeah.

15 Q. Does it reference their Cedar Run I think
16 it is address for the business?

17 A. I'll have to look at it. I've got it.
18 You know, I can show it to you. It's in the
19 magazine.

20 Q. Is that your magazine?

21 A. Yes.

22 Q. Who wrote the article?

23 A. It was done by -- I'll have to look. I
24 don't know if it was Sylvia or if it was Peggy. I
25 can't recall. We've got three different writers. So

1 forgive me if I... But I've got it right here if you
2 want to see it.

3 Q. Is that an extra copy?

4 A. Yeah.

5 MR. PEAGLER: Your Honor, I'd like to
6 admit that.

7 THE COURT: Mr. Detwiler?

8 MR. DETWILER: No objection.

9 THE COURT: Pardon?

10 MR. DETWILER: No objection.

11 THE COURT: Without objection

12 Claimant's 1.

13 (CLAIMANT'S EXHIBIT NUMBER 1 WAS MARKED FOR
14 IDENTIFICATION.)

15 MR. PEAGLER: That's all I have for this
16 witness, Your Honor.

17 THE COURT: Mr. Detwiler.

18 THE WITNESS: Should I just hand it?

19 THE COURT: You can just hand it.

20 CROSS-EXAMINATION

21 BY MR. DETWILER

22 Q. And if you would, go ahead and open to
23 that article you just referred.

24 A. Sure.

25 Q. May I?

1 A. Sure.

2 Q. So this is the article right here --

3 A. That is correct.

4 Q. -- is that right?

5 A. That is correct.

6 Q. Thank you, sir.

7 A. Uh-huh.

8 Q. Now, Mr. Trembly, did I pronounce that

9 right?

10 A. You did. Trembly.

11 Q. Trembly. You're a salesman?

12 A. That's correct.

13 Q. And for that magazine?

14 A. Yeah. My family actually owns the

15 publication.

16 Q. Okay. And so that would make Mr. Adell

17 one of your customers, advertising customers?

18 A. That is correct.

19 Q. Okay.

20 A. He is now.

21 Q. He is now. Any idea how much he spends

22 with y'all?

23 A. You talking annually, monthly?

24 Q. You tell me. Any way you want to present

25 it.

1 A. Let me figure it out for you real quick.
2 Probably in the last year it's been around a little
3 over \$4000.

4 Q. Now, you said -- it sounds like you have
5 met with Mr. Adell on a regular basis?

6 A. We have not met in person on a regular
7 basis in the last six or seven months. But the first
8 couple of months I did see him at the Home Show, I
9 saw him in his home office and I saw him at a
10 luncheon meeting in Rioz in Myrtle Beach.

11 Q. Three times?

12 A. Three times.

13 Q. Okay.

14 A. Uh-huh.

15 Q. The last time, do you recall about when
16 that was?

17 A. That would have been around the middle of
18 March of last year 2015 in Rioz at a Home Builders
19 Association luncheon.

20 Q. Okay. Now, since that time how many times
21 have you met with him or seen?

22 A. Seen him? To be quite honest with you, I
23 don't think I have seen him in person since last
24 spring.

25 Q. Since last spring?

1 A. So that would have been right around that
2 March time period; correct.

3 Q. Okay. You haven't seen him since he had
4 his neck surgery? Is that what you're saying?

5 A. That's correct.

6 Q. Okay. You've talked about how he was
7 hands-on with his work and how hardworking he was.
8 Have you ever actually gone out and seen him work?

9 A. I have not been on a job site with him.

10 Q. Okay. That's what I thought. And you met
11 with him -- when you met at the Cedar Run facility,
12 you met in his kitchen?

13 A. We met and actually we walked back to his
14 office. They've got an office set up for the
15 business.

16 Q. Okay.

17 A. And then we talked. And since we were all
18 three going to sit down, we decided that we would --
19 because I had a lot of marketing material. So we
20 decided the kitchen table was best to sit down and
21 spread the marketing material out. So that's what we
22 did.

23 Q. And you're aware that that's a three
24 bedroom, two bath house?

25 A. I have no idea. My primary interest was

1 business.

2 Q. And are you aware that Mr. Adell refers to
3 that as a second home?

4 A. Once again, that's not a conversation
5 we've had.

6 Q. Right. Do you have any idea how long he
7 owned that house?

8 A. I have no idea.

9 MR. DETWILER: That's all I've got, Your
10 Honor.

11 THE COURT: Anything further?

12 MR. PEAGLER: Nothing further.

13 THE COURT: Thank you for your time today,
14 sir.

15 THE WITNESS: Okay. Would you like to
16 keep this?

17 THE COURT: Yes.

18 (WITNESS EXCUSED.)

19 THE COURT: Mr. Maziarz, would you raise
20 your right hand, please?

21 MATTHEW MAZIARZ,

22 AFTER BEING DULY SWORN TO TELL THE TRUTH, TESTIFIED
23 AS FOLLOWS:

24 THE COURT: Please state your full name
25 for the record.

1 THE WITNESS: Matthew Preston Maziarz.

2 THE COURT: Mr. Peagler.

3 DIRECT EXAMINATION

4 BY MR. PEAGLER

5 Q. Matt, were you working with Horace on/or
6 around March 25th of 2015?

7 A. Was I working with him?

8 Q. Were working with or around Horace?

9 A. Oh, yes, sir.

10 Q. And what were you doing that day?

11 A. I was down there to help him unload his
12 trailer of equipment that he brought from Asheville
13 and to tile his office bathroom.

14 Q. Okay. And was this work all that
15 concerned the business of Clean Streak?

16 A. Yes, sir.

17 Q. All right. Tell us what y'all did that
18 morning.

19 A. Well, that morning, of course, you know,
20 we -- I started on the tile. I think -- I believe he
21 had some meetings with some gentlemen. I'm not
22 exactly sure what his meetings were pertaining to.
23 But I tiled the bathroom, got all the tile set and
24 then, you know, sometime in that afternoon we started
25 unloading the trailer of supplies.

1 Q. Okay. What types of supplies were you
2 unloading from the trailer?

3 A. Five-gallon buckets of wax. He had some
4 equipment. He had some sand, you know, some
5 scrubbing pads. Just cleaning stuff for the
6 business.

7 Q. What's the sand for?

8 A. To scrub like concrete and, you know, like
9 tile and what's it called? Granite, stuff like that.
10 You put it underneath the pads and --

11 Q. Like an abrasive cleaner?

12 A. Yes, sir.

13 Q. Okay. How did Horace seem to be that
14 morning?

15 A. He was good. You know, energetic, I guess
16 and -- I mean, definitely not hurt.

17 Q. Okay. You didn't notice any type of
18 guarded movement or anything that would indicate any
19 kind of medical distress?

20 A. No, sir.

21 Q. All right. Then what happened?

22 A. Then I remember he was -- he had two of
23 the five-gallon buckets, one in each arm. And I
24 remember he was carrying them out and when he went to
25 set them down he obviously showed some discomfort and

1 some pain and grabbed at his neck. And then, of
2 course, you know, he said we need to take a break and
3 we -- you know, that's pretty much it for the rest of
4 the day. He end up going in and putting a pack on
5 his neck and, you know, pretty much taking it easy
6 for the rest of the day after that.

7 Q. Now, earlier that day had he been doing
8 the same type of lifting work that you were doing
9 earlier that day, too?

10 A. Yes, sir. I mean, he was moving some
11 stuff around in the garage. I mean, I can't say for
12 certain all that he was doing because, of course, I
13 was tiling the bathroom. But, yeah, he was
14 definitely moving stuff in the garage. The same
15 buckets, you know, that kind of stuff.

16 Q. Okay. Well, tell me what happened
17 after -- after he said he felt like he was hurt.
18 What happened next?

19 A. He -- I mean, he was instantly sweating
20 profusely. Sat down. You know, put a pad, I
21 believe, on his neck and then, you know, like I said,
22 didn't do anything for the rest of the day. And then
23 later on that night is when he was in excruciating
24 pain to the point he had to go to the hospital.

25 Q. Tell us what happened later that night.

1 A. Of course, I had went upstairs, you know,
2 and he was downstairs. And I had heard something.
3 Wasn't quite sure what it was. Apparently, it end
4 him screaming for me and he was laying in the floor
5 at the bottom of the stairs needing to go to the
6 hospital.

7 Q. And did you dial 911?

8 A. Yes, sir.

9 Q. The ambulance come pick him up?

10 A. Yes, sir.

11 Q. Had you ever heard Horace complain of any
12 kind of neck problems before that day he was injured
13 and any other time you worked with him?

14 A. No, sir. I worked for Horace for over a
15 year and, I mean, he's not the kind of guy that
16 doesn't -- you know, kind of directs traffic. He
17 actually does the job and, you know, he always buffs
18 the floors. You know, done all that kind of stuff.
19 Carried the mops and the buckets and the wax and, you
20 know, never had any issues. He's always been, you
21 know, gung-ho about it, so...

22 Q. Now, did you go with him to the hospital?

23 A. Yes, sir.

24 Q. Was he basically treated and released from
25 the hospital at that time?

1 A. To some extent. I know that their -- you
2 know, they had treated him. We were there for
3 several hours. Again, I'm -- I sat in the lobby.
4 I'm not like his first of kin or anything like that,
5 so I couldn't like go back in the room while they
6 were treating him. But, yeah, we were there for
7 several hours and then, you know, left the hospital.
8 I know that he made some follow-up appointments after
9 that. I know there was some inform- -- I know he was
10 on blood thinners at the time. So, you know, we were
11 worried about the medication.

12 Q. Did he do any follow-up care there at the
13 beach?

14 A. Not that -- I mean, I can't say for
15 certain. We ended up leaving and going back to
16 Asheville.

17 Q. The next day?

18 A. Yes, sir.

19 Q. And then he followed up with care --

20 A. I believe so. Yeah. You know, I wasn't
21 with him.

22 Q. Okay. Did he appear to be in significant
23 pain that evening when you saw him?

24 A. Oh, yes, sir.

25 Q. Did he tell you what was hurting?

1 A. His neck.

2 MR. PEAGLER: That's all I have for this
3 witness.

4 THE COURT: Mr. Detwiler.

5 MR. DETWILER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. DETWILER

8 Q. Is it Maziarz?

9 A. Yes, sir.

10 Q. Am I pronouncing that okay?

11 A. Yes, sir.

12 Q. Maziarz. How long have you worked for
13 Clean Streak? Three or four years has it been?

14 A. I mean, I've been around Clean Streak. I
15 worked on their books for Clean Streak specifically
16 for over a year. And then, of course, I've done
17 subcontracting stuff for them for probably three or
18 four years.

19 Q. Okay. So for the last year or maybe a
20 little bit more, you've actually been a regular
21 employee of Clean Streak?

22 A. No, not this past year.

23 Q. Not this past year?

24 A. No. This was, you know, a few years ago.
25 I worked for Clean Streak for about a year. A little

1 over a year.

2 Q. So you were a regular employee before you
3 became sort of a contractor?

4 A. Yes, sir.

5 Q. Is that what you're saying? I've got them
6 mixed up in my mind. Okay. And do you work for
7 anybody else other than clean Streak?

8 A. At this point in time?

9 Q. Yeah.

10 A. Yes, sir. I'm a manager at Bojangles'.
11 That's what I do now.

12 Q. How about back then? Did you work for
13 anybody other than Clean Streak?

14 A. I don't believe so. Not at that point in
15 time.

16 Q. Do you work for Clean Streak now for any
17 reason? Do you do any contracting work for them at
18 all?

19 A. Not as of recently. I -- like I said, I'm
20 fully employed. I have a full-time job with
21 Bojangles'. I'm a manager.

22 Q. When was the last time you had worked for
23 them?

24 A. I believe that was the last job that I had
25 done for them. I might have done something after it,

1 but I can't -- I mean, I can't say for certain.

2 Q. Did you actually see him -- and I'm
3 talking about with your own two eyes now. Did you
4 actually see him lift up two five-gallon buckets?

5 A. Yes, sir.

6 Q. Okay. And that's when he said he hurt
7 himself?

8 A. Yeah. Upon setting them down is when he
9 kind of dropped them and was -- you know, grabbed his
10 neck.

11 Q. Grabbed his neck. Okay. And you actually
12 saw this with your own two eyes?

13 A. Yes, sir.

14 Q. And are you aware of any other neck or
15 back problems Mr. Adell had had prior to March 25th?

16 A. No, sir. Like I said, when I worked with
17 him, you know, he buffed the floors. And I don't
18 know if you're familiar with like a floor buffer or
19 not, but, you know, they're heavy equipments. They
20 swing back and forth. So, I mean, if you had any
21 type of back, neck injuries, there's no way that he
22 would have been able to -- I mean, I'm not a doctor,
23 of course, but I mean...

24 Q. You're not aware of him being treated --

25 A. No, sir.

1 Q. -- for any back problem or other problems?

2 A. No, sir. Not that I'm aware of.

3 Q. You're not aware of him being treated by a
4 chiropractor?

5 A. Again, I'm -- you know, I don't know what
6 he does in his own time, so...

7 Q. And how often did you work around
8 Mr. Adell prior to March 25th of last year?

9 A. Like I said, when I worked for him
10 regularly, he was pretty much on every single job
11 working. Other than just your cleanings of like
12 banks of whatever. But like when you're talking
13 stripping floors, waxing a floor or any type of jobs
14 that required equipment, Mr. Adell has been on the
15 job and has worked the job. So, I mean, I was at
16 least three, four times a week for a year and then...

17 Q. Okay. Were you there when Mr. Adell --
18 who gave the history of this incident that you say
19 happened on March 25th, 2015? Who gave the history
20 of that to the EMS people who arrived to pick him up
21 and take him to the hospital? Would that be you or
22 Mr. Adell?

23 A. I believe he had spoke with them. You
24 know, I told them about him lifting the buckets.

25 Q. You told the EMS people about that?

1 A. I mean, I had spoke with them and told
2 them that, you know, he had grabbed his neck earlier
3 in that day.

4 Q. So are you telling me that you told the
5 EMS people that he hurt his neck lifting buckets of
6 wax? Is that what you're --

7 A. I mean, I don't know if I used them words
8 exactly or, you know, I just --

9 Q. What words did you use?

10 A. I mean, it was 2:00 o'clock in the
11 morning, sir. You know, I just got drug out of bed.
12 You know, they asked me what he had during the day.
13 I had said that he had lifted some stuff. I mean, I
14 can't say for certain verbatim what I said to them
15 that night. He was hysterical screaming. I mean, he
16 was in excruciating pain. So I don't really know
17 what words I got in edge wise. The only thing I
18 specifically remember saying was worrying about his
19 medicine. Because I knew that he was on blood
20 thinners and I wanted them to know that, you know, he
21 had medicine that he was taking and to take his
22 medicine. But other than that I can't say for
23 specific exactly what I said to them.

24 Q. Okay. And so is it fair to say then if
25 you didn't give the history to the EMS people, that

1 Mr. Adell may have gave him the history? Gave them
2 the history?

3 A. I mean, again --

4 MR. PEAGLER: Objection. Calls for
5 speculation.

6 MR. DETWILER: Well, let me ask it a
7 different way.

8 BY MR. DETWILER

9 Q. Was there anybody other than you and
10 Mr. Adell there to give the EMS people any history?

11 A. No, sir. I was on the phone with his
12 wife. Other than that, there was just us two.

13 Q. Okay.

14 A. But, again, he was hysterical and I didn't
15 really know exactly what was going on and the extent
16 of his injuries. I mean, there's no way.

17 Q. Okay. It was a simple question. My
18 question was was there anybody else there besides you
19 and Mr. Adell?

20 A. No, sir.

21 Q. Okay. And were you there when
22 Mr. Adell -- when the history of whatever happened
23 was given to the people at the hospital?

24 A. No, sir.

25 Q. You were not there?

1 A. I had to drive his vehicle and he had
2 already been brought in to the hospital.

3 Q. And you didn't have anything to do with
4 providing history to the people at the hospital?

5 A. Not that I'm aware of.

6 Q. Okay.

7 A. Again, it was 2:00 o'clock in the morning,
8 so...

9 MR. DETWILER: Thank you. That's all I
10 have.

11 THE COURT: Mr. Wyman?

12 MR. WYMAN: No questions, Commissioner.

13 MR. DETWILER: May I ask one more
14 question? Is it too late?

15 THE COURT: I'll let you come back to it
16 after Mr. Peagler.

17 MR. DETWILER: Okay. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. PEAGLER

20 Q. How much do the buckets of wax weigh?

21 A. Well, they're five pound -- they're
22 five-gallon buckets. An average, you know, gallon is
23 about eight pounds. So I'd say about 40 pounds a
24 bucket, per bucket.

25 Q. How about the bags of dirt or sand? How

1 much do --

2 A. Bags of sand are usually 80 pounds,
3 somewhere in there.

4 MR. PEAGLER: All right. That's all I've
5 got.

6 RECROSS-EXAMINATION

7 BY MR. DETWILER

8 Q. Well, why are we talking about sand? Did
9 he pick up buckets or did he pick up sand?

10 A. I mean, there were several things like I
11 explained on the trailer. There was sand. There was
12 equipment. There was materials.

13 Q. But wait, now. You said -- our question
14 is -- and this is what we all want to know is what
15 caused him to hurt his back if you know at all? Did
16 he pick up sand --

17 A. I told you when he picked up the two
18 buckets of waxes when he had grabbed his neck.

19 Q. Okay. All right. That was the specific
20 accident that you say you saw?

21 A. Yes, sir.

22 Q. All right. And what time of day was that?

23 A. Afternoon sometime. I mean, I didn't look
24 at my watch when it happened. I mean, I know it was
25 sometime afternoon.

1 Q. And you continued to work on?

2 A. No. I mean, that was pretty much it. We
3 pretty much called it the day then. And he -- like I
4 said, he had sat down and put a pad on his neck
5 and...

6 Q. Is that, what, a heating pad?

7 A. I mean, I'm not exactly sure again. I
8 don't know what he -- what kind of pad it was whether
9 it was a heating pad or a cooling pad or a neck
10 pillow. I just know he had something on his neck.

11 Q. What did you do then?

12 A. I was done pretty much for the day. I
13 finished tidying up a little bit with the materials
14 that we were unloading and that was pretty much it.
15 Called it the day. Tile -- I don't know if you're
16 familiar with it. You can only put the tile on.
17 Then you have to wait 24 hours to grout it. So I was
18 pretty much done with what I had to do for the day.

19 Q. So you think this may have been 4:00,
20 5:00, 6:00 o'clock or was it 2:00, 3:00 or 4:00
21 o'clock?

22 A. It was like about -- I don't know
23 fairly -- about 2:00. I mean, it wasn't evening
24 time. I mean, but it certainly wasn't, you know, in
25 the morning. Like I said, I didn't have a stop watch

1 or wasn't looking at my watch when the injury
2 happened.

3 Q. But your best estimation today as you sit
4 here under oath is it was about 2:00 o'clock?

5 A. I mean, again, I can't say for certain. I
6 just know it was sometime -- it wasn't late in the
7 evening. It wasn't early in the morning, so...

8 MR. DETWILER: Thank you. That's all I
9 have.

10 THE COURT: Mr. Wyman?

11 MR. WYMAN: Nothing, Commissioner.

12 THE COURT: Anything else?

13 MR. PEAGLER: No.

14 THE COURT: You may step down, sir. Thank
15 you very much. Any reason for Mr. Maziarz to remain
16 here?

17 MR. PEAGLER: He can be excused.

18 MR. DETWILER: No objection.

19 (WITNESS EXCUSED.)

20 THE COURT: Mr. Peagler.

21 MR. PEAGLER: It would be Horace Adell.

22 THE COURT: Mr. Adell.

23 HORACE LARRY ADELL, JR.,

24 AFTER BEING DULY SWORN TO TELL THE TRUTH, TESTIFIED

25 AS FOLLOWS:

1 THE COURT: Please state your full name
2 for the record.

3 THE WITNESS: Horace Larry Adell, Jr.

4 THE COURT: Mr. Adell, please have a seat,
5 sir.

6 Mr. Peagler.

7 DIRECT EXAMINATION

8 BY MR. PEAGLER

9 Q. What's your date of birth, Horace?

10 A. [REDACTED]

11 Q. How old does that make you?

12 A. Fifty-three.

13 Q. Are you married?

14 A. Yes, sir.

15 Q. And your wife's name?

16 A. Susan Donnell Adell. Excuse me. Susie
17 Elizabeth Donnell Adell.

18 Q. And how long have y'all been married?

19 A. We've been married six years now.

20 Q. Is there anyone other than Susan that is
21 dependent on you for support on a regular basis?

22 A. My daughter. Our daughter.

23 Q. And what's her name?

24 A. Her name is Brittany.

25 Q. And how old is Brittany?



1 A. Brittany is 25. She's be 26 Monday.
2 Yeah.
3 Q. What type of support do you provide for
4 her?
5 A. She's got some babies and they need things
6 like diapers and milk and sometimes food.
7 Q. Do you give them money on a regular basis?
8 A. Fairly regular.
9 Q. And how much would you say you average
10 giving her?
11 A. 60 to 100 bucks.
12 Q. Per week, per month?
13 A. That's at least once every three weeks.
14 Q. Okay. How far did you go in school,
15 Horace?
16 A. Twelfth grade.
17 Q. All right. Did you graduate from high
18 school?
19 A. Yes, sir, I did.
20 Q. And what high school did you graduate
21 from?
22 A. A.C. Reynolds High School.
23 Q. And where is that located?
24 A. That's located in Buncombe County. That's
25 North Carolina.

1 Q. And Horace, did you go to college after
2 high school?

3 A. No, sir. I went to the military.

4 Q. And what type of military service did you
5 have?

6 A. I was 82nd Airborne Green Beret.

7 Q. How long did you serve in the military as
8 a green beret?

9 A. I was in for five years.

10 Q. All right. Do you have an honorable
11 discharge?

12 A. I do, sir.

13 Q. And after the military did you go to any
14 kind of technical school or any other kind of
15 educational facility?

16 A. No, sir.

17 Q. Do you have any type of certificates
18 either related to your work or other occupations?

19 A. Yes, sir. I have a certificate of -- they
20 make me an honorary professor at A-B Tech. They
21 hired me to teach floor maintenance. And Blue Ridge
22 Community College, they hired me to make -- to teach
23 floor maintenance.

24 Q. How long did you do that for, each of
25 those positions?

1 A. I'm actually still doing it.

2 Q. Okay. What type of work have you done
3 during your adult life since you left high school and
4 the military?

5 A. All right. When I came out of the
6 military, the first thing that I did was tried to get
7 a job. And the response was that -- you know, that
8 there was nothing that I was qualified to do. So
9 after months and months of trying and just going
10 around doing handyman work, I decided to start my
11 first business which was maintenance. Super
12 maintenance. You know, fixing leaks and bathrooms,
13 replacing doors and stuff like that and graduated
14 into that to driving a lumber truck. It was called
15 Petty Lumber and I drove that for several, several
16 years. And after that I'd get off in the afternoon
17 and I'd do what we call light cleaning. I'd go in
18 and clean doctor's offices. I'd go into the Eckerd
19 drugstores. Well, it's not Eckerd's anymore. It's I
20 want to say CVS, I believe it's called now.

21 Q. Now, were you looking for somebody else
22 doing that type of light maintenance or were --

23 A. I was working for myself. Just --

24 Q. And is that what evolved into Clean
25 Streak?

1 A. Yes, sir.

2 Q. And how long ago did you start working
3 with Clean Streak full time?

4 A. I worked with Clean Streak full time after
5 I left the company, Carolina Colortone. So God, that
6 was '92.

7 Q. So how many years have you been running
8 Clean Streak now as far as you can remember?

9 A. Clean Streak -- I been running Clean
10 Streak 15 years. It's been around 30.

11 Q. Okay. In the last 15 have you experience
12 growth in your company?

13 A. Oh, yes, sir. The Lord has really blessed
14 me there.

15 Q. And is that a result of your work with --
16 primarily your work with Clean Streak?

17 A. The first 16 years of being in business I
18 was afraid to hire anyone, so I did all that work by
19 myself. The theory was I'll learn it first before I
20 could teach someone else to do it and that's exactly
21 what I did. It was me and bank presidents and me and
22 the owners of other businesses. I didn't have to
23 deal with anybody, you know, like property management
24 groups. It was really good then.

25 Q. How many employees does Clean Streak have

1 now?

2 A. We have 32 now.

3 Q. Is that in North and South Carolina?

4 A. No, that's in North Carolina. We have
5 three employees here now.

6 Q. In South Carolina?

7 A. In South Carolina.

8 Q. When did you decide to expand and enter
9 the South Carolina market?

10 A. My wife and I were down here on a long
11 weekend at the Holiday I'm going to say Surfside over
12 there. And there was a big chamber thing going on
13 and we just sort of went and talked to the one of the
14 chamber members and told her what we did, gave her a
15 card, that sort of thing. And she says, you know, we
16 really need somebody of your caliber here in Myrtle
17 Beach. So that just sort of got the wheels a turning
18 and we just sort of thought about and was really
19 scared.

20 And we didn't make a decision then. We
21 went back home and thought it over and turned right
22 back around the next weekend and we came back and
23 just sort of looked around and did a little survey of
24 Myrtle Beach area. Murrells Inlet, North, in this
25 end of North Myrtle Beach and tried to get us some

1 boundaries of how far did we want to go outside of
2 Murrells Inlet which is where we started looking for
3 our second home. And we knew that we were going to
4 have to put the office in the home because that's the
5 way I started my other one, you know, until we got
6 the working capital to grow. So that's what we did.

7 And after all of that we contacted a
8 realtor and he worked very diligent with us and took
9 us a while to find a good foreclosure that we could
10 afford. And we did and it was perfect because it was
11 right in the middle of everything. It had garage
12 space. It had office space. It was -- it was
13 perfect, so we jumped on it.

14 Q. And did you designate that as your work
15 location also?

16 A. Yes, we did. Well, we knew we had to
17 because, you know, my first business, the one in
18 North Carolina I started out of the trunk of my car.
19 And that's pretty tight quarters. And I just kept
20 working and working at it and eventually moved that
21 one into my home in North Carolina until I grew it to
22 the point to where I could take and actually rent a
23 building, get space that was right for a good
24 janitorial service and we built from there.

25 Q. How was your office set up in Myrtle

1 Beach?

2 A. Our office is set up in Myrtle Beach. We
3 have a P.O. Box that we get all of our business mail
4 through. We have a personal mailbox at the house
5 that we get mail from my relatives and family and
6 friends and stuff, little newspapers and stuff like
7 that.

8 Q. Do you have a designated phone line for
9 the business there?

10 A. Yes, we do.

11 Q. Do you have a storage facility there?

12 A. Yes, we do.

13 Q. And is it for business only?

14 A. It's for business only. Since all of this
15 has occurred we have managed to get -- because we ran
16 out of room with the paper products, we've got a
17 small storage building on 707 that we keep paper
18 products. We keep some chemicals in it. We keep,
19 you know, extra parts, extra vacuum cleaners, you
20 know, mop buckets. The stuff to keep us operating.
21 The actual workshop where I fix the vacuum cleaners,
22 the floor machines is set up in the garage because I
23 have to have power and I have to have light.

24 Q. Now, were things going pretty well at the
25 time of your accident, March -- on/or around

1 March 25th, 2015?

2 A. It -- no, sir, it wasn't. That was the
3 day after I hurt my neck.

4 Q. No. Before that. Were things going well?

5 A. Oh, yes, sir.

6 Q. Before you hurt your neck were things
7 going well with the business in Myrtle Beach?

8 A. Yes. We had put \$17,000 into advertising
9 and just a number of things. To get the name out
10 there we hired day labor people with vehicles to come
11 and get brochures and pass them out.

12 Q. Were you getting a positive response from
13 all that?

14 A. Yes, we were.

15 Q. Now, tell me what happened on/or around
16 March 24th of 2015. What were you doing that
17 morning?

18 A. That morning there was two -- we had two
19 appointments set up. One was with a paper vendor
20 supply. But after talking with him and after about
21 2-1/2 hours and he realized what we were doing and
22 what we wanted, they only ship out truck and trailer
23 loads a part of the time, so he was not the right
24 vendor for us.

25 Q. Right.

1 A. And then right after he left I had another
2 meeting with a -- he was a salesman.

3 Q. Did you do any physical work that morning?

4 A. No, sir, I did not.

5 Q. Were you doing any physical work that day?

6 A. I did.

7 Q. What type of work were you doing?

8 A. Well, to clarify the first part of it is I
9 made coffee and danishes. That was the only
10 strenuous work I did that morning, so we'd have
11 something to drink and eat. Right after the meeting
12 I had to change clothes and Matt was putting down the
13 tile in the office. And when he got to his point to
14 where the things we was trying to set up, we had
15 talked earlier. When he got to that point Matt would
16 come into the kitchen and just sort of stand there.
17 That was my cue to try to get the meeting on its way
18 and over so that we could go and start unloading the
19 thing, the trailer and truck.

20 Q. Before that day working with Matt, had you
21 ever been diagnosed with any kind of disc problem in
22 your neck?

23 A. No, sir.

24 Q. Had you ever experienced any intense pain
25 in your neck or any pain that would radiate down into

1 your arm?

2 A. The only -- the only pain that I would
3 experience that was in my neck is -- if you know, I
4 stand 6 foot 6. The machines aren't built for a man
5 my size. Well, they're not built for any man's size.
6 They're just average machines. So when I run that
7 machine -- could I stand up?

8 THE COURT: Certainly.

9 THE WITNESS: When I run the machine I
10 have to run the machine in such a fashion to where
11 I'm always like this (indicating). Whereas if
12 somebody like Matt or somebody like Brett would grab
13 ahold of it, they can either run that machine like
14 this (indicating). Well, I can't do that. I have to
15 bend over because I'm so tall to accommodate the
16 machine to get operator right. So that's normally my
17 position through the whole course of about eight or
18 nine hours behind that machine, but that's what I do.
19 I would get what my chiropractor would call muscle
20 fatigue and stress. And the only way that he could
21 relieve that stress would be for me to come in and it
22 was late usually three times a week and we staggered
23 the days. If I was going to do a floor on Monday, I
24 would be in the chiropractor's office on Tuesday.
25 And then Wednesday would go and if I had any more

1 discomfort, if it was still tight, I would go back in
2 on that Thursday and he would work my muscles.

3 Q. Where was that pain that he was working
4 on, where was that pain?

5 A. It was all in this part (indicating) of my
6 back and if he loosens up these here (indicating)
7 along with popping my hands and my fingers and wrists
8 and stuff, it would relieve all the tension here
9 (indicating). They would put those stems on you that
10 give you electrical pulses to relax my muscles which
11 would be followed up by a massage.

12 Q. Was that pain different than the pain you
13 suffered when you were picking up those --

14 A. Oh, Lord, yes.

15 Q. Okay. All right. Let's go back. Had you
16 ever seen a specialist for your neck before the work
17 accident of March 25th, 2015?

18 A. No, sir.

19 Q. Okay. How much did you make salary in
20 your position at Clean Streak?

21 A. I make \$1500 a week.

22 Q. Okay. Now, that day tell us how you got
23 hurt.

24 A. Everything was going great. I had changed
25 my clothes. Went and got some water before we

1 started into it. We opened the trailer and we
2 started moving paper boxes because that was the first
3 thing in the back. We get all the paper off --

4 Q. And just for clarification, you were
5 taking stuff off of the trailer?

6 A. Yes, sir.

7 Q. Where were you putting it?

8 A. We were putting it in the garage because
9 that's all we had.

10 Q. Okay. And the garage was where you kept
11 your materials for the business?

12 A. Yes.

13 Q. Okay. Continue.

14 A. And right after the paper -- right off the
15 paper products which consist of nine-inch roll toilet
16 paper, we had center pull toilet paper, household
17 toilet paper, regular toilet paper, sanitary napkins,
18 you know. Do you want me to go through the whole
19 list of it?

20 Q. Just tell us about the major stuff that
21 you had to move off the trailer.

22 A. Okay. Right after the paperwork we had
23 sand, and it's just regular white play sand. That
24 when you go to clean -- sort of like this ceramic
25 tile floor. If we wanted to get these grout lines

1 clean and pull any kind of debris or sticky substance
2 off of it, we put a thin coat of sand down and then
3 we would lightly wet the floor and we would take a
4 low speed buffer and buff this floor out and then
5 come back and actually strip this floor, rinse it,
6 dry it and then seal it. That's why you need the --
7 one of the reasons you need the sand. The other
8 reason you need the sand is for marble. We use
9 marble to clean the sand with a green scrub pad with
10 a low speed buffer. And then you come back with the
11 varnisher and you polish the shine out.

12 Q. Let's go right back to what you were doing
13 that day. So the sand. What else came off the
14 trailer?

15 A. After the sand we had five-gallon buckets
16 of strippers, we have five-gallon buckets of wax. We
17 had five-gallon buckets of USDA-approved degreasers
18 that we used to go into any kind of restaurants.

19 Q. What particular item were you moving when
20 you hurt yourself?

21 A. I was moving wax.

22 Q. All right. Tell us what happened.

23 A. I went to go on the back on the trailer, I
24 reached down, I picked up two five-gallon buckets
25 like I've always done, just picked it up and I turned

1 around with it and all the sudden it felt like -- you
2 know when you straighten your arm out and your arm
3 pop, well, just ten times that and then it
4 immediately started burning. So I said, "Ouch."

5 Q. Where did you feel the pop?

6 A. Right in the middle of my neck right back
7 here at the -- right there where you have to bend
8 right there (indicating).

9 Q. And where did you feel the burn?

10 A. Right in the same place.

11 Q. All right. What did you do the rest of
12 the time?

13 A. Well, you know, the rest of the day I --
14 you know, I just thought it was a little pop and then
15 it just kept hurting. And I said, Matt, dude, I
16 can't do this. So I gotta get on the ice. So I went
17 and got the ice but the ice -- laid back in the
18 recliner. We sit there and watched TV a few minutes.
19 I said, dude, I've got to stretch out, and I went and
20 laid down in the bed, put the heat -- I've got a
21 thing with little beans in it that you heat for two
22 minutes or would heat up and put that around my neck.
23 Well, that eased it. So, you know, I laid down and
24 fell off to sleep.

25 Q. What happened next?

1 A. The next thing I know, I was waking up
2 screaming and hollering, couldn't hardly breathe and
3 tried to lift my foot up to get out the bed.
4 Couldn't get it. So I just reached over and grabbed
5 the phone and called my wife and told her there was
6 something bad wrong.

7 Q. All right. What happened next?

8 A. She said, "Where is Matt?" And I said,
9 "He's upstairs in bed." And she says you've got to
10 get to him. I said, "I can't scream loud enough." I
11 said, "I can't." So I rolled over out of the bed
12 into the floor and had the phone in my hand and I
13 crawled -- pulled myself over to the stairwell and
14 started hollering, "Matt, Matt, Matt." So finally
15 Matt came to the top of the steps. I said, "Matt,
16 something's wrong. You need to call 911." Well, he
17 called 911 and then I gave him the cell phone and
18 Susan was telling him make sure you take the
19 medicine, make sure you mention blood thinners just
20 so that they would, you know, know what I was taking
21 already.

22 And then after that I had crawled -- I've
23 got a round -- I don't know what you call it. Would
24 you call an ottoman? It's a round thing that sits in
25 front of your couch. But anyway, I crawled over to

1 it and all I could do was lay my body over it. And I
2 stayed in that position like that until the ambulance
3 got there.

4 Q. And the ambulance came?

5 A. They did.

6 Q. And did you tell them anything about a
7 history of problems with your neck?

8 A. The only thing that I remember accurately
9 is he said, Mr. Adell, how long has your neck been
10 hurting and I said I hurt all the time, I hurt all
11 the time. I didn't know what else to say. I was
12 hurting. I said I hurt all the time.

13 Q. What did you mean by that?

14 A. My whole body aches all the time
15 literally. I mean, doing the type of manual labor I
16 do, you can't do it without having some kind of...

17 Q. Have you ever experienced that type of
18 pain before?

19 A. No, sir. No, sir.

20 Q. All right. You were taken to the
21 hospital?

22 A. Yes, sir.

23 Q. All right. And from there you were
24 referred to doctors in Asheville?

25 A. Yes, sir.

1 Q. You were eventually referred to
2 Dr. Rhoton?

3 A. Yes, sir.

4 Q. What did Dr. Rhoton do for you?

5 A. I do not -- I didn't know who Dr. Rhoton
6 was until after they got me -- I went under
7 anesthesia and woke me up. That was the first time I
8 met that doctor.

9 Q. So what did he do for you?

10 A. He came in and he showed me joints. He
11 said, "These are five and six what's left of them."
12 And I said, "Five and six what?" He said, "Your
13 vertebraes." He says they're gone. He says we've
14 replaced them with cadaver bones. We soaked them in
15 your spinal fluid and then we put a metal plate with
16 two screws and he says you're in for a long haul of
17 recovery. I'm sorry. I thought I was answering.

18 MR. DETWILER: I'm sorry. Your Honor, I
19 object.

20 THE COURT: Sustained.

21 BY MR. PEAGLER

22 Q. Did he do surgery on you?

23 A. Yes, sir, he did.

24 Q. Was it on your neck?

25 A. Yes, sir.

1 Q. Do you have a scar from that surgery?

2 A. Right here. It's right here (indicating).

3 Q. Right across the front of your neck?

4 A. Yes, sir.

5 Q. Okay. Were you taken out of work right
6 after this incident occurred?

7 A. Yes, sir.

8 Q. Have you been able to return to work?

9 A. No, sir.

10 Q. Let me finish my question, please. Have
11 you been able to return to work since March 25th of
12 2015?

13 A. Yes. 2015.

14 Q. Have you returned to work since you got
15 hurt?

16 A. No, sir, I have not returned to work.

17 Q. Have you drawn any paychecks since you --
18 since March 25th of 2015?

19 A. No, sir.

20 Q. Okay. Has Dr. Rhoton been your main
21 treating doctor?

22 A. Yes, sir.

23 Q. Do you feel like the treatment that he has
24 provided and that you received from physical therapy,
25 do you think they have improved your condition at

1 least some?

2 A. Yes, sir, I do.

3 Q. Do you feel like you need more treatment?

4 A. I know I do.

5 Q. Has the doctor released you from his care?

6 A. No, sir.

7 Q. Has any doctor said you're at maximum
8 medical improvement?

9 A. No, sir.

10 Q. What do you hope to accomplish by
11 receiving further medical care?

12 MR. DETWILER: Objection, Your Honor.
13 Asked for a medical conclusion.

14 THE COURT: I'm going to allow the
15 question. Please proceed.

16 BY MR. PEAGLER

17 Q. My question was what do you hope to
18 accomplish by receiving additional medical care?
19 What's your goal?

20 A. I want to go back to work. I mean, that's
21 all I know.

22 MR. PEAGLER: If I could approach,
23 Commissioner. I'm looking at APA 8, Commissioner.
24 It's the photographs.

25 BY MR. PEAGLER

1 Q. Can you identify these copies of these
2 photographs, Horace?

3 A. Yes, I can.

4 Q. All right. What's that a picture of?

5 A. That's a picture --

6 Q. 174.

7 A. That's a picture of me in front of -- an
8 award that we have in Asheville.

9 Q. Okay. Now, was this picture taken in
10 Asheville?

11 A. Yes, sir.

12 Q. What about this picture, APA 175?

13 A. That is -- that's my office at -- on Cedar
14 Run.

15 Q. In Myrtle Beach?

16 A. Yes, sir.

17 Q. Okay. And what's that a picture of? I
18 know it's upside down. 176.

19 A. That's a picture of the supplies we used
20 for cleaning.

21 Q. And those are in the garage in Myrtle
22 Beach?

23 A. Yes, sir.

24 Q. And last but not least APA 177?

25 A. Those are in the storage building that we

1 got.

2 Q. And what are these?

3 A. That is five-gallon buckets of wax and
4 stripper that we were unloading.

5 Q. And that's the type you were handling when
6 you got hurt?

7 A. Yes, sir.

8 Q. Okay. And are those a fair and accurate
9 depiction of the photographs?

10 A. Yes, sir.

11 Q. They're a fair and accurate depiction --

12 A. Yes, sir.

13 Q. -- of your offices those days --

14 A. Yes, sir.

15 Q. Horace, have you ever had to complain to
16 any medical provider about any issues with your
17 memory?

18 A. No, sir, I haven't. You were speaking
19 prior to this; correct?

20 Q. At any time.

21 A. Before the accident, no. After the
22 accident, yes.

23 Q. Okay. And who did you discuss that with,
24 which doctor?

25 A. I talked with not only Dr. Rhoton, the

1 surgeon, but my -- my main -- my personal physician,
2 my doctor Dr. Smith.

3 Q. Okay. After the accident --

4 MR. PEAGLER: Commissioner, I'm referring
5 to APAs 1 and 2 by the defense, Exhibits 1 and 2.

6 BY MR. PEAGLER

7 Q. This looks like a form. Can you tell me
8 who signed this form?

9 A. My wife, Susan.

10 THE COURT: Where you at?

11 MR. PEAGLER: It's APA 254 defense brief.

12 THE COURT: Got it.

13 MR. PEAGLER: It's under Tab 2. It's the
14 last thing.

15 THE COURT: All right.

16 BY MR. PEAGLER

17 Q. And what date was that submitted? Can you
18 tell us?

19 A. If I can get my glasses I could tell you.

20 MR. PEAGLER: Commissioner, I can just --
21 it looks like 3/30/2015.

22 THE COURT: Yes, sir.

23 MR. DETWILER: I'll stipulate to that.

24 BY MR. PEAGLER

25 Q. So that's five days after the incident

1 that your wife sent in this form?

2 A. Yes, sir.

3 Q. All right. And then it looks like you
4 signed a form, and this is APA 253. It looks like
5 you signed a form and turned it into the insurance
6 company also. Is that your signature?

7 A. Yes, sir.

8 Q. All right. And it shows a weekly wage of
9 \$1,500?

10 A. Yes, sir.

11 Q. And can you tell us what it says how the
12 injury or occupational disease occurred? Can you
13 tell us what's written there?

14 A. I can't really see the...

15 MR. PEAGLER: Well, if I could read it,
16 Commissioner. "Moving and installing supplies to
17 Myrtle Beach, South Carolina temporary storage."

18 BY MR. PEAGLER

19 Q. Well, this doesn't have a date. Could you
20 tell us what date? Do you have any idea or
21 recollection when that was filed?

22 A. No, sir. Honestly, I don't.

23 Q. Okay. And that's the form you sent to the
24 insurance company?

25 A. Yes, sir.

1 MR. PEAGLER: That's all I have for this
2 witness.

3 THE COURT: Mr. Detwiler.

4 MR. DETWILER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. DETWILER

7 Q. Mr. Adell.

8 A. Yes, sir.

9 Q. Do you need to take a break? I'm going to
10 be with you for a few minutes.

11 A. Oh, no, sir.

12 Q. You good?

13 A. Yes, sir.

14 Q. Okay. You comfortable. Back in May of
15 2014, this would be before this happened.

16 A. Uh-huh.

17 Q. This happened you say on March 25th, 2015;
18 right?

19 A. Uh-huh.

20 Q. So back in May of 2014 you were actually
21 treating for back and joint pain with Forge Mountain
22 Medicine, weren't you?

23 A. Yes, sir.

24 Q. Okay. And that's not your chiropractor
25 that you were treating with three times a week.

1 That's another medical facility, isn't it?

2 A. Yes, sir.

3 Q. Okay. And so you treated three times a
4 week with a chiropractor. And how long did you do
5 that?

6 A. After he tried giving me some muscle
7 relaxers to try to see if that would calm it down, he
8 sent me to Clay Sill(ph) who is the chiropractor that
9 I've been seeing for many years.

10 Q. And you've been seeing the chiropractor
11 for many years?

12 A. Yes, sir.

13 Q. Three times a week?

14 A. Not --

15 Q. More or less?

16 A. Yeah, more or less. Not consistent.

17 Q. Okay. I'm with you. I'm with you. And
18 you mentioned a while ago that he does some
19 manipulation of your mid and low back and then does
20 something or at least that tends to release your
21 tension. And you pointed -- you said here
22 (indicating), but it's not clear on the record. You
23 meant your neck; right? You pointed to your neck.
24 Is that what you meant to say?

25 A. What I meant -- okay. I don't know if

1 you've ever been to a chiropractor or not.

2 Q. I'm just asking.

3 A. Well, I'm trying to clarify what you're
4 saying there because you're sort of confusing me.
5 Because I barely reach this -- you know, the part of
6 my neck back here. I don't have any -- I did not
7 have any problems from my shoulder blades up to the
8 bottom of my ears. I had no trouble there. All of
9 my problems were these muscles that run across here
10 (indicating).

11 Q. Your shoulders?

12 A. Yes, sir.

13 Q. Your shoulders now?

14 A. Well, yes, sir.

15 Q. The top of your shoulders and the base of
16 your neck, is that what you're referring to?

17 A. That's what I'm referring to, sir.

18 Q. Okay. Good. Now, so in addition to
19 treating with the chiropractor for all those many
20 years, you also treated with Forge Mountain Medicine.
21 That was for back and joint pain and even in June
22 you were back there again and you were having muscle
23 pain, moderately severe, constant and worsening and
24 the pain was aching; isn't that right?

25 A. And -- yes, sir.

1 Q. And it's same kind of pain you just
2 described?

3 A. Yes, sir.

4 Q. Okay. That you were treated for with the
5 chiropractor?

6 A. Yes, sir.

7 Q. And when you went on March 25th of 2015,
8 the EMS picked you up; Right? The emergency medical
9 services people came and picked you up from your
10 second home or office or -- I'm not arguing that --

11 A. Yes. Yes, sir. Yes, sir.

12 Q. And they came and picked you up and it was
13 early in the morning?

14 A. It was -- it was -- it was 2:00 o'clock or
15 a little bit after.

16 Q. I'm with you. And so -- and that report
17 says that you were found in the living room kneeling
18 against the coffee table; is that right?

19 A. I was -- yes. I was actually laying over
20 that table. Yes, sir.

21 Q. That was in the living room in the house;
22 right?

23 A. Yes, sir.

24 Q. Okay. And you were having extreme neck
25 pain off and on for three months according to the EMS

1 records. Who told them that? That would have been
2 you, wouldn't it?

3 A. Yes, sir. Yes.

4 Q. And then said that you had been seeing a
5 chiropractor and had just been adjusted recently
6 according to this pretty specific history that the
7 EMS people had; right? Do you remember telling them
8 that?

9 A. I cannot tell a lie. I don't honestly
10 remember that.

11 Q. You don't remember --

12 A. I just know I was in so much pain.

13 Q. Okay. But that's true that you had been
14 treating with a chiropractor --

15 A. Yes, sir.

16 Q. -- and had been recently adjusted --

17 A. Yes, sir.

18 Q. -- by the chiropractor?

19 A. Yes, sir.

20 MR. DETWILER: Okay. Your Honor, I'm
21 looking at APA Page 2, the EMS record. I think
22 that's in Mr. Wyman's Page 2, I believe. It may be
23 in both Mr. Wyman and Mr. Peagler's Page 2. This
24 would be the 3/25/15 EMS record APA Page 2.

25 MR. WYMAN: It's in mine, Commissioner.

1 THE COURT: All right.

2 BY MR. DETWILER

3 Q. And the EMS people noted that you told
4 them -- or tried to tell them that the pain had been
5 in your neck and radiating into both arms; is that
6 right?

7 A. Yes, sir.

8 Q. Okay. And it said that you had taken
9 medicine after dinner. That was for your high blood
10 pressure?

11 A. No. That was a muscle relaxer because I
12 thought I could calm them down. And sometimes when I
13 get done working hard after stripping waxing, I'll
14 take a muscle relaxer just so I can relax enough to
15 go to sleep.

16 Q. So you regularly took muscles relaxers to
17 try --

18 A. No, sir. I don't regularly. I don't make
19 it a practice to take pills, sir.

20 Q. Okay. Who prescribed the muscle relaxers
21 for you?

22 A. It would either -- it would have been
23 Dr. Smith.

24 Q. Dr. Smith. Is he with Forge Valley?

25 A. Yes, sir.

1 Q. Okay. And then he also -- you also noted
2 that you were supposed to take a muscle relaxer
3 after -- or at bedtime, but you didn't?

4 A. No, sir, I did not.

5 Q. Okay. But you were supposed to?

6 A. I didn't think about. Just didn't think
7 about it, sir.

8 Q. And there was no mention in the EMS report
9 about any sort of lifting accident or any accident at
10 all. Why is that? Why didn't you tell them the
11 history that you're now telling the Commissioner?

12 A. Sir, I was in so much pain. I was just
13 wanting some relief. I was, sir, and...

14 Q. Okay. Well, it was pretty specific
15 information you did give them. Why didn't you
16 mention the fact that you had picked up five-gallon
17 buckets? You don't remember why?

18 A. Sir, honestly, I don't.

19 Q. Okay. They took you to Waccamaw Medical
20 Center; is that right?

21 A. Yes, sir.

22 Q. Do you remember that?

23 A. Yes, sir.

24 Q. And essentially you gave them the same
25 story at Waccamaw Medical Center. You were having

1 neck pain for three months. It was worse tonight.
2 You've had a history of back pain. Do you remember
3 saying that?

4 A. I don't remember saying it, but I'm not
5 saying I didn't say it, sir.

6 MR. DETWILER: Okay. Your Honor, that
7 would be APA Page 3.

8 BY MR. DETWILER

9 Q. And then that same day I guess at Waccamaw
10 they did a CAT scan and that showed cervical
11 spondylosis. No acute bony abnormality. Are you
12 aware of that?

13 A. No, sir, I'm not.

14 MR. DETWILER: That's APA Page 9, Your
15 Honor, Mr. Wyman's APA.

16 BY MR. DETWILER

17 Q. So then you went to the Park Ridge
18 Emergency Room, and that would be back in the
19 Asheville area --

20 A. Yes, sir.

21 Q. -- where you live?

22 A. Yes, sir.

23 Q. Okay. And that was on March the 27th,
24 2015, just two days later? Do you remember that?

25 A. I can't say yea or nay to that, but...

1 Q. Okay. The history given to the Park Ridge
2 ER was -- it said that the onset of your problem was
3 chronic. Okay. Do you know what "chronic" means?

4 A. Sure, I do, sir.

5 Q. Okay. And it said that the incident
6 happened at home and it also said that you had had
7 neck pain for four months and it said that there
8 was --

9 THE COURT: What page are you on?

10 MR. DETWILER: I'm sorry. That would be
11 on Page 56 -- excuse me. Page 46 of Mr. Peagler's
12 APAs. Making sure that I can tell you.

13 THE COURT: That's all right.

14 BY MR. DETWILER

15 Q. But they noted that you had neck pain for
16 four months and that you had had -- you didn't say
17 anything about any particular injury. Do you
18 remember that?

19 A. (No verbal response.)

20 Q. Okay. Was anybody else there to give
21 history other than you?

22 A. My wife was with me.

23 Q. She was with you?

24 A. Yes, sir.

25 Q. You already told your wife everything that

1 happened; right?

2 A. Yeah. When I was on the phone with her
3 that night, I gave her the run down. I was just in a
4 lot of pain.

5 Q. And then a few days later you went back to
6 the Forge Valley Medical Center.

7 MR. DETWILER: And, Your Honor, I'm
8 referring now to APA Pages 284 and 290. That would
9 be mine, the ones that we discussed earlier.

10 BY MR. DETWILER

11 Q. So just a few days later on the 30th of
12 March -- that would be the same day the forms were
13 sent to the insurance company -- you said at that
14 time for the first time that you had picked up
15 something and hurt your back? But in this case you
16 said you had picked up a 60-pound bag of dirt at your
17 second home is what it said. Isn't that true?

18 A. Well, pardon me for not remembering your
19 name, sir. I moved so much equipment that day,
20 honest to God, I can't tell you what I told any of
21 those medical guys, because it's like a fog to me.

22 Q. You couldn't tell them -- can you tell
23 them --

24 A. I'm not saying I didn't tell. I don't
25 remember it, sir.

1 Q. You couldn't tell them what you had
2 actually lifted to hurt your back or neck?

3 A. Sir, I don't even remember getting asked
4 that. That's just being honest. I don't remember.

5 Q. Okay. And then a couple of days later you
6 were referred and saw Dr. Rhoton or Rhoton for the
7 first time?

8 MR. DETWILER: And that was on April the
9 2nd, 2015. Your Honor, that would be at APA Page 15.
10 That would be in Mr. Wyman's APAs. This is Carolina
11 Spine & Neurosurgery.

12 BY MR. DETWILER

13 Q. And at that time you gave the history that
14 you had an acute onset of pain while building
15 shelves. Why did you tell him that?

16 A. Sir, when we were at the office that day,
17 the only thing that I can tell you for sure is what
18 stopped me from working. Anything beyond that is
19 just not clear for me.

20 Q. Okay. Well, you told Dr. Rhoton that you
21 hurt yourself building shelves and now you're saying
22 that you hurt --

23 MR. PEAGLER: I'm going to object.
24 That's --

25 MR. DETWILER: -- yourself lifting this

1 wax; is that correct?

2 MR. PEAGLER: That's not the complete
3 sentence. He said this occurred when he was working
4 building shelves and burring of new supplies. That's
5 what the sentence says on APA Page 15. Not just
6 working on shelves.

7 MR. DETWILER: Well, Your Honor, he can
8 cross-examine.

9 THE COURT: All right.

10 MR. DETWILER: Thank you, Your Honor.

11 BY MR. DETWILER

12 Q. And so -- and you also told Dr. Rhoton
13 there was no prior history of neck problems, didn't
14 you?

15 A. Yes, sir. I...

16 Q. Okay. Now, these forms that Mr. Peagler
17 asked you about, those are forms -- they're a little
18 bit different than the forms we're used to down in
19 South Carolina because this was originally filed as a
20 North Carolina claim, wasn't it?

21 A. I understand that to have happened, sir.

22 Q. Okay. And one of them says that you were
23 injured at 4:00 p.m. while moving and installing
24 supplies to the Myrtle Beach temporary storage. And
25 that one was signed by you but there's no date. Do

1 you remember that? That was -- do you remember that
2 form? Shall I show it to you again so you...

3 A. Get me glasses.

4 Q. I got them.

5 A. Understand I can't read or see without
6 them.

7 Q. Yeah. Let me bring them to you. I'm
8 sorry. Your glasses.

9 A. Thank you, sir.

10 **MR. DETWILER:** Your Honor, I'm looking at
11 APA Page 253 which would be Tab 1 or Exhibit 1 that
12 Mr. Peagler asked him about earlier.

13 **THE COURT:** Yes, sir.

14 **BY MR. DETWILER**

15 Q. And that looks like a mechanical signature
16 to me. Did you actually sign that or did somebody
17 stamp your signature on that for you?

18 A. My office man stamped that signature on
19 there. But that is my signature because that stamp
20 as you know is made from your signature.

21 Q. Of course. But who actually filled that
22 out? Is that your writing or your wife's writing?

23 A. That would be my H.R. person. Because at
24 that time I believe -- they had me under so much
25 medication, sir, I couldn't even talk to you plain.

1 Q. Okay. So somebody in your office signed
2 that?

3 A. It would have been Donna, My office
4 secretary and my H.R. person signed it.

5 Q. Donna Cook?

6 A. Yes, sir.

7 Q. Okay. And she would have filled this out
8 based on what you told her?

9 A. Based on what my wife. Because I was in
10 no condition to talk to anyone. When I left from
11 down there in South Carolina on my way back home the
12 only way that I could get home and ride was for them
13 to shoot me up with a very strong pain pill. I can't
14 give you that pain pill's name because I don't take
15 medicine.

16 Q. Okay. Is it fair to say that this form
17 that doesn't have a date was probably filled out at
18 the same time this form that does have a date?

19 A. My wife could tell you exactly because she
20 makes sure the stuff was filled out, sir, and I'm not
21 trying to dodge your question.

22 Q. I understand. That's fine. That's a fine
23 answer. Nothing wrong with that answer. Okay. And
24 that would have been also filled out by Ms. Cook or
25 would that have been -- it was signed by your wife?

1 A. That's my wife's handwriting if you'll
2 look.

3 Q. Okay.

4 A. If you'll compare them, you can see that
5 they're not the same, sir.

6 Q. Okay. So your wife filled one of them out
7 and Ms. Cook filled the other one out?

8 A. I think that -- yes, sir.

9 Q. Okay. Now on the Form 50 -- the Form 50
10 is a notice of claim or a hearing request in South
11 Carolina. Okay? That's what your lawyer sends to
12 the Commission to get all this started. You were
13 probably aware of that, aren't you? The Form 50?

14 A. Yes.

15 Q. All right. On the Form 50 that was
16 originally filed on May the 7th, 2015, the Form 50
17 says that you were working on a storage facility --
18 and I'm quoting now. "The claimant was working on a
19 storage facility when he fell injuring his back."

20 A. Sir, I haven't injured my back here.

21 Q. And you didn't fall, did you? Okay.

22 A. No, sir.

23 Q. And then on the 12A, which is something
24 the insurance company sends in to the Commission,
25 once they get notice of the claim, they put what

1 they're told. It says you injured your neck/back
2 from a fall. You didn't fall, did you?

3 A. No, sir. I just picked up two buckets and
4 my neck popped.

5 Q. Okay. And then on the Form 50 that was
6 filed on May the 18th, 2015, it said that you were
7 working on the storage facility when you fractured
8 your neck and back when you were carrying a
9 five-gallon bucket of wax. Okay.

10 A. Could you repeat that again?

11 Q. Yes, sir. I'll be glad to. It says that
12 you were carrying a five-gallon bucket of wax. And
13 your testimony today is that you were carrying two
14 five-gallon buckets of wax?

15 A. Yes, sir. Because anybody that's in this
16 line of work will tell you it's better to have equal
17 amount of weight distribution than it is to be
18 lopsided on one side.

19 Q. And this occurred when you -- you were
20 actually in the trailer when you -- when you picked
21 them up and felt this pain in your neck?

22 A. I reached up into that trailer just like
23 this (indicating), sir, and picked those buckets up
24 and put them down by my side and turned around. And
25 when I turned, my neck popped. I set those buckets

1 down immediately.

2 Q. Okay. Gotcha. And so why did you tell me
3 that this actually occurred when I took your
4 deposition that you were in the garage working?

5 A. The trailer was in the garage, sir.

6 Q. The trailer was in the garage?

7 A. The back end of the trailer was sticking
8 in.

9 Q. Okay. I understand. I didn't understand
10 that. That's good. Okay.

11 THE WITNESS: Your Honor.

12 BY MR. DETWILER

13 Q. Are you okay?

14 A. Listen. I'm a very honest man. I'm too
15 old to try to do something dishonest and I didn't
16 build my business dishonest. I built it on faith,
17 sir.

18 Q. Mr. Adell.

19 A. I'm just saying that you're -- it feels
20 like you're just -- you're badgering me. And I'm --
21 I'm not going to lie to you. I'm not.

22 THE COURT: Just keep answering his
23 questions, sir.

24 MR. DETWILER: Thank you, Your Honor. May
25 I proceed?

1 THE COURT: Yes. Please.

2 MR. DETWILER: Thank you.

3 BY MR. DETWILER

4 Q. I'm sorry if you feel I was badgering you.
5 That's not my intent.

6 A. I mean.

7 Q. And so when you went to see Dr. Rhoton,
8 they actually admitted you to admission hospital;
9 right?

10 A. Immediately, yes, sir.

11 Q. Okay. And they couldn't do the surgery on
12 your neck right away because of your high blood
13 pressure or some other medical problems?

14 A. Yes, sir. If memory serves me right, he
15 came in to the room and they had me under medication.
16 Before the surgery my wife told me who was doing my
17 surgery. That he had worked on Peyton Manning and
18 that was all I knew of the man.

19 Q. Okay. Going back to when you first went
20 to Waccamaw Medical Center.

21 A. Yes, sir.

22 Q. Then you went -- after that you went to
23 the Forge Valley Medical Center and then you wound up
24 with Dr. Rhoton and then you wound up in the Mission
25 Hospital. Each and every one of those times you gave

1 them your BlueCross BlueShield card, didn't you, and
2 put that on your health insurance?

3 A. Yes, sir.

4 Q. Okay.

5 A. I didn't know how else to pay for it.

6 Q. And this had been just reported to the
7 insurance company. Did you ever ask for prior
8 authorization from Builders Mutual Insurance Company
9 for the surgery?

10 A. Sir, I was in the hospital. My wife
11 handled all the logistics of things.

12 Q. Did you ever tell anybody -- are you aware
13 of anybody ever reporting to the Builders Mutual
14 Insurance Company that you were in the hospital and
15 getting ready to go into surgery?

16 A. If I am -- If I am not --

17 Q. Did you? Let me ask --

18 A. No, sir. No, sir.

19 Q. I can't ask you what other people said
20 because --

21 A. No, sir. No, sir. No, sir.

22 Q. Okay. I'm sorry. I didn't phrase that
23 well. And all of your bills, medical bills have been
24 paid by BlueCross BlueShield; right?

25 A. Not to my knowledge.

1 Q. Some of your bills have been paid by
2 BlueCross BlueShield?

3 A. I'm going to assume, sir. I do -- I can't
4 give you a yes or no on that, sir.

5 Q. Okay. Did you ever tell Dr. Rhoton that
6 this had actually happened at work while you were
7 working?

8 A. Yes, sir.

9 Q. Okay. Now, I know you said what you said
10 and that's reflected in the record, but did you say
11 that that was while you were working in your
12 employment?

13 A. I don't know.

14 Q. Okay. And I assume the same answer is
15 true. You don't remember or you don't know whether
16 you told the hospital this happened at work?

17 A. No, sir, I do not.

18 Q. And in order to get your health insurance
19 to pay your bills, you specifically told BlueCross
20 BlueShield that this did not happen at work; isn't
21 that true?

22 A. No, sir. I -- no, sir. That is not true.

23 THE COURT REPORTER: Excuse me a moment.

24 (COURT REPORTER CHANGES BACKUP AUDIO.)

25 THE COURT: Off the record.

1 (OFF THE RECORD.)

2 THE COURT: We're back on the record.

3 BY MR. DETWILER

4 Q. For at least a little while after your
5 surgery you still received a salary from the company
6 you own; right?

7 A. No, sir.

8 Q. Okay. Well, you're a 100 percent owner of
9 the company; right?

10 A. Yes, sir. And I am employed by the
11 company.

12 Q. Right. And who told you not to take a
13 salary anymore?

14 A. Who told me not to take a salary anymore?

15 Q. Yes, sir. Could that have been your
16 lawyer?

17 MR. PEAGLER: Objection, Commissioner.
18 That is not appropriate.

19 THE COURT: Sustained.

20 BY MR. DETWILER

21 Q. Why did you quit paying yourself a salary?

22 A. Because if I am not mistaken, my
23 bookkeeper said this is a workmen's comp claim. You
24 cannot draw a check anymore, Horace, until this gets
25 cleared up.

1 Q. Okay. And so --

2 A. And my account- -- excuse me. And my
3 accountants. I'm sorry. I didn't mean to interrupt
4 you.

5 Q. No. I interrupted you. I'm sorry.

6 A. My accountant told me that she was almost
7 positive that I couldn't draw a paycheck under this.

8 Q. Okay. And so did your wife continue to be
9 paid by the company; right?

10 A. My wife is on disability, sir. It took
11 everything she could do just to try to handle the
12 day-to-day operations of the business.

13 Q. So she works in the business? She handles
14 the day-to-day operations? Always has handled the
15 day-to-day operations --

16 A. No, sir.

17 Q. -- hasn't she?

18 A. No, sir.

19 Q. Well, she did prior to this accident?

20 A. No. Do you want me to answer?

21 Q. Yes, sir.

22 A. My wife is on a right-to-work situation.

23 Q. Uh-huh.

24 A. And since all of this has happened to me
25 because she had to take on such a strong load with

1 the business, she about lost her disability for this.

2 Q. Okay. I'm sorry to interrupt you, but
3 here is my question.

4 A. Well, I mean, I --

5 Q. And it's not a complicated question. Did
6 she work in the business -- whether she got money or
7 not, did she work in the business prior to this
8 incident?

9 A. Yes, sir.

10 Q. And she was the person who kind of ran the
11 office, wasn't she?

12 A. Yes, sir.

13 Q. Okay. And she still is the person who
14 runs the office; correct?

15 A. No, sir.

16 Q. Who? Are you back running the office?

17 A. No, sir.

18 Q. Who runs the office?

19 A. My operations manager runs the office,
20 sir.

21 Q. Okay. Now, after your surgery you
22 actually did go into the office some, didn't you?

23 A. Dr. Rhoton's assistant told me that I
24 could only --

25 MR. DETWILER: Objection, Your Honor.

1 THE WITNESS: Well, you're asking me.

2 MR. DETWILER: I did not ask you what
3 somebody else said. All I --

4 THE WITNESS: The doctors --

5 THE COURT: Hang on. Hang on.

6 BY MR. DETWILER

7 Q. All I've asked is did you go back into the
8 office and work some after this -- after the surgery?

9 THE COURT: That's either yes or a no.

10 THE WITNESS: Yes, I did.

11 BY MR. DETWILER

12 Q. And you continue to go into the office and
13 work some, don't you?

14 A. No, sir.

15 Q. Okay.

16 A. Sir, I need to clarify that.

17 Q. Please do.

18 A. I can only be on my feet two to three
19 hours a day.

20 Q. Okay.

21 A. I can only sit at my desk and I can answer
22 the phone and I can sign payroll checks. That is the
23 extent of what I can do. If there is a job that
24 needs to be estimated, someone has to go with me --

25 Q. Okay.

1 A. -- and do that. She made that very clear
2 that is the only capacity and that was so the
3 business could still run.

4 Q. Okay. And so you go in and you sign
5 checks --

6 A. I'm sorry.

7 Q. -- and do paperwork and then you do some
8 estimating with help from somebody else. What else
9 do you do?

10 A. There's nothing else I can do. I'll take
11 a meeting. I'll take a meeting. I can take a
12 meeting.

13 Q. Okay. And who would you meet with?
14 Vendors and advertising people like the man who came
15 in earlier?

16 A. Yeah. Heads of departments in hospitals,
17 people like that.

18 Q. Okay. So you're selling if you will?
19 You're selling your company?

20 A. No. These are what we call quality
21 control meetings.

22 Q. Okay. I'm with you. And would that be in
23 Myrtle Beach as well as Asheville?

24 A. Yes, sir.

25 Q. Okay. So you're traveling down to Myrtle

1 Beach and meeting with these people you just
2 described as well as in Asheville; correct?

3 A. Yes, sir.

4 Q. Okay. And when a decision needs to be
5 made about the company -- hiring, firing, anything
6 like that -- you make those decisions, don't you?

7 A. No, sir.

8 Q. So you don't have anything to do with
9 those decisions?

10 A. I did not say -- I did not say that. I
11 answered the question you asked me.

12 Q. Okay. So are you consulted? Do you get
13 involved in the business decisions of the company?

14 A. I am consulted.

15 Q. Okay. And as the owner I imagine they
16 listen to you, don't they?

17 A. As the owner if I am not there to actually
18 witness whatever problem, the situation I'm having,
19 if it's not documented properly, no, sir, I do not
20 make that decision. I leave it up to my operations
21 manager to make those calls.

22 Q. You have 35 people now. 32 in North
23 Carolina and three in South Carolina?

24 A. Yes, sir.

25 Q. On March 25th, excuse me, 2015, you didn't

1 have any employees in South Carolina?

2 A. No, sir.

3 Q. Okay. And how many employees did you have
4 in North Carolina?

5 A. How many did I?

6 Q. At that time. Did you have fewer or more
7 at that time or the same?

8 A. Fewer or more? I missed something.

9 Q. Okay. My question is how many employees
10 did you have in North Carolina on March 25th, 2015?

11 A. Thirty-eight.

12 Q. You had 38. Okay. And you had zero in
13 South Carolina?

14 A. Yes, sir.

15 Q. All right. How often do you stay in
16 Myrtle Beach at your home or your second home or your
17 facility or --

18 A. Whenever I have come down for something.

19 Q. And how often do you come down?

20 A. Here lately it's been a week here, a week
21 there. So it'd be safe to say six, seven days.

22 Q. What do you mean six --

23 A. At a spurt.

24 Q. Okay. Six or seven days at a time?

25 A. Yes, sir.

1 Q. About every couple of weeks? Are you a
2 week on, week off here?

3 A. I try to stay back and forth as much as
4 possible, but the ride doesn't do me very good.

5 Q. Okay. You mentioned a while ago that you
6 received an honorable discharge from the Army. In
7 fact, you received a general discharge, didn't you?

8 A. And if you will check, that has been
9 upgraded.

10 Q. Okay. Well, when I took your deposition
11 you told me that you'd had an honorable -- I mean, a
12 general discharge?

13 A. Yes.

14 Q. Okay. And when I took your deposition you
15 told me that they had -- they had sort of encouraged
16 you to leave because of your family situation?

17 A. Yes.

18 MR. DETWILER: Okay. Your Honor, that's
19 all I have at this time.

20 THE COURT: Mr. Wyman?

21 MR. WYMAN: No questions, Commissioner.

22 THE COURT: Anything further?

23 MR. PEAGLER: Briefly, Commissioner.

24 REDIRECT EXAMINATION

25 BY MR. PEAGLER

1 Q. In regard to when you went to the
2 emergency room at Waccamaw Community Hospital -- I'm
3 looking at APA Page 3 -- did you tell them that the
4 neck pain was exacerbated that night? Do you recall
5 saying that?

6 MR. PEAGLER: It's in the records,
7 Commissioner, under HPI.

8 THE WITNESS: You say exacerbated?

9 BY MR. PEAGLER

10 Q. Right. Got worse?

11 A. Yes.

12 Q. Now, when you were -- well, let me make
13 sure. I think this is on APA Page 50. I believe
14 this is Dr. Rhoton's office. And this is all
15 referring to before. It says, "Patient presents
16 today with an eight-day history of acute onset of
17 severe posterior neck bilateral shoulder and
18 bilateral upper extremity pain in the triceps,
19 forearms and to the fingertips. This occurred when
20 he was working building shelves and burring of new
21 supplies at he and his wife's new business at Myrtle
22 Beach, South Carolina." Do you remember making that
23 statement to Dr. Rhoton?

24 A. I do.

25 Q. Okay. Did you have to pay for any type of

1 medical treatment out of your pocket or medication?

2 A. No, sir.

3 Q. Okay. Have you had to take any loans or
4 promise to pay any medical providers?

5 A. Yes, I have.

6 Q. And do you remember what those
7 providers -- who they are?

8 A. One of them is Forge Mountain Physical
9 Therapy. BlueCross BlueShield gives me 30 visits a
10 year for physical therapy. We called them and told
11 what the situation was. They extended 15 more
12 visits. Once we hit that 15 more visits, they could
13 no longer do that, give me coverage.

14 Q. When y'all submitted the claim to workers'
15 compensation, did the workers' compensation carrier
16 ever instruct you to go to any specific medical
17 provider?

18 A. No, sir.

19 Q. Did they ever offer you any medical
20 provider as the president of the company?

21 A. No, sir.

22 Q. Have they ever offered to pay for any of
23 your medical treatment?

24 A. No, sir.

25 Q. Is it your understanding that they

1 immediately denied your claim?

2 A. Yes, sir.

3 Q. Is that why you had to seek treatment on
4 your own for these injuries?

5 A. Yes, sir.

6 MR. PEAGLER: And Commissioner, on the
7 Form 50 issue I'd like to note that on May 18th,
8 2015, the subsequent Form 50, it was amended. And I
9 would apologize that the error reporting on the
10 initial Form 50 was a scribner's error on my part.
11 That was fixed in the hearing request on May 18th of
12 2015.

13 THE COURT: Mr. Detwiler, anything
14 further?

15 MR. DETWILER: No, sir.

16 THE COURT: Mr. Wyman?

17 MR. WYMAN: Nothing, Commissioner.

18 THE COURT: Any other witnesses on behalf
19 of the claimant?

20 MR. PEAGLER: No, sir.

21 THE COURT: Any witness on behalf of
22 defendant employer?

23 MR. WYMAN: None, Commissioner.

24 MR. DETWILER: None.

25 THE COURT: All right. That will conclude

1 this proceeding.

2 (WHEREUPON, THE HEARING WAS CONCLUDED AT 4:10 P.M.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF RICHLAND

5
6 I, SKYLET KEAN, COURT REPORTER AND NOTARY
7 PUBLIC, FOR THE STATE OF SOUTH CAROLINA, DO HEREBY
8 CERTIFY THAT SAID HEARING TRANSCRIPT IS A
9 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH
10 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING
11 TRANSCRIPT CONTAINS A TRUE RECORD OF SAID HEARING.
1213 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY
14 NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY
15 OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I
16 FINANCIALLY INTERESTED IN THE ACTION.
1718 WITNESS MY HAND AT COLUMBIA, SOUTH CAROLINA,
19 THIS 4TH DAY OF MARCH 2016.
2021
22
23 SKYLET KEAN, COURT REPORTER
24 NOTARY PUBLIC FOR THE STATE OF
25 SOUTH CAROLINA
MY COMMISSION EXPIRES: 07/30/2024SKYLET KEAN (803) 609-0134
fttpam@aol.com

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1504993

Horace Adell,)
)
Claimant,)
)
v.)
)
Clean Streak,)
)
Employer,)
)
and)
)
Builders Mutual,)
)
Carrier/Defendants.)
)

COPY

FULL COMMISSION HEARING

Tuesday, August 16, 2016
11:51 a.m. - 12:20 p.m.

The Full Commission Hearing was heard before Commissioners Gene McCaskill, Melody L. James and Mike Campbell, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 16th day of August, 2016, before Sonia D. Wallace-Sanders, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

Richard C. Detwiler, Esquire
 Alden G. Terry, Esquire
 Callison, Tighe and Robinson, LLC
 1812 Lincoln Street
 Columbia, South Carolina 29201
 Attorney for the Claimant

Daniel E. Peagler, Esquire
 Michael Johnson PC and Associates
 2001 Lincoln Street
 Columbia, South Carolina 29201
 Attorney for the Defendants

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: Today is August 16, 2016. This is
2 South Carolina Workers' Compensation Case
3 Number 1504993. This is the case of Horace
4 Adell, Claimant, versus Clean Street, Employer,
5 and Builders Mutual, Carrier. This is a cross
6 appeal. The first appellant is the claimant
7 defendant represented by Richard Detwiler. The
8 second appellant is claimant defendant
9 represented by Daniel Peagler. Each side is
10 allowed 10 minutes for oral argument and the
11 appellant three minutes in reply. You are
12 requested to argue the grounds of exception and
13 stay within the records.

14 COMMISSIONER CAMPBELL: Mr. Detwiler?

15 ARGUMENT BY MR. DETWILER:

16 MR. DETWILER: Thank you, Commissioner. May it
17 please this Commission. We have a case here
18 that's a little bit unusual. I know you've
19 looked at the record already to some degree at
20 least. And the employer is, in fact, the
21 claimant in this case, which makes it a little
22 tricky when you're defending the case. And I
23 represent just Builders Mutual Insurance
24 Company, the carrier. Michael Wyman was hired
25 to represent the employer. We had a hearing



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1 back in, I guess it was February. No, excuse
2 me. Yeah, I guess it was ---

3 MR. PEAGLER: February.

4 MR. DETWILER: --- February, yeah, it was, February
5 before Commissioner Beck. The issue is
6 compensability, whether this man Horace Adell
7 had, in fact, suffered an injury by accident in
8 the scope of his employment. And then the
9 second issue that is brought before you today
10 is whether or not he is entitled to a running
11 award, if he, in fact, did suffer an injury by
12 accident. This man was working at -- the
13 medical record -- what the medical records say
14 was a second home down in Myrtle Beach. The
15 man's from Asheville. His company is in
16 Asheville. He was working on his second home,
17 which he then said, well, was really part --
18 partly his office. And although he got his
19 personal mail there and his office mail he got
20 at a P.O. Box in Myrtle Beach. But he was, by
21 all accounts and it's not disputed, that he was
22 looking to increase his presence or start a
23 presence in the Myrtle Beach, South Carolina,
24 area for his business, Clean Streets, which
25 does industrial cleaning for hospitals and



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1 things like that. So, he says that he was at
2 his office, second home, you decide, when he
3 says that he was lifting a bucket of wax and
4 felt a pop in his neck. This happened, he
5 says, during the day. And then he put ice
6 packs on it and went to sleep. And then woke
7 up in excruciating pain at something like 2 --
8 1:00 a.m. the next day. That's why you'll see
9 the medical records reflect a different day
10 from what he says is the accident. The problem
11 with that story, though, is that the EMS
12 records and the ER records say absolutely
13 nothing, nothing about an injury by accident.
14 What they say is, in fact, he tells the EMS
15 workers he's been having neck problems and pain
16 in his neck for three months. The ER records
17 said three to four months. He tells the EMS
18 people, as they're taking him to the hospital,
19 that he had taken some pain medication and had
20 -- was supposed to have taken a muscle relaxer
21 before he went to bed, but didn't do it. So he
22 was already on two medications for his neck
23 pain. Now, the ER records reflect the same
24 thing. Absolutely no mention of picking up a
25 bucket of wax or a bucket of anything. And all



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1 he says to all his medical providers,
2 contemporaneously with this event, was that, in
3 fact, he had been suffering from neck pain for
4 three to four months. So fast forward a few
5 days, he goes on his own to see a doctor up in
6 North Carolina and his story begins to evolve.
7 And he gets his wife to file a first reported
8 injury in North Carolina, where they were
9 insured. And the first report in North
10 Carolina reflects that he says he hurt his neck
11 while building shelves at his -- at the new
12 office or new storage facility in Myrtle Beach.
13 Didn't say a thing about picking up wax. And
14 again, likewise, you know, the story evolved
15 even in a -- in a stranger twist. The Form 50,
16 the original Form 50 said he hurt his neck when
17 he fell. So there's one story after another
18 about how this guy supposedly got hurt. But if
19 you look at the medical records and look at
20 them objectively, and particularly the initial
21 medical records where he is saying I'm having
22 -- I've been having neck problems, I've been
23 treating with a chiropractor for three months.
24 He's on drugs, pain drugs and muscle relaxers.
25 And the EMS record even reflects that this



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1 prior history, if you read it, the prior
2 history relates to the neck and, in fact, even
3 says that he had radiating symptoms in his
4 arms. That's what the EMS records say. It is
5 our position, of course, that this man did not
6 suffer an injury by accident in the course and
7 scope of his employment. In fact, he had
8 preexisting condition and I'll note, too, that
9 his Form 50 -- the last Form 50 that was filed
10 when they, you know, got the story that they
11 were going to stick with -- the last Form 50
12 that they filed said he had no preexisting
13 condition, you know. I think it's 11(b) on the
14 Form 50 that it asks you if you have any prior
15 disabilities. And he said, no. Well, he's had
16 years and years of history, not just this
17 incident with his neck for three months prior
18 to this, but he had years of problems with his
19 back and that's reflected in the medical
20 records. It is our position and we think you
21 should find, based on the medical records as a
22 whole and specifically the testimony of the
23 claimant, that this man did not suffer a -- an
24 injury by accident on the 25th of March of '15.
25 Now, even if you were to think that, okay,



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1 Commissioner Beck found this man credible --
2 and I got to tell you he's a likable guy. I
3 can see why Commissioner Beck may have found
4 that. He's a likable guy. He's quiet, unlike
5 me, he's quiet. He's unassuming. He seems
6 like a nice guy and Commissioner Beck thought
7 he was credible. Well, I mean, he gave a good
8 appearance. It just doesn't make sense though,
9 when you look at his testimony in relation to
10 the medical records. But even if you were to
11 find that he was -- he suffered a compensable
12 accident, think about what he testified in the
13 hearing about. Now, again, this is a guy who
14 owns the company. He's the executive of the
15 company. His wife is also an officer of the
16 company. He testified that he -- since this
17 accident, he sits in his office and he answers
18 the phone, he goes out and does estimates, he
19 says he has to have help. He didn't describe
20 how much help or what help, but he goes and
21 does estimates for the company. He has
22 meetings with vendors. He has meetings with
23 department heads in hospitals, he has -- he's
24 involved in the hiring and firing, he signs
25 payroll checks and does other paperwork. And



1 yet, Commissioner Beck, for whatever reason,
2 found that he should be on a running award of
3 temporary total disability. Now, think about
4 this one. His wife, Susan Adell, testified in
5 her deposition -- she wasn't at the trial, by
6 the way -- but in her deposition which is in
7 the record, Susan Adell says that the company
8 has made more money and more profit and has
9 grown since he had this accident. So this
10 company that is, you know -- and she testified,
11 well, I really don't know anything about the
12 company, I was really just sort of a marketing
13 person, you know, I've had to step in and do
14 some stuff, but he really is the one that ran
15 the company. And when I asked about, well, how
16 well's the company doing. Low and behold the
17 company's doing great. Miraculously, doing
18 great. It is ---

19 COMMISSIONER WILKERSON: Is the company still paying
20 him?

21 MR. DETWILER: And the company -- no, the company's
22 not paying him ---

23 COMMISSIONER WILKERSON: Well, that's why he's doing
24 great at \$1,500 a week.

25 MR. DETWILER: Well, I -- I guess you're right.



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1 That certainly has something to do with the
2 profit. I said, well, who told you, you should
3 stop your salary? And there was a lot of
4 hemming and hawing about that. So ultimately,
5 he said, you know, his accountant told him he
6 ought to stop it. And so he stopped his own
7 salary, which, you know, come -- which makes
8 for a great TTD claim. But the fact of the
9 matter is, he's still working and that does not
10 meet the definition of total disability under
11 42-910.

12 COMMISSIONER WILERSON: You still got him insured?

13 MR. DETWILER: No, sir. We do not, is my
14 understanding. And so, even if he is found to
15 have suffered a compensable injury by
16 accident, I don't see how in the world this
17 Commission can say that he is temporarily
18 totally disabled and meets the definition of
19 42-910 of total disability, temporary or
20 permanent. And, therefore, that part of the
21 order, at the very least, needs to be reversed.
22 Those are the two issues we have before you.
23 Mr. Peagler has raised an issue about a -- one
24 document that is in the chiroprac- -- well, I
25 shouldn't say in the chiropractor's records.



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1 It's not a record and that's the position.
2 It's a statement by the chiropractor that
3 describes his records. That's not -- that's
4 not anything admissible under the APA as a
5 medical record. That's our position.

6 **COMMISSIONER JAMES:** Well, let's say if it is.
7 Well, and I'm going to ask Mr. Peagler what
8 relief he's requesting other than put it the
9 record. Is there something that you would want
10 to do in response to that? Should we -- should
11 it be included in the record?

12 **MR. DETWILER:** That's a good question. You know, I
13 think that, at the very least, if that were to
14 go in, you know, I did not get the chir- --
15 it's a chiropractor in North Carolina. I did
16 not, if I recall, did not retain or -- get
17 those records prior to the hearing. I don't
18 know -- I can't tell you how long before the
19 hearing I was aware that he went to a
20 chiropractor. It wasn't something that was
21 readily apparent. There's nothing ever
22 mentioned in the Form 50s, multi-form 50s about
23 this.

24 **COMMISSIONER JAMES:** Let me ask you this ---

25 **MR. DETWILER:** So I might want to get those records.



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1 COMMISSIONER JAMES: But if -- but it was a timely-
2 produced record, though. And it was in the APA
3 ---

4 MR. DETWILER: I'm not arguing that.

5 COMMISSIONER WILKERSON: Yeah.

6 COMMISSIONER JAMES: Okay. It was in the APA.

7 MR. DETWILER: Yes, it is.

8 COMMISSIONER JAMES: So there was no request at the
9 time, it was a request to keep it out, but no
10 request to do anything further at the time of
11 ---

12 MR. DETWILER: That's correct.

13 COMMISSIONER JAMES: --- the hearing.

14 MR. DETWILER: That's a fair statement.

15 COMMISSIONER JAMES: All right. Thank you.

16 COMMISSIONER CAMPBELL: Thank you. You'll have
17 three minutes. Mr. Peagler?

18 ARGUMENT BY MR. PEAGLER: ---

19 MR. PEAGLER: Three minutes?

20 COMMISSIONER CAMPBELL: No, you have -- he'll have
21 another three minutes. And you ---

22 MR. PEAGLER: Should I address my appeal also?

23 COMMISSIONER JAMES: You use your 10 minutes however
24 you want?

25 COMMISSIONER CAMPBELL: Yeah, and then you'll have



1 an additional three minutes after that.

2 (Off the Record)

3 MR. PEAGLER: All right. I'll go ahead and start on
4 my appeal. It's an expert report. The
5 document was proffered. The document was also
6 timely served on the APAs. As a matter of
7 note, we had a previously scheduled hearing
8 where that document was in my APAs as
9 referenced in my brief. And that was a hearing
10 that was originally scheduled in July of 2015.
11 So, Rick had that statement from July of 2015
12 all the way until February of 2016. He's
13 criticizing the lack of production of records,
14 yet he presented none. We had a statement,
15 which qualifies as an expert report. His way
16 to handle that at the hearing would have been
17 to either ask for an adjournment or ask for an
18 opportunity to depose the chiropractor and hold
19 record of it. And neither of those was done.

20 COMMISSIONER JAMES: I think that was my question.
21 So you're asking that we allow it in pursuant
22 to the Administrative Procedures Act and that
23 we consider it in our deliberation.

24 MR. PEAGLER: And that's why it was proffered at the
25 hearing. We want that statement in because it



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1 supports our case. There are no chiropractor
2 records that show any type of neck issue in the
3 record. The only statement from the
4 chiropractor is one where he indicates, and
5 it's quoted in my respondent's brief because it
6 was addressed in their appellant's brief, in
7 regard to -- it was basically the chiropractor
8 said that he did maintenance work for his back
9 and didn't address his neck. Basically, that's
10 it in a nutshell. And that's what the
11 statement says, which bolsters the fact and
12 goes on to be the basis -- main basis for my
13 argument. They argue my client had a
14 preexisting cervical disc issue. Yet, there
15 are no medical records prior to the date of
16 accident that document that he had a cervical
17 disc issue. There's some that may show a
18 history, but there are none that -- there is no
19 medical evidence to contradict. In fact, the
20 only medical evidence to directly address
21 causation is that of Dr. Rhoton. Dr. Rhoton is
22 the primary treating physician for the doctor.
23 He provided a questionnaire where he related
24 the accident to causing the injuries. That's
25 on my APA -- if you'll be patient for a moment



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1 -- pages 83 through 85 Dr. Rhoton also takes
2 him out of work. So let's talk about what
3 supports Horace's argument for compensability.
4 Horace is a self-made man. He was in the Green
5 Berets, 82nd Airborne, for five years. When he
6 came back he started this company, Clean Sweep,
7 in North Carolina near his home in -- near
8 Asheville and grew into a company that had its
9 -- from his home to its own office space
10 warehouse and employs 32 people in North
11 Carolina. In early 2000, I think '14, he
12 decided that he wanted to expand to South
13 Carolina. So he did the same thing. He looked
14 for an area in Myrtle Beach to buy a house to
15 use for his business. If you look at the -- in
16 my brief, I detail some of the witness
17 statement. One of them was Trey Trimble. Trey
18 Trimble is an unbiased witness. He worked for
19 Synergy Magazine on the coast, it's a business
20 publication. He met with Horace the morning of
21 the incident. He observed the business. He's
22 -- his testimony indicated it looked like a
23 business. He saw the garage, it was stored
24 with business materials. There are photos in
25 the record, which was documented by Horace



1 Adell showing what that business area looked
2 like in our APAs. And he also said that
3 morning that Horace -- this is morning of the
4 incident -- seemed to be energetic and showed
5 no signs of medical distress. We also have
6 photographs in the record from our witness, Dan
7 Warren, who is the claimant's brother-in-law,
8 who attended a family gathering with him two
9 days before this incident. We have photos in
10 the APAs. And Dan testified -- I'm looking for
11 my quote. I'm sorry. I'm a little shaky
12 today.

13 COMMISSIONER CAMPBELL: Take your time.

14 MR. PEAGLER: He testified that he saw the claimant
15 two days before the accident at the family
16 gathering. Noted claimant was in a good mood,
17 appeared in no physical distress, had no issues
18 lifting anything. And authenticated the
19 photos, which are APA number 10, pages 179 and
20 182, showing where he's holding kids, multiple
21 kids, grinning, stuff like that, just two days
22 before the incident. A person with a severe
23 cervical disc issue would not be able to do
24 that. A person with a cervical disc issue
25 would not be able to appear to be in no medical



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1 distress the morning before he got hurt.
2 There's the testimony of Matt Mazars, who no
3 longer works for him -- at the time of the
4 hearing, he had worked for Bojangles' as a
5 manager for over a year -- he was there to help
6 Horace unload the trailer supplies and also to
7 tile a bathroom. He tiled the bathroom in the
8 morning, that afternoon his testimony shows
9 where Horace got hurt, what he was doing and
10 what he did. They were unloading a trailer.
11 It had the cleaning sand that they use for
12 concrete and tile floors as an abrasive
13 cleaning component and they also had the five
14 gallon buckets of wax, which they estimated, I
15 think weighed about 40 pounds a piece. Now,
16 the medical treatment is somewhat consistent.
17 And it's argued that the carrier should not
18 have to pay for that treatment because it was
19 not authorized by the claimant. I mean, I'm
20 sorry, by the carrier. If you look at Dr.
21 Rhoton's history when he first meets him, he
22 says the patient presents today with an eight
23 daily history of acute onset of severe
24 posterior neck, bi-lateral shoulder and bi-
25 lateral upper extremity pain in the triceps,



1 forearms and to the finger tips. This occurred
2 when he was working building shelves and
3 burring of new supplies -- I'm not sure what
4 that means -- at he and his wife's new business
5 at Myrtle Beach, South Carolina. He has no
6 prior history of neck problems. He has had
7 some low back pain and sciatic problems in the
8 past, but none currently. He was seen at an
9 emergency room in Myrtle Beach and returned to
10 the actual area where they reside. He was seen
11 again at the Parkridge Hospital emergency room
12 recently, but they were apparently unable to
13 get an MRI scan. He was sent to an open MRI
14 recently and was found to have severe C5-C6
15 spondylosis stenosis and herniated disc. He
16 was referred to us for urgent neurosurgical
17 consultation -- that's APA Number 3, page 54.
18 So any argument that this wasn't emergent care
19 in order to avoid payment under the Act, we
20 feel there's no basis for that. The doctor
21 says it's urgent. The doctor says it's severe.
22 Their case was denied. It would be unfair to
23 shift the burden of medical care on a
24 compensable case. I'm sorry?

25 COMMISSIONER JAMES: There isn't -- there's a



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1 finding of the denial of the care, but there's
2 no finding that it was urgent, is that correct?

3 MR. PEAGLER: There -- I think there was a finding,
4 it was emergency medical treatment.

5 COMMISSIONER JAMES: It is? Okay. All right.
6 Thank you, I'm sorry to interrupt you.

7 MR. PEAGLER: And I would also argue that if not, we
8 would ask the Commission to address that in an
9 order -- a final order if it deems compensable.
10 As for TTD, Horace was a hands-on guy. He did
11 the buffing, he did the cleaning, he did the
12 physical work at his company also. That's in
13 his testimony and that's in his deposition.
14 The problem is, he can't do his regular work
15 because of the neck injury.

16 COMMISSIONER JAMES: But he's performing light duty.

17 MR. PEAGLER: Well, the doctor took him completely
18 out of work. He has to do some ministerial
19 work as the owner of the company, which we
20 would classify that materials being. His
21 bookkeeper and his accountant said that he
22 should not draw a paycheck. This is his
23 testimony in the hearing until this was all
24 cleared up. And that's referenced in my brief
25 also. We also see inconsistencies in the



1 brief.

2 **COMMISSIONER JAMES:** Okay.

3 **MR. PEAGLER:** I'm sorry.

4 **COMMISSIONER JAMES:** And let me make sure I
5 understand and that's the way I read it in the
6 record. That's the claimant's testimony of
7 what he was advised from his accountant?

8 **MR. PEAGLER:** That's correct.

9 **COMMISSIONER JAMES:** Okay.

10 **MR. PEAGLER:** And it was in the hearing transcript.

11 And I can tell you exactly where that is.

12 **COMMISSIONER JAMES:** That's fine, Mr. Peagler. You
13 don't have to use your time to read that off.

14 **MR. PEAGLER:** There are also several sites, for
15 instance, the profitability of the company.
16 That was not in the testimony and if it was in
17 the deposition of the defendant, there's no
18 site to refer to see what that is. I am not
19 sure that that is accurate, but that would have
20 to be referenced by site. There's a statement
21 that we take issue with, where defense counsel
22 argues in their brief that the claimant doesn't
23 want to work. He wants to go on disability
24 like his wife, which would be a significant pay
25 cut. But that was also addressed in Horace's



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1 testimony when he testified -- when he was
2 asked about the question not ---

3 COMMISSIONER CAMPBELL: Go ahead and finish your
4 sentence.

5 MR. PEAGLER: I'll finish my sentence.

6 COMMISSIONER CAMPBELL: Go ahead.

7 MR. PEAGLER: It's on the transcript of page 75,
8 lines 20 and 21. I want to go back to work.
9 I mean, that's all I know. So, thank you.

10 COMMISSIONER CAMPBELL: And you'll have three minutes
11 to reply, Mr. Detwiler.

12 REPLY BY MR. DETWILER:

13 MR. DETWILER: Thank you, Commissioner. So let's put
14 this in context now. What we're now talking
15 about is and Mr. Peagler brought this up, I
16 didn't bring it up. What we're now talking
17 about is a very profitable company that employs
18 35 people in two states as being run by two
19 people who are out on disability. Think about
20 that for just a minute. Now, I'm glad Mr.
21 Peagler quoted that passage from Dr. Rhoton's,
22 I think it was Dr. Rhoton's medical records.
23 You'll note that it was completely void of any
24 description of an accident picking up buckets
25 of anything. So, please read that. But I want



1 to -- I want to -- I'll characterize the EMS
2 records a while ago. Please, if you'll just
3 indulge me, let me read this. It's very brief.
4 Patient stated that he is having extreme neck
5 pain. He stated that his pain has been off and
6 on for three months, which would explain why he
7 might have been fine in the morning and not so
8 fine in the afternoon. He went to the
9 chiropractor and got adjusted recently, which
10 helped the pain temporarily. The pain was in
11 his neck and went into his arms. Patient
12 stated that he took pain medicine after he ate
13 dinner. He also stated that he was supposed to
14 take a muscle relaxer at bedtime, but did not
15 take any tonight. Then in the ER records --
16 and this would be the claimant's APA, page 2 --
17 the patient has seen several physicians
18 concerning this issue, meaning his neck issue,
19 and has not had any significant relief. So the
20 notion that there are no medical records to
21 support the idea that he had a preexisting
22 condition is nonsense. I mean, these are words
23 out of his mouth contained in the medical
24 records relevant to this case. And Mr. Peagler
25 suggested that there's no evidence of what he



1 did day in and day out or that what he did day
2 in and day out was, you know, this hard labor.
3 In fact, there's really no evidence of that in
4 the record, except in the context of his
5 description of what he -- of the continuing
6 back problems he had been having for years.
7 And he did testify that he did a lot of the
8 manual work using these -- a machine and he's
9 a very tall man and the machines that he had to
10 stoop over for. And he had been having
11 problems with his back for years. I will wrap
12 it up, unless you have any other questions.

13 COMMISSIONER JAMES: I have one question. I know
14 y'all both sort of addressed this, but I'm
15 going to -- the authorization or seeking the
16 treatment. What efforts were there for the
17 seeking of the treatment by the claimant? Was
18 it denied from the get go?

19 MR. DETWILER: No, ma'am, it was not. And there,
20 the York -- the Commission's file will reflect
21 a denial letter months later after
22 investigation of this. But there's nothing in
23 the record to suggest that the claimant ever
24 asked this carrier to authorize his neck
25 surgery or anything else. And the notion that



1 this was an emergent situation is belied by the
2 fact that the records we're talking about, that
3 Mr. Peagler was just referring, to are eight
4 days after this incident. He did go to the ER
5 immediately. And he did go -- was treated at
6 Waccamaw Medical Center and then drove up to
7 Asheville and sought treatment in North
8 Carolina. So, I mean, that's all I know about
9 that.

10 COMMISSIONER JAMES: Well the ER is usually
11 considered emergent. But as far as this
12 surgeries -- surgery, you said there was no
13 demand prior to the surgery?

14 MR. DETWILER: There's no demand that I'm aware of
15 or that the record -- that's reflected in the
16 record. And I'll note that the North Carolina
17 first report of injury was dated March the
18 30th, which was five days after this alleged
19 incident or maybe even six days after this
20 alleged incident. There's no -- nothing in the
21 record about when it was submitted in North
22 Carolina. Thank you.

23 COMMISSIONER CAMPBELL: All right. Thank you. Mr.
24 Peagler?

25 REPLY BY MR. PEAGLER:



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1 MR. PEAGLER: There's no record -- there's no
2 evidence in the record to show where they ever
3 offered or directed any medical treatment. And
4 this case was denied, because as far as the
5 medical records ---

6 COMMISSIONER JAMES: So the claim was denied from
7 the get go. You're saying that the records
8 support that it was denied from the ---

9 MR. PEAGLER: Yes, I believe so. I believe there
10 was never any intention to authorize any
11 medical treatment, because there's nothing in
12 the record to indicate, hey, you need to this
13 doctor, that doctor. And there's nothing in
14 the Act that requires a claimant to attempt to
15 get authorization or demand treatment in a
16 denied case. And if you were to allow ---

17 COMMISSIONER JAMES: That's why I asked the
18 question.

19 MR. PEAGLER: And if you were to allow them to avoid
20 payment for any causley related medical up
21 through the date of the hearing or through the
22 date of their denial, that would be a windfall
23 for the workers' comp carrier at the expense of
24 the health insurance carrier. You know, you
25 talked about Dr. Rhoton's report where it says



1 burying supplies. He was moving supplies when
2 he got hurt. I don't know what burying
3 supplies means in the doctor's record, but it's
4 obviously that -- obvious that supplies are.
5 In the emergency room record, they say that
6 exacerbated. They don't reference why or how
7 whether it's an injury or not. But we've got
8 the witnesses to say he wasn't hurt before.
9 We've got the photographs to show he wasn't
10 hurting before. There's no medical record
11 dated before this hearing. No provider, no
12 chiropractic records -- and they were available
13 to the defense also, as were any of the medical
14 records he saw -- there are no medical records
15 that support the contention that he had a
16 preexisting cervical issue. They're relying on
17 emergency room records primarily after he had
18 taken pain medicine, when he was in a large
19 amount of pain, and he didn't know what was
20 going on with himself. During his deposition,
21 he testified at times that he didn't know
22 whether it was a blood clot because he was on
23 blood thinner. He just didn't know. He knew
24 he hurt. So there's no explanation for the
25 accuracy or inaccuracy of the records. But



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1 there are no records that say he had a
2 preexisting cervical disc or neck issue. Even
3 though, I'm sure they will look for -- they had
4 ample opportunity. The reason we don't see any
5 disability on the Form 50 when we filed it was
6 there was no evidence that he had ever been
7 given any type of impairment rating or
8 disability prior to the filing of that form.
9 So his wife is on disability. He doesn't want
10 to be on disability. He wants to work. He
11 wants to get better so he can return to work.
12 Remember there's a finding of credibility and
13 the Commission -- and you'll see it in my
14 standard of review paragraph. Although they --
15 before Commission, this is a basically a
16 hearing of de novo. You can find your own
17 findings of fact credible, not credible, things
18 like that. But we would ask that you give
19 deference to Chairman Beck's assessment of the
20 witness because he saw him under examination
21 and cross-examination. Thank you.

22 COMMISSIONER CAMPBELL: Okay, thank you.

23 MR. DETWILER: Thank y'all.

24 COMMISSIONER WILKERSON: Thank you all.

25 (There being no further questions, the hearing



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concluded at 12:20 p.m.)



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CERTIFICATE

This is to certify that the hearing consisting of twenty-eight (28) 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 December 2, 2016.



Sonia D. Wallace-Sanders
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 18, 2019



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South Carolina Workers' Compensation Commission
W.C.C. File No. 1504993

Horace L. Adell, Jr.,	)	
	)	
Claimant,	)	
	)	
v.	)	Deposition
	)	
Clean Streak, Inc.,	)	of
	)	
Employer,	)	Horace L. Adell, Jr.
	)	
and	)	
	)	
Builders Mutual	)	
Insurance Company,	)	
	)	
Carrier/Defendants.	)	

Date: August 12, 2015

Time: 10:04 a.m.

Location: Michael Johnson & Associates, PC,
2001 Lincoln Street, Columbia, South Carolina

Reported by
Olivia Michelle Crocker

APPEARANCES

For the Claimant: Daniel E. Peagler, Esq.
Michael Johnson, PC and Associates
2001 Lincoln Street
Columbia, South Carolina 29201

For the Employer/Carrier:

(For Builders Mutual) Richard C. Detwiler, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, South Carolina 29201

(For Clean Streak) Mikell Wyman, Esq.
Gallivan, White & Boyd, PA
1201 Main Street
Columbia, South Carolina 29201

Also Present: Susan Adell

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EXHIBITS

Defendants' Exhibit Number 1, Form 18 of Horace Adell, Jr.	59
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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Workers' Compensation Act and all applicable rules.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Horace L. Adell, Jr., being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. DETWILER:

Q Mr. Adell, my name is Rick Detwiler. I'm glad to meet you today. I'm here to take your deposition. Have you ever had your deposition taken before?

A No, sir.

Q Okay. I know that your lawyer's explained the rules, but I'm required to explain a few things to

1 you as well by our rules. I'm here just to ask you
2 questions to find out what you can tell me about
3 your workers' compensation claim, okay?

4 A Okay.

5 Q All right. You do need to speak up so the court
6 reporter can take down everything that's said. And
7 you need to give verbal answers, and -- and try to
8 refrain from uh-huhs and unh-unhs so that the court
9 reporter can take down everything accurately, okay?

10 A Yes, sir.

11 Q All right. You're doing great. We're not going to
12 be here real long. You know, we're not here to run
13 a marathon. If you need to take a break, please
14 let me know. We'll be glad to take a break at any
15 time. However, during any sort of break, you
16 cannot discuss your testimony with anyone. Do you
17 understand?

18 A Yes, sir.

19 Q Okay. And other than that, I'll just ask you a few
20 questions, and then I'll turn it over to Mr. Wyman.
21 He may have a few questions in follow-up. And then
22 your lawyer may or may not ask questions. Often
23 times the witness's lawyer does not. So that'll be
24 up to him.

25 A Okay. And you are with who?

1 Q I -- that's a good question. And I represent
2 Builders Mutual Insurance Company, your workers'
3 compensation insurance company.

4 A So Clean Streak, you represent?

5 Q I -- no, sir, I don't. And let me make sure that
6 we're clear on that point. I represent Builders
7 Mutual Insurance Company. Because we were
8 concerned that there might be a conflict of
9 interest with my representing both the insurance
10 company and Clean Streak, Builders Mutual has hired
11 Mr. Wyman to represent Clean Streak. Do you
12 understand?

13 A Yes, sir.

14 Q Okay. Now, and -- and I -- you know, I do want you
15 -- I'm sure you do understand that you -- let me
16 ask you a question. You're the owner of Clean
17 Streak; is that right?

18 A Yes, sir.

19 Q Okay. Are there any other owners of Clean Streak?

20 A No, sir.

21 Q You do understand that as the owner and, I assume,
22 an officer of Clean Streak, you have an obligation
23 on behalf of Clean Streak to cooperate with the
24 defense of this case. You understand that?

25 A Yes, sir.

1 Q Okay. You also understand that you're under oath
2 today; is that right?

3 A Yes, sir.

4 Q Okay. Do you understand that that -- that that
5 means that you're subject to the penalties of
6 perjury should you not tell the truth? Do you
7 understand that?

8 A Yes, sir.

9 Q Okay. And, finally, I want to let you know that
10 this is a proceeding just like testifying in court
11 in the sense that it can be used as your testimony
12 in court and pursuant to the rules that we operate
13 under. Do you understand that?

14 A Yes, sir.

15 Q All right. Give me your full name, please, for the
16 record.

17 A Horace Larry Adell, Jr.

18 Q What is your date of birth?

19 A [REDACTED]

20 Q Please give us your social security number.

21 A [REDACTED]

22 Q Okay.

23 MR. DETWILER: And I'd ask the court reporter
24 to redact all but the four -- last four
25 digits, please.

1 Q And where do you live, sir?

2 A I live at 33 Roseland Drive, which is in Mills
3 River, North Carolina.

4 Q And about where is Mills River, North Carolina more
5 or less?

6 A It's 5 miles below the Asheville Regional Airport.

7 Q Know exactly where that is.

8 And who do you live with there, sir?

9 A My wife, Susan.

10 Q Okay. And your wife -- Susan's in here today with
11 you; is that correct?

12 A Yes, sir.

13 Q Okay. Is she an owner of Clean Streak?

14 A No, sir.

15 Q Okay. She's an officer of Clean Streak though; is
16 that correct?

17 A Yes, sir.

18 Q I've seen some references that she's a vice
19 president; is that right?

20 A Yes, sir.

21 Q Okay. And you're the president?

22 A Yes, sir.

23 Q And how long have you lived at that address,
24 please?

25 A We got married -- what -- seven -- six -- six years

1 ago.

2 Q So you've been married to Susan for six or seven
3 years?

4 A Yes, sir.

5 Q Okay. Do y'all have any children?

6 A Yes, sir.

7 Q Okay. And what are their ages?

8 A Brittany is 24. Thomas is 32 -- one -- 32.

9 Q Okay. And so -- and neither of them live with you?

10 A No, sir.

11 Q Okay. And are these children of your marriage with
12 Susan?

13 A No, sir.

14 Q Okay. And who is the mother of those children?

15 A Susan.

16 Q Okay. But they're not your -- you're not the
17 father then of those children?

18 A No, sir.

19 Q Okay. I gotcha. And tell me how you got injured.

20 A I was setting up my South Carolina office at 404
21 Cedar Run, me and a worker I had hired to come and
22 do some work in the office so we could get ready
23 for a grand opening in May. We were actually
24 setting up the warehouse because I was splitting my
25 inventory from Asheville. I was taking everything

1 50/50 from there and bringing it down here so that
2 we could take off, make it big. We -- we were in
3 the garage working, and I was taking and moving
4 chemicals and proceeded to pick up two 5-gallon
5 buckets of wax, something I do every day. And when
6 I stood up, I felt a pop. You know, I just thought
7 it was a pop and then a burn.

8 Q Okay. You -- you pointed to your neck. You felt a
9 pop in your neck?

10 A Yes, sir.

11 Q Could you be -- point exactly where that pop
12 occurred?

13 A In the middle of my neck right below my head.

14 Q Right -- right -- right -- right at your shoulder
15 blade --

16 A Right.

17 Q -- your shoulder line?

18 A Yes, sir.

19 Q Okay.

20 A And then it burnt. And, you know, I didn't really
21 think too much about it at first. And -- and then
22 it started hurting, so I went and got some ice and
23 put on it.

24 Q Uh-huh.

25 A We took a break.

1 Q What day was this?

2 A This would've been the 24th, I believe, sir.

3 Q Of what?

4 A Of -- Jesus Christ. April. March.

5 Q You -- you need to give -- you can't get any help.

6 A No. I'm not trying to get any help.

7 Q Okay.

8 A I'm very bad on -- on dates.

9 Q Okay. So --

10 A That's why I have people --

11 Q So you think it might've been March?

12 A Yes, sir. It could've been March.

13 Q Okay. The -- but you remember the day of the 24th.

14 Why do you remember the 24th so well?

15 A Because there was a conflict between when this

16 actually happened, the 24th or the 25th. And --

17 Q Conflict with whom and about what?

18 A With some of the different reports that were given

19 to the different people that needed them.

20 Q And those different reports were given by whom?

21 You?

22 A I don't remember giving anybody any dates about

23 this. I just remember when it happened and when I

24 called the ambulance --

25 Q Okay. Well --

1 A -- and what they did.

2 Q I'm sorry. I interrupted you, and I apologize.

3 So tell me -- I interrupted you a while ago.

4 You were telling your story of how you got hurt.

5 So you felt a pop in your neck, and then what

6 happened?

7 A Well, it popped. I said "ouch."

8 And Matt said, "What's wrong?"

9 And I said, "Just -- something just popped."

10 Q Now, who's Matt?

11 A That was the worker I hired to do tile work in my
12 office for the grand opening.

13 Q And he is -- what's his last name?

14 A His name's Matt Mazar, and he's a contractor.

15 Q Okay. And he -- so he didn't work for you as an
16 employee? He was a -- he was a contractor doing
17 work for you?

18 A Yes, sir.

19 Q Okay. Gotcha. And I -- I keep interrupting. And
20 that's not going to be the last time I do that.

21 A That's okay, sir.

22 Q So just keep telling your story. Tell -- so what
23 happened? You said you said "ouch." Matt heard
24 you, I assume?

25 A Yes.

1 Q Okay. And then what happened?

2 A And then we -- we putted around for about an hour,
3 you know, just trying to settle everything else
4 down as far as closing the day down. And we quit
5 work early, went into the kitchen area and fixed us
6 something to eat. I'm walking around with the ice
7 pack on my neck and --

8 Q And you're still in your office, right?

9 A Yes, sir.

10 Q Okay.

11 A So we -- we fixed us some sandwiches and sat down,
12 and we ate. And I said, "Matt, I need to go lay
13 down."

14 He said, "Well, I'm going to go to bed, too."

15 Q What -- what time of day was this?

16 A This -- I can't give you the exact time because I
17 don't know the exact time.

18 Q I didn't ask for an exact time. Just give me a
19 rough idea. Was it before lunch or after lunch?

20 A It was after lunch..

21 Q Okay. You remember if it was late afternoon?

22 A No. It wasn't late afternoon. Three/four/five
23 o'clock.

24 Q And you --

25 A Somewhere in there.

1 Q And you continued to work after that?

2 A Yeah. We was putting shelves up as well. So
3 that's -- really I was going do some laundry, and
4 then I couldn't -- couldn't do it. Couldn't take
5 it so packed my neck in ice and commenced to going
6 in and locking things up. And we sat down and ate
7 us some sandwiches and watched --

8 Q Okay. You're doing great, but I -- I should've
9 asked this question earlier. Do -- do you -- are
10 you under the influence of any drugs, alcohol,
11 prescription medications, or anything that would
12 keep you from giving clear and truthful answers
13 today?

14 A I have taken some pain medicine this morning.

15 Q What pain medicine?

16 A They've got me on -- I'm not very good with
17 medication names. I know what they look like.

18 Q Who prescribed it?

19 A My surgeon.

20 Q Dr. Rhoton?

21 A Dr. Rhoton.

22 Q Okay.

23 A Oxycodone, I want to say it is.

24 Q All right. So back to my question: Can you give
25 clear answers today? Are you understanding my

1 questions?

2 A Yes, sir.

3 Q Are you --

4 A Yes, sir.

5 Q And are you giving me clear answers? You have any
6 problem going forward? Because if you have any
7 problems going forward, I want to stop now and
8 reconvene another time when you can go forward.

9 A No, sir. No, sir. Nothing is hindering me from
10 answering your questions. It's just when you start
11 asking me questions like, "Can you give me time;
12 can you give me dates," you're losing me because I
13 don't remember.

14 Q Well, you're human, right?

15 A I hope so.

16 Q Okay. All right.

17 A I've been called a machine before.

18 Q Okay. Well, nobody -- nobody expects you to
19 remember exact times and dates for something that
20 happened, you know, a few months ago. So I'm not
21 holding you to that. But I -- I do want you to
22 give me your best recollection --

23 A Yes, sir.

24 Q -- about the day, okay?

25 A Yes, sir.

1 Q All right. And so you fixed some sandwiches. Matt
2 went and laid down. Did -- did you say? And --
3 and you did as well?

4 A Uh-huh.

5 Q And y'all just knocked off for the day. And
6 were --

7 A Yes, sir.

8 Q Were you staying -- were you staying at your
9 facility?

10 A Yes, sir.

11 Q Okay. All right. Do you have a -- a home in
12 Myrtle Beach?

13 A I do, sir.

14 Q Okay. And where is that home located?

15 A It's in the same structure.

16 Q So your -- your home is in the same structure as
17 your warehouse?

18 A As -- yes, sir.

19 Q And your facility?

20 A Yes, sir.

21 Q Explain that to me. I don't -- I'm not sure. I
22 can't quite picture that in my mind.

23 A Okay. Like this structure here.

24 Q Okay.

25 A I can have an office in this structure, and another

1 part of it can -- can be my living quarters.

2 Q Okay. So you have a -- you have a living quarters
3 consisting of what? A bedroom? Two bedrooms?
4 Kitchen or what?

5 A It consists of three bedrooms.

6 Q Okay. All right. And I -- if I asked this
7 question already, forgive me. But where is --
8 exactly is that location?

9 A 404 Cedar Run.

10 Q Okay.

11 A Myrtle Beach, Surfside.

12 Q Okay. All right. You did say that.

13 And so -- and so you have a section of this
14 facility that is your home. Is that your primary
15 home or what is referred to as "a second home"?

16 A It's referred to as a second home.

17 Q Okay. And in this same structure, you also have an
18 office?

19 A I do.

20 Q And do you have customers that visit you at that
21 office?

22 A I have a salesperson, vendors that come and talk to
23 me. Yes, sir. I do.

24 Q Okay. And then you also, in that same structure,
25 have a warehouse area where you keep supplies?

1 A Yes, sir.

2 Q And it was in that warehouse area that you were
3 setting up shelving and that sort of thing; is that
4 correct?

5 A Yes, sir.

6 Q Okay. And do you have -- have you ever had
7 problems with your neck before?

8 A No, sir. I strip and wax a lot of floors, so I get
9 a lot of what they call "muscle fatigue" and
10 stress, tightness.

11 Q Uh-huh.

12 A And there are things that we do in this line of
13 work to try to maintain our bodies to where we can
14 keep going.

15 Q And when you say "muscle tightness," you're -- are
16 you specifically talking about your neck or just
17 generally all over your body?

18 A I'm talking all over my body.

19 Q Okay. So you've never had any problems
20 specifically associated with your neck before?

21 A No, sir.

22 Q Okay. And -- all right. So the -- this was on the
23 24th, you say?

24 A Yes, sir.

25 Q Of March?

1 A Yes, sir.

2 Q Of 2015, correct?

3 A Yes, sir.

4 Q And you put ice on your neck?

5 A Uh-huh.

6 Q And what happened after that?

7 A Well, usually whenever I do that, it stops all the
8 pain. It freezes up, and I'm able to go to sleep.

9 Next day I wake up, usually go on.

10 Q When you say usually when you do that, you mean
11 when you have a muscle ache --

12 A Uh-huh.

13 Q -- you put ice on it?

14 A Uh-huh.

15 Q Is that correct?

16 A Yes, sir.

17 Q Okay. Good. And go ahead. What happened? What
18 happened?

19 A Went to bed. And I had to have fell off into a
20 deep sleep. But it didn't take but -- when I
21 actually got to sleep, it didn't start -- it didn't
22 -- it didn't help me. Just -- it was like
23 something just drove something up into my neck.
24 And I just said, "What in the heck?" And it was so
25 much pain. I mean I've never felt that kind of

1 pain before. Didn't know what -- I thought I was
2 dying. I couldn't move. I couldn't -- I couldn't
3 scream to get -- get help. So I had to roll myself
4 into the floor, pull myself across the floor to the
5 bottom of the steps. And all I could do was say,
6 "Matt. Matt." I couldn't -- I couldn't even yell
7 because it just hurt. Well, then I got the phone,
8 which was right there. And I called my wife
9 because I thought I was dying. I didn't know what
10 -- I said, "Honey, I know something's wrong.
11 Something's bad wrong." I couldn't breathe. I'm
12 in a lot of pain.

13 She said, "Call 911. Call 911." So by that
14 time, she'd gotten Matt on his phone, and he'd
15 already put the 911 call in. And I -- the only
16 thing that I could think of was to make sure that
17 he'd gave them the proper address because we've
18 actually -- people have delivered stuff to --
19 before, and it went to another place called Little
20 River.

21 Q Uh-huh.

22 A So we just -- I just kept saying, "Make sure you
23 give them good directions. Tell them where I'm
24 at." At this time, I'm laying over a table, you
25 know, talking to him, telling him.

1 About that time they came in. The -- the
2 ambulance got there and put my on the gurney and
3 kept telling them, "Guys -- guys, I'm in so much
4 pain. I'm -- I'm really hurting. Be easy with
5 me."

6 "Mr. Adell, we've got to pick you up. We've
7 got to move you. We've got to get you in the
8 truck. We've got to roll you down the driveway."
9 You know, it was just such excruciating pain. I
10 mean, just don't know how much pain I was in, you
11 know.

12 Q So when you first felt the pop in your neck, was
13 that painful, or it's just a pop?

14 A It was like popping your finger.

15 Q Okay.

16 A You know, it was very loud. It was like -- like
17 you pop your knee.

18 Q So in other words, you actually heard this pop?

19 A Yes.

20 Q Okay.

21 A And -- and then it -- it just burnt.

22 Q Okay.

23 A I mean just like somebody took and put some fire to
24 it and just burning it.

25 Q Well, was it -- I -- I guess I'm trying to figure

1 out or distinguish between whatever you felt then
2 and the pain you felt and just described when you
3 woke up in the middle of the night.

4 A Totally different.

5 Q Okay. Tell me the difference.

6 A No pain. Lots of pain.

7 Q Okay. So you really didn't feel any pain when it
8 popped?

9 A No. It just -- I actually thought I just popped
10 something.

11 Q Okay. All right.

12 A I didn't -- the burning came on and I said, "Wait a
13 minute." You know, maybe it's a pinched nerve or
14 something I did, you know, when I lifted it.

15 Q Uh-huh.

16 A But, you know, it -- after I put the ice on it,
17 still didn't have no pain. But when I laid down --

18 Q Uh-huh.

19 A -- it just started coming on.

20 Q Well, when you -- I guess you spoke with the EMS
21 people and you told them what happened; is that
22 right?

23 A I tried to, yes, sir.

24 Q Okay. And you described to them pretty much what
25 you've just described to me?

1 A To the best of my recollection, sir.

2 Q Okay. And there wouldn't be any reason for you to
3 say anything different, is there?

4 A No, sir.

5 Q Okay.

6 A I just -- so much pain.

7 Q Okay. And when you got to the emergency room, you
8 gave them this same history?

9 A Yes, sir. I believe I did.

10 Q Okay. And -- and when you saw -- and tell me what
11 happened then. We've got the medical records, so I
12 don't want you to walk through all the details of
13 all those. They'll speak for themselves. But --
14 but you went to the emergency room. What happened
15 after that?

16 A I remember that they put -- had me in a wheelchair.
17 And they rolled me over to a lady, and she was
18 wanting my insurance information.

19 Q Uh-huh.

20 A So --

21 Q What insurance information did you give them?

22 A I handed them the only thing I had in my pocket, my
23 BlueCross BlueShield.

24 Q Okay.

25 A They asked for it, and I gave it to them. I mean,

1 that's what you do.

2 Q Did you tell them that you hurt yourself while you
3 were working on the job?

4 A Yes, sir.

5 Q Okay. And -- and you told the EMS people that you
6 hurt yourself while you were working on the job?

7 A Yes, sir.

8 Q Okay. And -- and you gave them BlueCross. Well,
9 why didn't you tell the people -- the billing
10 people that you hurt yourself on the job, or did
11 you?

12 A The -- the billing people?

13 Q When you gave them the BlueCross BlueShield card,
14 right?

15 A Uh-huh.

16 Q Okay. Did you tell them this is workers' comp or
17 that I hurt -- hurt yourself on -- you hurt
18 yourself on the job?

19 A No, sir.

20 Q You didn't tell them that?

21 A No, sir. Because, be honest with you, that was the
22 furthest thing away from my mind.

23 Q Okay.

24 A I was just wanting to get help.

25 Q Okay. And then -- so you -- they wheeled you over

1 to the billing people. They -- you gave them the
2 BlueCross BlueShield card. You didn't tell them it
3 was workers' comp. And then what happened after
4 that?

5 A They took me back up in the back. And this lady
6 doctor came in and shot me up with a bunch of pain
7 medicine and sent me back to Asheville.

8 Q Okay. Now, what do you mean by sending you back to
9 Asheville?

10 A She told me that -- at that point, she says, "The
11 X-rays are showing nothing."

12 Q Uh-huh.

13 A She said, "But what I can do is: I can ease your
14 pain." And she gave me pain medicine.

15 Q Okay.

16 A And they discharged me, and we came back to
17 Asheville. And that's when my wife started taking
18 me to the hospital.

19 Q Okay. When you say "we came back to Asheville,"
20 who's we?

21 A Me and Matt.

22 Q Okay.

23 A The contractor that I hired to go down with me with
24 all the equipment and stuff.

25 Q I didn't realize Matt was from Asheville as well.

1 Okay. I gotcha.

2 So you and Matt went on back. And does Matt
3 do work for you regularly as a contractor?

4 A Not regularly.

5 Q What -- what does he do mainly?

6 A He's a handyman.

7 Q And how long have you known Matt?

8 A Three or four years.

9 Q Okay. And y'all do anything outside of the office
10 together?

11 A No, sir.

12 Q Okay. Y'all friends?

13 A Associates.

14 Q Okay. And so after you got back to -- did you go
15 to Asheville the next day?

16 A We went back to Asheville that night.

17 Q Uh-huh. "That night," you mean after -- when you
18 were released from the ER?

19 A ER. We went back, and we packed up what he could
20 get in the truck.

21 Q Uh-huh.

22 A We left most of it.

23 Q Uh-huh.

24 A Got back home.

25 Q Okay. And then what happened after that? You got

1 home and what?

2 A My wife took me to the emergency room at Park Ridge
3 Medical Hospital.

4 Q Uh-huh.

5 A They took me into the emergency room. They did X-
6 rays and sent me to St. Joe Memorial Mission
7 Hospital.

8 Q Okay. And what -- you -- I guess you described the
9 -- so your wife took you to the -- the emergency
10 room at what hospital?

11 A Park Ridge.

12 Q And was that -- on what day? Would that been like
13 the next day?

14 A That would've been the day of the 25th.

15 Q Okay. All right. What is Forge Mountain Medicine?
16 That's Dr. Smith?

17 A Yes. That --

18 Q That where you went --

19 A That's my -- that's my primary doctor.

20 Q I gotcha. Okay.

21 So you went to Park Ridge Medical, right?

22 A Yes, sir.

23 Q Okay. And -- and what'd they do for you?

24 A It's a fog really. I just know they took X-rays,
25 and I was on my way to another hospital.

1 Q Okay. And what hospital did you go to after Park
2 Ridge?

3 A We went to Memorial Mission, St. Joe's, which is
4 the big one that we were at.

5 Q Okay. That's the big one in Asheville?

6 A Yes, sir.

7 Q Okay. And then what -- what happened there?

8 A Some of this is a little foggy to me because I -- I
9 was under some medication. I know they took me
10 back and did a MRI on me. And Dr. Rhoton
11 discovered that it was a serious break. And they
12 had to -- see, I take blood thinners. They had to
13 wait to get that out of my system before they could
14 actually do what they needed to do to get me
15 underway.

16 Q When you went to Park Ridge Health, that's in
17 Hendersonville; is that right?

18 A Yes, sir. That's in Henderson County.

19 Q When you went to Park Ridge Health, did you give
20 them the history that you gave them in the
21 emergency room down in -- or wherever it was in
22 Myrtle Beach? Did you tell them that -- how it
23 happened -- what happened?

24 A I would love to be able to say yes, but I can't.
25 My wife, at that point, was handling all of that.

1 Q Okay. So your wife gave -- gave the history to the
2 Park Ridge Health people?

3 A Yes, sir.

4 Q But you had told your wife what happened, right?

5 A Yes. Well, she already knew what was happening
6 because she was in touch with the hospital.

7 Q Okay.

8 A He -- in Myrtle Beach.

9 Q Okay. So when we look at it -- whatever history
10 that's in the Park Ridge Health records, that
11 history would've come from your wife; is that
12 right?

13 A Yes, sir.

14 Q And that would've been based on what you told her;
15 is that correct?

16 A That would've been based on what she learned from
17 the hospital because if -- if you test me on a
18 doctor coming in and talk to me about stuff, it
19 doesn't stick with me.

20 Q Now, here's -- here's what I'm -- where'd your wife
21 come to understand what happened to you? How --

22 A She knew what happened before I left Myrtle Beach.

23 Q Because you called her?

24 A Because I called her and told her -- I could not
25 tell her what was wrong.

1 Q Okay.

2 A I called her to tell her I was in excruciating pain
3 and I did not know if I was dying or what was going
4 on. And that's when she said, "Call 911."

5 Q And you told her how it happened?

6 A At that time, no, sir.

7 Q Oh, you didn't?

8 A Just -- I told her what was wrong with me, what --
9 what I was feeling.

10 Q You didn't tell her how you got hurt?

11 A At that point, sir, all I was looking to do was get
12 that pain to stop.

13 Q Okay. Now --

14 A I mean it took over everything with me.

15 Q Okay. Did your -- but your wife, I think -- did
16 you say that your wife had talked to Matt?

17 A Yes.

18 Q Okay.

19 A She told him to call 911.

20 Q Okay. Did -- Matt told her how -- how this had
21 happened -- come about?

22 A You would have to speak directly with my wife to --
23 to get that answer, sir.

24 Q And so from Park Ridge, you went to the Mission
25 Hospital?

1 A Yes, sir.

2 Q Okay. And then what happened there?

3 A Again, sir, you would have to talk with my wife
4 about that because once I got back into her care,
5 she handled everything as far as making sure I got
6 the right doctors, that they done what they needed
7 to do to get me better.

8 Q Okay. Well, so you have no memory of going to
9 Mission? Is that what you're telling me?

10 A No, sir.. I don't. I know that when I woke up how
11 many ever days later it was, I was in Memorial
12 Mission Hospital in a room.

13 Q Okay. And is that when Dr. Rhoton took over your
14 care?

15 A Yeah. The way I understand this -- and this is the
16 only way I know how to answer you is: He just
17 happened to be in the hospital when I -- when I
18 came in and seen my stuff and said, "Let me take a
19 look at this man."

20 Q All right. And have you -- do you have any other
21 medical conditions? Obviously, we've talked about
22 your neck. And we'll get back to that in a minute.
23 But do you have -- have you had any medical
24 conditions in the past of any kind? Any injuries?
25 Any chronic medical conditions or anything like

1 that?

2 A I have blood clots.

3 Q Okay.

4 A About three years ago, I had pneumonia real bad.

5 Q Uh-huh.

6 A And . . .

7 Q Any other diseases or -- or long -- you know, sort
8 of long-term conditions?

9 A Lord, no.

10 Q Huh?

11 A Lord, no. No.

12 Q Okay. And -- okay. So I guess you -- you had
13 surgery at some point in time; is that right?

14 A On my neck, sir?

15 Q Have you had any other surgeries?

16 A I've never broken a bone in my body.

17 Q Okay. So you had surgery on your neck?

18 A Yes, sir.

19 Q Have you had any other surgeries?

20 A No, sir.

21 Q Okay. So I guess you had surgery on your neck
22 then; is that right?

23 A Yes, sir.

24 Q And I have that surgery as April the 6th, 2015.

25 Does that sound about right to you?

1 A Yes, sir.

2 Q All right. Tell me how you're doing now from that
3 surgery.

4 A I've had the best five days the last five days
5 since that happened.

6 Q Well, great. Good. I'm glad to hear that.

7 A I am, too.

8 Q And so I see that you have a cane. Why do you have
9 a cane?

10 A If I stand up and put one foot in front of the
11 other, somebody's going to catch me, or I'm going
12 to fall on them.

13 Q Okay.

14 A My balance -- my balance is not back to where I --
15 the therapist said I don't need to be without some
16 sort of support. It's either that or stay on the
17 couch.

18 Q So tell me what kind of -- of problems with any
19 other part -- with any part of your body you're
20 having as a result of your neck incident.

21 A Okay. Right after surgery when they released me
22 from the hospital and they started me doing
23 physical therapy, we thought that we were on the
24 right track. When I say "we," I'm talking me and
25 the therapist, as well as -- in -- in Asheville and

1 Myrtle Beach.

2 Q Uh-huh.

3 A I developed inflamed muscles to where this side --

4 this whole left side swolled.

5 Q You're -- you're pointing at your left shoulder; is

6 that right?

7 A Yes, sir.

8 Q Okay.

9 A And it swolled up so bad to where I could no longer

10 perform the simple exercises that they were putting

11 me through. So they -- they stopped it till the

12 swelling went down. The -- my surgeon gave me

13 inflammatory medicine to help with that.

14 Q Uh-huh.

15 A So once that went back down, the pain shifted from

16 my left to my right, which they said that was a

17 great sign that things was starting to do and heal

18 and get better.

19 Q Who's "they"?

20 A The -- the physical therapist.

21 Q Okay.

22 A I started experiencing numbness.

23 Q Where?

24 A In my arms.

25 Q Both arms?

1 A Both arms..

2 Q Okay.

3 A And I'm -- I'm even today -- even this morning, I
4 have to massage both my arms when I get up. And
5 then I have to get under the hottest water I can
6 take off the shower to get that stuff going.

7 Q Okay. So you --

8 A Even right now, my hands are tingling. I usually
9 have very good color in my hands.

10 Q Uh-huh. Looks like you have good color now.

11 A Well, usually they're a lot plush -- more --
12 they're a lot better and stronger, and they're not
13 swollen.

14 Q Okay.

15 A There's a problem with the writing. I -- I had a
16 hard time when it first started giving me --
17 writing and signing my name, it was like I was
18 having to push my hand across the paper. That has
19 gotten better --

20 Q Uh-huh.

21 A -- to the point to where I can actually get through
22 it.

23 Q Uh-huh. So you had -- and I'm paraphrasing now,
24 but you've had numbness in both arms. Is either
25 arm better than the other, or they -- or they same

1 -- the same?

2 A They're the same.

3 Q Okay. And do you -- you're having numbness right
4 now as we're speaking, correct?

5 A No. All I have is tingling.

6 Q You have tingling?

7 A Yeah. Just tingling.

8 Q Okay.

9 A And as the day goes on, it does get better.

10 Q Okay. And so you wake up with numbness in your
11 arms?

12 A Uh-huh.

13 Q And then -- is that a yes?

14 A Excuse me. I'm sorry. Yes.

15 Q Okay.

16 A It is a yes.

17 Q And -- and then after you get going and take a
18 shower and rub your arms, that -- that numbness
19 goes away?

20 A It does go away.

21 Q Okay.

22 A It doesn't completely go away. I have that
23 tingling, you know, but --

24 Q Okay.

25 A -- you deal with that. I mean --

1 Q Have you -- I'm sorry. Have you returned to work?

2 A No, sir. I haven't returned to work. The surgeon
3 allowed me to do what she calls "light, light,
4 light, light, light work."

5 Q Okay.

6 A Which just means that I can go in work, sit in my
7 chair for two hours.

8 Q Uh-huh.

9 A After two hours, I start getting very sleepy. It's
10 like you unplug me from the wall.

11 Q Uh-huh.

12 A And I have to go home.

13 Q Uh-huh.

14 A And I sleep. And usually I don't make it back.

15 Q What causes you to get sleepy?

16 A She told me that it's just my body healing and that
17 it's like overexerting yourself, I guess you could
18 say.

19 Q Uh-huh.

20 A But I just run out of gas.

21 Q And so who runs your business when -- when you're
22 not there running it?

23 A My wife.

24 Q Okay. Has -- and did you receive a salary from
25 your business or --

1 A I did, sir.

2 Q Okay. And where taxes were taking out -- taken out
3 and that sort of thing? Or did you receive just a
4 draw?

5 A No, sir.

6 Q You received a salary?

7 A Yes, sir.

8 Q Your wife receive a salary?

9 A Yes, sir.

10 Q Okay. And do you still receive that salary?

11 A No, sir.

12 Q Okay. Well, you're the owner. Why -- why aren't
13 you receiving a salary?

14 A Because I was told I couldn't.

15 Q By who? Your lawyer?

16 MR. PEAGLER: Objection.

17 Q By who?

18 MR. PEAGLER: Objection: calls for --

19 Q So -- so who told you you couldn't have -- have a
20 salary?

21 A I was --

22 MR. PEAGLER: I'm going to object. I think
23 that's confidential.

24 MR. DETWILER: That tells us what the answer
25 is then.

1 Q Okay. And so did anybody other than your lawyer
2 ever tell you that you --

3 MR. PEAGLER: Objection. That calls for
4 confidential --

5 Q Did -- did anybody -- I'm not talking about any --
6 any conversation you've had with your lawyer now.
7 Has anyone ever told you that you -- anyone other
8 than your lawyer ever told you that you couldn't
9 have a salary?

10 A No, sir.

11 Q Okay. And so when did --

12 MR. PEAGLER: I'd like to object to that last
13 question. The phrasing of it -- for the
14 record, object because the phrasing of it said
15 "anybody other than your lawyer," which means
16 he would have to violate confidentially in
17 order to answer that question.

18 Q And so when did you quit receiving a salary?

19 A I have not received a salary since the -- the last
20 pay period that fell in that -- from the 24th till
21 whenever the next pay period was. I haven't
22 received a salary in over, what, five or six
23 months.

24 Q Okay. And so -- and I'm not asking you about
25 anything that you've talked about with your lawyer,

1 but when did you first engage a lawyer?

2 A When did I first engage my lawyer?

3 Q Correct.

4 A I don't recollect, sir.

5 Q Was it right after the accident that you described?

6 A No, sir.

7 Q Okay. How many months after or weeks after or days
8 after?

9 A Honestly, sir, I can't answer that. I -- I don't
10 know.

11 Q Okay.

12 A I just don't remember.

13 Q All right. And . . .

14 A You got to remember, if I may.

15 Q Sure.

16 A I was very heavily medicated to where if you came
17 to me and told me you were the president and walked
18 away from me, I wouldn't remember it.

19 Q Uh-huh.

20 A I couldn't talk. I slurred when I talked. I
21 couldn't think.

22 Q Uh-huh.

23 A My wife was having to help me bathe.

24 Q Uh-huh.

25 A I couldn't do anything.

1 Q Uh-huh. Okay. And are you okay today?

2 A Yes, sir. I am able to do my own hygiene and that
3 sort of thing.

4 Q All right. Now, I was asking -- I asked you about
5 the cane, and you said you had balance problems.

6 A Uh-huh.

7 Q But then we sort of got into the discussion of the
8 numbness that you have had in your arms.

9 A Uh-huh.

10 Q So tell me about what other problems you may have
11 that you attribute to this on-the-job accident.

12 A I guess the biggest problem that I've had is not
13 being able to make my salary --

14 Q Uh-huh.

15 A -- so that I can continue to provide for my family.
16 I've lost so much work because I can't be on the
17 job and make sure the work's being done properly.

18 Q Uh-huh.

19 A I've had to turn down a lot. The loss to Clean
20 Streak has been just -- been heavy.

21 Q Uh-huh. So does your family take home less out of
22 the company now than it used to?

23 A Take home nothing.

24 Q Does your wife not get a salary?

25 A She does, but my wife -- you need to understand

1 that she runs the daily operations. She doesn't --
2 she doesn't physically go out and work. She
3 handles, you know, decisions with the payroll and
4 stuff like that so . . .

5 Q Who do you have going out and physically doing the
6 work now?

7 A I have a lead man that -- that I have trained very
8 extensively that does a great job for me.

9 Q Uh-huh.

10 A He goes out and does the work for me.

11 Q What's his name?

12 A His name is Alex Harvey.

13 Q Okay. And how long has Alex Harvey worked for you?

14 A Seven years.

15 Q Okay. And so that hasn't changed, right?

16 A No, sir.

17 Q Okay. Have you -- have you increased your staff in
18 order to accommodate the company and -- and the --
19 your -- your not being there?

20 A Yes, sir.

21 Q Okay. And how -- who have you hired to accommodate
22 your -- your inability to be there?

23 A We've had to hire a temporary receptionist to come
24 in to help my office manager.

25 Q Your office manager being your wife?

1 A No, sir. I have -- I have a personal secretary as
2 well as an officer manager.

3 Q Okay.

4 A But she's limited as well.

5 Q What do you mean, "she's limited"?

6 A Knowledge.

7 Q Okay. And what does she help you do?

8 A She -- she does all my paperwork. She takes all of
9 my calls. She schedules my appointments. She
10 schedule the teams' appointments. She sets up the
11 team schedule.

12 Q And what kind of appointments do you -- do you
13 keep?

14 A The onlyest appointment that I keep is when I have
15 to go into the office and sit down and talk to a
16 vendor or I talk to a contractor about a job.

17 Q Okay. But she schedules those appointments?

18 A Yes. But -- go ahead.

19 Q And the team consists of who? Who's the team that
20 you just described?

21 A I have three teams.

22 Q Three teams? Okay.

23 A I have three teams of workers.

24 Q And how many teams did you have in March of 2015?

25 A I had three teams.

1 Q Same -- the same three teams?

2 A Same three teams.

3 Q Okay. And you have three lead man -- three lead
4 men?

5 A I have one, two, three -- Lamond, Willis, Chris,
6 and Billy. Five.

7 Q You have five lead men. But explain how this
8 organization's set up then. So you have five lead
9 men, but you only have three teams. What -- I
10 don't -- how does that work?

11 A Okay. My teams consist of team leaders.

12 Q Uh-huh.

13 A One, two, three teams.

14 Q Uh-huh.

15 A The other two guys are managers and supervisors.

16 Q Over the teams?

17 A Over the teams.

18 Q Gotcha. Okay. So you have three team leaders who,
19 I guess, are supervisors of sorts. And then you
20 have two people who --

21 A No. They're just team leaders. I have two
22 supervisors and one manager.

23 Q What is a -- what's the difference between a team
24 leader and the people who work on the team?

25 A Okay. A team leader is somebody that knows more

1 than, say, the three of you would.

2 Q Okay.

3 A They are able to go out and handle problems that
4 you don't know how to handle.

5 Q Okay.

6 A Like if they say, "Hey, I've got a spot over here
7 on the carpet. How am I going to get it up," go
8 get this chemical and brush and brush it out. And
9 then --

10 Q I see what you're saying. So -- but they don't
11 actually supervise those people?

12 A They do supervise them in the aspect of getting
13 into the properties and making sure every job is
14 done right. That team leader is held responsible
15 for the work and that the building is secure when
16 they leave it.

17 Q How many people work under each team leader?

18 A There's three to four people under each team
19 leader.

20 Q And does that vary from day to day as to whether
21 it's three or four, or do they get switched around
22 among the teams or what?

23 A They do, but not as often as you would think
24 because we have to be certified in certain areas.
25 Like our medical end of things, they have to

1 understand how to go in and do a infection control,
2 how not to do germ transference, what they're going
3 to use to clean that brand new vinyl floor with the
4 texture to it that they -- the hospital just put
5 down. They've got to be -- they've got to be
6 trained in the medical field.

7 Q Okay. Well, you know, you've begged the question
8 that I should've asked about 30 minutes ago. Tell
9 me what Clean Streak actually does.

10 A Clean Streak is a full-service janitorial company.
11 We -- if it needs to be cleaned, we can do it. We
12 do post-construction cleanup when you have to build
13 a home. We make it ready for you to come in to
14 where you got to do is just set your house up and
15 move your furniture in.

16 Q Uh-huh.

17 A We strip and wax floors. We -- we clean carpet.

18 Q This is all in the commercial context?

19 A Yes, sir.

20 Q All right. You don't do homes?

21 A Yes, sir. We do.

22 Q You do actually do residences?

23 A As post-construction cleanup.

24 Q Okay.

25 A We do open -- spring openings for people that have

1 summer homes.

2 Q Okay.

3 A We close them down and winterize them for them.

4 Q Okay.

5 A If it needs to be cleaned, they're -- they call us.

6 Q But you also do cleaning in hospitals?

7 A Yes, sir.

8 Q You mentioned --

9 A We do.

10 Q Commercial facilities of any kind?

11 A Yes, sir.

12 Q Okay.

13 A You know, we're -- we're the only green-certified
14 janitorial company in the area.

15 Q What does that mean?

16 A What that means is that I can come into your home
17 and teach you the difference between green and --
18 and being green compliant. And there is a
19 difference. I can take and give you green products
20 to clean your property with, your home with and let
21 you build and build and build and build up germs,
22 or I can give you a green product that's got a
23 killer in it that you can clean with in your house
24 every day and your house is clean. It's sterile.

25 Q Uh-huh. Okay.

1 A There's a big difference. And you have to
2 understand that.

3 Q Gotcha. Okay. And so you do residences. And in
4 terms of percentage of your business, is it -- is
5 it mostly commercial? You know, can -- do you have
6 or can you give me a percentage? Is it -- is it 75
7 percent commercial/25 percent residential or what?

8 A That's a fair assessment, yes, sir.

9 Q Okay. All right. How about that?

10 And -- and in the commercial part, is that --
11 is that predominantly hospitals?

12 A No, sir.

13 Q Okay. What hospitals do you do work in?

14 A Pardee, Mission St. Joe's. We do a little bit of
15 work in Transylvania. We do dog kennels. Anything
16 that needs to be cleaned, we do it. I mean --

17 Q Okay.

18 A -- that's what we're about.

19 Q So how many employees do you have?

20 A We've got 28.

21 Q Twenty-eight. How many employees did you have in
22 March of 2015?

23 A Twenty-eight.

24 Q Okay. So there's been no change in the employment
25 of the -- your employees since this accident; is

1 that right?

2 A No, sir.

3 Q Okay. So -- and then are they -- are they busy?

4 A Yes, sir.

5 Q They're very busy.

6 A Yes, sir.

7 Q You -- you laughed when I asked that question.

8 A Yes, sir.

9 Q They're very busy, huh?

10 A If you're any good in this field, you're busy.

11 Q Okay. All right. So your business hasn't changed
12 -- changed much in terms of -- of how much business
13 you're able -- able to discharge?

14 A Now, that is not true.

15 Q Okay. Well, why isn't it true?

16 A Because --

17 Q You've got just the number of -- same number of
18 employees. You have the same number of jobs?

19 A I've got more jobs that I've had to turn down
20 because --

21 Q That's not my question. My question was: Do you
22 have roughly the same number of jobs that you had
23 now -- you had in March of 2015? I'm not talking
24 about what you've turned down. Is your -- is
25 your --

1 A We've lost one.

2 Q You're lost one. Okay.

3 And are -- have your revenues stayed flat or
4 gone up?

5 A No. Went down actually.

6 Q Okay. And what are your revenues per year?

7 A You would have to talk to wife about that?

8 Q All right. Well, I think we're going to have to.

9 A That's -- that's something I can't answer because
10 you -- you've got to understand that, you know, I
11 own the business, but I've built the business by
12 using these.

13 Q The -- you -- you -- until this accident or right
14 after this accident, you had a salary?

15 A Yes, sir.

16 Q Your wife had a salary?

17 A Yes, sir.

18 Q Anybody else in your family have a salary from this
19 business?

20 A No, sir.

21 Q And -- and then at the end of the year, after your
22 -- your salary's paid and all the employees are
23 paid, I assume -- hope for you that there were
24 profits in the company.

25 A Would you say that again, please?

1 Q Sure. After all the expenses every year, are there
2 profits in the company?

3 A Sure. There are.

4 Q Okay. And what -- and -- and do y'all distribute
5 those profits to yourselves after all the expenses
6 are paid and after the taxes are paid?

7 A Yes, sir.

8 Q Okay. And so I assume that that has continued to
9 -- how often do you pay the profits of the company?
10 Monthly?

11 A You would have to ask my wife about that.

12 Q Okay. You don't have any idea how much money comes
13 in to your checking account or your bank account
14 every month?

15 A No, sir. Not really.

16 Q Okay. When you went to see Dr. Smith for this
17 problem -- you saw Dr. Smith for this problem a few
18 days after you say it happened, right?

19 A Yes, sir.

20 Q Okay. Dr. Smith is your family doctor?

21 A Yes, sir. He is.

22 Q Okay. Did your wife accompany you to see
23 Dr. Smith?

24 A Yes, sir.

25 Q Did Dr. -- did -- did -- did you give the history

1 to Dr. Smith, or did your wife give the history to
2 Dr. Smith?

3 A I think it was a little bit of both.

4 Q Okay.

5 A What I could remember -- what I could . . .

6 Q Did you tell -- did you or your wife tell Dr. Smith
7 that -- that you had a -- or that this was a
8 workers' comp related claim?

9 A Yes, sir.

10 Q You did. Okay.

11 THE DEPONENT: Ernie, would you --

12 MR. PEAGLER: Yeah. Excuse me.

13 THE DEPONENT: Let me just --

14 MR. DETWILER: You need to take a break?

15 THE DEPONENT: No. Just -- but if I hold my
16 head up long enough, it starts falling and a
17 headache comes.

18 MR. PEAGLER: (To the deponent) Is that good
19 enough?

20 THE DEPONENT: Yes. Thank you.

21 Q Well, do you have any other problems other than the
22 numbness in your arm that you attribute to this --
23 this neck injury?

24 A These headaches.

25 Q These headaches?

1 A Yes.

2 Q Okay. And -- and that comes on when? When lawyers
3 question you in depositions or --

4 A No.

5 Q -- at any other time?

6 A No. And I guess I should've said something to you
7 before we even started this because I told Ernie
8 the only -- the onlyest reason I brought it in is
9 because my therapist said, "You need to take either
10 your soft or your hard because if you're sitting
11 there, we don't want them to think that you're not
12 getting better," so I didn't have it on. And that
13 was as long as I could go without it.

14 Q So you wear that neck collar pretty much all day?

15 A No. I wear it every day. I don't wear it all day.
16 I'll put it on when I can't get to ice.

17 Q Okay.

18 A Because if I can put ice on it, it freezes it. And
19 I'll --

20 Q About -- I'm sorry. About how many hours a day do
21 you wear that neck collar?

22 A About how many hours a day? Three, maybe four.

23 Q Do you sleep in it?

24 A No, sir. I sleep on a wedge.

25 Q Other than the head -- and -- and so the headaches

1 come on when?

2 A They come on whenever I can -- whenever my neck --
3 whenever it gets too heavy to support itself,
4 that's when I start getting headaches to my left
5 eye, and it just --

6 Q What do you do to relieve that? Go lie down?

7 A Usually what I do when -- when they start hurting.

8 Q Okay. Do you have any other problems other than
9 the -- the -- the numbness that you described a
10 while ago in your -- in both arms and your
11 headaches that come on occasionally?

12 A No. They don't come on occasionally. They come on
13 every day. I have them every day.

14 Q Every day for how long?

15 A Every single day until I can get where I can lay
16 myself down or I can get this support on me.

17 Q And how long do they last?

18 A Right now, I can feel it leaving.

19 Q Okay. All right. So they come on, and they --
20 they go away within minutes is what you're
21 describing, once you get some relief for your neck?

22 A No. What -- what I'm trying to get you to
23 understand is: I have to put support to get the
24 strain off my neck. Once the strain start -- once
25 it settles down, then my headache gets lighter and

1 lighter. And eventually it goes away.

2 Q Okay. That -- that's -- okay. That's what I
3 thought you said. All right.

4 And -- and then -- and so you have those
5 headaches how many times a day?

6 A Three/four times a day.

7 Q How far'd you go in school?

8 A Twelfth.

9 Q Graduate from -- from high --

10 A Yes, sir.

11 Q Okay. And did you have any military experience?

12 A Yes, sir.

13 Q Okay. Tell me about that.

14 A I was 82nd Airborne.

15 Q Air Force?

16 A No, sir. Army.

17 Q Army Air. Okay. I'm sorry.

18 A Yes, sir.

19 Q Shows you my ignorance. And --

20 A And --

21 Q -- how long were you in the Army?

22 A Five years.

23 Q Okay. And from what years -- in what years?

24 A Went in in '80.

25 Q You went in '90?

1 A '80.

2 Q '80. I'm sorry.

3 A Yes. 1980.

4 Q Uh-huh. '80 to '85 then roughly?

5 A Yes, sir.

6 Q Okay. So did you do duty in Iraq?

7 A No, sir.

8 Q Okay.

9 A I went -- I went -- I was in the Iran Contra with
10 Ronald Reagan.

11 Q Right.

12 A That's the only action I seen.

13 Q Okay. Did you -- were you deployed then?

14 A I was.

15 Q In combat?

16 A I was.

17 Q Where?

18 A We went to Grenada, I think it was.

19 Q Oh, okay. And were you honorably discharged?

20 A I was discharged. It was other than honor. It was
21 special circumstances.

22 Q What were the special circumstances?

23 A I was led to believe that I had a baby out there
24 that needed me at home more than the military
25 needed me. And she raised so much Cain I got out.

1 Q All right. Well, what -- if I were to get your --
2 your military records, what would they tell me?

3 A Just that.

4 Q That you were not honorably discharged? Are you
5 saying you got a general discharge?

6 A I got a general discharge.

7 Q And -- and you went to the Army and said, "I can't
8 do this anymore because I've got a baby I need to
9 go care for"?

10 A I could no longer perform the duties adequately to
11 -- to suit my commander. And when that started
12 happening, they dug into it and found out why and
13 said the best thing for me to do was go home and
14 take care of that.

15 Q So they asked you to leave?

16 A Yes.

17 Q And what'd you do after that?

18 A I had a landscaping business for a while.

19 Q Okay.

20 A I had a -- a handyman where I went around and fixed
21 minor repairs, you know, windows, doors, stuff like
22 that.

23 Q Okay. And when did you start Clean Streak?

24 A I started Clean Streak -- I've always had several
25 jobs. And I was driving the truck during the day,

1 and at night I'd go out and clean.

2 Q Uh-huh.

3 A And I'd repeat that process every single day. My
4 work day usually started about five o'clock in the
5 morning.

6 Q When did you start Clean Streak?

7 A I started Clean Streak -- let's see. It's 13 years
8 old. So I started -- I started Clean Streak, well,
9 really right after I got out of the service because
10 the first cleaning job I had was for a home-health
11 agency.

12 Q Okay. When did you start the company -- the
13 corporation called --

14 A Fifteen years ago.

15 Q Fifteen years ago. Okay. And -- and then I guess
16 that's your full-time employment now, right?

17 A Yes, sir.

18 Q You do anything else other than work at Clean
19 Streak?

20 A No.

21 Q Okay.

22 A Nothing earns me money, no.

23 Q Okay. Well, what does that mean? What do you do
24 other --

25 A I do a lot of charity work.

1 Q Okay. For what charities?

2 A I help out homeless children, children that can't
3 eat.

4 Q Uh-huh.

5 A The food pantries where they feed these families
6 that can't afford to buy food for themselves. We
7 do coat drives, clothes drives. And we go around
8 and we talk to the different churches and different
9 schools.

10 Q Is that in the Asheville area?

11 A Yes, sir.

12 Q Okay. Now, you originally filed the claim in North
13 Carolina, right?

14 A Yes, sir.

15 Q Okay. Is that North Carolina claim still active?

16 A No, sir.

17 Q And why not?

18 A Because Builders Mutual made a mistake.

19 Q And what did they make a mistake about?

20 A Dates.

21 Q Okay. So -- so explain, please.

22 A I wish I could explain it further, but my wife can
23 tell you in detail because she has dealt with this
24 Builders Mutual deal to -- through this whole
25 process.

1 Q Okay. Well, so you're saying that Builders Mutual
2 denied the claim because of the discrepancy about
3 the date as to when it happened. Is that your
4 understanding? Is that what you're trying to tell
5 me?

6 A I think that's what I'm trying to tell you.

7 Q Okay. Do you --

8 A And I'm saying that because I can't honestly look
9 at you and tell you yes or no because my wife
10 handles all that stuff. And, quite honestly, she
11 understands it better than I do.

12 MR. DETWILER: (To the court reporter) Mark
13 those two, please.

14 Defendants' Exhibit Number 1, Form 18 of
15 Horace Adell, Jr.

16 Defendants' Exhibit Number 2, Form 19 of
17 Horace Adell, Jr.

18 MR. PEAGLER: Rick, if you want to go off the
19 record, I can explain a little bit --

20 MR. DETWILER: Okay.

21 MR. PEAGLER: -- what all's involved.

22 MR. DETWILER: Off the record.

23 (Off the record from 11:01 a.m.
24 until 11:02 a.m.)

25 THE EXAMINATION BY MR. DETWILER CONTINUES.

1 Q Mr. Adell, your lawyer just tried to give me some
2 -- some background on your coverage with -- with
3 Builder Mutual, your workers' comp coverage
4 generally.

5 A Uh-huh.

6 Q Who do you have workers' comp coverage with now?

7 A White Insurance.

8 Q White Insurance?

9 A Yeah. W-h-i-t-e, White Insurance.

10 Q Okay. Now, I -- that sounds like an agency to me.

11 A That is an agency.

12 Q Okay. Do you know who your coverage is with?

13 A It's Auto . . .

14 Q Auto Owners?

15 A I believe you're right.

16 Q Okay. All right. And when did you get written for
17 that?

18 A You would have to ask my wife that.

19 Q All right. I'm going to show you -- I've got --
20 I've marked a couple of documents that --

21 MR. DETWILER: Here you go, Ernie. Make sure
22 I give you the right ones. The -- the North
23 Carolina Form 18 that's Number 1 and North
24 Carolina Form 19 is Number 2. (To Mr. Wyman)
25 Did I give you a copy of that?

1 MR. WYMAN: I've got that.

2 MR. DETWILER: You've got that.

3 Q I'm going to show you a document that's been marked
4 as Exhibit 1, and I'll tell -- tell you this is a
5 document filed with the North Carolina Industrial
6 Commission, called a "Form 18." Can you tell me if
7 you recognize that document at all? Or can you
8 tell me if you recognize the handwriting on that
9 document?

10 A No, sir. I do not recognize the handwriting on
11 this.

12 Q Okay. Do you recognize the signature at the bottom
13 where it says employee's name and signature?

14 A Employee's name and signature? Yes, sir. That's
15 mine.

16 Q That's your signature? That looks like it's a
17 preprinted stamp signature to me. Is it, or did
18 you actually sign that document?

19 A It's a preprinted stamp signature.

20 Q Okay. Who has access to your preprinted stamp
21 signature?

22 A My wife.

23 Q Okay. Is this your wife's handwriting?

24 A It's very possible.

25 Q Okay. You don't recognize your wife's handwriting?

1 A I don't see a lot of my wife's handwriting.

2 Q Okay. And do you know when this document was
3 filled out? I don't see a date on it.

4 MR. PEAGLER: (To Mr. Detwiler) Looking at
5 this one?

6 MR. DETWILER: I'm looking at Number 1, yeah.

7 MR. PEAGLER: The 18?

8 MR. DETWILER: The 18.

9 A I don't know, sir, the date on it.

10 Q Okay. Do you -- I don't see a date on it either.
11 Do you -- do you have any idea when it was filled
12 out?

13 A No, sir. I don't.

14 Q All right. And your wife is the only one, I hope,
15 that has access to your -- your -- your stamp
16 signature -- your signature stamp, right?

17 A She is. And that's done by design.

18 Q Of course. And you would -- then -- then she's
19 authorized to use it?

20 A Yes, sir.

21 Q Okay. And as far as you know, she -- she filled
22 this form out?

23 A Uh-huh.

24 Q Is that -- is that a yes?

25 A Yes, sir. Yes, sir.

1 Q All right. And the second document I want to show
2 you is a Form 19. Again, this is a North Carolina
3 Industrial Commission Form 19. It's a lot
4 different than the one we use here.

5 A Uh-huh.

6 Q And this is the employer's report of injury. The
7 first one was an employee's report of injury. And
8 does -- do you recognize this signature or --
9 excuse me. Do you recognize this writing?

10 A That's my wife.

11 Q That's your wife's writing?

12 A Uh-huh.

13 Q And do you recognize her signature on the bottom?

14 A I do.

15 Q And she signed this as vice president?

16 A Yes, sir.

17 Q Do you think that -- do you have any idea of
18 whether this was done at the -- on the same date as
19 the employee's first report?

20 A No, sir. I do not.

21 Q You don't know one way or the other. Okay. This
22 -- this document seems to have been completed on
23 March 30th, 2015. Do you see that?

24 A I do.

25 Q Okay.

1 MR. PEAGLER: Rick, is there a Page 2 to that?

2 MR. DETWILER: I do not have a Page 2 that I
3 know of. Let me look and --

4 MR. PEAGLER: This just said --

5 MR. DETWILER: I see what you're -- I see what
6 you're referring to.

7 MR. PEAGLER: I'm not familiar with their
8 forms. That says "Page 1 of 2."

9 MR. DETWILER: Let's look real quick.

10 MR. PEAGLER: Thank you.

11 MR. DETWILER: Let's go off the record.

12 (Off the record from 11:07 a.m.
13 until 11:08 a.m.)

14 THE EXAMINATION BY MR. DETWILER CONTINUES.

15 Q Who is Summer Adell?

16 A Summer?

17 Q Is there a Summer -- person named Summer Adell?

18 A Not that I know of. You sure it's not Susan?

19 Q I'm just looking at the document. I think it must
20 be a misprint.

21 All right. Give me just one second. Let me
22 look over my notes and see if there's anything else
23 I need to ask you.

24 Who's Donna Cook?

25 A That's my office manager.

1 Q Okay. There is a reference in your prehearing
2 brief to have given written notice of the workers'
3 comp claim to Susan Adell and Donna Cook. Okay.
4 What -- what written notice did you give them of
5 this accident and injury?

6 A It would've been an incident report, I'm assuming.

7 Q Would it -- would it -- would it have been this --
8 this North Carolina form, you think --

9 A That's --

10 Q -- that we talked about?

11 A That's what I'm thinking.

12 Q Any other written notice that you know of?

13 A No, sir. Not that I'm aware of.

14 Q Okay. And so this was a notice you gave them
15 immediately following the alleged accident; is that
16 right?

17 A Yes, sir.

18 Q Okay. And so I assume you told them exactly what
19 you've told me about how the accident occurred,
20 correct?

21 A Yes, sir.

22 Q I'm going to take a break and look over some other
23 parts of my file while Mr. Wyman asks you some
24 questions if he has any. And so if you'll forgive
25 me right now, I may come back and ask you a few

1 more follow-up questions, okay?

2 A Okay.

3 EXAMINATION

4 BY MR. WYMAN:

5 Q Mr. Adell, my name is Mikell Wyman. I just want to
6 really just establish my role in this for the
7 record. I actually do not have any questions for
8 you regarding your testimony today. You
9 understand, sir, that I've been hired by Builders
10 Mutual Insurance Company, as Mr. Detwiler explained
11 to you before we went on the record?

12 A Yes, sir.

13 Q Solely to represent Clean Streak, Inc.

14 A Yes, sir.

15 Q You understand that?

16 A Yes, sir.

17 Q And you understand, sir, that I do not represent
18 you personally? You've got an excellent attorney
19 to do that.

20 A Right.

21 Q And you understand that I do not represent your
22 wife or any other officers of the company
23 personally?

24 A Yes, sir.

25 Q You understand that? Okay.

1 Thank you, sir. I just wanted to make sure
2 the record was clear regarding my involvement in
3 the case.

4 A Okay.

5 MR. WYMAN: I don't have any questions for
6 you.

7 MR. PEAGLER: Rick, do you want me to go ahead
8 that way if you have any other follow up --

9 MR. DETWILER: Yeah. Go ahead. Sure.

10 EXAMINATION

11 BY MR. PEAGLER:

12 Q Horace, do you handle the workers' comp claims for
13 your company?

14 A No. I do not.

15 Q All right. Who typically handles those for the
16 company?

17 A Susan.

18 Q All right. Before you hurt your neck, did you
19 often work on site?

20 A Yes, sir.

21 Q What type of work did you do?

22 A I not only gave everybody their duties, but I also
23 oversee to make sure everything was done properly.

24 Q Did you actually participate in the physical labor
25 of the jobs?

1 A Yes, sir.

2 Q In what ways?

3 A I ran the machines.

4 Q All right. And why did you take that role? Why
5 did you do that as the owner and president of the
6 company?

7 A Because I'm the best at it.

8 Q Okay. And have you been able to do that since you
9 got hurt?

10 A No.

11 Q Did you feel like that was an integral part of your
12 role within -- with Clean Streak?

13 A Yes, sir. I do.

14 Q Now, last year you had 28 employees. And how many
15 offices did you have?

16 A One.

17 Q Starting in 2015, how many offices did you have?

18 A Only had one started, but two.

19 Q You opened in March? You were --

20 A Right.

21 Q You were opening the Myrtle Beach office --

22 A Yes.

23 Q -- in South Carolina?

24 A Yes.

25 Q Now, how has your injury impacted your ability to

1 work and the impact on the new office you opened in
2 March?

3 A We -- we -- we looked at that, and we've lost quite
4 a bit of money because we were unable to -- I don't
5 have -- I don't have the means now that I have this
6 going on to bring in day labor to get the jobs done
7 because all -- all I have to have is people that
8 can follow instructions, and I can do any job. And
9 I'm not able to do that.

10 Q Okay.

11 A Prior to this injury, down there, I think -- you
12 should know that we -- we made -- just in the four
13 or five jobs that we did, we made a little over
14 \$18,000. And the potential for growth is
15 tremendous down there. And since then we've
16 documented that we have turned down 16 different
17 jobs.

18 Q Okay. And that's because of your injury?

19 A That's because of my injury.

20 Q And will opening the office and not being able to
21 take new accounts like you could have -- will that
22 have an impact on your bottom line at the end of
23 the year?

24 A It sure will. We spent \$17,000 setting that office
25 up, advertising, licensing, and -- and now we have

1 to back it up.

2 Q Okay.

3 MR. PEAGLER: That's all I have, Rick.

4 REEXAMINATION

5 BY MR. DETWILER:

6 Q So it's your testimony that since -- or since this
7 accident occurred, you've lost business and began
8 losing money in your business. Is that what you're
9 saying?

10 A Yes, sir. I am.

11 Q Okay. Who is Kevin Shay?

12 A Who is Kevin Shay? Sir, I have no idea who Kevin
13 Shay is.

14 Q Well, let me help you. I've got something that
15 indicates he is the regional sales manager for
16 Wausau Paper.

17 A Yes. That -- yes. I had a meeting with him the --
18 the morning of the 24th.

19 Q Okay.

20 A He's a vendor.

21 Q And how long did y'all meet?

22 A We was in there for three hours.

23 Q Why do you remember that so well?

24 A Because he told me -- we were looking to get a
25 vendor that would give us a bulk price on products,

1 supplies, you know, toilet paper and chemicals,
2 whatnot.

3 Q Uh-huh.

4 A And that particular company wants you to order a
5 tractor and trailer load at a time. And we were
6 just starting the business. We couldn't do that.

7 Q Uh-huh.

8 MR. DETWILER: All right, sir. That's all I
9 have. Thank you for answering my questions.

10 MR. WYMAN: I have nothing further.

11 FURTHER DEPONENT SAITH NOT.

12 (Whereupon, there being no further
13 questions, the deposition was
14 concluded at 11:17 a.m.)

15 (*This transcript may contain quoted material.
16 Such material is reproduced as read or quoted
17 by the speaker.)

18 (**Certificate accompanies sealed original
19 only.)

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Before the South Carolina Workers' Compensation
Commission

WCC File No.: 1504993

Horace L. Adell, Jr.,	)	
	)	
Claimant,	)	
	)	30(b)(6) Deposition
vs.	)	
	)	of
Clean Streak, Inc.,	)	
	)	Clean Streak, Inc.,
Employer,	)	(Susan Adell)
	)	
and	)	
	)	
Builders Mutual	)	
Insurance	)	
Company,	)	
	)	
Carrier/Defendants.	)	

Date: August 25, 2015

Time: 3:04 p.m.

Location: Gallivan White & Boyd, PA

1201 Main Street, Suite 1200, Columbia, South Carolina

29201

Reported by
Diane M. Hendricks

1 A. No.

2 Q. --- called you?

3 A. No. He was not.

4 Q. Okay. And what did he tell you when he called
5 you?

6 A. He told me that he was paralyzed and that he
7 could not move.

8 Q. He said he was paralyzed and could not ---

9 A. Uh-huh.

10 Q. Not move?

11 A. He could not move.

12 Q. Who dialed the phone for him?

13 A. I guess he did.

14 Q. Okay. And did he tell you what had happened?

15 A. Yes. He told me that ---

16 Q. What did he tell you?

17 A. --- he had hurt his neck.

18 Q. How did he tell you he hurt his neck?

19 A. He hurt his neck at -- during work setting up
20 shelves, is the first thing that I heard. He was
21 setting up shelves.

22 Q. Okay. And so -- so he picked up the phone, he
23 said, "I'm paralyzed." He dialed your number, he
24 said, "I'm paralyzed." I've hurt my neck
25 terribly, I guess. And it's -- and -- and I did

1 it setting up shelves. Is that what he told you?

2 A. Yes.

3 Q. Okay. All right. And then what's the next
4 thing? What else did he tell you in -- let me
5 ask you this: About what time of day was that
6 that he called you?

7 A. It was late at night. I was asleep.

8 Q. Okay. Do you have any idea what time it was at
9 night?

10 A. 12:00 maybe.

11 Q. So you think it was about midnight or so?

12 A. Yeah. Because I'm the one that said, "Call 911."

13 Q. Okay. And when did he say this -- this accident
14 setting up the shelves occurred?

15 A. During the day they had a meeting with the stock
16 people and they were setting up shelving. They
17 had been -- had gone -- they had gone down to
18 South Carolina office. We had split our
19 inventory in half. Machinery, chemical, wax.
20 And they were getting it ready for our suppliers
21 to ship the rest of our things so that we could
22 start contracts.

23 Q. Okay.

24 A. We had been ---

25 Q. In -- in ---

1 you show me in this stack where that information
2 is?

3 MR. WYMAN: Madame Court Reporter, let's go off the
4 record for a second.

5 (Off the record from 3:30 p.m. until 3:30 p.m.)

6 Q. Now, Ms. Adell, I'm looking at some of the
7 records that you presented to me are the payroll
8 item detail.

9 A. Uh-huh.

10 Q. January 14 through September 15. And you've
11 given it to me on Horace Adell, and I guess you
12 mentioned, I haven't seen it yet, but I'm sure
13 it's in here, you mentioned that you gave me
14 yours as well; is that right?

15 A. Uh-huh.

16 Q. Okay. Is that right?

17 A. I did. During the first deposition you asked
18 what family members worked for our company,
19 so ---

20 Q. Uh-huh.

21 A. --- that's why I brought you mine.

22 Q. Okay. And what is your salary at the company?

23 A. It's very minimal. I am disabled. In 2004 I had
24 a car accident where I broke 36 bones from
25 the ---

1 Q. Uh=huh.

2 A. --- waist up.

3 Q. Uh-huh.

4 A. Collapsed lungs.

5 Q. And so you collect Social Security?

6 A. I do. And so I make what is the most that I can
7 make. I'm on a right-to-work program.

8 Q. Uh-huh.

9 A. And it's like I said before. My job was very
10 minimal. It was just to do the marketing and
11 help Mr. Adell.

12 Q. Well, it didn't sound minimal when you were
13 saying it to me the other -- or a little while
14 ago. You said it -- it sounded like you were
15 very busy, but you were doing the fun stuff.
16 Isn't that what you said?

17 A. Yeah. Yes. And I can work when I can work. I
18 have ---

19 Q. Right. You did the entertaining, you did ---

20 A. I did the entertaining.

21 Q. You were the face of the company, I think ---

22 A. Right.

23 Q. --- you said. You got all the business in the
24 door, and Mr. Adell actually discharged the work;
25 is that right?

1 Q. Okay. But in terms of tracking income this year
2 versus last year, you've actually made more money
3 and you've -- you've made more profit. Is that
4 not correct?

5 A. We've made more money, not necessarily more
6 profit, if you'll look at our expenses and our
7 payroll.

8 Q. All right. Well, let's take a look at that.
9 Let's -- we're looking at -- I'm looking at gross
10 profit, and I know you've got expense
11 behind -- the come off of that. But gross profit
12 is -- is up \$30,000-something. Is it not?

13 A. Uh-huh.

14 Q. Okay.

15 MR. WYMAN: Is that a yes?

16 A. Yes. I'm sorry.

17 Q. And then if you look at the -- let -- and let's
18 just flip all the way down to net income. And
19 this is net income after depreciation and all the
20 other things, right?

21 A. Yes.

22 Q. Okay. And --and you net income has actually gone
23 up \$5,000; has it not?

24 A. It may have. But I also did not -- I stopped
25 advertising, and the things that I usually do.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE PANEL
The Honorable Mike Campbell, The Honorable Melody L. James
and The Honorable Avery B. Wilkerson, Jr.

WCC No. 1504993
Appellate Case No. 2017-000084

Horace L. Adell, Jr.,

Employee/Claimant/Respondent,

-v-

Clean Streak, Inc.,

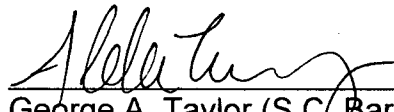
Employer/ Respondent, and

Builders Mutual Insurance Company,

Carrier/Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule 211(b), SCACR, by containing all material proposed to be included by any of the parties.



George A. Taylor (S.C. Bar No. 100245)

Alden G. Terry (S.C. Bar No. 102851)

CALLISON TIGHE & ROBINSON, LLC

Post Office Box 1390

Columbia, South Carolina 29202-1390

(803) 404-690

GeorgeTaylor@CallisonTighe.com

AldenTerry@callisontighe.com

ATTORNEYS FOR CARRIER/APPELLANT

July 5, 2017