

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-000684  
SCWCC File No. 1501883

**RECEIVED**

AUG 30 2017  
SC Court of Appeals

Stephen Livingston, Claimant.....Appellant,

v.

The Building Center, Inc., Employer, and  
Old Republic Insurance Co., Carrier, Defendants.....Respondents.

**MOTION TO AMEND THE RECORD ON APPEAL AND FOR EXTENSION OF  
TIME FOR FILING RESPONDENTS' FINAL BRIEF**

Respondents, by and through their undersigned attorney, hereby move before this Honorable Court that the Record on Appeal be amended and for an extension of time in which to file the Respondents' Final Brief. As grounds for this Motion, Respondents submit that documents designated in both Respondents' and Appellant's Designation of Matters were not included in the Record on Appeal and the Record on Appeal contains incorrect pagination. Specifically, Respondents assert pages two through eight of the Report of Dr. John Evans should follow page 247 of the Record on Appeal. Respondents further assert a questionnaire completed by Dr. David Lee on March 10, 2016 should be included as part of Appellant's APA Submissions, per Appellant's Designation of Matter. Therefore, Respondents request that the Record on Appeal be amended to include the missing matters and an extension in which to file their Final Brief to allow correct pagination in accordance with the Amended Record on Appeal.

[Signature page to follow]



Respectfully Submitted:



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Attorneys for Respondents

August 28, 2017  
Columbia, South Carolina

a specific incident. The mass was non-tender and measured 13 x 8 x 4 cm. On 02/17/2015, the claimant reported pain in both shoulders to Dr. Mullaney. On 03/06/2015, the claimant was in the Providence ED with soft tissue tenderness in the right shoulder. The shoulder had limited ROM due to pain. No location of a mass was recorded. The examiner suspected rotator cuff disease. Another Ed visit on 03/31/2015 found the claimant complaining of right shoulder pain. The examiner records the presence of a fatty tumor on the right clavicle. An ultrasound of the right shoulder performed was interpreted to show "soft tissue fat induration without discrete mass. No cyst/fluid collection is identified". Dr. Mullaney recorded the mass to be a lipoma, confirmed by ultrasound on 03/06/2015. The claimant was in the Ed on 07/10/2015 complaining of right sided neck pain. On 11/03/2015, the claimant was having burning in his feet. Dr. Mullaney thought this to be neuropathic and prescribed Neurontin. Dr. Mullaney recorded increased right shoulder pain on 11/17/2015.

The claimant was diagnosed with the Gout in an ED visit on 05/30/2014.

On 10/28/2015, the claimant was in the Providence ED complaining of his feet swelling.

Dr. David Lee, an orthopedic surgeon, saw the claimant on 01/28/2016. The claimant dated his right shoulder pain to a day (not specified) in March 2015. Dr. Lee recorded the presence of the mass with positive impingement signs. He interpreted radiographs to show a type III acromion. He diagnosed a soft tissue mass and impingement and recommended a MRI scan.

Currently, the claimant complains of right shoulder pain. He describes the pain as severe, and says the pain extends from his right shoulder into the right side of his neck and into his right elbow, wrist and fingers. Associated symptoms include a large "lump" on his shoulder, "tingling" in his right elbow and "glove-like numbness" in all fingers on his right hand. The right shoulder pain is aggravated by cervical spine motion and all motion of his right arm. He says he has to use his left hand to drive, lift things, and dress himself. He also says his right hand grip strength is weak.

Currently the claimant is employed full time at a lumber distribution company.

The claimant's educational background includes obtaining his high school diploma.

The claimant denies previous WC claims.

**Records Reviewed for this examination include:**

Potentially useful records prior to the work incident were submitted for review. No records contemporaneous with the "injury" date were submitted for review

Providence Internal Medicine, Stephen Mullaney, MD., office notes, 02/12, 02/17, 03/23, 07/23, 11/03, 11/17/2015

Providence Hospital ED note 10/28/2015, 05/30/2014, 11/04/2014, 03/06/2015, 03/31/2015, 07/10/2015

Ultrasound report, Paul Aitchison, MD., 02/27/2015

Southeastern Orthopaedic and Sports Medicine, David Lee, MD: 01/28/2016 and questionnaire 03/10/16

**PMH:** Hypertension, Gout, Diabetes mellitus, hyperlipidemia, neuropathy,

**Allergies:** None Known

**Medication History:** Lisinopril 40 mg q day, HCTZ 12.5 mg q day, Indomethacin 25 mg po bid, Metformin 500 mg po q day, Lovastatin 10 mg po q day, Neurontin 300 mg po TID, Amlodipine 10 mg po q day

**Past Surgical History:** none

**Family History:** hypertension (parents)

**Social History:** He denies EtOH and tobacco use; He is married.

**Review of systems:**

Eyes: (-) visual disturbance or change

- Endocrine:** (+) endocrine-related symptoms
- Musculoskeletal:** (+) joint or musculoskeletal symptoms
- Allergic/Immunologic:** (-) allergic or immunologic symptoms
- Cardiovascular:** (+) cardiovascular problems (Hypertension)
- Constitutional Symptoms:** (-) constitutional symptoms such as fever, headache, nausea, dizziness
- Ear, Nose, Mouth, Throat:** (-) any symptoms relating to the Ears, Nose, Mouth and Throat
- Gastrointestinal:** (-) GI symptoms
- Genitourinary:** (-) GU symptoms
- Integumentary:** (-) skin related problems
- Neurological:** (-) neurological symptoms or problems
- Psychiatric:** (-) emotional or mental health problems/issues
- Respiratory:** (-) respiratory problems

**Physical Exam:**

BP Sitting 161/100 mmHg; HR 85 bpm; Temp 99.6 F; Height 5 ft. 9 in;  
Weight 291 lbs; BMI ??; O2 Saturation 98%

Patient is a 49 year old male, who appears his given age, well developed, well nourished, with good attention to hygiene and body habitus, appears in moderate distress, is holding his arm against his abdomen in a protective manner and is very reluctant to move his right upper extremity in any fashion. He is pleasant. He is oriented to person, place and time. Mood and affect are normal and appropriate to the situation.

The claimant presents today ambulatory without assistance.

All measurements were made using a goniometer.

**Musculoskeletal:**

**Cervical spine examination:**

Inspection reveals no external signs of acute injury or trauma to the cervical spine.

Palpation reveals diffuse tenderness over the right side of the neck.

He is very reluctant to move his neck due to pain, but could move the neck well when distracted.

Cervical spine flexion (active): within functional limits, with pain extending into the right side of the neck and right shoulder.

Cervical spine extension (active): within functional limits, with pain extending into the right side of the neck and right shoulder.

Cervical spine right rotation (active): 20 degrees.

Cervical spine left rotation (active): 30 degrees.

Muscle tone is normal.

**Right Upper Extremity Examination:**

Inspection reveals a mass over the superior aspect of the right shoulder measuring 13 cm by 18 cm.

The mass does not pulsate or transilluminate.

Inspection of the remainder of the right upper extremity reveals no external signs of acute injury or trauma.

Palpation reveals diffuse tenderness over the right shoulder and upper arm.

He is extremely reluctant to move his right shoulder, elbow, wrist, and fingers.

Passive shoulder abduction (active): 80 degrees, with significant pain.

Elbow motion is limited and painful.

Wrist motion is limited and painful.

ROM of all phalanges is within functional limits. Motion is slow.

No objective shoulder instability noted.

Muscle tone is acceptable.

Forearm circumference measured 5 cm below the elbow flexion crease:  
Right 46 cm; Left 45 cm.

Neurologic: Superficial sensibility is intact in the right upper extremity.  
Sharp/dull sensibility is intact.

Vascular: Peripheral pulses are normal on palpation; extremities are warm  
with no edema.

Skin temperature measured with an IRT207 Infrared Thermometer: Right  
shoulder 96 degrees; Left shoulder 98 degrees.

Deep tendon reflexes are equal and symmetric.

#### Test results:

**DASH: 83;** According to the AMA Guides to the Evaluation of Permanent Impairment, 6<sup>th</sup> edition, this score correlates with a Functional History Grade Modifier of 4 ("severe problem"; Table 15-7, pg. 406).

**Activities of Daily Living Questionnaire: 2.24;** According to the AMA Guides to the Evaluation of Permanent Impairment, 6<sup>th</sup> edition, this score correlates with a Functional History Grade Modifier of 3 (Table 15-7, pg. 406).

**Impression:** Pain right shoulder, nonspecific

Painless soft tissue mass, right shoulder

**Evaluation/rating/Questions:**

**Question 1:** Was the right shoulder soft tissue mass directly caused by carrying lumber and other products on the shoulder?

**Answer 1:** In my opinion and to a reasonable degree of medical certainty, the mass on the claimant's right shoulder was not directly caused by carrying lumber and other products on the shoulder.

The mass is a lipoma or a "soft tissue fat induration without discrete mass". The mass itself is nontender. The cause of lipomas is unknown. Lipomas tend to run in families, so genetic factors likely play a role in their development. The causes of a lipoma are unknown. It is possible that they are caused by a physical trauma, i.e., a blow to that part of the body. However, it is unclear whether the trauma causes a lipoma to form or if the lipoma is discovered simply as a result of medical attention to that area of the body. (Cleveland Clinic)

Several factors may increase the risk of developing a lipoma, including:

- **Being between 40 and 60 years old.** Although lipomas can occur at any age, they're most common in this age group. Lipomas are rare in children.
- **Having certain other disorders.** People with other disorders, including adiposis dolorosa, Cowden syndrome and Gardner's syndrome, have an increased risk of multiple lipomas.
- **Genetics.** Lipomas tend to run in families. Trauma is not a cause of lipomas.

(Mayo Clinic e-Newsletter)

**Question 2:** Does the claimant have impingement syndrome of the right shoulder? If so, was the impingement syndrome caused by carrying lumber.

**Answer 2:** In my opinion and to a reasonable degree of medical certainty, the claimant has nonspecific right shoulder pain that could be impingement. He was so reluctant to move the shoulder that impingement signs could not be tested. The pain is not caused by carrying lumber on the shoulder. His subjective complaints are not supported by objective findings.

The causal relationship between the claimant's symptoms and any specific work incident is not established because:

1. The nature, history or mechanism of the "injury" is unclear;
2. Useful notes of medical visits prior to the alleged "injury" and outside activities were not commented upon by any of the treating physicians. Based on this lack of documentation of prior status, the notion that the claimant was totally normal and that all his complaints are solely due to carrying lumber is not supported.
3. The claimant's objective baseline ultrasound status prior to the alleged onset has not been established. A specific change at the time of the alleged "injury" cannot be documented;
4. The dating of the claimant's symptoms to the carrying lumber is subjective and not supported by objective findings that could relate his symptoms to his work
5. The ultrasound findings are likely related to age, gender and a progression of previous changes.

The opinions rendered in this independent medical evaluation are the opinions of the examining physician. This evaluation was based on the medical records available with the assumption that this material is true and correct as well as a physical examination performed today. If more information becomes available an additional report may be requested. Undetectable injuries and illnesses may be present at the time of this physical examination. This examination does not endorse or criticize the medial treatment of care providers. Explained to the client and the client acknowledges understanding that this examination does not constitute the establishment of a doctor/patient relationship;

Signed by John P. Evans John P. Evans, M.D.

John P. Evans, M.D.

Certified, American Board of Orthopaedic Surgery

Certified in the Evaluation of Disability and Impairment, American Academy of Disability Evaluation Physicians.

Dr. David K. Lee  
February 22, 2016  
Page 3

STEPHEN LIVINGSTON  
DOB: 07/19/1966  
DOL: 02/12/2015

1. In my medical opinion, within a reasonable degree of medical certainty [most likely], considering Mr. Livingston had no history of problems with his right shoulder prior to his work injury that occurred on February 12, 2015, the injuries were [most likely] caused by him repeatedly carrying heavy objects at work?

Yes or  No

Please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. In my medical opinion, within a reasonable degree of medical certainty, [most likely], the recommendation for the MRI, is to determine the extent of aggravation to the right shoulder, by the repetitive carrying of heavy objects.

Yes or  No

3. In my medical opinion, within a reasonable degree of medical certainty [most likely], Mr. Livingston's need for medical treatment relating to the right shoulder is due to his continuing to lifting of heavy objects as part of his job duties.

Yes or  No

*As well as carrying them on the shoulder*

4. In my medical opinion, within a reasonable degree of medical certainty [most likely], based on Mr. Livingston's current medical condition, he is not at MMI, and additional medical treatment would tend to lessen his period of disability, due to the work injury of February 12, 2015.

Yes or  No

If no, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dr. David K. Lee  
February 22, 2016  
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5. Additional Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



David K. Lee, MD  
Southeastern Orthopaedic and Sports Medicine  
146 N. Nospital Drive (LMP2)  
West Columbia, SC 29169

Dated: 3/10/16

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**PROOF OF SERVICE**

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I, Elizabeth Manning, certify that I have served the **Respondents' Motion to Amend the Record on Appeal and Request for Extension** on August 28, 2017, by depositing a copy of it in the United States Mail, postage prepaid, on August 28, 2017, addressed to his (APPELLANT) attorney(s) of record, Holly Atkins, Atkins Law Firm, P.O. Box 1478, Columbia, SC 29202. I also served the **Respondents' Motion to Amend the Record on Appeal and Request for Extension** by depositing a copy of it in the United States Mail, postage prepaid, on June 2, 2017, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, The South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina, 29211.

August 28, 2017

*E. Manning*

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# WILLSON JONES CARTER & BAXLEY, P.A.

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August 28, 2017

The Honorable Jenny Abbott Kitchings, Clerk of Court  
The South Carolina Court of Appeals  
P.O. Box 11629  
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AUG 30 2017

SC Court of Appeals

Re: Stephen Livingston vs. The Building Center, Inc. DOI: 2/12/15  
WCC File No.: 1501883 DOI: 2/12/2015  
Carrier: Old Republic Insurance Company - Claim No.: 011260-041591-WC-01  
WJC&B File No.: 0090.01984  
Appellate Case No.: 2017-000684

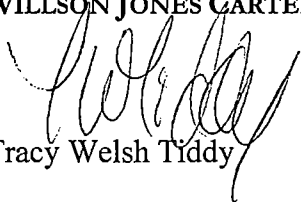
Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of the **Respondents' Motion for to Amend the Record on Appeal and Request for Extension** in the above-referenced matter along with the requisite filing fee amount of \$25.00.

By copy of this letter and enclosures to Holly Atkins, counsel of record for the APPELLANT, we are serving her with a copy of our **Respondents' Motion for to Amend the Record on Appeal and Request for Extension** as indicated by the enclosed Proof of Service. Thank you for your consideration in this matter. Please contact us with any questions or if further information is needed from our office.

With kindest regards,

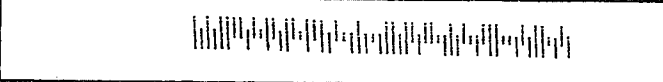
WILLSON JONES CARTER & BAXLEY, P.A.

  
Tracy Welsh Tiddy

TWT/jbm  
Enclosures

Ms. Holly Atkins, Esquire, (via mail)  
Ms. Amy Bracy, (via mail)  
Ms. Sondra Kast (via e-mail)  
Mr. Coy Cooley (via e-mail)

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