

22760

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 09 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-002626

Builders Mutual Insurance Company
for itself and its insured, Peachtree Electrical Services, ... Appellants,

v.

Bob Wire Electric, Inc. and South Carolina Home Builders
Self Insurers Fund, ... Respondents.

RECORD ON APPEAL

Richard C. Detwiler

CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, SC 29202-1390
Tel: (803) 404-6900
Fax: (803) 404-6901

ATTORNEYS FOR APPELLANTS

Pope D. Johnson, III
POPE D. JOHNSON, III
ATTORNEY AT LAW
1230 Richland Street
Columbia, SC 29201
Tel: (803) 799-9791
Fax: (803) 253-6084

ATTORNEY FOR RESPONDENTS

INDEX

ORDERS:

Circuit Court Order, September 9, 2015	003
Circuit Court Order, November 12, 2015	014

PLEADINGS:

Complaint	018
Answer	029

MOTIONS

Motion to Alter or Amend Order Pursuant to Rule 59(e), SCRCF	034
--	-----

TRANSCRIPTS:

Trial Transcript	041
------------------------	-----

TRIAL EXHIBITS:

Exhibit 1 – Transcript of Deposition of Christopher C. Price, December 18, 2003	098
Exhibit 2 – Transcript of Deposition of Christopher C. Price, February 1, 2005	124
Exhibit 3 – Transmittal Order of Commissioner Susan S. Barden, June 21, 2005	135
Exhibit 4 – Transcript of Hearing held June 5, 2006 before Commissioner David Huffstetler	136
Exhibit 5 – Decision and Order of Commissioner Huffstetler, July 5, 2006	164
Exhibit 6 – Consent Order Approving Settlement Agreement, August 26, 2006	177
Exhibit 7 – S.C. Workers' Compensation Commission Appellate Panel Order, dated May 4, 2007	182
Exhibit 8 – Order of Honorable Steven H. John, December 20, 2007	199
Exhibit 9 – Decision and Order of Commissioner Funderburk, June 12, 2008	203
Exhibit 10 – S.C. Workers' Compensation Commission Amended Appellate Panel Order, January 6, 2009	212
Exhibit 11 – Order of Honorable Ben Culbertson, September 14, 2009	219
Exhibit 12 – Final Brief of the Appellants to the Court of Appeals, August 25, 2010	233
Exhibit 13 – <u>Christopher Price v. Peachtree Electrical Services, et al.</u> , Op. No. 4923 (S.C. Ct. App. filed December 21, 2011)	271
Exhibit 14 – <u>Christopher Price v. Peachtree Electrical Services, et al.</u> , Op. No. 27314 (S.C. Sup. Ct., filed Sept. 11, 2013)	278
Exhibit 15 – Attorneys' Fee Affidavit	281
Exhibit 16 – Pay History	283

Exhibit 17 – Pay History	290
Exhibit 18 – Summary of Expenses.....	297

CERTIFICATE OF COUNSEL :

Certificate of Counsel	298
------------------------------	-----

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Builders Mutual Insurance Company)
for itself and its insured; Peachtree)
Electrical Services,)

Plaintiffs,)

vs.)

Bob Wire Electric, Inc. and South)
Carolina Home Builders Self-)
Insurers Fund,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-01818

ORDER

RECEIVED
2015 SEP 11 14:10:32
JANETTE M. HARRIS
CLERK OF COURT

INTRODUCTION

This is an equitable action by Builders Mutual Insurance Company ("Builders Mutual") to recover payments it made to or on behalf of a claimant in a workers' compensation proceeding. Builders Mutual maintains that its payments to or on behalf of Christopher Price after he had a second accident on November 3, 2003 while employed by Bob Wire Electric, Inc. were the obligation of the South Carolina Home Builders Self Insurers Fund (the "Fund") and that the Fund was obligated to reimburse Builders Mutual.

The following orders were issued in the workers' compensation proceeding:

1. Transmittal Order of Commissioner Susan S. Barden dated June 21, 2005 adding Bob Wire/SCHBA.
2. Decision and Order of Commissioner Huffstetler dated July 5, 2006 who found that there was no accident with Bob Wire Electric, Inc. and dismissed the Fund.
3. SC Workers' Compensation Commission Appellate Panel Order dated May 4, 2007 ("First Appellate Panel Order") which reversed the decision of

Commissioner Huffstetler and remanded the action to the Single Commissioner for a determination of benefits due

4. Order of Judge Steven H. John dated December 20, 2007 dismissing Defendant's Appeal from First Appellate Panel Order as untimely.
5. Order of Commissioner Funderburk dated June 12, 2008 (Order of Remand) who ordered reimbursement for \$112,789.42 in medical benefits and \$47,023.88 in compensation benefits.
6. Amended Appellate Panel Order dated January 6, 2009 which affirmed the Order of Commissioner Funderburk
7. Order of Circuit Court Judge Ben Culbertson dated September 14, 2009 affirming Second Appellate Panel Order
8. The Court of Appeals decision in Christopher Price v. Peachtree Electrical Services, et al., Opinion No. 4923 (S.C. Ct. App. Filed December 21, 2011) which vacated the Single Commissioner's, the Appellate Panel's and the circuit court orders. The order specifically held that the Appellate Panel Order dated May 4, 2007 did not establish the law of the case.
9. The Supreme Court Order on Writ of Certiorari to the Court of Appeals filed September 11, 2013 which affirmed as modified the Order of the Court of Appeals.
10. The Supreme Court Order dated November 7, 2013 taxing fees and costs against Builders Mutual Insurance Company and Peachtree Electrical Services

In this action, Builders Mutual has asserted claims for declaratory judgment, quantum meruit/unjust enrichment/restitution, and equitable indemnity. In response, the Fund has asserted a number of defenses including a general denial, failure to state a claim, the statute of limitations, the defenses of laches and unclean hands, *res judicata*, and waiver. The Fund also asserted that the Orders of the Single Commissioner, Appellate Panel, and the circuit court had been vacated and were therefore of no effect.

The action came before the Court on March 16, 2015 for a non-jury trial. A representative of Builders Mutual and its attorney testified. The exhibits offered by

Builders Mutual were admitted into evidence over the objection of the Fund. Builders Mutual also submitted its attorney's bills for an in-camera review by the court. The exhibits offered by the Fund were admitted into evidence over the objection of Builders Mutual. Based thereon, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A.

CAUSE OF ACTION FOR DECLARATORY JUDGMENT

(1) Builders Mutual has alleged a cause of action for declaratory judgment, alleging:

"39. In accordance with the Appellate Panel Order, Plaintiffs are entitled to a declaratory judgment ordering reimbursement from Defendants for all amounts paid by Plaintiffs to Price in connection with his Second Accident, which total \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, together with the costs including reasonable attorneys' fees on the grounds set forth herein above, in an amount to be determined by the Court pursuant to S.C. Code Ann. §15-53-10, et. seq. (1977), together with pre-judgment interest at the highest rate allowed by law."

(2) Builders Mutual's cause of action for declaratory judgment is based upon the following allegations:

"37. The Appellate Panel Order, dated May 4, 2007, which has not been vacated, altered or modified by the Court of Appeals' Opinion or any other appellate action, specifically holds that the injury suffered by Price on November 3, 2003, during his employment with Bob Wire, was a second accident for which Defendants, not Plaintiffs, are properly responsible.

38. The Appellate Panel Order, from which there has been no appeal, specifically provides for and required an apportionment of benefits paid and/or to be paid to Price in connection with his Second Accident between Plaintiffs and Defendants in accordance with the determination that a Second Accident did in fact occur for which Defendants are responsible."

(3) The Court of Appeals dealt with the effect of Appellate Panel Order dated May 4, 2007 directly. The Court of Appeals held that the Appellate Panel's Order dated May 4, 2007 was an intermediate order and that the Fund was not required to immediately appeal the Appellate Panel Order. The Court of Appeals specifically held that the May 4, 2007 Order did not establish the "law of the case". The Court of Appeals stated:

"Bob Wire contends the Commission lacks subject matter jurisdiction to deal with Peachtree's equitable claim for reimbursement because the Commission's authority is derived strictly from statute in derogation of the common law. We agree.

As a threshold matter, Peachtree contends the findings in the Appellate Panel's first order of May 2007 (First Order) constitute the law of the case because the appeal from that order was dismissed as untimely. We disagree.

Peachtree is correct in asserting that, in effect, no immediate appeal was taken from the First Order because Bob Wire's appeal was late. However, we disagree that Bob Wire was required to immediately appeal the First Order to prevent its findings from becoming the law of the case. An intermediate order may be appealed if it involves the merits of the case as described in section 14-3-330(1). Section 14-3-330 merely allows the aggrieved party to appeal an intermediate order involving the merits; it does not require an appeal at that time. The aggrieved party may wait until a final judgment is rendered and then appeal. See Lancaster v. Fielder, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) ("[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under section 14-3-330(1) this [c]ourt can review any intermediate order or decree necessarily affecting the judgment not before appealed from.").

Accordingly, Bob Wire was not required to appeal the First Order immediately following its issuance to avoid the findings therein becoming the law of the case. Instead, Bob Wire, as it was permitted to do, appealed the final judgment of the single commissioner on remand. Bob Wire continued to raise the jurisdictional question on subsequent appeals to the Appellate Panel, the circuit court, and this court. Therefore, the findings of the First Order regarding subject matter jurisdiction did not constitute the law of the case, and the issue is properly preserved for our consideration in this appeal." Emphasis supplied.

The Order of the Court of Appeals is clear and unambiguous.

(4) The Supreme Court affirmed the Court of Appeals decision with modification. The Supreme Court Was equally direct. The Supreme Court held:

"Accordingly, the Court of Appeals' reliance upon section 14-3-330 was in error. However, even under section 1-23-380, the order of the appellate panel was not immediately appealable. **Therefore, the Court of Appeals properly found Bob Wire's failure to file an immediate appeal from the order did not render the findings of fact and conclusions of law therein the law of the case.**" Emphasis supplied.

The Order of the Supreme Court is clear and unambiguous.

(5) This Court has no authority to circumvent or rule contrary to clear and unambiguous rulings of the Court of Appeals or the Supreme Court. When both the Court of Appeals and the Supreme Court, by its affirmance, have found that the Commission lacked subject matter jurisdiction of Builders Mutual's claim for equitable indemnity and when both courts have specifically found that the May 4, 2007 Order of the Appellate Panel did not establish the law of the case, then the May 4, 2007 Order of the Appellate Panel did not establish the law of the case. This Court cannot and will not hold otherwise.

B.

CAUSE OF ACTION FOR QUANTUM MERUIT/UNJUST ENRICHMENT/RESTITUTION

Builders Mutual's second cause of action is for quantum meruit/unjust enrichment/restitution.

"Quantum meruit; quasi-contract; and implied by law contract are equivalent terms for an equitable remedy. *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (citations and internal quotation marks omitted) (alteration by court). The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contracts." *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). To prevail

on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); see also *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010) (providing the same requirements). *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 734 S.E.2d 177 (2012).

Builders Mutual's cause of action for quantum meruit, unjust enrichment and restitution are based upon the following allegations:

"41. Plaintiffs unwittingly conferred a non-gratuitous benefit upon Defendants by virtue of their payment to Price of benefits in connection with his Second Accident, all of which benefits were properly payable by, and should have been paid by, Defendants.

42. Defendants realized a benefit from Plaintiffs' payments of benefits to Price in connection with his Second Accident since all benefits payable to Price in connection with his Second Accident were the sole liability and responsibility of Defendants.

43. Defendants knew the Claimant had suffered a second accident while working for Defendant Bob Wire, yet they knowingly and silently allowed the Plaintiffs to provide benefits under the South Carolina Workers' Compensation Act to Price."

However, there is no evidence that Builders Mutual conferred "a non-gratuitous benefit" on the Fund by its payments to or on behalf of the claimant related to the second accident. The claimant made no claim against the Fund in the hearing conducted by Commissioner Huffstetler or in the hearing before Commissioner Funderburk. Furthermore, there is no evidence that the Fund "knowingly and silently" allowed Builders Mutual to provide benefits under the South Carolina Workers' Compensation Act related to the second accident. Instead, there is evidence that Builders Mutual knew of the second accident and subsequent employment with Bob Wire as early as December 18, 2003 when Builders Mutual's attorney deposed Christopher Price.

"Q. Okay. Did you go back to work?

A. Yes. I did.
Q. You told me you were supposed to back to work on the 11th, when did you actually.
A. I actually went back to work on the 18th of August.
Q. Who did you go to work with?
A. I went back to work on my own, doing side work.
Q. When you say side work, was that electrical work?
A. Yes, until October 17th, I started working for Bob-Wire electric part time." (Price Depo. p.12, line 21 to p.13, line 7)

The alleged second accident was on November 3, 2003. The Fund's attorney raised this issue specifically at the hearing on June 5, 2006 before Commissioner Huffstetler.

"Mr. Smith: Yes, Your Honor, I would just like to add because they were placed on notice per the deposition of the claimant that they conducted on December 18th, 2003. The motion was not filed until April of 2005."

Bob Wire and the Fund were not joined as parties to the workers' compensation proceeding until June 21, 2005. See Transmittal Order dated June 21, 2009.

Builders Mutual has failed to establish that it conferred a benefit on the Fund. Builders Mutual's payments to or on behalf of the claimant did not benefit the Fund. Instead, Builders Mutual paid a claim that the claimant did not make against the Fund. Therefore, I find that the Fund is not liable to Builders Mutual on the basis of the Fund's claim of quantum meruit/unjust enrichment/restitution.

C.

CAUSE OF ACTION FOR EQUITABLE INDEMNIFICATION

Builders Mutual's third cause of action is for equitable indemnification. In order to state a claim for equitable indemnification, a party must plead and support the following elements:

"(1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor."

Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 60, (Ct. App. 1999).

A claim for equitable indemnification is based upon some imputed fault or where there is some special relationship between the parties. In the case of *Rock Hill Telephone Company, Inc. v. Globe Communications*, 363 S.C. 385, 611 S.E.2d 235 (2005), the Supreme Court stated:

"In general, indemnity may be defined as a form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994) (quoting *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 398 S.E.2d 500 (Ct. App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992)). The right to indemnity arises by operation of law "in cases of imputed fault or where some special relationship exists between the first and second parties." *Id.* In other words, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join.

Stuck v. Pioneer Logging Mach., Inc., 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983) (citations omitted). We have held that the relationship between a contractor and a subcontractor supports a claim for equitable indemnification. *First Gen. Servs.*, 314 S.C. at 442, 445, S.E.2d at 448; *Town of Winnsboro*, 307 S.C. at 131, 414 S.E.2d at 120."

Here, there is no issue of imputed fault and there is no special relationship between Builders Mutual and the Fund that would be a basis for equitable indemnity. Accordingly, Builders Mutual's claim for equitable indemnity is denied.

D.

Although Builders Mutual did not plead the defense of *res judicata*, Builders Mutual has raised it. However, I find that the defense of *res judicata* has no application in this case. *Res judicata* is an affirmative defense which must be pled. Rule 8(c), SCRCP. *Res judicata* has not been pled. *Res judicata* can be raised as a defense

when a plaintiff seeks to re-litigate a matter that was previously litigated.

In the recent case of *Dozier v. American Red Cross*, Opinion No. 5272, filed September 17, 2014, the Court of Appeals described the defense of *res judicata* as follows:

"*Res judicata* encompasses both issue preclusion and claim preclusion. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 834 (1997). However, *res judicata* is more commonly referred to simply as claim preclusion. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998). *Res judicata*, or claim preclusion, bars plaintiffs from pursuing a later suit when the claim (1) was litigated or (2) could have been litigated. *Crestwood Golf Club, Inc.*, 328 S.C. at 216, 493 S.E.2d at 835. *Res judicata* is shown if (1) the identities of the parties are as in the prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994)."

Builders Mutual has not pled *res judicata*. Even if Builders Mutual had pled *res judicata* in its complaint, it would not have availed Builders Mutual. The Court of Appeals has held, and the Supreme Court has affirmed, that the Commission lacked subject matter jurisdiction to determine Builders Mutual's claim for equitable indemnity. Therefore, the adjudications in the workers' compensation proceeding were not adjudications by a "court of competent jurisdiction". Accordingly, I find that Builders Mutual is not entitled to prevail based upon the defense of *res judicata*.

E.

CLAIM FOR ATTORNEY'S FEES AND COSTS

Builders Mutual has asserted that it is entitled to recover its attorney's fees and costs which total \$111,062.40. Most of these fees and costs were incurred in the workers' compensation proceeding. Builders Mutual did not prevail in the workers'

compensation proceeding. The Supreme Court had no trouble in determining which party was the prevailing party in the workers' compensation proceeding. The Supreme Court taxed fees and costs against Builders Mutual pursuant to Rule 242, SCACR. Builders Mutual failed to prevail in that action and has failed to prevail in this action. The Court notes that Builders Mutual's fees are some five (5) times higher than the fees and costs of the prevailing party. However, it is unnecessary to review and analyze what would be a reasonable fee since Builders Mutual has failed to prevail in both actions. Therefore, I find that Builders Mutual is not entitled to recover its attorney's fees and costs from the Fund.

F.

THE EQUITIES DO NOT WEIGH IN FAVOR OF BUILDERS MUTUAL

In determining these equitable claims, the Court has weighed the equities in favor or against each party. The equities do not weigh in favor of Builders Mutual. Builders Mutual's joinder of Bob Wire and the Fund in the workers' compensation proceeding was ill advised. Builders Mutual joined the Fund as a third party to the workers' compensation proceeding and asserted a claim for equitable indemnification in the workers' compensation proceeding. Builders Mutual's representative and its attorney acknowledged that they were not aware of any action before the Commission in which a claim for equitable indemnification was filed and/or successfully asserted. Builders Mutual did not have to join the Fund to the workers' compensation action. Builders Mutual could have defended the claim based on the second accident on the basis that it was not liable for the second accident and Builders Mutual could have sought a credit for benefits paid to or on behalf of Christopher Price related to the

second accident. Builders Mutual nevertheless chose to proceed on its claim for equitable indemnification against the Fund in the workers' compensation proceeding. This has delayed the disposition of this dispute. Builders Mutual's representative testified that she had no idea of how to reach the claimant and he did not testify. Builders Mutual offered no testimony by any expert as to what medical expenses were attributable to a second accident. The equities weigh in favor of the Fund, which successfully defended the claim that Builders Mutual brought in the workers' compensation proceeding and in this action.

G.

THE FUND'S DEFENSES

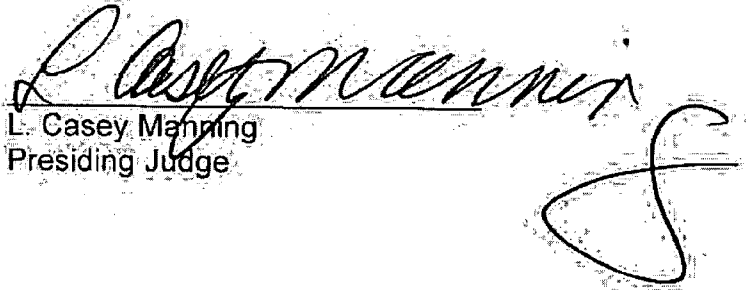
The Fund has asserted a number of defenses. However, in view of my ruling above, I find that it is unnecessary to consider the Fund's defenses.

H.

ORDER

Accordingly, IT IS ORDERED that the claims of Builders Mutual and Peachtree Electrical Services in this action are hereby denied and judgment is entered in favor of Bob Wire Electric, Inc. and the South Carolina Home Builders Self Insurers Fund.

AND IT IS SO ORDERED.


L. Casey Manning
Presiding Judge

Columbia, South Carolina

 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Builders Mutual Insurance Company)
for itself and its insured, Peachtree)
Electrical Services,)

Plaintiff,)

vs.)

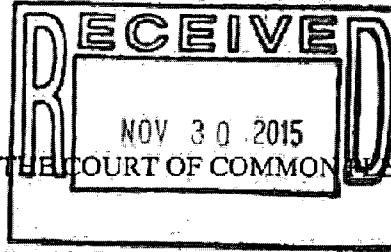
Bob Wire Electric, Inc. and South)
Carolina Home Builders Self Insurers)
Fund,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40-01818

ORDER



JEANETTE W. McBRIDE
C.C.P. & G.S.

2015 NOV 16 PM 12:42

FILED
RICHLAND COUNTY

This is an equitable action by Builders Mutual Insurance Company ("Builders Mutual") to recover payments it made to or on behalf of a claimant in a workers' compensation proceeding. Builders Mutual maintains that its payments to or on behalf of Christopher Price after he had a second accident on November 3, 2003 while employed by Bob Wire Electric, Inc. were the obligation of the South Carolina Home Builders Self Insurers Fund (the "Fund") and that the Fund was obligated to reimburse Builders Mutual.

The action came before the Court on March 16, 2015 for a non-jury trial. On September 11, 2015, the Court filed an order denying the claims of Builders Mutual Insurance Company and Peachtree Electrical Services and ordering that judgment be entered in favor of Bob Wire Electric, Inc. and South Carolina Home Builders Self Insurers Fund.

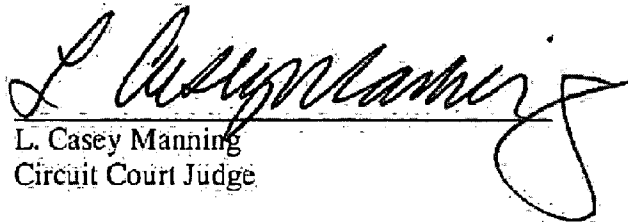
The action is now before the Court on Builders Mutual Insurance Company and Peachtree Electrical Services' motion to alter or amend the Order filed September 11, 2015. For the reasons stated below, the motion to alter or amend is denied.

"A party may wish to file such a motion when she believes the court has misunderstood, failed to consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must

file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Department of Transportation*, 36 S.C. 9, 602 S.E.2d 772 (2003).

Here, the Court considered, understood and ruled upon the issues raised by the motion in its Order filed September 11, 2015. Upon careful review of the plaintiffs' motion, I find no basis to alter or amend the Order filed September 11, 2015. The plaintiffs have preserved the issues raised by their motion for appellate review. The plaintiffs' motion to alter or amend is hereby denied.

AND IT IS SO ORDERED.


L. Casey Manning
Circuit Court Judge

Columbia, South Carolina

Nov 12, 2015

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO: 2014 CP-40-01818

Builders Mutual Insurance Company for itself and
its insured, Peachtree Electrical Services

Bob Wire Electric, Inc. and South Carolina
Home Builders Self Insurers Fund,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Pope D. Johnson, III

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(c), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

r Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Nov, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Builders Mutual Insurance)
Company, for itself and its)
insured, Peachtree Electrical)
Services,)

CASE NUMBER: _____

Plaintiffs,)

**COMPLAINT
(Non-Jury)**

v.)

Bob Wire Electric, Inc. and)
South Carolina Home Builders)
Association Self Insurance Fund,)

Defendants.)

2014 MAR 19 PM 4:41

The Plaintiff, Builders Mutual Insurance Company ("Builders Mutual"), for itself and its insured Peachtree Electrical Services ("Peachtree"), collectively referred to as the "Plaintiffs," complaining of the Defendants, would respectfully show unto this Honorable Court as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Builders Mutual Insurance Company is mutual insurance company organized and existing under the laws of the State of North Carolina and writes policies of insurance, including workers' compensation insurance, throughout the State of South Carolina.

2. Peachtree Electrical Services is a business organized and existing under the laws of the State of South Carolina doing business in the County of Georgetown, State of South Carolina.

3. At all times pertinent hereto, Peachtree was an insured of Builders Mutual under a policy of workers' compensation insurance.

4. Defendant Bob Wire Electric, Inc. ("Bob Wire") is a corporation organized and existing under the laws of the State of South Carolina doing business in the County of Horry, State of South Carolina.

5. Defendant South Carolina Home Builders Association Self-Insurance Fund ("SCHBA") is a self-insurance fund organized and existing under the laws of the State of South Carolina, whose principal offices are located in Richland County, South Carolina, which writes policies of workers compensation insurance throughout the State of South Carolina.

6. At all times pertinent hereto, SCHBA was Bob Wire's workers' compensation insurance carrier.

7. This Court has jurisdiction over this matter.

8. Venue in this matter is proper in Richland County, South Carolina.

BACKGROUND FACTS

9. Peachtree employed Christopher Price ("Price") in 2002.

10. Price suffered a back injury during his employment with Peachtree on December 9, 2002 (hereinafter, the "First Accident").

11. In connection with this First Accident, Builders Mutual, as Peachtree's workers' compensation carrier, voluntarily paid to Price temporary total disability compensation and also paid for Price's authorized medical treatment, including spine surgery.

12. After treatment and other benefits were provided for by Builders Mutual, Price was released to full duty work at maximum medical improvement on August 8, 2003.

13. After reaching maximum medical improvement, Price returned to full duty work, employed by Defendant Bob Wire.

14. Price suffered another accident and injury on or about November 3, 2003, while working for Bob Wire (hereinafter, the "Second Accident").

15. Bob Wire was aware of the Second Accident when it occurred.

16. Price, however, reported this Second Accident to Peachtree instead as a continuation of his injury from the First Accident, while Bob Wire remained silent.

17. Builders Mutual provided workers' compensation benefits to Price in connection with the Second Accident including additional weekly compensation payments and an additional surgery.

18. Plaintiffs provided workers' compensation benefits to Price in connection with this Second Accident and Price's new injury without any knowledge that the Second Accident had indeed occurred during Price's employment with Bob Wire.

19. After payment of substantial benefits to Price in connection with this Second Accident, Plaintiffs discovered evidence of the Second Accident suffered by Price while working for Bob Wire.

20. Plaintiffs immediately and successfully sought to have Defendants added as parties to the workers' compensation action then pending between Plaintiffs and Price.

21. The Appellate Panel of the Full Commission of the Workers' Compensation Commission ultimately held, in its Order filed on May 4, 2007 (the "Appellate Panel Order"), that Price had, indeed, suffered a subsequent accident while working for Bob Wire, for which Defendants were properly responsible.

22. The Appellate Panel Order remanded the case to the Jurisdictional Commissioner of the Workers' Compensation Commission for an apportionment of benefits paid or to be paid to Price between Plaintiffs and Defendants, consistent with the Appellate Panel Order establishing that a Second Accident had occurred during Price's employment with Bob Wire.

23. As a result of the Appellate Panel Order, the claims relating to the First Accident and the Second Accident were bifurcated and thereafter treated as two separate, distinct claims. The Plaintiffs' claim for reimbursement was remanded to a single commissioner.

24. Commissioner George N. Funderburk issued a Decision dated June 12, 2008 which concluded that the amount of benefits Plaintiffs had mistakenly paid as a result of the Second Accident, which should have been paid by Defendants and for which Defendants were required to reimburse Peachtree, totaled \$112,798.42 in medical benefits and \$47,023.88 in temporary total disability benefits.

25. Defendants appealed the single commissioner's decision to the Full Commission, which affirmed the single commissioner's decision (the "Second Appellate Panel Order"); and thereafter to the Circuit Court for Georgetown County, which also affirmed (the "Circuit Court Order").

26. Defendants then appealed the Circuit Court Order to the Court of Appeals.

27. The Court of Appeals issued an opinion on December 21, 2011 vacating the single commissioner's decision (which determined the amount of the reimbursement due from Defendants to Plaintiffs) as well as the Second Appellate Panel Order and the Circuit

Court Order (both of which affirmed the Single Commissioner Decision) on the grounds that the Workers' Compensation Commission does not have subject matter jurisdiction to hear Plaintiffs' claim for reimbursement from another carrier or employer.

28. The Court of Appeals' Opinion states in this regard that "[c]laims not affecting the employee's right to compensation are within the purview of the circuit court, not of the Commission." The Court of Appeals' Opinion specifically provides that this Court is the proper forum with jurisdiction for ordering the reimbursement to Plaintiffs of those amounts to which Plaintiffs are entitled.

29. Plaintiffs filed a Petition for Certiorari to the Supreme Court with respect to the Court of Appeals' Opinion, and after granting certiorari as to certain of Plaintiffs' claims the Supreme Court affirmed the Court of Appeals' Opinion, with certain modifications, by Opinion No. 27314 filed on September 11, 2013.

30. Plaintiffs paid a total of \$112,789.42 in medical benefits to Price after and in connection with the Second Accident on November 3, 2003.

31. Plaintiffs paid a total of \$47,023.88 in temporary total disability benefits to Price after and in connection with the Second Accident on November 3, 2003.

32. Plaintiffs also incurred substantial costs including attorneys' fees in defense of Price's claims in connection with his Second Accident, as well as such costs associated with the recovery of the benefits and costs incurred, all as a result of the Defendants' refusal to accept the claim by Price and engaging in vexatious litigation relating thereto.

33. Defendants are responsible and liable for all benefits paid or payable to Price from and after November 3, 2003, as previously determined by the South Carolina

Workers' Compensation Commission, in connection with the Second Accident which occurred while Price was employed with Bob Wire.

34. Defendants have failed and refused and continue to fail and refuse to reimburse Plaintiffs for those benefits paid to Price in connection with his Second Accident, in the amounts which are set forth in this Complaint.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

35. Each and every allegation contained in the above paragraphs is realleged as if set forth verbatim herein.

36. This cause of action is brought pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et. seq. (1977) and involves an actual, justiciable controversy between the parties as described herein:

37. The Appellate Panel Order, dated May 4, 2007, which has not been vacated, altered or modified by the Court of Appeals' Opinion or any other appellate action, specifically holds that the injury suffered by Price on November 3, 2003, during his employment with Bob Wire, was a second accident for which Defendants, not Plaintiffs, are properly responsible.

38. The Appellate Panel Order, from which there has been no appeal, specifically provides for and requires an apportionment of benefits paid and/or to be paid to Price in connection with his Second Accident between Plaintiffs and Defendants in accordance with the determination that a Second Accident did in fact occur for which Defendants are responsible.

39. In accordance with the Appellate Panel Order, Plaintiffs are entitled to a declaratory judgment ordering reimbursement from Defendants for all amounts paid by Plaintiffs to Price in connection with his Second Accident, which total \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, together with the costs including reasonable attorneys' fees on the grounds set forth herein above, in an amount to be determined by the Court pursuant to S.C. Code Ann. § 15-53-10, et. seq. (1977), together with pre-judgment interest at the highest rate allowed by law.

**FOR A SECOND CAUSE OF ACTION
(QUANTUM MERUIT / UNJUST ENRICHMENT / RESTITUTION)**

40. Each and every allegation contained in the above paragraphs is realleged as if set forth verbatim herein.

41. Plaintiffs unwittingly conferred a non-gratuitous benefit upon Defendants by virtue of their payment to Price of benefits in connection with his Second Accident, all of which benefits were properly payable by, and should have been paid by, Defendants.

42. Defendants realized a benefit from Plaintiffs' payments of benefits to Price in connection with his Second Accident since all benefits payable to Price in connection with his Second Accident were the sole liability and responsibility of Defendants.

43. Defendants knew the Claimant had suffered a second accident while working for Defendant Bob Wire, yet they knowingly and silently allowed the Plaintiffs to provide benefits under the South Carolina Workers Compensation Act to Price.

44. In fact, Defendants have engaged in vexatious litigation with the Plaintiffs seeking to avoid reimbursing the Plaintiffs for the benefits which Defendants should have paid.

45. Defendants have retained the benefit of the payments made by Plaintiffs to Price in connection with his Second Accident and have continuously failed and refused to reimburse Plaintiffs for those benefits paid by Plaintiffs to Price in connection with his Second Accident.

46. Defendants have been unjustly enriched by Plaintiffs' payments to Price in connection with his Second Accident, which payments were the responsibility of Defendants and paid by Defendants.

47. It is inequitable for Defendants to continue to retain the benefit of Plaintiffs' payments of benefits to Price without reimbursing Plaintiffs for the same.

48. Plaintiffs are entitled to restitution from Defendants in the amounts of \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, representing those benefits paid by Plaintiffs to Price in connection with his Second Accident, together with costs, including all attorneys' fees incurred in pursuing this claim for reimbursement, plus pre-judgment interest at the highest rate allowed by law.

FOR A THIRD CAUSE OF ACTION
(EQUITABLE INDEMNITY)

49. Each and every allegation contained in the above paragraphs is realleged as if set forth verbatim herein:

50. The continued failure and refusal of Defendants to pay benefits due to Price in connection with his Second Accident, or to otherwise properly acknowledge and recognize his Second Accident which they knew occurred during his employment with Bob Wire and of which Bob Wire had notice, resulted in payment by Plaintiffs of benefits to Price.

in connection with his Second Accident for which Plaintiffs were not liable or responsible, and which were the sole responsibility and liability of Defendants.

51. All benefits due and owing to Price in connection with his Second Accident were at all times the responsibility and liability of Defendants.

52. Plaintiffs have no liability or responsibility or other obligation for payment of any benefits to Price in connection with his Second Accident.

53. Plaintiffs paid benefits to Price in connection with his Second Accident in order to protect their interest in connection with the claim(s) filed against Plaintiffs by Price relating to his Second Accident.

54. In connection with his Second Accident, Plaintiffs paid to or on behalf of Price a total of \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits and Plaintiffs are entitled to a judgment against Defendants in said amounts under principles of equitable indemnity.

55. In addition, Plaintiffs incurred costs of litigation and unnecessary appeals, including attorneys' fees, in defending the claim(s) of Price against Plaintiff relating to the Second Accident, which claims were rightfully and properly against Defendants, and Plaintiffs are entitled to judgment against Defendants in said amounts under principles of equitable indemnity, including pre-judgment interest at the highest rate allowable under the law.

WHEREFORE, having fully set forth their Complaint herein, the Plaintiffs respectfully pray for:

- A. A declaration and order declaring that, in accordance with the Appellate Panel Order, Defendants shall reimburse and pay to Plaintiffs the sums of \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, which represent those amounts paid by Plaintiffs to Price in connection with his Second Accident which occurred while he was employed with Bob Wire; and
- B. Restitution from Defendants in the amounts of \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits, representing those benefits paid by Plaintiffs to Price in connection with his Second Accident which occurred during his employment with Bob Wire; and
- C. Judgment against Defendants, under principles of equitable indemnity, in an amount equal to the total \$112,789.42 in medical benefits and \$47,023.88 in temporary total disability benefits paid by Plaintiffs to Price in connection with his Second Accident which occurred during his employment with Bob Wire; and
- D. Judgment against Defendants, for the Plaintiffs' costs and attorneys' fees incurred by Plaintiffs in defending the claim(s) of Price against Plaintiff relating to the Second Accident, as well as the costs and attorneys' fees associated with the recovery from Defendants in the amounts unwittingly paid by Plaintiffs on behalf of the Defendants, which Defendants have wrongfully retained; and
- E. Judgment for pre-judgment interest at the highest rate allowable under the law; and
- F. For such other and further relief as the Court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]



Richard C. Detwiler
Mary Dameron Milliken
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite 200 (29201)
Post Office Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: RickDetwiler@CallisonTighe.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

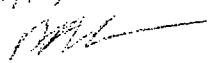
March 18, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Builders Mutual Insurance Company	)	Civil Action No. 2014-CP-40-01818
for itself and its insured, Peachtree	)	
Electrical Services,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS' ANSWER
	)	
Bob Wire Electric, Inc. and South	)	
Carolina Home Builders Self	)	
Insurers Fund,	)	
	)	
Defendants.	)	
_____	)	

The defendants answer the Complaint herein as follows:

FOR A FIRST DEFENSE

1. The defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.
2. That the allegations of paragraphs 1 and 2 are admitted.
3. That the allegations of paragraph 3 are denied.
4. That the allegations of paragraph 4 are admitted.
5. That the allegations of paragraphs 5, 6, 7 and 8 are denied.
6. That the allegations of paragraph 9 are admitted.
7. That the allegations of paragraph 10 are admitted with the exception of its being "first accident".
8. That the allegations of paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 are denied.
9. That the allegations of paragraphs 1 through 8 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 35.
10. That the allegations of paragraphs 36, 37, 38 and 39 are denied.

#1


11. That the allegations of paragraphs 1 through 10 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 40.

12. That the allegations of paragraphs 41, 42, 43, 44, 45, 46, 47 and 48 are denied.

13. That the allegations of paragraphs 1 through 12 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 49.

14. That the allegations of paragraphs 50, 51, 52, 53, 54 and 55 and the remaining allegations of the Complaint are denied.

FOR A SECOND DEFENSE

15. That the Complaint fails to state facts sufficient to constitute a cause of action against the defendants and therefore should be dismissed.

FOR A THIRD DEFENSE

16. That the Complaint against the defendants is barred by the applicable statute of limitations and should be dismissed.

FOR A FOURTH DEFENSE

17. That the Complaint against the defendants is barred under the doctrine of laches and therefore should be dismissed.

FOR A FIFTH DEFENSE

18. That the plaintiff has unclean hands and is therefore not entitled to any equitable relief whatsoever.

FOR A SIXTH DEFENSE

19. That the Order of Commissioner Funderburk dated June 12, 2008, which was affirmed by the Appellate Panel and the Circuit Court, was reversed and vacated by the South Carolina Court of Appeals by an Order dated December 21, 2011 and as a result thereof, the defendants are not liable to the plaintiff for any amount.

#2
12

FOR A SEVENTH DEFENSE

20. That the defendants plead the Decision and Order of the Commission dated August 8, 2011, which stated that the defendants "shall not have any liability for any benefits under the Workers' Compensation Act as a result of any alleged accident on or about November 3, 2003", which the defendants plead as a complete bar and defense to this action.

FOR AN EIGHTH DEFENSE

21. That Christopher Price did not make any claim whatsoever for workers' compensation benefits against the defendants and as a result thereof, the defendants are not liable to the plaintiff for any amount whatsoever.

FOR A NINTH DEFENSE

22. That the defendants plead the doctrine of res judicata as a complete bar and defense to this action.

FOR A TENTH DEFENSE

23. That the defendants plead the defense of collateral estoppel as a complete bar and defense to this action.

FOR AN ELEVENTH DEFENSE

24. That the defendants plead the doctrine of waiver as a complete bar and defense to this action.

FOR A TWELFTH DEFENSE

25. That the plaintiffs recovered \$50,000 from a third party settlement, which should be offset against any claim the plaintiff has against the defendants.

FOR A THIRTEENTH DEFENSE

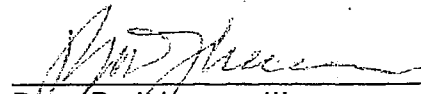
26. That the circuit court does not have subject matter jurisdiction to determine the payments due Christopher Price for the alleged 2003 accident.

FOR A FOURTEENTH DEFENSE

27. That any order issued by the Commission regarding this matter, when the Commission lacked subject matter jurisdiction, is a nullity and is unenforceable.

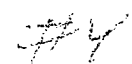
#3
P

WHEREFORE, having answered, the defendants demand that the Complaint against them be dismissed and for such other and further relief as may be just and proper.



Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-253-6084 (fax)
pope@popejohnsonlaw.com
Attorney for the Defendants

Columbia, South Carolina
March 24, 2014



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Builders Mutual Insurance Company)
for itself and its insured, Peachtree)
Electrical Services,)
Plaintiff,)

Civil Action No. 2014-CP-40-01818

vs.)

CERTIFICATE OF SERVICE

Bob Wire Electric, Inc. and South)
Carolina Home Builders Self)
Insurers Fund,)
Defendants.)

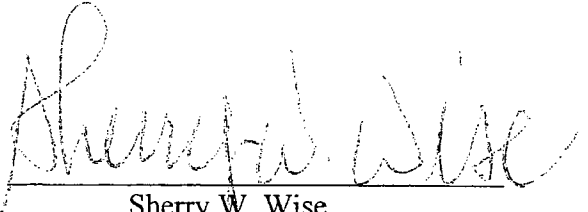
I, Sherry W. Wise, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Richard C. Detwiler, attorney for the Plaintiff, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 24th day of March, 2014.

COUNSEL SERVED:

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

PLEADINGS:

Defendant's Answer


Sherry W. Wise

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Builders Mutual Insurance)
Company, for itself and its)
insured, Peachtree Electrical)
Services,)

CASE NUMBER: 2014-CP-40-01818

Plaintiffs,)

**NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND ORDER
PURSUANT TO RULE 59(e), SCRPC**

v.)

Bob Wire Electric, Inc. and)
South Carolina Home Builders)
Association Self Insurance Fund,)

Defendants.)

RICHLAND COUNTY
FILED
2015 SEP 21 PM 4:21
JEANETTE W. HOBRIDGE
C.C.P. & C.S.

TO: POPE D JOHNSON, III, ATTORNEY FOR DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Plaintiffs, Builders Mutual Insurance Company, for itself and its insured, Peachtree Electrical Services, will on the tenth (10th) day from the date hereof or as soon as counsel may be heard move before this Honorable Court for an Order, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter or amend the Court's Order filed of record on September 11, 2015, on the following grounds:

1. This Court erred in finding that the Appellate Panel Order dated May 4, 2007 did not establish *facts* that became the law of the case when those facts were not appealed from by the Defendants. This Court misapprehends the finding of the Court of Appeals in its decision because the only issue before the Court of Appeals was whether the Workers' Compensation Commission had jurisdiction to determine this claim for reimbursement by one carrier against the other. It held only the circuit court had jurisdiction to preside over

that dispute, but that did not change the exclusive jurisdiction the South Carolina Workers' Compensation Commission has over the determination of whether the Claimant suffered an accident and thus which Employer/Carrier is responsible. These underlying facts of the May 4, 2007 Order of the Commission (*i.e.*, that Claimant suffered a second accident) were never appealed from by the Defendants and therefore those facts are conclusively established. Those facts cannot be re-litigated now because (a) they have been previously litigated with all parties, including the Claimant, present and (b) the circuit court does not have jurisdiction to determine whether an accident occurred. It is error for this trial court not to accept the determination of the May 4, 2007 Order that Claimant Price suffered a second accident, a determination that only the South Carolina Workers' Compensation Commission can make.

2. Builders Mutual paid not only for a claim made against its insured by the Claimant Christopher Price, but also for the workers' compensation claim arising from Christopher Price's accident while working for the Defendant Bob Wire. The Defendants paid this second claim without knowledge of the second accident, yet this court inexplicably finds that "there is no evidence that Builders Mutual conferred 'a non-gratuitous benefit' on the Fund by its payment to or on behalf of the Claimant related to the second accident." This is error.

3. This Court also found that the Claimant made no claim against the Defendants previously, a fact which is irrelevant. The Commission determined that Peachtree/Builders Mutual had the right to ask for such a determination that a second accident occurred, a determination only the Commission can make. This Court must give deference to the Commission's procedural determination.

4. This Court incorrectly held that there is no evidence that the Fund "knowingly and silently" allowed Builders Mutual to provide benefits under the South Carolina Workers' Compensation Act related to the second accident. This holding is factually incorrect. In fact, the Claimant repeatedly testified that he told his supervisor at Bob Wire that he had been hurt. Indeed, his supervisor at Bob Wire was present with the Claimant when he was injured. The Claimant immediately went out of work for treatment for his back. Therefore, only the Claimant and Bob Wire knew he had suffered a second accident. The Plaintiffs did not, and as a result gratuitously provided benefits to the Claimant which were for the second accident, rather than the first.

5. This Court further erred in suggesting that "there is evidence that Builders Mutual knew of the Second Accident and subsequent employment with Bob Wire as early as December 18, 2003." This Court then quotes a portion of the deposition testimony of the Claimant taken on that date. Nowhere in that quoted testimony does the Claimant suggest that he suffered a second accident. Indeed, it was not until after the Claimant was deposed in a separate collateral proceeding on February 1, 2005, a proceeding in which Builders Mutual was not a party, that the reality of the new second accident was brought to light. Bob Wire and the Fund were immediately joined as parties to the workers' compensation action on June 21, 2005, based upon a motion filed on April 22, 2005.

6. This Court erred in determining that "Builders Mutual has failed to establish that it conferred a benefit on the Fund," even though Builders Mutual paid the Fund's claim. This Court further erred in holding that "Builders Mutual's payments to or on behalf of the Claimant did not benefit the Fund" when it was the Fund's claim, not Builders Mutual's. In fact, the Fund and its insured Bob Wire would have been responsible for these payments

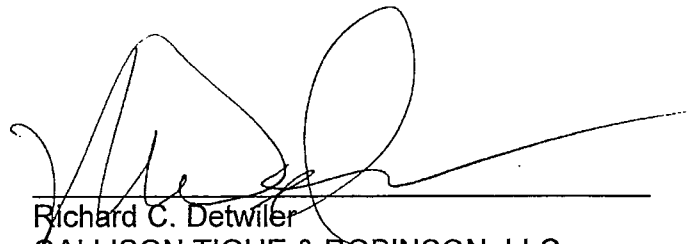
had they not concealed their knowledge of the Claimant's second accident. Therefore, this Court erred in finding that the Fund is not liable to Builders Mutual on the basis of Builders Mutual's claim of *quantum meruit*/unjustment enrichment/restitution.

7. The Court erred in not allowing its claim for equitable indemnification based upon the facts of this case. In this case, where the Defendants knew of a second accident and knew of their responsibility to report the claim under the South Carolina Workers' Compensation Act and to provide benefits to the Claimant based upon that second accident, and failed to do so, "fault" is established. The right of indemnity "exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." Rock Hill Telephone Company, Inc. v. Globe Communications, 363 S.C. 385, 611 S.E. 2d 235 (2005). Nonetheless, this Court inexplicably found "there is no issue of imputed fault . . ." between Builders Mutual and the Fund that would be a basis for equitable indemnity. This finding is error.

8. This Court is correct in its statement that *res judicata* is a defense which must specifically be pled. However, Builders Mutual is not a Defendant in this case. It is the Plaintiff. In its pleadings, the Plaintiff specifically and repeatedly referred to facts in prior orders of the Workers' Compensation Commission, *from which no appeal was ever taken*, which could not now be re-litigated. They are *res judicata*. This was pled. Yet, this Court held that "the adjudications in the workers' compensation proceedings were not adjudications by a 'court of competent jurisdiction.'" What this Court misapprehends is that those underlying facts that the Claimant had suffered a second accident could **only** be

determined by the South Carolina Workers' Compensation Commission. Only the Workers' Compensation Commission is capable of determining whether an accident at work occurred for which the Claimant was entitled to receive benefits. In this case, the Commission did that. Those facts were never appealed from. Therefore those facts were conclusively established. The only portion of the workers' compensation orders which exceeded the Commission's authority, according to the Court of Appeals and the Supreme Court, dealt with the jurisdictional issue of a reimbursement claim by one carrier against another. That is the sole issue before this Court. This Court has erred in not making that determination.

9. The Court erred in not awarding attorneys' fees and costs in this case, for several reasons. First, as noted above, the facts as established by the "court of competent jurisdiction" – the Workers' Compensation Commission – established that the Claimant suffered a second accident while working for Bob Wire and, hence, Bob Wire and its carrier, the Fund, should be responsible for those benefits. Those facts were never appealed from. The only part of the underlying case in which the Plaintiffs did not prevail was the determination that the Circuit Court – and not the Commission – must determine how much is owed by the Fund to Builders Mutual. Because of the Appellate Court's determination in that regard, it taxed fees and costs, as it was required to do. This does not change the fact that the prior orders of the Workers' Compensation Commission are determinations of a "court of competent jurisdiction" and must be used as the underpinning of this case. Further, because the Court has erred in its underlying determination as shown above, it also erred in failing to award attorneys' fees and costs to the Plaintiffs, which should be the prevailing party here.



Richard C. Detwiler
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street
Post Office Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: RickDetwiler@CallisonTighe.com

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

September 21, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Builders Mutual Insurance)
Company, for itself and its)
insured, Peachtree Electrical)
Services,)

Plaintiffs,)

v.)

Bob Wire Electric, Inc. and)
South Carolina Home Builders)
Association Self Insurance Fund,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

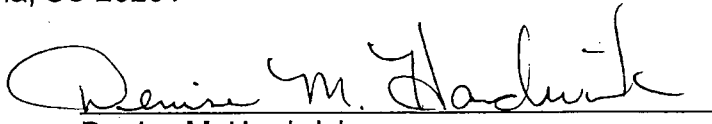
CASE NUMBER: 2014-CP-40-01818

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2015 SEP 21 PM 4:21
JEANETTE W. NORRIS
C.C.P. & C.S.

I, Denise M. Hardwick, an employee of Callison, Tighe & Robinson, LLC, Attorneys for the Plaintiff, do hereby certify that I have served a copy of **Plaintiffs' Notice of Motion and Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP**, in this matter on counsel of record by causing a copy of same to be emailed and hand-delivered to him at the below address on September 21, 2015:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
1230 Richland Street
Columbia, SC 29201


Denise M. Hardwick

Columbia, South Carolina

September 21, 2015

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 BUILDERS MUTUAL INSURANCE)
5 COMPANY, ET AL.,) TRANSCRIPT
6 -V-) OF
7) RECORD
8 BOB WIRE ELECRIC, INC. ET AL.,) 2014-CP-40-01818
9 DEFENDANTS.)

10

11

MARCH 16, 2015

12

RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15

HONORABLE CASEY L. MANNING, JUDGE;

16

17 A-P-P-E-A-R-A-N-C-E-S:

18

FOR THE PLAINTIFF:

19

MR. DETWILER, ESQ.

20

21

22

FOR THE DEFENDANT:

23

MR. JOHNSON, ESQ.

24

25

I-N-D-E-X

1		
2		PG.
3	MOTION:	4
4		
5	EXAMINATION OF JENNIFER WILSON:	
6	DIRECT BY MR. DETWILER	27
7	CROSS BY MR. JOHNSON	37
8	EXAMINATION OF RICHARD CARL DETWILER:	
9	DIRECT BY MR. JOHNSON	54
10	CERTIFICATE OF REPORTER:	57
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 E-X-H-I-B-I-T-S

2 PLAINTIFF'S

3 No. EXB.

4 1. Deposition of Christopher C. Price.

5 2. Deposition of Christopher C. Price condensed.

6 3. Transmittal Order.

7 4. Transcript of hearing June 5, 2006.

8 5. Decision and Order, July 5, 2006.

9 6. Consent Order.

10 7. Appellate Panel Order, May 4, 2007.

11 8. January 7, 2007 Order.

12 9. Decision and Order June 13, 2008.

13 10. Amended appellate Panel, January 7, 2009.

14 11. September 21, 2009 Order.

15 12. Appeal Final Brief.

16 13. SC Court of Appeals Opinion #4923.

17 14. SC Court of Appeals Opinion Case 2012-207886.

18 15. Attorney's Fee Affidavit.

19 16. Pay History.

20 17. Pay History.

21 18. Summary of Expense.

22

23

24

25

1 (The following proceedings were held on
2 March 16th, 2015.)

3 THE COURT: We'll go through the background, the
4 first accident, second accident, appeal, no appeal,
5 preserved, not preserved.

6 And you're the moving party?

7 MR. DETWILER: I'm the moving party. Can I go
8 home?

9 THE COURT: You still have a motion you want to
10 make or how you want to do it?

11 MR. JOHNSON: I don't object to Rick leading off.

12 THE COURT: Okay. All right. I'll put it this
13 way, we're going to put everything in one ball. If it's not
14 summary judgment, it will either be directed verdict or
15 matter of law. You know, we'll sort it out.

16 MR. DETWILER: Thank you, Your Honor. May I take
17 a moment to outline the case?

18 THE COURT: Yes, sir.

19 MR. DETWILER: It sounds like you've read our
20 pretrial brief and I'd like to just kind of hit the high
21 spots. And then I've got a stack of exhibits, which I've
22 given you copies of, but they're not in evidence and I would
23 like to introduce --

24 THE COURT: Do you have objection to any of them
25 going it?

1 MR. JOHNSON: I object to most of them.

2 THE COURT: That's fine. This is nonjury. You
3 can mark them, do a proffer, however you want do it.

4 MR. DETWILER: Okay.

5 THE COURT: Go ahead, Mr. Detwiler.

6 MR. DETWILER: Thank you, Your Honor.

7 Your Honor, as you point out this -- this evolves
8 from a worker's comp case that started in 2002. My client
9 is Builder's Mutual Insurance Company. It's represented by
10 Janie Wilson, who's with me today. We had a claim with one
11 of our insureds called Peachtree Electrical Company. They
12 had a worker who was hurt, admitted injury, paid the
13 benefits, paid the worker's comp weekly benefits, back
14 operation. He is released to go back to work. He does go
15 back to work, but not for us. He goes back to work for
16 another company.

17 THE COURT: Bob Weir? Is it Weir?

18 MR. JOHNSON: Yes, sir.

19 MR. DETWILER: Bob Weir. He gets hurt. He comes
20 back to Ms. Wilson and says, you know, my back is still
21 hurting. And so not knowing any better, not knowing
22 anything about the second accident, she starts him back on
23 PTD and he has not one, but two more back surgeries after
24 that.

25 THE COURT: Uh-huh. Okay.

1 MR. DETWILER: And then a few months later, we
2 find out -- and we can talk about how we found out. I don't
3 know that it truly matters. But we find out that he
4 actually did suffer a second accident with Bob Weir. He's
5 testified about that three different times, as least, but
6 one of them is in the -- in the hearing that started out the
7 worker's comp case that we're here --

8 THE COURT: In front of Funderburk, is that the
9 one?

10 MR. DETWILER: No, it was in front of Commissioner
11 Huffstetler, the first accident.

12 THE COURT: Okay.

13 MR. DETWILER: The first accident was tried. We
14 teed this up, we brought in Bob Weir to that case, added
15 them as a party. We argued about whether there was a second
16 accident. We -- Commissioner Huffstetler said no, I don't
17 think it was a second accident. The claimant testified and
18 that transcript is in -- we'll put it in evidence. He
19 testified very clearly that a second accident had occurred.
20 We took it up to the commission. The commission said you're
21 right, a second accident occurred. It was clearly a second
22 accident. And we're going to remand it down to another
23 single commissioner --

24 THE COURT: That was Funderburk?

25 MR. DETWILER: That was Funderburk, that's right.

1 THE COURT: Is this Funderburk from Camden?

2 MR. DETWILER: No, no.

3 THE COURT: That's ALJ anyway.

4 MR. JOHNSON: That's right, that's ALJ.

5 THE COURT: I'm sorry.

6 MR. DETWILER: This was actually Commissioner
7 Funderburk from Greenville, who's now deceased.

8 THE COURT: Okay.

9 MR. DETWILER: But anyway, so we go down to
10 Commissioner Funderburk. We argue about the apportionment,
11 we put in our evidence. Commissioner Funderburk finds --
12 after there's already been a finding of a second accident,
13 said that's been decided, I'm not deciding that today. I'm
14 just deciding how much --

15 THE COURT: Apportionment.

16 MR. DETWILER: He grants the order on
17 apportionment. It goes up to the commission, affirmed. It
18 goes up to the circuit court, Judge Culbertson, affirmed.
19 It goes up to the Court of Appeals and the only thing --

20 THE COURT: Was it Culbertson or Johns? I thought
21 I read Johns.

22 MR. DETWILER: Johns was the first time.

23 THE COURT: Okay. All right.

24 MR. DETWILER: One thing I -- well, I'm glad you
25 brought it up because that's kind of important because the

1 first -- you remember the first hearing, Huffstetler finding
2 of no accident. We go up to the commission, finding the
3 second accident did occur. We agree. Overruled
4 Huffstetler. They did appeal to Judge Johns, but Judge
5 Johns found that that appeal was untimely.

6 THE COURT: Okay.

7 MR. DETWILER: So we're back down on remand. We
8 go back up. And from that point forward, the only thing
9 they argued, Bob Weir and Home Builder's Association argue
10 was whether the commission had jurisdiction to determine --
11 to make a determination of apportionment. They never
12 appealed the issue --

13 THE COURT: Of finding the second accident or
14 anything else?

15 MR. DETWILER: That's right.

16 THE COURT: All right.

17 MR. DETWILER: And so we have the Court of
18 Appeals's opinion. Now, let's talk about that for a minute
19 because that's what -- this is -- as I understand it, this
20 is the entirety of Mr. Johnson's defense. He's going to --
21 he actually filed a motion and just circled the word
22 vacated, said it's vacated.

23 Well, what's vacated? What's vacated is from
24 Commissioner Funderburk up, that was what was vacated, the
25 issue of apportionment. The issue of the finding of the

1 second accident was never even appealed from, much less
2 considered by the Court of Appeals. And that is clear from
3 the language of the Court of Appeals's opinion. If you'll
4 look at the statement of facts --

5 THE COURT: What tab is it under on yours?

6 MR. DETWILER: That would be one of last ones
7 here. Let's see, it would be Tab 13.

8 THE COURT: Tab 13.

9 MR. DETWILER: Tab 13.

10 THE COURT: 4923.

11 MR. DETWILER: Okay. And if you'll flip over to
12 the fourth page of that opinion in the law/analysis section.
13 You see that?

14 THE COURT: Yes, sir.

15 MR. DETWILER: Second paragraph.

16 THE COURT: As a threshold matter?

17 MR. DETWILER: As a threshold matter, he describes
18 the first order. And the Court actually makes the first
19 order, that's the May 4th, 2007 order, a defined term in the
20 opinion.

21 And then you go back and you go over and you look
22 at what they actually did, what they actually vacated. They
23 didn't vacate the first order as defined by the opinion.
24 They vacated very clearly the order of Commissioner
25 Funderburk and the circuit court and the full commission,

1 that's what they -- that's what they vacated. Because they
2 say the commission didn't have jurisdiction to make that
3 determination of apportionment. But only the worker's comp
4 commission can make the finding of a second accident.
5 They're the only body equipped to make that decision.
6 Importantly, when Commissioner -- when it got back down to
7 Commissioner Funderburk, the case actually got bifurcated at
8 that point in time.

9 Now, keep in mind, Price was there the whole way
10 through at that point. He's still at the hearing with
11 Commissioner Funderburk about the apportionment. But the
12 commissioner says, okay, now, you don't have anything to do
13 with the apportionment issue anymore, I'm bifurcating this.
14 Even assigned a new worker's comp commission number to his
15 claim versus Bob Weir. And the only thing that was left at
16 that point was this claim and this claim for reimbursement
17 from one carrier to another.

18 THE COURT: All right.

19 MR. DETWILER: That's the only thing that was
20 there.

21 THE COURT: Okay.

22 MR. DETWILER: So as we see it, there is testimony
23 that we've provided in the exhibits that included --
24 including the transcript from the original hearing before
25 Commissioner Huffstetler where the plaintiff testified about

1 the second accident. You can make that -- you can make your
2 own determination if that's what Mr. Johnson wants you to
3 do. You could make your own determination that there was a
4 second accident. We feel that it is unnecessary to do that
5 because it's already been decided and it's already been
6 decided by the proper body and that's the South Carolina
7 Worker's Compensation Commission.

8 THE COURT: Okay.

9 MR. DETWILER: So that's where we are. My client
10 has now spent -- and we seek reimbursement for the medical
11 expenses associated with -- and I'll hand this up, Your
12 Honor. This is not the materials I sent you. The medical
13 expenses associated -- and we have the backup evidence we'll
14 put into evidence, Your Honor. The medical expenses are
15 \$112,774.93. The compensation benefits that were paid --
16 all of this was related to the second claim. The
17 compensation benefits are \$47,023.88. And the total costs
18 incurred would be \$159,813 --

19 THE COURT: Minus your attorney's fees?

20 MR. DETWILER: That does not include my attorney's
21 fees. We also seek our attorney's fees which are --

22 THE COURT: 113 plus and counting?

23 MR. DETWILER: And counting, right.

24 THE COURT: Okay. All right.

25 MR. DETWILER: So that's where we are. And I have

1 to admit I was rather astounded by that number when I pulled
2 it together over the weekend.

3 THE COURT: I hope that made your partners happy.

4 MR. DETWILER: Well, they may or may not be happy,
5 but the reality is when they -- if they thought about this
6 being a 13-year-old case, they probably said I didn't charge
7 enough.

8 THE COURT: I understand.

9 MR. DETWILER: Thank you, Your Honor. That's our
10 case. We're seeking reimbursement. We think the facts are
11 here. All of the evidence is already -- most of it has been
12 decided. We think you can read through this and decide it
13 in your leisure.

14 THE COURT: Okay. Thank you, Mr. Detwiler.

15 Mr. Johnson.

16 MR. JOHNSON: Your Honor, isn't it Alice in
17 Wonderland that the Mad Hatter says words only mean what we
18 say they mean, not what they mean? That's really what we
19 have here. The problem for Mr. Detwiler is the Court of
20 Appeals did more than he said they did in their decision.
21 I'll hand you up a copy.

22 What you'll see on the first page is it says
23 vacated. On the second page in the lead paragraph, we
24 vacate the single commissioner's, the appellate panel's and
25 the circuit court's orders. And, of course, vacating an

1 order means it doesn't exist any more. And he's trying to
2 travel on orders that were vacated by the Court of appeals.
3 If you turn to the next page, it will tell you why --

4 THE COURT: 598, would it be?

5 MR. JOHNSON: Yes, sir. Where the Court goes over
6 the evidence of the same commissioner, the appellate panel,
7 et cetera. And then on the next page goes through a long
8 analysis, Bob Weir contends the commission lacks subject
9 matter jurisdiction in dealing with equitable claims for
10 reimbursement because commission's authority is derived
11 strictly from statute -- from common law. We agree as a
12 threshold matter, Peachtree, Plaintiff in this case contends
13 the finding of the appellate panel's first order of May 7th
14 first order constitutes the law of the case because the
15 appeal from that order was dismissed as untimely. We
16 disagree.

17 So what the Court of Appeals did was that they
18 vacated all of the earlier orders, which they should have.
19 If the commission didn't have subject matter jurisdiction to
20 deal with them, they're orders are annulled anyway. Their
21 decision was affirmed as modified by the Supreme Court. And
22 the only modification in that order is the court said the
23 commission reached -- excuse me, the Court of Appeals
24 reached a correct decision, they just gave an improper or
25 wrong basis for their decision and they set it aside.

1 I'll hand up a third order, which is where Supreme
2 Court tax costs against the plaintiff in favor of SIF, Self
3 Insurers Fund. And, you know, you get reimbursed for the
4 cost when you win, not when you lose.

5 So we think it's a pretty simple matter if you
6 read those two orders and see what they did. It wipes
7 everything that came before. He has to come in and prove a
8 claim for equitable indemnification. He can't just ride
9 what was done and say they determined it, therefore we're
10 entitled to it one way or the other.

11 And so we ask by summary judgment -- or at the end
12 of Plaintiff's case, we'll ask you to rule that those orders
13 vacate all the earlier orders and that the Plaintiff has not
14 presented a valid claim here because he's relied on those
15 earlier orders that were vacated to do so.

16 Now, he has a claim for equitable indemnification.
17 One of the elements of equitable indemnification is --

18 THE COURT: There's three, right?

19 MR. JOHNSON: Well, there's really more than
20 three, but the one I think is important is you have to have
21 a special relationship with the one from whom you seek
22 equitable indemnification. In other words, you have to be a
23 subcontractor, contractor, some kind of relationship that
24 exist between the two parties.

25 THE COURT: All right.

1 MR. JOHNSON: They do not have that here. They
2 have a claim for quantum meruit and they seek to recover on
3 that theory. We would say that when you look at what you're
4 going to hear on the facts, they didn't convey any benefit
5 to us by paying this claim. They didn't -- they made a
6 mistake.

7 I never heard of bringing a third party in in a
8 worker's comp case on a claim for equitable indemnification.
9 They had alternatives. The claimant never claimed that he
10 got hurt and made a claim against us. The only people who
11 made a claim against us was the Plaintiff. The Plaintiff
12 had the opportunity to ask the commission to determine
13 whether they were liable or not liable for that claim. And
14 they were found not liable for the second accident. They
15 could have sought a credit against what they otherwise owed
16 the Plaintiff for what they had incurred improperly. It
17 happens all the time in comp cases. A carrier pays past the
18 date of maximum medical improvement, you get a credit
19 against the award for that. They could have sued us or sued
20 the Plaintiff in circuit court to get the money back on the
21 theory of unjust enrichment and get a judgment against him
22 and apply that judgment against what he had. But instead of
23 doing that, they chose to file a common law claim for
24 equitable indemnification.

25 THE COURT: So because of their tactical decision,

1 they should be out of court, basically, is that what you're
2 saying?

3 MR. JOHNSON: Exactly. Their hands aren't clean.
4 They could have -- and I have not understood yet for any
5 reason why they would have pursued it in the fashion they
6 did because --

7 THE COURT: All right.

8 MR. JOHNSON: -- if we know worker's comp is a
9 creature of statute and a claim for equitable
10 indemnification has got nothing to do with being created by
11 a statute, they just sued us and incurred this expense. I
12 want to reemphasize, the claimant never made a claim against
13 us. Had they not sued us, we would have not owed a penny on
14 that because the statute of limitations would have run by
15 the time presumably --

16 THE COURT: Now, are you still claiming the
17 statute of limitations in this case before me here today,
18 that's no longer the issue of the statute because they sued
19 in time?

20 MR. JOHNSON: It wouldn't be an issue --

21 THE COURT: Okay.

22 MR. JOHNSON: Well, it could be an issue if they
23 had brought an action of law against us, but the statute of
24 limitations doesn't apply to equitable claims.

25 THE COURT: All right.

1 MR. JOHNSON: We've raised the defense of latches
2 because this is something that started in 2003 --

3 THE COURT: Two.

4 MR. JOHNSON: Two or three --

5 THE COURT: Yeah, whenever.

6 MR. JOHNSON: -- and they didn't sue us until last
7 year. And we'll offer some evidence on how we're prejudiced
8 by their decision to wait until this long to sue us in
9 support of a defense of latches.

10 THE COURT: All right.

11 MR. JOHNSON: So that's our position in a
12 nutshell, Your Honor.

13 THE COURT: I think we all got that real clear.
14 Do you have any evidence you want to offer?

15 MR. DETWILER: I do.

16 THE COURT: Yes, sir.

17 MR. DETWILER: Your Honor, at this time, I would
18 like to introduce the exhibits you already have copies of
19 and I've premarked them. And they are 1 through 15,
20 counting my attorney's fee affidavit.

21 THE COURT: Yes, sir.

22 (WHEREUPON, Plaintiff's Exhibit Nos. 1
23 through 15 were marked for
24 identification only.)

25 MR. DETWILER: And, perhaps, I could -- Mr.

1 Johnson indicated before we got started here that he has
2 objections to certain of the exhibits. I think he said most
3 of them, so I guess we need to --

4 THE COURT: It was all or most, I don't remember.

5 MR. JOHNSON: It was all but two. We can go
6 through them one at a time or I can tell you what my
7 objections are to them.

8 THE COURT: All right.

9 MR. JOHNSON: The ones I don't object to are the
10 Court of Appeals's decision to --

11 THE COURT: Well, that's nice. The Court of
12 Appeals and I guess the Supreme Court --

13 MR. JOHNSON: You're very perceptive, yes, the
14 Supreme Court. I have no objections to that. As to the
15 others, it's my opinion that they have -- the orders that
16 are a part of these exhibits and the transcripts from which
17 the orders came are inadmissible because all of that has
18 been vacated.

19 Secondly, it's my position that it's all hearsay
20 and not admissible on the grounds that it is hearsay. The
21 third thing, Your Honor, is that -- those would be my
22 positions, Your Honor --

23 THE COURT: That's fine.

24 MR. JOHNSON: -- the hearsay and vacating orders
25 that wouldn't be relevant. Relevant evidence, of course,

1 being that which tends to prove something one way or
2 disprove it the other. And an order that's been set aside
3 for lack of subject matter jurisdiction can't be proof one
4 way or the other because it's a nullity.

5 THE COURT: All right.

6 Mr. Detwiler?

7 MR. DETWILER: Thank you, Your Honor. Well, of
8 course, it's our position and I think it's pretty clear from
9 the Court of Appeals's opinion that the orders that
10 Mr. Johnson indicates have been vacated are not inclusive of
11 everything he wants to be vacated. And if I could --

12 THE COURT: The order may be vacated, but the
13 record remains the same.

14 MR. DETWILER: Not only does the record remain the
15 same, but not all of the orders have been vacated. And if I
16 might point out a couple of things in response to what
17 Mr. Johnson said a while ago.

18 THE COURT: Sure.

19 MR. DETWILER: He was very -- he very briefly
20 pointed out that the Court of Appeals said we vacate the
21 single commissioner's, the appellate panel's and the circuit
22 court's orders. May I point out that all of those are
23 singular. Those are singular possessive. They're not
24 plural possessive. Commissioner's, one commissioner order.
25 Appellate panel, one appellate panel order. Circuit court,

1 one circuit court order were vacated. Clearly, when they --
2 when they define a term called a first order and then they
3 say we're vacating all these other others, they clearly did
4 not intend to vacate that first order finding that there was
5 a second accident.

6 But as you point out, the record certainly doesn't
7 go away. The testimony given by the claimant, who was under
8 oath, who was cross-examined by Mr. Johnson's predecessor
9 representing the Home Builder's Association was there. This
10 was a hearing where everybody was present. And so I think
11 that that comes in under 803 -- excuse me, 804(b)(1). It
12 also comes under -- comes in under Rule 1005. Those
13 transcripts come in, all the orders, prior orders come in.
14 Certainly, we're here as a matter of law. You may decide
15 that -- and I think it would be wrong to do so, obviously,
16 but you may --

17 THE COURT: I have no idea what I'm going to do,
18 obviously.

19 MR. DETWILER: You may decide that Mr. Johnson is
20 right and --

21 THE COURT: Uh-huh.

22 MR. DETWILER: -- these don't have any relevance,
23 but we certainly have a right to admit them into evidence
24 for the record.

25 THE COURT: All right.

1 Mr. Johnson.

2 MR. JOHNSON: Your Honor, I differ on the
3 admissibility of the transcripts. You're here sitting as a
4 court of equity determining equitable claims. We're
5 entitled to have the witnesses come and testify. We're
6 entitled to have the claim, if they have a claim proven
7 against us or defend against it at the same time. So I
8 don't agree that -- further the rules of evidence are
9 different at the commission. The commission isn't bound by
10 the rules of evidence. This Court is bound by the rules of
11 evidence. So we don't think 804(b)(1) is a basis for
12 getting orders -- the transcripts in. We don't believe that
13 Rule --

14 THE COURT: Well, didn't the Court of Appeals and
15 the Supreme Court consider the record -- I mean, the
16 transcripts on everything else?

17 MR. JOHNSON: They considered --

18 THE COURT: I mean, they had to. I mean, I assume
19 they did.

20 MR. JOHNSON: They did.

21 THE COURT: Yeah.

22 MR. JOHNSON: But basically what they did was they
23 considered it and they said there's no subject matter
24 jurisdiction, so that wipes all of that out. And to be able
25 to put in a deposition transcript of a witness, you've got

1 to meet the requirements of the rules, one of which he's
2 more than a hundred miles away, you can't find him. I mean,
3 there's several things you can prove to get the witness's
4 testimony in by way of a sworn deposition. But in absence
5 of that proof, what they've done to bring the live witnesses
6 here, we would say they can't put in a cold record that
7 deals with a different issue here -- different issues here
8 to support their claim.

9 So in any event, we think that if you read the
10 Court of Appeals order and I -- again, I'm not sure what Mr.
11 Detwiler means. The Court said we vacated the single
12 commissioner's, the appellate panel's and the circuit
13 court's orders. It didn't say we vacate one of the single
14 commissioner's orders and one of the appellate panel or one
15 of the circuit court. It uses the plural, orders.

16 So -- and if you read it, I say -- it seems clear
17 to me what they were saying. And if they're saying there's
18 no jurisdiction for the commission to deal with this kind of
19 claim, a claim for equitable indemnification, surely, that
20 wipes out the record before.

21 THE COURT: All right. Anything further,
22 gentlemen?

23 MR. DETWILER: Only a couple of things, Your
24 Honor. One is the claimant is more than a hundred miles
25 away as stated in all of the deposition transcripts that you

1 have. He lives in Myrtle Beach or at one time he lived in
2 Murrells Inlet, so that's over a hundred miles away last
3 time I looked and drove it. So if that's really an issue,
4 that ought to be disposed of. I can't think of the other
5 issue.

6 THE COURT: That's fine. What I'm going to have
7 everybody do is submit proposed orders, touch on any
8 argument that the other side made. I'll look at everything
9 and make a decision one way or the other. How much time are
10 y'all going to need, do you think?

11 MR. DETWILER: For the proposed orders?

12 THE COURT: Yeah.

13 MR. DETWILER: I can do it in 10 days.

14 THE COURT: Make it easy on yourself, it doesn't
15 matter to me. This case goes back to 2001 or two, I
16 wouldn't think it would make any difference. Make it easy
17 on yourself is what I'm saying. You want 30 days, for
18 example?

19 MR. DETWILER: Thirty days is fine.

20 MR. JOHNSON: That's fine.

21 THE COURT: Let's give you 30 days. It will
22 probably take me another two or three weeks, so maybe
23 another 30 days before I make a decision by the time I sort
24 through everything.

25 MR. DETWILER: Okay.

1 THE COURT: We're probably looking at an outset
2 maybe 60 days before I can make the decision on what I've
3 heard here today.

4 MR. DETWILER: Okay.

5 THE COURT: It might be sooner, might be later,
6 but probably no later than that, but within 60 days, I
7 should have a decision one way or the other. I can you tell
8 you both I honestly have no idea what I'm going to do until
9 I sort through everything based on the arguments y'all made
10 here today.

11 MR. DETWILER: Of course. The only other thing
12 that I have to introduce, Your Honor, probably would be good
13 for the record would be to introduce the backup materials
14 that indicate how much we paid on the claims. And I have
15 Ms. Wilson to authenticate that. We could stipulate to it
16 or --

17 THE COURT: We'll just stipulate to it and raise
18 that argument in your proposed order. It shouldn't count,
19 it doesn't count or whatever. But I'm going to have to look
20 at it one way or the other.

21 MR. JOHNSON: Actually, if he puts his witness up,
22 there are a couple of things I'd want to ask her.

23 THE COURT: That's -- however y'all want to do it.

24 MR. DETWILER: We're here. We're ready to go.

25 THE COURT: Let's take a little break.

1 (Whereupon, a short recess was held.)

2 THE COURT: Once again, this is a general
3 observation, Mr. Johnson. Whatever your objection, we've
4 got to proffer it in any way, we got to include -- you
5 understand that? So are we ready?

6 MR. DETWILER: We're ready, Your Honor.

7 MR. JOHNSON: Your Honor, may I make two points so
8 it will be in the record, very briefly?

9 THE COURT: Go ahead.

10 MR. JOHNSON: One is Mr. Detwiler claims that the
11 order is unclear as to what they were doing or not doing.

12 THE COURT: Yes, sir.

13 MR. JOHNSON: Of course, when that happens, you
14 file a motion to reconsider and point out what they were
15 not --

16 THE COURT: Kind of like a 59(e), I guess?

17 MR. JOHNSON: Yes.

18 THE COURT: That will be one of your arguments,
19 how is that?

20 MR. JOHNSON: Thank you.

21 THE COURT: Okay.

22 MR. JOHNSON: The other point is this Court --
23 when a case comes back from appeal, this Court has certain
24 limited jurisdiction to deal with whatever the court -- you
25 know, however --

1 THE COURT: I can only take what they give me.

2 MR. JOHNSON: Exactly. You can only deal with
3 what they give you. And there's case law that's outside
4 your jurisdiction to go outside of what they gave you.

5 THE COURT: Okay.

6 MR. JOHNSON: Here, they dismissed the case, so
7 this is a whole nother case 10 years after the fact. And we
8 would say that you're restricted to by that decision doing
9 nothing because they ruled against the Plaintiff.

10 COURT: That's fine. That's fine. And the reason
11 I made that observation is that the last thing we want is a
12 remand to say you should have made a record. We'll put
13 everything -- we'll include everything.

14 MR. JOHNSON: Right.

15 THE COURT: Whether I should consider it or not,
16 the record is there for everybody to see.

17 MR. JOHNSON: Exactly. And then the Court of
18 Appeals could say it was unclear and --

19 THE COURT: I know. That's fine.

20 Mr. Detwiler.

21 MR. DETWILER: That's fine. I call Janie Wilson.

22 THEREUPON,

23 JENNIFER WILSON,

24 after having been duly sworn, testified as follows:

25 THE COURT: Please take a seat. Tell us your full

1 name and spell your last name for the record.

2 THE WITNESS: My name is Jennifer Wilson. I go by
3 Janie. And Wilson is W-I-L-S-O-N.

4 THE COURT: I'm going to ask you to speak up a
5 little bit, I have trouble hearing.

6 THE WITNESS: Okay. Me, too.

7 THE COURT: Ma'am?

8 THE WITNESS: Me, too.

9 THE COURT: Okay. Well, you don't have trouble
10 talking, do you?

11 THE WITNESS: (The witness shakes head.) I can
12 talk.

13 THE COURT: Okay. Go ahead Mr. Detwiler.

14 MR. DETWILER: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. DETWILER:

17 Q. Could you state your full name for the record, please?

18 A. Janie Wilson.

19 Q. And Ms. Wilson, where do you work?

20 A. Builder's Mutual Insurance Company.

21 Q. And how long have you -- what do you do for Builder's
22 Mutual?

23 A. I'm a worker's comp adjustor.

24 Q. How long have you been a worker's comp adjustor doing
25 Builder's Mutual work?

1 A. Since 2002.

2 Q. Okay. How long have you been in the worker's comp
3 adjusting business?

4 A. Since May 1979.

5 Q. Okay. I can't do that math, but it's been a long time?

6 A. Yes.

7 Q. Okay. And did you -- in your work for Builder's Mutual
8 as a worker's comp adjustor, did you have occasion to
9 work on the file or the claim brought by Christopher
10 Carl Price?

11 A. Yes.

12 Q. Okay. Have there been any other adjustors that have
13 worked on this file since the file was first brought?

14 A. For a year and a half, Shaffer handled the claims for a
15 small -- that period of time.

16 Q. I got you, but you handled it early on?

17 A. I did.

18 Q. Did you handle it through the period that includes
19 November the 3rd, 2003?

20 A. Yes.

21 Q. Okay. And you've been handling it for a number of
22 years since, right?

23 A. Yes, uh-huh.

24 Q. Okay. Did you bring with you today some information
25 about what -- well, let me back up a little bit. Can

1 you tell the Judge your understanding of what has
2 happened with this file, anything unusual?

3 A. Sure.

4 Q. Why don't you just start with telling us a little bit
5 about how the file originated?

6 A. Okay. Well, he was injured -- Mr. Price had an injury
7 on 12/09/2002. He stepped in a hole at a restaurant
8 and he suffered a back injury. And as a result of that
9 event, he ended up with herniated discs and he had
10 surgery. He had a discectomy. Then he continued with
11 medical treatment. I believe he had physical therapy,
12 work hardening. And then he was rated and released by
13 the doctor.

14 Q. Okay. Did -- after he was rated and released by the
15 doctor, did he go back to work?

16 A. He did. He went back to work -- I learned that he had
17 gone back to work for somebody else.

18 Q. Not for Peachtree?

19 A. Not for Peachtree.

20 Q. Who is your understanding he went back to work for?

21 A. Well, eventually, I learned he went to work for Bob
22 Weir Electrical.

23 Q. That's the Defendant here (indicating)?

24 A. Yes.

25 Q. Okay. Now, could you tell us what happened after he

1 was rated and released? Was that the end of the claim?

2 A. No. He went back to the doctor complaining that he was
3 having more back problems and he sought additional
4 treatment for it.

5 Q. Okay. And was that claim for additional treatment made
6 to you and to Builder's Mutual?

7 A. Yes -- well, we got medical records from the doctor who
8 had treated him for the first injury, for our accident.

9 And he went back to the same doctor and continued
10 medical treatment.

11 Q. Was there any indication that -- in the doctor's record
12 at that time that the claimant had suffered any new
13 accident or intervening event?

14 A. There was no mention.

15 MR. JOHNSON: Objection. They're testifying about
16 a doctor's records -- an opinion contained in a doctor's
17 record. That would be hearsay and --

18 THE COURT: Sustained.

19 MR. DETWILER: Okay.

20 BY MR. DETWILER:

21 Q. Did you have any reason to believe that the claimant
22 had suffered any new accident or intervening event?

23 A. I had no information to lead me to believe that.

24 Q. And what did you do based on the information that you
25 had at the time?

1 A. Well --

2 Q. Did you start paying him comp again?

3 A. I did, but it -- I think there was a deposition in
4 between before I started paying.

5 Q. Okay. And we're not going to go into what the
6 deposition said, that's in the record and you can't
7 testify about that.

8 A. Okay.

9 Q. But did you start paying --

10 A. Yes.

11 Q. -- worker's compensation weekly benefits again?

12 A. In January 2004, I started paying benefits.

13 Q. Okay.

14 A. Going backwards to when he started losing time from
15 work again.

16 Q. Okay. And did you also provide him medical -- new
17 medical benefits?

18 A. Yes.

19 Q. Could you tell -- tell us briefly in the broadest sense
20 what kind of medical benefits, what kind?

21 A. Again, he started losing time from work again. And
22 then he -- he returned to the doctor. He had more
23 surgery. This time he had a fusion and he continued
24 physical therapy and treatment, the standard treatment
25 for that type of injury.

1 Q. Okay.

2 A. Until he was released again.

3 Q. Okay. And can you tell us how much you have spent
4 since he went back out of work for weekly benefits?

5 A. \$47,023.88.

6 Q. Okay.

7 A. That was for 11/21/03 to 07/06/06.

8 Q. I'll show you a document, is that the document -- could
9 you tell us what that document is?

10 A. This is just a list of all the temporary total of
11 disability benefits that we paid --

12 Q. Okay.

13 A. -- to him each week.

14 Q. And what is the total of that?

15 A. \$47,023.88.

16 Q. Okay. Is this a document that is kept in the regular
17 course of your business --

18 A. Yes.

19 Q. -- at Builder's Mutual?

20 A. This is just a printout of all the payments we made.

21 Q. All right.

22 MR. DETWILER: I'd like to have this marked as
23 Exhibit 16.

24 THE COURT: That's with your objection? I think
25 you object to the whole line of testimony and everything, do

1 you not?

2 MR. JOHNSON: I do.

3 THE COURT: Okay, that's fair enough.

4 MR. JOHNSON: Can I see that?

5 MR. DETWILER: Oh, I'm sorry.

6 THE COURT: Okay.

7 (WHEREUPON, Plaintiff's Exhibit No. 16

8 was marked for identification only.)

9 MR. DETWILER: I'm going to show you another

10 document --

11 Let's go ahead and mark that, please.

12 (WHEREUPON, Plaintiff's Exhibit No. 17

13 was marked for identification.)

14 BY MR. DETWILER:

15 Q. Can you identify that document?

16 A. This is an itemization of all the medical benefits we
17 paid.

18 Q. And is that also a document that is regularly stored in
19 the computer at Builder's Mutual Insurance Company?

20 A. Yes.

21 Q. And did you have that printed out for the purposes of
22 this hearing today?

23 A. I did.

24 Q. Okay. And what does that show Builder's Mutual
25 spent -- let me back up. I see there's some

1 handwritten notes on this. Are those your notes?

2 A. Yes, these are my notes.

3 Q. Can you explain why you wrote on it?

4 A. When we printed this out, we printed it from the date
5 of the second accident, which was 11/03/03, and some of
6 the payments for the first accident happened after the
7 second accident occurred. So some of those payments
8 are on here, too.

9 Q. Okay. Well, what do you mean by second accident?

10 A. The accident for Bob Weir 11/03/03.

11 Q. Well, this is the first time you mentioned that, tell
12 us what you understand happened -- well, what did you
13 ultimately understand happened that lead to these
14 additional benefits?

15 MR. JOHNSON: Objection, Your Honor, that would be
16 hearsay.

17 THE COURT: What was the question again?

18 MR. DETWILER: I asked her what her investigation
19 showed and why she started paying additional benefits after
20 she investigated it.

21 THE COURT: All right. Overruled. I'll let --
22 look, either this is going to make a big difference or it's
23 not going to make any difference at all. Okay. I mean, you
24 got to object, I understand that, there's nothing personal.
25 But let her say what she wants to and we'll see where it

1 goes.

2 Go ahead.

3 MR. DETWILER: Okay.

4 THE COURT: I know what this is anyway because
5 it's in the record by the way, right?

6 Go ahead, Mr. Detwiler.

7 MR. DETWILER: Thank you, Your Honor.

8 BY MR. DETWILER:

9 Q. So what was your -- you mentioned a second accident,
10 what were you referring to? I just want to clarify
11 your testimony.

12 A. I'm referring to the accident at Bob Weir.

13 Q. Okay. And what -- did you do as part of your work as
14 the adjustor an investigation into that?

15 A. Uh-huh.

16 Q. Yes? Is that a yes?

17 A. Yes, we did, I'm sorry.

18 Q. Okay.

19 A. And we learned that he had an accident at Bob Weir. He
20 was pulling wire, he fell to his knees. And he had a
21 boss nearby who came to his aid.

22 Q. All right. Now, if I've asked you this already,
23 forgive me, but how much have you spent in medical
24 benefits now?

25 A. We have paid \$112,774.93.

1 Q. Okay. Is that the amount after you deducted those few
2 things that relate to the first accident?

3 A. Yes.

4 Q. Okay. And so in total now, how much have you spent in
5 medical benefits and comp benefits for the second
6 accident?

7 A. \$159,813.30.

8 Q. And to the best of your ability have -- does that
9 exclude any expenses that you spent on the first
10 accident, the accident with Peachtree?

11 A. Yes, it does.

12 Q. Okay.

13 THE COURT: For the record, I note your objection
14 on each and every one of these exhibits. Is that fair?

15 MR. JOHNSON: Yes, Your Honor.

16 MR. DETWILER: And Your Honor, this is just a
17 summary, a recap. I would propose I mark it as an exhibit
18 unless there's an objection.

19 THE COURT: That's fine.

20 (WHEREUPON, Plaintiff's Exhibit No. 18
21 was admitted into evidence.)

22 THE COURT: The bottom line is all of this counts
23 or none of it counts.

24 MR. DETWILER: Right.

25

1 BY MR. DETWILER:

2 Q. Now, Ms. Wilson, you've also incurred attorney's fees;
3 is that right?

4 A. Yes, sir.

5 Q. Okay. And those have been I think exclusively with my
6 law firm; is that right?

7 A. Correct.

8 Q. Okay. And, if I may. It's already been marked as
9 Exhibit 15. This is an affidavit that I have signed,
10 but could you just tell us what the numbers are for the
11 record in terms of what Builder's Mutual has spent in
12 this case defending the second accident?

13 A. \$103,130.75 in fees and \$7,931.65 in costs.

14 Q. And that's over the course of 12 years or so that we've
15 been fighting about this second accident?

16 A. Twelve, 13 years, yes.

17 Q. You're also seeking prejudgment interest; is that
18 correct?

19 A. Correct.

20 MR. DETWILER: Thank you. That's all the
21 questions I have. Answer any questions Mr. Johnson may
22 have.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. When did you take over the responsibility of this file?

1 Who was the original --

2 A. I handled it from the beginning.

3 Q. From the very start?

4 A. (The witness nodded head.)

5 Q. Now, as I understand it -- well, tell me this, when did
6 you learn that there was a second accident?

7 A. I believe it was -- let me look here. I believe it was
8 April 12, 2005.

9 Q. All right. And how was it determined there was a
10 second accident? How did you learn?

11 A. How did I learn? Well, there was a deposition taken --
12 I believe Mr. Selevy was involved with a deposition on
13 the third party claim and I understand that the
14 claimant testified in that deposition that he had had
15 an accident through Bob Weir.

16 Q. Have you read the deposition?

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

18 Q. And that's the first time you learned --

19 A. Yes.

20 Q. -- there was supposedly a second accident that was not
21 under your coverage?

22 A. (The witness nodded head.)

23 Q. And was this in the third party case?

24 A. Yes.

25 Q. And so -- you don't recall whether you read the

1 deposition or somebody told you what it said?

2 A. I don't remember if I read it or not.

3 Q. And that was in 2005?

4 A. Yes.

5 Q. Now, as I understand it, the claimant had a first
6 accident on December the 9th, 2002?

7 A. 12/09/2002.

8 Q. He returned to work on 08/08/03?

9 A. I don't -- he may have -- well, let me look. I'm not
10 sure. He did return to work, I'm not sure what date.

11 Q. Then there was supposedly a second accident of
12 November the 3rd, 2003?

13 A. Correct.

14 Q. And after the second accident, he contacted you and
15 said he needed to go back to the doctor?

16 A. He did not contact me, he just went back to the doctor,
17 but I believe he had a lawyer.

18 Q. And then you communicated with the doctor and started
19 him up on a running award of compensation and medical
20 benefits?

21 A. We -- well, there was deposition before that, before I
22 started him on a running award.

23 Q. What deposition -- who took that deposition?

24 A. One of the lawyers at CTR.

25 Q. One of the lawyers in what?

1 A. Callison Tighe.

2 Q. All right. Who -- what was -- when was that the
3 deposition?

4 A. I believe it was like December 2003.

5 Q. And were questions asked on that deposition about the
6 second accident?

7 A. I believe so -- well, not about the accident, they -- I
8 believe my recollection is that he was asked about --
9 Mr. Price was asked about the accident. He did not
10 admit to having one.

11 Q. Have you -- but you don't -- this is what somebody told
12 you, you haven't read it yourself?

13 A. Well, I may have. It's just been so long, I don't
14 remember.

15 Q. Well, let me ask you this, you certainly could have
16 found out if your lawyers could in that deposition as
17 to whether he went back and worked for your employer or
18 some other employer, correct?

19 A. What was the question?

20 Q. The question is your lawyers could have asked questions
21 to determine whether he -- when he had gone back to
22 work and where he had gone back to work, correct?

23 A. Yeah, we knew that he --

24 MR. DETWILER: Your Honor, I object. This
25 question is assuming evidence that --

1 THE COURT: They're saying speculation, I could
2 put it off on that, but the record -- what y'all are asking
3 is already in the record basically.

4 MR. DETWILER: And that particular deposition
5 transcript is right there in the record.

6 THE COURT: That's fine. The bottom line is they
7 resumed payment whether they should have or not.

8 MR. JOHNSON: As --

9 BY MR. JOHNSON:

10 Q. Did you pick up the phone and call the claimant and ask
11 him any questions about whether he had had any
12 intervening or other accidents between your accident --

13 A. We did --

14 Q. Did you?

15 A. -- investigate for that, but I didn't call him. He had
16 a lawyer.

17 Q. Well, did you call his lawyer and ask him?

18 A. No. We had a deposition.

19 Q. And the deposition --

20 A. We had a deposition --

21 Q. -- showed what it showed?

22 A. Yeah. A deposition was taken in December before I
23 started paying temporary total.

24 Q. Ms. Wilson, you would agree with me that had you or
25 your company or your company's attorney been vigilant,

1 y'all could have found out about the second accident
2 before you ever put him up on running award?

3 A. If the claimant had been truthful, we would have known.

4 Q. Whether he was truthful or not, you could have found
5 out whether he had an accident -- the second accident
6 with an intervening employer, couldn't you?

7 A. If he had --

8 Q. You could get records to determine --

9 A. -- been honest with us, I could have found out.

10 Q. So because he was dishonest, your claim is you didn't
11 find out until later?

12 A. That's correct, because he was --

13 Q. So --

14 A. -- deposed and he did not admit to any intervening
15 event.

16 Q. So was he asked about any intervening event?

17 MR. DETWILER: Your Honor, the deposition says
18 what it says. Are we going to test her recollection of what
19 a deposition said?

20 THE COURT: All right. Both of you relax.
21 Everything y'all have asked in the last 30 minutes, I
22 already know from the record anyway.

23 What he's asking is that you had a duty to
24 investigate, not just take somebody's word for it.

25 THE WITNESS: Yeah, yeah.

1 THE COURT: I understand all that.

2 You can move on, Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 THE WITNESS: Yeah, I did.

5 BY MR. JOHNSON::

6 Q. Now, tell me again when you found -- it was the second
7 deposition you found out he had the intervening
8 accident?

9 A. When he had an intervening accident? When I found out?

10 Q. Yes.

11 A. Someone called me and told me April 12th, 2005.

12 Q. And what did you do once you learned this information?

13 A. Contacted my lawyer.

14 Q. And what did he do?

15 A. What did you do?

16 MR. DETWILER: I can't help you there.

17 THE WITNESS: Well, I believe that within two

18 months, we added Bob Weir and South Carolina Home Builders
19 as parties to the case.

20 BY MR. JOHNSON::

21 Q. But you were continuing to pay him comp benefits,
22 weren't you?

23 A. We were under a running award, yes.

24 Q. You were continuing to pay medical expense for him,
25 weren't you?

1 A. We were under a -- yes, we were.

2 Q. Did you or your attorneys on your behalf file a stop
3 payment application?

4 A. As a matter of fact, I think we did.

5 Q. When did you file that?

6 A. I don't remember.

7 Q. And when you file a stop payment application, you can
8 claim a credit for benefits paid up to that date if the
9 commission agrees that you had the right to stop it
10 when you file the application, right?

11 A. We can. I believe there was a hearing of sorts where
12 we agreed to continue to pay benefits until these
13 issues were resolved.

14 Q. So y'all voluntarily entered into some agreement to
15 continue to pay benefits even though you knew there had
16 been supposedly a second accident?

17 A. Well, I don't know about -- I'm not sure what you're
18 getting at.

19 Q. Well, what I'm getting at is rather than -- once it
20 comes to your attention that you had been defrauded, I
21 guess you would say, he didn't tell you about it
22 initially, you learned about it subsequently, after he
23 had committed a fraud on you, you continued to pay
24 benefits?

25 A. Yes, because I can't stop doing that in South Carolina.

1 Q. And how many weeks did you pay through?

2 A. We paid through July 6th, 2006.

3 Q. So more than another year, you were continuing to pay
4 benefits?

5 A. Correct.

6 Q. Under this agreement y'all made?

7 A. I don't remember what happened between that time, but
8 we were not allowed to stop or we would have.

9 Q. Did you and your --

10 A. I believe that --

11 MR. DETWILER: Objection, Your Honor, she hadn't
12 finished her answer.

13 MR. JOHNSON: I didn't mean to cut you off --

14 THE COURT: Y'all relax. Let her finish.

15 Finish your answer, then wait for your next
16 question. Go ahead. What was your answer?

17 THE WITNESS: I don't remember.

18 BY MR. JOHNSON:

19 Q. Ms. Wilson, when you went to -- did you go to a hearing
20 on the determination of what benefits he was entitled
21 to?

22 A. At what point?

23 Q. After he reached maximum medical improvement the second
24 time, was there a hearing to determine the extent of
25 his disability?

1 A. You know, I think we settled outside of a hearing.

2 Q. Okay. And when you settled it, did you settle it on
3 the basis that he had permanent disability?

4 A. We sure did.

5 Q. Did you in that settlement seek a credit for benefits
6 you had paid on the second accident for which you were
7 not liable and he was not entitled to receive from you?

8 A. Well, what we did was we filed a -- we added South
9 Carolina Home Builders as a party to the case. And we
10 went to a hearing and the commission ordered --

11 THE COURT: The answer to that question would be
12 no, Mr. Johnson.

13 MR. JOHNSON: Yeah.

14 THE COURT: All right.

15 BY MR. JOHNSON:

16 Q. And you often seek credit when you've paid past the
17 date of maximum medical improvement, don't you? That's
18 standard and ordinary?

19 A. Do we do that?

20 Q. Yes.

21 A. Yes.

22 Q. But you didn't do it here --

23 MR. DETWILER: Your Honor, I object --

24 THE WITNESS: I feel like --

25 MR. DETWILER: -- this is just going to go on

1 forever. It's not relevant at all. What he's talking
2 about -- it's very confusing. He's talking about seeking a
3 credit for the overpayment to a claimant of benefits after
4 he reaches maximum medical improvement. We're here today
5 seeking reimbursement for a claim that they should have paid
6 in the first place and they didn't. That's all we're here
7 for.

8 THE COURT: All right. You're overruled. I'm
9 going to let him finish.

10 Go ahead and make your record.

11 MR. JOHNSON: Thank you, Your Honor.

12 BY MR. JOHNSON::

13 Q. How many years have you been working as an adjustor
14 handling worker's comp claims?

15 A. Since '79.

16 Q. Have you ever heard of another case where a claim for
17 equitable indemnification was being made in the
18 worker's compensation case like occurred here?

19 MR. DETWILER: Objection.

20 THE COURT: Basis?

21 MR. DETWILER: Relevance --

22 THE COURT: She says she's been working in the --

23 MR. DETWILER: I mean.

24 MR. JOHNSON: This is -- well --

25 MR. DETWILER: Your Honor, for the record, I'll

1 stipulate that I never have either and I've been practicing
2 law for 30 years --

3 THE COURT: The answer to that question is no, but
4 go ahead. I'll answer the question from now on. Go ahead.
5 The answer is no.

6 Mr. Detwiler, Mr. Johnson, neither have you or
7 neither have I for that matter. Maybe you have, have you?

8 MR. JOHNSON: I haven't.

9 THE COURT: See, there you go.

10 (Laughter.)

11 BY MR. JOHNSON:

12 Q. Am I correct that the claimant never took the position
13 that he had compensable -- he never filed a claim
14 against Bob Weir and the South Carolina Self-Insureds?

15 A. I don't know what he did. I mean, I don't know if he
16 did or not.

17 Q. Well, weren't you handling the case back when the
18 claims were being filed?

19 A. Well, Bob Weir was aware of it. I mean --

20 Q. I'm talking about --

21 A. -- they had notice of it within the first --

22 THE COURT: Let me help you out. The record
23 indicates that the Plaintiff never filed a claim against Bob
24 Weir is what the history of the case indicates to me,
25 without pulling this information from this particular

1 witness.

2 MR. JOHNSON: That's good.

3 THE COURT: All right. I mean, if he had of, we
4 wouldn't be here or we'd be here under different
5 circumstances.

6 MR. JOHNSON: Well --

7 MR. DETWILER: If you want to make it clear, the
8 fact of the matter is after it was bifurcated, he actually
9 did make a claim against Home Builders Association.

10 THE COURT: Okay. Go ahead, Mr. Johnson.

11 BY MR. JOHNSON:

12 Q. Ma'am, on the medical expenses of \$112,000, you recall
13 that number?

14 A. 125,000?

15 Q. Right here (indicating)?

16 A. 112,000?

17 Q. Do you recall that?

18 A. Okay. Yeah.

19 Q. Tell me what investigation was done to determine what
20 of those expenses were related to the second accident
21 or related to the first accident or a result of both
22 accidents?

23 A. Well, we -- he had already been rated and released from
24 the first one and was -- medical care was completed.

25 And so we used the MMI date to split the two. When he

1 went back for treatment for the -- after he went back
2 after his second accident with Bob Weir, when he went
3 back for treatment, from that date forward, we used for
4 the second accident.

5 Q. All right. So you didn't go to the doctor and say,
6 look, we've got two accidents here. He's back getting
7 more treatment now. What is attributable to the first
8 or the second?

9 A. No, we already finished, so we attributed the rest to
10 the -- your accident.

11 Q. I know you attributed it, but you didn't ask the doctor
12 --

13 A. I didn't need to.

14 Q. -- whether it was related to one or the other or both?

15 A. No.

16 Q. You didn't do that?

17 A. No, I didn't need to.

18 Q. Do you know where the claimant lives?

19 A. No, not right now.

20 Q. When was the last time you had contact with him?

21 A. Well, number one, I can't talk to him because he has a
22 law -- he had a lawyer, so I did not talk with him. I
23 did not contact him.

24 Q. Are you aware of any effort being made by you or your
25 attorneys to have the claimant here to testify today?

1 A. I'm not aware of any, no.

2 Q. Are you aware of any actions on the part of your
3 attorneys or yourself to have the medical doctors here
4 or depositions from them related to --

5 A. No.

6 Q. -- this case? So in filing this claim against my
7 client for a couple hundred thousand dollars, you
8 weren't planning on bringing anyone who had firsthand
9 knowledge about it?

10 A. I'm sorry, what?

11 Q. You took no steps to bring someone that had firsthand
12 knowledge about the matter?

13 MR. JOHNSON: Do I need to --

14 THE WITNESS: Well, I just think it's more simple
15 than you're making it out to be.

16 BY MR. JOHNSON::

17 Q. Did you -- well, I think you've answered, that's fine.

18 THE COURT: Anything further of this witness?

19 MR. DETWILER: No, sir.

20 THE COURT: You may step down.

21 Anything further from anybody?

22 MR. DETWILER: Your Honor, I have my attorney's
23 fees affidavit. I'm prepared to testify about that.

24 THE COURT: No, he's not going to object. It's
25 submitted.

1 MR. DETWILER: Thank you, Your Honor.

2 MR. JOHNSON: Well, could I see that?

3 THE COURT: Oh, yeah, let him see it. It seems
4 within the range of normal charges or bills for this type of
5 work. And this all -- it's all or nothing, you know, one
6 way or the other. So if you want to object to it, go ahead.
7 I can let you do it in your proposed order if you need to.

8 MR. DETWILER: He has.

9 THE COURT: Give Mr. Johnson a copy of it and you
10 can argue about it if you need to, Mr. Johnson --

11 MR. DETWILER: It's the last thing in the book.

12 THE COURT: -- in your proposed order. We'll
13 cover everything.

14 Anything further, gentlemen?

15 MR. DETWILER: Nothing from the Plaintiff, Your
16 Honor. Thank you.

17 THE COURT: Okay. Give you 30 days for proposed
18 orders --

19 MR. JOHNSON: I have a witness.

20 THE COURT: Yes, sir. You want to put some
21 evidence up, Mr. Johnson?

22 MR. JOHNSON: Yes, sir, I want to object to that
23 attorney's fee affidavit as being hearsay, plus I have a
24 right to cross-examine Mr. Detwiler --

25 THE COURT: Come on up, Mr. Detwiler, tell him

1 about why you charged.

2 (Laughter.)

3 THEREUPON,

4 RICHARD CARL DETWILER,

5 after having been duly sworn, testified as follows:

6 THE COURT: Please take a seat. Tell us your full
7 name and spell your last name for the record.

8 THE WITNESS: Richard Carl --

9 THE COURT: Is this the first time you've ever
10 examined an attorney on his attorney's fees?

11 MR. JOHNSON: No.

12 THE COURT: Okay. Go ahead.

13 THE WITNESS: Richard Carl Detwiler,
14 D-E-T-W-I-L-E-R.

15 Thank you, Your Honor. I guess I have to testify
16 before he crosses me, is that how this works?

17 THE COURT: I think he can just ask -- you stand
18 on the affidavit you submitted for your services?

19 THE WITNESS: I stand on the affidavit, Your
20 Honor, and I'd be happy to submit in-camera any detail Your
21 Honor would like to substantiate those, but we believe that
22 they are --

23 THE COURT: What do you want to ask him?

24 THE WITNESS: -- appropriate.

25 MR. JOHNSON: I didn't want to interrupt him.

1 DIRECT EXAMINATION

2 BY MR. JOHNSON:

3 Q. Mr. Detwiler, do you have your bills?

4 A. I don't have my bills with me, but I certainly can
5 produce them if you -- but I would produce them
6 in-camera for the Court to see.

7 Q. Do you have your bill for cost?

8 A. Same answer.

9 Q. So we've got your net figure, but none of the backup?

10 A. I can certainly present that and prepared to present
11 that to the Court in-camera.

12 Q. Do you have -- do you have it here with you?

13 A. I do not have it here with me.

14 MR. JOHNSON: Your Honor, I would object to the
15 summary of his fees coming in.

16 THE COURT: That's fine. He's going to submit to
17 me in-camera. I'll take a look at them and take that into
18 account.

19 MR. JOHNSON: Under Rule 1006.

20 THE COURT: Beg your pardon?

21 MR. JOHNSON: I object on the basis of Rule 1006.

22 THE COURT: Okay. That's fine. That's fine.
23 Anything further?

24 MR. JOHNSON: Nothing further.

25 THE COURT: All right. Step down, Mr. Detwiler.

1 THE WITNESS: Do I have to?

2 THE COURT: Well, you don't have to. But take the
3 30 days, do the proposal order and cover anything in the
4 order you want to. I'll look at that and make a decision.

5 About 30 days after they give me the proposal,
6 I'll probably make a decision one way or the other. Thank
7 you all so very much.

8 MR. JOHNSON: We've got a witness.

9 THE COURT: Huh?

10 MR. DETWILER: For those?

11 MR. JOHNSON: Yeah.

12 MR. DETWILER: You don't have a counterclaim for
13 that.

14 MR. JOHNSON: It would relate to the
15 reasonableness of your fees.

16 THE COURT: I don't know what you're saying.

17 MR. DETWILER: He wants to put up their counsel's
18 fees.

19 THE COURT: How is that relevant?

20 MR. JOHNSON: Your Honor, it relates to the
21 reasonableness of the fees that are being --

22 THE COURT: Submit them to me in-camera. I'm not
23 hearing any testimony on it. Submit them to me. I mean,
24 submit me an affidavit or something, whatever you want to
25 do, but I've heard enough testimony today. I don't want to

1 hear anything else. But cover everything from both sides,
2 but I don't need to year -- you can't call him. He's not
3 going to know. Just give me an affidavit.

4 MR. JOHNSON: Okay.

5 THE COURT: That will be good.

6 MR. DETWILER: Thank you.

7 THE COURT: All right. Thank you. Y'all have a
8 safe trip back to Greenville. Good luck to everybody.

9 MR. DETWILER: Thank you, Judge.

10 THE COURT: All right.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COUNTY OF RICHLAND)

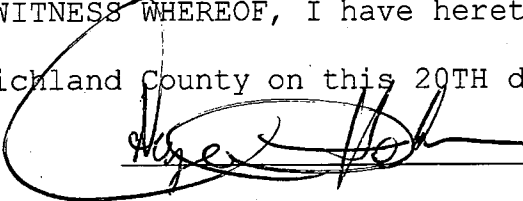
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Builders Mutual Insurance
5 Company et al. VS. Bob Wire Electric, Inc. et al., Case No.
6 2014-CP-40-01818, at the Richland County Courthouse, mARCH
7 16, 2015.

8 I FURTHER CERTIFY that the foregoing pages 1
9 through 57 constitute a true, accurate and full transcript
10 of said hearing.

11 I FURTHER CERTIFY that I am not employed by any of
12 the parties hereto and I have no financial interest in the
13 outcome of said case.

14 IN WITNESS WHEREOF, I have heretofore set my hand
15 and seal at Richland County on this 20TH day of June, 2016.

16 
17 Crystal Holmes, Official Court Reporter
18
19
20
21
22
23
24
25

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CHRISTOPHER C. PRICE) Claim No. 0220142
Employee/Claimant,)
-vs-) DEPOSITION OF:
PEACHTREE ELECTRICAL SERVICES) CHRISTOPHER C. PRICE
Employer,)
and)
PEACHTREE ELECTRICAL SERVICES)
Defendant.)

Given before Charles J. Martin, III, Court Reporter
and Notary Public, at the Law Offices of N. David
DuRant, 1801 Glenns Bay Road, Surfside Beach, South
Carolina, on Thursday, December the 18th, 2003
commencing at 11:10 a.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
-Professional Court Reporters-
Serving the Legal Community Since 1957
1-800-822-8711

Beaufort	Camden	Charleston	Columbia
Florence	Greenville	Greenwood	Hilton Head
Lexington	Myrtle Beach	Newberry	Orangeburg
Spartanburg	Summerville	Sumter	West Columbia

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711



A P P E A R A N C E S

For the Plaintiff: Callison, Tighe & Robinson, LLP
By: Mikell H. Wyman, Esquire
1812 Lincoln Street, Suite 200
Columbia, S.C. 29201

For the Defendant: N. David DuRant & Associates,
P.A.
By: N. David DuRant, Esquire
1801 Glenns Bay Road
Surfside Beach, S.C. 29587

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

INDEX TO EXAMINATIONS:

1
2 Direct examination by Mr. Wyman.....04
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

It was stipulated by and between counsel for the parties that this deposition is taken pursuant to notice and that all questions as to notice are waived; that all objections, save as to the form of the question, are reserved until the time of trial; that the deposition is taken pursuant to the South Carolina Rules of Civil Procedure, for the purposes allowed therein; and that the deponent was explained his right to read and sign the deposition and waived that right.

(Christopher C. Price, being duly sworn, testified as follows:)

DIRECT EXAMINATION BY MR. WYMAN:

Q. Good morning, Mr. Price, we met off the record, my name is Mikell Wyman, I represent Peachtree Electrical Services. Have you ever had your deposition taken?

A. No.

Q. This is an opportunity for me to ask you some questions about your worker's comp claim. I'm

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 not here to trick you, ask you any red herrings,
2 anything like that; I just want to find out what
3 you have to say about your claim. It's most
4 important that you understand the question that
5 I ask. If you need me to rephrase it, restate
6 it, I'll be happy to do that. But if you answer
7 it, I'm going to assume you understood it, is
8 that fair?

9 A. Yes, sir.

10 Q. Okay. I don't suspect that we'll be here very
11 long. But if at any time we take a break which
12 we can do if you like, if you speak with your
13 lawyer I need to let you know that I'm entitled
14 to ask about what you discussed with your lawyer
15 during the deposition. Until we go off the
16 record here and we're done. Are you under the
17 influence of any drugs, alcohol, prescriptions
18 or otherwise that would prevent you from giving
19 truthful testimony this morning?

20 A. I'm on prescription drugs, but nothing that
21 would..

22 Q. That wouldn't give you any problems testifying
23 today?

24 A. No, sir.

25 Q. Okay. Good. Give me your full name please.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

- 1 A. Christopher Carl Price.
- 2 Q. And your date of birth?
- 3 A. October 23rd, 1969.
- 4 Q. Social Security Number, please.
- 5 A. 256-06-6659
- 6 Q. Are you married, sir?
- 7 A. Divorced.
- 8 Q. Children?
- 9 A. No.
- 10 Q. What is your address please?
- 11 A. 4840 Moss Creek Loop, number 11, Murrells Inlet,
- 12 29576.
- 13 Q. Okay. How far did you go in school?
- 14 A. Graduated high school.
- 15 Q. Where was that?
- 16 A. Florida, Lemon Bay High School in Englewood,
- 17 Florida.
- 18 Q. Any technical school?
- 19 A. Yeah, I've had some technical school, no
- 20 college.
- 21 Q. Did you earn any degrees?
- 22 A. No degrees.
- 23 Q. Okay. What did you study in tech school?
- 24 A. I took nursing, I took electronics, took
- 25 electrical.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Okay. All right. If you would, please run
2 through your work history from the time that you
3 finished with your technical school training or
4 the time that you finished high school. And I
5 don't need to know absolutely everywhere that
6 you have worked, but I need to get a good idea
7 of the types of jobs that you have done.

8 A. Okay. I'll just start from where, pretty much
9 from when I got married.

10 Q. When was that?

11 A. That would've been '93.

12 Q. Okay.

13 A. Moved to Virginia, did home health nursing for a
14 couple of years. Got out of that and was a
15 warehouse foreman for a lumber company. Did
16 that for a year 'til they went out of business
17 and then started doing electrical work. Did
18 homes, residential homes for a year. Got out of
19 that and started for a little electrical
20 contractor doing commercial and industrial work.
21 Worked for him for two years before I moved here
22 to the beach, then I started working for
23 Peachtree.

24 Q. And how long were you with Peachtree?

25 A. I was with Peachtree six months before I was

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 injured.

2 Q. Speaking of being injured, give me, just give me
3 a brief description of how you injured yourself.

4 A. I was tracing down a wire underneath the
5 restaurant. It was about a three and a half
6 foot crawl space under the restaurant. I was
7 following the wire underneath, kinda stooped
8 down, walking across and stepped on the edge of
9 false -- it was wood covered with dirt to make
10 it look like regular ground. Stepped on the
11 edge of it, my right leg went down in the hole
12 and my left leg went out to my side and I fell
13 down into the hole.

14 Q. Okay. How did you land?

15 A. Just like that (indicates), my left leg out to
16 my side and my right leg down in the hole.

17 Q. Okay. Did you fall on your rear end?

18 A. I went all the way up to my crotch, and stopped.
19 Caught myself with my arms.

20 Q. Okay. Did anybody..

21 A. I fell all the way into the hole.

22 Q. Did anybody see you fall?

23 A. No. I had a helper that was working outside of
24 the restaurant.

25 Q. What was his name?

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 A. Anthony Goins.

2 Q. Do you know if he is still with Peachtree
3 Electrical Services?

4 A. No. He is not.

5 Q. Do you know where he works now?

6 A. I do not know where he works, but I do know how
7 to get in touch with him.

8 Q. Okay. Who was your supervisor on that job?

9 A. I was my supervisor.

10 Q. Okay. And you only had one helper?

11 A. Yes.

12 Q. Were you the only two on the job site?

13 A. Yes.

14 Q. Who was your supervisor back (indicates)?

15 A. Mike, Mike Stead, the owner.

16 Q. Did you contact Mike?

17 A. Yes.

18 Q. Okay. Where did you first receive treatment?

19 A. Doctor Turek.

20 Q. Okay. And when was that?

21 A. That was after Thanksgiving, it was right after
22 the accident.

23 Q. Okay. Was it the same day?

24 A. No. It was not the same day.

25 Q. Can you give me an estimate of how many days it

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 was between the accident and your first medical
2 treatment? If you're going to refer to it, I'm
3 entitled to look at it, is that a problem with
4 you?

5 A. Yeah. No. It's no problem. I'm just trying to
6 see if I've even got it in here, but I don't
7 think I do.

8 Q. Is that just your personal calendar that you're
9 referring to there?

10 A. Yeah. That's my personal calendar.

11 Q. That's fine. I can check it with medicals.
12 Again, I want to get your take on things. How
13 long did you treat with Doctor Turek?

14 A. I only had a couple of visits with Doctor Turek
15 until he referred me to Doctor Mills.

16 Q. What kind of treatment did Doctor Turek give
17 you, just generally?

18 A. Pain medications, steroids, and tried some
19 muscle relaxers.

20 Q. Okay. When you got to Doctor Mills, what kind
21 of treatment was he giving you initially?

22 A. Doctor Mills gave me pain medicine, took me off
23 of steroids. And just gave me pain medicine and
24 that was pretty much it, and started with x-
25 rays, then a CAT scan, then an MRI, and then a

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 mylogram before he decided to do surgery.

2 Q. Did you see any other doctors between the times
3 you were referred to Doctor Mills and your
4 surgery?

5 A. I went for a second opinion to Doctor Benjamin.

6 Q. Why did you go to a second opinion?

7 A. Because it was my back and that's your life, you
8 start messing with your back so I wanted a
9 second opinion.

10 Q. That was your choice?

11 A. Yeah.

12 Q. Do you remember the name of that doctor?

13 A. Doctor Benjamin.

14 Q. Did he provide any treatment to you?

15 A. No treatment.

16 Q. It was just an evaluation?

17 A. That's it.

18 Q. And if I'm not mistaken, you had surgery late
19 April.

20 A. April, had surgery April 22nd.

21 Q. How long were you in the hospital then?

22 A. I was out on the 23rd.

23 Q. Just one night you spent there?

24 A. I went there 6:30, 7:30, 22nd that morning, and I
25 was out by like 11:30 the next day.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Okay. Did you continue to treat with Doctor
2 Mills following the surgery?

3 A. Yes. I did.

4 Q. Did you see any other doctors after your surgery
5 until Doctor Mills released you?

6 A. No. The only thing I had was physical therapy.

7 Q. Okay. About how many times did you go to
8 physical therapy?

9 A. Went to physical therapy three times a week.

10 Q. And, when to the best of your recollection did
11 Doctor Mills release you to go back to work?

12 A. He released me to go back to work on -- I was
13 supposed to go back to work August 11th, but
14 Peachtree did not want me to come back to work
15 for 'em.

16 Q. And did you speak with Mike about that?

17 A. Yes. I did.

18 Q. What was his response to you?

19 A. Told me that work was slow and that he didn't
20 need me.

21 Q. Okay. Did you go back to work?

22 A. Yes. I did.

23 Q. You told me you were supposed to back to work on
24 the 11th, when did you actually..

25 A. I actually went back to work on the 18th of

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 August.

2 Q. Who did you go to work with?

3 A. I went back to work on my own, doing side work.

4 Q. When you say side work, was that electrical
5 work?

6 A. Yes, until October 17th, I started working for
7 Bob-Wire electric part time.

8 Q. Okay. When you were working for yourself, can
9 you give me an estimate of about how much money
10 you were making, or was it by the job?

11 A. Was making \$15 an hour.

12 Q. Okay. How were you finding work when you were
13 working by yourself?

14 A. I was working with somebody else?

15 Q. Okay. Who was that person, who were you
16 working, you said..

17 A. Brad Arruda, I was working with another guy.

18 Q. Was he your employee?

19 A. No. We both worked together doing jobs, we
20 would find jobs and both of us would go do 'em.

21 Q. What kind of jobs were you working?

22 A. Electrical jobs, residential, businesses..

23 Q. Anything you could get?

24 A. ..just anything we could find, yeah.

25 Q. And that was 15 an hour.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 A. Yeah.

2 Q. And, on October 17th, you went to work for Bob-
3 Wire?

4 A. Bob-Wire electrical, yes.

5 Q. How much were you making with Mr. Wire, or with
6 that..

7 A. \$15 an hour.

8 Q. Okay. Doing the same type of work?

9 A. (nods head)

10 Q. How long were you with Bob-Wire?

11 A. Until I was put out of work.

12 Q. Can you give me an idea of when that was?

13 A. November 20th.

14 Q. Why were you put out of work?

15 A. From the time I went back to work, gradually my
16 back had started hurting more and I went back
17 and seen Doctor Mills. He increased my pain
18 medication, um, so over the next couple of weeks
19 from that visit the pain started going down my
20 leg again. So. I called for another
21 appointment with Doctor Mills.

22 At that time, he put me on another kind of
23 medicine for the pain in my leg and asked me if
24 I wanted to be put out of work then. I told him
25 no.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Let me stop you right here, and I'm sorry to do
2 that, but I want to make sure we get this clear
3 for the record. About when did you first call
4 Doctor Mills after you went back to work?

5 A. First time I went back to Doctor Mills was
6 October the 15th.

7 Q. So that was before you took the job with Mr.
8 Wire; is that correct?

9 A. Right before I took the job with him, yes.

10 Q. So, you're already experiencing pain then?

11 A. Right.

12 Q. Right. You told me you made another appointment
13 with him after..

14 A. Right.

15 Q. Okay. When would that have been?

16 A. The following appointment was November the 13th.

17 Q. And you told me, if I'm not mistaken, that
18 Doctor Mills took you out of work November 20?

19 A. Right.

20 Q. Have you done any work since then?

21 A. No.

22 Q. Have you made any money in any way since then?

23 A. No.

24 Q. Okay. When Doctor Mills first released you, I
25 believe, somewhere around in August to go back

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 to work after your surgery, do you recall being
2 presented with a form asking you to agree that
3 you would go back to work, or that you were able
4 to back to work?

5 A. No. Doctor Mills released me to go back to
6 work. He told me to use my better judgment in
7 what I did as to not injure myself any further.

8 Q. Did he give you anymore specific restrictions
9 this time that you could do? Did he give you
10 what some doctors like to call a back owner's
11 manual, did he give you any papers as to how to
12 care for your back?

13 A. Yeah.

14 Q. And did you read those?

15 A. Yes.

16 Q. Did they contain any written restrictions on
17 what you could do?

18 A. Only thing that they contained were proper
19 lifting techniques.

20 Q. Okay. When you went back to work, did that
21 require you to do any lifting?

22 A. Yes.

23 Q. Did you do that lifting?

24 A. No..

25 Q. Who did that lifting?

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

- 1 A. The guy that I worked for, worked with. I
2 lifted nothing over 35 pounds basically.
- 3 Q. Was that a regular thing for you to lift 35
4 pounds or less on your job?
- 5 A. Yes.
- 6 Q. How many times a day, can you give me an
7 estimate, I know that's kind of hard to do, but
8 just give me round about..
- 9 A. My tool bay weighs over 20 pounds.
- 10 Q. So, you had that on your hips?
- 11 A. No, no, no. I carried it, I don't wear a tool
12 bag, I don't wear a waist thing, I have a bag I
13 carry. But, I mean, you know lifting a light,
14 putting a light up. The light can weigh
15 anywhere from five to twenty pounds.
- 16 Q. At any point did you get distinct feelings of
17 pain while were you doing those things?
- 18 A. Yes.
- 19 Q. How is your back now?
- 20 A. Not good.
- 21 Q. Explain. What's not good?
- 22 A. Constant pain 24 hours a day, doesn't go away.
23 Have to take pain pills every four hours.
- 24 Q. What are you taking?
- 25 A. Take Vicodin, 500 milligrams.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

- 1 Q. Anything else you're taking, not just pain
2 medication, but anything?
- 3 A. I take Neurontin 300 milligrams, which is for
4 nerve pain, take it twice a day. Take Mobic
5 7 ½ milligrams, which is an anti-inflammatory.
6 And I take Riveron at night to go to sleep.
- 7 Q. Who is prescribing those things for you?
- 8 A. Doctor Mills.
- 9 Q. You have named for me Doctor Turek, Doctor
10 Benjamin, and Doctor Mills, does that sound
11 correct?
- 12 A. Yes.
- 13 Q. Any other doctors you've seen?
- 14 A. Yes.
- 15 Q. Who?
- 16 A. Doctor Ahearn
- 17 Q. How did you get to Doctor Ahearn?
- 18 A. Second opinion for after Doctor Mills released
19 me.
- 20 Q. Okay. Did Doctor Ahearn treat you in any way?
- 21 A. No.
- 22 Q. Simply an evaluation?
- 23 A. Right.
- 24 Q. Okay. Did Doctor Mills refer you?
- 25 A. No. I went to Doctor Ahearn on my own.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Okay. Are you treating with a physician now?

2 A. Doctor Mills.

3 Q. When was the last time you saw Doctor Mills?

4 A. Would have been November 13th, na, I went to his
5 office December 3rd but I didn't see him.

6 Q. Why did you go on December 3rd?

7 A. Last time I went and seen him, he gave me the -
8 on December, I mean November 13th when I went and
9 seen him he prescribed the Neurontin. He told
10 me if my condition stayed the same - and he done
11 blood test to make sure that I didn't have an
12 infection in my back. And said if I still had
13 the pain that he was gonna do a MRI, so I went
14 back and seen him December 3rd, and that's when
15 he told me he wanted to do an MRI.

16 Q. Have you scheduled that MRI?

17 A. We tried to schedule the MRI, but workmen's comp
18 wouldn't authorize it.

19 Q. Okay. All right. How do you spend your day now
20 that you're not working?

21 A. At home. Sometimes I leave and go see some
22 friends that I have at the beach. About once a
23 day, maybe, I might take my dog out for a walk.
24 But I have my roommate takes my dog out for a
25 walk for me.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Okay. Has Doctor Mills indicated that you might
2 need further surgery?

3 A. He hasn't indicated anything. The only thing he
4 said is that he thought it might be an infection
5 in my back, that's why he done the blood work.
6 Now he wants the MRI so he can see what's
7 causing this, now, because he has no indication
8 as to why it's doing it.

9 Q. Are the pain medications that you're taking and
10 the muscle relaxers..

11 A. I don't take any muscle relaxers.

12 Q. I'm sorry, I didn't mean to characterize your
13 testimony. Any of the prescriptions that you're
14 taking aside from, of course, the one that helps
15 you sleep, are they helping the pain?

16 A. Yeah, they help manage it.

17 Q. Is it still there when you're on the pain
18 medications?

19 A. Yeah.

20 Q. Okay.

21 A. The only pain that's not there is the pain in my
22 leg, my back always hurts, always. The
23 Neurontin keeps the pain from going down my leg.

24 Q. Is there anything, besides the drugs, that
25 lessens the pain for you?

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 A. Not right now, no.

2 Q. Does it help when you lay down?

3 A. No. I have to take sleeping pills to go to
4 sleep. I can't get comfortable at night to go
5 to sleep. I pretty much gotta knock myself out.

6 Q. Okay. Tell me what makes the pain worse as far
7 as your activities. What kind of things really
8 give you problems?

9 A. Can't bend over.

10 Q. And when you say bend, you mean bend at the
11 waist?

12 A. Yeah. Like bend at the waist, I can't bend at
13 the waist. If I kneel down to pick something
14 up, stand back up it makes it worse, I mean, and
15 I'm not talking about picking up something
16 heavy. I'm talking, down to pick up an ice cube
17 that dropped on the floor, that makes it worse.

18 Q. Tell me about where you live, do you have any..

19 A. Steps.

20 Q. Okay. You have steps going into your home, is
21 it a home?

22 A. No. Townhouse. I live in a townhouse.

23 Q. So. Are you responsible for taking care of a
24 yard?

25 A. No.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Anything like that?

2 A. My roommate does all the cleaning, I don't even
3 clean anything. I make my bed and do my
4 laundry.

5 Q. I hate to hear that you're hurt, but that's not
6 necessarily a bad thing.

7 A. No.

8 Q. I wish I had a roommate that would do all that
9 for me.

10 A. This is the first roommate, my last roommate
11 wasn't like that, but this roommate takes care
12 of me.

13 Q. What kind of things do you do for fun Mr. Price?

14 A. Play with my dog. Go see my friends. Maybe go
15 out on weekends, go to the club for an hour or
16 two.

17 Q. Any hobbies?

18 A. No.

19 Q. Play any sports?

20 A. No.

21 Q. If you give me just a second, I think we might
22 be almost done.

23 MR. DURANT: Take your time.

24 (Deposition goes off the record for a
25 brief period of time.)

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Mr. Price, just a few more and I'll let you out
2 of here. You don't dispute the fact that you
3 could return to work back when Doctor Mills
4 released you in August, do you?

5 A. I coulda used some more physical therapy I do
6 believe.

7 Q. Did he tell you that or is that just your
8 feeling?

9 A. That's what the physical therapist told me and I
10 believe that I coulda used some more but Doctor
11 Mills said no.

12 Q. But you did go back to work a week later?

13 A. Yes I did.

14 Q. By your comment to us you just made, I would
15 assume physical therapy helped.

16 A. Oh, yeah.

17 Q. Okay.

18 A. I couldn't have went right from surgery and --
19 without physical therapy and went back to work,
20 no.

21 Q. Sure, sure. Did you do any work hardening, work
22 conditioning?

23 A. That's what I did, yeah.

24 Q. At the physical therapist.

25 A. Yeah, that's what I did.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. There were two distinct..

2 A. I done a month of physical therapy then I done
3 two months of work conditioning.

4 Q. Was is all with the same service?

5 A. Yes, all at the same place. They requested
6 another three weeks of work conditioning with,
7 what is it FYE or something, whatever.
8 Functional -- FCI, whatever that is. And Doctor
9 Mills rejected it and sent me to work.

10 Q. How much were you making when you worked at
11 Peachtree?

12 A. 12.50 an hour.

13 Q. Was that full time?

14 A. Yes.

15 Q. Any overtime, regularly?

16 A. Occasionally.

17 Q. Do you recognize the name Michael and Company
18 Hair Salon?

19 A. Yes.

20 Q. Okay. What is that?

21 A. That's a job that I did down in Pawley's Island.

22 Q. Okay. When did you do that job?

23 A. It woulda been some time before I got hurt,
24 right there September, October I guess.

25 Q. While you were working for Peachtree?

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 A. While I was working for Peachtree, yes.

2 MR. WYMAN: That's all I got, thank you.

3
4
5
6 (Deposition CONCLUDED at 11:38 a.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 STATE OF SOUTH CAROLINA)

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 : C-E-R-T-I-F-I-C-A-T-E
 2 COUNTY OF HORRY)
 3

4 I, Charles J. Martin, III, Court Reporter and Notary
 5 Public, certify that I did have Christopher C. Price to
 6 appear before me at 11:10 a.m. on Thursday, December the
 7 18th, at the Law Office of N. David DuRant, 1801 Glenns
 8 Bay Road, Surfside Beach, South Carolina; that the
 9 witness was sworn and cautioned to tell the truth, the
 10 pages constitute a true and accurate transcript of the
 11 testimony given at that time and place.

12 I further certify that I am not of counsel or kin to
 13 any of the parties to this cause of action, nor am I
 14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
 16 seal this the 19th day of December, 2003.

17
 18
 19
 20
 21
 22
 23
 24
 25

Notary Public for South Carolina
 My Commission expires 11/04/08

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN.

04-CP-22-387

CHRISTOPHER PRICE,
 PLAINTIFF,
 VS.
 DIVINE FISH HOUSE, INC.,
 D/B/A DIVINE FISH HOUSE
 & WAHOO'S RAW BAR &
 GRILL,
 DEFENDANTS.

DEPOSITION OF
 CHRISTOPHER PRICE

FEBRUARY 1st, 2005

DEPOSITION FROM 10:45 A.M.

TAKEN BY PEPPER M. MCCARTHY, NOTARY PUBLIC AND
 PROFESSIONAL REPORTER, AT THE LAW OFFICE OF DAVID DURANT, 1801
 GLENNS BAY ROAD, SURFSIDE BEACH, SOUTH CAROLINA.

STIPULATIONS

IT WAS STIPULATED BY AND BETWEEN COUNSELS FOR THE
 PARTIES THAT THIS DEPOSITION IS TAKEN PURSUANT TO
 NOTICE AND THAT ALL QUESTIONS AS TO NOTICE ARE
 WAIVED; THAT ALL OBJECTIONS, EXCEPT AS TO FORM OF
 THE QUESTION ARE RESERVED UNTIL THE TIME OF
 TRIAL; THAT THE DEPOSITION IS TAKEN PURSUANT TO
 THE RULES OF CIVIL PROCEDURE FOR THE PURPOSES
 ALLOW THEREIN; AND THAT THE DEPONENT WAS
 EXPLAINED HIS RIGHT TO READ AND SIGN THE
 DEPOSITION AND WAIVES THAT RIGHT.

THIS IS AN OFFICIAL TRANSCRIPT GOVERNED BY 25A S.C. CODE ANN.
 REGS 67-615D (SUPP. 2000). THE UNAUTHORIZED COPYING OF THIS
 DOCUMENT IS DEEMED TO BE CONVERSION OF AN ASSET BELONGING TO
 THE COURT REPORTER.

CHRISTOPHER PRICE, AFTER FIRST HAVING BEEN DULY SWORN,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SALEEBY:

Q MR. PRICE, WE MET BEFORE YOUR DEPOSITION. I THINK YOU
 HAD THE OPPORTUNITY TO LISTEN IN ON ANTHONY GOINS'
 DEPOSITION, BUT AGAIN, FOR THE RECORD, I'M JAY SALEEBY.
 I'M AN ATTORNEY FROM FLORENCE WITH AIKEN BRIDGES LAW
 FIRM AND I REPRESENT THE DIVINE FISH HOUSE IN THIS

APPEARANCES

FOR THE PLAINTIFF: FROM: ATTORNEY AT LAW
 N. DAVID DURANT, ESQ.
 1801 GLENNS BAY ROAD
 SURFSIDE BEACH, SC 29587

FOR THE DEFENDANTS: FROM: AIKEN BRIDGES
 JAMES SALEEBY, ESQ.
 P.O. DRAWER 1931
 FLORENCE, SC 29503

INDEX TO EXAMINATION

DIRECT EXAMINATION BY MR. SALEEBY PAGE 3

LAW SUIT THAT YOU AND YOUR ATTORNEY HAVE BROUGHT AGAINST
 IT. AFTER LISTENING TO MR. GOINS' DEPOSITION, DO YOU
 KIND OF UNDERSTAND THE PROCESS NOW AND HOW THINGS ARE
 GOING TO WORK?

A YES, SIR.

Q SO ALL I'M GOING TO DO IS ASK YOU A SERIES OF QUESTIONS.
 I'M GOING TO FIND OUT ABOUT WHO YOU ARE, AS A PERSON,
 AND I'M GOING TO FIND OUT ABOUT THE ACCIDENT THAT TOOK
 PLACE TOWARDS THE END OF 2002, THEN WE'LL ASK YOU ABOUT
 THE DOCTORS AND THE TREATMENT THAT YOU'VE UNDERGONE
 SINCE THAT ACCIDENT. OKAY?

A OKAY.

Q LIKE I TOLD ANTHONY, THE RULES APPLY, BUT I TELL YOU
 THAT IF YOU DON'T UNDERSTAND SOME QUESTION THAT I ASK
 YOU, YOU NEED TO STOP ME AND LET ME KNOW THAT AND I'LL
 REPHRASE OR REPEAT THAT QUESTION, SO THAT YOU AND I WILL
 BE ON THE SAME PAGE. YOU'RE NOT ALLOWED TO LOOK TO YOUR
 ATTORNEY OR ANYONE ELSE TO ASK THEM TO CLARIFY IT FOR
 YOU. OKAY?

A OKAY.

Q AGAIN, I DON'T TAKE LONG DEPOSITIONS. ANTHONY'S TOOK
 LONGER THAN I EXPECTED FOR A WITNESS DEPOSITION. I'LL
 TRY TO MOVE YOURS ALONG AS QUICKLY AS POSSIBLE, BUT IF
 YOU NEED A BREAK FOR ANY REASON, YOU JUST LET ME KNOW IT
 AND I'LL BE HAPPY TO ACCOMMODATE YOU. OKAY?

PLAINTIFF'S
 EXHIBIT

5

A ALL RIGHT.
 Q WHAT'S YOUR FULL NAME, PLEASE?
 A CHRISTOPHER CARL PRICE.
 Q WHAT IS YOUR DATE OF BIRTH?
 A OCTOBER 23RD, 1969.
 Q DO YOU KNOW YOUR SOCIAL SECURITY NUMBER?
 A 256-06-6659.
 Q WHERE DO YOU CURRENTLY RESIDE?
 A 4240 MOSS CREEK LOOP, UNIT 11, MURRELLS INLET.
 Q WHO RESIDES WITH YOU AT THAT ADDRESS?
 A A ROOMMATE.
 Q WHO IS THAT?
 A MICHAEL HICKMAN.
 Q ARE YOU MARRIED?
 A NO.
 Q HAVE YOU EVER BEEN MARRIED?
 A YES.
 Q DID THAT MARRIAGE END IN DIVORCE?
 A YES.
 Q DOES YOUR EX-WIFE LIVE IN Horry COUNTY ANYWHERE ---
 A NO.
 Q --- OR GEORGETOWN COUNTY ANYWHERE?
 A NO.
 Q IS SHE UP IN NORTH CAROLINA?
 A YES.

7

Q BUT YOU DID RECEIVE SOME TRAINING IN BEING AN
 ELECTRICIAN AND WIRING, THAT KIND OF STUFF? IS IT
 YES?
 A YES.
 Q DO YOU CURRENTLY WORK WITH ANY EMPLOYER TODAY?
 A NO.
 Q DO YOU HAVE ANY KIND OF OCCUPATION WHATSOEVER?
 A NO.
 Q WHAT DO YOU DO FOR INCOME ON A WEEKLY OR MONTHLY
 BASIS?
 A WORKMEN'S COMP.
 Q THE WORKMEN'S COMP CLAIM, DOES THAT ARISE FROM THE
 ACCIDENT THAT WE'RE HERE ABOUT TODAY?
 A YES.
 Q THE ONE THAT HAPPENED AT THE FISH HOUSE?
 A YES.
 Q HAS THAT CLAIM BEEN SETTLED OR CLINCH OR IS IT STILL
 GOING FORWARD?
 A STILL GOING.
 Q HAVE THE DOCTORS DECLARED THAT YOU HAVE REACHED MAXIMUM
 MEDICAL IMPROVEMENT YET?
 A YES.
 Q DO YOU KNOW WHEN THEY SAID THAT, WHEN YOU REACHED THAT
 M.M.I. OR MAXIMUM MEDICAL IMPROVEMENT?
 A END OF DECEMBER.

6

Q WHAT'S HER NAME?
 A VALERIE.
 Q IS THAT YOUR ONLY MARRIAGE?
 A YES.
 Q DO YOU HAVE ANY CHILDREN?
 A NO.
 Q WHERE DID YOU ATTEND HIGH SCHOOL?
 A FLORIDA --- BAY HIGH SCHOOL, INGLEWOOD, FLORIDA.
 Q DID YOU GRADUATE FROM HIGH SCHOOL?
 A YES, I DID.
 Q DO YOU HAVE ANY FORMAL EDUCATION ABOVE AND BEYOND HIGH
 SCHOOL?
 A I HAD A COUPLE YEARS OF COLLEGE.
 Q WHERE DID YOU ATTEND?
 A SURRY COMMUNITY COLLEGE AND I.T.T. TECHNICAL INSTITUTE.
 Q WHERE IS THE COMMUNITY COLLEGE?
 A IN SURRY COUNTY, NORTH CAROLINA.
 Q I.T.T., WHERE WAS THAT?
 A TAMPA, FLORIDA.
 Q WHAT KIND OF CLASSES DID YOU TAKE, IN GENERAL?
 A I TOOK JUST A BUNCH OF PREREQUISITE COURSES TO GO TO
 UNIVERSITY, AND I TOOK SOME ELECTRICAL COURSES.
 Q DID YOU RECEIVE ANY KIND OF CERTIFICATES OR ASSOCIATE'S
 DEGREES OR ANYTHING LIKE THAT?
 A NO.

8

Q OF 2004?
 A 2004, YES.
 Q I KNOW YOU'RE NOT AN ATTORNEY, AND IF YOU DON'T KNOW,
 YOU DON'T KNOW, BUT DO YOU KNOW WHAT THE NEXT STAGE IS
 FOR YOUR WORKERS' COMPENSATION CLAIM? DO YOU KNOW IF
 YOU ALL ARE ABOUT TO SETTLE IT OR IF THERE'S A HEARING
 COMING UP OR ANYTHING LIKE THAT?
 A WE'RE TRYING TO SETTLE IT.
 Q THE MONEY YOU'VE RECEIVED FROM WORKERS' COMP THUS FAR
 WOULD BE, I GUESS THE AVERAGE WEEKLY WAGE AMOUNTS THAT
 YOU GET ON A WEEKLY OR MONTHLY BASIS?
 A WEEKLY BASIS, AND EXPENSES.
 Q THEY HAVE PROBABLY BEEN PAYING YOUR MEDICAL BILLS.
 A YES.
 Q AGAIN, YOU MAY NOT KNOW THIS, BUT DO YOU KNOW HOW MUCH
 THE WORKERS' COMPENSATION CARRIER HAS PAID IN MEDICAL
 BILLS ON YOUR BEHALF TO-DATE?
 A MY KNOWLEDGE WOULD BE AROUND SEVENTY-FIVE THOUSAND, BUT
 THAT'S JUST FOR THE BILLS THAT I SEE. I'VE NEVER GOTTEN
 ANY BILLS FOR ANY OF THE PHYSICAL THERAPY, AND SO I KNOW
 THOSE GOT TO RUN RIGHT UP THERE TOO.
 Q LET'S GO OFF THE RECORD FOR ONE SECOND.
OFF THE RECORD
 Q MR. PRICE, I CAN'T REMEMBER EXACTLY WHERE WE LEFT OFF.
 I THINK WE TALKED ABOUT, KIND OF, YOUR EDUCATIONAL

9

BACKGROUND AND THE FACT THAT YOU'RE NOT WORKING RIGHT NOW. HAVE YOU WORKED SINCE THE ACCIDENT AT THE FISH HOUSE?

A I WORKED FOR A COUPLE MONTHS AFTER MY FIRST SURGERY AND RE-INJURED.

Q SO WE HAVE AN ACCIDENT NEAR THE END OF 2002, AND WE'LL GET THAT DATE DOWN LATER. YOU DON'T WORK AT ALL UNTIL AFTER YOUR FIRST SURGERY, WHICH IS IN APRIL OF '03, IS THAT CORRECT?

A RIGHT.

Q HOW LONG AFTER YOUR SURGERY, IN APRIL OF '03, DID YOU RETURN TO PEACHTREE?

A I NEVER RETURNED TO PEACHTREE. THEY DID NOT WANT TO HIRE ME BACK.

Q WHERE DID YOU GO TO WORK AFTER YOUR SURGERY IN APRIL OF '03?

A I DID SOME WORK ON MY OWN AND I WORKED FOR BOB WIRE ELECTRIC.

Q WHICH DID YOU DO FIRST?. THE WORK ON YOUR OWN OR THE WORK WITH BOB WHITE ELECTRIC?

A BOTH OF THEM AT THE SAME TIME.

Q WHEN WAS IT THAT YOU RETURNED TO WORK AFTER YOU SURGERY IN APRIL OF '03?

A LET'S SAY IT WAS AUGUST AND SEPTEMBER.

Q FOR HOW LONG DID YOU WORK?

10

A ABOUT TWO, TWO AND A HALF MONTHS. MY DOCTOR RELEASED ME WITH NO LIMITATIONS.

Q WAS THAT DR. MILLS, WHEN YOU REFER TO YOUR DOCTOR?

A DR. MILLS.

Q YOU WERE EMPLOYED WITH BOB WIRE DURING THAT TWO OR TWO AND A HALF MONTHS. IS THAT BOB WIRE ELECTRIC?

A YES.

Q WHERE IS THAT LOCATED?

A LIBERTY STREET, RIGHT AROUND THE CORNER HERE.

Q IN SURFSIDE BEACH?

A YES.

Q WHO WAS YOUR SUPERVISOR THERE?

A BOB --- I CAN'T THINK OF WHAT HIS LAST NAME IS.

Q THE GUY THAT THE BUSINESS IS NAMED AFTER?

A YEAH.

Q YOU SAY YOU WORKED FOR YOURSELF SOME, I GUESS. DID YOU WORK AS A SUBCONTRACTOR WITH SOME GUYS --- (TALKING OVER EACH OTHER) AND THEY NEEDED SOME WORK DONE?

A YES.

Q YOU TALKED ABOUT RETURNING TO WORK IN AUGUST OR SEPTEMBER OF '03. I'VE GOT SOME NOTES FROM LONG BAY REHAB, AND IT SAYS YOU WERE RELEASED TO RETURN TO WORK, FULL-DUTY, IN SEPTEMBER OF 2003. SO THAT TIME FRAME IS CORRECT?

A (NO RESPONSE.)

11

Q IS THAT A YES?

A YES.

Q THEN IT SAYS, "HE STATES HE WAS RE-INJURED AT THE END OF NOVEMBER OF 2003, WHEN PULLING WIRE THROUGH A PIPE AND THE RESISTANCE AND JARRING EXACERBATED HIS BACK AND LEG PAIN," IS THAT CORRECT?

A YES.

Q WHAT HAPPENED? WHAT WERE YOU DOING IN NOVEMBER OF 2003?

A PULLING WIRE.

Q DO YOU REMEMBER WHERE YOU WERE AT THAT TIME?

A MURRELLS INLET, AT THE SCUBA SHOP. WE WERE WIRING THE SCUBA EXPRESS, I THINK IS WHAT IT'S CALLED.

Q I'M NOT GOOD WITH ELECTRICAL WIRING AND STUFF. WHAT ARE YOU DOING WHEN YOU'RE PULLING A WIRE? WHAT HAPPENS?

A WHEN WE'RE PULLING THREE-FACE POWER FROM THE POLE, FROM THE METER, TO AN OUTBUILDING THAT THEY' HAD THEIR COMPRESSOR IN FOR CHARGING THE TANKS; AND SO IT'S A LITTLE THICKER WIRE THAN, LIKE, WHAT YOU WOULD RUN FOR RECEPTACLES AND STUFF LIKE THAT; AND THE GUY I WAS WORKING WITH, HE WAS FEEDING IT IN THE PIPE AND I WAS PULLING ON THE ROPE, TRYING TO GET THE WIRE UP THROUGH THE PIPE, SO HE COULD PUT THE PANEL UP.

Q DOING SOMETHING LIKE THAT REQUIRED A GOOD BIT OF EFFORT AND A GOOD BIT OF PULLING? WOULD YOU SAY IT WAS STRENUOUS?

12

A YES.

Q WOULD YOU SAY IT'S VERY STRENUOUS?

A IN GOOD HEALTH? NO.

Q GIVEN THE CONDITION YOU WERE IN ---

A VERY STRENUOUS.

Q WAS THAT EVEN WHAT KIND OF BROUGHT ALL THE PROBLEMS BACK TO THE SURFACE AND THE NEW ROUND OF TREATMENT WITH DR. MILLS AND EVERYBODY ELSE?

A I WAS PULLING ON THE WIRE, FELT SOMETHING IN MY BACK GO, AND I FELL TO THE GROUND FROM THE PAIN.

Q DO YOU KNOW WHAT THE NAME OF THE SCUBA SHOP WAS YOU WERE WORKING AT?

A SCUBA EXPRESS.

Q DID YOU FILE ANY WORKERS' COMP CLAIM AGAINST BOB WIRE?

A NO.

Q WHEN YOU WERE ONSITE, WAS THAT THROUGH BOB WIRE OR WERE YOU ON YOUR OWN, WHEN YOU WERE DOING THAT?

A IT WAS THROUGH BOB WIRE, BUT IT WASN'T ANYTHING ON HIS PART. I MEAN, WHAT I HURT THERE WAS EXACTLY WHAT DR. MILLS HAD JUST OPERATED ON. THIS WASN'T --- THIS WASN'T A NEW INJURY. IT WAS THE SAME ONE.

Q WHEN YOU TALKED TO DR. MILLS ABOUT IT, DID HE TELL YOU THAT YOU UNDOED WHAT HE WAS ABLE TO DO IN THE SURGERY OR DID HE GIVE AN EXPLANATION OF WHAT HAPPENED, AS FAR AS THE INJURY WAS CONCERNED, FROM THE SCUBA SHOP?

13

A I HAD TWO DISKS THAT WERE HERNIATED, AND --- BUT ONLY ONE OF THEM WAS PUSHED OUT ENOUGH THAT IT WAS PINCHING THE SCIATICA NERVE. SO HE --- THE FIRST OPERATION, HE TRIMMED THE FIRST ONE, THE ONE THAT WAS BULGING. HE TRIMMED IT BACK, BUT HE LEFT THE SECOND ONE ALONE.

Q HE TRIMMED THE ONE THAT WAS TOUCHING THE NERVE.

A THE NERVE --- RIGHT --- AND THE OTHER ONE, HE DIDN'T DO ANYTHING AT ALL TO; AND WHEN I RE-INJURED IT WAS THE SAME DISK THAT HE HAD SHAVED, POPPED RIGHT BACK OUT, EVEN MORE THIS TIME; AND THE SECOND ONE WAS OUT FURTHER.

Q SO, IN THE FIRST SURGERY, HE SHAVES A DISK, SO YOU NO LONGER HAVE NERVE IMPINGEMENT.

A RIGHT.

Q THEN THIS THING HAPPENS AT THE SCUBA SHOP AND YOU GO BACK TO GET CHECKED OUT BY DR. MILLS, AND THEN THAT FIRST DISK THAT WAS SHAVED, AS WELL AS THE SECOND DISK, ARE BOTH IMPINGING ON THE NERVE AT THAT TIME.

A RIGHT.

Q THEN YOU HAVE THE SECOND SURGERY, I GUESS, IN JUNE OF 2004?

A YES.

Q WHAT WAS DIFFERENT ABOUT THE SECOND SURGERY? WHAT DID HE DO IN THAT ONE THAT HE DIDN'T DO IN THE FIRST?

A HE REMOVED BOTH THE DISKS, PUT BONE GRAFT IN, FUSED THREE VERTEBRAE TOGETHER WITH SIX SCREWS AND TWO STEEL

14

RODS.

Q IT SOUNDS LIKE YOU'VE BEEN THROUGH A LOT. SO DO YOU KNOW WHAT LEVEL OF THE SPINE YOU HAD THIS SURGERY?

A LUMBAR.

Q WAS THAT THE L-5?

A L-5, S-1.

Q I'M GOING TO JUMP BACK A LITTLE BIT. LET ME STAY ON THAT TRACK FOR JUST A COUPLE MORE MINUTES. AFTER YOU HAVE YOUR SECOND SURGERY IN JUNE OF 2004, TELL ME ABOUT YOUR RECOVERY PERIOD AFTER THAT. COULD YOU TELL THAT SOME GOOD HAD BEEN DONE OR HOW DID YOU PROGRESS?

A IT'S BEEN A NIGHTMARE. THE WHOLE THING'S BEEN A NIGHTMARE. I'VE NEVER BEEN IN SO MUCH PAIN IN MY LIFE, AND IT HASN'T --- IT HASN'T BEEN GOOD. I CAN'T SLEEP. I CAN MAYBE GET UP AROUND THE HOUSE AND DO SOMETHING FOR AN HOUR, HOUR AND A HALF, AND I'M MORE OUT THE REST OF THE DAY. I MEAN, THE SECOND SURGERY ALLEVIATED MY PAIN IN MY LEG FROM THE PINCHED NERVE.

Q WAS IT GOING DOWN THE LEFT LEG OR RIGHT LEG?

A RIGHT LEG --- BUT THE PAIN IN MY BACK IS WORSE NOW THAN IT WAS BEFORE THE SURGERY.

Q I'LL BACKTRACK IN A LITTLE BIT, BUT AS WE SIT HERE TODAY, WHAT MEDICATIONS DO YOU TAKE?

A I TAKE VICODIN, 500 MILLIGRAMS EVERY FOUR HOURS, FLEXERIL, REMERON AND EFFEXOR.

15

Q I KNOW WHAT VICODIN AND FLEXERIL DO. WHAT DOES REMERON DO?

A REMERON IS A SLEEPING PILL AND EFFEXOR IS AN ANTIDEPRESSANT.

Q BEFORE THE LAST COUPLE OF MONTHS OF 2002, DID YOU TAKE ANY KIND OF PRESCRIPTION MEDICATIONS ---

A NO.

Q --- ON A REGULAR BASIS? HAD YOU EVER TAKEN ANY KIND OF ANTIDEPRESSANT BEFORE THE SECOND HALF OF 2002?

A YES.

Q WHAT HAD YOU TAKEN BEFORE?

A I HAD TAKEN WELLBUTRIN TO HELP ME QUIT SMOKING.

Q HAD YOU EVER SOUGHT ANY PSYCHOLOGICAL COUNSELING OF ANY KIND BEFORE THE SECOND HALF OF 2002?

A YES.

Q WHY WAS THAT? WHAT PROMPTED THAT TREATMENT?

A PROBLEMS WITH MY MARRIAGE.

Q DID YOU ALSO TAKE THE WELLBUTRIN IN CONJUNCTION WITH THE DIVORCE?

A (NO RESPONSE.)

Q IS THAT A YES?

A YES. I'M SORRY ABOUT THAT.

Q WHEN DID YOU HAVE THE DIVORCE? WHEN WAS THAT?

A ABOUT MIDDLE --- MID-JUNE, JULY, 2000.

Q DID YOU ALL RESIDE IN NORTH CAROLINA AT THAT TIME?

16

A YES.

Q WAS THAT IN MOUNT AIRY?

A YES.

Q BEFORE THE ACCIDENT THAT BRINGS US HERE TODAY, HAVE YOU EVER HAD ANY KIND OF LOWER BACK OR RIGHT LEG PROBLEMS BEFORE?

A I HAD A PULLED A MUSCLE IN MY LOWER BACK BEFORE.

Q DID IT REQUIRE ANY TREATMENT OF ANY KIND?

A JUST PAIN PILLS AND FLEXERIL FOR, LIKE, THREE DAYS, THEN IT CLEARED UP. NEVER HAD ANYMORE PROBLEMS.

Q DID YOU SEE A DOCTOR AT THE BEACH AREA FOR THAT OR WERE YOU IN NORTH CAROLINA?

A NO. I WAS IN NORTH CAROLINA.

Q WHO WAS YOUR FAMILY PHYSICIAN IN NORTH CAROLINA?

A DR. TEMPLETON.

Q HE IS IN MOUNT AIRY?

A YES.

Q WAS HE THE GUY THAT GAVE YOU THE PRESCRIPTION AND LOOKED AT YOUR LOW BACK WHEN YOU HAD THE MUSCLE PULLED?

A YES, SIR.

Q WAS THAT JUST ONE VISIT WITH THE DOCTOR, AND OTHER THAN THAT ONE VISIT, HAD YOU EVER HAD ANY OTHER BACK OR LEG PROBLEMS BEFORE THIS ACCIDENT AT THE BEACH?

A NO.

Q YOU HEARD ME ASK ANTHONY THIS. THIS IS A QUESTION I ASK

17

IN EVERY DEPOSITION. I DON'T MEAN TO MAKE IT PERSONAL,
BUT DO YOU HAVE ANY KIND OF CRIMINAL RECORD WHATSOEVER?

A YES.

Q WHAT WOULD THAT CONSIST OF?

A NARCOTICS CHARGE.

Q DID ANY OF THEM OCCUR IN SOUTH CAROLINA?

A YES.

Q WHAT WAS THE CHARGE OR CHARGES, SPECIFICALLY?

A POSSESSION OF MARIJUANA AND POSSESSION OF COCAINE.

Q DID A LOCAL ATTORNEY ASSIST YOU WITH HANDLING THOSE
CHARGES?

A YES.

Q WHO DID THAT?

A DAVID.

Q WHAT WAS THE DISPOSITION? DID YOU PLEAD GUILTY? DID
YOU TRY THE CASE? WHAT HAPPENED?

A PLEAD GUILTY.

Q DID YOU DO IT IN CONWAY?

A YES.

Q WOULD YOU REMEMBER THE JUDGE'S NAME, BY CHANCE?

A NO.

Q WHAT WAS YOUR SENTENCE OR PUNISHMENT?

A PRID FINES.

Q DID YOU GET ANY PROBATION AT ALL?

A NO.

19

Q WHAT DO YOU HAVE TO DO?

A THEY TOLD ME I WAS GOING TO GET A SIX MONTHS' PROBATION.

Q WHEN WAS THE DRIVING WITHOUT A LICENSE?

A THANKSGIVING OF LAST YEAR.

Q 2004? I MAY HAVE CONFUSED MYSELF. HAVE YOU ALREADY
PLEAD GUILTY TO THAT OFFENSE?

A NO.

Q DO YOU HAVE AN ATTORNEY HELPING YOU DOWN IN FLORIDA?

A YES.

Q WHO'S DOING THAT?

A SHANNON RUE.

Q WHAT CITY OR COUNTY IS THIS IN?

A PUNTA GORDA, FLORIDA, CHARLOTTE COUNTY.

Q ARE YOU AWAITING A TRIAL DATE OR A DATE TO POSSIBLY
PLEAD GUILTY?

A FEBRUARY 15TH.

Q IS THE PLAN TO PLEAD GUILTY ON THAT DAY?

A YES.

Q YOU MIGHT GET SIX MONTHS' PROBATION?

A I WILL GET SIX MONTHS' PROBATION.

Q YOU'LL HAVE TO REPORT ON A MONTHLY BASIS DOWN THERE?

A YES.

Q ANY OTHER CRIMINAL ---

A NO.

Q --- RECORD AT ALL? THE ONLY PUNISHMENT YOU GOT FROM THE

18

Q YOU DIDN'T HAVE TO REPORT TO A PROBATION GUY OR ANYTHING
LIKE THAT?

A NO.

Q WERE YOU ARRESTED THE SAME TIME ANTHONY WAS?

A YES.

Q IT ARISES FROM THE SAME INCIDENT?

A YES.

Q DID THE POLICE OFFICERS COME TO YOU ALL'S APARTMENT OR
SOMETHING?

A YES.

Q DID YOU HAVE ANY OTHER BRUSHES WITH THE LAW IN SOUTH
CAROLINA?

A NO.

Q DO YOU HAVE ANY OTHER MARKS ON YOUR CRIMINAL RECORD,
OTHER THAN WHAT YOU'VE ALREADY TOLD ME ABOUT, FROM ANY
STATE?

A (NO RESPONSE.)

Q THAT'S IT, AS FAR AS YOUR CRIMINAL RECORD IS CONCERNED?

A FLORIDA.

Q WHAT HAPPENED IN FLORIDA?

A DRIVING WITHOUT A LICENSE.

Q DID YOU PLEAD GUILTY TO THAT?

A YES.

Q DID YOU GET ANY PUNISHMENT FOR IT?

A I HAVE TO GO DOWN THERE FOR IT STILL.

20

NARCOTICS OFFENSE AT THE BEACH WAS PAYING THE FINES?

A YES, AND THE COURT COSTS --- COURT COSTS.

Q SOMETIMES THE JUDGE ---

A LOST MY LICENSE FOR A YEAR.

Q ANY COMMUNITY SERVICE?

A NO. IT'S KIND OF HARD FOR SOMEBODY IN MY POSITION TO DO
ANY COMMUNITY SERVICE.

Q I THOUGHT HE MIGHT HAVE YOU ANSWERING PHONES OR
SOMETHING. I DON'T KNOW WHAT THEY DO.

A WHEN I PLEAD GUILTY IN CONWAY, THAT WAS AFTER MY FIRST
SURGERY, BEFORE MY SECOND SURGERY AND I COULDN'T EVEN
STAND UP DURING THE COURT PROCEEDINGS. SO I GUESS THE
JUDGE TOOK PITY ON ME AND LET ME GO WITH FINES.

Q WAS IT IN 2003 OR 2004?

A 2003.

Q I GUESS, IF THE SURGERY WAS IN APRIL OF 2003, WHEN WAS
YOUR GUILTY PLEA?

A MAY, I THINK? I'M NOT SURE.

Q OBVIOUSLY, I KNOW ABOUT YOUR WORKERS' COMP CLAIMS AND
THE ACCIDENT THAT BRINGS US HERE TODAY. ANY OTHER
WORKERS' COMPENSATION CLAIMS YOU'VE FILED?

A NO.

Q HAVE YOU EVER BEEN INVOLVED IN A LAWSUIT BEFORE THIS ONE
WE'RE HERE ABOUT TODAY?

A NO.

21

Q WHAT DAY OR DATE DID YOU HAVE YOUR ACCIDENT AT THE DIVINE FISH HOUSE?

A NOVEMBER 22ND, 2002.

Q I THINK YOU'RE AWARE NOW THAT WHEN I WALKED IN THE ROOM TODAY, I WAS UNDER THE ASSUMPTION THAT IT HAPPENED DECEMBER 9 OF 2002.

A RIGHT.

Q I BELIEVE IT'S EVEN IN YOUR COMPLAINT AND DISCOVERY RESPONSES --- REFERENCES AN ACCIDENT OF DECEMBER 9, 2002, IF I RECALL CORRECTLY. DESCRIBE FOR ME WHAT HAPPENED THERE. WHY DID THE ACCIDENT HAPPEN NOVEMBER 22, BUT OTHER REPORTS REFLECT DECEMBER 9TH?

A I GOT HURT ON THE 22ND. THE NEXT DAY --- I DIDN'T INFORM MY BOSS UNTIL THE NEXT DAY, ABOUT FALLING IN THE HOLE, AND HE HAD ALREADY LEFT TO GO OUT OF TOWN; AND SO HE WANTED TO WAIT UNTIL AFTER THANKSGIVING TO DO ANYTHING ABOUT IT, WHICH I TOLD HIM I DIDN'T THINK I COULD WAIT, AND HE SAID I REALLY HAD NO CHOICE BECAUSE HE WAS GOING OUT OF TOWN AND HE DIDN'T HAVE TIME TO FOOL WITH IT. SO WHEN HE GOT BACK FROM THANKSGIVING, HE SENT ME TO A CHIROPRACTOR AND ---

Q WHAT CHIROPRACTOR DID YOU GO SEE?

A DOBY CHIROPRACTIC IN SURFSIDE. HE TOOK X-RAYS, AND I WENT IN FOR TWO SESSIONS WITH HIM, AND AFTER THE SECOND SESSION, I TOLD HIM I WOULDN'T BE COMING BACK. I CALLED

23

AND INJURING YOUR BACK.

A RIGHT.

Q THAT INFORMATION WAS GENERATED BY MIKE STEAD.

A YES.

Q SO HE, BASICALLY, ON OR AROUND DECEMBER 9TH, PUT FORTH A FALSE WORKERS' COMPENSATION CLAIM TO GET YOU ON THE WORKERS' COMPENSATION TRACK BECAUSE HE INITIALLY TRIED TO AVOID WORKERS' COMPENSATION FROM YOUR ACCIDENT ON NOVEMBER 22ND, 2002.

A RIGHT.

Q WERE OKAY WITH THIS AT THE TIME? DID YOU GO ALONG WITH IT?

A I WASN'T OKAY WITH IT, BUT I HAD NO CHOICE.

Q DID YOU EVER REPORT TO ANY DOCTOR THAT YOU FELL OFF A LADDER ON DECEMBER 9TH, 2002. I MEAN, FROM YOUR OWN TWO LIPS, WHEN THEY ASKED YOU TO DESCRIBE IT, DID YOU EVER GIVE THEM THAT INFORMATION?

A THE FIRST TIME THAT I SEEN DR. MILLS, I TOLD HIM THAT, AND THEN THE SECOND TIME THAT I SEEN DR. MILLS, I TOLD HIM WHAT ACTUALLY HAPPENED.

Q DID YOU EVER DESCRIBE THE ACCIDENT INVOLVING THE LADDER, AS OPPOSED TO THE HOLE TO ANY OTHER MEDICAL PROVIDER?

A NO.

Q JUST DR. MILLS ON THAT ONE OCCASION, IS THAT CORRECT?

A YES, SIR.

22

MIKE, TOLD MIKE THAT I WASN'T DOING --- GOING TO THE CHIROPRACTOR ANYMORE, THAT I WAS GOING TO A REAL DOCTOR.

Q WHEN YOU SAID "MIKE", YOU MEAN MIKE STEAD?

A MIKE STEAD, YES.

Q YOUR SUPERVISOR AT PEACHTREE?

A YES. WHEN I TOLD HIM THAT, HE TOLD ME TO GO SEE DR. TUREK IN GARDEN CITY. SO I WENT AND SEEN DR. TUREK. DR. TUREK DID SOME X-RAYS AND GAVE ME SOME MEDICATION, TOLD ME TO COME BACK IN A WEEK. I CAME BACK A WEEK LATER AND STILL SAME PROBLEM, SAME SYMPTOMS.

Q WHAT WERE YOUR SYMPTOMS AT THAT TIME?

A PAIN IN MY LEG, IN MY RIGHT LEG, LIKE A BURNING STABBING PAIN IN MY RIGHT LEG AND EXTREME PAIN IN MY LOWER BACK, AND THE SECOND VISIT TO DR. TUREK, HE GAVE ME SOME OTHER MEDICINE AND SAID THAT IF I WASN'T FEELING BETTER IN A FEW DAYS TO CALL HIM AND COME BACK IN AND THAT WORKMEN'S COMP WAS GOING TO HAVE TO GET INVOLVED AT THAT POINT IN TIME, WHICH THAT'S WHEN THAT TOOK PLACE, WHEN I WENT BACK ON MY THIRD VISIT; AND MIKE SAID, IN ORDER FOR HIM NOT TO GET IN TROUBLE, TOLD ME THAT --- HE TOLD WORKMEN'S COMP THAT I FELL OFF A LADDER AT THE SHOP AND THAT'S HOW I INJURED MY BACK.

Q AS YOU PROBABLY KNOW, I'VE GONE THROUGH SOME OF YOUR MEDICAL RECORDS AND I HAVE SEEN SEVERAL REFERENCES THAT TALK ABOUT YOUR FALLING OFF A FIVE OR SIX-FOOT LADDER

24

Q SO, AT THIS POINT, YOU'VE SEEN THE CHIROPRACTOR, WHO OBVIOUSLY IS NOT DOING YOU ANY GOOD. DR. TUREK SAYS IT'S MORE SERIOUS THAN ORIGINALLY THOUGHT. WHO IS THE NEXT DOCTOR THAT YOU SEE TO HELP YOU WITH YOUR BACK?

A DR. MILLS.

Q WHAT DID HE DO FOR YOU?

A FIRST, HE JUST PUT ME ON SOME ANTI-INFLAMMATORIES AND PAINKILLERS, AND DID AN M.R.I. AND A C.A.T. SCAN, AND WANTED TO SEE IF, MAYBE, IT MIGHT HEAL ITSELF.

Q WHEN HE RUNS ALL THOSE TESTS --- THE M.R.I.s, THE C.A.T. SCANS AND ALL THAT STUFF --- DID HE TELL YOU, AT THAT POINT IN TIME ---

A YES.

Q --- "CHRISTOPHER, I SEE A DISK BULGING HERE OR THERE"?

A THE FIRST THING HE DID WAS A C.A.T. SCAN. THE C.A.T. SCAN DIDN'T REALLY GIVE HIM ALL THE INFORMATION THAT HE NEEDED. SO THAT'S WHEN HE DID THE M.R.I., AND THEN IT WAS ONCE HE DID THE M.R.I., WE KNEW EXACTLY WHAT THE PROBLEM WAS; AND AFTER THE M.R.I. THAT'S WHEN HE STARTED DISCUSSING SURGERY OPTIONS, AND HE SAID I NEEDED FUSION, BUT I WAS TOO YOUNG, THAT HE WANTED TO DO THE DISCECTOMY, THEN HE SAID THAT SHOULD LAST ME FOR A LONG TIME, AND SO THAT'S WHAT WE DECIDED TO DO; AND HE JUST SENT ME BACK TO WORK WITH NO RESTRICTIONS AFTER THE FIRST SURGERY; AND IF I WOULD HAVE HAD SOME

25

RESTRICTIONS, THEN MAYBE IT WOULDN'T HAVE HAPPENED, BUT YOUR GUYS --- YOUR JOB, I MEAN, IT'S A WHOLE LOT DIFFERENT THAN BEING AN ELECTRICIAN. I CAN'T --- I CAN'T GO OUT ON A JOB SOMEWHERE AND TELL MY BOSS, "OH, WELL. THE DOCTOR TOLD ME USE MY BEST JUDGMENT, AND I JUST DON'T THINK I CAN DO THAT." I'M NOT GOING TO HAVE A JOB VERY LONG.

Q DR. MILLS, MAKES A COMMENT BEFORE EACH OF THE SURGERIES YOU HAVE. HE DESCRIBES THEM AS ELECTIVE SURGERY, AND I KNOW YOU, DON'T KNOW WHY. DID HE EVER GIVE YOU OPTIONS LIKE YOU CAN DO JUST PHYSICAL THERAPY OR YOU CAN DO THE SURGERY OR THERE'S ANOTHER OPTION OR DID YOU ALL JUST COME TO AN AGREEMENT THIS IS THE SURGERY THAT YOU NEEDED AT THE TIME?

A THAT WAS THE SURGERY I NEEDED AT THE TIME. AT FIRST, HE WANTED TO DO THE --- WHAT DO YOU --- INJECTIONS IN MY BACK.

Q MYELOGRAMS?

A NO. MYELOGRAMS P.S. EPIDURAL ---

Q EPIDURALS.

A --- LOWER EPIDURAL INJECTIONS, AND I REFUSED THEM.

Q WHY?

A MIXED REVIEWS ON PEOPLE THAT I HAD TALKED TO THAT HAD THOSE SHOTS BEFORE, AND VERY FEW PEOPLE BENEFITTED FROM THESE INJECTIONS, AND SO THAT'S WHY I DECIDED NOT TO GET

27

WOULD OBJECT TO THAT.

MR. SALEEBY: OKAY. THAT'S A POOR QUESTION.

Q DID YOU FEEL LIKE YOU WERE GETTING BETTER UNTIL THIS EVENT OCCURRED IN NOVEMBER OF 2003, WHEN YOU RE-INJURED YOUR BACK?

A YES.

Q AFTER THAT INJURY OCCURRED, I TAKE IT YOU WENT BACK TO DR. MILLS?

A YES.

Q YOU EXPLAINED TO HIM WHAT HAPPENED?

A YES.

Q WHAT DID YOU ALL DECIDE, AS FAR AS A COURSE OF TREATMENT FROM THAT POINT FORWARD?

A FIRST, HE DID ANOTHER M.R.I. TO SEE WHAT HAD HAPPENED, AND AFTER HE GOT THE M.R.I., HE WANTED TO DO FICET INJECTIONS, AND SO I DID DO THE FICET INJECTION ONE TIME, AND IT ONLY LASTED A FEW DAYS, AND WHEN IT WORE OFF, I WAS IN WORSE PAIN THAN I WAS BEFORE; AND THAT'S WHEN WE DECIDED THAT WE HAD TO DO THE FUSION SURGERY.

Q THAT WENT FORWARD IN JUNE OF 2004?

A YES.

Q WHEN DR. MILLS DID THE NEW M.R.I.s AFTER THE EVENT IN NOVEMBER OF 2003, WERE THE PROBLEMS WITH THE DISKS IN THE SAME TWO AREAS WHERE YOU HAD THE PROBLEMS BEFORE YOUR FIRST SURGERY?

26

THEM.

Q SO YOU HAVE THE DISCECTOMY IN APRIL OF '03?

A UH-HUH. (AFFIRMATIVE RESPONSE.)

Q I GUESS, DID YOU HAVE A COURSE OF PHYSICAL THERAPY FOLLOWING THE SURGERY?

A YES.

Q HOW DID YOU DO DURING THAT COURSE? DID YOU START FEELING BETTER AND FEELING STRONGER?

A OH, YEAH.

Q WHEN DR. MILLS TOOK ALL WORK RESTRICTIONS OFF OF YOU IN AUGUST OR SEPTEMBER OF 2003, HOW DID YOU FEEL, AT THAT POINT IN TIME, RIGHT BEFORE YOU GO BACK TO WORK? DID YOU FEEL A HUNDRED PERCENT?

A OH, NO.

Q WHERE WERE YOU?

A NO. I FELT PROBABLY ABOUT SEVENTY-FIVE PERCENT, BUT HOPEFUL THAT IT WAS JUST GOING TO CONTINUE TO GET BETTER.

Q DID YOU FEEL LIKE YOU WERE GETTING BETTER UNTIL YOU HAD THIS ACCIDENT IN NOVEMBER OF 2003?

A YES.

MR. DURANT: OBJECTION TO THE FORM OF THE QUESTION. YOU SAID THAT IT WAS AN ACCIDENT AND I DON'T THINK THERE WAS ANYTHING ACCIDENTAL ABOUT PULLING ON A ROPE. SO I

28

A YES.

Q IT WOULD HAVE BEEN THE DISK THAT WAS ACTUALLY SHAVED IN THE FIRST SURGERY AND THEN THE SECOND DISK THAT HE DIDN'T TOUCH BECAUSE IT WASN'T IMPINGING ON THE NERVE AT THAT TIME.

A RIGHT.

Q AGAIN, AFTER THE SECOND SURGERY, DID YOU GO THROUGH A COURSE OF PHYSICAL THERAPY?

A YES.

Q HOW DID YOU PROGRESS THROUGH THAT PHYSICAL THERAPY?

A THEY SAID I DID REAL GOOD. I MEAN, I DEVOTED MYSELF TO PHYSICAL THERAPY, TO GETTING BETTER, AND WITH THIS SURGERY, IT'S --- THEY SAY THAT I'M AS GOOD AS I'M GOING TO GET. I WAS UNEASY WITH THAT. I DON'T --- I DON'T LIKE GOING TO BED AT NIGHT AND WONDERING IF I'M GOING TO BE ABLE TO GET UP THE NEXT DAY.

Q THEY SAY THE CONDITION YOU'RE IN RIGHT NOW IS AS GOOD AS YOU'RE GOING GET?

A YEAH.

Q TELL ME WHAT YOU CAN AND CAN'T DO.

A NOT A LOT I CAN DO. I GUESS YOU'VE GOT MY REPORT FROM PHYSICAL THERAPY, MEDIUM-DUTY WORK. CAN'T STAND FOR OVER AN HOUR. CAN'T SIT DOWN FOR OVER AN HOUR. I'VE GOT TO GET UP AND DOWN, UP AND DOWN ALL DAY, AND I CAN'T LIFT ANYTHING, REALLY, OVER THIRTY POUNDS. I MEAN, THAT

29

JUST DOESN'T LEAVE A WHOLE LOT THAT YOU'RE CAPABLE OF DOING WHEN ---

Q HAVE YOU GOTTEN ANY ADVICE OR ENCOURAGEMENT FROM DR. MILLS OR ANY PROVIDERS ABOUT WHAT KIND OF JOB YOU SHOULD BE LOOKING FOR OR YOU SHOULDN'T BE LOOKING FOR WORK AT ALL? I MEAN, WHAT DO THEY SAY ABOUT YOUR EMPLOYMENT?

A THEY JUST GAVE ME MY --- AFTER THE F.C.E., THE EVALUATION, WHATEVER THE EVALUATION SAYS, 'I NEED TO GO LOOK FOR JOBS THAT FIT THOSE REQUIREMENTS.'

Q YOU NEED TO FIND SOMETHING WHERE YOU'RE NOT LIFTING WEIGHT OVER THIRTY POUNDS, WHERE YOU DON'T HAVE TO SIT FOR MORE THAN AN HOUR STRAIGHT, DON'T HAVE TO STAND FOR MORE THAN AN HOUR STRAIGHT. WHAT OTHER LIMITATIONS ARE THERE ON YOU, AS FAR AS EMPLOYMENT?

A THAT'S PRETTY MUCH IT. I MEAN ---

Q OF COURSE, YOU COME WITH YOUR OWN BACKGROUND. YOU HAVE WHAT EDUCATION YOU HAVE AND WHAT EXPERIENCE YOU HAVE.

A RIGHT.

Q ARE YOU CURRENTLY LOOKING FOR WORK, AS WE SIT HERE TODAY?

A NO.

Q WHAT'S YOUR PLANS, AS FAR AS THAT'S CONCERNED?

A MOVING TO FLORIDA, LIVING WITH MY MOM FOR A LITTLE WHILE. DR. MILLS SAID IT TAKES A WHOLE YEAR TO --- FOR IT TO HEAL OR RECOVERY TIME, AND I'M AT SEVEN MONTHS

31

CAN BE BEFORE YOU TRY TO ENTER THE WORKFORCE.

A RIGHT. I DON'T GIVE A DAMN WHAT DR. MILLS SAYS. I DON'T GIVE A DAMN WHAT ANYBODY ELSE SAYS. HE MAY SAY --- YEAH --- I CAN GO BACK TO WORK, BUT YOU KNOW WHAT? YOU'RE NOT WALKING AROUND IN MY SHOES.

Q ANTHONY MENTIONED A CANE EARLIER. ARE YOU STILL USING A CANE TODAY?

A SOMETIMES.

Q HOW OFTEN DO YOU NEED TO USE THAT?

A HOPEFULLY, GOING TO FLORIDA, I WON'T HAVE TO USE IT AT ALL, BUT HERE, THE COLD DAYS ARE BAD AND IF IT'S RAINING, I DON'T EVEN LEAVE THE HOUSE.

Q OBVIOUSLY, I'M ASSUMING THAT YOU REALIZE YOUR EMPLOYER PROBABLY DIDN'T HANDLE IT CORRECTLY WHEN YOU FIRST HAD YOUR INJURY.

A RIGHT.

Q DO YOU FEEL LIKE DR. MILLS KIND OF LED YOU ASTRAY IN LETTING YOU HAVE THIS FIRST SURGERY?

A NO.

Q IS THERE A PROBLEM YOU HAVE WITH DR. MILLS?

A NO. I LOVE DR. MILLS. HE'S GREAT, AND HE WAS ABSOLUTELY RIGHT. I AM TOO YOUNG TO HAVE THIS SURGERY. NOW I GOT A BIG CHUNK OF MY LIFE STOLE AWAY FROM ME, A HUGE CHUNK, AND I HAD THE POSSIBILITY OF HAVING IT BACK AFTER THAT FIRST SURGERY, THE DISCECTOMY, BUT I COULD

30

RIGHT NOW.

Q SO IS IT YOUR PLAN TO SEE WHERE YOU ARE AT THE END OF THAT YEAR, THEN MAKE A JUDGMENT CALL FROM THAT POINT FORWARD?

A RIGHT. RIGHT NOW, I CAN'T --- I COULDN'T WORK AN EIGHT-HOUR DAY. I COULDN'T MAKE IT THROUGH EIGHT HOURS.

Q ARE YOU TALKING ABOUT THE PAIN WOULDN'T ALLOW YOU TO DO IT?

A YES, SIR. YES.

Q HAVE YOU TALKED WITH YOUR MOM ABOUT ANY POTENTIAL EMPLOYERS, WHAT YOU MIGHT COULD DO IN FLORIDA ---

A NO.

Q --- AFTER YOU GET DOWN THERE? SO THERE'S NOTHING SOLID? THERE IS NO ---

A NO.

Q --- PLAN ABOUT WHERE YOU'RE GOING TO WORK.

A THE THING IS IS, AFTER THE FIRST SURGERY, THEY SEND ME BACK TO WORK WITH NO RESTRICTIONS AND INJURED MYSELF AND I HAD TO GO THROUGH THIS SURGERY THIS TIME. IF ANYBODY WOULD HAVE BEEN HONEST WITH ME ABOUT THIS, I WOULDN'T HAVE HAD THIS DONE. I WOULDN'T RECOMMEND THIS SURGERY TO ANYONE, AND I'M NOT ABOUT TO RUSH INTO WORK.

Q I CAN UNDERSTAND WHERE YOU MIGHT BE A LITTLE GUN-SHY.

A I'M NOT GOING TO GO THROUGH THIS AGAIN.

Q SO YOU WANT TO MAKE SURE YOU'RE GOING TO BE THE BEST YOU

32

STILL DO A LOT OF THINGS. SO, I MEAN, HE MADE THE RIGHT CALL. IT'S JUST HE --- I GUESS HE DOESN'T REALLY REALIZE WHAT ALL'S INVOLVED WITH DOING ELECTRICAL WORK, AND LIKE I SAID, I CAN'T --- I CAN'T TELL MY BOSS THAT "I JUST DON'T THINK I SHOULD DO THAT." I MEAN, I'D GET FIRED RIGHT THEN AND THERE. SO, I MEAN, DR. MILLS DID A GREAT JOB, AND I HAVE NO ILL FEELINGS TOWARDS HIM. I THINK HE'S GREAT.

Q YOU LISTED THESE FOUR MEDICATIONS FOR ME EARLIER, BUT WHAT ARE THE FOUR MEDICATIONS YOU'RE TAKING NOW?

A VICODIN, FLEXERIL, REMERON, EFFEXOR.

Q DO YOU KNOW WHICH OF THESE FOUR THAT YOU ARE LIKELY TO KEEP TAKING INDEFINITELY?

A VICODIN AND FLEXERIL. THE FLEXERIL WILL PROBABLY CHANGE. I USE FLEXERIL TO GO TO SLEEP AND THE REMERON AND, AFTER A WHILE, YOU JUST GET USED TO IT. SO I'LL HAVE TO GET SOMETHING ELSE.

Q IT DOESN'T DO WHAT IT'S SUPPOSED TO DO ANYMORE.

A YEAH. SEE, I WAS ON REMERON FOR A LONG TIME, AND SO NOW I DON'T TAKE THE REMERON EVERY NIGHT. I'LL SWITCH. SOMETIMES I'LL TAKE FLEXERIL AND SOMETIMES I'LL TAKE REMERON.

Q WE TALKED ABOUT A COUPLE CHIROPRACTIC VISITS, DR. TURK, DR. MILLS, TWO SURGERIES, THE PHYSICAL THERAPY AFTER EACH OF THE SURGERIES. HAVE YOU SEEN ANY OTHER MEDICAL

33

PROVIDERS FOR TREATMENT FOR YOUR BACK AND LEG PROBLEMS?

A DR. WILKINS, PAIN MANAGEMENT.

Q IS HE AT ---

A COASTAL ORTHOPAEDICS.

Q WHAT DID HE DO FOR YOU?

A HE GAVE ME THE FLEXERIL.

Q ANYTHING ELSE? ANY OTHER MEDICAL PROVIDERS THAT HAVE TREATED YOU?

A NO.

Q NONE. YOU'VE SEEN DR. AYNER, BUT THAT WAS MORE FOR A CONSULTATION AND AN OPINION THING.

A RIGHT. THAT WAS A SECOND OPINION.

Q I'M GOING TO JUMP BACK NOW TO THE ACTUAL ACCIDENT, WHICH WE HADN'T TALKED ABOUT. I THINK WE'VE ESTABLISHED IT HAPPENED NOVEMBER 22ND, 2002.

A YES.

Q ANTHONY WAS WITH YOU AT THE FISH HOUSE.

A YES.

Q THE TWO OF YOU HAD GONE UNDERNEATH THE FISH HOUSE FOR WHAT PURPOSE?

A TO TRACE A WIRE.

Q WHAT'S "TRACING A WIRE"? TELL ME THAT.

A WHAT IS IS THEY GOT STEPS GOING UP TO THE RESTAURANT. THE WALLS ON EACH SIDE OF THE STEPS HAVE LIGHTS IN THEM. THOSE LIGHTS HAD WENT OUT. THEY WEREN'T WORKING ANY

35

A YOU'RE STOOPED OVER. YOU COULDN'T STAND STRAIGHT UP, BUT YOU WASN'T ON HANDS AND KNEES, WAS WALKING, JUST WITH YOUR KNEES BENT AND HUNCHED OVER, AND I WAS LOOKING UP, TRACING THE WIRE GOING ACROSS THE BEAM, AND I WASN'T PAYING ATTENTION TO THE GROUND BECAUSE IT JUST LOOKED LIKE ALL DIRT UNDER THERE, AND IN AN INSTANT --- IT WAS, I THOUGHT, A SINKHOLE. I THOUGHT A SINKHOLE OPENED UP. I THOUGHT THE WHOLE DAMN RESTAURANT WAS GETTING READY TO COME DOWN ON TOP OF ME, AND MY RIGHT LEG WENT DOWN IN THE HOLE, MY LEFT LEG WENT OUT TO MY SIDE AND CAME UP AND THAT'S WHAT MESSED MY BACK UP.

Q YOUR RIGHT LEG GOES IN THE HOLE AND YOUR LEFT LEG STAYS UP ON THE GROUND THAT YOU'VE BEEN WALKING ON BEFORE.

A YEAH --- AND I GO ALL THE WAY DOWN TO MY CROTCH BEFORE I STOP, AND I'M CLAWING WITH MY HANDS TO KEEP FROM GOING ALL THE WAY IN, AND IT WAS A GOOD MINUTE OR SO BEFORE I EVEN STARTED THINKING. I MEAN, I WAS IN SHOCK WHEN IT HAPPENED.

Q HOW DEEP WAS THE HOLE?

A SEVEN --- ABOUT SEVEN FOOT DEEP. IT WAS A --- LATER ON, WHAT I FOUND OUT WAS IT'S A STORM DRAIN THAT GOES UNDERNEATH THE RESTAURANT OUT TO THE INLET. THE STORM DRAIN HAD A HOLE IN IT AND IT HAD A LEAK. SO SOMEBODY DUG IT, FIXED THE PIPE, BUT THEY NEVER FILLED THE HOLE BACK IN. THEY HAD TOOK TWO-BY-FOURS AND MADE BRACES

34

LONGER. SO WE PULLED THE OLD LIGHTS OUT, PUT NEW LIGHTS IN THERE, THEN WE HAD TO GO UNDER THE RESTAURANT AND FIND THE WIRE THAT'S FEEDING POWER TO THOSE LIGHTS. THEY HAD BEEN DISCONNECTED SOMEWHERE. SO YOU HAVE TO GO TRY TO FIND OUT WHERE THE WIRES ARE THAT ARE GOING TO THE LIGHTS. TRACE THE RUNS BACK TO WHEREVER THEY COULD BE; IN A JUNCTION BOX WHERE THEY'VE BEEN DISCONNECTED OR WHATEVER. SO THAT'S WHAT WE'RE DOING, TRACING A WIRE. WE'RE TRYING TO FIND THE WIRES THAT ARE GOING TO THOSE LIGHTS OUT THERE.

Q FIRST, ANTHONY TESTIFIED THAT YOU ALL WERE UNDERNEATH THE RESTAURANT FOR ABOUT FIVE MINUTES BEFORE YOU HAD YOUR ACCIDENT. DOES THAT SOUND ABOUT RIGHT TO YOU?

A HE WAS UNDER THERE ABOUT FIVE MINUTES. I HAD BEEN UNDER THERE LONGER.

Q HOW LONG HAD YOU BEEN UNDER THERE?

A PROBABLY OVER A HALF HOUR.

Q I THINK ANTHONY DESCRIBED THE PLACE WHERE THE HOLE WAS. IF YOU GO IN THAT FRONT ACCESS DOOR, YOU GO STRAIGHT FIFTEEN OR TWENTY FEET, THEN YOU MAKE A LEFT-HAND TURN AND GO ANOTHER FIFTEEN OR TWENTY FEET AND THEN IT WOULD BE IN THAT AREA SOMEWHERE.

A RIGHT. IT'S ABOUT IN THE MIDDLE OF THE RESTAURANT.

Q CHRISTOPHER, JUST TELL ME, IN AS MUCH DETAIL AS YOU CAN, WHAT HAPPENED. HOW DID THE ACCIDENT OCCUR?

36

ACROSS THE HOLE, LAID TWO SHEETS OF PLYWOOD ON TOP OF THAT AND THEN THEY THREW DIRT ON TOP OF THE PLYWOODS. SO IT JUST LOOKED LIKE REGULAR GROUND UNDER THERE. I DIDN'T --- YOU COULD NOT SEE ANY OF IT.

Q HOW DID YOU BECOME AWARE OF ALL THIS? THERE WAS A STORM DRAIN, THEN IT WAS FIXED, AND THEN THE PLYWOOD AND BOARDS ---

A LATER ON.

Q WHO TOLD YOU THAT?

A MIKE.

Q MIKE STEAD?

A YEAH.

Q HOW DID HE KNOW IT?

A BECAUSE WE DID ALL THE WORK FOR DIVINE'S. PEACHTREE DONE ALL THE ELECTRICAL WORK FOR DIVINE'S.

Q DID MIKE KNOW WHO ACTUALLY DUG THE HOLE OUT ---

A NO.

Q --- TO FIX THE DRAIN?

A NO.

Q BUT SOMEONE FROM PEACHTREE KNEW ABOUT THE HOLE BECAUSE THEY'D BEEN DOWN THERE AND SEEN IT BEFORE.

A NO.

Q TELL ME ---

A AFTER I FELL IN THE HOLE AND EXPLAINED TO MIKE WHAT HAPPENED, MIKE KNOWS JACK DIVINE AND CHERYL AND AMY AND

37

ALL OF THEM. SO HE CALLED AND WAS TALKING TO THEM ABOUT IT. SO SOMEBODY OVER THERE HAD TOLD HIM.

Q THAT THEY HIRED SOMEBODY TO FIX IT AND APPARENTLY THE FIX WAS NOT DONE CORRECTLY.

A RIGHT. NOBODY AT PEACHTREE WAS AWARE THAT THERE WAS A HOLE UNDERNEATH THAT RESTAURANT.

Q DO YOU KNOW WHO DIVINE'S HIRED TO FIX THE STORM DRAIN, WHO DIDN'T FILL IT BACK IN?

A NO.

Q THE HOLE THAT WAS NOT FILLED BACK IN WAS ABOUT SEVEN FEET DEEP. WHAT WAS THE SIZE IN DIAMETER?

A ABOUT SIX FOOT AROUND.

Q WHOEVER DID THE REPAIRS TO THE STORM DRAIN, DIDN'T FILL IT IN, BUT PUT TWO TWO-BY-FOURS ACROSS IT AND THEN PUT PLYWOOD ON TOP?

A RIGHT.

Q SO WE HAVE TWO TWO-BY-FOURS AND THEN WE HAVE TWO FOUR-FOOT-BY-EIGHT-FOOT SHEETS OF PLYWOOD ON TOP.

A RIGHT.

Q WAS THE PLYWOOD COVERED WITH DIRT AND UNDER THE GROUND OR WAS IT SITTING ON TOP OF THE GROUND OR DO YOU KNOW?

A WHEN THEY PUT THE TWO-BY-FOURS, IT'S NOT LIKE THEY JUST LAID THEM ACROSS THE HOLE LIKE THAT. THEY WERE DOWN IN THE GROUND LIKE THIS. SO THE PLYWOOD SAT RIGHT ON TOP, AND THEN THEY HAD DIRT ON TOP OF IT. SO, I MEAN, IT

38

LOOKED JUST LIKE THE REST OF THE DIRT UNDER THERE. IT'S --- IT DIDN'T STAND OUT IN ANY WAY. BELIEVE ME, IF I COULD, I'D HAVE MISSED IT. I'D HAVE MUCH RATHER HAVE MISSED IT.

Q DID YOU BOTTOM OUT AND HIT THE BOTTOM OF THE HOLE OR WERE YOU ---

A NO.

Q --- ABLE TO HOLD YOURSELF UP? WERE YOU ABLE TO GET YOURSELF OUT OF THE HOLE OR DID ---

A ANTHONY HELPED ME.

Q DID ANTHONY HELP YOU GET OUT FROM UNDER THE RESTAURANT?

A YES.

Q I THINK YOU HEARD ANTHONY TESTIFY OF THE CONVERSATION THAT HE HAD WITH THE FEMALE MANAGER AT THE RESTAURANT THE DAY OF THE ACCIDENT. DID YOU TALK TO ANYBODY FROM DIVINE'S?

A NO. AS SOON AS WE GOT OUT FROM UNDER THE RESTAURANT, I HAD HIM HELP ME TO THE VAN, AND I TOLD HIM TO GO INSIDE AND TELL THEM WHAT HAPPENED AND THAT WE WERE LEAVING.

Q HAVE YOU, SINCE THAT DAY, HAD ANY CONVERSATION WITH ANYBODY ASSOCIATED WITH DIVINE'S ABOUT THE ACCIDENT?

A NO.

Q WHEN ANTHONY COMES BACK OUT AND GETS IN THE VAN WITH YOU, WHAT DO YOU ALL DO FROM THAT POINT FORWARD?

A GO HOME.

39

Q YOU REPORT THE ACCIDENT TO MIKE THE NEXT DAY.

A RIGHT.

Q WHEN DO YOU FIRST SEE A CHIROPRACTOR FOR HELP? WOULD IT BE THE DAY AFTER THE ACCIDENT OR A COUPLE DAYS AFTER THE ACCIDENT?

A NO. IT WAS A WEEK FOLLOWING THE ACCIDENT.

Q THERE WERE TWO VISITS THERE.

A YES.

Q THEN YOU GO SEE TUREK.

A YES.

Q YOU TOLD ME YOU HAVEN'T HAD ANY OTHER CONVERSATIONS WITH ANYBODY FROM DIVINE'S, BUT EARLIER YOU TALKED ABOUT WHAT YOU LEARNED THROUGH MIKE IN HIS CONVERSATIONS WITH JACK DIVINE AND OTHERS. THROUGH HEARSAY LIKE THAT, HAVE YOU HEARD ANYTHING ELSE ABOUT YOUR ACCIDENT OR DIVINE'S THAT RELATES TO THIS LAWSUIT?

A NO.

Q IS THERE ANY OTHER DETAIL ABOUT THE ACCIDENT THAT YOU CAN THINK OF, AS WE SIT HERE TODAY, THAT WE HAVEN'T ALREADY TALKED ABOUT?

A NO. I CAN'T THINK OF ANYTHING ELSE.

Q WHEN DID YOU FIRST COME TO WORK AT PEACHTREE?

A JULY --- JUNE, JULY, 2002.

Q OF '02?

A YES.

40

Q YOU AND ANTHONY STARTED AT THE SAME TIME?

A I STARTED BEFORE HIM, BUT ---

Q THEN YOU DON'T REALLY GO BACK TO WORK AT PEACHTREE ANY TIME AFTER YOUR ACCIDENT, AND THEN THERE'S A SHORT PERIOD OF TIME WHERE YOU DO YOUR OWN AND DO SOME WORK FOR BOB WIRE IN 2003.

A RIGHT.

Q CAN YOU, JUST BRIEFLY, GIVE ME YOUR WORK HISTORY BEFORE YOU'RE HERE AT THE BEACH? WHAT DID YOU DO?

A I WORKED FOR GODWINS ELECTRIC COMPANY IN ELKIN FOR TWO YEARS. I WAS SUPERVISOR WITH THEM.

Q IN NORTH CAROLINA?

A IN NORTH CAROLINA --- AND BEFORE THAT, I WORKED FOR HULL ELECTRIC FOR A YEAR.

Q HULL?

A HULL --- H-U-L-L --- ELECTRIC, DOWN IN MOUNT AIRY, FOR A YEAR.

Q WHAT DID YOU DO BEFORE THAT?

A BEFORE THAT, I WORKED AT A CAR DEALERSHIP IN THE PARTS DEPARTMENT.

Q WERE YOU THE PARTS MANAGER OR SOMETHING? WHAT DID YOU DO?

A JUST PARTS CLERK.

Q WAS THAT IN NORTH CAROLINA AS WELL?

A YES.

41

Q MOUNT AIRY?
 A MOUNT AIRY.
 Q WHAT DEALERSHIP?
 A PATTERSONS.
 Q HOW LONG DID YOU HOLD THAT POSITION?
 A ALMOST TWO YEARS.
 Q DO YOU HAVE A FAMILY DOCTOR THAT'S LOCAL?
 A NO.
 Q BEFORE YOU HAD YOUR ACCIDENT, HAD YOU SEEN ANY PHYSICIANS IN THE MYRTLE BEACH OR MURRELLS INLET AREA?
 A NO.
 Q YOU ALREADY TOLD ME YOUR FAMILY DOCTOR WAS IN MOUNT AIRY.
 A YES.
 Q ANY OTHER DOCTORS THAT YOU SAW WHEN YOU WERE IN MOUNT AIRY?
 A NO.
 Q HAVE YOU EVER SEEN A CHIROPRACTOR BEFORE THIS INCIDENT TOOK PLACE? HAVE YOU EVER HAD ANY MAJOR MEDICAL PROBLEMS BEFORE THIS INCIDENT?
 A NO.
 Q HAVE YOU EVER BEEN HOSPITALIZED FOR ANY REASON?
 A NO.
 Q DO YOU REMEMBER WHAT THE LIGHTING WAS LIKE UNDERNEATH THE RESTAURANT?

42

A IT WAS DURING THE DAY WHEN WE WERE THERE. THE ONE SIDE OF THE RESTAURANT IS NOTHING BUT LATTICE WORK. SO YOU GET SOME SUNLIGHT IN UNDERNEATH THERE FROM THERE. I DON'T RECALL ANY LIGHTS UNDER THERE.
 Q WERE YOU CARRYING A FLASHLIGHT?
 A YES.
 Q WERE YOU POINTING A FLASHLIGHT UP TO TRACE THE WIRE ---
 A YES.
 Q --- (TALKING OVER EACH OTHER) TIME YOU WERE WALKING? DID ANTHONY HAVE A FLASHLIGHT?
 A YES.
 Q CHRISTOPHER, I APPRECIATE YOUR TIME AND PATIENCE AND BEING HERE TODAY. THAT'S ALL THE QUESTIONS I HAVE FOR YOU.
 A OKAY. THANK YOU.
 MR. DURANT: I DON'T HAVE ANYTHING.
 (THIS DEPOSITION WAS CONCLUDED AT 11:35 A.M.)

(SIGNATURE WAIVED)
 CHRISTOPHER PRICE

43

SOUTH CAROLINA,

CERTIFICATE

HORRY COUNTY,

I, PEPPER M. MCCARTHY, A NOTARY PUBLIC AND VERBATIM REPORTER IN AND FOR THE STATE OF SOUTH CAROLINA DO HEREBY CERTIFY THAT CHRISTOPHER PRICE WAS DULY SWORN PRIOR TO THE TAKING OF THIS DEPOSITION AND THAT THE FOREGOING FORTY-TWO (42) PAGES CONSTITUTE A TRUE AND ACCURATE TRANSCRIPTION OF THE EVIDENCE AS GIVEN BY SAID WITNESS AND IS TAKEN DOWN AND TRANSCRIBED BY ME. I FURTHER CERTIFY THAT THE PERSON WERE PRESENT AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I'M NOT OF COUNSEL FOR OR NOR IN THE EMPLOY OF ANY OF THE PARTIES TO THIS ACTION NOR AM I INTERESTED EITHER DIRECTLY OR INDIRECTLY IN THE RESULTS THE THEREOF.

I FURTHER CERTIFY THAT I AM NOT RELATED BY BLOOD OR MARRIAGE TO ANY OF THE PARTIES TO THIS ACTION.

THIS THE 22ND DAY OF FEBRUARY, 2005.

PEPPER M. MCCARTHY,
 NOTARY PUBLIC &
 VERBATIM REPORTER

MY COMMISSION EXPIRES:
 JANUARY 29TH, 2012.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Christopher Price

Claimant,

vs.

Peachtree Electrical Services

Employer,

and

Builders Mutual Insurance Co.

Carrier/Defendants

WCC File No. 0220142

JUN 22 2005

TRANSMITTAL ORDER

A Motion regarding the following issue(s) has been received:

☐ Discovery or a Subpoena
☐ Appointment of a Guardian ad Litem
☐ Attorney's appearance before the Commission
☐ Withdrawal of Representation
☐ Attorney's Fee
☐ Claim Pending Commission Review
☐ Postpone ☐ Adjourn the Scheduled Hearing
☐ Self-insurance Privileges
☐ Penalties and Interest
☐ Third Party Practice
☒ Other: Add Bob Wire Electric Inc. and its carrier, S.C. Home Builders, as parties.

The following disposition has been made: ☒ Granted ☐ Denied
☐ Set for a hearing ☐ Have attorneys brief the issue

Reasons:

Columbia, SC

June 21, 2005

Susan S. Barden
Susan S. Barden
Commissioner, SCWCC

CERTIFICATE OF SERVICE

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

This 21st day of June, 2005

By *Penne R. Henry*
Administrative Assistant to the Commissioner

R.135

PLAINTIFF'S
EXHIBIT

3

*Copy of
2-3-05
Form 50
attached
ph*

*NDD
RCO
5
SC HB*

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

CHRISTOPHER PRICE, EMPLOYEE,)
CLAIMANT,)

VS.)

WCC #: 0220142

PEACHTREE ELECTRICAL SERVICES,)
BOB WIRE ELECTRICAL, INC.,)
EMPLOYERS, AND)
SC HOME BUILDERS' ASSOCIATION)
AND BUILDERS MUTUAL INSURANCE,)
CARRIER,)

DEFENDANTS.)
-----)

COPY

HEARING WAS HELD ON JUNE 5, 2006, IN
MYRTLE BEACH, SOUTH CAROLINA, COMMENCING AT 3:10 P.M.
BEFORE COMMISSIONER DAVID W. HUFFSTETLER.

APPEARANCES

FOR THE CLAIMANT: N. DAVID DURANT, ESQUIRE
SURFSIDE, SOUTH CAROLINA

FOR THE DEFENDANTS: ANDREW D. SMITH, ESQUIRE
SC HOME BUILDERS MT. PLEASANT, SOUTH CAROLINA

FOR THE DEFENDANTS: RICHARD C. DETWILER, ESQUIRE
BUILDERS MUTUAL COLUMBIA, SOUTH CAROLINA

SUBJECT OF HEARING

TO DETERMINE ISSUES AS SET FORTH ON FORMS 50 AND 51.

MORRIS REPORTING SERVICES
532 MEADOWBROOK DRIVE

COLUMBIA, SOUTH CAROLINA 29223
(803) 462-0074
INDEX

FOR THE DEFENDANTS:

PAGE

CHRISTOPER PRICE

DIRECT EXAMINATION BY MR. DETWILER.....	6
CROSS-EXAMINATION BY MR. SMITH.....	16
CROSS-EXAMINATION BY MR. DURANT.....	21
RE CROSS-EXAMINATION BY MR. DETWILER.....	23
RE CROSS-EXAMINATION BY MR. SMITH.....	25

EXHIBITS

(NONE)

MORRIS REPORTING SERVICES

PROCEEDINGS

1
2
3 THE COURT: THIS IS WORKERS' COMPENSATION
4 FILE NUMBER 0220142, THE CASE OF THE CLAIMANT
5 CHRISTOPHER PRICE VERSUS PEACHTREE ELECTRIC AND
6 BUILDERS MUTUAL INSURANCE COMPANY AND ALSO BOB WIRE
7 ELECTRIC AND THE SOUTH CAROLINA HOME BUILDERS
8 ASSOCIATION. THE CLAIMANT IS PRESENT. HE'S
9 REPRESENTED BY ATTORNEY N. DAVID DURANT. PEACHTREE
10 ELECTRIC AND BUILDERS MUTUAL INSURANCE ARE
11 REPRESENTED BY ATTORNEY RICHARD C. DETWILER. BOB
12 WIRE ELECTRIC AND THE SOUTH CAROLINA HOME BUILDERS
13 ASSOCIATION IS REPRESENTED BY ATTORNEY ANDREW SMITH.
14 THE CASE IS SET ON AN APPLICATION MADE BY PEACHTREE
15 ELECTRIC AND BUILDERS MUTUAL TO STOP PAYMENT OF
16 COMPENSATION. THE AVERAGE WEEKLY WAGE IS \$514.84
17 WITH A COMPENSATION RATE OF \$343.24. THE DATE OF THE
18 ACCIDENT IS DECEMBER 9TH, 2002.

19 ARE THERE ANY OBJECTION TO THOSE ITEMS,
20 JURISDICTION, VENUE OR ANY OF THE APA SUBMISSIONS?

21 MR. SMITH: YOUR HONOR, I WOULD JUST LIKE
22 TO NOTE THAT THE AVERAGE WEEKLY WAGE AND COMP RATE
23 WHEN HE WAS WORKING AT BOB WIRE ELECTRICAL WAS
24 \$198.83 AVERAGE WEEKLY WAGE. THE COMP RATE WOULD BE
25 \$132.56.

MORRIS REPORTING SERVICES

1 THE COURT: ANY OBJECTION TO THAT?

2 MR. DETWILER: NO OBJECTION.

3 THE COURT: AND WITHOUT OBJECTION THE
4 COMMISSION FILE BECOMES A PART OF THE RECORD WITH THE
5 EXCEPTION OF SELF-SERVING DECLARATIONS AND
6 UNSTIPULATED MEDICAL REPORTS.

7 I WOULD NOTE A PREVIOUS ORDER OF THE COMMISSION
8 WHICH ADDED BOB WIRE ELECTRIC AND THE SOUTH CAROLINA
9 HOME BUILDERS ASSOCIATION. THAT WAS APPEALED AND THE
10 FULL COMMISSION ORDER FOUND THAT SINGLE COMMISSIONER
11 ORDER TO BE INTERLOCUTORY.

12 IT'S MY UNDERSTANDING FROM A DISCUSSION WITH THE
13 PARTIES AT OUR PRE-HEARING CONFERENCE PEACHTREE
14 ELECTRIC AND BUILDERS MUTUAL TAKES THE POSITION THAT
15 THE CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON
16 AUGUST 8TH, 2003. THEY SEEK CREDIT FOR ANY TEMPORARY
17 COMPENSATION PAID AFTER THAT DATE. THEY CONCEDE SOME
18 PERMANENT PARTIAL DISABILITY TO THE BACK. THEY TAKE
19 THE POSITION THAT ANY BENEFITS PAID AFTER A
20 SUBSEQUENT INJURY AT BOB WIRE ELECTRIC ARE ALL THE
21 RESPONSIBILITY OF BOB WIRE ELECTRIC AND THE SOUTH
22 CAROLINA HOME BUILDERS ASSOCIATION.

23 BOB WIRE ELECTRIC AND THE HOME BUILDERS
24 ASSOCIATION FIRST PRESERVES THEIR POSITION THEY
25 SHOULD NOT HAVE BEEN MADE A PARTY TO THE HEARING.

MORRIS REPORTING SERVICES

1 THEY FURTHER TAKE THE POSITION THAT THE CLAIM IS
2 BARRED BY SECTION 42-15-40. THEY TAKE THE POSITION
3 THAT NO CLAIM HAS BEEN BROUGHT AGAINST THEM BY THE
4 CLAIMANT. THEY FURTHER WOULD TAKE THE POSITION THAT
5 PEACHTREE ELECTRIC AND BUILDERS MUTUAL SHOULD BE
6 ESTOPPED FROM ANY REIMBURSEMENT FOR TEMPORARY
7 COMPENSATION OR MEDICAL TREATMENT PRIOR TO THE TIME
8 THAT THEIR MOTION WAS FILED TO ADD THEM AS A PARTY.
9 IS THAT CORRECT?

10 MR. SMITH: YES, YOUR HONOR, I WOULD JUST
11 LIKE TO ADD BECAUSE THEY WERE PLACED ON NOTICE PER
12 THE DEPOSITION OF THE CLAIMANT THAT THEY CONDUCTED ON
13 DECEMBER 18TH, 2003. THE MOTION WAS NOT FILED UNTIL
14 APRIL OF 2005.

15 THE COURT: THE CLAIMANT TAKES THE
16 POSITION THAT HE REACHED MAXIMUM MEDICAL IMPROVEMENT
17 ON MAY 5TH, 2005. THAT HE IS PERMANENTLY AND TOTALLY
18 DISABLED FROM EITHER OR BOTH OF THE INJURIES. IS
19 THAT RIGHT?

20 MR. DURANT: YES, SIR.

21 THE COURT: SIR, RAISE YOUR RIGHT HAND.

22 CHRISTOPHER PRICE,
23 HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE COURT: STATE YOUR FULL NAME, PLEASE.

25 THE WITNESS: CHRISTOPHER CARL PRICE.

MORRIS REPORTING SERVICES

1 THE COURT: GO AHEAD, SIR.

2 DIRECT EXAMINATION

3 BY MR. DETWILER:

4 Q. MR. PRICE, HOW OLD ARE YOU, SIR?

5 A. THIRTY-SIX.

6 Q. ARE YOU MARRIED?

7 A. NO. DIVORCED.

8 Q. ANY CHILDREN?

9 A. NO.

10 Q. WHERE DO YOU LIVE?

11 A. RIGHT NOW I'M LIVING IN MYRTLE BEACH.

12 Q. AND HOW LONG HAVE YOU LIVED IN MYRTLE

13 BEACH?

14 A. SINCE FEBRUARY.

15 Q. HOW FAR DID YOU GO IN SCHOOL?

16 A. GOT THROUGH HIGH SCHOOL.

17 Q. AND YOU'VE HAD SOME TECH SCHOOL TRAINING?

18 A. YES. SOME. LIMITED.

19 Q. BUT YOU DON'T HAVE ANY OTHER DEGREES OTHER

20 THAN YOUR HIGH SCHOOL DIPLOMA?

21 A. NO.

22 Q. WHAT KIND OF WORK HAVE YOU DONE IN YOUR
23 WORK HISTORY?

24 A. LAST I WAS AN ELECTRICIAN. SIX YEARS.

25 Q. YOU WERE AN ELECTRICIAN FOR SIX YEARS?

MORRIS REPORTING SERVICES

1 A. YES.

2 Q. AND THAT'S WHAT YOU WERE DOING WHEN YOU
3 WERE INJURED WITH --

4 A. YES.

5 Q. -- PEACHTREE?

6 A. YES.

7 Q. WHAT OTHER KINDS OF WORK HAVE YOU DONE IN
8 YOUR PAST?

9 A. WORKED IN A LOCAL BUILDING SUPPLY AS A
10 WAREHOUSE FOREMAN AND I DID SOME HOME HEALTHCARE.

11 Q. AND YOU ACTUALLY TOOK SOME NURSING COURSES
12 AT SOME POINT IN TIME?

13 A. YES, I DID.

14 Q. THAT WAS A NUMBER OF YEARS BACK?

15 A. YES.

16 Q. PRIOR TO DECEMBER 9TH, 2002 WHEN YOU WERE
17 INJURED WITH PEACHTREE, DID YOU EVER SUFFER FROM ANY
18 DISABILITIES?

19 A. NO.

20 Q. NOW, YOU WERE INJURED ON DECEMBER 9TH, AS
21 WE SAID, '02. THAT'S AN ADMITTED ACCIDENT WITH
22 PEACHTREE; IS THAT RIGHT?

23 A. YES.

24 Q. TELL US BRIEFLY WHAT HAPPENED ON THAT
25 ACCIDENT.

MORRIS REPORTING SERVICES

1 A. I WAS WORKING AT DEVINE'S FISHHOUSE. I
2 WAS IN THE CRAWL SPACE UNDERNEATH THE RESTAURANT
3 TRACING OUT WIRE FOR STEP LIGHTS THAT WE WERE
4 REPLACING THAT WERE EXISTING. I WAS TRYING TO FIND
5 THE CIRCUIT. SOMEBODY DISCONNECT IT. I WAS TRYING
6 TO HOOK IT BACK UP SO THE STEPS LIGHTS WOULD WORK.
7 AND AS I WAS TRACING THE WIRE I STEPPED ON THE
8 EDGE -- WELL, I GUESS IT WAS PLYWOOD. AND THERE'S A
9 BIG HOLE THAT SOMEBODY HAD COVERED UP AND I CRASHED
10 IN IT.

11 Q. YOU CRASHED THROUGH THE HOLE?

12 A. YES.

13 Q. AND YOU RECEIVED MEDICAL TREATMENT AFTER
14 THAT ACCIDENT?

15 A. YES, I DID.

16 Q. AND DR. MILLS WAS YOUR AUTHORIZED TREATING
17 PHYSICIAN?

18 A. YES.

19 Q. IS THAT RIGHT? AND YOU HAD A DISKECTOMY
20 WITH DR. MILLS AS A RESULT OF THIS ACCIDENT; DID YOU
21 NOT?

22 A. YES.

23 Q. AND ON AUGUST THE 8TH, 2003 DR. MILLS
24 RELEASED YOU AND ASSIGNED A 10 PERCENT WHOLE BODY
25 IMPAIRMENT AND 13 PERCENT IMPAIRMENT TO THE SPINE; IS

MORRIS REPORTING SERVICES

1 THAT CORRECT?

2 A. YES.

3 Q. DOES THAT SOUND RIGHT?

4 A. YES.

5 MR. DETWILER: AND, YOUR HONOR, THAT'S APA
6 PAGE 22 IN OUR APA'S, DEFENDANTS APA'S.

7 BY MR. DETWILER:.

8 Q. AND HE ALSO NOTED THAT YOU DENIED AT THAT
9 TIME HAVING ANY RADICULAR PAIN ANYMORE?

10 A. NO PAIN DOWN THE LEG.

11 Q. NO PAIN DOWN THE LEG ANYMORE --

12 A. RIGHT.

13 Q. -- AT THAT POINT? AND THAT WAS ON
14 AUGUST 8TH, 2003. AFTER YOU WERE RELEASED YOU WENT
15 TO WORK FOR BOB WIRE ELECTRIC; IS THAT RIGHT?

16 A. YES.

17 Q. AND YOU STARTED AROUND OCTOBER OF 2003?

18 A. SOUNDS RIGHT.

19 Q. AND THE FIRST PART OF NOVEMBER OF 2003 YOU
20 WERE WORKING AT THE MURRELLS INLET SCUBA EXPRESS JOB
21 SITE; IS THAT RIGHT?

22 A. YES.

23 Q. AND YOU WERE WORKING THERE FOR BOB WIRE
24 ELECTRIC?

25 A. YES.

MORRIS REPORTING SERVICES

1 Q. WHILE WORKING AT THE SCUBA EXPRESS JOB
2 SITE FOR BOB WIRE YOU WERE PULLING WIRE --

3 MR. SMITH: OBJECTION TO THE FORM OF THE
4 QUESTION. IT'S OBVIOUS HIS HEARING AND LEADING.

5 MR. DETWILER: ADVERSE WITNESS.

6 THE COURT: WELL, YOU HAVEN'T IDENTIFIED
7 HIM. I WAS A LITTLE SURPRISED. I THOUGHT THE
8 CLAIMANT'S ATTORNEY WOULD ASK QUESTION BUT HE HADN'T.

9 MR. SMITH: SO WAS I.

10 THE COURT: IF YOU WOULD BE CAREFUL WITH
11 YOUR PHRASING. BECAUSE YOU HAVE ANOTHER PARTY HERE
12 AS A DEFENDANT.

13 MR. DETWILER: ALL RIGHT, SIR.

14 THE COURT: THERE'S NOTHING TO
15 CROSS-EXAMINE. HE HASN'T TESTIFIED TO ANYTHING YET.
16 BY MR. DETWILER:

17 Q. DO YOU REMEMBER WORKING AT THE SCUBA
18 EXPRESS SHOP?

19 A. YES, I DO.

20 Q. JOB SITE?

21 A. YES, I DO.

22 Q. AND YOU WERE WORKING FOR BOB WIRE AT THAT
23 TIME?

24 A. YES, I WAS.

25 Q. AND THAT WAS IN NOVEMBER OF '03?

MORRIS REPORTING SERVICES

1 A. YES.

2 Q. AFTER YOU HAD BEEN RELEASED BY DR. MILLS?

3 A. YES.

4 Q. CAN YOU TELL US WHAT HAPPENED THAT DAY
5 WORKING ON THE SCUBA EXPRESS JOB SITE.

6 A. WE WERE PULLING A CIRCUIT FOR A COMPRESSOR
7 THAT WAS IN AN OUT BUILDING AWAY FROM THEIR OFFICE.
8 IT WAS THREE #10 WIRES OR FOUR #10 WIRES.

9 Q. THAT'S PRETTY THICK WIRES?

10 A. NO, THEY'RE NOT --

11 MR. SMITH: I OBJECT. LEADING.

12 THE WITNESS: THEY'RE NOT VERY THICK. NO.

13 THE COURT: IF YOU'D BE CAREFUL --

14 BY MR. DETWILER:

15 Q. TELL US HOW THICK THE WIRES ARE.

16 A. THAT'S TWO GRADES STRONGER THAN WHAT YOU
17 WOULD RUN FOR LIKE THE RECEPTACLES IN HERE. I MEAN
18 IT'S NOT A LOT OF MORE EXTRA WEIGHT BUT IT'S A LITTLE
19 BIT. AND PULLING -- I WAS PULLING THE WIRE UP
20 THROUGH THE PIPE. BRAD WAS PUSHING AT ANOTHER
21 LOCATION, SO -- AND TRY TO GO THROUGH IT EASIER. AND
22 WHILE I WAS PULLING I HAD SEVERE PAIN IN MY BACK.

23 Q. COULD YOU DESCRIBE THE PAIN THAT YOU HAD
24 IN YOUR BACK?

25 A. STABBING, BURNING IN MY LOWER BACK AND IN.

MORRIS REPORTING SERVICES

1 THE SAME AREAS WHERE I HAD ALREADY HAD PROBLEMS.

2 Q. AND DID THAT OCCUR IMMEDIATELY WHEN YOU
3 WERE PULLING THE WIRE?

4 A. AT ONE POINT WHILE I WAS PULLING THE WIRE,
5 YES. I HAD PULLED THE WIRE SOME BEFORE AND IT HADN'T
6 HAPPENED. JUST AT THAT TIME IT HAPPENED.

7 Q. AND WHAT DID YOU DO WHEN YOU FELT THE PAIN
8 IN YOUR BACK?

9 A. IMMEDIATELY FELL TO THE GROUND. COULDN'T
10 DO ANYTHING ELSE. I HAD TO SIT THERE FOR ABOUT FIVE
11 MINUTES BEFORE I COULD GET UP OFF THE GROUND.

12 Q. NOW, YOU MENTIONED A PERSON NAMED BRAD; IS
13 THAT RIGHT?

14 A. YES.

15 Q. AND BRAD WAS THE MAN YOU WERE WORKING WITH
16 ON THE JOB SITE THAT DAY?

17 A. YES.

18 Q. AND WHO DID HE WORK FOR?

19 A. BOB WIRE ELECTRIC.

20 Q. AND WAS HE YOUR SUPERVISOR?

21 A. MORE OR LESS, YES. HE WAS THE SENIOR MAN?

22 Q. HE WAS THE LEAD MAN.

23 A. YES.

24 Q. AT THAT TIME DID YOU CONSIDER HIM YOUR
25 SUPERVISOR?

MORRIS REPORTING SERVICES

1 A. YES.

2 Q. HAVE YOU WORKED ANYWHERE ELSE SINCE THE
3 ACCIDENT IN NOVEMBER OF '03 WHEN YOU WERE WORKING FOR
4 BOB WIRE?

5 A. NO, I HAVE NOT.

6 Q. NOW, YOU DID WORK FOR ABOUT A HALF A WEEK
7 IN JANUARY OF '04 FOR BOB WIRE; IS THAT RIGHT?

8 A. RIGHT.

9 Q. AND OTHER THAN THAT, YOU HAVEN'T WORKED
10 ANYWHERE?

11 A. NO, SIR.

12 Q. SINCE THE ACCIDENT AT BOB WIRE YOU HAD
13 SURGERY TO YOUR BACK?

14 A. YES.

15 Q. AND THAT WAS A FUSION; WAS IT NOT?

16 A. YES, IT WAS.

17 Q. AND YOU'VE CONTINUED TO HAVE TREATMENTS
18 FROM DR. MILLS AND OTHER DOCTORS?

19 A. YES, I HAVE.

20 Q. AND YOU WERE PUT BACK ON TEMPORARY TOTAL
21 DISABILITY WITH PEACHTREE AND BUILDERS MUTUAL; WERE
22 YOU NOT?

23 A. YES, I WAS.

24 Q. NOW, YOU DID NOT TELL YOUR DOCTORS OR
25 PEACHTREE OR BUILDERS MUTUAL ABOUT THE ACCIDENT IN

MORRIS REPORTING SERVICES

1 NOVEMBER OF '03 WHILE WORKING FOR BOB WIRE, DID YOU?

2 MR. SMITH: OBJECTION TO THE FORM OF THE
3 QUESTION.

4 THE COURT: BE CAREFUL WITH YOUR PHRASING.
5 BY MR. DETWILER:

6 Q. DID YOU TELL YOUR DOCTORS OR PEACHTREE OR
7 BUILDERS MUTUAL THAT YOU HAD INJURED YOUR BACK WHILE
8 WORKING AT PEACHTREE IN NOVEMBER OF '03? OH, EXCUSE
9 ME. . WHILE WORKING FOR BOB WIRE IN NOVEMBER OF '03?

10 A. NO.

11 Q. PEACHTREE AND BUILDERS MUTUAL AUTHORIZED
12 THE SUBSEQUENT SURGERY BY DR. MILLS, DIDN'T THEY?

13 A. YES, THEY DID.

14 Q. AND THEY PUT YOU BACK ON TEMPORARY TOTAL
15 DISABILITY?

16 A. YES, THEY DID.

17 Q. AND AS FAR AS YOU KNOW, THEY DIDN'T KNOW
18 THAT YOU HAD HAD THIS SUBSEQUENT ACCIDENT, DID THEY?

19 A. NO. THEY NEVER KNEW IT WAS ANOTHER
20 ACCIDENT, NO.

21 Q. AND WHY DIDN'T YOU TELL PEACHTREE OR
22 BUILDERS MUTUAL?

23 A. I DIDN'T THINK ABOUT IT.

24 Q. NOW, DID ANYONE AT BOB WIRE KNOW THAT YOU
25 HAD SUFFERED THIS INJURY WHILE WORKING AT THE SCUBA

MORRIS REPORTING SERVICES

1 EXPRESS?

2 A. BRAD OR RITA WHO WAS WORKING WITH ME KNEW
3 ABOUT IT. AND WE LEFT THE JOB SITE EARLY THAT DAY.

4 Q. AND WHY DID YOU LEAVE THE JOB SITE EARLY
5 THAT DAY?

6 A. BECAUSE THE PAIN. THERE'S NO WAY I COULD
7 GO THROUGH THE DAY. AND I DIDN'T GO BACK TO WORK
8 EVER AFTER THAT EXCEPT FOR THAT SHORT TIME BACK WITH
9 BOB WIRE BECAUSE I NEEDED SOME MONEY.

10 Q. NOW, AFTER THIS INCIDENT WITH BOB WIRE,
11 YOU WENT BACK TO SEE DR. MILLS, DIDN'T YOU?

12 A. YES, I DID.

13 Q. AND DID YOU REPORT -- TELL ME, WHAT DID
14 YOU REPORT TO DR. MILLS IN TERMS OF THE PROBLEMS THAT
15 YOU WERE HAVING?

16 A. IMMEDIATELY AFTER THE ACCIDENT IT WAS JUST
17 PAIN IN MY BACK. BUT THE MORE THAT TIME PROGRESSED I
18 STARTED HAVING MORE SYMPTOMS DOWN MY LEG AGAIN,
19 HAVING NERVE.

20 Q. AND YOU SAW DR. MILLS RIGHT AFTER THIS
21 INCIDENT HAPPENED --

22 A. YES, I DID.

23 Q. -- AT BOB WIRE?

24 A. YES.

25 MR. DETWILER: AND THOSE MEDICALS CAN BE

MORRIS REPORTING SERVICES

1 FOUND AT APA'S 24 THROUGH 25, COMMISSIONER.

2 BY MR. DETWILER:

3 Q. AND WHAT KIND OF SURGERY DID YOU
4 ULTIMATELY HAVE THE SECOND SURGERY?

5 A. THE SECOND SURGERY WAS A DOUBLE FUSION:
6 L4-L5, L5-S1.

7 MR. DETWILER: THAT'S ALL I HAVE, YOUR
8 HONOR.

9 THE COURT: MR. DURANT, DO YOU HAVE ANY
10 QUESTIONS?

11 MR. DURANT: NOT AT THIS TIME. I MIGHT
12 HAVE SOME AFTER MR. SMITH.

13 THE COURT: MR. SMITH.

14 MR. SMITH: THANK YOU, YOUR HONOR.

15 D I R E C T E X A M I N A T I O N

16 BY MR. SMITH:

17 Q. DR. MILLS RELEASED YOU TO RETURN TO WORK
18 ON AUGUST 8TH, 2003; IS THAT CORRECT?

19 A. THAT SOUNDS RIGHT, YES.

20 Q. AND JUST PRIOR TO THAT ON JULY 7TH, 2003
21 WHEN YOU WERE RELEASED TO MAXIMUM MEDICAL IMPROVEMENT
22 YOU ALSO SAW DR. MILLS; DID YOU NOT?

23 A. IF THAT'S WHAT IT SAYS, YEAH.

24 Q. WOULD YOU DISPUTE THE FACT THAT HIS
25 RECORDS INDICATE JUST ONE MONTH PRIOR TO BRING

MORRIS REPORTING SERVICES

1 RELEASED TO MAXIMUM MEDICAL IMPROVEMENT THAT YOU HAD
2 A QUOTE, "SEVERE LOWER BACK PAIN?"

3 A. YES. I WAS STILL HAVING PAIN IN MY BACK
4 EVEN THOUGH HE RELEASED ME TO GO BACK TO WORK, YES.

5 Q. AND IN FACT AT THE TIME THAT HE SAID THAT
6 YOU WERE AT MAXIMUM MEDICAL IMPROVEMENT YOU DIDN'T
7 BELIEVE YOU WERE READY TO RETURN BACK TO WORK AND YOU
8 WERE STILL HAVING BACK PAIN; ISN'T THAT TRUE?

9 A. YES. THAT'S TRUE.

10 Q. AND IN FACT WHEN DR. MILLS RELEASED YOU,
11 IT WAS YOUR UNDERSTANDING THAT YOU WERE GOING TO NEED
12 A SECOND SURGERY IN THE FUTURE AND IT WAS JUST TRYING
13 TO BE PROLONGED?

14 A. I WAS TOLD THAT --

15 Q. YOU CAN'T TELL US WHAT A DOCTOR. WAS THAT
16 YOUR UNDERSTANDING OR?

17 A. MY UNDERSTANDING WAS THAT IF I KEPT
18 PUSHING MYSELF I WOULD HAVE TO HAVE ANOTHER SURGERY,
19 YES.

20 Q. AND AFTER DR. MILLS RELEASED YOU TO RETURN
21 TO WORK IN AUGUST 2003 YOU ATTEMPTED TO GO BACK AT
22 PEACHTREE ELECTRICAL; DID YOU NOT?

23 A. YES, I DID. HE RELEASED ME WITH NO
24 RESTRICTIONS WHEN HE SENT ME BACK TO WORK.

25 Q. WHEN YOU WENT BACK TO PEACHTREE ELECTRICAL

MORRIS REPORTING SERVICES

1 THEY TOLD YOU THEY DIDN'T HAVE A JOB FOR YOU, DIDN'T
2 THEY?

3 A. THEY HAD TOLD ME THEY DIDN'T WANT ME BACK,
4 YES.

5 Q. AND THEY TOLD YOU TO GO FIND WORK
6 SOMEWHERE ELSE?

7 A. THAT'S RIGHT.

8 Q. AND THAT'S WHEN YOU STARTED WORKING FOR
9 BOB WIRE IN OCTOBER OF 2003; IS THAT TRUE?

10 A. RIGHT.

11 Q. AND YOU WORKED APPROXIMATELY 15 HOURS PER
12 WEEK AT BOB WIRE?

13 A. I WOULD WORK LESS AND WORK MORE DEPENDING
14 ON HOW I FELT.

15 Q. AND IN FACT, YOU COULDN'T WORK 48 HOURS
16 PER WEEK BECAUSE YOUR BACK WAS STILL HURTING YOU?

17 A. YEAH. JUST BEING RELEASED TO GO BACK TO
18 WORK, NO, I COULDN'T WORK 40 HOURS A WEEK RIGHT FROM
19 THE START.

20 Q. AND REALLY THE ONLY REASON YOU WERE
21 WORKING AT BOB WIRE WAS BECAUSE YOU NEEDED THE MONEY;
22 ISN'T THAT TRUE?

23 A. THAT'S RIGHT.

24 Q. NOW, YOU ATTRIBUTED ALL OF YOUR BACK -- DO
25 YOU REMEMBER ME -- THAT'S IN YOUR DEPOSITION BACK IN

MORRIS REPORTING SERVICES

1 AUGUST OF 2005; CORRECT?

2 A. YES.

3 Q. AND YOU ATTRIBUTE ALL OF YOUR BACK PAIN
4 THAT YOU WERE HAVING AT THAT POINT IN TIME BACK TO
5 THE ACCIDENT AT PEACHTREE ELECTRICAL; DID YOU NOT?

6 A. RIGHT. YES.

7 Q. AND YOU AGREE YOU DID NOT INJURE YOUR BACK
8 AT BOB WIRE ELECTRICAL; DO YOU NOT?

9 A. I HAD -- I BELIEVE THAT IT WAS FROM THE
10 ORIGINAL ACCIDENT WHY I WAS HAVING THE PAINS NOW,
11 YES.

12 Q. AND THE ORIGINAL ACCIDENT WOULD HAVE BEEN
13 ON PEACHTREE ELECTRICAL?

14 A. RIGHT. AT DEVINE'S.

15 Q. AND YOU DON'T BELIEVE PULLING THAT LIGHT
16 CONDUIT AT BOB WIRE ELECTRICAL HAS ANYTHING TO DO
17 WITH YOUR CURRENT BACK PAIN, DO YOU?

18 A. WELL, AT THE TIME I DIDN'T THINK IT DID,
19 NO. BUT OBVIOUSLY THAT'S NOT MY DECISION TO MAKE
20 NOW, IS IT?

21 Q. CORRECT. BUT THAT'S WHAT YOU TOLD ME
22 DURING YOUR DEPOSITION?

23 A. YES. THAT'S WHAT I TOLD YOU, YES.

24 Q. AND THERE WASN'T ANY OTHER PARTICULAR
25 INCIDENT OR ACCIDENT AT BOB WIRE THAT AGGRAVATED YOUR

MORRIS REPORTING SERVICES

1 INJURY; ISN'T THAT TRUE?

2 A. JUST GOING BACK TO WORK EVERY DAY.

3 Q. AND, AGAIN, YOU BELIEVE THAT YOUR CURRENT
4 CONDITION IS RELATED BACK TO YOUR EMPLOYMENT AT
5 PEACHTREE ELECTRICAL; DO YOU NOT?

6 A. YES.

7 Q. NOW, YOU HAD SAID THAT YOU THOUGHT YOU HAD
8 AGGRAVATED YOUR BACK AND YOU HAD SEVERE PAIN ON
9 PULLING THAT LIGHT CONDUIT. BUT ISN'T IT TRUE THAT
10 EVER SINCE DR. MILLS RELEASED YOU IN AUGUST OF 2003
11 THAT EVERYTHING WAS AGGRAVATING YOUR BACK? GETTING
12 OUT OF BED IN THE MORNING, TAKING SHOWERS, SITTING,
13 STANDING, ALL THOSE - ANY HOUSEHOLD ACTIVITY WAS
14 AGGRAVATING YOUR BACK; IS THAT CORRECT?

15 A. THAT'S CORRECT. I WAS TOLD THE CURRENT
16 PAIN WOULD BE SOMETHING I HAD EVERY DAY. IT DIDN'T
17 MATTER WHETHER I DID SOMETHING OR WHETHER I DIDN'T.
18 I WAS STILL GOING TO BE IN PAIN.

19 Q. AND YOU HAD EPISODES PRIOR TO WORKING --
20 AFTER WORKING AT BOB WIRE ELECTRICAL OUTSIDE OF YOUR
21 EMPLOYMENT THAT WOULD PRODUCE THESE AGGRAVATING
22 SYMPTOMS?

23 A. YEAH. THERE'S SOME THINGS THAT CAUSE IT
24 TO GET A LITTLE WORSE.

25 Q. AND ARE YOU AWARE THAT DR. MILLS' RECORDS

MORRIS REPORTING SERVICES

1 DO NOT REFLECT THAT YOU HAD INJURED YOURSELF IN THE
2 CAPACITY OF PULLING CONDUIT AT BOB WIRE ELECTRICAL?

3 A. NO, IT SHOULDN'T. I NEVER TOLD HIM
4 ANYTHING. *

5 MR. SMITH: THANK YOU. THAT'S ALL THE
6 QUESTIONS I HAVE.

7 C R O S S - E X A M I N A T I O N
8 BY MR. DURANT:

9 Q. JUST A COUPLE OF FOLLOW-UP QUESTIONS,
10 CHRIS. WHEN YOU WERE RELEASED THE FIRST TIME FROM
11 DR. MILLS ON AUGUST 8, 2003, HAD THE RADIATING PAIN
12 DOWN YOUR LEG ABATED OR STOPPED?

13 A. YES.

14 Q. SO YOU WERE NOT HAVING ANY RADIATING PAIN
15 DOWN YOUR LEG AT THAT TIME?

16 A. NONE.

17 Q. THE SIGNIFICANT PAIN WAS IN YOUR BACK?

18 A. RIGHT. JUST IN MY LOWER BACK.

19 Q. AND THAT'S WHEN HE RELEASED YOU THE FIRST
20 TIME?

21 A. RIGHT.

22 Q. NOW, DID THAT CONTINUE FROM THE TIME THAT
23 YOU WERE RELEASED THE FIRST TIME UNTIL THE SECOND
24 INCIDENT OCCURRED WITH BOB WIRE?

25 A. YES. THAT'S WHEN THE PAIN STARTED BACK.

MORRIS REPORTING SERVICES

1 Q. AND WHEN YOU SAY THE PAIN -- THAT YOU HAD
2 PAIN IN THE BACK PRETTY MUCH THE WHOLE TIME FROM THE
3 SURGERY, BUT THE RADIATING PAIN DOWN YOUR LEG HAD
4 STOPPED?

5 A. RIGHT.

6 Q. AND THAT DIDN'T START BACK UNTIL AFTER THE
7 EVENT WITH BOB WIRE?

8 A. YES.

9 Q. THAT'S WHEN YOU STARTED HAVING RADIATING
10 PAIN DOWN YOUR LEG AGAIN?

11 A. RIGHT.

12 Q. THAT'S WHAT CAUSED YOU TO FALL TO THE
13 GROUND OR THE FLOOR?

14 A. NO. NO. I HAD PAIN, IMMEDIATE PAIN IN MY
15 LOWER BACK. THAT'S WHAT CAUSED ME TO FALL. AND
16 WITHIN A FEW DAYS AFTER THAT, THAT'S WHEN THE PAIN
17 DOWN MY LEG STARTED AGAIN. THE PAIN DOWN MY LEG
18 DIDN'T START IMMEDIATELY. IT TOOK A FEW DAYS.

19 MR. DURANT: THANK YOU. NOTHING FURTHER.

20 THE COURT: WHAT WAS THE DATES OF THE
21 EVENT AT BOB WIRE?

22 THE WITNESS: IT WAS NOVEMBER. I'M NOT
23 SURE WHAT THE DATE WAS. WHENEVER THEY -- I DON'T
24 REMEMBER DATES. I KNOW IT WAS SHORTLY AFTER I
25 RETURNED TO BOB WIRE. I THINK IT WAS IN NOVEMBER.

MORRIS REPORTING SERVICES

1 MR. DURANT: IT WAS IN NOVEMBER. I'LL
2 GIVE YOU THE EXACT DATE.

3 MR. SMITH: YOUR HONOR, HE HAS TO ASK HIM
4 A QUESTION.

5 THE COURT: YOU CAN'T TESTIFY FOR HIM.

6 THE WITNESS: I BELIEVE IT'S IN EARLY --

7 THE COURT: WELL, YOU TESTIFIED EARLIER
8 YOU WENT TO WORK WITH BOB WIRE IN OCTOBER OF 2003.

9 THE WITNESS: RIGHT.

10 THE COURT: SO YOU SAID JUST NOW IT WAS
11 SHORTLY AFTER THAT. ARE YOU SAYING IT WAS NOVEMBER
12 2003?

13 THE WITNESS: NOVEMBER 2003.

14 THE COURT: THANK YOU. IS THERE ANYTHING
15 ELSE?

16 MR. DETWILER: YES, SIR, YOUR HONOR.

17 R E C R O S S - E X A M I N A T I O N

18 BY MR. DETWILER:

19 Q. ANOTHER LAWYER IN MY OFFICE TOOK YOUR
20 DEPOSITION ON DECEMBER 18TH, 2003. DO YOU REMEMBER
21 THAT?

22 A. YES.

23 Q. THE FIRST DEPOSITION YOU HAD IN THE
24 WORKERS' COMP CASE?

25 A. YES.

MORRIS REPORTING SERVICES

1 Q. DO YOU REMEMBER THAT? AND YOU DIDN'T TELL
2 THAT LAWYER AT THAT TIME ABOUT ANY INCIDENT AT BOB
3 WIRE YOU, DID YOU?

4 A. NOT THAT I CAN RECOLLECT.

5 Q. AND IT WAS IN FEBRUARY OF '05 THAT YOU
6 GAVE A DEPOSITION IN A THIRD PARTY ACTION AGAINST
7 DEVINE FOODS; IS THAT RIGHT?

8 A. YES.

9 Q. AND YOU DID TESTIFY ABOUT THAT INCIDENT AT
10 THAT TIME, DIDN'T YOU?

11 A. YES, I DID.

12 MR. DETWILER: THAT'S ALL I HAVE.

13 THE COURT: LET ME JUST NOTE FOR THE
14 RECORD THAT IN ADDITION TO THE APA SUBMISSIONS I HAVE
15 THE DEPOSITION OF THE CLAIMANT FROM AUGUST 30TH, 2005
16 AND I HAVE A DEPOSITION OF ROBERT CONROY.

17 MR. DETWILER: YOUR HONOR, IN MY APA
18 SUBMISSIONS I HAVE HANDED UP COPIES OF THE DEPOSITION
19 OF THE CLAIMANT FROM DECEMBER 18TH. I THOUGHT I GAVE
20 YOU THAT ORIGINAL?

21 MR. SMITH: YOU DID. AND THEN I GAVE THE
22 ORIGINAL IN AUGUST.

23 MR. DETWILER: BUT I'LL HAND IT UP IN MY
24 APA'S. I'VE HANDED UP FOUR DEPOSITION TRANSCRIPTS:
25 THREE OF THE CLAIMANT, TWO FROM THIS CASE AND ONE

MORRIS REPORTING SERVICES

1 FROM THE THIRD PARTY CLAIM. AND THEN ONE OF
2 ROBERT -- MR. CONROY WHICH IS DUPLICATIVE OF WHAT YOU
3 HAVE THERE.

4 THE COURT: NO ONE DEPOSED DR. MILLS; IS
5 THAT RIGHT?

6 MR. SMITH: THAT'S CORRECT, YOUR HONOR.

7 MR. DETWILER: I'M SORRY. THERE'S THE
8 ORIGINAL OF THE -- I THOUGHT I HAD HANDED IT UP, OF
9 THE DECEMBER 18TH, 2003 DEPOSITION OF THE CLAIMANT.
10 IF I MAY HAND THAT UP.

11 THE COURT: IF THERE'S NOTHING ELSE, THEN
12 THAT CONCLUDES --

13 MR. SMITH: I JUST HAVE A FEW MORE
14 QUESTIONS, YOUR HONOR.

15 THE COURT: I'M SORRY. GO AHEAD.

16 R E C R O S S - E X A M I N A T I O N
17 BY MR. SMITH:

18 Q. AFTER YOUR THIRD PARTY DEPOSITION WAS --
19 OR ACTUALLY DURING YOUR THIRD PARTY DEPOSITION, DID
20 YOU BELIEVE WHEN THAT ATTORNEY WAS DEPOSING YOU THAT
21 YOUR ACCIDENT WAS A RESULT OF WORKING AT PEACHTREE
22 ELECTRICAL?

23 A. I BELIEVE THAT IT HAD SOME EFFECT.

24 Q. AND YOU'VE SINCE RECEIVED A THIRD PARTY
25 RECOVERY?

MORRIS REPORTING SERVICES

1 A. NO, I HAVEN'T RECEIVED IT.

2 Q. BUT IT'S BEEN SETTLED?

3 A. YES.

4 Q. AND THAT WAS AGAINST PEACHTREE ELECTRICAL
5 COMPANY?

6 A. NO.

7 Q. I'M SORRY. THE PEOPLE UNDERNEATH WHERE
8 YOU WERE WORKING AT?

9 A. DEVINE'S.

10 Q. OH, DEVINE'S. YOU INDICATED THAT YOU
11 BEGAN WORKING FOR BOB WIRE IN OCTOBER OF 2003?

12 A. THAT SOUNDS RIGHT, YES.

13 Q. WOULD YOU DENY THE FACT THAT DR. MILLS
14 INDICATED IN HIS OCTOBER 15, 2003 REPORT "THAT YOU
15 WERE HAVING RIGHT LOWER BACK PAIN, DENIES ANY
16 ACCIDENT OR INJURY AND IS PRESENTLY WORKING 20 HOURS
17 A WEEK?" SOUND ABOUT RIGHT?

18 A. SOUNDS ABOUT RIGHT, YES.

19 MR. SMITH: THANK YOU. THAT'S ALL THE
20 QUESTIONS I...

21 BY MR. SMITH:

22 Q. NOW, PRIOR TO BEING RELEASED FROM DR.
23 MILLS ON AUGUST 8TH, 2003, YOU HAD RELATED TO HIM ON
24 NUMEROUS OCCASIONS THAT YOU WERE HAVING RADICULOPATHY
25 EXTENDING DOWN TO YOUR LOWER LEGS; CORRECT?

MORRIS REPORTING SERVICES

1 A. WHEN IS THIS?

2 Q. DATING ALL THE WAY BACK TO JANUARY 2003.

3 A. BEFORE THE FIRST SURGERY?

4 Q. YES.

5 A. YEAH.

6 Q. SO THAT WASN'T SOMETHING NEW; CORRECT?
7 THE RADICULOPATHY PRIOR TO THE FIRST SURGERY?

8 A. NO. THE FIRST SURGERY FIXED MY LEG PAIN
9 BUT THAT WAS IT. I STILL HAD LOWER BACK PAIN AFTER
10 THE FIRST SURGERY.

11 Q. AND IT WAS YOUR UNDERSTANDING AT THAT TIME
12 THAT YOU WERE GOING TO HAVE TO UNDERGO A SECOND
13 SURGERY; CORRECT?

14 A. THAT THE POTENTIAL FOR A SECOND SURGERY
15 WAS THERE, YES.

16 MR. SMITH: THANK YOU. THAT'S ALL THE
17 QUESTIONS.

18 THE COURT: IF THERE'S NOTHING ELSE, THAT
19 CONCLUDES THE HEARING.

20

21 (WHEREUPON, THE HEARING WAS CONCLUDED AT 3:35 P.M.)

22

23

24

25

MORRIS REPORTING SERVICES

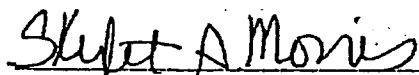
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, SKYLET A. MORRIS, COURT REPORTER AND NOTARY PUBLIC, FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE TRANSCRIPT OF THE FOREGOING HEARING IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS IN THE FOREGOING HEARING.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT COLUMBIA, SOUTH CAROLINA,
THIS 19TH DAY OF JUNE, 2006.



SKYLET A. MORRIS

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires June 22, 2014

MORRIS REPORTING SERVICES

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0220142

Christopher Price,
Employee/Claimant,

-VS-

Peachtree Electrical Services,
Employer, and

Builders Mutual Insurance,
Carrier, Defendants.

HEARING:

Held on June 5, 2006, in Myrtle Beach, South
Carolina, per notices timely and properly
served upon all parties of interest.

APPEARANCES:

N. David Durant, Esq., Surfside, South
Carolina, appearing on behalf of the Claimant.

Richard C. Detwiler, Esq. Columbia, South
Carolina, appearing on behalf of Peachtree
Electrical Services and Builders Mutual
Insurance.

Andrew D. Smith, Esq., Trask & Howell,
L.L.C., Mt. Pleasant, South Carolina, appearing
on behalf of Bob Wire Electrical and the SC
Home Builders.

PURPOSE OF HEARING:

To determine if Peachtree Electrical Services
and Builders Mutual Insurance may stop
payment; and if so, to determine if the Claimant
is entitled to any further benefits and whether
they are entitled to a credit for temporary
benefits paid in excess of award. Also, to
determine whether Bob Wire Electrical and
S.C. Home Builders have any liability under
the Act.

DECISION & ORDER:

By David W. Huffstetler, Commissioner

FILED:

July 5, 2006



E-Mailed to G.W. & L.S.
R-164

JUL 6 2006

STIPULATIONS

Counsel for both parties stipulated to the following:

1. The purpose of the hearing is to determine the issues as set forth on Peachtree Electrical Services and Builders Mutual Insurance Form 21.
2. Notice of the hearing for the claim was properly served upon all parties of interest.
3. Venue, set in Horry County is proper, as agreed by the Parties.
4. The South Carolina Workers' Compensation Commission has jurisdiction of this claim.
5. The Claimant's average weekly wage at the time of the accident at Peachtree Electrical Services was \$514.84 resulting in a compensation rate of \$343.24.
6. The Claimant has not filed a Form 50 against Bob Wire Electrical or S.C. Home Builders SIF alleging a date of accident during his employ at Bob Wire Electrical.
7. To determine whether Bob Wire Electrical and S.C. Home Builders SIF has any liability under the Act.

APA SUBMISSIONS

The following items were timely and properly submitted into evidence by the Claimant pursuant to the Administrative Procedures Act.

APA #	DESCRIPTION	DATES	PAGES
1	Dr. William Mills	1/12/05	1-2
2	Operative Report	6/15/04	3-4
3	Impairment Rating by Dr. William L. Mills, Coastal Orthopaedic	5/5/05	5

The following items were timely and properly submitted into evidence by the Defendant Peachtree Electrical Services pursuant to the Administrative Procedures Act.

APA #	DESCRIPTION	DATES	PAGES
4	Med Plus (Dr. James Turek)	12/9/02-12/11/02	6-10
5	Conway Hospital	1/7/03-6/15/04	11-32
6	Coastal Orthopaedic Associates (Wilbur Mills, MD/Jeffrey Wilkins, MD)	1/2/03-3/14/03	33-96
7	Clinical Pathology Assoc.	4/22/03-6/15/04	97-98
8	Coastal Physical Therapy	1/16/03-5/15/03	99-116
9	Strand Regional Specialty Associates (Dr. Jeff Benjamin)	2/14/03	117-119
10	Waccamaw Community Hospital	3/28/03	
11	Long Bay Rehab	12/3/04	120-125
12	Dr. Luis Fernandez		
13	Dr. John Ligouri		
14	Deposition Transcript Christopher Price	12/18/03	126-158
15	Deposition Transcript Christopher Price	2/1/05	159-174
16	Deposition Transcript Christopher Price	8/30/05	175-190
17	Deposition Transcript Robert Conroy	10/12/05	191-198

The following items were timely and properly submitted into evidence by the Defendant Bob Wire Electrical pursuant to the Administrative Procedures Act.

APA #	DESCRIPTION	DATES	PAGES
18	William L. Mills, M.D.	1/20/05 – 5/5/05	199-202

EXHIBIT#	DESCRIPTION	DATES	PAGES
19	Note from Sandra Soles re: Claimant	2/10/03	203
20	Form 50	2/3/05	204
21	Motion to Add a Party and For Continuance	5/2/05	205-207
22	Transmittal Order	6/21/05	208
23	Form 30, Request for Commission Review	7/12/05	209-210
24	Motion to be Removed as Party Defendant	7/13/05	211-214
25	Letter from Office of Attorney General Re: insurance fraud complaint	9/23/05	215
26	Deposition transcript of Robert Conroy	10/12/05	216-242

STATEMENT OF THE CASE

This case is before the undersigned Commissioner pursuant to Defendant/Peachtree Electrical Services filing of a Form 21, request to stop payment of temporary total disability benefits.

Peachtree Electrical Services contends the Claimant reached maximum medical improvement on August 8, 2003, and it seeks credit for any temporary compensation paid after that date. Peachtree Electrical Services takes the position it is liable for medical treatment and permanent partial disability, although it is their position any benefits paid after an alleged injury at Bob Wire Electrical or any permanent partial disability as a result of the alleged injury is the responsibility of Bob Wire Electrical.

Per Transmittal Order, Bob Wire Electrical was added as a party on June 21, 2005. On July 12, 2005 Bob Wire Electrical appealed the Transmittal Order to have it vacated and reversed, which was found interlocutory by the Commission. Bob Wire Electrical preserves their

position they should not have been made a party to this hearing. Bob Wire Electrical further takes the position that the claim is barred by S.C. Code §42-15-40. They take the position that no claim has been brought against them by the Claimant. They further take the position that Peachtree Electrical Services should be *estopped* from seeking any reimbursement for temporary compensation or medical treatment prior to the time that their Motion was filed, on April 22, 2005, to add them as a party.

The Claimant takes the position he reached maximum medical improvement on May 5, 2005. He contends that he is permanently and totally disabled.

EVIDENCE OF THE CASE

The record includes the testimony of the Claimant, Christopher Price, as well as the aforementioned APA submissions.

At the time of the hearing, the Claimant was thirty-six (36) years old. He is divorced and has no children. The Claimant graduated from high school. He has taken some technical and nursing courses. The Claimant has worked as a warehouse foreman and health care provider. He worked as an electrician for the last six years.

On December 9, 2002 the Claimant was working for Peachtree Electrical Services at Devine's Fishhouse. While in the crawl space underneath the restaurant tracing out wire, the Claimant crashed through a hole and injured his back. Peachtree Electrical Services admitted the accident. Dr. William L. Mills was the Claimant's authorized treating physician. The Claimant complained of severe back pain and radiculopathy extending down his lower legs. The Claimant underwent a diskectomy on April 22, 2003. On July 7, 2003, Dr. Mills released the Claimant to maximum medical improvement, and the Claimant was released to return to work on August 8,

2003. However, the Claimant testified he continued to have severe back pain at the time Dr. Mills released him to return to work.

Question: "But isn't true that ever since Dr. Mill's released you in August 2003 that everything was aggravating your back? Getting out of bed in the morning, taking showers, sitting, standing, all those -- any household activity was aggravating your back; is that correct?"

Answer: "That's correct. I was told the current pain would be something I had every day. It didn't matter whether I did something or whether I didn't. I was still going to be in pain."

(Hearing Transcript p. 20, l. 9-18)

It is the Claimant's understanding at the time Dr. Mill's released him he would potentially need another surgery, in the future.

Question: "And it was your understanding at that time that you were going to have to undergo a second surgery; correct?"

Answer: "That the potential for a second surgery was there, yes".

(Hearing Transcript p. 27, l. 11-15)

Further, when Dr. Mills released the Claimant, the Claimant did not believe he was able to return to work, but he needed money.

Question: "Would you dispute the fact that his records indicate just one month prior to being released to maximum medical improvement that you had a quote, 'severe lower back pain?'"

Answer: "Yes, I was still having pain in my back even though he released me to go back to work, yes."

Question: "And in fact at the time that he said that you were at maximum medical improvement you didn't believe you were ready to return back to work and you were still having back pain; isn't that true?"

Answer: "Yes. That's true."

(Hearing Transcript p. 16, l. 24-25 & p. 17, l. 1-9)

Upon being released, the Claimant attempted to go back to work for Peachtree Electrical Services. Peachtree Electrical Services informed the Claimant they did not have a job for him. The Claimant testified that when he tried to return to work at Peachtree Electrical Services they "didn't want me back" and was told to go find work elsewhere. (Hearing Transcript p. 18, l. 3-7). Thus, the Claimant got a position with Bob Wire Electrical in October 2003. The Claimant testified that prior to going to work for Bob Wire Electrical normal daily activities aggravate his back including getting out of bed, taking showers, sitting, standing or any household activity. The Claimant testified he was unable to work full time because of the continued pain in his back. The Claimant worked approximately 15 hours per week.

Question: "And you attribute all of your back pain that you were having at that point in time back to the accident at Peachtree Electrical; did you not?"

Answer: "Right. Yes".

Question: "And you agree you did not injure your back at Bob Wire Electrical, do you not?"

Answer: "I had—I believe that it was from the original accident [at Peachtree Electrical] why I was having the pains now, yes."

Question: "And you don't believe pulling that light conduit at Bob Wire Electrical has anything to do with your current back pain, do you?"

Answer: "Well, at the time I didn't think it did, no."

(Hearing Transcript p. 19, l. 3-19)

While working at the Murrells Inlet Scuba Express jobsite for Bob Wire Electrical, the Claimant experienced some back pain while pulling some "small" (not thick) wires. Despite this incident, the Claimant testified he attributes his current back pain to the accident at Peachtree Electrical Services. Furthermore, Peachtree Electrical Services did not obtain any medical evidence from a physician indicating the Claimant injured himself at Bob Wire Electrical. In fact, Dr. Mill's medical records do not reflect the Claimant injured himself at Bob Wire Electrical even though he saw Dr. Mills right after the alleged incident.

Question: "And you saw Dr. Mills right after this incident happened—"

Answer: "Yes, I did."

(Hearing Transcript p. 15, l. 20-22)

Despite this incident, the Claimant testified he attributes his current back pain to the accident at Peachtree Electrical Services. At the Claimant's August 30, 2005 discovery deposition, which was submitted into evidence, the Claimant testified as follows:

Question: "Okay. Do you believe anything having to pull on that wire injured your back, or do you believe it's related to your original injury at Peachtree."

Answer: "The original injury. It had nothing to do with pulling a wire."

(Claimant's Deposition p. 60, l. 16-20)

Then again at the Hearing the Claimant testified as follows:

Question: "You believe that your current condition is related back to your employment at Peachtree Electrical; do you not?"

Answer: "Yes."

(Hearing Transcript p. 20, l. 3-6)

Robert Conroy is the owner of Bob Wire Electrical. Mr. Conroy's October 12, 2005 deposition was submitted into evidence. Mr. Conroy testified the Claimant only worked for Bob Wire Electrical for a five-six week span. Mr. Conroy testified that the Claimant never reported a work-related injury while working with Bob Wire Electrical.

Question: "He [Mr. Arruda] never said anything to you about Mr. Price pulling wire and injuring his back?"

Answer: "No."

Question: "Have you ever heard that story before from anywhere?"

Answer: "No, I have not."

(Deposition of Robert Conroy p. 20, l. 2-7)

Question: "Mr. Price never told you that he hurt his back working on the Scuba Express job?"

Answer: "Not to my recollection. He never complained about any injuries. That I'm aware of."

(Deposition of Robert Conroy p. 20, l. 13-16)

Question: "And you never have received any notice of Mr. Price of being injured on a work related job in which he was working?"

Answer: "No."

(Deposition of Robert Conroy p. 26, l. 21-24)

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant suffered an admitted injury to his back when he stepped through a hole while working for Peachtree Electrical Services.
3. As a result of that injury, the Claimant underwent surgery at the hands of Dr. Mills, the Claimant's primary treating physician.
4. The Claimant testified he took a job with Bob Wire Electrical working 15 hours a week, in October 2003.
5. He further testified that, while pulling 3 or 4 small wires through conduit, he felt severe pain in the same area of his back that was injured on November 9, 2002.
6. He did not report it as a new injury, which is validated in Robert Conroy's deposition.
7. Mr. Conroy said the first he heard of a purported injury with Bob Wire Electrical was at the deposition on October 12, 2005.
8. The Claimant has not filed a claim against Bob Wire Electrical.
9. Since the date of the Claimant's episode of pain is more than two years ago and he has filed no claim, the Claimant would be barred by S.C. Code Ann. §42-15-40 and S.C. Code Ann. §42-15-20 from recovery.
10. However, this point is moot because he brings no claim against them.
11. At the time of the hearing, the Claimant testified he believes that all his problems stem from the injury with Peachtree Electrical Services.

12. None of the parties deposed Dr. Mills to ask his opinion concerning the purported incident with Bob Wire Electrical and I find no opinion in the medical reports that would indicate that pulling 3 or 4 wires would cause a back injury.
13. Bob Wire Electrical and South Carolina Home Builders Association were made parties to the hearing through a transmittal order from Commissioner Barden in response to Peachtree Electrical's motion.
14. That makes them a party to the hearing; it does not establish an injury by accident while the claimant was in their employ.
15. The Claimant testified that he understood after the first surgery that he was at risk for a second surgery.
16. The Claimant's testimony is that he was not injured by accident arising out of his employment with Bob Wire Electrical and there is no medical evidence to indicate that his disability or the need for the second surgery was occasioned by an injury with Bob Wire Electrical.
17. It would be pure speculation for me to find an injury when there is no testimony or medical evidence to support that finding.
18. It appears the Claimant's symptoms recurred after he became active.
19. This resulted in a second surgery (fusion).
20. Dr. Mills opines to a 20% impairment of the back in his January 20, 20005 report and goes on to say, "this appears to be all one process."
21. He also recommends continuing pain management therapy.
22. The Claimant did not give very much testimony concerning his current problems.

RULINGS OF LAW

1. Under S.C. Code Ann. §42-1-130, the Claimant was a covered Employee at the time in question and under S.C. Code Ann. §42-1-140, the Employer was a covered Employer.
2. Under S.C. Code Ann. §42-15-30(19) the Claimant sustained thirty-five (35%) permanent partial disability to the back while working for Peachtree Electrical Services.
3. Under S.C. Code Ann. §42-1-160, the Claimant did not sustain an injury by accident arising out of and in the course and scope of his employment with Bob Wire Electrical.
4. Under S.C. Code Ann. §42-15-40 and S.C. Code Ann. §42-15-20, any claim against Bob Wire Electrical is barred.

ORDER

IT IS, FURTHER ORDERED that the Claimant reached maximum medical improvement on May 5, 2005.

IT IS, FURTHER ORDERED that Defendants Peachtree Electrical Services are entitled to a credit for temporary total disability benefits paid since May 5, 2005.

IT IS, FURTHER ORDERED that the Defendants Peachtree Electrical Services shall pay the Claimant 105 weeks of compensation, representing a 35% permanent loss of use of the back.

IT IS, THEREFORE, HEREBY ORDERED that the Claimant did not suffer an injury by accident with Bob Wire Electrical.

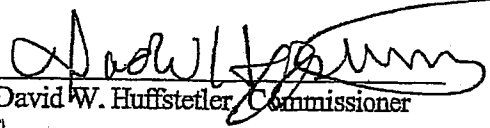
IT IS, THEREFORE, HEREBY ORDERED that Bob Wire Electrical is dismissed from this claim.

IT IS, SO ORDERED!

Dated:

July 5, 2000

9418/228/dec-ar


David W. Huffstetler, Commissioner

CERTIFICATE OF SERVICE

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

DD
RD
AS

This _____ day of _____, 200__

By _____
Administrative Assistant to the Commissioner ✓

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No. 0220142

Christopher Price,

Employee/
Claimant,

vs.

Peachtree Electrical Services,

Employer, and

Builders Mutual Insurance Company,

Carrier,

Defendants.

APPROVED

AUG 29 2006

S. C. Workers' Comp. Comm.

CONSENT ORDER APPROVING
SETTLEMENT AGREEMENT

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the Claimant, Christopher Price, with the consent of the Defendants. The Claimant is represented by N. David DuRant of The Law Offices of N. David DuRant and Associates, P.A. of Surfside Beach, South Carolina. The Defendants, Peachtree Electrical Services, Employer, and Builders Mutual Insurance Company, Carrier, are represented by Richard C. Detwiler, of Callison Tighe & Robinson, LLC, of Columbia, South Carolina. The South Carolina Workers' Compensation Commission has jurisdiction.

On or about December 9, 2002, while an employee of Peachtree Electrical Services, Claimant sustained an injury by accident arising out of and in the course of employment, suffering injury to the back. Medical care and treatment were necessitated by the injury, as outlined in the Commission's files. The Claimant alleges need and entitlement to additional medical treatment and

SCWCC

AUG 28 2006

JUDICIAL



temporary and/or permanent disability benefits as a result of the accident, which allegations are shown in the Commission's file. The Defendants have disputed the claims for additional benefits under the Act.

On June 5, 2006, a hearing was held on the Defendants' application to stop payment of temporary total disability benefits. On July 5, 2006, this Commission issued its Decision and Award, granting the Defendants' application and awarding the Claimant permanent partial disability benefits to the back, with credit to the Defendants for the overpayment of temporary total disability benefits paid after the date of maximum medical improvement.

The Claimant has also prosecuted and ultimately settled a related third-party claim against Divine Dining Group, Inc. d/b/a Divine Fish House for the total lump sum of Five Hundred Forty Thousand and No/100 Dollars (\$540,000.00). The Commission's files reflect that the Defendants have paid approximately One Hundred Thirty-eight Thousand and No/100 (\$138,000.00) in medical benefits on behalf of the Claimant and approximately Fifty-eight Thousand and No/100 (\$58,000.00) in compensation benefits for Claimant's time out of work. Under South Carolina Code §42-1-560 (2006 Ann.), the Defendants have a statutory lien upon the third-party settlement proceeds and assert their entitlement to a full recovery of their lien, less attorneys fees and costs. The Claimant alleges he is entitled to a reduction of the Defendants' lien pursuant to §42-1-560 and the decisions of Kirkland v. Allcraft Steel Co., Inc., S.C. 389, 496 S.E.2d 624 (1998) and Breeden v. TCW, Inc./Tennessee Express, 345 S.C. 201, 546 S.E. 2d 657 (Ct. App. 2001), affirmed in part, reversed in part, 355 S.C. 112, 584 S.E.2d 379 (2003).

The parties hereto now advise that, in view of the aforementioned disputes, an Agreement has been reached between the Claimant and the Defendants to settle this matter in its entirety, subject

only to the approval of the South Carolina Workers' Compensation Commission. The Claimant has agreed to make, and the Defendants have agreed to accept, payment in the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) in settlement of any further liability the Defendants may have with respect to the Claimant's claims for benefits under the Act, and in further settlement of the lien held by the Defendants upon the Claimant's third-party recovery proceeds.

As a material and integral part of the agreement of the parties, it is agreed that this Settlement Agreement shall act as a complete and final release of, and in full settlement and satisfaction of, every liability of the Defendants of whatever nature or kind under the laws of the State of South Carolina, including the South Carolina Workers' Compensation Act, growing out of, or in any way connected with, the aforescribed accident. The Defendants shall be responsible for all related medical expenses incurred at the request of the Defendants, or either of them, prior to the date of the Commission's Order of July 5, 2006, and any and all further medical expenses of whatever nature or kind thereafter shall be the express liability of the Claimant, and that the Defendants shall have no further liability therefor. This Settlement Agreement, once approved and payment made hereunder, shall also act as a complete and final discharge of the Defendants' lien under §42-1-560. However, nothing herein shall be construed to release the South Carolina Home Builders Association and Bob Wire Electric from any liability in this case, either to the Defendants' or to the Claimant.

By their signature hereon, the Claimant and Claimant's attorney acknowledge and warrant that the Claimant has been fully advised of all rights under the laws of the State of South Carolina, and the Claimant specifically warrants herein that he is of the opinion that the proposed settlement is reasonable and fair. In this opinion, the Claimant's attorney concurs and, together with Claimant, respectfully requests this Commission approve the Settlement as set forth above. Both the Claimant and Claimant's attorney acknowledge that the Commission relies on these representations and assurances by the Claimant and his Counsel that the Claimant has had the opportunity to be and has

SCWCC

AUG 28 2006

JUDICIAL

been fully advised of his rights under the laws of the State of South Carolina. The Claimant further acknowledges and warrants consent to, and the approval of, this Order as a final determination and adjudication of all benefits and claims for damages to which the Employee might be entitled from the Defendants and a complete release of all liabilities of the Defendants under the laws of the State of South Carolina growing out of, or in any way connected with, the aforesaid accident.

Based upon the foregoing representation of the parties and counsel, this Commission is of the opinion that the Settlement between the parties, the terms of which are set forth herein, is both reasonable and proper and should be approved.

NOW, THEREFORE, IT IS ORDERED that the terms of the settlement as set forth herein are hereby approved and confirmed, and that payment shall be made as provided hereunder, and the Defendants are hereby fully and forever released and discharged of all liabilities of whatever kind and nature under the laws of the State of South Carolina growing out of, or in any way connected with, the aforesaid accident, and that the Defendants' lien pursuant to South Carolina Code §42-1-560 is hereby released and forever discharged, subject only to payment by the Claimant to the Defendants as provided hereunder, so that this matter is not subject to review under any conditions.

It is further ordered that this settlement resolves all issues between the Claimant, on the one hand, and Peachtree Electrical Services and Builders Mutual Insurance Company, on the other, but this Agreement shall in no way be construed as a settlement or release of any claims either party may have against Bob Wire Electric and/or the South Carolina Home Builders Association, its carrier.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

By: /s/ Susan S. Barden
David W. Huffstetter, Commissioner

_____, 2006

Barden

SCWCC

AUG 28 2006

JUDICIAL

I certify this to be a true and correct copy.
4 Gregory S. Lane

I, Christopher Price, have read the foregoing Settlement Agreement and Consent Order. I have conferred with my attorney about the Agreement and Order and I understand and hereby consent to the terms thereof.

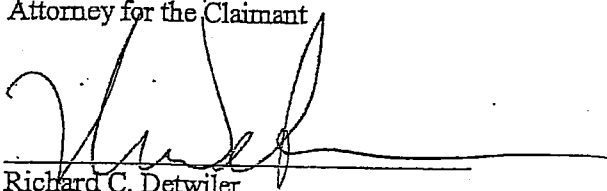


Christopher Price, Claimant

WE CONSENT:



N. David DuRant
Law Offices N. David DuRant
and Associates, P.A.
P. O. Box 14722
Surfside Beach, SC
Attorney for the Claimant



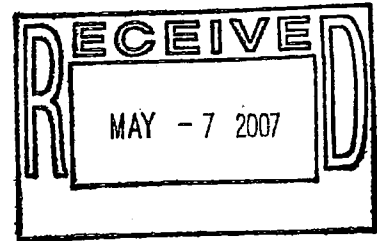
Richard C. Detwiler
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, South Carolina 29202
Attorneys for the Defendants

SCWCC

AUG 28 2006

JUDICIAL

APPELLATE PANEL
DECISION AND ORDER
OF THE



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC. FILE NO. 0220147

Christopher Price Claimant.

v.

Peachtree Electrical Services, Inc., Employer, and Builders Mutual Insurance Company,
Its Insurance Carrier, ... Appellants.

Peachtree Electrical Services, Inc., Employer, and Builders Mutual Insurance Company,
Its Insurance Carrier, ... Appellants.

v.

Bob Wire Electrical, Inc., Subsequent Employer, and South Carolina Home Builders
Association, Its Insurance Carrier Respondents,

Appellate Panel Review held in Columbia, South
Carolina on November 21, 2006, per notices timely
and properly served on all parties of interest.

Appellate Panel Decision and Order filed
May 4, 2007.

Appearances:

Defendants/Appellants Peachtree Electrical Services, Inc.
and Builders Mutual Insurance Company represented by
Richard C. Detwiler of Callison Tighe & Robinson, LLC,
Columbia, South Carolina

Subsequent Employer/Respondent Bob Wire Electrical, Inc.
represented by Andrew D. Smith of Trask & Howell, LLC,
Mt. Pleasant, South Carolina



STATEMENT OF THE CASE

This is an appeal by the Employer, Peachtree Electrical Services, Inc., and its Carrier, Builders Mutual Insurance Company (together, "Peachtree") from an Order of the Hearing Commissioner, the Honorable David W. Huffstetler, dated July 5, 2006. The hearing was held on June 5, 2006, in Myrtle Beach, South Carolina on Peachtree's Form 21, Employer's Request for Hearing.

This is an admitted claim for an accident which occurred on December 9, 2002. The issues presented at the hearing were (1) whether Peachtree was entitled to stop payment of benefits, (2) the claim for additional benefits by the Claimant and (3) whether Claimant's subsequent employer, Bob Wire Electrical, Inc., and its carrier, the South Carolina Home Builders Association (together, "Bob Wire") should be liable for benefits subsequent to the date of Claimant's first release at maximum medical improvement, August 8, 2003, due to a subsequent accident Claimant allegedly had while working for Bob Wire in November of 2003. In his Order, Commissioner Huffstetler held, in pertinent part, as follows:

FINDINGS OF FACT

8. The Claimant has not filed a claim against Bob Wire Electrical.
9. Since the date of Claimant's episode of pain is more than two years ago and he has filed no claim, the Claimant would be barred by S.C. Code Ann. §42-15-40 and S.C. Code Ann. §42-15-20 from recovery.
10. However this point is moot because he brings no claim against them.
11. At the time of the hearing, the Claimant testified he believes that all his problems stem from the injury with Peachtree Electrical Services.

18. It appears the Claimant's symptoms recurred after he became active.
19. This resulted in a second surgery (fusion).

RULINGS OF LAW

3. Under S.C. Code Ann. §42-1-160, the Claimant did not sustain an injury by accident arising out of and in the course and scope of his employment with Bob Wire Electrical.
4. Under S.C. Code Ann. §42-15-40 and S.C. Code Ann. §42-15-20, any claim against Bob Wire Electrical is barred.

ORDER

The Claimant reached maximum medical improvement on May 5, 2005.

Defendants Peachtree Electrical Services are entitled to a credit for temporary total disability benefits paid since May 5, 2005

The Defendants Peachtree Electrical Services shall pay the Claimant 105 weeks of compensation, representing a 35% permanent loss of use of the back.

The Claimant did not suffer an injury by accident with Bob Wire Electrical.

Bob Wire Electrical is dismissed from this claim.

Within the statutory period, Peachtree filed a Form 30, Request for Commission Review.

The Claimant did not file an appeal as to his award. A hearing was held before this Appellate Panel on November 21, 2006, based upon the record of the case.

ISSUES ON APPEAL

While the exceptions set forth in the Appellants' Form 30 are many, the questions presented on appeal are essentially three:

1. Are Claimant's back and leg symptoms related to the on-the-job injury suffered while working for Bob Wire Electrical?
2. Are Bob Wire and its carrier, SCHBA, responsible for benefits paid as a result of the November 2003 subsequent accident?
3. Is the claim barred by either the notice provisions set forth in S.C. Code §42-15-20 or the limitations of S.C. Code §42-15-40?

SCOPE OF REVIEW

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the hearing and, if the grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

FACTS

Claimant is a thirty-six year old high school graduate who has worked primarily as an electrician. It is admitted that he was injured while working for Peachtree on December 9, 2002. It is further admitted that he was entitled to and did receive medical treatment and compensation benefits for that injury. He reached maximum medical improvement, according to his authorized treating physician and surgeon, William L. Mills, M.D., on August 8, 2003. He returned to work, at first for himself, and then for another electrical company, Bob Wire.

In early November, 2003, while working for Bob Wire, Claimant testified that, upon pulling

wire through conduit, he felt pain which was so excruciating that he fell to his knees and cried out in agony. Tr. p. 12 ll. 4 - 11; Claimant's Depo. of 2/1/05, p. 11, l. 3 - p. 12, l. 10; Claimant's Depo of 8/30/05 p. 48, l. 19 - p. 49, l. 4, p. 51, ll. 2 - 17. The Claimant, through his attorney, contacted Peachtree, his former employer, for additional medical treatment and temporary total disability benefits. He returned to his previous treating physician, Dr. Mills, on November 13, 2003. The medical records and testimony indicate that this incident at Bob Wire occurred on or about November 3, 2003. The Claimant never told Peachtree or BMIC that anything had happened while he was working for Bob Wire. Based upon this lack of information, Peachtree provided additional medical treatment, including surgery and temporary total disability benefits from November 21, 2003, until the date of the stop pay hearing. Whether this incident at Bob Wire was a new accident and injury or just a non-event and continuation of his existing back problems is the crux of this dispute.

At the same time he was receiving the new benefits from Peachtree, Claimant was pursuing a third-party action stemming from his original accident. In that proceeding, the Claimant described an event Peachtree maintains was a new accident and injury. See, Claimant's Depo. of 2/1/05, p. 11, l. 3 - p. 12, l. 10. Peachtree, of course, was not a party to that action, and it was sometime after that deposition was taken that these Defendants learned of the new accident with Bob Wire. Peachtree immediately moved to add Bob Wire and its carrier, the South Carolina Home Builders Association (SCHBA hereafter), as parties to this case on April 22, 2005. That Motion was granted on June 21, 2005 by Commissioner Susan Barden. It is important to note that this motion to add Bob Wire as parties was made promptly upon learning of the new accident with Bob Wire, and only one year and five months after the accident at Bob Wire.

Bob Wire denied there was any new accident, denied that it had received notice of any such accident and claimed that the statute of limitations barred any action against and liability of Bob Wire. Bob Wire also filed an interlocutory appeal of Commissioner Barden's decision to add them as parties in the first place, which delayed the hearing on Peachtree's application to stop payment of benefits, which was filed on September 30, 2005. The hearing on Peachtree's application to stop pay was finally held on June 5, 2006. From that hearing, Commissioner Huffstetler awarded permanent partial disability benefits to the Claimant, but held there was no accident while Claimant worked at Bob Wire, thereby dismissing Bob Wire. This appeal followed.

DISCUSSION

1. Did the Claimant suffer an intervening accident and injury while working for Bob Wire Electric?

South Carolina Code § 42-1-160 defines "injury" and "personal injury" as an "injury by accident arising out of and in the course of the employment" with the Employer. The word "accident," as used in this section, is defined as an "unlooked for and untoward event which is not expected or designed by the person who suffered the injury." Radcliffe v. Southern Aviation School, 209 S.C. 411, 40 S.E.2d 626 (1946). It is such an event that the person who suffered the injury did not expect, design or intentionally cause. Yates v. Life Insurance Company of Georgia, 291 S.C. 301, 353 S.E.2d 297 (Ct. App. 1987). "If . . . there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. . . . [It is not] necessary that the accidental quality or condition be created by wound or external violence. Riley v. S.C. State Ports Authority, 253 S.C. 621, 172

S.E.2d 657 (1970).

In this case, the Claimant was pulling wire through a conduit while working for Bob Wire Electrical Company on or about November 3, 2003, when he felt pain so severe he fell to his knees and cried out. He described the event very clearly and consistently in three different legal proceedings: his deposition in the third-party action, his deposition in the workers' compensation case and at the hearing on the Defendants' stop pay application.

Q. And did that occur immediately when you were pulling the wire?

A. At one point when I was pulling the wire, yes. I had pulled the wire some before and it hadn't happened. Just at that time it happened.

Q. And what did you do when you felt the pain in your back?

A. Immediately fell to the ground. Couldn't do anything else. I had to sit there for about five minutes before I could get up off the ground.

Transcript of Hearing p. 12, ll. 2 - 11.

Q. You talked about returning to work in August or September of '03. I've got some notes from Long Bay Rehab, and it says you were released to return to work, full duty, in September of 2003. So that time frame is correct?

A. (No response.)

Q. Is that a yes?

A. Yes.

Q. Then it says, "He states he was re-injured at the end of November 2003, when pulling wire through a pipe and the resistance and jarring exacerbated his back and leg pain," is that correct?

A. Yes.

Q. What happened? What were you doing in November of 2003?

A. Pulling wire.

Q. Do you remember where you were at that time?

A. Murrell's Inlet, at the Scuba Shop. We were wiring the Scuba Express, I think is what it's called.

Q. I'm not good with electrical wiring and stuff. What are you doing when you're pulling a wire? What happens?

A. When we're pulling three-face power from the pole, from the meter, to an outbuilding that they had their compressor in for changing the tanks; and so it's a little thicker wire than, like, what you would run for receptacles and stuff like that; and the guy I was working with, he was feeding it in the pipe and I was pulling on the rope, trying to get the wire up through the pipe, so we could put the panel up.

Q. Doing something like that required a good bit of effort and a good bit of pulling? Would you say it was strenuous?

A. Yes.

Q. Would you say it was very strenuous?

A. In good health? No.

Q. Given the condition you were in - -

A. Very strenuous.

Q. Was that even what kind of brought all the problems back to the surface and the new round of treatment with Dr. Mills and everybody else?

A. I was pulling on the wire, felt something in my back go, and I fell to the ground from the pain.

Claimant's Deposition of 2/1/05, p. 10, l. 20 - p. 12, l. 13.

Q. Do you remember a specific incident at Bob Wire where you were pulling wire and felt an immediate onset of pain?

A. Yes.

Q. Okay. And in fact you had -- you felt an immediate onset of pain, and it was so painful that you immediately -- that you fell to your knees in pain; isn't that correct?

A. Yes.

Q. Okay. And, now, and that happened in November of 2003; is that correct?

A. Yes.

Claimant's Deposition of 8/30/05, p. 48, l. 19 - p. 49, l. 5.

In each case, Claimant's testimony described an unlooked for and untoward event which he did not expect or design. While pulling the wire, he felt immediate pain which was so excruciating that he fell to his knees and cried out. Subsequently, he went back out of work and had to undergo additional surgery for his back problems, after he had reached maximum medical improvement prior to this accident with Bob Wire. Clearly, he suffered a physical disability which was caused, increased or accelerated by this event while working at Bob Wire. It is therefore axiomatic that what occurred to the Claimant that day while working for Bob Wire was an injury by accident, as that term has been defined by S.C. Code § 42-1-160 and repeatedly by the appellate courts of this state. Viewed another way, if there had been no prior accident with Peachtree, would the event which took place on that day while working for Bob Wire have been considered an injury by accident by this Commission under existing law? This Appellate Panel believes that it would. Yet, the single Commissioner held that, pursuant to S.C. Code Ann. § 42-1-160, the Claimant did not sustain an injury by accident arising out of and in the course and scope of his employment with Bob Wire

Electrical. This Panel finds that this is a clear error of both fact and applicable law.

2. Was the accident at Bob Wire an intervening cause of Claimant's problems?

An "intervening cause" which will relieve an employer of liability for an injury is an independent cause which intervenes between the original accident and injury, turns aside the natural sequence of events, and produces a result which would not otherwise have followed and which could not have been reasonably anticipated. It is a new and independent force which breaks the causal connection between the original injury and itself becomes the direct and immediate cause of the injury. Black's Law Dictionary, Fifth Ed.

In this case, the Claimant had been injured, released and rated for his original on-the-job injury with Peachtree Electrical Services. He was released on August 8, 2003, and the best evidence in the record indicates that the accident with Bob Wire occurred on or about November 3, 2003, some 12 weeks later, after he had returned to work. It is hard to seriously contend that this incident at Bob Wire, after the Claimant had been released to return to work and, in fact, had returned to work, was not a "new and independent force which breaks the causal connection between the original injury and itself becomes the direct and immediate cause of the injury." He immediately went back out of work, back to the doctor and back to surgery. No medical evidence is required for any reasonable person to presume and conclude that the Claimant's subsequent problems were a result of this new accident at Bob Wire. It is therefore the finding of this Commission that the Claimant suffered an accident and injury while working at Bob Wire on or about November 3, 2003.

3. Is this claim barred by the statute of limitations or the notice provisions provided in §§42-15-20 and 42-15-40, respectively?

The Commissioner's ruling that the claim against Bob Wire Electric was barred by §§42-15-

20 and/or 42-15-40 misconstrues facts and is an error of law. First, the single Commissioner found that "[s]ince the date of Claimant's episode of pain is more than two years ago and he has filed no claim, the Claimant would be barred by S.C. Code Ann. § 42-15-40 and S.C. Code Ann. §42-15-20 from recovery." Section 42-15-20 is, of course, the notice provision of the Act, which requires notice of an accident within ninety days and §42-15-40 is the statute of limitations requiring that a claim be filed within two years of the accident.

(a) S.C. Code Ann. § 42-15-20:

This section requires notice be given to an employer of an accident within ninety days of its occurrence "unless it can be shown that the employer, his agent or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person." §42-15-20. In this case, the Claimant was working with his supervisor, Brad Arruda, pulling the wire when he felt excruciating pain and fell to his knees, crying out in anguish. At the hearing, Claimant testified as follows:

Q. Now you mentioned a person named Brad; is that right?

A. Yes.

Q. And Brad was the man you were working with on the job site that day?

A. Yes.

Q. And who did he work for?

A. Bob Wire Electric.

Q. And was he your supervisor?

A. More or less, yes. He was the senior man[.]

Q. He was the lead man[?]

A. Yes.

Q. At that time did you consider him your supervisor?

A. Yes.

Transcript of hearing, p. 12, l.12 - p. 13, l. 1.

In his depositions, Claimant similarly testified about his accident at Bob Wire.

Q. Did you tell Brad, though, --

A. He was right on the other side.

Q. I'm sorry?

A. He was on the other side of the wall.

Q. Okay.

A. And I let out a moan, I guess, and fell to my knees, and he came around the corner and seen me.

Q. Okay, so he -- you're saying that he actually responded to your falling down and crying out in pain?

A. Right.

Q. Okay. And he came around the corner, and did y'all -- did you tell him what had happened?

A. Yes.

Q. What did you tell him?

A. I told him that I just had a severe pain my back, crippling pain in my back and --

Claimant's Deposition of 8/30/05, p. 51 ll. 2 - 17.

Q. Now, do you know whether Brad told anybody else at Bob Wire about it?

A. I know he told Bob about it, the owner.

Claimant's Deposition of 8/30/05, p. 52, ll. 5 - 7.

The Commissioner's finding that the requirements of §42-15-20 have not been met are factually incorrect. There is clear evidence that the Employer "or his agent or representative" had knowledge of the accident. The Claimant satisfied the requirements of §42-15-20.

(b) Section 42-15-40:

The Commissioner's finding that this claim is barred because "the date of Claimant's episode of pain is more than two years ago" is also error. Section 42-15-40 requires that a claim must be "filed with the Commission within two years after an accident." § 42-15-40. In this case, the Employee, for whatever reason, chose to pursue additional benefits against Peachtree, his original Employer. Peachtree knew nothing of this subsequent accident with Bob Wire, nor did Claimant's doctor. Without knowledge of the accident at Bob Wire, Peachtree provided those benefits. But as soon as Peachtree learned of the new accident and injury, it filed a motion to add Bob Wire and South Carolina Home Builders Association, its carrier, to this proceeding, specifically alleging that the Claimant's new problems and the benefits Peachtree had to provide were the direct and proximate cause of a subsequent accident while working at Bob Wire. Peachtree's motion was made well within the two year period provided by § 42-15-40. Peachtree did all it could to raise this issue in a timely fashion. On the other hand, Bob Wire was well aware of this subsequent accident and failed to report it to the Commission. Nowhere in the Commissioner's Order is it explained how the two-year statute of limitation would apply to preclude benefits under these circumstances. The

Commissioner's finding that the statute of limitations applied is an error of law.

(c) The claim is not barred simply because the *Claimant* did not pursue the claim.

The Commissioner found that the issues regarding the notice provisions and statute of limitations of the Act were "moot" because the Claimant brought no claim against Bob Wire. First, it must be noted that nowhere in §42-15-40 is there a requirement that the claim be filed by the employee. Here, Peachtree did bring such a claim, as soon as it knew such a claim existed, as an aggrieved party has an inherent right under the Act and the laws of this State to do.

The Workers' Compensation Act is remedial. While the regulations of this Commission make no specific provisions for an Employer to bring third-party or indemnity claim against another party in this situation, it should not be precluded from doing so. This is consistent with this State's Rules of Civil Procedure. See, SCRCP Rule 14. It is also consistent with other analogous procedures provided in the Worker's Compensation Act. Cf., S.C. Code §42-1-560(c). And the common law doctrines of indemnity and equitable subrogation are certainly applicable in an instance, such as this, where one employer has been required by circumstance to pay a claim for another employer.

Subrogation may be broadly defined as the substitution of one person in the place of another with reference to a lawful claim or right. Kuzmik v. Bee's Fairy Associates, 342 S.C. 579, 608, 538 S.E.2d, 15, 30 (Ct. App. 2000) (citing Shumpert v. Time Insurance Co., 329 S.C. 605, 496 S.E.2d 653 (Ct. App. 1998)). Equitable (or legal) subrogation is implied subrogation that arises under the common law. It is not dependent upon a contract. As this Court put it in Kuzmik:

The doctrine is an equitable one, founded not upon any fixed law, but upon principles of natural justice; its purpose is to require the ultimate discharge of a debt by the person who in equity and good

conscience ought to pay it; and it is to be applied according to the dictates of equity and good conscience in the light of the actions and relationship of the parties.

Id. (citing Calbert Fire Insurance Company v. James, 236 S.C. 431, 435, 114 S.E.2d 832, 834 (1960)). (Emphasis in original.)

The elements of the doctrine of equitable subrogation are:

- (1) the party claiming subrogation has paid the debt;
- (2) the party was not a volunteer, but had a direct interest in the discharge of the debt or lien;
- (3) the party was secondarily liable for the debt or for the discharge of the lien; and
- (4) no injustice will be done to the other party by the allowance of the equity.

United Carolina Bank v. Caroprop, Ltd., 316 S.C. 1, 2, 446 S.E.2d 415, 416 (1994); Shumpert v. Time Ins. Co., *supra*.

In this case, this Commission has the authority and power to place the responsibility for a claim upon the employer and carrier who ultimately should be liable. The doctrine of equitable subrogation applies here and its elements have been satisfied with respect to Bob Wire. Peachtree, the party claiming subrogation, paid the debt owed to the injured worker, Christopher Price. Peachtree was not a volunteer, but had a direct interest in the discharge of the debt or lien. Peachtree was secondarily liable for the debt in that, save for the intervening accident and causation, it would have liability. Certainly, no injustice will be done to the party who, in equity and good conscience, should be responsible - Bob Wire.

It is the duty of this Commission to make a fair determination of true liability and apportion the costs of caring for an injured worker appropriately. The single Commissioner's Order fails in

this regard. The single Commissioner's Order, therefore, must be reversed.

FINDINGS OF FACT

The foregoing facts are hereby incorporated by reference as this Commission's Findings of Fact, and this Commission further finds as follows:

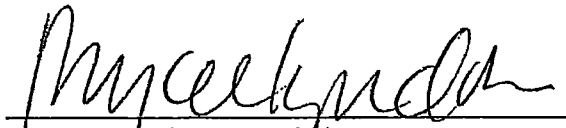
1. Claimant suffered a new accident and injury on or about November 3, 2003, while working for Bob Wire Electrical, Inc., which accident and injury was an aggravation of his pre-existing back condition. Based upon the medical records, testimony and other evidence in the record, it appears that this new accident occurred on or about November 3, 2003.
2. Claimant gave notice of the new accident and injury which occurred while working for Bob Wire by immediately telling his supervisor on the job, Brad Arruda, who in turn told the owner of Bob Wire.
3. The statute of limitations was satisfied by Bob Wire being added as a party by Defendants Peachtree and Builders Mutual.
4. This claim is remanded to the Jurisdictional Commissioner for determination of average weekly wage and benefits, etc., and apportionment of benefits paid and /or to be paid in a manner consistent with the findings set forth herein.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Hearing Commissioner filed on July 5, 2006, is hereby AFFIRMED, AS MODIFIED, and the matter is remanded to the jurisdictional Commissioner as provided herein.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION



G. Bryan Lyndon, Commissioner
For the Appellate Panel

-16-

R.197

CERTIFICATE OF SERVICE

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

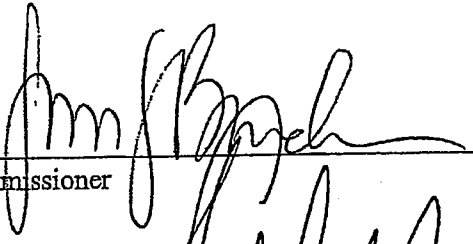
This 9th day of May, 2007

By Tanara Monis
Assistant to the Commissioner

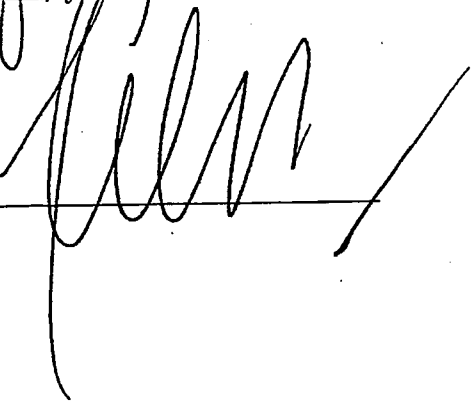
RCD
ADS

REVERSED AND REMANDED

CONCUR:



, Commissioner



, Commissioner

Columbia, South Carolina
_____, 2007

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Christopher Price,

Claimant,

v.

Peachtree Electrical Services, and Builders
Mutual Insurance Company,

Employer/Carrier/Respondents,

v.

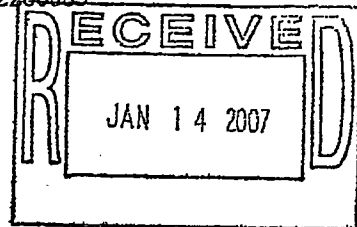
Bob Wire Electric, Inc., self-insured
Employer, through S.C. Home Builders SIF,

Defendants/Appellants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

SCWCC NO. 02200142

CASE NO: 2007CP2200885



ORDER

FILED
GEORGETOWN COUNTY, S.C.
2008 JAN -7 AM 9:13
ALMA Y. WHITE
CLERK OF COURT

This is an appeal from the South Carolina Worker's Compensation Commission. It involves a dispute between Peachtree Electrical Services, former employer of the Claimant, Christopher Price, and a subsequent employer, Bob Wire Electric, Inc. Peachtree filed a Motion to Dismiss the appeal on the grounds that it was not made timely, which motion was also before the Court. Because the motion, if granted, would be dispositive of this appeal, it should be considered first.

South Carolina Code Section 42-17-60 provides for appeals from an award of the Worker's Compensation Commission. In pertinent part, it states as follows:

§42-17-60. Conclusiveness of award; appeal; payment of compensation during appeal.

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon such review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of award or within thirty days after the

1084
110
R.199



receipt of notice to be sent by registered mail of the award, but not thereafter, may appeal from the decision of the commission to the court of common pleas of the county in which the alleged accident happened, or in which the employer resides or has his principal office, for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

S.C. Code §42-17-60 (emphasis added)

The record in this case indicates that the Full Commission Order was issued on May 4, 2007. According to Bob Wire's Notice of Intent to Appeal, it received that Order on May 7, 2007. Therefore, pursuant to South Carolina Code §42-17-60, Bob Wire had thirty days from May, 7, 2007, or until June 6, 2007, to appeal to the Circuit Court. Bob Wire's Notice of Intent to Appeal was not filed until June 29, 2007, some twenty-three days later. In response to the Motion to Dismiss the appeal, Bob Wire's counsel candidly admits that the appeal was not made timely, but argues excusable neglect. Specifically, Bob Wire's Return to the Motion points out the following:

1. The appeal in question was filed in conjunction with the Decision and Order of the Full Commission issued on May 4, 2007.
2. This matter was originally assigned to Andrew D. Smith, Esquire, at Trask & Howell, L.L.C., to handle the defense for the Appellant. On April 26, 2007, Mr. Smith left the employ of Trask & Howell, L.L.C., causing all of his approximately 150 files, including the present case, to be reassigned.
3. On or about May 7, 2007, the Full Commission Decision and Order in this matter was received in the Appellant's office. However, as a result of a scrivener's error on the part of the docketing clerk, the Notice of Appeal was not properly recorded, and was instead docketed for June 29, 2007.
4. Because this particular claim had not yet been reassigned, the scrivener's error was not discovered, and the Notice of Appeal remained docketed for June 29, 2007.
5. Subsequently, the claim was reassigned to Jamie C. Guerrero at Trask & Howell, L.L.C., who filed a Notice of Appeal with the Georgetown Clerk of Court on June 29, 2007.

2004
J. H. J.

6. On July 3, 2007, Defendant Peachtree Electrical Services and Builders Mutual Insurance Company filed a Motion to Dismiss based upon the Notice of Appeal being filed untimely.
7. The Appellant contends it was excusable neglect to rely on a scrivener's error in the docketing of the Notice of Appeal in light of the fact that the claim was being reassigned to a new attorney after Mr. Smith's departure from Trask & Howell, LLC.
8. Section 15-27-130 provides that the Court may relieve a party from a judgment taken through excusable neglect. "This section is liberally construed to see that justice is promoted and to strive for disposition of cases on their merits." Mann v. Walker, 328 S.E.2d 659 (Ct. App. 1985).
9. The Appellant maintains that it would be fundamentally unfair to dismiss this claim on the basis of an untimely appeal as a result of a scrivener's error, especially in light of its good faith and meritorious issues on appeal.
10. Since the Appellant's Notice of Appeal was in fact filed on June 29, 2007, it is obvious they relied on the scrivener's error deadline in so filing and did not simply file the appeal untimely on purpose or out of inexcusable neglect.

The question this Court must answer is whether it has any discretion to relieve Bob Wire from an untimely appeal. While the Court is certainly sympathetic to the unintentional and understandable failure to have the appeal calendared properly, the timeliness of an appeal is a matter of jurisdiction and this Court has no discretion or jurisdiction over the matter after the time for the appeal has run. South Carolina Code §42-17-60 is explicit that the award must be appealed within thirty days of the date of the award or after receipt of notice sent by registered mail, "but not thereafter." While there is no authority specifically on point, the South Carolina Court of Appeals has ruled that the circuit court lacked jurisdiction, based on the insufficiency of an appeal, where the petition for review was so vague that it did not adequately specify grounds for the appeal. Solomon v. W. B. Easton, Inc., 307 S.C. 518, 415 S.E. 2d 841 (S.C. App. 1992). Similarly, it is well settled

304
JAG

that the thirty-day period provided for notice of appeal from a circuit court to the appellate courts of this state, provided by the analogous Rule 203 of the S.C. Appellate Court Rules, has been held to be jurisdictional. Thus, this Court has no discretion nor jurisdiction to relieve Bob Wire or the S.C. Home Builders Association from its failure to timely file a notice of appeal from the Commission's award to this Court.

NOW, THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Motion to Dismiss the Appeal of Bob Wire Electric, Inc. and its carrier, South Carolina Home Builders Association, is hereby granted and the appeal is dismissed.

AND IT IS SO ORDERED.

Georgetown
Columbia, South Carolina
12/20/2007

Resident
Steven H. John,
Presiding Judge
Fifteenth Judicial Circuit

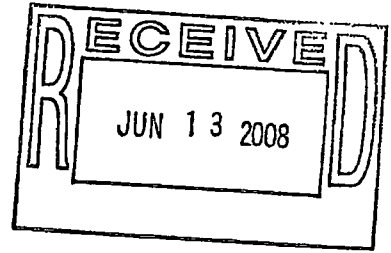
4384
[Signature]

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0220142



Christopher Price,
Employee/Claimant,

-VS-

Peachtree Electrical Services,
Employer, and

Builders Mutual Ins. Co.,
Carrier, Defendants.

-VS-

Bob Wire Electrical, Inc.,
Self-insured Employer through
S.C. Homebuilders SIF.

HEARING:

Held on April 23, 2008, in Florence, South
Carolina, per notices timely and properly
served upon all parties of interest.

APPEARANCES:

Richard C. Detwiler, Esq., Callison, Tighe,
and Robinson, L.L.C., South Carolina,
appearing on behalf of Defendant Peachtree
Electrical Services.

Jamie C. Guerrero, Esq., Trask & Howell,
L.L.C., Mt. Pleasant, South Carolina,
appearing on behalf of the Defendant Bob
Wire Electrical, Inc.

PURPOSE OF HEARING:

To determine the issues on remand per the
Appellate Panel's May 4, 2007 Order.

DECISION & ORDER:

By George N. Funderburk, Commissioner

FILED:

June 12, 2008



APA SUBMISSIONS

The Claimant submitted the following items into evidence at the time of the hearing pursuant to the Administrative Procedures Act:

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
1	Coastal Orthopaedic Associates	11/13/03 – 03/08/05	1-20
2	Conway Medical Center Operative Report	6/15/04-6/22/04	21-31
3	Long Bay Rehab	12/3/04	32-40
4	William L. Mills, MD Initial Visit Report	1/20/05	41-42
5	Impairment Rating by William L. Mills, MD Initial Visit Report	5/5/05	43
6	Dr. Luis Fernandez	4/7/08	44
7	Decision and Order	7/5/06	45-57
8	Appellate Panel Decision & Order	5/4/07	58-74

Defendant Bob Wire Electrical, Inc. submitted the following items into evidence at the time of the hearing pursuant to the Administrative Procedures Act:

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
9	Coastal Orthopaedic Associates	1/2/03-1/16/04	75-89
10	Luis F. Fernandez, M.D.	6/15/05-2/20/08	90-107
11	The Independence Back Institute	5/9/0610/6/06	108-121
12	Long Bay Rehab	9/14/04	122-123

<u>EXHIBITS #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
13	Employer Records – Days/Hours Worked	10/15/03-1/10/04	124-126
14	Complaint-Negligence filed by N. David DuRant, Esq. Case No. 2004-CP-22-387	5/12/04	127-130
15	Form 50, Employee's Notice of Claim And/or Request for Hearing	2/3/05	131
16	Release of All Claims	4/6/06	132-134
17	Consent Order Approving Settlement Agreement, WCC File 02202142	8/28/06	135-139
18	Form 19, Status Report & Compensation Receipt, WCC File 0220142	8/28/06	140
19	SLED Arrest Record	3/20/08	141-142

Defendant Peachtree Electrical Services submitted the following items into evidence at the time of the hearing pursuant to the Administrative Procedures Act:

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
20	Summary of Expenses to be Paid by SCHBA and BMIC	11/3/03-5/30/06	143-146
21	Medical Expenses Related to Bob Wire Accident – Expenses incurred after 11/3/03	11/3/03-5/30/06	147-157
22	Attorney Fee Affidavit	11/7/03	158-188

This matter was originally scheduled for hearing on April 18, 2008, at 9:30 a.m. in Myrtle Beach, South Carolina. However, due to time constraints, the matter was rescheduled for April 23, 2008, at 9:30 a.m. in Florence, South Carolina. On April 18, 2008, the undersigned Commissioner ordered that WCC No. 0220142 and WCC No. 0327174 be bifurcated and addressed in separate hearings. Accordingly, WCC No. 0327174 was rescheduled for hearing on April 23, 2008, at 9:30

a.m. and WCC No. 0220142 was rescheduled for hearing on April 23, 2008, at 10:30 a.m. The Claimant filed a Form 50 in WCC No. 0327174 on January 17, 2008. However, because he believed that the issues raised on the Form 50 in WCC No. 0327174 would be addressed in the remand hearing for WCC No. 0220142, that Form 50 was withdrawn on March 26, 2008. In the interest of judicial economy, the undersigned Commissioner reinstated the Claimant's Form 50 in WCC No. 0327174, as well as Defendant Bob Wire Electrical's Form 51.

STIPULATIONS

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was properly and timely served upon all parties in interest.
3. Venue, set in Florence County, is proper as agreed by the parties.

STATEMENT OF THE CASE

The Claimant suffered an admitted injury to his back in an accident arising out of and in the course of his employment with Peachtree Electrical Services ("Peachtree") on or about December 9, 2002. He was rated and released by the authorized treating physician on August 8, 2003. He subsequently went to work for Bob Wire Electrical, Inc. ("Bob Wire"). In November of 2003, after he had been working for Bob Wire, Claimant returned to the authorized treating physician complaining of additional back problems. He was taken out of work by the authorized treating physician and Peachtree's Carrier restarted temporary total disability benefits and provided medical treatments.

On April 22, 2005, Peachtree filed a motion to add Bob Wire as a party on the grounds that it had discovered evidence which Peachtree believed showed that the Claimant suffered a

subsequent injury by accident while working for Bob Wire, resulting in additional medical treatment and disability for which Peachtree had paid. Peachtree's Motion to add Bob Wire was granted on June 21, 2005.

On June 5, 2006, a hearing on Peachtree's Form 21 Application to Stop Payment was held before Commissioner Huffstetler. By Decision and Order dated July 5, 2006, Commissioner Huffstetler found that the Claimant did not sustain a work-related injury while working with Bob Wire and dismissed Bob Wire as a party. Commissioner Huffstetler also ordered Peachtree to pay the Claimant 105 weeks of compensation for 35% loss of use of the back resulting from the December 9, 2002 accident.

Peachtree appealed the Single Commissioner's finding that the Claimant had not suffered a subsequent accident while working for Bob Wire, and Bob Wire's dismissal. Neither Peachtree, Bob Wire nor the Claimant appealed the Single Commissioner's finding that the Claimant sustained a 35% disability to the back.

By Decision and Order dated May 4, 2007, the Appellate Panel reversed the Single Commissioner by finding that the Claimant had sustained an accident and injury on or about November 3, 2003 while working for Bob Wire. The Appellate Panel found that the Claimant gave proper notice of the work-related accident and that the Statute of Limitations had been satisfied when Bob Wire was added as a party on Peachtree's Motion in April of 2005. The Appellate Panel remanded the matter to the jurisdictional Commissioner for an apportionment of the benefits which Peachtree had paid to the Claimant.

Bob Wire appealed to the Circuit Court. That appeal was dismissed as untimely.

ISSUES PRESENTED

This matter is on remand from the South Carolina Workers' Compensation Appellate Panel for "determination of average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with the finding set forth herein." The issues, therefore, as framed by the parties can be stated as follows:

1. According to its APA submissions, Peachtree paid \$137,980.61 in medical benefits and \$58,301.74 in temporary total disability benefits to the Claimant. How much of these benefits paid to the Claimant are the responsibility of Bob Wire, under the circumstances?
2. Peachtree also incurred \$36,235.27 in defense costs, including attorneys' fees. Is Peachtree entitled to the recovery from Bob Wire of any of its litigation costs, including attorneys' fees, as a result of prosecuting this matter, under the doctrine of equitable indemnity?
3. By settling the case with the Claimant on August 29, 2006, did Peachtree relinquish its rights to recover any reimbursement or any overpayment of benefits from Bob Wire.

FINDINGS OF FACT

1. The Appellate Panel made the following findings of facts and conclusions of laws:
 1. Claimant suffered a new accident and injury on or about November 3, 2003, while working for Bob Wire Electrical, Inc., which accident and injury was an aggravation of his pre-existing back condition. Based upon the medical records, testimony and other evidence in the record, it appears that this new accident occurred on or about November 3, 2003.
 2. Claimant gave notice of the new accident and injury which occurred while working for Bob Wire by immediately telling his supervisor on the job, Brad Arruda, who in turn told the owner of Bob Wire.
 3. The statute of limitations was satisfied by Bob Wire being added as a party by Defendants Peachtree and Builders Mutual.
 4. This claim is remanded to the Jurisdictional Commissioner for determination of average weekly wage and benefits, etc., and apportionment of

benefits paid and /or to be paid in a manner consistent with the findings set forth herein.

The appeal of these findings was dismissed and, therefore, these findings of the Appellate Panel are the law of the case.

2. All medical expenses incurred by Peachtree as a result of the Claimant's accident and injury on December 9, 2002 while working for Peachtree, until the Claimant's subsequent injury on November 3, 2003 while working for Bob Wire, are causally-related to the Claimant's December 9, 2002 accident which occurred while working for Peachtree.

3. All medical expenses and temporary total disability benefits paid after the November 3, 2003 are causally-related to his accident while working for Bob Wire on that date.

4. Until the date Bob Wire's appeal was dismissed by the Circuit Court, on December 20, 2007, Bob Wire continued to deny its responsibility in this matter and continued to deny that any subsequent accident and injury had occurred to the Claimant while he was working for Bob Wire. On July 10, 2006, the Claimant settled the 2002 claim against Peachtree by Consent Order Approving Settlement Agreement, which was approved by the Commission on August 29, 2006. Peachtree gave no notice to Bob Wire of this settlement, but the settlement was approved by the Commission and made a part of the Commission's file in this case prior to the hearing before the Appellate Panel on November 21, 2006.

CONCLUSIONS OF LAW

1. Bob Wire's argument that Peachtree relinquished its right to seek reimbursement from Bob Wire by clinching the case with the Claimant without notice to Bob Wire is fundamentally without merit. First, it should be noted that the clincher specifically is between the Claimant and Peachtree, not Bob Wire, and both Peachtree and the Claimant specifically reserved

all rights either party may have against Bob Wire. Second, at the time of the settlement, Bob Wire denied any responsibility in this matter and that a subsequent accident ever occurred at all. Bob Wire cannot now be heard to suggest that it was entitled to notice of any settlement between the other parties to the case. Third, the settlement involved matters arising out of the December 9, 2002 accident with Peachtree, not the November 3, 2003 accident with Bob Wire. As conceded by all parties to this case, the 2003 injury with Bob Wire should have been, and now has been, bifurcated and established as a separate claim, with a separate WCC file number with the Commission. Under these circumstances, I conclude as a matter of law that Bob Wire was not and could not be a necessary and proper party to the settlement agreement between Peachtree and the Claimant, and was not entitled to any notice of the settlement. The Settlement Agreement between Peachtree and the Claimant, which settled the 2002 claim, has no bearing on Peachtree's right to reimbursement for expenses it incurred as a result of the 2003 claim.

2. Peachtree paid medical providers a total of \$137,980.61 according to its APA submissions. It appears that \$112,789.42 in medical benefits were provided after the November 3, 2003 accident with Bob Wire. Therefore, Peachtree is entitled to reimbursement from Bob Wire of the \$112,789.42 in medical benefits paid by Peachtree which were causally-related to the November 3, 2003 accident, subject to prompt verification by Bob Wire and its Carrier.

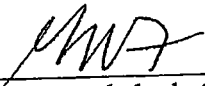
4. Peachtree also paid temporary total disability benefits after the November 3, 2003 accident with Bob Wire in the total amount of \$47,023.88. Peachtree is entitled to reimbursement of those benefits from Bob Wire.

5. Peachtree is not entitled to an award of attorneys' fees and costs under the theory of equitable indemnity.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bob Wire shall reimburse Peachtree for all causally-related medical treatment and temporary total disability compensation provided to the Claimant by Peachtree after November 3, 2003. Specifically, Bob Wire shall reimburse Peachtree in the amount of \$112,789.42 for medical benefits paid and \$47,023.88 for temporary total disability benefits paid to the Claimant after November 3, 2003. Peachtree's claim for litigation costs, including attorneys' fees, is denied.

AND IT IS SO ORDERED.


George N. Funderburk, Commissioner

Columbia, South Carolina

June 11, 2008

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 12 day of June, 2008
By Luella Tolleson
Administrative Assistant to the Commissioner

RD
JG

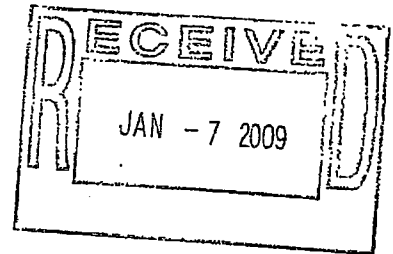
AMENDED APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0220142



CHRISTOPHER PRICE,

EMPLOYEE,
CLAIMANT/RESPONDENT,

- V -

PEACHTREE ELECTRICAL SERVICES and
BOB WIRE ELECTRICAL, INC.,

EMPLOYERS,

AND

BUILDERS MUTUAL INSURANCE CO. and
S. C. HOMEBUILDERS SIF,

CARRIERS,
DEFENDANTS.

Appellate Panel Review held in Columbia,
South Carolina on October 28, 2008 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

January 6, 2009.

APPEARANCES:

Defendants/Respondents/Peachtree Electrical
Services represented by Richard C. Detwiler,
Esquire, of Columbia, South Carolina.

Defendants/Appellants/Bob Wire Electrical, Inc.
represented by Kirsten L. Barr, Esquire, of Mt.
Pleasant, South Carolina.



STATEMENT OF CASE

This Order replaces the Order issued December 17, 2008 which erroneously included the exceptions to a companion file, WCC File #0327174. The previous Order is withdrawn. WCC File #0327174 has not yet been heard on appeal, and it will be scheduled in due course. This appeal is for WCC File # 0220142.

The parties were heard by Commissioner George N. Funderburk on April 23, 2008 in Florence, South Carolina. On June 12, 2008, he issued the following Order:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bob Wire shall reimburse Peachtree for all causally-related medical treatment and temporary total disability compensation provided to the Claimant by Peachtree after November 3, 2003. Specifically, Bob Wire shall reimburse Peachtree in the amount of \$112,789.42 for medical benefits paid and \$47,023.88 for temporary total disability benefits paid to the Claimant after November 3, 2003. Peachtree's claim for litigation costs, including attorneys' fees, is denied.

AND IT IS SO ORDERED.

Within the statutory period, counsel for the Defendants/Bob Wire Electrical, Inc. filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on October 28, 2008. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Defendant/Bob Wire Electrical, Inc. respectfully submits the following:

1. The South Carolina Workers' Compensation Commission does not have jurisdiction over equitable claims of indemnity or subrogation.

2. Peachtree has unclean hands and will otherwise be unjustly enriched by the "reimbursement" ordered by the Hearing Commissioner.

3. Commissioner Funderburk erred in summarily concluding that Peachtree is entitled to "reimbursement" for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable indemnity.

4. Commissioner Funderburk erred in summarily concluding that Peachtree is entitled to "reimbursement" for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable subrogation.

5. Commissioner Funderburk's finding that Bob Wire must "reimburse" Peachtree for all temporary total disability compensation benefits paid to the Claimant after November 3, 2003 is arbitrary and capricious.

6. Peachtree's request for "reimbursement" is governed by S. C. Code Ann. § 42-9-210 and § 42-1-560.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission, by unanimous vote, has determined all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety.

FINDINGS OF FACT

1. The Appellate Panel made the following findings of fact and conclusions of law:

a. Claimant suffered a new accident and injury on or about November 3, 2003 while working for Bob Wire Electrical, Inc. which was an aggravation of his pre-existing back condition. Based on the medical records, testimony and other evidence in the record, it appears this new accident occurred on or about November 3, 2003.

b. Claimant gave notice of the new accident and injury which occurred while working for Bob Wire by immediately telling his supervisor on the job, Brad Arruda, who in turn told the owner of Bob Wire.

c. The statute of limitations was satisfied by Bob Wire being added as a party by Defendants/Peachtree and Builders Mutual.

d. This claim is remanded to the jurisdictional commissioner for determination of average weekly wage and benefits, etc. and apportionment of benefits paid and/or to be paid in a manner consistent with the findings set forth herein.

The appeal of these findings was dismissed and, therefore, these findings of the Appellate Panel are the law of the case.

2. All medical expenses incurred by Peachtree as a result of Claimant's accident and injury on December 9, 2002 while working for Peachtree, until Claimant's subsequent injury on November 3, 2003 while working for Bob Wire, are causally related to Claimant's December 9, 2002 accident which occurred while working for Peachtree.

3. All medical expenses and temporary total disability benefits paid after November 3, 2003 are causally related to his accident while working for Bob Wire on that date.

4. Until the date Bob Wire's appeal was dismissed by the circuit court on December 20, 2007, Bob Wire continued to deny its responsibility in this matter and continued to deny any subsequent accident and injury had occurred to the Claimant while he was working for Bob Wire. On July 10, 2006, Claimant settled the 2002 claim against Peachtree by Consent Order Approving Settlement Agreement, which was approved by the Commission on August 29, 2006. Peachtree gave no notice to Bob Wire of this settlement, but the settlement was approved by the Commission and made a part of the Commission's file in this case prior to the hearing before the Appellate Panel on November 21, 2006.

CONCLUSIONS OF LAW

1. Bob Wire's argument that Peachtree relinquished its right to seek reimbursement from Bob Wire by clinching the case with the Claimant without notice to Bob Wire is fundamentally without merit. First, it should be noted the clincher specifically is between Claimant and Peachtree, not Bob Wire, and both Peachtree and Claimant specifically reserved all rights either party may have against Bob Wire. Second, at the time of the settlement, Bob Wire denied any responsibility in this matter and that a subsequent accident ever occurred at all. Bob Wire cannot now be heard to suggest it was entitled to notice of any settlement between the other parties to the case. Third, the settlement involved matters arising out of the December 9, 2002 accident with Peachtree, not the November 3, 2003 accident with Bob Wire. As conceded by all

parties to this case, the 2003 injury with Bob Wire should have been, and now has been, bifurcated and established as a separate claim, with a separate WCC file number with the Commission. Under these circumstances, it is concluded, as a matter of law, Bob Wire was not and could not be a necessary and proper party to the settlement agreement between Peachtree and the Claimant and was not entitled to any notice of the settlement. The Settlement Agreement between Peachtree and the Claimant, which settled the 2002 claim, has no bearing on Peachtree's right to reimbursement for expenses it incurred as a result of the 2003 claim.

2. Peachtree paid medical providers a total of \$137,980.61 according to its APA submissions. It appears \$112,789.42 in medical benefits was provided after the November 3, 2003 accident with Bob Wire. Therefore, Peachtree is entitled to reimbursement from Bob Wire of the \$112,789.42 in medical benefits paid by Peachtree which were causally related to the November 3, 2003 accident, subject to prompt verification by Bob Wire and its Carrier.

3. Peachtree also paid temporary total disability benefits after the November 3, 2003 accident with Bob Wire in the amount of \$47,023.88. Peachtree is entitled to reimbursement of those benefits from Bob Wire.

4. Peachtree is not entitled to an award of attorneys' fees and costs under the theory of equitable indemnity.

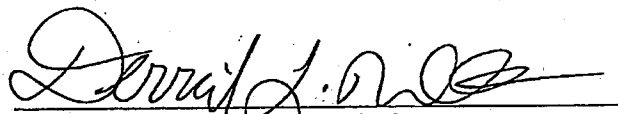
ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on June 12, 2008 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED Bob Wire shall reimburse Peachtree for all causally related medical treatment and temporary total disability compensation provided to the Claimant by Peachtree after November 3, 2003. Specifically, Bob Wire shall reimburse Peachtree in the amount of \$112,789.42 for medical benefits paid and \$47,023.88 for temporary total disability benefits paid to the Claimant after November 3, 2003. Peachtree's claim for litigation costs, including attorneys' fees, is denied.

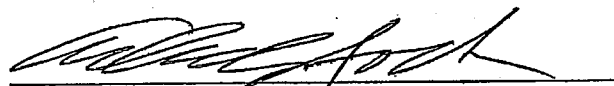
AND IT IS SO ORDERED.

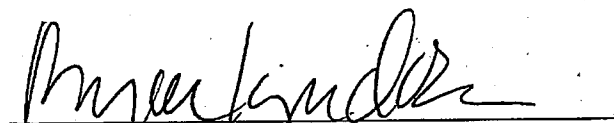
S. C. WORKERS' COMPENSATION COMMISSION


Derrick L. Williams, Commissioner

FULL AFFIRMATION

CONCUR:


Andrea C. Roche, Commissioner


G. Bryan Lyndon, Commissioner

(L:\0327174.dhw.app.)

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
postage paid, in the United States mail addressed to
the attorney or attorneys for said parties.
This 6th day of January, 2009.
by Phet Boofey Briggs
Administrative Assistant to the Commissioner

KLB
NDD
RCD
RAH III
JGG

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Christopher Price,)

Claimant,)

v.)

Peachtree Electrical Services, Inc. and
Builders Mutual Insurance Company,)

Employer/Carrier/Appellants,)

v.)

Bob Wire Electric, Inc., self-insured
Employer, through South Carolina
Home Builders Association SIF,)

Defendants/Respondents.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
SCWCC NO. 02200142

CASE NO: 2009-CP-22-0087 and
2009-CP-22-0182

ORDER

FILED
GEORGETOWN COUNTY, S.C.
2009 SEP 21 AM 9:56
ALMA Y. WHITE
CLERK OF COURT

This matter came before me on the cross-appeals of the parties from the Amended Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission, dated January 6, 2009 ("Appellate Panel Order"). That Order specifically incorporates by reference the Single Commissioner's Decision and Order, dated June 12, 2008 ("Single Commissioner's Order"); therefore, both Orders must be considered together.

STATEMENT OF THE CASE

The parties to this appeal each employed the Claimant, Christopher Price, at different times. Peachtree Electrical Services ("Peachtree") employed the Claimant in 2002 and Bob Wire Electric, Inc. ("Bob Wire") employed the Claimant afterward, in 2003. Peachtree seeks reimbursement from Bob Wire for workers' compensation benefits it says it paid to the



Claimant unwittingly as a result of an accident that actually occurred while Claimant worked for Bob Wire.

FACTUAL AND PROCEDURAL HISTORY

This matter has a long procedural history, including a prior appeal to this Court, which requires recitation. It is helpful to review this history in two parts, one involving the prior appeal and the other involving this current appeal.

1. Prior Appeal:

The record reflects that the Claimant was injured on the job with Peachtree on December 9, 2002. Peachtree provided all benefits under the South Carolina Workers' Compensation Act ("Act") for that injury. The Claimant was released by his authorized treating physician on August 8, 2003 and given an impairment rating. He subsequently went to work for Bob Wire Electrical ("Bob Wire"). On November 3, 2003, after he had been working for Bob Wire, he returned to the authorized treating physician complaining of additional back problems. Nothing was said about a new accident. He was taken out of work by the doctor and Peachtree's Carrier restarted workers' compensation benefits, including medical treatments.

After paying substantial additional benefits to the Claimant, Peachtree discovered evidence which it believed showed Claimant had suffered a subsequent injury while working for Bob Wire, which had led him to return to the doctor. Peachtree filed a Motion to add Bob Wire as a party. That motion was granted.¹

¹Bob Wire appealed the Order adding it to the case but that appeal was dismissed as interlocutory.

On June 5, 2006, a hearing was held before Commissioner David Huffstetler for the purposes of determining what permanent disability benefits might be due the Claimant for the accident with Peachtree and whether a subsequent accident with Bob Wire had occurred such that Bob Wire should be held responsible for benefits flowing from that second accident. Commissioner Huffstetler awarded the Claimant benefits based upon 35% disability to the back and held that there had not been a subsequent accident with Bob Wire.

Peachtree appealed Commissioner Huffstetler's Order as to whether there had been a subsequent accident with Bob Wire. The Appellate Panel of the Full Commission reversed, finding that the Claimant had, indeed, suffered a subsequent accident while working for Bob Wire. In this first Order of the Appellate Panel relating to this case, dated May 4, 2007, the Appellate Panel made detailed findings of fact and conclusions of law, and then held as follows:

The foregoing facts are hereby incorporated by reference as this Commission's Findings of Fact, and this Commission further finds as follows:

1. Claimant suffered a new accident and injury on or about November 3, 2003, while working for Bob Wire Electrical, Inc., which accident and injury was an aggravation of his pre-existing back condition. Based upon the medical records, testimony and other evidence in the record, it appears that this new accident occurred on or about November 3, 2003.
2. Claimant gave notice of the new accident and injury which occurred while working for Bob Wire by immediately telling his supervisor on the job, Brad Arruda, who in turn told the owner of Bob Wire.

3. The statute of limitations was satisfied by Bob Wire being added as a party by Defendants Peachtree and Builders Mutual.
4. This claim is remanded to the Jurisdictional Commissioner for determination of average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with the findings set forth herein.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Hearing Commissioner filed on July 5, 2006, is hereby AFFIRMED, AS MODIFIED, and the matter is remanded to the jurisdictional Commissioner as provided herein.

First Appellate Panel Order, dated May 4, 2007, p. 16 (emphasis added).

Importantly, at the time this Order was issued, the 2002 and 2003 injuries were being dealt with (and litigated) together. As will be noted, the two claims were subsequently bifurcated by the Commission as a result of the First Appellate Panel Order.

Bob Wire attempted to appeal from this First Appellate Panel Order, but the appeal was dismissed as untimely.

2. Current Appeal:

Following the dismissal of Bob Wire's appeal, a hearing on remand was held before Commissioner George N. Funderburk, who issued the Single Commissioner's Order of June 12, 2008 involved in this appeal. The Single Commissioner's Order begins by recounting some of the history set forth above as well as the findings of facts of the First Appellate Panel Order set forth above. Commissioner Funderburk noted that "the appeal of these findings

was dismissed and, therefore, these findings of the Appellate Panel are the law of the case.” Single Commissioner’s Order, Findings of Fact No. 1, p. 7. Commissioner Funderburk noted that the 2002 claim (involving the accident with Peachtree) and the 2003 claim (involving the accident with Bob Wire) were now bifurcated as two separate claims, and that the only issues on remand were for a “determination of average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with [the First Appellate Panel Order of May 4, 2007].” The record reflects that the Average Weekly Wage for Peachtree’s 2002 accident was \$343.24. There has been no determination of the Average Weekly Wage for the 2003 accident, which is now the subject of a separate claim.²

At the hearing before Commissioner Funderburk, Peachtree submitted without objection documentary evidence of the compensation and medical benefits it paid to the Claimant after November 3, 2003, the date of the Claimant’s accident and injury with Bob Wire. Bob Wire argued that Peachtree had waived its right to seek reimbursement from Bob Wire by entering into a settlement agreement with the Claimant with regard to the 2002 claim. In his Conclusions of Law, the Single Commissioner held that this argument was “fundamentally without merit.” Single Commissioner’s Order, Conclusion of Law No. 1, p. 7.

²At the hearing before this Court, counsel for Bob Wire stated there is a hearing scheduled for the very near future with regard to what additional benefits, if any, are due the Claimant from the 2003 accident.

Commissioner Funderburk concluded that Peachtree paid medical benefits as a result of the November 3, 2003 accident with Bob Wire in the total amount of \$112,789.42, as well as temporary total disability benefits as a result of the November 3, 2003 accident in the amount of \$47,023.88. This conclusion was based upon the detailed submissions by Peachtree of the benefits it paid to the Claimant. It does not appear from the record that Bob Wire put up any contrary evidence as to what benefits Peachtree paid relative to the 2003 claim. The Single Commissioner ordered that:

Bob Wire shall reimburse Peachtree for all causally-related medical treatment and temporary total disability compensation provided to the Claimant by Peachtree after November 3, 2003. Specifically, Bob Wire shall reimburse Peachtree in the amount of \$112,789.42 for medical benefits paid and \$47,023.88 for temporary total disability benefits paid to the Claimant after November 3, 2003. Peachtree's claim for litigation costs, including attorneys' fees, is denied.

Bob Wire appealed the Single Commissioner's Order. The Appellate Panel unanimously affirmed the Single Commissioner's Award, incorporating the Single Commissioner's Order as its own.

Bob Wire now appeals from the Appellate Panel's Order dated January 6, 2009.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act governs judicial review of a decision of an administrative agency." Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). "Any review of the [C]ommission's factual findings is governed by the substantial evidence standard." Lockridge v. Santens of Am., Inc., 344 S.C.

511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001). Under this standard, a reviewing court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence or is affected by an error of law. Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005).³

DISCUSSION

In this appeal, Bob Wire essentially raises two issues. First, Bob Wire argues that “the South Carolina Workers’ Compensation Commission does not have the power or authority to order a subsequent employer to ‘reimburse’ a prior employer under any theory and the elements of equitable indemnity and/or subrogation are otherwise not established in, or applicable, to this case.” Appellant’s Brief, pp. 1 - 2. Second, Bob Wire argues, “in the alternative,” this matter should be remanded “as the Commission failed to address any of the jurisdictional or complex legal issues raised on appeal and failed to make detailed findings of fact and conclusions of law on these disputed matters, in contravention of South Carolina Code Ann. § 42-17-40 and South Carolina Code Section § 1-23-350.” Id. For the reasons set forth below, this Court finds that there is substantial evidence to support the Appellate Panel’s Order of January 6, 2009, there is no error of law contained in that Order and,

³Bob Wire asserts that, because the Commission relied upon equitable principals in reaching its decision, this is an action in equity requiring a de novo review by this Court. However, Bob Wire cites no authority for the proposition that a review of a decision of the South Carolina Workers’ Compensation Commission should be made under any standard of review other than the substantial evidence rule provided for under the Administrative Procedures Act. See, Lockridge, supra. I find Bob Wire’s contention without merit. Nevertheless, even if Bob Wire’s argument did have merit, this is an argument which should have been raised on appeal from the first Appellate Panel Order as it relates to the issues of whether (not how much) Peachtree should be reimbursed.

therefore, the decision of the Commission must be affirmed.

1. Commission's Authority to Order Reimbursement:

The issue of whether the Commission has the "power or authority" to order reimbursement under the facts of this case was a matter specifically addressed by the Full Commission in its First Appellate Panel Order of May 4, 2007. Bob Wire's appeal from this Order was dismissed. Thus, the doctrine of res judicata applies as to those issues previously litigated and the Findings of Fact and Conclusions of Law contained in that Order are the law of the case.

The issues previously litigated revolved around whether there was a subsequent accident on November 3, 2003 and Peachtree's entitlement to reimbursement. The Full Commission specifically addressed its power and authority in this matter, and the doctrines of equitable subrogation and equitable indemnity. In the prior appeal, the Appellate Panel held as follows:

In this case, this Commission has the authority and power to place the responsibility for a claim upon the employer and carrier who ultimately should be liable. The doctrine of equitable subrogation applies here and its elements have been satisfied with respect to Bob Wire. Peachtree, the party claiming subrogation, paid the debt owed to the injured worker, Christopher Price. Peachtree was not a volunteer, but had a direct interest in the discharge of the debt or lien. Peachtree was secondarily liable for the debt in that, save for the intervening accident and causation, it would have liability. Certainly, no injustice will be done to the party who, in equity and good conscience, should be responsible - Bob Wire.

First Appellate Panel Order, dated May 4, 2007, p. 15 (emphasis added).

As noted by the Single Commissioner and the Appellate Panel in their respective Orders appealed from now, these findings are now the law of the case.

Bob Wire argues, nonetheless, that these issues are "jurisdictional" and may be argued at any time, citing Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007). However, Bob Wire's position ignores the fact that it has already litigated these issues, its appeal was dismissed as untimely, and our law is clear that one cannot continue to raise such matters after appeals are exhausted. Directly on point are the cases of Hoffman-Hoffman v. S&K Systems, 281 S.C. 336, 315 S.E.2d 169 (Ct. App. 1984) and Dunlap & Dunlap v. Zeimerman, 188 S.C. 322, 199 S.E.2d 296 (1938). The Court of Appeals in Hoffman-Hoffman, quoting with approval from Dunlap & Dunlap, held:

The question of jurisdiction may be raised once, but when the issue has been decided adversely to a party he cannot continue to raise it, in different stages of a trial. His remedy is to preserve his exception in the first instance, and his failure to do so foreclose the right to raise it again.

The Court then quoted the Supreme Court in its decision in the case of Nix v. Mercury Motor Express, Inc., 270 S.C. 477, 242 S.E.2d 683 (1978), which held:

We therefore find that having raised the jurisdictional question at trial and having an adverse ruling, Cooper waived his right to complain about jurisdiction when he failed to appeal the Magistrate's judgments. This is true whether the jurisdiction related to the person or the subject matter.

Hoffman-Hoffman, at p. 338 (emphasis added).

Thus, in order to preserve a challenge to jurisdiction - even subject matter jurisdiction - the Appellants here were required to file and serve a timely appeal. They did not and therefore

cannot now challenge the Commission's jurisdiction, power or authority to rule as it did.

2. **Adequacy of Findings of Fact and Conclusions of Law Below:**

The Appellants next argue that the Appellate Panel failed to make adequate findings of fact and conclusions of law, as required by South Carolina Code § 42-17-40 and South Carolina Code § 1-23-350. This position is based predominately on Bob Wire's arguments with regard to the Commission's jurisdiction and the issues raised, but not timely appealed from, in the first round of appeals in this case. Again, as to those issues, Bob Wire cannot now be heard to complain.

With respect to the amounts determined by the Single Commissioner to be reimbursed by Bob Wire to Peachtree, which amounts were affirmed by the Appellate Panel, there is substantial evidence in the record such that this Court must affirm the Commission's Order. For clarity, the issues here are the determination of Average Weekly Wage and the allocation of the benefits paid to the Claimant between the 2002 claim and the 2003 claim.

a. **Determination of Average Weekly Wage.**

The record reflects that the Average Weekly Wage paid by Peachtree to the Claimant for its 2002 accident was \$343.24. Bob Wire contends here that the Average Weekly Wage for the November 3, 2003 accident is lower and it should not be required to reimburse Peachtree at a higher comp rate. The difficulty with Bob Wire's argument is several-fold. First, the Commission has determined that Peachtree innocently and unwittingly paid the Claimant benefits at the rate established in the 2002 claim. According to the First Appellate

Panel Order, Bob Wire had notice of but nevertheless denied that the Claimant had been injured on its job. Because Peachtree had no knowledge of the subsequent accident, it paid at the higher rate of compensation, and had no right to pay the Claimant using a lower Average Weekly Wage. If Bob Wire's argument were to be accepted, this Court would calculate the weeks of benefits paid after November 3, 2003 at the lower comp rate. However, this would only result in a partial reimbursement of what Peachtree actually paid as a result of the 2003 claim against Bob Wire. Therefore, it is the finding of this Court that the Commission correctly based reimbursement to Peachtree on the amount of benefits actually paid by it to the Claimant and not, as Bob Wire argues, on the Employee's average weekly wage while employed by Bob Wire. Though not exactly on point in this case, the court finds S.C. Code Ann. § 42-9-430 also persuasive on this issue. That statute states:

Whenever a dispute arises between two or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee pursuant to the provisions of this title . . . the hearing commissioner may, in his discretion, require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time *the liable party must reimburse all other parties for the benefits they have paid to the employee . . .*

S.C. Code Ann. § 42-9-430 (emphasis added).

b. Allocation of Benefits Paid Between the 2002 and 2003 claims.

As noted, the Appellate Panel's Decision specifically incorporates by reference the Single Commissioner's Order. Read together, the Findings of Fact and Conclusions of Law

are clear and specific. Peachtree submitted detailed evidence of the medical bills and compensation it paid to or on behalf the Claimant. The record reflects a breakdown of those benefits paid before the second accident on November 3, 2003, for which the Commission held Peachtree responsible, and after that second accident with Bob Wire, for which it held Bob Wire responsible. Bob Wire submitted no contrary evidence. The First Appellate Panel Order had already concluded that the 2003 accident with Bob Wire was an aggravation of the prior injury sustained while working for Peachtree. See, First Appellate Panel Order, dated May 4, 2007, Findings of Fact No. 1. Thus, it is perfectly logical for the Commission to conclude that all benefits paid after that date flowed from this second accident. Because there is substantial evidence to support the Commission's findings, this Court must sustain those findings.

Bob Wire also argues that, should the Commission's Order be affirmed, Peachtree would somehow collect some "windfall." This position is based predominately upon the fact that Peachtree "clinchered" its case with the Claimant in conjunction with the settlement of its lien on proceeds from a third-party claim stemming from the 2002 accident.

Bob Wire's argument fails for several reasons. As the Appellate Panel's Order of January 6, 2009 finds, the clincher agreement was between the Claimant and Peachtree, not Bob Wire. The settlement was with respect to Peachtree's 2002 claim only. Both Peachtree and the Claimant specifically reserved all rights either party may have against Bob Wire. At the time of that settlement, Bob Wire denied any responsibility whatsoever in this matter, or even that a subsequent accident ever occurred at all. Appellate Panel Order, dated January

6, 2009, Conclusions of Law No. 1, p. 5. Furthermore, the third-party case (and subsequent settlement) and the workers' compensation claim against Peachtree all arose out of the December 9, 2002 accident, not the November 3, 2003 accident with Bob Wire. As the Commission held, "the settlement agreement between Peachtree and the Claimant, which settled the 2002 claim, has no bearing on Peachtree's right to reimbursement for expenses it incurred as a result of the 2003 claim." *Id.*, p. 6.

Bob Wire's position is also based substantially upon conjecture. The settlement between Peachtree and the Claimant was a compromise of several significant issues. The first issue compromised was Peachtree's lien on the third-party settlement. A second issue compromised was its obligations to pay the Claimant permanent partial disability benefits pursuant to Commissioner Huffstetler's Order. Third, Peachtree compromised its potential liability for a change of condition and future medicals under South Carolina Code § 42-17-90. The calculus of this settlement between Peachtree and the Claimant, at the time it was entered into, would require pure speculation on this Court's part. This Court does not have the ability to look behind the four corners of that settlement agreement to divine the dynamics of the issues settled, even if that settlement of the 2002 claim were germane to Peachtree's right to reimbursement for benefits paid as a result of Bob Wire's 2003 accident.

3. Attorney's Fees.

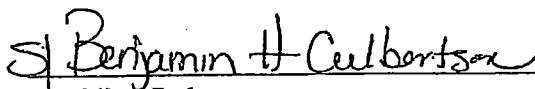
Peachtree cross-appealed the Appellate Panel's denial of its request for reimbursement of attorneys' fees incurred in litigating to recover from Bob Wire the costs of the benefits paid to the Claimant. Peachtree bases its claim for attorneys' fees upon the doctrine of

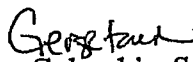
equitable indemnity. However, it is well settled that attorneys' fees may only be granted when authorized by statute or contract. Therefore, the Commission's denial of attorney's fees to Peachtree is also affirmed.

CONCLUSION

The majority of Bob Wire's arguments on appeal here were matters which were before the Commission in the earlier appeal, from which Bob Wire failed to appeal timely, and are now the law of the case. As to the decision of the Appellate Panel dated January 6, 2009, which is the only matter before this Court, the record contains substantial evidence to support the Commission's findings of fact and conclusions of law on all issues. The Commission's ruling denying Peachtree's request for attorney's fees is also affirmed.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Amended Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission, dated January 6, 2009, ordering Bob Wire Electric, Inc. and the South Carolina Homebuilders Association Self-Insurance Fund to reimburse Builders Mutual Insurance Company, as Carrier for Peachtree Electrical Services, Inc., the total amount of \$159,813.30 (\$112,789.42 for medicals and \$47,023.88 in compensation benefits) is AFFIRMED, and judgment in the amount of \$159,813.30 is hereby rendered accordingly.


Presiding Judge
Fifteenth Judicial Circuit


~~Columbia~~, South Carolina

Sept. 14, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-0087

Christopher Price,.....Claimant,

v.

Peachtree Electrical Services, Inc. and
Builders Mutual Insurance Company,
Employer/Carrier,.....Respondent

v.

Bob Wire Electric, Inc. self-insured
Employer, through South Carolina
Home Builders Association IF.....Appellants.

FINAL BRIEF OF THE APPELLANTS

Kirsten Leslie Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for the Appellants



Table of Contents

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	1
Evidence Summary.....	13
Arguments.....	15
I. The Court of Appeals should review an equitable claim under the preponderance of evidence standard.....	15
II. The South Carolina Workers' Compensation Commission does not have jurisdiction over common law equitable claims of indemnity or subrogation.....	18
III. The Appellants have unclean hands and will otherwise be unjustly enriched by the reimbursement ordered by the Commission.....	21
IV. The Commission erred in summarily concluding that the Respondents are entitled to reimbursement for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable indemnity.....	24
V. The Commission erred in summarily concluding that the Respondents are entitled to reimbursement for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable subrogation.....	26
VI. The Commission's finding that the Appellants must reimburse the Respondents for all temporary total disability compensation benefits paid to the Claimant after November 3, 2003, at the rate of \$343.24 per week, is arbitrary and capricious.....	29
VII. The Respondents request for reimbursement is governed by S.C. Code Ann. § 42-9-210 and § 42-1-560 and the Commission erred in creating new right and remedy.....	31
Conclusion.....	33

Table of Authorities

CASES

<u>S.C. Tax Comm'n v. S.C. Tax Board of Review</u> , 278 S.C. 556, 299 S.E.2d 489 (1983).....	20
<u>Blue Cross/Blue Shield v. S.C. Industrial Commission</u> , 274 S.C. 204, 262 S.E.2d 35 (1980):.....	32
<u>Brayboy v. Workforce</u> , 383 S.C. 463, 681 S.E.2d 567 (2009)	17
<u>Dailey v. Secura Ins. Co.</u> , 164 Wis.2d 624, 476 N.W.2d 299 (Ct.App.1991).....	29
<u>Edwards v. State</u> , 372 S.C. 493, 642 S.E.2d 738 (2007)	23
<u>First Gen. Servs. of Charleston, Inc. v. Miller</u>	27
<u>Geathers v. 3V, Inc.</u> , 371 S.C. 570, 641 S.E.2d 29.....	9
<u>Geathers v. 3V, Inc.</u> , 371 S.C. 570, 641 S.E.2d 29 (2007)	18, 21
<u>Horry County v. Ray</u> , 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009).....	16
<u>Houston v. Deloach & Deloach</u> , 378 S.C. 543, 663 S.E.2d 85(Ct. App. 2008)	19
<u>James v. Annes, Inc.</u> , ___ S.C. ___, 688 S.E.2d 562 (2010)	20
<u>Kuznik v. Bees Ferry Associates</u> , 342 S.C. 579, 538 S.E.2d 15 (Ct. App. 2000).	22
<u>Lizee v. S.C. Dep't of Mental Health</u> , 367 S.C. 122, 623 S.E.2d 860 (Ct. App. 2005).....	19
<u>Owens v. Herndon</u> , 252 S.C. 166, 165 S.E.2d 696 (1969)	20, 33
<u>Precision Instrument Mfg. Co. v. Automotive Co.</u> , 324 U.S. 806, 814, 65 S.Ct 993, 89 L.Ed. 1381 (1945).....	24
<u>Rock Hill Telephone Co., Inc. v. Globe Communications, Inc.</u> , 363 S.C. 385, 611 S.E.2d 235 (2005).....	28
<u>Sanders v. MeadWestvaco Corp.</u> , 371 S.C. 284, 638 S.E.2d 66 (2006).....	37
<u>Shuler v. Tri-County Electric Co-op, Inc.</u> , 385 S.C. 470, 684 S.E.2d 765 (2009)	16
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005).	23
<u>Town of Winnsboro v. Wiedeman-Singleton, Inc.</u> , 303 S.C. 52, 398 S.E.2d 500 (Ct.App.1990), <i>aff'd</i> , 307 S.C. 128, 414 S.E.2d 118 (1992).....	27
<u>Townes Assoc. v. City of Greenville</u> , 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).....	16
<u>United Carolina Bank v. Caroprop, Ltd.</u> , 316 S.C. 1, 446 S.E.2d 415 (1994).....	30
<u>Williams v. Wilson</u> , 349 S.C. 335, 339-40, 563 S.E.2d 320, 322 (2002))	16
<u>Wilson v. Landstrom</u> , 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984).....	24

STATUTES

S.C. Code Ann. § 42-9-360.....	30
S.C. Code Ann. § 42-1-560.....	31
S.C. Code Ann. § 42-9-220.....	30
S.C. Code Ann. § 42-9-260.....	30
S.C. Code Ann. § 1-23-380.....	17

S.C. Code Ann. § 42-15-40.....	9
S.C. Code Ann. § 42-1-560.....	32
S.C. Code Ann. § 42-15-60.....	19
S.C. Code Ann. § 42-9-10.....	19, 30
S.C. Code Ann. § 42-9-130.....	20
S.C. Code Ann. § 42-9-210.....	31
S.C. Code Ann. § 42-9-360.....	8

REGULATIONS

S.C. Code Reg. 67-710	7
S.C. Code reg. 67-1302.....	30
S.C. Code Regs. 67-1302 through 67-1305	19
S.C. Code Reg. 67-606	29

Statement of the Issues on Appeal

- I. What is the appropriate standard of review in a claim of equity?**
- II. Does the South Carolina Workers' Compensation Commission have jurisdiction over common law equitable claims of indemnity or subrogation?**
- III. Will the "reimbursement" ordered by the Workers' Compensation Commission unjustly enrich the Respondents?**
- IV. Did the Workers' Compensation Commission err in summarily concluding that the Respondents are entitled to reimbursement under a theory of equitable indemnity?**
- V. Did the Workers' Compensation Commission err in summarily concluding that the Respondents are entitled to reimbursement under a theory of equitable subrogation?**
- VI. Is the Workers' Compensation Commission's finding that the Appellants must "reimburse" the Respondents for all temporary total disability compensation benefits paid to the Claimant after November 3, 2003, at the rate of \$343.24 per week, arbitrary and capricious?**
- VII. Did the Commission err in creating a new right and remedy for the Respondents when adequate statutory rights and remedies already exist?**

Statement of the Case

Third-party Defendants, Bob Wire Electrical Services and the South Carolina Home Builders Self-Insurers' Fund (hereinafter "the Appellants") seek review and reversal of the September 14, 2009 Order of the Honorable Benjamin H. Culbertson, which affirmed the January 6, 2009 "Amended" Decision and Order of the South

Carolina Workers' Compensation Commission. (R. p. 65). The Appellants respectfully contend that the Commission erred as a matter of law by summarily finding and concluding that "Peachtree is entitled to reimbursement from Bob Wire of \$112,789.42 in medical benefits" and temporary total disability benefits "in the total amount of \$47,023.99." (R. p. 63).

The Appellants respectfully contend that the South Carolina Workers' Compensation Commission does not have the power or authority to apportion liability for benefits between successive employers, or to order a subsequent employer to "reimburse" a prior employer under any common law theory. Even if the Commission had such authority, the elements of equitable indemnity and/or subrogation are otherwise not established in, or applicable to, this case. In addition, the Workers' Compensation Commission failed to address any of the jurisdictional or complex legal issues raised by the Appellants and failed to make sufficiently detailed findings of fact and conclusions of law on these disputed matters, in contravention of S.C. Code Ann. § 42-17-40 and S.C. Code Ann. § 1-23-350.¹

The record reveals that Christopher Price (hereinafter "the Claimant") injured his back in an accident arising out of and in the course of his employment with Peachtree Electrical Services on December 9, 2002, while working at a restaurant owned by the Divine Dining Group, Inc..² The Respondents, Peachtree Electrical and its insurance carrier, Builders Mutual, admitted liability for the Claimant's back injury and voluntarily paid temporary total disability compensation and authorized medical treatment, including

¹The Workers' Compensation Commission's January 6, 2009 Order fails to reference any legal authority whatsoever. No statute, regulation, or even case law is discussed, applied, or even mentioned by the Commission.

² The Claimant did not begin to work for the Appellant, Bob Wire Electric, until October 19, 2003. (R. p. 345).

two surgeries with Dr. William L. Mills at Coastal Orthopaedic Associates. The Claimant last saw Dr. Mills on December 17, 2004 and a 20% impairment rating was issued on January 6, 2005. (R. pp. 240-41).

On February 3, 2005, the Claimant filed a Form 50, "Notice of Claim and Request for a Hearing," against the Respondents, seeking additional medical and compensation benefits as a result of the December 9, 2002 accident. (R. p. 83). On March 7, 2005, the Respondents filed a Form 51, admitting that the Claimant sustained an injury on or about December 9, 2002. The Claimant did not file any claim against (nor did he seek workers' compensation benefits from) the Appellants.

On April 22, 2005, the Respondents filed a Motion to Add Bob Wire Electric and the South Carolina Home Builders SIF (the Appellants) as third-party defendants in the workers' compensation claim. In their Motion, the Respondents alleged that the Claimant sustained an injury in "November of 2003," while working for Bob Wire Electrical. The Claimant did not join in this motion and did not amend his Form 50 to allege any injury arising out of his employment with the Appellants.

A Transmittal Order was issued by Commissioner Susan S. Barden on June 21, 2005, by which the Appellants, Bob Wire Electric and the South Carolina Home Builders SIF, were added as parties to the Claimant's admitted workers' compensation claim against the Respondents.³ (R. p. 1). On July 12, 2005 the Appellants appealed Commissioner Barden's Order to the Commission's Appellate Panel and this appeal was summarily dismissed as interlocutory. (R. p. 2). The Appellants also filed a Motion to be

³ Note: there is no statutory or regulatory provision authorizing or otherwise governing third-party practice in a workers' compensation claim.

removed as parties on July 13, 2005. This motion was also summarily dismissed by the Workers' Compensation Commission.

On September 29, 2005 – over seven months after the Claimant was placed at maximum medical improvement – the Respondents filed a Form 21, requesting a hearing to determine the Claimant's entitlement to additional medical and compensation benefits as a result of the admitted accident on December 9, 2002. (R. p. 84). Again, the Claimant made no claim against the Appellants. Instead, in addition to his workers' compensation claim against the Respondents, the Claimant filed a civil law suit against the Divine Dining Group, Inc., alleging negligence in connection with the December 9, 2002 accident. (R. p. 79).

On December 11, 2005, the Divine Dining Group paid the Claimant \$540,000.00 for the injuries he sustained as a result of the December 9, 2002 accident. (R. pp. 353-55). By virtue of S.C. Code Ann. §. 42-1-56(b), the Respondents had a statutory lien on this \$540,000.00 settlement "to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid" in the workers' compensation claim.

A hearing was held before Commissioner David W. Huffstetler on June 5, 2006 regarding the December 9, 2002 workers' compensation claim against the Respondents. Appearances were made by the Claimant, the Respondents, and the Appellants as third-party defendants. By Decision and Order dated July 5, 2006, Commissioner Huffstetler dismissed the Appellants as parties to the Claimant's admitted claim against the Respondents, on the basis that (1) the Claimant did not make any claim against the Appellants, (2) the Claimant did not even give the Appellants notice of any injury, and (3) even if the Claimant did decide to file a claim against the Appellants, it would be

barred by the statute of limitations. (R. pp. 13-16). In addition, Commissioner Huffstetler specifically found that "the Claimant testified he believes that all of his problems stem from the injury with Peachtree Electrical Services" and that "there is no medical evidence to indicate that his disability or the need for the second surgery was occasioned by an injury with Bob Wire Electrical. It would be pure speculation for me to find an injury when there is no testimony or medical evidence to support that finding." (R. pp. 13-14).

Commissioner Huffstetler further found that the Claimant was entitled to, and the Respondents were liable for, benefits for a 35% loss of use of the back as of the December 9, 2002 accident (\$36,040.20). (R. p. 12). The Respondents were awarded a \$20,986.68 credit for overpayment of temporary total disability compensation for the period after May 5, 2005, resulting in a net award to the Claimant of \$15,053.52. (R. p. 12). Neither the Respondent, nor the Claimant, appealed the award of 35% to the back or the credit for overpayment of temporary benefits.

Instead of paying the \$15,053.52 net award pursuant to Commissioner Huffstetler's Decision and Order, the Respondents settled the Claimant's workers' compensation claim (WCC Claim No. 0220142), as well as their outstanding lien⁴ against the Claimant's \$540,000 civil settlement on July 10, 2006.⁵ (R. p. 398). According to the terms of the settlement,

The Claimant has agreed to make, and the [Respondents] have agreed to

⁴ At the time of the settlement, the Respondents' lien totaled \$196,085.84 for medical and temporary compensation benefits paid in the workers' compensation claim. (R. p. 136).

⁵ Counsel for the Respondents submitted his billing records into evidence. According to an entry dated July 10, 2006, "Telephone conferences with David Durant [Claimant's counsel], telephone conferences with Tina Hill (case settled -- \$50,000 payment to BMIC from third-party proceeds)." (R. p. 398).

accept, payment in the sum of Fifty Thousand and No/100 Dollars (\$50,000.000) in settlement of any further liability the [Respondents] may have with respect to the Claimant's claims for benefits under the Act, and in further settlement of the lien held by the [Respondents] upon the Claimant's third-party recovery proceeds. (R. p. 358).

Neither the Respondents, nor the Claimant, notified the Appellants or the Workers' Compensation Commission that the Claimant's workers' compensation claim had been settled.

Instead, on July 18, 2006, the Respondents filed a Form 30, requesting review of Commissioner Huffstetler's Decision and Order by the Commission's Appellate Panel, raising 18 alleged errors. (R. p. 86). The Respondents' Form 30 makes no mention that the claim had been settled.⁶ The Claimant and the Respondents did not file their settlement agreement with the Commission until August 28, 2006. (R. p. 356). Even after the settlement agreement was filed with and approved by the Workers' Compensation Commission, the Respondents failed to notify the Appellants that W.C.C. Claim No. 0220142 -- the only claim pending before the Commission -- had been settled. (R. p. 356).

A hearing was held before the Commission's Appellate Panel on November 21, 2006, with counsel for the Appellants and the Respondents appearing. The Claimant did not make an appearance before the Appellate Panel, having already settled his workers' compensation claim.

⁶ S.C. Code Reg. 67-710 governs settlement of claims pending review. This regulation requires "the appellant shall immediately notify the Commission's Judicial Department in writing...The Judicial Department will remove the case from the review hearing docket or notify the Commission an order is not required. Apparently, this procedure was not followed in the claim *sub judice*."

At the Appellate Panel hearing, the Respondents argued

We've been paying [the Claimant] under false pretenses, and this ought to

be Bob Wire Electrical's problem...Mr. Price didn't file a claim against

Bob Wire, we did... But this court, *this Commission sits in equity*, and I

see no reason why you can't, in good conscious [sic] and equity, find the

employer who should be responsible for the claim responsible. (R. pp.

172-73) (emphasis added).

The Respondents further argued, "[a]gain, we're bringing this claim on [the Claimant's]

behalf⁷... we've had to pay an enormous amount of benefits to this man because we

didn't know he had been injured in the subsequent injury." (R. p. 177). However,

despite their indignation, the Respondents failed to acknowledge that they had paid these

benefits to the Claimant voluntarily and on advice of counsel, failed to acknowledge that

they had voluntarily relinquished their right to seek a credit for reimbursement for

overpayment from the Claimant, and failed to acknowledge that they had discharged their

lien against the \$540,000.000 third-party settlement for only \$50,000.00.

At the hearing before the Appellate Panel, the Appellants argued that neither the

Claimant's testimony, nor the medical records, supports a finding that the Claimant

sustained any injury as a result of an alleged accident at Bob Wire. (R. pp. 179-88).

Importantly, the Claimant brought no claim against the Appellants and did not participate

in the Respondents' appeal. The Appellants further argued that, having failed to bring

any claim for an alleged accident in November 2003, any such claim by the Claimant

would be barred by S.C. Code Ann. § 42-15-40, which requires that the "right to

⁷ There is no evidence in the record to suggest that they were authorized to bring any claim on behalf of the Claimant. Of course, S.C. Code Ann. § 42-9-360 expressly provides that "No claim for compensation under this title shall be assignable."

compensation under [the Workers' Compensation Act] is barred unless a claim is filed with the commission within two years after an accident." (R. p. 187).

After hearing oral arguments, the Commission's Appellate Panel issued an interlocutory Order on May 4, 2007, remanding the case to a "Jurisdictional Commissioner." (R. p. 32). According to the Appellate Panel, there is no requirement that the Claimant file a claim against the Appellants, as opposed to some third party. (R. p. 30). The Appellate Panel stated that the Respondents, the Claimant's prior employer and its insurance carrier, had "an inherent right" to bring a claim against the Appellants. According to the Appellate Panel,

While the regulations of this Commission make no specific provisions for an Employer to bring third-party or indemnity claim [sic] against another party in this situation, it should not be precluded from doing so...the common law doctrines of indemnity and equitable subrogation are certainly applicable in an instance, such as this, where one employer had been required by circumstance⁸ to pay a claim for another employer. (R. p. 30).

The Appellate Panel stated that the Respondents' claim against the Appellants was not barred by the statute of limitations and further stated that it was the Commission's "duty" to "apportion the costs of caring for an injured worker appropriately."⁹ (R. p. 31).

⁸ Apparently the "circumstance" to which the Appellate Panel refers is the Respondents' failure to defend the Claimant's workers' compensation claim against them on its merits and the Respondents' failure to recover its statutory lien from the at-fault third-parties who paid the Claimant \$540,000.000.

⁹ The Appellate Panel's May 4, 2007 Order did not cite or distinguish the case of Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29, which was issued by the South Carolina Supreme Court on January 29, 2007. In Geathers, the Supreme Court held that

On this basis, the Appellate Panel reversed Commissioner Huffstetler's Decision and Order and found, instead, that the "Claimant suffered a new accident and injury on or about November 3, 2003, while working for Bob Wire Electrical, Inc., which accident and injury was an aggravation of his pre-existing back condition." (R. p. 32). The Appellate Panel did not make any findings as to whether, or to what extent, the Claimant's workers' compensation benefits should be "apportioned," nor did the Appellate Panel find the Appellants liable for any benefits to either the Respondents or the Claimant. The Appellate Panel did not make any findings relative to the impact of the Respondents' settlement with the Claimant. Furthermore, the Appellate Panel made no conclusions of law in its May 4, 2007 Order. Instead, the Appellate Panel remanded the case to a "Jurisdictional Commissioner" for a "*determination of average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with the findings set forth herein.*" (R. p. 32) (emphasis added).¹⁰

A hearing pursuant to the Appellate Panel's remand Order was held on April 23, 2008 before Commissioner George N. Funderburk. No testimony was presented at the April 23, 2008 hearing. However, the Appellants and the Respondents did present documentary evidence pursuant to the Administrative Procedures Act. The Claimant was not a party to the April 23, 2008 hearing; having settled his claims against the Respondents and having failed to bring any claim against the Appellants.

Commissioner Funderburk issued a Decision and Order on June 12, 2008, but

the Workers' Compensation Commission does not have authority to apportion liability for successive injuries between two parties.

¹⁰ While it is unclear what this vague and inarticulate phrase actually means, it is clear that, at a minimum, the Jurisdictional Commissioner was required to make detailed findings as to whether and to what extent the Claimant was entitled to benefits as a result of the alleged accident on November 3, 2003 at Bob Wire and the applicable average weekly wage for that alleged accident.

made no finding as to the Claimant's average weekly wage at the time of the alleged accident on November 3, 2003, as required by the Appellate Panel's remand Order. (R. pp. 40-48). In addition, Commissioner Funderburk made no finding regarding the elements of the Respondents' equitable indemnity/subrogation claim (*i.e.*, which benefits the Respondents were "secondarily liable" and paid "involuntarily" on behalf of the Appellants). Commissioner Funderburk made no finding as to whether the Claimant's need for medical treatment or compensation benefits was in any way related to any accident on November 3, 2003. Instead, Commissioner Funderburk summarily concluded that the Appellants must pay the Respondents \$112,789.42 for medical benefits and an additional \$47,023.88 for temporary disability compensation (for a total of \$159,813.33) -- without citing any evidence or any law. (R. p. 48).

In addition, Commissioner Funderburk did not discuss the fact that the Claimant was not actually entitled to, and the Respondents were not actually liable for \$47,023.88 in temporary total disability compensation, the amount the Appellants are required to "reimburse" the Respondents. The Claimant was only entitled to, and the Respondents were only liable for \$26,037.20 in temporary disability compensation after Commissioner Huffstetler's previous Order granted the Respondents a credit of \$20,986.68 for overpayment of benefits. (R. p. 15). There was no explanation as to why the Appellants' liability to the Respondents should exceed the Respondents' liability to the Claimant or why the Respondents were entitled to such an obvious windfall.

Commissioner Funderburk also failed to consider that the Respondents had already received a \$50,000.00 reimbursement from the third-party claim."¹¹ According to

¹¹ In addition, Peachtree avoided payment of the award of 35% loss of use of the back. This fact directly contravenes Peachtree's statement that it expended \$36,040.20 in

the Respondents' filings with the Commission, it paid out a total of \$196,086.35 before the \$50,000.00 reimbursement, resulting in a net payment of \$146,086.35 to (or on behalf of) the Claimant. (R. p. 365). Commissioner Funderburk failed to reconcile the fact that an additional payment of \$159,813.33 by the Appellants would actually mean that the Respondents will make a net profit of \$13,726.98 in an admitted workers' compensation claim.

In addition, Commissioner Funderburk failed to explain why the Appellants were responsible for temporary total disability compensation at a rate more than double that at which the Appellants would have been liable to the Claimant, had the Claimant actually filed a workers' compensation claim against them. According to the transcript of June 5, 2006 Hearing before Commissioner Huffstetler, the parties stipulated that the Claimant's average weekly wage at Bob Wire was \$198.83, resulting in a compensation rate of \$132.56 per week. (R. pp. 141-42). The Claimant's compensation rate for the December 9, 2002 accident at Peachtree is \$343.24. (R. p. 141). Commissioner Funderburk failed to explain why the Appellants were liable to the Respondents for \$47,023.88 in temporary total disability compensation, when the Appellants would have been liable to the Claimant for only \$9,535.73 in temporary total disability benefits had the correct rate and period been applied.¹²

In addition to claiming that they are entitled to *profit* from this workers' compensation claim, the Respondents argued before Commissioner Funderburk that the

permanent partial disability benefits as a result of the December 9, 2002 accident. (R. p. 364).

¹² The Claimant continued working for Bob Wire through January 10, 2004. The period from January 10, 2004 through May 5, 2005 (the date upon which the Claimant's period of temporary disability ended according to Commissioner Huffstetler's Decision and Order), is 68.85 weeks ($68.85 * \$138.50 = \$9,535.73$).

Appellants should reimburse them for \$36,234.27 in attorneys' fees and expenses incurred in the Respondents' defense. (R. p. 365). Commissioner Funderburk denied this request.

Following Commissioner Funderburk's Order, the Appellants requested that the Commission's Appellate Panel review and reverse that Order, raising 25 grounds for appeal. A review hearing was held on October 28, 2008 before a three-member Appellate Panel. On December 17, 2008, the Appellate Panel issued an inexplicable Order, which addressed issues wholly irrelevant to the appeal. (R. pp. 49-56). The Appellate Panel failed to address a single issue raised in the Appellants' brief or oral arguments in the case *sub judice*. An "Amended Appellate Panel Decision and Order" was thereafter issued on January 6, 2009; however, the Commission again failed to address even one of the twenty-five issues raised by the Appellants on appeal. (R. pp. 57-63).

The Appellants timely filed a Petition for Judicial Review in the Court of Common Pleas for Georgetown County on February 3, 2009. (R. pp. 133-38). The Respondents filed a cross-appeal, regarding the Commission's denial of their claim for \$36,234.27 in attorneys' fees and costs.

The appeals came before the Honorable Benjamin H. Culbertson, who issued an Order dated September 14, 2009, affirming the Appellate Panel's Amended Order. (R. p. 78). According to Judge Culbertson, "substantial evidence" supports the Workers' Compensation Commission's findings; however, no actual evidence is referenced in the Order. Judge Culbertson further concluded that it would require some sort of "speculation" to conclude that the Respondents' request for reimbursement actually

exceeds its net liability in this case. (R. p. 71). In addition, Judge Culbertson determined that the Commission's failure to determine the Claimant's compensation rate for the November 2003 (the rate at which the Appellants would have been liable to pay benefits to the Claimant had he actually filed a claim against them) was somehow irrelevant because the Respondents paid the Claimant at a higher rate and were deserving of reimbursement at this higher rate. (R. pp. 74-75). The present appeal ensued.

Evidence Summary

The record reveals that Christopher Price (hereinafter "the Claimant") injured his back in an accident arising out of and in the course of his employment with Peachtree Electrical Services on December 9, 2002 while working at a restaurant owned by the Divine Dining Group, Inc..¹³ The Respondents, Peachtree Electrical and its insurance carrier, Builders Mutual, admitted liability for the Claimant's back injury, voluntarily provided compensation benefits, and authorized medical treatment with Dr. William L. Mills, to include a lumbar laminectomy and discectomy surgery on April 22, 2003 and a lumbar fusion surgery on June 15, 2004. (R. p. 229, p. 234).

Dr. Mills initially opined that the Claimant reached maximum medical improvement by August 8, 2003, though the Claimant reported that he continued to have "daily pain which he rates at about a 4 or 5 on a scale of 1 to 10."¹⁴ (R. p. 307). On

¹³ The Claimant did not begin to work for Bob Wire Electric until October 19, 2003. (R. p. 345).

¹⁴ The Claimant testified that he continued to have back pain at the time he was released to return to work in August 2003. According to the Claimant, Peachtree informed him that they "didn't want [him] back," so he found part-timework at Bob Wire. The Claimant testified he could not work full-time because his ongoing back pain. (R. 155-57). The Claimant testified that his doctors led him to believe that if he pushed himself to work he would eventually need another back surgery. (R. p. 155).

October 15, 2003, the Claimant returned to Dr. Mills, who noted: "Mr. Price reports a two week history of right lower back pain. He denies accident or injury." (R. p. 308). Dr. Mills gave the Claimant an injection and prescribed Vicodin for pain. The following week, the Claimant began working part-time for the Appellant, Bob Wire Electrical. (R. p. 345).

Dr. Mills subsequently recommended an MRI scan because the Claimant's ongoing symptoms did not improve with the injection and pain medications. (R. pp. 224-25). In his preoperative report dated March 31, 2004, Dr. Mills stated

Mr. Price is a 34 year old white male with a history of low back and right leg pain dating back to a work-related accident on 12/9/02...He went on to have a right L5-S1 diskectomy on 4/22/03 and did fairly well for a brief period of time after his diskectomy. He began having significant low back and right leg pain after having had three weeks of Work Hardening. (R. p. 229).

There is no mention of any injury or accident while working for Bob Wire contained in any of the Claimant's medical records.

According to the Commission, the Claimant re-injured his back in an accident at Bob Wire on November 3, 2003. The Claimant's time cards from his job at Bob Wire reveal that he did not actually work for Bob Wire on that date. (R. p. 346).

The Claimant last saw Dr. Mills on December 17, 2004 and a 20% impairment rating was issued on January 6, 2005. (R. pp. 240-41). The Respondents did not seek to terminate temporary total disability compensation at that time, as was their right under S.C. Code Reg. 67-506. Instead, the Respondents continued to pay temporary total

disability compensation through July 6, 2006 – an additional 78 weeks beyond the date of maximum medical improvement -- at the rate of \$343.24 per week, totaling an additional \$26,821.76 in temporary total disability compensation.

Arguments

I. The Court of Appeals should review an equitable claim under a preponderance of evidence standard.

The Respondents allege that they are entitled “reimbursement” from the Appellants, not under some provision of the Workers’ Compensation Act, but under a common law theory of equitable indemnity and/or equitable subrogation. Therefore, the South Carolina Workers’ Compensation Commission, which purportedly acted under the assumption that it sits as a “court of equity” in awarding the requested “reimbursement,” is not entitled to the deferential substantial evidence standard of review employed in the typical workers’ compensation appeals. Instead, because this is an “appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence.” Townes Assoc. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). *See also*, Horry County v. Ray, 382 S.C. 76, 674 S.E.2d 519 (Ct. App. 2009) (noting that “[t]he appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence.” (citing Williams v. Wilson, 349 S.C. 335, 339-40, 563 S.E.2d 320, 322 (2002))).

The Circuit Court stated that there is no case law to support application of a preponderance of evidence standard of review in a workers’ compensation appeal. The Appellants respectfully contend the Workers’ Compensation Commission has not

heretofore addressed a common law claim of equity and, therefore, the issue has not been squarely addressed. However, the Supreme Court most recently employed a preponderance of evidence standard of review in a workers compensation case in Shuler v. Tri-County Electric Co-op, Inc., 385 S.C. 470, 684 S.E.2d 765 (2009) and Brayboy v. Workforce, 383 S.C. 463, 681 S.E.2d 567 (2009). In both cases, the question before the Supreme Court was whether the claimant was an “employee” of the defendant for purposes of the Workers’ Compensation Act. Because the existence of an employer-employee relationship is a jurisdictional question, the Supreme Court made “findings based on its view of the preponderance of the evidence.” Brayboy, 383 S.C. at 464, 681 S.E.2d at 567. The Supreme Court explained that “[w]hen the issue involves jurisdiction, the appellate court may take its own view of the preponderance of the evidence.” Shuler, 385 S.C. at 473, 684 S.E.2d 767.

The Appellants respectfully contend that when the issue involves a matter of equity, the appellate court may also take its own view of the preponderance of the evidence, even in appeals from the Workers’ Compensation Commission. In the present case, the preponderance of the evidence reveals that the Claimant’s need for medical treatment and his period of disability – even after November 3, 2003, are causally-related to the December 2, 2002 accident for which the Respondents have sole liability. On October 15, 2003, medical records reveal that “Mr. Price reports a two week history of right lower back pain. He denies accident or injury.” (R. p. 308). Dr. Mills gave the Claimant an injection and prescribed Vicodin for pain. Dr. Mills subsequently recommended an MRI scan because the Claimant’s ongoing symptoms did not improve with the injection and pain medications. (R. pp. 224-25). In his preoperative report dated

March 31, 2004; Dr. Mills stated

Mr. Price is a 34 year old white male with a history of low back and right leg pain dating back to a work-related accident on 12/9/02...He went on to have a right L5-S1 diskectomy on 4/22/03 and did fairly well for a brief period of time after his diskectomy. He began having significant low back and right leg pain after having had three weeks of Work Hardening. (R. p. 229).

There is no mention of any injury or accident while working for Bob Wire contained in any of the Claimant's medical records.

According to the Commission, the Claimant re-injured his back in an accident at Bob Wire on November 3, 2003. The Claimant's time cards from his job at Bob Wire reveal that he did not actually work for Bob Wire on that date. (R. p. 346). The Claimant testified that he believed all of his problems stemmed from the December 2, 2002 accident at Peachtree. (R. p. 157). Therefore, the Appellants respectfully contend that the preponderance of the evidence reveals that, despite the Commission's finding that there was an accident on November 3, 2003, this was merely a "recurrence of the first injury" on December 2, 2002 and that the Claimant's need for medical treatment and his period of disability following this date are the sole responsibility of the Respondents. *See Geathers v. 3V, Inc.*, 371 S.C. 570, 641 S.E.2d 29 (2007) (stating that "if the second injury is merely a recurrence of the first injury, then the insurer on the risk at the time of the original injury remains liable for the second").

The Appellants further contend that the Circuit Court erred in affirming the Commission without considering the legal errors raised on appeal. Even if the Court of

Appeals determines that the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5)(e) applies to findings of fact in equitable actions tried by the Workers' Compensation Commission, the Appellants respectfully contend that the Commission's findings, inferences, conclusions, and decisions were made in excess of the Commission's statutory authority, were made upon unlawful procedure, are affected by error of law, and are otherwise arbitrary, capricious, and characterized by an abuse of discretion. An appellate court "freely and absolutely reviews a trial court's decision concerning an issue of law." Houston v. Deloach & Deloach, 378 S.C. 543, 552-3, 663 S.E.2d 85, 90 (Ct. App. 2008). Indeed, the appellate court's authority to review errors of law has been described as "plenary." Lizee v. S.C. Dep't of Mental Health, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (Ct. App. 2005). For these reasons, the Court of Appeals clearly has the power to reverse or modify the Commission's Order pursuant to S.C. Code Ann. § 1-23-380, for the reasons stated below.

II. The South Carolina Workers' Compensation Commission does not have jurisdiction over common law equitable claims of indemnity or subrogation.

The South Carolina Workers' Compensation Commission is an administrative agency, created by statute, and can only exercise those powers that have been specifically conferred by the South Carolina General Assembly. S.C. Tax Comm'n v. S.C. Tax Board of Review, 278 S.C. 556, 299 S.E.2d 489 (1983). *See also*, James v. Annes, Inc., ___ S.C. ___, 688 S.E.2d 562 (2010) (holding that without an express grant from the legislature, the Workers' Compensation Commission is without power to address an issue). In Owens v. Herndon, 252 S.C. 166, 165 S.E.2d 696 (1969), the South Carolina Supreme Court held, "[t]he rights and liabilities of employee and employer under the

Workmen's Compensation Act are purely statutory and are to be judged by the terms of the Act. Policy considerations as to what benefits should be conferred or obligations imposed are strictly for the legislature. . . .” The legislature has enacted no statute by which an employer, which voluntarily pays benefits, can seek “reimbursement” from a subsequent employer, or request an “apportionment” of benefits between them. In fact, our Supreme Court has specifically held that South Carolina has neither statute, nor case law, authorizing the apportionment of workers' compensation benefits between successive employers. Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007).

In the present case, the Appellants were ordered to pay the Respondents \$112,789.42 for medical benefits and \$47,023.99 temporary total disability benefits, which the Respondents had voluntarily paid to the Claimant as a result of his admitted December 9, 2002 workers' compensation claim. The payment of temporary total disability compensation is governed by S.C. Code Ann. § 42-9-10, which states, that “the employer shall pay...*to the injured employee* during the total disability a weekly compensation equal to sixty-six and two-thirds of his average weekly wages.” (emphasis added). Nothing in S.C. Code Ann. § 42-9-10, or the regulations promulgated thereunder, suggests that temporary total disability compensation is payable to anyone other than the employee, or at any rate other than sixty-six and two thirds of his average weekly wages.”¹⁵ Similarly, S.C. Code Ann. § 42-15-60 and S.C. Code Regs. 67-1302 through 67-1305 govern payment of medical benefits and provide that payment be made only to a “medical provider” or “medical practitioner.” There is no statute or regulation providing for payment of medical expenses to any other entity.

¹⁵Here, the Appellants were ordered to reimburse the Respondents for temporary total disability compensation at a rate that was admittedly higher than the Claimant’s average weekly wage with the Appellant, Bob Wire.

The Commission acknowledged that it was without statutory authority to address the Respondents' claim for reimbursement of medical and compensation benefits, as the Commission's May 4, 2007 Order states:

While the regulations of this Commission make no specific provisions for an Employer to bring third-party or indemnity claim [sic] against another party in this situation, it should not be precluded from doing so...the common law doctrines of indemnity and equitable subrogation are certainly applicable in an instance, such as this, where one employer had been required by circumstance to pay a claim for another employer. (R. p. 30)

Clearly, the equitable doctrines of indemnity and subrogation – upon which the Respondents' "reimbursement" claims purportedly rely -- arise out of the common law,¹⁶ not out of the statutory provisions of Title 42.

The Appellants respectfully submit that the Commission does not have the power, authority, or jurisdiction to order the Appellant to pay the Respondents \$159,813.33 for reimbursement of medical and compensation benefits the Respondents voluntarily paid the Claimant in an admitted workers' compensation claim. Of course, "subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Issues related to subject matter jurisdiction may be raised at any time. Edwards v. State, 372 S.C. 493, 642 S.E.2d 738 (2007), (quoting State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)). Because the Commission does not have subject matter jurisdiction or statutory authority over the Respondents' equitable claims, the Court of Appeals should reverse the

¹⁶ Kuznik v. Bees Ferry Associates, 342 S.C. 579, 538 S.E.2d 15 (Ct. App. 2000).

Commission's "Amended" Order dated January 6, 2009.

III. The Appellants have unclean hands and will otherwise be unjustly enriched by the "reimbursement" ordered by the Commission.

The Workers' Compensation Commission summarily found that the Appellants must reimburse the Respondents for "[a]ll medical expenses and temporary total disability compensation paid after the November 3, 2003 [accident] [sic]," ostensibly under the doctrines of equitable indemnity or equitable subrogation. However, one who comes to the court seeking equity must come with clean hands. See Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814, 65 S.Ct 993, 89 L.Ed. 1381 (1945) ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."); Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.") (internal quotations and citations omitted)). The Appellants respectfully contend that the Respondents are not entitled to "reimbursement" because they have acted unfairly and prejudicially to the Appellants. Furthermore, the Respondents concealed their "unclean" hands at the time of the hearing before the Appellate Panel on November 21, 2006.

The record reveals that the Respondents were given a \$20,986.68 credit for overpayment of temporary total disability compensation for the period from May 5, 2005 through July 6, 2006, pursuant to Commissioner Huffstetler's Order. However, without

notice to, or consent from, the Appellants, the Respondents voluntarily relinquished its right to the \$20,986.68 credit when it entered into a settlement agreement with the Claimant on August 28, 2006. The Respondents concealed this settlement from the Appellants for over a year. The Respondents later claimed (and the Commission inexplicably awarded) that they are entitled to reimbursement for \$47,023.88 in temporary total disability compensation (R. p. 365), though the Respondents were only liable for \$26,037.20 in temporary total disability compensation.¹⁷ The Appellants respectfully contends that the Respondents' voluntary decision to waive a credit for overpayment of temporary disability compensation alone should bar their request for "reimbursement" under some ill-defined equitable theory.

In addition, the Claimant reached a \$540,000.00 settlement in his civil claim against the at-fault third-parties for the December 9, 2002 accident. (R. pp. 353-55). Despite this very substantial third-party recovery, the Respondents voluntarily relinquished their statutory lien of \$196,085.84 for only \$50,000.00. The Appellants respectfully contend that the Respondents could have easily recovered more (it not all) of its statutory lien of \$196,085.84 from the Claimant's settlement. The fact that the Respondents voluntarily waived a \$196,085.84 lien for only 25 cents on the dollar suggests that the Respondents were not acting in good faith (or made some strategic decision with the Claimant to discharge their lien in exchange for an assignment of his claim against the Respondent). The Respondents' waiver of their statutory lien obviously prejudiced the Appellants, as a more reasonable lien recovery would have obviated the

¹⁷ Note that the Respondents also filed an "exhibit" (R. p. 364) suggesting that it paid the Claimant \$36,040.20 in benefits for permanent loss of use of the back, as ordered by Commissioner Huffstetler on July 5, 2006, but the Respondents never actually paid this award. This is further evidence of the Respondents' "unclean hands."

need for the present tortuous proceedings.

Lastly, it is evident that the Respondents appear to have unclean hands because they seek to profit from their request for "reimbursement." According to the Respondents, in addition to their \$50,000 lien recovery, the Appellants should "reimburse" the Respondents in the amount of \$159,813.30 for medical and indemnity benefits they paid to the Claimant. However, the Respondents' Form 19 reflects that the Respondents' net payment to (or on behalf of) the Claimant was only \$146,085.84¹⁸. (R. p. 361). On its face, the Respondents seek (and the Commission awarded) the Respondents a windfall profit in the amount of \$13,727.46 in a claim for which it voluntarily admitted liability. This is further evidence of the Respondents' unclean hands and the inequitable, faulty logic employed by Commission, which should be reversed on appeal.

IV. The Commission erred in summarily concluding that the Respondents are entitled to "reimbursement" for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable indemnity.

Assuming the Commission has the power and authority to address the Respondents' common law equitable claims, then the proper question before the Jurisdictional Commissioner on remand was the extent to which the Respondents are

¹⁸The Respondents' gross payment of \$196,085.84 includes benefits paid prior to November 3, 2002. The sum of \$146,085.84 is the net payment to, or on behalf of, the Claimant after the Respondents recovered \$50,000.00 in compromise settlement of their lien on the Claimant's \$540,000.00 civil settlement.

entitled to such relief under a theory of equitable indemnity.¹⁹ Unfortunately, neither the Jurisdictional Commissioner, nor the Appellate Panel, addressed this issue. Instead, the Commission summarily concluded that the Respondents are entitled to reimbursement from the Appellant for all benefits the Respondents voluntarily paid to the Claimant after November 3, 2003. The Appellants respectfully contend that the Commission did not make sufficient findings to support this conclusion and that the conclusion is otherwise contrary to the applicable law.

Indemnity is a “form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party.” First Gen. Servs. of Charleston, Inc. v. Miller 314 S.C. 439, 442, 445 S.E.2d 446, 449 (1994) (quoting Town of Winnsboro v. Wiedeman-Singleton, Inc., 303 S.C. 52, 398 S.E.2d 500 (Ct.App.1990), *aff’d*, 307 S.C. 128, 414 S.E.2d 118 (1992)). Furthermore, “a right of indemnity exists whenever the *relation between the parties* is such that either in law or in equity there is an obligation on one party to *indemnify* the other, as where one person is exposed to liability by the wrongful act of another in which he does not join.” Rock Hill Telephone Co., Inc. v. Globe Communications, Inc., 363 S.C. 385, 611 S.E.2d 235 (2005) (emphasis added). In the present case, there is no evidence that the Respondents were exposed to liability to the Claimant by virtue of any “special relationship” with, or “wrongful act” by the Appellants.

Not only is there is no “special relationship” between the Appellants and the Respondents, the only relationship between the Appellants and the Respondents is the adversarial relationship created by the Respondents when it moved to add the Appellants

¹⁹ The Appellate Panel’s Order states that the case was remanded for a “determination of average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with the findings set forth herein.” (R. p. 296).

as a party to the Claimant's workers' compensation claim. However, according to the South Carolina Supreme Court in Rock Hill Telephone Co., Inc. v. Globe Communications, Inc., *supra*, "there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing." Therefore, the Respondents' claim for any amount of equitable indemnity must fail on this basis alone.

In addition, the Respondents were not "exposed to liability by the wrongful act" of the Appellants. Clearly, the Respondents were exposed to liability for workers' compensation benefits because the Claimant made a claim against the Respondents. The Respondents' liability to the Claimant arose out of an accident on December 9, 2002, which the Respondents voluntarily admitted. The Appellants did not cause the December 9, 2002 accident, nor were they in any way involved with the Respondents' voluntary decision to pay medical and compensation benefits. Similarly, the Appellants were not in any way involved with the Respondents' subsequent decision to settle with the Claimant and waive their statutory lien on the Claimant's \$540,000.00 civil settlement. The Appellants committed no "wrongful act" and otherwise did not expose the Respondents to any liability. Again, there is simply no factual basis upon which the Commission or the Court could properly ascribe any degree of liability to the Appellants under a theory of equitable indemnity.

- V. The Commission erred in summarily concluding that the Respondents are entitled to "reimbursement" for all medical and compensation benefits it voluntarily paid the Claimant under a theory of equitable subrogation.

The doctrine of equitable subrogation is inapplicable to the case at bar and is not a proper basis for ordering the Appellants to reimburse the Respondents for medical and compensation benefits it voluntarily paid to, or on behalf of, the Claimant. Subrogation can arise by statute, by contract, or through equity. Dailey v. Secura Ins. Co., 164 Wis.2d 624, 476 N.W.2d 299 (Ct.App.1991). Conventional subrogation arises by contract and is specifically bargained for by the parties. In contrast, equitable (or legal) subrogation arises under the common law. While conventional subrogation obviously does not apply to the facts of this case, the Appellants respectfully contend that the Respondents are similarly not entitled to recover any amount under a theory of equitable subrogation.

On remand, the Commission failed to apply the elements of equitable subrogation to the facts of this case in summarily concluding that the Appellants must reimburse the Respondents for \$159,813.30 for medical and indemnity benefits they paid to the Claimant.

The elements of the doctrine of equitable subrogation are:

1. the party claiming subrogation has paid the debt;
2. the party was not a volunteer, but had a direct interest in the discharge of the debt or lien;
3. the party was secondarily liable for the debt or for the discharge of the lien; and
4. no injustice will be done to the other party by the allowance of the equity.

United Carolina Bank v. Caroprop, Ltd., 316 S.C. 1, 446 S.E.2d 415 (1994). Following the remand Order, the issue before the Commission was whether and to what extent the

Respondents involuntarily paid a debt for which it was only secondarily liable. The Respondents cannot meet elements 2, 3, or 4 and, therefore, are not entitled to any amount of “reimbursement” under a theory of equitable subrogation.

With regard to the second element of equitable subrogation, the Respondents clearly had no legal interest in, or obligation for, any liability the Appellants may have had to the Claimant stemming from an alleged accident on or about November 3, 2003. The Claimant did not even file a workers’ compensation claim against the Appellants until January 17, 2008 (long after the Respondents and the Claimant reached a full and final settlement by which the Respondents agreed to pay all medical and compensation benefits) and the Respondents are not a party to the Claimant’s claim against Bob Wire, because it has no relationship with the Appellants (W.C.C. 0327174). Instead, the Respondents voluntarily paid medical and compensation benefits after November 3, 2003 – it was under no legal compulsion to pay these benefits. The Respondents did not even seek to defend themselves at a hearing when the Claimant requested additional medical and compensation benefits after reaching maximum medical improvement in August 2003. On this basis alone the Respondents’ “equitable subrogation” claim must fail.

Furthermore, the Respondents are not “secondarily liable” for any claim against the Appellants. There is simply no relationship between the Appellants and the Respondents that would subject the Respondents to any liability should the Appellants fail to meet their legal obligations to the Claimant.

Perhaps more importantly, the Appellants do face an “injustice” should the Court permit the Respondents to accept liability on its behalf and then have a right of reimbursement (with potential for profit and claim for attorney fees). Not only do the

Appellants now face a double liability for the same accident, but the matter of whether and to what extent the Appellants should be liable for the Claimant's alleged injuries should rest solely between the Appellants and the Claimant. As stated by the South Carolina Supreme Court in Blue Cross/Blue Shield v. S.C. Industrial Commission, 274 S.C. 204, 262 S.E.2d 35 (1980), "[t]he employee may file a claim or refuse to file a claim. The employer and employee are entitled to litigate, or refuse to litigate, without interference. If Blue Cross is aggrieved, it may refuse to pay and litigate with its insured."

The Appellants respectfully contend that the Respondents in this case are no different than the health insurance company in Blue Cross and the same legal principle is equally applicable in the case *sub judice*. Having no legal relationship with the Appellants, the Respondents should not be entitled to recover any amount as "subrogation" or any other equitable theory, simply because the Respondents claim to be aggrieved. See Owens v. Herndon, 252 S.C. 166, 165 S.E.2d 696 (1969) (holding that the "rights and liabilities of employee and employer under the Workmen's Compensation Act are purely statutory and are to be judged by the terms of the Act. Policy considerations as to what benefits should be conferred or obligations imposed are strictly for the legislature. . . .").

VI. The Commission's finding that the Appellants must "reimburse" the Respondents for all temporary total disability compensation benefits paid to the Claimant after November 3, 2003 at the rate of \$343.24 per week is arbitrary and capricious.

Following the December 10, 2002 accident, the Claimant could only work part time because he still had "severe lower back pain." (R. pp. 155-56). Payroll records indicate that, after he was terminated by Peachtree, the Claimant only worked for Bob Wire a total of 35.5 hours over a two-week period prior to November 3, 2003, the date the second "accident." (R. p. 345). Based upon this evidence and the parties' stipulation that that the Claimant's average weekly wage at Bob Wire was \$198.83 (R. p. 141), the Commission should have found (as required by the Appellate Panel's Order of Remand) that the Claimant's applicable compensation rate for the period after November 3, 2003 was only \$132.56.

Instead, the Commission failed to address the proper compensation rate for the November 3, 2003 accident following the Order of remand and otherwise did not explain this failure. However, S.C. Code Reg. 67-606(A) states, "[t]he average weekly wage and compensation rate is an issue for determination at the hearing unless stipulated by the parties." The Commission's failure to address the applicable average weekly wage and compensation rate was especially critical, as the Commission ordered the Appellants to reimburse the Respondents for 137 weeks of temporary total disability compensation. The Appellants respectfully contend that, if the Appellants should have any liability for temporary total disability compensation for the period after November 3, 2003, it should be at the rate of \$138.50 per week, not \$343.24 per week as implicitly found by the Commission.

Furthermore, according to the un-appealed portion of Commissioner Huffstetler's July 5, 2006 Decision and Order, the Respondents were only liable for temporary total disability compensation through May 5, 2005. The Respondents were given a credit for

overpayment of temporary total disability compensation benefits paid after that date, to be applied against the award of 35% loss of use of the back, which was likewise not appealed. Yet inexplicably, the Commission has ordered the Appellants to reimburse the Respondents for temporary total disability compensation through July 6, 2007 -- an additional 61.1429 weeks (\$20,986.68) beyond the Respondents' own liability, without explanation.

The Appellants respectfully contend that, had the Claimant actually filed a workers' compensation claim for a November 3, 2003 accident and actually proven his entitlement to benefits, he could not have been entitled to more than \$132.56 per week for the period from January 10, 2004²⁰ through May 5, 2005 (68.85 weeks). Therefore, at best, the total amount of temporary total disability compensation payable for a November 3, 2003 accident is \$9,126.75. Yet, the Commission ordered the Appellants to pay the Respondents \$47,023.88 in temporary total disability compensation. The Commission's conclusions regarding the amount of temporary total disability compensation are arbitrary, capricious, and contrary to the undisputed evidence and the applicable law.

Furthermore, if the Appellants are liable for temporary total disability compensation, such benefits should be made payable to the Claimant alone, pursuant to S.C. Code Ann. § 42-9-10, § 42-9-220, § 42-9-260. There is no statutory provision providing that the Appellant's liability for temporary total disability compensation can be discharged by payment to a third-party, such as the Respondents.²¹ Therefore, the

²⁰ See R. p. 347, which shows that the Claimant continued working for Bob Wire through January 10, 2004.

²¹ S.C. Code Ann. § 42-9-360 states that "[n]o claim for compensation under this title shall be assignable." Therefore, Commissioner Funderburk erred as a matter of law by impliedly assigning the claim for temporary total disability compensation to the Respondents.

Appellants are at a serious risk of a double exposure for temporary disability benefits (the Claimant has now filed a claim against the Appellants for a November 2003 accident and this claim is still pending before the Workers' Compensation Commission). In addition, the Appellants' right to seek reimbursement from the Second Injury Fund may be seriously prejudiced (by the fact that its obligations have not been discharged in accordance with the S.C. Code reg. 67-1302, *et seq.*). For these reasons, the Appellants seek reversal.

VII. The Respondents' request for "reimbursement" is governed by S.C. Code Ann. § 42-9-210 and § 42-1-560 and the Commission erred in creating new right and remedy.

Essentially, the Respondents argue that some of the Claimant's medical and compensation benefits are causally-related to an accident at Bob Wire on November 3, 2003 and that, therefore, these benefits were paid by the Respondents in error. In fact, the Respondents claim that they were induced by the Claimant's "false pretenses" to pay these medical and compensation benefits for the period after November 3, 2003.

However, the Respondents seemingly rewarded the Claimant's "false pretenses" with a settlement agreement and waiver of their lien on the Claimant's \$540,000.00 civil settlement. Instead of challenging their liability to the Claimant on appeal, or seeking reimbursement from the Claimant or from his \$540,000.00 civil settlement, the Respondents argued that the Workers' Compensation Commission should create a new right of reimbursement against the Appellants, out of "fairness."

However, by statute, the South Carolina General Assembly has already provided a

specific procedural mechanism by which the Respondents could have recouped these payments from the Claimant, to the extent that they were not due and payable when made. Credit for overpayment of temporary total benefits is governed by S.C. Code Ann. § 42-9-210, which states,

Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this Title were not due and payable when made may, subject to the approval of the Commission, be deducted from the amount to be paid as compensation...

See Sanders v. MeadWestvaco Corp., 371 S.C. 284, 638 S.E.2d 66 (2006). Therefore, the Workers' Compensation Act already provided the Respondents an adequate remedy for their claimed overpayment of compensation. The Respondents could have argued that, pursuant to S.C. Code Ann. § 42-9-210, they were entitled to a credit for all temporary total disability compensation benefits paid for the period after November 3, 2003 against the award of permanency, for which the Respondents concede liability in the amount of \$36,040.20. (R. p. 364). To the extent that the Respondents' claim that their overpayment of compensation benefits totaled \$47,023.88,²² the Respondents had the additional right to enforce their statutory subrogation rights under S.C. Code Ann. § 42-1-560.

Pursuant to S.C. Code Ann. § 42-1-560(b), the Respondents had a right to assert a lien on the proceeds of any recovery from a third-party "to the extent of the total amount

²² Note that the Respondents' overpayment is due in part to the fact that they did not timely request a hearing to terminate benefits and in part due to the fact that the Respondents paid the Claimant \$2,471.32 during a period when the Claimant was actually working (11/21/03 – 1/10/04). (R. pp. 345-47).

Respondents' common law claim for equitable subrogation or equitable indemnity as a matter of law. Furthermore, to the extent that the Workers' Compensation Commission has subject matter jurisdiction over these claims, the preponderance of the evidence shows that the Respondents are not entitled to equitable subrogation or equitable indemnity in any amount. Therefore, the Appellants respectfully request that the Commission's "Amended" Decision and Order be reversed in its entirety.

Respectfully submitted,



Kirsten Leslie Barr, Esq.
Trask & Howell, LLC
Attorneys for the Appellants
Bob Wire Electrical, Inc. and
The S.C. Home Builders SIF

August 25, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-0087

Christopher Price,.....Claimant,

v.

Peachtree Electrical Services, Inc. and
Builders Mutual Insurance Company,
Employer/Carrier,.....Respondent

v.

Bob Wire Electric, Inc. self-insured
Employer, through South Carolina
Home Builders Association IF.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of the Appellants
complies with Rule 211(B), SCACR and Supreme Court Order 2007-08-16-02, dated
August 13, 2007, requiring redaction of personal data identifiers..



Kirsten Leslie Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for the Appellants

August 24th, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Christopher Price, Claimant,

v.

Peachtree Electrical Services,
Inc., Employer, and Builders
Mutual Insurance Company,
Carrier, Respondents,

v.

Bob Wire Electric, Inc., self-
insured Employer, through
South Carolina Home Builders
Association SIF, Appellants.

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 4923
Heard October 5, 2011 – Filed December 21, 2011.

VACATED



Kirsten Leslie Barr, of Mount Pleasant, for Appellants.

Richard C. Detwiler, of Columbia, for Respondents.

KONDUROS, J.: Christopher Price was injured while working for Peachtree Electrical Services (Peachtree) in December 2002. In 2003, while in the employment of Bob Wire Electrical (Bob Wire), Price was injured again. Bob Wire and the South Carolina Home Builders Self Insurers' Fund (collectively Appellants) appeal the circuit court's order affirming the decision of the Appellate Panel of the Workers' Compensation Commission (the Commission) requiring Bob Wire to reimburse Peachtree for benefits Peachtree paid to Price after the 2003 injury. We vacate the single commissioner's, the Appellate Panel's, and the circuit court's orders.

FACTS

Price injured his back in an accident arising out of and in the course and scope of his employment with Peachtree on December 9, 2002, while working at a restaurant owned by the Divine Dining Group, Inc. Peachtree and its carrier admitted liability for the injury, voluntarily paid temporary total disability compensation, and authorized medical treatment including a surgery performed by Dr. William L. Mills of Coastal Orthopaedic Associates. Price was released to full-duty work at maximum medical improvement on August 8, 2003, with a ten percent impairment rating to the whole body and thirteen percent to the spine. Price did not return to work for Peachtree but went to work part-time for Bob Wire and suffered another injury in November 2003.¹ Price did not return to work at Bob Wire and never filed a claim against Bob Wire. Instead, he returned to Dr. Mills and complained of worsening and continuing back pain stemming from the 2002 accident. Peachtree again provided benefits to Price, paying him the same

¹ According to Price's testimony, his supervisor at the time was working on the other side of the wall where they were pulling and installing electrical cables. Price fell to the ground and moaned in pain, and his supervisor checked on him.

temporary total benefits as in 2002, and authorized medical treatment, which included an additional surgery.

In May 2004, Price filed a negligence claim against Divine Dining for his injuries arising out of the 2002 accident. The complaint sought past and future medical bills, past and future physical pain and suffering, past and future lost wages, past and future mental pain and suffering, and permanent disability. In February 2005, Price filed a Form 50 seeking total disability stemming from his back injury, which the form indicated was caused by the 2002 accident. Price was given a twenty percent impairment rating after the second accident. In April 2005, Peachtree added Bob Wire as a party to the workers' compensation action. Peachtree's attorney indicated Bob Wire was added as soon as Peachtree discovered, by reading Price's deposition testimony in the negligence action, a second injury had occurred.

Price settled his negligence claim against Divine Dining for \$540,000 in April 2006. In June 2006, Peachtree entered into a clincher agreement with Price for \$50,000, whereby Peachtree released its liens against the proceeds of the negligence action and Price released Peachtree from all further liability. Each covenanted not to waive any claims either of them may have against Bob Wire. Bob Wire was not informed of the clincher agreement.

The single commissioner determined no evidence demonstrated Bob Wire ever knew of a second accident and no evidence showed the injury in 2003 was not just a continuation of the injury Price had already suffered. On appeal, the Appellate Panel reversed the single commissioner, finding Price had suffered a second accident in 2003 and holding Bob Wire responsible for reimbursing Peachtree for benefits Peachtree paid to Price as a result of the second accident. The matter was remanded to the single commissioner to determine "the average weekly wage and benefits, etc., and apportionment of benefits paid and/or to be paid in a manner consistent with the findings set forth herein." Bob Wire attempted to appeal from this order, but the appeal was dismissed as untimely.

On remand to the single commissioner, Peachtree submitted evidence regarding the compensation and medical treatment it had provided to Price.

Bob Wire argued Peachtree had waived its right to seek reimbursement for these costs from Bob Wire by entering into the clincher agreement with Price regarding the 2002 injury. The single commissioner was unpersuaded and ordered that Bob Wire reimburse Peachtree for all causally-related medical treatment and temporary total disability compensation provided to Price by Peachtree after November 3, 2003, in the amount of \$112,789.42 and \$47,023.88 respectively. The Appellate Panel and circuit court affirmed the single commissioner's order. This appeal followed.

LAW/ANALYSIS

Bob Wire contends the Commission lacks subject matter jurisdiction² to deal with Peachtree's equitable claim for reimbursement because the Commission's authority is derived strictly from statute in derogation of the common law. We agree.

As a threshold matter, Peachtree contends the findings in the Appellate Panel's first order of May 2007 (First Order) constitute the law of the case because the appeal from that order was dismissed as untimely. We disagree.

Peachtree is correct in asserting that, in effect, no immediate appeal was taken from the First Order because Bob Wire's appeal was late.³ However, we disagree that Bob Wire was required to immediately appeal the First Order to prevent its findings from becoming the law of the case. An intermediate order may be appealed if it involves the merits of the case as described in section 14-3-330(1).⁴ Section 14-3-330 merely allows the

² Subject matter jurisdiction refers to "the authority of a court to entertain a particular action." Cribb v. Spatholt, 382 S.C. 475, 481, 676 S.E.2d 706, 709-10 (Ct. App. 2009).

³ Bob Wire filed its appeal of the First Order outside the thirty-day time limit set forth in section 42-17-60 of the South Carolina Code (Supp. 2006).

⁴ Appeals from the Commission are governed by section 42-17-60 of the South Carolina Code (Supp. 2010). See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010) (holding if a more specialized statute concerning appealability

aggrieved party to appeal an intermediate order involving the merits; it does not require an appeal at that time. The aggrieved party may wait until a final judgment is rendered and then appeal. See Lancaster v. Fielder, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) ("[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under section 14-3-330(1) this [c]ourt can review any intermediate order or decree necessarily affecting the judgment not before appealed from.").

Accordingly, Bob Wire was not required to appeal the First Order immediately following its issuance to avoid the findings therein becoming the law of the case.⁵ Instead, Bob Wire, as it was permitted to do, appealed the final judgment of the single commissioner on remand. Bob Wire continued to raise the jurisdictional question on subsequent appeals to the Appellate Panel, the circuit court, and this court. Therefore, the findings of the First Order regarding subject matter jurisdiction did not constitute the law of the case, and the issue is properly preserved for our consideration in this appeal.

Turning our attention to that issue, our jurisprudence has long recognized the power of the Commission is derived strictly from statute.

The right to workmen's compensation is wholly statutory, not existing except under the circumstances provided in the Workmen's Compensation Acts. It is not a common law right for the reason that the Acts

exists, it is controlling); see also Allison v. W.L. Gore & Assocs., 394 S.C. 185, ___, 714 S.E.2d 547, 549 (2011) (discussing appealability of workers' compensation claim as governed by section 42-17-60). At the time of this case, section 42-17-60 of the South Carolina Code provided that workers' compensation appeals were to be taken in the same manner as other appeals. See S.C. Code Ann. § 42-17-60 (Supp. 2006) (stating a party could appeal "under the same terms and conditions as govern appeals in ordinary civil actions"). Thus, the general appealability statute at section 14-3-330 of the South Carolina Code (1977 & Supp. 2010) is controlling.

⁵ We decline to address whether the First Order constituted an appealable interlocutory order as such a determination is not necessary to the disposition of this issue.

are in derogation of, or departures from, the common law, and are not amendatory, cumulative or supplemental thereto, nor declaratory thereof, but wholly substitutional in character

Marchbanks v. Duke Power Co., 190 S.C. 336, 363, 2 S.E.2d 825, 836 (1939) (internal quotation marks and citations omitted). Therefore, the Commission's jurisdiction and authority is circumscribed by the Workers' Compensation Act (the Act).

Peachtree argues unless an express provision prohibits an action, the Commission can deal with any issue arising under the Act. See S.C. Code Ann. § 42-3-180 (1985) ("All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this Title."); see also James v. Anne's, Inc., 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010) (finding the Commission had authority to prorate a lump sum award because nothing in the Act prohibited, either expressly or impliedly, the proration language at issue). However, only disputes ancillary to an employee's right to compensation arise under the Act. See Laboureur v. Harleysville Mut. Ins. Co., 302 S.C. 540, 544, 397 S.E.2d 526, 529 (1990) (discussing the Commission's purview to determine policy cancellation and stating "[w]hen the employee's rights are not involved, an employer/insured must present all such issues to the circuit court"); see also Roper Hosp. v. Clemons, 326 S.C. 534, 539, 484 S.E.2d 598, 600 (Ct. App. 1997) (holding a medical provider's common law claims for payment of employee's medical bills did not fall within the purview of the Act and claims would properly be litigated in circuit court). Claims not affecting the employee's right to compensation are within the purview of the circuit court, not of the Commission.

In this case, the claim presented is a common law, equitable claim for reimbursement made by Peachtree, an employer, against Bob Wire, another employer. The matter directly in contention does not affect Price's right to compensation. He has been completely compensated for the 2002 accident pursuant to the clincher agreement between himself and Peachtree, and any future benefits for which Bob Wire may be liable are a separate and distinct

matter from any benefits Peachtree may have paid previously. Therefore, the Commission lacked subject matter jurisdiction to determine Peachtree's right to reimbursement from Bob Wire, and that claim should have been dismissed.

Because our determination as to the jurisdiction of the Commission is dispositive of the case, we need not address Bob Wire's remaining issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address additional issues when one issue is dispositive). Because the Commission lacked subject matter jurisdiction to hear Peachtree's claim for reimbursement, the single commissioner's order, the Appellate Panel's order, and the circuit court's order are hereby

VACATED.

FEW, C.J., and THOMAS, J., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Christopher Price, Claimant,

v.

Peachtree Electrical Services, Inc. and Builders Mutual
Insurance Company, Employer/Carrier, Petitioners,

v.

Bob Wire Electric, Inc., self-insured Employer, through
South Carolina Home Builders Association SIF,
Respondents.

Appellate Case No. 2012-207886

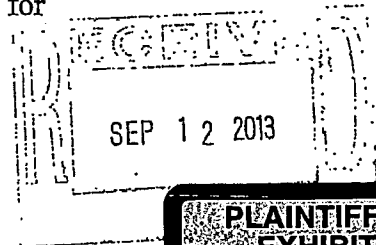
ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 27314
Submitted August 5, 2013 – Filed September 11, 2013

AFFIRMED AS MODIFIED

Richard C. Detwiler and Mary Dameron Milliken, both
of Callison Tighe & Robinson, LLC, of Columbia, for
Petitioner.



Kirsten Leslie Barr, of Trask & Howell, LLC, of Mt.
Pleasant, for Respondent.

PER CURIAM: Peachtree Electrical Services seeks review of the Court of Appeals' decision in *Price v. Peachtree Elec. Servs., Inc.*, 396 S.C. 403, 721 S.E.2d 461 (2011), finding the Workers' Compensation Commission did not have subject matter jurisdiction over Peachtree's equitable subrogation claim. We deny the petition for a writ of certiorari as to Peachtree's Question III and affirm with regard to subject matter jurisdiction. However, we grant the petition as to Peachtree's Questions I and II, dispense with further briefing, and affirm as modified herein the decision of the Court of Appeals regarding appealability of the first appellate panel order.

Earlier in this matter, an appellate panel of the Workers' Compensation Commission issued an order finding Bob Wire Electric was responsible for an injury incurred by claimant that was originally attributed to Peachtree. The appellate panel remanded the case to the single commissioner for further determination of benefits. Bob Wire did not immediately appeal the appellate panel order, but subsequently appealed the order of the single commissioner.

Peachtree argued before the Court of Appeals that the appellate panel order was a final decision and because Bob Wire did not appeal that decision, the findings of fact and conclusions of law in the order were the law of the case. The Court of Appeals found, pursuant to S.C. Code Ann. § 14-3-330 (1976 & Supp. 2012), Bob Wire was not required to file an immediate appeal from the appellate panel order, but could wait and appeal the final judgment of the single commissioner and in fact did. The Court of Appeals applied S.C. Code Ann. § 42-17-60 (Supp. 2012) in finding section 14-3-330, the general applicability statute, controlling.

However, recently, this Court in *Bone v. U.S. Food Service*, Op. No. 27278 (S.C. Sup. Ct. filed June 26, 2013), clarified that the Administrative Procedures Act (APA), not section 14-3-330, establishes the standard for judicial review of decisions of the Workers' Compensation Commission. Pursuant to the APA, "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380 (Supp. 2012). An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review. *Bone, supra*. "A preliminary, procedural, or intermediate agency

action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate review." S.C. Code Ann. § 1-23-380.

Accordingly, the Court of Appeals' reliance upon section 14-3-330 was in error. However, even under section 1-23-380, the order of the appellate panel was not immediately appealable. Therefore, the Court of Appeals properly found Bob Wire's failure to file an immediate appeal from the order did not render the findings of fact and conclusions of law therein the law of the case.

AFFIRM AS MODIFIED

TOAL, C.J., PLEICONES and BEATTY, JJ., concur. KITTREDGE, J., and HEARN, J., concur in result only.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Builders Mutual Insurance)
Company, for itself and its)
insured, Peachtree Electrical)
Services,)

Plaintiffs,)

v.)

Bob Wire Electric, Inc. and)
South Carolina Home Builders)
Association Self Insurance Fund,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2014-CP-40-01818

ATTORNEYS' FEE AFFIDAVIT

PERSONALLY APPEARED BEFORE ME Richard C. Detwiler who, being duly sworn, deposes and says:

1. I was admitted to the practice of law in South Carolina in 1986 and I am an active member of the South Carolina Bar Association, the Richland County Bar Association. I am also admitted to practice before the United States District Court, District of South Carolina and the United States Fourth Circuit Court of Appeals. Since July of 1992 I have been a partner in the law firm of Callison, Tighe & Robinson, LLC. The emphasis of my practice is general civil litigation, and workers' compensation. Both my firm and I, individually, are rated "AV" by Martindale-Hubbell, its highest rating, indicating "Very High to Preeminent" legal abilities and "Very High" general ethical standards.

2. I am the attorney of record for the Plaintiffs in the above-captioned action. The services rendered in this matter have been performed by me or under my direction. My billing rates for this matter have been \$125.00 to \$220.00 per hour over the life of the

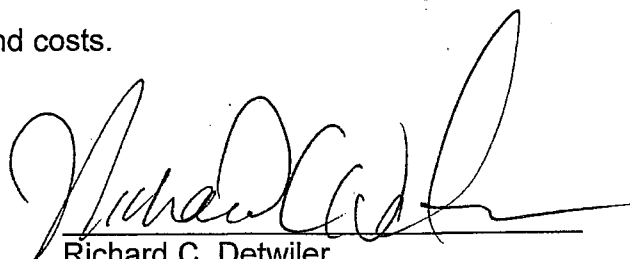


case. Others have billed at lower rates. With regard to this matter, we have incurred \$103,130.75 in fees and \$7,931.65 in costs. I believe that none of these costs would have been incurred had there been no subsequent accident; thus, all fees and costs were incurred with respect to the defense of the subsequent accident the Claimant incurred with Bob Wire Electric, including the successful efforts to establish Bob Wire/SCHBA as the responsible parties.

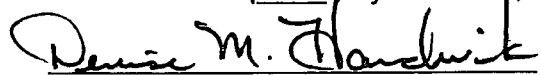
3. I believe that all services performed in this case were reasonable and necessary for the proper representation of Plaintiffs and I am informed and believe that the fees charged in this case reflect those customarily charged in this locality for a similar action. I believe the results we have obtained for our client justify the fees charged in this matter. It is also my belief that all of these fees could have been avoided but for the position taken by Peachtree and the SCHBA, the responsible parties.

4. I am requesting that the Court review the file, this Affidavit, and the evidence presented to this Court and grant Plaintiffs a reasonable sum of attorneys' fees and costs to date. I am also requesting on behalf of the Plaintiffs that the Court require the SCHBA to reimburse the Plaintiffs for those fees and costs.

Further, deponent sayeth naught.


Richard C. Detwiler
Attorney for Plaintiffs

SWORN TO AND SUBSCRIBED
before me this 13th day of March, 2015

 (L.S.)
Notary Public for South Carolina
My commission expires: 1-20-19



```
XXXXXXXX XXXXX XX XX XXXXXXXXXXX XXX XXXX XXXX
XXXXXXXX XXXXXXXX XX XX XXXXXXXXXXX XXXX XX XXXXXXXX
XX XX XX XX XX XX XX XXXX XX XX XX
XX XX XX XX XX XX XX XX XX XX XX
XXXXXXXXXX XX XX XX XX XX XX XX XX
XXXXXXXXXX XX XX XX XX XX XX XX XX
XXXX XX XX XX XX XX XX XX XX XX XXXX
XXXX XX XX XX XX XX XX XX XX XX XXXX
XX XXX XX XX XX XX XX XX XX XX XX
XX XXX XX XX XX XX XX XX XX XXXX XX
XX XXX XXXXXXX XXXXXXX XX XXXXXXXXX XX XXX XXXXXXX
XX XXX XXXXX XXXXX XX XXXXXXXXX XX XXX XXXXX
```

ROUTE TO: Linda Smith

REPORT TITLE: ***** PAY HISTORY REPORT *****

PROGRAM NAME: W7061R FILE: 0 COPIES: 1 HOLD: *YES

OUTPUT QUEUE: PRT02 FORMS: *STD SAVE: *YES

GROUP: 1
YEAR: 102
EMPLOYER: *ALL
CASE RANGE: 47128 - 47128
DATE RANGE: 11/03/2003 - 3/16/2015
PAYMENT CODE: *ALL
TRANSACTION TYPE: *ALL
RESERVE CODE: *ALL
RESERVE TYPE: C
PAYMENT VALUE 1: *ALL

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 1

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	TYPE	RESERVE CODE TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD	PAYEE NAME	CHECK #	AMOUNT
CP	P	CO C	1/02/2004	1/02/2004	11/21/2003	1/01/2004	6		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			632132	2,059.44
CP	P	CO C	1/07/2004	1/07/2004	1/02/2004	1/08/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			633069	343.24
CP	P	CO C	1/14/2004	1/14/2004	1/09/2004	1/15/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			634685	343.24
CP	P	CO C	1/21/2004	1/21/2004	1/16/2004	1/22/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			636239	343.24
CP	P	CO C	1/28/2004	1/28/2004	1/23/2004	1/29/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			637400	343.24
CP	P	CO C	2/05/2004	2/05/2004	1/30/2004	2/05/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			639431	343.24
CP	P	CO C	2/12/2004	2/12/2004	2/06/2004	2/12/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			641143	343.24
CP	P	CO C	2/18/2004	2/18/2004	2/13/2004	2/19/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			642374	343.24
CP	P	CO C	2/26/2004	2/26/2004	2/20/2004	2/26/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			644255	343.24
CP	P	CO C	3/03/2004	3/03/2004	2/27/2004	3/04/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			645409	343.24
CP	P	CO C	3/10/2004	3/10/2004	3/05/2004	3/11/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			646982	343.24
CP	P	CO C	3/17/2004	3/17/2004	3/12/2004	3/18/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			648666	343.24
CP	P	CO C	3/24/2004	3/24/2004	3/19/2004	3/25/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			650088	343.24
CP	P	CO C	3/31/2004	3/31/2004	3/26/2004	4/01/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			651887	343.24
CP	P	CO C	4/07/2004	4/07/2004	4/02/2004	4/08/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			653917	343.24
CP	P	CO C	4/14/2004	4/14/2004	4/09/2004	4/15/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			654975	343.24
CP	P	CO C	4/21/2004	4/21/2004	4/16/2004	4/22/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			656490	343.24
CP	P	CO C	4/28/2004	4/28/2004	4/23/2004	4/29/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			658163	343.24
CP	P	CO C	5/05/2004	5/05/2004	4/30/2004	5/06/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			659347	343.24
CP	P	CO C	5/12/2004	5/12/2004	5/07/2004	5/13/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			660752	343.24
CP	P	CO C	5/19/2004	5/19/2004	5/14/2004	5/20/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			662271	343.24
CP	P	CO C	5/26/2004	5/26/2004	5/21/2004	5/27/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			663730	343.24
CP	P	CO C	6/02/2004	6/02/2004	5/28/2004	6/03/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			665236	343.24
CP	P	CO C	6/09/2004	6/09/2004	6/04/2004	6/10/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			666698	343.24
CP	P	CO C	6/16/2004	6/16/2004	6/11/2004	6/17/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			668245	343.24
CP	P	CO C	6/23/2004	6/23/2004	6/18/2004	6/24/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			669953	343.24
CP	P	CO C	6/30/2004	6/30/2004	6/25/2004	7/01/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			671277	343.24
CP	P	CO C	7/07/2004	7/07/2004	7/02/2004	7/08/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			672345	343.24
CP	P	CO C	7/14/2004	7/14/2004	7/09/2004	7/15/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			673945	343.24
CP	P	CO C	7/21/2004	7/21/2004	7/16/2004	7/22/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			675812	343.24
CP	P	CO C	7/28/2004	7/28/2004	7/23/2004	7/29/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			677160	343.24
CP	P	CO C	8/04/2004	8/04/2004	7/30/2004	8/05/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			678612	343.24
CP	P	CO C	8/11/2004	8/11/2004	8/06/2004	8/12/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			680057	343.24
CP	P	CO C	8/18/2004	8/18/2004	8/13/2004	8/19/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			681634	343.24
CP	P	CO C	8/25/2004	8/25/2004	8/20/2004	8/26/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			683088	343.24
CP	P	CO C	9/01/2004	9/01/2004	8/27/2004	9/02/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			684574	343.24
CP	P	CO C	9/08/2004	9/08/2004	9/03/2004	9/09/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			685980	343.24
CP	P	CO C	9/15/2004	9/15/2004	9/10/2004	9/16/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			687672	343.24
CP	P	CO C	9/22/2004	9/22/2004	9/17/2004	9/23/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			689507	343.24
CP	P	CO C	9/29/2004	9/29/2004	9/24/2004	9/30/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			690812	343.24
CP	P	CO C	10/06/2004	10/06/2004	10/01/2004	10/07/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			692196	343.24
CP	P	CO C	10/13/2004	10/13/2004	10/08/2004	10/14/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			693681	343.24
CP	P	CO C	10/20/2004	10/20/2004	10/15/2004	10/21/2004	1		TT	LT	COMP SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			695297	343.24

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 2

SELECTIONS: YEAR: 102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	TYPE	RESERVE CODE	TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD	PAYEE NAME	CHECK #	AMOUNT
CP	P	CO	C	10/27/2004	10/27/2004	10/22/2004	10/28/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			696734	343.24
CP	P	CO	C	11/03/2004	11/03/2004	10/29/2004	11/04/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			698048	343.24
CP	P	CO	C	11/10/2004	11/10/2004	11/05/2004	11/11/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			699689	343.24
CP	P	CO	C	11/17/2004	11/17/2004	11/12/2004	11/18/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			701265	343.24
CP	P	CO	C	11/23/2004	11/23/2004	11/19/2004	11/25/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			702546	343.24
CP	P	CO	C	12/01/2004	12/01/2004	11/26/2004	12/02/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			703628	343.24
CP	P	CO	C	12/08/2004	12/08/2004	12/03/2004	12/09/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			704945	343.24
CP	P	CO	C	12/15/2004	12/15/2004	12/10/2004	12/16/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			706483	343.24
CP	P	CO	C	12/21/2004	12/21/2004	12/17/2004	12/23/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			707576	343.24
CP	P	CO	C	12/29/2004	12/29/2004	12/24/2004	12/30/2004	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			708914	343.24
CP	P	CO	C	1/05/2005	1/05/2005	12/31/2004	1/06/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			710012	343.24
CP	P	CO	C	1/12/2005	1/12/2005	1/07/2005	1/13/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			711693	343.24
CP	P	CO	C	1/19/2005	1/19/2005	1/14/2005	1/20/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			712685	343.24
CP	P	CO	C	1/26/2005	1/26/2005	1/21/2005	1/27/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			714126	343.24
CP	P	CO	C	2/02/2005	2/02/2005	1/28/2005	2/03/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			715571	343.24
CP	P	CO	C	2/09/2005	2/09/2005	2/04/2005	2/10/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			717036	343.24
CP	P	CO	C	2/16/2005	2/16/2005	2/11/2005	2/17/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			718582	343.24
CP	P	CO	C	2/23/2005	2/23/2005	2/18/2005	2/24/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			720041	343.24
CP	P	CO	C	3/03/2005	3/03/2005	2/25/2005	3/03/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			721936	343.24
CP	P	CO	C	3/09/2005	3/09/2005	3/04/2005	3/10/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			723078	343.24
CP	P	CO	C	3/16/2005	3/16/2005	3/11/2005	3/17/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			724462	343.24
CP	P	CO	C	3/23/2005	3/23/2005	3/18/2005	3/24/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			726175	343.24
CP	P	CO	C	3/30/2005	3/30/2005	3/25/2005	3/31/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			727356	343.24
CP	P	CO	C	4/06/2005	4/06/2005	4/01/2005	4/07/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			728764	343.24
CP	P	CO	C	4/13/2005	4/13/2005	4/08/2005	4/14/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			730003	343.24
CP	P	CO	C	4/20/2005	4/20/2005	4/15/2005	4/21/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			731386	343.24
CP	P	CO	C	4/27/2005	4/27/2005	4/22/2005	4/28/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			732774	343.24
CP	P	CO	C	5/04/2005	5/04/2005	4/29/2005	5/05/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			734187	343.24
CP	P	CO	C	5/11/2005	5/11/2005	5/06/2005	5/12/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			735586	343.24
CP	P	CO	C	5/18/2005	5/18/2005	5/13/2005	5/19/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			736920	343.24
CP	P	CO	C	5/25/2005	5/25/2005	5/20/2005	5/26/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			738327	343.24
CP	P	CO	C	6/01/2005	6/01/2005	5/27/2005	6/02/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			739219	343.24
CP	P	CO	C	6/08/2005	6/08/2005	6/03/2005	6/09/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			740439	343.24
CP	P	CO	C	6/15/2005	6/15/2005	6/10/2005	6/16/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			741935	343.24
CP	P	CO	C	6/22/2005	6/22/2005	6/17/2005	6/23/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			743212	343.24
CP	P	CO	C	6/29/2005	6/29/2005	6/24/2005	6/30/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			744490	343.24
CP	P	CO	C	7/06/2005	7/06/2005	7/01/2005	7/07/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			745549	343.24
CP	P	CO	C	7/06/2005	7/06/2005	7/08/2005	7/14/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			745550	343.24
CP	P	CO	C	7/21/2005	7/21/2005	7/15/2005	7/21/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			748414	343.24
CP	P	CO	C	7/28/2005	7/28/2005	7/22/2005	7/28/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			749825	343.24
CP	P	CO	C	8/03/2005	8/03/2005	7/29/2005	8/04/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			750735	343.24
CP	P	CO	C	8/10/2005	8/10/2005	8/05/2005	8/11/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			751972	343.24
CP	P	CO	C	8/17/2005	8/17/2005	8/12/2005	8/18/2005	1	TT	LT	COMP	SYSTEM CHECK PAYMENT	CHRISTOPHER PRICE			753384	343.24

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 3

SELECTIONS: YEAR: 102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C

PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	TYPE	RESERVE CODE TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	OYS	BR2	BR7	DESCRIPTION	PAYEE	MOD PAYEE NAME	CHECK #	AMOUNT
CP	P	CO C	8/24/2005	8/24/2005	8/19/2005	8/25/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	754541	343.24
CP	P	CO C	8/31/2005	8/31/2005	8/26/2005	9/01/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	755917	343.24
CP	P	CO C	9/07/2005	9/07/2005	9/02/2005	9/08/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	756798	343.24
CP	P	CO C	9/14/2005	9/14/2005	9/09/2005	9/15/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	758233	343.24
CP	P	CO C	9/21/2005	9/21/2005	9/16/2005	9/22/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	759631	343.24
CP	P	CO C	9/28/2005	9/28/2005	9/23/2005	9/29/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	760996	343.24
CP	P	CO C	10/05/2005	10/05/2005	9/30/2005	10/06/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	762405	343.24
CP	P	CO C	10/12/2005	10/12/2005	10/07/2005	10/13/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	763445	343.24
CP	P	CO C	10/19/2005	10/19/2005	10/14/2005	10/20/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	764963	343.24
CP	P	CO C	10/26/2005	10/26/2005	10/21/2005	10/27/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	766337	343.24
CP	P	CO C	11/02/2005	11/02/2005	10/28/2005	11/03/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	767545	343.24
CP	P	CO C	11/09/2005	11/09/2005	11/04/2005	11/10/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	768794	343.24
CP	P	CO C	11/16/2005	11/16/2005	11/11/2005	11/17/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	770084	343.24
CP	P	CO C	11/23/2005	11/23/2005	11/18/2005	11/24/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	771515	343.24
CP	P	CO C	11/30/2005	11/30/2005	11/25/2005	12/01/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	772238	343.24
CP	P	CO C	12/07/2005	12/07/2005	12/02/2005	12/08/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	773721	343.24
CP	P	CO C	12/14/2005	12/14/2005	12/09/2005	12/15/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	774883	343.24
CP	P	CO C	12/21/2005	12/21/2005	12/16/2005	12/22/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	776188	343.24
CP	P	CO C	12/28/2005	12/28/2005	12/23/2005	12/29/2005	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	776934	343.24
CP	P	CO C	1/26/2006	1/26/2006	12/30/2005	1/26/2006	4		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	781785	1,372.96
CP	P	CO C	2/01/2006	2/01/2006	1/27/2006	2/02/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	782941	343.24
CP	P	CO C	2/08/2006	2/08/2006	2/03/2006	2/09/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	784340	343.24
CP	P	CO C	2/15/2006	2/15/2006	2/10/2006	2/16/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	785353	343.24
CP	P	CO C	2/22/2006	2/22/2006	2/17/2006	2/23/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	786575	343.24
CP	P	CO C	3/01/2006	3/01/2006	2/24/2006	3/02/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	787942	343.24
CP	P	CO C	3/08/2006	3/08/2006	3/03/2006	3/09/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	789150	343.24
CP	P	CO C	3/15/2006	3/15/2006	3/10/2006	3/16/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	790664	343.24
CP	P	CO C	3/22/2006	3/22/2006	3/17/2006	3/23/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	791861	343.24
CP	P	CO C	3/29/2006	3/29/2006	3/24/2006	3/30/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	792881	343.24
CP	P	CO C	4/05/2006	4/05/2006	3/31/2006	4/06/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	794131	343.24
CP	P	CO C	4/12/2006	4/12/2006	4/07/2006	4/13/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	795373	343.24
CP	P	CO C	4/19/2006	4/19/2006	4/14/2006	4/20/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	796324	343.24
CP	P	CO C	4/26/2006	4/26/2006	4/21/2006	4/27/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	797863	343.24
CP	P	CO C	5/03/2006	5/03/2006	4/28/2006	5/04/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	799166	343.24
CP	P	CO C	5/10/2006	5/10/2006	5/05/2006	5/11/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	800370	343.24
CP	P	CO C	5/17/2006	5/17/2006	5/12/2006	5/18/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	801564	343.24
CP	P	CO C	5/24/2006	5/24/2006	5/19/2006	5/25/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	802675	343.24
CP	P	CO C	5/31/2006	5/31/2006	5/26/2006	6/01/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	803740	343.24
CP	P	CO C	6/07/2006	6/07/2006	6/02/2006	6/08/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	805047	343.24
CP	P	CO C	6/14/2006	6/14/2006	6/09/2006	6/15/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	806185	343.24
CP	P	CO C	6/21/2006	6/21/2006	6/16/2006	6/22/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	807241	343.24
CP	P	CO C	6/29/2006	6/29/2006	6/23/2006	6/29/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	808792	343.24
CP	P	CO C	7/06/2006	7/06/2006	6/30/2006	7/06/2006	1		TT	LT	COMP SYSTEM CHECK PAYMENT		CHRISTOPHER PRICE	809686	343.24

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 4

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C

PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	RESERVE TYPE	CODE	TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD	PAYEE NAME	CHECK #	AMOUNT	
129															COUNT	129	TOTAL:	47,023.88

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 5

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

*** SUMMARY BY PAYMENT TYPE CODE ***

TYPE	AMOUNT
CP COMP SYSTEM CHECK PAYMENT	47,023.88

*** SUMMARY BY PAYMENT VALUE 1 CODE ***

TYPE	WEEKS	DAYS	AMOUNT
TT TEMPORARY TOTAL - OUT OF	137		47,023.88

8:19:10
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/16/2015
PAGE: 6

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/16/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: C PAYMENT VALUE 1: *ALL
GROUP: 1 BUILDERS MUTUAL INSURANCE CO.

*** GRAND SUMMARY BY PAYMENT TYPE CODE ***

TYPE	AMOUNT
CP COMP SYSTEM CHECK PAYMENT	47,023.88

*** GRAND SUMMARY BY PAYMENT VALUE 1 CODE ***

TYPE	WEEKS	DAYS	AMOUNT
TT TEMPORARY TOTAL - OUT OF	137		47,023.88

*** GRAND TOTAL: *** 47,023.88

11/3/03
New accident
(2nd)

15:03:21
#7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 1

SELECTIONS: YEAR: 102 FROM CASE: 47128 to 47126 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	RESERVE TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS DYS	BR2 BR7	DESCRIPTION	PAYEE	MOD	PAYEE NAME	CHECK #	AMOUNT
MP	P	ME	M	11/18/2003	11/18/2003	10/15/2003	10/15/2003	X RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	624136	139.99 ✓
MP	P	ME	M	12/09/2003	12/09/2003	11/13/2003	11/13/2003	HB LT MED SYSTEM CHECK PAYMENT	570314381		CONWAY HOSPITAL	628169	113.00
MP	P	ME	M	12/10/2003	12/10/2003	10/28/2003	10/28/2003	X MD LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	628498	72.00 ✓
MP	P	ME	M	12/19/2003	12/19/2003	10/28/2003	10/28/2003	X RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	630472	20.32 ✓
MP	P	ME	M	12/22/2003	12/22/2003	8/08/2003	8/08/2003	X RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	630826	119.67 ✓
MP	P	ME	M	1/07/2004	1/07/2004	11/26/2003	11/26/2003	MD LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	633218	72.00
MP	P	ME	M	1/14/2004	1/14/2004	10/15/2003	10/15/2003	X MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	634793	89.30 ✓
MP	P	ME	M	1/14/2004	1/14/2004	11/12/2003	11/12/2003	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	634794	72.00
MP	P	ME	M	1/16/2004	1/16/2004	11/14/2003	12/06/2003	RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	635368	367.44
MP	P	ME	M	1/16/2004	1/16/2004	12/12/2003	12/12/2003	RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	635369	225.53
MP	P	ME	M	1/30/2004	1/30/2004	12/22/2003	12/22/2003	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	638193	16.56
MP	P	ME	M	1/31/2004	1/31/2004	12/29/2003	12/29/2003	MD LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	638376	72.00
MP	P	ME	M	2/06/2004	2/06/2004	9/19/2003	9/19/2003	X RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREENS	639955	119.67 ✓
MP	P	ME	M	2/06/2004	2/06/2004	1/05/2004	1/06/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	639956	108.14
MP	P	ME	M	2/18/2004	2/18/2004	1/29/2004	1/29/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	642477	16.56
MP	P	ME	M	2/25/2004	2/25/2004	1/16/2004	1/16/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	643991	52.00
MP	P	ME	M	3/01/2004	3/01/2004	1/23/2004	1/23/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	644787	16.56
MP	P	ME	M	3/01/2004	3/01/2004	1/16/2004	1/16/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	644788	193.02
MP	P	ME	M	3/03/2004	3/03/2004	12/22/2003	12/22/2003	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	645527	52.00
MP	P	ME	M	3/12/2004	3/12/2004	2/05/2004	2/05/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	647709	109.32
MP	P	ME	M	3/18/2004	3/18/2004	2/13/2004	2/13/2004	HB LT MED SYSTEM CHECK PAYMENT	134241163		CAROLINA BONE AND JOINT SURGER	649121	6,489.00
MP	P	ME	M	3/19/2004	3/19/2004	2/17/2004	2/17/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	649412	90.24
MP	P	ME	M	3/24/2004	3/24/2004	2/07/2004	2/07/2004	MD LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	650269	60.00
MP	P	ME	M	4/06/2004	4/06/2004	3/05/2004	3/05/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	653552	20.76
MP	P	ME	M	4/12/2004	4/12/2004	3/15/2004	3/15/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	654413	90.24
MP	P	ME	M	4/12/2004	4/12/2004	3/12/2004	3/12/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	654414	92.76
MP	P	ME	M	4/23/2004	4/23/2004	1/21/2004	1/21/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	657215	72.00
MP	P	ME	M	4/23/2004	4/23/2004	3/26/2004	3/26/2004	MD LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	657216	72.00
MP	P	ME	M	4/26/2004	4/26/2004	3/15/2004	3/15/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	657448	72.00
VO	V	ME	M	4/27/2004	4/27/2004	3/15/2004	3/15/2004	MD LT VOID	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	657448	72.00CR
MP	P	ME	M	4/27/2004	4/27/2004	3/15/2004	3/15/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	657847	72.00
MP	P	ME	M	4/27/2004	4/27/2004	3/25/2004	3/25/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	657848	20.76
MP	P	ME	M	5/04/2004	5/04/2004	4/07/2004	4/07/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	659111	16.56
MP	P	ME	M	5/04/2004	5/04/2004	2/23/2004	2/23/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	659112	52.00
MP	P	ME	M	5/05/2004	5/05/2004	3/31/2004	3/31/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	659446	72.00
MP	P	ME	M	5/05/2004	5/05/2004	2/13/2004	2/13/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	659447	448.50
MP	P	ME	M	5/05/2004	5/05/2004	1/07/2004	1/07/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	659448	1,458.00
MP	P	ME	M	5/05/2004	5/05/2004	2/13/2004	3/15/2004	MD LT MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	659449	520.50
MP	P	ME	M	5/06/2004	5/06/2004	4/14/2004	4/14/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	659749	208.92
MP	P	ME	M	5/19/2004	5/19/2004	4/21/2004	4/21/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	662386	76.98
MP	P	ME	M	5/19/2004	5/19/2004	4/27/2004	4/27/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	662387	20.76
MP	P	ME	M	5/21/2004	5/21/2004	11/14/2003	11/14/2003	RX LT MED SYSTEM CHECK PAYMENT	361924025		WALGREEN COMPANY	663077	254.28
MP	P	ME	M	5/27/2004	5/27/2004	5/13/2004	5/13/2004	RX LT MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	664233	164.82

1st acc
#560.95

PLAINTIFF'S
EXHIBIT
17
PEN/AD 800-631-6888

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 2

SELECTIONS: YEAR:102 FROM CASE: 47126 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47126 NAME: PRICE. CHRISTOPHER

NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	RESERVE TYPE	CODE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD	PAYEE NAME	CHECK #	AMOUNT
MP	P	ME	M	5/27/2004	5/27/2004	5/03/2004	5/03/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	664234	113.00
MP	P	ME	M	5/28/2004	5/28/2004	5/17/2004	5/17/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	664545	169.74
MP	P	ME	M	5/28/2004	5/28/2004	5/16/2004	5/16/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	664546	95.40
MP	P	ME	M	5/28/2004	5/28/2004	3/24/2004	3/24/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	664547	76.98
MP	P	ME	M	6/04/2004	6/04/2004	5/12/2004	5/12/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	665896	52.00
MP	P	ME	M	6/07/2004	6/07/2004	4/30/2004	4/30/2004		MD	LT	MED SYSTEM CHECK PAYMENT	562029099		CAROLINA ANESTHESIA ASSOC	666179	192.00
MP	P	ME	M	6/07/2004	6/07/2004	4/30/2004	4/30/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570835798		CONWAY ANESTHESIA ASSOC	666180	192.00
MP	P	ME	M	6/09/2004	6/09/2004	5/13/2004	5/13/2004		MD	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	666816	72.00
MP	P	ME	M	6/10/2004	6/10/2004	1/21/2004	1/21/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	667134	76.98
MP	P	ME	M	6/10/2004	6/10/2004	2/23/2004	2/23/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	667135	195.15
MP	P	ME	M	6/10/2004	6/10/2004	5/21/2004	5/21/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	667136	16.56
MP	P	ME	M	6/16/2004	6/16/2004	5/27/2004	5/27/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	668344	20.76
MP	P	ME	M	6/22/2004	6/22/2004	4/30/2004	4/30/2004		HB	LT	MED SYSTEM CHECK PAYMENT	134241163		CAROLINA BONE AND JOINT SURGER	669667	703.00
MP	P	ME	M	6/30/2004	6/30/2004	5/03/2004	5/03/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	671411	20.76
MP	P	ME	M	7/01/2004	7/01/2004	6/07/2004	6/07/2004		MF	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	671771	20.76
MP	P	ME	M	7/08/2004	7/08/2004	6/18/2004	6/18/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	672836	28.75
MP	P	ME	M	7/08/2004	7/08/2004	6/15/2004	6/15/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	672837	76.98
MP	P	ME	M	7/14/2004	7/14/2004	4/30/2004	4/30/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674100	533.00
MP	P	ME	M	7/16/2004	7/16/2004	6/29/2004	6/29/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	674659	23.80
MP	P	ME	M	7/19/2004	7/19/2004	6/07/2004	6/07/2004		HB	LT	MED SYSTEM CHECK PAYMENT	570314381		CONWAY HOSPITAL	674960	76.00
MP	P	ME	M	7/19/2004	7/19/2004	6/07/2004	6/07/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674961	72.00
MP	P	ME	M	7/19/2004	7/19/2004	1/29/2004	1/29/2004		MD	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	674962	72.00
MP	P	ME	M	7/19/2004	7/19/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570514574		CLINICAL PATHOLOGY CONSULTANTS	674963	62.00
MP	P	ME	M	7/19/2004	7/19/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674964	2,123.00
MP	P	ME	M	7/19/2004	7/19/2004	6/15/2004	6/15/2004		PT	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674965	919.20
MP	P	ME	M	7/19/2004	7/19/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674966	5,017.40
MP	P	ME	M	7/19/2004	7/19/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	674967	9,689.50
MP	P	ME	M	7/20/2004	7/20/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570835798		CONWAY ANESTHESIA ASSOC	675405	864.00
MP	P	ME	M	7/21/2004	7/21/2004	6/29/2004	6/29/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	675908	3,542.00
MP	P	ME	M	7/27/2004	7/27/2004	6/25/2004	6/25/2004		MF	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	676958	18.84
MP	P	ME	M	7/27/2004	7/27/2004	7/06/2004	7/06/2004		MF	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	676959	18.24
MP	P	ME	M	7/27/2004	7/27/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	571049603		1 CAROLINA RADIOLOGY ASSOC LLC	676960	33.00
MP	P	ME	M	7/28/2004	7/28/2004	6/15/2004	6/15/2004		PT	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	677252	1,647.00
MP	P	ME	M	7/29/2004	7/29/2004	6/15/2004	6/15/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	677647	286.00
MP	P	ME	M	8/02/2004	8/02/2004	7/14/2004	7/14/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	678063	18.24
MP	P	ME	M	8/09/2004	8/09/2004	7/13/2004	7/13/2004		MD	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	679409	72.00
MP	P	ME	M	8/13/2004	8/13/2004	7/20/2004	7/20/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	680810	92.76
MP	P	ME	M	8/18/2004	8/18/2004	7/22/2004	7/22/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504		COASTAL ORTHOPAEDIC ASSOCCOATES	681730	51.00
MP	P	ME	M	8/19/2004	8/19/2004	6/15/2004	6/15/2004		MF	LT	MED SYSTEM CHECK PAYMENT	621586607		MEDICAL BILL AUDITS INC	682050	25.20
MP	P	ME	M	8/25/2004	8/25/2004	1/27/2004	7/27/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	683180	151.02
MP	P	ME	M	8/31/2004	8/31/2004	8/13/2004	8/13/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	684445	29.10
MP	P	ME	M	8/31/2004	8/31/2004	8/02/2004	8/02/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634		MEDICAL SERVICES COMPANY	684446	29.10
MP	P	ME	M	8/31/2004	8/31/2004	6/18/2004	6/18/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570941194		AMERICAN HOMEPATIENT	684447	105.00

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 3

SELECTIONS: YEAR: 102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	RESERVE TYPE	CODE TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD PAYEE NAME	CHECK #	AMOUNT
MP	P	ME	M	9/08/2004	9/08/2004	8/24/2004	8/24/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	686119	76.98
MP	P	ME	M	9/14/2004	9/14/2004	8/30/2004	8/30/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	687458	29.10
MP	P	ME	M	9/28/2004	9/28/2004	6/15/2004	6/15/2004				HB LT MED SYSTEM CHECK PAYMENT	570314381	CONWAY HOSPITAL	690620	53,033.00
MP	P	ME	M	9/28/2004	9/28/2004	9/13/2004	9/13/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	690621	29.10
MP	P	ME	M	9/29/2004	9/29/2004	10/15/2003	6/29/2004				TR LT MED SYSTEM CHECK PAYMENT	256066659	CHRISTOPHER PRICE	690873	296.07
MP	P	ME	M	10/05/2004	10/05/2004	9/22/2004	9/22/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	691987	20.76
MP	P	ME	M	10/05/2004	10/05/2004	9/23/2004	9/23/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	691988	76.98
MP	P	ME	M	10/06/2004	10/06/2004	8/18/2004	8/18/2004				MD LT MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	692292	51.00
MP	P	ME	M	10/11/2004	10/11/2004	9/08/2004	9/08/2004				MD LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	693091	62.00
MP	P	ME	M	10/18/2004	10/18/2004	10/01/2004	10/01/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	694799	20.76
MP	P	ME	M	10/21/2004	10/21/2004	9/22/2004	9/22/2004				MD LT MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	695801	103.00
MP	P	ME	M	10/22/2004	10/22/2004	9/16/2004	9/23/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	696030	1,188.00
MP	P	ME	M	10/28/2004	10/28/2004	10/11/2004	10/11/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	697179	20.76
MP	P	ME	M	11/04/2004	11/04/2004	10/12/2004	10/12/2004				MD LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	698496	72.00
MP	P	ME	M	11/05/2004	11/05/2004	10/21/2004	10/21/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	698789	269.91
MP	P	ME	M	11/05/2004	11/05/2004	9/15/2004	9/15/2004				MD LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	698790	333.00
MP	P	ME	M	11/08/2004	11/08/2004	10/21/2004	10/21/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	699116	29.10
MP	P	ME	M	11/08/2004	11/08/2004	10/29/2004	10/29/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	699117	153.48
MP	P	ME	M	11/10/2004	11/10/2004	10/04/2004	10/04/2004				MD LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	699791	141.00
MP	P	ME	M	11/11/2004	11/11/2004	7/22/2004	7/22/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	700257	29.10
MP	P	ME	M	11/11/2004	11/11/2004	10/01/2004	10/01/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700258	141.00
MP	P	ME	M	11/11/2004	11/11/2004	9/29/2004	9/29/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700259	141.00
MP	P	ME	M	11/11/2004	11/11/2004	9/27/2004	9/27/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700260	187.00
MP	P	ME	M	11/11/2004	11/11/2004	10/11/2004	10/11/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700261	141.00
MP	P	ME	M	11/11/2004	11/11/2004	10/13/2004	10/13/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700262	141.00
MP	P	ME	M	11/11/2004	11/11/2004	10/15/2004	10/15/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700263	141.00
MP	P	ME	M	11/11/2004	11/11/2004	10/08/2004	10/08/2004				PT LT LTD SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700264	141.00
MP	P	ME	M	11/11/2004	11/11/2004	10/06/2004	10/06/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700265	141.00
MP	P	ME	M	11/15/2004	11/15/2004	10/25/2004	10/25/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	700871	1,080.00
MP	P	ME	M	11/18/2004	11/18/2004	6/21/2004	6/21/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	701713	236.82
MP	P	ME	M	11/18/2004	11/18/2004	11/02/2004	11/02/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	701714	29.10
MP	P	ME	M	11/19/2004	11/19/2004	11/01/2004	11/05/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	702013	1,080.00
MP	P	ME	M	11/19/2004	11/19/2004	9/19/2004	9/19/2004				RX LT MED SYSTEM CHECK PAYMENT	361924025	WALGREEN COMPANY	702014	119.67
MP	P	ME	M	11/22/2004	11/22/2004	10/21/2004	10/21/2004				MD LT MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	702301	52.00
MP	P	ME	M	11/23/2004	11/23/2004	10/18/2004	10/18/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	702727	141.00
MP	P	ME	M	11/23/2004	11/23/2004	10/20/2004	10/22/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	702728	239.00
MP	P	ME	M	11/29/2004	11/29/2004	11/12/2004	11/12/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	703165	29.10
MP	P	ME	M	12/13/2004	12/13/2004	11/23/2004	11/23/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	706011	219.57
MP	P	ME	M	12/14/2004	12/14/2004	11/15/2004	11/19/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	706287	1,620.00
MP	P	ME	M	12/14/2004	12/14/2004	11/08/2004	11/12/2004				PT LT MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	706288	1,620.00
MP	P	ME	M	12/16/2004	12/16/2004	7/22/2004	10/29/2004				TR LT MED SYSTEM CHECK PAYMENT	256066659	CHRISTOPHER PRICE	706942	264.96
MP	P	ME	M	12/21/2004	12/21/2004	12/03/2004	12/03/2004				RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	707672	29.10
MP	P	ME	M	12/27/2004	12/27/2004	12/03/2003	12/06/2003				RX LT MED SYSTEM CHECK PAYMENT	361924025	WALGREEN COMPANY	708351	113.16

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 4

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER

NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	RESERVE TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD PAYEE NAME	CHECK #	AMOUNT
MP	P	ME M	12/27/2004	12/27/2004	12/12/2003	12/12/2003		RX	LT	MED SYSTEM CHECK PAYMENT	361924025	WALGREEN COMPANY	708352	116.10
MP	P	ME M	12/27/2004	12/27/2004	11/10/2004	11/10/2004		MD	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	708353	72.00
MP	P	ME M	12/30/2004	12/30/2004	11/01/2004	12/17/2004		TR	LT	MED SYSTEM CHECK PAYMENT	256066659	CHRISTOPHER PRICE	709322	213.75
MP	P	ME M	1/10/2005	1/10/2005	12/15/2004	12/15/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	711142	20.76
MP	P	ME M	1/10/2005	1/10/2005	12/03/2003	12/03/2003		RX	LT	MED SYSTEM CHECK PAYMENT	361924025	WALGREEN COMPANY	711143	25.76
MP	P	ME M	1/10/2005	1/10/2005	12/27/2004	12/27/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	711144	29.10
MP	P	ME M	1/10/2005	1/10/2005	11/22/2004	11/22/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711145	324.00
MP	P	ME M	1/10/2005	1/10/2005	11/23/2004	11/23/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711146	324.00
MP	P	ME M	1/10/2005	1/10/2005	11/29/2004	11/29/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711147	324.00
MP	P	ME M	1/10/2005	1/10/2005	11/30/2004	11/30/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711148	324.00
MP	P	ME M	1/10/2005	1/10/2005	12/01/2004	12/01/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711149	324.00
MP	P	ME M	1/10/2005	1/10/2005	12/02/2004	12/02/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711150	324.00
MP	P	ME M	1/10/2005	1/10/2005	12/03/2004	12/03/2004		PT	LT	MED SYSTEM CHECK PAYMENT	753109825	LONG BAY REHAB LLC	711151	324.00
MP	P	ME M	1/10/2005	1/10/2005	12/17/2004	12/17/2004		MD	LT	MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	711152	52.00
MP	P	ME M	1/11/2005	1/11/2005	12/30/2004	12/30/2004		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	711472	84.27
MP	P	ME M	1/18/2005	1/18/2005	1/05/2005	1/05/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	712558	29.10
MP	P	ME M	1/26/2005	1/26/2005	1/14/2005	1/14/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	714213	16.56
MP	P	ME M	2/04/2005	2/04/2005	1/20/2005	1/20/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	716381	115.32
MP	P	ME M	2/04/2005	2/04/2005	1/20/2005	1/20/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	716382	153.00
MP	P	ME M	2/28/2005	2/28/2005	2/10/2005	2/10/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	721047	140.06
MP	P	ME M	3/02/2005	3/02/2005	1/20/2005	1/20/2005		MD	LT	MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	721689	166.00
MP	P	ME M	3/10/2005	3/10/2005	2/23/2005	2/23/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	723316	54.24
MP	P	ME M	3/21/2005	3/21/2005	3/05/2005	3/05/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	725466	127.68
MP	P	ME M	3/21/2005	3/21/2005	3/01/2005	3/01/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	725467	84.27
MP	P	ME M	3/23/2005	3/23/2005	3/10/2005	3/10/2005		MD	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	726317	72.00
MP	P	ME M	4/14/2005	4/14/2005	3/22/2005	3/22/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	730304	297.24
MP	P	ME M	4/15/2005	4/15/2005	4/07/2005	4/07/2005		MD	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	730558	72.00
MP	P	ME M	5/20/2005	5/20/2005	4/28/2005	4/28/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	737487	156.78
MR	R	ME M	6/02/2005	6/02/2005	12/12/2003	12/12/2003		RX	LT	MEDICAL RECOVERY	361924025	WALGREEN COMPANY	2650919	116.10CR
MR	R	ME M	6/02/2005	6/02/2005	12/03/2003	12/06/2003		RX	LT	MEDICAL RECOVERY	361924025	WALGREEN COMPANY	2650919	113.16CR
MR	R	ME M	6/02/2005	6/02/2005	9/19/2004	9/19/2004		RX	LT	MEDICAL RECOVERY	361924025	WALGREEN COMPANY	2650919	119.67CR
MP	P	ME M	6/02/2005	6/02/2005	11/14/2003	11/14/2003		RX	LT	MEDICAL RECOVERY	361924025	WALGREEN COMPANY	2650919	139.90CR
MP	P	ME M	6/03/2005	6/03/2005	5/05/2005	5/05/2005		MD	LT	MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCOATES	739793	123.00
MP	P	ME M	6/09/2005	6/09/2005	5/14/2005	5/22/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	740846	200.50
MP	P	ME M	6/09/2005	6/09/2005	5/05/2005	5/05/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	740848	72.00
MP	P	ME M	6/14/2005	6/14/2005	5/30/2005	5/30/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	741738	55.55
MP	P	ME M	7/13/2005	7/13/2005	6/15/2005	6/15/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	747023	206.85
MP	P	ME M	8/04/2005	8/04/2005	7/15/2005	7/15/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	751089	110.10
MP	P	ME M	9/20/2005	9/20/2005	8/25/2005	8/25/2005		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	759469	271.35
MP	P	ME M	2/13/2006	2/13/2006	1/30/2006	1/30/2006		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	785038	21.68
MP	P	ME M	2/13/2006	2/13/2006	1/14/2006	1/14/2006		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	785039	217.20
MP	P	ME M	2/22/2006	2/22/2006	2/01/2006	2/01/2006		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	786667	96.75
MP	P	ME M	3/07/2006	3/07/2006	2/13/2006	2/13/2006		RX	LT	MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	788993	217.20

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 5

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

TRANSACTION CODE	TYPE	RESERVE CODE	TYPE	TRAN DT	POST DT	SERVICE FROM	TO	WKS	DYS	BR2	BR7	DESCRIPTION	PAYEE	MOD PAYEE NAME	CHECK #	AMOUNT
MP	P	ME	M	3/31/2006	3/31/2006	3/15/2006	3/15/2006					RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	793636	863.25
MP	P	ME	M	4/04/2006	4/04/2006	8/25/2005	1/14/2006					RX LT MED SYSTEM CHECK PAYMENT	256066659	CHRISTOPHER PRICE	794039	1,498.08
MP	P	ME	M	4/20/2006	4/20/2006	3/14/2006	3/14/2006					MD LT MED SYSTEM CHECK PAYMENT	570764504	COASTAL ORTHOPAEDIC ASSOCCATES	796840	72.00
MP	P	ME	M	5/09/2006	5/09/2006	4/24/2006	4/24/2006					RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	800130	16.37
MP	P	ME	M	5/23/2006	5/23/2006	4/27/2006	4/27/2006					RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	802365	50.36
MP	P	ME	M	5/26/2006	5/26/2006	5/09/2006	5/09/2006					RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	803208	113.28
MP	P	ME	M	5/30/2006	5/30/2006	5/09/2006	5/09/2006					MD LT MED SYSTEM CHECK PAYMENT	561972856	COASTAL REHAB MEDICINE ASSOC.	803599	168.00
MP	P	ME	M	5/30/2006	5/30/2006	5/11/2006	5/11/2006					RX LT MED SYSTEM CHECK PAYMENT	592997634	MEDICAL SERVICES COMPANY	803600	595.73
MP	P	ME	M	6/16/2006	6/16/2006	5/30/2006	5/30/2006					MD LT MED SYSTEM CHECK PAYMENT	561972856	COASTAL REHAB MEDICINE ASSOC.	806710	112.00
MR	R	ME	M	8/23/2006	8/23/2006	8/23/2006	8/23/2006					SM LT MEDICAL RECOVERY	700000105	COASTAL FEDERAL BANK (SUBROGAT	5930445	
VO	V	ME	M	8/14/2009	8/29/2003	3/28/2003	3/31/2003					RX LT VOID	361924025	WALGREENS	606881	

183

COUNT 183

TOTAL: 63,009.24

credit
for
1st acc.

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 6

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M

PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.
YEAR: 102 CLAIM: 47128 NAME: PRICE, CHRISTOPHER

NATURE CODE: 52 NATURE DESCRIPTION: STRAIN

*** SUMMARY BY PAYMENT TYPE CODE ***

TYPE	AMOUNT
MP MED SYSTEM CHECK PAYMENT	113,715.20
MR MEDICAL RECOVERY	50,488.83CR
VO VOID	217.13CR

*** SUMMARY BY PAYMENT VALUE 1 CODE ***

TYPE	WEEKS	DAYS	AMOUNT
HB HOSPITAL			60,414.00
MD MEDICAL			28,174.20
MF MEDICAL REDUCTION FEE			83.04
PT WRK HARDENING/PHYS THERAP			12,976.20
RX DRUG BILL			10,587.02
SM SUBRO MED RECOVERY			50,000.00CR
TR TRAVEL EXPENSES			774.78

15:03:21
W7061R

BUILDERS MUTUAL INSURANCE CO.
***** PAY HISTORY REPORT *****

3/13/2015
PAGE: 7

SELECTIONS: YEAR:102 FROM CASE: 47128 to 47128 DATES: 11/03/2003 to 3/13/2015 EMPLOYER: *ALL
PAYMENT CODE: *ALL TRANSACTION TYPE: *ALL RESERVE CODE: *ALL RESERVE TYPE: M

PAYMENT VALUE 1: *ALL

GROUP: 1 BUILDERS MUTUAL INSURANCE CO.

*** GRAND SUMMARY BY PAYMENT TYPE CODE ***

TYPE	AMOUNT
MP MED SYSTEM CHECK PAYMENT	113,715.20
MR MEDICAL RECOVERY	50,488.83CR
VO VOID	217.13CR

*** GRAND SUMMARY BY PAYMENT VALUE 1 CODE ***

TYPE	WEEKS	DAYS	AMOUNT
HB HOSPITAL			60,414.00
MD MEDICAL			28,174.20
MF MEDICAL REDUCTION FEE			83.04
PT WRK HARDENING/PHYS THERAP			12,976.20
RX DRUG BILL			10,587.02
SM SUBRO MED RECOVERY			50,000.00CR
TR TRAVEL EXPENSES			774.78

*** GRAND TOTAL: *** 63,009.24

Christopher Price
Summary of Expenses incurred by Builders Mutual Ins. Co.
for accident with Bob Wire Electric, Inc.
Date of Accident: 11/3/03

Medical Expenses \$ 112,774.93

Compensation Benefits \$ 47,023.88

(For period 11/21/03 - 7/6/06 - 137 weeks @ CR \$343.24 per week).

Total Costs Incurred \$ 159,813.30



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas:

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-002626

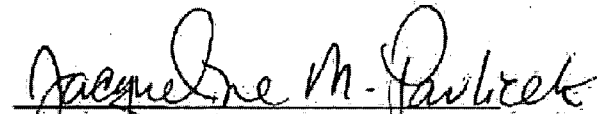
Builders Mutual Insurance Company
for itself and its insured, Peachtree Electrical Services, ... Appellants,

v.

Bob Wire Electric, Inc. and South Carolina Home Builders
Association Self Insurance Fund, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



Richard C. Detwiler (S.C. Bar 6473)
Jacqueline M. Pavlicek (S.C. Bar 100556)
CALLISON TIGHE & ROBINSON, LLC
P.O. Box 1390
Columbia, South Carolina 29202
Tel. (803) 404-6900
Fax. (803) 404-6902
rickdetwiler@callisontighe.com
pavlicek@callisontighe.com

Attorneys for the Appellants

August 23, 2016.