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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2016-000497

Samuel Rose, Claimant, ... Appellant,

v.

JJS Trucking, Uninsured Employer, and Chris Thompson Services,
Upstream Employer, and Bridgefield Casualty Ins. Co., Carrier for
Chris Thompson Services, and The State Accident Fund, ... Respondents.

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENTS

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1112328

SAMUEL ROSE, EMPLOYEE/CLAIMANT

vs.

JJS TRUCKING, LLC, AND CHRIS THOMPSON SERVICES, LLC, EMPLOYERS,

and

**BRIDGEFIELD CASUALTY INSURANCE COMPANY AND TRAVELERS
INSURANCE COMPANY, CARRIERS,**

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing: Held in Summerville, South Carolina on May 15, 2012

Appearances: Employee/Claimant represented by Joseph B. Fisher, George Sink
Law Firm, N. Charleston, South Carolina

Employer, Chris Thompson Services and Bridgefield Casualty
Company represented by Kirsten L. Barr, Trask & Howell, LLC,
Mt. Pleasant, South Carolina

Employer, JJS Trucking, LLC appeared pro se.

Carrier, Travelers Insurance Company represented by F. Reid
Warder, Jr., Esquire, Wood & Warder, LLC, Charleston, SC

South Carolina Uninsured Employers' Fund, Defendant was
represented by Amy V. Cofield, Cofield Law Firm, Lexington,
South Carolina

Purpose of Hearing: To determine issues as set forth on Form 50 and Form 51

Decision and Order: By Commissioner Gene McCaskill

Date: August 23, 2012

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Form 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$650.00 and compensation rate is \$433.34 respectively.
4. Venue, set in Dorchester County, is proper.
5. The Employee/Claimant was injured while working for Chris Thompson Services, LLC and workers' compensation was filed, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS:

ON BEHALF OF THE EMPLOYER:

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	SLED Report	04/30/12-04/26/12	1-9
2	Petition to Transfer Liability	04/30/12-01/24/12	10-14
3	SCWCC Form 18	04/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/10	39

ON BEHALF OF THE CLAIMANT

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Stuart M. Leon, MD MUSC Medical Center	08/10/11	1-2
2	Andrew B. Conrad, MD MUSC Medical Center	08/10/11	3-5
3	Christopher J. Erikson, MD		

4	MUSC Medical Center Peter H. White, MD MUSC Medical Center	08/10/11 08/11/11	6-7 8-9
5	Alan N. Abel, MD	08/16/11-01/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	08/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	09/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	09/06/11-10/11/11	27-40
9	Troy Marlow, MD TriCounty Radiology Associates	11/09/11	41-42
10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report SC Highway Patrol	08/10/11	47-50
EX B	Pay Records of the Claimant	07/12/11-08/09/11	51-55

ON BEHALF OF TRAVELERS INDEMNITY COMPANY

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr.	03/30/12	14
2	Premium Finance Agreement for JJS Trucking, LLC	10/13/10	1
3	Travelers Invoice to JJS Trucking, LLC	11/08/10	2
4	Notice of Cancellation	01/04/11	2
5	SC Department of Employment And Workforce	02/21/12	15

ON BEHALF OF SC UNINSURED EMPLOYERS' FUND

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
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NONE

STATEMENT OF THE CASE

This claim is before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant on November 18, 2011, and Form 51 filed by Defendant, Chris Thompson Services on December 15, 2011, and Form 51 filed by Defendant, SC Uninsured Employers' Fund on January 4, 2012. The Claimant alleged that on August 10, 2011 he sustained an alleged injury to his right knee, back, neck and head. Defendants denied the claim.

It was the Claimant's position that he was injured on August 10, 2011 while employed by JJS Trucking. Claimant asserted that JJS Trucking was a subcontractor to Chris Thompson Services. JJS Trucking is uninsured and Chris Thompson is insured by Bridgefield Casualty Insurance Company. The Claimant seeks a finding of compensability that includes medical treatment, payment of temporary total benefits less any amounts paid by the carrier of Chris Thompson Services.

It was the position of Chris Thompson Services that the Claimant sustained an admitted injury by accident as alleged on August 10, 2011. However, the severity of permanency of injuries and need for future treatment was specifically denied. Chris Thompson Services also made a Motion to Transfer Liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415 because Mr. Cedric Smalls, a principal of JJS Trucking, had represented to Chris Thompson Services that it had workers' compensation coverage. Chris Thompson Services had obtained an ACORD Form 25 Certificate of Insurance indicating coverage. Chris Thompson Services also stated to the Commissioner that it had, through its insurance carrier, Bridgefield, paid temporary total disability payments since the date of the accident in the amount of \$75.00 per week and requested that the South Carolina Uninsured Employers' Fund reimburse Bridgefield for those benefits paid. Chris Thompson Services argued that JJS Trucking never provided notice that his coverage had changed or lapsed. Chris Thompson Services argued that a

certificate of insurance presented distinguished this case from the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009).)

Because the case at had a description of the policy terms. The distinction was also offered that the Hopper case dealt with an out of state employer or multi-state employers and regulations and that this case did not.

It was further argued that the signature of David Hayes as the authorized agent for the insurance company satisfactory the face of the certificate of insurance rose no red flags regarding the authority of the signature. It was also argued that a copy of the certificate of insurance was filed with the South Carolina Workers' Compensation Commission on November 4, 2011, which was believed to be a timely filing.

The SC Uninsured Employers' Fund argued that liability could not be transferred to the UEF. It was argued that the certificate of insurance presented was sufficient pursuant to the law set forth in the Barton v. Higgs case (Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009)) as well as the Hopper v. Terry Hunt Construction case. The SC Uninsured Employers' Fund argued that the description of operations box was blank and that the cases of Barton and Hopper stood for the proposition that incomplete certificates were not sufficient to transfer liability. It was also argued that the certificate of insurance only stated it was a "binder" and never conveyed any information that there was ever a policy written.

The Uninsured Employers' Fund argued that the timing of the presentation of the certificate was contrary to §42-1-415. That statute provides that documentation must be turned over to the Commission "at the time a claim is filed". This certificate was not turned over for several months. The UEF argued that §42-1-415(A) stated that the upstream contractor must first pay all benefits due before requesting liability to be transferred and at the time of the

hearing. However, only a few benefits had been paid, certainly not all. Therefore, the UEF argued that the case was premature as far as the motion to transfer liability.

EVIDENCE OF THE CASE

The Claimant testified that he was working on August 10, 2011 for JJS Trucking in Summerville, SC at the Keystone Lumber Mill. He stated that JJS Trucking was owned by Cedric Smalls and that he had been working there for about 4 ½ to 5 months prior to his accident. Claimant testified that during his time at JJS Trucking, his job was to haul loads from Summerville, SC to North Charleston, SC, specifically from Keystone Lumber Mill to Westvaco. He explained that he was injured when he was rear-ended by a truck that was following him causing his truck to jackknife and hit the median wall. Following the accident, Claimant testified that he suffered a fractured knee, low back and neck injury as well as dizziness and problems with his left hand. He testified that following the accident, he went to MUSC where he was to receive further treatment from a neurologist and orthopedist but never got those because of having no insurance. Instead he went to a general practitioner by the name of Dr. Abel and from there, he was referred to Tri County Spinal Care for pain management and then to Dr. Wildstein, an orthopaedic surgeon.

Claimant testified that he has been unable to work since August 10, 2011, because of the nerve damage he sustained in his neck and back. He further testified that he still has headaches, numbness in his left arm and fingers and his back. He is currently on several medications such as Flexeril, Neurontin, Elavil and Viracept as well as Ibuprofen. He testified that it is his understanding that he needs to see a neurologist and needs to have surgery.

On cross-examination, the Claimant stated that he had to reschedule his last hearing because he had been incarcerated, accused of stealing a 32" television, some barstools and a laptop. Claimant stated, "the police said a witness observed me running across the parking lot

running from an apartment across the street to my mom's car and putting it in the car". Claimant testified that he was using a cane recommended by Dr. Avery because he had fallen down the stairs once. He said he had fallen down the stairs in January when at his mother's house but after that fall, his pain became worse.

On cross-examination by Mr. Smalls, the Claimant testified that he was hired by JJS Trucking as a contractor. He testified that he worked his own schedule but that Cedric Smalls told him to work 12 hours from the time he started. On further cross-examination by Mrs. Cofield, the Claimant clarified that he was a sub-contractor for Chris Thompson Services, but was an employee of JJS. He also stated that when he was arrested last month, he was not using his cane, but he was on Oxycodone and other medications.

On cross-examination by Mrs. Barr, it was stated that it was his responsibility to keep his truck clean and would be responsible for any fines due to his own negligence. He also stated that he is responsible for any state and federal taxes and any workers' compensation insurance.

Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Chris Thompson Services. He indicated he had been using JJS Trucking since approximately 2008. He explained that when he first hired JJS Trucking he was given a certificate of insurance showing that they had workers' compensation coverage. He said that he requested updated documentation once a year.

Mr. Thompson was shown a certificate of insurance that he identified to be dated October 18, 2011, and issued by Swamp Fox Agency. He stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Insurance Agency. He stated that his view of the certificate of insurance gave him no reason to question whether or not JJS Trucking had insurance. He conveyed that it was not

until about September or beginning of October before he was positively told that he did not have insurance. After that information was received, he severed his relationship with JJS Trucking.

On cross-examination by Mrs. Cofield, Mr. Thompson acknowledged that there was no description in the Description of Operations box on the certificate of insurance. Mr. Thompson also acknowledged that it did not have a policy number, but in fact, stated that it was a "binder". Mr. Thompson testified that he did not believe that Mr. Smalls purposely defrauded him or purposely gave a false certificate of insurance.

FINDINGS OF FACT

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.
2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.
6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.
7. On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.
8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.

9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1-415.

10. Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

CONCLUSIONS OF LAW

1. On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

4. Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.

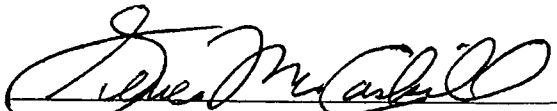
5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.
6. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.
7. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1-415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.
8. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.
9. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 23, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1112328

Samuel A. Rose,)
Employee/Claimant,)
VS.)
JJS Trucking, LLC, Employer, and)
The South Carolina Uninsured Employer's Fund,)
AND)
Chris Thompson Services, LLC, Statutory)
Employer, and Bridgefield Casualty Insurance Co.,)
Carrier/Defendants.)

ADMINISTRATIVE ORDER

A Motion regarding the following issue(s) has been received:

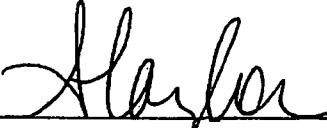
X Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company's Motion to Introduce Newly Discovered Evidence filed November 12, 2013

The following dispositions have been made:

Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company's Motion to Introduce Newly Discovered Evidence is hereby granted. Claimant's third-party claim (by way of Answer and Counterclaim) filed in the Charleston County Court of Common Pleas on February 20, 2013 is hereby admitted into evidence in the above-referenced workers' compensation claim.

Columbia, SC

January 3, 2014



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail

addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

January 3, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1112328

Samuel A. Rose,

Employee/Claimant,

VS.

JJS Trucking, LLC, Employer, and
The South Carolina Uninsured Employer's Fund,

AND

Chris Thompson Services, LLC, Statutory
Employer, and Bridgefield Casualty Insurance Co.,
Carrier/Defendants.

ADMINISTRATIVE ORDER

A Motion regarding the following issue(s) has been received:

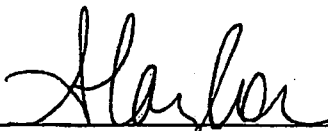
X Claimant's Motion in Opposition to Introduce After Discovered Evidence filed on November 21, 2013

The following dispositions have been made:

Claimant's Motion in Opposition to Introduce After Discovered Evidence is denied.

Columbia, SC

January 3, 2014



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
January 3, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. 1112328

Samuel A. Rose,

Employee/Claimant,

VS.

JJS Trucking, LLC, Employer, and
The South Carolina Uninsured Employer's Fund,

AND

Chris Thompson Services, LLC, Statutory
Employer, and Bridgefield Casualty Insurance Co.,
Carrier/Defendants.

ADMINISTRATIVE ORDER

A Motion regarding the following issue(s) has been received:

X Claimant's Motion to Introduce After Discovered Evidence filed on December 20, 2013

The following dispositions have been made:

Claimant's Motion to Introduce After Discovered Evidence is denied. The evidence sought to be introduced (the Voluntary Dismissal) does not fit the meaning of "newly discovered evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013.

Columbia, SC

January 3, 2014



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

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

party(ies) and to the attorney(s) for the represented party(ies).
January 3, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Samuel A. Rose v JJS Trucking, LLC and Chris Thompson Services, LLC
SCWCC: 1112328
Commissioner: Taylor

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby:

☒ Dismissed as Interlocutory. ☐ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

☐ Granted. ☐ Denied. ☐ Dismissed ☐ Set for Hearing.

BEFORE THE;

☐ Hearing Comm. ☐ Jurisdictional Comm. ☐ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

☐ Remand to Panel as indicated below.

☐ Barden
☐ Beck

☐ James
☐ Roche
☐ McCaskill

☐ Taylor
☐ Wilkerson

☐ Remand for Order consistent with the Order of the Court.

☐ Remand to the Hearing Commissioner.

☐ Remand to the Jurisdictional Commissioner.

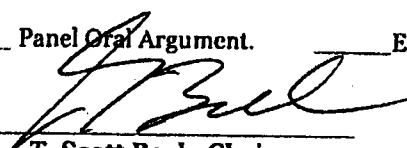
☐ Other: _____

☐ Remand:

☐ Panel Oral Argument.

☐ En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair

Columbia, South Carolina

1/21 2014

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Andrea C. Roche
Commissioner Gene McCaskill

NOT PARTICIPATING:

☒ X

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL.

This 21 day of January, 2014.

By: Valerie D. Miller
SCWCC Judicial Department

**DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1112328**

Samuel Rose,
Employee/Claimant,

-vs-

JJS Trucking, LLC, and Chris Thompson
Services, LLC,
Employers, and
Bridgefield Casualty Insurance Company
and Travelers Insurance Company,
Carriers, and
South Carolina Uninsured Employers Fund,
Defendants.

HEARING:

Held on September 23, 2013, in St.
Matthews, South Carolina, per notices
timely and properly served upon all parties
of interest.

APPEARANCES:

Benjamin W. Akery, Esq., The Steinberg
Law Firm, L.L.P., appearing on behalf of the
Claimant

Kirsten L. Barr, Trask & Howell, L.L.C.,
appearing on behalf of Chris Thompson
Services, LLC, and Bridgefield Casualty
Insurance Company

Amy V. Cofield, Esq., The Cofield Law
Firm, appearing on behalf of the South
Carolina Uninsured Employers' Fund

John Eric Kaufmann, Esq., appearing on
behalf of J.J.S. Trucking, LLC

PURPOSE OF HEARING:

To determine issues pursuant to Form 21

DECISION & ORDER:

By Aisha Taylor, Commissioner

FILED:

September 2, 2014

EVIDENCE SUBMITTED

In addition to the Commission's file, which is part of the record of the case, the following items were timely and properly submitted into evidence by the Defendants pursuant to the Administrative Procedures Act:

DEFENDANT'S APA SUBMISSIONS

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
1	Gregory M. Jones, M.D. Charleston Spine & Physical Medicine	3/20/13 – 4/16/13	1-4

<u>EXHIBITS #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
2	JJS Trucking Certificate of Insurance	10/2/10 – 10/2/11	5
3	Deposition of Sedrick Smalls	11/14/11	6-17
4	Deposition of Samuel Rose	11/14/11	18-28
5	Petition to Transfer Liability	1/24/12 - 4/30/12	29-33
6	SCWCC Form 18	4/10/12	34
7	SLED	4/30/12	35-42

The following items were timely and properly submitted into evidence by the Claimant pursuant to the Administrative Procedures Act:

CLAIMANT'S APA SUBMISSIONS

APA #	DESCRIPTION	DATES	PAGES
8	Stuart M. Leon, M.D.	8/10/11	43 - 44
9	Andrew B. Conrad, M.D.	8/10/11	45 - 47
10	Christopher J. Erikson, M.D.	8/10/11	48 - 49
11	Peter H. White, M.D.	8/11/11	50 - 51
12	Alan N. Abel, M.D.	8/16/11 - 6/6/13	52 - 72
13	Michael S. Rissing, M.D.	8/23/11	73 - 74
14	Cameron Wills, D.C.	9/2/11	75 - 76
15	Richard Kellett, M.D.	9/6/11 - 10/11/11	77 - 90
16	Troy Marlow, M.D.	11/9/11	91 - 92
17	Michael Wildstein, M.D.	11/23/11 - 12/14/11	93 - 96
18	Donald E. Olofsson, D.O.	11/30/11	97 - 98
19	Steven C. Poletti, M.D.	7/15/13	99 - 100

EXHIBITS # DESCRIPTION DATES PAGES

20	Traffic Collision Report S.C. Highway Patrol	8/10/11	101 - 104
21	Statement of Account Dr. Alan N. Abel, M.D.	8/16/11 - 6/6/13	105 - 107
22	Statement of Account Tricounty Spinal Care Centers	9/2/11 - 10/11/11	108 - 111
23	Statement of Account Southeastern Medical Solutions	11/9/11 - 12/14/11	112

24	Decision & Order Commissioner Gene McCaskill	8/23/12	113 - 123
25	Decision & Order Appellate Panel	5/15/13	124 - 134

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 of interest.
3. Venue, set in Dorchester County, is proper as agreed by the parties.
4. The Claimant's average weekly wage is \$650.00 resulting in a compensation rate of \$433.34.

STATEMENT OF THE CASE

This matter was before the undersigned Commissioner on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Defendants' Form 21 requesting permission to terminate compensation, following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. The Claimant argues that he has not reached maximum medical improvement and is entitled to ongoing compensation or, in the alternative; the Claimant argues he is permanently and totally disabled.

Following the hearing, on November 8, 2013, the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company, by and through their attorney, learned for the first time that the Claimant had an ongoing third-party claim arising out to of the August 10, 2011

accident pending in the Charleston County Court of Common Pleas. On November 12, 2013, the Defendants filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in the Charleston County Court of Common Pleas on February 20, 2013. The Defendants argued that this newly discovered evidence was relevant to the determination of the issues pending before the undersigned Commissioner, because the record reveals that the Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days after filing his third-party claim and, to date, has never filed a Form S-2. As a result, the Defendants argue that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560. The Claimant did not file a return¹ to the Defendant's Motion to Introduce Newly Discovered Evidence. The Defendants' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. At the time of the hearing, the Claimant, Samuel Rose, was 43 years old. He is a high school graduate and worked for J.J.S. Trucking for approximately six months. (Hrg. Transcript p. 17, ll. 18-25). The Claimant was rear ended on

¹ The Claimant did file a "Motion in Opposition to Introduce After Discovered Evidence." The Claimant's motion was denied by Administrative Order dated January 3, 2014.

August 10, 2011 while traveling on I-26, allegedly injuring his head, neck, back, and legs. (Hrg. Transcript p. 19, l. 17- p. 20, l. 23).

The Claimant testified that he is currently experiencing stiffness and throbbing pain in his neck that radiates to his shoulders, arms, and head. (Hrg. Transcript p. 28, ll. 1-10). He is also experiencing numbness in his arm and fingers and he claims that he can only lift about 25 pounds with his right arm. (Hrg. Transcript p. 28, ll. 14-25). He stated his left arm is worse than his right. (Hrg. Transcript p. 29, l. 1- p. 30, l. 4).

Regarding the Claimant's lower back, he testified that he currently experiences throbbing, radiating pain in his lower back near his spine. (Hrg. Transcript p. 30, ll. 10-18). He testified that his back is fine when he is moving, but hurts when he stops. (Hrg. Transcript p. 31, ll. 2-10).

The Claimant also testified that his right leg occasionally gives out and swells. (Hrg. Transcript p. 31, ll. 15-18). His knee sometimes hurts, but not always. (Hrg. Transcript p. 31, ll. 17-24). He was previously diagnosed with Osgood-Schlatter's Disease, but he claims he was not experiencing any pain in his right knee at the time of the accident. (Hrg. Transcript p. 32, ll. 4-10).

The Claimant also testified that the back of his head swells up, and he constantly has headaches, dizziness, and blurred vision. (Hrg. Transcript p. 32, ll. 11-17). The Claimant further testified that he did not believe he could go back to work in his current condition because he believes he cannot take the vibrations of driving the truck or doing the pre-trip inspection. (Hrg. Transcript p. 33, ll. 3-10).

On cross-examination, the Claimant testified that he fell down a flight of stairs at his mother's house in November of 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 35, ll. 2-7). The Claimant admitted he went to Tri-County Spinal Care, but he initially stated it was only for pain management. (Hrg. Transcript p. 35, ll. 14-23). After further questioning, the Claimant denied receiving treatment, but later he admitted that he had received injections and MRI's and x-rays had been taken. (Hrg. Transcript p. 35, ll. 6-19).

The Claimant also admitted that he currently carries his cane in the wrong hand, his right hand, even though the doctors advised him that he needs to carry the cane in his *left* hand if he is actually having *right* knee pain. (Hrg. Transcript p. 38, l. 16 – p. 39, l. 7). He also testified that he did not remember Dr. Wildstein telling him that his complaints were out of proportion with what the physical exam showed. (Hrg. Transcript p. 39, ll. 21-25).

The Claimant admitted that he has not applied for any jobs or even looked for work anywhere. (Hrg. Transcript p. 42, ll. 9-14). He also testified that he has not been incarcerated again since the last hearing. (Hrg. Transcript p. 42, l. 23 – p. 43, l. 5). He admits that he was incarcerated after the August 10, 2011 accident.

Upon further cross-examination, the Claimant testified that he believes he needs the cane for dizziness, which he relates to his headaches. (Hrg. Transcript p. 44, l. 14 – p. 45, l. 14). The Claimant was also forced to admit that, despite his testimony that "nothing's been done" for him, Dr. Abel's records indicate the Claimant saw him 42 times. (Hrg. Transcript p. 45, l. 24 – p. 46,

l. 4). He was also forced to admit that he has been treated and evaluated Dr. Kellett, Dr. Wildstein, Dr. Wills, Dr. Poletti, and Dr. Jones and he has received both injections and pain medicine. (Hrg. Transcript p. 46, ll. 8-20).

On re-direct examination, the Claimant testified that Dr. Wildstein said he might potentially benefit from a one level anterior cervical discectomy and fusion. (Hrg. Transcript p. 50, ll. 2-24). The Claimant also testified he was feeling depressed even though depression was never raised in his Form 50 or his response to the Form 21 submitted by the Defendants. (Hrg. Transcript p. 51, l. 10 – p. 52, l. 10).

On November 8, 2013, the Claimant's attorney contacted the Defendants' counsel to discuss an upcoming mediation in the Claimant's previously undisclosed third-party claim. On November 12, 2013, Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Motion to Introduce Newly Discovered Evidence. The newly discovered evidence was the Claimant's third-party claim filed in the Charleston County Court of Common Pleas on February 20, 2013. The Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days and still has not filed a Form S-2.

On November 21, 2013, the Claimant filed a Motion in Opposition to Introduce After Discovered Evidence. The Claimant also filed on December 20, 2013 a Motion to Introduce After Discovered Evidence. On December 23, 2013, the Defendants filed a Return to the Claimant's Motion to Introduce Newly Discovered Evidence.

On January 3, 2014, Commissioner Taylor issued three orders that granted the Defendants' Motion to Introduce Newly Discovered Evidence and denied the Claimant's Motion in Opposition to Introduce After Discovered Evidence and the Claimant's Motion to Introduce After Discovered Evidence.

Based upon the newly discovered evidence admitted into the record, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560(b) by not filing a Form S-2 with the Workers' Compensation Commission, the employer, and the carrier within thirty days. As a result, the Claimant is not entitled to additional benefits under the Act, and the Defendants may terminate payment of temporary total disability benefits.

FINDINGS OF FACT

1. The parties to this proceeding were sent directives for a proposed order on January 13, 2014.
2. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence).
3. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the

commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
2. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec. 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.

3. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, *supra*. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.
4. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
5. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.
6. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.
7. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.

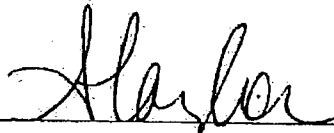
8. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to pursue, and the Defendants shall have no liability for, any additional benefits under the Workers' Compensation Act following the commencement of the third-party action on February 20, 2013.

IT IS, FURTHER ORDERED that the Defendants shall have a lien on the proceeds of any recovery from any third-party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

IT IS SO ORDERED!



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
September 2, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Samuel Rose v Chris Thompson Services, LLC
SCWCC: 1112328
Commissioner: Taylor

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Strike Appellant's Brief**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;

_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted. _____ Denied. _____ Dismissed _____ Set for Hearing.

BEFORE THE;

_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.

_____ Barden
_____ Beck

_____ James
_____ Campbell
_____ McCaskill

_____ Taylor
_____ Wilkerson

_____ Remand for Order consistent with the Order of the Court.

_____ Remand to the Hearing Commissioner.

_____ Remand to the Jurisdictional Commissioner.

_____ Other: _____

_____ Remand:

_____ Panel Oral Argument.

_____ En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair

Columbia, South Carolina

12/15
_____ 2014

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

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

By Kim Falls on December 16, 2014

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

SAMUEL ROSE,	)	W.C.C. File No. 1112328
	)	
Claimant/Appellant,	)	
	)	
v.	)	DECISION & ORDER
	)	
JJS TRUCKING,	)	
Uninsured Employer, and	)	
CHRIS THOMPSON SERVICES,	)	
Upstream Employer, and	)	
BRIDGEFIELD CASUALTY INS. CO.,	)	
Carrier for Chris Thompson	)	
Services, and	)	
THE STATE ACCIDENT FUND,	)	
	)	
Respondents.	)	

STATEMENT OF THE CASE

This matter came before the Commission's Appellate Panel for a review hearing on April 21, 2015. The case was previously tried before Commissioner Taylor on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Form 21 filed by Chris Thompson Services and Bridgefield Casualty Insurance (hereinafter "the Respondents"), requesting permission to terminate compensation following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. Following the hearing, on November 8, 2013, the Respondents learned for the first time that the Claimant had an ongoing third-party claim arising out of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas.

On November 12, 2013, the Respondents filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in

the Charleston County Court of Common Pleas on February 20, 2013. The Respondents argued that this newly discovered evidence was relevant to the determination of the issues pending before Commissioner Taylor because the Claimant did not file a Form S-2 with the Workers' Compensation Commission, the Employer, or the Carrier within thirty days after filing his third-party claim. As a result, the Respondents argued that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560. The Claimant did not file a return¹ to the Respondent's Motion to Introduce Newly Discovered Evidence. The Respondents' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

On September 2, 2014, Commissioner Taylor issued a Decision and Order, by which she made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *The parties to this proceeding were sent directives for a proposed order on January 13, 2014.*
2. *The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence).*
3. *The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the*

¹ The Claimant did file a "Motion in Opposition to Introduce After Discovered Evidence." The Claimant's motion was denied by Administrative Order dated January 3, 2014.

commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

CONCLUSIONS OF LAW

1. *S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.*
2. *Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.*
3. *According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.*
4. *Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on*

which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

5. *Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.*
6. *Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.*
7. *Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.*
8. *Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.*

Thereafter, the Claimant filed a Form 30 requesting review of Commissioner Taylor's September 2, 2014 Order on the following grounds:

FIRST: The Hearing Commissioner erred in granting Defendant's [sic] Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies November 12, 2013 Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim filed in Charleston County Court of Common Pleas on February 20, 2013), the error being that the defense of exclusive remedy was not pled by any of the Defendant's [sic], nor was the issue raised at the September 23, 2013 hearing before the single Commissioner, further the Answer and Counterclaim could have been secured by the Defendant's before the September 23, 2013 hearing had they exercised reasonable diligence.

SECOND: The Hearing Commissioner erred in denying the Claimant's November 21, 2013 Motion in Opposition to Introduce After Discovered Evidence summarily without any legal reasoning, findings of fact or conclusions of law to support this denial.

THIRD: The Hearing Commissioner erred in denying Claimant's December 20, 2013 Motion to Introduce newly Discovered Evidence (voluntary dismissal of the Claimant's third-party suit), holding the voluntary dismissal did not fit the meaning of "Newly Discovered Evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned [sic] on August 5, 2013, the error being there is no requirement under South Carolina Statutory Law, South Carolina Workers' Compensation Regulations or South Carolina Common Law Jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence.

FOURTH: The Hearing Commissioner erred in granting Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntarily [sic] dismissal Claimant's third-party suit) the error being that South Carolina case law holds that when a Claimant voluntarily dismissed his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

FIFTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), the error being this is a gross miscarriage of justice as the single Commissioner entertained new defenses that were not pled or argued at the September 23, 2013 hearing by the Defendant's [sic], however the single Commissioner did not allow the Claimant to introduce newly discovered evidence or to

be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's [sic] exclusive remedy argument moot.

SIXTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third party-suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).

SEVENTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is well-settled law of South Carolina that if the Commission undertakes to receive such additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, [sic] S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

EIGHTH: The Hearing Commissioner erred in finding of fact #3 and Conclusion of Law #1 in holding that the Claimant failed to file a Form S2 when the Claimant did indeed file a voluntary dismissal of the Claimant's underlying 3rd party lawsuit as newly discovered evidence on December 19, 2013, which the Commissioner denied, then subsequently filed the appropriate S2 on February 10, 2014 after re-filing the underlying 3rd party lawsuit.

NINTH: The Hearing Commissioner erred in Conclusion of Laws #1, #2, #3, #4, #5, #6, #7, and #8 in holding that the Claimant did not provide notice of the 3rd party action by way of filing a Form S2 and therefore was not entitled to additional medical treatment,

disability benefits or permanent disability when the Claimant voluntarily dismissed his underlying 3rd party claim on December 5, 2013 before settling it and submitted the dismissal to the Commission as newly discovered evidence and then after re-filing the 3rd party lawsuit timely filed a Form S2 on December 19, 2013, the error being that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

CONCLUSION

The Appellate Panel AFFIRMS the September 2, 2014 Decision and Order of Hearing Commissioner Taylor in its entirety and enters the following:

FINDINGS OF FACT

1. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013.
2. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the commission that this third-party action had been commenced.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides

that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

9. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.
10. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed

against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.

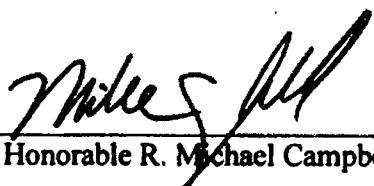
11. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
12. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.
13. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act.
14. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.
15. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants/Respondents shall have no liability for, any additional benefits under the Workers' Compensation Act.

IT IS, FURTHER ORDERED that the Defendants/Respondents shall have a lien on the proceeds of any recovery by the Claimant from any third-party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

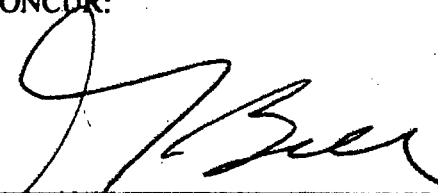
IT IS SO ORDERED!



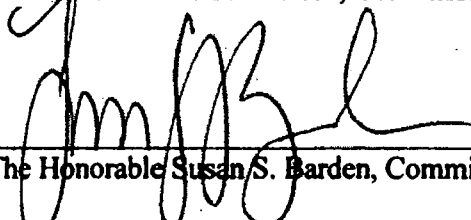
The Honorable R. Michael Campbell, II, Commissioner

Date: February 8th, 2014

WE CONCUR:



The Honorable T. Scott Beck, Commissioner



The Honorable Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on February 8, 2016

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675



WCC File #: 1112328
Carrier File #: 943450
Carrier Code #:
Employer FEIN #:

Claimant's Name: Samuel A. Rose SSN: 2-7-85-8888
Address: 127 1/2 Main St.
City, State, Zip: Charleston, SC 29403
Home Phone: (843) 577-3988 Work Phone:
Preparer's Name: Kirsten L. Barr Law Firm: Trask & Howell LLC Preparer's Phone #: (843) 881-1027
Employer's Name: J.S. Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Address: 106 New Hope Dr.
City, State, Zip: Summerville, SC 29483
Insurance Carrier: Bridgefield Casualty Insurance Co.
The date of injury reported on Form 12A is: August 10, 2011 (m/d/yyyy)

Check appropriate section(s). The employer's representative requests a hearing to:

- I. ☒ **Stop payment of compensation.** Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on March 20, 2013 (copy of medical report must be attached).

Compensation payments are current as of June 13, 2013 and shall continue until otherwise ordered or until Form 17 is signed by the claimant.

A Form 17 was offered and refused on June 13, 2013.

- II. ☐ **Address suspension, termination, or reduction of temporary disability payments for any cause.**

☐ a. At any time pursuant to § 42-9-260(E).

☐ b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is _____

- III. ☒ **Determine if compensation is due** pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

The Claimant has reached maximum medical improvement and impairment ratings have been assigned.

Claimant reached maximum medical improvement on March 20, 2013 (m/d/yyyy) (copy of medical report must be attached).

- IV. ☒ **Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.**

- V. ☐ **Determine amount of compensation for claims involving a fatality.** (Dependency Investigation must be attached).

☐ a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.

☐ b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

A hearing requested pursuant to this section will be set on an expedited basis.

- A \$ 25.00 filing fee and updated Form 18 must be included with an employer's request for a hearing.
- An employer requesting a hearing must include certification that the request has been served on all parties in compliance with R.67-211.

Kirsten L. Barr

Preparer's Signature

Attorney for the Defendants

June 13, 2013

Title

Date

P.O. Box 2167, Mt. Pleasant, SC 29465

Address

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or visit us online at www.wcc.sc.gov.

WCC Form # 21 Revised 04/18/2011

21

Employer's Request for Hearing

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328

Carrier File # 943450

Carrier Code #

Employer FEIN

Samuel A. Rose

Claimant's Name

SSN

Address

(843) 577-3988

Home Phone

Work Phone

JIS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company

Employer's Name

106 New Hope Dr.

Address

Summerville, SC 29483

City

State

Zip

Bridgefield Casualty Insurance Co.

Insurance Carrier

Kirsten L. Barr

Preparer's Name

(843) 881-4228

Phone #

1. Date of Injury: August 10, 2011
month day year

2. Total Weeks of Compensation Paid: 95

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TT From: 08/11/11 To: 06/13/13

Type: From: To:

Type: From: To:

4. Date of First Payment:

month day year

5. Total Amount Paid (a) Compensation: \$ 41,600.64

(b) Medical (Include Nursing, Hospital Drugs, Etc.):

6. Informal Conference is Requested: ☐ yes ☐ no
(check one)

7. Use these lines to send a memo to the Commission:

Kirsten L. Barr

Employer's Representative

(843) 881-4228

Phone

June 13, 2013

Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

WC File # 1112976
Carrier File # 943450
Carrier Code # 01067
Employer FEIN 36-4500154

SAMUEL A ROSE
Claimant's Name

SSN

Chris Thompson Services, LLC
Employer's Name

147 Ashton St. Charleston, SC 29403-5105
Address City State Zip

PO BOX 3377 SUMMERVILLE, SC 29484-3377
Address City State Zip

(843)577-3988
Home Phone #

(843)421-4984
Work Phone #

Bridgefield Casualty Insurance Company
Insurance Carrier

Melissa Kerby
Preparer's Name

1-800-863-2181
Phone #

Date of Injury: 08/10/11
month day year

Date of Notice to Employer of Injury:
month day year

I. Payment of Temporary Compensation (choose A, B, or C) Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate

A. Temporary Total at the compensation rate of \$ 75.00 per week. For this period of disability, disability began on 08/11/11 and the date of first payment was 12/22/11

B. Temporary Partial at the compensation rate of _____ per week. Note: When Temporary Partial compensation rate will vary, report first payment here. Supplement throughout the period of Temporary Partial compensation by filing Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ and the date of first payment was _____

Calculation of Temporary Partial rate:

Average weekly wage before injury
Current weekly wage
Difference in wages before injury and now
x .6667 x .6667
Temporary Partial Compensation Rate

C. Salary in lieu of temporary total / temporary partial (circle one) compensation in the amount of _____ began on _____ and the date of first payment of salary in lieu of temporary compensation was _____

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF THE INJURY.
ATTACH DOCUMENTATION AS TO THE REASON FOR THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on _____ for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to return to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

Sent to Commission on
12/23/11

I certify that this form has been served on the claimant per R.67-211.


Signature of Claims Administrator

12/23/11
Date

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employers representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to the SCWCC Judicial Department at the address at the top of the form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 115(11) ☐ has ☐ has not been received.

Signature of claimant or legal representative

Date

Employers representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employers representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employees representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employees representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

WCC FORM # 15 REV. DATE 3/97
53 532 943450

15

TEMPORARY COMPENSATION REPORT

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803)737-5700

File # 1112976
Carrier File # 943450
Carrier Code # 01067
Employer FEIN 36-4500154

SAMUEL A. ROSE
Claimant's Name

SSN

Chris Thompson Services, LLC
Employer's Name

1777 Ashcroft Dr, Charleston, SC 29403-5405
Address City State Zip

PO BOX 3377 SUMMERVILLE, SC 29484-3377
Address City State Zip

(843) 577-3988
Home Phone #

(843) 421-4984
Work Phone #

Bridgefield Casualty Insurance Company
Insurance Carrier

Melissa Kerby
Preparer's Name

1-800-863-2181
Phone #

Date of Injury: 08/10/11
month day year

Date of Notice to Employer of Injury: _____
month day year

I. Payment of Temporary Compensation (choose A, B, or C) Check one: ☐ Initial period ☐ Additional period ☒ Corrected compensation rate

A. Temporary Total at the compensation rate of \$ 433.34 per week. For this period of disability, disability began on 08/11/11 and the date of first payment was 12/23/11

B. Temporary Partial at the compensation rate of _____ per week. Note: When Temporary Partial compensation rate will vary, report first payment here.

Supplement throughout the period of Temporary Partial compensation by filing Form 15S with the Form 18, which shall be filed six months after the date of Injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ and the date of first payment was _____

Calculation of Temporary Partial rate:

Average weekly wage before injury _____
Current weekly wage _____
Difference in wages before injury and now _____
x .6667 x .6667
Temporary Partial Compensation Rate

C. Salary in lieu of temporary total / temporary partial (circle one) compensation in the amount of _____
began on _____ and the date of first payment of salary in lieu of temporary compensation was _____

THIS SECTION MAY BE USED ONLY WITHIN 160 DAYS AFTER NOTICE TO EMPLOYER OF THE INJURY.
ATTACH DOCUMENTATION AS TO THE REASON FOR THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on _____ for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to return to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

Sent to Commission on

08/10/12

I certify that this form has been served on the claimant per R.67-211.


Signature of Claims Administrator

08/10/12

Date

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employers representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to the SCWCC Judicial Department at the address at the top of the form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 115(11) ☐ has ☐ has not been received.

Signature of claimant or legal representative

Date

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WCC FORM # 15 REV. DATE 3/97
53 532 943450

15

TEMPORARY COMPENSATION REPORT

04/18/2013 09:33

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CHARLESTON SPINE

04/18/2013 10:25:16 Page 2 of 5

PAGE 02/05



**Charleston Spine &
Physical Medicine, PA**

Gregory M. Jones, M.D.
2093 Henry Tecklenburg Drive, Suite 310
Charleston, SC 29414

Office (843) 402-0111
FAX (843) 402-9010
Toll Free (800) 393-7008

ROSE, Samuel #9807

March 20, 2013

CHIEF COMPLAINT: Multifocal generalized pain.

HISTORY OF PRESENT ILLNESS: Patient is a 42 year old male who presents with multiple complaints of pain which he states began in neck, back, and right knee on 8/14/11 when he was involved in collision when his tractor-trailer was hit by another tractor-trailer truck. He states that he experienced initial neck pain and low back pain as well as right knee pain after MVA, which involved explosion, prior to and during which patient was physically "thrown" over guard rail to get him away from fire.

Patient states that he was told that he suffered a right knee fracture, not only by Dr. Abel, his primary physician, but also by Dr. Kellett and an orthopedist at MUSC, although imaging 8/10/11 immediately post injury showed soft tissue swelling right knee anterior to tibial tuberosity and medially about knee joint with some fragmentation of tibial tuberosity consistent with contusion and/or reactivation of old preexistent Osgood-Schlatter's disease, with no acute fracture line identified. As for cervical symptoms, patient underwent extensive subsequent treatment, as he did for lumbar symptoms, all to no avail.

Patient states that he now experiences chronic neck and right predominant shoulder pain, average 6/10 to 8/10 severity, with similar pain of aching/throbbing and occasional stabbing nature across low back. Patient describes chronic aching pain right medial and lateral as well as anterior knee, where he states he believes his knee hit steering column while braking with right leg. Patient relates that his knee has intermittently "given out" on several occasions since MVA in August and November 2012, and he has developed chronic "cracking and creaking" with motion right knee, average pain 4/10 to 6/10 with flaring up to 8/10 on prolonged weight bearing or excessive walking. Patient experiences two to three flares weekly on average, usually lasting anywhere from two hours to remainder of day, dependent on activities including walking.

As for lumbar symptoms, patient notes that pain generally 6/10 on average, flaring up to 10/10 even now, in spite of previously undergoing three epidural blocks in low back with no change or improvement in symptomatology, accomplished in September, October, and November of 2011 by Dr. Kellett. Patient relates no sciatica complaints either lower limb, but back and bilateral upper buttock pain persistent since injury 8/10/11. Patient states that low back pain "flares every day," typical duration "couple of hours" for flaring, and usually "moving around or getting off feet" tends to reduce symptoms, as does activities like walking. Prolonged sitting, lying supine, or side-lying all tend to increase back symptoms. He has recently continued using four-point cane for ambulation assist, states that this seems to "take pressure off back" and "seems to help some" in regard to back pain. He states that he has gone through physical therapy as recommended previously by Dr. Wildstein and other physicians in 2011, no benefit achieved with therapy.

For cervical symptoms, patient has also undergone multiple treatments to include epidural injection and trial right-sided cervical facet injection C3-4 level. Although neither of these procedures by Dr. Richard Kellett helped neck symptoms or arm complaints for any length of time, patient did note decrease in neck pain from 9/10 down to 6/10 for several weeks after 9/5/11 initial epidural, but also apparently similar response after single right-sided cervical facet block C3-4 level, both accomplished by Dr. Kellett. Block lasted for more than one to two weeks in regard to the estimated 25-30% improvement in neck and shoulder symptoms, and symptoms were largely recurrent and back to baseline/pre-block level within 10 to 14 days after each block procedure. Patient had already developed what he describes as right upper limb numbness and tingling primarily involving right deltoid and biceps region

04/18/2013 09:33

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CHARLESTON SPINE

PAGE 03/05

ROSE, Samuel #9807

Page 2

March 20, 2013

HISTORY OF PRESENT ILLNESS (continued): with ROM deficits right shoulder subjectively, along with numbness and tingling and pins and needles sensation intermittently in all fingers of right hand. More recently, patient has occasionally experienced similar symptoms left upper limb. Patient was even considered for possible botulinum toxin injection for right shoulder and neck trigger points, but that was not accomplished by Dr. Kellett. He also discussed possibility of patient undergoing cervical facet radiofrequency ablation, but found patient did not tolerate even single level right-sided cervical facet block 10/11/11, and apparently this was not pursued due to lack of more significant or lasting benefit with the facet injection trial.

Patient states that all activities flare symptoms including prolonged sitting or standing, walking or driving, twisting or reaching, lying on back or stomach, coughing or sneezing, or bending neck and back backwards or forwards. Patient states that all medications have failed to help to any significant extent, including oral anti-inflammatories, Elavil, and "pain spray" for fibromyalgia, and also notes that even Tylenol with codeine and other narcotic analgesics simply "take edge off" pain at best. Heating pad also used with at best temporary relief.

Patient was seen by Dr. Wildstein who suggested possible option of single level cervical fusion, but patient is concerned this would prove of little benefit as has all other treatments thus far.

PAST MEDICAL HISTORY: Significant for prior nephrolithiasis.

REVIEW OF SYSTEMS: Positive for hypertension, urinary system stones as indicated above, chronic alternating constipation and diarrhea, worsening over past year or more, chronic knee pain, and difficulty sleeping, otherwise noncontributory.

MEDICATIONS: Tylenol #3 and Elavil as well as ibuprofen all given for pain by Dr. Abel. Also uses topical pain spray for myofascial pain and Ben Gay lotion prn.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: Patient is single, no children, had worked only a few months at his current job for Chris Thompson Services since April 2011 when he was injured 8/10/11. States that he cannot return to work, feels that he is unable to drive truck while taking pain medications, and states that pain is too severe to allow him to drive. Patient feels that he is disabled due to chronic pain in various regions noted above. No tobacco or alcohol use. Previously participated in sports including football, basketball, and baseball.

FAMILY HISTORY: Noncontributory.

PHYSICAL EXAMINATION: Exam reveals a cooperative male, appears somewhat older than stated age, no acute distress, height 6' 2", weight 220 pounds, no antalgia to gait, although patient does appear to affect at times a steppage gait on right, mildly antalgic, not consistently seen. No difficulty getting onto or off of exam table. Lower extremity exam reveals GPS positional monitoring device in place on right ankle. There is focal tenderness noted medial and lateral joint line at right knee as well as over anterior tibial region right knee, with mild crepitus noted both knees at extreme ranging of motion for extension and flexion, dorsalis pedis and tibialis posterior pulses adequate bilaterally, no pedal or ankle edema, but with focal patchy non-dermatomal sensory hypesthesias to light touch noted anterior left thigh, medial right calf, and dorsal aspect left foot comparing side to side. Multifocal tender points and trigger points noted throughout hip girdle and gluteal regions bilaterally with most significant trigger points noted piriformis, gluteus maximus, gluteus medius, and gluteus minimus muscles as well as originating fibers quadratus lumborum muscles bilaterally. Multilevel lumbar multifidus tender points noted with tenderness also noted over essentially all lumbar facets to varying degrees bilaterally. No palpable step off lumbar spine, no CVA tenderness to percussion, no scapulohumeral motion deficits or scapular winging, no obvious scoliotic curvature. Marked tenderness noted over both SI joints and bilateral sciatic notches. Significant tenderness also noted over greater trochanteric bursal regions, with tenderness noted over tensor fascia latae tendon

ROSE, Samuel #9807

Page 3

March 20, 2013

PHYSICAL EXAMINATION (continued): sheaths and hamstring tightness noted bilaterally, with quadriceps tightness noted worse on right than left. No definite focal myotomal weakness noted, other than slight give-way weakness noted 5-/5 right quadriceps due to pain per patient. Although poor effort noted on manual muscle testing lower extremities throughout, no focal weakness identified with retesting with distraction as allowed. Straight leg raise nonprovocative bilaterally for radicular symptoms, sciatic stretch nonprovocative bilaterally, no ischial bursal tenderness.

Upper extremity exam reveals increased hypesthesia to light touch in non-dermatomal distribution throughout entire right upper limb all regions tested comparing side to side, and there is decreased strength noted right supraspinatus and right deltoid as well as right biceps muscles 4-/5, as patient complains of pain on any abduction of right shoulder. Patient also complains of concordant right greater than left shoulder girdle pain without radicular symptoms on foraminal compression test to right and to slightly lesser extent to left side, and on Spurling's test to each side. Neither of these latter tests cause radicular symptoms past shoulder however. Slight hypesthesia to light touch also noted finger tips and dorsal aspect all fingers and thumb left hand comparing distal to proximal. Multifocal trigger points noted throughout shoulder girdle and lateral neck muscles including supraspinatus, levator scapulae, upper and middle trapezii, rhomboid major and minor muscles, scalene muscles, and splenius capitis as well as splenius cervicis muscles bilaterally. There is tenderness over greater occipital nerve routes bilaterally. No palpable step off cervical spine, but multilevel cervical and upper thoracic facet tenderness noted along with palpable tender points and trigger points throughout cervical and upper and middle thoracic paraspinal/multifidus muscles to varying degrees bilaterally, essentially all levels palpated. No focal myotomal wasting noted either shoulder girdle or distal upper limb comparing side to side. Reflexes 1+ and symmetric triceps, biceps, and brachioradialis.

IMAGING: Multiple imaging studies reviewed. Refer to detailed reports for findings. No additional findings or interpretations noted by this examiner, agree with all written interpretations of these various studies as previously published.

- IMPRESSION:**
1. Chronic cervicothoracic and right greater than left shoulder girdle myofascial pain, with underlying multilevel cervical spondylosis and facet hypertrophy with C5-6 and C6-7 preexistent degenerative disc-osteophyte complexes/stenoses, symptomatic chronically since MVA work-related 8/10/11 with right upper limb dysesthesias and numbness.
 2. Chronic lumbosacral myofascial and/or facet-generated pain due to chronic lumbosacral strain injury sustained in work-related 8/10/11 MVC, with underlying preexistent multilevel degenerative disc lesions and facet arthropathy L2-3 through L5-S1 levels with chronic bilateral sacroiliitis and preexistent SI joint osteoarthritis.
 3. History of right knee contusion with transient history of intermittent swelling S/P MVA 8/10/11, with preexistent Osgood-Schlatter's disease.

RECOMMENDATIONS/DISCUSSION: This patient has developed chronic primarily myofascial pain in cervicothoracic, right greater than left shoulder girdle, low back, and bilateral buttock regions relating to 8/10/11 MVA. Unfortunately, he had fairly severe underlying preexistent degenerative pathology in both cervical and lumbar spine present prior to MVA 8/10/11. This has likely contributed to chronicity of symptoms and lack of any significant response to prior extensive nonsurgical measures including various blocks, therapy, and medications. Please refer to narrative for answers and current opinions relating to specific questions posed in 3/12/13 Summit/Liberty Mutual accompanying letter for this IME.

This examination above carried out for purpose of IME only, and did not constitute forming doctor/patient relationship. No treatments were accomplished, and no medications prescribed. The nature of the IME, reasoning behind this interview/examination, and importance of patient questionnaire explained to examinee. Examinee informed to notify examiner of any pain, discomfort, numbness, or other symptomatology produced by any portion of exam or any maneuver accomplished during examination. If further information becomes available, such additional information may or may not change the opinion rendered in this evaluation. Opinions in this IME do not constitute recommendation for claim to be made.

Gregory M. Jones, M.D.

GMJ/bjl

ROSE, Samuel
#9807

CHARLESTON SPINE & PHYSICAL MEDICINE

April 16, 2013 Narrative

There has been a request to address various issues in relation to this patient's IME of 3/20/13 in letter 3/12/13 from Heritage Summit Healthcare.

1. Refer to IME of 3/20/13 for current diagnoses.
2. It is my opinion that this patient would likely not benefit significantly from single level fusion C5-6. He does not have any evidence of definitive cervical radiculopathy, as his weakness about right shoulder girdle appears to be entirely pain related, and there is no atrophy present. Although patient may require surgical intervention at some point in future for most probably C5-6 and C6-7 disc levels due to the degenerative disc-osteophyte complexes, uncovertebral and facet hypertrophic changes, and neural impingement at both levels, this surgery would be necessitated only if patient develops cervical radiculopathy consistent with MRI findings and neural impingement previously identified, and it would indeed be related to preexisting conditions in this patient. It appears that most of patient's symptoms currently relate to myofascial pain in cervicothoracic spine musculature and particularly right shoulder girdle musculature, and this is primary explanation for patient's failure to respond to prior cervical epidural block and even cervical facet block trial in this examiner's opinion. Dr. Abel and other physicians have diagnosed this patient with myofascial pain and/or fibromyalgia, and had already begun treatment directed toward management of this chronic condition.
3. It does not appear that any future treatment would be warranted to help this patient achieve higher level of functional status or lessen his disability. He is likely at maximum medical improvement. All treatments accomplished thus far have largely been failures, patient is still complaining of 8/10 and up to 10/10 level intensity in all affected regions in spite of extensive prior treatment.
4. Mr. Rose has likely reached maximum medical improvement with respect to 8/10/11 injury as of 3/20/13 IME date.
5. It is my opinion that patient has likely suffered DRE Category II, 5% cervicothoracic spine impairment and DRE Category II, 5% lumbar spine impairment per *AMA Guides to the Evaluation of Permanent Impairment, 5th edition*, relating to injuries sustained 8/10/11. This takes into account at least the myofascial and/or facet-generated pain present cervicothoracic and lumbosacral spine, chronic sacroiliitis, and significant trigger points noted throughout neck, interscapular and right greater than left shoulder girdle regions as well as low back and buttock regions bilaterally.
6. Mr. Rose is capable of working without restrictions based on current neurologic assessment and current understanding of his underlying multilevel degenerative preexistent pathology cervicothoracic and lumbar spine regions. Based on response, as stated previously, to prior therapeutic interventions (non-surgical), it does not appear that patient is suffering from significant discogenic/facet-generated pain in cervical or lumbar regions, and thus it is most likely that he has developed chronic myofascial pain in these regions. He could even be developing full-blown fibromyalgia, although this condition cannot be blamed on injury event 8/10/11, to a reasonable degree of medical certainty. Patient should be able to return to gainful employment at any job that he desires with no specific restrictions regarding vocational and/or avocational pursuits with relation to the myofascial injuries sustained 8/10/11 to these various regions. I see no need for continued use of narcotic analgesics in this patient with primarily myofascial pain; in fact, these types of drugs are contraindicated in myofascial pain as they are notoriously ineffective (as seen in this patient). Patient might want to seek more appropriate treatment through rheumatologist or primary physician at some point in future for myofascial pain through his primary health insurance.

Gregory M. Jones, M.D.

GMJ/bjl

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

History and Physical Report

Patient: ROSE, SAMUEL**MRN: 000177114**

Attending:

Date: 8/10/11 1:58 PM

Status: INITIAL

PATIENT NAME: ROSE, SAMUEL

MRN: 002658620

PATCOM: 495787582

DATE: 08/10/2011

SERVICE:

ATTENDING: Stuart M Leon, MD

CHIEF COMPLAINT: Motor vehicle collision

HISTORY OF PRESENT ILLNESS: The patient is a very pleasant 40-year-old African American gentleman who was involved in a motor vehicle collision earlier this morning on Interstate 26. The patient was reportedly the restrained driver of a tractor trailer, whose vehicle was rear-ended by another tractor trailer. The patient did have loss of consciousness at the scene. He was transferred to MUSC for further definitive evaluation and care. He arrives awake and alert, complaining of right lower extremity pain and headache.

PAST MEDICAL HISTORY: Childhood asthma.

PAST SURGICAL HISTORY: None.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

MEDICATIONS: None.

SOCIAL HISTORY: Negative for alcohol, tobacco, and intravenous drug use.

FAMILY HISTORY: The patient reports that his mother had a history of high blood pressure.

REVIEW OF SYSTEMS:

Significant only for right lower extremity pain and headache. The patient specifically denies neck pain, chest pain, shortness of breath, abdominal pain and all other systems were negative to review as well.

PHYSICAL EXAMINATION:

On physical examination, the patient's airway is patent. He has equal breath sounds bilaterally. There is no gross chest wall deformity. His trachea is midline, and a cervical collar is in place. He has palpable femoral pulses. His heart is regular rate and rhythm. Glasgow Coma Score is 15. His abdomen is soft, nontender, nondistended. His pelvis is stable to AP and lateral compression. All four extremities are without gross deformities. The patient is noted to have a right knee laceration as well as a right shin laceration.

A complete and thorough trauma evaluation has just been completed, revealing the following injury complex:

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Printed by: PELZER, CHERISE

Date Printed: 09/04/2011

Page1

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

History and Physical Report

Patient: ROSE, SAMUEL

MRN: 000177114

Attending:

Date: 8/10/11 1:58 PM

Status: INITIAL

1. Traumatic brain injury with loss of consciousness without evidence of intracranial bleed.

2. Right knee laceration.

3. Right shin laceration.

ASSESSMENT: This is a very pleasant 40-year-old African American gentleman involved in a motor vehicle collision earlier this morning with the above-noted injury complex.

PLAN:

1. The patient be assigned to 23-hour observation and will be admitted to the trauma service.

2. We will follow up all right lower extremity films in order to rule in or out the presence of injury.

3. Local wound care will continue.

4. We will attempt to clear the patient's cervical collar clinically.

5. A cognitive evaluation will be obtained later this afternoon.

6. Adequate pain control will be ensured.

Dictated by: Stuart M Leon, MD

Stuart M Leon, MD

Attending

477190246/medq/

JOB: 1001777

DD: 08/10/2011 13:58:30

DT: 08/10/2011 14:52:00

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Date Printed: 09/04/2011

Page2

Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 04:53am

RAD - DIAG CHEST SINGLE VIEW FRONTAL
OUT

Accession number: 6414046

EXAMINATION: CHEST 08/10/11 04:53:00

ACCESSION NUMBER: 6414046

INDICATION: trauma

COMPARISON: None

FINDINGS: Single AP view on backboard. Mediastinum is within normal limits of width and aortic arch is clearly visualized. Heart size normal. Lungs are clear. No evidence for pneumothorax. No gross evidence of osseous injury.

IMPRESSION:

No gross evidence of trauma recommend upright off backboard when able.

VOICE DICTATED BY: Dr. Andrew Conrad

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: PAL SURANYI

Practice Partner signature acknowledges receipt of results only.

trauma

SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am

RAD - CT HEAD/BRAIN W/O CONTRAST
OUT

Accession number: 6414045

EXAMINATION: BRAIN CT 08/10/11 05:43:00

ACCESSION NUMBER: 6414045

INDICATION: mvc

COMPARISON: None

TECHNIQUE: CT of the brain without intravenous contrast.

FINDINGS: Notably diminutive appearance of the lateral ventricles and third ventricle, suggestive of increased intracranial pressure, with intact appearance of the basilar cisterns and no CT evidence for hemorrhagic or non-hemorrhagic diffuse axonal injury. No evidence of focal contusions, subarachnoid hemorrhage, extra-axial collections, or other intracranial bleed. There are no signs of acute infarction. The CSF spaces are symmetrical. There is no evidence of fracture. Minimal mucosal thickening in the maxillary sinuses bilaterally, but the paranasal sinuses and mastoids are otherwise unremarkable. Significant beam hardening present due to dental hardware limiting evaluation of the posterior fossa.

IMPRESSION:

Slightly decreased caliber of the lateral and third ventricles, suggestive of increased intracranial pressure, but no other evidence of acute intracranial abnormality.

Findings discussed with Dr. Ellett by Dr. Rogers at 1128 on 8/10/2011. Patient is walking/talking with no clinical signs of increased intracranial pressure. Patient's ventricular system is decreased in caliber, but at the upper limits of normal, per attending review.

VOICE DICTATED BY: Andrew B. Conrad M.D.

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: M, MATHEUS

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er bed 2

mvc

SIGNED BY ADMINISTRATOR (ADM) 08/12/2011 06:58AM

Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 06:30am

RAD - DIAG KNEE, AP/LAT VIEWS

OUT

Accession number: 6414050

EXAMINATION: RIGHT KNEE 08/10/11 06:30:00

ACCESSION NUMBER: 6414050

INDICATION: Right knee laceration and pain following trauma

COMPARISON: None

FINDINGS: Antero-posterior and lateral views of right knee demonstrate the bones to be well mineralized. Well corticated ossific fragments noted at the tibial insertion of the patellar tendon, likely due to prior Osgood-Schlatter disease. There is minimal narrowing and osteophytosis of the medial tibiofemoral as well as the patellofemoral compartments, but no evidence of acute bony, joint or soft tissue abnormality. There is no evidence of fracture or dislocation. The joint spaces are normal. There is no evidence of capsular distention.

IMPRESSION:

Mild to moderate two compartment osteoarthritis.

Evidence of Osgood-Schlatter disease.

No evidence of acute fracture or dislocation.

Discussed with Dr. Malouf at 06:32 on 8/10/11 via telephone who reports that the laceration is superficial over the lateral aspect of the patella.

VOICE DICTATED BY: Andrew B. Conrad M.D.

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: WILLIAM CONWAY

Practice Partner signature acknowledges receipt of results only.

trauma right knee laceration and pain

SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

Radiology Results

Name: ROSE, SAMUEL

Page: 1

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am

RAD - TRAUMA ANGIO NECK WITH CONTRAST
OUT

Accession number: 6414043

EXAMINATION: CERVICAL SPINE CT WITH CONTRAST 08/10/11 05:43:00

ACCESSION NUMBER: 6414043

INDICATION: pain.

COMPARISON: None

TECHNIQUE: Multiple contiguous spiral CT images were obtained through the cervical spine without IV contrast.

FINDINGS: There is normal alignment of the cervical spine with no evidence of acute fracture or dislocation. Vertebral body heights are preserved. There is loss of intervertebral disk noted at C5-C6 and to a greater degree at C6 and C7. Posterior disk osteophyte complexes noted at these levels as well resulting in mild canal stenosis at C5-C6. Mild R>L neural foraminal narrowing at the level of C5/6 secondary osteophyte formation. There is anterior osteophyte formation noted. Posterior elements are unremarkable. There is no prevertebral soft tissue swelling.

No vascular injury. Fetal origin of the right PCA.

Please see concurrently performed CT of the chest for findings in this area.

IMPRESSION:

No evidence of acute traumatic injury to the cervical spine. No vascular injury.

Multilevel degenerative changes as above with mild canal stenosis C5-C6.

Key findings discussed with Dr. Selander on 08/10/11 06:02:27.

VOICE DICTATED BY: Dr. C. J. Erikson

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: M, MATHEUS

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er bed 2

mvc

SIGNED BY ADMINISTRATOR (ADM) 08/12/2011 06:58AM

Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am

RAD - CT CHEST/ABDOMEN/PELVIS W/CONT
OUT

Accession number: 6414044

EXAMINATION: CT CHEST / ABDOMEN / PELVIS 08/10/11 05:43:00

ACCESSION NUMBER: 6414044

INDICATION: pain; motor vehicle collision.

COMPARISON: None.

TECHNIQUE: Multiple helical CT images were obtained of the chest, abdomen and pelvis after intravenous administration of 100 cc Omnipaque 350. Coronal and sagittal reconstructions were also performed.

FINDINGS:

Chest: No vascular injury. Bovine-type arch. Lung parenchyma reveals bibasilar hypoventilatory changes. There is no pneumothorax or pleural effusion. No fracture. Mild thoracic spondylosis. Hiatal hernia.

Abdomen: No traumatic solid lesion. 5 to 6-mm hypodensity in the left kidney too small to characterize accurately. Gastrointestinal tract is unremarkable without abnormal wall thickening. Colonic diverticulosis. No vascular injury. No free intraperitoneal gas, fluid nor lymphadenopathy. No visible fracture.

Pelvis: Lower intestinal tract shows no evidence for bowel wall thickening or injury. No vascular injury. Normal appendix. Prostate upper limits of normal in size. Normal bladder. No free gas or fluid. No lymphadenopathy. No visible fracture. There is mild degenerative disk disease at L3-L4.

IMPRESSION:

1. No acute injury to chest, abdomen or pelvis.
2. Key findings discussed with Dr. Ricky on at 0544 hrs.

VOICE DICTATED BY: C. J. Erikson, M.D.

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: MUNAZZA ANIS

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er bed 2

mvc

SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

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Medical University of South Carolina

Charleston, SC

843-792-2123

CONSULTATION REPORT**Patient: ROSE, SAMUEL****MRN: 000177114**

Attending:

Date: 8/11/11 7:55 PM

Status: FINAL

MUSC Medical Center

CONSULTATION REPORT

PATIENT NAME: ROSE, SAMUEL

MRN: 000177114

PATCOM: 495787582

DATE: 08/11/2011

SERVICE: Ortho Surg

ATTENDING: Langdon A Hartsock, MD

REQUESTING PHYSICIAN: NONE PER PATIENT

TYPE OF SERVICE: Orthopedic Surgery.

REASON FOR CONSULTATION: Right knee pain.

HISTORY OF PRESENT ILLNESS: This is a 40-year-old male who was involved in an MVC yesterday where his knee struck the steering wheel on the right. He was admitted to the trauma surgery service for observation and orthopedic surgery service was consulted for his right knee pain.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: Irrigation debridement of scalp wound when he was a child.

CURRENT MEDICATIONS: None.

ALLERGIES: NONE.

SOCIAL HISTORY: Negative for alcohol, tobacco, and drugs.

REVIEW OF SYSTEMS:

Negative except for his right knee strain.

PHYSICAL EXAMINATION:

GENERAL: This a well-appearing, well-developed African American male in no acute distress. He is alert, oriented x3, answering questions appropriately.

RIGHT LOWER EXTREMITY: A focused examination of his right knee, the patient has no obvious deformity of right lower extremity. Hip flexion is greater than 90 degrees. Internal and external rotation to approximately 20 and 35 degrees respectively. He has active flexion of his knee greater than 90 degrees. There is minimal edema about his right knee. There is no appreciable effusion. The patient does have tenderness to palpation in the superior aspect of his right patella. Knee is stable to varus and valgus stress. Anterior drawer is negative. Posterior drawer is negative. He is able to plantar flex and dorsiflex his right ankle. His toes are up and downgoing. He has a warm and well-perfused foot. 2+ dorsalis pedis pulse and sensation is intact to light touch in all dermatomal distributions. He has 5/5

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Date Printed: 09/04/2011

Page1

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

CONSULTATION REPORT**Patient: ROSE, SAMUEL****MRN: 000177114**

Attending:

Date: 8/11/11 7:55 PM

Status: FINAL

muscle strength in all muscle groups in the right lower extremity.

RADIOGRAPHIC EVALUATION: AP and lateral views of the patient's right knee is negative for fracture dislocation. However, there is evidence of a tibial avulsion this is an old finding that is consistent with previous Osgood-Schlatter disease.

ASSESSMENT AND PLAN: This is a 40-year-old male with right knee pain after a MVC 1 day ago. We recommend an MRI to evaluate the patient's ligamentous structures in his knee as well as the meniscus for possible soft tissue injury. The patient will be discharged from the trauma surgery service today and he will follow up with Dr. Hartsock in approximately 10 days with an outpatient MRI. This patient has been discussed with Dr. Laura Liles of the orthopedic surgery service and will be discussed with Dr. Hartsock.

Dictated by: Peter Holland White, MD

Peter Holland White, MD

Langdon A Hartsock, MD

Attending

477411670/medq/

JOB: 1002103

DD: 08/11/2011 19:55:08

DT: 08/12/2011 04:49:14

Authenticated by PETER H. WHITE, MD On 08/12/2011 10:56:51 AM

Authenticated by LANGDON A HARTSOCK, MD On 08/18/2011 09:45:14 AM

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Date Printed: 09/04/2011

Page2

DOB: 8-23-70

w/c

DATE	NAME	AGE	ALLERGIES	OCCUPATION	LNMP
8/12/11	Rox, Sonnet	40	0	Truck Driver	

SUBJECTIVE

Truck - Truck accident, long haul, heavy work
by ambulance - Hospitalized overnight
Injury neck, back, & knee. Attraction
Pain in back

OBJECTIVE

HT WT BP RESP

General Appearance

HEENT

Chest & Heart

Abdomen

Skin

MUSCULO-SKELETAL

Neck

Location

Degree Tenderness

Degree Spasm

Sternomastoids

R-L

0-1-2-3-4

Trapezius

R-L

0-1-2-3-4

0-1-2-3-4

Occipitalis

R-L

0-1-2-3-4

0-1-2-3-4

O-C Junction

R-L

0-1-2-3-4

0-1-2-3-4

Cervical (Paraspi)

R-L

0-1-2-3-4

0-1-2-3-4

Limitation of Motion

Flexion

Extension

0-1-2-3-4

Lateral Flexion

R-L

Rotation

Shoulders

Trapezius R-L

0-1-2-3-4

Acromioclavicular Jt

0-1-2-3-4

0-1-2-3-4

Clavicle

0-1-2-3-4

0-1-2-3-4

Acromion

0-1-2-3-4

0-1-2-3-4

Deltoid

0-1-2-3-4

0-1-2-3-4

Other:

0-1-2-3-4

0-1-2-3-4

Limitation of Motion

Rotation

Elevation

Extension

Depression

Abduction

Mid--Upper Back (thoracic)

Paraspinous

R-L

0-1-2-3-4

Trapezius

R-L

0-1-2-3-4

0-1-2-3-4

Supraspinatous

R-L

0-1-2-3-4

0-1-2-3-4

Teres Major

R-L

0-1-2-3-4

0-1-2-3-4

Teres Minor

R-L

0-1-2-3-4

0-1-2-3-4

Latissimus Dorsi

R-L

0-1-2-3-4

0-1-2-3-4

0-1-2-3-4

Thoracic Wall Sternocostal Joints

Pectoralis Muscles Degree Tenderness Degree Spasm
Breasts 0-1-2-3-4 0-1-2-3-4

Low Back

Paralumban R-L 0-1-2-3-4 0-1-2-3-4
Limitation of Motion
Flexion Extension Rotation R-L

Knees

Patella R-L 0-1-2-3-4 0-1-2-3-4
Tubercle of Tibia R-L 0-1-2-3-4 0-1-2-3-4
Head of Fibula R-L 0-1-2-3-4 0-1-2-3-4
Joint Space Swelling R-L 0-1-2-3-4 0-1-2-3-4
Limitation of Motion R-L
Flexion Extension Rotation
Laxity of Motion R-L

Abnormal Signs: Anterior Drawer's R-L

Upper Extremities

Right

Neurological Evaluation

Cranial Nerves II-XII Intact Abnormal
Sensory Deficit: Location
Motor Deficit: Location

ASSESSMENT

- 1 Neck, back strain
- 2 @ Knee injury
- 3 Bridgman - 4 tx

PLAN

- 1 Get MR + X-ray - msc
- 2 RUC 5-6 days

ADDITIONAL INFORMATION (FINDINGS)

- 3 Metron 800 3.0 - fac
GI (N75)

ALAN N. ABEL, M.D.

Name Samuel Rose Birthdate 8-23-70 Chart No. _____

DATE _____ PROGRESS NOTES

8-22-11 Present neck, low back
 + (C) knee dx =
 Numb to 12/12
 PE Exam (D) neck
 arm back -
 the arm (D) knee
 Neck - head, star / sp -
 Knee pain
 To have
 needs in
 screen
 seen
 Ortho at
 musc
 on Oxycontin
 10mg
 1/1/10
 I got for
 repair musc

(C) / neck low back

8-29-11 Ccs on low back pain
 Vocal strain - gilly DT
 at home (referred musc)
 RR
 Ccs on
 the
 + dx (2+) neck h.)
 23 + arm back
 Neck, head pain
 with mth

(C) / neck low back
 I got for
 repair musc
 10mg
 1/1/10

Name Samuel Rose

SS#

Page #

Address

Phone (home)

(work)

Date of birth

8-23-70

Drug allergies

8/31

VT has been getting VI 3X's/week
as home via APKediss.

He feels PT is coming.

in his pain + was

told "no pain, 10/10"

Miss cancelled his appt + today.

Neck area 5/10 kind of

pain PT and

Brn 3/10 pain PT

10/10 a/t PT

(N) has stopped - "Drops a lot"

VE R. neck - hit starts color

unusually to no sound. (N) PT

Had to be seen for neck, 3/10/10

page 107 -

neck and

1-2+ Neck region.

to latissimus muscle

Stren / 5/10

neck/neck

1/2000

4/5/10

PT/PT

PT/PT



Name Samuel Rose SS# _____ Page # _____
 Address _____
 Phone (home) _____ (work) _____ Date of birth 8-23-70
 Drug allergies _____

9-6-11 Pt. qm + Tricounty Spinal care
 for therapy & ~~anesthesia~~ ^{med.} ~~anesthesia~~ ^{med.}
 give shots in back today
 T2-L60° Fx in leg, (see report)
 180/100

PE - 10 s.

then procedure run

h.d. = good now.

very thin and healthy

(evidence too)

1/2 set

2.15 min
10 TB

Need back in

Fx knee.

HRM (not related)

1/2 set

1/2 set

1/2 set

(0.0)

Name

Samuel Rose

Birthdate

8-23-70

Chart No.

DATE

PROGRESS NOTES

9/24/11

Pt doing better. Had

epidural low back +

O-C injection.

on Lorazepam + Elavil -

Need "soreness"

+ low back pain after procedure with a feeling

PE

cells to use 1/4 mls

G

140/90

change

Hypertension on D

mild pruritus treated

1-2+ tears when low back

pain still present

mild - /Lum 90-95°

17 sec 21- and.

① 5 sec / 5 sec - 17 sec

② 12 sec

③ 1 sec 7x -

④

Rizp

+ 10 sec

Rec

9-29-11

Pain in neck back pain

14A- (OC) - 8 sec

6 sec by Mr. Keller

d-zz-zz

In back 17 sec

PE - mod. tear upon + low back

head

mod. tear OC joint 4. D

pain and

OC mouth

Neck in

Neck - back stop

Alan N. Abel, M.D.

Family -57-

7741-C Dorchester Road - North Charleston, SC 29418

ime Samuel Rose Birthdate _____ Chart No. _____

DATE _____ PROGRESS NOTES

10-11-11 Right crown & base
OC 14.1
No red & low back arch
Seen heel pa-center (Tr. 600)
& referred to motion up. (Spine core)
OC
tree
pac
low
OC
lot
1 + tree pure train run
h. 2 o parallel run
low red 4 OC per o
14-30 extending red
15-20
run in
14-20 on rd.
OC vent
Red -> next step

OC
1-26-11
14.1, 14.2, 14.3 - red still paid
(160/120 x 2)
2 + tree h. 2 o pure train
tree 1-2 + parallel run
h. 2
See 14.2 paid 14.2 red
1 + tree parallel run
h. 2 -
run in
14.2 - 14.2 run
OC parallel - same
14.2 -
14.2



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Telephone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Samuel Nisc Date 8/31/11
Address _____

R/Neck, back &
OB/Low injury
2nd MVA

Unable to work for
at least 30 more days

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Speed
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Telephone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Samuel Rose Date 7/29/11
Address _____

Rx Neck back injury
17s'

still unable to
work
estimated 30 more days

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Speed
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Telephone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Sandra Rose Date 10/31/11
Address _____

Rx
Hs's, Dizziness
head, head injury

Continue
no work status
was evaluated

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Specs
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Phone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Samuel Rose Date 11/31/12
Address _____

R

Continued "no work"
status for
additionally
30 days

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

_____, M.D.
Dispense As Written

[Signature], M.D.
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Phone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Samuel Doss Date 12/30/11
Address _____

Rx Continue "no work"
status

Wrist + back
injury

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

_____, M.D. Alan N. Abel, M.D.
Dispense As Written Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Telephone: (843) 552-9061 / Fax: (843) 552-0062 / North Charleston, SC 29418

Name Sam Rose Date 11/28/11
Address _____

Rx

BC neuritis
Post traumatic stress

Cont "no work
status"

☐ Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Substitution Permissible

[Signature]

Alan N. Abel, M.D.
7741-C Dorchester Rd.
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Fax: (843) 552-0062

October 8, 2012

Joseph B. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

RE: SAMUEL A. ROSE

Dear Mr. Fisher:

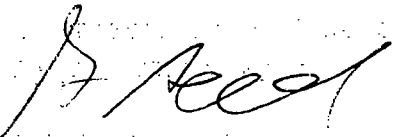
This is an update on Mr. Rose. I continue to see him for ongoing neck and back symptoms and associated headaches.

He was seen on 10/04/12 complaining of new symptoms of losing feeling in his right hand, with a decrease in grip in the right hand at times. He has ongoing low back pain and headaches in the occipital/cervical region. There is a decreased sensation of sharpness over the right hand vs. the left. There is still bilateral paracervical and paralumbar muscle tenderness, with painful range of motion of the neck.

This patient continues to be frustrated by the lack of recommended treatment. He does need to see a neurosurgeon for evaluation of surgery on his neck. He is to continue Elavil and ibuprofen, and see me again in three weeks.

I am concerned about any further delay in getting this patient the treatment that he needs. I wanted you to be aware of this.

Sincerely,



Alan N. Abel, M.D.

ANA/ppi

Alan N. Abel, M.D.
7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061
Fax: (843) 552-0062

December 17, 2012

Joseph B. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

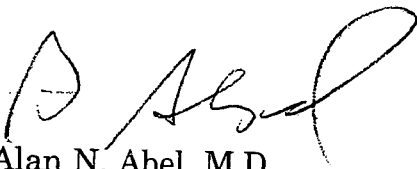
RE: SAMUEL A. ROSE

Dear Mr. Fisher

I am continuing to see Mr. Rose for his injuries. He remains symptomatic, and if at all possible, I would like to make arrangements for physical therapy for this gentleman as I feel this might help his condition improve.

Kindly let me know if you have any suggestions.

Sincerely,



Alan N. Abel, M.D.

ANA/ppi

16

Alan N. Abel, M.D.
7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061
Fax: (843) 552-0062

May 29, 2013

Joseph P. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

RE: SAMUEL A. ROSE

Dear Mr. Fisher:

As you are aware, I have treated Mr. Rose since 08/16/11 for injuries sustained in a truck accident that occurred on 08/10/11.

Initially, Mr. Rose presented to my office with neck, back and right knee discomfort. My initial impression is that he had a neck and back strain/sprain injury in addition to a right knee injury as a result of this accident. He also informed me of having a slow heart rate for which he was evaluated at MUSC prior to seeing me. I requested that his records be obtained.

He was next seen on 08/22/11 with persistent neck and back pain and right knee discomfort. He stated that he was seeing an orthopaedist at the Medical University where pain medication had been prescribed for the patient.

He was seen again on 08/29/11 with ongoing back and neck discomfort. He was receiving physical therapy at home.

When seen on 08/31/11, he informed me of receiving therapy three times per week at home, and he thought this might be increasing his pain. He remained symptomatic, and I was agreeable to holding physical therapy at that time as the patient felt this might be aggravating his condition.

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 2

He returned on 09/06/11. He had been referred to Tri-county Spinal Care Center where he was receiving "shots in the back." He stated that he had a "fracture in the leg."

Mr. Rose was next seen on 09/20/11 and was doing somewhat better, having had an epidural injection and an injection into his occipital/cervical region. He still had neck soreness and low back pain after prolonged sitting and standing. He remained tender over the paracervical muscles and paralumbar muscles, with painful range of motion. The exam was non-revealing at that time.

I continued to see Mr. Rose who remained symptomatic. He was noted to have elevated blood pressure on 10/26/11. On subsequent visits of 11/03/11 and 11/28/11, he reported continued occipital/cervical headaches with some dizziness and persistent back pain. At this point, it was thought he had an occipital/cervical neuritis with secondary headaches and ongoing back pain. He was still seeing an orthopaedist for his neck and back.

X-rays of his lumbar spine done on 11/30/11 showed mild degenerative changes and facet arthropathy of the lumbar spine and mild degenerative changes of the sacroiliac joint. X-rays of the right knee showed mild soft tissue swelling anterior to the knee and over the tibial tuberosity. There was some fragmentation of the tibial tuberosity, suggesting prior Osgood-Schlatter's disease.

A cervical/lumbar scan was done on 11/09/11 which showed significant degenerative changes in the mid cervical region with moderate exit stenosis. There was also evidence of swelling of the lower cervical ligaments suggesting ligamentous strain/sprain.

When the patient returned to see me on 12/15/11, he informed me of having seen the orthopaedist who recommended that he have neck surgery based on an MR scan. He continued to have neck and back discomfort, and now had intermittent numbness reportedly in the left shoulder and forearm. There was improvement in his knee at this time, stating that it was "healing fine."

I continued to follow Mr. Rose. His symptoms in the neck and back region were continuing, with persistent occipital/cervical headaches.

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 3

Because of the chronicity of his discomfort, I placed him on a low-dose antidepressant on 02/09/12 to control his pain. The patient was awaiting a neurologic appointment.

We discussed the possibility of more physical therapy on his visit of 02/24/12. He stated that he was being scheduled for surgery on his neck. His shoulder was also bothersome.

On his visits of 03/15/12 and 04/12/12, his symptoms persisted. I thought there was developing anxiety and depression as a result of the delay in his worker compensation determination. He stated that his left arm got "cold" with tingling in the tips of all fingers of the left hand, and I suggested an EMG nerve conduction study.

When seen on 05/10/12, his back was getting worse and his left arm remained numb.

There was no change on his visit of 05/30/12, at which time he was using a cane for support.

On 06/27/12, he continued to have neck and back discomfort, along with headaches and dizziness. His blood pressure was slightly elevated. He reported still having numbness in the left upper arm with tingling in all of his fingers. He was given a pain medication, and I again suggested resumption of physical therapy.

On 07/20/12, he reported "pain, pain and more pain" in the neck, back and occipital/cervical region. He was very tender in the paralumbar and paracervical muscles at this time, and range of motion was painful in all directions. He was to continue his Elavil, and efforts were again made to arrange for physical therapy.

On 08/07/12, his low back was still bothersome, as was his neck. He still had numbness in the left arm and shoulder and "throbbing headaches that won't go away." He had persistent dizziness and was still quite anxious about the need for surgical intervention. He had not seen the orthopaedist since 12/28/11.

He reported no change in his condition upon his visit on 08/23/12. He stated that his right knee goes out at times. His examination was essentially unchanged.

He remained symptomatic on subsequent visits of 09/12/12 and 10/04/12, stating that he was losing feeling in his right hand and losing his grip in that hand. I suggested that he see a neurosurgeon as soon as possible. He was to continue his Elavil and ibuprofen.

Joseph P. Fisher, Esquire

Re: Samuel A. Rose

May 29, 2013

Page 4

There was no change in his clinical condition or his treatment on subsequent visits of 10/25/12 and 11/16/12.

On his visit of 12/07/12, he reported more pain in his right knee. It was thought that he had a possible Baker's cyst in the posterior knee. He remained tender in the neck and back region with painful range of motion.

The patient appeared to become more and more depressed on subsequent visits due to lack of improvement and intervention. He reported increasing pain and seemed to have more difficulty walking. He was referred by his insurance carrier to Dr. Gregory Jones whose records indicate that he felt the patient had chronic cervicothoracic and left shoulder girdle myofascial pain and chronic lumbosacral myofascial and facet-generated pain due to lumbosacral strain from the above accident. He allegedly told the patient that he had developed a fibromyalgia-type syndrome. I am essentially in agreement with this interpretation, although I do not feel he has a full fibromyalgia clinical presentation if this was diagnosed.

The patient continued to be symptomatic on subsequent visits of 03/28/13, 04/08/13 and 04/18/13. On 04/18/13, the patient reported that, "I just want to get back to normal and return to work" as before. He reported having no neck or back problems prior to this accident.

It is this examiner's opinion that the patient is at maximum medical improvement and, unfortunately, I am not optimistic that he will improve to any significant degree in the future. Perhaps physical therapy might be helpful, as suggested previously. He would benefit from an EMG nerve conduction study to see if there is, indeed, nerve decompression in his neck requiring surgical intervention.

Unfortunately, this patient is not improving to the extent that he would like to see. I do feel that earlier intervention and neurologic treatment may have benefited him, and perhaps lessened his degree of pain and lack of mobility that he now has.

At the time of his last visit of 05/16/13, the patient was walking with a limp, using a cane and holding his neck and back area stiffly. He was significantly more tender in the paracervical and paralumbar region with painful range of motion.

Although the patient is at maximum medical improvement, I will continue to see him to assure continuity of care. He did return on 05/23/13 expressing concern with transmission of hepatitis B at Tri-county Spinal Care where he had received two

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 5

injections in November. He was referred for hepatitis testing. As I continue to see him, I hope we can find some way to proceed with his further testing and physical therapy if insurance will allow. I will be glad to issue an impairment evaluation in writing if you so desire.

I hope this information is useful to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. N. Abel, M.D.", written in dark ink.

Alan N. Abel, M.D.

ANA/ppi

Name

Amosel Rose

Birthdate

8-23-70

Chart No.

DATE

PROGRESS NOTES

5/23/13

pt arrived clinic
 Controlling Hives 0 /m
 17mm in Hives
 at Tr. cut 50.00 can
 17mm in Hives
 17mm in Hives

(W)

PT

Hives 0 /m

/H

6-6-13

pt arrived clinic
 pt has Hives 0 /m
 Hives + Hives 0 /m

2 Hives - very small
 Hives 0 /m

Hives
 Hives

ADIC

1.577-10

2+ Hives + Hives 0 /m
 Hives 0 /m
 Hives + Hives 0 /m
 Hives 0 /m

Hives 0 /m
 Hives 0 /m
 Hives 0 /m

Hives + Hives

Hives 0 /m

Hives 0 /m

Hives 0 /m

Hives 0 /m

(W)

PT

2 Hives 0 /m

Alan N. Abel, M.D.

Family Medicine

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Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/23/11 : 4:52pm

RAD - MRI LOWER EXT JOINT W/O CONT
R5W

Accession number: 6423084

EXAMINATION: MRI KNEE 08/23/11 16:52:00

ACCESSION NUMBER: 6423084

INDICATION: RT KNEE PAIN AND SOFT TISSUE SWELLING. EVALUATE FOR
LIGAMENTOUS INJURY

COMPARISON: Knee radiographs 08/10/11

TECHNIQUE: Routine multiplanar MRI of the right knee without contrast.

FINDINGS: There is an impaction type fracture to the medial femoral
condyle with associated bone marrow edema.

Medial and lateral menisci are normal.

Anterior and posterior cruciate ligaments are normal.

Normal lateral collateral ligament complex and iliotibial band.
There is no evidence of injury to the posterolateral corner,
including the popliteus tendon and arcuate ligament.Normal medial collateral ligament. Normal posteromedial corner,
including the distal semimembranosus complex, gracilis, and
semitendinosus tendons.Increased T2 signal within the infrapatellar tendon. The visualized
distal quadriceps tendon is normal.The patellofemoral articulation is congruent without tilt or
subluxation. Normal medial and lateral patellar retinacula.Incidental note is made of two well corticated ossific fragments
anterior to the tibial tubercle from prior Osgood Schlatter disease.No soft tissue masses, joint effusion, popliteal cyst, and no
periarticular bursitis.There are 3 compartment osteoarthritic changes with 3 compartment
chondromalacia and osteophyte formation.**IMPRESSION:**Mild impaction type fracture the medial femoral condyle with
associated bone marrow edema.

Patellar tendinopathy and evidence of prior Osgood Schlatter disease.

Radiology Results**Page: 2**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114

SEX:M AGE:41

No evidence of internal derangement.

Three compartment chondromalacia and osteoarthritic changes.

VOICE DICTATED BY: Dr. MICHAEL RISSING

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: JOSH MCCAIN

Practice Partner signature acknowledges receipt of results only.

MRI RT KNEE **PT WILL BRING ORDER WITH HIM*** WORKER'S COMP PER: PATIENT 08/11/11 C 1.3/GFR
59,FW

RT KNEE PAIN AND SOFT TISSUE SWELLING. EVALUATE FOR LIGAMENTOUS INJURY

SIGNED BY BRANDI B AQUINO, PA (R5W) 09/01/2011 07:58AM



TRI-COUNTY SPINAL CARE CENTER

Medical Care

Chiropractic Care

Physical Therapy

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/02/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

HISTORY

Date of Accident: 08-10-11

The patient was injured in a high velocity car crash.

The patient was transported to the emergency room by EMS. Diagnostics were taken. Medication was prescribed.

The patient revisited the ER 2 weeks later.

Mri was taken of his knee. Impaction fracture was noted.

He has been under the care of his PCP. Pain management was recommended.

PAST MEDICAL HISTORY

Hypertension

PAST SURGICAL HISTORY

No past surgical history reported.

MEDICATIONS

Oxycodone, Flexeril, Colace, IB

FAMILY HISTORY

There is no significant family history.

SOCIAL HISTORY

There is no significant social history.

ALLERGIES

No known drug allergies.

VITAL SIGNS: Blood Press	Pulse	Resp Rate	O2 Sat%
132 / 94	79	18	99

PHYSICAL EXAM

Cervical Pain is described by the patient as being a 8 out of 10, with 10 being most severe.

Cervical Range of motion is reduced by 30%. Spasm and pain is evident upon palpation. Thoracic pain is present.

Thoracolumbar Exam:

Back Pain is described by the patient as being a 7 out of 10, with 10 being most severe.

Range of motion is reduced by 25%. Pain is evident with motion.

Knee: Right

Knee exam reveals pain with motion. Pain is reported as a 6 of 10.

Objective Test Findings:

Cervical Compression Test: Indication of Cervical Nerve Root Compression. Soto Hall Test: Indication of Cervical Sprain.

Non Organic Exams:

The patient tested negative for Libman's Sign and Mankopf's Sign: A negative indicator for malingering.



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09/02/2011

Samuel A Rose

8/23/1970

DX STUDIES

ER records were reviewed.

The following Radiographs were reviewed:

Knee series, PA Chest.

Cervical, Thoracic, Abdomen, Head, Pelvis CT was reviewed. Possible intracranial pressure noted.

Knee MRI was reviewed. Impaction fracture noted.

Cervical Degenerative Joint and Disc Disease was evident.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

E0238: Ice and Heat packs were prescribed to the patient for at home use.

ASSESSMENT

723.4 Cervical Radiculitis

847.0 Cervical Sprain Strain, 847.1 Thoracic Sprain Strain, 847.2 Lumbar Sprain Strain

728.85 Spasm of Muscle

Tibial impaction fracture

PLAN

The patient will be seen 2-3 x per week until symptoms diminish or referral is indicated. The injuries of the patient were caused by this accident.

The patient is being referred for Orthopaedic evaluation of his neck and knee, Dr. Wildstein ph 843-406-2771 fax 406-2789.

Cameron Wills, D.C.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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09/06/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

VITAL SIGNS:	Position	Blood Press	Pulse	O2 Sat%
	pre	170 / 115	66	95
	post	149 / 107	72	97

PHYSICAL EXAM

Original intake and examination findings are accurate and consistent with patient pain levels. There continues to be high levels of pain. I discussed the risks and rewards of steroid injection therapy. Informed consent was given.
Radicular symptoms are present in the upper extremity.

PROCEDURES

The patient was given IV sedation.
The target area was identified under fluoroscopic guidance.
The area was prepped and draped in the usual sterile fashion.
The skin was anesthetized with 1% lidocaine using a 25 ga needle.
A 20 ga Touhy needle was advanced into the epidural space using standard LOR technique. LEVEL C 6-7
Placement was verified under fluoroscopy with contrast dye.
A mixture of 0.25% Marcaine, normal saline, and 40 mg of Depo-Medrol was injected into the epidural space.
The needle was removed, the skin cleaned, and a sterile bandage was applied.
No complications were encountered.

DX STUDIES

I have reviewed diagnostic reports. They are consistent with pain pathway and diagnosis.

TREATMENT

The patient was seen in the North Charleston facility today.
98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.
62310: Epidural injection, cervical/thoracic region C 6-7
77003: Fluoroscopic Guidance and Localization of Needle
99144: Moderate sedation, first 30 min
J2250: 2 units Versed (midazolam), per 1 mg
J1030: DepoMedrol 40 mg
A4645: Contrast 200-299 Mg/Iodine, 1ML
J3490 Marcaine .25%
1% Lidocaine
A4550: Injection Tray
A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves
20553: Trigger Point Injections to reduce pain, spasm, inflammation, and to increase pain free range of motion. X2
J1030: DepoMedrol 40 mg
A4550: Injection Tray

PLAN

Follow up care is scheduled. Post procedure care advice was given.



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09/06/2011

Samuel A Rose

8/23/1970

Richard Kellett, M.D.
Electronically Signed



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09/08/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Steroid injection has reduced patient symptom levels greatly.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

Prescribed therapy will continue until MMI is reached.

sas

Richard Kellett, M.D.
Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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09/13/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Higher pain levels are reported today.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PRESCRIPTIONS

Lortab 5mg, No. 20, 1 PO. every 4 to 6 hours PRN for pain.
May Cause Drowsiness.

Flexeril 5 mg, No. 20, 1 PO t.i.d. PRN muscle spasms/stiffness.
May cause Drowsiness

PLAN

Steroid injection procedure is scheduled. Pre procedure instruction was given.

jmb

Richard Kellett, M.D.
Electronically Signed



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09/15/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

VITAL SIGNS:	Position	Blood Press	Pulse	O2 Sat%
	pre	167 / 113	73	94
	post	193 / 130	73	97

PHYSICAL EXAM

The patient is making clinical progress. We will proceed with a follow up procedure.

PROCEDURES

The patient was given IV sedation.

The target area was identified under fluoroscopic guidance.

The area was prepped and draped in the usual sterile fashion.

The skin was anesthetized with 1% lidocaine using a 25 ga needle.

A 22 ga spinal needle was advanced into each identified facet space. Level L 2-3 bilateral

Placement was verified under fluoroscopy with contrast dye.

A mixture of 0.25% Marcaine, and 40 mg of Depo-Medrol was divided equally at each facet space.

The needle was removed, the skin cleaned, and a sterile bandage was applied.

No complications were encountered.

TREATMENT

The patient was seen in the North Charleston facility today.

64493: Lumbar or Sacral facet Injection, diagnostic or therapeutic agent, first level bilateral L2 - L3

77003: Fluoroscopic Guidance and Localization of Needle

99144: Moderate sedation, first 30 min

J2250: 2 units Versed (midazolam), per 1 mg

J1030: DepoMedrol 40 mg

A4645: Contrast 200-299 Mg/ML Iodine, 1ML

J3490 Marcaine .25%

1% Lidocaine

A4550: Injection Tray

A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves

64405: Occipital nerve block

J1030: DepoMedrol 40 mg

A4550: Injection Tray

PRESCRIPTIONS

Elavil 25mg #30 1 QHS

2 Refills

PLAN

There were no adverse reactions to the procedure. Post treatment instruction was given.

sas



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09/20/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Pain levels have reduced moderately since steroid injection procedure. The patient reports less pain with day to day activities.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

We will continue prescribed therapy. There was pain reduction with today's therapy.

sas

Richard Kellett, M.D.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

Medical Care

Chiropractic Care

Physical Therapy

Jeffrey Gersbach, M.D.

Richard Kellett, M.D.

Cameron Wills, D.C.

North Charleston-West Ashley-Summerville

Ph: 843-225-7746 Fax: 843-647-7035

Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/22/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

The patient reports an increase in knee pain.

Spinal pain appears to be reducing with treatment.

DX STUDIES

Knee MRI was reviewed.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

The patient is being referred for Orthopaedic evaluation, Dr. Wildstein ph843-406-2771 fax 406-2789. He does not appear to be a surgical case, but your medical opinion would be appreciated.

Richard Kellett, M.D.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

Medical Care

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North Charleston-West Ashley-Summerville

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/27/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Symptoms continue. The patient will be prescribed medication to help with pain, inflammation and muscular spasm.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PRESCRIPTIONS

Neurontin 300mg #90 1 QHS FOR 3 DAYS, BID FOR 3 DAYS, 1 TID

PLAN

Prescribed therapy will continue until MMI is reached.

Ortho visit will be held for now.

Richard Kellett, M.D.
Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/29/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Positive Muscular Findings of Pain and Spasm:

Occipitalis, SCM, Splenius Capitus, Spinalis thoracis, Latissimus dorsi, Longissimus thoracis, Quadratus lumborum, Iliocostalis lumborum.

Trigger Point therapy and Stretching will be administered to each muscle group.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

Therapy will continue as prescribed. The patient was taken through assisted stretching today.

sas

Richard Kellett, M.D.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

Medical Care

Chiropractic Care

Physical Therapy

Jeffrey Gersbach, M.D.

Richard Kellett, M.D.

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North Charleston-West Ashley-Summerville

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

10/04/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Neck pain and headaches continue.

Spinal and knee pain appears to be progressing.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PLAN

If this procedure does not reduce pain levels, we will proceed with Cervical Diagnostic block procedure and possible radiofrequency ablation.

Richard Kellett, M.D.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

Medical Care

Chiropractic Care

Physical Therapy

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Richard Kellett, M.D.

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North Charleston-West Ashley-Summerville

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

10/06/2011

Samuel A Rose

8/23/1970

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Pain continues.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PLAN

Prescribed therapy will continue until MMI is reached.

sas

Richard Kellett, M.D.

Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

Medical Care Chiropractic Care Physical Therapy

Jeffrey Gersbach, M.D.

Richard Kellert, M.D.

Cameron Wills, D.C.

North Charleston-West Ashley-Summerville

Ph: 843-225-7746 Fax: 843-647-7035

Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

Samuel A Rose 10/11/2011 8:30:00 AM 41 year old
247-55-3390 RELEASED
8/23/1970
437-4012

CHIEF COMPLAINT

referral

VITAL SIGNS:	Position	Blood Press	Pulse	Resp Rate	O2 Sat%
	pre	140 / 111	75	16	96

PHYSICAL EXAM

Today's exam reveals significant pain. Cervical more than back.

PROCEDURES

Facet Injection

The patient was given IV sedation.

The target area was identified under fluoroscopic guidance.

The area was prepped and draped in the usual sterile fashion.

The skin was anesthetized with 1% lidocaine using a 25 ga needle.

A 22 ga spinal needle was advanced into each identified facet space. Level C 3-4 RT SIDE

Placement was verified under fluoroscopy with contrast dye.

A mixture of 0.25% Marcaine, and 40 mg of Depo-Medrol was divided equally at each facet space.

The needle was removed, the skin cleaned, and a sterile bandage was applied.

No complications were encountered.

DX STUDIES

Cervical MRI was ordered.

TREATMENT

The patient was seen in the North Charleston facility today.

64490: Cervical or Thoracic facet Injection, diagnostic or therapeutic agent, first level C 3-4 RT SIDE

77003: Fluoroscopic Guidance and Localization of Needle

99144: Moderate sedation, first 30 min

J2250: 2 units Versed (midazolam), per 1 mg

J1030: DepoMedrol 40 mg

A4645: Contrast 200-299 Mg/ML Iodine, 1ML

J3490 Marcaine .25%

1% Lidocaine

A4550: Injection Tray

A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves

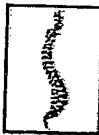
PLAN

The patient did not tolerate the procedure well. His hands were interfering with the procedure. The patient could be a candidate for RF ablation if he could tolerate the procedure.

The patient is being released today. He continues to suffer from accident related neck and knee pain.

The patient is being referred for Orthopaedic knee and spinal evaluation, Dr. Wildstein ph843-406-2771 fax 406-2789.

The patient is scheduled for further diagnostic testing.



TRI-COUNTY SPINAL CARE CENTER

Medical Care

Chiropractic Care

Physical Therapy

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

Samuel A Rose

10/11/2011 8:30:00 AM

41 year old

247-55-3390

RELEASED

8/23/1970

437-4012

Richard Kellett, M.D.

Electronically Signed

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Rose, Samuel
DOB: 8/23/1970
MRN: 806624
PATIENT PHONE: 843-437-4012
PHYSICIAN: Richard Kellett, MD
DATE: 11/9/2011

EXAM: CERVICAL MRI WITHOUT CONTRAST

HISTORY: Cervical radiculitis.

COMPARISON STUDIES: None.

TECHNIQUE: Multiplanar multisequence images cervical spine without contrast.

FINDINGS: *Alignment and bony structures:* C5/6 mild degenerative retrolisthesis and mild lateral discogenic endplate irregularity. C6/7 moderate disc narrowing and discogenic endplate irregularity. Both levels have mild type I Modic change. C5/6 mild right facet edema. Remaining marrow and alignment preserved. Patchy STIR hyperintensity within lower cervical interspinous ligaments most noticeable at C6/7, possibly ligamentous strain or sprain. *Spinal cord:* Normal signal and caliber. *Craniocervical junction:* Unremarkable central elements and junction as visualized. *Findings by level:*

C2/3: Normal.

C3/4: Mild left uncovertebral and bilateral facet hypertrophies. No stenosis.

C4/5: Mild disc bulge and facet hypertrophy. No stenosis.

C5/6: Moderate disc-osteophyte complex extends biforaminally. Moderate uncovertebral and facet hypertrophy. Moderate exit crowding of C6s bordering on severe. Mild central narrowing.

C6/7: Disc-osteophyte complex extends biforaminally. Uncovertebral and facet hypertrophy are mild. Mild exit narrowing. There may be slight contact exiting C7s.

C7/T1: Mild disc bulge and facet hypertrophy. No stenosis.

IMPRESSION:

1. Midcervical spondylosis most impressive at C5/6 where prominent uncovertebral hypertrophy causes moderate exit stenosis bordering on severe. Correlation for C6 radiculopathies might be helpful. Lesser findings discussed above.
2. Lower cervical interspinous ligament edema is mild and may represent ligamentous strain or sprain.

Troy Marlow, M.D.
TM / hc

DD: 11/10/2011 / DT: 11/10/2011
JOB: 13940324



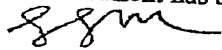
Page 1 of 2

Patient Name: Rose, Samuel

MRN: 806624

EXAM: CERVICAL MRI WITHOUT CONTRAST

This document has been electronically reviewed and signed.

A handwritten signature in black ink, appearing to be 'sgm', is written below the text 'This document has been electronically reviewed and signed.'

Wildstein Spine Center, P.A.
418 Folly Rd.
Suite C
Charleston, SC 29412
Phone 843.406.2771 Fax 843.406.2789

ROSE, SAMUEL (DOB: 8/23/1970 ID: 3790) Nov 23, 2011 Wed 11:08 AM
CC Neck & Knee pain MVA

HPI DOI: 8.11.11

Seen at the request of Richard Kellett, M.D. for evaluation of his neck and knee pain since being involved in a rear-end MVC in which he was the restrained driver of the truck that was rear-ended at a speed of 45 MPH. He was taken to MUSC where he was admitted for 2 days for neck, back and knee pain. Since then, he has had headaches that won't go away, pain in the neck that is in the back and sides without paresthesias, low back pain that is in the middle and lower part and is sharp and worse with movement and improved by sleeping. His R knee is painful when he walks and he states it feels like the knee is twisted. He has associated swelling of the right knee at times. He denies locking or popping of the knee. He currently uses a cane for ambulation, but he does so in the incorrect hand for a right knee injury. His pain is a 10/10 in all areas and he has not been able to work since the accident. He has been treated with LESI's x 3 and a back brace for the LBP, as well as cortisone injections into the back of his head and a radiofrequency ablation to the back of his head as well. Nothing has helped his pain at all and he states that his pain is sometimes better, sometimes worse than when the accident first occurred.

ROS Detailed review of systems, past medical, social, and family histories, medications and drug allergies can be found on the patient intake form and were scanned into the electronic chart and reviewed by me today.

PMH denies

SH [Tobacco: Never smoker]

Meds Fioricet oral tablet
Ibuprofen 400 mg oral tablet
Lortab 5/500 oral tablet
Neurontin 300 mg oral capsule

Vitals Wt: 210 lb Ht: 74 in BMI: 27.0

PE GENERAL: WNLWD NAD. ambulates w/ right-sided antalgia and a cane in the right hand
HEENT: NC/AT, PERRLA, oral mucosa pink and moist, no CLAD, trachea midline and without goiter
LUNGS: CTA bilaterally
HEART: RRR S1 S2 without murmurs, thrills, rubs
ABDOMEN: Soft, Non-tender, non-distended Normo-active bowel sounds,
SKIN: good turgor, no lesions, rashes or nodules BUE's, BLE's and trunk

MSK: BUE's with FROM shoulders, elbows, wrists w/o decrement. negative apprehension test
Stable throughout ROM and to w/v stresses. NTTP over Bilat clavicles, elbows, wrists.+
trapezius spasm present bilaterally. Strength 5/5 B delts/Bi/Tri/WE/WF/intrinsics/grip. R knee
with mild TTP over medial femoral condyle. No effusion, no joint line TTP. neg lachman's at
30 degrees flexion. neg mcmurray's.
SPINE: TTP over cervical and lumbar spine posteriorly. decreased ROM of neck in ext and

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The information on this page is confidential.
Any release of this information requires the written authorization of the patient listed above.

ROSE, SAMUEL (DOB: 8/23/1970; ID: 3790) Nov 23, 2011 Wed 11:08 AM

left rotation secondary to pain. L spine with FROM without decrement. there is no lumbar paraspinal spasm present. no palpable lumbar stepoff. no palpable stepoff. Saggital alignment overall good. Shoulders level
Neuro/Psych: DTR's intact and symmetric BUE's bi/tri/BR 2+ and symmetric. no long tract signs, SLTI BUE's median, radial and ulnar nerve distributions. Spurlings and Phemite's negative. No hoffman's sign, no ulnar escape. No difficulty with rapid, alternating movements. negative SLR bilaterally, Tandem walks w/o difficulty. babinski negative, no clonus. Alert and oriented to person, time and event. Affect appropriate for condition

VASCULAR: Bilateral upper extremities with 2+ radial, 2+ ulnar pulses with good capillary refill present

IMAGING: MRI of the C spine obtained at Tricounty 11/9/11 and MRI of the right knee from 8/23/11 done at MUSC and reviewed by me today shows C5-6 cervical spinal stenosis and spondylosis causing bilateral C6 foraminal stenosis. There is also evidence of an interspinous ligamentous injury with high signal at the lower cervical levels. Knee MRI from 8/23/11 demonstrated an impaction fracture of the medial femoral condyle on the right with marrow edema present and tricompartmental changes consistent with osteoarthritis.

A/P

CERVICALGIA (723.1):

LUMBAGO (724.2):

FRACTURE OF LOWER END OF FEMUR UNSPECIFIED PART CLOSED (821.20):

I would like to see imaging of the L spine as well of the right knee to see how the Impaction fracture is healing. Additionally, I do not see where he has had any workup of his LBP so plain films of this are needed as well. I would further like to get copies of the MUSC records and Dr. Kellef's notes to find out what exactly has been done to date and the diagnoses he has been given to date. I do not think that he is currently a reasonable surgical candidate as most of his complaints are rather nonspecific and are out of proportion to his physical exam findings. I will see him back once I have had a chance to review these records and get imaging.

ORDERED/ADVISED: - AP/Lat of Lumbar spine ICD9 Codes (723.1, 821.20, 724.2)

- Standing AP/Lat/sunrise and notch views of the right knee ICD9 Codes (723.1, 821.20, 724.2)

- Custom Order (Please get copies of Dr. Kellef's notes on Mr. Rose- what procedures he has had done and for the office visits he has had with him.) ICD9 Codes (723.1, 821.20, 724.2)

- FUJ 3 weeks ICD9 Codes (723.1, 821.20, 724.2)

Coded: 99245

Michael Wildstein, MD

Electronic Signature

Wildstein Spine Center, P.A.
418 Folly Rd.
Suite C
Charleston, SC 29412
Phone 843.406.2771 Fax 843.406.2789

ROSE, SAMUEL (DOB: 8/23/1970 ID: 3790)

Dec 14, 2011 Wed 09:13 AM

CC 3 WK FU

HPI DOT: 8.11.11
Referring: Richard Kelleff M.D.

He returns for -up for evaluation of his low back, neck and knee pain. He has had his L spine and knee imaging and he still complains mostly of neck, periscapular, and headache pains. His cervical MRI showed some severe bilateral C6 foraminal stenosis and broad based disc bulge along with disc desiccation at C5-7.

ROS Patient denies any fever, chills. He is complaining of some dizziness and continued headaches posteriorly in the occipital region.

PMH denies

SH [Tobacco: Never smoker]

Meds Fioricet oral tablet
ibuprofen 400 mg oral tablet
Lortab 5/500 oral tablet
Neurontin 300 mg oral capsule

Vitals Wt: 210 lb Ht: 74 in RR: 13 BMI: 27.0

PE GENERAL: WNL NAD. ambulates w/ right-sided antalgia and a cane in the right hand
HEENT: NC/AT, PERRLA, oral mucosa pink and moist, no CLAD, trachea midline and without goiter
LUNGS: CTA bilaterally
HEART: RRR S1 S2 without murmurs, thrills, rubs
ABDOMEN: Soft, Non-tender, non-distended Normo-active bowel sounds,
SKIN: good turgor, no lesions, rashes or nodules BUE's, BLE's and trunk

MSK: BUE's with FROM shoulders, elbows, wrists w/o decrement. negative apprehension test. Stable throughout ROM and to v/v stresses. NTTP over Bilat clavicles, elbows, wrists. + trapezius spasm present bilaterally. Strength 5/5 B delts/Bi/Tri/WE/WF/intrinsics/grip. R knee with mild TTP over medial femoral condyle. No effusion, no joint line TTP. neg Lachman's at 30 degrees flexion. neg McMurray's.
SPINE: TTP over cervical and lumbar spine posteriorly. decreased ROM of neck in ext and left rotation secondary to pain. L spine with brace in place. Sagittal alignment overall good. Shoulders level. + cervical paraspinal spasm present.
Neuro/Psych: DTR's intact and symmetric BUE's bi/tri/BR 2+ and symmetric. no long tract signs. SLT1 BUE's median, radial and ulnar nerve distributions. Spurling's and Lhermitte's negative. No Hoffman's sign, no ulnar escape. No difficulty with rapid, alternating movements. negative SLR bilaterally. Tandem walks w/o difficulty. Babinski negative, no clonus. Alert and oriented to person, time and event. Affect appropriate for condition

IMAGING: AP/Lat of the L spine and AP/Lat of the R knee ordered from Tricounty on 11.30.11 and reviewed by me today shows no obvious fractures or listhesis. The medial femoral

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Page 1 of 2

The information on this page is confidential.
Any release of this information requires the written authorization of the patient listed above.

ROSE, SAMUEL (DOB: 8/23/1970 ID: 3790)

Dec 14, 2011 Wed 09:13 AM

condyle appears to be intact and healing well, the L spine shows some L5-S1 facet arthrosis with good preservation of disc height.

A/P

CERVICALGIA (723.1);

LUMBAGO (724.2);

FRACTURE OF LOWER END OF FEMUR UNSPECIFIED PART CLOSED (821.20);

symptoms Given his complaints and imaging studies, I do not feel that surgery would be beneficial for his back or knee currently. Discussing with him further his periscapular pain and neck, I feel that he could potentially benefit from a one level C5-6 ACDF which I feel would reliably take care of the periscapular pain and neck pain. I do not know that it would help relieve his headaches, though.

Coded: 99214

Michael Wildstein, MD

Electronic Signature

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Rose, Samuel
DOB: 8/23/1970
MRN: 806624
PATIENT PHONE: 843-437-4012
PHYSICIAN: Michael Wildstein, MD
DATE: 11/30/2011

EXAM: X-RAY OF THE LUMBAR SPINE, TWO VIEWS

HISTORY: Lumbago: 821.2, closed fracture of unspecified part in lower end of femur.

TECHNIQUE: Two views of the lumbar spine.

COMPARISON STUDIES: None.

FINDINGS: Five, lumbar shaped, non-rib bearing vertebral bodies in the lumbar spine. Mild facet arthropathy most pronounced L3-4 through L5-S1. Mild degenerative changes of the sacroiliac joints. Minimal intervertebral joint space narrowing most pronounced L2-3 and L5-S1. The pedicles appear well-maintained. The remaining bones and soft tissues are unremarkable. The hips and pelvis are not included in the field of view.

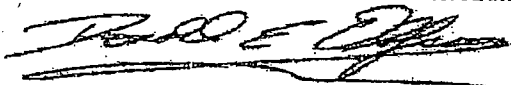
IMPRESSION:

1. Mild degenerative disc disease and facet arthropathy of the lumbar spine. No acute fracture line seen.
2. Mild degenerative changes of the sacroiliac joints.

Donald E. Olofsson, DO
DO / cm

DD: 11/30/2011 / DT: 11/30/2011
JOB: 14062385

This document has been reviewed and electronically signed by



Page 1 of 1

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Rose, Samuel
DOB: 8/23/1970
MRN: 806624
PATIENT PHONE: 843-437-4012
PHYSICIAN: Michael Wildstein, MD
DATE: 11/30/2011

EXAM: X-RAY RIGHT KNEE FOUR VIEWS

HISTORY: Closed fracture of unspecified part of lower end of femur.

TECHNIQUE: Four views of the right knee.

COMPARISON: None.

FINDINGS: Soft tissue swelling anterior to the knee. Fragmentation of the tibial tuberosity and multiple ossicles suggesting prior Osgood-Schlatter's. The soft tissue swelling may represent contusion or reactivation of the Osgood-Schlatter's. No acute fracture line seen. Mild soft tissue swelling about the medial aspect of the knee. The remaining bones and soft tissues are unremarkable.

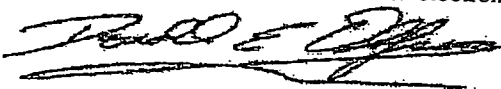
IMPRESSION:

1. Mild soft tissue swelling anterior to the knee and anterior to the tibial tuberosity. There is also soft tissue swelling medially about the knee.
2. Fragmentation of the tibial tuberosity suggesting prior Osgood-Schlatter's. The local soft tissue swelling about the tibial tuberosity may represent a recent contusion or reactivation of the Osgood-Schlatter's.

Donald E. Olofsson, DO
DO / lb

DD: 11/30/2011 / DT: 11/30/2011
JOB: 14062598

This document has been reviewed and electronically signed by



Page 1 of 1

SOUTHEASTERN SPINE INSTITUTE

ROSE, SAMUEL

Patient #600980

DOB: 8/23/1970

July 15, 2013

Independent medical evaluation

Mr. Rose is seen for the purposes of an independent medical evaluation.

This man has a history of a job-related injury and motor vehicle accident dating to 2011. It is a fairly well-documented accident where he was rear-ended at moderately high speed by another tractor trailer while driving a tractor trailer. Apparently the effect of the accident was, per the patient, for his truck to jackknife; and then he had to be pulled out of the car. He had severe pain into his knee, pain into his back, into his neck. He has had multiple injections in the cervical and lumbar spine. He was seen by Dr. Wildstein. He has been potentially recommended for surgical intervention. He has seen Dr. Jones who is a physical medicine and rehabilitation doctor who did not recommend surgery. He was recommended per Dr. Jones to return to work without restrictions.

On exam he has limited motion in his neck and back. He has positive Spurling's test with rotation of his neck to the right. He has positive straight leg raising on the right. He has tenderness in and around his right knee on the right. He has pain with extension and forward flexion of his spine. There are no long tract signs.

His MRI scan of the cervical spine shows him to have two-level disc herniations at C5-6 and C6-7. There is disc material that's herniated causing compression of the C6 roots bilaterally. At the C6-7 level there is degeneration with exit stenosis. He has not to my interpretation had any type of MRI scanning of his lumbar spine. There is a report of an MRI interpretation per Dr. Wildstein where Dr. Wildstein feels that he has an impaction fracture of his medial femoral condyle.

Diagnoses:

1. Cervical disc herniation with cervical spondylosis and cervical radiculopathy.
2. Low back pain of indeterminate etiology.
3. History of right knee contusion/impaction fracture.

Comment: First with regards to this man's knee, he has gotten an opinion from his chiropractor and from Dr. Jones who is a physical medicine and rehabilitation doctor that there is nothing to be done for his knee. The only orthopedic doctor that I can see having evaluated him is Dr. Wildstein, and the MRI interpretation per him is that of an impaction fracture of his medial femoral condyle. He obviously has some significant pain in and around his knee. He requires evaluation by a knee specialist. I suspect that he may require additional MRI scanning of his knee and perhaps even knee surgery.

(Continued)

SOUTHEASTERN SPINE INSTITUTE

ROSE, SAMUEL

Patient #600980

DOB: 8/23/1970

July 15, 2013

Page 2

With regards to his cervical spine, he has pain into his neck, two-level disc disease; and he has gotten an opinion again from Dr. Jones that "It is my opinion that this patient would likely not benefit from a single-level fusion at C5-6" and an opinion from Dr. Wildstein that surgery could reasonably be expected to decrease his disability.

I do agree with Dr. Wildstein that surgical intervention is indicated. This man has two-level disc disease. He does have pain radiating into his arm. That is consistent with cervical radiculopathy. Without belaboring the point, a non-surgical recommendation from a non-surgeon doesn't really mean all that much to me. Although surgery may not be a magic wand answer, it is clearly indicated and clearly related to his pain. With regards to his lumbar spine, he has not had an MRI scan. He has had an interpretation by Dr. Jones in his independent medical evaluation that he "has multilevel degenerative disc lesions and facet arthropathy L2-3 through L5-S1 levels with chronic bilateral sacroiliitis and preexistent SI joint arthritis". The details of that make me wonder if he has, in fact, had a scan; but everything that I've seen in the medical records would indicate that he has not.

This man has a potential surgical lesion in his neck, requires further MRI imaging of his lumbar spine, and should be evaluated by an orthopedic surgeon for his ongoing problems with his knee. His current impairment is 13 percent to the cervical spine with an additional 5 percent to his lumbar spine, and I would leave any impairment up to Dr. Wildstein or the orthopedist with regards to his knee. He is on off-duty status pending recommendations as mentioned.

I have seen this gentleman for the purpose of an independent medical evaluation and hold my opinions true, most probable, to a reasonable degree of medical certainty.

Steven C. Poletti, M.D.

SCP/dmp
T- 7/16/13

CC: Joseph B. Fisher, Esquire

ORIGINAL

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				Page # 1		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010)				# Of Units 02		Amended - Attach Copy of Original Report Corrected		Notified 0 3 4 2		Arrived 0 3 4 9															
Date 08-10-2011		Time of Collision 0 3 4 0		County 10		Collision Location (Rt. # / Name) E 26 / I 26				Main 2-Alternate 5-Spur		6-Connection 7-Business		Miles: N E S W		Dir. N E S W		Near City or Town of: NORTH CHARLESTON													
Lane # / Dir. 3 / 10 S W		Distance Offset .16		Direction N E S W		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Base Intersection (Rt. # / Name) F 75 / ASHLEY PHOSPHATE RD				Main 2-Alternate 5-Spur		6-Connection 7-Business		GPS COORDINATES 00 00' 00.00"													
R.R. Id.		From N E 1- Entrance S W 2- Exit		Ramp Only N E 2- US Primary S W 3- SC Primary		To N E 2- US Primary S W 3- SC Primary		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Second Intersection (Rt. # / Name) W 52 / US 52 CONN				Main 2-Alternate 5-Spur		6-Connection 7-Business		Latitude 32 56 12.53											
Longitude 80 02 55.45																															
E-079899 Driver/Pedestrian's Full Name ROSE SAMUEL A										E-079900 Driver/Pedestrian's Full Name CLARK ROBBIE																					
Unit # 01		Sex M		Race B		Street/R.F.D. 17 ASHTON ST				Unit # 02		Sex M		Race B		Street/R.F.D. 113 WYATT LN															
# Occ 1		Birth Date 08-23-1970		City, State, & Zip CHARLESTON SC 29403				# Occ 1		Birth Date 09-12-1962		City, State, & Zip SUMMERVILLE SC 29485																			
State SC		Driver's License # 008776497				Class A		Insurance Company TOWER INS CO				State SC		Driver's License # 008823561				Class A		Insurance Company TOWER INS CO											
Year 1995		Body TR		Vehicle Make INTL		VIN # 1HSHGALR3536SH684				Year 1999		Body TR		Vehicle Make INTL		VIN # 2HSFRAER8XC068828															
State SC		Year 2011		License Plate # PS91257		Owner's D.L. #				State SC		Year 2012		License Plate # P434865		Owner's D.L. #															
Home Telephone (843) 5773988		Owner's Full Name JJS TRUCKING LLC				Home Telephone ()		Owner's Full Name CHRIS THOMPSON SERVICES LLC				Bus. Telephone ()		Street/R.F.D. 106 NEW HOPE DR																	
Contributed To Collision Yes		City, State, & Zip CHARLESTON SC 29403				Contributed To Collision Yes		City, State, & Zip SUMMERVILLE SC 29483				C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No		Summons #		Code		Summons #		Code		Towed ELITE		Yes No			
Estimated Speed 50		Speed Limit 60		C.D.L. Req: Yes No				T/B S Req: Yes No		Alc/Drg Info (see back): Yes No		Summons #		Code		Summons #		Code		Towed ELITE		Yes No									
Driver/Pedestrian's Full Name										State Year License Plate # Owner's D.L. #																					
Unit # # Occ		Sex		Race		Street/R.F.D.				Home Telephone ()		Owner's Full Name																			
Birth Date		City, State, & Zip				Bus. Telephone ()		Street/R.F.D.																							
State		Driver's License #				Class		Insurance Company				Contributed To Collision Yes No		City, State, & Zip																	
Year		Body		Vehicle Make		VIN #				Estimated Speed 60		Speed Limit		C.D.L. Req: Yes No		T/B S Req: Yes No		Alc/Drg Info (see back): Yes No		Summons #		Code		Summons #		Code		Towed ELITE		Yes No	
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Address City										Address City																					
State Zip Phone										State Zip Phone																					
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(X) N																															
UNIT 1 AND UNIT 2 WERE TRAVELING EAST ON I-26. UNIT 1 WAS SLOWING DOWN FOR CONSTRUCTION ZONE AHEAD. UNIT 2, DRIVING TOO FAST FOR CONDITIONS, STRUCK THE REAR OF UNIT 1. UNIT 1 WAS THEN PUSHED INTO THE CONCRETE MEDIAN WALL.																															
MEDIAN BARRIER																															
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																															
Investigating Officer's Name				Rank		Badge #		Jurisdiction Code		Review Date		Reviewer's Name				Rank		Internal Agency Code													
WILLSON DA				1001		T 7 7 5		H P O 6										11C H06R4R1													

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03-Downhill Runaway			07-Jackknife		22-Motor Veh. (In Transport)		49-Fence																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
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SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)		Amended-Attach Copy of Original Report	Corrected Report
			Page <u>1</u> of <u>2</u> Pages			
Date 08-10-2011	Time 0340	County 10	Route Category 1- Interstate 2-US Primary 3-SC Primary	4-Secondary 5-County 6-PP	Accident Location (Route Number and Name if Any) ON 26 / I 26	Auxiliary 0-Mainline 6-Connection 2-Alternate 7-Business 5-Spur 9-Other
IF THIS CRASH INCLUDES:					Access Control	
<u>Any</u> truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways, OR <u>Any</u> motor vehicle with seating to transport nine (9) or more people, including the driver OR <u>Any</u> motor vehicle (regardless of weight) displaying a hazardous materials placard;					1- No Access Control 2- Full Access Control 3- Partial Access Control 2	
					Vehicle Information	
					Gross Vehicle Weight Rating/ Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 99- Unknown/ Hit and Run 03	
					Vehicle Configuration	
					00- Passenger Car (only w/ HAZMAT placard) 01- Light Truck (only w/ HAZMAT placard) 02- Bus (seats for 9-15 people) 03- Bus (seats for 16 + people) 04- Single Unit Truck (2axles/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck-Tractor Only (Bobtail) 08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 98- Other/Unable to Classify 99- Unknown/ Hit and Run 08	
					Bus Use	
					01- Not used as a bus 02- School 03- Transit/Commuter/Sch service 04- Intercity 05- Charter/Tour 06- Shuttle/Church 07- Unknown 01	
AND RESULTS IN:					Cargo Body Type	
<u>Any</u> fatality or fatalities OR <u>Any</u> person(s) transported for immediate medical services OR Number of Vehicles Towed <u>Any</u> disabled motor vehicle(s) towed away from the scene					00- Bus (seats for 9-15 people) 01- Bus (seats for 16+ people) 02- Enclosed Box 03- Cargo Tank 04- Flat Bed 05- Dump 06- Concrete Mixer 07- Auto Transporter 08- Garbage/Refuse 09- Grain, Chips, Gravel 10- Pole 11- Intermodal Container 12- Log 13- Veh. Towing Vehicle 97- N/A 98- Other 99- Unknown/Hit & Run 09	
					Trailer Length and Width	
					Length 00- No Trailer 01- Less than 480 in. (40 ft.) 02- 481 in. - 576 in. (48 ft.) 03- 577 in. or more 99- Unknown/ Hit and Run Width 00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 84 in. (7 ft.) 03- 85 in. or more 99- Unknown/ Hit and Run	
Complete This Form Only If:						
One or More Qualifying Vehicle(s) was Involved - AND						
One or More Qualifying Injuries/Fatalities was Sustained - OR						
One or More Disabled Vehicle(s) was Towed Away From the Scene						
Total Number of Supplemental Forms Required for this Collision:					2	
Unit Number 01 FR-10 Number E-079899 Carrier Information Name: JJS TRUCKING LLC Address: 137 GORDON ST City: CHARLESTON State: S C Zip: 2 9 4 0 3 Business Phone Number: 8 4 3 5 7 7 3 9 8 8 Identification Numbers U.S. DOT 1 3 9 0 3 7 4 None = 0 0 State Number 5 8 5 2 5 8 S C Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate Carrier? Was a Citation Issued to this Vehicle?						
Hazardous Material Involvement						
Was This Vehicle Carrying Hazardous Materials? 1- Yes 2- No 3- Unknown/Hit and Run 2 Did the Vehicle Have a Hazardous Material Placard? 1- Yes 2- No 3- Unknown/Hit and Run 2 If "Yes", What Class of Hazardous Material (off placard/shipping papers)? 01- Class 1 (Explosives) 06- Class 6 (Poison/Infectious Substance) 02- Class 2 (Gases) 07- Class 7 (Radioactive) 03- Class 3 (Flammable Liquids) 08- Class 8 (Corrosives) 04- Class 4 (Flammable Solids) 09- Class 9 (Misc. Goods) 05- Class 5 (Oxidizing Substance) 10- No Placard 99- Other/Unknown/Hit and Run If "YES", enter 4 digit HAZMAT ID (look on placard/shipping papers) 0 0 0 0 Did Hazardous Material Release from this Vehicle? 1- Yes 2- No 3- Unknown/Hit and Run 1 Name of Agency Notified (In Case of Release): DHEC						
Investigator's Name WILSON - D-A Rank LCPL Date 08-10-2011 Reviewer's Name WILSON - D-A Rank LCPL						

ORIGINAL

SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)			Amended-Attach Copy of Original Report	Corrected Report				
Date 08-10-2011		Time 0340		County 10		Route Category 1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-PP		Accident Location (Route Number and Name if Any) DN 26 / I 26		Auxiliary 0-Mainline 2-Alternate 5-Spur 6-Connection 7-Business 9-Other	
Page 2 of 2 Pages											
IF THIS CRASH INCLUDES:											
Any truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways, OR Any motor vehicle with seating to transport nine (9) or more people, including the driver OR Any motor vehicle (regardless of weight) displaying a hazardous materials placard;						Access Control 1- No Access Control 2- Full Access Control 3- Partial Access Control 2					
						Vehicle Information Gross Vehicle Weight Rating/ Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 99- Unknown/ Hit and Run 03					
						Vehicle Configuration 00- Passenger Car (only w/ HAZMAT placard) 01- Light Truck (only w/ HAZMAT placard) 02- Bus (seats for 9-15 people) 03- Bus (seats for 16+ people) 04- Single Unit Truck (2axles/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck-Tractor Only (Bobtail) 08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 98- Other/Unable to Classify 99- Unknown/ Hit and Run 08					
						Bus Use 01- Not used as a bus 02- School 03- Transit/Commuter/Sch service 04- Intercity 05- Charter/Tour 06- Shuttle/Church 07- Unknown 01					
AND RESULTS IN:											
Any fatality or fatalities						How Many? 2					
Any person(s) transported for immediate medical services						How Many? 2					
Number of Vehicles Towed						How Many? 2					
Any disabled motor vehicle(s) towed away from the scene						How Many? 2					
Complete This Form Only If:											
One or More Qualifying Vehicle(s) was Involved - AND											
One or More Qualifying Injuries/Fatalities was Sustained - OR											
One or More Disabled Vehicle(s) was Towed Away From the Scene											
Total Number of Supplemental Forms Required for this Collision						2					
Unit Number 02 FR-10 Number E-079900											
Carrier Information											
Name: CHRIS THOMPSON SERVICES											
Address: 106 NEW HOPE											
City: SUMMERVILLE State: SC Zip: 29483											
Business Phone Number: 843 296 9600											
Identification Numbers											
U.S. DOT None = 0 0											
State Number SC (3) Not in Commerce - Other Truck/Bus (4) Not in Commerce - Government (5) Other Operation/Not Specified Carrier? 5											
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate Carrier? 3											
Was a Citation Issued to this Vehicle? 1- Yes 2- No 3- Pending 3											
Investigator's Name Rank Date WILSON - D A LCPL											
Hazardous Material Involvement											
Was This Vehicle Carrying Hazardous Materials? 1- Yes 2- No 3- Unknown/Hit and Run 2											
Did the Vehicle Have a Hazardous Material Placard? 1- Yes 2- No 3- Unknown/Hit and Run 2											
If "Yes", What Class of Hazardous Material (off placard/shipping papers)? 01- Class 1 (Explosives) 06- Class 6 (Poison/Infectious Substance) 02- Class 2 (Gases) 07- Class 7 (Radioactive) 03- Class 3 (Flammable Liquids) 08- Class 8 (Corrosives) 04- Class 4 (Flammable Solids) 09- Class 9 (Misc. Goods) 05- Class 5 (Oxidizing Substance) 10- No Placard 99- Other/Unknown/Hit and Run If "YES", enter 4 digit HAZMAT ID (look on placard/shipping papers)											
Did Hazardous Material Release from this Vehicle? 1- Yes 2- No 3- Unknown/Hit and Run 1											
Name of Agency Notified (In Case of Release): DHEC											
Reviewer's Name Rank											

conclusively determined that "JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance."

The Claimant has now received all necessary and causally-related medical care and treatment and has been placed at maximum medical improvement by Dr. Gregory M. Jones as of March 20, 2013, with impairment ratings of 5% of the cervicothoracic spine and 5% of the lumbar spine and "no specific restrictions regarding vocational and/or avocational pursuits."

5. Legal issues involved:

Defendants Chris Thompson Services, LLC, and Bridgefield Casualty seek to transfer liability for continuing compensation to the Uninsured Employers Fund pursuant to S.C. Code Ann. § 42-1-415, in addition to reimbursement for all benefits paid to date. Defendants seek to terminate temporary total disability compensation based upon a finding of maximum medical improvement pursuant to S.C. Code Ann. § 42-9-260, with a credit for all benefits paid after March 20, 2013. Defendants also seek a determination of the Claimant's entitlement to benefits for loss of use of the back related to the August 10, 2011 accident, commensurate with the impairment ratings in the record, pursuant to S.C. Code Ann. § 42-9-30(21).

6. Unusual aspects: None known or anticipated.

7. Witnesses (designate if expert*): Chris Thompson; Sedrick Smalls

8. Exhibits: See attached Notice of Submissions; Depositions of Claimant and Sedrick Smalls, WCC File

9. Medical evidence: See attached Notice of Submissions

10. Name, address, and specialty, if any, of the treating physician:

Dr. Gregory M. Jones, Charleston Spine and Physical Medicine

11. Impairment rating(s); body part(s); physician and date of opinion:

5% cervicothoracic file; 5% lumbar spine per Dr. Jones on April 16, 2013

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

☐ **Mediation *** Note that the hearing in this case was scheduled prior to the effective date of the mediation regulation.******

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: Joseph B. Fisher, Esq. PO Box 63506, North Charleston, SC 29419; Benjamin W. Akery, Esq., P.O. Box 1028, Goose Creek, SC 29445; Amy V. Cofield, Esq., The Cofield Law Firm, 809 South Lake Drive, Lexington, SC 29072; and Sedrick Smalls, JJS Trucking, LLC, 765 McDaniel Town Road, Ridgeville, SC 29472 on the 9th of September, 2013

by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Kristen L. Barr

Email: kbarr@trask-howell.com

Date of hearing: September 23, 2013

Time needed for hearing: One hour

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

- * Commissioners reserve the right to admit expert witnesses at hearings.
- * Commissioners reserve the right to admit expert witnesses at hearings.



**Charleston Spine &
Physical Medicine, PA**

Gregory M. Jones, M.D.
2093 Henry Tecklenburg Drive, Suite 310
Charleston, SC 29414

Office (843) 402-0111
FAX (843) 402-9010
Toll Free (800) 393-7008

ROSE, Samuel #9807

March 20, 2013

CHIEF COMPLAINT: Multifocal generalized pain.

HISTORY OF PRESENT ILLNESS: Patient is a 42 year old male who presents with multiple complaints of pain which he states began in neck, back, and right knee on 8/14/11 when he was involved in collision when his tractor-trailer was hit by another tractor-trailer truck. He states that he experienced initial neck pain and low back pain as well as right knee pain after MVA, which involved explosion, prior to and during which patient was physically "thrown" over guard rail to get him away from fire.

Patient states that he was told that he suffered a right knee fracture, not only by Dr. Abel, his primary physician, but also by Dr. Kelleff and an orthopedist at MUSC, although imaging 8/10/11 immediately post injury showed soft tissue swelling right knee anterior to tibial tuberosity and medially about knee joint with some fragmentation of tibial tuberosity consistent with contusion and/or reactivation of old preexistent Osgood-Schlatter's disease, with no acute fracture line identified. As for cervical symptoms, patient underwent extensive subsequent treatment, as he did for lumbar symptoms, all to no avail.

Patient states that he now experiences chronic neck and right predominant shoulder pain, average 6/10 to 8/10 severity, with similar pain of aching/throbbing and occasional stabbing nature across low back. Patient describes chronic aching pain right medial and lateral as well as anterior knee, where he states he believes his knee hit steering column while braking with right leg. Patient relates that his knee has intermittently "given out" on several occasions since MVA in August and November 2012, and he has developed chronic "cracking and creaking" with motion right knee, average pain 4/10 to 6/10 with flaring up to 8/10 on prolonged weight bearing or excessive walking. Patient experiences two to three flares weekly on average, usually lasting anywhere from two hours to remainder of day, dependent on activities including walking.

As for lumbar symptoms, patient notes that pain generally 6/10 on average, flaring up to 10/10 even now, in spite of previously undergoing three epidural blocks in low back with no change or improvement in symptomatology, accomplished in September, October, and November of 2011 by Dr. Kelleff. Patient relates no sciatica complaints either lower limb, but back and bilateral upper buttock pain persistent since injury 8/10/11. Patient states that low back pain "flares every day," typical duration "couple of hours" for flaring, and usually "moving around or getting off feet" tends to reduce symptoms, as does activities like walking. Prolonged sitting, lying supine, or side-lying all tend to increase back symptoms. He has recently continued using four-point cane for ambulation assist, states that this seems to "take pressure off back" and "seems to help some" in regard to back pain. He states that he has gone through physical therapy as recommended previously by Dr. Wildstein and other physicians in 2011, no benefit achieved with therapy.

For cervical symptoms, patient has also undergone multiple treatments to include epidural injection and trial right-sided cervical facet injection C3-4 level. Although neither of these procedures by Dr. Richard Kelleff helped neck symptoms or arm complaints for any length of time, patient did note decrease in neck pain from 9/10 down to 6/10 for several weeks after 9/5/11 initial epidural, but also apparently similar response after single right-sided cervical facet block C3-4 level, both accomplished by Dr. Kelleff. Block lasted for more than one to two weeks in regard to the estimated 25-30% improvement in neck and shoulder symptoms, and symptoms were largely recurrent and back to baseline/pre-block level within 10 to 14 days after each block procedure. Patient had already developed what he describes as right upper limb numbness and tingling primarily involving right deltoid and biceps region

ROSE, Samuel #9807

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March 20, 2013

HISTORY OF PRESENT ILLNESS (continued): with ROM deficits right shoulder subjectively, along with numbness and tingling and pins and needles sensation intermittently in all fingers of right hand. More recently, patient has occasionally experienced similar symptoms left upper limb. Patient was even considered for possible botulinum toxin injection for right shoulder and neck trigger points, but that was not accomplished by Dr. Kellett. He also discussed possibility of patient undergoing cervical facet radiofrequency ablation, but found patient did not tolerate even single level right-sided cervical facet block 10/11/11, and apparently this was not pursued due to lack of more significant or lasting benefit with the facet injection trial.

Patient states that all activities flare symptoms including prolonged sitting or standing, walking or driving, twisting or reaching, lying on back or stomach, coughing or sneezing, or bending neck and back backwards or forwards. Patient states that all medications have failed to help to any significant extent, including oral anti-inflammatories, Rivafl, and "pain spray" for fibromyalgia, and also notes that even Tylenol with codeine and other narcotic analgesics simply "take edge off" pain at best. Heating pad also used with at best temporary relief.

Patient was seen by Dr. Wildstein who suggested possible option of single level cervical fusion, but patient is concerned this would prove of little benefit as has all other treatments thus far.

PAST MEDICAL HISTORY: Significant for prior nephrolithiasis.

REVIEW OF SYSTEMS: Positive for hypertension, urinary system stones as indicated above, chronic alternating constipation and diarrhea, worsening over past year or more, chronic knee pain, and difficulty sleeping, otherwise noncontributory.

MEDICATIONS: Tylenol #3 and Easiv as well as ibuprofen all given for pain by Dr. Abel. Also uses topical pain spray for myofascial pain and Ben Gay lotion pm.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: Patient is single, no children, had worked only a few months at his current job for Chris Thompson Services since April 2011 when he was injured 8/10/11. States that he cannot return to work, feels that he is unable to drive truck while taking pain medications, and states that pain is too severe to allow him to drive. Patient feels that he is disabled due to chronic pain in various regions noted above. No tobacco or alcohol use. Previously participated in sports including football, basketball, and baseball.

FAMILY HISTORY: Noncontributory.

PHYSICAL EXAMINATION: Exam reveals a cooperative male, appears somewhat older than stated age, no acute distress, height 6'2", weight 220 pounds, no antalgia to gait, although patient does appear to affect at times a steppage gait on right, mildly antalgic, not consistently seen. No difficulty getting onto or off of exam table. Lower extremity exam reveals GPS positional monitoring device in place on right ankle. There is focal tenderness noted medial and lateral joint line at right knee as well as over anterior tibial region right knee, with mild crepitus noted both knees at extreme ranging of motion for extension and flexion, dorsalis pedis and tibialis posterior pulses adequate bilaterally, no pedal or ankle edema, but with focal patchy non-dermatomal sensory hyperesthesia to light touch noted anterior left thigh, medial right calf, and dorsal aspect left foot comparing side to side. Multifocal tender points and trigger points noted throughout hip girdle and gluteal regions bilaterally with most significant trigger points noted piriformis, gluteus maximus, gluteus medius, and gluteus minimus muscles as well as originating fibers quadratus lumborum muscles bilaterally. Multilevel lumbar multifidus tender points noted with tenderness also noted over essentially all lumbar facets to varying degrees bilaterally. No palpable step off lumbar spine, no CVA tenderness to percussion, no scapulohumeral motion deficits or scapular winging, no obvious scoliotic curvature. Marked tenderness noted over both SI joints and bilateral sciatic notches. Significant tenderness also noted over greater trochanteric anterior regions, with tenderness noted over tensor fascia latae tendon.

ROSE, Samuel #9807

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PHYSICAL EXAMINATION (continued): sheaths and hamstring tightness noted bilaterally, with quadriceps tightness noted worse on right than left. No definite focal myotomal weakness noted, other than slight give-way weakness noted 4-5 right quadriceps due to pain per patient. Although poor effort noted on manual muscle testing lower extremities throughout, no focal weakness identified with retesting with distraction as allowed. Straight leg raise nonprovocative bilaterally for radicular symptoms, sciatic stretch nonprovocative bilaterally, no ischial bursal tenderness.

Upper extremity exam reveals increased hypesthesia to light touch in non-dermatomal distribution throughout entire right upper limb all regions tested comparing side to side, and there is decreased strength noted right supraspinatus and right deltoid as well as right biceps muscles 4-/5, as patient complains of pain on any abduction of right shoulder. Patient also complains of concordant right greater than left shoulder girdle pain without radicular symptoms on foraminal compression test to right and to slightly lesser extent to left side, and on Spurling's test to each side. Neither of these latter tests cause radicular symptoms past shoulder however. Slight hypesthesia to light touch also noted finger tips and dorsal aspect all fingers and thumb left hand comparing distal to proximal. Multifocal trigger points noted throughout shoulder girdle and lateral neck muscles including supraspinatus, levator scapulae, upper and middle trapezi, rhomboid major and minor muscles, scalene muscles, and splenius capitis as well as splenius cervicis muscles bilaterally. There is tenderness over greater occipital nerve routes bilaterally. No palpable step off cervical spine, but multilevel cervical and upper thoracic facet tenderness noted along with palpable tender points and trigger points throughout cervical and upper and middle thoracic paraspinal/multifidus muscles to varying degrees bilaterally, essentially all levels palpated. No focal myotomal wasting noted either shoulder girdle or distal upper limb comparing side to side. Reflexes 1+ and symmetric triceps, biceps, and brachioradialis.

IMAGING: Multiple imaging studies reviewed. Refer to detailed reports for findings. No additional findings or interpretations noted by this examiner, agree with all written interpretations of these various studies as previously published.

- IMPRESSION:**
1. Chronic cervicothoracic and right greater than left shoulder girdle myofascial pain, with underlying multilevel cervical spondylosis and facet hypertrophy with C5-6 and C6-7 predominant; degenerative disc-osteophyte complexes/stenoses, symptomatic chronically since MVA work-related 8/10/11 with right upper limb dysesthesias and numbness.
 2. Chronic lumbosacral myofascial and/or facet-generated pain due to chronic lumbosacral strain injury sustained in work-related 8/10/11 MVC, with underlying preexistent multilevel degenerative disc lesions and facet arthropathy L2-3 through L5-S1 levels with chronic bilateral sacroiliitis and preexistent SI joint osteoarthritis.
 3. History of right knee contusion with transient history of intermittent swelling 8/P MVA 8/10/11, with preexistent Osgood-Schlatter's disease.

RECOMMENDATIONS/DISCUSSION: This patient has developed chronic primarily myofascial pain in cervicothoracic, right greater than left shoulder girdle, low back, and bilateral buttock regions relating to 8/10/11 MVA. Unfortunately, he had fairly severe underlying preexistent degenerative pathology in both cervical and lumbar spine present prior to MVA 8/10/11. This has likely contributed to chronicity of symptoms and lack of any significant response to prior extensive nonsurgical measures including various blocks, therapy, and medications. Please refer to narrative for answers and current opinions relating to specific questions posed in 3/12/13 Summit/Liberty Mutual accompanying letter for this IME.

This examination above carried out for purposes of IME only, and did not constitute forming doctor/patient relationship. No treatment was accomplished, and no medications prescribed. The nature of the IME, reasoning behind this interpretation, and importance of patient questionnaire explained to examinee. Examinee informed to notify examiner of any pain, discomfort, numbness, or other symptoms/physiology produced by any portion of exam or any maneuver accomplished during examination. If further information becomes available, such additional information may or may not change the opinion rendered in this examination. Opinions in this IME do not constitute recommendation for claims to be made.

Gregory M. Jones, M.D.

GMJ/bjl

ROSE, Samuel
#9807

CHARLESTON SPINE & PHYSICAL MEDICINE

April 16, 2013 Narrative

There has been a request to address various issues in relation to this patient's IME of 3/20/13 in letter 3/12/13 from Heritage Summit Healthcare.

1. Refer to IME of 3/20/13 for current diagnoses.
2. It is my opinion that this patient would likely not benefit significantly from single level fusion C5-6. He does not have any evidence of definitive cervical radiculopathy, as his weakness about right shoulder girdle appears to be entirely pain related, and there is no atrophy present. Although patient may require surgical intervention at some point in future for most probably C5-6 and C6-7 disc levels due to the degenerative disc-osteophyte complexes, uncovertebral and facet hypertrophic changes, and neural impingement at both levels, this surgery would be necessitated only if patient develops cervical radiculopathy consistent with MRI findings and neural impingement previously identified, and it would indeed be related to preexisting conditions in this patient. It appears that most of patient's symptoms currently relate to myofascial pain in cervicothoracic spine musculature and particularly right shoulder girdle musculature, and this is primary explanation for patient's failure to respond to prior cervical epidural block and even cervical facet block trial in this examiner's opinion. Dr. Abel and other physicians have diagnosed this patient with myofascial pain and/or fibromyalgia, and had already begun treatment directed toward management of this chronic condition.
3. It does not appear that any future treatment would be warranted to help this patient achieve higher level of functional status or lessen his disability. He is likely at maximum medical improvement. All treatments accomplished thus far have largely been failures, patient is still complaining of 8/10 and up to 10/10 level intensity in all affected regions in spite of extensive prior treatment.
4. Mr. Rose has likely received maximum medical improvement with respect to 8/10/11 injury as of 3/20/13 IME date.
5. It is my opinion that patient has likely suffered DRE Category II, 5% cervicothoracic spine impairment and DRE Category II, 5% lumbar spine impairment per *AMA Guides to the Evaluation of Permanent Impairment, 5th edition*, relating to injuries sustained 8/10/11. This takes into account at least the myofascial and/or facet-generated pain present cervicothoracic and lumbosacral spine, chronic sacroiliitis, and significant trigger points noted throughout neck, interscapular and right greater than left shoulder girdle regions as well as low back and buttock regions bilaterally.
6. Mr. Rose is capable of working without restrictions based on current neurologic assessment and current understanding of his underlying multilevel degenerative preexistent pathology cervicothoracic and lumbar spine regions. Based on responses, as stated previously, to prior therapeutic interventions (non-surgical), it does not appear that patient is suffering from significant discogenic/facet-generated pain in cervical or lumbar regions, and thus it is most likely that he has developed chronic myofascial pain in these regions. He could even be developing full-blown fibromyalgia, although this condition cannot be blamed on injury event 8/10/11, to a reasonable degree of medical certainty. Patient should be able to return to gainful employment at any job that he desires with no specific restrictions regarding vocational and/or avocational pursuits with relation to the myofascial injuries sustained 8/10/11 to these various regions. I see no need for continued use of max opio analgesics in this patient with primarily myofascial pain; in fact, these types of drugs are contraindicated in myofascial pain as they are notoriously ineffective (as seen in this patient). Patient might want to seek more appropriate treatment through rheumatologist or primary physician at some point in future for myofascial pain through his primary health insurance.

Gregory M. Jones, M.D.

GMI/MI



CERTIFICATE OF LIABILITY INSURANCE

 QP# 01
 J35280C

 DATE (MM/DD/YYYY)
 10/18/10

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AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☒ UM/UM 75,000	BAHDF0280410	10/02/10	10/02/11	COVERED SINGLE LIMIT (Per Occurrence) \$1,000,000 BODILY INJURY \$ BODILY INJURY \$ PROPERTY DAMAGE \$ AUTO ONLY - EXCEPT \$ OTHER THAN \$ AUTO ONLY \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
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WORKERS COMPENSATION AND EMPLOYERS LIABILITY ☒ ANY EMPLOYED PERSONS ☐ CONTRACTORS ☐ OTHER	BINDER	10/08/10	10/08/11	EL EACH OCCUR \$500,000 EL EMPLOYER \$500,000 EL EMPLOYER \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (SEE POLICY FOR DETAILS)

CERTIFICATE HOLDER CHRIS THOMPSON SERVICES, LLC BOX 688-3084 P.O. BOX 3377 SURGEVILLE SC 29484	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to mail 10 days written notice to the certificate holder named to the life, and failure to do so shall constitute a breach of contract and liability of any kind upon the insurer, its agents or representatives. AUTHORIZED REPRESENTATIVE DAVID W. HAYES
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Condensed Transcript

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1112328

Samuel A. Rose,
Employee, Claimant,

vs.

JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,

Employer:

and

Bridgefield Casualty Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SEDRICK SMALLS

November 14, 2011
11:00 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WC FILE NO. 1112014

Samuel A. Rose,
Employee, Claimant,
-vs-
JUS Trucking, LLC/PCRP and Chris
Thompson Services, LLC/Bridgefield
Casualty Insurance Company,
Employer.

Bridgefield Casualty Insurance Co.,
Carrier, Defendants.

The deposition of Sedrick Smalls,
taken before Paul Bearden, Court Reporter and Notary
Public, at the George Sink, P.A., 7011 Myers
Avenue, N. Charleston, South Carolina on November
15th, 2011, commencing at 11:00 a.m.

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EXHIBITS

14	Plaintiff's Exhibit Number One	8
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SEDRICK SMALLS

was sworn (affirmed) and testified as follows:

EXAMINATION BY MR. FISHER:

Q My name is Joe Fisher. I represent Samuel Rose with
the worker's compensation claim that we filed arising out of
an accident that occurred on August 10, 2011. I want to ask
you some questions about your relationship with my client, a
work relationship and your work relationship, business
relationship with a gentleman named Chris Thompson and his
company Chris Thompson Services, LLC, okay?

A Yes, sir.

Q Will you please state your name for the record?

A Sedrick Smalls.

Q Mr. Smalls, where do you live at?

A 187A Gordon Street, Charleston, South Carolina, 29403.

Q And are you familiar with the company called JUS
Trucking?

A Yes.

Q And how are you familiar with that company?

A I am the owner, president. I think that's it, the
president.

Q Are there any other owners, any other shareholders,
anything like that in JUS Trucking?

A No.

Q You're sole proprietor?



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1 A Yes. 2 Q Sole owner? 3 A Yes, President, yes. 4 Q And do you know a gentleman named Samuel Rose? 5 A Yes. 6 Q How do you know Mr. Rose? 7 A I employed him at JIS Trucking. 8 Q Do you remember when he went to work for you? 9 A I believe it was the fourth month. 10 Q I think he testified earlier he went to work for you in April of 2011. Would that be about right? 12 A Correct, correct. 13 Q Was he working for you in August of 2011? 14 A Yes. 15 Q And JIS Trucking, you guys subcontract work for Chris Thompson Services; is that correct? 16 A Correct. 17 Q And how long have you had a relationship to work with Chris Thompson Services? 18 A For over three plus years. 19 Q And what is that relationship? 20 A I'm a subcontractor, I'm - I pull loads for him. He provides a trailer, and I provide my insurance coverage to him, and he pays me by the ton to carry each load. 21 Q And where do these loads go to, and where do the loads	1 A Yes. 2 Q Take your time. 3 A Here we go. If you want to make a copy of that. 4 Q That would be great. 5 A That's the same thing I provided to the insurance company. 6 company. 7 (Where upon on off the record discussion took place.) 8 9 Q Sir, you provided us with what looks like a payroll log, is that what that is? What is that? And I'll show you a copy of it. 10 log, is that what that is? What is that? And I'll show you a copy of it. 11 a copy of it. 12 A Exactly. This is what we call a load sheet and for each ticket number you see represents a load. For each load that's turned in, that's how he gets paid his \$25. It just verifies what he done that particular week. 13 each ticket number you see represents a load. For each load that's turned in, that's how he gets paid his \$25. It just verifies what he done that particular week. 14 Q And for example on 77122011, if you'll take a look at that. 15 that. 16 A Correct. 17 Q Which is one, two, three, four, five, six, seven numbers; is that correct? One, two, three, four, five, six, seven numbers. 18 A Correct. 19 Q Does that mean he made seven loads that day? 20 A Correct. 21 Q And then on the 13th it shows one, two, three, four,
1 come from? 2 A They come from a lumber mill in Summerville, and then they go to a paper mill in Charleston, and the lumber mill is off of Highway 78 and they go to Virginia Avenue. 3 A They come from a lumber mill in Summerville, and then they go to a paper mill in Charleston, and the lumber mill is off of Highway 78 and they go to Virginia Avenue. 4 Q And that's your exclusive contract with him? 5 A Yes. 6 Q You don't have anything else anywhere other than this route from Summerville to the paper mill; is that right? 7 A Correct. 8 Q And let me see, my client had started working for you in April of 2011. Did you pay my client? 9 A Yes, I paid him. Yes. 10 Q And how did you pay him? 11 A I paid him as a subcontractor by the per load. For every load that he received, he got paid for each load. 12 Q And how much did he get paid per load? 13 A Twenty-five dollars per load. 14 Q And how many loads would you say he could make on average in a day? 15 A Focus - he would on average per day it was normally around five loads. Sometimes a little bit more, sometimes a little bit less, but on average for Mr. Samuel every week, he typically got 25 to 30 loads every week. I do have some documentation for that. 16 Q You do. Could I see what you have?	1 five numbers, so he made five loads that day; correct? 2 A Correct. 3 Q And I would assume it varies on traffic and other things; is that correct? 4 A Correct. 5 Q As to how many loads you could get a day. And what you've given us is from July 12, 2011, through August 8, 2011; is that correct? 6 A Correct. But I do have all of his since he was employed. I just thought it might be handy to have today because that's for the insurance company. They just wanted "X" amount for representation so, but that's what you're looking at right there. 7 Q I would like to mark this as Plaintiff's Exhibit One, please. 8 (Plaintiff's Exhibit No. 1 was marked for identification.) 9 Q Now, what was your arrangement with Chris Thompson Services, your business arrangement? 10 A My arrangement was to - and we only had a verbal agreement, but my arrangement was to haul loads, and I was to receive compensation for each load that I carried, and I would turn in my sheets at the end of the week, and then the following week he would relinquish me a check for what I did the previous week.

1 Q - Were you paid by the ton? 2 A - Correct. 3 Q - And then he was also paid by the ton, "He" being Chris 4 Thompson, did he get paid so much per ton as well? 5 A - I believe so, yes. 6 Q - Who paid Chris Thompson? 7 A - I would believe he got paid from Capstone because 8 tracks the - maybe - matter of fact, he might have got 9 paid from the lumber mill. Actually, I really don't know, 10 but I know that's where we delivered it to, Capstone. 11 Q - And Chris Thompson would cut a check JIS Trucking - 12 A - Correct. 13 Q - every week and then you would cut a check to your 14 employees - 15 A - Yes. 16 Q - or is it the fellows who drove a truck for you - 17 A - Correct. 18 Q - and that's how that worked? 19 A - Correct. 20 Q - And how many trucks did you have working for you at the 21 time of this accident? 22 A - Three. 23 Q - Three, And how many trucks do you own? 24 A - Four. 25 Q - Four trucks. Who all drove a truck for you?	1 A - Exactly. But excluding the trailer. Everything on the 2 trailer would be Chris Thompson's. 3 Q - How long have you had JIS Trucking? 4 A - If I'm not mistaken - I know I got a date for when it 5 was established, but I would say somewhere around seven 6 years. 7 Q - Have you ever had any trouble with insurance like 8 what's going on now? 9 A - No, sir. 10 Q - Now, you've provided and I believe your insurance 11 agency provided some insurance certificates to us, and the 12 state has concluded that your insurance had lapsed from 13 February 5, 2011. Until September 22, 2011. Did you ever 14 receive a letter from the state? 15 MR. KILLEN: Let me just object to the form of 16 that question. 17 Q - Well, if you could just answer that. Have you ever 18 received a letter from the South Carolina Workmen's 19 Compensation Commission by a gentleman named Gary Smith? 20 A - Please repeat that question. 21 Q - Have you ever received a copy of this letter right 22 here, I want to show you? 23 A - No, sir. 24 Q - It says it was mailed to 137A Gordon Street? 25 A - Let's see, this is on October - okay, October the
1 A - At that time of the incident, it was me, Samuel Rose, 2 Shaun Thompson - Shaun Thomas, and Reggie Washington. 3 Reggie was really part time. He didn't run every day. 4 Q - Did you have a truck driver named Tim? 5 A - Yes, I did, but he was not employed with me at that 6 time. He was a subcontractor for me at that time. 7 Q - Did you have a truck driver named Mark? 8 A - Yes, I did at that time, but he was not working for me 9 at that time. 10 Q - The deal with Chris Thompson was in order for you to 11 work for him you had to provide him with copies of your 12 certificates of insurance - 13 A - Correct. 14 Q - to cover your drivers and yourself for workmen's 15 compensation purposes, is that right? 16 A - Correct. 17 Q - And what would happen if you didn't provide those 18 certificates of insurance to Chris Thompson? 19 A - I would be terminated. 20 Q - And who paid for the gas for the trucks that you drove? 21 A - I did. 22 Q - What about the tires? 23 A - I did. All maintenance to the vehicles, I was 24 responsible for? 25 Q - But the trailers were owned by Chris Thompson?	1 28th. Okay, Okay. 2 Q - Is this your address here, 137A Gordon Street? 3 A - Yes. Well, what I want to say is I haven't actually 4 seen it myself, but they have sent quite a bit of letters to 5 me. 6 Q - And has any insurance company or anyone told you that 7 your insurance had lapsed starting February 5, 2011, through 8 September 22, 2011? 9 A - I had not received anything from my actual insurance 10 carrier. 11 Q - But have you talked with anyone at the State of South 12 Carolina Workmen's Compensation Commission about that? 13 A - No, sir. 14 Q - And no one's discussed any sort of fine with you for 15 not having it - 16 A - I did receive a letter saying that if I do not show 17 that I had insurance over "X" amount of years that I would 18 receive a fine. 19 Q - Now, are you aware that the insurance company - your 20 workmen's compensation carrier has said that you didn't have 21 insurance at the time of this accident? 22 A - I am aware that they said that. 23 Q - Have you talked to them about that since then? 24 A - Have I talked with them? 25 Q - Your insurance company?

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1 A I have, and they still stand by the fact that I do not 2 have worker's compensation. 3 Q And which company said that, is it Travelers, Zurich, 4 do you remember? 5 A Travelers. 6 Q After Mr. Rose was in the accident, when did you find 7 out this accident happened? 8 A I found out immediately. I mean, within an hour. 9 Q Did you go to the hospital and see him? 10 A Yes, I did. 11 Q Did you ever talk to Chris Thompson about this 12 accident? 13 A Yes, I did. 14 Q What did Chris Thompson and you discuss? 15 A I informed him that at this scene his driver hit my 16 driver in the rear, that at the scene DOT and South Carolina 17 State Troopers had faulted his driver at fault and that my 18 driver was in no way -- they called it not contributing. So 19 I informed him of all of this. 20 Q After this accident, did you and Chris Thompson ever 21 discuss worker's compensation coverage? 22 A We did later on once I found out that I was not being 23 covered. 24 Q What did Mr. Thompson tell you? 25 A That when he informed me that --	1 but I don't know what's going on because if you look at 2 those documents, it would state that you would have it, but 3 again, if I don't I don't, but I was not aware that I did 4 not. 5 Q Is this the documents you were just asking me about? 6 A Yes, sir. 7 Q And one of them is dated 10/16/2010. Can you take a 8 look at that? Number one it has Tower Insurance Company. 9 Below it it has Travelers Insurance; is that correct? 10 A Correct. 11 Q And it shows the date covered 10/22/10 to 10/22/11? 12 A I know on this policy, if I'm not mistaken, I had just 13 renewed it after the accident because after I found out, I 14 went to go get reinstated, you know, and so that's what 15 we're looking at right here. 16 Q And this was generated after the accident; is what 17 you're saying? 18 A That's right, that's right. 19 Q And where it says under down there, what does that 20 mean? 21 A That means that I'm covered. 22 Q That's your understanding that it means you're covered? 23 Then I have this other one from Swap Fox Agency? Is this 24 your agency? 25 A No, No, No. We're looking at the wrong thing, I'm
1 MS. BARR: Object to the hearsay. 2 Q Go ahead and answer the question. 3 A He informed me that I can no longer work for him based 4 on the fact that my insurance had lapsed at that time. 5 That's what he said. 6 Q Did he ever say anything about his insurance taking 7 care of this claim with regard to Mr. Rose? 8 A What he stated is that -- 9 MS. BARR: Same objection to hearsay. 10 Q Go ahead. 11 A What he stated was that Sedrick -- that I was 12 responsible for keeping my worker's comp coverage current. 13 He stated that he was not informed that my insurance had 14 lapsed. Actually, I was looking for it here, but I don't 15 have it. But I was going to ask you -- remember I found you 16 two copies of -- he in turn said to me, Sedrick -- so this 17 bottom line I was terminated. Later on, a week or so later 18 he informed me that he did an investigation or he had come 19 across the fact that my insurance had not lapsed, and he 20 provided me with documents. I in turn called my insurance 21 agent that happened to look into this because ever since I 22 worked for Mr. Thompson, if my insurance was ever in 23 jeopardy of lapsing, my insurance carrier always would 24 inform him because he's listed down there, but all I can say 25 is, he said, Sedrick, you know you can't be employed here,	1 any. This is not what I'm looking at because this here 2 says 10/22/2010 -- 3 Q Yes, sir. 4 A -- through 10/22/2011. 5 Q Yes, sir. 6 A So therefore when I look at this I would have been 7 covered through -- because I received a couple of them now, 8 he let me recheck what I stated. 9 Q This is another one that you -- he, this one's dated 10 8/24/11. 11 A Okay. There we go. This is the one probably I was 12 referring to. 13 Q And this one, the 10/22/10, that says -- does that say 14 Travelers Insurance? 15 A Yeah, that says Travelers Insurance; correct. 16 Q And this 8/22/11, now whose insurance company picks up 17 coverage at that point? 18 A Zurich American Insurance Company. 19 Q And that's good from August 24, 2010, it says, to 20 August 24, 2011; is that correct? 21 A Correct. 22 Q But you didn't purchase it until 8/22/11; is that 23 correct? 24 A Actually -- the best thing I can say to you is -- 25 purchase -- I was under the impression that I did it -- I

1 This is 8/28/11 -- I wasn't the person -- that was not a
2 purchase actual date because if that's a purchase date, why
3 would it be 8/28/11 where it actually says here, you know,
4 coverage 8/24/10 through 8/24/11. I --
5 Q That's a good question.

6 A I was under the impression that that's when probably
7 someone actually sent it out verifying the date it was sent
8 out but not the actual date of coverage. These -- from my
9 interpretation -- those are the actual dates of coverage.

10 Q Why would there have been one from August 24, 2010 for
11 Zurich and one from October 6, 2010 from Travelers? I don't
12 have any idea.

13 A The only idea that I could have is maybe the insurance
14 had lapsed and somebody else picked it up. I don't know.
15 What I do is I make my payments to Swap Fox and -- but I
16 don't know.

17 Q Have you ever went and showed these and discussed these
18 with anyone at Swap Fox?

19 A We talked -- I sent it back to Swap Fox. I have not
20 gotten a response back from Swap Fox, and that would be
21 attention Gregg Hudson, I believe, operations manager via
22 Swap Fox.

23 Q When you hired Samuel Rose, his job was to haul
24 woodchips from Sumnerville to the Capstone Plant; is that
25 correct?

1 A Correct.

2 Q And you furnished the truck; is that correct?

3 A Correct.

4 Q You paid for the gas; is that correct?

5 A Correct.

6 Q You paid for the maintenance on the truck; is that
7 correct?

8 A Correct.

9 Q And really all he did was he was suppose to get in the
10 truck and drive it safely to and from Sumnerville, dumped it
11 Capstone, come back. His job was just to drive the truck?

12 A His job was just to drive the truck; yes.

13 Q And you told him where to go?

14 A No, I did not.

15 Q You didn't tell him where to go?

16 A No, sir. At Sumnerville, we have a loader box and each
17 driver has a shift, but you can start your shift earlier or
18 later. I did not make that determination.

19 Q Not when, but where? I mean, he had your truck. His
20 job was to drive your truck from Sumnerville saw mill, to
21 Capstone. He couldn't just take that truck if he wanted to
22 haul chips to Gannett or something like that?

23 A No, sir.

24 Q Well, thank you, sir. I don't have any other
25 questions. Appreciate it.

1 EXAMINATION BY MS. BARR:

2 Q Mr. Smalls, my name is Kristi Barr. We met briefly
3 before we went on. I represent Chris Thompson and the
4 insurance carrier. Do you recall making payments to Swap
5 Fox or to anybody else for worker's comp insurance in 2011?

6 A No, ma'am.

7 Q Would you have written one check. I mean, do you
8 recall making any payments toward the purchase of a worker's
9 comp insurance policy in the year prior to the accident?

10 A Yes, ma'am.

11 Q Now, do you have business records showing -- would you
12 write the check to Swap Fox then?

13 A Sometimes I made them to Swap Fox and sometimes I --

14 Sir, if I was close to being terminated, they would say,
15 hey, just make it out to us and make sure it stays current.

16 Q At any time in the months prior to this accident that
17 happened in August of 2011, did you stop making your regular
18 payment?

19 A Focus. I'm not going to say that I didn't -- I might
20 not have had some times when I might have been late. But
21 what would happen is that my insurance agent would say,
22 Smalls, well this is where you are and this is what you need
23 to do. But, yes, just -- and -- focus -- if my insurance
24 had lapsed, I would have to go in and sign something saying
25 that I didn't for that particular period that might have

1 just lapsed that I was not covered, so again, the best way I
2 can put it is that I'm not going to say that I didn't have
3 any issues, but at the time of this incident, I was under
4 the impression that I was covered.

5 Q Would you be able to put your hand on like the canceled
6 checks or check stubs that you would have written to pay for
7 your worker's compensation insurance in the months prior to
8 Mr. Rose's accident?

9 A I'm pretty sure I could go back and find documentations
10 of payments.

11 Q Do you recall ever getting a notice from Swap Fox or
12 from the worker's comp insurance company saying that your
13 policy had lapsed --

14 A No.

15 Q -- or that they were going to cancel it?

16 A No, ma'am.

17 Q You still get your insurance with Swap Fox?

18 A As of now, I'm out of business pretty much. I'm
19 exhausted.

20 Q Were you running trucks for anybody other than --

21 A No. No, ma'am.

22 Q -- what you did for Chris Thompson?

23 A Exactly. That was everything for me.

24 Q And you have four trucks?

25 A Yes.

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1 Q Do you still have the four trucks? 2 A I still have -- yes, I still have them. 3 Q And where do you keep your trucks? 4 A I keep one of them at the shop that broke, but I have 5 three in a yard, what they call Red Top. 6 Q Is that something that you own or -- 7 A It's a friend's property. 8 Q And where is Red Top is that? 9 A That's off of Charleston -- I think that's Old 10 Charleston Road. 11 Q And who owns the property where they're located? 12 A Rodney Doctor. 13 Q Doctor? 14 A Yes, ma'am. 15 Q And do you pay him rent to keep those trucks there, or 16 is he just a friend, or what's the arrangement? 17 A -Oh, no, he's a friend. 18 Q And you say that you have not worked or done any kind 19 of work with JJS Trucking since you talked to Mr. Thompson 20 about the lapse in your worker's comp insurance? 21 A Yes, ma'am. 22 Q Just a quick question. We've marked this as Claimants 23 One, but I think you said this was a load sheet; is that 24 what you called it? 25 A Yeah. By definition, we call them load sheets, but	1 Q So Mr. Rose would leave this in a box for Chris 2 Thompson; is that correct? 3 A Correct. 4 Q And Chris Thompson or someone in his company would do 5 these calculations? 6 A Correct. 7 Q And then Mr. Thompson's company would pay you -- 8 A Correct. 9 Q -- and send these sheets back? 10 A Correct. 11 Q And then you would have them for your records; is that 12 right? 13 A Correct. 14 Q So would you just then write a check to Samuel Rose for 15 the amount shown on the bottom of this load sheet? 16 A No. I would write a check to him for each load -- his 17 compensation was \$25. 18 Q That's right. 19 A I would count each load that was turned in to verify, 20 and I would cut him a check for those amount of loads. 21 Q Did Mr. Rose ever tell you how many tips he took in a 22 captain week? 23 A Sometimes we would discuss -- you know, he would say, 24 well, yes Smalls, I got 25 loads, or I got 30 loads and 25 then, so we would discuss it and then what would happen is
1 that's how we determine compensation. 2 Q And would this be something that an employee like Mr. 3 Rose would turn in to you each week? 4 A Yes. But technically he turned it in to the office. 5 He doesn't really turn them in to me, but I look at it as 6 being turned in to me. Every week he would fill it out just 7 like I did and put it in a box, and then when the checks 8 came from Chris Thompson then it would come back to me. 9 Q So when you say he leaves it in a box, this was a box 10 at Captain's? 11 A Correct. 12 Q But Chris Thompson didn't write a check to Samuel Rose. 13 He wrote you a check? 14 A Exactly. He wrote me a check. Yes, ma'am. 15 Q I think Mr. Klien probably has some questions for you. 16 That's all I have for you right now. 17 EXAMINATION BY MR. KLIEN: 18 Q Mr. Smalls, I'm Tim Klien. I represent South Carolina 19 Worker's Compensation Uninsured Employers Fund, and this 20 load sheet, this is filled out by Samuel Rose; is that 21 correct? 22 A Correct. 23 Q And did Mr. Rose do the calculations on this document? 24 A No. No. Chris Thompson did the calculations on the 25 sheet.	1 When this came back this was like double checking what the 2 verbal communication was. 3 Q The verbal communication was just informative; right? 4 A Correct. 5 Q This document, this load sheet, I mean, that's the holy 6 grail. 7 A Yes. 8 Q That's the document where everything is based off of; 9 right? 10 A Correct. 11 Q Let me ask you a few background questions. What's your 12 date of birth? 13 A 5/22/70. 14 Q And your social security number? 15 A 4002. 16 Q And your driver's license number? 17 A 006880380. 18 Q And that's South Carolina? 19 A Correct, sir. 20 Q I know your home address, is that your business address 21 as well? 22 A Correct, sir. 23 Q Have you ever operated any other locations other than 24 the Gordon Street location? 25 A No, sir.

1 Q Where do you house your trucks? 2 A Red Top or if I was -- 3 Q I'm sorry. Let me ask that a better way. When you 4 were in business, where did you house your trucks? 5 A In Summerville at the mill. 6 Q And who owns that mill? 7 A Well, byers the mill would be Capstone. 8 Q And so you would park your trucks there, did you pay 9 anyone for the space? 10 A No, sir. 11 Q Who did you negotiate that with? 12 A Well, you used the word, "negotiate." I was just 13 authorized by Mr. Chris Thompson to be able to park there. 14 Q And you went into business with Chris Thompson about 15 three-and-a-half years ago, right? 16 A Yes, sir. 17 Q You never had a written contract with him? 18 A No, sir. 19 Q But you had a written contract with all your drivers? 20 A Yes, sir, most of them. 21 Q You're the only member of your LLC? 22 A Yes, sir. 23 Q How are you taxed? 24 A When you say, how am I taxed? 25 Q Are you taxed like a sole proprietor? Do you know?	1 A Correct. 2 Q Where do you bank? 3 A First Citizens. 4 Q Do you have personal accounts there? 5 A I don't have a personal account. 6 Q All your bank accounts there -- if there -- is there 7 more than one? 8 A No. It's just one, JIS-Trucking. 9 Q And it's just a checking account? 10 A Yes. 11 Q Do you have a mortgage on your house at Gordon Street? 12 A I do. 13 Q Is that in your name alone? 14 A It is. 15 Q How do you pay the mortgage? 16 A By check. 17 Q Out of your JIS-Trucking, LLC account? 18 A Most of time I would assume so, yes. 19 Q You would assume so or yes or no? 20 A I would say yes. 21 Q So you use that JIS-Trucking account for your personal 22 needs? 23 A I guess you can say it like that. 24 Q Do you separate your money from your corporation with 25 your personal money?
1 It's okay if you don't know. 2 A I mean, I got some tax documents, but I know there's 3 different ways you can be taxed. 4 Q Do you pay corporate taxes for your income through your 5 LLC? If you don't know, it's okay? 6 A Well, I know on my taxes my corporation is listed so. 7 Q Okay. Your LLC? 8 A Yes, sir. 9 Q You pay personal income tax? 10 A Can I make a call? Because my accountant might answer 11 the phone. 12 Q It's all right. What's your accountant? 13 A Liberty Tax. Warren -- Warren Frazier. 14 Q Where is he located? 15 A Goose Creek. 16 Q Do you own the property at Gordon Street? 17 A Yes, I do. 18 Q Permitted? 19 A Yes. 20 Q Does your LLC own any property? 21 A No, sir. 22 Q Who owns those trucks? 23 A My corporation. 24 Q Their filed in the name of JIS-Trucking, LLC; is that 25 correct?	1 A Oh, no, I see what you're saying. No, I do pull it 2 out. 3 Q How do you pull it out? 4 A I write a check to myself. 5 Q And then you cash it? 6 A Correct. 7 Q At First Citizens? 8 A Correct. 9 Q How do you pay your electric bill? 10 A I would pay it off of my account. 11 Q From your corporate account? 12 A Correct. 13 Q What about when you do get groceries? 14 A I pay cash. 15 Q Do you ever write a check for groceries? 16 A No, sir. 17 Q Do you own any automobiles personally? 18 A Yes, sir. 19 Q How do you get gas? 20 A I pay for it with the cash. 21 Q You pay cash for your gas at all times? 22 A Correct. 23 Q You never use your corporate account to pay for your 24 personal vehicle's gas. 25 A No, sir.

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29 1 Q What kind of cars do you own personally? 2 A I got a Kia Sorento and a F250 true cab truck and a 3 F150 that's an older truck. 4 Q Any other automobiles or trucks? 5 A No, sir. 6 Q Does your wife own those vehicles as well? 7 A No. 8 Q Did you ever take money out of any of your drivers 9 checks to pay for worker's comp insurance? 10 A No. 11 Q Did Chris Thompson ever take money out of what he paid 12 you to pay for worker's compensation insurance? 13 A No. 14 Q Did the terms of your agreement with Chris Thompson 15 ever change at any time during the course of your 16 relationship? 17 A No. 18 Q So he took the same percentage but when you started as 19 he did from your last load? 20 A Same percentage out -- same percentage out. I would 21 say -- you say take the same percentage out. I would -- 22 I was paid by the ton, but that would change based off 23 of fuel cost or what he was being compensated with because 24 it did go up and down. But I don't see it as -- you say 25 take something out.	31 1 (Written upon an off the record 2 discussion took place.) 3 Q Do you have a copy of that certificate dated 10/18/2010 4 or do you need -- 5 A I got it. 6 Q Now, in October of 2010, did you get a new policy 7 through the Swap Fox Agency for worker's comp insurance? 8 A I'm sorry. Which one am I looking at? 9 Q Your looking at the one dated 10/18/2010. 10 A Okay. 11 Q That's the one that we're dealing with here. That's 12 the most important one, in my opinion. 13 Did you get a new policy of insurance that year in 14 October of 2010 for worker's comp; do you remember that? 15 A A new? 16 Q Yes. 17 A 10th, the 18th, 10/18/10, did I get a new? 18 Q Let me go through this certificate with you. This 19 purports to show that the document was created on 20 October 18, 2010 by someone at Swap Fox Agency, and it has 21 Inure B Travelers Insurance or Indemnity and Affiliates. I 22 can't read, it kind of says where your broker's comp policy 23 would be in effect. That Inure B up there at the top is 24 referencing this right here where it says binder and their 25 those dates of effective coverage down here, 10/8/10 through
30 1 Q So when it changed, how did you find out that it 2 changed? 3 A I saw it on the -- I mean, I got the load sheet -- the 4 statement. 5 Q When you got paid, that's when you learned? 6 A Correct. 7 Q There was no negotiating those factors? 8 A No, sir. 9 Q What Chris Thompson paid you, you got, is that correct? 10 A Correct. 11 Q And you didn't have any say so in that? 12 A No, sir. 13 Q And you said earlier your job was to provide insurance 14 coverage, and his job was to provide the trailer? 15 A Well, I mean, no. My job was to provide a truck and a 16 driver. 17 Q Okay. 18 A But under the terms, I was supposed to make sure I keep 19 my insurance, you know, current. 20 Q And that's your liability insurance and your worker's 21 comp insurance? 22 A Correct. 23 Q I believe Mr. Fisher showed you a certificate of 24 insurance earlier. I don't think we made it an exhibit. 25 There's one dated 10/18/2010.	32 1 10/8/11. Did you go get a new insurance policy around that 2 time? 3 A If that's the 10/18/10 -- I would -- are you saying 4 this is the time when I was renewing it? 5 Q I'm asking you. Did you renew a policy, or did you get 6 a new one or what? 7 A I renew every year, so if I'm renewing it every year 8 and it starts on the 10th, the 8th, the 10, 10th the 2nd and 9 then this date up here is -- I would have believed that this 10 is the beginning of a new policy. 11 Q It shows binder down there. Did you ever have an 12 actual policy issued to you from Travelers? 13 A I'm pretty sure I would have had to. I mean -- 14 Q When did you make your payments to Swap Fox? 15 A Oh, wow, I mean, normally there would have been a 16 deposit made, and I would be making monthly payments. 17 Q So around the time, you either renewed or got a new 18 policy you make a deposit; is that correct? 19 A Correct. 20 Q And then from the rest of the year you make -- 21 A -- Correct. 22 Q -- equal monthly installments; is that correct? 23 A Pretty much. 24 Q And there were times in the past where you would fall 25 behind?

1 A Correct. 2 Q But someone from Swap Fox would contact you and let you 3 know and then you would catch up, correct? 4 A Correct. 5 Q Now, the worker's comp commission is showing a -- that 6 this policy was canceled sometime in February of 2011. Now, 7 between October of 2010 and February of 2011, were you 8 missing payments to Swap Fox or Travelers? 9 A Okay. Say that one more time, please. 10 Q Between October of 2010 and February of 2011, there 11 about what, four months? 12 A Okay. Between October -- go ahead now. 13 Q Did you miss any of your payments? 14 A For my worker's comp, I'm going to say I really don't 15 recall missing any payments, but if worker's comp says -- 16 well, not worker's comp but if they say my insurance lapsed 17 in January, I would have to say obviously I didn't make a 18 payment. 19 Q Are you telling me you know that you didn't make a 20 payment or just because this paperwork, which is not 21 binding, says it. 22 A Exactly. 23 Q Are you relying on these documents? 24 A Yeah, pretty much. 25 Q Satisfy for your recollection?	1 Chris Thompson? 2 A I myself don't send certificates over to Chris 3 Thompson. My agent would send it over to Chris Thompson. 4 Q Did you ever ask your agent to do that? 5 A In the past I think one time I did. It wasn't in the 6 last year. I think one time before my -- he questioned me 7 on my insurance renewal date, and I called my agent and say 8 could you send over Chris Thompson a current, you know, 9 certificate of insurance, but that was -- that had probably 10 happened two years plus ago. 11 Q How long was your agreement with Chris Thompson 12 supposed to last? 13 A He never -- we never discussed a time frame for how 14 long it was supposed to last. 15 Q How long did it actually last? 16 A I'm going to say about three and a half years. 17 Q So for three and a half years, you two companies never 18 had a written agreement? 19 A No, sir. 20 Q These and a half years you two companies, both of your 21 LLCs, never put anything on paper to show that you two had a 22 contract with each other? 23 A No, sir. 24 Q And nothing changed since three and a half years before 25 the contract terminated, as far as the terms of contract are.
1 A Pretty much. 2 Q Are you telling me that it's possible you missed a 3 payment or two? 4 A I'm saying it is possible. 5 Q Is it probable? 6 A Probable? If that the same meaning as saying possible, 7 I'm going to say it's possible. 8 Q Did you ever get a call from anyone at Swap Fox during 9 that time? 10 A No, sir. 11 Q Did you ever get a letter from anyone at Swap Fox 12 during that time telling you your policy was getting ready 13 to lapse? 14 A No, sir. 15 Q Did you ever get a letter from Travelers during that 16 period of time telling you your policy was getting ready to 17 lapse and what you could do to cure that? 18 A I don't recall it, no, sir. 19 Q Did you ever get any of your premiums refunded to you? 20 A No, sir. 21 Q Neither Travelers nor Swap Fox ever wrote you a check 22 for any worker's compensation insurance you paid for, but 23 they weren't providing coverage for you? 24 A No, sir. 25 Q How frequently would you send certificates over to	1 continued is that correct? 2 A Yes, sir, that's what I am saying. 3 Q After Chris Thompson terminated the contract with your 4 company, did your company receive full payment for the work 5 it had already performed? 6 A If you are saying if anything was owed to me from him, 7 did I receive it, then I would say, yes. 8 Q Was it effective immediately, or did you get a 30 day 9 grace period? 10 A Effectively. 11 Q And you would make your insurance payments to Swap Fox 12 Agency? 13 A Yes, sir, sometimes, yes. 14 Q Sometimes? 15 A Yes, sometimes. 16 Q Where would you make them if you weren't making them 17 directly to Swap Fox? 18 A If I'm not mistaken it would have been to like a 19 finance company maybe. I don't know if it was actually to 20 Travelers or Zurich, but sometimes it would be like a finance 21 company that would be established, and I would pay them. 22 Q What is the last time you remember making payments to a 23 finance company? 24 A I would have to go and look at my records. Right this 25 second I --



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 1 Q Just to the best of your recollection?
 2 A I would -- I would believe in this -- in the early
 3 portion of this year because like I said, I know I was
 4 making payments.
 5 Q So you were making payments in 2011?
 6 A 2011.
 7 Q It's 2011.
 8 A Yes.
 9 Q It is your testimony that you never received notice of
 10 a cancellation?
 11 A No, sir.
 12 Q By notice of cancellation, I mean a letter from the
 13 insurance company or the agent saying that they were getting
 14 ready to cancel your policy unless you followed up with the
 15 payment?
 16 A It's a possibility they might have sent me something.
 17 Also when I was aware of a possible lapse trap, I would
 18 bring it current. In this particular case here, I was not
 19 aware that my insurance had lapsed, and any other time if my
 20 insurance was about to lapse, Chris Thompson would have been
 21 all over me because he did not want my insurance to lapse,
 22 so I can't say I didn't make a mistake. What I can say is
 23 that ever since I dealing with Swap Fox and ever since I've
 24 been running for Chris, I never had this problem, and when
 25 he brought it to my attention, I didn't have nothing to say.

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 1 Q "He" being who?
 2 A Chris Thompson.
 3 Q And he didn't know about this problem until after the
 4 accident, is that correct?
 5 A Correct.
 6 Q That's all the questions I have.
 7 EXAMINATION BY MR. FISHER:
 8 Q Let me ask you one, Mr. Smalls: The insurance company,
 9 whenever you say sometimes you made insurance payments
 10 through a finance company and not directly to Swap Fox, what
 11 finance company would that be, and how did that work?
 12 A The best way I can put it is Swap Fox was my insurance
 13 agent. Normally, when I would go and establish a insurance
 14 binder, I would have to put "X" amount of dollars down, and
 15 then I would say, okay, well, to the finance on this -- if
 16 the policy was \$3,000, I might put down \$2,000. They might
 17 finance 3,000. I would give Swap Fox a check and then what
 18 would happen would be I would either make payments to a --
 19 normally, I don't think it was the actual insurance, I think
 20 it was to like a finance company. And then if I got in
 21 trouble, you know, they would say, Hey, you know your
 22 insurance is about to cancel, I would talk to my insurance
 23 agent and say, Hey, what's the deal, well, you got "X"
 24 amount of time. Sometimes I would just cut them a direct
 25 check, you know, and they would deal with it however they

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 1 deal with my policy. They might have had a more faster,
 2 efficient way of dealing with the situation.
 3 Q Well, there's this note here -- cancellation,
 4 reinstatement, non renewals and it shows on 10/11 that
 5 your policy was canceled, and it says by the request of the
 6 finance company?
 7 MR. KELLEY: Can you tell him where that is, Joe?
 8 MR. FISHER: Yeah.
 9 Q It says TOC inquiry on line with South Carolina. This
 10 is something to show whether or not you had insurance. But
 11 anyway, the finance company, if you don't make a payment to
 12 the finance company, does your coverage lapse?
 13 A I would say I'm sure it would lapse. I guess, that's
 14 an answer.
 15 Q Do you know what finance agency it was that you were
 16 dealing with at this time?
 17 A I would have to really go back and talk to my agent. I
 18 can find that out.
 19 Q It would be worth it for you to do that. Thank you,
 20 sir. I don't have any other questions.
 21 EXAMINATION BY MR. KELLEY:
 22 Q Check follow up. Did you ever sign a contract with the
 23 finance agency?
 24 A You know something, I have to go back and look at my
 25 documents because like I said, normally when I start the

40
 1 policy I would sign "X" amount of papers, and I'd have to go
 2 back and try to start looking at all those things to verify
 3 that.
 4 MR. FISHER: Okay. Thank you. That's all.
 5 (The deposition was concluded at
 6 12:10 p.m. November, 14th,
 7 2011.)
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Sedrick Smalls

November 14, 2011

1 STATE OF SOUTH CAROLINA
2 : CERTIFICATE
3 COUNTY OF DORCHESTER
4 I, Laci B. Bearden, Court Reporter and Notary Public,
5 certify that I did have Sedrick Smalls appear before me at
6 11:00 a.m. on Monday, November 14th, 2011, at the law
7 offices of George Sirk, P.A., 7011 Fivers Avenue, N.
8 Charleston, South Carolina; that the witness was sworn and
9 cautioned to tell the truth, the pages constitute a true and
10 accurate transcript of the testimony given at that time and
11 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 14th day of November, 2011.

17
18
19
20 Laci B. Bearden
21 Notary Public for South Carolina
22 My Commission Expires: September 23, 2021
23
24
25


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Condensed Transcript

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Casualty Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SAMUEL ROSE

November 14, 2011
9:45 a.m.

George Sink, P.A.
7011 Rivers Avenue
N, Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO. 1112010 Samuel A. Rose, Employee, Claimant, -vs- JTS Trucking, LLC/SCRY and Chris Thompson Services, LLC/Bridgfield Casualty Insurance Company, Employer. -and- Bridgfield Casualty Insurance Co., Carrier, Defendant. The Deposition of Samuel Rose, taken before Paul Selden, Court Reporter and Notary Public, at the George Sirk, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 9:45 a.m.	INDEX EXAMINATION BY MS. BARR 4 EXAMINATION BY MR. KILLEN 28 EXHIBITS (No exhibits produced.)
APPEARANCES For the Employer: George Sirk, P.A. BY: Joseph B. Fisher 7011 Rivers Avenue Suite 105 N. Charleston, SC 29405 fisher@sirklaw.com For the Carrier: Trask & Howell, LLC BY: Kristen L. Barr 788 Johnnie Dodds Blvd. P.O. Box 2167 Mt. Pleasant, SC 29465 kbarr@trask-howell.com S.O. Uninsured Employers Fund BY: Timothy Killen, Esq. 100 Executive Center Drive, Suite 101 Columbia, SC 29210 TKillen@slc.gov	SAMUEL ROSE was sworn (affirmed) and testified as follows: EXAMINATION BY MS. BARR: Q Mr. Rose, my name is Kristen Barr and I represent a company called Bridgfield Casualty Insurance Company, and Chris Thompson Services regarding your worker's compensation claim. And I'm sure Mr. Fisher's explained to you what we're doing here today, but again, it's called a discovery deposition, and it really is just what it sounds. It's my chance to discover a little bit more about you as a person and about the accident and your injuries and how you've been doing since then. My questions are intended to be straight forward, so if I ask something that is unclear or doesn't make sense, please ask me to rephrase or repeat my question. I'm happy to do that. Because otherwise, if you answer my questions, number one, I'm going to assume you're answering truthfully, and number two that you understood the question before you answered it, fair enough? A Okay. Q The other thing is the court reporter is going to take down everything we say here today. This is the microphone; so we just need to speak up and speak clearly. If I understand you if you nod your head here today, but she can't take that down on paper very well, so we just need to remember to say yes or no and just again, answer it to the



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1 best of your ability. 2 If you would state your full name for the record? 3 A Samuel Archibald Rose. 4 Q Could you spell your middle name for me? 5 A A-R-C-H-I-B-A-L-D. 6 Q And Mr. Rose, what is your date of birth? 7 A August 23, 1970. 8 Q And your social security number? 9 A 3390. 10 Q And are you married, single, divorced? 11 A Single. 12 Q Have you ever been married? 13 A No. 14 Q Do you have any children? 15 A No. 16 Q And what is your current you address? 17 A 17 Ashton Street, Charleston, South Carolina. 18 Q And who do you live with at 17 Ashton Street? 19 A My cousin. 20 Q And how long have you lived there? 21 A I grew up there. 22 Q And it's just the two of you living there? 23 A Yes. 24 Q Anybody depending on you for support? 25 A No.	1 early. 2 Q And would you work until the North Charleston plant 3 closed or the saw mill up in Summerville closed? 4 A Summerville. North Charleston is open 24/7. 5 Q So you would begin and start your day at Summerville? 6 A Yes. 7 Q Did you keep the truck you used at your home or JIS 8 Trucking, how did your day start? 9 A It was parked in Summerville at the saw mill. 10 Q So would you drive your personal vehicle to the saw 11 mill then? 12 A Yes. 13 Q Did you have to punch a time card or anything like 14 that, or how did you keep track -- how would JIS keep track 15 of your time? 16 A Our daily logs. 17 Q What would you keep track of in your daily log? 18 A The time that I start work, the inspection of the 19 truck, and number of tons (made). 20 Q And would you also get receipts from either the saw 21 mill or from the mill in Charleston as far as what you 22 loaded or unloaded? 23 A Each load that we pick up we received a receipt. When 24 we got to Capstone we received another receipt. 25 Q And what would you do with those receipts?
1 Q Tell me, it's my understanding you were working for a 2 company called JIS Trucking at the time of this accident, is 3 that right? 4 A Yes. 5 Q And who did you work for at JIS Trucking? 6 A Sedick Smith. 7 Q And when did you start working for Sedick Smith at 8 JIS Trucking? 9 A Back in February or March. 10 Q Of 2011? 11 A Yes. 12 Q And what were you hired to do for JIS Trucking? 13 A To haul woodchips from Summerville to North Charleston. 14 Q And that was to North Charleston to the Capstone plant? 15 A Yes. 16 Q Did you have a set work schedule that you did? 17 A From 12:00 o'clock until 12 noon. Either 12 noon or 18 2:00 o'clock, and I would do a 10 to 12 hour shift. 19 Q And during your ten to 12 hour shift, I guess it would 20 be a ten hour shift if you started at 2:00 o'clock in the 21 afternoon? 22 A Yes -- well, no. From the time I started, I worked 23 either 10 to 12 hours, and I worked until the plant closed. 24 Q And to your knowledge, what time did the plant close? 25 A It's suppose to close at 3:30, but sometimes it closes	1 A We turned them in at the end of the week. 2 Q And who did you turn the receipts in to? 3 A They went to Chris Thompson. He has a mailbox placed 4 at the saw mill in Summerville, and we'll put our work 5 sheet, and we put everything in the envelope for him. 6 Q And then how would you get paid? 7 A By check. Sedick Smith is the one that paid me. 8 Q And what was the basis of your pay? How did he 9 calculate how much you would earn per week? 10 A \$25 dollars per load. 11 Q So someone would add up all those receipts and then 12 would be \$25 even for each load that you would get paid? 13 A Yes. 14 Q And how many loads would you average per shift? 15 A Anywhere from six, seven loads per shift. 16 Q And how many days per week did you do this? 17 A Five. 18 Q Was it Monday through Friday? 19 A Yes. We worked on weekends as needed. 20 Q How frequently would you work weekends? 21 A Not often. 22 Q And how did it work? Would Mr. Smith pay you in 23 check or would he give that to you personally? Was it 24 mailed to you? 25 A It was given personally.



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Samuel Rose

November 14, 2011

1 Q By Mr. Smalls? 2 A Yes. 3 Q And what day of the week would he give you your check? 4 A Friday. 5 Q So every Friday you would get a check? 6 A Yes. 7 Q And how much was your average check that you were paid 8 on Fridays by Mr. Smalls? 9 A It ranged from 650 to 750 depending on how many loads I 10 ran for the week. 11 Q And so you would get the whole 650 to 750? 12 A Yes. 13 Q He didn't take out any taxes? 14 A He took out a prepaid deduction for damages to the truck 15 for an escrow account. 16 Q He took that out each week or just the beginning? 17 A Each week. 18 Q What is your job status with Mr. Smalls? Are you still 19 employed by him? 20 A Yes, to my understanding. 21 Q Do you still have funds in that escrow account? 22 A I have no idea. 23 Q When was the last time you got a paycheck from 24 Mr. Smalls? 25 A The week prior to the accident.	1 Q As I understand it, you had legal representation pretty 2 quickly after the accident; is that fair to say? 3 A Yes, I called him. 4 Q I mean, that was within like a day or two after the 5 accident you had somebody working on your behalf? 6 A In two days. 7 Q Where did you work prior to JIS Trucking? 8 A Leopard, Incorporated. 9 Q Leopard? 10 A Yes. 11 Q What does Leopard, Incorporated do? 12 A It's a tire company. We distribute tractor-trailer 13 tires. 14 Q How long did you work for Leopard? 15 A About seven years. 16 Q And where's Leopard located? 17 A It's headquartered out of New Jersey. It's local 18 office is here in North Charleston. 19 Q You said that they distribute tractor-trailer tires. 20 Were you doing long distance hauling, trucking? 21 A Both. My job required mostly local driving. 22 Q So local within South Carolina? 23 A No. South Carolina, North Carolina, Florida, Georgia. 24 Q And why did you leave Leopard, Incorporated? 25 A The work slowed down, and I needed money.
1 Q Have you spoken to Mr. Smalls since the accident? 2 A Once or twice. 3 Q Did he come see you in the hospital? 4 A Yes. 5 Q Has he done anything to help you with your lost wages 6 or your medical bills? 7 A Nothing. 8 Q Have you discussed that? 9 A When I asked him about it, he told me about the 10 insurance. When I contacted the insurance, nothing. 11 Q And what did he tell you about insurance? 12 A That he had insurance. 13 Q Did he tell you, Ben, auto insurance or worker's comp, 14 or did he tell you what kind? 15 A He said he had workers' comp insurance for us. 16 Q And he gave you the name of a company to call? 17 A Yeah. I gave that to the lawyer. I don't remember the 18 name. He also said that he spoke with Chris Thompson, and 19 Chris Thompson told him that he would cover the medical 20 bills. 21 Q Did you ever speak with anybody at Mr. Smalls insurance 22 company, or did you just pass that on to your attorney? 23 A They contacted me at first, after the accident. They 24 sent me a card and then they said, nothing. I passed all 25 that information on to my attorney.	1 Q When did you last work for them? 2 A February, the latter part of February. 3 Q Of this year? 4 A Yes. 5 Q How much were you earning on average at Leopard? 6 A About 500 a week. 7 Q And is that the same you would earn from them any in 8 2010 or 2009? 9 A Yeah. 10 Q One of the things we have to do in worker's comp is try 11 to get an idea of how much money you were making in the past 12 year. So was there any other income from any source other 13 than Leopard, Incorporated or from Sedick Smalls in this 14 past year, 2011? 15 A Allstate Logistics. 16 Q What did you do for Allstate Logistics? 17 A Local runs. That's just to supplement my income. 18 Q When was the last time you worked for Allstate 19 Logistics? 20 A Back in January. The company went out of business. 21 Q So around the time of this accident, say July or August 22 of 2011, any other supplemental source of income? 23 A No. 24 Q The checks that you would get from Sedick Smalls, 25 would it be on a JIS checking account?



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Samuel Rose.

November 14, 2011

1 A Yes.
2 Q Would it always be the same looking check, or did you
3 ever get a check personally from Sedrick?
4 A Always from JUS Trucking.
5 Q And if we needed to try to track down how much those
6 checks were, would you have a habit of cashing them
7 somewhere or depositing them into a checking or saving
8 account?
9 A I always cashed it at First Citizens Bank.
10 Q Did you have an account there or was that where
11 Mr. Smalls did?
12 A That's where Mr. Smalls had his account.
13 Q Was there a particular branch that you used?
14 A Summerville, Main Road.
15 Q Tell me, on the day of this accident, I believe it was
16 August 10, 2011, what were you doing before the accident
17 occurred or what were you in the process of doing when the
18 accident occurred?
19 A That was my last run for the night, and I was on my way
20 to Capstone to drop the load.
21 Q Did you ever turn in the receipts from that day to
22 Sedrick Smalls?
23 A No. The receipts were left inside the truck. My log
24 book and everything was left in the truck.
25 Q And tell me, as a result of the accident, what

1 happened. Did you stay inside the cab of truck, were you
2 thrown from the cab of the truck, what happened to you
3 specifically?
4 A After the accident, I was pulled out of the truck.
5 Some people stopped, and they pulled me out of the truck and
6 tossed me over the wall, the median of the highway.
7 Q Are there air bags in the truck or any other restraint
8 devices?
9 A Seatbelt.
10 Q Do you recall hitting in particular on the inside of
11 the cab, or did the front end restrain you?
12 A My knee shattered the steering column. My head bounced
13 off the rear glass and steering wheel.
14 Q You said the rear glass?
15 A Yes, it was a dry cab.
16 Q Anything else that you can really recall hitting?
17 A Just my right knee when it shattered the steering
18 column and just hitting - I blacked out when I hit the
19 glass, but I do remember getting pulled from the cab, and
20 then they threw me over the wall before the truck blew up.
21 Q When you blacked out were you totally out cold, or did
22 things just kind of go fuzzy for you a little bit?
23 A I was told I was out cold.
24 Q Is my understanding you were taken to MUSC, is that
25 right?

1 A Yes.
2 Q How long did you stay at MUSC?
3 A A day and a half.
4 Q And when they released you from MUSC were you referred
5 to any particular doctors or what was your plan of care
6 after your release from MUSC?
7 A They scheduled me an appointment with the neurologist.
8 They gave me a physical therapist and told me I needed to
9 see an orthopedist as well.
10 Q Do you have a family physician?
11 A No, not at the time, no.
12 Q In the past, have you had a personal family doctor?
13 A No, I just use military doctors.
14 Q Did you serve in the military?
15 A No, my parents.
16 Q So when you were younger, you would just see VA
17 doctors?
18 A Yeah.
19 Q But you haven't seen anybody at the VA since this
20 accident?
21 A No.
22 Q And if you tried to take a break, just let me know.
23 A I took pills before.
24 Q What sort of pills might have you taken today?
25 A Flexeril, Fioricet, Elavil, Exiprex.

1 Q Do those medications have any effects on you, side
2 effects? Do they make you drowsy or --
3 A Drowsy, dizzy but they are suppose to help me cope with
4 pain.
5 Q Now, after MUSC, did you - you said that they
6 scheduled an appointment with a neurologist, is that right?
7 A Yes.
8 Q Did you see the neurologist?
9 A No, they just canceled my appointment.
10 Q Have you seen a neurologist at all since the accident?
11 A I'm scheduled to see one next week.
12 Q Who are you scheduled to see next week?
13 A Dr. Weinstein (ph).
14 Q Doctor who?
15 A Weinstein.
16 Q Weinstein? Is that somebody that you're -
17 MR. FISHER: Weinstein.
18 MS. BARR: Weinstein.
19 Q And you're to see Dr. Weinstein about your neck?
20 A My neck, my back, and my knee.
21 Q Now, I know MUSC had talked to you about seeing an
22 orthopedist about your knee. Did you see any of the
23 orthopedists at MUSC for your knee?
24 A No. They canceled the appointments as well.
25 Q There was talk about you seeing Dr. Harstock (ph). Did


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1 you ever see him? He's an orthopedist at MUSC? 2 A He's the one that canceled the appointment. There was 3 a problem with the insurance. 4 Q You've seen Dr. Widdsten already; is that right? 5 A I've spoken with him, but I haven't went to his office 6 yet. 7 Q Have you seen any doctor since you were released from 8 MUSC? 9 A Yes. 10 Q And who has treated you? 11 A Dr. Able, Dr. Keller, Dr. Wells. 12 Q Dr. Able, what kind of doctor is Dr. Able; do you know? 13 A General practitioner. 14 Q And how did you find Dr. Able? 15 A Through my lawyer's office. 16 Q And what has Dr. Able been doing for you? 17 A He's the initial one that treated me for my neck, my 18 back, and my knee. He's been - 19 Q Giving you the medications? 20 A Some of it. I'm just monitoring my treatment. 21 Dr. Keller (K) is the pain specialist. He's the one - he's 22 been trying to help me cope with my pain. He's given me 23 Oxycodone, Loraz, just things to help with the pain. I've 24 taken two epidural, cortisone shots. 25 Q And were your epidurals for your neck or for your lower	1 Q After - I know you spent the night there but after 2 your release did you ever go back to see any doctors at 3 MUSC? 4 A No, I went to my appointments but they kept getting 5 canceled. And then also assigned me a physical therapist. 6 And I forgot who that was. 7 Q Did you get any therapy done there? 8 A Three times. 9 Q And I know you said you scheduled Dr. Widdsten. Any 10 other doctors appointment? 11 A No, Doctor Able, yes. 12 Q What sort of schedule do you have with Dr. Able? Do 13 you see him like once a week or once a month? 14 A Every two weeks. 15 Q And the pain medicines you have now you said you got 16 some from Dr. Able and then some from Dr. Keller? 17 A Yeah. 18 Q Tell me a little bit about the pain you're feeling now, 19 where you're feeling it, and help me understand how you 20 describe it. 21 A Dizziness. 22 Q And how frequently are you dizzy? 23 A Daily. 24 Q Is it something that comes and goes? 25 A If I move too fast then my head starts spinning. If I
1 back? 2 A My lower back. The cortisone shots were for my neck. 3 And he referred me to Dr. Widdsten. 4 Q Have you seen anybody in Dr. Widdsten's office. 5 A No. I took an MRI already, and I'm waiting for my 6 appointment. 7 Q Where did you have the MRI done? 8 A Tidwell County Radiology. 9 Q And was that for your neck or for you or lower back? 10 A My neck. I've had an MRI of my knee done at MUSC. 11 Q All right. Do you have any appointments with any 12 doctors that deal specifically with the knee problem or the 13 main problem, your neck and your back at this point? 14 A My neck and my back at this point. 15 Q And you mentioned Dr. Wells; is that right? 16 A Yes. 17 Q What has Dr. Wells done for you? 18 A Mostly it's just therapy, physical therapy and just to 19 help me deal with the pain. 20 Q Any doctors other than Dr. Able, Dr. Keller, 21 Dr. Wells? 22 A No. 23 Q And then of course you saw a number of doctors while 24 you were a patient at MUSC. 25 A Yes.	1 get up, when I first stand up I have to extend myself. 2 There's a throbbing in the back of my head that hurts. My 3 neck, if I hold it up too long it starts hurting. My lower 4 back is still in pain. And my knee, if I go for walks in 5 the neighborhood to exercise, walking less than a block I 6 just need help or need some rest just to get back on. 7 Q And that's your right knee? 8 A Yeah. 9 Q Does it lock up or it just hurts? 10 A It locks up and it hurts. 11 Q Do you feel the pain anywhere else? 12 A My whole back. My entire back. 13 Q Is there anything that helps with the pain or improves 14 it even a little bit as far as your back pain goes. A 15 position or activity that helps? 16 A Showers, warm showers; Eongry. 17 Q But you have been doing some exercises with the 18 physical therapist? 19 A Yes. 20 Q Do they have you doing anything at home as far as 21 exercising or stretching to help with your back? 22 A Stretching helps my back and my neck. 23 Q Are you good? Some people are better than others about 24 actually doing the stretches and exercises. Do you do them? 25 A I do some of them, but it hurts.

1 Q You mentioned that the medication that you've taken 2 before you came here today, do you take any other 3 medications say like at bedtime? 4 A Yes. 5 Q What other medications do you take? 6 A Fentanyl. 7 Q Your handing me a list and it look like -- 8 A Those are all the medication that I take. 9 Q So it's Fentanyl, Amitriptyline, Fioricet, Eleval, 10 Ibuprofen, Loraz, the Ibuprofen, and you also have 11 Neurontin and Oxycodone? 12 A Right? 13 Q And the Oxycodone, is that something that you take when 14 the pain gets really bad? 15 A Yes. 16 Q And the Neurontin you take everyday? 17 A Yes. 18 Q Have you ever had surgery before? 19 A No. 20 Q Have you ever been hospitalized for any reason prior to 21 this accident? 22 A No. 23 Q Have you ever had a workers compensation claim or a 24 personal injury claim? 25 A Never.	1 blood pressure, diabetes anything like that. 2 A High blood pressure, Asthma. 3 Q Do you take prescription medications for either of 4 those conditions? 5 A For high blood pressure Lotensin. 6 Q And who prescribes Lotensin for you? 7 A Dr. Able. 8 Q And before Dr. Able, who -- 9 A I was not on any medication for high blood pressure. 10 Q Were you aware you had high blood pressure before the 11 accident? 12 A Yes, but it wasn't dangerously high. 13 Q Do you monitor your blood pressure now? 14 A Nope, I do, yes. 15 Q Do you have it under control now? 16 A Yes. 17 Q And just so I'm clear, you may have already told me 18 this, but Dr. Able -- you never saw Dr. Able until after 19 the accident in August? 20 A Right. The blood pressure medication, they had assumed 21 the headaches I was having was because of the blood 22 pressure. Then the blood pressure came under control and 23 then I still had the headaches. 24 Q Does the pain medication that you're taking, does that 25 help with the headaches?
1 Q Have you ever been in an automobile accident prior to 2 this? 3 A Yes. 4 Q And when was that? 5 A I think it was '07. 6 Q In 2007? 7 A Yes. 8 Q And where did that accident occurred? 9 A Here in Charleston. 10 Q Were you injured in that accident? 11 A No. 12 Q Was there any sort of settlement with the insurance 13 company over that accident? 14 A Yes. 15 Q Do you recall about how much you received in that 16 settlement? 17 A No. 18 Q Was it a couple hundred dollars, a couple thousand 19 dollars? 20 A It was a few hundred. And the owner of the car is the 21 one that got his car repaired. I borrowed the car. 22 Q Did they take you hospital or anything after the 23 accident? 24 A No. 25 Q Do you have any chronic medical conditions like high	1 A No, not really. 2 Q How would you describe the type of headaches you have. 3 Where do you feel it and what does it feel like? 4 A The back of my head. It's like a buildup of pressure, 5 throbbing. 6 Q Does that change through the course of the day, the 7 intensity? 8 A Sometimes it gets worse and sometimes it's milder, but 9 it's there. 10 Q I noticed your wearing a soft collar around your neck. 11 Where did you get that? 12 A Dr. Able. 13 Q When do you wear that? 14 A Whenever I have to keep my head up. 15 Q So like you don't wear that around the house or that 16 sort of thing? 17 A No. Right now just keeping my head up at work, and my 18 collar is just to help me keep it up. 19 Q So you kind of rest your chin on it a little bit? 20 A Yeah. 21 Q And the cane, I notice that your off carrying the cane? 22 A Unsteadiness and balance. 23 Q Have you talked to Dr. Able about maybe your 24 medications affecting you making you a little dizzy? 25 A He said that the whiplash effect, I'm going to be dizzy

25 1 for another year. I'll still have side effects from it. 2 Q But you have not gone to a neurologist to have that 3 checked out. 4 A Not yet. 5 Q And you don't think any appointments are scheduled 6 right now with the specialist? 7 A No. They've taken X-rays, and Dr. Kellist is the last 8 to take X-rays of my neck, and he referred me to the 9 neurologist. 10 Q And there in his same practice together, Dr. Widdensen 11 and Dr. Kellist, is that right? 12 A Dr. Wills and Dr. Kellist is in the same practice. 13 Dr. Able is in a different practice. 14 Q Have you had any sources of income since the accident? 15 A Just family and money that I've borrowed. 16 Q You don't have like a AFLAC policy or any kind of 17 insurance policy? 18 A No. 19 Q And your medical bills, have you started getting bills 20 from MUSC or any of the other providers? 21 A Yes. 22 Q Have you paid any of your medical bills? 23 A No. 24 Q When was the last time you spoke to Sedrick Smith? 25 A It's been over a month ago.	27 1 of record like a check stub or anything like that that you 2 could -- 3 A I didn't save any. 4 Q You didn't save any. 5 A We probably can go to the bank and ask for copies of 6 the check. 7 Q But you said they were always on a JIS Trucking 8 checking account? 9 A Yes. 10 Q And then there would have also been somebody would have 11 kept a log -- 12 A Sedrick Smith. 13 Q Did your log survive the accident, do you know? 14 A I have no idea. 15 Q With the log that you would have had with you on the 16 night of the accident, been your only log you ever had 17 working for JIS Trucking, or would there have been other 18 logs? 19 A Copies of the logs are kept by Chris Thompson when we 20 turned in the logs at the end of the week. 21 Q Did you ever see him personally and the hand him the 22 log, or was there just left in the plant? 23 A We left it in a place. 24 Q Was that left at Captone's? 25 A No, it was left in Summerville.
26 1 Q And you said that he told you that you were covered by 2 workers? He had a worker's comp policy that covered you? 3 A That was in the hospital after the accident he told me 4 that and that was back in August. 5 Q Did you subsequently find out that he didn't have a 6 policy in effect? 7 A Yes. 8 Q Did you talk to him about that? 9 A I spoke with my lawyer. 10 Q But you never confronted Mr. Smith, and said hey, your 11 policy was no good? 12 A Yeah. I asked him about it, and he still showed me 13 that it was good. 14 Q Do you have a gut feeling, do you believe him, do you 15 think he had a workers' compensation policy? 16 A At the time of the accident, I did believe him. 17 Q What about now, do you know what to think? 18 A Right now I was told they didn't that the policy 19 lapsed. 20 Q Do you think you know, if Mr. Smith said he had it, 21 do you think he knew it had lapsed, or do you think he was 22 telling you the truth -- 23 A At the time, I assumed he was telling me the truth. 24 Q If we needed you to help us figure out how much you had 25 earned while working for JIS Trucking, do you have any sort	28 1 Q At the any call in Summerville? 2 A Yes. 3 Q Would it have been at that front office where you drop 4 in? 5 A No, back at the scales. 6 Q Would you talk to anybody when you dropped that off? 7 A No. We put it in a envelope in the mailbox. The 8 mailbox was for JIS Trucking, and we just put it in an 9 envelope for JIS Trucking. 10 Q There was just some kind of lobby with the mailbox in 11 it? 12 A Outside. 13 Q Outside. And the over there by the scales? 14 A Yes. And if there was any problems JIS would contact 15 me or Sedrick Smith would contact me. 16 Q As for the problems with the logs? 17 A Yes. 18 Q Mr. Rose, I think that's all the questions I have for 19 you. Mr. Kellist may have some questions for you and your 20 lawyer might have some, too. 21 EXAMINATION BY MR. KELLIST: 22 Q I'm Tim Kellist. I represent the state agency involved 23 in this case. This is Workers' Compensation Uninsured 24 Employer Fund. When you went to work for JIS Trucking, did 25 your route ever vary?

1- A We took the Interstate or we went the back way through 2- Harahan and Goose Creek. 3- Q But you were always going to the same place from the 4- same place; is that correct? 5- A Yes. 6- Q How did you know you were hauling these loads for Chris 7- Thompson? 8- A Chris Thompson was the contractor and everything coming 9- out of Sumnerville saw mill is either hauled for Don Sweet 10- or Chris Thompson. Everybody else were just subcontractors 11- under those two. 12- Q How did you know you were working under Chris 13- Thompson? 14- A I was told. 15- Q Who told you that? 16- A Sedrick Smith. 17- Q Did you ever work for anybody else other than Chris 18- Thompson? 19- A At the saw mill, no. 20- Q You said that Chris Thompson would contact you? 21- A No, his secretary. 22- Q His secretary would contact you? 23- A If there's a problem with the logs or paperwork that I 24- turn in, they left either notes in the box for us, or when 25- we picked up our checks, we received the note from them, or	1 Chris Thompson. The trucks belong to JJS Trucking, and they 2 were responsible for the maintenance on the trailer. JJS 3 Trucking was responsible for maintenance on the truck. 4 Q Every time you started a load the trailer was Chris 5 Thompson's? 6 A Yes. 7 Q When you were just the trailer on your out truck was 8 Chris Thompson's? 9 A Yes. 10 Q Did JJS Trucking own any of the trailers? 11 A No, just the truck. 12 Q Could you have done the job without the trailer? 13 A No. The trailer is used to haul the chips. 14 Q And so in order to get the job done you needed Chris 15 Thompson's trailer? 16 A Right. 17 Q Did you ever have any direct interaction with Chris 18 Thompson himself? 19 A His mechanics. 20 Q What would they do? 21 A They were the ones that inspected the trucks, took care 22 of the maintenance on the trucks, fix the tires, just the 23 regular maintenance on the trailer. 24 Q You said the trucks, you mean the trucks or the trailer 25 accident?
1 They would call us on the phone, or our boss would tell us, 2 relay the message to us. 3 Q Did somebody from Chris Thompson call you more often, 4 or did your boss Sedrick Smith? 5 A Mostly Sedrick Smith. Once I was contacted by someone 6 from Chris Thompson's office. 7 Q Just once? 8 A Twice. 9 Q Are you sure? 10 A Yes. 11 Q I don't want you to guess. I just want you to tell us 12 what you know. And when you were contacted by someone from 13 Chris Thompson what did they want? 14 A First time, was my boss of service. I went over 12 15 hours, and they told me not to do that, and the second time 16 it was for truck inspections. 17 Q What in regards to truck inspections? 18 A I needed to take the truck over to his shop to have 19 them inspect it. 20 Q You needed to take your JJS Trucking truck over to 21 Chris Thompson's shop; is that correct? 22 A Yes. 23 Q So that someone from Chris Thompson's outfit could 24 inspect your truck? 25 A The trailer. The trailer that we hauled belonged to	1 A The trailer. The day before the accident they 2 inspected the trucks, the truck itself. 3 Q And that JJS Trucking's truck? 4 A Yes. Chris Thompson mechanics inspected the truck 5 itself. The tractor, the day before the accident and prior 6 to that they were only inspecting the trailer and just doing 7 any maintenance or anything that we found wrong with the 8 trailer, they would fix it. 9 Q Do you know why they would inspect your truck the day 10 before the accident? 11 A One of the trucks that belonged to JJS Trucking had a tire 12 problem. The tread on the tire was worn. The mechanics 13 inspected it when it was parked at Sumnerville saw mill. He 14 left a note saying it needed to get replaced, and then he 15 wanted to see all the trucks and inspect the tires. 16 Q He being who? 17 A The head mechanic. A guy named Tim. 18 Q Tim working for? 19 A Chris Thompson. And to my knowledge he wanted every 20 truck that JJS drove inspected by him. 21 Q Did you talk to Sedrick Smith about that? 22 A Yes. 23 Q What did Sedrick Smith tell you? 24 A The truck that I was driving I had to take it to his 25 mechanic to get some tires replaced, and after I had the

1 tires replaced, I took it to have Tim, Chris Thompson's 2 mechanic to have it inspected. 3 Q What did Sedrick Smith tell you about the inspections? 4 A That we passed the inspection. 5 Q Did he tell you anything else? 6 A No. He just you told me to go get the trailer from 7 Chris Thompson, so I could continue my work for the day. 8 Q Did you ever hand in your logs to Sedrick Smith or JJS 9 Trucking? 10 A Yes. 11 Q How frequently would you do that? 12 A When I first started, I gave him my logs personally. 13 But after approximately two weeks I started putting it in 14 the box. 15 Q And giving it directly to Chris Thompson's company? 16 A Yes. 17 Q Besides the truck and the trailer, was there anything 18 else you needed to do your job? 19 A Fuel. 20 Q And you needed the logs, right? 21 A Yep. 22 Q How was fuel paid for? 23 A Tanja Smith, Sedrick's wife, we met her at the gas 24 station on Monrovia Gray Avenue. She would fill up the truck. 25 She did it twice a week.	1 Q What do you think would you happen if he made that 2 recommendation? 3 A We would be fired. 4 Q Is it your understanding that Chris Thompson said he 5 would pay for your medical bills? 6 A That's what I was told. 7 Q You were told that by Sedrick Smith? 8 A Yes. 9 Q And none of your medical bills have been paid? 10 A Nothing. 11 Q And you have not received any form of weekly 12 compensation while you have been out? 13 A No. 14 Q Did Chris Thompson subcontract this work out to any 15 other companies other than JJS Trucking? 16 A I wouldn't know that. 17 Q Were you aware of any drivers from other companies 18 hauling loads using Chris Thompson's trailers? 19 A I wouldn't know that. 20 Q Capstone ever have any drivers? 21 A Nope that came in contact with it. Everybody that 22 drove there just came from all over the state. 23 Q You never saw any Capstone employees driving your truck 24 doing the same things that you were you doing? 25 A I wouldn't know if they were Capstone employees.
1 Q Did you ever - 2 A Plus she would pay for it after we filed it up. 3 Q Did you fill up your truck any other way than that? 4 A No. 5 Q And when you got those new tires on the truck how was 6 that paid for? 7 A He paid for it himself. Sedrick Smith paid for it. 8 Q Did anybody working for JJS Trucking ever get fired 9 while you worked there? 10 A Nobody got fired. 11 Q Did anybody ever get reprimanded while you were there? 12 A Not to my knowledge. 13 Q Did you ever get reprimanded in any way? 14 A Once for my hours of service. 15 Q You got reprimanded by Chris Thompson's secretary? 16 A Both. Chris Thompson secretary and Sedrick Smith. 17 Q And you got paid \$25 a load? 18 A Yes. 19 Q And all the load you were hauling were - 20 A Woodchips. 21 Q In Chris Thompson's trailers. 22 A Yes. 23 Q Do you know whether or not Chris Thompson had a right 24 to fire you? 25 A He would recommend that we be fired.	1 Q So you don't know if that the right? 2 A Right. 3 Q How often do you take the Oxydome? 4 A I take the oxydome when the pain is unbearable. 5 Q Where's the last time you took it? 6 A Last night. 7 Q Before that, where's the last time you took it? 8 A When I took my MRI. 9 Q How long ago was that? 10 A Last week, Monday. 11 Q Do you ever take it more than a couple times a week? 12 A No. 13 Q And you said you were tossed over the median when you 14 got out of the truck? 15 A The people that pulled me out of the truck. They tried 16 to pull me away from it. I remember one guy saying get him 17 on the other side against the wall, and then I felt them 18 throw me over the wall, and when I came, to the police and 19 Gremm was dragging me further away from the truck while it 20 was burning. 21 Q What was burning? 22 A The truck blew up. The tractor that hit me blew up, 23 and my truck was burning. It caught on fire. 24 Q You didn't get any burns yourself? 25 A Smith situation, no.

37 1 Q Who pulled you out of the truck? 2 A I have no idea. 3 Q Do you know who hit you? 4 A I was told it was the driver by the name of Robbie. 5 Q Do you know Robbie? 6 A No. 7 Q Have you ever met him prior to that night? 8 A Just speaking saying hi and bye. 9 Q Where would you see him? 10 A When I'm leaving or coming to work. When I'm leaving 11 the saw mill or coming to work to the truck. 12 Q Saw mill. That's where you would start your work every 13 day? 14 A Yes. 15 Q What business is there? 16 A Sumpterville saw mill. That's where we picked up the 17 woodchips to take to Capstone. 18 Q Where did you keep your - 19 A All the trucks were parked across the street from the 20 saw mill property. All of Chris Thompson's trucks and JJS 21 trucks, they were parked there. 22 Q Where there any other trucks from any other companies 23 parked in the same lot? 24 A There used to be, but back in June or you July Don 25 Sweet, he had his drivers bring his trucks to him, and his	39 1 STATE OF SOUTH CAROLINA 2 : CERTIFICATE 3 COUNTY OF DORCHESTER 4 I, Lad B. Bearden, Court Reporter and Notary Public, 5 certify that I did have Samuel Rose to appear before me at 6 8:45 a.m. on Monday, November 14th, 2011, at the law offices 7 of George Eirik, P.A., 7011 Jivon Avenue, A. Charleston, 8 South Carolina, that the witness was sworn and cautioned to 9 tell the truth, the pages constitute a true and accurate 10 transcript of the testimony given at that time and place. 11 I further certify that I am not of counsel or kin to 12 any of the parties to this cause of action, nor am I 13 interested in any manner in its outcome. 14 IN WITNESS WHEREOF, I have hereunto set my hand and 15 seal this the 14th day of November, 2011. 16 17 18 19 Lad B. Bearden 20 Notary Public for South Carolina 21 My Commission Expires: September 28, 2021 22 23 24 25
38 1 also contacted parked their trucks somewhere else. The only 2 people that parked there was Chris Thompson and JJS trucks. 3 Q Do you know anything about who paid who to park them? 4 A No. 5 Q Do you know anything about the agreement between JJS 6 Trucking and Chris Thompson? 7 A No. 8 Q Up you know how much - and I know I just asked you 9 this question. Do you know what percentage Chris Thompson 10 took from each of your loads. 11 A No. 12 Q Did you have an understanding what would have happened 13 had your truck not passed that inspection by Chris 14 Thompson's personnel that day? 15 A I would have either had to drive a different truck or 16 not work. 17 Q Do you know whether or not Sedrick Smith had any 18 discussions with Chris Thompson when you were hired? 19 A I don't know. 20 Q That's all I have. 21 MS. BARR: Thank you, sir. That's all we have for 22 you if Mr. Fisher doesn't have any questions. 23 (The deposition was continued at 24 10:40 a.m. November, 14th, 25 2011)	39

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Samuel A. Rose,	)	W.C.C. FILE NO. 1112328
	)	
Employee/Claimant,	)	
	)	
-vs-	)	PETITION TO TRANSFER LIABILITY
	)	TO S.C. UNINSURED EMPLOYERS' FUND
JJS Trucking, LLC and Chris Thompson	)	PURSUANT TO S.C. CODE ANN. § 42-1-415
Services, LLC,	)	
	)	
Employers,	)	
	)	
and	)	
	)	
Bridgefield Casualty Insurance Co. and	)	
The S.C. Uninsured Employers' Fund,	)	
	)	
Carriers,	)	
	)	
Defendants.	)	

TO: The South Carolina Workers' Compensation Commission; Joseph B. Fisher, Esq., attorney for the Claimant; JJS Trucking, LLC; Timothy B. Killen, Esq., attorney for The South Carolina Uninsured Employers' Fund; and F. Reid Warder, Esq., attorney for Travelers Insurance Company;

PLEASE TAKE NOTICE that Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 to transfer liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. In his December 6, 2011 Form 50, the Claimant named JJS Trucking, LLC and Chris Thompson Services, LLC (upstream contractor) as employers at the time of

his August 10, 2011 work-related accident. The Claimant alleges injuries to the right knee, back, neck, and head as a result of an August 10, 2011 motor vehicle accident.

2. JJS Trucking, LLC was the Claimant's direct employer at the time of the August 10, 2011 accident. (See attached depositions of Samuel Rose and Sedrick Smalls).
3. JJS Trucking, LLC was a subcontractor for Chris Thompson Services, LLC at the time of the Claimant's alleged injuries.
4. JJS Trucking, LLC provided Chris Thompson Services, LLC with a Certificate of Liability Insurance, with effective date of October 8, 2010 and expiration date of October 8, 2011 for its workers' compensation policy, at the time it commenced work for Chris Thompson Services, LLC. (Exhibit A).
5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking, LLC to Chris Thompson Services, LLC.
6. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to or the knowledge of Chris Thompson Services, LLC, prior to the August 10, 2011 accident.
7. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this

title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employer's Fund."

8. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."
9. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.
10. JJS Trucking, LLC represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).
11. Furthermore, S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

12. HSE Consulting, LLC has provided that Thompson Services, LLC will neither be
credited nor be allocated that its workers' compensation coverage had lapsed as
required by S.C. Code Ann. § 42-1-1073.

13. Based on all of the above, both Thompson Services, LLC and Bridgeline Construction
it must be held responsible for the liability under the Act.

WHEREFORE, the undersigned, Thompson Services, LLC and Bridgeline Construction
respectfully request that the South Carolina Workers' Compensation
Commission issue an order compelling both Thompson Services, LLC and Bridgeline Construction
to pay the liability under the Act for the period between 12/1/14 to
12/31/14 in accordance with S.C. Code Ann. § 42-1-1073 and transfer liability of any to the HSE Consulting
Company, Inc.

Respectfully submitted,

THOMAS A. HOWELL, A.C.U.

A.C.U. No. 1111

Mr. Thomas, SC 1111

By: _____

THOMAS A. HOWELL

Attorney for Thompson Services, LLC
and Bridgeline Construction Company

January 14, 2015
HSE Consulting, Inc.

SECRETARIAT OF SERVICE

I hereby certify that on the 15th day of April 1918 I have caused to be and caused copy of the Petition to transfer liability on the small passage property in the following manner and parties to be added as follows:

Joseph A. Fisher, Esq.
P.O. Box 21122
Hialeah, Florida 33150

Robert Smith
1000 Broadway, N.Y.
N.Y. 10001
Clarkston, Ga. 30101

Samuel A. Smith, Esq.
The Smith Law Firm
200 South Columbia
Tomball, Tex. 77375

A. Ross Winters, Esq.
P.O. Box 21122
Hialeah, Fla. 33150

Mr. William H. Smith
1000 Broadway
N.Y. 10001
N.Y. 10001
N.Y. 10001


Robert L. Smith

XXXXXXXXXXXXXXXXXXXX

**P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700**

Employer FEIN

Bridgefield Casualty Insurance Co.
Insurance Center

(843) 881-4228
Phone #

2. Total Weeks of Compensation Paid: 35 weeks

Type: _____ **From:** _____ **To:** _____

7. Use these lines to send a memo to the Commission: _____

April 10, 2012
Date

P149

THE SUBJECT OF THIS RECORD IS
A CONVICTED SEX OFFENDER.
ADDITIONAL INFORMATION MAY
BE OBTAINED FROM THE NATIONAL
SEX OFFENDER PUBLIC WEBSITE AT
WWW.NSOPW.GOV

ARREST RECORD

S.C. LAW ENFORCEMENT DIVISION

Since neither fingerprints nor an
identifying number which is indexed
in our files accompanied your re-
quest, SLED cannot guarantee in any
manner that this material concerns
the individual in whom you are
interested.

TO: REC21A-09885 Mon Apr 30, 2012 14:23:31 OPEDRVB0RPM
FROM: SCCH-00561 Mon Apr 30, 2012 14:23:31

ICHR REQUEST FOR RAP SHEET
JRI-SCLED0000 SID-1354050 PUR-E
LWN-BELF, LB

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ID-SC01354050 PRI-
NAME-ROSE, SAMUEL ARCHIEDE SEX-M RACE-B
HEIGHT-601 WEIGHT-165 EYES-BRO HAIR-BLK SKIN- BORN-SC
PC- HENRY-
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ATE RECORD ENTERED--02/23/2001 DATE OF LAST UPDATE--04/23/2012

ADDITIONAL IDENTIFIERS	BIRTH
AME	DATES MARKS SOC SEC MISC NUM
OSE, SAMUEL ARCHIEDELL	08221970
OSE, SAMUEL	
OSE, SAMUEL A	
ISE, SAMUEL ARCHIEDELL	08221970

ARCHIEDELL, ROSE SAMUEL
OSE, SAMUEL ARCHIEDELL

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

OSE, SAMUEL ARCHIEDE 02/07/2001
J0100000 NORTH CHARLESTON PD
SE-01-999999B
N-

ARREST CHARGE 01-INDECENT
EXPOSURE

PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-TRESPASS
OFFENSE DATE-02/07/2001
COURT CHARGE 01-INDECENT

DOC-01631003669 WARR-6536930

EXPOSURE
COURT DISP-CONVICTED:3 YRS
SUS PROB 5 YRS/CRED STARTED
D 2-7-01/SEX
COURT DATE-07/18/2001

ATN-

DOC-R84 WARR-6536915

COURT CHARGE 02-TRESPASSING
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-03/20/2001

SC040055C R & E CENTER COLA
CASE-276934
IT-16-15-120-MISDEMEANOR

07/24/2001 CUSTODY STATUS-RECEIVED
START DATE-07/24/2001

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:2YRS SS
2YRS WITH 5YRS PROBATION
ATN-

JOSE, SAMUEL
SC0100000 CHARLESTON CNTY SO
CASE-02999999X

10/03/2002

ATN-
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-10/03/2002
PHOTOGRAPH AVAILABLE

JOSE, SAMUEL ARCHIEDE
C0100000 CHARLESTON CNTY SO
ASE-02015011B

10/08/2002

ATN-

ARR-H099911

IT-23-3-470 (A) (B) (1)-MISDEMEAN

ARREST CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
OFFENSE DATE-10/08/2002
PHOTOGRAPH AVAILABLE

IT-23-3-470 (A) (B) (1)-MISDEMEAN
JC-03631000111 WARR-H099911

COURT CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
COURT DISP-CONVICTED:197

DAYS/CRED GIVEN FOR TIME

SERVED BY SC DOC

COURT DATE-06/24/2003

ATH-

SC040015C SC DEPT CORRECTIONS 12/30/2002 CUSTODY STATUS-RECEIVED://///

CASE-276934

SC01454479 CONSOLIDATED

START DATE-12/30/2002

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE

COURT DISP-CONVICTED;3 YRS

ATH-500200026890

ROSE, SAMUEL ARCHIEDE

02/12/2004

SC0100100 CHARLESTON POLICE DE

CASE-03-25363C

ATH-10X004043021

WARR-H407261

CIT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 01-INDECENT
EXPOSURE

OFFENSE DATE-02/12/2004

ARR-H407262

IT-N/A-MISDEMEANOR

PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-SIMPLE ASSAULT

LT

OFFENSE DATE-02/12/2004

IT-16-15-130-MISDEMEANOR

XC-04631003067 WARR-H407261

COURT CHARGE 01-INDECENT
EXPOSURE

COURT DISP-CONVICTED;3 YRS

SERVE 2 YRS BAL SUS 3 YRS

PROB/CRED FOR TIME

COURT DATE-01/03/2006

ATH-10X004043021

IT-C/L-UNCLASSIFIED

XC-04631003068 WARR-H407262

COURT CHARGE 02-ASSAULT OF A
HIGH AND AGGRAVATED NATURE

COURT DISP-CONVICTED;10 YRS

SERVE 3 YRS BAL SUS 3 YRS

PROB/CRED FOR

COURT DATE-01/03/2006

SE, SAMUEL ARCHIEDE

10/25/2004

SC0100100 CHARLESTON POLICE DE

CASE-04023850C

ATH-10X004299044

CIT-C/ORDINANCE-UNCLASSIFIED

ERY OF HIGH AND AGGRAVATED
NATURE

CIT-C/ORDINANCE-UNCLASSIFIED

OFFENSE DATE-10/25/2004
PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-INDECENT
EXPOSURE
OFFENSE DATE-10/25/2004

CIT-16-15-130-MISDEMEANOR
DOC-056810000518 WARR-HB65013

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED; 2YRS
SERVE 2YRS BAL SUS 3YRS

PROBATION CREDIT TIME
SERVED
ATH-10X004289044

JOSE, SAMUEL ARCHIEDELL

11/17/2004

IC0100100 CHARLESTON POLICE DE
ATH-
WARR-H749964
CY-16-15-130-MISDEMEANOR

ARREST CHARGE 01-INDECENT
EXPOSURE
PHOTOGRAPH AVAILABLE

TY-16-15-130-MISDEMEANOR
OC-05681000768 WARR-H749964

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED; 3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATH-

JOSE, SAMUEL
IC0100100 CHARLESTON POLICE DE
ASE-165 728
FH-990000031005
WARR-H768017
CY-16-3-654-FELONY

02/28/2005

ARREST CHARGE 01-CRIMINAL

SEXUAL CONDUCT - THIRD
DEGREE
OFFENSE DATE-02/28/2005

TY-16-3-654-FELONY
C-006810 WARR-H768017

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - THIRD
DEGREE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED

~~CONFIDENTIAL - SECURITY INFORMATION 100-443330-9007-7770-250100155C-133C-2C-25700100155C~~

LA 98-200601

15-16-130-MIDEMEANOR

87489 01475-01/12/2006

COMBAT CHARGE 01-INDIRECT

28060-2X2

COMBES DISCONTINUOUS-POINT METHOD

WRS 332YB9 3YR4FFMOBFA

COPIES DATE-01/12/2006

Y5R-50020004680

REF ID: A66549

02-453416/BALE COURT

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

2005

COURT DIS-COMVICTED, 1953-54

22804254128

COMB DATE-01/12/2006

REF ID: A67280-1/2-41

COPIES CHARGE 02-1534011 OF A

ADVICE CARRYOVERS ONY HATH

BY DISP-COMMITTEE, 10 YE

88 2 YRS 2 YRS 2 YRS 2 YRS

9002/21/10-2470 JMMJ

06/30/2006 CUSTODY STATUS-PROBATION

9002/02/90-8170 JHYJG

REF ID: A66005

001028-2857

REF ID: A66587

Y 20 J704884-TO ZEPHYRUS LANCER

DATE AND LOCATION OF REPORT

REF ID: A66666

8092 2YBS W/23

01 - PAGE 02 OF FOLLOW

END OF PAGE

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000305612716/220

NOTED 14-23-22 REC'D 09585 34N: 070000000000

10- REC211-09586 Mon Apr 30, 2012 14:23:32 OPHID/KVBOLEPH

REF: 88CB-00562 Mon Apr 30, 2012 14:23:32

AGE-02 MAYE-04/30/2012 TIME-14:23:31

24 OCT-2013 000000 S C LAM EMB DIV

FD-350 (Rev. 5-22-64)

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 02-INDICENT

EXPOSURE

COURT DISP-CONVICTED;3YRS

SUSP 2YRS W/3YRS PROBATION

CIT-C/L,-MISDEMEANOR

COURT CHARGE 03-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED

NATURE

COURT DISP-CONVICTED;10 YRS

SUSP 3YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 04-INDICENT

EXPOSURE

COURT DISP-CONVICTED;3YRS

2YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 05-INDICENT

EXPOSURE

COURT DISP-CONVICTED;3YRS

SUSP 2YRS W/3YRS PROBATION

OSE, SAMUEL

02/26/2008

CO100156 CHARLESTON FPP

ASE-20080225

FN-10D100528242

ARR-W10081703 *

IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION

VIOLATION

OFFENSE DATE-02/26/2008

PAI PRINTS AVAILABLE

OSE, SAMUEL

07/14/2008

CO100156 CHARLESTON FPP

ASE-20080714

FN-10D100541133

ARR-W10081703 *

IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION

VIOLATION

OFFENSE DATE-07/14/2008

PAI PRINTS AVAILABLE

040015C SC DEPT CORRECTIONS 07/16/2008 CUSTODY STATUS-RECEIVED

SE-071620

START DATE-07/16/2008

T-C/L-UNCLASSIFIED

COURT CHARGE 01-ASSAULT OF A
HIGH AND AGGRAVATED NATURE

COURT DISP-CONVICTED;10 YRS

COURT CHARGE 02-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DATE-CONVICTED, 10 YRS
SS 3 YRS 3 YRS PROB CC

COURT DATE-07/16/2008

CTF-16-15-130-HISDREANOR

COURT CHARGE 02-INDECENT
EXPOSURE
COURT DATE-CONVICTED, 3 YRS 3
YRS SS 2 YRS 3 YRS PROB

COURT DATE-07/16/2008

04/14/2012

JOSE, SAMUEL ARTHUR
NC1080000 DORCHESTER CITY SO
TAR-12004032
LEN-1800612671
ARR-4473169
CTF-16-11-311-PELOSY

ARREST CHARGE 01-BURGLARY -
FIRST DEGREE
OFFENSE DATE-04/14/2012
PHOTOGRAPH AVAILABLE
FBI PRINTS AVAILABLE

ARR-4473169
CTF-16-12-180(B) (1)-HISDREANOR

ARREST CHARGE 02-RECEIVING
STOLEN GOODS <\$2,000

OFFENSE DATE-06/14/2012

- WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

LEAD ON SEARCH OF SCIED CYS CCH FILE USING SID/SC1954050
HIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CHARGE ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
HARRIS MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
SE OF THIS RECORD IS ALLOWED.

>>> ** N O T I C E ** <<<

THE SUBJECT OF THIS RECORD IS A CONVICTED SEX OFFENDER. ADDITIONAL
* INFORMATION MAY BE OBTAINED FROM THE SOUTH CAROLINA SEX OFFENDER
* REGISTER AT: > WWW.SLED.SC.GOV <

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
NINETY (90) DAYS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C 922(G)).

* 3 C CUIS END OF RECORD **

N Mon Apr 30, 2012 14:23:32

000305515414/220

OT Mon Apr 30, 2012 14:23:32

REC21A MSG# 09886

SAN: 0FHURVB0AFKH

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

Samuel A. Rose,
Employee/Claimant,

v.

JJS Trucking, LLC, Employer, and
the South Carolina Uninsured
Employers' Fund,

and

Chris Thompson Services, LLC,
Statutory Employer, and
Bridgefield Casualty Insurance
Company, Carrier,
Defendants.

W.C.C. FILE NO. 1112328

**MOTION TO INTRODUCE
NEWLY DISCOVERED EVIDENCE**

TO: Commissioner Aisha Taylor, South Carolina Workers' Compensation Commissioner,
Joseph B. Fisher, Esq., attorney for the Claimant, Amy B. Coefield, Esq., attorney for the
Uninsured Employer's Fund, and J. Eric Kauffmann, attorney for JJS Trucking, LLC:

PLEASE TAKE NOTICE that the above-named Defendants hereby move, pursuant to
Regulation 67-215 and Regulation 67-707 to introduce newly discovered evidence into the record
and the Commission's file. This Motion is based upon the following:

1. This matter is currently pending before Commissioner Taylor for a determination of whether
the Claimant is entitled to any additional medical or compensation benefits under the
Workers' Compensation Act.
2. On November 8, 2013, which was following the hearing but prior to a determination of the
issues, the Defendants learned for the first time that the Claimant commenced a third party

claim against Robbie Clark and his insurance carrier in the Charleston County Court of Common Pleas on February 20, 2013. (See Attached Exhibit "A").

3. The Claimant's third party action arises out of the same alleged accident on August 10, 2011 for which the Claimant seeks workers' compensation benefits. (See Attached Exhibit "B").
4. South Carolina Code § 42-1-560 sets for the requirements for simultaneously pursuing third-party action and a workers' compensation claim. The statute provides:

"Notice of the commencement of the [third party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]."

5. The Claimant did not provide any notice of the commencement of the third party action until November 5, 2013, when counsel for the Claimant notified the undersigned counsel for the Defendants that his third party action was scheduled for mediation. The Claimant's "notice" was clearly beyond the thirty day requirement (it was actually 258 days after the commencement of his third party action) and, to date, no Form S2 (the form prescribed by the Commission) has ever been filed or served.
6. Because the Workers' Compensation Act is in derogation of common law rights, the requirements of § 42-1-560 must be strictly construed. Callahan v. Beaufort County Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even if the Defendants have "not lost [their] right of subrogation against the potentially responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.

7. According to the South Carolina Supreme Court, "§ 42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra.

WHEREFORE, the Defendants respectfully contend that newly discovered evidence (*i.e.*, the third-party claim filed in the Circuit Court on February 20, 2013), when considered with the Commission's file that does not include a Form S2 dated on or before March 22, 2013 and the undersigned's averment that no Form S2 has been served upon the Defendants, compels a conclusion that the Claimant failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560(b) and; therefore, he is not entitled to any additional workers' compensation benefits as a matter of law. The Defendants request that the Hearing Commissioner receive this newly discovered evidence (Exhibits "A" and "B") or otherwise take judicial notice of the fact that the Claimant commenced a third party action on February 20, 2013 but failed to File a Form S2 within the requisite 30 days and render her decision accordingly..

WE HEREBY SO MOVE.

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for the Defendants

November 11, 2013

EXHIBIT "A"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Robbie Clark,

Plaintiff,

vs.

Samuel A. Rose,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-10-2996

AMENDED ANSWER
AND COUNTERCLAIM
(Jury Trial Demand)

FILED
2013 FEB 20 PM 1:25
JUDGE ARSTRONG
CLERK OF COURT

sub

The defendant, above named, answering the Complaint of the plaintiff, above named, alleges and says as follows:

1. That the defendant lacks sufficient information to form a belief as to the allegations of paragraph 1 of the Complaint.
2. That the defendant admits the allegations contained in paragraph 2 of the Complaint.
3. That the defendant admits the allegations contained in paragraph 3 of the Complaint.
4. In response to paragraph 4 of the Complaint, defendant lacks sufficient information as to the particulars, but admits plaintiff was traveling east on I-26 and struck defendant in the rear.
5. In response to paragraph 5 of the Complaint, defendant admits he was traveling east on I-26, but denies that his lights were malfunctioning.
6. In response to paragraph 6 of the Complaint, defendant admits he was hit from behind but denies his lights were malfunctioning.
7. In response to the allegations of paragraph 7, the defendant hereby realleges and incorporates by reference paragraphs 1 through 6 as fully and effectively as if set forth herein verbatim.

8. That the defendant denies the allegations contained in paragraph 8 of the Complaint.
9. In response to paragraph 9 of the Complaint, defendant denies the allegations as to negligence and admits the plaintiff sustained injury.
10. That the defendant denies each and every allegation not specifically admitted.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Comparative Negligence)

11. That plaintiff's comparative negligence is a bar to recovery or reduces plaintiff's recovery as provided by law.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Worker's Compensation Exclusivity/Fellow Employee)

12. That defendant was the statutory employee of Chris Thompson Trucking, plaintiff's employer. This plaintiff and defendant were co-employees and this action may be barred by the doctrines of worker's compensation exclusivity and/or the fellow employee doctrine.

FURTHER ANSWERING AND AS A COUNTERCLAIM

13. The allegations of paragraphs 1 through 12 of the Answer are hereby realleged and incorporated by reference as fully and effectively as if set forth herein verbatim.
14. That Plaintiff Robbie Clark is a citizen and resident of the County of Dorchester, State of South Carolina.
15. That Defendant Samuel A. Rose is a citizen and resident of County of Charleston, State of South Carolina.

16. That the alleged acts and omissions contained herein occurred in the County of Charleston, State of South Carolina.

17. That Defendant Samuel A. Rose, at all times alleged in the Complaint, was acting in the course and scope of his employment with JJS Trucking and was operating a JJS trucking vehicle.

18. Plaintiff Robbie Clark was at all times alleged in the Complaint acting as an independent contractor working as a subcontractor to the owner of the vehicle he was operating.

19. Defendant Samuel A. Rose hereby brings his cause of action in tort against Robbie Clark for Robbie Clark's negligent, grossly negligent, careless, reckless, negligent *per se*, willful and wanton in one or more of the following particulars, to wit:

- (a) In then and there operating said trucking vehicle at a rate of speed that was excessive under the circumstances then prevailing;
- (b) In then and there following too closely;
- (c) In then and there failing to keep a proper lookout;
- (d) In then and there failing to maintain proper control over his aforesaid trucking vehicle;
- (e) In then and there failing to equip his trucking vehicle with adequate brakes or braking system; and if so properly equipped, in failing to properly utilize them;
- (f) In then and there failing to equip his trucking vehicle with adequate and safe steering mechanisms; and if so properly equipped, in failing to properly utilize them;
- (g) In then and there failing to equip his trucking vehicle with an adequate signaling device or horn; and if so properly equipped, in failing to properly utilize it;

- (h) In then and there failing to take advantage of any last clear chance to avoid striking Defendant Samuel A. Rose;
- (i) In then and there colliding with Defendant Samuel A. Rose's truck vehicle;
- (j) In then and there failing to properly observe the road and traffic conditions;
- (k) In then and there failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- (l) In failing to yield the right-of-way to Defendant Samuel A. Rose;
- (m) In then and there operating a trucking vehicle with a reckless disregard for the rights and safety of others;
- (n) All of which were the direct and proximate cause of the injuries and damages Defendant Samuel A. Rose suffered, as are more fully set forth below, said acts being in violation of the laws of the State of South Carolina.

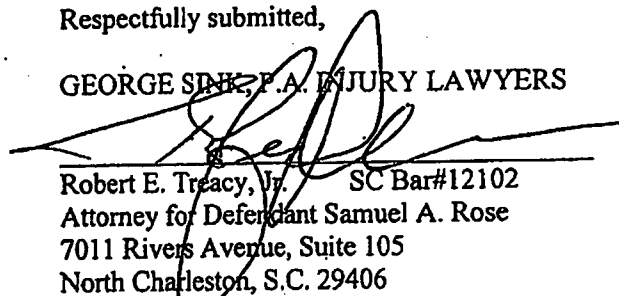
20. As the direct and proximate result of the aforesaid negligence, grossly negligent, careless, reckless, negligent *per se*, willful and wonton acts or omissions of Plaintiff Robbie Clark, Defendant Samuel A. Rose suffered great and permanent physical harm and severe injury from being thrown about within his trucking vehicle, all of which has and will, upon information and belief, in the future cause Defendant Samuel A. Rose to undergo much physical pain, suffering, and mental anguish, and has and will, upon information and belief, in the future cause Defendant Samuel A. Rose to have to spend money for medicine and medical services and has caused Defendant Samuel A. Rose to suffer economic losses including economic losses from the loss of his ability to earn wages.

21. Defendant Samuel A. Rose is informed and believes that he is entitled to judgment for actual and punitive damages against Plaintiff Robbie Clark that a trier of fact may determine, together with the costs of this action and for such other relief as this Court may deem just and proper.

WHEREFORE, Defendant Samuel A. Rose prays for judgment against Plaintiff Robbie Clark, on claims of negligence, gross negligence, carelessness, recklessness, negligence *per se*, and willfulness in such sum of actual and punitive damages that a trier of fact may determine together with such other relief this Court may deem just and proper.

Respectfully submitted,

GEORGE SINK, P.A. INJURY LAWYERS



Robert E. Treacy, Jr. SC Bar#12102
Attorney for Defendant Samuel A. Rose
7011 Rivers Avenue, Suite 105
North Charleston, S.C. 29406
(843) 569-1700

And

CLAWSON and STAUBES, LLC
Timothy A. Domin
Attorney for Defendant Samuel A. Rose
126 Seven Farms Drive, Ste. 200
Charleston, SC 29492
(843) 557-2026

North Charleston, SC

January 2, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROBBIE CLARK,

Plaintiff,

vs.

SAMUEL A. ROSE,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-10-2996

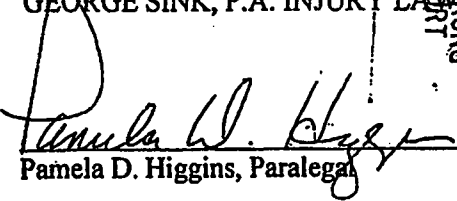
CERTIFICATE OF SERVICE

I, the undersigned employee of George Sink, P.A. Injury Lawyers, do hereby certify that on this day, February 19th, 2013, I served a copy of *Amended Answer and Counterclaim* on the below listed parties via first class mail:

Jonathan F. Krell, Esq.
Uricchio Howe Krell Jacobson Toporek and Keith, PA
PO Box 399
Charleston, SC 29402

Robert Daniel Moseley, Jr., Esq.
Smith Moore Letherwood, LLP
300 East McBee Ave., Ste. 500
Greenville, SC 29601

GEORGE SINK, P.A. INJURY LAWYERS


Pamela D. Higgins, Paralegal

2013 FEB 20 PM 2:25
JULIE J. ARMS, CLERK
CLERK OF COURT

FILED

EXHIBIT "B"

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ROBBIE CLARK,)

Plaintiff,)

v.)

SAMUEL A. ROSE,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10- 2996

COMPLAINT
Jury Trial Requested

FILED
2012 MAY -7 PM 3:03
JULIE J. ARTHUR
CLERK OF COURT

Plaintiff, complaining of Defendant, alleges and says:

PARTIES

1. Plaintiff is and was at all times mentioned herein a citizen and resident of Dorchester County, South Carolina.
2. Defendant is and was at all times mentioned herein a citizen and resident of Charleston County, South Carolina.

JURISDICTION and VENUE

3. This Court has subject-matter jurisdiction over the claims in this lawsuit, personal jurisdiction over Defendant and venue is proper in Charleston County, South Carolina.

FACTS

4. On or about August 10, 2011, at approximately 3:40 a.m., Plaintiff was the operator of a 1999 tractor-trailer bearing South Carolina license plate number P434865 for the year 2012 and was traveling in an easterly direction along I-26.
5. At the time and place aforementioned, Defendant was the operator of a 1995 tractor-trailer bearing South Carolina license plate number PS91257 for the year 2011 and was traveling in an easterly direction along I-26 with malfunctioning tail lights.

6. That suddenly and without any warning, due to Defendant's malfunctioning tail lights, Plaintiff struck the rear of Defendant's tractor-trailer, thereby causing a collision and injuring Plaintiff.

FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence)

7. Plaintiff incorporates all allegations of Paragraphs above into this cause of action as if set forth verbatim.

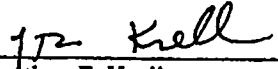
8. That the injuries and damages complained of herein were directly and proximately caused by the following negligent, careless, reckless, willful, and grossly negligent acts of Defendant all in violation of the statutes and common laws of the State of South Carolina, combining and concurring:

- (a) In failing to insure his vehicle was safe for travel on the roads and highways;
- (b) In failing to inspect his vehicle properly before travel;
- (c) In failing to have functioning tail lights;
- (d) In failing to comply with the Federal Motor Carrier Safety Regulations;
- (e) In operating the tractor-trailer without adequate rest or sleep;
- (f) In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing;
- (g) In otherwise being negligent, reckless, and careless; and
- (h) For such other acts and omissions that may become more apparent through the discovery and/or trial of this matter.

9. That as a result of the aforesaid negligent, grossly negligent, careless, willful, and reckless acts, Plaintiff has been injured and damaged. Plaintiff has, is and will in the future suffer from the following, including but not limited to: pain and suffering; a permanent injury; medical expenses; trauma; loss of enjoyment of life; lost wages; annoyance and inconvenience and travel - all to his injury and damage in an amount of actual and punitive damages to be determined at the trial of this action.

WHEREFORE, Plaintiff requests that judgment be entered against Defendant on all causes of action and that Plaintiff be awarded: actual damages; punitive damages; a trial by jury as to all causes of action properly triable; the costs of this action; and such other and further relief as the Court may deem just and proper.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.



Jonathan F. Krell
17 ½ Broad Street – Post Office Box 399
Charleston, South Carolina 29402
Tel: (843) 723-7491; Fax: (843) 577-4179
ATTORNEYS FOR PLAINTIFF

April 30, 2012
Charleston, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1112328

SAMUEL A. ROSE, Employee,

Claimant,

vs.

CHRIS THOMPSON SERVICES, LLC
OR JJS TRUCKING, LLC, Employer, and

BRIDGEFIELD CASUALTY INSURANCE
COMPANY AND/OR S.C UNINSURED
EMPLOYERS' FUND, Carrier,

Defendants.

**MOTION IN OPPOSITION TO
INTRODUCE AFTER DISCOVERED
EVIDENCE**

SCWCC

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In Accordance with Regulations, 67-215 and 67-707, Samuel Rose (Claimant) moves in opposition to the employer and carrier's Motion to Introduce Newly Discovered Evidence. In support of this Motion in Opposition, the Claimant asserts the following:

1. On February 20, 2013, the Claimant's third-party attorney filed a lawsuit against Robbie Clark and his insurance carrier in Charleston County Court of Common Pleas.
2. The above-referenced third-party lawsuit has not been settled, therefore the employer and their workers' compensation insurance carrier have not lost their right of subrogation against the potentially responsible third-party.
3. The employer and workers' compensation insurance carrier are free to enter into settlement negotiations in the Claimant's third-party lawsuit to protect

their right of subrogation against the potentially responsible third-party at any time they so choose.

4. The employer/carrier's argument under Callahan v. Beaufort County School District, 375 S.C. 92, 651 S.E.2d 311 (2007) is misplaced. The court in Callahan found that where the third-party case is voluntarily dismissed pursuant to Rule 41, FRCP that voluntary dismissal leaves the situation as though no suit has ever been filed and renders the issue of no S-2 Form being filed moot.
5. In an over abundance of caution, the Claimant's third-party attorney is in the process of filing a voluntary dismissal of the underlining third-party case pursuant to South Carolina Rule of Civil Procedure 41 (similar to Federal Rule of Civil Procedure 41). The executed Order of Dismissal will be filed with the South Carolina Workers' Compensation Commission shortly.
6. Therefore, we hold the filing of the voluntary dismissal on the underlining third-party suit (to be submitted shortly) renders the failure to file an S-2 Form with the South Carolina Workers' Compensation Commission in regards to the February 20, 2013 third-party suit moot pursuant to the Callahan decision.

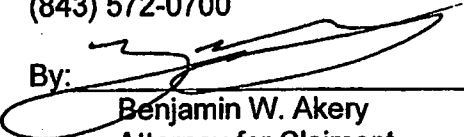
WHEREFORE, the Claimant respectfully requests that the Commission deny the employer/carriers Motion to Admit Newly Discovered Evidence (i.e., the third-party claim filed in Circuit Court on February 20, 2013) in the interest of Judicial economy as the issue will be moot upon the South Carolina Workers' Compensation Commissions receipt of the voluntary dismissal of the underlining third-party suit. In the alternative, the Claimant respectfully requests to leave the record open for the Commission to

receive a properly executed voluntary dismissal of the underlining third-party suit as newly discovered evidence so that the Commission may render a decision in line with the holding in Callahan.

WE HEREBY SO MOVE.

Respectfully submitted:

THE STEINBERG LAW FIRM LLP
118 Goose Creek Blvd., S., PO Box 1028
Goose Creek, South Carolina 29445
(843) 572-0700

By: 

Benjamin W. Akery
Attorney for Claimant

Goose Creek, South Carolina

November 21, 2013

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

Samuel A. Rose,
Employee/Claimant,

v.

JJS Trucking, LLC, Employer, and
the South Carolina Uninsured
Employers' Fund,

and

Chris Thompson Services, LLC,
Statutory Employer, and
Bridgefield Casualty Insurance
Company, Carrier,
Defendants.

W.C.C. FILE NO. 1112328

**RETURN TO "MOTION IN
OPPOSITION TO INTRODUCE
AFTER DISCOVERED EVIDENCE"**

TO: Commissioner Aisha Taylor, South Carolina Workers' Compensation Commissioner,
Joseph B. Fisher, Esq. and Benjamin W. Akery, Esq., attorneys for the Claimant; Amy B. Coefield,,
Esq., attorney for the Uninsured Employer's Fund; and J. Eric Kauffmann, attorney for JJS
Trucking, LLC:

PLEASE TAKE NOTICE that the above-named Defendants hereby respectfully request that
the Claimant's "Motion in Opposition to Introduce After Discovered Evidence" based upon the
following:

1. This matter is currently pending before Commissioner Taylor for a determination of whether
the Claimant is entitled to any additional medical or compensation benefits under the
Workers' Compensation Act.

2. On November 8, 2013, which was following the hearing but prior to a determination of the issues, the Defendants learned for the first time that the Claimant commenced a third party claim against Robbie Clark and his insurance carrier in the Charleston County Court of Common Pleas on February 20, 2013. (See Attached Exhibit "A").
3. The Claimant did not provide any notice of the commencement of the third party action until November 5, 2013, when counsel for the Claimant notified the undersigned counsel for the Defendants that his third party action was scheduled for mediation. The Claimant's "notice" was clearly beyond the thirty day requirement (it was actually 258 days after the commencement of his third party action) and, to date, no Form S2 (the form prescribed by the Commission) has ever been filed or served.
4. Because the Workers' Compensation Act is in derogation of common law rights, the requirements of § 42-1-560 must be strictly construed. Callahan v. Beaufort County Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even if the Defendants have "not lost [their] right of subrogation against the potentially responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.
5. According to the South Carolina Supreme Court, "§ 42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra.
6. Because this newly discovered evidence reveals that the Claimant has failed to preserve his right to proceed against the Defendants by failing to comply with the strict requirements of S.C. Code Ann. § 42-1-560, the Defendants filed a Motion to Introduce the Claimant's third-party pleadings into the record. The Claimant did not file any Return to this Motion.

7. The Claimant makes no argument that the Defendant's Motion is improper; instead, the Claimant argues that he may take additional actions in the future that may create new evidence that he would wish for the Commission to consider one day. This highly speculative, hypothetical argument has no basis in fact. The Claimant's argument is no different than suggesting that there will be a Zombie Apocalypse next week that might render the Defendant's argument under § 42-1-560 moot – until it happens and can be documented, the argument is meritless.
8. The Claimant also concedes that he did, in fact, file a third-party lawsuit. The Claimant further concedes that he did not ever file or serve a Form S2 and otherwise failed to comply with the strict requirements of § 42-1-560.
9. To the extent that the Claimant argues that he is not bound by the strict requirements of § 42-1-560 because he may enter into an agreement to voluntarily dismiss his third-party claim, this hypothetical argument is also without merit. The Claimant's hypothetical attempt to cheat the system does not cure his failure to comply with the statute.
10. In addition, because the Defendants have a statutory lien against any third-party recovery, the Defendants object to the Claimant entering into any voluntary agreement to dismiss the third party claim, as that would clearly undermine the Defendants' statutory rights as a lien holder. (*See* Rule 41(d), S.C.R.C.P. which would require "payment of the costs of the action previously dismissed" if the Claimant or the Defendants re-files the third-party action)
11. Furthermore, pursuant to S.C. Code Ann. § 42-1-560(f), the Claimant is not entitled to enter any agreement compromising his claim without the written consent of the Defendants. Therefore, while the Claimant may attempt to enter into an agreement with the third-party Defendants to dismiss his third-party claim, this does not render the Defendants' argument

moot, it simply creates additional arguments why the Claimant is not entitled to pursue a workers' compensation claim for failure to comply with the requirements of S.C. Code Ann. § 42-1-560.

THEREFORE, the Defendants respectfully contend that newly discovered evidence (*i.e.*, the third-party claim filed in the Circuit Court on February 20, 2013), when considered with the fact that no Form S2 has been served upon the Defendants or filed with the Commission, compels a conclusion that the Claimant failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560(b) and; therefore, he is not entitled to any additional workers' compensation benefits as a matter of law. The Defendants request that the Hearing Commissioner receive this newly discovered evidence (Exhibits "A" and "B") or otherwise take judicial notice of the fact that the Claimant commenced a third party action on February 20, 2013 but failed to File a Form S2 within the requisite 30 days and render her decision accordingly, without consideration of the speculative arguments advanced in the Claimant's "Motion in Opposition to Introduce After Discovered Evidence."

Respectfully submitted,

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for the Defendants

November 25, 2013

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1112328

Samuel A. Rose, Employee,

Claimant,

vs.

Chris Thompson Services, LLC or JJS
Trucking, LLC, Employer, and

Bridgefield Casualty Insurance Company
and/or S.C. Uninsured Employer's Fund,
Carrier,

Defendants.

**MOTION TO INTRODUCED NEWLY
DISCOVERED EVIDENCE**

TO: COMMISSIONER AISHA TAYLOR, SOUTH CAROLIAN WORKERS' COMPENSATION COMMISSIONER, KIRSTIN BARR, ESQUIRE, ATTORNEY FOR CHRIS THOMPSON SERVICES, LLC, AMY V. COFIELD, ESQUIRE, ATTORNEY FOR SOUTH CAROLINA UNISURED EMPLOYERS FUND, J. ERIC KAUFFMAN, ESQUIRE, ATTORNEY FOR JJS TRUCKING, LLC:

PLEASE TAKE NOTICE that the above-named Claimant hereby moves, pursuant to Regulation 67-215 and Regulation 67-707 to Introduce Newly Discovered Evidence into the record in the Commission's file. This Motion is based upon the following:

- 1) This matter is currently pending before Commissioner Taylor for determination of whether the Claimant is entitled to any additional medical or compensation benefits under the South Carolina Workers' Compensation Act.
- 2) On February 20, 2013, the Claimant's third-party attorney filed an Amended Answer and Counter-Claim on behalf of Samuel A. Rose (the Claimant) against

SCWCC
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JUDICIAL

a Robby Clark (third-party Plaintiff) in order to protect Mr. Rose's and all Workers' Compensation insurance carrier's Common Law and Statutory rights to recover from a third-party claim against Robbie Clark.

- 3) The above-referenced third-party law suit has not been settled, therefore the employer and Workers' Compensation insurance carriers have not lost the right of subrogation against the potentially responsible third-party.
- 4) On November 12, 2013, Chris Thompson Services, LLC, through their counsel, filed a Motion to Introduce Newly Discovered Evidence attaching the February 20, 2013 Amended Answer and Counter-Claim.
- 5) Chris Thompson Services, LLC though their attorney argue that pursuant to Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 311 (2007) because the Claimant's third-party attorney filed an Answer and Counter-Claim without filing a Form S2, the Claimant is not entitled to any additional Workers' Compensation benefits.
- 6) Chris Thompson Services LLC's argument under Callahan is misplaced. The Supreme Court stated in Callahan, "despite Claimant's failure to comply with § 42-1-560, we nonetheless affirm the Circuit Courts finding that her workers' compensation claim may proceed. In this case, Claimant voluntary dismissed her third-party suit pursuant to Rule 41, FRCP. A voluntary dismissal leaves the situation as though no suit had ever been filed" (see attached Exhibit "A").
- 7) On December 5, 2013, which was following the workers' compensation hearing but prior to determination of the issues, the third-party case between Robbie Clark (third-party Plaintiff) and Samuel A. Rose (third-party Defendant and Claimant) was dismissed without Prejudice pursuant to the agreement of all parties in the third-party case (see attached Exhibit "B".)

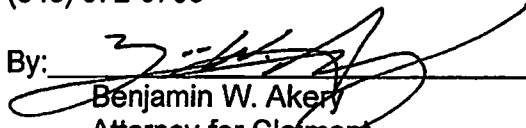
8) Therefore, we hold the voluntary dismissal (Exhibit B) on the underlying third-party suit renders the issue of failure to file an S2 Form with the South Carolina Workers' Compensation Commission in regards to the February 20, 2013 third-party suit moot pursuant to Callahan which states "a voluntary dismissal leaves the situation as though no suit had ever been filed."

WHEREFORE, the Claimant respectfully contends that the Newly Discovered Evidence (third-party claim voluntary dismissal filed December 5, 2013), render the issues raised in Chris Thompson Services, LLC November 12, 2013 Motion to Introduce Newly Discovered Evidence moot. Therefore, the Claimant respectfully requests the jurisdictional Commissioner proceed with rendering a Decision and Order based upon the medical evidence, testimony and exhibits that were proffered at the September 23, 2013 Workers' Compensation Hearing in the above-referenced matter as well as the holding in Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 311 (2007).

WE HEREBY SO MOVE.

Respectfully submitted:

THE STEINBERG LAW FIRM LLP
118 S. Goose Creek Blvd., P.O. Box 1028
Goose Creek, South Carolina 29445
(843) 572-0700

By: 

Benjamin W. Akery
Attorney for Claimant

Goose Creek, South Carolina

December 20, 2013

CALLAHAN v. BEAUFORT COUNTY SCHOOL DIST. S.C. 311

Cite as 651 S.E.2d 311 (S.C. 2007)

bly in enacting this provision was to extend to the wife the right to recover for the loss of consortium of her husband, which right existed only in favor of the husband under the common law"). In *Taylor v. Medenica*, the Court was asked to recognize a cause of action by a child for loss of parental consortium claim, a claim not cognizable under common law. The opinion states "By enacting [§ 15-75-20] the legislature has provided for loss of consortium actions for spouses. The statute has not been amended to provide for a similar cause of action for children. Whether South Carolina should recognize a cause of action for loss of parental consortium is a matter best left to the General Assembly." *Taylor v. Medenica* merely holds that any extension of consortium claims beyond that permitted at common law should be left to the General Assembly, not as the majority would read it, that by enacting § 15-75-20 the General Assembly abolished the common law right of a parent to sue for loss of her child's consortium.

Since a parent has the right to sue for loss of her child's consortium at common law,⁴ a right preserved under the South Carolina Tort Claims Act,⁵ I would reverse the trial court's dismissal of the Does' consortium claim.

C. Neglect Supervision

The trial court held the Does' negligent supervision claim was proper, but noted that only medical expenses would be recoverable under this theory. See *Wright v. Colleton County*, *supra*. The trial court held, however, that the Does' claim must be dismissed because they pleaded no such damages. I agree with the Does that they did plead these damages in paragraph 38 of their complaint. I would therefore reverse the dismissal of this claim.

D. Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*

The trial judge also dismissed the Does' claims for breach of an assumed duty *In loco parentis* and breach of fiduciary duty, finding no such heightened duties exist in a school-student setting. The question of duty is one

for the court. *E.g., Houck v. State Farm Fire and Cas. Ins. Co.*, 366 S.C. 7, 620 S.E.2d 326 (2005). I can find no error in the trial court's conclusion that these two heightened duties do not exist. I agree with the majority that we should affirm the dismissal of these two claims.

CONCLUSION

For the reasons given above, I concur in part and dissent in part.



375 S.C. 92

Christine CALLAHAN, Employee,
Respondent,

v.

BEAUFORT COUNTY SCHOOL DISTRICT, Employer, and S.C. School Boards Insurance Trust, Carrier, Appellants.

No. 26377.

Supreme Court of South Carolina.

Heard May 22, 2007.

Decided Sept. 4, 2007.

Rehearing Denied Oct. 17, 2007.

Background: Workers' compensation claimant appealed decision of Workers' Compensation Commission that denied application for benefits on ground that claimant failed to provide notice of her third-party suit. The Circuit Court, Beaufort County, Curtis L. Coltrane, J., reversed. Employer appealed, and the Supreme Court certified appeal.

Holdings: The Supreme Court, Pleicones, J., held that:

(1) Circuit Court could not conduct equity analysis when considering whether claimant violated statute mandating

4. *Webb v. Southern Ry. Co.*, *supra*.

5. *Wright v. Colleton County*, *supra*.

that claimant give timely notice of civil action against third-party tortfeasor to employer, carrier, and Commission, but

- (2) workers' compensation claim could proceed even though claimant failed to comply with statute.

Affirmed as modified.

1. Workers' Compensation ⇨1910

Review of a decision of the Workers' Compensation Commission is governed by the Administrative Procedures Act (APA). Code 1976, § 1-23-310 et seq.

2. Workers' Compensation ⇨1939.1

Supreme Court may reverse a decision of the Workers' Compensation Commission where the decision is affected by an error of law. Code 1976, § 1-23-380(A)(5)(d).

3. Workers' Compensation ⇨1110, 2171

Workers' compensation claimant may proceed against both the employer-insurance carrier in a workers' compensation proceeding and against a third-party tortfeasor in a civil action by complying with the requirements of statute mandating that claimant give timely notice of civil action to employer, carrier, and Workers' Compensation Commission. Code 1976, § 42-1-560(b).

4. Workers' Compensation ⇨1110, 2171

Because workers' compensation statutes provide an exclusive compensatory system in derogation of common-law rights, the Supreme Court strictly construes the requirements of statute allowing claimant to simultaneously pursue a third-party action against the tortfeasor and a workers' compensation claim and leaves it to the legislature to amend and define its ambiguities. Code 1976, § 42-1-560(b).

5. Workers' Compensation ⇨1939.11(1)

In reviewing decision of Workers' Compensation Commission that denied application for benefits, Circuit Court could not conduct equity analysis when considering whether claimant violated statute mandating that claimant give timely notice of civil action against third-party tortfeasor to employer,

carrier, and Commission in order to be able to simultaneously proceed on both matters; statute had to be strictly construed. Code 1976, § 42-1-560(b).

6. Workers' Compensation ⇨1106

Workers' compensation claim could proceed even though claimant failed to comply with notice requirements of statute allowing claimant to simultaneously pursue a third-party action against the tortfeasor and a workers' compensation claim; civil action became a nullity, and thus statute became inapplicable, once civil action was voluntarily dismissed by claimant. Code 1976, § 42-1-560(b); Fed.Rules Civ.Proc.Rule 41, 28 U.S.C.A.

Kirsten L. Barr, of Trask & Howell, of Mt. Pleasant, for Appellants.

William B. Harvey, III, of Harvey & Battey, of Beaufort, for Respondent.

Justice PLEICONES:

This is a workers' compensation appeal. The single commissioner denied workers' compensation benefits due to the claimant's failure to provide notice of her third-party suit as required by S.C.Code Ann. § 42-1-560(b) (1985). The full commission affirmed, and claimant appealed to the circuit court. The circuit court reversed, holding that the lack of notice had not prevented the "equitable adjustment of the rights of all the parties" because the third-party suit never reached a final determination on the merits. Beaufort County School District ("Employer") appealed, and we certified the appeal pursuant to Rule 204, SCACR. We affirm as modified.

FACTS

Christine Callahan ("Claimant") alleged injuries due to exposure to chemicals at Battery Creek High School on November 14, 2002. Employer and the South Carolina School Boards Insurance Trust ("Carrier") denied workers' compensation benefits. Claimant filed a Form 50 on January 17, 2003, to request a hearing.

CALLAHAN v. BEAUFORT COUNTY SCHOOL DIST. S.C. 313

Cite as 651 S.E.2d 311 (S.C. 2007)

On January 24, 2003, Claimant filed a civil action against a third-party, Tech Clean Industries, based on the same injuries alleged in the workers' compensation action. However, it was not until July 16, 2003, that the Claimant filed and served a Form S-2, providing the Commission, Employer, and Carrier with notice of her intent to pursue both a workers' compensation claim and a third-party civil action for the same injuries. Claimant voluntarily dismissed the third-party action without prejudice in November 2003.¹

ISSUE

Did the circuit court err by failing to find Claimant's workers' compensation claim is barred because she did not provide notice of her third-party action within thirty days of its commencement, in accordance with the requirements of S.C.Code Ann. § 42-1-560(b)?

ANALYSIS

[1, 2] Review of a decision of the workers' compensation commission is governed by the Administrative Procedures Act. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). We may reverse where the decision is affected by an error of law. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000); S.C.Code Ann. § 1-23-380(A)(5)(d) (Supp.2006).

[3] South Carolina Code Ann. § 42-1-560 sets forth the requirements for simultaneously pursuing a third-party action and a workers' compensation claim. The statute provides:

1. Although it is unclear from the record whether Claimant re-filed the third-party action, the Court was made aware at oral argument that Claimant later re-filed the third-party action against Tech Clean. We offer no opinion on the efficacy of this re-filing.
2. This holding does not conflict with our past cases. This Court previously held that a claimant had elected a remedy, thus forgoing workers' compensation benefits, by settling a third-party claim without complying with the notice requirements of § 42-1-560, even though the carrier had actual knowledge of the third-party suit. *Fisher, supra*; see also *Hardee v. Bruce Johnson*

Notice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission].

S.C.Code Ann. § 42-1-560(b). An injured party may proceed against both the employer-carrier and against a third-party tortfeasor by complying with the requirements of § 42-1-560. *Fisher v. S.C. Dept. of Mental Retardation-Coastal Center*, 277 S.C. 573, 575, 291 S.E.2d 200, 201 (1982); *Hudson v. Townsend Saw Chain Co.*, 296 S.C. 17, 20, 370 S.E.2d 104, 106 (Ct.App.1988) ("[subsection (b)] plainly requires an employee, when he or she brings a third-party action, to give notice to the Commission, the employer, and the employer's carrier of the commencement of the third-party action within 30 days of its commencement.").

In this case, Claimant did not provide the Form S-2 to the Commission, Employer, and Carrier until July 2003, nearly six months after she initially filed her third-party suit and three months after the action had been removed to federal court.

[4] Because workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, we strictly construe the requirements of § 42-1-560 and leave it to the legislature to amend and define its ambiguities. *Cf. Wigfall v. Tideland Util., Inc.*, 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003). Here, the statute clearly requires timely notice to be given to all three entities employer, carrier, and Commission on the Form S-2.²

[5] We find the circuit court erred by excusing compliance with the statute based

Trucking Co., 293 S.C. 349, 354-355, 360 S.E.2d 522, 525 (Ct.App.1987)(discussing the facts of *Fisher*). Additionally, prior cases interpreting this statute have found that prejudice should not be considered. See *Hudson, supra* (finding claimant's prejudice argument "unpersuasive, if in fact the question of prejudice is relevant at all")(citing *Stroy v. Millwood Drug Store*, 235 S.C. 52, 109 S.E.2d 706 (1959)); *Kimmer v. Murata*, 372 S.C. 39, 640 S.E.2d 507 (Ct.App.2006)(holding that "prejudice is 'NOT' an element to be considered in regard to the failure to give mandated statutory notice.").

on the "equitable adjustment of the rights of all the parties." Even though the employer had not lost its right of subrogation against the potentially responsible third-party, the statutory provision mandates notice to the employer, carrier, and Commission within thirty days of filing the third-party suit. It was improper for the circuit court to conduct an equity analysis to carve an exception to the workers' compensation notice requirement. *See Wigfall, supra; Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Commn.*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (holding that a court's equitable powers must yield in the face of an unambiguously worded statute).

[6]—Despite Claimant's failure to comply with § 42-1-560, we nonetheless affirm the circuit court's finding that her workers' compensation claim may proceed. In this case, Claimant voluntarily dismissed her third-party suit pursuant to Rule 41, FRCP. A voluntary dismissal leaves the situation as though no suit had ever been filed. 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* 2d § 2367, at 321 (1995); *Allen v. S. Ry. Co.*, 218 S.C. 291, 297-298, 62 S.E.2d 507, 511 (1950). Following this rule, the third-party suit originally filed in January 2003 became a nullity, and § 42-1-560 is not applicable. As a result, there is no violation of § 42-1-560 when the third-party suit is treated as never being filed.

CONCLUSION

We hold that § 42-1-560(b) must be strictly followed in order for a claimant to preserve her right to proceed against both an employer and a third-party. On the facts before us, Claimant's voluntary dismissal without prejudice of her third-party suit allows her to proceed with her workers' compensation claim. Accordingly, the decision of the circuit court is

AFFIRMED AS MODIFIED.

TOAL, C.J., MOORE, BURNETT, JJ.,
and Acting Justice R. FERRELL
COTHRAN, JR., concur.



375 S.C. 106

The STATE, Respondent,

v.

Ronte HOUHEY, Appellant.

No. 26381.

Supreme Court of South Carolina.

Heard June 5, 2007.

Decided Sept. 10, 2007.

Background: Defendant who was charged with second-degree criminal sexual conduct with a minor (CSCM) sought review of order of the Circuit Court, Cherokee County, J., Mark Hayes, II, J., requiring him to submit to testing for sexually transmitted diseases.

Holdings: The Supreme Court, Pleicones, J., held that:

- (1) probable cause showing was not necessary to support order requiring defendant to undergo HIV testing, and
- (2) statute under which testing was ordered was not unconstitutionally vague.

Affirmed.

Waller, J., concurred in result only in separate opinion in which Moore, J., concurred.

1. Searches and Seizures ¶78

State was not required to show probable cause or individualized suspicion that defendant was actually infected with a sexually transmitted disease before testing of defendant's blood for sexually transmitted diseases could be performed pending prosecution for criminal sexual conduct with a minor (CSCM), and such procedure did not violate defendant's right of protection against unreasonable searches and seizures; special needs exception allowed search, as State had valid interest in protecting the health and safety of victim, and the testing furthered State's in-

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 2012-CP-10-2996

ROBBIE CLARK,)

Plaintiff,)

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE**

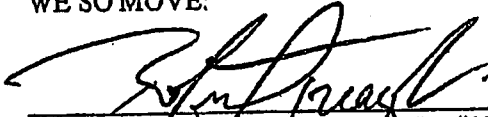
vs.)

SAMUEL A. ROSE,)

Defendant.)

The Plaintiff and Defendant, by and through their undersigned attorneys, hereby dismiss
the above-styled matter, both Complaint and Counterclaims, without prejudice.

WE SO MOVE:


Robert E. Treacy, Jr., Esq. SC Bar#12102
George Sink, P.A., Injury Lawyers
7011 Rivers Avenue, Suite 105

North Charleston, SC 29406

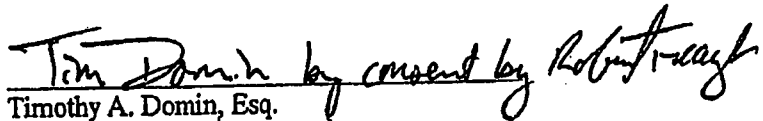
(843) 569-1700 phone

(843) 569-1848 fax

RTreacy@SinkLaw.com

Attorney for Plaintiff Samuel A. Rose on Counterclaim

2013 DEC -5 PM 2:52
JULIE J. ROUSE
CLERK OF COURT


Timothy A. Domin, Esq.

Clawson and Staubes, LLC

126 Seven Farms Drive, Suite 200

Charleston, SC 29492

(843) 557-2026 phone

(843) 722-2867 fax

TDomin@clawsonandstaubes.com

Attorney for Defendant Samuel A. Rose

WE CONSENT:

Jonathan Krell by consent by Robert Moseley
Jonathan F. Krell, Esq.
Uricchio Howe Krell Jacobson Toporek and Keith, PA
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Attorney for Plaintiff

Robert Moseley by Consent by Robert Moseley
Robert Daniel Moseley, Jr., Esq.
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300 East McBee Ave., Ste. 500
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(864) 242-6440 phone
(864) 240-2475 fax
Rob.Moseley@SmithMooreLaw.com
Tynetra.Evans@SmithMooreLaw.com
Attorney for Plaintiff on Counterclaim

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1112328
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Samuel A. Rose SSN: 247-55-3390
Address: 17 Ashton St.
City: Charleston State: SC Zip: 29403
Home Phone: _____ Work Phone: _____
Preparer's Name: Benjamin W. Akery Law Firm: The Steinberg Law Firm Preparer's Phone #: (843) 720-2800

Employer's Name: JJS Trucking, LLC (Uninsured Employer); Chris Thompson Services, LLC (upstream employer)
Address: 137-A Gordon's Street
City: Charleston State: SC Zip: 29403
Insurance Carrier: SC Uninsured Employers Fund and/or Bridgefield Casualty Insurance Co.

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer Date of injury: August 10, 2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

SEE ATTACHED ADDENDUM

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

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

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Kirsten L. Barr, Esquire,
Name

Trask & Howell, LLC, P. O. Box 2167, Mt. Pleasant, 29465-2167; Amy V. Cofield, Esquire, Cofield Law Firm, LLC, 809 South Lake Drive, Lexington, SC 29072; J. Eric Kauffman, Esquire, P.O. Box 6461, Columbia, SC 29260

Address

on the 14 day of January, 2014 by ☐ first class mail ☐ personal service ☒ certified mail.

[Signature]
Preparer's Signature

Attorney for the Claimant
Title

January 14, 2014
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

GROUND'S FOR REVIEW

Claimant: Samuel A. Rose

**Employer/Carrier: JJS Trucking, LLC (SCUEF); Chris Thompson Services, LLC
(Bridgefield Casualty Ins. Co.)**

WCC No.: 1112328

- FIRST:** The Hearing Commissioner erred in granting Defendant's Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies November 12, 2013 Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim filed in Charleston County Court of Common Pleas on February 20, 2013), the error being the defense of exclusive remedy was not pled by any of the Defendant's, nor was the issue raised at the September 23, 2013 hearing before the single Commissioner, further the Answer and Counterclaim could have been secured by the Defendant's before the September 23, 2013 hearing had they exercised reasonable diligence.
- SECOND:** The Hearing Commissioner erred in denying the Claimant's November 21, 2013 Motion in Opposition to Introduce After Discovered Evidence summarily without any legal reasoning, findings of fact or conclusions of law to support this denial.
- THIRD:** The Hearing Commissioner erred in denying Claimant's December 20, 2013 Motion to Introduce newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), holding the voluntary dismissal did not fit the meaning of "Newly Discovered Evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013, the error being there is no requirement under South Carolina Statutory Law, South Carolina Workers' Compensation Regulations or South Carolina Common Law Jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence.
- FOURTH:** The Hearing Commissioner erred in granting Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntarily dismissal Claimant's third-party suit) the error being South Carolina case law holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed

and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, S.E.2d 311 (2007).

- FIFTH: The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), the error being this is a gross miscarriage of justice as the single Commissioner is entertaining new defenses that were not pled nor argued at the September 23, 2013 hearing by the Defendant's, however the single Commissioner is not allowing the Claimant to introduce newly discovered evidence or to be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's exclusive remedy argument moot.
- SIXTH: The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).
- SEVENTH: The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is the well-settled law of South Carolina that if the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 1112328
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Samuel A. Rose SSN: 247-55-3390
Address: 17 Ashton St.
City: Charleston State: SC Zip: 29403
Home Phone: _____ Work Phone: _____
Preparer's Name: Benjamin W. Akery Law Firm: The Steinberg Law Firm

Employer's Name: Chris Thompson Services, LLC or JJS Trucking, LLC
Address: 137-A Gordon's Street
City: Charleston State: SC Zip: 29403
Insurance Carrier: SC Uninsured Employers Fund and Bridgefield Casualty Insurance Co.
Preparer's Phone #: (843) 572-0700

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of Injury: August 10, 2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

SEE ATTACHED ADDENDUM

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Name

Kirsten L. Barr, Esquire Trask & Howell, LLC, P. O. Box 2167, Mt. Pleasant, 29465-2167; Amy V. Cofield, Esquire, Cofield Law Firm, LLC, 809 South Lake Drive, Lexington, SC 29072; J. Eric Kauffman, Esquire, P.O. Box 6461, Columbia, SC 29260

Address

on the 11 day of September, 2014 by ☐ first class mail ☐ personal service ☒ certified mail.

Preparer's Signature

Attorney for the Claimant
Title

Thursday, September 11, 2014
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

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**Employer/Carrier: JJS Trucking, LLC (SCUEF); Chris Thompson Services, LLC
(Bridgefield Casualty Ins. Co.)**

WCC No.: 1112328

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- FOURTH:** The Hearing Commissioner erred in granting Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntarily dismissal Claimant's third-party suit) the error being South Carolina case law holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed

and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, S.E.2d 311 (2007).

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The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), the error being this is a gross miscarriage of justice as the single Commissioner entertained new defenses that were not pled nor argued at the September 23, 2013 hearing by the Defendant's, however the single Commissioner did not allow the Claimant to introduce newly discovered evidence or to be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's exclusive remedy argument moot.

SIXTH:

The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).

SEVENTH:

The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is the well-settled law of South Carolina that if the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

EIGHTH:

The Hearing Commissioner erred in finding of fact #3 and Conclusion of Law #1 in holding that the Claimant failed to file a

Form S2 when the Claimant did indeed file a voluntary dismissal of the Claimant's underlying 3rd party lawsuit as newly discovered evidence on December 19, 2013, which the Commissioner denied, then subsequently filed the appropriate S2 on February 10, 2014 after re-filing the underlying 3rd party lawsuit. .

NINTH:

The Hearing Commissioner erred in Conclusion of Laws #1, #2, #3, #4, #5, #6, #7, and #8 in holding that the Claimant did not provide notice of the 3rd party action by way of filing a Form S2 and therefore was not entitled to additional medical treatment, disability benefits or permanent disability when the Claimant voluntarily dismissed his underlying 3rd party claim on December 5, 2013 before settling it and submitted the dismissal to the Commission as newly discovered evidence and then after re-filing the 3rd party lawsuit timely filed a Form S2 on December 19, 2013, the error being that Claimant complied South Carolina case law which holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, S.E.2d 311 (2007).

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1112328

SAMUEL A. ROSE, Employee,

Claimant/Appellant,

vs.

CHRIS THOMPSON SERVICES, LLC
AND J.J.S. TRUCKING, LLC, Employers,
and

BRIDGEFIELD CASUALTY
INSURANCE, SC UNINSURED
EMPLOYERS FUND, Carriers,

Defendants/Respondents.

BRIEF ON BEHALF OF
CLAIMANT/APPELLANT

STATEMENT OF CASE

This case was heard before the Honorable Commissioner Aisha Taylor on September 23, 2013 in St. Matthews, South Carolina to determine all issues set forth in the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies Form No. 21.

The Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company requested to stop/terminate payment of temporary total disability benefits and determine whether the Claimant was entitled to an award of permanency pursuant to the opinion of Dr. Greg Jones who placed the Claimant at maximum medical improvement on March 20, 2013 with impairment ratings of five percent (5%) to the cervico-thoracic spine and five percent (5%) to the lumbar spine. They further sought a

credit for temporary total disability benefits paid following March 20, 2013 and requested a finding commiserate with the impairment ratings given by Dr. Jones. Defendants JJS Trucking took the same position as the Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company. Additionally, Defendant South Carolina Uninsured Employer Fund took the same position as Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company.

The Claimant maintained he had suffered injuries to his head, knee, leg, back and neck and was not at maximum medical improvement. The Claimant relied upon an August 23, 2011 right knee MRI which showed a femoral condyle impaction fracture (Claimant's APA p. 73) and a November 9, 2011 cervical spine MRI which showed C5-6 and C6-7 disc herniations (Claimant's APA p. 91). The Claimant further relied on the opinion of Michael Wildstein, M.D. who recommended a C5-6 fusion surgery on December 14, 2011 (Claimant's APA p. 96) and Dr. Steven C. Poletti, M.D. who agreed with Dr. Wildstein and felt that surgical intervention was indicated in his July 15, 2013 report (Claimant's APA p. 100). The Claimant also maintained that if he was found to be at maximum medical improvement, he is permanently and totally disabled based upon Alan Abel, M.D. deposition testimony and Dr. Poletti's July 15, 2013 IME which stated he is to be on off duty status.

Subsequent to the hearing and before any proposed Order directives were provided by the Commissioner, the Defendant's Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Motion to Introduce Newly Discovered Evidence which was an Amended Answer and Counter Claim filed by the Claimant's

separate third-party counsel dated February 20, 2013. Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company alleged that because the Claimant did not file a Form S2 within thirty (30) days of filing their answer and counter claim, he was not entitled to any additional workers' compensation benefits.

On November 21, 2013, the Claimant timely filed a Motion in Opposition to Introduce After Discovered Evidence. The Claimant maintained the underlying third-party lawsuit did not settle therefore the employer and the workers' compensation insurance carrier did not lose their right of subrogation against the potential responsible third-party. Therefore the Motion to Introduce Newly Discovered Evidence should be denied. Alternatively, the Claimant requested that should the Defendants Motion to Introduce Newly Discovered Evidence be granted, that they be afforded the same opportunity to Introduce Newly Discovered Evidence, namely the Claimant's underlying third-party stipulation of dismissal.

On November 25, 2013 the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a return to Claimant's Motion in Opposition to Introduce After Discovered Evidence.

On December 20, 2013, the Claimant filed a Motion to Introduce Newly Discovered Evidence, namely the Claimant's underlying third-party lawsuit stipulation of dismissal without prejudice filed by Claimant's separate third-party counsel filed with the Charleston County Court of Common Pleas on December 5, 2013. The Claimant respectfully requested that the Newly Discovered Evidence be admitted rendering the Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies S2 and

exclusive remedy arguments moot pursuant to the Decision in Callahan v. Beaufort County School District, 375 S.C. 92, 651 S.E.2d 311 (S.C. 2007).

On December 23, 2013 the Defendant's Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Return to Claimant's Motion to Introduce Newly Discovered Evidence.

On January 3, 2014 the Honorable Commissioner Aisha Taylor issued three (3) Administrative Orders. The first Administrative Order granted the Defendant's Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies Motion to Introduce Newly Discovered Evidence (Claimant's third-party answer and counter-claim). The second Administrative Order summarily denied Claimant's Motion in Opposition to Introduce Newly Discovered Evidence. The third Administrative Order denied Claimant's Motion to Introduce Newly Discovered Evidence stating "the evidence sought to be introduced (a voluntary dismissal) does not fit the meaning of 'newly discovered evidence' under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013."

On January 14, 2014 out of an abundance of caution the Claimant timely filed a Form 30, Request for Commission Review, alleging seven (7) different grounds for review of Commissioner Taylor's January 3, 2014 Administrative Orders.

On January 21, 2014 the Honorable T. Scott Beck issued a Judicial Conference Decision and Order dismissing the Claimant's appeal as it was interlocutory.

On February 10, 2014 Claimant's separate third-party counsel filed Claimant's new Summons and Complaint dated February 3, 2014 with the Charleston County Court of

Common Pleas along with a Form S2 dated February 11, 2014 with the South Carolina Workers' Compensation Commission and served the employer and carrier through their attorney of record. On September 2, 2014, Commissioner Aisha Taylor rendered a Decision and Order which included the following findings of fact pertinent to this appeal:

1. The parties to this proceeding were sent directives for a proposed order on January 13, 2014.
2. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants Motion to Introduce Newly Discovered Evidence).
3. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the Commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

The Single Commissioner also made the following conclusions of law pertinent to this appeal:

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
2. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise

and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.

3. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.
4. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
5. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.
6. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.
7. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.
8. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

On September 11, 2014 the Claimant timely filed a Form 30, Request for Commission review alleging the following nine (9) grounds for review:

FIRST: The Hearing Commissioner erred in granting Defendant's Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies November 12, 2013 Motion to Introduce Newly

Discovered Evidence (Claimant's Answer and Counterclaim filed in Charleston County Court of Common Pleas on February 20, 2013), the error being the defense of exclusive remedy was not pled by any of the Defendant's, nor was the issue raised at the September 23, 2013 hearing before the single Commissioner, further the Answer and Counterclaim could have been secured by the Defendant's before the September 23, 2013 hearing had they exercised reasonable diligence.

SECOND: The Hearing Commissioner erred in denying the Claimant's November 21, 2013 Motion in Opposition to Introduce After Discovered Evidence summarily without any legal reasoning, findings of fact or conclusions of law to support this denial.

THIRD: The Hearing Commissioner erred in denying Claimant's December 20, 2013 Motion to Introduce newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), holding the voluntary dismissal did not fit the meaning of "Newly Discovered Evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013, the error being there is no requirement under South Carolina Statutory Law, South Carolina Workers' Compensation Regulations or South Carolina Common Law Jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence.

FOURTH: The Hearing Commissioner erred in granting Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal Claimant's third-party suit) the error being South Carolina case law holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, S.E.2d 311 (2007).

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however the single Commissioner did not allow the Claimant to introduce newly discovered evidence or to be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's exclusive remedy argument moot.

SIXTH: The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).

SEVENTH: The Hearing Commissioner erred in granting the Defendant's Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is the well-settled law of South Carolina that if the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

EIGHTH: The Hearing Commissioner erred in finding of fact #3 and Conclusion of Law #1 in holding that the Claimant failed to file a Form S2 when the Claimant did indeed file a voluntary dismissal of the Claimant's underlying 3rd party lawsuit as newly discovered evidence on December 19, 2013, which the Commissioner denied, then subsequently filed the appropriate S2 on February 10, 2014 after re-filing the underlying 3rd party lawsuit.

NINTH: The Hearing Commissioner erred in Conclusion of Laws #1, #2, #3, #4, #5, #6, #7, and #8 in holding that the Claimant did not provide notice of the 3rd party action by way of filing a Form S2 and therefore was not entitled to additional medical treatment, disability benefits or permanent disability when the Claimant voluntarily dismissed his underlying 3rd party claim on December 5, 2013 before settling it and

submitted the dismissal to the Commission as newly discovered evidence and then after re-filing the 3rd party lawsuit timely filed a Form S2 on [February 10, 2014], the error being that Claimant complied South Carolina case law which holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, S.E.2d 311 (2007).

The above referenced grounds for review can be summarized into the following issues on appeal.

ISSUES ON APPEAL

- I. **WHETHER THE SINGLE COMMISSIONER COMMITTED AN ERROR OF LAW IN HOLDING THAT THE CLAIMANT DID NOT PROVIDE NOTICE OF THE THIRD PARTY ACTION BY WAY OF FILING A FORM S2 AND THEREFORE WAS NOT ENTITLED TO ADDITIONAL MEDICAL TREATMENT, DISABILITY BENEFITS OR PERMANENT DISABILITY WHEN THE OVERWHELMING UNCONTRADICTED EVIDENCE SHOWS THE CLAIMANT VOLUNTARILY DISMISSED HIS UNDERLYING THIRD-PARTY CLAIM ON DECEMBER 5, 2013, SUBMITTED A DISMISSAL TO THE COMMISSION AS NEWLY DISCOVERED EVIDENCE, RE-FILED A THIRD-PARTY LAWSUIT ON FEBRUARY 3, 2014 AND TIMELY AND PROPERLY FILED A NEW FORM S2 ON FEBRUARY 11, 2014, ALL WITHOUT AFFECTING THE RIGHTS OF THE WORKERS' COMPENSATION INSURANCE CARRIER TO SUBROGATION AGAINST THE POTENTIAL THIRD PARTY DEFENDANT, THEREFORE LEAVING THE SITUATION AS THOUGH THE INITIAL THIRD-PARTY SUIT HAD NEVER BEEN FILED AND RENDERING ANY ALLEDGED VIOLATION OF SECTION 42-1-560, NOT APPLICABLE PURSUANT TO CALLAHAN V. BEAUFORT COUNTY SHCHOOOL DISTRICT, 375 S.C. 92, 651, S.E.2d. 311 (2007).**
- II. **WHETHER THE SINGLE COMMISSIONER COMMITTED AN ERROR OF LAW IN GRANTING DEFENDANTS MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE (CLAIMANT'S ANSWER AND COUNTER CLAIM) AND DENYING CLAIMANT'S MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE (VOLUNTARY DISMISSAL OF CLAIMANT'S THIRD-PARTY SUIT) AS THERE IS NO REQUIREMENT IN SOUTH CAROLINA STATUTORY LAW, WORKERS' COMPENSATION REGULATIONS OR COMMON LAW JURISPURDENCE THAT EVIDENCE MUST EXIST AT THE TIME OF THE**

HEARING IN ORDER FOR IT TO BE CONSIDERED AS NEWLY DISCOVERED EVIDENCE THUS RESULTING IN THE SINGLE COMMISSIONER ENTERTAINING NEW DEFENSES THAT WERE NOT PLEAD NOR ARGUED AT THE SEPTEMBER 23, 2013 HEARING BY THE DEFENDANTS WITHOUT ALLOWING CLAIMANT TO INTRODUCE NEWLY DISCOVERED EVIDENCE OR BE HEARD TO ARGUE THEIR POSITION IN RESPONSE TO DEFENDANT'S NEWLY DISCOVERED EVIDENCE IN VIOLATION OF SOUTH CAROLINA WORKERS' COMPENSATION REGULATION 67-707(C)(2)(D).

STANDARD OF REVIEW

In a workers' compensation case, the Full Commission is the ultimate fact finder. DeBruht v. Kershaw County Sheriff's Dept., 397 S.E.2d 782 (Ct. App. 1990); Rogers v. Kunia Knitting Mills, 440 S.E.2d 401 (Ct. App. 1994). The Full Commission, sitting as a finder of fact, can consider all of the evidence and reach its own findings of fact and conclusions of law. The scope of review of the Full commission is not limited. Lowe v. Am-Can Transport Services, 324 S.E.2d 87 (Ct. App. 1984); Green v. Raybestos-Manhattan, Inc., 156 S.E.2d 318 (S.C. 1967). The Commission must consider all the evidence in the record when developing its findings of fact. Hendricks v. Pickens County, 517 S.E.2d 698 (Ct. App. 1999). An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures. Broughton v. South Carolina Game and Fish Dept., 64 S.E.2d 152 (1951).

ARGUMENT

I. THE SINGLE COMMISSIONER'S RULING THAT THE CLAIMANT DID NOT PROVIDE NOTICE OF THE THIRD-PARTY ACTION BY WAY OF FILING A FORM S2 AND THEREFORE WAS NOT ENTITLED TO ADDITIONAL MEDICAL TREATMENT, DISABILITY BENEFITS OR PERMANENT DISABILITY SHOULD BE REVERSED AS IT IS BASED ON AN ERROR OF LAW AND UNSUPPORTED BY THE EVIDENCE.

On August 10, 2011, the Claimant suffered injuries to his head, knee, leg, back

and neck in a severe motor vehicle collision involving two tractor trailers. He suffered loss of consciousness and had to be removed from his vehicle. The claimant did not commence a third-party action on his own but rather was actually sued by the third-party Plaintiff in the motor vehicle collision. The Claimant, through the help of separate legal counsel, filed an Answer and Counter Claim to not only protect his own legal rights but the rights of the Workers' Compensation Insurance carrier as well. This answer and counter claim was filed on February 20, 2013. The third-party counter claim was never settled and Claimant's separate third-party counsel notified counsel for the workers' compensation insurance carrier on or around November 5, 2013 of the underlying third-party counter claim to insure that the workers' compensation insurance carriers rights were protected in an upcoming mediation in the underlying third-party counter claim,

The workers' compensation insurance carrier then filed a copy of the underlying third-party answer and counter claim with the South Carolina Workers' Compensation Commission as newly discovered evidence on November 12, 2013. Subsequently, separate third-party counsel for the Claimant filed a stipulation of dismissal without prejudice in the underlying third-party counter claim on December 5, 2013 and the Claimant's workers' compensation counsel filed a motion to introduce newly discovered evidence (stipulation of dismissal without prejudice) with the South Carolina Workers' Compensation Commission on December 20, 2013.

The Single Commissioner granted the Defendants motion to introduce newly discovered evidence but denied the Claimant's motion to introduce newly discovered evidence. Claimant's separate third-party counsel then filed a new Summons and Complaint in the underlying third-party claim on February 3, 2014 and timely filed a new Form S2 on February 11, 2014 serving the Workers' Compensation Commission, the employer and carrier.

The facts in the case at bar are identical to those found in Callahan v. Beaufort County School District, 651, S.E.2d. 311 (2007). In Callahan, the Claimant filed a civil action against the third-party Defendant on January 24, 2013 but failed to file a Form S2 with the South Carolina Workers' Compensation Commission within thirty (30) days. The Claimant did not file a Form S2 until July 16, 2013. The Defendants then raised the exclusive remedy defense that the Claimant did not file an S2 within thirty (30) days. Subsequently the Claimant voluntarily dismissed the third-party action without prejudice in November 2003. The court in Callahan held "despite the Claimant's failure to comply with South Carolina Code Annotated § 42-1-560, we nonetheless affirm the circuit courts finding that her workers' compensation claim may proceed. In this case, Claimant voluntarily dismissed her third-party suit pursuant to rule 41, FRCP. A voluntary dismissal leaves the situation as though no suit had ever been filed (Citations omitted). Following this rule, the third-party suit originally filed in January 2003 became a nullity and § 42-1-560 is not applicable. As a result, there is no violation of S.C. Ann. § 42-1-560 when the third-party suit is treated as never being filed." Callahan, 651, S.E.2d. 311, 314 (2007).

Accordingly, the overwhelming evidence in the record shows the Claimant complied with South Carolina case law which holds that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply S.C. Ann. § 42-1-560 by not filing a Form S2 is fully remedied and moot. Consequently, this Appellant Panel acting as the ultimate fact finder should review the record as a whole and reverse the Single Commissioners ruling that the Claimant did not provide notice of the third-party action by way of filing a Form S2 and was not entitled to additional medical treatment, disability benefits or permanent disability. In the alternative, the Claimant respectfully requests that appellant panel remand the case to the Single Commissioner with orders

that the Claimant's voluntarily dismissal without prejudice be admitted as newly discovered evidence and have the Single Commissioner reconvene the hearing with proper evidence from both sides pursuant to South Carolina Workers' Compensation Regulation 67-707(c)(2)(d).

II. THE SINGLE COMMISSIONER COMMITTED AN ERROR OF LAW IN GRANTING THE DEFENDANT'S MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE (CLAIMANT'S ANSWER AND COUNTERCLAIM) AND DENYING CLAIMANT'S MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE (VOLUNTARY DISMISSAL OF CLAIMANT'S SUIT).

South Carolina Workers' Compensation Commission Regulation 67-707 deals specifically with additional and newly discovered evidence. That Regulation states in pertinent part:

C: the moving party must establish the new evidence is of the same nature and character required for granting a new trial and show:

- (1) The evidence sought to be introduced is not evidence of accumulative or impeaching character but would likely have produced a different result had the evidence been procurable at the first hearing; and
- (2) The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

(d) If the Commission grants the motion, the review hearing is stayed. The case will be remanded to the original hearing Commissioner who may, unless otherwise provided, reconvene the hearing or admit the depositions of a witness into the record.

The Single Commissioner denied the Claimant's motion to introduce newly discovered evidence, (December 5, 2013 voluntary dismissal of Claimant's third-party suit) holding the "voluntary dismissal did not fit the meaning of 'newly discovered

evidence' under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013." There is no requirement under South Carolina Statutory law, South Carolina Worker' Compensation Regulations or South Carolina Common Law jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence. This is not a requirement of South Carolina Workers' Compensation Regulation 67-707 or South Carolina Rule of Civil Procedure 59 which governs new trials and amendment of judgments. Therefore, the Single Commissioner's holding was an error of law.

"If the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings." Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, S.E.2d. 318, 320 (1967). By the Single Commissioner granting the Defendant's motion to introduce newly discovered evidence (Claimant's answer and counterclaim) and denying Claimant's motion to introduce newly discovered evidence (voluntary dismissal of Claimant's third-party suit) there was a violation of due process. The Single Commissioner simply entertained new defenses that were not pled nor argued at the September 23, 2013 hearing by the Defendant's, without allowing the Claimant to introduce newly discovered evidence or to be heard to argue their position in response to the Defendant's newly discovered evidence which ultimately renders the Defendants exclusive remedy argument moot.

Accordingly, under South Carolina Statutory, Regulatory and Case Law, the Single Commissioner should have granted the Claimant's motion for newly discovered evidence (voluntary dismissal of Claimant's third-party suit) and reconvened the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulations 67-707(c)(2)(d) and rendered a decision in line with the holding in Callahan based upon the proper record as a whole. Consequently, the Claimant respectfully

requests this Appellant Panel acting as the ultimate fact finder remand this case to the Single Commissioner with instructions to admit the Claimant's newly discovered evidence (voluntary dismissal of Claimant's third-party suit) and reconvene the September 23, 2013 hearing pursuant to South Carolina Worker' Compensation Regulation 67-707(c)(2)(d) and make a decision based upon the full record as a whole.

CONCLUSION

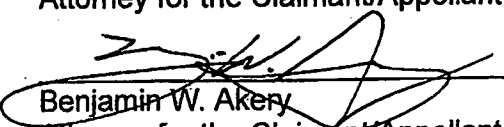
For the foregoing reasons the Appellate Panel, acting as the ultimate fact finder, should make its own findings of facts and conclusions of law based on the evidence as a whole and reverse the Decision and order of the Single Commissioner. The Appellate Panel should find the Claimant properly voluntarily dismissed his underlying third-party lawsuit, re-filed the third-party lawsuit and timely filed a Form S2 with the Workers' Compensation Commission, employer and insurance carrier, therefore there was no violation of § 42-1-560 as the initial third-party suit is treated as never being filed and the Claimant's Workers' Compensation case may proceed pursuant to Callahan. In the alternative, the Appellate Panel should remand the case to the Single Commissioner with instructions to receive Claimant's newly discovered evidence (voluntary dismissal of Claimant's third-party suit) and render a Decision based upon the record as a whole in line with the Callahan decision.

Respectfully Submitted,

By:


Joseph Fisher, Esquire
Attorney for the Claimant/Appellant

By:


Benjamin W. Akery
Attorney for the Claimant/Appellant

November 14, 2014

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

SAMUEL ROSE,	)	W.C.C. File No. 1112328
	)	
Claimant/Appellant,	)	
	)	
v.	)	MOTION TO STRIKE
	)	CLAIMANT'S BRIEF
JJS TRUCKING,	)	
Uninsured Employer, and	)	
CHRIS THOMPSON SERVICES,	)	
Upstream Employer, and	)	
BRIDGEFIELD CASUALTY INS. CO.,	)	
Carrier for Chris Thompson	)	
Services, and	)	
THE STATE ACCIDENT FUND,	)	
	)	
Respondents.	)	

TO THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND ALL
ATTORNEYS OF RECORD:

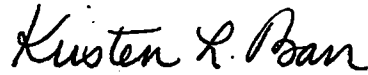
PLEASE TAKE NOTICE that the above-named Respondents, Chris Thompson Services and Bridgefield Casualty Insurance hereby move before the South Carolina Workers' Compensation Commission for an order striking the Claimant's Brief to the Appellate Panel, from the record in this case pursuant to S.C. Code Ann. § 67-707 and based upon the following:

1. The Claimant has appealed the September 2, 2014 Decision and Order of Commissioner Taylor by which the Claimant's claim was denied and dismissed with prejudice. The Claimant also seeks reversal of Commissioner Taylor's Order denying the Claimant's request to introduce new evidence manufactured after the hearing.
2. In his brief to the Appellate Panel dated November 14, 2014, the Claimant makes repeated, specific reference to and arguments regarding the new evidence that he sought to introduce before Commissioner Taylor, but which was not admitted into the record.

3. In addition, the Claimant makes further repeated, specific reference to evidence that is not only not included in the record, but which he has never even sought to introduce pursuant to S.C. Code Reg. 67-707.
4. There is no Motion for the introduction of any Newly Discovered Evidence currently pending before the Commission.
5. The repeated, specific inappropriate references contained throughout the Claimant's brief to facts not in evidence pertain to the Claimant's own actions following the hearing before Commissioner Taylor and these facts do not constitute "newly discovered evidence" under S.C. Code Reg. 67-707. In particular, these facts not in evidence are not newly discovered, they are simply *newly manufactured* by the Claimant in an attempt to cure his own willful violation of S.C. Code Ann. § 42-1-560(b).
6. Obviously, the Respondents are grossly prejudiced by the Claimant's repeated, specific reference to and arguments regarding facts not in evidence and both the briefs and oral arguments in this claim should be confined to the record.
7. The Respondents should not be required to respond to arguments concerning facts not in evidence.
8. Furthermore, the Respondents would be seriously prejudiced by the mere admission of the Claimant's brief into the Commission's file, which typically becomes part of the record on appeal, thus meaning that the Claimant would essentially be permitted to circumvent both S.C. Code Reg. 67-612(J) and Reg. 67-707 by repeatedly and specifically referencing facts not in evidence.

THEREFORE, the Respondents respectfully request that the Commission order the Claimant's arguments be confined to the record in this case; that the Claimant's Brief dated November 14, 2014 be stricken in its entirety due to the repeated, specific, inappropriate, and prejudicial reference to facts not in evidence; and that the Commission assess the costs associated with the filing of this motion against the Claimant, in addition to any other such fines and penalties deemed appropriate under these circumstances.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kirsten L. Barr". The signature is written in black ink and is positioned above a horizontal line.

Kirsten L. Barr
Trask & Howell, LLC

November 26, 2014

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

SAMUEL ROSE,	)	W.C.C. File No. 1112328
	)	
Claimant/Appellant,	)	
	)	
v.	)	BRIEF OF THE RESPONDENTS
	)	CHRIS THOMPSON SERVICES &
JJS TRUCKING,	)	BRIDGEFIELD CAUSALTY INS. CO.
Uninsured Employer, and	)	
CHRIS THOMPSON SERVICES,	)	
Upstream Employer, and	)	
BRIDGEFIELD CASUALTY INS. CO.,	)	
Carrier for Chris Thompson	)	
Services, and	)	
THE STATE ACCIDENT FUND,	)	
	)	
Respondents.	)	

STATEMENT OF THE CASE

This matter came before Commissioner Taylor for a hearing on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Form 21 filed by Chris Thompson Services and Bridgefield Casualty Insurance (hereinafter "the Respondents"), requesting permission to terminate compensation following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. Following the hearing, on November 8, 2013, the Respondents learned for the first time that the Claimant had an ongoing third-party claim arising out of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas.

On November 12, 2013, the Respondents filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in the Charleston County Court of Common Pleas on February 20, 2013. The Respondents argued

that this newly discovered evidence was relevant to the determination of the issues pending before Commissioner Taylor because the Claimant did not file a Form S-2 with the Workers' Compensation Commission, the Employer, or the Carrier within thirty days after filing his third-party claim. As a result, the Respondents argued that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560.

The Claimant did not file a return¹ to the Respondent's Motion to Introduce Newly Discovered Evidence. The Respondents' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

The Claimant then filed a Motion to Introduce New Evidence into the record. After completing discovery in his third-party claim and participating in a 5.8 hour mediation with the third-party defendants, the Claimant entered into an agreement – without the knowledge or consent of the Respondents – to dismiss his third party claim. Commissioner Taylor denied the Claimant's Motion on the basis that the evidence the Claimant sought to introduce was not “of the same nature and character required for granting a new trial” as required by S.C. Code Reg. 67-707(C) and S.C.R.C.P. Rules 59 and 60.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. At the time of the hearing, the Claimant, Samuel Rose, was 43 years old. He is a high school graduate and worked for J.J.S. Trucking for

¹ The Claimant did file a “Motion in Opposition to Introduce After Discovered Evidence.” The Claimant's motion was denied by Administrative Order dated January 3, 2014.

approximately six months. (Hrg. Transcript p. 17, ll. 18-25). The Claimant was rear ended on August 10, 2011 while traveling on I-26, allegedly injuring his head, neck, back, and legs. (Hrg. Transcript p. 19, l. 17- p. 20, l. 23).

The Claimant testified that he is currently experiencing stiffness and throbbing pain in his neck that radiates to his shoulders, arms, and head. (Hrg. Transcript p. 28, ll. 1-10). He is also experiencing numbness in his arm and fingers and he claims that he can only lift about 25 pounds with his right arm. (Hrg. Transcript p. 28, ll. 14-25). He stated his left arm is worse than his right. (Hrg. Transcript p. 29, l. 1- p. 30, l. 4).

Regarding the Claimant's lower back, he testified that he currently experiences throbbing, radiating pain in his lower back near his spine. (Hrg. Transcript p. 30, ll. 10-18). He testified that his back is fine when he is moving, but hurts when he stops. (Hrg. Transcript p. 31, ll. 2-10).

The Claimant also testified that his right leg occasionally gives out and swells. (Hrg. Transcript p. 31, ll. 15-18). His knee sometimes hurts, but not always. (Hrg. Transcript p. 31, ll. 17-24). He was previously diagnosed with Osgood-Schlatter's Disease, but he claims he was not experiencing any pain in his right knee at the time of the accident. (Hrg. Transcript p. 32, ll. 4-10).

The Claimant also testified that the back of his head swells up, and he constantly has headaches, dizziness, and blurred vision. (Hrg. Transcript p. 32, ll. 11-17). The Claimant further testified that he did not believe he could go back to work in his current condition because he believes he cannot take the vibrations of driving the truck or doing the pre-trip inspection. (Hrg. Transcript p. 33, ll. 3-10).

On cross-examination, the Claimant testified that he fell down a flight of stairs at his mother's house in November of 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 35, ll. 2-7). The Claimant admitted he went to Tri-County Spinal Care, but he initially stated it was only for pain management. (Hrg. Transcript p. 35, ll. 14-23). After further questioning, the Claimant denied receiving treatment, but later he admitted that he had received injections and MRI's and x-rays had been taken. (Hrg. Transcript p. 35, ll. 6-19).

The Claimant also admitted that he currently carries his cane in the wrong hand, his right hand, even though the doctors advised him that he needs to carry the cane in his *left* hand if he is actually having *right* knee pain. (Hrg. Transcript p. 38, l. 16 – p. 39, l. 7). He also testified that he did not remember Dr. Wildstein telling him that his complaints were out of proportion with what the physical exam showed. (Hrg. Transcript p. 39, ll. 21-25).

The Claimant admitted that he has not applied for any jobs or even looked for work anywhere. (Hrg. Transcript p. 42, ll. 9-14). He also testified that he has not been incarcerated again since the last hearing. (Hrg. Transcript p. 42, l. 23 – p. 43, l. 5). He admits that he was incarcerated after the August 10, 2011 accident.

Upon further cross-examination, the Claimant testified that he believes he needs the cane for dizziness, which he relates to his headaches. (Hrg. Transcript p. 44, l. 14 – p. 45, l. 14). The Claimant was also forced to admit that, despite his testimony that "nothing's been done" for him, Dr. Abel's records indicate the Claimant saw him 42 times. (Hrg. Transcript p. 45, l. 24 – p. 46, l. 4). He was also forced to admit that he has been treated and evaluated Dr. Kellett, Dr. Wildstein, Dr. Wills, Dr. Poletti, and Dr. Jones and he has received both injections and pain medicine. (Hrg. Transcript p. 46, ll. 8-20).

On re-direct examination, the Claimant testified that Dr. Wildstein said he might potentially benefit from a one level anterior cervical discectomy and fusion. (Hrg. Transcript p. 50, ll. 2-24). The Claimant also testified he was feeling depressed even though depression was never raised in his Form 50 or his response to the Form 21 submitted by the Defendants. (Hrg Transcript p. 51, l. 10 – p. 52, l. 10).

On November 8, 2013, the Claimant's attorney contacted the Respondents' counsel to discuss an upcoming mediation in the Claimant's previously undisclosed third-party claim. On November 12, 2013, Respondents Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Motion to Introduce Newly Discovered Evidence. The newly discovered evidence was the Claimant's third-party claim filed in the Charleston County Court of Common Pleas on February 20, 2013. The Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days.

ARGUMENTS

- I. The Hearing Commissioner properly concluded that the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560 based upon the greater weight of the evidence in the record and the applicable law.**

The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence). The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the commission that this third-party action had been

commenced. As a result, the Hearing Commissioner concluded that the Claimant was not entitled to any additional benefits under the Workers' Compensation Act for failure to comply with the mandatory requirements of S.C. Code Ann. § 42-1-560. The Respondents respectfully request that the Appellate Panel affirm this conclusion based upon the greater weight of the evidence in the record and the applicable law.

S.C. Code Ann. § 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides that

"Notice of the commencement of the [third-party] action **shall**² be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." (emphasis added)

In fact, the only way a claimant may proceed against both an employer/carrier and against a third-party tortfeasor is by complying with the requirements of S.C. Code Ann. § 42-1-560. Fisher v. S.C. Dept. of Mental Retardation, 277 S.C. 5763, 575, 291 S.E.2d 200, 201 (1982); Hudson v. Townsend Saw Chain Co., 296 S.C. 17, 20, 370 S.E.2d 104, 106 (Ct. App. 1988) (holding that § 42-1-560(b) "plainly requires an employee, when he or she brings a third-party action, to give notice to the Commission, the employer, and the employer's carrier of the commencement of the third-party action within 30 days of its commencement.") Because the Claimant did not file or serve a Form S-2 (the notice form prescribed by the Commission) or otherwise provide any notice of the commencement of the third-party action to the Commission,

² "The term 'shall' in a statute means that the action is mandatory." Johnston v. S.C. Dept. of Labor, Licensing, and Reg., 365 S.C. 293, 296-97, 617 S.E.2d 363, 364 (2005) (citing Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003)).

the Employer, or the Carrier within thirty days, the Claimant failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

Furthermore, the Workers' Compensation Act is in derogation of common law rights, and; therefore, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Respondents are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Respondents have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.

The Claimant would argue that his admitted failure to comply with S.C. Code Ann. § 42-1-560 could somehow be "cured" by voluntarily dismissing this third-party lawsuit and then simply re-filing. The Respondents respectfully contend that the Claimant should not be permitted to grossly circumvent the clear statutory requirements in this manner. To date, there is no case law on this issue and the Supreme Court has previously declined to address the "efficacy" of a re-filing. See Callahan, supra, at footnote #1. Should the Claimant voluntarily dismiss his third-party suit and then re-file, then the third-party suit filed on February 20, 2013

could no longer be considered a “nullity” and to suggest that the Commission should pretend that the February 20, 2013 suit was never filed under such circumstances would entail a grossly prejudicial legal fiction. Therefore, the Respondents respectfully contend that that the Hearing Commissioner’s Decision and Order should not be reversed based on facts not in evidence, hypothetical scenarios, or newly-manufactured events.

II. The Hearing Commissioner’s conclusions of law numbered 4, 5, 6, 7, and 8 are the law of the case.

The Claimant did not appeal Conclusions of Law numbers 4, 5, 6, 7, or 8 of the Hearing Commissioner’s Decision and Order in his Form 30, nor did he raise any exception to these Conclusions in his brief to the Appellate Panel. These Conclusions deal with the Claimant’s entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, and 42-9-30, yet none of these statutes are ever mentioned in the Claimant’s Form 30 or his brief, nor does he argue that he is entitled to any benefits under these sections.

Therefore, the following conclusions are the law of the case:

4. *Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.*

5. *Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.*
6. *Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.*
7. *Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.*
8. *Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.*

S.C. Code Ann. § 42-17-50 provides the procedure for appealing a Hearing Commissioner's Order; however, "only issues within the application are preserved for the full Commission." Creech v. Ducane Co., 320 S.C. 559, 476 S.E.2d 114, *reh'g denied, cert. denied* (Ct. App. 1995). Furthermore, all findings of fact and law by the Hearing Commissioner "become and are the law of the case, except only those within the scope of the exception." Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2s 712 (1940). Here, the Claimant did not raise any exception to Conclusions numbered 4, 5, 6, 7, or 8 and he cannot now raise any exception to these Conclusions, as the Commission lacks the authority or jurisdiction to extend the fourteen days

permitted for the perfecting of an appeal. Allison v. W.L. Gore & Assoc., 394 S.C. 185, 714 S.E.2d 547 (2011).³

Therefore, regardless of any argument the Claimant makes under S.C. Code Ann. § 42-1-560, the issue is moot because the Claimant is not entitled to any additional medical or compensation benefits under the South Carolina Workers' Compensation Act as a matter of law. According to the South Carolina Supreme Court, "an unappealed ruling, right or wrong, is the law of the case." Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)). In addition, mere "conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review." State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005) (citing Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993 (holding that failure to provide arguement or supporting authority for an issue renders it abandoned))). Due to his failure to raise any exception to Conclusions 4, 5, 6, 7, or 8 in his Form 30 and his failure to raise any argument regarding Conclusions 4, 5, 6, 7, or 8 in his brief to the Appellate Panel, the Respondents respectfully contend that the Claimant's appeal is moot and otherwise without merit and further respectfully contend that the Hearing Commissioner's Decision and Order should be affirmed in its entirety.

³ Note that the Claimant also failed to raise any exception or make any argument regarding Conclusions numbered 4, 5, 6, 7, or 8 in his brief to the Appellate Panel and therefore, any future exception would be deemed abandoned. Blakely v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976); Beach Co. v. Charleston Co. Sch. Dist., 263 S.C. 7, 207 S.E.2d 406 (1974).

CONCLUSION

Therefore, based upon the arguments set forth above, the Respondents respectfully request that the Decision and Order of Commissioner Tayhor date September 2, 2014 be affirmed in its entirety.

Respectfully submitted,



Kirsten L. Barr
Trask & Howell, LLC
Attorneys for the Respondents

Dated: December 8, 2014

160/48\dec-ord



STEPHEN B. SAMUELS
ATTORNEY AT LAW

March 8, 2016

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Samuel Rose v. JJS Trucking, et. al.
WCC File No.: 1112328

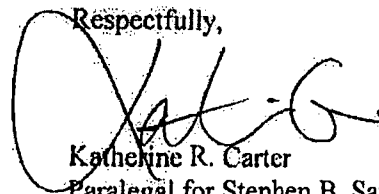
Dear Ms. Kitchings:

Enclosed for filing is a **Notice of Appeal** in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the Respondent;
2. A copy of the order which is to be challenged on appeal;
3. A filing fee of \$100.00; and
4. A copy of our letters to the Court Reporters requesting the transcripts and confirming that we agree to pay the per page charge as provided by Rule 607, SCACR.

Please have your staff clock in the copy of the Notice of Appeal and return the clocked copy with our courier.

Respectfully,



Katherine R. Carter
Paralegal for Stephen B. Samuels

/krc

Enclosure(s) as stated

cc: Robert Treacy, Esquire
Amy Bracy, SCWCC
Kirsten L. Barr, Esquire
Amy Cofield, Esquire

WE WORK FOR THE PEOPLE WHO WORK.

1320 RICHLAND STREET, COLUMBIA, SC 29201 | P: (803) 779.4000 | F: (803) 779.4004 | WWW.SAMUELSLAWFIRM.NET

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Commissioners R. Michael Campbell, II, T. Scott Beck, and Susan S. Barden

WCC File No. 1112328

Samuel Rose, Claimant, ... Appellant,

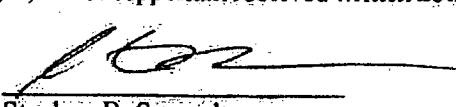
v.

JJS TRUCKING, Uninsured Employer, and CHRIS THOMPSON SERVICES,
Upstream Employer, and BRIDGEFIELD CASUALTY INS. CO., Carrier for
Chris Thompson Services, and THE STATE ACCIDENT FUND, ... Respondents.

NOTICE OF APPEAL

Samuel Rose appeals the Decision and Order of the Appellate Panel of the South Carolina
Workers' Compensation Commission dated February 8, 2016. Appellant received written notice of
the order on February 8, 2016.

March 8, 2016


Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000

Counsel for the Appellant

Other Counsel of Record:

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809 South Lake Drive
Lexington, SC 29072
(803) 951-0389

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P.O. Box 2167
Mount Pleasant, SC 29464
(843) 881-1027

Counsel for the Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Commissioners R. Michael Campbell, II, T. Scott Beck, and Susan S. Barden

WCC File No. 1112328

Samuel Rose, Claimant, ... Appellant,

v.

JJS TRUCKING, Uninsured Employer, and CHRIS THOMPSON SERVICES,
Upstream Employer, and BRIDGEFIELD CASUALTY INS. CO., Carrier for
Chris Thompson Services, and THE STATE ACCIDENT FUND, ... Respondents.

PROOF OF SERVICE

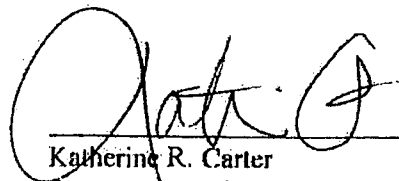
I certify that I, Katherine R. Carter, paralegal to Stephen B. Samuels, have served the **Notice of Appeal** upon counsel for the Respondents and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on March 8, 2016, addressed as follows:

Amy Cofield
809 South Lake Drive
Lexington, SC 29072

Kirsten L. Barr
P.O. Box 2167
Mount Pleasant, SC 29464

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

March 8, 2016


Katherine R. Carter
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000

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

SAMUEL ROSE,

Claimant/Appellant,

v.

JJS TRUCKING,
Uninsured Employer, and
CHRIS THOMPSON SERVICES,
Upstream Employer, and
BRIDGEFIELD CASUALTY INS. CO.,
Carrier for Chris Thompson
Services, and
THE STATE ACCIDENT FUND,

Respondents.

W.C.C. File No. 1112328

DECISION & ORDER

STATEMENT OF THE CASE

This matter came before the Commission's Appellate Panel for a review hearing on April 21, 2015. The case was previously tried before Commissioner Taylor on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Form 21 filed by Chris Thompson Services and Bridgefield Casualty Insurance (hereinafter "the Respondents"), requesting permission to terminate compensation following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. Following the hearing, on November 8, 2013, the Respondents learned for the first time that the Claimant had an ongoing third-party claim arising out to of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas.

On November 12, 2013, the Respondents filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in

the Charleston County Court of Common Pleas on February 20, 2013. The Respondents argued that this newly discovered evidence was relevant to the determination of the issues pending before Commissioner Taylor because the Claimant did not file a Form S-2 with the Workers' Compensation Commission, the Employer, or the Carrier within thirty days after filing his third-party claim. As a result, the Respondents argued that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560. The Claimant did not file a return¹ to the Respondent's Motion to Introduce Newly Discovered Evidence. The Respondents' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

On September 2, 2014, Commissioner Taylor issued a Decision and Order, by which she made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *The parties to this proceeding were sent directives for a proposed order on January 13, 2014.*
2. *The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence).*
3. *The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the*

¹ The Claimant did file a "Motion in Opposition to Introduce After Discovered Evidence." The Claimant's motion was denied by Administrative Order dated January 3, 2014.

commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
2. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec. 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.
3. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.
4. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on

which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

5. *Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.*
6. *Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.*
7. *Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.*
8. *Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.*

Thereafter, the Claimant filed a Form 30 requesting review of Commissioner Taylor's September 2, 2014 Order on the following grounds:

FIRST: The Hearing Commissioner erred in granting Defendant's [sic] Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies November 12, 2013 Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim filed in Charleston County Court of Common Pleas on February 20, 2013), the error being that the defense of exclusive remedy was not pled by any of the Defendant's [sic], nor was the issue raised at the September 23, 2013 hearing before the single Commissioner, further the Answer and Counterclaim could have been secured by the Defendant's before the September 23, 2013 hearing had they exercised reasonable diligence.

SECOND: The Hearing Commissioner erred in denying the Claimant's November 21, 2013 Motion in Opposition to Introduce After Discovered Evidence summarily without any legal reasoning, findings of fact or conclusions of law to support this denial.

THIRD: The Hearing Commissioner erred in denying Claimant's December 20, 2013 Motion to Introduce newly Discovered Evidence (voluntary dismissal of the Claimant's third-party suit), holding the voluntary dismissal did not fit the meaning of "Newly Discovered Evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned [sic] on August 5, 2013, the error being there is no requirement under South Carolina Statutory Law, South Carolina Workers' Compensation Regulations or South Carolina Common Law Jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence.

FOURTH: The Hearing Commissioner erred in granting Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntarily [sic] dismissal Claimant's third-party suit) the error being that South Carolina case law holds that when a Claimant voluntarily dismissed his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

FIFTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), the error being this is a gross miscarriage of justice as the single Commissioner entertained new defenses that were not pled or argued at the September 23, 2013 hearing by the Defendant's [sic], however the single Commissioner did not allow the Claimant to introduce newly discovered evidence or to

be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's [sic] exclusive remedy argument moot.

SIXTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third party-suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).

SEVENTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is well-settled law of South Carolina that if the Commission undertakes to receive such additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, [sic] S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

EIGHTH: The Hearing Commissioner erred in finding of fact #3 and Conclusion of Law #1 in holding that the Claimant failed to file a Form S2 when the Claimant did indeed file a voluntary dismissal of the Claimant's underlying 3rd party lawsuit as newly discovered evidence on December 19, 2013, which the Commissioner denied, then subsequently filed the appropriate S2 on February 10, 2014 after re-filing the underlying 3rd party lawsuit.

NINTH: The Hearing Commissioner erred in Conclusion of Laws #1, #2, #3, #4, #5, #6, #7, and #8 in holding that the Claimant did not provide notice of the 3rd party action by way of filing a Form S2 and therefore was not entitled to additional medical treatment,

disability benefits or permanent disability when the Claimant voluntarily dismissed his underlying 3rd party claim on December 5, 2013 before settling it and submitted the dismissal to the Commission as newly discovered evidence and then after re-filing the 3rd party lawsuit timely filed a Form S2 on December 19, 2013, the error being that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

CONCLUSION

The Appellate Panel AFFIRMS the September 2, 2014 Decision and Order of Hearing Commissioner Taylor in its entirety and enters the following:

FINDINGS OF FACT

1. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013.
2. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the commission that this third-party action had been commenced.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statute provides

that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

9. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.
10. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed

against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.

11. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.
12. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.
13. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act.
14. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.
15. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants/Respondents shall have no liability for, any additional benefits under the Workers' Compensation Act.

IT IS, FURTHER ORDERED that the Defendants/Respondents shall have a lien on the proceeds of any recovery by the Claimant from any third-party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

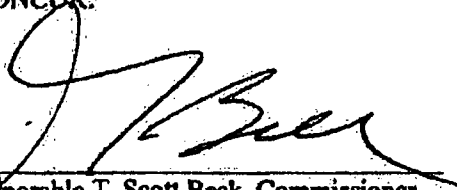
IT IS SO ORDERED!



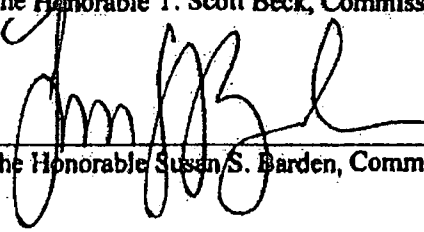
The Honorable R. Michael Campbell, II, Commissioner

Date: February 8th, 2014

WE CONCUR:



The Honorable T. Scott Beck, Commissioner



The Honorable Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

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

By Kim Falls on February 8, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1212678

EMPLOYEE/CLAIMANT: SAMUEL ROSE

EMPLOYER: CHRIS THOMPSON SERVICES, L.L.C.
J.J.S. TRUCKING, L.L.C.

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 23RD DAY OF
SEPTEMBER, 2013, COMMENCING AT THE HOUR OF 11:07 A.M., IN
ST. MATTHEWS, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA TAYLOR,
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

BENJAMIN W. AKERY, ESQUIRE, OF THE FIRM
THE STEINBERG LAW FIRM, L.L.P.
111 GOOSE CREEK BOULEVARD SOUTH
GOOSE CREEK, SOUTH CAROLINA 29445

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

KIRSTEN L. BARR, ESQUIRE, OF THE FIRM
TRASK & HOWELL, L.L.C.
763 JOHNNIE DODDS BOULEVARD
MT. PLEASANT, SOUTH CAROLINA 29464

ATTORNEY FOR CHRIST THOMPSON SERVICES, L.L.C.,
AND BRIDGEFIELD CASUALTY INSURANCE COMPANY,

AMY V. COFIELD, ESQUIRE, OF THE FIRM
COFIELD LAW FIRM
809 SOUTH LAKE DRIVE
LEXINGTON, SOUTH CAROLINA 29072

ATTORNEY FOR S.C.U.E.F.,

JOHN ERIC KAUFMANN, ESQUIRE, OF THE FIRM
LAW OFFICES OF JOHN ERIC KAUFMANN
3608 LANDMARK DRIVE, SUITE F
COLUMBIA, SOUTH CAROLINA 29204

ATTORNEY FOR J.J.S. TRUCKING, L.L.C.

ALSO ATTENDING:

WILLENE H. ROSE
CEDRIC SMALLS
TONYA SMALLS

I N D E X

PAGE

MR. SAMUEL ROSE:

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RE-CROSS EXAMINATION BY MS. BARR.....	54
CERTIFICATE OF NOTARY PUBLIC.....	58

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

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

6 BY COMMISSIONER TAYLOR:

7 ALL RIGHT. TODAY IS SEPTEMBER 23, 2013. WE'RE
8 HERE ON WORKERS' COMP FILE NUMBER 1112328. THIS IS
9 THE CLAIM OF MR. SAMUEL ROSE WHO IS REPRESENTED
10 TODAY BY MR. BENJAMIN AKERY. THE EMPLOYER IS J.J.S.
11 TRUCKING, L.L.C., THE GENERAL CONTRACTOR IS CHRIS
12 THOMPSON SERVICES, L.L.C. I MIXED THAT UP. THE
13 CARRIER -- THE CARRIERS INVOLVED ARE BRIDGEFIELD
14 CASUALTY INSURANCE COMPANY WHO IS REPRESENTED BY MS.
15 KIRSTEN BARR. THE EMPLOYER, J.J.S. TRUCKING, L.L.C.
16 IS REPRESENTED TODAY BY MR. ERIC KAUFMANN. WE'RE
17 HERE ON THE BRIDGEFIELD'S FORM 21 REQUEST TO STOP OR
18 TERMINATE PAYMENT OF TEMPORARY TOTAL DISABILITY
19 BENEFITS AND DETERMINE WHETHER THE CLAIMANT IS
20 ENTITLED TO AN AWARD OF PERMANENCY PURSUANT TO
21 STATEMENTS OF MAXIMUM MEDICAL IMPROVEMENT.
22 BRIDGEFIELD CASUALTY IS ALSO REQUESTING CREDIT FOR
23 TEMPORARY TOTAL BENEFITS PAID IN EXCESS OF THE
24 AWARD. THE SOUTH CAROLINA UNINSURED EMPLOYERS FUND
25 IS ALSO PRESENT HERE TODAY REPRESENTED BY MS. AMY

1 COFIELD. THERE IS AN ISSUE REGARDING LIABILITY IN
2 THIS CLAIM; HOWEVER, THAT MATTER IS PENDING BEFORE
3 THE SOUTH CAROLINA COURT OF APPEALS. I HAVE A DATE
4 OF ACCIDENT OF AUGUST 10TH, 2011. CLAIMANT'S
5 AVERAGE WEEKLY WAGE IS \$650.00 YIELDING A
6 COMPENSATION RATE OF \$433.34. ARE THERE ANY
7 OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY
8 OTHER ITEMS?

9 **BY MS. BARR:**

10 NO, YOUR HONOR.

11 **BY COMMISSIONER TAYLOR:**

12 THANK YOU. MR. AKERY?

13 **BY MR. AKERY:**

14 JUST AGAIN PREVIOUSLY PUT ON THE RECORD. THE
15 CLAIMANT OBJECTS TO THE DEFENDANT'S EXHIBIT NUMBER
16 SEVEN, A SLED REPORT, IT LOOKS LIKE IT'S DATED APRIL
17 30TH, 2012, APA PAGE NUMBERS 35 THROUGH 42.
18 CLAIMANT TAKES THE POSITION THAT THIS EVIDENCE IS
19 PREJUDICIAL AND OUTWEIGHS ANY PROBATIVE EVIDENTIARY
20 VALUE.

21 **BY COMMISSIONER TAYLOR:**

22 OKAY. MS. BARR.

23 **BY MS. BARR:**

24 YES, YOUR HONOR. AS WE NOTED IN THE PRETRIAL
25 CONFERENCE, TESTIMONY HAS ALREADY BEEN GIVEN IN THIS

1 CASE PRIOR HEARING ON MAY 15TH, 2012, REGARDING THAT
2 SLED REPORT. IT'S RELEVANT IN SO FAR AS IT DELAYED
3 ADJUDICATION OF THIS CLAIM BECAUSE THE CLAIMANT
4 ADMITS BEING INCARCERATED AT THE TIME OF THE
5 ORIGINAL HEARING FOR RUNNING ACROSS A PARKING LOT
6 FROM AN APARTMENT, CROSSED MY MOM'S CAR, PUTTING A
7 T.V. IN THE ---

8 **BY MR. AKERY:**

9 OBJECTION. AND WHAT IS THAT COMING FROM?

10 **BY MS. COFIELD:**

11 HERE.

12 **BY MS. BARR:**

13 THE CLAIMANT'S TESTIMONY PAGE 33 LINES 21 TO
14 PAGE 34 LINE 3 ---

15 **BY MR. AKERY:**

16 THANK YOU.

17 **BY MS. BARR:**

18 --- OF THE HEARING TRANSCRIPT. WE ALSO BELIEVE
19 THAT NOW THAT THE CLAIMANT ALLEGES TO BE PERMANENTLY
20 AND TOTALLY DISABLED, THE QUESTION OF -- OF HIS
21 EMPLOYABILITY AND HIS ABILITY TO -- TO GAIN
22 EMPLOYMENT IN THE FUTURE IS IMPACTED BY HIS CRIMINAL
23 RECORD, WHICH INCLUDES CRIMES OF MORAL TURPITUDE.

24 **BY COMMISSIONER TAYLOR:**

25 OKAY. THANK YOU. I WILL THE ALLOW THE SLED

1 REPORT INTO EVIDENCE AS A WHOLE. FURTHER OBJECTIONS
2 MAY BE RAISED LATER ON SHOULD THEY BECOME RELEVANT.
3 ANY OTHER OBJECTIONS? WITHOUT ANY FURTHER OBJECTION
4 THE COMMISSION FILE BECOMES A PART OF THE RECORD
5 WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
6 UNSTIPULATED MEDICAL REPORTS. MS. BARR, YOUR
7 POSITION STATEMENT?

8 **BY MS. BARR:**

9 THANK YOU, YOUR HONOR. MY CLIENTS WERE ORDERED
10 TO PROVIDE, QUOTE, "AN EVALUATION TO DETERMINE THE
11 EXTENT OF THE CLAIMANT'S INJURIES AND HIS
12 ENTITLEMENT TO ONGOING MEDICAL TREATMENT AS
13 PRESCRIBED BY AN AUTHORIZED TREATING PHYSICIAN TO BE
14 SELECTED BY THE CARRIER." THAT'S PAGE 120 OF THE
15 RECORD, PAGE 8 OF COMMISSIONER HUFFSTETLER'S ORDER -
16 - OR EXCUSE ME A SEC -- COMMISSIONER -- I APOLOGIZE,
17 MCCASKILL'S ORDER. PURSUANT TO THAT ORDER, WE
18 PROVIDED AN EVALUATION WITH DR. GREG JONES WHO
19 PLACED THE CLAIMANT AT MAXIMUM MEDICAL IMPROVEMENT
20 AS OF MARCH 20, 2013, WITH IMPAIRMENT RATINGS OF
21 FIVE PERCENT OF THE CERVICOTHORACIC SPINE AND FIVE
22 PERCENT OF THE LUMBAR SPINE AND STATED NO SPECIFIC
23 RESTRICTIONS REGARDING VOCATIONAL OR AVOCATIONAL
24 PURSUITS. DR. JONES DID NOT RECOMMEND ANY
25 ADDITIONAL MEDICAL TREATMENT BECAUSE HE BELIEVED THE

1 CLAIMANT'S OBJECTIVE FINDINGS DID NOT SUPPORT HIS --
2 HIS SUBJECTIVE COMPLAINTS, AND ALL PRIOR TREATMENT
3 HAD BEEN FRUITLESS. THIS OPINION AS TO MAXIMUM
4 MEDICAL IMPROVEMENT IS IN FACT SUPPORTED BY THE
5 CLAIMANT'S OWN FAMILY PHYSICIAN WHO IS NOT AN
6 AUTHORIZED TREATING PHYSICIAN. YOU'LL SEE AT PAGE
7 70, DR. ABEL STATED ON MAY 29, 2013, "IT IS THIS
8 EXAMINER'S OPINION THAT THE PATIENT IS AT MAXIMUM
9 MEDICAL IMPROVEMENT, AND UNFORTUNATELY I AM NOT
10 OPTIMISTIC HE WILL IMPROVE TO ANY SIGNIFICANT DEGREE
11 IN THE FUTURE." I SEE NO STATEMENTS FROM DR. ABEL,
12 THE FAMILY PHYSICIAN, IN THE RECORD RECOMMENDING ANY
13 ADDITIONAL MEDICAL TREATMENT THAT WOULD TEND TO
14 LESSEN THE PERIOD OF DISABILITY TO A REASONABLE
15 DEGREE OF MEDICAL CERTAINTY. WE BELIEVE THAT THE
16 CLAIMANT IS AT MAXIMUM MEDICAL IMPROVEMENT, IS NOT
17 ENTITLED TO ANY ADDITIONAL MEDICAL TREATMENT FOR HIS
18 NECK, BACK, OR KNEE. THE KNEE IS AN ISSUE ACCORDING
19 TO THE FAMILY PHYSICIAN'S REPORTS AND THE CLAIMANT'S
20 OWN TESTIMONY THAT'S WAXED AND WANED. WE BELIEVE IT
21 WAS ADEQUATELY ASSESSED BY DR. HARTZOG IN THE
22 EMERGENCY ROOM FOLLOWING THE ACCIDENT WHO FOUND THAT
23 X-RAYS SHOWED NO ACUTE FRACTURE. IT WAS ALSO
24 SUPPORTED BY DR. WILDSTEIN, THE SURGEON THAT THE
25 CLAIMANT CHOSE FOR HIMSELF, AN UNAUTHORIZED SURGEON,

1 WHO STATED AT PAGE 96 THAT HE WOULD NOT BENEFIT FROM
2 KNEE SURGERY. DR. WILDSTEIN MADE THAT STATEMENT
3 HAVING BENEFIT OF BOTH THE X-RAY, THE HOSPITAL
4 RECORDS, AND THE M.R.I. REPORT WHICH HE INTERPRETED.
5 THERE IS AN OPINION FROM DR. POLETTI GIVING SOME
6 VAGUE OPINIONS ABOUT HIS NEED FOR FURTHER WORK UP,
7 BUT DR. POLETTI ADMITS THAT HE HAS NOT EVALUATED A -
8 - A -- ANY M.R.I. SCANS OR X-RAYS OR PRIOR RECORDS
9 REGARDING HIS KNEE, AND WE THEREFORE BELIEVE IT'S
10 ENTITLED TO LITTLE WEIGHT AND ASK THAT YOU FIND THAT
11 HE'S NOT ENTITLED TO ANY ADDITIONAL MEDICAL
12 TREATMENT FOR HIS KNEE. WE SEEK A CREDIT FOR
13 TEMPORARY TOTAL DISABILITY PAYMENTS PAID FOLLOWING
14 THE DATE OF MAXIMUM MEDICAL IMPROVEMENT, MARCH 20,
15 2013, AND A FINDING COMMENSURATE WITH THE IMPAIRMENT
16 RATINGS OF FIVE PERCENT TO THE NECK AND FIVE PERCENT
17 TO THE LUMBAR SPINE.

18 **BY COMMISSIONER TAYLOR:**

19 WHAT WAS THE HEARING DATE THAT WAS POSTPONED
20 ORIGINALLY DUE TO THE CLAIMANT'S INCARCERATION?

21 **BY MS. BARR:**

22 IT WAS ORIGINALLY SCHEDULED FOR APRIL 23, 2012.
23 IT WAS WITH COMMISSIONER BARDEN.

24 **BY COMMISSIONER TAYLOR:**

25 OKAY. MR. AKERY.

1 BY MR. AKERY:

2 MAY IT PLEASE THE COURT. IT'S THE CLAIMANT'S
3 POSITION THAT HE'S NOT AT MAXIMUM MEDICAL
4 IMPROVEMENT. HE SUFFERED INJURIES TO HIS HEAD,
5 KNEE, LEG, BACK, AND NECK ON AUGUST 10TH, 2011, IN A
6 SEVERE MOTOR VEHICLE ACCIDENT INVOLVING TWO TRACTOR
7 TRAILERS. HE HAD LOSS OF CONSCIOUSNESS AND HAD TO
8 BE REMOVED FROM HIS VEHICLE. HE HAD TREATMENT AT
9 M.U.S.C., WHICH SHOWED HE SUFFERED A TRAUMATIC BRAIN
10 INJURY WITH LOSS OF CONSCIOUSNESS AT THE SCENE, AS
11 WELL AS NECK, BACK, AND RIGHT LEG AND KNEE INJURIES.
12 HE HAD AN AUGUST 23RD, 2011, RIGHT KNEE M.R.I.,
13 WHICH SHOWED A FEMORAL CONDYLE IMPACTION FRACTURE;
14 THAT'S CLAIMANT'S APA PAGE 73. HE WAS REFERRED TO
15 FURTHER ORTHOPEDIC FOLLOW UP BY M.U.S.C., WHICH WAS
16 NEVER AUTHORIZED. ON NOVEMBER 9TH, 2011, HE HAD A
17 CERVICAL SPINE M.R.I., WHICH SHOWED DISC HERNIATION
18 C5/6, C6/7 WHICH IS CLAIMANT'S APA PAGE 91. HE WAS
19 TREATING WITH DR. ABEL WHO MADE MULTIPLE
20 RECOMMENDATIONS FOR FURTHER NEUROLOGICAL EVALUATION,
21 E.M.G. NEUROSURGICAL EVALUATION, ORTHOPEDIC FOLLOW
22 UP, NONE OF WHICH WERE PROVIDED. ADDITIONALLY, HE'S
23 SEEN TWO SURGEONS, A DR. WILDSTEIN ON DECEMBER 14TH,
24 2011, WHICH IS CLAIMANT'S APA PAGE 96, WHO
25 RECOMMENDED A C5/6 FUSION SURGERY. ALSO A DR.

1 POLETTI ON JULY 15TH OF 2013, WHICH IS CLAIMANT'S
2 APA PAGE 100, WHO AGREED WITH DR. WILDSTEIN AND FELT
3 THAT SURGICAL INTERVENTION IS INDICATED. DR.
4 POLETTI ALSO RECOMMENDED A LOW BACK M.R.I. AND
5 REFERRAL TO AN KNEE SURGEON FOR A FRACTURE AND
6 FURTHER ORTHOPEDIC FOLLOW UP FOR THE KNEE.
7 THEREFORE, WE TAKE THE POSITIONS THAT NEITHER
8 ORTHOPEDIC SURGEON AND THE ONLY TWO ORTHOPEDIC
9 SURGEONS THAT HAVE SEEN THE CLAIMANT HAVE PLACED HIM
10 AT MAXIMUM MEDICAL IMPROVEMENT AND HAVE BOTH
11 RECOMMENDED SURGICAL INTERVENTION.

12 **BY COMMISSIONER TAYLOR:**

13 OKAY. THANK YOU. MS. COFIELD.

14 **BY MR. AKERY:**

15 THAT'S -- THAT'S IT.

16 **BY COMMISSIONER TAYLOR:**

17 OKAY.

18 **BY MS. COFIELD:**

19 COMMISSIONER, IT'S OUR POSITION THAT -- WELL,
20 WE AGREE WITH THE POSITION SET FORTH BY MS. BARR,
21 THAT THE CLAIMANT HAS REACHED MAXIMUM MEDICAL
22 IMPROVEMENT AND THAT THE EMPLOYER HAS PROVIDED
23 EVERYTHING THAT THEY WERE ORDERED TO DO PREVIOUSLY.

24 **BY COMMISSIONER TAYLOR:**

25 MR. KAUFMANN.

1 BY MR. KAUFMANN:

2 THANK YOU, MADAM COMMISSIONER. AGAIN FOR
3 PURPOSES OF THE ISSUES BEFORE THE COMMISSION TODAY,
4 WE JOIN IN MS. BARR'S POSITION.

5 BY COMMISSIONER TAYLOR:

6 OKAY. THANK YOU.

7 BY MR. AKERY:

8 IF I MAY I HAVE ONE QUICK THING. IF -- IF --
9 IF THE CLAIMANT IS FOUND TO BE AT MAXIMUM MEDICAL
10 IMPROVEMENT, WE TAKE THE POSITION THAT HE IS
11 PERMANENTLY AND TOTALLY DISABLED AND UNABLE TO
12 RETURN TO WORK BASED UPON DR. ABEL'S DEPOSITION PAGE
13 26, LINE 8, AND THEN ALSO DR. POLETTI'S JULY 15TH,
14 2013, I.M.E., WHICH STATES THAT HE IS TO BE ON OFF-
15 DUTY STATUS. THAT'S ALL.

16 BY MS. BARR:

17 YOUR HONOR, WE WOULD DENY THAT THE CLAIMANT'S
18 ENTITLED TO ANY BENEFITS UNDER 42-9-10 AS A MATTER
19 OF LAW. IT'S A SINGLE SCHEDULED MEMBER CASE. HIS
20 PERMANENT IMPAIRMENT IMPACTS A SINGLE BODY MEMBER,
21 THE BACK, AT THIS TIME, AND THERE ARE NO IMPAIRMENT
22 RATINGS TO ANY OTHER BODY MEMBERS.

23 BY COMMISSIONER TAYLOR:

24 ALL RIGHT. MR. AKERY, YOU MAY CALL YOUR FIRST
25 WITNESS.

1 BY MR. AKERY:

2 MR. ROSE.

3 BY COMMISSIONER TAYLOR:

4 MADAM COURT REPORTER, WILL YOU PLEASE SWEAR THE
5 WITNESS.

6 BY THE COURT REPORTER:

7 RAISE YOUR RIGHT HAND, PLEASE.

8 * * * * * * * * * * * * * * * *

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

12 * * * * * * * * * * * * * * * *

13 SAMUEL ROSE

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

15 BY COMMISSIONER TAYLOR:

16 OKAY.

17 BY MS. BARR:

18 YOUR HONOR, BEG AN INDULGENCE FOR A MINUTE.

19 BY COMMISSIONER TAYLOR:

20 SURE.

21 (OFF THE RECORD)

22 BY COMMISSIONER TAYLOR:

23 ALL RIGHT. MR. AKERY.

24 DIRECT EXAMINATION BY MR. AKERY:

25 Q. CAN I HAVE YOUR FULL LEGAL NAME FOR THE RECORD?

1 A. SAMUEL ARCHITO ROSE.

2 Q. I'M GOING TO ASK YOU TO SPEAK UP. OKAY.

3 BY COMMISSIONER TAYLOR:

4 MR. ROSE, THIS IS THE COURT REPORTER, AND SHE
5 HAS TO RECORD EVERYTHING YOU SAY. SO YOU WANT TO
6 MAKE SURE YOU SPEAK UP SO SHE CAN HEAR YOU, OKAY?

7 BY THE WITNESS:

8 ALL RIGHT.

9 BY COMMISSIONER TAYLOR:

10 OKAY.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE, YOU WERE BORN AUGUST 23RD, 1970; THAT
13 MAKES YOU 43 YEARS OLD; IS THAT CORRECT?

14 A. YES.

15 Q. YOU CURRENTLY LIVE AT 17 ASHTON STREET, CHARLESTON,
16 SOUTH CAROLINA, AND YOU LIVE WITH YOUR TWO COUSINS;
17 IS THAT CORRECT?

18 A. YES.

19 Q. YOU GREW UP OVERSEAS AND AT SEVERAL DIFFERENT STATES
20 BECAUSE YOUR MOTHER WAS IN THE AIR FORCE; IS THAT
21 CORRECT?

22 A. YES.

23 Q. YOU'RE CURRENTLY NOT MARRIED; YOU HAVE NO CHILDREN
24 AND NO DEPENDANTS; IS THAT CORRECT?

25 A. YES.

- 1 Q. LET'S TALK A LITTLE BIT ABOUT YOUR EDUCATION. YOU
2 RECEIVED A HIGH SCHOOL DIPLOMA FROM BURKE HIGH
3 SCHOOL IN 1985; IS THAT CORRECT?
- 4 A. YES.
- 5 Q. YOU DID THREE YEARS OF COLLEGE BUT RECEIVED NO
6 CERTIFICATES OR DEGREES; IS THAT CORRECT?
- 7 A. YES.
- 8 Q. YOU ALSO HAVE OBTAINED A C.D.L. IN 2009; IS THAT
9 CORRECT?
- 10 A. YES.
- 11 Q. HAVE YOU EVER HAD ANY PRIOR WORKERS' COMPENSATION
12 CLAIMS?
- 13 A. NO.
- 14 Q. LET'S TALK ABOUT YOUR WORK HISTORY APPROXIMATELY THE
15 LAST TEN YEARS OR SO. YOU WORKED FOR THE WAFFLE
16 HOUSE AS A COOK FOR APPROXIMATELY TWO YEARS; IS THAT
17 CORRECT?
- 18 A. YES.
- 19 Q. DESCRIBE TO ME YOUR DUTIES AT THAT JOB?
- 20 A. I WAS A SHORT ORDER COOK AND A SUPERVISOR OF THE
21 THIRD SHIFT.
- 22 Q. WHAT TYPE OF LIFTING DID YOU HAVE TO DO IF ANY
23 THERE?
- 24 A. LIFTING PRODUCE, STOCKING, AND JUST COOKING.
- 25 Q. HOW MUCH AMOUNT OF WEIGHT WERE YOU REQUIRED TO LIFT?

1 A. THE MOST IS LIKE 50 POUNDS.

2 BY MS. COFIELD:

3 CAN -- CAN HE SPEAK UP A LITTLE BIT. I CAN'T
4 EVEN HEAR HIM RIGHT NOW.

5 BY MR. AKERY:

6 OKAY.

7 BY MS. COFIELD:

8 I MEAN, SHE CAN'T HEAR YOU VERY GOOD.

9 BY COMMISSIONER TAYLOR:

10 YEAH, I'M TRYING TO READ HIS LIPS. JUST TRY TO
11 SPEAK AS LOUD AS YOU CAN.

12 BY MR. AKERY:

13 AND DON'T WORRY, YOU'RE NOT -- NOBODY IS GOING
14 GET UPSET IF YOU'RE YELLING.

15 BY COMMISSIONER TAYLOR:

16 YEAH.

17 BY MR. AKERY:

18 SO TALK AS LOUD AS YOU CAN, OKAY.

19 DIRECT EXAMINATION RESUMED BY MR. AKERY:

20 Q. HOW LONG WERE YOU ON YOUR FEET AT THAT JOB?

21 A. ALL DAY -- I MEAN ALL NIGHT.

22 Q. NEXT IT LOOKS LIKE YOU WORKED AT ALLSTATE LOGISTICS
23 ALSO KNOWN AS LEOPARD, INCORPORATED. WHAT WAS YOUR
24 JOB TITLE THERE?

25 A. I WAS A DRIVER AND A SUPERVISOR.

1 Q. AND HOW LONG WERE YOU THERE?

2 A. OFF AND ON FOR EIGHT -- EIGHT-AND-A-HALF, NINE
3 YEARS.

4 Q. WHAT WERE YOUR JOB DUTIES AS A DRIVER?

5 A. TO LOAD AND UNLOAD THE TRUCKS AND DELIVER TIRES.

6 Q. WHAT TYPE OF TIRES WERE YOU DELIVERING?

7 A. TRACTOR TRAILER TIRES.

8 Q. AND HOW MUCH DID THOSE TRACTOR TRAILER TIRES WEIGH?

9 A. ANYWHERE BETWEEN 90 AND 150, DEPENDING ON HOW MUCH
10 AIR WE PUT IN IT.

11 Q. AND DID YOU HAVE TO GET THOSE ON AND OFF THE TRUCKS?

12 A. YES.

13 Q. HOW FAR WERE YOU REQUIRED TO DRIVE AT THAT JOB?

14 A. THE FARTHEST I'VE DRIVEN WAS NEW JERSEY, I ---

15 Q. GENERALLY WHERE WERE YOU DRIVING?

16 A. LOCALLY, GEORGIA -- GEORGIA, FLORIDA, NORTH
17 CAROLINA.

18 Q. AND IT LOOKS LIKE YOU ALSO WORKED FOR A J.J.S.
19 TRUCKING?

20 A. YES.

21 Q. AND STARTED THERE APPROXIMATELY ON OR AROUND
22 FEBRUARY 2011; IS THAT CORRECT?

23 A. YES.

24 Q. AND YOU WORKED THERE UP UNTIL YOUR DATE OF INJURY ON
25 AUGUST 10TH, 2011?

1 A. YES.

2 Q. WHAT WERE YOUR JOB DUTIES AT -- AT THAT POSITION?

3 A. TO HAUL WOOD CHIPS FROM SUMMERVILLE TO NORTH
4 CHARLESTON.

5 Q. AND WERE YOU REQUIRED TO CLIMB AND GET UP ON THE
6 TRUCK?

7 A. YES.

8 Q. HOW OFTEN DID YOU HAVE TO DO THAT?

9 A. EVERY -- EVERY TIME I LOADED.

10 Q. OKAY. WHAT TYPES OF THINGS DID YOU HAVE TO DO TO
11 THE TRUCK TO KEEP IT IN RUNNING CONDITION?

12 A. INSPECT THE TRUCK, LOAD IT AND DRIVE IT.

13 Q. WERE YOU EVER REQUIRED TO CLIMB UNDER THE TRUCK?

14 A. YES.

15 Q. AND WHAT WOULD YOU DO WHEN YOU CLIMBED UNDER THE
16 TRUCK?

17 A. JUST INSPECT THE PRE-TRIP INSPECTION, THE POST-TRIP
18 INSPECTION AND THEN CLIMB ON THE TOP OF THE TRUCK TO
19 COVER THE CHIPS WITH THE TARP.

20 Q. OKAY. AND AGAIN, I'M GOING TO JUST ASK YOU TO SPEAK
21 UP IF YOU CAN. YOU SAID CLIMB UP ON TOP OF THE
22 TRUCK TO INSPECT THE CHIPS ON THE TARP?

23 A. TO COVER THE CHIPS WITH THE TARP.

24 Q. OKAY. AND WHAT KIND OF TARP WAS THIS?

25 A. A CLOTH TARP.

1 Q. OKAY. WAS IT A MANUAL TARP THAT YOU HAD TO PULL
2 OVER THE TOP OF THE TRUCK?

3 A. YES.

4 Q. HOW MUCH WEIGHT WERE YOU REQUIRED TO LIFT AT THAT
5 JOB?

6 A. IT IS JUST A MATTER -- WELL, UNCOVERING THE CHIPS,
7 IF IT GETS COVERED WITH -- IF THE TARP GETS COVERED
8 WITH THE CHIPS, THEN WE HAVE TO UNCOVER IT OR PULL
9 IT OUT SO WE CAN USE IT.

10 Q. APPROXIMATELY HOW MUCH WEIGHT WOULD THAT BE?

11 A. ABOUT 25, 30 POUNDS JUST PULLING IT OUT.

12 Q. AND HOW MANY HAULS A DAY DID YOU DO OF WOOD CHIPS?

13 A. ANYWHERE FROM FIVE TO EIGHT.

14 Q. AND YOU'D BE REQUIRED TO GET IN AND OUT OF THE --
15 THE TRUCK?

16 A. EACH TIME, YES.

17 Q. NOW, THIS IS AN ADMITTED ACCENT. SO BRIEFLY
18 DESCRIBE WHAT HAPPENED ON AUGUST 10TH, 2011.

19 A. I WAS ON MY LAST -- I WAS TAKING MY LAST LOAD FROM
20 SUMMERVILLE TO NORTH CHARLESTON. I LOADED UP IN
21 SUMMERVILLE AT THE LUMBER MILL, AND ON THE -- WHEN I
22 DROVE DOWN 52, GOT ON THE INTERSTATE, AND AS I WAS
23 GOING TO I-26 APPROACHING ASHLEY PHOSPHATE, THE
24 CONSTRUCTION ZONE AT THE TIME ---

25 **BY MR. SMALLS:**

1 HE HAD BEEN REAR ENDED.

2 BY THE WITNESS:

3 --- I WAS REAR ENDED.

4 BY MR. SMALLS:

5 YES, MA'AM, WE AGREE.

6 BY MR. AKERY:

7 YOU -- YOU CAN CONTINUE.

8 BY COMMISSIONER TAYLOR:

9 OKAY. I'M SORRY. YOU MAY CONTINUE.

10 THE WITNESS RESUMES ANSWER:

11 A. ON THE INTERSTATE, I WAS REAR-ENDED, AND WHILE I WAS
12 HIT FROM BEHIND, THE TRUCK JACK KNIFED. I HIT THE
13 CENTER MEDIAN, AND THE TRUCK BLEW UP.

14 DIRECT EXAMINATION RESUMED BY MR. AKERY:

15 Q. WHAT -- WHAT HAPPENED AFTER THE ACCIDENT? DO YOU
16 REMEMBER ANY OF THAT?

17 A. I WAS PULLED OUT OF THE TRUCK. SOME PEOPLE THREW ME
18 OVER THE MEDIAN, AND I WOKE UP IN THE HOSPITAL.

19 Q. WHAT PARTS OF YOUR BODY HURT WHEN YOU WOKE UP IN THE
20 HOSPITAL?

21 A. EVERYTHING, MAN.

22 Q. OKAY.

23 A. MY HEAD AND MY NECK, MY BACK, MY LEGS, EVERYTHING
24 HURTS.

25 BY MS. BARR:

1 YOUR HONOR, CAN I OBJECT. THIS TESTIMONY HAS
2 ALREADY BEEN GIVEN IN THE FIRST HEARING. I BELIEVE
3 THAT THE QUESTIONS WERE ALL ASKED AND ANSWERED.

4 BY COMMISSIONER TAYLOR:

5 I'M GOING TO OVERRULE THE OBJECTION, BUT JUST
6 LIMIT THE QUESTIONS SINCE THEY -- THEY'RE ALREADY IN
7 THE RECORD.

8 BY MR. AKERY:

9 OKAY. I'LL ---

10 BY COMMISSIONER TAYLOR:

11 YOU CAN -- YOU CAN FINISH THAT LAST ANSWER.

12 THE WITNESS RESUMES ANSWER:

13 A. OKAY. EVERYTHING ON ME HURT.

14 BY COMMISSIONER TAYLOR:

15 OKAY.

16 DIRECT EXAMINATION RESUMED BY MR. AKERY:

17 Q. NOW, BRIEFLY YOU -- YOU WENT AND YOU WERE KEPT AT
18 M.U.S.C. OVER NIGHT; IS THAT CORRECT?

19 A. YES.

20 Q. OKAY. WELL, WHAT TREATMENT DID THEY RECOMMEND FOR
21 YOU?

22 BY MS. BARR:

23 OBJECTION. THE MEDICAL RECORDS SPEAK FOR
24 THEMSELVES.

25 BY MR. AKERY:

1 THIS GOES TO WHETHER OR NOT THE TREATMENT WAS
2 AUTHORIZED, YOUR HONOR.

3 BY MS. BARR:

4 NO TREATMENT WAS AUTHORIZED AT THE TIME HE WAS
5 SEEN IN THE HOSPITAL. THE CLAIM HADN'T BEEN FILED.

6 BY COMMISSIONER TAYLOR:

7 I'M GOING TO SUSTAIN THE OBJECTION. I MEAN,
8 I'M SORRY; I'M GOING TO OVERRULE THE OBJECTION.

9 DIRECT EXAMINATION RESUMED BY MR. AKERY:

10 Q. AND WHAT TREATMENT WAS RECOMMEND IN M.U.S.C.?

11 A. THEY RECOMMENDED I SEE AN ORTHOPEDIC SURGEON, AND I
12 HAD A FOLLOW UP WITH DR. HARTZOG, WHICH WAS DENIED,
13 AND I HAVEN'T HAD ANY TREATMENT.

14 Q. NOW, WHO DID YOU GO NEXT TO FOR TREATMENT?

15 A. DR. ABEL.

16 Q. AND WHAT TREATMENT DID YOU OBTAIN OR -- OR GET FROM
17 DR. ABEL?

18 BY MS. BARR:

19 YOUR HONOR, THE SAME OBJECTION. THIS WAS
20 ALREADY GIVEN WITH THE TESTIMONY AT -- AT THE
21 REGIONAL HEARINGS CONTAINED IN THE TRANSCRIPT. I'D
22 HATE FOR US TO HAVE TO GO BACK THROUGH ALL THE
23 INCONSISTENCIES OF HIS TESTIMONY TODAY IN RESPONSE
24 TO THESE SAME QUESTIONS.

25 BY COMMISSIONER TAYLOR:

1 THEY'RE THE SAME QUESTIONS.

2 BY MR. AKERY:

3 YOUR HONOR, I -- I'D REPLY TO THAT THAT THERE
4 HAS BEEN SOME TREATMENT THAT'S BEEN RECOMMENDED
5 SINCE THAT.

6 BY MS. BARR:

7 AND, YOUR HONOR, I WOULD SAY ---

8 BY MS. COFIELD:

9 IT'S ALL IN THE MEDICAL RECORDS.

10 BY MS. BARR:

11 --- THE MEDICAL RECORDS WOULD SPEAK FOR
12 THEMSELVES.

13 BY MS. COFIELD:

14 THAT'S WHY YOU TURN THEM IN.

15 BY COMMISSIONER TAYLOR:

16 OKAY.

17 BY MR. AKERY:

18 AND I'LL BE BRIEF.

19 BY COMMISSIONER TAYLOR:

20 I'M GOING TO SUSTAIN THE OBJECTION. LET'S FAST
21 FORWARD TO WHATEVER IS NEW THAT WASN'T ADDRESSED
22 BEFORE.

23 BY MR. AKERY:

24 OKAY.

25 DIRECT EXAMINATION RESUMED BY MR. AKERY:

1 Q. NOW, YOU HAD ADDITIONALLY SEEN TWO SURGEONS A DR.
2 WILDSTEIN, WHAT DID HE RECOMMEND FOR YOU?

3 BY MS. BARR:

4 OBJECTION. SAME -- SAME OBJECTION. HE HAD
5 SEEN DR. WILDSTEIN PRIOR TO ---

6 BY COMMISSIONER TAYLOR:

7 AT THE TIME OF THE HEARING? YEAH, LET'S ---

8 BY MS. COFIELD:

9 WELL, NOT ONLY THAT, BUT ALL OF THE MEDICAL
10 RECORDS ARE HERE. SO IT'D BE HEARSAY FOR HIM TO SAY
11 WHAT DR. WILDSTEIN SAID. IT'S HERE IN THE MEDICAL
12 RECORDS.

13 BY MR. AKERY:

14 AND I'LL PHRASE IT THIS WAY, YOUR HONOR.

15 DIRECT EXAMINATION RESUMED BY MR. AKERY:

16 Q. DR. WILDSTEIN HAS RECOMMENDED A CERVICAL SPINE
17 SURGERY?

18 BY MS. BARR:

19 OBJECTION TO THE LEADING.

20 BY COMMISSIONER TAYLOR:

21 WELL, OKAY.

22 BY MR. AKERY:

23 OKAY.

24 BY COMMISSIONER TAYLOR:

25 I'M GOING TO SUSTAIN THE OBJECTION. YOU CAN

1 ASK HIM WHAT HIS UNDERSTANDING OF WHAT HIS ---

2 BY MR. AKERY:

3 OKAY.

4 BY COMMISSIONER TAYLOR:

5 --- WHAT HIS CURRENT STATUS IS BUT GENERALLY
6 SPEAKING ---

7 BY MR. AKERY:

8 OKAY.

9 BY COMMISSIONER TAYLOR:

10 --- BECAUSE THAT'S ALL HE CAN TESTIFY TO.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE, YOU'VE SEEN SEVERAL SURGEONS: A DR.
13 WILDSTEIN AND A -- A DR. POLETTI; IS THAT CORRECT?

14 A. YES.

15 Q. OKAY. AND WHAT'S YOUR UNDERSTANDING OF -- OF WHAT
16 YOUR CONDITION IS?

17 A. THEY TOLD ME I HAVE A HERNIA IN ---

18 BY MS. BARR:

19 OBJECTION TO THE HEARSAY.

20 DIRECT EXAMINATION RESUMED BY MR. AKERY:

21 Q. AND WHAT'S YOUR UNDERSTANDING? YOU DON'T HAVE TO
22 TELL ME WHAT THEY SAID.

23 A. OKAY. THAT I HAVE A HERNIA IN MY NECK AND IN MY
24 LOWER BACK.

25 Q. AND HAVE -- IS THERE ANYTHING THAT YOU'VE LIKE TO

1 HAVE DONE IN ORDER TO HELP THAT?

2 A. I'D LIKE TREATMENT. I HAVEN'T HAD ANY TREATMENT
3 YET.

4 Q. OKAY. AND AS FAR AS YOUR EVALUATION WITH DR.
5 WILDSTEIN, HOW MUCH TIME DID HE SPEND WITH YOU?

6 A. DR. WILDSTEIN SPENT ABOUT AN HOUR WITH ME.

7 Q. AND DID HE SEE YOU ON TWO SEPARATE VISITS?

8 A. YES, HE DID.

9 Q. HOW LONG DID HE SPEND WITH YOU ON EACH VISIT?

10 A. ABOUT THE SAME AMOUNT OF TIME WITH EVERYTHING AND
11 ALL ---

12 Q. ABOUT AN HOUR EACH TIME. HOW MUCH TIME DID DR.
13 POLETTI SPEND WITH YOU?

14 A. THIRTY TO FORTY-FIVE MINUTES.

15 Q. OKAY. NOW, YOU'VE SEEN ALSO A DR. JONES ON MARCH
16 THE 20TH, 2013, AND THIS IS APPROXIMATELY 19 MONTHS
17 AFTER THE WRECK. HOW MUCH TIME DID DR. JONES SPEND
18 WITH YOU?

19 A. LESS THAN TEN MINUTES.

20 Q. WHAT'S YOUR UNDERSTANDING OF THE RECOMMENDATIONS
21 THAT HE GAVE YOU?

22 A. WELL, HE TOLD US ONE THING AND ---

23 **BY MS. BARR:**

24 OBJECTION TO HEARSAY.

25 **DIRECT EXAMINATION RESUMED BY MR. AKERY:**

1 Q. AND -- AND -- AND AGAIN, SAMUEL, I JUST WANT TO KNOW
2 WHAT YOUR UNDERSTANDING IS OF THE RECOMMENDATIONS
3 THAT HE GAVE.

4 A. THAT I WOULD RECEIVE TREATMENT IS WHAT HE TOLD ME.

5 Q. WELL ---

6 BY MS. BARR:

7 OBJECTION TO HEARSAY, "WHAT HE TOLD ME," I MEAN
8 PRETTY CLASSIC.

9 BY COMMISSIONER TAYLOR:

10 IT'S SUSTAINED.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE, I'M GOING TO ASK YOU WHAT'S YOUR
13 UNDERSTANDING OF WHAT RECOMMENDATIONS WERE GIVEN;
14 WHAT DID YOU UNDERSTAND WAS GOING TO BE CARRIED OUT
15 AFTER THAT VISIT?

16 A. THAT I WOULD HAVE MY SURGERY.

17 Q. NOW, DR. POLETTI RECOMMENDED THREE THINGS IN HIS
18 REPORT ---

19 BY MS. BARR:

20 OBJECTION TO LEADING.

21 BY MR. AKERY:

22 OKAY.

23 BY COMMISSIONER TAYLOR:

24 SUSTAINED.

25 DIRECT EXAMINATION RESUMED BY MR. AKERY:

- 1 Q. AS FAR AS THE -- LET'S TALK ABOUT YOUR CURRENT
2 CONDITIONS, OKAY, MR. ROSE. I WANT TO ADDRESS THESE
3 ONE AT A TIME. OKAY. AS FAR YOUR NECK, HOW IS YOUR
4 NECK DOING RIGHT NOW?
- 5 A. IT HURTS, AND STIFFNESS ON THE SIDE, AND IT HURTS.
- 6 Q. AND -- AND JUST SPEAK UP A LITTLE BIT.
- 7 Q. CAN YOU DESCRIBE THE PAIN FOR US?
- 8 A. THROBBING AND JUST RADIATING PAIN, IT JUST HURTS.
- 9 Q. AND WHERE DOES IT RADIATE TO?
- 10 A. MY SHOULDERS, MY ARMS, MY HEAD.
- 11 Q. AND IS ONE ARM WORSE THAN THE OTHER?
- 12 A. YEAH.
- 13 Q. AND WHICH ARM?
- 14 A. THE LEFT SOMETIMES HURTS MORE THAN MY RIGHT. I CAN
15 FEEL THE NUMBNESS IN IT.
- 16 Q. AND WHERE DO YOU FEEL THE NUMBNESS?
- 17 A. LIKE MY ARM AND MY FINGERS.
- 18 Q. IS THAT NUMBNESS CAUSING ANY ISSUES WITH YOUR
19 ACTIVITIES OF DAILY LIVING?
- 20 A. WHEN I LIFT SOMETHING, I CAN'T HOLD IT FOR -- WELL -
21 - WELL, THE STANDARD PERIOD OF TIME. I JUST LOSE MY
22 GRIP ON IT.
- 23 Q. HOW MUCH WEIGHT CAN YOU LIFT WITH YOUR -- FIRST WITH
24 YOUR RIGHT ARM?
- 25 A. SOMETIMES I CAN LIFT LIKE 25 POUNDS.

1 Q. AND WITH YOUR LEFT ARM, HOW MUCH CAN YOU LIFT?

2 A. VERY LITTLE.

3 Q. NOW, THE NUMBNESS IN -- THAT YOU DESCRIBED IN -- IN
4 YOUR ARMS AND YOUR HANDS, HAS THAT GOTTEN BETTER,
5 STAYED THE SAME, OR -- OR GOTTEN WORSE?

6 A. IT'S GOTTEN WORSE.

7 Q. AND HAS THAT GOTTEN BETTER, STAYED THE SAME, OR
8 GOTTEN WORSE SINCE THE DATE OF INJURY?

9 A. IT'S GOTTEN WORSE. EVERYTHING'S GOTTEN WORSE.

10 Q. WHAT HELPS WITH YOUR CERVICAL OR YOUR NECK PAIN?

11 A. MEDICATION, JUST ---

12 Q. AND WHO ARE THOSE MEDICATIONS BEING PRESCRIBED BY?

13 A. DR. ABEL.

14 Q. HAS ANYBODY ELSE PRESCRIBED YOU ANY MEDICATIONS?

15 A. NO.

16 Q. ARE YOU WILLING TO UNDERGO THE CERVICAL SPINE
17 SURGERY THAT WAS RECOMMENDED FOR YOU?

18 A. YES.

19 **BY MS. BARR:**

20 OBJECTION, I -- THE MEDICAL RECORDS SPEAK FOR
21 THEMSELVES. THEY TALK OF BEING -- BEING A POTENTIAL
22 CANDIDATE. THERE'S NO RECOMMENDATION.

23 **BY COMMISSIONER TAYLOR:**

24 THIS TIME I'M GOING TO SUSTAIN THE OBJECTION AS
25 TO THE -- THE WORD, RECOMMENDATION; HOWEVER, I THINK

1 THE QUESTION IS IF -- IF SOMEONE OFFERED IT, WOULD
2 HE GO, AND HE ANSWERED THAT SO...

3 BY THE WITNESS:

4 YES.

5 DIRECT EXAMINATION RESUMED BY MR. AKERY:

6 Q. BEFORE AUGUST 10TH OF 2011, DID YOU EVER HAVE ANY
7 PRIOR INJURIES TO YOUR NECK OR ANY PROBLEMS WITH YOUR
8 NECK?

9 A. NO.

10 Q. LET'S TALK ABOUT YOUR LOW BACK. DESCRIBE YOUR LOW
11 BACK ISSUES AT THIS POINT.

12 A. IT HURTS. WHEN I MOVE TOO MUCH OR SIT TOO LONG,
13 IT'S -- IT JUST HURTS.

14 Q. AND WHERE IS THE PAIN AT? CAN YOU DESCRIBE
15 SPECIFICALLY IN YOUR LOWER BACK?

16 A. THE PAIN IS NEAR MY SPINE.

17 Q. AND WHAT TYPE OF PAIN IS IT?

18 A. IT'S JUST RADIATING, THROBBING, JUST ---

19 Q. HOW LONG CAN YOU SIT FOR BEFORE YOU START HAVING
20 PAIN?

21 A. NOT LONG, SOMETIMES ---

22 Q. AND I NEED YOU TO GIVE ME A SPECIFIC AMOUNT OF TIME?

23 A. FIVE, TEN MINUTES.

24 Q. OKAY. AND HOW LONG CAN YOU STAND FOR AND -- AND BE
25 IN ONE PLACE BEFORE YOU START HAVING PAIN?

1 A. TEN, FIFTEEN MINUTES.

2 Q. HOW LONG CAN YOU WALK FOR; IS THAT BETTER FOR YOU?

3 A. WALKING'S MUCH BETTER.

4 Q. AND HOW LONG CAN YOU WALK FOR?

5 A. AS LONG AS I'M MOVING, I MEAN, I'M FINE, BUT WHEN I
6 STOP, IT HURTS.

7 Q. AND IF FURTHER TREATMENT WAS OFFERED FOR YOUR LUMBAR
8 SPINE, IS THAT SOMETHING THAT YOU'D BE WILLING TO
9 UNDERGO?

10 A. YES.

11 Q. BEFORE AUGUST 10TH OF 2011, THE DATE OF THIS
12 ACCIDENT, WERE YOU HAVING ANY PROBLEMS WITH YOUR
13 LUMBAR SPINE?

14 A. NO.

15 Q. NOW, LET'S TALK ABOUT YOUR RIGHT KNEE. DESCRIBE THE
16 ISSUES YOU'RE HAVING WITH YOUR RIGHT KNEE RIGHT NOW.

17 A. MY LEG GIVES OUT ON ME. IT SWELLS UP, AND SOMETIMES
18 IT HURTS; SOMETIMES IT DOESN'T.

19 Q. PAIN LEVEL ZERO TO TEN, WHERE IS YOUR PAIN IN YOUR
20 KNEE REGULARLY?

21 A. ABOUT A THREE.

22 Q. IF FURTHER EVALUATION TREATMENT WAS OFFERED FOR YOUR
23 RIGHT KNEE, WOULD YOU LIKE TO UNDERGO THAT?

24 A. YES.

25 Q. BEFORE AUGUST 10TH OF 2011, HAD YOU EVER HAD ANY

1 CONDITIONS TO YOUR RIGHT KNEE BEFORE?

2 A. YES.

3 Q. AND WHAT WERE THEY?

4 A. AS A CHILD, I WAS DIAGNOSED WITH OSGOOD-SCHLATTER'S
5 DISEASE, BUT I -- OSGOOD-SCHLATTER'S DISEASE, AND I
6 GREW OUT OF IT.

7 Q. AND SINCE YOU WERE A CHILD UP UNTIL THE AUGUST 10TH,
8 2011, INJURY, WERE YOU HAVING ANY RIGHT KNEE
9 PROBLEMS OR INJURIES OR PAIN?

10 A. NO.

11 Q. NOW, LET'S TALK ABOUT YOUR HEAD. WHAT IF ANY
12 CONDITIONS ARE YOU HAVING WITH YOUR HEAD AT THIS
13 POINT?

14 A. THE BACK OF MY HEAD SWELLS UP. I CONSTANTLY HAVE
15 HEADACHES, DIZZINESS, BLURRED VISION.

16 Q. HOW OFTEN DO YOU HAVE HEADACHES?

17 A. EVERY DAY.

18 Q. AND HOW LONG DO THEY LAST?

19 A. SOMETIMES AN HOUR, SOMETIMES SEVERAL HOURS.

20 Q. WHAT HELPS?

21 A. JUST QUIET, PEACE, MEDICATION.

22 Q. AND IF NEUROLOGICAL TREATMENT WAS BEING OFFERED, IS
23 THAT SOMETHING YOU'D LIKE TO UNDERGO?

24 A. YES.

25 Q. NOW, WITHOUT GETTING THE TREATMENT THAT WE'VE TALKED

1 ABOUT, NECK SURGERY, NEUROLOGICAL TREATMENT,
2 REFERRAL TO A KNEE SPECIALIST, AND LUMBAR SPINE
3 TREATMENT, DO YOU FEEL WITHOUT THAT TREATMENT YOU
4 CAN CURRENTLY GO BACK TO WORK IN YOUR CONDITION?

5 A. NO.

6 Q. AND WHY IS THAT?

7 A. 'CAUSE I CAN'T -- I CAN'T DRIVE A TRUCK. I CAN'T
8 TAKE THE VIBRATIONS. I CAN'T DO THE PRE-TRIP, GO
9 UNDER THE TRUCK. I CAN'T -- CLIMBING INTO THE
10 TRUCK. JUST I CAN'T TAKE THE VIBRATIONS.

11 Q. ARE YOU ON ANY MEDICATIONS?

12 A. YES.

13 Q. WHAT ARE YOU ON?

14 A. ELAVIL, TYLENOL THREE, CYMBALTA, AND IBUPROFEN.

15 Q. DO THEY AFFECT -- AFFECT THE WAY YOU DRIVE?

16 A. THE TYLENOL THREE HAS CODEINE IN IT, AND THE
17 CYMBALTA IS A PAIN MANAGEMENT, AND ELAVIL IS A PAIN
18 MANAGEMENT IS WELL AS ---

19 **BY MS. BARR:**

20 OBJECTION TO THE CLAIMANT'S CHARACTERIZATION OF
21 -- OF ELAVIL AND CYMBALTA. I BELIEVE THOSE ARE
22 MEDICAL ISSUES AND ---

23 **BY COMMISSIONER TAYLOR:**

24 I'M GOING TO OVERRULE THE OBJECTION. HE CAN
25 TESTIFY AS TO WHAT HE THINKS IT IS.

1 BY MS. BARR:

2 ALL RIGHT. I WOULD ASK THAT THE -- THE
3 COMMISSION TAKE JUDICIAL NOTICE OF THE NATURE OF
4 THOSE MEDICATIONS.

5 BY COMMISSIONER TAYLOR:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. AKERY:

8 Q. WHAT ARE YOUR PLANS AT THIS TIME?

9 A. JUST TO GET BETTER AND GO BACK TO WORK.

10 BY MR. AKERY:

11 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

12 BY COMMISSIONER TAYLOR:

13 OKAY. THANK YOU. MS. BARR.

14 BY MS. BARR:

15 THANK YOU.

16 CROSS EXAMINATION BY MS. BARR:

17 Q. MR. ROSE, WE'VE MET BEFORE, BUT AGAIN I'M KIRSTEN
18 BARR, AND I REPRESENT CHRIS THOMPSON SERVICES AND
19 HIS INSURANCE CARRIER IN YOUR WORKERS' COMPENSATION
20 CLAIM. I NOTICE YOU'RE HERE WITH A CANE TODAY; IS
21 THAT RIGHT?

22 A. YES.

23 Q. ALL RIGHT. AND THAT WAS A CANE THAT DR. ABEL GAVE
24 YOU SOME -- AT SOME POINT IN TIME BECAUSE YOU WERE
25 FALLING DOWN THE STAIRS?

1 A. YES.

2 Q. OKAY. AND IN FACT, YOU TESTIFIED PREVIOUSLY THAT IN
3 NOVEMBER OF 2011 AND AGAIN IN JANUARY OF 2012, YOU
4 FELL DOWN A FLIGHT OF STAIRS AT YOUR MOTHER'S HOUSE
5 ON BOTH OCCASIONS AND RE-INJURED YOUR BACK AND NECK;
6 IS THAT RIGHT?

7 A. YES.

8 Q. HAVE YOU FALLEN DOWN STAIRS OR ANYWHERE ELSE TO
9 FURTHER INJURE YOU NECK AND BACK SINCE THAT TIME?

10 A. SLIPS, NOT FALLING, NOT RECENTLY.

11 Q. OKAY. BUT YOU ADMIT THAT YOU RE-INJURED YOUR BACK
12 AND NECK AFTER FALLING DOWN THE STAIRS AT HOME?

13 A. YES.

14 Q. OKAY. AND IS WAS AFTER THAT YOU FELL DOWN THE
15 STAIRS AT YOUR MOTHER'S HOUSE AND RE-INJURED YOUR
16 BACK AND NECK THAT YOU BEGAN TREATMENT WITH TRI-
17 COUNTY SPINAL CENTER; IS THAT RIGHT?

18 A. NO.

19 Q. NO. OKAY. WE -- WE HAVE THE RECORDS. YOU HAD
20 TESTIFIED ON -- ON DIRECT EXAMINATION THAT YOU'D
21 NEVER HAD ANY TREATMENT FOR YOUR NECK OR BACK?

22 A. RIGHT. I WENT TO TRI-COUNTY SPINAL CARE, AND THAT
23 WAS FOR PAIN MANAGEMENT.

24 Q. YEAH, AND ---

25 A. AND THEY GAVE ME EPIDURAL INJECTIONS AND CORTISONE

1 SHOTS, AND THEY RECOMMENDED I SEE A NEUROSURGEON,
2 AND I NEVER SEEN THEM.

3 Q. ALL RIGHT.

4 A. I JUST RECEIVED PILLS AND SHOTS, AND THAT'S IT,
5 NOTHING.

6 Q. ALL RIGHT. YOU SAID YOU HADN'T HAD ANY TREATMENTS,
7 BUT ARE SO YOU SAYING NOTHING CONSTITUTES EPIDURAL
8 INJECTIONS, A RADIOFREQUENCY ABLATION PROCEDURES ---

9 A. BY TREATMENT ---

10 Q. --- INJECTIONS, THERAPY?

11 A. BY TREATMENT, I MEAN, THEY -- THE SURGEONS
12 RECOMMENDED I HAVE SURGERY. I'VE NEVER HAD SURGERY.
13 THEY RECOMMENDED THAT I SEE A NEUROLOGIST. I'VE
14 NEVER SEEN A NEUROLOGIST. THEY RECOMMENDED THAT I
15 HAVE TESTS DONE. THE ONLY TEST I HAD DONE WAS
16 M.R.I.s, NOTHING ELSE. I HAVEN'T HAD TREATMENT.

17 Q. OKAY. EXCEPT FOR THE INJECTIONS, THE M.R.I.s, THE
18 X-RAYS, THE HOSPITAL TREATMENT?

19 A. YEAH, AND FOR PAIN. I'VE HAD STUFF FOR PAIN TO HELP
20 ME DEAL WITH PAIN, AND EVERYTHING WORKS marginally,
21 BUT I STILL HAVE PAIN.

22 Q. OKAY.

23 A. EVERY DAY I STILL HAVE PAIN.

24 Q. ALL RIGHT.

25 A. I STILL GET DIZZY. I STILL -- MY HEAD STILL SWELLS

1 UP. MY LEG STILL GIVES OUT ON ME.

2 Q. YOUR HEAD SWELLS UP?

3 A. YES, THE BACK OF MY HEAD SWELLS.

4 Q. ALL RIGHT. AND THAT'S NOT -- CAN YOU SHOW ME ANY
5 MEDICAL RECORDS WHERE A DOCTOR'S DOCUMENTED YOUR
6 HEAD SWELLING UP?

7 A. I HAVE TOLD THEM I HAD SWELLING BACK THERE. THEY'VE
8 FELT BACK THERE.

9 Q. ALL RIGHT.

10 A. I HAVE HAD ---

11 Q. IS THAT FROM FALLING DOWN THE STAIRS AT HOME?

12 A. NO. I DIDN'T BUMP MY HEAD WHEN I FELL DOWN.

13 Q. ALL RIGHT. WELL, YOU WERE ASKED EARLIER ABOUT WHAT
14 HURT WHEN YOU WENT TO THE HOSPITAL INITIALLY AFTER
15 THE ACCIDENT AND YOU ---

16 A. AND I TOLD THEM I HURT.

17 Q. WELL, YOU TESTIFIED TODAY ---

18 A. 'CAUSE I FEEL PAIN.

19 Q. YOU TESTIFIED TODAY THAT WHEN YOU WENT TO THE
20 HOSPITAL RIGHT AFTER THIS ACCIDENT, YOU WERE FEELING
21 PAIN EVERYWHERE?

22 A. YEAH.

23 Q. BUT WHEN YOU TESTIFIED AT THE HEARING BEFORE
24 COMMISSIONER MCCASKILL IN MAY OF 2012, ---

25 **BY MS. BARR:**

1 AND, COMMISSIONER, I'M LOOKING AT PAGE 26.

2 BY COMMISSIONER TAYLOR:

3 THANK YOU.

4 CROSS EXAMINATION RESUMED BY MS. BARR:

5 Q. YOU -- YOU SAID THAT YOU WERE HAVING PROBLEMS WITH
6 YOUR NECK, YOUR LOWER BACK, AND YOUR KNEE; IS THAT
7 RIGHT?

8 A. YES.

9 Q. OKAY. BUT NOW YOU SAY YOUR HEAD SWELLS?

10 A. THE BACK OF MY HEAD RIGHT HERE, IT -- IT SWELLS UP.
11 I MEAN, DR. ABEL COULD HAVE DOCUMENTED IT, DR.
12 KELLETT; I'VE TOLD ALL THE DOCTORS ABOUT IT.

13 Q. OKAY.

14 A. I DON'T -- I DON'T KNOW WHAT'S IN THEIR RECORD, BUT
15 I TOLD THEM, AND IT'S THERE; YOU CAN SEE IT.

16 Q. ALL RIGHT. NOW, SPEAKING OF DR. ABEL, WE TALKED
17 ABOUT THIS CANE YOU HAVE. YOU CARRY, AND WE WATCHED
18 YOU BEFORE THE HEARING WHEN YOU CAME IN, YOU -- YOU
19 CARRY THAT CANE IN YOUR RIGHT HAND; IS THAT CORRECT?

20 A. YES.

21 Q. BUT YOU CLAIM THAT IT'S YOUR RIGHT KNEE THAT'S
22 INJURED; IS THAT RIGHT?

23 A. YES.

24 Q. ALL RIGHT. AND EVEN DR. WILDSTEIN NOTED, PAGE 93 OF
25 THE APAs, THAT ---

1 A. HE STATED THAT ACTUALLY ---

2 Q. --- THAT THAT'S THE INCORRECT HAND TO CARRY A CANE
3 IN IF YOU ---

4 A. HE TOLD ME I SHOULD CARRY THE CANE IN MY LEFT HAND,
5 BUT I TOLD HIM IT HURTS. SO I CARRY IT THE WAY
6 THAT'S COMFORTABLE FOR ME. AND I'D BEEN TELL HIM I
7 CARRY IT TO WHAT'S COMFORTABLE.

8 Q. OKAY. BUT IT'S NOT NECESSARILY THERAPEUTIC FOR YOUR
9 KNEE OR WOULD HELP YOUR KNEE?

10 A. BUT IT HURTS, I TRY TO ALLEVIATE THE PAIN.

11 Q. ALL RIGHT. WHAT HURTS?

12 A. WHEN I CARRY IT IN MY LEFT HAND TOO MUCH, I CAN FEEL
13 THE PAIN IN MY NECK, AND I CAN FEEL IT IN MY
14 SHOULDERS. IT HURTS. SO I CARRIED IT IN MY RIGHT
15 HAND TO ALLEVIATE SOME OF THAT, AND THEN I SWITCH IT
16 BACK AND FORTH BECAUSE I HURT.

17 Q. OKAY. BUT I THOUGHT YOUR KNEE ONLY HURT SOMETIMES?

18 A. MY KNEE GIVES OUT. IT HURTS SOMETIMES, BUT THE REST
19 OF MY BODY HURTS. MY BACK HURTS. MY NECK HURTS. I
20 HURT.

21 Q. OKAY. DO YOU REMEMBER DR. WILDSTEIN TELLING YOU
22 THAT HE BELIEVED THAT YOUR COMPLAINTS WERE OUT OF
23 PROPORTION WITH WHAT HE COULD FIND ON YOUR PHYSICAL
24 EXAM?

25 A. NO, I DON'T.

1 BY MS. BARR:

2 THAT'S PAGE 94, COMMISSIONER.

3 BY COMMISSIONER TAYLOR:

4 THANKS.

5 THE WITNESS RESUMES ANSWERS:

6 A. AND I TOLD ALL THE DOCTORS I HURT; I JUST NEED
7 SOMETHING FOR PAIN. I HURT. I NEED SOMETHING DONE.

8 CROSS EXAMINATION RESUMED BY MS. BARR:

9 Q. BUT THE THINGS THAT THEY'VE GIVEN YOU FOR PAIN, YOU
10 SAY HAVEN'T HELPED?

11 A. THEY DIDN'T.

12 Q. OKAY.

13 A. THE EPIDURALS ONLY WORK FOR A FEW DAYS. THEY TOLD
14 ME IT SHOULD HAVE LASTED FOR A FEW WEEKS. IT
15 DIDN'T. AND THE PILLS, THEY WORKED FOR A LITTLE
16 WHILE, BUT THERE'S -- WHEN I NEEDED IT, IT'S NOT
17 THERE. I HURT.

18 Q. THE MEDICATIONS YOU GET NOW ARE FROM DR. ABEL, YOUR
19 FAMILY PHYSICIAN; IS THAT RIGHT?

20 A. YES.

21 Q. AND YOU REALIZE DR. ABEL SAID THAT HE DIDN'T THINK
22 THAT THERE WAS ANY TREATMENT THAT WOULD MAKE YOU ANY
23 BETTER?

24 A. OTHER THAN HAVING SURGERY, HE SAID SURGERY CAN HELP
25 ME, BUT I -- HE RECOMMENDED IT, BUT NOTHING'S

1 HAPPENING, NOTHING'S BEEN DONE.

2 Q. BUT YOU REALIZE THAT -- THAT DR. ABEL, THE LETTER HE
3 WROTE TO YOUR LAWYER ON MAY 29, 2013, HE SAID, "I'M
4 NOT OPTIMISTIC HE WILL IMPROVE TO ANY SIGNIFICANT
5 DEGREE IN THE FUTURE."

6 A. I'M NOT AWARE OF THAT.

7 Q. SO HE BASICALLY TOLD YOU YOU NEED TO LIVE WITH THIS?

8 A. HE SAYS I NEED TO LEARN TO LIVE WITH IT, THEN HE
9 RECOMMENDED THAT I GO TO A PAIN MANAGEMENT
10 SPECIALIST, AND I STILL HAVEN'T. EVER SINCE I SEEN
11 DR. KELLETT ---

12 Q. WELL, NOTHING THAT THE PAIN MANAGEMENT ---

13 A. I HAVEN'T SEEN A ---

14 Q. --- YOU SAID NOTHING WORKED THAT THEY TRIED AT PAIN
15 MANAGEMENT.

16 A. IT DON'T. THE SHOTS THAT THEY GAVE ME, THE
17 CORTISONE SHOTS, THE EPIDURALS, THEY LAST FOR A
18 LITTLE WHILE. AT NIGHT, I STILL CAN'T SLEEP. I
19 CAN'T RELAX. I CAN'T REST 'CAUSE I HURT. DEPENDING
20 ON WHAT POSITION I'M IN, I HURT.

21 Q. AND YOU HURT WORSE NOW BECAUSE YOU FELL DOWN THE
22 STAIRS THAN YOU DID ORIGINALLY AFTER THE ACCIDENT?

23 BY MR. AKERY:

24 OBJECTION.

25 THE WITNESS ANSWERS:

1 A. NO. I HURT WORSE NOW BECAUSE NOTHING'S EVER BEEN
2 DONE. IT'S BEEN OVER TWO YEARS AND NOTHING'S BEEN
3 DONE, NOTHING.

4 **CROSS EXAMINATION RESUMED BY MS. BARR:**

5 Q. BUT YOU ADMITTED THAT FALLING DOWN THE STAIRS TWICE
6 AT HOME INCREASED YOUR BACK AND NECK PAIN; IS THAT
7 RIGHT?

8 A. BACK THEN. YES, IT DID.

9 Q. OKAY. HAVE YOU APPLIED FOR ANY JOBS?

10 A. NO, I HAVEN'T.

11 Q. PUT IN AN APPLICATION ANYWHERE?

12 A. NO, I HAVEN'T.

13 Q. TRIED TO WORK ANYWHERE?

14 A. NO, I HAVEN'T.

15 Q. HAVE YOU APPLIED FOR SOCIAL SECURITY DISABILITY?

16 A. NO.

17 Q. HAVE YOU HAD ANY FURTHER INJURIES LIKE THE ONE
18 DESCRIBED FALLING DOWN THE STAIRS?

19 A. NO.

20 Q. JUST YOU SAY YOU'VE -- YOU'VE ALMOST FALLEN BUT
21 CAUGHT YOURSELF?

22 A. YEAH.

23 Q. HAVE YOU BEEN INCARCERATED SINCE THE TIME OF THE
24 LAST HEARING?

25 A. HAVE I BEEN SINCE THE TIME OF THE LAST HEARING?

1 Q. YES.

2 A. NO. 'CAUSE THAT HEARING WAS CANCELLED.

3 Q. RIGHT. BUT HAVE YOU BEEN INCARCERATED FOR ANY OTHER

4 REASON?

5 A. NOT SINCE THE LAST HEARING.

6 Q. ALL RIGHT. YOUR RIGHT KNEE, YOU HAVE OSGOOD-

7 SCHLATTER DISEASE?

8 A. I HAD IT, YES.

9 Q. IT WAS NEVER TREATED SURGICALLY, WAS IT?

10 A. IT DIDN'T REQUIRE SURGERY, BUT IT WAS TREATED.

11 Q. HOW WAS YOUR OSGOOD-SCHLATTER'S DISEASE TREATED?

12 A. WITH PHYSICAL THERAPY MOSTLY.

13 Q. DID YOU WEAR A BRACE?

14 A. YES, I DID. AND A CAST.

15 Q. DO YOU STILL HAVE THE BONEY PROMINENCE; CAN YOU SEE

16 IT, THE EVIDENCE OF THE OSGOOD-SCHLATTER ---

17 A. YES.

18 Q. --- DISEASE ON YOUR KNEE?

19 A. YES.

20 Q. ALL RIGHT. THE COMMISSIONER MAY NOT BE FAMILIAR,

21 BUT IT'S LIKE A BUMP BELOW YOUR KNEECAP; IS THAT

22 RIGHT?

23 A. YEAH.

24 Q. IT'S TENDER TO THE TOUCH?

25 A. YES. AND IT WAS EXACERBATED WHEN MY KNEE SHATTERED

1 THE STEERING COLUMN.

2 Q. AND OSGOOD-SCHLATTER DISEASE, AS I'M FAMILIAR WITH
3 IT, IT -- IT'S PAINFUL TO KNEEL WHEN YOU HAVE
4 OSGOOD-SCHLATTER'S DISEASE; IS THAT RIGHT?

5 A. YES, IT IS.

6 **BY MS. BARR:**

7 THAT'S ALL THE QUESTIONS I HAVE FOR YOU AT THIS
8 TIME.

9 **BY COMMISSIONER TAYLOR:**

10 OKAY. MS. COFIELD, ANY QUESTIONS.

11 **BY MS. COFIELD:**

12 YES, COMMISSIONER.

13 **CROSS EXAMINATION BY MS. COFIELD:**

14 Q. MR. ROSE, WHY DO USE THAT CANE?

15 A. FOR DIZZINESS, FOR BALANCE, AND TO HELP ME -- JUST
16 TO HELP ME WALK.

17 Q. OKAY. SO IT'S NOT BECAUSE YOUR KNEE IS HAVING
18 TROUBLE, IT'S ---

19 A. MY KNEE GIVES OUT ON ME SOMETIMES. I DON'T KNOW
20 WHEN IT'S GOING TO DO IT, BUT IT DOES IT, AND I DO
21 GET DIZZY A LOT.

22 Q. OKAY. AND -- AND YOU SAID IN YOUR LAST DEPOSITION
23 THAT YOU GOT THE CANE BECAUSE OF DIZZINESS?

24 A. YES.

25 Q. OKAY.

1 A. THERE'S NOTHING'S CHANGED.

2 Q. IS IT THE MEDICINE THAT'S MAKING YOU DIZZY?

3 A. NO, I DON'T THINK SO.

4 Q. WELL, WHAT DO YOU THINK MAKES YOU DIZZY?

5 A. JUST LIKE RIGHT NOW, MY -- I'M DIZZY. AND IT'S JUST
6 I CAN FEEL MY HEAD THROBBING, AND IF I MOVE TO FAST,
7 I GET DIZZY. IT'S JUST DOING CERTAIN THINGS. I
8 DON'T -- AND THAT'S WHY THEY RECOMMENDED I SEE A
9 NEUROSURGEON -- I MEAN A NEUROLOGIST, BUT I NEVER
10 SEEN ONE.

11 Q. BECAUSE OF YOUR HEAD?

12 A. I DON'T KNOW WHAT'S HAPPENING.

13 Q. BECAUSE OF YOU BEING DIZZY?

14 A. BECAUSE OF THE HEADACHES THAT WON'T GO AWAY BECAUSE
15 OF THE ---

16 Q. WHO -- WHO RECOMMENDED THAT?

17 A. DR. KELLETT, HE DID, DR. ABEL.

18 Q. BECAUSE OF YOUR HEADACHES?

19 A. I HAVE HEADACHES EVERY DAY, MISS. I HAVE HEADACHES
20 EVERY NIGHT. I HAVE HEADACHES SOMETIMES THAT JUST
21 WON'T GO AWAY.

22 Q. IS THAT YOUR MAIN PROBLEM?

23 A. NO. THAT'S ONE OF MY PROBLEMS.

24 Q. OKAY. A FEW MINUTES AGO, YOU TOLD -- TOLD MS. BARR
25 THAT NOTHING'S BEEN DONE FOR YOU?

1 A. IT HASN'T BEEN DONE.

2 Q. YOU'VE SEEN DR. ABEL ACCORDING TO HIS RECORD ON PAGE

3 105, 42 TIMES?

4 A. OKAY.

5 Q. IS THAT CORRECT?

6 A. YES, AND HE -- HE'S MADE PLENTY OF RECOMMENDATIONS

7 AND NOTHING'S BEEN DONE.

8 Q. YOU'VE SEEN HOW MANY OTHER DOCTORS?

9 A. I'VE SEEN DR. KELLETT, AND I'VE SEEN DR. WILDSTEIN,

10 DR. WILLS, DR. POLETTI, DR. JONES, AND NOBODY -- ANY

11 RECOMMENDATION THAT'S BEEN MADE HAS NOT BEEN

12 FOLLOWED THROUGH ON OR FOLLOWED UP ON.

13 Q. WELL, NOW WAIT A MINUTE?

14 A. WAIT A MINUTE FOR WHAT?

15 Q. YOU HAD INJECTIONS, DIDN'T YOU?

16 A. INJECTIONS FOR PAIN, TO HELP ME DEAL WITH PAIN.

17 Q. OKAY.

18 A. AND THE INJECTIONS WEREN'T WORKING.

19 Q. AND YOU HAD MEDICINE AS WELL, TOO, DIDN'T YOU?

20 A. PAIN MEDICINE.

21 Q. OKAY. SO YOU DID HAVE TREATMENT?

22 A. I WANT TO GET RID OF MY PAIN.

23 Q. OKAY.

24 A. THE TREATMENT HELPS ME GET RID OF THE PAIN, NOT TO

25 HELP ME DEAL WITH IT EVERY DAY. I WANT TO GET RID

1 OF IT.

2 Q. WHAT -- WHAT DO YOU THINK IS GOING TO GET RID OF IT?

3 A. I DON'T KNOW. SURGERY MIGHT HELP.

4 Q. WHO TOLD YOU THAT?

5 A. THE DOCTORS.

6 Q. THEY TOLD YOU THAT; IT'S NOT IN THEIR RECORD.

7 A. I DON'T KNOW WHAT'S IN THE RECORDS. I HAVEN'T SEEN
8 THE RECORDS.

9 Q. NOBODY ---

10 A. ALL I KNOW IS I GO THROUGH PAIN. ALL I KNOW IS THEY
11 TELL ME I NEED SOME TYPE OF ---

12 Q. MR. ROSE, CAN I ASK A QUESTION, PLEASE?

13 A. GO AHEAD.

14 Q. NO DOCTOR HAS SAID TO YOU THAT IF YOU HAVE SURGERY
15 IT'S GOING TO ALLEVIATE YOUR PAIN, HAVE THEY?

16 **BY MR. AKERY:**

17 OBJECT TO FORM.

18 **THE WITNESS ANSWERS:**

19 A. HE SAID IT MAY -- IT MAY ALLEVIATE SOME OF MY PAIN.

20 **BY MS. COFIELD:**

21 OKAY. I DON'T HAVE ANYTHING ELSE.

22 **BY COMMISSIONER TAYLOR:**

23 OKAY. MR. KAUFMANN.

24 **BY MR. KAUFMANN:**

25 JUST A COUPLE.

CROSS EXAMINATION BY MR. KAUFMANN:

Q. MR. ROSE, DID YOU MENTION THAT AMONG THE MEDICINES
YOU'VE BEEN PRESCRIBED WERE ELAVIL AND CYMBALTA?

A. YES.

Q. WHEN WERE YOU FIRST PRESCRIBED ELAVIL?

A. I THINK ABOUT TWO YEARS AGO.

Q. AND WHO PRESCRIBED THAT FOR YOU?

A. DR. ABEL.

Q. AND HAS HE BEEN THE ONLY DOCTOR TO PRESCRIBE THAT
FOR YOU?

A. YES.

Q. AND HAVE YOU BEEN TAKING THAT MEDICATION
CONSISTENTLY THROUGHOUT THE ---

A. YES.

Q. --- THIS PERIOD OF TIME SINCE HE FIRST PRESCRIBED
IT?

A. YES.

Q. AND THEN THE SAME QUESTION WITH CYMBALTA, HOW LONG
HAVE YOU BEEN TAKING THAT?

A. SINCE THEY SENT -- SINCE I SAW DR. JONES; I DON'T
REMEMBER THE DAY.

Q. BUT DR. JONES WAS THE DOCTOR WHO PRESCRIBED THAT FOR
YOU INITIALLY?

A. NO. HE RECOMMENDED IT, AND HE GAVE ME A SAMPLE OF
LYRICA TO TAKE BACK TO DR. ABEL, AND THEY CONSULTED,

1 AND THEN THEY PUT ME ON CYMBALTA.

2 Q. WHO WAS IT WHO ORIGINALLY PRESCRIBED THE CYMBALTA?

3 A. IT WAS RECOMMENDED BY DR. JONES, AND IT WAS
4 PRESCRIBED BY DR. ABEL.

5 Q. AND WAS THAT PRESCRIBED AROUND THE SAME TIME THAT
6 THE ELAVIL WAS PRESCRIBED?

7 A. NO.

8 Q. LATER OR -- OR EARLIER?

9 A. OVER A YEAR LATER.

10 Q. OH, OKAY. AND HAVE YOU BEEN TAKING THAT
11 CONTINUOUSLY SINCE YOU WERE PRESCRIBED ---

12 A. YES.

13 Q. --- CYMBALTA? OKAY. HAVE YOU EVER SEEN A
14 PSYCHIATRIST OR A PSYCHOLOGIST ---

15 A. NO.

16 Q. --- FOR ANY REASON?

17 A. NO.

18 **BY MR. KAUFMANN:**

19 THAT'S ALL I HAVE, COMMISSIONER.

20 **BY COMMISSIONER TAYLOR:**

21 OKAY. THANK YOU. MR. AKERY.

22 **BY MR. AKERY:**

23 A BRIEF FOLLOW UP.

24 **RE-DIRECT EXAMINATION BY MR. AKERY:**

25 Q. A LITTLE EARLIER YOU WERE ASKED THE QUESTION IF

1 ANYBODY HAD TOLD YOU THAT SURGERY WOULD HELP YOUR
2 PAIN, AND I'M LOOKING AT PAGE 96 HERE OF THE APAs.
3 IT SAYS "A ONE LEVEL C5/6 A.C.D.F., WHICH I FEEL
4 WOULD RELIABLY TAKE CARE OF THE PERISCAPULAR PAIN
5 AND NECK PAIN," AND THAT WAS FROM DR. WILDSTEIN. IS
6 THAT WHAT HE HAD INSTRUCTED YOU?

7 **BY MS. BARR:**

8 WHAT PAGE ARE YOU LOOKING AT?

9 **BY MR. AKERY:**

10 PAGE 96 OF THE APAs.

11 **RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:**

12 Q. IS THAT WHAT HE ---

13 **BY MS. BARR:**

14 THE POTENTIAL BENEFIT PART? YOU KEEP LEAVING
15 OUT THE POTENTIAL.

16 **BY MR. AKERY:**

17 IT SAYS BENEFIT FROM A ONE LEVEL C5/6 ---

18 **BY MS. BARR:**

19 POTENTIALLY BENEFIT.

20 **BY MR. AKERY:**

21 HE'S -- NO, HE DOESN'T SAY POTENTIAL. IT SAYS
22 "I FEEL THAT HE CAN POTENTIALLY BENEFIT FROM ONE
23 LEVEL C5/6 A.C.D.F., WHICH I FEEL WOULD RELIABLE
24 TAKE CARE OF THE PERISCAPULAR PAIN AND NECK PAIN."

25 **RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:**

1 Q. IS THAT WHAT HE DISCUSSED WITH YOU?

2 A. YES.

3 **BY COMMISSIONER TAYLOR:**

4 OKAY.

5 **RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:**

6 Q. OKAY. ADDITIONALLY, DR. ABEL HAS BEEN TREATING YOU
7 WITH SOME PSYCHOTROPIC MEDICATIONS THAT HELP WITH
8 SOME MENTAL ISSUES; IS THAT CORRECT?

9 A. YES.

10 Q. AND WHAT MENTAL ISSUES ARE YOU HAVING RIGHT NOW?

11 A. DEPRESSION.

12 Q. AND DID YOU HAVE ANY DEPRESSION BEFORE THIS
13 ACCIDENT?

14 A. NO.

15 Q. WHAT IS CAUSING THE DEPRESSION?

16 A. THE FACT THAT NOTHING'S BEING DONE.

17 **BY MS. BARR:**

18 OBJECTION.

19 **BY MR. AKERY:**

20 WHAT'S THE OBJECTION?

21 **BY MS. BARR:**

22 HE'S A MEDICAL DOCTOR QUALIFIED TO TESTIFY AS
23 TO THE NATURE OF A DIAGNOSIS THAT HE MAY OR MAY NOT
24 HAVE THAT'S NOT MENTIONED IN THE MEDICAL RECORDS AND
25 THE CAUSE OF THAT CONDITION WHICH HE MAY OR MAY NOT

1 HAVE.

2 BY MR. AKERY:

3 WHAT -- WHAT -- WHAT SYMPTOMS ---

4 BY MS. BARR:

5 I DON'T THINK HE'S QUALIFIED.

6 RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:

7 Q. WHAT SYMPTOMS ARE YOU HAVING?

8 A. DEPRESSION.

9 Q. OKAY. AND CAN YOU DESCRIBE THIS?

10 A. IT'S JUST THE FEELINGS THAT I HAVE THAT -- WELL,
11 NOTHING'S BEING DONE.

12 BY MS. BARR:

13 OBJECTION. YOUR HONOR, I'D ALSO OBJECT ON THE
14 GROUNDS OF RELEVANCE. THERE'S NO FORM 50 ALLEGING
15 RELEVANCE; THERE WAS NO RESPONSE TO THE FORM 21
16 ALLEGING RELEVANCE. THE PRE-HEARING BRIEF DOESN'T
17 TALK ABOUT DEPRESSION. MENTAL INJURY IS SIMPLY NOT
18 SOMETHING THAT'S BEFORE THE COMMISSION.

19 BY MR. AKERY:

20 AND I'M GOING TO REFERENCE AN APA PAGE NUMBER,
21 IN WHICH THE PHYSICIAN ADDRESSES DEPRESSION. OKAY?

22 BY MS. BARR:

23 WELL, THAT'S GREAT THAT THERE'S AN APA HE IS
24 GOING TO POINT TO. THE FACT REMAINS THAT NO CLAIM
25 FOR DEPRESSION HAS EVER BEEN MADE. NO CLAIM FOR

1 MENTAL INJURY HAS NEVER BEEN MADE. IT'S NOT EVEN
2 RAISED ON HIS PRE-HEARING BRIEF.

3 BY MR. AKERY:

4 WELL, I'LL TELL YOU WHICH PAGE.

5 BY MS. BARR:

6 OF YOUR PRE-HEARING BRIEF, OF YOUR FORM 50, OF
7 YOUR RESPONSE TO FORM 21?

8 BY COMMISSIONER TAYLOR:

9 I'M GOING TO OVERRULE THE OBJECTION.

10 BY MR. AKERY:

11 AND -- AND I'M REFERENCING PAGE 69 OF THE APAs,
12 AND THIS IS WHERE DR. ABEL STATES ON HIS VISITS OF
13 MARCH 15TH, 2012, AND APRIL 12TH, 2012, "HIS
14 SYMPTOMS PERSISTED. I THOUGHT THERE WAS DEVELOPING
15 ANXIETY AND DEPRESSION AS A RESULT OF DELAY IN HIS
16 WORKERS' COMPENSATION DETERMINATION."

17 BY COMMISSIONER TAYLOR:

18 THAT'S FINE.

19 BY MR. AKERY:

20 OKAY.

21 BY COMMISSIONER TAYLOR:

22 I'M GOING OVERRULE THE OBJECTION. I'M GOING TO
23 -- AND HE'S NOT PLEADING IT AT THIS POINT IN TIME.
24 HE'S JUST TESTIFYING AS TO WHAT HE THINKS HE HAS.
25 IT'S EVIDENCE, THE WEIGHT TO BE CONSIDERED TO THE

1 ISSUES BEFORE ME, THAT'S A MATTER FOR ME TO DECIDE,
2 BUT HE -- I'LL LET HIM TESTIFY AS TO HOW HE FEELS.

3 BY MS. BARR:

4 CERTAINLY, AND WE -- SIMPLY WE WOULD OBJECT TO
5 ANY ATTEMPT TO CREATE A NEW CLAIM FOR INJURIES NOT
6 PREVIOUSLY PLED IN THE ATTEMPT TO CLAIM ENTITLEMENT
7 IN BENEFITS FOR THESE ALLEGED PROBLEMS.

8 BY MR. AKERY:

9 YOUR -- YOUR HONOR, THE TESTIMONY IS SOLICITED
10 MERELY SHOW THAT HE IS NOT REGULAR IN HIS CURRENT
11 STATE. HE'S FRUSTRATED. HE'S ANGRY. HE'S UPSET,
12 AND THAT MIGHT NOT BE THE WAY HE WAS BEFORE THIS
13 ACCIDENT. OKAY.

14 BY COMMISSIONER TAYLOR:

15 OKAY. AND I'LL ALLOW IT JUST TO -- TO GO TO
16 HIS STATE OF MIND; THAT'S FINE. YOU MAY CONTINUE,
17 MR. AKERY.

18 BY MR. AKERY:

19 ALL RIGHT. THAT'S ALL THE QUESTIONS I HAVE AT
20 THIS TIME.

21 BY COMMISSIONER TAYLOR:

22 OKAY. MS. BARR.

23 BY MS. BARR:

24 THANK YOU. JUST BRIEFLY OF -- OF ONE QUESTION.

25 RE-CROSS EXAMINATION BY MS. BARR:

1 Q. YOU TESTIFIED ABOUT WANTING TREATMENT AND WANTING
2 THE INSURANCE COMPANY AND YOUR EMPLOYER AND -- AND
3 CHRIS THOMPSON SERVICES TO AUTHORIZE TREATMENT
4 INCLUDING SURGERY. I NOTICE THAT THE MOST RECENT
5 RECOMMENDATION AT PAGE 71 FROM DR. ABEL WAS A
6 REFERRAL FOR HEPATITIS TESTING. ARE YOU CLAIMING
7 THAT ---

8 A. NO.

9 Q. --- WORKERS' COMPENSATION COULD -- SHOULD COVER THIS
10 HEPATITIS TESTING?

11 A. NO. WHAT HAPPENED WAS THAT -- TRY -- WHAT IT SAY --
12 DR. KELLETT'S OFFICE, THERE WAS A PATIENT THAT
13 TESTED POSITIVE FOR HEPATITIS. THE HEALTH
14 DEPARTMENT CAME AND CLOSED THE OFFICE DOWN AND
15 REPORTED THAT ALL PATIENTS BE TESTED FOR IT.

16 Q. ALL RIGHT. AND DR. KELLETT WAS SOMEBODY YOU SAW ON
17 YOUR OWN WITHOUT AUTHORIZATION FROM ANY OF YOUR
18 EMPLOYERS OR YOUR EMPLOYER OR THE INSURANCE COMPANY?

19 A. AND YEAH ---

20 Q. YOUR LAWYER SENT YOU TO DR. KELLETT; IS THAT RIGHT?

21 A. YEAH, THAT WAS TRI-COUNTY SPINAL CARE.

22 Q. OKAY. AND TRI-COUNTY SPINAL CARE IS SOMETHING THAT
23 -- THAT MR. FISHER OF THE GEORGE SINK LAW FIRM SENT
24 YOU TO DR. KELLETT?

25 A. RIGHT.

1 Q. HAVE YOU HAD THAT HEPATITIS TESTING?

2 A. AND I HAD THE TEST, BUT I TESTED NEGATIVE.

3 BY MS. BARR:

4 NO FURTHER QUESTIONS.

5 BY COMMISSIONER TAYLOR:

6 OKAY. MS. COFIELD.

7 BY MS. COFIELD:

8 NOTHING FURTHER.

9 BY COMMISSIONER TAYLOR:

10 OKAY. MR. KAUFMAN.

11 BY MR. KAUFMANN:

12 NOTHING FURTHER.

13 BY COMMISSIONER TAYLOR:

14 ALL RIGHT. THE WITNESS IS EXCUSED. DOES THE
15 CLAIMANT HAVE ANY OTHER WITNESSES?

16 BY MR. AKERY:

17 NONE, YOUR HONOR.

18 BY COMMISSIONER TAYLOR:

19 ALL RIGHT. DO THE DEFENDANTS HAVE ANY
20 WITNESSES?

21 BY MS. BARR:

22 NO, YOUR HONOR. WE'LL RELY ON THE MEDICAL
23 RECORDS.

24 BY COMMISSIONER TAYLOR:

25 ALL RIGHT. THANK YOU. THAT CONCLUDES THIS

1 MATTER.

2 (THERE BEING NO FURTHER QUESTIONS, THE HEARING WAS
3 CONCLUDED AT THE HOUR OF 11:56 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1112328

EMPLOYEE/CLAIMANT: SAMUEL ROSE

EMPLOYER: CHRIS THOMPSON SERVICES, L.L.C.
J.J.S. TRUCKING, L.L.C.

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 57 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **SAMUEL ROSE** TAKEN ON THE 23RD DAY OF SEPTEMBER, 2013.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 18TH DAY OF OCTOBER, 2013.

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

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

From: Ben Akery <bakery@steinberglawfirm.com>
Date: November 9, 2015 at 4:50:15 PM EST
To: keroberts@wcc.sc.gov, "Falls, Kim" <kfalls@wcc.sc.gov>
Cc: Chrystal Dively <cdively@trask-howell.com>, Kirsten Barr <kbarr@trask-howell.com>, amy@cofieldlaw.com, Joseph Fisher <JFisher@sinklaw.com>, Robert Treacy <RTreacy@sinklaw.com>
Subject: FW: Samuel Rose v. Chris Thompson, et. al. 1112328

Keith and Kim, hope you are both doing well. Please allow this email to respond to Chrystal Dively's email from earlier this afternoon. Please be advised the Claimant objects to the Proposed Order as written and we advised Defense Counsel of this objection on 9/25/15 and again on 10/30/15 (emails shown below). We never received a response from defense counsel and only now have received a copy of the same proposed order sent to your attention without the changes that we have requested pursuant to the Appellate Panel's instructions. Again, we object to the proposed Order as written and request that the below requested changes be made pursuant to the Appellate Panel's Decision and Order. Thank you for your assistance in this matter.

Benjamin W. Akery, Esq.

<[image005.png](#)>

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From: Ben Akery [mailto:bakery@steinberglawfirm.com]
Sent: Friday, October 30, 2015 12:04 PM
To: 'Kirsten Barr'
Cc: 'amy@cofieldlaw.com'; 'Robert Treacy'; 'Joseph Fisher'
Subject: RE: Samuel Rose v. Chris Thompson, et. al. 1112328

Kirsten, please advise as to status of this proposed change? Thanks.

Benjamin W. Akery, Esq.

<[image001.png](#)>

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From: Ben Akery [mailto:bakery@steinberglawfirm.com]
Sent: Friday, September 25, 2015 1:50 PM

To: 'Kirsten Barr'

Cc: 'amy@cofieldlaw.com'; 'Robert Treacy'; 'Joseph Fisher'

Subject: RE: Samuel Rose v. Chris Thompson, et. al. 1112328

Kirsten, hope you are doing well. We would ask that you please remove the following sentence on the bottom of page 10 of the proposed Order:

"Regardless of these arguments, the fact remains that the Claimant is not entitled to any additional medical or compensation benefits under the South Carolina Workers' Compensation Act as a matter of law, having failed to perfect an appeal of the Hearing Commissioner Taylor's Conclusions of Law regarding the Claimant's entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30."

Other than that I think we are fine with the rest of the Order. Thanks.

Benjamin W. Akery, Esq.

<image002.png>

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From: Kirsten Barr [<mailto:kbarr@trask-howell.com>]

Sent: Thursday, September 17, 2015 3:00 PM

To: Roberts, Keith

Cc: amy@cofieldlaw.com; bakery@steinberglawfirm.com; Falls, Kim

Subject: RE: Samuel Rose v. Chris Thompson, et. al. 1112328

Keith,

I submitted a proposed order a while back. However, the Claimant objected to the order because I actually addressed the issues that were before the Appellate Panel in that order. I have been struggling how to draft an order that could actually withstand scrutiny on appeal without addressing the issues that were considered by the Panel. I have attached a second proposed order with hopes that the Claimant will not object again.

Best,
Kirsten

From: Roberts, Keith [<mailto:keroberts@wcc.sc.gov>]
Sent: Thursday, September 17, 2015 2:36 PM
To: Kirsten Barr <kbarr@trask-howell.com>
Cc: amy@cofieldlaw.com; bakery@steinberglawfirm.com; Falls, Kim <kfalls@wcc.sc.gov>
Subject: Samuel Rose v. Chris Thompson, et. al. 1112328

Kirsten,

What is the status of the proposed order in this claim? Order instructions were issued on May 6th, 2015.

J. Keith Roberts

Attorney at Law
South Carolina Workers' Compensation Commission
1333 Main Street - Suite 500
Columbia, South Carolina 29201
Direct: (803) 737-5701
KeRoberts@wcc.sc.gov

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2016-000497

Samuel Rose, Claimant, ... Appellant,

v.

JJS Trucking, Uninsured Employer, and Chris Thompson Services,
Upstream Employer, and Bridgefield Casualty Ins. Co., Carrier for
Chris Thompson Services, and The State Accident Fund, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



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Attorneys for Appellant

November 3, 2016
Columbia, South Carolina